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PROCEEDINGS AND DEBATES OF THE 100th CONGRESS, SECOND SESSION

HOUSE OF REPRESENTATIVES—*Tuesday, October 11, 1988*

The House met at 12 noon.

The Reverend Dr. Ronald F. Christian, assistant to the bishop, Washington, DC, Metropolitan Synod, Evangelical Lutheran Church in America, offered the following prayer:

Heavenly Father, gracious God, we invoke Your name at noon of this another day and by so doing, we acknowledge You to be our Creator and confess You to be our Lord.

This day we pray:

Save us from conceit that puffs up the mind but also from despair that tears apart the will.

Protect us from a pride that hardens the senses but also from sloth that lacks desire.

Heal our bent and broken hearts but also break our strident and discordant spirits.

O God, may we never be so preoccupied with the affairs of this world that we fail to acknowledge You as our source of wisdom, our anchor of strength, and the giver of mercy. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from North Carolina [Mr. McMILLAN] kindly come forward and lead the Members in the Pledge of Allegiance to the flag?

Mr. McMILLAN of North Carolina. Thank you, Mr. Speaker.

Please join me in saying the Pledge of Allegiance.

Mr. McMILLAN of North Carolina led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

CONFERENCE REPORT ON S. 2749, DEFENSE AUTHORIZATION AMENDMENTS AND BASE CLOSURE AND REALIGNMENT ACT

Mr. MONTGOMERY submitted the following conference report and statement on the Senate bill (S. 2749) to authorize appropriations for fiscal year 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes:

CONFERENCE REPORT (H. REPT. 100-1071)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2749) to authorize appropriations for fiscal year 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the

NOTICE

A final issue of the Congressional Record for the 100th Congress, second session, will be printed after the sine die adjournment of the Congress. Members may submit manuscript for printing to the Official Reporters of Debates no later than November 10, 1988.

None of the material printed in the Congressional Record after adjournment may contain subject matter, or relate to any event, which occurred after the date that Congress officially adjourned.

No provision herein shall be construed to supersede the two-page rule.

All material must be signed by the Member and delivered to the respective offices of the Official Reporters of Debate, Room HT-60 or S-220 of the Capitol. These offices are open Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m.

Members of Congress desiring to purchase reprints of material submitted for printing in the Congressional Record during the adjournment may do so through the Congressional Printing Management Division located at the Government Printing Office. This office may be reached by telephoning 275-2226 between the hours of 8:00 a.m. and 4:30 p.m. daily.

By order of the Joint Committee on Printing.

FRANK ANNUNZIO, *Chairman.*

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

SECTION 1. SHORT TITLE

This Act may be cited as the "Defense Authorization Amendments and Base Closure and Realignment Act".

TITLE I—ADDITIONAL FISCAL YEAR 1989 AUTHORIZATION PROVISIONS

SEC. 101. ADDITIONAL AUTHORIZATIONS FOR MILITARY CONSTRUCTION AND LAND ACQUISITION PROJECTS

(a) ARMY.—(1) In addition to projects otherwise authorized by law, the Secretary of the Army may acquire real property and may carry out a military construction project for the construction of a barracks modernization at Fort Bliss, Texas, in an amount not to exceed $7,100,000.

(2) In addition to projects otherwise authorized by law, the Secretary of the Army may make advances to the Secretary of Transportation for the construction of defense access roads under section 210 of title 23, United States Code, at New Cumberland Army Depot, Pennsylvania, in an amount not to exceed $5,300,000.

(3) In addition to any other authorization of appropriations for the Department of the Army, funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 1988, for projects of the Department of the Army described in paragraphs (1) and (2) in the amount of $12,400,000.

(4) The forty units of military family housing authorized to be constructed at Schofield Barracks, Hawaii, by section 2101 of the Military Construction Authorization Act, 1989, may be constructed at Helemano Military Reservation, Hawaii.

(b) AIR FORCE.—(1) In addition to projects otherwise authorized by law, the Secretary of the Air Force may acquire real property and may carry out military construction projects at Blytheville Air Force Base, Arkansas, in an amount not to exceed $4,086,000.

(2) In addition to any other authorization of appropriations for the Department of the Air Force, funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 1988, for military construction and land acquisition projects of the Department of the Air Force authorized by paragraph (1) in the amount of $4,086,000.

SEC. 102. ADDITIONAL AUTHORIZATIONS FOR GUARD AND RESERVE CONSTRUCTION AND LAND ACQUISITION PROJECTS

(a) AUTHORIZATIONS OF APPROPRIATIONS.—In addition to funds otherwise authorized by law, there are authorized to be appropriated for fiscal years beginning after September 30, 1988, for cost of acquisition, architectural and engineering services, and construction of facilities for the Guard and Reserve Forces, and for contributions therefor, under chapter 133 of title 10, United States Code (including the cost of acquisition of land for those facilities), the following amounts:

(1) For the Department of the Army, $17,506,000 for the Army National Guard of the United States.

(2) For the Department of the Air Force, $2,300,000 for the Air National Guard of the United States.

(b) AUTHORIZATION OF USE OF FUNDS FOR CERTAIN PROJECTS.—Construction and acquisition projects for the Air National Guard of the United States at the following locations and in the following amounts are authorized to be carried out using unexpended funds from amounts appropriated for fiscal years beginning before October 1, 1988:

(1) Anchorage Kulis Air National Guard Base, Alaska, $3,500,000.

(2) Allen C. Thompson Field, Mississippi, $2,000,000.

SEC. 103. ARMY AIR DEFENSE SYSTEM

(a) LIMITATION.—The Secretary of the Army may obligate fiscal year 1989 missile procurement funds that are available for advance procurement for the Air Defense Anti-Tank (ADATS) System only to support continued low-rate production of such system.

(b) FUNDS COVERED.—For purposes of subsection (a), fiscal year 1989 missile procurement funds are funds appropriated to or for the use of the Army for fiscal year 1989 for procurement of missiles and funds otherwise made available to the Army for fiscal year 1989 for that purpose.

SEC. 104. MULTIYEAR PROCUREMENT AUTHORITY

(a) REQUESTS FOR RELIEF.—If for any fiscal year a multiyear contact to be entered into under section 2306(h) of title 10, United States Code, is authorized by law for a particular procurement program and that authorization is subject to certain conditions established by law (including a condition as to cost savings to be achieved under the multiyear contract in comparison to specified other contracts) and if it appears (after negotiations with contractors) that such savings cannot be achieved, but that substantial savings could nevertheless be achieved through the use of a multiyear contract rather than specified other contracts, the President may submit to Congress a request for relief from the specified cost savings that must be achieved through multiyear contracting for that program. Any such request by the President shall include details about the request for a multiyear contract, including details about the negotiated contract terms and conditions.

(b) TOW II MISSILE PROGRAM.—Section 8031 of the Department of Defense Appropriations Act, 1989 (Public Law 100-463), is amended by striking out the last proviso.

SEC. 105. FIXED-PRICE DEVELOPMENT CONTRACTS

Section 8085 of the Department of Defense Appropriations Act, 1989 (Public Law 100-463), relating to fixed-price development contracts is amended by—

(1) striking out "fixed price-type contracts" and inserting in lieu thereof "firm fixed-price contracts"; and

(2) striking out ": Provided further," and all that follows through the end of the section and inserting in lieu thereof a period.

SEC. 106. TECHNICAL AMENDMENTS

(a) CONFORMANCE OF AUTHORIZATION AND APPROPRIATION PROVISIONS.—(1) Section 826(c) of the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100-456), is amended—

(A) in subsection (c), by inserting "and the Committees on Appropriations" after "Committees on Armed Services"; and

(B) in subsection (d), by striking out "three years after the date of the enactment of this Act" and inserting in lieu thereof "on September 30, 1991".

(2) Section 8105 of the Department of Defense Appropriations Act, 1989 (Public Law 100-463), and the amendment made by that section, shall cease to be effective.

(b) DEFINITIONS.—(1) Section 1095a(c) of title 10, United States Code, is amended—

(A) in paragraph (1), by striking out "(1) 'Captive" and inserting in lieu thereof "(1) The terms 'captive"; and

(B) in paragraph (2), by striking out "(2) 'Dependent" and inserting in lieu thereof "(2) The term 'dependent".

(2) Section 2683(c) of such title is amended—

(A) in paragraph (2)(B), by inserting "the term" after "In subparagraph (A),"; and

(B) in paragraph (4)—

(i) by inserting "The term" after "(A)"; and

(ii) by striking out "(B) 'Minimum" and inserting in lieu thereof "(B) The term 'minimum".

(c) CORRECTION OF REFERENCE TO SCHOOL OF THE AMERICAS.—Section 4415 of title 10, United States Code, is amended by striking out "School for the Americas" in subsections (b) and (c) and inserting in lieu thereof "School of the Americas".

SEC. 107. TERM OF OFFICE OF VICE CHAIRMAN OF JOINT CHIEFS OF STAFF

Notwithstanding the term of office stated in the first sentence of section 154(a)(3) of title 10, United States Code, the President may extend until June 1, 1989, the term of office of the officer serving as Vice Chairman of the Joint Chiefs of Staff for the term which began on February 6, 1987.

SEC. 108. REPORT ON CLOSE AIR SUPPORT ALTERNATIVES

(a) ASSESSMENT.—(1) The Secretary of Defense shall conduct an independent assessment of Army and Air Force studies and analyses of close air support aircraft alternatives for meeting the military requirements of the United States (A) for the interim period between the date of the completion of the assessment and the year 2000, and (B) for the period after such year.

(2) In conducting such assessment, the Secretary shall consider both the development of new aircraft and the modification of existing aircraft, including the A-7 Plus Strikefighter, the F/A-16, the AV-8B, and the A-10 aircraft in current or modified configuration.

(3) In conducting such assessment, the Secretary shall also address the following issues:

(A) Cost.

(B) Development and production schedules.

(C) Technical risks.

(D) Manpower requirements.

(E) Force structure.

(F) Five-year funding profiles.

(G) Cost effectiveness.

(H) Military effectiveness.

(b) OPERATIONAL TEST PLAN.—The Director of Defense Operational Test and Evaluation shall develop an operational test plan for a competitive fly-off of alternative aircraft for the close air support mission. The Director shall complete the development of such plan no later than March 31, 1989. In developing such plan, the Director shall consult with the Air Force Test and Evaluation Center, the Army Operational Testing and Evaluation Activity, and the Marine Corps Operational Test and Evaluation Activity.

(c) TRANSFER FEASIBILITY.—The Secretary of Defense shall assess the feasibility of transferring, no later than fiscal year 1992, the close air support mission from the Air Force to the Army. In conducting such assessment, the Secretary shall consider the cost, schedules, five-year funding profiles, manpower requirements, and force structure implications of such a transfer.

(d) REPORTS.—Not later than March 31, 1989, the Secretary of Defense shall submit to the Committees on Armed Services and the Committees on Appropriations of the Senate and the House of Representatives an interim report on the matters referred to in subsections (a) through (c). The Secretary

shall submit a final report on such matters to those Committees not later than December 31, 1989. Such reports shall be submitted in both classified and unclassified form.

SEC. 109. EXTENSION OF DATE FOR REPORT ON POTENTIAL START TREATY

Section 908 of the National Defense Authorization Act, Fiscal Year 1989, is amended—

(1) in subsection (b), by striking out "September 15, 1988" and inserting in lieu thereof "March 15, 1989"; and

(2) by striking out subsection (c) and inserting in lieu thereof the following:

"(c) INTERIM REPORT.—The President shall submit an interim report to Congress containing the information described in subsection (b) not later than December 15, 1988.

"(d) FORM OF REPORT.—The President shall submit the reports under subsections (b) and (c) in both classified and unclassified form.".

SEC. 110. TRANSFER OF CERTAIN OBSOLETE SUBMARINES

Clauses (2) and (3) of section 7308(c) of title 10, United States Code, shall not apply with respect to transfers, under section 7308(a) of such title, of obsolete vessels by the Secretary of the Navy as follows:

(1) Transfer of the obsolete submarine United States ship Blenny to the town of Ocean City, Maryland.

(2) Transfer of the obsolete submarine ex-Croaker (ex-SS-246) to the Buffalo and Erie County Naval and Servicemen's Park, a nonprofit corporation organized under the laws of the State of New York.

TITLE II—CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

SEC. 201. CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

The Secretary shall—

(1) close all military installations recommended for closure by the Commission on Base Realignment and Closure in the report transmitted to the Secretary pursuant to the charter establishing such Commission;

(2) realign all military installations recommended for realignment by such Commission in such report; and

(3) initiate all such closures and realignments no later than September 30, 1991, and complete all such closures and realignments no later than September 30, 1995, except that no such closure or realignment may be initiated before January 1, 1990.

SEC. 202. CONDITIONS

(a) IN GENERAL.—The Secretary may not carry out any closure or realignment of a military installation under this title unless—

(1) no later than January 16, 1989, the Secretary transmits to the Committees on Armed Services of the Senate and the House of Representatives a report containing a statement that the Secretary has approved, and the Department of Defense will implement, all of the military installation closures and realignments recommended by the Commission in the report referred to in section 201(1);

(2) the Commission has recommended, in the report referred to in section 201(1), the closure or realignment, as the case may be, of the installation, and has transmitted to the Committees on Armed Services of the Senate and the House of Representatives a copy of such report and the statement required by section 203(b)(2); and

(3) the Secretary of Defense has transmitted to the Commission the study required by section 206(b).

(b) JOINT RESOLUTION.—The Secretary may not carry out any closure or realignment under this title if, within the 45-day period beginning on March 1, 1989, a joint resolution is enacted, in accordance with the provisions of section 208, disapproving the recommendations of the Commission. The days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of such 45-day period.

(c) TERMINATION OF AUTHORITY.—The authority of the Secretary to carry out any closure or realignment under this title shall terminate on October 1, 1995.

SEC. 203. THE COMMISSION

(a) MEMBERSHIP.—The Commission shall consist of 12 members appointed by the Secretary of Defense.

(b) DUTIES.—The Commission shall—

(1) transmit the report referred to in section 201(1) to the Secretary no later than December 31, 1988, and shall include in such report a description of the Commission's recommendations of the military installations to which functions will be transferred as a result of the closures and realignments recommended by the Commission; and

(2) on the same date on which the Commission transmits such report to the Secretary, transmit to Committees on Armed Services of the Senate and the House of Representatives—

(A) a copy of such report; and

(B) a statement certifying that the Commission has identified the military installations to be closed or realigned by reviewing all military installations inside the United States, including all military installations under construction and all those planned for construction.

(c) STAFF.—Not more than one-half of the professional staff of the Commission shall be individuals who have been employed by the Department of Defense during calendar year 1988 in any capacity other than as an employee of the Commission.

SEC. 204. IMPLEMENTATION

(a) IN GENERAL.—In closing or realigning a military installation under this title, the Secretary—

(1) subject to the availability of funds authorized for and appropriated to the Department of Defense for use in planning and design, minor construction, or operation and maintenance and the availability of funds in the Account, may carry out actions necessary to implement such closure or realignment, including the acquisition of such land, the construction of such replacement facilities, the performance of such activities, and the conduct of such advance planning and design as may be required to transfer functions from such military installation to another military installation;

(2) subject to the availability of funds authorized for and appropriated to the Department of Defense for economic adjustment assistance or community planning assistance and the availability of funds in the Account, shall provide—

(A) economic adjustment assistance to any community located near a military installation being closed or realigned; and

(B) community planning assistance to any community located near a military installation to which functions will be transferred as a result of such closure or realignment,

if the Secretary determines that the financial resources available to the community (by grant or otherwise) for such purposes are inadequate; and

(3) subject to the availability of funds authorized for and appropriated to the Department of Defense for environmental restoration and the availability of funds in the Account, may carry out activities for the purpose of environmental restoration, including reducing, removing, and recycling hazardous wastes and removing unsafe buildings and debris.

(b) MANAGEMENT AND DISPOSAL OF PROPERTY.—(1) The Administrator of General Services shall delegate to the Secretary, with respect to excess and surplus real property and facilities located at a military installation closed or realigned under this title—

(A) the authority of the Administrator to utilize excess property under section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483);

(B) the authority of the Administrator to dispose of surplus property under section 203 of that Act (40 U.S.C. 484); and

(C) the authority of the Administrator to grant approvals and make determinations under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)).

(2)(A) Subject to subparagraph (B), the Secretary shall exercise authority delegated to the Secretary pursuant to paragraph (1) in accordance with—

(i) all regulations in effect on the date of the enactment of this title governing utilization of excess property and disposal of surplus property under the Federal Property and Administrative Services Act of 1949; and

(ii) all regulations in effect on the date of the enactment of this title governing the conveyance and disposal of property under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)).

(B) The Secretary, after consulting with the Administrator of General Services, may issue regulations that are necessary to carry out the delegation of authority required by paragraph (1).

(C) The authority required to be delegated by paragraph (1) to the Secretary by the Administrator of General Services shall not include the authority to prescribe general policies and methods for utilizing excess property and disposing of surplus property.

(D) Before any action may be taken with respect to the disposal of any surplus real property or facility located at any military installation to be closed or realigned under this title, the Secretary shall consult with the Governor of the State and the heads of the local governments concerned for the purpose of considering any plan for the use of such property by the local community concerned.

(E) The provisions of this paragraph and paragraph (1) are subject to paragraphs (3) and (4).

(3) Before any action is taken with respect to the disposal or transfer of any real property or facility located at a military installation to be closed or realigned under this title, the Secretary shall notify all departments and other instrumentalities (including nonappropriated fund instrumentalities) within the Department of Defense of the availability of such property or facility, or portion thereof, and may transfer such property, facility, or portion, without reimbursement, to any such department or instrumentality. In carrying out this paragraph, the Secretary shall give a priority, and shall transfer, to any such department or other instrumentality that agrees to pay fair market value for the property or facility, or portion thereof. For purposes of this paragraph, fair market value shall be determined on the basis of the use of the property or facility on December 31, 1988. This para-

graph shall take precedence over any other provision of this title or other provision of law with respect to the disposal or transfer of real property or facility located at a military installation to be closed or realigned under this title.

(4)(A) Except as provided in subparagraph (B), all proceeds—

(i) from any transfer under paragraph (3); and

(ii) from the transfer or disposal of any other property or facility made as a result of a closure or realignment under this title,

shall be deposited into the Account established by section 207(a)(1).

(B) In any case in which the General Services Administration is involved in the management or disposal of such property or facility, the Secretary shall reimburse the Administrator of General Services from the proceeds of such disposal, in accordance with section 1535 of title 31, United States Code, for any expenses incurred in such activities.

(c) APPLICABILITY OF OTHER LAW.—(1) The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to—

(A) the actions of the Commission, including selecting the military installations which the Commission recommends for closure or realignment under this title, recommending any military installation to receive functions from an installation to be closed or realigned, and making its report to the Secretary and the committees under section 203(b); and

(B) the actions of the Secretary in establishing the Commission, in determining whether to accept the recommendations of the Commission, in selecting any military installation to receive functions from an installation to be closed or realigned, and in transmitting the report to the Committees referred to in section 202(a)(1).

(2) The provisions of the National Environmental Policy Act of 1969 shall apply to the actions of the Secretary (A) during the process of the closing or realigning of a military installation after such military installation has been selected for closure or realignment but before the installation is closed or realigned and the functions relocated, and (B) during the process of the relocating of functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated. In applying the provisions of such Act, the Secretary shall not have to consider—

(i) the need for closing or realigning a military installation which has been selected for closure or realignment by the Commission;

(ii) the need for transferring functions to another military installation which has been selected as the receiving installation; or

(iii) alternative military installations to those selected.

(3) A civil action for judicial review, with respect to any requirement of the National Environmental Policy Act of 1969 to the extent such Act is applicable under paragraph (2), or with respect to any requirement of the Commission made by this title, of any action or failure to act by the Secretary during the closing, realigning, or relocating referred to in clauses (A) and (B) of paragraph (2), or of any action or failure to act by the Commission under this title, may not be brought later than the 60th day after the date of such action or failure to act.

SEC. 205. WAIVER

The Secretary may carry out this title without regard to—

(1) any provision of law restricting the use of funds for closing or realigning military installations included in any appropriation or authorization Act; and

(2) the procedures set forth in sections 2662 and 2687 of title 10, United States Code.

SEC. 206. REPORTS

(a) IN GENERAL.—As part of each annual budget request for the Department of Defense, the Secretary shall transmit to the appropriate committees of Congress—

(1) a schedule of the closure and realignment actions to be carried out under this title in the fiscal year for which the request is made and an estimate of the total expenditures required and cost savings to be achieved by each such closure and realignment and of the time period in which these savings are to be achieved in each case, together with the Secretary's assessment of the environmental effects of such actions; and

(2) a description of the military installations, including those under construction and those planned for construction, to which functions are to be transferred as a result of such closures and realignments, together with the Secretary's assessment of the environmental effects of such transfers.

(b) STUDY.—(1) The Secretary shall conduct a study of the military installations of the United States outside the United States to determine if efficiencies can be realized through closure or realignment of the overseas base structure of the United States. Not later than October 15, 1988, the Secretary shall transmit a report of the findings and conclusions of such study to the Commission and to the Committees on Armed Services of the Senate and the House of Representatives. In developing its recommendations to the Secretary under this title, the Commission shall consider the Secretary's study.

(2) Upon request of the Commission, the Secretary shall provide the Commission with such information about overseas bases as may be helpful to the Commission in its deliberations.

(3) The Commission, based on its analysis of military installations in the United States and its review of the Secretary's study of the overseas base structure, may provide the Secretary with such comments and suggestions as it considers appropriate regarding the Secretary's study of the overseas base structure.

SEC. 207. FUNDING

(a) ACCOUNT.—(1) There is hereby established on the books of the Treasury an account to be known as the "Department of Defense Base Closure Account" which shall be administered by the Secretary as a single account.

(2) There shall be deposited into the Account—

(A) funds authorized for and appropriated to the Account with respect to fiscal year 1990 and fiscal years beginning thereafter;

(B) any funds that the Secretary may, subject to approval in an appropriation Act, transfer to the Account from funds appropriated to the Department of Defense for any purpose, except that such funds may be transferred only after the date on which the Secretary transmits written notice of, and justification for, such transfer to the appropriate committees of Congress; and

(C) proceeds described in section 204(b)(4)(A).

(3)(A) The Secretary may use the funds in the Account only for the purposes described in section 204(a).

(B) When a decision is made to use funds in the Account to carry out a construction project under section 204(a)(1) and the cost of the project will exceed the maximum amount authorized by law for a minor construction project, the Secretary shall notify in writing the appropriate committees of Congress of the nature of, and justification for, the project and the amount of expenditures for such project. Any such construction project may be carried out without regard to section 2802(a) of title 10, United States Code.

(4) No later than 60 days after the end of each fiscal year in which the Secretary carries out activities under this title, the Secretary shall transmit a report to the appropriate committees of Congress of the amount and nature of the deposits into, and the expenditures from, the Account during such fiscal year and of the amount and nature of other expenditures made pursuant to section 204(a) during such fiscal year.

(5) Unobligated funds which remain in the Account after the termination of the authority of the Secretary to carry out a closure or realignment under this title shall be held in the Account until transferred by law after the appropriate committees of Congress receive the report transmitted under paragraph (6).

(6) No later than 60 days after the termination of the authority of the Secretary to carry out a closure or realignment under this title, the Secretary shall transmit to the appropriate committees of Congress a report containing an accounting of—

(A) all the funds deposited into and expended from the Account or otherwise expended under this title; and

(B) any amount remaining in the Account.

SEC. 208. CONGRESSIONAL CONSIDERATION OF COMMISSION REPORT

(a) TERMS OF THE RESOLUTION.—For purposes of section 202(b), the term "joint resolution" means only a joint resolution which is introduced before March 15, 1989, and—

(1) which does not have a preamble;

(2) the matter after the resolving clause of which is as follows: "That Congress disapproves the recommendations of the Commission on Base Realignment and Closure established by the Secretary of Defense as submitted to the Secretary of Defense on ", the blank space being appropriately filled in; and

(3) the title of which is as follows: "A joint resolution disapproving the recommendations of the Commission on Base Realignment and Closure."

(b) REFERRAL.—A resolution described in subsection (a), introduced in the House of Representatives shall be referred to the Committee on Armed Services of the House of Representatives. A resolution described in subsection (a) introduced in the Senate shall be referred to the Committee on Armed Services of the Senate.

(c) DISCHARGE.—If the committee to which a resolution described in subsection (a) is referred has not reported such resolution (or an identical resolution) before March 15, 1989, such committee shall be, as of March 15, 1989, discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House involved.

(d) CONSIDERATION.—(1) On or after the third day after the date on which the com-

mittee to which such a resolution is referred has reported, or has been discharged (under subsection (c)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution (but only on the day after the calendar day on which such Member announces to the House concerned the Member's intention to do so). All points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of.

(2) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(3) Immediately following the conclusion of the debate on a resolution described in subsection (a) and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

(e) CONSIDERATION BY OTHER HOUSE.—(1) If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

(A) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (B)(ii).

(B) With respect to a resolution described in subsection (a) of the House receiving the resolution—

(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(ii) the vote on final passage shall be on the resolution of the other House.

(2) Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

(f) RULES OF THE SENATE AND HOUSE.—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 209. DEFINITIONS

In this title:

(1) The term "Account" means the Department of Defense Base Closure Account established by section 207(a)(1).

(2) The term "appropriate committees of Congress" means the Committees on Armed Services and the Committees on Appropriations of the Senate and the House of Representatives.

(3) The terms "Commission on Base Realignment and Closure" and "Commission" mean the Commission established by the Secretary of Defense in the charter signed by the Secretary on May 3, 1988, and as altered thereafter with respect to the membership and voting.

(4) The term "charter establishing such Commission" means the charter referred to in paragraph (3).

(5) The term "initiate" includes any action reducing functions or civilian personnel positions but does not include studies, planning, or similar activities carried out before there is a reduction of such functions or positions.

(6) The term "military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Secretary of a military department.

(7) The term "realignment" includes any action which both reduces and relocates functions and civilian personnel positions.

(8) The term "Secretary" means the Secretary of Defense.

(9) The term "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and any other commonwealth, territory, or possession of the United States.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment to the title of the bill, insert the following: "An Act to provide certain additional fiscal year 1989 defense authorization policies, to provide procedures to facilitate the closure and realignment of obsolete or unnecessary military installations, and for other purposes.".

And the House agree to the same.

From the Committee on Armed Services, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

LES ASPIN,
RONALD V. DELLUMS,
IKE SKELTON,
MARVIN LEATH,
DAVE MCCURDY,
DENNIS M. HERTEL,
SOLOMON P. ORTIZ,
TOMMY F. ROBINSON,
WILLIAM L. DICKINSON,
DAVID O'B. MARTIN,
LYNN MARTIN,
BEN BLAZ,
ARTHUR RAVENEL, JR.,
CURT WELDON,

From the Committee on Government Operations, for consideration of section 921 of the Senate bill, and the House amendment, and modifications committed to conference:

JACK BROOKS,
JOHN CONYERS, JR.,
CARDISS COLLINS,
FRANK HORTON,
ROBERT S. WALKER,

From the Committee on Merchant Marine and Fisheries, for consideration of section 921 of the Senate bill, and the House amendment, and modifications committed to conference:

WALTER B. JONES,
GERRY E. STUDDS,
EARL HUTTO,
BOB DAVIS,
DON YOUNG,

From the Committee on Rules, for consideration of section 921 of the Senate bill, and the House amendment, and modifications committed to conference:

CLAUDE PEPPER,
JOE MOAKLEY,
BUTLER DERRICK,
ANTHONY C. BEILENSON,
MARTIN FROST,
JAMES H. QUILLEN,

As additional conferees, for consideration of section 921 of the Senate bill, and the House amendment, and modifications committed to conference:

THOMAS S. FOLEY,
DICK ARMEY,
Managers on the Part of the House.

SAM NUNN,
JOHN C. STENNIS,
J.J. EXON,
CARL LEVIN,
EDWARD M. KENNEDY,
JEFF BINGAMAN,
JOHN GLENN,
ALBERT GORE, JR.,
TIMOTHY E. WIRTH,
RICHARD SHELBY,
JOHN W. WARNER,
STROM THURMOND,
GORDON HUMPHREY,
PETE WILSON,
PHIL GRAMM,
STEVE SYMMS,
JOHN MCCAIN,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2749) to authorize appropriations for fiscal year 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I—ADDITIONAL FISCAL YEAR 1989 AUTHORIZATION PROVISIONS

Legislative Provisions

LEGISLATIVE PROVISIONS ADOPTED

Military construction authorization (secs. 101 and 102)

The fiscal year 1989 Military Construction Appropriations Act (Public Law 100-447) appropriated funds for several military construction projects that are not authorized by the fiscal year 1989 Defense Authorization Act (Public Law 100-456).

Sections 101 and 102 provide the statutory authorization for these projects as required by law:

State/installation	Project	Amount (thousands)
DEPARTMENT OF THE ARMY		
PA New Cumberland Army Depot.	Access road	$5,300
TX Fort Bliss	Barracks modernization	$7,100
Army total		12,400
DEPARTMENT OF THE AIR FORCE		
AR Blytheville Air Force Base	Add/alter religious education facility.	1,600
AR Blytheville Air Force Base	Organizational maintenance shop.	[1] 2,486
Air Force total		4,086
ARMY NATIONAL GUARD		
MS Camp McCain	Army airfield	6,113
MS Camp McCain	Multipurpose training	904
MS Camp McCain	SIMNET training facility	929
MS Camp McCain	Tank road	525
ND Minot	Reserve/Guard center	7,920
NV Stead Airport	Aviation support facility	1,115
Army National Guard total.		17,506
AIR NATIONAL GUARD		
AK Kulis ANGB	Add/alter parking apron	[2] 3,500
FL Camp Blanding	Site preparation and utilities	800
MS Thompson Field	Aerial port facility	[2] 2,000
WI Volk Field	ACMI facility	1,500
Air National Guard total.		7,800

[1] Increase over previously authorized level.
[2] Authorized for appropriation using prior year funds.

Army family housing (sec. 101(a))

Section 2102 of the fiscal year 1989 Defense Authorization Act (Public Law 100-456) authorizes $11.4 million for the construction of 100 units of military family housing at Helemano, Hawaii. Section 2102 also authorizes $4.45 million for the construction of 40 units of military family housing at Schofield Barracks, Hawaii.

The Department of the Army recently revised the siting plan for this construction. Therefore, the conferees agree to a provision authorizing all of the 140 units to be constructed at Helemano, Hawaii with no change in the total funding.

Army air defense anti-tank system (ADATS) (sec. 103)

The conferees agree to include a provision that further clarifies the use of fiscal year 1989 advance procurement funds for the Army's Air Defense Anti-Tank System (ADATS).

The fiscal year 1989 Defense Appropriations Act (Public Law 100-463) includes a provision waiving the requirements of sections 138 and 236 of title 10, United States Code, for operational and live-fire testing in order to allow the Army to obligate fiscal year 1989 advance procurement funds in support of full rate production. This provision allows the Army to obligate these funds before the completion of operational testing for the system.

The conferees do not believe that title 10 requirements for operational testing should be waived for this major weapon system. Accordingly, section 103 allows the Secretary of the Army to obligate the fiscal year 1989 advance procurement funds for goods, services, and material only to support continued low-rate production for ADATS.

The conferees understand that the Department of the Army plans to conduct a field training exercise prior to the obligation of the fiscal year 1989 advance procurement funds. Therefore, the conferees expect the Army to obligate the fiscal year 1989 advance procurement funds after consultation with the Director, Operational Test and Evaluation, concerning the results of the field training exercise.

Multiyear procurement (sec. 104)

The conferees agree to include a provision that further clarifies the authority of the Department of Defense to enter into multiyear contracts. The fiscal year 1988/1989 Defense Authorization Act (Public Law 100-180) and the fiscal year 1989 Defense Authorization Act (Public Law 100-456) establish several statutory requirements—such as the mandatory levels of savings as compared with other contracts—that must be met before the Department may enter into a multiyear contract.

The fiscal year 1989 Defense Appropriations Act (Public Law 100-463) contains a provision (sec. 8031) that waives a requirement that multiyear procurement for the TOW II missile achieve 12 percent savings as compared to annual contract costs. As a general rule, the conferees do not believe that the Department of Defense should sign multiyear contracts without achieving the required savings. The conferees understand, however, that there may be selected cases where negotiations between the Department and the contractor fall short of the mandated thresholds, yet the negotiated contract offers substantial savings as compared to executing annual contracts. In those cases where the Department believes substantial savings would be eliminated, the conferees suggest that the Department request legislative relief and submit new multiyear justifications. These justifications should be based on the negotiated contracts and would allow the Committees on Armed Services to the Senate and House of Representatives to make recommendations based on negotiated data as compared to the Department's best estimates.

Regulations on use of fixed price development contracts (sec. 105)

Section 807 of the fiscal year 1989 Defense Authorization Act (Public Law 100-456) requires the Secretary of Defense to prescribe guidelines limiting the use of fixed price contracts for development programs. The section also precludes use of firm-fixed price development contracts in excess of $10 million unless approved by the Under Secretary of Defense for Acquisition.

The fiscal year 1989 Defense Appropriations Act (Public Law 100-463) requires the Under Secretary of Defense for Acquisition to approve all "fixed price-type" development contracts (not just "firm-fixed price" development contracts) in excess of $10 million. The Under Secretary's authority cannot be delegated below the level of an Assistant Secretary. In addition, the provisions requires the Department of Defense to notify Congress 30 days prior to authorizing any "fixed-price type" development contracts in excess of $10 million.

The conferees agree that careful scrutiny of fixed-price type development contracts is desirable, but believe that regulations required by the Authorization Act should be promulgated and given a chance to work before imposing high level internal review and Congressional notification requirements on all fixed-price type contracts. Accordingly, the conferees agree to delete the additional approval and reporting requirements contained in the Appropriations Act.

Technical amendments (sec. 106)

The fiscal year 1989 Defense Authorization Act contained a provision (sec. 826) governing the allowability of costs to promote the export of defense products. The fiscal year 1989 Defense Appropriations Act contained a provision (sec. 8105) which contained the identical substantive provisions, and which required a report to be submitted to the Appropriations Committees, as well as to the Armed Services Committees, of the Senate and the House of Representatives.

The conferees agree to amend the fiscal year 1989 Defense Authorization Act to adopt the requirement that the report be submitted to the Appropriations Committees as well as to the Armed Services Committees. In addition, the conferees agreed to amend the expiration date of the Authorization Act provision to conform it to the expiration date of the provision under the Appropriations Act (September 30, 1991). Finally, the conferees agreed to adopt certain other technical corrections to permanent law.

Expiration of term of office of Vice Chairman of Joint Chiefs of Staff (sec. 107)

The conferees understand that the term of the officer serving as Vice Chairman of the Joint Chiefs of Staff will expire on February 6, 1989. Because this date is only 18 days after the inauguration of the new Administration, the conferees determined that the new Administration would be forced to make an early decision on a nominee for this important military position.

The conferees agree to authorize the President to extend until June 1, 1989, the term of the officer serving as Vice Chairman of the Joint Chiefs of Staff for the term which began on February 6, 1987.

Close air support (sec. 108)

The conferees agree to include a provision requiring the Department of Defense to conduct certain studies regarding close air support.

The conferees note that there is serious concern in the Congress over the future of close air support and the need to modernize this key mission. The conferees believe a more independent and comprehensive assessment is required than is currently scheduled to be produced in support of key decisions to modernize this mission. The conferees emphasize that the study requirement is not intended to express support for or opposition to any particular approach, but that comprehensive analysis must precede any plan to modernize the close air support mission.

Analysis of alternative U.S. strategic nuclear force postures under START (sec. 109)

Section 908 of the fiscal year 1989 Defense Authorization Act (Public Law 100-456) requires a report to Congress by the President on the implications of a potential Strategic Arms Reductions Treaty (START) for alternative U.S. force postures in the 1990's. Because of the delay in enacting the fiscal year 1989 Defense Authorization Act, the conferees agree to a provision changing the deadline for this report from September 15, 1988 to March 15, 1989. The provision also requires an interim report to be submitted no later than December 15, 1988.

Transfer of certain obsolete submarines (sec. 110)

The conferees agree to a provision that waives the otherwise applicable congressional review period under section 7308 of title 10, United States Code, incident to the transfer of the obsolete submarine *Blenny* to the town of Ocean City, Maryland and the obsolete submarine ex-*Croaker* (ex-SS-246) to the Buffalo and Erie County Naval and Servicemen's Park, a nonprofit corporation organized under the laws of the state of New York.

Aircraft ejection seats

Section 842 of the fiscal year 1989 Defense Authorization Act (Public Law 100-456) establishes the Product Evaluation Activity. The conferees note that industry has developed advanced ejection seats for high performance combat aircraft. The conferees believe that such advanced-design ejection seats are excellent candidates for demonstration under the Product Evaluation Activity.

TITLE II—CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

LEGISLATIVE PROVISIONS

LEGISLATIVE PROVISIONS ADOPTED

Initiation of closure and realignment action (sec. 201)

The Senate bill contained a provision (sec. 921(a)(3)) that would require the initiation of all closures and realignments no later than September 30, 1991, and the completion of all such actions no later than September 30, 1995.

The House bill contained a similar provision (sec. 2) that would prohibit initiating such actions before January 1, 1990.

The Senate recedes.

The conferees recognize the need of impacted communities to plan for the economic dislocations associated with base closures and realignments. Delaying initiation of closure actions until January 1, 1990 provides approximately one year for such planning. During this period, the Department of Defense will be performing the environmental analysis required by the National Environmental Policy Act, and developing the detailed plans for implementing these closures, including the design of associated new facility construction. The conferees anticipate that impacted communities will use this period to develop reuse plans which will play a key role in subsequent Defense Department decisions regarding excess property disposal.

Conditions (sec. 202)

The Senate bill contained a provision (sec. 921(b)(1)) that would require the transmittal of a study by the Secretary of Defense regarding the overseas base infrastructure to the Base Closure and Realignment Commission and the Congress and the transmittal of the Commission's report and certification to the Secretary of Defense and the Congress. Both of these actions would be prerequisites for carrying out any closure or realignment under this act.

The House amendment contained no similar provision.

The House recedes.

Timing of submission of the Secretary of Defense's recommendation (sec. 202(a))

The Senate bill contained a provision (sec. 921(b)) that would direct the Secretary of Defense to submit a report of his decision concerning the recommendations of the Base Closure and Realignment Commission to the appropriate committees of the Congress within fifteen days after the Commission transmits its recommendations to the Secretary.

The House amendment contained a similar provision (sec. 3) that would direct the Secretary of Defense to submit this report to the Committees on Armed Services of the Senate and House of Representatives no later than January 16, 1989.

The Senate recedes.

Timing of a joint resolution of disapproval (sec. 202(b))

The Senate bill contained a provision (sec. 921(h)) that would establish a procedure by which the Congress could disapprove the closure and realignment decision of the Secretary of Defense through a joint resolution of disapproval that would be considered under expedited procedures. Such a resolution would have to be enacted during the 45 day period beginning with the Secretary's report of his decision to the Congress.

The House amendment contained a similar provision (sec. 3(b)) that would establish the period of enactment of such a resolution as 45 days beginning on March 1, 1989.

The Senate recedes.

The conferees agree that the procedures for such a consideration must comply with the parliamentary procedures of the Senate and the House of Representatives for such a resolution. They further agree that such a resolution should not be considered before March 1, 1989 in order to allow time for the 101st Congress to organize.

Size of the Commission (sec. 203(a))

The Senate bill contained a provision (sec. 921(c)) that would direct the Base Closure and Realignment Commission to be expanded from its original nine members to fifteen. New and replacement members would be appointed by the Secretary of Defense in consultation with the leadership of the Congress and associations representing State and local government officials. In addition to professional qualifications, the new commissioners would be selected in a way to ensure a reasonable geographic balance.

The House amendment contained no similar provision.

The House recedes with an amendment.

The conferees are aware that the Secretary of Defense has recently increased the membership of the Commission to ten. The conferees believe that the Commission would benefit from additional membership and direct the Secretary of Defense to appoint two additional members for a total of 12. In adding these members, the conferees believe the Secretary should take into account the geographic balance of the Commission.

Independence of the Commission staff (sec. 203(c))

The Senate bill contained a provision (sec. 921(c)(2)) that would mandate that none of the Base Closure and Realignment Commission's professional staff could have been Department of Defense employees during 1988.

The House amendment contained a similar provision (sec. 4(b)) that would require the staff supporting the Commission to be knowledgeable, professional, and independent. In order to insure this independence, no more than half of the professional staff could be employed by the Department of Defense during calendar year 1988.

The Senate recedes. The conferees recognize that the Commission faces a formidable task in completing a full analysis of the U.S. military base infrastructure and in developing a package of closure and realignment recommendations by December 31, 1988. To achieve this goal and provide the Secretary of Defense and the Congress a credible product, the conferees believe the Commission will need a staff that is thoroughly professional, knowledgeable of both the installation structure and broad military requirements, have access to both the data and judgment of the military Services, be familiar with cost accounting and environmental considerations, and be independent of both Department biases and political partisanship.

Property disposal (sec. 204(b))

The Senate bill contained a provision (sec. 921(e)) that would waive the Federal Property and Administrative Services Act on a one-time basis and would authorize the Secretary of Defense to manage the disposal of real properties found to be available in connection with base closures and realignments.

The House amendment contained a provision (sec. 5(b)) that would require that the transfer and disposal of real property related to base closures and realignments under this act be conducted by the Administrator of General Services, who acts primarily under the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.). Transfers of available real property to other military Services and agencies of the Department of Defense, including nonappropriated fund instrumentalities, would be considered before the property could be declared excess to the needs of the Department and reported to the Administrator for further federal utilization or disposal.

The conferees agree to a provision that would require the Administrator of General Services, on a one-time basis and for the unique purposes of this act, to delegate to the Secretary of Defense the Administrator's authority under the excess property utilization and surplus property disposal provisions of the Federal Property Act. The Secretary of Defense would then manage the utilization and disposal of properties available as a result of base closures and realignments. Thus the Secretary would act with respect to the utilization and disposal of properties in accordance with the provisions of the Federal Property Act and the related 1944 Act provisions. These provisions establish policies and procedures for property utilization and disposal, including a wide range of opportunities for cost-free public benefits transfers and other special planning and acquisition opportunities for State and local governments and certain nonprofit entities under existing law and regulations.

The conferees expect the Administrator to delegate, in accordance with section 205(d) of the Federal Property Act, any other specific functions under that Act which may be appropriate for exercise by the Secretary to facilitate property utilization and disposal under this act, such as functions under Title VIII of the Federal Property Act (urban land utilization).

The conferees expect the Secretary to issue regulations necessary to carry out this delegated authority, after consultation with the Administrator. However, since the Administrator, under the Federal Property Act, must prescribe policies and methods for maximizing utilization of excess property and must exercise supervision and direction over disposition of surplus property (all subject to overall policies and directives of the President), the authority to be delegated to the Secretary does not include authority to prescribe general policies and methods for utilizing excess property and disposing of surplus property.

The conferees expect the Secretary and Administrator to cooperate in making agreements under which the Administrator may provide services to the Secretary relating to the functions described in paragraph (1) in accordance with section 1535 of title 31, United States Code. Where the General Services Administration may be involved in the management or disposal of property, the Secretary would reimburse it for expenses incurred in such activities from the proceeds of property disposals.

The conference agreement would further provide that other military Services and agencies of the Department of Defense, including nonappropriated fund instrumentalities, would be notified and given the opportunity to acquire the available property, with priority given to any such entity agreeing to pay fair market value. An effort to carry out this provision would precede any determination that the property is excess or surplus.

Proceeds from transfers and disposals of property would be deposited into the Defense Base Closure Account.

Environmental analysis (sec. 204(c))

The Senate bill contained a provision (sec. 921(e)) that would waive the National Environmental Policy Act (NEPA) for the actions associated with closures and realignments pursued under this act.

The House amendment contained a provision (sec. 5(c)) that would modify on a one-time basis the applicability of the National Environmental Policy Act to the actions of the Base Closure and Realignment Commission and the Secretary of Defense concerning his decision whether to accept the Commission's recommendations. The scope and period during which civil action for judicial review could be requested under this statute would also be modified.

The Senate recedes with an amendment that would delete the provision to allow challenges under the NEPA to be brought within 60 days from when a reasonable person would have acquired actual or constructive knowledge of the Secretary's action or failure to act under the NEPA. The conferees expect the Secretary to provide maximum public notice of his decision under the NEPA so that the 60 day filing requirement may be met.

The conferees recognize that the National Environmental Policy Act has been used in some cases to delay and ultimately frustrate base closures, and support the narrowing of its applicability for closures and realignments under this act. However, they also believe that the NEPA goals of public disclosure and clear identification of potential adverse environmental impacts, as well as mitigating measures available to the decision maker, should be protected.

While the Commission has been directed in its charter to consider potential environmental consequences in developing its closure and realignment recommendations, neither the Commission nor the Secretary of Defense are required to perform a complete, public environmental analysis process prior to making their recommendations and decisions. The conferees expect that the Department of Defense will conduct the analyses required by the NEPA after the Secretary has made his decision on the closure or realignment of an installation. The focus of this analysis has been narrowed to the specific environmental impacts upon the gaining and losing locations, and the mitigating measures available to the Secretary. The opportunity to bring civil action for judicial review would be limited to 60 days.

Scope of overseas installation study (sec. 206(b))

The Senate bill contained a provision (sec. 921(f)) that would direct the Secretary to review overseas bases for efficiencies that could be achieved through closure or realignment and to submit a report on his findings no later than September 15, 1988 to the Commission and to the appropriate committees of Congress.

The House amendment contained a similar provision (sec. 7(b)) that would direct the Secretary of Defense to provide a study to the Base Closure and Realignment Commission by September 15, 1988. The study would outline actions planned for U.S. overseas bases that could affect the Commission's recommendations concerning closure or realignment of military bases in the United States. This report would also be provided to the Committees on Armed Services of the Senate and House of Representatives.

The House recedes with an amendment that would extend the reporting date for the overseas base study to October 15, 1988.

Funding of base closure actions (sec. 207)

The Senate bill contained a provision (sec. 921(g)) that would provide an annual authorization, beginning in fiscal year 1990, of $300 million to finance base closures. Transfers from other appropriations accounts and proceeds from property sales would constitute additional funding sources.

The House amendment contained a provision (sec. 8) that would establish an annual limit of $300 million for direct appropriations and transfers into a special base closure account. In addition, proceeds from property sales would also be deposited into the account.

The conferees agree that the funding of the substantial base closure and realignment costs should come from direct appropriations, transfers, and property sales. However, since the funding requirements for direct appropriations cannot be determined until the Commission has completed its work, the conferees agree to a provision that would require direct funding of the base closure account to be established each year during the annual authorization and appropriations cycle based upon the Department's budget request.

LEGISLATIVE PROVISIONS NOT ADOPTED

Commission certifications

The Senate bill contained a provision (sec. 921(c)) that would require the Base Closure and Realignment Commission to certify that none of the installations recommended for closure or realignment were more important than installations in the United States or overseas that are to be retained.

The House amendment contained a provision (sec. 4) that would direct the Commission to certify that it had taken the equitable geographic distribution of U.S. military bases into account in developing its closure and realignment recommendations, and had reviewed all military installations in the United States, including those planned or under construction.

The conferees believe that the geographic distribution of military activities within the United States is an important consideration based upon functional, economic, and political considerations. Although they agree to delete both provisions, the conferees fully expect geographic distribution to be carefully weighed during the Commission's deliberations leading to its closure and realignment recommendations. Likewise, within functional categories of installations where excess capacity is identified, the conferees expect that the Commission will ultimately recommend for closure those bases that are the least valuable to the Department and that meet the other criteria outlined in the Commission's charter.

The conferees expect the Commission to evaluate the U.S. base infrastructure not only for closure candidates, but also for realignment initiatives which could result in significant savings through reorganization or consolidation. Further, the Commission should carefully consider for closure those installations where local communities have expressed an interest in having these bases closed.

Sense of the Senate concerning Commission deliberations

The Senate bill contained a provision (sec. 935) that would state the sense of the Senate that the Commission should take into account the total economic impact of closures and realignments, not simply the costs to the Department of Defense or the Federal government, in developing its recommendations. The provision would state, in addition, that the Commissioners should be appropriately briefed on the installation requirements of classified programs.

The House amendment contained no similar provision.

The Senate recedes.

The conferees note that the charter under which the Commission was formed directs that among the criteria to be used by the Commission in developing its recommendations is the economic impact on communities where closures or realignments would occur. The conferees believe that this analysis should, to the maximum extent possible, outline the full extent of these economic impacts, including costs not directly related to the Department of Defense or other Federal agencies. Likewise, in analyzing U.S. basing requirements, the conferees expect the Secretary of Defense to provide the Commissioners with the necessary access to classified programs, consistent with current statutes and their needs.

From the Committee on Armed Services, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

Les Aspin,
Ronald V. Dellums,
Ike Skelton,
Marvin Leath,
Dave McCurdy,
Dennis M. Hertel,
Solomon P. Ortiz,
Tommy F. Robinson,
William L. Dickinson,
David O'B. Martin,

Lynn Martin,
Ben Blaz,
Arthur Ravenel, Jr.,
Curt Weldon,

From the Committee on Government Operations for consideration of section 921 of the Senate bill, and the House amendment, and modifications committed to conference:

Jack Brooks,
John Conyers, Jr.,
Cardiss Collins,
Frank Horton,
Robert S. Walker,

From the Committee on Merchant Marine and Fisheries, for consideration of section 921 of the Senate bill, and the House amendment, and modifications committed to conference:

Walter B. Jones,
Gerry E. Studds,
Earl Hutto,
Bob Davis,
Don Young,

From the Committee on Rules, for consideration of section 921 of the Senate bill, and the House amendment, and modifications committed to conference:

Claude Pepper,
Joe Moakley,
Butler Derrick,
Anthony C. Beilenson,
Martin Frost,
James H. Quillen,

As additional conferees, for consideration of section 921 of the Senate bill, and the House amendment, and modifications committed to conference:

Thomas S. Foley,
Dick Armey,

Managers on the Part of the House.

Sam Nunn,
John C. Stennis,
J.J. Exon,
Carl Levin,
Edward M. Kennedy,
Jeff Bingaman,
John Glenn,
Albert Gore, Jr.,
Timothy E. Wirth,
Richard Shelby,
John W. Warner,
Strom Thurmond,
Gordon Humphrey,
Pete Wilson,
Phil Gramm,
Steve Symms,
John McCain,

Managers on the Part of the Senate.

CONFERENCE REPORT ON S. 1630, RETIREMENT AND SURVIVORS' ANNUITIES FOR BANKRUPTCY JUDGES AND MAGISTRATES ACT OF 1988

Mr KASTENMEIER submitted the following conference report and statement on the Senate bill (S. 1630), to provide for retirement and survivors' annuities for bankruptcy judges and magistrates, and for other purposes:

Conference Report (H. Rept. 100-1072)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1630) to provide for retirement and survivors' annuities for bankruptcy judges and magistrates, and for the other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988".

SEC. 2. BASIC RETIREMENT PROGRAM.

(a) New Retirement System.—Chapter 17 of title 28, United States Code, is amended by adding at the end the following new section:

"§ 377. Retirement of bankruptcy judges and magistrates

"(a) Retirement Based on Years of Service.—A bankruptcy judge or magistrate to whom this section applies and who retires from office after attaining the age of 65 years and serving at least 14 years, whether continuously or otherwise, as such bankruptcy judge or magistrate shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's or magistrate's lifetime, an annuity equal to the salary being received at the time the judge or magistrate leaves office.

"(b) Retirement Upon Failure of Reappointment.—A bankruptcy judge or magistrate to whom this section applies, who is not reappointed following the expiration of the term of office of such judge or magistrate, and who retires upon the completion of such term shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of such bankruptcy judge's or magistrate's lifetime, an annuity equal to that portion of the salary being received at the time the judge or magistrate leaves office which the aggregate number of years of service, not to exceed 14, bears to 14, if—

"(1) such judge or magistrate has served at least 1 full term as a bankruptcy judge or magistrate, and

"(2) not earlier than 9 months before the date on which the term of office of such judge or magistrate expired, and not later than 6 months before such date, such judge or magistrate notified the appointing authority in writing that such judge or magistrate was willing to accept reappointment to the position in which such judge or magistrate was serving.

For purposes of this subsection, in the case of a bankruptcy judge, the written notice required by paragraph (2) shall be given to the chief judge of the circuit in which such bankruptcy judge is serving and, in the case of a magistrate, such notice shall be given to the chief judge of the district court in which the magistrate is serving.

"(c) Service of at Least 8 Years.—A bankruptcy judge or magistrate to whom this section applies and who retires after serving at least 8 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of the judge's or magistrate's lifetime, an annuity equal to that proportion of the salary being received at the time the judge or magistrate leaves office which the aggregate number of years of service, not to exceed 14, bears to 14. Such annuity shall be reduced by ⅙ of 1 percent for each full month such bankruptcy judge or magistrate was under the age of 65 at the time the judge or magistrate left office, except that such reduction shall not exceed 20 percent.

"(d) Retirement for Disability.—A bankruptcy judge or magistrate to whom this section applies, who has served at least 5 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate, and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's or magistrate's lifetime, an annuity equal to 40 percent of the salary being received at the time of retirement or removal or, in the case of a judge or magistrate who has served for at least 10 years, an amount equal to that proportion of the salary being received at the time of retirement or removal which the aggregate number of years of service, not to exceed 14, bears to 14.

"(e) Cost-of-Living Adjustments.—A bankruptcy judge or magistrate who is entitled to an annuity under this section is also entitled to a cost-of-living adjustment in such annuity, calculated and payable in the same manner as adjustments under section 8340(b) of title 5, except that any such annuity, as increased under this subsection, may not exceed the salary then payable for the position from which the judge or magistrate retired or was removed.

"(f) Election; Annuity in Lieu of Other Annuities.—A bankruptcy judge or magistrate shall be entitled to an annuity under this section if the judge or magistrate elects an annuity under this section by notifying the Director of the Administrative Office of the United States Courts. A bankruptcy judge or magistrate who elects to receive an annuity under this section shall not be entitled to receive any annuity to which such judge or magistrate would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5.

"(g) Calculation of Service.—(1) For purposes of calculating an annuity under this section—

"(A) full-time service as a bankruptcy judge or magistrate to whom this section applies may be credited; and

"(B) each month of service shall be credited as one-twelfth of a year, and the fractional part of any month shall not be credited.

"(2)(A) In the case of an individual who is a bankruptcy judge to whom this section applies and who retires under this section or who is removed from office under subsection (d) upon the sole ground of mental or physical disability, any service of that individual as a United States magistrate to whom this section applies, and any service of that individual as a full-time judicial officer who performed the duties of a magistrate and a bankruptcy judge at the same time, shall be included for purposes of calculating years of service under subsection (a), (b), (c), or (d), as the case may be.

"(B) In the case of an individual who is a magistrate to whom this section applies and who retires under this section or who is removed from office under subsection (d) upon the sole ground of mental or physical disability, any service of that individual as a bankruptcy judge to whom this section applies, and any service of that individual as a full-time judicial officer who performed the duties of a magistrate and a bankruptcy judge at the same time, shall be included for purposes of calculating years of service under subsection (a), (b), (c), or (d), as the case may be.

"(h) COVERED POSITIONS AND SERVICE.—This section applies to—

"(1) any bankruptcy judge appointed under—

"(A) section 152 of this title;

"(B) section 34 of the Bankruptcy Act before the repeal of that Act by section 401 of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2682); or

"(C) section 404 of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2549); and

"(2) any United States magistrate appointed under section 631 of this title,

only with respect to service on or after October 1, 1979, as such a bankruptcy judge or magistrate.

"(i) PAYMENTS PURSUANT TO COURT ORDER.—(1) Payments under this section which would otherwise be made to a bankruptcy judge or magistrate based upon his or her service shall be paid (in whole or in part) by the Director of the Administrative Office of the United States Courts to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

"(2) Paragraph (1) shall apply only to payments made by the Director of the Administrative Office of the United States Courts after the date of receipt by the Director of written notice of such decree, order, or agreement, and such additional information as the Director may prescribe.

"(3) As used in this subsection, the term 'court' means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian tribal court or court of Indian offense.

"(j) DEDUCTIONS, CONTRIBUTIONS, AND DEPOSITS.—

"(1) DEDUCTIONS.—Beginning with the next pay period after the Director of the Administrative Office of the United States Courts receives a notice under subsection (f) that a bankruptcy judge or magistrate has elected an annuity under this section, the Director shall deduct and withhold 1 percent of the salary of such bankruptcy judge or magistrate. Amounts shall be so deducted and withheld in a manner determined by the Director. Amounts deducted and withheld under this subsection shall be deposited in the Treasury of the United States to the credit of the Judicial Officers' Retirement Fund. Deductions under this subsection from the salary of a bankruptcy judge or magistrate shall terminate upon the retirement of the bankruptcy judge or magistrate or upon completing 14 years of service for which contributions under this section have been made, whether continuously or otherwise, as calculated under subsection (g), whichever occurs first.

"(2) CONSENT TO DEDUCTIONS; DISCHARGE OF CLAIMS.—Each bankruptcy judge or magistrate who makes an election under subsection (f) shall be deemed to consent and agree to the deductions from salary which are made under paragraph (1). Payment of such salary less such deductions (and any deductions made under section 376 of this title) is a full and complete discharge and acquittance of all claims and demands for all services rendered by such bankruptcy judge or magistrate during the period covered by such payment, except the right to those benefits to which the bankruptcy judge or magistrate is entitled under this section (and section 376).

"(k) DEPOSITS FOR PRIOR SERVICE.—Each bankruptcy judge or magistrate who makes an election under subsection (f) may deposit, for service performed before such election for which contributions may be made under this section, an amount equal to 1 percent of the salary received for that service. Credit for any period covered by that service may not be allowed for purposes of an annuity under this section until a deposit under this subsection has been made for that period.

"(l) INDIVIDUAL RETIREMENT RECORDS.—The amounts deducted and withheld under subsection (j), and the amounts deposited under subsection (k), shall be credited to individual accounts in the name of each bankruptcy judge or magistrate from whom such amounts are received, for credit to the Judicial Officers' Retirement Fund.

"(m) ANNUITIES AFFECTED IN CERTAIN CASES.—

"(1) PRACTICING LAW AFTER RETIREMENT.—

"(A) FORFEITURE OF ANNUITY.—Subject to subparagraph (B), any bankruptcy judge or magistrate who retires under this section and who thereafter practices law shall forfeit all rights to an annuity under this section for all periods beginning on or after the first day on which he or she so practices law.

"(B) FORFEITURE NOT TO APPLY WHERE INDIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNUITY.—(i) If a bankruptcy judge or magistrate makes an election to practice law after retirement under this section—

"(I) subparagraph (A) shall not apply to such bankruptcy judge or magistrate beginning on the date such election takes effect, and

"(II) the annuity payable under this section to such bankruptcy judge or magistrate, for periods beginning on or after the date such election takes effect, shall be equal to the annuity to which such bankruptcy judge or magistrate is entitled on the day before such effective date.

"(ii) An election under clause (i)—

"(I) may be made by a bankruptcy judge or magistrate eligible for retirement under this section, and

"(II) shall be filed with the Director of the Administrative Office of the United States Courts.

Such an election, once it takes effect, shall be irrevocable.

"(iii) Any election under this subparagraph shall take effect on the first day of the first month following the month in which the election is made.

"(2) RECALL NOT PERMITTED.—Any bankruptcy judge or magistrate who retires under this section and who thereafter practices law shall not be eligible for recall under section 155(b), 375, or 636(h) of this title.

"(3) ACCEPTING OTHER EMPLOYMENT.—Any bankruptcy judge or magistrate who retires under this section and thereafter accepts compensation for civil office or employment under the United States Government (other than for the performance of functions as a bankruptcy judge or magistrate under section 155(b), 375, or 636(h) of this title) shall forfeit all rights to an annuity under this section for the period for which such compensation is received. For purposes of this paragraph, the term 'compensation' includes retired pay or salary received in retired status.

"(n) LUMP-SUM PAYMENTS.—

"(1) ELIGIBILITY.—(A) Subject to paragraph (2), an individual who serves as a bankruptcy judge or magistrate and—

"(i) who leaves office and is not reappointed as a bankruptcy judge or magistrate for at least 31 consecutive days;

"(ii) who files an application with the Administrative Office of the United States Courts for payment of the lump-sum credit;

"(iii) is not serving as a bankruptcy judge or magistrate at the time of filing of the application; and

"(iv) will not become eligible to receive an annuity under this section within 31 days after filing the application;

is entitled to be paid the lump-sum credit. Payment of the lump-sum credit voids all rights to an annuity under this section based on the service on which the lump-sum credit is based, until that individual resumes office as a bankruptcy judge or magistrate.

"(B) Lump-sum benefits authorized by subparagraphs (C), (D), and (E) of this paragraph shall be paid to the person or persons surviving the bankruptcy judge or magistrate and alive on the date title to the payment arises, in the order of precedence set forth in subsection (o) of section 376 of this title, and in accordance with the last two sentences of that subsection. For purposes of the preceding sentence, the term 'judicial official' as used in subsection (o) of section 376 shall be deemed to mean 'bankruptcy judge or magistrate'.

"(C) If a bankruptcy judge or magistrate dies before receiving an annuity under this section, the lump-sum credit shall be paid.

"(D) If all annuity rights under this section based on the service of a deceased bankruptcy judge or magistrate terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

"(E) If a bankruptcy judge or magistrate who is receiving an annuity under this section dies, annuity accrued and unpaid shall be paid.

"(F) Annuity accrued and unpaid on the termination, except by death, of the annuity of a bankruptcy judge or magistrate shall be paid to that individual.

"(G) Subject to paragraph (2), a bankruptcy judge or magistrate who forfeits rights to an annuity under subsection (m)(3) before the total annuity paid equals the lump-sum credit, shall be entitled to be paid the difference if the bankruptcy judge or magistrate files an application with the Administrative Office of the United States Courts for payment of that difference. A payment under this subparagraph voids all rights to an annuity on which the payment is based.

"(2) SPOUSES AND FORMER SPOUSES.—(A) Payment of the lump-sum credit under paragraph (1)(A) or a payment under paragraph (1)(G)—

"(i) may be made only if any current spouse and any former spouse of the bankruptcy judge or magistrate are notified of the bankruptcy judge's or magistrate's application; and

"(ii) shall be subject to the terms of a court decree of divorce, annulment, or legal separation or any court order or court approved property settlement agreement incident to such decree, if—

"(I) the decree, order, or agreement expressly relates to any portion of the lump-sum credit or other payment involved; and

"(II) payment of the lump-sum credit or other payment would extinguish entitlement of the bankruptcy judge's or magistrate's spouse or former spouse to any portion of an annuity under subsection (i).

"(B) Notification of a spouse or former spouse under this paragraph shall be made

in accordance with such requirements as the Director of the Administrative Office of the United States Courts shall by regulation prescribe. The Director may provide under such regulations that subparagraph (A)(i) may be waived with respect to a spouse or former spouse if the bankruptcy judge or magistrate establishes to the satisfaction of the Director that the whereabouts of such spouse or former spouse cannot be determined.

"(C) The Director shall prescribe regulations under which this paragraph shall be applied in any case in which the Director receives two or more orders or decrees described in subparagraph (A).

"(3) DEFINITION.—For purposes of this subsection, the term 'lump-sum credit' means the unrefunded amount consisting of—

"(A) retirement deductions made under this section from the salary of a bankruptcy judge or magistrate;

"(B) amounts deposited under subsection (k) by a bankruptcy judge or magistrate covering earlier service; and

"(C) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Judicial Officers' Retirement Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under subsection (o);

but does not include interest—

"(i) if the service covered thereby aggregates 1 year or less; or

"(ii) for the fractional part of a month in the total service.

"(o) JUDICIAL OFFICERS' RETIREMENT FUND.—

"(1) ESTABLISHMENT—There is established in the Treasury a fund which shall be known as the 'Judicial Officers' Retirement Fund'. The Fund is appropriated for the payment of annuities, refunds, and other payments under this section.

"(2) INVESTMENT OF FUND.—The Secretary of the Treasury shall invest, in interest bearing securities of the United States, such currently available portions of the Judicial Officers' Retirement Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

"(3) UNFUNDED LIABILITY.—(A) There are authorized to be appropriated to the Judicial Officers' Retirement Fund amounts required to reduce to zero the unfunded liability of the Fund.

"(B) For purposes of subparagraph (A), the term 'unfunded liability' means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, of the present value of all benefits payable from the Judicial Officers' Retirement Fund, over the sum of—

"(i) the present value of deductions to be withheld under this section from the future basic pay of bankruptcy judges and magistrates; plus

"(ii) the balance in the Fund as of the date the unfunded liability is determined.

In making any determination under this subparagraph, the Comptroller General shall use the applicable information contained in the reports filed pursuant to section 9503 of title 31, with respect to the retirement annuities provided for in this section.

"(C) There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 17 of title 28, United States Code, is amended by adding at the end the following new item:

"377. Retirement of bankruptcy judges and magistrates.".

(c) INCUMBENT JUDGES AND MAGISTRATES.—

(1) RETIREMENT ANNUITY UNDER TITLE 5 AND SECTION 377 OF TITLE 28.—A bankruptcy judge or United States magistrate in active service on the effective date of this Act shall, subject to paragraph (2), be entitled, in lieu of the annuity otherwise provided under the amendments made by this section, to—

(A) an annuity under subchapter III of chapter 83, or under chapter 84, of title 5, United States Code, as the case may be, for creditable service before the date on which service would begin to be credited for purposes of subparagraph (B), and

(B) an annuity calculated under subsection (b) or (c) and subsection (g) of section 377 of title 28, United States Code, as added by this section, for any service as a full-time bankruptcy judge or magistrate on or after October 1, 1979 (as specified in the election pursuant to paragraph (2)) for which deductions and deposits are made under subsections (j) and (k) of such section 377, as applicable, without regard to the minimum number of years of service as such a bankruptcy judge or magistrate, except that—

(i) in the case of a judge or magistrate who retires with less than 8 years of service, the annuity under subsection (c) of section 377 of title 28, United States Code, shall be equal to that proportion of the salary being received at the time the judge or magistrate leaves office which the years of service bears to 14, subject to a reduction in accordance with subsection (c) of such section 377 if the bankruptcy judge or magistrate is under age 65 at the time he or she leaves office, and

(ii) the aggregate amount of the annuity initially payable on retirement under this subsection may not exceed the rate of pay for the bankruptcy judge or magistrate which is in effect on the day before the retirement becomes effective.

(2) FILING OF NOTICE OF ELECTION.—A bankruptcy judge or magistrate shall be entitled to an annuity under this subsection only if the judge or magistrate files a notice of that election with the Director of the Administrative Office of the United States Courts specifying the date on which service would begin to be credited under section 377 of title 28, United States Code, in lieu of chapter 83 or chapter 84 of title 5, United States Code.

(3) LUMP-SUM CREDIT UNDER TITLE 5.—A bankruptcy judge or magistrate who makes an election under paragraph (2) shall be entitled to a lump-sum credit under section 8342 or 8424 of title 5, United States Code, as the case may be, for any service which is covered under section 377 of title 28, United States Code, as added by this section, pursuant to that election, and with respect to which any contributions were made by the judge or magistrate under the applicable provisions of title 5, United States Code.

(4) RECALL.—With respect to any bankruptcy judge or magistrate receiving an annuity under this subsection who is recalled to serve under section 375 of title 28, United States Code—

(A) the amount of compensation which such recalled judge or magistrate receives under subsection (c) of such section shall be calculated on the basis of the annuity received under this subsection; and

(B) such recalled judge or magistrate may serve as a reemployed annuitant to the extent permitted by subsection (e) of section 375 of such title.

Section 377(m)(3) of title 28, United States Code, as added by subsection (a) of this section, shall not apply with respect to service as a reemployed annuitant described in subparagraph (B).

SEC. 3. JUDICIAL SURVIVORS' ANNUITIES.

(a) ANNUITIES FOR SURVIVORS OF BANKRUPTCY JUDGES AND MAGISTRATES RETIRING UNDER NEW SYSTEM.—Section 376 of title 28, United States Code, is amended as follows:

(1) Subsection (a)(1) is amended—

(A) by striking out "or" at the end of subparagraph (D);

(B) by adding "or" at the end of subparagraph (E);

(C) by inserting after subparagraph (E) the following:

"(F) a full-time bankruptcy judge or a full-time United States magistrate;"; and

(D) by striking out "; or (iv) October 1, 1986;" and inserting in lieu thereof ", (iv) October 1, 1986, or (v) the date of the enactment of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, in the case of a full-time bankruptcy judge or United States magistrate in active service on that date;".

(2) Subsection (a)(2) is amended—

(A) by striking out "and" at the end of subparagraph (D);

(B) by adding "and" at the end of subparagraph (E); and

(C) by adding at the end the following:

"(F) in the case of a bankruptcy judge or United States magistrate, an annuity paid under section 377 of this title;".

(3) Subsection (b) is amended in the last sentence—

(A) by inserting after "deductions" the following: "(and any deductions made under section 377 of this title or under subchapter III of chapter 83, or chapter 84, of title 5)"; and

(B) by inserting before the period the following: "(and under section 377 of this title or under subchapter III of chapter 83, or chapter 84, of title 5)".

(b) SURVIVORS' ANNUITIES FOR INCUMBENTS.—In the case of a bankruptcy judge or magistrate who elects an annuity under section 2(c), only service for which an annuity under subsection (b) or (c) and subsection (g) of section 377 of title 28, United States Code, as added by section 2 of this Act, is calculated under section 2(c) may be used in the computation of an annuity under section 376 of title 28, United States Code, as amended by subsection (a) of this section.

SEC. 4. AMENDMENTS RELATED TO RECALL.

(a) RECALL OF BANKRUPTCY JUDGES.—Section 155(b) of title 28, United States Code, is amended—

(1) by inserting "section 377 of this title or in" after "annuity in"; and

(2) by inserting "which are applicable to such judge" after "title 5".

(b) ALTERNATIVE RECALL OF CERTAIN JUDGES AND MAGISTRATES.—Section 375 of title 28, United States Code, is amended—

(1) in subsection (a) by inserting "under the provisions of section 377 of this title or" after "has retired";

(2) in subsection (c)—

(A) by inserting "under the provisions of section 377 of this title or" after "annuity provided"; and

(B) by adding at the end thereof the following: "The annuity of a bankruptcy judge or magistrate who completes that 5-year period of service, whose certification is not renewed, and who retired under section 377 of this title shall be equal to the salary in effect, at the end of that 5-year period, for the office from which he or she retired."; and

(3) in subsection (g) by inserting "who retired under the applicable provisions of title 5" after "section".

(c) Recall of Magistrates.—Section 636(h) of title 28, United States Code, is amended in the second sentence—

(1) by inserting "section 377 of this title or in" after "annuity set forth in"; and

(2) by inserting "which are applicable to such magistrate" after "title 5".

SEC. 5. TECHNICAL AMENDMENTS.

Section 631(e) of title 28, United States Code, is amended—

(1) by striking out "(j)" and inserting in lieu thereof "(k)";

(2) by striking out "(i)" and inserting in lieu thereof "(j)"; and

(3) by striking out "(h)" and inserting in lieu thereof "(i)".

SEC. 6. CONFORMING AMENDMENTS.

(a) Administrative Office of the United States Courts.—Section 604(a) of title 28, United States Code, (relating to the duties of the Director of the Administrative Office of the United States Courts) is amended—

(1) in paragraph (7) by inserting "bankruptcy judges, United States magistrates," after "United States,";

(2) by redesignating paragraph (18) as paragraph (19); and

(3) by inserting after paragraph (17) the following:

"(18) Regulate and pay annuities to bankruptcy judges and United States magistrates in accordance with section 377 of this title and paragraphs (1)(B) and (2) of section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988;".

(b) Civil Service Retirement System.—Section 8334(i) of title 5, United States Code, is amended by adding at the end the following new paragraph:

"(4) Notwithstanding any other provision of law, a bankruptcy judge or magistrate who is covered by section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 shall not be subject to deductions and contributions to the Fund, if the judge or magistrate notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such an election, the judge or magistrate shall be entitled to a lump-sum credit under section 8342(a) of this title.".

(c) Federal Employees Retirement System.—Section 8402 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(e) A bankruptcy judge or magistrate who is covered by section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 shall be excluded from the operation of this chapter, other than subchapters III and VII of such chapter, if the judge or magistrate notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such election, the judge or magistrate shall be entitled to a lump-sum credit under section 8424 of this title.".

SEC. 7. THRIFT SAVINGS PLAN.

(a) Participation in the Plan.—Subchapter III of chapter 84 of title 5, United States Code, is amended by adding at the end the following:

"§ 8440a. Bankruptcy judges and magistrates

"(a)(1) A bankruptcy judge or magistrate who is covered by section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund.

"(2) An election may be made under paragraph (1) only during a period provided under section 8432(b) for individuals subject to this chapter.

"(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII shall apply with respect to bankruptcy judges and magistrates who make contributions to the Thrift Savings Fund under subsection (a) of this section.

"(2) The amount contributed by a bankruptcy judge or magistrate for any pay period shall not exceed 5 percent of basic pay for such pay period.

"(3) No contributions shall be made under section 8432(c) of this title for the benefit of a bankruptcy judge or magistrate making contributions under subsection (a) of this section.

"(4)(A) Section 8433(b) of this title applies to a bankruptcy judge or magistrate who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires entitled to an immediate annuity under section 377 of title 28 (including a disability annuity under subsection (d) of such section) or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988.

"(B) Section 8433(c) of this title applies to any bankruptcy judge or magistrate who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before attaining age 65 but is entitled, upon attaining age 65, to an annuity under section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities Act of 1988; except that the period described in paragraph (3) of section 8433(c) commences on or after the date on which payment of the bankruptcy judge's or magistrate's annuity under section 377 of title 28 commences.

"(C) Section 8433(d) of this title applies to any bankruptcy judge or magistrate who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before becoming entitled to an immediate annuity, or an annuity upon attaining age 65, under section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988.

"(5) With respect to bankruptcy judges and magistrates to whom this section applies, retirement under section 377 of title 28 is a separation from service for purposes of this subchapter and subchapter VII.

"(6) For purposes of this section, the terms 'retirement' and 'retire' include removal from office under section 377(d) of title 28 on the sole ground of mental or physical disability.

"(7) Sums contributed pursuant to this section by bankruptcy judges or magistrates, as well as all previous contributions to the Thrift Savings Fund by those bankruptcy judges and magistrates, and earnings attributable to such sums and contributions, may be invested and reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of this title.

"(8) In the case of a bankruptcy judge or magistrate who receives a distribution from the Thrift Savings Plan and who later receives an annuity under section 377 of title 28, that annuity shall be offset by an amount equal to the amount which represents the Government's contribution to that person's Thrift Savings Account, without regard to earnings attributable to that amount. Where such an offset would exceed 50 percent of the annuity to be received in the first year, the offset may be divided equally over the first 2 years in which that person receives the annuity.".

(b) Conforming Amendment.—The table of sections at the beginning of chapter 84 of title 5, United States Code, is amended by adding at the end the following:

"8440a. Bankruptcy judges and magistrates.".

SEC. 8. REPORT TO CONGRESS.

The Director of the Administrative Office of the United States Courts shall, not later than 5 years after the date of the enactment of this Act, submit a report to the Congress on the financial operation of the retirement annuity program established under this Act and the amendments made by this Act. The report shall, in particular, include a discussion of the deductions from salary and deposits made for contributions to the annuity program and the need for continuing the deductions at the level established under the amendments made by this Act.

SEC. 9. EFFECTIVE DATE.

(a) In General.—Subject to subsection (b), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act and shall apply to bankruptcy judges and magistrates who retire on or after the date of the enactment of this Act.

(b) Exception for Judges and Magistrates Retiring on or after July 31, 1987.—A bankruptcy judge or magistrate who left office on or after July 31, 1987, and before the date of the enactment of this Act may elect to receive an annuity, or to participate in the Judicial Survivors' Annuity System, under the amendments made by this Act if such bankruptcy judge or magistrate, within 60 days after so leaving office, accepted office or employment with the United States Government or a State government or was eligible at the time he or she left office for an immediate annuity under title 5, United States Code. Any election under this subsection shall not be valid unless it is made within 6 months after the date of the enactment of this Act and under the same conditions as other persons who may make elections under the amendments made by this Act, except that any such person who makes an election under this subsection shall not receive a lump-sum credit under section 8342 or 8424 of title 5, United States Code, for prior service and shall not be required to make contributions for prior years of creditable service.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill and agree to the same.

PETER W. RODINO,
ROBERT W. KASTENMEIER,
MIKE SYNAR,
CARLOS J. MOORHEAD,
HENRY J. HYDE,
Managers on the Part of the House.

JOE BIDEN,
HOWELL HEFLIN,
DENNIS DECONCINI,
STROM THURMOND,
CHUCK GRASSLEY,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1630) to provide for retirement and survivors' annuities for bankruptcy judges and magistrates, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

MAXIMUM ANNUITY

Under the Senate bill, a bankruptcy judge or a magistrate is entitled at age 65 and after the completion of 14 years of judicial service to an annuity equal to the salary of the position at the time he or she left the position. Judicial service performed on or after October 1, 1979, is eligible for credit.

The House amendment provided that bankruptcy judges and magistrates would be eligible for retirement benefits under the same age and service requirements which govern the eligibility of article III judges for retirement benefits. Those requirements, which are commonly referred to as the "modified rule of 80," establish eligibility for an annuity upon the completion of an aggregate number of years of age and service equal to at least 80. The aggregate of 80 years must consist of a minimum of 10 years of creditable service and a minimum age of 65 at the time of separation.

The Conference substitute adopted the Senate provision.

PROPORTIONATE ANNUITY

The Senate bill provided a proportionate annuity commencing at age 65 for bankruptcy judges and magistrates who left office with less than 14 years, but who completed at least 8 years, of judicial service.

The House amendment provided a proportionate annuity based on 15 years of judicial service. It also penalized bankruptcy judges and magistrates who left office voluntarily prior to age 65 by reducing their annuity by 2% of their annuity for each year that they left office prior to age 65.

The Conference substitute adopted the House provision as to penalty and the Senate provision as to years of service, but limited the penalty to a maximum of 20% of the annuity.

ELECTIONS

Under the Senate bill, participation in the retirement plan was optional at the election of the bankruptcy judge or magistrate and could be made at any time prior to leaving office. An election to participate in the retirement plan voided all rights to annuities, including disability and survivorship annuities, which the bankruptcy judge or magistrate might have been entitled to under the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS). Upon such an election, the judicial officer was entitled to a lump-sum payment of all prior contributions to CSRS/FERS with interest.

The House amendment was similar in substance, but provided that no interest would be paid on a lump-sum payment of prior contributions to CSRS upon an election to participate in the new retirement plan.

The Conference substitute adopted the House provision.

CONTRIBUTIONS

The Senate bill did not require any contributions from bankruptcy judges or magistrates.

The House amendment required an annual contribution of 3% of salary for a maximum period of 15 years. A separate Judicial Officers' Retirement Fund was established in the Treasury and appropriated for the payment of annuities, refund, and other payments.

The Conference substitute adopted the House provision, but reduced the annual contribution from 3% to 1% of salary or 14 years. The Administrative Office of U.S. Courts is required to report to Congress in five years as to whether the contribution is significant enough to warrant retention.

LUMP-SUM PAYMENTS

As stated above, the Senate bill did not include any provisions requiring contributions to the retirement system. Consequently, there were no provisions regarding a lump-sum refund of contributions to this plan upon early separation.

The House amendment required contributions to the retirement system. It provided bankruptcy judges and magistrates the opportunity to claim a lump-sum refund for prior contributions to the retirement system upon an early separation from office. The House amendment also included provisions protecting the spouse's rights to such a lump-sum payment.

The Conference substitute adopted the House provision.

DISABILITY BENEFITS

The Senate bill provided an immediate annuity equal to 40% of the salary of the position to disabled bankruptcy judges and magistrates who completed at least 5 years of creditable service. In the case of a disability incurred by a bankruptcy judge or magistrate after serving 10 or more years, it also provided for an annuity equal to that proportion of the salary being received at the time of separation which the number of years of service bore to 14.

The House amendment included a similar provision, but provided that the proportionate annuity be based on 15 years of service.

The Conference substitute adopted the Senate provision.

JUDICIAL SURVIVORS' ANNUITIES SYSTEM

The Senate bill amended the Judicial Survivors' Annuity System Act (JSAS) to include bankruptcy judges and magistrates. They were provided the option to elect to participate in that system at any time prior to separation.

The House amendment was the same as the Senate provision, however, it required that the election be made within six months of the enactment of the bill or within six months after the bankruptcy judge or magistrate marries.

The Conference substitute adopted the House provision.

PRACTICE OF LAW AFTER RETIREMENT

The Senate bill did not include any provision affecting the practice of law by retired bankruptcy judges or magistrates.

The House amendment provided that a retired bankruptcy judge or magistrate forfeited his annuity if he practiced law upon retirement. Upon notifying the Administrative Office of an intent to practice law, however, a retired bankruptcy judge or magistrate would be entitled to an annuity, but without any future cost-of-living adjustments.

The Conference substitute adopted the House provision.

RECALL

The Senate bill made conforming amendments to several sections of title 28, United States Code, which dealt with the recall of retired bankruptcy judges and magistrates. The revisions pertained to the compensation of recalled judicial officers and made reference to the enhanced annuity provided under this bill.

The House amendment included a similar provision, but also provided that the retirement annuity of a bankruptcy judge or magistrate who completed a five-year period of recall service could include all changes in the salary of the office. Under the amendment the recall of a retired bankruptcy judge or magistrate who practiced law after separation from office was prohibited.

The Conference substitute adopted the House provision.

ALTERNATIVE ANNUITY FOR INCUMBENTS

The Senate bill provided incumbent bankruptcy judges and magistrates with the opportunity to elect a hybrid alternative retirement option. Under this option, a bankruptcy judge or magistrate would be entitled to a proportionate annuity for eligible service since October 1, 1979, and to credit for all government service which was otherwise eligible for an annuity under the Civil Service Retirement System of the Federal Employees' Retirement System, but not credited for an enhanced annuity under this bill. The aggregate annuity was subject to a ceiling equal to 100% of the salary of the Office.

The House amendment contained a similar provision which included reference to the proportionate annuity as set forth in its earlier sections.

The Conference substitute adopted the Senate provision.

THRIFT SAVINGS PLAN

The Conference substitute also includes technical amendments to permit bankruptcy judges and magistrates to continue contributing to the Thrift Savings Plan but without a matching contribution from the government.

Those judges and magistrates who withdraw from TSP will receive a refund of the government's contribution but, to avoid a windfall, the annuity under this Act would be offset by the amount of the refunded government contribution.

EFFECTIVE DATES

The Senate bill provided that all bankruptcy judges and magistrates retiring on or after July 31, 1987, were eligible to elect the new retirement plan.

Eligibility for benefits under the House amendment was extended to bankruptcy judges and magistrates who retired on or after the date of enactment of the legislation.

The Conference substitute adopted the Senate date for those persons who left office between July 1, 1987 and the date of enactment and were immediately eligible for a pension or who accepted another governmental position. Those persons will not be entitled to a refund of contribution from other federal pension plans nor will they be required to make additional contributions.

PETER W. RODINO,
ROBERT W. KASTENMEIER,
MIKE SYNAR,
CARLOS J. MOORHEAD,
HENRY J. HYDE,
Managers on the Part of the House.
JOE BIDEN,
HOWELL HEFLIN,
DENNIS DECONCINI,
STROM THURMOND,
CHUCK GRASSLEY,
Managers on the Part of the Senate.

RESIGNATION AS MEMBER OF COMMITTEE ON POST OFFICE AND CIVIL SERVICE

The SPEAKER laid before the House the following resignation as a member of the Committee on Post Office and Civil Service:

HOUSE OF REPRESENTATIVES,
Washington, DC, October 5, 1988.
Hon. JIM WRIGHT,
Speaker of the House, H-209, Capitol, Washington, DC.

DEAR MR. SPEAKER: I hereby resign my position as a Member of the Post Office and Civil Service Committee effective Thursday, October 6, 1988.

I would appreciate it if you would inform the Members of the Steering and Policy Committee of this action.

Thank you for your cooperation.

Cordially,
STEPHEN J. SOLARZ,
Member of Congress.

The SPEAKER. Without objection, the resignation is accepted.

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 3621, SOUTHERN CALIFORNIA INDIAN LAND TRANSFER ACT

The SPEAKER. Pursuant to House Resolution 576, the Chair appoints the following conferees on the bill (H.R. 3621) to declare that certain lands located in California and held by the Secretary of the Interior are lands held in trust for the benefit of certain bands of Indians and to declare such lands to be part of the reservation with which they are contiguous: Messrs. UDALL, RICHARDSON, and YOUNG of Alaska.

PASSAGE OF THE DRUG BILL

(Mr. GEKAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GEKAS. Mr. Speaker, the House has done its duty with respect to the passage of a good and tight and strong and effective drug bill. It contains provisions for the reform of the exclusionary rule, a problem that we have had over the years where the judges throw out cases simply because the police have failed to cross a "t" or include in a certain warrant certain other evidence that they found on the scene unexpectedly. It contains provisions having to do with user sanctions to lower the demand for these poisonous drugs and contains a provision for the application and a proclamation of the death penalty for those drug pushers and kingpins who would kill in the furtherance of their enterprise. They would kill judges and law enforcement officers and police officers on the beat. It would stop at nothing.

We need to implore the Senate not to allow the end of the session blues, as it were, to prevent them from passing some form of that bill and sending it back to us so that the American people can be satisfied that the Congress has done its job with respect to the war on drugs.

THE HISTORY OF THE PLEDGE OF ALLEGIANCE

(Mr. McMILLAN of North Carolina asked and was given permission to address the House for 1 minute.)

Mr. McMILLAN of North Carolina. Mr. Speaker, I would like to thank you for the honor of leading the House in the Pledge of Allegiance to the flag. Today follows a symbolic day in the history of the Pledge.

In 1892, as part of the observance of the 400th anniversary of Columbus' journey to America, President Benjamin Harrison called for its use as a show of patriotism.

The Pledge itself was taken from a children's magazine known as "The Children's Companion."

The author of the Pledge was a man named Francis Bellamy, associate editor of "The Children's Companion." The original wording of the Pledge was expanded by the National Flag Confederation of the American Legion in the years 1923 and 1924. Congress made the Pledge part of the code concerning the use of the flag in the year 1942. It was not until the year 1954 that the words "under God" were added to produce the Pledge that we all know and recite today.

GENERAL PULASKI'S MEMORIAL DAY

The SPEAKER. Under a previous order of the House, the gentleman from Illinois [Mr. ANNUNZIO] is recognized for 5 minutes.

Mr. ANNUNZIO. Mr. Speaker, October 11 marks the 209th anniversary of the death of the great Polish patriot and military leader, Gen. Casimir Pulaski, who gave his life in the cause of American independence at the Battle of Savannah.

Casimir Pulaski was actively involved in the resistance to Russian encroachments on Polish independence during the years 1768 through 1772. His military activities met with some success. However, Pulaski was unable to prevent the partitioning of his beloved country of Poland, and he was forced into exile. Nevertheless, his own deep commitment to the ideals of freedom never wavered, and when he first heard of the American Revolution while in Paris in 1776, he declared, "Wherever on the globe men are fighting for liberty, it is as if it were my own affair."

Pulaski arrived in Boston in June 1777, and joined the American colonies in their fight for independence. He fought with distinction at the Battle of Brandywine, and because of his meritorious service, Gen. George Washington recommended to the Continental Congress that it appoint Pulaski to the post of brigadier general of the cavalry. Pulaski organized an independent corps of cavalry and light infantry, known as the Pulaski Legion, which contributed many successes to America's pursuit for independence.

At the Battle of Savannah, Pulaski displayed one final act of courage. As the British fired from this fortified city, Pulaski volunteered to charge through the line of defense, enter the city of Savannah, and confuse the enemy. His untimely death at the head of this famous cavalry charge underscored his dedication to the ideals for which the colonies fought. His example of sacrifice and devotion to our country's cause is a model of patriotism for all time.

President Reagan has issued a proclamation commemorating the heroic actions of this outstanding military leader, and a copy of that proclamation follows:

[A Proclamation by the President of the United States of America]

GENERAL PULASKI MEMORIAL DAY, 1988

Casimir Pulaski, Polish and American patriot, revolutionary and hero, gave his life for liberty 209 years ago during America's War of Independence. Leading a cavalry assault at the siege of Savannah, he was mortally wounded. But the cause for which he fought so courageously was to prevail, and his immortal example of service and sacrifice was to inspire lovers of freedom around the globe forever after. America does well to pause in remembrance on the anniversary of General Pulaski's death and to swear eternal allegiance to the principles of liberty and justice he held dear.

Casimir Pulaski had also fought for liberty in Poland, his native land. When victory eluded the brave Polish people, he sought a kindred cause and found it in America. There "the shot heard 'round the world" had sounded warning to tyrants and hope to mankind. Like Polish patriots to this day, Pulaski knew that freedom's call is universal—that a battle for freedom anywhere is a battle for freedom everywhere; that liberty is diminished everywhere as long as tyranny reigns anywhere. In fighting for America, General Pulaski fought also for the unalienable rights to life, liberty, and the pursuit of happiness—rights that America had boldly declared, rights that God had granted Americans and Poles and all humanity alike.

America's struggle for freedom was victorious, thanks to Casimir Pulaski and to countless men and women like him. Tragically, freedom has not yet come to some nations, and it has been snatched from others. But freedom is on the move. Just as General Pulaski stood with us, so will we continue to stand for liberty throughout the globe. So will we stand for the people of Poland, in whose hearts faith and freedom and the spirit of Pulaski burn ever brightly. Let our observance of General Pulaski Memorial Day, 1988, remind us of all this Polish hero and his fellow Poles have done for America;

let it remind us as well that his work and ours, the cause of freedom, goes on today and every day.

Now, therefore, I, Ronald Reagan, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Tuesday, October 11, 1988, as General Pulaski Memorial Day, and I direct the appropriate government officials to display the flag of the United States on all government buildings on that day. In addition, I encourage the people of the United States to commemorate this occasion as appropriate throughout our land.

In witness whereof, I have hereunto set my hand this twenty-eighth day of September, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

RONALD REAGAN.

Mr. Speaker, I am proud to join with Americans of Polish descent in the 11th Congressional District of Illinois, which I am honored to represent, and Polish-Americans throughout this Nation, in commemorating the 209th anniversary of General Pulaski's inspirational achievements and sacrifice during the American Revolution.

AMERICA'S DECATHLON CONTEST

The SPEAKER. Under a previous order of the House, the gentleman from Missouri [Mr. SKELTON] is recognized for 60 minutes.

Mr. SKELTON. Mr. Speaker, in this election and Olympic year, the attention of many Americans has been drawn to two epic contests, the first the man on man's struggle that we call a Presidential race; the second, the more multifaceted competition involving the finest athletes from throughout the world that we know as the Olympics.

□ 1215

In many ways the 1988 election for President is similar to one of the events of the Olympic games, the marathon race.

The 1988 campaign unofficially started over 2 years ago, ultimately involving 13 entrants. Two contestants still in this long-distance event have now rounded the last turn and are headed into the final stretch.

I can think of very few more demanding quests than seeking election to the American White House. It is a punishing gauntlet and any would-be President must run it; he must have both physical and mental toughness because this is the only route to go in our scheme of things.

If the Presidential contest is similar to a marathon race, I would argue that the role of America in the world over the past 45 years can be compared to another Olympic event, the decathlon. The decathlon is the most punishing event that exists, consisting of 10 events: 100 meter, 400 meter and 1,500 meter runs, 110 meter high hurdle, javelin and discus throws, shotput, pole vault, high jump, and the long jump. It requires speed and strength and endurance and intelligence and a variety of other skills enabling a contestant to compete. It entails such a variety of skills and physical attributes, however, that the number of athletes who can participate in this sport are quite few in comparison to any other sport. Similarly, the activist role that the United States has played in the world since World War II is one that has required a variety of skills and physical attributes. In promoting the national goals of security, peace and democracy in our world, we have relied on a strategy having diplomatic and political and economic and, of course, military components to it.

The United States was forced into this global contest by the empirical ambitions of the Soviet Union under Joseph Stalin in the aftermath of World War II.

After the defeat of the axis powers in 1945, the specter of Soviet communism threatened to prostrate the Western world.

At that time the United States was the only democratic country with military and economic resources able to thwart the aims of the Soviet Union in Western Europe. Through the policy of containment, the United States vigorously resisted this new threat.

The Truman doctrine which provided military and economic aid to Greece and Turkey in 1947 was soon followed by the Marshall plan, which provided economic relief to the rest of Europe.

The signing of the NATO agreement in 1949 committed the military power of the United States to the defense of Western Europe.

The generation that had come to power in the 1940's was determined not to repeat the mistakes of the 1920's and 1930's: isolationism did not guarantee peace; appeasement only encouraged dictators. As the Soviets have sought to gain elsewhere what they were unable to achieve in Western Europe, this high stakes contest between the two superpowers has spread to virtually every region of the world—from Europe to Asia, the Middle East, Africa, and now, as we see, Latin America, specifically Central America. This struggle between the United States and the Soviet Union can be likened to the decathlon because only these two countries have had the economic, military, demographic, political, and diplomatic resources to compete on a worldwide basis. It is a struggle that has continued now for more than 40 years.

As we take stock over the hard and bitter peace that we have lived through as a nation since the end of World War II, one that has cost close to 100,000 American lives in 2 Asian wars, I believe that we can take a certain measure of pride in our accomplishments. Like Atlas, we have shouldered our burdens well. Areas of the world that were completely devastated were soon on the way to economic recovery due to a combination of American generosity and self-interest. Western Europe is stong, vigorous, and prosperous, as is that island nation on the other side of the globe, Japan. Europe and Japan have prospered as a result of the far-reaching economic, diplomatic, and military policies adopted by the Truman administration back in the late forties and early fifties and supported by every American administration thereafter.

The recent Olympics in Korea allowed the world to see yet another country that has benefited from close ties with our country, the United States, in both war and peace. The sacrifices paid in blood and treasure by Koreans and Americans a generation ago have yielded handsome dividends. South Korea, a vibrant prospering democracy, has become an important economic player on the world scene. By contrast, one need only look across the 38th parallel to North Korea. It is not only economically isolated but also increasingly out of step with the political ferment taking place elsewhere in the communist world. Only in North Korea and Albania does Stalin's reputation continue unblemished.

Elsewhere in East Asia, a credible argument can be made that the sacrifices made by the United States in Vietnam were not in vain. True, despite our considerable efforts, Indochina fell—Vietnam, Cambodia, and Laos. And yet, I believe that the period of our involvement in Vietnam bought time for the other countries of Southeast Asia. Though some of the dominoes fell, not all of them did. Thailand, Malaysia, Singapore, and Indonesia had time to develop and strengthen themselves politically and economically. As members of the Association of Southeast Asian Nations [ASEAN] their average economic rate of growth in the decade after 1975 was 7 percent in real terms, twice the global average. Today, East Asia has replaced Western Europe as America's leading overseas trading partner. Very few would have predicted such a development in 1965.

The United States has gone through a series of shifts in national security policy over the past four and one-half decades, from relatively activist periods to relatively more passive ones. There has been a tension between trying to strike a balance between security risks on the one hand and costs on the other. Inevitably as one goes down the other goes up. To lower the risks requires spending more money. On the other hand, cutbacks in defense spending imply a willingness to allow risks overseas to increase.

We have passed through years of increased defense spending—the early

1950's in Korea, the Kennedy-Johnson years in Vietnam, and the Reagan years in response to developments in Iran and Afghanistan—to be followed inevitably by periods of retrenchments. On three previous occasions when we have gone through efforts to scale back, they have taken place after wartime: wholesale demobilization after World War II, and substantial cutbacks after the end of military action in both Korea and Vietnam.

Upon coming into office in January 1981, the Reagan administration convinced Congress that efforts to cut defense costs in the 1970's, under both the Nixon-Ford administrations and the Carter administration, had left the United States exposed. The humiliation of Iran holding American diplomats hostage for 444 days, along with the Soviet invasion of Afghanistan, convinced the American public that a change was required.

The chief elements of the Reagan administration security strategy, broadly supported by the Congress, included: an impressive military buildup of both nuclear and conventional forces, symbolized by the 600-ship Navy; a tough position on strategic arms negotiations; an effort to confront the Soviet Union with superior American technology through the strategic defense initiative [SDI]; and the willingness to support local resistance forces fighting the Soviets or their proxies in the Third World, such as Afghanistan, Angola, Nicaragua, and Cambodia.

The security policies of the Reagan administration have worked remarkably well with respect to the Soviet Union. The Soviets, on the march in the 1970's, are now in the process of cutting costly foreign policy ventures—in Afghanistan, Vietnam, and now it looks like in Angola. While critics of SDI in this country have belittled the idea, feasibility, and cost of strategic defense, SDI indeed captured the attention of the Soviet Union. Not only have we signed the first arms control agreement that had led to the elmination of a whole class of nuclear missiles, but we are probably in the best position since the early 1970's to sign further agreements to reduce both conventional and strategic nuclear forces.

These security policies have brought about a substantial improvement in the international perception of the power, prestige, and influence of the United States throughout the world. While the actual military balance between the two countries has not changed that much, the atmosphere of unease, restiveness, and concern that marked the beginning of the 1980's has been displaced by one of relative calm and hope as we approach the end of this decade.

Yet the successes of the present administration have been bought at a significant cost. Budget deficits at home and trade deficits with friends overseas transformed the United States in a relatively short period of time from a creditor to a debtor nation, according to Department of Commerce figures. The last time we held such status was before World War I. In 1981, we were the world's largest creditor nation; 7 short years later we are the world's largest debtor nation.

The reason for today's very tough budget situation is not that defense spending is excessively high, but rather that the revenue base is too low. In 1981, the President sought and got a tax cut, increased defense spending, and promised to balance the national budget—all at the same time. The rather old-fashioned notion of tax and spend was replaced by the newfangled one from that administration of borrow and spend. Supply side economists persuasively argued that reducing taxes would raise revenues. Howard Baker, the Senate majority leader at that time, likened the President's belief in supply side economics and calls for increased defense spending coupled with substantial tax cuts to a high stakes riverboat gamble. Seven years later we can see quite clearly that Howard Baker's riverboat gamble did not pay off the way it was intended.

It is important to understand that the economic difficulties that developed during the 1980's were the product of specific policy decisions designed to reduce the size of the Federal Government.

I remember here in this Chamber in July 1981 when the tax cut bill came before us, following two budget cut measures, at that time I spoke against the tax cut saying that we should wait a year to see what happened with the economy before rushing to judgment on cutting taxes. But the administration had the votes and they won.

Most economists will tell you today that our budget deficit is a result mainly of the 1981 tax cut. I at that time predicted a budget deficit and I am here today to tell you, unfortunately, that I was correct.

And yet, I am not one to lay the blame for our fiscal problems on increases in defense spending. America is, indeed, rich enough to be militarily strong. During the Eisenhower years, the United States devoted a much larger share of its gross national product to defense than we have done in the past 8 years; over 10 percent in the 1950's compared to some 6 percent in the 1980's. And these greater resources were devoted to defense at a time when the Soviet military threat to the United States was much weaker relative to the United States than it is today.

If one looks at the overall economy there are three options for the allocation of economic resources: for defense, for private consumption, and for all other investment. Of the three options, defense takes the smallest cut, about 6 percent. To argue that promotion of economic growth requires a reduction of defense spending is to ignore another option—redirecting 1 or 2 percentage points of GNP from private consumption, which now comprises roughly 67 percent, to the investment category, the remaining 27 percent.

□ 1230

To say that the Nation cannot simultaneously bear the military burdens of a world leader and maintain a high rate of economic growth simply means that we are unwilling to sacrifice those one or 2 percentage points.

Critics of the Reagan defense buildup are on much firmer ground in condemning the management style of the Defense Department under the Reagan administration. Much effort was devoted to getting substantial increases in defense spending. Less effort, however, was applied to making sure those increased sums were spent efficiently and spent well.

After the initial infusion of greater sums for defense in the early 1980's, the Pentagon soon found itself confronted with a number of management problems. The first was waste, with the spare parts fiasco, as symbolized by $436 hammers and $7,622 coffeemakers; the second, with cost overruns, as represented by the now canceled Aquila RPV reconnaissance platform and the Sergeant York air defense gun after the investment of literally billions of dollars; and the third, increased weapons costs due to inefficient procurement rates, especially for tactical aircraft.

Reagan administration defense planners made the same mistake the Johnson administration domestic planners made 20 years earlier. At that time liberals thought that by spending lots of money they could win the war on poverty. Their conservative counterparts in the Reagan defense establishment made the same mistake in trying to solve national security problems by the expenditure of money. No doubt significant progress was made on both fronts, but much waste also occurred resulting in diminished public support for both efforts. Until the perception is established that the Pentagon is vigilant in its spending of defense dollars, support for increased defense spending in peacetime will be hard to generate.

It is unfortunate that former Secretary Weinberger was not overly interested in working with Congress in trying to deal with some of these serious issues. He left it to Congress to make the cuts in defense rather than help us in those tough decisions. The major problem of his stewardship was an unwillingness to help establish priorities. His successor, Frank Carlucci, seems to be a realist. He understands the necessity of both establishing priorities and working with this body. His revisions of the 1989 budget late last year and early this year showed him to be a man ready to make the tough decisions.

The winner of this year's Presidential marathon race will find himself in a greater contest next year, directing the national security policy of the United States. That decathlon event has many of the same challenges that the United States has faced over the past 40 years. Yet at the same time there are new challenges that are taking place under very changed circumstances.

The most important piece of old business consists of managing with patience and skill the United States-Soviet relationship. The challenge here is much the same as it has been over the past 40 years: Avoiding nuclear war, confronting Soviet thrusts in the developing world, and attempting to transform the competition between the two countries into more peaceful venues.

Mikhail Gorbachev has shaken up the Soviet system in a way not seen since the early years of Nikita Khrushchev. In many ways he is a different type of Soviet leader. He is the first one not to have experienced either of the two seminal events of the modern Soviet state: The industrialization of the 1930's or the horrors of the Great Patriotic War of the 1940's. Unlike the vast majority of party officials, he did not study engineering but devoted his scholastic endeavors to the study of law at Moscow State University in the early 1950's.

Reports have it that during the 1960's he traveled on short vacations with only his wife in both Italy and France. The normal custom for Soviet officials traveling in the West has been as part of a large delegation on formal state visits. Such large delegations do not have the chance to experience the day-to-day lifestyle found in the West. One can imagine the impact on the Gorbachevs of seeing for themselves the variety and inexpense of consumer goods in Western department stores, supermarkets, and shopping arcades. They must have understood that the average Italian and Frenchman live a very good life, indeed almost unimaginable by Soviet standards.

The dramatic changes taking place in the Soviet Union hold the promise that we might actually be watching, if not the end of the cold war, at least the beginning of the end. Even if true, it will probably take the next 40 years to work out a post-cold-war security arrangement with the Soviets. Now is not the time to become impatient, to try to settle all our outstanding issues with the Soviets in the shortest time possible, to fool ourselves with unrealistic expectations. After all, let us see if Gorbachev will be around 5 years from now. It would be unwise to base U.S. security policies on the seemingly well-intentioned Milhail Gorbachev if he were to be replaced in a few years by a more traditionally minded Soviet leader. Let us not forget that we came to regret the overselling of détente in the early 1970's, just a few years ago.

If dealing with the Soviet Union continues to be the most important item of old business, equally important is managing our relationships with Japan and Europe. The two, or I should say the three—Japan, Europe and the Soviet Union—are interrelated. Security concerns predominated 40 years ago. Now it seems that trade and economic matters with our allies compete with security issues.

Both Japan and Europe are success stories of post-war American foreign policy. Both suffered great destruction during the Second World War, and our dominant position after the war was an unnatural one. We consciously made every effort to help friends and former enemies to rebuild their shattered economies. Thus our overwhelming economic and military dominance was bound to diminish. But we made a concerted effort to see to it that precisely such a development did indeed take place. Subsequently, we extended help to nations of the underdeveloped world to build their economies, too.

Our task now is to manage both security and economic relations with both of these world power centers. A shifting of military burdens will have to take place in order to allow the United States to put its economic house back in order. Budget and trade deficits have the United States in rather difficult economic circumstances. It has lost the economic and military dominance it once had in the 1950's when the world was still recovering from World War II.

Some believe we are on an inevitable decline due to "imperial overstretch," to use the words of Yale Prof. Paul Kennedy. I do not agree, the United States is the only country in the world enjoying the dual advantage of being both an economic and a military power of the first order. I do believe, however, that the time has come when we need assistance from our allies. The popular term used to describe this balancing of efforts is "burdensharing." Both Japan and Europe will have to contribute more to our shared security concerns, either directly, by creating more military forces, by paying more of the costs of American forces stationed on their soil, or indirectly, by contributing more economic and security assistance to those countries in the Third World looking to the West that need help.

Over the past four decades the United States has played an influential role throughout the world. It, along with the Soviet Union, was one of the world's two superpowers, one of the two decathlon athletes of world affairs. It helped rebuild Europe and Japan and, with less success, sought to help the smaller countries of the Third World. Aside from its interests in Western Europe and Japan, the United States found itself an important player elsewhere: In the Middle East, brokering diplomatic efforts to bring peace; and in the Far East, fighting two costly wars there, yet also transforming the world balance by establishing contacts with the People's Republic of China.

The world we live in today is far different than the world of 1945. The United States is no longer the only nuclear power in the world. Our share of the world economy is less than half of what it was 40 years ago. Europe, Japan, and the four "tigers" of east Asia, Taiwan, Singapore, Korea, and Malaysia, have become major economic players in the world. New problems have arisen that scarcely existed some 40 years ago—state-sponsored terrorism, international drug trafficking, energy concerns, environmental destruction, and the problems of trade and budget deficits in an interdependent world economy.

At home, as a result of Vietnam and the Watergate, the Congress has a more significant role to play in matters of foreign policy as does the press. Yet trust between executive and legislative branches is a hit-or-miss affair as the consensus on foreign policy that existed in the early postwar years broke apart on the shoals of Vietnam.

Yet, despite all these changes, the United States will continue to be at least as powerful militarily as the Soviet Union and twice as large economically as Japan. It will be the only country in the world to enjoy this dual advantage for years to come. Whether we like it or not, the United States will continue to have an important role to play in the affairs of the world for decades to come.

Mr. Speaker, the next President will face many difficult changes in the world. As he begins to put together a policy for dealing with the problems of the world, some tried and true policies will be kept, others discarded, and still others will have to be created.

First, a broader definition of "national security" is required, one that includes economic as well as military considerations. Too often economic and security decisions move on separate tracks. Though we are stronger militarily today than we were 8 years ago, economically we are weaker. The Federal budget squeeze during the Reagan years has forced deep cuts in economic aid abroad, reducing U.S. influence. At home the cutbacks in the defense budget of the past few years reflect budgetary considerations, unlike the three previous periods of retrenchment following the end of World War II, Korea, and Vietnam. Much greater coordination will be required in the future.

Second, in putting together a national security strategy for the 1990's and beyond, the President must be clear about objectives and priorities. Militarily, the United States has three broad objectives: First, to deter nuclear war; second, to contribute to the defense of Western Europe and Korea where American troops are stationed; and third, to be able to intervene in areas of the Third World where American interests may require such action.

While overriding considerations should be given to deterring nuclear war, I would argue that we have a very robust capacity to deter such a conflict. Our ballistic missile submarine force, the deployment of thousands of cruise missiles on Navy attack subs and B-52's, the procurement of B-1 bombers and the future procurement of Stealth bombers, and the improved command and control capabilities that we bought during this decade will stand us in good stead for years to come.

In Europe the military balance is not as comfortable as we would like it to be. An imbalance of forces exists between the Warsaw Pact and NATO. Yet until our allies are willing to make a greater contribution to correcting this imbalance, we simply do not have the budgetary resources to correct a problem that they themselves appear unwilling to correct. Despite this imbalance, I believe the situation in Europe is fairly stable.

I have assigned a high priority to intervention because we are not likely to see the commitment of U.S. combat forces to emergencies in the developing world before either nuclear war or a general war in Europe. Eight times since the Second World War American forces have been committed to such situations: in Korea, Vietnam, the Dominican Republic, the *Mayaguez* incident, the Iranian rescue mission, Grenada, the Libyan raid, and most recently, the Navy's escort operation in the Persian Gulf.

Unfortunately, we are ill-prepared for this type of work here, as underscored by our performance in Vietnam, the *Mayaguez* incident, and the Iranian rescue attempt. Vietnam still haunts us. Though the literature on the war is abundant and critiques of our performance by civilians and military alike offer much to think about, we still have not digested its lessons fully. One need only look at the amount of attention that the military services give to the most likely contingency, low-intensity conflict, what used to be called counterinsurgency or guerrilla warfare in the 1950's and 1960's. It was Congress, not the services, that had to promote the establishment of the Special Operations Command. We still have to devote more time and effort on the dilemmas posed by unconventional warfare and insurgency in the developing world and developing the doctrine and forces to fight such "small wars." Progress is being made but at a snail's pace.

☐ 1245

Third, U.S. security policies will be put together under far more stringent budgetary constraints by Ronald Reagan's successor. Relations with the Soviet Union will continue to predominate in the formulation of a broad national security policy. Now that both countries have ratified the INF Treaty, the next order of business on the arms control agenda should be a conventional arms control treaty. An agreement between NATO and the Warsaw Pact should be sought in which we should expect significant reductions of Soviet forces in Eastern Europe. It will require much time and effort to coordinate with allies a definition of goals and sorting out the various problems of data, verification, and roles before entering upon serious negotiations with the Soviets. But it is in conventional forces that big dollars can be saved by both sides.

At the same time, nuclear weapons will continue to be important in maintaining stability between the two countries. The next President should make this clear to Americans. While cuts may be made in a START agreement, and these should only take place after we have a conventional arms reduction agreement, the notion of making nuclear weapons obsolete should be relegated to the realm of science fiction. It may come to pass but probably not in our lifetime.

One of the most contentious issues of recent years in defense policy concerns the strategic defense initiative [SDI]. The current strategy of deterrence that relies on the threat of wiping out millions of innocent civilians has worked so far. But a look at history reveals that in military affairs offense and defense have traded positions of predominance. In this century we have seen such shifts: During World War I defense held the advantage; with the advent of the nuclear age, offense once again regained the predominant position.

Unlike the United States, the Soviet Union has consistently stressed the desirability of strategic defense through its heavy investment in air defense, civil defense, and the deployment of an antiballistic missile defense system around Moscow. The most important reason for the United States to continue SDI is to offset similar Soviet research efforts. The threat posed by ballistic missiles may one day be rendered obsolete by technological breakthroughs. This may help to restore the balance between offense and defense. Deployment of a limited system could at least offer us some remedy for the accidental launch of a nuclear missile, something we don't have now.

During the next decade defense spending should be kept around 5 percent of GNP. Allies will have to provide more assistance as noted earlier, but we may also have to reevaluate policies here. For example, one idea that should be considered and debated is a return to conscription. The current All Volunteer Force has been a success in the Reagan years but the costs have been significant.

I might also mention a bill that I am presently cosponsoring, one that looks to national service on a voluntary basis as being an issue of debate and consideration. This is necessary because the pool of young people that fill our military forces today is gradually getting smaller and will get smaller in the years ahead.

Finally, the one area of the world that will require more attention, creative thought, and greater investment by the United States is Latin America. It is in this region of the world where many of the world's problems can be seen in one region—overpopulation, the problem of international debt, the international drug cartel, environmental destruction, energy, immigration, and, finally, guerrilla wars in a number of countries.

Over the past 40 years, except for a brief period of the Kennedy administration's Alliance for Progress, the United States has neglected this region of the world. One can see this in the current electoral campaign—almost nothing at all about the most controversial foreign policy issue of the decade, Nicaragua. Yes, the Reagan administration and Congress have devoted more time, effort, and money to Latin America, but compared to resources devoted to Europe, Japan, and the Middle East, Latin America comes in a distant fourth. We could offset our defense expenditures for Japan, for example, by having that country provide $40 billion in grant aid to the region of Latin America.

We once had the resources of being the world's policeman. That is no longer the case. Earlier this year, the Commission on Integrated Long-Term Strategy, a bipartisan group of leading defense thinkers, issued its report entitled "Discriminate Deterrence." It offered some very specific proposals for coping with the changed situation in which we find ourselves today. The next administration would do itself a great service by consulting the report and noting some of its recommendations as it puts together its national security policy. The report noted that "in the future, even more than in the last 40 years, the United States will need its allies to share the risks and burdens of the common defense." This will be the challenge for the next administration as we try to take care of problems closer to home.

Mr. Speaker, when the next President takes his oath of office, shortly after the convening of this 101st Congress, these issues that I have outlined today will force us, the Congress, the new inhabitant of the White House, and the American people to take stock. Let us do our best to work together for our own national security and for a lasting peace in our world.

The SPEAKER pro tempore (Mr. FRANK). Under a previous order of the House, the gentleman from California [Mr. DORNAN] is recognized for 60 minutes.

MY ADVICE TO THE PRIVILEGED ORDERS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. GONZALEZ] is recognized for 60 minutes.

Mr. GONZALEZ. Mr. Speaker, last Friday I presented the case about how interrelated the monetary; that is a fancy word for our finances, and our fiscal; a fancy word for our revenue sources, are taxation.

My very distinguished colleague from Missouri [Mr. SKELTON] that preceded me at the outset of his special order actually underlined specific points that I had made with respect to the fact that, if the dollar is not worth much, we cannot have a very substantial and viable defense.

Mr. Speaker, I said last Friday that history shows that, if a country loses the battle at the money tables, it is not going to win, or, if it wins on the battleground, it is going to lose the battle eventually.

This has been the rather dismal history in the 20th century, which has been a century of unprecedented warfare. It has been a century inhospitable, very unfriendly, to the democratic spirit, much less the democratic processes; so that up to now, as far as we have gone without eroding, at least visibly, the bedrock, the foundations, of our own constitutional representatives, participatory democracy, the likes of which no country can point to; that is a justifiable pride.

Mr. Speaker, what we boast of today may not be so justifiable. I pointed out that I experienced very much what my very distinguished predecessor speaker mentioned in a general way.

My election was contested the first time to the Congress 27 years ago, and a big issue was made by the Republican opponent that San Antonio, my hometown, and at that time the congressional district known as the 20th District from Texas, which I have the honor of representing, consisted of the entire county. Today it is not even all of the city of San Antonio. But at that time it was the entire county.

And historically San Antonio has been on the front line of defense. The defense outposts from the very founding of San Antonio have been very important as the Nation has developed and even before it was part of the United States, so that the thesis was that unless a Representative from the 20th District could get on the Committee on Armed Services, it would be impossible to properly and effectively represent the district.

The thrust of the matter is that I have been privileged to serve in the State senate of Texas for 5 years and, before that, 3 years on the city council, both of these bodies being legislative, deliberative bodies. And I learned that no matter where you are assigned, and particularly I found in the Congress, that it all depends on the individual Member, not the committee he or she is assigned to, as to what they want to do, how they must proceed to do it. And in defending the rightful interests of the constituency and the district, a Member did not have to be assigned to any particular committee with a lot of prestige and importance.

Mr. Speaker, I think it is quite simple to conclude by those knowledgeable in the ways of legislative bodies that, if that were the case, then only the handful selected to belong to those committees could be effective Representatives. The absurdity of that is quite obvious.

So, I did not let that bother me. But unfortunately the issue was a hot one, as attempted to be developed by the opponent, and the leaders of the then minority party in both Houses at the time came to San Antonio and promised that, if the opponent were elected, they could guarantee that he would be selected to serve on the Committee on Armed Services. Well, to the people that are knowledgeable, that in itself was a hollow promise because there is a big difference to being a member of the majority party, which is the one that controls the organization, the assignments, and the order of the day, or the priorities, and membership on the committees, and the practice had been that with a numerous body and a great majority of that body belonging to x number of major or standing committees, there could only be so many who could be directed to serve in that capacity.

However, I had the good fortune of being the only one of the three sworn in at the beginning of the 2d session of the 87th Congress that was assigned to a major standing and very historic committee, the committee then known as Banking and Currency, Banking and Currency Committee. Today it is the Committee on Banking, Finance and Urban Affairs.

Mr. Speaker, my answers all during the contest and for the last 27 years have been that the assignment was a choice one because, if I were diligent in my efforts in defending the rightful interests of the missions that the Defense Department assigned for those activities in the San Antonio area, it did not matter what committee I was on particularly, but that it did matter how well those of us assigned in dealing with the matters of the economy and the financial, the monetary and the fiscal affairs did work because, if we did not defend, and uphold and fight just as hard in peace as we do in war to defend the proper interests of the greatest number of citizens, the greatest interests of the greatest number in that respect, it did not mean much how much we would want to fashion and wish for a level of defense. If we could not afford it, we just could not afford it.

□ 1300

If the dollar was worthless, why certainly we would not, unless we changed our basic form of government. In those countries in the 20th century in which authoritarianism has ruled, of course it was possible to develop a giant war machine. In a democracy such as ours, if we want to do that and we do it with the consent of those governed, we have to make a case for it.

My thesis has been that it is very difficult to make a case for battling on the fields where men are dying if you are going to lose that struggle at the conference tables of finance, high finance. This is what has happened to us, essentially.

As I said last Friday, the United States was the only creditor nation, and my distinguished colleague, the gentleman from Missouri, stated that at the outset of his special order today. We were the only creditor nation. He did not put it that way, but I have. We were the only creditor nation in the two world wars.

The United States had emerged from a debtor situation in 1914. As a matter of fact, at the turn of the century when Teddy Roosevelt wanted to build the Panama Canal, we finally did, but only by going to France and borrowing the then needed $40 million from the French bankers. We did not have the resources; but since then the country grew and it waxed strong and it prospered and it expanded. Its great engines of production were fired up, both in the manufacture of manmade goods as well as in the production of food and fiber.

It was our credit that won the war, World War I and World War II, but in the aftermath of those conflicts, the failure to adjust to the reality of the world cost us plenty, as it is and has now.

I have spoken out, and I was going to round out my preliminary remarks by saying that also Friday I placed in the RECORD the New York Times article by the economist and columnist for the New York Times, Leonard Silk, in which he was finally saying, "Hey, look. We do have a problem with foreign investment, with the heavy infusion of both credit, investment and actual ownership of some of our main sources of production in our country."

However, as long as you have the kind of situation where you have a low dollar, a devalued weak dollar, you are going to have to raise interest rates in order to keep the investments that the foreign investors have made because of the high yield of their investment, and do not worry, as nobody has, none of the Federal Reserve Board Chairmen, and I never heard any leader in Congress or any President talk about the disastrous effect of extortionate rates of interest, confiscatory rates of interest, usurious rates of interest, which continue to flagellate our economy.

No nation in the known history of mankind, even going back as far as 7,000 years before Christ and in the days of Hammerabi, has a society endured, and long endured, if it allowed and tolerated such things as usury.

Well, yes, through the centuries and in the Middle Agès and even as a matter of religious dogma, usury was prohibited. In ancient Hebrew times, the death penalty was exacted and there was a forgiveness of all debts every 50 years.

Today, how does that translate? Well, we live in a country, and particularly since World War II, where our whole economy is predicated very much like a three-legged stool; mass production, mass consumption and the kind of mass consumption possible since World War II, in turn predicated on mass credit availability, the installment payment, low rates of interest, that enabled us to have a high rate of consumption of our own American-made products, mass produced in turn, but once you chop away one of those legs you are going to have a stool that cannot stand up.

And simply this is what has happened. We have seen the ravaging effects of businesses going out in bankruptcy as never before since and exceeding the level, if we extrapolate population sizes and all, of the depression period.

We see where giant great monstrous corporations are taking over, merging, forcing, and compelling.

Now, this is because the laws and the safeguards that have been erected have, and particularly under this administration, just simply have been erased off the statute books by nonenforcement.

In Great Britain, for example, you have a Board of Monopoly and Management. They review mergers or takeovers, but it is regulatory, it is governmental. It is not private enterprise.

What we did in our country was erect legal standards, the antitrust laws, the so-called Robinson-Patman Act, which was touted as the small businessman's Magna Carta, which was challenged directly in 1975, or 1974, by the Nixon administration.

Some of us got together and the then-chairman of the Small Business Committee, the great Joe Evans from Tennessee, appointed the Ad Hoc Committee on Robinson-Patman, appointed me the chairman. We had the greatest number of hearings. We had 3,000 witnesses and we were able to turn the tide; however, with the advent of the Reagan administration and a total rout and retreat on such laws as Robinson-Patman and the antitrust laws, what we have had is an abdication of responsibility and an almost complete monopolization of financial resources.

We have seen the poor impoverished more and the rich enriched, where today about 84 percent of our total financial resources and economic resources are controlled by a handful of corporate entities.

In competition then with what is happening and with what I have been trying to discuss since it was first unveiled officially in 1979 in May at the Bonn economic summit meeting, President Carter then being President, in 1980 it was fleshed out, but in 1979 in the communique that was issued by the summiteers, the last line of that communique said that in principle the development and the acceptance of the EMS, the European Monetary System, the ECU, the European Currency Unit, were accepted in principle; however, that has all been fleshed out, and today the ECU, the main intent of that system was to stabilize the highly disorganized money markets in the international currency exchanges, once we went into the floating arrangement in 1971 after the United States went off the so-called gold exchange standard, but which in effect was the first devaluation of the dollar, and that was President Nixon. It was not any wild-eyed liberal President or liberal Congress. This was a conservative, so-called, by definition, by self-admission. They did it.

Yet it was the first scaled down devaluation of the dollar. It was not called that, but that is what it was.

Then within a period of one year and a half, there were two successive and further devaluations, but the nations then went into what is known as a floating exchange system, and all of the American economists and the Government economists and the Treasury officials, my own fellow Texan from Texas, John Connelly, all proclaimed that this was the thing.

Reading history, one would have said that the enemy of finance and investment is instability, and if you have a floating exchange, undefined as to values, sooner or later you have a chaotic situation and sooner or later someone or some combination of nations was going to offer some kind of an alternative, and they did, the Europeans did. They first started out with what they called the Snake Arrangement, the 7 or so countries, the big 6, and later the big 10, or the 10, the group of European countries, all European, had an understanding among themselves as to how far a fluctuation they would allow between their currencies.

Then they developed, as had been anticipated since the Treaty of Rome, in 1958, that there would be not only a common market, which today is becoming a single market, but it was going to be a United States of Europe, and today that is what I wanted to develop, since Mr. Silk, as I mentioned in last Friday's column was saying there was very little we could do to reverse this tremendous deficit in our international accounts, and more importantly the unacceptable and unmanageable domestic debt which is unmanageable because there are complicating factors.

Then Mr. Silk in his article, as I pointed out Friday, says: "Well, when and if these two negatives can be controlled and reduced, maybe then we can have a chance to do something about this level," that he now says is unacceptable of foreign investment.

But the fact remains that in our committee we had the leading economists, just last year, and every one of them, some of them members of the President's economic advisers and some of them the highest noted economists in the country and maybe the world, and they were all saying the same thing. They were all saying that we have got to let the dollar fall.

And when I had my 5 minutes, I just said, "Well, gentlemen, how far do you think the dollar should be allowed to fall?"

Well, they looked at each other.

And I said, "Second question. What makes you think you or anybody else in this country can control the drop of the dollar?"

Once those external forces that had been building up for the last 8 years, external to our shores over which we no longer have any control, operate in a different way, we are no longer the masters of our fate. We are no longer the ones who can even shape such things as interest rates.

With that situation, my question would have been to Mr. Silk, as it is today, "What do you want to do about it?"

□ 1315

Some of us have been advocating both, in anticipation of what now is plainly accepted, and this was when it sounded almost irrational to say so in 1966 when we had the first credit crunch. There were some of us, and we are on record, and we took the floor. There was no TV or anything, and we did not even have to in that day and time come to the House floor and speak it out. We could have written it out, put it in writing, and it was printed as if we had spoken. I never have thought that was right. I thought this great privilege of what we call special orders means that we address the House, and there are always plusses and minuses today with our in-house closed-circuit TV. Many of our Members can watch the proceedings and hear the remarks of the special order from their own offices as the great majority do.

The record is there. There were voices that anticipated. There were some of us who introduced legislation in anticipation, but it was considered far-reaching, almost irrational in that balmy day where the idea that anybody would be paying more than 6 percent was just unthought of, and when some of us said there is nothing to keep that happening here, and we are one of the few countries, in fact, the only country that handles its money matters the way we do.

How can a hardware manufacturer in New England no matter if it is a family business as one testified before the Small Business Committee which I also belong to, a hundred years ago established, how can it compete with a Japanese manufacturer where the Japanese have strict control of interest rates, and we do not? How could that little manufacturer in New England, not so little by our standard locally in Texas, pretty big up there, but internationally now, how can he get a line of credit for modernization of machinery, production enhancement, inventory of supplies, if he has to pay 16, 17, 18 percent? How can he compete with the Japanese producer that does not have to pay more than 7 percent for his line of credit?

Common sense tells us that these so-called intangibles are not intangible at all. They are real factors, and this is what we are confronted with.

With the development of the events in the postwar Europe, and my illustrious colleague from Missouri a while ago was single-mindedly referring to the defense posture vis-a-vis the Russians and so forth, but Europe of 1947, which is what we are authorizing and appropriating $350 billion for, because over 60 percent of that $350 billion is for the so-called defense of Europe, and it is no longer 1947 Europe. It is another world.

The generations on the threshold of power in those countries are generations who do not remember World War II. It is history, and not only that, we have 320,000 of our military, more or less, in Germany alone. The French have about some 10,000, and the British have about 7,000.

But where? The British from the very beginning in the partition decided that they were going to control the Ruhr. Why? Because that is the steel-producing area. They were not about to let German steel ever be a competitor to British steel, so there they are. Uncle Sam, who after the world war went from Uncle Sam to Uncle Sap, is left holding the middle. For what? For an anticipated Russian invasion, as if suddenly the Russians do not have any brains? We do not know or do not want to know anything of the history there of Middle Europe and Russia and the buildup goblins that do not exist and overlook completely the psychology, the culture, the historical antecedents of even those we call allies, much less those that we still have in a dominated, from that standpoint, position.

The world today has leaders, for instance, the German leader, the West German leader, Kohl was 15 years old at the time of World War II; Gorbachev, the Russian leader, was 15 years at the time of World War II.

Gorbachev has produced such leadership that he simply is keeping pace with the internal developments in Russia, no more, no less, which is not a simplistic state. It is a conglomeration of many states. It is a unit of the Soviet Socialist Republics and a very, very intricate system.

Obviously under Gorbachev the Russians have been better led than Red, whereas, in the United States under our actor President we have retrogressed or recidivated to better dead than Red, that kind of irrationality.

In the meanwhile, the Europeans are announcing that they are on the threshold of a real United States of Europe, but even before this, the handwriting has been on the wall when the West Germans and French and generally the West Europeans decided that they were going to do something to independize themselves from the sources of the Middle East oil and natural gas, from other sources.

They entered into an agreement with Russia, and Russia built this pipeline from the Siberian gas fields right into West Europe. Our President, who at that time was doing the best to foment a war hysteria, a war psychosis toward the Russians, said, "We cannot allow that to happen," and he warned our so-called allies, he said, "I am going to have to call for an embargo." What happened to that embargo? The same thing that happened to the resolution that was passed here by the House last February with respect to Gen. Manuel Antonio Noriega. The deep freeze.

Why? Because it was soon apparent to the President that all of his big important contributors from Chase Manhattan on down were the main financiers of Ruhrgasse, which was the company that was bringing the pipeline into Western Europe, and so then we heard no more shortly after that. The President was not about to insist on an embargo, because the European countries said, "Hey, wait awhile, why, the Russians have used pipe technology and know-how in building this pipeline from you Americans. You did business with them," and that included my present Governor of Texas, Mr. Clements. He was in business with the Bolshies, believe it or not, so the pipeline was built 3 years ago. It is servicing. It is producing gas, and it is being consumed by our so-called European allies.

In the meanwhile, even such German provincial leaders as Strauss, Franz Josef Strauss, of Bavaria, who died recently, a fanatic anti-Russian, big cold warrior, all of a sudden he was cooling off and made a visit shortly before his death to Russia, toasted cheek-by-jowl with the Russian leaders, and announced that, yes, there had been a big change in that there could be an accommodation, and Gorbachev, the skilled leader, has actually given hope for some kind of reunification that could be available to the West Germans.

Where does that leave us? We are the ones who have 300-plus, 320,000 troops, in Germany. Are we going to wait like we have in Korea, for instance, where we have massive demonstrations saying. "We want reunification with North Korea, and we do not want you Americans around here any more. What do we need you all for?" These are what I call failures on our part to anticipate and to focus on a perspective of the real world, not our ideological prisms through which we distill what we think the world is or more likely what we think the world should be.

In furtherance of that, let me point out an article in Europe, which is a publication of the European Community, an article entitled "Europe Without Borders: Answers to Some Questions; Addressing Some of the Concerns About the EC's"—European Community's—"1992 Project," and it says, "The EC Commission recently produced the following paper to allay fears that the 1992 plan will lead to a 'Fortress Europe.'"

However, the Japanese are not sitting down and pondering, the governmental leaders, not the private corporate leaders, where will they be with respect to 1992 Europe, even though they have a lot less at stake, that is, their corporations have a lot less at stake than we have, but we are not.

As far as I know, mine is the only voice that has even mentioned, much less discussed, the ECU, the European Currency Unit, the EMS, the European Monetary System, at the time preceding the 1985 summit that President Reagan went to Bonn again. Why, the American papers wrote as if he was going there to lay a wreath of flowers at the Nazi cemetery in Bitburg. He was not. He was there for the economic summit which, fleshed out by the finance ministers at last, because they had gotten together in Palermo, Italy, 1 month before, and structured the thing, and then they gave it as a fait accompli, and that was it.

Mr. Speaker, I would like to put in the RECORD at this point this article in the magazine Europe that I referred to and just briefly say that they are trying to allay fears, and maybe they should, and as I said Friday, I am not saying that this is necessarily bad for the United States. The article is as follows:

[From Europe Magazine, October 1988]

EUROPE WITHOUT BORDERS: ANSWERS TO SOME QUESTIONS

The E.C. Commission recently produced the following paper to allay fears in the United States that the 1992 plan will lead to a "Fortress Europe."

The ongoing process of completing the single European Community market entails the elaboration and adoption of a vast legislative program. This is a complex and lengthy process, and it is not possible at this stage to give definitive answers to many of the questions on the matter that are put to the Commission. Many of the replies are, of necessity, provisional and reflect the current situation and thinking in the Community.

1. What is the "1992 program"?

The 1992 program aims to sweep away the remaining obstacles to the free movement of people, goods, services and capital within the Community. The concept of a large single market, unhampered by national divisions, is not new—it was envisioned by the six European countries that launched the process of European unification in 1951. That process was clearly a political endeavor, but the means chosen were economic. Much progress toward economic integration has been achieved, but a number of difficult barriers remain between the (now 12) E.C. member states. Concerned about economic and technological stagnation in the E.C. and to give a new impetus to European integration, European leaders in 1985 launched a major drive to create a true common market by the end of 1992.

2. How will the program be accomplished?

The Commission, the E.C.'s executive body, in a 1985 "White Paper" outlined almost 300 pieces of legislation to remove physical, technical and fiscal barriers between member states. They would, for example, scrap time-consuming border controls, prevent differences between technical regulations from hindering intra-E.C. trade, and bring national value-added and excise tax systems closer together. All of these proposals must be approved by the Council of Ministers, which is composed of representatives of the 12 E.C. member states. Upon adoption, they become law that applies throughout the E.C., enforced by the European Court of Justice.

3. What are the benefits of a single market?

First of all, it brings the E.C. one step nearer its ultimate goal of unification, thus consolidating the economic and political stability of Europe. More immediately, the removal of internal trade barriers will give a significant boost to the E.C. economy. The 1992 program will create a huge, unified market of 320 million consumers, and goods, services and capital moving across national borders as easily as they do across state borders in the United States.

This will reduce costly red tape and allow business to produce for an E.C.-wide market, without having to adapt to a variety of national technical standards or health and safety regulations. Manufacturers will be able to achieve economies of scale, and the business environment will become more competitive as sectors such as air transport and financial services are liberalized and government purchases are opened up in new sectors to suppliers throughout the Community.

A recent study sponsored by the Commission to evaluate the economic benefits of the 1992 program projected that the creation of a unified market would add about 5 percent to the E.C.'s gross domestic product. In the medium term, the study found, the program also would add as many as 2 million new jobs and keep average consumer prices 6 percent lower than in a divided market. The 1992 program also will help technological development, with companies operating on a E.C.-wide market better able to afford the necessary research and development.

On a more personal level, E.C. citizens will have the right to live or work in any member state without the restrictions that now affect certain professions. It will be easier for them to find work because university diplomas, apprenticeship courses and vocational training acquired in their home country will be recognized throughout the Community. Furthermore, they will be able to travel to other E.C. countries without facing police checks and other formalities at national borders.

4. What hardships will be created by the 1992 program?

Since the single market will lead to a more competitive environment for existing companies, they will have to adjust their activities to this new environment. Certain sectors will face more important changes than others because of liberalization: transport, telecommunications and banking are examples.

Less developed regions or those suffering industrial decline will need some economic and social assistance to soften the impact of the changes and to assist in making the needed adjustments. The E.C. aims to reduce disparities between the various regions: This is why the E.C. Heads of State or Government decided in February 1988 to strengthen structural funds to ensure the neessary economic and social cohesion of the Community.

5. What benefits will the 1992 program have for the United States and U.S. businesses?

A strong European economy contributes to a healthy world economic and trading system. The United States stands to gain because of the close E.C.-U.S. political and economic partnership. U.S.-E.C. trade amounted to about $146 billion in 1987, and the E.C. is the United States' biggest export market. U.S. investment in Europe ($126.7 billion in 1986) will benefit from a strong European economy, as will E.C. investment in the United States ($157.7 billion).

U.S. businesses are well placed to exploit the benefits of a unified market. First of all, their subsidiaries incorporated in the E.C. will profit from the removal of barriers to the same extent as purely European companies. American companies are already used to operating in both a global and a large domestic marketplace, so may have less trouble adapting to the new environment than indigenous companies.

U.S. exporters will find themselves selling into a single market with a generally uniform set of norms, standards and testing and certification procedures. They will no longer have to face 12 different sets of requirements or intra-E.C. border controls. In case where the E.C. has not yet adopted standards, it looks to standards already established by the International Standards Organization (ISO) for guidance. It should be stressed that, in general, E.C. standards are close to the internationally agreed ISO and International Electrotechnical Commission standards.

Of course, the increased competitiveness of European industry could affect the market share of third-country firms both within the E.C. and abroad. But U.S. companies are highly competitive in the global marketplace, and are in a good position to seize the opportunities of the European single market. In fact, many people in the E.C. are afraid that the main beneficiaries of the internal market could well prove to be the Japanese and American companies operating in Europe.

6. How will the 1992 program promote external trade?

In overall terms, completion of the single market will stimulate the world economy as the E.C.'s greater competitiveness leads to faster growth and a rise in imports, coupled with the commercial benefits brought about by the existence of a single market.

The E.C. has eliminated all internal tariffs and has a common external tariff system. Its average weighted tariff on industrial goods is 4.5 percent, about the same as that of the United States, and among the lowest within the General Agreement on Tariffs and Trade. (GATT). The E.C. has played a leading role in the GATT, and is actively participating in the current Uruguay Round of GATT negotiations aimed at liberalizing trade and "rolling back" protectionist trade barriers.

The E.C. has developed a common trade policy, with regulations covering such areas as dumping (closely following the GATT dumping code), a system of trade preferences for developing countries and customs rules for goods entering the Community.

The remaining national quantitative restrictions will have to be removed as part of the creation of a single market or as a result of the extension of the common trade policy. The E.C. has begun the process of rolling back by offering in the Uruguay Round to drop national import quotas on a range of goods. This process will continue as the round progresses.

The E.C. has and will continue to maintain a liberal trading policy. Accounting for 20 percent of world trade (compared with 14 percent for the United States) and with about 10 percent of its GDP dependent on exports to third countries (compared with about 5 percent for the United States), it has more interest than any of its trading partners in maintaining the "one world" trading system.

7. How will trade in services be opened up?

Although services account for a major share of world trade, they are subject to little, if any, international regulation. In fact, multilateral negotiations on the subject are under way within the framework of the Uruguay Round. The general approach in the Europe of 1992 will be that service providers such as banks or insurance companies that are approved in one member state will be allowed to operate under similar conditions throughout the Community.

In the banking sector, a recent E.C. Commission proposal calls for reciprocal access for newcomers to the E.C. market. As far as established firms are concerned, consideration is being given to what the position should be once the single market is completed, in particular in regulated sectors such as banking. As yet no decisions have been taken.

The E.C. is perfectly willing to open up its services sector provided its major trading partners are prepared to do likewise. Accordingly, the E.C. attaches great importance to the work of the relevant negotiating group in the Uruguay Round, which it hopes will lead to the opening of markets in this sector. Clearly, in this context the E.C. cannot deprive itself of negotiating leverage by making unilateral concessions in this sphere.

8. Will U.S. companies be able to compete for governmental purchases and contracts?

The creation of a single market will fully open up public-sector markets, which heavily favor national suppliers, to suppliers throughout the Community. The 1992 program envisions that the rules that already exist will be better enforced, and that procurement will be opened up in areas not now covered such as water, transport, energy and telecommunications.

European subsidiaries of U.S. companies will have the same access to government purchases and contracts as any E.C. company. U.S. suppliers from outside the E.C. will continue to be governed by the GATT Code on Government Procurement. Signatories to the code have agreed to provide mutual nondiscriminatory access to public procurement markets in specified sectors. For the sectors not covered by the GATT code, the E.C. is ready to extend the guarantee of equal market access to achieve a balance between advantages and obligations.

Discussions are under way in the Uruguay Round to expand the GATT code to areas that are not now covered.

9. How can interested parties in the United States make their views on prospective new E.C. legislation known to the E.C. authorities?

The E.C.'s decision-making machinery is very transparent, probably one of the most transparent in the world. Commission proposals to the Council are published in the Official Journal and there is ample time for any interested party to comment on these proposals before they are adopted by the Council, a process that on average takes 18 to 24 months.

In addition, the Commission in many instances announces its plans, in the form of communications to the Council, even before a formal proposal is made. The Green Paper on Copyright published in June 1988 is such an example.

The openness of the decision-making process makes it easy for interested parties to follow and gives them the opportunity to make their views known. The United States is particularly well placed in this respect since, in addition to a large and effective U.S. Mission to the E.C., the private sector is well represented through the U.S. Chamber of Commerce in Brussels.

10. Will the 1992 program create a new monetary system and common currency?

No, but that is a complementary goal. The E.C. in 1979 established the European Monetary System (EMS) in an effort to minimize the erratic currency fluctuations that had impeded trade and discouraged European firms from undertaking major investment projects. It is based on a system of fixed but adjustable exchange rates, resting on a variety of intervention and credit mechanisms.

This system has been technically improved over the years. European leaders in the coming months are going to discuss the possibility of further improvements. The basic assumption is that the EMS will evolve to encompass a European central bank managing a common reserve system. This would mean the creation of a common currency. No date has been set at this time for achieving this goal.

11. Will this all really take place by 1992?

So far, the Commission has presented more than two-thirds of the proposals outlined in its 1985 White Paper and the Council has adopted more than one third of all the proposals. By the end of 1988, the Commission will have presented 90 percent of its proposals to the Council, thus giving economic operators and policymakers a virtually complete picture of the envisaged program.

Treaty reforms approved by E.C. member states to streamline decisionmaking took effect in mid-1987, increasing the chances for meeting the 1992 target. These reforms, encompassed in the Single European Act, allow the Council to take decisions by majority vote in many cases that formerly required unanimity. However, unanimity is still required for the approximation of tax rates on products and services (VAT and excise duties).

But even if work remains to be done as 1993 approaches, the process of building a single market has achieved a momentum that cannot be reversed. In fact, the business community is becoming increasingly aware of the new reality, and groups and firms are positioning themselves to take full advantage of the opening up of the market.

It is and it will be if we continue in our shell as we have for 40 years. It will not be if we have the ingenuity and the proper leadership. After all, if anybody is complaining now, the American people decided they wanted to elect an actor as President, and they got him. The only thing they have not gotten is either the admission or the last act of the performance that still has to be presented to the American people.

It is obvious that no matter who gets elected in November, and I do not know how much of a choice the American people have in November. I will admit to that myself, because nobody wants to address a live and ticking issue. I think the furor, unbelievable furor, over the Pledge of Allegiance, my Lord, I mean, that reminds me of pre-Hitler, and particularly Hitler Germany, where they took oaths, and they said, "Sieg Heil," and we do the same thing. Except why? By golly, we are un-American if we do not dare pledge the allegiance. But why should we?

I was never quite as disappointed in my dear friend and fellow Texan, our Speaker, when I think he kind of collapsed to those who are superpatrioteers. Let me tell the Members why. While Europe is united, we are all split up. We are all breaking up. We have no cohesion, and we are flailing our arms even in a campaign about what, the Pledge of Allegiance, as if somebody is superpatriotic and somebody is not, depending on that litmus test of the Pledge of Allegiance.

□ 1330

Let me tell you why I resent it. Here is Supreme Court Justice Robert H. Jackson in 1943 when the Supreme Court ruled on the Pledge. He said, "if there is any fixed star in our constitution constellation, it is that no official high or petty can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion or for citizens to confess by record or at their faith therein."

So here we are, no one wants to discuss EC, no one wants to discuss how maybe the Japanese are beginning to offer us a little plan of cooperation because they do fear the emerging 1992 United States of Europe, which will be a single market then. That is 325 million highly literate citizens, very industrious, very productive and very educated compared to our territory.

Now, I started to read the significant part in the statement to allay the fears of Americans as they say, "Of course, the increased competitiveness of European industry could affect the market's share of third country firms both within EC, the European Community and abroad. Oh, well, but the U.S. countries are highly competitive in the European marketplace, or to seize the opportunities in the European market, et cetera, et cetera. That lets the cat out of the bag and it also underpins what I am saying, that instead of flailing a jingoistic proclamation and posture by our national leader, we should be devising some successful approach which has not been, up to now, it has been catastrophic with respect to our hemispheric hegemony where we have the wit and the will and the intelligence which is inherent in America and leaders, if only they can be so attractive that the American people will have a choice to vote for them, where if we do use our wit and our will we can muster because we are in competition with the European countries in Latin America.

Our business activity in Latin America, in 10 years, has gone to less than 17 percent from almost 40 percent. The Reagan administration thinks it can submit itself into the hearts of the Latin Americans. Well, that is absurd, but it is all based on ideological anticommunism and that may be fine for us, but even in Europe it is not. If we are going to destabilize and intervene in the internal affairs of a sovereign nation such as Nicaragua because it is Marxist, Leninist, or what have you, then we ought to go and interfere with France because a French Cabinet has two Communists in it. That is what the Latin American mind cannot comprehend about us.

Just last week I heard from my colleagues on the Republican side talking about the coming crisis in such countries as Mexico, where maybe we might have to intervene, we may have to go into Mexico. Well that to me is astoundingly unbelievable. Instead of saying what is the crisis, what is the root cause, what is it we should be doing now which we are not, and of course, we are not because the national consciousness is not aware, either south or north, for that matter, we are talking about what military intervention? The American mothers are only 6 percent of the world's mothers. We do not have the manpower to intervene in every single one of our countries south of the border or even half of them. And should we, and how, and under what circumstances, if ever that fateful day should come, but which I believe is certainly avoidable. There was nothing that mandated our troops even now as early as 1980 and 1982 in any country south of the border because at no time has the option been used of a diplomatic approach first. At no time that President Reagan from the inception of his administration and the grasping of power, ever initiated any kind of diplomatic initiative.

As I said last Friday, even President Eisenhower handled it 10 times better when the last dispute between Honduras and Nicaragua and the same countries that formed the so-called Contadora countries today said that we ought to have an amicable situation. We would like to counsel, and then invited the United States, and President Eisenhower joined. What did they do? They made the United States the leader and we went to the World Court and we resolved that conflict and there has not been any conflict until General Haig at the very outset of the Reagan administration induced the Argentinian generals to send in troops, put them in Honduras, and they are the forerunners of what we call the Contras.

Their whole idea was to train and have a cadre of armed men that could enter into Nicaragua and destabilize. So instead of wasting our energy, our boys, our money, our treasure in such wasteful, unsuccessful, losing, why not have recourse to the leadership such as Franklin Roosevelt in the 1930's. Remember Franklin Roosevelt came into power right after Coolidge. Coolidge had invaded Nicaragua, sent the Marines there. We had sent them four or five times before. In Mexico, feelings were still raw since the invasion of Veracruz of our Marines in 1914, with the expropriation of the oil properties by President Lazaro Cardenas in the early 1930's, there were tremendous pressures by the powerful oil interests on President Roosevelt to intervene, and he would not march into Mexico. What did he do? He had the brillant Sumner Welles, the like of which unfortunately we just not have had for Under Secretary for Latin American Affairs.

The good neighbor policy was born.

Now, yes, the United States was not one whit less powerful. It was not one whit giving up any kind of prerogative or hegemony control but it brought about such good will that when World War II broke out, instead of having sullen, uncooperative, and hateful neighbors we had such allies as Mexico alone had Mexican citizens fighting with our soldiers, thousands of them dying in World War II. If anyone wants to, they can go on Armistice Day, cross the border and go into such cities as Nuevo Laredo and they will see American flags over the grave sites. Mexico gave us the Squadron 201 and they sent airmen and some planes and they fought with ours in the Pacific. That was the difference.

In South America, where the Japanese had literally gained control of the economies, every one of those southern South American countries, not only expelled, they neutralized the Japanese and they proclaimed their adherence to the United States. The only exception was Argentina, where they had strong Nazi sympathies until the end of the war. As a matter of fact, I served from the first day of the war, December 7, with what turned out to be the censorship program. I served with military as well as naval intelligence and ended up with the cable and radio censorship, and our big problem to the end of the war was the fact that we could pick up a phone in Buenos Aires, use the South Atlantic cable and call Berlin to the day Hitler died in the bunker or wherever.

However, the war in the beginning was the North Atlantic and the rest is history, but the point I am making is that through wise, sagacious leadership, knowledgeable, we turned from uncooperation to cooperation. Today, there is not one country in the Western Hemisphere of any particular size that is with us in the policies or actions, I should say, because I do not think there is a policy on the part of the Reagan administration in Central America alone. Yet we have had Senators making resolutions saying, well, if one MIG shows up in Nicaragua we say invade. Well, Equador has over 20 MIG's, and there are more Russian advisors and embassy officials in just one of those countries than we have anywhere, even in the United States. So we know we have to get the perspective that if we do not exert moral as well as intelligent leadership, but to do that we have to confront the problem. We have to say what is the origin of the problem, where do we come from, where do we want to go, what are we going to do, sit and wait until we have real vehement and violent protests in South Korea? Should we not be discussing that? Why should we tax the American people 60, 65 percent of $315 billion for so-called defense of Europe where the Europeans are more scared of us than they are of the Russians, and the Russian leader, Mr. Gorbachev, successful as he has been, in fact the admission of his success was a sorry confession on the part of President Reagan's press man at the time of the summit meeting in Iceland, who then tell us this year and last year that he put all the quotes into the President's mouth because the President was not looking good with respect to Mr. Gorbachev.

Now that is a sorry, sorry, state of affairs. We cannot tolerate this. Our country cannot continue to tolerate a $165 billion deficit in our national trade accounts. We cannot tolerate regaining control of our own financial, fiscal and monetary destinies, but to do that we have to do things that some of us have been warning about and some of us have been advocating, such as actually having accountability from the Federal Reserve Board which does not account either to the Congress or the President. That is one aspect.

The third aspect that bothers me is with respect to the very vulnerable point we still have in the question of energy or so-called gas, oil, in the Middle East. In an article by David Rolfe and Judith Vidal-Hall, in a publication known as South of London, and reprinted in the business section of the World Press Review for October of this year, we have an article entitled, "Will Seven Become Four?"

The article referred to is as follows:

[From the World Press Review, October 1988]

WILL SEVEN BECOME FOUR?

(By David Rolfe and Judith Vidal-Hall)

SOUTH

In little more than 10 years, four-fifths of the world's oil supply will be comtrolled by the Middle East. While reserves in the rest of the world dwindle, those in Saudi Arabia, Kuwait, the United Arab Emirates, Iran, Iraq, Libya—and also Mexico—will last for more than 500 years at current production levels. Indeed, the days are gone when the so-called Seven-Sisters—Shell, Exxon, British Petroleum, Texaco, Gulf, Mobil, and Chevron—set the world price and reaped the rewards. OPEC has also been changing, and the oil world is increasingly dominated by those with control over the marketing chain. The signs are that the real power will rest with Shell and Exxon, and with Saudi Arabia and Kuwait.

Meanwhile, the West is losing out through its preoccupation with prices. The first price shock, in 1973, led to frenzies of new exploration and production in Alaska, the North Sea, Siberia, China, and elsewhere. The success, which ended the West's dependence on OPEC, has created an illusion of security.

Saudi Arabia's recent announcement of plans to restructure the Aramco company marked the opening of the latest phase in the transformation of the international oil industry. Fifteen years ago, the Saudis and other OPEC members resorted to nationalizations in their efforts to retain a larger share of oil earnings. Now at least two OPEC members are taking steps to insure that profits from refining and marketing in the U.S. and Europe are credited to them.

Aramco—a partnership founded in 1933 involving Chevron [then Standard Oil of California], Exxon, Texaco, and Mobil of the U.S.—controlled the output and sale of all Saudi oil for decades. The kingdom's income came from royalties paid by the partnership, which even owned the Saudi oilfields. Saudi Arabia bought a 25-percent stake in Aramco in 1973 and raised it to 60 percent in 1974. In 1980, the company was reduced to the still-lucrative role of service contractor. Now the Saudis intend to change Aramco by building joint ventures around the world with the four contractors, thereby establishing a substantial presence in refining and marketing.

Three months before the Saudis unveiled their plans for Aramco, the Kuwaitis had bought 22 percent of the shares of another oil major, British petroleum. The significance of this move is underlined by the fact that it may yet be blocked by Britain's Monopolies and Mergers Commission. The BP purchase follows Kuwait's entry into the marketing sector in Europe through the establishment of a chain of gas stations.

Saudi Arabia, Kuwait, and, to a lesser extent, the U.A.E have no urgent need for cash. Instead of supporting the short-term aims of most OPEC members, they favor a long-term strategy designed to insure that oil continues to dominate the world energy market. They want to earn the maximum from every barrel by concentrating on profits from refining and marketing. Though day-to-day tactics differ, the recent Saudi dismissal of OPEC and non-OPEC pleas for production cuts to increase prices shows that the strategy has survived the departure of Sheikh Zaki Yamani as Saudi oil minister. It is an approach that requires determination, resources, and the sacrifice of short-term earnings. From this perspective, an increase in oil prices now would merely stimulate competition and accelerate the search for substitute fuels—as happened after the 1973 and 1979 price hikes.

The Saudis and Kuwaitis see a future where the world balance will be tight. Current surpluses will gradually diminish as production in the North Sea, the U.S., and the Soviet Union declines, and as demand rises in the more successful economies of the South. Prices will be higher, and Saudi Arabia and Kuwait will by then be established as integrated suppliers. Others, in particular Iran and Iraq, will benefit as long as they can get their oil to the market, but the big money will go to those who can control each link of the supply chain.

Changes in the oil industry are also affecting the Seven Sisters. Now only six remain. Gulf has been taken over, and its assets have been broken up and absorbed—mostly by the other six. Of those six, Texaco and BP face difficulties, and Mobil and Chevron have been declining steadily.

Only two sisters, Shell and Exxon, look truly healthy. Both have oil reserves and assets, including cash to fund investment and acquisitions; Shell's cash assets are now sufficient to buy 75 percent of Mobil, the fourth-largest company in the industry. Both survived slumps in prices and have accumulated key assets amid the fallout from the various breakups in the rest of the industry. They are strongly represented in both production and marketing and are in position to take advantage of either declines or rises in the price of oil.

Shell and Exxon are not dependent on any one area of the world. And both are immune from the risk of takeover—Shell because of its complex Anglo-Dutch ownership structure, Exxon because it has carefully used some of its cash to buy back its own shares. As they sail confidently into the 1990s, Shell and Exxon will be followed by a flotilla of smaller companies—some profitable and successful, but most plagued by a decline in their oil reserves and by the threat of corporate raids. These two companies, plus their Kuwaiti and Saudi stepsisters, will have taken over from the original seven.

They are talking about the seven oil giants that have governed and dictated the oil market. Today the Saudis have decided, and the Arabs, generally producing nations where, incidentally, their reserves are unlimited to the foreseeable future while those of our country and other countries outside of the Middle East are dwindling and dwindling fast. They have decided that they are going to do what up to now has been the seven oil companies, with the exception of the two that are so giant, Shell and Exxon, they are not wholly independent on that part of the country.

□ 1345

But these are two giant oil companies. The American corporation, for instance, has steadfastly since World War II—part of our booty was the obtainment of the German formulas for converting such things as shale and other products into artificial or ersatz gasoline as they called it during the war. They got ahold of those formulas. They have not wanted to give them to the American Government at any time because they want to hold their monopoly in energy production. Yet for how many years have we had the alternatives to the so-called energy crisis? These are the things that the American people will not know unless their leaders are candid and honest and tell them so.

Withholding knowledge in a democracy, in my book, is tantamount to a crime, because only knowledgeable citizens in a democracy can prevent being brainwashed or being actually controlled as the experts say today in the mind-molding, mind-consciousness control through the application of practical psychology and/or modern electronic instantaneous communication and the monopoly thereof.

The networks have over 95 percent control of all television viewing time of the American public. Let us not forget that.

This article in this magazine from London, they spread out how they anticipated what today's newspaper brings out, that the British Ministry of Monopolies and Mergers, as they call it, they call it "the Commission," as of today's newspapers advising Kuwait that they had better divest themselves of the 21 or 22 percent they had of British Petroleum and reduce it to 9 percent.

Well, it will be interesting to see how far that can come about.

The conclusion is that the Saudis now are in the process of marketing.

When our President ordered our Navy into the Persian Gulf, he did not order it to protect the American domain; he ordered it and he flagged the ships to protect the oil shipments of Standard Oil of California or Socal, and British Petroleum. And that was it.

That is where our sailors died.

The actual Arabic countries, since Iran is not an Arabic country, that they were protecting their oil shipments, were not and have not been marketing. They have been producers, maybe some refineries, but they have not marketed.

Now this article says even that shall now be withdrawn from these companies and we will be more at the mercy of those countries that did not hesitate to boycott in the 1973-74 period.

Now with all of these combined worldwide situations—and these are fact situations—the most important being how can we keep the dollar as still the viable international reserve unit with the emergence of the European currency unit?

In this same magazine there is an advertisement, "The Jean Monnet commemoration bond, ECU's, 500 million at 7⅝, bonds due in 1994. They are issuing EC-based bonds and the ECU at this point in exchange is worth one and one-quarter dollars. This ad, and I am going to ask that it be printed in the Record so that my colleagues will see how far since 1979 when we first took this floor and advised that we had better be confronting the emergency of the ECU and the EMS, there is a 500-million bond issue of ECU's at 7⅝ percent yield due on maturing in 1994.

Now that is a new July 1988 issue. It is sponsored by the Deutsche Bank, the Banque Paribas, and all of these Europeans.

The article referred to is as follows:

[This advertisement appears as a matter of record only]

Jean Monnet Commemoration Bond

(New Issue July 1988)

ECU 500,000,000 7⅝% BONDS DUE 1994

European Coal and Steel Community and European Economic Community Represented by the Commission of the European Communities

Deutsche Bank, Aktiengesellschaft.

Banque Paribas.
BNP Capital Markets Limited.
Kredietbank S.A. Luxembourgeoise.
Algemene Bank Nederland N.V.
Banco Bilbaro Vizcaya.
Banque Inosuez.
Bayerische Vereinsbank Aktiengesellschaft.
Citicorp Investment Bank Limited.
Crédit Agricole.
Credit Suisse First Boston Limited.
Merrill Lynch International & Co.
Rabobank Nederland.
Sparekassen SDS.
Dresdner Bank, Aktiengesellschaft.
Allied Irish Bank Plc.
Bank Brussel Lambert N.V.
Banque Internationale à Luxembourg S.A.
Bear, Stearns International, Limited.
Commerzbank, Aktiengesellschaft.
Crédit Commercial de France.
Generale Bank.
Mitsubishi Trust International Limited.
SBCI Swiss Bank Corporation Investment banking.
Union Bank of Switzerland (Securities) Limited.
Istituto Bancario San Paolo di Torino.
S. G. Warburg Securities.
Amsterdam-Rotterdam Bank N.V.
Banque Générale du Luxembourg S.A.
Baring Brothers & Co., Limited.
Caisse des Dépôts et Consignations.
County NatWest, Limited.
Crédit Lyonnais.
The Long-Term Credit Bank of Japan (Europe) S.A.
The Nikko Securities Co., (Europe) Ltd.
Société Générale.
Westdeutsche Landesbank Girozentrale.

So that with that I will close by simply saying that when this administration turned the destinies to those surrounding the present, I call them the friendly Fascists, some of them I confronted when I was chairman of the committee on the Robinson-Patman law, and that is the way I would define it. You know, it is a horrible thing to use labels, I do not like labels. But we could say instead of "Fascists," we could say authoritarians. One of them, this is the way he is quoted and he happens to have been and is the chief economist for General Electric, Walter Jolson. Here is his philosophy:

> Let's talk about the difference in living standards rather than wages. What in the Bible says we have to have a higher standard of living than others? We have to give a bit back.

Well, fine, but you do not give the family jewels away to prove that you have got to give something.

THIS ADMINISTRATION'S RECORD ON HOMELESS LEGISLATION

The SPEAKER pro tempore (Mr. GONZALEZ). Under a previous order of the House, the gentleman from Massachusetts [Mr. FRANK] is recognized for 60 minutes.

Mr. FRANK. Mr. Speaker, the question of the homeless has been discussed in this Presidential campaign and it has been discussed in the debates which we had at both the Presidential and Vice Presidential levels.

One fact ought to be very clear: One of the issues on which there has been the greatest difference between the Democratic and Republican parties to date and an issue which will be dealt with very differently depending on who wins in November, is the question of the homeless.

The Democratic Party, I regret to say, has not done as much as we should to alleviate the plight of the homeless people. But our record looks enormously good compared to the resistance, the reluctance, and opposition that the Republican Party has shown with very few exceptions to our efforts to aid the homeless.

Senator QUAYLE in the debate said, when asked, in part "What we have done for the poor is that we in fact the homeless bill—" and people will understand that I am quoting Senator QUAYLE directly—"What we have done for the poor is that we in fact, the homeless bill, the McKinney Act which is a major piece of legislation that deals with the homeless. The Congress has cut the funding that the administration recommended." Senator QUAYLE said that with regard to the McKinney Act, the bill that is our primary vehicle for dealing directly with the homeless, he says that "The Congress has cut the funding that the administration recommended."

Now, Mr. Speaker, I know that people argue that Senator QUAYLE ought not to be judged by the same standards as other people. The Republican apologists have basically approached the question of Senator QUAYLE's participation in a debate the way people talk about amateur golfers in the club tournament. People are not measured against how well they do, they are measured against their handicap. And when they say someone did well if he shot 20 over par, if his or her handicap was 18 over par or 21 over par, that is what they are talking about.

So I know that we are not supposed to expect from Senator QUAYLE the kind of quality of remarks that we have generally expected, but even taking into account Senator QUAYLE's handicap—and the rules of the House prohibit me from explaining exactly what his handicap is—but even taking into account Senator QUAYLE's handicap, this is a very strange statement.

Now we never accuse each other of lying, but I will say that any resemblance between the statement that Senator QUAYLE made in the debate and the facts is accidental. Senator QUAYLE said the Congress has cut the funding that the administration recommended for the McKinney Act. Exactly the opposite is the case.

We should begin by noting that this year the President asked for $264.8 million for the McKinney Act. Included in that were $70 million that had to absolutely be spent in food stamps. Congress appropriated, counting that same $70 million, $448 million. That is $378 million specifically for the McKinney Act plus that $70 million.

We appropriated about $180 million more than the President asked for.

Now even to Senator QUAYLE, when the President asks for $260 and we appropriate $440, I do not understand how that appears that we voted less.

But it is not simply a single misstatement. The Vice President said—Vice President BUSH in his debate with Governor Dukakis—"I want to see the McKinney Act fully funded." Well, we are glad to learn that, on September 25. The fact is this administration has been fighting hard to keep the McKinney Act underfunded from its inception and the Presidential debate is the first indication we had that GEORGE BUSH disagreed with that. At every step of the way, in fact, the McKinney Act was authorized for this year at $600 million; the President requested about one-third of that. And the Vice President indicated no difference with the request.

We have Senator QUAYLE inaccurately claiming that we cut the funding the President requested when we in fact voted much more than the President asked. We have the Vice President claiming that he was for full funding when at every turn he supported an administration that has cut it.

As a matter of fact, earlier this year we had a vote in the House; some of us wanted to increase the appropriations for the McKinney Act which was being cut by the appropriations committee. I regret to say that we lost. And I also regret to say that my Democratic colleagues voted for that only in a narrow majority. But the Republicans voted overwhelmingly against it.

A small majority of Democrats voted to increase McKinney Act funding over the amount the appropriations committee asked for.

A large majority of Republicans voted against it.

GEORGE BUSH apparently was with us in spirit. But you know, Mr. Speaker, when people are with you in spirit that does not do you much good up on the board.

GEORGE BUSH apparently in his secret heart of hearts, maybe in the same place where he secretly opposed trading arms for hostages, tells us he was with us on the McKinney Act. But there was no indication of it.

As a matter of fact, Mr. Speaker, you know what we got today, and you, Mr. Speaker, know particularly because of the extraordinary leadership you have shown to all of us in your full time occupation as chairman of the Subcommittee on Housing where you have taken the lead more than any other Member on this homelessness question, in a communication which as you know we received last week, the House and Senate conferees on this year's McKinney Act reauthorization—it is a bill that has to be reauthorized—the conferees came up with what we thought was a reasonable package given the budget constraints. It seemed to us well within the budget. All of us were very disappointed when we got a letter dated October 6 from the Reagan administration, Secretary Pierce, which said among other things, and I will quote directly: "The administration objects to several House provisions which if enacted would needlessly expand the scope of existing homeless programs."

I think that one is worth repeating. "The administration objects to several House provisions which if enacted would needlessly expand the scope of existing homeless programs."

Mr. Speaker, I am appalled. Winter approaches. A large number of our fellow and sister citizens, many through no fault of their own, face homelessness. There are small children, wholly innocent of anything anyone could blame them for, elderly people who face homelessness, and we know as a nation that our response has been inadequate. DAN QUAYLE and GEORGE BUSH say when they are on television how much they care abut this program. But here is the administration position that they apparently support: "The administration objects to several provisions which would needlessly expand the scope of existing homeless programs." Those words, the accusation that the bill we are about to pass, I hope, put together with your strong leadership, Mr. Speaker, the suggestion that these—not the suggestion, the assertion that we would needlessly expand the scope of existing homeless programs, that is a cruel statement.

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It is a statement which reflects the policy that this administration puts forward and that GEORGE BUSH and DAN QUAYLE have worked for, and I am offended when candidates say in televised debates words about how much they care about the homeless program when in fact what we get is their support for a statement that we are needlessly expanding it. They say we are needlessly expanding the homeless program. I am at a loss adequately to describe how appalling it seems to me it is for this administration, which has presided over Pentagon spending that they admit has gone astray in so many ways, to tell us that we are needlessly expanding the homeless program, and then at the same time we hear from Senator QUAYLE and the Vice President about how much they are for the program.

Let me go back to the specifics of Senator QUAYLE's statement when he accused Congress of cutting below the administration, and, of course, as is often the case, Senator QUAYLE got the facts exactly wrong, absolutely exactly wrong. We voted more money than the administration asked for while still staying within the budget overall. For the emergency food and shelter program, the President asked for $80 million; we voted $114 million. For emergency shelter grants, the President asked for nothing; we voted $46.5 million. For adult education, for homeless children education, education for the homeless children who are stuck because they do not live anywhere—we are told that GEORGE BUSH wants to be the education President—well, the "Education President" supported a budget request of zero for education for homeless children, and we voted $4.8 million. In area after area, we voted more money than was asked for.

And I will ask the chairman to go back a couple of years. You will remember, and you reminded me—I apologize, Mr. Speaker, for alluding to your more constant role as chairman of the Housing Subcommittee—you reminded me, and I am grateful for it, earlier that the first thing this administration did about the homeless was to spend $300,000 on a terrible study which sought to minimize the problem. You will remember that when the issue of the homeless came up, when this question first came up, some of us were critical of the Secretary of Housing and Urban Development for not doing anything, and he said to us that the homeless was not his problem. I guess he is a very literal-minded man. He believes that he is the Secretary of the Department of Housing.

Now, what makes one homeless? What makes one homeless is the absence of housing. So apparently the Secretary of the Department of Housing thinks that if people do not have any housing, they are not his responsibility.

But as we know, he fought it. They did not want there to be a McKinney Act. The administration opposed it. They did not want there to be any program for the homeless. The administration opposed it. GEORGE BUSH was there and DAN QUAYLE was there on the administration's side.

This effort now to claim in TV debates that they are the great champions of the homeless simply gets no factual support. The Reagan administration opposed our efforts to go into the homeless program. They did a study that was widely repudiated. They counted how many homeless there were in cities. As you remember, Mr. Speaker, in your role as subcommittee chairman, as you reminded me, in city after city, the officials in those cities, the church leaders, the voluntary groups, the people who comprised GEORGE BUSH's "thousand points of light," came to us and said, "This study is wrong."

This administration, in my judgment, shamefully, in a nation as wealthy as ours, in this great country, opposed our efforts to come to the aid of the homeless. They sought to minimize the problem. When we were putting the McKinney Act together, they fought against us. When it came time to ask for money for the McKinney Act, the President asked for too little. When some of us tried to get some more, they gave us no help. And now at this late hour, on the same day, I believe, that DAN QUAYLE was saying, "Isn't it terrible that Congress is underfunding the administration's request," we get a letter which says, "The administration objects to provisions which would needlessly expand the scope of existing homeless programs."

We have not done enough for the homeless. I am sorry that we lost on the floor when we tried to expand the funding. But at every point Congress, and particularly the Democrats in Congress, have done far more for the homeless than this administration. And I will say as a resident of Massachusetts the Michael Dukakis has been in the forefront of events in this country to use State and local resources for the homeless, and he has fought hard for Federal funds.

Anyone who looks at the record of Ronald Reagan, GEORGE BUSH, and DAN QUAYLE in fighting our efforts to help the homeless will see they have not stopped. We currently have pending a piece of legislation which tries to do something more for the homeless, and this administration is objecting. If GEORGE BUSH and DAN QUAYLE are serious, let them repudiate this position. Let us hear from them.

Will Senator QUAYLE vote with us on this question? Will he take what he said in the debate and give it some substance? I have not heard anything about that, Mr. Speaker.

We are currently at issue now as to whether we are going to pass this bill. Ronald Reagan and Sam Pierce and GEORGE BUSH and DAN QUAYLE are all on record here, because this is the administration's position that they tell us they support, as saying how we are trying to needlessly expand the scope of the homeless program. So let us give them a test. It is obvious, if we look at the record, that the programs and actions that Michael Dukakis has taken and that the Democrats in Congress have taken are far more nearly what is required. And they are not enough.

We talk about the homeless, and there are some homeless people who are not nice people. There are homeless people who are abusive. There are some homeless people who have probably contributed to their own misbehavior and to their circumstances, although I do not think the penalty for having misbehaved ought to be freezing to death. That seems to be a little excessive, although I am never sure about what some of my colleagues on the other side will think is appropriate as punishment. But there are clearly large numbers of homeless children, older people, and others who by any standard are blameless, and to accuse us of needlessly expanding a program to take care of them, to object when this wealthy country is asked to spend a very, very small amount of money to keep people from freezing to death is hard to understand. And we need some effort made to keep them from being abused in shelters, because we know that when we underfund these shelter programs, people may go into the shelters and a small minority of bad people will victimize the majority.

That is the administration's policy, and that is what Dan Quayle and George Bush have supported. Dan Quayle is simply, flatly wrong. George Bush is wrong when he talks about their support.

Just to recap on the homeless, when this issue first became an issue, this administration fought every effort we made to get a Federal program for the homeless, and George Bush and Dan Quayle supported that. Michael Dukakis and Lloyd Bentsen, on the other hand, were in favor of Federal programs to help the homeless. The first action this administration took on the homeless that I can recall was paying taxpayers' money for a lousy study that tried to minimize it. When we got the McKinney Act passed, with no help from the President, they requested in January of this year far less money than the bill called for. We appropriated considerably more than they asked for. When some of us tried to increase that appropriation, the Republicans were monolithically against us, and a large majority of Republicans beat a small majority of Democrats on that issue. Dan Quayle and George Bush were on the wrong side of the issue, and Michael Dukakis and Lloyd Bentsen were on the right side.

Now, today, as we try to deal further with the homeless issue, the contribution of this administration is this October 6 letter in which they seek to kill the bill. They are objecting to a reauthorization of the McKinney Act because we would "needlessly expand the scope of the existing homeless programs."

I do not understand how people can be so callous, and I do not understand how George Bush and Dan Quayle can on the one hand go on television and profess their great love and concern for the homeless. Dan Quayle pointed out how grateful these people were that he went to see. He did not even tell them about the fact that he voted against them all the time; he simply bestowed upon them his magnificent presence while at the same time cutting the funds they need.

It is not simply the homeless alone, Mr. Speaker, because George Bush said one other thing in that debate that appalled me. When Michael Dukakis was asked about the problems of the homeless, he quite appropriately talked about the disastrous record of housing in this administration. One area where this administration has succeeded far beyond any other, as we know, Mr. Speaker, is in its attacks on housing. There may have been some problems that needed to be addressed. There were some problems that needed to be addressed, but this administration has taken an absolute meat axe approach to them. They have opposed all programs, even the most successful.

They tried to zero out the subsidized housing for older people and handicapped people. As for subsidized housing built with some Federal assistance by private developers for the elderly and the handicapped, they wanted none of it. That is housing that by every measure is enormously successful.

This administration has been so unrelenting in its opposition to housing that I think it is very clear that if the Reagan-Bush administration's war on drugs was fought as vigorously as its war on housing, this would now be a drug-free country.

The result now, of course, is enormous pain for people, and it has increased homelessness. George Bush's lack of understanding of this issue never became clearer—and he now claims to be a supporter of full funding for the McKinney Act—when 3 years ago he evinced no interest at all in the subject and never dissented at all from the administration's war on it. And to this day he does not disagree with the administration's effort to kill the reauthorization of the McKinney Act, because to quote them, it needlessly expands the scope of the homeless program.

How anyone can live in this country today and walk the streets and object to a bill because it needlessly expands the scope of the homeless programs is absolutely beyond me.

Let us hear what George Bush said when Michael Dukakis talked about the need for more housing. And an example of that was the excellent program Michael Dukakis put forward yesterday very specifically to help with home ownership, and he has been a pioneer in Massachusetts in using programs to try to increase housing. What George Bush said was this: "Governor, you are blurring the issue of the homeless and housing."

Now, that is breathtaking. Frankly, it is the kind of comment we would come to expect from Dan Quayle: "You're blurring the issue of the homeless and housing."

Where does George Bush think people are going to live, in trees? What does he mean, "You're blurring the issue of the homeless and housing"? Trying to separate the problems of the homeless from housing is a little redundant. That is why they are homeless; they have been separated from housing. The notion that we can talk about homelessness without talking about adequate housing for low-income people is one that I think would only be plausible to people who are as removed from the problems of working people as George Bush. Only someone who had no knowledge of what really goes on in our cities could think that we could talk about the homeless without talking about housing.

Let me just, to give a counter example, quote from the Supplementary Statement on Health Care for Homeless people. There was a study done by the National Academy on the question of homelessness, and some of the people there said that while they agreed with the statement of the academy, they objected to the rule which said they could not really get into the more emotional issues. What they said was this: "We endorse the report and its recommendations. . . . But the report fails to capture our sense of shame and anger about homelessness."

In other words, these people who were on the study of homelessness were a majority. I believe this was a 12-member commission, and 9 of the 12 members on this National Academy of Sciences study felt that the constraints they were given in the statement kept them from saying what they wanted. So they put out a supplementary statement, and as part of my permission to include extraneous matter, I want to include this. Let us be clear that this is extraneous only in the technical sense of the rules of the House. It is not extraneous to any important value. And I want to compliment these members—Ellen Bassuk, William Breakey, Alan Fischer, Charles Halpern, Gloria Smith, Louisa Stark, Nathan Stark, Bruce Vladeck, and Phyllis Wolfe—for a forceful and emotional statement that is intellectually coherent about the homeless. Let me quote from one particular part of what they say:

Housing. As the Committee observed in its report, the health problems of homeless people that differ from the health problems of other poor people related directly to their homeless state. . . .

We support the principle that decent, affordable housing is every American's right. This view reaffirms the Federal Housing Act of 1948. . . . To this end, we strongly recommend that the Federal Government work to substantially increase the supply and availability of low-income housing.

Mr. Speaker, the text of the report, entitled "Supplementary Statement on Health Care for Homeless People," is as follows:

SUPPLEMENTARY STATEMENT ON HEALTH CARE FOR HOMELESS PEOPLE

(By Ellen L. Bassuk, William R. Breakey, A. Alan Fischer, Charles R. Halpern, Gloria Smith, Louisa Stark, Nathan Stark, Bruce Vladeck, and Phyllis Wolfe)

This supplementary statement was prepared by nine members of the committee on Health Care for Homeless Persons, not in opposition to the Committee's report, but from concern that the report is too limited in its discussion of the broader aspects of the issues it addresses. We endorse the report and its recommendations. We especially feel that the fact-finding efforts it embodies were thorough and thoughtful. But the report fails to capture our sense of shame and anger about homelessness, and it incompletely addresses the context in which all discussions regarding the health of homeless persons should be placed.

Any IOM report necessarily must undergo a process of negotiation among Committee members, and then between the Committee and external reviewers; such a process assures the objectivity, credibility, and defensibility of the report and its principal findings. This is just as it should be in order for the IOM and the National Academy of Sciences to fulfill the critical role of providing objective expert advice. There are invariably frustrations in such a process, but they too are an expected part of a committee's and the Institute's work. Another frustration, however, affected the work of this Committee, and while the Committee's staff did an excellent job of managing this frustration within the Academy's ground rules, we feel the need to articulate our feelings in a supplementary statement.

The frustration we all experienced working on this report arises from the nature of the problem we were charged to address. Contemporary American homelessness is an outrage, a national scandal. Its character requires a careful, sophisticated, and dispassionate analysis—which this report provides—but its tragedy demands something more direct and human, less qualified and detached. We have tried to present the facts and figures of homelessness, but we were unable to capture the extent of our anger and dismay. We have summarized available studies on homeless children, but we had no means to paint the pathos and tragedy of these displaced, damaged, innocent lives. We have reviewed the demographic and clinical data and then, walking home, passed men asleep on heating grates or displaced people energetically searching in garbage piles for a few cents' income from aluminum cans. We analyzed mortality data for the homes but lacked any platform from which to shout that our neighbors are dying needlessly because we are incapable of providing the most basic services.

As the Committee's deliberations progressed, we became increasingly aware that homelessness causes some illnesses and exacerbates and perpetuates others by seriously complicating efforts to treat disease and reduce disability. Therefore, only a comprehensive long-term strategy for eliminating homelessness will permanently improve the health status of homeless persons. Because of its charge and its limited resources, however, the Committee was unfortunately constrained in its ability to formulate essential long-term recommendations that dealt with the root causes of homelessness.

The most basic health problem of homeless people is the lack of a home; to condemn someone to homelessness is to visit him or her with a host of other evils. Ignoring the causes of homelessness leads to treating only symptoms and turns medical programs into costly but necessary stopgap measures. Attempts to address the health problems of homeless persons separately from their systemic causes is largely palliative.

A broad long-term strategy is needed to solve the health care problems of homeless people. Such a strategy must emphasize the context of homelessness. It must focus on gross inadequacies in four areas: supply of low-income housing; income maintenance, support services, and access to health care for the poor and uninsured.

1. *Housing.* As the Committee observed in its report, the health problems of homeless people that differ from the health problems of other poor people relate directly to their homeless state. We agree with the World Health Organization's statement (1987) on the International Year of Shelter for the Homeless: "Shelter to protect against the elements and to serve as a locus of family life is a basic human need. . . . At its best, appropriate shelter promotes emotional and social health."

We support the principle that decent, affordable housing is every American's right. This view reaffirms the Federal Housing Act of 1948, which describes the Federal Government's obligation to assure that every household has access to decent, affordable housing. To this end, we strongly recommend that the Federal Government work to substantially increase the supply and availability of low-income housing. More specifically, we recommend that, as a start, funding for federal housing programs be restored to 1981 levels.

2. *Income and Benefits.* As the committee also observed, people must have income levels that make housing affordable, both to prevent and to end existing homelessness. We were grieved to encounter ever-growing numbers of homeless people with full-time jobs, who were unable to afford any kind of housing because they were being paid the minimum wage. It is our judgment that the minimum wage should be set at a level that makes decent housing affordable.

Many people must rely on entitlements for their income and financial support. Not only have these benefits become more difficult to obtain, but today's federal entitlements are not sufficient to support housing for the elderly, the disabled, or those on welfare. If homelessness and its resultant health problems are to be eliminated, those benefits must be significantly augmented.

3. *Supportive Services.* Many homeless persons are disconnected from supportive relationships and caretaking institutions, as the report notes. Some, such as chronically mentally ill individuals, substance abusers, those with physical disabilities, and the very young and the very old, have special needs. Many homeless people urgently require a wide array of support services, including job training, psychological rehabilitation, outreach, and case management.

For the most chronically disabled among the homeless population, psychosocial rehabilitation services must be offered, but for those who cannot be rehabilitated the goal is to provide decent and humane asylum in the community. Disabled people must not be consigned to lives of degradation.

4. *Access to Medical Care.* While homeless people encounter many obstacles obtaining access to health care, the single greatest problem is one shared by many other Americans; they are unable to pay for health care and therefore often do not receive it. While the Constitution does not promise citizens health care, neither does it guarantee universal free education or old age pensions, but these rights have long been recognized by policy makers. Additionally, the President's commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research in their 1983 report *Securing Access to Health Care* concluded that:

"* * * society has an ethical obligation to ensure equitable access to health care for all.

"The societal obligation is balanced by individual obligations.

"Equitable access to health care requires that all citizens be able to secure an adequate level of care without excessive burdens. When equity occurs through the operation of private forces, there is no need for government involvement, but the ultimate responsibility for ensuring that society's obligation is met, through a combination of public and private sector arrangements, rests with the Federal Government.

"The cost of achieving equitable access to health care ought to be shared fairly.

"Efforts to contain rising health care costs are important but should not focus on limiting the attainment of equitable access for the least well served portion of the public."

Approximately 37 million Americans, including many of the homeless, are without any form of public or private health insurance. Medicaid has tended to some needs of one large constituency, but we believe the time has come to move toward establishing universal access to health care.

The Committee tried to report as dispassionate as the IOM/NAS process requires, but the reality cries out for immediate action. As we witnessed the suffering of America's poorest citizens, we came to understand that the individual health problems of homeless people combine to form a major public health crisis. We can no longer sit as spectators to the elderly homeless dying of hypothermia, to the children with blighted futures poisoned by lead in rat-infested dilapidated welfare hotels, to women raped, to old men beaten and robbed of their few possessions, and to people dying on the streets with catastrophic illnesses such as AIDS. Without eliminating homelessness, the health risks and concomittant health problems, the desperate plight of homeless children, the suffering, and the needless deaths of homeless Americans will continue. We agreed with the recommendations set forth in the Committee report, but we felt continuously uneasy because of our inability to state the most basic recommendation: homelessness in the United States is an inexcusable disgrace and must be eliminated.

The study of the National Academy was specifically—and I may have misstated that a little bit—on the health problems of the homeless. They were asked to talk about the health problems of the homeless, and they signed a report that talked about the health problems of the homeless, but they pointed out that we cannot deal with these issues in abstract isolation, that the health problems of the homeless really are a product in large part of the fact of their homelessness. And what they say here is that if we have a national policy that cuts housing as badly as they have cut it, how can we possibly expect there not to be an increase in homelessness, and how can we expect there not to be an added problem of health care?

So on the one hand we have GEORGE BUSH and his "By the way" and pausing in his counting of the "thousand points of light" criticizing Michael Dukakis for "blurring the issue of housing and homeless." But no one with any knowledge of the needs of the homeless, no one who has any particular sense of concern for the homeless would argue that it is rational to talk about the homeless in abstract isolation from housing.

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And in fact this report from the 9 of the 12 people who studied the question of health care for the homeless point out that housing is essential to it. On the one hand we have GEORGE BUSH saying, "Hey, what's housing got to do with homeless?," a very bizarre statement, "What's housing got to do with homeless? Don't blur the two."

Well, it is this administration's relentless assault on housing that has been the problem, and I want to repeat what I started by saying, "Look at Michael Dukakis' record of creativity and imagination in housing, the Mass Housing Finance Agency, the Secretary of Community Development, the work they've done together, the creative and thoughtful way and a cost-effective way that they have put housing programs together."

Michael Dukakis has a very thoughtful prohousing statement yesterday; they are statements that help home ownership for moderate-income people, they are statements that help low-income housing get constructed, they are a vast contrast to GEORGE BUSH. And, if my colleagues are concerned about housing in this country, they will find no greater difference between the candidates than in the creative prohousing, fiscally responsible policies of the Dukakis administration and the assault that Ronald Reagan, and GEORGE BUSH and DAN QUAYLE have made on housing.

At this point, Mr. Speaker, under my general permission I also want to put into the RECORD an article from the real estate section of Saturday's Washington Post by Ann Mariano, "Housing Crisis Grips Low-Income Women, Higher Rents Put the Squeeze on the Poor," are the accurate headlines; headlines are not always accurate, as we know.

Mary Gay, a resident of Adams Morgan, pays 80 percent of her income for rent.

More than one-third of single-parent families spend 75 percent or more of their income for rent.

The Reagan administration's policies, fully supported by GEORGE BUSH and DAN QUAYLE, would exacerbate this. As a matter of fact, in the reauthorization of the McKinney Act that this administration is objecting to, in addition to objecting because we would needlessly expand the scope of existing homeless programs; I keep repeating that one. It is such an extraordinary statement, particularly when it comes from people like BUSH and QUAYLE who are telling us how prohomeless they are, being accused of needlessly expanding the scope of existing homeless programs. That is like accusing people of wantonly and needlessly sending emergency food to the Sudan. I do not understand the mindset that can say, and this is, we are told, this is administration policy. In addition to the homeless programs being needlessly expanded, they object, as my colleagues know, Mr. Speaker, because of your leadership here to things we have done to try and prevent future homelessness.

One of the things we do in this bill is try and prevent people from being thrown out of the homes they now live in subsidized housing because in some cases economic trends will lead them to be put at risk, and we put some provisions in there to try to preserve existing subsidized housing, and of course the Reagan administration is dead set against those.

My colleagues will remember that in 1987 we passed a bill that for the first time established some protections for people who now live in subsidized housing, elderly people, families with children, who are at risk, not because they do not pay the rent, not because they are morally deficit, but because of economic trends beyond their control they are confronted with the possibility of eviction, and we try to help them in cost-effective ways. Nobody denied that we were doing it in as cost-effective way possible.

The Reagan administration opposed those efforts. They were voted on overwhelmingly by Congress. There were 27 votes against that effort in the Senate; one of the votes was DAN QUAYLE. LLOYD BENTSEN voted for it; DAN QUAYLE voted against it.

I mention that to illustrate exactly what their policies in the debate mean. So not only does the administration object in the McKinney Act reauthorization that is now pending to or doing more for the homeless than they want, they object to our efforts to prevent homelessness. This administration is at the same time telling the American people how supportive and compassionate they are in fighting to oppose efforts to prevent evictions.

I do not think there is much crueler than going to a 78-year-old woman who has lived in a particular neighborhood for 30 or 40 years and say, "We're sorry, ma'am. We know you're living on minimum Social Security, but you've got to get out because the neighborhood is improving, and it's a nice neighborhood, and we can't afford to have you around anymore, and you're gone. We will not keep you here."

What we try to do is say, "Look. We can't prevent fundamental economic trends perhaps from changing a neighborhood," but we can say that that woman will be allowed to continue to live there under the terms she originally thought she would be allowed to live there. If the Federal Government has to step in and help out, we will do it. They are opposed to it.

The greatest disparity in numbers my colleagues will want to see is in the housing budget under this administration. And the greatest difference in public policy my colleagues will want to see is what will happen in housing if Michael Dukakis wins versus what will happen if GEORGE BUSH wins.

In every year since the Reagan administration has taken over there has been a drop in spending for housing, and understand, Mr. Speaker, that this comes in the context of the increasing deficit. In other words, Ronald Reagan has not been cutting housing trends because he wanted to reduce the deficit. Ronald Reagan is as interested in reducing the deficit as the Ayatollah Khomeini is in spreading secular humanism. Ronald Reagan has done more for deficits than any other single individual. He has had a lot of help. It is not only him, but he has certainly not been opposing the deficit. He wanted to cut housing funds and finance tax breaks for the oil industry. We have cut housing funds to pay for what goes on at the Pentagon where consultants steal money from us. We have cut housing funds so that wealthy farmers can get a great deal of money or that foreign assistance can go in some cases to countries that squander it and use it for their own corrupt purposes.

We are not talking here about where the housing fund should have been cut to reduce the deficit because deficits have not been reduced. Housing funds have gone substantially down, and the result is the problems of the low-income women and more homelessness.

Mr. Speaker, I am going to conclude with a summary because there really is not much more to be said. Having read the Washington Post over the weekend, I was tempted to see if I can take 60 minutes to get my full 18,000 words, which is 60 times 300, but there really is not that much to be said here because it is not a complicated subject.

The Reagan administration began by opposing virtually every program we had to provide housing construction even for the elderly and the handicapped, which has generally been considered noncontroversial, and GEORGE BUSH and DAN QUAYLE supported every one of those assaults, every one of those budgets which took from elderly housing and raised the rents, one of the things this administration did with DAN QUAYLE's vote and with GEORGE BUSH's full support.

My colleagues know, if someone is 80 years old, living on minimum Social Security, 10 years ago they would have had to pay 25 percent of their income if they lived in a public housing project or a subsidized housing project, and DAN QUAYLE and GEORGE BUSH helped change that. They now pay 30 percent. DAN QUAYLE and GEORGE BUSH have helped raise the amount that the elderly have to pay when they live in subsidized housing, and then they try to cut down the number of subsidized housing, and then we got into the homeless question, and the Reagan administration, with the support of GEORGE BUSH and DAN QUAYLE, opposed us on the homeless every step of the way.

Michael Dukakis was one of those leading the way to get the Federal Government not to cut housing, to be more creative and more fiscally responsible on the way we spent, but to in fact do more in housing, and Michael Dukakis was a pioneer in trying to deal with the homeless in the face of this administration's assaults. We had HUD with the full backing of Vice President BUSH, Senator QUAYLE, and others resist any efforts to get them into the dealings with the homeless. We had them use $300,000 of taxpayers' money for a fraud study to try and minimize the problem. When we passed the McKinney Act, they were dragging their heels. When the President had to send in a budget request, and let us remember again that DAN QUAYLE said in the debate that Congress has voted less money for the McKinney Act than the administration asked, and DAN QUAYLE was wrong. Mr. Speaker, he made it up. He simply said things that were the opposite of the truth because the administration asked for far less than they should have gotten. We voted money, more than they asked for, not as much as I wished. When some of us tried to vote more, they opposed us, and even as we stand here today, what is the status of dealing with the homeless?

We have got a bill that is awaiting signatures by conferees on the old leadership and that of people in the Senate. We got a pretty good bill. Not nearly enough, does not do nearly enough, but it does put in a few extra safeguards to keep people from getting evicted, and it does try and patch a few of the holes of the homeless program.

And what is the actual response of the Republicans? I am not talking about what DAN QUAYLE and GEORGE BUSH are told what makes sense to say in the debate. I do not want to focus solely on what the debates coaches told BUSH and QUAYLE. I am talking about the reality.

Mr. Speaker, the reality is that this administration in its official document dated October 6 says to us, "Stop trying to prevent evictions in the future, and stop trying to expand the scope of existing homeless programs."

So, when GEORGE BUSH says he is for fully funding the McKinney Act and DAN QUAYLE says Congress cut the McKinney Act below the administration said, they are wrong. They are absolutely at variance with the truth. They have been part of an administration, and willing parts of an administration for 8 years, that has cut housing in general and has specifically opposed funds for the homeless and, as we stand here, is engaged in an effort to have us cut back on the meager amounts we are already doing.

Michael Dukakis, on the other hand, as Governor and as an advocate international level, has been one of the leaders in a housing policy that has been fiscally effective, that deals with the needs of middle-income people trying to start a family, of elderly people, of the desperately poor, 3-year-old children who have no place to live. The contrast could not be greater.

If Michael Dukakis and LLOYD BENTSEN are elected in November, we will begin to address our housing programs in a serious way. We will not, because of budget constraints, be able to do by any means everything we should, but we will begin to make the situation better.

If we get GEORGE BUSH and DAN QUAYLE, who, on the one hand, profess their love for the McKinney Act, and on the other hand do everything possible to undercut it, and my colleagues know I should have mentioned, Mr. Speaker, that when we did get a bill passed which began—I did mention—when we did get bills passed that were going to begin to deal with the problems of the homeless and the future evictions, they were opposed by all parties on the other side, not just the administration, but the Vice President and Senator QUAYLE. If the Bush-Quayle ticket wins and they continue the housing programs that they personally have espoused, and supported and voted for, then disaster lies ahead. It does not take much to predict that, if GEORGE BUSH and DAN QUAYLE win, we will have more homeless, not because they are heartless, but because they do not understand the situation.

When DAN QUAYLE can say that we have cut funding below what the administration asked for when we nearly doubled it, when GEORGE BUSH can object because Michael Dukakis says we cannot talk about the homeless without talking about housing, when this administration sends us a letter last week trying to kill the McKinney Act reauthorization in its current form because it expands the scope of the programs for the homeless, we see what frugal results lie ahead for the most vulnerable people in our society, and not just them because, when we talk about the housing programs of this administration, it is the elderly who are now paying significantly more rent, the poorest and the elderly. It is working people, lower middle income people, young people trying to start families who cannot afford housing.

Mr. Speaker, housing is one of the areas where the disparity is the greatest, and I hope for the duration of this campaign, if Senator QUAYLE and Vice President BUSH cannot reverse themselves, if they cannot bring themselves to support us in getting the McKinney Act reauthorization passed, if they cannot support us in expanding the scope of the homeless programs, needfully in our opinion, not needlessly, then at least let them spare us the spectacle of their continuing on the one hand to oppose our efforts to help the homeless and on the other hand going on television and talking about how committed they are.

[From the Washington Post, Oct. 8, 1988]

HOUSING CRISIS GRIPS LOW-INCOME WOMEN

(By Ann Mariano)

Mary Gay, a resident of Adams Morgan, pays 80 percent of her income for rent and was barely meeting expenses when doctors told her last spring that she has breast cancer. She has been unable to work since her surgery in April and the bills are piling up.

Gay, a single mother with two daughters, is among an increasing number of women whose housing costs are eating up a larger portion of their financial resources while their incomes stand still or decline.

More than one-third of single-parent families spend 75 percent or more of their income for rent, according to housing experts at a recent conference on women's housing problems sponsored by the Women's Research and Education Institute.

For black women, who head more than half of all black families, the burden can be even heavier. They "face crushing rents in the face" of a shrinking supply of housing, said Richard Ferlauto, a community organizer and staff director for New Jersey state assemblyman David Schwarz. An unexpected crisis, like Gay's cancer surgery and chemotherapy treatments, can push many low-income women over the edge into poverty and homelessness.

Gay's gas and electricity bills are now three months overdue, and she also is behind on her rent.

"I had things under control until I got sick. Then things got jumbled up," said Gay, who receives food stamps and $268 a month in welfare payments. Now, "I take care of one problem, then I try to take care of another problems."

Before her surgery, Gay worked part time caring for elderly patients confined to their homes.

"Women have become increasingly vulnerable to the housing crisis" faced by most low-income families as rents escalate and the supply of housing they can afford dwindles, Ferlauto said. Because of this, he said, the number of working women living in homeless shelters is mounting.

Housing problems are growing for all low-income women, but single women face the worst difficulties. They have grown from 10 percent of the homeless population in 1982 to 25 percent in 1987, said Rep. Constance A. Morella (R-Md.), a Montgomery County resident and a member of the Congressional Caucus for Women's Issues. Although women have made strides in other areas, "we are locked out of something as basic as housing," she said at the conference.

Rep. Barney Frank (D-Mass.), a supporter of federal housing aid for the poor, blamed the Reagan administration for many of the housing problems that women face.

"If the Reagan administration's war on drugs was as effective as the attack on housing," the country would not have any drug problems, he said.

Congress and the Reagan administration have cut federal housing programs by more than 75 percent since 1980. As a result, "no city, no state can solve the low-income housing problems" of the nation because "they just don't have the funds," said Rep. Barbara B. Kennelly (D-Conn.), the only woman serving on the House Ways and Means Committee.

"Without effective, even strident" lobbying in Congress for restoring some federal funding on behalf of "housing issues and women's issues, we will find ourselves in a few years from now looking back on the good old days of 1988," said Cushing Dolbeare, an expert on housing for the poor and a founder of the National Low-Income Housing Coalition.

Increasingly, low-income women find that the less they can afford to pay, the more they have to pay, Dolbeare said.

Decent, affordable housing for everyone is a basic human right, she said, and $25 billion to $30 billion would have to be spent to make a serious dent in the need for low-income shelter.

Women are in "triple jeopardy," Dolbeare said. They are more likely to be poor; they are more likely to be excluded from home ownership, putting them "in some kind of housing jeopardy all their lives," at the whim of landlords and vulnerable to other problems; and they face a tight rental market, or if housing is available, they are more likely than other groups to face discrimination because of their sex, because they have children, or because they are on welfare, she said.

"Homeless mothers face an added fear," said Diana Pearce, director of the Women and Poverty Project at the Institute for Women's Policy Research. They often avoid shelters for fear "they might lose their children." Many local governments require women who go to homeless shelters to put their children in foster care. Ironically, "in many states, foster homes get four times as much money [in government aid] as the real parent" gets in public assistance, Pearce said.

Older women are one of the poorest groups in the nation. Although more elderly women prefer to live alone than do older men, women older than 65 who live alone are more likely to be poor than most other women, and often spend half or more of their income on housing, said Leah Dobkin, a housing specialist for the American Association of Retired Persons. These women often live in housing units built before 1950 that often are too large.

"Maintenance can be a significant burden, and they sometimes must choose health care or home care," Dobkin said.

Women older than 65 made up more than two-thirds of all poor, single homeowners reporting incomes of $5,000 or under, according to Census Bureau statistics. Nearly one-quarter of all renters who live alone are elderly women, compared with only 6 percent who are men, the figures show. These elderly women had a lower median income, $6,446 annually, than any group.

THE 75TH ANNIVERSARY OF THE ASILOMAR CONFERENCE CENTER

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. PANETTA] is recognized for 5 minutes.

Mr. PANETTA. Mr. Speaker, this year marks the 75th anniversary of Asilomar, one of California's—and the Nation's—most beautiful and significant conference centers, located in my congressional district. This noteworthy birthday will be celebrated during special ceremonies at the center, in Pacific Grove, CA, on October 22, 1988. I urge my colleagues to join me in saluting this unique facility.

Asilomar—which means "refuge by the sea"—has provided an inexpensive, but spectacular, setting for conferences since 1913. Open to the public, Asilomar is a unit of the California State parks system. This is remarkable, as so many conference centers today are privately owned and available only to the wealthy. The center is noteworthy for another reason: It is home to 11 buildings designed by Julia Morgan, a world-renowned architect who also designed the Hearst castle at San Simeon, and many other famous buildings in California and elsewhere.

To foster contemplation and thought, the Asilomar Conference Center does not provide television or telephones in rooms, or other distractions. Instead, the center is designed to encourage conversation and reflection. The 105 acres border the coast, and are home to fragile sand dunes and endangered and threatened species.

I hope that my colleagues—and all those who read this tribute—will one day find an opportunity to visit the Asilomar Conference Center. I would also ask that my colleagues join me in commemorating the 75th anniversary of this very special place.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mrs. MORELLA) to revise and extend their remarks and include extraneous material:)

Mr. DRIER of California, for 60 minutes, on October 12, 13, 14, and 15.

Mr. BEREUTER, for 60 minutes, on October 13.

(The following Members (at the request of of Mr. GONZALEZ) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. EDWARDS of California, for 60 minutes, today.

Mr. MORRISON of Connecticut, for 60 minutes, October 12.

Mr. FRANK, for 60 minutes, on October 15.

(The following Members (at the request of Mr. FRANK) to revise and extend their remarks and include extraneous material:)

Mr. STENHOLM, for 30 minutes, on October 12.

Mr. PANETTA, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mrs. MORELLA) and to include extraneous matter:)

Mr. BROOMFIELD.

Mr. DANNEMEYER in three instances.

Mr. FRENZEL.

Mr. RINALDO.

Mr. GRADISON in two instances.

Miss SCHNEIDER.

(The following Members (at the request of Mr. GONZALEZ) and to include extraneous matter:)

Mr. TRAFICANT.

Mr. ANDERSON in 10 instances.

Mr. GONZALEZ in 10 instances.

Mr. BROWN of California in 10 instances.

Mr. ANNUNZIO for six instances.

Mr. JONES of Tennessee in 10 instances.

Mr. PEPPER.

Mr. ATKINS.

Mr. HUBBARD.

Mr. KANJORSKI in two instances.

ENROLLED BILLS SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 4417. An act to authorize appropriations to the Secretary of Commerce for the programs of the National Bureau of Standards for fiscal year 1989, and for other purposes;

H.R. 4724. An act to direct the Secretary of Agriculture to release a reversionary interest of the United States in certain land located in Oktibbeha County, MS; and

H.R. 5186. An act to designate the Federal building and U.S. courthouse located at 109 South Highland, Jackson, TN, as the "Ed Jones Federal Building and United States Courthouse."

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 2057. An act to provide for the establishment of the Coastal Heritage Trail Route in the State of New Jersey, and for other purposes.

BILLS AND JOINT RESOLUTIONS PRESENTED TO THE PRESIDENT

Mr ANNUNZIO, from the Committee on House Administration, reported that that committee did on the following dates present to the President, for his approval, bills and joint resolutions of the House of the following titles:

On October 7:

H.R. 1596. An act to amend title 28, United States Code, to create two divisions in the Judicial District of Maryland;

H.R. 4028. An act to authorize the Secretary of Agriculture to exchange certain National Forest System lands in the Targhee National Forest;

H.R. 4267. An act to authorize additional appropriations for the WEB Rural Water Development Project, SD, authorize the use of Pick-Sloan Missouri Basin electric power by the Lower Brule Sioux Indian Tribe, and to rename certain facilities of the Central Valley project, California;

H.R. 4276. An act to designate the U.S. Post Office Building located at 1105 Moss Street in Lafayette, LA, as the "James Domengeaux Post Office Building";

H.R. 4433. An act to designate the U.S. Post Office Building in Jeannette, PA, as the "John Dent Post Office Building";

H.R. 4857. An act to amend the Job Training Partnership Act to make a technical change;

H.J. Res. 576. Joint resolution designating February 19 through 25, 1989, as "National Visting Nurse Associations Week"; and

H.J. Res. 602. Joint resolution in support of the restoration of a free and independent Cambodia, the withdrawal of Vietnamese forces, and the protection of the Cambodian people from a return to power by the genocidal Khmer Rouge.

ADJOURNMENT

Mr. FRANK. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 2 o'clock and 29 minutes p.m.), under its previous order, the House adjourned until tomorrow, Wednesday, October 12, 1988, at 12 noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4447. A letter from the Assistant Secretary, Management and Administration, Department of Energy, transmitting notification of a proposed altered Federal records system, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

4448. A letter from the Secretary of Labor, transmitting a report on the Department's views on the proposed change in the permissible hours for employment of batboys and batgirls, pursuant to Public Law 99-425, section 801(2) (100 Stat. 977); to the Committee on Education and Labor.

4449. A letter from the Federal Inspector, Alaska Natural Gas Transportation System, transmitting a report on the status of the Alaska Natural Gas Transportation System covering the first two quarters of project activity, January through June, 1988, pursuant to 15 U.S.C. 719e(a)(5)(E); jointly, to the Committees on Energy and Commerce and Interior and Insular Affairs.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. ASPIN: Committee of conference. Conference report on S. 2749 (Rept. 100-1071). Ordered to be printed.

Mr. RODINO: Committee of conference. Conference report on S. 1630 (Rept. 100-1072). Ordered to be printed.

Mr. LaFALCE: Committee on Small Business. H.R. 1769. A bill to establish a Minority Business Development Administration in the Department of Commerce, to clarify the relationship between such Administration and the Small Business Administration, and for other purposes; with an amendment (Rept. 100-1073, Pt. 1). Ordered to be printed.

Mr. DINGELL: Committee on Energy and Commerce. H.R. 2693. A bill to require asbestos manufacturers to submit information on their asbestos products to the Environmental Protection Agency and to require owners of buildings containing asbestos to inspect the buildings and take samples of asbestos or asbestos-containing material before commencing civil actions relating to asbestos, and for other purposes; with amendments (Rept. 100-1074). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ATKINS:

H.R. 5496. A bill to provide for the improved management of the Nation's water resources; jointly, to the Committees on Agriculture, Interior and Insular Affairs, and Public Works and Transportation.

By Mr. ATKINS (for himself, Mr. Beilenson, Mr. Brown of California, Mr. Markey, Mr. Mavroules, Mr. Moakley, Mr. Studds, and Mr. Waxman):

H.R. 5497. A bill to establish national water use performance standards for certain plumbing products in order to conserve and protect the Nation's water resources, and for other purposes; to the Committee on Energy and Commerce.

By Mr. GEKAS (for himself and Mr. Fish):

H.R. 5498. A bill to amend title 18 of the United States Code to punish corruption; to the Committee on the Judiciary.

By Mr. RINALDO (for himself and Mr. Ritter):

H.R. 5499. A bill to require the Federal Communications Commission to prescribe standards for AM stereo radio broadcasting; to the Committee on Energy and Commerce.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 1938: Mr. Roe.

H.R. 4450: Mr. Richardson.

H.R. 4923: Mr. Horton, Mr. Moakley, Mr. Whittaker, Mr. Sharp, Mr. Brown of Colorado, Mr. Weber, Mr. Hansen, Mr. Lewis of Georgia, Mr. Dowdy of Mississippi, Mr. Spratt, Mr. Downey of New York, Mr. Penny, Mr. Marlenee, and Mr. Schaefer.

H.R. 5051: Miss Schneider.

H.R. 5075: Mr. Johnson of South Dakota, Mr. DeWine, Mrs. Bentley, and Mr. Slaughter of Virginia.

H.J. Res. 651: Mr. Thomas of Georgia and Mr. St Germain.

H. Con. Res. 307: Mr. Davis of Michigan and Mr. Buechner.

H. Con. Res. 339: Mr. Clinger, Mrs. Vucanovich, Mr. Hall of Texas, Mr. Chandler, Mr. Nagle, Mr. Bunning, Mr. Bateman, Mr. Dixon, Mr. Hyde, Mr. Fazio, Mrs. Byron, Mr. McMillen of Maryland, Mr. Hall of Ohio, Mr. Sensenbrenner, Mr. Skaggs, Ms. Kaptur, Mr. Cheney, Mr. Buechner, Mr. Armey, Mr. McGrath, Mr. Donald E. Lukens, and Mr. Dyson.

H. Con. Res. 358: Mr. Horton.

H. Res. 546: Mr. Coleman of Texas, Mr. Edwards of Oklahoma, Mr. Nielson of Utah, Mr. Weldon, Mr. Dornan of California, and Mr. Aspin.

SENATE—*Tuesday, October 11, 1988*

(Legislative day of Thursday, October 6, 1988)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Honorable Bob Graham, a Senator from the State of Florida.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Trust in the Lord, and do good; so shalt thou dwell in the land, and verily thou shalt be fed. Delight thyself also in the Lord; and he shall give thee the desires of thy heart. Commit thy way unto the Lord; trust also in him; and he shall bring it to pass.—Psalm 37:3-5.

Gracious God our Father, the psalmist makes it abundantly clear that one cannot lose when he takes You seriously. Adequate provision, desires of our heart fulfilled, infallible direction—are the legacy of those who trust in You, delight in You, and commit their way unto You. Deliver us, Lord, from the folly of settling for anything less than God's best for our lives. In the name of the Lord who is consummately trustworthy. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. Stennis].

The legislative clerk read the following letter:

U.S. Senate,
President pro tempore,
Washington, DC, October 11, 1988.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable Bob Graham, a Senator from the State of Florida, to perform the duties of the Chair.

John C. Stennis,
President pro tempore.

Mr. GRAHAM thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

Mr. BYRD. Mr. President, will the Chair let me know when I have consumed 10 minutes?

The ACTING PRESIDENT pro tempore. Yes.

THE CHAPLAIN'S PRAYER

Mr. BYRD. Mr. President, as I reflected on the Chaplain's words today, I was again aware that the Heavenly Father, who feeds the birds of the air, who clothes the lillies of the field, will not be unattentive to, or unmindful of, the needs of man. He knows our daily needs. And the Chaplain's prayer reminded us of that.

If we ask the Heavenly Father for bread, whether it be spiritual or material, our needs and prayers will not go unanswered. God told man to go forth and subdue the Earth. God knows man's limitations, but He also knows of man's talents and abilities because He, the Creator, was the Father of man, created him out of the dust of the ground and breathed into his nostrils the breath of life. Man's potential, through God's grace and with God's will and God's help, can achieve man's needs and goals.

Edwin Markham wrote a few lines in this same spirit, when he said:

Earth Is Enough

We men of Earth have here the stuff
Of Paradise—we have enough!
We need no other stones to build
The Temple of the Unfulfilled—
No other ivory for the doors—
No other marble for the floors—
No other cedar for the beam
And dome of man's immortal dream.

Here on the paths of every-day—
Here on the common human way
Is all the stuff the gods would take
To build a Heaven, mold and make
New Edens. Our the stuff sublime
To build Eternity in time!

TO THE SENATE STAFF OF THE 100TH CONGRESS—THANK YOU

Mr. BYRD. Mr. President, as the historic 100th Congress comes to a close I want to express my deep appreciation for those who work to make the Senate run more smoothly and efficiently and productively; people who are as much responsible for the effective workings of the U.S. Senate as are the 100 men and women elected to serve in it; people who contribute to the history of their country everyday, but rarely will be mentioned in the history books; people who make my job, and the jobs of the other 99 Members of this Chamber, much easier and more pleasant and productive.

I shall begin by expressing my high regard and deep appreciation for some young Americans we too often take for granted, but we cannot do without—the Senate pages. These young men and women are among the hardest working staffers in the Federal Government. They do everything and anything to assist each Member of this Chamber. I thank them for their energy, persistence, willingness to follow instructions, for their loyalty and for their zeal. I thank them for the work they perform and for their interest and involvement in the functioning of the Senate.

The Reverend Dr. Richard Halverson, the 60th Chaplain of the Senate, has held this esteemed position for more than 7 years—since February 2, 1981. He has been a good friend and spiritual leader. His kindness as well as his thoughts touch and inspire us all. He is so helpful in our hour of need, as he was in my own and my wife Erma's. He is helpful when we have loved ones who are sick. When we need comfort, or guidance, or support, we can count on him.

With great pleasure, I express my gratitude to my long-time friend and associate, the 25th Secretary of the Senate, Walter Joseph Stewart. He is more than aware of my indebtedness to him; therefore, I will not belabor the point, except to say that the service he has performed in the 100th Congress has been invaluable. From our past associations, I was aware of his personal work ethic and his loyalty to the Senate. For these reasons and more, I asked him to leave the private sector to serve as the Secretary of the Senate for the historic 100th Congress. I am glad that he did, and I thank him. He is assisted in his important work by Michelle Haynes, Muriel Anderson, Kathy Dignan, and Dot Svendson. These pleasant and loyal staffers show extreme grace under heavy demands. Dot Svendson is a genius at arranging large functions, and Michelle Haynes always gives her best as well.

The secretary for the majority, Abby Saffold, has my deep and sincere appreciation. She is such a pleasant person with whom to work. She also brings to her position a competence and a dedication that make the difficult tasks much simpler, and a demanding job much easier. She is assisted by Sue Spatz and Jerri Davis, who perform their many and various duties professionally and effectively.

The assistant secretary for the majority, Robert Bean, is an outstanding individual who performs his duties with diligence and dedication. Likewise, the secretary for the minority, Howard Greene, and his assistant,

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

John L. Doney, perform valuable services for Senators on both sides of the aisle.

Every Member of this body is aware of the work of the Democratic floor staff, Charles Kinney, Marty Paone, and Bill Norton. They are invaluable. I thank Charles Kinney and Marty Paone for their disciplined, orderly thinking and their calm demeanor under pressure throughout the long years they have served. The Republican floor staff counterpart, Elizabeth Greene, is always congenial, courteous, and cooperative; I thank her for her good work and the Republican leadership, as well, for having the wisdom to select her for that position.

The staff of the Democratic Cloakroom, Joe Hart, Gary Heimberg, Lenny Oursler, Patrick Hines, Art Cameron, and Lawrence Smith are responsive to numerous requests for assistance from Democratic Senators. During day or night sessions, short or long sessions, they are on the job, diligent in duty and effective in performance.

Likewise, I acknowledge the outstanding work and cooperation of the Republican Cloakroom. Its fine staff includes George Cartagena, Mary Arnold, David Schiappa, and Brad Holsclaw.

My chief of staff in the majority leader's office, Mrs. Barbara Videnieks, is entitled to some special words of praise and thanks. She is one of the most politically astute individuals I have ever worked with in my long political career, and she possesses one of the best and brightest minds on Capitol Hill. The demands made upon her are various and many, but her skills seem limitless. I rely on her good judgment. She works closely and effectively not only with me, but also with the democratic policy committee staff and with my State office staff every day on a broad range of issues and policies. She is someone who, indeed, has made a difference. In her invaluable work, she is ably assisted by Charlotte Holt, Kathy McNally, and Becky Roberts.

Among the most exhausting and demanding positions on Capitol Hill is the position of staff director of the Democratic Policy Committee. Fortunately, I currently have two very able and talented men in these positions: Richard D'Amato, the staff director of the Policy Committee for Defense and Foreign Policy; and Tom Sliter, the staff director of the Policy Committee for Domestic Policy. Their professionalism, their intelligence, their years of legislative experience have been tested every day during the 100th Congress, and they have been more than equal to the challenges. I am pleased to have had these two men as directors, and I am proud of their performances. They have not merely survived in their pressure-packed-hours and days; they have prevailed, and I, the Senate, and the United States have benefited. To them and to their very capable assistants, Alice Aughtry and Lula Davis, I am grateful, and I say thank you.

They, like other Democratic Senators and I, have profited from the Democratic Policy Committee's outstanding issues staff: Sally Mernissi's solid grasp of domestic issues, Dave Corbin's initiative and research abilities, Rusty Mathews' knowledge of energy issues, Jon Wood's grasp of the economy, Kent Hughes' understanding of trade, Scott Harris' capabilities on defense issues, Jan Heininger's knowledge of foreign affairs, Ed King's expertise in Latin American issues, and Bruce Vaughn's important research in foreign policy. These intelligent and skilled staffers are specialists in their respective fields. They give of themselves to the work of this body and the good of the country. They are ably assisted in their work by Wendy Deker, Nancy Iacomini, Paul Jentel, Nancy Scribner, and Susan Sherk.

An important function of the policy committee is to inform Members on our side of the aisle regarding the Senate's business. Elizabeth Shotwell and her assistants produce legislative bulletins on each major piece of legislation, special reports, vote compilations, and other committee publications. Marian Bertram summarizes each major piece of legislation and has an invaluable mastery of the entire legislative process. Assistants Claire Amoruso, Doug Connolly, Brenda Corbin, Patti Schmid, and Lynn Terpstra are to be commended for their tireless and meticulous efforts and praised for their work. Thanks also to Mike Alion who has served as a messenger with a smile.

Linda Peek, the former Director of the Policy Committee's Communications Office, gave invaluable service. The current director of the office is the talented, dedicated and well-liked Marsha Berry. She and her staff, Robert Barnes, Kim Camp, Mary Helen Fuller, Kevin Sullivan, and Kevin McManus are super in dealing with the fourth estate so that the American public is better informed on the workings of this institution.

I must also take the time to commend my faithful and superb West Virginia office staff. Under the direction and supervision of my very able, conscientious, dedicated, and hard-working Administrative Assistant Joan Drummond, my State office staff helps me to provide my constituents with first-rate services throughout the year. The talents and skills of Tina Evans, my clear headed, astute, capable, and very professional press secretary, are deeply appreciated. My State director, Jim Huggings, has an enthusiastic interest in West Virginia that touches everyone. Melissa Wolford is a very great help to me on energy issues. Also in my State office are Jim Allen, Patricia L. Braun, Kay Christensen, Suzanne Groot, Marilyn Hill, Cynthia K. Huber, Leslie S. Hucks, Connie K. Huggins, Gail John, Barbara Jordan, Helen Kelly, Florence King, Carol Kiser, Catherine Lark-Preston, Joseph Meadows, Hampton Rector, Barbara Redd, Mary Jane Small, Elysa Smith, Debra Wood, Anne Barth, Nancy Peoples, Maxine Nagel, and Jennifer Lambert. These devoted and talented people play a large and vital role in my services in the U.S. Senate. Needless to say, I am in their debt, and I am deeply grateful.

And I include with them, the fine and remarkably gifted staffers who help me on appropriations: Terry Sauvain, Diana Gourlay, Charley Estes, Don Knowles, and Carol Mitchell. And I include George Carenbauer, my representative on the Judiciary Committee staff, who provides me with wise and able counsel.

Mr. President, everyone knows that the smooth and effective workings of this Chamber depend, to a large extent, on the knowledge and interpretations of the Senate's complex rules and precedents as made by the Senate Parliamentarian. Therefore, it is with great pleasure that I call attention to the work of the Senate Parliamentarian Alan Frumin and his assistants, Kevin Kayes, Jim Weber, and Jennifer Smith. Also in the Parliamentarian's office is the ever helpful and likeable Sally Goffinet. These people who make up this very important Senate office have my deepest respect and gratitude.

I also extend my appreciation to the official reporters of debates. The specialized work of the Chief Reporters, Chick Reyonds, William Mohr, Frank Smonskey, Ronald Kavulick, Jerald Linnell, Raleigh Milton, Joel Breitner, and Mary Jean McCarthy; Assistant, Chief Reporter Scott Sanborn; Morning Business Editor Mark Lacovara; Staff Assistant Karen McIntosh; and the staff of expert transcribers—Eileen Connor, Donald Carrigan, Thurston Yokoyama, Sherry Jenkins, Jon Alexander, and Mamie Meltzer—so essential to the operation of the U.S. Senate.

Legislative Clerks William Farmer and Scott Bates get a big "thank you" for their abilities to accomplish the many, various, and demanding tasks of their positions.

The seldom-seen, but—always—appreciated awards go the Bill Clerk Vincent Del Balzo and his assistants Kathie Alvarez and Coleen Kuehn; Journal clerks William Lackey, Dave Tinsley, and Jim Thorndike; and Enrolling Clerk Brian Hallen and his assistant, Maxine Snowden. These positions often involve long hours and hard work, and these persons have my gratitude.

Barry Wolk and his printing services staff constantly work under the burden of time to meet the printing needs of this institution. They accomplish their assignments not only successfully but pleasantly.

The Superintendent of the Document Room, Jeanie Bowles, and her staff perform admirably in making sure that legislative documents and publications are distributed to the Senate Chamber and Senate offices and available to the general public.

From the executive clerk, Gerry Hackett, to the daily digest editor, Jim Timberlake, to Director of the Office of Senate Security Michael Disilvestro, we receive the best of service. I commend Abraham McPhail and his able clerks and special assistants in office services for effectively meeting the rigorous demands of that office.

The 30th Sergeant at Arms Henry Giugni, his Deputies Brian Nakamura and Jeanine Drysdale Lowe, and Minority Representative Loretta Fuller do an outstanding job. Mrs. Lowe has been especially kind to me and my wife, Erma, over the years; my wife, Erma, and I have always appreciated her graciousness and the way that she goes far beyond the parameters of her job to assist in countless ways. The minority representative Loretta Fuller also does an outstanding job. Among the many important duties that the Sergeant at Arms provides is the security that is, regrettably, such a necessity in this dangerous world.

The enormous responsibility for protecting this historic building, the U.S. Capitol—the very symbol of American Democratic Government—belongs to Chief Kerrigan and the U.S. Capitol Police. I say thank you for a job well done. Theirs is an important job and can be a dangerous one at times. It is also a delicate one. They must provide protection while, at the same time, ensuring the right of the people to observe their Government in action and to petition it. This is not easy, but the Capitol Police must perform this difficult task in a professional way, and must always remember to be as courteous to visitors as to Senators.

The staff of the Senate Computer Center, Postmaster Jay Woodall and his staff, and the director of telecommunications, Robert McCormick, and his deputy, Joan Ansheles, do an outstanding job in providing their valuable services. The Service Department, headed by Russell Jackson and Ron Ledlow, likewise, does outstanding work.

It is difficult for me to imagine this institution's functioning without access to reliable information—and the ability to get it quickly. Among the important support offices that ensure that Members of this Chamber and their staffs are appropriately and fully informed on any issues or topic are the Congressional Research Service and the Senate library. These offices and their staffs probably do not realize how much their work is appreciated. I thank them now for their ability to respond quickly, their pleasant manner, their attention to detail, and their professionalism.

Senate Historian Dr. Richard Baker is a gentleman and a scholar with whom I have developed a warm personal and professional relationship over the past several years. He and his talented staff are doing an extraordinary job in documenting the history of this great institution, and I commend them for their efforts.

I thank John Hitzel, John Koutsoumpas, Vitae Dergman, Shirley Felix, and everyone on the Senate restaurant staffs for insuring that the Members of this Chamber are well fed; the Capitol Physician, Dr. William Narva and his staff, for insuring that we are well cared for; and Alan Porter and Steve Benza of the photographic studio and the staff for making sure we are well photographed despite the way we may appear.

I thank Max Barber, Bob Peterson, Roy McGhee, Maurice Johnson, and all those who work in the Senate radio, television, print, periodical and photographers galleries. They perform a valuable service in following our efforts in this Chamber—no easy task in itself—while helping to keep us all accountable to our constituents.

As long as the Senate is in session, the dedicated staff of the TV control offices enables the American people to follow the deliberations of the Chamber. I thank Jim Grahne, Bill Patterson, and their staff for its diligence as well as its outstanding work.

A special "thank you" also goes to the people who manage the reception room, Christine Catucci, "Irish" McLain, and Ruby Paone. Mr. "Tinker" St. Clair and all the doorkeepers, and Arthur Curran and Donn Larson, their supervisors, are with us each hour we are in session; their dedication to the Senate is well known and highly regarded.

I also express my appreciation to Larry Harrison, Carl McNeal, Desi Harrison, Darnell Jacobs, Mary Harris, Peggy Harris, and the hundreds of other Senate employees who maintain the Senate and supply many other essential services.

Mr. President, dozens of other people contribute to the workings of the Senate. While time does not permit me to thank everyone by name, each has my most profound and sincere appreciation. And that gratitude will not lessen with the coming years.

RESERVATION OF REPUBLICAN LEADER'S TIME

Mr. BYRD. Mr. President, I ask unanimous consent that the able Republican leader's time be reserved.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, not to extend beyond the hour of 9:30 a.m. with Senators permitted to speak therein for not to exceed 5 minutes each.

THE SENATE STAFF

Mr. PROXMIRE. Mr. President, in the years I have been here I have never seen a time when the Chaplain and the leader have given such proper attention to the people who really do the work here, to the Policy Committee staff, to the floor staff, to the Cloakroom staff, to the pages, to all these people who work so hard and get so little credit and do such a superb job.

One of the reasons why the 100th Congress has done so well is not only we have fine leaders, not only has there been good cooperation from all Senators, but the staffs have done such an outstanding job.

THE BANK POWERS BILL AND INSIDER TRADING BILL

Mr. PROXMIRE. Mr. President, I would like to mention very briefly that I intend to do all I can to bring up the bank powers bill and the insider trading bill. It is going to be difficult, I know, and I hope that the leader will recognize that this is something that I must do and something that I earnestly hope we can accomplish.

PUBLIC OPINION PROVIDES SMALL SUPPORT FOR CUTTING DEFICIT

Mr. PROXMIRE. Mr. President, a Gallup Poll conducted last month reports that Americans do favor tax increases for people who earn over $80,000 per year. Of course this would include every Member of the Congress, so don't hold your breath until the Congress passes this kind of tax based on ability to pay. The poll also shows 65 percent favor a tax increase on alcoholic beverages. Sixty-one percent approve a tax increase on tobacco products.

For those who favor prompt action on reducing spending, there's also some support, although it's not nearly as decisive. A respectable 37 percent favor cutting defense spending. Thirty-one percent would "eliminate" the Star Wars Program. Twenty-seven favor removal of U.S. troops from Korea and Europe. Twenty-two percent would eliminate the Space Shuttle Program. When asked which cut they favored most strongly 9 percent said cutting defense spending. This was favored more than any other spending cuts. A consistently smaller proportion of Americans favored reducing social programs. Social Security, Medicare, and education were the programs that Americans were the least willing to reduce.

The public attitude reported in this poll by the Times Mirror company of Los Angeles has a special validity. First, the poll was conducted by one of the most respected polling organizations in the country, the Gallup Organization. Here is an organization that has learned from many decades of professional polling how carefully questions must be framed to elicit representative responses. Second, the poll questioned more than 3,000 Americans across the country. In a poll this size, conducted by a reputable professional polling organization, the reliability of the poll for the entire American population would be within 1 or 2 percent. Third, the poll was recent. It reflects the views of Americans within a few weeks of the November Presidential and congressional elections. Popular support for Presidential candidates will probably vary in coming weeks. But the public position on these issues of spending and taxing is likely to remain about the same.

So what is the message the poll sends to candidates in this democracy? The message is that the American people do not favor reduction in Federal Government spending. They generally oppose any reduction of spending in social programs. They are less opposed to a reduction in military spending. But even when the spending reduction is put in the context of how to deal with the Federal deficit. And that is the context within which the Gallup Organization asked these questions. There is not a majority constituency for reducing any specific Federal programs. There is considerable popular sentiment to freeze all Federal spending programs—36 percent; or to freeze all except "vital" programs—37 percent. But even this "keep spending the same" sentiment falls short of majority support. And the fact that only a tiny 7-percent favor eliminating the automatic cost-of-living increases for Social Security recipients suggests that a big majority favor increasing not only Social Security benefits but spending on other programs at least as much as inflation so there would be no "real" reduction in the benefits for these programs.

Contrary to the conventional political wisdom, a big majority favor increasing some taxes and increasing them now. The fact that 64 percent favor higher taxes for persons who earn $80,000 per year or more suggests a potentially lucrative as well as popular area for raising revenue. This is reinforced by Gallup's finding that more than twice as many favor this increase than favor any other tax increase. Support for increased taxes on alcoholic beverages—65 percent—and tobacco products—61 percent—suggest two other "popular" sources of taxation that could raise billions of dollars annually. To the extent the higher taxes resulted in higher prices and less consumption, these tax increases would also improve the Nation's health.

Although the poll does indicate popular ways through which the Congress could make a modest start in reducing the budget deficit, the poll really tells us that there is no way the Congress can make truly significant and enduring reductions in the deficit without overriding American public opinion. This poll tells us the next President and the next Congress will have to make the most painful kind of decisions that are called for in a democracy. Our elected representatives will have to either reduce popular Federal expenditures that the American people do not want to reduce; or they will have to raise taxes that the American people do not want raised or most likely they will have to do both.

Of course, all this can and should be minimized by more efficient and less wasteful government. But with a trillion dollar annual budget, even the most diligent and thrift-minded President and the most prudent Congress will be unable to bring the massive Federal deficits under control without taking strong but unpopular positions to oppose many of our spending initiatives and to increase broad-based taxes.

Mr. President, I ask unanimous consent that the poll sponsored by the Times Mirror Corp. and conducted by the Gallup Organization to which I have earlier alluded be printed in the RECORD.

There being no objection, the poll was ordered to be printed in the RECORD, as follows:

[From the People, the Press and Politics 1988]

HERE'S HOW THE AMERICAN PEOPLE WOULD DEAL WITH THE FEDERAL BUDGET DEFICIT

At our behest, Gallup asked 3,021 Americans across the country for their views on the federal budget deficit. Here's what we learned:

59 percent think the budget deficit is a "bad thing"; 20 percent think it isn't; 21 percent don't know or have no opinion.

Among those who think it's a problem, 47 percent would deal with it entirely by reducing federal spending; 39 percent would use a combination of spending cuts and tax hikes.

When given a list of 20 deficit reduction measures and asked which they favored, which one they favored most strongly, and which they strongly opposed, people responded as follows:

Deficit reduction measure	Percent favor	Percent favor most strongly	Percent strongly oppose
Tax increases:			
1. For people who earn over $80,000 per year	64	21	4
2. On tobacco products	61	8	5
3. On gasoline	16	0	15
4. On alcoholic beverages	65	8	4
5. National sales tax	19	2	17
Spending reductions:			
6. Cut defense spending	37	9	16
7. End farmer's price supports	20	1	17
8. Cut minority assistance programs	22	3	15
9. Cut public education spending	6	0	43
10. Privatize Federal prison management	29	2	10
11. Cut scientific research spending	11	0	20
12. Freeze all Federal spending	36	7	8
13. Freeze spending on all but vital programs	37	6	10
14. Eliminate automatic cost of living increases for Social Security recipients	7	0	36
15. Eliminate space shuttle program	22	3	12
16. Cut Medicare benefits	4	0	49
17. Private postal service management	28	2	10
18. Remove U.S. troops from Korea and Europe	27	3	10
19. Eliminate star wars program	31	7	11
20. Eliminate Food Stamp Program	13	2	27

When asked whether they favored or opposed six "new proposals" to deal with the deficit, people responded as follows:

Proposal	Percent favor	Percent oppose
1. Legalize marijuana and tax its sale	17	79
2. Sell national parks	3	92
3. Create a national lottery	59	34
4. Legalize gambling	43	50
5. Sell strategic petroleum reserves	7	75
6. Sell national wilderness areas	5	89

FEW MEASURES WIN BROAD SUPPORT

None of the 26 measures won majority support from all of the 10 voter groups defined by our surveys. And only four were favored by nine groups:

Tax hikes on alcohol and tobacco;

A tax increase for people earning over $80,000/year;

A national lottery.

Mr. **PROXMIRE**. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator has yielded the floor.

The Senator from Nevada.

THE SENATE STAFF

Mr. **REID**. Mr. President, I would initially like to extend my appreciation to the majority leader and to Chairman PROXMIRE for acknowledging the work of the staff.

I would especially like to tell the majority leader how much I appreciate his singling out the pages. I have been completely amazed these past few years I have served in the Senate at how hard they work. People see these young men and women scurrying about not recognizing that they start school at 6:15 in the morning and go as late as we do at night. So they really do deserve our congratulations and applause, and I certainly extend that to them at this time.

AIRLINE SAFETY

Mr. REID. Mr. President, I can remember as if it were yesterday when I took my first airplane ride. I traveled with my high school football team from Las Vegas, NV to San Luis Obispo, CA. I, of course, was frightened as the plane eased off the ground, pushed through the clouds and eventually bounced over the scenic Sierra Nevada mountains.

Since that initial ride through the skies, I have taken, like other Members of this body, hundreds and hundreds of airplane rides, traveling hundreds of thousands of miles. I am no longer frightened when I climb in an airplane. But the question is should I be? The condition of air travel is a concern to me as I am sure it is a concern to all Members of this body.

Mr. President, for these and for other reasons just last week, I visited with representatives of the airline industry. We talked about the inadequate number of air traffic controllers and the inability to handle air travel capacity in our country.

Although I have shared every traveler's dilemma of delays and crowded conditions, I was still very surprised to hear that, in 1987, last year, 450 million passengers were handled at our airports. That is twice the population of our country. Even more astounding is the projection that, by the year 2000, our airports expect to handle 750 million passengers.

Given this explosive growth and the resulting need for improvements, I did not expect to pick up the Washington Post 2 days later and see a front page article announcing that the Federal Aviation Administration has cut the number of flights at our country's busiest airport—Chicago's O'Hare International.

The cuts were explained as precautionary measures. In arriving at a decision to cut the number of flights, an understaffed, overworked air traffic controller situation was not considered a key factor. This is somewhat peculiar in light of the fact that recently one O'Hare controller likened the airport's radar room to a zoo. These are the words of an air traffic controller at O'Hare, that the airport's radar room was like a zoo.

Cutting flights might help lighten the controller's burden, thereby lessening the potential for safety problems. But this is a quick fix that exacerbates another problem—the problem of capacity.

I fear, Mr. President, that our air travel system is headed toward paralysis unless we do something to increase the system's capacity.

For some reason, we do not want to spend adequate moneys to build, modernize, and enhance the various facets of civil aviation—the airports, aircraft, and air traffic control operation operations specifically.

We are, admittedly, putting funds into new air traffic control equipment and computers. We have contracted for a $3.6 billion system that will be installed incrementally from 1992 through 1999. But the air traffic control operation is not limited to machines and equipment—there are people involved.

We tend to forget the human factor—a factor that is cited as contributing to more than 65 percent of the aircraft accidents each year. When we revisit the problems of safety and capacity in air travel in the 101st Congress, more attention must be paid to the needs and numbers of the people involved in controlling our air traffic.

And when we return in January to the 101st Congress, we must also direct our attention to the question of why we are not using the money that we have to improve our Nation's air travel system.

As a member of the Appropriations Committee, I plan to take a close look at the Aviation Trust Fund. This fund is built up through taxes on passenger tickets, commercial airlines, shippers, and others involved in air travel as suppliers or consumers.

The fund is supposed to be used for the modernization and operation of our airway system, and for the Airport Improvement Program.

Given the current needs of our air travel system, I do not understand the rationale for keeping the trust fund at its current surplus of nearly $6 billion unobligated dollars. The fiscal year 1988 taxes that finance the fund are expected to contribute another $3.8 billion to the trust fund.

We are looking at a surplus nearing the $10 billion mark at a time when budget surpluses are very rare. Here, there is a budget surplus.

There are those who want to capitalize on this large surplus by keeping it where it is and subsequently making our Federal budget deficit look smaller. It would look smaller, but it would not be smaller. This short-sighted budget balancing is nothing more than a charade. Maybe—as some of my distinguished colleagues in the Congress have proposed—we should free the trust fund from the Federal budget to ensure that the revenues are spent.

We need to do whatever is necessary to ensure that we begin investing in facilities, people, research and development, and other areas. Such investments are necessary. It is time the Federal Government stops focusing on penalizing the airline through actions such as reductions in flights. It is time the Federal Government starts trying to help, rather than hinder.

This help will enhance the effectiveness and efficiency of our air travel system. But it will also do something more Mr. President. An investment in our air travel system will help our country's economy. Consider New York's three major airports—LaGuardia, Kennedy, and Newark. Together, these three airports are responsible for 300,000 jobs and $20 billion or 3 percent of the region's gross economic product.

When we commence the 101st Congress, we should keep in mind all the election promises about an improved economy and better job opportunities. In such a context, the air travel system in our country deserves recognition and action.

THRIFT INDUSTRY: A TOP PRIORITY FOR 1989

Mr. DOLE. Mr. President, the thrift industry continues to dominate the business headlines across the country. There is a growing consensus that the S&L crisis should be a top priority for the next Congress and the next administration.

As I mentioned last week, the 100th Congress does not have time in the remainder of its schedule to deal with this problem. Quick fixes won't work here.

But, what we can and should do is help speed up the process. We can ensure that the 101st Congress and the 41st President have the best information available; so, that they can make informed decisions next year.

Mr. President, the House passed its own version of a National Thrift Commission bill last Thursday. The House and Senate versions of the bill are slightly different. Under the Senate bill, the Commission would study the problems facing both the FSLIC and the FDIC while the House version only endorses a study of the FSLIC.

The other difference between the two versions of the bill is that the House bill would create an 18-member panel with additional congressional appointments, as opposed to the 14-member Commission created under the Senate-passed bill.

I hope that we can work out the differences between the House and Senate on this issue. The recommendations made by this Commission will be a crucial element in the debate on this issue next year. But, we need to give the Commission time—time to gather information, to review all of its options, and to develop its recommendations.

I would like to submit for the RECORD, a thought-provoking discussion of this issue that appeared in Sunday's Washington Post. I do not claim to be an expert in the field; I am not. But, in my view, this kind of discussion is important. We must review all of the options available before we can make any decision about which policies we should or should not pursue.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Oct. 9, 1988]

RESTORE DISCIPLINE TO THE SYSTEM

(By Donald G. Ogilvie)

In one way or another every American will be affected by how the FSLIC crisis evolves—and how it is ultimately resolved. The losses of insolvent S&Ls are reflected in the cost of all credit and financial services.

The numbers game over the eventual cost of a rescue shouldn't distract us from a more basic issue—how do we prevent this from ever happening again? The answer lies in restoring regulatory, supervisory and accounting rigor to the S&Ls, and in reestablishing effective market discipline in the deposit insurance system.

How? A task force of ABA bankers recently released a report that outlines a three stage action plan to correct the growing insolvency of FSLIC:

The Federal Home Loan Bank Board should immediately halt the growth of the 900 or so insolvent or nearly insolvent FSLIC insured thrifts; the FSLIC should speed up liquidations by ending personnel limits and streamlining administrative procedures; current tax laws should be extended to assist FSLIC in arranging for assisted acquisitions of troubled thrifts.

By the end of this year, Congress or the regulatory agencies should document needed thrift regulatory, supervisory and accounting reforms; broaden the framework for handling insolvent thrifts, including perhaps a special "limited-life liquidation trust;" and prepare additional means for funding liquidations, sales or mergers of S&Ls.

In 1989, Congress should enact legislation that will upgrade thrift regulatory, supervisory and accounting standards and speed up and fund the liquidation of brain-dead S&Ls. Although all other reasonable and equitable funding options should be explored, many experts now believe the use of taxpayer funds and/or the Treasury's credit may be unavoidable.

We also recommend developing a framework for reforming and restoring market discipline in federal deposit insurance and taking a new look at the housing incentive system.

There will be no lasting solution unless the issues of adequate capital requirements, accounting rules and tight regulation are addressed head-on. The time to deal with the problem is now.

ADOPT RISK-BASED INSURANCE

(By James Gattuso, John Buttarazzi)

To avoid a succession of FSLIC crises in the future, lawmakers must address the inherent problem of the federal deposit insurance system through such steps as introducing "risk-based" premiums.

The Federal Home Loan Bank's Southwest Plan for merging insolvent thrifts with larger healthy ones with financial assistance from FSLIC is realistic financially but has serious flaws. FSLIC does not have cash available for the mergers and must rely on unsecured notes that some potential investors are reluctant to accept. Some of the acquiring thrifts may themselves be insolvent under stringent private sector accounting principles. Potential acquirers of Texas S&Ls are limited, because FSLIC prevents banks and thrifts from outside the state from acquiring Texas S&Ls.

Merging FSLIC and FDIC is opposed by many bankers who question the fairness of forcing their industry to pay for the problems of the S&Ls. FDIC may need all its funds simply for banking problems caused by bad foreign loans and the depressed energy and real estate markets. An FSLIC-FDIC merger could weaken the banks without saving the thrifts.

A third approach would attempt to ease the thrift crisis by reducing regulatory restrictions, providing managers with more flexibility to tackle their problems and making weak S&Ls more attractive.

Although further deregulation of the thrift industry is a sound policy, it should proceed cautiously until policymakers solve the fundamental cause of the problem: the perverse incentive of federal deposit insurance. FSLIC provides insurance to all its members at a fixed price, without regard to past management performance. This gives thrift managers considerable incentive to pursue risky business strategies because they can count on FSLIC to foot the bill.

Any bailout plan will be little more than a Band-Aid until this fundamental flaw is corrected. Such a reform should replace flat-rate premiums with premiums based on the risk associated with the thrift's management policies and investment portfolio. Under such a system, managers no longer would be able to disregard risk and count on a bailout. Risk-based premiums, combined with further deregulation, would encourage sound management without impeding innovation.

FIRST: SHUT INSOLVENT THRIFTS

(By Catherine England)

The very first financial issue the incoming president will have to deal with is the savings and loan industry crisis.

It is of vital importance that insolvent thrifts be closed as quickly as possible. The resources of FSLIC, including the capital of the healthy portion of the industry, are clearly inadequate. Neither the banking industry nor FDIC can absorb the shortfall. Taxpayer funds must be used, but their use must be made conditional.

1. A time limit—say two to three years—should be set for closing all insolvent thrifts. An elite task force of examiners and closure experts should be gathered from among state and federal agencies to close ailing S&Ls.

2. In closing these institutions, examiners should emphasize speed. Delays only allow greater losses to accumulate. The out-year liabilities FSLIC is assuming may create equally serious problems down the road. Liquidations should be the preferred form of failure resolution where decapitalized S&Ls are involved.

3. Ownership restrictions on failing S&Ls should be eliminated. Anyone willing to assume a thrift and recapitalize it should be allowed to do so with no limit on the number of adequately capitalized S&Ls an individual or corporation can own. But in attracting new capital, federal authorities should make no more guarantees about future returns.

4. Deposit insurance should be limited to $100,000 per depositor every three years. Once an account in a failed institution is paid, that depositor should be eligible for similar reimbursement only up to the $100,000 limit in accounts in other failed institutions within that period. The losses incurred by insolvent institutions awaiting closure must be slowed and depositors must be discouraged from playing the rate-chasing game.

This policy could be further strengthed by changing the federal deposit insurance contract to insure principal, not interest. Thus an individual's initial investment would be protected, but those who blithely search out the highest rates without regard for financial stability would not profit from their irresponsible behavior.

A new administration, regardless of party, and a new Congress can address this problem not of their own making. But delay will force the new president and the 101st Congress to accept an increasing share of the responsibility.

ACT QUICKLY TO RESOLVE CASES

(By Paul M. Horvitz)

The savings and loan crisis is over.

The hopelessly insolvent institutions have been identified, the crooks have been ousted, the reckless deals are no longer being made. The real losers are S&L executives and stockholders, homeowners who have seen the value of their houses decline, and developers dragged under by blocks of concrete no one wants to buy.

We must consider changes in our system so that this tragedy will not recur. The next administration can deal with that after congressional hearings, commission reports and a stream of recommendations. We need a good answer, but we don't need it today.

What we do need today is prompt action by FSLIC to resolve its existing caseload. FSLIC's needs exceed its own resources and those of the industry. Wisely, Congress has already made clear its intention to put the resources of the U.S. Treasury behind FSLIC's obligation to protect depositors. We can now call a halt to the exercises in which analysts vie to advertise the highest estimate of the cost. Since the residual loss is to be picked up by the Treasury, we don't need to know now whether the cost will be $50 billion or $150 billion. There will be time later for setting up with other potential contributors to the solution—healthy savings and loans, commercial banks, the FDIC, etc.

All that must be done now is to give FSLIC the funds it needs, as Congress has already decided. Resolving cases does not require the brainpower of rocket scientists. FSLIC has demonstrated that it can resolve cases at a rapid rate. If the deals have been less than optimal, that simply reflects FSLIC's lack of sufficient funds to consummate the most economic deals. Indeed, the best solution for the worst cases—close the doors and hand out checks—is obvious, yet impossible to implement without cash. It is crucial that cases be resolved promptly because losses increase geometrically as insolvent institutions continue to operate.

So let's go on with it.

THE THREE STEPS TO STABILITY

(By Richard T. Pratt)

Extended discussion of and blame for the condition of the savings and loan industry and its insurer, the FSLIC, is not productive. The fact is that neither the industry nor the insurer have the resources to resolve the problem.

Three steps are necessary, at a minimum, to deal with the problem and return the industry to a stable basis.

First, all obligations of FSLIC should be formally recognized as full faith and credit obligations of the U.S. government. Questions regarding FSLIC obligations unnecessarily complicate the S&L case resolution process and tend to create an environment that maximizes the ultimate losses that may have to be absorbed by the public. Because the credit of FSLIC is open to question, the government is issuing FSLIC obligations at costly junk bond rates. Similarly, high-quality purchasers will not continue to acquire failed S&Ls through acceptance of FSLIC notes where there is any risk of nonpayment or discounting.

Neither FSLIC nor FDIC is now or ever has been an operating insurance company. The insurance premium should be viewed as a license fee for the right to issue insured deposits.

The premiums should be the same for banks and thrifts. Healthy thrifts cannot be expected to continue to pay higher premiums than banks. A 20 basis-point premium on all insured deposits would raise more than $6 billion per year.

Once the present crisis is stabilized, Congress and regulators should restructure the bank regulatory and deposit insurance systems to maximize the ability of financial institutions to deliver high-quality financial services to the public, while minimizing risks in a manner commensurate with the financial resources of FSLIC and FDIC. Comprehensive reform of accounting and capital standards is a predicate to any such restructuring.

A Fact: FSLIC Needs Bailout

(Mark Riedy)

First, let's recognize a terribly discomforting reality: FSLIC needs a large cash infusion from the federal government. That's not a proposal, it's a fact.

Count on it taking a minimum of $60 billion, and possibly a great deal more, depending on how quickly the cash infusion occurs, the direction of interest rates, how many S&Ls ultimately are determined to be dead; and how much the federal government will recoup eventually when it sells the real estate and other assets held by the failed thrifts.

The National Council of Savings Institutions is conducting a series of "town hall" meetings that will produce many proposals. I would suggest that any plan should honor three basic principles:

First, Congress must work with private business to create opportunities for profitable depository institutions to continue serving a broad range of credit and financial services needs of American consumers and businesses.

Second, Congress and regulators should design a solution that attracts new, private capital into depository institutions.

Third, the proposed solution must restore and preserve the safety and soundness of the deposit insurance system and demand that the underwriting of risk to deposit insurance funds be enforced fairly, consistently and vigorously.

We need to identify all the reasons that the crisis occurred and target the solution accordingly. It was crooks and con artists, bad managers, inadequate supervision, unbalanced deregulation and soured regional economies that combined to do in the FSLIC.

Sorely needed new capital and management talent can be attracted to the thrift industry by facilitating the sale of S&Ls to bank holding companies, securities firms, and diversified financial and nonfinancial corporations, both foreign and domestic. We should also consider concepts of a single deposit insurance fund, risk-based deposit insurance premiums, higher capital requirements premiums, higher capital requirements and stricter accounting procedures for thrifts and "privatization" of the banking operations of the Federal Home Loan Bank System. Little should be sacred.

Finally, lawmakers should take steps to ease the cost to the taxpayer. Congress and the regulators must tighten up supervision of marginal institutions, demand more real capital in the deals that the Federal Home Loan Bank Board is striking with new investors in failed S&Ls, and stop hopelessly insolvent S&Ls from making new loans and investments.

First, Clean Up to the Mess

(By Robert Litan)

Think of the thrift crisis as the national equivalent to having toxic waste in your living room. Clean it up first. Then make sure it never lands there again.

The cleanup requires first a commitment to close or force the merger of all insolvent depositories as rapidly as possible—by the end of 1990. Many failed thrifts can be auctioned off quickly. But federal regulators should no longer sell a thrift if private investors are unwilling to put in substantial capital of their own. Thrifts that are sold should meet minimum capital standards within three years. If these conditions are not reasonably likely, the institution should be liquidated and insured depositors paid off.

Taxpayers eventually will pick up much of the tab, but other sensible funding sources should first be exhausted. FSLIC should have about $15 billion in additional cash coming in through 1990. Another $10 billion could be borrowed, using as collateral the capital of the federal home loan banks. Interest on this debt could be funded by the deposit insurance premiums paid by healthy banks and thrifts—both of which would benefit from the cleanup, though neither is to blame. A merger of the bank and thrift insurers is inevitable, but resolution of problem banks will deplete the FDIC's reserves—perhaps to no more than $5 billion.

Nontaxpayer sources might be able to provide $30 billion of the cost, leaving taxpayers with at least a $30 billion bill. It would be a mistake to count on insurance premiums to be collected from thrifts over the next 10 years. This money may well be needed to pay for future problems.

Taxpayers should demand several long-run reforms in return for their money. Regulators should be required to take over banks and thrifts before they fail. Banks and S&Ls should gradually be required to report their finances at market value to show their true net worth. The many legal distinctions between the bank and thrift industries should gradually be eliminated.

Reform of the nation's crazy, complicated financial laws should not be avoided. Rather than allow nonbanking firms into the industries piecemeal by purchasing bankrupt banks and thrifts, we should have the same ownership rules for everyone.

Merge the FSLIC and FDIC

(By William Isaac)

Merger of the FSLIC and FDIC is an attractive political alternative to a direct taxpayer bailout, but a simple consolidation of insurance funds will not provide the resources needed to resolve FSLIC's backlog of troubled institutions.

To protect against future regulatory failures, FDIC's supervisory jurisdiction should be extended to federally insured thrifts, utilizing the agency's extensive human resources as well as its funds. FDIC has more than twice as many regulatory employees—8,800 versus 4,200—as the bank board.

Merging the funds and granting the FDIC supervisory jurisdiction over thrifts does not require elimination of the bank board or even a radical change in its operations. The bank board could retain its authority to charter thrifts and administer a central banking system for home lenders.

Within the savings and loan industry four different financial resources could be tapped: the remaining borrowing authority of FSLIC, FSLIC's remaining cash and future revenues, an estimated $3 billion from the accumulated capital and future income of the Federal Home Loan Bank System and the capital and future income of the healthy S&Ls.

Besides these funds and the FDIC, there are federal resources other than general taxpayer revenues that might be used to solve the problem.

The most promising source of significant support for the combined funds would come from the Federal Reserve Banks. The Fed does not pay interest on reserve deposits of financial institutions. Paying interest on those reserves and channeling those payments to the combined fund could produce the necessary resources.

Tapping the Federal Reserve Banks could be both attractive to the industry and palatable to Congress. It brings to bear a significant, independent source of financial strength. Though this support technically comes from the U.S. Treasury, it is distinguishable from a direct taxpayer bailout, because earnings on reserves are derived from the depository institutions. Over the longer term, it would bolster the profitability of both the banking and thrift industries by correcting the longstanding inequity of interest-free reserve deposits.

Find New Funds, Restore Confidence

The U.S. League of Savings Institutions has two task forces at work developing a program to provide the Federal Savings and Loan Insurance Corp. with the resources it needs to resolve problem institutions and expects to present its findings after the elections.

The League's task forces have been guided by certain basic principles:

If restoration of FSLIC's solvency requires more than the $10.8 billion commitment our institutions made in last year's recapitalization law, new sources of funds must be identified and another funding mechanism must be in place. The burden of any amount beyond $10.8 billion would stretch our institutions beyond the limits of prudence.

Basic regulatory reforms must be adopted to prevent the occurrence of this situation.

Our separate regulatory structure, the Federal Home Loan Bank System, and our savings institutions' distinct and specialized role as providers of housing finance must be preserved.

While the U.S. League's program has not been finalized, two means of helping the FSLIC were recommended by the League's Legislative Committee last March and adopted as official policy:

Establish an asset-holding corporation, funded by the government, to acquire troubled real estate assets from failing or failed institutions. The corporation would hold these assets, reselling them when real estate markets recover. Profits would flow back to the government. Congress itself raised the idea of creating an asset-holding company when it ordered a feasibility study in the 1987 recapitalization law.

Modify the passive loss tax rules, which were tightened in the 1986 Tax Reform Act. That action seriously affected the market value of commercial real estate and exacerbated the worsening foreclosure problems in areas already suffering from regional economic difficulties. We are urging Congress to review temporary or limited relief from the new passive loss rules to stabilize and enhance property values in these depressed areas.

As Congress sorts through the options for funding FSLIC's needs, it should also conduct a complete review of the entire deposit insurance system—FSLIC, FDIC, and the National Credit Union Share Insurance Fund—to make it compatible with the deregulated financial system.

A RADICAL REALIGNMENT IS NEEDED

(By Bert Ely)

Congress should enact legislation requiring all healthy savings and loans to transfer to Federal Deposit Insurance Corp. insurance within six months if they qualify for coverage, based on a quick assessment of their finances comparable to the rapid licensing of banks following the 1933 bank holiday.

All failing and insolvent thrifts would then be turned over to the Federal Savings and Loan Insurance Corp., whose sole job would be to dispose of them at the lowest possible cost to the taxpayers.

The Federal Home Loan Bank Board would be disbanded. The regional Home Loan Banks would be liquidated and their retained earnings transferred to FSLIC, which would become a part of the Treasury Department. Regulatory practices and accounting standards for banks and thrifts would be harmonized over a five-year period. The new rules would encourage long-term housing lending and give S&Ls a reasonable time to get out of their direct investments and other businesses not now permitted for banks. Regulation of thrifts would parallel regulation of banks: Federally chartered S&Ls would be under the comptroller of the currency. State-chartered ones would be regulated by the FDIC unless they became members of the Federal Reserve System, which would then regulate them.

Thrifts remaining under FSLIC could only take deposits of up to $100,000 and their interest rates could not exceed a national cap. Reducing competition for funds would help healthy institutions nationwide by bringing down rates.

The problem real estate owned by thrifts under FSLIC supervision would be disposed of to the greatest extent possible by selling either the whole association or its real estate in bulk. The FSLIC would not give notes or any other deferred payments to acquirers. Real estate would be sold in bulk, at a substantial discount, but in a way that would not require public disclosure of the value of each property. FSLIC would try to sell this real estate to investors with the capital to hold it for the long term, but would not itself warehouse or finance real estate holdings.

To eliminate the impact of the FSLIC bailout as a political issue, government financial statements for the years 1982-1988 would be restated to reflect FSLIC's losses when they occurred rather than when they are paid for.

BURROUGHS-WELLCOME AND THE EXTENSION OF THE FEDERAL AZT FUND

Mr. SANFORD. Mr. President, I am extremely pleased by the Senate action to extend the Federal subsidy for the drug Retrovir [AZT], due to expire September 30, for an additional 6 months. This drug is essential for people with AIDS and the cutoff of funds may well have had tragic consequences.

The new emergency Federal fund will provide $15 million in subsidies for AZT, $10 million of which will come from reprogramming already authorized Federal moneys. Even more notable is the fact that Burroughs-Wellcome, the manufacturer of the drug, will provide the remaining $5 million.

In addition to commending Senator WEICKER for his fine work in ensuring that people with AIDS would not be left without access to this important drug, I wish to take this opportunity to salute Burroughs-Wellcome for exhibiting the best aspects of corporate responsibility.

Burroughs-Wellcome, located in Research Triangle Park, NC, first identified AZT as being of potential value in the fight against AIDS. Moreover, it was Burroughs-Wellcome, in conjunction with government scientists and university investigators, who conducted the study and development of the drug.

Since the early stages of AZT's distribution, Burroughs-Wellcome has played a leading role in providing AZT to needy individuals. For example, during the 6 months before the drug was approved, Burroughs-Wellcome gave 10 million dollars worth of AZT free to 5,000 patients through a Treatment Investigation New Drug [IND] Program. By March 1989, the company will have provided nearly 30 million capsules of AZT free of charge to patients in various clinical trials across the country, including 1 metric ton of AZT per year to the Federal Government free of charge for use in its clinical trial programs. Many of these trials will be used to evaluate drugs potentially competitive to AZT.

Burroughs-Wellcome's participation in the Federal fund is laudable. In the sad history of the advent of the disease, the actions of those such as Burroughs-Wellcome's in contributing to the Federal fund, deserve our full recognition and appreciation.

SENATOR DAN QUAYLE

Mr. KASTEN. Mr. President, no one who knows our distinguished colleague Senator DAN QUAYLE can possibly doubt his sparkling intellect and deep concern about the economic issues confronting America.

To those who do not know Senator QUAYLE, I recommend his intelligent and cogently reasoned article in the most recent issue of the Harvard Journal of Legislation. Entitled "Is Gramm-Rudman an Exercise in Legislative Futility?," his article shows the sharpness of mind and seriousness about ideas that have marked his career as a legislator.

The article demonstrates that its author is a master of the legislative process—and especially of congressional budgetmaking. He knows how Congress works, and he has some ideas about how to make it work better—both very important elements in the job description of America's next Vice President.

Mr. President, I recommend this article to all who are curious about DAN QUAYLE the legislator, and DAN QUAYLE the potential Vice President, I ask unanimous consent that it be included in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

IS GRAMM-RUDMAN-HOLLINGS AN EXERCISE IN LEGISLATIVE FUTILITY?

(By Dan Quayle*)

The Congressional budget and appropriations process has for years been perilously close to collapse. The procedure that Congress employs to raise and spend money is inefficient and time consuming. The budgetary process has produced fiscal gridlock, and it has left little time for other legislative activity. Responding to these problems, Congress passed the Gramm-Rudman-Hollings Balanced Budget and Emergency Deficit Control Act,[1] which instituted a set of procedural changes that catalyzed significant change. The Gramm-Rudman-Hollings procedural reforms have helped to reduce the political pressures that often lead to fiscal irresponsibility and breakdown of political consensus. These and other proposed procedural reforms promise to remove many obstacles that have prevented us from prudently allocating federal resources. The evidence to date indicates that Gramm-Rudman-Hollings has succeeded. Since its enactment, the growth in nominal federal spending, an estimated 2.1 percent for fiscal year 1987, has reached its lowest level since 1965.[2] The Act's structures have forced a reluctant Congress to make the hard political choices necessary to achieve meaningful deficit reduction.

A HISTORY OF BUDGET-PROCESS REFORM

Spending process reform has traditionally resulted from reactions to periods of fiscal crisis. Before the Civil War, the taxwriting committees—the Ways and Means Committee in the House, and the Finance Committee in the Senate—exercised jurisdiction over the federal budget. During the Civil

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[1] The Balanced Budget and Emergency Deficit Control Act of 1986, Pub. L. No. 99-177, 99 Stat. 1037 [hereinafter Gramm-Rudman-Hollings or the Act]. The Act was amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. No. 100-119, 101 Stat. 754.

[2] Unless otherwise indicated, all data used in the Essay are drawn from sources on file with the Senate Budget Committee.

War, the public debt grew from $90 million to $2.7 billion. Even though this debt was halved by the end of the century, the rapid growth of the national debt prompted Congress to establish two separate appropriations committees—the House Committee in 1865 and the Senate Committee in 1867—to control the federal purse strings.

Public sentiment for a national budget system swelled after World War I. During that war federal outlays skyrocketed from $700 million to $18 billion. The exorbitant cost of financing World War I led the passage of the Budget and Accounting Act of 1921,[3] which required the President to submit budgetary recommendations to Congress through a newly established Bureau of the Budget, now the Office of Management and Budget (OMB). The 1921 Budget Act also established the General Accounting Office (GAO), an independent, nonpolitical agency to serve Congress in investigations, audits, legal accounting, claims settlements, and to make recommendations for more effective fiscal management. Furthermore, it clarified and formally outlined the jurisdiction of the appropriations committees. The 1921 Budget Act's delegation to the President of a larger role in the budget process led to debate between those who believed that the President had been granted too much authority in budgeting and those who believed that Congress could better balance revenues and outlays if the executive branch provided recommendations and a detailed accounting of all programs.

After World War II, during an era of Congressional reform, an ill-fated Joint Budget Committee was established under the terms of the Legislative Reorganization Act of 1946.[4] This panel was comprised of members of the Senate Finance Committee, the House Ways and Means Committee, and both appropriations committees. It was charged with reviewing the President's budget and recommending its own ceilings for expenditures and appropriations. This committee reported its first budget in February of 1947 but disbanded two years later.

During the Nixon Administration, Congress faced a budget crisis that threatened to strip it of its control over government expenditures: the President refused to spend money which Congress had appropriated. While Presidential impoundment had been exercised regularly since Thomas Jefferson's Administration,[5] President Nixon's refusal to spend an unprecedented $18 billion (or about 7.3% of total spending) was viewed by Congress as overstepping the bounds of executive authority in addition, Congress had become skeptical of the accuracy of the economic and budget projections made by the OMB and relied upon by the President in formulating budget proposals. It desired a more systematic process under which it could consider and control budget policy. In response to these concerns, the budget process was overhauled by the Congressional Budget and Impoundment Control Act of 1974.[6]

The 1974 Budget Act addressed the budget process concerns by the following actions: providing a procedure for rescissions and deferrals; establishing the Congressional Budget Office (CBO) to provide economic forecasts and estimates independent of the executive branch; and creating House and Senate Budget Committees to set overall revenue and spending levels for each major function of the federal government. Congress could act affirmatively rather than respond to each of the President's spending recommendations which allowed for little account to be taken of each measure's individual impact.

Under the new budget process, broad spending and revenue levels would be set for eighteen different categories so that Congress would have a fiscal benchmark from which to make policy decisions. The budgets developed by Congress under the 1974 Budget Act set recommended levels of spending, called functions, in each of these categories. However, the functional aggregate figures did not bind Congress or its committees to any policy changes. The authorization committees still exercised jurisdiction over developing programs to meet national needs, while the appropriations committee of each chamber determined the funding for those programs. The expectation that the 1974 Budget Act would allow Congress to balance the budget proved illusory. During the first ten years of the Act, the deficit increased over four-fold.

In 1985, faced with yet another fiscal crisis in the form of a deficit in excess of $200 billion and a national debt nearing $2 trillion, Congress adopted the Gramm-Rudman-Hollings Balanced Budget and Emergency Deficit Control Act.[7] A consensus was reached, although the final version of this legislation was significantly different from what the authors and original supporters had envisioned. Despite strenuous outcry from opponents, this drastic change in the way that Congress budgets and spends its money was adopted in relatively short order.

Regardless of the charges of its critics, Gramm-Rudman-Hollings is not a budgetary meat-axe. It is simply a change in the budget process. Under Gramm-Rudman-Hollings, Congress for the first time is required to look for revenues to offset additional spending items. In addition, Gramm-Rudman-Hollings has set limits above which the deficit may not rise for each of five successive years. If Congress fails to meet the deficit reductions contemplated by the targets, an automatic across-the-board reduction, known as a sequester, is triggered. Congress then has one month to enact changes sufficient to avoid a sequester, or the across-the-board cuts will go into effect. These procedural reforms force Congress to focus on reducing the size of the deficit when formulating its budgetary priorities.

The deficit has been reduced by more than $60 billion from its high point at $220 billion in fiscal year 1986. Furthermore, the discipline of Gramm-Rudman-Hollings forced the final agreement on the latest two-year $76.1 billion deficit reduction package passed in the waning hours of the first session of the 100th Congress.[8] Although it was Wall Street's "Black Monday"—when the Dow Jones Industrial average fell 508 points on October 19, 1987—that brought the leadership of both houses of Congress to the bargaining table with the Reagan Administration, it was Gramm-Rudman-Hollings that compelled negotiators to complete the task. Negotiations collapsed more than once, but the threat of a sequester's across-the-board cuts brought the negotiators back together until a final compromise was crafted.

The political logic of Gramm-Rudman-Hollings is actually quite simple. It automatically provides a scenario worse than that of most proposed budget cuts. Without the threat of a sequester, it is unlikely that the spending reduction would have come to fruition. While virtually everyone will agree that the aggregate federal budget must be trimmed, few are willing to sacrifice programs that directly benefit themselves. The public's voting and interest group lobbying efforts provide a centrifugal counterweight to Congressional consensus in crafting a significant deficit reduction package. Yet, Gramm-Rudman-Hollings induces both consensus and deficit reduction.

Notwithstanding increases in federal spending, the economy has seen a trend toward deregulation during the past eight years, which in turn has spurred prosperity. Paradoxically, concurrent with record budget deficits, our economy has enjoyed record growth. Employment is at an all-time high; the rate of inflation has been cut from more than 12 percent at the beginning of the decade to about 4 percent in 1987,[9] median family income is on an upward trend—reversing the decline of the early eighties; and we have achieved sixty-three months of continuous economic expansion. Such an expansion has never before been achieved during peacetime. Those benefitting from economic expansion are reluctant to suffer cuts in programs affecting them. To them, the consequences of continued budget deficits seem nebulous and distant, and the need for measures like Gramm-Rudman-Hollings seems remote.

WHAT THE FUTURE HOLDS

Gramm-Rudman-Hollings has forced Congress to take measures to alleviate the budget crisis. In order to comply with the second year provisions of the amended version of the Act, Congress faces the task of paring $36 billion from the approximately $157 billion deficit as estimated by the Congressional Budget Office.[10] In order to meet this and the remaining four years of Gramm-Rudman-Hollings targets, difficult choices must be made.

Budget and spending process reform may make some of the crucial choices politically easier for legislators. As Benjamin Franklin reportedly said, "Once the people find they can vote themselves money, that will herald the end of the Republic." In fact, legislators proposing elimination of programs have faced sharp campaign attacks by special interests and coalitions. In this way, Congress, and by extension the Federal Treasury, has been held political hostage. However, the threat of the Gramm-Rudman-Hollings' automatic sequester gives Congress the incentive to make difficult political choices and confront their constituents with the prospect of reduced federal subsidies.

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[3] 42 Stat. 20 (1921).

[4] 60 Stat. 812 (1946).

[5] Thomas Jefferson first withheld $50,000 intended for maintaining Navy gunboats on the Mississippi River. Presidential impoundments continued through the era of Franklin D. Roosevelt, who was the first chief executive to impound congressionally appropriated funds to accomplish public policy objectives rather than fiscal management. Roosevelt impounded $500 million that Congress had earmarked for public works projects. Presidents Kennedy and Johnson reduced federal spending through impoundments by 6 percent and 5.4 percent, respectively.

[6] Pub. L. No. 93-344, 88 Stat. 297 (1974).

[7] *See supra* note 1.

[8] Pub. L. No. 100-203, 101 Stat. 1330 (1987).

[9] CONGRESSIONAL BUDGET OFFICE, REPORT TO THE SENATE AND HOUSE COMMITTEES ON THE BUDGET, THE ECONOMIC AND BUDGET OUTLOOK, FISCAL YEARS 1989-1993 36 (1988).

[10] *See id.*

The original Gramm-Rudman-Hollings budget reduction targets clearly have not been met. Rather than face the required cuts that were circumvented in previous years through financial "smoke and mirrors" and accounting gimmickery, Congress has resorted to revising the Gramm-Rudman-Hollings timetable and deficit targets. Still, the framework of Gramm-Rudman-Hollings remains, and the threat of a sequester continues to impose discipline on the budget process. Gramm-Rudman-Hollings insulates legislators politically by distancing them from direct criticism over budget cuts. Such insulation is a necessary ingredient to successful deficit reduction, as long as it is accomplished through our complex democratic political system.

The success of Gramm-Rudman-Hollings in insulating and disciplining Congress argues for further procedural reforms. Several years ago, I first proposed the idea of a two-year budget cycle to ease some of the time pressures that have hampered the budgeting process. I have also strongly advocated a Constitutional amendment to balance the budget and a proposal to give the President line item-veto authority. More recently, I have offered a spending reform measure that would give the President enhanced rescission authority and force Congress to scrutinize more closely many of the projects that it routinely lumps into foot-thick, multi-billion dollar omnibus spending measures known as "continuing resolutions." All of these, while no sure cure for deficit reduction, make difficult but necessary choices somewhat easier.

BICENTENNIAL MINUTE

MAY 24, 1844: THE SENATE AND THE TELEGRAPH

Mr. DOLE. Mr. President, over the years the U.S. Senate has served as a forum for the unveiling of new ideas, programs, and even inventions. One notable debut of a significant invention occurred 144 years ago, on May 24, 1844, when Prof. Samuel F.B. Morse successfully tested his "magneto-telegraph" from a ground-floor room in the Senate wing of the Capitol.

Morse had first tested the telegraph from one end of the Capitol building to the other, sending Senators from one terminal to the other and using the machine to announce their arrival in advance. But to prove that his invention was more than a parlor game, he needed to test it over a longer distance. With the help of a $30,000 congressional appropriation, Morse had wires strung 44 miles, along the railroad tracks that ran from Washington to Baltimore.

On the appointed day, he invited Senators and Representatives to be present as he transmitted the first message over the telegraph. We all remember from our history books Morse's famous message that day: "What hath God wrought!" What we may not remember is the message that returned from Baltimore. There the Democrats were holding their National Convention, and operators in Baltimore immediately began relaying the latest convention news.

The assembled politicians in Washington were fascinated to hear that the convention nominated for President the first "dark horse" candidate, former House Speaker James K. Polk. For Vice President the convention chose Senator Silas Wright. Professor Morse telegraphed back to Baltimore: "Mr. Wright is here and says * * * that he cannot accept the nomination." But the convention did not trust the new invention and again sent its message. Again Wright declined. It was not until he sent a handwritten letter, by a special messenger on horseback, that the convention accepted his refusal and nominated former Senator George M. Dallas.

JUSTICE FOR WORLD WAR II SHIPYARD WORKERS

Mr. PRESSLER. Mr. President, our distinguished colleagues, Senator Hecht of Nevada and Senator Sanford of North Carolina, have introduced S. 2709, a bill to establish more fairness in the disposition of thousands of claims by World War II shipyard workers for compensation for lung disease caused by the inhalation of asbestos dust during construction of warships in U.S.-controlled Navy yards.

Normally, workers suffering injury because of the negligence of the Government would be able to bring suit under the Federal Tort Claims Act.

Unfortunately, insofar as these asbestos claims are concerned, judicial activists have allowed the Government to plead "discretionary function," which is another term for sovereign immunity.

If their cases could be heard on the merits, some of these workers would be able to prove that their asbestos lung disease arose, after a "latency" period of 30 to 40 years, from their shipyard exposure. In some cases, they might prove the disease was caused by Government negligence in enforcing its occupational hazard rules. Many other claims probably would be defeated on the merits.

As I understand the purpose of S. 2709, it simply permits World War II shipyard workers to assert their claims against the Government, just as they are asserting claims against the asbestos insulation manufacturers. As a matter of fairness, the Navy, which controlled the application of asbestos insulation in warships, should be required to defend these claims on the merits along with the manufacturers, especially since the manufacturers did not control the workplace.

Mr. President, American standards of justice include permitting our citizens to have their claims for damages allegedly caused by the Government decided on the merits of each case. I urge our colleagues to give serious consideration to this basic principle when they review S. 2709. I have done so, and ask unanimous consent that my name be added as a cosponsor of this bill.

POW/MIA RECOGNITION DAY, STATE OF UTAH

Mr. HATCH. Mr. President, the following is Governor Bangerter's proclamation designating September 16, 1988, as "POW/MIA Recognition Day" in the State of Utah. The proclamation was issued in response to various veterans groups and in keeping with the establishment of this date on a national level, as proclaimed by President Reagan.

Declaration

Whereas, Americans are still prisoners, missing in action, or otherwise still unaccounted for in Southeast Asia; and

Whereas, those Americans who have paid the price of capture and imprisonment or death remind all of us of the sacrifices made on behalf of allegiance to our Nation and the ideals of liberty which it represents; and

Whereas, the families of those who remain missing or unaccounted for also inspire us for the courage they have exhibited in the face of uncertainty; and

Whereas, there are still 21 Utahns unaccounted for in Southeast Asia; and

Whereas, in order to recognize the special debt of gratitude all Americans owe to those who sacrificed their freedom in the service of our country and to reaffirm our commitment to their courageous families; now, therefore,

I, Norman H. Bangerter, Governor of the State of Utah, do hereby declare September 16, 1988 as "POW/MIA Recognition Day" in Utah and encourage all citizens to join in the observation of this event to honor all POW/MIA Americans and their families.

TRIBUTE TO SENATOR LAWTON CHILES

Mr. HATFIELD. Mr. President, the Senate is a body of extraordinary men and women whose achievement can be noted in the history books and newspapers. Some make impressions through bold actions which capture the Nation's attention, but others become well-known for their dedicated service not only to their constituents but also to the country. Lawton Chiles has gained the recognition of his peers and others because he has repeatedly demonstrated his skill as a legislator and his concern for the country. After 18 years in the Senate, Lawton Chiles has decided to step down and he will be missed.

Since he became a Member of the Senate in 1971, Senator Chiles' hallmark has been his ability to succesfully work with the members of his State delegation and with all his colleagues in the Senate. His now-famous walk across the State of Florida was only the harbinger of the dedication he would bring to his job. His emphasis on open government is an outgrowth of his desire to encourage individuals to have the greatest possible involvement in the matters which affect them. He has championed issues affecting the poor and the elderly. And he has long been involved in issues which affect the financial security of the United States. As chairman of the Senate Budget Committee and as a fellow member of the Senate Appropriations Committee he has been involved in congressional efforts to address the serious financial problems facing the country. Whatever serious budget reform that has come about in the last decade has had Senator CHILES' helping hand behind it.

It has been said, "Integrity without knowledge is weak and useless, and knowledge without integrity is dangerous and dreadful." What has struck me about Senator CHILES is his unwavering integrity and his careful use of the powers he holds as a Member of Congress. Much of the wisdom of the senior Senator from Florida is derived from his religious beliefs. His scholarship of the Old Testament of the Bible has provided him with direction and insight into the problems of today.

My wife and I have shared a deep, spiritual friendship with LAWTON and Rhea Chiles. That friendship transcends politics and positions and embodies the bedrock of human relationships: Love, trust, communion. Although my friendship with Senator CHILES will blossom in the years to come, I will deeply miss the opportunity to work beside a man for whom I hold the highest respect. My wish to him and his family is one of continued happiness, good health, and God's constant company.

THE RETIREMENT OF DAN EVANS

Mr. HATFIELD. Mr. President, I would like to take time out from the Senate's busy schedule in order to pay tribute to DAN EVANS on occasion of his retirement from the U.S. Senate.

DAN EVANS has been both a good friend and a good neighbor. The close proximity of our States has often necessitated our working together to protect common regional interests and to smooth out interstate differences. This cooperation and involvement in shared goals have come naturally in large part because of our common history and our friendship.

In addition to our both having served in the Navy and in academia, DAN and I both had the honor of being elected to the office of Governor in our respective States. In fact, during the first 2 of DAN's 12 years in the statehouse, our terms overlapped and we had the pleasure of working together on important State issues. I can remember DAN's brother-in-law visiting me in Salem in order to ask me advice in anticipation of DAN's first gubernatorial campaign. At that time I had confidence in DAN's ability to win a tough campaign against the incumbent Gov. Albert Rosellini. Little did I know, however, that he would become Washington's only three-term Governor and that we would meet once again in the U.S. Senate and be able to renew our partnership in looking after the interests of the Northwest and the country.

The event that brought DAN to the U.S. Senate—the death of Scoop Jackson—was a sad one, but it allowed me and DAN the opportunity to renew the fine working relationship we had enjoyed so many years before. It is interesting to note that the Senator will retire from the Senate, after having served just over 5 years—not even a complete term. I believe that, judging from DAN EVANS' manner and integrity, few would recognize him as a freshman Senator. His long and distinguished public service quickly marked him as a Senator who knows the ropes and was effective from the very start.

A large part of my admiration for Senator EVANS relates to his keen knowledge of the issues. As many of my colleagues know, DAN EVANS was trained as an engineer. It has always seemed to me that his analytical approach to issues—breaking them down and getting to their root problems—in many ways reflects that background.

There is, however, nothing mechanical about his passion for pursuing issues that are important to him. His strength of conviction has been key to the many meaningful achievements that bear his imprint. As a member of the Energy and Water Resources Committee, the Foreign Relations Committee, and as ranking member of the Select Committee on Indian Affairs, DAN has guided legislation through Congress that has been of enormous help to his State and to the Nation.

Although these legislative accomplishments are many, the ones that come most readily to my mind are those that have benefited the Northwest. For instance, without his efforts, legislation to protect the scenic beauty of the Columbia Gorge would not be in place and the citizens of both Oregon and Washington could not count on being able to enjoy that resource for generations to come. He also has been an advocate for a group that sorely needed one—Native Americans. I can attest to the fact that the tribes in Oregon and Washington have benefited from his enlightened work in this area—resulting in legislation to provide restoration of Federal recognition, reservation lands, and improved tribal services.

No tribute to the Senator from Washington would be complete without mentioning his family—DAN's wife Nancy and his three sons, Dan, Jr., Mark, and Bruce. They have undoubtedly provided the high level of support necessary for political and personal success.

Through all of the years, DAN and I have fought and won many battles together on issues affecting the welfare of our respective States and the country. While there have been occasions where we followed different paths, the level of respect and trust I have for him has always been a constant. While I will miss his presence in the Senate, I will look forward to our continuing association back in the Northwest.

THE INF TREATY NEGOTIATING RECORD—FUTURE ACCESS

Mr. BYRD. Mr. President, the Senate ratification of the INF Treaty was historic not only in terms of arms reduction but also in the way in which the Senate considers treaties. It was the first time that arrangements were made for the Senate to have access to the classified records of our negotiations with the Soviet Union, and referral to those records was an integral part of the process of the Senate's advice and consent procedure.

The dispute between the Senate and the executive branch over the proper interpretation of the Antiballistic Missile [ABM] Treaty made it clear that the Senate would need to examine the INF Treaty at length. It was also clear that the records of the negotiations, which the administration had relied upon to buttress its interpretation of the provisions of the ABM Treaty, would be relevant to the Senate's consideration of the INF Treaty.

In early December 1987, discussions were held with the administration concerning Senate access to the records of the negotiations, and terms of access were agreed upon between the branches. On December 18, by agreeing to a resolution (S. Res. 348) offered by myself and Senator DOLE, the Senate created the Arms Control Treaty Review Support Office, to provide the Senate with the capability to store and review the records of the INF negotiations.

To assist the Senate in its review, the Support Office staff created a research data base, containing data on the negotiating record, as well as full text transcripts of the hearings held by the Senate Committees on Armed Services and Foreign Relations. This data base made it possible to locate within minutes any document in the negotiating record and any reference to it in the testimony. The speed with which information could be gathered and analyzed proved to be invaluable in the course of committee markups and floor debate on the treaty. As further proof of the quality of this data base, State Department officials requested, and were granted, access to it during the debate on ratification.

In addition to the data base, the staff of the Treaty Support Office also prepared briefing books on issues, such as future weapons technology, which required indepth study and clarification. Together with the negotiating record documents, these resources made possible a thorough review and analysis of the INF Treaty, thus proving the wisdom of obtaining the negotiating record and setting up the Treaty Support Office.

The access agreement specified that the negotiating record was to be returned to the State Department following treaty ratification. However, because of lingering concerns about reinterpretation and impact on future arms accords, it was deemed prudent to assure continued Senate access to the INF negotiating record.

Prior to returning the negotiating record to the executive branch, I wrote to the Department of State, requesting assurance that, if the need arose in the future, Senators and cleared staff would be granted access to the negotiating record and associated research materials. By letter of August 9, 1988, the Department of State gave such assurance, and on August 15, 1988, the negotiating record, research data base, and briefing books were transmitted to the Department of State.

The letter of August 9, 1988, by which the Department of State agreed to a system of continued access to the negotiating records of the INF Treaty, provides that, if the need arises for future Senate access to those materials, Senators and a limited number of cleared staff, at the request of the majority and minority leaders, will have access to those materials on appropriate occasions in the future. The materials will be retained by the Office of the Legal Adviser at the Department of State.

Mr. President, I want to take this opportunity to express my appreciation to Secretary of State Shultz for his leadership and cooperation with the Senate in exercising its advise and consent duty on the INF Treaty.

I ask unanimous consent that the correspondence exchanged between the State Department and the Senate regarding future access to the INF negotiating record be inserted in the Record.

There being no objection, the letters were ordered to be printed in the Record, as follows:

U.S. Senate,
Washington, DC, July 14, 1988.

Hon. George P. Shultz,
Secretary of State,
Department of State, Washington, DC.

Dear Mr. Secretary: We intend to return to you the INF Treaty negotiating record, in accordance with the access agreement accompanying your February 5, 1988, letter to Senator Byrd. That agreement states that the negotiating record be returned to the department following Senate action on the Treaty. We are preparing to return the documents; however, we want to establish a reliable mechanism for future Senate access, if the need arises, to those documents.

We want to have assurance that, upon request of the Majority and Minority Leaders, Senators will have future access to the INF Treaty negotiating record and associated materials (see below), that such access be readily available, and that access be granted to a limited number of appropriately cleared staffers whose names are submitted to the Secretary of State by the Senate Majority and Minority Leaders.

The associated materials mentioned above were generated in connection with the Senate's review of the negotiating record. They include a computerized document control and research data base. There are also briefing books containing copies of the negotiating record documents organized by issue. When these materials are transferred to the department along with the negotiating record, we would want to ensure that the same access for Senators and appropriately cleared Senate staffers would be given to them, as to the INF Treaty negotiating record itself.

We would appreciate your consideration of this arrangement for future access to the INF Treaty negotiating record. We would appreciate receiving confirmation of this arrangement from you as soon as possible.

Sincerely,

Robert C. Byrd,
Majority Leader.
Bob Dole,
Republican Leader.

Department of State
Washington, DC, August 9, 1988.

Hon. Robert C. Byrd,
U.S. Senate.

Dear Senator Byrd: I am responding to your letter of July 14 to the Secretary concerning the return of the INF Treaty negotiating record.

We appreciate your confirmation that the record will be returned in accordance with the access agreement which accompanied Secretary Shultz's letter of February 5. We also welcome your willingness to provide the computerized materials and briefing books which were prepared by the Senate to facilitate research into the negotiating record on specific issues.

If the need arises for future Senate access to these materials, we agree that Senators and a limited number of cleared staff should have access to these materials on appropriate occasions in the future, upon request of the Majority and Minority Leaders. The materials will be retained by the Office of the Legal Adviser, where access will be provided in accordance with the above.

I am pleased that we can cooperate in this matter, and I hope we will continue to work together in a spirit of mutual cooperation throughout the implementation of the INF Treaty.

Sincerely,

Edward Fox,
Assistant Secretary,
Legislative Affairs.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

TECHNICAL CORRECTIONS ACT OF 1988

The ACTING PRESIDENT pro tempore. The Senate will resume consideration of the pending business, S. 2238, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 2238) to make technical corrections relating to the Tax Reform Act of 1986, and for other purposes.

The Senate resumed consideration of the bill.

Pending: Stevens Amendment No. 3624, relating to certain employer employee trusts pursuant to collective bargaining agreements.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, we are now on the technical corrections bill and the unanimous-consent agreement that applies to the bill. I would like to remind all Senators that we will vote on the bill by 8 o'clock this evening.

There is a 30-minute time limit on all amendments, with the exception of two amendments by the Senator from New Jersey [Mr. Bradley], which is 1 hour per his amendments, and the amendment by the Senator from Alaska [Mr. Stevens], which is unlimited.

I urge all Senators to keep the terms of that time agreement firmly in mind because we have to dispose of this tax bill by this evening.

Mr. President, I urge the cooperation of all Senators to keep their comments short and also to bring up their amendments as quickly as possible, otherwise we will find ourselves in a position as we get to 8 o'clock of voting on amendments and Senators would not have had time to explain their amendments and the managers of the bill would not have had their time to explain their position on the amendments.

Again, I urge all Senators to quickly come to the floor for the disposition of the Stevens amendment so we can move expeditiously on this bill. When the Senate disposes of the Stevens amendment, Mr. President, it will then be my intention to offer a perfecting amendment which will be a package of small amendments that we could accept. I expect that package to be noncontroversial. At the conclusion of the adoption of that package, which will not take much time, we will then be on the bill for further amendments.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER [Mr. BREAUX]. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I have pending before the Senate an amendment which was presented just before we recessed on Friday. We are awaiting response from the Joint Tax Committee as I understand it. I would like to inquire of the distinguished managers of the bill if we might discuss one other subject while we are waiting; that is the application of the Federal diesel excise tax as it applies to marine users.

FEDERAL DIESEL TAX

I have previously discussed this with both of the managers, Senators PACKWOOD and BAUCUS. And I want to just explain some of the problems we have, and see if there is a way that I might inquire of the managers if something might be done to deal with the issue.

In remote communities such as are located in my State, Dutch Harbor, Kodiak, Cordova, those are all landlocked cities. Two of them are islands, and Cordova has no access to the rest of the country by road. They did have a famous bridge which was not repaired after the earthquake. They have no access by truck. These are marine user communities. They are fishing communities primarily, and the large vessels that are in use in the Pacific fishing fleet use diesel almost exclusively.

As a consequence, the diesel fuel dealer sells, I would say, most of its diesel supplies to marine users. Yet, there are also some owners of small trucks and other smaller personal use vehicles who fully expect to pay the tax, who are willing to pay the tax, and who must have diesel fuel supply.

The impact of the 1987 Revenue Act—as we understand it—is that fishermen and all other off-road users of diesel, pay the excise tax and apply for a refund.

The problem with the bill language before us is that it only permits fishermen to purchase diesel fuel tax-free if they buy from a retailer who sells exclusively to marine users. The problem is, most of the retailers in my State—although they sell primarily to marine users—also sell diesel for these other smaller uses, such as trucks.

It forces the fishermen, who buy 95-plus percent of the diesel in the community, to pay tax and wait for a refund. It puts the burden on the wrong people.

I have inquired in particular from my friend from Oregon whether it would be possible to establish some authority for the Secretary of Treasury to issue regulations which would provide for de minimis exceptions where in fact it can be certified by the dealer that these incidental sales do not exceed an amount; for discussion purposes we have been using 5 percent.

So could I ask the Senator from Oregon whether he would be interested in responding to my inquiry concerning authority to the Secretary to issue regulations that would eliminate this requirement for the marine user to pay taxes in advance and get the money back a year later simply because there are de minimis sales of diesel fuel to the persons who are not entitled to the refund and who are not entitled to the exception under the 1986 act.

Mr. PACKWOOD. Mr. President, the Senator is suggesting it is de minimis because there is no other dealer on the island. If you are going to have diesel fuel and one person provides it, that is it.

Mr. STEVENS. That is correct. There may be another dealer on the same situation.

Mr. PACKWOOD. Mr. President, given that situation, as I understand the facts, where you have an island where there are no roads of any consequence, where the number of trucks is de minimis, the number of motor vehicles that use diesel are insignificant, but if you are going to have any diesel, you have to buy it from the person who supplies the marine fleet because that is 99 percent or 95 percent of the sales, I think we could give to the Treasury Department, the Internal Revenue Service, a de minimis authority to accommodate to those fact situations.

Mr. STEVENS. As I understand it, the Senator would prefer not to do that at this time but to it in conference after discussing the matter with the House.

Mr. PACKWOOD. I would like to discuss it with the Treasury before we go ahead. But again, I come back to the facts as the Senator describes them. Obviously, he knows his State of Alaska better than I do. I think he makes a good case. I have just been in this business long enough not to want a response to an ex parte presentation on something I do not know until I have talked to somebody else who might say, "No, those are not the facts, this is really the way, and I will get back to you." I am inclined to say what the Senator says is right. I do not want to jump in and make a commitment unless the case is good that the facts are as the Senator says they are.

Mr. STEVENS. I say to my friend that I am confident that this situation also applies to other areas of the country where island communities serve as the base for the fishing fleet, where they, too, have a similar circumstance, have no semi trucks and trailers, and have no diesel road use capability at all.

As I said, where are you going to go with a semitractor trailer if you are on Ketchikan? You can go from one end of the island to the other, but that is it. If you are going to take it off the island, they put the trailer on a boat and take it away.

Mr. PACKWOOD. The Senator is suggesting not that the sale of the truck would not be taxed, but the dealer would lose his exemption.

Mr. STEVENS. Absolutely. The sales to the nonmarine users would be taxed. They expect to pay the tax. But I seek to eliminate the burden on the marine user who, under existing law, as we understand it, must pay tax on the deliveries from the diesel fuel dealer solely because that dealer sells a de minimis amount of diesel fuel to nonexempt customers. In my judgment, that is a situation that exists particularly in the Northwest.

I had the occasion last year to take a trip north from Silban Bay, and there are many Washington State communities that are not accessible by road to service the Washington fishing fleet. I think there are some similar areas in Oregon.

Mr. PACKWOOD. I do not think so. It is all short based. There are no islands at all. There are roads clearly running to the stations, and the fishermen drive their cars down. So we have a different situation.

Mr. STEVENS. I can assure my friend that if you are in Dutch Harbor, you are not going anywhere by road, and the same for Kodiak and Juneau, our capital city, which is not accessible by road.

I would hope that the Senator would agree to pursue that in conference.

I ask the Senator from Montana if he would attempt to see if there is a way, after consultation with the Secretary of the Treasury, to grant authority to the Secretary to issue regulations which would provide that those marine users would not have to pay the tax in advance if they bought from a dealer who had de minimis nonexempt sales.

Mr. BAUCUS. Mr. President, the Senator from Alaska raises a sympathetic point. With respect to off-road users and on-road users, which would be cars and trucks, there should be some way to distinguish between the two, so that the marine dealer would collect the tax from the on-road user but not have to collect tax from, say, the marine user.

He raises a sympathetic case, and we have to now see if we can work this out. Some points to consider are, first, the revenue effect. We are asking the Joint Tax Committee to see what revenue effect there would be if we were to direct the Treasury to come up with a de minimis rule so that a marine user who made only de minimis sales would not have to collect the tax.

We also have to assure ourselves that there is no additional noncompliance. The Treasury would have to be satisfied. The provision should be written to assure that there is not additional noncompliance.

It is important to remember, however, that even under the current bill, if a marine dealer sells diesel fuel to, say, a nonroad user, he still can get a refund with interest on that transaction.

That applies, obviously, under current law, with farmers, too. We feel that it is unfair to farmers to have to ask for a refund.

I understand the point of the Senator from Alaska. It depends on the revenue effect and the degree to which the Treasury can be assured that there is no additional noncompliance.

Mr. STEVENS. I thank my good friend.

I commend the committee for the provision in the bill before the Senate that deals with agricultural use. I seek to try to find a way to extend that to marine users.

In my State, if a vessel pulls into one of these marine diesel facilities, a commercial vessel, a commercial fishing vessel, they buy thousands and thousands of gallons of diesel at a time. To have to pay that tax in advance, and in effect wait a year for a refund, leads them to the same complaints the farmers have made, and I think justifiably so, that they should not have to pay the tax and seek a refund a year later.

I am delighted that the two managers of the bill, Mr. President, will pursue that matter.

Does the Senator from Montana have additional comments?

Mr. BAUCUS. No.

I yield the floor. I will do the best I can.

Mr. STEVENS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I ask unanimous consent that there be placed in the RECORD at this point a statement explaining in technical detail the necessity, as we see it, for this type of consideration of the de minimis exemption for marine users from the diesel fuel tax.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT

Mr. President, fishermen are exempt from paying a 15 cent per gallon excise tax on diesel fuel in these cases where the fuel is used solely for fishing purposes. However, as part of a new enforcement plan, the Revenue Act of 1987 required—beginning April 1, 1988—that fishermen, and all other off-road users of diesel, pay the excise tax and apply for a refund.

Recognizing the burden which the 1987 Act placed on farmers, fishermen and other off-road users, the Finance and Ways & Means' Technical Corrections bills both contain provisions designed to allow exempt users of diesel to purchase tax-free.

Both bills provide that marine users can purchase tax-free from: "a retailer selling diesel fuel exclusively to purchasers as supplies for commercial and noncommercial vessels".

However, these provisions do not cover most of the fueling facilities available to the fishing industry in my state. Most diesel dealers who service our fishing industry are retailers who do not service marine vessels "exclusively". In addition to fishermen, they also provide diesel fuel for local trucking, dock services, electric generation and other purposes.

I understand that this problem may apply to fishermen and diesel retailers in Washington and other states.

The failure of the current bill language to exempt fishermen from payment of the tax is contrary to the unanimous position taken by the Senate only two months ago.

On July 28, 1988, in a sense of the Senate amendment offered by Senator Karnes to the Drought Assistance Bill, the Senate voted unanimously (94-to-0) that Congress should pass before the end of this session legislation that "provides an exemption from the Federal excise tax on diesel fuel that is to be used for farming and fishing . . .".

Mr. President, the Senate's unanimous vote reflects the sense of the Senate that fishermen, as well as farmers, should not have to pay a tax they don't owe. Under current law, fishermen are exempt from the diesel tax. To force them to pay the tax and wait months—or even a year—for a refund is unfair.

The most direct way to solve this problem is to delete the word "exclusively" from the bill language. This would permit fishermen to purchase the diesel fuel tax free from any retailer selling diesel fuel to fishermen.

An alternative legislative approach would be to change the language to read "a retailer selling diesel fuel at a facility principally to purchasers as supplies for commercial and noncommercial vessels". If this alternative language is used, the report language could explain that the intention is to permit tax-free sales at retail facilities where most of the diesel sales are to fishermen. In other words, where sales to non-marine users are de minimis, tax-free sales to marine users should be permitted.

As I have said previously, in Alaska about all of these marine diesel facilities are located in areas with no highway connections available—most are on islands or in portions of Alaska with no road access. The sale by these dealers to non-marine users is de minimis; such sales are for local consumption and are, in most instances, made by the only diesel dealer in the community.

The current bill language, which will allow farmers and others to resume tax-free purchases in estimated to cost $317 million in 1989, $64 million in 1990, and $66 million in 1991. Striking the word "exclusively", in order to cover fishermen, only adds $10 million in 1989, and $5 million in 1990 and 1991. Therefore, permitting fishermen to purchase diesel tax-free, in the same way as farmers, would add comparatively little to the revenue estimates for the diesel provisions.

While the best solution is to change the legislative language, an alternative approach might be to establish legislative history explaining which retailers are permitted to sell diesel tax-free to fishermen.

The House report language states: "For marine users, the bill treats as producers for this purpose *retail dealers who exclusively sell* diesel fuel to water users." The House report language is therefore essentially identical to the bill language and presents the same problem by referring to retailers who sell "exclusively" to fishermen.

However, the *Senate report language* would allow tax-free sales to fishermen at a *"facility"* exclusively serving marine users. If "facility" is intended to mean the dock or pier where the fuel is pumped, most retailers would be included; however, if "facility" is intended to mean the larger location—which in many cases includes pumps for trucks, farmers, construction companies, home heating oil, etc.—then the problem remains.

Therefore, the problem of fishermen having to pay the diesel tax could be rectified by report language in the Joint Statement of Managers *if* the report language says that "the bill treats as producers for this purpose, retail dealers who sell diesel fuel at a facility *(i.e., a dock or pier)* exclusively serving waterway users."

Mr. President, I thank the Managers of the bill for their attention to this matter and appreciate their willingness to discuss my concerns with House conferees in the upcoming conference.

Mr. GRAHAM. Mr. President, I ask unanimous consent that the item presently before the Senate be set aside for the purpose of considering an amendment I shall offer.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3639

Mr. GRAHAM. Mr. President, I send an amendment to the desk on behalf of myself and Senators SYMMS and PRYOR.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Florida [Mr. GRAHAM], for himself, Mr. SYMMS and Mr. PRYOR, proposes an amendment numbered 3639.

Mr. GRAHAM. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Section 56(c)(1) is amended by adding after subparagraph (B) thereof the following subparagraph:

"(C) CERTAIN INSTALLMENT SALES.—For any tax year beginning after 1989, in the case of a taxpayer which made an election under Section 453(l)(2)(B) for such tax year or any preceding tax year, alternative minimum taxable income shall be adjusted as provided under subsection (f) and subsection (g) shall not apply".

PARTNERSHIP REPORTING OF UNRELATED BUSINESS TAXABLE INCOME

Section 6031 of the 1986 Code is amended by adding at the end thereof the following new subsection (d):

"(d) Separate Statement of Items of Unrelated Business Taxable Income.—In the case of any partnership regularly carrying on a trade or business (within the meaning of section 512(c)(1)), the information required under subsection (b) to be furnished to its partners shall include such information as is necessary to enable each partner to compute its distributive share of partnership income or loss from such trade or business in accordance with section 512(a)(1), but without regard to the modifications described in paragraphs (8) through (15) of section 512(b)."

(c) Estates of Nonresidents Who Are Not Citizens But Have Citizens As Spouses.—Subsection (a) of section 2106 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

(3) Marital Deduction Allowed Where Spouse is Citizen.—The amount which would be deductible with respect to property situated in the United States at the time of the decedent's death under the principles of section 2056."

(d) Effective Date.—

(1) The amendments made by subsection (a) and (c) shall apply to estates of the decedents dying after the date of the enactment of this Act.

(2) The amendments made by subsection (b) shall apply to gifts on or after July 14, 1988.

SEC. 373. RATE SCHEDULE FOR TAX ON ESTATES OF NONRESIDENTS NOT CITIZENS

(a) General Rule.—Subsection (b) of section 2101 of the 1986 Code (relating to computation of tax) is amended by striking out "a tentative tax computed in accordance with the rate schedule set forth in subsection (d)" each place it appears and inserting in lieu thereof "a tentative tax comput-

* * * * *

(b) Amount of Unified Credit.—Subsection (c) of section 2102 of the 1986 Code is amended to read as follows:

"(c) Unified Credit.—

"(1) In general.—A credit shall be allowed against the tax imposed by section 2101 equal to the amount which bears the same ratio to $192,800 as the value of the part of the decedent's gross estate which at the time of his death is situated in the United States bears to the value of his entire gross estate wherever situated. If a credit has been allowed under section 2505 with respect to any gift made by the decedent, the $192,800 amount referred to in the preceding sentence shall be reduced by the amount so allowed.

"(2) Limitation Based on Amount.—The credit allowed by this subsection shall not exceed the amount of tax imposed by section 2101.

"(3) Application of Other Credits.—For purposes of subsection (a), sections 2011 to 2013, inclusive, shall be applied as if the credit allowed under this subsection were allowed under section 2010."

(c) Technical Amendments.—

(1) Subsection (d) of section 2101 of the 1986 Code is hereby repealed.

(2) Subsection (a) of section 6018 is amended to read as follows:

"(a) Returns by Executor.—

"(1) In general.—In all cases where the gross estate at the death of the decedent exceeds $600,000, the executor shall make a return with respect to the estate tax imposed by subtitle B. The preceding sentence shall apply in the case of the estate of the decedent who is a nonresident not a citizen of the United States only if some portion of his gross estate is situated in the United States at the time of his death.

"(2) Adjustment for certain gifts.—The dollar amount set forth in paragraph (1) shall be reduced (but not below zero) by the sum of—

"(A) the amount of the adjusted taxable gifts (within the meaning of section 2001(b)) made by the decedent after December 31, 1976, plus

"(B) the aggregated amount allowed as a specific exemption allowed under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) with respect to gifts made by the decedent after September 8, 1976."

"(d) Effective Date.—The amendments made by this section shall apply to the estates of decedents dying after the date of the enactment of this Act.

Mr. GRAHAM. Mr. President, the amendment, which I offer on behalf of myself, Senators Symms and Pryor, will make a correction in an area of the installment sales provision of the current Tax Code which is scheduled to go into effect in 1989.

This will maintain the current treatment of certain installment sales contracts. It is essential that the taxpayer pays either the full or the minimum tax on, first, the amount of taxable income which is taken into account in the current tax year and pays interest on the amount of the installment income which is deferred for future tax years.

This provision of paying interest on future, yet unreported, installment income was a provision of the 1986 Tax Reform Act which has worked well, which deals with some of the alleged inequities of the previous treatment of installment sales income. This amendment would maintain that treatment beyond 1989.

In order to meet the requirement of revenue neutrality, we are proposing two other amendments. One of those relates to the taxable income from partnership of otherwise nontaxable entities. If a nontaxable entity receives income which is of a taxable source it is, of course, taxable to that degree of income. This will provide that when that income comes from a partnership source it shall be reported to the nontax entity as taxable income so that it can be properly reported and taxes paid.

Second, we also adjust the current gift and estate tax rate which is applicable to nonresident aliens to the same levels as are currently applicable to U.S. citizens.

This in my opinion is a fair adjustment making nonresident aliens and U.S. citizens in parity in terms of their gift and estate tax obligations.

Mr. President, I offer this amendment and urge the Senate's positive consideration.

Mr. President, the amendment that I am offering today is essential to correct what I believe is a serious inequity in the Tax Code that will come into effect for taxable years beginning after 1989. If the current situation continues to exist after that year, companies in the residential lot development industry may have to both pay interest on deferred taxes from installment income and pay minimum tax on the same income. This is clearly unfair and will have a very serious negative effect on many companies in this industry in a variety of States including my own.

Some background information on this situation may be helpful to the Senate. In 1986, as part of tax reform, Congress enacted a proportionate disallowance rule which would have had the effect of virtually eliminating the installment method for companies in this industry. In 1987, as part of the 1987 tax legislation, Congress went further and generally eliminated the use of the installment method of accounting for tax purposes. Thus, taxpayers were required to pay current taxes on sales income even though the money had not been collected from their customers. This would have been a serious hardship for the residential lot development industry. This is an industry which sells residential lots to thousands of Americans, many of whom are buying them to plan their retirement. For the most part, these are middle-class working men and women who prepare for their retirement by buying a residential lot over 10 or more years and then build a home on the lot when the lot is paid for. Because companies in this industry could not pay taxes on money that they had not received, and because they often could not sell their receivables, the Senate Finance Committee unanimously agreed in connection with the 1986 tax legislation to an amendment offered by the Senator from Arkansas, Senator Pryor. This amendment was ultimately agreed to by the conferees and the Congress. In the 1987 tax legislation, Congress again expressly reaffirmed the Pryor amendment.

Under the Pryor amendment, this industry can elect to pay interest on installment method deferred taxes. If the election is made, the taxpayer can continue to use the installment method in computing its taxable income for the regular tax and the minimum tax. The interest is intended to eliminate the tax benefit accruing to a taxpayer from the continued use of the intallment method. The interest applies to both the regular tax and the minimum tax.

A problem developed, however, because during the conference on the 1986 bill, a compromise had to be arrived at with respect to the minimum tax. As part of the compromise, it was agreed that the minimum tax would include a portion of book income for 3 years. The book income adjustment was pursued by Senator PACKWOOD because he believed that no companies should report earnings for financial purposes while paying no taxes. I agree with the Senator from Oregon and salute his effort in 1986. I should note also that contrary to the accusations made by some, the book income provision has worked well. Not only have there been few problems, but this provision should get much of the credit for the fact that large corporations with real economic income are paying taxes at a higher rate than in the past.

As part of the compromise, however, after 1989 the minimum tax would no longer include book income but instead would include a portion of so-called adjusted current earnings. This E&P-based calculation will create the serious problem for this industry that I refer to.

Because of the nature of their receivables, many of these companies are required to report their income for financial purposes on the installment method. Since they are also reporting for tax purposes on the installment method they do not now incur minimum tax attributable to income for which they have elected the interest charge. After 1989 when the E&P-based method comes into effect, installment deferral will be included in the minimum tax base and these companies will have to pay minimum tax on the same income on which there is already an interest charge.

The effect of this inequity, as I have said, will be devastating for a number of companies in several States including Florida. Under my amendment, companies which elect to pay interest would be required to continue to use the book income minimum tax. To the extent any of such companies do not use the installment method for financial statement purposes and report greater book profits than taxable income, their minimum taxable income will, consistent with Senator PACKWOOD'S philosophy, be increased. If the installment method is used for tax and financial purposes, there should be no increase in their minimum taxable income. In other respects, they would, of course, pay the same minimum tax as all other taxpayers.

I think that the generally accepted accounting principles reflected in the book income approach better measure economic income than the adjusted current earnings approach. In any event, the book income adjustment provides a sufficient measurement of economic income to assure that taxpayers in this industry are subject to the minimum tax.

As is required by our procedures, the amendment which I am offering is revenue neutral. It is paid for by an adjustment to the partnership reporting of unrelated business taxable income. Essentially, tax exempt entities must pay taxes on unrelated business taxable income—that is, income that is unrelated to their tax exempt status. Income that they derive from partnerships may be either taxable or tax exempt. Under current reporting rules, the tax exempt entity may or may not know that some of its income from a partnership should be taxed. My amendment merely changes the reporting requirements of the partnership requiring that it indicate how much of its income is taxable and how much is tax exempt. I feel this is a fair provision and one which I hope is supported by the Treasury Department.

It is also paid for by making the gift and estate tax rates that are applicable to U.S. citizens and residents also applicable to nonresident aliens and their estates, and by conforming certain other aspects of estate and gift taxation of nonresident aliens and their estates to that of U.S. citizens and residents. Under present estate and gift tax law, nonresident aliens are generally favored over U.S. citizens and residents. My amendment merely eliminates this.

I hope that my amendment is agreed to by the Senate. If it is not, it will create a serious cash-flow problem for many companies in this industry. I fear that the ability of these companies to meet obligations to their customers—many of whom are elderly Americans looking forward to retirement—their employees, suppliers, and subcontractors, will be severely impaired.

The PRESIDING OFFICER. Is there further debate on the amendment?

The Senator from Oregon.

Mr. PACKWOOD. Mr. President, from this side, we find it a good amendment.

They have not attempted to undermine the minimum tax in any way and are willing to pay interest on the installment sales.

I think it is a good amendment. We are prepared to accept it.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, the Senator from Florida has worked very cooperatively with the manager of the bill to try to find a way to handle this question. He raises a sympathetic case. I think it is proper that land installment sales not comply with the cumulative earnings tax provision that goes into effect in 1990, and he has also raised a way to make this revenue neutral.

As the Senator from Oregon has said, nevertheless these dealers would still have to pay interest on deferred taxes. That is entirely appropriate. And this side is prepared to accept the amendment.

The PRESIDING OFFICER. Do Senators yield back their time?

The Senator from Florida.

Mr. GRAHAM. Mr. President, I appreciate the remarks by the managers of the bill.

I yield the floor.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to the amendment of the Senator from Florida.

The amendment (No. 3639) was agreed to.

Mr. BAUCUS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PACKWOOD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAUCUS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Alaska.

AMENDMENT NO. 3624

Mr. STEVENS. Mr. President, the pending amendment that I have would change a provision in the Tax Reform Act of 1986 regarding pension plans that were in effect and ratified prior to March 1, 1986. It is intended to remove the provisions of such a plan from the impact of the 1986 law, preserving workers' rights to increased pension benefits if they continue to work.

Over the weekend a suggestion was made that this could be accomplished by the pension plan itself, if the time for compliance was moved. It is my understanding, now, that the managers of the bill will incorporate in the amendment to be offered by the committee, an amendment that moves the date of the provision—it is the Internal Revenue Code section 415—to October 1, 1991. I am informed by the managers of the pension plan that I know is directly affected that this would give them the opportunity to make that plan conform to the intent of the section that I just mentioned, section 415.

With that understanding, and that is my understanding, I am prepared to withdraw the amendment.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, the Senator from Alaska raises a concern regarding section 415 limits that apply to Alaska Teamsters pension plan. The 1986 Act raised, tightened the section 415 limitations that applied to defined benefit pension plans and the transition was given to negotiated plans, that is collectively bargained plans, for 2 years or until the current collective bargaining period expired.

This provision, as it turns out, should be extended slightly, that is to October 1, 1991, as suggested by the Senator from Alaska. It is our understanding that the revenue effect is a negligible increase in revenue for the period under question.

With those considerations, and with the understanding that there is a negligible increase in revenue and that the transition will, in fact, expire on October 1, 1991, the Senator is correct. That is, we will include that provision in the perfecting package.

Mr. **STEVENS**. Is the Senator from Oregon seeking the floor?

Mr. **PACKWOOD**. Mr. President, I echo what the Chairman said. I think it is equitable and should be included in the package.

Mr. **STEVENS**. Mr. President, I wish to explain the operation and purpose of the amendment just presented. The Tax Reform Act of 1986 contains several adjustments to the provisions of the Internal Revenue Code concerning pension plans. Among the concerns giving rise to these adjustments are that preexisting law favoring early retirement deprives the Nation of the benefits of senior skilled workers and deprives the treasury of taxes due from these workers' incomes. In a nutshell, the Tax Reform Act's pension reform provisions reflect a policy of encouraging workers to continue employment up to the Social Security retirement age. This is accomplished by requiring that benefits for early retirement be actuarially adjusted downward from a ceiling of maximum benefits payable to a worker retiring at the Social Security retirement age.

Unfortunately, the pension reforms of the Tax Reform Act can have the opposite effect where a preexisting pension plan was designed to feature a very low normal retirement age coupled with incentive adjustments to a worker's pension where the worker does not retire at the "normal" age under the plan. Such a plan may be designed to achieve the objective of encouraging a worker to remain in the workforce up to the worker's attaining the Social Security retirement age. However, workers eligible for "normal" retirement under this kind of plan now face the prospect of seeing their retirement pension frozen at an actuarially imposed ceiling should they continue to work, while if they retire now they will enjoy a higher level of pension benefits. These senior workers are therefore encouraged to retire now.

The amendment presented removes this encouragement by preserving these workers' rights to increased pension benefits if they continue to work. Because it addresses only plans pursuant to collectively bargained agreements ratified before March 1, 1986, the amendment should benefit the rank and file beneficiaries of such pension plans, and not high-income private pension plan beneficiaries; nor should it create a loophole for such high-income private pension plans to take advantage of in the future.

Mr. President, in summary I want to thank the managers of the bill. There are not a great many beneficiaries to the plan at this time, some 300 to 400. The amount to be included is at least 10 times that amount. They primarily live outside of our State now. I am told easily identified are beneficiaries who live in Texas, New York, Wyoming, California, North Dakota, Montana, Idaho, Washington State, and Oregon. There are several job sites affected by this provision: Clear Air Force Base; our only producing coal mine in Alaska; the NASA/General Electric satellite tracking station.

There are a host of non-Alaska employees involved in the multiple employer pension fund: Sealand, part of CSX; Ocean Totem Express from Washington State; Pacific Telecom/Alascom in Washington State; ITT-FELIC, which is in Colorado; General Electric from Connecticut; Cummins Diesel from Indiana; Morrison-Knudsen from Idaho; Linden Transport of Washington State; Consolidated Freightways of California; Continental Baking from Missouri.

I could go on with the list. I think the way it has been handled is entirely acceptable. I have discussed this with representatives of the pension fund this morning. I thank the managers, and I thank the Senate for its patience. I withdraw the amendment.

The **PRESIDING OFFICER**. The Senator has that right. The amendment is withdrawn.

The amendment was withdrawn.

Mr. **BRADLEY** addressed the Chair.

The **PRESIDING OFFICER**. The Senator from New Jersey.

AMENDMENT NO. 3640

(Purpose: To increase the earned income credit and strike provisions reducing Federal revenue)

Mr. **BRADLEY**. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The **PRESIDING OFFICER**. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. BRADLEY] proposes an amendment number 3640.

Mr. **BRADLEY**. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

The amendment is as follows:

Strike out Subtitles B and C of Title VII and insert:

Subtitle B—Increase in Earned Income Credit

SEC. 711. INCREASE IN EARNED INCOME TAX CREDIT.

(a) CREDIT INCREASED FROM 14 TO 15 PERCENT.—Section 32(a) of the 1986 Code is amended by striking out "14 percent" and inserting in lieu thereof "15 percent".

(b) PHASE-OUT OF CREDIT.—Paragraph (2) of section 32(b) of the 1986 Code is amended by striking out "10 percent" and inserting in lieu thereof "10.2 percent".

(c) CONFORMING AMENDMENTS.—

(1) Section 3507(c)(2)(B)(i) of the 1986 Code is amended by striking out "14 percent" and inserting in lieu thereof "15 percent".

(2) Section 3507(c)(2)(C)(i) of the 1986 Code is amended by striking out "14 percent" and inserting in lieu thereof "15 percent".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1988.

Subtitle C—Other Provisions

SEC. 721. STUDY OF EFFECT OF MINIMUM PARTICIPATION RULE ON EMPLOYERS REQUIRED TO PROVIDE CERTAIN RETIREMENT BENEFITS.

(a) STUDY.—The Secretary of the Treasury or his delegate shall conduct a study on the application of section 401(a)(26) of the Internal Revenue Code of 1986 to Government contractors who—

(1) are required by Federal law to provide certain employees specified retirement benefits, and

(2) establish a separate plan for such employees while maintaining a separate plan for employees who are not entitled to such benefits.

Such study shall consider the Federal requirements with respect to employee benefits for employees of Government contractors, whether a special minimum participation rule should apply to such employees, and methods by which plans may be modified to satisfy minimum participation requirements.

(b) REPORT.—The Secretary of the Treasury or his delegate shall report the results of the study under subsection (a) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives not later than September 1, 1989.

SEC. 722. STUDY OF TREATMENT OF CERTAIN TECHNICAL PERSONNEL.

The Secretary of the Treasury or his delegate shall conduct a study of the treatment provided by section 1706 of the Reform Act (relating to treatment of certain technical personnel). The report of such study shall be submitted not later than September 1, 1989, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 723. PURCHASE OF INSURANCE BY COOPERATIVE HOSPITAL SERVICE ORGANIZATIONS.

(a) IN GENERAL.—Subparagraph (A) of section 501(e)(1) of the 1986 Code is amended by inserting "(including the purchasing of insurance on a group basis)" after "purchasing".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to purchases before, on, or after the date of the enactment of this Act.

SEC. 724. REPORT ON THE SMALL BUSINESS INNOVATION RESEARCH PROGRAM.

Subsection (a) of section 6 of the Small Business Innovation Development Act of 1982 (15 U.S.C. 638, note) is amended by striking out "December 31, 1988" and inserting in lieu thereof "July 1, 1989".

SEC. 725. STUDY ON HEALTH CARE COSTS RESULTING FROM SMOKING.

(a) In General.—The Secretary of the Treasury or his delegate shall, in consultation with the Surgeon General of the Public Health Service, conduct an ongoing study of—

(1) the public and private health care costs incurred (with respect to smokers, their spouses, and others) as a result of cigarette smoking in the United States,

(2) the incidence of cigarette smoking in the United States by adults and by teenage and younger children, and

(3) the impact of the rate of the excise tax imposed by section 5701 of the Internal Revenue Code of 1986 on cigarette smoking by adults and by teenage and younger children.

(b) Reports.—Reports of the study required by subsection (a) shall be submitted every 2 years, with the 1st such report to be submitted by January 1, 1989. Each such report shall be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 726. APPLICATION OF SECURITY INTEREST TEST TO BOND FINANCING OF HAZARDOUS WASTE CLEAN-UP ACTIVITIES.

Before January 1, 1989, the Secretary of the Treasury or his delegate shall issue guidance concerning the application of the private security or payment test under section 141(b)(2) of the Internal Revenue Code of 1986 to tax-exempt bond financing by State and local governments of hazardous waste clean-up activities conducted by such governments where some of the activities occur on privately owned land.

SEC. 727. TREATMENT OF CERTAIN INSTRUMENTS UNDER FOREIGN CURRENCY RULES.

(a) General Rule.—Clause (iii) of section 988(c)(1)(B) of the 1986 Code (as amended by title I) is amended by striking out "unless such instrument would be marked to market under section 1256 if held on the last day of the taxable year".

(b) Technical Amendments.—

(1) Paragraph (1) of section 988(a) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) Application of subparagraph (b) in the case of certain traders.—In the case of any instrument—

"(i) which would be marked to market under section 1256 if held on the last day of the taxable year, and

"(ii) which was entered into or acquired by the taxpayer in the active conduct of the trade or business of trading such instruments,

to the extent provided in regulations, subparagraph (B) shall be applied without regard to the requirement that the instrument not be part of a straddle and without regard to the identification requirement contained therein."

(2) Paragraph (1) of section 988(d) of the 1986 Code is amended by striking out the second sentence and inserting in lieu thereof the following: "For purposes of the preceding sentence, the term 'section 988 transaction' shall not include any transaction with respect to which an election is made under subsection (a)(1)(B)."

(c) Effective Date.—The amendments made by this section shall apply with respect to forward contracts, future contracts, options, and similar financial instruments entered into or acquired after September 8, 1988.

SEC. 728. DUAL RESIDENT COMPANIES.

(a) General Rule.—In the case of a transaction which—

(1) involves the transfer after the date of the enactment of this Act by a domestic corporation, with respect to which there is a qualified excess loss account, of its assets and liabilities to a foreign corporation in exchange for all of the stock of such foreign corporation, followed by the complete liquidation of the domestic corporation into the common parent, and

(2) qualifies, pursuant to Revenue Ruling 87-27, as a reorganization which is described in section 368(a)(1)(F) of the 1986 Code,

then, solely for purposes of applying Treasury Regulation section 1.1502-19 to such qualified excess loss account, such foreign corporation shall be treated as a domestic corporation in determining whether such foreign corporation is a member of the affiliated group of the common parent.

(b) Treatment of Income of New Foreign Corporation.—

(1) In general.—In any case to which subsection (a) applies, for purposes of the 1986 Code—

(A) the source and character of any item of income of the foreign corporation referred to in subsection (a) shall be determined as if such foreign corporation were a domestic corporation,

(B) the net amount of any such income shall be treated as subpart F income (without regard to section 952(c) of the 1986 Code), and

(C) the amount in the qualified excess loss account referred to in subsection (a) shall—

(i) be reduced by the net amount of any such income, and

(ii) be increased by the amount of any such income distributed directly or indirectly to the common parent described in subsection (a).

(2) Limitation.—Paragraph (1) shall apply to any item of income only to the extent that the net amount of such income does not exceed the amount in the qualified excess loss account after being reduced under paragraph (1)(C) for prior income.

(3) Basis adjustments not applicable.—To the extent paragraph (1) applies to any item of income, there shall be no increase in basis under section 961(a) of such Code on account of such income (and there shall be no reduction in basis under section 961(b) of such Code on account of an exclusion attributable to the inclusion of such income).

(4) Recognition of gain.—For purposes of paragraph (1), if the foreign corporation referred to in subsection (a) transfers any property acquired by such foreign corporation in the transaction referred to in subsection (a) (or transfers any other property the basis of which is determined in whole or in part by reference to the basis of property so acquired) and (but for this paragraph) there is not full recognition of gain on such transfer, the excess (if any) of—

(A) the fair market value of the property transferred, over

(B) its adjusted basis,

shall be treated as gain from the sale or exchange of such property and shall be recognized notwithstanding any other provision of law. Proper adjustment shall be made to the basis of any such property for gain recognized under the preceding sentence.

(c) Definitions.—For purposes of this section—

(1) Common parent.—The term "common parent" means the common parent of the affiliated group which included the domestic corporation referred to in subsection (a)(1).

(2) Qualified excess loss account.—The term "qualified excess loss account" means any excess loss account (within the meaning of the consolidated return regulations) to the extent such account is attributable—

(A) to taxable years beginning before January 1, 1988, and

(B) to periods during which the domestic corporation was subject to an income tax of a foreign country on its income on a residence basis or without regard to whether such income is from sources in or outside of such foreign country.

The amount of such account shall be determined as of immediately after the transaction referred to in subsection (a) and without, except as provided in subsection (b), diminution for any future adjustment.

(3) Net amount.—The net amount of any item of income is the amount of such income reduced by allocable deductions as determined under the rules of section 954(b)(5) of the 1986 Code.

(4) Second same country corporation may be treated as domestic corporation in certain cases.—If—

(A) another foreign corporation acquires from the common parent stock of the foreign corporation referred to in subsection (a) after the transaction referred to in subsection (a),

(B) both of such foreign corporations are subject to the income tax of the same foreign country on a residence basis, and

(C) such common parent complies with such reporting requirements as the Secretary of the Treasury or his delegate may prescribe for purposes of this paragraph,

such other foreign corporation shall be treated as a domestic corporation in determining whether the foreign corporation referred to in subsection (a) is a member of the affiliated group referred to in subsection (a) (and the rules of subsection (b) shall apply (i) to any gain of such other foreign corporation on any disposition of such stock, and (ii) to any other income of such other foreign corporation except to the extent it establishes to the satisfaction of the Secretary of the Treasury or his delegate that such income is not attributable to property acquired from the foreign corporation referred to in subsection (a)).

SEC. 729. ETHYL ALCOHOL AND MIXTURES FOR FUEL USE.

Section 1910 of the Omnibus Trade and Competitiveness Act of 1988 is amended by adding at the end thereof the following new subsection:

"(c) Application of Amendments.—The amendments made by this section shall apply with respect to ethyl alcohol, and mixtures of ethyl alcohol, entered—

"(1) during the period beginning on August 23, 1988, and ending on the date of enactment of the Technical Corrections Act of 1988, and

"(2) after the date, if any, on which the Secretary of Agriculture, the Secretary of Energy, and the Secretary of the Treasury, acting jointly, submit to the Congress, and publish in the Federal Register, a written statement certifying that the domestic ethyl alcohol production industry is not fully meeting demand for ethyl alcohol in the United States and that the quantity of ethyl alcohol, and mixtures of ethyl alcohol, that would be imported into the customs territory of the United States free of duty by reason of the amendments made by this section is necessary to maintain adequate supplies of ethyl alcohol for consumers in the United States.".

SEC. 730. CERTAIN EMPLOYER PENSION CONTRIBUTIONS NOT INCLUDED IN FICA WAGE BASE.

Any State or political subdivision thereof which—

(1) has relied in good faith on any letter ruling of the Internal Revenue Service issued after December 31, 1983, maintaining that any amount treated as an employer contribution under section 414(h)(2) of the Internal Revenue Code of 1986 is excluded from the definition of "wages" for purposes of tax liability under section 3121(v)(1)(B) of such Code, and

(2) has not paid such tax based on such reliance,

shall be relieved of any such liability arising from a finding that such contribution was in fact under a salary reduction agreement for the period ending with the earlier of the date of the enactment of this Act or receipt of a notice of revocation of the letter ruling by the Internal Revenue Service.

SEC. 731. CARRYOVER OF POST-1987 LOW-INCOME HOUSING CREDIT DOLLAR AMOUNTS PERMITTED.

(a) IN GENERAL.—Section 42(h)(6) of the 1986 Code (relating to housing credit dollar amount may not be carried over, etc.), as amended by section 102(l)(14)(A), is amended by adding at the end thereof the following new subparagraph:

"(E) EXCEPTION WHERE 10 PERCENT OF COST INCURRED IN 1ST YEAR.—

"(i) IN GENERAL.—An allocation meets the requirements of this subparagraph if such allocation is made with respect to a qualified building which is placed in service not later than the close of the second calendar year following the calendar year in which ends the taxable year to which the allocation will 1st apply.

"(ii) QUALIFIED BUILDING.—For purposes of clause (i), the term 'qualified building' means a building—

"(I) more than 10 percent of the reasonably anticipated cost of the construction, reconstruction, or rehabilitation of which is incurred before the close of the calendar year in which ends the taxable year to which the allocation will 1st apply, and

"(II) which is a new building (or is treated under subsection (e) as a new building) when placed in service."

(b) CONFORMING AMENDMENT.—Section 42(h)(6)(B) of the 1986 Code, as amended by section 102(l)(14)(A), is amended by striking out "(C) or (D)" and inserting in lieu thereof "(C), (D), or (E)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts allocated in calendar years after 1987.

SEC. 732. EXTENSION OF AUTHORITY TO ISSUE MORTGAGE REVENUE BONDS AND MORTGAGE CREDIT CERTIFICATES.

(a) BONDS.—

(1) IN GENERAL.—Subparagraph (B) of section 143(a)(1) of the 1986 Code (relating to termination) is amended by striking out "December 31, 1988" each place it appears and inserting in lieu thereof "June 30, 1989".

(2) SPECIAL RULE.—The date contained in section 143(a)(1)(B) of the 1986 Code shall be treated as contained in section 103A(c)(1)(B) of the Internal Revenue Code of 1954, as in effect on the day before the date of the enactment of the Reform Act, for purposes of any bond issued to refund a bond to which such section 103A(c)(1) applies.

(b) CERTIFICATES.—Subsection (h) of section 25 of the 1986 Code (relating to credit for interest on certain home mortgages), as amended by section 113(a)(26) of this Act, is amended by striking out "for any calendar year after 1988" and inserting in lieu thereof "after June 30, 1989".

SEC. 733. REPEAL OF SECRETARIAL AUTHORITY TO PRESCRIBE CLASS LIVES.

Paragraph (1) of section 168(i) of the 1986 Code is amended—

(1) by adding at the end of subparagraph (B) the following new sentence: "Nothing in this subparagraph shall authorize the Secretary to prescribe class lives which are longer than the lives determined under subparagraph (A).", and

(2) by striking out subparagraph (D) and by redesignating subparagraph (E) as subparagraph (D).

SEC. 734. REVERSION OF QUALIFIED PENSION PLAN ASSETS.

(a) TEMPORARY INCREASE IN EXCISE TAX ON REVERSION.—

(1) IN GENERAL.—In the case of any employer reversion from a qualified plan received after July 26, 1988, and before May 1, 1989, section 4980(a) of the Internal Revenue Code of 1986 shall be applied by substituting "60 percent" for "10 percent".

(2) CASES WHERE NOTICE GIVEN.—Paragraph (1) shall not apply to any reversion pursuant to a plan termination if—

(A) with respect to plans subject to title IV of the Employee Retirement Income Security Act of 1974, a notice of intent to terminate required under such title was provided to participants (or if no participants, to the Pension Benefit Guaranty Corporation) before July 27, 1988;

(B) with respect to plans subject to title I of such Act, a notice of intent to reduce future accruals required under section 204(h) of such Act was provided to participants in connection with the termination before July 27, 1988; or

(C) with respect to plans not subject to title I or title IV of such Act, the board of directors of the employer approved the termination or the employer took other binding action before July 27, 1988.

(b) TIME FOR PAYMENT OF TAX.—

(1) IN GENERAL.—Section 4980(c) of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new paragraph:

"(4) TIME FOR PAYMENT OF TAX.—For purposes of subtitle F, the time for payment of the tax imposed by subsection (a) shall be the last day of the month following the month in which the employer reversion occurs."

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to reversions received on or after May 1, 1989.

SEC. 735. EXTENSION AND MODIFICATION OF TARGETED JOBS CREDIT.

(a) 3-MONTH EXTENSION.—Paragraph (4) of section 51(c) of the 1986 Code (relating to termination) is amended by striking out "December 31, 1988" and inserting in lieu thereof "March 31, 1989".

(b) EXTENSION OF AUTHORIZATION.—Paragraph (2) of section 261(f) of the Economic Recovery Tax Act of 1981 is amended by striking out "and 1988" and inserting in lieu thereof "1988 and 1989".

(c) REDUCTION IN PERCENTAGE OF CREDIT FOR SUMMER YOUTH EMPLOYEES.—

(1) IN GENERAL.—Subparagraph (B) of section 51(d)(12) of the 1986 Code is amended by striking out clause (i) and by redesignating clauses (ii) and (iii) as clauses (i) and (ii).

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to individuals who begin work for the employer after December 31, 1988.

The PRESIDING OFFICER. The Senator has 30 minutes in support of his amendment.

Mr. BRADLEY. I thank the Chair.

Mr. President, this amendment is a very simple amendment. It raises the rate from 14 to 15 percent on the earned income tax credit. It increases the income level at which the credit phases out from $19,400 to $19,820, effective in 1989. It increases the maximum credit from $875 to $978.

The increase in the earned income tax credit which, as everyone in this body knows, benefits the poorest taxpayers in America, is paid for by deleting most of the revenue-losing provisions that were added under the technical corrections bill as reported out of the Finance Committee on August 3, 1988. This is, with the exception of three provisions that help low-income families. We retained the low-income housing credit, the mortgage revenue bonds and we extend the targeted jobs tax credit for months to March 31, 1989.

Mr. President, the rationale for what this amendment proposes to do should be clear to any Member of this body. According to the August 1988 Census Bureau report, the income disparity between those who are well off in America and those who are now struggling, wider than in any year since the Census Bureau began collecting this information in 1947.

The top 20 percent of American families now get almost 44 percent of all the income. The bottom 20 percent of American families get less than 5 percent of all income.

Mr. President, between 1980 and 1987, the average income of the bottom one-fifth of families declined by $23. If you flip the coin over the same period, the average income of the top 5 percent of families increased by $23,000.

Mr. President, that is graphically illustrated by this income chart. As my colleagues can see, in 1980, there was a dramatic increase in the amount of income for the top 5 percent of the population. On average, for families above this income level, the top 5 percent of income earners, there was a $23,000 increase in income.

Mr. President, if we drop down from this dramatic line that moves up in income, $23,000 a family, down to the bottom 20 percent of income in this country—you cannot tell it from the line, but take my word—there was a decrease of $23 per family.

What the census data shows is that notwithstanding the real help that poor families got out of tax reform, we still have a long way to go. No one disputes the fact that the poor are getting poorer, no matter how hard they work. The census data also shows that the effectiveness of most Government benefit programs, like food and housing in lifting poor families out of poverty, declined in 1987 for the sixth time in the last 8 years.

In other words, there has been a double whammy on that bottom 5 percent of earners in this country. The antipoverty impact of these spending programs has diminished even as poverty income has become more severe.

Had these programs had the same antipoverty impact, in 1987 as in 1989, there would have been 517,000 fewer poor families with children, not 176,000 more, which is the case today; 176,000 more poor families.

Mr. President, it is simply unacceptable that in a country as prosperous as America, the number of families living in poverty continues relentlessly to increase. It need not be this way, and if the Congress would pass this amendment, we will be doing something about the problem. Not everyone will be helped by the roughly $1.6 billion increase in the EITC. It only helps working families, because that is a good place to start. If you work, you deserve to be helped, and this is an amendment to help low-income working families.

(Mr. SHELBY assumed the chair.)

Mr. BRADLEY. Mr. President, let us now consider how this amendment would be paid for. Who benefits from the provisions that my amendment deletes? I argue it is not the working poor who benefit from the provisions that I delete from the bill. So let us look at the beneficiaries of some of these provisions.

Let us start with the R&D tax credit. Like every Member of this body, I am for research and development. Dare I even say I am for the "c" word, increased competitiveness. But there is really a question as to whether this credit induces firms toward improved productivity, and I argue that the evidence is not compelling. But more importantly, we do not need to make a decision now about whether to extend the credit; the credit is good through 1988. We can consider it next year along with everything else in a deliberative and comprehensive manner. I argue that extending the credit for simply 6 months without even facing up to the problems everyone agrees are there is simply, shall I say, Mickey Mouse.

Do you know who benefits the most from extending this credit 6 months? The people who benefit the most from extending it for 6 months are the lobbyists who will be retained to come back in another 6 months to get it extended a little bit further.

Mr. President, I really think we need to deal with this issue with a permanent fix. If we deal with it only by extending it 6 months, 3 months, 8 months, it is only the lobbyists who will benefit.

I also point out that according to a Treasury study, in 1983, the latest year for which statistics were published, less than 1 percent of all corporate taxpayers claimed the R&D credit, and that over 50 percent of all R&D credits were claimed by fewer than 400 firms, all of which had assets of over $1 billion and all of which significantly benefited from the rate cuts in the corporate rates in the 1986 act. Those cuts went from 46 to 34 percent.

As we look at the R&D tax credit, we see that lobbyists benefit. We see that a number of large firms benefit, but certainly poor families struggling to buy clothes and put their kids through school and food on the table do not benefit from the R&D tax credit. So we eliminate it. We do not extend it for another 6 months. We say let us wait until next year and deal with the problem in a more permanent way.

What about energy credits. Well, Mr. President, three-quarters of the loophole for energy credits benefit firms with over one-half billion dollars in assets. Three-quarters of the benefits on the energy credits go to firms with more than a half-billion dollars in assets. So there are not many poor people there who benefit either.

What about educational assistance? Maybe that helps a part-time, short-order cook who wants to become a laboratory technician so she can give her family a better life. Maybe that person benefits but not likely. According to the data, the average beneficiary of this break has earnings well above the median for workers in this country. The bulk of the benefits probably go to administrative and professional employees.

Mr. President, I am all for education. I am all for professionals and managers improving themselves. It is a question of priorities. With the deficit where it is, money is scarce, and that means in my opinion the neediest should come first, not last.

What my amendment does is to take the working poor and give them the benefit of the income that we have raised in this tax bill. So if we have seen the R&D tax benefit does not benefit the poor, we have seen that energy credits do not benefit the poor, and educational assistance does not target the poor, what else do we eliminate?

We exclude the group legal services extension. On that issue, the data is not really very good, so we are guessing a little bit, and that is a problem in and of itself. But before we spend scarce dollars on tax expenditures, we ought to know who benefits.

Moreover, it appears that most people who are covered by one of these group legal plans are in the median income range, not well-off, clearly, but not poor either. And again I say that in this kind of circumstance our first priority should be for those whom we all know, as witnessed by the line on this chart, have not shared in the so-called economic recovery but are being increasingly left behind.

How about another provision that we eliminate? So-called section 861. I understand that this one is important to a lot of Senators, and I have supported it strongly in the past. But who are the beneficiaries in this kind of circumstance? They are 24 multinational corporations concentrated in 4 industries, all of which benefited from the 1986 corporate rate cuts. How much does this bill give to the 24 winners? About $200 million for a 4-month fix. That is right, $200 million for 4 months to 24 highly profitable, multinational corporations.

Mr. President, I do not begrudge them the help that they need with their R&D. Again, I am all for R&D. But I do not believe these 24 corporations are going to stop doing R&D if this provision is not enacted now. But again, if we are raising taxes, I believe our first priority ought to be to reduce the burden on the working poor, the people whose income has actually declined over the last 7½ years of this administration. While the well-off and the profitable corporations have prospered, it has been the lower 20 percent of the taxpayers in this country who have been left behind. As I have said before, we owe it to them and to our conscience to put them ahead of the tax breaks that are handed out in this bill.

Mr. President, those are some of the major extenders that my amendment would eliminate, and it is by eliminating those extenders that we will have the revenue to increase the earned income tax credit from 14 to 15 percent.

Now, what other things do we eliminate? We eliminate the section really on the so-called noncontroversial, low-cost proposals. First, Mr. President, these so-called noncontroversial, low-cost proposals add up to almost $200 million in lost revenue. Second, I am somewhat skeptical that anybody in this body, except for the Senator who proposed the specific provision, has the slightest idea what they do and I might even say whom they benefit.

Let me give you an example. Who can explain what "discharge of indebtedness income by rural co-ops on loan payments pursuant to OBRA" means? Or how about "move forward effective date of 1986 act provision regarding UBIT exemption for certain games of chance to October 22, 1986"?

Well, moving forward a date on games of chance costs $11 million, even if you do not know what it means.

Or take another one: "Certain tolerances permitted in the determination of wine excise tax." What does that mean?

In isolation, on the merits, these are, some of them, doubtless, worthy causes, good ideas in this bill, but why are we doing them now?

Why, in light of the overwhelming evidence, does everyone keep citing and wringing their hands about the poor here? Why are we not allocating some of these deficit scarce dollars to the working poor?

We know one thing. If we increase the earned income tax credit from 14 to 15 percent, thereby increasing the tax credit dollars from $875 to $978, every dollar of that credit will go directly to the taxpayer. It is the best, the fairest, the most effective way to help low-income families that Congress has yet devised. It has bipartisan support because everyone knows the earned income tax credit is a good program.

Just a couple of weeks ago, for example, the distinguished Senator from Minnesota, Senator BOSCHWITZ, was singing the praises of the earned income tax credit and urging the Senate to support an increase. Today we have another opportunity to do just that. This does not adjust the earned income tax credit for family size as the Senator from Minnesota proposed, however. We should do that. Unfortunately, to do that costs a lot more than the $1.5 to $1.6 billion that the Senate Finance Committee has raised in new taxes. I hope we will do that next year. But when you are living in poverty, $1.5 billion devoted to the earned income tax credit is real money. So let us not make the best enemy of the good, and let us take this opportunity to translate rhetoric into reality.

We all talk about poor people. We all agree that too many people live at or below the poverty line. We all agree that their numbers are increasing. We say we want to do something about it. Well, Mr. President, this is our chance.

For those Senators who have various provisions in the bill, I mean I support some of the provisions in this bill, and next year when we have to deal with revenues and expiring provisions and so on, I might even vote for some of the things that I am moving to strike today.

But it is not the time or the place to be raising taxes and changing tax laws. If we are going to raise $1.5 billion in taxes, as this bill will do, then let us give the tax break to those people who are working, those hardworking families for whom the American dream is fast becoming a nightmare.

Mr. President, this is a very simple amendment. It is an amendment that takes the $1.5 billion that this bill raises in revenues and simply increases the earned income tax credit from 14 to 15 percent. It gives every Senator who has been talking about helping poor people an opportunity to do so in the most effective and direct way that we have in the Tax Code.

Let us just remind ourselves once more about what has happened since 1980. Since 1980 the top 5 percent of the population has increased their income $23,000 per family. That is what this line means, an increase of $23,000 per family.

If you drop to the bottom 20 percent of the population, you see that the line is flat and trending down because every poor family had an average decline of $23 during the period 1980 to 1987. This amendment is aimed to rectify in some small way that move by spending $1.5 billion in tax revenues to increase the earned income tax credit from 14 to 15 percent.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, I yield myself such time as I may need.

Much as I hate to quarrel with my good friend from New Jersey, who is——

The PRESIDING OFFICER. The time is controlled by the Senator from Montana.

Mr. BAUCUS. Mr. President, I yield to the Senator from Oregon as much time as he may consume.

Mr. PACKWOOD. I thank the Chair. As much as I hate to quarrel with my good friend from New Jersey, who has a right and left arm on tax reform, I think this is an inappropriate amendment at this time, and especially in some of the areas in which he takes money to pay for it. He talks about educational assistance; that we are only extending this expiration to December 31, 1988; and it can wait until next year. First, it expired December 31, 1987, and has been expired all this year. All of the employers and all of the students who are benefiting from employer-paid education are wondering whether or not they are going to have the exemption this year.

Here is the way this works. An employer sends an employee to school. It is not normally the Harvard Business School for a masters in business. First, the annual amount that an employer can pay is limited to $5,250. And you are not going to get a year at Harvard Business School for that. The great bulk of the money goes to community colleges.

The employer will send an employee there, probably a nighttime course, a couple of times a week, costing $200, $300, $400, or $500 a year, to make that employee a better employee and a more productive employee. Usually you are talking about people who have gotten their high school, probably no college or very little college, and they are trying to move up from a job that pays $5 an hour to one that maybe pays $6.25 an hour.

This is hardly an amendment designed for the rich, although the total revenue involved is $311 million. If you eliminate it, you can pick up $311 million all right, but do not worry about IBM and its engineers or IBM and its candidates for masters degrees. They will pay for those candidates in any event. This is going to hit Sally and Joe who are working at the electronics company, working in the lumbermill and who would like to go to the community college and upgrade themselves a bit. The employer says "Sally, Joe, I will send you down. You can learn how to be a patternmaker rather than a janitor." That is basically what this benefit is for.

Next he aims at group legal. These are collectively bargained agreements. I do not know of any that are not collective-bargaining agreements. It is limited to agreements that cost $70 a year or less. I do not want to mislead anybody. But you are not going to get a high-priced Wall Street lawyers for a plan that pays $70 a year maximum.

This is again for workers who usually cover common legal actions that a normal worker cannot afford—wills, domestic relations, things of this nature involving a relatively slight amount of money, and the employer cannot afford $100, $125, $150 per employee for a lawyer.

These plans have worked out very well but to say they benefit the rich or even barely the middle class is an overextension. These benefit average workers for whom you can buy a group legal policy for $70 a year or less. You just are not going to get antitrust benefits, blue sky benefits, and advice on bonds and stocks for that price. In fact, the plans are normally quite limited as to what they cover, and what you and I would call the everyday legal problems of the everyday workaday world of the average citizen.

Then he gets rid of the solar, geothermal, and ocean thermal credits, and I guess I ask how soon do we forget? These were credits put in in the midseventies when we had the energy crisis, and we wanted to encourage people to use solar, geothermal, or ocean thermal current energy. They had been significantly whittled down and whittled down. Now they will expire unless we extend them.

I guess we are all relatively fat and happy now. Oil prices are down, gasoline prices are down from where they were, and we do not think much about it. We do not realize we are now still importing close to 50 percent of all the oil that we use and if OPEC ever gets their house in order again—they have not for the last several years. They have been haggling with each other over limiting production. So long as they cannot limit production and so long as they produce more than the world needs, the price will stay down. But if they ever get their house in order, we are going to face again the gasoline lines of the seventies. We are going to face again oil at $30 or $35 or $40 a barrel, and we are going to wonder why we wasted the time trying to find solar or geothermal or other answers to the production of energy. These credits help all. Senator BRADLEY's amendment would eliminate it.

The R&D credits, both as to the extension of the regular credit in this country and how we allocate them overseas—here, again, you have the argument made that these credits are going to expire. What is our plan next year? Do we let them expire on a promise that we will do something about them next year, or do we extend them somewhat so that businesses will know they can count on them?

Time and time again, in dealing with taxes, we have had more complaints from citizens in this country about the instability of taxation rather than the level of taxation: "Why do you keep changing the law? Why can't we count on it for 1, 2, 3, or 5 years not to change?"

All we are trying to say to business is: "We want to encourage research and development. We think this is a good idea. Will you please do it? Here is what the law will be; and if we are going to change it, we will change it prospectively, so that you will know what it will be before."

Those are the kinds of things the Senator from New Jersey aims at. I think the programs we have are good. The bulk of the money goes to low-income workers, some to middle-income workers. The question is, are we working to eliminate all these provisions, most of which I think any normal person will say are good, in exchange for the provisions of the Senator from New Jersey? Some may favor the provisions of the Senator from New Jersey. The Senate will have to make its choice. I think we should stay with the provisions we have in the bill, and I hope the amendment will be defeated.

The **PRESIDING OFFICER**. Who yields time?

Mr. **BRADLEY**. Mr. President, I have heard the arguments of the distinguished ranking member of the Finance Committee, whom I respect a great deal, and I will try to respond to one or two of his points.

Again, the purpose of the amendment I have offered is to take the money that we have raised from this tax bill, roughly $1.6 billion, and spend it in a way that benefits those people in our society who have not benefited at all from the last 8 years.

It is an attempt to take that $1.6 billion and give it to people in the bottom 20 percent of taxpayers in this society who, over the last 8 years, have seen their income decrease by $23, versus the top 5 percent of income earners in this society, who have seen their income increase $23,000 per family. If we do that, we have eliminated the extenders I have enumerated and the special provisions in section 3.

That distinguished Senator from Oregon argues that some of those extenders benefit all income levels. Well, I might grant to him that there might be somebody in the bottom 20 percent who has some advantage from an educational assistance or some advantage from group legal. But if you are going to spend the dollars most efficiently to help the people in the bottom 20 percent, the way to do that is to increase the earned income tax credit. All the revenue goes to that income level.

Specifically, the Senator referred to the educational provision, and I should like to cite a study by the American Society of Training and Development, done in May 1985, which said that the average beneficiary of educational assistance had earnings well above those of the median worker.

Obviously, there were some people in the lower income levels who received educational assistance. But the question is, what was the value of the educational assistance that was given to people at the low-income level versus the value of the educational assistance that was given to people with much higher incomes? The number that is provided is that for incomes for $15,000 and below, the average amount of educational assistance per participant was $400. Meanwhile, for incomes of $50,000 and above, the average amount of assistance per participant was $1,710.

Mr. President, it is true that some people at the lower end do benefit from things like educational assistance and group legal, but it is not true that they benefit in an equivalent manner or amount as people at the upper end of the scale.

So, again, the amendment I have offered would take $1.6 billion that we raise from major multinational corporations and that we have placed in the code as extenders for 6 months, primarily to keep things alive, in my view, for the lobbyists to be employed another 6 months, so that they will be back in another 6 months to argue that we extend that further. Let us not extend 6 months and then 6 months next year and decide what we want to do on a permanent basis about R&D, group legal, or educational assistance.

The reason they were extended in the tax reform bill for only 6 months, the reason they were sunsetted, was that Congress had some reservation about it. So, rather than extending another 6 months and another 6 months and another 6 months, which is the "permanent lobbyists' employment act," why do we not decide, once and for all, what we want to do about it?

That is why I have argued that with this tax bill, which raises $1.6 billion, we should simply take that money and raise the earned income tax credit in a way that would benefit the bottom 20 percent of the taxpayers in this country, the bottom 20 percent that have not benefited from the last 8 years—indeed, have seen a decline in income and a decline in overall assistance.

Mr. President, that is the argument. I have repeated it several times so that those who are listening on the boxes in the offices would be able to understand the choice, and I would hope that the Senate would support the amendment.

I inquire of the distinguished chairman of the subcommittee: This amendment would be disposed of as the first amendment to be voted on at 2 o'clock. Is that correct?

Mr. **BAUCUS**. I yield myself 2 minutes to answer the question of the Senator from New Jersey.

Mr. President, that is correct. There is an informal understanding or agreement that the first vote on this bill will occur no later than 2 o'clock. If the Senator offers his amendment now, as he has, and if there is a recorded vote on the amendment, more than likely it will be the first vote, and it can be arranged for 2 o'clock.

Mr. **BRADLEY**. I thank the Senator.

Mr. President, I ask for the yeas and nays.

The **PRESIDING OFFICER**. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. **BRADLEY**. Mr. President, how much time remains?

The **PRESIDING OFFICER**. The Senator from New Jersey has 2 minutes and 29 seconds.

Mr. **BRADLEY**. Mr. President, I would simply say we have heard a lot of rhetoric on the floor of the Senate and on the campaign trail about poor people and about the need to help poor people. The candidates of both parties have been out talking about how it is our job that we have to help everybody, the rising tide lifts all bodies.

There are 20 percent of the taxpayers in this country who have been left behind. This amendment would go directly to assist them.

We have had the distinguished Senator from Minnesota and others on the other side of the aisle strenuously arguing for an increase in the earned income tax credit.

Precisely what this amendment does is increases the earned income tax credit.

A couple weeks ago we had a debate about minimum wage. The people on the other side said we do not want an increase in the minimum wage. We want an increase in the earned income tax credit.

Mr. President, this is an opportunity to vote for an increase in the earned income tax credit to help those bottom 20 percent of the taxpayers of this country who have been left behind by the last 8 years, and this is an opportunity for we as politicians to make good on our rhetoric.

The PRESIDING OFFICER. Who yields time?

The Senator from Montana.

Mr. BAUCUS. Mr. President, I yield 5 minutes to the Senator from Arkansas.

The PRESIDING OFFICER. The Senator from Arkansas is recognized for 5 minutes.

Mr. PRYOR. Mr. President, I hope I will not use all the 5 minutes. I hope to yield some back to the distinguished chairman, Senator BAUCUS.

Let me say, first, I think all of us in the Senate would love to see the bottom 20 percent of the population benefited to the degree that the Senator from New Jersey wants to help them by increasing the earned income tax credit. However, what we would like to do, what we want to do, and what we desire to do may be somewhat tricky if we are thinking of a way of how to accommodate this wish and this noble desire.

I applaud the Senator from New Jersey for bringing this matter to the floor of the Senate today. I also remind my colleagues that we have not held a hearing on this issue in the Finance Committee this year.

Second, we do not know truly how the Bradley amendment would affect the overall tax policy and the tax structure.

Third, how does the Senator from New Jersey plan to pay for helping the bottom 20 percent of the income strata?

It is very simple. He repeals certain sections of the tax corrections bill which is now before the U.S. Senate. For example, those of you from agriculture States across America have heard no praise whatsoever, only condemnation for something called the heifer taxes.

The distinguished Senator from New Jersey, although he may not realize it, is going to repeal and knock out and extricate from the technical corrections bill the so-called heifer tax. It is gone. And we will see the heifer tax remain, and that will be one of the ways the distinguished Senator wants to pay for the earned income tax credit.

There is another issue. How else is he going to pay for it? He is going to be repealing the research and development section of the technical corrections bill. This is going to work adversely to what we think the policy has been clearly enunciated to this country that we must increase research and development if we are to remain competitive.

As I understand it—perhaps the Senator from New Jersey could illuminate me or educate me—the Senator's amendment would repeal the R&D credit that is today in the technical corrections bill before the U.S. Senate.

Fourth—and the main reason I take this floor at this time—one-third of the technical corrections bill is the so-called taxpayers' bill of rights where we have held a multitude of hearings, where we have worked with the American Bar Association, the CPA's, the U.S. Chamber of Commerce, NFIB, the National Taxpayers Union, and who knows how many other organizations—70 or 80 perhaps—who have endorsed the taxpayers' bill of rights.

I say with all due respect to the Senator from New Jersey, if he wants to help the bottom income strata, that 20 percent in the bottom income, he is repealing the taxpayers' bill of rights to protect that portion of our population.

The taxpayers' bill of rights does not help just the lower 20 percent or the upper 20 percent. The taxpayers' bill of rights is addressing itself to an injustice that has been building up for four decades, and that is the abusive nature of the Internal Revenue Service in dealing with the small independent business man and woman, with the small and medium taxpayer, and the Senator from New Jersey, if his amendment prevails, is going to repeal one-third of the technical corrections bill, the taxpayers' bill of rights for which we today have 72 cosponsors in the U.S. Senate, Democrats, Republicans, liberals, conservatives, with 2 years of hard work to get the taxpayers' bill of rights to the floor of the Senate, over to a conference tomorrow between the House and the Senate conferees. This work is going to be all for nought. It is going to be washed down the drain. It is going to be gone and perhaps gone for good if we allow the amendment of the Senator from New Jersey to prevail.

In conclusion, Mr. President, I may well get on the floor of the Senate next January or February or March, and I may say to my friend from New Jersey this is a splendid approach and we need to increase the earned income credit. However, at this time, only 3 or 4 days before the adjournment of the 100th Congress, this is absolutely the wrong time to do it.

Mr. President, I yield the floor and I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. BAUCUS. Mr. President, I yield myself as much time as I may consume.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, the Senator from New Jersey offers a very sympathic amendment. We are sympathetic with the plight of low-income Americans, particularly low-income working Americans who have children.

There is no doubt that all of us in the Senate on both sides of Capitol Hill and in fact all of us in Government are attempting to find ways to relieve the burden that faces low-income Americans, particularly low-income Americans who have children to support. And the Senator from New Jersey has offered a way to help address that. That is by raising the low-income tax credit. It is very sympathetic proposal.

The Senator from Arkansas, the Senator from Oregon, and I agree that as sympathetic as this effort is, this is not the time to do it.

The reasons it is not the time to do it are severalfold: first, we are in the last week of this Congress attempting to pass a technical corrections bill to straighten out a lot of the contradictions, a lot of the ambiguities, and a lot of the problems that were created in the 1986 Tax Act and which have to be cleared up so that American taxpayers know what the law is.

There are many minor mistakes, many technical corrections in the 1986 Tax Act which we have to clear up this year.

We have been working on this now for 2 years. Now is the time to finish the job.

In addition, this technical corrections bill closes three major tax loopholes and devotes that revenue to extending current programs, that is, they are not new programs. The R&D tax credit is not a new program. Employer-provided educational assistance is not a new program. Section 861 is not a new program. Group legal services is not a new program.

We are not using the revenue from loophole closers for new programs. We are using it to extend current programs that are very meritorious.

The reason we are faced with extending these programs is that the provisions were sunset, that is, they were enacted for a certain period of time, and there is a date when they are cut off unless extended.

We asked ourselves and the committee asked itself should we continue and extend those provisions?

The very resounding answer is "yes." It is proper to continue these provisions.

Certainly, the R&D tax credit and section 861 are basic provisions which, in fact, do help make America competitive. The fact is that American R&D as a percentage of GNP, that is, civilian R&D, is lower than the R&D spending by our trading partners—Japan and West European trading countries. That is the percentage of gross national product spent on R&D by our trading partners is higher than it is in America. And that is with current law.

What the Senator proposes to do is repeal the R&D tax credit, repeal section 861, and put Americans in an even worse competitive position than they are in today.

I do not think that is what we want to do. In fact, I am quite confident that is not what we want to do.

In fact, it is clear to me if we continue 861 and the R&D tax credit they probably will create more jobs for Americans, including the very people the Senator from New Jersey is attempting to help and we are all attempting to help. We want to make America competitive and the Senator's proposal will not make America competitive by any stretch of the imagination.

In addition, the Senator from Arkansas very ably points out that the Senator from New Jersey would repeal the taxpayer bill of rights, the very provision that is in the law to help all Americans deal with the IRS on a more equal basis; certainly lower income Americans do not have the resources to hire high-priced legal talent.

We have to have the taxpayers' bill of rights, particularly so middle-income Americans and low-income Americans can deal with the IRS on those infrequent occasions when agents get a little high-handed.

In addition, the Senator from New Jersey, in his amendment, repeals a host of provisions which are minor in their costs but which are very important to individual groups of Americans. One is the artists' and authors' capitalization provision. The Senator from New Jersey repeals that. He wants to repeal a provision in this bill which allows artists and authors to expense their costs instead of requiring them to capitalize them.

The list goes on and on and on but with provisions which are very, very meritorious that we should enact that the Senator would ask us to repeal.

It is also important to point out that the 1986 Tax Act went a long way to help low-income Americans. First, we took 6 million lower income Americans off the tax rolls. In addition, we adopted lower rates to help lower income taxpayers. Third, we transferred about $120 billion from individual taxpayers to the corporate taxpayers. There was a shift of about $120 billion over 5 years from individuals to corporate America. We did this in the 1986 Tax Act.

So this Congress has gone a long way to help lower income Americans. We are now in the middle of a technical corrections bill. This is not the time to basically gut the bill, not even if it is gutted to address a problem that at some other time must be addressed.

I think it is more important to address this problem next year in the next tax legislation that this Congress faces. For example, what is the best way to provide benefits to lower-income Americans? Is it to somehow change the definition of family size? Is it somehow to perhaps raise the personal exemption? There is a host of ways that we should look at next year to see how to deal with this along with the other problems we are going to face.

So as much as the Senator raises a sympathetic amendment, this obviously is not the place and it is not the time to do this. It very well may be that next year we will not increase the income tax credit. We may find some other ways that are more appropriate after we have committee hearings and after we have discussed it and focused on this issue.

So, for all those reasons, I hope the Senate will not agree to this amendment. At the appropriate time, I will move to table the amendment.

I am prepared now to yield back the remainder of my time if the Senator from New Jersey is prepared to yield back his time.

Mr. BRADLEY. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from New Jersey has 1 minute.

Mr. BRADLEY. Mr. President, I ask the distinguished chairman if he would yield me another minute or 2 just to respond to the points he has made.

Mr. BAUCUS. I am very happy to yield 2 minutes to the Senator from New Jersey.

Mr. BRADLEY. Mr. President, let me first say that it is true, we eliminate the provision for authors and artists. That was a very difficult decision for me because I happen to strongly support what we have done in the bill with regard to authors and artists, because I feel there was a fundamental inequity done in the 1986 act.

But it is a choice: are you going to help them or are you going to help the bottom 20 percent of the population? In this case, I decided that the priorities should lie with those 20 percent of the taxpayers who received no benefit out of the last 8 years.

The distinguished Senator from Montana has argued that, well, the R&D tax credit helps the bottom 20 percent. Well, to argue that the tax credit that helps the 24 large multinational corporations really helps the poor is to argue the ultimate trickle down. Ultimately, maybe that is true. The rising tide lifts all boats. But the rising tide in the last 8 years has left the bottom 20 percent of the population on the shore and it has not helped them at all.

I would say, in addition, if there was a rallying call for this—and the distinguished Senator from Arkansas lamented that I eliminated the heifer tax provision—if there was a rallying cry for this amendment, it would be: people, not cows. And, essentially, it is true. We eliminate the heifer tax, but we take the money for that and we give it to the bottom 20 percent of the population.

Then the final argument that all the opponents of this amendment have offered is that it is the wrong time: It is the wrong time to do this amendment. It is on a tax bill on the floor when all these others things have been in the bill and everybody has agreed to it and along comes this amendment.

I would say, Mr. President, it has been the wrong time to help the bottom 20 percent of the taxpayers in this country for the last 8 years. And the way you can see it has been the wrong time is because they have received no benefit. They have lost $23 a family over the last 8 years while the top 5 percent has gained $23,000 per family.

So, Mr. President, if this is the wrong time, when will the right time be? Mr. President, I would agrue that this is the time. I hope that when we get to the vote, the Senate will vote what they have been saying—that we want to help the poor.

Mr. President, I ask unanimous consent that a statement by the Center on Budget and Policy Priorities be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BRADLEY AMENDMENT TO RAISE THE EARNED INCOME TAX CREDIT PHASE-IN RATE TO 15 PERCENT

Senator Bradley plans to offer an amendment to the Technical Corrections Act of 1988 to modify the Earned Income Tax Credit. This action would be taken to compensate for the effects of the rise in the FICA payroll tax rate which took effect this year.

BACKGROUND

The Earned Income Tax Credit was designed to lower the tax burden on low income working families with children by offsetting their payroll tax burdens. The credit is available only to poor people who work and support dependent children in the household. The EITC enjoys strong bipartisan support and is widely viewed as one of the most effective and well targeted mechanisms to assist the working poor. The Tax Reform Act of 1986 expanded the Earned Income Tax Credit (EITC) and indexed it for inflation.

The EITC provides a refundable tax credit at a rate of 14 percent for the first $6,250 of earned income, up to a maximum credit of $875. From $6,250 of income to $9,840 of income the credit remains the same—$875. For each dollar earned above $9,840 the value of the EITC is phased-out at a rate of 10 percent so that a person with income of $18,590 (or above) receives no EITC. Thus, a family with $3,000 of income receives an

EITC of $420, a family with $8000 of income receives a credit of $875 (the maximum), and a taxpaying family with $11,500 of income qualifies for an EITC worth $709 ($875-$166).

When the EITC was established in 1975, it was designed primarily as a means of offsetting the regressive nature of the FICA payroll tax on these families. It was this purpose—of offsetting the FICA tax—that dictated the choice of 14 percent as the phase-in rate for the credit in the 1986 law. Most economists believe that low wage employees actually bear the brunt of both components of the payroll tax—the employee's and the employer's share (since employers calculate their total employee costs in setting wage levels). As such, effectively offsetting the FICA tax requires offsetting the combined FICA rate. The FICA tax rate in 1986 was 7.15 percent, resulting in a combined rate of 14.3 percent. Accordingly, 14 percent was chosen as the appropriate rate for the EITC in that year.

However, on Janaury 1, 1988 the FICA tax rate rose to 7.51 percent, resulting in a combined rate slightly above 15 percent. The EITC phase-in rate needs to be raised to 15 percent if it is to continue to offset the total (employer plus employee) FICA payroll tax.

BRADLEY AMENDMENT

Senator Bradley's amendment to the Technical Corrections Act would increase the phase-in rate of the EITC to 15 percent to accomodate the 1988 increase in the payroll tax. To pay for this EITC adjustment, Senator Bradley's amendment would strike most of the parts of the Technical Corrections Act that extend certain expiring provisions in the federal tax code. Two such expiring provisions which provide assistance to low income individuals—the mortgage revenue bond and tax credit for low income rental housing—would not be struck from the legislation. Savings from the costs of striking the other extension provisions would provide the necessary funds to cover the costs of the EITC amendment.

The provision would ensure that the EITC continues its historic function of effectively offsetting regressive FICA payroll taxes for working poor families.

Mr. **BRADLEY.** I thank the distinguished Senator from Montana for yielding me the additional 2 minutes.

The **PRESIDING OFFICER.** Who yields time?

The time for the Senator from New Jersey has expired.

Mr. **BAUCUS.** Mr. President, for all the reasons that we discussed, I think the appropriate time to consider this issue is when we have the time to consider the wide range of options as to how to best deal with the tax liability of low-income Americans, and that obviously will be when we take up a tax bill sometime next year. It is certainly more appropriate than coming up with an idea here on the floor that guts the technical corrections bill. Let us get on and pass the technical corrections bill and then deal with the question the Senator raises at the appropriate time next year.

Mr. President, I move to table the amendment and I ask for the yeas and nays.

The **PRESIDING OFFICER.** Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. **SANFORD.** Mr. President, I rise to state my reluctant opposition to the Bradley amendment. I certainly support the goals of the Bradley amendment—to reach the lowest income taxpayers. Indeed, we must consider new approaches to assist this group of taxpayers that is so consistently left out of updates tax reforms and needed tax assistance.

However, I do not believe that we should address this issue as part of this Technical Corrections bill, nor do I think it is appropriate to repeal the research and development tax credit, the educational assistance provisions, the targeted jobs tax credit, or a number of the other expiring tax provisions that the Bradley amendment would affect. Many of these provisions provide the key to continuing important research, job training, and educational assistance programs which keep our nation economically competitive.

Let me touch on just two of the provisions which the Bradley amendment would affect. First, the Bradley amendment would eliminate the research and development tax credit and the basic research tax credit. These two credits are important tools for increasing national research and development, national innovation, and national productivity. They encourage productive research cooperation between private industry, universities, and the Government.

Corporations, today, lack the resources and the long-term focus to support crucial research and development. This situation is compounded by a growing threat from international research and competition. If we are to bring back a strong research base within America, we must provide tax-based incentives to the Nation's research community. We must act now to prevent the expiration of these two important tax credits which stimulate domestic research.

Second, the Bradley amendment would eliminate section 127, the Employer Education Assistance Program. Again, this important program would expire without the extension in the technical corrections bill. This program has aided thousands of Americans to further their education, to advance their careers and to fulfill their potential. The provision has encouraged employers to further the education of their employees through community college classes, advanced degree programs, and other basic educational advancement efforts. This is a goal which I support and which I believe our tax code ought to continue to support.

While I share the Senator from New Jersey's concern that we must do more to aid the lowest income taxpayers, I believe that we must not sacrifice these important provisions that affect the welfare of all Americans.

Mr. **DURENBERGER.** Mr. President, I think there is not a single Member of the Senate who would not like to increase the earned income credit for low-income workers. Just 2 years ago, we voted to increase the credit by nearly 50 percent and, for the first time, indexed the credit for inflation. I would certainly like to see the credit raised again to help low-income workers.

However, Mr. President, the amendment offered by the distinguished Senator from New Jersey, Senator BRADLEY, could, in fact, hurt low-income workers because the amendment would repeal provisions in the tax code that encourage American companies to maintain world competitiveness and to keep crucial research jobs in the United States.

Are employees of Cray Research, Control Data, 3M, or any other American company better off if their companies continue to expand their research and development [R&D] efforts in this country to meet tough foreign competition? Or are they better off if they close their American R&D research centers and move those jobs abroad? That's one of the choices this amendment provides.

This amendment repeals the important taxpayers bill of rights which injects a measure of fairness and balance in the relationship between the IRS and the ordinary taxpayer. I think it is important to remember that the main beneficiaries of the taxpayer bill of rights will be the ordinary American citizen who gets harassed by the IRS, not the wealthy taxpayers who can afford high-priced legal counsel.

This amendment also reinstates the so-called "heifer tax" which has caused inordinate confusion and complexity for the farmers in my State, especially our dairy farmers.

And finally, this amendment repeals the provisions in the bill which allow companies to provide educational assistance funds to their employees. For many of the beneficiaries of this provision, especially low-income employees who benefit from the earned income credit, this program is their only hope to move up the economic ladder.

Mr. President, the earned income credit is certainly a worthwhile concept. I am sure that the Senate Finance Committee will reexamine the credit next year and, after hearings, decide whether the credit should be raised and then decide what the best mechanism to fund an increase would be. This amendment certainly does not provide an appropriate funding mechanism.

RIGHT ISSUE, WRONG APPROACH

Mr. BUMPERS. Mr. President, I strongly support the goal of the Bradley amendment.

Low-income taxpayers have been victims of the Reagan-Bush tax policy.

They have received none of the benefits of the tax cuts while wealthy taxpayers have received tens of billions of dollars in tax cuts.

Until we adopted the tax reform legislation, low-income taxpayers were worse off than they had been in 1980. Taxpayers living below the poverty level were forced to pay taxes. This was an outrage and we rectified this problem in the 1986 bill.

Now, Senator BRADLEY wants to provide some much deserved and much delayed tax relief to low-income taxpayers.

Under almost any circumstances I can imagine, I would support this amendment.

I have championed the cause of tax relief for the poor throughout my Senate career.

I supported the Mitchell amendment during the tax reform debate and sponsored the Kassebaum amendment last year. Both would have provided special tax benefits to low-income taxpayers and increased the progressivity of the tax system.

But, the Bradley amendment takes the wrong approach to financing this tax relief. I could support it if it financed this tax relief by an adjustment in the top tax bracket for wealthy individuals, but I cannot support it when it is financed by repealing many tax provisions which are not primarily used by wealthy individuals.

The Bradley amendment takes away tax benefits from too broad a range of taxpayers. It does not simply increase taxes on those taxpayers who are best able to pay for tax relief for the poor.

I am very reluctant to oppose the Bradley amendment, but that is what I must do. I hope to work with Senator BRADLEY to fashion another approach to this same goal in the next Congress.

Mr. BOSCHWITZ. Mr. President, I rise today to congratulate my colleague, the Senator from New Jersey, for his amendment proposing an expansion of the earned income tax credit from 14 percent to 15 percent. While I applaud his proposal, I must reluctantly oppose him because of the manner in which he proposes to pay for it.

As my colleagues know, I am a strong supporter of the earned income tax credit and have a bill which provides meaningful changes to the current program. My bill, S. 2658, would increase the maximum credit and tie it to family size. For example, my bill would increase the maximum credit available to a taxpayer with one child from $913 to $1,000 in 1989. Further, the credit would be enlarged for families with 2, 3, or 4 children, providing a maximum credit of $1,500, $2,000, and $2,500, respectively. This second change would be a significant boost for families with more than one child.

The proposal before us today differs from mine in two important respects. First, it does not raise the maximum credit as much as my proposal would. Second, it does not take into account family size, one of the most important reforms in my bill. The result is a far more limited reform of the EITC.

While the Senator from New Jersey offers an important but limited increase in the EITC, he strikes some very important provisions to pay for it. Specifically, the Senator would strike language authorizing the taxpayer bill of rights; he would not repeal the burdensome capitalization requirement for artists, writers, and livestock producers; and he would not extend the targeted jobs tax credit, the employee education exclusion, the mortgage revenue bond program, and the research and development tax credit. These are very important programs that help millions of taxpayers, many of them low-income taxpayers.

By canceling important corrections in the Tax Code to pay for a slightly modified EITC, this amendment would be very destructive to the bill before us while providing limited help to low-income taxpayers. For that reason, I must reluctantly oppose the amendment offered by my friend from New Jersey. I invite him to work with me to ensure prompt consideration of my bill next year in the 101st Congress.

Mr. President, I yield the floor.

Mr. HEINZ. Mr. President, I wish to make a few comments regarding the Bradley amendment to increase the earned income tax credit. While I believe that increasing the earned income tax credit is a worthwhile goal, I cannot support the revenue-raising proposals used to pay for this amendment.

Employer-provided education assistance has proved to be one of the most effective tools we have for encouraging education in this country. Senator BRADLEY would strike the provision in the Finance Committee amendment which extends the provision through 1988. We should be making the provision permanent, not striking it.

We are all aware of the significant increases in the cost of tuition, and have great concerns over the future affordability of college education. This body, last week, voted to provide a tax exemption for interest from U.S. savings bonds used to pay for higher education. That provision helps parents in the future; employee education assistance helps provide education today.

I want to review the history of employee education assistance. Section 127 has been a part of the cost since 1978. It was enacted to eliminate the confusion created by a prior Treasury regulation, which required employees to demonstrate that the educational assistance provided to them by employers was strictly job related. Otherwise the benefits would be considered taxable income.

This regulation, in effect, discriminated against lower level employees, who had more narrowly defined job descriptions. Top personnel could justify almost any course—English, math, psychology, computers, economics, et cetera—these courses would relate to their performance as managers. However, how does a secretary or a production worker justify these courses and still not have their tuition taxed.

Employer education assistance should never have been allowed to expire. However, we all know the "rules" we operated under last year as a result of the "budget summit." However, hundreds of companies continued with their education program. They were relying on us to extend the provision. How do we tell the companies, as well as their employees, that they guessed wrong, and we were not serious about education?

The Bradley amendment also cuts back on the targeted jobs tax credit extension. The House bill extends the provision for 2 years, and the Senate bill extends the provision for 6 months. Now Senator BRADLEY wants only a 3-month extension. We should be making the provisions permanent, not extending it for only 3 months.

While the earned income credit helps the poor, TJTC helps them more. It gives employers an incentive to hire the economically disadvantaged. I have held numerous hearings on TJTC over the last 6 years. I heard from individuals who told me that without TJTC they would not have found a job. Increasing the earned income credit clearly does not help the unemployed.

Mr. President, while I support Senator BRADLEY's efforts to increase the earned income credit, I cannot support this amendment. As a member of the Senate Finance Committee, I will work with Senator BRADLEY to find a way to pay for increasing the credit. I urge my colleagues to vote against this amendment.

Mr. BAUCUS. Mr. President, I believe that it would be appropriate to ask unanimous consent that the vote on this amendment occur at 2 o'clock.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3641

(Purpose: to express the sense of the Senate on the tax treatment of expenses relating to adoptions)

Mr. HATCH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Utah (Mr. HATCH) proposes an amendment numbered 3641.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following:

"SEC. . Tax Treatment of Adoption Expenses.—It is the sense of the Senate that—

(1) whereas the most important resource in America is its children;

(2) whereas there are at least 36,000 children in America legally free for adoption and waiting;

(3) whereas the actual costs associated with legal adoptions can be as high as $15,000;

(4) whereas family wealth should not be a determinative factor in adopting a child;

(5) whereas more favorable tax treatment of adoption expenses will move thousands of children into permanent homes; and

(6) therefore the tax laws of the United States should provide for the deductibility of all or part of the costs of adopting a child.

Mr. HATCH. Mr. President, I am today proposing an amendment to S. 2238 expressing the sense of the Senate that families formed through adoption should receive the same tax treatment as all other families. This amendment is based on S. 1733, the Fairness for Adopting Families Act, a bill I introduced with other Senate and House colleagues who share my commitment to fostering adoption in our Federal and State laws. Today, the Senate can stress its support for helping families with the high costs inherent in adopting children. We can help those families who will provide permanent, loving homes for the 36,000 children who are legally free for adoption.

Legislation such as S. 1733 is desperately needed. As lawmakers, we continue to call for the strengthening of the family unit, yet the Tax Code inherently favors those families who have biological children. There is no doubt as to the validity of these deductions. Nevertheless, we should also examine our current tax treatment of those families who adopt children.

Mr. President, I originally intended to introduce S. 1733 as an amendment to the technical corrections bill. It has been estimated by the staff of the Joint Committee on Taxation that the revenue effect of S. 1733 would be a nominal amount over a 3-year period. However, because of the late hour of the session, I do not wish to impose on the Senate a lengthy discussion about the offsets required to keep this bill revenue neutral. Therefore, I decided to introduce this amendment stating that it is the sense of the Senate that the Tax Code should provide for the deductibility of the legitimate costs associated with adoption. While this approach is nonbinding, I think it is time to go on record with this statement of intent. We really need to do more than pay lip service to supporting adoptive parents. I have to say I am disappointed that the Finance Committee has not acted on S. 1733, but I hope they will do so in the 101st Congress.

Legislation such as S. 1733 would accomplish a number of objectives. First, it would ensure equality in the tax treatment of dependents. In contrast to the numerous tax benefits given to those couples who have biological children, there is not one tax deduction associated with adoption. A benefit discrepancy such as this must be corrected. In fact, the one provision enacted in our Tax Code that allowed families to deduct up to $1,500 of their expenses when they adopted a special needs child was repealed. This tax treatment must be restored and balanced against the favorable tax treatment afforded other American families.

Second, S. 1733 recognizes the importance of the family unit and seeks to strengthen that unit through alleviating many of the cost barriers associated with adoption. For many families seeking to adopt a child, the costs associated with such a procedure are simply prohibitive. Prospective parents are not only required to pay court costs and attorney fees, but must also often pay for maternity home services, the hospital and physician's fees, and at times, prenatal care for the natural mother as well. Data provided by the National Committee for Adoption shows that the actual costs connected with legal adoptions range up to $15,000. I do not believe wealth should be the determining factor in deciding whether or not a family can adopt a child.

Reforming the tax law to provide for the deductibility of adoption expenses would also save our society money. The National Center for Adoption has shown savings in two ways. First, such a deduction would move thousands of children, who might otherwise linger in inappropriate foster care, into a family of their own. Not only is foster care an incomplete solution, it is also an expensive one. Foster care subsidies are a Federal entitlement. Second, a tax deduction would encourage shifting medical costs to the adoptive family and away from the more expensive AFDC and Medicaid system.

S. 1733 has three major features. First, it would provide a tax deduction for unreimbursed, yet necessary and legitimate, adoption expenses. Second, it would exclude from the employee's income any payments made by an employer for adoption expenses. Third, it would treat any employer contribution to an adoption expense plan as an ordinary and necessary business expense. S. 1733 would set a $5,000 cap on the deduction allowed for the expenses of each adoption.

As long as an adoption is in accordance with State and local law, the tax deduction for unreimbursed adoption expenses should be available. Each legal adoption is socially useful and beneficial. Each adoptive family, regardless of how the adoptive child came to be in that family, deserves our support. Whether that child is a healthy infant, a child with special needs, or a child from another country, the adoption expenses should be deductible, as long as all Federal and State legal requirements are met.

My proposal would exclude those adoptions which are administered through illegal practices such as procuring the services of a baby broker. Many parents in my own State of Utah and other States have been defrauded by such schemes. The cost of an illegal adoption can be over $25,000, most of which goes into the pockets of middlemen and women. Fees for such arrangements would not, and must not, be deductible.

Two of the provisions of S. 1733 deal with the interest in adoption by many of the Nation's employers. Nearly 40 companies now provide some adoption benefits, including such corporations as Dow Chemical, IBM, Digital Equipment, and Honeywell. The actual benefits vary considerably. Some companies provide both a cash payment and paid leave. Many of these benefits are flat payments. Deseret Mutual Benefit Association, a large Utah employer, provides adoption benefits to their employees of up to 80 percent of approved adoption expenses up to $1,200. These fees include maternity expenses and legal agency fees.

S. 1733 addresses two problems now associated with employer-provided adoption benefits. The first is that payments made to employees are taxable as income. This bill excludes from an employee's income those payments made by an employer. The second is that companies may not treat their adoption payments to employees as a regular business expense. This factor discourages this type of enlightened employer involvement. My bill would remove that disincentive to this kind of private sector benefit.

The most important resource America has is its families. We must do everything in our power to ensure their continued growth and success. By making adoption costs tax deductible, we would help not only children and families, but also society as a whole.

I know that none of us want children to remain unadopted, to be forced to stay in foster homes, to never experience the joy of being part of a family. It is time for our adoption policies to be driven by a spirit of hope, so I strongly urge my colleagues to unanimously support this amendment. This sense-of-the-Senate resolution gives families formed through adoption hope—hope that Congress will, in fact, reexamine our Tax Code and provide fairness for adopting families.

I hope our colleagues managing this bill will be able to accept this sense-of-the-Senate resolution so we can have unanimous consent. I think every Senator in the Senate would be for it.

The PRESIDING OFFICER. The Senator from Montana. Who yields time?

Mr. BAUCUS. Mr. President, I yield myself as much time as I consume.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I thank the Senator from Utah for this amendment. It is a sense-of-the-Senate resolution that the United States should provide for the deductibility of all or part of the costs of adopting a child.

The 1986 Tax Act changed the deductibility of adoptive expenses. In fact, it repealed it and replaced it with a provision where the States and the Federal Government with matching grants would make grant payments to special cases regarding adopting parents. That may or may not be the best way to solve this question.

But, certainly, the request stated in the sense-of-the-Senate resolution that all adopted expenses be deductible is one that this Congress has considered and should consider and probably always will consider because of the importance of it.

This side again commends the Senator from Utah for offering the sense-of-the-Senate resolution and is very happy to accept this amendment.

Mr. PACKWOOD. We are happy to accept it on this side, Mr. President.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I urge the adoption of the amendment.

The PRESIDING OFFICER. All time must be yielded back.

Mr. BAUCUS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3641, AS MODIFIED

(Purpose: To express the sense of the Senate on the tax treatment of expenses relating to adoptions)

Mr. HATCH. Mr. President, I ask unanimous consent that the amendment be modified as indicated.

The PRESIDING OFFICER. The Senator has a right to modify his amendment.

The amendment, as modified, is as follows:

"SEC. . TAX TREATMENT OF ADOPTION EXPENSES.—It is the sense of the Senate that—

(1) the most important resource in America is its children;

(2) there are at least 36,000 children in America legally free for adoption and waiting;

(3) the actual costs associated with legal adoptions can be as high as $15,000;

(4) family wealth should not be a determinative factor in adopting a child;

(5) more favorable tax treatment of adoption expenses will move thousands of children into permanent homes; and

(6) therefore the tax laws of the United States should provide for the deductibility of all or part of the costs of adopting a child.

Mr. HATCH. Mr. President, I urge the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment (No. 3641), as modified, was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PACKWOOD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAUCUS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ADAMS). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I compliment the managers of the bill for making good progress. Senators have been offering amendments and we have been moving right along and disposing of those amendments.

There is a rollcall vote set for 2 o'clock p.m. Do the managers know of any other amendments at this point which are ready for action?

Mr. BAUCUS. Mr. President, I am unaware of any amendments at this time. We are finding the amendments that were listed in the unanimous-consent agreement on Friday, a good number of those, are dropping off now. They will not be offered.

We have already disposed of several. There are no amendments that are ready to be offered this time.

Mr. BYRD. There will be after 2 o'clock?

Mr. BAUCUS. After 2 o'clock, I am quite certain.

Mr. BYRD. Does the distinguished Member concur?

Mr. PACKWOOD. Mr. President, I do totally, and the amendments that have had a half-hour time limitation we are managing to finish in 5 or 10 minutes.

Mr. BYRD. That is quite normal for such complicated agreements, I have found.

RECESS

Mr. BYRD. Mr. President, I understand the Republican leader has no problem with our going out for the conferences.

Mr. President, in order to accommodate the two-party conferences and their regular Tuesday luncheons, I ask unanimous consent that the Senate stand in recess now until the hour of 2 o'clock today.

There being no objection, at 12:03 p.m., the Senate recessed until 2 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. SANFORD).

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Under the previous order, the question occurs on agreeing to the motion of the Senator from Montana to lay on the table the amendment of the Senator from New Jersey.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Oklahoma [Mr. BOREN], the Senator from New Jersey [Mr. LAUTENBERG], and the Senator from Tennessee [Mr. SASSER] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Mississippi [Mr. COCHRAN], the Senator from Washington [Mr. EVANS], the Senator from Texas [Mr. GRAMM], the Senator from New Hampshire [Mr. HUMPHREY], the Senator from Nebraska [Mr. KARNES], the Senator from Indiana [Mr. LUGAR], the Senator from Indiana [Mr. QUAYLE], the Senator from Wyoming [Mr.

WALLOP], and the Senator from California [Mr. WILSON] are necessarily absent.

I further announce that, if present and voting, the Senator from Nebraska [Mr. KARNES] and the Senator from Wyoming [Mr. WALLOP], would each vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The results was announced—yeas 85, nays 2, as follows:

[Rollcall Vote No. 362 Leg.]

YEAS—85

Adams
Armstrong
Baucus
Biden
Bingaman
Bond
Boschwitz
Breaux
Bumpers
Burdick
Byrd
Chafee
Chiles
Cohen
Conrad
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dole
Domenici
Durenberger
Exon
Ford
Fowler
Garn
Glenn
Gore
Graham
Grassley
Harkin
Hatch
Hatfield
Hecht
Heflin
Heinz
Helms
Hollings
Inouye
Johnston
Kassebaum
Kasten
Kennedy
Kerry
Leahy
Levin
Matsunaga
McCain
McClure
McConnell
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Proxmire
Pryor
Reid
Riegle
Rockefeller
Roth
Rudman
Sanford
Sarbanes
Shelby
Simon
Simpson
Specter
Stafford
Stennis
Stevens
Symms
Thurmond
Trible
Warner
Weicker
Wirth

NAYS—2

Bradley
Dodd

NOT VOTING—13

Bentsen
Boren
Cochran
Evans
Gramm
Humphrey
Karnes
Lautenberg
Lugar
Quayle
Sasser
Wallop
Wilson

So the motion to lay on the table the amendment (No. 3640) was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. MATSUNAGA. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Montana.

AMENDMENT NO 3642

Mr. BAUCUS. Mr. President, I sent an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Montana [Mr. BAUCUS] proposes an amendment numbered 3642.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under Amendments Submitted.)

The PRESIDING OFFICER. The Senate will be in order. The Senator from Montana.

Mr. BAUCUS. Mr. President, the amendment which I have sent to the desk is a perfecting amendment which includes 30 or so amendments that Senator PACKWOOD and I have been negotiating with various Senators over the past several weeks. It is a package of 30 noncontroversial, bipartisan amendments, amendments which improve the bill.

I will not take the time of the Senate to list all the 30 amendments, but they include, for example, an amendment of the Senator from Colorado, Mr. ARMSTONG, dealing with splash blending; also on his side of the aisle, an amendment by Senator STEVENS dealing with Medicare; another amendment by Senator STEVENS dealing with Alaska Native Corporations; another amendment dealing with the authorization of rural health research centers. On the Democratic side of the aisle, as an example, an amendment of the Senator from Connecticut, Mr. DODD, and the Senator from New York Mr. MOYNIHAN, dealing with ESOP stock dispositions; another amendment by Senator LAUTENBERG dealing with the medical deduction for radon treatment expenses.

That, Mr. President, is the nature of the amendments that we have before us.

In addition, Mr. President, the amendment strikes out of the committee amendment the automatic denial, of tax deductions for first business telephone in the taxpayer's home. It also contains a number of technical corrections to the trade bill which have been cleared on both sides.

All in all, Mr. President, this perfecting amendment solves a lot of problems and addresses a great many legitimate concerns. I believe the amendment to be noncontroversial, and I urge, at the appropriate time, the adoption of the amendment.

Mr. DOMENICI. Mr. President, I rise in support of the amendment, requiring the CPI-U for COLA's though I have some reservations.

I understand that this amendment will affect Social Security, supplemental security income, railroad retirement, veteran's pensions, military retirement, civil service retirement, Federal employees disability and death benefits, and several other small groups of Federal retirees programs, beginning in 1990.

About 300 billion dollars' worth of 1989 retiree and disability benefits will be updated by the CPI-U if this amendment becomes law. Currently, the update is done administratively by the CPI-W.

CBO, and I believe OMB, assess no costs to this provision. they assume that the CPI-W and the CPI-U will be the same in the future.

I understand that the CPI-U is a slightly more appropriate index for social security recipients, other retirement benefits and other disability benefits. It is based on a sample of urban citizens that includes seniors, in contrast to the CPI-W that includes very few seniors or disabled in its sample.

The CPI-U has risen faster, on average, than the CPI-W, over the past 8 or 9 years. I caution my colleagues that, if they believe they are voting for an amendment that will guarantee retirees a higher COLA, they are not. In 1990, the CPI-U could be higher, the same, or lower than the CPI-W.

The experts—OMB and CBO—assume that both CPI measures will be the same, that is, the chances that the CPI-U will be less than the CPI-W are the same as the CPI-U being higher than the CPI-W.

Though I support the amendment, my reservation is that the CPI-U may turn out to be less than the CPI-W for the 1990 COLA. If so, will we vote to go back to the CPI-W?

In other words, I have some concern that some believe that we are voting for the higher of the two CPI's, not the most appropriate CPI. I, for one, am not. I am voting for the most appropriate CPI.

Mr. MURKOWSKI. Mr. President, the purpose of the amendment I am offering today corrects an inequity in the administration of the harbor maintenance fee. It provides that import/export cargo moving under a single bill of lading to or from Hawaii, Alaska, and United States possessions which is "relayed" at a United States port shall be taxed only once.

The harbor maintenance fee is assessed on the value of commercial cargo shipped on and through the ports and waterways of the United States to finance some of the cost operating and maintaining those ports, harbors, and waterways.

I supported the fee when it was enacted and think that it is a fair way to finance these costs.

The law is clear that the harbor tax is applied only once to cargo that is unloaded from a vessel and subsequently loaded back onto the same vessel.

However, the Customs Service has determined that the tax should be applied twice on cargo when it is unloaded from one vessel and loaded onto another vessel.

The practical effect of the customs service interpretation is double taxation of "relay" cargo.

Mr. President, let me give you an example. A load of Alaskan salmon is loaded on a vessel in Kodiak, AK, under a bill of lading showing that it is to be shipped to Japan. At that point the harbor tax is imposed.

Since the volume of fish coming from Kodiak is not sufficient to make up a full load to Japan, it is first shipped to Tacoma, WA, where it is unloaded, consolidated with additional cargo bound for Japan, and then reloaded onto a different vessel for the trans-Pacific voyage. This is where the term "relay" comes from—the cargo is relayed from one vessel to another in order to achieve efficiencies of scale.

Under the Custom Service's interpretation, that Kodiak fish is taxed a second time when it is reloaded onto the second vessel. However, if the fish were loaded back on the same vessel, it would not be taxed a second time.

This application is discriminatory, Mr. President. Why should cargo that is reloaded onto the same vessel be taxed only once, while cargo that is reloaded unto a different vessel is taxed twice?

Double imposition of the harbor tax also threatens to disrupt this Nation's current efficient system of load-center ports, which serve a function similar to airline hubs. Modern steamship lines have developed a system whereby cargo is funneled through large load-center ports, and relayed to and from smaller United States ports by less expensive ships and barges.

This relay cargo system is particularly important to my State of Alaska, to Hawaii and to our possessions which must rely heavily on waterborne commerce. In addition, the volumes of cargo moving to and from Alaska, Hawaii, and United States possessions are not sufficient to justify use of large expensive ships—thus the relay cargo system is critical to us.

To discriminate against the relay cargo system by imposing the harbor tax twice on this cargo is simply unfair and unwise.

Mr. President, my amendment will correct this situation. It provides that cargo moving to or from Alaska, Hawaii, and United States possessions under a single bill of lading which is "relayed" at a United States port shall be taxed only once.

Our estimates show that the revenue impact of this amendment is in the range of $20,000.

Mr. President, I thank the bill managers for recognizing the need for this amendment and agreeing to accept it.

Mr. EXON. Mr. President, today I am offering an amendment to the tax technical corrections bill to clarify the treatment of investments in Government securities by variable annuities under section 817(h) Internal Revenue Code of 1986. This measure is a simple and straightforward clarification. It provides that, for purposes of determining whether a variable annuity is adequately diversified, each U.S. Government agency or instrumentality is treated as a separate issuer. The amendment is identical to H.R. 4862 on which the Joint Committee on Taxation has written has "negligible" revenue effect on fiscal year budget receipts.

Section 817(h) of the Internal Revenue Code of 1986 was enacted by the 1984 Deficit Reduction Act. The purpose of the provision is to discourage the use of variable annuities primarily as investment vehicles by limiting a customer's ability to select specific investments underlying the contract, and put them in a tax deferred retirement annuity. Interest earned on such investments would otherwise be taxed currently. To curtail this activity, section 817(h) requires that an annuity be "adequately diversified" in investments that are not publicly available and made at the discretion of the investor. The act gives treasury the authority to define "adequately diversified" in regulations.

Proposed regulations under section 817(h), require that no single investment represent more than 55-percent of the value of the assets underlying the annuity. All securities of the same issuer are treated as a single investment. For this purpose, Treasury would treat all securities issued or guaranteed by the United States or its instrumentalities as issued by a single issuer. The proposed regulations do not distinguish between the various different types of Government agencies that issue a variety of securities with different rates of return, different credit risks and different maturities. The proposed regulations would thus prohibit investing more than 55-percent of the value of the assets underlying an annuity in Government securities.

Treasury gives three reasons for this position:

Investment income earned on Government securities is taxed currently to investors;

Treating all Government securities as issued by a single issuer is consistent with the treatment of such securities for other purposes;

Investors should not be allowed to put into a tax deferred annuity investments that would be currently taxable if purchased directly.

The proposed regulation, however, is not appropriate for the following reasons:

Current tax policy favors deferral of tax where investment income provides life insurance or retirement security;

The proposed regulations mechanically borrow the definition of "Government securities" from the 1940 Investment Company Act which used a broad definition to except such securities from regulation and allow unlimited investment; Treasury reverses this concept to restrict investments;

Investors do not control annuity investments in Government securities because insurers invest in a diverse selection of such securities which vary by issuing agency, rates of return, maturity, and investment risk.

For purposes of minimizing investment risk of retirement funds, many insurers prefer to invest substantially or entirely in securities issued by several different Government agencies or instrumentalities.

Treating each Government agency or instrumentality as a separate issuer would achieve the section 817(h) purposes of "adequate diversification."

Mr. President, I urge my colleagues to approve this amendment.

Mr. BOREN. Mr. President, the technical corrections bill that we are considering includes a change that has unforeseen and unfair consequences for many businesses that can be easily remedied by the amendment I am offering.

Let me take a moment to give some background on the problem. The 1986 Tax Reform Act modified the accelerated cost recovery system to require that the "half-year convention" be utilized for all property, other than real property, depreciated under the ACRS method.

The half-year convention requires that all property placed in service, or disposed of, during the taxable year be treated as having been placed in service, or disposed of, at the midpoint of the taxable year. Consequently, a half year of depreciation would be allowed for the first year property is placed in service, regardless of when the property is placed in service during that year, and a half year of depreciation would be allowed for the year in which property is disposed of or is otherwise retired from service.

As an exception to the application of the half-year convention, the 1986 act amended the Tax Code to provide that if more than 40 percent of the aggregated bases of the year's depreciable acquisitions, excluding real property, is placed in service in the final quarter of the year, all nonreal property assets must be depreciated utilizing the midquarter convention.

Under the midquarter convention, all property placed in service, or disposed of, during any quarter of a taxable year is treated as placed in service, or disposed of, at the midpoint of such quarter. Thus, the first- and last-year depreciation allowance would be based on the number of quarters the asset was actually in service.

Subject to certain transition rules, these provisions of the 1986 act were imposed upon property placed in service after December 31, 1986.

The technical corrections bill passed by the House earlier this year as well as the bill reported out by the Senate Finance Committee that the Senate is now considering to propose to modify the Tax Code by requiring that any property placed in service and disposed of in the same taxable year be disregarded for purposes of the 40-percent test. This amendment would be retroactive to January 1, 1987.

Mr. President, I do not take issue with the change in the 40-percent test that is included in the technical corrections bill. My concern relates only to the retroactive application of this change. Simply put, imposing this change retroactively will result in the unfair treatment of companies that have for the past 2 years justifiably and in good faith relied on the clear and unambiguous language of the 1986 act.

The amendment I am offering is simple and straightforward. It would amend the technical corrections bill to provide that section 102(a)(23) of the technical corrections bill apply at the election of the taxpayer to taxable years beginning before January 1, 1989.

The amendment applies to companies that are adversely affected by the retroactive change in the technical corrections bill because of a unique pattern of purchases necessitated by the cyclical nature of their business. Many companies have a unique situation dictated by their business cycle that the Tax Code, in all fairness, should recognize and accommodate.

Those who would be hurt by the retroactive imposition of this change include among others, national car rental companies and many of the well over 1,500 independent franchisees in the car rental business. If we do not make this change we will place on them an unfair tax burden and a horrendous amount of paperwork. I know of one company that would have to recompute and refile 76 tax returns to comply with the change included in the technical corrections bill. Just imagine the number of tax returns that other companies would have to recompute if we do not make the application prospective. We are talking about paperwork that would swamp many small- and medium-sized businesses that we all know do not have the resources to cope with this burden.

Mr. President, I know that many of my colleagues share my deep concern that we strive for a fair tax system that does not retroactively impose unanticipated and excessive taxes on taxpayers and does not overburden small businesses with excessive paperwork. My amendment is offered with that purpose in mind.

The Joint Committee on Taxation has stated that an amendment such as this "would have no impact on fiscal year budget receipts."

Mr. GRASSLEY. Mr. President, I rise to speak on a provision in the Finance Committee's "perfecting" amendment to the tax technical corrections bill. That provision is essentially the same as S. 2805, a rural health bill that I introduced on September 16, 1988, and is cosponsored by Senators McCAIN, INOUYE, and DURENBERGER.

My rural health bill has been agreed to by both managers of the tax technical corrections bill now before us. And my staff has discussed this with the Labor/HHS Appropriations Committee staff and the Appropriations Committee will have no problem with it.

The bill would not break new ground, in that the activities it would authorize are already underway. But the bill would provide greater certainty or viability for these activities, and it would indicate that the Congress is truly serious about addressing the problems involved in providing health care in rural communities.

This bill would do three things: First, it would authorize $3 million for the operating expenses of the Office of Rural Health. The office was authorized in last year's reconciliation legislation, but funds for it were not authorized.

Second, it would authorize $3 million for the Rural Health Research Centers Program; $1.5 million has been appropriated, but not authorized, for this program.

Third, this bill would establish by statute the National Advisory Committee on Rural Health, require it to report periodically to the Congress, and would authorize such sums for its operation. The committee was administratively established by the Secretary of Health and Human Services.

According to an informal estimate by CBO, this addition to the tax technical corrections bill would not affect outlays for fiscal year 1989. There would be $3 million in additional outlays in fiscal year 1989 subject to appropriations. And, given our budget situation, I do not believe that money would be appropriated for the activities authorized by this bill until the next fiscal year.

Mr. President, I will not say more about this amendment unless another Senator has a question about it. I placed in the CONGRESSIONAL RECORD when I introduced S. 2805 a lengthy statement explaining the rationale for the bill.

Mr. CRANSTON. Mr. President, I am very pleased that, at my request, the consensus package to the tax technical corrections bill includes a provision regarding the disposition of applications for disability benefits for individuals who have AIDS related complex [ARC]. Section 800u would require the Secretary of Health and Human Services to submit two reports to Congress within 6 months after enactment. The first report would contain information regarding the numbers of people with ARC who have applied for disability-related benefits under the Social Security Act—Social Security Disability Insurance [SSDI] and Supplemental Security Income [SSI]—for fiscal years 1988, 1987, and, to the extent feasible, 1986; the numbers of such applications approved, denied, and reversed upon appeal; and the rates of allowance and denial of those applications by State and region.

This report would also be required to provide information regarding the criteria or guidelines that the Social Security Administration [SSA] uses to determine eligibility, including information about any changes in such criteria that are under consideration, as well as information regarding the cost of such benefits. Finally, the report would be required to estimate, to the extent it is feasible to do so, the projected number of applications for benefits and costs involved for the next 3 years.

In the second report, the Secretary would be required to state what arrangements, if any, now exist to provide for coordination between SSA and State disability agencies with respect to the provision of benefits and to help individuals applying for benefits to learn of the full range of Federal and State benefits for which they may be eligible.

Mr. President, on June 29, 1988, I introduced S. 2592, which would require the Secretary to develop and implement specific criteria for determining the eligibility of individuals with symptomatic HIV infection for disability-related benefits under titles II [SSDI] and XVI [SSI] of the Social Security Act. I have been very concerned that individuals who have serious, disabling illnesses which result from the HIV infection but which do not meet the strict definition of AIDS are being denied Social Security disability benefits.

The SSA's current policy is for such cases to be decided on a case-by-case basis. It provides no specific guidelines or criteria to assist claims examiners in making determinations for these individuals. The result has been that many individuals are initially turned down, forcing them to fight for their benefits through lengthy appeals processes. By the time many of the cases are resolved, the illness has advanced to AIDS or even death.

Mr. President, S. 2592 would help resolve the situation by requiring the Secretary of HHS to develop criteria so that determinations would be made fairly and expeditiously. I want to make clear that I am in no way suggesting that Social Security benefits should be widely or automatically available based simply on HIV infection without regard to the extent of the resulting disabilities. At the same time, however, it seems grossly unfair to deny benefits to an individual with disabling ARC who may be as sick or sicker than someone with AIDS simply because he or she does not meet the strict definition of AIDS.

Mr. President, although I would prefer to move ahead with S. 2592, I believe that the information gained by the reports required in the pending amendment would be very helpful in moving closer to the goal ensuring fair and equitable treatment of the Social Security claims of persons with symptomatic HIV infection.

I urge adoption of the amendment.

Mr. DIXON. Mr. President, I am offering an amendment that I would like to have inserted in the appropriate place in title V of this bill. This amendment will facilitate the railroad industry—both railroad management and labor—to bargain collectively for cash or deferred compensation arrangements—401(K) plans—on a union by union basis.

Many railroad unions have expressed the desire to be able to negotiate for these cash or deferred compensations arrangements. Nine of the seventeen rail labor organizations, in their section 6 notices for this round of collective bargaining, have requested the establishment of a 401(K) plan.

The railroad industry is vastly different than many other industries in our country. Most industries are represented by only one union. The railroad industry, on the other hand, has 17 distinct unions operating within it.

Under current law, one union's ability to negotiate a 401(K) plan for its members is affected by the eligibility of members of the other 16 unions. For the railroad industry, the universe of eligibility takes into account all 17 unions and their employees, even though these employees are not represented by the union negotiating for the deferred compensation plan.

The amendment that I am offering would rectify this situation. Consistent with the current law exclusion relating to union employees in sections 410(b)(3) (A) and (B), this provision would facilitate the collective bargaining of 401(K) plans by allowing the plans to be tested for discrimination and coverage on a union by union basis. Under this proposal, benefit packages could be tailored to the needs of individual unions.

The amendment has the support of both rail labor and rail management. In addition, the Joint Committee on Taxation has found this proposal to be revenue neutral.

I would like to have printed in the RECORD, a letter from Mr. William Dempsey, president of the Association of American Railroads and Mr. Richard Kilroy, chairman of the Railway Labor Executives Association, supporting this amendment. Furthermore, 30 Senators, including myself, have written Chairman BENTSEN and ranking member PACKWOOD of the Finance Committee urging support of this amendment. I would like to have this letter printed in the RECORD at this point.

I know of no opposition to the amendment, believe it is a good amendment, and urge its adoption.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Identical letter sent to Senator Packwood.

JULY 29, 1988.

Hon. LLOYD BENTSEN,
Chairman, Committee on Finance, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: We would greatly appreciate your assistance in obtaining a technical correction to permit union employees in the railroad industry to bargain for cash or deferred arrangements ("401(k) plans") on a union-by-union basis. Without this correction, a union may in effect be precluded from obtaining through collective bargaining with a railroad employer a 401(k) plan for its members by a quirk in the Internal Revenue Code's antidiscrimination rules relating to what has or has not been done with respect to other employees of that employer.

Both labor and management agree on the necessity of being free to negotiate separately the establishment and the particular terms of a 401(K) plan with the union representative of each class or craft of railroad employees, without having to sweep into the bargaining equation other groups of employees represented by other unions. For example, under a special rule introduced into the Code in 1974, airline pilot representatives in a similar context under the Railway Labor Act are free to bargain with an airline for a tax-favored benefit plan without regard to the level of qualified plan benefits being provided to or sought by other employee representatives also negotiating with the airline.

The proposed technical correction would provide the same flexibility to union employees of railroads. Indeed, the legislative history of the special rule for airline pilots indicates that Congress contemplated extending this relief to other union groups in the future.

For your convenience we have attached draft statutory language, pursuant to which 401(k) plans could be tailored to the needs of individual railroad unions.

Thank you for your kind consideration of this matter.

Sincerely,

WILLIAM H. DEMPSEY,
President, Association of American Railroads, Washington, DC.

RICHARD I. KILROY,
Chairman, Railway Labor Executives Association, Washington, DC.

U.S. SENATE,
Washington, DC, September 20, 1988.

Senator LLOYD BENTSEN,
Chairman, Senate Finance Committee, U.S. Senate.

DEAR LLOYD: We are writing to call your attention to a meritorious amendment to the 401(k), deferred compensation plan provisions of the Internal Revenue Code jointly sought by rail labor and management, which we support.

The proposal would permit railroad employees represented in accordance with the Railway Labor Act to bargain separately for cash or deferred arrangements ("401 (k) plans"). The railroad labor force is made up of 17 unions, 9 of whom have already indicated in their bargaining positions a request to establish a 401 (k) plan. Congress responded to a similar problem in the airline industry by adopting an amendment allowing separate 401 (k) bargaining to airline pilots. The development of 401 (k) plans for railroad workers will be facilitated by adopting the joint labor management proposal. The Joint Committee on Taxation has found this amendment would have a negligible effect on fiscal year budget receipts (see attached letter).

We strongly urge you to include this amendment in the Committee amendments to the Technical Corrections Act.

Thank you for your kind consideration in the matter.

Sincerely,

ALAN J. DIXON.
(With 29 cosigners.)

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
Washington, DC.

Hon. JOHN HEINZ,
U.S. Senate, Washington, DC.

DEAR JOHN: This is in response to your request for a revenue estimate of a proposal to modify the coverage and participation requirements applicable to cash or deferred arrangements (401(k) plans). Your proposal would modify sec. 410(b)(3) to exclude employees who are not covered by a 401(k) plan maintained pursuant to a collective bargaining agreement between railroad employees and their employer. In addition, sec. 414(q) would provide that in determining the "top paid group" for purposes of identifying highly compensated employees, all employees not covered by the collective bargaining agreement would be excluded.

This proposal would have a negligible effect on fiscal year budget receipts.

I hope this information will be helpful to you. If we can be of any further assistance, please do not hestitate to let me know.

Sincerely,

RONALD A. PEARLMAN.

U.S. SENATE,
Washington, DC, September 20, 1988.

Senator BOB PACKWOOD,
Ranking Minority Member, Senate Finance Committee, U.S. Senate.

DEAR BOB: We are writing to call your attention to a meritorious amendment to the 401 (k), deferred compensation plan provisions of the Internal Revenue Code jointly sought by rail labor and management, which we support.

The proposal would permit railroad employees represented in accordance with the Railway Labor Act to bargain separately for cash or deferred arrangements ("401 (k) plans"). The railroad labor force is made up of 17 unions, 9 of who have already indicated in their bargaining positions a request to establish a 401 (k) plan. Congress responded to a similar problem in the airline industry by adopting an amendment allowing separate 401 (k) bargaining to airline pilots. The development of 401 (k) plans for railroad workers will be facilitated by adopting the joint labor management proposal. The Joint Committee on Taxation has found this amendment would have a negligible effect on fiscal year budget receipts (see attached letter).

We strongly urge you to include this amendment in the Committee amendments to the Technical Corrections Act.

Thank you for consideration in the matter.

Sincerely,

ALAN J. DIXON,
(With 29 cosignees.)

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
Washington, DC.
Hon. JOHN HEINZ,
U.S. Senate, Washington, DC.

DEAR JOHN: This is in response to your request for a revenue estimate of a proposal to modify the coverage and participation requirements applicable to cash or deferred arrangements (401(k) plans). Your proposal would modify sec. 401(b)(3) to exclude employees who are not covered by a 401(k) plan maintained pursuant to a collective bargaining agreement between railroad employees and their employer. In addition, sec. 414(q) would provide that in determining the "top paid group" for purposes of identifying highly compensated employees, all employees not covered by the collective bargaining agreement would be excluded.

This proposal would have a negligible effect on fiscal year budget receipts.

I hope this information will be helpful to you. If we can be of any further assistance, please do not hesitate to let me know.

Sincerely,

RONALD A. PEARLMAN.

Mr. DIXON. Mr. President, the amendment which I am offering at this time is designed to repatriate revenue back to the U.S. Treasury. This amendment has been scored by the Joint Committee on Taxation as a "modest revenue raiser." In addition to being a revenue raiser, this amendment is noncontroversial.

This provision has been incorporated in the House version of the technical corrections bill. Regrettably, however, it is contained in neither the Senate bill as reported by the committee nor its pending committee amendment.

My amendment would loosen the capital requirements for Netherlands Antilles finance subsidiaries by changing the permissible debt-to-equity ratio for these subsidiaries from 5 to 1 to 25 to 1.

This provision meets all the criteria established by the committee and its staff for inclusion in the committee amendment. It is my understanding that this provision was not included in the committee amendment because it was overlooked due to the press of time in which the committee had to consider the numerous amendments before it.

Far from having a negative revenue impact, this proposal actually increases revenue by a negligible amount. Combined with the fact that it is noncontroversial, I would urge my colleagues to support this important amendment.

I ask unanimous consent that a letter from Mr. Pearlman of the Joint Committee on Taxation be printed at this point in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
Washington, DC, June 8, 1988.
Hon. ALAN J. DIXON,
U.S. Senate, Washington, DC.

DEAR SENATOR DIXON: This is in response to your request of April 12, 1988, for an estimate of a proposal which would loosen the capital requirements for Netherlands Antilles finance subsidiaries. The proposal would change the permissible debt-to-equity ratio for these subsidiaries from 5-to-1 to 25-to-1.

The movement of capital out of the Netherlands Antilles caused by this proposal would decrease the amount of foreign tax credits attributable to the payment of taxes to the Netherlands Antilles. This reduction in foreign tax credits would increase U.S. tax revenues unless the affected taxpayers were in excess credit positions, or the taxpayers were tax-exempt, or the repatriated capital was reinvested in ways which generated foreign tax credits from others sources. After taking account of these and other factors, we estimate that this proposal would increase annual fiscal year budget receipts by a negligible amount over the 1988-1993 period.

I hope this information will be helpful to you. If we can be of further assistance, please let me know.

Sincerely,

RONALD A PEARLMAN.

Mr. MATSUNAGA. Mr. President, the amendment which I offered with the Senator from Arkansas, Mr. PRYOR, as a cosponsor, is a purely technical amendment to clarify the application of the inventory capitalization rules to property that is acquired and held in inventory for the purpose of resale. The amendment is noncontroversial and has been accepted by the managers on both sides of the aisle.

Mr. President, in the Tax Reform Act of 1986 the Congress adopted a new, complex, and controversial set of rules regarding the capitalization of inventory costs and expenses. Under these rules, the Treasury Department is required to develop simplified procedures to apply the uniform capitalization rules to property which is acquired and held in inventory for the purpose of resale. The conference report accompanying the act expressly and clearly sets forth the standards to be employed by Treasury in crafting these rules and procedures.

In March 1987 the Treasury issued its proposed and temporary regulations under section 263A of the Internal Revenue Code. These regulations were candid in acknowledging that the IRS chose, in composing the regulations, not to follow the congressional directives in the conference report regarding the calculation and allocation of storage and handling costs to property acquired for resale when held in inventory. As a result, both the House and Senate versions of the now pending Technical Corrections Act contain what is in effect a direct instruction to the Treasury Department that the allocation standards specified in the conference report must be used and the intent of Congress followed.

On August 22, 1988, the IRS issued an advance notice [Notice 88-86] which describes the changes it intends to make in the previously issued regulations. As applied to storage and handling costs of resale property, the rules contained in the notice continue to do violence to the content of the conference report and the intent of Congress.

Mr. President, the notice provides an alternative simplified resale method which purports to reflect the approach of the conference report. For FIFO [First In First Out] taxpayers, the alternative simplified approach permits the inclusion of beginning inventory in the denominator of the allocation ratio and then applies the ratio to the taxpayer's ending inventory. This approach generally follows the conference report.

However, Mr. President, the alternative simplified resale method in the notice deviates substantially from the conference report with respect to LIFO [Last In First Out] taxpayers. Although the notice permits the inclusion of beginning inventory in the denominator of the allocation ratio, it changes another aspect of the conference report. The notice requires that the resulting fraction must now be applied to the taxpayer's ending inventory which is the sum of old layers and the LIFO increment for the year.

This approach differs from the approach of the conference report to the Tax Reform Act of 1986 in that the conference report requires the application of the allocation ratio only to a LIFO taxpayer's increment for the year. The result of the latest change to the conference report is significant. Unless a taxpayer experiences a decrease in its inventory, the total cumulative amounts of storage and handling costs capitalized with respect to existing LIFO layers would increase each year which increases tax liability significantly. Finally, the notice appears that taxpayers who do not wish to choose the alternative simplified resale method may use the method and ratio provided in the 1987 temporary regulations. This method ignores the conference report and the intent of Congress as expressed by the Technical Corrections Act.

Mr. President, in light of the latest IRS Notice the language of the Technical Corrections Act should of necessity be made more precise and explicit in order to ensure that the conference report and the intent of Congress is followed. My amendment would accomplish this objective by ensuring that all the elements of the allocation method set forth in the conference report will be followed in any rules and regulations.

Mr. President, I urge the adoption of my amendment.

Mr. DODD. Mr. President, I would ask the floor manager to include in this legislation a provision that any forced disposition of employer securities by an employee stock ownership plan [ESOP] that occurs by operation of a State law shall not be treated as a disposition for purposes of the excise tax under section 4978A of the Internal Revenue Code. The rationale for this provision is simple and is best stated by the House when it incorporated this provision in their technical corrections bill: it is unfair to impose an excise tax on an ESOP when a disposition of employer securities is outside of the control of the ESOP.

I understand this matter has been discussed with the staff of the Joint Committee on Taxation and they indicated that negligable revenue is involved in correcting this oversight. This provision merely clarifies a special provision of the Tax Reform Act of 1986 allowing, for a temporary period of time, partial relief from estate taxes through an estate tax deduction for sales of employer securities to an ESOP. I do not believe it was our intention at that time to penalize the ESOP when the disposition of securities was outside its control.

It is my understanding that your staff has reviewed this provision to insure its technical nature and agreement by both sides. I thank both you and the committee staff for assistance in this matter.

Mr. MELCHER. Mr. President, today Senators HEINZ, PRESSLER, and BURDICK join me in offering an amendment to the tax technical corrections bill to require Federal agencies to use the broadest and most fair Consumer Price Index [CPI] currently available when they calculate cost-of-living adjustments [COLA's] for Federal income security programs such as Social Security, Civil Service, railroad retirement, military retirement and veterans pensions. The long overdue amendment we are offering today simply incorporates a 1980 recommendation by the Office of Management and Budget and the 1982 and 1987 recommendations of the General Accounting Office to use the currently available, broader based CPI-U for COLA calculations.

On September 26, Senators HEINZ, PRESSLER, and BURDICK joined me in introducing S. 2831, a bill to ensure that recipients of Federal income security programs receive COLA's based on the CPI-U. Last Wednesday, we held a Special Committee on Aging hearing on this issue which confirmed that the legislation we introduced is a reasonable, responsible approach toward beginning to assure Federal income security program recipients that they are getting a fair deal when it comes to their COLA's. Today, we are attempting to make certain we accomplish our goal without any further delay.

Americans across the country, including many Members of Congress, assume that the Federal Government is using the most accurate CPI available for indexing Federal retiree, survivor and disabled benefits to the rate of inflation. Unfortunately and surprisingly, we are not. In fact, the CPI used for COLA calculations [the CPI-W] does not survey even one retired person or disabled person who does not work.

Mr. President, because most older and disabled Americans live on a fixed income, a COLA that offsets the effects of inflation on the purchasing power of Social Security benefits and pensions under other Federal retirement, disability and survivor programs is of vital importance. However, because the CPI used for COLA calculations surveys only the working population, a great deal of doubt has been cast on its reliability for these inflation adjustments.

Clearly, there is no reason to assume that older and disabled Americans have the same buying patterns as the rest of the population. In fact, just the opposite is true. For example, few would dispute the fact that, on average, the medical needs of those 65 and older are far greater than for the rest of the population. If the inflation rate for these services paralleled the overall inflation rate, there would be less reason for concern. Unfortunately, the medical inflation rate each year has risen higher and faster than the general inflation rate.

For example, while the general inflation rate from August 1987 to August 1988 was 4 percent, the medical inflation rate was 6.6 percent—a difference of more than 60 percent. As a result, because the elderly are not sampled in the CPI-W, the CPI-based inflation rate does not fully reflect the elderly's inflation rate. Sadly, as a number of witnesses testified at an Aging Committee hearing I chaired last year, older Americans are finding they have less money each year to pay for food, electricity and other necessities.

Soon after that hearing, I sponsored legislation to require BLS to develop a one-time reweighted index that specifically reflected the elderly's inflation rate. That legislation was incorporated in the Older Americans Act of 1987 and enacted into Public Law 100-175.

BLS's recently released study showed that Americans 65 or older appear to have experienced higher inflation than has the rest of the Nation in the last 5 years. According to the study, the experimental index found that the inflation rate for the elderly they surveyed rose a total of 19.5 percent between 1983 and 1988. That compares with 16.5 percent for the consumer price index that is used as a basis for the Social Security COLA and other Federal retirement programs, the CPI-W. BLS concluded that it appeared that higher medical and housing costs were the primary factors for the difference.

BLS informs us that more extensive research on the special purchasing habits of the elderly, as well as additional sampling population studies, must be completed before the so-called "experimental" index is ready to be used. Nevertheless, in the interim, we cannot allow older Americans to be cheated by an index that doesn't even include retirees in the population that the index sampled.

Fortunately, however, there already exists an inflation index which does sample at least some retirees and some disabled persons. In fact, this index, known as the CPI-U, is the index used in most other governmentwide calculations and surveys a broader and larger sample population. For this very reason, GAO recommended using the CPI-U for COLA calculations in a 1982 report, as well as in testimony before the Aging Committee last year. Furthermore, in 1980, OMB recommended that the CPI-U replace the CPI-W for COLA calculations. In the words of then Director of OMB, James T. McIntyre:

> The new "all urban" index [CPI-U], in doubling the population covered compared with the current index, will include retirees and other recipients of Federal program benefits that are adjusted by the CPI, but who are not represented by the current index. It will thus not only reflect more accurately the changes in prices experienced by a larger proportion of the population, but will be a more appropriate base of adjustment of Federal benefits than the much more limited "wage and clerical" index [CPI-W] in current use.

The Aging Committee has been looking into this matter for the last year and a half, and we have heard nothing to contradict this statement. Indeed, I have become convinced that the CPI-U provides a more accurate measure of the elderly's inflation rate than does the CPI-W. For this same reason, at the Committee's October 5 hearing, representatives of the major aging organizations—including, the American Association of Retired Persons, the National Council on Senior Citizens, the National Association of Retired Federal Employees, and the National Committee To Preserve Social Security and Medicare—expressed their support for this legislation.

Notwithstanding the SSA's estimate for 1989, it is possible that fluctuations over a longer period in the two inflation indexes may balance out. In fact, both CBO and OMB view this measure as budget neutral. Testimony submitted by former OMB director Jim Miller at the October 5 hearing reads as follows:

> Indeed, it is the practice of OMB, in preparing our budget estimates, to assume that the proportionate increases in the two indexes will be identical in future years. Under our normal forecasting practices, it

would make no difference to projected outlays if CPI-U replaced CPI-W in the COLA formula for Social Security, or anywhere else in the Budget.

Contrary to its 1980 position on this issue, OMB does not now support this legislation. This is because OMB believes that COLA's would be virtually unchanged under the CPI-U and that therefore this legislation is not needed.

Mr. President, given both CBO and OMB's position that this legislation is budget neutral, this amendment as merely technical in nature. COLA's may or may not change under this legislation. However, they will be more fair.

Mr. President, we are seeking fairness, not a windfall. Our aim is simply to assure that the millions of elderly and disabled Americans who depend on Social Security, veterans pensions, and other Federal income security programs are provided with the most accurate COLA possible. These Americans deserve no less, and I urge my colleagues to support this amendment.

Mr. BYRD. Mr. President, last week I wrote to Japanese Prime Minister Takeshita to propose that the United States and Japan explore over the next 6 months possible frameworks for enhanced cooperation between our two countries. today, I am submitting an amendment to set such an exploration in motion.

I am concerned about the increasingly acrimonious nature of our recent relations with Japan. This is due in large part to our trade problems and a product-by-product, sector-by-sector approach to resolving them which has aggravated feelings on both sides, causing deep frustrations and anger in the United States, and bitterness in Japan. I believe there is a growing recognition on both sides of the Pacific that there are more productive ways to handle the American-Japanese relationship.

I note, for instance, the summer issue of the Japanese Journal, Japan Trade and Industry included an article entitled "Toward a New U.S.-Japan Economic Alliance" which asserts that something must be done, "promptly and effectively," to halt the deterioration in relations between the two countries. The author refers to the report of a recent Japanese business study group which concluded that there should be a joint effort between the United States and Japan to build an economic alliance that could eliminate United States-Japanese economic friction and help stabilize the world economy.

My amendment requires the administration to study the issue afresh, and come up with some recommendations about how we can arrange our relations with the Japanese in a more positive, less acrimonious manner. It will require some creativity, some new perspectives. It would be premature to ask that American and Japanese officials study this matter jointly and develop a common set of recommendations. Hopefuly, that will eventually be possible, and detailed understandings be reached as to how this important alliance will reinvigorate itself and grow in cooperative, mutually helpful channels. The amendment does ask that the administration maintain a dialog with the Japanese over the course of the study, and to provide a summary of Japanese views as a part of the required report to the Congress.

Primarily, we need to discuss this matter among ourselves and reach some consensus about what we think would be ways to handle relations with Japan. We are in the waning days of one administration and, at the least, this exploratory work will give the bureaucrats something to work on over the next 4 to 5 months. What is needed now is some dialog and some thoughtful attention by those people who have wrestled with many of these issues over the last 8 years.

I foresee that such a study could be very useful to the new administration, whether it is Democratic or Republican. The timeframe I am proposing is for an interim report to be concluded by March 1, 1989, and a final report by July 1, 1989. Thus, the new administration will have an opportunity to review the thinking of those who will be departing the policymaking scene, and this will provide some continuity between administrations.

I am also proposing that the lead agencies for this study be the Treasury, the State Department, and the U.S. Trade Representatives. They are best suited to do a broad brush examination of our relationship with Japan—a relationship that encompasses mutual security needs, participation in international financial institutions, and close political ties, as well as trade. At the same time, this proposal requires separate input and reports from the Departments of Defense, Agriculture, and Commerce. Each has distinct views of United States relations with Japan and their views need to be not merely taken into account, but also reported separately.

Mr. President, the time has come to find a better way to handle our relationship with Japan. As our Ambassador to Japan, our distinguished former colleague Mike Mansfield has said, it is high time we stop nickeling and diming this vital relationship. Mr. Mansfield is firmly convinced that the American-Japanese relationship is America's most important bilateral relationship and deserves our constant attention. Clearly, we need to establish a better working understanding of our mutual roles and responsibilities so that we can build into the relationship a certain amount of shock-absorptive buffer which any alliance needs. It is time for the next step—a study by the administration, with informal dialog with the Japanese, to help us chart the course.

I appreciate the comments and contributions made by the cosponsors of this amendment—Senators ROTH, BAUCUS, PELL, ROCKEFELLER, MOYNIHAN, and MITCHELL—all of whom have demonstrated responsible concern over the direction of our relationship with Japan and deeply desire to develop productive options to improve that relationship over the long run.

I ask unanimous consent that the article from Japan Trade and Industry be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

TOWARD A NEW UNITED STATES-JAPAN ECONOMIC ALLIANCE

(By Keiya Toyonaga)

A widespread perception remains strong in the United States and, indeed, throughout the Western nations, that Japan is a closed society, dedicated to minimizing the importation of foreign products or investments. The prevailing opinion appears to be that Japan, at best, half-heartedly supports free international competition, and does everything in its power to make international trade a one-way street. Critics claim that Japanese markets become open to imports only after extreme pressure is applied, with threats of retaliatory action by other governments.

It is not my purpose to debate the merits of the endless stream of individual conflicts that have characterized trade relationship between the U.S. and Japan. But it seems evident that something must be done, promptly and effectively, to halt the deteriorating relationships between the two countries. Continuation of the "Japan-bashing" which characterizes many debates in the U.S. Congress, and the grudging reaction which frquently takes place in Japan, threatens to undermine the basic security and economic links which are vital to the maintenance of world peace and prosperity.

ALTERED ATTITUDES

The answer, I am convinced, rests on the creation of a new, comprehensive, cooperative relationship between the United States and Japan, providing world leadership in furtherance of liberalized trade and investment, currency stabilization and a sharing of economic burdens in fields such as aid to less developed countries and national security expenditures. Such a cooperative alliance would require major changes in policies and attitudes in both the United States and Japan, but the future economic health of the free world may well depend on the adoption of such significant innovations.

During the last fiscal year, which ended March 31, I served as chairman of a group of business and financial leaders in the Osaka area which conducted an intensive study of the causes and cures for the deteriorating atmosphere in U.S.-Japanese economic relationships. This study group, the Committee for International Affairs, Kansai Keizai Doyukai, has recently produced a forward-looking report which we hope will serve as the starting point for further deliberation among experts in both countries, looking toward a new era of mutual respect and cooperation.

The report, entitled "Toward a New Economic Alliance between the United States and Japan," contains a number of far-reaching recommendations. To place these proposals in proper perspective, it is necessary to review briefly a few basic factors which have led to the current economic problems between the United States and Japan.

At the conclusion of World War II, the United States assumed responsibility not only for maintaining the military security of the nations of the free world, but also for restoring their economic health. The U.S. helped to rebuild the war-ravaged industries of Europe, Asia and the less developed countries, opened its vast markets to foreign products, and provided a stable monetary climate for international transactions through creation of GATT (the General Agreements on Tariffs and Trade), the World Bank and the IMF (the International Monetary Fund).

In the ensuing decades, the economic growth of many free world nations has been remarkable. Although the economy of the United States itself has continued to show admirable stability and vigor, the unquestionable fact is that the U.S. dominance of the world economic scene has been changing. Other nations have grown relatively much faster, particularly Japan, which now enjoys the second-largest GNP of any country. While the rapid development of other nations may be attributed to the success of America's postwar efforts, the truth is that it has resulted in a weakened world economic leadership.

The U.S. now has difficulties in exercising an effective leadership singlehandedly, and no other nation has yet been prepared to share that responsibility with the United States. The simple fact is that Japan benefited greatly, and without substantial cost, from international public assets made available in the postwar decades by the United States, such as in the maintenance of peace, development of a free-trade system, and assurance of a stable international monetary system. Unfortunately, however, Japan has been slow to take more responsibility, commensurate with its economic development, for contributing to the maintenance and development of world political and economic order.

POLICY MISMATCH

This has led to criticism in the United States and other nations that Japan is a "free rider." For its part, the United States—despite its role of providing world economic leadership——has failed to coordinate its policies adequately with other nations, focusing instead on domestic concerns for maintaining "a strong America." Thus, in recent years, both nations have fallen short of meeting their international responsibilities, in part due to a lack of will to pursue a coordinated macroeconomic policy.

Indeed, in our opinion, the single most important factor leading to recent economic friction between the U.S. and Japan is the fact that, since 1980, the two countries have pursued diametrically opposite macroeconomic policies. Throughout this decade, the United States has adopted excessively stimulative fiscal policies while Japan has until recently adopted a policy of austerity.

During the early 1980s, the United States implemented large-scale tax reductions combined with substantial increases in total government expenditures (primarily defense-related). This expensive fiscal policy resulted in a rapid growth in consumption—and a huge increase in the federal budget deficit. While the demand for capital increased, the government adopted a tight-money policy to curtail inflation.

The net result was an inadequate supply of capital and soaring interest rates. These conditions attracted a massive flow of dollars back into the United States from Japan and elsewhere, which served to sustain the high value of the dollar. It was, in short, a perfect scenario for encouraging the importation of foreign goods into the United States.

By contrast, during these same years, Japan maintained a stringent fiscal policy, in order to restore its fiscal soundness. As a result, domestic demands for products in Japan stagnated, encouraging the Japanese economy to rely excessively on exports for its growth.

In short, the conflicting macroeconomic policies of the two countries provided a vast incentive to export products from Japan to the Untied States, thereby creating an enormous imbalance in U.S.-Japanese trade.

Despite Japan's huge trade surplus with the United States, the yen remained low relative to the dollar in the first half of the decade because of large capital flows from Japan to the U.S. (induced by inadequate capital demand in Japan and a significant difference in interest rates in the two markets). When the major nations attempted to rectify disparities in the world economy through the Plaza agreement of 1985, excessive priority was given to the realignment of exchange rates, causing a sudden appreciation of the yen and a decline of the dollar, despite the fact that the underlying macroeconomic causes where being addressed much more slowly.

Unfortunately, the lack of required coordination in macroeconomic policies between the two countries, along with negotiating postures which emphasize each individual sectoral issue, have resulted in an unhealthy and counterproductive atmosphere in U.S.-Japanese relations.

In the United States, manufacturers, unions and national politicians, alarmed by the flood of imports from Japan, have become vociferous about alleged unfair pricing and other trade practices which they claim have caused unfair competition with U.S. manufacturers, and have become equally caustic in charges that Japan prevents American firms from competing in Japanese markets. The result has been an outpouring of legal and legislative actions and proposals, many with far-reaching consequences not only for scores of Japanese industries, but also for the world trading system as a whole.

ALL TALK, NO ACTION

It should be noted here that the United States has its own problems to be solved, and that problems in the U.S.-Japan relationship do not lie solely with Japan. In this article, I will not reiterate problems which the United States is responsible for. Rather, I will focus my attention on the Japanese aspects of the troubled relationship.

It is further observed that Japan has not done much on its own initiative to create fundamental improvements in U.S.-Japanese relations or to propose methods whereby Japan can contribute toward stabilizing the global economy. This is, in fact, the genesis of the wide-spread perception that Japan has a deliberate policy of procrastination with regard to changes being sought by U.S. interests, that Japan is "all talk, no action," and that unfair Japanese practices will not be altered unless extreme pressure is applied.

Japan must overcome its passiveness, begin to respond more positively to criticism, and suggest a comprehensive agenda for improving U.S.-Japanese economic relations. Otherwise, I am convinced, there are likely to be a number of unfortunate consequences:

(1) American distrust of Japan, as well as Japanese resentment of America, will intensify, jeopardizing vital basic relationships between the two countries.

(2) If improvement of the U.S. trade deficit is delayed and the U.S. economy declines, there is a danger that isolationist sentiments may resurface in America and that protectionism may replace liberal trade as a national goal.

(3) An American tendency toward bilateral agreements may be intensified, thereby undermining GATT and other multinational arrangements which protect the rules of liberal international trade. The U.S. has already worked out free-trade agreements with Canada and Israel, as well as a framework for consultation with Mexico, and such principles of reciprocity and bilateralism may be extended to other countries.

What is required most urgently is a practical means of dealing with the basic instability that now exists in virtually every aspect of the world economic system—including trade, currency, finance and the debt problem. There are many indications that the current economic system, which supported the postwar expansion, has become seriously weakened and requires restructuring.

DUAL LEADERSHIP

Ideally, to meet this challenge, the United States, Japan, members of the European Community and other major nations should cooperate in developing a new structure which will provide a reliable system for international policy coordination. The obvious problem, however, is that in light of competing national interests, it would be impossible for a multinational effort to reach agreement on such a complex structure within a reasonable time frame. In fact, a vital element in the successful creation of such a new system is strong, effective leadership. While the U.S. acting alone can no longer provide this leadership, a joint effort by the two nations with the largest GNPs—the U.S. and Japan—could establish a structure which would win the cooperation of other nations.

The fundamental objective of the proposed economic alliance is simultaneously to achieve two fundamental needs, namely, elimination of U.S.-Japanese economic friction and stabilization of the world economy. This will require a new, comprehensive set of policies which our report set out in a section on a "New Economic Alliance between the United States and Japan." The basic elements in the proposed alliance are as follows:

Free-trade program

In general, all tariffs, quotas and other trade barriers would be removed between the two nations in stages over a 5-to-10-year period. This would include domestic Japanese practices which inhibit the entry of foreign goods and services. While this liberalization was taking place, both countries would avoid the imposition of additional trade restrictions either through administrative or legislative action. With regard to sectors of the Japanese economy where friction now exists (such as agriculture, construction, the distribution system, finance and insurance), entry barriers should be reduced promptly to a level acceptable to the United States.

Furthermore, the U.S.-Japan movement toward free trade should be designed so that it could be applicable to other countries, insofar as possible. The intention is that a bilateral free-trade effort would serve as a nucleus for a broad multinational program moving toward liberal trade.

Currency stabilization program

To alleviate the burden on the dollar as the key currency, the yen would be internationalized to a greater extent, and Japan would play an active role in making the yen complement the dollar.

In addition, a framework would be created to permit the U.S. and Japan to adjust their macroeconomic policies swiftly and effectively in order to assist in the stabilization of international currencies.

Burden-sharing program

Japan would cooperate with the U.S. in sharing the future burden of international public assets. In this regard, Japan would not only utilize its economic resources to sustain world peace, free trade and currency stability, but would actively contribute toward: (1) expanding and improving aid to developing countries; (2) resolving the problem of accumulated international debts; (3) spreading among the free world nations the benefits of basic technological developments; and (4) increasing imports from developing countries.

The report further recommends that, as an integral part of its international obligations, Japan should take unilateral action to reform aspects of its economy which have been widely criticized. In particular, it says, reform is required in the following areas: (a) government deregulation, including specified reductions in items requiring licenses or permits; (b) free-market mechanisms, to permit both government and private businesses to reflect shifts in exchange rates in their domestic prices; and (c) strengthening and coordinating administrative functions so that Japan's foreign policies can be implemented effectively.

It is my hope, shared by other members of the Committee for International Affairs, that scholars and political leaders specializing in international economic issues will study and debate our proposal for a new economic alliance between the U.S. and Japan, make suggestions for its improvement, and then press vigorously for the implementation of such a program in the form of a binding agreement between the two governments.

Mr. ROCKEFELLER. Mr. President, I am extremely pleased to join with the majority leader, my senior colleague from West Virginia, as a cosponsor of this amendment.

Although cooperation between the United States and Japan in the postwar period has never been better than it is at present, the conflicts between us have also never been greater. Trade friction, defense burden sharing, demands that Japan assume much greater international responsibilities, questions about direct Japanese investment in the United States, an equitable two-way flow of technology, protection for American intellectual property, leakage of critical technology to the Soviet Union—these are all serious issues being raised in the United States, and they deal with fundamental aspects of our relationship with Japan.

We have, most regrettably, been proceeding on these and other issues in an ad hoc way, with each Federal department following its own particular agenda. We negotiate product by product, sector by sector, raising a particular trade issue often because its proponents have the loudest voice in Washington. Emotion quickly overwhelms rationality—on both sides. The result has been a great lack of success in these negotiations, with growing bitterness, doubt, and misunderstanding between our two countries.

The United States has a broad range of vital interests in Japan. If we don't begin to think about the United States-Japan relationship in a more comprehensive way, the inevitable conflicts can all too easily become unmanageable. We may not only lose many opportunities for cooperation and coordination that would be of great benefit to us, but we also might find ourselves in situations of harmful and dangerous conflict with Japan.

What are the key American interests in the United States-Japan relationship. How can we manage that relationship to assure that these interests can best be made? The proposal presented by the majority leader, which requires that the executive branch look at possible frameworks for enhanced cooperation with Japan in the economic and security areas, will result in a thorough examination of all the elements in the bilateral relationship. Once we have such an evaluation at hand, we can then proceed to develop a policy that best serves our national economic, security, and strategic interests.

We can no longer afford just to sit around and hope that we will be able to avoid a further deterioration in our relationship with Japan. It needs a direction, and the majority leader's proposal is an excellent first step in trying to regain control of that relationship and to assure that our vital interests will be met.

There is a provision in the trade bill, introduced by Senator ROTH and myself, calling for a special summit meeting between the President and the Japanese Prime Minister, "for the purpose of addressing trade and economic issues, and establishing an agreement that provides objectives for improvement in trade and economic relations and targets for achieving these objectives." This special summit would, unlike previous summit meetings, include Members of Congress and the Diet, in addition to Cabinet members. This would, of course, be a final step in the development of a framework for enhanced cooperation.

It is time we get started on the process, and the majority leader's proposal will provide the next administration with a proper foundation for this. I congratulate the majority leader on his vision, and look forward to working closely with him in this area.

Mr. ROTH. Mr. President, I am pleased to be the principal cosponsor of the amendment offered by the majority leader, the distinguished Senator from West Virginia, [Mr. BYRD] requiring a comprehensive study on new approaches for economic and security cooperation between the United States and Japan.

The Omnibus Trade and Competitiveness Act which was recently signed into law by President Reagan included a sense of the Senate resolution I authored calling on the President to propose to the Japanese Prime Minister that a special executive/parliamentary summit be held between political leaders of both our countries. This summit would include Members of Congress from both political parties, key Cabinet members, representatives of all political parties in Japan and of the key ministries such as the Ministry of Foreign Affairs, the Ministry of Finance, the Ministry of International Trade and Industry as well as the Ministry of Agriculture. The purpose of such a summit would be to reach a joint agreement between key leaders in Japan and in the United States that provides objectives for improvement in trade and economic relations and establishes targets for achieving these objectives. This resolution in the new trade law was cosponsored by Senator ROCKEFELLER as well as Senators BENTSEN, RIEGLE, DANFORTH, SYMMS, and BAUCUS.

I have joined Senator BYRD in cosponsoring this amendment of United States-Japan relations today because I believe the study called for in this amendment will provide us with the base of knowledge we will need to undertake the kinds of discussions with Japan called for in my summit proposal.

This amendment addresses the full panoply issues before the United States and Japan and I strongly agree that it is only with a comprehensive understanding of our bilateral relationship that we can achieve new possibilities for cooperation with Japan. Importantly, this study will not simply cover traditional trade issues—such as tariffs and quotas. It will address mutual defense and the sharing of the burden of defense as well a broad array of commercial issues of critical importance to our bilateral relationship now and increasingly in the future. Here I refer to such areas as intellectual property protection government procurement, technology transfer and high technology targeting, trade in services, exchange rates, and systems for distribution of goods.

This study will be useful, to whichever party wins the Presidential election, by getting the basic information together, in a timely way, that can promote a productive and constructive relationship between the United States and Japan. This amendment would require an interim report by March 1, 1989 and a final report by no later than July 1, 1989. As strong allies, Japan and the United States both have a clear interest in resolving festering problems in trade, economics, and defense. While we can continue to deal with narrow issues as they arise, we both have a stake in developing a comprehensive overall relationship that is mutually beneficial.

Mr. BAUCUS. Mr. President, the bilateral relationship between the United States and Japan is the most important in the world bar none. This statement by United States Ambassador to Japan Mike Mansfield may sound like a rhetorical flourish, but it merely reflects economic reality.

Japan has made tremendous strides since World War II. The United States and Japan are now the two largest economic powers in the world.

The United States and Japan have the second largest bilateral trade relationship between any two major countries—$115 billion annually.

Japan is the largest source of foreign investment in the United States, and Japan is by far the United States' largest foreign creditor.

Japan has also joined the United States to become the world's second financial superpower. Tokyo and New York have become the world's two largest financial centers. The world's 10 largest banks are now all Japanese owned.

Over the last 7 years, the yen has become the world's second major currency after the dollar. The use of the yen in international bond issues has increased 1,200 percent since 1980; use of the dollar has dropped by 50 percent.

As the Japanese economy has expanded, however, the relationship between the United States and Japan has deteriorated. The United States and Japan have become ensnarled in a seemingly endless series of bitter trade and economic disputes.

The pattern is always the same. The United States demands that Japan eliminate a trade barrier. Japan refuses. Both nations bluster and threaten. Usually, in the 11th hour, an agreement is reached, but only at the cost of much goodwill on both sides. A number of these disputes have already flared to near trade war proportions, and no end is in sight.

That is why I am very happy to be a cosponsor of Senator BYRD's amendment to begin a bilateral study of possible new directions for the United States-Japan relationship.

U.S. ECONOMIC PROBLEMS

The United States frustration with Japanese trade practices as seen in the recently completed trade bill and the long list of trade disputes with Japan results largely from the tremendous United States trade deficit.

In the last 7 years, the United States has experienced nothing short of an international economic disaster. From 1980 to 1987, the U.S. trade deficit swelled from $31 to $170 billion. Over the same period, the manufacturing trade balance went from a $27 billion surplus to a $138 billion deficit.

At the heart of the trade deficit is Japan. United States imports from Japan grew from $40.9 billion in 1983 to $84 billion in 1987—a 105-percent increase.

Over the same period, United States exports to Japan rose from $21.2 to $26.9 billion—a paltry 27 percent.

Predictably, the bilateral trade deficit exploded. The deficit rose from $20 to $60 billion—a 200-percent increase.

The United States bilateral trade deficit with Japan is more than three times as large as the bilateral deficit with any other nation.

Perhaps even more troubling, the United States trade deficit with Japan—regardless of exchange rate fluctuations and other economic changes—has persisted for 25 years.

Eliminating this trade deficit should be a top priority for the United States.

The trade deficit has already cost the United States 4 million jobs.

And, since the United States must borrow money from abroad to pay for imports, the United States has slipped deep into the red financing the trade deficit.

In 7 years, the United States has gone from being the world's largest creditor to being the world's largest debtor. Some economists quibble about the size of the debt, but the best statistics available indicate that the United States now owes the rest of the world more than $400 billion.

By the mid-1990's, the interest payments on this huge debt could drive the U.S. standard of living down by 2 to 3 percent—the same amount that the U.S. standard of living declined during the Great Depression.

And these dire statistics do not tell the whole tale. The United States has seen an unprecedented erosion of critical industries. Virtually every major manufacturing industry had a lower trade balance in 1987 than in 1980.

The United States has already lost its edge in the manufacture of critical high technology products, like semiconductors, to the Japanese.

In 1980, the United States was responsible for nearly 75 percent of world semiconductor shipments. Japan was responsible for about 25 percent.

Now, the situation has dramatically reversed. Japan is responsible for 75 percent of the shipments and the United States is responsible for less than 20 percent.

If the trend is not reversed soon, we stand to lose other key industries ranging from the production of supercomputers to aerospace manufacturing to Japan.

CAUSES OF THE DEFICIT

Neither Japan nor the United States bears all of the blame for the trade deficit—there is plently of blame to go around.

In large part, the trade deficit is the result of poor macroeconomic coordination; exchange rate fluctuations, the United States budget deficit, and sluggish growth in consumer demand in Japan are all partially responsible.

Some U.S. industries have also not worked hard enough at exporting their products to Japan.

But many of those that have tried have had doors slammed in their face.

The Japanese public and private sector continue to systematically encourage exports and discourage imports.

Significant import barriers, ranging from agricultural quotas to the Japanese distribution system, block United States exports. And Japan continues to target critical industries for export growth—often at the expense of their United States competitors.

FLAWED U.S. STRATEGY

The United States has yet to devise a coherent strategy for addressing its trade and economic problems with Japan.

The Reagan administration has relied heavily upon lowering the dollar to bring down the trade deficit. We have already seen the dollar come down from about 250 yen to about 130 yen.

Controlling exchange rates is a part of the solution, but it is not the whole solution.

Many Japanese companies can be competitive even at drastically lower exchange rates. Mitsushita claims that it can be competitive with the dollar as low as 57 yen to the dollar, Hitachi claims that it can compete at 93 yen.

Lowering the dollar has had an impact on the deficit, but most economists believe that a low dollar will not bring the U.S. trade deficit down much below approximately $100 billion per year—unless we are willing to lower the dollar to levels that would wreak havoc on the U.S. economy.

Moreover, lowering the dollar lowers the U.S. standard of living. As imports grow more expensive, the inflation rate rises, and the American consumers dollar doesn't go as far.

Already, the price of some Japanese automobiles have risen more than $1,000 because of the lower dollar.

The United States has also pursued ad hoc bilateral negotiations to open the Japanese market to certain United States products.

These negotiations have had some successes, but they have also had three serious weakenesses.

First, we have chosen our targets poorly. Many man-hours and dollars have been thrown into efforts to open the Japanese market to relatively minor products, like baseball bats and grapejuice. Meanwhile, billion dollar plus targets, like the Japanese distribution system, have been ignored.

Second, the current strategy of making an endless series of small complaints has given the average Japanese citizen the impression that the United States is trying to blame all of its problems on Japan. Every opinion poll taken over the last 3 years has noted a sharp increase in negative feeling toward the United States in Japan.

These negative impressions of the United States inevitably lower United States leverage with Japan.

Finally, we have left every Federal agency run its own negotiations with Japan. The Treasury Department, the Defense Department, the State Department, and the United States Trade Representative's office have all carried on independent negotiations with Japan. The United States has had no central agenda.

This disorganization allows Japan to play one agency off of another and avoid major concessions.

TIME FOR CHANGE

Leaders on both sides of the Pacific have recognized the current weakenesses in the United States-Japan relationship. We have seen a number of new approaches put foward over the last 3 years ranging from a United States-Japan Free-Trade Agreement, to the Gephardt amendment to the trade bill, to the Maekawa Commission recommendations.

Some believe that the current round of GATT negotiations represent the best chance to resolve our bilateral differences.

Others believe that new U.S. trade barriers are the answer.

I believe that the best option is a sweeping bilateral agreement that addresses all aspects of the United States-Japan relationship, including macroeconomic problems, trade disputes, and the inequitable security burden.

But whatever their alternative, all sides of the debate have concluded that the status quo is unacceptable.

In my view, the question is not whether we will take a new approach to the United States-Japan problem, but which of the several approaches we will choose.

That is why I think the Byrd amendment is so critical. Both sides must take a hard look at the problems that both nation's face and begin to formulate solutions.

The world's two economic superpowers must forge a new relationship to deal with their problems.

Mr. President, I ask unanimous consent that the material entitled "Explanation of Modifications to Finance Committee Amendment" be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

EXPLANATION OF MODIFICATIONS TO FINANCE COMMITTEE AMENDMENT

Hobby losses: The amendment to the Finance Committee Amendment ("the Amendment") corrects a clerical error in the 1986 Code.

Capital cost recovery: The amendment to the Amendment also provides that for purposes of calculating the 40 percent test for the midquarter convention the taxpayer may elect to exclude or include property placed in and withdrawn from service in the same tax year, for tax years beginning before 1989.

The amendment to the Amendment deletes (at the request of the original sponsor) a transition rule included in the Tax Reform Act of 1986.

Corporate: The amendment to the Amendment clarifies that for purposes of the provision if a person has a warrant to acquire stock, such stock shall be considered as owned by such person.

The amendment to the Amendment clarifies that the provision relating to certain outbound reorganizations applies to exchanges on or after June 21, 1988 (rather than June 22, 1988), unless pursuant to a plan of reorganization adopted before the June 21, 1988 date.

REITs: The amendment to the Amendment relates to payments received on interest rate swap agreements by real estate investment trusts. Under present law, at least 95 percent of the gross income of a real estate investment trust must be derived from passive sources such as dividends, interest, or gain from the sale or other disposition of stock or securities. In addition, less than 30 percent of its gross income may be derived from the sale of stock or securities held for less than six months. Under the amendment, except as the Treasury Secretary provides by regulations, any payment to a real estate investment trust under a bona fide interest rate swap or cap agreement entered into by the real estate investment trust to hedge variable rate indebtedness incurred to acquire or carry real estate assets (and gain from the sale of such agreement) is treated as income qualifying under the 95-percent test, and the agreement is treated as a security under the 30-percent test.

Simplified method for allocating storage and handling costs of taxpayers acquiring property for resale: The amendment to the Amendment provides that under the simplified method for allocating storage and handling costs between ending inventory and cost of goods sold, the amount of storage or handling costs included in ending inventory is to be determined by dividing the amount of storage or handling costs by the beginning inventory balance and purchases during the year and multiplying the result by the amount of costs in ending inventory that are considered purchases for the year. The provision is effective as if included in the Tax Reform Act of 1986.

Insurance: The amendment to the Amendment clarifies that in the case of an interinsurer or reciprocal underwriter that reports on its annual statement reserves for unearned premiums net of premium acquisition expenses, the difference between (1) the amount of the reserves at the end of the most recent taxable year beginning before January 1, 1987, and (2) 80 percent of the sum of the reserves at a such date and such premium acquisition expenses is to be taken into account ratably over a 6-year period as a section 481(a) adjustment.

Application of section 89 to small employers: Under present law, employees who normally work less than 17½ hours per week are disregarded for purposes of the nondiscrimination rules for employee benefit plans (sec. 89). The amendment to the Amendment provides that, in applying the 80-percent test under section 89 to a plan maintained by an employer with less than 10 employees, (1) employees who normally work 35 hours or less per week may be disregarded in applying the test to plan years beginning in 1989, (2) employees who normally work 25 hours per week or less may be disregarded in applying the test to plan years beginning in 1990, and (3) the present-law rules apply to plan years beginning in 1991 and thereafter.

Foreign: *Noncontrolled section 902 corporations.*—The amendment to the Amendment corrects a provision in the Committee-passed bill so that, for foreign tax credit limitation purposes, look-through treatment of dividends from controlled foreign corporations may be denied only in the case of a U.S. shareholder that was not a U.S. shareholder of the controlled foreign corporation at the time the distributed earnings were derived, and allows the Secretary to permit look-through treatment in such a case by regulation.

80/20 company effective date.—The amendment to the Amendment modifies section 112(g) of S. 2238 to provide that a 1986 Act provision, which treats dividends paid to U.S. persons by a U.S. corporation doing most of its business outside the United States (an "80/20 company") as U.S. source, will be effective either for dividends paid in taxable years beginning after December 31, 1986, or, if the taxpayer elects, for dividends paid after December 31, 1986.

Captive insurance companies.—The amendment to the Amendment also clarifies that a provision included in the Committee-passed bill, which conforms the treatment of gains on sales of stocks in foreign corporations that are controlled foreign corporations under the captive insurance rules with the treatment accorded to gains on sales of controlled foreign corporation stock in general, is effective for gains on sales of stock in foreign insurance companies regardless of whether those companies have elected to treat their related person insurance income as income effectively connected with the conduct of a trade or business in the United States.

Interaction of treaties and statutes.—The amendment to the Amendment clarifies that an item is excludable from gross income of a taxpayer pursuant to those treaty provisions that continue to operate unaffected by subsequently enacted statutes.

Compliance: The amendment to the Amendment deletes a superfluous sentence from the provision relating to the surrender of property subject to levy.

Gasoline tax: The amendment to the Amendment corrects a cross-reference to the gasoline tax.

Harbor maintenance tax to be imposed once on certain Alaska, Hawaii, or possessions cargo: The amendment to the Amendment provides that the harbor maintenance tax is to be imposed only once on cargo (other than crude oil) that is shipped in a continuous transportation under a single bill of lading or to or from a port in Alaska, Hawaii, or a U.S. possession. The provision is effective on the date of enactment.

BATF occupational tax: The amendment to the Amendment provides a cross-reference coordinating elements of the BATF occupational tax.

Allocation of assets in case of plan spinoffs: The amendment to the Amendment also provides that the allocation rule under the technical corrections provisions of the Amendment in the case of pension plan spin offs applies to a spin off involving a plan maintained by a bank that has been closed by the appropriate bank authorities and a plan maintained by a bridge bank (as described in 12 U.S.C. 1821(i)). The amendment also authorizes the bridge bank to cause the plan maintained by the closing bank to spin off assets to a defined benefit pension plan maintained by the bridge bank in accordance with the allocation rule within 180 days after the closing of the bank. The amendment is effective with respect to transactions occurring after July 26, 1988.

Insurance: The amendment to the Amendment clarifies that for purposes of the modified endowment contract provision that allows the amount of the 7-pay premium to be increased by an expense charge of $75 for certain contracts with a death benefit of $10,000 or less, all contracts issued by the same insurance company to the same policyholder are treated as a single contract.

Corporate: The amendment to the Amendment clarifies that the reference to section 469(j)(5) refers to the Code section.

Alaska Native Corporation transitional relief: The amendment to the Amendment provides limited additional relief to (1) Native Corporations that transfer losses (or credits) to offset income assigned (or attributable to property contributed) pursuant to a binding contract entered into before July 26, 1988 and (2) certain financially distressed Native Corporations. The amendment also provides certain special administrative rules relating to IRS audit and judicial proceedings.

Residential telephone service: The amendment to the Amendment deletes the provision denying a deduction for certain residential telephone service.

Minimum participation rule for police and firefighters: The amendment to the Amendment modifies the application of the minimum participation rule to plans maintained for qualified public safety employees by (1) clarifying that qualified public safety employees include employees providing police protection, firefighting services, and emergency medical services, and (2) deletes the requirement that qualified public safety employees be full-time employees to qualify for the special rule.

Application of funding rules to multiple employer plans: The amendment to the Amendment clarifies the funding rules for multiple employer plans (as added by the Amendment) by providing that, in the case of a plan established after December 31, 1988, each employer is treated as maintaining a separate plan for purposes of the minimum funding standard unless the plan uses a method for determining required contributions that provides that any employer contributes at least the amount that would be required if the employer maintained a separate plan.

Withdrawal liability of multiemployer plans: The amendment to the Amendment deletes section 722 of the Amendment, which provided for a temporary moratorium on collection of certain withdrawal liability to a multiemployer plan.

Low-income housing credit: The amendment to the Amendment corrects a drafting error relating to the measurement of project costs that must be incurred to qualify for the carryforward and further clarifies the credit percentages that may be carried forward.

Extension of research credit: The amendment to the Amendment makes a technical correction to the pro rata rule for computing qualified research expenditures under the three-month extension of the research credit, to ensure that certain fiscal-year taxpayers receive the credit for qualified expenditures made prior to January 1, 1989 (in accordance with present law).

FSLIC extension: The amendment to the Amendment clarifies that the effective date of the provision extending tax exemption to FDIC assistance received by a financially troubled bank is the same as the basic effective date of the extended rules for FSLIC assistance and thus does not apply to transfers after December 31, 1988 and before July 1, 1989 that are pursuant to an acquisition occurring before January 1, 1989.

The amendment to the Amendment corrects a reference to December 1 to read December 31. Thus, the extension of the FSLIC assistance provisions that expire as of December 31, 1988 applies to certain transfers after December 31, 1988 (rather than after December 1, 1988).

Application of pension reversion excise tax increase—bankrupt companies: The amendment to the Amendment adds an additional exception to the temporary increase in the pension reversion excise tax included in the Amendment to the Finance Committee bill. Under the exception, the increased tax does not apply if a final order directing plan termination was entered by a court of competent jurisdiction and notice of such court-ordered termination was provided to participants before July 27, 1988.

Interest exclusion for refinanced ESOP loans: The amendment provides that, in the case of a refinancing of a securities acquisition loans that was made before October 22, 1986, the partial interest exclusion under section 133 is available with respect to the greater of (1) the term of the original securities acquisition loan, or (2) the amortization period used to determine the regular payments under the original securities acquisition loan.

Gasohol blenders exception: The amendment permits gasohol blenders to purchase gasoline at a reduced tax rate even though the alcohol component of the gasohol is not purchased at the same time.

Nondiscrimination rules for cafeteria plans: The amendment provides that the Secretary may provide that the reasonable classification test applicable to cafeteria plans (sec. 125(b)(1)) is applied in a different manner than the reasonable classification test applicable under the coverage (sec. 410(b)) and line of business rules (sec. 414(r)). The provision is effective as if included in section 1151(d)(1) of the Reform Act.

Substantiation of certain charitable contributions of inventory property by closely held corporations: The amendment authorizes the Treasury Department to substitute alternative substantiation requirements for the present-law qualified appraisal rules in the case of contributions of inventory property by closely held corporations for the ill, needy, or infants, such as contributions of food by food retailers to shelters for the homeless.

Election of producers of pistachio nuts to deduct preproductive period costs currently: The amendment permits taxpayers that are not required to use an accural method of accounting to elect to deduct currently costs incurred in the planting, cultivation, maintenance, or development of pistachio trees, effective as if included in the Tax Reform Act of 1986.

Exemption of forced dispositions of stock by an ESOP from excise tax: The amendment provides that any forced disposition of publicly traded employer securities by an ESOP that occurs by operation of a State law shall not be treated as a disposition for purposes of the excise tax under section 4978A. This exception does not apply if the ESOP has a controlling interest in the corporation (i.e., the ESOP controls the disposition of the stock). The provision is effective as if included in the amendment made by section 10413 of the Revenue Act of 1987.

Term of Office of Social Security Public Trustees: The amendment adds a section to the Amendment. Present law directs the President to nominate two individuals to serve as public members of the boards of trustees of the social security and medicare trust funds. These nominees are subject to Senate confirmation and serve for 4-year terms. The proposed amendment provides that an individual serving as a public trustee on or after the date of enactment of the legislation may continue in office past the expiration of his or her term until such time as a successor has been nominated and confirmed.

Radon medical deduction: The amendment allows a taxpayer to include as expenses paid for medical care qualified home improvement costs incurred to mitigate radon gas exposure, effective beginning in 1988.

Exemption from retail excise tax for certain heavy trucks: The amendment adds the retail excise tax on heavy trucks and trailers to the category of excise taxes for which the Treasury Department can provide exemptions if the benefits from the exemption accrue to the United States, effective on the date of enactment.

Relief from recognition of corporate level gain involving transfer of residential cooperative units: The amendment provides that, except as provided in regulations, no corporate level gain or loss shall be recognized to a residential housing cooperative when property that qualifies as a principal residence is distributed to a tenant shareholder in exchange for the tenant shareholder's stock, to the extent the exchange qualifies for nonrecognition at the shareholder level under section 1034 of the Code. The provision is effective as if included in the Tax Reform Act of 1986.

Sec. 415 limits for police and firefighters: The amendment adds a section to the Amendment. Present law provides that the limit on benefits that may be paid under a qualified pension plan to police and firefighters is not less than $50,000 for police and firefighters who retire after 20 years of service. The amendment provides that 20 years of service requirement for the special rule for police and firefighters is decreased to 15 years.

Medicare coverage of medical attendant on commerical airline: The amendment adds a section to the Amendment. Present Medicare law allows coverage of ambulance service in certain circumstances, including air ambulance service. Current regulations allow coverage of medically necessary transportation on a commerical airline in the

State of Alaska when air ambulance service is not available. The amendment provides Medicare coverage for the services of a medically necessary attendant escorting a patient on a commerical airline in those circumstances where coverage of the transportation on the commercial airline is allowed.

Netherlands Antilles: The amendment allows a Netherlands Antilles finance subsidiary to increase its debt-equity ratio to 25-to-1 and still satisfy the requirements of the Tax Reform Act of 1984 relating to U.S. tax exemption for interest paid to qualified finance subsidiaries.

Change in depreciable life and method for fruit and nut trees: The amendment provides for straight line depreciation over ten years for trees or vines bearing fruit or nuts.

Study on the definition of resident alien: The amendment provides that the Treasury Secretary shall complete a study before May 1, 1989 of the Code definition of resident alien, in order to examine the administrability of the definition, its effect on investment flows into the United States, the definitions used by U.S. trading partners, the relationship of the definition with U.S. treaties, and the estimated revenue impact of changing the definition.

Annuity diversification requirements: The amendment adds a section to the Amendment. Each agency or instrumentality of the United States is treated as a separate issuer for purposes of the annuity diversification requirements applicable to variable annuity or variable life insurance contracts.

Section 401(k) plans for railroad employees: The amendment adds a section to the Amendment. A special exception to the qualified pension plan coverage rules under present law permits the coverage rules to be applied to a plan established pursuant to a collective bargaining agreement covering airline pilots as if the employees covered by the bargaining agreement were the only employees of the employer. The amendment expands this special rule to apply also to collectively bargained 401(k) plans for railroad employees.

Report on Hospital Wage Indices: This amendment requires two studies, recommending how certain hospitals, under Medicare, should be reimbursed based on their geographic location.

Consumer Price Index: The amendment provides use of the Consumer Price Index for all urban consumers by a Federal officer or agency in determining certain cost-of-living increases.

Rural Health Centers: The amendment provides an authorization for rural health centers research.

Medicaid Reform: The amendment expresses the sense of the Senate on Medicaid reform for people with disabilities.

Reports regarding certain disability-related benefits: The amendment requires reports from the Secretary of Health and Human Services regarding certain disability-related benefits.

Trade technical amendments: The amendment provides technical corrections to recent trade legislation.

Effective date of section 415 amendments for collectively bargained plans: The amendment provides that, in the case of a plan in existence on March 1, 1986, and maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, the modifications to the section 415 limits for collectively bargained plans in the Tax Reform Act of 1986 do not apply in years beginning before October 1, 1991.

Educational assistance for graduate teaching and research assistants: Under the Finance Committee amendment, the section 127 exclusion for employer-provided educational assistance is retroactively reinstated for one year, so that the exclusion is available for all of 1988. The amendment also provides that, for 1988, employer-provided educational assistance generally is not excludable under section 127 in the case of graduate-level education. However, an exception to this limitation on the section 127 exclusion is provided for graduate teaching and research assistants at colleges or universities who perform services for the educational institution.

It was the intent of the Finance Committee to clarify that benefits provided to graduate teaching and research assistants are eligible for exclusion under the scholarship and tuition reduction provisions of section 117 or, if the college or university has a section 127 employer-provided educational assistance program, under the provisions of section 127, provided that the requirements of whichever of those sections is applicable are satisfied. Of course, an exclusion under sections 117(a) or 117(d) is subject to the limitation set forth in section 117(c) of present law, disallowing an exclusion under that section for amounts representing payment for services.

Mr. PACKWOOD. Mr. President, I think this amendment has been cleared with anybody who might conceivably have objection to it. These are genuinely technical corrections and amendments. I know of no opposition.

Mr. HARKIN. Mr. President, I am pleased that the managers of the bill have agreed to include an amendment that I and Senator GRASSLEY cosponsored in this omnibus amendment.

The 1986 Tax Reform Act added a new section 89 to the Internal Revenue Code which applies detailed nondiscrimination rules to employer sponsored welfare benefit plans, including group health and group-term life insurance arrangements.

These new rules—which have yet to be drafted by the Internal Revenue Service—seek to expand benefit coverage for lower paid workers by taxing benefits of higher paid workers that exceed limits set by a series of computational tests. While there is still no regulatory guidance on many important section 89 issues, the new requirements are generally effective for benefit plans beginning after December 31, 1988.

The goal of discouraging discrimination in employer provided health and group-term life insurance arrangements is important and is one which I fully support.

Unfortunately, the section 89 rules could in some cases have the opposite effect envisioned by the proposal's original advocates. Instead of expanding coverage to reach more workers, it could result in less coverage—and we could see many new employers decide against starting any employee insurance plan.

I also want to note that it can cost many small employers more to expand benefits coverage than to pay the tax penalty required for maintaining a benefit plan that is ruled as discriminatory. When these employers look at their bottom line, it may make no business sense for them to meet the new requirements. This problem is most significant with small businesses.

Only 46 percent of the employers with fewer than 10 employees offer health insurance plans. That figure jumps to 78 percent for firms employing 10 to 25 employees and 92 percent for firms employing from 26 to 50 workers. Almost all large firms have health plans.

It is the smallest category of firms that is most likely to either eliminate a health plan or decide to not start one.

In the spring, the Principal Financial Group, headquartered in Des Moines, surveyed the impact of the new section 89 requirements among a selected group of its small employer clients, each with less than 10 employees. The overwhelming majority of these small employers failed the section 89 tests.

In many cases, employees at these small businesses have decided to not take health insurance because they received coverage through a working spouse. The underlying measure provides that such an employees decision would not count against an employer. A second major problem was the difficulty of getting part time workers to take health insurance.

The amendment provides that small employers—defined as those businesses with less than 10 workers for the purposes of this amendment—be allowed a transition period. That period will enable them to expand coverage in an orderly way. It will also allow them to find appropriate insurance packages which meet their requirements under the law.

The amendment only modifies the provision for meeting the 80-percent employee participation test. This test which was designed for smaller businesses provides that a plan meets the participation requirements of section 89 if 80 percent of all of the employees are members of the insurance plan. Under the amendment, part-time employees must be eligible for insurance as they are under the provisions in the bill. However, part-time employees will only be counted for the purposes of the 80-percent participation test under the following schedule:

In 1989, those working more than 35 hours would be counted. In 1990, those working for more than 25 hours would be counted for the 80-percent test. In 1991 and thereafter, those working for more than 17½ hours would be counted as they would under the bill.

As I indicated, this phase in would be limited to the smallest of small employers. Based on the limited size of this group the Joint Tax Committee has determined that the revenue effect will be minimal. The loss of revenues to the Treasury is less than $1 million per year. Of greater importance, I believe the policy objective of expanded health coverage has a better chance of being achieved through this transitional period.

Mr. President, as I noted earlier, that 46 percent of the 2.8 million American firms with 10 workers or less offer health insurance. I fear that this already low level may be jeopardized by the current complexity of the section 89 requirements, especially as most small employers do not have the sophisticated or extensive human resources capabilities of larger organizations and many are attempting to cope with several years of rate increases for health plans currently in place.

The decision by most small employers whether or not to comply with section 89 will be one based on financial considerations. I believe we should assist these small businesses in their efforts to comply and provide the benefits coverage sought by section 89.

I would also ask unanimous consent to place in the Record a letter to Senators from the U.S. Chamber of Commerce on this issue.

There being no objection, the letter was ordered to be printed in the Record, as follows:

U.S. Chamber of Commerce,
Washington, DC, October 5, 1988.

Members of the United States Senate:

The U.S. Chamber of Commerce urges you to support an amendment by Senators Harkin and Grassley to S. 2238, the Technical Corrections Act of 1988, that would assist small employers in complying with the complex nondiscrimination tests under Section 89 of the Internal Revenue Code.

As a result of the law's complexity and the lack of timely regulatory guidance, Section 89 will have a serious impact on employers of all sizes.

The Harkin-Grassley amendment would phase in over three years the time frame in which employers with fewer than 10 employees would have to comply with the full range of requirements under Section 89.

Rules to ensure nondiscrimination in benefit plans should act as an incentive, not a disincentive, for employers to provide coverage for their workers. According to the Small Business Administration, 2.8 million U.S. firms with fewer than 10 employees offer health insurance benefits. A transition period would help these businesses to manage the increased costs and administrative burden of Section 89 compliance in a more orderly manner.

The Chamber urges you to support the Harkin-Grassley amendment to help the smallest employers to meet the complex demands of Section 89 and would be pleased to assist in developing further revisions to mitigate the expense and administrative burden of Section 89 compliance for all employers.

Sincerely,

Albert D. Bourland.

LIMITATIONS APPLICABLE TO EARLY RETIREMENT

Mr. STEVENS. Mr. President, the Tax Reform Act of 1986 generally changed the ceiling limitations applicable to early retirement payments by qualified pension plans, but through a transition rule contained in section 1106(i) delayed the effective date for the new limitations to apply to plans maintained pursuant to one or more collective-bargaining agreements ratified on or before March 1, 1986. As to these plans, the new ceilings were to apply on the earlier of the date on which the last relevant collective-bargaining agreement terminates or January 1, 1989. In the case of many such plans, however, the transition period provided has proven to be simply too short to permit an orderly transition through the collective-bargaining process.

The amendment solves this transition problem by extending the transition period for all plans described in the Tax Reform Act's section 1106(i) to October 1, 1991, after which time the new section 415 ceilings would apply to all such plans. Until the new effective date, benefits would continue to accrue as they have heretofore for beneficiaries of these plans. This additional time will permit the orderly cycling of plans pursuant to collective-bargaining agreements through the bargaining process, permitting these plans to be redesigned, and allowing plan administrators to effect necessary changes in benefits administration, obtain appropriate IRS determination letters and educate participants with respect to new plan terms. It, therefore, advances our purpose to discourage early retirement and encourage productive workers to remain in the work force.

SECTION 415 LIMITS FOR EARLY RETIREMENTS BY POLICE OFFICERS AND FIREFIGHTERS (CITY OF ANCHORAGE)

Mr. STEVENS. Mr. President, section 415 of the Internal Revenue Code contains limitations on pension benefits payable to employees, including public employees. For public employees, current law sets a declining ceiling for early retirees with less than 20 years of service; the earlier retirement age, the lower the ceiling.

For police and firefighters retiring with 20 years or more of service, the Tax Reform Act provided that the pension benefit ceiling would not drop below $50,000. However, one of the retirement plans offered by the city of Anchorage to policemen and firefighters permits an early retirement with less than 20 years of service. Anchorage adopted a 15-year retirement plan because it found its public safety officers often could not work the full 20 years due to the unusually harsh conditions in Alaska.

With less than 20 years of service, the $50,000 floor which protects police and firefighters does not apply. Consequently, with early retirement, and comparatively high salaries—to accommodate the high cost of living in Alaska—some of the policemen and firemen in Anchorage are entitled to pensions exceeding the 415 limitations. In fact, without the $50,000 floor, early retirees could see their pensions reduced to as low as $6,600.

However, the Alaska State Constitution protects employees from the diminishment of accrued retirement benefits. Therefore, the Anchorage Police and Fire Retirement Board is caught between the 415 limitation which requires a reduced pension payment and the Alaska Constitution which requires a full pension payment.

Both the House-passed bill (H.R. 4333), as well as the Senate Finance Committee amendment contain provisions designed to alleviate this problem. However, while they both correct the problem for current employees, they would nevertheless force lower pensions for policemen and firefighters hired beginning in 1990.

In order to prevent this problem from arising, I worked with the Finance Committee to write an amendment which prevents the pension limit for early police and fire retirees from dropping below $50,000. This ceiling will be high enough to accommodate any early retirement pensions to which policemen or firemen might be entitled. According to the Joint Committee on Taxation, my amendment will have a negligible impact on revenues.

I thank the Finance Committee for their cooperation in drafting this amendment to protect the pension benefits of police and firefighters.

STEVENS PROVISION TO EXEMPT PENSION REVERSIONS ORDERED BY A COURT BEFORE JULY 27, 1988 FROM THE 60 PERCENT EXCISE TAX IN THE COMMITTEE AMENDMENT (WIEN)

Mr. STEVENS. Mr. President, under present law, a 10-percent excise tax is imposed on an employer reversion from a qualified plan. One of the provisions in the committee amendment would temporarily increase the excise tax from 10 percent to 60 percent.

The committee amendment provides for several exceptions to the temporary excise tax increase. My amendment would add an additional exception in order to rectify an unintended effect of the provision relating to the impending termination of the Wien Air Alaska, Inc., fixed pension plan for pilots.

Wien is preparing to terminate the plan pursuant to an April 22, 1988, settlement agreement. The settlement agreement awards to plan participants a large portion of the plan's actuarial surplus of approximately $2 million. After payment from the surplus of taxes imposed by IRC section 4980, administrative costs, and other specified items, 50 percent of the remaining surplus is to be awarded to participants in the form of a benefit increase. The remaining 50 percent will revert to Wien.

On May 23, 1988, Wien mailed a notice to participants as required by the settlement agreement, informing them of the terms of that agreement, including the benefit increase funded by the surplus and an amendment allowing them to receive their benefits in a lump sum. Despite this notice, the plan's termination does not qualify for the committee amendment's prior notice exceptions, since the formal notice to participants required by ERISA has not yet been sent.

However, this is not the type of termination the committee's provision is designed to discourage. Unlike an employer that unilaterally terminates a plan to obtain a reversion for its own benefit, Wien negotiated the terms and conditions of termination with the Air Line Pilots Association. These terms confer significant advantages upon participants, including the lump-sum option and the benefit increase funded from the surplus. Many participants are counting on these cash distributions, of which they were informed in Wien's May 23, 1988, notice, as insurance against the job security risks they now face in the airline industry.

Under the committee amendment, Wien and the participants would each, in effect, bear half of the burden of the excise tax increase.

Because this is not the type of situation the committee provision is designed to cover, I worked with the Finance Committee to draft an additional exception to cover pension plans in the situation I have just described.

I thank the Finance Committee for their cooperation in drafting this amendment.

STEVENS PROVISION ON MEDICARE REIMBURSEMENT FOR MEDICAL ESCORT OR ATTENDANT SERVICES ON COMMERCIAL AIR CARRIERS

Mr. STEVENS. Mr. President, section 1867(s)(7) of the Social Security Act provides for Medicare coverage of "ambulance services where the use of other methods of transportation is contraindicated by the individual's condition. * * *" However, early in the program, the Health Care Financing Administration determined that the vehicle and personnel standards developed for ambulance service could, in effect, make these services unavailable in Alaska.

Therefore, HCFA authorized for Alaskans the use of air ambulance service furnished by commercial aircraft. When strict requirements are met, HCFA deems the commercial air carrier to be a Medicare-approved ambulance for purposes of the trip in question.

A problem arises, however, because FAA regulations prohibit airline flight attendants from acting as escorts for stretcher patients. Airlines in Alaska therefore require that all stretchers be accompanied by a person qualified to administer whatever medical attention may become necessary during the flight.

However, under current law and regulations, Medicare will not pay for medical attendants on commercial flights; they can pay for the services of ambulance attendants only if they're an integral component of the ambulance service. Alaskans are, therefore, faced with the choice of paying the costs of medical attendants on commercial flights or paying for the expensive services of special air ambulances—which are not covered by Medicare.

My provision would authorize Medicare to pay for services of medical escorts or attendants on commercial aircraft. CBO estimates this will cost only $21,000 per year.

I thank the Finance Committee for working with me on this provision which will help to make Medicare payments for ambulance service uniformly available to all Americans, including those in the remotest parts of our Nation.

(At the request of Mr. BYRD, the following statement was ordered to be printed in the RECORD:)

● Mr. LAUTENBERG. Mr. President, I want to express my strong support for a provision included at my request in the committee amendment which addresses the serious, nationwide problem of radon gas.

The provision would clarify that for the purposes of the medical expense deduction, amounts paid for qualified home improvements to mitigate radon gas exposure shall be treated as expenses paid for medical care. To qualify, the home must have a level of radon exceeding the level at which EPA recommends that homeowners take action. Also, the radon level must be measured by a State or a person found competent to measure radon by the State or EPA.

This provision is based on legislation I introduced, S. 756, and previously was approved by the Finance Committee as part of a 1987 reconciliation package. S. 756 has been cosponsored by a broad, bipartisan group of 25 Senators. These 25 include a majority of Finance Committee members, including Senators BRADLEY, HEINZ, DOLE, MOYNIHAN, ARMSTRONG, RIEGLE, CHAFEE, DURENBERGER, DASCHLE, ROCKEFELLER, and BOREN. The bill also is supported by the National Association of Realtors; the Consumer Federation of America, the American Lung Association, the American Academy of Pediatrics, and the Associated Specialty Contractors.

Mr. President, according to the Environmental Protection Agency, radon causes the lung cancer deaths of up to 20,000 Americans annually. A recent EPA report found that one in three homes surveyed had a dangerous level of this deadly gas.

It is important that residents of contaminated homes take measures, such as the installation of ventilation systems, to mitigate the threat of radon. However, such measures can be costly, running into the thousands of dollars, and can impose a substantial burden on a family budget.

These expenses are health-related and should qualify as deductible medical care expenses. Unfortunately, the Internal Revenue Service has expressed uncertainty about this question.

There should be no doubt. The medical expense deduction has been allowed in several similar situations, and the Internal Revenue Code clearly states that for purposes of the medical expense deduction, medical care expenses include amounts paid for the "prevention of disease" (26 U.S.C. Section 213(d)).

To cite some related examples, the IRS has allowed the deduction of swimming pools prescribed for the rehabilitation of persons with back injuries. It has allowed a deduction for the removal of lead-based paint, where a child with a related illness could worsen his condition by ingesting paint chips. Finally, a taxpayer has been able to deduct the cost of a device to fluoridate water, to prevent tooth decay. If these deductions are allowed, then so should the deduction in the case of radon mitigation.

Unlike swimming pools, which provide a variety of nonhealth-related benefits, radon remediation systems do little beyond preventing a specific, deadly disease. Nor is there any question about either the need or effectiveness of radon mitigation measures. Under the amendment, the deduction would be allowed only where a home has a level of radon determined to be dangerous by the EPA. Also, the amendment would allow the deduction only for remediation techniques that have been proven effective.

According to a recent study by a team of Rutgers University researchers, radon remediation is remarkably effective in saving lives. The study found that for every 100 households that had a health-threatening level of radon in their homes, an estimated 8 to 13 lives were saved through radon remediation efforts. According to one of the researchers, "It's hard to think of another public health program that is so effective in saving so many lives."

This provision will encourage homeowners to mitigate the effects of radon and will save lives, including lives of children. Yet it will do so in a manner that is narrowly targeted to those in greatest need. Since the medical expense deduction is available only where total medical care expenses exceed 7.5 percent of adjusted gross income, benefits will go largely to those with high remediation expenses and relatively modest incomes.

I would note that in calculating the value of the deduction, there is no need under the provision to provide IRS with an assessment of the impact of radon remediation on the value of one's home. Unlike swimming pools, which can significantly increase the value of one's home, radon remediation generally just restores the value of a home to its value before discovery of a radon problem. Radon remediation expenditures thus will count in full as eligible for the medical expenses deduction. This is consistent with current law with respect to amounts paid to make one's home accessible to a handicapped taxpayer, which are also eligible in full for the medical expense deduction.

I would emphasize to my colleagues that this provision is entirely consistent with the principles of tax reform. It does not reopen a loophole that was closed. Rather, it clarifies a basic deduction—for medical expenses—that has been retained.

I have been working quite some time to get this provision included. Earlier this year I wrote to Senator BENTSEN to seek the committee's support. Since then I have been working closely with Senator BAUCUS.

I want to express my appreciation to Senator BAUCUS for his cooperation on this matter. Senator BAUCUS has long demonstrated his sensitivity to environmental problems generally, and radon in particular. He is truly a national leader on the environment.

I also want to thank the staff of the Finance Committee for their assistance. They have been very cooperative, and I appreciate it.

Mr. President, I ask that copies of letters of endorsement from several organizations be included in the RECORD at this point.

The letters follow:

CONSUMER FEDERATION OF AMERICA,
August 12, 1988.

Hon. LLOYD BENTSEN,
U.S. Senate,
Washington, DC.

DEAR SENATOR BENTSEN: The Consumer Federation of America (CFA) urges you to include in any amendment of S. 2238, The Technical Corrections Act of 1988, a clarification of the current medical care deduction making clear that taxpayers can, in fact, deduct radon mitigation measures as medical care expenses.

Indoor air pollution is the number one environmental health threat to this nation—with radon gas the greatest known killer among indoor air pollutants. Experts attribute as many as 20,000 lung cancer deaths annually to radon and estimate that as many as one in five homes exceed current acceptable radon levels. Through increased public attention, residents are being encouraged to test their homes and to make home improvements if harmful radon levels are detected—improvements necessary to safeguard their health. Yet, these mitigation measures can be costly, posing a substantial burden to many taxpayers who recognized the need to limit dangerous exposures to protect themselves and their families.

The amendment that we support, which would simply clarify the current medical care deduction to include radon mitigation expenses, is similar to a measure included in last year's budget reconciliation package but later dropped from the package as a result of the budget summit agreement. The current radon amendment includes language based on S. 756, the Radon Mitigation Clarification Act of 1987, which has 25 co-sponsors, including 11 members of the Senate Finance Committee.

The requested clarification of the current medical care deduction would have minimal revenue impact, estimated at less than $8 million dollars over a three year period. This amount is particularly insignificant when compared to the huge costs to this country resulting from unstemmed radon exposure—in terms of lives lost, health care dollars expended, lost income and property damage.

Indoor air quality is a key health and safety priority for CFA, which represents more than 240 local, state and national consumer organizations, with more than 50 million total members. Federal leadership—through measures such as the proposed amendment—is imperative if we are to make any significant progress in fighting the radon threat.

Thank you for your attention to this matter.

Sincerely,

SANDRA B. ESKIN,
Legislative Representative.

NATIONAL ASSOCIATION OF REALTORS,
October 1, 1987.

Hon. FRANK R. LAUTENBERG,
U.S. Senate,
Washington, DC.

DEAR SENATOR LAUTENBERG: On behalf of the 780,000 members of the National Association of Relators®, I am pleased to convey to you our support of S. 756, a bill to ensure that costs related to radon mitigation qualify for the tax deductions for medical care expenses.

While we believe that much remains to be learned about the radon phenomenon, your bill would enhance the opportunity to take the necessary steps to minimize radon exposure in homes. As real estate professionals, we are encouraged to see that reasonable proposals to address this evolving issue such as S. 756 are being advanced in Congress.

As an organization which has historically concerned itself with restraint of federal spending, we are also pleased to note that S. 756 is estimated to have a relatively minimal budgetary impact.

The National Association of Relators® appreciates your leadership on this issue and looks forward to working with you and your staff for quick passage of this legislation.

Very truly yours,

STEPHEN D. DRIESLER.

AUGUST 24, 1988.

Hon. LLOYD BENTSEN,
U.S. Senate,
Washington, DC.

DEAR SENATOR BENTSEN: The American Academy of Pediatrics recognizes that radon poses a serious threat to the health of residents in contaminated homes. Children are at particular risk due to their length of exposure. We believe that an opportunity exists to encourage families to address this problem.

A proposal to allow radon mitigation expenses as a medical expense deduction was included in last year's budget reconciliation package, but was dropped prior to passage. The Academy urges you to include language based on S. 756, the Radon Mitigation Clarification Act of 1987 in the committee amendment to the technical corrections bill.

Offering a tax deduction for radon clean up will serve as an incentive for homeowners who might otherwise attempt to ignore the problem. Radon gas is invisible and odorless, which abets procrastination. Assisting parents with the financial burden assumed for radon clean up will have a direct impact on the health of children in this country.

Your efforts for children are greatly appreciated.

Sincerely,

RICHARD M. NARKEWICZ, M.D.,
President.

AMERICAN LUNG ASSOCIATION,
Washington, DC, September 9, 1987.

Hon. FRANK R. LAUTENBERG,
U.S. Senate, 717 Hart Senate Office Building, Washington, DC.

DEAR SENATOR LAUTENBERG: The American Lung Association, and its medical section, the American Thoracic Society, commend your introduction of S. 756, the "Radon Mitigation Clarification Act of 1987." The provision of a tax deduction for medical care expenses in connection with home improvements initiated to mitigate indoor air contaminants represents a significant step toward addressing and rectifying a substantial health threat.

The ALA/ATS continues to be particularly concerned that the potential for increased exposure to indoor contaminants is exacerbated by the onslaught of energy conservation techniques and efforts to reduce heating and cooling costs through the reduction of infiltration and ventilation. Radon is among the indoor pollutants of primary concerns to the ALA/ATS. Others include carbon monoxide, and nitrogen oxides, formaldehyde and asbestos.

The ALA/ATS also continues in its strong support for increased research on the possible effects of indoor and outdoor air pollution. The increase and integration of research are essential to permitting the development of appropriate control strategy. We know that you share this perspective.

Again, we congratulate you on the foresight shown in the introduction of S. 756.

Sincerely,

FRAN DU MELLE,
Director.

AMERICAN SUBCONTRACTORS
ASSOCIATION, INC.,
Alexandria, VA, August 24, 1987.

Hon. FRANK R. LAUTENBERG,
U.S. Senate, Washington, DC.

DEAR SENATOR LAUTENBERG: The American Subcontractors Association would like to commend you for your recent efforts to help educate the public about the dangers of radon contamination in many American homes. You have managed to heighten awareness of the increasing dangers of the poisonous gas, and your bill, S. 756, to allow homeowners a tax deduction for home modifications needed to quell any radon contamination is a productive step in the right direction to helping solve this pervasive problem.

As I'm sure you are aware, the Environmental Protection Agency reported that radon is believed to cause between 5,000 and 20,000 deaths each year and is the leading cause of lung cancer among non-smokers. ASA has become increasingly aware of the expenses that many homeowners face in order to rid their homes of contamination. While some homes may only need to have foundation cracks sealed, other homes may need installation of underground ductwork and ventilation fans, which can become a very expensive process.

ASA is making every effort to educate its members about the dangers of radon contamination. It is indeed a subject of which the construction industry should be aware.

Once again, thank you for your efforts in this field and we hope you have continued success in educating the public about this deadly substance.

With best regards,

M.R. (Mac) Sullivan, Jr.,
Chairman, ASA Government Relations Committee.

Associated Specialty Contractors, Inc.,
Bethesda, MD, October 1, 1987.

Senator Frank R. Lautenberg,
U.S. Senate, Washington, DC.

Dear Senator Lautenberg: The Associated Specialty Contractors (ASC) is an umbrella organization of eight national associations of construction specialty contractors, whose membership represents a segment of the construction industry comprising nearly 200,000 specialty contracting firms. These firms have a combined annual volume of over $100 billion and employ nearly 1.5 million workers.

ASC is pleased to endorse S. 756, legislation aimed at helping to alleviate the growing and serious health problems associated with residential radon contamination. Individuals who discover that their home is contaminated with radon gas face the prospect of being at increased risk of developing lung cancer. These homeowners may also feel that they simply cannot afford the expense of radon mitigation.

S. 756 would enable individuals who must make home improvements to mitigate harmful levels of radon gas, to qualify for the medical care expense tax deduction. This tax deduction would provide relief for homeowners with the most serious radon problems, and those who are least, able to afford mitigation costs.

ASC commends your efforts to help thousands of homeowners who have radon gas trapped in their homes, and we look forward to working with you towards passage of S. 756.

Sincerely yours,

Daniel G. Walter,
President.

NATIVE NET OPERATING LOSS EXEMPTION

Mr. STEVENS. Mr. President, the Finance Committee's technical corrections bill includes a provision terminating the Alaska Native net operating loss [NOL] exemption. Enacted in 1986, the exemption has helped return many Native corporations to financial stability.

I do not oppose the termination of the NOL provision although I regret that controversy over its implementation and cost have largely obscured the tremendous good it has done. I am grateful to the distinguished acting chairman of the Finance Committee, Senator Baucus, and the distinguished ranking Republican member, Senator Packwood, for their help in fashioning a transition rule that will protect crucial Native interests. I also greatly appreciate the assistance of the staff of the Finance Committee and the Joint Committee on Taxation.

I'd like to take this opportunity to clarify a few points with the sponsors of the Finance Committee's perfecting amendment, Senators Baucus and Packwood.

First, I am informed that the $16.4 million loss cap established as part of the transition rule for one group of Native corporations does not apply to losses not limited by the House bill. Second, I understand that the binding contract requirement in that transition rule would include a contract that contemplated a reduction in the parties' obligations in the event of a later congressional limitation of the losses allowable in the NOL transaction.

Mr. BAUCUS. Mr. President, the Senator from Alaska is correct. Losses not limited by the House bill are not intended to be counted toward the transition rule's $16.4 million loss cap. A contract will be considered to be binding under the transition rule even if it was conditioned in some way on the continuing availability of the NOL exemption.

Furthermore, the Finance Committee's final NOL provision is not intended to affect the IRS's evaluation of NOL transactions. In other words, in approving this provision, we are not requesting the IRS to tighten or relax its scrutiny of the NOL transactions. The IRS should continue to apply the approach it has developed in response to the passage of the 1986 NOL provision.

Mr. STEVENS. Mr. President, I appreciate the clarification offered by my colleague from Montana. I do want to raise one other point. The Finance Committee's transition rule for "first-time" Native corporations defines a "qualified corporation" as a corporation that has not "engaged in any transaction which allow any loss or credit . . . to be used" to offset income from a profitable partner on or before April 26, 1988.

It has come to my attention that some small Native corporations signed NOL agreements prior to April 27 only to see the transaction collapse for some other reason such as the failure to file a consolidated return on time. There is some concern that the execution of these agreements might preclude these corporations from participating in the first-time provision. My reading of the committee's language is that it does not cover transactions where the executed documents might have been correctly drafted but the transactions failed for some other reason. Does the acting chairman agree?

Mr. BAUCUS. Yes, Mr. President; the Senator is correct. The committee's language is intended to exclude only those corporations that successfully concluded a NOL transaction, provided that the transaction failed for reasons other than a successful IRS challenge.

Mr. PACKWOOD. Mr. President, I agree with Senator Baucus on the questions presented by Senator Stevens.

Mr. STEVENS. Mr. President, I thank my colleagues for their help and patience in dealing with this difficult issue.

Mr. BAUCUS. Mr. President, I believe there is no futher debate on this amendment. I yield back the remainder of my time.

The PRESIDING OFFICER. There being no further debate, the question is on agreeing to the committee perfecting amendment.

The amendment (No. 3642) was agreed to.

Mr. BAUCUS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PACKWOOD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAUCUS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HEINZ. Mr. President, I ask unanimous consent that the order for quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEINZ. Mr. President, it is now almost 2 years after the Tax Reform Act of 1986 was signed into law by the President and we are finally passing—we hope, if we get some cooperation with the House—the Technical Corrections Act. It has been a very long wait for the millions of Americans who have unnecessarily experienced hardships because of errors, some of them very serious errors, in that 1986 bill.

Maybe there are some people even here in this body who think that the Technical Corrections Act has very little impact on the average taxpayer. Maybe it only impacts, some think, big business.

If that is what they think, they are very wrong, indeed. Besides correcting mistakes, this bill also contains a section which extends a number of tax provisions that make a critical difference in helping handicapped and disadvantaged individuals get jobs, providing educational opportunities for employees, and making buying a home more affordable for many first-time home buyers. Mr. President, those are programs that help the average American. They help people get on the main street.

The technical corrections legislation is also critical to schoolteachers, particularly in three States—my home State of Pennsylvania, Hawaii, and Oregon—and that is because due to a drafting error, retiring teachers were inadvertently subject to a stiff Federal tax on their lump sum pension payments. They have, in effect, been subject to double taxation. Very specifically, one of my constituents, a college professor, retired last year and he was stunned to learn that he suddenly owed $14,155 in taxes on his pension on which he had already paid taxes in full.

I have not met anybody who disagrees that this tax is a mistake. Nevertheless, in my home State, Pennsylvania teachers who retired these last 2 years have had to pay these additional taxes. There have been, in fact, teachers who, because of this provision, literally could not afford to retire, they could not afford the extra taxes that would suddenly become due.

With the passage of this bill, assuming we do pass the bill, assuming we do get it to the President with the assistance of the President and that the President signs it, then if we do all those things, we will finally be able to help the several thousand Pennsylvanians whose lives have been jeopardized and who are being unfairly taxed.

This bill, Mr. President, also corrects drafting errors in the bonds provisions which have caused great uncertainty in Government financing, particularly for our local governments. The largest city in my State, of course, is Philadelphia. Philadelphia, once this legislation is passed, will be able to issue bonds for the Philadelphia Convention Center which is an essential part of the strategy of bringing back the downtown area in Philadelphia. Up until the passage of this bill, until it finally becomes law, they will not be able to do that, even though they have been trying to build this convention center there for the last 5 or 6 years.

So while there may be some people who think these clarifications are not important to the average person, they are very important to many citizens.

The bill also contains extenders, Mr. President, for a number of important expiring tax provisions. One of those which I have argued for on so many occasions, both in the Finance Committee and on the floor over the last decade, is the targeted jobs tax credit. This legislation extends that legislation for another 6 months. I wish we could extend it permanently, but 6 months was the best we could do and, therefore, we are going to need to extend it again next year.

We ought to extend it because the Targeted Jobs Tax Credit Program has been one of the most cost effective and genuinely efficient programs for encouraging the private sector to hire very disadvantaged individuals, people who would probably never have gotten into the work force and now, as a result of this provision, over the last several years literally millions have been hired, given a break in the workplace, proved themselves and gone on to productive lives.

Many employers have come to realize that the Targeted Jobs Tax Credit Program does what it is supposed to do. It provides the help the employer needs on a targeted basis with the extra effort, extra costs that that employer needs to invest in that economically and usually educationally disadvantaged employee.

While the Finance Committee package extends this provision through 1988, I am here today in part because I want to urge the conferees who are going to be selected on this bill to extend that provision all the way through calendar year 1989 at a minimum. Obviously, I would like to see it made permanent. Extending the provision permanently should be our top priority next year if we cannot do it this year. This bill also extends the mortgage revenue bonds provision.

Mr. President, that is important because this program, the mortgage revenue bonds, has given millions, literally millions—that is not an exaggeration—to first-time home buyers, people who have rented, people who have never had a physical stake in a home in our country, in our society, they have been given under this single program, millions of them, the ability to buy a home.

In my home State of Pennsylvania, since the program's inception of just 6 years ago in 1982, a total of almost $1.3 billion in bonds have been issued, and that has directly assisted some 26,000 first-time home buyers.

Without that program, I think it is fair to say many of those people would still be renting and would not be sharing in the dream of owning their own home.

The bill also contains needed changes to curb law. When we enacted these laws that I am referring to, I suspect in some cases we simply did not realize the impact they were going to have on taxpayers. A perfect example, and it is one on which we had a test vote just a moment ago, in part, is the provision relating to the collection of the diesel fuel tax. This bill restores the diesel fuel excise tax exemption for farmers, for coal operators, for waterway operators, and for other off-road users, as we should have done in the first place, quite frankly.

Since that program started in 1978, over 3 million individuals have found employment directly as a result of the Targeted Jobs Tax Credit Program. It is a program that we cannot allow to expire.

I think also that the importance of using the Tax Code to encourage education was clearly demonstrated not long ago when in this body we voted overwhelmingly I think by a vote of maybe 94 to 0 to adopt an amendment that provided interest earned on U.S. savings bonds used for the payment of tuition and education fees would be exempt from tax.

I, along with all my other colleagues, supported that provision last week, Mr. President, and I believe it will help parents in the future pay for the college education of their children. The children who are going to be in college in the future, the kids who are entering high school today, the kids who are in the elementary school today are going to need all the education they can get, and that provision is going to help them get it.

This package also extends employee education assistance. I think some of us have often said that employee education assistance has provided one of the best partnerships between Government and the private sector that has ever existed in order to encourage education.

What is happening, of course, is that thousands of businesses pay the tuition for their employees, for college and the tuition is, of course, tax exempt to the employee.

I have heard from thousands of my constituents who have told me that without that benefit, they simply could not have afforded either to go to college or to gain the equivalent of a college degree working part time. If we firmly believe in education, that is another provision that we simply cannot afford to let expire.

There are 56,000 farmers in my home State of Pennsylvania who, once we pass this legislation, assuming it is passed, will no longer have to go through the added burden of paying the tax and then filing for a refund. Talk about paperwork reduction, this provision will achieve it.

It will prevent the Government, I might add, from using hard-pressed farmers' money interest free. That is what we are doing right now is forcing our farmers to make interest-free loans from the Federal Government.

One of the most important provisions, and it is a new one, in this bill is the taxpayers' bill of rights. I must say, during the last 4 years, during which time I have been privileged to hold with Senator PRYOR, the chairman of the IRS Oversight Subcommittee, hearings on various problems with the IRS, I have learned far more than I ever thought I would learn about many of these problems.

They first came to visit my home State of Pennsylvania about 4 years ago when the Internal Revenue Service had a massive computer failure, along with some other failures, at the

Philadelphia Service Center and for the taxpayers, that literally became a nightmare from which it just could not wake up. Hundreds of thousands of returns were lost, levy notices were sent out. People's creditors were told that they were deadbeats. It was really a nightmare. I do not exaggerate when I say that. In both the hearings we held in the State as well as hearings down here, Senator SPECTER and I, who conducted these hearings in the State, heard taxpayer after taxpayer testify to what I can only describe as personal horror stories in dealing with the IRS.

I am pleased to report that—ever so often it is nice to have a little bit of news—the hearings long before we drafted a taxpayers' bill of rights resulted in numerous improvements in IRS performance.

I want to commend Commissioner Gibbs for the work he has done in improving the IRS. But notwithstanding those improvements, and they made a difference to my constituents in Pennsylvania, I think we need to continue our efforts to improve the IRS, and the taxpayer bill of rights is clearly a much-needed bill.

It is our view that the taxpayers of this country, when they are honest, when they are doing their duty, when they are paying their fair share of the bill, deserve to be treated with courtesy and respect, and, equally important, to know their rights.

This bill restricts the abusive practices of the IRS, and I want to particularly congratulate Senator PRYOR on his bill, and I look forward to continuing to work with him after the passage of this legislation to monitor not only the implementation of the legislation but the performance of the Internal Revenue Service.

Mr. President, I have said a number of favorable things about the legislation before us. But I too realize the bill is not perfect. Rarely do we pass and have a chance to vote on a perfect piece of legislation. One imperfection—actually, I think it is far greater than that—is that this bill does not address the problems that 20 million small investors in mutual funds have with what is going to be called, or what may become better known as the "phantom income tax." Twenty million people, Mr. President, are going to find out that they are going to be taxed on income that they have never received because they are not going to be able to take full advantage of the deductions they should be entitled to take if they invest in virtually all mutual funds.

I must say when the Finance Committee met to try to solve this and the other problems that we have been working on I was strongly assured that this problem, the "phantom income tax" problem, would be corrected in conference with the House of Representatives.

Mr. President, I believe the other members of the Finance Committee understand the importance of the mutual fund "phantom income" problem, and that it will be corrected in conference. Otherwise, I can just imagine the amount of mail that 20 million deservedly legitimately upset taxpayers can generate. I for one, in addition to thinking of their right, do not want to have to answer my share in Pennsylvania of those letters since we are 5 percent of the population. That would mean I could expect a million letters. Mr. President, I try to answer all of my mail. But that is a bundling of postal mail to my office that I could just as soon do without.

Mr. President, next year we are going to have to again extend all of the expiring provisions in this legislation. I, as a member of the committee, realize the revenue has been strained which we had to work under. They prevented us from extending those provisions further. However, I want to put my colleagues on the Finance Committee and here in the Senate on notice that I am going to press and press as hard as I know how to make these provisions permanent.

We go through the process of extending these provisions every year. If we believe that these provisions are meritorious, if we believe that these are good laws, if we believe half of what we say about them here on the floor, let alone all, we should make them permanent, and not cause the continued uncertainty that is exemplified by the expiration at the end of 1986 of the targeted Jobs Tax Credit Program. That program which had helped in 1985 some 622,000 people, because it was interrupted, was only able to help 445,000 people in fiscal year 1987.

I have also been advised in conjunction with the educational assistance deduction, according to the schools in Pennsylvania, that the enrollment in those schools is down for their night programs. That is what the employer-paid educational assistance usually provides. That is a direct result of allowing that provision to expire.

I ask how can we expect anyone to have confidence in our tax system and work directly in these programs when we only extend them for short periods of time. We often interrupt them. We say, "Oh, well, we meant to do it but we just did not get around to it." That is no way to conduct the Nation's business.

Mr. President, I will just conclude by saying I have only touched on a few of the provisions which are included in the technical corrections bill. This bill, when it is enacted, will benefit millions of taxpayers who were inadvertently affected by mistakes in the 1986 Tax Reform Act. I urge my colleagues to vote for this bill. I am hopeful that we will have a swift conference, final passage, and Presidential signature on the technical corrections bill.

Mr. President, I yield the floor.

Mr. BAUCUS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. FOWLER). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HEINZ. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEINZ. Mr. President, I rise in strong support of including in this technical corrections package legislation which Senator LAUTENBERG and I earlier proposed that will allow homeowners to include the cost of measures needed to abate radon contamination in their homes as a medical expense deduction. I believe this help is needed, fully justified and long overdue.

About 1 month ago, the Surgeon General and the Environmental Protection Agency jointly issued a national health alert advising all homeowners to test their homes for radon contamination. As this advisory indicates, the problem of radon is much more widespread than originally believed. Current estimates are that up to 8 million homes are threatened by radon.

Unfortunately, the people of Pennsylvania are all too familiar with radon. In fact, national awareness of the radon problem was triggered by an incident in my State. In 1984, Stanley Watras, a nuclear powerplant construction engineer at the Limerick plant, set off radiation detectors on his way into work. It was found that Mr. Watras' home had been contaminated with extremely high levels of radon. EPA now estimates that over one-third of Pennsylvanian homes have radon levels above what EPA has determined to be the safe level.

Research since then has proven that radon is the leading cause of lung cancer for nonsmokers. The National Academy of Sciences has determined that radon causes up to 20,000—of a total of 130,000—lung cancer deaths per year. And radon poses a particular risk for smokers, whose health risk of cancer is 10 times greater than nonsmokers. Furthermore, Dr. Vernon Houk of the Surgeon General's office reports that the health toll from radon probably exceeds by 10 times the health impacts from all other outdoor air pollutants.

Mr. President, we believe in preventive medicine in this country. While I personally think we could be doing far more, the fact is that health insurance, which is tax favored and deductible to employers, generally pays for many preventive services ranging from mammograms to routine checkups. Further, we permit the deductibility of costs to handicapped individuals needing special equipment or modification to their homes. What we propose is the deductibility of radon-related expenses so that the costs of home modifications to prevent dangerous radon gas seepage—such as putting in ventilation systems, sealing cracks in foundations, et cetera—will be considered as expenses which are allowed as a medical deduction.

Mr. President, the radon problem can be addressed. Mitigation measures can be undertaken to reduce radon contamination in homes. This provision, by providing a tax break for necessary radon abatement, should encourage people to take the steps necessary to eliminate the radon threat in their homes.

Mr. BAUCUS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Ohio.

AMENDMENT NO. 3643

(Purpose: To sunset two treaty provisions relating to special relief with respect to insurance excise taxes)

Mr. METZENBAUM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 3643.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . SUNSET OF TREATY PROVISIONS.

(a) IN GENERAL.—No provisions of the Tax Convention with the United Kingdom (on behalf of Bermuda) or the Tax Convention with Barbados, whether entered into on, before, or after the date of enactment of this Act, shall prevent application of any provision of the Internal Revenue Code of 1986 imposing insurance excise taxes, unless (in the case of a treaty entered into after the date of enactment of this Act) each treaty by specific reference to this section of this Act clearly expresses the intent to override the provisions of each section.

(b) EFFECTIVE DATE.—The provisions of this section shall apply to any such treaty in effect on December 31, 1989, with respect to insurance premiums paid after December 31, 1989, or for that portion of such premiums allotable to insurance coverage for taxable years beginning on or after January 1, 1990.

Mr. METZENBAUM. Mr. President, this amendment is intended to close a loophole in the Barbados Tax Treaty and limit a new loophole which is contained in a yet to be ratified tax treaty with Bermuda.

How many times have we heard the President of the United States tell the American people that the enormous Federal budget deficit is the fault of Congress. "I can't spend a dime unless they tell me to" he has proclaimed time after time.

Mr. President, and I now speak not to the President of the Senate but to the President of the United States, that simply is not so.

On July 11, 1986, the President signed a Tax Treaty with Bermuda—a notorious tax haven country. Among other provisions it waives United States excise taxes on United States insurance premiums paid Bermuda insurers, making insurance a tax-exempt business in Bermuda. Without any action by Congress the administration exempts tax sheltered businesses operating in Bermuda from United States tax laws, laws intended to stop the very same tax shelters. The President plans to give the multibillion-dollar insurance industry a $202 million tax break and leave the American taxpayer to pay the tab.

According to the Joint Committee on Taxation the Bermuda treaty will cost taxpayers $202 million. That is $202 million more in red ink written by the President, not by Congress. And what of the administration's heralded Gramm-Rudman-Hollings Balanced Budget Act?

James Miller, Director of the OMB, has informed the Congress that tax treaties which add to our deficit woes simply do not count for purposes of the Gramm-Rudman-Hollings law. That is new math. It is inconceivable that the treaty cost $202 million and Mr. Miller says it does not come within the purpose of the Gramm-Rudman-Hollings law. It is $202 million more in red ink but ignored by the OMB.

I ask unanimous consent that a copy of the OMB letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC.

Hon. CLAIBORNE PELL,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I understand there may be some question concerning the budgetary treatment of the Bermuda Tax Convention Treaty under Gramm-Rudman-Hollings (G-R-H), the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

I am advised by counsel that, under G-R-H, the 1989 fiscal impact of ratification of the treaty by the Senate may not be taken into consideration for purposes of the October 15, final sequester report. Section 251(c) of G-R-H provides that the final sequester report due October 15 may only be adjusted for "laws enacted and regulations promulgated as final" after the August 15 initial report snapshot date. Ratification of a treaty is not "enactment" of a law, and, accordingly, the effects of such ratification may not be counted for purposes of the final sequester report.

Sincerely yours,
JAMES C. MILLER III,
Director.

Mr. METZENBAUM. Mr. President, time after time this administration has presented tax treaties to Congress which have substantial price tags. While we struggle to meet the needs of the sick, the poor, and of our children with shrinking budgets, the President has his negotiators traveling to tax-haven countries giving away the store.

Why does the administration want to allow the insurance industry to use Bermuda as a haven from paying its fair share of taxes. Barbados already enjoys this special loophole, costing American taxpayers millions of dollars each year. The administration apparently reasons that if Barbados can get this special loophole in our tax laws, why not Bermuda. The insurance industry gets the break; the American taxpayer gets the bill.

There are other examples of giveaway tax treaties.

Take the proposed treaty with Denmark—it would give millions and millions of dollars in additional foreign tax credits for United States oil companies drilling in the North Sea while United States wells are capped in Texas and Oklahoma. This is a treaty that I have opposed over a period of time and I will continue to block it to the best of my ability.

Another example of the administration's generosity with American tax dollars is the treaty with the Netherlands Antilles. The treaty had a loophole which was costing hundreds of million of dollars by exempting U.S. corporate bonds from U.S. taxes. What did this administration do? Did it close the loophole? No; it did not. It requested Congress to repeal the U.S. law so that we could lose even more revenue.

To its credit the Foreign Relations Committee has attached a reservation to the Bermuda treaty, sunsetting its new loophole on January 1, 1990. It also has limited the provision in other respects. In addition, the administration has represented to the committee that it will renegotiate the Barbados treaty.

Mr. President, it is time to send a strong and loud message to the administration and administrations to follow. Tax treaties are intended to prevent double taxation and improve tax enforcement by information exchange agreements. They are not intended as a vehicle to rewrite U.S. tax laws. My amendment will sunset the insurance excise tax provisions for both Barbados and Bermuda in 1 year.

I believe that we should do more. We should tell the administration to find some way to pay for its $202 million giveaway instead of adding to our deficit. But at a minimum we should sunset the two loopholes by statute—that is what my amendment does.

I urge the adoption of this amendment.

It is my understanding the manager of the bill is prepared to accept it.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, the effect of the amendment by the Senator from Ohio is to sunset the insurance forgiveness provisions in the Barbados and pending Bermuda treaty by the end of 1989.

If this amendment is agreed to in all likelihood the Bermuda treaty will then be ratified at a later date by the Senate, and the effect of the amendment by the Senator from Ohio is to sunset the insurance tax forgiveness provisions of the Barbados treaty and the pending Bermuda treaty by the end of 1989.

Mr. METZENBAUM. The Senator from Montana is 100 percent correct.

Mr. BAUCUS. Mr. President, with that assurance we find the amendment acceptable on this side.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, the amendment is acceptable on this side also.

The PRESIDING OFFICER. Is there any further debate?

Hearing no further debate, the question is on agreeing to the amendment of the Senator from Ohio.

The amendment (No. 3643) was agreed to.

Mr. METZENBAUM. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BAUCUS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. METZENBAUM. I thank the managers of the bill for their cooperation and courtesy in permitting me to bring up this amendment and adopting it.

Mr. BAUCUS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BRADLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3644

(Purpose: To establish a trust fund to finance the antisubstance abuse legislation, to fund such trust with revenues raised by this bill, and to provide that certain provisions of the bill not take effect)

Mr. BRADLEY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Jersey [Mr. BRADLEY] proposes an amendment numbered 3644.

Mr. BRADLEY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of title VII, insert:

Subtitle —Funding of Anti-Substance Abuse Legislation

SEC. . ANTI-SUBSTANCE ABUSE TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to establishment of Trust Funds) is amended by adding at the end thereof the following new section:

"SEC. 9511. ANTI-SUBSTANCE ABUSE TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the Anti-Substance Trust Fund, consisting of such amounts as may be transferred to such Trust Fund as provided in this section or credited to the Fund under section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There is hereby appropriated to the Anti-Substance Abuse Trust Fund amounts equivalent to the increase in taxes received in the Treasury by reason of subtitle A of title VII, section 732, and section 745 of the Technical Corrections Act of 1988.

"(c) APPROPRIATION OF ADDITIONAL SUMS.—There are hereby authorized to be appropriated to the Anti-Substance Abuse Trust Fund such additional sums as may be appropriate to make the expenditures referred to in subsection (d).

"(d) EXPENDITURES.—Amounts in the Anti-Substance Abuse Trust Fund shall be available, as provided in appropriation Acts, for making expenditures to carry out the purposes of the Omnibus Anti-Substance Abuse Act of 1988.".

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of the Internal Revenue Code of 1986 is amended by adding after the item relating to section 9510 the following new item:

"Sec. 9511. Anti-Substance Abuse Trust Fund."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1989, except that such amendments shall not take effect if the Omnibus Anti-Substance Abuse Act of 1988 is not enacted during the 100th Congress.

SEC. . CERTAIN PROVISIONS NOT TO TAKE EFFECT IF DRUG LEGISLATION ENACTED.

If the Omnibus Anti-Substance Abuse Act of 1988 is enacted during the 100th Congress, then, notwithstanding any other provision of this Act, the following provisions of this Act shall not take effect:

(1) Subtitle E of title IV (relating to education savings).

(2) The provisions of this title other than—

(A) subtitle A and this subtitle, and

(B) sections 718, 723, 725, 732, 734, 736, 738, 744, 745, 761, 762, 787, 798, and 799.

Mr. BRADLEY. Mr. President, the amendment before us establishes a drug trust fund to be funded by loophole closing provisions in this tax bill. This trust fund would only be established if the Omnibus Anti-Substance Abuse Act of 1988 is enacted this year.

Second, the amendment strikes the revenue-losing provisions in the bill if the drug bill is enacted this year. In other words, if a drug bill is not enacted, the revenue-losing portions of this tax bill, primarily the extenders, would become law. If the drug bill is enacted, the revenue-losing portions would not become law and the revenue-raising measures would be folded into a drug trust fund to help fund the drug bill.

Mr. President, it is my understanding that to fully fund the drug bill that the bipartisan group of Senators has suggested would take an appropriation of $2.6 billion, which would lead to 1989 Federal outlays of $1.4 billion. But we only have enough money for an appropriation of $800 million and $450 million in outlays.

This leaves us short by $1.8 billion in appropriations and $1 billion in 1987 outlay.

The key loophole closed in the technical corrections bill now before us raise about $900 million in 1989 and $1.8 billion over the next 3 years.

We can come very close to fully funding the drug bill if the revenue raised by this bill is used for drug programs rather than the variety of revenue losers included in the bill.

Mr. President, what will all this extra money mean, in terms of additional efforts to combat drugs in this country? It will mean about 2,000 additional Federal law enforcement personnel who will be hired for interdiction on our borders and in our cities; at least 300,000 drug treatment slots will be provided, an additional $100 million for drug treatment and prevention programs in our schools.

Mr. President, we are really faced with how we choose to spend the tax dollars that we raise. It is a question of priorities.

In the amendment that I offered earlier today, I suggested that we spend the revenue by providing an increase in the earned income tax credit for the bottom 20 percent of the taxpayers in this country who have benefited not at all from the last 8 years; in fact, on an average, have $23 less per family as opposed to the top 5 percent that has a $23,000 increase.

The Senate rejected that amendment overwhelmingly and now, Mr. President, I would offer the Senate a second choice about priorities. If the Senate did not want to spend the revenue that is raised in this bill to try to help the bottom 20 percent of the population, I would hope that it would choose to spend the revenue that we raise by combating drugs that are the scourge of a nation I would hope that the $1.7 to $1.8 billion that are raised in revenue in this bill could be dedicated to a special drug trust fund that would be used to finance the omnibus drug bill that we are about to consider in the Senate and that we would, therefore, be making a major step toward combating the scourge of drugs in our country.

Mr. President, it is a very simple amendment. It is an amendment about priorities. We heard of lot of speeches on the floor of the U.S. Senate about the poor and today we have a chance to vote an amendment for the poor.

We have even heard more speeches on the floor of the U.S. Senate about combating drugs. And we are about to have a major battle over an omnibus drug bill that does a lot of good things but does not provide any money to actually do them in the real world.

What I would suggest is, if we are really interested in combating drugs, we have to appropriate the dollars, we have to raise the money to do so, and this amendment will go a long way toward providing some money to combat drugs, which every Senator has said he or she would like to do.

For me, Mr. President, it is simply a question of priorities. Do we want to combat drugs or do we not want to combat drugs? If we do, if we believe that combating drugs is more important than the provisions to increase research expenditures or legal expenditures for some months or educational assistance extenders for 6 months—if we believe it is more important to have $1.8 billion out there in the war against drugs, then I think the vote would be in support of the amendment that I am offering.

If, on the other hand, people believe that it is more important to extend provisions for 6 months and provide a little sugar here and a little sugar there for a variety of other groups and people, then the vote would be against this amendment.

But, make no mistake, Mr. President, this is a debate and vote about priorities. I would urge the Senate, if it failed to go on record in support of providing tax relief to the bottom 20 percent of the population, that it at least go on record in support of combating drugs in this country and funding a legitimate war on drugs that is envisioned under the Omnibus Drug Act.

Mr. BAUCUS. Mr. President, this side has just now had an opportunity to see the amendment. We do not know yet what is in the amendment.

I ask unanimous consent that I be able to suggest the absence of a quorum and the time be charged against the remaining time of the bill. Not against the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PACKWOOD. Mr. President, we are also on this side left a little in the lurch to find out what it is you have cut out. Can we go down the list of things you cut out? I remember what you had on the other amendment. Is educational assistance gone?

Mr. BRADLEY. Everything that spends any money is gone.

Mr. PACKWOOD. Well, how does it differ from what you eliminated in the previous amendment?

Mr. BRADLEY. It includes those things that I had retained. In the previous amendment, I retained some provisions for things such as mortgage revenue bonds. This eliminates all section 3 and section 4.

Mr. PACKWOOD. Including diesel fuel tax, including mortgage revenue bonds; everything?

Mr. BRADLEY. It eliminates every provision in the tax bill that is an extender or that spends money.

Mr. PACKWOOD. Got it.

The PRESIDING OFFICER. The Senator from Montana, Mr. BAUCUS.

Mr. BAUCUS. Mr. President, I yield myself as much time as I consume.

Mr. President, we have already been down this road. This is essentially the same type of amendment that the Senator from New Jersey offered earlier today, that is, to strike most of the provisions in the bill that are extenders and that correct the diesel fuel problem, the heifer tax problem, and so forth, and use that revenue, in this case, to spend on a bill that this body has not yet even seen.

Mr. President, this amendment is similar to the last amendment in the sense that it addresses a problem that is not before us. It is addressing a problem that we will deal with in the future.

In the case of the earned income tax credit amendment, it was the problem of low-income working families that this body must address next year when it takes up a tax bill. With respect to the pending amendment, it is the drug bill.

I do not think, Mr. President, we want to put the cart before the horse. That is, I do not think we want to raise revenue for legislation that we know nothing about.

The drug bill may or may not come before the full Senate. There will be provisions in the drug bill that various Senators may or may not want to vote for. Death penalty—there are some Senators who are very strongly against the death penalty. Some feel very strongly the other way.

The exclusionary rule—there may be legislation that changes the current law with respect to the exclusionary rule, determining what evidence is admissible in a criminal proceeding.

We do not know what will be in the drug bill. I strongly urge Members to not buy a pig in a poke by raising taxes for a bill that is not yet before us. There have been prior instances where this body and the other body have attempted to raise revenue on an authorizing bill. We did that, for example, in the Superfund bill. There was a procedure worked out whereby the authorizing committees dealing with Superfund legislation worked out the authorizing provisions and the Finance Committee and Ways and Means worked out the revenue-raising provisions.

There was also a procedure worked out on catastrophic health insurance where relevant authorizing and revenue-raising committees on both sides of Capitol Hill jointly put together a bill.

I do not think we want to at this point go down the road trying to raise revenue for a bill that we know nothing about, which may or may not come before the Senate this year.

In addition, it is important for Senators to know that the amendment before us guts the technical corrections bill. In fact, it goes even further in gutting the bill, if that is possible, than the previous amendment. That is, not only is the research and development tax credit repealed, and not only is the section 861 provision repealed, not only are taxpayers bill of rights provisions repealed, but in addition, the Senator repeals mortgage revenue bonds, low-income housing credits, and also the targeted jobs tax credit provision, as well as the diesel tax provision.

This is not only a gutting amendment, it is an obliteration amendment. I do not think we want to obliterate the technical corrections bill at this moment. I do not think there is much need, Mr. President, for much more debate on this. I think the issue is clear.

I am prepared to yield back the remainder of my time, and the Senator from New Jersey is also prepared to do likewise.

Mr. BRADLEY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BRADLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BRADLEY. Mr. President, the distinguished Senator from Oregon asked a question earlier as to whether the amendment that I have offered will eliminate the section that relates to diesel fuel excise tax collection and exemption procedures. The answer to his question is it would not eliminate that section from the bill. That section is in title III.

The only titles that are eliminated are after title VI of the bill. So that the diesel fuel provision is retained; the Indian fishing rights provision is retained; the limitation on Treasury loan to bond authority is retained; the additional simplification and clarification provisions are retained; the railroad unemplyment retirement provision are retained; and the Social Security Act minor technical amendments are retained.

The remainder of the bill is, however, eliminated and is used to fund this trust fund.

Mr. PACKWOOK addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, if I can read a list so that those who are listening have a clear view as to what is eliminated: Employer-provided educational assistance; employer-provided legal insurance; the solar geothermal credits; the extension of the research and development credit to March 31, 1989; the 4-month extension of the U.S. overseas allocation of research and development; the taxpayers' bill of rights; the heifer tax; the capitalization for authors, artists, and photographers; the miscellaneous section, which is worth $245 million; the mortgage revenue bonds; the targeted jobs credit; and the low-income housing credits. Those are all eliminated, and I ask the Senator if I make a mistake to correct me.

Mr. BAUCUS. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, if I was in error that the diesel tax provision was excluded, then I stand corrected. As I understand, in talking to the Senator from New Jersey, the diesel tax provision it still, under his amendment, included in the bill.

Mr. BRADLEY. This is correct.

Mr. BAUCUS. It does not exclude the diesel tax.

Mr. BRADLEY. It does not exclude the diesel tax.

Mr. BAUCUS. Mr. President, I appreciate that clarification of the Senator from New Jersey. I might add, however, that in addition to all the provisions referred to by the Senator from Oregon, the amendment has in effect of repealing the Kennedy savings bond amendment, as well as many other provisions the Senator eliminates that were not elminated in his previous amendment. Even though the diesel tax provision is included in the bill under the Senator's amendment, virtually every other provision of the bill is eliminated.

I stand by my earlier position that this is an obliteration amendment. I hope very much at the appropriate time when we do vote on this amendment that it is tabled.

Mr. President, I yield the floor.

Mr. DURENBERGER. Mr. President, I rise to speak in opposition to the amendment offered by the distinguished Senator from New Jersey, Senator BRADLEY. I think the idea of establishing a trust fund to help fight drug abuse is a good idea. Just last week, I voted for an increase in cigarette and alcohol excise taxes to be placed in a trust fund to help the States in their efforts to eradicate drugs.

But the amendment under consideration is the wrong way to finance a war on drugs. I am not going to ask the low income and the poor elderly to lose a program for financing new homes to pay for the war on drugs. Nor am I going to take away the chances for the hardcore unemployed to get a job through the benefit of the targeted jobs credit. And I am not going to ask the first time home buyer to lose his chance to buy a home to pay for a national drug program.

Nor do I think it is right to single out the American farm family to pay for the war on drugs. And I think it is shortsighted and irresponsible to raise the cost of R&D performed by American companies in this country and encourage them to move research facilities and jobs overseas.

There are many ways that we can pay for the war on drugs. But it is simply unfair to ask some of our poorest citizens to lose programs that they benefit from to finance this war on drugs. I am certain that we will be able to find a bipartisan way to fund the drug bill after it is enacted. For these reasons, I urge my colleagues to vote to table this amendment.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. BRADLEY. Mr. President, I am prepared to yield back the remainder of my time if we get the yeas and nays on the motion to table.

Mr. BAUCUS. Mr. President, I am prepared to yield back the remainder of my time. I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BAUCUS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll

The assistant legislative clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. WIRTH). Without objection, it is so ordered.

The question occurs on the motion to table.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the pending amendment be temporarily laid aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO 3645

(Purpose: To impose sanctions against Iraq)

Mr. PELL. Mr. President, on behalf of the Senator from North Carolina, Mr. HELMS, and myself, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Rhode Island [Mr. PELL] for himself and Mr. HELMS, proposes an amendment numbered 3645.

Mr. PELL. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill add the following:

TITLE I—SANCTIONS AGAINST IRAQ

SEC. 101. SHORT TITLE.

This title may be cited as the "Sanctions Against Iraqi Chemical Weapons Use Act".

SEC. 102. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the Kurdish people constitute a distinct ethnic group of some twenty million, with an ancient history and a rich cultural heritage;

(2) three to four million Kurds are citizens of Iraq, residing in the northern part of that country;

(3) the Iraqi Army has undertaken a military campaign against Kurdish regions of Iraq and has destroyed Kurdish villages in northern Iraq;

(4) substantial evidence exists that the Iraq Army has been using chemical weapons against Kurdish insurgents and unarmed Kurdish civilians;

(5) by these and other actions against the Kurds, Iraq has violated their internationally recognized human rights;

(6) tens of thousands of Kurdish survivors of the Iraq Army assaults have taken refuge in Turkey;

(7) several United Nations teams have confirmed that Iraq has used chemical weapons in its war with Iran; and

(8) Iraq's use of chemical weapons is a gross violation of international law.

(b) PURPOSE.—It is the purpose of this title to mandate United States sanctions against Iraq because of its use of chemical weapons in violation of interntional law.

SEC. 103. IMPOSITION OF SANCTIONS AGAINST IRAQ.

(a) INITIAL SANCTIONS.—(1) The United States Government may not sell to Iraq any item on the United States Munitions List.

(2) Licenses may not be issued for the export to Iraq of any item on the United States Munitions List.

(3) The authorities of section 6 of the Export Administration Act of 1979 shall be used to prohibit the export to Iraq of any goods or technology on the control list established pursuant to section 5(c)(1) of that Act.

(4) Licenses may not be issued for the export to Iraq of any chemical that the President determines may be used primarily in the production of chemical weapons or may be otherwise devoted to chemical weapons or may be otherwise devoted to chemical warfare purposes.

(5) The United States shall oppose any loan or financial or technical assistance to Iraq by international financial institutions in accordance with section 701 of the International Financial Institutions act.

(6) This subsection takes effect on the date of enactment of this Act.

(b) Requirement for Additional Sanctions.—Not later than December 31, 1988, the President, after consultation with the Congress, shall impose appropriate additional sanctions against Iraq unless the President certifies in writing to the Speaker of the House of Representatives and the chairman of the Commitee on Foreign Relations of the Senate—

(1) that the Government of Iraq is not using chemical weapons in violation of international law, including the 1925 Geneva Protocol (relating to the use of chemical weapons in war) and Common Article 3 of the 1949 Geneva Conventions (relating to the protection of victims of war); and

(2) that the Government of Iraq has provided reliable assurances that it will not use chemical weapons in the future in violation of international law; and

(3) that—

(A) the Government of Iraq is willing to allow on-site inspections by United Nations observers or other internationally-recognized, impartial observers, or

(B) other reliable means exist, to ensure that the Government of Iraq is not using chemical weapons.

(c) Description and Authorization of Additional Sanctions.—(1) To the extent they are not otherwise authorized, the sanctions described in paragraph (2) of this subsection are hereby authorized to be imposed against Iraq pursuant to subsection (b). In imposing sanctions against Iraq pursuant to subsection (b), the President shall exercise authority described in one or more of the subparagraphs of paragraph (2). Sanctions described in paragraph (2) shall be in addition to any other sanctions imposed on Iraq pursuant to subsection (b).

(2) The sanctions referred to in paragraph (1) are the following:

(A) Denial of access to the Export-Import Bank.—Denying credits or credit guarantees through the Export-Import Bank of the United States to Iraq.

(B) Restrictions on imports.—Prohibiting or otherwise restricting the importation into the United States of one or more kinds of articles (which may include petroleum or any petroleum product) that are the growth, product, or manufacture of Iraq.

(C) Additional restrictions on exports.—Prohibiting or otherwise substantially restricting, using the authorities of section 6 of the Export Administration Act of 1979, exports to Iraq of goods and technology (excluding agricultural commodities and products).

(D) Downgrading diplomatic relations.—Using the President's constitutional authorities to downgrade or suspend diplomatic relations between the United States and Iraq.

(d) Contract Sanctity.—(1) For purposes of export controls imposed in accordance with subsection (a)(3) of this section, the date described in section 6(m)(1) of the Export Administration Act of 1979 shall be deemed to be September 15, 1988.

(2) In imposing any additional sanction under subsection (c) of this section, the President may not prohibit or curtail the execution of any contract or agreement entered into before the earlier of the date on which notice of intent to impose the additional sanction is printed in the Federal Register or the date on which the President notifies the Congress of such an intent.

(e) Reports to Congress.—The President shall report to the Congress periodically on the actions taken pursuant to this section.

SEC. 104. CONDITIONS FOR LIFTING SANCTIONS.

The President may waive any sanctions imposed pursuant to section 103(a) or (b), including sanctions described in section 103(c), if the President determines and so certifies in writing to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate—

(1) that the Government of Iraq is not using chemical weapons in violation of international law, including the 1925 Geneva Protocol (relating to the use of chemical weapons in war) and Common Article 3 of the 1949 Geneva Conventions (relating to the protection of victims of war); and

(2) that the Government of Iraq has provided reliable assurances that it will not use chemical weapons in the future in violation of international law; and

(3) that—

(A) the Government of Iraq is willing to allow on-site inspections by the United Nations observers or other internationally-recognized, impartial observers, or

(B) other reliable means exist, to ensure that the Government of Iraq is not using chemical weapons.

SEC. 105. RESPECT BY THE GOVERNMENT OF IRAQ FOR INTERNATIONALLY RECOGNIZED HUMAN RIGHTS, ESPECIALLY THOSE OF THE KURDISH MINORITY.

Not later than December 31, 1988, the President shall submit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate an assessment of whether the Government of Iraq is respecting internationally recognized human rights, in particular the rights of the Kurdish minority in Iraq. This assessment shall be accompanied by a report which includes—

(1) all available information regarding the Government of Iraq's respect for internationally recognized human rights;

(2) a detailed description of the Government of Iraq's treatment of the Kurdish minority, including a detailed account of civilian killings and depopulation activities against the Kurds;

(3) a review of whether the Government of Iraq is committing gross violations of internationally recognized human rights;

(4) a description of the steps which the United States has taken to promote respect by the Government of Iraq for internationally recognized human rights; and

(5) a description of the steps which the United States has taken to discourage practices by the Government of Iraq which violate internationally recognized human rights, especially the rights of the Kurdish minority in Iraq.

SEC. 106. ACTIONS BY THE GOVERNMENT OF TURKEY.

The Congress—

(1) urges the Government of Turkey to cooperate with any United Nations or other appropriate investigation of Iraqi use of chemical weapons; and

(2) commends the Government of Turkey for its humanitarian decision to host thousands of Kurdish people fleeing Iraq.

SEC. 107. MULTILATERAL ACTIONS.

(a) United Nations.—The Congress calls upon the President—

(1) to bring immediately to the attention of the Secretary General of the United Nations, and to puruse before the Security Council of the United Nations, the matter of Iraq's use of poison gas against its own nationals, most of whom are defenseless civilians; and

(2) to demand that, in accordance with United Nations Security Council Resolution 620, appropriate and effective measures be taken against Iraq for its repeated use of chemical weapons.

(b) Other Multilateral Efforts.—(1) The Congress calls upon the President to seek multinational cooperation in imposing sanctions and otherwise bringing pressure on Iraq in order to obtain a cessation of Iraq's use of chemical weapons.

(2) The Congress also calls upon the President to seek multilateral cooperation in order to obtain Iraqi respect for the internationally recognized human rights of the Kurdish minority in Iraq.

(3) It is the sense of the Congress that the United States should cooperate with and, as appropriate, participate in multilateral efforts to assist Kurdish refugees who are in need of medical treatment and other humanitarian aid.

SEC. 108. CERTAIN UNITED STATES EXPORTS.

It is the policy of the United States to prohibit the export to Iraq of goods and technology that would significantly contribute to the military potential of Iraq. The President should review, under section 6 of the Export Administration Act of 1979, any proposed export to Iraq of goods or technology valued at over $50,000,000.

SEC. 109. TERMINATION.

No provision of this title, and no sanctions imposed by or under the authority of this title, has force and effect after June 30, 1991.

Mr. PELL. Mr. President, this amendment responds to Iraq's extensive use of chemical weapons against the Kurdish population in August and September. It is a compromise agreed to by the relevant House committees and similar to House-passed sanctions legislation, but less sweeping than the sanctions measures already approved on two earlier occasions by the Senate.

The sweeping sanctions were approved September 9 as a freestanding bill, and also September 30 when it was part of the foreign aid appropriations bill.

This compromise would impose two sanctions on Iraq immediately: (1) The prohibition on the export of dual-use technology to Iraq, and a requirement the U.S. oppose loans to Iraq by the international financial institutions.

It would impose additional sanctions if Iraq does not provide reliable assurances that it will not again use poison gas.

The compromise has contract sanctity and human rights provisions and it does not in any way, I repeat, does not affect in any way agricultural exports or credits.

It is cosponsored by the Senator from North Carolina, and my understanding is that it is being approved on both sides of the aisle.

The PRESIDING OFFICER. Who yields time?

Mr. DURENBERGER. Mr. President, I yield myself so much time as I may take to indicate that the chief cosponsor of this amendment, Senator HELMS, and also Senator McCAIN are on their way over to the floor right now and would like to speak on the issue before we act on it.

So I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3644

Mr. BAUCUS. Mr. President, I ask unanimous consent that the pending amendment be laid aside so that the Senate can refer to the earlier amendment and vote on the motion to table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The business before the Senate is now the motion to table the amendment offered by the Senator from——

Mr. McCAIN. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. McCAIN. Mr. President, I would like to speak on the pending amendment.

Mr. BAUCUS. Mr. President, I ask for the regular order.

The PRESIDING OFFICER. The regular order has been requested.

Mr. McCAIN. I withdraw my objection, Mr. President.

The PRESIDING OFFICER. The business of the Senate is the motion to table the amendment offered by the Senator from New Jersey.

The question is on agreeing to the motion of the Senator from Montana to lay on the table the amendment of the Senator form New Jersey. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Oklahoma [Mr. BOREN], the Senator from Florida [Mr. CHILES], and the Senator from New Jersey [Mr. LAUTENBERG] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Mississippi [Mr. COCHRAN], the Senator from Washington [Mr. EVANS], the Senator from Texas [Mr. GRAMM], the Senator from New Jersey [Mr. HUMPHREY], the Senator from Nebraska [Mr. KARNES], the Senator from Indiana [Mr. LUGAR], the Senator from Indiana [Mr. QUAYLE], the Senator from Wyoming [Mr. WALLOP], and the Senator from California [Mr. WILSON] are necessarily absent.

I further announce that, if present and voting, the Senator from Nebraska [Mr. KARNES] and the Senator form Wyoming [Mr. WALLOP] would each vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 82, nays 5, as follows:

[Rollcall Vote No. 363 Leg.]

YEAS—82

Adams
Armstrong
Baucus
Bingaman
Bond
Boschwitz
Breaux
Bumpers
Burdick
Byrd
Chafee
Cohen
Conrad
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dole
Domenici
Durenberger
Exon
Ford
Fowler
Garn
Glenn
Gore
Graham
Grassley
Harkin
Hatch
Hatfield
Hecht
Heflin
Heinz
Helms
Hollings
Inouye
Johnston
Kassebaum
Kasten
Kennedy
Kerry
Leahy
Levin
Matsunaga
McCain
McClure
McConnell
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nickles
Packwood
Pell
Pressler
Proxmire
Pryor
Reid
Riegle
Rockefeller
Roth
Rudman
Sanford
Sarbanes
Sasser
Shelby
Simon
Simpson
Specter
Stennis
Stevens
Symms
Thurmond
Trible
Warner
Weicker
Wirth

NAYS—5

Biden
Bradley
Dodd
Nunn
Stafford

NOT VOTING—13

Bentsen
Boren
Chiles
Cochran
Evans
Gramm
Humphrey
Karnes
Lautenberg
Lugar
Quayle
Wallop
Wilson

So the motion to table amendment No. 3644 was agreed to.

AMENDMENT NO. 3645

Mr. BAUCUS. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending question is the amendment by the Senator from Rhode Island. Who yields time?

The Senate will be in order. The pending business is the amendment offered by the Senator from Rhode Island. Who yields time?

Mr. BAUCUS. Mr. President, who controls time on this amendment?

The PRESIDING OFFICER. The Senator from Rhode Island controls time on his amendment.

Mr. HEINZ. Mr. President, how is the time in opposition to the amendment controlled?

The PRESIDING OFFICER. The time is controlled by the manager of the bill, unless he favors it. If the majority leader favors the amendment, the time in opposition is controlled by the minority leader or his designee.

Mr. PELL. Mr. President, could you repeat that? I could not hear.

The PRESIDING OFFICER. The Senate will be in order. The time on the amendment is controlled by the Senator from Rhode Island—controlled by the manager of the bill, unless the manager of the bill favors the amendment. If the manager of the bill favors the amendment, time in opposition is then controlled by the minority leader or his designee.

Mr. PACKWOOD. Is that also true if the minority leader is in support of the amendment?

The PRESIDING OFFICER. The minority leader would then designate an individual who would control the time in opposition to the amendment.

Mr. PACKWOOD. I thank the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Am I correct in saying that I control 15 minutes?

The PRESIDING OFFICER. There is 14½ minutes under the control of the Senator from Rhode Island.

Mr. PELL. I would yield to the Senator from Arkansas, Mr. PRYOR.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. HEINZ. Mr. President, parliamentary inquiry. Have we established at this point who is going to control the time in opposition to the amendment? Because if no one is interested, I will claim it.

The PRESIDING OFFICER. The time in opposition is controlled by the majority leader or his designee.

Mr. HEINZ. Might I ask the minority leader, whom I see on the floor, if he would?

Mr. DOLE. I yield all my privileges to the Senator from Oregon, Senator PACKWOOD.

Mr. PACKWOOD. I must say I honestly have not heard all the arguments and I do not know where I will come down, but I will be happy to yield time to the Senator from Pennsylvania even if I eventually end up voting for it.

Mr. HEINZ. Mr. President, I thank my friend the Senator from Oregon. I will withhold my comments for now but I will take advantage of that offer in just a few minutes.

The Senator from Rhode Island has yielded to Senator PRYOR, as I understand it.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. PRYOR. I will not take but a moment and one of my purposes in rising is to ask the distinguished chairman of the Foreign Relations Committee, the Senator from Rhode Island, about a section in this Iraqi sanctions. Earlier in the section on the Iraqi sanction it was my concern and I think a concern shared by many of the Senators from agricultural States that might in fact—or appear to be—or could be perceived to be, an embargo of agricultural items to Iraq.

I would like, Mr. President, to rise and ask my friend, the distinguished chairman, is this in any way intended to impose restrictions on agriculture exports, and in particular agriculture credit programs, to Iraq?

Mr. PELL. Mr. President, I thank very much the Senator from Arkansas for his excellent question and will say the distinguished Senator is correct. These sections of this bill will not impose any restrictions whatsoever on agricultural exports or agricultural credit programs.

Mr. PRYOR. Mr. President, I thank the distinguished Senator from Rhode Island very much. He has answered my question. I am glad that is now a part of the RECORD.

Mr. President, I yield the floor.

Mr. PELL. Mr. President, I have already spoken in behalf of the amendment and will now yield time to the Senator from North Carolina, who is a cosponsor of this amendment.

Mr. HELMS. Mr. President, over the past month, millions of Americans have become aware of the horrible efforts of the Iraqi Government to systematically eliminate its own citizens of Kurdish descent. What is going on is a crime against humanity, and the United States cannot sit by and idly watch it proceed.

The chairman's amendment will bring about firm action against the Iraqi regime, and do so in such a manner which I believe will be immediately acceptable to the House.

It never ceases to amaze me how cruel and vicious radical regimes—such as the Saddam Hussein regime in Iraq—can be. Often utilizing chemical weapons, the Iraqi Government has killed literally thousands of Kurds and has forced tens of thousands more to flee to neighboring countries.

This is not the first time the Iraqi regime which, by the way, gets most of its arms from the Kremlin—has employed chemical weapons against its own civilians. In March of this year, Iraq dropped chemical weapons on a Kurdish city. According to U.S. News and World Report, this attack took the lives of 5,000 innocent civilians. News reports suggest that this attack was meant to "punish" Kurdish Iraqi citizens.

In the last month, however, the Iraqi regime's attacks against its own Kurdish citizens intensified. According to the New York Times, the regime took advantage of its August 20 ceasefire with Iran to launch a military offensive against the Kurds.

Mr. President, the United States should not sit idly by and watch the Iraqi regime undertakes an "offensive" against their 3 to 4 million Kurdish citizens. The American people do not want us to sit idly by. In fact, I am proud to say that the church Dot and I attend here in Virginia, the First Baptist Church in Alexandria, has given shelter to three Kurds on a hunger strike to protest the actions of the Iraqi regime.

This legislation, of which I am proud to cosponsor with the distinguished chairman of the Foreign Relations Committee, will help demonstrate to the Iraqi just how serious our country views its campaign against the Kurds. In addition, it will help assure that United States tax dollars do not subsidize the Iraqi regime.

Because of the lateness of the session, this could be our only chance to do something about the horrible campaign being undertaken be the Iraqi Government. It would be a terrible shame if we missed this opportunity.

In summary, let me say, over the past month, literally millions of Americans have become aware for the first time of the horrible effects of the Iraqi Government systematically eliminating its own citizens of Kurdish descent. What is going on is a crime against humanity, and the United States cannot and should not and must not sit back and idly watch it proceed.

The PRESIDING OFFICER. The Senator from Rhode Island.

The PELL. Mr. President, I yield 3 minutes to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. GORE. Mr. President, I rise to compliment the distinguished chairman of the Foreign Relations Committee and his counterpart in the other body and the ranking members on both sides for working out difficult problems in reconciling the differences between the two bills in very short order. I have watched the distinguished chairman as he has approached this issue. He has done this body proud.

I have been particularly interested in this measure. My uncle was a victim of poison gas in World War I. I have watched the development of this issue, and I think that if humankind is going to preserve the prohibition against the barbarism which was put in place following the terrible tragedies of World War II, the world cannot stand by in the face of repeated violations of the prohibitions against the use of poison gas. I urge overwhelmingly, indeed, unanimous support for this measure and, again, I compliment the leaders on both sides of the aisle for making it possible.

Mr. PELL. I thank my colleague from Tennessee. I now yield such time as he may desire to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. McCAIN. Mr. President, I thank my colleague from Rhode Island for the outstanding work he and his staff have done on this issue. I think it is an important amendment we are considering. I only wish that we had been able to bring up as a freestanding bill for the kind of debate that an issue of this import deserves. I want to say, Mr. President, I support this amendment. I believe that all of us in both Houses condemn Iraq's use of poison gas.

I also believe, however, that we agree we should adopt sanctions against any country that acquires such gas for anything other than deterrent purposes, any country which uses gas, and any country which opposes a treaty on chemical weapons.

Further, I strongly believe that we should apply sanctions against any company that sells equipment that can be used for chemical warfare. That is why I think that we should not stop at passing a sanctions bill that singles out Iraq alone. I think it is possible it could provoke Iraq to accelerate its chemical warfare programs. I do not believe we should ignore the need to protect Israel, Egypt, and our other friends in the Middle East. I do not believe we should stop at passing a bill that does not take into account evidence that Iran, Libya, and Syria are actively producing poison gas and that Iran and Libya have used it. I do not believe we should stop at passing this legislation if it does not even take into consideration the preliminary account of the fact that Iraq and Syria seem to be producing biological as well as chemical weapons.

That is why I will soon propose a follow-on bill which covers Iran, Libya, and Syria and any other nations that the President may select where evidence is clear that they have been involved in this kind of intolerable activity.

It is also why I propose reporting requirements that require all weapons of mass destruction and which will provide a basis for taking broader action during the next session of Congress.

I understand the reluctance that some in the other body may have in dealing with any further amendment to the present chemical weapons bill. At the same time, I think we cannot ignore a need for a bill that will protect Israel, Egypt, and our other friends in the region, as well as our own troops and citizens and those of the rest of our allies.

Mr. President, I intend to propose legislation that will give the President ample flexibility in a way to apply sanctions to be sure that his negotiating leverage is preserved without creating a situation where other countries fail to see any major congressional pressure upon them or the threat of any meaningful sanctions.

At the same time, I hope we will soon begin to consider how we can take broader and more effective action to halt a proliferation of all weapons of mass destruction during the coming year. I believe that this will be one of the most serious issues we face in the next Congress, and we urgently need to be treating biological, chemical, and nuclear weapons and their delivery systems as part of a comprehensive arms control program.

Mr. President, I would like to again thank my colleague from Rhode Island for his years of effort on this very important issue. I would like to express my support for this amendment and also express my appreciation for his willingness to work with me and others in this body who are concerned about the other nations that are also producing and have the capability of using chemical and biological weapons.

Mr. President, if we let this genie out of the bottle, we are going to face serious challenges to civilization as we know it. This is the cheapest and most inexpensive method of producing weapons of mass destruction that we know of. I think that it is of most serious import that we address this in a bipartisan fashion with the next administration.

I yield back the remainder of my time.

Mr. PELL. Mr. President, I thank my colleague from Arizona who knows firsthand so much about the horrors of war, and I thank him for his interest in this matter. I completely agree with him that their bill should not be limited only to Iraq. However, we have to deal with what is possible, not what is desirable. For that reason, I am grateful to him for his wish to postpone consideration a broader chemical weapons bill until a later date and look forward to supporting him at that time.

I yield 2 minutes to the Senator from Louisiana [Mr. BREAUX].

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Mr. President, I want to thank the Senator for yielding, and I commend him for his willingness to work with many of us who were concerned about the original bill having restrictions on agricultural exports or restricting even agricultural export credit guarantees to the country of Iraq.

History repeats itself on a regular basis, and we have learned many years ago that export restrictions on agricultural products simply do not work as an instrument of foreign policy. The United States should not be engaged in depriving innocent civilians of products that feed their families, particularly when they are in such destitute circumstances as the citizens of the country of Iraq happen to be today.

I am very pleased that the distinguished chairman saw fit to remove any reference to restricting or limiting of agricultural sales to the country of Iraq and at the same time saw fit to remove any prohibitions against their use of legitimate existing agricultural export credit guarantees from the United States.

The bottom line is that agricultural products in this country should simply not be a tool of foreign policy. It is one thing to prohibit munitions and armaments and things that they can shoot back at us and at their neighbors. I wholeheartedly support that effort, but to restrict the sale of agricultural products, the use of export and credit guarantees, I think is a wrong approach, and the distinguished chairman agreed. We congratulate him for it and thank him for his willingness to sit and meet and agree with what we are proposing. I yield back.

Mr. GORE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. DASCHLE). Is there a sufficient second?

There is a sufficient second. The yeas and nays were ordered.

The PRESIDING OFFICER. The chairman informs the Members the Senator from Rhode Island has 4 minutes remaining. The Senator from Oregon has 3 minutes remaining.

Mr. PELL. I yield 2 minutes to the Senator from Maine.

Mr. COHEN. I thank the chairman for yielding. Let me join in commending the chairman of the Foreign Relations Committee for the initiative he has taken on this particular issue. Frankly, I believe the proliferation of chemical weapons poses nearly as great a danger as we have seen with that of the proliferation of nuclear capabilities of various nations. We have witnessed a toleration of its use which I think is unprecedented.

Frankly, one of the things that is disappointing to me perhaps with this legislation—and I intend to support it—is that it is not tough enough. Not only do I agree with the Senator from Arizona that we have to apply it to many other nations that would indeed resort to chemical weapons, but I think we have to make the sanctions much more punitive than they are today.

As far as Iraq is concerned, they have been developing chemical weapons and using chemical weapons for the past 10 years. There has been no expression of international outrage.

It seems to me that we are going to really raise the barrier once again. With comtemplated abuse of chemical weapons we have to be far more punitive than we have been here. As I read the sanctions, they are quite limited in their application. If it is certified that Iraq agrees not to use them again in the future, then there are no further sanctions. I think any country that has used chemical or gas warfare ought to pay a penalty, a very severe penalty. And I hope in the future we might consider such sanctions.

Mr. PELL. Mr. President, I thank the Senator from Maine for his position. I agree with him. We had a much tougher version we passed in the Senate in September twice. But this is the best we could get the House to accept.

I yield.

The PRESIDING OFFICER. Who yields time?

Mr. HEINZ addressed the Chair.

Mr. PACKWOOD. Mr. President, how much time would the Senator from Pennsylvania like?

Mr. HEINZ. Six minutes.

Mr. PACKWOOD. I yield 7 minutes to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. HEINZ. The Senator from Oregon is generous to a fault. I thank him.

Mr. President, I must say after listening to the discussion on this amendment that I am very close to opposing it and voting against it. If the time contraints were different I think I would talk about it for a long time, until the managers understood the sloppy job that this amendment represents.

I was tempted a second time when I listened to the Senator from Louisisana, Senator BREAUX, discuss how there had been an agricultural products carve-out in this amendment, motivated by concern that unilateral controls on agriculture do not work.

The reason his remarks stirred me up is he is right. Unilateral controls do not work on medical equipment, on personal computers, and on machine tools, either. But that is exactly what the amendment of the Senator from Rhode Island does.

In the name of getting tough on chemical weapons use or submanufacture in Iraq, the Senator from Rhode Island gets tough on American exporters, those that produce certain kinds of relatively high technology but not the highest technology equipment. And for the life of me I cannot see how denying medical technology which can be bought from France, Germany, Italy, Japan, or half a dozen other countries is going to make Iraq less willing to engage in chemical warfare.

I cannot see how, since personal computers are available in Taiwan, Korea, Singapore, Europe, Canada, and another half dozen places, preventing Americans from selling personal computers to Iraqi school kids or bureaucrats or businessmen is going to somehow get their Government to change their policy, especially when they can buy them cheaper—and maybe on occasion, I hope not often—better someplace else. And the same thing goes for machine tools. We do not have a monopoly on them. We have not had for about 100 years. Yet unilateral controls are exactly what the amendment of the Senator from Rhode Island impose.

What we ought to be doing is structuring a response in which we first make our point through the usual multilateral diplomatic channels. Second, if we really want to get tough, what we ought to do is single out the chemicals and the equipment that makes it possible to manufacture and deliver chemical weapons. Only if that fails should we move to broader sanctions.

This amendment of the Senator from Rhode Island does not do that. It would strike me as the height of silliness to pass an amendment that shoots American exporters in the foot but does not get to the root of the problem, which is to crack down on the chemicals and technology that create chemical weapons.

I have news for the Senator from Rhode Island and his staff. If they had checked with the subcommittee, of which I am ranking member and which I chaired for 6 years, we could have told them that the export control list under title V of the Export Administration Act does not control most of the chemicals and technology from which poison gas is made. But they did not check. I do know where they checked. And maybe if they were serious about doing this work, they would bother. But something has happened here. As a result, we are faced with an amendment that frankly does not do the job.

I am not going to oppose the amendment because I think that would probably send the wrong signal to the Iraqis, but they are probably laughing at us because they are going to get their so-called high technology equipment from all the other suppliers. And they are still going to be able to get chemicals and technology they want from us because this amendment does not do anything about it.

I would have hoped we would have found a way to bring up the Dole-Helms amendment. If we had done that, we would have a policy that focuses not just on the appropriate technology and on the chemicals, but on all the countries besides Iraq, Iran, Syria, the others, that are attempting to make and may have the capability to use chemical weapons. That, of course, is the other big flaw in this amendment.

The Senator from Arizona correctly pointed out that flaw. I wish he had persisted in his amendment to correct that. But we are under a very tight time limitation here. There are other much-needed amendments, and I am not going to take the time of the Senate to offer them.

But I want to point out that there are some deep flaws in this amendment. This is the third time a proposal like this has been advanced by the Senator from Rhode Island and his staff. When the U.S. Senate has three opportunities to craft a bill, it ought to make an effort to do a workmanlike, decent job. I am sorry to say that this one does not fill the bill.

The **PRESIDING OFFICER**. Who yields time?

The Senator from Oregon has 5 minutes 40 seconds. The Senator from Rhode Island has 2 minutes 30 seconds.

Mr. **PELL** addressed the Chair.

The **PRESIDING OFFICER**. The Senator from Rhode Island.

Mr. **PELL**. Versions of this legislation have been before the Senate for a month and twice before it has been approved by the Senate.

Twice before the Senate has approved legislation that, first, cuts off the export of sensitive technology to Iraq and, second, requires the United States to vote against the loans to Iraq in the international financial institutions. This bill simply reaffirms what we have already done on two occassions.

I am prepared to yield back the balance of my time if the manager for the opposition is, too.

Mr. **PACKWOOD** addressed the Chair.

The **PRESIDING OFFICER**. The Senator from Oregon.

Mr. **PACKWOOD**. I yield 3 minutes to the Senator from Rhode Island.

The **PRESIDING OFFICER**. The Senator is recognized.

Mr. **CHAFEE**. Mr. President, I would like to direct an inquiry to my colleague. This gives the President authority to invoke sanctions on other materials, but not agricultural produce; is that correct?

Mr. **PELL**. That is correct. Agricultural products are specifically not touched. It says sanctions can only be applied to nonagricultural things.

Mr. **CHAFEE**. I am having trouble with the section of this amendment that exempts agricultural products. Take the products from our own State, whether it is textiles or machine tools, they are not automatically on the sanction list, but they could be; is that correct?

Mr. **PELL**. That is correct.

Mr. **CHAFEE**. It gives the President authority to impose these sanctions within *x* weeks; is that correct?

Mr. **PELL**. That is correct.

Mr. **CHAFEE**. Obviously the Senator is concerned about the products of our own State—but why do we get into a position where the sanctions could be levied on our products but not agricultural products? That is not having all the United States bear the burden in an equal fashion.

Mr. **PELL**. No; but it seemed advisable to limit the agricultural products both for reasons of political necessity, that is to get the bill through, and also because food is a special commondity that is essential for survival. You can punish a country by denying them some manufactured goods, but they cannot survive without food.

Mr. **CHAFEE**. This issue is new to me, I know the Senator has had the previous sanctions bill earlier, but that bill zipped through. I think that was by a voice vote.

Mr. **PELL**. That is correct.

Mr. **CHAFEE**. This is a little different, and I am just curious about the rationale that it is imposed on some sections of the country—the pain, if you will—but not on other sections.

Mr. **PELL**. The original version of the bill did have agricultural sanctions in it, and then from the point of view of political necessity, they were taken out.

Mr. **CHAFEE**. I see. But there is not enough of political necessity for machine tools?

Mr. **PELL**. I wish there were.

Mr. **CHAFEE**. You could make an amendment, if you want.

Mr. **PELL**. I would be glad to hear it.

Mr. President, I am prepared to yield back the remainder of my time.

Mr. **HEFLIN**. Mr. President, today we are voting on an amendment which imposes certain sanctions against Iraq. It is my understanding that this amendment contains a contract sanctity provision which ensures that contracts already in existence will not be affected by the imposition of these or future sanctions.

I further understand that this amendment deals with items on the munitions and/or dual-use list rather than basic products used for nonmilitary purposes. In particular, I am concerned about some contracts which a major manufacturing concern in the State of Alabama has entered into under the Export-Import Bank/Government of Iraq Trade Credit Facility. These contracts involve ductile iron pipe and accessories, which it is my understanding, are not covered by the terms of this amendment.

Mr. **DURENBERGER**. Mr. President, I rise to speak concerning the amendment offered by the Senator from Rhode Island, Senator PELL. This amendment would impose limited trade sanctions on the Iraqi Government as a symbolic condemnation of their criminal and barbaric use of chemical weapons against citizens living in their own country, the Kurdish minority.

Mr. President, I will vote for this amendment because the sponsor of the amendment has recognized my concerns, and the concerns of many other Senators, by removing provisions that would have made it impossible for American farmers to sell farm commodities to Iraq. But I want to say that my vote for this amendment is with some reluctance. That reluctance is not to be confused with my outrage over the Iraqi's use of poison gas but it results from my frustration over our unilateral policy response in this and other cases.

Mr. President, every time a foreign country does something that we in the United States believe is immoral or illegal, we in the Congress vote to impose some form of restrictions on trade. And those votes are usually close to unanimous. Currently, we have imposed some form of restrictions on trade on more than 40 countries.

Yet I think that we should reconsider the whole notion that the only way we can express our moral indignation over other countries' reprehensible behavior is by unilaterally imposing trade sanctions. We learned from the Soviet grain embargo that we do not have a monopoly on the sale of any product or commodity. When we in Congress vote to close foreign markets, I believe the people who really are hurt are the American farmer and the American exporter.

The only way to really make embargos or trade sanctions work is for the United States to act in concert with our trading partners to ensure that when American companies have to leave a market, they will not be immediately replaced by Japanese or French or other foreign sellers.

I hope my colleagues will give serious consideration to these ideas.

Mr. PACKWOOD. Mr. President, I am going to ask the manager of the bill to do this, because a number of our colleagues are gone, to set this vote at exactly 6 o'clock, once we yield back the time, and then go on with any other amendment.

Mr. BAUCUS. Mr. President, I think that will be fine with this side. I have talked with the majority leader, and he indicates that 6 o'clock is fine.

Mr. PACKWOOD. Mr. President, I ask unanimous consent to set the vote on this amendment at 6 o'clock.

The PRESIDING OFFICER. Without objection, it is so ordered.

Do both sides yield back their time?

Mr. PACKWOOD. I yield back my time.

Mr. PELL. I yield back my time.

The PRESIDING OFFICER. The vote will take place at 6 p.m.

AMENDMENT NO. 3646

(Purpose: To extend for 2 years the date by which hydroelectric projects must be placed in service if such projects were delayed in order to comply with certain Federal law)

Mr. McCLURE. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending question is the substitute, which is open to amendment.

Mr. McCLURE. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The Senator from Idaho [Mr. McClure], for himself, Mr. Wallop, Mr. Simpson, Mr. Symms, and Mr. Melcher, proposes an amendment numbered 3646.

Mr. McCLURE. Mr. President, I ask unanimous consent that reading of the amemdment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . PERIOD FOR PLACING HYDROELECTRIC PROJECTS IN SERVICE.

In the case of any qualified hydroelectric generating projects (as described in section 48(l)(12)(A)(vii) of the 1986 Code) with respect to which a Federal law enacted before the date of the enactment of this Act imposed, in addition to any standard licensing requirements under part I of the Federal Power Act, requirements for determinations pertaining to streamflow, habitat, and water temperatures and quality, section 46 (b)(2)(D) of the 1986 Code shall be applied by substituting "1990" for "1988" in recognition of the fact that such projects were delayed by such additional requirements.

Mr. McCLURE. Mr. President, this is an amendment which was listed on the approved list of amendments to be offered. I offered it on behalf of the cosponsors listed: the Senators from Wyoming and Idaho and the Senator from Montana [Mr. Melcher], the Senators most directly affected. I mention that with due apology to the floor manager of the bill, who is also interested in the subject matter of the amendment.

Mr. President, the amendment I offer today is very simple and just. It makes a correction to an unintended result of congressional action. The amendment would extend the hydroelectric tax credit for the Island Park hydro project which would have been placed in service but for an act of Congress which delayed the project.

In 1986 the Congress approved the Electric Consumers Protection Act [ECPA] (Public Law 99-495). In the 1986 law, Congress added a rider which cited the Island Park Dam hydropower project by name and FERC project number and imposed new and additional licensing criteria. This action occurred during the middle of the ongoing FERC licensing process. The act required that in addition to the requirements of part I of the Federal Power Act that, "* * * the Commission may issue such license only if the Commission determines that significant and permanent alteration of streamflow, habitat, water temperature, and quality will not occur as a result of the project."

Unfortunately, when dealing with the Island Park issue, the Congress was focusing on allowing the project to be built, but did not foresee the licensing delay that would occur due to the additional requirements we imposed. The project met all the requirements of the law and was timely filed; however, the delay imposed by Congress pushed the project back so it was impossible to place it in service by the end of this year when the credit expires. Thus, all we are asking today is for Congress to treat this hydroproject the same it has every other project.

Mr. President, my staff and I have been in touch with the members and staff of the Senate Finance and House Ways and Means Committees. All have been sympathetic to our plight but have also pointed out that they consider this a "rifle shot."

Now as I understand the "rifle-shot" concern, it is designed to prevent Congress from legislating tax breaks that benefit one taxpayer while ignoring others similarly situated. The reasoning behind this policy is that if a tax break is to be received by one taxpayer, those in similar circumstances—that is, covered by similar facts—should receive equal treatment and application of the law. In short, tax breaks should be legislated for classes—categories—of taxpayers, rather than benefiting a special interest.

Mr. President, I understand the arguments of my colleagues; however, let me say that the provision included in ECPA created a new class of taxpayer with respect to the energy tax credits. Namely, a class of taxpayer whose ability to meet the energy tax credit expiration deadline has been thwarted by the requirements of an act of Congress. Therefore, this is not a rifle shot but is recognition by the Congress that this class of taxpayer should receive the same treatment as all other taxpayers similarly situated.

This amendment should be adopted because it does not discriminate or distinguish among those similarly situated, it merely treats the Island Park project the same way any other project would be treated but for the congressional delay. The Congress created the delay and it is only just that the Congress correct this problem by adopting this amendment.

Mr. President, if this problem is not resolved, it is likely that the thousands of hours of work that have gone into meeting the requirements of the congressional act on the private, State, and local levels, will go for naught. Close to $1 million have been invested which will go for naught. This would be a tremendous waste of time and effort, and result in abandonment of an opportunity to generate 4.8 megawatts of nonpolluting energy. The nonprofit Fall River Rural Electric Cooperative will also lose a key future generating component.

Mr. President, I think it is only fair that Congress recognize the inequity created by the rifle shot we imposed in 1986 and adopt this amendment which will treat the Island Park project the same as any other project similarly situated. It was a so-called rifle shot in 1986 that caused the delay, it will be a great irony if this project does not go forward because the managers of this bill choose to oppose the project because they consider it a rifle shot in 1988.

Mr. President, I would not feel so strongly about this if it had not been my amendment that created the problem; and my amendment that created the problem was done in a good-faith effort on my part, as well as the project sponsors, to make certain that the water quality of the Henry's Fork of the Snake River was not compromised in any way by construction of the project. That additional test imposed by the amendment which I offered almost 2 years ago was the source of the problem, and I feel a moral obligation to try to correct the inadvertent problem that came about as we tried to solve the other problem which was perceived at that time.

I urge adoption of the amendment.

Mr. BAUCUS. I yield myself such time as I may consume.

Mr. President, the amendment offered by the Senator from Idaho is a sympathetic one.

Under the current law, the Island Park project, in order to benefit from the energy tax credit, must be placed in service by the end of 1989. In the last 2 or 3 years, there have been various events which have either delayed or caused the Island Park project to jump through more hurdles in order to meet the placed-in-service date.

One is the Electric Consumers Protection Act which the Senator from Idaho mentioned. That act requires the applicant to meet more conditions, more standards, in order to achieve approval of the relevant Federal Government agencies.

The Senator from Idaho correctly states, as far as this Senator can determine, that those additional requirements probably added an additional burden to the applicant and made it more difficult for the applicant to have the project placed in service by the end of 1989.

The amendment is also sympathetic because the Island Park project would be located near the State of Montana. It is a project which, if placed in service and operating, will provide electric power to consumers in southwest Montana as well as Idaho. The project would mean lower power bills and lower rates. That is, of course, a very admirable goal, one we would like to pursue.

In addition, the amendment is sympathetic because the Senator from Idaho has been very, very diligent in pressing his amendment and also in trying very creatively and very constructively to find a solution to this problem. He has talked with me many, many times. He has also tried to find other solutions, and we are now at the point of trying to decide whether or not this amendment should be part of this bill.

Unfortunately for this amendment, Mr. President, we have a general standard in this technical corrections bill of not accepting rifle shots. This is, after all, a technical corrections bill. It is a bill which essentially corrects the technical mistakes that were made in the 1986 Tax Reform Act. It is a bill which closes three major loopholes and uses the revenue to extend some of the current provisions in the tax law that would otherwise expire, namely, the R&D tax credit, the low-income housing credit, and others.

We have tried to pass a clean bill; we have tried to address the technical problems in the 1986 Tax Act; we have tried to close loopholes. This bill is not a tax bill that has lots of ornaments or carries lots of baggage. It was not designed to raise revenue. That would be inappropriate generally and certainly inappropriate at this time since we are in the last week of the Congress and November 8 is just 4 weeks away.

The Finance Committee has received over 145 requests for changes in old transition rules.

Mr. President, if we were to adopt all of those requests, this tax bill would have a very hefty price. It is because of all these requests and because of the price of these requests that the Finance Committee adopted the clear standard on this bill of not accepting rifle shots or changes to old transition rules.

Mr. President, there are several requests that various Senators have given to the committee for changes for placed-in-service dates which also arguably are meritorious because of Government-caused delays or other reasons. Island Park is not in a class by itself. For example, the Andrew Skroggin River project is delayed, and not because of the Government. And the Dart project in Virginia is delayed because State and local government approvals have been slow in coming.

These examples illustrate why the placed-in-service transition provision for Island Park has not been accepted on this bill.

Another example is the Gateway Harbor project which is behind schedule because of the delay of the Army Corps of Engineers in completing prerequisite dredging. The fault is with the Army Corps of Engineers. That is why a Senator has asked for another extension of the placed-in-service date.

The Finance Committee decided that we cannot at this time agree to rifle-shot provisions even if part of the reason for the delay is traced to the U.S. Government or the Congress.

Mr. President, if we accept rifle shots of this nature, when the Senate conferees go to conference with the House, the House conferees will then point to the Senate rifle shots and will say, "You Senators have yours, we House Members now want ours."

The standard in the House bill was no rifle shots. The House bill does not contain rifle shots.

If we in the Senate now were to adopt rifle shots, then the House conferees would come to the conference with their bushel basket full of rifle shots. I guarantee the Members of the Senate that the bill brought back from the conference with the House to the Senate then would be much more heavily ladened; there would be much revenue raised; many more provisions of merit and some perhaps of not as much merit will make the final passage of the bill and the signature of the President less likely.

I do not think we want to jeopardize the diesel tax provisions in the bill, the extension of the R&D tax credit, the heifer tax, and other very important provisions of this bill by departing from our standard and accepting rifle shots even under the color of merit. That is what makes it so difficult, particularly difficult for this Senator, the acting manager of the bill, to ask the Senator from Idaho not to press his amendment.

Mr. President, if the Senator were not to press his amendment, if he were to withdraw his amendment, I can assure the Senator from Idaho that at least this Senator will at the earliest appropriate date, maybe this year, but in all likelihood, probably next year, and certainly early next year, attempt to address this problem. It does have a lot of merit. The U.S. Government is a significant part of the reason for the delay in this project being placed in service by the end of 1989. There is still some time remaining, albeit not a lot of time. If the project, nevertheless, can be placed in service by the end of 1989, then it will be entitled to the credit.

If somehow it becomes apparent that it cannot be placed in service by the end of 1989 and if there is an appropriate opportunity, then I assure the Senator from Idaho that this Senator will exercise every effort to attempt to find a reasonable solution to this problem.

But at this point I am constrained to urge the Senator from Idaho not to press his amendment because of the circumstances and the short time remaining and because we need to pass the technical corrections bill.

The PRESIDING OFFICER. The Senator from Montana.

Mr. MELCHER. Mr. President, will my colleague yield me 2 minutes?

Mr. BAUCUS. Mr. President, I yield 2 minutes to the Senator from Montana.

The PRESIDING OFFICER. The Senator is recognized.

Mr. MELCHER. I thank my colleague.

Mr. President, I stress with all the emphasis I can the merits of this amendment. It is one that is badly needed. It does have effect not only on Idaho but does have effect on Montana in that part of the power that would be produced in Island Park will be utilized in Montana.

I have listened to the discussion that has taken place in this colloquy and debate on this amendment, and I urge that all consideration be given to as soon as possible correcting this inequity for Island Park.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 8 minutes and 54 seconds.

Mr. PACKWOOD. I thank the Senator.

Mr. President, this amendment has been particularly troublesome because I think merit is on the side of the Senator from Idaho.

We did get many, many requests for rifle shots as Senator BAUCUS, the chairman, has indicated, many of them needed because of alleged Government action which had delayed a project. Often they were the so-called placed-in-service date. You had to do something by a certain date. You thought you would get it done. The Government dragged their feet on whatever it is they had to approve and, therefore, you could not meet the placed-in-service date; therefore, you lost the time and needed the transition rule.

In this particular case, the Senator from Idaho has been very good about indicating this.

This was not, as I understand it, an administrative action. It was a legislative action that we took simultaneously with the passage of the tax reform bill. Had this action taken place in your amendment a month earlier, we would have understood this at the time of the tax bill. Had it taken place a month later, we would have understood the tax bill at that time and we would have accommodated it. It is just that they took place within a week of each other and no one foresaw it.

So now, through no one's fault, we have a situation that should be corrected but where both the chairman and I are reluctant to open up rifle shots because of the criticism that comes to the bill.

I can give you a good example of when we did one on one occasion. In 1986, we made in the tax bill a provision for allowing the steel companies to take certain numbers of credits. There was about a total of $500 million spread over a fair number of steel companies. Then one of them, LTV, went bankrupt. And in the bankruptcy proceedings the bankruptcy court held that that credits could not be used in the fashion they intended them to be used. It was a reorganization. They were going to keep going. So we wanted them to be able to use the credits.

So we put a provision in the bill to reverse the bankruptcy court, putting LTV back in the position we thought they were in in 1986. It led to extraordinary criticism of special favoritism. We tried to make the argument we were trying to put them in the same position they would have been in 1986 and we thought they were in in 1986 and would have been in that position but for going bankrupt and reorganizing. That is all we were trying to do. Still the criticism came. So we tried to avoid these rifle shots.

But I will say to the Senator, I will do everything, along with the chairman, I will do everything possible to make sure that we take care of this at the earliest possible moment if the facts are as he has stated, and I have no reason to believe they are other what he says. He has made a good case and he has been a gentleman about it.

I hope he will withdraw the amendment now, but he will get my early consideration as soon as we can get to it.

I thank the Chair.

Mr. McCLURE addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Oregon yield to the Senator from Idaho?

Mr. PACKWOOD. Yes, I yield to the Senator from Idaho.

Mr. McCLURE addressed the Chair.

The PRESIDING OFFICER. The Chair apologizes.

The Senator is recognized.

Mr. McCLURE. I thank the Chair. I will not consume the Senator's time on behalf of the committee.

Mr. President, I appreciate the comments that have been made by both the Senator from Montana, the manager of the bill, and the Senator from Oregon. The Senator from Oregon states my position exactly correctly.

The Senator from Montana mentioned other projects that were delayed for other reasons, one that was delayed because of a flood. Congress does not make floods. In spite of what people may blame us for, we are not yet responsible for floods.

Another project that was delayed was because of State and local government actions. Obviously, we do not control State and local government actions.

And the Senator from Oregon is again correct when he points out this was not one that was delayed by bureaucratic shuffling. This was a delay created by the Congress and I think the Congress ought to respond.

It is, I think, particularly appropriate in some respects that we address this as we are doing a technical corrections bill. Two years ago, the Congress created a tax law. We said that there were some things that happened, where we simply made a mistake or errors of judgment or they did not work out the way we expected, so we are going back and changing what we did.

And that is what I am suggesting we ought to do with respect to this particular project. Because of my interference, because of my intevention, because of my concern that we make certain the water quality on that particular stream not be adversely affected, I put a rider on a bill that said:

> This project cannot alter that stream, and until you can prove that it can't, you can't go forward. And, FERC, you cannot issue the license until you have been satisfied that this meets a higher standard than we require of any other project.

In meeting that standard which we created, they had to take more time and more study and more proof before FERC, which is now clear to license. They have met that test, but it consumed time.

It just seems to me, while we are dealing with technical corrections to a tax bill, that we ought to be able to also make a technical correction to a hydrolicensing provision which I offered in good faith and that the people that are involved in good faith attempted to comply with.

I also understand, in my conversations with my good friends the managers of the bill on both sides of the aisle, I understand that in trying to get myself out of the dilemma with respect to having created a problem in good faith for the people in good faith, sponsors of the project, I can also be transferring a dilemma to the shoulders of the people who are managing the bill and having also attempted to meet the demands of other people who have other demands upon them for amendments to this bill.

I do not want to do that to the managers of the bill. They have a tough enough job managing this bill, and I think they are doing it so very well, in very tough circumstances, in some respects. I recognize how tough it is going to be to stand off all the demands that come for whatever piece of tax legislation that reaches the floor.

But I am extremely concerned, from my own standpoint, not just selfishly, but I just do not think it is right for the Congress of the United States to erect a special requirement for a single license and them say, "Now that we have caused you some trouble, go ahead and lose your million dollars. Tough luck, fellow."

The Fall River Electric Co-op is also going to give up their opportunity for some revenues as the result of the failure of the project. But the managers of the bill hold out, I think, a good-faith offer to me, in return that the next opportunity we have to legislate on tax matters that are open to amendments of this kind, that this amendment has merit and, under different circumstances, can be considered.

I am very reluctant to try to attempt further to get this problem resolved at this time because we do not have an unlimited amount of time. They have to meet the in-service needs at the end of this year. It is 1988 needs that we are trying to meet. If we do not amend it, though, they are left uncertain until we act as to whether or not we will ever act.

I do not really know if they can keep this project going and get the financiers to continue in order to keep the project going, moving toward a period of time when they can qualify, but I hope in the future they will qualify. That is a very tough thing for them to do.

I think, based upon the remarks of the two managers of the bill, who I think are dealing in every bit of good faith as is the Senator from Idaho, that perhaps we can persuade the project's sponsors and those who happen to support that project, that Congress will act expeditiously and sympathetically, and that they need not abandon the project at this time because we failed to act at this time. It is based upon that consideration, which I think is important to make, and I think I will not pursue the amendment at this time, although it is with some apprehension that I do not do so, because I think there is a very real risk that the project will collapse and fall appart before the Congress acts. That is not their fault. Perhaps it is not my fault, because I did not anticipate 2 years ago how much additional time it would take to meet the requirements as set forth in this amendment, which I did offer and which the Congress did adopt and which the President did sign into law.

They are operating under that requirement. They have met the testing of that requirement. But is took them more time than was contemplated when, 2 years ago, we established that higher threshold for them to cross.

I think the equities are on the side of the amendment. I understand the dilemma of the managers of the bill.

Mr. President, I withdraw the amendment.

The PRESIDING OFFICER. The Senator has the right to withdraw his amendment.

The amendment (No. 3646) was withdrawn.

Mr. BAUCUS. Mr. President, I wish to express my very deep appreciation to the Senator from Idaho. He has a very meritorious amendment. He has worked very hard to find a solution to the problem that we are now faced with.

I must say, Mr. President, that this amendment puts this Senator in a very awkward position because it tends to raise the question of to what degree we, as Senators, work for our own States' interest and to what degree do we, as Senators, also work for the national interests of major national legislation that deals with the entire country. Each of us in this body has been faced with that question or dilemma at one time or another.

This amendment very squarely places this Senator in the middle of that dilemma for many reasons. No. 1, it is a project that will benefit the State of Idaho and a portion of the State of Montana. I think it is a good project.

No. 2, there is some color of merit in the argument of the Senator from Idaho. In any other circumstances I can think of, this Senator—and I am sure the Senator from Oregon—would be more than willing to adopt it. On the other hand, we are faced with writing and passing a technical corrections bill that excludes, as much as possible, rifle shots or other provisions that have the effect of raising revenue or loading down the bill and, therefore, running the risk that the bill will not be signed by the President.

That is the situation we are faced with, and I must thank the Senator and do thank the Senator from Idaho for withdrawing the amendment. Mr. President, at least this Senator will work as diligently as he can to find a solution to the problem as early as possible next year.

I thank the Senator for his very statesmanlike approach to this problem.

The PRESIDING OFFICER. The time of the Senator from Montana has expired.

Does the Senator from Idaho yield time to the Senator from Oregon?

Mr. McCLURE. I am happy to yield whatever time I have remaining.

The PRESIDING OFFICER. The Senator may proceed.

Mr. PACKWOOD. Is the Chair recognizing me?

The PRESIDING OFFICER. Yes, under this amendment the Senator from Idaho controlled half the time and the Senator from Montana controlled half.

Mr. PACKWOOD. I understand that. How much time does the Senator have left?

The PRESIDING OFFICER. I am informed by the Parliamentarian as a result of the Senator from Idaho having withdrawn the amendment there is no longer any time remaining.

Mr. PACKWOOD. The amendment is withdrawn now.

Mr. President, we are now on the bill again; right?

The PRESIDING OFFICER. That is correct.

Mr. PACKWOOD. Mr. President, I simply want to also thank the Senator from Idaho. He has been a gentleman throughout all of this. That is one of the reasons he is one of the most effective Senators in this body and we will both do all we can to rectify this problem and I thank the Chair and the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. MATSUNAGA. Mr. President, prior to the vote on final passage of the Technical Corrections Act of 1988 (S. 2238) I rise as a member of the Finance Committee to commend and congratulate the floor managers on both sides of the aisle, the chairman of the Subcommittee on Taxation, the Senator from Montana, Mr. BAUCUS, and the ranking Republican member of the Finance Committee, Mr. PACKWOOD, for the excellent and expeditious manner in which they have managed the debate on a most difficult and complicated bill. I wish also to commend the chairman of the Finance Committee, Mr. BENTSEN, for his leadership without which the pending measure would not be up for floor action.

Mr. President, I am especially pleased to note a number of important provisions contained in the bill which are of particular importance to my constituents in the Senate of Hawaii. For one thing, this legislation contains a provision which will provide significant pension relief to participants of the Hawaii employees' State retirement system. This change is necessary to prevent an unfair, retroactive tax on the pension contributions of Hawaii retirees.

My colleagues will recall that the Tax Reform Act of 1986 contained transitional relief for State pension plans from the tax changes in the pension distribution rules. the Tax Reform Act provided a special grandfather rule for State plans which as of May 5, 1986, allowed for the withdrawal by the employee of employee contributions. In the case of such plans, the modification in the basis recovery rules for distributions prior to the annuity starting date apply only to the extent that the amount distributed exceeds the employee's basis as of December 31, 1986. Due to an ambiguity in the statutory language of this grandfather rule, the Hawaii plan was unable to avail itself of this transition rule. My amendment simply places the Hawaii employees' State retirement system within the general grandfather or transition rule for preannuity distributions which is contained in the Tax Reform Act of 1986. My amendment provides that members of the Hawaii employees' State retirement system who retired before the end of 1986 and selected a refund retirement option will not be subject to tax on their withdrawals. Furthermore, individuals who retire after December 31, 1986, and choose a refund retirement option can withdraw their pre-1987 contributions on a tax free basis. Only employee contributions made after December 31, 1986, will be subject to the new pro rata recovery rules which blend taxable employer contributions with nontaxable employee contributions.

Mr. President, the pending bill also contains a technical change in the tax-exempt bond rules which will benefit the Hawaii Housing Authority's Hula Mae Housing Program. Current Treasury Department mortgage revenue bond regulations do not permit the capitalization of ground leases in those cases where the lease payment is not specified for the entire term of the lease. In the State of Hawaii the rental payment on ground leases is not fixed over the term of the lease but is renegotiated over time. As a result, Hawaii land subject to ground leases is rendered ineligible for the mortgage revenue bond program. The Technical Corrections Act would direct the Treasury Department to amend its regulations to provide a method of determining a capitalized value for ground leases where the lease term has at least 35 years remaining and the rent is known for at least the first 10 years of the remaining term.

The Technical Corrections Act also provides for the reinstatement of the tax exclusion for cost-of-living allowances [COLA's] for judicial branch employees working outside of the continental United States. Under current law, civilian employees of the U.S. Government stationed outside of the contiguous 48 States and the District of Columbia can exclude from gross income cost-of-living allowances received in accordance with regulations approved by the President. As a result of Revenue Ruling 87-29, judicial branch employees stationed outside of the United States are rendered ineligible for this tax exclusion. Under the Technical Corrections Act, judicial branch employees stationed outside of the contiguous United States and the District of Columbia would be eligible for the tax exclusion of the cost-of-living allowances if they were received either under regulations approved by the President or under other approved pay scales of salary plans. This provision is of particular benefit to judicial branch employees in Hawaii and Alaska.

Mr. President, the Technical Corrections Act also provides for a clarification of the exemption from the ad valorem harbor maintenance tax for cargo transported between the U.S. possessions and the State of Hawaii. The Harbor Maintenance Revenue Act of 1986—Public Law 99-662—contained a series of exemptions from the tax for cargo transported to and from Hawaii, Alaska, and the U.S. possessions for ultimate use or consumption in the State or U.S. possession. The Technical Corrections Act clarifies this law by providing a specific exemption for cargo transported between the U.S. possessions and Hawaii or Alaska and between Hawaii and Alaska.

Mr. President, as the author of the renewable energy tax credits I am particularly pleased that the bill before us renews this important commitment to energy self-sufficiency. The Technical Corrections Act contains a 6-month extension of the geothermal, solar, and ocean thermal energy tax credits through June 30, 1989. This 6-month extension will allow the program to continue while providing the Congress with the opportunity to assess this important program next year.

Mr. President, I strongly urge my colleagues to support passage of the pending, long over due Technical Corrections Act.

Mr. PACKWOOD. Mr. President, I want to thank the Senator from Hawaii for his very generous comments about both the chairman, Senator BAUCUS, and myself. He has been an invaluable member of this committee since he came to the Senate. I think there are few people of whom we are fonder and, frankly, more willing to work with and do more for. He has been very generous with his help on this bill. We are indeed all grateful for everything he has done.

Mr. President, I yield the floor.

Mr. McCLURE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, I rise in support of the tax technical corrections bill. As many of my colleagues have pointed out, there were a number of mistakes made in the 1986 Tax Reform Act. Further, there was an unintended effect imposed by the Omnibus Budget Reconciliation Act of 1987 which will be corrected under this bill. That provision, which deals with the treatment of tax exempt diesel fuel purchases, is in my mind one of the most important provisions of this bill.

Mr. President, last week my staff delivered to the office of the chairman of the Finance Committee, Senator BENTSEN, and to Senator BAUCUS and Senator PACKWOOD, a copy of a letter signed by 46 of our colleagues. In short, the letter expressed our concern that if for some reason the technical corrections bill is stalled and does not pass, that we want the chairman to work with Chairman ROSTENKOWSKI to consider freestanding legislation which will be enacted prior to adjournment to restore the diesel fuel tax exemption for farmers and other off-road vehicle users.

The Senate has taken action on at least two occasions to correct this error but has been unable to proceed further due to the constitutional restraint which requires all revenue bills to originate in the House. In March, the Senate Finance Committee reported a bill to restore the purchase of diesel fuel without payment of tax to all off-highway users, farmers, and other exempt users. This bill has been on the Senate Calendar since March without any action. Further, during consideration of the drought bill the Senate included a nonbinding resolution expressing the sense of the Senate that Congress act expeditiously to "provide an exemption from the Federal excise tax on diesel fuel that is to be used for farming purposes rather than a refund of such tax after it is paid by farmers."

The action by this body was hardly expeditious, but I am glad that we are finally getting around to correcting this problem. Further, I know those farmers, ranchers, and others whose cash flow has been tightened due to this ill-conceived idea will breathe a sigh of relief to know some common sense has been restored in the law. They will no longer be required to give Uncle Sam an interest free loan until a refund could be secured.

Mr. President, another provision of interest to the agriculture community is the repeal of the so-called heifer tax. Up until 1986, agricultural producers could immediately deduct the preproductive expenses of managing their breeding herds. However, in the 1986 act the accounting rules for preproductive expenses were changed. It required agricultural producers to use one of two options. First, they can capitalize their preproductive expenses rather than deduct them immediately, or alternatively, they can deduct them immediately, but only if they recapture the expenses when each animal is sold and use a less favorable depreciation method for all of their agricultural machinery and equipment.

Mr. President, this provision created an administrative nightmare. Agricultural producers were required to keep track of their preproductive expenses animal-by-animal. The National Cattlemen's Association estimated that it may increase taxes by $50 to $100 for each animal placed back in the herd. This is simply impractical and should be corrected.

The last issue in the area of agriculture that I want to raise is the amendment to be offered by Senator MELCHER which will restore income averaging for family farmers with annual gross receipts of under $1 million in 1988. I am an original cosponsor of the amendment. It is supported by the major agriculture associations including the American Farm Bureau Federation, National Cattlemen's Association, National Association of Wheat Growers, and National Pork Producers Council, just to name a few.

The restoration of income averaging for farmers will help stabilize the flow of income and level the fluctuations that farmers experience from year to year. As family farmers try to adjust to conditions beyond their control—such as drought, pests, disease and other factors—income averaging will help provide some certainty and stability to this most important but unpredictable industry.

Mr. President, a key provision included in this bill is the taxpayers' bill of rights. This has been discussed at length but I would like to make a few points that I have not heard yet today.

I am a cosponsor of the taxpayer bill of rights and believe it is long overdue. We hear a lot in this body about civil liberties and the constitutional protections that are so important to each and everyone of us. However, I was amazed when I reviewed the committee report that was filed with the taxpayer bill of rights. On page 27 of that report is the section on the budget effects of the bill. Under that section you will find the revenue estimates of the taxpayer bill of rights. The thing that boggles my mind is that it will cost the Federal Government $191 million in 1989 and $517 million from 1988-93 if the bill is enacted.

In simple terms that means if we provide the taxpayers of this country a bill of rights that will protect them in their dealings with a governmental agency that it will cost the Government additional revenue. Does this suggest that some citizens are overpaying their taxes or are being unduly harrassed due to the ability of the IRS to intimidate or scare taxpayers into compliance?

Mr. President, the IRS has a difficult job to do, but when we have to enact legislation to try to equalize the position of taxpayers to the Government, I believe something is wrong.

Let me just point out a few provisions of the taxpayer bill of rights. The bill requires:

The IRS to provide a written explanation of the rights of a taxpayer and the IRS during collection procedures;

Requires the IRS to determine reasonable times and places for audits; allows taxpayers to be represented by lawyers, accountants, et cetera;

Allows taxpayers to rely on written advice provided by the IRS;

Prohibits the IRS from using records of tax enforcement results to evaluate enforcement officers;

Requires the IRS to seek comment from the Small Business Administration before promulgating final regulation which may have an unfair adverse effect on small business;

Requires the IRS to comply with an installment payment of tax liability when the IRS agrees to such an agreement;

Requires the IRS to give 10-day notice before levying on property, unless the tax is in jeopardy;

Allows taxpayers to be awarded their litigation costs when the Government position is not "substantially justified;"

Provides for a civil cause of action for damages due to unreasonable action by the IRS, and the list goes on.

These provisions—which most people are probably amazed to know are not the current law—will do much to equalize the strong arm of Uncle Sam against the taxpaying public which supports him. I am proud to be an original cosponsor of this bill and hope the Senate will stand tough to make sure it is included in the final package.

On another issue, Mr. President, I have long advocated the need to increase the savings rate in this country. In the past we have encouraged debt by giving preferred tax treatment to those who borrow for today rather than save for tomorrow. I was most disappointed in 1986 when the individual retirement accounts were restricted. I believe we should encourage this type of saving not only for retirement but for education and first-time homebuyers. For many years I have introduced legislation which would promote savings by allowing first-time homebuyers and others to put their money in accounts which would be tax deferred or even tax exempt if withdrawn for a specific purpose.

I was pleased when the Senate overwhelmingly adopted an amendment offered by the Senator from Massachusetts which will allow the interest income from savings bonds to be tax exempt if used for any college or vocational education. This is a step in the right direction not only to encourage savings but to help those who are trying to meet the ever increasing cost of higher education. This is but the first step in what I hope is a trend to increase the savings rate in this country and provide tax preferred vehicles to help young people further their education and purchase their first home. Further, Vice President BUSH proposed the tax free treatment of interest on U.S. savings bonds to be used for college tuition some time ago as part of his platform.

Mr. President, there are a number of other provisions in this package which I strongly support. The extension of the mortgage revenue bonds, the change in the uniform capitalization rules for artists and designers and a host of other long overdue corrections to the 1986 act. However, there is one issue that will be left out of this bill because some claim that it costs too much money. That issue is the restoration of capital gains.

Mr. President, I supported the Tax Reform Act of 1986, but I did so with a serious reservation about the changes to treatment of capital gains. Many argued that we had to level the playing field of investments, that we did not want to tilt the balance in favor of one investment over the other. However, when we repealed the 60-percent exclusion for capital gains and allowed such investment income to be taxed at ordinary income rates we made a major mistake.

The reason there will not be an amendment to restore the capital gains exclusion is because the Joint Tax Committee has estimated the revenue effect to be substantial. The committee contends that as much as $11 billion over 3 years in revenues will be lost if a top rate of 15 percent were to be imposed. In order to reinstate this provision an offset of $11 billion would have to be found.

Ironically, history has shown that every reduction in the capital gains tax resulted in higher, not lower tax receipts. On the other hand, increasing the capital gains tax rate actually is a revenue loser for the Government. Higher rates lead investors to hold on to their assets rather than sell them and realize capital gains.

Mr. President, an editorial in the Wall Street Journal on March 8, 1988, entitled "A Capital Idea" made this point very clear. It points out that the maximum rate on long-term gains was doubled in 1969 and that revenues plummeted. Further, back during the 1978 debate over reducing maximum effective capital-gains taxes to 28 from 49 percent, the Treasury Department predicted "the measure would cost more than $2 billion annually." The actual result was that revenues from capital gains increased from $8.1 billion to $11.7 billion between 1977 and 1979.

In addition to the Wall Street Journal article, a recent study by the Treasury Department concludes that when you look at the history of changes to the capital gains rates the results imply that the reduction produces revenue gains rather than revenue losses.

Mr. President, I believe it is time that we take a serious look at reinstating a lower rate for capital gains. Vice President BUSH is a leader in this effort and should be commended for his willingness to push this effort even amid allegations by his opponents that it benefits only the rich.

Vice President BUSH has proposed to reduce the capital gains rate to 15 percent on gains held more than 1 year. He argues that Americans must invest in our national economy, and continue to establish productive businesses which provide added capital and new jobs. A higher capital gains rate discourages new investment, and stifles economic growth. A reduction in the rate will significantly strengthen our economy as new investors will be able to reinvest untaxed profits into the economy. Over the long term, this means more investment, and greater tax revenue to the Government from other taxes.

Mr. President, I share the views of the Vice President and look forward to working with him in the future to encourage investment in American businesses. As a former businessman, the Vice President knows firsthand how critical investment is in creating jobs and opportunities for all Americans.

Mr. PACKWOOD. Mr. President, I know the Senator from Montana wants to speak and we have a vote set at 6. If he starts speaking, he will run out of time. I ask unanimous consent that we set the vote that was set at 6 o'clock at 6:15.

Mr. BAUCUS. Reserving the right to object, I wonder if the Senator will withhold that request just a moment so I can clear that with this side.

Mr. PACKWOOD. Yes, I will be happy to withhold.

Mr. BAUCUS. Mr. President, for the time being, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

VOTE AT 6:15 P.M.

Mr. PACKWOOD. Mr. President, I renew my unanimous consent request that the vote that was set at 6 o'clock be set at 6:15.

The PRESIDING OFFICER. Without objection, the vote will take place at 6:15.

Mr. PACKWOOD. I thank the Chair.

The PRESIDING OFFICER. The Senator from Montana.

AMENDMENT NO. 3650

(Purpose: To amend the Internal Revenue Code of 1986 to restore income averaging for farmers)

Mr. MELCHER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Montana [Mr. MELCHER], for himself, Mr. HEFLIN, Mr. MCCLURE, Mr. HARKIN, Mr. GRASSLEY, Mr. NICKLES, Mr. BURDICK, Mr. EXON, Mr. CONRAD, Mr. SANFORD, Mr. SHELBY, Mr. KARNES, Mr. DIXON, Mr. SIMON, and Mr. PRESSLER proposes an amendment numbered 3650.

Mr. MELCHER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of title IV of the bill add the following new subtitle:

SUBTITLE —INCOME AVERAGING

SEC. . RESTORATION OF INCOME AVERAGING FOR FARMERS.

(a) REPEAL OF PROVISION ELIMINATING INCOME AVERAGING FOR FARMERS.—In the case of any taxable year of a qualified farmer beginning in 1988, the 1988 Code shall be applied and administered as if section 141 of the Reform Act (and the amendments made by such section) had not been enacted.

(b) QUALIFIED FARMER.—For purposes of this section—

(1) IN GENERAL.—The term "qualified farmer" means an individual—

(A) who is actively engaged in the trade or business of farming (within the meaning of section 2031A(e) (4) and (5) of the 1986 Code), including the trade or business of aquaculture on a farm, and

(B) the annual gross receipts of whom for the 3 preceding taxable years—

(i) exceed $1,000,000 for each of such years, and

(ii) are attributable to such trade or business.

(2) ACTIVELY ENGAGED.—A taxpayer shall be treated as actively engaged in the trade or business of farming only if the taxpayer is involved in the operation of such trade or business on a regular, continuous, and substantial basis.

Mr. MELCHER. Mr. President, I offer this amendment on behalf of myself and Senators HEFLIN, MCCLURE, HARKIN, GRASSLEY, NICKLES, BURDICK, EXON, CONRAD, SANFORD, SHELBY, KARNES, DIXON, SIMON, and PRESSLER.

Mr. President, very simply, what this amendment does is to reinstate for one year income averaging for family farmers and ranchers with gross receipts of under $1 million in 1988.

Mr. President, it sounds like when you offer an amendment here on the Senate floor, you are talking about big bucks, but I want to say right at the outset that CBO says the cost of this amendment is $17 million. Surely in this package of numerous pages of new legislation, new tax corrections, there is room for tax equity and tax justice for American farmers and ranchers who are caught in a pretty tough squeeze.

That squeeze that I am talking about is the fact that over the past several years, farm and ranch income has not been very good because of low commodity prices. These prices are somewhat better now, but following right on the heels of some improved commodity prices, a vast number of farmers and ranchers in this country found themselves in the drought of 1988. So it is a highly critical time. Recovery for them has been set back by the drought.

I repeat, CBO says the cost of this amendment to allow for income averaging for the farmers and ranchers for 1 year would deplete the Treasury of just $17 million.

The reason why it is so little is that the taxes are collected. It is just spread out over income averaging allowing the time test method of collecting taxes from the people who need income averaging the most.

The 1986 tax bill wiped out income averaging, and if it is not reinstated for this year, there will be a lot of farmers and ranchers hardpressed because they are faced with tough credit conditions, they are faced with drought when it is necessary to sell in order to get what they can.

Take a livestock producer or cattle producer. He must sell if there is no grass and no hay. That warps out of shape what the usual income would be. It does not mean that he is better off; it means that he is worse off because he is forced to liquidate cattle at a time when, for lack of grass and feed, he is just starting to recover economically.

This amendment is very much needed. It is one that cannot be ignored. Of course, it is supported by a broad array of agricultural interests, which I will read off: It is supported by the National Association of Wheat Growers, the American Farm Bureau Federation, the American Soybean Association, Center for Rural Affairs, the National Cattlemen's Association, the National Corn Growers Association, the National Cotton Council, the National Farmers Organization, the National Farmers Union, the National Grains Association, National Milk Producers Federation, National Pork Producers Council, and the U.S. Rice Producers Legislative Group.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator has 10 minutes remaining. Who yields time? The manager of the bill, Senator BAUCUS, controls the remainder of the time on the other side.

Mr. MCCLURE. Mr. President, parliamentary inquiry. Does the Senator from Montana have any time remaining?

The PRESIDING OFFICER. The Senator from Montana has 10 minutes.

Mr. MCCLURE. Will the Senator yield me 2 minutes?

Mr. MELCHER. I yield to the Senator 3 minutes.

Mr. MCCLURE. I thank the Senator for yielding. As the Senator indicated, I am an original cosponsor of this amendment, and I support it very strongly. One of the dilemmas you have when you are facing tax bills, such as the 1986 Tax Act, is that it has a whole lot of different provisions in it and you either buy the whole package or you do not and you do not always have a chance to raise the issues you want to raise in a way in which they have any chance of success. The result is that if you end up having a bill passed that has any provisions with which you strongly disagree, then you must try to change them at a future time.

Income averaging is one of those when it applies to agriculture, as far as this Senator is concerned. Agriculture is a chancy business at best. Some years are good; some years are bad. Some years you have drought and some years you have fire. Sometimes you may have bad market conditions. The income of a farmer is not predictable. They have to be the greatest gamblers outside of Las Vegas in order to be engaging in farming at all.

Under those circumstances, it makes a great deal of sense to this Senator that you take some of the risk and some of the gamble out by giving them the opportunity to average over a period of years what is actually, in fact, income that averages over a period of years. Because of the Tax Code, they pay higher rates than they really ought to have for that average income over a period of time.

If his amendment is not adopted at this time, I hope it will be adopted at some other time and give our farm families the kind of tax equity which I think they are entitled to. I thank the Senator for yielding.

Mr. PACKWOOD. Will the Senator yield for one question? How do you take care of the problem, however, of farmers who have not been hurt by the drought? If it appears the occupation is a chancy occupation, then you ought to have income averaging for all farmers and for all chancy operations.

Mr. McCLURE. I would say, farming may not be the only one, but you show me another one that has a predictable risk, if that is not an apposition in terms. Income for farmers goes up and down for reasons that they cannot control in a way that seems to me to be unique to farming. Therefore, there ought to be a provision that allows them to accommodate to that so they do not pay the tax on their peak earnings but they pay the average tax on average earnings.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, the Senator from Montana controls time, does he not?

The PRESIDING OFFICER (Mr. CONRAD). The Senator is correct.

Mr. PACKWOOD. Will the Senator yield me 5 minutes?

Mr. BAUCUS. Mr. President, I yield 5 minutes to the Senator from Oregon.

Mr. PACKWOOD. Mr. President, we have done a number of things for farmers in this technical corrections bill, some of which, honestly, are not technical. We have repealed the heifer tax, which is a change of policy and we did it because of the very difficult problems of administration that it caused for farmers. Very honestly, nobody else has heifers but farmers. So that is unquie to farming.

We have changed the rules for State tax special use valuation; that is, farm land. We have a deferral of tax on the sale of livestock on account of the drought. We have repealed the diesel fuel provision, the bulk of which affects farmers. We have repealed the special and harsher uniform capitalization rules for pistachio nuts. And we have changed the depreciation period for fruit and nut trees.

So, given this list, it would be hard to argue that farmers have not been specially treated, and I would say very specially treated in this bill. But, more importantly, let us go back to why income averaging was passed originally.

In the bad old days that President Reagan likes to talk about, when we had top rates of 92 percent, low rates of 11 but top rates of 92 percent, income averaging for a lot of people made a great deal of sense. If you had a low rate of 11 percent and a high rate of 92 percent in 1 year, if you were in the farming business and you made $20,000, $30,000, and in a good year you made $150,000 and you were paying 92 percent, you had a tremendous up and down in your income and averaging made sense; averaging applied to anybody who was in that situation, and farmers were not the only ones in that situation.

Now the rates after the tax reform bill in 1986 go from 15 percent to 28 percent. You do not have the wild fluctuations that you had prior to 1986, really prior to 1981 when we cut the taxes from 70 to 50 percent. But in tax reform, we tried to make sure that all—this is what we were aiming at—all forms of income from whatever source derived would be taxed reasonably equally. We did not completely succeed at it, but we used to have stories appearing from the Internal Revenue Service and the Treasury Department that would go roughly like this: Last year 484 people made over $200,000 a year and paid no taxes.

You try to explain that to the average farmer. Explain that to the average lumber mill worker. How can anybody make that much money and pay no taxes? It did not matter what answer you gave. It did not matter that you said the person bought municipal bonds, bought school bonds for your county and because those are tax free the interest rates were 7 percent instead of 9 percent on the bonds and that would keep the property taxes lower in this county than they would otherwise be if the bonds were 9 percent. That argument did not wash. Or you say the taxpayer gave several great paintings to the Metropolitan Museum of Art that were worth several hundreds of thousands apiece. It did not work. To the average farmer making $15,000, $20,000, $25,000, $30,000 a year, if he is lucky, or the average lumber mill worker making $20,000, $25,000 if they are lucky, if somehow you had $100,000, or $200,000, or $300,000, or $400,000 worth of income, they thought you ought to pay some taxes. And I have to agree with them.

I think they are basically right if you are going to have any sense of fairness about the Tax Code.

So we got rid of lots of special exemptions, deductions, qualifications in the 1986 Tax Code, many of which people would regard as not loopholes. We got rid of the tax deductions for IRA's, the independent retirement accounts. We got rid of the deduction of the estate tax, consumer interest deduction, capital gains. Many of these would not be regarded by the people who use them as a special interest.

Special interest is something, Mr. President, that you use that I do not use. That is special interest. Therefore, we also got rid of income averaging because that was used often by a special group of people, and for those who use it, they regard that as a God-given right that almost came with Moses, or at least the Bill of Rights.

For those who do not use it, they did not see it as something that should be continued.

Am I running out of time? Could I have 2 more minutes?

Mr. BAUCUS. Mr. President, I yield 2 minutes to the Senator from Oregon.

Mr. PACKWOOD. We got rid of many of those deductions and brought the rates down.

Now, as for the issue as to whether this is a chancy occupation, my hunch is that the occupation of stockbroker is a chancy occupation, especially after last October when the market fell 600 points. My guess would be the number of stockbrokers went down rather dramatically. As a matter of fact, any number of them simply lost their jobs in a retrenchment on Wall Street.

What about a construction worker? I do not know about most States, but in Oregon a construction worker works a lot some years, does not work a lot in others. It really depends on how much construction there is—is it boom or bust? What is the weather? In some years a construction worker can do very well, next year do very badly.

That is a chancy occupation. Income averaging is gone.

As far as the drought, we have passed a drought bill that was intended to take care of those farmers hit by the drought. Many farmers were hit, many were not, and yet this bill is going to apply to all farmers, whether or not they were hit by the drought at all.

My State was relatively lucky—relatively. We did not suffer what the Midwest and the Southeast suffered. But for all of these reasons, I am very reluctant, in fact strongly opposed, to now go back and open up one of the loopholes that we closed in the 1966 Tax Act and open it up only for farmers, not anybody else that is in a chancy occupation, and at the same time say to all the others whose deductions we took away, those who deducted IRA's and sales taxes and consumer interest, we are not reopening your special loopholes.

So, I would hope that the amendment of the Senator from Montana would be defeated and defeated by a very strong vote.

I thank the Chair and thank the chairman for letting me have the time.

The PRESIDING OFFICER. The time of the Senator from Oregon has expired.

Who yields time? If no one is seeking time or yielding time, the time will be subtracted equally.

Mr. BAUCUS. Mr. President, I ask unanimous consent that any quorum call requested by this Senator at this point have the time equally charged to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MELCHER. Mr. President, I ask unanimous consent that further proceedings under the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MELCHER. Mr. President, I send a modification of my amendment to the desk.

The PRESIDING OFFICER. Is there objection?

Mr. PACKWOOD. Reserving the right to object, can the Senator modify his amendment before the time has run out?

The PRESIDING OFFICER. It would require consent regardless of when it was requested.

Mr. PACKWOOD. I object.

The PRESIDING OFFICER. Objection is heard.

Who yields time?

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the quorum call I might request at this time be equally charged against both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

Mr. PACKWOOD. Is it time to vote, Mr. President?

The PRESIDING OFFICER. The question now occurs on amendment No. 3645.

Mr. MELCHER. Mr. President, has all time expired on the amendment?

The PRESIDING OFFICER. No. The Senator's amendment has been set aside by a previous order. The vote on the Pell amendment takes precedence.

AMENDMENT NO. 3645

Mr. PELL. Mr. President, this legislation excludes agricultural exports from the scope of the sanctions that might be imposed. This reflects a basic political reality. The leaders of both Houses of Congress, as well as the Presidential candidates, have expressed their strong opposition to the use of food as a weapon. A bill that contained food sanctions simply would not pass and, under such circumstances, Iraq's conduct would go unpunished.

Historically, moreover we have, as a policy matter, distinguished between our food exports and other exports. In the 1920's, for example, the United States had no diplomatic or other relations with the Bolshevik regime in the Soviet Union. Yet, under the leadership of Herbert Hoover, the United States provided food assistance to combat famine in Russia. There seems to me to be a clear distinction between sanctions to cut off food to a country, which many oppose, and sanctions which would help a country's development. The sanctions in this bill are aimed at blocking Iraq's development as long as it continues to use chemical weapons.

It has been long accepted practice to control the export of various kinds of technology. We do this, for example, with regard to the Soviet Union. This bill, in essence, extends those controls to Iraq. The sanctions will not be directed at the exports of products of any particular state, but at certain categories of manufactured goods, and in particular, at those which would help the Iraqi war machine.

In imposing additional sanctions on Iraq, I expect the President will restrict Iraqi exports to the United States rather than restrict nonsensitive United States exports to Iraq. An oil boycott of Iraq is a sanction that will really hurt Iraq and will not affect United States interests. I will be urging the President to consider this step.

Sanctions do affect American interests. It is my hope that the sanctions we impose on Iraq will be as costly as possible for the Iraqis with the smallest possible impact on our own country. We must recognize, however, that there are greater issues at stake here. The spread of chemical weapons poses a grave threat to our national security. Unless we act against those who would use these weapons, we can be sure that their use will spread. As compared to the terrifying consequences of the spread of chemical weapons, the price to Americans of these sanctions is small indeed.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3645. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Oklahoma [Mr. BOREN], the Senator from Florida [Mr. CHILES], the Senator from Ohio [Mr. GLENN], and the Senator from New Jersey [Mr. LAUTENBERG] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Mississippi [Mr. COCHRAN], the Senator from Washington [Mr. EVANS], the Senator from Texas [Mr. GRAMM], the Senator from Nebraska [Mr. KARNES], the Senator from Indiana [Mr. LUGAR], the Senator from Indiana [Mr. QUAYLE], the Senator from Wyoming [Mr. WALLOP], and the Senator from California [Mr. WILSON] are necessarily absent.

I further announce that, if present and voting, the Senator from Wyoming [Mr. WALLOP] would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 87, nays 0, as follows:

[Rollcall Vote No. 364 Leg.]

YEAS—87

Adams
Armstrong
Baucus
Biden
Bingaman
Bond
Boschwitz
Bradley
Breaux
Bumpers
Burdick
Byrd
Chafee
Cohen
Conrad
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dodd
Dole
Domenici
Durenberger
Exon
Ford
Fowler
Garn
Gore
Graham
Grassley
Harkin
Hatch
Hatfield
Hecht
Heflin
Heinz
Helms
Hollings
Humphrey
Inouye
Johnston
Kassebaum
Kasten
Kennedy
Kerry
Leahy
Levin
Matsunaga
McCain
McClure
McConnell
Melcher

Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Proxmire
Pryor
Reid
Riegle
Rockefeller
Roth
Rudman
Sanford
Sarbanes
Sasser
Shelby
Simon
Simpson
Specter
Stafford
Stennis
Stevens
Symms
Thurmond
Trible
Warner
Weicker
Wirth

NOT VOTING—13

Bentsen
Boren
Chiles
Cochran
Evans
Glenn
Gramm
Karnes
Lautenberg
Lugar
Quayle
Wallop
Wilson

So, the amendment (No. 3645) was agreed to.

Mr. PELL. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3650

The PRESIDING OFFICER. The Senator from Montana.

Mr. MELCHER. What is the pending business?

The PRESIDING OFFICER. The Senator's amendment is now the pending business of the Senate.

If the Senator will withhold for one moment, we will try to restore order in the Chamber so the Senator can be heard.

The Senator from Montana has the floor.

Mr. MELCHER. Mr. President, how much time remains?

The PRESIDING OFFICER. There are 4 minutes under the control of the manager of the bill and 3 minutes under the control of the Senator from Montana.

Mr. MELCHER. Mr. President, I ask unanimous consent to modify my amendment.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. Mr. President, reserving the right to object.

Mr. MELCHER. I ask unanimous consent to modify my amendment.

There is a typographical error in it.

Mr. DOLE. I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from South Dakota.

Mr. DASCHLE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DASCHLE. Mr. President, if the amendment offered by the Senator from Montana is amended, does that preclude amendments in the second degree?

The PRESIDING OFFICER. No, it does not preclude further amendments. The first degree can be amended in the second degree unless it is a substitute.

Who yields time?

The Republican leader.

Mr. DOLE. Mr. President, I would be happy to take a look at the amendment. I do not know what it is. If it is a modification, perhaps we can agree to it.

I have no objection to the modification.

The PRESIDING OFFICER. The Senator from Montana would need to seek consent.

Mr. MELCHER. Mr. President, I ask unanimous consent to modify my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment, as modified, is as follows:

At the end of title IV of the bill add the following new subtitle:

Subtitle —Income Averaging

SEC. . RESTORATION OF INCOME AVERAGING FOR FARMERS.

(a) REPEAL OF PROVISION ELIMINATING INCOME AVERAGING FOR FARMERS.—In the case of any taxable year of a qualified farmer beginning in 1988, the 1986 Code shall be applied and administered as if section 141 of the Reform Act (and the amendments made by such section) had not been enacted.

(b) QUALIFIED FARMER.—For purposes of this section—

(1) IN GENERAL.—The term "qualified farmer" means an individual—

(A) who is actively engaged in the trade or business of farming (within the meaning of section 2032A(e) (4) and (5) of the 1986 Code), including the trade or business of aquaculture on a farm, and

(B) the annual gross receipts of whom for the 3 preceding taxable years—

(i) does not exceed $1,000,000 for each of such years, and

(ii) are attributable to such trade or business.

(2) ACTIVELY ENGAGED.—A taxpayer shall be treated as actively engaged in the trade or business of farming only if the taxpayer is involved in the operation of such trade or business on a regular, continuous, and substantial basis.

Mr. MELCHER. Mr. President, what we are dealing with here is only fairness and justice for farmers. The conditions that have existed a few years ago for the past several years has taken away farm income. Then the drought hits, and that is the double whammy on them.

Mr. President, I do not know how much time I have remaining, but I yield the remainder of my time to my friend from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska has 2 minutes and 34 seconds.

Mr. EXON. I thank my friend from Montana and I thank the Chair.

Mr. President, I congratulate my good friend and colleague, Senator MELCHER, from the State of Montana, for offering this proposal that I am proud to cosponsor because it is something that we have worked on for a long, long time.

We made a big mistake, I think, if we would look back in retrospect on the 1986 tax bill when we eliminated income averaging for farmers.

The reason we had income averaging in the first place was because there is no business that is as fragile, that can be affected by the weather. There is no business, I think the facts will show, that have more ups and downs because of the very nature of the business than agriculture. Income averaging had been the law of this land for a long, long time, for very good reasons, as has been stated and outlined by the Senator from Montana.

This is a chance to correct something that needs to be corrected. It is also a chance for us to not only level out the playing field, as the Senator from Montana has indicated, but it is also a chance to let the farmers pay their fair share of taxes.

Now, those who are not thoroughly familiar with agriculture probably cannot realize how a farmer can have a fairly large income in one year and then maybe little or nothing for the next two. Income averaging is simply a matter of fairness, both from the standpoint of the taxpaying farmer and from the standpoint of the Treasury.

So, I would hope that we would correct that wrong. This is a technical corrections bill. This is the place for this to be accepted by the U.S. Senate. I enthusiastically back the amendment offered by the Senator from Montana, reserving the remainder of the time and yield it back to the Senator from Montana if there is time remaining.

The PRESIDING OFFICER. There are 13 seconds remaining.

Mr. MELCHER. Mr. President, I yield to the Senator from Iowa and ask unanimous consent that we may have 1 minute further.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Mr. President, income averaging for tax purposes is invaluable, indeed essential, for America's farmers whose fate is subject to economic and natural forces far greater than those faced by any other sector of business.

Farmers depend for their livelihood on commodity prices which can vary widely over a short period of time. They are also subject to weather which can cause dramatic changes in the amount of crops that they produce. Farmers saw both of those realities in 1988.

Few individuals in our society are so subject to regular swings in income from year to year. Some people see a single year with a very high income. But, few have the continual wide shifts in income that farmers must deal with.

A concept embodied in the tax reform movement of these past few years is that those with a similar level of income should pay a similar amount of tax. Indeed, the 1986 Tax Act did move in that direction.

But when it comes to family farmers and the owners of small businesses, that bill went the wrong way in repealing income averaging. Many farmers earn nothing in a bad year and will then earn $40,000 in a good year. And they see that pattern repeated over and over again. On average, their income would be $20,000.

Yet, the income tax that an average family of four would pay on a regular $20,000 income is less than one-third of the income tax that the farm family in our example would have to pay. Obviously, this contradicts the principle of persons with similar incomes paying similar levels of taxes.

The Melcher amendment which I am pleased to cosponsor provides that farmers will have the right to average their incomes in 1988 as they were allowed to do through 1986. For budgetary reasons, and certainly to target assistance to small- and medium-sized farmers, this amendment limits the use of income averaging to those farmers whose annual sales are less than $1 million.

This year, our farmers will have to face an added burden: the drought. This prompts even greater urgency for this Congress to act and reinstall income averaging for 1988.

I urge that the amendment be passed. I would also note that in the future, I would like to see income averaging extended for both farmers and small businesses. Our small businesses are the greatest source of economic growth and innovation for our economy, and they too would gain greater stability and profitability through the use of income averaging. I intend to work toward making this provision permanent in the future, and to extend it to cover both our small- and medium-sized farms and our small businesses.

Mr. President, this is a great amendment that I have cosponsored with the Senator from Montana. I just wish to point one other thing out, that it limits it to those farmers with annual sales of less than $1 million. So it really targets income averaging to those farmers who really need it. I wholeheartedly support the amendment and congratulate the author, the Senator from Montana.

The PRESIDING OFFICER. The time of the Senator from Montana has expired.

Who yields time?

Mr. BAUCUS. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back.

The Republican leader.

AMENDMENT NO. 3651

(Purpose: To amend the Internal Revenue Code of 1986 to include payments under title II of the Disaster Assistance Act of 1988 in the special rule for taxable year of inclusion and to treat property transferred in trust to a spouse who is not a citizen of United States)

Mr. DOLE. Mr. President, I send to the desk an amendment in the second degree on behalf of Senator DASCHLE, Senator DURENBERGER, and myself and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE] for Mr. DASCHLE, for himself, Mr. DOLE, and Mr. DURENBERGER, proposes an amendment numbered 3651.

Mr. DOLE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the matter proposed to be inserted, insert the following:

Subtitle —Disaster Assistance Payments

SEC. . DISASTER ASSISTANCE ACT PAYMENTS INCLUDED IN SPECIAL RULE FOR TAXABLE YEAR OF INCLUSION: TREATMENT OF PROPERTY TRANSFERRED IN TRUST TO A SPOUSE WHO IS NOT A CITIZEN OF UNITED STATES.

(a) DISASTER ASSISTANCE PAYMENTS.—

(1) IN GENERAL.—The second sentence of section 451(d) of the 1986 Code (relating to special rule for crop insurance proceeds or disaster payments) is amended by inserting "or title II of the Disaster Assistance Act of 1988," after "the Agricultural Act of 1949, as amended.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to payments received before, on, or after the date of the enactment of this Act.

(b) TREATMENT OF PROPERTY TRANSFERRED IN TRUST TO SPOUSE WHO IS NOT A CITIZEN OF UNITED STATES.—

(1) IN GENERAL.—Part III of subchapter A of chapter 11 of the 1986 Code is amended by adding at the end thereof the following new section:

"SEC. 2047. TREATMENT OF PROPERTY TRANSFERRED IN TRUST TO SPOUSE WHO IS NOT A CITIZEN OF UNITED STATES.

"(a) IN GENERAL.—If—

"(1) the surviving spouse of the decedent is not a United States citizen, and

"(2) the executor elects the application of this section,

then there shall be excluded from the value of the gross estate the value of property passing to such spouse in a trust described in subsection (b), reduced by the amount of any liability transferred with such property to the trust.

"(b) TRUST DESCRIBED IN THIS SUBSECTION.—

"(1) IN GENERAL.—A trust is described in this subsection if such trust requires that—

"(A) any trustee is a resident of the United States,

"(B) the surviving spouse is entitled to all the income from the property in the trust, payable annually or at more frequent intervals, or has a usufruct interest for life in such property, and

"(C) such property is located in the United States.

"(2) PROPERTY INCLUDES INTEREST THEREIN.—The term 'property' includes an interest in property.

"(3) SPECIAL PORTION TREATED AS SEPARATE PROPERTY.—A specific portion of property shall be treated as separate property.

"(4) INCOME.—The term 'income'—

"(A) has the meaning given to such term by section 643(b), but

"(B) shall not include any income accrued but not distributed at the date of death of the surviving spouse.

"(c) TAX TREATMENT OF TRANSFERS OF TRUST CORPUS.—

"(1) IMPOSITION OF ESTATE TAX.—There is hereby imposed an estate tax on the transfer by the trustee of any property not described in subsection (b)(1)(B).

"(2) AMOUNT OF ESTATE TAX.—

"(A) IN GENERAL.—The amount of estate tax imposed by paragraph (1) with respect to any transfer shall be the amount equal to—

"(i) the tax which would have been imposed under section 2001 on the estate of the decedent if such estate included the value of the transferred property described in paragraph (1) (including any previously transferred property described in such paragraph), less

"(ii) the tax imposed under section 2001 on the estate of the decedent determined without regard to this subsection.

"(B) RATE OF TAX WHERE ORIGINAL ESTATE TAX UNDETERMINED.—If the tax described in subparagraph (A)(ii) has not been determined at the time of the imposition of the tax under paragraph (1), the amount of estate tax imposed by paragraph (1) with respect to any transfer shall be equal to—

"(i) the value of the transferred property described in paragraph (1), multiplied by

"(ii) the highest rate of tax imposed by section 2001 on the date of the decedent's death.

"(3) SWITCH TO NON-UNITED STATES TRUSTEE TREATED AS A DISTRIBUTION OF CORPUS.—In the event of an appointment of a trustee who is not a resident of the United States, such appointment shall be considered a transfer described in paragraph (1) of the remaining property in the trust.

"(4) PROPERTY LOCATED OUTSIDE OF UNITED STATES TREATED AS A DISTRIBUTION OF CORPUS.—If at any time the trust holds any property not located in the United States, such trust shall be treated as having transferred such property in a transfer to which paragraph (1) applies.

"(5) DUE DATE.—The estate tax imposed by paragraph (1) shall become due and payable on the day which is 6 months after the date of the transfer described in such paragraph.

"(6) LIABILITY OF TAX.—The trustee shall be personally liable for the estate tax imposed by paragraph (1).

"(7) TREATMENT OF TAX.—For purposes of this chapter, the tax imposed by paragraph (1) shall be treated as a tax imposed by section 2001.

"(d) CREDIT FOR TAX ON PREVIOUS TRANSFER.—If the value of any property to which subsection (c) applied is included in the gross estate of the decedent's surviving spouse, a rule similar to the rule of section 2013(a) shall apply, except that such section shall be applied by substituting the date of transfer for the date of the decedent's death.

"(e) ELECTION.—An election under this section with respect to any property shall be made by the executor on the return of tax imposed by section 2001. Such an election, once made, shall be irrevocable."

"(2) DISALLOWANCE OF MARITAL DEDUCTION WHERE SPOUSE IS NOT CITIZEN OF UNITED STATES.—

"(A) ESTATE TAX.—Section 2056 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(d) DISALLOWANCE OF MARITAL DEDUCTION WHERE SURVIVING SPOUSE NOT UNITED STATES CITIZEN.—If the surviving spouse of the decedent is not a United States citizen—

"(1) no deduction shall be allowed under subsection (a), and

"(2) section 2040(b) shall not apply."

"(B) GIFT TAX.—Section 2523 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(i) DISALLOWANCE OF MARITAL DEDUCTION WHERE SPOUSE NOT CITIZEN.—If the spouse of the donor is not a citizen of the United States—

"(1) no deduction shall be allowed under this section,

"(2) section 2503(b) shall be applied with respect to gifts made by the donor to such spouse by substituting '$100,000' for '$10,000', and

"(3) the principles of sections 2515 and 2515A (as such sections were in effect before their repeal by the Economic Recovery Tax Act of 1981) shall apply, except that the provisions of such section 2515 providing for an election shall not apply."

"(C) ESTATES OF NONRESIDENTS WHO ARE NOT CITIZENS BUT HAVE CITIZENS AS SPOUSES.—Subsection (a) of section 2106 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) MARITAL DEDUCTION ALLOWED WHERE SPOUSE IS CITIZEN.—The amount which would be deductible with respect to property situated in the United States at the time of the decedent's death under the principles of section 2056."

"(3) EFFECTIVE DATES.—

"(A) The amendments made by paragraph (1) and subparagraphs (A) and (C) of paragraph (2) shall apply to estates of decedents dying after the date of the enactment of this Act.

(B) The amendments made by paragraph (2)(B) shall apply to gifts on or after July 14, 1988.

Mr. DOLE. Mr. President, I give credit to the Senator from South Dakota because he originated the idea.

We think this is income averaging but it means four times as much to farmers as does the amendment of the Senator from Montana.

Mr. President, I am sympathetic toward the view of farmers who feel that they should have the ability to even out their tax liability by using income averaging. They had it for a long time. In fact, we had a debate here a couple of years ago on whether we should have it just for the farmers alone and the cost was about $300 million. Senator MELCHER's amendment is much more restrained because many farmers do have widely fluctuating income from year to year and end up paying taxes at a higher rate than if they averaged their income over several years.

However, there is a more specific income averaging idea—and it is the idea of Senator DASCHLE and I am happy to join in that effort—which is truly a technical correction and should be adopted this year.

As part of the Disaster Assistance Act of 1988, the "Drought Bill," We provided relief payments for farmers whose crops were devastated. It was difficult, but through bipartisan effort, we were able to get relief enacted in a timely manner.

However, in the effort to make certain that relief would be received when farmers needed it, we inadvertently enacted statutory language which could be interpreted as doubling up a farmers income in 1988.

It was a mistake. We made a mistake and now we want to correct it.

Under the tax laws generally, crop disaster payments may be included in income in the year after they are received if the farmer can show that the income from the damaged crops would otherwise have been received in that year.

However, when we enacted the drought relief bill, we did not specifically make reference to this provision of the tax laws or to the Agriculture Act of 1949 which is referenced in the Tax Code. This leads to the possibility that the IRS would deny the flexibility allowed for other disaster payments to relief under the drought bill.

Now, we do not want this to happen. It was a mistake. Somebody made a drafting error. Senator DASCHLE was alert enough to catch it as a member of the Senate Finance Committee.

What good are these payments if we take away a large part of them by kicking a taxpaying farmer into a higher tax bracket this year?

This is targeted income averaging for farmers who were really hit by the drought in Montana, North Dakota, South Dakota, Nebraska, parts of Kansas, Indiana, Illinois, and other States.

This amendment merely clarifies that the relief provided in section 451(d) of the Tax Code will apply to payments for crop losses pursuant to the Disaster Assistance Act of 1988.

I understand that the revenue estimators tell us this amendment would result in a one-time revenue loss of $58 million. To offset this loss, the amendment would also close a loophole in the estate tax arising when a foreign spouse inherits property from a U.S. citizen. That would take care of that one-time loss.

Generally, under our tax laws, no estate tax is due when an individual dies and leaves property to his spouse. Estate taxes are due when the spouse dies. However, when the spouse is a foreigner, often the United States is unable to collect when the estate tax is due.

The amendment would simply give a foreign spouse of a U.S. decedent a choice: Either pay estate tax when the U.S. spouse dies, or put the property in trust and pay the estate tax when the foreign spouse dies or withdraws the property from the trust.

This closes the loophole while allowing the foreign spouse full use of the property during his or her lifetime. I believe it is a fair provision.

I urge the adoption of the amendment, and I yield any time I have remaining to the Senator from South Dakota.

Mr. DASCHLE. Mr. President, if we do not address this issue in this bill, we are not going to be able to address it this year. A lot of farmers are going to be double taxed in a year when they cannot even handle the amount of tax they may owe as a result of whatever income they can get from this year's crop. So, it is critical that we offer this amendment at this time.

I share the sentiment expressed by the distinguished Senator from Montana. I believe, as he does, that at some point we ought to take another look at income averaging. Income averaging from farmers is needed even more than it was before the Tax Reform Act of 1986 was passed.

So I hope at some time next year we might take a good look at income averaging. I would be very interested in working closely with the Senator from Montana to see that at some point in the near future we not only address it, but that we do so in such a way as to provide for more than just 1 year of income averaging, which is all the amendment introduced by the Senator from Montana does.

So I hope, Mr. President, that we can accept this amendment as a substitute. It is supported by Senators PRYOR, DANFORTH, BOREN, PACKWOOD, DURENBURGER, HARKIN, and HEFLIN in its own right and certainly merits the support of this body.

I thank the Senator for yielding.

The PRESIDING OFFICER Who yields time?

Mr. BAUCUS. Mr. President, I yield 5 minutes to the Senator from Montana.

Mr. MELCHER. Mr. President, I thank my colleague for yielding.

This proposal, which is absolutely essential, that has been offered by Senator DOLE and Senator DASCHLE does what we almost invariably do in a disaster situation. We offer the opportunity for the disaster payments that are received to be taxable in this year or the subsequent year. That is only tax equity and it is only a necessary part of the correction of the Tax Code in terms of the drought disaster that we have experienced this past year.

But what the parliamentary situation is this: by offering this as a substitute, it wipes out the amendment I offered for income averaging for 1988 for farmers and ranchers.

I ask my friend, the distinguished Republican leader, if he would not like to have both this substitute amendment which costs $58 million and also my income amendment with the cost of $17 million. I wonder if my distinguished friend from Kansas, the Republican leader, would like to advise us whether he would not appreciate having both amendments adopted.

Mr. DOLE. Mr. President, I am not the manager of the bill. If I had been the manager, it might have been a different way.

But it seems to me what we are doing in ours is a technical correction. We made a mistake. What the Senator from Montana is doing is coming in with a policy change. This is supposed to be a technical corrections bill. I assume there are a lot of other policy provisions in the bill, but I would leave that up to the managers.

I do not know how we are going to implement 1-year income averaging. I do not know how you can do it. I do not know how the IRS does it. Maybe they have some way they can do it for 1 year.

But our amendment, I would say, is urgent. We need to do this. We need to do it now.

Talking about $17 million in the instance pointed out by the Senator from Montana—$58 million is the estimated cost of this amendment—I would leave that up to the managers. I am not the manager of the bill. I think ours is a good amendment and should be adopted.

Mr. MELCHER. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Montana retains time. He has 2 minutes remaining.

Mr. MELCHER. Mr. President, I retain the remainder of my time.

The PRESIDING OFFICER. The Chair will state to the Senator that once time has been yielded to him he cannot then reserve that time.

Mr. MELCHER. Mr. President, then I will utilize the 2 minutes right now.

Mr. President, the income averaging for farmers and ranchers at this time is extremely important. But, because of the parliamentary situation, where this technical correction amendment dealing with drought disaster payments comes as a substitute, adoption of it wipes out the income-averaging amendment that I earlier offered.

I deeply regret the situation that has been foisted upon us, because it is important, for those of us from the drought areas, to make sure that in this bill the farmers and ranchers will have the option of taking their drought disaster payments to be considered as income this year or next year. They should have that opportunity.

After all, that is what has been the case in almost all situations where we have had a disaster and the payments flowed from the Federal Government to help out the people suffering that disaster. But this amendment was to become a part of that broad package that will be offered at the conclusion of all other amendments and has been extracted from that in order to kill—and I say that deliberately—kill the opportunity to vote on passage of the income averaging for farmers and ranchers for this 1 year.

I very much regret that, but that is, in fact, what the parliamentary situation is.

Mr. EXON. Mr. President, how much time is remaining?

The PRESIDING OFFICER. Who yields time? The Senator from Montana's time——

Mr. BAUCUS. Mr. President, I yield 2 minutes to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 2 minutes.

Mr. EXON. Mr. President, let us understand what we are doing here. I think that the case has been made for income averaging. I think that, if the family farmers and ranchers of America were here voting on the floor tonight, they would much prefer the underlying amendment, rather than the substitute amendment that has been offered, for lots of reasons but not the least of which is the fact that this is a 1-year Band-Aid approach that I happen to agree with, but I do not agree that it should have come before the Senate in the way it did, as a substitute. Because the Senator from Montana is correct, the facts of the matter are that if we vote for the substitute we will be eliminating, we will be wiping out the long-term income averaging for farmers and ranchers that is so vitally needed.

Therefore, I hope that the substitute amendment offered by the Senator from Kansas and the Senator from South Dakota either be defeated or, at this time, if those who offer the second-degree amendment would agree to incorporate that second-degree amendment in with the amendment offered by the Senator from Montana, I think we would have a package that would be acceptable.

I reserve the balance of the time and yield it back to the manager of the bill.

The PRESIDING OFFICER. Who yields time? The Republican leader.

Mr. DOLE. Mr. President, apparently, there has been some misunderstanding. I did not know anything about it. I am going to withdraw the amendment and hope it will be offered by the Senator from South Dakota.

The PRESIDING OFFICER. The Senator has the right to withdraw his amendment.

The amendment was withdrawn.

AMENDMENT NO. 3652 TO AMENDMENT NO. 3650

(Purpose: To amend the Internal Revenue Code of 1986 to include payments under title II of the Disaster Assistance Act of 1988 in the special rule for taxable year of inclusion and to treat property transferred in trust to a spouse who is not a citizen of United States)

Mr. DASCHLE. Mr. President, I offer the amendment.

The PRESIDING OFFICER. The Senator from South Dakota has an amendment at the desk?

Mr. DASCHLE. Mr. President, the amendment is at the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from South Dakota (Mr. Daschle), for himself, Mr. Dole, Mr. Pryor, Mr. Danforth, Mr. Boren, Mr. Packwood, Mr. Durenberger, Mr. Harkin, Mr. Heflin, and Mr. Grassley, proposes an amendment numbered 3652.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the matter proposed to be inserted, insert the following:

Subtitle —Disaster Assistance Payments

SEC. . DISASTER ASSISTANCE ACT PAYMENTS INCLUDED IN SPECIAL RULE FOR TAXABLE YEAR OF INCLUSION; TREATMENT OF PROPERTY TRANSFERRED IN TRUST TO A SPOUSE WHO IS NOT A CITIZEN OF UNITED STATES.

(a) Disaster Assistance Payments.—

(1) In general.—The second sentence of section 451(d) of the 1986 Code (relating to special rule for crop insurance proceeds or disaster payments) is amended by inserting "or title II of the Disaster Assistance Act of 1988," after "the Agricultural Act of 1949, as amended,".

(2) Effective date.—The amendment made by paragraph (1) shall apply to payments received before, on, or after the date of the enactment of this Act.

(b) Treatment of Property Transferred in Trust to Spouse Who Is Not a Citizen of United States.—

(1) In general.—Part III of subchapter A of chapter 11 of the 1986 Code is amended by adding at the end thereof the following new section:

"SEC. 2047. TREATMENT OF PROPERTY TRANSFERRED IN TRUST TO SPOUSE WHO IS NOT A CITIZEN OF UNITED STATES.

"(a) In General.—If—

"(1) the surviving spouse of the decedent is not a United States citizen, and

"(2) the executor elects the application of this section,

then there shall be excluded from the value of the gross estate the value of property passing to such spouse in a trust described in subsection (b), reduced by the amount of any liability transferred with such property to the trust.

"(b) Trust Described in This Subsection.—

"(1) In general.—A trust is described in this subsection if such trust requires that—

"(A) any trustee is a resident of the United States, "(B) the surviving spouse is entitled to all the income from the property in the trust, payable annually or at more frequent intervals, or has a usufruct interest for life in such property, and

"(C) such property is located in the United States.

"(2) PROPERTY INCLUDES INTEREST THEREIN.—The term 'property' includes an interest in property.

"(3) SPECIFIC PORTION TREATED AS SEPARATE PROPERTY.—A specific portion of property shall be treated as separate property.

"(4) INCOME.—The term 'income'—

"(A) has the meaning given to such term by section 643(b), but

"(B) shall not include any income accrued but not distributed at the date of death of the surviving spouse.

"(c) TAX TREATMENT OF TRANSFERS OF TRUST CORPUS.—

"(1) IMPOSITION OF ESTATE TAX.—There is hereby imposed an estate tax on the transfer by the trustee of any property not described in subsection (b)(1)(B).

"(2) AMOUNT OF ESTATE TAX.—

"(A) IN GENERAL.—The amount of estate tax imposed by paragraph (1) with respect to any transfer shall be the amount equal to—

"(i) the tax which would have been imposed under section 2001 on the estate of the decedent if such estate included the value of the transferred property described in paragraph (1) (including any previously transferred property described in such paragraph), less

"(ii) the tax imposed under section 2001 on the estate of the decedent determined without regard to this subsection.

"(B) RATE OF TAX WHERE ORIGINAL ESTATE TAX UNDETERMINED.—If the tax described in subparagraph (A)(ii) has not been determined at the time of the imposition of the tax under paragraph (1), the amount of estate tax imposed by paragraph (1) with respect to any transfer shall be equal to—

"(i) the value of the transferred property described in paragraph (1), multiplied by

"(ii) the highest rate of tax imposed by section 2001 on the date of the decedent's death.

"(3) SWITCH TO NON-UNITED STATES TRUSTEE TREATED AS A DISTRIBUTION OF CORPUS.—In the event of an appointment of a trustee who is not a resident of the United States, such appointment shall be considered a transfer described in paragraph (1) of the remaining property in the trust.

"(4) PROPERTY LOCATED OUTSIDE OF UNITED STATES TREATED AS A DISTRIBUTION OF CORPUS.—If at any time the trust holds any property not located in the United States, such trust shall be treated as having transferred such property in a transfer to which paragraph (1) applies.

"(5) DUE DATE.—The estate tax imposed by paragraph (1) shall become due and payable on the day which is 6 months after the date of the transfer described in such paragraph.

"(6) LIABILITY OF TAX.—The trustee shall be personally liable for the estate tax imposed by paragraph (1).

"(7) TREATMENT OF TAX.—For purposes of this chapter, the tax imposed by paragraph (1) shall be treated as a tax imposed by section 2001.

"(d) CREDIT FOR TAX ON PREVIOUS TRANSFER.—If the value of any property to which subsection (c) applied is included in the gross estate of the decedent's surviving spouse, a rule similar to the rule of section 2013(a) shall apply, except that such section shall be applied by substituting the date of transfer for the date of the decedent's death.

"(e) ELECTION.—An election under this section with respect to any property shall be made by the executor on the return of tax imposed by section 2001. Such an election, once made, shall be irrevocable."

(2) DISALLOWANCE OF MARITAL DEDUCTION WHERE SPOUSE IS NOT CITIZEN OF UNITED STATES.—

(A) ESTATE TAX.—Section 2056 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(d) DISALLOWANCE OF MARITAL DEDUCTION WHERE SURVIVING SPOUSE NOT UNITED STATES CITIZEN.—If the surviving spouse of the decedent is not a United States citizen—

"(1) no deduction shall be allowed under subsection (a), and

"(2) section 2040(b) shall not apply."

(B) GIFT TAX.—Secton 2523 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(i) DISALLOWANCE OF MARITAL DEDUCTION WHERE SPOUSE NOT CITIZEN.—If the spouse of the donor is not a citizen of the United States—

"(1) no deduction shall be allowed under this section,

"(2) section 2503(b) shall be applied with respect to gifts made by the donor to such spouse by substituting '$100,000' for '$10,000', and

"(3) the principles of section 2514 and 2514A (as such sections were in effect before their repeal by the Economic Recovery Tax Act of 1981) shall apply, except that the provisions of such section 2515 providing for an election shall not apply."

(C) ESTATES OF NONRESIDENTS WHO ARE NOT CITIZENS BUT HAVE CITIZENS AS SPOUSES.—Subsection (a) of section 2106 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) MARITAL DEDUCTION ALLOW WHERE SPOUSE IS CITIZEN.—The amount which would be deductible with respect to property situated in the United States at the time of the decedent's death under the principles of section 2056."

(3) EFFECTIVE DATES.—

(A) The amendments made by paragraph (1) and subparagraphs (A) and (C) of paragraph (2) shall apply to estates of the decedents dying after the date of the enactment of this Act.

(B) The amendments made by paragraph (2)(B) shall apply to gifts on or after July 14, 1988.

Mr. DASCHLE. Mr. President, that is a very generous offer on the part of the distinguished Republican leader, and I want to publicly acknowledge my gratitude to him.

I might emphasize the Republican leader all through this process has been very supportive and instrumental in bringing this legislation to the point it is today. We could not have accomplished what we have this evening were it not for the fact that he and his staff were very directly involved. I want to acknowledge that and express again my appreciation to him for his effort.

I rise today to introduce an amendment that will help America's farmers who are suffering financially from this summer's terrible drought. The provision clarifies the tax treatment of disaster payments received for crop losses pursuant to the Disaster Assistance Act of 1988.

In August, Congress passed disaster payment legislation in record time to assist farmers suffering devastation of their crops and animals due to the drought. We worked hard to craft legislation that would accomplish the goal of relief to farmers.

In passing the drought bill, Congress asssumed that farmers receiving disaster relief payments for their crops would be taxed on those payments in the same manner that they have been taxed on payments they have received under previous disaster relief programs.

Specifically, under the Internal Revenue Code, crop disaster relief payments have always been allowed to be included in income in the year after they are received if the farmer can show that the income from the damaged crops would otherwise have been received in that year. This provision properly recognizes that disaster payments might otherwise result in a "bunching" of the farmer's income and that a farmer should not be placed in a worse tax position simply because he receives crop disaster payments rather than the income from the crops themselves.

Because the Disaster Assistance Act of 1988 was drafted as a freestanding bill, rather than as an amendment to the permanent farm legislation, the Agricultural Act of 1949, as amended, it could be argued that payments received under the 1988 act are not susceptible to this favorable treatment. This was clearly not Congress' intent and only occurred in the rush to pass this urgently needed legislation.

The amendment I am offering today will clarify this potential misinterpretation of congressional intent and ensure that our Nation's farmers received the full beneficial treatment that the Disaster Assistance Act of 1988 was designed to provide. Under the amendment farmers would be guaranteed the opportunity to report their income from disaster payments in the same manner they always have, claiming the disaster payments as income in the same tax year that the producer would have claimed the normal income had the disaster not occurred.

This amendment will fulfill the commitment we made in the drought legislation to our farmers, many of them in my own State of South Dakota, who have been so badly impacted by this summer's conditions. I urge my colleagues to join me today in adopting this amendment.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Republican leader.

Mr. DOLE. Mr. President, let me just congratulate the Senator from

South Dakota. I walked in here and misunderstood what the signals were, I guess I can say. I do not play that way.

I want to acknowledge when I first offered the amendment, it is the amendment of the Senator from South Dakota. He did most of the work. We have had a lot of staff conferences. It is a matter of interest to all of us, the Presiding Officer, everyone in this Chamber I think would want to support this amendment.

It is a good idea. It is a technical correction. We paid for it and in my view it is something that ought to be adopted.

I cannot respond to the Senator from Montana concerning his amendment because I am not the manager on either side but I think that second-degree amendment, Senator DASCHLE's amendment is a good amendment.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Did I hear the Senator from South Dakota yield back his time?

Mr. DASCHLE. That is correct.

Mr. PACKWOOD. Who controls the time on the other side, the Senator from Montana?

The PRESIDING OFFICER. The Senator from Montana.

Mr. PACKWOOD. What I am hoping is we are going to be able to yield back our time because I have a feeling we will have another amendment. If we have 15, 20, or 25 minutes on this, and a vote, we will be up against 8 o'clock and not any time to discuss them.

Mr. BAUCUS. Mr. President, how much time is remaining on the amendment? How much time on either side?

The PRESIDING OFFICER. The opponents have 12 minutes and 56 seconds.

Mr. BAUCUS. It is my understanding the proponents have yielded back their time.

The PRESIDING OFFICER. Yes, the opponents.

Mr. BAUCUS. Opponents. Excuse me.

Mr. President, I am prepared to yield back the balance of the time on the amendment unless Senators wish to speak further.

I see no Senators at this point—Mr. President, I yield 2 minutes to the Senator from Montana.

Mr. MELCHER. Mr. President, will my colleague yield me 5 minutes?

Mr. BAUCUS. Mr. President, at this point, I think there are other Senators who wish to speak. I am constrained to yield 3 minutes to the Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana is recognized for 3 minutes.

Mr. MELCHER. Mr. President, we would like to have the opportunity to have a vote on income averaging for 1 year. Due to the situation we are in, where the substitute has been offered, its adoption will preclude us from having that opportunity to vote on my income-averaging amendment.

Mr. President, I make a parliamentary inquiry, is a perfecting amendment in order?

The PRESIDING OFFICER. Yes. But only after all time has been yielded back on the pending substitute.

Mr. MELCHER. Mr. President, I merely announce now that when that time occurs, I will offer a perfecting amendment.

The PRESIDING OFFICER. Does the Senator from Montana yield back his additional time?

Mr. MELCHER. Yes, I yield back my additional time.

The PRESIDING OFFICER. Who yields time? The proponents have yielded back all time. The only time remaining is the opponents', controlled by the Senator from Montana.

Mr. BAUCUS. Mr. President, the pending amendment is the amendment offered by the Senator from South Dakota [Mr. DASCHLE], and the Senator from Kansas [Mr. DOLE], which does, in fact, correct an oversight.

Ordinarily under the law, disaster assistance payments, crop insurance payments that are paid to farmers, are paid such that farmers have the right to elect to defer whether to pay income tax on that particular payment for a year.

When the drought assistance bill was passed, unfortunately the Congress did not address whether or not to provide the same treatment to farmers who received drought assistance payments. I think it is probably the collective decision of the Senate that we should extend the same provisions to the farmers who receive drought assistance payments as we extend to those farmers who receive crop insurance payments or other disaster assistance payments. So the amendment offered by the Senator from South Dakota corrects that.

It costs $58 million. It is a $58 million amendment. But it is an amendment that we must enact to allow farmers who receive drought assistance payments the right to elect to defer income tax payments for a year.

The Senator from South Dakota raises the $58 million of revenue to pay for the amendment. How does he raise the $58 million? Essentially, he closes a loophole, a loophole that should be closed.

Today, when a person dies, there is what is called an estate tax marital deduction; that is, the spouse of the decedent is allowed to receive the property in a way that there is no estate tax paid. That is the full marital deduction. Unfortunately, in the case of foreign spouses who survive decedents and who live overseas, the estate tax is often not collected when the foreign spouse dies.

This amendment corrects that problem. This amendment simply allows the foreign spouse to make an election at the time of the decedent's death to either pay the Federal estate tax when the decedent dies or to put the inherited property into a special trust fund so that, as a practical matter, the same estate tax is paid.

The loophole ought to be closed.

I remind all Senators that the pending question before us is the amendment of the Senator from South Dakota on whether or not we should allow farmers who receive drought assistance to elect to defer income tax for 1 year. Income averaging is another matter; it is another issue. In all fairness, Mr. President, it is an issue which is a little more problematic with this committee at this time.

The drought assistance election provision offered by the Senator from South Dakota is definitely a provision that should be enacted. Income averaging is a little more problematic because that gets into changes of substantive law.

We must remind ourselves that we have a technical corrections bill before us. We are trying to pass a clean, slimmed-down, technical corrections bill. We do not have rifle shots in this bill. We do not have any new transition rules in this bill. At the very minimum, we should hold ourselves down to not enacting substantive law changes.

Perhaps we will enact substantive changes at a later date. Certainly we can do that next year, but not in this bill and not at this time.

It is difficult for this Senator not to automatically agree to the income-averaging amendment. That is because Montana, like so many other States, is an agricultural State. As indicated by the Senator from Oregon, we have done much to help American farmers and ranchers. The 1986 act gave us lower rates; this bill will provide drought relief assistance, repeal of the heifer tax, and changes to the diesel tax. These provisions mean that farmers generally are afforded much of the relief they so justly deserve. These provisions mean that the merits of income averaging are not as important now as they would have been a few years ago.

Mr. President, again I remind Senators that the pending question is the Daschle amendment. If the Daschle amendment is agreed to—and I hope that it is—we will face the question of income averaging some other time and we will deal with that at that time.

This side is prepared to agree to the Daschle amendment.

Mr. DURENBERGER. Mr. President, I am pleased to join the distinguished Republican leader in cosponsoring this amendment which resolves an unintended problem that some farmers may face because of the drought.

It has always been our policy to allow disaster relief payments to be included in income in the year the payment is received or in the following year, if, had the disaster not occurred, the recipient would have sold his crop in the next year. We adopted this policy because if a farmer receives payments under a disaster relief bill as a replacement for income he expected to receive in the next year, he would pay more taxes on the income than if the disaster had not occurred.

Mr. President, when we passed this year's drought bill, a provision was omitted that would have allowed this income deferral policy to continue. Adoption of this amendment will redress this problem, and I urge my colleagues to support it.

Mr. BOREN. Mr. President, this amendment provides a much-needed correction. As you know, American farmers experienced the worst drought in decades this summer. Accordingly, Congress quickly responded by passing a bipartisan disaster relief bill to provide disaster payments to the farmers who suffered crop losses.

The bill was a massive piece of legislation and was passed in record time so that relief could be provided before the next crop year. Expediency was a primary goal and rightly so. Unfortunately, the pressure of writing such a huge bill in such short time allowed for a mistake to be made.

The disaster relief bill, H.R. 5015, was written in a way that allows the disaster payments to be considered as taxable income. Mr. President, the House and Senate Agriculture Committees deliberated for weeks over the percentages at which payments would be made. This mistake undermines the purpose and intent of the compromise disaster package. I don't think our farmers will appreciate us giving them disaster payments only to have us take it right back.

Mr. President, this is truly a technical correction to right a mistake that was made in the drafting of legislation that was necessarily hurried. I urge the adoption of the amendment.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN. Mr. President, I ask for the yeas and nays on the underlying motion.

The PRESIDING OFFICER. The Senator needs to have the floor to be able to do that, and we have not had an indication of willingness by the managers to yield time.

Mr. BAUCUS. Mr. President, I yield to the Senator from South Dakota.

Mr. DASCHLE. Mr. President, I ask for the yeas and nays on the Daschle-Dole amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. MELCHER addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. MELCHER. Is all time yielded back?

The PRESIDING OFFICER. No; the Senator from Montana still controls 6 minutes 40 seconds.

Mr. BAUCUS. Mr. President, might I ask how much time the Senator from South Dakota has?

The PRESIDING OFFICER. He has yielded back his time.

Mr. MELCHER. Mr. President, parliamentary inquiry. May I ask for the yeas and nays on my underlying amendment?

The PRESIDING OFFICER. The Chair should indicate that that is not the pending business and so this would not be the appropriate time to ask for the yeas and nays.

Who yields time?

Mr. MELCHER addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. EXON. Point of order, Mr. President. What is the pending business?

The PRESIDING OFFICER. The pending business is the Daschle amendment.

Mr. EXON. Point of order, Mr. President. Is it not true, Mr. President, that the last amendment offered by the Senator from Montana precedes the Daschle amendment?

The PRESIDING OFFICER. The Senator from Montana has not offered a further amendment at this time and could not offer a further amendment until all time is expired on the amendment that is before the body at this time.

Mr. EXON. I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator does not have the floor. The Senator from Montana has the floor and controls the time.

The Senator from Montana has 5 minutes remaining.

Mr. BAUCUS. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The Senator from Montana.

Mr. MELCHER. Mr. President, is it proper to suggest the absence of a quorum now?

The PRESIDING OFFICER. It is.

Mr. MELCHER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MELCHER. I ask unanimous consent that further proceedings under the quorum call be dispensed with.

The PRESIDING OFFICER (Ms. MIKULSKI). Without objection, it is so ordered.

Mr. MELCHER. Madam President, I ask unanimous consent to proceed for 3 minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none and it is so ordered.

Mr. MELCHER. The parliamentary situation is that the amendment for drought disaster payments to be counted either as income in this year or in the subsequent year will be the first amendment to be voted on. It is a substitute amendment to the amendment I offered for income averaging for farmers and ranchers. It is a situation where if the substitute—in other words, the disaster payment prerogatives—would carry, it wipes out the underlying amendment and therefore we would have no opportunity to vote on income averaging. The first amendment we are going to be voting on, the substitute, dealing with what year disaster payments will be counted as income, is identified as costing $58 million. Income averaging for farmers for 1988 would cost $17 million. Both should be adopted, but it has been deliberately staged that we would have to vote on the drought disaster first, wiping out income averaging.

We cannot, Madam President, do much about that. It is the prerogative of the committee to set the stage on how we vote, and they have decided that income averaging will not be voted upon, even though it is desperately needed, even though it is justified, even though it is justified, even though it is tax equity, even though it would be extremely helpful to farmers and ranchers in this country. I wish that this maneuver to block a vote on income averaging were not the case, but that is definitely the case in this instance.

By voting for the option of having the drought disaster payments counted as income this year or next year, we wipe out the opportunity to vote on income averaging. Had the package been offered as it was proposed by the committee, this particular amendment, the option of having drought disaster payments counted as income this year or next year, would have been included in that package that was offered by the committee and accepted as a package amendment. However, it has been withdrawn from that group and placed in this posture, and I for one see no other alternative than to accept what the committee has designed, however unfortunate it is. I will personally vote for the substitute even realizing that it will carry down, if it prevails, my income-averaging amendment.

The PRESIDING OFFICER. All time has expired. The question now is on agreeing to the Daschle amendment to the Melcher amendment. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. Bentsen], the Senator from Oklahoma [Mr. Boren], the Senator from Florida [Mr. Chiles], and the Senator from New Jersey [Mr. Lautenberg] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Mississippi [Mr. Cochran], the Senator from Wisconsin [Mr. Evans], the Senator from Texas [Mr. Gramm], the Senator from Nebraska [Mr. Karnes], the Senator from Indiana [Mr. Lugar], the Senator from Indiana [Mr. Quayle], the Senator from Wyoming [Mr. Wallop], and the Senator from California [Mr. Wilson] are necessarily absent.

I further announce that, if present and voting, the Senator from Wyoming [Mr. Wallop] and the Senator from Nebraska [Mr. Karnes] would each vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 87, nays 1, as follows:

[Rollcall Vote No. 365 Leg.]

YEAS—87

Adams
Armstrong
Baucus
Biden
Bingaman
Bond
Boschwitz
Bradley
Breaux
Bumpers
Burdick
Byrd
Chafee
Cohen
Conrad
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dodd
Dole
Domenici
Durenberger
Exon
Ford
Fowler
Garn
Glenn
Gore
Graham
Grassley
Harkin
Hatch
Hatfield
Hecht
Heflin
Heinz
Helms
Hollings
Inouye
Johnston
Kassebaum
Kasten
Kennedy
Kerry
Leahy
Levin
Matsunaga
McCain
McClure
McConnell
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Proxmire
Pryor
Reid
Riegle
Rockefeller
Roth
Rudman
Sanford
Sarbanes
Sasser
Shelby
Simon
Simpson
Specter
Stafford
Stennis
Stevens
Symms
Thurmond
Trible
Warner
Weicker
Wirth

NAYS—1

Humphrey

NOT VOTING—12

Bentsen
Boren
Chiles
Cochran
Evans
Gramm
Karnes
Lautenberg
Lugar
Quayle
Wallop
Wilson

So the amendment (No. 3652) was agreed to.

Mr. DASCHLE. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BAUCUS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The pending question is on agreeing to the Melcher amendment, as modified, as amended by the Daschle amendment.

The Senate is not in order. Senators not wishing to speak will please take their seats, so that the Chair can observe who will seek recognition.

The Chair will repeat: The pending business before the Senate is the Melcher amendment, as modified, as amended by the Daschle amendment.

The amendment (No. 3650), as modified, as amended, was agreed to.

AMENDMENT NO. 3653

(Purpose: To refine the capital gains exclusion for the sale of a principal residence by an individual over the age of 55 so as to allow such exclusion to be available to disabled individuals, and for other purposes)

Mr. PACKWOOD. Madam President, I am going to make a unanimous-consent request, and it is to offer an amendment on behalf of Senator Wilson. It is on the list. His plane is delayed, and he cannot get here. It has been cleared on both sides.

I will explain the amendment. Present law allows people over 55 a one-time exclusion if they sell their homes. To qualify, however, the person must have lived in the house for 3 of the last 5 years.

If a person is forced to move to a nursing home, they can lose the exclusion. Senator Wilson's amendment would remedy this. So long as the person spends 1 year out of 5 in the house, time spent in a nursing home would qualify for the exclusion.

I ask unanimous consent to offer the amendment on behalf of Senator Wilson. It is on the list to be offered.

Mr. BUMPERS. Mr. President, will the Senator yield for a question?

Mr. PACKWOOD. I yield.

Mr. BUMPERS. I want to clarify something.

The Senator says "1 year."

Mr. PACKWOOD. If the other 4 are in a nursing home.

Mr. BUMPERS. How about 2 years in a nursing home? The present rule is 3 years' residency in a house. Does 2 years in a nursing home still qualify?

Mr. PACKWOOD. Yes.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? The Chair hears none, and it is so ordered.

Mr. PACKWOOD. Madam President, I ask unanimous consent that the name of Senator Pressler be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PACKWOOD. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Oregon [Mr. Packwood], for Mr. Wilson (for himself and Mr. Pressler), proposes an amendment numbered 3653.

Mr. PACKWOOD. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the amendment, add the following:

SEC. . PRINCIPAL RESIDENCE CAPITAL GAINS EXCLUSION.

(a) In General.—Subsection (d) of section 121 of the Internal Revenue Code of 1986 (relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55) is amended by adding at the end thereof the following new paragraph:

"(9) Determination of use during periods of out-of-residence care.—If a taxpayer owns any property and uses such property as the taxpayer's principal residence for any 1-year period within a 5-year period ending immediately before a period of time during which the taxpayer becomes physically or mentally incapable of self-care in such residence, then the taxpayer shall be treated as using such property as the taxpayer's principal residence during such period of time and while the taxpayer is residing in any facility (including a nursing home) licensed by a State or political subdivision to care for an individual in the taxpayer's condition."

(b) Options Subject To Wash Sale Rules.—Subsection (a) of section 1091 of the 1986 Code (relating to losses from wash sales of stock or securities) is amended by adding at the end thereof the following sentence: "For purposes of this section, the term 'stock or securities' shall include contracts or options to acquire stock or securities."

(c) Valuation of Group-Term Life Insurance.—Subsection (c) of section 79 of the 1986 Code (relating to the determination of the cost of insurance) is amended by striking out the last sentence.

(d) Effective Dates.—

(1) Subsection (a).—The amendment made by subsection (a) shall apply with respect to any sale or exchange after September 30, 1988, in taxable years ending after such date.

(3) Subsection (c).—The amendment made by subsection (c) shall apply to taxable years beginning after December 31, 1988.

(By request of Mr. Packwood, the following statement was ordered to be printed in the Record:)

● Mr. WILSON. Madam President, there is a small glitch in our tax system that places a very significant financial penalty on some older Amercians. While I cannot believe that it is an intended consequence, it is a very real one that is unfair and needs to be changed.

We are all aware that there is a provision in the Federal Tax Code that allows those over 55 years of age to claim a one-time capital gains exclusion on the sale of a personal residence. This provision, contained in section 121 of the code, includes a test for residency: In order to claim the exclusion, the taypayer must have lived in the residence for 3 of the prior 5 years. While this test is reasonably designed to prevent abuse, it unfairly harms certain older Americans who become ill or injured, or are otherwise unable to take care of themselves.

Mr. Edward Bosely of Santa Ana Heights, CA, brought this matter to my attention. Mr. Bosely's mother is suffering from Alzheimers disease—a problem desperately in need of a cure.

When Mr. Bosely became aware of his mother's condition, he and his wife took his mother into their home. After a short while, they realized that she would need to be placed in a nursing home in order that she receive the necessary full-time care.

For the first few years she was in the nursing home, they rented out her house and used the income to help defray some of her expenses. This ultimately became impractical, so they decided to sell her home. However, as a result of the time Mr. Bosely's mother has spent in the nursing home, her house no longer qualifies as her principal residence as required by section 121. This means that if the house is sold, Mr. Bosely's mother cannot claim her one-time capital gains exclusion. The financial impact is devastating. For example, assuming the capital gain on her home is $50,000, the added tax burden could exceed $10,000.

This is not simply unfair; It is tragic.

Furthermore, there is a sad irony to this. If Mr. Bosely did not sell his mother's house until after her death, no taxes would ever be paid on the capital gains. Yet, because of the 3-out-of-5 years rule, if he sells the house now, she must pay taxes on the gain.

As Mr. Bosely has said, what purpose is served by a tax law that discourages the sale of an older American's house at the very time that the proceeds are needed to pay for long-term care?

The answer is that the effect of the law serves no legitimate purpose and should be changed.

Madam President, when an older parent suffers a stroke, a broken hip, a heart attack, or some other debilitating mental or physical incapacity, the children are often at a loss as to what to do. There are arrangements to be made—sometimes for the parent's care in a medical facility, or perhaps in a nursing home. There is the emotional trauma of seeing a loved one in distress. And there is always hope that the problem will be overcome.

With this hope, everyone looks forward to the parent returning home.

Unfortunately, this hope is often not realized. Sometimes, the parent does not get better and cannot return home.

But, we are not clairvoyant. Sometimes, it may take more than 2 years to know what will happen. And sometimes, even if the inevitability of long-term care is realized, there is reluctance to sell a parent's home at first because of the psychological harm that it could inflict on the parent. Ultimately, though, selling the house may be the only prudent course, especially as the bills for long-term care continue to come in.

We must not penalize a lack of clairvoyance. We must not penalize the compassion of children for their parents. Yet that is exactly the effect of our present tax law.

Madam President, my amendment will resolve the present hardship in our tax law. It is based on a bill I introduced earlier this year, S. 2501. This bill has been cosponsored by Senators D'AMATO, SYMMS, KARNES, DECONCINI, COCHRAN, MCCAIN, and SIMON.

What my amendment will do is allow the time spent in a nursing home or medical facility to count as time spent in the principal residence for purposes of the 3-out-of-5 year requirement of the capital gains exclusion rule of section 121 of the Internal Revenue Code. The only requirement is that the taxpayer spent at least 1 year of the prior 5 years actually using the home.

I know that there is a strong, understandable, and even justifiable desire here on the floor that amendments offered to the technical corrections bill contain a revenue offset to make the amendment revenue neutral, no matter what the equities of the proposal, itself, may be.

Therefore, I have added to my amendment a provision overturning a very recent decision of the U.S. Tax Court, *Gantner* v. *Commissioner*, No. 2222-86, 91 T.C. No 47 (9/29/88). This decision was issued less than 2 weeks ago. Indeed, I learned of it from the front page of the Wall Street Journal, in its weekly tax report.

In the Ganter decision, the Tax Court held that the tax rules on so-called wash sales, section 1091 of the Internal Revenue Code, do not apply to sales of stock options or other contracts to acquire stocks or securities. As a matter of practicality, indeed, necessity, my amendment overturns this decision.

I have also added a provision contained in section 347 of the House-passed bill that affects the valuation of employer-provided group term life insurance.

I have added these two provisions because of the need for an offset. As the first offset provision is a new matter, I anticipate full consideration of it in the conference.

Madam President, I urge adoption of the amendment.●

Mr. PACKWOOD. I have nothing further to say on the amendment, Madam President.

Mr. BAUCUS. Madam President, the amendment offered by the Senator from California [Mr. WILSON] is a very sympathetic amendment. It corrects a hardship, and we accept the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3653) was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

AMENDMENT NO. 3612

(Purpose: To disregard amount of bonds issued on behalf of a bond bank or dedicated bond pool in determining if issuer qualifies for small issuers exception to arbitrage rules)

Mr. BINGAMAN. Madam President, I call up amendment No. 3612.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN], for himself and Mr. DOMENICI, proposes an amendment numbered 3612.

Mr. BINGAMAN. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1263, between lines 4 and 5, insert the following:

(45)(A) Clause (ii) of section 148(f)(4)(C) of the 1986 Code (as added by paragraph (17)(A) is amended by redesignating subclauses (II) and (III) as subclauses (III) and (IV), respectively, and by insert-

* * * * *

powers not subordinate to such unit shall, for purposes of applying such subclause to such unit, be treated as not issued by such unit,".

(B) The amendment made by subparagraph (A) shall apply to bonds issued after December 31, 1988.

The PRESIDING OFFICER. Will the Senator withhold?

It is very difficult for the Chair to follow who is seeking recognition, and there is a continual buzz in the rear of the Chamber, and it is difficult for the Chair to hear the Senator who has obtained the floor. We have approximately 30 minutes remaining on this legislation and it is important to hear the debate.

Mr. BINGAMAN. Madam President, I am offering this amendment for myself and my colleague, Senator DOMENICI. It is an amendment to the Technical Corrections Act to clarify the tax treatment of municipalities which act as the issuer for a municipal bond bank or dedicated bond pool.

The 1986 tax law provides a small issuers exception from the arbitrage and rebate provisions for cities and towns which issue less than $5 million annually in traditional public purpose tax-exempt bonds.

The Blue Book issued by the Joint Tax Committee further clarifies this provision as it applies to bond banks by stating that bond banks and other similar arrangements are covered by this exception to the extent they have made bond proceeds available to their member or participant units of government with general taxing powers. The clarification is silent, however, with respect to the treatment of municipalities which act as the issuer for a municipal bond bank or dedicated bond pool. Unless this issue is dealt with, it would mean that a municipality which issued on behalf of the bank or pool would lose its eligibility for the small city exemption—even though the small city would issue less than $5 million for its own use.

For example, the city of Sante Fe is the designated issuer on behalf of the New Mexico municipal bond pool. Without this clarification, however, Sante Fe would be unlikely to allow the bond pool to issue, because it would subject Sante Fe's own public purpose borrowing to the arbitrage and rebate provisions—a significant penalty, even though the 1986 law was specifically designed to exempt cities like Sante Fe.

My amendment would permit the New Mexico municipal bond pool and all other similar pools to proceed without a penalty upon the issuing city. As a result, my amendment would serve to further clarify the explanation of the treatment under the exception for bond banks and bond pools provided by the Joint Tax Blue Book.

This is a highly technical issue but it is very important to municipal small bond issuers. I urge my colleagues to adopt this amendment.

Madam President, I believe this amendment is acceptable to both the majority and minority managers.

I would hope that my colleagues would support it and it could be adopted.

Mr. BAUCUS. Madam President, this amendment corrects a glitch in the Tax Reform Act that in essence imposes a penalty on small cities and counties that issue bond pools for the benefit of other small governments of the State. It is a generic amendment and an amendment which this side is prepared to accept.

Mr. PACKWOOD. Madam President, there is no objection on this side.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. BAUCUS. I yield back the remainder of my time.

Mr. BINGAMAN. I yield back the time I have.

The PRESIDING OFFICER. All time has expired.

The question is on agreeing to the amendment of the Senator from New Mexico.

The amendment (No. 3612) was agreed to.

Mr. BINGAMAN. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BAUCUS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Ohio.

AMENDMENT NO. 3654

(Purpose: To treat certain family services providers)

Mr. METZENBAUM. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] for himself and Mr. GLENN proposes an amendment numbered 3654.

Mr. METZENBAUM. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following:

SEC. . TREATMENT OF CERTAIN FAMILY SERVICES PROVIDERS.

(a) A State may treat a person who renders dependent care or similar services as other than an employee for employment tax purposes for the Applicable Period if all of the following conditions are satisfied with respect to such person for such Applicable Period:

(i) The person does not provide any dependent care or similar services in any facility owned or operated by the State;

(ii) The person is compensated by the State for such services, directly or indirectly, out of funds provided pursuant to Chapter 7 of Title 42 of the United States Code, or the provisions and amendments made by the Family Security Act of 1988.

(iii) The State does not treat the person, with respect to the provision of dependent care or similar services, as an employee for employment tax purposes;

(iv) The State files all Federal income tax returns (including information returns) required to be filed with respect to such person on a basis consistent with the State's treatment of such person as other than an employee beginning on the date of the enactment of this section; and

(v) No more than ten percent of the State's employees are provided with insurance under Title II of the Social Security Act pursuant to voluntary agreements with the Secretary of Health and Human Services under section 218 of such Title.

(b) The term "State" shall mean the government of the United States, District of Columbia, any state or political subdivision thereof, and any agency or instrumentality of any of the foregoing.

(c) The term "employment tax" means any tax imposed by subtitle C of the Internal Revenue Code.

(d) The term "Applicable Period" means the period beginning on January 1, 1984 and ending on December 31, 1990.

(e) The Secretary of Treasury shall report to the Senate Committee on Finance and the House Committee on Ways and Means on the tax status of day-care providers compensated pursuant to the program described in the Section no later than December 31, 1989.

Mr. METZENBAUM. Madam President, day-care services for the working poor are being threatened by the IRS. If the IRS has its way publicly provided day-care services all over this country may come to a grinding halt. The Federal Government contributes to day-care expenses to help poor mothers move off the welfare roles. In fact we have expanded the importance of day care as part of the welfare reform bill recently enacted into law.

Local governments routinely contract with existing day-care providers to obtain these services. These day-care providers pay their taxes like every other self-employed worker. But recently the IRS has started treating these care providers as employees of the local government. This means that local governments must withhold Federal income taxes, provide State fringe benefits, pay Federal Medicare taxes, and contribute to State pensions.

In Ohio, three counties—Crawford, Lucas, and Stark—have been audited by the IRS. The IRS has determined that they are subject to fines and penalties.

But even more is at stake.

According to the State of Ohio, if the IRS position is sustained, it could increase day-care costs to Ohio by 600 to 1,200 percent. In practical terms it means the end of day care for the working poor, the end of jobs for those trying to better themselves and their families, and the end of training programs for single-parent families. It means welfare checks instead of paychecks.

Madam President, my amendment will prevent the IRS from closing down day-care services in several States including Ohio. These States exempt their public employees from the Social Security System. For these States the IRS position is the most far reaching, because it would force these service providers into State pension systems. My amendment also calls on the IRS to reevaluate its position so that day care in every State will be protected.

Madam President, I urge my colleagues to support this amendment.

The language of this amendment has been cleared with the Treasury Department. It is my understanding the managers of the bill are prepared to accept it.

The PRESIDING OFFICER. Is there any further debate? The Senator from Montana.

Mr. BAUCUS. Madam President, this amendment essentially clarifies the conditions under which day-care center employees will be treated as independent contractors, that is, employees who are associated with the State day-care centers. It is a good amendment. This side is prepared to accept the amendment.

Mr. PACKWOOD. Madam President, we have checked the amendment and are prepared to accept it.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. BAUCUS. I yield back my time.

Mr. METZENBAUM. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

The question is on agreeing to the amendment of the Senator from Ohio.

The amendment (No. 3654) was agreed to.

Mr. METZENBAUM. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BAUCUS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Michigan.

AMENDMENT NO. 3655

Mr. RIEGLE. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Michigan [Mr. RIEGLE] proposes an amendment numbered 3655.

Mr. RIEGLE. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Amend section 135 by redesignating subsection (d) as subsection (e) and inserting after subsection (c) the following new subsection:

"(d) APPLICATION TO STATE PREPAID TUITION PLANS.—To the extent excluded from gross income under subsection (a), the same exclusion from gross income shall apply in connection with any contract entered into with an entity the income of which is excluded from gross income under section 115(b) with respect to any amount otherwise includable in the gross income of an individual which represents the excess (if any) of—

"(1) the value of educational services received by the individual during the taxable year at an eligible educational institution, or the value of the payment made to an eligible educational institution on behalf of the individual for higher education expenses during the taxable year, over

"(2) the prorata portion of the basis of the contract entered into by or on behalf of the individual with an entity the income of which is excluded from gross income under section 115(b) pursuant to which the individual is entitled to receive such educational services or the payment of such higher education expenses at an eligible educational institution."

(a) IN GENERAL.—Section 115 of the Internal Revenue Code of 1986 (relating to income of States, municipalities, etc.) is amended by adding at the end the following new subsection:

"(b) QUALIFIED STATE PREPAID TUITION PLANS.—(1) For purposes of subsection (a)(1), program income derived by a state or agency or instrumentality or political subdivision thereof or an entity created and administered by a state for the benefit of its residents, in connection with a program the function of which is to provide access to higher education by issuing contracts for the provision of educational services or the payment of higher education expenses with respect to which an individual is entitled to an exclusion from gross income pursuant to section 135(d), shall be treated as income derived from the exercise of an essential governmental function.

(2) DEFINITIONS.—For purposes of this section—

(A) Program income includes gross receipts from the issuance of prepaid tuition contracts, gross investment income from investment in qualified United States savings bonds the income from which may be eligible for exclusion from gross income of an individual pursuant to section 135(d) and gifts, grants and contributions;

(B) Higher education expenses shall have the meaning set forth in section 135(e)(1)."

Amend Section 170(c)(1) in its entirety to read as follows:

"(1) A State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes; for purposes of this section, the issuance of contracts by an entity the income of which is excluded from gross income under section 115(b) for the provision of educational services or the payment of higher education expenses, income in connection with which is excludable from the gross income of an individual pursuant to section 135(d), shall be treated as an exclusively public purpose."

Amend Section 4942(g)(1)(A) to read as follows:

"(A) Any amount (including that portion of reasonable and necessary administrative expenses) paid to accomplish one or more of the purposes described in section 170(c)(2)(B) or to fund the purchase of prepaid tuition contracts, payments made or the value of educational services received with respect to which may be excluded from the gross income of an individual pursuant to section 135(d), other than any contribution to—

(i) an organization controlled (directly or indirectly) by the Foundation or one or more disqualified persons (as defined in section 4946) with respect to the Foundation, except as provided in paragraph (3), or

(ii) a private foundation which is not an operating foundation (as defined in subsection (j)(3)), except as provided in paragraph (3), or"

Mr. RIEGLE. Madam President, I would like to thank the distinguished chairman of the Finance Committee, Senator BENTSEN, as well as Senator PACKWOOD and Senator BAUCUS for their bipartisan leadership at this highly political time, a time when tax matters are particularly sensitive. Their leadership has resulted in a bill that makes important technical corrections to the Tax Code, extends a number of expiring provisions, and creates a taxpayer bill of rights. In the spirit of the 1986 Tax Reform Act, the bill closes additional loopholes and allows no net increase in taxes.

As the Senate sponsor of the legislation to extend the authority to issue mortgage revenue bonds [MRB's] and mortgage credit certificates [MCC's] through 1992, I am especially pleased that the authority has been extended free of the crippling targeting provisions approved by the House. Although I am disappointed that the program has only been extended through June 1989, I recognize the revenue limitations to further extension. Nonetheless, I would hope that the 101st Congress will provide for a longer extension.

By continuing the Mortgage Revenue Bond Program, Congress has recognized that the American dream of homeownership is becoming increasingly difficult for many Americans. By allowing State and local housing finance agencies to make mortgage loans at below-market interest rates for first-time home buyers who need assistance, this tax-exempt bond program has been a resounding success nationwide. Since the program began in the 1970's, MRB's have been used to finance the purchase of over 900,000 homes. In addition, States may exchange MRB authority for mortgage credit certificates which entitle eligible first-time home buyers to a credit against Federal income taxes.

In my home State of Michigan, the State housing development authority has shown that there are additional benefits to MRB's. These include the financing of home improvement loans, which many small localities in Michigan blend with community development block grants. In this way, 5,440 homeowners with average incomes of $7,550 per year have been able to afford repairs to their homes. Other indirect benefits common to MRB programs around the country include the many added jobs in construction and related trades.

The extension of the Employer Educational Assistance Program under the bill is an important step in assuring that the United States remains competitive in the global marketplace. This program has provided undergraduate and graduate educational assistance to workers so that they might be better prepared to meet the increasingly challenging and unstable demands of the workplace.

The bill also provides relief for our Nation's farmers and other off-highway users of diesel fuel by exempting them from tax on diesel fuel and liberalizing refund procedures. It continues the targeted jobs tax credit, which has offered hope, opportunity, and jobs to many disadvantaged individuals.

By expanding and extending the low-income housing credit, the Senate has recognized the need for this vital program. Likewise, through extension of the credit for research and development, the Senate has recognized the importance of commercial research and development to our country's competitiveness. With many of our public research dollars devoted to defense, it is imperative that private industry be supported in its efforts to remain at the cutting edge of technology in what has become a highly competitive global economy.

It is very important that the conference on this bill include language from the House bill with respect to deficiency payments for taxable years beginning before January 1, 1987, for certain workers' compensation funds. Qualified group self-insurers' should not be assessed deficiency charges attributable to the timing of policyholder dividend deductions. To impose deficiency payments after the fact on self-insured funds is not fair. I urge the Senate conferees to accept with modifications the language that is included in section 345 of title III of the Miscellaneous Revenue Act of 1988.

An important provision to the vast majority of Americans is the taxpayer bill of rights. Thanks to the tireless and dedicated effort of Senator PRYOR, the American people will now be assured of fair and timely treatment by the Internal Revenue Service.

Madam President, I believe that we should enact this modest yet important bill today in order to provide for needed technical corrections to the Tax Code and to extend expiring provisions. I commend Senator BENTSEN for his leadership in requiring a clean tax technical corrections bill that is revenue neutral.

Madam President, this is an amendment that is technical in nature and is designed to clarify the Education Savings Bond Program that was passed as the Kennedy amendment a few days ago. This amendment will allow existing and future State programs to provide educational trust arrangements that build upon the Kennedy initiative. There are 9 States across the country that have guaranteed educational trust programs and 12 other States with savings bond programs. To allow these existing State programs to thrive requires this particular amendment.

Although it has been difficult to draft the amendment in the time allotted, I am offering it acknowledging that there may be some technical details to work out. In general, we have cleared the amendment on both sides. It would be my understanding that if we are not all satisifed with the precise technical language by the time we come through the conference, my amendment would be set aside.

Mr. BAUCUS. Madam President, this amendment is offered because of the concern the State of Michigan and other States have about the amendment adopted earlier after being offered by the Senator from Massachusetts [Mr. KENNEDY]. The earlier amendment was on the Education Savings Bond Program. This Education Savings Bond Program is a good program.

The concern of the State of Michigan is that the Michigan Education Savings Program might be jeopardized or adversely affected as a consequence of the Education Savings Bond Program.

We all know the importance of providing funds for students so they can go to college. It is our intent to try to find a way not only to enact the Education Savings Bond Program, but to do it in a way that does not adversely affect the State of Michigan Education Savings Program.

The amendment offered by the Senator from Michigan is an attempt to address a concern of the State of Michigan and other States that have similar programs so that their programs are not adversely affected.

Because the education savings bond amendment was offered and adopted only recently, the Senator from Michigan has not had sufficient time to craft the perfect amendment to deal with both situations.

The managers of the bill are prepared at this time to accept the amendment offered by the Senator from Michigan but Senators should know that the present draft of the amendment results in a very complicated, perhaps unnecessarily burdensome provision that could be very difficult for the State of Michigan, the IRS, and others to understand.

We will accept the amendment at this time with the understanding that during the next day or two, that is, the time we are in conference, the authors of the amendment will attempt to make the amendment more workable. The Senator from Michigan has my assurance that to the degree we can clarify the amendment, I will urge the conferees to adopt it. On the other hand, if in the next 2 days we cannot clarify the amendment and also write it to implement good public policy, then I must in all fairness say to the Senator from Michigan that as a conferee I will be less inclined to push the Senate position.

Mr. PACKWOOD. Madam President, the chairman has stated it very well and the Senator from Michigan has been very understanding.

The amendment at the moment is drafted in such a way that you could not in good conscience accept it. If it could be crafted in such a way that it is acceptable we would be prepared also to suggest to the House that they accept it.

Mr. RIEGLE. Madam President, I thank the chairman and the Republican floor manager.

Madam President, I ask unanimous consent that a list of the 9 States that have guarantee programs and the 12 States that have savings bond programs be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATES WITH STUDENT EDUCATIONAL PROGRAMS

Guarantee programs: Michigan, Florida, West Virginia, Maine, Wyoming, Tennessee, Missouri, Oklahoma, and Indiana.

Savings bonds: Illinois, North Carolina, Virginia, Kentucky, Colorado, Connecticut, Washington, Iowa, North Dakota, and Rhode Island.

Mr. BAUCUS. Madam President, I yield back the remainder of my time.

Mr. RIEGLE. Madam President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Michigan.

The amendment (No. 3655) was agreed to.

Mr. BAUCUS. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. RIEGLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Montana.

AMENDMENT NO. 3656

(Purpose: Relating to the study on health care costs resulting from smoking)

Mr. BAUCUS. Madam President, on behalf of Mr. FORD and Mr. HELMS, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Montana [Mr. BAUCUS] for Mr. FORD, for himself and Mr. HELMS, proposes an amendment numbered 3656.

Mr. BAUCUS. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike section 736 proposed to be added by the amendment and insert:

SEC. 736. STUDY ON ECONOMIC IMPACT OF SMOKING.

(a) IN GENERAL.—The Secretary of the Treasury or his delegate, in consultation with the Secretary of Health and Human Services, shall conduct a study of:

(1) the direct public (and private to the extent determinable) health care costs incurred (with respect to smokers, their spouses and others) as a result of cigarette smoking in the United States,

(2) the changes in incidence of cigarette smoking in the United States over the past 20 years,

(3) the impact of the rate of the excise tax imposed by section 5701 of the Internal Revenue Code of 1986 on cigarette smoking among all age groups,

(4) the distributional effects of all Federal tobacco excise tax increases among income classes,

(5) The distributional effects of all Federal tobacco excise tax increases among income classes,

(6) the impact of changes in the cigarette excise tax rate on State and local cigarette tax revenue collections, and on the related farm community, and

(7) The changes in cigarette excise tax rates imposed by States and localities since 1958.

(b) REPORTS.—The report of the study required by subsection (a) shall be submitted by July 1, 1989. Such report shall be submitted to the Committees on Ways and Means and Agriculture of the House of Representatives and the Committees on Finance and Agriculture of the Senate.

Mr. BAUCUS. Madam President, this is the cigarette study compromise amendment. The Finance Committee includes a provision requiring the Surgeon General to study the consequences of the effect of cigarette smoking.

There are Senators in this body who had some problems with that amendment. As a result of many hours and several days of negotiations, all the Senators involved in this issue have reached an agreement. This is that compromise agreement.

I urge adoption of the amendment.

Mr. PACKWOOD. Madam President, again this is the amendment on which I am particularly glad to see a compromise worked out, and I heartily agree with what the chairman said.

Mr. BAUCUS. Madam President, I yield back the remainder of my time.

The PRESIDING OFFICER. Is there further debate on the amendment?

All Senators having yielded back their time, the question is on agreeing to the amendment.

The amendment (No. 3656) was agreed to.

Mr. HELMS. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BAUCUS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CHAFEE. Madam President, the Technical Corrections Act of 1988 is vitally important to the American taxpayer. In order to provide the taxpaying citizens of this country with the guidance necessary accurately to comply with tax reform, I believe we must enact these technical corrections before the end of the 100th Congress.

American taxpayers have already been required to file tax returns under the law enacted in tax reform, and in many cases these laws contain technical drafting errors. The goal of this bill is to correct clerical and drafting errors and to resolve dozens of ambiguities in the Tax Reform Act of 1986 and the Budget Reconciliation Act of 1987. In addition, this bill provides the guidance necessary to taxpayers for interpreting recent tax acts.

Tax reform is currently working. We have taken a giant step forward in achieving fairness in the Tax Code. The number of profitable corporations that are escaping taxation has dropped dramatically from 1986 to 1987. In fact, the average tax rates of America's largest corporations have actually increased under tax reform, in spite of the reduction in the highest corporate tax rate from 46 percent to 40 percent in 1987.

It is extremely important that we leave the new improvements to the system intact, to provide stability to the Tax Code and to allow us to properly analyze the benefits and detriments of tax reform. We should not, therefore, utilize this bill to open up debate on the reform we enacted in the Tax Reform Act of 1986. We must not enact any amendments that would violate the original goal of the reform bill: fairness in the Tax Code.

In addition to the technical corrections, the Finance Committee has included provisions to extend important tax incentives that have expired or are expiring at the end of this year. The extension of the mortgage revenue bond program is a key element of the efforts of State housing agencies to provide affordable ownership for low-income Americans. Homeownership is part of the American dream, yet it has been in decline since 1980. We need to revert that trend.

Testimony that we have heard in the Finance Committee proves the success of the mortgage revenue bond programs around the country. The program is targeted toward lower income, first-time home buyers and has been absolutely necessary to many Americans who would not otherwise qualify for a mortgage. Statistics from Rhode Island show that 74 percent of all approved mortgage revenue bond applicants would not have been able to obtain a mortgage through any of the alternative sources available.

The other expiring provisions such as the research and experimentation credit, employee educational assistance, low income housing credit, targeted jobs tax credit, and the section 861 expense allocation moratorium are significant and I am glad we were able to include them in this package.

Another issue that I believe needs to be addressed this year is section 89, nondiscrimination requirements for employee benefit plans. The requirements enacted in the 1986 bill are complex and regulations to provide additional guidance on these rules have not been issued by the Treasury Department. Without additional clarification, employers will not be able to comply with these rules on a timely basis.

During the Finance Committee action I have worked to clarify the rules and provide American employers with the opportunity to comply. I am glad we were able to provide additional safe harbor provisions and to improve the rules without endangering the effectiveness of the nondiscrimination requirements.

This bill also includes an amendment that will correct a problem with the collection of the diesel fuel excise tax created by a provision in the Budget Reconciliation Act of 1987. Off-road users of diesel fuel have always been exempt from paying the 15-cent-per gallon excise tax, because this tax is collected for the highway trust fund.

As a result of the recent change in law, commercial fishermen are now forced to pay this tax at the time of purchase. The fishermen must then apply to the Internal Revenue Service for a refund of a tax from which they are exempted by law.

This is Government intrusion at its worst: collecting a tax from the fishermen which they don't even owe, and withholding it for a year. The burden is particularly onerous because fishing crews normally divided up the profits from a fishing trip. If a portion of these profits were withheld for a year, it would be difficult, if not impossible, to ensure that each fisherman receives a fair share when the refund check arrives.

I want to make it clear that I agree with the intent of the Budget Reconciliation Act, which is to collect more efficiently the diesel excise tax from highway users. Therefore, I am glad that we have been able to develop a proposal that will allow these fishermen to buy diesel fuel without paying the tax while keeping in place the more efficient collection process.

This bill includes many other substantive changes in the law that are necessary to carry out the intent of the 1986 act. We have not included provisions that would violate the goal of tax reform to make our tax laws fairer for all taxpayers. I would urge my colleagues to defeat any amendment that would violate the goal of providing overall fairness in the Tax Code.

AMENDMENT NO. 3657

(Purpose: To except a certain charitable contribution from the imposition of the alternative minimum tax)

Mr. SIMPSON. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment of the Senator from Wyoming.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON] proposes an amendment numbered 3657.

Mr. SIMPSON. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 956, between lines 17 and 18, insert the following new paragraph:

(6) Subsection (f) of section 701 of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(8) EXCEPTION FOR CERTAIN CHARITABLE CONTRIBUTION.—Section 57(a)(6) of the Internal Revenue Code of 1986 (as amended by this section) shall not apply to any deduction attributable to any contribution made pursuant to a loan and contribution agreement dated August 28, 1975, and supplemented by agreements dated February 24, 1982, and March 15, 1983."

Mr. SIMPSON. Madam President, I do not want to take up a lot of time. I admire what Senator BAUCUS and Senator PACKWOOD have done—a very splendid job with a tough issue.

But I just want to get something on the record here. For the past 2 years now, my staff and I have pursued the possibility of obtaining transitional relief for the Olin Corp., the parent company of the Winchester Arms Corp., from the Tax Reform Act.

In 1975—and I will fit this in within the 7 minutes here—the Olin Corp. made a permanent loan, under contract, of a collection of antique arms, the Pugsley collection, a Winchester Arms collection, from New Haven, CT, which was stored there for many years and seen by about 3,000 people a year.

They said, "This is unfortunate." We said, "Bring it to Wyoming, we will build you a wing and 300,000 people will see it, more than see the Brooklyn Art Museum."

And that is the kind of place we have. I am on that board. I drew the contract. I was never remunerated in any way. I never was remunerated for anything I did. I am still a member of the board of trustees and very proud to be on that.

So I remember drawing the contract. No question about the fact that it will come and it is, in fact, already there and we built the wing. So that is not even a problem. There is no consideration that that would not be the case.

But the agreement, the original agreement of 1975, specified that Olin would transfer ownership of the collection "at a future date" in a manner most advantageous to the business and charitable purposes of the Olin Corp. As I say, in my youth, I drafted that particular contract. There is no conflict. I just bring it to your attention as a matter of interest.

I ask unanimous consent that the original agreement and a supplementary agreement be printed in the RECORD.

There being no objection, the agreements were ordered to be printed in the RECORD, as follows:

Agreement entered into this 28th day of August, 1975 by and between Olin Corporation, Winchester-Western Division, 275 Winchester Avenue, New Haven, Connecticut 06504 (hereinafter called "Winchester") and the Buffalo Bill Memorial Association, a non-profit corporation, P.O. Box 1020, Cody, Wyoming 82414 (hereinafter called "BBMA"):

WITNESSETH

Whereas, Winchester owns an extensive and valuable firearms' collection, a firearms' library, related firearms' memorabilia, and extensive gun serial number records, all of which are located at the Winchester Gun Museum in New Haven, Connecticut (sometimes collectively referred to as the "Winchester Collection"); and

Whereas, BBMA operates a museum and educational institution which includes collections relating to the life of Wm. F. "Buffalo Bill" Cody, the Plains Indian, Western art, firearms' and Western memorabilia; and

Whereas, the parties mutually desire to increase the public display and exposure of the Winchester Collection and to make the BBMA museum more comprehensive and complete (and to that end the parties are desirous of Winchester permanently loaning and ultimately transferring full ownership of the Winchester Collection to the BBMA);

Now, therefore, it is hereby agreed as follows:

1. Permanent Loan of the Winchester Collection.—Winchester will, in a manner most advantageous to its business and charitable purposes and in a manner compatible with the charitable status BBMA, permanently loan the Winchester Collection to the BBMA for permanent display at BBMA's museum. The firearms to be loaned will be those included in an appraisal report annexed hereto as Exhibit A and hereby made a part of this agreement.

2. Transportation.—Winchester shall arrange and pay for the cost of packing the Winchester Collection and shipping it to BBMA in Cody, Wyoming. The shipping schedule will be coordinated with BBMA.

3. Permanent Display.—BBMA shall provide permanent public display of the Winchester Collection. The Winchester Collection shall initially be displayed in an area of 8,000 square feet located on the main floor of the museum. When the North American Plains Indian building is completed (estimated to be during 1977), BBMA will locate the Winchester Collection in a larger display space of approximately 16,000 square feet in the BBMA main building. It is understood, however, that BBMA may, on a temporary basis, loan selected portions of the Winchester Collection to other museums for temporary display in such museums.

4. Promotion of the Winchester Collection.—BBMA shall actively promote the exhibition and display of the Winchester Collection and shall give to the Winchester Collection the attention and promotion equal to that given to the Whitney Gallery, the North American Plains Indian museum and the Buffalo Bill Cody Collection.

5. Curator.—BBMA will employ a skilled and knowledgeable curator and assistant to manage the Winchester Collection and its exhibition and display. The total cost of the curator and assistant, including, but not limited to, salaries, travel expenses, and other ordinary and necessary expenses, shall be paid by BBMA. The selection of the initial curator must be approved in advance by WINCHESTER but such approval shall not be unreasonably withheld by WINCHESTER. BBMA shall provide adequate office space and support area to the curator.

6. Display Costs.—All costs of display, including, but not limited to, the costs of unpacking and the costs of display fixtures shall be borne by and paid for by BBMA.

7. Method of Transfer of Ownership of Winchester Collection.—It is the intention of WINCHESTER to make periodic transfers of ownership to BBMA of all or certain segments of the Winchester Collection in such a manner most advantageous to its business and charitable purposes and in a manner compatible with the charitable status of BBMA, so that BBMA will eventually own the entire Winchester Collection.

8. Contingencies.—It is agereed that the ownership of any portion of the Winchester Collection which shall have been transferred to BBMA by WINCHESTER shall pass to non-profit museums or other authorized charitable organizations selected by WINCHESTER and BBMA in the event that the Buffalo Bill Historical Center is closed, abandoned or otherwise fails to operate as a viable museum .

9. Risk of Loss.—All risk of loss of the Winchester Collection after delivery to BBMA and while on exhibit and display at BBMA shall be borne by BBMA and BBMA shall provide risk insurance coverage at least equal to the fair market value of the Winchester Collection and shall name Winchester as an insured party, its interests shall appear.

10. Entire Agreement.—This constitutes the entire agreement between the parties and may not be changed or amended except in writing signed by both parties.

In withess whereof the parties have hereto set their hand and seal on the date first above mentioned.

SUPPLEMENTARY AGREEMENT

Supplementary agreement, dated as of February 24, 1982, by and between Olin Corporation, Winchester Group, East Alton, Illinois, 62024 (hereinafter called "Olin"), and the Buffalo Bill Memorial Association, a nonprofit corporation, P.O. Box 1020, Cody, Wyoming, 82414 (hereinafter called "BBMA").

WITNESSETH

Whereas, Olin entered into an agreement with BBMA, dated August 28, 1975 (the "1975 Agreement"), pursuant to which the "Winchester Collection" referred to therein was permanently loaned to BBMA for display at BBMA's museum; and

Whereas, Olin desires to permanently loan additional firearms to BBMA;

Now, therefore, it is agreed as follows:

1. Olin will permanently loan to BBMA for permanent display at its museum at Cody, Wyoming, the firearms listed in Exhibit A annexed hereto and made a part of this Agreement ("additional firearms");

2. Olin and BBMA agree that all of the terms and conditions of the 1975 Agreement shall apply to the additional firearms;

3. BBMA shall, so long as firearms are on loan under the 1975 Agreement, maintain all licenses required of it by Federal or other laws and regulations and provide Olin with current copies of such licenses.

4. Correspondence, notices and similar communications addressed to Olin under the 1975 Agreement as supplemented hereby shall be mailed or delivered as follows, until further notice: Corporate Secretary, Olin Corporation, 120 Long Ridge Road, Stamford, CT 06904, Attention: Mr. M. Neisloss.

In witness whereof, the parties have executed this Supplementary Agreement as of the date first above mentioned.

SUPPLEMENTARY AGREEMENT

Supplementary agreement, dated as of March 15, 1983 by and between OLIN CORPORATION, 120 Long Ridge Road, Stamford, CT. 06904 (hereinafter called "Olin"), and the Buffalo Bill Memorial Association, a nonprofit corporation, PO Box 1020, cody, WY. 82414 (hereinafter called "BBMA").

WITNESSETH

Whereas, Olin entered into an agreement with BBMA, dated Auguest 28, 1975 (the "1975 Agreement"), pursuant to which the "Winchester Collection" referred to therein was permanently loaned to BBMA for display at BBMA's museum;

Whereas, Olin entered into a Supplementary Agreement with BBMA dated Febraury 24, 1982 (the "1982 Supplement"), pursuant to which additional firearms were loaned to BBMA; and

Whereas Olin desires to loan two additional firearms to BBMA;

Now, therefore, it is agreed as follows:

1. (Olin will permanently loan to BBMA for permanent display at its museum at Cody, Wyoming, the firearms listed in Exhibit A annexed hereto and made a part of this Agreement ("additional firearms").

2. Olin and BBMA agree that all of the terms and conditions of the 1975 Agreement, as supplemented by the 1982 Supplement, shall apply to the additional firearms.

In witness whereof, the parties have executed this Supplementary Agreement as of the date first above mentioned.

Mr. SIMPSON. Madam President, prior to the Tax Reform Act, the Olin Corp. engaged in an ongoing and substantial contributions program throughout the country. And, of course, with the Buffalo Bill Historical Center, too. And the contemplated transfer just keeps getting a little bit delayed.

It can never be vitiated, just a continual delay. And then along comes the Tax Reform Act and the new corporate alternative minimum tax rule.

This has adversely affected Olin's ability to transfer the final title. Specifically, the Tax Reform Act would treat the appreciated value of this collection as an item of tax preference subject to the alternative minimum tax.

Well, as a result, the intended transfer of the collection has not yet been completed. It surely will be. As I say, there is no question about that.

But no one intended this result—not the Olin Corp., certainly not the Buffalo Bill Historical Center. I am sure this was not the intended effect of the drafters of the Tax Reform Act.

So the amendment is simply a necessity to facilitate the final conveyance of this splendid collection which is seen by 250,000 to 300,000 people a year in a wing housing the Winchester Collection. I will be there forever, without question.

But this is precisely what transition rules were to do. So over these last 2 years, I have talked with Senator Bentsen. He said, "Don't worry about it, Al. It's all set."

Danny Rostenkowski, a great guy to deal with, said, "Don't worry, Al, it's all set." Senator Max Baucus, and Senator Bob Packwood too, and yet old Al is still wandering around in the wilderness like John the Baptist.

I tell you, it is a fascinating adventure and a little bit frustrating, I must say, indeed. Because this is known now as a "rifleshot," and I have seen grapeshot fired into this canister all afternoon and the last 2 days where they have lobbed bombs in here that are going to cost billions of dollars in the final result. This thing, at one time, was described as "revenue neutral." I guesss that was the objective of what we were trying to do is to say that things would be "revenue neutral." But even if it is a "rifleshot," what could be more appropriate than having a Winchester to do it?

So I would like to take this to the floor, but it would be a crude act at this hour to ask for a rollcall vote. I hope that the floor managers might see fit to set this little gem into the diadem of stuff that has rolled out of here. I know that Danny Rostenkowski has indicated his interest and support of it.

It is not a rifleshot. It is an important thing that has been literally promised for 2 years. Where it continues to disappear, I have not the slightest idea, but I really no longer care to go on with the inquiry of the investigative approach to find out.

I hope that it will be included as part of this corrections package. I assure you, if it is, it will come out the other end through the House of Representatives. And I see there is nothing here. It is revenue neutral to simply facilitate the transfer of a gun collection to the Buffalo Bill Historical Center at no cost to the Government.

I hope it might be accepted. I present it to the floor managers in that form.

Mr. BAUCUS. Madam President, the Senator from Wyoming, with his unique sense of timing, is offering an amendment which is a rifleshot concerning a rifle collection. The amendment essentially would provide that the donor of appreciated property to a charitable donee does not have to pay taxes on, in this instance, the appreciation of that property. Ordinarily, taxes would have to be paid under the alternative minimum tax.

As meritorious as the contribution to the Buffalo Bill Museum is—and I think it is very meritorious—the effect of this amendment would be to allow the taxpayer, in this instance, an exemption from the alternative minimum tax; that is, appreciated property donated to a charitable organization generally is a tax preference subject to the alternative minimum tax.

We have had many, many rifleshot requests, Madam President. And, I might add, we have had considerable difficulty resisting those rifleshot requests.

If we were to adopt this rifleshot request, Madam President, we would have to go back and revisit all the others that have been requested but excluded from this bill.

I must add, Madam President, if we do include it in this bill the House would come with its bushel basket full of rifle shots and we probably would not have a technical corrections bill.

We must keep our eye on the ball: passage of technical corrections. We are almost there. The hour of 8 o'clock is practically here and it is with considerable reluctance I must tell my good friend from Wyoming that the committee unfortunately is not in a position to accept this amendment. I hope the Senator does not press the amendment.

The **PRESIDING OFFICER** (Mr. Simon). The Senator from Oregon.

Mr. PACKWOOD. The amendment does cost $3 million, actually. It is an example of a company caught up in a minimum tax situation, although dozens of others are in the same position where they entered into contracts or agreements ahead of time, we changed the law and now say: You are going to be subject to minimum tax.

This would be a rifleshot for this particular company to the extent of $3 million. There are many other contracts and offers and acceptances similarly situated that have simply not asked for it.

Mr. SIMPSON. Mr. President, I know that the hour has arrived, but I would ask these floor managers if this surely is not the kind of thing that one should deal with when we are talking about transitional and tax technical corrections. At this hour I am not going to take my colleagues through the labor of a rollcall vote. But I would hope to get some indication that this is what the work of the committee is about, that we will do our work and it will be considered promptly, with dispatch, at the next occasion that the Senators do their remarkable work.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Senator be allowed to proceed for an additional 2 minutes.

The **PRESIDING OFFICER.** Is there objection? Without objection, it is so ordered.

Mr. SIMPSON. Mr. President, I already received the courtesies of the floor managers. I am just saying it seems to me, as we talk about correcting things, this is one thing that should be corrected. You have a contract that is not breachable and an issue which is well within the realm of the committee, and I am asking, not to present this tonight and disrupt the order, that would be untoward.

But is this not something that could be dealt with, with dispatch, as the Senators get into their next efforts in this committee?

Mr. BAUCUS. Would the Senator yield?

Mr. SIMPSON. Indeed, I yield.

Mr. BAUCUS. Mr. President, the Senator is correct. This bill does not include new transition rules. This would be a new transition rule.

Tax bills typically include transition rules. This is not a typical tax bill. It is a technical corrections bill.

The Senator is correct. Next year would be a more opportune time, a more appropriate time, to consider this new transition rule on its merits.

The Senator has my assurance that we will give it every consideration next year, which will be a more appropriate time than this.

Mr. SIMPSON. Mr. President, I appreciate that assurance. Knowing my colleague from Montana, I know it will be there, and I believe, if I can receive that same assurance from my friend from Oregon, that is certainly appropriate enough for me.

Mr. PACKWOOD. Absolutely.

The PRESIDING OFFICER. Does the Senator from Wyoming withdraw his amendment?

Mr. SIMPSON. Yes, Mr. President, I withdraw the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment was withdrawn.

AMENDMENT NO. 3639, AS MODIFIED

Mr. BAUCUS. Mr. President, I ask unanimous consent to reconsider amendment numbered 3639 to modify such amendment as follows:

On page 1, strike out "for such tax year or any preceding tax year" and insert in lieu thereof "before October 11, 1988."

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, in addition, I ask unanimous consent that the last request be amended to also include, "on page 3, strike lines 3 through 17."

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator will send the modification to the desk.

The amendment, as modified, is as follows:

On page 1, strike out "for such tax year or any preceding tax year" and insert in lieu thereof "before October 11, 1988,".

On page 3, strike lines 3 through 17.

DIESEL FUEL TAX—EXCLUSIVE MARINE USE

Mr. MURKOWSKI. As my friend from Oregon knows, there is some concern about the manner in which this bill treats dealers of diesel fuel for marine purposes. As I understand the bill, a marine user of fuel will be able to make a tax-free purchase if the dealer from whom he is purchasing the fuel sells exclusively to waterway users. Is that the bill manager's understanding as well?

Mr. PACKWOOD. The Senator from Alaska is correct.

Mr. MURKOWSKI. The interpretation of the term "exclusively" is of critical importance to many of my constituents in Alaska living in many isolated coastal communities which do not have road access to other parts of the State, such as Dutch Harbor, Cold Bay, Cordova, and the island community of Kodiak. In these communities the marine fuel dealer is the only place in town to buy fuel or he has the only fuel storage tanks in the community. As a consequence, these dealers sell to both marine users, who are exempt from the diesel fuel tax, and to nonmarine users, who must pay the tax. Now the sales to nonmarine users are a very small part of the dealers total sales—they may be for a truck to move fish products around the dock, et cetera. However, if the term "exclusively" is literally applied, that dealer would not quality for the exemption and the marine users would have to pay the tax and wait for their refunds.

Can the two bill managers give me some indication of how they intend the Internal Revenue Service to interpret this provision? In other words, do you intend that the IRS take the unique situation of Alaskan coastal communities into account when interpreting the term "exclusively?"

Mr. PACKWOOD. The Senator from Alaska raises a valid point. Under the facts as he has outlined them it would be my intent to attempt to secure in the conference authority for the Treasury Department to develop regulations for a reasonable de minimis allowance to take account of the unique situation found in these coastal communities, as long as such regulations would not result in additional noncompliance with the diesel tax.

Mr. BAUCUS. In the situation outlined by the Senator from Alaska, I would encourage the conference committee to authorize Treasury to promulgate regulations on the exclusive use provision to allow for a certain level of de minimis sales to nonmarine users, provided there is no additional revenue loss from noncompliance.

Mr. CRANSTON. I understand that there is some confusion in the amendments to the net operating loss limitations that relate to the treatment of accounts receivable for purposes of the 25-percent built-in gain or loss rule. Under the 1986 act, for purposes of calculating the 25-percent threshold test, assets are to be reduced by cash and cash items which include accounts receivable. The bill would give the Treasury authority to change this rule by regulation so that sometimes assets would include accounts receivable. It is not entirely clear what these regulations will provide, since there seems to be some uncertainty about what the proper rule should be. In view of this uncertainty, it would seem appropriate to have the 1986 act rules continue to apply until regulations have been issued.

Mr. BAUCUS. I agree. It would be my hope that such regulations would be prospective in effect and thus would not apply to ownership changes in completed transactions and in transactions as to which there is a binding contract, including a binding purchase offer, before the date of issuance of such regulations.

DISPOSITION OF INVESTMENT PROPERTY

Mr. DIXON. Mr. President, Senator SIMON and I had planned to offer an amendment designed to ensure that charitable organizations liquidating extraordinary large amounts of property would have the time they need to conduct the property sales in an orderly and prudent fashion.

A brief review of the circumstances confronting the MacArthur Foundation illustrates the point. The MacArthur Foundation is our Nation's fourth largest private foundation. It supports a wide variety of charitable and public service projects within this country and throughout the world. The foundation supports, on a sustained basis, programs on mental health research, international peace and security, and worldwide conservation.

The foundation inherited its huge investment portfolio—valued at over $2 billion—as the result of a bequest by John MacArthur in 1978, only 10 years ago.

As part of an IRS-approved plan to divest its portfolio of excess business holdings, the foundation also received an uncommonly large block of investment real estate properties. These properties—45,000 acres valued at $500 to $800 million—represent over one-third of the MacArthur Foundation's entire asset portfolio. A problem arises because most of these properties are concentrated in two contiguous counties of southeast Florida.

With the IRS's approval, the foundation has been able to sell over $200 million worth of its other real estate investment properties piecemeal, under the protection of a liquidating trust.

If the foundation sold this property in a few bulk sales, it would be taxed at the 2-percent rate already provided by Congress on investment asset dispositions by private foundations. These bulk sales, however, would saturate the local Florida real estate market—devaluating the foundation's, as well as the communities', properties.

The foundation, in meeting its competing fiduciary obligations, confronts a no-win situation. The foundation can sell the assets in bulk and, by doing so, fail to achieve full value for them. Alternately, it can attempt to sell them piecemeal. Given the absence of clear guidance in the statute, however, it is possible that the IRS may assert that the foundation is subject to a 34-percent corporate level tax on the entire gain on the sale of these investment properties.

Although we have been working with Treasury on this amendment, we have not yet been able to draft the technical language that would reach the desired result while guaranteeing that no dealer-type income would be protected. Accordingly, in view of the shortness of time, we have decided not to offer our amendment on this bill.

Mr. BAUCUS. The Senator from Illinois is to be thanked for having brought this matter to the attention of this body. From what I have been told of this problem, it appears that the foundation in question should not be penalized because of the unusually large size of the property they have inherited.

As the Senator from Illinois may know, given the late date that this problem has been called to the attention of the Finance Committee, we have not been able to work out all the details for a legislative solution on this bill. Our reticence arises not from the proposed amendment's application to the MacArthur Foundation, but from concern that unforseen problems might arise as the amendment is applied generically. It simply would take more time than we have this late in the session to examine the amendment fully.

I note that IRS procedural rules relating to liquidating trusts provide some flexibility. These rules provide that a liquidating trust must have a fixed and determinable termination date that is generally not more than 3 years. These rules also provide that the termination date should be "reasonable based on all the facts and circumstances." Generally liquidating trusts are not to last for more than 3 years, but the regulations do not appear to foreclose a longer duration.

I look forward to working with my friend next year on this important matter.

Mr. DIXON. I thank my friend, the floor manager of the bill, for his kind words and assurances. It is unfortunate that there was not enough time to provide a legislative solution to this problem. We will continue to work with Treasury to achieve an administrative solution at the earliest possible date. My staff and I will also continue to work with you and the committee staff to fashion appropriate relief for this important sector of our economy.

DIESEL FUEL TAX

Mr. BOREN. Mr. President, several diesel fuel marketers have expressed concern that the committee report on diesel fuel excise tax collection procedures could be interpreted as directing Treasury to impose a very tight definition of who is a wholesale distributor eligible to make tax-free sales to exempt, off-highway business users of diesel fuel. It is my understanding that the committee did not intend such a direction to Treasury, but rather intended by this report language to provide a safe-harbor limiting Treasury's authority. Is it the understanding of the distinguished chairman of the Subcommittee on Taxation and Debt Management and the ranking member of the Finance Committee that the committee intends for Treasury to continue to use the current standard?

Mr. BAUCUS. The Senator is correct. As the Senator has noted, the committee report on section 301 of the bill includes a statement concerning the definition of wholesale distributor that has led to several questions.

Specifically, the committee report states that the Treasury Department may not treat a diesel fuel marketer as a retailer rather than a wholesale distributor eligible to make tax-free sales to exempt, off-highway business users solely because the marketer makes de minimis sales at retail. As manager of the bill, I want to clarify that this language was intended as a safe harbor to protect those wholesale distributors who engage in casual retail sales, other than in bulk, from being precluded from being registered to make tax free sales. Thus, Treasury may not limit qualification as a wholesale distributor to those persons who exclusively engage in wholesale transactions.

I would further note that under the pre-1988 gasoline tax collection provisions, Treasury adopted regulations providing a somewhat more liberal than de minimis standard for defining wholesale distributor. See for example Treasury Regulations section 48.4082-1(d). Provided that Treasury determines a compliance problem would not arise from extending the gasoline tax collection procedures to the diesel tax collection procedures, the standard contained in this gasoline tax regulation would be entirely consistent with the committee report statement to which the Senator refers.

Mr. PACKWOOD. I agree with the remarks of the distinguished manager, Senator Baucus.

Mr. BOREN. Mr. Chairman, a question has also been raised as to whether a farmer cooperative cardtrol/keytrol operation could qualify as a wholesale distributor under the committee bill. Cardtrol/keytrol operations are used thougout Oklahoma and the Southwest by farmer cooperatives. Cardtrol/keytrol operations are unmanned facilities that sell diesel fuel in bulk quantities to farmers who are members of the cooperative. The farmers purchase the fuel on a credit card-like system. The entire operation is computerized, with paper records of each transaction. Under the committee bill, would these farmer cooperative cardtrol/keytrol operations be treated as wholesale distributors even though the cooperative does not actually transport fuel to the farmer?

Mr. BAUCUS. The Senator is correct. The committee intends that bulk sales of diesel fuel placed directly into bulk storage tanks and not, for example, into motor fuel tanks, through a farmer cooperative cardtrol/keytrol facility will be treated as a wholesale distributor. Further, the fact that a farmer cooperative's sales may be made only to its members would not by itself disqualify it from being a wholesale distributor.

Mr. PACKWOOD. I agree with the remarks of my colleague, Senator Baucus.

EXTENSION OF EXPIRING ENERGY TAX CREDIT

Mr. McCLURE. Mr. President, since the committee has extended certain expiring energy tax credits in the bill now before the full Senate, I would like to take this opportunity to seek clarification of the hydroelectric energy tax credit. As you know, the hydroelectric energy tax credit expired on December 31, 1985, but may be claimed for certain projects after that date if certain affirmative commitments were made with regard to such projects before the expiration date and if such projects are placed in service by December 31, 1988.

I would like to clarify that once such property is placed in service, the hydroelectric energy tax credit would not be forfeited or reduced, in certain circumstances, when a second stage of a project is undertaken. For example, a second stage could be undertaken that would use a dry lake bed as a holding reservoir for excess water derived from high flows, to be released during low flows to enhance the output of the project. This second stage would be accomplished by separate contract. Finally, the hydroelectric energy tax credit would not be claimed with respect to the second stage of the project. If this second stage would not be deemed to create a new impoundment—as the term "new impoundment" is contemplated under the statute—it therefore would not adversely affect the ability of the underlying project to retain the hydroelectric energy tax credit in full.

Is my interpretation correct that the hydroelectric energy tax credit earned with regard to the original project would not be forfeited or reduced in that situation?

Mr. BAUCUS. That is correct. As long as the second stage of the project such as the one you have described is not considered a new impoundment—as the term "new impoundment" is contemplated under the statute—the second stage should not impair the energy tax credit earned on the original project, unless the second stage resulted in the increase in the installed capacity of the project above 25 megawatts.

Mr. PACKWOOD. I agree with the remarks of my colleague, the Senator from Montana.

MODIFIED ENDOWMENT CONTRACTS

Mr. PRYOR. Mr. President, I have several questions for the gentleman from Montana concerning the single premium life provisions of this bill.

I understand that under the provision contained in the committee amendment relating to modified endowment contracts, certain universal life insurance contracts known as option II or option B contracts and other similar contracts may be considered modified endowment contracts due to the application of the material change rules. The explanation of the committee amendment indicates that other universal life insurance contracts are not considered materially changed if the premiums paid under the contract are within the limitations provided under present law. Was the failure to address option II contracts and other similar contracts inadvertent?

Mr. BAUCUS. Yes; it was the intent of the committee that the definition of necessary premium would take into account an increase in the death benefit provided under the contract but only to the extent that the increase is taken into account under present law for proposes of the definition of life insurance.

Mr. PRYOR. Second, the provision contained in the committee amendment relating to modified endowment contracts applies to contracts entered into on or after June 21, 1988. For this purpose, a contract entered into before June 21, 1988, is considered entered into after such date if certain changes in the contract occur. It is unclear under the committee amendment how the seven-pay test is to apply to a contract that loses its grandfather status. Are the rules that apply to contracts that are materially changed applicable to such a contract?

Mr. BAUCUS. Yes; in the case of a contract that is entered into before June 21, 1988, and that loses its grandfather status, the cash surrender value of the contract is to be annuitized over a 7-year period.

Mr. PRYOR. Last, the provision contained in the committee amendment relating to modified endowment contracts reduces the amount of the seven-pay premium for contracts that are materially changed. For certain contracts, the new seven-pay premium may be negative. If a contract was not a modified endowment contract prior to the material change and no further premiums are paid under the contract, I assume that the contract would not be considered a modified endowment contract due to the negative limitation. Is this correct?

Mr. BAUCUS. Yes; the committee did not intend to treat the contract as a modified endowment contract in the situation you have described.

INSTALLMENT SALES

Mr. BOREN. Mr. Chairman, as you know, in last year's reconciliation bill we repealed the use of the installment method for dealers in personal property. Since that time, I have become concerned about the impact repeal of the installment method has had on many small businesses, particularly in the automobile industry, and to the need to provide consumers with reliable, inexpensive transportation. I am concerned that the committee has not had an adequate amount of time to evaluate the impact of the repeal of the installment sales provisions on these small businesses. Is it your understanding that the committee intends to consider this issue early in the next Congress?

Mr. BAUCUS. I am aware of the concern of the Senator from Oklahoma on this issue. The repeal of the installment method may have presented a financial burden to some small businesses. I hope that the Finance Committee will have a chance to review the operation of the new rules in the next Congress.

APPLICATION OF DIESEL EXCISE TAX EXEMPTION TO ELECTRIC UTILITIES IN ALASKA

Mr. STEVENS. Mr. President, would the Republican manager of the bill yield for a question?

Mr. PACKWOOD. I would be happy to yield to the Senator from Alaska for a question.

Mr. STEVENS. I thank the Senator. I'd like to preface my question by explaining that Alaska, more than any other State, relies heavily on diesel fuel in generating electricity. Consequently many of the small utilities in my State therefore have a considerable interest in whether they are covered by the provisions in this bill relating to the diesel excise tax.

Mr. PACKWOOD. I can appreciate the Senator's concern about this issue.

Mr. STEVENS. As I understand it, section 301 of the committee amendment reported by the Finance Committee on August 3, 1988, would permit the tax-free purchase of diesel fuel by off-highway business users, when purchased from a producer.

Mr. PACKWOOD. The Senator from Alaska is correct.

Mr. STEVENS. When diesel fuel is delivered in bulk quantities to electric utilities in Alaska, would that be considered to be a purchase from a "producer"?

Mr. PACKWOOD. In my view, that is the intent of the Finance Committee. For purposes of this section of the bill, the definition of "producer" is intended to include distributors of diesel fuel who deliver fuel into bulk storage tanks, such as fuel storage tanks at an electric utility of any size.

Mr. STEVENS. Therefore, this bill will permit electric utilities of any size to purchase diesel fuel for electric generation, without paying the diesel excise tax.

Mr. PACKWOOD. In my view, the Senator from Alaska is correct in his interpretation. Does the manager of the bill agree?

Mr. BAUCUS. I agree with the remarks of my colleague, the Senator from Oregon.

BONDING REQUIREMENTS OF DIESEL FUEL TAX SECTION

Mr. GRAMM. Mr. Chairman, several organizations have contacted me about their concern over registration, bonding, and information reporting requirements which may be required in order for off-highway diesel users to continue purchasing fuel tax free. First of all, let me say I believe we will have accomplished nothing by restoring tax-free purchases of diesel to exempt users if we require them to register with the IRS, post a bond or some tax liability they don't even owe, and then force them to submit a 10-page thesis to the Internal Revenue Service every quarter about the fuel they purchased.

Mr. BAUCUS. I assure my colleague from Texas that it is the intent of members of the Senate Finance Committee that the Internal Revenue Service only require such information reporting as may be necessary to ensure compliance with this provision. Of course, it is our intent that the Internal Revenue Service keep the paperwork burden to an absolute minimum. What specific concern does the Senator from Texas have with respect to bonding requirements?

Mr. GRAMM. It has been pointed out to me that certain report language states: "In order to maintain the greatest possible compliance, the committee decided that sales to an exempt user may be made without payment of tax only when the parties to the sale satisfy Treasury-prescribed bonding and registration requirements." Now I hope that language will not be interpreted to mean that each and every exempt user will be required to post a bond before he or she will be allowed to purchase tax free.

If we required every farmer, rancher, fisherman, logger drilling contractor, and strip miner to post a bond before allowing them to purchase diesel tax free, in essence, we would be saying, "Even though you're using this fuel for tax-exempt purposes, the Internal Revenue Service doesn't trust you, so we want you to post a bond so that, if you're found using this fuel for taxable purposes, you will have enough money to satisfy your tax liability and any penalties we may impose." I hope this is not the intent of the members of the Senate Finance Committee.

Mr. PACKWOOD. I would interpret the language to which the gentleman from Texas is referring to say that sales to an exempt user generally may be made tax free without requiring that a bond be posted. On behalf of the minority members of the Finance Committee, I would say that the reference to satisfaction of Treasury-prescribed bonding requirements means that Treasury has the flexibility to require bonding only in those cases where there is potential for abuse and evidence to suggest that abuse will occur.

Mr. GRAMM. Would the Senator from Montana concur with that statement?

Mr. BAUCUS. I agree with the Senator from Oregon and would be happy to work with the conferees toward this clarification.

Mr. GRAMM. I thank both the gentleman from Montana and the gentleman from Oregon for their assistance with this problem.

SECTION 117 EXCLUSION FOR GRADUATE STUDENT TUITION REDUCTION

Mr. RIEGLE. I would like clarification of an issue with respect to graduate teaching or research assistants at colleges and universities that arises under the scholarship provisions of section 117 of the Internal Revenue Code of 1986. As amended by the Tax Reform Act of 1986, section 117 provides an exclusion from gross income for qualified scholarships and qualified tuition reductions. However, the exclusion is not available for any portion of a scholarship or tuition reduction amount that represents payment for teaching, research, or other services.

At some educational institutions, tuition remission may be the subject of collective-bargaining agreements between the institution and its graduate teaching or research assistants. Am I correct in believing that tuition reduction is not to be considered as representing payment for services merely because it is provided under the terms of such a collective-bargaining agreement?

Mr. BAUCUS. The Senator from Michigan is correct. A qualified tuition reduction is not to be considered as provided for services under section 117 of the code merely because it is provided under a collective-bargaining agreement between a college or university and its graduate teaching or research assistants. Accordingly, the amount of a qualified tuition reduction received pursuant to such a collective-bargaining agreement that constitutes payment for services under section 117, and hence is not excludable from income, is to be determined on the basis of all the relevant facts and circumstances.

CLARIFYING "BOOK INCOME" ISSUE FOR EXEMPT ORGANIZATIONS

Mr. ROTH. I understand that some question of interpretation has arisen concerning the effect of the bill's language with respect to the application of the alternative minimum tax on the unrelated business taxable income of an exempt organization. Could you please tell us what the committee intends on this point?

Mr. BAUCUS. The bill clarifies that, for exempt organizations, present law uses the term "alternative minimum taxable income," which includes specifically the "book income" and "current earnings" adjustments, to mean only those items of income and deductions which are included in computing unrelated business taxable income, after taking into account the modifications of section 512(b) for investment income and other items. The committee has had no intention of causing the "book income" or "current earnings" adjustments to impose the alternative minimum tax on the investment income of exempt organizations.

PROFIT-SHARING PLANS

Mr. DIXON. Mr. President, I had planned to offer what I believed was a noncontroversial amendment to the tax technical corrections legislation before us today. This amendment would have resolved an ambiguity in the Employee Retirement Income Security Act of 1974 [ERISA] that has left the profit-sharing plans of publicly traded partnerships at a competitive disadvantage relative to corporations.

At the request of the floor managers of the bill, I have agreed not to offer it at this time. I would like to ask the Senator from Montana, however, if he would agree to move expeditiously on this provision when the appropriate vehicle become available?

Mr. BAUCUS. I appreciate and respect the Senator's decision not to offer his amendment at this time. It is my understanding that this amendment has no revenue effect. When the appropriate legislative vehicle is before us, I will work with the Senator to try to find a way to deal with the problem that the Senator's amendment would address.

MULTIPLE EMPLOYER PLAN

Mr. BOREN. Mr. President, I would like to inquire of the distinguished manager of the bill concerning the committee's multiple employer plan amendment. Under the committee amendment, the minimum funding standards are to be determined by treating each employer in a multiple employer plan as maintaining a separate plan, unless the plan's method for determining required contributions assures that each employer will contribute at least the required minimum. I understand that in this case the multiple employer plan will file only a single form 5500 and only a single schedule B for the entire plan will be required to be prepared.

Mr. BAUCUS. It may be possible to demonstrate such compliance, for example. The Senator is correct. Plans must, however, be able to demonstrate compliance with the employer-by-employer rule by demonstrating—using appropriate assumptions for turnover, mortality, future growth in wages, and investment experience—that each employer contributed, at a minimum, the sum of normal cost plus required amortization of any unfunded liabilities, or net experience or other losses reduced by the amortization of any credits for experience or other gains and any contributions the deduction for which would be denied by the full funding limitation. Each employer's normal cost would have to reflect its actual salary and demographics.

Unfunded past service liabilities would have to be amortized at least as rapidly as required by the code. Under this method, no deficiencies could arise and no prior year credit balances would be permitted.

COLUMBIA RIVER PUD'S

Mr. ADAMS. Mr. President, I, along with my distinguished colleague from Montana [Mr. Baucus], seek a clarification of section 1317(25) of the Tax Reform Act of 1986. On the Columbia River in the State of Washington a number of public utility districts have embarked on a 10- to 15-year program to rehabilitate and improve existing hydroelectric facilities. These improvement projects are for facilities at dams that were financed with the proceeds of tax-exempt bonds issued before 1969 and which are owned by State and local governmental agencies. These dams and adjacent waters and lands also provide many public recreational sites. Section 1317(25) of the Tax Reform Act of 1986 provided authorization for these public utility districts to issue up to $750 million of tax-exempt bonds to finance this improvement program, but requires that $400 million of this amount be issued after December 31, 1991. However, another provision of the Tax Reform Act of 1986 inadvertently may terminate, on January 1, 1991, the authority of the Columbia River public utility districts to issue bonds for these improvements. Clarification is needed so that the amendments made to the special transitional rules of the Tax Reform Act of 1986 by the Technical Corrections Act of 1988 allow these Columbia River public utility districts to issue tax-exempt bonds for improvements after December 31, 1990.

The intent of the Tax Reform Act of 1986 clearly was for these public utility districts to be allowed to issue bonds after December 31, 1990. Indeed, that statute requires $400 million of bonds to be issued after December 31, 1991. Therefore, we need to clarify that the amendment made by the Technical Corrections Act of 1988 to the provision of the 1986 Tax Reform Act which otherwise may terminate the authority of Columbia River public utility districts to issue bonds financing these improvements, in fact, is intended to give them authority to issue tax-exempt bonds after December 31, 1990, for these capital improvement projects. I therefore ask the distinguished subcommittee chairman, Mr. BAUCUS, and the distinguished ranking member of the Finance Committee, Mr. PACKWOOD, to clarify these provisions.

Mr. BAUCUS. My distinguished colleague from the State of Washington [Mr. ADAMS] has raised a valid issue which should be clarified. Section 113(g)(48) of the Technical Corrections Act of 1988 amends section 1317(25) of the Tax Reform Act of 1986—relating to termination of transition rules for specific facilities—to provide that the transition rules for specific facilities do not terminate after December 31, 1990, where other paragraphs of that section otherwise provide. Certain public utility districts in the State of Washington have authority to issue tax-exempt bonds under section 1317(25) of the Tax Reform Act of 1986. That section does not specifically state that the public utility districts may issue bonds after December 31, 1990, but does provide, in part, that no more than $350 million of a total authorized amount of $750 million of tax-exempt bonds may be issued before January 1, 1992. Clearly, its intent was to authorize bonds which could be issued after December 31, 1990. It is my understanding that the amendment contained in section 113(g)(48) of the Technical Corrections Act of 1988 will allow these public utility districts in the State of Washington to issue tax-exempt bonds pursuant to section 1317(25) of the Tax Reform Act of 1986 after December 31, 1990.

Mr. PACKWOOD. My distinguished colleague from the State of Washington [Mr. ADAMS] has raised a valid issue which should be clarified. I agree with the interpretation as presented by my friend from Montana [Mr. BAUCUS].

HOUSE PROVISION ON POOLED FINANCING BONDS

Mr. GLENN. I would like to discuss with the floor managers a section in the House version of the technical corrections bill, H.R. 4333, that will restrict the use of pooled financing bonds. The language in this House proposal, if enacted into law, would seriously and adversely affect the Ohio Water Development Authority—a program that has financed more than $2 billion worth of water quality projects for the citizens of Ohio for nearly 20 years—as well as several other State programs.

This Ohio agency issues bonds and lends the proceeds to local Ohio governments to finance the construction of water supply and waste water treatment facilities. In fact, the OWDA has been so successful that its program serves as a model for the new State Revolving Loan Fund Program created by the Congress in the Clean Water Act of 1987.

As a result, the restrictions on pooled financing bonds found in the House bill would endanger bond-financed revolving loan fund programs like the OWDA. Further, it would prevent any other State from setting up a similar program under the Clean Water Act. The Senate participants in the conference on the technical corrections bill should therefore reject this House provision.

Mr. METZENBAUM. I join with my colleague from Ohio in urging the floor managers to reject the language found in the House proposal. According to the House, these pooled financing bond provisions are meant to prevent the issuance of so-called hedge blind pool bonds. These bonds are issued as a hedge against rising interest rates. The proceeds of the bonds will be used to make loans only if interest rates do not go down. If interest rates happen to drop after the bonds are issued, the bond proceeds are expected to be used to redeem the bonds—instead of to finance projects. The bond proceeds are invested at a rate which generates enough investment income to pay bond interest until the proceeds are lent or used to redeem the bonds. Sometimes the issuer's obligation to pay underwriting fees and other issuance costs is contingent on the use of the bond proceeds to make loans.

The OWDA has never issued such bonds and has no intention of issuing such bonds. The House proposal is intended to eliminate abusive financing programs. However, the OWDA Program is not abusive, and consequently, the House proposal should be rejected.

Mr. GLENN. In many States like Ohio there are a great number of small towns and special districts which are not large enough to access the financial markets directly. In addition, issuance of tax-exempt bonds today require the assistance and advice of highly trained experts. Pooled financing gives smaller issuers the benefits of access to the securities market and permits these professional fees and other issuance costs to be spread over the many bonds of a large issue.

Mr. METZENBAUM. The OWDA bonds also receive a higher bond rating than many other local government issues. Higher ratings mean lower interest costs, savings which can be passed through to the local governments. Finally, OWDA is able to develop and maintain the financial and legal expertise required to raise capital in the bond markets, which also helps to keep issuance costs down. It is for these reasons that the OWDA and other State agencies across the country issue pooled financing bonds—not to gain arbitrage profits or to hedge against interest rate increases.

The House bill's pooled financing proposals would restrict the OWDA's ability to finance water quality projects. It would force the OWDA to coordinate the plans of numerous local governments in order to issue bonds, and impose significant additional administrative and issuance expenses. It would introduce delay and uncertainty about when money will be available to local governments. One result will be that larger local governments will resort to more expensive, single project financing to avoid having to coordinate their own efforts with other local governments.

Mr. GLENN. The House bill's pooled financing bond provisions do not distinguish between abusive hedge bond pool financings from nonabusive ones, like, for example, OWDA's. The provisions were added to the House bill without hearings, at the last minute, in a closed session of the House Ways and Means Committee. These provisions will do a great deal of harm to the critically important efforts of State and local governments to prevent further degradation of our water resources. If abuses exist, they must be dealt with by legislation which curbs the abuse without needlessly interfering with legitimate and important programs.

I urge the floor managers to assure the Senate that no bill brought before the Senate will contain any provisions restricting the issuance of legitimate, nonabusive pooled financing bonds like those issued by OWDA and many other State agencies.

Mr. PACKWOOD. I would like to add that the pooled financing bond provisions in the House bill cause significant problems for programs in many other States, including my own. These provisions would require major changes that would seriously erode the operational efficiencies of programs in Oregon, Texas, West Virginia, Pennsylvania, and New Jersey, among others. These are programs for Government-owned and Government-operated infrastructure projects of a kind traditionally financed with the proceeds of tax-exempt bonds. Because word of the provisions is still spreading, it is likely that many more States, not yet heard from, would also be adversely affected.

The House proposal appears to have been based on extremely limited information about its effects on the operations of important and worthwhile State and local government programs, such as Oregon's and Ohio's.

In addition, the provision's prohibitions on the use of loan repayments to make additional loans would prevent the creation of any kind of revolving loan program such as those the Congress sought to encourage in the Clean Water Act of 1987. The implementation of that act's State Revolving Fund Program, intended as a substitute for Federal "title II" grants for water treatment projects, is seriously jeopardized by the House bill's restrictions.

The existence of a few abusive "pools" does not justify adding provisions to the Tax Code that will seriously disrupt the operation of so many State and local government programs that are innocent of such abuses.

Mr. BAUCUS. I too am concerned that the pooled financing bond provisions in the House bill may cause serious problems for the OWDA and many other State and local governments. It is my intention that the Senate participants in the conference stand firm against the provisions in the House bill.

Mr. PACKWOOD. Let me reiterate that I am concerned that this House proposal would have a serious impact on legitimate, nonabusive pooled financing bond programs. Consequently, it is my intention that the Senate conferees reject any House language that would jeopardize worthwhile programs like the OWDA.

REPEAL OF THE GENERAL UTILITIES DOCTRINE

Mr. HEFLIN. Is the distinguished Senator available to discuss a question I have regarding the measure now before the Senate?

Mr. BAUCUS. Yes, I am. I would be delighted to answer the question of the Senator from Alabama.

Mr. HEFLIN. I thank the Senator from Montana.

My question concerns section 106(g)(5)(B) of the bill, which amends section 633(d) of the Tax Reform Act of 1986. As the Senator will recall, section 633(d) of the Tax Reform Act contains transitional rules for certain small corporations regarding the repeal of the General Utilities Doctrine.

My question is: If a corporation—which was in all other respects a "qualified corporation" under the transition rules of section 633(d)(5) of the Tax Reform Act of 1986—were to have adopted a plan of liquidation prior to March 31, 1988, and is completely liquidated prior to January 1, 1989, and on August 1, 1986, and at all times thereafter before such liquidation, the corporation was "closely held enough" so that more than 50 percent, by value, of its stock was owned by 10 or fewer qualified persons, would such corporation come within the definition of "qualified corporation" under section 633(d)(5) of the Tax Reform Act of 1986 regardless of how long any such shareholders may have held their stock and regardless of whether or not such shareholders were the same throughout the applicable period?

Mr. BAUCUS. The corporation you have just described is a "qualified corporation" under section 633(d)(5) of the Tax Reform Act. The Senate Finance Committee included section 106(g)(5)(B) in the technical corrections bill now before the Senate in order to clarify the situation you have described.

Mr. HEFLIN. I thank the Senator from Montana for his assistance.

Mr. BAUCUS. The Senator is welcome. I am very pleased that I was able to be of assistance to my friend from Alabama.

GROUP LEGAL SERVICES

Mr. RIEGLE. I have a question concerning the provision of the bill dealing with the extension of the exclusion for employer provided group legal services benefits. This provision basically reinstates the exclusion retroactive to December 31, 1987, and extends the exclusion for 1 year through the end of 1988. However, this provision for the first time places a cap on the amount of employer provided group legal services which are exempt from taxation. Specifically, the exclusion of the premium value of any group legal services plan which provides insurance-type protection against legal expenses for any individual is limited to $70 per taxable year. This limit applies to the "premium value" of a plan—whether insured or self-insured—not to the reimbursements or services provided under the plan.

Obviously, it is easy to determine the premium value of an insured group legal services plan. It is the premium paid by the employer to the insurance company. However, I believe we need to provide additional guidance to employers on how the premium value should be calculated in situations where the group legal services plan is a self-insured plan. It is my understanding that in such cases the premium value would be determined by taking the total amount paid by the employer under the plan during the year, and dividing this by the total number of individuals who are entitled, in their own right, to benefits under the plan.

To use a specific example, the group legal services plans maintained by the major auto companies are all self-insured plans. That is, the companies simply contribute to the plans whatever amount of money is needed to pay the covered legal expenses. Various classes of individuals are eligible, in their own right, for benefits under these plans, including active employees, laid off employees, employees on leave, retirees, and surviving spouses. Dependents of these classes of individuals also have "secondary" eligibility. It is my understanding that the premium value of these plans would be determined by taking the total amount contributed by the company to the plan during the year, and dividing this by the total number of individuals who have primary eligibility for benefits under the plan—that is, the total number of active employees, laid off employees, employees on leave, retirees, and surviving spouses covered under the plan.

Mr. BAUCUS. The Senator's understanding is correct.

For example, if a company makes contributions to a trust funding a group legal services plan that provides insurance-type coverage, the total amount of the company contributions made in 1988 to the trust to fund the plan is divided by the number of employees, former employees and other individuals entitled to receive plan benefits other than as dependents of the participants. The resulting amount is the equivalent of a premium paid to a group legal services plan.

EXEMPTION OF NONPROFIT HEALTH MAINTENANCE ORGANIZATIONS

Mr. CHAFEE. Mr. President, I would like to obtain clarification of the effect of the Tax Reform Act of 1986 on the exemption of nonprofit health maintenance organizations. The statement of managers reported that section 501(m), which was added to the code by the Tax Reform Act, would not alter the exempt status of health maintenance organizations. That statement is not reiterated, however, in the explanation of section 501(m) in the Finance Committee report on this bill.

Mr. BAUCUS. Mr. President, in response to the statement of my friend from Rhode Island, nonprofit health maintenance organizations provide physician services in a variety of practice settings primarily through physicians who are either employees or partners of the health maintenance organization or through contracts with individual physicians or one or more groups of physicians—organized on a group practice or individual practice basis. Code section 501(m) did not alter the tax-exempt status of such health maintenance organizations.

LINES OF BUSINESS

Mr. BOREN. Mr. President, in the general explanation of the Tax Reform Act of 1986, prepared by the staff of the Joint Committee on Taxation—the Blue Book—beginning on page 794, the concept of "separate line of business" as it applies under section 89(h)(4) and other sections of the Internal Revenue Code is discussed.

It is clear that the Secretary of the Treasury is to prescribe by regulation what constitutes a separate line of business. The text provides:

> Congress generally intended that a line of business or operating unit include all employees necessary for the preparation of property for sale to customers or for the

provision of services to customers. * * * Certain exceptions to the general rule * * * may be established by regulation where an employer has 2 operations that are vertically integrated and that traditionally are operated by unrelated entities.

I would like to ask the distinguished floor manager, by way of example, is it intended that a vertically integrated oil company could elect to treat its retail marketing operations as a line of business separate from its production and refining operations inasmuch as the retail marketing of petroleum products is traditionally conducted by independent individual operator/dealers rather than by vertically integrated oil companies?

Mr. BAUCUS. Yes; it is intended that under section 89 the retail gas operations of a vertically integrated oil company may be treated as a separate line of business so long as the retail gas market has traditionally been operated by independent operators or dealers who are self-employed or employees of businesses unrelated to vertically integrated oil companies. Of course, the line of business requirements set forth in section 414(r) must be satisfied. Thus, a retail gas operation of a vertically integrated company must have at least 50 nonexcludable employees and must satisfy any guidelines published by the Secretary of the Treasury.

Mr. BRADLEY. Mr. President, I wonder if I might engage the distinguished manager's attention to raise an issue that is of great importance to my State, New Jersey, and to several other States as well. The issue deals with the circumstances under which payments received by a regulated public utility are exempt from tax as nontaxable contributions to capital.

In IRS advance notice 87-82, the Service issued a clarification of the circumstances in which a payment is or is not taxable. Significantly, the notice states that if a particular payment received by a utility benefits the public at large, the payment is nontaxable.

Mr. President, I believe the IRS notice correctly states Congress' intent. The matter takes on particular urgency in the context of payments to utilities by Federal, State, and local governments for the construction of alternative water supply projects in designated zones of drinking water contamination. I believe, and I know my view is shared by the Environmental Protection Agency, that such payments should be nontaxable in that they benefit the public at large.

Polluted water is a serious problem, not just for New Jersey but for the Nation. Should the IRS determine that providing safe drinking water is not a public benefit, and should it declare that payments for providing alternative sources to polluted water are taxable income to the utility, then Congress must act to reverse this erroneous interpretation of congressional intent.

I would like to ask the distinguished manager if he does not share my view that providing American families with clean drinking water is among our highest priorities. And, in anticipation of his answer, I would like his pledge that, should the IRS come to the wrong conclusion on this matter, the Finance Committee will hold hearings early next year to redress this unacceptable outcome.

Safe, clean drinking water is America's birthright. And I, for one, am committed to protecting it. I am sure the Senator from Montana will agree and that he will want to see Congress enact legislation to guarantee it, should that become necessary.

I ask unanimous consent that a letter I sent to the Administrator of EPA be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, August 12, 1988.

Hon. LEE M. THOMAS,
Administrator, Environmental Protection Agency, Washington, DC.

DEAR MR. THOMAS: As you may know, the 1986 Tax Reform Act substantially amended section 118(b) of the Internal Revenue Code of 1954. Former section 118(b) provided that, under certain circumstances, contributions in aid of construction received by a regulated public utility were treated as nontaxable contributions to capital. The 1986 Act changed the treatment of such payments, requiring that in most instances, they be included in gross income under section 61 of the 1986 Code.

In IRS Advance Notice 87-82, the Service issued a clarification of the situations in which Section 118(b) will, or will not, treat a payment as taxable income to the utility. Significantly, the Notice states that if a particular payment received by a utility does not reasonably relate to the provision of services by the utility to or for the benefit of the person making the payment, but rather benefit the public at large, the payment is not treated as taxable income to the utility but rather as a non-taxable contribution to capital.

I believe the IRS Notice correctly states the Congress' intent. The matter takes on particular urgency in the context of payments to utilities by federal, state and local governments for the construction of alternative water supply projects in designated zones of drinking water contamination. Such payments should be non-taxable in that they benefit the public at large.

Constructing alternative water supply projects for the general public where the Department of Environmental Protection has determined that the existing supply is contaminated is an urgent priority in my state. However, it is also a nationwide problem that demands leadership by your agency.

Notwithstanding Notice 87-82, there is unfortunately some confusion as to the effect of the 1986 Tax Reform Act on payments to utilities to construct these public projects. Accordingly, the township of Bridgewater, New Jersey has submitted a ruling request on the issue of how the repeal of Section 118(b) effects the characterization of monies paid by Bridgewater to the Elizabeth Water Company to provide an alternative water supply where the existing supply is contaminated. I understand EPA's Region II office has been in touch with the Township on this matter because they recognize the potentially serious consequences to similar projects throughout the country should Bridgewater receive an adverse ruling. I also understand that Region II will be bringing this matter to your attention. I would urge you to put EPA strongly on record in support of an interpretation of the 1986 Act that would not require a utility to take such payment into income and that would permit these vital public health and safety projects to proceed.

Sincerely,

BILL BRADLEY.

Mr. BAUCUS. The Senator from New Jersey makes an excellent point. I agree that if the IRS does find that such payments are taxable income, the Finance Subcommittee should hold hearings on this issue early in 1989. I thank the Senator, Mr. BRADLEY.

ESTATE FREEZE PROVISIONS

Mr. DANFORTH. Mr. President, the technical corrections bill contains several changes to the estate freeze provisions that we enacted as part of the Revenue Act of 1987. I have no problem with these proposed changes which represent a significant improvement over the House bill.

I am concerned, however, that a portion of the language in the Senate Finance Committee report might be construed to undercut the original estate freeze effective date contained in the 1987 act. The 1987 act grandfathers all freezes that were completed before December 18, 1987. On page 526 and 527 of the Senate Finance Committee report of August 3, 1988, in a section entitled "Reasons for Change," it is suggested that in certain circumstances the failure to exercise stock conversion rights might be deemed a transfer of wealth subject to gift tax. I would like clarification that such a transfer will not, of itself, cause section 2036(c) to apply. Otherwise, even if a holder of convertible preferred stock created in a transaction before December 18, 1987, did nothing, it is possible that appreciation which he could have obtained if he had converted to common stock on or after December 18, 1987, would be taxed under section 2036(c).

Mr. President, I do not think that this reading was intended. Accordingly, I would like to ask the two floor managers if the Senate Finance Committee intended to narrow the 1987 act's grandfather date by the changes in this year's bill.

Mr. DOLE. Mr. President, I share the Senator from Missouri's concern and I would also appreciate receiving some assurance from the managers that the nonexercise of conversion rights which were in existence before December 18, 1987, will not be considered a transfer for purposes of section 2036(c).

Mr. BAUCUS. Mr. President, I understand the concerns expressed by my colleagues. It was the intent of the committee that the nonexercise of a right to convert preferred stock into common stock in existence before December 18, 1987, is not to be treated as a transfer for purposes of the effective date rule of section 2036(c).

Mr. PACKWOOD. Mr. President, I concur fully with the Senator from Montana, and the language should be considered so clarified.

SECTION 532(c)

Mr. KASTEN. Mr. President, at this point, I would like to enter into a brief colloquy with the managers of the bill. Senator PACKWOOD, am I correct in understanding that 532(c) was intended to prevent the conversion of dividends taxable at ordinary income rates to capital gains and to prevent the deferral of income tax?

Mr. PACKWOOD. The Senator is correct. Section 532(c) was primarily based on the need to close a loophole existing when there was a difference between the long-term capital gains rate and the tax rate on ordinary income and to prevent the deferral of tax. As a result of the Tax Reform Act of 1986, capital gains are taxed at the same rate as dividend income and corporations are taxed at a higher marginal tax rate than individuals. Accordingly, the 1986 act also insures that the investment corporation device, which converts dividend income into capital gains income and results in tax at corporate rates, is uneconomical.

Mr. KASTEN. I thank the Senator. I am withdrawing the amendment at this time with the understanding that the managers share my view that section 532(c) may be unnecessary in light of the present rate structure.

Mr. BAUCUS. The Senator can be assured that this issue will receive full consideration as part of the committee's effort to review the taxation of subchapter C corporations and their shareholders next year.

Mr. KASTEN. I thank the Senator.

MARYLAND SAVINGS AND LOAN CRISIS AND IRS

Mr. SARBANES. During the savings and loan crisis in Maryland in 1985, the State government took responsible action to protect depositors and prevent collapse of financial markets by establishing a State agency to insure the deposits in savings and loan institutions that had been insured by the insolvent private insurance corporation. Maryland is attempting to pay off all depositors to finally end the crisis but is being delayed by a tax dispute with the Internal Revenue Service. As the floor manager of this bill knows, I question whether the State of Maryland should be taxed for the Federal tax liabilities of an insolvent predecessor as a result of State action to protect depositors in insolvent savings and loan institutions. I commend the State for its effort to settle this matter, and I would hope the IRS will be reasonable and promptly resolve this dispute.

Ms. MIKULSKI. I want to reinforce the comments of my colleague from Maryland. The State of Maryland has made a good-faith effort to untangle a financial knot that threatened the savings of thousands of Marylanders. The tax dispute with the IRS is putting a financal burden on these depositors; I would hope that the IRS could take that into account. And if this dispute cannot br resolved, I would appreciate any help the Finance Committee can offer in looking into the matter.

Mr. BAUCUS. I share the concern of the Senator from Maryland and hope that the IRS and the State can reach agreement to resolve this dispute. Should this matter not be resolved in the near future, the Finance Committee would be happy to consider appropriate action. I appreciate the Senator's interest in this issue.

TESTAMENTARY TRUST

Mr. KENNEDY. Would the distinguished chairman agree that under section 106(g)(5)(B) of S. 2238, if a testamentary trust made a valid discretionary distribution of stock which it held for 6 years to an individual who had been a beneficiary of the trust for these same 6 years, then this individual would be treated as owning this stock for 6 years and would be a qualified person who would meet the 5-year requirement imposed by section 106(g)(5)(B) of S. 2238?

Mr. BAUCUS. Yes; the Senator is correct.

DRAFT GREENMAIL

Mr. MOYNIHAN. I would like to inquire of the Senator from Montana what his understanding of the application of the greenmail tax is in light of the amendments made by this bill. Am I correct in concluding that the greenmail tax does not apply in a situation where the stock of the taxpayer and all other shareholders is purchased at the same price, at essentially the same time and in a transaction which is substantially the same; that is, all shares are purchased with the same total value of consideration per share, whether in the form of debt, debenture, or cash, with no additional consideration provided to any selling shareholder?

Mr. BAUCUS. The Senator's conclusion is correct.

QUALIFIED GROUP

Mr. ADAMS. Mr. President, I seek a clarification of section 633(d) of the Tax Reform Act of 1986, section 106(g)(5)(B) of S. 2238, and the relevant explanatory provisions of the Senate Committee on Finance Report to S. 2238. These provisions pertain to criteria recognizing the gain or loss on liquidating sales and distribution of property. Specifically, an ambiguity results in the Senate committee report interpretation of when a corporation may be found to be a "qualified group" under the terms found in section 106(g)(5)(B) of S. 2238. This in turn may prevent recognition of a part of the corporate gain on the sale of corporate assets.

Within section 106(g)(5)(B) of S. 2238, as interpreted by the Senate Finance Committee report, it is stated that the bill provides that a corporation is not a "qualified group" corporation unless more than 50 percent of the stock of such corporation is owned—on August 1, 1986, and at all times thereafter before the corporation is completely liquidated—by the same 10 or fewer qualified persons at all times during the 5-year period ending on the date of the plan of liquidation.

The facts of the case in question are that 100 percent of the shares of the affected corporation were owned by two shareholders until mid-1987, each holding 50 percent of the issued and outstanding shares. Furthermore, these shareholders had owned their shares for more than 5 years. Subsequently, after mid-1987, 100 percent of the issued and outstanding shares of the corporation were owned by one of the two original shareholders. This shareholders had owned his shares for more than 5 years.

Accordingly, the possible ambiguity may result from how one interprets the phrase "the same"as found in the Senate committee report description of section 106(g)(5)(B).

Mr. President, let me ask my friend from Montana if it is his understanding that under this fact pattern as I presented, the corporation represented by my constituent would meet the test of a "qualified group" as defined under section 106(g)(5)(B) and interpreted by the relevant provisions of the Senate Finance Committee report.

Mr. BAUCUS. Mr. President, let me answer my friend from Washington that it is my understanding that under the fact pattern he presented, the corporation represented by his constituent would meet the test of a "qualified group" as defined under section 106(g)(5)(B) and interpreted by the relevant provisions of the Senate Finance Committee report.

Mr. ADAMS. I thank the Senator from Montana for his clarification.

Mr. WARNER. Mr. President, I rise in support of the Technical Corrections Tax Act of 1988. While there is no one single provision that characterizes this legislation, there are a variety of issues it addresses that are long overdue for congressional action.

DIESEL FUEL TAX

Of the many provisions this bill contains, the most important for Virginians is assuredly the correction of the formula for the collection of the diesel fuel tax. In Virginia this has been a particularly important item for farmers and fishermen.

The 1987 Budget Reconciliation Act contained a revenue provision that changed the collection point for the diesel fuel excise tax on Federal highway users from retailers to wholesalers. Clearly, this new tax collection procedure, which went into effect April 1, intended to strengthen enforcement and collection of the diesel tax from those who use our Nation's highways. Surely, a worthy goal.

However, the unintended effect of this act has been to force virtually all diesel consumers to pay the tax up front on their fuel. Only thereafter, those who demonstrated that they did not use the fuel on a federally funded highway are eligible to apply for a refund from the Internal Revenue Service.

Before this act passed late last year, a retailer, who collected the tax, was presumed to be able to distinguish between sales of fuel to highway and nonhighway users. Under the new procedure a diesel wholesaler would have no idea who the end-user of the fuel would be and thus has had to charge the tax on all fuel sales.

For fisherman, the Reconciliation Act effectively raised diesel fuel costs by 20 percent and imposed a severe cash drain on fishery vessel operators. These small businessmen operate on such a narrow margin. They cannot afford to give the Federal Government thousands of dollars that they need to make mortgage and insurance payments on vessels, meet payrolls for crew members, and repair boats, and replace gear. In fact, in many fisheries, fuel cost is the most significant cost associated with vessel operations. Fuel purchases account for over 27 percent of operating costs for vessel operators in the Southeastern United States.

Further, this change in tax collection procedures imposed an onerous recordkeeping burden on these small businessmen least able to comply with it. Fishery vessel operators and owners have had to maintain detailed and meticulous records of all fuel purchases for IRS inspection in order to obtain refunds of a tax they were never meant to pay.

HEIFER TAX

Another important provision in the bill for Virginians, cattlemen in particular, is the elimination of the so-called heifer tax, which I have supported from the beginning as an original legislative cosponsor. It has to be one of the most ridiculous taxes of all times. I cosponsored the original bill to overturn this tax. I really can't imagine that anyone in Washington had any sense of the practical impact this would mean for livestock producers around the country. It was obviously an effort in the 1986 Tax Act to close a loophole that never existed. It certainly wasn't fun while it lasted for the livestock owners, and I am glad to see it on its way.

S&L ASSISTANCE

I am also glad to see that the legislation includes a very timely and needed extension to a provision due to expire December 31, 1988, that facilitate assistance transactions by the Federal Savings and Loan Insurance Corporation [FSLIC] and to expand their applicability to similar transactions of the Federal Deposit Insurance Corporation [FDIC]. The existing provisions allow tax-free assistance payments in failing thrift merger transactions without a basis reduction and also allow the passing of net operating losses to the assuming thrift.

This is a critical time for the thrift industry and the FSLIC. The FDIC also has experienced record bank failures for the last several years. The ability of both the FSLIC and the FDIC to assist the many ailing thrifts and banks they insure relies heavily on finding healthy merger partners. The tax-free assistance provisions would greatly enhance both agencies' abilities to resolve failing institution cases in the most efficient manner, with the least cost to the insurance funds.

I am glad to see that my colleagues share my interest in maintaining the safety and soundness of the financial industry. Given the present stresses on financial institutions and the deposit insurance funds, I believe that maintaining safety and soundness requires an efficient resolution of failing and failed financial institutions. Extending the FSLIC tax provisions and making them applicable to the FDIC will assuredly help achieve that objective. Failure to extend and expand the provisions will make FSLIC and FDIC assistance transactions more difficult and costly, and thus further exacerbate the current problems of the financial industry and the insurance funds.

ARTISTS AND WRITERS

For artists, photographers, and freelance writers this legislation, I hope, represents the end of a long road to rectify a frivolous provision inserted at the last minute into the 1986 Tax Reform Act. This provision appeared after the legislation had been approved by Congress as a footnote in a congressional report. Just a footnote. That was why I was glad to join other Members of this body in cosponsoring S. 2664, which would have accomplished the same goal for our literary and artistic communities.

MORTGAGE BONDS

This legislation also contains a much-needed provision extending the Mortgage Revenue Bond Program for 6 months. Housing policy will be a high priority for the 101st Congress next year. The last thing we need to do is to allow such an important support program to expire as we consider ways to expand affordable housing for all Americans.

MRB's are scheduled to sunset on December 31 of this year, and their loss would take away the States' ability to provide affordable housing to low- and moderate-income first-time homebuyers.

In Virginia mortgage revenue bonds have created an exemplary low-cost housing program for nearly 45,100 families who would not otherwise qualify for conventional financing. In 1987 the average household income of first-time home buyers who received loans from the Virginia State Housing Development Authority [VSHDA] was $25,556. The average price of the homes they purchased was $53,281, with a median down payment of 7 percent.

The State of Virginia has worked hard to establish a strong public/private financing mechanism to address the critical need for affordable housing. Since the Virginia State Housing Development Authority was created in 1972, thousands of Virginians have participated in VSHDA MRB programs. Thousands more are still waiting for help. If MRB authority is allowed to sunset at the end of this year, they may never get the assistance they need.

Mr. President, I hope my colleagues will consider the full-range of items included in this bill and pass it as soon as possible. We need to go on to a conference with the House and get final agreement before sine die adjournment most likely next week. I thank the Chair.

TAX-EXEMPT BOND FINANCED SELF-INSURANCE PLANS

Mr. SIMPSON. Mr. President, I rise to address an issue which is of great importance to the self-insurance plans which many State and local governments—including the State of Wyoming—are currently negotiating.

Under present tax law, the Treasury Department has broad regulatory authority to limit arbitrage motivated transactions.

That regulatory authority is intended to permit the Treasury Department to eliminate any devices designed to promote issuance of bonds to be used as investment conduits in violation of the arbitrage provisions adopted by Congress.

Such broad authority is an appropriate response to the narrow interpretation of the Treasury Department's regulatory authority set forth in *City of Tucson* v. *Commissioner,* 820 F2d 1283 (DC Cir. 1987).

However, this broad grant of regulatory authority should not be used to prevent legitimate transactions which are not motivated by the desire to earn arbitrage on tax-exempt proceeds.

Several State and local government entities, including one in my State of Wyoming, have expressed earnest concern that this provision might be used inadvertently in order to prevent tax-exempt bond financed self-insurance plans which are not arbitrage motivated and which do not produce arbitrage.

In response to a growing inability of many State and local governments to purchase insurance coverage at reasonable prices, tax-exempt bond financed self-insurance plans have been developed in good faith reliance upon the Tax Reform Act.

I would respectfully request that the Finance Committee thoughtfully address this legitimate concern of State and local governments during the next session of Congress—and assure that the availability of tax-exempt bond financing for self-insurance plans be allowed to continue unimpaired.

I thank the Chair.

Mr. DURENBERGER. Mr. President, we will shortly be voting on the bill which makes technical corrections to the Tax Reform Act of 1986 and which contains several substantive changes that I strongly support. I would like to take a moment to highlight some of the important features of this bill which will be of special benefit to the citizens of rural America.

This legislation provides badly needed relief to the Nation's farmers who have had to pay excise taxes on the diesel fuel they need to operate their farm equipment. This law never should have gone into effect, and that's why I cosponsored legislation earlier this year that would have repealed this onerous requirement.

And we have today adopted an amendment I coauthored which ensures that farmers who receive drought relief payments this year will have the option of being taxed on those payments in this year or next year, if they can show that they would have received payments for their crops next year.

This legislation also provides much-needed relief to several farm families in Minnesota and in other States who have been harassed by the IRS because they have been cash renting their farms within the family. Last year, I introduced legislation (S. 1761) that makes certain that when a farmer dies, his widow can cash lease the farm to her children and not be subject to recapture tax. I am pleased that this bill has been incorporated in this bill.

This legislation also includes provisions incorporating bills I have cosponsored which raise the mileage allowance for rural letter carriers and allows employees of rural telephone cooperatives to participate in section 401(k) cash or deferred compensation plans. And the bill contains an amendment I offered in the Senate Finance Committee which allows local citizens to purchase small rural banks from large banking companies without the rural banks having to give up their bad debt reservice accounts.

Mr. President, last year, Congress substantially raised the Bureau of Alcohol, Tobbaco and Firearms [BATF] taxes paid by producers, wholesalers and retailers of alcohol products. In my view, the new BATF taxes place an inequitable burden on small producers and retailers. I am pleased that this legislation incorporates an amendment I offered in the Senate Finance Committee which exempts small ethanol producers from the BATF taxes, and incorporates a bill (S. 2261) I introduced earlier this year which exempts university research facilities from these taxes.

However, there is more that must be done to equalize the burden of these BATF taxes. I have introduced legislation (S. 2260) that would reduce the BATF taxes on small retail distributors of beer and wine. That legislation is one approach to the problem. Next year I intend to revisit this entire issue so that we can restore a measure of fairness and equity in BATF taxation.

Mr. President, this legislation also extends many important tax provisions that I have always supported including the extension of the mortgage revenue bond program, low-income housing credits, the targeted jobs tax credit, and the R&D credit, and the employee educational assistance exclusions.

Although these provisions are extended for a short time, I believe their inclusion in this bill sends a strong signal that Congress next year will make a renewed commitment to making these provisions permanent.

Mr. GLENN. Mr. President, I rise today to support S. 2238, the Technical Corrections Act of 1988. This important piece of legislation will make necessary corrections in the landmark 1986 Tax Reform Act.

The bulk of the bill will perform the cross the T's and dot the I's variety of modifications. In as complicated and lengthy a law as the 1986 Tax Reform Act there is sure to be errors—typos, drafting glitches, omissions, and so on. These seemingly trivial mistakes have created havoc for thousands of taxpayers, including individual taxpayers, small business, and the Nation's largest corporations.

It is a simple matter of good tax policy that Congress make these technicial corrections this Congress. More than 2 years have passed since the enactment of the Tax Reform Act and any further delay would be unfair and inexcusable. This Congress should pass S. 2238 so that all of our fellow citizens can finally benefit from the Tax Reform Act.

S. 2238 contains several other important provisions. When the Congress passed the Tax Reform Act 2 years ago, it extended the life of several longstanding tax programs; now these programs have or are about to expire. These programs are important to taxpayers ranging from first-time home buyers to kids from poor famiies trying to get their first taste of the work world, from factory workers going back to school to manufacturing companies investing in research and development in order to become internationally competitive.

The merits of these very popular programs are clear. These worthwhile programs include:

First, the authority for States to issue tax-exempt Mortgage Revenue Bonds, a program that helps first-time home buyers enjoy the American dream and buy a home for them and their families;

Second, the Targeted Job Tax Credit, a program that encourages employers to hire disadvantaged youths, Vietnam veterans, former convicts, and reformed drug addicts;

Third, the Low-Income Housing Tax Credit, which provides incentives for builders to construct housing for the less affluent in our society;

Fourth, the Research and Experimentation Tax Credit, one of the few incentives found in the U.S. Tax Code designed to help American manufacturers become globally competitive;

Fifth, the exemption for employees receiving Employer-Provided Educational Assistance, a program that has helped millions of factory workers get their college degree or learn a new skill in order to better themselves.

I supported permanent extension of many of these programs, but understand why the Finance Committee recommended only temporary extension. Confronted with a massive budget deficit and reluctance to raise taxes, the committee has given the programs some breathing room to enable its supporters to come back to the Congress next year. The committee amendment should be approved.

Taxpayers will be very glad to hear that S. 2238 includes the long overdue taxpayer bill of rights, a provision I was proud to have cosponsored. From now on, taxpayers who happen to find themselves on the opposite side of the table from an IRS auditor will be better informed of their legal rights and more assured of receiving a fair shake from Uncle Sam. As a result of this bill, the IRS will be more responsive to taxpayer complaints, more careful in its enforcement actions and more sensitive to the concerns of small businesses. Moreover, should an IRS agent go off on a wild goose chase, the taxpayer will have a right to seek the recovery of litigation expenses. I believe that heavyhanded IRS practices may soon be a thing of the past.

Farmers and other off-road users of diesel fuel will also find relief in S. 2238. A misguided law passed just months ago now requires these groups to pay the diesel fuel excise tax at the pump and then apply for a refund. Under S. 2238, farmers and others will not have to pay this tax at the pump anymore.

Finally, Ohio subchapter S corporations will be allowed to continue to use the cash method of accounting, which is entirely in keeping with the intent of Congress. An error in an IRS regulation issued pursuant to the Tax Reform Act defined these bona-fide business enterprises as tax shelters, thus making them ineligible for the cash method. My proposal will correct this mistake and offer relief to the hundreds of S corporations in Ohio and elsewhere.

The Senate should act expeditiously on S. 2238. And the conferees on the House side should see the wisdom in this body's proposals and accept the essence of S. 2238. The taxpayers are waiting for us. We should not let them down. To put this off this Congress will mean no less than another 4 or 5 months delay.

Mr. BOND. Mr. President, this legislation contains provisions which are of vital importance to millions of Americans. Small businessmen and small investors will all be helped, and those provisions which will allow us to remain competitive in research and development are also needed. In addition, the more than 5 million people who reside on farms throughout our Nation clearly need the relief this bill provides.

As we are all aware, this summer's devastating drought has cast a shadow on our agricultural economy. Congress has worked hard to strengthen rural America. In the last 3 years we have passed four major pieces of legislation affecting agriculture: The Food Security Act of 1985, the Farm Credit Assistance Act of 1987, the Omnibus Budget Reconciliation Act of 1987, and the Disaster Assistance Act of 1988. Although I believe strongly that our efforts have paid off—the technical corrections bill allows us to further assist our farmers in these difficult times.

Since January, I and many other Members have joined together in order to restore the diesel tax exemption for farmers and other off-road users. As I traveled through Missouri surveying drought damage, farmers repeatedly expressed their frustration with Congress' inability to correct such a ridiculous provision. While hopeful the provision would be repealed prior to the fall harvest, Missouri farmers will be thankful if the exemption is granted prior to adjournment. I seriously hope we don't make a bad situation worse by failing to act.

Another provision important to many livestock producers is the recovery period for single purpose agricultural or horticultural structures. Under current law, the recovery period is 7 years. However, the House felt that longer recovery periods were in order to better reflect the economic lifespan of these structures.

Mr. President, longer recovery periods are one thing—but the House actually created an 8-year period for poultry structures and a 12-year recovery period for all others. When this two-tiered recovery period was brought to my attention, I was at a loss to explain it. At the request of Missouri hog producers, I examined the issue more closely and was very pleased to learn the Senate Finance Committee has included in their amendment a provision which corrects this imbalance. The committee amendment simply assigns a 10.5-year recovery period for all of these type structures. This achieves the objective of extending the recovery period yet maintains equity among the various types of livestock.

In addition, I am pleased to see that the Senate bill repeals the so-called heifer tax—or the uniform capitalization rules for certain livestock producers. Livestock producers will once again be able to deduct preproductive expenses as they occur. The National Cattlemen's Association has estimated this provision could result in a $50 to $100 tax increase for each heifer placed back in a producer's herd. Again, this is not the time to impose new burdens on our agricultural sector.

Mr. President, I also want to take this opportunity to comment on the so-called phantom income issue. While I can understand the committee's concern over the potential revenue loss associated with this issue, I am disappointed that the Senate bill does not resolve this problem. As a cosponsor of Senator MOYNIHAN's bill, S. 1489, I feel very strongly that the Congress erred in the 1986 tax reform bill, and certainly hope the Senate can find a way to resolve this conference.

Mr. President a large amount of time and effort has gone into this bill—I know my senior colleague from Missouri Senator DANFORTH has devoted countless hours to this package. So I wish to take this opportunity to commend him, as well as the floor managers and the other members of the Finance Committee for their diligence and perserverance.

I now hope that conferees can resolve the differences between our bill and the House version before we adjourn. I know that many Americans anxiously await our actions.

Mr. BIDEN. Mr. President, I intend to support the passage of the Technical Correction Act that is now pending before the Senate. In addition to making technical corrections to the 1986 Tax Reform Act, the bill extends a number of important tax provisions that will otherwise expire. The bill also includes the taxpayer bill of rights which will guarantee certain basic rights to taxpayers involved in disputes with the Internal Revenue Service.

Our tax system is in trouble. Even law-abiding taxpayers are intimidated by the collection process. The extensive use of impersonal computers may well have contributed to this. Even more intimidating are reports of the great difficulties and injustices encountered by some taxpayers. Reports that the Internal Revenue Service imposes quotas on its agents, although denied by IRS, are generally perceived to be true. And the overwhelming complexity of the Tax Code leads taxpayers to realize that, with a small slip, they could be facing this awe-inspiring collection machine themselves.

To meet this problem, this bill—the Technical Corrections Act—includes revolutionary new legislation. Called "The Taxpayer Bill of Rights," it provides protections for every taxpayer. While no taxpayer seeks a dispute with the Internal Revenue Service, the fact is that no taxpayer can be sure of avoiding one. The existence of a legislative bill of rights, spelling out the limits of IRS authority and certifying each taxpayer's fundamental rights, can be of critical importance in any confrontation.

I have been concerned about disillusionment with the tax system for some time. In an effort to restore equity to the Tax Code, I worked for adoption of the Tax Reform Act of 1986. To try to correct some of the excesses in the collection process, last year I cosponsored S. 1774, the "Taxpayer Bill of Rights" introduced by Senator PRYOR. The version of the bill now before us is a modification of that one, incorporating suggestions of interested parties.

Congress has granted very broad powers to the Internal Revenue Service. There is good reason for that. It is important to each taxpayer that all taxpayers pay their fair share of the tax burden. The IRS is charged with accomplishing this.

Despite broad authority, unpaid taxes continue to grow. It is time to recognize that such broad authority may be self-defeating. Apprehension over IRS authority may be destroying belief in the integrity and restraint of the Internal Revenue Service, thus damaging the self-assessment system which is the heart of our tax collection process.

Congress has not placed adequate limits on IRS power. It has never formulated the rights of individuals involved in the collection process. Clearly we want taxes that are due collected. In doing that we must never lose sight of the rights of all citizens in their dealings with their Government. To do otherwise will be counterproductive.

It is said that the Service has already put taxpayer protections in place through administrative action. To the extent this is true, I commend the IRS. However, a legislative grant of power should also carry legislative limits on its use. Administrative protections simply do not offer the same level of protection.

The Internal Revenue Service has many dedicated public servants, striving to ensure that every American family pays its fair share, and only its fair share, of the tax burden. But in big organizations, things go wrong. Employees may inadequately understand agency policies. Supervisors may be over zealous. Things may get out of control. That is the time when a taxpayer bill of rights is needed.

Mr. President, there are a number of other features of this bill that might best be described as housekeeping measures. The bill tidies up a number of aspects of the Tax Code which are important to the continued equity and efficiency of the Tax Code. It corrects a number of errors in the 1986 Tax Reform Act, as well as in other laws, so that they will operate as Congress intended. It extends several tax programs that are expiring. Their continuation will provide important economic benefits to our country.

The Tax Reform Act of 1986 was landmark legislation. It deserves some of the credit for the continued health of our economy. However, there has been unnecessary confusion caused by our failure to make certain technical corrections to assure the original intent of Congress. This bill will put these changes into law and assure its smoother and fairer functioning.

In that connection, the Senate will act to correct a cumbersome provision in the Tax Reform Act which has caused difficulties for farmers and other off-road users of diesel fuel, in Delaware and throughout the Nation. Under the Tax Reform Act, off-road users of diesel fuel, as well as local governments, would be required to pay the tax and then apply for refunds. This will cost them money, to say nothing of aggravation. This bill will ease these requirements by allowing tax-free purchase at the wholesale level. When the tax is paid in a retail purchase, refund provisions are liberalized, including payment of interest on refund claims. I am a cosponsor of Senator **Daschle**'s bill (S. 2075) which seeks to remedy these inequities. I am pleased that the Finance Committee bill has recognized the seriousness of this problem and taken steps to remedy it.

The bill before us extends the Mortgage Revenue Bond Program until June 30, 1989. This extension is critical to my State of Delaware, as I am sure it is in every other State. Delaware has issued $432 million of mortgage revenue bonds since the inception of its program. It has enabled 7,780 first-time homebuyers to purchase homes. With a median income below $30,000, many would have been unable to afford a home without this assistance. That is why I cosponsored Senator **Riegle**'s bill (S. 1522) which would have extended this program through 1992. It will be important that we act next year to adopt a longer extension.

This bill makes a number of other beneficial changes in our tax laws. It extends the exclusion of employer-provided educational assistance through 1988. This is an important change to the many workers who are attending school in an effort to increase their opportunities. Without this, they might be forced to pay taxes on the value of their employer's contribution. The bill also extends the exclusion of employer-provided group legal services through 1988, which provides a means for workers to afford legal representation when needed.

The bill continues the targeted jobs tax credit through June 30, 1989. This is one of the few Federal programs offering targeted employment opportunities for many disadvantaged individuals. The bill also extends, regrettably only for 3 months, the tax credit for research expenditures. This is a small, but important contribution to improving America's competitiveness in world markets.

During consideration of this bill, Senator **Bradley** offered an amendment that would have stricken a number of the extensions of expiring tax provisions, some of which I have mentioned above. His amendment would have substituted an increase in the earned income tax credit from 14 percent to 15 percent. The earned income tax credit is an important tax program. It rewards work by reducing the tax burden on the wages earned by the lowest income taxpayers. Under other circumstances I would wholeheartedly have supported Senator **Bradley**'s proposal. However, had his proposal been adopted, it might well have resulted in the failure of the entire bill. There are just too many worthwhile provisions, many of which I have already mentioned, to take this chance. So I reluctantly voted against the amendment.

The Technical Corrections Act has many important provisions and I support its passage. Without any question, the most important is the taxpayer bill of rights. It will be another reform to our tax system, of the order of magnitude of the Tax Reform Act, that will preserve our self-assessment system of tax collection.

Mr. NUNN. Mr. President, last Friday night, I was unable to cast my vote on several matters considered as amendments to the technical corrections bill because of a longstanding engagement in Georgia. I would like to state my position on three of of these amendments.

The Senate voted overwhelmingly in favor of an amendment to the bill that calls for the legislative taking of 542 acres of land outside the Manassas National Battlefield Park. I would like to take this opportunity to announce that I support this important proposal.

I believe that by acquiring this land we are not only preserving an area right in tradition and history but we are also protecting the integrity of one of our Nation's most significant parks. Finally, I commend Senator **Bumpers** and others who have fought and won this battle, and I remain hopeful that President Reagan will join in this fight to recognize the integral role this land played in our Nation's past.

I also missed a procedural vote on Senator **Evans**' pay equity study bill. Senator **Evans** offered S. 552, his pay equity study proposal, as an amendment to the technical corrections bill; however, a motion was made to table his amendment. The motion to table failed by a vote of 14 to 72. Had I been present, I would have voted not to table this amendment.

I supported S. 552 at the committee level as the Governmental Affairs Committee on which I sit considered and recommended to the Senate that the legislation be adopted. I believe that the Federal Government, as an employer, should study whether it treats its employees fairly in the workplace; however, I do not favor Federal imposition of comparable worth or pay equity in the private sector.

I would also like to state for the record that had I been present for the vote on S. 889, the Satellite Televison Fair Marketing Act, I would have voted with my colleague Senator **Gore** in opposition to the motion to table his amendment.

I support a Federal policy that encourages the development of communications technology that provides all our Nation's citizens the opportunity to choose from a variety of information and entertainment sources. For this reason, I cosponsored legislation that was enacted into law in 1984 that permits the home viewing of unscrambled satellite-transmitted cable television programming. In addition, during the closing days of the 99th Congress, I voted for legislation cosponsored by Senators **Gore** and **Ford** that would have brought more certainty to the marketing of satellite-transmitted programming. Unfortunately, this measure was defeated in the Senate by a vote of 54 to 44.

I share the concern of satellite dish owners that access to scrambled television signals should be available at a reasonable cost to everyone who wants it. In summary, S. 889 would provide the essential statutory right of access to scrambled television programming and establish the conditions necessary for a competitive market. For these reasons, I would have voted in favor of S. 889, the Satellite television Fair Marketing Act.

Mr. LEVIN. Mr. President, I support the passage of the Technical Corrections Act. This legislation will correct technical imperfections in the Tax Reform Act of 1986 and the omnibus reconciliation bill of 1987. Chief among these improvements are the modification of the low-income housing credit and the repeal of the diesel tax provision, which had amounted to an interest free loan by farmers and localities to the Federal Government.

This legislation before us today also contains provisions which extend the effective date of several important sections of the Tax Code. I cosponsored a number of these provisions when they were introduced as free standing bills. These include extensions of the targeted jobs and the research and development tax credits, the mortgage revenue bond program for first time home buyers, and the exclusions from income of employer provided educational assistance and group legal assistance. These provisions represent a legitimate use of the Tax Code to foster beneficial activities to individuals and to society.

I am also pleased that this legislation contains the taxpayer's bill of rights, which I and others have worked so long to enact. This legislation is essential if the American taxpayers are to have a chance of being treated fairly and with dignity as they attempt to comply with this Nation's tax laws.

For these reasons, I urge support for this legislation.

Mr. BINGAMAN. Mr. President, I rise in strong support of the Tax Technical Corrections Act. This bill not only corrects several serious inequities and oversights in the existing Tax Code, many made by the Tax Reform Act of 1986, but it also addresses a number of needed policy changes. It includes changes to make our Tax Code fairer, protect the taxpayers, and improve the ability of Americans to compete in international markets.

This bill is especially well suited to New Mexico's diverse economy. I would like to review several important parts of this legislation which I authored or cosponsored.

R&D TAX CREDIT AND EMPLOYEE EDUCATIONAL EXPENSES DEDUCTION

High-technology industries benefit from the extension of the R&D tax credit, which I cosponsored. This provision extends the credit through March 31, 1989. The credit encourages innovative research, and is due to expire at the end of the year. Stimulating research and development is one of the key challenges facing our Nation; this extension will help us meet that challenge. I would like to have seen the credit made permanent, but this extension will allow us to come back to this issue next year.

Another measure to help our high-technology industries which I cosponsored is an extension of the deduction for employee educational expenses. That deduction allows firms to exclude the value of employer-provided educational assistance from gross income, up to $5,250. This will encourage employers to grant educational benefits to their workers, increase the educational and economic opportunities for employees who wish to upgrade their skills, and stimulate employers to retain employees whose current skills have become outdated by new technologies. The Tax Reform Act of 1986 extended this deduction only through 1987. This bill extends those benefits through 1988.

Both the R&D tax credit and the employer-provided education assistance measures are important to strengthening American competitiveness.

REPEAL OF THE HEIFER TAX AND THE DIESEL EXCISE TAX

Farmers will benefit from the repeal of the so-called heifer tax and the diesel excise tax. The Tax Reform Act of 1986 [TRA] requires breeders of livestock to capitalize the preproductive expenses of their farm assets—the heifer tax. I believe the heifer tax places an undue economic and recordkeeping burden on cattlemen and other livestock breeders. I cosponsored this legislation to exempt livestock breeding from these rules and am pleased that it is now included in this legislation.

The repeal of the diesel fuel tax, which I also cosponsored, will allow farmers and other off-road users to purchase diesel fuel without paying the tax, rather than having to pay the tax and file for a refund. As of April 1, 1988, farmers and ranchers, and other previously tax-free purchasers, were required to pay a 15-cents-per-gallon diesel excise tax at the time of purchase from the wholesaler and then file for a refund. Their reimbursement might not come until the end of the tax year. In the meantime, the Government can use their hard-earned money when they do not even owe the tax in the first place. The legislation will eliminate this senseless provision and the unnecessary economic and record-keeping burdens it has created for tax-exempt users.

ARTISTS AND AUTHORS

Artists and authors will benefit from repeal of the uniform capitalization rules on business expenses for free-lance authors, photographers, and artists—another measure I cosponsored. Under the Tax Reform Act of 1986 (Internal Revenue Code section 263A), free-lance artists, photographers, and authors were not allowed to deduct their business expenses until income was generated. As we all know, creative projects often take years to complete and possibly even longer to generate income. Not to allow annual business expense deductions is therefore an unfair burden on creative artists. I believe that section 263A was not intended to laden artists and authors with this recordkeeping burden. The provision in this legislation corrects this mistake.

OIL AND NATURAL GAS

The oil and natural gas industry will benefit from a provision to waive reporting requirements for the now-repealed windfall profits tax. Since this tax was repealed by the Omnibus Trade and Competitiveness Act and the price of oil has not risen this year to a point where a tax would be due, it makes no sense to impose a recordkeeping burden on our oil producers when no tax will be due. This provision, which I cosponsored as well, repeals that reporting requirement.

LOW INCOME HOUSING TAX CREDIT

The housing industry benefits from the extension of the low-income housing credit, which I cosponsored. This provision extends the authority for States to issue qualified mortgage bonds and credit certificates for 6 months, through June 30, 1989.

EDUCATIONAL SAVINGS

Families will benefit from a provision to help pay for educational expenses. As we all know, a college education is an important part of the American dream. Yet, increasingly the cost of college has been rising at such a rate as to make this an impossible dream. This provision provides for tax free interest on U.S. savings bonds if the money is used for college expenses. It is a simple, self-regulated plan to help families meet those rising costs of a higher education. I was pleased to have cosponsored this legislation.

TAXPAYER'S BILL OF RIGHTS

Taxpayers will benefit from the taxpayer's bill of rights, which is also in this legislation and which I cosponsored. We have all heard horror stories about the lack of accountability and abuses by the Internal Revenue Service. These stories are disturbing. However, far more serious than these individual abuses is the deep and widespread fear and mistrust that most Americans feel for the IRS, a fear that is directly attributable to the agency's lack of accountability. These fears have led record numbers of Americans to withhold owed taxes or to improperly fill out their income tax returns. This measure will go a long way toward protecting and helping American taxpayers. I also hope it will be a first step toward reinstating trust in the Internal Revenue Service.

MUNICIPAL BOND POOLS

Finally, cities and towns will benefit from a provision I authored to clarify the tax treatment of municipalities which act as the issuer for a municipal bond bank or dedicated bond pool. The 1986 tax law exempts small issuers from the arbitrage and rebate provisions for cities and towns which issue less than $5 million annually in traditional public purpose tax-exempt bonds. However, the explanation of this law by the Joint Tax Committee is silent on the treatment of municipalities which act as the issuer for a municipal bond bank or dedicated bond pool. My provision ensures that a municipality which issued on behalf of the bank or pool, such as the city of Santa Fe which is the designated issuer on behalf of the New Mexico municipal bond pool, would lose its eligibility for the small city exemption—even though the small city would issue less than $5 million for its own use. This is not what was intended in the Tax Reform Act of 1986, and my provision corrects that oversight.

CONCLUSION

Mr. President, I have mentioned but a few of the significant measures contained in this bill. There are many other provisions that are important to correcting flaws in our Tax Code.

Tax technical corrections has been a long time in coming. I congratulate my colleagues, especially the members of the Finance Committee, Senators BAUCUS and PACKWOOD the managers of the bill, and their staffs for a job well done.

I am pleased we are about to pass this legislation. I hope it will be enacted into law shortly.

CALIFORNIA CASE MANAGEMENTS SERVICES FOR DEVELOPMENTALLY DISABLED INDIVIDUALS

● Mr. WILSON. Mr. President, I would like to discuss an issue that is of great concern to many residents of California. Section 9508 of the Consolidated Omnibus Reconciliation Act [COBRA] of 1985 authorizes States to add case-management services to the scope of Medicaid benefits and to target those services to certain groups of Medicaid-eligible individuals, such as developmentally disabled individuals. California has long recognized the importance of case-management services for developmentally disabled individuals and, as required by State law, has provided State funds for these services for a number of years. Case-management services have proven extremely valuable for developmentally disabled individuals in California, and I was greatly concerned to learn that the Health Care Financing Administration [HCFA] has denied California's request to include these services under the State's Medicaid plan.

HCFA's denial of the State plan amendment apparently is based on language in the joint explanatory statement accompanying the conference report on the COBRA (H. Rept. No. 99-453, page 546) which stated "The conferees expect that the Secretary will assure that payments made for case management services under this section do not duplicate payments made to public agencies or private entities under other program authorities for this same purpose." The conferees were concerned that HCFA not make "duplicate" payments. California's plan amendment would not result in any duplicate payments; providers would be paid only once.

Mr. CRANSTON. Mr. President, I share my colleague's concern about the Health Care Financing Administration's denial of California's proposed Medicaid plan amendment. California has long been a pioneer in the provision and coordination of services to persons with developmental disabilities.

I understand that HCFA interpreted Federal law to prohibit Medicaid payments for services which States already furnish free of charge, and that Federal reimbursements cannot exceed locally prevailing charges for comparable services. I further understand that HCFA contends that, since California's regional centers provide case management without charge to developmentally disabled individuals, Medicaid payments for these services would violate Federal law. However, I would like to clarify that all third parties are billed for case-management services provided to persons with developmental disabilities and that, thus, those services should not be considered to be provided "free of charge." Medicaid, in this circumstance, is like all other third-party payers and should be billed.

I do not believe that it was Congress' intent, in enacting the COBRA provision, to penalize California for its early efforts, particularly when other States, now providing case-management services for the first time because Federal funds are available, are being rewarded. Thus, I would like to take this opportunity to urge the conferees on the tax technical corrections bill to include, in the conference report joint explanatory statement, language clarifying that Congress intended to cover targeted case-management services as a State option under the Medicaid Program, regardless of whether the State has been a leader in this field and was already providing these services to its Medicaid beneficiaries.

Mr. WILSON. Mr. President, I concur in the recommendation of my colleague from California [Mr. CRANSTON] and also urge the conferees to take such action. I understand that the State intends to appeal HCFA's decision. Thus, this clarification on the part of the conferees could avoid potentially costly litigation over the issue.●

SUPPORT FOR EXTENSION OF FSLIC EXCLUSION

Mr. BOSCHWITZ. Mr. President, I rise today to announce my strong support for the Technical Corrections Act. It clears up many problems that resulted from the Tax Reform Act of 1986. For example, this bill reinstates the exemption from the diesel tax for farmers and other off-road users of diesel fuel. It also extends the Mortgage Revenue Bond Program for 6 months; this program is very important in my State.

I am also pleased that this bill extends section 597 of the Tax Code for 6 months. As the original sponsor of this provision when it ws enacted in 1981, I have seen its importance in helping the Federal Savings and Loan Insurance Corporation restructure failed thrifts.

As my colleagues know, section 597 treats payments made by FSLIC to a struggling thrift as a nontaxable infusion of capital. If this exclusion were not available, it would be much more expensive to rehabilitate a failed savings and loan because potential investors would demand that FSLIC put more of its own money into the restructured thrift to offset the additional tax liability.

This conclusion is confirmed by both the Office of Management and Budget and the Congressional Budget Office. They have agreed that an extension of the tax provision will actually reduce the Federal deficit for fiscal year 1989. OMB estimates the extension would reduce the fiscal year 1989 deficit by more than $600 million. According to OMB, a simple 3-year extension could reduce Federal tax revenues by $1.1 billion over the fiscal year 1989-91 period, but will simultaneously reduce FSLIC outlays by over $2.1 billion.

In addition, I fully support the Finance Committee's amendment to section 597, which extends the same tax treatment to assistance payments by the Federal Deposit Insurance Corporation. This is a very constructive change that will be very helpful to regulators at the FDIC, as they attempt to restructure banks in financial difficulty.

It is clear that the crisis facing the entire financial services industry now makes this provision necessary for both FDIC and FSLIC. Frankly, I would have preferred that section 597 be extended for a longer period. Next year when Congress considers what relief, if any, is needed for the financial services industry, I hope my colleagues will see the value of section

597 and reauthorize it for a longer term.

Once again, let me say how proud I am to be the original sponsor of section 597. It has been an effective provision, and I encourage my colleagues to support its reauthorization. Mr. President, I yield the floor.

AMENDMENT TO STRIKE SECTION 799 OF THE COMMITTEE AMENDMENT TO THE TECHNICAL CORRECTIONS ACT OF 1988

Mr. NICKLES. Mr. President, I would like to bring to the attention of my colleagues a matter concerning the financial well-being of millions of America's workers who rely upon company-sponsored retirement plans. The security of pension benefits for our Nation's retirees could be threatened by a misguided provision added to the Technical Corrections Act of 1988.

The provision, section 799 of the Finance Committee amendment, would temporarily increase the excise tax on pension reversions from 10 percent to 60 percent. In effect, this provision will serve as a moratorium, a deliberate attempt to deny plan sponsors their rightful access to plan surpluses.

This "moratorium in disguise" is a haphazard way of dealing with a very serious issue. The effects of a moratorium are unknown at this point and could be potentially damaging to the integrity of the entire pension system. A matter of this magnitude should require an indepth review by the proper committees of jurisdiction. This has not been done. We must not undermine the authority of our committee system especially when we are dealing with the creation of entirely new policy.

By freezing surplus pension assets, Congress will be sending an omnibus signal to plan sponsors, and ultimately, their beneficiaries. This policy would immediately encourage pension plan funding at the minimum acceptable level and could possibly lead to gross underfunding of pension plans. Why should plan sponsors allow a surplus to exist in their pension plans when faced with possible Government seizure and the dictating of policy as to its use? Why, at a time when the frequency of pension reversion transactions is dramatically decreasing, is the Government going to intercede in a such a harmful and unwarranted manner? This sudden moratorium was not thoroughly thought out and should be defeated.

It will be the retirees of our country who will suffer from this policy decision made in haste. The fiscal solvency of their pension plans will be at stake—the very source from which they must live for the rest of their lives.

I understand the circumstances involved in bringing this amendment to the floor, and consequently, I intend to withdraw my amendment without a recorded vote. However, I would like to point out the serious danger that this seemingly harmless provision poses on our Nation's pension benefit system.

I respectfully request that this potentially disastrous provision be removed by the conferees of this bill and that it be directed back to the committees of jurisdiction for proper study. We cannot afford to enact such policy before we are aware of it far-reaching effects.

ON REPEAL OF SECTION 532(C) OF THE INTERNAL REVENUE CODE

Mr. KASTEN. Mr. President, I have introduced an amendment that would bring a sense of fairness and understanding to the Tax Code. It repeals section 532(c) of the Internal Revenue Code which applies the accumulated earnings tax to widely held corporations.

Repeal of 532(c) is not one of the burning political issues of the day. Senators are not going to be overwhelmed by mail and phone calls on this issue.

Nonetheless, I believe that continued application of the accumulated earnings tax on widely held corporations is bad public policy and potentially damaging to American business.

Furthermore, as a result of the elimination of the capital gains preference and the inversion of corporate and individual income tax rates—the original congressional intent for imposing the penalty on widely held corporations no longer exists.

Mr. President, I would like to go into a brief background of the accumulated earnings tax for the benefit of those who are unfamiliar with this issue.

The accumulated earnings tax is imposed on corporations that accumulate earnings—rather than pay them as dividends—to assist their shareholders in avoiding income tax.

Historically, this tax had not been applied to widely held corporations. By its very nature, a widely held corporation does not lend itself to the requisite conspiracy between management and shareholders for tax avoidance.

In the 1984 Deficit Reduction Act—DEFRA, Congress made the accumulated earnings tax applicable, for the first time, to widely held corporations.

The legislative history shows that section 532(c) was a reasonable congressional response to the insidious growth of certain unregulated investment corporations specifically formed for the purpose of converting dividends then taxed at 50 percent to long-term capital gains treatment then taxed at 20 percent.

The investment corporations used their capital to purchase dividend paying stocks of other corporations. The investment corporation, receiving a dividend, was subject only to the nominal tax on the dividend—an effective rate of 6.9 percent—and, instead of paying these dividends to its shareholders, it accumulated dividends.

Shareholders thus paid no taxes on dividends of the underlying stocks held by the investment corportion but could realize income equivalent to the dividend accumulation by selling their shares. The gain on the sale of those shares was taxable as capital gains at a 20-percent rate rather than ordinary dividend income at the 50-percent rate.

In effect, the difference between the tax rates on long-term capital gains and ordinary income created a loophole that could be used for these tax avoidance schemes.

The Tax Reform Act of 1986 eliminated the capital gains differential—and inverted the tax rates on personal and corporate income. The top personal tax rate is now 28 percent and the corporate tax is now 34 percent. The original intent of section 532(c)—that is closing the loophole that existed when we had a difference in capital gains and ordinary income rates—no longer exists. Under these circumstances, section 532(c) is unnecessary. The continued application of section 532(c) burdens legitimate widely held corporations with a penalty when the original intent for imposing the penalty no longer exists.

Furthermore, any benefit from tax deferral was eliminated by the combination of the reduction in the dividends received deduction from 85 to 70 percent—and tax rate inversion which occurred between the maximum corporate tax rate and maximum individual tax rate. As a consequence of these changes, a taxpayer who invests in an investment corporation that accumulates dividends would encounter a 10-percent tax penalty. It would take 10 years of a 1-percent improved after-tax yield to break even. And thereafter, the improved after-tax yield would be only 1 percent.

Section 532(c) is not only deadwood, but also constitutes very questionable public policy. It is premised on the incorrect assumption that widely held corporations are in a position to assist their shareholders in tax avoidance schemes by paying on or inadequate dividends. That is not the case. Most widely held corporations have shareholders to whom a dividend payout is critical. A good share of those stockholders, for example, pension funds which own approximately 40 percent of all publicly traded shares, university trust funds, and so forth, to not even pay taxes on these dividend payouts.

The directors of a corporation which are typically elected annually are chaired with the responsibility of determining dividends based on the business' needs. They make their decision by weighing projected income, current funds, planned expansion, projected product development along with other factors peculiar to the corporation to arrive at an appropriate dividend. Their decision should not be influenced by concerns that a punitive tax could be imposed by an overzealous and arbitrary IRS agent who does not have their understanding of required business actions. Such influence can only result in excessive dividend payouts which, in the long run, curb business expansion and, in turn, affect the tax base. The immediate benefits from taxes on current excessive dividend payouts should not be allowed to outweigh the long-term ongoing advantages of an expanding tax base upon which our economy and Government ultimately depend.

The Treasury Department is currently preparing a study on the taxation of subchapter C corporations and their shareholders. Assistant Secretary of the Treasury O. Donaldson Chapoton has assured me that this issue will be considered as part of an overall effort to improve the taxation of subchapter C corporations.

Mr. GRASSLEY. Mr. President, after almost 2 years of ups and downs, near misses, false starts and a few jump starts, the Senate is finally getting around to acting on the technical corrections tax bill, in the fading moments of the 100th Congress. Even now, taxpayers across the country are not guaranteed that the Congress will do its job and pass this necessary legislation.

I heard it said right here on the Senate floor during debate on the parental leave bill that while parental leave was good for families, the technical corrections bill was only good for the corporations and fat cats of America. So, the tax bill was, therefore, less important.

Well, whoever said this should take a look at the technical corrections bill and maybe they will learn just how important this bill is to the taxpayers and families of America.

Mr. President, there are many necessary provisions that are included in both the underlying bill and the committee amendment, but I would like to focus on just a few of them.

First, after a number of years, many negotiations and a great deal of debate, the Senate is poised finally to pass a comprehensive taxpayers bill of rights, that will help protect American taxpayers from IRS abuse. Nearly everyone has either experienced, or known someone who has experienced, abusive treatment by the IRS. The situation has finally reached a point where Congress has been forced to step in and try to put a stop to the unchecked power of those IRS agents who exceed or misuse their authority.

I want to commend Senators PRYOR and REID, who, along with myself, put this legislation together and forged a bipartisan coalition that has brought us to this critical point. This legislation builds upon taxpayer protection legislation that I've been pushing for over 6 years.

The IRS admitted that taxpayer abuse does exist, and its time Congress did something to stop it. Under this legislation, Congress will have more effective oversight over the IRS and taxpayers will have stronger protections against illegal seizures and harassment by unscrupulous IRS agents. Mr. President, its time to put faith back into the taxpayer system and this legislation is certainly a giant step in the right direction.

Two other provisions that I'd like to focus on repeal agricultural taxes that are extremely burdensome to the farmers of my State of Iowa, as well as farmers across the country. These two taxes known as the heifer tax and the diesel fuel tax, are two of the most onerous and ridiculous burdens the Government has placed on our farmers, who as we know, are struggling day after day to keep our family farms alive.

The hated heifer tax forces farmers to capitalize their preproductive expenses in regard to heifer calves over a number of years rather than deduct these costs in the year in which they are incurred. This tax, which was originally intended for equipment produced and retained by companies, has been interpreted by the IRS to include calves that are retained and added to a breeding herd. I strongly support finally repealing this IRS misinterpretation that has been estimated to cost farmers between $50 and $100 for each animal retained in the herd.

Another unfair source of revenue is the dreaded diesel tax. This tax forces farmers, as well as other off-road users and State and local governments, to pay excise tax on fuel, and then apply for a refund after the Government has kept their money all year and made interest on it. Well again, I am happy to see that the Senate has recognized this blatant unfairness and is attempting to resolve it.

One last issue I want to address, Mr. President regards income averaging for farmers. Our distinguished colleague, Senator MELCHER, along with myself and others, will be offering an amendment that will restore income averaging for farmers for calendar year 1988. In light of the boom and bust years that are endemic to farming, as well as the disastrous drought our farmers suffered through this year, it is imperative that this modest tax relief be granted, and I urge my colleagues to support this amendment.

Mr. President, its extremely important that the Congress pass this bill and send it on to the President, so that taxpayers all over America will be granted the tax relief that they expect, as well as deserve.

(At the request of Mr. DOLE, the following statement was ordered to be printed in the RECORD:)

WE NEED THE TAXPAYERS BILL OF RIGHTS AND REPEAL OF THE HEIFER TAX

● Mr. KARNES. Mr. President, I rise in opposition to an amendment offered by the distinguished Senator from New Jersey. The Senator's amendment would raise the earned income tax credit for many Americans. But the Senator from New Jersey is proposing to pay for the proposal by eliminating such essential items from the technical tax corrections bill as the taxpayer bill of rights, preproductive expensing for heifers, the so-called heifer tax, the wine ethanol import restriction, and the 1-year deferral for livestock sold on account of drought.

While the goal of the Senator from New Jersey will meet the needs of his constituents, eliminating the heifer tax and the taxpayer bill of rights will do harm to my constituents, the people of Nebraska.

Mr. President, the power of the Internal Revenue Service has become enormous in recent years. The taxpayer bill of rights would restore some balance between the taxpayer and the Federal Government. I think that we need to recognize that the Federal Government must accept some limits in its powers. The taxpayer bill of rights offers some restraint on the IRS. I think that it is needed and should be kept in the current bill.

The heifer tax is also eliminated under this proposed amendment. Cattle producers and dairymen are now paying over $100 in additional costs as a result of this law. The tax corrections measure would eliminate this unfair tax. Mr. BRADLEY now wants to eliminate the needed provision.

Mr. President, Nebraskans owned over 6 million cattle in the most recent statistical period available. In that year, over 1.8 million calves were born. The added cost to these Nebraskans would be over $180 million. This is a tax that cattlemen and dairymen don't owe. It is a tax that was invented in order to reduce the budget deficit. Like the diesel tax, it should be repealed.

In addition to the taxpayer bill of rights, and the heifer tax, the Senator from New Jersey is proposing to allow cheap wine from Europe to be transhipped through the Caribbean and into the United States duty free. Mr. President, Nebraska produces 11 million gallons of ethanol annually. My opposition to this scam is a matter of public record. These ethanol imports would displace 80 million bushels of domestically produced corn and cost taxpayers $120 million in lost tariff revenues.

Finally, although this is not an inclusive list of the damage that the New Jersey Senator's amendment will do to Nebraskans, the Bradley amendment will also eliminate the 1-year income deferral derived from livestock sold because of the current drought.

Although the Senator has recently visited Nebraska, he seemingly has yet to fully realize just how important these issues are to the fragile recovery taking place in rural America.

Thank you Mr. President. I yield the floor.●

INTRAOCULAR LENSES

● Mr. WILSON. Mr. President, I rise to alert my colleagues to the need to delay the effective date for limiting intraocular lens reimbursement under Medicare. This adjustment in date is needed for a variety of all-important management and administrative reasons, but mainly to protect our senior citizens from being asked to pay additional out-of-pocket costs for this sight-restoring device.

Most of us are aware that a cataract implant operation is the most successful, most often performed and thus the most costly surgical procedure under Medicare. Upwards of 1,200,000 of these operations occur annually. Costs include the surgeon's fee, a fee to the hospital or surgery center, and the cost of the medical device which is surgically implanted to replace the natural lens of the eye.

The majority of these intraocular lenses are researched and developed and then manufactured in my State of California. At an industrywide average price of slightly over $300, this is a $380 million industry.

OBRA-85 took strides to limit what the Government would pay for this device, feeling that physicians, hospitals and surgery centers were adding too high a mark-up to the manufacturers price. HCFA was to issue proposed rules in April which would comply with OBRA to price IOLs both reasonably and by class of lens involved.

For various bureaucratic reasons HCFA missed the April date by nearly 5 months. That has obviously set the July 1 effective date back at least until this December or possibly later.

In its August 18 notice of proposed rulemaking, NCFA said that the reasonable lens pricing issue is still open to industry data, as is the intent of Congress that IOL's be classified, seemingly by current, newer, and advanced technology, thus taking into consideration R&D costs.

The Health Industry Manufacturers Association, which represents IOL manufacturers, has studies by Price Waterhouse and Ernst & Whinney which will aid HCFA in making final classification and pricing decisions.

Further, HCFA said its final rule would be applied retroactively to July 1, 1988. Therein lies the problem which an amendment to the technical tax corrections bill would address, should conferees agree: to stop the distinct possibility that beneficiaries who pay 20 percent of the lens cost, will be asked to pay an additional out-of-pocket amount, months after the surgery.

If a lens that is implanted today costs $300, Medicare pays the facility $240 and the beneficiary pays the facility $60. If HCFA decides that the price of that class of lens should have been $250—$200 from Medicare to the facility and $50 from the beneficiary to the facility—then the facility is obligated to seek a refund of $50 from the manufacturer and return $40 of that to Medicare and $10 to the beneficiary or his or her Medigap insurer.

If, on the other hand, the lens is classed as new, advanced technology costing $420, then the manufacturer will be entitled to additional revenue from the facility which must bill and collect $96 from Medicare and $24 from the enrollee.

Mr. President, this would be an intolerable management, administrative and bookkeeping nightmare. Each month Medicare is paying for approximately 100,000 intraocular lenses. Some patients will move, others may have had the operation in an out-of-State facility and are hard to track as records get lost or misfiled, still others may pass away. For the Government to plan a refund or additional collection solution to a problem that does not exist, is nonsensical.

There are other problems; manufacturers do not know how to compute sales commissions, facilities are not sure what to pay for lenses, hospitals are at a loss to figure reimbursement which involves a complicated blending formula. The industry is literally in a dither due to the irrational notion of retroactivity as compared to the more sensible approach of making a rule effective upon it final format.

There is nothing which requires retroactivity. There is no reason for the July 1 effective date except that there has been the representation that Medicare dollars may be saved—although major differences exist concerning estimates to this effect. Had the savings been so important—and they are not assured until we see a final rule—then HCFA should have issued its proposed rule back in April when the industry was expecting it.

My amendment says simply that the provisions of OBRA which set reasonable fees for intraocular lens classes is to be effective upon issuance of a final regulation. This is only fair.●

● Mr. KARNES. Mr. President, the members of the Senate Finance Committee have worked long and hard this year to draft S. 2238. There are many very good provisions in this legislation which I feel will help Nebraskans.

This bill will help rural Nebraskans as they strive to revitalize their economic base. This bill corrects many of the laws, enacted in prior sessions, which added insult to the injury and the hardship which our farmers and ranchers have faced over the past several years.

This bill will treat many of the citizens of my State fairly. The bill will redress some of the inequities created by the Tax Reform Act of 1986 and the Omnibus Budget Reconciliation Act of 1987. Many of these inequities were created for the purpose of raising revenue to balance the Federal budget which has been plagued by several years of congressional overspending. These new taxes on our farmers and ranchers were shortsighted. But now, we are going to remedy many of the problems with the enactment of this bill.

Let me mention a few of the problems S. 2238 seeks to correct. First, one of the most important changes this bill will make deals with the taxation of diesel fuel used for off-highway use. This problem was created by the Omnibus Budget Reconciliation Act of 1987, which I voted against. Now Congress has an opportunity, with the passage of S. 2238, to substantially improve the process used to collect taxes from on-highway users of diesel fuel and, at the same time, relieve the burden placed upon our farmers who use this fuel for off-highway purposes.

Second, this bill corrects the "heifer tax" problem. Prior to the 1986 Tax Reform Act, producers could deduct the cost of raising cattle in the year that the expense occurred. However, effective January 1, 1987, costs—feed, pasture leasing, et cetera—associated with raising an animal are required to be capitalized. The new requirement has caused headaches because of the definition of "preproductive period" and the allocation of costs of raising livestock. The result of the 1986 Tax Reform Act has not resulted in tax simplification for thousands of farmers and ranchers. In addition, another provision of the bill, section 708, provides livestock owners with some additional drought relief. It will allow a 1-year deferral of proceeds from livestock sold on account of the recent drought.

Third, Mr. President, this bill will correct an unfortunate situation created by the trade bill which contained a provision concerning the duty-free importation of ethyl alcohol derived from cheap European wine alcohol. That provision will be detrimental to the interests of my State. It would expand the duty-free importation of ethanol through the Caribbean basin initiative resulting in direct substitution of European-produced wine alcohol for U.S-produced corn alcohol.

Nebraska currently produces 11 million gallons of ethanol annually.

Within the next 2 years, it is anticipated that the current level of production will be expanded by 50 million gallons. Allowing the duty-free importation of ethanol, as this bill would allow, will only serve to undermine the Nebraska ethanol industry. In fact, it will displace the consumption of 80 million bushels of corn.

It is estimated that extending this special preference will result in the loss of $120 million in lost tariff revenues. While I support the efforts to improve economic conditions in the Caribbean Basin, this provision will not benefit the people of the Caribbean as much as it will benefit European wine alcohol producers. I cannot understand why we would grant a special benefit to European wine producers who have already benefited from large-scale subsidies and, at the same time, hurt United States corn farmers and ethanol producers, whether they be in Nebraska or other parts of the country. This provision should not have been in that bill and I am glad the Senate Finance Committee has included this provision in the tax corrections legislation to provide a measure of flexibility concerning this policy.

Finally, one of the most important provisions of the bill, the taxpayer's bill of rights, will allow for the protection of taxpayer rights without deterring the IRS from carrying out its legitimate functions. It is the goal of the taxpayers bill of rights to alleviate the confrontational atmosphere that exists between the IRS and the taxpayer. And I believe that it will successfully accomplish this goal by providing a greater disclosure of information to the taxpayers about their legal rights.

There are several other worthy provisions in S. 2238 which will ease the burden on many Nebraskans. Because of this I am hopeful the bill will receive overwhelming support.●

Mr. GRASSLEY. Mr. President, I am a cosponsor of the amendment of section 89 offered by my colleague from Iowa, Senator HARKIN, and I rise to speak in support of that amendment.

Mr. President, our amendment accepts the principle at the heart of section 89, which is that tax-favored employee benefit plans should not discriminate in favor of the highly compensated employee at the expense of the rank and file employee.

Our amendment also accepts one of the larger purposes of section 89, which is to expand and improve the employee benefits available to rank and file employees.

However, our amendment also assumes that if section 89 becomes law without the modification we offer today, this larger purpose will not be realized.

On the contrary, it is our belief that, if section 89 goes forward without our modification, the benefits available to rank and file employees may be reduced.

To understand this, it is important to realize that, when section 89 becomes effective on January 1, 1989, many small businesses will find that they are not in compliance with the law.

The principal financial company, headquartered in Des Moines, IA, undertook a survey of small employers to see how many of them were in compliance.

The principal financial group is a major underwriter of life and health insurance for small employer groups throughout the United States. According to principal, their current policyholders include over 50,000 employers with fewer than 10 full-time employees each. Thus, they have considerable experience in working with small employers on those employers' benefit plans.

I need to note that this was a small survey of 100 firms of 10 or fewer employees, so the results cannot be taken as definitive. However, they are suggestive.

Using the 80-percent participation test, this survey found that, when employee coverage was tested separately, 56 percent of plans failed the test.

When dependent coverage was tested separately, 70 percent of plans failed the test.

When employee and dependent coverage was tested on a combined basis, 68 percent of the plans failed the test.

These findings suggest that, with the best will in the world, compliance with the present provisions of section 89 is going to be very difficult. The difficulties of compliance are going to be increased by the fact that regulatory guidance will not be forthcoming until later this month, and then, as I understand it, that guidance will not be complete.

The compliance problems for large employers will probably prove the most difficult in that:

They have the most varied employee benefit offerings, and could, therefore, have difficulty sorting out relationships among the various types of benefit offerings they have.

They have the largest number of employees, of course, and hence the greatest data collection problems.

But I rise today to speak on behalf of small employers, those employing 10 or fewer employees, and in support of the amendment being offered by my colleague Senator HARKIN and myself which will ease the impact of section 89 on these small employers.

For small employers of this size, the problem will not be so much one of vast data collection efforts, although data collection could be a problem for them, as it will be one of simply meeting either the 80-percent participation test or the three other tests in combination that section 89 stipulates must be used if the 80-percent test is failed.

The main reason for this is that part-time employees must be counted in the base used to determine whether a benefit plan is discriminatory.

As has been noted in the employee benefits literature, if only two part-time employees in a firm with a total of five to nine nonhighly compensated employees were not provided benefits, for whatever reason, the employer would not meet the 80-percent test.

If an employer has fewer than five nonhighly compensated employees, nonenrollment of any one would disqualify the plan.

If an employer is unable to meet the 80 percent test, it seems to me unlikely that they would be able to meet the three other tests in combination.

Given the state of affairs, a small employer would have a limited number of options. They could: First, revise the plan's eligibility requirements, and attempt to enroll enough part-time employees to satisfy the test; second, reduce the working hours of part-time employees to less than 17½ hours per week, third, leave the plan as it is and pay the penalty, or fourth, terminate the plan.

Thus, the section 89 rules could have the perverse effect of causing small employers to drop all benefits altogether, or to reduce the hours their part-time employees work.

Neither of these seem to me to be a particularly good outcome.

As I said at the beginning of my statement, the amendment we are offering today accepts the nondiscrimination principle. I want to make that clear. This is not an effort on our part to escape a reasonable public policy designated to make sure that tax-favored benefits are not offered to employees in a manner that discriminates in favor of highly compensated employees at the expense of less well compensated employees.

If this modification is accepted, we believe that more nonhighly compensated workers in small firms, particularly those who are working between 17½ and 35 hours per week, will end up with better benefits than will be the case if we do not modify section 89.

Mr. President, I close by repeating a point I have made several times in the course of my discussion of our amendment.

This amendment accepts the goals inherent in section 89—the principle that there should not be discrimination in tax-favored employee benefits, and that these benefits should be available to as many employees of small business as possible.

We think this amendment will make it much more likely that section 89 will achieve these goals.

● Mr. WILSON. Mr. President, I rise to comment on the treatment of arbitrage earnings on bona fide debt service funds as referenced in section 741 of the committee amendment.

Issuers of certain fixed rate long term bonds who maintain multipurpose investment funds would be severely burdened by tracking arbitrage attributable to bona fide earnings for multiple issues. This is true whether the fund is maintained for the payment of debt service on more than one issue or for general government operations, which may include the payment of debt service.

I understand section 741 of the committee amendment would exclude earnings on bona fide debt service funds from the arbitrage rebate calculation in the case of those issuers who maintain multipurpose investment funds. However, I am concerned that for other issuers of tax-exempt debt who maintain single purpose investment funds, the amount of rebatable arbitrage should reflect true economic experience, the aggregate arbitrage yield, so that such issuers should not pay more to the Federal Government than their net arbitrage profit.

Further, many issuers—such as the county of Los Angeles—have already invested significant resources in order to comply with the arbitrage rebate requirements of the Tax Reform Act of 1986.

Consequently, Mr. President I believe it is important that earnings on bona fide debt service funds be included in the arbitrage rebate calculation if such funds are not maintained as part of a multipurpose investment fund. I would urge the conferees to address this matter in conference to ensure that this approach is reflected in the statutory language of the final conference agreement.●

The PRESIDING OFFICER. The hour of 8 o'clock has arrived. The question is on agreeing to the committee substitute as amended.

The committee substitute, as amended, was agreed to.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time.

The PRESIDING OFFICER. Under the previous order, the House bill is before the Senate. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 4333), to make technical corrections relating to the Tax Reform Act of 1986, and for other purposes.

The PRESIDING OFFICER. All after the enacting clause of the House bill is stricken and the text of the Senate bill, as amended, is inserted in lieu thereof. The question is on the third reading of the bill.

The amendment was ordered to be engrossed.

The bill (H.R. 4333) was ordered to a third reading and was read the third time.

Mr. BRADLEY. Mr. President, I ask for the yeas and nays on passage of the bill.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

There being no further debate, the question is on passage of the House bill, as amended. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Oklahoma [Mr. BOREN], the Senator from Florida [Mr. CHILES], and the Senator from New Jersey [Mr. LAUTENBERG] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Mississippi [Mr. COCHRAN], the Senator from Washington [Mr. EVANS], the Senator from Texas [Mr. GRAMM], the Senator from Nebraska [Mr. KARNES], the Senator from Indiana [Mr. LUGAR], the Senator from Indiana [Mr. QUAYLE], the Senator from Wyoming [Mr. WALLOP], and the Senator from California [Mr. WILSON] are necessarily absent.

I further announce that, if present and voting, the Senator from Wyoming [Mr. WALLOP], and the Senator from California [Mr. WILSON] would each vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 87, nays 1, as follows:

[Rollcall Vote No. 366 Leg.]

YEAS—87

Adams
Armstrong
Baucus
Biden
Bingaman
Bond
Boschwitz
Breaux
Bumpers
Burdick
Byrd
Chafee
Cohen
Conrad
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dodd
Dole
Domenici
Durenberger
Exon
Ford
Fowler
Garn
Glenn
Gore
Graham
Grassley
Harkin
Hatch
Hatfield
Hecht
Heflin
Heinz
Helms
Hollings
Humphrey
Inouye
Johnston
Kassebaum
Kasten
Kennedy
Kerry
Leahy
Levin
Matsunaga
McCain
McClure
McConnell
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Proxmire
Pryor
Reid
Riegle
Rockefeller
Roth
Rudman
Sanford
Sarbanes
Sasser
Shelby
Simon
Simpson
Specter
Stafford
Stennis
Stevens
Symms
Thurmond
Trible
Warner
Weicker
Wirth

NAYS—1

Bradley

NOT VOTING—12

Bentsen
Boren
Chiles
Cochran
Evans
Gramm
Karnes
Lautenberg
Lugar
Quayle
Wallop
Wilson

So the bill (H.R. 4333), as amended, was passed.

Mr. BAUCUS. Mr. President, I move that the Senate insist on its amendments and ask for a conference with the House on the disagreeing votes of the two Houses and that the Chair be authorized to appoint conferees.

The motion was agreed to, and the Presiding Officer [Mr. SIMON] appointed Mr. BENTSEN, Mr. MATSUNAGA, Mr. MOYNIHAN, Mr. BAUCUS, Mr. BOREN, Mr. PACKWOOD, Mr. DOLE, Mr. ROTH, and Mr. DANFORTH conferees on the part of the Senate.

Mr. BAUCUS. Mr. President, I want to take this opportunity to give my deep thanks and appreciation to the Senator from Oregon, Mr. PACKWOOD, who worked very well with me in managing this bill. He was a true ally and part of the team. I extend my very deep appreciation to the Senator from Oregon, and also to the majority leader. For the last 2 weeks we have been attempting to bring up the technical corrections bill. I thank the leader for his very helpful aid and advice in bringing up this bill and working it out with other competing legislation.

I also express my deep thanks to some very hardworking staff, first to Jim Gould and Pat Oglesby of the Finance Committee, without whose help we would not be here, additionally to Ron Pearlman and Randy Weiss of the Joint Tax Committee staff, Mike Evans and Tim Vettel of my office and also particularly to other Finance Committee staff, Randy Hardock, Janet Pollan, Norm Richter, and Maurice Foley. I also give my deep appreciation to Mrs. Barbara Groves Mattox. She is no longer on the Finance Committee staff but several months ago worked very hard, and she, too, has helped to make this technical corrections bill possible.

I thank my colleagues for their cooperation. They have been most helpful in securing passage of this bill. I publicly thank my colleagues for their aid and assistance.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, expressions of gratitude are very much in order with respect to our two managers and the way they have handled this difficult, and somewhat arcane in some respects, piece of legislation. They did it well and they did it in record time. I thank them. I also thank the distinguished Republican leader for his cooperation in allowing us to get this bill up. I thank all Senators for the way they have worked to put together the time agreement which enabled the Senate to complete action at this hour. Otherwise, the Senate would still have been working on the bill probably tomorrow and beyond. So my thanks to Senator BAUCUS and Senator PACKWOOD for a job well done.

Mr. President, I ask unanimous consent that Calendar Order No. 861, S. 2238, be indefinitely postponed.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. Mr. President, there are some matters that can be disposed of now quickly, I think, if we go into morning business.

Mr. STEVENS. Mr. President, will the distinguished leader yield to me for a moment?

Mr. BYRD. Yes, gladly.

Mr. STEVENS. As one who has been, I think, most vexatious as far as the managers of the bill are concerned, I thank them for their courtesy and patience with me in the problems that affected people who live some 4,500 to 5,000 miles away. At times it is difficult for us to deal with these issues without appearing to be contentious, but I am grateful to the two managers of the bill for their patience and for their cooperation in working out these difficult problems for my constituents. I thank my friend.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent there now be a period for morning business and that Senators may be permitted to speak therein and the period not extend beyond 15 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

SENATOR JOHN STENNIS RETIRES

Mr. LEVIN. Mr. President. I wish to join my colleagues in paying tribute to JOHN STENNIS, who will be leaving the Senate on January 2, 1989 after 41 years in office.

Senator STENNIS has had an extraordinary distinguished career. He has served as both chairman of the Armed Services Committee and of the Appropriations Committee. He has been a trusted adviser to Presidents, Cabinet secretaries, and to his colleagues in this body. He has been an inspiration to many of the hundreds of men and women who have had the privilege of serving with him. I am one who will always be grateful that I had the chance to know him. He has been a trusted mentor and friend.

There are many moments during these past 41 years that can be cited to explain how it is that this Senator became a legend. I will speak of just one of them.

It was in 1954 that Senator STENNIS took to the floor to open the Senate debate over the censure of Joe McCarthy. McCarthy was riding high. Few dared to speak out against him in fear that he would turn his wrath on them. Even President Eisenhower kept his disdain for McCarthy to himself. No, few wanted to tangle with Joe McCarthy.

But JOHN STENNIS was not cowed, not intimidated. Senator STENNIS accused McCarthy of pouring "slush and slime" on the Senate. He said that failing to censure such behavior would mean that "something * * * fine has gone out of this Chamber, and something of a wrong character, something representing a wrong course, a wrong approach, will have entered * * *." Senator STENNIS' speech helped turn the tide against McCarthy. The man, and his methods, were censured.

Mr. President, I salute JOHN STENNIS on his retirement and wish him all the best in the years ahead. He will be remembered here, in this institution to which he dedicated so much of his life, and throughout the Nation as an outstanding Senator, public servant, and patriot.

TRIBUTE TO SENATOR JOHN C. STENNIS

Mr. SASSER. Mr. President, I rise today to pay tribute to our distinguished departing colleague, Senator JOHN STENNIS of Mississippi.

When I came to the U.S. Senate 12 years ago, JOHN STENNIS was already a legend on Capitol Hill. I think all of my colleagues would agree that he has been an absolute inspiration to this body over his 41 years of distinguished service. His patient, honest, hardworking, no-nonsense style is without equal and will be sorely missed in the Senate.

One of the very best examples of his leadership capabilities was recently witnessed by this body when, as chairman of the Senate Appropriations Committee, he delivered all the appropriations bills into the President's hands before the start of the new fiscal year, an accomplishment unmatched since 1976. They said it couldn't be done, but JOHN STENNIS and the U.S. Congress set the record straight. That's the kind of quality leadership legacy he leaves behind.

Before coming to the Senate, JOHN STENNIS enjoyed a distinguished legal career in Mississippi as a district prosecuting attorney and circuit judge. He is a graduate of Mississippi State University and Virginia Law School and he possesses a Phi Beta Kappa key. His career in public service dates back to 1928, when he was first elected to represent the people of Kemper County in the Mississippi House of Representatives. He has made the people at home proud ever since then.

A patriot in every sense of the word, he has served in the Senate during some of the most turbulent and exciting periods of America's history, much of it as chairman of the Senate Committee on Armed Services. He has been a wise voice as we have sought to maintain our defense readiness in a changing and often dangerous postwar world.

In the aftermath of Watergate, Members on both sides of the aisle agreed that JOHN STENNIS was the best man to shoulder the responsibility of reviewing the President's tapes. With only the country's best interest in mind, he rose ably to the occasion. It is this ardent loyalty to his country and fair-minded, responsible statesmanship that will recommend him to history.

Mr. President, despite the frenzy and chaos in which the Senate operates, the senior Senator from Mississippi has remained unfailingly courteous to and considerate of all his colleagues as well as the staff of this body. Despite personal hardship, he has remained a loyal, hard-working, irreplaceable Member of the Senate. His counsel has been of inestimable value to me and to so many others. I value his advice, I treasure his friendship, and I join with my colleagues in wishing him happiness and peace in his retirement.

ROBERT T. STAFFORD RETIRES

Mr. LEVIN. Mr. President. I wish to join my colleagues in paying tribute to Senator ROBERT STAFFORD who is leaving the Senate when the 100th Congress adjourns.

Senator STAFFORD has spent 40 years in public life. He has served Vermont as attorney general, Lieutenant Governor, Governor, Congressman and, since 1971, as Senator. It is clear that the people of his State know a good public servant when they see one.

The name of ROBERT STAFFORD will always be associated with two areas in which many of his legislative accomplishments can be found: the environment and education. A dedicated environmentalist, Senator STAFFORD was instrumental in passage of the Superfund bill, and in reauthorizing and rewriting the Clean Water Act and the Clean Air Act.

In the area of education, BOB STAFFORD fought for reauthorization of the Vocational Education Act, the Rehabilitation of the Handicapped Act, and the Higher Education Act. It is, in large part, thanks to Senator STAFFORD that Congress was able to block various administration proposals which would have weakened or eliminated vital education programs. It is in recognition of his leadership that the House and Senate voted to rename the Guaranteed Student Loan Program in honor of the Senator from Vermont.

Over the years Bob Stafford has fought many a good fight, for the people of his State and the Nation. He is one of the truly great and gentle people who have served in this body. He has been ramrod straight in the manner in which he has fought for the good causes with which he has been associated. I salute him as he returns home and wish him and Helen all the best in the years ahead. He leaves behind a record of which any Senator could be proud.

MERGING BANKS AND SECURITIES FIRMS: FIRST BOSTON AND CREDIT SUISSE

Mr. DIXON. Mr. President, there have been a number of press reports over the past few days describing the proposed merger of First Boston, a major securities firm, with Credit Suisse, a very large Swiss Bank.

I think this transaction is a noteworthy one for a number of reasons. For example: First Boston will not lose any authority to conduct any securities activities either here in the United States or abroad; Credit Suisse will not lose any authority to conduct any banking activities either in Switzerland or in the United States;

The merged firm will have access to FDIC deposit insurance and to the Federal Reserve's discount window; and

There will be no "fire walls" or "Chinese walls" between the bank and the securities firm.

If Credit Suisse were an American bank, the Glass-Steagall Act would prohibit it from merging with First Boston. If Credit Suisse was American and First Boston was foreign, U.S. law would severely restrict the kind of securities activities First Boston could engage in. Its activities in foreign markets would be significantly limited, and it would have very little ability to conduct securities activities in the American market.

It can be argued that the Credit Suisse-First Boston merger does not undermine the Glass-Steagall prohibitions that generally prevent U.S. banks from being affiliated with U.S. securities firms, and it is true that this transaction is only legal because of a grandfathering provision of the International Banking Act of 1978. However, the bottom line is that First Boston is able to merge with a bank, and that this merger does tend to undermine the Glass-Steagall prohibition.

It is also worth noting that First Boston is not the only major securities firm to be affiliated with a bank. Merrill Lynch, Goldman Sachs, Drexel Burnam, and Dreyfuss are just a few of the securities firms that have bank affiliates. Shearson is part of American Express, while also owns Boston Safe Deposit and Trust. Dean Witter is owned by Sears, which also owns Greenwood Trust Co., and savings and loans. Bache and Co. is owned by Prudential Insurance, which also owns Prudential Bank and Trust.

The Glass-Steagall barrier is breaking down, and it is breaking down from both sides of the barricade. However, without legislative change, the barrier is least troublesome to securities firms trying to conduct banking activities. The barrier is much more difficult to overcome from the bank side of the wall.

That is simply not fair, Mr. President. If securities firms can, through bank affiliates, have access to the discount window and obtain FDIC deposit insurance, than basic fairness demands that banks be allowed reciprocal opportunities to enter the securities business.

I am glad to be able to say that the Senate recognized this unfairness. Last March, we passed the Proxmire Financial Modernization Act by a vote of 94 to 2—if that's not a mandate for change, I don't know what is. The Senate bill contains the kind of fire walls that protect bank safety and soundness. It is a good bill; one that protects and promotes the public interest in a safe, sound, and competitive financial system.

The House Banking Committee reported legislation that creates a number of very serious problems for the banking industry, but which fundamentally recognizes the need for change. The House Energy and Commerce Committee, however, reported legislation that generally prohibits bank-affiliated securities firms from exercising some of the new securities authority authorized by the Senate, severely restricts the ability of the securities affiliates to competitively use the authorities that are granted, and which actually takes away the ability of banking organizations to continue to offer many products that they have been offering for a long time.

I have been told that the House Energy and Commerce Committee is interested in producing a fair and reasonable bill, and that the unfair, absolutely unworkable bill they reported was designed to make a jurisdictional point and to establish an intitial negotiating position.

I want to believe that is true, Mr. President, but I have to note that there are not any negotiations going on. The Senate acted in March. Time is running out; where is the House?

If the House Energy and Commerce Committee is seriously interested in producing a bill—if they are interested in doing more than preserving the securities industry's advantages under current law—I want to tell them that the Senate is prepared to meet. I am an optimist. I think that, if we do meet, we can produce a good bill.

I think it should be made clear, however, that not negotiating does not preserve the Glass-Steagall barrier. As the Credit Suisse-First Boston merger demonstrates, that barrier if falling. What a failure to negotiate will demonstrate is that the House Energy and Commerce Committee is not interested in seeing Congress take control of the reform process, that it is not interested in the kind of fair, pro-competitive reform that the Senate has passed and sent to the House, and that it is not interested in ensuring that proper "fire walls" are maintained between banking and securities activities.

I urge my colleagues in the House to stand up for fairness, for competition, and for preservation of the safety and soundness of our financial system. I urge them to work with the Senate to produce a bill in the few days remaining before we adjourn.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Kalbaugh, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, and a withdrawal, which were referred to the appropriate committees.

(The nominations and withdrawal received today are printed at the end of the Senate proceedings.)

VETO MESSAGE ON S. 1259—MESSAGE FROM THE PRESIDENT—PM 164

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which was ordered held at the desk by unanimous consent, pending further disposition:

To the Senate of the United States:

I am returning herewith without my approval S. 1259, a bill to grant a right of access across a portion of Buffalo National River Park to a landowner whose property is adjacent to the Park. Located in northwest Arkansas, the Buffalo National River was established in 1972. Buffalo National River, with both swift-running and placid stretches, is one of the few remaining unpolluted free-flowing rivers in the lower 48 States.

Through various efforts in recent years, the landowner has sought a shortcut across Park lands for access to a public road near his land, as an alternative to the means of access across private lands that he already enjoys. The landowner claimed unsuccessfully in court that certain Park land constituted a public road on which he and other members of the public were entitled to travel. The United States District Court for the Western District of Arkansas found that he had "no right to use a part of the Buffalo River National Park lands for access to his residence." *Jones v. Gould and the Department of the Interior,* Civil No. 83-3097 (1983), 12. Upon appeal of the case, a unanimous three-judge panel of the United States Court of Appeals for the Eighth Circuit affirmed the decision of the lower court, stating that "the district court's finding that no public road existed is correct." *Jones v. Gould and the Department of the Interior,* 741 F. 2d 220 (1984), 221.

Preservation of America's natural heritage requires careful management of our parklands by the Department of the Interior. The Federal Government has a duty to preserve and protect our National Parks for the benefit and enjoyment of all Americans—both those now living and future generations. This bill permits the special roadway access for the private landowner to diminish the scenic, historic, and other values for which the Park was established, as long as it does not do so "unreasonably." The Park lands across which the landowner seeks access are partly wooded and partly old pastureland that is now returning to its natural condition as a forest. Special roadway access across this land would inhibit its return to that natural condition.

If we begin with S. 1259 to establish by private bills special roadway privileges in our National Parks for the convenience of private landowners fortunate enough to have sufficient influence to secure passage of such bills, we will have begun to squander our national treasure.

Accordingly, I cannot approve S. 1259.

RONALD REAGAN.

THE WHITE HOUSE, *October 11, 1988.*

MESSAGES FROM THE HOUSE

At 11:10 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House disagrees to the amendments of the Senate to the bill (H.R. 3361) to amend the Public Health Service Act to establish within the National Institutes of Health a National Institute on Deafness and Other Communication Disorders; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. DINGELL, Mr. WAXMAN, Mr. LENT, and Mr. MADIGAN as managers of the conference on the part of the House.

The message also announced that the House has passed the following bill, with amendments, in which it requests the concurrence of the Senate:

S. 437. An act to amend the Small Business Investment Act of 1958 to permit prepayment of loans made to State and local development companies.

ENROLLED BILLS SIGNED

At 2:33 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 2057. An act to provide for the establishment of the Coastal Heritage Trail Route in the State of New Jersey, and for other purposes;

H.R. 4417. An act to authorize appropriations to the Secretary of Commerce for the programs of the National Bureau of Standards for fiscal year 1989, and for other purposes;

H.R. 4724. An act to direct the Secretary of Agriculture to release a reversionary interest of the United States in certain land located in Oktibbeah County, MS; and

H.R. 5186. An act to designate the Federal building and United States Courthouse located at 109 South Highland, Jackson, TN, as the "Ed Jones Federal Building and United States Courthouse".

The enrolled bills were subsequently signed by the President pro tempore [Mr. STENNIS].

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3967. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report on the financial audit of Neighborhood Reinvestment Corporation for 1987; to the Committee on Banking, Housing and Urban Affairs.

EC-3968. A communication from the Assistant Secretary of the Interior (Land and Minerals Management), transmitting, pursuant to law, notice of leasing systems for the eastern Gulf of Mexico; to the Committee on Energy and Natural Resources.

EC-3969. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report of the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-3970. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain overpayments of offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-3971. A communication from the Acting Administrator of the General Services Administration, transmitting, pursuant to law, a copy of lease prospectus for the National Aeronautics and Space Administration; to the Committee on Environment and Public Works.

EC-3972. A communication from the Acting Administrator of the General Servcices Administration, transmitting, pursuant to law, copies of lease prospectuses; to the Committee on Environment and Public Works.

EC-3973. A communication from the Acting Secretary of the U.S. International Trade Commission, transmitting, pursuant to law, the third annual report on the impact of the Caribbean Basin Economic Recovery Act on the U.S. industries and consumers; to the Committee on Finance.

EC-3974. A communication from the Assistant Legal Advisor for Treaty Affairs, Department of State, transmitting, pursuant to law, a report on international agreements, other than treaties, entered into by the United States in the 60 day period prior to September 29, 1988; to the Committee on Foreign Relations.

EC-3975. A communication from the Special Counsel of the U.S. Merit Systems Protection Board, transmitting, pursuant to law, a report on the investigation of a former official of the Bureau of Indian Affairs, Juneau, AK; to the Committee on Governmental Affairs.

EC-3976. A communication from the Acting Secretary of Agriculture, transmitting, pursuant to law, a new Privacy Act system of records entitled "Drug-Free Federal Workplace Records"; to the Committee on Governmental Affairs.

EC-3977. A communication from the Acting Secretary of Education, transmitting, pursuant to law, a report entitled "Final Regulations for the Bilingual Education Program and the Emergency Immigrant Education Program"; to the Committee on Labor and Human Resources.

EC-3978. A communication from the Acting Secretary of Education, transmitting, pursuant to law, a report on assistance for disaster stricken schools and educational agencies; to the Committee on Labor and Human Resources.

EC-3979. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain overpayments of offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-3981. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report on the financial audit of the Senate Building Beauty Shop for the year ended December 31, 1988; to the Committee on Rules and Administration.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-627. A joint resolution adopted by the Legislature of the State of California; to the Committee on Armed Services.

"ASSEMBLY JOINT RESOLUTION NO. 92—

"Whereas, The Medal of Honor is the nation's highest military awarded and has been so since the Civil War; and

"Whereas, There are prescribed statutory limits on the time within which this award may be made; and

"Whereas, Heroic deeds often are overlooked in the heat of battle and only come to light after the time limits have elapsed, and heroic events have been overlooked for various reasons; and

"Whereas, These time limits have in the past been waived by Congress when information has been uncovered after the fact; and

"Whereas, There are currently two bills before Congress which would waive the time limits for two black Americans who performed heroically in wartime; and

"Whereas, HR 3509 concerns Sergeant Henry Johnson who served in France during World War I as a member of the all-black 369th Infantry regiment and has been acknowledged by the United States Army as a World War I hero, and who was the first American awarded France's highest military honor, the Croix de Guerre, for his bravery; and

"Whereas, HR 3510 concerns Seaman Dorris Miller who was a mess steward aboard the battleship West Virginia when the Japanese attacked the ship in Pearl Harbor on December 7, 1941, and is credited with risking his life to drag his mortally wounded captain to safety and then to returning to the deck to man a machine gun and shoot down two Japanese aircraft for which action he was awarded the Navy Cross; and

"Whereas, It is a historical fact that more than 1.5 million black Americans served in the Armed Forces of the United States during World War I and World War II; and

"Whereas, It is also a historical fact that no black American received the Medal of Honor during those wars;

"Whereas, HR 3509 and HR 3510 currently have 130 cosponsors and indications are that President Reagan will sign these bills if passed by Congress; now, therefore, be it

"*Resolved, by the Assembly and Senate of the State of California jointly,* that the Legislature of the State of California urges the Congress of the United States to enact HR 3509 and HR 3510; and be it further

"*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-628. A joint resolution adopted by the Legislature of the State of California; to the Committee on Environment and Public Works:

"ASSEMBLY JOINT RESOLUTION NO. 67

"Whereas, The California Legislature, with the adoption of Senate Joint Resolution 24 in 1982 (Resolution Chapter 13 of the Statutes of 1982), went on record in support of construction of a multipurpose Auburn Dam; and

"Whereas, A multipurpose Auburn Dam would provide flood protection for the Sacramento region and greatly help meet the future water and power needs of El Dorado, Placer, and Sacramento Counties; and

"Whereas, In Sacramento and adjacent areas, recent floods and a drought have focused renewed interest in the construction of a multipurpose Auburn Dam, a large version of which was authorized by Congress in 1965 but never completed; and

"Whereas, In August 1988, the American River Authority, a joint powers agency representing El Dorado and Placer Counties, informed the federal government of its willingness to issue revenue bonds to finance the hydroelectric power portion of a multipurpose Auburn Dam, and is attempting to obtain contracts for water sales from such a project; and

"Whereas, The American River Authority favors the construction of a multipurpose Auburn Dam, which could provide increased water and power supplies, flood protection, fishery enhancements, and recreational opportunities to all beneficiaries; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California jointly, That the Legislature of the State of California advises the Congress of the United States that it continues to support construction of a multipurpose dam at the Auburn site, provided that it is shown that the project's water and power users will pay their fair share of the costs of the water and power; and be it further

"Resolved, That the Legislature respectfully encourages the Congress to give serious consideration to the offer of the American River Authority to share the costs of a multipurpose dam; and be it further

"Resolved, That the Legislature respectfully encourages the Congress to give serious consideration to the offer of the American River Authority to share the costs of a multipurpose dam; and be it further

"Resolved, That the State of California, while participating in any study of the American River watershed, should consider the needs of, and potential benefits to, El Dorado and Placer Counties, as well as those of the City of Sacramento, Sacramento County, and other local entities; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, the Secretary of the Interior, the Secretary of Defense, and Speaker of the House of Representatives, each Senator and Representative from California in the Congress of the United States, the Governor of California, the Secretary of the Resources Agency, and the Director of Water resources."

POM-629. A joint resolution adopted by the Legislature of the State of California; to the Committee on Finance;

"ASSEMBLY JOINT RESOLUTION NO. 94

"Whereas, Congress has established the National Economic Commission to recommend ways to solve the nations deficit problems; and

"Whereas, Proposals are being considered by the commission to impose a special tax on motor vehicle fuels to reduce the federal deficit; and

"Whereas, The burden for deficit reduction should be borne by the whole nation, not just motor vehicle fuel users; and

"Whereas, California's highway needs are enormous, and a strengthened highway program is essential to sustain economic growth and preserve the quality of life in California; and

"Whereas, The use of this traditional source of highway funds for deficit reduction would significantly impede the ability of the state to implement badly needed adjustments to the fuel tax and be disastrous to California's effort to improve its vital highway system; now, therefore, be it

"*Resolved by the Assembly and the Senate of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the Congress of the United States to seek deficit reduction through means other than an increase in the motor vehicle fuel tax; and be it further

"*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-630. A joint resolution adopted by the Legislature of the State of California; to the Committee on Finance:

"ASSEMBLY JOINT RESOLUTION NO. 82—

"Whereas, Alzheimer's disease is a disease of the brain, causing progressive dementia and, ultimately, physical dysfunction as well; and

"Whereas, Persons afflicted with Alzheimer's disease can be neither cured nor rehabilitated, and the course of the disease is one of unremitting, progressive mental and physical deterioration over 5 to 20 years, with death resulting usually from infection, often pneumonia; and

"Whereas, Diagnosis of Alzheimer's disease is made by eliminating other known causes of cognition and memory impairments for which diagnostic techniques are available, and there is no reliable diagnostic test for Alzheimer's disease; and

"Whereas, In the United States, Alzheimer's disease or related dementia afflict approximately 3 million individuals, most of whom are 65 years old or older; and

"Whereas, Among the segment of the population of the United States over 65 years of age, Alzheimer's disease is the fourth most common cause of death; and

"Whereas, The incidence of Alzheimer's disease increases sharply with age, including approximately 5 percent of the total population over 65 years of age, and over 20 percent of the group over 85 years of age; and

"Whereas, While the incidence of Alzheimer's disease or related dementias has remained relatively constant for 35 years, survival rates have not, and ever increasing percentages of the population over 65 years of age survive past 80 years of age; and

"Whereas, There are national estimates that as many as 500,000 persons in California currently suffer from Alzheimer's disease or related dementias, and the State Department of Health Services projects that, by the year 2020, there will be 750,000 Alzheimer's disease patients throughout the state; and

"Whereas, Approximately 50 percent of the American nursing home population is afflicted with Alzheimer's disease, and in California, the State Department of Health Services estimates 50 to 70 percent of residents in all long-term care facilities suffer from Alzheimer's disease; and

"Whereas, The average annual cost of nursing home care in California currently runs between fifteen thousand dollars ($15,000) and thirty thousand dollars ($30,000), the aggregate annual cost of nursing home care for Alzheimer's disease, patients nationwide is estimated to be as high as 48 billion dollars, and the California share, conservatively assuming 11 percent, is 5.3 billion dollars; and

"Whereas, Most Alzheimer's disease, patients are not being cared for in nursing homes, and more than 75 percent of all dementia patients living at home are being attended by family caregivers; and

"Whereas, The services required by these patients, and their families and caregivers, range across a continuum of needs unique to the progressive deterioration caused by Alzheimer's disease; and

"Whereas, Specific needs for service depend on the particular stage of Alzheimer's disease of any given patient, and the total cost of care for dementia patients in California, including those who are not institutionalized in skilled nursing facilities, is unknown; now, therefore, be it

"*Resolved by the Assembly and Senate of the State of California, jointly,* That the Legislature hereby memorializes the President and the Congress of the United States to enact legislation expanding benefits under the Medicare program for Alzheimer's disease, patients and their families, to include, as in-home and community-based services, Alzheimer's disease, day care, in-home and out-of-home respite care, and adult social day care, and to include long-term residential care; and be it further

"*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

—

POM-631. A joint resolution adopted by the Legislature of the State of California; to the Committee on the Judiciary:

"ASSEMBLY JOINT RESOLUTION NO. 93

"Whereas, More than 13 years have passed since the end of the Vietnam War, yet thousands of Indochinese remain in refugee camps in Thailand, Malaysia, the Philippines, and Hong Kong; and

"Whereas, About 450,000 Indochinese refugees have made their homes in California and many are now United States citizens and are contributing members of their adopted country; and

"Whereas, Many Indochinese refugees in camps in countries of first asylum are husbands, wives, parents, children, and other family members of former refugees and citizens living in the State of California, and many of these refugees have remained in refugee camps for more than five years; and

"Whereas, Secretary of State George Shultz has suggested that an alternative to resettling the Vietnamese refugees is voluntary repatriation, under which the refugees either 'voluntarily' return to their homeland or remain indefinitely at the refugee camps; and

"Whereas, In the past, Vietnamese refugees, including women and children, who have returned to Vietnam after arriving in Guam were put into reeducation camps by the Vietnamese government and were accused of participating in activities with the CIA, and many of these people still remain in the reeducation camps; and

"Whereas, The number of Indochinese refugees to be admitted to the United States for the 1989 fiscal year has been reduced by 6,000; now, therefore, be it

"*Resolved by the Assembly and the Senate of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to request the State Department to reevaluate its proposed policy of 'voluntary' repatriation of Vietnamese refugees; and be it further

"*Resolved,* That those Indochinese refugees who have relatives living in the United States and who qualify under immigrant status should be given priority to be admitted into the United States of America, and that their cases be expedited; and be it further

"*Resolved,* That the admission quota should remain at 29,500 the same level as it is currently established at, and that the United States should take an active leadership role within the international community in search of a long-term satisfactory solution; and be it further

"*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and the Vice President of the United States, to the Secretary of State, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

—

POM-632. A joint resolution adopted by the Legislature of the State of Maine; to the Committee on Labor and Human Resources:

"JOINT RESOLUTION MEMORIALIZING THE MEMBERS OF THE UNITED STATES CONGRESS TO PASS LEGISLATION FOR BETTER CHILD CARE SERVICES

"We, your Memorialists, the House of Representatives and Senate of the State of Maine of the One Hundred and Thirteenth Legislature, now assembled, most respectfully present and petition the United States Congress, as follows:

"Whereas, State Government has provided almost 20 years of progressive leadership and commitment of resources to develop child care services in Maine; and

"Whereas, the lack of good quality, accessible and affordable child care services is still a serious problem facing many thousands of children and families, and employers, all across Maine; and

"Whereas, successful resolution of the child care crisis requires coordination and collaboration between all levels of government and the private sector; and

"Whereas, the "Act for Better Child Care Services" is a comprehensive Federal Government proposal to assist states and local communities to make child care more affordable for low-income and moderate-income families, to increase the number of child care facilities and qualified providers available to all families, and to improve the range of options and quality of all child care services; now, therefore, be it

"*Resolved:* That We, your Memoralists, respectfully urge and petition the Members of the United States Congress to pass "AN ACT for Better Child Care Services," S. 1885-H.R. 3660; and be it further

"*Resolved:* That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the President of the Senate and the Speaker of the House of Representatives in the Congress of the United States and to each Member of the Maine Congressional Delegation."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute.

S. 2047. A bill to require a health warning on the labels of all alcoholic beverage containers (Rept. No. 100-596).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 2879. A bill to provide a method under which the State of New Mexico can continue certain Federal highway road work; to the Committee on Energy and Natural Resources.

By Mr. BINGAMAN:

S. 2880. A bill to promote state-wide health promotion campaigns, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. PELL:

S.J. Res. 394. Joint resolution to establish a national policy on permanent papers; to the Committee on Government Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DOLE (for himself, Mr. MCCAIN, Mr. BOSCHWITZ, Mr. STAFFORD, Mr. KARNES, Mr. WILSON and Mr. SIMON):

S. Res. 493. A resolution to amend Senate Resolution 28 to implement closed caption broadcasting for hearing-impaired individuals of floor proceedings of the Senate; to the Committee on Rules and Administration.

By Mr. BYRD (for himself and Mr. DOLE):

S. Res. 494. A resolution to authorize representation by the Senate Legal Counsel in the case of *Springfield Terminal Railway Co. v. United Transportation Union and National Mediation Board;* considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BINGAMAN:

S. 2880. A bill to promote statewide health promotion campaigns, and for other purposes; to the Committee on Labor and Human Resources.

NATIONAL HEALTH PROMOTION ACT

• Mr. BINGAMAN. Mr. President, I rise today to introduce the National Health Promotion Act, a bill to establish Federal-State health promotion campaigns nationwide.

This summer, the Surgeon General issued his first report on nutrition and health. That landmark document revealed that two-thirds—66 percent—of all deaths in the United States are caused by chronic ailments such as coronary heart disease, stroke, atherosclerosis, diabetes, and cancer. The report also, for the first time, details important evidence linking diet and disease.

The Surgeon General makes some important recommendations for improving our diets and decreasing our risk of developing a chronic disease. These include lowering our consumption of saturated fats, high-cholesterol foods, sugar, sodium, and alcoholic beverages, and eating more foods containing complex carbohydrates and fiber.

These changes and other critical steps to better health will not come about simply because the Surgeon General issued this report. Changes will come only from informed individual action by each person in our society. The key word here is "informed." Many Americans across the country will never hear of or read the Surgeon General's report. Many Americans will remain unaware of the relation between their diet and their risk from chronic diseases, and they will remain unsure of what foods they should and should not eat.

But if we find a way to reach into every State, reservation, city, and town in the country with information on diet, fitness, and good health habits, our country would benefit in a multitude of ways. Evidence is clear that better health enhances personal well-being and quality of life, improves work-place productivity, and decreases medical costs. And these in turn lead to greater economic well-being for our country as a whole.

In my home State of New Mexico, I helped develop the health promotion program I envision for the Nation. That program, called HealthNet New Mexico, is helping many New Mexicans. HealthNet, a nonprofit organization funded by private contributions, has just completed its second, successful year. To date, more than 44,000 New Mexicans in more than 60 communities and 642 worksites and schools have participated in the program.

HealthNet's mission is to help New Mexicans make changes in their lifestyles that will lead to healthier lives. Specifically, it aims, by 1996, to have 90 percent of all adult New Mexicans within 10 percent of their ideal weight, 90 percent of adults exercising regularly, and 90 percent of all New Mexicans tobacco-free.

HealthNet targets individual behavior change through a series of 3 annual 10-week campaigns. The three campaigns, Eat Right New Mexico, Get Fit New Mexico, and Tobacco-Free New Mexico, focus on improving nutrition, encouraging fitness, and eliminating tobacco use. During each campaign, participants register at worksites, schools, senior centers, health care institutions, and other appropriate locations and come away with charts and materials to guide them through the 10-week session. The materials include information on diet, fitness, or tobacco use, and outline step-by-step goals that can be tailored to an individual's particular needs.

Each person is responsible for improving his or her health habits and motivation. The program also encourages participation by entire offices, competitions between offices or towns, lectures, demonstrations, group walks, and exercise classes. In New Mexico this year, a number of health professionals gave weekly lectures to the public free of charge in communities and worksites throughout the State.

To ensure a successful series of campaigns, community-wide organization is crucial. HealthNet New Mexico involved individuals from Federal, State, and local agencies, professional organizations, education institutions, businesses, health care institutions, and the media. Media participation is central, particularly because many New Mexicans live in rural areas. With the cooperation of the major television stations, local radio stations, and newspaper, HealthNet messages could reach virtually all of the State's 1.4 million people.

HealthNet now is beginning to evaluate the results and benefits of its campaigns. We do not have to wait for the statistical results to know, however, that heightened individual awareness of good health habits is benefiting many people around the State. For many New Mexicans, energy and fitness levels are up, and the State has benefited from lower health care costs and increased worker productivity.

Our country as a whole can share the benefits we have experienced in New Mexico. The legislation that I am introducing will help other States develop their own HealthNet programs. It calls for a grant program administered by the Secretary of Health and Human Services. During the 5-year program, each State can apply for funds for any 3 consecutive years on 75, 50, and 25 percent Federal matching basis, respectively.

The State would be responsible for developing a program and enlisting the support of appropriate organizations and professionals. The State would also establish an advisory board of individuals from government, health care organizations, businesses, the education profession, and the general public, which will develop a comprehensive plan for the health promotion campaigns.

The plans should emphasize improvement of physical fitness and nutrition, cessation of tobacco use, reduced misuse of drugs and alcohol, control of high blood pressure, prevention of lifestyle-related accidents, and reduction of stress.

Finally, my bill stipulates that the State must assure an equitable distribution of grants throughout the State. And if it plans to charge individual participation fees, it must do so on a sliding scale, based on ability to pay. This will help assure the widest possible participation around the State.

If we help get these programs started, each State eventually would be able to operate them on their own. Given the many benefits of these health promotion campaigns, it will be in their interest to continue them beyond the 3-year development period.

I am convinced that good health leads not only to a longer life, but to a better life. I am convinced that good health is absolutely essential to remaining a productive, competitive nation in the world economy. And I am convinced that if this legislation is enacted and effectively implemented, our Nation will experience a revolution in health awareness that will alter significantly, and positively, the quality of life for all Americans.●

By Mr. PELL:

S.J. Res. 394. Joint resolution to establish a national policy on permanent papers; to the Committee on Governmental Affairs.

NATIONAL POLICY ON PERMANENT PAPERS

Mr. PELL. Mr. President, I am introducing today a Senate joint resolution which would establish a national policy that books and other publications of enduring value be published on acid free paper.

Within the last year, an increasing amount of publicity has been given to the fact that we are facing the loss of an enormous part of our historical, cultural, and scientific record because of the self-destruction of the acidic papers on which books and other publications have been printed since the mid-19th century. This is the problem of the "brittle books," which has been the subject of attention on public television and other media.

I have been particularly concerned about this problem in my role as chairman of the Joint Committee on the Library in the 100th Congress. The Library of Congress is a pioneer in developing the technology for mass deacidification of its collections through the use of diethylzinc [DEZ]. A pilot plant utilizing this process is now being tested in Houston, with the expectation that a large scale facility will soon be in operation under license from the Library. The present goal is to begin treatment of all the Library's new acquisitions by 1991 and to start retrospective treatment at the same time of existing publications in American history.

The National Archives and Records Administration and the National Library of Medicine are also making vigorous efforts to deal with the problem, either through deacidification or through microfilming books and publications which are already too brittle to save.

Congress has already appropriated over $100 million in support of these efforts, and we should be prepared to provide more. At stake is nothing less than the preservation of the whole record and literacy output of the most remarkable century of human experience to date.

However, it makes little sense to continue the remedy without attempting to curb the basic problem. And that is what the resolution I am offering today is designed to do. It establishes a national policy to promote and encourage the printing of books and other publications of enduring value on nonacidic paper. In a figurative sense, it locks the library door against prospective invasion by publications printed on acidic paper.

The resolution would declare it to be a policy of the United States that all Federal records, books and publications of enduring value be produced on acid-free papers. In furtherance of that objective, the resolution urgently recommends that Federal agencies require the use of archival quality papers for permanently valuable Federal records, and the use of permanent papers for other publications of enduring value.

The resolution would also urgently recommend that American publishers voluntarily adhere to the American National Standard for permanent paper in printing publications of enduring value, and that the use of such paper be noted in the publication, in advertisements and in standard bibliographic listings.

Finally, the resolution would urge the compilation of reliable statistics on the production of permanent paper and on the volume required to meet the objectives of the national policy established by the bill. And it would direct the Librarian of Congress and the Archivist of the United States, together with the directors of the national libraries of medicine and agriculture, to monitor progress in implementing the national policy and report annually to Congress.

It is worth noting, Mr. President, that some progress is already being made toward implementing the national policy. The recent excellent study of Book Preservation Technologies prepared by the Office of Technology Assessment estimated that 15 to 25 percent of the books currently being published in the United States are printed on acid-free paper.

The Library of Congress and many university presses are among those already published on acid free papers, as is the National Historical Publications and Records Commission. As a former member of the Commission, I am proud to have had a role in establishing its policy of publishing on permanent paper.

Clearly, the technology exists to implement the national policy. I am advised that permanent papers with a life of several hundred years can be produced at prices generally competitive with acid papers. The implementation of a national policy with respect to Federal records and publications surely would stimulate an expansion of production of nonacidic papers and hopefully lead to increasingly competitive prices.

Finally, it should be noted that the implementation of the national policy, by attacking the problem prospectively, will have the effect of reducing the long-range costs of deacidification. Every book produced on acid-free paper today frees up preservation resources which can be used to attack the crumbling backlog of publications dating back to 1850.

I commend this resolution to the attention of the Senate, and I invite comments and suggestions. It is, of course, late in the 100th Congress, but I intend the reintroduce the resolution in January 1989, and I hope it will be possible to hold public hearings soon thereafter to explore the matter in-depth. I have every confidence that it will not be said 100 years from now that we knew how to solve this problem but did nothing about it.

ADDITIONAL COSPONSORS

S. 2782

At the request of Mr. DASCHLE, the name of the Senator from Missouri [Mr. DANFORTH] was added as a cosponsor of S. 2782, a bill to amend title XIX of the Social Security Act to provide coverage for certain outreach activities undertaken at the option of a State for the purpose of identifying pregnant women and children who are eligible for medical assistance and assisting them in applying for and receiving such assistance, and for other purposes.

SENATE JOINT RESOLUTION 340

At the request of Mr. PACKWOOD, the names of the Senator from Georgia [Mr. NUNN], and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of Senate Joint Resolution 340, designating November 27 through December 3, 1988, as "National Sir Winston Churchill Recognition Week."

SENATE RESOLUTION 493—IMPLEMENTING CLOSED CAPTION BROADCASTING FOR HEARING-IMPAIRED INDIVIDUALS OF FLOOR PROCEEDINGS OF THE SENATE

Mr. DOLE (for himself, Mr. SIMON, Mr. MCCAIN, Mr. BOSCHWITZ, Mr. STAFFORD, Mr. KARNES, and Mr. WILSON) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 493

Resolved, That subsection (a) of the first section of Senate Resolution 28, agreed to February 27, 1986, is amended by adding at the end thereof the following: "All coverage under this resolution shall be made available to hearing-impaired individuals via closed captions.".

Mr. DOLE. Mr. President, a little over 2 years ago, we voted to bring the Senate to the American people through the medium of television. We did so out of the belief that increasing access to the political process strengthens our democracy. But we are still not bringing the Senate to all the people. More than 20 million Americans with hearing impairments remain shut out from the day-to-day workings of this body.

Today I am introducing a resolution which would enable Americans with hearing impairments to plug in to their democracy by requiring closed-captioned broadcasting of Senate floor proceedings. Closed-captioning technology allows the audio portion of a program to be displayed in printed form on the television screen. The captions are only received if a person has a special decoding device attached to the television set. Real-time, instantaneous closed-captioning is already being used in broadcasts of Presidential speeches and press conferences, news programs, and even some Senate committee hearings. And it is expected that next year the House will approve a proposal to implement closed-captioning of its proceedings.

My resolution would simply amend the resolution setting forth the rules concerning televising of Senate sessions. It does not prescribe what type of equipment is to be used, or whether the captioning is to be done in-house or by an outside vendor. Those questions should be decided by the Senate Rules Committee, which has been looking into the issue for the past 2 years. There will be some cost involved, but I believe that we must pay the price to ensure that every American can tune in to his or her elected leaders.

Mr. President, it is time for the Senate to commit itself to opening its doors to deaf and hearing-impaired Americans. We know the technology is out there. And we know that all the major organizations representing hearing-impaired Americans enthusiastically support captioning Senate floor proceedings.

I should warn our hearing-impaired viewers that not everything we say is worth hearing. But every so often something gets said here that touches our lives and shapes our destiny as a nation. All Americans—whether hearing or nonhearing—have a right to share in these debates. I urge my colleagues to join me in support of this measure now and upon its reintroduction next year. Let us pledge to make the 101st Congress the time when we can truly say that the world's greatest deliberative body is accessible to all Americans.

SENATE RESOLUTION 494—AUTHORIZING REPRESENTATION BY THE SENATE LEGAL COUNSEL IN THE CASE OF SPRINGFIELD TERMINAL RAILWAY CO. VERSUS UNITED TRANSPORTATION UNION AND NATIONAL MEDIATION BOARD

Mr. BYRD (for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 494

Whereas, in the case of *Springfield Terminal Railway Co.* v. *United Transportation Union and National Mediation Board,* No. 88-0117 P, pending in the United States District Court for the District of Maine, counsel for the plaintiff has served a deposition subpoena for testimony and the production of documents on Mary Anne Marsh, an employee on the Staff of Senator John F. Kerry, and has served, and intends to serve additional, deposition subpoenas on telephone companies for testimony and the production of telephone records pertaining to Senator Kerry and members of his staff;

Whereas, pursuant to sections 703(a), 704(a)(2) and 708(c) of the Ethics in Government Act of 1978, 2 U.S.C. § § 288b(a), 288c(a)(2), and 288g(c) (1982), the Senate may direct its counsel to represent Members and employees of the Senate with respect to any subpoena or order relating to their official responsibilities: Now, therefore, be it

Resolved, That the Senate Legal Counsel is directed to represent Senator Kerry and members of this staff in the case of *Springfield Terminal Railway Co.* v. *United Transportation Union and National Mediation Board,* in connection with subpoenas served upon them, or upon third parties, in order to assert all privileges to which they may be entitled.

AMENDMENTS SUBMITTED

TECHNICAL CORRECTIONS TO TAX REFORM ACT OF 1986

GRAHAM (AND OTHERS) AMENDMENT NO. 3639

Mr. GRAHAM (for himself, Mr. SYMMS, and Mr. PRYOR) proposed an amendment to the bill (S. 2238) to make technical corrections relating to the Tax Reform Act of 1986, and for other purposes; as follows:

Section 56(c)(1) is amended by adding after subparagraph (B) thereof the following subparagraph:

"(C) CERTAIN INSTALLMENT SALES.—For any tax year beginning after 1989, in the case of a taxpayer which made an election under Section 453(1)(2)(B) before October 11, 1988, alternative minimum taxable income shall be adjusted as provided under subsection (f) and subsection (g) shall not apply."

PARTNERSHIP REPORTING OF UNRELATED BUSINESS TAXABLE INCOME

Section 6031 of the 1986 Code is amended by adding at the end thereof the following new subsection (d):

"(d) SEPARATE STATEMENT OF ITEMS OF UNRELATED BUSINESS TAXABLE INCOME.—In the case of any partnership regularly carrying on a trade or business (within the meaning of section 512(c)(1)), the information required under subsection (b) to be furnished to its partners shall include such information as is necessary to enable each partner to compute its distributive share of partnership income or loss from such trade or business in accordance with section 512(a)(1), but without regard to the modifications described in paragraphs (8) through (15) of section 512(b)."

(c) ESTATES OF NONRESIDENTS WHO ARE NOT CITIZENS BUT HAVE CITIZENS AS SPOUSES.—Subsection (a) of section 2106 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) MARITAL DEDUCTION ALLOWED WHERE SPOUSE IS CITIZEN.—The amount which would be deductible with respect to property situated in the United States at the time of the decedent's death under the principle of section 2056."

(d) EFFECTIVE DATE.—

(1) The amendments made by subsection (a) and (c) shall apply to estates of the decedents dying after the date of the enactment of this Act.

(2) The amendments made by subsection (b) shall apply to gifts on or after July 14, 1988.

SEC. 373. RATE SCHEDULE FOR TAX ON ESTATES OF NONRESIDENTS NOT CITIZENS.

(a) GENERAL RULE.—Subsection (b) of section 2101 of the 1986 Code (relating to computation of tax) is amended by striking out "a tentative tax computed in accordance with the rate schedule set forth in subsection (d)" each place it appears and inserting in lieu thereof "a tentative tax comput-

* * * * *

(b) AMOUNT OF UNIFIED CREDIT.—Subsection (c) of section 2102 of the 1986 Code is amended to read as follows:

"(c) UNIFIED CREDIT.—

"(1) IN GENERAL.—A credit shall be allowed against the tax imposed by section 2101 equal to the amount which bears the same ratio to $192,800 as the value of the part of the decedent's gross estate which at the time of his death is situated in the United States bears to the value of his entire gross estate wherever situated. If a credit has been allowed under section 2505 with respect to any gift made by the decedent, the $192,800 amount so allowed.

"(2) LIMITATION BASED ON AMOUNT.—The credit allowed by this subsection shall not exceed the amount of tax imposed by section 2101.

"(3) APPLICATION OF OTHER CREDITS.—For purposes of subsection (a), sections 2011 to 2013, inclusive, shall be applied as if the credit allowed under this subsection were allowed under section 2010."

(c) TECHNICAL AMENDMENTS.—

(1) Subsection (d) of section 2101 of the 1986 Code is hereby repealed.

(2) Subsection (a) of section 6018 is amended to read as follows:

"(a) RETURNS BY EXECUTOR.—

"(1) IN GENERAL.—In all cases where the gross estate at the death of the decedent exceeds $600,000, the executor shall make a return with respect to the estate tax imposed by subtitle B. The preceding sentence shall apply in the case of the estate of the decedent who is a nonresident not a citizen of the United States only if some portion of his gross estate is situated in the United States at the time of his death.

"(2) ADJUSTMENT FOR CERTAIN GIFTS.—The dollar amount set forth in paragraph (1) Shall be reduced (but not below zero) by the sum of—

"(A) the amount of the adjusted taxable gifts (within the meaning of section 2001(b)) made by the decendent after December 31, 1976, plus

"(B) the aggregate amount allowed as a specific exemption allowed under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) with respect to gifts made by the decedent after September 8, 1976."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying after the date of the enactment of this Act.

BRADLEY AMENDMENT NO. 3640

Mr. BRADLEY proposed an amendment to the bill S. 2238, supra; as follows:

Strike out Subtitles B and C of Title VII and insert:

Subtitle B—Increase in Earned Income Credit

SEC. 711. INCREASE IN EARNED INCOME TAX CREDIT.

(a) CREDIT INCREASED FROM 14 TO 15 PERCENT.—Section 32(a) of the 1986 Code is amended by striking out "14 percent" and inserting in lieu thereof "15 percent".

(b) PHASE-OUT OF CREDIT.—Paragraph (2) of section 32(b) of the 1986 Code is amended by striking out "10 percent" and inserting in lieu thereof "10.2 percent".

(c) CONFORMING AMENDMENTS.—

(1) Section 3507(c)(2)(B)(i) of the 1986 Code is amended by striking out "14 percent" and inserting in lieu thereof "15 percent".

(2) Section 3507(c)(2)(C)(i) of the 1986 Code is amended by striking out "14 percent" and inserting in lieu thereof "15 percent".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1988.

Subtitle C—Other Provisions

SEC. 721. STUDY OF EFFECT OF MINIMUM PARTICIPATION RULE ON EMPLOYERS REQUIRED TO PROVIDE CERTAIN RETIREMENT BENEFITS.

(a) STUDY.—The Secretary of the Treasury or his delegate shall conduct a study on the application of section 401(a)(26) of the Internal Revenue Code of 1986 to Government contractors who—

(1) are required by Federal law to provide certain employees specified retirement benefits, and

(2) establish a separate plan for such employees while maintaining a separate plan for employees who are not entitled to such benefits.

Such study shall consider the Federal requirements with respect to employee benefits for employees of Government contractors, whether a special minimum participation rule should apply to such employees, and methods by which plans may be modified to satisfy minimum participation requirements.

(b) REPORT.—The Secretary of the Treasury or his delegate shall report the results of the study under subsection (a) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives not later than September 1, 1989.

SEC. 722. STUDY OF TREATMENT OF CERTAIN TECHNICAL PERSONNEL.

The Secretary of the Treasury or his delegate shall conduct a study of the treatment provided by section 1706 of the Reform Act (relating to treatment of certain technical personnel). The report of such study shall be submitted not later than September 1, 1989, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 723. PURCHASE OF INSURANCE BY COOPERATIVE HOSPITAL SERVICE ORGANIZATIONS.

(a) IN GENERAL.—Subparagraph (A) of section 501(e)(1) of the 1986 Code is amended by inserting "(including the purchasing of insurance on a group basis)" after "purchasing".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to purchases before, on, or after the date of the enactment of this Act.

SEC. 724. REPORT ON THE SMALL BUSINESS INNOVATION RESEARCH PROGRAM.

Subsection (a) of section 6 of the Small Business Innovation Development Act of 1982 (15 U.S.C. 638, note) is amended by striking out "December 31, 1988" and inserting in lieu thereof "July 1, 1989".

SEC. 725. STUDY ON HEALTH CARE COSTS RESULTING FROM SMOKING.

(a) IN GENERAL.—The Secretary of the Treasury or his delegate shall, in consultation with the Surgeon General of the Public Health Service, conduct an ongoing study of—

(1) the public and private health care costs incurred (with respect to smokers, their spouses, and others) as a result of cigarette smoking in the United States,

(2) the incidence of cigarette smoking in the United States by adults and by teenage and younger children, and

(3) the impact of the rate of the excise tax imposed by section 5701 of the Internal Revenue Code of 1986 on cigarette smoking by adults and by teenage and younger children.

(b) REPORTS.—Reports of the study required by subsection (a) shall be submitted every 2 years, with the 1st such report to be submitted by January 1, 1989. Each such report shall be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 726. APPLICATION OF SECURITY INTEREST TEST TO BOND FINANCING OF HAZARDOUS WASTE CLEAN-UP ACTIVITIES.

Before January 1, 1989, the Secretary of the Treasury or his delegate shall issue guidance concerning the application of the private security or payment test under section 141(b)(2) of the Internal Revenue Code of 1986 to tax-exempt bond financing by State and local governments of hazardous waste clean-up activities conducted by such governments where some of the activities occur on privately owned land.

SEC. 727. TREATMENT OF CERTAIN INSTRUMENTS UNDER FOREIGN CURRENCY RULES.

(a) GENERAL RULE.—Clause (iii) of section 988(c)(1)(B) of the 1986 Code (as amended by title I) is amended by striking out "unless such instrument would be marked to market under section 1256 if held on the last day of the taxable year".

(b) TECHNICAL AMENDMENTS.—

(1) Paragraph (1) of section 988(a) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) APPLICATION OF SUBPARAGRAPH (B) IN THE CASE OF CERTAIN TRADERS.—In the case of any instrument—

"(i) which would be marked to market under section 1256 if held on the last day of the taxable year, and

"(ii) which was entered into or acquired by the taxpayer in the active conduct of the trade or business of trading such instruments,

to the extent provided in regulations, subparagraph (B) shall be applied without regard to the requirement that the instrument not be part of a straddle and without regard to the identification requirement contained therein."

(2) Paragraph (1) of section 988(d) of the 1986 Code is amended by striking out the second sentence and inserting in lieu thereof the following: "For purposes of the preceding sentence, the term 'section 988 transaction' shall not include any transaction with respect to which an election is made under subsection (a)(1)(B)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to forward contracts, future contracts, options, and similar financial instruments entered into or acquired after September 8, 1988.

SEC. 728. DUAL RESIDENT COMPANIES.

(a) GENERAL RULE.—In the case of a transaction which—

(1) involves the transfer after the date of the enactment of this Act by a domestic corporation, with respect to which there is a qualified excess loss account, of its assets and liabilities to a foreign corporation in exchange for all of the stock of such foreign corporation, followed by the complete liquidation of the domestic corporation into the common parent, and

(2) qualifies, pursuant to Revenue Ruling 87-27, as a reorganization which is described in section 368(a)(1)(F) of the 1986 Code,

then, solely for purposes of applying Treasury Regulation section 1.1502-19 to such qualified excess loss account, such foreign corporation shall be treated as a domestic corporation in determining whether such foreign corporation is a member of the affiliated group of the common parent.

(b) TREATMENT OF INCOME OF NEW FOREIGN CORPORATION.—

(1) IN GENERAL.—In any case to which subsection (a) applies, for purposes of the 1986 Code—

(A) the source and character of any item of income of the foreign corporation referred to in subsection (a) shall be determined as if such foreign corporation were a domestic corporation,

(B) the net amount of any such income shall be treated as subpart F income (without regard to section 952(c) of the 1986 Code), and

(C) the amount in the qualified excess loss account referred to in subsection (a) shall—

(i) be reduced by the net amount of any such income, and

(ii) be increased by the amount of any such income distributed directly or indirectly to the common parent described in subsection (a).

(2) LIMITATION.—Paragraph (1) shall apply to any item of income only to the extent that the net amount of such income does not exceed the amount in the qualified excess loss account after being reduced under paragraph (1)(C) for prior income.

(3) BASIS ADJUSTMENTS NOT APPLICABLE.—To the extent paragraph (1) applies to any item of income, there shall be no increase in basis under section 961(a) of such Code on account of such income (and there shall be no reduction in basis under section 961(b) of such Code on account of an exclusion attributable to the inclusion of such income).

(4) RECOGNITION OF GAIN.—For purposes of paragraph (1), if the foreign corporation referred to in subsection (a) transfers any property acquired by such foreign corporation in the transaction referred to in subsection (a) (or transfers any other property the basis of which is determined in whole or in part by reference to the basis of property so acquired) and (but for this paragraph) there is not full recognition of gain on such transfer, the excess (if any) of—

(A) the fair market value of the property transferred, over

(B) its adjusted basis,

shall be treated as gain from the sale or exchange of such property and shall be recognized notwithstanding any other provision of law. Proper adjustment shall be made to the basis of any such property for gain recognized under the preceding sentence.

(c) DEFINITIONS.—For purposes of this section—

(1) COMMON PARENT.—The term "common parent" means the common parent of the affiliated group which included the domestic corporation referred to in subsection (a)(1).

(2) QUALIFIED EXCESS LOSS ACCOUNT.—The term "qualified excess loss account" means any excess loss account (within the meaning of the consolidated return regulations) to the extent such account is attributable—

(A) to taxable years beginning before January 1, 1988, and

(B) to periods during which the domestic corporation was subject to an income tax of a foreign country on its income on a residence basis or without regard to whether such income is from sources in or outside of such foreign country.

The amount of such account shall be determined as of immediately after the transaction referred to in subsection (a) and without, except as provided in subsection (b), diminution for any future adjustment.

(3) NET AMOUNT.—The net amount of any item of income is the amount of such income reduced by allocable deductions as determined under the rules of section 954(b)(5) of the 1986 Code.

(4) SECOND SAME COUNTRY CORPORATION MAY BE TREATED AS DOMESTIC CORPORATION IN CERTAIN CASES.—If—

(A) another foreign corporation acquires from the common parent stock of the foreign corporation referred to in subsection (a) after the transaction referred to in subsection (a),

(B) both of such foreign corporations are subject to the income tax of the same foreign country on a residence basis, and

(C) such common parent complies with such reporting requirements as the Secretary of the Treasury or his delegate may prescribe for purposes of this paragraph,

such other foreign corporation shall be treated as a domestic corporation in determining whether the foreign corporation referred to in subsection (a) is a member of the affiliated group referred to in subsection (a) (and the rules of subsection (b) shall apply (i) to any gain of such other foreign corporation on any disposition of such stock, and (ii) to any other income of such other foreign corporation except to the extent it establishes to the satisfaction of the Secretary of the Treasury or his delegate that such income is not attributable to property acquired from the foreign corporation referred to in subsection (a)).

SEC. 729. ETHYL ALCOHOL AND MIXTURES FOR FUEL USE.

Section 1910 of the Omnibus Trade and Competitiveness Act of 1988 is amended by adding at the end thereof the following new subsection:

"(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall apply with respect to ethyl alcohol, and mixtures of ethyl alcohol, entered—

"(1) during the period beginning on August 23, 1988, and ending on the date of enactment of the Technical Corrections Act of 1988, and

"(2) after the date, if any, on which the Secretary of Agriculture, the Secretary of Energy, and the Secretary of the Treasury, acting jointly, submit to the Congress, and publish in the Federal Register, a written statement certifying that the domestic ethyl alcohol production industry is not fully meeting demand for ethyl alcohol in the United States and that the quantity of ethyl alcohol, and mixtures of ethyl alcohol, that would be imported into the customs territory of the United States free of duty by reason of the amendments made by this section is necessary to maintain adequate supplies of ethyl alcohol for consumers in the United States.".

SEC. 730. CERTAIN EMPLOYER PENSION CONTRIBUTIONS NOT INCLUDED IN FICA WAGE BASE.

Any State or political subdivision thereof which—

(1) has relied in good faith on any letter ruling of the Internal Revenue Service issued after December 31, 1983, maintaining that any amount treated as an employer contribution under section 414(h)(2) of the Internal Revenue Code of 1986 is excluded from the definition of "wages" for purposes of tax liability under section 3121(v)(1)(B) of such Code, and

(2) has not paid such tax based on such reliance,

shall be relieved of any such liability arising from a finding that such contribution was in fact under a salary reduction agreement for the period ending with the earlier of the date of the enactment of this Act or receipt of a notice of revocation of the letter ruling by the Internal Revenue Service.

SEC. 731. CARRYOVER OF POST-1987 LOW-INCOME HOUSING CREDIT DOLLAR AMOUNTS PERMITTED.

(a) IN GENERAL.—Section 42(h)(6) of the 1986 Code (relating to housing credit dollar amount may not be carried over, etc.), as amended by section 102(l)(14)(A), is amended by adding at the end thereof the following new subparagraph:

"(E) EXCEPTION WHERE 10 PERCENT OF COST INCURRED IN 1ST YEAR.—

"(i) IN GENERAL.—An allocation meets the requirements of this subparagraph if such allocation is made with respect to a qualified building which is placed in service not later than the close of the second calendar year following the calendar year in which ends the taxable year to which the allocation will 1st apply.

"(ii) QUALIFIED BUILDING.—For purposes of clause (i), the term 'qualified building' means a building—

"(I) more than 10 percent of the reasonably anticipated cost of the construction, reconstruction, or rehabilitation of which is incurred before the close of the calendar year in which ends the taxable year to which the allocation will 1st apply, and

"(II) which is a new building (or is treated under subsection (e) as a new building) when placed in service."

(b) CONFORMING AMENDMENT.—Section 42(h)(6)(B) of the 1986 Code, as amended by section 102(l)(14)(A), is amended by striking out "(C) or (D)" and inserting in lieu thereof "(C), (D), or (E)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts allocated in calendar years after 1987.

SEC. 732. EXTENSION OF AUTHORITY TO ISSUE MORTGAGE REVENUE BONDS AND MORTGAGE CREDIT CERTIFICATES.

(a) BONDS.—

(1) IN GENERAL.—Subparagraph (B) of section 143(a)(1) of the 1986 Code (relating to termination) is amended by striking out "December 31, 1988" each place it appears and inserting in lieu thereof "June 30, 1989".

(2) SPECIAL RULE.—The date contained in section 143(a)(1)(B) of the 1986 Code shall be treated as contained in section 103A(c)(1)(B) of the Internal Revenue Code of 1954, as in effect on the day before the date of the enactment of the Reform Act, for purposes of any bond issued to refund a bond to which such section 103A(c)(1) applies.

(b) CERTIFICATES.—Subsection (h) of section 25 of the 1986 Code (relating to credit for interest on certain home mortgages), as amended by section 113(a)(26) of this Act, is amended by striking out "for any calendar year after 1988" and inserting in lieu thereof "after June 30, 1989".

SEC. 733. REPEAL OF SECRETARIAL AUTHORITY TO PRESCRIBE CLASS LIVES.

Paragraph (1) of section 168(i) of the 1986 Code is amended—

(1) by adding at the end of subparagraph (B) the following new sentence: "Nothing in this subparagraph shall authorize the Secretary to prescribe class lives which are longer than the lives determined under subparagraph (A).", and

(2) by striking out subparagraph (D) and by redesignating subparagraph (E) as subparagraph (D).

SEC. 734. REVERSION OF QUALIFIED PENSION PLAN ASSETS.

(a) TEMPORARY INCREASE IN EXCISE TAX ON REVERSION.—

(1) IN GENERAL.—In the case of any employer reversion from a qualified plan received after July 26, 1988, and before May 1, 1989, section 4980(a) of the Internal Revenue Code of 1986 shall be applied by substituting "60 percent" for "10 percent".

(2) CASES WHERE NOTICE GIVEN.—Paragraph (1) shall not apply to any reversion pursuant to a plan termination if—

(A) with respect to plans subject to title IV of the Employee Retirement Income Security Act of 1974, a notice of intent to terminate required under such title was provided to participants (or if no participants, to the Pension Benefit Guaranty Corporation) before July 27, 1988;

(B) with respect to plans subject to title I of such Act, a notice of intent to reduce future accruals required under section 204(h) of such Act was provided to participants in connection with the termination before July 27, 1988; or

(C) with respect to plans not subject to title I or title IV of such Act, the board of directors of the employer approved the termination or the employer took other binding action before July 27, 1988.

(b) TIME FOR PAYMENT OF TAX.—

(1) IN GENERAL.—Section 4980(c) of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new paragraph:

"(4) TIME FOR PAYMENT OF TAX.—For purposes of subtitle F, the time for payment of the tax imposed by subsection (a) shall be the last day of the month following the month in which the employer reversion occurs."

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to reversions received on or after May 1, 1989.

SEC. 735. EXTENSION AND MODIFICATION OF TARGETED JOBS CREDIT.

(a) 3-MONTH EXTENSION.—Paragraph (4) of section 51(c) of the 1986 Code (relating to termination) is amended by striking out "December 31, 1988" and inserting in lieu thereof "March 31, 1989".

(b) EXTENSION OF AUTHORIZATION.—Paragraph (2) of section 261(f) of the Economic Recovery Tax Act of 1981 is amended by striking out "and 1988" and inserting in lieu thereof "1988 and 1989".

(c) REDUCTION IN PERCENTAGE OF CREDIT FOR SUMMER YOUTH EMPLOYEES.—

(1) IN GENERAL.—Subparagraph (B) of section 51(d)(12) of the 1986 Code is amended by striking out clause (i) and by redesignating clauses (ii) and (iii) as clauses (i) and (ii).

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to individuals who begin work for the employer after December 31, 1988.

HATCH AMENDMENT NO. 3641

Mr. HATCH proposed an amendment, which was subsequently modified, to the bill S. 2238, supra; as follows:

At the appropriate place in the bill, insert the following:

"SEC. . TAX TREATMENT OF ADOPTION EXPENSES.—It is the sense of the Senate that—

(1) the most important resource in America is its children;

(2) there are at least 36,000 children in America legally free for adoption and waiting;

(3) the actual costs associated with legal adoptions can be as high as $15,000;

(4) family wealth should not be a determinative factor in adopting a child;

(5) more favorable tax treatment of adoption expenses will move thousands of children into permanent homes; and

(6) therefore the tax laws of the United States should provide for the deductibility of all or part of the costs of adopting a child.

BAUCUS (AND PACKWOOD) AMENDMENT NO. 3642

Mr. BAUCUS (for himself and Mr. PACKWOOD) proposed an amendment to the bill S. 2238, supra; as follows:

On page 1 of the amendment, before line 1, insert:

On page 733, after line 23, insert:

(3) Section 183(e)(2) of the 1986 Code is amended by striking out "2" and inserting in lieu thereof "3 (or 2 if applicable)".

On page 743, line 9, insert "(A)" after "(23)".

On page 743, between lines 18 and 19, insert:

(B) Clause (ii) of section 168(d)(3)(B) of the 1986 Code (as added by subparagraph (A)) shall apply to taxable years beginning after December 31, 1988, unless the taxpayer elects, at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe, to have such clause apply to taxable years beginning in 1987 and 1988.

On page 2 of the amendment, between lines 3 and 4, insert:

On page 785, strike lines 1 through 4, and redesignate accordingly.

On page 2 of the amendment, strike line 11 and insert: "if a person has a warrant to acquire stock, such stock shall be considered as owned by such person.' "

On page 3 of the amendment, lines 2 and 4, strike "June 22" and insert "June 21".

On page 3 of the amendment, strike lines 6 through 15, and insert:

On page 908, beginning with line 13, strike out all through page 909, line 13, and insert:

"(G) Treatment of certain interest rate agreements.—Except to the extent provided by regulations, any—

"(i) payment to a real estate investment trust under a bona fide interest rate swap or cap agreement entered into by the real estate investment trust to hedge any variable rate indebtedness of such trust incurred or to be incurred to acquire or carry real estate assets, and

"(ii) any gain from the sale or other disposition of such agreement,

shall be treated as income qualifying under paragraph (2) and such agreement shall be treated as a security for purposes of paragraph (4)(A)."

On page 3, between lines 19 and 20, insert:

On page 968, before the end period, insert: "and by multiplying the resulting allocation ratio by inventory amounts determined in accordance with the provisions of the joint explanatory statement of the committee of conference of the conference report accompanying H.R. 3838 (H.R. Rep. No. 99-841, Vol. II., 99th Cong., 2d Sess. II-306-307 (1986))".

On page 4 of the amendment, between lines 7 and 8, insert:

On page 1007, strike lines 11 through 14, and insert: "premium acquisition expenses—

"(i) subparagraph (B) of paragraph (4) shall be applied by treating unearned premiums as including an amount equal to such expenses, and

"(ii) appropriate adjustments shall be made under subparagraph (C) of paragraph (4) to reflect the amount by which—

"(I) such reserves at the close of the most recent taxable year beginning before January 1, 1987, are greater or less than,

"(II) 80 percent of the sum of the amount under subclause (I) plus such premium acquisition expenses."

On page 5 of the amendment, between lines 14 and 15, insert:

On page 1130, beginning with line 18, strike out all through page 1131, line 7, and insert:

(10) Clause (i) of section 904(d)(2)(E) of the 1986 Code is amended striking out "during which it was a controlled foreign corporation" and inserting in lieu thereof "during which it was a controlled foreign corporation and except as provided in regulations, the taxpayer was a United States shareholder in such corporation".

On page 5 of the amendment, between lines 18 and 19, insert:

On page 1142, line 20, insert "(A)" after "(1)" the first place it appears.

On page 1142, after line 24, insert:

(B) A taxpayer may elect not to have the amendment made by subparagraph (A) apply and to have section 1214(d)(1) of the Reform Act apply as in effect before such amendment. Such election shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe.

On page 1171, strike lines 4 through 10, and insert:

"(7) Coordination with section 1248.—For purposes of section 1248 (and such other purposes as the Secretary may prescribe in regulations), if any person is (or would be but for paragraph (3)(C)) treated under paragraph (1) as a United States shareholder with respect to any foreign corporation which would be taxed under subchapter L if it were a domestic corporation—

"(A) such person shall be treated as meeting the stock ownership requirements of section 1248(a)(2) with respect to such foreign corporation, and

"(B) such foreign corporation shall be treated as a controlled foreign corporation.

On page 6 of the amendment, between lines 10 and 11, insert:

On page 1229, between lines 20 and 21, insert:

(6) Section 894(a) of the 1986 Code is amended by inserting "applicable to the taxpayer" after "United States".

On page 7 of the amendment, strike lines 17 through 19, and insert the following:

(1) Subsection (d) of section 6332 of the 1986 Code is amended—

(A) by inserting "and any other person" after "delinquent taxpayer", and

(B) by striking out the last sentence thereof.

On page 8 of the amendment, between lines 11 and 12, insert:

On page 1349, between lines 13 and 14, insert:

(16) Section 4222(d) of the 1986 Code is amended by striking out "4083" and inserting in lieu thereof "4101".

On page 8 of the amendment, between lines 23 and 24, insert:

On page 1419, line 20, strike "in" and insert "is".

On page 10 of the amendment, between lines 6 and 7, insert the following:

On page 1436, line 19, strike "(s)" and insert "(t)".

On page 1437, between lines 18 and 19, insert the following:

(4) Section 5113 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(g) Coordination of Taxes Under Section 5111.—No tax shall be imposed by section 5111(a) with respect to a person's activities at any place during a year if such person has paid the tax imposed by section 5111(b) with respect to such place for such year."

On page 1437, line 19, strike "(t)" and insert "(u)".

On page 11 of the amendment, line 12, strike "maintain" and insert "maintained".

On page 11 of the amendment, strike line 24 and insert:

(d) Other Provisions.—

(1) Subparagraph (C) of section 412(l)(3) of the

On page 12 of the amendment, line 1, strike "(i)" and insert "(A)".

On page 12 of the amendment, line 4, strike "(ii)" and insert "(B)".

On page 12 of the amendment, line 7, strike "(B)" and insert "(2)".

On page 12 of the amendment, line 10, strike "(i)" and insert "(A)".

On page 12 of the amendment, line 13, strike "(ii)" and insert "(B)".

On page 22 of the amendment, line 13, insert "to the same policyholder" after "insurer".

On page 27 of the amendment, line 6, insert "of the 1986 Code" after "469(j)(5)".

On page 27 of the amendment, line 15, insert "in existence on April 26, 1988," after "corporation".

On page 27 of the amendment, after line 25, insert:

(c) Exception for Existing Contracts.—

(1) In general.—Subsection (a) shall not apply to any loss (or credit) of any corporation in existence on April 26, 1988, which is used to offset income assigned (or attributable to property contributed) pursuant to a binding contract entered into before July 26, 1988.

(2) $16,400,000 limitation.—The aggregate amount of losses (and the deduction equivalent of credits as determined in the same manner as under section 469(j)(5) of the 1986 Code) to which paragraph (1) applies with respect to any corporation shall not exceed $16,400,000. For purposes of this paragraph, a Native Corporation and all other corporations all of the stock of which is owned directly by such corporation shall be treated as 1 corporation.

(3) Coordination with subsection (b).—Subsection (b) shall not apply to any corporation to which this subsection applies (or any corporation treated as 1 corporation with such corporation under paragraph (2)).

(d) Special Rule for Insolvent Corporations.—

(1) In general.—Subsection (a) shall not apply to any loss (or credit) of any applicable insolvent corporation which arises before January 1, 1989, if—

(A) such loss (or credit) is used to offset income assigned (or attributable to property contributed) pursuant to a binding contract entered into before July 26, 1988, or

(B) the applicable insolvent corporation was under the jurisdiction of a Federal district court under title 11 of the United States Code on April 26, 1988.

(2) $120,000,000 limitation.—The aggregate amount of losses (and the deduction equivalent of credits as determined in the same manner as under section 469(j)(5) of the 1986 Code) to which paragraph (1) applies with respect to any applicable insolvent corporation shall not exceed $120,000,000. For purposes of this paragraph, an applicable insolvent corporation and all other corporations all of the stock of which is owned directly by such corporation shall be treated as 1 corporation.

(3) Application with subsections (b) and (c).—Subsections (b) and (c) shall not apply to any corporation to which this subsection applies (or any corporation treated as 1 corporation with such corporation under paragraph (2)).

(4) Applicable insolvent corporation.—For purposes of this subsection, the term "applicable insolvent corporation" means any regional Native Corporation in existence on April 26, 1988, the balance sheet of which included in its applicable financial statement (as defined in section 56(f)(3) of the 1986 Code) for its most recent 12-month period ending on or before October 6, 1988, reflected an excess of current liabilities over current assets (as defined in accounting literature, within the meaning of Internal Revenue Service Regulation 1.56-1T(d)(2)(ii)).

(e) Special Administrative Rules.—

(1) Notice to native corporations of proposed tax adjustments.—Notwithstanding section 6103 of the 1986 Code, the Secretary of the Treasury or his delegate shall notify a Native Corporation or its designated representative of any proposed adjustment—

(A) of the tax liability of a taxpayer which has contracted with the Native Corporation (or other corporation all of the stock of which is owned directly by the Native Corporation) for the use of losses of such Native Corporation (or such other corporation), and

(B) which is attributable to an asserted overstatement of losses by, or misassignment of income (or income attributable to property contributed) to, an affiliated group of which the Native Corporation (or such other corporation) is a member.

Such notice shall only include information with respect to the transaction between the taxpayer and the Native Corporation.

(2) RIGHTS OF NATIVE CORPORATION.—

(A) IN GENERAL.—If a Native Corporation receives a notice under paragraph (1), the Native Corporation shall have the right to—

(i) submit to the Secretary of the Treasury or his delegate a written statement regarding the proposed adjustment, and

(ii) meet with the Secretary of the Treasury or his delegate with respect to such proposed adjustment.

The Secretary of the Treasury or his delegate may discuss such proposed adjustment with the Native Corporation or its designated representative.

(B) EXTENSION OF STATUTE OF LIMITATIONS.—Subparagraph (A) shall not apply if the Secretary of the Treasury or his delegate determines that an extension of the statute of limitations is necessary to permit the participation described in subparagraph (A) and the taxpayer and the Secretary or his delegate have not agreed to such extension.

(3) JUDICIAL PROCEEDINGS.—In the case of any proceeding in a Federal court or the United States Tax Court involving a proposed adjustment under paragraph (1), the Native Corporation, subject to the rules of such court, may file an amicus brief concerning such adjustment.

(4) FAILURES.—For purposes of the 1986 Code, any failure by the Secretary of the Treasury or his delegate to comply with the provisions of this subsection shall not affect the validity of the determination of the Internal Revenue Service of any adjustment of tax liability of any taxpayer described in paragraph (1).

On page 28 of the amendment, line 1, strike "(c)" and insert "(f)".

On page 28 of the amendment, beginning with line 19, strike all through page 29, line 13.

On page 29 of the amendment, line 14, strike "705" and insert "704"

On page 37 of the amendment, strike lines 5 through 10, and insert:

"(i) IN GENERAL.—An employer may elect to have this paragraph applied separately with respect to any classification of qualified public safety employees for whom a separate plan is maintained.

On page 37 of the amendment, lines 13 and 14, strike "full-time".

On page 48 of the amendment, line 6, strike "a plan maintained by".

On page 48 of the amendment, line 9, insert "a plan maintained by" before "an".

On page 48 of the amendment, strike lines 22 through 25, and insert:

"(A) IN GENERAL.—In the case of a plan established after December 31, 1988, each employer shall be treated as maintaining a separate plan for purposes of section 412 unless such plan uses a method for determining required contributions which provides that any employer contributes not less than the amount which would be required if such employer maintained a separate plan.

On page 49 of the amendment, line 17, insert "IN GENERAL.—" after "(A)".

On page 51 of the amendment, beginning with line 18, strike all through page 52, line 21.

On page 52 of the amendment, line 22, strike "723" and insert "722".

On page 168 of the amendment, strike lines 16 through 25, and insert the following:

"(I) which is part of a project for residential rental property, more than 10 percent of the project costs of which are incurred before the close of the calendar year in which the allocation is made, and

"(II) which is a new building (or is to be treated as a new building under subsection (e)) when placed in service or is an existing building with respect to which rehabilitation expenditures shall be taken into account under subsection (e) when such building is placed in service.

"(iii) PROJECT COSTS.—For purposes of clause (ii)(I), the term 'project costs' means the total costs budgeted to acquire and develop the project, including costs budgeted by the taxpayer to acquire the land on which such project is located and any existing structure located on such land."

On page 175 of the amendment, line 7, insert "the amount of such expenditures and payments made in such taxable year before January 1, 1989, plus" after "shall be".

On page 179 of the amendment, strike lines 1 through 6, and insert:

(D) The amendments made by this paragraph shall apply to any transfer—

(i) after December 31, 1988, and before July 1, 1989, unless such transfer is pursuant to an acquisition occurring before January 1, 1989, and

(ii) after June 30, 1989, if such transfer is pursuant to an acquisition occurring after December 31, 1988, and before July 1, 1989.

On page 183 of the amendment, line 1, strike "December 1" and insert "December 31".

On page 202 of the amendment, line 7, strike "or".

On page 202 of the amendment, line 12, strike the end period and insert ", or".

On page 202 of the amendment, between lines 12 and 13, insert:

(D) such plan termination was directed by a final order of a court of competent jurisdiction entered before July 27, 1988, and notice of such order was provided to participants before such date.

On page 202 of the amendment, after line 24, insert the following new sections:

SEC. 800. LOANS TO ACQUIRE EMPLOYER SECURITIES.

Notwithstanding the last sentence of section 111B(h)(5)(A) of this Act, the amendments made by paragraphs (1) and (2) of section 111B(h) of this Act shall not apply to any loan used to refinance a loan described in section 133(b)(1)(A) of the 1986 Code which is made before October 22, 1986, if the terms of the refinanced loan do not extend the total commitment period beyond the later of—

(1) the term of the original securities acquisition loan, or

(2) the amortization period used to determine the regular payments (prior to any final or balloon payment) applicable to the original securities acquisition loan.

SEC. 800A. APPLICATION OF REDUCED GASOLINE TAX RATE TO BLENDERS.

(a) IN GENERAL.—Paragraph (1) of section 4081(c) of the 1986 Code (relating to gasoline mixed with alcohol at refinery, etc.) is amended by adding after the 1st sentence the following new sentence: "Subject to such terms and conditions as the Secretary may prescribe (including the application of section 4101), the treatment under the preceding sentence also shall apply to use in producing gasohol after the time of such removal or sale.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 800B. DISCRIMINATORY CLASSIFICATIONS FOR CAFETERIA PLANS.

(a) IN GENERAL.—Paragraph (1) of section 125(b) of the 1986 Code is amended by inserting "(whether or not discriminatory under other provisions of this chapter)" after "highly compensated employees".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendment made by section 1151(d)(1) of the Reform Act.

SEC. 800C. AUTHORITY TO WAIVE APPRAISAL REQUIREMENT FOR CERTAIN CHARITABLE CONTRIBUTIONS OF PROPERTY.

Notwithstanding paragraph (2) of section 155(a) of the Tax Reform Act of 1984, the Secretary of the Treasury or his delegate may in the regulations prescribed pursuant to such section waive the requirement of a qualified appraisal in the case of a qualified contribution (within the meaning of section 170(e)(3)(A) of the 1986 Code) of property described in section 1221(1) with a claimed value in excess of $5,000.

SEC. 800D. TREATMENT OF PISTACHIO TREES.

(a) IN GENERAL.—Subparagraph (B) of section 263A(d)(3) of the 1986 Code (relating to certain persons not eligible) is amended to read as follows:

"(B) CERTAIN PERSONS NOT ELIGIBLE.—No election may be made under this paragraph by a corporation, partnership, or tax shelter, if such corporation, partnership, or tax shelter is required to use an accrual method of accounting under section 447 or 448(a)(3)."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 803 of the Tax Reform Act of 1986.

SEC. 800E. EXCISE TAX ON DISPOSITION OF STOCK BY AN ESOP NOT TO APPLY TO CERTAIN FORCED DISPOSITIONS.

(a) IN GENERAL.—Subsection (e) of section 4978A of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(4) FORCED DISPOSITION OCCURRING BY OPERATION OF A STATE LAW.—Any forced disposition of qualified employer securities by the employee stock ownership plan of a corporation occurring by operation of a State law shall not be treated as a disposition. This paragraph shall only apply to securities which, at the time of the disposition, are regularly traded on an established securities market."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendment made by section 10413 of the Revenue Act of 1987.

SEC. 800F. MODIFICATIONS IN THE TERM OF OFFICE OF PUBLIC MEMBERS OF THE BOARDS OF TRUSTEES OF THE SOCIAL SECURITY TRUST FUNDS.

(a) IN GENERAL.—Sections 201(c), 1817(b), and 1841(b) of the Social Security Act (42 U.S.C. 401(c), 1395i(b), 1395t(b)) are each amended by inserting after the first sentence the following: "A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. A member nominated and confirmed as a member of the public may serve after the expiration of such member's term until such member's successor has taken office or the next report of the Board is issued, whichever occurs first.".

(b) Effective Date.—The amendments made by this section shall apply to members of the Boards of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, of the Federal Hospital Insurance Trust Fund, and of the Federal Supplementary Medical Insurance Trust Fund serving on such Boards of Trustees as members of the public on or after the date of the enactment of this Act.

SEC. 800G. HOME IMPROVEMENTS TO MITIGATE RADON GAS EXPOSURE QUALIFY FOR MEDICAL CARE EXPENSES TAX DEDUCTION.

(a) In General.—For purposes of section 213(d)(1) of the 1986 Code (defining medical care), amounts paid for qualified home improvements to mitigate radon gas exposure shall be treated as expenses paid for medical care.

(b) Definitions.—For purposes of this section—

(1) Qualified home improvements.—The term "qualified home improvements" means—

(A) sub-slab ventilation,

(B) drain-tile ventilation,

(C) block-wall ventilation,

(D) sump ventilation, and

(E) such other techniques as determined by the Secretary by regulation.

(2) Radon gas exposure.—The term "radon gas exposure" means exposure at a level exceeding the level recommended by the Environmental Protection Agency as measured by the State or person approved by such agency.

(c) Effective Date.—This section shall apply to taxable years beginning after December 31, 1987.

SEC. 800H. AUTHORITY TO EXEMPT ARTICLES FROM EXCISE TAX ON HEAVY TRUCKS AND TRAILERS WHERE BENEFIT ACCRUES TO UNITED STATES.

(a) In General.—Section 4293 of the 1986 Code is amended by inserting "section 4051," after "section 4041,".

(b) Effective Date.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 800I. DISTRIBUTIONS BY COOPERATIVE HOUSING CORPORATIONS.

(a) In General.—Section 336 of the 1986 Code (relating to gain or loss recognized on property distributed in complete liquidation) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) Distributions by Cooperative Housing Associations.—Except as provided in regulations, no gain or loss shall be recognized on the distribution by a cooperative housing association of a dwelling unit to a stockholder in such corporation if such distribution is in exchange for the stockholder's stock in such corporation and such exchange qualifies for nonrecognition of gain under section 1034(f). For purposes of this section, any term used in this subsection which is used in section 216 shall have the meaning given such term by section 216."

(b) Effective Date.—The amendment made by this section shall take effect as if included in the amendments made by section 631 of the Tax Reform Act of 1986.

SEC. 800J. APPLICATION OF SECTION 415 LIMITATIONS TO POLICE AND FIREFIGHTERS.

(a) In General.—Clause (ii) of section 415(b)(2)(H) of the 1986 Code is amended by striking out "20 years" and inserting in lieu thereof "15 years".

(b) Effective Date.—The amendment made by this section shall apply as if included in the amendments made by section 1106(b)(2) of the Reform Act.

SEC. 800K. PAYMENT FOR MEDICAL ESCORT OR ATTENDANT ON COMMERCIAL AIRLINER ALLOWED.

(a) In General.—The Secretary shall in promulgating regulations pursuant to the authority provided in section 1861(s)(7) of the Social Security Act (42 U.S.C. 1395x(s)(7)) provide that in all cases where regulations allow coverage of transportation on a commercial airliner, such regulations also provide for coverage of a medical escort or attendant on such commercial airliner.

(b) Effective Date.—The amendment made by subsection (a) shall become effective on the date of enactment of this Act.

SEC. 800L. TREATMENT OF CERTAIN UNITED STATES AFFILIATE OBLIGATIONS.

(a) General Rule.—Subparagraph (B) of section 127(g)(3) of the Tax Reform Act of 1984 is amended by inserting before the period at the end thereof the following: "as such principles are applied in Revenue Ruling 86-6, except that the maximum debt-to-equity ratio described in such Revenue Rulings shall be increased from 5-to-1 to 25-to-1."

(b) Effective Date.—The amendment made by subsection (a) shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 800M. TREATMENT OF CERTAIN TREES.

(a) In General.—Section 168(e)(3) of the 1986 Code (relating to classification of certain property) is amended by adding at the end thereof the following new subparagraph:

"(F) 10-year property.—The term '10-year property' includes any tree or vine bearing fruit or nuts."

(b) Straight Line Depreciation.—Section 168(b)(3) of the 1986 Code (relating to property to which straight line method applies) is amended by adding at the end thereof the following new subparagraph:

"(D) Property described in subsection (e)(3)(F)."

(c) Effective Date.—The amendments made by this section shall apply to property placed in service after December 31, 1988.

SEC. 800N. STUDY OF DEFINITION OF UNITED STATES RESIDENT.

(a) In General.—The Secretary of the Treasury or his delegate shall conduct a study of section 7701(b) of the Internal Revenue Code of 1986, relating to the determination as to whether a person is a United States resident for purposes of Federal tax laws. Such study shall include an examination of—

(1) the effect such determination has on Federal tax administration and investment flows between the United States and other countries,

(2) the coordination of such determination with any treaty obligations of the United States,

(3) how such determination compares with the way such determination is made by our major trading partners, and

(4) any estimated revenue gain or loss which would result from modifying such determination.

(b) Report.—The Secretary of the Treasury or his delegate shall report before May 1, 1989, the results of the study conducted under subsection (a) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

SEC. 800O. VARIABLE CONTRACTS INVESTMENT IN GOVERNMENT SECURITIES PERMITTED.

(a) In General.—Subsection (h) of section 817 of the 1986 Code (relating to treatment of certain nondiversified contracts) is amended by adding at the end thereof the following new paragraph:

"(6) Government securities funds.—In determining whether a segregated asset account is adequately diversified for purposes of paragraph (1), each United States Government agency or instrumentality shall be treated as a separate issuer."

(b) Effective Date.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1987.

SEC. 800P. CASH OR DEFERRED ARRANGEMENTS OF RAILROAD EMPLOYEES.

(a) In General.—Section 410(b)(3) of the 1986 Code is amended by striking out "and" at the end of subparagraph (B), by striking out the period at the end of subparagraph (C) and inserting in lieu thereof ", and" and by adding at the end thereof the following new subparagraph:

"(D) in the case of a plan which includes a qualified cash or deferred arrangement described in section 401(k) established or maintained pursuant to an agreement which the Secretary of Labor finds to be a collective bargaining agreement between any craft or class of railroad employees represented in accordance with title I of the Railroad Labor Act and 1 or more employers, all employees not covered by such agreement."

(b) Effective Date.—The amendment made by this section shall apply to years beginning after December 31, 1988.

SEC. 800Q. REPORTS ON HOSPITAL WAGE INDICES.

(a) In General.—The Secretary of Health and Human Services shall report to the Congress, within 60 days of the date of the enactment of this Act, on recommendations for reimbursement under section 1886(d) of the Social Security Act of any hospital described in subsection (b) for discharges occurring in fiscal year 1989 that would result in aggregate payments under title XVIII of the Social Security Act to such hospitals in an amount no less than would have been paid without the enactment of the amendments made by section 4005(a)(1) of the Omnibus Budget Reconciliation Act of 1987. The Secretary's recommendations under this section shall not result in an increase in the budget deficit and shall include, but not be limited to, approaches under section 1886(d)(5)(C)(iii) of the Social Security Act.

(b) Hospitals Described in this Subsection.—A hospital is described in this subsection if such hospital is one with an area wage index for fiscal year 1989 lower than such area wage index for fiscal year 1988 as a result of the amendments made by section 4005(a)(1) of the Omnibus Budget Reconciliation Act of 1987.

(c) PROPAC Study and Report.—The Prospective Payment Assessment Commission shall study and make a report to the Congress within 9 months of the date of the enactment of this Act on the appropriate payment for hospitals described in section 1886(d)(8)(B) of the Social Security Act and the appropriate treatment of the costs of such hospitals in computing area wage indices.

SEC. 800R. USE OF CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS BY FEDERAL OFFICER OR AGENCY IN DETERMINING CERTAIN COST-OF-LIVING INCREASES REQUIRED.

(a) In General.—Effective with respect to any cost-of-living adjustment of benefits and allowances payable in any month beginning on or after December 1, 1989, in any case where the consumer price index (CPI-W) is specifically required or authorized to be utilized by any Federal officer or agency in determining cost-of-living increases in benefits or allowances, the consumer price index so utilized shall, notwithstanding any other provision of law, be the "Consumer Price Index for all Urban Consumers" (CPI-U).

(b) Limitation.—This section shall not apply—

(1) to any use of any escalation formula, or the use of any index described in such formula, which has been, or may be, negotiated by any employer, including any public employer, and any labor union or association of employees; and

(2) to actions undertaken, or to be undertaken, or rights, benefits or obligations between individuals, businesses, or State and local governments, or each with the other.

SEC. 800S. RURAL HEALTH POLICY—RESEARCH CENTERS PROGRAM.

(a) Research Centers Program.—

(1) In general.—Section 711 of the Social Security Act is amended by adding at the end thereof the following new subsections:

"(c) The Director shall implement a grant program to establish and support rural health research centers located at public and not-for-profit entities which will provide an information base and policy analysis capacity on issues of rural health. Such centers shall—

"(1) collect, develop, and analyze and disseminate current data and information on rural health;

"(2) conduct applied research, case studies, demonstration projects, and policy analyses that focus on the delivery, financing, organization, and management of health care services in rural areas; and

"(3) provide technical assistance to rural health care delivery organizations.

"(d)(1) There are authorized to be appropriated $3,000,000 for each of the fiscal years 1989, 1990, and 1991 for funding the rural health research centers described in subsection (c).

"(2) There are further authorized to be appropriated for each of such fiscal years $3,000,000 for carrying out the operations of the Office of Rural Health Policy.".

(2) Effective date.—The amendments made by this subsection shall become effective on the date of enactment of this Act.

(b) Establishment of National Advisory Committee on Rural Health.—

(1) In general.—There is hereby established the National Advisory Committee on Rural Health (hereinafter referred to as the "Committee").

(2) Functions of the committee.—The Committee shall advise the Secretary of Health and Human Services (hereinafter referred to as "Secretary") and the Congress concerning the provision and financing of health care services in rural areas.

(3) Structure and membership of the committee.—The Committee shall consist of 18 members, including the chair, selected by the Secretary from authorities knowledgable in the fields of delivery, financing, research, development, and administration of health care services in rural areas. Such authorities shall include representatives from State and local governments, foundations, provider associations, and other rural interest groups.

(4) Terms of membership.—Members shall be invited to serve for overlapping 3-year terms.

(5) Meetings of the committee.—Meetings shall be held approximately 3 times per year at the call of the chair, who shall approve the agenda. All meetings shall be open to the public and notice of all meetings shall be given to the public.

(6) Compensation of members.—Members who are not full-time Federal employees shall be paid at a rate not to exceed $150 per day, plus per diem and travel expenses at rates authorized for persons serving intermittently in the Government under subchapter I of chapter 57 of title 5, United States Code.

(7) Annual report of the committee.—The National Advisory Committee shall submit an annual report to the Secretary and the Congress not later than October 10 of each year. Such report shall contain, at a minimum, a list of the members and such members' business addresses, the Committee's functions, dates and places of meetings, and a summary of Committee activities and recommendations made during the previous year.

(8) Termination of the committee.—The Committee established by this subsection shall terminate 3 years from the date of the enactment of this section, unless renewed by appropriate administrative action as provided in section 222 of the Public Health Service Act.

(9) Authorization of appropriations.—There are authorized to be appropriated such sums as are necessary to carry out the purposes of this subsection.

SEC. 800T. SENSE OF THE SENATE RESOLUTION URGING CONGRESS TO ACT ON MEDICAID REFORM FOR PEOPLE WITH DISABILITIES.

(a) Findings.—The Senate finds that—

(1) the needs of people with disabilities are not adequately met in the Nation's existing health care system;

(2) there is no well-designed system of services for individuals needing long-term support with the exception of limited services available through medicaid;

(3) such services are still rooted in the medical model;

(4) the Nation's understanding of the needs and capabilities of people with disabilities has progressed and it has become clear that traditional medically oriented services provided through medicaid are frequently inadequate and inappropriate;

(5) all people, regardless of disability, should have the opportunity to live, work, and pursue recreational activities in their communities;

(6) the medicaid program should be changed from one that demands dependency to one that seeks to encourage personal growth and is tailored to the needs of each individual;

(7) the Congress should ensure the availability of a wide range of services and support for people with disabilities and the families of such people in a variety of residential settings;

(8) such services should be designed to meet the unique needs of each person rather than requiring an individual to "fit into" a service system or residential placement;

(9) it is time for the Congress to consider seriously true reform of medicaid services for people with disabilities;

(10) this issue has been the subject of serious debate in the Congress for the last 5 years and has been the subject of 4 hearings in the Committee on Finance of the Senate; and

(11) the Medicaid Home and Community Quality Services Act, S. 1673, has been introduced in the Senate to address the need for reform and has been cosponsored by 48 members of the Senate.

(b) Sense of the Senate.—It is the Sense of the Senate that—

(1) early in the 101st Congress medicaid reform should be undertaken;

(2) such reform should ensure that services will be provided in a wide range of residential settings from in-home support to institution based care; and

(3) independence, productivity, and community integration should be the national goal for people with disabilities.

SEC. 800U. REPORTS REGARDING CERTAIN DISABILITY-RELATED BENEFITS.

(a) Eligibility for Benefits.—Not later than 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report providing information on—

(1) the number of individuals with AIDS-related complex (ARC) who have made application for disability-related benefits under titles II and XVI of the Social Security Act during fiscal years 1988, 1987, and, to the extent feasible, 1986;

(2) the number of such applications approved, denied (by reason of denial), and reversed upon appeal;

(3) the rates of allowance and denial of such applications by State and region, to the extent feasible;

(4) the criteria, guidelines, or other information used to determine eligibility (including copies of the documents setting forth such criteria, guidelines, and information) including information about any changes in criteria that are under consideration;

(5) the total costs of disability-related benefits provided to individuals with ARC during fiscal years 1988, 1987, and, to the extent feasible, 1986; and

(6) to the extent available, the projected number of such applications that will likely be approved and denied and the estimated costs of such benefits for the next 3 years.

(b) Coordination of Federal and State Disability Programs.—Not later than 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report describing what arrangements, if any, now exist to provide for coordination between the Social Security Administration and State disability agencies with respect to the provision of disability-related benefits under titles II and XVI of the Social Security Act and State disability insurance programs to individuals with AIDS and ARC and to make such individuals applying for any such benefits aware of the full range of Federal and State disability-related benefits for which such individuals may be eligible.

SEC. 800V. TRADE TECHNICAL AMENDMENTS.

(a) In General.—

(1) Section 121 of the Trade Act of 1974 (19 U.S.C. 2131) is amended by striking out "(d) There are" and inserting in lieu thereof "There are".

(2)(A) Paragraph (6) of section 203(e) of the Trade Act of 1974 (19 U.S.C. 2253(e)) is amended—

(i) by striking out "(A) the application" in subparagraph (B) and inserting in lieu thereof "(i) the application", and

(ii) by striking out "(B) the designation" in subparagraph (B) and inserting in lieu thereof "(ii) the designation".

(B) Paragraph (2) of section 1214(j) of the Omnibus Trade and Competitiveness Act of 1988 is amended—

(i) by striking out "Section 203(f)" and inserting in lieu thereof "Paragraph (6) of section 203(e)",

(ii) by striking out "in paragraph (1)" and inserting in lieu thereof "in subparagraph (A)(i)", and

(iii) by striking out "in paragraph (3)" and inserting in lieu thereof "in subparagraph (B)(i)".

(3) Section 1215 of the Omnibus Trade and Competitiveness Act of 1988 is amended by striking out "1212(j)(1)" and inserting in lieu thereof "1214(j)(1)".

(4) Section 771B of the Tariff Act of 1930 is amended to read as follows:

"SEC. 771B. CALCULATION OF SUBSIDIES ON CERTAIN PROCESSED AGRICULTURAL PRODUCTS.

"In the case of an agricultural product processed from a raw agricultural product in which—

"(1) the demand for the prior stage product is substantially dependent on the demand for the latter stage product, and

"(2) the processing operation adds only limited value to the raw commodity, subsidies found to be provided to either producers or processors of the product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed product.".

(5) Paragraph (19) of section 771 of the Tariff Act of 1930 (19 U.S.C. 1677), as added by section 1335 of the Omnibus Trade and Competitiveness Act of 1988, is redesignated as paragraph (20).

(6) Subsection (e) of section 1337 of the Omnibus Trade and Competitiveness Act of 1988 is amended by striking out "1321(b)" and inserting in lieu thereof "1322".

(7) Paragraph (6) of section 1342(a) of the Omnibus Trade and Competitiveness Act of 1988 is amended by striking out "by paragraph (5)(B)" and inserting in lieu thereof "by paragraph (5)(A)".

(8) Section 204 of the Trade Act of 1974 is amended by redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

(9) Subsection (d) of section 701 of the Tariff Act of 1930 (19 U.S.C. 1671) is amended by redesignating the subsection (d) relating to a cross reference as subsection (f).

(10) Subsection (a) of section 162 of the Trade Act of 1974 (19 U.S.C. 2212(a)) is amended—

(A) by striking out "chapter 1 or", and

(B) by inserting "or under section 1102 of the Omnibus Trade and Competitiveness Act of 1988" after "or 124".

(11) Item 735.24 of the Tariff Schedules of the United States is amended by striking out "5.52% ad val." and inserting in lieu thereof "4.64% ad val.".

(12) Subparagraph (B) of section 337(n)(2) of the Tariff Act of 1930 (19 U.S.C. 1337(n)(2)(B)) is amended by striking out "under subsection (h)" and inserting in lieu thereof "under subsection (j)".

(13) Subsection (g) of section 1214 of the Omnibus Trade and Competitiveness Act of 1988 is amended to read as follows:

"(g) COBRA OF 1985.—Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c) is amended—

"(1) by striking out 'schedule 8 of the Tariff Schedules of the United States except item 806.30 or 807.00' in subsection (a)(9)(A) and inserting in lieu thereof 'chapter 98 of the Harmonized Tariff Schedule of the United States, except subheading 9802.00.60 or 9802.00.80';

"(2) by striking out 'General Headnote 3(e)(vi) or (vii)' in subsection (a)(9)(C) and inserting in lieu thereof 'general note 3(c)(v)';

"(3) by striking out 'Schedules' in subsection (a)(9)(C) and inserting in lieu thereof 'Schedule';

"(4) by striking out 'item 806.30' wherever it appears in subsection (b)(8)(A) and inserting in lieu thereof 'subparagraph 9802.00.60';

"(5) by striking out 'item 807.00' wherever it appears in subsection (b)(8)(A) and inserting in lieu thereof 'subparagraph 9802.00.80'; and

"(6) by striking out 'headnote 2 of the General Headnotes and Rules of Interpretation of the Tariff Schedules of the United States' in subsection (c)(3) and inserting in lieu thereof 'general note 2 of the Harmonized Tariff Schedule of the United States'.".

(14) Subparagraph (D) of section 1214(q)(2) of the Omnibus Trade and Competitiveness Act of 1988 is amended—

(A) by striking out "TSUS" in clause (iv) and inserting in lieu thereof "TSUS;",

(B) by striking out "HTS" in clause (iv) and inserting in lieu thereof "HTS; and", and

(C) by striking out "subparagraph (E)" in clause (vi) and inserting in lieu thereof "subparagraph (D)".

(15) Section 330(c)(3)(A)(i) of the Tariff Act of 1930 (19 U.S.C. 1330(c)(3)(A)(i)) is amended by striking out "most recently appointed to" and inserting in lieu thereof "with the shortest period of service on".

(16) Subsection (g) of section 332 of the Tariff Act of 1930 (19 U.S.C. 1332(g)) is amended by striking out "report to Congress. on the first" and inserting in lieu thereof "report to Congress on the first".

(17) Subsection (i) of section 1121 of the Omnibus Trade and Competitiveness Act of 1988 is amended by striking out "subsection (c) apply" and inserting in lieu thereof "subsection (f) apply".

(b) EFFECTIVE DATE.—The amendments made by this section shall be applied as if such amendments took effect on August 23, 1988.

SEC. 800W. EFFECTIVE DATE OF SECTION 415 LIMITATIONS OF COLLECTIVELY BARGAINED AGREEMENTS.

(a) IN GENERAL.—Paragraph (2) of section 1106(i) of the Reform Act is amended to read as follows:

"(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan in effect before March 1, 1986, pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, the amendments made by this section (other than subsection (d)) shall not apply to contributions or benefits pursuant to such agreement in years beginning before October 1, 1991."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the provisions of section 1106 of the Reform Act.

SEC. 800X. DEFINITION OF PART-TIME EMPLOYEE FOR PURPOSES OF SECTION 89.

For purposes of section 89(f) of the 1986 Code, in the case of a plan maintained by an employer which employs fewer than 10 employees on a normal working day during a plan year, section 89(h)(1)(B) of such Code shall be applied—

(1) by substituting "35 hours" for "17½ hours" in the case of a plan year beginning in 1989, and

(2) by substituting "25 hours" for "17½ hours" in the case of plan years beginning in 1990.

All persons treated as 1 employer for purposes of subsection (b), (c), (m), (n), or (o) of section 414 of the 1986 Code shall be treated as 1 employer for purposes of the preceding sentence.

SEC. 800Y. RELAY CARGO.

(a) IN GENERAL.—Subsection (g) of section 4462 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) RELAY CARGO.—Only 1 tax shall be imposed under section 4461(a) on cargo (moving under a single bill of lading) which is unloaded from one vessel and loaded onto another vessel at any port in the United States for relay to or from any port in Alaska, Hawaii, or any possession of the United States. For purposes of this paragraph, the term 'cargo' does not include any item not treated as cargo under subsection (b)(2)."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the provision of the Harbor Maintenance Revenue Act of 1986 to which it relates.

SEC. 800Z. SPECIAL RULE FOR APPLYING SPIN-OFF RULES TO BRIDGE BANKS.

(a) IN GENERAL.—Section 414(l)(2) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(G) SPECIAL RULES FOR BRIDGE BANKS.—For purposes of this paragraph, in the case of a bridge bank established under section 11(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(i))—

"(i) such bank shall be treated as a member of any controlled group which includes any insured bank (as defined in section 3(h) of such Act (12 U.S.C. 1813(h)))—

"(I) which maintains a defined benefit plan,

"(II) which is closed by the appropriate bank regulatory authorities, and

"(III) any asset and liabilities of which are received by the bridge bank, and

"(ii) the requirements of this paragraph shall not be treated as met with respect to such plan unless during the 180-day period beginning on the date such insured bank is closed—

"(I) the bridge bank has the right to require the plan to transfer (subject to the provisions of this paragraph) assets to a defined benefit plan maintained by the bridge bank with respect to participants or former participants (including retirees and beneficiaries) in the original plan employed by the bridge bank or formerly employed by the closed bank, and

"(II) no other merger, spin-off, termination, or similar transaction involving the original plan may occur without the prior written consent of the bridge bank."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 205(c) of this Act.

SEC. 800AA. (a)(1) The Secretary of the Treasury, the Secretary of State, and the United States Trade Representatives, acting jointly, shall conduct and coordinate a study that is designed to examine and evaluate possible frameworks for enhanced cooperation between the United States and Japan in the form of extensive economic and security arrangements between the United States and Japan.

(b)(1) The study provided for under subsection (a) shall include, but not be limited to, consideration of—

(A) tariffs, quotas, and other traditional subjects of a free trade area agreements,

(B) trade in services and direct foreign investment,

(C) coordination of monetary and fiscal policies, including currency exchange rate policies,

(D) domestic policies related to savings, consumption, and investment,

(E) government procurement policies,

(F) systems of distributing goods,

(G) anticompetitive practices and enforcement of antitrust laws,

(H) intellectual property protection,

(I) foreign development assistance and approaches to the problem of third world debt,

(J) access to research and development activities and opportunities in both public and private sectors,

(K) targeting of strategic industries,

(L) technology transfers and high technology targeting, and

(M) dispute settlement procedures.

(2) The frameworks for enhanced cooperation that are considered in the study provided for under subsection (a) shall—

(A) address mutual defense and sharing of the burden of defense,

(B) be consistent with the General Agreement on Tariffs and Trade,

(C) avoid harm to other foreign countries,

(D) supplement, but not replace, bilateral negotiations between the United States and Japan on specific economic sectors or issues, and recognize the enhanced authority of the United States Trade Representative to formulate and conduct U.S. trade policy as provided Public Law 100-418; and

(E) have the potential for extension to other foreign countries, particularly the foreign countries located along the Pacific Rim.

(3)(A) In conducting and coordinating the study required under subsection (a), the Secretary of the Treasury, the Secretary of State, and the United States Trade Representative shall—

(i) solicit the views of the Government of Japan and of nongovernmental Japanese experts throughout the course of the study,

(ii) solicit the views of the Secretaries of Defense, Agriculture, and Commerce with regard to any matter involved in the study that is relevant to the activities and duties of these entities,

(iii) solicit the views of nongovernmental United States experts on Japan, and

(B) The Secretaries of Defense, Commerce, and Agriculture shall submit to the Secretary of the Treasury, the Secretary of State, and the United States Trade Representative written statements of their views regarding the subject matters of this study within their respective jurisdictions.

(c)(1) The Secretary of the Treasury, the Secretary of State, and the United States Trade Representatives are authorized to secure directly from any officer, department, agency, establishment, or instrumentality of the United States such information as may be necessary to conduct the study described in subsection (a), and each officer, department, agency, establishment, or instrumentality of the United States is authorized and directed to furnish such information suggestions, estimates, and statistics directly to the Secretary of the Treasury, the Secretary of State, and the United States Trade Representative.

(2) Upon request of the Secretary of the Treasury, the Secretary of State, or the United States Trade Representative, the head of any department, agency, or instrumentality of the United States shall make any of the facilities and services of such department, agency, or instrumentality available to the Secretary of the Treasury, the Secretary of State, or the United States Trade Representative and detail any of the personnel of such department, agency, or instrumentality to the Secretary of the Treasury, the Secretary of State, or the United States Trade Representative, on a nonreimbursable basis, to assist the Secretary of the Treasury, the Secretary of State, and the United States Trade Representative in conducting the study described in subsection (a).

(d)(1) The Secretary of the Treasury, the Secretary of State and the United States Trade Representative, acting jointly, shall submit to the President, to the Committee on Foreign Relations, the Committee on Finance, the Committee on Armed Services, the Committee on Governmental Affairs, and the Committee on Appropriations of the Senate, and to the Committee on Foreign Affairs, the Committee on Ways and Means, the Committee on Armed Services, and the Committee on Appropriations of the House of Representatives—

(A) an interim report on the study conducted under subsection (a) by no later than March 1, 1989, and

(B) a final report on such study by no later than July 1, 1989.

(2) The reports submitted under paragraph (1) shall include—

(A) specific recommendations for possible framework for enhanced cooperation between Japan and the United States,

(B) a summary of the views of the Government of Japan and of nongovernmental Japanese experts with regard to such possible frameworks, and

(C) the statements of the Secretaries of Defense, Commerce, and Agriculture submitted under subsection (b) (3) (B) as appendices to the report.

METZENBAUM AMENDMENT NO. 3643

Mr. METZENBAUM proposed an amendment to the bill S. 2238, supra; as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . SUNSET OF TREATY PROVISIONS.

(a) IN GENERAL.—The provisions of the Tax Convention with the United Kingdom (on behalf of Bermuda) of the Tax Convention with Barbados, whether entered into on, before, or after the date of enactment of this Act, shall prevent application of any provision of the Internal Revenue Code of 1986 imposing insurance excise taxes, unless (in the case of a treaty entered into after the date of enactment of this Act) each treaty by specific reference to this section of this Act clearly expresses the intent to override the provisions of such section.

(b) EFFECTIVE DATE.—The provisions of this section shall apply to any such treaty in effect on December 31, 1989, with respect to insurance premiums paid after December 31, 1989, or for that portion of such premiums allotable to insurance coverage for taxable years beginning on or after January 1, 1990.

BRADLEY AMENDMENT NO. 3644

Mr. BRADLEY proposed an amendment to the bill S. 2238, supra; as follows:

At the end of title VII, insert:

Subtitle —Funding of Anti-Substance Abuse Legislation

SEC. . ANTI-SUBSTANCE ABUSE TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to establishment of Trust Funds) is amended by adding at the end thereof the following new section:

"SEC. 9511. ANTI-SUBSTANCE ABUSE TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Anti-Substance Abuse Trust Fund", consisting of such amounts as may be transferred to such Trust Fund as provided in this section or credited to the Fund under section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There is hereby appropriated to the Anti-Substance Abuse Trust Fund amounts equivalent to the increase in taxes received in the Treasury by reason of subtitle A of title VII, section 732, and section 745 of the Technical Corrections Act of 1988.

"(c) APPROPRIATION OF ADDITIONAL SUMS.—There are hereby authorized to be appropriated to the Anti-Substance Abuse Trust Fund such additional sums as may be appropriate to make the expenditures referred to in subsection (d).

"(d) EXPENDITURES.—Amounts in the Anti-Substance Abuse Trust Fund shall be available, as provided in appropriation Acts, for making expenditures to carry out the purposes of the Omnibus Anti-Substance Abuse Act of 1988.".

(b) CLERICAL AMENDMENT.—The table of sections for subchapter a of chapter 98 of the Internal Revenue Code of 1986 is amended by adding after the item relating to section 9510 the following new item:

"Sec. 9511. Anti-Substance Abuse Trust Fund."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1989, except that such amendments shall not take effect if the Omnibus Anti-Substance Abuse Act of 1988 is not enacted during the 100th Congress.

SEC. . CERTAIN PROVISIONS NOT TO TAKE EFFECT IF DRUG LEGISLATION ENACTED.

If the Omnibus Anti-Substance Abuse Act of 1988 is enacted during the 100th Congress, then, notwithstanding any other provision of this Act, the following provisions of this Act shall not take effect:

(1) Subtitle E of title IV (relating to education savings).

(2) The provisions of this title other than—

(A) subtitle A and this subtitle, and

(B) sections 718, 723, 725, 732, 734, 736, 738, 744, 745, 761, 762, 787, 787, 798, and 799.

PELL (AND OTHERS) AMENDMENT NO. 3645

Mr. PELL (for himself, Mr. HELMS, and Mr. McCAIN) proposed an amendment to the bill S. 2238, supra; as follows:

At the end of the bill add the following:

TITLE I—SANCTIONS AGAINST IRAQ

SEC. 101. SHORT TITLE.

This title may be cited as the "Sanctions Against Iraqi Chemical Weapons Use Act".

SEC. 102. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the Kurdish people constitute a distinct ethnic group of some twenty million, with an ancient history and a rich cultural heritage;

(2) three to four million Kurds are citizens of Iraq, residing in the northern part of that country;

(3) the Iraqi Army has undertaken a military campaign against Kurdish regions of Iraq and has destroyed Kurdish villages in northern Iraq;

(4) substantial evidence exists that the Iraq Army has been using chemical weapons against Kurdish insurgents and unarmed Kurdish civilians;

(5) by these and other actions against the Kurds, Iraq has violated their internationally recognized human rights;

(6) tens of thousands of Kurdish survivors of the Iraq Army assaults have taken refuge in Turkey;

(7) several United Nations teams have confirmed that Iraq has used chemical weapons in its war with Iran; and

(8) Iraq's use of chemical weapons is a gross violation of international law.

(b) PURPOSE.—It is the purpose of this title to mandate United States sanctions against Iraq because of its use of chemical weapons in violation of interntional law.

SEC. 103. IMPOSITION OF SANCTIONS AGAINST IRAQ.

(a) INITIAL SANCTIONS.—(1) The United States Government may not sell to Iraq any item on the United States Munitions List.

(3) The authorities of section 6 of the Export Administration Act of 1979 shall be used to prohibit the export to Iraq of any goods or technology on the control list established pursuant to section 5(c)(1) of that Act.

(2) Licenses may not be issued for the export to Iraq of any item on the United States Munitions List.

(3) The authorities of section 6 of the Export Administration Act of 1979 shall be used to prohibit the export to Iraq of any goods or technology on the control list established pursuant to section 5(c)(1) of that Act.

(4) Licenses may not be issued for the export to Iraq of any chemical that the President determines may be used primarily in the production of chemical weapons or may be otherwise devoted to chemical weapons or may be otherwise devoted to chemical warfare purposes.

(5) The United States shall oppose any loan or financial or technical assistance to Iraq by international financial institutions in accordance with section 701 of the International Financial Institutions act.

(6) This subsection takes effect on the date of enactment of this Act.

(b) REQUIREMENT FOR ADDITIONAL SANCTIONS.—Not later than December 31, 1988, the President, after consultation with the Congress, shall impose appropriate additional sanctions against Iraq unless the President certifies in writing to the Speaker of the House of Representatives and the chairman of the Commitee on Foreign Relations of the Senate—

(1) that the Government of Iraq is not using chemical weapons in violation of international law, including the 1925 Geneva Protocol (relating to the use of chemical weapons in war) and Common Article 3 of the 1949 Geneva Conventions (relating to the protection of victims of war); and

(2) that the Government of Iraq has provided reliable assurances that it will not use chemical weapons in the future in violation of international law; and

(3) that—

(A) the Government of Iraq is willing to allow on-site inspections by United Nations observers or other internationally-recognized, impartial observers, or

(B) other reliable means exist, to ensure that the Government of Iraq is not using chemical weapons.

(c) DESCRIPTION AND AUTHORIZATION OF ADDITIONAL SANCTIONS.—(1) To the extent they are not otherwise authorized, the sanctions described in paragraph (2) of this subsection are hereby authorized to be imposed against Iraq pursuant to subsection (b). In imposing sanctions against Iraq pursuant to subsection (b), the President shall exercise authority described in one or more of the subparagraphs of paragraph (2). Sanctions described in paragraph (2) shall be in addition to any other sanctions imposed on Iraq pursuant to subsection (b).

(2) The sanctions referred to in paragraph (1) are the following:

(A) DENIAL OF ACCESS TO THE EXPORT-IMPORT BANK.—Denying credits or credit guarantees through the Export-Import Bank of the United States to Iraq.

(B) RESTRICTIONS ON IMPORTS.—Prohibiting or otherwise restricting the importation into the United States of one or more kinds of articles (which may include petroleum or any petroleum product) that are the growth, product, or manufacture of Iraq.

(C) ADDITIONAL RESTRICTIONS ON EXPORTS.—Prohibiting or otherwise substantially restricting, using the authorities of section 6 of the Export Administration Act of 1979, exports to Iraq of goods and technology (excluding agricultural commodities and products).

(D) DOWNGRADING DIPLOMATIC RELATIONS.—Using the President's constitutional authorities to downgrade or suspend diplomatic relations between the United States and Iraq.

(d) CONTRACT SANCTITY.—(1) For purposes of export controls imposed in accordance with subsection (a)(3) of this section, the date described in section 6(m)(1) of the Export Administration Act of 1979 shall be deemed to be September 15, 1988.

(2) In imposing any additional sanction under subsection (c) of this section, the President may not prohibit or curtail the execution of any contract or agreement entered into before the earlier of the date on which notice of intent to impose the additional sanction is printed in the Federal Register or the date on which the President notifies the Congress of such an intent.

(e) REPORTS TO CONGRESS.—The President shall report to the Congress periodically on the actions taken pursuant to this section.

SEC. 104. CONDITIONS FOR LIFTING SANCTIONS.

The President may waive any sanctions imposed pursuant to section 103(a) or (b), including sanctions described in section 103(c), if the President determines and so certifies in writing to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate—

(1) that the Government of Iraq is not using chemical weapons in violation of international law, including the 1925 Geneva Protocol (relating to the use of chemical weapons in war) and Common Article 3 of the 1949 Geneva Conventions (relating to the protection of victims of war); and

(2) that the Government of Iraq has provided reliable assurances that it will not use chemical weapons in the future in violation of international law; and

(3) that—

(A) the Government of Iraq is willing to allow on-site inspections by the United Nations observers or other internationally-recognized, impartial observers, or

(B) other reliable means exist, to ensure that the Government of Iraq is not using chemical weapons.

SEC. 105. RESPECT BY THE GOVERNMENT OF IRAQ FOR INTERNATIONALLY RECOGNIZED HUMAN RIGHTS, ESPECIALLY THOSE OF THE KURDISH MINORITY.

Not later than December 31, 1988, the President shall submit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate an assessment of whether the Government of Iraq is respecting internationally recognized human rights, in particular the rights of the Kurdish minority in Iraq. This assessment shall be accompanied by a report which includes—

(1) all available information regarding the Government of Iraq's respect for internationally recognized human rights;

(2) a detailed description of the Government of Iraq's treatment of the Kurdish minority, including a detailed account of civilian killings and depopulation activities against the Kurds;

(3) a review of whether the Government of Iraq is committing gross violations of internationally recognized human rights;

(4) a description of the steps which the United States has taken to promote respect by the Government of Iraq for internationally recognized human rights; and

(5) a description of the steps which the United States has taken to discourage practices by the Government of Iraq which violate internationally recognized human rights, especially the rights of the Kurdish minority in Iraq.

SEC. 106. ACTIONS BY THE GOVERNMENT OF TURKEY.

The Congress—

(1) urges the Government of Turkey to cooperate with any United Nations or other appropriate investigation of Iraqi use of chemical weapons; and

(2) commends the Government of Turkey for its humanitarian decision to host thousands of Kurdish people fleeing Iraq.

SEC. 107. MULTILATERAL ACTIONS.

(a) UNITED NATIONS.—The Congress calls upon the President—

(1) to bring immediately to the attention of the Secretary General of the United Nations, and to pursue before the Security Council of the United Nations, the matter of Iraq's use of poison gas against its own nationals, most of whom are defenseless civilians; and

(2) to demand that, in accordance with United Nations Security Council Resolution 620, appropriate and effective measures be taken against Iraq for its repeated use of chemical weapons.

(b) OTHER MULTILATERAL EFFORTS.—(1) The Congress calls upon the President to seek multinational cooperation in imposing sanctions and otherwise bringing pressure on Iraq in order to obtain a cessation of Iraq's use of chemical weapons.

(2) The Congress also calls upon the President to seek multilateral cooperation in order to obtain Iraqi respect for the internationally recognized human rights of the Kurdish minority in Iraq.

(3) It is the sense of the Congress that the United States should cooperate with and, as appropriate, participate in multilateral efforts to assist Kurdish refugees who are in need of medical treatment and other humanitarian aid.

SEC. 108. CERTAIN UNITED STATES EXPORTS.

It is the policy of the United States to prohibit the export to Iraq of goods and technology that would significantly contribute to the military potential of Iraq. The President should review, under section 6 of the Export Administration Act of 1979, any proposed export to Iraq of goods or technology valued at over $50,000,000.

SEC. 109. TERMINATION.

No provision of this title, and no sanctions imposed by or under the authority of this title, has force and effect after June 30, 1991.

McCLURE (AND OTHERS) AMENDMENT NO. 3646

Mr. McCLURE (for himself, Mr. SYMMS, Mr. WALLOP, Mr. SIMPSON, and Mr. MELCHER) proposed an amendment to the bill S. 2238, supra; as follows:

At the appropriate place, insert the following new section:

SEC. . PERIOD FOR PLACING HYDROELECTRIC PROJECTS IN SERVICE.

In the case of any qualified hydroelectric generating projects (as described in section 48(l)(2)(A)(vii) of the 1986 Code) with respect to which a Federal law enacted before the date of the enactment of this Act imposed, in addition to any standard licensing requirements under part I of the Federal Power Act, requirements for determinations pertaining to streamflow, habitat, and water temperatures and quality, section 46(b)(2)(D) of the 1986 Code shall be applied by substituting "1990" for "1988" in recognition of the fact that such projects were delayed by such additional requirements.

OMNIBUS ANTI-SUBSTANCE ABUSE ACT

McCONNELL AMENDMENTS NOS. 3647 THROUGH 3649

(Ordered to lie on the table.)

Mr. McCONNELL submitted three amendments intended to be proposed by him to the bill (S. 2852) to provide for an omnibus Federal, State, and local effort against substance abuse, to provide for a Cabinet-level position to centralize and streamline Federal activities with respect to both drug supply (interdiction and law enforcement) and drug demand (prevention, education, and treatment), to expand Federal support to ensure a long-term commitment of resources and personnel for a substance abuse education, treatment, and rehabilitation efforts, to strengthen and improve the enforcement of Federal drug laws and enhance the interdiction of illicit drug shipments, and for other purposes; as follows:

AMENDMENT NO. 3647

At the end of the pending matter, add the following:

TITLE —ELECTION FRAUD AND CORRUPTION ENFORCEMENT

SECTION 1. SHORT TITLE.

This Act may be cited as the "Anti-Corruption Act of 1988".

SEC. 2. OFFENSE.

Chapter 11 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 225. Public Corruption

"(a) Whoever, in a circumstance described in subsection (c), deprives or defrauds, or attempts to deprive or to defraud, by any scheme or artifice, the inhabitants of a State or political subdivision of a State of the honest services of an official or employee of such State or subdivision, shall be fined under this title, or imprisoned for not more than ten years (or, if the defendant intended that the scheme or artifice promote conduct constituting an offense under the laws of the United States or a State for which the maximum term of imprisonment is greater than ten years, shall be imprisoned as required or authorized by the law punishing such offense or for not more than twenty years, whichever is less), or both.

"(b) Whoever, in a circumstance described in subsection (c), deprives or defrauds, or attempts to deprive or to defraud, by any scheme or artifice, the inhabitants of a State or political subdivision of a State of a fair and impartially conducted election process in any primary, run-off, special, or general election, through the procurement, casting, or tabulation of ballots or voter registration forms which are false, fictitious, fraudulent, or illegal under the laws of the State in which the election is held, or through the filing of any false, fictitious or fraudulent report required to be filed under State law regarding an election campaign, shall be fined under this title or imprisoned for not more than ten years, or both.

"(c) The circumstances referred to in subsections (a) and (b) are that—

"(1) for the purpose of executing or concealing such scheme or artifice or attempting to do so, the actor—

"(A) places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing;

"(B) transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce any writings, signs, signals, pictures, or sounds;

"(C) transports or causes to be transported any person or thing, or induces any person to travel in or to be transported in, interstate or foreign commerce; or

"(D) uses any facility of interstate or foreign commerce; or

"(2) the scheme or artifice affects in any manner or degree, or would if executed or concealed so affect, interstate or foreign commerce.

"(d) Whoever deprives or defrauds, or attempts to deprive or defraud, by any scheme or artifice, the inhabitants of the United States of the honest services of a public official or person who has been selected to be a public official shall be fined under this title or imprisoned for not more than ten years (or, if the defendant intended that the scheme or artifice promote conduct constituting an offense under the laws of the United States or a State for which the maximum term of imprisonment is greater than ten years, shall be imprisoned as required or authorized by the law punishing such offense, or for not more than twenty years, whichever is less), or both.

"(e) Whoever being an official, or public official, or person who has been selected to be a public official, directly or indirectly, discharges, demotes, suspends, threatens, harasses, or, in any manner, discriminates against any employee or official of the United States or any State or political subdivision of such State, or attempts to do so, in order to carry out or to conceal any scheme or artifice described in this section, shall be fined under this title or subject to imprisonment of up to five years or both.

"(f)(1) Any employee or official of the United States or any State or political subdivision of such State who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against because of lawful acts done by the employee as a result of a violation of subsection (e) or because of actions by the employee on behalf of himself or others in furtherance of a prosecution under this section (including investigation for, initiation of, testimony for, or assistance in such a prosecution) may in a civil action, obtain all relief necessary to make such individual whole. Such relief shall include reinstatement with the same seniority status such individual would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.

"(2) An individual is not eligible for such relief if that individual participated in the violation of this section with respect to which such relief would be awarded.

"(g) For purposes of this section—

"(1) the term 'State' means a State of the United States, the District of Columbia, Puerto Rico, and any other territory or possession of the United States;

"(2) the term 'agency' means a subdivision of the executive, legislative, judicial, or other branch of government, including a department, independent establishment, commission, administration, authority, board, and bureau, and a corporation or other legal entity established and subject to control by a government or governments for the execution of a governmental or intergovernmental program;

"(3) the terms 'public official' and 'person who has been selected to be a public official' have the meaning set forth in section 201 of this title; the terms 'official', 'public official', and 'person who has been selected to be a public official' shall also include any person acting under color of official authority;

"(4) the term 'official' includes a person who has been nominated or appointed to be an official or who has been officially informed that he or she will be so nominated or appointed, [and includes any official of an Indian tribal government.".]

SEC. 3. WHITE COLLAR CRIME.

Chapter 63 of Title 18 of the United States Code is amended by adding a new section as follows:

"§ 1346. Scheme or artifice to defraud

"For the purposes of this chapter, the term 'scheme or artifice to defraud' includes a scheme or artifice to deprive an organization of the intangible right of honest services in which the defendant received or attempted to receive, for the defendant or another person, anything of value or in which the defendant intended or contemplated loss or harm to the organization.".

SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS.

(a) TABLE OF SECTIONS.—The table of sections for chapter 11 of title 18, United States Code, is amended by adding at the end thereof the following item:

"225. Public Corruption.".

(b) TABLE OF SECTIONS.—The table of sections for chapter 63 of title 18, United States Code, is amended by adding at the end thereof the following item:

"1346. Scheme Or Artifice To Defraud.".

(c) RICO.—Section 1961(1) of title 18, United States Code, is amended by inserting "section 225 (relating to public corruption)," after "section 224 (relating to sports bribery),".

(d) INTERRUPTION OF COMMUNICATIONS.—Section 2516(1)(c) of title 18, United States Code, is amended by inserting "section 225 (relating to public corruption)," after "section 224 (bribery in sporting contests),".

SEC. 5. INTERSTATE COMMERCE.

(a) IN GENERAL.—Section 1343 of title 18, United States Code, is amended by striking "transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds" and inserting "uses or causes to be used any facility of interstate or foreign commerce".

(b) CONFORMING AMENDMENTS.—(1) The heading of section 1343 of title 18, United States Code, is amended by striking "Fraud by wire, radio, or television" and inserting "Fraud by use of facility of interstate commerce".

(2) The chapter analysis for chapter 63 of title 18, United States Code, is amended by striking the analysis for section 1343 and inserting the following:

"1343. Fraud by use of facility of interstate commerce".

AMENDMENT No. 3648

At the end of the pending matter, add the following:

TITLE —PRISON DRUG REHABILITATION TRAINING CENTER

SEC. . NATIONAL TRAINING CENTER FOR PRISON DRUG REHABILITATION PROGRAM PERSONNEL.

(a) IN GENERAL.—The Director of the National Institute of Corrections, in consultation with persons with expertise in the field of community-based drug rehabilitation, shall establish and operate, at any suitable location, a national training center (hereinafter in this section referred to as the "center") for training Federal, State, and local prison officials to conduct drug rehabilitation programs for criminals convicted of drug-related crimes and for drug-dependent criminals. Programs conducted at the center shall include training for correctional officers, administrative staff, and correctional mental health professionals (including subcontracting agency personnel).

(b) DESIGN AND CONSTRUCTION OF FACILITIES.—The Director of the National Institute of Corrections shall design and construct facilities for the center.

(c) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts otherwise authorized to be appropriated with respect to the National Institute of Corrections, there are authorized to be appropriated to the Director of the National Institute of Corrections—

(1) for establishment and operation of the center, for curriculum development for the center, and for salaries and expenses of personnel at the center, not more than $4,000,000 for each of fiscal years 1989, 1990, and 1991; and

(2) for design and construction of facilities for the center, not more than $10,000,000 for fiscal year 1989, 1990, and 1991.

AMENDMENT No. 3649

At the appropriate place add the following new title:

TITLE —STATE CLEARINGHOUSES

SEC. . This title may be cited as the "National Child Search Assistance Act of 1988".

SEC. . Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5771) is amended by—

(1) redesignating section 402 as section 411;

(2) redesignating section 403 as section 402, and inserting after such section the following:

"PART A—GRANTS FOR RESEARCH, DEMONSTRATION PROJECTS, AND SERVICE PROGRAMS";

(3) redesignating sections 404, 405, 406, 407, and 408 as sections 412, 413, 414, 415, and 416, respectively;

(4) striking out "406" in sections 413 and 415 (as redesignated by paragraph (3)) and inserting in lieu thereof "414";

(5) striking out "this title" in sections 411 through 416 each place it appears and inserting "this part" in lieu thereof; and

(6) inserting after section 416 (as redesignated by paragraph (3)) of the following new part:

PART B—GRANTS FOR STATE CLEARINGHOUSES

"GRANTS

"SEC. 421. From residual amounts originally appropriated for formula grants to States, and returned by such States pursuant to section 228, the Administrator shall make grants for the purpose of establishing and operating, or operating and expanding, Missing Children Information Clearinghouses, to States whose applications are approved under section 422. Each grant shall be made under such terms and conditions as the Administrator shall prescribe. The amount of a grant to a State for a fiscal year shall not exceed 50 percent of the total cost during such fiscal year of establishing and operating, or operating and expanding, the clearinghouse, as determined by the State under section 422. In no event shall any State be entitled to a grant in excess of $75,000.

"APPLICATIONS

"SEC. 422. (a) Each State that desires to receive a grant for a fiscal year under section 421 shall submit an application to the Administrator. The application shall contain such information and assurances as the Administrator deems necessary. The Administrator shall approve an application if the State qualifies under subsection (b) of this section.

"(b) To qualify for a grant for any fiscal year under this part, a State shall—

(1) agree to provide for the establishment and operation, or operation and expansion, of a Missing Children Information Clearinghouse within its department of justice of law enforcement, alone or in cooperation with other State agencies, that will—

"(A) work in conjunction with the national Crime Information Center by requiring local law enforcement agencies to promptly transmit all informtion on missing children under investigation to such Center, and to expunge such information regarding a child when such child is found;

"(B) educate parents, children, and community agencies and organizations, in ways to prevent to abduction and exploitation of children;

"(C) provide public information to assist in locating and returning missing children, including, but not limited to, a monthly bulletin to State and local law enforcement agencies with pictures and descriptions that will aid in locating missing children;

"(D) publish a directory of other organizations, such as private voluntary organizations, hospitals, medical clinics, and runaway shelters, that provide assistance in locating missing children;

"(E) establish an in-State toll-free telephone line to allow persons to report a missing child and be provided with information to assist in locating and returning a missing child as quickly as possible;

"(F) cooperate with and act as a liaison for other public and private organizations to locate missing children; and

"(G) work in conjunction with the National Center for Missing and Exploited Children, by providing information collected by State and local law enforcement agencies on the incidence of child abduction and exploitation, and by assisting in the development and dissemination of information on missing and exploited children;

"(2) determine the cost of the establishment and operation, or operation and expansion, of the clearinghouse in such fiscal year and provide assurances that the State will pay at least 50 percent of such cost in cash or in kind; and

"(3) agree to submit to the Administrator a status report on the activities and results of the States clearinghouse, no later than 6 months after receipt of a grant under this part, and at the end of each 6-month period thereafter, during any fiscal year for which the State received a clearinghouse grant under this part.

"ADMINISTRATIVE PROVISIONS

"SEC. 423. (a) The Administrator—

"(1) may prescribe such rules as he considers necessary or appropriate to carry out the purpose of this part; and

"(2) shall allocate staff and agency resources which are adequate to properly carry out this Administrator's responsibilities under this part.

"(b) Whenever the Administrator, after reasonable notice to any State and opportunity for a hearing, finds that the State has failed to comply substantially with the requirements of section 422, the Administrator shall withhold payments under this part until the Administrator is satisfied that the failure to comply has been corrected.

"(c) The Comptroller General of the United States shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of any State receiving assistance under this part that are pertinent to the sums received and disbursed under this part.

"AUTHORIZATION

"SEC. 424. (a) There are authorized to be allocated to the Administrator for the purpose of making grants under section 421, $2,000,000 for each of the fiscal year 1990, 1991, and 1992.

"(b) The funds authorized under subsection (a) shall be allocated from any residual funds originally appropriated for the Office of Juvenile Justice and Delinquency Prevention, which are returned by the States from formula grants, pursuant to section 228.

"DEFINITION

"SEC. 425. For purposes of this part, the term 'State' means any State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.".

EFFECTIVE DATA

SEC. . This title and the amendments made by this title shall become effective on the date of enactment and shall be effective until the end of fiscal year 1992, at which time this title and the amendments made by this title shall be repealed.

TECHNICAL CORRECTIONS TO TAX REFORM ACT OF 1986

MELCHER (AND OTHERS) AMENDMENT NO. 3650

Mr. MELCHER (for himself, Mr. HEFLIN, Mr. MCCLURE, Mr. HARKIN, Mr. GRASSLEY, Mr. BURDICK, Mr. CONRAD, Mr. NICKLES, Mr. EXON, Mr. SHELBY, Mr. KARNES, Mr. DIXON, Mr. SANFORD, Mr. PRESSLER, and Mr. SIMON) proposed an amendment, which was subsequently modified, to the bill S. 2238, supra; as follows:

At the end of title IV of the bill add the following new subtitle:

Subtitle —Income Averaging

SEC. . RESTORATION OF INCOME AVERAGING FOR FARMERS.

(a) REPEAL OF PROVISION ELIMINATING INCOME AVERAGING FOR FARMERS.—In the case of any taxable year of a qualified farmer beginning in 1988, the 1986 Code shall be applied and administered as if section 141 of the Reform Act (and the amendments made by such section) had not been enacted.

(b) QUALIFIED FARMER.—For purposes of this section—

(1) IN GENERAL.—The term "qualified farmer" means an individual—

(A) who is actively engaged in the trade or business of farming (within the meaning of section 2032A(e) (4) and (5) of the 1986 Code), including the trade or business of aquaculture on a farm, and

(B) the annual gross receipts of whom for the 3 preceding taxable years—

(i) does not exceed $1,000,000 for each of such years, and

(ii) are attributable to such trade or business.

(2) ACTIVELY ENGAGED.—A taxpayer shall be treated as actively engaged in the trade or business of farming only if the taxpayer is involved in the operation of such trade or business on a regular, continuous, and substantial basis.

DASCHLE (AND OTHERS) AMENDMENT NO. 3651

Mr. DOLE (for Mr. DASCHLE, for himself, Mr. DOLE, Mr. DURENBERGER, and Mr. GRASSLEY) proposed an amendment to amendment No. 3650 proposed by Mr. MELCHER (and others) and subsequently modified, to the bill S. 2238, supra; as follows:

In lieu of the matter proposed to be inserted, insert the following:

Subtitle —Disaster Assistance Payments

SEC. . DISASTER ASSISTANCE ACT PAYMENTS INCLUDED IN SPECIAL RULE FOR TAXABLE YEAR OF INCLUSION: TREATMENT OF PROPERTY TRANSFERRED IN TRUST TO A SPOUSE WHO IS NOT A CITIZEN OF UNITED STATES.

(a) DISASTER ASSISTANCE PAYMENTS.—

(1) IN GENERAL.—The second sentence of section 451(d) of the 1986 Code (relating to special rule for crop insurance proceeds or disaster payments) is amended by inserting "or title II of the Disaster Assistance Act of 1988," after "the Agricultural Act of 1949, as amended.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to payments received before, on, or after the date of the enactment of this Act.

(b) TREATMENT OF PROPERTY TRANSFERRED IN TRUST TO SPOUSE WHO IS NOT A CITIZEN OF UNITED STATES.—

(1) IN GENERAL.—Part III of subchapter A of chapter 11 of the 1986 Code is amended by adding at the end thereof the following new section:

"SEC. 2047. TREATMENT OF PROPERTY TRANSFERRED IN TRUST TO SPOUSE WHO IS NOT A CITIZEN OF UNITED STATES.

"(a) IN GENEAL.—If—

"(1) the surviving spouse of the decedent is not a United States citizen, and

"(2) the executor elects the application of this section,

then there shall be excluded from the value of the gross estate the value of property passing to such spouse in a trust described in subsection (b), reduced by the amount of any liability transferred with such property to the trust.

"(b) TRUST DESCRIBED IN THIS SUBSECTION.—

"(1) IN GENERAL.—A trust is described in this subsection if such trust requires that—

"(A) any trustee is a resident of the United States,

"(B) the surviving spouse is entitled to all the income from the property in the trust, payable annually or at more frequent intervals, or has a usufruct interest for life in such property, and

"(C) such property is located in the United States.

"(2) PROPERTY INCLUDES INTEREST THEREIN.—The term 'property' includes an interest in property.

"(3) SPECIAL PORTION TREATED AS SEPARATE PROPERTY.—A specific portion of property shall be treated as separate property.

"(4) INCOME.—The term 'income'—

"(A) has the meaning given to such term by section 643(b), but

"(B) shall not include any income accrued but not distributed at the date of death of the surviving spouse.

"(c) TAX TREATMENT OF TRANSFERS OF TRUST CORPUS.—

"(1) IMPOSITION OF ESTATE TAX.—There is hereby imposed an estate tax on the transfer by the trustee of any property not described in subsection (b)(1)(B).

"(2) AMOUNT OF ESTATE TAX..—

"(A) IN GENERAL.—The amount of estate tax imposed by paragraph (1) with respect to any transfer shall be the amount equal to—

"(i) the tax which would have been imposed under section 2001 on the estate of the decedent if such estate included the value of the transferred property described in paragraph (1) (including any previously transferred property described in such paragraph), less

"(ii) the tax imposed under section 2001 on the estate of the decedent determined without regard to this subsection.

"(B) RATE OF TAX WHERE ORIGINAL ESTATE TAX UNDETERMINED.—If the tax described in subparagraph (A)(ii) has not been determined at the time of the imposition of the tax under paragraph (1), the amount of estate tax imposed by paragraph (1) with respect to any transfer shall be equal to—

"(i) the value of the transferred property described in paragraph (1), multiplied by

"(ii) the highest rate of tax imposed by section 2001 on the date of the decedent's death.

"(3) SWITCH TO NON-UNITED STATES TRUSTEE TREATED AS A DISTRIBUTION OF CORPUS.—In the event of an appointment of a trustee who is not a resident of the United States, such appointment shall be considered a transfer described in paragraph (1) of the remaining property in the trust.

"(4) PROPERTY LOCATED OUTSIDE OF UNITED STATES TREATED AS A DISTRIBUTION OF CORPUS.—If at any time the trust holds any property not located in the United States, such trust shall be treated as having transferred such property in a transfer to which paragraph (1) applies.

"(5) DUE DATE.—The estate tax imposed by paragraph (1) shall become due and payable on the day which is 6 months after the date of the transfer described in such paragraph.

"(6) LIABILITY OF TAX.—The trustee shall be personally liable for the estate tax imposed by paragraph (1).

"(7) TREATMENT OF TAX.—For purposes of this chapter, the tax imposed by paragraph (1) shall be treated as a tax imposed by section 2001.

"(d) CREDIT FOR TAX ON PREVIOUS TRANSFER.—If the value of any property to which subsection (c) applied is included in the gross estate of the decedent's surviving spouse, a rule similar to the rule of section 2013(a) shall apply, except that such section shall be applied by substituting the date of transfer for the date of the decedent's death.

"(e) ELECTION.—An election under this section with respect to any property shall be made by the executor on the return of tax imposed by section 2001. Such an election, once made, shall be irrevocable."

"(2) DISALLOWANCE OF MARITAL DEDUCTION WHERE SPOUSE IS NOT CITIZEN OF UNITED STATES.—

"(A) ESTATE TAX.—Section 2056 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(d) DISALLOWANCE OF MARITAL DEDUCTION WHERE SURVIVING SPOUSE NOT UNITED STATES CITIZEN.—If the surviving spouse of the decedent is not a United States citizen—

"(1) no deduction shall be allowed under subsection (a), and

"(2) section 2040(b) shall not apply."

"(B) GIFT TAX.—Section 2523 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(i) DISALLOWANCE OF MARITAL DEDUCTION WHERE SPOUSE NOT CITIZEN.—If the spouse of the donor is not a citizen of the United States—

"(1) no deduction shall be allowed under this section,

"(2) section 2503(b) shall be applied with respect to gifts made by the donor to such spouse by substituting '$100,000' for '$10,000', and

"(3) the principles of sections 2515 and 2515A (as such sections were in effect before their repeal by the Economic Recovery Tax Act of 1981) shall apply, except that the provisions of such section 2515 providing for an election shall not apply."

"(C) Estates of nonresidents who are not citizens but have citizens as spouses.—Subsection (a) of section 2106 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) Marital Deduction allowed where spouse is citizen.—The amount which would be deductible with respect to property situated in the United States at the time of the decedent's death under the principles of section 2056."

"(3) Effective dates.—

"(A) The amendments made by paragraph (1) and subparagraphs (A) and (C) of paragraph (2) shall apply to estates of the decedents dying after the date of the enactment of this Act.

(B) The amendments made by paragraph (2)(B) shall apply to gifts on or after July 14, 1988.

DASCHLE (AND OTHERS) AMENDMENT NO. 3652

Mr. DASCHLE (for himself, Mr. Dole, Mr. Pryor, Mr. Danforth, Mr. Boren, Mr. Packwood, Mr. Harkin, Mr. Heflin, Mr. Durenberger, and Mr. Grassley) proposed an amendment to amendment No. 3650 proposed by Mr. Melcher (and others) and subsequently modified, to the bill S. 2238, supra; as follows:

In lieu of the matter proposed to be inserted, insert the following:

Subtitle —Disaster Assistance Payments

SEC. . DISASTER ASSISTANCE ACT PAYMENTS INCLUDED IN SPECIAL RULE FOR TAXABLE YEAR OF INCLUSION; TREATMENT OF PROPERTY TRANSFERRED IN TRUST TO A SPOUSE WHO IS NOT A CITIZEN OF UNITED STATES.

(a) Disaster Assistance Payments.—

(1) In general.—The second sentence of section 451(d) of the 1986 Code (relating to special rule for crop insurance proceeds or disaster payments) is amended by inserting "or title II of the Disaster Assistance Act of 1988," after "the Agricultural Act of 1949, as amended,".

(2) Effective date.—The amendment made by paragraph (1) shall apply to payments received before, on, or after the date of the enactment of this Act.

(b) Treatment of Property Transferred in Trust to Spouse who is not a Citizen of United States.—

(1) In general.—Part III of subchapter A of chapter 11 of the 1986 Code is amended by adding at the end thereof the following new section:

"SEC. 2047. TREATMENT OF PROPERTY TRANSFERRED IN TRUST TO SPOUSE WHO IS NOT A CITIZEN OF UNITED STATES.

"(a) In General.—If—

"(1) the surviving spouse of the decedent is not a United States citizen, and

"(2) the executor elects the application of this section, then there shall be excluded from the value of the gross estate the value of property passing to such spouse in a trust described in subsection (b), reduced by the amount of any liability transferred with such property to the trust.

"(b) Trust Described in This Subsection.—

"(1) In general.—A trust is described in this subsection if such trust requires that—

"(A) any trustee is a resident of the United States,

"(B) the surviving spouse is entitled to all the income from the property in the trust, payable annually or at more frequent intervals, or has a usufruct interest for life in such property, and

"(C) such property is located in the United States.

"(2) Property includes interest therein.—The term 'property' includes an interest in property.

"(3) Specific portion treated as separate property.—A specific portion of property shall be treated as separate property.

"(4) Income.—The term 'income'—

"(A) has the meaning given to such term by section 643(b), but

"(B) shall not include any income accrued but not distributed at the date of death of the surviving spouse.

"(c) Tax Treatment of Transfers of Trust Corpus.—

"(1) Imposition of estate tax.—There is hereby imposed an estate tax on the transfer by the trustee of any property not described in subsection (b)(1)(B).

"(2) Amount of estate tax.—

"(A) In general.—The amount of estate tax imposed by paragraph (1) with respect to any transfer shall be the amount equal to—

"(i) the tax which would have been imposed under section 2001 on the estate of the decedent if such estate included the value of the transferred property described in paragraph (1) (including any previously transferred property described in such paragraph), less

"(ii) the tax imposed under section 2001 on the estate of the decedent determined without regard to this subsection.

"(B) Rate of tax where original estate tax undetermined.—If the tax described in subparagraph (A)(ii) has not been determined at the time of the imposition of the tax under paragraph (1), the amount of estate tax imposed by paragraph (1) with respect to any transfer shall be equal to—

"(i) the value of the transferred property described in paragraph (1), multiplied by

"(ii) the highest rate of tax imposed by section 2001 on the date of the decedent's death.

"(3) Switch to non-United States trustee treated as a distribution of corpus.—In the event of an appointment of a trustee who is not a resident of the United States, such appointment shall be considered a transfer described in paragraph (1) of the remaining property in the trust.

"(4) Property located outside of United States treated as a distribution of corpus.—If at any time the trust holds any property not located in the United States, such trust shall be treated as having transferred such property in a transfer to which paragraph (1) applies.

"(5) Due date.—The estate tax imposed by paragraph (1) shall become due and payable on the day which is 6 months after the date of the transfer described in such paragraph.

"(6) Liability of tax.—The trustee shall be personally liable for the estate tax imposed by paragraph (1).

"(7) Treatment of tax.—For purposes of this chapter, the tax imposed by paragraph (1) shall be treated as a tax imposed by section 2001.

"(d) Credit for Tax on Previous Transfer.—If the value of any property to which subsection (c) applied is included in the gross estate of the decedent's surviving spouse, a rule similar to the rule of section 2013(a) shall apply, except that such section shall be applied by substituting the date of transfer for the date of the decedent's death.

"(e) Election.—An election under this section with respect to any property shall be made by the executor on the return of tax imposed by section 2001. Such an election, once made, shall be irrevocable."

(2) Disallowance of marital deduction where spouse is not citizen of United States.—

(A) Estate tax.—Section 2056 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(d) Disallowance of Marital Deduction Where Surviving Spouse Not United States Citizen.—If the surviving spouse of the decedent is not a United States citizen—

"(1) no deduction shall be allowed under subsection (a), and

"(2) section 2040(b) shall not apply."

(B) Gift tax.—Secton 2523 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(i) Disallowance of Marital Deduction Where Spouse Not Citizen.—If the spouse of the donor is not a citizen of the United States—

"(1) no deduction shall be allowed under this section,

"(2) section 2503(b) shall be applied with respect to gifts made by the donor to such spouse by substituting '$100,000' for '$10,000', and

"(3) the principles of section 2514 and 2514A (as such sections were in effect before their repeal by the Economic Recovery Tax Act of 1981) shall apply, except that the provisions of such section 2515 providing for an election shall not apply."

(C) Estates of nonresidents who are not citizens but have citizens as spouses.—Subsection (a) of section 2106 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) Marital deduction allow where spouse is citizen.—The amount which would be deductible with respect to property situated in the United States at the time of the decedent's death under the principles of section 2056."

(3) Effective dates.—

(A) The amendments made by paragraph (1) and subparagraphs (A) and (C) of paragraph (2) shall apply to estates of the decedents dying after the date of the enactment of this Act.

(B) The amendments made by paragraph (2)(B) shall apply to gifts on or after July 14, 1988.

WILSON (AND OTHERS) AMENDMENT NO. 3653

Mr. PACKWOOD (for Mr. Wilson) proposed an amendment to the bill S. 2238, supra; as follows:

At the appropriate place in the amendment, add the following:

SEC. . PRINCIPAL RESIDENCE CAPITAL GAINS EXCLUSION.

(a) In General.—Subsection (d) of section 121 of the Internal Revenue Code of 1986 (relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55) is amended by adding at the end thereof the following new paragraph:

"(9) Determination of use during periods of out-of-residence care.—If a taxpayer owns any property and uses such property as the taxpayer's principal residence for any 1-year period within a 5-year period ending immediately before a period of time during which the taxpayer becomes physically or mentally incapable of self-care in such residence, then the taxpayer shall be treated as using such property as the taxpayer's principal residence during such period of time and while the taxpayer is residing in any facility (including a nursing home) licensed by a State of political subdivision to care for an individual in the taxpayer's condition."

(b) Options Subject To Wash Sale Rules.—Subsection (a) of section 1091 of the 1986 Code (relating to losses from wash sales of stock or securities) is amended by adding at the end thereof the following sentence: "For purposes of this section, the term 'stock or securities' shall include contracts or options to acquire stock or securities."

(c) Valuation of Group-Term Life Insurance.—Subsection (c) of section 79 of the 1986 Code (relating to the determination of the cost of insurance) is amended by striking out the last sentence.

(d) Effective Dates.—

(1) Subsection (a).—The amendment made by subsection (a) shall apply with respect to any sale or exchange after September 30, 1988, in taxable years ending after such date.

(2) Subsection (b).—The amendment made by subsection (b) shall apply with respect to any sale after the date of enactment of this Act, in taxable years ending after such date.

(3) Subsection (c).—The amendment made by subsection (c) shall apply to taxable years beginning after December 31, 1988.

METZENBAUM (AND GLENN) AMENDMENT NO. 3654

Mr. METZENBAUM (for himself and Mr. Glenn) proposed an amendment to the bill S. 2238, supra; as follows:

At the appropriate place in the bill, insert the following:

SEC. . TREATMENT OF CERTAIN FAMILY SERVICES PROVIDERS.

(a) A State may treat a person who renders dependent care or similar services as other than an employee for employment tax purposes for the Applicable Period if all of the following conditions are satisfied with respect to such person for such Applicable Period:

(i) The person does not provide any dependent care or similar services in any facility owned or operated by the State;

(ii) The person is compensated by the State for such services, directly or indirectly, out of funds provided pursuant to Chapter 7 of Title 42 of the United States Code, or the provisions and amendments made by the Family Security Act of 1988.

(iii) The State does not treat the person, with respect to the provision of dependent care or similar services, as an employee for employment tax purposes;

(iv) The State files all Federal income tax returns (including information returns) required to be filed with respect to such person on a basis consistent with the State's treatment of such person as other than an employee beginning on the date of the enactment of this section, and

(v) No more than ten percent of the State's employees are provided with insurance under Title II of the Social Security Act pursuant to voluntary agreements with the Secretary of Health and Human Services under section 218 of such title.

(b) The term "State" shall mean the government of the United States, District of Columbia, any State or political subdivision thereof, and any agency or instrumentality of any of the foregoing.

(c) The term "employment tax" means any tax imposed by subtitle C of the Internal Revenue Code.

(d) The term "Applicable Period" means the period beginning on January 1, 1984 and ending on December 31, 1990.

(e) The Secretary of Treasury shall report to the Senate Committee on Finance and the House Committee on Ways and Means on the text status of day care providers compensated pursuant to the program described in the section no later than December 31, 1989.

RIEGLE AMENDMENT NO. 3655

Mr. RIEGLE proposed an amendment to the bill S. 2238, supra; as follows:

Amend section 135 by redesignating subsection (d) as subsection (e) and inserting after subsection (c) the following new subsection:

"(d) Application to State Prepaid Tuition Plans.—To the extent excluded from gross income under subsection (a), the same exclusion from gross income shall apply in connection with any contract entered into with an entity the income of which is excluded from gross income under section 115(b) with respect to any amount otherwise includable in the gross income of an individual which represents the excess (if any) of—

(1) the value of educational services received by the individual during the taxable year at an eligible educational institution, or the value of the payment made to an eligible educational institution on behalf of the individual for higher education expenses during the taxable year, over

(2) the prorata portion of the basis of the contract entered into by or on behalf of the individual with an entity the income of which is excluded from gross income under section 115(b) pursuant to which the individual is entitled to receive such educational services or the payment of such higher education expenses at an eligible educational institution.

(a) In General.—Section 115 of the Internal Revenue Code of 1986 (relating to income of States, municipalities, etc) is amended by adding at the end of the following new subsection:

"(b) Qualified State Prepaid Tuition Plans.—

(1) For purposes of subsection (a)(1), program income derived by a state or agency or instrumentality or political subdivision thereof or an entity created and administered by a state for the benefit of its residents, in connection with a program the function of which is to provide access to higher education by issuing contracts for the provision of education services or the payment of higher education expenses with respect to which an individual is entitled to an exclusion from gross income pursuant to section 135(d), shall be treated as income derived from the exercise of an essential governmental function.

(2) Definitions.—For purposes of this section—

(A) Program income includes gross receipts from the issuance of prepaid tuition contracts, gross investment income from investment in qualified United States savings bonds the income from which maybe eligible for exclusion from gross income of an individual pursuant to section 135(d) and gifts, grants and contributions;

(B) Higher education expenses shall have the meaning set forth in section 135(e)(1)

Amend Section 170(c)(1) in its entirety to read as follows:

"(1) A State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes; for purposes of this section, the issuance of contracts by an entity the income of which is excluded from gross income under section 115(b) for the provision of educational services or the payment of higher education expenses, income in connection with which is excludable from the gross income of an individual pursuant to section 135(d), shall be treated as an exclusively public purpose."

Amend Section 4942(g)(1)(A) to read as follows:

"(A) Any amount (including that portion of reasonable and necessary administrative expenses) paid to accomplish one or more of the purposes described in section 170(c)(2)(B) or to fund the purchase of prepaid tuition contracts, payments made or the value of educational services received with respect to which may be excluded from the gross income of an individual pursuant to section 135(d), other than any contribution to—

(i) an organization controlled (directly or indirectly) by the Foundation or one or more disqualified persons (as defined in section 4946) with respect to the Foundation, except as provided in paragraph (3), or

(ii) a private foundation which is not an operating foundation (as defined in subsection (j)(3)), except as provided in paragraph (3), or"

FORD (AND HELMS) AMENDMENT NO. 3656

Mr. BAUCUS (for Mr. Ford, for himself, and Mr. Helms) proposed an amendment to the bill S. 2238, supra; as follows:

Strike section 736 proposed to be added by the amendment and insert:

SEC. 736. STUDY ON ECONOMIC IMPACT OF SMOKING.

(a) In General.—The Secretary of the Treasury or his delegate, in consultation with the Secretary of Health and Human Services, shall conduct a study of:

(1) the direct public (and private to the extent determinable) health care costs incurred (with respect to smokers, their spouses and others) as a result of cigarette smoking in the United States,

(2) the changes in incidence of cigarette smoking in the United States over the past 20 years,

(3) the impact of the rate of the excise tax imposed by section 5701 of the Internal Revenue Code of 1986 on cigarette smoking among teenage groups,

(4) the distributional effects of all Federal tobacco excise taxes among the income classes,

(5) the distributional effects of all Federal tobacco excise tax increases among income classes,

(6) the impact of changes in the cigarette excise tax rate on State and local cigarette tax revenue collections, and on the related farm community, and

(7) the changes in cigarette excise tax rates imposed by States and localities since 1958.

(b) REPORTS.—The report of the study required by subsection (a) shall be submitted by July 1, 1989. Such report shall be submitted to the Committees on Ways and Means and Agriculture of the House of Representatives and the Committees on Finance and Agriculture of the Senate.

SIMPSON AMENDMENT NO. 3657

Mr. SIMPSON proposed an amendment to the bill S. 2238 supra; as follows:

On page 956, between lines 17 and 18, insert the following new paragraph:

(6) Subsection (f) of section 701 of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(8) EXCEPTION FOR CERTAIN CHARITABLE CONTRIBUTION.—Section 57(a)(6) of the Internal Revenue Code of 1986 (as amended by this section) shall not apply to any deduction attributable to any contribution made pursuant to a loan and contribution agreement dated August 28, 1975, and supplemented by agreements dated February 24, 1982, and March 15, 1983."

GUS J. SOLOMON U.S. COURTHOUSE

DOMENICI AMENDMENT NO. 3658

Mr. STEVENS (for Mr. DOMENICI) proposed an amendment to the bill (H.R. 5007) to designate the U.S. Courthouse at 620 Southwest Main Street, Portland, OR, as the "Gus J. Solomon U.S. Courthouse"; as follows:

SEC. . Notwithstanding any other provisions of law not to exceed one-fourth of 1 per centum of funds apportioned to a State under sections 105(b), 130, 144, and 152 of title 23, United States Code, shall be available to carry out section 140(b) of title 23, United States Code upon a request by the State highway department."

ZUNI-CIBOLA NATIONAL HISTORICAL PARK

BINGAMAN (AND DOMENICI) AMENDMENT NO. 3659

Mr. BYRD (for Mr. BINGAMAN, for himself and Mr. DOMENICI) proposed an amendment to the bill (H.R. 4182) to authorize the establishment of the Zuni-Cibola National Historical Park in the State of New Mexico, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Zuni-Cibola National Historical Park Establishment Act of 1988".

SEC. 2. ESTABLISHMENT OF PARK.

(a) ESTABLISHMENT.—In order to preserve and protect for the benefit of present and future generations certain nationally significant historical, archeological, cultural, and natural sites and resources associated with the Zuni Tribe, and in order to assist members of the Zuni Tribe in preserving and interpreting their tribal culture, there is hereby established the Zuni-Cibola National Historical Park. The park shall consist of lands with respect to which the Secretary of the Interior has accepted a leasehold pursuant to section 3 of this Act.

(b) EFFECTIVE DATE.—This section shall take effect on the date of publication by the Secretary, pursuant to section 3 of this Act, of a notice that the Secretary has accepted a leasehold interest that meets the requirements of this Act.

(c) TERMINATION.—This section shall terminate and shall be ineffective 24 months after the date of enactment of this Act unless prior to the end of such 24-month period the Secretary has published a notice of acceptance of a leasehold pursuant to section 3 of this Act.

SEC. 3. ACQUISITION OF LEASEHOLD.

(a) AUTHORITY OF SECRETARY.—If, no later than 18 months after the date of enactment of this Act, the Zuni Tribe, after consultation with the Bureau of Indian Affairs, offers to the Secretary a leasehold interest in trust lands of the Zuni Indian Reservation, in New Mexico, meeting the requirements of this Act, the Secretary is authorized and directed to accept such leasehold on behalf of the National Park Service and to publish in the Federal Register a notice of such acceptance.

(b) REQUIREMENTS.—the Secretary shall accept a leasehold under subsection (a) of this section if such leasehold—

(1) would continue for a period of at least 99 years;

(2) would require no rentals or other payments by the United States to the Zuni Tribe or any other party;

(3) would be applicable to no more than 800 acres of lands within the Zuni Indian Reservation that the Director of the National Park Service, after consultation with the Zuni Tribe and the Bureau of Indian Affairs, has determined to be necessary and adequate to carry out the purposes specified in section 4(a) of this Act; and

(4) would not be inconsistent with any of the provisions of this Act.

(c) MAP.—As soon as possible after publication of a notice of acceptance pursuant to subsection (a) of this section, the Secretary shall prepare a map of the park and shall provide copies of such map to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources and the Select Committee on Indian Affairs of the Senate.

(d) BOUNDARY ADJUSTMENTS.—The Secretary, after consultation with the Advisory Commission and with the agreement of the Zuni Tribe, may make minor revisions in the boundary of the park. Prior to making any such revision, the Secretary shall provide notice of the proposed change in the boundary to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources and Select Committee on Indian Affairs of the Senate. No such revision shall take effect sooner than 60 days after such notice has been provided to such Committees. After the effective date of any such revision, the Secretary shall prepare a revised map of the park, copies of which shall be provided to such Committees.

SEC. 4. MANAGEMENT.

(a) PURPOSES.—(1) The Secretary, acting through the Director of the National Park Service, and in consultation with the Advisory Commission established pursuant to section 6 of this Act, shall manage the lands covered by any leasehold accepted by the Secretary pursuant to section 3 as a unit of the National Park System consistent with the provisions of this Act, and the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1 et seq.), as amended and supplemented, and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461), as amended.

(2) The Secretary shall protect, manage, and administer the park for the purposes of preserving the historical, archeological, natural, scientific, cultural, and other resources and values of the park and providing for the public understanding and enjoyment of the same in such a manner as to perpetuate these resources and values for future generations.

(3) In implementing this Act, the Secretary shall cooperate with the Zuni Tribe.

(b) JURISDICTION.—The Secretary is authorized to accept concurrent jurisdiction from the Zuni Tribe for the purpose of law enforcement.

(c) CONSULTATION—The Secretary, acting through the Director of the National Park Service, shall consult regularly with the Commission established pursuant to section 6 of this Act. The Commission shall advise the Secretary on the management and operation of the park.

(d) FEES.—All enrolled members of the Zuni Tribe shall be exempt from the payment of fees for admission into the park.

(e) TRAINING.—In furtherance of the purposes specified in subsection (a)(2), and after consultation with the Advisory Commission established by section 6, the Secretary is authorized to enter into cooperative agreements with the Zuni Tribe, its subordinate boards, committees and enterprises, and individual members of the Zuni Tribe for the purpose of providing training of Zuni tribal members in the interpretation, management, protection, and preservation of archaeological and historical properties and in the provision of public services on the Zuni Indian Reservation needed for the fulfillment of the purposes specified in subsection (a)(2).

(f) PREFERENCE.—To the extent feasible, the Secretary shall exercise existing authorities so as to give preference to employing qualified members of the Zuni Tribe in the development, interpretation, and management of the park and in carrying out other activities related to the park.

SEC. 5. FEDERAL CONSISTENCY.

(a) FEDERAL ACTIONS.—The head of any Federal agency conducting or suporting activities directly or indirectly affecting the park shall—

(1) consult with, cooperate with, and, to the maximum extent practicable, coordinate its activities with the Secretary and with the Advisory Commission; and

(2) conduct or support such activities in a manner which—

(A) to the maximum extent practicable is consistent with the standards and criteria established pursuant to the plan required in section 7 of this Act, and

(B) will not have a significant adverse effect on the resources or values of the park, as determined by the Secretary.

(b) PERMITS.—No Federal agency may issue any license or permit to any person to conduct any activity within the park or which could affect the resources or values of the park unless the Secretary determines that any such proposed activity within the park will be conducted in a manner consistent with the standards and criteria established pursuant to the plan required in section 7 of this Act and wherever occurring will not have a significant adverse effect on the resources or values of the park.

(c) LIMITATION.—The provisions of this section shall apply only with respect to activities begun and licenses or permits issued after the date of enactment of this Act.

SEC. 6. ESTABLISHMENT OF ZUNI-CIBOLA ADVISORY COMMISSION.

(a) ESTABLISHMENT.—(1) There is established within the Department of the Interior a commission to be known as the Zuni-Cibola National Historical Park Advisory Commission which shall advise regularly the Director of the National Park Service on the planning, management, and administration of the park. The Advisory Commission shall consist of the Governor of the Zuni Tribe, the Director of the National Park Service, the Secretary of the Smithsonian Institution, the State Historic Preservation Officer of New Mexico (or their designees), and three members appointed by the Secretary from recommendations made by the Governor of the Zuni Tribe.

(2) The Advisory Commission is authorized to employ an administration director who shall be appointed by the Advisory Commission and who shall be paid at a rate not to exceed the rate of pay payable for grade GS-12 of the General Schedule.

(3) The administrative director of the Advisory Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51, and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that the individual so appointed may not receive pay in excess of the annual rate of basic pay payable for grade GS-12 of the General Schedule.

(4) The Administrator of the General Services Administration shall provide to the Advisory Commission on a reimbursable basis such administrative support services as the Advisory Commission may request.

(b) TERMS.—The initial terms of members of the Advisory Commission appointed by the Secretary pursuant to subsection (a) shall be staggered, as determined by the Secretary, in order to assure continuity in the administration of the Advisory Commission. Thereafter the term shall be four years. Any member of the Advisory Commission appointed for a definite term may serve after the expiration of such member's term until a successor is apointed. A vacancy in the Advisory Commission shall be filled in the manner in which the original appointment was made. The Advisory Commission shall exist for the duration of a leasehold accepted by the Secretary pursuant to section 3, and any extensions or renewals thereof.

(c) EXPENSES.—The non-Federal members of the Advisory Commission appointed pursuant to subsection (a) while away from their homes or regular places of business in the performance of services for the Advisory Commission, shall be allowed travel and all other related expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(d) CHAIR.—The Governor of the Zuni Tribe shall be the Chair of the Advisory Commission. Other officers of the Advisory Commission shall be elected by a majority of the members of the Advisory Commission to serve for terms established by the Advisory Commission.

(e) Meetings.—The Advisory Commission shall meet at the call of the Chair or a majority of its members. Consistent with the public meeting requirements of the Federal Advisory Committee Act, the Advisory Commission shall from time to time meet with persons concerned with park issues relating to the Zuni Tribe.

(f) APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT.—Except with respect to any requirements for reissuance of a charter and except as otherwise provided in this Act, the provisions of the Federal Advisory Committee shall apply to the Advisory Commission established by this section.

SEC. 7. PARK PLAN.

(a) DEADLINE.—No later than 3 years after the date of the publication of a notice pursuant to section 3(a), the Secretary, acting through the Director of the National Park Service and in consultation with the Advisory Commission, shall develop and transmit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources and the Select Committee on Indian Affairs of the Senate, a general management plan for the park which shall describe the appropriate uses and development of the park consistent with the purposes of this Act.

(b) ELEMENTS.—The park plan shall include (but not be limited to) the following:

(1) Plans for implementation of a continuing program of interpretation and visitor education about the resources and values of the park.

(2) Proposals for visitor use facilities to be developed for the park.

(3) Plans for management of the natural and cultural resources of the park in order to carry out the purposes specified in section 4(a)(2) of this Act, with particular emphasis on the preservation and long-term scientific use of archeological resources, giving high priority to the enforcement of the provisions of the Archeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.) and the National Historic Preservation Act (16 U.S.C. 470 et seq.) within the park. The natural and cultural resources management plans shall be prepared in close consultation with the New Mexico State Historic Preservation Office and the Zuni Tribe and their traditional cultural and religious authorities.

(4) Proposals for training members of the Zuni Tribe in such fields as interpretation, management, and artifact curation.

(5) A plan to implement the provisions of section 8 of this Act so as to ensure the protection of the right of the Zuni people to practice traditional Zuni religious activities within the park boundaries in a manner consistent with the purpose and intent of the American Indian Religious Freedom Act of August 11, 1978 (42 U.S.C. 1996).

(6) Proposals for cooperative research and interpretive programs within the park to be carried out by the Zuni Tribe through its archeology program, with technical assistance from the National Park Service.

(7) Proposals for implementing the provisions of this Act relating to the operation and supply of park concessions by qualified Zuni-owned businesses.

SEC. 8. CULTURAL AND RELIGIOUS USES.

In furtherance of the American Indian Religious Freedom Act, the Secretary, upon the request of an appropriate official of the Zuni Tribe, may, from time to time, temporarily close to general public use one or more specific portions of the part in order to protect the privacy of religious activities in such areas by Indian people. Any such closure shall be made so as to affect the smallest practicable area for the minimum period necessary for such purposes. Not later than 7 days after the first day on which any such closure takes effect, the Secretary shall provide written notification of such action to the Energy and Natural Resources Committee and Select Committee on Indian Affairs of the United States and the Committee on Interior and Insular Affairs of the House of Representatives.

SEC. 9. DEFINITIONS.

As used in this Act—

(1) the term "Advisory Commission" means the Zuni-Cibola National Historical Park Advisory Commission established under section 6;

(2) the term "park" means lands constituting a Zuni-Cibola National Historical Park established under section 2;

(3) the term "park plan" means the general management plan developed pursuant to section 7; and

(4) the term "Secretary" means the Secretary of the Interior.

SEC. 10. ADDITION TO MASAU TRAIL.

The first sentence of section 202 of the Act of December 31, 1987 (P.L. 100-225; 101 Stat. 1540) is amended by striking out "and Gila Cliff Dwelling National Monument." and inserting in lieu thereof "Gila Cliff Dwellings National Monument, and Zuni-Cibola National Historical Park."

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary for the purposes of this Act.

SMALL BUSINESS ACT AMENDMENTS

BUMPERS AMENDMENT NO. 3660

Mr. BYRD (for Mr. BUMPERS) proposed an amendment to the bill (H.R. 5050) to amend the Small Business Act to establish programs and initiate efforts to assist the development of small business concerns owned and operated by women, and for other purposes; as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act, together with the following table of contents, may be cited as the "Women's Business Ownership Act of 1988."

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TITLE I—CONGRESSIONAL FINDINGS AND PURPOSES

SEC. 101. FINDINGS AND PURPOSES.

Section 2 of the Small Business Act (15 U.S.C. 631) is amended by adding at the end thereof the following new subsection:

"(h)(1) With respect to the programs and activities authorized by this Act, the Congress finds that—

"(A) women owned business has become a major contributor to the American economy by providing goods and services, revenues, and jobs;

"(B) over the past two decades there have been substantial gains in the social and economic status of women as they have sought economic equality and independence;

"(C) despite such progress, women, as a group, are subjected to discrimination in entrepreneurial endeavors due to their gender;

"(D) such discrimination takes many overt and subtle forms adversely impacting the ability to raise or secure capital, to acquire managerial talents, and to capture market opportunities;

"(E) it is in the national interest to expeditiously remove discriminatory barriers to the creation and development of small business concerns owned and controlled by women;

"(F) the removal of such barriers is essential to provide a fair opportunity for full participation in the free enterprise system by women and to further increase the economic vitality of the Nation;

"(G) increased numbers of small business concerns owned and controlled by women will directly benefit the United States Government by expanding the potential number of suppliers of goods and services to the Government; and

"(H) programs and activities designed to assist small business concerns owned and controlled by women must be implemented in such a way as to remove such discriminatory barriers while not adversely affecting the rights of socially and economically disadvantaged individuals.

"(2) It is, therefore, the purpose of those programs and activities conducted under the authority of this Act that assist women entrepreneurs to—

"(A) vigorously promote the legitimate interests of small business concerns owned and controlled by women;

"(B) remove, insofar as possible, the discriminatory barriers that are encountered by women in accessing capital and other factors of production; and

"(C) require that the Government engage in a systematic and sustained effort to identify, define and analyze those discriminatory barriers facing women and that such effort directly involve the participation of women business owners in the public/private sector partnership.".

TITLE II—DEMONSTRATION PROJECTS

SEC. 201. ESTABLISHMENT.

Subsection (c) of section 8 of the Small Business Act (15 U.S.C. 637(c)) is amended to read as follows:

"(c)(1) Subject to the requirements of paragraph (2), the Administration shall provide financial assistance to private organizations to conduct demonstration projects for the benefit of small business concerns owned and controlled by women.

"(2) No amount of financial assistance shall be provided pursuant to this subsection unless the recipient organization agrees, as a condition of receiving such assistance, that—

"(A) it will obtain, after its application has been approved but prior to the disbursement of funds pursuant to this subsection, cash contributions from private sector sources in an amount at least equal to the amount of funds such organization will receive under this subsection; and

"(B) it will provide the types of services and assistance to present and potential women owners of small business concerns as are described in paragraph (3). For the purposes of this subsection such concerns may be either 'start-up' businesses or established 'on-going' concerns.

"(3) The types of services and assistance referred to in paragraph (2)(B) shall include the following:

"(A) Financial assistance, which assistance shall include training and counseling in how to apply for and secure business credit and investment capital; prepare and present financial statements; manage cash-flow and otherwise manage the financial operations of a business concern.

"(B) Management assistance, which assistance shall include training and counseling in how to plan, organize, staff, direct, and control each major activity and function of a small business concern; and

"(C) Marketing assistance, which assistance shall include training and counseling in how to identify and segment domestic and international market opportunities; prepare and execute marketing plans; develop pricing strategies; locate contract opportunities; negotiate contracts; and utilize varying public relations and advertising techniques.

"(4) Applications for financial assistance pursuant to this subsection shall be evaluated and ranked in accordance with predetermined selection criteria that shall be stated in terms of relative importance. Such criteria and their relative importance shall be made publicly available and stated in each solicitation for applications made by the Administration. Such criteria shall include—

"(A) a criterion that specifically refers to the experience of the offering organization in conducting programs or on-going efforts designed to impart or upgrade the business skills of women business owners or potential owners;

"(B) a criterion that specifically refers to the present ability of the offering organization to commence a demonstration project within a minimum amount of time; and

"(C) a criterion that specifically refers to the ability of the applicant organization to provide training and services to a representative number of women who are both socially and economically disadvantaged.

"(5) The financial assistance authorized pursuant to this subsection shall be made by grant, contract, or cooperative agreement and may contain such provision, as necessary, to provide for payments in lump sum or installments, and in advance or by way of reimbursement.

"(6)(A) The Administration shall prepare and transmit a report to the Committees on Small Business of the Senate and House of Representatives on the effectiveness of all demonstration projects conducted under the authority of this subsection. Such report shall provide information concerning—

"(i) the number of individuals receiving assistance;

"(ii) the number of start-up business concerns formed;

"(iii) the gross receipts of assisted concerns;

"(iv) increases or decreases in profits of assisted concerns; and

"(v) the employment increases or decreases of assisted concerns.

"(B) The report required pursuant to subparagraph (A) shall cover at least a twenty-four-month period and shall be submitted not later than thirty months after the effective date of this paragraph.

"(7) This subsection shall cease to be effective after September 30, 1991.".

SEC. 202. TECHNICAL.

Subsection (b) of section 8 of the Small Business Act (15 U.S.C. 637(b)) is amended by—

(1) striking out "and" at the end of paragraph (14);

(2) striking out "public." at the end of paragraph (15) and inserting in lieu thereof "public; and" and

(3) by adding the following new paragraph:

"(16) to make studies of matters materially affecting the competitive strength of small business, and of the effect on small business of Federal laws, programs, and regulations, and to make recommendations to the appropriate Federal agency or agencies for the adjustment of such programs and regulations to the needs of small business.".

SEC. 203. AUTHORIZATION.

There is authorized to be appropriated $10,000,000 to carry out the demonstration projects required pursuant to section 201. The initial projects authorized to be financed by this title shall be funded by January 31, 1989. Notwithstanding any other provision of law, the Small Business Administration may use such expedited acquisition methods as it deems appropriate to achieve the purposes of this section, except that it shall ensure that all eligible sources are provided a reasonable opportunity to submit proposals.

SEC. 204. DEFINITION.

For the purposes of this title, the term "small business concern owned and controlled by women" means any small business concern as defined pursuant to section 3 of the Small Business Act (15 U.S.C. 632)—

(1) that is at least 51 per centum owned by one or more women; and

(2) whose management and daily business operations are controlled by one or more of such women.

TITLE III—ACCESS TO CAPITAL

SEC. 301. AMENDMENTS TO THE CONSUMER CREDIT PROTECTION ACT.

Subsection (a) of section 703 of the Consumer Credit Protection Act (15 U.S.C. 1691b(a)) is amended to read as follows:

"(a)(1) The Board shall prescribe regulations to carry out the purposes of this title. These regulations may contain but are not limited to such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith.

"(2) Such regulations may exempt from the provisions of this title any class of transactions that are not primarily for personal, family, or household purposes, or business or commercial loans made available by a financial institution, except that a particular type within a class of such transactions may be exempted if the Board determines, after making an express finding that the application of this title or of any provision of this title of such transaction would not contribute substantially to effecting the purposes of this title.

"(3) An exemption granted pursuant to paragraph (2) shall be for no longer than five years and shall be extended only if the Board makes a subsequent determination, in the manner described by such paragraph, that such exemption remains appropriate.

"(4) Pursuant to Board regulations, entities making business or commercial loans shall maintain such records or other data relating to such loans as may be necessary to evidence compliance with this subsection or enforce any action pursuant to the authority of this Act. In no event shall such records or data be maintained for a period of less than one year. The Board shall promulgate regulations to implement this paragraph in the manner prescribed by chapter 5 of title 5, United States Code.

"(5) The Board shall provide in regulations that an applicant for a business or commercial loan shall be provided a written notice of such applicant's right to receive a written statement of the reasons for the denial of such loan.".

SEC. 302. FORM SIMPLIFICATION AND PREFERRED FINANCING.

(a) CERTIFIED LOAN PROGRAM.—Section 7 of the Small Business Act (15 U.S.C. 636) is amended by adding to subsection (a) the following new paragraph:

"(19) During fiscal years 1989, 1990, and 1991, in addition to the preferred lenders program authorized by the *proviso* in section 5(b)(7), the Administration is authorized to establish a certified loan program for lenders who establish their knowledge of Administration laws and regulations concerning the loan guarantee program and their proficiency in program requirements. In order to encourage certified lenders and preferred lenders to provide loans of $50,000 or less in guarantees to eligible small business loan applicants, the Administration (A) shall develop and shall allow participating lenders in the certified loan program and in the preferred loan program to solely utilize a uniform and simplified form for such loans and (B) shall allow such lenders to retain one-half of the fee collected pursuant to section 7(a)(16) on such loans: *Provided,* That a participating lender may not retain any fee pursuant to this paragraph if the amount committed and outstanding to the applicant would exceed $50,000 unless such amount was not approved under the provisions of this paragraph. The designation of a lender as a certified or preferred lender shall be suspended or revoked at any time that the Administration determines that the lender is not adhering to its rules and regulations or if the Administration determines that the loss experience of the lender is excessive as compared to other lenders: *Provided further,* That any suspension or revocation of the designation shall not affect any outstanding guarantee: *And, provided further,* That the Administration may not reduce the per centum of guarantee as a criterion of eligibility for participation in this program, except as otherwise provided by law.".

(b) REPORTS.—The Administration shall take appropriate steps to expand participation in the certified loan program and shall report to the Small Business Committees of the Senate and the House of Representatives on the amount of loans approved and the amount of losses sustained under the provisions of section 7(a)(19) of the Small Business Act. An interim report shall be submitted not later than one year after date of enactment of this Act and a final report shall be submitted not later than 18 months after the date of enactment.

TITLE IV—NATIONAL WOMEN'S BUSINESS COUNCIL

SEC. 401. ESTABLISHMENT.

There is established a Council to be known as the "National Women's Business Council" (hereinafter in this title referred to as the Council).

SEC. 402. DUTIES OF THE COUNCIL.

(a) The Council shall review—

(1) the status of women owned business nationwide, including progress made and barriers that remain in order to assist such businesses to enter the mainstream of the American economy;

(2) the role of the Federal Government and State and local governments in assisting and promoting aid to, and the promotion of, women owned business;

(3) data collection procedures and the availability of data relating to (A) women owned businesses; (B) women owned small business, and (C) small business owned and controlled by socially and economically disadvantaged women; and

(4) such other government initiatives as may exist relating to women owned business including, but not limited to, those relating to Federal procurements.

(b) Based upon its review, the Council shall, by December 31, 1989, and every twelve months thereafter, recommend to the Congress and the President—

(1) new private sector initiatives that would provide management and technical assistance to women owned small business;

(2) ways to promote greater access to public and private sector financing and procurement opportunities for such businesses; and

(3) detailed multiyear plans of action, with specific goals and timetables, for both public and private sector actions needed to overcome discriminatory barriers to full participation in the economic mainstream.

(c) For the purposes of this title the term "small business concern owned and controlled by women" shall have the same meaning as that term is given in section 204 of this Act.

SEC. 403. MEMBERSHIP.

(a) The Council shall be composed of nine members to be selected as follows:

(1) the Administrator of the Small Business Administration, the Secretary of Commerce (or such Secretary's deputy) and the Chairman of the Federal Reserve Board (or such Chairman's designee, who shall be a member of the Board);

(2) two members shall be appointed by the majority leader, and one member shall be appointed by the minority leader of the Senate.

(3) two members shall be appointed by the Speaker, and one member shall be appointed by the minority leader of the House of Representatives.

(b)(1) Appointments under section (a) (2) and (3) shall be made from individuals who are specially qualified to serve on the Council by virtue of their education, training, and experience and who are not officers or employees of the Federal Government nor of the Congress.

(2)(A) Of the individuals to be appointed under subsection (a) (2) and (3)—

(i) no more than two members to be appointed under each such paragraph of such subsection shall be of the same political party;

(ii) at least two members appointed under each such paragraph of such subsection shall be women; and

(iii) at least two members to be appointed under each such paragraph of such subsection shall be owners of small business concerns as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(B) Appointments made pursuant to subsection (a) (2) and (3) shall be made in the following sequence—

(i) appointments under (a)(2) shall be made within ninety days of the effective date of this title; and

(ii) appointments under (a)(3) shall be made within one hundred and twenty days of the effective date of this title.

(3) In making appointments under subsection (a), the appointing authorities shall give due consideration to achieving balanced geographical representation.

(C) Members appointed under subsection (a) (2) and (3) shall be appointed for a three-year term, except if any such appointee becomes an officer or employee of the Federal Government or of the Congress, such individual may continue as a member of the Council for not longer than the thirty-day period beginning on the date such individual becomes such an officer or employee.

(D) A vacancy on the Council shall be filled in the manner in which the original appointment was made.

(E) Members of the Council shall serve without pay for such membership, except members of the Council shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions of the Council, in the same manner as persons employed intermittently in the Federal Government are allowed expenses under section 5703 of title 5, United States Code.

(F)(1) Two members of the Council shall constitute a quorum for the receipt of testimony and other evidence.

(2) A majority of the Council shall constitute a quorum for the approval of a recommendation or report submitted pursuant to section 402 or section 406.

(G) The Chairperson and Vice Chairperson of the Council shall be designated by the President. The term of office of the Chairperson and Vice Chairperson shall be at the discretion of the President.

(H) The Council shall meet not less than four times a year. Meetings shall be at the call of the Chairperson.

SEC. 404. DIRECTOR AND STAFF OF THE COUNCIL.

(a)(1) The Council shall have a Director who shall be appointed by the Chairperson. Upon recommendation by the Director, the Chairperson may appoint and fix the pay of four additional personnel.

(2) The Director and staff of the Council may be appointed without regard to section 5311(b) of title 5, United States Code, and without regard to the provisions of such title governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

(b) The Council may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(c) Upon request of the Chairperson, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of such agency to the Council to assist the Council in carrying out its duties under this title without regard to section 3341 of title 5 of the United States Code.

SEC. 405. POWERS OF THE COUNCIL.

(a) The Council may, for the purpose of carrying out this title sit and act at such times and places, hold such hearings, take such testimony, receive such evidence, and consider such information, as the Council considers appropriate. The Council may administer oaths or affirmations for the receipt of such testimony.

(b) Any member or person within the employ of the Council may, if so authorized by the Council, take any action which the Council is authorized to take by this section.

(c) Except as otherwise prohibited by law, the Council may secure directly from any department or agency of the United States information necessary to enable it to carry out its duties under this Act. Upon the request of the Chairperson of the Council, the head of such department or agency shall promptly furnish such information to the Council.

(d) The Council may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

(e) The Administrator of the General Services Administration shall provide to the Council, on a reimbursable basis, such administrative support services as the Council may request. In addition, the Administrator shall, as appropriate, provide to the Council, upon its request, access to and use of such Federal facilities as may be necessary for the conduct of its business.

SEC. 406. REPORTS.

The Council shall transmit to the President and to each House of the Congress a report no less than once in every twelve-month period. The first such report shall be submitted no later than December 31, 1989. Such reports shall contain a detailed statement on the activities of the Council, and the findings and conclusions of the Council, together with its recommendations for such legislation and administrative actions as it considers appropriate based upon its reviews conducted under section 402.

SEC. 407. AUTHORIZATION.

There are authorized to be appropriated such sums as may be necessary to carry out this title and they may remain available until expended. New spending authority or authority to enter into contracts as authorized in this Act shall be effective only to such extent and in such amounts as are provided in advance in appropriation Acts. This title shall cease to be effective five years after the date of enactment.

TITLE V—STATISTICAL DATA AND EFFECT ON OTHER PROGRAMS

SEC. 501. CENSUS DATA.

(a) BUREAU OF LABOR STATISTICS.—The Bureau of Labor Statistics of the Department of Labor shall include in any census report it may prepare on women owned business data on—

(1) sole proprietorships;

(2) partnerships; and

(3) corporations.

(b) BUREAU OF THE CENSUS.—The Bureau of the Census of the Department of Commerce shall include in its Business Census for 1992 and each such succeeding census data on the number of corporations which are 51 per centum or more owned by women.

(c) COMBINED STUDY.—Not later than one hundred and eighty days after the effective date of this section, the Office of the Chief Counsel for Advocacy of the Small Business Administration (hereinafter referred to in this subsection as the "Office") shall conduct a study and prepare a report recommending the most cost effective and accurate means to gather and present the data required to be collected pursuant to subsections (a) and (b). The Department of Commerce and the Department of Labor shall provide the Office such assistance and cooperation as may be necessary and appropriate to achieve the purposes of this subsection.

SEC. 502. PROCUREMENT DATA.

(a) REPORTING.—Each Federal agency shall report to the Office of Federal Procurement Policy the number of small businesses owned and controlled by women and the number of small business concerns owned and controlled by socially and economically disadvantaged businesses, by gender, that are first time recipients of contracts from such agency. The Office of Federal Procurement Policy shall take such actions as may be appropriate to ascertain for each fiscal year the number of such small businesses that have newly entered the Federal market.

(b) DEFINITIONS.—For purposes of this section the terms "small business concern owned and controlled by women" and "small business concerns owned and controlled by socially and economically disadvantaged individuals" shall be given the same meaning as those terms are given under section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and section 204 of this Act.

SEC. 503. STATE OF SMALL BUSINESS REPORT.

Section 303 of Public Law 96-302 (15 U.S.C. 631(b)) is amended by adding the following new subsection:

"(e) The information and data required to be reported pursuant to subsection (a) shall separately detail those portions of such information and data that are relevant to—

"(1) small business concerns owned and controlled by socially and economically disadvantaged individuals, by gender, as defined pursuant to section 8(d) of the Small Business Act; and

"(2) small business concerns owned and controlled by women.".

SEC. 504. DISADVANTAGED SMALL BUSINESSES.

Nothing contained in this Act is intended to reduce or limit any programs, benefit, or activity that is authorized by law to assist small business concerns owned and controlled by socially and economically disadvantaged individuals as defined pursuant to section 8(d)(3) of the Small Business Act (15 U.S.C. 637 (d)(3)).

IMPROVEMENTS IN FEDERAL ENERGY MANAGEMENT PROGRAM

DOLE AMENDMENT NO. 3661

Mr. STEVENS (for Mr. DOLE) proposed an amendment to the amendment of the House to the bill (S. 1382) to amend the National Energy Conservation Policy Act to improve the Federal Energy Management Program, and for other purposes; as follows:

At the appropriate place, add the following:

SEC. . (a) It shall be unlawful for any person to manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm unless such firearm contains, or has affixed to it, a marking approved by the Secretary of Commerce, as provided in subsection (b).

(b)(1) Except as provided in paragraph (2) or (3), each toy, look-alike, or imitation firearm shall have as an integral part, permanently affixed, a blaze orange plug inserted in the barrel of such toy, look-alike, or imitation firearm. Such plug shall be recessed no more than 6 millimeters from the muzzle end of the barrel of such firearm.

(2) The Secretary of Commerce may provide for an alternate marking or device for any toy, look-alike, or imitation firearm not capable of being marked as provided in paragraph (1) and may waive the requirement of any such marking or device for any toy, look-alike, or imitation firearm that will only be used in the theatrical, movie or television industry.

(3) The Secretary is authorized to make adjustments and changes in the marking system provided for by this section, after consulting with interested persons.

(c) For purposes of this section, the term "look-alike firearm" means any imitation of any original firearm which was manufactured, designed, and produced since 1898, including and limited to toy guns, water guns, replica nonguns, and air-soft guns firing nonmetallic projectiles. Such term does not include any look-alike, nonfiring, collector replica of an antique firearm developed prior to 1898, or traditional B-B, paint-ball, or pellet-firing air guns that expel a metallic projectile through the force of air pressure.

(d) The Director of the Bureau of Justice Statistics is authorized and directed to conduct a study of the criminal misuse of toy, look-alike and imitation firearms, including studying police reports of such incidences and shall report on such incidences relative to marked and unmarked firearms.

(e) The Director of National Institute of Justice is authorized and directed to conduct a technical evaluation of the marking systems provided for in subsection (b) to determine their effectiveness in police combat situations. The Director shall begin the study within 3 months after the date of enactment of this section and such study shall be completed within 9 months after such date of enactment.

(f) This section shall become effective on the date 6 months after the date of its enactment and shall apply to toy, look-alike, and initation firearms manufactured or entered into commerce after such date of enactment.

(g) The provisions of this section shall supersede any provision of State or local laws or ordinances which provide for markings or identification inconsistent with provisions of this section provided that no state shall—

(i) prohibit the sale or manufacture of any look-alike, nonfiring, collector replica of an antique firearm developed prior to 1898, or

(ii) prohibit the sale (other than prohibiting the sale to minors) of traditional B-B, paint-ball, or pellet-firing air guns that expel a metallic projectile through the force of air pressure.

COLORADO RIVER STORAGE PROJECT AUTHORIZATION ACT

GARN AMENDMENT NO. 3662

Mr. STEVENS (for Mr. GARN) proposed an amendment to the amendment of the House to the amendment of the Senate to the bill (H.R. 3408) to increase the amounts authorized for the Colorado River Storage Project; as follows:

At the appropriate place in the bill, strike Section 6. and renumber section 7 as section 6

JOHNSTON AMENDMENT NO. 3663

Mr. BYRD (for Mr JOHNSTON) proposed an amendment to the amendment of the House to the amendment of the Senate to the bill H.R. 3408, supra; as follows:

The map reference contained in section 5(a) for the John Muir National Historic site is amended to read: "numbered 426-80, 015B and dated July 1988".

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON GOVERNMENT AFFAIRS

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Tuesday, October 11, in SD-342 Dirksen, for a hearing on the subject of security weaknesses at the nuclear weapons laboratories.

The PRESIDING OFFICER. Without objection, it is ordered.

COMMITTEE ON ARMED SERVICES

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Tuesday, October 11, 1988 in open session to consider the nomination of Karen R. Keesling to be Assistant Secretary of the Air Force for Manpower and Reserve Affairs.

The PRESIDING OFFICER. Without objection, it is ordered.

ADDITIONAL STATEMENTS

VERNON M. BATHURST

● Mr. DECONCINI. Mr. President, this past Friday evening in Mesa, AZ, Vernon M. Bathurst was honored by his many friends and colleagues for his 41 years of government service. He is retiring from the post of State conservationist in Arizona for the Soil Conservation Service. With the indulgence of my colleagues, I would like to take a moment to recognize the achievement of this outstanding public servant.

In 1949, after serving in the U.S. Army Air Corps, Verne began working for the Soil Conservation Service. In 1950, Verne became a work unit conservationist in Hays, KS. During his long and distinguished tenure with the Soil Conservation Service, Verne has lived in nine different States, spent 11 years in Washington, and rose to the position of Deputy Chief for Management for the Soil Conservation Service.

Among Verne's many awards and honors are the USDA Outstanding Performance and the USDA Superior Service Award.

In 1981, Verne's commitment to the work that was being done in the field by the Soil Conservation Service resulted in Verne becoming the State conservationist in Arizona, and Arizonans should feel fortunate that he was. Verne has been a tremendous resource to my staff and to me. I know that he will be missed by not only this Senator, but by the many others who benefited from his expertise and dedication.

I ask for this body to join me in conveying this country's gratitude for Verne's devotion and exemplary service to the United States of America.●

POW/MIA RECOGNITION DAY

● Mr. WARNER. Mr. President, I am a veteran of two wars and served as Under Secretary and later as Secretary of the Navy during the Vietnam conflict. Because of my personal involvement, there is probably no single issue over which I have agonized more than the possibility that some prisoners of war [POW's] may still be held captive as a result of the Vietnam conflict.

The United States continues to investigate reports of POW sightings. Actions to investigate these reports have received and will continue to receive priority by this administration. As a Member of the Senate, I am pledged to continue efforts aimed at securing answers for the families of those still missing in action. Only then can the Vietnam conflict end for them and their families.

Mr. President, although for many Americans, POW/MIA Recognition Day reminds them of the Americans still unaccounted for in Vietnam, there are many other brave Americans who remain unaccounted for from World War II and Korea.

I am sure my colleagues and all Americans join me in remembering all missing servicemen. Our commitment toward securing answers must be unwavering.

Mr. President, Gov. Gerald Baliles has proclaimed September 16, 1988, as "POW/MIA Recognition Day" in the Commonwealth of Virginia. I applaud the Governor's actions and ask that the text of his proclamation be included in the RECORD.

The proclamation follows:

POW-MIA RECOGNITION DAY

Whereas, we recognize the sacrifices and suffering of those who have fought for this nation in foreign wars; and

Whereas, our POWs endured great hardship and cruel treatment while in captivity, and years later many still face physical and emotional problems as a result of their imprisonment; and

Whereas, we remember those who are still listed as Missing in Action and we reiterate our commitment to accounting for these individuals; and

Whereas, the United States Congress has established the day of September 16, 1988, as "National POW/MIA Recognition Day": Now, therefore,

I, Gerald L. Baliles, Governor, do hereby recognize September 16, 1988, as POW/MIA Recognition Day in Virginia in acknowledgment of the sacrifices of those who we remember.●

FEDERAL JUDICIAL NOMINATIONS

● Mr. LEAHY. Mr. President, as I noted in an earlier statement to the Senate, on October 5 the Judiciary Committee reported 11 nominations to the Federal courts. In that earlier statement, I provided brief summaries of the background and qualifications of five of those nominations, and noted the issues which had been explored during the public hearings on each nomination, and in written followup questions to the nominees. Today, for the benefit of Senators who may soon vote on the confirmation of these nominees, I offer similar summaries with respect to three of the other judicial nominations reported on October 5.

First. D. Brooks Smith has been nominated to be U.S. district judge for the western district of Pennsylvania. Since 1984, the nominee has been a judge of the court of common pleas—a State trial court—in Blair County, PA. Before that, he conducted a private practice, focusing on litigation, in Altoona, PA, beginning in 1976. Concurrently, he held part-time posts as a district attorney in Blair County. Judge Smith is a 36-year-old graduate of Franklin and Marshall College and the Dickinson School of Law. He appears to enjoy a good reputation in his community, and was rated well qualified by a majority of the American Bar Association's Standing Committee on the Federal Judiciary, with a minority of that committee finding him "qualified."

At the hearing held on his nomination on October 4, Judge Smith was introduced by Senator SPECTER, and was questioned by Senators HEFLIN and THURMOND on the following topics: First, his role in reducing the backlog of unsentenced prisoners in the court on which he now sits; second, his conclusion that his continued membership in a club which bars women from membership will be inconsistent with his ethical responsibilities as a judge, unless the club's membership practices are changed; third, the transition from State to Federal court; and fourth, the authority of the courts under the separation of powers.

Second. Jay Waldman has been nominated to be U.S. district judge for the eastern district of Pennsylvania. Since 1986, the nominee has been a litigation partner in a Philadelphia law firm, representing principally large- and medium-sized corporations and public institutions. He served as general counsel of the Commonwealth of Pennsylvania from 1981-86, and as counsel to the Governor of Pennsylvania from 1979-81. Prior to that, he was deputy assistant attorney general for the criminal division from 1975-77, and an assistant U.S. attorney in Pittsburgh from 1971-75. Mr. Waldman is 43 years old, and graduated from the University of Wisconsin and the University of Pennsylvania Law School. He was rated "qualified" by the ABA Committee.

At the hearing on his nomination on October 4, Mr. Waldman was introduced by Senator SPECTER. He then responded to questions from Senators BIDEN, HEFLIN, and THURMOND on the following subjects: First, his lack of recent courtroom experience; second, judicial temperament; third, his decision to join a law firm as a partner a few years after he had appointed that firm to represent the Commonwealth of Pennsylvania in major litigation; fourth, the role of stare decisis in the application by a district court of decisions of a circuit court; and fifth, his handling of petitioners when he served as counsel to the Governor of Pennsylvania.

Third. Richard Nygaard of Pennsylvania has been nominated to be U.S. circuit judge for the Third Circuit Court of Appeals. The nominee is currently a judge of the Pennsylvania Court of Common Pleas, the State trial court, in Erie, PA, a position he has held since 1981. Before that, the nominee was a partner in a small firm in North East, PA, where he conducted a general practice that included minor litigation matters. Judge Nygaard also served from 1977-81 as a member of the county council in Erie County. The nominee is 48 years old, and holds degrees from the University of Southern California and the University of Michigan Law School. Judge Nygaard was evaluated by the majority of the ABA Committee as "qualified," while a minority found him "not qualified."

Two hearings were held on this nomination. At the first hearing on August 10, Judge Nygaard was introduced by Senators HEINZ and SPECTER. Senator SIMON questioned the nominee about the mixed rating he received from the ABA; the transition from State to Federal court; two cases in which Judge Nygaard's decisions were reversed by a State appellate court—discussed in more detail below—and about membership in any discriminatory organizations. At the second hearing on October 4, Senator BIDEN questioned the nominee further about some of the cases in which his decisions, particularly on sentencing issues, had been reversed, and about how he would apply the Federal sentencing guidelines if he is confirmed.

At the October 4 hearing, the committee took the testimony of Nan Aron of the Alliance for Justice—a coalition of civil rights, labor, and public interest law groups. The alliance opposes the nomination, based largely on concerns about the nominee's lack of Federal litigation experience and the "quality of this judicial decisionmaking," as reflected in the "sharp criticism" appearing in appellate decisions reviewing his rulings on the State trial court. Buzz Andrezeski, a Pennsylvania State senator, Rev. Dwayne Brock, past president of the Erie NAACP, testified in support of the nomination.

To a great extent, the committee's investigation of this nomination focused on several cases in which Judge Nygaard's rulings were reversed by the State appellate court. These include the following:

First. *Commonwealth* v. *Genelli,* 326 Pa. Super. 388, 474 A.2d 294 (1984). The defendant, a former city police chief, was charged with 28 counts of stealing guns and other items from the police evidence room, as well as ancillary conspiracy, witness intimidation, and obstruction of justice charges arising from the allegation that the defendant sold some of the guns and then tried to cover up the sales. Before trial, Judge Nygaard dismissed all the charges, on two principal grounds, described by the appellate court as follows: First, that the theft charges had been brought under the wrong statute; and second, that, because the weapons were "valueless" and proof of the Commonwealth's ownership was inconclusive, the case fell within the terms of a State statute authorizing dismissal of de minimis infractions. When the prosecution appealed to the Superior Court of Pennsylvania, that appellate court reversed and reinstated the charges. as to the first issue, the appellate court held that the issue of the statute under which the defendant was charged had been waived under Pennsylvania criminal procedure rules when the defense failed to raise it in a timely fashion, and that Judge Nygaard "erred in ruling on an issue which had been waived," regardless of whether the issue was raised by an untimely defense motion or by the judge himself—"we need not decide how this issue came before the trial court in light of our determination that it had been waived by (Gemelli) by his failure to properly preserve it by means of his written omnibus pretrial motion." As to the second issue, the appellate court wrote that "we perceive absolutely no basis for dismissing such serious allegations as merely de minimis infractions."

When asked about the Gemelli case at the August 10 hearing, the nominee testified that, in his view, the "primary thrust" of his ruling, and of the appellate court's reversal, was the issue of whether the defendant has been charged under the wrong statute. He also stated that the "primary thrust of their reversal" was the appellate court's objection to his having raised this issue himself (sua sponte), rather than in response to a defense motion. He explained:

> Unfortunately, the attorney had filed his motion to quash the indictment with me and had not filed it with the clerk of records. And, consequently, when it was sent over to the clerk of records, the motion itself was docketed one docket entry after my opinion, which makes it look like my order was sua sponte, and that was, as I gather it, the primary thrust of their reversal.

The nominee's testimony about the Gemelli case at the October 4 hearing was similar. He testified that "the de minimis aspects, standing on their own, would not have resulted in my decision." As to the issue of the statute under which Gemelli was charged, the nominee testified that he brought the issue up at a pretrial hearing with the prosecutors and defense attorneys. He reiterated that he received a defense motion on the subject prior to ruling. Because the concurring opinion in the Gemelli case noted that the prosecutors claimed they were never served with the later-docketed motion and that the motion "contains no affidavit or other proof of service," the nominee was asked whether the prosecution had notice of this motion. Judge Nygaard replied that the prosecutor "was present when it was handed to me. We were all in the room together." He also testified that he had raised the issue "directed, I suppose, primarily to the prosecutor, because if he presented his case, and a demurrer was requested and granted, then it is all over. And I thought he should pay some attention to this matter."

Second. Sentencing decisions. In several cases, the Superior Court of Pennsylvania has reversed sentencing decisions made by Judge Nygaard. These cases include:

Commonwealth versus Krysiak: The appellate court ruled that "the lower court's remarks regarding its reasons for sentencing are of such 'brevity and conclusory quality [that] they do not manifest a consideration of the statutory guidelines for sentencing" and they did not "constitute a statement of reasons [for the sentence] which comports in quality and length with that envisioned by the drafters of the Sentencing Code."

Commonwealth v. *Kunselman*, 363 Pa. Super. 475, 526 A.2d 443 (1987): The prosecution appealed Judge Nygaard's sentence of a drunk driver who pled guilty to vehicular homicide, involuntary manslaughter, and related charges, to 1½ to 3 years imprisonment, when the State statute provides that "the sentencing court shall order the person [convicted of such offenses] to serve a minimum term of imprisonment of not less than 3 years." The appellate court vacated the sentence, saying that the sentence imposed "frustrates the intent of the mandatory sentencing law, prevents implementation of the Sentencing Code, and neutralizes the function of the parole board."

Commonwealth versus Lord: the appellate court vacated Judge Nygaard's imposition of a $1,000 fine on a woman living on public assistance who was convicted of drunk driving, holding that the sentence failed to follow "the clear mandate" of a sentencing statute forbidding imposition of fines unless it "appears of record that the defendant is or will be able to pay the fine."

Commonwealth versus Braund: the appellate court struck down as "illegal" a 3- to 6-year sentence imposed by Judge Nygaard on a defendant who pled nolo contendere to the charge of "involuntary deviate sexual intercourse committed upon his 7-year-old son," a charge carrying a statutory mandatory minimum sentence of 5 years.

Judge Nygaard's testimony on these sentencing decisions may be summarized as follows. At both hearings, he testified that in the Krysiak case, he had followed a standard sentencing colloquy format, and that a sentencing decision he had made using the same format was affirmed by a different panel of the Superior Court at around the same time as he received the Krysiak appellate decision. He also stated, "I have made my * * * sentencing colloquy far more extensive since Krysiak." At the October 4 hearing, he testified that his decision in the Kunselman case was motivated by a desire to have the young offender involved serve his sentence in the county jail rather than the State penitentiary, a desire which he said was expressed to him by the prosecutor and evidently concurred in by the mother of the victim of the vehicular homicide. With respect to the Lord case, the nominee testified on October 4 that his practice had been to impose a fine of at least $1,000 in all drunk driving cases, and that he had on occasion found defendants jobs so that they could pay their fines. Since Lord, he testified,

> I have, obviously, added to my consideration that it is not merely future ability to pay, which is in the guidelines and in the sentencing code, but it is the current ability, and I do not put people who are on public assistance up to that maximum fine, which I normally impose, unless at the same time I find them a job.●

CHINA TRIP REPORT

● Mr. LEAHY. Mr. President, in August, I had the honor to lead a Senate delegation to the People's Republic of China and Hong Kong to discuss a range of agricultural, trade, environmental, foreign policy, and human rights matters. Joining me on the delegation were my close friends and colleagues, the distinguished Senators from Vermont [Mr. STAFFORD] and South Dakota [Mr. DASCHLE], as well as Walter J. Stewart, the able Secretary of the Senate.

We believe our discussions were fruitful, and the information we gained of considerable value in understanding trends and developments in China. Our delegation prepared a full report on our trip which we have sent to the distinguished majority and minority leaders. We would like to share that report with all Senators, and also to make it available to our colleagues in the other body, interested organizations and groups, academics and students of China, and the public at large.

Therefore, Mr. President, I ask that the report on Codel Leahy's visit to China and Hong Kong, prepared by Senator STAFFORD, Senator DASCHLE, and myself, be printed in the RECORD at this point.

The report follows:

U.S. SENATE,
Washington, DC, October 4, 1988.

Hon. ROBERT C. BYRD,
Majority Leader,
U.S. Senate,
Hon. ROBERT DOLE,
Minority Leader,
U.S. Senate.

DEAR BOB and BOB: In August, we formed a delegation to visit the People's Republic of China and the colony of Hong Kong. Our purposes were:

To deepen our understanding of the current political and economic situation in China, particularly the reform trends;

To explore China's agricultural production and market possibilities for U.S. farmers,

To exchange views on international environmental concerns and to gain a better insight into China's environmental protection mechanisms, and

To make clear fundamental American commitment to the cause of human rights, including human rights throughout every part of China.

It is our opinion, shared, we believe, by the American Ambassador in Beijing, Winston Lord, that our delegation achieved these purposes. In particular, we pressed hard the human rights question in Tibet, where there have been persistent reports of Chinese violations of the human rights of Tibetan dissidents and supporters of independence. The dialogue we began with Chinese and local Tibetan leaders on human rights can, if nutured carefully and managed properly, contribute to an improvement in the treatment of Tibetan political opponents of Chinese control and policies in Tibet. We intend to continue the effort we began in Lhasa to press China to improve its human rights performance in Tibet, beginning with the provision of basic information on imprisoned dissidents, such as the charges against them, their physical condition, and plans for trial or other legal action.

To share what we learned, we have prepared a report to the Senate covering the full range of the Delegation's activities. It is our hope that this report will help fellow senators, our colleagues in the House of Representatives, interested groups and organizations, and the American people improve their knowledge and understanding of this magnificent, exciting land of such vast potential to contribute to human progress and civilization.

We want to extend warm appreciation to all the many American and Chinese officials who worked as hard to make this trip so productive and enjoyable. Walter J. Stewart, Secretary of the Senate, made an outstanding contribution as a valued member of the Delegation. We also especially commend the superb support provided by Senate staff, including Charles Riemenschneider, staff director of the Agriculture Committee, Dr. Robert Sutter, noted China expert from the Congressional Research Service who served as an adviser and consultant to the Delegation, Ellen McCulloch Lovell and Neal Houston, administrative assistants to Senators Leahy and Stafford, Eric Newsom, foreign policy adviser to the Delegation, Georgia Joyal, Executive Assistant to Senator Leahy, who served as secretary to the Delegation, and Jan Paulk of Interparliamentary Services, who dealt with administrative arrangements. Colonel Edward Shaw, US Army Senate Liaison Office, managed the logistical arrangements with calm efficiency.

The work of these able staff contributed greatly to the success of the delegation, and we are grateful indeed.

Sincerely,

ROBERT STAFFORD.
PATRICK LEAHY.
THOMAS DASCHLE.

China and Hong Kong: Report of the Visit of Codel Leahy

INTRODUCTION

A Senate Delegation led by Senator Patrick Leahy, chairman of the Agriculture Committee, and including Senator Robert T. Stafford, ranking minority member of the Environment and Public Works Committee, Senator Thomas Daschle, a member of the Agriculture Committee, and Walter J. Stewart, Secretary of the Senate, traveled to the People's Republic of China and Hong Kong on August 15-30, 1988. The delegation's itinerary included stops in Beijing, Shanghai, Xian, Chengdu, Lhasa, Guilin, Guangzhou, and Hong Kong. Major objectives of the delegation included:

To assure Chinese leaders of bipartisanship in U.S. policies toward China, and to emphasize continuity in U.S.-Chinese relations no matter which political party gains the Presidency in November;

To inform leaders in China and Hong Kong about the extent of the drought in the United States and its impact on agricultural production, and to reassure them of sufficient U.S. agricultural reserves to supply consumers abroad as well as meeting domestic needs;

To assess the status of and potential for U.S. agricultural exports to China and Hong Kong, particularly in light of ongoing economic reforms in China and forthcoming changes in the political status of Hong Kong;

To exchange views and information on mutual environmental concerns, to learn more about China's environmental protection efforts and policies, and to encourage greater PRC involvement in international environmental protection activities; and

To observe firsthand the political and human rights situation in Tibet, to try to obtain specific information about the status and condition of imprisoned or missing Tibetan dissidents, and to press Chinese authorities for improvements in the human rights situation in Tibet.

The Delegation's three day stop in Lhasa and surrounding environs was the centerpiece of the entire trip. The visit to the Tibetan Autonomous Republic was at the invitation of the Chinese government, in itself an encouraging sign of increasing Chinese sensitivity to world opinion about Tibet. The trip to Tibet was, to the best of the Delegation's knowledge, the first such visit ever by Members of the U.S. Senate, and one of the very few visits by any foreign officials to that region since the riots and disturbances of the spring of this year.

The trip to China provided an opportunity to review Chinese domestic and foreign policies after a decade of political and economic reforms under Deng Xiaoping. The Delegation was able to discuss Chinese views about and responses to recent important international developments, such as Soviet General Secretary Mikhail Gorbachev's overtures toward China, improving Soviet-U.S. relations, the withdrawal of Soviet forces from Afghanistan, and efforts to reach a settlement in Kampuchea that might lead to the withdrawal of Vietnamese forces from that country.

This report summarizes the major findings of the Delegation's trip to China and Hong Kong and assesses the likely implications of recent developments for U.S. relations with the PRC and Hong Kong, and for broader U.S. political, economic and trade interests in the Pacific region.

In the PRC, the Delegation was the guest of the National Peoples' Congress, whose vice chairman, Madame Chen Muhua and her colleagues provided gracious and unflagging hospitality and assistance throughout our trip. Outside Beijing, the National Peoples' Congress shared its responsibilities as host with the provincial and municipal congresses where the Delegation visited. The Delegation wishes to express its most sincere gratitude for all their help.

Assistance rendered by U.S. agencies and officials, both in Washington and abroad, was outstanding. Prior to the departure of the Delegation, Secretaries George Shultz of the Department of State and Richard Lyng of the Department of Agriculture and their staffs provided superb substantive preparations. In China, Ambassador Winston Lord and his able staff, especially the Deputy Chief of Mission, Peter Tomsen, and Delegation Control Officer, Frederick Merkle, as well as U.S. consular officials in Shanghai, Chengdu, Guangzhou, and Hong Kong, provided excellent support. The tireless assistance given by the Ambassador and his staff contributed significantly to the success of the Delegation's visit, and all members of the Delegation wish to express deep appreciation.

TIBET

Like the collision between European civilization and the Indians of the Americas three centuries ago, in Tibet a massive, technologically advanced society—lowland China—is overwhelming the small, religiously-oriented, unsophisticated, clan-based Tibetan culture. And, the vast weight of modern China is coming down on nomadic Tibet almost unconsciously, as a dynamic nation in the midst of explosive economic, political and social change rushes forward to the 21st century.

In April, as planning began for Codel Leahy to visit China, unexpectedly the Chinese Ambassador in the United States extended an invitation to include Lhasa in the Delegation's itinerary. Senator Leahy, as leader of the Delegation, accepted the invitation at once.

This was an unparalleled opportunity to enter a region largely closed to foreign officials and press since large scale independence demonstrations last March. There had been persistent reports of large scale arrests for proindependence demonstrators, repression of Tibetan religious activities and mistreatment of political prisoners, even including stories of torture.

The Delegation had no preconceptions about Tibet, China's role there, or the human rights situation. In particular, we did not—and do not—challenge the position of the U.S. government that Tibet is part of China and that discussions between the Chinese government and Tibetan leaders, including representatives of the Dalai Lama, offer the best avenue to peace and progress.

In Tibet, we were accorded every courtesy by our Chinese hosts. We met senior Chinese and Tibetan officials, including Vice Chairman of the Tibetan Autonomous Region, Singchen Lobsang Gyaltsen, Vice Chairman Mao Rubai, the Mayor of Lhasa, and others. We were given detailed briefings on the economic situation of Tibet and on reforms China is extending from the lowlands to that mountainous region. The Delegation had blunt discussions with TAR leaders about reports of human rights violations.

At the same time, the Delegation sensed that it was in a kind of cocoon, insulated politely from Tibetan dissidents, religous leaders and opponents of Chinese rule. Nevertheless, members of the Delegation and staff were able individually to break away from the official group and meet separately with Tibetans. In this way, we were able to have direct contacts with a fair number of Tibetans, most of whom opposed China's control of Tibet, who demanded independence for Tibet, who struggled for the return of the Dalai Lama, and who are fighting to save the unique Tibetan culture and religion from submersion into Chinese forms.

Naturally, in these conditions what we heard and say was anecdotal. In three hectic days, only impressions are possible. But the impressions were vivid, in this land of sharp contrasts. We sensed, in the short time we were among them, that many, many Tibetans fear deeply that their religion and their way of life is being destroyed by China.

We spoke to monks, the political and spiritual leaders of Tibetan society, who had been imprisoned for demonstrating in favor of Tibetan independence and the return of the Dalai Lama, exiled head of the lamaistic form of Buddhism practiced by virtually all Tibetans. In every monastery and temple we saw pictures of the Dalai Lama; in the streets passersby begged us for a photograph of him. Tibetans told us of their fear of arrest, and of the pervasive secret police who tapped telephones and who they said watched everyone who had contact with foreigners. We had meetings with Tibetans who try to keep track of anyone arrested on political charges.

From all of these discussions, as well as our talks with U.S. Embassy officials covering Tibet, it is painfully clear that there is a human rights problem in Tibet. Its full scope is not clear because Chinese authorities refuse to provide essential information. Those who oppose Chinese rule, complain about the influx of ethnic Chinese from the lowlands, dissent from the policies of the Chinese authorities and their Tibetan allies, or demand the preservation of Tibetan language and culture from Sinicization risk arrest, indefinite detainment, and, we were repeatedly told, even abuse and torture.

How many Tibetans are being held in prison for political reasons is not clear. Gaining information on this issue was a central aim of the Delegation. In all our meetings, including the very candid exchange with Vice Chairman Mao Rubai, we asked Chinese authorities this question directly, giving them a list of more than 25 names of individuals we had heard were still in jail (a copy of a letter from Senator Leahy, leader of the Delegation, to Mr. Mao and a list of these names is included in the Appendices to this report). Some detainees were said to be in very bad physical condition.

Unfortunately, we were told courteously but firmly that this was none of our concern. Our hosts averred that the Tibetans in prisons were criminals, but guaranteed humane treatment under Chinese law. This information was of no concern to foreigners, we were told.

The Delegation equally courteously and firmly explained that such answers were unacceptable and that China has obligations under the United Nations Charter and international law to protect basic human rights. The Delegation consistently took the point of view that the world human rights community has a legitimate basis to raise concerns about human rights matters in China, including Tibet. We insisted that expressions of our concern were not related to the political question of the relationship between China and Tibet, which was an internal affair.

The Delegation left Lhasa optimistic that it had made limited but genuine progress in initiating a dialogue with Chinese authorities on human rights. Vice Chairman Mao did inform the Delegation that a monk revered by anti-Chinese Tibetans long imprisoned and feared dead was in fact in good health and in detention in Lhasa. The Delegation believes that further exchanges with Chinese authorities on the human rights situation in Tibet, especially when kept separate from the issue of Tibetan independence, could lead to the release of more information about specific human rights cases. And, the Delegation believes that China is very sensitive to how the world perceives its behavior in Tibet, and that further moderation in its policies and behavior is indeed possible—so long as China does not appear or perceive itself to be yielding to foreign pressure.

In this report to the Senate, the Delegation would like to offer some general observations which might help understanding of this tragic collison between two civilizations in Tibet.

China's central preoccupation is economic development and modernization, and it applies these goals in Tibet as it does in the other provinces. Fairness demands that it be recognized that the Chinese are making some efforts to moderate their impact on Tibet's unique religious-centered civilization. They are repairing some damage to temples and monasteries caused during the Cultural Revolution, they are permitting Tibetans to become monks again, and they are allowing the use of the Tibetan language in schools.

Chinese officials consistently emphasized the major efforts the central government has made to improve economic conditions and material well being of the people in the region. Thus, for example, they asserted that all government expenditures in Tibet come from central government subsidies which collectively will amount to over one billion yuan in 1988 (3.7 yuan = $1 U.S.) They noted that the government has focused its efforts in several areas, to open Tibet more to other provinces of China and to foreign countries, and to improve economic infrastructure. A network of roads connecting Lhasa with Qinghai, Sichuan, Yunnan, and Xinjiang has been established and there is also a road conncecting Lhasa with Nepal. The roads we saw were easily blocked by rock slides or subject to being washed away in spots. The main all-weather road is between Lhasa and Qinghai province, and Beijing recently completed an oil pipeline parallel with the road which will greatly ease the burden of supplying fuel to the capital. Air service between Lhasa and other Chinese cities and Nepal is expanding. Officials expressed great interest in cooperating with U.S. or other foreign firms in developing small hydroelectric projects, geothermal energy projects, hotels, or other ventures of mutual interest.

Government officials underlined their determination to raise education standards. They said that Tibet had 2,200 schools and four universities. They noted that even in remote areas the government is promoting education through the concept of central schools where children would reside for periods of time away from their widely dispersed, nomadic families in order to be educated, fed, and sheltered at government expense.

Despite these accomplishments, the difficulties of developing this vast, rugged, and remote area are clearly enormous. One official told the group that it would have taken him five days to travel by bus from Lhasa to his home in the eastern part of the Tibetan Autonomous Region (TAR) during this year's spring festival. Railroad connections do not exist anywhere in the region. Chinese officials said that over 90 percent of the manufactured goods used in the region come from other parts of China; and that apart from animal products and handicrafts, the region produces little for export. Many Tibetan children go without any formal education, according to regional officials.

However, despite impressive changes from the doctrinaire People's Republic it once was, China is far from a democracy. It simply will not abide political opposition, and is intolerant of dissent. Western approaches on the situation in Tibet and the human rights situation there must take account of this reality, and of profound Chinese sensitivities about foreign pressures.

The Delegation is convinced that Congress, the Administration and the human rights community should be as forceful in deploring China's behavior in Tibet as it has in rightfully criticizing Soviet treatment of Jews and political dissenters. Americans should not cease asking China for information on the condition and status of political prisoners in Tibet, and urging its full compliance with internationally accepted human rights standards.

Hopefully, Americans and others will express this deep concern and exert this pressure skillfully and diplomatically. The aim must be positive response and results, not offense and rigidity. But, we must not fail to stand by any person whose human rights are being violated for political or other reasons in Tibet, as we would for anyone in the same conditions anywhere else in the world.

Steady pressure on the Soviet Union has gained some concessions, such as the release of dissidents like Yuri Orlov, and the emigration of some Jewish refuseniks. As long as China's sovereignty over Tibet goes unchallenged—and this question should not be confused with the human rights issue—the Delegation is convinced China is prepared to go a long way to keep the good opinion of the world.

At the same time, the Delegation believes that it is ill-advised for well intentioned foreigners to encourage Tibetans to believe the outside world is going to intervene to help them win independence from China. The Delegation's perception is that China is absolutely determined to retain control of Tibet for a host of reasons. While some sort of compromise solution ought to be possible—and the Delegation urges all parties to show maximum flexibility and realism in searching for a mutually acceptable accommodation—the more extreme goals of some Tibetans for full independence seem totally unattainable. Tibetans and their friends around the world ought to be concentrating on preserving the best of their splendid culture and civilization as Tibet inevitably modernizes and adapts to the modern world.

CHINESE ECONOMIC REFORMS AND U.S. INTERESTS

The United States has a strong interest in the continued progress of China's exonomic reforms. On the one hand, the changes have included an "open door" policy regarding foreign trade and investment, especially from capitalist countries, which has broadened opportunities for mutually beneficial economic exchange. Thus, the United States is China's third largest trading partner, behind Japan and Hong Kong. China is now our fifteenth largest trading partner, up from twentieth in 1982. Two way trade, which was $8.3 billion in 1986, exceeded $10.4 billion in 1987, and is approaching $13 billion in 1988.

Major U.S. exports to China include commercial aircraft, transport equipment, industrial machines, high technology products, logs and lumber, wood and paper products, and chemicals. U.S. agricultural exports, which had declined in recent years, are now on the upswing with an increase in grain sales through the U.S. Government's Export Enhancement Program.

U.S. investors have committed $3.1 billion to ventures in the PRC (1.2 percent of total U.S. investment overseas), with $1.7 billion paid in thus far. The United States ranks second behind Hong Kong and Macao in investment in China. Much of the early investment was in exportation for gas and oil in the area of the South China Sea. Recent investment has been in high technology enterprises.

At the same time, China's pragmatic reform efforts have been much more conducive to the development of regional peace and prosperity than Beijing's often disruptive "revolutionary" practices of the past. The rapidly growing countries of the East Asian rim have become the most important area for U.S. foreign trade. In the past, their development was complicated by Maoist practices and policies which seemed at odds with more conventional practices of nation building favored by the East Asian states. Over the past ten years, however, Chinese policymakers have followed more pragmatic development policies that generally eschew conflict with neighboring states and promote mutually beneficial contracts with them in the interest of fostering greater economic development. The result has placed China within the ranks of the rapidly developing East Asian countries and has enhanced regional stability, peace, and prosperity—longstanding goals of U.S. foreign policy.

Reform Under Deng Xiaoping.

Deng's reform program has been motivated by concern to revitalize China's economy and establish a stable leadership structure. These goals have been pursued with an eye toward increasing China's power and prestige, improving the material well-being of the Chinese people, and thereby increasing their support for the Chinese Communist leadership. The party's reputation suffered badly as a result of the catastrophic excesses of the Maoist period, especially the Great Leap Forward (1958-60) in which tens of millions of people died as a consequence of starvation and disease; and the Cultural Revolution (1966-76), during which the post-revolutionary social structure was torn apart through Mao's manipulative efforts to maintain his political dominance and foster continual revolution.

The reforms initiated in China since the death of Mao Zedong in 1976 represent pragmatic, trial-and-error efforts designed to undo policy blunders of the past to achieve greater national growth and material well-being for the Chinese people. Recognizing that their political standing rests fundamentally on their ability to achieve tangible economic results, Chinese reformers led by Deng Xiaoping have sharply modified the economic model developed in China since the 1950s. That model was based on principles of egalitarianism, collective agriculture, national self-reliance, and strong central control. The modifications of the reformers have created a greater role for economic profit, individual enterprise, foreign private investment and decentralized decisionmaking; a somewhat reduced role for centrally administered prices, production, and investment; and a greater reliance on market forces and contacts with more developed countries to achieve economic progress.

The most sweeping and rapid change has occurred in the agricultural sector, where the commune system has given way to family-based private agriculture. As a consequence, agricltural output and farmers' incomes have soared. Reforming the urban economy has proven more complex and real progress towards rationalizing the cumbersome system of administered prices and centralized management of industry has been difficult. Changes to date have involved both administrative initiatives and gradual but sweeping changes in leadership. These have helped Beijing to effect economic policy changes more competently and with greater political support.

Beijing is likely to remain preoccupied well into the next decade with dismantling and modifying the stultifying economic and administrative procedures of the past thirty years. Chinese leaders plan to follow the decollectivization of rural land and increased use of incentives in agriculture of the past nine years with a multiyear effort to introduce incentives and greater efficiency into the more important and complicated urban economy. The key to change in the urban sector rests in China's ability to modify substantially its centrally controlled system of mandatory plans and phase out the grossly arbitrary and irrational administered price system. At the same time, Beijing has followed major retirements and shifts in the ranks of the government and army with a full-scale reexamination of all the 44 million members of the Chinese Communist party. Thus, both economic and political reforms are generally seen as correcting past excesses and exploring new options, rather than fundamentally altering China's Socialist orientation or challenging the monopoly of power exerted by the Communist party. In particular, the main means of production, the major share of the gross national product, and the sources of political power remain under state control.

Problems and Prospects of Economic Reform

Beijing leaders are unlikely to achieve fully their current reform objectives until well into the 1990s, if then, because of significant economic constraints, the complications from efforts to implement proposed reforms, and possible leadership instability. Major short-term economic constraints include an inadequate transportation system, insufficient supplies of electric power, and a shortage of trained personnel. Longer-term impediments include growing population pressure, the difficulty of obtaining enough capital to develop available energy resources and general industry, and reduced rates of agricultural growth after the rapid advances in recent years.

Meanwhile, planned changes in prices have been delayed in part because of their serious consequences for Chinese internal stability, since such changes could trigger inflation and cause hoarding. Closing inefficient factories will force workers to change jobs and perhaps remain unemployed for a time. Decentralized economic decisionmaking means that local managers can use their increased power for personal gain as well as for the common good. The result of these kinds of impediments has been a slowdown in the economic reforms.

Economic Performance in 1987 and Outlook for 1988

It was clear to the delegation after discussions in Beijing that two economic problems have most concerned China's leaders over the past year—excessive inflation and lagging grain output:

China's official inflation rate was 7 percent in 1987—an improvement over the 9 percent rate of 1985, but higher than any other year in the last decade. We were told that urban consumers were especially hard hit; food prices rose at double-digit rates; inflation rates of over 20 percent were reported in several major cities. Indeed, Beijing has acknowledged that the real incomes of one-fifth of China's urban dwellers declined.

Grain production in 1987 did not meet Beijing's admittedly ambitious target level of 405 million metric tons, though China produced more than 400 million tons—a feat accomplished only once before. Strong consumer demand for grain-based foods—bread, meat, and beer—and moderate international grain prices led China to more than double its grain imports, becoming a net grain importer after two years as a net exporter. To dampen demand and inflationary pressures, Beijing resumed the practice of issuing ration tickets for pork, eggs, and sugar in several major cities.

Inflation and lagging grain output have led Beijing to avoid economic policies that run the risk of worsening, rather than improving, price stability and grain production. Tighter central controls over prices, bank credit, and out-of-plan investment, plus increased state spending on agricultural infrastructure projects—proven ways of reducing upward pressures on prices and stimulating agricultural output—form the core of Beijing's approach to these problems this year.

The delegation learned that the economy turned in a solid performance in other areas. Urban industrial output rose nearly 15 percent, profits and taxes remitted to the state increased nearly 10 percent, and labor productivity was up about 8 percent in 1987. Chinese leaders generally credited the implementation of a contract system in industry—under which enterprises sign performance agreements with their supervisory bureaus specifying minimum output, earnings, and taxes—for the improved industrial performance. By last December, three-fourths of China's larger state enterprises had signed such contracts, and a majority of collective enterprises had adopted a parallel contract/leasing system. The contract system will remain in place for the near term, and some Chinese leaders would like to see it become a permanent feature of industrial policy. To introduce even greater fiscal accountability and managerial autonomy to enterprises, China adopted a new state enterprise law in March 1988 that spells out the responsibilities of factory managers and factory-level party officials, and Beijing may also implement bankruptcy regulations enacted in late 1986 before the end of this year.

The contract system also forms the basis for reforms of China's foreign trade sector, which also performed well in 1987. China's trade deficit declined by 70 percent, from $12 billion in 1986 to only $3.7 billion. Foreign direct investment picked up after a disappointing 1986, and China's foreign exchange reserves jumped more than 50 percent, to $15 billion. The particularly strong record has permitted the leadership to consider adopting more fundamental reforms in the management of foreign trade than it is likely to risk in agriculture or pricing industrial output. Virtually all of China's leaders have endorsed the strategy of export-led development in China's coastal areas enunciated by party Secretary Zhao Ziyang last January. Beijing also has placed many local branches of national trading corporations under provincial or municipal jurisdiction, increasing their autonomy from Beijing. To encourage individual factories to step up exports, Beijing has increased the portion of foreign exchange they may retain from exports. Beijing has even begun to allow Chinese enterprises to exchange surplus foreign exchange for domestic currency at premium rates in officially sanctioned swap centers, another inducement to export. As in industry, these changes are designed to make individual factories and corporations more responsive to market conditions.

The delegation was informed that China's economy will probably turn in another mixed performance in 1988. There are strong indications that droughts may decrease grain yields, limiting the near-term benefits of price and investment increases. In contrast, Chinese statistics for the first quarter of the year indicate that growth in industrial output may surpass last year's level. Primarily because of continued strong growth in exports, moreover, China's first quarter 1988 trade deficit was 40 percent below the level of a year earlier. Imports will probably pick up, however, as Beijing eases controls over purchases of materials, components, and equipment for use in export-processing ventures in China's coastal areas.

Beijing's chief problem in 1988 is managing inflation. China's retail price index reached double digits in the first quarter of 1988—twice the level of first quarter 1987—and Chinese officials acknowledge they will have a difficult time keeping inflation below ten percent for the year, even if it tapers off in the second half as planned. Sharp increases in industrial output will strain already tight supplies of energy and raw materials. Inflation, moreover, will also be fueled by workers' demands for increased bonuses after a year of belt-tightening.

The delegation was told that crucial but politically sensitive price reforms will proceed slowly over the near term in order to minimize economic dislocations among consumers. This year, Beijing will incrementally increase state-set prices for grain in order to stimulate production. But efforts to erode differentials between in-plan and market prices for raw materials and other industrial inputs will be slowed until Beijing reduces inflationary pressures.

Specific Issues

U.S. Agricultural Trade

The delegation repeatedly made clear to Chinese officials (and to leaders in Hong Kong) that the United States is determined to remain a reliable supplier of agricultural products to both markets. Delegation members reviewed the damage caused by the recent drought in the United States, but judged that because of large U.S. grain reserves, there should be no substantial impact on U.S. ability to meet the needs of foreign markets as well as the domestic U.S. consumers. Chairman Leahy underlined to the Chinese officials that despite the upcoming U.S. presidential election, there was bipartisan support in the United States for increased agricultural trade with China.

Chinese officials emphasized their continued strong interest in purchasing U.S. grain, especially wheat, so long as the price remained competitive. They said that China had already bought five million tons of U.S. grain in 1988 and that three million tons had already been delivered. They expressed concern that the U.S. drought would lead to a rise in U.S. prices which would hurt the competitiveness of U.S. products in the China market. Senator Daschle assured the Chinese and U.S. products, especially under the Export Enhancement Program, would remain price competitive. A representative of the Chinese Ministry of Agriculture in Beijing also told the delegation of Chinese concern with presence of TCK in recent shipments of U.S. wheat to China. Senator Daschle asked the Chinese to be sure that such information is passed quickly to U.S. officials so that appropriate steps to maintain quality control can be taken promptly.

GATT Membership

Officials at the Ministry of Foreign Economic Relations and Trade showed some impatience with the prolonged process China must go through in order to gain formal membership in the General Agreement of Tariffs and Trade (GATT).

In July 1986, China formally applied for "resumption" of its contracting party (CP) status in the GATT (Taiwan withdrew its CP status in 1950). The examination of China's application is currently under way in Geneva. China believes that membership in GATT will confer trading benefits such as unconditional most-favored-nation status, improved market access, and recourse to GATT arbitration in disputes over protectionist actions by developed countries.

The PRC has indicated that it is willing to negotiate terms of participation in a similar manner to newly acceding countries. China wants to sign a standard accession protocol for developing nations. The United States, Japan, and many European members believe that as a large and potentially significant actor in international trade, China must agree to, and implement, substantial foreign trade and price reforms in order to be GATT-compatible. Specifically, the United States wants to see greater transparency and uniformity in China's trade regime, fewer non-tariff barriers, and market-determined prices.

The United States, in principle, supports China's GATT membership. However, it wants China to negotiate a meaningful agreement that also addresses our concerns over the substantial non-tariff barriers, nontransparency, and non-market distortions that still characterize China's trading regime. The alternative would provide China with the benefits of GATT membership but allow for its continued ability as a major non-market economy to overwhelm the world's trading system with low-priced goods. In particular, the basic structural assumption of GATT is an international, free market system for trading that lets prices balance supply and demand. Many GATT rules make sense only in the context of such a price-related free market system. Thus, the United States wants price reform policies instituted in China so that internal prices of most goods will be determined freely by market forces. Now prices are artificially set in some sectors, including agriculture. The concern of U.S. officials is that disputes about dumping or illegal subsidies under GATT rules would be hard to resolve without major price reforms in China.

The United States and most other industrialized countries want to insure that China will allow imports relatively equitable treatment and market access. If through the GATT process China's trading procedures were made clearer to U.S. businesses, and with safeguards and price reforms in place, U.S. firms could benefit from greater knowledge of and greater access to Chinese markets.

COCOM Restrictions

Chinese officials at the Ministry of Foreign Economic Relations and Trade also complained about what they viewed as the impediments to smooth transfer of U.S. technology to China because of security review procedures in the U.S. Government and within the Coordinating Committee for Export Controls. The officials noted that the COCOM members, representing the major developed Western economies, had reached agreement on further liberalization measures in July 1988, and they expressed hope that the next COCOM meeting in September would yield similarly positive results.

Environmental Protection

Senator Stafford led the Delegation in making clear our strong interest in encouraging greater Chinese environmental protection efforts and cooperation with the United States and other countries. The delegation had talks in Beijing with leaders responsible for Chinese environmental policies and discussions at the Environmental Studies Center at Fudan University in Shanghai. Senator Stafford put particular emphasis on encouraging China to sign the Montreal Protocol that would restrict the use of fluorocarbons in the atmosphere and thereby help preserve the ozone layer in the earth's atmosphere. The Delegation also was heartened by ongoing Chinese cooperative ventures with the U.S. Environmental Protection Agency and warmly supported such Sino-U.S. cooperation in the future.

Officials in Beijing made clear that China faces major problems of air, water, solid waste, and noise pollution—with air pollution being the biggest problem. Air pollution is caused mainly by coal smoke. Coal is used for power generation in industry, for heating homes in north China, and as a cooking fuel. The wide use of coal also has resulted in a serious problem of acid rain in parts of China including parts of Sichuan and Guizhou provinces, according to Chinese officials.

Water pollution stems mainly from waste water of industrial enterprise solid waste—garbage—is a particular concern in the big cities. Only 30 percent is recycled, according to Chinese officials. Delegation members noted that steps had been taken in Beijing and other cities to reduce the main source of noise pollution, traffic noise. Other environmental concerns noted by the Chinese officials included soil erosion, the desertification of formerly fertile land, and the felling of trees and destruction of natural habitat, leading to the extinction of some animals and plants.

Chinese officials were forthright in responding to questions by Senator Stafford about the reasons for their environmental problems:

China has a low per capita natural resources ratio—this leads to strong population pressure on the natural environment.

Coal is China's main source of energy.

China cannot afford large environmental protection efforts.

Many Chinese factories are scattered throughout the country, making the task of monitoring their emissions more difficult.

Nevertheless, Chinese officials impressed the delegation with their determination to take actions to help improve the situation. We were told that an Environmental Protection Council, composed of senior central government leaders, had been established to deal with such problems, and that comparable organizatioins were being established at lower levels of government. The Chinese also seemed pleased with their ongoing cooperation with the U.S. Environmental Protection Agency and with the University of Hawaii's East-West Center, and welcomed closer cooperation in the future. (A report submitted to the Delegation by Mr. Jim Jianning, Chief Engineer of the Engineer of the Environmental Protection Bureau is printed in the Appendix to this report.)

FOREIGN POLICY CONCERNS

Our discussions with U.S. and Chinese officials in Beijing on the subject of China's approach to foreign affairs focused on Beijing's response to the recently more fluid situation around its periphery in Asia. In the recent past, Beijing had faced a menacing Soviet military threat on its northern border, and Soviet-backed allies like Vietnam used military aggression to expand influence and confront China in the south.

This strategic reality of Soviet pressure represented the central determinant in the Sino-American reconciliation, begun by President Nixon and enhanced by succeeding U.S. presidents. The new U.S.-China relationship was of crucial importance in maintaining a balance of influence in Asia favorable to the United States and its allies and associates, while allowing the United States to withdraw 600-700,000 troops from East Asia and to dismantle its past policy of trying to "contain" China. The Sino-U.S. reconciliation also had an important impact on Soviet strategic planning, particularly enhancing Soviet concerns over its Asian frontiers in the event of a confrontation with the West.

At present, however, the Gorbachev government is pulling back from Asia: it is withdrawing its troops from Afghanistan; has pledged to dismantle its SS-20 intermediate-range missiles in Asia; has withdrawn one of the Soviet divisions in Mongolia; and is encouraging Vietnam to continue its recent drawdown of troops in Cambodia. In an effort to promote a settlement on Cambodia that will reduce this obstacle in Sino-Soviet relations, Soviet and Chinese vice foreign ministers met in Beijing in late August. We were told that if progress is made on the Cambodia issue, China will be willing to move ahead with further normalization of Sino-Soviet relations, perhaps leading to a Sino-Soviet summit meeting in the next year or two. At the same time, of course, the Soviet Union continues to follow up on the positive results of recent Reagan-Gorbachev meetings with renewed efforts to improve relations with the United States and the West.

Now that the Soviet Union is pulling back in Asia and is also compromising with the United States on arms control and other areas, some U.S. and Chinese observers note that the Sino-American interest in close cooperation might decline and this might lead to a decline in the overall U.S.-China relationship. Two views seem to prevail on this question. One holds that U.S.-China relations have become so diverse and multifaceted over the past decade that decline in the perceived strategic imperative that brought the United States and China together during the Nixon Administration would have little effect. But another view holds that a decline in a common U.S.-Chinese interst in checking Soviet expansion would have a likely negative effect on U.S.-China relations. In particular, it would reduce the incentive of both sides to control bilateral disputes over sensitive issues like human rights, Tibet, Taiwan, trade issues, Chinese arms sales to the Middle East, and other questions, for the sake of maintaining a common Sino-U.S. front aganst Soviet expansion.

The discussions we had during the course of our two weeks in China made clear that both Chinese and U.S. officials have reduced the emphasis they used to place on the anti-Soviet strategic imperative in Sino-American relations; and that both sides are willing to offer frank views on points of disagreement, whether it be on issues of human rights in Tibet or Chinese arms sales to the Middle East. But they also made clear that both the United States and China gain from the reduction in Soviet-backed military pressure in Asia and that whatever differences emerge in Sino-U.S. relations are more than offset by the strong and growing economic, political, and cultural ties between the two countries.

Determinants of Recent Chinese Foreign Policy

The objectives of Chinese foreign policy continue to be determined by a small group of top-level leaders who reflect the broad interests of the Chinese state as well as their own parochial concerns. In the past, Mao Zedong, Zhou Enlai, and other senior leaders exerted overriding control over foreign policy. In recent years, the number of officials involved in advising on Chinese foreign policy has increased, but key decision remain the preserve of a small group of leaders, especially Deng Xiaoping.

The primary concerns of these leaders have been to guarantee Chinese national security, maintain internal order, and pursue economic development. Especially since the death of Mao in 1976, the top priority has been to promote successful economic modernization. Because this development represents the linchpin determining their success or failure, officials have geared China's foreign policy to help the modernization effort.

To accomplish economic modernization, however, as well as to maintain national security and internal order, Chinese leaders appear to be motivated by the fundamental prerequisite of establishing a relatively stable strategic environment, especially around the nation's periphery in Asia. The alternative, they say, would be a highly disruptive situation much greater Chinese expenditures on national defense and posing greater danger to domestic order and tranquility. China has influenced this environment, but it remains controlled more by others, especially the superpowers and their allies and associates. As a result, China's leaders have been repeatedly required to assess their surroundings for changes that could affect Chinese security and development, and they have been repeatedly compelled to adjust foreign policy to take account of such changes.

At the same time, Chinese leaders are motivated by nationalistic and ideological objectives that put China in conflict with its neighbors. These include irredentist claims (such as Hong Kong, Taiwan, offshore oil rights, and the like) and a desire to stand independently in foreign affairs as a leading force among "progressive" nations of the third world. These goals have struck a responsive political chord inside China. Occasional leadership discussion and debate over these and other questions regarding foreign affairs have sometimes affected the course of Chinese foreign policy. Since the early 1970s, however, the debates have become progressively less serious, and the foreign policy difference raised in them have become more moderate and less challenging to the recent dominant objectives of national development and security. In this context, nationalistic and ideological objectives have generally been given secondary priority when they conflict with the recent dominant objectives of national development and ensuring a stable strategic environment.

China's top foreign policy priority thus has remained the pragmatic quest for a stable environment needed for effective modernization and development. Chinese leaders since 1969 have seen the main danger of negative change in the surrounding environment posed by the Soviet Union. At first, China perceived Soviet power as an immediate threat to its national security. Over time, it has come to see the Soviet Union as less an immediate threat, although it remains a long-term danger using its growing military power and other sources of influence to encircle and pressure China into accepting a balance of influence in an Asia dominated by the Soviet Union and contrary to PRC interests.

Sino-Soviet Relations

China's strategy against the Soviet Union has been both bilateral and global. Bilaterally, China has used a combination of military preparations, political discussions, economic and cultural exchanges, and other interaction to minimize Soviet pressure while China gains whatever material or technological advantage it can from its neighbor to the north. China also uses such interchange to encouage the Soviets to moderate their military-backed expansion around China's periphery in Asia. Globally, China's strategy has focused at least until recently on developing, either implicitly or explicitly, an international united front designed to halt Soviet expansion and prevent the consolidation of Soviet dominance abroad. During the 1970s, China focused explicitly on developing such a front. In recent years, the perceived immediate threat from the Soviet Union has lessened, and Chinese leaders are satisfied with an implicit anti-Soviet arrangement focused on areas of Asia of greatest concern to China.

Policy Towards the United States

As the most important international counterweight to Soviet power, the United States is important in Chinese strategic calculations. Under terms of the Nixon Doctrine announced in 1969, the United States seemed determined to withdraw from its past policy of containing China in Asia and thereby ended a perceived U.S. threat to China's national security. In response, the PRC was prepared to start the process of Sino-American normalization. The process has been complemented in recent years by China's enhanced interest in pragmatic economic modernization, which has emphasized the importance of technical and financial help from abroad and access to foreign markets.

Thus China views the United States as economically important, not only for its own sake, but also as an influence on Japan, Western Europe, non-Communist countries in East Asia, and international financial institutions providing the economic aid, markets, and technical assistance needed to promote Chinese economic modernization. In recent years, China has also broadened its economic interchange with the Soviet bloc, and Sino-Soviet trade has grown more rapidly (from a much lower base) than Sino-U.S. trade. No leader in China has suggested, however, that contacts with the Soviet block could rival the importance of economic interchange with the non-Communist nations led by the United States.

Closer Chinese ties with the United States have continued to be complicated by Chinese nationalistic and ideological concerns over Taiwan and third world questions, as well as by fundamental differences between the social-political and economic systems of the United States and the PRC. Most notably, U.S. support for Tawian is seen as a continued affront to China's national sovereignty. Chinese leaders, though, have differentiated between substantive threats to their security, posed by continued enhancement of Soviet military power and military-backed influence around China's periphery in Asia, and threats to their sense of national sovereignty, posed by U.S. support for Taiwan.

Possible Changes in China's Stance Towards the Superpowers

In short, China has worked hard, and continues to work hard, to ensure that its strategic environment, threatened mainly by Soviet expansion, remains stable, so that it can focus on economic modernization. The Soviet Union is perceived to have a strategy that uses military power cautiously to achieve political influence and dominance throughout its periphery. China has long held that the focus of Soviet attention is in Europe but that NATO's strength requires Moscow to work in other areas, notably the Middle East, Southwest Asia, Africa, and East Asia, in order to outflank the Western defenses. China is believed to be relatively low on Moscow's list of military priorities, although Chinese leaders clearly appreciate the dire consequences for the PRC should the Soviet Union be able to consolidate its position elsewhere and then focus its strength to intimidate China.

The ascendancy of the new Gorbachev leadership in the Soviet Union has potentially profound implications for China and its position in the U.S.-Soviet-China triangular relationship. Some Chinese commentators have noted the possibility of a major change in Soviet policy in Asia. Of course, a substantial shift in the Soviet pressure on China would have a corresponding impact on calculations that have governed Chinese policy in Asia since the late 1960s. The Soviets have begun to address the so-called three obstacles that Beijing says lie at the heart of its security concerns vis-a-vis the Soviet Union: Soviet support for Vietnam's occupation of Cambodia, Soviet military occupation of Afghanistan, and the buildup of Soviet forces along the Sino-Soviet and Sino-Mongolian borders. In particular, Moscow is withdrawing from Afghanistan, has withdrawn one of its several divisions in Mongolia, and has encouraged a settlement in Indochina.

Current Issues

Chinese Arms to the Middle East

The delegation discussed foreign policy issues with Vice Foreign Minister Zhou Nan, the second ranking official in the foreign ministry. After reassuring the vice minister of bipartisan U.S. support for improved relations with China, Chairman Leahy noted that the sale of sophisticated Chinese weapons systems to sensitive world areas, notably

China's recent sale of intermediate-range ballistic missiles to Saudi Arabia, were viewed negatively in the U.S. Congress as a major escalation in the destructive capabilities of the hostile forces in this volatile region. The vice minister politely but firmly told the delegation of China's rationale for such sales and implied that the sales were not the business of third parties like the United States. Thus, he said that China follows "strict principles," is "very cautious," sells only conventional weapons for "defensive purposes" and to "enhance peace." He implied that the United States and others should look to their own record of arms transfers before criticizing China's action, asking rhetorically "who ranks first in arms sales to the region?" and noting that China provides only a small fraction of foreign arms received by Middle Eastern countries.

Cambodia

Vice Minister Zhou was also forthright in voicing China's suspicions of Vietnam's intentions in Cambodia. While noting China's willingness to support a political settlement once a Vietnamese troop withdrawal is set, Zhou claimed that Vietnam wants to leave behind the current Phnom Penh government as the strongest force in Cambodia. To do so, Vietnam must reduce the strength of the Chinese-backed Khmer Rouge. Zhou claimed that Vietnam was using international revulsion with the prospect of a return of the Khmer Rouge to strengthen the current pro-Vietnamese Phnom Penh regime. Zhou claimed China wants neither the Khmer Rouge nor the current Phnom Penh regime to provide the "main body" in a future Cambodian government. He said that China looks to Prince Sihanouk as providing the "main body."

Sino-Soviet Relations

Vice Minister Zhou was non-committal about prospects for Sino-Soviet relations and particularly the impending Sino-Soviet vice foreign minister talks on Cambodia. Chinese leader Deng Ziaoping has affirmed several times over the past two years that he would be willing to meet with Gorbachev if the Soviet Union would take measures to encourage the Vietnamese to withdraw from Cambodia. Now that the Vietnamese have begun to withdraw some troops and the Soviets are actively working with China and others to reach a settlement of the Cambodian issue, many speculate that a Sino-Soviet summit could take place soon. However, Zhou Nan said that China was waiting to respond to whatever the Soviets were going to offer; and later in August it was reported that the Soviet negotiator, Vice Foreign Minister Rogachev said that the Soviets were waiting to reply to whatever the Chinese were going to offer. Since our visit, the Soviets and Chinese have announced that PRC Foreign Minister Qian Qichan will visit Moscow later this year and Soviet Foreign Minister Shevardnadze will reciprocate with a visit to Beijing, probably early next year. These two visits could pave the way for a Deng-Gorbachev Summit next year, especially if there is progress in reaching settlement in Cambodia.

Other Issues

Chinese officials did not raise issues of Japan's military development and U.S. policy toward Taiwan. This contrasts with often strong Chinese complaints on these subjects in past discussions with U.S. visitors. U.S. officials in Beijing judged that differences in Sino-Japanese relations were being smoothed over in preparation for Prime Minister Takeshita's trip to China in late August. Takeshita was expected to bring offers of billions of dollars in financial support and more liberal Japanese investment in China. U.S. officials also believed Beijing was moderately satisfied with the evolution of relations with Taiwan now that Taipei was allowing exchange of mail and indirect trade and investment on the mainland. Beijing continues, however, to look to the U.S. to encourage greater Taiwan-PRC contacts. U.S. policy is to welcome the contacts that have occurred and to seek to foster an environment in which they can continue to develop.

On Korea, the Delegation asked Vice Minister Zhou Nan what China and others could do to ensure that North Korea does not take violent actions to disrupt the September 1988 Olympic games. Zhou noted that China is sending a large delegation to Seoul and wants the games to proceed smoothly. He went on to say that China believes that the United States could ease tensions on the peninsula by being more flexible in policies toward North Korea. If North Korea is isolated, he averred, it is not good for the "overall situation" or for U.S. interest.

HONG KONG

The United States has important interests in Hong Kong. Economically, over 800 U.S. corporations are located in Hong Kong, doing business with China and all of Asia. We have more than $6 billion in direct investment in Hong Kong, making us the second largest foreign investor there after the PRC. (U.S. investment in Hong Kong's manufacturing sector is especially high, about $770 million out of a total foreign investment of $1.5 billion.) Major U.S. investors include ESSO, Sea-Land Orient Ltd., Motorola, Electronic Industry Ltd. (a subsidiary of GE), Dataproducts H.K., and NCR.

Bilateral trade was about $14.5 billion in 1987, making Hong Kong our tenth largest trading partner. U.S. exports to Hong Kong were around $4 billion. U.S. agricultural shipments were valued at $466 million in 1987, up 15 percent from 1986. This made Hong Kong our 17th largest market for U.S. agricultural products. Imports, largely in apparel, electronics, jewelry and toys, reached approximately $10.5 billion. Some adjustment is taking place in the pattern of our bilateral trade, with an increase in the growth of Hong Kong's imports from, and a decline in the rate of growth of its exports to, the United States.

We are Hong Kong's largest market. Our share of Hong Kong's exports stood at 37 percent for 1987, a slight decline from the 41 percent in 1986. This reflects Hong Kong's effort to reduce some of its dependence on the U.S. market and diversify to other markets, especially Japan and Germany, a move made possibly by currency fluctuations which have increased the competitiveness of Hong Kong products.

Politically, the U.S. interest in Hong Kong's reversion to control by the PRC in 1997 relates to the impact this may have on U.S. economic interests in Hong Kong, and its implications for future Chinese reform policies and Chinese efforts to engineer a similar reconciliation with Taiwan. After several years of delicate and sometimes difficult negotiations, China and Britain reached an agreement in 1984 that Hong Kong would return to Chinese sovereignty upon the expiration in 1997 of a British lease on much of its territory. Since then, there have been conflicting views on what the resumption of Chinese authority in 1997 will mean to Hong Kong's economic and political situation and, more precisely, what it will mean to those businesses and governments that have substantial trade and investment interests in the colony. The PRC has made a number of promises intended to inspire confidence: that the Hong Kong "Special Administration Region" (SAR) can maintain its current system of government for at least 50 years; that it will enjoy a high degree of autonomy, including an independent judicial power; and that it will have autonomy in financial and budgetary matters.

In the months immediately following the ratification of the agreement, many observers appeared optimistic about the PRC promises. They viewed China's willingness to sign an agreement openly committing to these measures as highly significant. They believed that China's goal of reuniting Taiwan with the mainland gave added impetus to Chinese leaders to assure that the "one country two system" approach, advocated by Beijing in encouraging unification of Hong Kong and Taiwan with the mainland, worked well in Hong Kong. In particular, they believed that China's own pragmatic economic reform movement, which began in 1978, greatly increased its already strong incentives to assure that Hong Kong's economy remained strong, vibrant, and capable of contributing to China's own economic growth.

More pessimistic observers thought that the Sino-British agreement left the PRC with scope for substantial interference in Hong Kong's affairs, such as the provision stating that the law for Hong Kong in the future would be the "Basic Law" to be promulgated by China's National People's Congress. Concern also was prompted by some actions and statements of the Chinese themselves—such as Deng Xiaoping's statement during a sensitive point in the negotiations—that soldiers of the People's Liberation Army would, of course, be stationed on Hong Kong.

In 1988, this concern remains. Key political and economic issues are discussed below.

Political Issues

One issue in both importance and sensivity is the matter of Hong Kong's self-government and the manner in which its legislature will be selected both in the near future and after 1997. Recent developments would seem to indicate that democracy and political autonomy may be limited in post-1997 Hong Kong.

Prior to 1985, Hong Kong's Legislative Council (Legco) was appointed by Hong Kong's Governor, so the colony had no tradition of elective office. Indirect elections were introduced in 1985 with the election of 24 of Legco's 56 members by local councils, professional associations, trade unions, and other representative bodies. For a time, it was thought that direct elections for some Legco members would be attempted in 1988. However, the election was postponed until 1991, a move which some believe is a reflection of PRC pressure.

The PRC has strongly opposed instituting direct elections or establishing an elective tradition in Hong Kong prior to its resumption of control in 1997. The Chinese government contends that such moves, prior to promulgation of the long-awaited Basic Law (a draft was released in May 1988) are at best premature. There is also some indication that China may wish that current members of Legco resign in 1997, before their terms of office expire, so that the PRC can nominate appropriate candidates and hold indirect elections through a Beijing-appointed electoral college.

Nor has the election issue been without controversy in Hong Kong itself. In May 1987, the Hong Kong government produced a Green Paper (consultative document) on representative government for Hong Kong, following this with two surveys asking when direct elections should be instituted. The results of the opinion survey, to delay direct elections until 1991, were published in a February 1988 White Paper (policy document). The polls were immediately challenged by other well-respected pollsters as having been mishandled, and thus not truly representing the feelings of the Hong Kong people. Adding to the controversy, the British Parliament, despite support from the Labour and Liberal Parties, failed to act in support of direct elections for Legco just three weeks prior to issuance of the White Paper.

Economic Issues

The international, free-wheeling nature of Hong Kong's economy can make it difficult to relate economic downturns or upswings specifically to PRC actions, or to make longer-term projections based on what Hong Kong's situation might be after 1997. Statistically, according to the U.S. State Department, Hong Kong appears to be doing well, still heavily dependent on China and the United States as its largest overseas markets.

Some observers, however, have pointed out that in a highly fluid financial center such as Hong Kong, assets can be transferred overnight. This has prompted many to look for other indicators about how Hong Kong's economy may fare in the future. Many, for instance, are concerned about a potential "brain drain" as the wealthier, more highly skilled, and more mobile of Hong Kong's population move to hedge their bets as 1997 approaches. Some find grounds for pessimism in the upsurge of applications for certificates assuring that one's record is clear of criminal convictions—a necessary step in the event of overseas emigration. Others point to the growth of new professions—such as the emigration portfolio manager—which specialize in investing client funds in overseas ventures. A major exodus of skilled professionals and capital could deprive Hong Kong of the critical resources it needs to continue succeeding economically.

Refugees

An upsurge in the number of "boat people" arriving from Vietnam in 1988 caused the Hong Kong government to consider tightening its screening procedures for such incoming people. Some in Hong Kong advocate a strict regimen in which those migrants seen to be leaving Vietnam for economic rather than political reasons would be detained and returned to their place of origin. We were told that U.S. policy does not disagree with Hong Kong efforts to curb the flow of economically motivated migrants from Vietnam, but stresses the need to offer first asylum to those leaving Vietnam and maintenance of humanitarian conditions in camps for them, pending the processing of their cases. Since our visit, the Hong Kong government and UNHCR have reached agreement on new screening procedures which will permit UNHCR to participate in interviews of prospective refugees.

PRC Policy and Hong Kong

It was clear to the delegation that PRC leaders had no present intention to take steps that would seriously jeopardize the future stability and prosperity of Hong Kong. To the contrary, as Vice Foreign Minister Zhou Nan said, China wants to create a number of "little Hong Kongs" along its coast in order to gain further from the active economic interchange along the Asian-Pacific rim.

At the same time, China gains large economic benefits from preserving Hong Kong's autonomy. China is Hong Kong's largest trading partner, with almost 14 percent of the territory's export going to the PRC in 1987. The trade is heavily in China's favor, making it a major source of foreign exchange for the PRC. Investment is up, with a large expansion of investment by Hong Kong enterprises in China and by Chinese interests in Hong Kong, a trend which should continue and grow stronger as 1997 approaches.

China recognizes that Hong Kong provides it with a window on the world for improving managerial skills and providing access to technology. Hong Kong also provides China with a port through which it can trade with countries with which it has no diplomatic relations, including Taiwan, South Korea, Indonesia, and Saudi Arabia. In 1987, China's exports to Hong Kong grew by 41.7 percent to $13.86 billion; its imports from Hong Kong increased by 51.4 percent to $8.49 billion. Over one third of China's total exports and one-fifth of its total imports passed through Hong Kong last year. Hong Kong's own reexport of China-origin goods shot up by 63 percent last year to $10.8 billion, of which one-third went to the United States. (This tremendous boom in trade is largely attributable to the growth of export processing industries in South China.)

Finally, Chinese leaders explicitly link their handling of the Hong Kong question with their proposed policy toward Taiwan. They clearly recognize that mishandling of the transition to Chinese sovereignty in Hong Kong will seriously erode Taiwan's incentive to seek improved contacts and eventual reunification with the PRC.

PROSPECTS—CHINA AFTER DENG XIAOPING

The concern of observers in Hong Kong regarding the continuity of PRC policy toward the territory are matched by those who follow the broader range of Chinese domestic and foreign policies. All acknowledge that the success of Chinese efforts over the past decade has been closely dependent on the leadership of 83-year-old Deng Xiaoping. He has shown remarkable political expertise and has exerted political power sufficient to push Chinese reform programs forward and to make the hard decisions that needed to be made in dealing with complicated issues in foreign policy and domestic affairs.

As noted above, it is clear to the delegation that China still faces numerous difficulties in the road ahead, and that effective leadership remains the key determinant to China's successful development. Today, Beijing wrestles with major decisions on price reform, inflation, grain production and appropriate policies toward the Soviet Union and the United States. If Deng dies soon, will post-Deng leaders have the experience, expertise, and power to formulate effective policies and build the political supprt necessary to carry them out?

As time goes on, more and more Chinese leaders and larger segments of the Chinese population have established an ever growing stake in the current economic reforms, the opening to the outside world, and the discreet, moderate policy toward Hong Kong. It thus appears fair to say that one can be cautiously optimistic that post-Deng leaders will continue with recent practice. They are likely to follow the similar kinds of domestic and foreign policies that, on the whole, have proven to be beneficial for U.S. interests in relations with China and throughout the Asian-Pacific region.

APPENDIX A

Report by Mr. Jin Jianming, chief engineer of the Environmental Protection Bureau of the People's Republic of China, for the Delegation of the Senate Committee on Agriculture, Nutrition and Forestry.

Honorable leader of the delegation of the Senate Committee on Agriculture, Nutrition, and Forestry, Mr. Ambassador, and our American friends: Here is a briefing on the Chinese environmental protection work. First, achievements in recent years on environmental protection:

I. PREVENTION OF INDUSTRIAL POLLUTION

According to preliminary statistics of twenty-seven provinces, autonomous regions, and municipalities directly under central government control, 1,083 severely air-polluted industries were transferred in 1983, and 4,535 environmental protection projects will be completed in 1989. 304 factories received excellent ratings for their environmental protection work. 983 large and medium-size construction projects are conducting evaluations of their environmental protection work.

II. GENERAL MANAGEMENT OF CITY AIR AND NOISE POLLUTION

According to preliminary statistics of air pollution control for sixty key cities, in one year, 190 air pollution control areas, totalling 758 square kilometers, were constructed. In the same year, 350 noise pollution protection areas, totalling 710 square kilometers, were built. In 1987, 147 cases of river conservancy, totalling 968 kilometers, and 22 projects on lakes have been built.

III. PROTECTION OF THE NATURAL ENVIRONMENT

Altogether 481 natural environment protection zones, totalling 22 square kilometers, have been completed. 500 agricultural environmental protection areas, totalling 2.2% of the national acreage, have been completed.

IV. NEW LAWS AND REGULATIONS IN REGARD TO ENVIRONMENTAL PROTECTION

The government has promulgated laws such as "law for the environmental protection of the People's Republic of China," "law for the protection of air pollution," "forestry law," "pasture law," "law for the protection of mineral resources," and "an outline of natural environment protection in China."

At the moment, the government is working on laws such as "anti-noise pollution law," "law for the protection of animals," "regulations on the protection of plants," "regulations on the management of natural protection areas," etc. A hundred government standards, such as water quality, sea water quality, air quality, extent of chimney smoke release, etc., have been promulgated.

V. RESEARCH AND SURVEY WORKS CONDUCTED

A survey network of four tiers, e.g. central government, province, city and county, have been established. There are altogether 20,000 surveyors, 200 research institutions on natural environment protection, and 10,000 researchers.

VI. STRENGTHENING PROPAGANDA WORK, AND INCREASING THE QUALITY OF CADRES

Activities for national participation include Environmental Day on June 5, bird-loving week and a tree-planting project in the spring. A national newspaper, Chinese Environmental Paper, has a circulation of 500,000. The Chinese Environment Press has published many books on environmental protection. The Institute for Environmental Protection trains cadres working on environmental protection, and nearly 30 universities offer courses on environmental protection.

Second, existing problems in the environmental protection work:

Despite the above accomplishments, there still exist serious problems of water, air, and noise pollution. For example, air pollution is extremely serious in the North during the winter heating season. Acid rain can be found in Northwest cities due to the burning of coal of high sulfide content. Also, there are serious problems of soil depletion, deforestation, and the extinction of endangered species. For example, water and soil are depleted in the Yellow Mountain region. In the Northwest, due to the careless cutting of trees, land turns into desert, and the wild animals and plants face total extinction.

There are several causes of the above-mentioned problems.

I. The high population density and the scarcity of resources create pressure on environment.

II. It is difficult to manage the numerous median and small size industries spread around in town and villages.

III. Coal is the major source of energy, which causes serious pollution problems.

IV. In an economically backward society, it is impossible to employ effective measures due to the lack of money, technology, and good management skills.

Third, Chinese policies toward environmental protection:

I. Environmental protection policies.

a. To employ a policy which will synchronize with economic development, the construction of cities and villages, and the environmental efficiency.

b. To take preventive measures.

c. To employ the "responsibility system." The party which causes environmental deterioration will take the responsibility.

d. In all construction work, environmental protection measures will be incorporated into the project.

e. There will be a charge on the handling of industrial waste, and a fine will be charged for excessive waste.

f. Overall planning and environmental protection will be executed in the construction of new factories and building of industrial areas.

g. Industries which cause serious environmental protection will be closed or transferred.

II. Improvement of science and technology.

New science and technology are introduced in areas such as the recycling of waste, introduction of low pollution techniques, and the study of the techniques of solid waste, etc.

III. Improvement of environmental management.

The Environmental Protection Committee, under the direction of Premier Zhao Ziyang, will convene a meeting once every season to determine important issues on environmental protection. Also, legislation on environment will be strengthened.

Finally, since environmental protection is an international issue, it requires international cooperation and support. China and EPA in the United States already have had very good cooperation. Even though the problem of environmental deterioration and pollution are more serious in China, yet with the support of the government and the experience borrowed from abroad, I believe that these problems can be controlled and gradually corrected.

Submitted by Chief Engineer, Environmental Protection Bureau.

Jin Jianming.

AUGUST 18, 1988.

APPENDIX B

U.S. SENATE,
Washington, DC, September 8, 1988.

MAO RUBAI,
Vice Chairman, Tibetan Autonomous Republic, Lhasa, Tibet, People's Republic of China.

DEAR MR. VICE CHAIRMAN: On behalf of Senators Robert Stafford, Thomas Daschle and myself, I want once again to thank you and your associates for a magnificient visit to your splendid region. We were treated with unfailing courtesy and friendship, and it is our great desire that the visit of our Delegation will promote the growing relations between the United States and the People's Republic of China.

I enjoyed very much our very candid discussion the evening of September 22. I felt it was in the spirit of friendship and mutual understanding that we exchanged views about the state of US-PRC relations and issues of interest and concern in Tibet. All the members of my Delegation, as well as officials from the American Embassy in Beijing who accompanied us, came away from the discusison encouraged about the increasing openness of Tibet, and indeed, of all of China, to visitors and opinions from abroad. These feelings were strengthened by China's willingness to permit Western press representatives to visit Lhasa while we were there, a trend we trust will continue. We also welcome the improved access for American consular representatives from Chengdu to Lhasa.

As a longstanding friend of China, it is my belief that this openness and willingness to listen to views of others is essential to the continued growth of friendly and cooperative relations between our two peoples.

We spent a great deal of time discussing questions of human rights and the treatment of political dissidents in Tibet. I sought to emphasize, and I do so again in this letter, that my Delegation had no interst in interfering in the internal affairs of China. At the same time, I stated frankly and honestly that there were serious and worrisome questions about the condition and status of certain Tibetan individuals who had been detained apparently for various political activities. In connection with those discussions, I gave you a letter and two lists containing names of some of these individuals about whom information was lacking and about whom there were great misgivings in the world human rights community.

I welcomed your stating that Lobsang Chundra is in good health and in detention in Lhasa. This information about his condition and status is naturally of the greatest interest to the human rights community.

You expressed some confusion about the lists I presented you, as to what kind of information we sought and as to the difficulties in identifying some of the names. Therefore, upon my return to the United States I have sought additional clarifying data about these individuals which might help you and your associates. I have also added an additional name of an individual about whom there is great concern in the United States, and about whom information is almost totally absent.

Mr. Vice Chairman, let me take this opprtunity to underline again that neither I nor any member of my Delegation asks the authorities in China or in the Tibetan Autonomous Republic to undertake any particular action with regard to any of these individuals not in accord with Chinese law. I merely request, as a matter of intense humanitarian concern, to know the present physical condition and legal status of these people, that is, are they in good or ill health, and are they in detention or are they at liberty?

It would be impossible to overemphasize the favorable impact in the United States Senate and the Congress as a whole your provision of this very basic information would have. The friends of China would be immensely encouraged in their work for the continued strengthening of US-PRC relations.

I await your reply with the greatest anticipation. As we discussed in Lhasa, I would be glad to hear from you either directly or through Ambassador Lord in Beijing.

Once again, my deep appreciation to you and to all Chinese officials who made our visit so valuable.

Sincerely,

PATRICK LEAHY,
Chairman.

CASES OF HUMAN RIGHTS CONCERN

Tsokye Dolma.—This woman was identified in Senator Leahy's letter to Chairman Doje Cering. She is the sister of a Tibetan living in the United States. Reportedly she was arrested in March 1988, and her family in the United States have had no word of her whereabouts or health.

Geshe Lobsang Wangchuk.—A monk reported to have died in detention, but no confirmation is available.

Jampa Kalsang.—Believed to be about 40; a resident of the Klu-sgug area of Lhasa. Believed to have been arrested on September 26, 1986 for activities related to the Drepung Monastery. Believed to be held in Gutsa prison.

Panden Gyatso.—About 50; a monk from Drepung. Believed to have been arrested in Lhasa on August 26, 1983 and to have been sentenced to eight years imprisonment on April 19, 1984.

Dawa (Shol Dawa).—In his 50s; from the Shol district of Lhasa. Believed to have been arrested in late August 1985. Thought to have been sentenced to seven years imprisonment for advocating Tibetan independence. Believed to be held in Drapchi prison.

Kalden.—Believed to be of Nepalese origin. Arrested in 1982, reportedly for possessing materials advocating Tibetan independence. Believed to be in Drapchi prison.

Jamyang.—A postal worker from the Khams region. Arrested in 1985 and is believed to be in Drapchi prison.

Thubten.—Jamyang's brother, arrested at the same time and believed to be held in Drapchi prison.

Kunsang-tse.—Name of a family in Lhasa, a member of which was arrested in September 1985. His full name is not known. Believed to be in his early 30s and a middle school teacher. Thought to be in Drapchi prison.

Thubten Kelsang Thalusogentsang.—Imprisoned in 1981 and believed to be in Sangyip prison.

Yulo Dawa Tsering.—Aged 59; a high incarnate lama from Ganden monastery. Arrested in connection with demonstrations in the fall of 1987 and reportedly charged with "counterrevolutionary" propagandizing.

Tenpa Tsering.—Arrested in connection with the demonstrations in the fall of 1987 and charged with "sabotage and property destruction."

Jigme Gyatso.—Arrested for the same events as Yulo Dawa Tsering and Tenpa Tsering, and charged with "sabotage and property destruction."

Lobsang Tenzin.—A student in the 1987 entering class at the University of Tibet, arrested in connection with the March 1988 demonstrations. According to press reports he (and the next three persons) were arrested for the alleged murder of a security officer during the demonstration. Reportedly, he and the other three were tried in August 1988. No further information available.

Tsering Dhondup.—A student at the Tibetan Academy of Buddhism. (see Lobsang Tenzin).

Sonam Wangdu.—A resident of Lhasa. (see Lobsang Tenzin).

Gyaltsen Chophel.—A merchant in Lhasa from the area around the Jokhang Monastery. (see Lobsang Tenzin).

Ngawang Dupchen.—A monk from Drepung monastery arrested during the March demonstrations and reportedly still in prison as of August 1988.

Ngawang Gedun.—A monk from Drepung monastery arrested during the March demonstrations and reportedly still in prison as of August 1988.

Ngawang Nemgyal.—A monk from Drepung monastery arrested during the March demonstrations and reportedly still in prison as of August 1988.

Lobsang Zhundrup.—Reportedly a monk from Drepung monastery arrested during pro-independence riots and reportedly still in prison as of August 1988. However, there may be a confusion with a Lobsang Lhundrup, aged 25, a monk from Sera monastery arrested at Sera on October 4, 1987, and these may be the same person.

Ngawang Paikar.—A monk from Drepung monastery reportedly in prison as of August 1988. No other identifying information.

Lama Ngari Tulku.—A monk from Sera monastery arrested on March 6, 1988, and believed to be held in Sangyip prison.

Oser Rinpoche.—A monk from Sera monastery (name is possibly "Woeser") arrested on March 5, 1988 and believed to be held in Sangyip prison.

Tenzin Tsepel.—Arrested in March 1988. No other information available.

Wangdhuk.—Arrested in March 1988. No other information available.

Thubten Namdrol.—Reportedly arrested on October 24, 1987; in his 60s and believed to have resided at the Pala Lhubu monastery. Many have been a teacher of novices at one time.

New name:

Chozed Tenpa Chopel.—About 65, a groundskeeper at the Norbulingka Palace in Lhasa, and believed to have kept a shop on the Barkhor Street. Arrested in December 1987 and thought to be in Sangyip prison.●

NATIONAL CHALLENGER CENTER DAY

● Mr. GARN. Mr. President, on behalf of my friend from Ohio, Senator JOHN GLENN, and 55 of our colleagues who have joined as cosponsors, I am pleased that Senate Joint Resolution 365, declaring January 28, 1989, as "National Challenger Center Day," was passed by the Senate late last Friday evening. Congressman JACK BROOKS, of Texas, is hoping to expedite the passage of this bill in the House of Representatives before they adjourn.

Just over a week ago, I joined with millions of other Americans in watching the space shuttle *Discovery* lift off and enter space after our Nation's 32-month hiatus from manned space flight. I know I was not the only one who had goose bumps as a result of the excitement of that day. It is great to be back in space.

In the 4 days that followed *Discovery's* liftoff, we witnessed the successful deployment of a much needed communications satellite; experiments designed to provide valuable information in our quest to prolong life; and a picture perfect landing which concluded a practically error-free mission.

As we watched and celebrated *Discovery's* takeoff, and as we welcomed her home, I am sure there was not one person who was not thinking about and remembering the *Challenger* and her crew. *Discovery's* flight, in many ways was a tribute to Dick Scobee, Mike Smith, Ron McNair, Ellison Onizuka, and Judy Resnik, Greg Jarvis, and Christa McAluiffe. That tribute was made more poignant when the *Discovery* crew commented, "At this moment, our place in the heavens makes us feel closer to them—the *Challenger* crew—than ever before."

The loss of those fine people has not gone unnoticed. To continue the dream of those seven noble men and women, the families and friends of the *Challenger* crew decided to establish a space education center, called the Challenger Center, as a living memorial to their loved ones, to complete the dreams, and continue the final mission of the *Challenger* crew.

The center will provide the children and young people of this Nation with an opportunity to experience the sciences, especially the space sciences, at work. It will also help teachers learn how to be more effective in teaching the concepts embodied in space science. And it will serve as a focal point to bring together the best talents, skills, and resources to continue to improve learning and teaching opportunities for generations to come.

By focusing on the Challenger Center, we advance the dreams of those that gave the ultimate. In this way, we appropriately bring public attention to the anniversary of the shuttle accident. We also allow more dreams to become a reality as we raise up a generation who will know about and work in space and benefit from a greater knowledge of the world above. They, like the *Discovery* crew, will have the opportunity to feel closer to those who have gone before. I am pleased that Senate Joint Resolution 365 has been passed by the Senate and I thank my colleagues for their support.●

NATIONAL SKIING DAY

● Mr. GARN. Mr. President, late last Friday night, the Senate passed Senate Joint Resolution 301 to designage January 20, 1989, as "National Skiing Day." I am a sponsor of that bill with my colleague from Colorado, Senator WIRTH. Fifty-four other Senators joined us as cosponsors, and I appreciate their support.

As many of you know, I love to ski. Skiing challenges both the body and the mind. There is hardly an experience that surpasses schussing down a snow-packed slope, with the wind whistling past you, the air filled with crystals of ice, and the sky as blue as it gets only in the mountains.

But beyond the esthetics of the sport, skiing encourages economic development in an environmentally responsible way. Designating a "National Skiing Day" helps citizens foster appreciation and respect for the outdoors and, at the same time, affords economic growth in the many ski regions throughout the country.

Skiing is a vital part of recreation and tourism in my State's economy and the economies of many other States. Nationally, ski areas bring in over $1.6 billion a year. In Utah alone, the ski industry employs an estimated 6,000 workers in manufacturing, distribution, and resort positions. Utah's ski resorts have evolved into year-round mountain resorts providing both winter and summer activities. Skiing in Utah brings in over $360 million and over $27 million in combined State and local tax receipts. Over 53 percent of the 2.5 million lift tickets sold in Utah are sold to out-of-State skiers while 47 percent of the lift tickets are purchased by Utah residents. In a family oriented State like Utah, skiing provides an excellent family sport.

Utahns are extremely fortunate to have seven world-class resorts within 30 minutes of downtown Salt Lake City. Skiing has had a positive effect on our canyons by increasing both recreational value and commercial use of the national forests, providing employment opportunities and economic development, and creating an appreciation for the beauties of nature. In fact, because of the lack of humidity in our desert climate, Utah's snow is light, dry, and plentiful. That is why Utah's license plates claim ours as "The Greatest Snow on Earth."

This resolution is good for the vitality of America. No sport can so clear the senses and invigorate the body. As we enter the winter months and thousands of skiers throughout the Nation prepare for the upcoming ski season, I thank my colleagues for joining us in this fitting recognition of an important and growing industry.●

RESTRUCTURING THE FAA

● Mr. INOUYE. Mr. President, many of us in the Senate share a concern about this Nation's air transportation system. In recent years, our offices have become the focal point of a variety of aviation problems. Many of us are among the Nation's most frequent flyers. We are well aware of the enormous challenges facing air transportation.

If we are to avoid gridlock in air travel, we simply must give top priority to boosting the capacity of the Nation's airport and air traffic control system and solving many longstanding problems about which we are all well aware. That is why many of us have cosponsored legislation to fundamentally restructure the Federal Aviation Administration. S. 1600 is a bill that has 53 Senate cosponsors. It is a bill that offers great promise in coming to grips with our aviation problems and providing meaningful long-term solutions.

Unfortunately, it looks like that legislation will not be enacted before we adjourn. I know my colleague, and good friend, Senator FORD, intends to reintroduce this important bill next year and I want to assure him that I agree it deserves early attention and high priority. We simply must pursue a major restructuring of the FAA so that the professionals at that agency can do their jobs more effectively. It is also important that we free the Agency from cumbersome procurement regulations that have hampered efforts to modernize air traffic control equipment and facilities. We also have to find a way to allow the agency to offer financial incentives to fully trained controllers willing to transfer to understaffed facilities in high-cost areas of the country and find ways to attract and keep good talent at the agency.

Most importantly, we must figure out a way to assure a steady stream of revenues to run FAA programs. Taxpayers are putting billions of dollars into the aviation trust fund, but funding for FAA often falls short of what we have authorized in spending because we get all tangled up in efforts to reduce the Federal deficit. This is a complex problem that must be solved.

I hope the Commerce Committee will continue to show strong leadership in bringing FAA reform legislation to the Senate floor early next year. The American public is demanding vast improvements in our national air transportation system and it is time for us to take whatever steps are necessary to work out real solutions to existing problems.●

THE WAR AGAINST DRUNK DRIVING

● Mr. McCONNELL. Mr. President, it was almost exactly 5 months ago that a group of young people from the First Assembly of God Church in Radcliff, KY, were returning from Kings Island Amusement Park, when the schoolbus they were traveling in was struck headon, by a vehicle going the wrong way on Interstate 71 near Carrollton, KY. In a few short moments, the lives of 27 young people were over in a blaze of gasoline.

Most of the victims were between the ages of 10 and 17; three were adults from the church who had volunteered their time. The driver of the deadly car, who was found with a toxic concentration of alcohol in his blood stream, survived.

The senseless loss of so many lives left many in my State, and in this Nation, shaken; the loss of a wife and two young daughters by a soldier at Fort Knox; the loss of a son by a family in Vine Grove; a young cheerleader; a young girl who recently had her braces removed; and a minister who had been ordained only a month ago, and who fought the ensuing blaze with a fire extinguisher while getting the others out to safety. The loss of these bright young lives is one which their families must bear heavily, and one which affects all of us in some way.

To compound this tragedy, the loss of life was the result of drunk driving. Prosecutors in the case filed 27 counts of capital murder against the offender. Even if the case succeeds and the driver is punished to the full extent of the law, however, nothing can bring those 27 lives back. Instead, we need to prevent drunk driving before it results in tragedy.

Five months ago, 99 Members of this body signed a letter urging Surgeon General Koop to declare drunk driving a "national crisis" and take "all appropriate action" to meet this crisis. In the wake of the Carrollton bus tragedy, every member of the Kentucky congressional delegation joined in a followup letter to President Reagan requesting him to take similar action. I am proud to have signed both letters. Following these personal appeals to the President, I met with the President's Director for Policy Development, Gary Bauer, and strongly encouraged him to activate the administration against drunk driving.

Now, finally, we are passing legislation to declare drunk driving a national crisis. This week, the House approved House Concurrent Resolution 276 for that purpose, and I have joined with Senators WARNER and PELL in having this measure held at the desk, in order to put Congress firmly on record with regard to the need for action on drunk driving, and to enlist the administration's assistance in this effort. In particular, the Surgeon General's participation could be decisive, given his effectiveness on AIDS prevention.

This summer, a quilt was displayed on the Mall as a memorial to AIDS victims. It was a very effective and moving reminder of the human lives behind the fatality statistics, of the 41,925 Americans who have died of AIDS so far. When people saw that each square of that quilt represented a human life—taken before its time—the impact was far greater than any statistics could convey.

Mr. President, how large a quilt could we make with the names of all those who have died as a result of drunk driving? We could start with the names of the 23,000 people killed by drunk drivers in 1987. In that same year, 1,288 Americans died of AIDS. I think AIDS is a critical issue and have supported AIDS research, but drunk driving clearly is more than an epidemic—it is a plague. Our quilt would expand to 143,000 squares to represent all the lives lost from drunk driving in the last 5 years. We could add 65 new squares each day, and 500 more each week, for all the lives lost because of the preventable disease of drunk driving.

At last, Congress is taking action to prevent this. Just like our war on drugs, the war against drunk driving will not be won overnight. It will take a major commitment over the long haul. But I am proud to join with my colleagues, Senators WARNER and PELL, and all of the Senators who signed that first letter, in mobilizing the National Government into action on the national crisis of drunk driving.

The signatures of 99 Senators pale in comparison to 27 young lives lost in Kentucky. Their memory still cries out to all of us to make sure they did not die in vain.●

BESSEMER DITCH

● Mr. ARMSTRONG. Mr. President, I rise to commend the Senate action to approve H.R. 2772, a bill that includes the necessary authorization to complete a gunite lining of the Bessemer Ditch in Pueblo, CO.

Today, in Pueblo, CO, a church is sinking and suffering structural damage from rising water levels because of water seeping from the Bessemer Irrigation Ditch. This water seepage is a direct result of a changed water source for the Bessemer Ditch since completion of the federally-built Pueblo Dam and Reservoir. The water seepage problem is identical to one Congress resolved 8 years ago when homes in Pueblo were threatened, and I ask Congress to act again.

The Bessemer Ditch was built in 1883 to bring irrigation water from the Arkansas River west of Pueblo to farms east of Pueblo. It is a 40-mile unlined ditch, of which 9 miles wind through Pueblo. Water seepage was not traditionally a major problem, since the Arkansas River is muddy and, thus, the silt from the river provided a natural lining for the ditch.

In 1974, the Pueblo Dam and Reservoir was completed by the U.S. Bureau of Reclamation. The dam and reservoir covered the Bessemer Ditch's outlet on the Arkansas River and, thus, the Bessemer Ditch was provided a new outlet directly from the reservoir. The water is "clean" without the silt that previously provided a "self-lining" for the Bessemer Ditch.

Water loss along the Bessemer Ditch since completion of the Pueblo Dam and Reservoir increased quickly from its historical loss rate of 18 percent in 1974 to a 40-percent water loss rate by 1979. As a result, water seepage from the ditch raised ground water levels and posed a severe threat to the homes of low-income and elderly persons along the ditch.

In 1979, I appointed a task force in Pueblo to develop a solution. The task force decided to line only those areas of the ditch where seepage was immediately threatening homes. Also, gunite, an easily applied cement, was chosen as the best and quickest lining.

The Federal Government quickly recognized the urgent need to stop the seepage. Congress passed and the President signed legislation that authorized $1.5 million for a gunite lining on approximately half the length of the ditch as it runs through Pueblo. The gunite lining was quickly completed and has been a success.

Now, water is seeping through the areas not previously lined. Already a church and nearby businesses are threatened, and the water seepage is likely to endanger a community college and steel mill. I have again tasked Puebloans on this problem, and the Southeast Colorado Water Conservancy District recommends gunite lining for the remainder of the Bessemer Ditch as it flows through Pueblo.

Mr. President, the change from dirty to silty water is a direct result of the Federal Government building the Pueblo Dam and Reservoir and, thus, it is entirely appropriate the Federal Government assist with stopping the seepage problem today, just as it was 8 years ago.

H.R. 2772 was passed by the Senate on October 7 and includes the necessary authorization to line the remaining 11,000 feet of the Bessemer Ditch with local contribution to the design and construction costs. Work can begin this November to line the areas of the ditch causing the most immediate damage to the church and other properties.

I commend the Senate's swift action to stop the water seepage along the Bessemer Ditch.●

HABITAT FOR HUMANITY

● Mr. SASSER. Mr. President, I rise this morning to call the Senate's attention to a very vital and worthy housing program—Habitat for Humanity. Habitat is an ecumenical Christian housing ministry. Its objective is to eliminate poverty housing and to make decent shelter a matter of conscience.

Mr. President, that is a very grand and noble objective. I am pleased to report that Habitat is making progress toward meeting that goal.

As we all know, America is facing a housing crisis. In particular, homelessness is becoming both a national epidemic and a national disgrace. According to the National Academy of Sciences, on any given night in the United States there are 100,000 children sleeping on the streets. And these are not runaways, these are families on the streets. Indeed, one-fifth of the homeless population are families and one-fifth is employed.

Mr. President, this dramatic increase in the number of homeless people is a direct result of the lack of affordable housing in America today.

Habitat for Humanity is one of the very best organizations in operation today that is fighting for affordable housing. In Tennessee and elsewhere, Habitat for Humanity has been instrumental in providing homeownership for low income families. Indeed, there are over 200 affiliated projects in the United States and Canadian cities and over 40 sponsored projects in 18 developing countries.

In Tennessee, Habitat has already built 50 homes, has another 18 presently under construction and has renovated 147 more.

Habitat organizes volunteers to build livable houses for low-income families at prices that they can afford. Materials and labor are donated. And no-interest, no-profit loans are arranged.

Importantly, the low-income family is given the opportunity of home ownership, one of the cornerstones of American family life.

Mr. President, I wholeheartedly and enthusiastically endorse the efforts of Habitat for Humanity. This organization is making a monumental contribution in the fight for affordable housing. I yield the floor.●

GRAND VALLEY RECLAMATION PROJECT

● Mr. ARMSTRONG. Mr. President, I am pleased the contract for operation of the Grand Valley Reclamation project on Colorado's Western Slope will continue uninterrupted. Congress approved a 2-year contract extension, which was included in H.R. 2772, passed in the late hours of last Friday night.

The contract is between the United States and the Grand Valley Water Users Association, the Orchard Mesa Irrigation District and the Public Service Co. of Colorado for operation of the Grand Valley project on Colorado's Western Slope.

The Grand Valley Reclamation project was built by the Bureau of Reclamation in 1923. The canal and diversion works were built to accommodate power development. In 1931, a powerplant was built without Federal funds by the Public Service Co. of Colorado. No Federal funds have been spent on the powerplant, and none will be. In addition, income from the powerplant has enabled water users to make accelerated debt repayment to the Federal Government for the Grand Valley Reclamation project.

Presently, all surplus revenues above operation and maintenance costs are being remitted to the United States as accelerated debt repayment of loans obtained by the water users.

The contract extension under which the parties are now operating expires at the end of 1988. This additional 2-year extension of the contract means another temporary shutdown of the plant will not occur due to a lapse in the contract with the Bureau of Reclamation. I look forward to working with the contract parties next session for reauthorization of this contract to ensure stability of the project for the region.●

MEDICAL WASTE LEGISLATION

● Mr. LEVIN. Mr. President, in the early morning hours of this past Saturday, the Senate passed a bill that will establish a demonstration program for tracking medical waste in three Atlantic Coast States and the Great Lakes. This is great news for Michigan, which has recently been plagued by the despicable and dangerous practice of dumping medical waste. This measure is similar to legislation that I introduced, S. 2778, along with Senator RIEGLE.

Last Thursday, the House of Representatives passed this bill by a vote of 390 to 28. This vote shows the breadth and depth of support for this proposal. I worked very closely with Representative DINGELL, chairman of the House Energy and Commerce Committee on this important issue. I thank him for all he did. I am pleased that the full

House took action on this measure expeditiously, and I am also pleased that we acted to pass similar legislation with some minor amendments. I hope that the House will now agree to the Senate amendments, so this bill can be signed into law quickly.

While we have all been aware of the problem of medical wastes washing up on the shores of the Atlantic Ocean, this past September was the first time that such wastes washed up from Lake Michigan. About a month earlier, medical wastes were also found near Cleveland, OH, on Lake Erie beaches.

Like the incidents on the Atlantic coast, the origin of the waste was unknown. Michigan health department officials indicated that they were in a quandry about how to trace the waste. The legislation will give those Michigan officials, and other Great Lakes and Atlantic Coast State officials, the tools they need to prevent the dumping of medical wastes.

Senate passage of this bill is an important step toward ensuring that the practice of dumping medical waste in the Great Lakes will be stopped. The Great Lakes are precious. This action will help preserve them.●

FEDERAL EMPLOYEES LIABILITY REFORM AND TORT COMPENSATION ACT

● Mr. HUMPHREY. Mr. President, I am extremely pleased that the Senate is acting promptly to enact H.R. 4612, the identical House companion measure to S. 2500, the Federal Employees Liability Reform and Tort Compensation Act. This is extremely important legislation which is needed to protect Federal employees from exposure to unwarranted personal liability for actions performed within the scope of their Government employment.

The senior Senator from Iowa, Senator GRASSLEY, deserves enormous credit for moving promptly to introduce this legislation and move it through the Judiciary Committee for enactment. I was pleased to be an original cosponsor of S. 2500, which is urgently needed to prevent an unfair burden of liability to fall upon conscientious Federal workers.

The Supreme Court's decision in Westfall versus Erwin exposed thousands of Federal and postal employees to the threat of protracted personal tort litigation for claims arising from every decisionmaking within the scope of their employment. This decision overturned a longstanding rule that Federal employees had broad immunity from personal liability for common law torts arising in the context of routine Government operations.

I have been informed of numerous cases where relatively low level Federal employees have been subjected to enormous personal liability for claims arising from their conscientious performance of their Government duties. The Justice Department's Civil Division testified to the Judiciary Committee that the problems arising from the Westfall decision will not only give rise to enormous insecurity and uncertainty among Federal employees, but that it will place an enormous litigation burden on the Department.

H.R. 4612 provides a sound and just solution to this problem. It amends the Federal Tort Claims Act to make a lawsuit against the United States under the FTCA the exclusive remedy for persons alleging injury by Government negligence. Thus, the legislation provides plaintiffs a fair and adequate remedy for their claims, while at the same time relieving our Federal civil servants from the threat of suffering crushing personal liability for merely performing their governmental duties.

In this case, Congress has acted promptly and responsibly to fashion a just and effective legislative remedy for a serious problem. Again, I commend Senator GRASSLEY for his leadership in moving this legislation and I urge my colleagues to support enactment of H.R. 4612.●

UNANIMOUS-CONSENT AGREEMENT—S. 2749

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate takes up the conference report to accompany S. 2649, the base closing bill, there be a 40-minute time limitation thereon; that it be equally divided and controlled between and by Mr. NUNN and Mr. WARNER.

Mr. STEVENS. There is no objection, Mr. President.

The PRESIDING OFFICER. If there is no objection, it is so ordered.

AMENDMENT OF THE PUBLIC HEALTH SERVICE ACT

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5471.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5471), to amend the Public Health Service Act to revise the authority for the regulation of clinical laboratories.

There being no objection, the Senate proceeded to consider the bill.

Mr. ADAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. ADAMS. Mr. President, in November of last year, I read the article in the Wall Street Journal written by Walt Bogdanich pointing out that between 20 and 40 percent of Pap smear tests results are inaccurate.

I took a particular interest in the article because it chronicled the plight of a woman from my State, Barbara Arbuckle, who had cervical cancer which went undetected because of Pap smear tests which were not properly performed. As she told the committee in her stirring testimony, she had to undergo a radical hysterectomy and can no longer bear children. While Barbara's case is tragic, she is a lucky woman—she is still alive.

When I went home that night after the hearing, my thoughts turned to my family. I could not help but ask myself: "What if this happened to my wife or one of my daughters?" While I shuddered at this thought, it brought home to me the fact that the problem in our Nation's clinical laboratories is not some remote technical problem for someone else to solve. Rather, it is a problem which strikes close to home for all of us and it is our responsibility to do something about it.

The Clinical Laboratory Improvement Amendments of 1988 are a solid stride forward in our effort to insure that the people of this Nation receive quality medical treatment and services. The bill guarantees that patients and physicians will be able to rely on test results. It accomplishes this objective:

By establishing national standards which must be met;

By requiring laboratories to institute internal quality control program; and

By requiring laboratories to participate in ongoing proficiency testing.

It also imposes tough new standards in the area of cytology aimed at preventing the kind of tragedy suffered by Barbara Arbuckle. It achieves this objective:

By establishing workload limits to insure that cytotechnologists no longer work under sweat shop conditions which have produced so many unnecessary errors;

By guaranteeing that no evaluation is rendered on inadequately prepared Pap smear slides and that physicians are notified when they have submitted an improperly prepared slide to a laboratory for evaluation;

By requiring laboratories to implement strong internal quality control systems aimed at insuring that Pap smears are properly evaluated; and

By insuring that cytotechnologists maintain adequate skills by participating in an ongoing proficiency testing program.

Let me point out that this bill represents a hard fought compromise between competing forces. While many compromises had to be made on both sides of the aisle, at no time was the underlying objective of quality compromised in any way.

I must admit that I am disappointed that the provisions relating to direct billing and the prohibition of self-referral, which were approved by the Senate Labor Committee, are no longer a part of this bill. I believe that the ethical questions underlying both of these issues can and must be addressed. While I would prefer to see these issues resolved by private professional organizations, it is clear to me that these organizations are either unwilling or unable to do so in a manner which protects the public as well as the integrity of the professions they represent. For this reason, I believe that we must revisit these issues in the next Congress and I welcome the opportunity to work with all interested parties in achieving a fair and equitable resolution.

I think that it is important to understand that while Senator MIKULSKI and I introduced this bill, it represents the efforts of other Members of this body. In particular, Senators COHEN and LEVIN made tremendous contributions to the Senate's understanding of this issue and how to resolve it. They held important hearings which laid much of the groundwork for this bill and many of the provisions contained in the bill reflect their draftsmenship.

I also want to thank the ranking minority member of the Senate Labor Committee, Senator HATCH, for the perseverance he has displayed throughout the negotiations on this bill. This bill would never have come before the Senate for consideration had it not been for the efforts of Senator HATCH. He, and his very capable staff, have provided us with excellent counsel since the committee first took up the bill and played an instrumental role in forging an acceptable compromise.

I would like to thank my good friend, Senator MIKULSKI, for her leadership and commitment to this issue. No one has done more to protect and promote the health of women in this country than Senator MIKULSKI and I am thankful for having an opportunity to work with her in this cause.

H.R. 5471, the Clinical Laboratory Improvement Amendments of 1988, is being passed tonight and a great deal of credit goes to the Senator from Maryland, Senator MIKULSKI, and the Senator from Maine, Senator COHEN. I am certain they may want to say just a few brief things about this bill also, but to me, Mr. President, it represents a very important personal moment in the Senate because in this article I read about a young woman in the city of Seattle named Barbara Arbuckle who had three tests all showing that she did not have cervical cancer or the beginning of it. They were inaccurate, Mr. President.

As a result of that, this lady had to have a full-scale radical hysterectomy. In many ways she was lucky in that she survived. She may never have any children but she did not lose her life. That led to establishing a working relationship with the Senators I have mentioned, with doctors, and with others throughout the entire country to establish a set of standards for medical laboratories testing not only of Pap smear but of other clinical testing procedures to be certain that we were accurate.

Specifically, this bill sets national standards. It requires laboratories to institute internal quality control programs. It establishes a certificate program. One thing I must admit, Mr. President, that I wish were in the bill—and I am not disappointed it is not—but I think maybe the profession themselves will take care of it. I hope they will. That is the provisions relating to direct billing for Pap smear tests which were not in this. One of the reasons for that is people do not understand that Pap smears are read individually by individual cytotechnologists, and very often these people are overworked and required to work long hours so that the prices will go lower and lower. We wanted doctors to not put that pressure on these laboratories.

I am hopeful that the ethical questions involved—doctors' referral to their own laboratories, direct billing—can and will be addressed in the future. I believe we must revisit these issues in the future.

But in particular, this is an evening of great accomplishment for Senator MIKULSKI, myself, Senator COHEN, and many others on that committee that have worked to establish a national system of certification of laboratories for testing, not only of Pap smears but of other very important clinical tests.

I thank the majority leader for giving me this time tonight to express my support for this legislation and for the fact that the President has indicated he will sign it. We will do something about these laboratories so that all will have quality results and we will have no more tragedies as happened to Barbara Arbuckle.

Ms. MIKULSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I rise in support of the legislation.

Mr. President, over the past several months we have seen very frightening reports about problems in the medical laboratory testing industry. Let me give you a few examples:

A 23-year-old woman from Seattle had her Pap smear misread not once, but three times; now she cannot have children—and she was one of the lucky ones—she lived.

A laboratory in Ohio failed to detect a baby's genetic condition, easily treated by a special diet; without that diet, the baby developed mental retardation.

In Arizona, a man died because two different labs misread a biopsy slide of a malignant tumor.

Unfortunately, Mr. President, I could go on and on about lives that have been devastated or lost as a result of laboratory errors. Many of these stories came out in a hearing Senator ADAMS and I held in January of this year.

What we found out is that these laboratories—which are responsible for so many lives—are not being adequately regulated.

That is the purpose of the bill we are considering today: To hold laboratories to the type of standard that will not allow such mistakes to happen.

The goal of the bill is even simpler—to save lives and end undue suffering.

Let us take the Pap smear as an example. If you ask just about any woman what the one test is that they always have done, without fail, every year, when they go to their doctor, they will say the Pap smear.

When properly conducted, the Pap smear test is reliable, accurate, and essential for early detection of cervical cancer. However, recent reports of misdiagnoses of cervical cancer or precancerous conditions—estimated to occur in 20 to 40 percent of Pap smears—have sent a chilling message—do not trust the results of this test on which so many women's lives depend.

What I learned from our hearing is that there are too many labs out there where overworked, undersupervised technicians are making too many errors. These errors can mean the difference between life and death. We cannot allow this practice to continue.

We have seen many reports in the media about the problems with medical labs. Yet what are the recommendations that come out of these reports? That patients should take more responsibility, by asking their doctors questions about where they are sending their tests. That is the solution proposed by many "experts."

Well, I think this is absurd. When I get on an airplane, no one expects me to ask the mechanic if the sparkplugs are OK. Why should I have to ask my doctor if the laboratory is reliable? This is not a patient's responsibility—the burden falls on the doctors and the laboratories.

Yet it is clear that these doctors and laboratories are not living up to these responsibilities. That is why this bill calls for tougher standards for everyone who might endanger a patient by misdiagnosing a test result—including doctors in their own offices.

In closing, I would like to acknowledge my colleague, Senator BROCK ADAMS. We have been absolutely equal partners in the crafting of this bill, and it has been a great privilege to work with him. His concern for the health of women, and for the public health in general, has been inspiring to all of us who have worked with him.

Senator HATCH has also played a very important role in getting this bill to the floor and through the Senate. Both he and Senator KENNEDY have helped us navigate this bill through waters which at times seem very treacherous, and I have greatly appreciated his willingness to work out a good, strong bill.

Senators COHEN and LEVIN have also been actively involved in this issue, and we have exchanged many ideas in crafting this legislation. The hearings which they held in the Government Affairs Committee produced very useful findings which contributed to the shaping of this bill, and I greatly appreciate their contribution.

Mr. President, we spend $20 billion a year on laboratory tests—$5 billion in doctor's offices alone. We must hold the entire industry to a standard that will allow us to trust the results of these tests. This is not too much to ask.

Mr. President, let me summarize by saying this: A Senator has many honors, and many pleasures, but probably the greatest honor and pleasure that a Senator can have is helping to save lives. Tonight, working on a bipartisan basis, we are able to present to the American people a legislative framework to save lives. That legislative framework is very straightforward. It makes sure the laboratories of the United States of America will be safe, will be accurate, and will be reliable.

I thank my colleagues, Senator BROCK ADAMS, and Senator BILL COHEN. I express appreciation for the able assistance of Senator ORRIN HATCH, and our respective staffs, for doing this because what we essentially have is a legislative framework that will ensure inspections, adequate workload, and be able to do it within the framework of State responsibilities.

We got into this because the media brought it to our attention. We just did not want to be media sheep. We were not going to be media sheep. We dug into this. I saw again that we found out in Arizona a man died because two different labs misread a biopsy for a malignant tumor. A laboratory in Ohio failed to detect the baby's genetic condition, easily treated by a special diet, but because of misdiagnosis—therefore, without that diet—that baby is now mentally retarded.

We wanted to make sure that those situations did not happen again.

For we women there is the particular headache of laboratory tests being in error 20 to 40 percent of the time with false positives, but that is our best test to prevent cervical cancer.

Mr. President, I just want to conclude my remarks by thanking the majority leader for bringing this legislation up so when we talk about the 100th Congress, we hit a 10 with this legislation.

Mr. COHEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Mr. COHEN. Mr. President, I would like to take this opportunity to commend my colleagues, from the State of Washington, BROCK ADAMS and BARBARA MIKULSKI from Maryland, for the really heroic work that they performed in working this compromise out not only between the various committees of the Senate but also in the House legislation. There was serious opposition to some of the major provisions in the bill that were developed over here, and it was through their very constructive efforts that we were able to put together a package which now has the broad bipartisan support of both Houses and indeed the President of the United States.

Some might ask why do we even need this legislation? There are several answers to it. Basically, lab tests have become an integral part of our health care system. In fact in 1987, $3.1 billion lab tests were performed in this country. And over $20 billion was spent for lab tests. The Federal Government picked up roughly 40 percent of the costs through Medicare and Medicaid.

As my colleagues have indicated, most of us who go to doctors and have these tests performed are sent out in some cases to either hospital labs or independent labs, sometimes the physicians will perform these tests in their own offices. We ascribe some measure of infallibility to those tests. What my colleagues have described is that we have an erroneous test where you can have weeks of unnecessary treatment, financial stress, and emotional and physical strain where there has been a false positive reading or you can have a life-threatening condition that goes undetected as they have described until too late when you cannot reverse the disease.

I know from personal experience a family member who experienced that. So, how serious is the problem? The fact is we really do not know. We have been led into this investigation by some top reporters, Lea Thompson from channel 4 I believe, and also Walt Bogdavich of the Wall Street Journal. But the fact is we do not know how serious it is. We have seen reports. We have heard stories. We know of personal experiences, but the dilemma we face is you can have no legislation without facts and we cannot get the facts without legislation. That is what prompted this particular bill.

What we do know is that the current Federal regulatory scheme that governs clinical laboratories is seriously flawed to provide inadequate protection against inaccurate testing, and HCFA, the agency that is supposed to be overseeing the implementation and the compliance with our regulations, has not been nearly aggressive enough in performing that particular function.

I think the legislation is a good compromise. It does not contain everything I would like. It does put all labs under one standard, however. All laboratories—independent, in a hospital, in the physicians' offices—are covered.

There are certain waivers that can be granted, but the waivers can be granted to all the labs under the same circumstances. When the test to be performed is relatively simple, when the margin for error is very small and if errors should occur, the risk of serious illness is also quite small. Waivers can be granted.

I would prefer a different approach, but in the interest of getting this legislation to the floor and passed, I agreed to this.

As my colleague from Washington pointed out, many of us would prefer to see a direct billing scheme set up. It was strongly opposed by the AMA, and we have found that very small costs are being charged by laboratories; and when it goes through physicians, they dramatically increase, and we end up, as taxpayers, helping to foot the bill. We have to look at that closely.

It will be strenuously opposed in the coming years, but I think Congress has a large responsibility to look into it.

Mr. President, I am very pleased that the Senate is considering today the Clinical Laboratory Improvement Amendments of 1988. This bill constitutes an important revision of the Federal regulatory program governing clinical laboratories. It is a reform that is long overdue, and one that will go far in assuring the quality and accuracy of medical testing that is being performed throughout the United States. It will strengthen the enforcement against those labs that are not performing tests accurately, and enhance the accountability of privately accredited laboratories and extend Federal standards to thousands of labs that are not now regulated by the Federal Government.

Medical testing is a critical component in the delivery of health care. An estimated 3 to 5 billion laboratory tests are performed each year in the United States. Lab testing has also become a very large industry and a costly part of our Nation's health care. By some estimates, for example, over $20 billion was spent last year for lab tests, with the Federal Government picking up the tab for about 40 percent of this amount through Medicare and Medicaid payments.

Whether it be a simple throat culture taken in the family doctor's office, a test to determine the level of cholesterol, or a test to detect the AIDS virus, we, as patients, have come to depend on the accuracy of medical tests that are routinely ordered by our physicians. Most patients never doubt the accuracy of their lab tests and may, indeed, believe that such tests are infallible. Other patients believe that they could not fall victim to faulty test results, because labs performing tests are subject to Government regulations and must comply with standard designed to ensure quality in testing.

However, today, two decades after enacting the Clinical Laboratories Improvement Act, it has become abundantly clear to the Congress that we have, for too long, been operating under a false sense of security in believing that all is well with how we oversee lab quality. What we have learned, and what this legislation is designed to achieve, is that the Federal Government must do much more in order to protect the public from inaccurate and unreliable medical test results.

I have spent a great deal of time evaluating the adequacy of our current Lab Regulation Program. Last year, in response to disturbing revelations in the press concerning practices followed by some labs in screening Pap smears, my staff on the Subcommittee on Oversight of Government Management began an extensive investigation into how clinical laboratories are regulated. The investigation, conducted with the cooperation and assistance of my good friend, Senator LEVIN, chairman of the Oversight Subcommittee, as well as the subcommittee's 2 days of oversight hearings on the Health Care Financing Administration's management of the Clinical Lab Program, revealed that major gaps and deficiencies exist throughout the regulatory system governing laboratories. Many of these problems have direct, adverse effects on the quality of medical testing. The current regulatory scheme is an uneven one, with multiple levels of enforcement. Different standards exist for labs operating across State lines than for labs that are Medicare-reimbursed, so that labs performing the same types of tests on patients may be subject to very different standards of quality and enforcement.

Very troubling indeed is how poorly the Health Care Financing Administration, within the Department of Health and Human Services, has performed its duties in regulating laboratories that are under its jurisdiction. The Agency has ignored problems that have existed in this regulatory program for years, frequently promising improvements only to then delay taking action. While I have been encouraged by recent rules that have been offered by HCFA, they do not go far enough in some key areas of lab regulation. Pap smear testing and physician office lab testing are major areas, for example, in which HCFA has for too long refused to take the lead in proposing changes that would improve the system of lab regulation.

Also very troubling is the fact that the Federal Government does not have a national system on which it can decide whether to flunk or pass a lab for its performance of a particular test, and in many cases, the Government now lacks the tools or the will to take action against labs that are shown to perform lab tests poorly. Under the current system, these labs can just keep on performing tests, often with the Federal Government paying for the tests with Medicare or Medicaid dollars.

Equally disturbing is the fact that the Federal Government has given over its responsibility to inspect and grade labs to private sector organizations without ensuring that labs accredited by these groups remain ultimately accountable to the Federal Government and subject to enforcement when failing to meet quality standards. While these private sector organizations perform a valuable function for the Federal Government, greater oversight by the Federal Government of the accreditation process is necessary.

The subcommittee's investigation also pointed out the need to address the growing trend of lab testing that is being performed in physician office labs—labs that are not now regulated by the Federal Government. Our hearings provided compelling testimony on how testing is being performed inaccurately in these office labs—which now number between 100,000 and 200,000 nationwide—and how voluntary standards are not enough to ensure quality testing in these facilities.

Faulty lab testing is far too often a problem in the reading of Pap smears, a laboratory test that is crucial to the early detection of cervical cancer in women—a disease that spreads rapidly and accounts for 7,000 deaths annually in the United States. Practices engaged in by some labs are piecemeal pay for reading Pap smears, average workloads exceeding two or three times the maximum limits recommended by professional societies, lab workers analyzing slides with little or no supervision, and the use of Pap smear screening as a loss leader to get other lab business from doctors are severely jeopardizing accuracy in Pap smear testing. Such practices are contributing to an alarmingly high error rate in Pap smear results nationwide and must not be tolerated.

The bill before us today addresses many of these problems and goes far in strengthening the regulation, oversight, and enforcement of laboratory quality and practices. I am very pleased that the bill includes many provisions of S. 2473, the Quality in Medical Testing Act of 1988, that I introduced with Senator LEVIN earlier this year.

The pending legislation will establish a more unified system of lab regulation, removing the duplicative and confusing patchwork of laws and rules that now exist. Thus, labs operating only in one State and physicians' office labs, which are currently exempt from the Clinical Laboratories Improvement Act, will be subject to certification under the bill. The bill mandates quality standards for labs that are designed to assure that labs will consistently perform tests in a valid and reliable manner, and includes specific standards that must be met by labs which screen Pap smears, such as workload limitations for individuals who screen Pap smears, criteria for rescreening Pap smears, and other quality control procedures that must be followed. It also requires the development of a proficiency testing program to monitor and grade how well labs are actually performing tests.

The bill strengthens the enforcement mechanisms that have been sorely lacking in the Federal lab program and authorizes several studies that will provide the Federal Government with useful data on the links between lab quality, regulation, and patient health. The bill also retains the valuable involvement of the private sector in accrediting laboratories and administering proficiency testing programs, but infuses more oversight and enforcement authority by the Federal Government over the labs that are accredited by private sector groups. These changes will enhance the accountability of these accrediting bodies as well as individual labs that are accredited by the private sector organizations.

Mr. President, this legislation presents a workable balance of strict enforcement against those labs that perform faulty testing while recognizing that it may be appropriate to establish different standards for laboratories, based on the types of tests performed in the lab. I believe that it is more logical and appropriate to regulate labs on the basis of the types of tests they perform, rather than where the test, or how many tests, are performed, as has been the existing approach to lab regulation. My bill, S. 2473, would have based all lab regulation on the types of tests and test methodologies used in laboratories, and would have allowed standards governing a lab to correspond to the types of testing performed. I am pleased that the bill before us incorporates this concept by requiring the Secretary of HHS to take into consideration the types and characteristics of tests performed by labs when developing standards.

This legislation is a major step forward in lab reform. As with any reform affecting an industry of this magnitude, there are some elements with which I am not completely satisfied. I would have preferred retention of a requirement for direct billing by the laboratory to the patient or third party payors, or some modification of a direct billing requirement, as was contained in my bill. I also have some concerns about the inclusion of a certification waiver for labs that perform simple tests as set forth in the bill because I believe that all labs should be subject to minimum Federal standards. However, the waiver provision, as drafted, is properly a very narrow exception that applies only to labs performing simple examinations and procedures that are determined by the Secretary to have a statitistically insignificant risk of an erroneous result and should be construed narrowly by the Secretary, so that the vast majority of labs do not escape some degree of oversight and necessary regulation.

Mr. President, undoubtedly, a strong case exists for improvements in the Federal regulation of laboratories and I believe that the changes included in this bill are necessary to enforce true quality in testing. While I recognize that quality practices and performance exists throughout much of the lab industry, vigilant and effective oversight by the Federal Government of lab procedures and performance is necessary to ensure that the patient and the Government are getting the most for their money from the lab tests they purchase. If the Federal Government is not doing enough, much more than money is at stake. All too often, the very lives of our citizens can be.

I want to commend the Senate Labor and Human Resources Committee, especially Senators MIKULSKI, ADAMS, HATCH, and KENNEDY, for their diligent and important work on developing and moving forward this legislation. I also want to thank my colleague and chairman of the Oversight Subcommittee, Senator LEVIN, for his cooperation and valuable participation in the extensive investigation and hearings that we held on this issue. I am very pleased that the cooperative efforts on both sides of the aisle in this body, as well as the efforts of Congressman DINGELL, who introduced this legislation in the House of Representatives, have combined to produce a swift response to the problems that came to the attention of the Congress this year.

I also commend the two members of my staff who conducted a year-long investigation. We had two public hearings in the Government Affairs Committee. They did tremendous research in putting this set of hearings together for the committee, and I want to commend them publicly.

Mr. LEVIN. Mr. President, I am very pleased that the Senate is considering today much-needed legislation to replace the existing confusing patchwork of Federal regulations for clinical laboratories with a single statute to improve the accuracy and safety of medical laboratory testing.

Senator COHEN has led the way in the effort to improve our Nation's lab testing system. He and his staff have devoted an incredible amount of time and energy to this issue. Due to Senator COHEN's concern over the current state of the quality of medical lab testing, the Senate Subcommittee on Oversight of Government Management, which I chair and on which Senator COHEN is the ranking Republican, held extensive hearings on the Federal management of medical labs and the accuracy of lab testing in March of this year. As a result of the thorough preparation done by the Senator from Maine and his staff, our hearings touched on a great variety of aspects of the lab testing issue. The information gained from these hearings has played a major role in the lab testing legislation in both the House and the Senate. It was an exceptional job, and I commend Senator COHEN and his staff for their valuable work.

In response to the issues raised at our hearing, I joined Senator COHEN in drafting comprehensive lab testing legislation, S. 2473. I am pleased that the legislation the Senate is now considering, introduced by Senators ADAMS and MIKULSKI, is similar to S. 2473 and addresses many of the problems raised at our medical labs hearings.

The current law in the area of lab safety is flawed and the dire need for legislation in this area was brought home to me during the subcommittee's hearing on the issue. Two witnesses at our hearing were unfortunate illustrations of the life and death consequences of erroneous lab tests. In one case, a young mother of two was the victim of not one, but two erroneous Pap smear tests. This young mother died of cervical cancer which, oftentimes, if detected early enough, has a high survival rate. In the other case, a young couple was led to believe, by a faulty lab test, that their unborn child would be free of Tay-sachs syndrome, a hereditary disease which results in death within 2 to 5 years of birth. At the time of our hearing, this 2-year-old child was blind, completely paralyzed, and being fed through a tube.

Examples such as these highlight the personal tragedy of erroneous lab results and shake our confidence in even the most routine medical tests. To restore our confidence in the medical testing system, we need to bring all clinical labs under a regulatory scheme that is effective without being needlessly burdensome. The legislation now before us goes a long way toward accomplishing this goal.

The legislation before us establishes a more uniform and comprehensive system of regulation for all clinical laboratories. Currently, there are three different sets of regulations covering medical labs—some labs are covered by one set of regulations, some by another, and some are covered by both. This legislation replaces that hodge-podge with a clear set of regulations covering all labs.

Moreover, the legislation before us fills an important gap. Under existing law, labs located in physicians offices [POL's] are exempt from regulation. This exemption covers approximately 80,000 to 100,000 labs in the country. Only 13 States, including my own State of Michigan, regulate POL's to some extent. At our hearings, sound arguments were made in favor of requiring these labs to adhere to the same requirements as other labs. Patients should be able to expect the same level of accuracy from a lab test done by their personal physician as they do from those conducted in a hospital or a large commercial lab. I am pleased that this legislation addresses this problem by covering all labs, while remaining sensitive to the special needs of small physician offices. If a lab performs tests which have an insignificant risk of an erroneous result and these tests pose no reasonable risk of harm if performed inaccurately, the labor may apply for a waiver from the Federal requirements. This strikes a reasonable balance between the interests of the patient and the realities of the resources of small labs.

Another area of concern addressed by this legislation, is the high error rate currently being seen in Pap smear reviews. The College of Obstetricians and Gynecologists estimate that between 20 to 40 percent of all Pap smear tests are read as false negatives. Earlier in my statement, I described the very human tragedy which can result from such faulty readings. Our medical lab hearings revealed that it is not unusual for cytotechnologists, the lab workers who read Pap smear tests, to be pressured to review between 200 or 300 slides a day—a rate which may significantly increase the risk of inaccuracies. The American Society for Cytotechnology [ASCT] has recommended that no more than approximately 80 gynocologic slides be examined by a cytotechnologist within a 24-hour period. The measure before us would require the Secretary of Health and Human Services to set up national standards regarding workload guidelines and maximum workload limits for cytotechnologists. It also beefs up the rescreening program for cytotechnology labs.

Other notable features of this legislation include the provisions aimed at strengthening proficiency testing programs to monitor and insure the accuracy of testing in clinical labs and at increasing the role of the Federal Government in the oversight and accreditation of labs. Currently, the proficiency testing program and the accreditation process are run primarily by accepted private organizations. It is time to restore a larger degree of Federal Government responsibility and accountability in this area.

I commend Senators ADAMS and MIKULSKI for their role in the effort to fill the gaps in the current regulatory scheme by bringing this legislation before the full Senate. My friend from Michigan, Representative DINGELL, also deserves great recognition for his effective and prompt action in sending his lab testing bill, H.R. 5471, to the Senate.

Mr. ADAMS. Mr. President, I reiterate my appreciation to Senator COHEN and Senator HATCH for their cooperation, and of course to Senator MIKULSKI and the members of our staff.

The PRESIDING OFFICER. The question is on the third reading of the bill.

The bill was ordered to a third reading, was read the third time, and passed.

Mr. ADAMS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. COHEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE EXECUTIVE CALENDAR

Mr. BYRD. Mr. President, I inquire of my good friend Senator STEVENS, the acting Republican leader, as to whether or not the following nominations have been cleared on his side of the aisle: the three nominations on page 6 under Department of State; the nominations at the bottom of that page under U.S. International Development Cooperation Agency; on page 10, two nominations under the Judiciary and one nomination under Federal Retirement Thrift Investment Board; on page 11, two nominations under Federal Retirement Thrift Investment Board, one nomination under U.S. Postal Service.

Mr. STEVENS. Mr. President, I say to my good friend that on page 6, starting with Department of State, we have Nos. 870, 871, and 872.

Mr. BYRD. Mr. President, I suggest to my colleague and friend that we simply do the two nominations under the Judiciary on page 10; the three nominations under Federal Retirement Thrift Investment Board on pages 10 and 11; and the one nomination under U.S. Postal Service on page 11.

Mr. STEVENS. Mr. President, the calendar items that my good friend, the distinguished majority leader, has mentioned are cleared on this side, and we will be happy to proceed.

Mr. BYRD. I thank the distinguished Senator.

EXECUTIVE SESSION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the two nominations under the Judiciary on page 10 of the Executive Calendar; the three nominations under Federal Retirement Thrift Investment Board; and the one nomination under U.S. Postal Service; that those nominations be considered en bloc, confirmed en bloc, the motion to reconsider be laid on the table en bloc, and that the President be immediately notified of the confirmation of the nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

Without objection, the nominations are considered en bloc and confirmed en bloc.

The nominations considered and confirmed en bloc are as follows:

THE JUDICIARY

Eric H. Holder, Jr., of the District of Columbia, to be an associate judge of the Superior Court of the District of Columbia for the term of 15 years, vice Virginia L. Riley, deceased.

Mildred M. Edwards, of the District of Columbia, to be an associate judge of the Superior Court of the District of Columbia for the term of 15 years, vice Frank E. Schwelb, elevated.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

John David Davenport, of Oklahoma, to be a member of the Federal Retirement Thrift Investment Board for a term of 3 years. (Reappointment.)

The following-named person to be a member of the Federal Retirement Thrift Investment Board for a term of 2 years: Stephen E. Bell, of Virginia, vice V. Shannon Clyne, term expired.

The following-named person to be a member of the Federal Retirement Thrift Investment Board for a term of 3 years: James H. Atkins, of Arkansas, vice Robert A. G. Monks, term expired.

U.S. POSTAL SERVICE

Bert H. Mackie, of Oklahoma, to be a Governor of the U.S. Postal Service for the term expiring December 8, 1997, vice J.H. Taylor McConnell, term expiring.

NOMINATION OF JOHN DAVID DAVENPORT

Mr. NICKLES. Mr. President, I speak today to give my endorsement to the nomination of John David Davenport as a member of the Federal Retirement Thrift Investment Board.

This role, as a trustee and fiduciary for the new Federal Employee's Thrift Savings and Investment Program, is a very important responsibility in our Federal Government's operations. Mr. Davenport, along with the other members of the Board will have the management and oversight responsibility for directing the administration and investment of what is projected to be billions of dollars of Federal employees' retirement funds. Some private sector analysts predict this fund will become the largest pool of privately invested capital in the United States. It is imperative that the members of the Thrift Board have the highest degree of personal and professional integrity and have proven expertise in these types of investment activities.

As you know from reviewing Mr. Davenport's resume, he is extremely well qualified for the position. Given his experience and background, it is hard for me to imagine there could be a more qualified candidate to serve on the Board.

Mr. Davenport has more than 25 years of experience in the retirement investment business. As a businessman, he has been responsible for founding and building two separate tax advantaged insurance and investment operations which grew into nationally known multibillion-dollar financial services enterprises. He recently started his third venture, Landmark Financial Corp. Headquartered in Oklahoma City, which will be offering tax advantaged savings and investment plans to customers of our Nation's banks and thrifts. This too is a new concept.

Mr. Davenport also has extensive service in the investment business outside of public employee pension plans. For example, he is the majority stockholder and chairman of the Quail Creek National Bank in Oklahoma City.

I am sure that his experience in the investment and insurance business has given Mr. Davenport a keen understanding of the importance to all Americans of lifetime retirement decisions. Federal employees place a great deal of trust in those who oversee their pension plans. I know that the thousands of Federal employees in Oklahoma covered by FERS and those in the rest of the Nation will be confident about the safety and quality of their retirement investment with a man of Mr. Davenport's character and ability overseeing their pension.

Through his work in the public employee benefits field, and his service to public employees he has demonstrated a dedication and commitment to public employees. I urge the Senate to approve Mr. Davenport's nomination to an additional term on the Federal Retirement Thrift Investment Board.

NOMINATION OF BERT H. MACKIE

Mr. NICKLES. Mr. President, I speak today to give my strong endorsement of Bert Mackie to be a member of the Postal Service Board of Governors.

The U.S. Postal Service is a $38 billion agency with nearly 800,000 employees and it handles more than 147 billion pieces of mail each year out of nearly 40,000 branches and stations. If it were a private corporation, it would rank eighth among the Fortune 500. Thus, being named to the Board of Governors to the Postal Service is similar to being named to the board of directors of one of biggest companies in America, except in this case, this is an entity that touches the lives of each and every American in a very real and meaningful way.

I have known Bert Mackie for a long time, and he is an individual of the highest degree of integrity and ability. He would be a real asset to the Nation and the Postal Service and I am extremely pleased that the President has nominated him, and the Senate Governmental Affairs Committee has so expeditiously acted on the nomination.

Bert's substantial experience in business will help him to make wise policy choices for the Postal Service. As a leader in the Oklahoma banking industry, he has participated in the full range of business decisions from developing capital improvement budgets to labor relations. Because his experience is in banking, he brings to the job strong financial management skills. These skills will be very important in dealing with many of the issues presently facing the Postal Service. I am particularly confident that Bert's financial management background will greatly assist him in dealing with the complex financial management tasks facing the Board of Governors.

Additionally, as we all know, the postal employees are the backbone of the Postal Service. It is their dedication and hard work which makes the mail system work so effectively. Bert's experience with the employer-employee relationship will assist him in the crucial task of overseeing the Postal Service's work force.

Because Bert has lived in Enid which is surrounded by many small communities, he understands the importance of mail service to small towns and rural areas. He knows that in a small town the local post office is often the center of social activity and he knows that rural mail service is often a lifeline for many people. As a businessman, he understands the impact of mailing costs on business operations.

I look forward to Bert sharing his dedication and his commitment to public service with the Postal Service and the Nation.

LEGISLATIVE SESSION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

The PRESIDING OFFICER. Without objection, it is so ordered.

VETO MESSAGE ON S. 1259

Mr. BYRD. Mr. President, I ask unanimous consent that the veto message on S. 1259 be considered as having been read, that it be printed in the RECORD and spread in full upon the Journal, and that no further action occur on the message pending a request by the majority leader, after consultation with the Republican leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

The veto message is as follows:

To the Senate of the United States:

I am returning herewith without my approval S. 1259, a bill to grant a right of access across a portion of Buffalo National River Park to a landowner whose property is adjacent to the Park. Located in northwest Arkansas, the Buffalo National River was established in 1972. Buffalo National River, with both swift-running and placid stretches, is one of the few remaining unpolluted free-flowing rivers in the lower 48 States.

Through various efforts in recent years, the landowner has sought a shortcut across Park lands for access to a public road near his land, as an alternative to the means of access across private lands that he already enjoys. The landowner claimed unsuccessfully in court that certain Park land constituted a public road on which he and other members of the public were entitled to travel. The United States District Court for the Western District of Arkansas found that he had "no right to use a part of the Buffalo River National Park lands for access to his residence." *Jones* v. *Gould and the Department of the Interior,* Civil No. 83-3097 (1983), 12. Upon appeal of the case, a unanimous three-judge panel of the United States Court of Appeals for the Eighth Circuit affirmed the decision of the lower court, stating that "the district court's finding that no public road existed is correct." *Jones* v. *Gould and the Department of the Interior,* 741 F. 2d 220 (1984), 221.

Preservation of America's natural heritage requires careful management of our parklands by the Department of the Interior. The Federal Government has a duty to preserve and protect our National Parks for the benefit and enjoyment of all Americans—both those now living and future generations. This bill permits the special roadway access for the private landowner to diminish the scenic, historic, and other values for which the Park was established, as long as it does not do so "unreasonably." The Park lands across which the landowner seeks access are partly wooded and partly old pastureland that is now returning to its natural condition as a forest. Special roadway access across this land would inhibit its return to that natural condition.

If we begin with S. 1259 to establish by private bills special roadway privileges in our National Parks for the convenience of private landowners fortunate enough to have sufficient influence to secure passage of such bills, we will have begun to squander our national treasure.

Accordingly, I cannot approve S. 1259.

RONALD REAGAN.

THE WHITE HOUSE, *October 11, 1988.*

INDEFINITE POSTPONEMENT OF CALENDAR ORDERS NO. 945 AND NO. 1018

Mr. BYRD. Mr. President, I ask unanimous consent that the Calendar Orders No. 945 and No. 1018 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, if the Chair will indulge me momentarily, I think we will have some other matters cleared.

THE CALENDAR

Mr. BYRD. Mr. President, I inquire of my friend, Mr. STEVENS, as to whether or not the calendar orders numbered 961, 963, 969, 972, 1029, 1033, 1035, 1113, 1114, 1128, and 1137 have been cleared on his side of the aisle.

Mr. STEVENS. Mr. President, I might say to my good friend, the majority leader, that with the exception of Calendar Order No. 1113, we appear to agree on those items.

It is my understanding that one Senator has one amendment that is being discussed at the present time on Calendar No. 1113, which is H.R. 4612.

Mr. BYRD. Very well.

Mr. President, I ask unanimous consent that the foregoing calendar orders with the exception of Calendar Order No. 1113 be considered en bloc, that all amendments where shown be agreed to, that if there are amendments to the preambles, they be agreed to, and that Senators who have statements in relation to any of the foregoing measures have those statements appear in the Record at the appropriate place as though read, and that the various measures be passed and the motion to reconsider be laid on the table en bloc.

Mr. STEVENS. Mr. President, reserving the right to object, and I shall not object, Mr. President, the distinguished leader mentioned 1128.

Mr. BYRD. I did, yes, 1128.

Mr. STEVENS. Yes. That was on our list also.

There is no objection, Mr. President.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I will repeat those numbers for the convenience of the clerks. They are Calendar Orders 961, 963, 969, 972, 1029, 1033, 1035, 1114, 1128, and 1137.

LEWIS AND CLARK NATIONAL HISTORIC SITE

The Senate proceeded to consider the bill (S. 1704) to authorize the establishment of the Lewis and Clark National Historic Site in the State of Montana, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

SECTION 1. FINDINGS.

The Congress finds that—

(1) the site at which the historic Lewis and Clark Expedition commenced in St. Louis, Missouri, and the site at which the expedition terminated at Fort Clatsop in Oregon have been recognized as sites of historic significance on the Lewis and Clark National Historic Trail; and

(2) the historic significance of the travels of Lewis and Clark on the High Plains and their portage around the Great Falls of the Missouri requires additional recognition and interpretation.

SEC. 2. ESTABLISHMENT.

(a) Lewis and Clark National Historic Trail Interpretive Center.—That to further the public's understanding and provide appropriate interpretation of the scope and accomplishments of the Lewis and Clark Expedition, within the State of Montana and along the Lewis and Clark National Historic Trail, the Secretary of Agriculture (hereinafter in this Act referred to as the "Secretary") is authorized to establish the Lewis and Clark Historic Trail Interpretive Center (hereinafter in this Act referred to as the "Center"). The Secretary shall establish the Center upon the transfer by the State of Montana to the United States of the lands described in subsection (b) and such additional easements and other rights as the Secretary deems necessary to ensure adequate public access to the Center.

(b) Map.—The center shall consist of those lands, located in the vicinity of Great Falls, Montana, donated by the State of Montana, not to exceed fifty acres, as generally depicted on the map entitled "Boundary Map, Proposed Lewis and Clark National Historic Trail Interpretive Center," dated June 1980. The map shall be on file and available for public inspection in the offices of the Chief, United States Forest Service, Department of Agriculture, and the State of Montana Department of Fish, Wildlife, and Parks.

(c) Reversion of Lands.—Any lands or portions of lands granted to the Secretary by the State of Montana for use in connection with the Center shall revert to the State of Montana if, at any time, the Secretary uses such lands for any purpose other than those authorized under this Act.

SEC. 3. ADMINISTRATION.

(a) Authorization.—The Secretary shall administer the Center in accordance with this Act and the laws, rules, and regulations applicable to the national forests in such manner as will best provide for the interpretation of the scope and accomplishments of the Lewis and Clark Expedition, along the Lewis and Clark National Historic Trail within the State of Montana. In no event shall the Center be used for purposes other than those provided for by this Act.

(b) Plan.—Within two years after the establishment of the Center, the Secretary shall prepare and submit to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the Senate, a plan for the development and interpretation of the Center. Such plan shall include but not be limited to provisions for—

(1) interpretation to the public of available historic resources, documents, and artifacts associated with the Lewis and Clark Expedition, and

(2) development of facilities for public use and enjoyment of the area.

(c) Donations.—Nothwithstanding any other provision of law, the Secretary may accept donations of funds, property, or services from individuals, foundations, corporations, or pubic entities for the purpose of providing services and facilities which he deems consistent with the purposes of this Act.

(d) Cooperative Agreements.—In administering the Center, the Secretary is authorized to enter into cooperative agreements with the State of Montana, or any political subdivision thereof, for the rendering, on a reimbursable basis, of rescue, firefighting, and law enforcement services and cooperative assistance by nearby law enforcement and firefighting departments or agencies. The Secretary is also authorized to enter into cooperative agreements with other Federal agencies, and with State or local public agencies for the development and operation of facilities and services in furtherance of the purpose of this Act. The Secretary is encouraged to develop, in conjunction with the State of Montana, a cooperative management plan for the entire Giant Springs Park which will enhance the general public's opportunity to use and enjoy the Center as well as the nearby historical sites, and other State and Federal lands.

(e) Cooperating Association.—The Secretary is authorized and directed to enter into an agreement with the Portage Route chapter of the Lewis and Clark Heritage Foundation or a similarly affiliated organization to provide educational and interpretive materials to the public that highlight the travels of Lewis and Clark, High Plains Indians, explorers, or other historical features of the area, that are compatible with the purposes of the Center. Such agreement shall include but not be limited to each of the following:

(1) Provisions requiring the Foundation to obtain and maintain its status as a nonprofit tax-exempt organization.

(2) A provision permitting the Secretary to have access to the documents and records of the Foundation that involve the Center.

(3) The Foundation shall agree to return to the Center the profits earned from the sale of educational and interpretive materials.

(4) Minimum operating requirements and procedures for the sale of educational and interpretive materials at the Center.

(5) A procedure to settle disagreements between the Foundation and the Secretary.

(6) Reasonable rent and maintenance costs for the use of an area within the Center.

(7) Other items of mutual agreement.

The Secretary may terminate the agreement for good cause.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

(a) In General.—Except as provided in subsection (b), there is hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act, including such sums as may be necessary for the planning and designing of, and site preparation for, the Center and associated structures and improvements.

(b) Construction of Interpretive Center.—There is hereby authorized to be appropriated not more than $3,500,000 for the construction of the Lewis and Clark National Historic Trail Interpretive Center and associated structures and improvements.

(c) Any new spending authority described in subsection (c)(2)(A) of section 401 of the Congressional Budget Act of 1974 which is provided under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

SEC. 5. MISSOURI RIVER WILD AND SCENIC RIVER.

Subsection (g) section 203 of the Act approved October 12, 1976 (90 Stat. 2327, 2329), is amended as follows:

(1) Strike out "except" in paragraph (1)(G) and insert in lieu thereof "including".

(2) Strike out "National Park Service" in paragraph (2) and insert in lieu thereof "Bureau of Land Management".

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill to authorize the establishment of the Lewis and Clark National Historic Trail Interpretive Center in the State of Montana, and for other purposes."

TRANSFER OF CERTAIN LANDS IN MONTANA

The bill (S. 2457) to transfer certain lands in the State of Montana and to relieve the Town of Neihart, MT, of any obligation to pay consideration for lands conveyed to it under the authority of the Small Tracts Act, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 2457

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TRANSFER OF LANDS IN MONTANA.

(a) Transfer.—Notwithstanding any other provision of law, the Secretary of Agriculture is authorized and directed to convey by quitclaim deed, without consideration except for administrative costs associated with the preparation of title and legal description, including the administrative costs of any necessary surveys, to the community of Neihart, Montana, a parcel of land comprising approximately 3.1928 acres, known as the Neihart Cemetery, as identified on a map entitled Plot of Neihart Cemetery, dated 1972, and filed together with a legal description of such lands, in the office of the Chief of the Forest Service, United States Department of Agriculture. Such map and legal description shall have the same force and effect as if included in this Act, except that correction of clerical and typographical errors in such legal description and map may be made by the Secretary of Agriculture.

(b) RIGHT OF REVERSION.—Title to any real property acquired pursuant to subsection (a) shall revert to the United States if the community attempts to convey or otherwise transfer ownership to any portion of such property to any other party, attempts to encumber such title, or permits the use of any portion of such property for any purpose incompatible with the use of the property for cemetery purposes.

SEC. 2. RELIEF OF TOWN OF NEIHART, MONTANA.

Notwithstanding any requirements for payment of consideration for conveyances of land made pursuant to the Act of January 22, 1983 (16 U.S.C. 521d), the Town of Neihart, Montana, is relieved of any and all obligations to pay consideration to the United States for the conveyance of lands described in a deed dated January 2, 1986, from the United States of America to the town of Neihart, Montana, which deed is recorded on Reel 179, Page 373, of the land records of Cascade County, Montana. The United States hereby releases the town of Neihart, Montana, from any liability arising from the nonpayment of consideration for the said conveyance of lands.

ACQUISITION OF LANDS FOR CANAVERAL NATIONAL SEASHORE

The bill (H.R. 3559) to authorize and direct the acquisition of lands for Canaveral National Seashore, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

MANAGEMENT OF CERTAIN PUBLIC LANDS IN THE STATE OF MICHIGAN

The bill (H.R. 4375) to improve the management of certain public lands in the State of Michigan, was considered, ordered to a third reading, read the third time, and passed.

DOMINICK V. DANIELS POSTAL FACILITY

The bill (H.R. 2985) to designate the facility of the U.S. Postal Service located at 850 Newark Turnpike in Kearny, NJ, as the "Dominick V. Daniels Postal Facility," was considered.

Mr. LAUTENBERG. Mr. President, I am pleased that the Senate is today considering a bill to designate a Postal Service facility in Kearny, NJ, as the "Dominick V. Daniels Postal Facility," in memory of former Congressman Daniels, who died in July 1987. I was the sponsor of the Senate version of this bill.

Congressman Daniels represented the 14th District of New Jersey for 18 years, from 1958 to 1976. Congressman Daniels made improved health and safety standards in the workplace his major concerns. He was successful in bringing compensation to injured workers and in creating Federal job safety rules where States failed to provide any. Under his leadership, the principles of Federal supervision over occupational health and industrial safety were established. He was instrumental in the passage of key labor legislation, including the Comprehensive Employment and Training Act [CETA], and the Occupational Safety and Health Act [OSHA]. Congressman Daniels also was involved in efforts to see that schools and colleges strictly complied with the 1954 Supreme Court decision against racial segregation.

The voters in his district showed their appreciation by sending Congressman Daniels back to Congress every 2 years until his retirement. This tribute is particularly fitting because Congressman Daniels was instrumental in the development of the Kearny facility.

Mr. President, I urge my colleagues to support this bill and clear it for the signature by the President.

The bill (H.R. 2985) was ordered to a third reading, read the third time, and passed.

PROTECTION AND MANAGEMENT OF ARCHAEOLOGICAL RESOURCES ON FEDERAL LANDS

The bill (S. 1985) to improve the protection and management of archeological resources on Federal land, was considered.

Mr. DOMENICI. Mr. President, imagine the hue and cry that would rise across our Nation if someone, in the dead of night, dug up Plymouth Rock and carted it off for his own private collection.

The public would be outraged, and justifiably so.

Plymouth Rock holds an important place in our national historic and cultural heritage. It belongs to each of us.

Well, Mr. President, similar events are occurring daily across our land, and the hue and cry has yet been heard. I'm talking about the theft of our Nation's archaeological resources. It's time that we sound the alarm before our cultural resources—which are the common heritage of all Americans—are lost forever.

Archaeological resources are like endangered species: once they are destroyed, they are gone forever.

On public lands across our Nation, pot hunters and other archaeological looters are digging through ancient Indian pueblos, historic Spanish shipwrecks, and the graves of Civil War soldiers and Native Americans, then stealing artifacts for a collection or sale.

For example, an Arizona man was recently caught after he tried to sell a 1,350-year-old mummy of a Hohokam Indian infant to an undercover Federal agent for $35,000. This man had found the mummy—wrapped in a deer skin with several baby animal pelts, a small basket, and an unfinished woven mat—in a cave on National Forest land. The man said that, since he found the mummy and artifacts on Federal land, he thought they were his to keep.

What makes this case unusual is the fact that he was caught, convicted, and sentenced to jail for his crime. Most thefts of archaeological resources on public lands are not detected in time to apprehend the culprits. And in the rare instance of an arrest, the thieves are hardly ever punished.

After holding oversight hearings in 1985 on the problem of looting of archaeological artifacts on public lands, Senators WALLOP and BINGAMAN and I requested that the General Accounting Office [GAO] review the problem.

The GAO report was issued last December. It found that approximately 44,000 of the 136,000 archaeological sites in the Four Corners States of New Mexico, Arizona, Colorado, and Utah have been looted. In a 5½ year period ending in 1986, the Bureau of Land Management [BLM], the Forest Service, and the National Park Service documented 1,222 looting incidents in the four States.

Yet GAO concluded that these three agencies lack accurate documentation on the extent of looting. Agency records do not reflect the full extent of looting, either the current level of looting or its cumulative effects. There are no agencywide directives specifying under what circumstances a looting incident report should be prepared. In many instances, no report is prepared.

GAO determined that some of the factors in the continued looting of archaeological resources were the low probability of prosecution, the public attitude that looting was not really a crime, and the lack of education about the significance of archaeological sites.

In addition, GAO noted that BLM, the Forest Service, and the Park Service lack sufficient staff, funds, and knowledge of the resources they are supposed to protect to carry out effectively their cultural management responsibilities.

GAO concluded that the three agencies' efforts have not been extensive enough to cause commercial looters to fear being caught, and thus cease looting.

Archaeological resources located on Federal land have been protected since 1906, when Congress enacted the Antiquities Act. The Antiquities Act provides that qualified institutions may be issued permits for the excavation of archaeological sites. It also provides criminal penalties for unauthorized excavations.

However, in the late 1970's, the courts invalidated a crucial section of the Antiquities Act, thus creating the need for stronger legislation.

In 1979, I wrote the Archaeological Resources Protection Act [ARPA]. ARPA toughened the laws protecting archaeological resources on Federal lands by imposing severe criminal penalties for unauthorized excavation, damage, destruction, or removal of archaeological resources. It provides fines up to $100,000 and five years in jail for criminal violations. It also allows Federal land managers to impose civil penalties for violations and grant rewards for information on violations.

Mr. President, the Senate now has before it S. 1985, a bill that I introduced that would amend ARPA to improve the protection and management of archaeological resources on Federal lands.

The recently released GAO study found that the BLM, Forest Service, and the National Park Service have surveyed less than 6 percent of their lands in the Four Corners States for cultural resources and violations of laws protecting them. Only 7 percent of the estimated 2 million archaeological sites in the Four Corners States have been recorded. Most of the archaeological surveys performed in recent years have been conducted to obtain clearances for development projects and, therefore, are not necessarily directed at those areas having the greatest archaeological resource potential.

S. 1985 would strengthen the provisions of ARPA by directing BLM, the Park Service, the Forest Service, and other Federal agencies to develop plans to survey the lands under their control to determine the nature and extent of archaeological resources on those lands.

This bill would also require the agencies to prepare a schedule for surveying those areas that are likely to contain the most important archaeological resources.

The land management agencies could make more efficient and effective use of the funds and staff resources that are available for protecting their archaeological sites if they had more information on the number, location, and relative significance of these sites.

If the agencies do not locate and protect their most important archaeological resources, looters may destroy these resources before the agencies identify them.

Finally, S. 1985 directs the agencies to develop processes for reporting suspected incidents of looting of archaeological resources on their lands.

Improved documentation of looting activity would provide the land management agencies with better data to use in deciding the amount of funds and staff to request for, and allocate to, the protection of sites and to the apprehension and prosecution of looters.

The provisions of S. 1985 were supported by the GAO in its report on the looting of archaeological resources.

Mr. President, we need to strengthen our laws. There is no doubt about that. But it isn't sufficient to simply strengthen existing statutes. We need to provide adquate resources and direction to the land management and law enforcement agencies to ensure that the laws are enforced.

Last year, the Congress provided significant increases in the BLM and Park Service budgets for cultural resource management.

Unfortunately, the President's budget for fiscal year 1989 proposed cuts in funding for cultural resource management. At the Forest Service, the proposed cut was $2 million, or 13 percent. BLM cultural resource management programs were proposed to be decreased by 5 percent. Three Park Service programs for cultural resources management were slated for elimination.

The administration's proposed funding reductions were unjustified. Archaeological looting is reaching crisis proportions. We need to provide our land management agencies with adquate resources to confront this crisis.

I am pleased that the Congress agreed with me and rejected the administration's proposals.

The Interior Appropriations Act just signed by the President increases the Forest Service cultural resources management budget by 13 percent over its current level, bringing it to $15.9 million.

The act continues the three Park Service cultural resources management programs that the administration proposed to eliminate. These programs will be funded at their current level of $49 million.

The Interior Appropriations Act also increases BLM's budget for cultural resources management by $400,000 above the President's request, thus restoring it to its base level of $6.6 million.

Last year, at my urging, Congress also earmarked $1 million in the Department of Justice budget to be used to enhance efforts to identify and prosecute individuals who loot archaeological sites on Federal land.

Mr. President, it is clear that the Federal Government's efforts to protect archaeological resources on the lands under its control have been woefully inadequate. We stand by while our Nation's archaeological heritage is stolen and sold as quaint curios. Just as we would not stand idly by and allow the theft of Plymouth Rock, we can no longer allow this to continue.

The failure to protect our Nation's archaeological resources constitutes a breach of faith by the Federal Government. As the trustee of these lands for the American people, the Federal Government has an obligation to assure that these resources are not destroyed or stolen by those who have no respect for the past.

I urge the Members of the Senate to keep faith with the Americans of the past and the Americans of the future and support S. 1985 to extend greater protection to the archaeological resources of our Nation.

The bill (S. 1985) ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 1985

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Archaeological Resources Protection Act of 1979 (Public Law 96-95; 16 U.S.C. 470ii) be amended to add the following new section after section 13:

"SEC. 14. The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority shall—

"(a) develop plans for surveying lands under their control to determine the nature and extent of archaeological resources on those lands;

"(b) prepare a schedule for surveying lands that are likely to contain the most scientifically valuable archaeological resources; and

"(c) develop documents for the reporting of suspected violations of this act and establish when and how those documents are to be completed by officers, employees, and agents of their respective agencies.".

EXCHANGE OF CERTAIN FEDERAL MINING RIGHTS FOR CERTAIN LANDS IN NEW MEXICO

The Senate proceeded to consider the bill (S. 2264) to authorize the Secretary of the Interior to exchange certain Federal mining rights for certain lands in New Mexico, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

SECTION 1. The Secretary of the Interior is authorized to exchange certain lands as identified for disposal in the Southern Rio Grande Plan Amendment for certain mining claims on lands withdrawn for the National Aeronautic and Space Administration and New Mexico A&M College (now New Mexico State University) under P.L.O. 3685 and P.L.O. 2051. Once the United States determines the claims are valid under existing law, the exchange authorized by the preceding sentence shall to be made on an equal value basis as determined by an independent appraisal.

SEC. 2. (a) The Secretary of the Interior is authorized and directed to make available for exchange the Federal interests in the lands described in subsection (b) for the private interests in the lands described in subsection (c). The exchange shall be made in a manner consistent with applicable provisions of law and shall be on the basis of equal value as provided in section 206 of the Federal Land Management Act of 1976 (43 U.S.C. 1716).

(b) The Federal interests to be made available for exchange under this section are those lands in sections 14, 22, 23, 26, and 35 of T 23 S, R 2 E, New Mexico Principle Meridian which are encompassed by P.L.O. 2051.

(c) The private interests to be exchanged pursuant to this section are those lands owned by New Mexico State University in sections 19, 29, 30, and 31 of T 22 S, R 4 E, and section 6 of T 23 S, R 4 E, New Mexico Principle Meridian. The exchange may be made regardless of the reverter provision contained in the patent of those lands to the Regents of the Agricultural College of New Mexico and shall not be deemed to constitute the basis for reversion.

(d) Lands not acquired by New Mexico State University pursuant to this section and which are encompassed by P.L.O. 2051 may be disposed of, when available for disposition, by sale to or exchange with the State of New Mexico, New Mexico State University, or other public entities in accordance with the Recreation and Public Purposes Act (43 U.S.C. 869 et seq.): Provided, however, That New Mexico State University is given a right of first refusal on any proposed disposition.

(e) None of the lands transferred to New Mexico State University pursuant to this section shall be sold by New Mexico State University. All such lands shall be used for the purposes of promoting directly or indirectly educational, scientific, and research activities, including those activities currently authorized under P.L.O. 2051, or promoting the utilization of the natural geothermal resources located within the boundaries of the lands transferred. In the event that the lands transferred to New Mexico State University pursuant to this section are used for any purpose other than those for which conveyance is authorized by this subsection, title to that portion of the lands upon which there is an unauthorized use shall immediately revert to the United States without the necessity for further action to accomplish the reversion of title to the United States.

(f) Notwithstanding any other provision of law or court order, the Secretary of the Interior, if the Secretary determines it is necessary and appropriate for the purpose of consummating a conveyance of lands or interest therein under this Act, is hereby authorized and directed to revoke P.L.O. 2051 or any portion thereof necessary to consummate the transaction authorized by this Act.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

DESIGNATION OF CERTAIN WILDERNESS AREAS

The bill (H.R. 5395) to designate the Sipsey River as a component of the National Wild and Scenic Rivers System, to designate certain areas as additions to the Sipsey Wilderness, to designate certain areas as additions to the Cheaha Wilderness, and to preserve over thirty thousand acres of pristine natural treasures in the Bankhead National Forest for esthetic and recreational benefit of future generations of Alabamians, and for other purposes; was considered.

Mr. HEFLIN. Mr. President, today I am pleased to see the final passage of the Sipsey Wild and Scenic River, and Alabama Wilderness Additional Act relative to the environmental, recreational, and commercial use of the William F. Bankhead National Forest, and the Talledega National Forest. The bill we are passing today, H.R. 5395, is the companion bill to S. 2838, as amended and passed by this body on October 5, 1988. This bill is identical in every way to the Senate-passed bill.

This bill represents a great step toward enhancing the National Forest System in Alabama. I take this opportunity to thank and give credit where credit is due to the individual that has worked to see the final passage of this legislation, Congressman RONNIE FLIPPO. I think it is most appropriate for the Senate to pass the House-passed Flippo wilderness bill. I also thank Congressman FLIPPO's administrative assistant, Frank Toohey, for all of his hard work. I also thank Joe J. Brown, forest supervisor in the State of Alabama, for without his assistance we would not be here today.

Mr. President, I am hopeful that this bill will serve as a basis for reaching a balanced approach to both rounding out the Alabama Wilderness System and releasing areas to nonwilderness management. Wilderness areas are fast disappearing and we must endeavor to preserve these areas for the enjoyment of our children and our children's children.

This legislation would add 13,260 acres to the existing Sipsey Wilderness and 710 acres to the Cheaha Wilderness. The Sipsey Wilderness addition does not include the Gum Pond Camp Area, the Gum Pond Cemetery, or the Gum Pond Road in the northeast portion of the wilderness area. This area is indicated on the map of record. In addition, the legislation would designate approximately, 5,085 acres of the heavily forested river canyons as part of the National Wild and Scenic Rivers System. As the Senate knows, the purpose of the Wild and Scenic Rivers Act is to preserve free-flowing rivers which, with their immediate environment, possess particularly remarkable scenic, recreational, geologic, fish and wildlife, historical, cultural, or other similar values.

Several changes were made to the original bill which were introduced in both the House and the Senate. These changes included two primary section changes and deletions. The bill earlier provided for the construction of a lake and recreational facilities in the northeast portion of the Bankhead National Forest. As a result of having to conform with the House committee amended version of the bill, this provision has been amended to provide for a study of the proposed lake rather than immediate construction of the lake. I will continue to work for this very needed lake in the northeast portion of the Bankhead National Forest.

The other change deleted the section which provides for the use of horse-drawn vehicles in the Sipsey Wilderness. I understand that this section duplicates the Secretary of Agricultrue's current authority and is not needed in the bill. I further understand that both the House and Senate Agriculture Committees agree on this interpretation. These horse-drawn vehicles have been a historically common practice in the Sipsey Wilderness. I am hopeful the Secretary will continue to allow this practice to continue.

Several important provisions remain from my introduced bill. Much concern was raised regarding the spread of the southern pine beetle within the wilderness area. The Senate Agriculture Committee report on S. 2838, a bill identical to H.R. 5395, explains this provision. The following is the committee's explanation of this section:

> This section provides that the Secretary of Agriculture may take such measures as may be necessary to control fire, insects, including the southern pine beetle, and disease within the Sipsey Wilderness, Sipsey Wilderness addition, including areas within the designated boundaries of the Wild and Scenic Rivers, which are consistent with the Wilderness Act of 1964, and U.S. Forest Service Policy. This section also calls for the Secretary to evaluate the dangers and potential dangers created by the southern pine beetle and other insects within the Bankhead National Forest and adjacent State and private lands. If his evaluation of such dangers and potential dangers justifies a review of present policy about such insects within the wilderness, then he shall review such policy.

This bill still gives authority to the Forest Service to take the necessary measures to control the spread of this infamous pest and to study U.S. Forest Service policy with respect to the beetle. Alabama has already lost thousands of acres of prime forest land to the pine beetle, and if such steps are not taken, the pristine wilderness area could be lost forever.

Also, early on in the discussion of wilderness expansion, there were concerns raised about the need to prevent possible contamination of the Sipsey River since it fed the water supply for residents of Birmingham. To ensure the protection of high water quality, I have directed the Secretary of Agriculture to monitor the water in the Bankhead National Forest flowing toward and into Lewis Smith Lake.

As I mentioned earlier, many people have had a role in the passage of this bill. Fred Clark, of my staff, has worked diligently to ensure that this bill is acceptable to all interested parties. In my judgment, his efforts have been crucial to gaining the compromises which have allowed us to reach this point.

Mr. President, the recreational and leisure opportunities of wilderness areas are unsurpassed by any manmade attractions. I am hopeful the Senate will pass this bill. I believe this legislation reasonably addresses the environmental, recreational, and economical utilization of the Bankhead National Forest and the Talladega National Forest.

The bill (H.R. 5395) was ordered to a third reading, read the third time, and passed.

EGG RESEARCH AND CONSUMER INFORMATION ACT AMENDMENTS

The bill (H.R. 5318) to amend the Egg Research and Consumer Information Act to limit the total costs that may be incurred by the Egg Board in collecting producer assessments and having administrative staff, to eliminate egg producer refunds, and to delay the conducting of any referendum by egg producers on the elimination of such refunds, was considered, ordered to a third reading, read the third time, and passed.

ORDER TO INDEFINITELY POSTPONE CERTAIN ITEMS

Mr. BYRD. Mr. President, I ask unanimous consent that calendar orders numbered 1037 and 1039 be indefinitely postponed.

Mr. STEVENS. There is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

GUS J. SOLOMON UNITED STATES COURTHOUSE

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1000.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5007) to designate the U.S. Courthouse at 620 Southwest Main Street, Portland, OR, as the "Gus J. Solomon United States Courthouse."

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3658

(Purpose: To allow States, at their discretion, to use highway trust fund apportionments for on-the-job-training programs)

Mr. STEVENS. Mr. President, I send an amendment to the desk on behalf of Senator DOMENICI and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], on behalf of Mr. DOMENICI, proposes an amendment numbered 3658.

Mr. STEVENS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

"SEC. . Notwithstanding any other provisions of law not to exceed one-fourth of one per centum of funds apportioned to a State under sections 104(b), 130, 144 and 152 of title 23, United States Code, shall be available to carry out section 140(b) of title 23, United States Code upon a request by the State highway department."

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3658) was agreed to.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 5007), as amended was passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill as amended, was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TITLE AND POSSESSION OF CERTAIN LAND

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be discharged from further considered of H.R. 5059, a bill to quiet title and possession with respect to a land claim in Sumter County, AL; that the Senate proceed to its immediate consideration; that it be read the third time; passed; and that the motion to reconsider be laid on the table.

Mr. STEVENS. There is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 5059) was passed.

Mr. BYRD. Mr. President, I ask unanimous consent that Calendar Order No. 965, the Senate companion bill, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

REMOVAL OF CERTAIN RESTRICTIONS ON LAND ACQUISITION FOR ANTIETAM NATIONAL BATTLEFIELD

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee of Energy and Natural Resources be discharged from further consideration of H.R. 4554, a bill to remove certain restrictions on land acquisition for Antietam National Battlefield; that the Senate proceed to its immediate consideration; that the bill be read a third time; passed; and that the motion to reconsider be laid on the table.

Mr. STEVENS. There is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 4554) was passed.

Mr. BYRD. Mr. President, I ask unanimous consent that Calendar Order No. 964 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

ZUNI-CIBOLA NATIONAL HISTORICAL PARK

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 981.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4182) to authorize the establishment of the Zuni-Cibola National Historical Park in the State of New Mexico, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3659

Mr. BYRD. Mr. President, on behalf of Mr. BINGAMAN and Mr. DOMENICI, I send a substitute amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. BYRD), for Mr. BINGAMAN, for himself, and

Mr. DOMENICI, proposes an amendment numbered 3659.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Zuni-Cibola National Historical Park Establishment Act of 1988".

SEC. 2. ESTABLISHMENT OF PARK.

(a) ESTABLISHMENT.—In order to preserve and protect for the benefit of present and future generations certain nationally significant historical, archeological, cultural, and natural sites and resources associated with the Zuni Tribe, and in order to assist members of the Zuni Tribe in preserving and interpreting their tribal culture, there is hereby established the Zuni-Cibola National Historical Park. The park shall consist of lands with respect to which the Secretary of the Interior has accepted a leasehold pursuant to section 3 of this Act.

(b) EFFECTIVE DATE.—This section shall take effect on the date of publication by the Secretary, pursuant to section 3 of this Act, of a notice that the Secretary has accepted a leasehold interest that meets the requirements of this Act.

(c) TERMINATION.—This section shall terminate and shall be ineffective 24 months after the date of enactment of this Act unless prior to the end of such 24-month period the Secretary has published a notice of acceptance of a leasehold pursuant to section 3 of this Act.

SEC. 3. ACQUISITION OF LEASEHOLD.

(a) AUTHORITY OF SECRETARY.—If, no later than 18 months after the date of enactment of this Act, the Zuni Tribe, after consultation with the Bureau of Indian Affairs, offers to the Secretary a leasehold interest in trust lands of the Zuni Indian Reservation, in New Mexico, meeting the requirements of this Act, the Secretary is authorized and directed to accept such leasehold on behalf of the National Park Service and to publish in the Federal Register a notice of such acceptance.

(b) REQUIREMENTS.—the Secretary shall accept a leasehold under subsection (a) of this section if such leasehold—

(1) would continue for a period of at least 99 years;

(2) would require no rentals or other payments by the United States to the Zuni Tribe or any other party;

(3) would be applicable to no more than 800 acres of lands within the Zuni Indian Reservation that the Director of the National Park Service, after consultation with the Zuni Tribe and the Bureau of Indian Affairs, has determined to be necessary and adequate to carry out the purposes specified in section 4(a) of this Act; and

(4) would not be inconsistent with any of the provisions of this Act.

(c) MAP.—As soon as possible after publication of a notice of acceptance pursuant to subsection (a) of this section, the Secretary shall prepare a map of the park and shall provide copies of such map to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources and the Select Committee on Indian Affairs of the Senate.

(d) BOUNDARY ADJUSTMENTS.—The Secretary, after consultation with the Advisory Commission and with the agreement of the Zuni Tribe, may make minor revisions in the boundary of the park. Prior to making any such revision, the Secretary shall provide notice of the proposed change in the boundary to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources and Select Committee on Indian Affairs of the Senate. No such revision shall take effect sooner than 60 days after such notice has been provided to such Committees. After the effective date of any such revision, the Secretary shall prepare a revised map of the park, copies of which shall be provided to such Committees.

SEC. 4. MANAGEMENT.

(a) PURPOSES.—(1) The Secretary, acting through the Director of the National Park Service, and in consultation with the Advisory Commission established pursuant to section 6 of this Act, shall manage the lands covered by any leasehold accepted by the Secretary pursuant to section 3 as a unit of the National Park System consistent with the provisions of this Act, and the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1 et seq.), as amended and supplemented, and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461), as amended.

(2) The Secretary shall protect, manage, and administer the park for the purposes of preserving the historical, archeological, natural, scientific, cultural, and other resources and values of the park and providing for the public understanding and enjoyment of the same in such a manner as to perpetuate these resources and values for future generations.

(3) In implementing this Act, the Secretary shall cooperate with the Zuni Tribe.

(b) JURISDICTION.—The Secretary is authorized to accept concurrent jurisdiction from the Zuni Tribe for the purpose of law enforcement.

(c) CONSULTATION—The Secretary, acting through the Director of the National Park Service, shall consult regularly with the Commission established pursuant to section 6 of this Act. The Commission shall advise the Secretary on the management and operation of the park.

(d) FEES.—All enrolled members of the Zuni Tribe shall be exempt from the payment of fees for admission into the park.

(e) TRAINING.—In furtherance of the purposes specified in subsection (a)(2), and after consultation with the Advisory Commission established by section 6, the Secretary is authorized to enter into cooperative agreements with the Zuni Tribe, its subordinate boards, committees and enterprises, and individual members of the Zuni Tribe for the purpose of providing training of Zuni tribal members in the interpretation, management, protection, and preservation of archaeological and historical properties and in the provision of public services on the Zuni Indian Reservation needed for the fulfillment of the purposes specified in subsection (a)(2).

(f) PREFERENCE.—To the extent feasible, the Secretary shall exercise existing authorities so as to give preference to employing qualified members of the Zuni Tribe in the development, interpretation, and management of the park and in carrying out other activities related to the park.

SEC. 5. FEDERAL CONSISTENCY.

(a) FEDERAL ACTIONS.—The head of any Federal agency conducting or supporting activities directly or indirectly affecting the park shall—

(1) consult with, cooperate with, and, to the maximum extent practicable, coordinate its activities with the Secretary and with the Advisory Commission; and

(2) conduct or support such activities in a manner which—

(A) to the maximum extent practicable is consistent with the standards and criteria established pursuant to the plan required in section 7 of this Act, and

(B) will not have a significant adverse effect on the resources or values of the park, as determined by the Secretary.

(b) PERMITS.—No Federal agency may issue any license or permit to any person to conduct any activity within the park or which could affect the resources or values of the park unless the Secretary determines that any such proposed activity within the park will be conducted in a manner consistent with the standards and criteria established pursuant to the plan required in section 7 of this Act and wherever occurring will not have a significant adverse effect on the resources or values of the park.

(c) LIMITATION.—The provisions of this section shall apply only with respect to activities begun and licenses or permits issued after the date of enactment of this Act.

SEC. 6. ESTABLISHMENT OF ZUNI-CIBOLA ADVISORY COMMISSION.

(a) ESTABLISHMENT.—(1) There is established within the Department of the Interior a commission to be known as the Zuni-Cibola National Historical Park Advisory Commission which shall advise regularly the Director of the National Park Service on the planning, management, and administration of the park. The Advisory Commission shall consist of the Governor of the Zuni Tribe, the Director of the National Park Service, the Secretary of the Smithsonian Institution, the State Historic Preservation Officer of New Mexico (or their designees), and three members appointed by the Secretary from recommendations made by the Governor of the Zuni Tribe.

(2) The Advisory Commission is authorized to employ an administration director who shall be appointed by the Advisory Commission and who shall be paid at a rate not to exceed the rate of pay payable for grade GS-12 of the General Schedule.

(3) The administrative director of the Advisory Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51, and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that the individual so appointed may not receive pay in excess of the annual rate of basic pay payable for grade GS-12 of the General Schedule.

(4) The Administrator of the General Services Administration shall provide to the Advisory Commission on a reimbursable basis such administrative support services as the Advisory Commission may request.

(b) TERMS.—The initial terms of members of the Advisory Commission appointed by the Secretary pursuant to subsection (a) shall be staggered, as determined by the Secretary, in order to assure continuity in the administration of the Advisory Commission. Thereafter the term shall be four years. Any member of the Advisory Commission appointed for a definite term may serve after the expiration of such member's term until a successor is appointed. A vacancy in the Advisory Commission shall be filled in the manner in which the original appointment was made. The Advisory Commission shall exist for the duration of a leasehold accepted by the Secretary pursuant to section 3, and any extensions or renewals thereof.

(c) EXPENSES.—The non-Federal members of the Advisory Commission appointed pursuant to subsection (a) while away from their homes or regular places of business in the performance of services for the Advisory Commission, shall be allowed travel and all other related expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(d) CHAIR.—The Governor of the Zuni Tribe shall be the Chair of the Advisory Commission. Other officers of the Advisory Commission shall be elected by a majority of the members of the Advisory Commission to serve for terms established by the Advisory Commission.

(e) Meetings.—The Advisory Commission shall meet at the call of the Chair or a majority of its members. Consistent with the public meeting requirements of the Federal Advisory Committee Act, the Advisory Commission shall from time to time meet with persons concerned with park issues relating to the Zuni Tribe.

(f) APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT.—Except with respect to any requirements for reissuance of a charter and except as otherwise provided in this Act, the provisions of the Federal Advisory Committee Act shall apply to the Advisory Commission established by this section.

SEC. 7. PARK PLAN.

(a) DEADLINE.—No later than 3 years after the date of the publication of a notice pursuant to section 3(a), the Secretary, acting through the Director of the National Park Service and in consultation with the Advisory Commission, shall develop and transmit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources and the Select Committee on Indian Affairs of the Senate, a general management plan for the park which shall describe the appropriate uses and development of the park consistent with the purposes of this Act.

(b) ELEMENTS.—The park plan shall include (but not be limited to) the following:

(1) Plans for implementation of a continuing program of interpretation and visitor education about the resources and values of the park.

(2) Proposals for visitor use facilities to be developed for the park.

(3) Plans for management of the natural and cultural resources of the park in order to carry out the purposes specified in section 4(a)(2) of this Act, with particular emphasis on the preservation and long-term scientific use of archeological resources, giving high priority to the enforcement of the provisions of the Archeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.) and the National Historic Preservation Act (16 U.S.C. 470 et seq.) within the park. The natural and cultural resources management plans shall be prepared in close consultation with the New Mexico State Historic Preservation Office and the Zuni Tribe and their traditional cultural and religious authorities.

(4) Proposals for training members of the Zuni Tribe in such fields as interpretation, management, and artifact curation.

(5) A plan to implement the provisions of section 8 of this Act so as to ensure the protection of the right of the Zuni people to practice traditional Zuni religious activities within the park boundaries in a manner consistent with the purpose and intent of the American Indian Religious Freedom Act of August 11, 1978 (42 U.S.C. 1996).

(6) Proposals for cooperative research and interpretive programs within the park to be carried out by the Zuni Tribe through its archeology program, with technical assistance from the National Park Service.

(7) Proposals for implementing the provisions of this Act relating to the operation and supply of park concessions by qualified Zuni-owned businesses.

SEC. 8. CULTURAL AND RELIGIOUS USES.

In furtherance of the American Indian Religious Freedom Act, the Secretary, upon the request of an appropriate official of the Zuni Tribe, may, from time to time, temporarily close to general public use one or more specific portions of the park in order to protect the privacy of religious activities in such areas by Indian people. Any such closure shall be made so as to affect the smallest practicable area for the minimum period necessary for such purposes. Not later than 7 days after the first day on which any such closure takes effect, the Secretary shall provide written notification of such action to the Energy and Natural Resources Committee and Select Committee on Indian Affairs of the United States and the Committee on Interior and Insular Affairs of the House of Representatives.

SEC. 9. DEFINITIONS.

As used in this Act—

(1) the term "Advisory Commission" means the Zuni-Cibola National Historical Park Advisory Commission established under section 6;

(2) the term "park" means lands constituting a Zuni-Cibola National Historical Park established under section 2;

(3) the term "park plan" means the general management plan developed pursuant to section 7; and

(4) the term "Secretary" means the Secretary of the Interior.

SEC. 10. ADDITION TO MASAU TRAIL.

The first sentence of section 202 of the Act of December 31, 1987 (P.L. 100-225; 101 Stat. 1540) is amended by striking out "and Gila Cliff Dwelling National Monument." and inserting in lieu thereof "Gila Cliff Dwellings National Monument, and Zuni-Cibola National Historical Park."

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary for the purposes of this Act.

Mr. BINGAMAN. Mr. President, this amendment, offered on behalf of myself and Senator DOMENICI, is an amendment in the nature of a substitute of H.R. 4182, the Zuni-Cibola National Historical Park Act of 1988. H.R. 4182 is identical to S. 2162, legislation which I introduced earlier this year. The substitute represents the efforts of the Senate and the House of Representatives to reach an acceptable compromise. I am proud to offer this compromise today.

This historic legislation will create the first national historical park in the United States located entirely on Indian trust lands. Consideration of such a park has been under discussion since 1960 when the Secretary of Interior declared the ancient Zuni City of Hawikku eligible for Registered National Historic Landmark status.

Since that time, the National Park Service has diligently studied the potential for including certain areas of the Zuni reservation in the National Park System. I am pleased that we are now able to introduce legislation that accomplishes the goals first set more than 20 years ago.

This legislation exemplifies a new spirit of cooperation between the Federal Government and Indian people. This may seem an unusual partnership, Mr. President, but a partnership we can be very proud of because it was formed by the Pueblo's interest in sharing its history and the government's interest in protecting the resources.

The national significance of the historic sites of the Zuni culture is well documented. In the many studies conducted by the National Park Service, Zuni has been identified as a major focal point of the Anasazi culture, as a crossroads of Southwestern events since 1539, and as one of the most important centers of ethnological studies in the United States.

The park will be a prime example of an Indian-owned area of national importance, containing cultural, historical, and archaeological sites and resources. It deserves to be preserved and properly interpreted.

The legislation will designate certain portions of the Zuni reservation as the Zuni-Cibola National Historical Park, to be managed by the Park Service as a unit of the National Park System.

The bill also establishes within the Department of the Interior an Advisory Commission which will consult with the Director of the Park Service in the planning, management, and administration of the park. The commission will be chaired by the Governor of Zuni. The Secretary of the Smithsonian, who has long been an advocate of this particular proposal will also be a member of the Commission. I also hope the legislation will eventually assist members of the Pueblo of Zuni in preserving and interpreting the Zuni culture, provide for appropriate development of the recreational resources of their lands and waters, and provide training opportunities for Indians in the interpretation and management of their cultural, historical, and recreational resources.

Mr. President, this legislation is unique in one other way. For most of our previous national parks, we have had to acquire private land, sometimes at tremendous cost to the Federal Government. This legislation does not involve the purchase of any private lands; moreover, it specifically authorizes the Secretary to acquire land only through donation.

In order to preserve and protect this rare natural treasure for the benefit of present and future generations. I urge my colleagues to support this legislation.

The PRESIDING OFFICER. Are there amendments to the substitute? If not, the question is on agreeing to the substitute amendment.

The amendment (No. 3659) was agreed to.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall it pass?

So the bill (H.R. 4182) was passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RELIEF OF HELEN LANNIER

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be discharged from further consideration of H.R. 1864, a bill for the relief of Helen Lannier; that the Senate proceed to its immediate consideration; that it be read the third time; passed; and that the motion to reconsider laid on the table.

Mr. STEVENS. There is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 1864) was passed.

WOMEN'S BUSINESS OWNERSHIP ACT OF 1988

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5050.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5050) to amend the Small Business Act to establish programs and initiate efforts to assist the development of small business concerns owned and controlled by women, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3660

Mr. BYRD. Mr. President, on behalf of Mr. BUMPERS, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. BYRD), on behalf of Mr. BUMPERS, proposes an amendment numbered 3660.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act, together with the following table of contents, may be cited as the "Women's Business Ownership Act of 1988".

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TITLE I—CONGRESSIONAL FINDINGS AND PURPOSES

SEC. 101. FINDINGS AND PURPOSES.

Section 2 of the Small Business Act (15 U.S.C. 631) is amended by adding at the end thereof the following new subsection:

"(h)(1) With respect to the programs and activities authorized by this Act, the Congress finds that—

"(A) women owned business has become a major contributor to the American economy by providing goods and services, revenues, and jobs;

"(B) over the past two decades there have been substantial gains in the social and economic status of women as they have sought economic equality and independence;

"(C) despite such progress, women, as a group, are subjected to discrimination in entrepreneurial endeavors due to their gender;

"(D) such discrimination takes many overt and subtle forms adversely impacting the ability to raise or secure capital, to acquire managerial talents, and to capture market opportunities;

"(E) it is in the national interest to expeditiously remove discriminatory barriers to the creation and development of small business concerns owned and controlled by women;

"(F) the removal of such barriers is essential to provide a fair opportunity for full participation in the free enterprise system by women and to further increase the economic vitality of the Nation;

"(G) increased numbers of small business concerns owned and controlled by women will directly benefit the United States Government by expanding the potential number of suppliers of goods and services to the Government; and

"(H) programs and activities designed to assist small business concerns owned and controlled by women must be implemented in such a way as to remove such discriminatory barriers while not adversely affecting the rights of socially and economically disadvantaged individuals.

"(2) It is, therefore, the purpose of those programs and activities conducted under the authority of this Act that assist women entrepreneurs to—

"(A) vigorously promote the legitimate interests of small business concerns owned and controlled by women;

"(B) remove, insofar as possible, the discriminatory barriers that are encountered by women in accessing capital and other factors of production; and

"(C) require that the Government engage in a systematic and sustained effort to identify, define and analyze those discriminatory barriers facing women and that such effort directly involve the participation of women business owners in the public/private sector partnership.".

TITLE II—DEMONSTRATION PROJECTS

SEC. 201. ESTABLISHMENT.

Subsection (c) of section 8 of the Small Business Act (15 U.S.C. 637(c)) is amended to read as follows:

"(c)(1) Subject to the requirements of paragraph (2), the Administration shall provide financial assistance to private organizations to conduct demonstration projects for the benefit of small business concerns owned and controlled by women.

"(2) No amount of financial assistance shall be provided pursuant to this subsection unless the recipient organization agrees, as a condition of receiving such assistance, that—

"(A) it will obtain, after its application has been approved but prior to the disbursement of funds pursuant to this subsection, cash contributions from private sector sources in an amount at least equal to the amount of funds such organization will receive under this subsection; and

"(B) it will provide the types of services and assistance to present and potential women owners of small business concerns as are described in paragraph (3). For the purposes of this subsection such concerns may be either 'start-up' businesses or established 'on-going' concerns.

"(3) The types of services and assistance referred to in paragraph (2)(B) shall include the following:

"(A) Financial assistance, which assistance shall include training and counseling in how to apply for and secure business credit and investment capital; prepare and present financial statements; manage cash-flow and otherwise manage the financial operations of a business concern.

"(B) Management assistance, which assistance shall include training and counseling in how to plan, organize, staff, direct, and control each major activity and function of a small business concern; and

"(C) Marketing assistance, which assistance shall include training and counseling in how to identify and segment domestic and international market opportunities; prepare and execute marketing plans; develop pricing strategies; locate contract opportunities; negotiate contracts; and utilize varying public relations and advertising techniques.

"(4) Applications for financial assistance pursuant to this subsection shall be evaluated and ranked in accordance with predetermined selection criteria that shall be stated in terms of relative importance. Such criteria and their relative importance shall be made publicly available and stated in each solicitation for applications made by the Administration. Such criteria shall include—

"(A) a criterion that specifically refers to the experience of the offering organization in conducting programs or on-going efforts designed to impart or upgrade the business skills of women business owners or potential owners;

"(B) a criterion that specifically refers to the present ability of the offering organization to commence a demonstration project within a minimum amount of time; and

"(C) a criterion that specifically refers to the ability of the applicant organization to provide training and services to a representative number of women who are both socially and economically disadvantaged.

"(5) The financial assistance authorized pursuant to this subsection shall be made by grant, contract, or cooperative agreement and may contain such provision, as necessary, to provide for payments in lump sum or installments, and in advance or by way of reimbursement.

"(6)(A) The Administration shall prepare and transmit a report to the Committees on Small Business of the Senate and House of Representatives on the effectiveness of all demonstration projects conducted under the authority of this subsection. Such report shall provide information concerning—

"(i) the number of individuals receiving assistance;

"(ii) the number of start-up business concerns formed;

"(iii) the gross receipts of assisted concerns;

"(iv) increases or decreases in profits of assisted concerns; and

"(v) the employment increases or decreases of assisted concerns.

"(B) The report required pursuant to subparagraph (A) shall cover at least a twenty-four-month period and shall be submitted not later than thirty months after the effective date of this paragraph.

"(7) This subsection shall cease to be effective after September 30, 1991.".

SEC. 202. TECHNICAL.

Subsection (b) of section 8 of the Small Business Act (15 U.S.C. 637(b)) is amended by—

(1) striking out "and" at the end of paragraph (14);

(2) striking out "public." at the end of paragraph (15) and inserting in lieu thereof "public; and" and

(3) by adding the following new paragraph:

"(16) to make studies of matters materially affecting the competitive strength of small business, and of the effect on small business of Federal laws, programs, and regulations, and to make recommendations to the appropriate Federal agency or agencies for the adjustment of such programs and regulations to the needs of small business.".

SEC. 203. AUTHORIZATION.

There is authorized to be appropriated $10,000,000 to carry out the demonstration projects required pursuant to section 201. The initial projects authorized to be financed by this title shall be funded by January 31, 1989. Notwithstanding any other provision of law, the Small Business Administration may use such expedited acquisition methods as it deems appropriate to achieve the purposes of this section, except that it shall ensure that all eligible sources are provided a reasonable opportunity to submit proposals.

SEC. 204. DEFINITION.

For the purposes of this title, the term "small business concern owned and controlled by women" means any small business concern—

(1) that is at least 51 per centum owned by one or more women; and

(2) whose management and daily business operations are controlled by one or more of such women.

TITLE III—ACCESS TO CAPITAL

SEC. 301. AMENDMENTS TO THE CONSUMER CREDIT PROTECTION ACT.

Subsection (a) of section 703 of the Consumer Credit Protection Act (15 U.S.C. 1691b(a)) is amended to read as follows:

"(a)(1) The Board shall prescribe regulations to carry out the purposes of this title. These regulations may contain but are not limited to such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith.

"(2) Such regulations may exempt from the provisions of this title any class of transactions that are not primarily for personal, family, or household purposes, or business or commercial loans made available by a financial institution, except that a particular type within a class of such transactions may be exempted if the Board determines, after making an express finding that the application of this title or of any provision of this title of such transaction would not contribute substantially to effecting the purposes of this title.

"(3) An exemption granted pursuant to paragraph (2) shall be for no longer than five years and shall be extended only if the Board makes a subsequent determination, in the manner described by such paragraph, that such exemption remains appropriate.

"(4) Pursuant to Board regulations, entities making business or commercial loans shall maintain such records or other data relating to such loans as may be necessary to evidence compliance with this subsection or enforce any action pursuant to the authority of this Act. In no event shall such records or data be maintained for a period of less than one year. The Board shall promulgate regulations to implement this paragraph in the manner prescribed by chapter 5 of title 5, United States Code.

"(5) The Board shall provide in regulations that an applicant for a business or commercial loan shall be provided a written notice of such applicant's right to receive a written statement of the reasons for the denial of such loan.".

SEC. 302. FORM SIMPLIFICATION AND PREFERRED FINANCING.

(a) Certified Loan Program.—Section 7 of the Small Business Act (15 U.S.C. 636) is amended by adding to subsection (a) the following new paragraph:

"(19) During fiscal years 1989, 1990, and 1991, in addition to the preferred lenders program authorized by the *proviso* in section 5(b)(7), the Administration is authorized to establish a certified loan program for lenders who establish their knowledge of Administration laws and regulations concerning the loan guarantees program and their proficiency in program requirements. In order to encourage certified lenders and preferred lenders to provide loans of $50,000 or less in guarantees to eligible small business loan applicants, the Administration (A) shall develop and shall allow participating lenders in the certified loan program and in the preferred loan program to solely utilize a uniform and simplified loan form for such loans and (B) shall allow such lenders to retain one-half of the fee collected pursuant to section 7(a)(16) on such loans: *Provided*, That a participating lender may not retain any fee pursuant to this paragraph if the amount committed and outstanding to the applicant would exceed $50,000 unless such excess amount was not approved under the provisions of this paragraph. The designation of a lender as a certified lender shall be suspended or revoked at any time that the Administration determines that the lender is not adhering to its rules and regulations or if the Administration determines that the loss experience of the lender is excessive as compared to other lenders: *Provided further*, That any suspension or revocation of the designation shall not affect any outstanding guarantee: *And provided further*, That the Administration may not reduce the per centum of guarantee as a criterion of eligibility for participation in this program, except as otherwise provided by law.".

(b) Reports.—The Administration shall take appropriate steps to expand participation in the certified loan program and shall report to the Small Business Committees of the Senate and the House of Representatives on the amount of loans approved and the amount of losses sustained under the provisions of section 7(a)(19) of the Small Business Act. An interim report shall be submitted not later than one year after the date of enactment.

TITLE IV—NATIONAL WOMEN'S BUSINESS COUNCIL

SEC. 401. ESTABLISHMENT.

There is established a Council to be known as the "National Women's Business Council" (hereinafter in this title referred to as the Council).

SEC. 402. DUTIES OF THE COUNCIL.

(a) The Council shall review—

(1) the status of women owned business nationwide, including progress made and barriers that remain in order to assist such businesses to enter the mainstream of the American economy;

(2) the role of the Federal Government and State and local governments in assisting and promoting aid to, and the promotion of, women owned business;

(3) data collection procedures and the availability of data relating to (A) women owned businesses; (B) women owned small business, and (C) small business owned and controlled by socially and economically disadvantaged women; and

(4) such other government initiatives as may exist relating to women owned business

including, but not limited to, those relating to Federal procurements.

(b) Based upon its review, the Council shall, by December 31, 1989, and every twelve months thereafter, recommend to the Congress and the President—

(1) new private sector initiatives that would provide management and technical assistance to women owned small business;

(2) ways to promote greater access to public and private sector financing and procurement opportunities for such businesses; and

(3) detailed multiyear plans of action, with specific goals and timetables, for both public and private sector actions needed to overcome discriminatory barriers to full participation in the economic mainstream.

(c) For the purposes of this title the term "small business concern owned and controlled by women" shall have the same meaning as that term is given in section 204 of this Act.

SEC. 403. MEMBERSHIP.

(a) The Council shall be composed of nine members to be selected as follows:

(1) the Administrator of the Small Business Administration, the Secretary of Commerce (or such Secretary's deputy) and the Chairman of the Federal Reserve Board (or such Chairman's designee, who shall be a member of the Board);

(2) two members shall be appointed by the majority leader, and one member shall be appointed by the minority leader of the Senate.

(3) two members shall be appointed by the Speaker, and one member shall be appointed by the minority leader of the House of Representatives.

(b)(1) Appointments under section (a) (2) and (3) shall be made from individuals who are specially qualified to serve on the Council by virtue of their education, training, and experience and who are not officers or employees of the Federal Government nor of the Congress.

(2)(A) Of the individuals to be appointed under subsection (a) (2) and (3)—

(i) no more than two members to be appointed under each such paragraph of such subsection shall be of the same political party;

(ii) at least two members appointed under each such paragraph of such subsection shall be women; and

(iii) at least two members to be appointed under each such paragraph of such subsection shall be owners of small business concerns as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(B) Appointments made pursuant to subsection (a) (2) and (3) shall be made in the following sequence—

(i) appointments under (a)(2) shall be made within ninety days of the effective date of this title; and

(ii) appointments under (a)(3) shall be made within one hundred and twenty days of the effective date of this title.

(3) In making appointments under subsection (a), the appointing authorities shall give due consideration to achieving balanced geographical representation.

(C) Members appointed under subsection (a) (2) and (3) shall be appointed for a three-year term, except if any such appointee becomes an officer or employee of the Federal Government or of the Congress, such individual may continue as a member of the Council for not longer than the thirty-day period beginning on the date such individual becomes such an officer or employee.

(D) A vacancy on the Council shall be filled in the manner in which the original appointment was made.

(E) Members of the Council shall serve without pay for such membership, except members of the Council shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions of the Council, in the same manner as persons employed intermittently in the Federal Government are allowed expenses under section 5703 of title 5, United States Code.

(F)(1) Two members of the Council shall constitute a quorum for the receipt of testimony and other evidence.

(2) A majority of the Council shall constitute a quorum for the approval of a recommendation or report submitted pursuant to section 402 or section 406.

(G) The Chairperson and Vice Chairperson of the Council shall be designated by the President. The term of office of the Chairperson and Vice Chairperson shall be at the discretion of the President.

(H) The Council shall meet not less than four times a year. Meetings shall be at the call of the Chairperson.

SEC. 404. DIRECTOR AND STAFF OF THE COUNCIL.

(a)(1) The Council shall have a Director who shall be appointed by the Chairperson. Upon recommendation by the Director, the Chairperson may appoint and fix the pay of four additional personnel.

(2) The Director and staff of the Council may be appointed without regard to section 5311(b) of title 5, United States Code, and without regard to the provisions of such title governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

(b) The Council may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(c) Upon request of the Chairperson, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of such agency to the Council to assist the Council in carrying out its duties under this title without regard to section 3341 of title 5 of the United States Code.

SEC. 405. POWERS OF THE COUNCIL.

(a) The Council may, for the purpose of carrying out this title sit and act at such times and places, hold such hearings, take such testimony, receive such evidence, and consider such information, as the Council considers appropriate. The Council may administer oaths or affirmations for the receipt of such testimony.

(b) Any member or person within the employ of the Council may, if so authorized by the Council, take any action which the Council is authorized to take by this section.

(c) Except as otherwise prohibited by law, the Council may secure directly from any department or agency of the United States information necessary to enable it to carry out its duties under this Act. Upon the request of the Chairperson of the Council, the head of such department or agency shall promptly furnish such information to the Council.

(d) The Council may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

(e) The Administrator of the General Services Administration shall provide to the Council, on a reimbursable basis, such administrative support services as the Council may request. In addition, the Administrator shall, as appropriate, provide to the Council, upon its request, access to and use of such Federal facilities as may be necessary for the conduct of its business.

SEC. 406. REPORTS.

The Council shall transmit to the President and to each House of the Congress a report no less than once in every twelve-month period. The first such report shall be submitted no later than December 31, 1989. Such reports shall contain a detailed statement on the activities of the Council, and the findings and conclusions of the Council, together with its recommendations for such legislation and administrative actions as it considers appropriate based upon its reviews conducted under section 402.

SEC. 407. AUTHORIZATION.

There are authorized to be appropriated such sums as may be necessary to carry out this title and they may remain available until expended. New spending authority or authority to enter into contracts as authorized in this title shall be effective only to such extent and in such amounts as are provided in advance in appropriation Acts.

This title shall cease to be effective five years after the date of enactment.

TITLE V—STATISTICAL DATA AND EFFECT ON OTHER PROGRAMS

SEC. 501. CENSUS DATA.

(a) BUREAU OF LABOR STATISTICS.—The Bureau of Labor Statistics of the Department of Labor shall include in any census report it may prepare on women owned business data on—

(1) sole proprietorships;

(2) partnerships; and

(3) corporations.

(b) BUREAU OF THE CENSUS.—The Bureau of the Census of the Department of Commerce shall include in its Business Census for 1992 and each such succeeding census data on the number of corporations which are 51 per centum or more owned by women.

(c) COMBINED STUDY.—Not later than one hundred and eighty days after the effective date of this section, the Office of the Chief Counsel for Advocacy of the Small Business Administration (hereinafter referred to in this subsection as the "Office") shall conduct a study and prepare a report recommending the most cost effective and accurate means to gather and present the data required to be collected pursuant to subsections (a) and (b). The Department of Commerce and the Department of Labor shall provide the Office such assistance and cooperation as may be necessary and appropriate to achieve the purposes of this subsection.

SEC. 502. PROCUREMENT DATA.

(a) REPORTING.—Each Federal agency shall report to the Office of Federal Procurement Policy the number of small businesses owned and controlled by women and the number of small business concerns owned and controlled by socially and economically disadvantaged businesses, by gender, that are first time recipients of contracts from such agency. The Office of Federal Procurement Policy shall take such actions as may be appropriate to ascertain for each fiscal year the number of such small businesses that have newly entered the Federal market.

(b) DEFINITIONS.—For purposes of this section the terms "small business concern owned and controlled by women" and "small business concerns owned and controlled by socially and economically disadvantaged individuals" shall be given the same meaning as those terms are given under section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and section 204 of this Act.

SEC. 503. STATE OF SMALL BUSINESS REPORT.

Section 303 of Public Law 96-302 (15 U.S.C. 631(b)) is amended by adding the following new subsection:

"(e) The information and data required to be reported pursuant to subsection (a) shall separately detail those portions of such information and data that are relevant to—

"(1) small business concerns owned and controlled by socially and economically disadvantaged individuals, by gender, as defined pursuant to section 8(d) of the Small Business Act; and

"(2) small business concerns owned and controlled by women.".

SEC. 504. DISADVANTAGED SMALL BUSINESSES.

Nothing contained in this Act is intended to reduce or limit any programs, benefit, or activity that is authorized by law to assist small business concerns owned and controlled by socially and economically disadvantaged individuals as defined pursuant to section 8(d)(3) of the Small Business Act (15 U.S.C. 637 (d)(3)).

Mr. BUMPERS. Mr. President, I rise in strong support of H.R. 5050, the Women's Business Ownership Act of 1988. This is the companion measure to S. 2735, which Senator MIKULSKI introduced earlier this year. The dramatic increase in the number of women who are starting their own businesses has created a new and startling economic reality. Women-owned business is the fastest growing segment of the economy and its success or failure can drastically affect our Nation's economic future.

Unfortunately, women who seek business opportunities still suffer from disadvantages that result from years of discrimination and exploitation. Legislation is needed to help level the playing field and assist women business owners to enter the mainstream of the American economy.

The women's business ownership bill, H.R. 5050, addresses the problems of women business owners by providing for the following: First, management training demonstration projects on a public/private partnership basis; two, clarification as to the application of the Equal Credit Opportunity Act to business credit; three, a National Women's Business Council to recommend governmental and private sector activities in support of women's entrepreneurship; and four, improved collection and reporting of statistical information and data related to women-owned business.

This legislation passed the House by an overwhelming vote on October 3. It is supported by important small business groups and organizations such as the National Federation of Independent Business, NFIB; National Small Business United, NSBU; and the Small Business Legislative Council, SBLC, as well as national women's organizations. It is clear that this bill would benefit not only women entrepreneurs, but all other small business entrepreneurs as well. It should be endorsed and passed by this body.

The amendment that I am offering today essentially makes three changes in the legislation as passed by the House, and are made with the concurrence of our colleagues in the House. Section 303 of the House-passed bill would require a joint study by the Federal Reserve Board, the Comptroller of the Currency, and the Department of Commerce of capital needs and credit gaps regarding the services sector of the economy. The Federal Reserve Board, however, has informed us that it is currently conducting a comprehensive study regarding the credit needs of small business that will generate new data that is expected to cover much of the same type of information required by the joint study. Moreover, a very similar study by the Small Business Administration, with the assistance of the Federal Reserve Board, will be conducted soon as a result of an amendment which I offered and which will be included in the new SBA authority measure, H.R. 4174.

Second, the substitute bill would provide a sunset of 5 years for the National Women's Business Council established by title IV of the bill. The council is clearly needed now to strengthen the effectiveness of the Federal Government in promoting programs that encourage women entrepreneurs. Past efforts, across all administrations, have been weak and ineffectual. The present Interagency Council suffers from a lack of attention from official levels high enough to affect public policy. The National Women's Business Council, as constituted in this legislation, would correct the problem. The bill is silent, however, as to its length of duration. This sunset provision does not necessarily imply that the council would no longer be needed at the end of the 5 years. It is appropriate, however, that the issue should be revisited at that time, and if it is found that important issues remain, the council could be reauthorized in the future.

Third, the substitute bill would make a number of technical changes to conform the language to provisions that were adopted earlier this week as part of the SBA's reauthorization bill, and to clarify the process for the rulemaking procedures within the Federal Reserve Board in regard to the Equal Credit Opportunity Act [ECOA].

I want to specifically address two issues that have arisen in relation to the Equal Credit Opportunity Act. Concern has been expressed regarding the possibility of inadvertent noncompliance by lending institutions concerning notice and record retention for business loans. I want to make it clear that record retention and notice requirements would not apply to informal and undocumented applications such as those made over the telephone or other forms of verbal inquiry. Indeed, it is our intent that the ECOA provisions would only be triggered by the initial written application for commercial credit.

In addition it is not the intent of this legislation to require lenders to retain records pertaining to large loan transactions involving millions and millions of dollars. In this regard, I would note that SBA may guarantee general business loans for up to $750,000 and some special purpose loans for up to $1 million. In any case, the bill gives the Federal Reserve Board authority, pursuant to its rulemaking procedures, to make such reasonable exemptions of classifications that are deemed necessary to fulfill the intent of Congress. In this regard, I expect that the Fed will use its expertise to set an appropriate dollar cap for loans subject to the record retention and notice requirements.

Finally, the Federal Reserve Board should use its rulemaking authority to assure that the amount of documentation to be retained is only that which is necessary to achieve the goals of this act.

Mr. President, I want to express again that this legislation is needed to help release the potential within the female half of our population. This Nation needs the entrepreneurial talent of women. Women-owned business is a vital resource for the future productivity and growth of the American economy, and this country needs public policy initiatives such as this legislation to help meet the challenges of the next century.

I commend the chairman of the House Small Business Committee, Mr. LAFALCE, for his work on this bill, and I especially thank and commend our colleague, Senator MIKULSKI, for her work on the companion Senate bill and for helping to make this bill through both bodies.

Mr. WEICKER. Mr. President, I rise in support of the amendment offered by Senator BUMPERS on the Women's Business Ownership Act of 1988, legislation to promote the development and ownership of small businesses owned by women.

There has been an enormous growth in the number of women-owned businesses in recent years. According to the Small Business Administration, the number of women-owned businesses has increased by 11 percent annually from 1974 to 1984, as compared to a 5.4-percent growth rate of businesses owned by men during that period. Today, women own 1 in 4 of all small businesses, and those businesses contribute jobs to our economy. The phenomenal growth in women-owned businesses has occurred in many instances despite the continued stereotyping and discrimination that they face.

This bill will provide an important stimulus to encourage policies to foster the development of businesses owned and operated by women. It passed the House of Representatives earlier this week with overwhelming bipartisan support.

The provisions of this amendment, which have already been outlined by Chairman BUMPERS, are designed to overcome the very critical problems confronting women entrepreneurs. Those problems include getting access to capital and credit and obtaining management and technical assistance.

It is important to note that this body has already concurred in two provisions of this measure: The Demonstration Grant Program to provide management and technical assistance for women was contained in the SBA reauthorization conference report, H.R. 4174, and the State, Justice, Commerce appropriations law signed by the President provides $2 million for this problem in fiscal year 1989. The second is an initiative to encourage preferred and certified lenders to make smaller loans, less than $50,000, by allowing them to retain half of the 2-percent fee charged on those loans. This provision is also contained in the SBA reauthorization bill.

Another key provision of the bill would amend the Equal Credit Opportunity Act to add business loans to the type of loans covered by the act. It also would require lenders to keep records relating to loans and to provide written notice to applicants of their right to receive notice of reasons for a loan denial.

In addition to modifying existing programs which should be helpful to women-owned businesses, the bill also establishes a National Women's Business Council to study and review existing programs for helping women-owned businesses enter the mainstream and to make recommendations to the Congress and the administration on improving efforts to promote women business ownership.

Mr. President, women entrepreneurs have made great gains. This legislation will help continue that process. Furthermore, it will provide a blueprint for future Federal efforts to assist women-owned businesses. I urge my colleagues to support passage of the bill.

Mr. GARN. Mr. President, this bill extends the coverage of certain provisions of the Equal Credit Opportunity Act to business and commercial loans. But it gives the Federal Reserve the authority to exempt certain commercial loans and to determine the size and nature of the loans to be covered. We are not trying to cover million dollar loans to corporations. What we intend to include would be small business-type loans. We would expect the Federal Reserve to analyze the loan data and arrive at a reasonable figure in exempting large-dollar loans. I would expect that the dollar number might be somewhat around $100,000 or even less, depending on what the data showed.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3660) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 5050), as amended, was passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill as amended, was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FAIR CREDIT AND CHARGE CARD DISCLOSURE ACT—CONFERENCE REPORT

Mr. BYRD. Mr. President, I submit a report of the committee of conference on H.R. 515 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

> The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 515) to provide for more detailed and uniform disclosure by credit and charge card issuers with respect to information relating to interest rates and other fees which may be incurred by consumers through the use, of any credit or charge card, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 6, 1988.)

Mr. SASSER. Mr. President, I rise in strong support of the conference report on the Fair Credit and Charge Card Disclosure Act. This legislation is the result of almost 2 years of work on my part and that of my Banking Committee colleagues. In particular, I would like to pay tribute to the leadership of my friend the Senator from Connecticut on this important consumer issue.

Mr. President, this legislation is an enormous step forward in financial consumer protection. This credit card disclosure bill will help ensure that consumers know what they are paying for when they apply for, and use, a credit card.

Under present law, most consumers do not have a clue when they apply for a credit card as to what they will actually have to pay. Often the interest rate isn't disclosed—nor the annual fee—nor whether or not there is a grace period. Numerous other charges that can be determinative of the actual cost of using the card, won't be disclosed.

If the interest rate is disclosed, it is often buried in fine print or under heavy gloss. It is rarely clear or conspicuous.

It is impossible for a consumer to comparison shop or make an informed choice. Applying for a credit card is like playing the lottery, except the consumer cannot win.

He may think he has ordered a low interest rate card, but there could be a late payment fee if he does not pay off the balance every month.

More likely, the low rate may mean that there is no grace period, so he can easily end up paying more in interest than he would on higher rate cards.

And transaction charges, membership fees, over-the-limit fees and others, serve to add additional financial burdens on ignorant consumers who are forced to operate in the dark.

The bill that is before us today, Mr. President, will remedy this intolerable situation for consumers. This legislation will ensure that consumers are provided with the key "shopping" terms of every credit card program in a concise and uniform manner, at the time of the initial application.

Lenders will be required to disclose, in a tabular format, the annual percentage rate [APR]; any annual, periodic or membership fee; any minimum finance charge; the grace period and the name of the balance calculation method.

Simultaneously, any cash advance fee, any late fee, and any over-the-limit fee will have to be disclosed.

The legislation will cover mail applications and solicitations, telephone solicitations, as well as so-called take-ones, and catalog and magazine advertisements.

Mr. President, this legislation is a significant accomplishment. Indeed, it is stricter and provides for more disclosure than any State law enacted on the subject.

Enacting a Federal law stronger than any State law, was of particular concern to me because the legislature in my home State of Tennessee has considered enacting credit card legislation for several years. Mr. President, I take the perogative of the States to legislate in this area very seriously.

Moreover, Mr. President, besides being able to enact a stronger law, there is another reason for pursuing the Federal route. Under a decision of the Supreme Court—the so-called Marquette decision—States are limited in their ability to regulate credit cards issued by lenders located outside their borders.

Thus, without Federal law, consumers would still be at a disadvantage in comparison shopping between in-State and out-of-State cards. This bill will ensure that all credit card issuers no matter where they are located must make the same disclosures.

Mr. President, I became involved in this issue a year and a half ago due to the outrageously high interest rates lenders were charging on credit cards at the time. Hence, I introduced, S. 647, the Credit Card Holder Protection Act, on March 3, 1987.

My legislation provided for many of the same disclosures provided for under H.R. 515. However, my bill went further and addressed the issue of high credit card interest rates.

I was concerned that at a time when market interest rates had dropped to well below 10 percent, consumers were still paying rates on credit cards that hovered around 20 percent. Under S. 647, credit card interest rates would have floated along with market interest rates. That way a lender's credit card rate would always reflect its cost of funds. A reasonable rate would have been assured to the lender and a reasonable rate to the consumer.

Mr. President, my bill was an example of legislation that didn't need to be enacted before it had a postive effect. In the spring of 1987, credit card interest rates began a steady decline.

There are now several major credit cards available at rates below 15 percent. Indeed, American Express is offering its "Optima" card at 13.5 percent.

Further, lenders are offering different kinds of cards to serve the differing needs of consumers. Lenders are no longer relying on high interest rate catchall card programs.

Mr. President, with the enactment of the Fair Credit and Charge Card Disclosure Act consumers will be able to comparison shop between credit card programs with ease. They will know what they're getting into. They will find a card that suits their needs.

In closing, I remind my colleagues that this legislation is the product of much hard work on the part of the members of the Senate and House Banking Committees. It is a very significant proconsumer achievement.

I again complement my colleague, Senator DODD, the chairman of the Consumer Affairs Subcommittee of the Banking Committee, for his leadership on this important issue. I yield the floor.

Mr. DODD. Mr. President, I am delighted to rise in support of the conference report on H.R. 515, the Fair Credit and Charge Card Disclosure Act of 1988.

This bill represents the culmination of almost 3 years work by the Congress and by many different interested parties to devise legislation that will give consumers important cost information when it counts most—at the time they are being solicited to accept a credit card—in a fashion that is workable for lenders. the widespread support for this legislation from most consumer and lender groups is a testament to the success of these efforts.

How did this legislation come about and what does it do? As with many other congressional efforts, the initial motivation for this legislation came from high costs; in this case, the high costs consumers are paying to use their credit cards. Specifically, while most interest rates were declining by about 50 percent during the early 1980's, credit card interest rates not only didn't fall, they rose.

This phenomenon led the Consumer Affairs Subcommittee to initiate a series of hearings in an effort to determine why these interest rates were defying the laws of gravity. Not surprisingly, the hearings revealed that high credit card interest rates for consumers also meant high profit rates for lenders. In fact, according to Federal Reserve Board data, credit card loans went from a marginally profitable line of business in the 1970's to the banks' single most profitable area of lending for the last 4 years.

The importance of credit card interest rates lies in the fact that some 105.5 million Americans have over 800 million credit cards. The amount of debt rolled over is so high that even a 1-percent decline in interest rates would save consumers about $700 million.

While it is difficult to understand how credit card interest rates can rise when the cost of bank funds is plummeting and when there are 10,000 issuers marketing cards, the explanation appears to lie in the fact that most people only look at the bottom line—what they have to pay each month to roll over their credit. Thus, the monthly cost of not paying off a $1,000 credit card balance, at an interest rate of 18 percent per year, is only $15. Of course, what is a small cost to the consumer when repeated over and over again produces a large profit for the lender.

H.R. 515 is not designed to prevent lenders from making profits on credit card loans. It is designed to correct a market flaw caused by the lack of information. Once that is corrected, market forces should reduce profit margins to a true competitive level.

Under the present truth in lending law, lenders are not required to disclose the full cost information about their credit cards until they send the card to the consumer. The information is often confusing and difficult to read and arrives at a point in time when the consumer cannot very well shop around for a better rate.

This late disclosure of information is in sharp contrast to the way card issuers solicit consumers. We all know how that is done. All you have to do is read your mail to know that lenders rely heavily on mail solicitations. In fact, U.S. consumers were bombarded with over 2,400 million solicitations for credit cards in 1987. Moreover, because they are no present requirements on what they have to tell you, most solicitations tout the virtues of their cards, not the costs.

The solution to this problem lies in earlier disclosure of cost information. Unfortunately, only 12 States have acted to remedy the problem. This legislation will bring the benefits of early disclosure to consumers in all 50 States. The bill requires the disclosure of the following key cost items at the time the lender actually sends the consumer an application or a solicitation to open a credit card account:

The annual percentage rate for extensions of credit; any annual, periodic or membership fee, including any fee for activity or inactivity; any transaction charge for purchases; the grace period; the name of the balance calculation method; any minimum finance charge; cash advance fees; late fees; and over-the-limit fees.

I strongly believe that, armed with this key information, consumers will focus more on costs and shop around for cards that better meet their needs. In fact, one requirement of the bill is for the FED to publish the key cost items for at least 150 credit cards, including the 25 largest credit card issuers in the country. The publication of this information should increase public awareness further which, in turn, should make the credit card market more competitive.

In sum, Mr. President, this legislation will simply require the disclosure of key credit card information to consumers at the time they are deciding whether to get a credit card and, if so, which one. Being able to compare the terms and conditions of credit cards will be good for lenders who have a good product to sell and, in turn, it will be good for consumers.

Finally, I want to thank Chairman PROXMIRE and Senator GARN for their assistance in moving this important legislation, as well as Senators D'AMATO, SASSER, and SANFORD for their important substantive contributions. I also want to thank Chairman ST GERMAIN and Congressmen WYLIE, SCHUMER, and BARNARD for helping work out the compromise. Lastly, I want to thank the consumer and lender representatives for their valuable contributions to the legislation. While it was a long and often contentious process, the final product and its broad-based support is in no small part due to their efforts.

I urge adoption of the conference report.

Mr. EXON. Mr. President, I rise today in support of H.R. 515 and urge my colleagues to do the same.

The passage of this bill will end an over 3-year long effort on my part to give some protection to consumers when a bank that has issued a credit card changes the insurance company that is providing credit life insurance on the balance of a credit card account.

That effort began in 1985 when the Federal Reserve Board refused to issue regulations governing this situation. The following year, I proposed an amendment to S. 2752 to resolve this problem. That effort was thwarted by the failure of that bill to move at the end of the 99th Congress. Early in 1987, the Subcommittee on Consumer Affairs of the Committee on Banking, Housing, and Urban Affairs invited, at my urging, Mr. William Kizer to testify on this matter.

The legislation that was ultimately passed out of the committee, H.R. 515, included a provision, section 6, which provided notice to the consumer of a change in insurers and further provided that reenrollment should occur under certain circumstances.

My concern and interest in this matter is based on my firm belief that an insurer should not be changed without the knowledge and consent of the insured consumer.

Often such a change is accompanied by a change is cost, terms or coverage making the consent of the consumer doubly important. Section 6, as approved in conference, provides that notice will be given to consumers of any change in insurer and of any change in cost or significant change in terms. Credit cardholders will clearly benefit from this addition to the bill.

Section 6 met with considerable opposition from both the banking and insurance industries and I paid particular attention to their claims that the provision would be anticompetitive. I agree with their argument that we should encourage as much competition in this area as possible as such competition could benefit the cardholder as well. But, it seems that the goal of protecting the consumers' interests can easily be reconciled with the goal of promoting competition among those offering the insurance.

In that regard, I congratulate our Senate conferees, Senator PROXMIRE, Senator DODD, and Senator GRAMM, and their counterparts from the House of Representatives for adopting a compromise position on this provision. While I preferred that reenrollment by the consumer be required when the cost, terms, or coverage of insurance is about to be changed, I know when it is time to call in the dogs and to declare the hunt to be ended. Section 6 is a good provision and a solid addition to the bill.

Mr. President, I would finally like to take this opportunity to express my thanks to my colleagues on the Committee on Banking, Housing, and Urban Affairs, and particularly to Senator DODD for the cooperation and assistance on this matter.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the conference report.

The conference report is agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. STEVENS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FEDERAL ENERGY MANAGEMENT IMPROVEMENT ACT

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1382.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1382) entitled "An Act to amend the National Energy Conservation Policy Act to improve the Federal Energy Management program and for other purposes", do pass with the following amendments:

Strike out all after the resolving clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Energy Management Improvement Act of 1988".

SEC. 2. FEDERAL ENERGY MANAGEMENT IMPROVEMENTS.

(a) IN GENERAL.—Part 3 of title V of the National Energy Conservation Policy Act (42 U.S.C. 8251-8261) is amended to read as follows:

"PART 3—FEDERAL ENERGY MANAGEMENT

"SEC. 541. FINDINGS.

"The Congress finds that—

"(1) the Federal Government is the largest single energy consumer in the Nation;

"(2) the cost of meeting the Federal Government's energy requirement is substantial;

"(3) there are significant opportunities in the Federal Government to conserve and make more efficient use of energy through improved operations and maintenance, the use of new energy efficient technologies, and the application and achievement of energy efficient design and construction;

"(4) Federal energy conservation measures can be financed at little or no cost to the Federal Government by using private investment capital made available through contracts authorized by title VIII of this Act; and

"(5) an increase in energy efficiency by the Federal Government would benefit the Nation by reducing the cost of government, reducing national dependence on foreign energy resources, and demonstrating the benefits of greater energy efficiency to the Nation.

"SEC. 542. PURPOSE.

"It is the purpose of this part to promote the conservation and the efficient use of energy by the Federal Government.

"SEC. 543. ENERGY MANAGEMENT GOALS.

"(a) ENERGY PERFORMANCE GOAL FOR FEDERAL BUILDINGS.—(1) Subject to paragraph (2), each agency shall apply energy conservation measures to, and shall improve the design for the construction of, its Federal buildings so that the energy consumption per gross square foot of its Federal buildings in use during the fiscal year 1995 is at least 10 percent less than the energy consumption per gross square foot of its Federal buildings in use during the fiscal year 1985.

"(2) An agency may exclude from the requirements of paragraph (1) any building, and the associated energy consumption and gross square footage, in which energy intensive activities are carried out. Each agency shall identify and list in each report made under section 548(a) the buildings designated by it for such exclusion.

"(b) IMPLEMENTATION STEPS.—To achieve the goal established in subsection (a), each agency shall—

"(1) prepare or update, within 6 months after the date of the enactment of the Federal Energy Management Improvement Act of 1988, a plan describing how the agency intends to meet such goal, including how it will implement this part, designate personnel primarily responsible for achieving such goal, and identify high priority projects;

"(2) perform energy surveys of its Federal buildings to the extent necessary;

"(3) using such surveys, apply energy conservation measures in a manner which will attain the goal established in subsection (a) in the most cost-effective manner practicable; and

"(4) ensure that the operation and maintenance procedures applied under this section are continued.

"SEC. 544. ESTABLISHMENT AND USE OF LIFE CYCLE COST METHODS AND PROCEDURES.

"(a) ESTABLISHMENT OF LIFE CYCLE COST METHODS AND PROCEDURES.—The Secretary, in consultation with the Director of the Office of Management and Budget, the Secretary of Defense, the Director of the National Bureau of Standards, and the Administrator of the General Services Administration, shall—

"(1) establish practical and effective present value methods for estimating and comparing life cycle costs for Federal buildings, using the sum of all capital and operating expenses associated with the energy system of the building involved over the expected life of such system or during a period of 25 years, whichever is shorter, and using

average fuel costs and a discount rate determined by the Secretary; and

"(2) develop and prescribe the procedures to be followed in applying and implementing the methods so established.

"(b) USE OF LIFE CYCLE COST METHODS AND PROCEDURES.—(1) The design of new Federal buildings, and the application of energy conservation measures to existing Federal buildings, shall be made using life cycle cost methods and procedures established under subsection (a).

"(2) In leasing buildings for its own use or that of another agency, each agency shall give appropriate preference to buildings which minimize life cycle costs.

"(c) USE IN NON-FEDERAL STRUCTURES.—The Secretary shall make available information to the public on the use of life cycle cost methods in the construction of buildings, structures, and facilities in all segments of the economy.

"SEC. 545. BUDGET TREATMENT FOR ENERGY CONSERVATION MEASURES.

"Each agency, in support of the President's annual budget request to the Congress, shall specifically set forth and identify funds requested for energy conservation measures.

"SEC. 546. INCENTIVES FOR AGENCIES.

"(a) IN GENERAL.—Each agency shall establish a program of incentives for conserving, and otherwise making more efficient use of, energy as a result of entering into contracts under title VIII of this Act.

"(b) IMPLEMENTATION.—The head of each agency shall, no later than 120 days after the date of the enactment of the Federal Energy Management Improvement Act of 1988, implement procedures for entering into such contracts and for identifying, verifying, and utilizing, on a fiscal year basis, the cost savings resulting from such contracts.

"(c) USE OF SAVINGS.—The portion of the funds appropriated to an agency for energy expenses for a fiscal year that is equal to the amount of cost savings realized by such agency for such year from contracts entered into under title VIII shall remain available for obligation, without further appropriation, to undertake additional energy conservation measures.

"SEC. 547. INTERAGENCY ENERGY MANAGEMENT TASK FORCE.

"(a) IN GENERAL.—To assist the interagency committee organized under section 656 of the Department of Energy Organization Act (42 U.S.C. 7266) to coordinate the activities of the Federal Government in promoting energy conservation and the efficient use of energy and in informing non-Federal entities of the Federal experience in energy conservation, the Secretary shall establish an Interagency Energy Management Task Force (hereafter in this section referred to as the 'Task Force').

"(b) MEMBERS.—The Task Force shall be composed of the chief energy managers of agencies represented on the interagency committee organized under section 656 of the Department of Energy Organization Act.

"(c) DUTIES.—The Task Force shall meet when the Secretary requests, but not less often than twice a year, to—

"(1) assess the progress of the various agencies in achieving energy savings;

"(2) collect and disseminate information to agencies, States, local governments, and the public on effective survey techniques, innovative approaches to the efficient use of energy, incentive programs developed under section 546, innovative contracting methods developed under title VIII of this Act, the use of cogeneration facilities and renewable resources, and other technologies that promote the conservation and efficient use of energy;

"(3) coordinate energy surveys conducted by the agencies;

"(4) develop options for use in conserving energy;

"(5) report tc the committee organized under section 656 of the Department of Energy Organization Act; and

"(6) review, from time to time as may be necessary, the regulations relating to building temperature settings to determine whether changes in such regulations would be appropriate to assist in meeting the goals specified in section 543.

"SEC. 548. REPORTS.

"(a) REPORTS TO THE SECRETARY.—Each agency shall transmit a report to the Secretary, at times specified by the Secretary but at least annually, with complete information on its activities under this part, including information on—

"(1) the agency's progress in achieving the goals established by section 543; and

"(2) the procedures being used by the agency pursuant to section 546(b), the number of contracts entered into by such agency under title VIII of this Act, the energy and cost savings that have resulted from such contracts, the use of such cost savings under section 546(c), and any problem encountered in entering into such contracts and otherwise implementing section 546.

"(b) REPORTS TO CONGRESS.—The Secretary shall report annually, with respect to each fiscal year beginning after the date of the enactment of this subsection, to the Congress—

"(1) on all activities carried out under this part and on the progress made toward achievement of the objectives of this part, including a copy of the list of the exclusions made under section 543(a)(2);

"(2) the number of contracts entered into by all agencies under title VIII of this Act, the difficulties (if any) encountered in attempting to enter into such contracts, and proposed solutions to those difficulties; and

"(3) the extent and nature of interagency exchange of information concerning the conservation and efficient utilization of energy.

"SEC. 549. DEFINITIONS.

"For the purposes of this part—

"(1) the term 'agency' has the meaning given it in section 551(1) of title 5, United States Code;

"(2) the term 'construction' means new construction or substantial rehabilitation of existing structures;

"(3) the term 'cogeneration facilities' has the same meaning given such term in section (3)(18)(A) of the Federal Power Act (16 U.S.C. 796(18)(A));

"(4) the term 'energy conservation measures' means measures that are applied to a Federal building that improve energy efficiency and are life cycle cost effective and that involve energy conservation, cogeneration facilities, renewable energy sources, improvements in operations and maintenance efficiencies, or retrofit activities;

"(5) the term 'energy survey' means a procedure used to determine energy and cost savings likely to result from the use of appropriate energy related maintenance and operating procedures and modifications, including the purchase and installation of particular energy-related equipment and the use of renewable energy sources;

"(6) the term 'Federal building' means any building, structure, or facility, or part thereof, including the associated energy consuming support systems, which is constructed, renovated, leased, or purchased in whole or in part for use by the Federal Government and which consumes energy; such term also means a collection of such buildings, structures, or facilities and the energy consuming support systems for such collection;

"(7) the term 'life cycle cost' means the total costs of owning, operating, and maintaining a building over its useful life (including such costs as fuel, energy, labor, and replacement components) determined on the basis of a systematic evaluation and comparison of alternative building systems, except that in the case of leased buildings, the life cycle cost shall be calculated over the effective remaining term of the lease;

"(8) the term 'renewable energy sources' includes, but is not limited to, sources such as agriculture and urban waste, geothermal energy, solar energy, and wind energy; and

"(9) the term 'Secretary' means the Secretary of Energy.".

(b) CONFORMING AMENDMENT.—Section 381(c) of the Energy Policy and Conservation Act (42 U.S.C. 6361(c)) is amended to read as follows:

"(c) The Secretary shall include in the report required under section 548(b) of the National Energy Conservation Policy Act the steps taken under subsections (a) and (b) of this section.".

(c) TECHNICAL AMENDMENT.—Part 3 of title V of the table of contents of the National Energy Conservation Policy Act is amended to read as follows:

"PART 3—FEDERAL ENERGY MANAGEMENT

"Sec. 541. Findings.
"Sec. 542. Purpose.
"Sec. 543. Energy management goals.
"Sec. 544. Establishment and use of life cycle cost methods and procedures.
"Sec. 545. Budget treatment for energy conservation measures.
"Sec. 546. Incentives for agencies.
"Sec. 547. Interagency Energy Management Task Force.
"Sec. 548. Reports.
"Sec. 549. Definitions.".

SEC. 3. SURVEY OF ENERGY SAVING POTENTIAL.

(a) IN GENERAL.—The Secretary of Energy shall, using funds appropriated to carry out this section, carry out an energy survey, as defined in section 549(5) of the National Energy Conservation Policy Act, for the purposes of—

(1) determining the maximum potential cost effective energy savings that may be achieved in a representative sample of buildings owned or leased by the Federal Government in different areas of the country; and

(2) making recommendations for cost effective energy efficiency and renewable energy improvements in those buildings and in other similar Federal buildings.

(b) IMPLEMENTATION.—(1) The Secretary shall transmit to the Congress, within 180 days after the date on which funds are appropriated to carry out this section, a plan for implementing this section.

(2) The Secretary shall designate buildings to be surveyed in the project so as to obtain a sample of buildings of the types and in the climates that is representative of the buildings owned or leased by Federal agencies in the United States that consume the major portion of the energy consumed in Federal buildings.

(3) For purposes of this section, an improvement shall be considered cost effective if the cost of the energy saved or displaced by the improvement exceeds the cost of the

improvement over the remaining life of a Federal building or the remaining term of a lease of a building leased by the Federal Government as determined by the life cycle costing methodology developed under section 544 of the National Energy Conservation Policy Act.

(c) PERSONNEL.—(1) In carrying out this section, the Secretary shall utilize personnel who are—

(A) employees of the Department of Energy; or

(B) selected by the agencies utilizing the buildings which are being surveyed under this section.

(2) Such personnel shall be detailed for the purpose of carrying out this section without any reduction of salary or benefits.

(d) REPORT.—As soon as practicable after the completion of the project carried out under this section, the Secretary shall transmit a report of the findings and conclusions of the project to the Congress and to the agencies who own the buildings involved in such project.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $250,000 to carry out this section.

Amend the title so as to read: "An Act to amend the National Energy Conservation Policy Act with respect to the energy policy of the United States.".

Mr. METZENBAUM. Mr. President, the Federal Energy Management Improvement Act would be an important contribution to our Nation's energy policy. Since the energy crisis of the early 1970's there have been many proposals—and controversies—over how we should meet the challenge of assuring sufficient and secure energy supplies. Despite the controversy over many policy proposals, there is one proposal on which everyone agrees. Everyone agrees that the Federal Government itself must continue to demonstrate its commitment to energy efficiency by putting its own house in order. The Federal Government spent nearly $3½ billion dollars for the energy used in its nearly 500,000 buildings and facilities in 1986.

By reducing this cost the Government will directly reduce its spending. The CBO has estimated these savings at $225 million by 1993. These savings will mean that increasingly scarce Federal dollars can go to provide Government services and programs, instead of providing overhead to Government workers.

Just as importantly, when the Federal Government is vigorous in its energy and cost savings efforts, it sends an important signal to the public and to State and local governments that energy efficiency remains a national priority.

This legislation, S. 1382, will enhance the Government's ability to save energy by establishing conservation targets to supercede those which expired in 1986. In addition, the bill requires agencies to establish energy efficiency incentive programs to encourage agencies to redouble their energy management efforts. Under current budget practices if an agency is successful in reducing its energy use and cost, then those savings are taken away. S. 1382 would authorize agencies to share in the cost savings which result from their efforts and thus, it creates a powerful incentive for agencies to achieve savings. Finally, this legislation will establish an interagency energy management "Task Force" to facilitate agency coordination and cooperation, and it authorizes a survey of a sample of Federal buildings in order to demonstrate the potential for energy efficiency.

It has been just over a year since I first introduced S. 1382 on June 17, 1987. I am very pleased today to urge its final passage. The House amendment to S. 1382 contains new text which has been worked out between the House, Senate and administration. I am grateful for the cooperation of all of those who contributed to this legislation. I would particularly like to thank Congressman SHARP, chairman of the House Subcommittee on Energy and Power, for his consideration and cooperation, and for the fine work of his staff. As coauthor of this legislation, he has once again demonstrated his commitment to strengthening our Nation's energy policy.

Mr. President, the need for a strong energy policy continues to exist and this bill contributes to that goal by enhancing our Government's own internal energy efficiency efforts. I urge the support of my colleagues for the House amendments and for final passage of S. 1382, as amended.

Mr. WIRTH. Mr. President, I would like to join my colleagues in support of S. 1382, the Federal Energy Management Improvement Act. This legislation is a positive step in the effort to make energy efficiency, once again, a top priority of our energy policy. I commend Senator METZENBAUM for his leadership on this issue.

In response to the 1973 oil embargo, the United States aggressively began a conservation program to reduce our dependence on imported oil. As a result, American cars, homes, and factories became more efficient without reducing our quality of life. In fact, our gross national product has increased dramatically since 1973, while we reduced the nation's energy bill by $150 billion annually. And the Federal Government is saving more than $4 billion every year from the energy efficiency improvements in buildings alone.

Nevertheless, as a Nation we still are spending $400 billion annually for energy—more than we spend for education, and as much as we spend for health care. The United States still uses more energy per unit of gross national product [GNP] than almost all of our major trading partners. For example, the United States spends 10 to 12 percent of its GNP on energy, while Japan spends about 5 to 7 percent.

Clearly, we have enormous opportunities in this Nation to reduce energy consumption. And the Federal Government should provide leadership in the effort to use energy more efficiently. The Federal Energy Management Improvement Act will strengthen those efforts by encouraging Federal agencies to take advantage of shared savings contracts. These contracts have been utilized extensively by the private sector because they require no initial capital investments. Under shared savings arrangements, an energy management company will install energy saving technologies at no cost to the Federal Government in return for a portion of the savings that result from the avoided energy costs.

Unfortunately, the Federal Government has been slow to enter into shared savings contracts. The legislation before us today would give Federal energy managers an incentive to take advantage of these contracts by allowing a portion of the energy cost savings to be retained for additional energy efficiency projects.

Shared savings contracts have enormous potential to improve the efficiency of energy use in Federal facilities. We must overcome the barriers that currently exist to these contracts in the Federal Government and this legislation will help get us there.

Finally, I believe that the Senate itself can provide strong leadership by utilizing energy efficient technologies that will save energy and reduce the energy costs incurred by this body. In that effort, I have asked a panel of some of the Nation's leading energy efficiency experts and lighting designers to examine my office and the Energy and Natural Resources Committee's hearing room and to make recommendations about technologies that could help us save energy. I will presenting those findings to my colleagues later this year.

Energy efficiency is good economic policy, good environmental policy, and good energy policy. I urge my colleagues to join me in support of this legislation. And I look forward to working with all Senators to help this Nation realize the benefits of energy efficiency and to develop a comprehensive national energy policy.

Mr. STEVENS. Mr. President, I move that the Senate concur in the amendment of the House with an amendment.

AMENDMENT NO. 3661

(Purpose: To provide civil penalties for the manufacturing, entering into commerce or transporting of imitation firearms which do not have markings to make them readily identifiable)

Mr. STEVENS. Mr. President, I send the amendment to the desk on behalf of Mr. Dole and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. Stevens], for Mr. Dole, proposes an amendment numbered 3661.

Mr. STEVENS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, add the following:

Sec. . (a) It shall be unlawful for any person to manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm unless such firearm contains, or has affixed to it, a marking approved by the Secretary of Commerce, as provided in subsection (b).

(b)(1) Except as provided in paragraph (2) or (3), each toy, look-alike, or imitation firearm shall have as an integral part, permanently affixed, a blaze orange plug inserted in the barrel of such toy, look-alike, or imitation firearm. Such plug shall be recessed no more than 6 millimeters from the muzzle end of the barrel of such firearm.

(2) The Secretary of Commerce may provide for an alternate marking device for any toy, look-alike, or imitation firearm not capable of being marked as provided in paragraph (1) and may waive the requirement of any such marking device for any toy, look-alike, or imitation firearm that will only be used in the theatrical, movie or television industry.

(3) The Secretary is authorized to make adjustments and changes in the marking system provided for by this section, after consulting with interested persons.

(c) For purposes of this section, the term "look-alike firearm" means any imitation of any original firearm which was manufactured, designed, and produced since 1898, including and limited to toy guns, water guns, replica nonguns, and air-soft guns firing nonmetallic projectiles. Such term does not include any look-alike, nonfiring, collector replica of an antique firearm developed prior to 1898, or traditional B-B, paint-ball, or pellet firing air guns that expel a metallic projectile through the force of air pressure.

(d) The Director of the Bureau of Justice Statistics is authorized and directed to conduct a study of the criminal misuse of toy, look-alike and imitation firearms, including studying police reports on such incidences and shall reports on such incidences relative to marked and unmarked firearms.

(e) The Director of the National Institute of Justice is authorized and directed to conduct a technical evaluation of the marking systems provided for in subsection (b) to determine their effectiveness in police combat situations. The Director shall begin the study within 3 months after the date of enactment of this section and such study shall be completed within 9 months after such date of enactment.

(f) This section shall become effective on the date 6 months after the date of its enactment and shall apply to toy, look-alike, and imitation firearms manufactured or entered into commerce after such date of enactment.

(g) The provisions of this section shall supersede any provision of State or local laws or ordinances which provide for markings or identification inconsistent with provisions of this section provided that no state shall—

(i) prohibit the sale or manufacture of any look-alike, nonfiring, collector replica of an antique firearm developed prior to 1898, or

(ii) prohibit the sale (other than prohibiting the sale to minors) of traditional B-B, paint ball, or pellet-firing air guns that expel a metallic projectile through the force of air pressure.

Mr. DOLE. Mr. President, last May 25, the Senate passed its version of H.R. 4445, the plastic gun bill. The measure was returned to the other body, where it has been awaiting further action. As of today, the House has not appointed conferees nor moved to accept the Senate version. Nothing has happened.

Included in the Senate version was an amendment offered by this Senator dealing with toy guns. It was cosponsored by the distinguished Senator from California [Mr. Wilson] and passed the Senate unanimously. This Senator still retains a keen interest in the toy gun amendment, and therefore I am offering a revised version of the amendment today.

Although only a few incidents have actually occurred to date involving the criminal misuse of toy or imitation guns, there is potential for misuse of these items. Also, hearings before a subcommittee on the House Energy and Commerce Committee in August revealed that industry is beginning to comply voluntarily with marking of toy guns. Meanwhile a few States and localities are passing laws, sometimes inconsistent in requiring marking, packaging, or totally banning toys and look-alikes in their jurisdictions.

At this time I would like to clarify my intent in offering the toy gun legislation and to make clear to all concerned in industry, law enforcement, and Government just what is involved with this legislation. The amendment itself is quite simple in its thrust. It requires toy guns, replicas, look-alikes, imitations, water guns, and others, with certain exceptions, to have blaze orange plugs or similar markings permanently attached to the barrel. Industry would be given 6 months to come into compliance for markings on new production and to exhaust existing stocks of unmarked items.

The impetus for this legislation comes from the hobby and toy industries themselves, specifically the hobby industry of America and the toy manufacturers of America. The legislation is also very similar to laws that have been in effect in Spain and Italy, and is essentially identical to State legislation recently enacted in Connecticut. Unfortunately, as I have previously noted, recently a few States and local jurisdictions have enacted laws or ordinances with inconsistent or conflicting provisions. Some have banned the sale of a few items altogether, while others have required different methods of marking.

There have been a few incidents recently in which imitation firearms were used with apparent criminal intent, including a very recent incident in Kansas where a 9-year-old boy attempted to hold up a convenience store. Although that situation was resolved without harm to the boy, the potential for tragedy was significant. Unfortunately some imitation firearms are so realistic as to be absolutely indistinguishable from real firearms.

The Dole amendment is designed to allow continued production, sale, and distribution of these items, while at the same time reducing the potential for misuse as much as possible.

PROVISIONS OF THE AMENDMENT

The amendment makes it unlawful for any person to manufacture, import, ship, transport, or receive any toy, look-alike, or imitation firearm unless it has affixed to it a blaze orange plug inserted in the barrel. The plug is to be recessed no more than 6 mm and must be clearly visible. In certain instances where the item is not capable of being marked with a visible plug, the Secretary of Commerce is authorized to provide for an alternative marking or device which accomplishes the same purpose. Certain kinds of water guns and air-soft guns would be examples where alternate markings would be necessary. If there is no muzzle face, then the barrel tip should be distinctively marked.

Specific exemptions to coverage under this act are provided for imitation nonfiring replicas of any real firearm manufactured, designed, and produced in 1898 or earlier. It does not make sense to exempt real antique firearms from coverage under the Gun Control Act of 1968 and then include imitations of these weapons under coverage of this act. For example, a nonfiring replica of a Colt Model 1851 Navy revolver or single action revolver first manufactured in 1873 and subsequently manufactured since 1898 are not to be covered under this act.

B-B or pellet firing air guns such as those made by the Daisy Manufacturing Co. and Crosman air guns are also exempted. Similarly, I do not intend that paint-pellet guns firing projectiles for marking trees, or paintball games or other similar purposes such as those manufactured by the Nelson Paint Co. be covered.

It is contemplated that implementing regulations be issued by the Secretary of Commerce under his general regulatory authority. At the same time two independent studies or evaluations would be commissioned to determine the nature and scope of the misuse of toy guns and the adequacy of the marking systems established in this legislation. The Director of the

National Institute of Justice would be directed to conduct a 6-month evaluation of the markings in simulated police combat situations, while the Director of the Bureau of Justice statistics would conduct a detailed study of police reports of misuse of toy and replica guns, both marked and unmarked.

This legislation is to come into effect 6 months after enactment. This will allow sufficient time for manufacturers, importers, and dealers to exhaust existing inventories of unmarked look-alikes, toys, and imitations and to produce and distribute items that do comply. It will also allow the Secretary of Commerce or his designee to engage in an orderly rulemaking process under the Administrative Procedures Act.

Any State or local laws or ordinances which provide for inconsistent or conflicting marking or identification shall be preempted and superseded. For example, a local ordinance banning sale of traditional B-B, paint ball, or pellet-firing air guns would be of no force and effect. Also, if there were a State law that required a green colored plug or a red stripe on the side, it too would be nullified.

ADMINISTRATION OF THE ACT

This legislation will be administered by the Secretary of Commerce or his designee within the Department of Commerce, except for the independent studies conducted within the Justice Department. This legislation regulates legitimate commerce in toys, imitations, and look-alikes. It is not intended to be a part of the Gun Control Act of 1968 which strictly regulates real firearms. It is not part of the enabling legislation for the Consumer Product Safety Commission [CPSC]. However, it is contemplated that both the Bureau of Alcohol, Tobacco and Firearms [BATF] and CPSC will play important advisory roles consistent with their existing statutory authority. For example: The BATF currently makes determinations with respect to replica firearms that they are "nonguns."

Nonguns can be mailed through the U.S. mails whereas real firearms are nonmailable excepted between licensed manufacturers and dealers.

The U.S. Customs Service also will play an important role in the importation of these items. My information is that the vast majority of these items are now manufactured abroad and imported in the United States by various organizations. It is at the point of entry where the determination can and should be made whether a particular item is marked in compliance with the law.

It is anticipated that the Secretary will work closely with the affected industries and their representatives. There also should be close cooperation and coordination with law enforcement organizations and interested State and local agencies.

Mr. President, my staff and I had lengthy discussions very recently with representatives of several police organizations. As a result two provisions were added to evaluate the marking system contained in the legislation and to engage in a nationwide survey of police reports of incidents involving misuse of toy and replica guns. The Secretary would be given additional authority, after appropriate rulemaking, to modify the marking system in the wake of the evaluations.

In closing I want to pay tribute to the distinguished Senator from Ohio [Mr. METZENBAUM], the distinguished Senator from South Carolina [Mr. THURMOND], the distinguished Senators from California [Mr. CRANSTON and Mr. WILSON], and their staffs for their interest in and contributions to this amendment as it emerges in final form. Since the Senate passed my original amendment last May, California has subsequently passed State legislation affecting these toy guns. At the suggestion of the California Senators, the preemption section has been modified to accommodate the new California law.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. STEVENS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DIRECTING SENATE LEGAL COUNSEL TO TAKE CERTAIN ACTION

Mr. BYRD. Mr. President, on behalf of myself and Mr. DOLE I send to the desk a Senate resolution and I ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 494) to authorize representation by the Senate Legal Counsel in the case of Springfield Terminal Railway Co. v. United Transportation Union and National Mediation Board.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection the Senate proceeded to consider the resolution.

Mr. BYRD. Mr. President, a Massachusetts railroad has initiated a proceeding in the U.S. District Court for the District of Maine to challenge an adverse ruling by an arbitration board upholding the right of a union to call a safety strike under Federal law. As part of its effort to overturn the arbitrator's ruling, the railroad is alleging that Senator KERRY's staff influenced the arbitrator. We have been assured by Senator KERRY, and the Senate legal counsel's examination of this matter confirms, that the allegation is entirely without foundation or basis.

The railroad has served a deposition subpoena for testimony and documents on an employee on Senator KERRY's staff who has been monitoring the dispute between the railroad and the union on behalf of Senator KERRY. The railroad is also subpoenaing telephone companies for the office and home telephone records of Senator KERRY and his employee. This resolution will authorize the Senate legal counsel to represent Senator KERRY and any officer or employee of the Senate in connection with subpoenas in this case, in order to protect the privileges of the Senate and the interests of Senator KERRY and his staff by moving to quash the subpoenas.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 494) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follow:

S. RES. 494

Whereas, in the case of *Springfield Terminal Railway Co.* v. *United Transportation Union and National Mediation Board,* No. 88-0117 P, pending in the United States District Court for the District of Maine, counsel for the plaintiff has served a deposition subpoena for testimony and the production of documents on Mary Anne Marsh, an employee of the staff of Senator John F. Kerry, and has served, and intends to serve additional, deposition subpoenas on telephone companies for testimony and the production of telephone records pertaining to Senator Kerry and members of his staff;

Whereas, pursuant to sections 703(a), 704(a)(2) and 708(c) of the Ethics in Government Act of 1978, 2 U.S.C. §§ 288b(a), 288c(a)(2), and 288g(c) (1982), the Senate may direct its counsel to represent Members and employees of the Senate with respect to any subpoena or order relating to their official responsibilities: Now, therefore, be it

Resolved, That the Senate Legal Counsel is directed to represent Senator Kerry and members of his staff in the case of *Springfield Terminal Railway Co.* v. *United Transportation Union and National Mediation Board* in connection with subpoenas served upon them, or upon third parties, in order to assert all privileges to which they may be entitled.

PREVIOUS ACTION VITIATED BILL PLACED ON CALENDAR—H.R. 5007

Mr. STEVENS. Mr. President, I ask unanimous consent that all action taken on Calendar 1000, H.R. 5007, be vitiated and the bill be placed back on the calendar.

The PRESIDING OFFICER. There being no objection, it is so ordered.

COLORADO RIVER STORAGE PROJECT AUTHORIZATION

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 3408.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 3408) entitled "An Act to increase the amounts authorized for the Colorado River Storage Project," with the following amendments: On page 7, after line 17 of said amendment, insert:

SEC. 5. BOUNDARY CHANGE FOR JOHN MUIR NATIONAL HISTORIC SITE, CALIFORNIA.

(a) MAP; LAND ACQUISITION.—The Secretary of the Interior is authorized to acquire (by donation, purchase with donated or appropriated funds, to exchange) lands and interests in land within the area generally depicted on the map entitled 'Boundary Map, John Muir National Historic Site' numbered 426-80, 015A and dated June 1988. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior. Lands and interests in lands, within the boundaries of such area which are owned by the State of California or any political subdivision thereof, may be acquired only by donation or exchange. The Secretary of the Interior shall acquire only such interests in the John Muir grave site (as depicted on the map referred to in this subsection) as may be necessary to preserve the site in its present undeveloped condition and to provide all maintenance of the site by the Secretary of the Interior.

(b) INCLUSION WITHIN HISTORIC SITE.—The lands and interests in lands within the boundaries of the area depicted on the map referred to in subsection (a) shall be administered as part of the John Muir National Historic Site established by the Act of August 31, 1964 (78 Stat. 753; 16 U.S.C. 461 note).

(c) AUTHORIZATION OF APPROPRIATIONS.—For purposes of acquiring the lands and interests in lands within the area depicted on the map referred to in subsection (a), there are authorized to be appropriated such sums as may be necessary.

(d) COOPERATIVE AGREEMENT.—The Secretary of the Interior, acting through the Director of the National Park Service, is authorized to enter into a cooperative agreement with the East Bay Regional Park District of Oakland, California, for the operation and maintenance by such District of trails on lands within the John Muir National Historic Site.

SEC. 6. MISSOURI RIVER STREAMBANK STABILIZATION.

Section 3(a)(22) of the Wild and Scenic River Act of 1968, as amended (16 U.S.C. 1274(a)(22)), is further amended by inserting prior to the semi-colon at the end of subsection (A), the following: ": *Provided,* That no cost-sharing by local entities shall be required by the Secretary for streambank stabilization structures constructed under authority of this subsection".

SEC. 7. YOSEMITE NATIONAL PARK.

Notwithstanding any other provision of law, no Federal lands may be used for the expansion of the capacity of any reservoir which is located within the boundaries of Yosemite National Park unless Congress enacts specific statutory authorization after the date of the enactment of this Act for such expansion.

Amend the title so as to read: "To authorize additional appropriations for the Central Utah Project, to implement a settlement with the Strawberry Water Users, to expand the John Muir Historic Site, to prohibit the expansion of any reservoir within the boundaries of Yosemite National Park, and for other purposes.".

AMENDMENT NO. 3662

Mr. STEVENS. Mr. President, I move that the Senate concur in the House amendments to the Senate amendments with a further amendment by Senator GARN.

I send that amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. (Mr. ROCKEFELLER). The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS] for Mr. GARN proposes an amendment numbered 3662.

At the appropriate place in the bill, strike section 6 and renumber section 7 as section 6.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

AMENDMENT NO. 3663

Mr. BYRD. Mr. President, I send a technical correction amendment to the desk on behalf of Mr. JOHNSTON and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] for Mr. JOHNSTON proposes an amendment numbered 3663.

Mr. BYRD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

The map reference contained in section 5(a) for the John Muir National Historic site is amended to read: "numbered 426-80, 015B and dated July 1988".

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 3663) was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the motion to concur was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDERS FOR WEDNESDAY

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 10 o'clock tomorrow morning; that the call of the calendar be waived; that resolutions and motions over, under the rule, not come over; that there be a period for morning business following the recognition of the two leaders under the standing order for not to go beyond 10:30 and that Senators may speak therein for 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, does the distinguished Senator from Alaska, the acting Republican leader, have anything further he would like to say or any business he would like to transact?

Mr. STEVENS. Mr. President, I am delighted to be here once again with my good friend from West Virginia, a great majority leader, and I have nothing further.

Mr. BYRD. Mr. President, I thank my dear friend.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. BYRD. Mr. President, I move in accordance with the order previously entered that the Senate stand in adjournment until the hour of 10 o'clock tomorrow morning.

The motion was agreed to, and the Senate, at 9:08 p.m., adjourned until Wednesday, October 12, 1988, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate October 11, 1988:

DEPARTMENT OF TRANSPORTATION

GREGORY S. DOLE, OF MASSACHUSETTS, TO BE AN ASSISTANT SECRETARY OF TRANSPORTATION, VICE MATTHEW V. SCOCOZZA, RESIGNED.

INTER-AMERICAN FOUNDATION

HAROLD K. PHILLIPS, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE INTER-AMERICAN FOUNDATION FOR A TERM EXPIRING SEPTEMBER 20, 1994 (REAPPOINTMENT).

IN THE AIR FORCE

THE FOLLOWING AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR PROMOTION IN THE RESERVE OF THE AIR FORCE UNDER THE PROVISIONS OF SECTIONS 593 AND 8379, TITLE 10 OF THE UNITED STATES CODE. PROMOTIONS MADE UNDER SECTION 8379 AND CONFIRMED BY THE SENATE UNDER SECTION 593 SHALL BEAR AN EFFECTIVE DATE ESTABLISHED IN ACCORDANCE WITH SECTIONS 8374, TITLE 10 OF THE UNITED STATES CODE. (EFFECTIVE DATE FOLLOWS SERIAL NUMBER).

LINE OF THE AIR FORCE

To be lieutenant colonel

MAJ. WILLIAM B. BLAKELY, [redacted] 7/6/88
MAJ. DOUGLAS B. BROWN, [redacted] 7/17/88
MAJ. JAMES F. BUHL, [redacted] 7/17/88
MAJ. PETER M. CHESNEY, [redacted] 7/17/88
MAJ. JAMES E. CUNNINGHAM, [redacted] 7/17/88
MAJ. COY C. DAY, [redacted] 8/11/88
MAJ. EUGENE D. DONNER JR., [redacted] 7/9/88
MAJ. WILLIAM B. FOULOIS, [redacted] 7/17/88
MAJ. JAMES T. GREELEY, [redacted] 8/6/88
MAJ. JONATHAN L. HICKS, [redacted], 7/22/88
MAJ. RALPH D. KUNCE, [redacted], 7/22/88
MAJ. SAMUEL G. LUNDGREN, [redacted] 8/25/88
MAJ. THOMAS P. LYNCH, [redacted] 7/23/88
MAJ. HOWARD F. MAY, [redacted] 9/1/88
MAJ. BRIAN J. MCGARRY, [redacted] 7/17/88
MAJ. WILLIAM C. MOULD, [redacted] 9/1/88
MAJ. GORDON D. ROWE, [redacted] 8/14/88
MAJ. PAUL J. SULLIVAN, [redacted] 6/29/88

MAJ. MANUEL A. WALLACE, [redacted] 7/17/88
MAJ. DUANE E. WOERTH [redacted] 7/9/88

MEDICAL SERVICE CORPS

MAJ. WILLIAM S. FOX, JR. [redacted] 7/9/88

MEDICAL CORPS

MAJ. NORMAN L. ELLIOTT, [redacted] 7/9/88
MAJ. LARRY C. ROBERTS [redacted] 7/17/88
MAJ. THAMPI VERGHESE [redacted] 8/19/88

CONFIRMATIONS

Executive nominations confirmed by the Senate October 11, 1988:

THE JUDICIARY

ERIC H. HOLDER, JR., OF THE DISTRICT OF COLUMBIA, TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FOR THE TERM OF 15 YEARS.

MILDRED M. EDWARDS, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FOR THE TERM OF 15 YEARS.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

JOHN DAVID DAVENPORT, OF OKLAHOMA, TO BE A MEMBER OF THE FEDERAL THRIFT INVESTMENT BOARD FOR A TERM OF 3 YEARS.

THE FOLLOWING-NAMED PERSON TO BE A MEMBER OF THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD FOR A TERM OF 2 YEARS:

STEPHEN E. BELL, OF VIRGINIA.

THE FOLLOWING-NAMED PERSON TO BE A MEMBER OF THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD FOR A TERM OF 3 YEARS:

JAMES H. ATKINS, OF ARKANSAS.

U.S. POSTAL SERVICE

BERT H. MACKIE, OF OKLAHOMA, TO BE A GOVERNOR OF THE U.S. POSTAL SERVICE FOR THE TERM EXPIRING DECEMBER 8, 1997.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

WITHDRAWAL

Executive message, received October 11, 1988, transmitting the withdrawal of the following nomination from further Senate consideration:

IN THE ARMY

PURSUANT TO SECTION 629(A) OF TITLE 10, UNITED STATES CODE, THE NOMINATION OF COL. WILLIAM J. EDWARDS FOR PROMOTION TO THE PERMANENT GRADE OF BRIGADIER GENERAL PRESENTED TO THE SENATE ON AUGUST 10, 1988.

EXTENSIONS OF REMARKS

MYOPIC ON THRIFTS

HON. WILLIS D. GRADISON, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 11, 1988

Mr. GRADISON. Mr. Speaker, in spite of the inadequate measures previously adopted by the Congress, the erosion of the Nation's savings and loan industry continues unabated. Now, some of those who strongly supported the inadequate FSLIC recapitalization plan have come to the realization that this problem cannot be swept under the carpet. Resolving the S&L problem will take billions of taxpayers dollars. Further delay will only raise the cost. In its October 8, 1988, edition, the Economist argues forcefully the need to take action soon. I urge my colleagues to consider its arguments.

The editorial follows:

MYOPIC ON THRIFTS

A great unmentionable hangs over this year's American presidential campaign: the financial catastrophe that is the country's savings and loan (thrift) industry. Even if politics ensures that this issue is ignored until November's election, the crumbling thrifts will demand attention straight after it.

No one yet knows the full extent of the lurking damage, because the regulators are reluctant to sell the assets of dud thrifts and are far too keen on smoke-and-mirrors accounting. But, as a sore rule of thumb, the gloomiest of private analysts have in recent years consistently been too low in their estimates of how much the thrifts have been losing. Their guess now is that thrifts will require $100 billion of taxpayers' money, with at least $30 billion–$50 billion of that earmarked for Texas. If such a payout were needed in a single year, it would add about two-thirds to this year's expected budget deficit. It is far beyond the resources of the insolvent Federal Savings and Loan Insurance Corporation (FSLIC), and worse is probably to come.

The industry has spilt this red ink after six years of economic growth and falling interest rates. What will happen if there is a recession and/or falling house prices? Already, with the exception of booming California, the housing market seems to be softening across America.

The thrifts' downfall was the bad old cocktail of moral hazard and the wrong sort of protected deregulation. A sleepily run industry had suddenly to pay market interest rates to depositors while still offering fixed-rate mortgages to borrowers. When interest rates soared in the late 1970s, thrifts were caught paying double-digit yields on deposits while getting only single-digit interest income on their mortgages. In 1982 Congress sought to ease their plight by allowing them to invest in sexier assets—and made a familiar mistake. It deregulated, while retaining the blanket subsidy of federal deposit-insurance. Worse, it increased the insured limit from $40,000 per bank account to $100,000, with barely a thought for the potential cost to the thrifts' insurance fund.

Thus underpinned, a new breed of thrift owners proceeded to gamble with the public's money. They embarked on reckless asset growth and/or bet the ranch on interest-rate swings, knowing that if they lost they could always attract more cash by offering depositors high rates plus deposit insurance. The result was a kind of financial chain-letter that over-paid new depositors to pay off the old.

How to swim out of this vortex? The way not to do it is to make the sensible one-third of the thrift industry that is still healthy pay ever-higher insurance premiums to FSLIC. These thrifts already pay nearly twice as much in premiums as banks do. They should be allowed to defect to the commercial banks' insurance fund, the Federal Deposit Insurance Corporation, which still has some money left.

THE CASE FOR KIND CRUELTY

As for the rest, the only realistic way forward is to own up to past excesses and liquidate the one-third of America's thrifts that are bust, keeping a watchful eye on the other one-third that are dodgy. This means closing insolvent institutions down, selling their mortgages and branches and paying back their insured depositors. The shortfall of tens of billions of dollars will have to be raised by the government.

Unsurprisingly, Congress jibs at asking the federal government to borrow more money at the moment. But the longer politicians refuse to own up to losses that have already occurred, the greater the final cost to the taxpayer will be, and the more lingering the misery of depressed areas like Texas. Keeping thrift-financed commercial property off the market holds prices at a limbo-level that bears no relation to rents and which attracts no buyers of sound mind and finance. Yet this approach is being adopted ever more widely.

The Southwest Plan promoted by the Federal Home Loan Bank Board (FSLIC's overseer) seeks to merge lots of little bust thrifts into bigger bust thrifts. It is another attempt to buy time with federal free lunches. FSLIC (ie, the taxpayer) is offering buyers a chance to bet on Texan property with virtually no risk of loss. It not only agrees to pay exorbitant income on worthless thrift-assets for ten years, but also offers startling guarantees of principal. Not surprisingly, such no-risk deals attract punters. They should attract the wrath of congressmen. They perpetuate the pyramid game and will cost the taxpayer much more tomorrow than facing reality today.

In the longer term, the thrift debacle underlines the need to reform deposit insurance. The safety net needs to incorporate more market discipline, and be backed with more hawkeyed supervision. A suggestion: cut the insurance limit to $40,000 and offer it, as was originally intended, per individual and not per bank account. That would make depositors themselves more diligent in deciding which savings banks were walking on the wild side.

DEMAGOGS AND THE PLEDGE OF ALLEGIANCE

HON. FORTNEY H. (PETE) STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 11, 1988

Mr. STARK. Mr. Speaker, our Constitution requires the President to solemnly swear to preserve, protect, and defend the Constitution of the United States. A President who honors this oath will inevitably take some unpopular stands. We Americans have the constitutional right to say what we please—and no one can force us to toe the majority line. It is the sworn duty of the President to see that no one does.

Only one of our Presidential candidates has shown he would defend this constitutional right. Governor Dukakis had the courage to veto an unconstitutional bill that would have required Americans to recite the Pledge of Allegiance. As Supreme Court Justice Robert Jackson said:

> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein.

This is our constitutional birthright. Michael Dukakis protected it. What would GEORGE BUSH have done? He would have signed the bill. So much for defending the Constitution.

Patriotism is expressed in many ways. Some are easy—professions of patriotism. Some are hard, and require personal sacrifice. Michael Dukakis refused to sign a politically popular bill that would have violated our Constitution. He put the Constitution above his own political advantage. He is a man we can trust to honor his oath of office.

The demagogs who have attacked Governor Dukakis for his loyalty to the Constitution have their predecessors. In the 1940's, the Jehovah's Witnesses were persecuted for refusing to recite the Pledge of Allegiance. Eventually, the Supreme Court ruled that the Constitution protected the Jehovah's Witnesses. The story of their persecution is told in the article below. It shows the importance of electing a President who will defend our freedoms regardless of the political cost.

WITH LIBERTY AND JUSTICE FOR ALL?

(By Robert L. Maddox)

1940 was a bad time to be a Jehovah's Witness.

In June of that year the Supreme Court held 8–1 that a Pennsylvania school district could legally expel Jehovah's Witness children who refused to recite the Pledge of Allegiance or salute the flag.

The Witnesses were not trying to cause trouble, but as a religious group they sincerely believe that expressions of devotion to national symbols like the flag constitute

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

a form of idolatry. They claimed a constitutional right not to do either. The justices of the high court rejected that argument and in the *Minersville School District* v. *Gobitis* decision they held that freedom of conscience must bend the knee to the rituals and symbols of national unity.

Far from instilling a feeling of national pride and love of country, the *Gobitis* decision in fact unleased a frightful wave of intolerance and hate across America. Some segments of the population saw it as a Supreme Court-sanctioned "open season" on Witnesses. For three years the First Amendment was suspended for Jehovah's Witnesses, and a shameful chapter was written in American history.

In Richwood, W.Va., the chief of police and his deputy rounded up some Witnesses, forced them to drink castor oil and paraded them through the streets before running them out of town. In Jackson, Miss., members of a local veterans' organization attacked a trailer park where Witnesses lived and drove them out.

In Rockville, Md., police assisted a mob in breaking up a meeting of Witnesses. In Litchfield, Ill., townspeople attacked a group of Witnesses who were soliciting door to door. A Witness in Nebraska was lured from his home, dragged away and castrated. And in Kennebunk, Maine, a community adjacent to George Bush's Kennebunkport home, an unruly crowd charged the local Witness meeting hall and burned it down.

In 1940, between June 12 (just nine days after the *Gobitis* decision was handed down) and June 20, hundreds of attacks on Jehovah's Witnesses were reported to the U.S. Department of Justice.

Fueled by superpatriotism, local school district officials in Michigan threatened to seize children from their Witness parents. Across the country Witness children were expelled from public schools and threatened with imprisonment in juvenile homes, only because they refused to salute the flag.

The Supreme Court soon realized its mistake. Three years later the justices, in a dramatic reversal, overturned the *Gobitis* decision and ruled 6-3 that citizens could not be made to salute the flag if their consciences forbade it.

The *West Virginia State Board of Education v Barnette* case said each individual is protected by the Constitution. As Justice Robert Jackson eloquently put it, "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein."

Forty-five years later the issues raised by *Gobitis* and *Barnette* have arisen again, this time as an issue in the 1988 presidential campaign. It appears that the lessons of the 1940s have been overlooked.

Today politicians are using the Pledge of Allegiance as a political football. They either don't know or don't care about the power of the force they are playing with. In doing so they dishonor and endanger our constitutional heritage.

As Justice Jackson observed, "The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

In America, freedom of conscience means the right to sometimes go against the grain. It means the right to be in the minority, even a minority of one. Caution must be taken to preserve the sacred rights of each person and to avoid fanning the flames of religious intolerance, especially in the name of patriotism.

I believe in the Pledge of Allegiance. I recite it with a feeling of awe for the wonderful privilege it is to be an American. But the pledge is mere words and the flag is a just a square of cloth unless they stand for the great promise of America: the freedom of conscience for each individual.

The pledge speaks of a nation that seeks to guarantee "liberty and justice for all." Wouldn't it be ironic if that very pledge were used as a device to unjustly deny liberty for some?

(Dr. Robert L. Maddox is executive director of Americans United for Separation of Church and State.)

IN OPPOSITION TO H.R. 4782, COMMERCE, JUSTICE, STATE APPROPRIATIONS FOR FISCAL YEAR 1989

HON. WILLIAM E. DANNEMEYER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 11, 1988

Mr. DANNEMEYER. Mr. Speaker, I rise today to explain my vote against H.R. 4782, the fiscal year 1989 appropriations bill for the Departments of Justice, State and Commerce. My opposition to this bill arises from the conferees' decision to exclude the President's proposed reforms to the Legal Services Corporation [LSC]. I also supported the efforts of some of my House colleagues to convince the President to veto the bill when it reached his desk. Unfortunately, he signed it into law late last month.

These reforms would have recognized the importance of providing the poor with access to legal services, rather than allowing much of the annual appropriation to go to those who seek taxpayers' dollars to further their political agenda under the rubric of "law reform." What the LSC needs, Mr. Speaker, is more accountability to guarantee that poor individuals receive the best possible service at the lowest cost. This entails requiring LSC to make its grants on a competitive basis and to prevent the "grandfathering" of a few favored organizations for perpetual Federal funding.

While I voted against the bill, I would like to direct my remarks to one provision which the conferees agreed to retain, the language originally added to the Senate bill requiring the Federal Communications Commission [FCC] to enforce the ban against indecent television and radio broadcasts on a 24-hour a day basis.

On September 14, the House voted to instruct its conferees to agree to the Senate amendment. The motion, which I offered, was agreed to by a vote of 210 to 204.

The language in the conference report overturns a 1987 FCC regulation which created a "safe harbor" rule permitting the broadcast of indecent material between midnight and 6 a.m. As defined by the FCC, "indecent" includes descriptions of "patently offensive sexual or excretory activities and organs." This regulation clearly runs counter to 18 U.S.C. 1464, which prohibits the broadcast of "any obscene, indecent, profane language by means of radio communication" and provides criminal fines and penalties for violators.

Mr. Speaker, placing limits on obscene television and radio broadcasts will enhance the ability of parents to supervise their children, and in the long run safeguard their morality and well-being. This amendment is consistent with the Supreme Court's 1978 decision, FCC versus Pacifica Foundation, where the Court embraced these very reasons as "compelling governmental interests" to restrict indecent broadcasts.

Under the first amendment, the Government can regulate indecent material by time, manner, and place so long as it serves a legitimate governmental interest. Due to the accessibility of the public broadcast media and the extremely impressionable nature of young children, banning indecent language on the radio and television to protect children is a legitimate Government interest.

Statistics indicate that children have easy access to radio, television, and recording equipment—which grants them virtually unlimited access to obscene broadcasts, notwithstanding the time at which it airs. In fact, according to recent Arbitron ratings for New York, Los Angeles, and Chicago, one-third of all children between the ages of 12 and 17 listen to the radio after midnight. Fifty-nine percent of American households now contain videocassette recorders, thus providing children with this unlimited access.

Finally, this language does not censor ideas. It does not impede adult access to desired materials; adults may still purchase tapes and records or go to theaters and nightclubs to hear those words.

Despite this positive language, I nevertheless voted against the bill, due to my objections with respect to the LSC reforms.

THE DOLL LEAGUE, INC.

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 11, 1988

Mr. RANGEL. Mr. Speaker, it is indeed a great honor for me to ask you and my other colleagues to join with me to pay tribute to the Doll League, Inc. for 30 years of public service.

The Doll League, Inc., which was incorporated in 1959, is a tax-exempt, not-for-profit organization, operating two chapters in the metropolitan New York area and Washington, DC. The mission of this organization is to improve the quality of life for disadvantaged Americans. More specifically, the League concentrates its efforts in the areas of health care, education, and the arts.

Throughout the years that I have been a Member of this body representing the 16th Congressional District of New York, I have had the occasion, more than once, to observe first hand the Doll League's commitment to improving the lives of the less fortunate on the streets of New York City and Washington, DC. The Doll League, Inc. has made numerous financial contributions to a host of organizations nationwide. Such organizations include: the United Negro College Fund Scholarship at Morris Brown College, the Reality House of New York City, and the Meharry Medical College.

Christmas is a particularly joyful occasion at the Doll League, Inc. Dolls and toys, donated or purchased by the League, are distributed to children in schools, orphanages, hospitals, and day care centers. Each year, a Christmas party, complete with Santa Claus, is held for children. The dolls plan and execute the parties, and enjoy assisting Santa in distributing gifts.

Because I represent the upper west side of Manhattan, which includes Harlem, I am especially proud of this organization's contributions in my own district. Most recently, the Doll League, Inc., presented the Harlem Hospital with $30,000, to be used for the purchase of a much-needed dialysis machine. League members have also served as volunteers in the pediatrics ward of the Harlem Hospital. Other organizations receiving contributions in my congressional district include: the Boys Choir of Harlem and the Dance Theatre of Harlem.

Mr. Speaker, the Doll League, Inc., represents a first-class body that has, over the years, repeatedly demonstrated its determination and desire to make the world a better place for all. I personally know many of the league members. In fact, when the Doll League, Inc., established its first new chapter in Washington, DC, in September 1972, I had the honor of presiding over the installation ceremony.

Therefore, it is with great pride and admiration that I commend the many prominent women, in both New York City and Washington, DC, who are members of this organization for the work that they have done to date, and I know, will continue to do in the areas of education, health care, and the arts in the United States.

Finally, Mr. Speaker, I am delighted to take this opportunity to cite individually each member of the Doll League, Inc. The following women make up the Metropolitan New York chapter of this organization: Cynthia Badie-Rivers, Carole D. Brantley, Dorethea Bowles-Church, Jeri Warrick-Crisman, Lorraine E. Ewing, Jackie Krygar-Fisher, Linda A. Gowie, Clintona Jackson Graham, Barbara T. Jacquet, Evelyn Lofton, Mary G. Lopez, Barbara B. Marsan, Doretta Joy Murphy, N. Jean Noble, Lourdes Otis, Denise R. Richardson, Vivian Smith, and my dear wife, Alma Rangel.

Those persons making up the Washington, DC chapter of the Doll League, Inc., include: Althea Adams, Betty Blythe, Lucille Branton, Mary Brownlee, Hazel Campbell, Adelaide Clarke, June Fowler, ViCurtis Hinton, Earlene Freeman, Marguite Mazique, Catherine McPhail, Bertha Thompson, Sara Carter, Nesta Bernard, and Jean Crittinder.

Mr. Speaker, each of the above-listed women is to be commended for making the Doll League, Inc., the viable and worthwhile organization that it is.

TRIBUTE TO THE REVEREND DOCTOR AND MRS. MORRIS W. LEE

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 11, 1988

Mr. TRAFICANT. Mr. Speaker, today I rise in order to pay tribute to Rev. Dr. Morris W. Lee, and his wife, Beverly, and to the Third Baptist Church in Youngstown, OH, in my 17th Congressional District.

The outstanding accomplishments of Reverend Lee are particularly to be applauded. The Reverend is a past moderator of the Northern Ohio District Association, former member of the General Board of the American Baptist Convention, and former trustee of the Ohio Baptist Convention. He was one of the founders of the Youngstown Area Urban League, and served as president of such organizations as the Youngstown Area Community Action Council, Roberts Deliberating Club, and the Youngstown Torch Club. Reverend Lee is currently a member of the board of Home Missions of the National Baptist Convention and a member of the executive board of the Lott Carey Foreign Missions Convention. He received an honorary Doctor of Divinity degree in 1979 from Virginia Union University, and is now pursuing studies toward a Doctorate in Ministry from Ashland Theological Seminary, Trinity Lutheran Seminary and the Methodist Theological School in Ohio.

In 1960, Reverend Lee came to Youngstown, OH, to assume the pastorate of the Third Baptist Church. He inherited a most difficult situation. The former pastor had just passed away, and the congregation was being relocated due to highway construction. Under the strong leadership of Reverend Lee, the church began an extended period of renewal and growth. Today the church is recognized as an important contributor toward improving the quality of life in the Youngstown community.

On October 15, 1988, the Third Baptist Church in Youngstown, OH, will celebrate Appreciation Day in honor of its 114th anniversary and the birthdays of Reverend Lee and his wife, Beverly. Mr. Speaker, I ask today that the House join me in extending to Reverend Lee and his wife, and the Third Baptist Church my best wishes on the occasion of the church's anniversary and my heartfelt thanks for all of the wonderful effort they have made toward making my 17th Congressional District a finer place to live in. I am honored to represent these special people.

DELCO COMPANY PAYS TRIBUTE TO ITS OWN

HON. RICHARD T. SCHULZE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 11, 1988

Mr. SCHULZE. Mr. Speaker, 13 years ago the Vietnam war ended, and with it a significant part of American history. For some, the memory of Vietnam still remains a vivid and unforgettable chapter of their past. On October 15, 1988, I will join a group of Vietnam veterans from Delaware County, PA, known as the Delco Company, and will pay tribute to Vietnam veterans of the county who gave their lives to fight for democracy.

Beginning October 9, Delco Company will meet in Washington, DC, to trace the names of fallen friends from the Vietnam Memorial. The tracing will then be carried to Marcus Hook, PA, arriving the morning of the 15th for a parade and ceremony at Market Square Memorial Park. There, the tracing will be buried at the foot of the park's Vietnam Memorial for remembrance.

I consider it a tremendous privilege to recognize, as well as be a part of, Delco Company's tribute to those men who paid the highest price one can give this great Nation—their lives. Though we may never erase the painful memories held by friends and families whose loved ones never returned from Vietnam, we can recognize the Delco Company, and join with them in remembering and honoring the veterans of Delaware County who gave their lives for this great country.

NEW FEDERAL HOUSING LAW BRINGS INTEGRATION CLOSER

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 11, 1988

Mr. EDWARDS of California. Mr. Speaker, in the late 1970's it became clear that racial discrimination in the rental and sales of housing was widespread throughout the United States. Test after test indicated an epidemic of discrimination, in some areas at a rate of over 50 percent.

In 1981 Congressman Robert F. Drinan and I coauthored a strong fair housing bill, which passed the House but not the Senate. The racial discrimination continued.

H.R. 1158, the "Fair Housing Amendments of 1988" enacted overwhelmingly in September, is the successor to the Drinan-Edwards bill of 1981. Its becoming law is a tribute to my former colleague, Robert F. Drinan, S.J., who is presently professor of law, Georgetown University Law Center.

Mr. Speaker, I enclose for the CONGRESSIONAL RECORD an article by Father Drinan describing the new fair housing law as published September 6, 1988, in the Boston Herald.

[From the Boston Herald, Sept. 6, 1988]

NEW FEDERAL HOUSING LAW BRINGS INTEGRATION CLOSER

(By Robert F. Drinan)

At long last, discrimination in housing will be banned by a new, and surprisingly tough, federal law. The measure has been needed since the passage of the weak and generally ineffective Fair Housing Act in 1968.

The new law, for the first time, grants authority to the Housing and Urban Development Department (HUD) to prosecute cases before administrative law judges or in federal district courts. The administrative law judges can grant injunctive relief along with compensatory, but not punitive, damages.

The new law expands existing legislation by guaranteeing protection against discrimination to the handicapped, and to families with children.

The new law is a dramatic improvement over the Fair Housing Act of 1968 which promotes conciliation of complaints but gives no methods of enforcement to HUD. The 1988 amendments to the Fair Housing Act of 1968 are still weak because they do little to curb practices like red-lining or block-busting.

However, the National Association of Realtors concurred in the new law; indeed there was no organized opposition to the bill in its final, compromised version.

The enactment of the new law banning discrimination in housing is the result of persistent action over a generation by a coalition of religious, civil rights, and legal groups—including the American Bar Association. A version of the new law passed the House in 1980 (the Edwards-Drinan bill), but failed in the Senate in a post-election session after that body passed into Republican control in the election of 1980.

The Reagan administration had been opposed to any version of the Fair Housing bill until the spring of 1988 when, for reasons that are not entirely clear, it changed its position.

Civil rights activists have long observed that the Civil Rights Act of 1964 made integration possible in employment and education, but that no comparable right to housing was ever made available. Resistance to residential integration has always been strong. The tragedy has been that blacks and minorities have not been able to acquire housing even after they have obtained equal opportunities in employment and education.

Can the resulting checker-board pattern in housing, which is so evident in every metropolitan area of the country, be eroded or eliminated by the new fair housing law? There is no certainty at all that the long-delayed law can counteract the pervasive patterns of segregation built up over a generation during which white Realtors could deny housing to blacks, and blacks had no effective way to protest. At least now there is a new law that is designed to provide adequate enforcement mechanisms for the 2 million people who annually, by HUD's estimate, encounter discrimination when they try to rent or buy housing.

The Voting Rights Act of 1965 has been the most successful Civil Rights law in the history of America. It is incredible to realize now that blacks could hardly vote at all prior to 1965. Now they vote in almost the same proportion as whites do, and they are an enormously significant new force in the South. Perhaps a generation from now it will be clear that the Fair Housing Act of 1988 changed the face of America by making it possible for blacks to move into predominantly white communities.

If that happens, America will see the beginning of a whole new era of interracial harmony and domestic tranquility.

A NEED FOR WATER CONSERVATION

HON. CHESTER G. ATKINS

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 11, 1988

Mr. ATKINS. Mr. Speaker, just as the 1970's will be remembered as the decade that brought in the energy crisis, the 1980's may go down as the decade of the drought. In every year of this decade, some region of the country has experienced a drought-related crisis. Topping the list, of course, is the drought of 1988, which at one point led the U.S. Department of Agriculture to declare more than one-half of the counties in the country as drought disaster areas.

Unfortunately, our water shortage problems extend beyond occasional droughts, and they will not be cured by a few heavy rainfalls. Many communities, particularly in the Southwest and West, depend upon water mined from aquifers. Many of these aquifers are slowly becoming depleted as ground water is pumped at rates that exceed replenishment. This leads to falling water tables, which not only means less water to drink, but which also greatly increases the risk that saltwater will seep into the aquifer, rendering the entire water supply undrinkable.

Water shortages have also been caused by the rapid influx of people into our cities. About 70 percent of the population lived in urban areas in 1960, but that figure is expected to grow to 85 percent by 2000. In many of these areas, water use already approaches or exceeds the water supply system's dependable yield, leading the Congressional Budget Office to estimate that of the Nation's 756 large urban water systems, 170 will need an additional water supply by 1990.

Mr. Speaker, our water problems point to the need for wiser and more efficient use of our water resources, and for proactive policies aimed at preventing a future nationwide water shortage catastrophe. In short, we must start saving water now. Today I am introducing two pieces of legislation that would result in tremendous water savings and I hope inject the theme of water conservation into national consciousness. I am pleased to report that Senator WYCHE FOWLER is introducing two identical bills in the Senate.

The National Plumbing Fixtures Efficiency Act of 1988, which I am introducing with Representatives MARKEY, MAVROULES, MOAKLEY, STUDDS, BROWN, and BEILENSON, would set Federal efficiency standards for a variety of water-use products, and require clear labeling on these products to inform consumers how much water and money they would save by purchasing low-consumption items. Massachusetts recently became the first State to enact water efficiency standards by requiring the installation of toilets that use no more than 1.6 gallons of water per flush in any new construction or renovations. It is estimated that the new requirement, which would replace the current 3.5 gallon standand, would result in household savings of up to 25,000 gallons of water per year. Extension of such efficiency standards to the national level, and to showerheads, faucets, dishwashers, and other water use products, could lead to savings of billions of gallons of water each year.

This legislation would not only save water, but it would also reap significant benefits for consumers and manufacturers. The Massachusetts Water Resources Authority estimates that the average family could chop $80 off its water bill by installing a low-consumption toilet, and the savings would grow with installation of other water-efficient products. Once consumers become aware of such potential savings, they will look to replace plumbing products that ordinarily would have lasted for years. This increased demand will create more jobs and boost revenues for the plumbing manufacturers.

While this legislation would prescribe a specific water conservation technique, the second bill that I am introducing today would address the big picture. The Federal Government has done very little in the way of collecting and disseminating data and information on water conservation, and formulating policies that encourage the use of water-saving techniques. In addition, we have failed to adequately study related issues such as aquifer depletion, and we lack a clear consensus on where we should be going in terms of a national water management policy.

The National Water Conservation Act of 1988 would correct these shortcomings by declaring it to be the national policy of this country to protect and conserve national, regional, and local water resources. This legislation would authorize the Federal agencies that deal with water resources to report on the manner in which their policies promote or discourage the efficient use of water, and it would create a national clearinghouse through which States and localities could gather information on water conservation. In addition, this legislation would direct the U.S. Department of Agriculture to research new irrigation techniques, and it would direct the U.S. Geological Survey to conduct a study on the Nation's major aquifers.

In light of our current budget deficit and the need to protect our environment, we can no longer depend upon traditional supply-side solutions to our water shortage problems, such as the diversion of rivers or the construction of new dams. Instead, we must attack the demand side, and reduce the amount of water people use. Just as Americans started turning down their thermostats and insulating their homes to conserve energy in the 1970's, we must start taking action today to save water. I urge my colleagues to join me in taking these important first steps.

DUKAKIS' VISION OR NIGHTMARE

HON. WILLIS D. GRADISON, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 11, 1988

Mr. GRADISON. Mr. Speaker, one of the more prominent issues of the Presidential race is providing health insurance to those who are underinsured or uninsured. The Democratic nominee, Gov. Michael Dukakis, has unveiled his plan for mandated employer-provided health benefits. I would like to share with my colleagues my views on this proposal which are represented in the following article published in the October 7, 1988, edition of the Cincinnati Enquirer.

DUKAKIS' VISION OR NIGHTMARE

(By Bill Gradison)

Now that Governor Dukakis has vaulted universal health insurance onto the national agenda, voters face the daunting task of trying to weigh its pros and cons.

I call it daunting partly because the Democratic presidential nominee offered few specifics when he introduced a plan which would require virtually all businesses to provide health insurance to their workers. But the apparent benefits of the program—intended to reach most of the millions of Americans who now struggle by without health insurance—seem far more clear and immediate than the longer and more enduring problems it might create.

A SERIOUS GAMBLE

The potential difficulties are insidious and real, and they make mandated health insurance a serious gamble. "Proponents are wagering that its potential economic problems will not overwhelm the program's well-intentioned goals," wrote Project HOPE's Gail R. Wilensky about a Massachusetts mandated health-insurance plan signed by Governor Dukakis last spring. It is upon this plan, along with one by Democratic Sen. Edward M. Kennedy, also of Massachusetts, that Governor Dukakis has modeled his national proposal.

Dr. Wilensky's assessment—commissioned by the House Wednesday Group, an organization of Republican members of Congress of which I am the chairman—echoes the conclusions of many other experts in the field. These studies implicitly raise the question of whether Governor Dukakis' plan for Massachusetts will be a bad dream for America.

The lack of health insurance already is a nightmare for some 31 million to 37 million Americans, most of whom cannot qualify for Medicaid and cannot afford their own insurance. America's uninsured are 50 percent less likely to seek medical help even when facing such potentially serious conditions as chest pain or unexplained bleeding.

Those who have fallen through the cracks of our public and private insurance industry are mostly full-time workers (at 35 hours or more a week) and their dependents. Twelve million are children.

As a responsible society, we cannot ignore this problem. At first glance, mandated health benefits seem an attractive route—they offer a way to insure most of the uninsured and their cost would not be reflected in the deficit. At the same time, we cannot ignore the possible hazards of requiring employers to solve the problem. Some of these are:

Mandated health benefits represent a tax on employers. They raise labor costs by forcing businesses to conduct a government-promoted activity. Says Uwe E. Reinhardt, a noted health economist: "When the government orders Jones to purchase something for Smith, a tax has been effectively imposed upon Jones whether or not that payment is routed through the government's budget."

Small businesses will be hit hardest. These companies provide a wealth of new jobs in our economy but also tend to have the smallest profit margins. Mandated health insurance could be a costly roadblock to their growth.

Workers would pay a price and, for some, it could be severe. Businesses may choose to recover the higher labor costs, by curbing wage increases, cutting back working hours and laying off employees. The last of these would double the burden for the affected people, throwing them out of work in addition to leaving them, and their children, still without the promised health insurance.

Job growth could be hampered in other ways. Companies that experience higher labor costs will have less money to invest in expansion and research and development, meaning fewer job opportunities.

Consumers would pay as well. Apart from trimming hours, wages and the number of workers, businesses will attempt to recoup their higher labor costs by raising their prices.

In light of these risks, we should consider alternatives to the mandated benefits approach.

And promising alternatives do exist. One is a universal income-tax credit based on need alone and uncoupled from the Aid to Families with Dependent Children program. According to Jack A. Meyer, a prominent health-policy analyst, such an approach would "promote a competitive health-care market by arming the poor directly with fixed-dollar purchasing power that could be used for any qualified health plan."

Another option is a sliding-scale voucher plan in which the government would subsidize health care and a recipient's premiums would kick in as his or her income reached a specified level.

A similar approach, allowing the working poor to "buy in" to Medicaid coverage even if they are not receiving other welfare benefits, was proposed last year by Sen. John H. Chafee of Rhode Island.

To give businesses greater incentives to provide insurance, we could expand tax credits and make greater use of risk-pooling arrangements for small companies. We also could promote multi-employer trusts (METS), self-funded group plans that bring together small companies into multiple-business groups.

A variant of METS is organized by Cleveland's Council of Small Enterprises (COSE) which sponsors and manages health-care plans for more than 5,000 of its small-business members. While COSE has proved highly successful, it nevertheless experiences regulatory constraints from both the federal and state level which should be carefully reviewed in an effort to encourage the development of similar arrangements elsewhere.

FEWER RISKS

Such approaches may lack the superficial appeal of the sweeping Dukakis and Kennedy plans, but they pose fewer economic risks and offer clearer, more honest accountability. Their costs would be reflected on the government's book rather than hidden in lost businesses and job growth.

Furthermore, in trying to assure health care for all, we cannot afford to sacrifice our hard-won economic health, without which we could not make any progress toward addressing our social needs. Before we rush into another major federal mandate, those of us in Congress owe it to our constituents—the American people—to clearly assess all the costs as well as all the benefits and determine whether other methods might prove more effective and efficient, more responsible and accountable, and less taxing on the people we are trying to serve.

A TRIBUTE TO THOSE WHO ELECTRIFY OUR LIVES

HON. FORTNEY H. (PETE) STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 11, 1988

Mr. STARK. Mr. Speaker, Public Power Week, October 9 through 15, recognizes the contributions made by public power systems nationwide. I am proud that the city of Alameda, CA, has one of the most successful public power systems in the Nation. Alameda has a long tradition of providing efficient, inexpensive, and reliable energy.

The 2,204 publicly owned electric utilities and nearly 1,000 rural electric cooperatives in the United States are community owned and locally controlled, providing not-for-profit rates based on their cost of service.

In my district, the Alameda Public Power Co. currently services 75,232 individuals and has been providing efficient, reliable, and cost-effective service for 101 years. Since 1914 the bureau of electricity has returned over $39 million to the city general fund and annual dividends to the city are now at the $1.6 million level. The Alameda utility has been in operation longer than any other municipal utility in California.

Please join me in honoring the Alameda Public Power Utility, their employees, and their consumer-owners who work together to provide the best electric services possible to Alameda residents.

H.R. 4140, TO RECREATE AN INDEPENDENT NRC OFFICE OF INVESTIGATIONS

HON. WILLIAM E. DANNEMEYER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 11, 1988

Mr. DANNEMEYER. Mr. Speaker, I rise in support of this legislation which recreates the Nuclear Regulatory Commission [NRC] Office of Investigations. Maintaining the authority of the NRC Chairman over the Office of Investigations is in the best interest of nuclear safety regulation. Recreating this Office is an important step toward revitalizing the nuclear alternative, however it does not go far enough.

The 1st session of the 100th Congress was productive in addressing issues concerning the nuclear industry in the Energy and Commerce Subcommittee on Energy and Power in the House and in the Senate. We were able to move legislation reauthorizing the Price-Anderson Act through the House. The House passed a 2-year reauthorization of the NRC and late in the year the full committee reported a bill amending the Atomic Energy Act to increase the NRC's ability to enforce security at nuclear plants and reporting requirements for vendors of nuclear equipment. The issue of nuclear waste policy was addressed in the final days of the session as well.

The subcommittee chairman, Mr. SHARP, is to be commended for holding hearings on standardization and licensing reform this year.

These approaches are relevant and necessary in an overall effort to reform the operations and regulation of nuclear power in this country. Plant design and quality and efficiency in the licensing process are no less important to the viability and safety of the nuclear industry than are the issues of storage of waste and compensation of accident victims. Restoring the nuclear power option by meeting these important efficiency and safety needs will lead to significant advances in securing our Nation's energy future.

In August of this year the Senate passed H.R. 1315, to reorganize the Nuclear Regulatory Commission. The 89-to-6 vote indicates that a wide consensus had been reached after long negotiations between critics and advocates of nuclear power. It sets the stage for restoring our confidence in nuclear power and lays the groundwork for a new generation of reactors. The body of the Senate bill is similar to H.R. 4134, the Nuclear Standardization and Safety Reform Act of 1988, which was introduced by 13 Members of the House in the early part of the year. Many of my colleagues and I who have an interest in revitalizing the nuclear power option in our country through improved safety of current facilities as well as new facilities, streamlined licensing processes and standardized designs, refrained from offering amendments which contained the reforms embodied in H.R. 4134, to the bill we are considering today. In withholding the offering of these amendments to H.R. 4140, we agreed to work together in the next Congress to draft bipartisan legislation containing many of these concerns, air quality options, and natural gas policy options. I look forward to working with my colleagues in the next Congress to formulate a bipartisan policy.

We in this body, like our friends in the Senate, need to face the fact that nuclear power is vital to our Nation's energy supply and security needs. This option is necessary in order to meet America's demand for electricity. In addition, it is needed to reduce U.S. oil imports. Reports indicate that between 1985 and 1995, U.S. oil imports could almost double and interestingly, nearly half of this requirement will be used for the purpose of generating electricity. The United States is turning back to oil-fired facilities in order to generate electricity. However, fossil energy is confronted with smog, acid rain, greenhouse effect, ozone degradation, and other environmental problems and the level of concern is growing rapidly. The implementation of strict air quality requirements will be a priority with the new administration. In confronting these environmental questions interest in the nuclear option will increase. Nuclear energy will become an important option and cannot be cast aside as an undesirable alternative. It is a safe, economical and clean alternative.

The U.S. Council for Energy Awareness requested a public opinion poll. The results of the poll showed that Americans are willing to pursue the nuclear energy alternative in order to meet the increasing demand for electricity. It confirmed that Americans support nuclear energy as an important part of their future:

> Of 1,500 Americans polled by Cambridge Reports, Inc. in August of 1987:
>
> 79% said nuclear energy will be important in meeting the nation's future electricity needs, and
>
> 71% said nuclear energy is a good or realistic choice as an energy source for large-scale use.

It is clear that the nuclear power is an important alternative when considering our Nation's domestic energy needs, national security, and air quality concerns. I commend my distinguished colleagues, the ranking member of the Energy and Commerce Committee, Mr. DINGELL, and the ranking member of the Energy and Commerce Subcommittee on Energy and Power, Mr. SHARP, for their willingness to pursue a bipartisan resolution of these issues in the 101st Congress. The energy problem is large and complex and one solution is not to be expected. It is not out of the question, however, to work together to formulate a rational, responsible policy which will enhance safety, improve technology, complement fuel supplies, and preserve our environment. I look forward to working with my colleagues toward that end.

TRIBUTE TO GUS ROGAN AND PETE KUNOVICH

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 11, 1988

Mr. TRAFICANT. Mr. Speaker, I rise today to pay tribute to two outstanding residents of my 17th Congressional District of Ohio, Gus Rogan and Pete Kunovich. On October 1, both Gus and Pete were inducted into the Tamburitza Association of America's "Hall of Fame," in recognition of their 55 years of devotion in perpetuating Croatian cultural heritage by composing, teaching, and playing of tambura music and dance.

While Pete Kunovich and Gus Rogan call Youngstown, OH, their home, through their music, records, and appearances, their reputation reaches all four corners of the United States and Canada. Gus' "Balkan Strings Orchestra," with Pete playing bugarija, has cut 8 albums, published 10 songbooks, and a book on kolo music with chords. On three occasions the band had performed at the National Tamburitza Extravaganza, receiving its Presidential Award in 1983.

Yet, Pete and Gus are more than fine musicians. I also commend them for the great services that they provide for my constituents. Both of these great men have taken of their time to share their musical talents and rich cultural heritage with the community. Gus plays his "brac" and "prim" with a harmonica band and a country western group performing at hospitals, nursing homes, senior citizen groups, and community parks. Pete directs his own senior tamburitza group at the Croatian-American Citizen Club known as the "Friday Nighters." He also teaches tambura to a beginner's class of seniors.

On October 16, 1988, the American-Croatian Citizen Club of Youngstown will join to honor its two fine members Gus Rogan and Pete Kunovich. It is a great honor and privilege to serve these men. They are a credit to themselves and the great cultural heritage they so beautifully represent with their music. Mr. Speaker, I ask that you join with me today in extending to Gus and Pete my congratulations, thanks, and best wishes for the future.

INTRODUCTION OF THE AM RADIO IMPROVEMENT ACT

HON. MATTHEW J. RINALDO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 11, 1988

Mr. RINALDO. Mr. Speaker, AM radio is our oldest broadcasting service, and once was our most dominant. Since 1920, when KDKA radio in Pittsburgh aired the results of that year's Presidential election, AM radio has brought us music and talk, information and entertainment, from many outlets all over the country. Its place in broadcasting's history is second to none.

Today, it is apparent that the grandfather of modern American broadcasting is in decline. According to a recent study, AM radio listeners are just 26 percent of the overall radio audience, down from 75 percent in 1972—just 16 years ago. In 1986, half of the nearly 5,000 AM stations in the Nation lost money. This shocking decline was not due to poor management, but to the relatively low-quality sound that AM has when compared to FM radio. The most lucrative musical formats have, for the most part, gone where listeners can hear them with the highest sound quality—FM radio. Advertising dollars follow the stations with the highest listening audience. Therefore, if AM stations are to regain their full ability to compete in the radio market, they must have the ability to produce sound quality comparable to FM stations.

In an effort to reverse this decline, the Federal Communications Commission is considering a variety of changes to provide improved technical quality for AM radio. The FCC has devoted a great deal of time to this effort. I commend them for their work, and expect it to continue.

However, the FCC has refused to implement the largest potential improvement to AM radio: A standard for the broadcast of AM stereo. Twice in the past 6 years, the FCC has declined to adopt an AM stereo standard, preferring to let market forces decide on the appropriate system. While many AM radio stations lost listeners, the broadcasting industry waited for almost a decade to see which AM stereo standard would prevail. Originally, there were five different systems. Today, only two remain. Neither system is much used by AM stations. Less than 15 percent of AM stations now use stereo, and virtually no AM stereo radio sets are manufactured. Apparently, this stalemate has made AM station owners and radio manufacturers wary of backing a standard that may not be used or may be driven from the market.

The FCC once may have thought that market forces could solve this problem. But in this case, the lack of an AM stereo standard has caused market gridlock, not market harmony. The worst part is that this gridlock has accelerated the decline of the flagship of American broadcasting—AM radio.

Generally, I believe that the free play of market forces produces results superior to intrusive Government decisionmaking. However, where market forces have resulted, or will result, in protracted delay and indecision to the detriment of an important part of our overall broadcasting system, it is time for Government to intervene.

It's useful to contrast the AM stereo situation with another area of great concern to Members of Congress and the industry—high definition television or HDTV. No one thinks for a minute that broadcast HDTV can be brought to the American people in an efficient, expeditious manner without the adoption of technical standards. Even the FCC, which won't adopt AM stereo standards, agree with that assessment. This situation is more than a little ironic, especially when you consider that the prime justification for broadcast HDTV is the fear that without it, over-the-air TV service will become second-rate compared to cable and videocassette recorders using HDTV formats. While I would not characterize current AM radio as second-rate, it is in grave danger of permanently becoming a weak sister to FM radio. We must not let that happen.

There is a consensus in Congress that our broadcast television system should be kept viable by permitting, even encouraging, TV stations to use HDTV so they will remain competitive with cable and other media. In our efforts to bring broadcasting into the 21st century, we shouldn't forget radio or leave it behind. We should work to ensure that our two radio services—AM and FM—both remain viable, complementary, and competitive services. In that regard, we should heed the words of former FCC Chairman Richard Wiley. In recent testimony before the House Telecommunications Subcommittee, Chairman Wiley stated:

> Standard setting is a fine and sometimes controversial art. It is always difficult to decide if, and when, such a determination should be made. To act too soon, before a clear understanding of all relevant factors is possible, may result in a premature freezing of a developing technology. To act too late (or not to act at all) may be to retard the implementation of a new service into the marketplace (as, speaking personally, I think was the case with AM stereo).

AM radio may be down, but it is far from out. The quickest way to enhance AM radio's attractiveness to programmers and advertisers is by improving its sound quality. Since the FCC has declined to act in this area, Congress must step in and "seize the bull by the horns." That is why I have joined with my good friend, the gentleman from Pennsylvania, [Mr. RITTER], to introduce the "AM Radio Improvement Act of 1988." Its provisions recognize the importance of AM radio in our overall broadcasting scheme, and require the FCC to investigate and adopt a single stereo standard for AM radio within 6 months after enactment.

This legislation will not cure all the problems that AM radio broadcasting have. Ultimately, the solutions to AM radio's plight are—and should be—in their hands. However, all Members of Congress believe that our unique system of broadcasting serves as an important lifeline for all citizens of this Nation. Broadcasters should be encouraged to perform and to compete to their fullest potential. I believe that the widespread use of AM stereo will go a long way to assure AM radio's future competitiveness, as well as the growth and viability of the AM radio service for years to come.

TRIBUTE TO EVERY WOMAN'S VILLAGE

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 11, 1988

Mr. BERMAN. Mr. Speaker, I rise today to pay tribute to a fine institution in my community, Every Woman's Village, an informal, nonaccredited school with many outstanding achievements. On October 23, the village will hold an open house to celebrate its silver anniversary. As the Representative of California's 26th Congressional District, I am proud to share with my colleagues some of the accomplishments of Every Woman's Village.

Every Woman's Village, a nonprofit school and a pioneer in adult education, was founded in 1963 by Lynn Selwyn, Chris Edwards, and Diane Rosner, three innovative housewives interested in doing more than household tasks. Through organization, determination and community support, these three women established a creative, independent educational center for the sheer enjoyment of learning.

Every Woman's Village has an excellent reputation in the academic arena, and has been a role model for similar institutions of learning nationally and throughout the world. In 1965, Life magazine did a feature story on the village, which significantly increased its popularity. England, France, and Japan are among the countries that have indicated special interest in the educational programs of the village.

The innovative curriculum characterizes the forward-looking and aggressive faculty and student body. The variety and depth of its course offerings and progressive programs, such as its Volunteer Work-Exchange for Free Classes Program, and Independent Studies to obtain BA, MA, and Ph.D. degrees, caters to men and women of all ages. In addition, special services and programs include performing professional dance troups, a youth academic program, and a scholarship fund. The tree-lined bungalows on Sepulveda Boulevard in Van Nuys decorated with murals painted by students and their instructors are one more testimony of the unique character and success of the village.

In the past 25 years, thousands of men, women, and children of all ages have been emotionally, physically, and spiritually enriched from the village experience. The village has an impressive record of being dedicated to self understanding and creative expression through the joy of learning. It is an honor to have such a fine educational institution in the 26th District.

TRIBUTE TO THOMAS R. HOFFMAN AND RICHARD REMITE—WINNERS OF ST. BARNABAS ANNUAL VALOR AWARDS

HON. BERNARD J. DWYER

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 11, 1988

Mr. DWYER of New Jersey. Mr. Speaker, I rise today to pay tribute to two outstanding firefighters from my district, Thomas R. Hoffman and Richard Remite, both of Roselle, NJ. Firefighters Hoffman and Remite have been selected to be recipients of the Saint Barnabas Burn Foundation's Valor Award for their heroic actions in saving the lives of two young men earlier this year.

On June 7, 1988, Anthony Frietas and Jeff Bullerman were hired to clean a 20,000-gallon fuel oil storage tank located at the Abraham Clark High School in Roselle. Unfortunately, the tank had not been completely drained, and the toxic fumes from the gasoline residue in the bottom of the tank depleted the oxygen supply. After only a short time both workers were overcome by the noxious fumes and slipped into unconsciousness.

The Roselle Fire Department was summoned to the scene. Firefighters Remite and Hoffman donned safety equipment and proceeded to enter the tank by climbing down a slippery, oil-slicked chain ladder. A/Lt. Hoffman was the first to enter the tank and found one victim face down in the sludge and the other slumped against a well. In the process of rolling over the victim lying on the floor, the victim's arm became entangled in A/Lt. Hoffman's airhose, and his mask was ripped from his face. Realizing that he would be soon overcome by the fumes if he remained in the tank, A/Lt. Hoffman had the presence of mind to clear the blocked airways of the submerged victim, before climbing out of the tank.

Firefighter [FF] Remite then climbed down into the tank. Seeing movement coming from the victim sitting against the well, FF Remite made his way over to him. In a state of panic, the victim tried to pull FF Remite's mask off. Fortunately, FF Remite was able to calm the man, who was then lifted out of the tank by a lifeline by A/Lt. Hoffman. Despite the fact that his mask was now covered with oil, FF Remite was able to tie a second lifeline to the other victim, who was also hoisted out of the tank. FF Remite was forced to abandon his safety gear in order to be lifted out of the tank.

Both the victims and the firefighters were treated at the scene and later transported to Union Hospital where they were admitted. Presently, all four men are back at work.

I hope you will join me in honoring these firefighters, Hoffman and Remite, who risked their lives entering a toxic and volatile situation to save the lives of two men.

H.R. 1720, THE FAMILY WELFARE REFORM ACT

HON. WILLIAM E. DANNEMEYER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 11, 1988

Mr. DANNEMEYER. Mr. Speaker, I rise today to explain my decision to oppose the conference report on H.R. 1720, the Family Welfare Reform Act. The House approved this legislation on September 30 by a vote of 347 to 53. As in the past when other welfare measures have come before this House, the Members opposing the final product form a rather curious coalition of liberals and conservatives.

A quick reading of the floor debate that preceded final passage reveals a number of criticisms from the political left, such as the allegation that the work requirements in the bill constitute "slavefare" or that the transitional Medicaid and child care benefits are insufficiently generous. They also reprinted letters from public employee unions and the welfare bureaucracy in opposition to the bill.

Conservative opponents, on the other hand, criticized the work training component of the bill as "a revisitation of CETA," with a potential for enormous abuse and few tangible results and concluded that the enhanced benefits in the bill would result in more, not less, dependency.

In my opinion, Mr. Speaker, H.R. 1720 suffers from some fatal flaws which will ultimately increase the number of so-called behavioral dependents, a term coined by Michael Novak of the American Enterprise Institute, to describe individuals who are poor largely on account of their own behavior. The legislation, in short, will increase the number of persons eligible for welfare and do nothing to reduce their dependency on Government, rather than liberating them from it.

It also will increase Federal spending by at least $3.3 billion over the next 5 years, and probably by much more. And what do we get in return for all this new spending? A real work requirement? Unfortunately, Mr. Speaker, the welfare lobby succeeded in diluting the work requirement so much that, as columnist William Rusher noted, "only 1 welfare family out of 50 will be subject to the workfare provision 6 years from now."

By reducing from 15 to 13 the age of children eligible for the child care tax credit, the bill will increase the already heavy tax burden on middle-income families in order to pay for the child care costs of welfare recipients.

My greatest concern with H.R. 1720, however, lies in the message we are sending to the working poor in this country. As Mr. ARCHER, the distinguished gentleman from Texas, said:

> It is clear that some of the provisions * * * will accord welfare recipients who have gone to work to continued benefits that will not be available to those who live side by side with them and work for the same amount of money and have never been on welfare. So it is possible that someone who earns $18,000 a year can continue to get benefits of Medicare and child day care while a worker next door who earns $18,000 a year and has never been on welfare is denied those privileges.

In other words, by offering welfare recipients transitional Medicare and child care benefits, the Federal Government will be making some jobs more attractive than others. Not only will this discriminate against the working poor who do not receive these benefits, but it will encourage welfare recipients to prolong their part-time work and leave their full-time jobs after 12 months so they can requalify for an additional round of entitlements. The bottom line? These reforms are a slap in the face to the person who independently finds a job, and it tells the working poor that they can get a better deal by relying on Uncle Sam than by relying on themselves.

The $3.3 billion cost of the bill also alarms me. The 100th Congress seems determined to incur tens of billions of dollars in new spending obligations. All the while, it maintains a strict silence as to where all this new money will come from. Reductions in other programs? Sadly, no one advocates dismantling other Government programs in order to make way for this one. New taxes? With the level of Federal taxation already at a historical peacetime high of 20 percent of GNP, new taxes are out of the question. Or, the most likely response, more Government debt?

Whatever the answer, I believe the Congress should be more honest with the American people when it seeks to spend more of their hard earned tax dollars.

TRIBUTE TO 2D LT. GEOFFREY D. SNYDER, MS, USAR

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 11, 1988

Mr. TRAFICANT. Mr. Speaker, today I rise to pay tribute to 2d Lt. Geoffrey D. Snyder, MS, USAR of my 17th Congressional District of Ohio. I am honored to announce that on August 22, 1988, Geoffrey Snyder was one of 165 members of the Uniformed Services University of the health sciences' class of 1992 who began their first semester at the military medical school in Bethesda, MD.

Geoffrey was chosen from an applicant pool of nearly 1,600 outstanding candidates for his commitment to the military as well as for his outstanding academic qualifications. In return for his medical education, he has agreed to owe a 7-year service obligation upon completing his residency training. Second Lieutenant Snyder has embarked on a unique training course that combines traditional basic science and clinical coursework a comprehensive military medical curriculum which includes combat, casualty care, military applied physiology, preventive medicine, and combat psychiatry.

I salute 2d Lt. Geoffrey Snyder, MS, USAR for his outstanding accomplishment. We owe a special thanks and recognition to those who serve in our Armed Forces. It is with great pride that I recognize the important position that Second Lieutenant Snyder has chosen to assume in the service of his country. Mr. Speaker, I ask that you join me today in paying tribute to this special resident of my district. It is indeed an honor and a pleasure to serve as his Congressman.

REPUBLIC OF CHINA CELEBRATES 77TH BIRTHDAY

HON. BILL FRENZEL

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 11, 1988

Mr. FRENZEL. Mr. Speaker, the Republic of China's National Day is Monday, October 10, 1988. That's a good time to reflect on the achievements of a friend and close ally. I congratulate Taiwan on its impressive history and for its present-day status as a world economic power, a strategic ally, and a model of evolving democracy.

Taiwan's accomplishments in the area of trade and manufacturing and its dedication to free enterprise, are truly unique, especially given its size, location, and history. The country's leaders, including the current President, Mr. Lee Teng-hui, have played an important role in Taiwan's successes.

The Republic of China has had annual growth rates over each of the last 2 years above 10 percent. It is modernizing at record speed; it has reduced or removed many import tariffs and controls, and is attempting to reduce its trade surplus with the United States.

For many Members of Congress, the political evolution in the Republic of China is even more important. Fresh winds of change, all apparently positive are blowing in Taiwan. As the base of any democracy broadens, Americans are cheered. I wish the Republic of China continued success and look forward to the strengthing and democratization of its Parliament.

I hope the coming years will see more of the same progress. The many friends of Taiwan in Congress pledge our continued support for continued close relationship with this island nation of 20 million people. We applaud its history of reform and liberalization. We welcome with warmest regards the new Representative, Mr. Ding Mou-shih. We also salute his predecessor, Fredrick Chien, for his good work here along with best wishes for success in his new Cabinet position in Taiwan.

TAIWAN'S NATIONAL DAY

HON. MICKEY EDWARDS

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 11, 1988

Mr. EDWARDS of Oklahoma. Mr. Speaker, I am pleased to wish the Republic of China, which celebrated the 77th anniversary of its founding yesterday, continued progress and prosperity. I believe it is in America's interests to seek, wherever possible, better means of cooperation, unity, and understanding between the United States and Taiwan.

I wish to commend Taiwan's President, Mr. Lee Teng-hui, and his newly appointed representative to the United States, former Foreign

Minister Ding Mou-shih, for their work in continuing warm relations between our two peoples. They should know that we, as Members of Congress, stand behind the Taiwan Relations Act of 1979, and that our two countries share many similarities and remain very interdependent. These ties provide the basis for an outstanding relationship.

A TRIBUTE TO THE RHODE ISLAND CHAPTER OF ALPHA DELTA KAPPA

HON. CLAUDINE SCHNEIDER

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 11, 1988

Miss SCHNEIDER. Mr. Speaker, on the occasion of the beginning of Alpha Delta Kappa Week, I would like to take this opportunity to recognize the achievements of the Rhode Island chapter of Alpha Delta Kappa. Alpha Delta Kappa is an international sorority for women educators that is proud of its altruistic pursuits and accomplishments. I am also proud of their dedication to education and helping others.

The activities of the sisters are as varied as they are beneficial. The sisters of Alpha Delta Kappa volunteer at local hospitals and libraries, help children with tutoring at local schools, and engage in many other civic minded activities.

Recently, the Rhode Island Beta chapter of Alpha Delta Kappa took it upon themselves to help out two young couples with babies. The couples were having trouble making ends meet at Christmas time. The sisters bought and hand made clothing and toys for the children. Chapter corresponding secretary Lorraine Demartini voiced the good feelings of the chapter by stating:

"We have been blessed by giving—everyone says what a good feeling it is; our chapter has pulled together and our sisterhood seems ever stronger with another common cause to support so willingly."

I think Lorraine's words speak eloquently about the attitude, and the commitment of the Alpha Delta Kappa sisters. People like the sisters are out there helping others. This sorority should be held up as an example of what can be accomplished by giving more of ourselves to others.

H.R. 5407, NATIONAL COMMISSION ON THE THRIFT INDUSTRY

HON. CARROLL HUBBARD, JR.

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 11, 1988

Mr. HUBBARD. Mr. Speaker, I supported H.R. 5407, the National Commission on the Thrift Industry. I believe that no restrictions on membership should be imposed in order that the most qualified persons be permitted to serve. The legislation provides that any qualified citizen may serve on the Commission but it also provides that only two members of the Commission may have continuing affiliations with thrift trade groups or thrift regulators. However, a thrift executive who currently serves as an officer or committee chairman of a thrift trade group can end his or her affiliation and become eligible for Commission appointment. Further, there are no restrictions on the number of unaffiliated thrift executives who would be eligible for the citizen appointments although it is clear that citizens from various disciplines and professions should be considered.

There is no quota on the number of unaffiliated thrift executives, academics, attorneys, or any other professional groups which may be appointed to membership on the Commission for positions eligible to be filled by qualified citizens.

TRIBUTE TO THE WESTERN RESERVE CARE SYSTEMS SECURITY DEPARTMENT

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 11, 1988

Mr. TRAFICANT. Mr. Speaker, I wish to commend the Western Reserve Care System Security Department of my 17th Congressional District of Ohio for their efforts in the developing and initiating Project Safe in conjuction with National Crime Prevention Month.

As a former law enforcement official, I recognize the importance of establishing programs to develop community awareness of potentially threatening situations. For their efforts, Mr. Speaker, I hold those responsible for initiating and participating in Project Safe in the highest esteem.

I consider it both an honor and a privilege to represent the fine people who make up the Western Reserve Care System Security Department for all the fine work they have done. They will continue to have my undying respect and admiration.

SATELLITE TV MONTH

HON. RICK BOUCHER

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 11, 1988

Mr. BOUCHER. Mr. Speaker, across this Nation there are several million households where there is no access to either off-air broadcast television or cable. However, because of the relatively recent development of home satellite television, these Americans need no longer be deprived of the entertainment, news, and educational television programming enjoyed by their urban neighbors. Today, more than 2 million American households rely upon home satellite television.

After 2 years of depression, the satellite television is poised for a resurgence. To mark this rebirth, the Satellite Broadcasting and Communications Association has designated October as Satellite TV Month. Equipment manufacturers, distributors, programmers, and more than 2,500 satellite dealers will participate in this event.

On behalf of the Congress, I extend wishes for the success of this event and for the renewed vitality of this important television medium.

RUNNING A MARATHON A DAY FOR THE ELDERLY

HON. CLAUDE PEPPER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 11, 1988

Mr. PEPPER. Mr. Speaker, last Thursday, I was privileged to speak at a ceremony marking the end of a 3,400 mile run by 67-year-old New York administrative law judge Sam Freeman. Mr. Freeman's "Run Across America," a remarkable feat by anyone's standard, was not done to set a record, but to draw older citizens attention to the benefits of exercise and physical fitness in improving their health, vitality, and the quality of their lives.

Mr. Freeman, who has been running for about 9 years, holds the record for a 100-mile run for men his age and has run to the top of the Empire State Building. He does it for his health, not for records. In spotlighting the value of physical activity for older persons, Mr. Freeman's run took him through the southern portion of the United States where a great majority of retirement communities are located. I would like to share with my colleagues the article about Mr. Freeman which appeared in the New York Times.

[From the New York Times, Oct. 3, 1988]

RUNNING A MARATHON A DAY FOR THE ELDERLY

FALMOUTH, VA.—Running with Sam Freeman is rather ordinary: a gentle five-mile-per-hour pace, slow enough to chat and step easily out of the way of oncoming traffic along the Jefferson Davis Highway here should a driver hug the shoulder of the road too tightly.

The run is unremarkable, provided a visitor is only going along for a few miles and one overlooks Freeman's age or what he has been up to for the past five months. But should one attempt to keep up with Sam Freeman for a couple of days—not to mention a whole week—a run with the judge would quickly become an ordeal, a hair shirt that few people would voluntarily don.

The reason is that Freeman, who is an administrative law judge in New York City's Parking Violations Bureau, is 67 years old and is running across the United States. He is running the equivalent of a marathon each day, 13.1 miles in the morning and the same distance in the afternoon, seven days a week. He has been at it since leaving Los Angeles on May 7. And he is going to complete the task, if a bit behind schedule, reaching his goal of the Washington Monument on Thursday. He expects Claude Pepper, a Congressman from Florida, to meet him.

The judge and the Congressman, who is 88 years old, plan to walk up the stairs of the monument together, and Pepper will probably use the occasion to make some points about such things as the absurdity of mandatory retirement, the need for better health care for the elderly or some other issue involving the greying of America.

For the record, Saturday was the 138th day of running for Freeman. The elapsed

distance when he and David Alderson, his trainer-driver-manager-companion, quit as the sun set over the forests of Virginia 60 miles south of Washington was 3,332.5 miles. That translates into six pairs of running shoes and a string of nights spent in roadside motels or sleeping in the white van that has trailed the judge since he set out.

If you think all this borders on fitness nuttiness, you are probably right. Sam Freeman is a man possessed with distance. He started running on the indoor track at the Y.M.C.A. on 63d Street a decade ago and forgot to stop. First came marathons, then 40-kilometer and 50-kilometer races and, finally, a 100-mile event. Blame endorphins, if you want, or an aging man's neuroses about the inevitability of passing time. No matter, this man has come to have a mission in which he fervently believes.

"I want to make people of all ages aware that good health and physical fitness are the keys to a good and happy life," Freeman said. "Congressman Pepper's statement that ability is ageless is true."

One of the judge's motives for undertaking his transcontinental run was to generate publicity about fitness and age, to prove that an old man could accomplish such a feat. And he utters this core truth with the ease and conviction of someone who has said it hundreds of times to reporters from Palm Springs to Richmond.

"I have discovered the fountain of youth," he said. "I feel like I am 20. People belong to health clubs now because it is the thing to do. But belonging to a health club and not truly using it can be as meaningless as having a library card and not reading any books."

He can continue, if uninterrupted by questions, delivering a peripatetic monologue that mirrors the intensity of his convictions.

"You see kids age 10 growing big and fat watching TV," he said. "They are going to grow up and be unable to move. You go into a retirement home and all they can talk about is their aches and pains. One woman was complaining to me the other day about how her ankle hurt. And I told her I knew someone who didn't have a foot—his foot had been amputated—but he goes out and runs."

As he and Alderson have ticked off the miles through Arizona, New Mexico, Texas, Louisiana, Mississippi, Alabama, Florida and up the Atlantic Seaboard, Freeman has paused to meet with groups of retirees.

"They realize that what I am saying is for their benefit," he said. "They want to change their sedentary ways. "But they will need more motivation. They will have to hear the message again and again for it to have an effect. Motivation is everything."

Running across the country has taught him powerful lessons about motivation. Without them he might have given up many times, he confessed.

"It's a mind thing, not a body thing," he said. "It's 105 percent in the mind."

Running across the vastness of the Southwest, it was the mile and one-tenth mile markers on Interstate 40 that kept him going. He would count down the miles to the next exit, to the next town. Rising in the morning, facing yet another 26 miles, it was the thought of confronting friends and colleagues back home if he failed in what he said he would accomplish. He became a master of sending himself mentally to other locations, particularly to his beloved Central Park where he runs each day when he's in New York. "I can close my eyes and transport myself and run the entire six miles around the park, feeling every step," he said.

Around Gulfport, Miss., which marked mile 2,000, Freeman hit his low point. "That was when I had an intense desire to have it over and be home. I've been counting down ever since. And telling myself that I cannot let everyone down, that I must go on. That I must finish."

With his homecoming a mere week away now, the fantasies about Central Park have grown intense. What is the one thing he most wants to do when he arrives?

"To run in Central Park and just fly," he said, a dreamy look in his eyes. "I've been looking forward to that since the first day I left. It's a real joy."

SENATE—*Wednesday, October 12, 1988*

(Legislative day of Thursday, October 6, 1988)

The Senate met at 10 a.m., and was called to order by the Honorable HARRY REID, a Senator from the State of Nevada.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

Thou wilt keep him in perfect peace, whose mind is stayed on thee: because he trusteth in thee. Trust ye in the Lord for ever: for in the Lord Jehovah is everlasting strength.—Isaiah 26:3-4.

God of Abraham, Isaac, and Israel, as pressure and tension inevitably build this week, may the Senators and their staffs be reminded of this practical and relevant reality from the Prophet Isaiah—God's perfect peace for those who stay their mind on Him—the everlasting strength of the Lord Jehovah for those who trust Him. Help them to see the wisdom of stealing a quiet moment in the day to turn mind and heart God-ward. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. STENNIS].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 12, 1988.

To the Senate:

Under the provisions of Rule I, Section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HARRY REID, a Senator from the State of Nevada, to perform the duties of the Chair.

JOHN C. STENNIS,
President pro tempore.

Mr. REID thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the majority leader is recognized.

THE JOURNAL

Mr. BYRD. Mr. President, I ask unanimous consent that the Journal of proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

SCHEDULE

Mr. BYRD. Mr. President, I hope that we can come to an agreement between the two sides, the Republicans and Democrats, and within each of the two sides pass the core drug bill and go home without amendments. This is a good bill. It has been developed over a period of quite a long time by a very talented and dedicated working group on each side, chosen by the two leaders, and the core bill has been introduced with the support of the two leaders; the leadership on both sides.

I know there is a proclivity on the part of Senators to try to load everything onto these last-minute trains that are leaving the station. We used to have a continuing resolution. Now we see an effort to tie riders onto important bills hoping that those horses will carry the riders to the President's desk.

I think that the need for statesmanship requires us to rise above that. We have an opportunity here to pass a good bill. The American people are deeply concerned about the pervasiveness of drugs that know no class lines, that saturate the back alleys, and make their way even into the living rooms of the affluent. The schools, the homes, even the churches of America are without guarantee from this awful enemy of our young people, and it does not strike just the young but it is a threat to the old as well. It is the enemy in our midst, and will continue to grow and threaten the lives of young people.

I was reading in the Post this morning about the number of young people who have been knifed, shot, and slain in this Capital City of ours as a result of violence that comes from drugs and the spreading of drugs.

So we have a responsibility to pass a drug bill, and we have a drug bill that is a good drug bill.

I hope we will not let this debate on the drug bill deteriorate into a political sideshow where we will all be taking political potshots, where we will be trying to indicate who can be the toughest, and who can be the John Wayne in the drug war. We can all be tough.

We have a good, tough bill. It carries the death penalty in it. But we can get bogged down worrying about who can be the toughest, and we can get into all kinds of trouble. We can have all kinds of amendments, and I think we ought to avoid that, and pass this drug bill. I am willing on this side to do everything I possibly can to keep down amendments. I believe that on this side we can—I think we can—avoid offering amendments, any amendments except perhaps the one amendment to strike the death penalty. That will probably be bipartisan in its support, and there will certainly be bipartisan opposition to it, myself for one. We can defeat that motion to strike.

Then if we can avoid other amendments, include in the core bill the child pornography legislation that was recently passed—we did not pass it, but we adopted that amendment to the profamily package—include that, and the distinguished Republican leader may have an idea as to something he would also propose to be included as well. Then, say no more amendments, just debate this bill and go home, or at least send it over to the House. I have hopes and some reason to believe the House will accept our core bill. It might not. But I think it will.

In any event, we would have fulfilled our responsibility. We have a responsibility to do that, and to avoid getting down into the mud battles that are certainly possible and potential if we let our thirst for political potshots get the better of us.

I make that proposal. I am confident that the distinguished Republican leader wishes as much as I do to pass a good drug bill. I hope that we can do that.

I yield the floor.

RECOGNITION OF THE REPUBLICAN LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the minority leader is now recognized.

SCHEDULE

Mr. DOLE. Mr. President, I indicate to the majority leader that we are going to be meeting at 10:45 with the principal players on this side of the aisle. A couple of them are not available this morning, but we hope to have some information. I will meet with the majority leader later this morning.

There have been suggestions, and I think the core bill is a good bill. I think it was always perceived by some on this side as a starting point, not a completed product. We have Members on both sides with amendments they would like to add.

Also, there were Senators on both sides of the aisle meeting, and some of these amendments were set aside—not major amendments but minor ones. The staffs would meet, and some of them would say, "My Senator probably would not agree with that," and they would set that amendment aside. Perhaps some of those amendments could be agreed to.

There is some feeling that we could codify the exclusionary rule, the Supreme Court decision in *United States* v. *Leon*, 48 U.S. 897. There is a meeting going on, as we speak, concerning habeas corpus. I think Senator RUDMAN is meeting with Senator THURMOND and perhaps somebody on the other side of the aisle. I know that is a matter of great interest to the Senator from Florida [Mr. GRAHAM]. They think there might be another approach which might satisfy some who strenuously object to including anything on habeas corpus in the drug bill.

So, in the next few hours, we hope to come to some conclusion on this side, and I will be back to the majority leader as soon as I can.

Mr. BYRD. Mr. President, I thank the distinguished Republican leader. I am sure effort is going forth. I am also sure that between the Republican leader and myself, we would have no problem working it out.

BICENTENNIAL MINUTE

APRIL 19, 1878: THE SENATE AND THE PHONOGRAPH

Mr. DOLE. Mr. President, the human voice is perhaps the most fundamental instrument of the U.S. Senate. For almost two centuries this Chamber has served as the stage for great national debates. Senators speak daily on issues great and small, adding our voices to the record on every issue facing this Nation. Today, our proceedings are recorded both in written form in the CONGRESSIONAL RECORD, and in audiovisual form over the C-Span television network. So it should come as no surprise that 110 years ago, in 1878, Senators were among the first to have their voices recorded on Thomas Edison's phonograph.

The young inventor, Edison, ventured down from his New Jersey laboratory on April 19, 1878, to show the world his remarkable new invention. Edison's phonograph recorded sound on wax cylinders and could immediately play back its recordings. Accompanied by a newspaper correspondent from the Senate Press Gallery, Philadelphia Inquirer reporter Uriah Hunt Painter, Edison carried his machine to the White House, where President Rutherford B. Hayes recorded a few words. The inventor marched down to "newspaper row," a strip of newspaper offices along 14th Street, on the site of the current National Press Club, where he demonstrated this new marvel to the press.

But it was on Capitol Hill that Thomas Edison received his most skeptical audience. Here he allowed Senators to speak and then for the first time listen to their own oratory. Senator James Beck, a Kentucky Democrat, recited a poem into the machine. When Edison adjusted the reproducer and turned the handle, the phonograph squawked back Senator Beck's words at him. However, the Senator concluded that Edison was a ventriloquist, and insisted that the inventor leave the room so that he could operate the machine without him.

RETIREMENT OF PAUL TRIBLE

Mr. DOLE. Mr. President, as the Republican leader in the Senate, I note with some regret that Senator PAUL TRIBLE decided not to seek re-election this year.

Obviously, all of us understand the dilemma that a young man, such as PAUL, faces—trying to balance the enormous workload of a Senator and the responsibilities of a young family, and the priorities he has now set are admirable ones.

But Paul is one of the bright young lights in the National Republican Party, as his brief Senate career has proven. He has been a staunch supporter of President Reagan—and was a critical ally in seeing to it that much of the President's agenda was realized. And he has been an equally staunch advocate for the Commonwealth of Virginia—whether it was his role in transferring the authority of National and Dulles Airport from the Federal to local government, or insuring that the Newport News shipyard was kept busy—PAUL TRIBLE was vigilant about Virginia's welfare.

Despite his junior standing in the Senate, PAUL's integrity and intelligence made him a natural selection for service on several special assignments—membership on the Special Senate Committee Investigating the Iran/Contra Affair; and as Chairman of the committee on committees which has the difficult, some might say touchy, task of making Republican Committee assignments.

I hope and trust that PAUL's exit from the Senate does not mean we have heard the last from him on the national political scene. His years in public service have already proven that he has much to offer. As the Republican leader, I thank him for his support and hard work; and wish him all good things in future endeavors.

HAMILTON FISH, SR. TURNS 100

Mr. DOLE. Mr. President, in just about 2 months, on December 7, a distinguished American, and a very beloved and distinguished Republican, Hamilton Fish, Sr., will celebrate his centennial birthday.

Many of us have been privileged to know and work with his son, HAMILTON FISH, Jr., who has carried on the family commitment to public service as a Congressman from New York.

And for those who have had the honor of knowing Hamilton Fish, Sr., his son's success should come as no surprise. Because there could be no better role model than Ham Fish.

During World War I, he led the "15th New York Volunteers of the Colored Infantry," later known as the 369th infantry. And as a result of his acts of bravery—including participation in the battle of Champagne and an active role in capturing Sechault, Fish was decorated with the Croix de Guerre and the American Silver Star.

Hamilton Fish did not forget his wartime experiences when he returned to the States. In 1920, during his first 5 minutes as a Member of the House of Representatives, he introduced a resolution calling for the creation of the Tomb of the Unknown Soldier. He was also an organizer and strong supporter of the American Legion. And, in one of his most widely known legislative acts, sponsored legislation making the "Star-Spangled Banner" the national anthem.

Ham Fish, Sr. served in the House for 25 years. And as the senior Republican on the House Rules and Foreign Affairs Committee, was a key player in the pivotal issues relating to foreign policy and national security. But he was also an ardent advocate of civil and human rights—including his support for $100 million for Germans who were starving after World War I.

After leaving the House, Ham Fish involved himself in writing and the oil business.

Ham Fish, Sr.'s own words to members of the American Legion, are words he truly lived by:

> It is the manifest duty of the Legion—to take the leadership of most of the nonpolitical, nonpartisan issues affecting the interests of the American people, and help in making them a better place to live in for oncoming generations.

Mr. President, I know my colleagues will want to join me in wishing Ham Fish, Sr. a wonderful 100th birthday when he celebrates it in New York this December 7, and wish him many more to come.

On a personal note, I point out that at the age of 99, he was one of my staunch supporters in New York State early this year, and one of the Dole delegates in New York. I am very proud of his involvement in my campaign, which did not go all the way, but we had a lot of fun.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, not to extend beyond 10:30 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

THE COMING RECESSION AND WHAT TO DO ABOUT IT

Mr. PROXMIRE. Mr. President, Data Resources puts the odds of a major recession beginning by the end of 1989 at one-in-four. Data Resources is absolutely right to frame its forecast in probabilities. A one in four chance of a recession may or may not be accurate. But it roughly indicates two things honestly. First, even the most competent of economic forecasters cannot possibly predict when a recession will start. Data Resources would certainly qualify as one of the most competent. So, it wisely frames its forecast as some time in the next 15 months. Second, even over a relatively long period, such as 15 months or so, an honest forecast cannot determine whether a recession will or will not occur. So, Data Resources is right to give odds rather than to say a recession will or will not strike during that 15-month period.

But why one chance in four? Why not three chances in four? After all, in view of the history of American business cycles in peacetime, we are overdue for a recession now. There's good reason to expect us to put off this recession. We shouldn't. But we can. We very likely will. In this Senator's mind the record peacetime expansion has continued because the Federal Government has been living far beyond its means with record deficits and a present debt of $2.5 trillion. At the same time the American household sector has been going $3 trillion in debt. That's a debt bigger than the Federal Government's obligations. The good-time Charley who really takes the cake is the business sector with a fantastic $4.3 trillion of debt, a debt that is more than three times higher in relations to earnings than it was in a typically healthy economic year like 1955. Worst of all, the business debt promises to move even further out of sight in the next year or so with leveraged buyouts that will push American corporations to far greater levels of indebtedness.

Of course, all this prospective increase in new debt in the next year or so may be the prime reason the country will avoid a recession until after the end of next year—as Data Resources expects. All that borrowing and spending will continue to stimulate the economy. It will also make the next recession much deeper and more painful.

The Wall Street Journal's report on Data Resources' estimate of the timing of the next recession says nothing about the recession's severity. In view of the colossal private and public debt, whenever the recession strikes it is likely to be king-size. Heavily leverated firms—of which there will be thousands, will swiftly sink into insolvency. That means millions will lose their jobs. Households will lose their income they need to maintain their interest payments on the home mortgages and their car financing. This will drive housing construction firms over the brink. Automobile companies will be in deep trouble. The value of the assets of American corporations and households that seemed adequate to carry the heavy debt burden will suddenly and sharply dwindle. The Nation's financial institutions that hold much of the debt will struggle. Even in this present economic recovery period, bank, as well as savings and loan failures have hit the highest level since the Great Depression. The next recession will see their record holding of debt crumble into a miasma of nonperforming loans. The Federal Savings and Loan Insurance Corporation [FSLIC] and the Federal Deposit Insurance Corporation [FDIC], already in serious trouble, will have to come to the Congress for a bailout to redeem much of the $3 trillion Federal Government deposit guarantees the Congress has promised the Nation's depositors. The congressional bailout in a depression of the kind we can expect will be in the hundreds of billions.

Data Resources reports that the region of the country that will suffer the most will be the same that "got stung worst" in the last four economic downturns: The Great Lakes States. That includes Michigan, Illinois, Indiana, Ohio, and my own State of Wisconsin. Data Resources has these States losing 10 percent of their manufacturing jobs by the fourth quarter of 1990, if their one in four scenario of a recession beginning late next year comes to pass.

So, what can we do about it? What we can do about it and what we should do about it are entirely different, in fact, opposite things. How can we keep the good times rolling? The answer should be very fresh in our minds. We keep the good times rolling exactly as we have for the past 6 years—since the fall of 1982: run huge Federal deficits. Pursue an easy money, low interest monetary policy designed to keep households borrowing to build homes at low interest rates. Push hard at leveraged buyouts to keep businesses feverishly at work borrowing and spending. This is like the bad advice given to a heavy drinker who fears a hangover—he is told, "Take a good stiff shot the first thing in the morning. Above all, never get sober. Sobriety means the hangover begins." Sobriety means the heavy drinker starts paying for the good times. The real answer for the heavy drinker is to stop. Stop cold. Stop at once. Do not take another drink. Sure it will hurt. But it will save you from troubles much worse than a hangover.

Similarly, the action we should take to limit the consequences of the borrowing binge is to stop borrowing. Stop Federal spending about our revenues. Stop household borrowing. Stop business borrowing. Ah, but will that not bring on a recession and promptly? It sure will. But it will also cut our losses. We will start on the road to recovery. And the sooner we stop this reckless borrowing, the less destructive will be the recession and be less likely that it will be a full-fledged depression.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Missouri is recognized.

EARLY CHILDHOOD EDUCATION

Mr. BOND. Mr. President, last week Vice President Bush unveiled yet another initiative to improve the lives of America's children. It is a comprehensive plan which covers a lot of ground, but I would like to draw my colleagues attention to Vice President Bush's support for early childhood education.

I have been interested in early childhood education for years. When I was Governor of Missouri, I persuaded the State legislature to enact the "New Parents as Teachers" Program. This program helps parents teach their children in the crucial early years from birth to age three. In Missouri, trained parent educators visit new parents in their homes and help parents enhance their children's intellectual, language, physical, and social development. Parents also participate in monthly group meetings with other parents of children of the same age to discuss questions about their children's development. The program is voluntary and is run by the State department of education.

New Parents as Teachers has been a great success in Missouri—both in the increasing numbers of families that have signed up for it and in the promising test results of children involved in the program. An independent assessment of the Missouri program found that the children involved in New Parents as Teachers consistently scored higher than a control group, as well as the national norm, on all measures of intelligence, achievement, auditory comprehension, verbal ability, and language ability. Perhaps recognizing this, more parents have signed up for the program every year since its inception. Some local school districts have even approved additional levies so that there will be funding for additional parents to participate.

Seventeen States have followed Missouri's lead and have set up early childhood education programs. There are many more States that have sent representatives to the National Center on Parents as Teachers in St. Louis to learn more about Missouri's program. Education is primarily a family and local responsibility, and successful programs like New Parents as Teachers recognize this reality. The proper role for the Federal Government to play in this area is to provide seed money, to provide encouragement for local initiatives, and to provide the leadership that can be provided at the Federal level That is why Vice President BUSH's proposal makes such good sense.

Early childhood education helps families and children in urban, rural, and suburban areas in Missouri. It has worked well for families in all income brackets. All families can benefit from practical help in learning how to help their children learn and grow, but early childhood education can be especially crucial in helping disadvantaged children. Vice President BUSH's "invest in our children" plan recognizes this need as well, as his plan calls for increases in the Head Start Program so that all eligible 4-year-olds can be served.

We as a nation need to take good care of our children, provide them with good health care and a stimulating educational environment.

It is wise and humane to begin at the beginning with our children, and I commend the Vice President for doing so.

I invite my colleagues who may be interested in this program to contact me for further information. We are very proud of the National Center that has been established in St. Louis. I urge Members who are interested to contact me or you can contact the National Center directly for information on how such a program can be developed in your State or your area.

I thank the Chair and yield the floor.

THE THRIFT COMMISSION BILL AND THE DRUG BILL

The ACTING PRESIDENT pro tempore. The Senator from New York.

Mr. D'AMATO. Mr President, I would like to comment briefly on two matters. They are rather interrelated.

One is that this Senator has been informed that one of my colleagues is going to ask to bring up a bill from the House, the thrift commission bill.

The thrift commission bill in and of itself may be worthy of consideration except this particular bill is flawed. It is very much flawed as amended by the House. It eliminates the FDIC from the study. I do not think that makes sense. It adds two representatives of the industry which will be named to this important commission. I think the risk of undue influence is obvious.

However, there are greater problems. I suggest to you what they are. It is no secret that the thrift commission bill is being brought to the floor for the sole purpose of adding to it a bill that has not been considered and to use it as a vehicle to amend this legislation, legislation which was not reported from the Banking Committee, not approved by the Senate, and moreover legislation which is terribly flawed.

As a member of that Banking Committee I object to this last-minute attempt to produce legislation because the bill we would be producing has never been scrutinized by the full committee much less by the Senate.

We have more important business to do than this sleight of hand. That is exactly what this is. Some people may take offense at my characterization. When a Senator has to watch the floor because it may come up late at night or early in the morning or at some time, I suggest that is what is taking place.

Now, I think it is wrong. I think it is wrong for a number of reasons. I think the leader and the minority leader have been attempting in good faith to produce a compromise which would permit this body to do the important business of the people and that is to see to it that we have a drug bill that begins to address many of the shortcomings that exist today.

This is someone who believes very strongly that this bill can be improved. But I for one am willing to take the core bill, the core package, which the majority leader has indicated, and say, "Let us go forth and let us not end this session on the kind of bickering, petty partisanship, or even worse, egomania."

"You've got to have my amendment because if you don't have my amendment, it is not good."

That is terrible. I think all of us should take a step back. We have a pretty good package here, S. 2852. It does not do everything but it begins to go in the right direction.

It begins to set up funding mechanisms. We do not have the money there, but at least it addresses the education and the rehabilitation and answers the Daytop Village, which says: "My gosh, we need money to put extra beds for rehabilitation. We have a long waiting list of people trying to get in here."

For the first time, it says you can use these dollars to construct additional beds. For the first time, it begins to set a course, the triad—education, prevention, and good, tough law enforcement.

I do not want to have to use the various privileges that go to this august body, but I am going to serve notice now—and I do it with all due respect to all of the rights of my colleagues—if there is an attempt to bring up—again, reasonable people might agree or disagree with my interpretation on the banking bill. I will have more to say on that.

I hope I do not have to get up later on and go into extensive remarks or to call for the reading of the full bill and to raise objection to the clerk not reading the entire bill. I think that would be a waste of time, particularly when we have come so far and we have such a short distance to travel and so many people—and I see my good friend from Georgia, Senator NUNN, who is standing now. He has labored hard in this area, and others have in a bipartisan manner.

I am just suggesting that we really finish the business of the people. Let us put S. 2852 before this body and let my colleagues come together in a spirit of compromise, of compromising their own personal wishes and getting behind a bill that essentially begins to do the job. Let us really befuddle the political pundits, who say it cannot be done, and do the right thing.

I am certainly going to urge my colleagues on this side to put aside extraneous amendments, to put aside even amendments that may not be extraneous but are so controversial that we will not be doing what is right for the people. It is a tragedy that we cannot really stay on the Senate floor and say we are serious about the drug battle if we allow these differences to keep us from doing the work of the people.

I yield the floor.

Mr. NUNN. Mr. President, I am pleased that the Senator from New York has made his statement this morning. I agree with his sentiments. I think the core bill that we have on drugs is a good bill. It is not completely funded, but it is a start. I believe it sets the framework for basically almost a mandate for the appropriators next year to fully fund the drug bill.

I hope that we will all set aside our special projects and amendments, even those that are important. There are some of them that are pending that I have been for for years. For instance, the habeas corpus reform. I am very much in favor of that reform. But I hope that we can either work it out in a way that does not prolong the debate and make passage of the bill impossible or that it will not be proposed. And that is just one instance.

We have the exclusionary rule. We have all sorts of other problems on which we have strong feelings on both sides of the aisle. This is not a Democratic or Republican division.

I hope that we will put aside those differences in the last day or day and a half here and pass a bill, because we can actually pass the core bill in about an hour or 2 hours. We could probably even have some amendments that are not controversial and pass those very quickly. I believe we could get through tomorrow afternoon, by the middle of the afternoon, if we took up the bill sometime this afternoon and finished it. I think it would be among the most notable achievements of this Congress, and there have been many under the leadership of Senator Byrd and Senator Dole.

EXTENSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that morning business be extended 15 minutes and that Senators may continue to speak therein for not to exceed 5 minutes each.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

EXPRESSION OF APPRECIATION TO THE DEMOCRATIC FLOOR STAFF

Mr. NUNN. Mr. President, as the 100th Congress draws to a close, I want to say a special word of appreciation to our Democratic support staff for all of their help to the members and staff of the Armed Services Committee during the past 2 years. It is a tribute to Senator Byrd's leadership and style that his staff is so supportive of the committee process and helps to ensure that the work of the Senate is accomplished.

Our floor staff works under the capable direction of Abby Saffold, the secretary of the majority. Abby's thorough knowledge and attention to the details of the legislative process have made her indispensible in the U.S. Senate. Abby and her deputy Bob Bean have always been available to provide counsel and assistance whenever they were needed.

Dick D'Amato and Scott Harris on the Democratic Policy Committee have worked very effectively with the Armed Services Committee members and staff on national security issues and legislation. They were particularly helpful in the difficult task of coordinating the work of three Senate committees on the INF Treaty this year.

Mr. President, I cannot say enough about the excellent day-to-day support we have had from the Democratic floor staff of Charles Kinney, Marty Paone, and Bill Norton. It has not been easy passing the defense authorization bills and other legislative items in this Congress. Last year we faced a lengthy filibuster and this year of course we had a Presidential veto. Charles, Marty, and Bill have always been very helpful in assisting us in moving our committee bills through the Senate.

I also want to thank our excellent Democratic Cloakroom staff of Patrick Hines, Joe Hart, Gary Heimberg, Lenny Oursler, Art Cameron, and Bailey Izard for all of their assistance during the past 2 years. Their selfless and dedicated service has made all of our jobs easier.

I should also note while not working with them on a day-to-day basis as we do with our own floor staff, the Republican floor staff has always tracked down and helped to resolve any problem areas associated with our committee's work.

Finally, I want to express my appreciation to the Senate Parliamentarian, Alan Frumin, and his two assistants Kevin Kayes and James Weber. Alan and his staff have consistently provided objective and timely answers to the many questions that our committee has directed to them.

So, from the Armed Services Committee perspective, I wish to thank Senator Byrd and his excellent staff for their extraordinary cooperation and extremely effective leadership during the last 2 years. I am more conscious of it now than ever before because I am chairman of a committee and I know that this institution could not really operate without that kind of skilled leadership.

Mr. BYRD. Mr. President, will the distinguished Senator yield?

Mr. NUNN. Yes.

Mr. BYRD. Mr. President, I thank the Senator for his kind comments concerning the staff. Those compliments are highly deserved. They are much appreciated by the staff and by me.

I thank the distinguished chairman of the Armed Services Committee, who is also deserving of this kind of cooperation and support that the staff gives to him and his staff.

Mr. NUNN. I thank the Senator. Our committee, probably more than most in the last 2 years, has had trials and tribulations. We have had a prolonged filibuster. We have had the INF Treaty, which was extremely difficult; along with two other committees, we handled that. We have had this year a defense bill that was vetoed and we managed to put Humpty-Dumpty back together.

So we have probably expended more of the staff's time and attention than most committees. We are profoundly grateful to both Senator Byrd for his leadership and for their exemplary help to us.

TRIBUTE TO SENATOR LAWTON CHILES

Mr. NUNN. Mr. President, in the final days of the 100th Congress, Senator Lawton Chiles is bringing to a close 30 years of dedicated public service here in this body and in his home State of Florida. His Senate career has been characterized by three words—perhaps more, but these are the ones that come to mind when I think of Lawton Chiles' service—sincerity, integrity, and effectiveness. His voice will be greatly missed in the Senate.

Lawton and Rhea Chiles are close personal friends. I have had the privilege of knowing and working with Lawton since I first came to the Senate, 16 years ago, when he was known throughout the land as "Walkin' Lawton." Walking more than 1,000 miles across his State, with little money and little name recognition in the beginning, he set a style for campaigning that threatened to get out of hand and turn all the politicians of America into the streets.

Perhaps by coincidence, but maybe not completely, in the years since 1970, walking has become the most popular form of exercise in America, walking shoes are in every closet, malls open early for walkers and major thoroughfares and bridges all around America close down periodically just so people can walk on them.

Not content with having moved the Nation in a direction it had never previously showed signs of wanting to go since 1970, Lawton Chiles proceeded to take on the U.S. Senate. He applied the same understated technique, with the same inevitable result. The issues that were important to Lawton Chiles have become critical issues here in the Senate, and in the Nation as a whole—the problems of drugs and drug-related crime, the problems of an aging population, how to maintain an open and honest government, wasteful Federal procurement, the budget deficit.

Back in the late 1970's Senator Chiles and I began a lonely effort to prod the Senate into coming to grips with the growing drug problem and its relation to organized crime. He was serving as acting chairman of the Permanent Subcommittee on Investigations, on which I also served.

To get the Senate to act, we shared the daily chore of making speeches on the issue during the morning business, at first both of us speaking each day, then alternating days. We eventually wore the opposition down, and Senator Howard Baker cried, "Enough," and we got the Crime Control Act of 1982.

It has been said that public men are judged by their character and the size of the issues which concern them. Lawton Chiles brought to the Senate a Presbyterian conscience which taught him that a man's time and talents were the gifts of God, not for his own use, but for the benefit of his people. And he has given of his time and talents humbly, with good humor, under the most frustrating circumstances.

A nation is only as strong as its institutions, and in his three terms in the Senate, Lawton Chiles strove to make the institutions of American Government work when many preferred to make their names proving that Government could not work. He strove to secure consensus to solve problems when others were profiting from confrontation. He took on the thorny and thankless task of improving the process of Government—the painful process of the Federal budget because he felt it was the key to the health of the national economy at a critical time, and to efficient and effective Government.

He brought to that task skills that are rare and desperately needed in our time—exceptional intellect untouched by intellectual arrogance, unquestionable integrity unmarred by self-righteousness. He is a serious man who took the business of our Nation seriously, without falling into the trap of taking himself too seriously. Lawton Chiles retained his skill at practical jokes and his image as laid-back legislator even as he presided over the last-minute summit negotiations on the budget last year.

Perhaps the phrases "laid-back" and "low key," which have so often been used to describe the Senior Senator from Florida have misled us. He is, in many ways, the prototype of what Senators and Representatives in this Congress should be—steady, intensely dedicated to goals, identifying problems, working out solutions, and building consensus to implement those solutions.

Lawton Chiles sees problems as challenges, so, of course, a Federal budget deficit that suddenly exceeded all the Federal budget deficits in history put together was just the sort of challenge he needed. He did not pretend to be undaunted by that dramatic debt. In fact, Lawton admitted to feeling at times like "a fellow who had been given the captaincy of the *Titanic* after it was hit." But that did not prevent him from tackling this difficult job.

Just as he had in his 12 years in the Florida legislator, Lawton Chiles always kept the interests of the people of Florida foremost. Representing a fast-growing, diverse State, whose voters come from every part of the United States, he has special insights into the needs and concerns of all Americans. A believer in bipartisan government, when that proved impossible, he managed to carry every Democratic vote on key budget votes in a diverse and sometimes divided party.

At a time when others complained of the necessity of constantly raising funds, Lawton Chiles won his first race in a walk—with almost no money. He managed to win his second Senatorial election in 1976 with a ceiling on campaign contributions of $10. He has maintained a policy from the beginning of never taking an honorarium and not taking PAC money—even through his large and populous State has 11 different major media markets. In 1982, in the face of rapid inflation, he did consent to raise his ceiling on campaign contributions to $100.

Mr. President, Lawton Chiles is unique in many, many ways. Even though not all of us follow his lead on many of his examples—for instance, turning down all large campaign contributions and all PAC contributions and honorariums; even though we in this body do not all emulate that any more than we could all walk our way to the Senate in the first place—we have all come to admire Lawton Chiles' integrity, credibility, and extremely high standards. Even when we disagree, we respect his convictions.

During the latter days of his Senate career, he cochaired a joint committee studying the tragic problem of infant mortality and that one of his last major acts in this body was to urge a national commitment to prenatal care for every mother in America, and adoption of the goal of making every baby a healthy baby.

It was typical that while the attention of most of the Nation was on-partisan contests, Lawton Chiles was quietly trying to find a process to improve the lives of all of our children—seeking to find a solution on which a consensus could be built for a better America.

Even when we disagree we respect his conscience.

Lawton Chiles described himself as "a legislative animal," but I think the words of the poet Gilbert Holland are particularly apt in describing what kind of legislator Lawton Chiles has been:

> God give us men! A time like this demands
> Strong minds, great hearts, true faith and ready hands;
> Men whom the lust of office does not kill;
> Men whom the spoils of office cannot buy;
> Men who possess opinions and a will;
> Men who have honor; men who will not lie;
> Strong men, who live above the fog
> In public duty and in private thinking.

Such a man is our colleague, Lawton Chiles.

EXTENSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The Senator from Florida is recognized.

Mr. BYRD. Mr. President, how much additional time does the Senator require?

Mr. GRAHAM. Five minutes.

Mr. BYRD. Mr. President, I ask unanimous consent that morning business be extended for 5 minutes and then, at the conclusion of the remarks of the Senator, that I be recognized.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Florida.

TRIBUTE TO SENATOR LAWTON CHILES

Mr. GRAHAM. Mr. President, it is my desire to add my words of tribute to those which have been delivered by the Senator from Georgia about our colleague, Lawton Chiles, at the time of his departure after 18 years of service in the U.S. Senate. As the 100th Congress comes to conclusion, it will be the conclusion of a distinguished public career which has spanned three decades, 18 of those in the service of the U.S. Senate.

Our friend and colleague, Lawton Chiles, has chosen to return to private life. We will miss his experience, his wit and his assurance. We will miss his wisdom and his quiet integrity. But we are proud and grateful to have had his energy and example for so long. I am particularly proud and grateful to have had his friendship.

Lawton Chiles is a modern man who embodies the traditional values of America and of the U.S. Senate. His whole life is testament to those values—the way in which he got to the Senate was through his record of accomplishments and success in each previous endeavor.

Every responsibility Lawton has taken on is imbued with his own highly personalized style. I confess to having a little trouble imagining Washington next year without it.

When Lawton was in law school at the University of Florida, I was an undergraduate. He had returned from active duty in Korea and was immediately recognized as a leader. His competence and self-confidence were never self-aggrandizing. But his thoughtfulness and clear sense of direction set him apart. They have stood him well throughout his career.

When Lawton first ran for the Florida Legislature he and his wife, Rhea, personally visited thousands of households to meet the voters. He thought if people got to know him, to know what he was about, they would vote for him. And he was right. Lawton defeated a strong incumbent and began a lifetime of public service.

His example is all the more remarkable today as we count the many politicians who want to hide behind the careful packaging of their TV commercials. That never was, and still is not, Lawton's way.

When I was a freshman in the Florida House and Lawton was a 8-year veteran, chairman of the Florida Senate Appropriations Committee, we worked on education issues together. That is a commitment we both still share. It is fitting that one of his many "retirement" activities will be teaching.

In 1970 some considered a Chiles campaign for the U.S. Senate to be a bold, even foolhardy venture. He faced a former Democratic Governor, the powerful speaker of the State House of Representatives and the senior Republican member of the Florida congressional delegation—all experienced statewide political leaders.

And he beat them all by doing it typically his way. He went to the people.

LAWTON's famous walk from Century, FL, in the northwest panhandle all the way to the Keys at the southern tip of the peninsula has become a political legend. It was successful because it was pure LAWTON—it was real.

He has said that the walk was a kind of Walden Pond for him—that on lonely stretches of roadway between small towns and bustling cities he thought about his own life and what he wanted to use it for.

In quiet conversations with ordinary Floridians he learned about their hopes and dreams and fears and he saw how they reflected his beliefs and he theirs. He talked to people in convention halls and on street corners about what he had seen and what he had learned.

He took all that he had seen and heard and discovered with him to Washington. LAWTON has kept the voices of Florida with him and alive in his conscientious service to the people of our State. He has used the self-knowledge he gained while walking those thousands miles to guide him and to grow.

The 18 years he has spent in this Senate have been, in many ways, a continuation of that walk. LAWTON has remained open to new experiences and insights. He is still listening. He is still learning.

He did not want any tributes to mark his retirement. In fact he has stubbornly resisted all efforts to honor him. That, too, is pure LAWTON. He would rather go hunting with his grandson than sit through parties and laudatory speeches.

Family is important to him. Florida is important to him. Integrity is important to him. Time is important to him and he considers testimonials to be a waste of it.

We beg his indulgence. LAWTON has been too important to all of us to leave as an unsung hero. He has been almost an older brother to me, guiding me through my early days in the Senate and sharing with me his sense of pride in this office—and his sage advice when he felt it was appropriate.

His influence will continue through the many public policies he has helped to shape—they span the cycle of human life from prenatal care for indigent women and health care to reduce infant mortality, to the education of our children and young people, to the environmental protection which safeguards the quality of our lives, to improving life for America's elderly, to working for fiscal responsibility in our national budget so that our future will not be mortgaged.

LAWTON is that rarest and finest of politicians—a statesman—and his towering honestly has set an impeccable standard for all office seekers to reflect on.

From the beginning he limited his campaign contributions to small sums which ordinary people could afford. He always maintained that helping out ordinary people was his job and he never wavered from that commitment.

At the end of the first leg of his first Senate campaign in 1970 he said,

> I know now that no matter how much money you can spend on television, and even if you reach a million people at once that way, you can only listen to one person at a time * * *
>
> So * * * I know that when I complete my walk from one end of Florida to the other I'll better understand the State and the people and be better able to serve as a U.S. Senator. I believe the people know this, too.

I believe the people knew it then when they voted for him and over the next two terms in the Senate which LAWTON CHILES won overwhelmingly. I believe his colleagues here and the people of Florida and of this Nation know it today.

LAWTON is a man of deeply held principles who has faced life and its problems with humor and courage and decency. Florida is lucky to have him home full time. I will miss him. We will all miss his presence here.

(At the request of Mr. GRAHAM, the following statement was ordered to be printed in the RECORD:)

PROUD TO HAVE SERVED WITH LAWTON CHILES

● Mr. BENTSEN. Mr. President, I take great personal and professional pleasure in joining my colleagues to pay tribute to LAWTON CHILES. As we all know, LAWTON has decided not to seek reelection this year and will not be returning to this historic Chamber.

LAWTON and I came to the U.S. Senate as freshman Members back in 1971. He and I have been deskmates during these last 18 years, and I have no closer friend in the Senate. From our earliest encounters, to the present day, I have known LAWTON CHILES to be a man of judgment, compassion, courage, and total integrity.

During these 18 years, we have often relied upon each other for advice and counsel. We have worked our way up the ladder together, crafted legislation together, and debated late into the night together. I am proud to have had the opportunity to have served in this institution with LAWTON, and I can say with certainty that the U.S. Senate and the State of Florida will be losing a superb public servant when my distinguished colleague retires.

As chairman of the Senate Finance Committee, I perhaps have a unique perspective when it comes to praising LAWTON's work as chairman of the Senate Budget Committee.

Given the difficult budget deficit, and the tension between the Congress and the White House, chairmanship of the Budget Committee has undoubtedly been one of the most demanding and complex jobs in the U.S. Senate. Yet LAWTON has guided the Budget Committee with level-headed resolve, skill, and distinction. Never straying from fiscal responsibility, he has worked to ensure that the needs of the people of this great country are met. Fiscal responsibility and compassion—neither to the exclusion of the other—have been the watchwords of his tenure as both ranking member and chairman of the Budget Committee. You cannot ask for more than that in a person dedicated to balancing the competing interests that come before his committee.

LAWTON has also unselfishly given his time to serve as chairman of the Committee to Prevent Infant Mortality, and thanks in part to his efforts, we are seeing a renewed commitment to maternal and child health care in this country.

Mr. President, the health of our Nation has been benefited in more ways than one by LAWTON CHILES' tenure in the Senate. LAWTON's presence will be sorely missed by all. I know that all of us wish him well in his ventures beyond this Chamber.●

TRIBUTE TO SENATOR LAWTON CHILES

Mr. FOWLER. Mr. President, I deeply regret the retirement of my colleague Senator CHILES after 18 years of service to our country in the U.S. Senate. I know that the people of my neighboring State of Florida are also saddened to lose his representation.

Senator CHILES' contributions to his State and our Nation are hard to encompass in a brief statement. But throughout his public life—starting in the Florida House of Representatives in 1959 and continuing in this body to 1989—he has gained the admiration and respect of his people from the State's largest city of Jacksonville to the small town of Jerome bordering the Everglades, from the art deco international center of Miami Beach to the towns of central Florida such as Lake City, which are smaller, with no cosmopolitan pretense, but just as enterprising.

The tributes of these people over all the years tell the real story of Senator CHILES' record. He has been honored by the citizens of his home State for his protection of the environment, his advocacy of open Government and minority interests, his stand against crime and his efforts on behalf of senior citizens.

He has reflected the values of his people in all their diversity, and in the process he has provided national leadership. I know him as my chairman on the Budget Committee, as a stern defender of the Public Treasury. No one has worked harder for a return to fiscal sanity and the reduction of these tremendous budget deficits facing our Nation today.

We will miss that tough leadership Senator Chiles has provided.

I want to take this opportunity to wish him well. I know he will return to a full life outside of politics, that his citizenship and leadership will continue to be felt in his community, among his people.

Speaking as a freshman Senator, with about one-tenth of his experience in this body that works by tradition, I know that Senator Chiles' service will continue to serve as a model for me—of the patience, perseverance, and steady application it takes to make this Republic work.

So let me thank him for his public service, and for helping to mold all of us into better representatives of our States and our Nation.

He is my friend, and I will miss him greatly.

SEASONED LEADERSHIP OF LAWTON CHILES

Mr. LEVIN. Mr. President, on the top of the Senate's agenda next year will be the task of reducing the Nation's huge budget deficit. That challenge will be all the more difficult to meet because the Senate will be approaching it without the seasoned leadership of the senior Senator from Florida, Lawton Chiles. During the budget battles of the last 6 years, Lawton Chiles, as chairman of the Senate Budget Committee, has brought a reasoned, balanced attitude and a responsible, coherent message. In the face of rosy scenarios and blue smoke and mirror budgeting, Lawton Chiles has demonstrated the quiet dignity and intellectual honesty that have made Senate Democrats proud to call him their leader in budget policy.

Lawton Chiles came to the Senate in 1971, after a campaign effort that involved walking the length and breadth of Florida on a 1,000-mile trek. In that campaign and in the following two in 1976 and 1982, Lawton Chiles placed a premium on listening and on common sense. He also voluntarily limited the size of the campaign contributions that he would accept. In a very real sense, Lawton Chiles put his mouth and his ideas where his money was not.

On a personal note, I will always remember Lawton Chiles' work on the Gramm-Rudman-Hollings balanced budget law. Although initially skeptical on the merit of this approach to budgeting, he, nevertheless, devoted his considerable talents to making that law more rational and workable. He was unfailing in his willingness to listen to ideas for fine-tuning the law. When negotiations on Gramm-Rudman-Hollings would bog down, I was continually impressed with his steadfast adherence to the principles of good Government and sound economics, and I continually marveled at his even-temperedness in the face of pressure and provocation.

Given his sense of balance, no one would second-guess Lawton Chiles' decision to leave the Senate after 18 years, as much as we might regret it. It takes a strong sense of self to turn away from the accumulated years of power and prestige in the Senate and to exchange them for the reflection of private life. But it is no surprise that the quiet confidence that Lawton Chiles has demonstrated throughout his Senate career would lead him to this decision at a time of his own choosing.

I wish him and Rhea the best as they leave the hectic pace of the Senate for a well-deserved respite.

A SENATOR'S SENATOR—LAWTON CHILES

Mr. PRYOR. Mr. President, the Senate's loss will be the Nation's loss when Lawton Chiles leaves this body at the end of the current session.

From those days back in 1970, when he was known as Walkin' Lawton, and when he traveled the backroads of Florida to convince the voters to send him to Washington, Lawton Chiles has been known for his impeccable reputation and for his willingness to make hard decisions. He is truly a Senator's Senator.

As chairman of the Budget Committee, Lawton Chiles has led us through some very difficult times. He has displayed that rare ability to say "no" and to make it stick.

Lawton has been an example to us all in campaign finances. His $100 limit on contributions and his refusal to take contributions from outside Florida are a goal we should all be striving to achieve.

It is through Lawton Chiles' leadership that a number of procurement scandals have been uncovered. Indeed, he has been at the front lines of the battle to weed out Government waste wherever it occurs.

Lawton Chiles authored the Government in Sunshine Act and the Paperwork Reduction Act. He has been an innovator in elderly needs, the problem of infant mortality, drug trafficking, and education.

We all regret that Lawton has decided to retire at the end of this session. We certainly need his expertise and drive to continue chipping away at the budget deficits that confront this Nation.

Barbara and I want to wish him and Rhea a long and distinguished retirement. The people of Florida have been most fortunate in having Lawton Chiles as one of their voices in Congress.

A TRIBUTE TO SENATOR LAWTON CHILES

Mr. BINGAMAN. Mr. President, at the close of the 100th session of the U.S. Congress, a dedicated public servant, Senator Lawton Chiles, of Florida, will retire from the Senate and return to his home State of Florida. As one friend and colleague who will miss him, I would like to pay tribute to his many achievements.

Senator Chiles will always be remembered for opening up the Federal Government and enabling the people of this great Nation to better participate in its functions. His Government in the Sunshine Act of 1976 required regulatory commissions and other Government agencies to hold their meetings in public and open to the press. He was the force behind legislation that placed similar rules and reforms on Senate committee meetings. If this achievement does not sound significant, it is only because open meeting are now so common. Open public meetings were not the norm 12 to 15 years ago.

A watchdog of Government procurement in the 1970's, Senator Chiles led his Governmental Affairs Subcommittee through a series of investigations that exposed massive fraud and abuse. He exposed the Defense Department's practice of buying poor quality, undersized, and overpriced meat for the troops. His inquiry forced the military to overhaul its meat purchasing procedures. A 3-year investigation of the General Services Administration's contracts uncovered further and widespread fraud in other Government purchases. He went on to lead Congress in the development of better procurement policies and accountability measures.

After serving as the ranking member of the Budget Committee during the 98th and 99th Congresses, he became its chairman in 1987. As chairman, he performed the thankless task of passing budgets in a period of reduced spending. During this time, he did an admirable job of drafting a budget that would not be subjected to partisan holdups. In repeated acts of statesmanship, he urged compromise at a time when large deficits in the Government's Federal and current accounts placed unprecedented pressure on the United States to tighten its belt. This Senator supported his efforts and the budget plans he crafted as the very best plans that were presented to the Congress during my tenure as a Senator. They balanced the need to reduce Government spending in certain areas yet allowed growth in other critical areas such as export promotion, economic development and education.

This past year, I had the privilege to work with Senator CHILES on the creation of Sematech. This important research organization aims to make this Nation more competitive economically. He recognized the importance of Sematech to our country's future and he clarified the conditions under which it was funded.

Mr. President, for 18 years the Senate has profited from this great Senator's labors. He served his home State of Florida and his country with a high sense of responsibility and dedication. I wish him and his family the very best as he leaves the U.S. Senate.

LAWTON CHILES LEAVES AS A WINNER

Mr. SANFORD. Mr. President, I am pleased to join in paying tribute to my distinguished colleague, the senior Senator from Florida, LAWTON CHILES. I remember the excitement he created in the Democratic Party when "he walked his way into the U.S. Senate" in 1970. His honesty, and enthusiasm, and down-to-earth manner brought a zephyr of freshness to Washington. He became a leader immediately, and most recently has led as chairman of the Senate Budget Committee, the Senate Appropriations Subcommittee on Labor, Health, Human Services and Education, and the Governmental Affairs Subcommittee on Federal Spending. His counsel, his wisdom, and his steadfastness have given us what protection we have had from the damage the administration has inflicted upon the budget process.

During the past 18 years, Senator CHILES has become a leading expert in budget and appropriations matters. He became chairman of the Senate Budget Committee in the midst of a runaway deficit, with an unprecedented and unacceptably high debt. Under his able leadership, we have made progress. The fiscal year 1989 budget resolution was agreed to in a timely fashion as were every one of our appropriations measures this year.

He leaves the Senate and the Budget Committee after setting the tone for change. This year our Budget Committee hearings focused on the future, not simply this year or even next. New ideas were explored that should lead to a greater role for international cooperation. He has helped to bring us to the edge of new challenges. He has bequeathed us creative ideas for improvements in budget construction and management, as well as the development of a national science policy, and a sounder fiscal approach to the protection of Social Security funds.

The gentleman from Florida, LAWTON CHILES, has chosen not to seek reelection. He leaves as a winner, walking to a more gentle way of life. The experience he has brought to Congress, his skillful leadership, his willingness to compromise and accommodate, his ready wit, and his kindness and patience will surely be missed.

The ACTING PRESIDENT pro tempore. Under the previous order, the majority leader is now recognized.

Mr. BYRD. Mr. President, I understand there are two Senators who have a little morning business. How much time does the Senator need?

Mr. JOHNSTON. About 5 minutes.

EXTENSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that morning business be extended for 5 minutes to accommodate Mr. JOHNSTON, and an additional 5 minutes be extended to accommodate Mr. ROTH and I then be recognized.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Louisiana is now recognized for 5 minutes.

FAREWELL TO LAWTON CHILES

Mr. JOHNSTON. Mr. President, when the Senate adjourns sine die and the 100th Congress ends, we will be losing the service of one of our Nation's most dedicated legislators. I will be losing the company of one of my best friends. LAWTON CHILES is going home to Florida.

LAWTON arrived in the Senate 2 years before I did and in many ways paved the way for Senators like me to participate more fully in the legislative process. His efforts in passing the Government in the Sunshine and Senate in the Sunshine Acts substantially changed the way business is done here in Washington and provided Americans with enormously improved access to their government's operation. His work on this issue is the type of accomplishment that would serve to distinguish the careers of most lawmakers. But he has done much more for the Senate and for America than that.

Charged with what is by all accounts one of the most challenging and frustrating responsibilities, that of service on the Senate Budget Committee, the Senator from Florida has also emerged as a skilled, effective legislator. Having served closely with him there I can attest to his perseverence and ability on a host of difficult budget issues. As chairman of the committee in the 100th Congress, he was responsible for the rules change which resulted in the elimination of the usage of proxies in the markup of the budget resolution. Today, we can see the direct correlation between implementation of this policy and the enhanced level of participation by Budget Committee members in markup but when LAWTON brought it before the committee, passage did not come easily. It took every bit of his tenacious will and hard work to convince his colleagues of what the years ahead would show to be a wise and prudent policy. Always ahead of his time and pulling, sometimes dragging, his colleagues into the future with him, LAWTON CHILES has ever been the visionary.

I have served with him both in a time of peace, here in Washington, and in a time of hostility when, on a Senate mission to El Salvador in 1982, our helicopter was hit several times by gunfire. Through it all he has maintained his courage and his sense of humor.

In other areas such as his close scrutiny of Federal purchasing and procurement practices or his efforts on the matter of our Embassy in Moscow, he has moved quickly and decisively. He will never be confused with a hesitant, slow-to-act legislator nor do his actions bear the opportunistic mark of a lawmaker, looking for good press and a so-called sexy issue. The difference in his case is that LAWTON is truly inspired by the needs of the citizenry. Luckily for all of us, in his 18 years in the Senate, he has never lacked such inspiration.

With his typical humility, he would probably refuse to agree that his taking leave of the Senate will be a great loss for his colleagues. Those of us here, however, can feel already the ineffable difference his departure will make. But just as he is a man of great faith, we too must hope that Florida will send us a new Senator of his caliber. That is a tall order. What I am sure of is that the Senate will never be quite the same without LAWTON CHILES.

TRIBUTE TO SENATOR PROXMIRE

Mr. JOHNSTON. Mr. President, for 31 years the Senate has been enlightened and enlivened by the contributions BILL PROXMIRE has made to our deliberations. He has one of the brightest, keenest minds ever to address the legislative agenda. His grasp of complicated issues is matched by his skill in cutting through rhetorical fog and procedural pettifoggery to get to the core of a problem. He dislikes extravagance, pomposity, and the failure to accept responsibility which so often characterizes the operations of big government, but he has chosen as his weapon against waste the rapier of wit rather than the bludgeon of abuse. No agency which ever received a

Golden Fleece Award from Senator PROXMIRE ignored it, or forgot the message he was sending.

He did his duty as he saw it, never missing a rollcall vote, accepting no campaign contributions, composing the speeches in favor of the Genocide Convention and arms control which he gave, day after day, on the Senate floor until his vision was shared by others. This stubborn independence suited his electorate right down to the ground: they returned him to the Senate with a margin of two-thirds or better in his last two races. It suited us, his colleagues, too. We will miss his courage, his capability, and his astonishing capacity for work—Wisconsin has been overrepresented in the Congress for the last 31 years, because BILL PROXMIRE has done the work of two legislators. We will miss him and we will remember him.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired. The Senator from Delaware is now recognized for 5 minutes.

(The remarks of Mr. ROTH pertaining to the introduction of legislation appear in today's RECORD under Statements on Introduced Bills and Joint Resolutions.)

CONCLUSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, is morning business closed?

The PRESIDING OFFICER (Mr. WIRTH). The time for morning business has expired.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I am in a position to move to take up either the House drug bill or the Senate drug bill and that would be a nondebatable motion. I have sent word to the distinguished Republican leader that I would like to not necessarily go to either bill right now because there are discussions going on on both sides. I know that the Republican leader is having some discussions with Senators on his side right now with respect to drug legislation in the hopes that we can indeed compromise our inclinations to call up various and sundry amendments, and I think that I want to accommodate that effort.

Mr. President, I have just received word back from the distinguished Republican leader that he is agreeable to this consent request which I will make.

Mr. President, it would be my intention, if I were to make that motion at this time, to call up the House bill and offer the Senate core bill as a complete substitute for the House bill. I need not do that right now.

I ask unanimous consent that the rights that are presently available to any Senator who has the floor at this moment to make a nondebatable motion be retained by me until I have had an opportunity to consult with the Republican leader at a later point and reach the decision at that time to go forward with the motion.

Now, that may be at 1 o'clock, it may be at 1:30, or it may be at 2 o'clock this afternoon, but it gives the leader on the other side ample time to discuss with his Senators what the options are and at the same time I retain my present option of going to that House bill as of now and it would not be debatable as of now.

So if the request I make is granted, I will retain those rights status quo throughout the afternoon or until such time as I wish to exercise that right after consultation with the Republican leader.

The PRESIDING OFFICER. Is there objection to the request made by the majority leader? The Chair hears none, and it is so ordered.

Mr. BYRD. I also ask unanimous consent that that right only vest in me because I have the right right now. Nobody else has the right because I have the floor. I ask that that right vest only in me.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXTENSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, now I ask unanimous consent that there may be a continuation of morning business for 10 minutes; that Senators may speak therein for up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

BASE CLOSING

Mr. BYRD. Mr. President, I understand that Mr. WARNER and Mr. NUNN are prepared to go forward with the conference report on base closing. There is a time limitation on that measure of 40 minutes, and once morning business is closed it would be a good time, if those two Senators would like to proceed, to go to the base closing bill.

I have nothing else at the moment that I wish to call before the Senate.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I thank the distinguished leader. Indeed, the chairman of the Armed Services Committee, Mr. NUNN, and myself are prepared.

I understand that the Senator from Illinois, Mr. DIXON, who wishes to speak on this measure, S. 2749, together with the Senator from Alaska, Mr. STEVENS, have been alerted, and so far as I know we are prepared to go forward at the close of morning business if it is the desire of the majority leader and the Republican leader.

Mr. BYRD. Yes. I thank the distinguished Senator. I have no intention of doing other matters at this time, so I would suggest that our respective staffs and Cloakrooms prepare for going to the base closing conference report.

Mr. President, I yield the floor.

Mr. GORE addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. GORE. Mr. President, I thank the majority leader for his courtesy.

CONDITIONS FACING HOME SATELLITE DISH OWNERS

Mr. GORE. Mr. President, I take this opportunity to briefly speak to my colleagues this morning about an issue that we considered in the Senate last Friday. Indeed, I enjoyed a debate with the present occupant of the Chair on this subject, and that is the inequitable marketplace conditions facing home satellite dish owners.

The amendment which I offered last Friday embodying the provisions of S. 889, which has been on the calendar for quite some time, failed narrowly, by only seven votes, a narrower margin than was the case when it came up the first time in the Senate 2 years ago.

If only four Senators had changed their votes the outcome would have been different. Mr. President, at least four Senators informed me that they would have changed their votes except for the fact that it came as an amendment to the tax corrections bill which many felt should move forward.

Mr. President, a good example of this dilemma was the case of my good friend, Senator MAX BAUCUS. I want to make certain that the many supporters of S. 889 from his State of Montana fully understand that Senator BAUCUS was necessarily compelled to vote to table my amendment, because he was caught in an impossible situation as floor manager of the tax corrections bill which was under consideration at the time my amendment was introduced.

MAX BAUCUS has been a vigorous supporter of fair viewing rights for home satellite dish owners in Montana and throughout the country. I have valued his assistance in advancing S. 889, and he has already made known his support of this or any future measure if we are able to bring it up as a freestanding measure.

He has been one of rural America's most energetic and effective advocates, not only in the area of telecommunications, but in agriculture, rural development, transportation, health care, and other issues. I look forward to working with my good friend and colleague from Montana as we continue to fight for fair viewing rights for home satellite dish owners.

I make this point: That had the vote occurred on a stand-alone measure, I believe very strongly the measure would have passed.

I want to give notice to my colleagues that early in the 101st Congress, as early as possible, I intend to press this matter again. I feel very strongly about it. There is a rank injustice continuing where home dish owners are concerned.

During the debate last Friday we discussed several aspects of the issue which because of the time limitations were not fully resolved. I wanted to take these few moments to go back to a couple of items so my colleagues will have the benefit of the facts as they view developments in the satellite television marketplace over the next few months, in between now and the time we next debate this issue.

One issue that was unresolved in the debate was the suggestion by opponents of the amendment that there are already plenty of noncable distributors of programming for satellite dish owners, and that competition is occurring.

Mr. President, I have gone back to again check the arrangements cited in the debate. Two years ago the programmers refused to grant competitive arrangements to distributors who were not cable television companies or controlled by cable television companies. While opponents to S. 889 claim that a number of independent distributors are selling packages of programming, careful examination of these packages shows very clearly that these arrangements, with one minor exception that I will discuss in a moment, are a little more than resale agreements between programmers and distributors acting on commission from the programmer, and they do not receive wholesale prices and have no flexibility on terms to pass on to dish owners. So they are not truly independent competitive distribution systems. They are little more than programmer controlled deals which do nothing to advance competition. So the marketplace is not working at all and the prices are not driven down as a result.

In the much cited case of the National Rural Telecommunications Cooperative, I welcome that venture but it should now be clear that the NRTC contracts are not only restrictive but they come with wholesale prices in many cases much higher than the wholesale prices paid by cable operators.

The NRTC is prohibited by the programming cable powers from selling to home dish owning families outside their own limited geographical borders. So all but 15 to 20 percent of American families are eliminated from even this small marketplace opening.

So again the claim that the marketplace is working is simply not fact. Next, I want to restate what I believe is a clear analogy between the justice we are seeking for dish owners and the competitive boost given to cable operators in 1976 by the enactment of the compulsory license legislation. As my colleagues know, that law allowed cable television companies total access to local and distant broadcast signals by paying a small fee, a tiny fee, into a copyright pool to be redistributed to holders of the programming rights. In other words, we had a dominant technology, broadcast television. We had a new technology providing a new means of distributing the product—that is, programming—and the existing dominant technology wanted to restrict its fledging competition from gaining access to the supply of programming.

Well, obviously that was unjust, and inconvenient. So the Congress stepped in. There was confusion and distortion in the cable and broadcast marketplace. The cable's ability to grow was being threatened by programming interests who questioned cable's right to retransmit programming to their customers.

So the Congress intervened to give the new technology a break, and to prevent those programming interests from refusing to allow cable to resell its services.

Mr. President, this is very similar to the situation now controlling the satellite television marketplace. The new technology is considered threatening by cable television. And because cable television has economic power over the programmers by serving as the source of 95 percent of their revenue and in many cases owning the programmers in question, they seek to deny competitive access to that programming to the owners of satellite dishes.

This injustice must be remedied. But you know, the Congress has stepped in before on other occasions to help out the cable television industry. In an earlier episode cable petitioned for Government regulation of the rates that cable television companies pay to utilities to string their cables on the poles arguing that utilities should not be able to charge whatever they please for this service. It was the right thing to do because the Congress acted to level the playing field, and bring order to a confused marketplace.

The consequence was an almost unparalleled growth by cable and the country is better off for it. Now, a little more than a decade later, cable is not a fledgling new industry. It is a powerful economic giant. The tables have now turned. The situation is different. It is an economic giant and now it feels threatened by a new technology embodying a new way to distribute the programming that the consumers are really interested in seeing on their television screens.

So now the cable television industry is attempting to control access by the new technology to the programmer. So again the Congress should step in and say, "What is involved here is the public interest. These programs are created by the programmers, not the cable television industry. They should be accessible by the public, even those in rural areas, and the rates charged should be set by the marketplace, not by monopoly power used in collusive ways by members of this industry."

The 1984 Cable Act gave cable even more protections, and I think it is ironic that the cable television industry has such a short memory because what all of these special cable protection laws add up to a blatant case of corporate interests demanding to have it both ways—to have laws passed by the Congress allowing it to maintain its monopoly control of a product becoming increasingly important to American families, to be given special protections against competition and at the same time refusing to serve millions of families, and refusing others the right to serve those families on a competitive basis.

Mr. President, our opponents suggest that Government does not require an auto manufacturer to deal through any particular distributor, so it should not tell cable programmers that they must do so. However, the analogy is not valid. The Government does not protect auto dealers from competition from other dealers, as ironically, it does for cable. Nor does it give the dealer special, Government-regulated access to local property to build its dealership, as it does for cable.

So when the 101st Congress convenes, perhaps we should consider revisions in these laws. I think we need to protect the satellite dish owners, and the provisions of S. 889 represent the best and fairest way to do it.

Last week, we narrowly lost on a vote to table S. 889. If the marketplace does not dramatically improve over the next few months, we will be back again in January, in the 101st Congress.

I look forward to working with my colleagues on the Commerce Committee and the Judiciary Committee and with all Senators who are interested in these important issues. I just want to serve notice that I believe this is extremely important, and I will not rest as long as this injustice continues.

NEW ZEALAND KIWIFRUIT SUBSIDIES

Mr. CRANSTON. Mr. President, I have just been informed that the New Zealand Government is seriously considering a $90 million subsidy to its kiwifruit industry. If New Zealand implements this subsidy, the California kiwifruit industry will be placed in a severely disadvantaged economic position.

Between 1982 and 1986 imports of New Zealand kiwifruit increased fourfold. This increase was largely the result of earlier Government subsidies. At the same time, United States kiwifruit producers are losing a portion of their export market in the European Economic Community as a result of EEC subsidies which have spurred plantings of kiwifruit trees. Kiwi production is rising rapidly in the EEC, with Italy currently the second largest producer in the world. With these massive subsidies by the EEC and a new $90 million subsidy by the New Zealand Government, it will be increasingly difficult for the United States kiwifruit industry to compete.

If this New Zealand subsidy proposal is not withdrawn, I hope my colleagues will work with me to find ways to prevent severe injury to our domestic kiwi growers.

FORMER SENATOR JENNINGS RANDOLPH

Mr. SIMPSON. Mr. President, I would like to call the attention of the Senate to an article by our former colleague and dear good friend, Senator Jennings Randolph. The article is entitled "On the Ballot," and appears in the current edition of U.S. Air magazine.

In it, the remarkable Jennings Randolph continues his lifelong crusade to get all Americans to exercise their voting rights. As we all recall, Jennings Randolph has a long and enviable record on "getting out the vote." He is the acknowledged author of the 26th amendment to the Constitution, which lowered the voting age from 21 to 18. He has made countless speeches—both on and off the Senate floor—encouraging citizens to vote and participate in the electoral process. He has, indeed, been tireless in his efforts to combat the increasing sense of apathy among voters. He recognizes full well the importance of participation by individual citizens in a democracy such as ours. He knows that when the voting turnout increases, all citizens benefit.

This article is yet another example of his deep concern and commitment to his country. Coming in this election year, the article is both timely and relevant. I commend its contents to my colleagues, and I commend my very fine and kind friend, Jennings Randolph, for his continuing efforts to "make a difference" for our country.

Mr. President, I ask unanimous consent that a copy of the article appear in the Record at this point.

There being no objection, the article was ordered to be printed in the Record, as follows:

On the Ballot

(By Jennings Randolph)

Every election is important. It is the way Americans, living in a democracy, select their leaders. But this year's presidential election is especially important. For the first time in 20 years there will not be an incumbent president on the ballot. The choice will be between two men, neither of whom has called the White House home. The winner will live and work there for the next four—or maybe eight—years.

We should take the choice seriously. But what are we likely to do? If the predictions are correct, we will stay away from the polls in droves. The turnout in November is expected to be the lowest in 40 years as Americans become increasingly apathetic to the electoral process. More than 20 million former voters no longer bother, and fewer people are taking the plunge for the first time.

Four years ago in this space, I urged that Americans form themselves into "Battalions for the Ballot." The situation was critical then; today it is a crisis.

At that time we were next to last among the world's democracies in the percentage of voter turnout. Today, according to the Congressional Research Service, we have slipped even further. The United States now has the lowest rate of voter participation among the countries where free elections are enjoyed.

Our nation is endowed with many freedoms, hard won and jealously guarded. Prominent among them is the freedom to determine who will run our government, to choose the people who will make decisions that affect our lives every day. Under our system, voting is an inalienable right, not a privilege bestowed upon us by a higher authority that could just as easily take it away.

The right to vote, however, carries with it the responsibility to vote. We seem to forget that our way of life and the freedoms we enjoy can easily vanish if we are not careful, if we are lackadaisical about who we select as their guardians.

There are no valid reasons for not voting, only excuses. It is not enough to say that we disagree with the candidates, that they are not exciting, that the parties are corrupt, that politicians are self-serving frauds, that nothing can be done to really change things, or that our vote doesn't make any difference. Even if all these reasons were true—and they are not—they would not justify our failure to participate in the process. How else can we change conditions we do not like?

One of the most enduring popular myths is the one that says a single vote is not important. Many people know differently. Elections all across the country have been decided by just one vote. Rutherford B. Hayes was elected president of the United States by a single vote in the 1876 electoral college. That was just a few years after the impeachment of President Andrew Johnson failed by one vote. And at the outbreak of World War II, the military draft was approved by a single vote in the Congress.

There have indeed been close elections, but sometimes it is important to have a large vote and a wide margin of victory. It is almost certain that Ronald Reagan would have had far fewer successes in his eight years as president without the two overwhelming election wins that demonstrated his nationwide support. Even at that, this most popular of recent presidents was elected by less than half of those eligible to vote.

This year there will be over 182 million Americans of voting age, more than ever before. It should not also be a year when even fewer of us bother to vote. Let's accept our responsibility of citizenship and prove to those who are elected mayors, governors, legislators, members of Congress, city council members, and the new occupant of the White House that we care. It will help them do a better job. (Jennings Randolph of West Virginia was elected to the U.S. House of Representatives in 1932 and served through 1946. In 1958, he was elected to the Senate, in which he served through 1984. His achievements include authorship of the 26th Amendment to the Constitution, which lowered the voting age from 21 to 18. Sen. Randolph has never missed voting in an election since he became eligible 64 years ago.)

RETIREMENT OF SENATOR LAWTON CHILES

Mr. STENNIS. Mr. President, I rise today to pay special tribute to the distinguished Senator from Florida, Lawton Chiles, who will be leaving the Senate at the end of the 100th Congress.

During my 41 years in the Senate, I have had the opportunity and privilege to work with more than 400 Senators. I have seen men and women with great ability and great integrity—and Lawton Chiles ranks high on the list as a man of both ability and integrity.

For 18 years, Lawton Chiles has been both a leader and a worker among us. His leadership on the Senate Budget Committee has been widely recognized on both sides of the aisle. As chairman of this powerful committee, he has shown a mastery of the budgetary process as he worked tirelessly to develop a plan of spending for the Federal Government.

I have had the great privilege to serve with Senator Chiles on the Committee on Appropriations and see his work as chairman of the Labor, Health and Human Services and Education Subcommittee. His contributions are many, but none more significant that those in the important field of education. He has championed the cause of education—and has been in the forefront in assuring that the young people of our country have every opportunity to have a quality education.

On a personal note, I have seen and admired the dedication and strong leadership that Senator Chiles has exhibited as a member of the Senate Prayer Breakfast. Week after week, I, as well as many others, have been encouraged and strengthened by the faith, honesty, and integrity that Senator Chiles has exemplified.

The Senate will undoubtedly miss this outstanding public servant. However, as he returns to private life, our country will certainly continue to reap the benefits of both his past and future contributions. My warmest wishes go with him in his future endeavors.

SOVIET REFUSENIK BORIS CHERNOBILSKY

Mr. BIDEN. Mr. President, I am pleased to announce that I have received word that Boris Chernobilsky, a Soviet refusenik and former prisoner-of-conscience, has been granted permission to emigrate by Soviet authorities.

For 12 years Mr. Chernobilsky, a radio electronics engineer from Moscow, has sought to emigrate to Israel with his wife and children. During this period, Mr. Chernobilsky suffered greatly at the hands of Soviet authorities: he was fired from his job, served a 1-year prison sentence in a labor camp on a trumped-up charge, and was repeatedly harassed by agents of the KGB for his activities on behalf of Soviet refuseniks.

I have been following Mr. Chernobilsky's case since the spring of 1987, when I received a letter from his cousin in Israel asking for my assistance. I subsequently wrote to the Soviet Embassy requesting information about Mr. Chernobilsky. In response, Embassy officials informed me that he had been granted permission to leave the Soviet Union. Unfortunately, in Moscow, Boris Chernobilsky received different news: No exit visa would be forthcoming.

Last December, on the eve of the Washington summit, 25 of my colleagues joined me in bringing the Chernobilsky case to the attention of General Secretary Gorbachev. However, Mr. Gorbachev chose to ignore our letter, which prompted me to write him again just 2 weeks ago to make another plea for the Chernobilsky family.

Now it appears that our efforts have succeeded. But we have been down this road before, and I will remain cautiously optimistic until I learn that Mr. Chernobilsky and his family have arrived safely in Israel.

Mr. President, the release of the Chernobilsky family is gratifying to those of us in the United States and in Israel who have been working on their behalf. But let us not forget that there are thousands of Soviet citizens like Boris Chernobilsky who wish to leave the Soviet Union. While the recent increase in emigration is encouraging, the rate of departure still pales in comparison to the peak period of the late 1970's. If Mr. Gorbachev is serious about his commitment to opening up Soviet society, he must allow free emigration. Otherwise, skepticism about his sincerity will continue to serve as a barrier to closer ties with the West.

YUGOSLAVIAN HUMAN RIGHTS SITUATION

Mr. PRESSLER. Mr. President, I would like to take this opportunity to engage in a colloquy with our distinguished colleagues, Senator Simon from Illinois and Senator D'Amato from New York, regarding the deplorable human rights situation in Yugoslavia today. I have a high regard for their outstanding leadership on human rights issues.

It is widely acknowledged and documented that citizens of Abanian ethnic origin have been abused and mistreated by official authorities in Yugoslavia.

Would the Senator from Illinois agree with me that it is important for Americans to condemn the abuses that have been occurring in Yugoslavia?

Mr. SIMON. Mr. President, I certainly agree with my distinguished colleague, the senior Senator from South Dakota. Having read the almost daily news accounts on the Yugoslavian situation, I am disturbed at what seems to be happening over there. I am pleased that Senator Pressler initiated this conversation on a most troublesome subject.

Mr. PRESSLER. I thank my colleague. As he knows, there are about 2 million ethnic Albanians living in that country—most of them in the autonomous Province of Kosovo, where they make up more than 80 percent of the population. I might add that Kosovo is the poorest region of Yugoslavia and its unemployment is an astronomical 90 percent.

Mr. D'AMATO. Mr. President, I want to join Senator Simon in expressing appreciation to Senator Pressler for initiating this conversation. We have many Albanian Americans living in the State of New York and they are keenly interested in the shocking abuse of the rights of Albanians who are Yugoslavian citizens. This situation is simply outrageous. The facts have been confirmed by many sources. Would the Senator from South Dakota care to tell us how we know that systematic abuse of Yugoslavian Albanians has occurred?

Mr. PRESSLER. Yes. First of all, we have the excellent news reports to which Senator Simon referred. I must say that, while there have been many news reports in recent weeks, this really is an old problem. Hearings on this issue were held in the House earlier this year and again in 1986 and 1987. I have read some of the testimony from those hearings, and it documents that human rights violations against the Albanians in Yugoslavia have occurred repeatedly over the past several decades. And this problem seems to be getting worse.

Mr. SIMON. If the Senator will permit me—I agree with him that the problem is getting worse. We know that ancient ethnic rivalries and tensions are among the most difficult to resolve, but there really is no excuse for the mistreatment of any minority. I'm sure that abuses have occurred on both sides, but being vastly outnumbered, Albanians have been getting the lion's share of the unnecessary punishment. I note, for example, Amnesty International's 1988 annual report which states that the majority of Yugoslavians charged with political offenses in recent years have been Albanians from Kosovo Province.

Mr. D'AMATO. I thank the Senator from Illinois for mentioning Amnesty International's report. I have seen it, too, and it shows that literally thousands of ethnic Albanians have been charged and convicted of so-called political offenses. Many of these were jailed for "hostile propaganda" because they were accused of supporting full republic status for the Province of Kosovo.

Mr. PRESSLER. I would like to add to what my distinguished colleagues have just said that the Amnesty report also discusses beatings and torture of Albanian detainees. Mr. President, I will ask unanimous consent that the Yugoslavia section from Amnesty International's 1988 Report appear in the Record at the conclusion of this colloquy.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PRESSLER. Mr. President, now that we have discussed the general nature of this problem, I would like to ask my colleagues whether they would agree that the solution to this problem is the granting of greater autonomy to the Albanians of Kosovo to manage their own affairs? I believe that is the only solution to a problem that seems to be getting worse on practically a daily basis.

Mr. SIMON. Senator Pressler, I am not sure what the perfect solution would be in this case. Yugoslavia has always projected itself as a model of ethnic harmony, yet the facts speak otherwise. I would say that each minority should have the right to preserve and practice its own culture, including its own language. If that requires more political autonomy, and I think it probably does, then the Albanians of Kosovo should have it. I am disturbed by reports that the national government intends to strip Kosovo of much of its current power to govern its own affairs. It seems to me that would just add fuel to the fire.

Mr. D'AMATO. I would agree with everything that has just been said by my colleagues. The Albanians of Yugoslavia have been picked on for years. The mobs of Serbians who have been stirring up ethnic tensions are led by prominent Yugoslav politicians who should know better. They are violating the Helsinki Agreement on human rights, and it looks like they intend to further restrict what little local political autonomy now exists in Kosovo.

Mr. PRESSLER. I thank my colleagues for those responses. One is always hesitant to tell another society how it should deal with its problems. We have plenty of problems of our own. But what has been happening in Yugoslavia to the Albanian population is simply an international outrage. The country seems to be sliding toward civil war. Trying to make Albanians the scapegoats for Yugoslavia's 200-percent inflation and general economic chaos in itself is a crime.

In closing, Mr. President, I wish to thank Senator SIMON and Senator D'AMATO for discussing Yugoslavia's problems with me. I note that they have also joined me and other Members of Congress in a letter to Secretary Shultz urging our Government to speak out strongly to try to prevent a further deterioration of the situation in Yugoslavia.

Mr. President, I ask unanimous consent that the section of the amnesty report to which I referred be printed in the RECORD.

There being no objection, the section was ordered to be printed in the RECORD, as follows:

YUGOSLAVIA

At least 200 prisoners of conscience were held in Yugoslavia, of whom over 40 were convicted during 1987 of non-violent political offences under the federal and republican criminal codes. Many more were summarily jailed for up to 60 days for minor political offences. The total number of political prisoners was variously reported in the Yugoslav press as 500 and 800; other, unofficial, estimates were higher. Many political prisoners were denied a fair trial. There were allegations that certain political detainees had been ill-treated during pre-trial proceedings. Conditions in some prisons where prisoners of conscience were held were harsh. At least three people were sentenced to death and three others were executed, all for murder.

In recent years, the majority of people charged with political offences have been ethnic Albanians from Kosovo province, where since 1981 there has been continuing nationalist unrest. During 1987 tension increased in Kosovo province between the ethnic Albanian majority and the Serbian and Montenegrin minorities, who continued to complain of harassment and intimidation. In October federal police were sent into Kosovo to maintain order.

According to official reports from Kosovo, in the first eight months of 1987 police reported 31 ethnic Albanians for political crimes and 128 for minor political offences. On the basis of official statistics, between 1981 and October 1987 at least 1,500 ethnic Albanians from Kosovo were charged in regular courts with political offences and a further 6,650 were convicted of minor political offences under summary procedures. In addition, in September Yugoslavia's Defence Minister announced that since 1981, 1,435 ethnic Albanian soldiers had been discovered plotting subversion and armed rebellion in the army (such cases came under the jurisdiction of military courts, and were rarely reported in the press). Most defendants were accused of activities in support of the demand for Kosovo to be given republic status and to cease to be part of Republic of Serbia, or for an Albanian republic to be created within Yugoslavia, composed of Kosovo and other regions with large ethnic Albanian communities, with a view to its eventual unification with Albania.

Political detainees were generally charged under Article 133 of the federal criminal code dealing with "hostile propaganda" or under Article 136 (and connected articles) concerning "association for hostile activity". One prisoner of conscience was Muharrem Kurti, an ethnic Albanian who went to Albania in 1981 and returned to Yugoslavia in 1987. In September a court in Pec jailed him for 18 months for "hostile propaganda". He was found guilty of writing letters from Albania to his brother in which he praised the activity of Albanian nationalists in Yugoslavia, "glorified" the Albanian nation and "insulted the Yugoslav political system".

In April, 10 ethnic Albanians went on trial in Pec. Charges of belonging to an illegal nationalist organization (under Article 136) were dropped, but they were then accused under Article 133 of writing and distributing pamphlets and hostile slogans such as "Kosovo Republic". A graphologist reportedly told the court that the texts had all been written by one person and that none of the defendants, with the possible exception of Musa Beqiraj, was that person. However, in May six of the 10 defendants were convicted: Xhavit and Musa Beqiraj were each sentenced to 18 months' imprisonment and four others received one-year sentences.

In April Januz Salihi was sentenced to six and a half years' imprisonment in Gnjilane. He was convicted under Article 136, in connection with Article 114 ("endangering the social order"). He had been arrested in Belgrade in December 1986 after the Swiss authorities had refused his application for political asylum and forcibly returned him to Yugoslavia. At his trial he was accused of having joined an emigre organization called "Movement for an Albanian Socialist Republic in Yugoslavia" and of having propagated its goals among Kosovo Albanians living abroad. Further, he was said to have visited Albania in 1983 for two weeks. At his trial Januz Salihi retracted much of his previous testimony alleging that he had given it under torture, an allegation which the court apparently did not investigate. He admitted to having taken part in demonstrations in Kosovo in 1981, to visiting Albania and to having been, for two months, president of a club for Kosovo Albanians living in Switzerland.

Besides ethnic Albanians, other Yugoslav citizens were also convicted of "hostile propaganda". In March Miladin Nedic, a mining engineer, was sentenced to three and a half years' imprisonment in Tuzla for statements he allegedly made at two parties and in private conversations. He was said to have expressed Serbian nationalist views and criticized the government. He also allegedly stated that freedom of expression was restricted in his country.

Two other prisoners of conscience, Fadil Fadilpasic and Ibrahim Avdic, both engineers, were also convicted of "hostile propaganda" in June in Sarajevo and sentenced to four and two years' imprisonment respectively. They were alleged to have advocated in private conversations the creation of an "ethnically pure Muslim republic" in Yugoslavia to be governed by Islamic law, and to have claimed that religious freedom was restricted and that Muslims were discriminated against in Yugoslavia. A third defendant, Munib Zahiragic, an imam, was alleged to have advocated the use of arms to achieve an Islamic state in Bosnia-Hercegovina. He was sentenced to five years' imprisonment. Amnesty International sought further details of the evidence against him.

There was renewed criticism in the press and in public discussion of Article 133 of the federal criminal code, covering "hostile propaganda". On 10 December, International Human Rights Day, participants at a meeting organized by the Belgrade Institute for Criminological and Sociological Research called for its abolition on the grounds that it punished the expression of opinion and violated the International Covenant on Civil and Political Rights, ratified by Yugoslavia in 1971.

At least 10 prisoners of conscience were serving sentences, mostly of three or three and a half years, for refusing on religious grounds to do military service. Most were Jehovah's Witnesses, and several had already served a previous sentence for the same offence. Among those sentenced in 1987 were Oto Kukli, Benjamin Majcen and Joze Rakusa. In November the Constitutional Court of Yugoslavia rejected an appeal by a group of Jehovah's Witnesses from Maribor that the legislation providing for compulsory military service be declared unconstitutional.

The available information indicated that political prisoners were frequently denied fair trials. In several cases public officials or the press described defendants at guilty before their trials had taken place. For example, before Miladin Nedic's trial he was denounced in the press as a "proven nationalist" by the local committee of the League of Communists. He was subsequently convicted, largely on the basis of statements made by witnesses during pre-trial investigation proceedings which often differed significantly from their testimony in court. Defence attempts to find out what role the police had played in the preparation of the pre-trial statements were repeatedly blocked by the court. Press reports of the trial of Fadil Fadilpasic and his codefendants suggested that it suffered from similar flaws.

In a number of cases the courts appeared reluctant or unwilling to hear, let alone take account of, defence evidence. For example, Dobroslav Paraga was convicted in April by a court in Zagreb which refused to examine any of the defence evidence. He had been charged under Article 197 of the Croatian Criminal Code, dealing with "spreading false information". Two Slovenian journals had published articles which described the harsh conditions and ill-treatment he had experienced while a prisoner of conscience from 1980 to 1984 (see *Amnesty International Report 1981*). The court refused to hear any defence evidence, including testimony from his fellow-prisoners. However, it accepted the evidence of a fellow-prisoner and officials about whom Dobroslav Paraga had complained, who would have been liable to punishment if his allegations of ill-treatment had been accepted. He was sentenced to six months' imprisonment suspended for three years and a three-year ban on any form of public expression. This sentence was confirmed on appeal.

Some political detainees, mostly ethnic Albanians, were alleged to have been ill-treated during pre-trial detention. For example, information was received during 1987 from an ethnic Albanian who was imprisoned in the Military Prison at Ljubljana in 1983. He alleged that state security police kicked and beat him and others with batons and fists on sensitive parts of the body such as the kidneys, the soles of the feet and stomach. Similar methods were reported to be used by security police in Pec, where one prisoner of conscience died in detention in suspicious circumstances in late 1986. Xhemail Blakaj was arrested on 3 November 1986 and sentenced the following day to 60 days' imprisonment after literature and tapes "with a nationalist content" were found at his home in Vrelle, Kosovo. He was said by the authorities to have committed suicide in Pec prison on 8 November 1986. His family were reportedly denied access to him from the time of his arrest until 11 November 1986 when they were instructed to collect his body—which is alleged to have borne marks of torture—from a hospital in Pec.

In May and June the daily newspaper Borba published a series of articles about political prisoners in Yugoslavia. In the absence of any official figures, it estimated their number at about 500. Another newspaper, 8-Novosti, put the figure at 800 in February. The Borba articles, which were based on visits to several prisons, were dismissive of complaints of harsh conditions and ill-treatment made by former political prisoners, including prisoners of conscience. However, they did describe poor to bad conditions in Zenica, Lepoglava and Goli Otok prisons. (In July it was announced that Goli Otok prison would be closed at the end of 1988.) The articles criticized the use in Croatia and Serbia of the regime known as "strict observation", whereby prisoners can be summarily deprived of many of their rights.

At least three people were sentenced to death, two for multiple murder and one for rape and murder. Three people were executed, all for multiple murder.

During 1987 Amnesty International worked for the release or fair trial of more than 240 people, the majority of them prisoners of conscience, and raised with the authorities a number of allegations of ill-treatment of prisoners. It also pressed for death sentences to be commuted. Amnesty International observers attended the trials of Miladin Nedic and Dobroslav Paraga. In July the organization published a short report, Yugoslavia: Conditions of Imprisonment of Prisoners of Conscience. Amnesty International received no response from the government to it appeals and inquiries.

YUGOSLAVIA MUST AVOID CIVIL WAR

Mr. PRESSLER. Mr. President, Yugoslavia is sliding toward civil war. The impassioned nationalistic rhetoric of Serbian Communist Party leader Slobodan Milosevic has whipped up a frenzy of Serbian animosity toward the Albanian majority in the Province of Kosovo and the ethnic minorities in the Province of Vojvodina. What is occurring today in Yugoslavia is the making of a tragedy of epic proportions.

Under the constitution of Yugoslavia, Kosovo and Vojvodina are autonomous provinces of the Republic of Serbia. For all practical purposes, at least since 1974, this arrangement has meant that the Albanians of Kosovo controlled their own local governments, courts, and police. Now the Serbian Communist leader Milosevic has rabble roused Serbians to demand Yugoslavian constitutional changes that would establish greater Serbian control over the local government affairs of Kosovo and its Albanian Yugoslavian population. Current projections are that the Communist Party and Government of Yugoslavia will adopt those changes late next month.

This would be a serious mistake, Mr. President. Feeding the "Greater Serbian" aspirations of ambitious Serbian politicians could tear apart the delicate Yugoslavian ethnic balance. Reliable news reports from Yugoslavia in recent weeks indicate that Milosevic and other Serbian leaders have inspired or encouraged vicious, anti-Albanian activity. Mobs numbering in the hundreds of thousands have been provoked to demonstrate against the legitimate constitutional autonomy of the Albanians of Kosovo Province.

Many Slovenians have expressed concern that stronger Serbian control in the autonomous provinces will lead to greater Serbian influence at the national level. They believe such a course of events would diminish not only the Albanian but also the Slovenian, Croatian and other voices in the governance of Yugoslavia. If their fears become a reality, Yugoslavia as we have known it for the past 43 years will cease to exist. It will become a far worse place than it is now if one group of Yugoslavians, the Serbs, who constitute 35 percent of the nation's population, attempt to violate the unique Yugoslavian constitutional balance of ethnic rights and authority.

Albanians and Slovenians each constitute about 8 percent of the population; Croatians about 20 percent; Bosnians about 9 percent; Macedonians about 6 percent; Montenegrins about 3 percent; and Hungarians about 2 percent. These minorities are unlikely to stand idly watching their limited existing political freedoms evaporate in a Serbian grab for power.

Mr. President, the Balkan region has had a notoriously tragic past. It would be equally tragic if that region's traditional ethnic tensions were allowed to explode into civil war—a situation that might tempt military intervention by outsiders who have only their own interests at heart.

I urge Senators to speak out more often on the Yugoslavian problem. We, who have had over 200 years of experience with federalism, should encourage Yugoslavian leaders to restrain the impulse to deny one minority—the Albanians of Kosovo—legitimate expression of their political and economic rights. Suppressing the Albanians will not solve Yugoslavia's principal problems—an inflation rate of 200 percent and a stagnant economy.

I also urge our own Department of State to employ its diplomatic talents in counseling Yugoslavian leaders to avoid actions which might have major international repercussions reaching far beyond the Balkan region.

Mr. President, bullying the Albanians of Kosovo by making them into scapegoats for Yugoslavian economic woes is a major error of historic proportions. Surely there must be Yugoslavian leaders who have the sense of history, good judgment, and concern for the security of their nation to stop the slide toward national disintegration that is threatened by the rampant mob mentality prevailing in Yugoslavia today.

Mr. President, our own Department of State also has expressed concern over the ethnic tensions in Yugoslavia. I ask unanimous consent that an October 12, 1988 New York Times article on this be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Oct. 12, 1988]

U.S. AIDES EXPRESS CONCERN OVER YUGOSLAV CRISIS

(By David Binder)

WASHINGTON, Oct. 11.—There was a moment last Friday when violent demonstrations in two regional capitals in Yugoslavia made United States policy makers apprehensive that the Communist leaders of that Balkan country were losing control.

The previous day, Serbian nationalist demonstrators throwing rocks and bottles had brought about the resignation of the Communist leadership in Vojvodina Province. Demonstrations continued there on Friday. A similar pro-Serbian demonstration on Friday in Titograd, capital of the republic of Montenegro, turned violent, too, and the Montenegrin Communist leadership offered to resign. But security forces intervened and the politicians stayed on the job for the time being.

"We were pretty apprehensive Friday night," said an Administration official who specializes in Yugoslav affairs. He said that if street protests gained momentum and continued to topple political leaders there was no way to say where the unrest would end.

Yugoslavia has been gripped by a steadily worsening economic crisis for more than five years, and sharpening political rivalries over the last 12 months have compounded the situation. They started out over problems with the ethnic Albanian minority in the south of the country and have turned into a power struggle between Serbia and the republics of Croatia, Slovenia and Bosnia-Herzegovina.

"ALL YUGOSLAV SOLUTION" IS HOPE

United States policy since March 1941 has been to support the independence and territorial integrity of Yugoslavia. In the aftermath of World War II—especially after the Tito Government broke with Moscow in 1948—some $2.5 billion in American aid was sent to Belgrade. Now, although it is still under Communist rule, Yugoslavia is regarded by American policy makers as an essentially Western-oriented and independent country with a society that is more open than any in the Soviet bloc.

A senior Administration official said today that Washington remained hopeful there would be "an all-Yugoslav solution" to end the current troubles and strengthen central authority, rather than the one-sided, Serbian solution that has been pushed in recent months by Slobodan Milosevic, the head of the Serbian Communist Party.

At the same time, policy makers here appear to be torn between their appreciation of Mr. Milosevic as a catalyst forcing through sorely needed political and economic changes and their fear that the Serbian leader, by playing on national passions, might create unbridgeable antagonisms in Yugoslavia's other republics.

"We don't like what is happening with the nationalist elements," the senior offical said, adding that American policy makers were looking to the opponents of Mr. Milosevic to "speak out more and show that there are limits."

ECONOMIC FACTORS NOTED

The Reagan Administration's assessment of the unrest in Yugoslavia is that it is driven primarily by economic factors like the 217 percent inflation rate, the one million unemployed and the 10 percent drop in personal incomes. Even the latest nationalist outbursts were "70 percent economic" in origin, the official said. On the political scene, he said, it is a "generational" change.

The Administration has twice conveyed concerns to the Belgrade Government in recent months about the Yugoslav situation, he said, most recently in a talk last month between Secretary of State George P. Shultz and Foreign Secretary Budimir Loncar at the United Nations. The message was that while Washington felt the problems were essentially an internal matter, Yugoslavia's credibility as an economic partner was being damaged.

In addition, the official said concern had been registered about tensions between Slavs and ethnic Albanians in the province of Kosov and the republic of Macedonia. "There are some pressures," to do this, he said brought by Representative Joseph J. DioGuardia, Republican of Westchester County, and Vice President Bush. Both sent letters on behalf of Yugoslavia's ethinic Albanians to Foreign Secretary Loncar last month.

A TRIBUTE TO SENATOR DAN EVANS

Mr. BINGAMAN. Mr. President, today I wish to pay tribute to one of the Senate's most respected members—Senator Dan Evans of Washington. Senator Evans exemplifies the qualities that all of us who have served with him have come to admire. He is an intelligent and thoughtful legislator who has added luster to this body by his studious and reflective approach to the legislative process.

He has admirably carried forward the legacy of his predecessor, Senator Henry (Scoop) Jackson. The State of Washington is fortunate to have had the benefit of his Senate service.

I have served with Senator Evans on the Energy Committee since 1984. In those years, he has consistently elevated the quality of debate in the committee as we have considered such important national policy issues as nuclear waste disposal and siting, as we have discussed components of a national energy policy—including fuel efficiency standards. His leadership on these issues and his commitment to effective public lands protection will be missed in the committee.

Senator Evans came to the Senate with a long and distinguished career of public service. He served for 8 years in the Washington State Legislature. For 12 years he was Governor of the State, and for 6 years he was President of Evergreen College. This impressive background has made him an invaluable Member of the Senate, his breadth of experience benefiting all of us. We will miss the well-reasoned analysis of any issue he has taken an interest in.

While the Senate of the United States is often criticized for failing to live up fully to its label as the "greatest deliberative body on Earth," Senator Evans clearly has never failed to live up to his reputation as one of its finest deliberative Senators. It is a better institution because of the standards he has set.

TRIBUTE TO SENATOR WILLIAM PROXMIRE

Mr. BINGAMAN. Mr. President, at the close of this 100th Congress, Senator William Proxmire is retiring. This Chamber will not only lose a man whose achievements are legendary, but we will lose a man whose commitment to high ideals and strong character has led this legislative body to new heights. It is for these reasons, I would like to take a moment and pay tribute to him.

Senator Proxmire, chairman of the Senate Committee on Banking, Housing, and Urban Affairs, has caused major banking reform legislation to be passed, financial systems to be deregulated, and major housing laws to be developed. In particular, his truth-in-lending bill ended the era of surprises for consumers in banking. His Depository Institutions Deregulation and Monetary Control Act was instrumental in making it illegal for American corporations to bribe foreign officials. His ongoing fights with the Department of Housing and Urban Development exposed the inadequate funds spent on Federal housing subsidies.

His campaigns to expose wasteful Government spending have created an astonishing record of frugality and common sense. His legendary "Golden Fleece" award has been described by the Washington Post as "the most successful public relations device in American politics today." Since 1977 he has returned more than $1 million to the Treasury by cutting back on his personal and committee staffs.

Evidence of his uncompromising moral character was exemplified in his fight for the U.S. ratification of International Genocide Treaties. Moved by the extensive massacres in the Pacific Islands and bent on possible preventing future such tragedies, Senator Proxmire pushed untiringly for the Senate's approval of this convention. He spoke every day for nearly 20 years at the beginning of every Senate session on this topic. By 1986, when the Senate finally approved the treaty, he had made more than 3,000 speeches. He continues the practice of speaking to his colleagues each day on timely issues.

Probably the most remarkable legacy he has left this legislative body is his voting record. Since 1966, he has appeared, without a miss, for some 9,500 votes. This record shows his uncompromising dedication to the citizens of Wisconsin. In 22 years he has always fulfilled the trust they placed in him and represented their interests.

At the close of this 100th Congress, the U.S. Senate will most definitely lose an honorable legislator, who has set a high standard of uncompromised ideals and uncompromising character. As he leaves the Senate, I congratulate him on his truly outstanding record of public service.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

DEFENSE AUTHORIZATION ACT—CONFERENCE REPORT

Mr. NUNN. Mr. President, I believe there is a unanimous-consent agreement on the conference report on S. 2749. Is there a unanimous-consent agreement on a time limitation?

The PRESIDING OFFICER. The Senator is correct.

Mr. NUNN. Will the Chair give us the outline of the unanimous-consent agreement?

The PRESIDING OFFICER. The unanimous-consent agreement is 40 minutes, equally divided.

Mr. NUNN. Equally divided between the managers of the bill?

The PRESIDING OFFICER. That is correct.

Mr. NUNN. I thank the Chair.

Mr. President, I submit a report of the committee of conference on S. 2749 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2749) to authorize appropriations for fiscal year 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report will be printed in the House proceedings of the RECORD.)

Mr. NUNN. Mr. President, I am pleased to bring before the Senate the conference report on S. 2749, the Defense Authorization Amendments for fiscal year 1989 and Base Closure and Realignment Act.

This conference report is the last major piece of national defense legislation from the Armed Services Committee in the 100th Congress. It contains legislation that few people in the Congress or the public held out much hope for earlier this year and at several intervals during the year, even after we made progress.

I am referring, of course, to the provisions in this conference report which provide for a one-time streamlining of the provisions and procedures under which the Department of Defense can close or realign military bases within the United States. If this legislation is enacted, we will establish a process that, in my judgment, will result in the actual closure and realignment of military installations, thus providing for a more efficient and less costly base structure to support our military forces.

The key to making the military installation structure more efficient and effective is to remove the current bureaucratic and legislative roadblocks to closing or realigning bases. Chairman Goldwater discussed the issue of base closures several years ago with Secretary Weinberger, but the Defense Department never really offered any useful or credible proposals in this area.

Base closing lists have been developed from time to time over in the Pentagon. However, the problems, within DOD and the Congress in actually closing a base have resulted in no major closures for over a decade.

Earlier this year, Defense Secretary Frank Carlucci—faced with bringing the 5-year defense plan back into line with fiscal reality—recognized the need to reduce the installation structure. After consulting extensively with the leadership of the House and Senate Armed Services Committees, a concept was developed that would have an exective branch Base Closure Commission but Congress would fashion legislation to review and implement the decisions.

In May, Secretary Carlucci formed a bipartisan Base Closure and Realignment Commission, cochaired by former Senator Abe Ribicoff and former Congressman Jack Edwards. This group of "wise men" was tasked by the Secretary with analyzing the military base infrastructure in the United States, and providing the Secretary and the Congress with independent, bipartisan recommendations of which installations could be closed or realigned.

What was still remaining was the linchpin to making the Commission's work meaningful: a means of executing the Commission's recommendations in an expedited manner while preserving the need for strong congressional oversight. Title II of the bill before us is the Congress' response to this problem.

This bill, Mr. President, does three things to assist in the closing or realignment of bases that are excess to our current defense needs:

First, it establishes a process for arriving at a decision by the Secretary of Defense and review by the Congress.

Second, it provides the selective waiver of key laws which have delayed or frustrated previous closure proposals in the past.

Finally, it provides a flexible structure to fund the upfront costs of closing and realigning military bases prior to the time that the annual savings are realized.

This is what a lot of people do not recognize and understand—that when you close a base, you spend more money to begin with than you save. It is only over a period of time that savings are realized; but when they are realized, they can be very substantial, and they are recurring.

The process of developing and approving a list of base closures and realignments will involve the independent Base Closure and Realignment Commission, the Secretary of Defense, and the Congress. The Commission that was formed by Secretary Carlucci last May has held a series of public hearings regarding the requirements of our military base infrastructure, and the considerations which should be taken into account in developing a recommendation of bases to be closed. Secretary Carlucci consulted with the leadership of the oversight committees in naming the Commissioners. I ask unanimous concent that a list of the Commissioners be printed in the RECORD at the end of my speech.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. NUNN. Mr. President, the Commission will receive a study from the Secretary of Defense, which will also be provided to the Congress, concerning the closure or realignment of U.S. military bases overseas. This study is mandated in this legislation and must be completed by October 15 of this year. The Secretary had agreed with us prior to its passage that this was important information for the Commission to consider and so the study was started last spring.

The Commission must provide its recommendation to the Secretary of Defense by December 31, 1988. The Secretary then has until January 16, 1989, still within the current administration, to accept or reject the entire package or recommendations, and transmit his decision to the Congress. The Secretary cannot change the Commission's recommendations. He cannot pick and choose among the recommendations. His decision will be to approve all or nothing, and he will have to transmit his recommendation to Congress by January 16, 1989.

Transmitting the report to Congress will trigger an expedited review process. Congress will have an opportunity to review the Secretary's decision and, assuming he submits bases to be closed, could override it by a joint resolution of disapproval considered under expedited procedures during a period of 45 session days beginning on March 1, 1989. The joint resolution of approval could be vetoed by the President and if that veto were sustained the closures would take effect.

So, Mr. President, this is the three-step process by which the base closures and realignments could take effect. If the Secretary of Defense forwards the base closure package recommended by the Commission, there will be a substantial series of hurdles for anyone who wants to block it.

What happens if the package is approved? During 1989, the affected bases will not see any withdrawal of personnel related to the closure or realignment decision. During this year, the Department of Defense will be developing detailed plans for the closures, includng the design of any new facilities which might need to be constructed at the gaining bases. Just as importantly, the Department will be working with the affected communities to identify any adverse environmental impacts of these actions and measures which can be taken to minimize these impacts. At the same time, we would hope that the affected communities would be developing reuse proposals for at least some of the excess property. These proposals will play a key role in the Secretary's ultimate decision concerning the disposal of excess facilities.

In order to expedite the completion of these actions, the bill addresses previous bottlenecks in two important areas: property disposal and environmental analysis and related litigation.

The proceeds from the sale of excess property will be an important source of revenue to finance the substantial costs of installation closures and moving missions to other bases. I should note here that the Commission's charter requires that any costs in these categories must be amortized over a 6-year period. This means that the savings from closing the bases must be realized within 6 years. Most studies estimate that the annual savings from a leaner installation structure will far exceed the up-front costs. For this reason, the bill provides for the delegation of the property disposal authority of the Administrator of General Services to the Secretary of Defense. This way, the Secretary will be able to put a priority emphasis on the disposition of excess property. The proceeds from sales of defense property will go into a base closure fund to cover some of the up-front costs.

Despite this change in procedure, the Secretary will operate within the parameters of the Federal Property and Administrative Services Act. All of the opportunities which State and local governments now have for the low or no cost acquisition of excess Federal property for specific public uses will be preserved.

In crafting this bill, Mr. President, the conferees were particularly careful to weigh the potentially conflicting priorities of the Department of Defense and local environmental considerations. One of our objectives was to avoid the time consuming litigation associated with the National Environmental Policy Act [NEPA] which has often accompanied base closure proposals. In fact, NEPA has been used very effectively to prevent base closure. The bill waives the provisions of NEPA regarding the deliberations of the Base Closure and Realignment Commission and the decision of the Secretary of Defense whether to accept or reject the Commission's recommendation.

Once a closure decision is made, however, the Defense Department will have to perform the environmental impact analysis mandated by the National Environmental Policy Act regarding the potential impacts of any closing on any losing or gaining location. The conferees were sensitive to the importance of the public's participation in this process. Any adverse environmental impacts, as well as a range of compensating actions, must be identified before the Secretary of Defense actually implements any closure decision. This would be done during the 1-year delay on any closures this bill requires. It is important to note that none of the existing laws regarding the need to clean up toxic wastes is in any way affected by this law. The Department of Defense will still have to comply with all of these requirements.

The final section of the base closure title which I want to mention is the funding provision. The conferees envision three principal sources of funds to cover the up-front costs of base closures: annual authorizations and appropriations; transfers from other Defense accounts; and proceeds from property sales.

The bill establishes a special base closure fund into which funds from these sources would be deposited. The Department would then use these assets to pay for the many expenses associated with closures, such as the movement of personnel and equipment and the construction of replacement facilities when necessary. It is our hope that the Commission will be able to identify a number of parcels of high value, underutilized property which is not needed in the future which can be sold to provide a substantial revenue for the closure account. The rest of the funds would come through the normal authorization and appropriation process, during which time the Department would budget and justify their needs on an annual basis.

During the course of the conference on this bill, members expressed concerns about the membership of the Commission and about the independence of the Commission staff.

These were the main topics of discussion in our conference.

On Thursday, October 6, Chairman ASPIN, Congressman DICKINSON, Senator WARNER and I met with Secretary Carlucci and the two cochairmen of the Commission, former Senator ABE RIBICOFF and former Congressman Jack Edwards to discuss these and other issues. We complimented the Commission's leadership on the excellent progress to date and briefed them on the results of our conference.

We pointed out that the conference report expands the size of the Commission from the 10 members already appointed by Secretary Carlucci to 12. Secretary Carlucci and the Commission leadership were very receptive to some of the suggestions we had for additional people to serve on this commission to ensure its bipartisan charter and the needed mix of skills and background for their very challenging assignment.

On the subject of the Commission staff, we have worked closely with Secretary Carlucci and the Commission cochairmen to insure that the Commission was served by a competent, professional and nonpartisan staff. We have stressed the need for outstanding staff from the outset based on qualifications and based on experience, and the Commission has made progress in this area.

We were concerned about it during the beginning months of the commission. We have remained concerned about the overall capability of the staff, but it has significantly improved, and I am confident the Secretary of Defense as well as the Commission cochairman understand the need for qualified, competent professional staff so that when we do have a report from the Commission it will enjoy the kind of sustained support that is necessary here even with these expedited procedures because even with the expedited procedures we are going to have to have appropriations from time to time to supplement the account needed for these closures so a degree of credibility must be accorded the Commission work here in the Congress on both sides of the aisle, no matter who the President is, if we are going to see this succeed over a period of the next few years.

Mr. President, there were a lot of people who never really had much doubts about this legislation. I must say that from time to time I wondered whether we were going to be able to get it passed. We have had splendid support on both sides of the aisle.

We are passing this in a most difficult year where we have seen the main defense authorization bill vetoed and we have managed to put Humpty Dumpty back together again in that respect which helped pave the way for this legislation. Had we not been able to get a Defense authorization bill, my feeling is even though on its pure merits this bill should not have been affected, we all know in the real world there would have been a spillover effect and it would have been very, very hard to get enough support to pass this legislation because from a congressional point of view, even though Senator WARNER and myself, Congressman ASPIN and Congressman DICKINSON have all worked together on this from the very beginning. We have all believed necessary. We see the squeeze on Defense funds. We know we cannot afford excess bases that we do not need. We also understand the reality and the sensitivity in the communities of America that are so dependent in some cases on these bases at least in the short run and we know that that reflects itself here in the Congress.

So this is inherently a very difficult, sensitive, controversial legislation.

I think we do really owe a great deal to the Secretary of Defense for his initiation of this process and indeed I must say if there was not a strong degree of confidence in the Secretary of Defense, Mr. Carlucci, and in Abe Ribicoff, who served in this body, and I think he enjoyed the respect of people on both sides of the aisle, and also in Jack Edwards, who served in the House, and I think enjoyed the respect and still does of people on both sides of the aisle, these three people have credibility and without that kind of credibility by all of these individuals I think it would have been hard for this legislation to pass.

I look forward to reviewing the Commission's work with some degree of apprehension, but nevertheless with a degree of confidence that this is the right step and it is being taken at a time where the timing is absolutely essential.

The window is not going to be here very long. I think we look forward to receiving this legislation in the form of recommendations in December for the Secretary and in January for the Congress.

In addition to the legislation on base closing, this conference report contains several authorization provisions for fiscal year 1989 Defense Department programs, particularly in the area of military construction and multiyear procurement. I ask unanimous consent that a brief summary of the provisions of title I be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit 2.)

Mr. NUNN. Mr. President, I would say that Congressman ARMEY and Senator ROTH have really helped lead the way in this respect. Both of them have pushed us from time to time, and I have gotten a lot of phone calls from Senator ROTH. He has been very involved in this legislation, very interested in seeing that it is passed, and I thank him for his leadership and I also say that Congressman ARMEY on the House side has been a leader out in front on this issue, and so I congratulate both of these legislators for their efforts.

I also again thank my colleague, the Senator from Virginia. On this matter, as on almost all matters, we have worked very, very closely and without that kind of effort, we never would have seen this legislation pass.

I would also like to thank our capable staff on both the Democratic side, Bob Bayer, and also Ken Johnson on the Republican side, for their outstanding staff work.

I also want to pay special thanks to the staff members who worked on this legislation. In addition to Bob Bayer and Ken Johnson from our committee, this includes Alma Moore, Marilyn Elrod and Pete Steffes from the House Armed Services Committee. I also appreciate the very cooperative work from the Governmental Affairs Committee and the Environmental and Public Works Committee.

Mr. President, I reserve the remainder of my time.

EXHIBIT 1

SECRETARY OF DEFENSE'S COMMISSION ON BASE REALIGNMENT AND CLOSURE

Honorable Jack Edwards, Co-Chairman.
Honorable Abraham A. Ribicoff, Co-Chairman.
Mr. Louis Cabot
Honorable W. Graham Claytor, Jr.
Mr. Donald F. Craib, Jr.
Honorable Martin R. Hoffman.
General Bryce Poe, II, USAF (Ret).
Dr. James C. Smith.
General Donn A. Starry, USA (Ret).
Honorable Russell E. Train.

EXHIBIT 2

NATIONAL DEFENSE AUTHORIZATION AMENDMENTS FOR FISCAL YEAR 1989 AND BASE CLOSURE AND REALIGNMENT ACT

TITLE I—ADDITIONAL FISCAL YEAR 1989 AUTHORIZATION PROVISIONS

SEC. 101 AND 102. ADDITIONAL AUTHORIZATIONS FOR MILITARY CONSTRUCTION AND LAND ACQUISITION PROJECTS.

Authorizes funds appropriated for several military construction projects that were not authorized in the fiscal year 1989 National Defense Authorization Act.

SEC. 103. ARMY AIR DEFENSE SYSTEM.

Clarifies the use of fiscal year 1989 advance procurement funds for the Army's Air Defense Anti-Tank System (ADATS).

SEC. 104. MULTIYEAR PROCUREMENT AUTHORITY.

Clarifies the authority of the Defense Department to enter into multiyear contracts.

SEC. 105. FIXED-PRICE DEVELOPMENT CONTRACTS.

Deletes the additional approval and reporting requirements specified for fixed-price development contracts by the Defense Appropriations Act.

SEC. 106. TECHNICAL AMENDMENTS.

Technical and conforming amendments.

SEC. 107. TERM OF OFFICE OF VICE CHAIRMAN OF JOINT CHIEFS OF STAFF.

Authorizes the President to extend until June 1, 1989 the term of the officer serving as Vice Chairman of the JCS for the term which began on February 6, 1987.

SEC. 108. REPORT ON CLOSE AIR SUPPORT ALTERNATIVES.

Requires the Department of Defense to conduct certain studies regarding close air support.

SEC. 109. EXTENSION OF DATE FOR REPORT ON POTENTIAL START TREATY.

Changes the deadline for report on potential START Treaty from September 15, 1988 to March 15, 1989, and requires an interim report by December 15, 1988.

SEC. 110. TRANSFER OF CERTAIN OBSOLETE SUBMARINES.

Waives the congressional review period under 10 U.S.C. 7308 incident to the transfer of the obsolete submarine *Blenny* to the town of Ocean City, MD. and *Croaker* to the Buffalo and Erie County Naval and Servicemen's Park.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I join my distinguished chairman in complimenting indeed the many who have led the way.

The distinguished Senator from Delaware laid down a charter for this legislation many years ago and steadfastly reminded the Congress periodically of the need to go forward with it.

Then President Ronald Reagan and the current Secretary of Defense seized the initiative and approached the senior members of both the House and Senate Armed Services Committees, and sitting with the Secretary of Defense, our distinguished chairman from Georgia, the chairman of the House Armed Services Committee, Mr. ASPIN, Mr. DICKINSON and myself, over a course of some 5 months now, have devised this legislation and I am privileged to coauthor it with my colleague here from Georgia and to express our appreciation to others in this Chamber.

I see the Senator from Alaska, who has been a strong critic at times but recognizes the reality that this type of legislation simply has to go forward. Shortly we will hear from the distinguished Senator from Illinois who has had likewise some misgivings about the legislation but now recognizes that in the interest of national defense we have to go forward with this legislation.

The chairman mentioned the apprehension of the Members of Congress, and indeed as we approach our responsibility to vote on this momentarily, I am fearful that some will say "We are closing bases and we may close out my career in the Congress of the United States."

But I say to them that they can go back and I think face their constituencies with pride because evey Secretary of Defense since 1947 with the passage of the National Security Act of 1947, and the creation of the Department of Defense, every single Secretary has desired to remove from the rolls certain bases and installations which in their judgment have not contributed in a major way to this Nation's defense.

They recognized that many of these installations were established at the very time our Nation was formed and they have grown in importance in terms of our history more so than their contribution to national defense.

This is a very difficult decision to face. I know in my own State, one of the original 13 Colonies, that we simply embrace all of the installations that we are privileged to have in the Commonwealth of Virginia. I have no idea whether the Base Closure Commission will come up with a recommendation in my State. But if they do, Mr. President, then I will join with other Members of the Congress and face that decision squarely, determine whether or not the commission acted properly, and then I say I am willing to take the heat if it becomes a matter of necessity in my own State that one of these installations has to be closed in order to cut the waste from national defense.

There is little that concerns our citizenry more across this land than the concern that the Department of Defense has certain inefficiencies and waste built in. As hard as we work here in the Congress, as hard as the Secretary of Defense works, such a massive organization simply has inherent in it a measure of waste.

We are about to take a historic step today, one that every Secretary has desired to take and indeed every President. President Johnson, if you go back in the records, tried twice to get similar legislation through. But then, with the advent of the Vietnam conflict, he recognized that he could not go forward with it. But now we are about to pass that legislation, and I am confident, as is the chairman, that our colleagues will support it.

I say to my colleagues here in this Chamber and in the House that the realities are that they can go back and, with a measure of courage, face their constituencies and say they did the right thing in the best interests of the Nation and in the best interests of our national defense. I am hopeful that this issue will not be a decisive one in any campaign in the future.

Mr. President, unless the chairman has further words, I would suggest we allow our colleagues to say a word or two on this matter.

Mr. NUNN. Mr. President, how much time is remaining to each side under unanimous-consent request?

The PRESIDING OFFICER. The Senator from Georgia has remaining 5 minutes, and the Senator from Virginia has remaining 14½ minutes.

Mr. NUNN. Mr. President, I have a couple of requests on my side of the aisle. If the Senator does not use all of his time on his side, I would like to share some of that time so everyone could be accommodated. We may need to ask for additional time. If we do, we will share it equally. But I prefer to see if we can utilize the joint time of both of us.

Mr. WARNER. Mr. President, I will work with my chairman. I hope my colleagues, in discussing this, will bring out the potential cost savings. Our own calculations, consistent with the chairman's statement that early on you do not get savings, are indeed, that in 3 or 4 years it is anticipated anywhere from $2 billion to $5 billion per year from defense budgets can be saved by this measure.

Mr. President, at this time I yield such time as the Senator from Delaware may wish to take—3 or 4 minutes, as I understand it—to be followed by the distinguished Senator from Alaska.

Mr. NUNN. Mr. President, just one amendment. The Grace Commission said $2 billion to $5 billion. I think that is probably the range that we should expect here. The pessimistic side says $2 billion, and the more optimistic side says $5 billion.

But, nevertheless, the cost will be recurring, and if you even save $2 billion a year over a 20-year period, you are talking about an awful lot of money.

Mr. ROTH. Mr. President, this is indeed a historic occasion—a historic occasion because we are taking a step that is controversial that many people said could not be done but is in the interest of our national defense as well as our efforts at deficit reduction.

I want to congratulate first the distinguished chairman of the Armed Services Committee, SAM NUNN, and the ranking member, JOHN WARNER, for their very, very significant role in getting this legislation enacted. It could not have been done without them.

As I have already pointed out, many people said it never could be accomplished. I have to admit that the legislation has seen some very, very serious ups and downs. Some thought it would never see the light of day. But I am delighted to see that this sacred cow is finally being put out to pasture.

It has been at least 10 years—10 years, Mr. President—since we have closed down a base. And I have to say that I can understand the concern and worry of the individual Members about the possibility of having it happen in their district or State.

But the fact is that this legislation is good for national security, it is good for deficit reduction, and, most important, it is good for the American taxpayer. If we are going to do something about balancing the budget, the way it should be done is to eliminate unnecessary spending.

As has been pointed out by the distinguished Senator from Georgia, the Grace report has indicated that the amount of savings will be anywhere from $2 billion to $5 billion a year. That is not peanuts. That is a major reduction in the deficit in a time when I think we all agree that the conventional defense of this country is going to need bolstering and that is going to require funds. And so it comes at a very opportune time.

Mr. President, I would also like to pay my respects to the Secretary of Defense, Frank Carlucci, because, as has been indicated, this legislation would not be here today if it had not been for his strong leadership. DICK ARMEY, the House Member who I joined hands with many, many years ago to get this legislation enacted, called upon Frank Carlucci to help us. And he was already out in the lead. He was already out in the lead by creating a Commission that does have the warm respect of Members on both sides of the aisle.

I can think of no one—no one—more respected in the U.S. Senate than Abe Ribicoff, one of the two chairmen of this Commission. I would say the same is true of Jack Edwards—one a Democrat, one a Republican; one a former Senator, one a former Congressman. But it has been their strong leadership and bipartisan approach that has enabled us to make this tremendous progress today.

Finally, I think it is worthwhile to point out that Russell Train, a strong environmentalist, who has the respect of the environmental world, is also on this Commission. So that we know that environmental matters are not going to be overlooked as we move forward.

Mr. President, the effort is to take the base closing issue out of politics and do what is right in the interest of this country. I would just like to pay at this stage my strong respect for DICK ARMEY, who played such a key role in developing this legislation on the House side. Time and again he stood up and fought for it when people said it could not be done. And if he had not had the courage over on the House side, we would not, as I said, be here today as we are.

So in closing just let me say I want to again express my appreciation and thanks to the distinguished chairman of the Armed Services Committee and the ranking member, who have played such a forthright, strong, and courageous role in bringing this legislation here today.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, I simply ask unanimous consent at this time to have printed in the RECORD a list of all Commission members, which I think would be of interest.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

DEFENSE SECRETARY'S COMMISSION ON BASE REALIGNMENT AND CLOSURE

Co-Chairmen: Representative Jack Edwards, Honorable Abraham A. Ribicoff.

Commissioners: Mr. Louis Wellington Cabot; Mr. Donald Forsyth Craib, Jr.; Mr. Martin Richard Hoffman; General Bryce Poe, II, USAF (Retired); General Donn Albert Starry, USA (Retired); Mr. W. Graham Claytor, Jr.; and Mr. Russell Erroll Train.

Honorable Thomas Eagleton; and James C. Smith III.

Mr. NUNN. Mr. President, I would yield to the Senator such time as he may desire. I have a request of Senator LEVIN and Senator BUMPERS and my time will inevitably run out while the Senator from Illinois is speaking. But at this point I would ask after my time runs out to take it out of the time of the Senator from Virginia and we will ask unanimous consent to get enough time from both of us at the end so the Senator from Illinois will not be interrupted.

The PRESIDING OFFICER. The Senator from Georgia has 5 minutes. The Senator from Virginia has 8½ minutes.

The Senator from Illinois.

Mr. DIXON. Mr. President, despite my profound respect and admiration for the chairman of the Senate Armed Services Committee, the distinguished senior Senator from Georgia, and the ranking minority member, the senior Senator from Virginia, I rise in opposition to the final passage of S. 2749. While I support the provisions related to the Defense Appropriations Act for fiscal year 1989 and the technical corrections to the 1989 National Defense Authorization Act, I cannot support the provisions addressing the closure of military bases.

Mr. President, my opposition to this provision is well known. I spoke against it when it was considered in committee, and led 2 day's worth of debate when it was considered by the Senate this spring. Finally, I argued for changes when the conference met earlier this week. While, I am pleased that my colleagues did defer to me on several issues during these debates, I am still not satisfied that this bill is in the best interests of the American people.

My abiding concern has been that the process by which bases are identified for closure be totally objective and nonpartisan. I believe that all of the defense installations should be considered—those overseas as well as those in the United States. This analysis must be done on a level playing field, one that does not tilt toward the preconceived notions and biases of the military services, or the regional or political interests of one area or political party. This will be a one-time opportunity to save potentially substantial sums of money. It is imperative that this study be done right, because there will not be a second chance.

I believe that the process which this bill affirms remains fatally flawed in several respects. I do not believe that we have a level playing field, and I do not believe that the Commission appointed by Secretary Carlucci has sufficient time or resources to do a credible job. I would like to explain why I have drawn this conclusion.

First, the Base Closure and Realignment Commission is only now really getting into the analysis of the Defense Department's 3,800 major installations in the United States; 3,800 bases, Mr. President, and not one of them has been visited by the Commission.

While I respect the expertise and the bipartisanship of the Commission, I remain concerned that it fails to reflect the regional diversity of this country, or the interests of State and local government officials who have a vital stake in this matter. I was successful in amending the Senate bill to mandate the expansion of the Commission from 9 to 15 members. I appreciate the fact that Secretary Carlucci has already added one more member, and that the conferees directed the addition of two more members. This will help broaden the representation on the Commission, but I still believe it falls well short of the sort of broad perspective which I believe ought to focus on this important matter.

I have likewise had concern regarding the competence and independence of the Commission staff. As we all know, staff plays an essential, sometimes controlling role in the deliberations of Commissions and committees. From the beginning, there was concern that the staff supporting the Base Closure and Realignment Commission would simply reflect the views of the military services, rather than providing an independent analysis. For this reason, the Senate bill directed that none of the staff be Department of Defense employees.

I was pleased that the House also expressed these concerns and mandated that no more than half of the senior staff be Defense Department employees during 1988. The acceptance by the conferees of the House provision suggests that even my colleagues who support this initiative share my concerns about the independence and nonpartisanship of the Commission staff. I am aware that Secretary Carlucci and the Commission cochairmen have been working to satisfy our concerns in this area. I confess that I remain very concerned that the Commission staff be equal to the formidable task before it, and that it provide the kind of independent, professional, and nonpartisan analysis which I believe every one of my colleagues supports and expects.

There was a great deal of concern that overseas bases be included in this analysis. Frankly, I would have preferred that the Commission review both overseas and U.S. bases. If communities are going to be asked to undergo significant economic and social upheaval through installation closures and realignments, I believe they have a right to expect that our bases overseas will receive the same scrutiny as those in Illinois, Alaska, or Michigan. I was pleased that we were able to amend the Senate bill to include an indepth analysis of the overseas base infrastructure by the Secretary of Defense in this process. This report has been ongoing and is due on October 15 to both the Commission and the Congress. I am also pleased that the conferees supported the tougher Senate language which insisted that this study perform a rigorous scrub of our overseas bases—the same kind of analysis which the Commission will perform on the U.S. bases.

Finally, Mr. President, I have a genuine concern whether we have provided the Commission sufficient time to perform this difficult task. The Commission was formed in late May and has held a few public hearings. However, its efforts have been slowed by the persistent doubt about whether enabling legislation would be enacted. The Commission's staff, with the exception of a few Department of Defense employees who were loaned to it, has been very slow in recruiting the kind of top level, independent resources essential to this task.

By mandating the completion of the Commission's work by the end of this year, I believe that we are asking for exactly the kind of product which we are all trying to avoid. The reality is that the short time left to the Commission after enactment of this legislation will almost certainly lead to a rubber stamp of the military services' closure recommendations—rather than an unbiased, independent analysis. This is the reality of the situation, Mr. President, and I believe every Member needs to understand it when he or she votes on this measure.

I argued hard in conference that the Commission's mandate be extended until June 30, 1989, instead of December 31, 1988. I felt that this adjustment would give the process an even chance of doing what we all profess we want done—a thorough and independent review. Many of my colleagues argue against this idea, saying that it was better for the outgoing administration to make this kind of hard decision. I take the contrary view.

I want the administration which will have to implement these closures to have a role in agreeing to the list. I also want the Commission to have the benefit of the new administration's views on force structure, and force deployment. I regret that this idea was not accepted by the Commission.

I know we need to close military bases, Mr. President. Even if we were not facing huge Federal budget deficits, we would be looking at closing bases—we simply have more than we need. I do not believe this Commission, however, can give us the kind of independent, well-thought-out base closing list that the public interest and our national security interests demand. For that reason, Mr. President, I am forced to vote no on this conference report.

CLOSE AIR SUPPORT

Mr. President, the issue of maintaining and improving U.S. close air support capabilities has major implications for our present and future defense posture. Close air support is an issue which deserves an exhaustive, independent, and objective examination.

My amendment which was accepted by the conference committee is the same amendment which had been made a part of the fiscal year 1988 Defense appropriations bill passed by the Senate. It was not included in the Defense appropriations conference report because it was felt by the conference members that the amendment should be on the authorization bill, not a money bill.

The close air support language simply requires that the Secretary of Defense review all the close air support studies now going on by the Air Force and the Army. The amendment further requires that the Director of Defense Operational Test and Evaluation develop a plan outlining a potential "fly off" between existing aircraft that could be considered for the close air support mission. The final part of the amendment requires the Secretary of Defense to assess the feasibility of transferring the close air support mission from the Air Force to the Army.

Mr. President, I ask unanimous consent to print in the Record my statement of August 11, 1988, which outlined the need for this amendment.

There being no objection, the statement was ordered to be printed in the Record, as follows:

Mr. Dixon. Mr. President, during the reconsideration of last year's defense authorization bill, we began to take a very careful look at our conventional forces and to stress the importance of commonality of systems within the services. At that time I raised the issue of the need to look into the commitment by our Armed Forces to the vitally important close air support programs and the possibility of using one aircraft to satisfy this mission.

At my request, Senator Levin, chairman of the Subcommittee on Conventional Forces and Alliance Defense, held a hearing just a few months ago to address the critical need of the U.S. Army for close air support. Close air support is a term used to describe the way the Air Force uses aircraft along the front line in support of combat land forces. The aircraft used in this mission drop bombs on the enemy and use cannons to hit enemy vehicles. Close air support provides heavy firepower to counter quantitative advantages the enemy has in armor.

The problem we have, Mr. President, is that the Air Force has never given very high priority to close air support. You do not become an ace by killing tanks in the Air Force. The Air Force has plans to spend $12 billion over the next 7 years to develop a new fighter, but plans to spend almost nothing to modernize the fleet of aircraft which provides close air support for the Army. What the Air Force wants to do is take a great fighter plane, the F-16, and make it a close air support aircraft. Yet many experts throughout the defense community have pointed out that this great fighter plane is not a very good aircraft for close air support because it cannot maneuver very well when flying at low levels with a load of bombs. The Army off the record believes the Air Force will use them for other missions when the war starts. As I said earlier, you don't become an ace by killing tanks, Mr. President.

Mr. President, it is obvious to me that the Air Force has no intention of conducting a serious modernization of the Close Air Support Program. I am afraid the Air Force intends to just compromise on the issue by proposing to use the F-16 and call it the A-16. Gen. Roger D. Russ, Commander of the Air Force Tactical Air Command was quoted by Aerospace Daily as saying "A-16 is the best option we have seen for the close air support mission."

Well, Mr. President, this is the type of thinking that has cost this country's taxpayers millions of dollars in wasted moneys. The Air Force seems to forget that the marines are flying a plane designed for close air support—the AV-8B. Now it is just my opinion, but I think the Marine Corps knows a heck of a lot about close air support. Senator Carl Levin, chairman of the Conventional Forces Subcommittee on which I serve, has pointed out, in his excellent report on the results of his European trip last year to observe NATO conventional forces, the importance of reducing our dependence on fixed air bases. His recommendation on how to avoid this dependence which increases our vulnerability to Soviet attacks is to procure significant numbers of V/STOL aircraft like the AV-8B.

Mr. President, I was going to offer two amendments which I felt were required to bring this important issue to a head. At this time I ask unanimous consent to have these two amendments printed in the Record.

There being no objection, the amendments were ordered to be printed in the Record, as follows:

Draft Amendment

"On page 114, below line 22, insert the following:

"Sec. 8127. The Secretary of Defense, through the Director of Operational Test and Evaluation, shall make the selection of an appropriate interim close air support aircraft and shall conduct the testing and evaluation necessary for making the selection. In connection with the evaluation, the Director shall supervise a "fly-off" competition among the AV-8B aircraft. A-10 aircraft, A-7 aircraft, and all other aircraft which can reasonably perform the close air support mission.

"On page 114, below line 22, insert the following:

"Sec. 8127. Not later than March 1, 1989, the Secretary of the Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a plan for expeditiously transferring the Air Force close air support function to the Army."

Mr. Dixon. The first of the amendments I have just placed in the Record would not have forced the Air Force to buy any specific airplane. The amendment would have simply taken the decision authority on the close air support aircraft away from the Air Force and given it to the Secretary of Defense. The second amendment would have required the Secretary of Defense to report to Congress no later than April 1, 1989, on the feasibility of transferring the fixed wing close air support mission to the Army, beginning with the defense budget submission for fiscal year 1991.

However, Mr. President, after discussing the issue with my colleagues on the Appropriations Defense Subcommittee and having our staffs working together, we have come up with a compromise which I understand both sides have agreed to. The amendment, which is at the desk, requires the Secretary of Defense to conduct an independent assessment of the Air Force and Army analyses and studies of close air support aircraft alternatives for an interim period and after the year 2000. This assessment will include both new aircraft and modifications of existing aircraft, and as a minimum, the A-7, the F/A-16, the AV-8B, and the A-10.

The amendment further requires that the Director of Defense Operational Test and Evaluation develop and operational test plan for a competitive flyoff of close air support alternatives. This test plan will be developed no later than March 31, 1989, after consultation with the proper offices in the Army, Marine Corps, and Air Force. The amendment further requires the Secretary of Defense to assess the feasibility of transferring from the Air Force to the Army, the close air support mission, beginning not later than fiscal year 1992. The Secretary shall provide to the Committees on Appropriations and Armed Services of both Houses an interim report in March of 1989 and a final report by December 31, 1989.

Mr. President, I appreciate the help that my friends on the appropriations committee have given me on this important issue.

Whatever the final recommendation of the Secretary of Defense on the proper airplane for close air support, it is critical that we move forward to meet the close air support requirements. This mission must be elevated to a high priority within the Defense budget. The defense of our ground forces is critical to meeting any conventional threat.

Thank you, Mr. President.

(The remarks of Mr. Dixon as above set forth, by unanimous consent appear without interruption. However, during his remarks, the following occurred:)

The PRESIDING OFFICER. All time under the control of the Senator from Georgia has expired.

Mr. DIXON. I ask unanimous consent for an additional 6 minutes.

Mr. WARNER. Mr. President, regrettably, I am going to have to object. I understand there is a Member who will object to any further extension of the time should it be requested by the chairman or myself.

In that context, will the Chair advise the Senator from Virginia the remainder of the time that the Senator from Virginia has?

The PRESIDING OFFICER. The Senator from Virginia has remaining 8 minutes and 20 seconds.

Mr. DIXON. Mr. President, I want to express my shock at an objection to the completion of these remarks by a Senator who is accommodating in committee, on the floor, and in the conference and waived his right to speak at length against this legislation, notwithstanding his profound objections to parts of it.

I am absolutely shocked that a colleague for whom I have high regard would make an objection to my completing my remarks, which will take about 6 minutes.

The PRESIDING OFFICER. The Senator from Virginia controls the time.

Mr. GARN. Mr. President, reserving the right to object.

Mr. WARNER. Mr. President, I yield to the Senator from Utah.

Mr. GARN. I reserve the right to object. I will withdraw my objection. The Senator from Virginia is fronting for me. And I will do it to allow the Senator from Illinois to finish, but then if there are any further requests for an extension, I will object.

Mr. NUNN. Will the Senator from Utah just allow a brief observation? We have had splendid cooperation from people on both sides of the aisle in getting this legislation to this point. We need another 10 minutes on each side, which will be a total of about 20 minutes, which will allow us to vote on this on or before 12:30.

I hope he would not object because we are going to have a lot harder time getting agreements again if the time on our side is completely expired on the understanding we were going to share time after ours expired and yet on the other side of the aisle, the Senator from Virginia has several people who want to speak.

We are going to make ourselves a more difficult situation on the floor later if we do not get another 10 minutes.

Mr. GARN. If the Senator will yield, I will respond to that. I have no objection to this particular legislation, or those who are speaking.

The Senator from Utah, after 14 years in this body, gets rather tired when we stay late nights, when we cannot adjourn sine die with the same old game of colleagues who feel compelled to speak on this subject or others.

I was no party to the time agreement. If somebody had asked for 2 hours and that had been the agreement, fine. But the Senator from Georgia knows exactly what I am talking about. We love to hear ourselves talk. It makes absolutely no difference in the outcome of the votes.

Whatever the votes are, they will be the same regardless whether we have 10 minutes more or 20 minutes more or half an hour more. They will go in the record just as well. We can mail them to our constituents and say how great we are.

The Senator is objecting in general to, when we agree to time agreements, it happens almost all the time, and the Senator knows it—"I just need another 5 minutes. I have got to respond to what that Senator said. My goodness, the fate of the country lies on what I say and if it is not in the record, my goodness." The Senator from Illinois is smiling. He knows I speak the truth. Some of us would like to get through. The best thing we can do for this country is shut the Congress down and go home and make them safe until January.

For the first time in 12 years we actually did what the Constitution of the United States requires us to do. We passed all 13 regular appropriations bills before the end of the fiscal year.

Mr. NUNN. Mr. President, I ask unanimous consent that none of this time come out of the agreement.

The PRESIDING OFFICER. Is there objection? Is there objection to the unanimous consent request made by the Senator?

Mr. GARN. If I could finish my statement.

Mr. WARNER. We have a arrangement. The rules of the Senate say I am going to yield my time to you——

The PRESIDING OFFICER. The Senator from Georgia has propounded a unanimous consent request. Is there objection? The Chair hears none, and the time is controlled by the Senator from Virginia, who has remaining 8 minutes and 30 seconds.

Mr. WARNER. Mr. President, under the unanimous-consent request which has just been voted on, I have another 10 minutes.

The PRESIDING OFFICER. The unanimous-consent request propounded by the Senator from Georgia was that the statements made by the Senator from Utah not come out of the time of the Senator from Virginia. The Senator from Virginia has now remaining 8 minutes and 30 seconds.

Mr. WARNER. Mr. President, then I will join my colleague from Georgia and, at this time, propound to the Senate a unanimous-consent request that the Senator from Virginia be given another 15 minutes during which the Senator from Texas, the Senator from Alaska, the Senator from South Carolina will have an opportunity to speak.

Mr. LEVIN. Reserving the right to object, does the Senator have any time that he can allocate?

Mr. NUNN. If the Senator would withhold that, may I propound a unanimous-consent agreement on behalf of both of us? I agree with much of what the Senator is saying, but in this case, the managers of the bill, frankly, underestimated the number of people who wanted to speak. We were not able to consult with everyone. We had splendid cooperation. There are people who strongly oppose this legislation, but are not holding it up.

I think under these conditions, we will get out sooner if we extend the time on this bill because many times frustration pours over to other bills. I think we would be much better served if we go ahead and ask for another 20 minutes to be equally divided.

Mr. President, I propound a unanimous-consent request asking for an additional 20 minutes to be equally divided between the Senator from Virginia and myself.

The PRESIDING OFFICER. Is there objection?

Mr. GARN. Reserving the right to object, and I will not object, but I will object if there are any further requests beyond this 20 minutes and will finish my statement and reservation to object.

For the first time in 12 years, the Congress did what the Constitution requires us to do: We did our appropriations bills before the end of the fiscal year without a continuing resolution; we did not scare the Social Security recipients and the Federal employees. We were not smart enough to declare victory, and shut up and go home until January.

I hope that we can end this game that has been going on for the last 2 or 3 weeks and adjourn sine die. I will not object to this 20 minutes.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Without objection, it is so ordered.

The Senator from Georgia has 10 minutes; the Senator from Virginia has 18 minutes.

Mr. NUNN. Mr. President, I yield my colleague from Illinois 3 minutes, the reason being I have the Senator from Michigan and the Senator from Arkansas and so I yield the Senator from Illinois 3 minutes knowing that he is, when pressed, able to summarize and be very concise and yet be very emphatic and make his points with a great deal of effectiveness.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 3 minutes.

Mr. DIXON. Mr. President, in the spirit of accommodation, I will place my statement in the RECORD, but I want my colleagues to know, as they do well know, that I have accommodated each and every one of them on every occasion in the committee, in the conference, on the floor in reference to this. I had indicated to each of the managers that I had a statement to make. I have no personal quarrel with my friend from Utah who I am happy was able to vent his spleen on his birthday, and I wish him a happy birthday, but I cannot conclude the brief remarks I had in 3 minutes and would not impose upon my colleagues by taking additional time.

Mr. WARNER. Mr. President, how much time does the Senator from Illinois desire? The Senator from Virginia would like to give time from this side of the aisle. He asked for 6 minutes. I will be happy to yield 3 minutes, that will make a total of 6 minutes, and the chances are we will not interrupt you if you run over for another 6 seconds.

Mr. DIXON. I thank my friend from Virginia for the accommodation.

The PRESIDING OFFICER (Mr. DASCHLE). The Senator from Georgia.

Mr. NUNN. Mr. President, I want to thank the Senator from Illinois. He has fought hard for principles he believes in on this legislation. He has not always prevailed, but he has made a very constructive contribution to the legislation. The changes he has proposed have made the legislation strong. Even though he is voting against it, I thank him for his cooperation.

Mr. WARNER. Mr. President, I join with the distinguished chairman in recognizing the contributions by our member of the Senate Armed Services Committee. He knows full well he could have blocked this legislation at one or two junctures in this process. But he decided to allow this conference to work its will.

I think in the interest of national defense that decision was a better one.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, I yield such time as the Senator from Alaska may require.

● Mr. COHEN. Mr. President, I would like to make known my opposition to the Defense Authorization Amendments and Base Closure and Realignment Act.

In 1976, I cosponsored an amendment that was designed to enhance the oversight capacity of the Congress in matters pertaining to major base closures and realignments. The amendment required that the Department of Defense provide the Armed Services Committees of the House and Senate with reports detailing the full fiscal, economic, budgetary, and military effects of certain, specified base closures and reductions. The reports did not constitute a legislative veto; rather they represented an attempt to seek a complete explanation and examination of a major military action.

The amendment required the Secretary of Defense to:

First, notify Congress when a military base was a candidate for closure or significant deduction, reduction of 1,000 civilian personnel or 50 percent of the level of such personnel authorized as of March 1, 1976;

Second, comply with the National Environmental Policy Act;

Third, notify Congress when a final decision was made and provide a report detailing the estimated fiscal, local economic, budgetary, environmental, and operational consequences; and

Fourth, wait 60 days following the decision. This would give the Congress time to enact remedial legislation where base realignment decisions could be shown to be clearly incorrect and unjustified. It also would allow time for those affected to make plans to accommodate the decision in an orderly manner.

The provisions of the amendment were enacted into law on August 1, 1977. I believe these provisions are fair and reasonable. They ensure that Congress plays a full and vigorous role in important decisions concerning issues of national security and the economic health of our country. It is a constitutional and rational exercise of congressional power.

Decisions on base realignments are the prerogative of the President. However, the Congress has a commensurate responsibility to review base realignment decisions just as it reviews any executive branch program that affects expenditures of funds and impacts on the environment and people's lives.

According to the Department of Defense, the base closure notifications are onerous and counterproductive. Perhaps a good case can be made for streamlining the base closing process, and Congress should address that question.

Congress is involved in decisions to open military bases, it should play an equally significant role in determining whether to close them. It would be an abdication of our duties to give up primary responsibility in this area to an unelected commission. As the Wall Street Journal recently stated, "the Armey-Roth device is yet one more example of officials in Washington offloading unto a "commission" the responsibilities they are presumably elected to exercise themselves."

Mr. President, I continue to have strong concerns about whether, in fact, this Commission created by the pending bill will conduct an independent investigation rather than simply provide a patina of legitimacy for a preordained Defense Department decision. Therefore, I intend to vote against this measure.●

Mr. STEVENS. Mr. President, first I want to say the floor procedure seems to be flawed. Those opposed to this bill should have been in control of the time in opposition. In any event, I think my friend from Illinois has spoken well. I shall not vote on this bill today because, in deference to my good friend from Maine, Senator COHEN, who has an illness in the family, he asked me to give him a pair.

I want to state my reservations about this process because as the Senator from Illinois has pointed out, the question of overseas bases has not been addressed at all. Mr. President, no member of this commission represents the coming generations of the United States. I have felt and I have expressed here on the floor many times that the coming generations of Americans will not continue to support the maintenance of troops overseas the way we have. Those of us from the World War II era have felt differently about this and we have maintained these forces overseas. But now we see the public pressure on us regarding United States commitments in Europe, in Korea, and in Japan.

As I travel throughout the United States, young people ask me why do they have to be there in such great numbers; we no longer rely solely upon ocean transportation to take our troops overseas in the event of an emergency. Air transport can reinforce overseas troops rapidly.

While I still maintain support for NATO, I am not certain we need to maintain the number of troops we have there to assure our commitment. Certainly the review of Korea, Japan, and the Philippines commitment is not complete. Yet, under this bill, the Commission must be advised of the infrastructure plans with regard to overseas bases by the Defense Secretary between now and October 15—just 3 days from now.

Mr. President, there are other defects in this bill. The cost to maintain our commitment overseas in the NATO area alone is over $100 billion a year—that's personnel, operations, and procurement of replacement equipment costs.

In Japan personnel and operation costs are now approaching $3 billion, in Korea $4 billion. This bill, if it closes every base they have on the list, and the Grace Commission estimates prove true, we will save about $2.5 to $3 billion a year. That is like turning off the lights in the White House. Compare these savings to the increasing costs because of our dollar devaluation abroad. We should have some study related to that cost and set some ceiling. The reason some bases may be closed at home is because the costs overseas have increased more in this year alone than this bill will save—and that's the cost to maintain existing commitments.

Now, we need to address the cost of overseas deployment, not just have some statement from the Secretary concerning how much this overseas deployment means to us and no bases overseas should be included in this report. The Senator from Illinois and I sponsored provisions in the Senate passed bill to address these overseas considerations. I am saddened that the provisions are not in this conferenced product.

Let me comment on one other aspect of the bill as a member of the Appropriations Committee. Title I pertains to "additional fiscal year 1989 authorization provisions." I was alarmed yesterday to receive a copy of a letter addressed to the chairman of the Armed Services Committee—I presume it was addressed also to the distinguished ranking member—from the Secretary of Defense asking for committee approval to proceed with the obligation of funds and execution of the programs that were supported by the fiscal year 1989 Authorization and Appropriations Acts by this Congress and signed into law.

I ask unanimous consent that this letter be placed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF DEFENSE,
Washington, DC, October 7, 1988.

Hon. SAM NUNN,
Chairman, Committee on Armed Services, Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Committee reports that support the FY 1989 Authorization and Appropriation Acts contain like programs at variance in dollar value. The enclosed list identifies such programs.

It is requested that Committee approval be granted to proceed with the execution of these programs in an orderly manner.

Sincerely,

FRANK CARLUCCI.

FISCAL YEAR 1989 RDT&E APPROPRIATED—NOT AUTHORIZED

[In millions of dollars]

	Amount
ARMY	
0603105A: AIDS Research	18.2
0603802A: Weapons and Munitions Technology	20.0
0102814A:	
Special programs	15.0
Hypervelocity missile	30.0
0603757A: FAADS (FOG–M)	10.0
0604270A: EW Equipment	9.0
0604770A: JSTARS	3.6
0203745A:	
Weapons/Munitions Upgrade	7.0
Dragon III	5.5
Maxi-Cube Cargo Handling System	10.0
Total	108.3
NAVY	
0602131M: USMC Landing Force Technology	.4
0602233N: Mission Support Technology	2.1
0602234N: Systems Support Technology	2.4
0602314N: ASW Technology	10.0
0603222N: Skipper Enhancements	14.8
0603709N: Adv. Marine Biological Systems	.5
0603256N:	
V–22	5.0
Surface Ship Point Defense	3.0
0603708N: ASW Signal processing	2.1
0603717N: Command and Control Systems	5.0
0603725N: Facilities Improvements	3.7
0603746N: Retract Maple	10.0
0604203N: Standard Avoinics	1.7
0604211N: IFF Systems	5.0
0604215N: Support Equipment	1.8
0604309N: Sea Lance	15.3
0604504N: Air Control	1.4
0604708N: Initial Trainers	4.9
0604717N: USMC Combat Services Support	.4
0204163N: Fleet Telecom (Tactical)	2.3
0205667N: F–14 Upgrade	2.6
1110011N: Force Enhancements (SOF)	9.4
0301327N: Tech. Recon. and Surv	1.5
0304111N: Special Activities	24.0
0603721N: Environmental Protection	.4
0708011N: Manufacturing Technology	.2
Total	129.9
AIR FORCE	
0603605F: Adv. Weapons Technology	15.0
0102424F: Space Track	3.0
0102431F: Defense Support Program	17.5
0604601F: Chemical/Biological Defense	1.3
0604754F: JTIDS	9.7
0305114F: TRACALS	5.0
0207217F: Follow-on Tactical Recce	15.0
0207585F: Seek Spinner	20.0
Total	86.5
DEFENSE AGENCIES	
0605111D: Foreign Weapons Evaluation	2.5
0603756D: Consolidated Software Innitiatives	16.5
0604702D: Joint Standoff Weapons	18.0
0605107D: General Support for Policy	1.5
0602301E:	
Strategic Technology—DARPA	4.9
Research Projects—(Grants)	46.0
Adv. Submarine Tech.—DARPA	30.0
Lighter-than-Air—DARPA	5.0
0603226E: EEMIT—DARPA	8.9
1104011D:	
SOF Enhancements	5.0
National Security Space Activities	100.0
Total	238.3
Grand total	565.4

FISCAL YEAR 1989 PROCUREMENT APPROPRIATED–NOT AUTHORIZED

[In millions of dollars]

	Amount
APA:	
AH–64	50.4
AHIP Adv. Proc	12.0
MPA: MLRS	37.1
OPA:	
Supercomputers	27.4
Tri-Tac Equip	30.5
Intel—(IDHS)	5.0
ADDS	20.0
SINCGARS	15.0
Vehicle Intercom System	10.0
APN:	
SH-60 Mod	4.0
Common ECOM Equip	20.0
Aircraft Ind. Facilities	50.0
CH-53E Adv. Proc	36.0
AH–1W	55.0
WPN:	
Tomahawk	25.0
Sparrow	17.5
Ordnance Supt. Equip	6.5
PAA: RDX Facility	72.3
OPN:	
Sealift Support Equip	12.0
An-SQQ–89	15.0
Large Screen Display	2.0
AN/SSQ–53	22.5
AN-SSQ–57	7.5
Other Av. Spt. Equip	.3
PMC:	
M–1 Tank	.6
M–1 Adv. Proc	15.9
Dragon	20.0
Ammunition General Increase	34.8
APAF:	
VC–25A Mod	1.0
C–135 Mod	117.5
MH–60G	25.0
MPAF:	
Special Programs	22.3
AIM–9 Mod	50.0
OPAF:	
Traffic Control/Landing	20.0
OTH–B Radar	16.0
Range Improvements	10.0
Milstar	8.9
Base Procured Equip	14.9
NGRE,D:	
P–3 Mod	55.0
SH–3H Mod	4.6
Misc. Equip	10.0
KC–13T	5.0
TAOM	26.8
MH–60G	2.0
KC–135 Mod	21.8
Small Unit Spt. Vehicle	8.0
FIST–V	33.0
C–130	135.0
KC–135	63.0
DPA: Defense Prod. Act	6.0
SOF:	
Army Operations	18.0
Navy Operations	35.0
Army Misc. Equip	108.0
Navy Patrol Boats	100.0
Navy Misc. Equip	25.0
Total Procurement	1,566.5

O&M ADDS—APPROPRIATED NOT AUTHORIZED

[In millions of dollars]

Appropriation/item	Authorized	Appropriated	Appropriated not authorized
O&M, Army		167.0	167.0
LTACFIRE		1.0	1.0
National Tr. Center		25.0	25.0
Medical		141.0	141.0
O&M, Navy		636.0	636.0
Persian Gulf		60.0	60.0
Samuel B. Roberts		96.5	96.5
Aviation Depot Level Reparables		150.0	150.0
NTU/Fleet Mod		240.0	240.0
Seal Facility			
Maint		2.0	2.0
Medical Programs		87.5	87.5
O&M, Air Force	30.0	168.2	138.2
Depot Maint	30.0	63.8	33.8
SR–71 Support [1]		26.0	26.0
Readiness Items		69.0	69.0
USAF Academy Hospital		2.2	2.2
Search and Rescue		7.0	7.0
Classified Projects		.2	.2
O&M, Defense Agencies		13.3	13.3
Classified Projects		12.8	12.8
OEA Support		.5	.5
O&M, Army Reserves		5.0	5.0
Civilian Technicians		5.0	5.0
Total	30.0	989.5	959.5

[1] Contained within Classified Projects net decrease of $14.0 million.

Mr. STEVENS. This is a request from the Secretary of Defense for the approval of one committee to expend money that has been approved by the President of the United States and by both Houses. Now the Department is withholding funds because of some perceived controversy between the two committees. It is time that we get this solved. The Defense Appropriations Act for 1989 contains some provisions amending the act that was signed by the President authorizing appropriations for 1989. Specifically, the Appropriations Act includes an amendment offered by the Armed Services Committee concerning additional authorizations that were deemed to be necessary.

But now we have the Secretary's letter—on itemization—withholding funds until approved by the Armed Services Committee for AIDS research, special programs, etc. I hope those who read this RECORD will look at the letter's enclosure. This is why I disagree with my friend from Utah. Some of us have serious reservations not only about what is in the bill but about the processes that this bill reflects. Certainly we should not be in the position of, for the third time now, seeking the Armed Services Committee to approve the work that was done by the Congress. That was not just an Appropriations Committee bill. It was a bill passed by the Congress of the United States and signed into law by the President. Now we have the request for further approval. There is no legal requirement for the additional step. Mind you, Mr. President, it says, "The committee reports that support the fiscal year 1989 Authorization and Appropriations Acts contain like programs at variance in dollar value."

"It is requested that committee approval be granted to proceed with the execution of these programs in an orderly manner."

The Secretary of Defense is saying, because the two committee reports are in conflict, we are not going to spend money for the Department of Defense for these items until one committee clears the work of the Congress itself.

I think the procedure we are using between these two committees is so flawed that it is harming the defense of this country and until it is straightened out I am going to start really coming to the point in terms of examining every line item in the authorization bill next year. It is time for us to face up to this question of what is authorized and what is not, what is the role of the authorization committee, what is the role of the Appropriations Committee. I have spent 20 years now on the Appropriations Committee, and I thought we were doing the work that Congress assigned to us. Now we find, after we went through that long conference, we went through all of that interface with the Armed Services Committee representatives, that the Secretary of Defense believes, because there is a conflict between the two reports which accompanied our bills, he cannot proceed to expend money.

Now, Mr. President, there is enough wrong with this bill itself. One thing that is wrong with it, it did not clarify that battle. Title I of this bill deals with changes to the authorization and appropriations acts. If there is some dispute as far as the authorizers concerning the authorization for the continuance of these items that we continued in the Appropriations Act, that should have been before this Congress rather then treated by correspondence between the Pentagon and their Committee. It leaves the issues hanging over the next President, and those who administer the appropriations process for the Congress next year, this sword that says the Armed Services Committee stands ready to disapprove what the Congress has voted to approve.

But, Mr. President, the fundamental flaw in this bill itself is it does not reflect, in my judgment, the attitude of future generations in this country as I discussed earlier in my remarks on base closure procedures. I thank my friend.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. While my distinguished colleague from Alaska is still on the floor, I must challenge his statement with respect to not close any bases at home because we may bring home our soldiers, sailors, airmen, and Marines from abroad.

I agree with the fact that at all times we have to monitor the costs of our foreign deployment, but the strategy of this country today, the military strategy of America is predicated on a forward deployment, a moving of forces closest to the threat to this Nation. We cannot possibly move by air the tanks built in Michigan in sufficient numbers to confront an enemy. We simply have to maintain the forward-deployment strategy.

I hope that as this measure is implemented by the Secretary of Defense the American public is not misled by this Clarion call to bring them home rather than close up at home. It has appeal; it plays well, but it defies that basic military strategy which has maintained the peace primarily in Europe for some 40 years.

I yield 4 minutes to the Senator from Texas.

Mr. GRAMM. Mr. President, I thank our distinguished colleague for yielding.

Might I add on this debate on forward deployment, those of us from the South know what it is to have enemy armies in our back yard and have the natural preference of fighting wars elsewhere rather than in front of, behind, or even in one's home. Tempting as it is to get into a debate about jurisdiction or a debate about keeping Ivan back from the gate rather than fighting him at the threshold of our door, I am going to stay away from all of that. Instead, I want to talk about ideas and about how they dominate the political debate.

What we are doing today is adopting a bill that is pretty extraordinary. It is extraordinary because we are addressing one of the great political sacred cows in this country and in this great deliberative body. There is something in the heart of every politician that loves a dam or harbor or bridge or military installation. Though they may oppose the purpose, though they may vote against defense, they want the money coming into their area and they defend to the death the continuation of bases that may have been designed to defend us against Canada in the War of 1812.

We are here today because of an extraordinary young man, and that is what I want to emphasize. His name is Congressman DICK ARMEY. He is from Texas, and he is a determined man who had an idea. What we are proving today is that, while vested interests day in and day out produce a pork orgie that gives the Nation trichinosis in defense and in almost every other spending program of the Federal Government, a determined person with an idea is still a very powerful force in the legislative process.

We are today taking an extraordinary step that is aimed at making tough political decisions and will save the taxpayers money because of one extraordinary young man with a very powerful idea. So those who would cynically say that the American political system, and Congress in particular, is dominated totally by special interests and who would say that ideas have no role in this modern political era, can look at this bill. This bill is the triumph of an idea over vested interests, and I rejoice in it. Our problem is, Mr. President, these triumphs are too few and far between. I congratulate the young man with the idea and with the resolve to make it a reality.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Chair informs Senators that the Senator from Virginia has 4 minutes remaining and the Senator from Georgia has 6½ minutes remaining.

Several Senators addressed the chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. We have normally been rotating. I wonder if the distinguished Senator from Michigan will allow me to yield 2 minutes to my distinguished colleague from South Carolina, who knows more about this subject than I think most Members in our Chamber.

Mr. THURMOND. Mr. President, I thank the Senator.

Mr. President, I rise in support of the conference report for S. 2749. Passage of this bill could save the taxpayers billions of dollars. For years the Congress has kept bases open that the Department of Defense has felt should be closed to save tax dollars. The result has been a base structure that is too large for our defense needs.

Mr. President, due to the bipartisan leadership of Senators NUNN and WARNER, we have before us a bill that every Member of the Congress should support. And I want to commend both of these Senators for the outstanding leadership in this matter. The savings that can be accrued from closing bases will be needed in the future for other defense programs of higher priority.

Our present military base infrastructure is largely a result of our history, rather than our national security needs. Passage of this legislation will help bring our base structure more into conformity with our actual defense needs.

Mr. President, it is rare that the Congress passes legislation that can actually save the taxpayers money. S. 2749 is just such a measure, and I urge all of my colleagues to support final passage.

Mr. President, in closing, I want to say that this is a matter we have worked on for many, many years. I have been on the Armed Services Committee now for about 30 years or more. Ever since I have been on the Armed Services Committee this matter has been talked about but we have not gotten action. We are now about to get action. I urge my fellow Senators to support this measure.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I thank our distinguished colleague from South Carolina. Indeed he has a corporate memory, and he recalls well President Lyndon Johnson in his days making an effort. He came to the brink of getting it through but failed because of the problems throughout the world at that time.

I thank our distinguished colleague and indeed the staff member, Ken Johnson, who has worked on the Senate Armed Services Committee on these matters for many years.

Mr. NUNN. Mr. President, I share the remarks of my friend from Virginia about the Senator from South Carolina and about his capable staff. I would like to identify myself with those remarks.

I yield to the Senator from Michigan 2 minutes.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 2 minutes.

Mr. LEVIN. First, let me commend the Senator from Georgia and the Senator from Virginia for what they have done here. They have really been able to pull off an extraordinary result. We are all in their debt.

The Senator from Illinois has also made an important contribution here because what he has done has reminded us of the origin of these restrictions on executive discretion. The reason we have some limits on executive discretion in current law is because one President of the United States was thought to have abused the right that he had then to close bases in an untrammeled way. It was thought that the President 15 years ago, or so, closed bases in some States in retaliation for the way they voted in a certain election. The Congress decided to have a check on that executive discretion. It was proper at that time, but we overdid it.

As a result, we have been unable to close bases which should be closed. But because of the efforts of the Senator from Illinois and others we have some check built back into this conference report.

There is some requirement relative to the independence and objectivity of the Commission and their staff which it is our capability to enforce in the Congress. We can enforce that through hearings before we vote on any resolution of disapproval which we have a right to vote on in an expedited way in this conference report.

So there is a mechanism in this report to make sure that the result of this additional discretion is a fair result, is a balanced result, and that we do not have any regional politics that are made in this effort that is now going to be undertaken.

We want an independent, objective Commission. We do not want window dressing for a decision of the Secretary of Defense as to which base is to be closed.

We have built back some of that protection—not enough in my view. I happen to agree with much of what the Senator from Illinois has been doing, but enough so that I am able to vote for this conference report.

Again, I congratulate my friends from Georgia and Virginia for what they have done. My question of the Senator from Georgia is this.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. LEVIN. Could I have 30 more seconds?

The PRESIDING OFFICER. The Senator is recognized.

Mr. LEVIN. Is it our intent to be certain that the spirit and the letter of the protection that is built in here relative to independence and objectivity is fully implemented?

Mr. NUNN. The answer to that is yes. It is our intent, I say to the Senator from Michigan, and we have made that very, very clear in our conversations with the Secretary of Defense, with the cochairmen, Senator Ribicoff and Congressman Edwards. We have not only made it clear as far as the Commission, but also most importantly as far as the staff, and also I made it clear to the Secretary of Defense that we want to make sure that those active duty military people who are serving as part of the staff are buffered from retaliation if they are objective, and hopefully they will be from their own services.

So it is not just a matter of partisan politics. It is also a matter of protecting the active duty members against some of the contingencies of the services. So the answer to that question is yes. I cannot guarantee it but I do tell the Senator from Michigan that we have emphasized it, and I believe both Ribicoff and Edwards fully understand it, and fully intend to do everything as cochairmen to see that spirit is carried out.

Mr. LEVIN. We do have the capability through hearings to see that in fact it is carried out.

Mr. NUNN. That is right. The appropriations in the future are going to have to be there for the implementation of this. So there will be a check and balance in a number of ways.

I thank the Senator from Michigan for his contribution.

How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. NUNN. Mr. President, I yield 2½ minutes to the Senator from Arkansas.

Mr. BUMPERS. Mr. President, I will probably yield 30 seconds back.

Mr. President, I want to say I have serious reservations about this conference report due to the fact that we are going to give this Commission about 45 days to analyze 3,800 military facilities in this country, and come back and tell us which ones they are going to close and which ones they recommend for closing.

With the utmost respect, I suggest there will be no bases on the list in Georgia, or Virginia. And I doubt very seriously if there will be any in the home State of the chairman of the Subcommittee on Defense Appropriations.

What you are going to be doing is transferring what has been political in the past to a different bunch of politicians. The Secretary is going to dominate the Commission. The Secretary is going to tell the Commission which bases ought to be closed. I had a provision put in this bill to state that they had to consider the economic plight of the community. I am glad it is in there.

Take Eaker, formerly Blytheville Air Force Base, a SAC base in my State. If you close that base, you guarantee poverty in one of the poorest counties in America for the next 50 years.

Finally, Mr. President, I want to say I want to be sure that this bill requires the Commission to take into consideration OMB Circular A-94 and DOD instruction 7041.3, which are the circulars and the instructions that require or would require this Commission, when they are considering the economic value of closing a base, to also take into consideration the cost of money to the Government by using a 10-percent discount rate in analyzing cost savings.

For 3 years, I have tried to get a TACAMO squadron located in Little Rock, AR. The Air Force looked at about 20 bases, cut it to 7. Tinker Air Force Base was not even on the 20 list. It was not even on the seven list. Little Rock Air Force Base was picked by the Air Force and everybody at the Pentagon had agreed. All of a sudden, the call comes from the White House. This squadron is going to Tinker Air Force Base. A man who was high in the Defense Department, who was in the decisionmaking, said it was just that simple. Tinker was not even considered. He gets a call from the White House and says, "We just decided this squadron is going to Tinker Air Force Base," a most blatant political decision. They are all political.

I want to save $2 billion or whatever we can from the Defense Department. But I have real reservations about this proposal.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. My good friend from Arkansas and I have been on this floor toe-to-toe quite a bit here in the last few days. But I would like to reply and refer to earlier remarks by the Senator from Virginia when I first spoke with respect to this pending legislation. I have no idea, nor does any other Member in this Chamber, so far as I know, whether a base or an installation of the Commonwealth of Virginia is on this list or not, or a base or an installation in any other State. I have no knowledge whatsoever of this list.

In the first place, the list has not even been formed yet. They are merely recommendations that are flowing in. The Commission has not acted because the two senior members were in the office of the chairman of the Armed Services Committee a few days ago and told us that no final action whatsoever has been taken in the process to date; but I say this Senator will stand and face his constituency in the event the misfortunate falls to Virginia to lose a base and defend, and I repeat, defend, the conclusion of that Commission provided the work is done appropriately, and will undertake along with others to investigate it. But if it has done its work appropriately and in accordance with this law, assuming this measure becomes law, then I will take the heat, because in my judgment this is a proper piece of legislation.

On the 1st of March, Congress will have the opportunity to examine the work of the Commission, the propriety of the recommendations, and then determine whether or not we will have a joint resolution of disapproval. But I say to my colleagues, in this instance, using the words of Benjamin Franklin, this is one of those times when, "we must all hang together, or assuredly, we shall all hang separately.

Mr. MITCHELL. Mr. President, I regret that I cannot support this effort to close military installations at the recommendation of the Commission on Base Realignment and Closure.

In theory, such a Commission would serve a valuable purpose—insulating from politics the controversial process of closing an unneeded military base here in the United States.

In practice, however, I fear that this legislation would not achieve its goal.

Congress, with its constitutional mandate to provide for the common defense, has a responsibility to consider each base opening. It similarly has a responsibility to consider each base closing. This measure would, in large part, deprive Congress of this right and duty.

The Commission's recommendations would be presented to the Secretary of Defense to be accepted or rejected in full. No changes could be made to the list of closures, even if the Secretary determined that such changes were vital to U.S. national defense capabilities.

If the Secretary accepted the recommendations, Congress would similarly be presented with a list that could not be amended. Congress would not even be required to approve that list. Congress could only vote to disapprove the list—in full.

In other words, the Congress would lack any discretion to decide against closing one base from a list of perhaps two dozen.

If the Commission had made an error of judgment in even one instance when considering over 300 major military installations, Congress would be unable to correct that mistake. The result could have harmful effects upon our Nation's security.

By establishing an all-or-nothing approval process, Congress would be abrogating its responsibility to make decisions about individual bases. Congress would be transferring this authority to a 12-member Commission.

But how can this Commission thoroughly and objectively evaluate the more than 300 major military bases and thousands of other installations across the United States and decide which among them are least important to the Nation's defense—all by December 31, 1988. That is only 2½ months away.

Decisions of such importance should not be made without careful study and consideration. The Commission, composed of tentatively appointed members, has only just begun to analyze the task before them. To the best of my knowledge, no Commission member has even visited a major base to date.

Yet this Commission would be required to draw up a list of bases slated for closure before the end of the year, a list that Congress could only reject in full.

In my view, this is simply not realistic. It borders on the irresponsible. I therefore cannot support this conference report.

I look forward to working with my colleagues in an effort to identify and close those bases that no longer contribute significantly to our national defense. I believe that we must control defense spending.

But I cannot vote to abrogate our responsibilities as Senators to consider individual base closings. I cannot vote to set in motion a flawed process.

A process that is rushed, a process that is ill-considered, a process that rigidly rejects any discretion by a majority of the U.S. Congress—such a process is unsound.

It would not serve the national security interests of the United States.

Mr. BOSCHWITZ. Mr. President, I rise to support this important legislation—not only for its specific provisions, but also for its approach to Pentagon management.

The failure to close a single military base since 1976 is a glaring example of congressional mismanagement of the Pentagon. I have spoken twice on this floor in recent months on the role of Congress in managing the Department of Defense. I was first prompted to make these speeches when the Pentagon procurement scandal was revealed in June. I said then that the recent Pentagon scandal is an opportunity to explore some of the underlying reasons for Pentagon mismanagement. I have argued that one of these underlying causes is Congress itself. While the Pentagon has its share of problems, we have exacerbated many of them and have even created some of them.

That is why this legislation is such an important step. Congress should act as a board of directors—not as hands-on managers—by setting broad policies and goals. Almost all of us agree in principle that some military bases should be closed. After all we have more bases today than when we had at the height of World War II—when we had six times as many people in the armed services. However, this general consensus breaks down when it comes to specifics, when Members put up obstacles, such as lengthy and time-consuming environmental impact statements, to stop base closings in their home States. It is disappointing—but no great surprise—that for more than a decade Congress has kept the military from closing any unneeded bases.

This measure removes Congress from micromanaging each and every proposal to close a military base. Instead, a nonpartisan panel of experts will prepare a list of truly obsolete bases. Once this list is approved by the Secretary of Defense, Congress will have a limited time to vote up or down on the entire list. By closing up to two dozen obsolete bases, this legislation will save $2 to $5 billion annually in defense spending.

This approach is a responsible way for a board of directors to manage an enterprise—the board sets the overall goal of closing unneeded bases and allows impartial experts to make the judgment calls. Yet, we have not abdicated our responsibility. We still have the opportunity to reject the list that the Commission presents us.

I know that some of my colleagues are concerned about the economic impact of base closings in their States. Let me cite, therefore, a most interesting study, made by the Pentagon's economic adjustment committee made in reviewing 100 major base closings that occurred before 1976. The study reported that 94,000 Defense Department civilian jobs were eliminated, but nearly 140,000 jobs were created on those bases. That is because they were converted into private facilities such as industrial parks and airports.

Mr. President, this legislation points the way toward a more rational approach to congressional management of the Pentagon. A number of Pentagon reforms have been suggested in recent months: More multiyear procurement; closing the so-called revolving door; creating a civilian procurement agency, and so on.

For my part, I would urge that we not excuse ourselves and that we get our own house in order. Let's establish longer term budgeting. Let's cut our congressional pork in the defense budget. Let's resist the temptation to become involved in every detail of defense policy and to complicate the Pentagon's efforts to close obsolete bases. If we become an effective board of directors again, the business of the Pentagon will be better run as a result.

Mr. HEINZ. Mr. President, we stand poised to pass truly important legislation. For nearly a quarter of a century, Congress and successive administrations have been deadlocked over efforts to close obsolete military facilities. That era may be coming to an end.

The conference report on S. 2749 contains—essentially intact—the provisions of Representative Richard Armey's "Defense Savings Act" (H.R. 4481). The Defense Savings Act grants official recognition to an independent commission Secretary of Defense Frank Carlucci established on May 3, 1988. The Commission—headed by former Senator Abraham Ribicoff and former Representative Jack Edwards—will determine which domestic installations ought to be closed. The Commission will report its recommendations to the Secretary and to Congress by December 31, 1988. We, in turn, will be obliged to accept all of the recommendations or none of them under a fast-track procedure.

If indeed bases are closed, DOD and other Federal agencies will provide affected locales with extensive economic adjustment and community planning assistance. The Department of Defense is confident adverse economic impacts of base closings or realignments can be mitigated.

The Department of Defense [DOD] operates about 4,000 military installations in the United States. Most were built during World War II to house some 12 million service personnel. Today, 2.1 million men and women are on active duty; 400,000 serve overseas.

The Pentagon contends that 400 installations are obsolete. The Department of Defense, the Office of Management and Budget [OMB], and the Grace Commission estimate the Federal Government could save $2 to $5 billion annually if obsolete or superfluous bases were closed.

Congress has been loathe to close bases for two reasons. First, bases create jobs and boost local economies. Second, Congress has perceived—rightly so—that many of DOD's base closing decisions have been made on political, not strategic, grounds.

The savings involved in the Defense Savings Act are too big to pass up. The budget deficit is too unforgiving. Since 1985, DOD's operating budget has been reduced by roughly 5 percent in real terms. As a result, DOD has canceled major weapons systems and postponed building a 600-ship Navy.

Mr. President, I will vote to approve the conference report to S. 2749. It's a good bill. In principle, I support closing obsolete or superfluous bases. But I do want to take a moment to address a concern.

The House-passed version contained a provision, section 4(a)(2)(B), requiring the Commission on Base Realignment and Closure to consider "the equitable geographic distribution throughout the United States" of its recommended actions. Similar language is retained in the conference report.

Such language is important. The Northeast and Midwest contain 43 percent of U.S. population and account for 48 percent of total Federal revenues but contain just 228 of the 862 major military bases—6.5 percent—in this country. The region receives just 21.1 percent of DOD spending on salaries and wages.

There is a superabundance of bases in the South and West. This phenomenon is due, in part, to the availability of large tracts of land and strategic concerns. But it is also a legacy of the parochial interests and power of long-term former Armed Services Committee chairmen such as Senator Richard Russell and Representatives Carl Vinson, L. Mendel Rivers, and Edward Hébert. These men served their country well. They also served their region well.

In March 1985, DOD circulated a list of 22 bases it wished to close. The Northeast and Midwest contained 12 of the bases on DOD's list. In other words, the Northeast and Midwest contain a quarter of the military bases in this country, but one-half of the bases DOD wished to close. Those 12 contain 67 percent of the personnel that would be affected if all 22 were closed.

Regional equity issues are not at odds with strategic concerns. Northern air bases have shorter flight times to the Soviet Union. Eastern seaports are closer to Europe and above potential choke-points such as the straits of Florida.

I am confident the Commission will acknowledge the validity of these arguments and prevent the further entrenchment of regional inequities stemming from the location of existing military facilities.

Mr. SPECTER. I am voting against the conference report to S. 2749, the military base closure bill. While I support closure and realignment of defense installations in the United States, I cannot support the provisions in this conference report addressing the closure of military bases.

I join Senator Dixon in his concern for the process by which bases are identified for closure. The anaylsis of the Nation's bases must be objective, thorough, and nonpartisan and I believe that the Commission appointed by the Secretary of Defense under this conference report do not meet these criteria.

The total number falls short of a reasonable number needed to broaden the geographic diversity and objectivity of the Commission's membership.

In May 1988, during consideration of the defense authorization bill, I supported an amendment by Senator Dixon to increase the total number of Commission members to 15. That was the minimum acceptable number, I believe it is necessarity to broaden the representation on the Commission. That amendment passed by a vote of 83 to 13.

I am also concerned about the time provided to the Commission to submit its recommendations to the Secretary of Defense. By mandating the completion of the Commission's work by December 31, 1988, There is insufficient time to do the job. Under the timeframe as proposed in the conference report the Commission cannot provide adequate and objective analysis of the 3,800 major military installations nationwide.

My home State of Pennsylvania has 22 military bases, which employ approximately 74,500 full-time employees. To assure that these bases and their personnel are not lost as a result of a rushed and unthorough analysis, I am voting against this conference report. If any of the Pennsylvania bases are to be closed. And we hate closures around the Nation. I want an objective, nonpartisan Commission to make that decision with enough time to do the job properly.

The PRESIDING OFFICER. The Senator from Georgia has 15 seconds.

Mr. NUNN. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All of it?

Mr. NUNN. All of it. [Laughter.]

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the conference report. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS (when his name was called). Mr. President, on this vote I have a pair with the Senator from Maine [Mr. Cohen], who is absent because of illness in his family. If he were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "aye." Therefore, I withhold my vote.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. Bentsen], the Senator from Oregon [Mr. Boren], the Senator from Florida [Mr. Chiles], and the Senator from New Jersey [Mr. Lautenberg], are necessarily absent.

I further announce that, if present and voting, the Senator from New Jersey [Mr. Lautenberg] would vote "yea."

Mr. SIMPSON. I announce that the Senator from Maine [Mr. Cohen], the Senator from Minnesota [Mr. Durenberger], the Senator from Nebraska [Mr. Karnes], the Senator from Arizona [Mr. McCain], the Senator from Indiana [Mr. Quayle], and the Senator from Wyoming [Mr. WALLOP], are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota [Mr. DURENBERGER], the Senator from Nebraska] [Mr. KARNES], and the Senator from Wyoming [Mr. WALLOP], would each vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 82, nays 7, as follows:

[Rollcall Vote No. 367 Leg.]

YEAS—82

Adams
Armstrong
Baucus
Biden
Bingaman
Bond
Boschwitz
Bradley
Breaux
Burdick
Byrd
Chafee
Cochran
Conrad
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dodd
Dole
Domenici
Evans
Exon
Ford
Fowler
Garn
Glenn
Gore
Graham
Gramm
Grassley
Harkin
Hatfield
Hecht
Heflin
Heinz
Helms
Hollings
Humphrey
Inouye
Johnston
Kassebaum
Kasten
Kennedy
Kerry
Leahy
Levin
Lugar
Matsunaga
McClure
McConnell
Melcher
Metzenbaum
Mikulski
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Proxmire
Reid
Riegle
Rockefeller
Roth
Rudman
Sanford
Sarbanes
Sasser
Shelby
Simpson
Stafford
Stennis
Symms
Thurmond
Trible
Warner
Weicker
Wilson
Wirth

NAYS—7

Bumpers
Dixon
Hatch
Mitchell
Pryor
Simon
Specter

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Stevens, for

NOT VOTING—10

Bentsen
Boren
Chiles
Cohen
Durenberger
Karnes
Lautenberg
McCain
Quayle
Wallop

So, the conference report was agreed to.

Mr. NUNN. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. BYRD. Mr. President, will the distinguished Senator from Louisiana yield to me for a unanimous-consent request?

Mr. JOHNSTON. I yield.

EXTENSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that morning business be continued until 2 o'clock p.m. today and that Senators may speak therein for not to exceed 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO SENATOR ROBERT BYRD

Mr. JOHNSTON. Mr. President, I have known and admired ROBERT BYRD for the 16 years we have served together in the U.S. Senate, but recently I have had a particularly good vantage point for observing him in the conduct of his office. During this Congress, we have worked closely together on a host of legislative issues.

As a man who would be leader, I have observed him in his job with a keener interest and a closer scrutiny.

Senators have correctly noted many of Senator BYRD's great qualities: An astute legislative sense, a legendary knowledge of the rules, unquestioned integrity, to name just three.

But I would like to mention two other qualities, less frequently noted, which are also central to his remarkable success. First, his courage.

The majority leader has to have the courage to disagree with people he might prefer to conciliate. Every day he has to row against the current. Sometimes he has to oppose his colleagues individually, sometimes his colleagues collectively. Often he has to part company with the press or the public on an issue.

Confrontations come frequently, sometimes in important matters, sometimes over trivial, day-to-day housekeeping issues.

The majority leader has a dual responsibility, to make the Senate run smoothly and to carry out policy. When these roles conflict, he must make a decision. To follow the path of least resistance is frequently to sacrifice more important considerations. What a majority leader must be able to do, what this majority leader has done, is bring to bear his experience and judgment on the issue at hand without regard to his personal interest.

In addition, the majority leader must be attentive to the needs of 99 supplicants. At one time or another, every Senator has some small personal request, to hold a vote or change a schedule, so he must be a good friend and accommodator. At the same time, he cannot allow a multitude of requests to bog down the process. This day to day balancing of priorities, this necessity for saying "No," calls for courage, and BOB BYRD has shown that he has it.

The second quality that a leader must have is patience, and, for want of a better word, stick-to-itiveness. There is some confusion about the virtue of patience. It is not a negative quality. It is not just sitting there while somebody else does something. It is the active encouragement of the problem-solving process.

It is said that the Senate is inefficient. Collective judgment comes very slowly in a group of able, talented, diverse, strong-minded individuals. The Senate is brilliant but undisciplined, and attempts to achieve consensus are exasperating and frustrating. I have seen BOB BYRD working with groups of Senators on the budget, on Contra aid, on a host of other issues. These were groups with views as different as night and day, with personalities as placid as Vesuvius. Frequently, the prospects of forging agreement between fire and ice seemed bleak indeed. But through sheer force of character and a bottomless reservoir of patience, he would shape agreement and arrive at consensus. Lesser men would have slapped the table, closed the subject, allowed the issue to go unresolved so that it would hang around to haunt the body politic. Not ROBERT BYRD.

Sometimes the job of majority leader is a lonely one. I have heard BOB BYRD say that he may not be loved, but he wants to be respected. Respected he certainly is, for his rectitude and his flinty determination to make the Senate run smoothly. But in case he has any doubt about it, I would like to assure him that, in addition to our respect, he has our profound admiration and our deep affection. It has been an honor to serve with him and to learn from his example.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. EXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Nebraska.

TRIBUTE TO LAWTON CHILES

Mr. EXON. Mr. President, it has been a distinct pleasure and honor to serve in the U.S. Senate with LAWTON CHILES. His retirement announcement came as a surprise and disappointment to many, including this Senator.

Working with LAWTON is always an enjoyable experience. The Senate will miss his political talents and legislative skill.

As chairman of the Senate Budget Committee, LAWTON CHILES has carried a heavy responsibility. He has performed well. It is indeed no accident that the annual Federal budget deficit has declined from $221 billion in 1986 to $155 billion in 1988 under his leadership of the Senate Budget Committee.

Indeed, the taxpayers owe LAWTON CHILES a large debt of gratitude.

It was Senator CHILES who took the high risk, but ultimately high return strategy as chairman to bring the President to the budget negotiating table. In those negotiations, he was a keen player and brilliant strategist.

Throughout my career in the Senate, I have always admired Senator CHILE's important talent for uniting Democrats and appealing to moderate Republicans.

Senator CHILES sought compromise and cooperation. And he got it. LAWTON has an ability to move individuals off of the battleground and onto the common ground.

Senator CHILES has built a long list of personal and political accomplishments. He was a soldier in Korea, a successful attorney and businessman, a professor, a member of the Florida House and Senate and an outstanding U.S. Senator.

His career can be summed up with the simple statement that LAWTON CHILES is a leader and a true statesman.

Political history will record LAWTON CHILES as the inventor of the often imitated political institution, the walk across the State. In 1970, "WALKIN' LAWTON CHILES" traversed the great State of Florida to meet the voters and hear their views. Walking obviously works as LAWTON consistently won over 60 percent of Florida's vote.

LAWTON can certainly take credit for boosting shoe sales to aspiring young politicians attempting to "follow in his footsteps". And many will.

Mr. President, I will miss the distinguished senior Senator from Florida. He has been a trusted friend and adviser. The U.S. Senate has been enriched by the service of Senator LAWTON CHILES.

Thank you, Mr. President.

U.S. SENATOR JOHN C. STENNIS

Mr. EXON. Mr. President, one of the rewards of being a Member of this distinguished body is serving alongside many truly great Americans of our times. Prominent among them is the President pro tempore of the Senate and my dear friend, the senior Senator from Mississippi, JOHN STENNIS.

From my first day in the Senate, I have looked up to the senior Senator from Mississippi as a living example of what has made our Nation great—honesty, hard work, and a belief in the basic goodness of our people. For over 40 years, Senator STENNIS has dedicated his life to the strength, prosperity, and well-being of the United States. In doing so, he has earned my lasting respect and admiration for his statesmanship.

In particular, I have had the special privilege of working closely with the Senator on matters related to national security. It was under the leadership of Chairman STENNIS of the Senate Armed Services Committee that I received my indoctrination to the complexities of national security and the role of this important committee in shaping our national priorities. While serving as the chairman of the Appropriations Committee, Senator STENNIS worked further to ensure that our defense needs were adequately funded and those funds wisely spent in these difficult budgetary times.

Yet, Mr. President, the achievements of Senator STENNIS in the area of national security represent only the tip of the iceberg regarding his innumerable accomplishments and achievements throughout his nearly 41 years of service here in the Senate. His record speaks for itself. Few have or ever will come close to matching it.

Today, I would like to honor this great man who will be leaving the Senate upon the sine die adjournment of the 100th Congress. He has always been a gentleman; and honorable man who has served this Nation well and contributed to its greatness. I will miss his leadership, his wisdom, and his kind and courteous manner.

TRIBUTE TO SENATOR PROXMIRE

Mr. EXON. Mr. President, at the end of this session of Congress, the distinguished Senator from Wisconsin, my very good friend WILLIAM PROXMIRE, will retire from the Senate.

BILL PROXMIRE and I have worked together over the years on many, many issues. He has always been generous, helpful, ready to assist where he thought he could. The latest example was the Exon amendment regarding foreign investment in the trade bill. BILL was with me on that one every step of the way and I am indebted to him for its passage.

And so I am extremely proud to stand here and wish my good friend well in the future and tell him how dearly he will be missed by this Senator. His fastidiousness, hard work, enthusiasm and wisdom are all things I admire in BILL PROXMIRE.

Do not let me close without attributing a great deal of thanks and salute to his outright genius as a workman in the U.S. Senate. But for a financial genius like BILL PROXMIRE, the Senate would have gone off base on many, many occasions.

Who but BILL PROXMIRE could spend less that $150 on his last election campaign? Who could match that? BILL PROXMIRE practiced his down-to-earth, basic understanding of people, the facts of Government with action by being one who did not throw money away on election campaigns even during this time, Mr. President, when things obviously have gotten completely out of hand. BILL PROXMIRE is one who I think would work very hard and say that one of the things we must do in the next Congress of the United States is to put some kind of a reasonable cap on the amount of money being thrown into campaigns at least every level of government today.

Above everything else, he has set a record by never having missed a rollcall vote—not a single one—since 1966. Mr. President, that represents over 10,000 votes. It has never been accomplished before, and I think it is a record that will very likely stand forever.

To know how important BILL PROXMIRE's contribution was, one has to know of his dedication and his discipline. He ran to work each morning of every day no matter what the season or what the weather for many, many years. Likewise, he was one of those who ran hard to keep the U.S. Senate on track.

There are many things that I admire about the Senator from Wisconsin, and one of my favorites is the way he guards his money and that of the taxpayers of the United States. He has set an example for all of us to follow.

While his reputation for conservativism is well known, BILL gives new meaning to that phrase. I think it is a philosophy that more people need to learn, especially in light of the current deficit.

BILL not only dislikes frivolous spending, he created the Golden Fleece Award to ridicule those best known for their wasteful spending and let the public know exactly who was wasting taxpayers' money.

While I agree with Senator PROXMIRE on almost everything, there is one area on which we have had differences, although friendly ones, for a long, long time, and that is his strong support of the Chicago Cubs National League baseball team. I do not think I will ever be on the side of the ballpark in that regard since I am a Cardinals fan, one of the adversaries of the Chicago Cubs year after year, but I will always remain a fan of BILL PROXMIRE.

In closing, Mr. President, let me say in addition to our other associations over the years, BILL PROXMIRE and I were neighbors, right across the street from each other for most of the time that I have been serving in the U.S. Senate.

BILL PROXMIRE's warmth, BILL PROXMIRE's understanding, BILL PROXMIRE going out of his way to accommodate others in the U.S. Senate is exemplified by the fact that in addition to everything else, he was a very wonderful neighbor and no one could have asked for a better neighbor regardless of where they live in this big wide wonderful world of ours.

So I salute Bill Proxmire, my friend and my colleague, and wish him well in his future endeavors.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. Mikulski). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WIRTH. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

GLOBAL RELEAF

Mr. WIRTH. Madam President, all of us remember Mark Twain once said "everybody talks about the weather but nobody does anything about it." Today citizens across the United States and around the world are doing something about the weather. What they are doing is very damaging, indeed. We are all familiar with the phenomena of global warming and the fact that the warming of the atmosphere is the result, in large part, of the release of carbon dioxide into the atmosphere as well as the addition of a variety of other trace gases, the destruction of rain forests, the overpopulation of the world, and a variety of other elements. Global warming is probably the greatest challenge that all of us are going to face for the remainder of this century and well into the 21st century.

Citizens ask day in and day out, what can I do? What steps can I take? This morning, Madam President, I had the privilege of participating in a program that was launched by the American Forestry Association, a project called Global Releaf, R-e-l-e-a-f. Global Releaf is an effort all across the United States set up by the foresters in cooperation with a variety of other grassroots organizations to encourage Americans and people around the globe to plant trees.

What does that have to do with global warming? It is intended by the American Forestry Association that this be their response to the issue of global warming. It has two purposes now. First of all, trees are a sink for carbon dioxide. Conversely, trees are a spigot of carbon dioxide when they are burned or left to decompose. Where does it go? A great deal of it is going into the atmosphere, contributing in the area of 20 percent of the atmospheric load of CO_2. The planting of trees can have precisely the opposite impact. Trees absorb that carbon dioxide, and although it is not going to solve all of the problem, certainly tree planting can be a step in the right direction.

It is the goal of the American Forestry Association, similar to Arbor Day, and a variety of efforts across this country throughout our history, to plant 100 million trees by 1992. That is an ambitious goal, but this is an ambitious project.

So, one, the absorption of carbon dioxide will help, and that is one of the goals of Global Releaf.

A second is to cool our cities. What impact will that have? All of us know in urban areas that trees can have a very salutary impact on the environment of a city, and we all look when we go through cities, those great concrete areas, for places in which we are going to be able to find a tree or two and a little bit of shade. If we are looking for that, so are buildings and everything else. If we have trees growing, they are going to have a very beneficial impact by lowering the temperature of cities.

Why is that important to global warming? If we lower the temperature of our cities, we are going to use less air-conditioning in the summertime. We are going to burn, therefore, significantly less fossil fuels and that in turn has an impact on global warming. So Global Releaf is a step very much in the right direction. I hope all of my colleagues in the Senate and people around the country will take cognizance of this very important program started by the American Forestry Association.

I suggested at the opening of their program this morning, Madam President, that they might add one other element. What would happen if we encouraged a program whereby for every newborn child in the country they get not only a birth certificate but 300 seedlings to plant. If that were to happen and those 300 seedlings were to come to adulthood, that individual would not only arrive on this planet but also would arrive with the prospect of having trees that would absorb all of the carbon dixoide that individual would produce through his or her activities in the course of a lifetime.

Three hundred trees will absorb all of the carbon dioxide that an individual will produce. Would that not be a great Christmas present for people? Would that not be a great baby present? When people have a child, send them 300 seedlings and get them growing. The garden clubs of America are writing in and saying, "What can we do?" The garden clubs of America have a challenge right there. Join Global Releaf and maybe get into this project, saying "Let us really make an impact on the issue of global warming. People can do something. They can plant trees.

Finally, it would be my hope—and the Chair was deeply involved in the activities related to the Sahara in the last 2, 3, 4, 5 years, when this country made a very deep commitment to the issue of famine in Africa. Everyone remembers the tremendous outpouring of assistance that culminated with "Live Aid" in 1985. We may be able to avert future "Live Aid" benefits if efforts such as Global Releaf succeed. This is a productive, grassroots response to global warming. I hope, Madam President, that all of us will support this major program by the American Foresters called Global Releaf.

WORLD LEADERSHIP ON GLOBAL WARMING

Mr. WIRTH. Madam President, the events of this past summer have served a warning to the people of the world about the implications of man's continued contamination of the atmosphere and more specifically about global warming. As has been widely reported in the media, the scientific community is closing in on evidence that our planet is getting warmer and that if this issue is ignored, the Earth's climate could change in unprecedented and potentially disastrous ways.

The composition of the atmosphere is not changing at the whim of Mother Nature. Rather, it is the inhabitants of this planet, the way we have grown, and the prospect of continued neglect—business as usual—that threaten to alter our atmosphere, warm the planet and change climate patterns.

The good intentions of our forefathers are not to blame for the increased concentration of carbon dioxide and the other so-called greenhouse gases. But as the industrial revolution was launched, unwittingly, so too was an environmental revolution. And this summer's events indicated rioting by the environment. Record levels of smog choked the Eastern United States; forest fires exploded in the West; drought devastated the Nation's midsection; and, in the most gruesome signal, garbage sullied our beaches.

Madam President, the environment is speaking back to us. It has reached critical load. We simply cannot continue on the current path. We must change course to protect the integrity of the global commons. To ignore the threats of urban air pollution, acid rain and stratospheric ozone depletion is to ignore human health and the future we leave to our children and all future generations. The threat of global warming is probably the greatest environmental, economic, political and human challenge we face.

How should we respond to the scientific alarm about rapid climate change? We must begin by reexamining the activities of man: the way we power our economic institutions; and the way we use the land. For it is in these arrangements with nature that we find the root causes of scientific concern—fossil fuel combustion and deforestation. We can address these issues. The creativity of man has improved our collective experience on the planet and that creativity must be harnessed to preserve the planet.

The critical component in this challenge is leaderhsip. At the highest levels of government, protection of the global environment must be a leading priority. It must be raised from the fringes of international concern and initiative to the forefront of cooperative efforts among all nations around the globe.

For years, many Americans have been dismayed by how slow the current administration has responded to the acid rain issue. The naysayers have won and the environment is losing. And as public concern about global warming has increased enormously this summer, the administration has begun the process all over again, claiming the existence of scientific uncertainties about the regional distribution, effects and pace of climate change. Indeed, there are uncertainties. But by the time we have exact, incontrovertible evidence of rapid climate change, our ability to respond will have alluded us. We cannot wait until the seas have risen by one foot, or until successive droughts imperil our farmers and global food supplies. Instead, the leaders of the world must work together to address the scientific evidence and establish cooperative arrangements to reconcile uncertainties and develop strategies for protection.

Despite the fact that this issue received more attention in the media than any other environmental concern this summer, I am unaware of any response from the President. Meanwhile, other leaders in the world are standing up and calling for international cooperation.

Earlier this year, at a Canadian conference on atmospheric change, the Prime Ministers of Norway and Canada endorsed the idea of a global environmental summit. And in recent weeks, other world leaders have voiced their concern. On September 27, the British Prime Minister, Margaret Thatcher voiced her concern to the British Royal Society. "We may," she said, "have begun a massive experiment with the system of this planet itself." Mrs. Thatcher went on to say that she was prepared to take decisive action.

I would not suggest that Mrs. Thatcher and that British Government is a hotbed of radical liberalism. That is a conservative government that has developed a thoughtful concern for this issue of global warming.

On the same day, the Soviet Foreign Minister, Eduard Shevardnadze delivered a similar message to the United Nations. Mr. Shevardnadze called global environmental problems "a second front" of equal importance to nuclear disarmament. That is the Soviet Foreign Minister saying the issue of global warming and global environmental problems is a second front of equal importance to nuclear disarmament. And similarly, the West German Chancellor, Helmut Kohl, recently urged the nations of the world to work more closely to protect the environment.

Madam President, the leaders of the world, reflecting the concerns of the citizens they represent, are reaching out to join hands with the world community in the fight to protect the environment. It is time for the United States to lead this effort.

Last week, the Senator from Pennsylvania, Senator HEINZ, and I sent a report to the two Presidential candidates recommending new approaches to addressing our environmental problems. The first issue addressed in that report is global warming. It is my hope that both candidates will respond to the ideas put forth in our report, and particularly that they will speak to the issue of global climate change. And no place is that opportunity greater than tomorrow night in the debate on the West Coast. It is the last time our two Presidential candidates are going to be together. Let us hope the environment will receive the attention that it deserves.

Whomever the American people select as the next President must be prepared to join all nations in protecting our environment and our atmosphere.

Finally, Madam President, I would like to take this opportunity to salute the distinguished Senator from Vermont, Senator STAFFORD, for this continued, unfailing, and untiring leadership on this issue. He has been out front on these issues for many years, and the Senate, like the environment, will lose a great friend when he retires at the end of his term. During the past several weeks, Senator STAFFORD has presented to the Senate, in 17 parts, a comprehensive report on atmospheric contamination. I hope all of my colleagues will join me in thanking Senator STAFFORD for these thoughtful and thorough presentations. The Senator can be assured that his guidance and leadership will be sorely missed by this body, but his wisdom and spirit of environmental protection will permanently reside in this institution and elsewhere.

It is my understanding that his presentations may well be made into a tape for use by high schools, not only across the State of Vermont, but available across the country, a primer for students everywhere, not only on those issues, but on how a distinguished American citizen and tireless protector of the environment, the Senator from Vermont, Senator STAFFORD, would like to see us respond.

It is certainly a wonderful, example for all of us who will stay here to fight these battles to help prevent global warning.

Madam President, I ask unanimous consent that the statement by Margaret Thatcher, and the statement by the Soviet Foreign Minister, Mr. Shevardnadze, the reports of those statements, and the report of the statement of Chancellor Kohl, appear in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Times of London, Sept. 28, 1988]

THATCHER GIVES SUPPORT TO WAR ON POLLUTION

(By Nicholas Wood)

The Prime Minister last night warned that the well-being of the earth's inhabitants may be at risk from pollution.

In the most graphic words she has ever used on the issue, Mrs. Margaret Thatcher said it was possible that modern technology had unwittingly triggered "a massive experiment with the system of the planet itself."

She called for more research to identify more precisely the nature of the threat and said that the Government would have to consider the wider policy implications in areas such as energy production, fuel efficiency and reforestation.

And she made clear that once cause and effect had been properly established she was prepared to take decisive action to protect the environment.

The Prime Minister, who until now has been widely regarded as a skeptic on the issue, said that protecting the balance of nature was "one of the great challenges" of the rest of the century.

Her scenario, putting global pollution high on the political agenda, will delight environmentalists and the growing number of Tory backbenchers who want the Government to give a greenish thing to its free-enterprise policies.

Her remarks also indicate that Mrs. Thatcher recognizes that the electorate is becoming increasingly concerned about the threat to the planet's ecosystem and is determined that she will not be outflanked by her political opponents.

Earlier this week, Mr. Paddy Ashdown, the leader of the Social and Liberal Democrats, made the green vote one of his key priorities in the campaign to rebuild his party's support. Labour, too, is paying more attention to environmental matters.

Mrs. Thatcher, who was addressing an audience of 180 scientists, doctors, diplomats and senior Civil Servants at the annual dinner in London of the Royal Society, of which she is a fellow, said that engineering and science had brought great benefits. However, by releasing vast amounts of carbon dioxide into the atmosphere at the same time as great tracts of forest were being cut down, modern society was disturbing the earth's atmosphere.

Mrs. Thatcher identified the greenhouse effect, the hole in the ozone layer detected over the South Pole and acid rain as the three main dangers to the well-being of the planet.

Mrs. Thatcher said that the possible threat to human life posed by the greenhouse effect—the warming of the earth's atmosphere as a result of an accumulation of gases such as carbon dioxide leading to melting of the polar ice caps—had been brought home to her at the Commonwealth Conference in Vancouver last year.

The President of the Maldive Islands had reminded the gathering that the highest part of this country, with a population of 177,000, was only six feet above sea level.

"We need to identify particular areas of research, which will help to establish cause and effect. We need to consider in more detail the likely effects of changes within precise timescales."

[From the Daily Telegraph, Sept. 29, 1988]

NATURAL IMPORTANCE

Among the many speeches she has made, Mrs. Thatcher's address to the Royal Society about the dangers of mankind's ignorant experiments with the ecosystem of this planet is more likely than most to enter the history books. There are plenty of observations the cynics can—and probably will—make about it. Her conversion may appear to have come late in the day; it may, with an eye on the growing "green" element among younger voters, be said to smack of political opportunism; and costing the implications of what the Prime Minister has said might certainly take us into the realm of the unthinkable . . . But the cynical view ought not to diminish the importance of this speech. Mrs. Thatcher has used the grasp of a former research scientist and her high international standing to deliver, in the right company, a warning to all humankind.

Such is the extent of our ignorance about the damage being done to our planet that the first natural response to the Prime Minister's remarks is to declare a need for more research and more money to be spent on it. Yet we cannot escape the knowledge that many of the things we are doing, such as creating energy from fossil fuels, releasing noxious gases, and disposing of pollutants, are profoundly damaging. There must be more research and more spent on it, certainly, though that does not mean—as the Prime Minister was careful to stress—"a blank cheque for everyone with a bee in his bonnet". But there is also a case for quicker action. We are not well-poised to take it, least of all in the so-called Department of Environment.

Outside our immediate reach, yet an intrinsic part of the threat, is what goes on outside modern industrial countries. The Third World also carries heavy responsibilities, though it is not everywhere fashionable to say so. If we are to take the Prime Minister's words seriously, there is a need not only to make certain expensive industrial sacrifices on our own behalf, but perhaps also to finance damage limitation in parts of the Third World. Some economists will declare that the Prime Minister has, on behalf of the wealthier industrial nations, given a very large hostage to fortune. To which the proper answer is—none too soon.

KOHL URGES COOPERATION ON DEBT, ENVIRONMENT

Chancellor Helmut Kohl emphasized the need for international cooperation in solving the Third World's debt problems and called for stronger worldwide cooperation to protect the environment during a speech Tuesday (September 27) at the opening of the annual meeting of the International Monetary Fund and the World Bank in Berlin (West).

Addressing some 5000 conference participants from 151 countries, Kohl asserted that close international coordination and economic prudence by governments and banks had played a decisive role in averting a general world economic crisis following the fluctuations on the financial and foreign exchange markets last year. He maintained that the Federal Republic had made a positive contribution by reducing taxes, stimulating investment and accepting a higher budget deficit. These measures, the chancellor explained, have increased economic growth and stimulated imports, reducing the trade imbalance between the Federal Republic and other countries.

The chancellor further cited Bonn's debt cancellations or offers to cancel debt amounting to more than $4 billion up to now to benefit the least developed countries and poor African nations; its additional grants to sub-Saharan countries for the financing of interest payments; and its offer last week of more favorable credit terms under bilateral aid programs.

Kohl urged in addition that environmental protection become a "focal point" of development policy and called for efforts to link debt relief more closely to ecological requirements. Prosperity gained at the expense of destroying the environment would be a "Pyrrhic victory," the chancellor declared. He proposed that environmental protection, especially the protection of tropical rain forests, assume a greater role in cooperation with developing countries.

[From the Philadelphia Inquirer, Sept. 28, 1988]

SOVIET URGES ANTI-POLLUTION EFFORT

(By Rick Lyman)

UNITED NATIONS.—Soviet Foreign Minister Eduard A. Shevardnadze called yesterday for a major U.N. effort against the globe's environmental problems, describing them as "a second front" equal in importance to nuclear disarmament.

Citing pollution, global warming trends, the decaying ozone layer and "quite deliberate attempts" to dump toxic wastes in "densely populated areas of the Third World," Shevardnadze proposed the consolidation of current U.N. environmental programs in a council "capable of making effective decisions to ensure ecological security."

"The biosphere recognizes no divisions into blocs, alliances or systems," he said. "All share the same climatic system, and no one is in a position to build his own isolated and independent line of environmental defense."

It was one of several significant expansions in U.N. authority that Shevardnadze proposed to the General Assembly's 43d session, which heard President Reagan on its opening day, Monday.

Shevardnadze's proposals included "greater U.N. involvement in the process of nuclear disarmament," a "reinvigoration"of the Security Council and a U.N. supervised "register" of international arms sales and transfers.

"Disarmament and security, in all its aspects, are becoming an increasingly multilateral and truly international process," he said. "The institution of monitoring and verification should be equally international."

Although the Soviet foreign minister's address was peppered with mild rebukes of the United States, the tone, like Reagan's, was conciliatory.

This is "a remarkable time," he said, calling the current warmth in U.S.-Soviet relations "a product of reason of a new political intellect, which is prevailing over the dark legacy of the past."

"The division of mankind into great and small countries has run its historical course," he said. "Divisions and redivisions of the world into spheres of influence are historically pointless. Today, we must all be one sphere of influence—our planet."

On the environment, Shevardnadze called for a "consultative meeting of experts" next year under U.N. auspices to discuss the "health of the Earth" and a "summit meeting of the leaders of 15 or 20" nations from "all continents and the Non-Aligned Movement" in 1990.

This should culminate "sometime before 1992" in a U.N. international conference on the environment "at the summit level," Shevardnadze said.

As part of that initiative, he also called upon high-technology nations, such as the United States, to share technological advances—"pooling the efforts of states in the use of advanced technologies, such as thermonuclear fusion and superconductivity, in the interests of human survival."

The Shevardnadze initiative that drew immediate comment from the United States was his suggestion that the permanent members of U.N. Security Council meet soon to examine charges of violations of the Afghanistan cease-fire, a meeting that should also include "representatives of the parties directly concerned."

Responding to Shevardnadze's remarks, Secretary of State George P. Shultz told reporters yesterday that because the United States did not recognize the Soviet-backed Afghan regime, "we would not be ready" to meet with its representatives.

Shultz also accused the Soviets of violating the accords by allowing Afghan jets to cross into Pakistani air space. Pakistan and the United States have long aided the anti-Soviet Afghan rebels.

In his speech, Shevardnadze charged that "a nonstop production line of violations was set in motion" by the Pakistanis as Soviet troops started withdrawing from Afghanistan in May.

Asked after his speech whether the alleged Pakistani violations would stall the Soviet withdrawal, Shevardnadze said, "We shall see."

Shultz and Shevardnadze said they hoped to resolve, or at least clarify, the issue in meetings this week.

Regarding the U.S.-Soviet negotiations under way in Geneva on a proposed 50 percent reduction in long-range nuclear weapons, Shevardnadze was much less optimistic than President Reagan, who told the assembly Monday that such a treaty was "more than a possibility" in the next year.

Actually, the negotiations are "slowing down," Shevardnadze said, because of snags over verification procedures.

"It looks as if the Russian proverb, 'trust, but verify,' is good only when applied to the Soviet Union, but is not valid as regards the United States," he said.

Reagan has frequently used the proverb to push the Kremlin leadership toward greater openness in its military programs.

Regarding Reagan's proposal Monday to organize a worldwide ban on chemical weapons by calling a meeting of the nations that signed the 1925 Geneva Protocol to ban the weapons, Shevardnadze said the Soviet Union regarded the proposal "positively."

But Soviet Foreign Ministry spokesman Gennadi I. Gerasimov told reporters later that the protocol only addressed "part of the problem" by banning the use of chemical weapons, not their manufacture and stockpiling. The Soviet Union would like a comprehensive ban, Gerasimov said.

The United States has been manufacturing so-called binary chemical weapons, which only become poisonous upon firing, since 1982. The Soviets contend that they have nothing to do with chemical weapons.

Yesterday, Reagan continued a series of meetings in New York with leaders of other countries attending the General Assembly session.

He met with NATO foreign ministers, with representatives of Korea, Japan and Australia, and with the foreign ministers of South Asian rivals India and Pakistan. He returned to Washington later in the day.

A PORTION OF THE SPEECH BY EDUARD SHEVARDNADZE

It is because of that division that so many pages in the 1988 calendar have not been filled. It is for the same reason that this year has had such a generous supply of summer dates.

It is perhaps for the first time that we have seen the stark reality of the threat to our environment—a second front fast approaching and gaining an urgency equal to that of the nuclear-and-space threat.

For the first time we have clearly realized that in the absence of any global control man's so-called peaceful constructive activity is turning into a global aggression against the very foundations of life on Earth.

For the first time we have understood clearly that we just guessed, that the traditional view of national and universal security eased primarily on military means of defense is now totally obsolete and must be urgently revised.

Faced with the threat of environmental catastrophe, the dividing lines of the bipolar ideological world are receding. The biosphere recognizes no division into blocs, alliances or systems. All share the same climatic system and no one is in a position to build his own isolated and independent line of environmental defense.

Man-made "second nature"—the technosphere—has turned out to be dangerously fragile. The consequences of many of its breakdowns are becoming international and global.

Environmental crisis is being exported on an increasing scale, with toxic technologies, facilities, products and wastes spreading, overtly or covertly, through the channels of economic relations.

Quite deliberate attempts are being made to turn densely populated areas of the third world into toxic waste dumps.

In a situation like this it is suicidal to try to economically reign in progressive national developments, to wear down an imaginary enemy through economic pressures.

It is unreasonable to impede the economic reconstruction of countries that seek to restructure their energy industries and introduce resource-saving and waste-free technologies thus making the world less dangerous.

It is much more sensible, as we are proposing to the United States and other countries, to abolish some planned or on-going military programmes and channel the funds thus released towards instituting an international regime of environmental security.

All the environmental disasters of the current year have placed in the forefront the task of pooling and coordinating efforts in developing a global strategy for the rational management of the environment.

All of us, and I emphasize all of us, need an international programme to manage the risks involved in economic activities and to shift to alternative technologies that spare both man and nature.

We need resources to save our planet, instead of destroying it.

I think that the world community has such resources. But they have to be supplemented by the will and headiness to act, and, secondly, by an effective mechanism for international ecological cooperation.

It is quite clear that in this area, too, nothing can be done without the tools of new political thinking.

In this area too, it must emphasize the factor of time, we have too little of it, and problems are piling up faster than they are solved.

Even the implementation of the positive decisions already adopted could take years and years. Just the physical elimination of intermediate- and shorter-range missiles will require three years of continuous daily work, and the treaty's entire "sequence of implementation" will take thirteen years.

This makes it incumbent upon us to take responsible decisions today.

What are our liabilities?

Tens of thousands of nuclear warheads and hundreds of thousands of tons of toxic agents.

Mountains of conventional armaments.

Holes burnt in the ozone layer and the eroding biosphere.

The greenhouse effect and the depletion of non-renewable sources of energy.

Acid rains and deserts devouring the green world.

Forest fires and floods.

Drying seas and dying fauna.

Terrorism against the peoples and aggression against nature.

What are our assets?

The world's growing maturity which makes it possible to pose and solve global problems on a planetary scale.

The growing world-wide "Green Peace" movement.

Shared perceptions of environmental scientists and policy-makers who are becoming increasing active as environmentalists, as evidenced by the document of the states parties to the warsaw treaty and by the recent appeal issued by the pugwash movement.

The report entitled "our common future", prepared by the world commission headed by Mrs. Brundtland, and UNEP's [United Nations environmental program] models of environmental renaissance to counter environmental apocalypse.

The experience of the past three years which attests to the possibility of removing corrosive growing from the body of the Earth.

The experience of pooling the efforts of states in the use of advanced technologies, such as thermonuclear fusion and superconductivity, in the interests of human survival.

This year's calendar has also included another event, the inauguration of the centre for the development of an international experimental thermonuclear reactor by scientists from many countries. They wil chart the routes towards the inexhaustible sources of energy for the coming century and at the same time develop a model of joining efforts in the interests of all.

Among our assets is the realization that a monopoly of a small number of countries over advanced technologies and attempts at all costs to keep others on the sidelines of the emerging science-and-information world may boomerang against the monopolists.

Among our assets is the United Nations, whose high efficiency has been so graphically demonstrated by the events of 1988. They have also highlighted a simple but very meaningful truth: when nations, particularly the great powers, start to cooperate, the United Nations gains in influence and strength, once again capturing the spirit of its initial objectives.

It is true that the fable about two elephants stamping out grass is still popular. President Reagan's speech yesterday would seem to indicate that "the grass" is not being threatened.

We do not want to fight, and love is still a remote possibility.

Speaking seriously, the world community has gained much from the improvement in Soviet-American relations.

In this regard I am pleased to quote a remark by Mr. Perez De Cuellar.

The meeting between Gorbachev and Reagan, he said, has shown the world community an example of voluntary dialogue. Governments have suddenly realized that the United Nations is quite an appropriate place for negotiations and for solving problems.

Exactly. I would just add: the most appropriate place, and if in the past it has not always been that, the organization itself is the least to blame.

Let us say frankly that many of us, including particularly the permanent members of the Security Council, are to blame for the fact that at some point certain fundamental values of our organization, embodied in this charter, were diminished. Now that they are reverting to their initial level, we are duty bound to learn from the bitter lessons of the past for the sake of the future.

Today, for instance, the Soviet Union is reconsidering its previous attitude to the organization's economic institutions.

In particular, we attach great importance to the activities of the United Nations Economic and Social Council and would like to contribute to enhancing its effectiveness.

No country stands to gain by keeping aloof from the international forums of our organization. Having drawn this more than evident conclusion, we are asking: should not some of our partners take a fresh look at their attitude towards UNESCO?

The permanent members of the Security Council should set an example in strengthening the authority of the United Nations, enhancing its role, and expanding and enriching its peace-making functions.

All of us here are witnesses to our organization's rennaisance. At the same time, we are its architects.

We shall enhance the role of the United Nations even more by concerted efforts to combat the threats to our environment.

It is, we believe, within the framework of the United Nations that an international mechanism should be established to formulate urgent decisions on pressing global problems, above all economic and environmental problems.

The Soviet Union proposes a discussion on how to turn the United Nations environment program into an environmental council capable of taking effective decisions to ensure ecological security. It proposes that a three-event series of emergency meetings should be held—of course, under the auspices of the United Nations—to coordinate efforts in the field of ecological security.

A consultative meeting of experts in 1989 to discuss the health of the earth.

A summit meeting of the leaders of 15 or 20 states representing all continents and the non-aligned movement, an influential force of our times, in 1990;

The second United Nations International Conference on the Environment to be held, as planned, in 1992 or even earlier but, in any event, at the summit level.

Distinguished colleagues, we have been speaking of a calendar of real accomplishments, a calendar of ideas not yet realized, and a calendar of hopes and plans for the future.

The review of this year that we have undertaken is not an end in itself. What can be an end in itself is the inner moral principles of seeking progress and the political need to identify the moment of truth which from time immemorial has tended towards motion, towards overcoming inaction.

This year has been full of both movement and slow-downs. It has shown that Mikhail Gorbachev was right when he said: "A complex and in many respects unusual situation is developing in the world. We are in the beginning of a new, long road that promises both new prospects and new problems".

Which tendency will prevail? What will gain the upper hand—the tendency towards further movement ahead or the inertia of stagnation?

The answer is to be found in abandoning certain dogmas, even though cast in the form of "eternal" truisms. We have to write a new catechism of international existence, in which in the beginning will be thought and reason, followed by deeds for the sake of our common salvation and development.

It is necessary to stop sermonizing from high international rostrums and to recognize the principle of equality in international dialogue.

As for the dogma of "peace through strength", let us leave it to those who worship the faded commandments of the past.

History's keynote is peace through reason, and this, too is a commandment for the future.

The past has great power over us. But the future has an even greater gravitational force. The poetic metaphor—"to win the affection of space, to heed the call of the future"—takes on a lofty political meaning.

Let us not be deaf to that call, let us respond to it by really uniting to save life on Earth.

Mr. WIRTH. Madam President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SANFORD). Without objection, it is so ordered.

CALIFORNIA INDIAN LANDS

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 3621.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House disagree to the amendment of the Senate to the bill (H.R. 3621) entitled "An Act to declare that certain lands located in California and held by the Secretary of the Interior are lands held in trust for the benefit of certain bands of Indians and to declare such lands to be part of the reservation with which they are contiguous" and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That Mr. Udall, Mr. Richardson, and Mr. Young of Alaska be the managers of the conference on the part of the House.

Mr. BYRD. Mr. President, I move that the Senate insist on its amendment and agree to the conference requested with the House of Representatives on the disagreeing votes of the two Houses, and the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer [Mr. SANFORD] appointed Mr. INOUYE, Mr. MELCHER, Mr. DECONCINI, Mr. BURDICK, Mr. DASCHLE, Mr. EVANS, Mr. MURKOWSKI, and Mr. MCCAIN conferees on the part of the Senate.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. GRAMM. I move to lay that motion on the table.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, conferences will be continuing in respect to the drug bill.

I suggest that we might stand in recess for a while to facilitate those discussions.

RECESS UNTIL 3 P.M.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess until 3 p.m. today.

There being no objection, the Senate, at 1:59 p.m., recessed until 3:02 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. MELCHER).

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, if we may have order in the Senate.

The PRESIDING OFFICER. The majority leader.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, to review for the record the order that was entered protecting the rights of the majority leader to go to the drug bill by nondebatable motion, that right under that order pertained only to the drug bill, as far as the nondebatable motion is concerned. And I can exercise that right, as I understand the order, until such time as I have consulted with the distinguished Republican leader, at which time I am free to make that motion and it will not be debatable.

Am I correct, No. 1, that it pertains only to the drug bill, which would be the House bill in this instance; and, second, that I retain that right to proceed following consultation with the Republican leader?

The PRESIDING OFFICER. The majority leader is correct.

Mr. BYRD. Is that according to the recollection of the Republican leader?

Mr. DOLE. Yes, that is in accordance with the previous understanding, that it applies to the drug bill. And the reason for it is we want to try to get a drug bill passed and the majority leader had a perfect right this morning, during the morning hour, to get the drug bill before us. But we are negotiating and have been for the last couple of hours and this will facilitate speeding up the work. Maybe we can work it out. Maybe we cannot. But the majority leader is absolutely correct.

Mr. BYRD. I thank the Republican leader.

May I say, incidentally, on that point, that we have two groups working now, two bipartisan groups at work trying to resolve some of the matters and we hope that, as the afternoon wears on, that those two groups will be able to come to conclusions that will enable the Senate to move forward on the drug legislation.

Mr. DOMENICI. Would the distinguished majority leader yield for an observation by the Senator from New Mexico?

Mr. BYRD. Yes.

Mr. DOMENICI. I understand that it might be the intention of the leader to call up the so-called postal—well, I will call it "take the Postal Service off the unified budget" bill. And I understand that the leader might seek unanimous consent to proceed to that bill so that we will not have a motion that is debatable.

I want to say to the majority leader in advance, clearly I am in no position to agree on any time agreement on the bill, and the leader is not asking for that. But neither am I in a position to agree to proceed to the bill without the motion and without that motion being debatable because I have no idea, nor does anyone, how many amendments are contemplated.

We are now aware of something like six or seven amendments that might take 8 or 9 hours. So I am going to object whenever the leader requests that we proceed to the bill. But I want the leader to know, and Senators to know, that that objection will be removed by the Senator from New Mexico once we know the list of amendments and have a chance to review them. Because, clearly, this puts the Budget Act and the whole unified budget before the U.S. Senate.

The majority leader knows better than anyone, having helped draft that bill and grant it the sustenance that has kept it alive for almost 11, 12 years, that clearly we should not be having it wide open for all and any kinds of amendments.

That is going to be my position. I hope Senators who are interested in it know I am not going to remain an objector to proceeding with the bill. I clearly have some amendments myself. But I think we ought to know the full extent in detail of amendments that are contemplated on something as important as this.

Mr. BYRD. Mr. President, I thank the able Senator from New Mexico. He had clearly laid out his position and I understand it and respect it.

Mr. President, I will shortly ask unanimous consent to proceed to the Postal Service off budget measure. If there is an objection, I will move—that will be a debatable motion. And that will give the Senators the opportunity to discuss the motion and, hopefully, to develop some understanding of what amendments are going to be called up and we will see where we go from there.

I should say that once the core group, the distinguished Republican leader and I are ready to go with the drug bill, of course that, under the previous order, will take precedence.

BUDGETARY TREATMENT OF THE POSTAL SERVICE

Mr. BYRD. Now, Mr. President, with the record clear as to what our intentions are, what our rights are, I ask unanimous consent that the Senate proceed to consideration of Calendar 919, S. 2449.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. Mr. President, reserving the right to object——

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. And I will object. I do want to repeat for the record my reason for objecting.

It is not the substance of the matter but rather that at this late date, since we have the whole Budget Act before us in a sense, the Senator from New Mexico would like to see the extent of the amendments contemplated. I am aware of five or six with some 6 to 8 hours requested, but I think we ought to know all of the amendments that are contemplated before we proceed.

Second, I would say to the distinguished majority leader—and I have talked privately with him about this—some of those who are most interested in this bill are off working diligently as part of task force to produce a drug bill. I am aware of at least two who are extremely interested in this measure. They cannot be both places, and then the distinguished chairman of the Budget Committee, and I do not really know his position on the amendments or the bill, is not able to be present at least for a while. So I object.

The PRESIDING OFFICER. Objection is heard.

Mr. BYRD. Mr. President, the motion which I make, as has already been indicated, will be a debatable motion.

I move that the Senate proceed to the consideration of Calendar Order No. 919, S. 2449.

The PRESIDING OFFICER. The question is on the motion.

Mr. DOMENICI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

A "FURLOUGH" FOR IRAQ

Mr. PELL. Mr. President, on occasion a regime will commit a crime so heinous that the world community speaks vehemently in protest. Iraq's use of poison gas against its Kurdish population is such a crime.

Translating our sense of moral outrage into action becomes more difficult. On September 9, the Senate voted to impose on Iraq the most sweeping sanctions put forward for any country in decades. Yesterday the Senate voted for the third time for sanctions. This time, however, the package had been watered down after intense pressure from the House of Representatives and a variety of American business interests. I regret the weakening of the sanctions bill but I do believe yesterday's legislation has teeth and will cause Iraq and other countries to think twice about using chemical weapons.

Now we hear that the State Department opposes even this watered down sanctions bill. Apparently they would take the word of Iraq's foreign minister, Tariq Aziz, who promised Secretary Shultz that Iraq would not use chemical weapons. Unfortunately, this promise of future good conduct was accompanied by an assertion that Iraq had not used chemical weapons against the Kurds—an assertion that is demonstrably false. Can we really be expected to overlook the gassing of thousands of people on the basis of an assurance that is itself predicated on a lie?

As a former Foreign Service officer, I am sympathetic to the State Department's desire to maintain good relations with Iraq. Iraq is a rich and strategically important country and much work has gone into rebuilding the United States-Iraq relationship.

Some conduct, however, is beyond the pale for civilized nations. If we are not prepared to respond to Iraq's use of poison gas, will we ever be prepared to act?

Jim Hoagland has written a splendid column on these issues which appears in today's Washington Post. He concludes by saying that President "Reagan should not veto sanctions against Iraq and become a party to the refusal to confront evil." I endorse these sentiments wholeheartedly and would like to call the Senate's attention to the Hoagland article.

Mr. President, I ask unanimous consent that the Hoagland article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Oct. 12, 1988]

A "FURLOUGH" FOR IRAQ

(By Jim Hoagland)

PARIS.—While George Bush tries to convince the American electorate that he is actually running against Willie Horton for president, his State Department is asking the White House to issue a gold-plated full-time furlough for Iraq's chemical-weapons corps on the strength of Iraq's promise never to play with the naughty stuff again.

After publicly convicting Iraq of using poison gas, the State Department is now saying the Iraqis should pay no price for their crime. The Arabists at Foggy Bottom, backed up by George Shultz, are urging President Reagan to veto the economic sanctions Congress intends to levy against Iraq this week. The Arabists have the chutzpah, if they will pardon the expression, to do this even as Bush hammers on about what a tough guy he is on punishing lawbreakers—and while Reagan, in reaching for one last diplomatic accomplishment, calls for a new international conference to outlaw once again, you guessed it, the use of chemical weapons.

Where does chutzpah pass over the line into overt hypocrisy? That can be a difficult call in the worlds of diplomacy and politics. But the U.S. and French governments, American business that has interests in Iraq and some senior Capitol Hill legislators go crashing through that line when it comes to Iraq and poison gas. They say how awful it is, then try to make sure it goes unpunished.

The Iraqi government supervises tours to take journalists to areas where poison gas was not used. But there can be no doubt that Iraq has persistently used chemical weapons against Iran in their eight-year war and more recently against Kurdish guerrillas and civilians. United Nations investigators have reported the use of poison gas on at least eight occasions when only Iraq could have been guilty of it. The super-cautious Shultz was so persuaded by U.S. intelligence data that he atttacked Iraq publicly in September and demanded a halt to the attacks on the Kurds.

His words, and the quick action of the U.S. Senate in demanding tough economic sanctions against Iraq, seem to have had some effect. There have been no new chemical-weapon attacks reported since then. The Kurds, I suppose, should be thankful for small favors.

But is the world really prepared to look the other way and do nothing in the most ghastly case of the use of poison gas since the Nazi death camps of World War II? Are we really ready to say in effect that those who will be tempted to follow the Iraqi example in the future have nothing to fear?

The successful efforts on Capitol Hill to water down the Senate-passed sanctions suggest the answers to these questions are not as clear-cut as many might think. After U.S. agribusiness weighed in, House committee leaders helped block a provision in the Senate-passed sanctions bill that would have mandated an end to $800 million in agricultural credits for Iraq. A ban on oil imports from Iraq was also axed in House committee sessions.

The compromise House-Senate sanctions bill, worked out last weekend, has a few of its original teeth left. That bothers State Department officials, who claim that mandatory sanctions could "jeopardize" U.S.-Iraqi relations and "complicate" stalled peace talks between Iran and Iraq. Thus they urge a Reagan veto.

But final consideration of the sanctions bill comes as the White House is pressing France to host a new international conference on chemical weapons in December. Washington would welcome a formal announcement of the conference before Nov. 8 as a possible boost for Bush, who has emphasized that an effective chemical-weapons ban would be a high priority for his presidency.

France is involved because it holds the official documents of the 1925 treaty "outlawing" poison gas. Despite skepticism here that a meeting of 110 nations can be organized as quickly as the Americans would like, President Francois Mitterrand went along with Reagan's suggestion that he issue a call for a new conference in his speech to the United Nations Sept. 29.

Getting into the spirit of things, Mitterrand even added a call for international embargoes on weapons sales to any country that used poison gas. It was an intriguing idea, since France is one of Iraq's main arms suppliers. But Defense Ministry officials have beat a steady retreat since then, and after claiming the United States had not shared its "incontrovertible" evidence that the Iraqis gassed the Kurds.

Throughout World War II, reports of massive gassing of Jews by the Nazis were regularly dismissed because they lacked "evidence." Recently uncovered documents soon to be published in Geneva show that the International Committee of the Red Cross was convinced as early as 1942 that the Nazis were carrying out a policy of extermination. But it said nothing publicly and sought no condemnation of this horrible crime.

Who says history does not repeat itself? Or, that we learn from our mistakes? Those who did not want to know, or act, in World War II were always able to find the lack of proof at the right moment. Reagan should not veto sanctions against Iraq and become a party to the refusal to confront evil.

Mr. PELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PRYOR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

BUDGETARY TREATMENT OF THE POSTAL SERVICE

Mr. PRYOR. Mr. President, usually at this time in the last or waning hours of a congressional session a lot of things happen, a lot of things we did not think would happen. An awful lot of things that we hoped would happen, as the distinguished occupant of the chair really realizes, do not happen. This is one of those occasions when we have seized a very small window of opportunity to correct a very old problem and to settle an old issue in the Senate and in the House of Representatives.

Mr. President, I should like for just a few moments to talk about S. 2449, the Postal Services Budgetary Treatment Act of 1988. As I speak, we are attempting to locate in the Capitol Senator TED STEVENS, of Alaska, who has been not only a partner but an advocate of taking the Postal Service off budget and clarifying once and for all this extremely ambiguous issue that has once again visited Congress.

S. 2449 is not a complicated piece of legislation. It simply says that the receipts and disbursements of the Postal Service fund—a businesslike revolving fund; it is not a tax-based trust fund—shall not be included in the President's budget for the purposes of calculating the Federal deficit, and that the fund shall not be taken into account in making calculations under the 1985 Gramm-Rudman-Hollings Deficit Control Act.

Mr. President, as recently as April 1988, when Senator STEVENS proposed a sense-of-the-Senate resolution supporting the proposition that the Postal Service ought to be taken off budget, 74 of our 100 colleagues joined him.

What is at issue very simply is whether we want to continue to allow postal policy, financing, and operations to be driven by political considerations—and let us face it, that is how they are driven—associated with attempts to reduce the Federal deficit or whether we are going to make this a separate fund. The issue is whether we want to continue to allow the budget deficit picture to be distorted by inclusion of the unique, businesslike postal revolving fund in our calculations or whether we want to continue the fiction—and it is fiction—that the Postal Service is subject to sequestration, when even the Office of Management and Budget admits that there are no enforcement mechanisms available.

There is a similar bill, Mr. President, that I also wish to discuss. Many of our colleagues in debate which may take place later in the day may be told that the bill we are considering is H.R. 4150. That is not the bill we are considering. We are considering the Senate bill, which is very different from the House-passed bill. The House passed a bill earlier this year by a landslide vote of 390 to 16, and this has been carefully considered by the Senate Subcommittee on Federal Services, Post Office, and Civil Service, which I chair. It was reported out of the Senate Governmental Affairs Committee in July with only one dissenting vote in the committee. I should note that Senator SASSER, of Tennessee, has an amendment prepared, of which I am a cosponsor, to address this lone concern, that concern expressed in the hearing by our friend Senator RUDMAN, of New Hampshire.

Briefly, the bill would take effect in fiscal year 1990 so as not to be violative of the 2-year deficit reduction agreement reached last winter.

Also, it differs from the House-passed bill in a very major way. The Senate version of the bill does not increase postal borrowing or long-term debt authority. Finally, S. 2449 makes very clear that by placing the Postal Service in an off budget status, Congress does not relinquish any of its authority to oversee the budget and operations of the Postal Service.

Taking the Postal Service off budget is not a panacea. However, it will lessen the likelihood of future meat ax-type cuts aimed at an entity that is essentially self-supporting. Also important is that we will send a signal to OMB that we are very unhappy with its almost constant streams of attack on the U.S. Postal Service.

Senator STEVENS of Alaska, has mentioned in the past that he thinks OMB has a separate, not so hidden agenda as relating to the Postal Service. I think the Senator is right on target. While we all recognize that the Postal Service has problems, and it has many problems, the solution to those problems is clearly not to be achieved by every year, at the end of the year, assaulting this very important entity at every opportunity. Nevertheless, OMB has appeared to take the latter approach.

Mr. President, I am urging my colleagues this afternoon to join with us, while we have this window of opportunity, to pass this bill and once and for all set to rest the tremendous amount of confusion that has associated itself with the Postal Service operation. Aside from Senators SASSER and STEVENS and the Pryor amendment on the indirect subsidy issue, I ask Senators who are cosponsors of this bill to oppose all other amendments. Although some of those amendments may have merit in their own regard, it is not the vehicle in the last days, or maybe the last hours, of the 100th Congress for us to find solutions to every problem.

Mr. President, it is my understanding—and maybe the Chair could advise the Senator from Arkansas—that the distinguished majority leader has now placed the motion before the Senate to proceed to S. 2449. Is that a correct analysis?

The PRESIDING OFFICER. The Senator is correct.

Mr. PRYOR. Mr. President, at this time I see no other speakers and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GLENN. Mr. President, I rise in support of S. 2449, the Postal Service Budgetary Treatment Act of 1988, which was favorably reported by the Governmental Affairs Committee this past July. Similar legislation has already passed the House.

I have supported the idea of taking the Postal Service off budget so that it will be less vulnerable to political efforts to mask or otherwise influence our national budget priorities. I am also convinced that subjecting the Postal Service to the yearly constraints of the Federal budget process, over the long run, threatens its ability to maintain vital functions.

We established an independent Postal Service in the 1970 Reorganization Act to reflect the act's requirements that the Postal Service operate in a self-supporting, businesslike fashion. After many years of off-budget status, in 1985, the administration included the Postal Service fund in its budget for fiscal year 1986, in effect bringing it back on budget by administrative action. The fiscal year 1986 budget estimated that Postal Service net income to be $692 million in that fiscal year. And, we all know what has taken place since—in a time of deep budget deficits we have sought budget savings from the Postal Service.

This legislation would move the Postal Service off budget in 1990. Therefore, it would not violate the terms of the 2-year budget deficit reduction agreement that has taken fiscal year 1988 and 1989 savings from the Postal Service.

I commend my distinguished colleagues—Senator PRYOR, chairman of the Subcommittee on Federal Services, Post Office, and Civil Service, and Senator STEVENS, ranking minority member—for their diligent work on this legislation. It is my expectation that Governmental Affairs will continue to examine a wide range of budget reform issues in the next Congress, including separating the Social Security trust fund moneys from Federal budget deficit calculations. However, it is my hope that the Senate will act on S. 2449 this session and it will be enacted into law.

Mr. STEVENS. Mr. President, as one of the original cosponsors of S. 2449, legislation to take the U.S. Postal Service "off-budget," let me state in the strongest terms I know the reasons why this legislation should be passed and, I hope, signed into law. On December 10 and December 21 of last year I objected strongly to legislation that, for the first time, required the Postal Service, which is not part of the deficit problem, to reduce their operation and construction budget by $1.2 billion to try to solve the budget problems.

I have argued numerous times since then that the Postal Service should not be part of this budget reduction effort because it is not a significant part of the problem. I was pleased that on April 13, by an 85 to 8 vote, the Senate passed my sense of the Senate resolution that the Postal Service should be removed from the Federal budget. Mr. President, this legislation, S. 2449, is the most logical step to implement that Senate resolution. There are some who are concerned that if we removed the U.S. Postal Service from the unified Federal budget, other agencies, and/or programs, will argue that they, too, should be taken off budget.

Mr. President, let me respond to those arguments right now. The Postal Reorganization Act of 1971 was a unique reform which was driven by the special character and history of the Postal Service.

That postal reform legislation reorganized the postal system as an independent, self-supporting entity which is not similar to any other Federal organization. This sweeping, and in a sense radical change, was brought about by a remarkable national consensus that the previous postal organizations was failing, and strong medicine was essential.

Mr. President, I am the only person on the Government Affairs Committee who was serving on the old Post Office and Civil Service Committee when that legislation was passed.

The reorganization legislation made the Postal Service a financially self-contained and self-funded organization. This would enable the public to provide the funds needed for its operations and for capital improvements by paying the full cost of its services. Both congressional responsibility for appropriating annual budgets and apportionment controls normally exercised by the Office of Management and Budget to regulate executive branch expenditures were made inapplicable. When the legislation took effect, it was quickly recognized that the budgetary accounts of this financially independent new entity belonged as a self-contained annex to the Federal budget, not as a part of the budget totals.

Despite the tremendous visibility of this major reform reshaping an organization that touches most Americans closely on a daily basis, the new postal organization did not become a precedent or model followed by other Federal activities. Over more than a decade, during which the Postal Service remained off-budget, not a single other organization was able to demonstrate that it should be treated in the same way based on the precedent of the postal example. No other organization has had the same history of such a broad-based national outcry to remove it from partisan politics, and none approaches the Postal Service in either scale or in the type of service that it performs.

The Postal Service literally offers service to virtually everyone in the United States six times a week. While the service it performs is, at times, a mundane everyday matter, it is also a vitally important service which the American people care about very much.

Accordingly, the Postal Service cannot escape the bright light of public scrutiny of the service it performs, of the costs it incurs, and of the charges for its service. It is definitely not, like virtually every other federal activity that could claim to be self-supporting, a specialized or local function performed invisibly to the average citizen by officials in Washington or some other headquarters.

By making postal finances independent of the congressional budget and appropriations process, Congress does not avoid the necessity for oversight of postal performance. Our constituents in all corners of the country use the Postal Service. Every Senator and Representative must be attentive to complaints about any problems or mistakes made by the Service.

The congressional departure from Federal regulatory controls in the reorganized Postal Service was based on a perception of a special opportunity unavailable for most Federal programs. The work which the postal system performs, providing a service to everyone in the country at cost, makes it possible to rely on businesslike incentives for efficiency and management of expenses.

To include its funding in the Federal budget provokes a disservice to the Postal Service, its employees, as well as its customers. Inclusions of the Postal Service account in as the Federal budget significantly distorts the Federal deficit figures because of the way the large postal capital investment program is presented. Capital improvements are included as budget authority when commitments are made, and as outlays when cash payments are disbursed. This presentation adds to the deficit because it suggests that postage should have been collected to cover all of the cash payments as the buildings are built or equipment is purchased. This accounting treatment ignores the fact that valuable assets are acquired, and that the postal laws already make provision for the expense to be recognized through depreciation charges, and for postage to be collected to pay for that expense over the useful life of the asset. Thus, the Federal budget treats as deficit spending what is, in fact, standard businesslike financing of postal capital projects in accordance with generally accepted principles.

While the Government has other large capital programs which are included in the budget, these are financed largely through appropriations and are not major parts of the budget of most other businesslike or independent Federal entities.

As a part of the Gramm-Rudman-Hollings Act, Congress provided for return to the Federal budget of six entities which had previously been reported off-budget by law. These six were:

Federal Financing Bank.

Rural Electrification and Telephone Revolving Fund.

Rural Telephone Bank.

Strategic Petroleum Reserve Account.

U.S. Railway Association.

Synthetic Fuels Corporation.

The congressional decision to return these entities to the budget cannot be regarded as a basis for maintaining the Postal Service account in the budget, because not one of their budgets involves large investments in plants and equipment. Also, the U.S. Railway Association and the Synthetic Fuels Corporation, have since been abolished. All but one of the rest are Federal credit institutions which were established to provide funding to certain public or private activities. The sixth, the strategic petroleum reserve Account, funds its petroleum acquisitions largely through appropriations.

Other independent Federal entities which have been financed through some form of user charges include such activities as the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Tennessee Valley Authority. From this group, only TVA is at all comparable in purpose to the Postal Service, and it is a much smaller, regional operation which was not placed off-budget during the time when the Postal Service was.

The sheer size of this nearly $2 billion annual investment in the future of the postal system, when recorded as simply an addition to the Federal deficit, offers a ripe target during a general budget crunch.

That is what happened last year, Mr. President. People were just looking for some place to cut, but they did not want to cut in their own backyard, so they said, "Cut the Postal Service."

The harmful short-term expediency which is invited by this accounting treatment has been demonstrated by last year's reconciliation legislation, which virtually eliminated the postal capital program for the rest of this year and slashed capital investments in the postal system in half over 2 years. On-budget treatment of trust funds and the smaller self-supporting or other independent Federal entities has not resulted in similar devastation of the capital accounts of the entities involved.

The history of the U.S. Postal Service, the facts surrounding this issue, and the well being of this Nation's second oldest department all argue for passage of S. 2449, and for the removal of the Postal Service, once and for all, from the unified Federal budget.

Mr. President, I want to reiterate: In the beginning of the Postal Service, was off budget. It was intended to be off budget. We specifically exempted it from the coverage of specific laws when we made this radical, sweeping change and abolished the old Post Office Department and created the U.S. Postal Service.

If it were on the big board, the Postal Service would be the eighth largest corporation in the United States. It is the eighth largest operation in the United States, and it is managed on a businesslike basis, according to law.

By trying to put the Postal Service budget on budget in order take advantage of the cash-flow of the Postal Service, to try to deal with deficit problems and to try to reduce some Postal Service expenditures in order to create a reduction in Federal spending, the illusion was created last year that, somehow or other, we are dealing with a budget deficit.

We did not deal with the budget deficit. We prompted Post Office window service to close all over the country. Windows were closed early in some places so that when individuals came home from work they could not pick up their packages and other mail; and, worst of all, we delayed needed capital investment for Postal facilities for which money was available and had been collected from the Postal ratepayers.

The ratepayers pay for the operation of the Postal Service, not the taxpayers. That is why the Postal Service should not be operated in a way to deal with the problems of the taxpayers caused by the Congress creating deficits. The Postal Service should be operated on a businesslike basis, and we should maintain our oversight to assure that it is operated that way.

Having served so long now on the committee that oversee the Postal Service, I have taken occasion whenever I have traveled throughout the world to examine the postal system in the various countries that we visit.

I can tell the Senate that there is not a better postal system in the world today. None of them can say what we can say.

There is very, very little left of the Federal support for the Postal Service. Much of the support that remains relates back, as we know, to retirement payments that are being made for people who retired from or worked for the old Post Office Department during the time when the retirement fund was not properly funded.

That was an obligation of the Federal Government then, and the Postal Service had been asked to pick it up now. We are willing to try to move toward picking up some of that, but it would be unfair to put us in the position that requires the ratepayers today and tomorrow to pay for the failure of the Federal Government to properly fund the retirement system for the old Post Office Department when it was in fact a purely Federal entity. Today it is an independent Federal entity. I still believe very much that the Postal Service should go back off budget and we should deal with the deficit problems through corrections in the expenditures of funds that are appropriated, funds that we receive from the taxpayers. We should not, on the other hand, try to impose upon the Postal Service additional burdens, costs which were not created by the Postal Service, such as the costs that they have incurred in the past year due to the passage of the Reconciliation Act for the 1987 fiscal year.

I am hopeful that those who oppose this bill will let it pass. I believe that it would be one of the best things that the President could do, for the new President, is to sign this bill. I support one and the occupant of the Chair supports another, but no matter who the President is in the coming years this issue should not be one that has to be confronted by a new President. We should deal with the problem that was created when we put the Postal Service on budget by mistake. It was done by mistake. It should not have been there. It was not part of the deficit problem, and it should not be looked to to try and solve the deficit problem.

Mr. President, I am prepared to yield the floor, and I do yield the floor.

The PRESIDING OFFICER (Mr. GORE). The Senator from Kentucky.

Mr. FORD. Mr. President, let me join with my distinguished colleague from Alaska in his endeavor here to right what I see is wrong. He has been approaching this problem a long time with my good friend, the distinguished Senator from Arkansas [Mr. PRYOR].

This is symbolic, however, of the problems we are faced within Government. This is not a single item where those who use the service pay for it and then we in the Congress begin to meddle a little bit to try to reach a balanced budget or to meet the Gramm-Rudman-Hollings trend line and we begin to do certain things that create problems upon entities of the Federal Government that have been doing a good job and want to continue to do a good job, but we hamper them.

So I am very much in favor of this particular legislation. I believe S. 2449 is the number.

Mr. PRYOR. Yes.

Mr. FORD. And I support that.

But let me just visit a couple other areas that probably are not relevant to this one, but it indicates some of the problems we face today and that we ought to address.

A few years ago we had 100 percent of the uranium enrichment in this world. Today it is probably less than 40 percent, and at contract time in 1989 our domestic users notified the Government that they would be no longer continuing their contract. That was a 30-percent reduction which puts us down somewhere in the area of about 28 percent.

We have been trying and attempting for some time—I see my distinguished friend from New Mexico here, who has done a yeoman's job—to try to improve uranium enrichment and uranium mining in this country. But what we find is when we want to go off budget to have a little innovative idea of Government corporations to try to get us back into business, we find that there are those who want to continue to saddle Government and the taxpayers with the problem that has an opportunity to be solved.

My distinguished friend from Alaska [Mr. STEVENS] serves on the Commerce Committee. We have been trying diligently to figure out some way to return to those who fly in airplanes who pay an 8-percent tax on their ticket that goes into a trust fund to improve our airways and our airports. We wind up with a balance there of somewhere between $6 and $7 billion. Because it is in a trust fund on budget, we do not spend that for what it is collected for. We use that so we can help balance the budget so we can spend money someplace else.

I think it is about time that we have a shakedown cruise and put everything on an even keel and find out exactly where we are.

I think the reorganization of the Postal Service and this particular bill as it relates to off budget is the right direction, and I am very much for it. But I think as we begin to talk about this one particular item we begin to look at other ways that we might improve our ability to help our constituents because they are paying for it and we might be able to help the deficit. We might be able to do lots of things if we would go ahead and use some innovative ideas.

There is not anything wrong with taking FAA out of the Department of Transportation and making it an independent organization. There will be a sense-of-the-Senate resolution here today asking FAA to do something as it relates to our controllers at O'Hare. And we are just not doing anything.

The Department of Transportation asked the Appropriations Committee to forgive them for not being able to hire 950 full-time qualified controllers.

We begin to look at these problems. Each in themsevles is not significant, some would say, but when you begin to put them together, it becomes a real problem.

As I rise to support this piece of legislation and to help my friends from Alaska and Arkansas, I point out that in this day and age when we are having money problems, we are having deficits, we are going to have to start using innovative ideas, new ways to help our communities based on the amount of money we are collecting from our constituents and the amount of money we are not using, in my opinion, properly.

So, Mr. President, as we begin to look at this particular operation of the Federal Government to make it off budget, those who use its service pay for it. We begin to look at those who fly our airlines. They are paying for something that they are not getting. They absolutely have paid in $7 billion that has not been returned to them in the services and the ability of FAA and the Department of Transportation that they should be doing.

I think we are beginning to see the wisdom of some new ideas and some new directions.

We are not living in the past. The best is yet to come, I have heard.

But if we do not help it along, if we do not respond to the request of our constituents, then we are a major part of the problem—a major part of the problem.

So, as we begin down this road, I hope that my colleagues would look at other aspects of the Federal system and look at other agencies of the Federal Government.

I talk to my people at home and they talk about the inability to fund certain things. Well, I think it is time that Government becomes an honest partner. When I say an "honest partner," I mean it should not be looking to the Federal Government to be all things to all people. It should not be. But there should be leadership, there should be help, and there should be new ways of solving problems that have faced us for a long, long time.

I keep hearing: "We have never done it this way before. Why should we change?"

Well, business looks for new ways. Business looks for new opportunities. Those constituents of ours down there struggling to get ahead and stay in competition are looking for new ways. They are coming up with innovative ideas.

And so, Mr. President, I am hopeful that this piece of legislation will be approved and that we can do some things that are very helpful and that we also look at other areas where we can be of some assistance. Because the problem we are facing today in the airline industry is the inability to communicate. And we have the money to pay for it. We have the inability of airports for landing and for space. We have the money and ability to pay for it. We charge the passengers for those services and we are not seeing that it is done.

To give you an idea about an innovative idea, the distinguished occupant of the chair, his State, was one that wanted to invest in new airport facilities. They wanted to have some help, but they did not want to spend their money and not be able to have a chance to get some of it back.

So with his help and that of his colleague, Senator SASSER, we are able to put in the aviation legislation that, if it complied with the rules and they wanted to go ahead and spend their money in advance, they could take a chance on applying to the FAA and the trust fund for funding. And now you see a hub in Tennessee. They have progressed very well and they have accomplished a purpose that they would not have accomplished under the old way.

So new ways, new innovative ideas, Mr. President, are what we are going to have to begin to think about.

Old ways are fine, old values are fine, but we are living in a very progressive world—how fast our computers are changing; how fast our communications are changing. They all said, "I want the state of the art." Well, in computers and communications you will never have the state of the art. By the time you buy it and get it installed, somebody has something better. So your base has to be something that will adjust to the state of the art.

So that is what I am asking here, that we begin to adjust to the present and be able to cope with the future. So this is one of those steps in the right direction. I hope, Mr. President, that we will be able to accommodate our distinguished friends and that we will see some innovative ideas that will not increase the cost to the taxpayer, but to give them more than we have in the past.

Mr. President, I thank the distinguished Senator from Arkansas for allowing me this opportunity to say a few words. I know it is not right down the line as it relates to his legislation, but I think it does indicate the problem that we are seeing and I wanted to kind of hitch onto the wagon as it was beginning to move out of here. I thank my distinguished friend.

Mr. PRYOR. Mr. President, I thank the very distinguished Senator from Kentucky for his contribution and also for his support of taking the Postal Service off budget. Senator FORD is not only a very splendid businessman and was before he came to the Senate, but he was also Governor of one of the great States and he knew how to balance a budget. He knows that the postal system has to keep a balanced budget.

From time to time, that budget gets a little bit out of whack. Every once in a while that budget of the postal system will have a deficit. Sometimes that budget will have a surplus. Well, whether it is in deficit or surplus, Mr. President, the point is that for too long there has been great uncertainty about this particular budget.

There is no uncertainty about, let us say, the transportation trust system or the airport trust fund. Those seem to be fairly certain. We seem to know what the rules are. But the Postal Service is laboring today under a tremendous burden, not knowing whether they are on budget or off budget.

We saw—the distinguished Senator from Alaska and I especially did and also the distinguished Senator from New Mexico, many of us who worked around the clock with the budget summiteers last December right before Christmas—we saw what happened in a situation, Mr. President, when the Postal Service, which had been viewed by OMB as on budget, what they did to the Postal Service during those critical and last hours of last year's session of the Congress in late December. We saw that OMB, through the budget summiteers, with no relaxation, no guidelines which could be flexibly, only rigidly, enforced by the budget summit, said to the Postal Service, that you are going to not spend $1.2 billion over the next 2 years. The Postal Service had no alternative. They had no choice except to save $1.2 billion over the next 2 years.

What did they do first? They closed down the windows and they closed down the operating hours of our post offices. All around the United States, we heard the pressure from our constituencies. They maintained that they saved some money. Now they have reopened those windows. But the case is that we must build certainty into the post office trust fund situation once and for all.

Since the post office and the Postal Service was created—and I hope I am right about this; I see my friend from Alaska and he may want to correct me on this—it is my opinion, my belief, that the Postal Service has been off budget except that it began within the budget cycle, so to speak, or was put on budget in the early 1980's, about 1984. In the early 1980's, under David Stockman of OMB and later Jim Miller of OMB, it was decided that the Postal Service should go on budget. Since that time, there has been massive uncertainty about whether or not the Postal Service was subject to Gramm-Rudman-Hollings. Is the Postal Service subject to sequestration? These are major issues and major questions that we have a very, very difficult time answering.

Mr. President, the Postal Service has really kind of become the whipping boy around here. And the first thing that happens as we saw from the Grace Commission? What was one of the first recommendations of the Grace Commission to save money? It was to go out and close thousands of small post offices throughout America. I do not think we want to see that done.

We also know that, in looking at the postal situation and the postal system, unlike many of the other trust funds which are paid for by special taxes, we find that earned revenues of the Postal Service are those revenues that go into this trust fund. When the Congress or OMB or Gramm-Rudman-Hollings or whatever mechanism dictates to the Postal Service how those revenues are going to be spent, what we are doing is taking the postal patrons and the consumers that do business with the Postal Service and using their dollars to pay for the other services of our Federal system.

It is wrong. We have a chance to right that wrong, as the Senator from Kentucky so eloquently stated a few moments ago.

That time is now. The window of opportunity is here. I am very hopeful, Mr. President, that our colleagues will support this legislation putting the Postal Service into an off-budget situation.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, might I ask my friend, was the Senator finished? I just wanted to use a few moments to explain what I thought ought to happen and then I believe another Senator on our side will be here.

If the Senator has more to say——

Mr. PRYOR. I am reserving the balance of my time, I might say. I think on my side we have the Senator from Illinois, Senator SIMON, who would like to make a statement.

The PRESIDING OFFICER. The Chair will advise there are no time limitations. If the Senator from Arkansas has yielded the floor, the Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, let me say to those who are interested in the U.S. Postal Service, to the thousands upon thousands of employees that work there, and to those who are interested in postal facilities across this country, that nothing would have pleased the Senator from New Mexico more than had we left the U.S. Postal Service alone in last year's deficit reduction package.

But I would like all those people—many of whom are my friends—to know that if this bill passes, taking the U.S. Postal Service off the unified budget, we will have done nothing to protect the Postal Service. In my humble opinion, regrettably, we will have done nothing to protect the employees of the Postal Service or its capital accounts from Congress.

And why not? Because the U.S. Congress can, by a simply majority do what it wants legislatively with the accounts of the U.S. Postal Service, be they capital improvement on operating accounts. Because we have no requirement for a supermajority vote, like we have for Social Security under the Budget Act. Because the Postal Service still is owned by the U.S. Government. It is not a trust fund. Even if it was, we could take a trust fund on and say we think you are spending too much. We could cut you and we apply the savings to the deficit.

So if anyone has told the wonderful people in the employ of the U.S. Postal Service that this bill will protect the Postal Service—that it will retain the Agency in an inviolate manner, safe from any overreaching attempt by the U.S. Congress to take receipts from them and apply it to the deficit—if they have been told that, I regret to tell them they have been told wrong.

Frankly, I wish we could do something like that. I was part of last year's economic summit, but I was not for us taking the $1.2 billion over 2 years from the Postal Service. As a matter of fact, when the summiteers finished, they did not think that is what we would do.

So that the occupant of the chair and those Senators who want to listen will know, a number was assigned to the committee that handled the Postal Service to achieve savings from all of the payroll of the U.S. Government, all of its employees. We assumed that those savings would come from in-grade advances and upgrading that occurs each year within the Federal employee system. We assumed that they would come from the Federal pension plan, by allowing pensioneers to cash out and take lump-sum settlements. We did not assume that they would come from the U.S. Postal Service.

What happened was that nobody could agree, when it came to drawing the law—not a number on a piece of paper. Nobody could agree to find the money anywhere but here and it was found by way of reductions in the capital improvement program and operating expenses of the Postal Service.

Now, Mr. President, I will repeat. It is my opinion that if this bill passes and you take the Postal Service off budget and you had a situation similar to the one that caused this problem; if budgeteers meet and they say, "Let us go to the Governmental Affairs Committee and let us get them to contribute some of the savings;" Mr. President, I believe that by a simple majority the Congress can say the same thing they said last year. They can say it will indeed reduce the deficit of the United States.

I mean, if it is off the unified budget by a simple vote, it is back on the unified budget by a simple vote of the U.S. House and U.S. Senate, who would declare it as such.

I believe this bill would be amended before we pass it. I think we ought to put the same protection in here that we have for Social Security. Under the Budget Act, Social Security has a so-called supermajority requirement before you can mandate savings against the deficit under a reconciliation bill. That was our way of saying we will count it for purposes of calculating the deficit under Gramm-Rudman-Hollings, but we will not let you touch it for savings unless you have a supermajority.

I am not one for adding a bunch of amendments to this bill. I do not know how it is going to pass in the waning minutes, when we already know of seven or eight or nine amendments that will take 5 or 6 hours. In fact, I think there are amendments here that will take as much as 7 hours. So I do not know that I want to offer any amendments. But I submit it would be better for those who want to help our postal workers if we would require a supermajority vote before Postal Service cuts could be counted by way of savings. I have such an amendment drafted.

Those who are familiar with this legislation know that the Senator from New Mexico has said this approach to protecting the Postal Service will not work. This is saying you are off budget but there is no way that you can, by any kind of legislation, say to the U.S. Congress you cannot touch this if you see fit. And if you do not have a supermajority required by the budget process, then obviously it will take only a simple majority.

So you do over again what you did last year. I do not want it ever to happen. I think it was a mistake. I think it did not permit good planning. It took planning for long-term capital improvements and just cut the heart out of it. Now we have all kinds of aberrations in our respective States on what the Postal Service is going to get built when. And I do not think we ought to be very proud of that.

Having said that, I think everyone ought to know that there are still some very firm ties between the Postal Service and the Federal budget. Cost of living inceases for pensions are not fully paid for by the Postal Service. They have retirees entitled to cost of living increases and they do not generate enough money to pay for that. So we do spend money out of the Treasury to pay for that. It is a rather substantial amount of money.

I believe we also pay part of the health protection plan for the retirees out of the general budget of the U.S. Government, through the appropriations process. I am not here complaining about that. I am merely stating that it is a truism that there are some firm lines between the Postal Service and the Treasury.

I make this point about indirect subsidies aside and apart from the concept of a unified budget. The purpose of a unified budget is to have everything in it so that you understand the economics, the obligations, the agencies and entities that are within the control of the Federal Government. We need that for economic reasons, to understand who is being taxed for what and how much revenue is being generated. That is the purpose of a unified budget.

But, clearly that is not the reason that you use their receipts and their operational money against the deficit. It is because Congress voted to do it. I submit if they voted to do it when they should not have, they could vote to do it again, even if the Senate goes through this regime of saying it is not on the unified budget anymore.

What the Senate wills, it can unwill; what the Senate wills it can will back, and it can be done by a simple majority.

So people will know, there are amendments pending that say: If you are taking the Postal Service off budget and your intention is to get rid of the Federal Government's close ties, we want you to operate on your own. There are amendments saying take all your debts with you.

The ordinary taxpayer is paying for these costs now. If you do not want to be on the budget, get off the budget. But take those debts with you because that is one of the reasons to have the Postal Service on the budget, so you know the whole picture.

I understand that there are at least two such amendments. One assumes that a very small amount of money is owed. Another takes another approach. It is even hard to figure how much they owe. I think they ought to solve that by saying whatever it is, the Postal Service pays for it, if that is your frame of mind.

Mr. President, I am still hoping that Senators who have other amendments—be they germane, be they relevant, be they on completely different budgetary matters than this—will get all of them in. Then we can sit down and talk about whether we have time in the remaining few hours of this session to consider and vote on the various issues raised.

I yield the floor.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I rise in support of this legislation. My friend from New Mexico, the distinguished senior Senator from New Mexico, is absolutely correct when he says we can move with the same ease that we moved to take this off budget as we moved to put it on budget. I favor doing it because I favor an honest budget.

There are two big items in the budget that distort what we do. Both have been referred to by my friend, Senator DOMENICI. One is Social Security. We ought to take that off budget, too. We put Social Security on the budget for a very practical political reason. It was not because there was any great reason in terms of good government to do so. We got into the Korean war. Harry Truman, to his credit, said, "Let us increase taxes to pay for it," and we went through the Korean war, believe it or not, without increasing inflation or increasing the deficit or a very, very slight increase, but almost no increase.

We got into the Vietnam war, and President Johnson received some bad advice. The deficit started to grow. President Johnson did not believe that we could get a tax increase to pay for the Vietnam war. Someone on the staff said, "Let us put Social Security over, make it part of the budget, and the bottom line will not look so bad because Social Security is generating surpluses." So that was done. It was called the unified budget. It is a glorious sounding name for a little maneuvering to fool ourselves, and we ought to stop fooling ourselves.

Incidentally, if I may talk about fooling ourselves, one of the little switches that is taking place is we now talk about net interest rather than gross interest expenditure by the Federal Government. Social Security is involved in that because the Social Security trust funds generate interest. So we subtract that interest from the interest expenditure. The real interest expenditure this last fiscal year was not about $156 billion, it was $203 billion. We have seen interest expenditures grow in the last 8 years from $83 billion a year to $203 billion a year.

So Social Security is one of these things that distorts the budget. We ought to get an honest budget. We ought to take Social Security off the budget.

But the second thing that distorts it is because it is a big item and really should not be part of the budget in the traditional way because it generates revenue, it is self-supporting also to a great extent, is the Postal Service. Let us have an honest budget, let us put it off to the side and then when we have subsidies, let us be honest about it, we are going to have subsidies on retirement for obligations we have. I am willing to pay those. The Senator from Nebraska is willing to pay those. I think the Members of the Senate and the House are willing to do that.

I am willing to subsidize smalltown post offices. I recognize I live at Route 1, Makanda, IL, population 402. Makanda, IL, does not pay for itself, but Makanda, IL, gets very little in the way of any Federal Government subsidies. We do not have public housing, we do not have a lot of other things. So I am willing to pay a few dollars for smalltown services. I am willing to pay a few dollars so we subsidize, if you will—some of the journals do not recognize it as that—newspapers, magazines, and books that spread ideas. It is important for this Nation to have that.

One of the things that has happened is we have increased postage rates substantially for newspapers and magazines, books to a lesser extent, and the result is, particularly newspapers have to charge more for the newspapers they mail and rural subscriptions go down and people are more and more reliant on television for their news. It is a disservice to the Nation.

That is what we ought to do. Where we have subsidies, let us put them out on the table, let us be honest. Whatever subsidy may be necessary, let us put that in the budget, but not the whole Postal Service so it can run independently and, insofar as practically possible, without doing harm to the Nation on its own so that we do not have to have more subsidy than we should. I think that makes sense.

My hope is that we can pass this legislation in these waning hours of this Congress. If we cannot, we will at least discuss the idea, and we will be more prepared to do it in the next session.

Whether we should have a supermajority for the Postal Service, as has been suggested by my friend from New Mexico, I do not know. I am willing to listen to the arguments. I am not opposed to the idea. I am a little reluctant to move in that direction on my changes in the law, but maybe that is where we ought to go. The basic idea of moving toward a more honest budget makes sense, and I think that is what we ought to be doing.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. Exon). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

(Mr. SIMON assumed the chair.)

Mr. EXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. EXON. Mr. President, I want to echo and endorse the words of my friend and colleague from Illinois, Senator Simon, who has graciously relieved me from my duties in the chair so I can make the remarks that I think are important. I hope that the Senate will listen and I hope that we can move ahead on the bill before us to take the Postal Department out of the unified budget.

The Senator from Illinois has adequately stated why we should do that with regard to the Postal Service and he has also talked about other matters.

Honesty in budgeting is the main push behind this bill. I think that several years ago when the idea of the unified budget came up, it sounded good to everyone. Why should not the budget be unified so we can see it all in one place?

Well, that sounds good, but as a member of the Budget Committee, as is my distinguished friend from Illinois, we know full well that there are so many games being played today on the budget that that unified budget is now being used in a manner that it was not designed for: To mask what the true deficit of the United States is.

If we are going to have honesty in budgeting, we have to return to a unified budget rather than a budget that is controlled by specific trust funds. The fact is that there is a huge surplus in the highway trust fund that is derived from taxes that the citizens pay, when they buy parts and gasoline, to improve the roads. There is a huge surplus in the airport trust fund which has been accumulated over the years from a tax paid every time anyone buys an airplane ticket. The last accounting indicated there were $6 billion or more in surplus in that fund. And there are other funds where we have paid taxes for a specific purpose and they cannot be transferred anywhere else.

The problem, as the Senator from Illinois understands full well, is not just this administration, although this administration has been a champion in this regard, but other administrations have masked yearly the total deficit of the Federal Government by the use of the unified budget. They have said, "Well, since there is $6 or $7 billion in the airport trust fund that has not been spent, we can subtract $6 to $7 billion from the deficit." That is not right, because it is agreed that that money should not be spent for any other purpose. Therefore, this and other funds should be removed from the unified budget if for no other reason than it gives us honesty in budgeting.

There is nothing wrong, if a budget comes out with a $300-billion deficit, if for explanation purposes you wanted to say, "Well, it is $6 to $7 billion less if you take into consideration the amount of money that we will spend on airports but have not spent it yet."

What this unified budget has done is to make several administrations, including this one, refuse to spend money dedicated and collected for a specific purpose because if they spent the money their deficit would look that much worse. So I hope the Senate will move aggressively on this measure, and if we can and if we do then that will probably set the precedent to remove all trust funds from the budget. This is not going to make the deficit any worse or any better than it actually is, but it will eliminate that cloth that is held up from time to time that the deficit is actually lower than it is and the same time it would allow us to use with discretion and care the funds we have set up for the operation of these various important functions of Government, expending them to improve airports, to hire more controllers, and to give us more safety in the air, and on down through the other functions of Government. It would bring about better accounting both from the standpoint of good government and honest budgeting.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

(Mr. EXON assumed the Chair.)

Mr. PRYOR. Mr. President, I ask unanimous consent that proceedings under the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PRYOR. Mr. President, it is my understanding that the very distinguished Senator from Mississippi, Senator Stennis, has a statement. Am I correct? If I may address my question to the Senator from Mississippi, does the Senator have a statement? We are not in a time situation so I would suggest the Senator seek recognition of the Chair.

Mr. STENNIS addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. STENNIS. Mr. President, I have just been advised in my office that we have before the Senate a motion to proceed to the budgetary treatment of the Postal Service.

The PRESIDING OFFICER. The Senator is correct.

Mr. STENNIS. It is something I am not familiar with. I am not fighting the bill necessarily, but I do want it looked into by someone from the committee who knows the facts. I ask for deferment of this matter until I get someone here and I will make a report back to the Senator from Arkansas just as soon as I possibly can. I ask him to take the parlimentary procedure that would give me that opportunity.

Mr. PRYOR. Mr. President, if I may respond to my distinguished friend from Mississippi, even though I am technically at this moment, I think I am anyway, the manager of the bill, I will not call the shot. We will allow that to be a leadership call a little later in the afternoon, as to whether we move forward with the motion to proceed. I think that is the pending business before the Senate, the motion to proceed to this particular piece of legislation.

The PRESIDING OFFICER. The Senator from Arkansas is correct, that is the question before the Senate.

Mr. PRYOR. We will shortly, I assume, Mr. President, be hearing from our distinguished majority leader as to whether he will press it at this point.

Mr. STENNIS. All right. I thank the Senator very much. As I understand, we are going to wait now until the majority leader appears and find out more about his position. Is that correct?

Mr. PRYOR. Mr. President, unless I have instructions otherwise, the Senator from Arkansas will not press the motion to proceed at this time. I understand, too, that there are speakers on the other side of the aisle who might want to speak in opposition to the bill or opposing the motion to proceed. I hope that if they do oppose it, they will come to the Senate Chamber. Sometimes we have to many Senators wanting to speak at once and sometimes we have no Senators. We are in a situation now where we are looking for some eloquence on the floor of the Senate.

I yield the floor.

Mr. STENNIS. I appreciate the Senator's attitude. As I understand, the motion to proceed will be deferred until the leader can get here.

Mr. PRYOR. That is my understanding, Mr. President, I respond to my friend from Mississippi.

Mr. STENNIS. I thank the Senator and I thank the Chair.

Mr. PRYOR. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CONRAD. Mr. President, I ask unanimous consent that the order for quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CONRAD. Mr. President, I ask unanimous consent to proceed as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO SENATOR LAWTON CHILES

Mr. CONRAD. Mr. President, I rise to day to extend my heartfelt thanks to Senator CHILES for his leadership, his compassion and his friendship.

LAWTON CHILES retires from the U.S. Senate at the end of the 100th Congress, but his many contributions to the Senate will be remembered for years to come. As a newcomer to the Senate, I have had only 2 years to observe LAWTON at work. But as a member of the Budget Committee, I have had the privilege to work closely with him.

No one understands the intricacies of the Federal budget process better than LAWTON does. That understanding, and his complete mastery of budget details, have allowed him to guide budget measures through the Senate with great skill.

As chairman, LAWTON consistently encouraged members on his committee to actively participate in the budget process. He selflessly included the concerns of others at every point in the process, and through his diplomacy and courtesy has managed to craft consensus budget resolutions. Those of us who know the push and pull of day-to-day negotiating in the Senate—like the distinguished occupant of the chair—know what a truly remarkable achievement that is. More remarkable still, LAWTON has always kept his eye on the bottom line, and conscientiously informed the Senate of the budget implications of measures that came before us in this body.

On a personal note, I was impressed from my first days in the Senate by the chairman's open and friendly style. At Budget Committee hearings, members were recognized for questioning not in order of seniority, but in the order they arrived at the hearing room. Thus, the day after I was sworn in as Senator in 1987, when I ranked 100th in Senate seniority, I had the first opportunity to question the OMB Director at the committee's opening hearing on the Reagan budget. I will never forget that hearing, or the chairman's graciousness and courtesy.

From the beginning, LAWTON has tried to make the Senate a better place, more responsive to the people it serves. Shortly after his election to the Senate in 1970, he set about reforming the appropriations process, a path that eventually led to the Congressional Budget and Impoundment Control Act of 1974. He has continued this endeavor throughout his Senate career, closing loopholes in the act, and making improvements in the working of the process.

Even in the busy closing days of this session, in his last hearing as Budget Committee chairman, LAWTON took on a new challenge. His hearing began to shed light on the looming problems at the Federal Savings and Loan Insurance Corporation, and define the scope of a crisis that will affect our budget decisions for years to come.

LAWTON'S budget expertise goes beyond his mastery of the process. He has the unusual ability to translate bare budget numbers into human terms, to know and understand what policy changes will mean to the people they affect. That is the hallmark of a fine legislator and a dedicated public servant.

LAWTON CHILES will be remembered here for his leadership, his hard work, his skill, and his compassion, and his friendship. I am proud to have served with him, and I will miss him. I hope he can find the time to take a long vacation in the sunshine of his native State; I know he will enjoy great success at whatever he turns to next.

I yield the floor.

Mr. PRYOR. Mr. President, I see no one here on the floor seeking recognition at this point. If I might just for a few moments, I would like to seek unanimous consent to speak as if in morning business.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Arkansas that he be allowed to speak as if in morning business? Hearing no objection, it is so ordered.

SENATOR LAWTON CHILES

Mr. PRYOR. Mr. President, I am very proud I was on the floor of the Senate at the moment that the distinguished Senator from North Dakota took the floor to praise our colleague, Senator LAWTON CHILES of Florida, who will be leaving the Senate at the end of this term.

Senator CHILES, as we all know, has served with great commitment and dedication. He has served as not only chairman of the Budget Committee but as a very, very strong subcommittee chairman of the Governmental Affairs Committee, the Appropriations Committee, and he has been, in my opinion, Mr. President, a Senator's Senator.

We all remember the stories about "WALKIN' LAWTON," 1970. This one man sort of electrified the State of Florida, and inspired all of us in politics—probably better put "challenged" all of us in politics—as someone who could carry off this feat with dignity as he did in his own State. Not only did he win the hearts and souls but certainly the votes of his fellow Floridians in that election of 1970.

Mr. President, I do not think LAWTON CHILES would mind me telling a personal story on the floor about him. I have not told this in public. But some months ago when Senator CHILES announced that he was not seeking another term in the U.S. Senate, most of his colleagues, like myself, were taken aback. We were wondering. We always asked the first question, well, gosh, is he sick? What is wrong with him? Here in the U.S. Senate is certainly one of the most coveted positions that the public can bestow upon any American. LAWTON CHILES has held that position now for almost two decades. He has held it with distinction.

That afternoon when Senator CHILES made his announcement that he was not seeking another term, I walked out of my office, walked around the corner, and walked into Senator CHILES' office. He was sitting in an office all alone, and he was looking out the window. I will never forget the expression on his face. I sat down, Mr. President, with our friend LAWTON CHILES, and I said:

> Lawton, tell me, why did you do it? Why are you leaving it?

He says:

> Well, you know, in 1970 I walked throughout the State of Florida, and I was just beginning once again to start that walk again, and to recreate that walk in 1988 that I had made in 1970.

He said:

> The driver put me out of the car and I started walking from little town to little town and greeting people on the side of the road.

But he said the one thing that struck him was that in 1970, on that same road, the little trees on the road were just about waist high. Most of them were pines and oaks and tulips and poplars and whatever.

He said that as he started his 1988 walk, the thing that struck him was that those trees were no longer waist high but now were 20 or 25 feet tall. The trees had grown during those 18 years, and he had not had the opportunity to watch them grow.

He said to me, very simply, in answer:

> I think it's time to watch the trees grow and take time to smell the flowers.

I do not know that LAWTON CHILES is going to take a lot of time to watch the trees grow or to smell the flowers. I am not sure he will. I kind of doubt that he will. I think he is an impatient individual. After a few days of that, I believe he will be ready to do something else, because Senator CHILES is a man who has been called upon not only in his professional political career but also his private career as an attorney in Florida.

He is one person for whom I believe we all have tremendous respect, whether that individual be Democrat or Republican. The accolades and the statements and the speeches about LAWTON CHILES have come from both sides of the aisle.

Every once in a while, I guess that we, politicians, are subject to having rotten eggs and tomatoes thrown at us, and probably some of us deserve it. I know that I have deserved a little in the past, and I have had a few thrown at me.

Truly, one of the great opportunities we have as Members of the U.S. Senate is to look back and say that we have had the privilege and the honor of serving with men and women of the caliber, and the love for their country, of LAWTON CHILES. It has been my pleasure to know LAWTON CHILES and to serve with him, and I do not think the Senate will be quite the same without him.

(Mr. CONRAD assumed the chair.)

SENATOR LAWTON CHILES

Mr. DOMENICI. Mr. President, I was absent from the floor for a few moments, so I did not hear the remarks made about Senator CHILES by the present occupant of the chair, in their totality. Nor did I hear the remarks of the Senator from Arkansas in totality.

I compliment both Senators and any other Senators who are going to talk about LAWTON CHILES. He and I worked together on most difficult issues. In fact, many people are aware that we are very good friends, and they wonder how that can be here on the floor, each with different versions of what we ought to be doing. I can say that we have done that a few times. We have been on the same side more often. I think that is probably what makes this country so great, that we can disagree, but that does not mean we do not care deeply about each other.

I have a great deal more I want to say about him before the Senate adjourns. Perhaps tomorrow I will find time, or Friday morning.

In any event, it has been said that when we come to the Senate, we think we are going to make our mark—perhaps on our Nation or perhaps on our State or perhaps on the Senate. But most people who have been here for any length of time end up saying that it is more certain, as has been said by the distinguished majority leader, Senator ROBERT BYRD, that the Senate leaves a mark on us. I think that is true.

Each will have to analyze, as he or she has been here for a while, if it is true—what it is that leaves that mark. It probably is a number of things. I believe that is true. In my case, I believe the Senate has left a mark on me. I feel the U.S. Senate. It is a great place. It is rather fantastic from the standpoint of a parliamentary body, both for its longevity and its freedom. Its rules make each of us free, with few limitations on when we can offer amendments and what they have to be. They do not have to be germane, and there is no way you can limit somebody's speaking. Take just those few, and you understand what an enormous opportunity a Senator has to speak his piece.

I firmly believe that the mark is left on us because of the people here, also. Despite the cynicism that grows in America, and it goes through its peaks and valleys, cynicism about Government and those in Government—Governors, Senators, mayors—despite that, I believe it is fair to say that in my 16 years here, I have been privileged to rub shoulders with fellow Senators. As I look at them in the parade of my mind's eye, I can say that I would be very hard pressed to think of any other institution in the United States where I could be with 70, 80, or 100 men and women of such high caliber, of such enormous capability, collectively, and of such great repute.

I believe in my heart and soul that is true, and that is because of people like LAWTON CHILES, of Florida. In every respect he is a decent, wonderful human being, concerned, considerate, not puffed up or urging his own grandeur on us, just doing his work day to day, struggling with a very difficult and complex process, and in spite of his not being very well the last couple of years. He suffered a rather serious health problem not too long ago but carries his weight, and carries it well.

He is a friend and an advocate, and I consider it one of the rare privileges of my 56 years to have been able to work with him, struggled with him and, as he leaves, to be able to say that he is my friend and hope that I am his.

Mr. PRYOR. Mr. President, I understand that my distinguished colleague from Arkansas, Senator BUMPERS, is going to seek the floor.

Mr. BUMPERS. Mr. President, I ask unanimous consent that I may be permitted to proceed as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

ON HUMANITIES EDUCATION

Mr. BUMPERS. Mr. President, the close of the 100th Congress provides an excellent opportunity to review legislative accomplishments and set goals for the 101st Congress. I have been trying for several years to get enacted a bill that would establish a comprehensive program of summer seminars for elementary and secondary school teachers of the humanities. I remain committed to providing continuing education opportunities for humanities teachers who are already in the work force, and I inform my fellow Senators that I intend to make such legislation a priority in 1989.

In the summer of 1983 I read a short article in Time magazine about a summer seminar program for secondary school teachers of the humanities. Teachers who were chosen for the program were given stipends, actually paid, to go to college campuses, where they enrolled in rigorous academic courses taught by college professors. The most impressive thing about the story was the enthusiasm expressed by the teachers who were fortunate enough to participate in the seminars. The teachers lauded the program for its intellectual rigor and for the recognition it gave them and their profession. One teacher said, "It's easy to build a wall around yourself and teach students a certain way year after year. I think we'll all go home much better teachers because our excitement about the material will be communicated to the kids."

Another teacher said, "In this program, high school teachers are recognized as having scholarly interests."

No stronger endorsement could have been given the summer seminars than the endorsement given by those teachers.

This program, funded and administered by the National Endowment for the Humanities, allowed a select few teachers to go to college campuses for 6-week summer seminars. The seminar topics in that first summer of the program included Homer's Iliad and Odyssey. You might think there are not too many people interested in those Greek classics, but this seminar was oversubscribed. They studied Shakespeare; Alexis de Tocqueville's Democracy in America and Tolstoy's War and Peace. Almost 2,300 teachers applied for 225 places in the program in the first year.

This program was appealing to me because I saw it as a chance to improve the quality of teaching of the humanities. The teachers in those first NEH-sponsored seminars made clear that, given the opportunity to attend high-quality continuing education programs, they would attend. When I read about the seminars in 1983, I was already concerned about what I observed of the students I visited—their lack of knowledge of American history, their limited knowledge of or curiosity about other cultures, and their limited interest in reading.

Mr. President, when I go to high schools and students tell me that they hate history, I always respond by saying, "You just have not had the opportunity to study history as the fascinating story it really is. You haven't sensed the excitement of studying the history of your own country or of other cultures."

I realized at the time that the problems I observed in students' lack of interest in the humanities were complicated and complex problems that reflect many problems and changes in our society—changes in the family and changes in the goals and lifestyles of Americans, for example. The problems were not simply a matter of students failing school or of schools failing their students. However, I believed then, as I do now, that improving American education is essential to improving the lives of our young people. And improving classroom instruction is a first step to improving American education. That means keeping good teachers in the classroom and helping all teachers improve their skills. A person has to be very dedicated to decide to enter the classroom and remain there to face the challenges of present-day teaching, and continuing education can help dedicated teachers hone their skills and develop new areas of expertise.

Last Thursday evening I saw Barbara Walters in a 1-hour documentary called "Why Are Our Children Flunking?" They gave a multiple choice test in the course of the evening which I would hope was very simple for most adults. I was absolutely appalled to find, however, that given an option of four choices only 42 percent of the students in the three high schools studied could identify the Monroe Doctrine.

Of all the questions, the one about the reasons for the United States' entry into World War II was answered by the highest proportion of students. But when only 82 percent of the people answered that correctly, you have to ask yourself why the other 18 percent did not.

The general evaluation I made of American education in 1983 has been confirmed over the last 5 years. In that period, Congress and the rest of the Nation have been presented at least 11 major national reports on education, a series of report cards on American students issued by the National Assessment of Educational Progress, reports from the National Endowment for the Humanities on the humanities in the public schools and among the public, and very recently a report by the Bradley Commission on History in the Schools on the abysmal state of history teaching. The 11 major education reform reports have advocated a whole host of approaches for improving education in the United States and a number of the reports have focused especially on ways to improve the education of teachers for the Nation's public elementary and secondary schools. The report cards have provided an alarming profile of American school children's knowledge of literature and U.S. history; mathematics; and grammar, punctuation, and spelling and their writing and reading skills.

I have people come in my office with master's degrees, some with Ph.D. degrees, who cannot write a complete sentence.

I have read all the reports and I have been as alarmed as the next person by what they suggest about our educational system. I was shocked to learn that 75 percent of the 11th graders surveyed did not know that Abraham Lincoln was President between 1860 and 1880; that four-fifths of the students did not know what the Reconstruction period was; and that 70 percent of the students did not know what the Reformation was. And I was alarmed to learn that analytic writing skills are poor for students in all grades. Only 25 percent of 11th graders, 18 percent of 8th graders, and 2 percent of 4th graders can write an adequate or better analysis when asked to complete a simple exercise comparing and contrasting two things. And only about 5 percent of 17-year-olds have advanced reading skills and strategies.

Mr. President, the people of this country are refusing to vote in increasing numbers every election year. In 1986 when I last ran for reelection, only about 19 percent of the voters between 18 and 20 in this country bothered to vote. Who on earth is going to run this country?

And schoolchildren are unlikely to speak other languages or to be well informed about other countries.

I am impressed that Governor Dukakis has served as such a strong role model by demonstrating his command of at least three languages.

I frankly thought it was a really class act at the Democratic Convention when he delivered a good portion of his acceptance speech in Spanish.

All my children are bilingual. I have always said when I come back in the next world I want to come back as one of my children. They have had the best education I could afford for them, and I am jealous of them because they are all linguists.

Governor Dukakis has demonstrated that he has a command of several foreign languages, a skill that will be increasingly important in an ever-shrinking world.

Schoolchildren are unlikely to speak other languages or even be well informed about other countries.

In 1978, only 21 percent of high school students were enrolled in either a classical or modern foreign language. And most students are not even required to take a world history course to graduate from high school.

It is hard to imagine that a nation whose students have such limited skills and limited knowledge of basic subjects can be competitive with schoolchildren from nations that expect and require much greater academic achievement.

I will tell you about a family value that we used to have and lost, but which Japan still has. From the moment a child is born in Japan, he is taught that he must excel. Japan, with no natural resources, which must import all of its raw materials, refine them, turn them into finished products, send them out into the world market, and still be competitive and must depend on the skills of its people. Its skilled workers are its competitive edge. That is the reason only 2 percent of Japanese children drop out of school, as opposed to 28 percent in this country.

Think about the cost of $50 million for the bill I am going to reintroduce in January. Have you ever considered the economic costs of 28 percent of the children in this country not finishing high school? Have you considered the cost of the prisons it is going to take to house those dropouts who turn to crime, the cost of unemployment insurance for those who are unemployed, the cost of welfare to keep them alive? Compared to those costs $50 million is peanuts.

The statistics on academic achievement are frightening. But there are other trends which are also disturbing.

In the 1984 Presidential election—and this is what I mentioned a moment ago—I believe only 47 percent of all the people in this country eligible to vote bothered to do so. That means that one out of every two people you meet on the street do not bother to vote.

Do you know what the interesting thing about that is? Most of those people you meet, who don't bother to vote, can talk a good line about patriotism and love of country.

I do not want to get started on GEORGE BUSH's Pledge of Allegiance ploy, but I will say that if everyone in this country were well educated, that would not sell. I fear that young people in this country are cavalier about the privilege of voting because of their ignorance of our history. Young people generally lack any insight into the struggles leading up to the Revolutionary War; the history of the Civil War; the sacrifices of their grandparents during the Second World War, or the struggles—domestic and international—caused by the war in Vietnam. The executive director of the American Historical Association, Samuel Gammon, recently said in commenting on the sorry state of history teaching in this country, "Our citizens are in danger of becoming amnesiacs if you maintain that history is collective memory." I fear that young Americans are already amnesiac about the responsibilities of citizenship—the importance of each man and woman voting whenever he or she has that opportunity.

Mortimer Adler, a scholar of some note, said that no child ought to be allowed to graduate from high school, and certainly not from college, until he or she has read the Preamble to the Constitution, the Constitution, Lincoln's Gettysburg Address, and de Tocqueville's Democracy in America.

The point he was making is that we are preparing children in software and hardware and the genetics of apples and oranges, but we are not preparing them for citizenship. All of the rest of it means nothing if our children do not understand their obligations and duties.

I used to be a trial lawyer. I remember one time I was representing a woman in a divorce case. Her husband was representing himself, which he had a perfect right to do. That is another nice thing about our Constitution. So he went first. He got right up in the judge's face and started telling the judge about all his rights: he had a right to this and a right to that and so on. When he finished, the judge said, "Now, I have listened to you telling me about your rights, I am going to tell you about your duties. Your duties are to support those two children, and that is what this court is going to insist that you do."

And the duty of us, as adults and teachers in America, is to prepare our children for citizenship. Nothing else matters if we lose this democracy. I wonder if citizens with a greater understanding of our system of government, the Constitution and the Bill of Rights, would have been so susceptible to the demagoguery on the issue of the Pledge of Allegiance that has been so evident in the current Presidential campaign. I believe that children ought to be allowed to say the Pledge of Allegiance. They ought to be taught the words of the Star Spangled Banner and allowed to sing it when they want. It is tough to sing, incidentally. There are a lot of high notes in it.

Well, I believe a student with a keen knowledge of American history would not believe that the measure of a loyal citizen and his love of country is in how often he says the Pledge of Allegiance. Next thing you know, GEORGE BUSH will want to know how many goosebumps you got when you said the Pledge of Allegiance. And if it is less than a half a million, you do not qualify as a patriot.

Thomas Jefferson, in justifying the inclusion of the study of history in his plan for education, said:

> History, by apprising them of the past, will enable them to judge of the future; it will avail them of the experience of other times and other nations; it will qualify them as judges of the actions and designs of men; it will enable them to know ambition under every disguise it may assume; and knowing it, to defeat its views.

I am not afraid of the people. I am not afraid to trust their judgment as long as the facts are fairly presented to them.

When I was the only southern Senator to vote against the constitutional amendment on prayer in school, I knew what was at stake. I knew that my political career was at stake. But I knew that the American people, given a choice of whether they want the legislature and the school board telling their children what to pray, they would answer "No" 98 percent of the time.

Mr. President, in 1983, when I first read this article, about the NEH seminar program, I was convinced it should be dramatically expanded so that more American teachers would have the opportunity to participate in it. I have tried two separate avenues for expanding this program: I offered a bill authorizing a major teacher training effort in the humanities and I pursued increased funding for the National Endowment for the Humanities so it could expand its seminar program. The NEH touts its current seminar program but has not indicated a keen interest in administering a dramatically expanded program. As recently as 1986 the summer seminars served only about 750 students. At that rate, it would take decades before most classroom teachers would have an opportunity to participate.

I am convinced the greatest chance for success in improving this program is enacting a separate authorization, so 5 frustrating years after I first became interested in this subject, I am renewing my efforts to provide a comprehensive program of summer seminars for elementary and secondary teachers of the humanities. I know science and electronics are important and I know math and science education have been stressed lately. But I am just telling you that if our children graduate from high school and college and they do not understand the Constitution and they do not understand their obligations as citizens, none of us will amount to anything.

Mr. President, do you know that our students in the past 5 years have finished dead last—dead last—in competition with other developed nations of the world in a subject called global studies? You saw recently that, few 17-year-old students can identify Nicaragua.

As I already pointed out, they did not know what the Monroe Doctrine meant. The other night, on the Barbara Walters show, they were asking these kids: "When did the Civil War start?" Nobody knew that. "Who won?" Listen to this "Who won, North or South?" "I don't know and I don't care."

Under my bill, the Secretary of Education would be authorized to make grants to colleges, universities, community colleges, and junior colleges to conduct summer humanities institutes for elementary and secondary school teachers. The grants to institutions would include funds for tuition, fees, administration, living expenses, and stipends for participants. The institutes would be restricted to topics in the humanities, including both modern and classical languages, literature, history and philosophy, and language arts and social sciences. The bill would guarantee that each State would have at least one institute. The sponsors of the seminars would be required to involve classroom teachers in the planning and development of the seminars. Teachers can be invaluable in the planning of such seminars and can especially provide guidance on such issues as how heavily the seminars should emphasize pedagogy or how pedagogical methods should complement or focus on subject matter.

While the summer seminars would be the anchor of the program I propose, seminar sponsors would be encouraged—and would receive appropriate funding—to continue the summer seminar program throughout the school year. As participants of the seminars attest, the summer program is a boost in morale and in knowledge. I am convinced that a followup on the summer program throughout the school year will give teachers the opportunity to consolidate what they learned in the summer seminar and further refine their pedagogical skills.

The bill would also provide funding for cooperative teacher resource centers—again centered on humanities education—that will be operated by school districts and institutions of higher education. There are a number of examples of successful centers of this kind. I am particularly familiar with the Yale-New Haven Teachers' Institute, but there are other centers around the country. Some operate solely with local support, others have been successful in obtaining foundation support and occasional support from the National Endowment for the Humanities. I believe a modest infusion of Federal funds would generate a number of additional centers to support innovation in instruction in the humanities.

I have been repeatedly challenged by those who feel the teacher program I propose is not an appropriate role for the Federal Government. I feel it is not only appropriate, but that it is absolutely crucial for the Federal Government to provide leadership in this educational area. I am not proposing to solve all the problems in the area of humanities education or in the training of teachers, but I believe my program is a crucial first step to improving humanities instruction.

There are still many important questions and problems and areas of reform that can only be addressed by the States, local school districts, colleges, and universities. The major education reform reports suggest that changes should be made in teacher preparation, including changes in admissions, performance, and exit standards for candidates in teacher education programs; content of teacher training programs; the length of training programs; and in recruitment of qualified teacher candidates. The reports also recommend reforms in teacher certification requirements and teacher licensing standards; increases in teacher salaries; and changes in the working environment provided teachers.

Studies have also noted that students should be required to take more history, English, and foreign language courses to graduate from high school. And others have delineated the weaknesses of many elementary and high school text books and recommended major changes in them.

On many of these issues, Federal action is not appropriate. The States, local districts, and colleges of teacher education are already launching reform efforts on several of these issues. Progress is not even, and some States are much more aggressive on these issues than others. I am pleased to note that Arkansas has already reformed its curriculum standards and increased graduation requirements. The State is also struggling to increase teacher salaries.

And across the Nation there have been changes in these areas: In 1981-82, the average number of credits required for graduation was 2.6 for social studies and 3.6 for English/language arts; in 1984-85, the figures were 2.8 and 3.8 respectively. And students are beginning to enroll in foreign languages more readily. Nationwide, 29 percent of high school students were enrolled in foreign language classes in 1985-86. This represents a 38-percent increase since 1978.

These improvements are laudable, but they are not enough. States and schools of education can do much to attract outstanding candidates to teaching and to given them exemplary training. But more has to be done to provide those teachers who are already in the classroom more opportunities for continuing education. My proposal builds on the theory that instruction in the humanities can be improved by improving the skills of teachers. Improvements in humanities teaching obviously hinges on the efforts of teachers.

What is the proper Federal role in teacher training? The Federal Government has tended to respond to crises or challenges, like the launching of sputnik, and Federal support for programs to improve the elementary and secondary school teaching force has generally been limited and of relatively short duration. And the Federal role in teacher training has been particularly limited during the Reagan administration.

The first major Federal support to improve the skills of current teachers was through the National Defense Education Act, enacted in 1958. The NDEA authorized training institutes for guidance and counseling personnel, teachers of mathematics, science, foreign language, history, geography, reading, English, and disadvantaged youth. Three other comprehensive efforts to address teacher education and staff development problems were the Teacher Corps, Teacher Centers, and the programs of the Education Professions Development Act. More recently Congress has enacted a math and science education bill that provides some funds for teacher education and retraining, and there are training components in such legislation as the Vocational Education Act and the Handicapped Education Act.

A look at the National Defense Education Act provides insights into what role the Federal Government might take in teacher education, and evaluations of it demonstrate that the Federal role can be a positive one. The National Defense Education Act authorized a program of summer seminars for teachers. Typically, the institutes enrolled 40 to 50 elementary or secondary school teachers in 6 to 8 weeks of daily instruction.

According to evaluations of the teacher institutes operated under the authority of NDEA, 67 to 90 percent of the participants rated their institute experience as having been very positive. Teachers of the humanities viewed the NDEA efforts as a hopeful sign that the significance of their areas—compared to math and science—was finally being acknowledged. The teacher institutes were successful in attracting career teachers as participants, increasing their subject matter competency, and encouraging participants to continue in educational careers. Professional educators indicated that the greatest single justification for NDEA was in training teachers who in turn would raise the general level of education. These educators contended that more and better teachers were needed and that the betterment of teachers was related to their training in substantive areas. The evaluations of NDEA are not considered exhaustive and comprehensive, but I still believe they can be a strong force in improving the teacher work force.

It is time to reverse the trend toward Federal inaction in teaching training. Excellent humanities teaching requires solid, stimulating textbooks, a coherent curriculum, and well trained, well paid, and dedicated teachers. The program I propose will address the most important part of the equation for excellent humanities teaching; the teacher.

I will be making this proposal a top priority next year and will be asking for the support of my colleagues in this important effort.

Mr. President, a lot of people in this campaign talk about education. And polls show that Americans are willing to spend more money educating our children. I believe the people realize education is an investment in the future.

You know, we have over 2 million elementary and secondary teachers in this country. These seminars have probably touched fewer than 10,000 teachers. They amount to nothing in the scheme of things.

But those teachers who have had the benefit of these programs, who have been able to go back and really inspire students, those teachers are a precious resource. The money we have spent on those seminars has been some of the best money we ever spent.

The other night on the Barbara Walters Show they asked these youngsters, "Do you like history? Do you like philosophy?

"What do you mean, man, there ain't no money in that." That is true, there is no money in that in the sense that he was thinking about.

But I am just of the firm belief, Mr. President, that I am on the right track with this bill. I am not at all sure we ought not to be spending a billion or $2 billion a year. If we have 2 million teachers in this country who want summer seminars, who thirst and are curious for new kinds of knowledge that they can pass on to their youngsters, spending Federal dollars on their training will be the best money we ever spent.

I would like to hear the Presidential candidates, both of whom say they want to be remembered as the education President, I would like to hear both of them address something like this.

You know, talk is cheap around here. If we are really as far behind in education as we think, and if we want to be number one, I would like to hear a concrete plan for how are we going to become leaders again. You are not going to do it with a political speech. You are going to do it with hard work and it will not happen overnight.

We are a nation that is accustomed to fast food, minute oats, minute cream of wheat. Everything overnight. The problems we face in the educational system of this country, are monumental, and reform is not going to happen overnight. But you would be amazed what a difference we can make in the education level of our students in 4 years if we really are determined to do it.

Mr. President, I want to thank the distinguished manager of the bill and my very good friend and colleague from Arkansas, Senator PRYOR, for allowing me to proceed with this as in morning business.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. PELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE RETIREMENT OF SENATOR ROBERT T. STAFFORD

Mr. PELL. Mr. President, these are remarks I wish I did not have to make. Since January of 1977 the business of the Subcommittee on Education, Arts, and Humanities has been conducted by what has come to be called the firm of PELL and STAFFORD, or STAFFORD and PELL, depending on the whims of the American electorate and the party control of the U.S. Senate. It is, therefore, with the deepest personal and professional regret that I will experience the dissolution of that firm at the end of this, the 100th Congress.

In the almost 12 years that we have worked together, there has developed a partnership that I believe has served the education of our people extremely well. For my part, it is a partnership founded on a deep personal respect for a gentleman of integrity and principle. To the two of us, it has not mattered who was chairman, for partisanship has not entered our partnership and has not disrupted our business.

We have tried in these 12 years to measure everything by asking the same question over and over again. Is what we are doing in the national interest? If we could say yes, then we moved ahead, together. If we said no, then we stopped, together.

In private meetings, in subcommittee deliberations, on the Senate floor, and in conference, I have frequently been asked how I stood on this issue or that issue. Time and again, I would respond with my own personal position, and with the additional reservation that I wanted to check it out with BOB STAFFORD. I wanted to get his slant on the issue, and to know his position. But that process was not a one-way street, for I know that it worked in the opposite direction as well. Each of us has always had the highest respect for each other's counsel.

I must say in all candor, however, that there was a period in which it did matter who was chairman of the subcommittee, and that was in the early days of this administration. It took a man of BOB STAFFORD's fortitude, stature, and quiet determination to stand up and say no to the education cutbacks proposed by an administration of his own party. It was because of his leadership in that critical period that we were able to spare education and get on with our good work. I fear that without BOB STAFFORD at the helm, education would not have weathered the storm as well as it did.

I cannot express in words how much I will miss BOB STAFFORD next year. He has been my colleague and my partner. But most of all, he is my friend. And, as I look back on our service together, it is that friendship that is most important, for it is truly as the poet Yeats said,

> "Think where man's glory most begins and ends,
> And say my glory was I had such friends."

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. PRYOR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATE REPORT CARD—THE 100TH CONGRESS

Mr. PRYOR. Mr. President, I am standing alone on the Senate floor at this time and I see no request for speakers. Therefore, I do not think I will impede any business of the U.S. Senate if I were to make a few remarks about the second session of the 100th Congress which is about to draw to a close.

So, Mr. President, having said that, I would like to say, and all of my colleagues know this—this is no secret—in the last 3 or 4 years, I have become an absolute public nuisance when it regards the procedures of the Senate and some of the activities of the Senate in times past and our inability to get things done and to find ourselves in a gridlock in the last few days of the legislative session.

I have occasionally commented, Mr. President, on the way the Senate conducts its business or fails to conduct its business. I hope to offer suggestions and improvements in the future.

Today I would like to present in the last few days of this session for my colleagues' benefit what I call an improved report card on the functioning of this great institution during the year 1988. The leadership of the Senate, particularly from the majority leader, Senator ROBERT C. BYRD of West Virginia, I think is responsible for a great deal of this improvement. However, just as each Member of this democratic body bears responsibility for the gridlock that we often experience in the body, so does each Member deserve praise, I think, for our recent improvements.

Last January, Senator BYRD acted on a request made by a number of us that the Senate be firmly held to the 15-minute voting rule. The need for this change was unmistakable. Over the last 6 years, there had been a growing number of marathon votes of 30 minutes or more, 40 minutes, 50 minutes, an hour, while we are waiting for someone's plane to come, or waiting for some Senator to casually come from his office to the floor.

The total time wasted in 1987, by comparison, Mr. President, on these extended votes, amounted to 60 hours and 50 minutes over the 15-minute rule. In effect, we frittered away over an entire work week.

It took all of us a little time to get used to it, but we broke an old and a bad habit. We are now almost completing votes within the 15-minute rule, and I would suggest that our quality of work has been enhanced as a result.

The second major change in the operation of the Senate in 1988 was the establishment of a 3-week in, 1-week out schedule. Many Senators have noted that this change for the first time has allowed us to schedule, with some degree of certainty, meetings, and events with our constituents back home in our States and it also, I believe, has forced us to make more efficient use of our time while we are in the Nation's Capital.

I am also happy to note that we have cut back those weekend sessions that ruin plans to return to our home States or to be with our families. In fact, Mr. President, if we can make it through this week without a Saturday session, this year 1988 will be the first in over 10 years that the Senate of the United States has not been forced to hold any Saturday sessions.

Overall, Mr. President, we have spent less time in actual legislative session in 1988. But my analysis suggests that we have actually performed more work. During this Congress, we have been in session for 2,227 hours. We have voted 768 times. During the last Congress, we were in session 2,531 hours, held 740 votes. Thus, the ratio of votes taken versus the time spent in session has improved in 1988 by 17 percent.

As further evidence of increased productivity, the Senate has passed 1,152 bills during this Congress compared to 940 bills during the 99th Congress.

Perhaps the greatest accomplishment of the 100th Congress was the passage for the first time in 40 years of all of the 13 appropriations bills before the end of the fiscal year. Last year and the year before, we passed exactly zero independent appropriations bills and that improvement of 1988 is remarkable. This compares with five in 1985, four in 1984, one in 1983, zero in 1982, and only one spending bill in the year 1981.

Passing all 13 spending bills this year, Mr. President, is truly amazing. Somehow in 1988, we avoided the continuing resolution monster that has stalked Congress since the 1974 Budget Act. A great number of these accomplishments, Mr. President, are because of the driving force of the majority leader, ROBERT C. BYRD, to clamp down on the Senate and say that we are going to get down to business. We did in 1988 and I think we should be rather proud of our accomplishments.

The Senate also in 1988 has overcome White House roadblocks and vetoes in order to pass vital legislation, such as the omnibus trade bill and the defense authorization bill. Unfortunately, we have seen continued use of the filibuster or actions just as disruptive, such as threats of filibusters, so-called holds on bills, and dilatory debates on motions to proceed.

Mr. President, we were forced to file 20 cloture motions in 1988. Our report card has several A's, a few B's and C's, maybe an F for filibusters and the tangled and inefficient budgetary process. Overall, I think Senate operations for 1988 deserve an I for great improvement.

We should acknowledge the work of the members of the Senate Committee on Rules and the members of the Ad Hoc Committee to Improve Senate Operations established by the majority leader and the Republican leader.

The ad hoc committee was composed of Senators DANFORTH, BREAUX, FORD, BENTSEN, MURKOWSKI, EVANS, and myself. The Rules Committee, Mr. President, held numerous hearings in the 1988 period, on changing of Senate procedures, heard from many Senators, and issued, I think, a very excellent report with recommendations in September as a response to our concerns. That report and the various Senate reform measures not acted on this year clearly outline the challenge before us in the 101st Congress.

Mr. President, I again salute the majority leader for his years of stewardship of our proud Senate traditions and particularly for his leadership this year in moving the Senate toward a new era of smoother operations and better service to our general constituencies throughout the 50 States.

Mr. President, I yield the floor.

Mr. COCHRAN addressed the Chair.

The PRESIDING OFFICER (Mr. BINGAMAN). The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I ask unanimous consent to proceed for 5 minutes as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATOR JOHN C. STENNIS RETIRES

Mr. COCHRAN. Mr. President, when this second session of the 100th Congress comes to an end, my colleague and friend, JOHN C. STENNIS, will retire from the Senate. Except for Carl Hayden, he will have served longer in the Senate than anyone ever has.

It has been a special privilege to serve with him in this body for the past 10 years.

I salute and congratulate JOHN STENNIS today on his remarkable career in the U.S. Senate. He has represented our State of Mississippi in a splendid way, with dedication, and a strong and sincere sense of duty and responsibility. He has brought honor and credit to our State and to the U.S. Senate.

His personal qualities have endeared him to every Senator with whom he has served. And during his time here, he has served with 402 other Senators.

He has been at all times courteous, friendly, respectful of others, diligent, dependable, honest, thoughtful, conscientious, and cheerful even when he had reason not to be.

Forty-one years ago, when JOHN STENNIS won his seat in the Senate in a special election, one editorial writer said:

> Mississippi has made a wise choice. It has elected a thoughtful, purposeful, and high-minded man to the United States Senate. He is not afraid of hard work and his ability to form lasting friendships will stand him in good stead in Washington. In his election, the State has well earned the plaudits of the Nation.

JOHN STENNIS soon became a respected Member of this body. He didn't try to shine his light too brightly at first. He did his work, and he did it well. He accepted the assignments he was given without complaint or protest. He made a point of getting along with others and he showed by his actions and his demeanor his respect for the Senate as an institution.

Better assignments came with time, and he became chairman of important subcommittees and then full committees with important jurisdiction: Standards and Conduct, Armed Services, Appropriations.

He now serves with distinction as President pro tempore of the Senate.

Mr. President, very few of those who have served here will have matched the record or enjoyed the reputation of JOHN C. STENNIS. He has been a Senator's Senator, a person admired and appreciated by all who have had the privilege to serve with him.

I thank him for his many courtesies to me and for his genuine friendship.

But I also thank him for his example. No one could have a finer role model than the senior Senator from Mississippi, JOHN C. STENNIS.

THANKS TO FLOOR STAFFS

Mr. METZENBAUM. Mr. President, I would like to say a few words in behalf of our floor staffs, whose constant labor, day in and day out, enables the Senate to complete its work with at least a modicum of efficiency and organization.

With an institution as unwieldy and complex as the Senate is today, we simply would be incapable of functioning without their able help and assistance.

On our Democratic side, Abbey Saffold, who is now secretary for the majority, Charles Kinney, Marty Paone, and Bill Norton are, without a doubt, four of the most essential people serving the Senate. We could not do our work without them.

They have always gone out of their way to be helpful to me, and I believe other Senators would agree that their work to keep Senators apprised and abreast of the daily action on the floor has exceeded the call of duty. Their help is superb.

Their cooperation and their gracious efforts have helped this Senator to do his job better.

I believe our Democratic leader deserves a good deal of credit for hiring and keeping them. In addition to his many other sterling qualities, Robert C. Byrd is a good judge of character and temperament.

I hope that they will not be moving on. I have not discussed with any of them what their future plans might me, but I can say this: If they are planning to leave the Senate, they certainly will be missed.

And if they are planning to stay on with Senator Byrd or with the new leader, so much the better.

I do not want to overlook the Republican floor staff, because they too have been friendly and courteous to me.

While being completely loyal to their side, Howard Greene and Liz Greene have always been most gracious and willing to help. They are a credit to their side, and I have always been appreciative of their efforts.

I look forward to working with them again helping the minority next year.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

NATIONAL FORESTS AND PUBLIC LANDS OF NEVADA ENHANCEMENT ACT

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 941.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 59) entitled the "National Forests and Public Lands of Nevada Enhancement Act of 1987."

The PRESIDING OFFICER. Is there objection to the present consideration of the bill.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Forest and Public Lands of Nevada Enhancement Act of 1988".

SEC. 2. FINDINGS AND PURPOSES.

(a) Findings.—The Congress finds that—

(1) the public lands transferred by this Act contain valuable natural resources (such as watershed, range, outdoor recreation and wildlife habitat) which will be enhanced by the professional, multiple-use management of the Forest Service; and that certain national forest lands would be enhanced by the professional multiple-use management of the Bureau of Land Management;

(2) the public which uses these natural resources will be benefited by such adjustments in management;

(3) the public lands transferred by this Act to the jurisdiction of the Forest Service are adjacent to existing national forests and, in many cases, are part of the same watersheds and mountain ranges, and placing the management of these lands under the administration of one agency, the Forest Service, will improve efficency and be cost effective; that similar efficiency and cost effectiveness will result from transferring jurisdiction of certain National Forest lands to the Bureau of Land Management; and

(4) there is a consensus in Nevada that certain lands should be added to the National Forest System and that certain National Forest System lands should be transferred to the Bureau of Land Management for management.

(b) Purposes.—The purposes of this Act are—

(1) to transfer to the jurisdiction of the Forest Service, United States Department of Agriculture, certain public lands in Nevada currently administered by the Bureau of Land Management, United States Department of the Interior. These public lands are contiguous to the Toiyabe and Inyo National Forests and will become National Forest System lands; and

(2) to transfer to the jurisdiction of the Bureau of Land Management, United States Department of the Interior, certain lands in Nevada currently administered by the Forest Service, United States Department of Agriculture. These lands are contiguous to other public lands and will be managed as such.

SEC. 3. DEFINITIONS.

As used in this Act—

(a) the term "public lands" means the lands administered by the Bureau of Land Management, United States Department of the Interior, as defined in section 103(3) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701(e)); and

(b) the term "National Forest lands" or "National Forest System lands" means the lands administered by the Forest Service, United States Department of Agriculture, as defined in section 11 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a)).

SEC. 4. TRANSFER OF LANDS.

(a) Transfer of Public Lands to the Forest Service.—Effective one hundred and eighty days after the enactment of this Act, the approximately six hundred sixty-two thousand acres of public lands designated for inclusion in the National Forest System on three maps entitled "Nevada Interchange-A", dated January 1987, "Nevada Interchange-B", dated February 1988, and "Nevada Interchange-C", dated August 1988, are hereby withdrawn from the public domain, transferred to the jurisdiction of the Secretary of Agriculture, and shall become part of the Toiyabe National Forest or the Inyo National Forest, as appropriate.

(b) Boundaries of Toiyabe and Inyo National Forests.—(1) The boundaries of the Toiyabe National Forest and the Inyo National Forest are hereby modified to reflect the transfer of lands under subsection (a).

(2) For the purpose of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9), the boundaries of the Toiyabe National Forest and the Inyo National Forest, as modified by this subsection, shall be treated as if they were the boundaries of those National Forests as of January 1, 1965.

(c) Transfer of Forest Service Lands to the Bureau of Land Management.—Effective one hundred and eighty days after the enactment of this Act, the approximately twenty-three thousand acres of National Forest lands identified for management by the Bureau of Land Management on a map entitled "Nevada Interchange-A" and dated January 1987, are hereby transferred to the Secretary of the Interior.

(d) Maps.—The maps referred to in subsection (a) and subsection (c) shall be on file and available for public inspection in the offices of the Governor of Nevada, the Supervisors of the Toiyabe and Inyo National Forests, the Nevada State Director of the Bureau of Land Management, the Chief of the Forest Service, and the Director of the Bureau of Land Management. The Secretaries of Agriculture and the Interior may make minor changes to the maps to correct technical errors.

(e) Effective one hundred and eighty days after enactment of this Act, lands transferred by subsection (a) of this section to the jurisdiction of the Secretary of Agriculture shall be subject to the planning requirements of section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, and lands transferred by subsection (c) of this section to the jurisdiction of the Secretary of the Interior shall be subject to the planning requirements of the Federal Land Policy and Management Act of 1976. All transferred lands shall continue to be managed in accordance with plans in effect on the date of enactment of this Act until considered in plans developed under applicable provisions of law. If no plans are in effect on the date of enactment of this Act, the respective transferred lands shall be managed in a manner consistent with other National Forest or public lands, as the case may be, in the vicinity until a plan is developed under applicable provisions of law. Nothing in this Act shall of itself require the amendment or revision of the existing plans governing public lands or National Forest lands affected by the addition of or deletion of lands transferred by this Act.

SEC. 5. WILDERNESS SUITABILITY.

(a) BLM Wilderness Study Areas.—Any area or portion thereof designated as a Bureau of Land Management Wilderness

Study Area, which is made a part of the National Forest System by this Act, shall be managed by the Secretary of Agriculture in accordance with the provisions of section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782), to protect its wilderness character until Congress designates it as wilderness or releases it from further wilderness consideration. At the same time that the Secretary of the Interior submits wilderness recommendations to the Congress with regard to public lands in the State of Nevada, he shall also recommend to the Congress whether any wilderness study area or portion thereof transferred to the jurisdiction of the Forest Service by this Act should be included in the National Wilderness Preservation System.

(b) ROADLESS AREAS NOT RECOMMENDED AS WILDERNESS.—Any roadless area or portion thereof which is made a part of the National Forest System by this Act and which has been considered but not recommended for designation as wilderness pursuant to section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) shall be deemed to have been adequately considered for wilderness for the purposes of the initial land management plans hereafter required for such lands by section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604). The Secretary of Agriculture shall not be required to review the wilderness option for such area prior to the next regular revision of such plans for the National Forest in question, but the Secretary of Agriculture shall review the wilderness option for such area when such plans are revised.

(c) If the Secretary of the Interior does not recommend for wilderness designation all or any portion of the one hundred and sixty acres of land described in this subsection, the Secretary of Agriculture is authorized to offer for sale all or any portion of such land not recommended for wilderness at fair market value to Sky Mountain Resort, its successors or assigns. If the Secretary of Agriculture decides to sell such land, he shall notify Sky Mountain Resort, its successors or assigns in a timely manner, and proceed with the sale, provided that the prospective purchaser indicates an interest in such purchase within six months of the date of the Secretary of Agriculture's offer to sell such land. The land is described as follows:

MOUNT DIABLO MERIDIAN

Township 20 South, Range 57 East,

Section 28
Southeast quarter of southeast quarter
Northwest quarter of southeast quarter
Northeast quarter of northeast quarter
Section 34, southwest quarter of northwest quarter

(d) NO ADDITION TO THE NATIONAL WILDERNESS PRESERVATION SYSTEM.—Nothing in the Act shall be construed to add lands to the National Wilderness Preservation System.

SEC. 6. MANAGEMENT OF MINERAL RESOURCES.

Nothing in this Act shall be construed to change the laws governing the management of mineral resources.

SEC. 7. ADMINISTRATION OF RECEIPTS.

The acreage added to the Toiyabe and Inyo National Forests in the State of Nevada by this Act shall not be counted in determining the distribution of the Twenty-Five Percent Fund between the States of California and Nevada under the Act of May 23, 1908, as amended: Provided, however, That the acreage added to these forests shall be counted in the distribution of the Twenty-Five Percent Fund among the affected counties in Nevada.

SEC. 8. WATER RIGHTS.

(a) Congress hereby expressly reserves the minimum quantity of water necessary to achieve the primary purposes for which the lands transferred pursuant to section 4(a) are withdrawn. Those purposes are hereby declared to be solely and exclusively the primary purposes for which the National Forests within which the lands are to be included were established. The priority date for such reserved rights shall be the date of transfer pursuant to this Act and such rights shall be perfected pursuant to the procedural requirements of the laws of the State of Nevada.

(b) Congress hereby expressly relinquishes all Federal reserved water rights created by the initial withdrawal from the public domain in the lands transferred pursuant to section 4(c) effective on the date of such transfer.

(c) Nothing in this Act shall create an implied reservation of water.

(d) Nothing in this Act shall affect the right of the United States or of any person to acquire or dispose of water or water rights pursuant to the substantive and procedural requirements of the laws of the State of Nevada.

SEC. 9. VALID EXISTING RIGHTS.

(a) Nothing in this Act shall affect valid existing rights of any person under any authority of law.

(b) Authorizations to use lands transferred by this Act which were issued prior to the date of transfer shall remain subject to the laws and regulations under which they were issued. Such authorization shall be administered by the Secretary to whom jurisdiction over affected lands has been transferred by this Act: Any renewal or extension of such authorization shall be subject to the laws and regulations pertaining to the agency which has jurisdiction over the land at the time the renewal or extension is requested. The change of administrative jurisdiction resulting from the enactment of this Act shall not in itself constitute a basis for denying or approving the renewal or reissuance of any such authorization.

SEC. 10. ADMINISTRATIVE APPEALS.

With respect to the lands transferred by section 4, any formal administrative appeal, adjudication, or review pending on the date of transfer of jurisdiction under this Act shall be completed by the Secretary, or his designee, of the Department in which it was initiated.

SEC. 11. TRANSFER OF BUREAU OF RECLAMATION'S WILBUR SQUARE RESPONSIBILITIES TO THE CITY OF BOULDER CITY.

(a) Notwithstanding any other provision of law, the Secretary of the Interior is authorized and directed to enter into an agreement with the City of Boulder City, Nevada (hereinafter referred to as the "City"), which will provide that, upon acceptance by the City of title to and financial responsibility for continued maintenance of the parcel of land described in this subsection, all remaining repayment obligations owing to the United States, pursuant to contract numbered 14-06-300-978, dated January 4, 1960, between the United States and the City, as of the date of enactment of this Act, shall be discharged. The land shall be maintained as a public park by the City at its own cost and expense, and shall be conveyed to the City, without consideration, by quit claim deed subject to the conditions, restrictions, and protective covenants as established in the Guidelines of the Advisory Council on Historic Preservation (36 Code of Federal Regulations, part 800). Title shall revert to the United States if the land ceases to be used for park purposes. The agreement shall also stipulate that the City shall provide, without cost to the United States, the water supply required to water the Federal grounds surrounding the Bureau of Reclamation's administration building in the City, for as long as Federal ownership is retained, or through the year 2010, which ever occurs first. The land to be conveyed to the City is described as follows: approximately 3.25 acres, comprising all of block six, according to sheet 1 of 20, block plats of Boulder City, Nevada, drawing numbered X-300-460, dated July 15, 1959, and known as Wilber Square or Government Park.

(b) The Secretary of the Interior is authorized to enter into an agreement for the City to provide gardening services on Bureau of Reclamation land within the City; and in partial payment for this gardening service to transfer to the city any or all lawn and garden equipment owned and used by the Bureau of Reclamation as of the date of enactment of this Act, which is used to maintain the Bureau's grounds within the City.

(c) The Secretary of the Interior is authorized to transfer title to the City to all or any portion of the City water supply system which remains in Federal ownership and located outside of the Hoover Dam security area, and to provide the City with a permanent easement across all Federal lands necessary to properly operate and maintain any facility so transferred. The agreement referred to in this section shall also provide that all obligations to make payments to the United States for operation, maintenance, and replacement for works transferred to the City shall be discharged as of the date or dates of said transfer of title or operations and maintenance responsibility to the City.

AMENDMENTS NOS. 3671 AND 3672

Mr. GARN. Mr. President, I submit two amendments, en bloc, on behalf of Senators HECHT and REID.

The PRESIDING OFFICER. The amendments will be stated.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. GARN], for Messrs. HECHT and REID, proposes amendments en bloc numbered 3671, and 3672.

Mr. GARN. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT No. 3671

Amendment to the Committee Amendment to S. 59 Intended to be offered by Mr. Hecht (for himself and Mr. Reid) Strike Subsection 8(a) of the bill, as amended by the Committee amendment, and insert, in lieu thereof, the following:

"(a) Congress hereby expressly reserves the minimum quantity of water necessary to achieve the primary purposes for which the lands transferred pursuant to section 4(a) are withdrawn. Those purposes are hereby declared to be solely and exclusively the primary purpose for which the National Forests within which the lands are to be included were established. The priority date for such reserved rights shall be the date of transfer pursuant to this Act."

AMENDMENT No. 3672

Strike Subsection 5(c) of the bill, as amended by the Committee amendment, and insert, in lieu thereof, the following:

"(c) If at any time after the date of enactment of this Act, Congress releases all or any portion of the 160 acres of land described in this subsection from the requirements of Sec. 603(c) of the Federal Land Policy and Management Act, the Secretary of Agriculture is authorized to offer for sale all or any portion of the released lands at fair market value. If the Secretary of Agriculture decides to sell such land, he shall give public notice of such sale and shall establish a date within six months of such notice for the receipt of bids on such land. The Secretary of Agriculture shall sell such land to the party submitting the highest bid (at least equal to fair market value) on or before such date. The land is described as follows:

Mount Diablo Meridian Township 20 South, Range 57 East,

Section 28, Southeast ¼ of Southeast ¼; Northwest ¼ of Southeast ¼; Northeast ¼ of Northeast ¼.

Section 34, Southwest ¼ of Northwest ¼"

Mr. REID. Mr. President, I am a cosponsor of S. 59, the National Forests and Public Lands of Nevada Enhancement Act of 1987 and I wish to express my support of this bill as amended on the Senate floor.

As you may remember, several years ago the Reagan administration proposed a massive land interchange proposal involving tens of millions of acres nationwide. The public fought back and demanded that the impacts on local communities and private citizens be considered.

In Nevada, the proposed landswap caused an uproar. Under the original plan, Forest Service lands in Nevada would shrink to less than 1 million acres, while the BLM would manage 4.5 million acres. The Departments of Interior and Agriculture also held public hearings in Nevada two summers ago to gauge the public's sentiments about the landswap. The public hearings brought out near-unanimous opposition to reducing Forest Service lands in the State. Too many serious questions remained; ranging from concerns about agency funding, quality of management, the status of revenues to State and county governments, and possible environmental degradation.

Following public input and further deliberation, the U.S. Forest Service and BLM developed a new interchange proposal affecting 12 Western States and 2 Eastern cities, allowing Nevada to retain all of its existing national forests and converting BLM lands to the Forest Service.

At the urging of the National Forest Task Force of Nevada, the Nevada delegation introduced this legislation to enlarge and enhance our valuable Forest Service lands. Specifically, S. 59 transfers BLM lands to the U.S. Forest Service in the Spring Mountains adjacent to Mount Charleston, lands in the eastern Sierras, lands on the east side of the Ruby Mountains and lands adjacent to the Utah border and Mount Moriah.

The Enhancement Act is also supported by the Governor of Nevada, the Board of Commissioners of Clark County, and the Mt. Charleston Town Advisory Board. The transfer does not affect existing water rights. Any wilderness review that is underway by the BLM is properly protected in the trasnfer and the bill will not alter the existing division of responsibility for mining activity on Forest Service land.

Mr. President, this bill represents almost 3 years of work and refinement. I believe that it is time to pass this legislation and I urge its swift adoption.

Mr. HECHT. Mr. President, I am very pleased that we have finally reached an agreement with the leadership of the House of Representatives that will allow the National Forests and Public Lands of Nevada Enhancement Act to pass both Houses of Congress.

This bill will enlarge the Mount Charleston Unit of the Toiyabe National Forest, so that a larger portion of this year-round recreation area, which is so important to southern Nevada, can enjoy some of the advantages of national forest status. The bill will also make more comprehensible the confusing patchwork of Federal land ownership along Nevada's Sierra Front. Finally, the bill will include some of the Hot Creek Range in central Nevada as part of the Toiyabe National Forest.

Until very recently, this worthwhile bill had been tightly linked to Nevada wilderness legislation, both being repeatedly sent to the Senate by the House on the same vehicle. Recently the House requested a conference on a vehicle whereby both these matters would be on the table.

I have consistently objected to the idea of linking the Enhancement Act to Nevada wilderness in any fashion because they are two separate issues with very different degrees of support from the Nevada congressional delegation. The entire delegation supports the Enhancement Act, and has from the very beginning. Unfortunately, the delegation is widely split on the wilderness issue. It seems reasonable that the measure which enjoys broad support should proceed, while the delegation works out its differences on the other matter.

I object to a conference as requested by the House because of my longstanding belief that these issues ought to be dealt with separately. With this in mind, and with all due respect to the wisdom and experience which non-Nevadans could bring to bear on discussions of the issue of wildeness in Nevada, I think it just makes a lot more sense for Nevadans to work out this wilderness issue among ourselves. I am confident that sooner or later we will work it out among ourselves, and then our friends from other States can assist us in getting that compromise legislation through the Congress intact.

With regard to the Enhancement Act, I want to thank Senators MCCLURE, JOHNSTON, WALLOP, and BUMPERS for their assistance with the Senate bill. I also want to thank Congressman VENTO and his staff for their forbearance on the matter of wilderness, and their assistance to Nevada's congressional delegation in its efforts to create more national forest land in Nevada. Specifically, I would like to thank Gary Ellsworth, Jim Beirne, and Tom Williams of the Senate Energy Committee staff, as well as Jim Bradley and Dale Crane of the House Interior Committee staff.

There are two matters with regard to the substance of the Enhancement Act which I would like to briefly address at this point. It is the policy of the Forest Service to limit individual grazing permittees to a certain number of animals that may use the national forests. This bill will result in the transfer, to the Forest Service, of all or part of several grazing allotments. As a result of these transfers, several grazing permittees will, through no action of their own, likely find themselves in the predicament of exceeding the limit. I do not want any of these permittees to be required to reduce a herd merely because the Congress has chosen to transfer all or part of their allotment to the jurisdiction of the Forest Service. The Forest Service can make exceptions to the limit, and I expect the Forest Service to do so for permittees affected by this bill.

Having said this I want to make it very clear that I also expect the Forest Service to use its authority to properly manage the range resource, including adjusting the number of animals that may graze on the national forest lands created by this bill, when such adjustment is required for sound range management reasons, rather than mechanical compliance with an arbitrary administratively defined upper limit.

The Experimental Stewardship Program for managing range resources is very popular in Nevada, and I strongly encourage the Secretary of Agriculture and the Secretary of the Interior to continue any Experimental Stewardship Programs involving Federal lands transferred to the jurisdiction of their respective agencies by this bill.

After extensive consultation with Senator WIRTH, and at his urging, Senator REID and I have agreed to offer two floor amendments to S. 59. The first amendment makes it clear that some land that is being transferred to the Forest Service may only be sold if that acreage is released from wilderness consideration by Congress.

The second amendment modifies the water rights language in the committee substitute by removing the statutory requirement that Federal reserved water rights associated with the new national forest created by this bill be perfected pursuant to State law. I want to make it very, very clear that although there will not be a statutory requirement that these water rights be perfected pursuant to State law, it is my understanding that this is the current practice of Federal agencies, and it is my expectation that Federal agencies would assert water rights resulting from enactment of this bill in a manner that complies with the statutory and procedural requirements of the laws of the State of Nevada. Similarly, I would expect the Interior Department to promptly notify the State of Nevada of the relinquishment of Federal reserved water rights extinguished by this bill.

Mr. President, this bill means a lot to Nevadans, and I am very pleased to see it rapidly approaching the status of public law.

The **PRESIDING OFFICER.** The question is on agreeing to the amendments.

The amendments (Nos. 3671 and 3672) were agreed to.

The substitute amendment, as amended, was agreed to.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 59

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Forest and Public Lands of Nevada Enhancement Act of 1988."

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the public lands transferred by this Act contain valuable natural resources (such as watershed, range, outdoor recreation and wildlife habitat) which will be enhanced by the professional, multiple-use management of the Forest Service; and that certain national forest lands would be enhanced by the professional multiple-use management of the Bureau of Land Management;

(2) the public which uses these natural resources will be benefited by such adjustments in management;

(3) the public lands transferred by this Act to the jurisdiction of the Forest Service are adjacent to existing national forests and, in many cases, are part of the same watersheds and mountain ranges, and placing the management of these lands under the administration of one agency, the Forest Service, will improve efficiency and be cost effective; that similar efficiency and cost effectiveness will result from transferring jurisdiction of certain National Forest lands to the Bureau of Land Management and;

(4) there is a consensus in Nevada that these lands should be added to the National Forest System and that certain National Forest lands should be transferred to the Bureau of Land Management for management.

(b) PURPOSES.—The purposes of this Act are—

(1) to transfer to the jurisdiction of the Forest Service, United States Department of Agriculture, certain public lands in Nevada currently administered by the Bureau of Land Management, United States Department of the Interior. These public lands are contiguous to the Toiyabe and Inyo National Forests and will become National Forest System lands; and

(2) to transfer to the jurisdiction of the Bureau of Land Management, United States Department of the Interior, certain lands in Nevada currently administered by the Forest Service, United States Department of Agriculture. These lands are contiguous to other public lands and will be managed as such.

SEC. 3. DEFINITIONS.

As used in this Act—

(a) the term "public lands" means the lands administered by the Bureau of Land Management, United States Department of the Interior, as defined in section 103(3) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701(e)); and

(b) the term "National Forest lands" or "National Forest System lands" means the lands administered by the Forest Service, United States Department of Agriculture, as defined in section 11 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a)).

SEC. 4. TRANSFER OF LANDS.

(a) TRANSFER OF PUBLIC LANDS TO THE FOREST SERVICE.—Effective one hundred and eighty days after the enactment of this Act, the approximately six hundred sixty-two thousand acres of public lands designated for inclusion in the National Forest System on three maps entitled "Nevada Interchange-A", dated January 1987, "Nevada Interchange-B", dated February 1988, and "Nevada Interchange-C", dated August 1988, are hereby withdrawn from the public domain, transferred to the jurisdiction of the Secretary of Agriculture, and shall become part of the Toiyabe National Forest or the Inyo National Forest, as appropriate.

(b) BOUNDARIES OF TOIYABE AND INYO NATIONAL FORESTS.—(1) The boundaries of the Toiyabe National Forest and the Inyo National Forest are hereby modified to reflect the transfer of lands under subsection (a).

(2) For the purpose of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9), the boundaries of the Toiyabe National Forest and the Inyo National Forest, as modified by this subsection, shall be treated as if they were the boundaries of those National Forests as of January 1, 1965.

(c) TRANSFER OF FOREST SERVICE LANDS TO THE BUREAU OF LAND MANAGEMENT.—Effective one hundred and eighty days after the enactment of this Act, the approximately twenty-three thousand acres of National Forest lands identified for management by the Bureau of Land Management on a map entitled "Nevada Interchange-A" and dated January 1987, are hereby transferred to the Secretary of the Interior.

(d) MAPS.—The maps referred to in subsection (a) and subsection (c) shall be on file and available for public inspection, in the offices of the Governor of Nevada, the Supervisors of the Toiyabe and Inyo National Forests, the Nevada State Director of the Bureau of Land Management, the Chief of the Forest Service, and the Director of the Bureau of Land Management. The Secretaries of Agriculture and the Interior may make changes to the maps to correct technical errors.

(e) Effective one hundred and eighty days after enactment of this Act, lands transferred by subsection (a) of this section to the jurisdiction of the Secretary of Agriculture shall be subject to the planning requirements of section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, and lands transferred by subsection (c) of this section to the jurisdiction of the Secretary of the Interior shall be subject to the planning requirements of the Federal Land Policy and Management Act of 1976. All transferred lands shall continue to be managed in accordance with plans in effect on the date of enactment of this Act until considered in plans developed under applicable provisions of law. If no plans are in effect on the date of enactment of this Act, the respective transferred lands shall be managed in a manner consistent with other National Forest or public lands, as the case may be, in the vicinity until a plan is developed under applicable provisions of law. Nothing in this Act shall of itself require the amendment or revision of the existing plans governing public lands or National Forest lands affected by the addition of or deletion of lands transferred by this Act.

SEC. 5. WILDERNESS SUITABILITY.

(a) BLM WILDERNESS STUDY AREAS.—Any area or portion thereof designated as a Bureau of Land Management Wilderness Study Area, which is made a part of the National Forest System by this Act, shall be managed by the Secretary of Agriculture in accordance with the provisions of section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782) to protect its wilderness character until Congress designates that area as wilderness or releases it from further wilderness consideration. At the same time that the Secretary of the Interior submits wilderness recommendations to the Congress with regard to public lands in the State of Nevada, he shall also recommend to the Congress whether any wilderness study area or portion thereof transferred to the jurisdiction of the Forest Service by this Act should be included in the National Wilderness Preservation System.

(b) ROADLESS AREAS NOT RECOMMENDED AS WILDERNESS.—Any roadless area or portion thereof which is made a part of the National Forest System by this Act and which has been considered but not recommended for designation as wilderness pursuant to section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) shall be deemed to have been adequately considered for wilderness for the purposes of the initial land management plans hereafter required for such lands by section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604). The Secretary of Agriculture shall not be required to review the wilderness option for such area prior to the next regular revision of such plans for the National Forest in question, but the Secretary of Agriculture shall review the wilderness option for such area when such plans are revised.

(c) If at any time after the date of enactment of this Act, Congress releases all or any portion of the one hundred and sixty acres of land described in this subsection from the requirements of section 603(c) of the Federal Land Policy and Management Act, the Secretary of Agriculture is authorized to offer for sale all or any portion of the released lands at fair market value. If the Secretary of Agriculture decides to sell such land, he shall give public notice of such sale and shall establish a date within six months of such notice for the receipt of bids on such land. The Secretary of Agriculture shall sell land to the party submitting the highest bid (at least equal to fair market value) on or before such date. The land is described as follows:

MOUNT DIABLO MERIDIAN

Township 20 South, Range 57 East,
Section 28
Southeast ¼ of southeast ¼
Northwest ¼ of southeast ¼
Northeast ¼ of northeast ¼
Section 34, southwest ¼ of northwest ¼

(d) NO ADDITION TO THE NATIONAL WILDERNESS PRESERVATION SYSTEM.—Nothing in the Act shall be construed to add lands to the National Wilderness Preservation System.

SEC. 6. MANAGEMENT OF MINERAL RESOURCES.

Nothing in this Act shall be construed to change the laws governing the management of mineral resources.

SEC. 7. ADMINISTRATION OF RECEIPTS.

The acreage added to the Toiyabe and Inyo National Forests in the State of Nevada by this Act shall not be counted in determining the distribution of the Twenty-Five Percent Fund between the States of California and Nevada under the Act of May 23, 1908, as amended: *Provided, however,* That the acreage added to these forests shall be counted in the distribution of the Twenty-Five Percent Fund among the affected counties in Nevada.

SEC. 8. WATER RIGHTS.

(a) Congress hereby expressly reserves the minimum quantity of water necessary to achieve the primary purposes for which the lands transferred pursuant to section 4(a) are withdrawn. Those purposes are hereby declared to be solely and exclusively the primary purpose of which the National Forests within which the lands are to be included were established. The priority date for such reserved rights shall be the date of transfer pursuant to this Act.

(b) Congress hereby expressly relinquishes all Federal reserved water rights created by the initial withdrawal from the public domain in the lands transferred pursuant to section 4(c) effective on the date of such transfer.

(c) Nothing in this Act shall create an implied reservation of water.

(d) Nothing in this Act shall affect the right of the United States or of any person to acquire or dispose of water or water rights pursuant to the substantive and procedural requirements of the laws of the State of Nevada.

SEC. 9. VALID EXISTING RIGHTS.

(a) Nothing in this Act shall affect valid existing rights of any person under any authority of law.

(b) Authorizations to use lands transferred by this Act which were issued prior to the date of transfer shall remain subject to the laws and regulations under which they were issued. Such authorization shall be administered by the Secretary to whom jurisdiction over affected lands has been transferred by this Act: Any renewal or extension of such authorization shall be subject to the laws and regulations pertaining to the agency which has jurisdiction over the land at the time the renewal or extension is requested. The change of administrative jurisdiction resulting from the enactment of this Act shall not in itself constitute a basis for denying or approving the renewal or reissuance of any such authorization.

SEC. 10. ADMINISTRATIVE APPEALS.

With respect to the lands transferred by section 4, any formal administrative appeal, adjudication, or review pending on the date of transfer of jurisdiction under this Act shall be completed by the Secretary, or his designee, of the Department in which it was initiated.

SEC. 11. TRANSFER OF BUREAU OF RECLAMATION'S WILBUR SQUARE RESPONSIBILITIES TO THE CITY OF BOULDER CITY.

(a) Notwithstanding any other provision of law, the Secretary of the Interior is authorized and directed to enter into an agreement with the City of Boulder City, Nevada (hereinafter referred to as the "City"), which will provide that, upon acceptance by the City of title to and financial responsibility for continued maintenance of the parcel of land described in this subsection, all remaining repayment obligations owing to the United States, pursuant to contract numbered 14-06-300-978, dated January 4, 1960, between the United States and the City, as of the date of enactment of this Act, shall be discharged. The land shall be maintained as a public park by the City at its own cost and expense, and shall be conveyed to the City, without consideration, by quit claim deed subject to the conditions, restrictions, and protective covenants as established in the Guidelines of the Advisory Council on Historic Preservation (36 Code of Federal Regulations, part 800). Title shall revert to the United States if the land ceases to be used for park purposes. The agreement shall also stipulate that the City shall provide, without cost to the United States, the water supply required to water the Federal grounds surrounding the Bureau of Reclamation's administration building in the City, for as long as Federal ownership is retained, or through the year 2010, which ever occurs first. The land to be conveyed to the City is described as follows: approximately 3.25 acres, comprising all of block six, according to sheet 1 of 20, block plats of Boulder City, Nevada, drawing numbered X-300-460, dated July 15, 1959, and known as Wilber Square or Government Park.

(b) The Secretary of the Interior is authorized to enter into an agreement for the City to provide gardening services on Bureau of Reclamation land within the City; and in partial payment for this gardening service to transfer to the City any or all lawn and garden equipment owned and used by the Bureau of Reclamation as of the date of enactment of this Act, which is used to maintain the Bureau's grounds within the City.

(c) The Secretary of the Interior is authorized to transfer title to the City to all or any portion of the City water supply system which remains in Federal ownership and located outside of the Hoover Dam security area, and to provide the City with a permanent easement across all Federal lands necessary to properly operate and maintain any facility so transferred. The agreement referred to in this section shall also provide that all obligations to make payments to the United States for operation, maintenance, and replacement for works transferred to the City shall be discharged as of the date or dates of said transfer of title or operations and maintenance responsibility to the City.

The title was amended so as to read: "A bill entitled the 'National Forest And Public Lands Nevada Enhancement Act of 1988'."

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THE CALENDAR

Mr. BYRD. Mr. President, I inquire of my friend, Mr. GARN, as to whether or not the following calendar orders have been cleared on his side: Calendar Orders 371, 951, 984, and 1050.

Mr. GARN. Yes, those have been cleared.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Orders Nos. 371, 951, 984, and 1050.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONVEYANCE OF CERTAIN PUBLIC LANDS

The Senate proceeded to consider the bill (S. 575) to convey public land to the Catholic Diocese of Reno/Las Vegas, NV, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italic.)

S. 575

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS AND PURPOSE.—(a) The Congress finds that—

(1) in 1949 Marie **[**Dawson**]** *Lawton* purchased from Clark County in a tax sale 40 acres of land in Clark County, Nevada;

(2) she paid taxes on this property until her death in 1975, at which time the property was bequeathed to the Roman Catholic Diocese of Reno/Las Vegas to be used to benefit the Home of the Good Shepherd, which works with troubled young women in the Western States;

(3) since 1975 the Diocese has paid taxes on the property; and

(4) it has recently been discovered that Clark County erred in selling the property in 1949 since the land at that time was actually in the public domain.

(b) The purpose of this Act is to convey this property to the Diocese of Reno/Las Vegas so it may be sold to benefit the Home of the Good Sheperd.

[SEC. 2. CONVEYANCE. Notwithstanding any other provision of law, the Secretary of the Interior shall convey to the Catholic Diocese of Reno/Las Vegas, Nevada, the lands described as follows: one 40 acre parcel comprising the northwest one quarter of southwest one quarter of section 13 township 19 south range 61 east Mount Diablo base line and Meridian, subject to the limitation of section 3 of this Act.**]**

SEC. 2. CONVEYANCE.—Subject to valid existing rights and notwithstanding any other provision of law, the Secretary of the Interi-

or shall convey without consideration to the Catholic Diocese of Reno/Las Vegas, Nevada, the lands described as follows: one 40-acre parcel comprising the northwest one-quarter of southwest one-quarter of section 13 township 19 south range 61 east Mount Diablo base line and Meridian, subject to the limitations of section 3 of this act: Provided, That the administrative costs of such conveyance be borne by the Catholic Diocese of Reno/Las Vegas, Nevada.

SEC. 3. RESERVATION OF RIGHT-OF-WAY.—A right-of-way and construction easement shall be reserved to the United States to accommodate flood control facilities of the Clark County Regional Flood Control District. Said right-of-way shall be no more than 75 feet in width and 1,320 feet in length, and shall be located in accordance with the Clark County Flood Control District Master Plan.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AUTHORIZATION FOR CERTAIN WORK ON THE BESSEMER DITCH IN THE VICINITY OF PUEBLO, CO

The Senate proceeded to consider the bill (S. 2748) to extend the authorization in Public Law 96-309 to design and construct a gunite lining in certain reaches of the Bessemer Ditch in the vicinity of Pueblo, CO, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

That the Act of July 9, 1980, (Public Law 96-309, 94 Stat. 940) is hereby amended by adding a section 4 as follows:

"SEC. 4. The Secretary is hereby authorized to undertake the design and construction of approximately eleven thousand feet of gunite lining of the Bessemer Ditch in addition to that lining which was constructed pursuant to section 1 of this Act. There is hereby authorized to be appropriated as the Federal share of costs for the purpose of this section the sum of $1,170,000 (based on August 1988 prices), plus or minus such amounts, if any, as may be justified by reason of changes in construction cost indices applicable to the type of construction involved: *Provided*, That non-Federal interests shall contribute during construction of the additional gunite lining an amount equal to 22 per centum of the total costs of the design and construction of such additional lining. The non-Federal contribution may include cash and in kind contributions and shall not be subject to the conditions of section 21 of this Act. The Secretary is authorized to contract with the Bessemer Irrigation Ditch Company for the design and construction at cost of the additional gunite lining authorized by this section.".

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

URANIUM MILL TAILINGS REMEDIAL ACTION AMENDMENTS ACT

The Senate proceeded to consider the bill (S. 1991) entitled the "Uranium Mill Tailings Remedial Action Amendments Act of 1987," which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italics.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Uranium Mill Tailings Remedial Action Amendments Act of **[**1987"**]** *1988.*

SECTION 1. Section 106 of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7916) ("UMTRCA") is amended by striking paragraph (2) and all that follows and inserting in their place:

"(2) the Secretary of the Interior may transfer permanently to the Secretary to carry out the purposes of this Act, public lands under the jurisdiction of the Bureau of **[**Lands**]** *Land* Management in the vicinity of processing sites in the following counties:

"(A) Apache County in the State of Arizona;

"(B) *Mesa*, Gunnison, Moffat, Montrose, Garfield, and San Miguel Counties in the State of Colorado;

"(C) Boise County in the State of Idaho;

"(D) Billings and Bowman Counties in the State of North Dakota;

"(E) Grand and San Juan Counties in the State of Utah;

"(F) Converse and Fremont Counties in the State of Wyoming; and

"(G) Any other county in the vicinity of a processing site, if no site in the county in which a processing site is located is suitable.

Any permanent transfer of lands under the jurisdiction of the Bureau of Land Management by the Secretary of the Interior to the Secretary shall not take place until the Secretary complies with the requirements of the National Environmental Policy Act (42 U.S.C. 4321 et seq.) with respect to the selection of a site for the permanent disposition and stabilization of residual radioactive materials. Section 204 of the Federal Land Policy and Management Act (43 U.S.C. 1714) shall not apply to this transfer of jurisdiction. Prior to acquisition of land under paragraph (1) or (2) of this subsection in any State, the Secretary shall consult with the Governor of such State. No lands may be acquired under such paragraph (1) or (2) in any State in which there is no (1) processing site designated under this title or (2) active uranium mill operation, unless the Secretary has obtained the consent of the Governor of such State. No lands controlled by any Federal agency may be transferred to the Secretary to carry out the purposes of this Act without the concurrence of the chief administrative officer of such agency.".

SEC. 2. Section 112(a) of UMTRCA (42 U.S.C. 7922(a)) is amended to read as follows:

"(a) The authority of the Secretary to perform remedial action under this title shall terminate on September 30, 1994, except that the authority of the Secretary to perform groundwater restoration activities under this title is without limitation.".

Mr. ARMSTRONG. Mr. President, disposing of uranium mill site tailings has been determined to be important to the health of our citizens and the environment. That's why I cosponsored S. 1991 with my fellow Senator from Colorado. S. 1991 will extend to September 30, 1994 the expenditure of funds under title I of the Uranium Mill Tailings Radiation and Control Act of 1978.

Under the act, the uranium mill tailings remedial action project was established to clear toxic and radioactive wastes from abandoned uranium mill sites. Most of these sites are in the West. Colorado has one third of the uranium mill tailings sites to be cleared, with the remaining sites in Pennsylvania, Utah, New Mexico, Wyoming, Arizona, Oregon, Texas, North Dakota, and Idaho.

Remedial action at these sites will not be completed when the Energy Secretary's statutory authority to expend money for this program expires in 1990. The Department of Energy states removal of the uranium mill tailings is proving more difficult and time consuming than anticipated in 1978. Budget constraints restrict appropriation of the annual sums required to complete remaining work within the program's statutory limits. In addition, States need more time to appropriate funds to meet their 10 percent cost share.

The city of Grand Junction, CO, is a case worth mentioning. Grand Junction is on the western slope of the Rocky Mountains near the grand junction of the beautiful Gunnison and Colorado Rivers. Grand Junction is a well kept, attractive city of about 28,000 energetic, innovative people. For example, they established one of the Nation's first downtown outdoor malls. Built 25 years ago, their outdoor mall is landscaped with trees and flowers and interesting sculpture.

However, a nearby stretch of the Colorado River bank is piled with unsightly hills of uranium mill tailings. Due to the uranium mill tailings remedial action project, these tailings will be removed and permanently disposed. In conjuction with the Department of Energy's work removing the tailings, Grand Junction is developing a showpiece riverfront park, boosting economic growth as well as community spirit.

Mr. President, passage of S. 1991 means environmental concerns with these abandoned mill tailings can be resolved. The responsibilities and liabilities for incomplete removal work and the abandoned tailings themselves are addressed by extension of the uranium mill tailings remedial action project. Finally, my colleagues' favorable votes for S. 1991 protect the health of our citizens and make their communities safer, more attractive places to live.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill entitled the 'Uranium Mill Tailings Remedial Action Amendments Act of 1988'."

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AUTHORIZATION FOR CLOSED BASIN DIVISION, SAN LUIS VALLEY PROJECT, CO

The bill (S. 1549) to increase the authorize ceiling for the Closed Basin Division, San Luis Valley Project, CO, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 1549

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 109 of the Reclamation Project Authorization Act of 1972 (Public Law 92-514, 86 Stat. 964), as amended by section 6(c) of the Act of October 3, 1980 (Public Law 96-375, 94 Stat. 1505), is further amended by striking out "$57,139,000 (October 1979 prices)" and inserting in lieu thereof: "the sum of $100,000,000 (October 1987 prices)".

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THE CALENDAR

Mr. BYRD. Mr. President, I inquire of the distinguished acting Republican leader as to whether or not the following calendar orders have been cleared on his side: Calendar Orders 995, 1000, 1022, 1040, 1093, 1094, 1096, 1097, 1099, 1100, 1101, 1102, 1107, 1110, 1113, 1116, 1117, 1118, and 1138.

Mr. GARN. Those have been cleared.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the foregoing measures.

The PRESIDING OFFICER. Without objection, it is so ordered.

JOHN W. BRICKER FEDERAL BUILDING

The bill (H.R. 4410) to designate the Federal Building at Spring and High Streets in Columbus, Ohio, as the "John W. Bricker Federal Building", was considered, ordered to a third reading, read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

GUS J. SOLOMON UNITED STATES COURTHOUSE

The bill (H.R. 5007) to designate the United States Courthouse at 620 Southwest Main Street, Portland, OR, as the "Gus J. Solomon United States Courthouse", was considered, ordered to a third reading, read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENTS TO EDUCATION OF THE HANDICAPPED ACT AND REHABILITATION ACT OF 1973

The Senate proceeded to consider the bill (H.R. 5334) to make certain technical and conforming amendments to the Education of the Handicapped Act and the Rehabilitation Act of 1973, and for other purposes.

Mr. HARKIN. Mr. President, I rise today as chairman of the Subcommittee on the Handicapped and on behalf of the other members of the subcommittee, Mr. WEICKER, Mr. STAFFORD, Mr. KENNEDY, Mr. HATCH, Mr. SIMON, Mr. COCHRAN, Mr. METZENBAUM, and Mr. ADAMS, to urge the Senate adopt this legislation making technical and conforming amendments to the Education of the Handicapped Act, the Rehabilitation Act, the President's Committee on Employment of People With Disabilities, the American Printing House for the Blind, and the Helen Keller National Center Act.

This bill has been developed after extensive discussions between the two bodies of Congress, with the U.S. Department of Education, and with the groups affected by the legislation. It is bipartisan consensus legislation that has the support of the administration and the groups. The House bill (H.R. 5334) and Senate bill (S. 2821) are identical in all respects.

Although the bill is technical in nature, it is important that we pass this legislation because it will enable us to work with a complete and comprehensive compilation and facilitate the administration of these major programs providing training and educational opportunities for Americans with disabilities.

I incorporate by reference the identical section-by-section analyses of the bill that were included in the CONGRESSIONAL RECORD in the House and in the Senate on introduction.

I would like to thank Bob Silverstein of my staff for his work on this bill. I would also like to thank Sue Ellen Walbridge of Senator STAFFORD's staff for her extraordinary job in making the Rehabilitation Act free from errors. Without her commitment and efforts this bill would not have come to fruition.

The bill was ordered to a third reading, read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

REQUIREMENTS FOR CERTAIN EQUIPMENT ON MANNED UNINSPECTED VESSELS

The bill (H.R. 4557) to amend title 46, United States Code, to require alerting and locating equipment on manned uninspected vessels, to provide for exemption of uninspected vessels from certain requirements of that title, and to increase penalties for violations of certain uninspected vessel requirements, was considered, ordered to a third reading, read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RELIEF OF DYNAMIC TECHNOLOGY INTERNATIONAL, INC., LEW MALNAK ASSOCIATES, STAR DESIGN, INC., RIVERSIDE PRECISION MACHINES, AND CERTAIN OTHER INDIVIDUALS

The resolution (S. Res. 73) to refer S. 329 entitled "A bill for the relief of Dynamic Technology International, Inc., Lew Malnak Associated, Star Design, Inc., Riverside Precision Machines, and certain other individuals" to the Chief Judge of the U.S. Claims Court for a report thereon, was considered, and agreed to, as follows:

Resolved, That the bill (S. 329) entitled "A bill for the relief of Dynamic Technology International, Inc., Lew Malnak Associates, Star Design, Inc., Riverside Precision Machines, and certain other individuals" now pending in the Senate, together with all the accompanying papers, is referred to the Chief Judge of the United States Claims Court. The Chief Judge shall proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28, United States Code, and report thereon to the Senate, at the earliest practicable date, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States or a gratuity and the amount, if any, legally or equitably due to the claimants from the United States.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

REFERRING THE BILL FOR THE RELIEF OF FREDERICK PAUL

The Senate proceeded to consider the resolution (S. Res. 187) referring the bill for the relief of Frederick Paul to the chief judge of the U.S. Claims Court.

Mr. EVANS. Mr. President, we have before us a resolution to refer the case of Frederick Paul of Seattle, WA, to the U.S. Court of Claims. I am pleased that the Judiciary Committee, after closely reviewing the facts, recognized the merits of the claim by reporting the measure to the full Senate with a favorable recommendation. I ask that my Senate colleagues offer their support as well.

Fred Paul first presented his case to Congress in 1984, following several years of efforts to secure fair compensation for his dedicated and pioneering work on behalf of the North Slope Eskimos and other Alaska Natives. The congressional reference process affords Mr. Paul the opportunity to have his case properly considered.

Mr. Paul represented the North Slope Eskimos and other Alaska Native tribes from 1966 until enactment of the Alaska Native Claims Settlement Act [ANCSA] in 1971. He labored under a contract approved by the Department of Interior, as prescribed by law for any attorney representing native Americans for claims against the United States. His clients were completely isolated from Western civilization; their average education level was the third grade; they had no funds with which to petition the U.S. Government.

His efforts eventually culminated with the passage of the ANCSA. One of its provisions, however, abrogated his contract with the Alaska Natives and left Mr. Paul with an inadequate payment for over 7,000 hours of tireless work—a payment which was not realized until several years after enactment of the legislation.

Mr. President, Frederick Paul sought redress in Federal court. Yet, due to unique technicalities, he was denied access. His claim had not been judged based on its merits. Senate Resolution 187 would accomplish this by referring S. 966 to the U.S. Court of Claims for proper adjudication. Simply, it would allow the court to determine just and fair compensation, if any, due to Mr. Paul.

Fred Paul, a native American, is an impressive individual. He has practiced in the legal profession in Washington State since 1945, and before that, in Alaska. He has been active in numerous community organizations. Most notably, he is the cofounder of the Seattle Indian Center and served as its director for over a decade. He participated in the Boy Scouts of America for 21 years. In addition to his extraordinary social contributions, Mr. Paul was awarded the King County Bar Association's "Distinguished Lawyer of the Year" in 1985 and his nomination for the "Courageous Advocacy Award" is currently being considered by the American Trial Lawyers.

I am cosponsoring Senate Resolution 187 with Senator ADAMS and with the Alaskan Senators MURKOWSKI and STEVENS. His efforts are also supported by an overwhelming number of officials, lawyers, journalists, and other citizens from the State of Washington. All recognize his personal integrity, his devoted service to the Alaska Natives, and the substance of his plea for just and equitable fees.

Mr. President, I am proud to serve in a body which provides an access to justice for individuals who otherwise are faced with closed doors. The purpose of the congressional reference process is an important one. While it is used in rare circumstances, it furnishes American citizens with an avenue to seek redress when no other remedy exists. Our system of justice is one of which we should be proud. However, there are times when a case may fortuitously escape the fair hand. As such, congressional reference must act as a safety net. Frederick Paul depends on this avenue. The issue of equity in his case has yet to be addressed and it warrants adjudication in a court of law.

I ask for its favorable consideration.

The resolution was agreed to, as follows:

Resolved, That the bill S. 966, for the relief of Frederick Paul of Seattle, Washington, now pending in the Senate is hereby referred to the United States Claims Court, and the Chief Judge of the United States Claims Court shall proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28, United States Code; said court shall file its report within eighteen months from the date of the filing of Mr. Paul's petition in said court giving such findings of fact and conclusions of laws therein as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States, and the amount, if any, legally or equitably due from the United States to the claim.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FOR THE RELIEF OF JOHN M. GILL

The bill (H.R. 525) for the relief of John M. Gill, was considered, ordered to a third reading, read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RELIEF OF ALLEN H. PLATNICK

The bill (H.R. 945) for the relief of Allen H. Platnick, was considered, ordered to a third reading, read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RELIEF OF THOMAS NELSON FLANAGAN

The Senate proceeded to consider the bill (H.R. 1133) for the relief of Thomas Nelson Flanagan, which had been reported from the Committee on the Judiciary, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italic.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. GRANT OF JURISDICTION TO UNITED STATES CLAIMS COURT TO CONSIDER CLAIM AGAINST THE UNITED STATES; LIMITATION.

Notwithstanding section 2501 of title 28, United States Code, or laches, the United States Claims Court shall have jurisdiction to hear, determine, and render judgment on any claim filed by, or on behalf of, Thomas Nelson Flanagan ([redacted]*), or any of his heirs,* against the United States for lost **[**wages, lost benefits, compensatory and consequential damages, and mental suffering**]** *government wages and lost government benefits* **[**he**]** *Thomas Nelson Flanagan* sustained due to his wrongful discharge from the United States

Naval Reserve on January 5, 1943, if an action on such claim is instituted in such court in accordance with otherwise applicable law during the one-year period beginning on the date of the enactment of the Act.

SEC. 2. CONDUCT OF PROCEEDINGS.

Proceedings for the determination of the claim described in section 1 of this Act, determination of damages, and review of any judgment of such claim shall be conducted in the same manner as if the United States Claims Court had jurisdiction under section 1491(a) of title 28, United States Code.

SEC. 3. NO INFERENCE OF LIABILITY OF UNITED STATES.

This Act shall not be construed as an inference of liability on the part of the United States.

The amendments were agreed to.

The amendments were ordered to be engrossed, the bill was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RELIEF OF JOYCE A. McFARLAND

The bill (H.R. 1275) for the relief of Joyce A. McFarland, was considered, ordered to a third reading, read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RELIEF OF TRAVIS D. JACKSON

The bill (H.R. 1385) for the relief of Travis D. Jackson, was considered, ordered to a third reading, read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RELIEF OF CERTAIN INDIVIDUALS

The Senate proceeded to consider the bill (H.R. 1388) for the relief of David Butler, Aldo Cirone, Richard Denisi, Warren Fallon, Charles Hotton, Harold Johnson, Jean Lavoie, Vincent Maloney, Austin Mortensen, Kurt Olofsson, and John Jenks, which had been reported from the Committee on the Judiciary, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italic.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PAYMENT BY SECRETARY.

The Secretary of the Treasury shall pay the sum of **[**$37,855.64,**]** *$101,622.00,* out of any funds in the Treasury not otherwise appropriated, to the United States Property and Fiscal Officer for the State of Massachusetts to be distributed by such officer in accordance with section 2. Such payment shall be in full settlement of all claims against the United States arising from the unauthorized placement of the persons named in paragraphs (1) through (10) of section 2(a) under the Federal Civil Service retirement system upon the reemployment of such persons with the Massachusetts National Guard.

SEC. 2. PAYMENT BY UNITED STATES PROPERTY AND FISCAL OFFICER.

(a) PAYMENT.—Except as provided in subsection (b), the United States Property and Fiscal Officer for the State of Massachusetts, upon receiving the payment authorized by section 1, shall pay—

(1) **[**$4,055.95**]** *$5,459.09* to David Butler;

(2) **[**$4,457.47**]** *$14,531.48* to Aldo Cirone;

(3) **[**$1,126.87**]** *$4,143.07* to Richard Denisi;

(4) **[**$8,333.25**]** *$17,447.82* to Warren Fallon;

(5) **[**$1,848.11**]** *$7,273.20* to the estate of Charles Hotton;

(6) **[**$4,724.54**]** *$13,280.68* to Harold Johnson;

(7) **[**$2,096.58**]** *$8,516.86* to Jean Lavoie;

(8) **[**$3,435.99**]** *$8,677.43* to Vincent Maloney;

(9) **[**$1,911.38**]** *$6,627.43* to Austin Mortensen;

(10) **[**$2,971.77**]** *$5,812.55* to Kurt Olofsson; and

(11) **[**$2,923.73**]** *$9,852.39* to John Jenks.

(b) DEDUCTION OF INTEREST OBLIGATION.—If any person named in paragraph (1) through (10) of subsection (a) has an interest obligation to the Massachusetts State Board of Retirement on the date of enactment of this Act because of the unauthorized placement of such person under the Federal Civil Service retirement system, the United States Property and Fiscal Officer for the State of Massachusetts shall pay such obligation from the amount authorized for payment under subsection (a) before making any payment to, or on behalf of, such person under subsection (a).

SEC. 3. LIMITATION ON ATTORNEY'S FEES.

No amount in excess of 10 percent of any payment authorized by section 2(a) shall be paid to, or received by, any agent or attorney in consideration for services rendered in connection with such payment. Any violation of this section shall be a misdemeanor and any person convicted thereof shall be fined not more than $1,000.

SEC. 4. RETURN OF OVERPAYMENT.

The payments made pursuant to the provisions of section 2 of this Act reflect payments authorized with interest calculated through December 1988. If payments are made to the individuals listed in such section prior to January 1, 1989, such payments shall be recomputed to such earlier date and the difference between such amount and the payment authorized by this Act shall be returned to the Treasury of the United States.

The amendments were agreed to.

The amendments were ordered to be engrossed, the bill was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RELIEF OF FLEURETTE SEIDMAN

The Senate proceeded to consider the bill (H.R. 2802) for the relief of Fleurette Seidman, which had been reported from the Committee on the Judiciary, with an amendment:

On page 1, line 7, strike "$8,043.57", and insert "$5,500.00".

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SATISFACTION OF CLAIM.

The Secretary of the Treasury shall pay, out of any money in the Treasury not otherwise appropriated, to Fleurette Seidman ([redacted]) the sum of $5,500.00. Such sum represents the losses and expenses incurred by Fleurette Seidman arising out of her—

(1) voluntary termination of Federal employment in good faith reliance on erroneous information, received from a retirement counselor of the United States Customs Service, that she was then eligible for an annuity under section 8336(a) of title 5, United States Code, and

(2) subsequent return to her former position of employment.

SEC. 2. LIMITATION ON ATTORNEY'S AND AGENT'S FEES.

Not more than 10 percent of the sum appropriated by section 1 shall be paid to or received by any agent or attorney for services rendered in connection with the claim described in such section. Any person who violates this section shall be fined not more than $1,000.

The amendment was agreed to.

The amendment was ordered to be engrossed, the bill was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RELIEF OF BIBIANNE CYR

The bill (H.R. 3347) for the relief of Bibianne Cyr, was considered, ordered to a third reading, read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

REMEDIES AGAINST UNITED STATES FOR CERTAIN NEGLECT OR OMISSIONS BY U.S. EMPLOYEES IN THE SCOPE OF THEIR EMPLOYMENT

The Senate proceeded to consider the bill (H.R. 4612) to amend title 28, United States Code, to provide for an exclusive remedy against the United States for suits based upon certain negligent or wrongful acts or omissions of U.S. employees committed within the scope of their employment, and for other purposes, which has been reported from the Committee on the Judiciary with an amendment:

On page 9, after line 3, insert the following:

SEC. 9. TENNESSEE VALLEY AUTHORITY.

(a) EXCLUSIVENESS OF REMEDY.—

(1) An action against the Tennessee Valley Authority for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Tennessee Valley Authority while acting within the scope of this office or employment is exclusive of any other civil action or proceeding by reason of the same subject matter against the employee or his estate whose act or omission gave rise to the claim. Any other civil action or proceeding arising out of or relating to the same subject matter against the employee or his estate is precluded without regard to when the act or omission occurred.

(2) Paragraph (1) does not extend or apply to a cognizable action against an employee of the Tennessee Valley Authority for money damages for a violation of the Constitution of the United States.

(b) REPRESENTATION AND REMOVAL.—

(1) Upon certification by the Tennessee Valley Authority that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding heretofore or hereafter commenced upon such claim in a United States district court shall be deemed an action against the Tennessee Valley Authority pursuant to 16 U.S.C. 831C(b) and the Tennessee Valley Authority shall be substituted as the party defendant.

(2) Upon certification by the Tennessee Valley Authority that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Tennessee Valley Authority to the district court of the United States for the district and division embracing the place wherein it is pending. Such action shall be deemed an action brought against Tennessee Valley Authority under the provisions of this title and all references thereto, and the Tennessee Valley Authority shall be substituted as the party defendant. This certification of the Tennessee Valley Authority shall conclusively establish scope of office or employment for purposes of removal.

(3) In the event that the Tennessee Valley Authority has refused to certify scope of office or employment under this section, the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of this office or employment. Upon such certification by the court, such action shall be deemed an action brought against the Tennessee Valley Authority, and the Tennessee Valley Authority shall be substituted as the party defendant. A copy of the petition shall be served upon the Tennessee Valley Authority in accordance with the Federal Rules of Civil Procedure. In the event the petition is filed in a civil acition or proceeding pending in a State court, the action or proceeding may be removed without bond by the Tennessee Valley Authority to the district court of the United States for the district and division embracing the place in which it is pending. If, in considering the petition, the district court determines that the employee was not acting within the scope of his office or employment, the action or proceeding shall be remanded to the State court.

(4) Upon certification, any actions subject to paragraph (1), (2), or (3) shall proceed in the same manner as any action against the Tennessee Valley Authority and shall be subject to the limitations and exceptions applicable to those actions.

(c) RETENTION OF DEFENSES.—

Section 2674 of title 28, United States Code, is amended by adding at the end thereof the following new paragraph:

"With respect to any claim to which this section applies, the Tennessee Valley Authority shall be entitled to assert any defense which otherwise would have been available to the employee based upon judicial or legislative immunity, which otherwise would have been available to the employee of the Tennessee Valley Authority whose act or omission gave rise to the claim as well as any other defenses to which the Tennessee Valley Authority is entitled under this chapter."

So as to make the bill read:

H.R. 4612

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Employees Liability Reform and Tort Compensation Act of 1988".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds and declares the following:

(1) For more than 40 years the Federal Tort Claims Act has been the legal mechanism for compensating persons injured by negligent or wrongful acts of Federal employees committed within the scope of their employment.

(2) The United States, through the Federal Tort Claims Act, is responsible to injured persons for the common law torts of its employees in the same manner in which the common law historically has recognized the responsibility of an employer for torts committed by its employees within the scope of their employment.

(3) Because Federal employees for many years have been protected from personal common law tort liability by a broad based immunity, the Federal Tort Claims Act has served as the sole means for compensating persons injured by the tortious conduct of Federal employees.

(4) Recent judicial decisions, and particularly the decision of the United States Supreme Court in Westfall v. Erwin, have seriously eroded the common law tort immunity previously available to Federal employees.

(5) This erosion of immunity of Federal employees from common law tort liability has created an immediate crisis involving the prospect of personal liability and the threat of protracted personal tort litigation for the entire Federal workforce.

(6) The prospect of such liability will seriously undermine the morale and well being of Federal employees, impede the ability of agencies to carry out their missions, and diminish the vitality of the Federal Tort Claims Act as the proper remedy for Federal employee torts.

(7) In its opinion in Westfall v. Erwin, the Supreme Court indicated that the Congress is in the best position to determine the extent to which Federal employees should be personally liable for common law torts, and that legislative consideration of this matter would be useful.

(b) PURPOSE.—It is the purpose of this Act to protect Federal employees from personal liability for common law torts committed within the scope of their employment, while providing persons injured by the common law torts of Federal employees with an appropriate remedy against the United States.

SEC. 3. JUDICIAL AND LEGISLATIVE BRANCH EMPLOYEES.

Section 2671 of title 28, United States Code, is amended in the first full paragraph by inserting after "executive departments," the following: "the judicial and legislative branches,".

SEC. 4. RETENTION OF DEFENSES.

Section 2674 of title 28, United States Code, is amended by adding at the end of the section the following new paragraph:

"With respect to any claim under this chapter, the United States shall be entitled to assert any defense based upon judicial or legislative immunity which otherwise would have been available to the employee of the United States whose act or omission gave rise to the claim, as well as any other defenses to which the United States is entitled.".

SEC. 5. EXCLUSIVENESS OF REMEDY.

Section 2679(b) of title 28, United States Code, is amended to read as follows:

"(b)(1) The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim or against the estate of such employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee's estate is precluded without regard to when the act or omission occurred.

"(2) Paragraph (1) does not extend or apply to a civil action against an employee of the Government—

"(A) which is brought for a violation of the Constitution of the United States, or

"(B) which is brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized.".

SEC. 6. REPRESENTATION AND REMOVAL.

Section 2679(d) of title 28, United States Code, is amended to read as follows:

"(d)(1) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant.

"(2) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending. Such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. This certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal.

"(3) In the event that the Attorney General has refused to certify scope of office or employment under this section, the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment. Upon such certification by the court, such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. A copy of the petition shall be served upon the United States in accordance with the provisions of Rule 4(d)(4) of the Federal Rules of Civil Procedure. In the event the petition is filed in a civil action or proceeding pending in a State court, the action or proceeding may be removed without bond by the Attorney General to the district court of the United States for the district and division embracing the place in which it is pending. If, in considering the petition, the district court determines that the employee was not acting within the scope of his office or employment, the action or proceeding shall be remanded to the State court.

"(4) Upon certification, any action or proceeding subject to paragraph (1), (2), or (3) shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of this title and shall be subject to the limitations and exceptions applicable to those actions.

"(5) Whenever an action or proceeding in which the United States is substituted as the party defendant under this subsection is dismissed for failure first to present a claim pursuant to section 2675(a) of this title, such a claim shall be deemed to be timely presented under section 2401(b) of this title if—

"(A) the claim would have been timely had it been filed on the date the underlying civil action was commenced, and

"(B) the claim is presented to the appropriate Federal agency within 60 days after dismissal of the civil action.".

SEC. 7. SEVERABILITY.

If any provision of this Act or the amendments made by this Act or the application of the provision to any person or circumstance is held invalid, the remainder of this Act and such amendments and the application of the provision to any other person or circumstance shall not be affected by that invalidation.

SEC. 8. EFFECTIVE DATE.

(a) General Rule.—This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) Applicability to Proceedings.—The amendments made by this Act shall apply to all claims, civil actions, and proceedings pending on, or filed on or after, the date of the enactment of this Act.

(c) Pending State Proceedings.—With respect to any civil action or proceeding pending in a State court to which the amendments made by this Act apply, and as to which the period for removal under section 2679(d) of title 28, United States Code (as amended by section 6 of this Act), has expired, the Attorney General shall have 60 days after the date of the enactment of this Act during which to seek removal under such section 2679(d).

(d) Claims Accruing Before Enactment.—With respect to any civil action or proceeding to which the amendments made by this Act apply in which the claim accrued before the date of the enactment of this Act, the period during which the claim shall be deemed to be timely presented under section 2679(d)(5) of title 28, United States Code (as amended by section 6 of this Act) shall be that period within which the claim could have been timely filed under applicable State law, but in no event shall such period exceed two years from the date of the enactment of this Act.

SEC. 9 TENNESSEE VALLEY AUTHORITY.

(a) Exclusiveness of Remedy.—

(1) An action against the Tennessee Valley Authority for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Tennessee Valley Authority while acting within the scope of the office or employment is exclusive of any other civil action or proceeding by reason of the same subject matter against the employee or his estate whose act or omission gave rise to the claim. Any other civil action or proceeding arising out of or relating to the same subject matter against the employee or his estate is precluded without regard to which the act or omission occurred.

(2) Paragraph (1) does not extend or apply to a cognizable action against an employee of the Tennessee Valley Authority for money damages for a violation of the Constitution of the United States.

(b) Representation and Removal.—

(1) Upon certification by the Tennessee Valley Authority that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding heretofore or hereafter commenced upon such claim in a United States district court shall be deemed an action against the Tennessee Valley Authority pursuant to 16 U.S.C. 831C(b) and the Tennessee Valley Authority shall be substitued as the party defendant.

(2) Upon certification by the Tennessee Valley Authority that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Tennessee Valley Authority to the district court of the United States for the district and division embracing the place wherein it is pending. Such action shall be deemed an action brought against the Tennessee Valley Authority under the provisions of this title and all references thereto, and the Tennessee Valley Authority shall be substituted as the party defendant. This certification of the Tennessee Valley Authority shall conclusively establish scope of office or employment for purposes of removal.

(3) In the event that the Tennessee Valley Authority has refused to certify scope of office or employment under this section, the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment. Upon such certification by the court, such action shall be deemed an action brought against the Tennessee Valley Authority, and the Tennessee Valley Authority shall be substituted as the party defendant. A copy of the petition shall be served upon the Tennessee Valley Authority in accordance with the Federal Rules of Civil Procedure. In the event the petition is filed in a civil action or proceeding pending in a State court, the action or proceeding may be removed without bond by the Tennessee Valley Authority to the district court of the United States for the district and division embracing the place in which it is pending. If, in considering the petition, the district court determines that the employee was not acting within the scope of his office or employment, the action or proceeding shall be remanded to the State court.

(4) Upon certification, any actions subject to paragraph (1), (2), or (3) shall proceed in the same manner as any action against the Tennessee Valley Authority and shall be subject to the limitations and exceptions applicable to those actions.

(c) Retention of Defenses.—

Section 2674 of title 28, United States Code, is amended by adding at the end thereof the following new paragraph:

"With respect to any claim to which this section applies, the Tennessee Valley Authority shall be entitled to assert any defense which otherwise would have been available to the employee based upon judicial or legislative immunity, which otherwise would have been available to the employee of the Tennessee Valley Authority whose act or omission gave rise to the claim as well as any other defenses to which the Tennessee Valley Authority is entitled under this chapter."

Mr. THURMOND. Mr. President, I rise in support of H.R. 4612 as amended, a companion bill to S. 2500, the "Federal Employees Liability and Tort Compensation Act of 1988." This bill, introduced in the Senate by Senator Grassley will establish the Federal Tort Claims Act as the exclusive remedy for those injured by the negligence of a Federal employee acting within the scope of employment.

Under this bill, if a Federal employee is acting within the scope of his or her employment, the United States will be substituted as the sole defendant in cases alleging that a Federal employee committed a common law tort. This bill protects the Federal employee and provides an appropriate remedy for a victim injured due to the negligence of a Federal employee. H.R. 4612 is both supported by the Department of Justice and public employee organizations.

I support H.R. 4612 as amended.

Mr. HEFLIN. Mr. President, today we have an opportunity to discuss legislation to bring relief to an important segment of the American people, the civil servant.

In January of this year, the Supreme Court handed down the decision of Westfall versus Ervin. As a result of this decision, Federal employees were stripped of their longstanding immunity from State common law tort actions. Federal workers can now be sued in their individual capacity even when they are acting within "the scope of their employment." Before Westfall, these workers were able to go about their jobs reassured that as long as they did their jobs, they would be free from liability. This fact is no longer true.

The Westfall decision has pulled the rug out from under Federal workers, and has created a workplace filled with fear. Coast Guard workers, FDA and USDA inspectors, and many Federal law enforcement officials can no longer perform their duties with the confidence that they are free from potential law suits. Many Americans, and particularly Members of this body, appreciate the long, difficult, and often thankless jobs that many Federal employees' perform. Further, without this legislation, Federal employees' life savings are at risk. The fruits of an entire career of distinguished service can be wiped away in a single blow. With this legislation we are returning confidence to the Federal workplace.

This bill would substitute the United States as the sole defendant in cases where a Federal employee, acting within the scope of his or her duty, is being sued for a common law tort. This bill would merely reaffirm that the Federal Tort Claims Act is the proper remedy when suing the Government or a Government employee.

While in committee I offered an amendment, which was adopted, to include Tennessee Valley Authority workers within the scope of the protections provided by this bill. As I am sure my colleagues are aware, the TVA holds a unique position within our Federal Government's structure. My amendment merely provides that the same protections enjoyed by Federal employees should be enjoyed by TVA employees.

Federal employees deserve our admiration, respect, and confidence. Many major Federal employee groups have strongly endorsed and pushed for passage of this legislation. The Department of Justice has called upon this body to take responsible action and pass this legislation. I am proud to be a cosponsor and strong supporter of this bill. I urge my colleagues not to delay but to act swiftly and achieve passage of this legislation.

Mr. GRASSLEY. Mr. President, as the sponsor of S. 2500, the companion to H.R. 4612, and on behalf of my cosponsors, Mr. HEFLIN, Mr. TRIBLE, Mr. HUMPHREY, Mr. STEVENS, Ms. MIKULSKI, Mr. PRESSLER, and Mr. SIMON, I am pleased to rise in support of H.R. 4612.

Mr. President, earlier this year the Supreme Court dramatically changed the law governing the personal tort liability of Federal employees.

By its January 13, 1988, decision in Westfall versus Ervin, the Court held that Federal employees may be sued in their personal capacities for common law torts unless the actions giving rise to the suit were both within the scope of their employment and involved an exercise of governmental discretion.

The Court thus severely restricted the scope of traditional common law immunity from tort suit, available to Federal employees.

As a result of Westfall, we are now faced with an immediate crisis of personal liability exposure for the entire Federal workforce—more than 3 million persons in all 3 branches of Government, including more than 16,000 hard-working citizens in my own State of Iowa. Virtually every one of these employees—and particularly rank-and-file civil servants—now face the possibility of being required to defend a lawsuit in which his or her personal fortune is a stake—even when the actions complained of were clearly official duties.

Mr. President, I am not just "crying wolf." The dangerous effects of Westfall are already very tangible. For example, the Justice Department reports that on April 7, 1988, a $25,000 judgment was entered against a Capitol Police officer and a $10,000 judgment was entered against a Capitol Police sergeant for a claim arising out of an incident with a gas station owner.

In another case, on July 29, 1988, a $12,500 judgment was entered against a postal worker on a claim arising out of an office dispute.

In yet another case, on March 5, 1988, a $2 million judgment was entered against six employees of the Tennessee Valley Authority in a wrongful death case.

There are dozens of other cases.

The Department of the Air Force reports that they have over 50 active, open lawsuits where Air Force personnel have been sued in Federal court in their individual capacities, and are potentially liable to pay adverse judgments out of their own pockets. The individuals being sued range from the Secretary of Defense to the most senior commander on a base, to secretaries and junior enlisted members. The plaintiff in almost every case are complaining about an act done by a Federal employee as part of his or her official duties: a poor performance rating is alleged as "defamation;" failure to be awarded a government contract becomes "discrimination;" frustration at nonpromotion yields "emotional distress;" detention by security police becomes "false imprisonment," and the types of claims go on and on.

This has created a new climate of uncertainty. Federal employees now have no way of knowing whether the most routine of their official duties will expose them to a State law tort suit jeopardizing their personal assets.

The prospect of years of personal liability litigation against the Federal work force not only has a devastating impact on individual civil servants' pocketbooks, credit ratings, and morale, but will severely inhibit the ability of many agencies to carry out their mission.

Ironically, the Westfall decision is of little help to most injured plaintiffs, since it is rare that a civil servant will have the resources to pay a substantial tort judgment. Rather, it's more likely that Westfall-type suits will be employed simply to harass and intimidate Federal employees who are only trying to do their jobs.

I suspect that the Supreme Court realized that its decision dramatically changed existing law and would result in substantial personal liability exposure for Federal employees. Indeed, Justice Marshall's opinion in Westfall expressly invited Congress to consider the issue and fashion a more appropriate legislative solution.

Mr. Chairman, the bill that we approve today is an evenhanded and fair response to the Court's invitation. This bill amends the Federal Tort Claims Act to make a lawsuit against the United States under the FTCA the exclusive remedy for anyone injured by governmental negligence.

As my colleagues know, the FTCA has generally worked well over the past four decades in providing fair and expeditious compensation to persons injured by the common law torts of Federal employees. This bill, by covering Westfall-type cases under the FTCA, assures that victims of common law torts of Federal employees will be fairly compensated. At the same time, it provides a needed measure of employee protection from personal liability.

Mr. President, I would like to emphasize that this bill does not have any effect on the so-called Bivens cases or constitutional tort claims. Although this too is an area of concern to me—and I have introduced corrective legislation in the past—the bill that we pass today has no impact on these cases, which can continue to be brought against individual Government officials.

Mr. President, this legislation is supported by both the administration and the public employee unions, and has earned bipartisan support. The other body has overwhelmingly approved it, and the President is anxious to sign it. I thank my colleagues for their support, particularly the chairman and ranking member of the Judiciary Committee. I am sure the Federal work force will thank them as well.

The amendment was agreed to.

The amendment was ordered to be engrossed, the bill was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ADMINISTRATION OF THE GENERAL ACCOUNTING OFFICE

The Senate proceeded to consider the bill (H.R. 5052) to amend title 31 of the United States Code to provide for a transfer of control of the General Accounting Office Building and to improve the administration of the General Accounting Office.

Mr. GLENN. Mr. President, I commend to my colleagues passage of H.R. 5052, a bill to amend title 31 of the United States Code to provide for a transfer of control to the General Accounting Office Building and to improve the administration of the General Accounting Office.

H.R. 5052 was introduced on July 14, 1988, and jointly referred to the Committees on Government Operations and Public Works and Transportation. The Government Operations Committee held one hearing on the bill and received testimony from the General Accounting Office [GAO] and General Services Administration [GSA]. H.R. 5052 was approved by the Government Operations Committee on August 9, and the Committee on Public Works and Transportation concurred in the result. The bill was called up by the House of Representatives on October 3 under suspension of the rules and passed 400 to 0.

The bill provides for transferring custody and control of GAO's headquarters building in Washington, DC from GSA to GAO. In addition, the bill grants authority and provides for procedures to assist the Comptroller General of the United States in carrying out his responsibilities for management of this building.

In support of this legislation, GAO asserts that it is the only agency of the legislative branch whose headquarters space is under the jurisdiction of GSA and that its status as an arm of the legislation branch, charged with giving Congress its objective views with respect to programs and operations of the executive branch, would be enhanced if it had responsibility for meeting its own space needs. Moreover, GAO believes that it can better provide for the care and maintenance of the building and management of its space. This attitude extends to taking over responsibility for removing the serious asbestos problem within the building. While GAO would like to budget for this work itself and would like to do so on an expedited basis, GSA would have to fit the work into its own asbestos removal program.

I believe these facts favor the transfer of custody and control of the GAO headquarters building from GSA to GAO. Because GAO is a legislative branch agency, this bill does not set a precedent for the transfer of custody and control of any executive branch agency's building from GSA to any such agency.

I urge my colleagues to vote in favor of H.R. 5052.

The bill was ordered to a third reading, read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ADDITIONAL INFORMATION ABOUT ASBESTOS

The Senate proceeded to consider the bill (H.R. 5442) to provide the Environmental Protection Agency and the public with additional information about asbestos products.

Mr. BURDICK. Mr. President, I am pleased to support the Asbestos Information Act, H.R. 5442. It is my hope that enactment of this legislation will help reduce the time and costs associated with asbestos litigation in this country.

The bill requires manufacturers and processors of asbestos and asbestos-containing materials to report to EPA within 90 days of enactment with information about the types and classes of products, years of manufacture and other identifying characteristics of the asbestos or asbestos-containing materials they produced. EPA is required to catalogue and publish this information within 180 days of enactment.

A provision of section 2 of the bill merits classification. This section sets forth the reporting requirements for manufacturers and processors of asbestos or asbestos-containing materials. Manufacturers and processors are to provide information including the years of manufacture and types of products they have produced and "to the extent available, other identifying characteristics reasonably necessary to identify or distinguish the asbestos or asbestos-containing material." This does not mean that all information about the products must be submitted, simply the information reasonably necessary to identify or distinguish the asbestos-containing material.

With respect to asbestos-containing floor tile for example, the most feasible means to identify the manufacturer is generally by examination of the texture, design, and pattern of the tile. Therefore, it is our intent that manufacturers of asbestos-containing floor tiles would be in compliance with section 2 by submitting the designs and textures of the tiles to EPA.

Mr. President, I believe this is worthwhile legislation and urge my colleagues to support its enactment.

Mr. BAUCUS. Mr. President, it is widely recognized that asbestos-containing materials are present in thousands of buildings. Building owners face the difficult task of determining whether this situation presents a danger sufficient to require some form of abatement, and if so, whether to attempt to seek compensation from the manufacturers of these materials. The Asbestos Information Act will assist individuals and courts to identify these materials.

We have just begun to see the beginning of litigation relating to asbestos in buildings. Plaintiffs often file shotgun complaints. Each suit may involve as many as 50 defendants even though the products of only a few of these defendants may actually be present in any given building. State law requires that plaintiffs eventually identify the defendant whose products are present, but identification is likely to occur after the cost of these cases to both the plaintiff and the defendant has become enormous. The sheer number of parties involved in these lawsuits may lead to the result where the transaction costs exceed the potential damages to the building owner.

The Asbestos Information Act has, as its primary goal, the reduction of transaction costs in the asbestos-in-building litigation without placing additional burdens on building owners and without affecting the rights of the parties in the litigation. A Rand Corp. study of asbestos personal injury litigation concluded that over 60 percent of the total expenditures went to lawyers rather than claimants. This bill seeks to avoid a repeat of this experience in the asbestos-in-building litigation.

The legislation provides that the manufacturers of asbestos products shall submit to EPA for publication information identifying the characteristics of their products. This bill is designed to bring the critical issue of product identification to an early resolution. Once this information is made available, a court can then decide how to use the data in a specific case. Currently, defendants are reluctant to settle a case in which their product may not be present. Similarly, plaintiffs are reluctant to overlook a possible supplier of asbestos material to their building and judges are reluctant to press either side to make concessions thereby prolonging the case. The reluctance of all parties to push the case forward is often due to the unavailability of critical information to claimants, defendants and in turn the courts.

The Asbestos Information Act will make information readily, publicly, and inexpensively available with the expectation that plaintiffs will use this information to focus on those who manufactured products of the types found in their buildings. The courts and all parties to the asbestos-in-building litigation should find this information useful for product identification.

At the same time, the bill is crafted in a manner to ensure that the Environmental Protection Agency's role is one of a depository for information and not an analyzer of asbestos-in-building materials.

The legislation preserves the rights of State courts to handle asbestos-in-building cases as a State sees fit. At the same time, a valuable tool is provided which has the potential to significantly reduce transactional costs of these types of suits.

Simply stated, the legislation requires each manufacturer of any building material containing asbestos prior to the date of enactment to submit that information to the Environmental Protection Agency. EPA is then required to assemble and publish that data 180 days after the date of enactment.

The bill was ordered to a third reading, read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATIONAL TROPICAL BOTANICAL GARDEN

The bill (H.R. 4480) to change the name of the Pacific Tropical Botanical Garden, a federally chartered organization, to the National Tropical Botanical Garden, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CONSENT OF CONGRESS TO THE LAKE WYLIE MARINE COMMISSION COMPACT

The Senate proceeded to consider the joint resolution (H.J. Res. 644) granting the consent of Congress to the compact entered into between the State of North Carolina and the State of South Carolina establishing the Lake Wylie Marine Commission.

Mr. THURMOND. Mr. President, I rise today to express my support for House Joint Resolution 644, a joint resolution to give the consent of Congress to an interstate compact regulating Lake Wylie. I was a cosponsor of the Senate companion Senate Joint Resolution 367, which was introduced by Senator SANFORD.

Lake Wylie lies upon the border between North Carolina and South Carolina. This legislation will give Federal consent to the creation of an interstate commission, composed of officials from South Carolina and North Carolina, which will regulate Lake Wylie. This legislation results from the fact that governance of Lake Wylie is difficult since each State is responsible for only its own area of the lake. Police and wildlife officers are currently prohibited from crossing State lines to patrol the entire body of water. In addition, Lake Wylie is quickly becoming a densely populated area.

In an effort to remedy these problems, the South Carolina and North Carolina Legislatures recently adopted virtually identical laws authorizing the creation of the Lake Wylie Marine Commission. The commission plans to focus on four major areas: law enforcement, water safety, education, and environmental protection.

In order to be effective, this interstate compact requires congressional approval. This legislation faces no opposition and its passage is very important to the many people who live near the lake or use it for recreation. State and local officials are anxious that we pass this bill so that the commission may begin work and begin solving the problems it faces.

For these reasons, I urge my colleagues to vote in favor of this joint resolution.

The joint resolution was ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MEASURES INDEFINITELY POSTPONED

Mr. BYRD. Mr. President, I ask unanimous consent that the following calendar orders be indefinitely postponed: 1072, 1073, 1076, and 1077.

The PRESIDING OFFICER. Without objection, it is so ordered.

PURCHASE OF LAND IN RIVERSIDE, CA

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 970, H.R. 4050, a bill for the relief of certain persons in Riverside County, CA.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4050) for the relief of certain persons in Riverside County, CA, who purchased land in good faith reliance on an existing land survey.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3673

Mr. CRANSTON. Mr. President, I send an amendment to the desk and on behalf of myself and Mr. WILSON ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from California [Mr. CRANSTON] for himself and Mr. WILSON proposes an amendment numbered 3673.

Mr. CRANSTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1, line 3, after the word "That" insert: "Section 1."

At the end of the bill insert the following: "Section 2. Notwithstanding any other provision of law, the Secretary of the Interior shall, within six months of the enactment of this Act, complete the state indemnity application CA 16096 for land in Inyo County, California as submitted to the State Director, Bureau of Land Management, California State Office, Sacramento, California and shall convey the lands described therein to the State of California."

Mr. CRANSTON. Mr. President, this amendment simply directs the Secretary of the Interior to convey to the California State Lands Commission a 20-acre parcel of land in Inyo County, CA, as part of the State's indemnity selection. The Bureau of Land Management has recommended that this parcel be classified for disposal through State indemnity selection. However, because the land has been withdrawn and is subject to the injunction in National Wildlife Federation versus Burford, the BLM has not been able to convey the property. The amendment provides the necessary authority to complete the transaction. The National Wildlife Federation has indicated it has no objection to this amendment.

It has been cleared on both sides.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment of the Senator from California.

The amendment (No. 3673) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So, the bill (H.R. 4050), as amended, was passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MEASURE PLACED ON CALENDAR—H.R. 5321

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be discharged from further consideration of H.R. 5321, the motor vehicle commercial zone exemption bill and that the bill be placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

HANFORD REACH STUDY ACT

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1041, H.R. 3614, a bill to authorize a study of the Hanford Reach of the Columbia River.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3614) to authorize a study of the Hanford Reach of the Columbia River, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3674

Mr. GARN. Mr. President, I submit a substitute amendment on behalf of Senator EVANS and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. GARN, for Mr. EVANS, proposes an amendment numbered 3634.

Mr. GARN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert the following in lieu thereof:

SECTION 1. COMPREHENSIVE RIVER CONSERVATION STUDY.

The Secretary of the Interior ("Secretary"), in consultation with the Secretary of Energy, shall prepare a comprehensive river conservation study for that segment of the Columbia River extending from one mile below Priest Rapids Dam downstream approximately 51 miles to the NcNary pool north of Richland, Washington, as generally depicted on the map entitled "Proposed Columbia River Wild and Scenic River Boundary" dated May 17, 1988, hereinafter referred to as the "study area" which is on file with the United States Department of the Interior. The study shall identify and evaluate the outstanding features of the study area and its immediate environment, including fish and wildlife, geologic, scenic, recreational, natural, historical, and cultural values, and examine alternatives for their preservation. In examining alternative means for the preservation of such values, the Secretary shall, among other things, consider the potential addition of all or a portion of the study area to the national wild and scenic rivers system, and recommend a preferred alternative for the protection and preservation of the values identified. The Secretary shall cooperate and consult with the State and political subdivisions thereof, local, and tribal governments, and other interested entities in preparation of such a study and provide for public comment. The study shall be completed and presented to Congress within 3 years after the date of enactment of this Act.

SEC. 2. INTERIM PROTECTION.

(a) For a period of eight years after the enactment of this Act, within the study area identified in Section 1 of this Act:

(1) No federal agency may construct any dam, channel or navigation project.

(2) All other new federal and non-federal projects and activities shall, to the greatest extent practicable:

(A) be planned, designed, located and constructed to minimize direct and adverse effects on the values for which the river is under study, and

(B) utilize existing structures and facilities including, but not limited to, pipes, pipelines, transmission towers, water conduits, powerhouses, and reserviors to accomplish the purposes of the project or activity.

(3) Federal and non-federal entities planning new projects or activities in the study area shall consult and coordinate with the Secretary to minimize and provide mitigation for any direct and adverse effects on the values for which the river is under study.

(4) Upon receiving notice from the entity planning the new project or activity, the Secretary shall, no later than ninety days after receiving such notice and consulting with the entity:

(A) review the proposed project or activity and make a determination as to whether there will be a direct and adverse effect on the values for which the river segment is under study; and

(B) review proposals to mitigate such effects and make such recommendations for mitigation as he deems necessary.

(5) If the Secretary determines that there will be a direct and adverse effect that has not been adequately mitigated, he shall notify the sponsoring entity and the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate of his determination and any proposed recommendations.

(b) During the eight year interim protection period, provided by this section, all existing projects that affect the study area shall be operated and maintained to minimize any direct and adverse effects on the values for which the river is under study, taking into account any existing and relevant license, permit, or agreement affecting the project.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated not more than $150,000 for the purpose of conducting the study pursuant to section 1 of this Act.

Mr. EVANS. Mr. President, I am pleased to be joined by my colleague from Washington State, Senator ADAMS, in offering a substitute amendment to H.R. 3614, legislation which authorizes the Secretary of the Interior to conduct a comprehensive river conservation study of the Hanford Reach segment of the Columbia River. This amendment is the result of a remarkable and cooperative negotiating effort by State and local conservation groups, State and Federal agencies and other involved parties. I would like to express in particular my deep appreciation for the efforts of Congressman MORRISON and his staff, Senator ADAMS and his staff, the staff of the Senate Energy and Natural Resources Committee, the Nature Conservancy, the Columbia River Coalition, and the American rivers group. I believe the amendment that we are introducing today clarifies and strengthens the study process and the interim protection period for this segment of the river. I am pleased that this amendment enjoys the support of the various interested and involved parties. The Hanford Reach segment of the Columbia River is truly deserving of the legislative attention it is receiving today.

The Hanford Reach is the last significant stretch of the Columbia River that maintains the characteristics of the predevelopment mid-Columbia River ecosystem. The Reach extends for approximately 55 miles between the McNary pool north of Richland to just south of the Priest Rapids dam. It is bordered to the west largely by the Department of Energy's Hanford Reservation. Much of the land to the east is protected by the Washington Department of Wildlife and the U.S. Fish and Wildlife Service.

The Reach provides the most diverse natural habitat on the Columbia River. Similar habitat has been completely eliminated on the remainder of the Columbia River. Species found along the Reach include migratory waterfowl, salmon, steelhead, sturgeon, coyote, deer, and a variety of plant species, some of which are proposed for classification as endangered, threatened or sensitive by Federal and State agencies. One of its most significant resources are its natural spawning beds that support one of the few wild stocks of upriver bright fall chinook.

The Hanford Reach is also vastly important for its archeological resources. Because access to the river has been restricted as a result of the presence of the Department of Energy's Hanford Reservation, these sites have been remarkably free of vandalism. The Hanford Reach sites are also rare in that the majority of other sites along the river have been inundated by hydroelectric development. Research by the Mid-Columbia Archaeological Society has revealed evidence of at least 115 sites along the river. There has been estimates of at least 4.5 sites per river mile of shoreline. Many of these sites have religious and spiritual significance for native Americans. In fact, this area was the birthplace of the Native American Dreamer Religion. For the Yakima and Wanapum Indians, it is the last area in the entire Columbia basin where their religious places and burial sites have not been flooded or destroyed.

The desire to protect the Hanford Reach to date has been farreaching. In September 1970, the Department of the Interior and the Department of Agriculture identified the Hanford Reach as 1 of 47 rivers nationwide that were deserving of further evaluation under section 5(d) of the Wild and Scenic Rivers Act. In 1982, the Department of the Interior placed the Hanford Reach on the nationwide rivers inventory list.

The State of Washington has also expressed interest in protecting the Hanford Reach. The Washington Parks and Recreation Commission has initiated consideration of the Hanford Reach for State scenic river status. The Washington State Department of Natural Resources-Natural Heritage Program and the Department of Wildlife have recommended that the Reach be placed on the Washington Register of Natural Areas. In 1973, the State ecological commission passed a resolution endorsing "the development and implementation of an integrated, comprehensive resource management program by the various responsible agencies for the future use, protection and enhancement of this area, so that its basic environmental uniqueness will be preserved."

This legislation would authorize the Department of the Interior to conduct a study of the Hanford Reach, to determine appropriate protection and preservation measures. The legislation requires the Secretary of the Interior to involve appropriate entities in the study process—such as, the Yakima Indian Nation, the Washington Public Power Supply system, the Bonneville Power Administraton, Department of Energy, State and local governments and other interested parties. I would expect that a strong effort be made to study the potential eligibility of the Hanford Reach for inclusion in the National Wild and Scenic Rivers System. In my view this river segment is worthy of such designation as it has values and qualities that must be sustained for future generations. I would hope that at the end of the 3-year study period Congress will act expeditiously on protection measures for the Hanford Reach—and I will be most pleased if that level of protection provides inclusion of the Hanford Reach into the National Wild and Scenic Rivers System.

The amendment also provides that there be an interim protection period of 8 years. While I expect Congress will wish to act quickly on the study returned to Congress, this protection period allows ample time for Congress to consider permanent designation. The interim protection period will prohibit certain activities on the area under study. For instance, no Federal agency will be allowed to construct a dam, channel or navigation project. All other projects will be subject to the review of the Secretary of the Interior. I feel strongly that should any new project be necessary in the study area that an assessment be made as to whether existing structures and facilities would be more efficient and compatible with protecting the environment. The legislation we are considering today would require such an assessment. As stated in section 2 of this amendment, such projects should also be planned, designed, located, and constructed to minimize any adverse effects on the values for which the river is under study. It is not the intent of this section to require a reexamination of existing and relevant permits, licenses, and agreements that condition the current operation of facilities and projects operated by such entities as the Washington Public Power Supply System [WPPSS], the Department of Energy, and the Bonneville Power Administration. The inclusion of this section is to minimize adverse effects resulting from normal operations during the interim protection period. The language also recognizes that other "licenses, permits, or agreements," such as those administered by the Energy Facility Site Evaluation Council [EFSEC] in Washington State set certain terms and conditions on the operation of those facilities, and will continue to do so over the next 8 years. For example, the NPDES permit for the operating WNP-2 powerplant is subject to renewal in September 1990, by EFSEC. The intent of this language is neither to modify in any way the terms and conditions of existing permits, licenses, or agreements. Based on the hearing record and my understanding of the purpose of the scenic and recreational river status, I am not aware today of any real problem or inconsistency between such permits and agreements and the purposes and provisions of the Wild and Scenic Rivers Act. Any concerns regarding potential inconsistencies between such permits, licenses, and agreements and the purposes and requirements of this act can be addressed by the Secretary and the relevant parties during the initial 3-year study period and overall 8-year interim protection period.

This amendment also requires that the Secretary of the Interior be actively involved in decisions regarding appropriate mitigation for any new projects causing a direct and adverse effect to the values for which the river is under study. Values to be identified and evaluated in the study area and its immediate environment include: fish and wildlife, geologic, scenic, recreational, natural, historical, and cultural values. I believe this to be most appropriate since the Secretary of the Interior in his role of protecting our rivers under the National Wild and Scenic Rivers System has developed an expertise in fish, wildlife, and general mitigation matters, and is best suited to decide appropriate measures to protect the values we seek to preserve. I would expect the Secretary of the Interior during discussions of appropriate mitigation measures would take into account mitigation measures required under current law, such as those required under the Pacific Northwest Electric Power Planning and Conservation Act, and those required by the Electric Consumers Protection Act [ECPA] of 1986 for FERC license renewal.

There could well be projects in this study area which would be beneficial to the river segment. I know of two such projects which I expect will add to the value of the Hanford Reach area. For instance, I understand that the Grant County PUD No. 2 has a fish hatchery and spawning facility which may require further construction or modification in the future. Another proposed project is for a boat launch near the Vernita Bridge. The fish hatchery and spawning facility should certainly enhance the fish resources currently in the area, and the boat launch will correct a serious problem which exists along side of the river, where people are launching their boats and erosion and siltation are occurring. While these projects will have to comply with the requirement that these local efforts be coordinated through the Secretary of the Interior. I would anticipate that the Secretary would find such projects beneficial to the area.

This legislation is a significant step toward the permanent protection of this remarkable and significant stretch of the Columbia River. I hope that my colleagues in the Senate will join Senator Adams and myself in passing this important environmental measure for Washington State.

Mr. ADAMS. Mr. President, I rise today to express my appreciation to my Senate colleagues for considering the passage of the Hanford Reach bill. In particular, I would like to thank Senator Evans for his leadership and dedicated commitment to preserving this unique stretch of the Columbia River.

The Hanford Reach is a relatively untouched section of the Columbia River. For the past 45 years, the area's natural state has been preserved because of its location within the boundaries of the Hanford Nuclear Reservation. This situation presents us with an extraordinary opportunity to study irreplaceable aspects of our ecological and historical heritage. The bill we have before us today allows the time and provides the resources to take advantage of this fortunate event.

The natural features of this stretch of river are unequaled in any other part of the country. This section of the river is the last free-flowing stretch of the Columbia in the United States. It also hosts the last undisturbed spawning ground for fall chinook salmon on the river. In addition, the expanse of land surrounding the river is home to large numbers of migrating water fowl and shelters 22 rare plant and animal species. In fact, the natural features of the Reach are so significant that it has been recognized by the U.S. Fish and Wildlife Service as one of Washington State's two most important fish and wildlife habitats.

Preservation of the Hanford Reach is also extremely important because of its valuable cultural and educational contributions. The area is rich in archeological information. The boundaries of the Reach contain a number of native American villages, religious locations and burial grounds. Because the land has been undisturbed for many years, these locations provide us with exceptional opportunities to study past civilizations.

The legislation considered today provides for the preparation of a comprehensive study designating alternative means of preserving this unique stretch of the Columbia River. This study will be conducted by the Secretary of the Interior, who will solicit the viewpoints of all interested parties, including the Yakima Indian Nation, the Department of Energy, the Washington Public Power Supply System, the Bonneville Power Administration and regional governments. The Secretary will also review any new projects proposed for the Reach during the study period to determine if they will have a direct or adverse impact on the area. I fully expect that the Secretary's performance of these responsibilities will be consistent with the Federal trust responsibility toward Indian tribes.

The Hanford Reach bill is a significant step toward permanent protection and I encourage my colleagues to support this important bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3674) was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GARN. I move to lay that motion on the table.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 3614), as amended, was passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NONMAILABLE AGRICULTURAL COMMODITIES

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be discharged from further consideration of H.R. 5199, a bill to make nonmailable any agricultural commodity that the Secretary of Agriculture deems to be dangerous, and that the Senate proceed to its immediate consideration, the bill be considered, proceed to third reading, passed and the motion to reconsider laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 5199) was passed.

ESTABLISHMENT OF MEMORIAL TO WOMEN OF THE UNITED STATES WHO SERVED IN VIETNAM

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2042.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2042) entitled "An Act to authorize the Vietnam Women's Memorial Project, Inc., to construct a statue at the Vietnam Veterans Memorial in honor and recognition of the women of the United States who served in the Vietnam conflict", do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. ESTABLISHMENT OF MEMORIAL.

(a) In General.—The Vietnam Women's Memorial Project, Inc., is authorized to establish a memorial on Federal land in the District of Columbia or its environs to honor women who served in the Armed Forces of the United States in the Republic of Vietnam during the Vietnam era.

(b) Compliance With Standards for Commemorative Works.—The establishment of the memorial shall be in accordance with the Act entitled "An Act to provide standards for placement of commemorative works on certain Federal lands in the District of Columbia and its environs, and for other purposes", approved November 14, 1986 (40 U.S.C. 1001 et seq.).

SEC. 2. PAYMENT OF EXPENSES.

The United States shall not pay any expense of the establishment of the memorial.

SEC. 3. SENSE OF THE CONGRESS.

It is the sense of the Congress, with respect to location of the memorial in accordance with the Act referred to in section 1(b), that it would be most fitting and appropriate to place the memorial within the 2.2 acre site of the Vietnam Veterans Memorial in the District of Columbia.

Amend the title so as to read: "An Act to authorize the Vietnam Women's Memorial Project, Inc., to establish a memorial on Federal land in the District of Columbia or its environs to honor women of the Armed Forces of the United States who served in the Republic of Vietnam during the Vietnam era.".

AMENDMENT NO. 3675

(Purpose: To authorize the Vietnam Women's Memorial Project, Inc., to construct at the Vietnam Veterans Memorial a commemoration to women of the United States who served in Vietnam during the Vietnam conflict)

Mr. BYRD. Mr. President, I move that the Senate concur in the House amendments with a further amendment, which I send to the desk on behalf of Mr. Cranston and Mr. Durenberger.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. Byrd), for Mr. Cranston, (for himself and Mr. Durenberger), proposes an amendment numbered 3675.

Mr. BYRD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SEC. 1. AUTHORIZATION.

(a) In General.—The Vietnam Women's Memorial Project, Inc., is authorized to construct on public grounds within the 2.2 acre Vietnam Veterans Memorial site in the District of Columbia a specific commemoration of women of the United States who served in the Republic of Vietnam during the Vietnam conflict. Such commemoration shall be deemed to be a modification to the existing memorial.

(b) SITING.—The Secretary of the Interior, in consultation with the Vietnam Women's Memorial Project, Inc., and the Veterans' Memorial Fund, Inc., is authorized and directed to select, with the approval of the Commission of Fine Arts and the National Capital Planning Commission, a suitable site for the commemoration authorized in subsection (a) within the 2.2 acre Vietnam Veterans Memorial site in the District of Columbia.

(c) COMPLIANCE WITH STANDARDS FOR COMMEMORATIVE WORKS.—The construction and maintenance of the commemoration authorized in subsection (a) shall be in accordance with the Act entitled "An Act to provide standards for placement of commemorative works on certain Federal lands in the District of Columbia and its environs, and for other purposes", approved November 14, 1986 (40 U.S.C. 1001 et seq.), except that provisions of that Act with respect to siting shall be superceded by subsection (b).

SEC. 2. PAYMENT OF EXPENSES.

The United States shall not pay any expense of the establishment and maintenance of the commemoration authorized in section 1(a).

SEC. 3. SENSE OF THE CONGRESS.

It is the sense of the Congress that it is most fitting and appropriate that a specific commemoration of women of the United States who served in the Republic of Vietnam during the Vietnam conflict be constructed at the site of the Vietnam Veterans Memorial to help complete the process of recognition and healing that was undertaken with the establishment of the Memorial. Further, it is the sense of the Congress that after the addition of the commemoration authorized in section 1(a) the Vietnam Veterans Memorial will be complete and that no further additions or alterations to the site shall be authorized or undertaken.

THE VIETNAM WOMEN'S MEMORIAL PROJECT

Mr. CRANSTON. Mr. President, I rise today to urge my colleagues to support the amendment to the House amendment to S. 2042 that I am proposing along with Senator DURENBERGER. This amendment represents a compromise between the Senate bill which we coauthored and the House amendment text that would, we believe, meet the needs and concerns of all parties involved. It would authorize the Vietnam Women's Memorial Project, Inc. [VWMP], to construct at the Vietnam Veterans Memorial in Washington, DC, a specific commemoration to women of the United States who served in Vietnam during the Veitnam conflict, and would deem the commemoration a modification to the eixsting memorial.

BACKGROUND

Mr. President, when our bill, S. 2042, was before the Senate on June 14, 1988, with the cosponsorship of 73 of my colleagues, it passed with an overwhelming vote of 96 to 1.

On September 8, 1988, nearly 3 months later, the House Subcommittee on Libraries and Memorials, chaired by my friend and colleague, Congresswoman OAKAR, favorably reported an amendment to the Senate-passed bill. The full House Administration Committee favorably reported the amendment on September 22, and the House passed it by voice vote on September 23, 1988.

Mr. President, it is clear that Congress shares the goal of the VWMP to recognize the sacrifices and contributions made by women who served in the Vietnam conflict and to educate the public about the role of these women. I believe that the placement of a statue at the Vietnam Veterans Memorial would accelerate the healing process for the women who served their country during this very difficult time.

Although the goal of the Senate and the House of Representatives is the same, the approach has been different. Both approaches recognize that it is important that the VWMP meet and follow the criteria expressed in the Commemorative Works Act. (Public Law 99-652), but the similarities end there. The Senate bill specifically authorizes the addition to the Vietnam Veterans Memorial, as a modification of the existing memorial, of a statue commemorating women from the United States who served in the Vietnam conflict, whereas the House amendment authorizes the VWMP to construct a new memorial to commemorate women Vietnam veterans, without providing where that memorial should be placed.

PROBLEMS WITH THE HOUSE AMENDMENT

I strongly believe that passage of the House amendment to authorize a new memorial would not move us closer to a commemoration at the Vietnam Veterans Memorial for women who served in Vietnam. Indeed, there is a very good chance that the House approach would actually result in a major setback for this effort. Alternatively, the House approach could result in gutting the intent and essence of the Commemorative Works Act [CWA] if the project were to move forward as we intend.

The CWA sets up a procedure whereby memorials to be located in Washington, DC, have to meet certain criteria. The Vietnam Veterans Memorial is located in what is known as "Area I." Before a memorial can qualify to be put in area I, however, it must first meet the criteria to be authorized to be put in "Area II"—which generally consists of the District of Columbia and its environs. To meet the criteria for area II, the memorial must meet section 6(b)(1) of the CWA which requires military commemorative works to commemorate either a war or similar major military conflict or a branch of the Armed Forces. Section 6(b)(1) specifically states: "No commemorative work commemorating a lesser conflict or a unit of an Armed Force shall be permitted in Area II." It is difficult to see how a new memorial to the women who served in the U.S. Armed Forces in Vietnam fits this description.

Moreover, section 7(b)(2) of the CWA provides that a new memorial may not "encroach" on an existing memorial. This requirement on its face would seem to prohibit the authorizing authorities under the CWA—the Commission of Fine Arts, the National Capital Planning Commission, and the Secretary of the Interior—from agreeing to the placement at the existing Vietnam Veterans Memorial of the memorial to women who served in the Vietnam conflict.

That is why we believe authorizing a new commemoration, rather than authorizing a modification, may very well not result in the placement at the existing Vietnam Veterans Memorial of a commemoration of women who served in Vietnam.

Even if Congress closed its collective eyes, and deemed that the memorial to the women who served in Vietnam meets the criteria for a memorial in area II and authorized a new memorial in "Area II," which I do not believe should be done, the goal is still not reached by the House amendment. Next, the VWMP would need the approval of the Secretary of the Interior, upon his or her finding that the women's memorial was of preeminent historical and lasting significance to the Nation, in order for the memorial to be placed in area I, which includes The Mall, followed within 150 days by another act of Congress—that is, a second law—to approve locating the memorial in area I.

In contrast, both the Senate bill and the amendment we are proposing, recognize that the addition of a memorial to women at the existing Vietnam Veterans Memorial is just that—a modification to an existing memorial, which, by its own terms, the CWA does not address.

SENATE COMPROMISE PROPOSAL

Our compromise amendment would follow the House approach in two basic ways. First, in recognition of the well-reasoned process provided for in the CWA, the Senate bill required the VWMP to follow the basic CWA process. Recognizing the previous summary, negative disposition of the VWMP by the Commission of Fine Arts, as discussed more fully in my statement on June 14, 1988 (RECORD page S 7751), the Senate bill specified a specific timetable to govern the tripartite approval process. The House amendment did not contain this timetable provision, and neither does the amendment we are now proposing.

Second, the Senate bill specified that the memorial be a statue—which I firmly believe is the appropriate type of memorial in the context of harmonizing with the existing memorial, but to which the House has objected. This specification of a statue has also been dropped from the Senate amendment. However, as I will note later, I have serious reservations about the royalty arrangements that have been negotiated between the VWMP and the sculptor of the nurse statue they propose.

The amendment Senator Durenberger and I are proposing would, however, differ from the House approach in that it would specify the site for the commemoration to be the Vietnam Veterans Memorial as a modification to the existing memorial and would thus remove both the potential conflict with the CWA and the need for another law to be enacted to place the commemoration in area I at the existing memorial.

Our amendment would also restore important language concerning the role of the Vietnam Veterans Memorial Fund [VVMF] which was removed by the House. As my colleagues know, the VVMF's tremendous efforts in the face of great obstacles brought us the Vietnam Veterans Memorial. Today, the VVMF continues in a stewardship role—watching over the memorial, participating in ceremonies at the memorial on Memorial Day and on Labor Day, and adding to and correcting names on the wall. Additionally, the terms of the memorandum of conveyance provide that "* * * the VVMF shall have the opportunity to discuss any such changes with representatives of the Department of the Interior." Our amendment preserves the VVMF's rights by providing that the Secretary of the Interior will consult with both the VWMP and the VVMF, along with requiring, under the CWA terms incorporated in our amendment, the approval of the Commission of Fine Arts and the National Capital Planning Commission, in authorizing and selecting a suitable commemoration and a site for it within the Vietnam Veterans Memorial land.

Our amendment would further express the sense of the Congress that establishment of the VWMP is a fitting and appropriate way to help complete the process of recognition and healing for the men and women who served in the Vietnam conflict and the sense of the Congress that with the addition of this commemoration the Vietnam Veterans Memorial would be complete and that no further additions or alterations to the site should be authorized or undertaken. This provision should help alleviate concerns expressed that the VWMP's statue would become the first in a long string of additions to the Vietnam Veterans Memorial. I believe that the addition of this commemoration at the Vietnam Veterans Memorial would fulfill the original intent of the authorizing legislation enacted to honor the dedication and sacrifices of the women as well as the men who served on behalf of this Nation during the Vietnam conflict.

THE VWMP AND THE STATUE

Mr. President, since I began working with the VWMP, I have been impressed by the project's dedication to ensuring, through careful planning, that the addition of a specific commemoration would complement the existing memorial. The bronze statue which has been proposed by the VWMP is similar in appearance and demeanor to the statue of the three combat soldiers already in place at the memorial. The proposed placement of the statue at the end of the wall opposite to the end where the existing statue is placed, would, as Secretary Hodel has pointed out, provide a sense of completion and balance to the memorial, allowing visitors to walk in a full circle as they visit the different elements at the memorial site.

However, I do not believe that the statue already created should be selected for this purpose unless the royalty agreement with the artist is altered. I spoke to my concern about commemoration of memorials in my statement upon Senate passage, specifically the 50-percent royalty arrangement that exists for the "Three Fighting Men" statue at the Vietnam Veterans Memorial, which has resulted in its artist receiving over $85,000 in royalties; and a similar arrangement with respect to the "Lone Sailor" statue which is part of the Navy memorial, which has resulted in its artist receiving over $100,000 in royalties. In the case of the VWMP, the royalty agreement provides that the artist retain 90 percent of the proceeds from sales of replicas, which has resulted in its artist receiving over $45,000. This is in addition to the total of $135,000 which the artist would be paid under the agreement for the final statue and a total of $9,000 for three 3-foot replicas. I believe our memorials should not be a source of individual profit and encourage the VWMP to seek a change in their agreement.

CONCLUSION

Mr. President, it is time to honor the women of the United States who served so valiantly in Vietnam by authorizing the addition to the Vietnam Veterans Memorial of a commemoration to those women. As I noted earlier, the amendment that we offer today is a compromise which addresses the concerns raised by our colleagues in the other body while accomplishing our goal and still preserving the integrity of the CWA. The VWMP sent me a letter expressing their wholehearted support for this compromise, which I will ask to be printed in the Record.

It is my sincere hope that the other body will review this legislation with an open mind and will recognize the merits of this compromise in achieving the goal for which the VWMP and proponents of this effort have worked so very long and hard.

Certainly, Mr. President, House agreement to this amendment will not end the process. But it will move it forward in a major way and it will not require, as would the House amendment, that a second law be enacted in order to achieve our goal and that major damage be done along the way to the integrity of the CWA.

The VWMP and other proponents of the project will still have to work together to convince the Commission of Fine Arts and the National Capital Planning Commission of the desirability and merit of this project. I recognize that that may not be easy. But it is my hope that with the strong support of Congres, a renewed coalescing of support at the grassroots level, the existing support of every major veterans' organization, and the endorsement of the Secretary of the Interior, agreement can be reached with the two Commissions on the site and design for this most fitting and appropriate addition in much the same way as the original proponents of the Vietnam Veterans Memorial had to overcome and take into account opposition over the fundamental design of the Memorial.

Mr. President, in order to achieve the goal we all seek, I again urge the Senate to agree to the amendments we are proposing to the House amendment to S. 2042.

Mr. President, I ask unanimous consent that the October 4 letter to me from the VWMP be printed in the Record.

There being no objection, the letter was ordered to be printed in the Record, as follows:

The Vietnam Women's
Memorial Project, Inc.,
October 4, 1988.

Senator Alan Cranston,
U.S. Senate, Washington, DC.

Dear Senator Cranston: Yesterday I was informed that the language of the amended S2042 is not sufficient to ensure that the Project will be able to proceed with out goal to place a statue of a woman at the Vietnam Veterans Memorial in Washington. Because of the rather lengthy process which included hearings both in the Senate and House, the frequent meetings and stringent stipulations levied on us by the House Subcommittee on Libraries and Memorials which included meetings with Mr. J. Carter Brown, it was always our understanding that the present legislation was the only authorization we would need from Congress.

At no time in the process, did we realize that his legislation was not sufficient to meet the requirements of 40 USCS, Sec. 1006. We believed that the many eloquent expressions of support made by you and the other members of the Senate and House during the passage of S-2042, clearly indicates that it is the intent of Congress that the site of our Memorial should be at the Vietnam Veterans Memorial.

We have also learned of the Senate's concern that the amended S2042 violates the intent of the Commemorative Works Act. As the time of adjournment for this session of Congress draws near, the Vietnam Women's Memorial Project is once again faced with the possibility that despite the overwhelming bipartisan support for our goal, we may not have a piece of enabling legislation.

At this very critical time, we understand that you intend to offer compromise language which is acceptable to the Senate. The Board of Directors of the Project has always believed that our status would be an addition to the existing Memorial. In view of the present situation, we both support and applaud the compromise you are proposing.

You have been a most trusted and valued adviser to us since the inception of this Project. Once again, we must relay on your wisdom. We hope that all members of Congress, who truly believe that women who served in Vietnam should be honored, will joint you in this effort. I and the other members of the Board of Directors stand ready to use our resources to assist you.

We appreciate your continued interest and support.

Respectfully,

LINDA SPOONSTER-SCHWARTZ,
Major, USAF, MC (Ret.) and
Director, Legislative Affairs.

Mr. DURENBERGER. Mr. President, I rise today as the author, with the Senator from California, Senator CRANSTON, of S. 2042, a bill authorizing the Vietnam Women's Memorial Project, Inc. [VWMP] to construct a memorial to women who served in the Vietnam war.

I first introduced legislation on November 10, 1987, after the summary decision of the Commission of Fine Arts to reject a proposed statue. I strongly believed that our Nation owes a unique debt of gratitude to the more than 10,000 women who served in Vietnam. On February 4, 1988, I joined with Senator CRANSTON, chairman of the Senate Veterans Affairs Committee and 41 others to introduce S. 2042, modifying my earlier legislation. S. 2042 was consistent with Public Law 99-652, the Commemorative Works Act of 1986, which lays out a multistep process for any new commemorative works. It does not, however, address the question of modifications which the proposed Vietnam Women's Memorial clearly is.

The Senate Energy and Natural Resources Committee held hearings on S. 2042 on February 23 and favorably reported the bill to the full Senate on May 11. By the overwhelming vote of 96 to 1 on June 14, the Senate approved S. 2042 and sent it to the House. By the time the Senate passed S. 2042, it had 75 cosponsors. During the floor debate, I said passage of S. 2042 was "a giant leap forward in honoring the women—and men—who served in Vietnam."

The House Administration's Subcommittee on Libraries and Memorials held a hearing on June 27, 1988, the same day Congressmen GEJDENSEN and MONTGOMERY introduced a bill with identical language to the Senate passed bill. After 10 weeks, the House subcommittee held a markup on S. 2042 and substituted language authorizing a new memorial somewhere in Washington. The House passed the modified S. 2042 on September 23, 1988 by voice vote.

Mr. President, unfortunately the Senate cannot accept the House language. Had we been able to fully consult with the House during their more than 3 months of deliberations, I believe we could have reached an agreement. It is my sincere hope that we can still reach agreement if all sides show good faith interest.

The House bill, in stating the Vietnam Women's Memorial would be a new memorial—rather than a modification of an existing memorial—requires the VWMP to meet the provisions of the Commemorative Works Act for new memorials. Those opposed to the concept of honoring women at the Vietnam Veterans Memorial could then argue the VWMP does not meet the standards—thereby killing the proposal. S. 2042 lays out the identical approval process for this modification as Public Law 99-652 does for new memorials—except that it does force compliance with standards designed to limit new memorials.

Mr. President, when both Houses of Congress have spoken so firmly in favor of recognizing the contributions of women who served in Vietnam, this procedural argument should not prevent enactment of authorizing legislation this year. The Senate body responsible for drafting the Commemorative Works Act—the Energy and Natural Resources Committee—supported the original form of S. 2042, and it supports this form. Any problems with interpretations of Public Law 99-652 can be worked out with the House—both the Administration Committee and the Committee on Interior and Insular Affairs—before the end of the session if all parties are willing. I urge my colleagues to join me in the long overdue honoring of women who served in our Nation's longest war.

Mr. WARNER. Mr. President, I rise today to engage in a colloquy with Senator DURENBERGER.

First, I commend the Senator from Minnesota [Mr. DURENBERGER] for his dedication to ensuring that America's women veterans of the Vietnam war are duly recognized and commemorated at the Vietnam Veterans Memorial.

I was proud to be associated with the original efforts to erect a memorial to the valiant men and women who served our country so faithfully during the Vietnam war. I am equally pleased to associate myself with the efforts of Senator DURENBERGER and Senator CRANSTON to more fully recognize the contributions of the women of the Armed Forces at the memorial.

As you know, the Vietnam Veterans Memorial Fund as sponsors of the memorial continue a major financial and supportive commitment to the preservation of the memorial. I want to be sure that this legislation recognizes their contributions in organizing Memorial Day and Veterans Day ceremonies and in financing the maintenance of the memorial.

Is my understanding correct that the Vietnam Veterans Memorial Fund under this legislation will retain a consulting role with respect to any modifications of the Vietnam Veterans Memorial?

Mr. DURENBERGER. The Senator from Virginia [Mr. WARNER] is correct. Under the Memorandum of Conveyance, the Vietnam Veterans Memorial, Fund places the names of persons who die of wounds onto the memorial plus the addition of names for other purposes. The VVMF provides financial support for emergency repairs, and conduct the Memorial Day and Veterans Day ceremonies.

Due to recent damage of some of the panels of the granite wall, the fund assumed the responsibility of purchasing additional panels in the event portions of the existing structure must be replaced.

The fund continues a close working relationship with the National Park Service and this legislation affirms that responsibilities under its chartering statute and the Memorandum of Conveyance. The intent of this legislation clearly is for the fund to continue its consulting role over the management of the entire site of the Vietnam Veterans Memorial grounds.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia to concur.

The motion was agreed to.

TITLE AMENDMENT

(Purpose: To amend the title)

Mr. BYRD. Mr. President, I send an amendment to the title to the desk on behalf of Senators CRANSTON and DURENBERGER.

The title was amended so as to read:

To authorize the Vietnam Women's Memorial Project, Inc., to construct within the Vietnam Veterans Memorial site in the District of Columbia a specific commemoration of women of the United States who served in the Republic of Vietnam during the Vietnam conflict.

Mr. BYRD. Mr. President, I ask unanimous consent that a motion to reconsider be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

NATIONAL PARK OF AMERICAN SAMOA

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be discharged from further consideration of H.R. 4818, a bill to establish the National Park of American Samoa that the Senate proceed to its immediate consideration, that it be read the third time, passed, and the motion to reconsider laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 4818) was passed.

NATIONAL OCEANS POLICY COMMISSION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1133, H.R. 4210, the marine protection and sanctuaries bill.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4210) to authorize appropriations to carry out titles II and III of the Marine Protection, Research, and Sanctuaries Act of 1972 to establish the National Oceans Policy Commission, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3676

(Purpose: To strike certain provisions and for other purposes)

Mr. BYRD. Mr. President, on behalf of Mr. HOLLINGS I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virgina [Mr. BYRD] for Mr HOLLINGS proposes an amendment numbered 3676.

In section 205(b), insert "and (a)(5)" immediately after "section 304(a)(1)(C)" and immediately after "16 U.S.C. 1434(a)(1)(C)".

Strike title III and title IV.

Mr. HOLLINGS. Mr. President, I rise today in support of legislation to reauthorize and amend titles II and III of the Marine Protection, Research, and Sanctuaries Act of 1972 [MPRSA]. This legislation was enacted in response to growing concern over the degradation of marine habitats. Title II of the MPRSA established a comprehensive research program on the effects of ocean dumping. Title III created the National Marine Sanctuary Program which is administered by the National Oceanic and Atmospheric Association [NOAA]. The primary purpose of title III is to provide for the conservation and protection of nationally significant marine resources. I introduced S. 2761 on September 8, 1988, a bill to reauthorize and amend title III. The Commerce Committee unanimously ordered the bill to be favorably reported with two amendments. The legislation we are considering today, H.R. 4210, represents a compromise between S. 2761 and the House bill covering title III, and also includes the reauthorization of title II.

H.R. 4210 amends and reauthorizes title II of the MPRSA to continue for 2 years the comprehensive research program for ocean dumping. Authorization levels are set at $13,500,000 for fiscal year 1989 and $14,500,000 for fiscal year 1990. The bill also requires that the comprehensive research plan authorized under this title be consistent with that prepared under the National Ocean Pollution and Planning Act of 1978. Finally, the Under Secretary of Commerce responsible for implementing the program is directed to report annually to Congress on progress made and funds spent during that year.

The amendments to title III of the MPRSA contained in H.R. 4210 have five primary objectives. First, this legislation will provide a system of special use permits for marine sanctuaries. Historically, NOAA has promoted multiple uses of sanctuaries, provided these uses are compatible with resource protection. Congress incorporated this multiple use concept into the 1984 amendments. However, questions continue to arise concerning the regulation of commercial activities within sanctuaries, especially regarding NOAA's authority to grant concessions for such activities. The bill would provide a mechanism for controlling activities which cannot adequately be controlled under current sanctuary regulations.

Second, the bill addresses a problem related to NOAA's ability to recover financial awards for damages to sanctuary resources. In recent years, two accidents have caused significant damage to marine sanctuary resources. In both incidents, NOAA sued and collected large cash settlements for the damage done to the sanctuaries. However, since NOAA presently lacks the explicit authority to recover monetary damages for destruction done to sanctuary resources, the settlement moneys were returned to the Treasury. H.R. 4210 would permit funds that are collected for resource damages to be returned to NOAA for sanctuary use.

Third, this legislation provides a specific schedule for the designation of four new sanctuaries, for the completion of prospectuses on two additional sanctuaries, and for the completion of studies on four more sites. NOAA has continued to drag its feet in designating new sanctuaries. Since we last reviewed the program in 1984, only one new sanctuary has been incorporated into the system. The four sites scheduled for final designation under this bill are Cordell Banks, Monterey Bay, Flower Garden Banks, and the Western Washington Outer Coast. While I feel that it is unfortunate that we, in Congress, must legislate these designations, it is the only way I know that we can move the program along.

Fourth, the bill will establish guidelines for enforcement within marine sanctuaries similar to those already in place to protect other marine resources. This provision would provide for a more uniform enforcement authority under statutes protecting marine resources.

Finally, H.R. 4210 reauthorizes title III of the MPRSA for 4 years. The National Marine Sanctuaries Program was last authorized in 1984. At that time, $3,000,000 was authorized for fiscal year 1985, increasing to $3,900,000 for fiscal year 1988. H.R. 4210 would authorize $4,250,000 for fiscal year 1989, $4,900,000 for fiscal year 1990, $5,550,000 for fiscal year 1991, and $5,950,000 for fiscal year 1992. These sums are subdivided into funds for general administration of the program, management of sanctuaries, and site review and analysis.

In addition to the major changes outlined above, the bill includes minor changes to provisions governing the sanctuary designation procedure, research promotion and coordination, cooperative agreements and donations, the Channel Islands sanctuary and the U.S.S. *Monitor* sanctuary.

In closing, let me emphasize that I believe this legislation is necessary to provide a renewed sense of direction to the National Marine Sanctuaries Program. It will reaffirm our long-term commitment to conserving and protecting our nationally significant marine resources. I urge my colleagues to support this important legislation.

Mr. ADAMS. Mr. President, I rise in support of this legislation, which includes amendments to title III of the Marine Protection, Research, and Sanctuaries Act. There are two provisions in this bill of particular importance to Washington State.

First, the bill directs the Secretary to designate a National Marine Sanctuary on the Western Washington Outer Coast by no later than June 30, 1990. Second, the bill directs the Secretary to complete a prospectus regarding a possible Northern Puget Sound sanctuary by March 31, 1991. Both of these proposals were on the site evaluation list published in the Federal Register in 1983. Because this administraiton has been so slow in the overall designation process, it is proper at this time to direct them to finish these procedures for these sites by a date certain.

As regards the Western Washington Outer sanctuary, let me emphasize that all this bill does is direct the Secretary to designate a sanctuary in that area by a date certain. Details of the designation, such as boundaries and specific regulations will be determined through the normal designation process. I fully expect that both this process, and the process of developing a prospectus for the proposed Northern Puget Sound sanctuary in the San Juan Islands, will include significant and ongoing consultation with all affected and interested local governments, State agencies, Indian tribes, and interested citizens.

Finally, I would like to note that both proposed sanctuaries may include within their potential boundaries the usual and accustomed treaty fishing areas of several Indian tribes in Washington State. In addition, the Western Washington Outer Coast site may directly border several reservations. Indian treaty fishing rights and the sovereignty enjoyed by Indian tribes within the boundaries of their reservations exist as the result of treaties entered into between Indian tribes and the U.S. Government, and the Federal Government has a continuing obligation under the Federal trust responsibility to ensure that excercise of such rights and sovereignty is not unfairly impacted by other Federal management activities. I am certain that the Secretary will do this utmost in regards to both of these proposals to insure that the concerns of each affected tribe are addressed on an ongoing basis. Finally, it is my understanding that my concerns on this subject are shared by my colleague in the Washington State delegation, Congressman LOWRY, the author of the companion provisions in the House bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3676) was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CRANSTON. Mr. President, the measure before us reauthorize one of the most significant environmental programs ever enacted: title III of the Marine Protection, Research, and Sanctuaries Act of 1972 [MPRSA], the Marine Sanctuaries Program of the National Oceanic and Atmospheric Administration [NOAA]. I am a cosponsor of this legislation in the Senate, S. 2761. I am pleased that both Senate and House bills designate two northern California coastal areas as marine sanctuaries, Monterey Bay and Cordell Bank off Point Reyes. The legislation will also direct NOAA to launch a preliminary study toward making a marine sanctuary of Santa Monica Bay.

Cordell Bank, Monterey Bay, and Santa Monica Bay are marine environments of national importance. In keeping with the purpose of the Marine Sanctuaries Program, designating these areas as marine sanctuaries will protect their precious natural resources against pollution and despoilation.

Cordell Bank lies off the coast of California west of Point Reyes and slightly north of the gulf of the Farallones National Marine Sanctuary. It is home to a large number of marine bird and mammal species. The endangered humpback and blue whales feed in surrounding waters. This rocky underwater island is a living marine garden of fish and invertebrate species. Cordell Bank was proposed for sanctuary designation in 1981. It is time to give this magnificent resource sanctuary status and a protection plan.

California's Monterey Bay is habitat for many species of marine life, including whales and sea otters. It was proposed for sanctuary status in 1978, but dropped from consideration by the Department of Commerce in 1983. The unique qualities of the bay call for protection through sanctuary designation. Monterey Bay contains the largest underwater canyon on the North American coast, deeper than the Grand Canyon. Its exceptionally rich fish population is the resource of a thriving fishing industry. There are many other bay-dependent industries that prime the local economy—tourism, sport fishing, and restaurants. But despite its economic importance and its important as a marine resource, Monterey Bay is threatened by offshore drilling and by pollutants. Designation of the bay as a national marine sanctuary will accelerate the coordination efforts of State and local officials for bay protection and keep this incredible resource from being diminished.

The bill before us includes a study of Santa Monica Bay for possible designation as a national marine sanctuary. The northern portion of this southern California bay area is adjacent to the Santa Monica Mountains National Recreation Area, 150,000 acres of mountains and seashore. The Bay's marine resources include extensive kelp beds off its westerly and southern points. It is home to several endangered species of birds and mammals. The bay is part of the path for the annual migration of the gray whale. Last year, some 55 million visitors came to the beaches that surround the bay. The preservation of Santa Monica Bay may very well depend upon its designation as a marine sanctuary. A study of its merits for designation is well deserved.

Mr. President, I congratulate the distinguished chairman of the Senate Commerce Committee, Mr. HOLLINGS, for his willingness to press for this legislation and to include these California designations and study at my request. His leadership is, once again, advancing the cause of preservation of our magnificent coastal resources.

Mr. KERRY. Mr. President, I rise today to strongly urge my colleagues to support H.R. 4210, legislation which will reauthorize titles II and III of the Marine Protection, Research and Sanctuaries Act of 1972 [MPRSA]. This bill authorizes marine research ocean monitoring, and the Marine Sanctuary Program of the National Oceanic and Atmospheric Administration [NOAA]. Our Nation and, in particular, my home State of Massachusetts share a strong marine heritage. Our legislation protects that heritage through sound marine resource management of our sanctuaries and comprehensive monitoring and research programs, including the effects of pollution and ocean dumping on this marine environment. Title II of MPRSA provides for essential programs to assess the health of our Nation's ocean, coastal waters and estuaries. The Nation's Marine Sanctuary Program (title II) has been successful in preserving and protecting significant ocean resources in the Atlantic and Pacific Oceans as well as the Gulf of Mexico.

MPRSA title II supports NOAA programs which make up a coordinated national research effort toward understanding and protecting our coastal/ocean resources. Among the NOAA programs sponsored under title II are: the Hazardous Materials Response Program, which conducts long term resource assessments under the Superfund law and meets hazardous materials emergencies; the Status and Trends Program, which monitors water quality data and issues reports on our Nation's estuaries; and the Consequences of Contamination Program, which examines the effect of chemical contamination on marine life. H.R. 4210 will strengthen these programs by authorizing additional funds for research and will allow the pollution assessment programs to expand into the Great Lakes where it is greatly needed. In both marine and fresh water environments we must seek a better understanding of the fate and effects of contaminants which have been pouring into our Nation's waters for many years.

MPRSA title III contains language similar to S. 2761, the Marine Sanctuaries Authorization Act of 1988, which Senator HOLLINGS and I introduced earlier this year. It will authorize NOAA's Marine Sanctuary Program and move it ahead from the administration's stalled position. Current marine sanctuary sites include unique coral reefs, large tracts of ocean inhabited by threatened marine mammals and sea birds, and a shipwreck site of the Civil War ironclad the U.S.S. *Monitor.* Seven sites have been designated as sancturies by the Secretary of Commerce since the U.S.S. *Monitor* sanctuary was first designated in 1975. But in the past 8 years only one additional sanctuary site has been designated. Congress created a good program, which this administration has chosen to ignore. The lack of activity is inappropriate, particularly since the General Accounting Office evaluated NOAA's Marine Sanctuary Program in 1981 and concluded that the program was extremely important to marine resource management and conservation and should therefore be federally supported. In their study the General Accounting Office showed the great benefits the program offered ocean resources by ensuring their long-term preservation. The report further highlighted the positive nature of public education about our valuable ocean resources as a result of the sanctuary program. This is a program which must continue to preserve our Nation's marine environment, including its historic marine sites.

The administration has stalled and delayed this program unnecessarily and it is time to move the program forward. Our legislation does precisely that. It requires the Secretary of Commerce to designate one new sanctuary each year for the next 4 years. These include Cordell Banks, off California; Flower Garden Banks off Texas; Monterey Bay, CA, and Washington State's Outer Coast. It also requires the Secretary to prepare a prospectus and submit them to Congress for the designation of two other sites. In addition it sets a limit of 30 months for the Secretary to establish a sanctuary once a specific site has been named an active candidate.

One proposal in the legislation of particular importance to the people of New England, is the directive to the Secretary of Commerce to prepare a prospectus on Stellwagen Bank. This will begin the process to consider it as a national marine sanctuary site. Stellwagen Bank is a tremendous natural resource situated between Provincetown and Gloucester. It is a rich spawning ground for fish. It also sustains an abundance of marine mammals, birds, and turtles making this bank essential for commercial and recreational fishermen, as well as a prime area for whale watching. Currently Stellwagen Bank is threatened by growing pressure from conflicting uses such as shoreside development, offshore development, and industrial activities. By initiating a prospectus and investigating the merits of designating Stellwagen Bank as a national marine sanctuary we will get a true understanding into what type of activities the bank will sustain. At the same time we will be protecting this precious resource from damaging activities.

The legislation before us also strengthens title III of the MPRSA by providing that funds collected for sanctuary damage must be returned to NOAA for sanctuary restoration. In addition it allows for special use permits to be issued within the sanctuary system. These permits will allow both public and commercial activities to occur as long as they do not violate the resource protection and management in specific sanctuaries. Finally our legislation enhances law enforcement authority in marine sanctuaries to ensure the same protection for marine resources within the sanctuaries as we have for fishery conservation and marine mammal protection. This will allow NOAA to practice more uniform enforcement conduct.

Mr. President, I congratulate those Members of both the House and Senate who have worked so hard to create this much needed legislation. This legislation comes at a time when degradation of our coastal environment is beginning to make itself felt across this great Nation. We must encourage the passage of this legislation to ensure that we do not lose the rich heritage of our Nation's coastal lands and waters.

Mr. President, I again urge my fellow Senators to support H.R. 4210.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 4210), as amended, was passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I ask unanimous consent that Calendar Order No. 110, S. 2761, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMENDING HUMANITARIAN TREATMENT OF SOUTHEAST ASIA REFUGEES

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Concurrent Resolution 303, commending humanitarian treatment of Southeast Asia refugees and urging further measures to ensure humanitarian treatment of the refugees; that the concurrent resolution be agreed to; and that the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the concurrent resolution (H. Con. Res. 303) was agreed to.

The preamble was agreed to.

COMMENDING YAKUTAT ELEMENTARY SCHOOL FOR EXCELLENCE IN EDUCATION

Mr. GARN. Mr. President, I send to the desk a resolution on behalf of Senator STEVENS and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

A resolution (S. Res. 495) commending Yakutat Elementary School for excellence in education.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Utah?

There being no objection, the Senate proceeded to consider the resolution.

Mr. STEVENS. Mr. President, the elementary school in Yakutat, AK, has only 77 students. Yet tiny Yakutat Elementary School has been chosen as one of our Nation's outstanding educational institutions.

It is one of a handful of schools, among the 74,000 school districts across the Nation, to receive the Excellence Award from the President and the U.S. Department of Education.

Yakutat is hundreds of air miles from the nearest urban center. Yakutat's students cannot easily travel to other cities. No roads cross the St. Elias Mountains and the Malaspina Glacier, which serve as a backdrop to the community on the beautiful crescent of Yakutat Bay.

But the students of Yakutat, competing with youngsters who have libraries and museums and major learning centers at their doorsteps, have been chosen for this special recognition.

The award didn't come easily. Almost a year ago, a 100-member panel, appointed by the U.S. Department of Education, began the process of reviewing almost 700 schools nominated for the honor.

Panel members chose 364 schools for further evaluation. Traveling to every corner of our country, including Yakutat, they met with parents, teachers and staff members, community leaders, and students.

When the study was completed, Yakutat was one of 287 schools recommended for the recognition. It is the smallest school to receive the award, in terms of size and student body. But it is large in its accomplishments.

Yakutat Elementary is representative of the many small rural schools that dot my home State.

Despite small size, remote geographical location, and harsh weather conditions, Alaska's rural schools provide solid programs of instruction.

And equally as important, they help to foster character development, leadership, and awareness of their communities and the world beyond, and an appreciation of all that's special about Alaska and its different cultures.

Mr. President, I congratulate the people of Yakutat for their part in helping the elementary school achieve this special honor.

Yakutat has made all Alaska proud.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 495) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

Whereas, the Department of Education established a national School Recognition Program during the 1985-1986 school year;

Whereas, President Ronald Reagan and former Education Secretary William Bennett presented the award to Yakutat Elementary School last month;

Whereas, Mr. Jerry Schoenberger, Principal of Yakutat Elementary School traveled to Washington, D.C. for the award ceremony;

Whereas, Yakutat Elementary School has turned its rural setting into an educational advantage for its student body by incorporating such subjects as bird migration, glaciology, and Tlingit culture into its curriculum;

Whereas, through its adoption of the USS Ticonderoga, Yakutat Elementary School has taught its students first-hand the meaning of public service and duty to country;

Whereas, Yakutat Elementary School has set high academic standards for its students;

Whereas, the number of Yakutat Elementary School Students achieving at or above their grade level has increased by 5 to 10 percent annually for the past three years;

Whereas, the nation has placed a greater emphasis on math and readings skills as we enter the Twenty-first century and last year over half the Yakutat Elementary School students achieved at or above their grade level in these subjects;

Whereas, Yakutat Elementary School, as the smallest school to be commended under the Elementary School Recognition Program, serves as a model to be emulated by other schools around the country, and

Whereas, the Senate strongly supports educational programs that enrich their students, teachers, and communities, contain a commitment to learning, to high standards and to excellence, and embrace learning with enthusiasm; therefore be it

Resolved That the Senate commends Yakutat Elementary School for its achievement; and be it further

Resolved, That the Senate extends its congratulations to Yakutat Elementary School, its principal, Mr. Jerry Schoenberger, and the parents and children of Yakutat and sends its best wishes to those gathered for the local "Recognition Ceremony" on October 27, 1988.

Mr. GARN. Mr. President, I move to reconsider the vote by which the resolution was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AUTHORIZING THE PRINTING OF THE ENVIRONMENTAL SPEECHES OF SENATOR ROBERT STAFFORD AS A SENATE DOCUMENT

Mr. GARN. Mr. President, I send to the desk a resolution pertaining to the printing of Senator STAFFORD's speeches and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 496) to authorize the printing of the environmental speeches of Senator Robert Stafford as a Senate Document.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Utah?

There being no objective, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 496), was agreed to, as follows:

S. RES. 496

Resolved, That the environmental speeches of Senator Robert Stafford be ordered printed as a Senate Document.

Mr. GARN. Mr. President, I move to reconsider the vote by which the resolution was agreed to and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MAKING A TECHNICAL CORRECTION TO THE HUNGER PREVENTION ACT OF 1988

Mr. GARN. Mr. President, I send a bill to the desk on behalf of Senator LUGAR, Senator LEAHY, and Senator HARKIN, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2885) to amend the Hunger Prevention Act of 1988 to make a technical correction.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Utah?

There being no objection, the bill will be considered as having been read the second time and the Senate will proceed to its immediate consideration.

Mr. LUGAR. Mr. President, this bill changes the effective date of one provision of the Hunger Prevention Act which was signed by President Reagan on September 19. As my colleagues are aware, the Hunger Prevention Act was bipartisan legislation that provided $1.5 billion over 3 years in nutrition assistance to the needy of this country. I was a coauthor and strong supporter of the bill.

One section of the Hunger Prevention Act, section 344, concerned civil money penalties and disqualification of retail food stores and wholesale food concerns. This provision originated in the House version of the hunger bill. The House bill provided that the section would become effective not later than July 1, 1989, or on the effective date of rules issued by the Secretary, whichever was earlier. However, the final version of the bill made the section effective on July 1, 1989, regardless of the effective date of new regulations.

Mr. President, I have been informed that it will not be necessary to publish new regulations to implement section 344. Because the section provides the Secretary with needed flexibility in combating food stamp trafficking, the chairman of the Agriculture Committee, my friend Senator LEAHY, and the chairman of the Nutrition Subcommittee, Senator HARKIN, and I are offering this bill to make section 344 effective on October 1, 1988.

I urge my colleagues to support this noncontroversial correction.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 2885) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2885

Be it enacted by the Senate and House of Representatives of the United States of America in Congress asembled,

SECTION 1. TECHNICAL CORRECTION.

In section 701(b)(4) strike out "and sections 310 through 352" and insert in lieu thereof "sections 310 through 343, and sections 345 through 352".

Mr. GARN. Mr. President, I move to reconsider the vote by which the bill was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DESIGNATION OF WILDCAT RIVER UNDER THE WILD AND SCENIC RIVERS ACT

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1914.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1914) entitled "An Act to designate a segment of the Wildcat River in the State of New Hampshire as a component of the National Wild and Scenic Rivers System, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. DESIGNATION OF WILDCAT RIVER.

In order to preserve and protect for present and future generations the outstanding scenic, natural, recreational, scientific, historic, and ecological values of the Wildcat River in the State of New Hampshire, section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) as amended, by adding the following new paragraph at the end thereof:

"(65) Wildcat River, New Hampshire.—(A) A 14.51 mile segment including the following tributaries: Wildcat Brook, Bog Brook, and Great Brook (all as generally depicted on a map entitled as follows: these segments of the Wildcat River and its tributaries located within the boundary of the White Mountain National Forest (hereinafter in this paragraph referred to as 'the forest') shall be administered by the Secretary of Agriculture (hereinafter in this paragraph referred to as the 'Secretary'); those segments located outside the boundary of the forest shall be administered by the Secretary through a cooperative agreement with the Board of Selectmen of the town of Jackson and the State of New Hampshire pursuant to section 10(e) of this Act. Such agreement shall provide for the long term protection, preservation, and enhancement of the river segments located with the comprehensive management plan to be prepared by the Secretary pursuant to section 3(d) of this Act and with the July 1987 River Conservation Plan prepared by the Wildcat Brook Advisory Committee in conjunction with the National Park Service.

"(B)(i) To assist in the implementation of this paragraph, the Secretary shall establish, within 3 months after the date of enactment of this subparagraph, a Wildcat River Advisory Commission (hereinafter in this paragraph referred to as the 'Commission').

"(ii) The Commission shall be composed of 7 members appointed by the Secretary as follows: one member from recommendations submitted by the Governor of the State of New Hampshire; 4 members from recommendations submitted by the Jackson Board of Selectmen, of which at least 2 members shall be riparian property owners, and at least one member shall be on the Board of Selectmen; one member from recommendations submitted by the Jackson Conservation Commission; and one member selected by the Secretary. Members of the Commission shall be appointed for terms of 3 years. A vacancy in the Commission shall be filled in the manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Any member of the Commission appointed for a definite term may serve after the expiration of his term until his successor is appointed. The Commission shall designate one of its members as Chairman.

"(iii) The Commission shall meet on a regular basis. Notice of meetings and agenda shall be published in local newspapers which have a distribution which generally covers the area affected by the designation of the segments described in this paragraph. Commission meetings shall be held at locations and in such a manner as to ensure adequate public involvement.

"(iv) Members of the Commission shall serve without compensation as such, but the Secretary may pay expenses reasonably incurred in carrying out their responsibilities under this paragraph on vouchers signed by the Chairman.

"(v) Four members of the Commission shall constitute a quorum but a lesser number may hold hearings.

"(vi) The Commission shall cease to exist on the date 10 years after the enactment of this paragraph.

"(vii) The provisions of section 14(b) of the Federal Advisory Committee Act (Act of October 6, 1972; 86 Stat. 776), are hereby waived with respect to the Commission.

"(C) The authority of the Secretary to acquire lands outside the boundary of the White Mountain National Forest for purposes of this paragraph shall be limited to acquisition by donation or acquisition with the consent of the owner thereof. The Secretary may also acquire scenic easements for purposes of this paragraph as provided in section 6 of this Act.

"(D) There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this paragraph.".

Mr. HUMPHREY. Mr. President, the Wildcat River will be the first New Hampshire river included in the National Wild and Scenic Rivers System. This outstanding river segment is the pride of the town of Jackson. The citizens of Jackson deserve great credit for their efforts to protect this river.

The campaign to protect the Wildcat River stems from a July 1983 decision by the Federal Energy Regulatory Commission [FERC] to authorize a permit to a Massachusetts power company for study of construction of a hydroelectric facility on the falls. At the request of the town, I contacted FERC several times during the summer and fall of 1983 requesting that they withdraw the preliminary permit for the hydroelectric facility.

Jackson Falls is a major attraction in a town dependent upon the tourist trade. The threat posed by the potential construction of a hydropower plant fueled an effort by the town of Jackson to protect their prized river in perpetuity. In November 1983, I sponsored legislation authorizing a study of the Wildcat River for possible inclusion in the National Wild and Scenic River System. The Senate Energy and Natural Resources Committee recognized the unique circumstances associated with the Wildcat River study stating in the committee report—98-420—that "the study should give emphasis to State and local government and landowner protection alternatives for the Wildcat Brook * * *"

The law directing a National Park Service study of the Wildcat River was enacted in 1984. Shortly thereafter, the town of Jackson entered into cooperative agreements with the National Park Service, the U.S. Forest Service and some local conservation groups in order to develop and implement a rigorous river conservation plan. The town passed a new zoning ordinance, new land use regulations and aggressively and successfully sought to acquire conservation easements. The National Park Service's February 1988 Wild and Scenic River study cites the river conservation plan written by the town of Jackson as "* * * consistent with the Wild and Scenic Rivers and Act and the national interest in conserving the outstanding remarkable values of Wildcat Brook."

In March 1987, the town of Jackson voted unanimously to pursue wild and scenic designation. Later that year, Senator RUDMAN and I introduced S. 1914, to include the Wildcat River in the National Wild and Scenic River System. I appreciate the efforts of the chairman of the Senate Energy Subcommittee on Public Lands, National Parks and Forest, Senator BUMPERS, who scheduled hearings and quickly moved this bill through the Energy Committee. S. 1914 passed the Senate on July 7. A slightly-amended version of the bill recently passed in the House of Representatives.

One point stressed consistently throughout consideration of S. 1914 was the National Park Service's conclusion that "* * * there is no need for any additional Federal acquisition associated with proposed designation beyond the boundary of the White Mountain National Forest." Based on this conclusion, the Senate bill stated that "* * * no lands or interest in lands outside of the boundary of the forest shall be acquired by the Secretary except by donation."

The bill before the Senate today has been altered with regard to that point. Section 1(C) states: "The authority of the Secretary to acquire lands outside the boundary of the White Mountain National Forest for purposes of this paragraph shall be limited to acquisition by donation or acquisition with the consent of the owners thereof. The Secretary may also acquire scenic easements for purposes of this paragraph." The report—100-904—filed by the House Committee on Interior and Insular Affairs expounds on this provision stating:

> The committee does not intend for the Forest Service to acquire upon enactment of this legislation, lands or easements outside the boundary of the White Mountain National Forest to carry out the management of the Wildcat River. The town of Jackson has demonstrated an extraordinarily high level of involvement and support for designation and management of the Wildcat River * * *.

Mr. President, this point deserves further clarification as this provision is central to the success of S. 1914. More than 70 percent of the town of Jackson lies in the White Mountain National Forest. Thus, the town operates off of a very limited tax base. The town of Jackson has implemented strict and binding conservation measures which meet National Wild and Scenic River System guidelines. The restrictions put in place by the town of Jackson are designed to ensure that Federal acquisition of land or easements will not be necessary.

The provisions contained in S. 1914 build on the spirit of local-State-Federal cooperation which has typified the town of Jackson's efforts to protect the Wildcat River. This bill requires that the Secretary of Agriculture enter into a cooperative agreement with the town of Jackson and the State of New Hampshire to provide for the long-term protection, preservation and enhancement of the river, and that a Wildcat River advisory committee be established to assist the Forest Service with the river management.

Mr. President, the town of Jackson supports this bill. Recently, I received a letter dated September 15, 1988 stating: "The Jackson Board of Selectmen unanimously support S. 1914, as amended and passed by the House of Representatives." In addition, the Governor of New Hampshire and conservation groups throughout the State, the Region and the Nation support the designation of the Wildcat River in Jackson.

Enactment of S. 1914 will ensure that a 14.51-mile segment of a unique and outstanding New Hampshire river will be protected and enjoyed forever. I urge my colleagues to support this legislation.

Mr. RUDMAN. Mr. President, as we celebrate the 20th anniversary of the National Wild and Scenic Rivers Act, the Senate is preparing to pass S. 1914, a bill designating a 14.51 mile segment of the Wildcat River as a component of the National Wild and Scenic River System. Senate approval of this bill will be a major victory for the people of Jackson, NH, and the surrounding area. I want to take this opportunity to highlight the outstanding efforts of the people of Jackson and congratulate them on their foresight and determination. They have taken extraordinary steps to ensure the long-term protection of the Wildcat and have set an example of effective partnership between local and Federal Government to protect a valuable natural resource, and I am proud to support their work. And I might add, because of their efforts, the National Park Service has determined that there is no need for any Federal land acquisition as a result of this designation.

New Hampshire's Wildcat River will be a valuable addition to the Nation's Wild and Scenic River System. By extending Federal protection to this river, we ensure that development will not impair the scenic and recreational value of the river and its environs.

I appreciate the support of the Senate Energy and Natural Resources Committee for this measure, as well as their decision to take rapid action on it. I would like to express my particular appreciation to Senators BUMPERS and WALLOP and the able staff of the Subcommittee on Public Lands, National Parks and Forests for their efforts.

I urge my colleagues to support this measure.

Mr. BYRD. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I should state for the information of the Senate that the meetings of the groups that are working on the drug bill have been going forward during the afternoon and they will resume again shortly.

It is hoped that an agreement can be reached before the day ends. For the time being, I should say that there will be no rollcall votes—I say this for the information of Senators, that they might have an opportunity to get some dinner and get some work done in their offices—there will be no rollcall votes prior to the hour of 9:15 tonight.

BUDGETARY TREATMENT OF THE POSTAL SERVICE

Mr. BYRD. Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER. The pending business before the Senate is the motion to proceed to the consideration of S. 2449.

Mr. BYRD. Mr. President, I want to thank Mr. GARN, the acting Republican leader, for fine cooperation I have received in transacting morning business. It was done with dispatch and with his fine support.

BILLS AND JOINT RESOLUTIONS READ THE FIRST TIME

Mr. BYRD. Mr. President, there are two measures on the calendar that should be attended to before the close of morning business. There may be further morning business today.

I am sure this will be agreeable with the Republican leader.

BANGLADESH DISASTER RELIEF

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate may proceed to the calendar of bills and joint resolutions read the first time.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5389) concerning Bangladesh disaster relief.

Mr. BYRD. Mr. President, I object to any further proceedings at this time on this bill.

The PRESIDING OFFICER. The bill will be placed on the calendar.

RELIEF OF CALVIN L. GRAHAM

The PRESIDING OFFICER. The clerk will report the bill.

The assistant legislative clerk read as follows:

A bill (H.R. 610) for the relief of Calvin L. Graham.

Mr. BYRD. Mr. President, I object to any further proceedings at this time on this bill.

The PRESIDING OFFICER. This bill will also be placed on the calendar.

Mr. BYRD. Mr. President, for the information of those who read the RECORD and may be viewing the business as it is being transacted in the Senate, the objection to further proceeding is for the purpose of having the bill placed on the calendar. It is not necessarily an objection to the content of the bill.

It is an objection that has to be lodged under rule XIV of the Standing Rules of the Senate in order to place the bills directly on the calendar where they then will be eligible for call-up, either by unanimous consent or by motion.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEINZ. Mr. President, I rise in support of S. 2449, the Postal Reorganization Act of 1988, legislation which guarantees the independence of the Postal Service, and ensures that postal operations will not be subject to micromanagement by the Congress or by the administration.

The independence of the Postal Service was supposed to be assured by the Postal Reorganization Act of 1970. After 18 years of autonomous operation, postal services have improved. And the burden of the service on the U.S. taxpayer is declining. In 1986, the Postal Service was required to take on the cost of its health benefits. Under an amendment which Senator SASSER and I will offer, the Postal Service will have to bear its retirement costs, which will be phased in over a period of years.

This is a very equitable arrangement. The Postal Service will carry its own weight, with minimal taxpayer support. In exchange, S. 2449 will remove the operating budget of the U.S. Postal Service from the Federal budget.

I'd like to briefly review what has happened under the current situation. During the conference of the fiscal year 1988 budget reconciliation bill, the Office of Management and Budget initially proposed taking $1.9 billion from the Postal Service's budget. Given that the U.S. Postal Service processes and delivers more mail each year than all other industrialized nations combined while charging rates below those found anywhere else in the world, I opposed these cuts. Badly needed modernization and equipment procurement would be delayed for years. Such a cut would have forced the Postal Service to operate in overcrowded, outdated facilities, ultimately undoing any savings which might be made.

The Governmental Affairs Committee, on which I serve, did manage to reduce that cut to $1.25 billion over 2 years. Nevertheless, the damage to services was considerable. The capital improvement budget was cut in half to make up $650 million of the cut, and $600 million came from the operating budget.

I suspect that most of us have experienced, at least indirectly, the side-effects of these reductions. For a long time, reduced window and weekend hours, curtailed special services, long, winding lines, and deteriorating facilities served to remind us of the Postal Service's budgetary woes. Numerous, exasperated postal customers called my office to relate tales of how, contrary to custom, these budget cuts were directly harming their small businesses, as countless working hours were wasted to accommodate new, inflexible window schedules and reduced services. Constituents told me of spending their lunch hours, if not the majority of their day, waiting to use overnight mail services or to pick up registered packages before the facility closed for the afternoon. Services formerly taken for granted had suddenly become few and far between.

Full window hours were restored this month, but only after April's 3-cent first-class rate increase. Indeed, the Postal Service is to be commended for this relatively rapid recovery, but many more improvements need to be made, and these cannot be undertaken if the postal budget is continually subjected to the vagaries of Congress and the OMB.

S. 2449 would eliminate further disruptions in the Postal Service by taking it off budget. Support for S. 2449 and the Sasser "retirement subsidy phase-out" amendment makes good business, Mr. President, and I urge prompt passage of these measures.

APPOINTMENTS BY THE PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to section 5(a)(3) of Public Law 100-382, appoints the following individuals to the Advisory Committee for the White House Conference on Library and Information Services: Joan Ress Reeves, of Rhode Island; Rebecca Ann Floyd, of Mississippi; and Richard Akeroyd, Jr., of Connecticut.

The Chair, on behalf of the President pro tempore, pursuant to section 491 of Public Law 99-498, reappoints Dr. James Lloyd Flippin, of Mississippi, to the Advisory Committee on Student Financial Assistance.

RECESS

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess until 8 p.m. today.

Thereupon, at 6:58 p.m., the Senate recessed until 8:01 p.m., whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. BYRD].

The PRESIDING OFFICER. Without objection, the Senate will stand in recess for an additional hour.

RECESS

There being no objection, at 8:01 p.m., the Senate recessed until 9:01 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. DODD].

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SHELBY). Without objection, it is so ordered.

SENATOR PROXMIRE, AN UNCOMMON MAN, IS LEAVING THE SENATE

Mr. CHILES. Mr. President, it is a privilege to extend my personal respect and appreciation to my colleague, Senator WILLIAM PROXMIRE, as he puts the finishing touches on his outstanding service to the people of Wisconsin and, indeed, the entire country.

Senator PROXMIRE is known as a man of independent thought and action. He determinedly sets his course with the public interest as his guide.

I suspect it is these qualities, along with unrivaled diligence and dedication, that have made his elections a cakewalk and allowed him to enjoy 38 years of political success, 31 of them in the U.S. Senate.

For example, in his 1976 reelection, Senator PROXMIRE spent a total of $173.73 on his campaign and, of course, accepted no contributions. Then, in 1982, he lowered his spending to $145.10. In this age of obscene campaign spending, that is clear testimony that the people of Wisconsin appreciate his integrity and performance.

Many years ago, Senator PROXMIRE inaugurated his now famous "Golden Fleece Award." It has become a national symbol of the need to be alert to Government waste of taxpayers' money. Dozens of these awards were announced, along with the details of misuse or abuses of Federal funding. Many distressed recipients complained, but few were convincing.

The Senator is an enduring presence on the Senate floor, particularly with his regular contributions during morning business. Not many people know that for 19 years he spoke each day the Senate was in session, urging the ratification of the genocide treaty. This was a major contribution to the Senate's finally agreeing on the treaty 2 years ago.

Former chairman of the Joint Economic Committee and currently chairman of the Banking, Housing and Urban Affairs Committee, he has been a significant national policy force in these areas. Among his credits are the Competitive Equality Banking Act. He also authored the Foreign Corrupt Practices Act to stop bribery of foreign officials by American companies doing business abroad.

I doubt there has ever been a greater contrast in the Senate than between Senator PROXMIRE and his predecessor, Senator Joseph McCarthy. Senator PROXMIRE's rightmindedness and zeal for protecting the public interest honor the good judgment of Wisconsin's voters who kept returning him to this body. He has made his mark on the Senate and on American history. He will be missed.

Mr. President, the next U.S. Senator from Wisconsin will have a real challenge to fill Senator PROXMIRE's shoes.

TRIBUTE TO SENATOR STAFFORD

Mr. CHILES. Mr. President, as the 100th Congress draws to a close, I would like to take a moment to pay tribute to a colleague who has also elected to say farewell to the Senate.

Senator ROBERT T. STAFFORD brought an impressive background to this body when he was appointed in 1971 to fill the vacancy created by the death of Senator Winston Prouty. The application of his knowledge and experience, his high personal and senatorial standards, and his sound judgment in the public interest has caused me to greatly admire and respect him. The people of Vermont can justly be proud of his service.

Senator STAFFORD first earned his bachelor's degree at Middlebury College in 1935, then successfully completed his legal education at Boston University Law School 3 years later.

Embarking on his public career, he served as Rutland City prosecutor until World War II began, then entered the U.S. Navy. After the war ended, having attained the rank of lieutenant commander, he returned home and became Rutland County State's attorney in 1947.

Four years later, he returned to active duty with the Navy for 2 years during the Korean conflict and ultimately retired as a captain in the U.S. Naval Reserve.

From Korea, Senator STAFFORD again returned to Vermont, where he was appointed deputy attorney general in 1953 and elected attorney general the following year. That began a string of election victories which carried him to the governorship in 1958, then a seat in the U.S. House of Representatives in 1960.

During his 10 years in the House, he was a stalwart member of the Armed Services Committee and the Ethics Committee. He also served as vice chairman of the House Republican Conference.

After his appointment to the U.S. Senate, Senator STAFFORD won a special election in 1972 to complete the remaining 5 years on the term. He has since been reelected twice.

His experience and leadership have contributed to an impressive array of legislative successes. As chairman of the Environment and Public Works Committee during the 97th, 98th, and 99th Congresses, Senator STAFFORD presided over some of the most significant environmental reforms since the early 1970's. He can point with pride to laws strengthening and expanding the landmark Superfund program, cleaning up toxic waste, identifying and removing asbestos in public schools, ensuring safe drinking water, and providing important water projects. He was the first Vermonter to head a Senate committee since Senator Aiken did so in 1953.

As chairman of the Subcommittee on Education, Arts, and Humanities in the 99th Congress, he was responsible for the Higher Education Act which provided grants and loans to thousands of college students. In particular, this act helped boost education to a greater prominence in terms of national priority.

Senator STAFFORD has also served with distinction on the Labor and Human Resources Committee, the Veterans' Affairs Committee, the Select Committee on Intelligence, the Select Committee on Aging, and the Special Committee on Official Conduct.

In the history of this Nation Senator STAFFORD is one of 83 Americans to be elected by the people of a State to be Governor, Member of the U.S. House of Representatives and U.S. Senator. I am proud that I have had the opportunity to serve with him in this body and hope that he and his wife, Helen, will continue to enjoy the fulfilling lives they so much deserve.

THE VIETNAM WOMEN'S MEMORIAL

Mr. MURKOWSKI. Mr. Chairman, I am most pleased to once again offer my support for S. 2042, a bill which would authorize the Vietnam Women's Memorial project, to construct a statute in honor and recognition of the women of the United States who served in uniform during the Vietnam conflict.

Throughtout American history, women in uniform have served our Nation and served it well. Their service in Vietnam was part of that great tradition. Of the thousands of women who served in Vietnam, many were young nurses fresh out of school caring for our wounded with great skill and compassion in intensive-care wards and burn units.

This statue, in honor and recognition of the 10,000 American women who served in the Vietnam conflict, is long overdue. These brave women clearly deserve to be recognized for their great contributions and sacrifices. These women witnessed firsthand the painful costs of war. They witnessed the frustration and horror of war. Now is the time for us to say thank you to these women veterans and let them know that their work in Vietnam did not go unnoticed.

A statue at the site of the Vietnam Veterans' Memorial is one way in which we can fully recognize the service and sacrifices that these women gave so unselfishly to their country. I believe that the addition of this statue will successfully complete the memorial by honoring both the men and women who served their Nation during the Vietnam conflict.

Mr. President, it is my hope that with the support of the Congress we can convince all those involved in the authorization process of the memorial that this proposal is a just one. I urge my colleagues to join me in support of this bill.

TRIBUTE TO SENATOR JOHN C. STENNIS

Mr. THURMOND. Mr. President, I would like to take this opportunity to pay tribute to my distinguished friend and colleague, Senator JOHN C. STENNIS of Mississippi, President pro tempore of the U.S. Senate. Senator STENNIS plans to retire from his position as U.S. Senator at the close of this 100th session of Congress. It has been an honor and a privilege to serve with Senator STENNIS, and I will be saddened by his departure from the Senate.

The biography of Senator JOHN C. STENNIS includes many impressive accomplishments. Senator STENNIS graduated from Mississippi State University in 1923. In the summer of 1922, while we were both juniors in college, Senator STENNIS and I attended the same ROTC camp at Fort McClellan, AL. In 1928, while attending the University of Virginia Law School, Senator STENNIS was elected to the Mississippi House of Representatives. He successfully completed his studies at the University of Virginia while also fulfilling his duties as a State legislator. He has dedicated his life to public service since that time. After serving as a circuit judge in Mississippi, Mr. STENNIS was elected to the U.S. Senate in 1947 in a special election. Now in his 40th year in the U.S. Senate, Senator STENNIS is second only to the late Carl Hayden of Arizona in total years of Senate service.

Senator STENNIS is chairman of the Senate Appropriations Committee, and he also chairs that committee's Defense Appropriations Subcommittee. Throughout his tenure on the Appropriations Committee, he has had a strong and clear voice for a sound fiscal policy. In addition, Senator STENNIS is also the senior member of the Armed Services Committee, which he chaired from 1969 to 1980. In his role as chairman of the Armed Services Committee, Senator STENNIS was instrumental in assuring a strong and viable defense system for the United States.

Throughout Senator STENNIS's career, he has earned the reputation as a man of sound judgment and unfailing integrity. For this reason, Senator STENNIS was chosen to chair the first Senate Ethics Committee, and he authored the first Code of Ethics ever to be adopted by the U.S. Senate.

JOHN C. STENNIS has worked hard to protect the interests of his State and his country. He has been particularly successful in bringing jobs to Mississippi, and has strongly supported the passage of programs in Congress to achieve this goal. These projects include the Tennessee-Tombigbee Waterway in northeast Mississippi, and the Gulf coast complex, which contains the National Space Testing Laboratory. The Navy Oceanography center and the Army ammunition plant are additional examples of his efforts to help the State of Mississippi.

In his first Senate race, Senator STENNIS promised to "plow a straight furrow right down to the end of the row." Senator STENNIS has proven himself a man of his word. During his time in the Senate, he has never deviated from the path of that which is honorable and true. Perhaps the Mississippi newspaper, the Commercial Dispatch, said it best, "Senator STENNIS has always been true to himself and his electorate—no finer thing may be said of any man." I could not agree more with this description of Senator STENNIS.

I consider Senator STENNIS to be a close personal friend, and have held him in high esteem long before the time I came to the Senate. I wish him good health and happiness for the years to come. I thank the senior Senator from Mississippi for his many years of distinguished service in the U.S. Senate and to his country.

MESSAGES FROM THE HOUSE

At 1:01 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House disagrees to the amendment of the Senate to the bill (H.R. 3621) to declare that certain lands located in California and held by the Secretary of the Interior are lands held in trust for the benefit of certain bands of Indians and to declare such lands to be part of the reservation with which they are contiguous; it asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. UDALL, Mr. RICHARDSON, and Mr. YOUNG of Alaska as managers of the conference on the part of the House.

ENROLLED BILL SIGNED

At 1:11 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 3235. An act to amend the Public Health Service Act to revise the program of assistance for health maintenance organizations.

The enrolled bill was subsequently signed by the Acting President pro tempore [Mr. REID].

At 4:22 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4992. An act to expand out national telecommunications system for the benefit of the hearing-impaired and the speech-impaired population, and for other purposes.

At 6:40 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has agreed to the following concurrent resolutions, without amendment:

S. Con. Res. 156. Concurrent resolution to correct the enrollment of S. 2723; and

S. Con. Res. 160. Concurrent resolution to authorize a correction on the enrollment of S. 508.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1807) to amend the Small Business Act to reform the Capital Ownership Development Program, and for other purposes.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2749) to authorize appropriations for fiscal year 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 3757) to amend title 5, United States Code, to permit voluntary of leave by Federal employees where needed because of a medical or other emergency situation.

The message further announced that the House has passed the bill (S. 2470) to promote energy conservation and technology competitiveness in the American steel and aluminum industries; with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the bill (S. 2049) to establish an independent Commission on the Veterans Administration Home Loan Guaranty Program; to amend title 38, United States Code, to authorize reductions in the interest rate on loans made by the Veterans' Administration to finance the sales of properties acquired by the Veterans' Administration as the result of foreclosures, and to establish creditworthiness requirements and require a 0.5 per centum fee for assumptions of such loans other than those sold without recourse, and for other purposes; with amendments in which it requests the concurrence of the Senate.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1769. An act to establish a Minority Business Development Administration in the Department of Commerce, to clarify the relationship between such Administration and the Small Business Administration, and for other purposes.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 388. Concurrent resolution to correct technical errors in the enrollment of the bill H.R. 3757.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

At 8:03 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolutions:

S. 391. An act for the relief of Hyong Cha Kim Kay;

S. 2393. An act to amend the Protection and Advocacy for Mentally Ill Individuals Act of 1986 to reauthorize such Act, and for other purposes;

H.R. 900. An act to protect and enhance the natural, scenic, cultural, and recreational values of certain segments of the New Gauley, and Bluestone Rivers in West Virginia for the benefit of present and future generations, and for other purposes;

H.R. 1720. An act to revise the AFDC program to emphasize work, child support, and family benefits, to amend title IV of the Social Security Act to encourage and assist needy children and parents under the new program to obtain the education, training, and employment needed to avoid long-term welfare dependence, and to make other necessary improvements to assure that the new program will be more effective in achieving its objectives;

H.R. 2399. An act to provide for study and research on the decline in United States forest productivity and to determine the effects of atmospheric pollutants on forest environments, and for other purposes;

H.R. 3029. An act to designate the new Post Office Building in Gretna, Louisiana as the "William W. Pares, Jr. Post Office Building";

H.R. 4345. An act to amend the United States Grain Standards Act to extend through September 30, 1993, the authority contained in section 155 of the Omnibus Reconciliation Act of 1981 and Public Law 98-469 to charge and collect inspection and weighing fees, and for other purposes;

H.R. 5423. An act to authorize continued storage of water at Abiquiu Dam in New Mexico;

H.J. Res. 488. Joint resolution designating November 6-12, 1988, as "National Women Veterans Recognition Week"; and

H.J. Res. 648. Joint resolution to encourage increased cooperation to protect biological diversity.

The enrolled bill H.R. 1720 was subsequently signed by the Acting President pro tempore (Mr. REID).

At 8:50 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bills, without amendment:

S. 2148. An act to amend the Wild and Scenic Rivers Act of 1968, and for other purposes; and

S. 2545. An act to redesignate Salinas National Monument in the State of New Mexico, and for other purposes.

The message also announced that the House agrees to the amendment of the Senate to the amendments of the House to the bill (S. 1382) to amend the National Emergency Conservation Policy Act to improve the Federal Energy Management program, and for other purposes.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 4262) to amend title 17, United States Code, to implement the Berne Convention for the Protection of Literary and Artistic Works, as revised at Paris on July 24, 1971, and for other purposes.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5261) to reauthorize and amend the Indian Health Care Improvement Act, and for other purposes.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3621) to declare that certain lands located in California and held by the Secretary of the Interior are lands held in trust for the benefit of certain bands of Indians and to declare such lands to be part of the reservation with which they are continguous.

The message also announced that the House agrees to the amendments of the Senate to each of the following bills:

H.R. 2628. An act to amend the National Traffic and Motor Vehicle Safety Act of 1966 respecting the importation of motor vehicles in anticipation of compliance with safety standards under such Act; and

H.R. 3515. An act to amend the Solid Waste Disposal Act to require the Administrator of the Environmental Protection Agency to promulgate regulations on the management of infectious waste.

The message further announced that the House disagrees to the amendment of the Senate to the bill (H.R. 4333) to make technical corrections relating to the Tax Reform Act of 1986, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. ROSTENKOWSKI, Mr. GIBBONS, Mr. PICKLE, Mr. RANGEL, Mr. STARK, Mr. ARCHER, Mr. VANDER JAGT, and Mr. CRANE as managers of the conference on the part of the House.

The message also announced that the House has passed the bill (S. 136) to improve the health status of Native Hawaiians, and for other purposes; with an amendment, in which it requests the concurrence of the Senate.

The message further announced that the House has passed the bill (S. 1081) to establish a coordinated National Nutrition Monitoring and Related Research Program, and a comprehensive plan for the assessment of the nutritional and dietary status of the United States population and the nutritional quality of the United States food supply, with provision for the conduct of scientific research and development in support of such program and plan; with amendments, in which it requests the concurrence of the Senate.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 2266) to amend the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 to authorize appropriations for fiscal years 1988 and 1989, and for other purposes; with an amendment, in which it requests the concurrence of the Senate.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 1769. An act to establish a Minority Business Development Administration in the Department of Commerce, to clarify the relationship between such Administration and the Small Business Administration, and for other purposes; to the Committee on Commerce, Science, and Transportation.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 388. A concurrent resolution to correct technical errors in the enrollment of the bill H.R. 3757; to the Committee on Governmental Affairs.

MEASURES PLACED ON THE CALENDAR

The Committee on Commerce, Science, and Transportation was discharged from the further consideration of the following bills, which were placed on the calendar:

S. 2384. A bill to authorize appropriations to carry out the Atlantic Striped Bass Conservation Act for fiscal years 1989 through 1991, and for other purposes; and

H.R. 5321. An act to amend the Motor Carrier Safety Act of 1984 to eliminate application of the commercial zone exemption to commercial motor vehicle safety regulations, and for other purposes.

The following bills were read the second time, and placed on the calendar:

H.R. 610. An act for the relief of Calvin L. Graham; and H.R. 5381. An act concerning disaster relief of Bangladesh.

MEASURES HELD AT THE DESK

The following bill, received from the House of Representatives on October 6, 1988, was ordered held at the desk pursuant to the order of October 7, 1988:

H.R. 4879. An act to amend the Depository Institution Management Interlocks Act to revise the manner in which the service of directors of depository institutions and depository holding companies are regulated, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. WIRTH, from the Committee on Armed Services:

Ken Kramer, of Colorado, to be an Assistant Secretary of the Army.

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. ROTH:

S. 2881. A bill to amend the copyright laws to permit the unlicensed viewing of videos under certain conditions; to the Committee on the Judiciary.

By Mr. WIRTH (for himself and Mr. DASCHLE):

S. 2882. A bill to authorize a land exchange in South Dakota and Colorado; to the Committee on Energy and Natural Resources.

By Mr. PELL:

S. 2883. A bill to establish a program of grants to consortia of local educational agencies and community colleges for the purpose of providing technical preparation education and for other purposes; to the Committee on Labor and Human Resources.

By Mr. SPECTER:

S. 2884. A bill to establish emergency response procedures for rail carriers in transporting hazardous materials; to the Committee on Commerce, Science, and Transportation.

By Mr. GARN (for Mr. LUGAR (for himself, Mr. LEAHY and Mr. HARKIN)):

S. 2885. A bill to amend the Hunger Prevention Act of 1988 to make a technical correction; considered and passed.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. GARN (for Mr. STEVENS):

S. Res. 495. A resolution commending Yakutat Elementary School for excellence in education; considered and agreed to.

By Mr. GARN (for Mr. DOLE):

S. Res. 496. A resolution to authorize the printing of the environmental speeches of Senator Robert Stafford as a Senate Document; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ROTH:

S. 2881. A bill to amend the copyright laws to permit the unlicensed viewing of videos under certain conditions; to the Committee on the Judiciary.

VIDEO VIEWING IN GROUP HOMES

● Mr. ROTH. Mr. President, it has recently been brought to my attention by some of my alert constituents that a change must be made in our copyright laws to permit those confined in hospitals, hospices, nursing homes, and the like to view videos together without buying a license from the copyright owners.

As a general matter, copyright law distinguishes between the private and public enjoyment of copyrighted works. Private enjoyment in one's home without a license is permitted. Public enjoyment without a license is prohibited unless it falls under one of the many exceptions specifically codified.

In 1976 Congress was aware that television programs were viewed in public areas. Consequently, it provided in 17 U.S.C. § 110(5) that public viewing of television without a license is permitted if the television is "of a kind commonly used in private homes," if no direct charge is made for viewing, and if the transmitted program is not futher transmitted to the public. But if one rents a video to play on a VCR hooked up to a television set, the law does not allow a public showing without a license.

Why? In my opinion, the answer is simple: In 1976 video cassettes were not part of American life. Therefore, it was not necessary for Congress to write an exception, as it did for television viewing.

This glitch in the law has produced its share of problems. As a result, many of our older citizens who are confined by their infirmities to living in a hospital or a group home that doesn't fit the copyright stereotype of a home are, as a practical matter, denied the entertainment value of videos available to those who live in more typical, more private accommodations. Whether they are living in a hospital, a hospice, a nursing home, an adult foster care center, or some other type of group home, it makes no difference. Copyright law requires that they obtain a license. But as a practical matter, this is generally not possible.

Licenses are costly. Moreover, cost aside, licenses sold by a motion picture agent may be valid only for a fraction of the movies that one may find available in a video store. So the protection against copyright infringement afforded by a license may be incomplete.

The real question is why should people who, by age or circumstance, are forced to live in groups be treated differently from those who live alone or with their family. When they watch a movie on television, copyright law treats them the same. But if they rent a video cassette of the same movie and watch it on the same television in the same public area with the same people, they need a license from the copyright owner.

Many of these senior citizens living in group settings live day to day, in poor health, with modest means. For these, their group setting is their only home. Their fellow patients or residents are the only family they have left. Copyright law should not discriminate against them simply because they fail to constitute "a normal circle of a family and its social acquaintances." You see, under copyright law, it is only the normal circle of a family and its social acquaintances that is blessed with permission to watch videos without a license. This discrimination must be eliminated. My legislation would do so.

The legislation I introduce today creates a very narrow exception for the public viewing of videos. This exception tracks the language excepting the public viewing of television programs, which is fairly general, with an additional limitation that the unlicensed video display be permitted only in "a hospital, hospice, nursing home, or other group home providing health or health-related care and services to indiciduals on a regular basis." Consequently, the exception I propose is not strictly limited to senior citizens although it is clear that that group would be most likely benefited. The exception would also apply, for example, to hospitalized children watching videos in a common room.

The legal rationale of my exception is not so much the age of the video viewer as it is the place of the viewing. When people have to leave a typical home setting for health reasons and go to a new home which copyright law deems to be a public place, I do not believe that they should lose their right to view videos.

I recognize that it may be too late in this Congress to enact my proposal. But I wish to put all parties interested in our copyright laws on notice of this problem. It is my hope that if action is not possible now, Congress will act expeditiously in the next session to remedy this problem.

I ask unanimous consent that the text of my bill be printed in the RECORD at this point.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 110 of title 17, United States Code, be amended by adding after paragraph (5) the following:

"(6) the performance or display of a work by means of a video cassette recorder and a television set of a kind commonly used in private homes, if

(A) the performance or display occurs in a hospital, hospice, nursing home, or other group home providing health or health-related care and services to individuals on a regular basis;

(B) no direct charge is made to see or hear such performance or display; and

(C) the performance or display is not further transmitted to the public;".

Redesignate the subsequent paragraphs accordingly.●

By Mr. PELL:

S. 2883. A bill to establish a program of grants to consortia of local educational agencies and community colleges for the purposes of providing technical preparation education, and for other purposes; to the Committee on Labor and Human Resources.

TECH-PREP EDUCATION ACT

Mr. PELL. Mr. President, today I am introducing the "Tech-Prep" Education Act. While I am doing so late in this Congress, I believe its introduction is important in order that we have it for discussion and examination during the months before we return in January. I plan to reintroduce this legislation in the 101st Congress for consideration during our reauthorization of vocational education.

The "Tech-Prep" Education Act authorizes $100 million for demonstration grants to technology education partnerships between local educational agencies and community colleges. The legislation is modeled after a highly innovative program initiated by Dale Parnell, president of the American Association of Community and Junior Colleges. This initiative, the "two-plus-two" program, coordinates 2 years of technology-related instruction at the high school level with a 2-year program at a community college. After completing these 4 years of instruction, the student receives a tech-prep associate degree. Under this degree program, courses for secondary school students are designed to prepare them for instruction in a technical field at a postsecondary institution. The high school program parallels the college preparatory track, but includes communications, applied mathematics and principles of technology.

The "two-plus-two" model provides an important bridge between secondary school and postsecondary instruction. This linkage serves to encourage students who might have ended their education with high school to extend their educational program into postsecondary instruction. In addition, it offers vocational students, and students seeking careers in high-growth occupations a productive educational channel to develop technical skills.

The Tech-Prep Program may also serve to encourage potential dropouts to stay in school and complete their high school degree. Often students leave school because they have lost interest in their course-work, or because they are not doing well in their studies. Part of the problem is due to the fact that these students may not do well with theoretical courses, but may have considerably more success and interest in applied courses, courses that will supply them with the skills necessary for employment in fast-growth jobs.

An examination of future employment needs underscores the importance of technology education. Projections from the Department of Labor indicate that occupational needs for the fastest-growing jobs will require some education beyond the high school level. These jobs require a considerable degree of technological literacy. They include: computer service technicians; computer systems analysts, programmers and operators; electrical and electronic technicians; mechanical engineers and mechanical engineering technicians.

The legislation I am introducing today authorizes $100 million for partnerships between community colleges and local educational agencies to develop and implement the "two-plus-two" program. These funds will enable both schools to establish model technology education programs which can then be replicated nationwide. Assistance under this legislation is designed to encourage these educational partnerships to continue to offer the tech-prep associate degree in the absence of Federal assistance. The Federal share of the grant therefore declines over the 5-year period. The bill provides a Federal share of 80 percent in the first year, 60 percent in the second, 40 percent in the third year, and 20 percent in the final 2 years. Special consideration will be given to applications which successfully assist students with placement in a job or enrollment in a 4-year baccalaureate degree program, with special consideration for programs that are developed in coordination with business, industry, and labor unions.

I believe that we will all be the beneficiaries of this important initiative. We all have a considerable interest in the technological literacy of our students. Assistance for these programs will strengthen the preparation of students for the increasingly sophisticated demands of the labor market. It will provide technical preparation in mechanical, industrial, or practical art, or in the field of trade or applied science. In so doing, it will increase the ability of these students to obtain meaningful employment in high-growth industries. In turn, it will enable them to be part of the economic prosperity and growth of the future, rather than being limited to low-paying jobs or jobs in dying industries.

We have a considerable interest in tailoring an educational program to the needs of these students. For, as Woodrow Wilson once said:

> Nations are renewed from the bottom, not from the top . . . the genius which springs up from the ranks of unknown men is the genius which renews the youth and energy of the people.

The "Tech-Prep" Program is an example of what can be accomplished when secondary schools and community colleges work together. It has long been a tradition that the Federal role in education is that of increasing access and strengthening the quality of instruction. I believe this legislation fulfills that twin responsibility. It increases access by expanding opportunities for students who might otherwise turn away from school. It strengthens quality by bringing the joint expertise of community college and secondary school personnel to bear on developing innovative programs in technology education.

I commend this legislation to my colleagues, and hope that they will give it careful consideration. I ask unanimous consent that the full text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Tech-Prep Education Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress makes the following findings:

(1) Rapid technological advances and global economic competition demand increased levels of skilled technical education preparation and readiness on the part of youths entering the work force.

(2) Effective strategies reaching beyond the boundaries of traditional schooling are necessary to provide early and sustained intervention by parents, teachers, and educational institutions in the lives of students.

(3) A combination of nontraditional school-to-work technical education programs, using state of the art equipment and appropriate technologies, will reduce the dropout rate for secondary school students in the United States and will produce youths who are mature, responsible, and motivated to build good lives for themselves.

(4) The establishment of systematic technical education articulation agreements between secondary schools and community colleges is necessary for providing youths with skills in the liberal and practical arts and in basic academics with the intense technical preparation necessary for finding a position in a changing workplace.

(5) By the year 2000 an estimated 15 million manufacturing jobs will require more advanced technical skills, and an equal number of service jobs will become obsolete.

(6) More than 50 percent of jobs that are currently developing will require skills greater than those currently provided by existing educational programs.

(7) Dropout rates in urban schools are currently 50 percent or higher, and more than 50 percent of all Hispanic youth drop out of high school.

(8) Each year, as a result of 1 million youths dropping out of secondary school with inadequate preparation to enter the workforce, the United States loses $240,000,000,000 in earnings and taxes.

(9) Employers in the United States pay an estimated $210,000,000,000 annually for formal and informal training, remediation, and in lost productivity as a result of untrained and unprepared youth joining, or attempting to join, the workforce of the United States.

(b) PURPOSE.—It is the purpose of this Act—

(1) to provide planning and demonstration grants to consortia of local educational agencies and community colleges, for the development and operation of 4-year technical preparation education programs leading to an associate degree for youths; and

(2) to provide, in a systematic manner, strong, comprehensive links between secondary schools and community colleges.

SEC. 3. PROGRAM AUTHORIZED.

(a) GENERAL AUTHORITY.—The Secretary of Education shall make grants to pay the Federal share of the cost of activities carried out under this Act to consortia of—

(1) local educational agencies or area vocational schools serving secondary school students; and

(2) community colleges (including postsecondary vocational technical schools).

(b) FEDERAL SHARE.—The Federal share of the cost of any activity carried out with assistance under this Act may not exceed—

(1) for the first year that a grant is received, 80 percent of such cost with respect to planning purposes;

(2) for the second year that a grant is received, 60 percent of such cost with respect to implementation and operation;

(3) for the third year that a grant is received, 40 percent of such cost with respect to operation; and

(4) for the fourth and fifth year that a grant is received, 20 percent of such cost with respect to operation.

SEC. 4. TECHNICAL PREPARATION EDUCATION PROGRAMS.

(a) GENERAL AUTHORITY.—Each grant recipient shall use amounts paid under this Act to develop and operate a 4-year technical preparation education program.

(b) CONTENTS OF PROGRAM.—Each such program shall—

(1) be carried out under an articulation agreement between the participants in the consortium;

(2) consist of the 2 years of secondary school preceding graduation and 2 years of higher education, with a common core of required proficiency in mathematics, science, communications and technologies designed to lead to an associate degree in a specific career field;

(3) include the development of technical preparation education program curriculum appropriate to the needs of the consortium participants; and

(4) include in-service training for teachers that—

(A) is designed to train teachers to implement effectively technical preparation education curriculum;

(B) provides for joint training for teachers from all participants in the consortium; and

(C) may provide such training in weekend, evening and summer sessions, institutes or workshops.

(c) ADDITIONAL AUTHORIZED ACTIVITIES.—Each such program may—

(1) provide for training programs for counselors designed to enable counselors more effectively to recruit students for technical preparation education programs, and ensure their successful completion of such programs and their placement in appropriate employment; and

(2) provide for the acquisition of technical preparation education program equipment.

SEC. 5. APPLICATIONS.

(a) In General.—Each consortium that desires to receive a grant under this section shall submit an application to the Secretary at such time and in such manner as the Secretary shall prescribe.

(b) Five-Year Plan.—Each application submitted under this section shall contain a 5-year plan for the development and implementation of activities under this Act.

(c) Approval.—The Secretary shall approve applications based on their potential to create an effective technical preparation education program as described in section 4.

(d) Special Consideration.—The Secretary shall give special consideration to applicants whose applications—

(1) provide for effective employment placement activities or transfer of students to four-year baccalaureate degree programs;

(2) demonstrate commitment to continue the program after the termination of assistance under this Act; and

(3) are developed in consultation with business, industry and labor unions.

(e) Equitable Distribution of Assistance.—In making grants, the Secretary shall ensure an equitable distribution of assistance among the States and among a cross section of urban and rural consortium participants.

SEC. 6. REPORTS.

Each grant recipient shall, with respect to assistance received under this Act, submit to the Secretary such reports as may be required by the Secretary to ensure that such grant recipient is complying with the requirements of this Act.

SEC. 7. DEFINITIONS.

For purposes of this Act:

(1) The term "articulation agreement" means a commitment to a program designed to provide students with a nonduplicative sequence of progressive achievement leading to competencies in a technical preparation education program.

(2) The term "community college" has the meaning provided in section 1201(a) of the Higher Education Act of 1965 for an institution which provides not less than a two-year program which is acceptable for full credit toward a bachelor's degree.

(3) The term "Secretary" means the Secretary of Education.

(4) The term "local educational agency" has the meaning provided in section 1471(12) of the Elementary and Secondary Education Act of 1965.

(5) The term "technical preparation education program" means a combined secondary and postsecondary program which—

(A) leads to an associate degree;

(B) provides technical preparation in at least 1 field of mechanical, industrial or practical art, trade or applied science;

(C) provides competence in mathematics, science and communications (including through applied academics); and

(D) leads to placement in employment.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $100,000,000 for fiscal year 1989, and such sums as may be necessary in each of the 4 succeeding fiscal years to carry out the provisions of this Act.

By Mr. SPECTER:

S. 2884. A bill to establish emergency response procedures for rail carriers in transporting hazardous materials; to the Committee on Commerce, Science, and Transportation.

HAZARDOUS MATERIALS RAIL TRANSPORTATION SAFETY ACT

Mr. SPECTER. Mr. President, today I introduce the Hazardous Materials Rail Transportation Safety Act of 1988, to improve rail transportation of hazardous materials.

Transportation of hazardous materials is a dangerous but essential activity. According to the Department of Transportation, approximately 4 billion tons of regulated hazardous materials are transported each year throughout the United States. The Association of American Railroads reports that approximately 925,000 full carloads of hazardous materials were transported in 1987. While transportation by rail is considered the safest method of moving these enormous amounts of hazardous materials, a number of problems remain to be remedied. This act will make a rail transportation safer, and will provide better protection for surrounding communities.

A recent Federal Railroad Administration (FRA) safety assessment revealed that out of 8,000 hazardous waste tank cars inspected "an unacceptably high ratio of defects" were found. The report stated that an investigation of intermodal units disclosed that 18 percent had improper placards and 12 percent had incorrect shipping papers.

The bill I introduce today contains a number of important measures to improve rail transportation of hazardous materials. Emergency response procedures would be established to ensure that all personnel involved in rail accidents or hazardous situations know how to react quickly and effectively. The bill's tank car standards will guarantee that all vehicles containing hazardous materials meet specifications designed to ensure that the tanks do not leak or rupture even under extreme circumstances.

The bill would establish minimum training requirements for employees who are associated with the transportation of hazardous materials; the employees would be tested on their knowledge and ability to implement emergency procedures. The bill also includes a provision for more frequent inspections of trains, tracks and bridges associated with the transportation of hazardous waste, to ensure that rail equipment and facilities are in order.

This bill is based on long-held concern for transporting hazardous materials, the disturbing number of train derailments nationwide and numerous site visits and personal meetings with railroad officials, labor leaders and concerned citizens. On February 28, 1984, I introduced S. 2356, the Urban Radioactive Materials Protection Act. This bill would require environmental impact statements from the agency which approves transportation of radioactive waste material by highway routing through a metropolitan area.

A number of recent railroad accidents were potential tragedies. For example, during the past 2 years there have been at least 11 serious derailments in western Pennsylvania on one stretch of track alone. Those included accidents on May 17, 1986, June 30, 1986, October 31, 1986, and January 15, 1987. These derailments have resulted in damage to private property and the evacuation of thousands of residents, because the trains included freight cars containing toxic chemicals and hazardous materials.

On April 11, 1987, two freight trains collided in Bloomfield, PA, near Pittsburgh, causing several derailed cars to ignite and forcing the evacuation of some 16,000 persons. A derailed car leaked phosphorus oxychloride, a gasoline and hydrolic fuel additive which can be lethal in large doses. The accident also involved a car containing toluene diisocyanate, a flammable substance which can irritate lungs, skin and eyes. The catastrophe is considered Pennsylvania's worst train accident in a decade and the largest chemical-caused evacuation in Pittsburgh's history.

Less than 1 month later, on May 6, 1987, a serious rail accident occurred in Confluence, PA. Twenty-seven train cars derailed and crashed into an adjacent tower, killing the tower operator. Approximately 1,000 residents were evacuated from the area because a number of the derailed cars contained hazardous materials, including sodium hydroxide, liquid propane, and hydrochloric acid.

In response to these accidents and the concerns expressed by area residents, I testified on May 12, 1987, during the Senate Commerce Committee hearing on the transportation of hazardous materials to express my deep concern about the many train derailments in western Pennsylvania. On July 27, 1987, I toured the tracks in Confluence and personally met with local officials, union leaders, CSX Transportation, Inc., representatives, Federal Railroad Administration representatives, and local residents. Based on the serious threat to public safety posed by the unusual series of accidents on these tracks, I wrote to Transportation Secretary Dole on July 30, 1987, requesting that the tracks be shut down until the problem was resolved. Two days following my site inspection, yet another accident occurred on the same track, 27 miles away in Connellsville, PA. Two of the 17 cars involved were carrying residues of liquid chlorine and liquid petroleum.

In my July 30, 1987, letter to the Transportation Secretary, I expressed special concern about the condition of the tracks and the continuing derailments in light of Amtrak's use of these tracks for its Capital Limited line. This passenger train travels between Chicago and Washington, DC, carrying an average of 543 passengers per day in each direction. Amtrak advises that approximately 60 trains transported 16,295 passengers during June 1987. Only 6 days after I raised these concerns, Amtrak's eastbound Capital Limited No. 30 derailed approximately 2½ miles east of the Pittsburgh station. According to Amtrak, 2 of the 3 locomotives and all 14 passenger cars left the track. Amazingly, the cars somehow remained upright and there were no serious injuries among the 234 passengers on board.

Mr. President, I have repeatedly stressed the importance of maintaining safe tracks and rail procedures to assure that such accidents are prevented. In response to the many train accidents in Pennsylvania and repeated calls for a thorough investigation, the Federal Railroad Administration began an inspection of track and equipment between McKeesport, PA, and Harpers Ferry, WV, on August 4, 1987. In light of the Amtrak derailment, I again wrote to the Transportation Secretary on August 5, 1987, requesting full review of the accidents and to urge the Federal Railroad Administration to expand the ongoing track inspection to include the Pittsburgh area. Shortly thereafter, the FRA extended its inspections to include all track and equipment from the Ohio/Pennsylvania border to Washington, DC.

Yet another accident in western Pennsylvania occurred on August 22, 1987, in McKeesport, when 16 cars of a freight train derailed. Four of the cars contained hazardous chemicals, including butane, which is highly flammable and explosive. More than 700 people were evacuated for nearly 24 hours, but fortunately no serious injuries occurred.

On February 17, 1988, two railroad tank cars, one containing a form of highly flammable and toxic chemical styrene, derailed in McKees Rocks, Pennsylvania, a suburb of Pittsburgh. Again, fortunately, there were no injuries reported in relation to the accident. According to preliminary reports, the derailment was caused by a split rail.

Most recently, on August 1, 1988, 19 railroad cars, 5 transporting chlorine and sodium hydroxide, derailed in an area accessible only by rail on which Amtrak operates 2 trains daily. As stressed last year, an accident involving a train carrying hazardous materials and an Amtrak train carrying passengers could result in catastrophic consequences.

Given the frequency of these accidents and the potentially catastrophic situations they create, I believe that current rail operations and track conditions must be subject to improved safety standards. The Senate Appropriations Committee, of which I am a member, also shared my concern regarding these derailments and, upon my recommendation, included language in its report accompanying H.R. 2890, the fiscal year 1988 Transportation Appropriations bill, regarding the ongoing inspections. The Committee directed the FRA to include in its report recommendations for improvement of regulatory oversight in track inspections and enforcement; equipment inspection and enforcement; and train operations enforcement, including adherence to speed limits, materials, and display of warning placards on cars containing toxic chemicals. The committee also requested that the report include an assessment of track conditions and the adequacy of current inspections procedures and staffing.

Mr. President, while my comments today, and my own experiences, focus on problems in Pennsylvania, rail safety is not a localized problem. I believe the track and equipment problems in western Pennsylvania are representative of the situation nationwide.

On four consecutive days in December 1987, for example, there were rail accidents involving hazardous materials elsewhere in the Nation. On December 10, 1987, 18 cars derailed near Chemult, OR, spilling 13,000 gallons of sulfuric acid into the adjacent forest. The next day, 25 freight cars, including 6 tank cars loaded with hazardous chemicals, derailed at Scott Air Force Base in Illinois. On December 12, 16 cars derailed near Round Rock, 15 miles north of Austin, TX, leaving 3 burning tankers, 2 of which contained liquid propane and the third containing butyl alcohol. The accident resulted in the evacuation of approximately 8,000 residents. More recently, on June 22, 1988, 34 CSX railroad cars derailed in Crofton, KY, releasing white phosphorus which ignited, causing the evacuation of 3,000 local residents.

The Congressional Research Service advises that in 1986 alone, approximately 842 train incidents nationwide involving hazardous materials were reported to the Department of Transportation. Therefore, the bill I introduce today will address existing problems nationwide in transporting hazardous materials.

Mr. President, transporting hazardous materials by rail obviously involves risks. While it is not realistic to expect an accident-free industry, nevertheless we have a responsibility to reduce obvious hazards and make the system as safe as possible. The bill I introduce today will implement much needed improvements to guarantee rail safety for the public, by ensuring frequent and thorough inspections. By enacting these provisions, positive steps will be taken to ensure that accidents occur far less frequently, and that effective emergency response procedures are in place when an accident does occur.

The legislation I introduce today would establish emergency response procedures for rail carriers after accidents or in emergency situations involving the transportation and storage of hazardous materials. This provision is similar to H.R. 2056, introduced in the House by Representative TONY HALL in 1987. Specifically, this provision would require that copies of written information be on board trains transporting hazardous materials, available for immediate distribution to local emergency personnel. In addition, all train employees involved in an accident would be trained to provide immediate assistance to local emergency personnel.

The Federal Railway Administration reports that approximately 5,600 tank cars built prior to November 6, 1971, fall outside Department of Transportation tank car regulations. The bill I am introducing today includes a provision regarding tank car design which would require that all tank cars built prior to the 1971 regulation carrying hazardous materials must meet minimum requirements established by the Secretary of Transportation. Any car built prior to November 6, 1971, that transports hazardous material would have to be retrofitted to meet the minimum requirements.

To assess current Department of Transportation tank car regulations, the bill includes a provision similar to the House bill calling for the Secretary of Transportation to enter into a contract with the National Academy of Sciences to conduct an objective, nonpartisan study of the railroad tank car design process. The study, in conjunction with previous studies of the Federal Railroad Administration and the National Transportation Safety Board, would include specifications on development, design approval, repair process approval, repair accountability, and the process by which designs and repairs are presented, weighed and evaluated. The study also would determine what weight should be accorded to public safety factors in consideration of tank car design.

This bill also would mandate training programs for rail workers to ensure that employees on trains transporting hazardous materials are adequately prepared to deal with an accident or emergency situation. The legislation implements a mandatory training program for all rail workers. This provision, similar to H.R. 2650, introduced by Representative COLLINS, calls on the Secretary of Transportation to issue rules, regulations, standards, and orders requiring employers to provide training courses to employees involved in the transportation of hazardous materials. Employers would be required to certify to the Secretary that their employees have been trained and tested in accordance with criteria developed by the Secretary.

Mr. President, all freight train accidents are serious, but those that include the transportation of hazardous materials are especially dangerous. This legislation would mandate an increase in the number of inspections on trains, tracks and bridges which regularly are used for the transportation of hazardous waste. In carrying out these inspections, the Federal Railroad Administration will ensure that each train transporting high-level nuclear waste and spent fuel shall be inspected by the FRA inspectors at its point of origin. To address the problems in track and bridge conditions, the bill would require the FRA to inspect tracks, bridges and signal systems not less than once during each 6-month period.

Another integral part of the legislation involves the use of placards, which designate the type of hazardous material that is being transported. Following an accident, it is most important to properly identify the substance which may have leaked and caused subsequent adverse public health effects. In response, the bill states that any person who willfully alters, destroys, or removes any placard involved in the transportation of hazardous waste, shall be subject to a fine of not more than $10,000 or imprisonment for not more than 3 years.

The Pittsburgh Press recently conducted a nine-part series evaluating current safety conditions of our Nation's railroad industry. Its findings based on a review of inspection reports and internal engineering memos of over six railroad bridges revealed that each railroad investigated reported that "intensive maintenance" was recommended on bridges but that all of their bridges are "safe for use." There currently are no Federal regulations regarding bridge inspections, an area which I feel has been woefully neglected. The bill I introduce today would require the Federal Railroad Administration to inspect bridges and assess the current condition of bridges nationwide to determine if regulations are necessary to ensure bridge safety.

Mr. President, in light of the importance of the Pittsburgh Press series on train derailments, I ask unanimous consent that the first overview article be reprinted in the RECORD following my statement.

To provide adequate personnel for these additional responsibilities, the Federal Railroad Administration is authorized to double its number of hazardous materials track inspectors to assist in carrying out the track and train inspections. In addition, the Federal Railroad Administration is authorized to hire a professional engineer specializing in the development of improved tank car specifications, regulations, and inspections of tank cars used in transporting hazardous materials to help address existing and future problems in this important area.

This bill offers reasonable and practical solutions to remedy rail safety and inspection problems nationwide. Accordingly, I urge my colleagues to join me in this effort to create a safer rail system for the transportation of hazardous materials.

Mr. President, I ask unanimous consent that this bill be reprinted in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2884

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Hazardous Materials Rail Transportation Safety Act of 1988".

REGULATIONS

SEC. 2. Within 18 months after the date of the enactment of this section, the Secretary of Transportation shall issue rules, regulations, standards, and orders establishing emergency response procedures for rail carriers in accident or emergency situations involving the transportation and storage of hazardous materials. Such rules, regulations, standards, and orders shall include, among other things, a requirement or prohibition, as the case may be, that—

(1) copies of written information detailing the type and location of all hazardous material transported by a train shall be available aboard that train for immediate distribution to local emergency personnel responding to any accident or emergency situation arising out of, or in connection with, that train or hazardous materials;

(2) employees on any train transporting hazardous materials involved in an accident or emergency situation immediately render assistance to local emergency personnel responding to the accident or emergency situation; and

(3) railroad tank cars built before November 6, 1971, may not be used in hazardous materials transportation unless such cars meet all current safety and design requirements imposed by the Secretary of Transportation.

STUDY

SEC. 3. Within 90 days following the date of the enactment of this Act, the Secretary of Transportation shall enter into a contract with the National Academy of Sciences to study railroad tank car design process, including specification development, design approval, repair process approval, repair accountability, and the process by which designs and repairs are presented, weighed, and evaluated. The study shall also consider, among other things, whether public safety considerations require greater control by and input from the Secretary with respect to tank car design. The Secretary shall report the results of such study, together with his recommendations, to Congress within the 12-month period following the date of the enactment of this Act.

TRAINING

SEC. 4. (a) Within 12 months following the date of the enactment of this Act, the Secretary of Transportation shall issue rules, regulations, standards, and orders requiring training courses, certified by the Secretary, to be given by any person engaged in the transportation of hazardous waste. Any person required to provide such training courses shall certify to the Secretary, in such manner and at such times as the Secretary shall prescribe, that the employees of such person have knowledge of and have been tested in appropriate areas of responsibility in accordance with criteria developed by the Secretary.

(b) Within 180 days following the date of the enactment of this Act, the Secretary of Transportation shall develop criteria which shall be met in connection with obtaining certification by the Secretary for purposes of subsection (a) of this section.

(c) For purposes of this section, the term "person" means any individual, corporation, or other entity.

TRAIN AND TRACK INSPECTIONS

SEC. 5. (a) The Federal Railroad Administration shall take such action as may be necessary to increase the number of inspections which it conducts on trains, tracks, and bridges which are used in connection with the transportation of hazardous materials.

(b) In carrying out inspections, the Federal Railroad Administration shall take such action as may be necessary to assure that each train transporting hazardous materials shall be inspected by Federal Railroad Administration inspectors at its point of origin. Inspections shall include safety procedures, personnel, train equipment, containerization, and such other aspects of transportation as the Federal Railroad Administration determines appropriate. Track and major signal systems associated with such shipments shall be inspected by the Federal Railroad Administration not less than once during each 6-month period.

(c) The Secretary of Transportation shall employ and maintain thereafter an additional 35 safety inspectors above the number of safety inspectors authorized for fiscal year 1989, in aggregate, for the Federal Railroad Administration to assist in carrying out the inspections required by this section. The Secretary shall take such action as may be necessary to assure that the additional inspectors authorized by this section focus their activities upon the transportation of high-level nuclear waste and spent fuels with remaining time spent upon the transportation of all other hazardous materials. In addition, the Federal Railroad Administration shall hire one professional engineer to specialize in the development of improved tank car specifications, regulations, and inspections thereof.

CRIMINAL PENALTY

SEC. 6. Section 110 of the Hazardous Materials Transportation Act (49 U.S.C. 1809) is amended by adding at the end thereof the following:

"(c) Any person who willfully alters, destroys, or removes any placard required under this Act or section 172.500 of title 49 of the Code of Federal Regulations involving the transportation of hazardous materials shall be subject to a fine of not more than $10,000, or imprisoned for not more than 5 years, or both.".

BRIDGE INSPECTIONS

SEC. 7. (a) As part of the inspection of tracks discussed in section 5, the Federal

Railroad Administration's designated inspectors shall inspect bridges on such routes to ensure the integrity of the bridge structure. If structural defects are discovered, the inspector shall immediately notify the appropriate rail carrier or maintenance entity to indicate defects.

(b) The Federal Railroad Administration shall assess the current condition of bridges nationwide to determine if regulations are necessary regarding bridge construction and safety by January 1, 1990.

AUTHORIZATIONS

SEC. 8. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

[From the Pittsburgh Press, Sept. 18, 1988]

ACCIDENTS ROLL ON: TRAIN WRECKS RAISE ISSUES OF PROFIT VERSUS SAFETY

(By Andrew Schneider, Lee Bowman, and Thomas Buell, Jr.)

Railroads around the country are in dangerous condition.

Trains with faulty brakes and cracked wheels speed along defective tracks that could buck them at any time.

They rumble across great bridges that sway on rotting timbers, rusted steel and crumbling concrete.

They carry lethal chemicals, tons of coal, and the precious cargo of passengers over a nationwide system guided by radio communications and electronic traffic signals that often fail.

About 16 times a day, motorists are hit at crossings while brazenly challenging a train's right-of-way or are lulled unknowingly into its path by inoperative or inadequate warning devices.

This year accidents on the country's 300,000 miles of railroad track are occurring at an alarming rate.

Public attention is captured by train accidents hastily attributed to acts of God, speeding or drugged-up railroaders.

But a nine-month investigation by The Pittsburgh Press into railroad safety found that the underlying causes of many of the accidents were the railroads themselves that allowed their safety standards to be sidetracked by economic pressures to keep the trains moving.

And the accidents continue.

The number of multiple-car derailments and large releases of hazardous materials last month increased about 35 percent over August of last year, a Press analysis shows.

Last month's toll included 159 people injured in 32 major train accidents; at least 31 motorists killed at crossings; another 19 killed along the tracks and at least five railroaders who died or were killed on the job.

There were 34 leaks, ruptures or explosions of chemical cars. The released hazardous materials caused the evacuation of thousands, including 1,000 ordered from homes around Altoona, Iowa, after a head-on collision of two trains ignited tankers of denatured alcohol.

Wrecks involving hazardous chemicals carry the greatest potential for disruption and disaster, as 16,000 Pittsburgh residents learned last year when they were evacuated after two Conrail trains derailed near the Bloomfield Bridge.

As the number of accidents rises, so do the costs. During the first four months of 1987, rail accidents caused $43.8 million worth of damage to the railroads. According to company estimates provided to the Federal Railroad Administration, damage during the same period this year amounts to $52.2 million, almost 18 percent higher. These figures don't include business lost by merchants, or the cost of firefighting and police efforts picked up by local government.

The national figures are reflected in Pennsylvania where accidents increased from 97 in 1986 to 103 last year. In the first four months this year there were 35 major accidents, up four from the same period a year ago, including the January head-on collision of two Conrail trains at Thompsontown, Juniata County, that left four men dead.

And the escalation continues. "Based on the amount of running our field investigation teams are doing, there appears to be a significant increase in the number of serious rail accidents this year, particularly in the last three months," said William Zielinski, chief of rail accident investigation for the National Transportation Safety Board.

The Pittsburgh Press found that railroad safety is being jeopardized because:

Supervisors from more than a half-dozen major railroads order faulty cars carrying passengers, freight and hazardous cargo sent out without repairs even though the company's own safety inspectors have tagged them for serious mechanical defects.

Passenger cars and freights loaded with hazardous materials travel from Florida to New England and from Pennsylvania to Illinois over poorly maintained bridges that no government agency has the authority to inspect.

Thousands of rail cars with design flaws that make them susceptible to rupture carry hazardous materials around the country each day. Many rail safety experts believe much stronger standards are needed for both the cars and the labels they carry to inform emergency personnel how to treat the chemicals in case of an accident.

Railroad managers ignore many track defects, often for months or years or until a derailment forces action or a government inspector comes calling. Band-Aid repairs sometimes result in changes to tracks that can derail trains at certain speeds.

More than 600 die in collisions with trains at railroad grade crossings each year, often because drivers fail to heed devices warning of approaching locomotives. But sometimes warning lights, bells and gates at grade crossings don't work—and are knowingly allowed to malfunction.

Communications breakdowns of radios and computer links contribute to collisions and near-misses. Even the industry's newest Star Wars-like dispatch centers lose information about the trains they're supposed to control.

The Federal Railroad Administration, the only agency with authority to order changes in the railroads, refuses to act on many NTSB recommendations for correcting deficiencies that have caused repeated train wrecks, deaths and injuries.

Railroads increasingly appear willing to gamble on safety, said government agents who monitor the industry.

"Risk taking has become part of railroads doing business," said Donald Rugh, a rail safety inspector with the Ohio Public Utility Commission.

"They'll let a train go out with a defect, even if we bring it to their attention. They know that even if our fine makes it through the FRA, it will be cheaper than what it would have cost to hold the train up, cut out the car and make the repair," said Rugh. As a result, "things have gotten dangerous out there."

Even so, most trains arrive at their destinations without major problems. An Aug. 3 survey by The Press of traffic on the nation's 498 railroads showed that 6,444 trains moved 40,476 cars 1,212,740 miles that day with only one serious derailment.

But the potential for disaster is enormous. In Pennsylvania, for instance, railroads criss-cross virtually every community, with the heaviest concentration in the southwestern corner around Pittsburgh. The threat of a derailment makes those who live near tracks wary of the trains that roll past their homes.

Railroad employees sometimes are more concerned than their less knowlegeable neighbors.

Mel Rose is a car safety inspector at Conrail's Conway rail yards by day and president of neighboring New Brighton's borough council at night. He says he worries about a derailment of one of the dozens of long, chemical-laden freights that run past his Beaver County town each day.

Sean Ferris, a 13-year Conrail veteran and now district union chairman for the men who build and repair the tracks, often reports flaws in the rails running through his Allegheny Valley neighborhood to Conrail or the government. The father of four fears defective rails might spill a train load of dangerous chemicals near his house in the Natrona section of Harrison Township.

Rose and Ferris are among a quarter of a million railroaders whose place in America's industrial heritage was threatened as recently as 10 years ago when railroads stood at the brink of bankruptcy. To stave off financial ruin, the railroads pared work forces and cut back maintenance.

Those moves enhanced the profit picture, but they also increased the risks.

For example, replacement and repairs of the nation's 85,000 railroad bridges often comes only when the bottom line allows. Bridges frequently are earmarked for work only when the condition deteriorates to the point that they interfere with the timely movement of trains. In scores of cases, The Press found that the railroads' own engineers and bridge inspectors had catalogued year after year, the progressive deterioration of these vital structures.

Railroad officials insist the often aging bridges are safe, but there is no outside inspection system that would verify the companies' opinions and no federal regulations they must follow to maintain the structures.

"We don't see the follow-up that's needed to keep these bridges safe," said John Fisher, a civil engineering professor at Lehigh University and a national authority on bridge safety. "Too many railroads have deeply cut their engineering and bridge inspection staffs. There has got to be someone to stand up and say this is getting dangerous and something has to be done now. If not, they're inviting disaster."

Company officials often are aware of serious problems but stymied by the cost of repairs.

For example, Walter DeWitt, safety director for Norfolk Southern, said it would cost $2.5 million to completely repair a tunnel under Greentree Hill that has severe damage from water seepage. At least two trains a day, each carrying tankers containing explosive and poisonous chemicals, pass through the tunnel which runs beside and under several large hotels.

The deterioration reached such a critical stage this year that workers were ordered to inspect the tunnel before each train ran through to make sure debris wasn't fouling the tracks. Some repairs are now being made, the company said.

Many railroad officials argue that cutting back maintenance is a reasonable gamble for an industry still struggling to gain financial stability.

But last year 15 of the nation's 17 largest railroads made money. Their $2.1 billion in profits were the highest in three years. At the same time, money spent on track and equipment improvements dropped to the lowest level in four years.

Railroads have cut track mileage 8 percent since 1980, while cutting the number of maintenance workers by half, from 183,966 to 97,667 last year.

Many of the branches the railroads dropped have been picked up by short line and regional railroad operations. While such small railroads have been in business for decades, hundreds more have sprung up in the past few years.

And since many of these new operations run on a shoestring, without the resources and workers to maintain track and equipment, regulators are especially worried about how they can cope with safety problems.

"We are apprehensive about the impact these short lines will have on the overall rail safety picture. Most take over operations that major carriers had abandoned and where in most cases, maintenance was far below what was needed for years, so the deck may have been stacked against them from the start," said the NTSB's Zielinksi.

The proliferation of short lines was just one side-effect of railroad deregulation in 1980. The removal of government controls on shipping rates, much sought by the industry, thrust railroads into the open market, where time is of the essence and the essence is money.

In such a climate, field supervisors often find that slowing the system in the name of safety can be a career damaging move even though top managers list safe operations as a major corporate goal.

Some of those top officials, including Richard Sanborn, president of Conrail, and W. Graham Claytor, chairman of Amtrak, say they recognize the conflicting demands of safety and productivity, but they insist that safety always takes first place.

"You have to manage that kind of tradeoff. There are conflicts in everything we do in our lives, and the good managers are going to be the ones who can be productive and be safe at the same time," Sanborn said.

Claytor said he preaches safety "from the boardroom to the brakeman. You've got to have safety as a very high priority for top management, but if it stops at top management, it won't get anywhere."

But boardroom executives often are insulated from what is happening in the field. When they ride the rails, subordinates carefully try to orchestrate what they see. The game is called "gold plating the railroad," and makes it unlikely that any top executive will ever see shabby equipment or ride over rough rails. Sometimes the game goes so far as to include painting the side of a building the chief is likely to see, while the side away from the tracks is rotting.

Lower-level supervisors hear the talk about safety, but in interviews they repeatedly said that to stay within budget and on schedule, they sometimes have no choice but to cut corners and take chances to keep the trains moving.

"Railroads rely too much on luck that nothing is going to happen, but the accident files are filled with cases where their luck ran out," said Chris Longcrier, a track inspector with the Alabama Public Utility Commission.

FRA Administrator John Riley insists that bad luck is less a factor than bad judgment on the part of railroad workers—and has directed much of the agency's attention recently to controlling drug and alcohol use in the industry. However, other safety experts say that by dwelling on substance abuse, the agency may be missing even more serious problems.

"Alcohol and drug abuse is a problem with the railroads, perhaps to a larger degree than other industries, but it is not the main cause of the accidents, it is not being listed as a probable cause of any of the accidents we've recently investigated," said the NTSB's Zielinski.

"Human factors are always a major contributing factor, but that must include the pressure, either implied or actual, on railroaders to move the trains at all costs. Sometimes that pressure can be great."

Some lawmakers question whether people problems should be the FRA's main concern.

"So much attention has been given to misuse of alcohol and drugs by operators of railroads that we may be overlooking an alternate major cause, or equally serious cause, and that's lack of adequate maintenance on the railroads" said Sen. James Exon, chairman of the Senate Surface Transportation Subcommittee and a driving force behind recent rail safety legislation.

Government railroad experts in several states share Exon's concern over reduced maintenance.

"We have found that Southern Pacific has cut back on their maintenance crews considerably, to the point where we're having a lot of problems getting them to observe safety regulations," said William Weil, director of rail programs for the California Public Utilities Commission.

The head of Wisconsin's rail safety division, Charles Campbell, said the largest railroad in his state, the SOO Line, has made similar personnel cuts.

"You can't have that kind of shortage (of people) and maintain the status quo. You're going to lose ground, and we're very concerned about that."

Cuts in maintenance forces are especially evident in the condition of tracks. From Pittsburgh's North Side to the plains of northern Minnesota to the Mississippi Delta, the steel rails and wooden ties that are the underpinning of safe train operations are suffering from neglect and causing accident after accident.

ADDITIONAL COSPONSORS

S. 10

At the request of Mr. CRANSTON, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 10, a bill to amend the Public Health Service Act to improve emergency medical services and trauma care, and for all purposes.

S. 1265

At the request of Mr. KENNEDY, the name of the Senator from Vermont [Mr. STAFFORD] was added as a cosponsor of S. 1265, a bill to amend the Public Health Service Act and the Fair Labor Standards Act of 1938 to provide minimum health benefits for all workers in the United States.

S. 1391

At the request of Mr. EXON, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 1391, a bill to amend the Surface Transportation Assistance Act of 1982.

S. 2229

At the request of Mr. KENNEDY, the name of the Senator from Ohio [Mr. METZENBAUM] was added as a cosponsor of S. 2229, a bill to amend the Public Health Service Act to reauthorize programs concerning health research and teaching facilities, and training of professional health personnel under title VII of such act, and for other purposes.

S. 2379

At the request of Mr. SASSER, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of S. 2379, a bill to authorize the insurance of certain mortgages for first-time homebuyers, and for other purposes.

S. 2395

At the request of Mr. WIRTH, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 2395, a bill to facilitate access to space, and for other purposes.

S. 2698

At the request of Mr. DODD, the name of the Senator from Colorado [Mr. WIRTH] and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of S. 2698, a bill to provide Federal assistance to the National Board for Professional Teaching Standards.

S. 2709

At the request of Mr. HECHT, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 2709, a bill to clarify the United States' obligation to observe occupational safety and health standards and to clarify the United States' responsibility for harm caused by negligence at any workplace, owned by, operated by, or under contract with the United States.

S. 2724

At the request of Mr. RIEGLE, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of S. 2724, a bill to amend the Export Administration Act of 1979.

S. 2841

At the request of Mr. KARNES, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 2841, a bill to provide that the Secretary of Transportation may not issue regulations reclassifying anhydrous ammonia under the Hazardous Materials Transportation Act.

S. 2852

At the request of Mr. BYRD, the name of the Senator from Maryland

[Mr. Sarbanes] was added as a cosponsor of S. 2852, a bill to provide for an omnibus Federal, State, and local effort against substance abuse, to provide for a Cabinet-level position to centralize and streamline Federal activities with respect to both drug supply—interdiction and law enforcement—and drug demand (prevention, education, and treatment), to expand Federal support to ensure a long-term commitment of resources and personnel for substance abuse education, treatment, and rehabilitation efforts, to strengthen and improve the enforcement of Federal drug laws and enhance the interdiction of illicit drug shipments, and for other purposes.

S. 2875

At the request of Mr. Kennedy, the name of the Senator from Utah [Mr. Hatch] was added as a cosponsor of S. 2875, a bill to amend the Federal Food, Drug, and Cosmetic Act to revise the authority under that act to regulate pesticide residues in food.

SENATE JOINT RESOLUTION 354

At the request of Mr. Helms, the name of the Senator from Iowa [Mr. Grassley] was added as a cosponsor of Senate Joint Resolution 354, a joint resolution to designate November 6 through 12, 1988, as "National Farm Broadcasters Week."

SENATE JOINT RESOLUTION 357

At the request of Mr. Cranston, the name of the Senator from Illinois [Mr. Simon] was added as a cosponsor of Senate Joint Resolution 357, a joint resolution designating the week beginning November 6, 1988, as "National Women Veterans Recognition Week."

SENATE JOINT RESOLUTION 373

At the request of Mr. Byrd, the names of the Senator from New York [Mr. D'Amato], and the Senator from Nebraska [Mr. Karnes] were added as cosponsors of Senate Joint Resolution 373, a joint resolution to designate the week beginning November 13, 1988, as "National Craniofacial Deformity Awareness Week."

SENATE JOINT RESOLUTION 375

At the request of Mr. Moynihan, the names of the Senator from Kansas [Mr. Dole], the Senator from Connecticut [Mr. Weicker], the Senator from New Jersey [Mr. Lautenberg], the Senator from Michigan [Mr. Levin], the Senator from Texas [Mr. Bentsen], and the Senator from Illinois [Mr. Simon] were added as cosponsors of Senate Joint Resolution 375, a joint resolution designating October 22, 1988, as "National Chester F. Carlson Recognition Day."

SENATE JOINT RESOLUTION 381

At the request of Mr. Bond, the name of the Senator from Rhode Island [Mr. Chafee] was added as a cosponsor of Senate Joint Resolution 381, a joint resolution to designate October 30, 1988 as "Fire Safety at Home Day—Change Your Clock, Change Your Battery."

SENATE JOINT RESOLUTION 388

At the request of Mr. Gore, the name of the Senator from Rhode Island [Mr. Chafee] was added as a cosponsor of Senate Joint Resolution 388, a joint resolution designating October 15, 1988, as "National Fire Fighters Day."

SENATE RESOLUTION 470

At the request of Mr. Riegle, the name of the Senator from Maryland [Ms. Mikulski] was added as a cosponsor of Senate Resolution 470, a resolution relating to Great Lakes medical waste.

SENATE RESOLUTION 476

At the request of Mr. DeConcini, the name of the Senator from Alaska [Mr. Stevens] was added as a cosponsor of Senate Resolution 476, a resolution expressing the sense of the Senate regarding United States policy in bringing about national reconciliation and self-determination in Angola and Namibia.

SENATE RESOLUTION 492

At the request of Mr. Symms, the name of the Senator from Wisconsin [Mr. Kasten] was added as a cosponsor of Senate Resolution 492, a resolution to express concern about the Soviet bloc governments.

SENATE RESOLUTION 495—COMMENDING YAKUTAT ELEMENTARY SCHOOL FOR EXCELLENCE IN EDUCATION

Mr. GARN (for Mr. Stevens) submitted the following resolution; which was considered and agreed to:

S. Res. 495

Whereas, the Department of Education established a national School Recognition Program during the 1985-1986 school year;

Whereas, President Ronald Reagan and former Education Secretary William Bennett presented the award to Yakutat Elementary School last month;

Whereas, Mr. Jerry Schoenberger, Principal of Yakutat Elementary School traveled to Washington, D.C. for the award ceremony;

Whereas, Yakutat Elementary School has turned its rural setting into an educational advantage for its student body by incorporating such subjects as bird migration, glaciology, and Tlinigit culture into its curriculum;

Whereas, through its adoption of the USS Ticonderoga, Yakutat Elementary School has taught its students first-hand the meaning of public service and duty to country;

Whereas, Yakutat Elementry School has set high academic standards for its students;

Whereas, the number of Yakutat Elementary School Students achieving at or above their grade level has increased by 5 to 10 percent annually for the past three years;

Whereas, the nation has placed a greater emphasis on math and reading skills as we enter the Twenty-first century and last year over half the Yakutat Elementary School students achieved at or above their grade level in these subjects;

Whereas, Yakutat Elementary School, as the smallest school to be commended under the Elementary School Recognition Program, serves as a model to be emulated by other schools around the country, and

Whereas, the Senate strongly supports educational programs that enrich their students, teachers, and communities, contain a commitment to learning, to high standards and to excellence, and embrace learning with enthusiasm; therefore be it

Resolved, that the Senate commends Yakutat Elementary School for its achievement; and be it further

Resolved, That the Senate extends its congratulations to Yakutat Elementary School, its principal, Mr. Jerry Schoenberger, and the parents and children of Yakutat and sends its best wishes to those gathered for the local "Recognition Ceremony" on October 27, 1988.

SENATE RESOLUTION 496—AUTHORIZING THE PRINTING OF THE ENVIRONMENTAL SPEECHES OF SENATOR ROBERT STAFFORD AS A SENATE DOCUMENT

Mr. GARN (for Mr. Dole) submitted the following resolution; which was considered and agreed to:

S. Res. 496

Resolved, That the environmental speeches of Senator Robert Stafford be ordered printed as a Senate Document.

AMENDMENTS SUBMITTED

OMNIBUS ANTI-SUBSTANCE ABUSE ACT

SPECTER AMENDMENT NOS. 3664 THROUGH 3670

(Ordered to lie on the table.)

Mr. SPECTER submitted seven amendments intended to be proposed by him to the bill (S. 2852) to provide for an omnibus Federal, State, and local effort against substance abuse, to provide for a cabinet level position to centralize and streamline Federal activities with respect to both drug supply (interdiction and law enforcement) and drug demand (prevention, education and treatment), to expand Federal support to ensure a long-term commitment of resources and personnel for a substance abuse education, treatment, and rehabilitation efforts, to strengthen and improve the enforcement of Federal drug laws and enhance the interdiction of illicit drug shipments, and for other purposes; as follows:

AMENDMENT NO. 3664

At the appropriate place in the bill, insert the following new section:

SEC. . NEGOTIATIONS FOR AN INTERNATIONAL CRIMINAL COURT.

It is the sense of the Congress that the President should begin negotiations with foreign governments to investigate the possibility of establishing an international criminal court to hear cases regarding the prosecution of persons accused of having engaged in international drug trafficking or having committed international crimes.

AMENDMENT NO. 3665

On page 416, line 21, after "number" delete "and" and insert "a ,".

On page 416 insert on line 21 after "demographic characteristics," ", socioeconomic, and other relevant characteristics".

On page 416 after line 25, insert "(3) the percentage of individuals who complete the appropriate course of treatment through programs referred to in paragraph (1) who upon one year after completion require further treatment.".

On page 417 of the bill, insert on line 1 after "care," "and the nature of treatment".

On page 417 between lines 7 and 8, insert "(6) the percentage of individuals who do not complete the approprirate course of treatment through programs referred to in paragraph (1).".

On page 417 after line 25 insert "(12) provide follow-up services to determine whether clients subsequently become involved in criminal activities, drug use, and other information regarding the subsequent drug-related or criminal activities of individuals who have undergone a treatment program.".

AMENDMENT NO. 3666

On page 337: In lines 15 through 19, strike all between "or" and "procedures".

AMENDMENT No. 3667

At the appropriate point in the bill, insert the following:

Subtitle B—International Provisions

SEC. 1011. EXPORT-IMPORT BANK FINANCING FOR SALES OF DEFENSE ARTICLES AND SERVICES FOR ANTINARCOTICS PURPOSES.

Section 2(b)(6) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(6) is amended—

(1) by inserting "(A)" before "The Bank";

(2) by striking "paragraph" and inserting in lieu thereof "subparagraph", and

(3) by adding at the end the following new subparagraphs:

"(B) Subparagraph (A), and section 32 of the Arms Export Control Act, shall not apply to any sale of defense articles or services primarily for antinarcotics purposes if—

"(i) the Bank is requested to provide a guarantee or insurance for the sale;

"(ii) the President determines, in accordance with subparagraph (C), that the sale is in the national interest of the United States;

"(iii) the Bank determines that, notwithstanding the provision of a guarantee or insurance for the sale, not more than 10 percent of the guarantee and insurance authority available to the Bank in any fiscal year will be used by the Bank to support the sale of defense articles and services; and

"(iv) the sale is made on or before September 30, 1992.

"(C) In determining whether a sale of defense articles or services primarily for antinarcotics purposes would be in the national interest of the United States, the President shall determine that the sale would—

"(i) be consistent with the antinarcotics policy of the United States; and

"(ii) involve the end use of a defense article or service primarily for antinarcotics purposes in a major illicit drug producing or major drug-transit country (as defined in section 481(i) of the Foreign Assistance Act of 1961).

"(D) In making the determination under subparagraph (C) above, the President shall take into account whether the sale would be made to a country with a democratic form of government.

"(E) The Board shall not give approval to guarantee or insure a sale of defense articles or services unless the President determines, in accordance with subparagraph (C), that it is in the national interest of the United States for the Bank to provide such guarantee or insurance, and such determination has been reported to the Congress not less than 25 days of continuous session of the Congress before the date of such approval. For purposes of the preceding sentence, continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 25-day period referred to in such sentence.

"(F) The provision of a guarantee or insurance under subparagraph (B) shall be deemed to be the provision of security assistance for purposes of section 502B of the Foreign Assistance Act of 1961 (relating to governments which engage in a consistent pattern of gross violations of international recognized human rights).

"(G) To the extent that defense articles or services for which a guarantee or insurance is provided under subparagraph (B) are used for a purpose other than antinarcotics purposes, they may be used only for those purposes for which defense articles and defense services sold under the Arms Export Control Act (relating to the foreign military sales program) may be used under section 4 of such Act.

"(H) As used in this paragraph, the term defense articles and services means articles, services, and related technical data that are designated as defense articles and defense services pursuant to sections 38 and 47(7) of the Arms Export Control Act and listed on the United States Munitions List (part 121 of title 22 of the Code of Federal Regulations)."

AMENDMENT No. 3668

At the appropriate point in the bill, insert the following:

DEVELOPMENT ASSISTANCE.—For fiscal year 1989, the project agreement document for a project carried out pursuant to chapter I of part I of the Foreign Assistance Act of 1961 (relating to development assistance) shall contain—

(1) in the case of the Chapare Regional Development Project, a clause requiring that project activities be suspended if the Government of Bolivia fails to achieve relevant coca eradication targets contained in agreements between the Government of Bolivia and the United States.

AMENDMENT No. 3669

On page 520, between line 22 and the title analysis for title V of the bill, insert the following:

SEC. . PARTICIPATION OF MEMBERS OF THE ARMED FORCES IN FOREIGN DRUG INTERDICTION OPERATIONS.

(a) IN GENERAL.—Notwithstanding any other provision of law, subject to subsection (b), the Secretary of Defense may authorize active participation of members of the Armed Forces of the United States in drug interdiction operations conducted in a foreign country by law enforcement authorities of such foreign country.

(b) LIMITATIONS.—Active participation of members of the Armed Forces in a drug interdiction operation of a foreign country may be authorized under subsection (a) only if—

(1) an appropriate official of the foreign country conducting such operation requests the participation of such personnel;

(2) law enforcement personnel of the foreign country actively participate in such operation with members of the Armed Forces of the United States; and

(3) personnel of the Drug Enforcement Administration are now permitted to engage in such a drug interdiction operation.

(c) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

AMENDMENT No. 3670

At the appropriate place in the bill, insert the following: Section 6(a)(2) of Public Law 98-312 is amended by striking "$3,400,000" and inserting in lieu thereof "$5,000,000." $1,600,000 may be transferred to the Higher Education appropriation account of the Department of Education, to be available until expended, to carry out provisions of section 6(a) of Public Law 98-312, notwithstanding any other provision of law.

NATIONAL FORESTS AND PUBLIC LANDS OF NEVADA ENHANCEMENT ACT

HECHT (AND REID) AMENDMENT NOS. 3671 AND 3672

Mr. GARN (for himself, Mr. HECHT, for himself and Mr. REID) proposed two amendments to the bill (S. 59) entitled the "National Forests and Public Lands of Nevada Enhancement Act of 1987"; as follows:

AMENDMENT No. 3671

Intended to be offered by Mr. HECHT (for himself and Mr. REID) strike subsection 8(a) of the bill, as amended by the Committee amendment, and insert, in lieu thereof, the following:

"(a) Congress hereby expressly reserves the minimum quantity of water necessary to achieve the primary purposes for which the lands transferred pursuant to section 4(a) are withdrawn. Those purposes are hereby declared to be solely and exclusively the primary purpose for which the National Forests within which the lands are to be included were established. The priority date for such reserved rights shall be the date of transfer pursuant to this Act.".

AMENDMENT No. 3672

Strike subsection 5(c) of the bill, as amended by the Committee amendment, and insert, in lieu thereof, the following:

"(c) If at any time after the date of enactment of this Act, Congress releases all or any portion of the 160 acres of land described in this subsection from the requirements of sec. 603(c) of the Federal Land Policy and Management Act, the Secretary of Agriculture is authorized to offer for sale all or any portion of the released lands at fair market value. If the Secretary of Agriculture decides to sell such land, he shall give public notice of such sale and shall establish a date within six months of such notice for the receipt of bids on such land. The Secretary of Agricutlure shall sell such land to the party submitting the highest bid (at least equal to fair market value) on or before such date. The land is described as follows:

Mount Diablo Meridian

Township 20 South, Range 57 East, Section 28

Southeast ¼ of Southeast ¼
Northwest ¼ of Southeast ¼
Northeast ¼ of Northeast ¼
Section 34, Southwest ¼ of Northwest ¼"

RELIEF OF CERTAIN PERSONS IN RIVERSIDE COUNTY, CA

CRANSTON (AND WILSON) AMENDMENT NO. 3673

Mr. CRANSTON (for himself and Mr. WILSON) submitted an amendment to the bill (H.R. 4050) for the relief of certain persons in Riverside County, CA, who purchased land in good faith reliance on an existing private land survey; as follows:

On page 1, line 3, after the word "That" insert: "Section 1."

At the end of the bill insert the following:

"SEC. 2. Notwithstanding any other provision of law, the Secretary of the Interior shall, within six months of the enactment of this Act, complete the state indemnity application CA 16096 for land in Inyo County, California as submitted to the State Director, Bureau of Land Management, California State Office, Sacramento, California and shall convey the lands described therein to the State of California."

HANFORD REACH STUDY AREA

EVANS (AND ADAMS) AMENDMENT NO. 3674

Mr. GARN (for Mr. EVANS for himself and Mr. ADAMS) submitted an amendment to the bill (H.R. 3614) to authorize a study of the Hanford Reach of the Columbia River, and for other purposes; as follows:

Strike all after the enacting clause and insert the following in lieu thereof:

SECTION 1. COMPREHENSIVE RIVER CONSERVATION STUDY.

The Secretary of the Interior ("Secretary"), in consultation with the Secretary of Energy, shall prepare a comprehensive river conservation study for that segment of the Columbia River extending from one mile below Priest Rapids Dam downstream approximately 51 miles to the McNary pool north of Richland, Washington, as generally depicted on the map entitled "Proposed Columbia River Wild and Scenic River Boundary" dated May 17, 1988, hereinafter referred to as the "study area" which is on file with the United States Department of the Interior. The study shall identify and evaluate the outstanding features of the study area and its immediate environment, including fish and wildlife, geologic, scenic, recreational, natural, historical, and cultural values, and examine alternatives for their preservation. In examining alternative means for the preservation of such values, the Secretary shall, among other things, consider the potential addition of all or a portion of the study area to the national wild and scenic rivers system, and recommend a preferred alternative for the protection and preservation of the values identified. The Secretary shall cooperate and consult with the State and political subdivisions thereof, local, and tribal governments, and other interested entities in preparation of such a study and provide for public comment. The study shall be completed and presented to Congress within 3 years after the date of enactment of this Act.

SEC. 2. INTERIM PROTECTION.

(a) For a period of eight years after the enactment of this Act, within the study area identified in Section 1 of this Act:

(1) No federal agency may construct any dam, channel or navigation project.

(2) All other new federal and non-federal projects and activities shall, to the greatest extent practicable:

(A) be planned, designed, located and constructed to minimize direct and adverse effects on the values for which the river is under study, and

(B) utilize existing structures and facilities including, but not limited to, pipes, pipelines, transmission towers, water conduits, powerhouses, and reservoirs to accomplish the purposes of the project or activity.

(3) Federal and non-federal entities planning new projects or activities in the study area shall consult and coordinate with the Secretary to minimize and provide mitigation for any direct and adverse effects on the values for which the river is under study.

(4) Upon receiving notice from the entity planning the new project or activity, the Secretary shall, no later than ninety days after receiving such notice and consulting with the entity:

(A) review the proposed project or activity and make a determination as to whether there will be a direct and adverse effect on the values for which the river segment is under study; and

(B) review proposals to mitigate such effects and make such recommendations for mitigation as he deems necessary.

(5) If the Secretary determines that there will be a direct and adverse effect that has not been adequately mitigated, he shall notify the sponsoring entity and the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate of his determination and any proposed recommendations.

(b) During the eight year interim protection period, provided by this section, all existing projects that affect the study area shall be operated and maintained to minimize any direct and adverse effects on the values for which the river is under study, taking into account any existing and relevant license, permit, or agreement affecting the project.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated not more than $150,000 for the purpose of conducting the study pursuant to section 1 of this Act.

VIETNAM WOMEN'S MEMORIAL PROJECT

CRANSTON (AND DURENBERGER) AMENDMENT NO. 3675

Mr. BYRD (for Mr. CRANSTON for himself and Mr. DURENBERGER) proposed an amendment to the House amendment to the bill (S. 2042) to authorize the Vietnam Women's Memorial Project, Inc., to construct a statue at the Vietnam Veterans' Memorial in honor and recognition of the women of the United States who served in the Vietnam conflict; as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. AUTHORIZATION.

(a) In General.—The Vietnam Women's Memorial Project, Inc., is authorized to construct on public grounds within the 2.2 acre Vietnam Veterans Memorial site in the District of Columbia a specific commemoration of women of the United States who served in the Republic of Vietnam during the Vietnam conflict. Such commemoration shall be deemed to be a modification to the existing memorial.

(b) Siting.—The Secretary of the Interior, in consultation with the Vietnam Women's Memorial Project, Inc., and the Veterans' Memorial Fund, Inc., is authorized and directed to select, with the approval of the Commission of Fine Arts and the National Capital Planning Commission, a suitable site for the commemoration authorized in subsection (a) within the 2.2 acre Vietnam Veterans Memorial site in the District of Columbia.

(c) Compliance with Standards for Commemorative Works.—The construction and maintenance of the commemoration authorized in subsection (a) shall be in accordance with the Act entitled "An Act to provide standards for placement of commemorative works on certain Federal lands in the District of Columbia and its environs, and for other purposes", approved November 14, 1986 (40 U.S.C. 1001 et seq.), except that provisions of that Act with respect to siting shall be superceded by subsection (b).

SEC. 2. PAYMENT OF EXPENSES.

The United States shall not pay any expense of the establishment and maintenance of the commemoration authorized in section 1(a).

SEC. 3. SENSE OF THE CONGRESS.

It is the sense of the Congress that it is most fitting and appropriate that a specific commemoration of women of the United States who served in the Republic of Vietnam during the Vietnam conflict be constructed at the site of the Vietnam Veterans Memorial to help complete the process of recognition and healing that was undertaken with the establishment of the Memorial. Further, it is the sense of the Congress that after the addition of the commemoration authorized in section 1(a) the Vietnam Veterans Memorial will be complete and that no further additions or alterations to the site shall be authorized or undertaken.

Amend the title to read:

To authorize the Vietnam Women's Memorial Project, Inc., to construct within the Vietnam Veterans Memorial site in the District of Columbia a specific commemoration of women of the United States who served in the Republic of Vietnam during the Vietnam conflict.

MARINE PROTECTION, RESEARCH, AND SANCTUARIES

HOLLINGS AMENDMENT NO. 3676

Mr. BYRD (for Mr. HOLLINGS) proposed an amendment to the bill (H.R. 4210) to reauthorize title II of the Marine Protection, Research, and Sanctuaries Act of 1972, for fiscal years 1989 and 1990, and for other purposes; as follows:

In section 205(b), insert "and (a)(5)" immediately after "section 304(a)(1)(C)" and immediately after "16 U.S.C. 1434(a)(1)(C)".

Strike title III and title IV.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FINANCE

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on October 12, 1988, to hold a hearing on and to consider the nominations of Malcolm M.B. Sterrett to be General Counsel and Mary T. Goedde to be Assistant Secretary for Legislation of the Department of Health and Human Services; Charles H. Dallara to be Assistant Secretary of Policy Development, and Edith E. Holiday to be Assistant Secretary of Public Affairs and Public Liaison of the Department of the Treasury.

The PRESIDING OFFICER. Without objection it is ordered.

ADDITIONAL STATEMENTS

"KIDS" HAVE THEIR DAY

● Mr. SASSER. Mr. President, this is to commend the volunteers and sponsors associated with the Washington Congressional Concours D'Elegance which benefited "Kids, Inc." "Kids" is among the largest of the national nonprofit organizations which fulfill dreams of gravely ill children. I was pleased to have served as an honorary judge at the event along with the Honorable Henry Giugni.

A group of more than 50 dedicated volunteers organized and operated the Washington Congressional Concours D'Elegance, an antique and classic car show which was attended by several thousand spectators, in Potomac, MD, on May 15, 1988. Their hard work and determination will enable "Kids" to bring much happiness to these children and their families.

In particular, I wish to commend Mr. Lew Delafield, event chairman, and Lt. Col. Frank Norton, deputy chairman, as well as committee members John and Jan Campbell who founded "Kids", Ms. Barbara Dana, Ms. Joan Dawson, Bob and Beth Fitzpatrick, Mr. Robert Hurt, Mr. Dick James, Lt. Col. Jack MacNeill, Ms. Gina Rowe, and Mr. Bob Steward for their efforts on behalf of children whose time to dream is so limited.

The generous sponsors of the organization and the event included RJR Nabisco, General Electric Co., Philip Morris Cos., General Motors, Hughes Aircraft, Mantech International, Montgomery Donuts/Tiers of Joy, Pizza Movers and Hecht Co.-Tysons Corner.

I am confident that the members of "Kids'" board of advisors share my sentiments in commending all those participants, volunteers and sponsors who gave so freely of their time, energy and financial support in order to make this such a special event.●

EGG RESEARCH AND CONSUMER INFORMATION ACT

● Mr. FOWLER. Mr. President, I rise today to thank my colleagues and to express my pleasure that the Senate passed legislation last night to keep alive the American Egg Board.

Georgia is one of the Nation's leading egg producers. Throughout the mountainous regions in the northern part of my State, there are thousands of henhouses spread out in the valleys and nestled into the hillsides. Some are owned by large outfits like Arbor Acres. Others are owned and managed by families of moderate means, who may rely on the income of a single chicken house to maintain their traditional home in the mountains.

The egg industry in north Georgia—and I'm sure the situation is similar in other States—makes important contributions to the economy, at every level. It makes important contributions to the social stability and continuity of the region, providing families with a way to make a living in the small towns and countryside, so that they do not have to join the exodus to the cities in order to provide for their children and improve their standard of living.

And, of course, it goes without saying that egg producers make an important contribution to our Nation's food supply.

But the egg industry is in the midst of a difficult period of adjustment—as it adapts to major developments affecting sales and production, ranging from cholesterol concerns to serious droughts. In the past 18 months, 20 percent of egg producers have gone out of business.

The legislation passed last night by the Senate will allow the egg industry, through assessments paid by producers to the American Egg Board, to address its own problems and work to solidify its own position in the market. It will allow egg producers to employ methods that have already proven successful in similar situations for the beef, pork, and dairy industries.

We have given egg producers the means they sought to help themselves. I am confident that, using this tool, they will manage to correct these temporary problems. Again, I am happy to see that the Senate has taken this course of action, knowing how important it is to families, small businesses and communities throughout north Georgia and many other parts of our Nation.●

CONTRACTS FOR RESIDENTIAL CONSTRUCTION

● Mr. DECONCINI. Mr. President, I would like to call my colleagues' attention to an issue of great importance to the homebuilding industry in this country. As many of you know, I previously introduced a bill, S. 2694, which clarifies that contracts for residential construction, which are completed in less than 12 months, should be exempt from the requirements to use the percentage completion method. The urgency of this proposal has increased in light of provisions in the House-passed technical bill.

In both the 1986 Tax Reform Act and in the 1987 Budget Reconciliation Act, we legislated cutbacks in the completed contracts method of accounting. I think all of us believed that these cutbacks would primarily affect the long-term contracts of defense contractors, not contracts for the construction of homes. Nevertheless, the Internal Revenue Service issued a notice, Advance Notice 88-66, earlier this year which took actions previously inconceivable.

The cutbacks in the completed contracts method of accounting contained in both the 1986 and 1987 tax bills were aimed at forcing the governments contractors, who often receive substantial progress payments from the U.S. Government, to pay a fair share of tax on these progress payments as they are received. It was thought that requiring these contractors to pay tax based on a "percentage of completion" of the contract would more correctly match the economic benefits of the Government payments with the taxes required to be paid.

The homebuilders were caught in the definition of "long-term contract," because they often receive a small deposit to build a home in one taxable year, but do not complete a home until the following taxable year. Unlike the defense contractors, however, the homebuilders receive very small down payments and usually incur significant costs to develop the land and finish the home before receiving the final payment for it. The homebuilder does not receive progress payments, and the small deposit is kept in an escrow account and cannot be used to offset the construction costs or the tax payments. If the prospective home buyer decides not to purchase the finished home, the deposit may even have to be refunded. Thus, the homebuilder assumes all the risks of holding the completed and unsold home.

The House technical corrections bill contains a provision to totally repeal the completed contracts method of accounting. Such an action would further exacerbate the problems of the homebuilders. Thus, I would urge my colleagues on the Senate Finance Committee who will be conferees on this bill that if total repeal is seriously considered, they agree to the clarification which I have proposed in S. 2694.●

S. 1600, FEDERAL AVIATION ADMINISTRATION INDEPENDENT ESTABLISHMENT ACT

● Mr. BUMPERS. Mr. President, before the Senate adjourns sine die and the 100th Congress comes to a close, I want to bring to the attention of the Senate a bill which has been reported by the Senate Commerce Committee but will not likely be acted upon in this final week of legislative activity. S. 1600, introduced by Senator Ford, would establish the Federal Aviation Administration [FAA] as an independent executive agency charged with the task of ensuring the safety of our Nation's airways. I am pleased to be a cosponsor of this bill, and am disappointed that the Senate did not approve the measure this year.

Aviation safety is an increasingly important issue to airline consumers and the public at large, and it is clearly a priority concern for those who travel the airways. The number of passengers who traveled on airlines in 1987 was more than 450 million, and will double by the year 2000. The present structure and resources of the FAA will clearly be unable to handle this increased workload. This expanding industry, which by necessity is a heavily regulated and controlled portion of the transportation sector, will require an expanded Federal role in order to improve safety.

A second important and related issue is the need to maintain our Nation's aviation infrastructure. The administration and Congress have, over the last few years, allowed a more than $7 billion surplus to amass in the airport and airways trust fund. The recent reports of crowded airways in our Nation's larger airports shows that if we are to prevent this problem from compounding in the next few years, we must act soon.

Now I know that an independent FAA will not solve all of our Nation's aviation needs. The aerospace industry must also do its part to meet the challenge. But revitalizing and streamlining the FAA is urgent, and separating the agency from the Department of Transportation should allow it to operate in a manner that gives commercial aviation the attention it deserves. S. 1600, by elevating the responsibility of the FAA and reforming the decisionmaking structures within that agency, goes a long way toward meeting the challenges we face in this important area.

I commend Senator Ford for his efforts on the Aviation Subcommittee to address this issue. His legislation is sound, and I hope that once the 101st Congress convenes, the Senate will consider a bill similar to S. 1600 and act on this issue promptly.●

THE SUPERCONDUCTING SUPER COLLIDER

● Mr. WILSON. Mr. President, I rise today to express my continued support for the Superconducting Super Collider [SSC]. More than any other project, the SSC signals the rest of the world that the United States intends to remain at the forefront of scientific research. Our strong commitment to the SSC is vital if we are to maintain our leadership role.

The SSC will allow scientists to explore the fundamental structure of matter and energy. This basic knowledge will enhance the technological and economic competitiveness of the United States by offering likely benefits in the physics, business, medical energy, education, and governmental areas.

Within the next 6 weeks, the Secretary of Energy will announce the preferred site for the SSC. The West offers two superior sites, Arizona and Colorado. I join Governor Deukmejian and the Western Governors' Association in endorsing a western site.

Locating the SSC in the West offers several unique advantages. A western site would allow cooperation with the existing Federal laboratories at Los Alamos, Sandia, Lawrence Livermore, and the National Center for Atmospheric Research—Boulder.

The western sites offer a quality of life conducive to attracting the best scientists from all over the world. Moreover, the environmental impact statement indicates that construction at the western sites would be the least disruptive of the environment, and both sites offer reduced construction and operating costs.

The western universities and associated centers have joined to establish the Western States SSC coalition, which is dedicated to maintaining the SSC as a national priority, establishing regional scientific research centers, and providing additional resources for the SSC through their institutions. The Western Interstate Commission for Higher Education has endorsed a western site and will assist the coalition in establishing cooperative programs.

In closing, Mr. President, I hope that I can count on my colleagues' support for this important project.

Mr. President, I ask that a letter addressed to President Reagan from the Western Governors' Association, dated September 29, 1988, on the super collider be printed in the Record.

The letter follows:

Western Governors' Association,
Denver, CO, September 29, 1988.

Hon. Ronald Reagan,
President of the United States,
The White House, Washington, DC.

Dear Mr. President: In January 1987 you committed the United States to a leadership role in scientific research with the announcement of your support for building the Superconducting Super Collider (SSC). The SSC and associated technological advances signal the rest of the world that this Nation intends to remain at the forefront of high energy physics research.

The Department of Energy in January of this year, after reviewing the National Academies of Science and Engineering recommendations, selected seven sites from thirty nationally for further study. Two of these sites are in western states, Arizona and Colorado. The governors of both Colorado and Arizona have worked extremely hard at bringing the SSC to the West and have supported continued funding of the program by Congress.

The Western Governors believe the West offers two superior sites for the SSC and want you to know their position. In 1987 the Western Governors passed a policy resolution supporting the location of the SSC in the West. That position and commitment is reaffirmed by this letter.

As a fellow westerner, you are aware that locating the SSC in the West offers several unique advantages to the Department of Energy and the Nation. The western sites would allow the federal government to build on the existing commitments to advanced scientific research in high energy physics and superconductivity at the federal laboratories at Los Alamos, Sandia, Lawrence Livermore, and the National Center for Atmospheric Research—Boulder.

The western universities and associated centers of excellence have joined to establish the Western States SSC Coalition. The Coalition is dedicated to establishing regional cooperative research centers for scientific research and to provide additional resources for supporting the SSC through their institutions. The Western Interstate Commission for Higher Education in a rare action endorsed the location of the SSC in the West and committed to work with the Western States SSC Coalition in establishing cooperative research and educational programs.

The western states, due to their environmental settings, offer both the quality of life and the amenities needed to attract and retain superior scientists. The western sites also were judged in the environmental impact statement as being the least disruptive of the seven in terms of environmental impact. Additionally, both sites were found to offer extensive monetary savings in terms of construction and operating costs over the life of the facility.

As Western Governors we urge you in preparing your recommendation to the Congress for funding to select one of the two western sites under consideration.

Sincerely,

George Deukmejian, Governor of California, Chairman; George Sinner, Governor of North Dakota, Vice-Chairman; Steve Cowper, Governor of Alaska; Rose Mofford, Governor of Arizona; Roy Romer, Governor of Colorado; John Waihee, Governor of Hawaii; Cecil Andrus, Governor of Idaho; Ted Schwinden, Governor of Montana; Richard Bryan, Governor of Nevada; Neil Goldschmidt, Governor of Oregon; George Mickelson, Governor of South Dakota; Norman Bangerter, Governor of Utah; Booth Gardner, Governor of Washington; and Michael Sullivan, Governor of Wyoming.●

IN PRAISE OF CITIZENS OF SACO, MT

● Mr. BAUCUS. Mr. President, a train derailment near Saco, MT, last summer could have been much worse, had it not been for the efforts of that community's citizens. Saco residents opened up their homes and donated their time in helping the victims of that accident.

Many of the train passengers were on their way to a convention of the National Association of Letter Carriers in Portland, OR. At the convention, some of the members told about their experiences in Saco. Clarence Van Elsberg, president of the Montana State Association of Letter Carriers, sent a letter to the residents of Saco expressing the gratitude of the accident victims.

Mr. President, I ask that Mr. Van Elsberg's statement may be printed in the RECORD.

The letter follows:

STATEMENT OF CLARENCE VAN ELSBERG

Citizens of Saco and surrounding area: My name is Clarence Van Elsberg. I am President of the Montana State Association of Letter Carriers. I have just returned from the 56th Biennial Convention of the National Association of Letter Carriers which was held in Portland, Oregon.

The Amtrak train that derailed in your area was carrying many delegates and their families who were on their way to the National Convention in Portland. On the convention floor, with 6,125 delegates in attendance representing all 50 states, delegates from the North East and North Central United States praised the citizen's of Saco and the surrounding area for the support and services provided them.

The experiences that they related, being taken into private homes, the use of phones to call families, school buses for transportation, and just over all helpful and friendly attitude, were very much appreciated. Their praise of the citizens of Montana was totally complementary.

The 14 delegates representing the State of Montana at the National Convention were the proudest delegation on the floor of the convention. It was because of the unselfishness of the citizens of Saco and the surrounding area.

This letter is our way of expressing our gratitude for the assistance provided our Brothers and Sisters and their families in this emergency.●

GOMPERS SECONDARY SCHOOL SAN DIEGO, CA

● Mr. WILSON. Mr. President, it is with great pride that I rise today to honor the remarkable achievement of a team of students from Gompers Secondary School of the San Diego Unified School District in San Diego, CA, who together were victorious in the 1988 National Bicentennial Competition on the Constitution and Bill of Rights, a newly created educational competition funded by the U.S. Congress and cosponsored by the National Bicentennial Competition on the Constitution and Bill of Rights.

These San Diego students won first place in a demanding competition of knowledge and application regarding our American Constitution. Over 1,000 students from 43 States across our country participated in the national finals in Washington, DC. With their victory, the Gompers team gained the distinction as the first winner of this prestigious national competition. Their achievement brings credit to them, to their teacher and coach, David Vigilante, to their school and certainly to all California. They proved that with dedicated effort, hard work, and unified quest for excellence, they could succeed in this educational competiton, and succeed brilliantly.

It is with deep respect that I salute the achievement of these bright young Californians in this Chamber of the U.S. Senate. I know my Senate colleagues join with me in congratulating them and in wishing each of them every success in all their future endeavors.●

THE SUMMIT HOTEL

● Mr. LAUTENBERG. I rise to call my colleagues' attention to an historic hotel in Summit, NJ, that is celebrating its 120th year of hospitality. I am referring to the Summit Hotel.

The hotel began in the 1860's as the Blackburn House, a country resort with elegant charm and European service. Guests enjoyed this wonderful resort so much, that many came to Summit, NJ, and settled.

In 1929 it was time to expand due to the resort's popularity. The present structure standing today was built on the original site and the result was the Summit Suburban Hotel. It was opened just before the Great Crash and today is listed in the New Jersey Historic Preservation Sites Inventory and Union County Inventory of Historic Sites.

The hotel's rich history continued as it thrived and attracted guests, by its location, amenities, and dedication to excellence.

In 1984 the Summit Suburban was bought by new owners and renamed the Summit Hotel. A massive renovation completed in 1986 continues a tradition of gracious hospitality.

Mr. President, I would like to recognize the Summit Hotel's present owners, chairman of the board Marshall F. Weinerman, president Robert S. Gelber, and vice president and general manager Franz V. Eichenauer. I extend my best wishes for continued success in the future.●

TO FIGHT DRUG ABUSE

● Mr. DANFORTH. Mr. President, at long last, the Senate is about to begin consideration of bipartisan legislation to fight drug abuse. Let us act quickly on this important initiative.

The terrible, deadly black market engaged in the production and distribution of narcotics has become a large, costly part of our Nation's economy. In 1983, the last year for which figures are available, the IRS estimated that the retail value of cocaine consumed in the United States was anywhere from $3.2 billion to over $8 billion per year. The retail value of all narcotics consumed in 1983 may have been as high as $33 billion.

This spring, Fortune magazine stated that, worldwide, the trade in narcotics may be $500 billion per year—a figure which is twice the value of all U.S. currency in circulation.

There can be no doubt that many hundreds of millions of these dollars left the United States for other countries. Likewise, there can be no doubt that every dollar spent in this deadly drug trade was a dollar not spent or invested in legal commerce.

The resources drained from legal trade and investment by narcotics consumption is not the only impact upon our economy. An even greater toll is exacted from our society in terms of death, injury, disease, property loss, and lost productivity.

A 1984 study released by the Research Triangle Institute estimated that the direct cost of illegal drug use to our country exceeds $60 billion per year. The cost of crimes directly related to drug consumption made up one-third of this total. Lost productivity, injuries, and damage to property accounted for a $33 billion loss to our economy. Hidden costs, including increased welfare costs, were responsible for the remainder.

Sixty billion dollars is an enormous sum of money. It is more than the 1987 gross sales of IBM. Sixty billion dollars is almost twice the 1987 gross sales of DuPont. Moreover, this staggering figure reflects 1983, not 1987 or 1988 sales of illegal narcotics. The Justice Department estimated the 1987 U.S. narcotics trade value as closer to $100 billion—almost equal to gross sales of General Motors, the No. 1 company on the "Fortune 500."

There are other burdensome costs related to illegal narcotics use. Drug abuse in our country adds at least $50 billion annually to the cost of life insurance, workman's compensation insurance, health insurance, auto insurance, and other types of insurance coverage. Every American is affected by the increasingly high cost of insurance. It is just one price we pay for illegal drug use.

I am committed to ending this drain on our legal economy. The first step is to require mandatory random drug and alcohol testing in those portions of the workplace directly affecting our health and safety. Of critical importance is public transportation, where our health, safety, and property are always at stake.

The Senate's omnibus anti-drug initiative contains a Hollings-Danforth provision calling for random testing of safety sensitive aviation and rail workers, and truck and bus drivers.

I urge my colleagues' support. Let us rid ourselves of the insidious burden illegal drug use places on us all.●

A WORLD DESPERATE FOR WATER

Mr. SIMON. Mr. President, I recently saw an article in the Chicago Sun-Times, "Libya pushes vast Gadhafi irrigation project," written by Frances D'emilio of the Associated Press.

It is talking about a multibillion dollar project that will bring water to a desert area in Libya.

There are similar projects elsewhere, perhaps not on this scale, but areas desperate for water.

That problem is going to grow and not diminish as the world's population grows.

The answer, ultimately, is not simply piping water from one area that has fresh water to another area that does not.

What we have to do is much more research on finding an inexpensive way of converting salt water to fresh water. That would provide a better answer, not only for Libya, but for the Middle East in general, for northern Africa, for the Southwestern United States, and for much of the world.

My colleagues will be hearing much more from me on that in the future, but I wanted to point this out.

I ask to have the article printed in the Record. The article is meaningful only in that it is one small indication of what we are going to see much more of in the future, a world desperate for water.

The article follows:

[From the Chicago Sun-Times, September 18, 1988.]

Libya Pushes Vast Gadhafi Irrigation Project

(By Frances D'emilio)

BREGA, Libya—Col. Moammar Gadhafi still insists that his Great Man-made River Project will transform a nation that is 95 percent desert into a "Garden of Eden" abloom in fruits, vegetables and grain.

Despite sagging oil revenues, Libya is pushing ahead with Gadhafi's dream of piping fresh water from deep under the Sahara Desert to the shores of Tripoli and other thirsty coastal areas.

One underpinning of the project is U.S. technology, reportedly in place before January, 1986, when the Reagan administration ordered American companies to stop doing business in Libya on the ground that Libyans were behind terrorism aimed at Americans and other Westerners.

Gadhafi went to Brega on Aug. 26, 1986, to inaugurate the factory that makes the concrete and steel pipes for the "river." Since then, workers have laid about 280 miles of the planned 12,500 miles of pipeline.

The first stage, estimated to cost $4.5 billion, calls for 1,180 miles of pipeline to carry half a billion gallons of fresh water daily from wells in east central Libya to a reservoir at Ajdabiya near the coast on the Gulf of Sidra for distribution to areas near Sirte and Benghazi.

Factory manager Osman Jaouda recently estimated that this stage would be finished in 1991.

A South Korean construction company, Dong-Ah, is cranking out the pipes and digging through the desert to lay them. Jaouda said the Koreans' inexperience with desert terrain and weather has caused delays.

The pipeline slices through bleak terrain, broken only occasionally by brush and date palms near oases where camels and goats graze.

With current lower market prices, Libya's oil revenue is sharply down—from $22 billion in 1980 to $6.6 billion in 1987.

Diplomatic and business sources in Tripoli say Libya has cut back drastically on such projects as highway, school and hospital construction and is concentrating on its oil industry, the military and the Great Man-made River.

"Every single Libyan is waiting for water," Jaouda said, leading a tour for journalists flown on a government plane from Tripoli to Benghazi to see the project.

He said Gadhafi visits frequently to check on progress.

The U.S. order against American operations in Libya caused a few hectic months without consultants but did not delay the project, Jaouda said.

The firm of Root and Brown Inc., of Houston, Texas, turned over its duties to its subsidiary in England, and Britons and Canadians have taken the place of the estimated 300 Americans who were working on the project.

He said the first water to flow will irrigate 247,000 acres of farmland near the Mediterranean city of Benghazi, Libya's second largest city.

Other stages call for water to be tapped from wells in central west Libya and be delivered to Tripoli and for a pipeline to connect the Libyan capital, Tripoli, with Sirte. Eventually, a pipeline is to run out to wells in Kufra, deep in the south, and the final phase will pipe water as far east as Tobruk, near the border with Egypt.

Businessmen and technicians here, including those who have worked on irrigation projects, express doubts that the project will guarantee that Libya can grow all it needs to eat. They cite the competing demands by major cities, where most of Libya's population lives, for more and better drinking water.

Jaouda estimated that the Great Man-made River's water, pumped from natural wells 1,150 feet underground, will last 50 years.

The pipe segments, each weighing 72 tons and measuring 23 feet long and 13 feet in diameter, probably will outlast the water, he said.●

IN APPRECIATION OF JOSEPH M. McGRAIL

● Mr. LAUTENBERG. Mr. President, I want to take a few moments to call the Senate's attention to the singular contributions Joseph M. McGrail has made to the work of the Subcommittee on Transportation of the Committee on Appropriations. Joe has been assigned to the subcommittee from the General Accounting Office since March 1987. He will be returning to GAO at the end of this Congress. His special talents will be sorely missed.

Joe has brought to the subcommittee an exceptional combination of: broad experience across a wide range of governmental functions; solid analytical skills; and expertise in aviation policy. He began his Government service in the Navy as a hospital corpsman and physical therapist from 1952 to 1956. His career in GAO began in June 1960, after completing his bachelor of science at LaSalle college in Philadelphia under the GI bill.

Six months later the Kennedy administration was inaugurated. President Kennedy had a high regard for public service. For him, and for the generation that came of age at that time, Government and politics constituted a special calling which demanded excellence and deserved respect. The uniformly high quality of Joe's work and his deep dedication to the value of public service bear witness to the continued strength of that ideal.

Joe's assignments at GAO have spanned a diverse array of programs and agencies. He has investigated the financial management of Office of Economic Opportunity projects, audited military payrolls and materiel stockpiles, and evaluated EPA water pollution programs and the Navy's Aegis air defense system.

For the last 8 years, Joe's work has been concentrated primarily in the aviation area. One of his most significant accomplishments in this regard is the 1986 survey and analysis of the air traffic controller work force. He was the manager and principal author of that study which, to no small degree, has set the agenda of FAA staffing issues for the Government and the aviation community for the remainder of this decade and beyond. And this is true not just in relation to controllers. Subsequent and ongoing GAO investigations of the safety inspectors work force and of generic FAA training and recruitment problems owe much to the 1986 controller study. In fact, Joe's work has been instrumental in expanding GAO's effort and capabilities in the analysis of important questions across the entire spectrum of transportation programs and policies. In recognition of these achievements, Joe received both the Regional Manager's Award and the Comptroller General's Meritorious Service Award in 1986.

I, of course, have always had a strong interest in aviation policy. And aviation is a major element of the portfolio of the Transportation Subcommittee which I am now privileged to chair. Joe's expertise and professional experience have thus been invaluable assets, not just for me, but for the members of the subcommittee and, indeed, for all Senators and their staffs. But above and beyond his purely professional abilities, Joe has provided the kind of seasoned perspective, mature judgment, and tough-minded integrity for which there is no substitute. I know, and other Senators know, that we can depend on Joe for objective analysis and for sound, sensible advice.

So, Mr. President, I want to extend to Joe my personal appreciation and to thank him on behalf of the subcommittee for his assistance. And I know my colleagues join me in wishing him every success in the future.●

PROCLAMATION OF POW/MIA RECOGNITION DAY IN MONTANA

● Mr. BAUCUS. Mr. President, Montana Gov. Ted Schwinden proclaimed September 16, 1988, as POW/MIA Recognition Day. This was to honor the 21 Montana servicemen, along with the 2,414 other Americans, who are still unaccounted for as a result of the Vietnam War.

My heart goes out to the families and friends of those Americans. I hope we can resolve soon the haunting questions concerning their fate.

Mr. President, I ask that the proclamation by Governor Schwinden be printed in the RECORD.

The proclamation follows:

PROCLAMATION

Whereas, today, over 15 years since the end of active U.S. involvement in the Vietnam War, 21 Montana servicemen are among the 2,435 Americans still unaccounted for in Indochina; and

Whereas, the family and friends of the missing must live with uncertainty until the fate of all our POWs and MIAs is known, and

Whereas, Montanans have not forgotten the sacrifice our missing or captive countrymen have made for their state and the nation; and

Whereas, we will continue to remember them long after this day is over; and

Whereas, in memory of our fellow Montanans, the POW/MIA flag will be flown at the Capitol in Helena on Friday, September 16, 1988.

Now, therefore, I, Ted Schwinden, Governor of the State of Montana, do hereby proclaim Friday, September 16, 1988, as POW/MIA Day in Montana.●

THE STRUGGLE TO RESTORE LEBANON

● Mr. SIMON. Mr. President, I rise to draw attention to one of the most poignant events in the Middle East today: The struggle of the people of Lebanon to restore peace, independence and prosperity to their beautiful country after a decade and more of strife.

I am proud today to join a number of my colleagues in cosponsoring Senate Concurrent Resolution 145, submitted by my good friend, Senator GEORGE MITCHELL of Maine, one of this Nation's most distinguished Lebanese-Americans. Americans of Lebanese heritage, thought relatively few in number, have made a disproportionately large contribution to the success of this country. Philip Habib in diplomacy, Senator MITCHELL himself in politics, Danny Thomas in entertainment, and my distinguished constitutent Bob Abboud in business are only a few of the names that immediately come to mind in the rollcall of contributions made by these active and talented citizens.

I share the deep pain they feel at the tragedy that has befallen the land of their forefathers. Like them, I share a desire to do all I can to contribute to ending the cycle of violence, destruction and suffering which has reduced the famed "Paris of the Mideast" and its lovely countryside to a living nighmare.

Because any little improvement counts for so much in Lebanon, I have worked over the last several years to preserve United States Government funding to support the work of the YMCA of Lebanon, which is providing humanitarian services for individuals and communities of all religious and political beliefs. Noteworthy among its accomplishments is a day camp program for some 6,000 children affected by war. This organization also has provided needed clothing, food, and medical treatment to over a quarter of a million victims of the fighting.

Great as the need is for humanitarian assistance, there is an even greater requirement for political solutions to the conflicts which have all but destroyed Lebanon as an independent country. This was clearly brought home to me in a talk I had last week with delegates to the first conference of the American task force for Lebanon, a group of distinguished Lebanese-Americans who are working to restore peace and stability to that land. I was impressed with the seriousness and sincerity of my visitors, who made a strong appeal for the United States to use its considerable influence and prestige to create a situation in which the Lebanese people could determine their own fate, free from outside interference.

They stressed that the first need is to get foreign military forces out of Lebanon and to ensure that the Lebanese people themselves are given an opportunity to choose their own political leaders and institutions without intimidation.

I have written directly to Secretary to State George Shultz to urge that the United States remain fully engaged in the weeks ahead to work for a free and democratic Lebanon dedicated to a peaceful life for all of its confessional communities. It is my hope that the next administration will move on this problem, and move quickly.

Mr. President, we need to send a strong message of support and friendship to those in Lebanon who are striving to rebuild their country in peace. I commend Senator MITCHELL, on his leadership in behalf of Lebanon, and I urge that this concurrent resolution be adopted.●

RABBI ARNOLD SHER

● Mr. DODD. Mr. President, it is my deep honor to call to my colleagues' attention the accomplishments of Rabbi Arnold Sher, the leader of Congregation B'nai Israel in Bridgeport, and a man who has touched the lives of many in my State of Connecticut.

Rabbi Sher is a man of warmth and humor, who does not shy from holding or expressing views on national and international affairs. In addition to his spiritual leadership, he has proven himself again and again a civic leader by rolling up his sleeves and tackling the most difficult yet most rewarding work there is: that of volunteer in one's community.

He has been a tireless champion of civil rights and positive race relations in Bridgeport, and he has been recognized for his considerable accomplishments in the field of low-income housing. Currently, he is chairman of the Bridgeport Rotary Housing Corp., which serves more than 200 elderly residents. The list of his involvements, Mr. President, is distinguished both by its length and its diversity.

Since 1980, Rabbi Sher has also held the title of Attorney Sher, a member of both the Connecticut and American Bar Associations. He teaches law at the University of Bridgeport and religious studies at Fairfield University. In May of this year he earned yet another academic distinction, the doctor of divinity degree from Hebrew Union College-Jewish Institute of Religion.

I have already mentioned how the rabbi has touched many lives. Let me assure you that he has touched mine. Since I came to know him early in my career, Rabbi Sher has taught me much with his words and deeds. Mr. President, I appreciate having the opportunity to praise his 20 years at Congregation B'nai Israel. I know that you and my colleagues will join me in paying tribute to this man who, with his family, brings such credit to his congregation, his city, and his State.●

AMERICAN SOCIETY OF NAVAL ENGINEERS

● Mr. McCAIN. Mr. President, I rise today to extend my congratulations to the American Society of Naval Engineers in honor of their 100th anniversary which occurs this year. This professional organization, which was founded in 1888 to advance the technology and general knowledge of American naval engineering, currently derives its membership from the Coast Guard, the naval aviation community, the naval electronics community, the Marine Corps, the Maritime Administration, the merchant shipping community, the Army, and the naval weapons community. The society has been dedicated to advancing the technology of naval engineering to ensure quality in all the maritime services, while at the same time promoting professionalism of its members and naval engineering as a career field.

Their list of accomplishments is impressive and deserves our recognition. Vital contributions from the ASNE have been made in the transitional development from sail to steam, and from diesel to nuclear power. The members of the society have continually proven themselves to be leaders in the development of mechanical, electrical, and electronic systems that are aboard U.S. ships in support of ship aviation and missile launching installations. In addition, members of the society have augmented the great strides made in ship design, construction, operation, maintenance and logistic support of surface and subsurface ships, ship-related aviation and space systems, and shipboard weapons and electronic systems.

The society also deserves to be commended for its professional communication between civilian sectors including civilian Government engineers, industry engineers, shipbuilders, ship operators, and designers of engineering services and equipment. The work of the American Society of Naval Engineers has furthered the knowledge that exists in this field and has been of vital importance to our Nation.

Again, I congratulate the American Society of Naval Engineers for its achievement and progress in the advanced technology of the Navy, Coast Guard, Marine Corps, Merchant Marine and the entire Nation.●

MINNESOTA'S AVIATION PROFESSIONALS

● Mr. BOSCHWITZ. Mr. President, I rise today to express my appreciation to Minnesota's aviation enthusiasts.

During the past year I have worked closely with the general aviation community about issues important to them. Because I fly a great deal, and because my son is a licensed private pilot, I have developed a great deal of interest in aviation issues.

In the course of my work, I've developed a great deal of respect and admiration for the men and women involved in general aviation. I have found these Minnesotans to be professional in their approach to aviation, strong supporters of aviation safety, and supportive of programs to upgrade pilot proficiency and knowledge.

On Monday, October 10, I had the opportunity to address the first Annual Minnesota Aviation Symposium, and it's with a great deal of pride that I mention that they awarded me the "1988 Minnesota Aviation Award." This award was presented to me by the following aviation organizations:

Minnesota Office of Aeronautics.

Minnesota Council of Airports.

Minnesota Aviation Trades Association.

Minnesota Community Colleges.

Minnesota Business Aircraft Association.

Minnesota Chaper, Ninety-Nines.

Minnesota Aviation Association.

Minnesota Seaplane Pilots Association.

Minnesota Sport Aviation Association.

Minnesota Confederate Air Force.

Minnesota Aviation Museum and Hall of Fame.

Aircraft Owners and Pilots Association.

Minnesota Wing, Civil Air Patrol.

Minnesota Aviation Advisory Council.

Federal Aviation Administration.

University Aviation Association.

Aerospace Education Association, North Central.

Experimental Aircraft Association.

Local Airline Service Action Committee.

Mr. President, while I looked at my efforts as just doing my job, I must tell you that it is very gratifying to have my work so richly recognized. While I have already personally thanked these organizations for this award, I wanted to publicly thank them for this award, and let them know that I hope to continue to be a strong voice in the Senate on behalf of general aviation enthusiasts.●

MISOPROSTIL PROCEEDINGS AT THE FDA

● Mr. HUMPHREY. Mr. President, every woman of child-bearing age in this country should be concerned about the recent behind-the-scenes decision within the Food and Drug Administration. The FDA's Advisory Committee on Gastrointestinal Drugs met to consider whether a new drug—misoprostil, which can be used to treat ulceration under certain circumstances—should be marketed.

In addition, the advisory committee considered whether the marketing of the drug should include a mandatory contraindication for women of child-bearing age. For misoprostil has potent abortifacient properties. That description comes from Assistant Secretary of Health Robert Windom in a memo to the HHS chief of staff dated September 28.

In other words, when administered to a pregnant woman, misoprostil is likely to cause an abortion. Under those circumstances, if the drug is to be marketed at all, surely its accompanying medical literature would have to contraindicate the drug for women who might be pregnant. Just think of the human tragedies that otherwise would occur.

Anyone familiar with drug handbooks like, the Physician's Desk Reference [PDR] knows that contraindications are commonplace, especially during pregnancy and lactation. There are literally hundreds of drugs that are so contraindicated because they might cause harm to the baby before birth or through breast feeding.

The Assistant Secretary of HHS admits, in writing, that misoprostil is one of those dangerous drugs. And yet, the FDA advisory committee does not recommend contraindicating its use in women of child-bearing age, preferring instead an "intensive educational campaign to properly inform patients of the risk." That's remarkable. We can only speculate as to the reason for the committee's unconscionable neglect. Could it be to limit the legal liability of physicians who prescribe the drug to women who might be pregnant? Could it be to lay the groundwork for common usage of the drug to provoke abortion?

Mr. President, all Senators should examine carefully these curious proceedings within FDA. I ask that Assistant Secrtary Windom's memo of September 28 be printed in the RECORD.

The memorandum follows:

MEMORANDUM

To: Chief of Staff.

From: Robert E. Windom, Assistant Secretary for Health.

Subject: Morning mail for September 28.

Items of interest to the President: None.

Items of interest to the Secretary:

Misoprostil

The FDA Gastrointestinal Drugs Advisory Committee met to discuss the efficacy of the drug misoprostil to treat non-steroidal anti-inflammatory drug induced ulceration. This drug has potent abortifacient properties and has been the subject of heated debate over the past few years.

The committee identified a group of high risk patients (for example, elderly patients with concommitant debilitating diseases or a history of duodenal ulcer) as especially in need of an effective prophylactic drug like misoprostil. Because there is no effective drug available to treat non-steroidal anti-inflammatory drug-induced gastric ulcer, the Advisory Committee recommended 9 to 1 to approve misoprostil for use in high risk patients. The committee did not recommend contraindicating use of the drug in women of child-bearing age, but instead recommended an intensive educational campaign to properly inform patients of the risk.

Right-to-Life groups have strongly opposed clinical trials of this drug and will continue to oppose its marketing.

Required action or follow-up:

None.●

UNANIMOUS-CONSENT REQUEST

Mr. BYRD. Mr. President, may we have the attention of all Senators? Mr. President, the able Republican leader and a large number of Senators, those Senators who were appointed to the working group on both sides by the two leaders, including the cochairs of those two groups, Senators NUNN and MOYNIHAN, RUDMAN, D'AMATO, WILSON, and GRAMM, have met on numerous occasions throughout the day, sometimes in one group, sometimes in more than one group, on which occasions groups were meeting concurrently. Many hours have gone into the effort, today, to attempt to draw up an agreement which would enumerate the amendments that would be called up, and I am prepared, now, to present a request that would limit the amendments to those that I shall enumerate.

Perhaps I should say that we can pass a drug bill. I talked to the Speaker earlier today. I had heard that the House might go out until next week and come back, waiting on the Senate to pass a drug bill.

I suggested to the Speaker that it was my hope that the Senate would pass a drug bill tomorrow, or no later than sometime Friday, but tomorrow if we could get this agreement, in which case he said that he would have his membership here Friday. He said he could not very well call his people back Friday if we were going to wait until next week to pass a drug bill.

So we left our understanding by my saying that I would give him a reading tonight as to whether or not we were able to get the agreement. So, if I can call the Speaker and let him know that the Senate has reached an agreement, which hopefully would see us act, finally, on the drug bill by late tomorrow or early Friday, then he would have the House back on Friday. Otherwise, he would have them back next week.

Mr. President, we have the opportunity within our reach to pass a good drug bill, a drug bill that has every mark of bipartisanship on it, a drug bill which has been crafted by Democrats and Republicans who have spent days upon end with staffs from both sides at the direction of the two leaders, and those task force members could not have been expected to be asked to be more faithful in trying to carry out their assignments.

I hope that we understand if this agreement is reached, we will stay here until we get this drug bill completed, and we can get it done tomorrow, no later than Friday. Now, a single objection, of course, will mean we have no agreement, and a single objection may mean that we will have no drug bill. Every Senator has his right to object. That is understood by all. But I hope that we will also understand the burden that an objection carries with it. If this were a Democratic bill, one might expect an objection. If it were a Republican bill, one might expect an objection. But this is a bipartisan bill, and I hope that Senators will not object.

I do not know of any problem that is gnawing at the minds and troubled hearts of the American people any more than the drug problem. So having said that, I am going to indicate now what the agreement would be.

First of all, I would call up the House bill, and it would be the intention of the joint leaders and all those on both sides of the aisle who are on the task groups, and any others who wish to join, to offer the Senate core drug bill as a substitute for the House bill, and the core bill would be that bill which has been laboriously developed by the task group plus a package that would be jointly offered by the two leaders and the cochairs, and that package would contain circa 30 amendments in the package. There would be a vote on it at some point. We would have a vote up or down. But that would be a single amendment offered en bloc, and the agreement would be that the package would be subject to a vote up or down or a tabling motion.

But that would in itself contain 30 amendments, and those 30 amendments would be offered by several Senators on both sides of the aisle. They would deal with child pornography; exclusionary rule; habeas corpus; alcohol warning labels; penalty for threats against former Government officials; National Commission on Uniform State Laws; drug free United States by 1995 statement; make a drug czar a member of the NSC; Federal agencies' participation in Uniform Crime Reporting Program; GAO study on impact of criminal penalties; deportation; health amendment; drug free work place suspension; mental health study; drunk driving; program for children of alcoholics; sense of sentence on the UN; technical amendments; S. 2793, the Anti-Corruption Act amendments; ADAMHA; customs reauthorization; penalties for anabolic steroids; National Guard; protection for Colombian officials; technical transfer financial records to DOJ; mental health study; and increased mandatory sentences.

That list of amendments appears to be a very formidable list, but I think that with an explanation by the cochairs of any one of those amendments, Senators would see and better understand what is meant, and before a Senator would object, I would hope that he would discuss the particular amendment in that group that he may have some problem with and hope he will discuss that with the task force members on his side and understand just what it involves. I think that would hopefully remove objections.

In addition to that package of amendments, the following amendments would be subject to being offered: An amendment by Mr. LEVIN on death penalty modifications; Mr. KENNEDY on racial justice modification to the death penalty; Mr. SIMON, death penalty related; Mr. KERRY, money laundering; Mr. WILSON, random testing for driver's license; Mr. GRAMM, loss of Federal benefits; Senators DOMENICI and GRAMM, imposition of civil penalties; Senators HATFIELD, EVANS, and LEVIN, substitute mandatory life sentence without parole both the 20-year minimum and death penalty maximum presently in the bill; Mr. DODD, expedited procedures.

Those amendments, which I will refer to as being in category 3 are the amendments that would be offered. Amendments could be offered to those amendments only if such amendments were germane and relevant to the amendment that it is being offered to.

Let me say that again. There are eight amendments that belong in that category. I will call that category 3, amendments to be offered. Those amendments would be subject to amendment only if the amendment offered is germane and relevant to the underlying amendment.

I had mentioned an amendment by Mr. DODD on expedited procedures as having been in category 3. That amendment is in category 2. Let me explain category 2.

I understand Mr. DODD wants it on both. For the moment, it will be on both.

Mr. DOLE. We did not agree to that. We are going to have an objection immediately.

Mr. NUNN. List 3.

Mr. BYRD. That will be on list 3.

Mr. NUNN. I am sorry, list 2.

Mr. BYRD. That will be in category 2.

Category 2 contains 18 amendments. Category 2 consists of amendments under review. What do we mean by that? Amendments under review would be amendments that starting tomorrow morning would be under review by a joint bipartisan working group made up of the cochairs. It would be set off here in the Vice President's room or another room here, to which Senators would go who are listed in a category 2 and see if that working group of cochairs had cleared the amendment. If the cochairs clear the amendment, then it would be called up. If the cochairs do not clear the amendment on category 2, what was the understanding? That the two leaders——

Mr. NUNN. The understanding was that if the cochairs did not clear the amendment on category 2, they would not be agreed to, they would not be eligible to come up. But we did discuss a fallback position on that depending on the leadership so that the leadership, if the cochairs did not clear the amendment, would be able to jointly agree to bring up the amendment.

Mr. ARMSTRONG. Mr. President, will the leader yield? I do not think we understood over here what we just heard because I am confident that the leader did not propound, or did not discuss what seemed to be under discussion. He is not suggesting that the Senate enter in to a unanimous-consent agreement under which a group of two Senators would go off in another room and decide what was in order to be offered.

Mr. BYRD. That is what I was about to propose.

Mr. ARMSTRONG. Mr. President, I heard the Senator from Georgia say there was some thought of a fallback position. I am relieved to hear that because I am confident that would not meet the test of fairness in the minds of many Senators.

Mr. BYRD. All right, Very well. Let us put it this way then. I will list the amendments that would be subject to review by the joint chairs, and if those joint chairs—I hope that Senators will not come in at the moment and hand me these amendments. Let us talk about those we have been working over for hours. The amendments under review subject to agreement of the leadership, those amendments I think would be screened by the joint cochairs, by the joint chairs, and it is possible that those amendments could be worked out and agreed to. They may not be very difficult to resolve. But they are listed, and if they cannot be agreed to upon, then the fallback would be that the two leaders would decide if they could be called up.

Mr. DOLE. Both of us would have to agree.

Mr. BYRD. Both would have to agree. Let me say to the Senator I have no objection to calling any one of them up.

Mr. ARMSTRONG. Mr. President, I do not want to interrupt the train of thought of the leader, but this does not sound to me like an agreement that is fair in the slightest. Now, there is not one of those amendments that has my name on it. I may have an amendment that I wish to offer, but I have not indicated that to anybody.

Mr. President, we are all eager to pass a drug bill, but there are at least some of us who are skeptical that that cause is advanced by entering into any kind of a unanimous-consent agreement. There are some of us who think that the expeditious way to do it is to call up the bill and begin to debate the bill and let people offer amendments. Had we done that, say, at 10 o'clock this morning, we might be well toward passage of a bill at this point. Now, we might not. But, Mr. President, whether any amendment is called up should not be, in my opinion, the subject to some off-the-floor discussion.

Personally, I am not disposed to grant any unanimous consent agreement tonight. I would like to see a list of the amendments. I would like to see where we are going, and I would like to have some discussion of the leadership of the schedule under which all this would be considered.

But in any event, I would be dumfounded if we would enter into the kind of agreement that is under discussion tonight.

Mr. BIDEN. Will the leader yield for just a comment?

The PRESIDING OFFICER. The majority leader has the floor.

Mr. BIDEN. Will the leader yield for a brief comment?

Mr. BYRD. Mr. President, I yield to the distinguished Republican leader.

Mr. DOLE. Mr. President, let me, before the majority leader makes a request, indicate what has been transpiring the last several hours—in fact, the last several months, start it that way. I was not on the core group. We have had I think a total of 20-some Senators involved on both sides of the aisle over a period of 4 months working on the drug bill.

We have had at least six on our side: Senator THURMOND has been very active, Senator DOMENICI has been very active, along with Senators WILSON, GRAMM, RUDMAN, and D'AMATO—we think a pretty good cross section on this side of the aisle. And so for the past 3 or 4 months, particularly the last 3 or 4 days and all day today, they have been trying to make judgments on all the amendments. There are 80-some amendments. Eighty-some amendments have been offered. Nobody can claim surprise; that they did not know we were talking about a drug bill the last several months. We brought it up in our policy luncheons and everywhere and now we are being told we want to offer several amendments.

The only point I would like to make is this. I would like to have a week and a half on the drug bill, and maybe we are going to have a week and a half on the drug bill, maybe the rest of this week and maybe all of next week. And if that is what Senators want, that is all right with me. I am not running this year and I will be right here. But I would say there may be objection, maybe from either side. I am not saying there should not be. But I would say on the list that we have agreed to there are 30 amendments, minor amendments generally. There are 11 Republican, 10 Democrat and 9 bipartisan amendments. I think we could explain each one of those amendments and nobody would object, at least say, OK, they ought to be in the package, it ought to be a leadership amendment.

I think where we are having difficulty and where I think we would agree with the Senator from Colorado and others, on page 3, the hot buttons Republicans have, the hot buttons the Democrats have, we have agreed on an equal number of amendments that each side would offer, and those amendments have not been drafted and they have not been seen by anybody on either side, and so nobody has suggested there should not be second-degree amendments, nobody suggested, except we just limit that list.

I would hope at that point we could have an up or down vote on each of the amendments rather than a tabling motion. They are solid amendments. Imposition of civil penalties, that is one that Senator DOMENICI and Senator GRAMM have been working on; testing, Senator WILSON and others; and Senator HATFIELD, for example, Senator EVANS and others I think on the death penalty.

I guess what I would suggest is that we—the majority leader can move to the bill right now under an agreement. He could have done it this morning during the morning hour, and it was agreed that he could do it anytime later in the day.

Mr. BYRD. Anytime later.

Mr. DOLE. Anytime later, and it is not a debatable motion. But I would hope that if we cannot agree on anything else, we could at least agree that we would add to this package those amendments where there has been total agreement by everyone in the room. There were a dozen of us at one time in that room, Republicans and Democrats, and we were well represented and we have been working on these with staff.

I would say that on page 2—those are sort of the purgatory amendments—they do not know where they are going, and they may not be going anywhere. But you have to have an agreement by the core group. That is the core group of Senator GRAMM, Senator RUDMAN, Senator D'AMATO, and Senator THURMOND. And if they get an agreement and they are worked out—I do not think there is going to be any big objection on the floor, but if they should have some disagreement, then maybe the Senator from Colorado is right, but we thought, well, if both leaders agreed, they could at least have a vote on it. But it only takes one leader to say no, there was not any agreement on that, that is off the table.

Now, I know that may not be as deliberative as some would like, but it is Wednesday. Many of us hoped to be out last week. We would like to be out at least by Friday. I would hope we could get some agreement tonight. I do not quarrel with anybody's right to see the amendments as they are all written out. But I think you have to have a little confidence in some of us who have been working for hours and months and weeks.

If we can get some agreement on part of it, or all of it, if we cannot get any agreement on any of it, I would encourage the majority leader to go to work on the bill, maybe all of us on the committees who have been working on this can agree to table amendments, get this bill passed or decide not to pass it, and wrap up our business this week.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The leader has the floor.

Mr. BYRD. Mr. President, I yield to the distinguished Senator.

Mr. BIDEN. Mr. President, I will just take a minute or so.

I think this notion that there is somehow suspended disbelief that we would yield to the leadership the decision of whether or not certain amendments would or would not be voted on is in fact a ludicrous statement. The Senate has to run on some sense of comity. The Senate has to run on some sense of trust.

That room, for the past weeks, and I was not in there most of the time having just arrived back here, has been represented by every political hue and stripe within both the political parties. It seems to me that, if we all want a drug bill, at some point there has to be the willingness of those of us who were not in there all the time to have a little bit of trust, a little bit of trust in the fact that the people who represent the political stripe that we represent within our own parties in fact are representing our interests if we want to get a bill within the time limits.

So, quite frankly, Mr. Leader, I do not think it is so crazy for us to say that the page 2 amendments should be ones in which the leadership on recommendation of the cochairs on both sides of the aisle would in fact make a judgment of whether or not they warrant a vote or do not warrant a vote.

I do not know why that is so crazy. It seems to me that if the Government, this body as well as the Government, worked a little more like that, that we would get a whole lot more done. But now we treat everything as if somebody had a secret agenda, attempted to pull the wool over somebody's eyes, when, in fact, on that committee Senator GRAMM, who has never been accused of being a liberal—it runs the gamut across all political spectrums.

So I hope my friends who consider those page 2 amendments listed will work toward getting a bill and have a little bit of trust and a little bit of faith in people who are in fact honorable people. We have no reason to mistrust, and they represent all the political views in this body.

I do not think there is anything so crazy about that. I think it is about time we do more of that instead of being a body of 100 individual egos who in fact have to have every one of their amendments all of the time up before the U.S. Senate.

We might get a heck of a lot more done. I for one am willing in light of the way it was arrived at to trust the judgment of the two leaders, and quite frankly prior to this process beginning I do not think there is anybody here in the last 15 years that has spent any more time than the Senator from Delaware with the drug issue. I am chairman of the committee. I have no reluctance to yield to the group of 12 or 15 men and women who in fact have been dealing with this for a long time.

We would get a lot more done if we trusted just a little more.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Delaware.

Mr. President, I yield to the Senator from Georgia.

Mr. NUNN. Mr. President, I would just add briefly that I agree with the Senator from Delaware. I agree with the majority leader, and the minority leader. I hope we can get an agreement tonight; if not tonight, tomorrow morning.

The Senator from Colorado observed that if we had started at 10 o'clock this morning we would be far along now. I can say to the Senator—and I know he is very sincere in his remarks—that we would not be anywhere at all. We have gone through some 100 amendments.

This list represents—even this list No. 2, the purgatory list, which was probably appropriately labeled by the minority leader—even these amendments, amendments that we believe we can get an agreement on. We may not.

But we simply have not had time to go through each one of them and agree on them. But what we have tried to do is drop all sorts of amendments that were not directly related to the drug bill, and some of them were believed to be very important by the offerers of the amendment. Of course, we could not have had any agreement. I will give one example.

The Senator from Ohio is here on the floor. We had a 7-day waiting period for handgun purchases. That is not on any list here. If that amendment comes up, we all know it is going to be debated quite a while. I do not know what would happen to it. Maybe there would be a substitute, and maybe something else. That is not on the list.

We have an amendment that was very strongly felt to be important by the Senator from Florida on special forfeiture. We had an objection. It did not look like it was going to be agreed to at any point.

So what we have done here is we have this list No. 3, and these are all relevant to this drug bill. They are all germane to the drug bill, and they are all controversial.

So these were the amendments that we felt people felt were so important that they had to be dealt with on this bill. This list No. 2 is the list of amendments, the so-called purgatory list, of which we hope at least 80 percent of them will be agreed to. They may not be. Then we had a fallback so that those that are not agreed to—let us say one member of the cochairman group objects, or two—the leadership will get together in good faith, and see if they can both agree that they would be able to be brought up.

The list No. 1 is the result of literally weeks and weeks and weeks of negotiations, and being able to put this list into the core bill.

So that is where we are right now. There are all sorts of amendments that are not on here.

We are really down to the point, I think we will be tonight—if not tonight, tomorrow morning, or sometime by about noon tomorrow or 3 o'clock tomorrow afternoon—where if we do not get a unanimous consent I believe we just will not get a drug bill this year. I hope we do not reach that. But I think those who object should look at it in that light, if they are going to object because we may very well be blocking a drug bill.

I would say to everyone here, and I believe the Senator from New Hampshire will completely agree with me on this, that 95 percent of the good that is going to come out of this bill, both in education and treatment, and law enforcement and interdiction, is in this core package. We are really fighting over the margins. If people want to fight over the margins for the next several days, we will probably end up going home with nothing. But that is a pretty large responsibility for those who take that position.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Georgia.

I yield to the Senator from New Hampshire.

Mr. RUDMAN. Mr. President, I thank the distinguished majority leader. I will be very brief.

I want to recount some history here so everybody understands it. This task force was put together 4 months ago by the two leaders. I did not volunteer for it. But I have served on it with some very good people from both sides of the aisle.

We have had literally hundreds of hours of meetings. We have circulated to every Member of the U.S. Senate the fact that we were doing this.

If anybody is surprised tonight, they must have been sleeping for the last 3 months. We have had literally hundreds of proposals. We have negotiated many of them. We finally came down to the situation in the last 3 days where we felt it was vital that there were certain key amendments on this side of the aisle that must be offered to this core package—two of them, one by Senator **Wilson** dealing with testing, one by Senator **Gramm** dealing with user sanctions.

Now the other side has agreed to that. As a matter of fact, to be perfectly fair about it, some of the more, in our view, egregious amendments which were going to be offered from that side are not being offered. I know there are people here who wonder why their amendment is not on this list. It is not on the list because somebody in this body has said that there is going to be extended debate on the issue, or there will be no vote on the issue. That may not be very polite, but that is the way the Senate works under the rules.

So we have finally come down to this list. I want to say that I agree with Senator **Nunn** completely. I think 95 percent of it is in the core bill. But I do think the amendments, particularly the ones I mentioned, are extremely important to, I think, the people on both sides of the aisle in a bipartisan way.

Let me finally sum up by saying this: Everyone who has worked on this in the last 4 months tried to incorporate in the core bill anything we could that we could say would not meet with a great deal of objection on the floor. We have done that. We are now down to these amendments.

I think it would be a shame if we did not pass a drug bill because we could not get unanimous consent.

As to those on our side whose amendments are not on the list, I will explain to them, and I will tell them who did not want them, and they can talk to those Senators. We have real problems with all the amendments that are not on the list.

Mr. BYRD. I thank the distinguished Senator from New Hampshire.

Mr. METZENBAUM. Mr. President, will the Senator yield?

Mr. BYRD. I yield to Senator **Armstrong**.

Mr. ARMSTRONG. Mr. President, I am grateful for the leader yielding to me, but I think in some sense it would be better if Senators could gain recognition to address the Senate directly.

Mr. BYRD. I say to the Senator that I am holding the floor so that I can propound the request. I have not propounded it yet. When I propound the request, I will not lose the floor merely because an objection is lodged.

Mr. ARMSTRONG. The leader knows full well that there is no danger at any time, day or night, around the clock, that he will find it difficult to gain the floor. Under the traditions of the Senate, he can gain recognition at any time.

My point was, simply, and it is a point the leader has often made, that it is better for Senators to gain their own recognition rather than making speeches by yielding from another Senator.

I said that we would be further along if we started at 10 o'clock. The truth is that we would be further along if we had started a week ago or a month ago on this bill, but people had other priorities. They want to take up the parental leave bill, the minimum wage bill, and leave windows in the Senate so Senators could attend events off Capitol Hill. I am not complaining about that. That is their right.

It is even the right of Senators to pursue legislation I may not agree with; even to pursue, for purposes of their own choosing, legislation at great length which few Senators, if any, think has a real chance of passage, even if the result in doing so is to bring us down, days after the announced outline of the end of the session, to the consideration of one of the most important pieces of legislation we are going to take up. I do not quarrel with any of it. But I do not agree with the notion that because, at the very last minute, we finally get down to business on this important piece of legislation, a Senator who wants to have the right to offer an amendment or to know what is on the list of amendments that will be considered is prejudicing or jeopardizing the passage of the bill. I am not one of those Senators. I do not have an amendment to offer on this bill. But I do not agree with the procedure and I do not agree with the fact that 10 or 15 days after we have scheduled for adjournment, we are taking up this legislation, after we have fiddled around and wasted time, in my judgment, on legislation of lesser priority; that at this moment we should compromise the better procedures and traditions of the Senate.

I congratulate the leaders and the task force and the chairmen and the other Senators who worked on this. I am disposed to support the legislation, even though I do not like the process and have been waiting around all day and am being asked to buy into a unanimous-consent agreement, the procedure of which I do not agree with. I am, nonetheless, disposed to support the substance of the bill.

I compliment the two leaders for getting us to this point, though belatedly. We have spent a lot of time on legislation that is a dead cat and a dead dog, that has been drug through the Chamber with no chance it was ever going to be passed.

I say to the majority leader that I think the wiser course would be to take this list of proposed amendments, have them duplicated, and proposed at 9 o'clock tomorrow morning the unanimous-consent request, at which time I think it would have a better chance of being accepted.

I further suggest that it would have a better chance of being accepted if it did not contain this unusual page 1, page 2 arrangement, which many of us who do not have a stake or interest in the particular amendments find a troublesome precedent and a troublesome idea.

The Senator from Delaware thinks it is a matter of trust. I do not think that at all. I think Senators are here to vote on amendments and make up their own minds. It is not a reflection on any other Senator, least of all the leaders, the chairmen, or the cochairmen of some task force, to say what these amendments are, and not have somebody sitting in the Vice President's room making that decision for us. I say qualify all those amendments and let them be voted on.

Third, I say to the majority leader that it seems to me that a properly framed unanimous consent-request in the daylight that contains some discussion or some representation as to what the schedule for consideration would be, would be favorably received.

It seems to me that this is far too important an issue to prejudice it by offering a unanimous-consent request under circumstances and under a format that mitigates against it.

Mr. BYRD. I yield to Mr. **Metzenbaum**.

Mr. METZENBAUM. Mr. President, I say to the majority leader that I have made it clear for some time that I intended to offer the 7-day waiting period with respect to the purchase of handguns, and I feel very deeply about it. I am not at all certain that it would pass, but I feel that I wanted to make a battle for it. But I am a realist; and when I look at what I want to offer and when I see what effort has gone into trying to produce a drug bill, I recognize that I might be selfish or more concerned about one amendment than the totality.

So, although I strongly regret the fact—I will not say that I resent it, but I am moderately unhappy that I will not have an opportunity to offer such an amendment, and I would not object because I wanted my amendment to be heard.

I commend those who have spent many hours trying to put together this drug package. It would be a sad day if we went home without a drug bill because John, Joe, Pete, Howard, or Bill, or somebody else just wanted to get their amendment adopted.

I think that those who have been working on it represent a good cross section of the Senate, and we should let them proceed.

Mr. BYRD. I thank the distinguished Senator from Ohio [Mr. METZENBAUM].

I yield to Mr. LEAHY.

Mr. LEAHY. Mr. President, I would not want to have the impression left that we might have gone earlier on this legislation and that during the last couple of weeks the majority leader has had matters that did not count. That is not the situation, and it should not be the record.

Just as water finds its level, legislation finds its time, and that is the case we have here.

I have taken part in a number of those negotiations in the majority leader's office, along with the distinguished Republican leader. There are some items that I do not like in this bill, and there are some items I wish were in the bill that will not be in the bill. But I am one Senator; and if we are going to have a bill, each of us—as the distinguished Senator from Ohio said and as the distinguished Senators on the Republican side have said—will have to wait for another day. I will come back with the things I want in the 101st Congress.

We have debated long and hard the question of habeas corpus. I think we have worked out a reasonable compromise. It means that I have given something and others have given something.

The distinguished Senator from West Virginia has given on some issues he would like in the bill that are not in the bill. I am sure that if he had written the agreement by himself, there are items that would not be there. He is protecting both Democrats and Republicans.

The fact is that we have reached the time. If we are going to have a piece of legislation, it is going to be in the area we are talking about. Those amendments may or may not be agreed to. My amendment may be agreed to and it may not. Someone else's amendment may be agreed to or it may not.

This is really the time, and this is really the agreement. I support the majority leader.

Mr. BYRD. I thank the distinguished Senator from Vermont.

Mr. STEVENS. Mr. President, will the Senator yield?

Mr. BYRD. I yield.

Mr. STEVENS. Mr. President, I remember a story told me by former Senator Thurston Morton from Kentucky that I will share with my good friend, the majority leader, at some other time.

I find myself in a situation that story reminds me of.

I had an amendment listed on the list here that is at the desk of our assistants. I find it is not on list 1, list 2 or even the purgatory list.

That raises the question to me whether my amendment went to heaven or to hell. How do I find that out?

Mr. GRAMM. It went to hell.

Mr. STEVENS. I know the Senator from Texas might want me to go there, but where did my amendment go?

I find there are some amendments here that have sort of disappeared.

This Senator has great reservations about financing a real drug war out of the proceeds of forfeitures particularly when the forfeitures come on the basis of a bill that has no protection for the innocent owners of the vehicles involved. I had an innocent owner protection amendment as was in the House bill, and I do not find it in the bill, and I do not find it in list No. 1 or list No. 2 or in purgatory.

So this is not a hypothetical question.

Mr. DOLE. It is on list 4.

Mr. STEVENS. This is on list 4. That is the one. What happens to list 4?

Mr. DOLE. Nothing.

Mr. STEVENS. That is what I thought. I want to encourage the Senators who are working on it to examine very deeply into the issue of having a bill that proposes to finance the war on drugs on the basis of forfeitures that take place without an appropriate defense for those who own the vehicles to show that they had nothing to do with the circumstances.

I represent a State where a major industry is commercial fishing, and we have had such instances now arise in our State that worry me very deeply. I might say so far as I can determine each one of these vessels have eventually been released. But I question whether they would have been released if the motivation for sale was to continue the war on drugs, if the forfeiture became the means by which they obtained the money to keep the engine going that we all want to see started. And I am very serious.

I hope that we can find some way to resurrect a few of these amendments and to talk.

I congratulate the leader for the procedure that has been used, but I do think that somehow or other we ought to make sure what we are doing concerning the forfeiture issue vis-a-vis innocent owners.

Mr. BYRD. I thank the distinguished Senator from Alaska, and I yield to Mr. CHAFEE.

Mr. CHAFEE. I would like to ask a question if I might.

First of all, I have the same concerns as the Senator from Alaska has regarding the protection for innocent owners on forfeiture. I am not sure what happens on that.

But my particular question deals with the so-called purgatory list, the category 2 list.

As I understand that list, that goes to a group that is assembled somewhere. Who is on the group?

Mr. BYRD. The task group which is composed of——

Mr. CHAFEE. Six on this side and four from that side?

Mr. DOLE. Six and six.

Mr. BYRD. The entire number. Four on that side and two on this side.

Mr. CHAFEE. So they get in there and they go over this list. It looks like 12 or 14 amendments. Then, if there is a disagreement amongst them, then they fail.

Mr. McCLURE. They do not come up.

Mr. CHAFEE. They do not come up. Let us say there is agreement. Then what happens next?

Mr. DOMENICI. They are accepted.

Mr. CHAFEE. Do they come as a package or do they come before us for a vote? What happens? One at a time?

Mr. BYRD. They are called up just like any other amendment that is on category 3.

Mr. CHAFEE. They go in what we would call category 3. They come up for a vote.

Mr. BYRD. Yes.

Mr. CHAFEE. Now, so if you object, if one should object to something in the category 2 group they have to make an appeal to one of the members of the core group. Is that correct? That would be the procedure?

Mr. BYRD. Yes. The core group would be available. It could be right here on the floor. You could walk up to Senator NUNN or a couple Senators on your side, "How about this amendment?" It is yours. It is listed. I do not see any there listed by Mr. CHAFEE. But if there were one, "how about my amendment?" They may say "Fine, perhaps it could be worked out."

Some of those amendments on that list probably can be reconciled without too much trouble. Some of them probably will not be called up.

Mr. CHAFEE. OK.

Mr. BYRD. I know one amendment on there that is a very contentious one that will not be called up.

Mr. CHAFEE. I thank the leader for that.

Mr. BYRD. I thank Mr. CHAFEE, and I yield to Mr. McCLURE.

Mr. McCLURE. I thank the Senator for yielding.

I want to ask a question about process. I know we will get into more of that later. I wanted to do that before the unanimous-consent request was offered.

Reference has already been made to the question of gun ownership and the limitations on gun ownership, all of the waiting period.

The Senator from Ohio has a very different view from the Senator from Idaho in respect to that issue. That has been left off the list. I understand the reasons why the Senator from Ohio did that.

But there is, however, a provision in the House bill. In shorthand around here it is known as the McCollum amendment. The McCollum amendment in the judgment of the Senator from Idaho is not perfect but it is preferable to the other amendment.

If the Senate succeeds in passing this bill with the amendments, whatever they may be, it would then go to the House of Representatives.

Mr. BYRD. Yes.

Mr. McCLURE. It is my understanding we would take up the House bill and amend the House bill with whatever action we take and send it back to the House.

Mr. BYRD. Yes.

Mr. McCLURE. I assume that there is the expectation on the part of many that there is not time at this late date in the session to have the normal conference with the extended debate about all the provisions. However, I suspect the House at least has the capacity to say "We want a conference on this bill."

We would have then a Senate bill silent with respect to gun provisions and the House bill with the McCOLLUM amendment.

While I realize that conferees are bound within the parameters of the conference, there sometimes is a rule that permits conferees to write a provision as they would like to write it.

What I am seeking here is some idea as to whether or not it would be the expectation of the conferees or the leadership to hold either to the silence of the Senate bill or the House provision in the McCollum amendment with no possibility of the conferees writing some other kind of language that the conferees might like on the question of purchasing handguns.

Mr. BYRD. Mr. President, there is no way to predict what action the House would take. The House could accept the House bill as amended by the Senate substitute without any change and it would go to the President or the House could amend the Senate amendment to the House bill and send it back to the Senate. The Senate could add an amendment to that. The amendments are in two degrees between the Houses. Or the House could amend the bill and ask for a conference. So there are any number of options.

Mr. President, may we have order in the Senate?

The PRESIDING OFFICER (Mr. GRAHAM). The Senate will come to order.

The Senate will come to order. Those who have conversations other than that before the Senate will please retire to the Cloakroom.

Mr. BYRD. So there are any number of options—not any number, but there are several options that the House would have.

Mr. McCLURE. There are certainly some options, but let me focus just on this one provision for just a moment to explain the reason why I asked before we get into the question of granting unanimous consent, and I hope that I will certainly be in a position to raise no objection, and that is that if I know that we will end up with either no provision or the McCollum amendment, I am quite disposed not to insist upon any amendment here.

If, however, I am faced with the possibility that the conferees will write an entirely new provision, then I would almost be compelled to insist upon the opportunity to offer the McCollum amendment so that it was not conferenceable.

If we have identical provisions in the House bill and the Senate bill, the conference cannot write a new provision. If there is a difference, the conference can.

I do not want to see the conference in this instance being given the opportunity to write language with respect to the purchase of firearms which is such an emotional and sensitive issue for so many people on all sides of that issue.

What I am really seeking here is assurance on the part of the leadership on both sides, the Senator from Kansas and the Senator from West Virginia, as our leaders, that they would expect that the conferees will either adopt the Senate position, which would be silence under this disagreement, no provision at all, or they would adopt the House provision with no change.

And I might say to the Senator before he answers that question that I discussed this matter with Senator METZENBAUM because I told him I was going to raise the issue and I wanted an assurance that we were not going to see a new provision written in conference. That is a risk this Senator does not wish to confront. And Senator METZENBAUM says I would understand that if a Senate bill is silent and the House bill has the McCollum amendment in it, it would be one or the other, but it would not be a new provision written by the conference. And that is the assurance the Senator from Idaho is seeking at this time.

Mr. BYRD. Well, I cannot give the Senator any assurance, except to say that I would hope, likewise that it would be one or the other. But I am in no position to guarantee what the conferees would do with respect to this item or any other item in disagreement.

Mr. McCLURE. I understand the dilemma the Senator has. I am extremely concerned that we have a very clear understanding, before we go into this, as to whether or not the conferees are going to be free to write new provisions. And you know and I know they sometimes stretch the limits of the conference when they are disposed to do so. I know as a practical matter that if indeed they were to do that and they came back with a conference report with an entirely new provision that was totally unacceptable to me, I would not have very much luck in filibustering that conference report. The history of trying to stop it at that particular time is not a very good or encouraging history.

Mr. BYRD. Yes.

Mr. McCLURE. And if I cannot get some kind of assurance, then I want the opportunity to offer the provision in the Senate that is identical to the provision in the House, upon which I think we would prevail but certainly would provoke a long discussion. I would much rather have some means by which the Senator from Idaho and people who are concerned, as I am concerned on this issue, that the conferees are not going to be free to write a new provision that is different from either that which is in the House or the Senate.

Mr. BYRD. Well, I am not so sure that even if the Senator called up his amendment, I do not know what action the Senate would take on it.

Mr. McCLURE. I understand.

Mr. BYRD. And unless the Senate amended the bill so that it would be precisely as the House provision is written, there would be no guarantee that there would not be some change in the conference in order to bring the two Houses together and resolve the difference. So even if the Senator offered his amendment, if an amendment to the amendment were offered and agreed to, then the bill that went to the House would be different from the House bill and the conferees again might take it upon themselves to agree on something that neither house has agreed to and sent it back in the conference report or in disagreement.

Mr. McCLURE. Would the Senator yield then?

Mr. BYRD. Yes.

Mr. McCLURE. I thank the distinguished Senator for yielding.

Mr. President, if I might just comment just one word further. The reason I ask the question at this point—and certainly I recognize the truth of what the Senator is saying—but if I were to offer the McCollum amendment in the Senate and it is adopted, then there is nothing left for the conferees to talk about.

Mr. BYRD. That is true.

Mr. McCLURE. If, on the other hand, it were amended, then we would have whatever remedies we have with respect to the procedures in the Senate without limitation, which is a much better protection than is attempting to fight a provision in the conference report.

Mr. BYRD. I understand. I think I am probably on the Senator's side on this question. But there are many Senators who are giving up the opportunity to call up an amendment and they run the risk, the same risk, with respect to certain provisions of the bill that they may be particularly interested as the Senator from Idaho would be running.

Does the distinguished Senator from Pennsylvania wish me to yield to him?

Mr. SPECTER. I do. I think the Senator from Washington arose ahead of me.

Mr. BYRD. I yield to Mr. EVANS.

Mr. EVANS. I thank the leader.

I first would associate myself with the remarks of the Senator from Colorado. I think they were well put.

I have the greatest of admiration and respect for those who have worked very hard on this bill. From what I understand, at least to this point, many of the provisions in the bill that they have put together are infinitely better than some of the similar provisions which had been suggested in previous weeks.

But, frankly, this Senator is either slow or the proposal the majority leader was about to propound or would like to propound this evening is exceptionally complex, complex enough so that this Senator, at least, does not know whether I want to preserve a right to amend further. And, as I understand, in one section of the proposed amendment is you can amend; in another section they are in purgatory; and in the other section, they are going to be adopted all as one group. This Senator has not yet had a chance to look at all of those to determine what is in it.

I would suggest to the leader that it would be better procedure for us to at least have the opportunity during the night and the early part of tomorrow morning to examine and to understand a little better some of the particularly troublesome provisions or potential provisions in this bill, at least to this Senator.

Maybe they are all worked out. Maybe I have no further concerns. Maybe I would enthusiastically join in the unanimous-consent agreement, even as it might be proposed tonight. But not tonight, because this Senator has simply not had a chance to examine the provisions to understand better what they are. I would hope that we might be able to put this proposed unanimous-consent agreement into a written form so that we could all have it in front of us and also have the opportunity between now and sometime late tomorrow morning to examine more carefully and with more precision the nature of some of those amendments which are being proposed by the joint leadership.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Washington.

I yield to the distinguished Senator from Pennsylvania, Mr. SPECTER.

Mr. SPECTER. I thank the majority leader.

I believe that the unanimous-consent agreement should go forward at the earliest possible time, although this Senator has grave concern about the procedures which have been utilized and about the omission of certain amendments which this Senator has proposed.

I agree with the Senator from Colorado [Mr. ARMSTRONG], who has spoken about the preferability of having this bill called up at a much earlier date. A week ago Monday and a week ago the Friday before, I spoke at some length with the majority leader present about my concerns about the fact that we were talking up the drug bill when we were out of time and out of money, considering the high priority of the drug bill on the business of the Senate.

But I do believe that a drug bill is of great importance to the American people and that we ought to proceed as promptly as possible from this moment forward because, aside from raising certain concerns and certain objections to what has happened in the past, we cannot repurchase that time.

This Senator has proposed a number of amendments, after having worked on the drug issue for more than 20 years and after having recently made a trip to South America. I am a little perplexed at the listings which have sprung forth tonight which omit certain amendments which I have proposed, one amendment on an international court which is very similar to a sense-of-the-Senate amendment which was adopted in 1986 on terrorism. According to the word I have received from staff—and on this matter, this Senator was prepared to attend meetings today but was told that they were closed meetings and later found out that staff was present—some staff member objected to an amendment which this Senator had proposed that had cleared everyone except the staffer of one Senator who had in the past spoken in favor of this issue or an issue very closely related to this issue.

Considering the importance of the drug bill, I do not intend to speak for longer in the aggregate than 3 minutes, and I am near that time now. So that, so far as I am concerned, I will continue to attempt to get a negotiation and arrangement to have the issues taken up which I have proposed in the amendments which I have filed.

But I think the realities of life are that the way this procedure has been arranged, a more conciliatory word than rigged, is to run pretty much roughshod over the procedures of the Senate and what are customarily the rights of Senators. Because, however much any of us may wish to assert those rights, we are more concerned with the welfare of the country and will not stand in the way of seeing the drug bill proceed.

So, having expressed those concerns and reservations, I would urge the majority leader to proceed forthwith. I can recall a night in 1982 when Senator Baker, then majority leader, stood on this floor at 11:45 and announced the presence of some 63 amendments. Senator DOLE was the chairman of the Finance Committee on the tax bill and Senator DOLE said that he wanted to proceed because amendments, like mushrooms, grew overnight. And by 6:30 the next morning, we had a tax bill.

As much as none of us likes that procedure, it is the way to move ahead. So I would urge that we proceed with this unanimous-consent agreement and do the best we can.

I thank the majority leader.

The PRESIDING OFFICER. The Senate will be in order.

Mr. BYRD. Mr. President, there have been some good points made tonight and there have been some commonsense suggestions. Let me say, before I get to the bottom line, first of all we have been busy on other very important matters. It is not as though we have been doing nothing for 2 or 3 weeks and suddenly here, at this late date we have come up with the idea of pushing the drug bill. I realize we have been on some measures that some Senators do not consider important, or some Senators are opposed to and that is their right. But if the Senate waited around to call up measures that everybody agreed to, I am afraid that we would not be doing much of the people's business and most of us would not stay here very long.

Somebody has to make a judgment and I generally try to make my judgments based on a consensus of Senators who feel that we ought to go forward with the bill. And also with some judgment as to what I think the country expects.

Second, as to our having indicated an adjournment date that was reached 2 weeks ago, I think I recall, and I am sure others will if I do not recall correctly, that I stated some several days ago, at least 2 weeks or longer after having notified the House leadership, in my judgment a realistic adjournment date would be October 15, give or take. And I think everybody in this Senate is aware of that because I took into consideration the fact that we had a tax technical corrections amendment bill, we had other important legislation, which many of us considered to be important, at least; profamily legislation and so on.

So I think it would suggest that Senators knew that I, at least, expected to be here until October 15, give or take a bit. And I notified the world of that by public statements.

Third, every Senator certainly has known that the two task force groups have been working on this matter for 4 months. Also, we put out hotlines on our side, I believe last Friday, asking any Senators who had amendments to the drug bill to let us know about them. And I believe that the other side did the same, put out a hotline, informing Senators if they had amendments they wished to be considered on the drug bill, that they let the leadership know.

I am not going to put the request tonight. I think it is a reasonable request on the part of Mr. ARMSTRONG, Mr. EVANS, and others, that they have an opportunity to see what the amendments are; to read them, read the list. That is not an unreasonable request and I will wait until the morning.

Mr. President, I ask unanimous consent that the amendments that were listed that would be included in the leadership package be printed in the RECORD at this point under that category heading, "Amendments Included in Leadership Package."

There being no objection, the list was ordered to be printed in the RECORD, as follows:

AMENDMENTS INCLUDED IN LEADERSHIP PACKAGE

Thurmond, Child Pornography.

Leadership, Exclusionary Rule.

Leadership, Habeas Corpus.

Thurmond/Ford, Alcohol Warning Labels.

Wilson, Penalty for Threats Against Former Government Officials.

Domenici, National Commission on Uniform State Laws.

Domenici, Drug Free U.S. by 1995 Statement.

Cohen, Make Drug Czar Member of NSC.

Bingaman, Federal Agencies Participation in Uniform Crime Reporting Program.

Graham, G.A.O. Study on Impact of Criminal Penalties.

Kennedy, Deportation.

Durenberger, Health Amendment.

Nunn/Warner/Gramm, Drug Free Workplace Suspension.

Domenici, Mental Health Study.

Lautenberg/Danforth, Drunk Driving.

Dodd, Program for Children of Alcoholics.

Graham, Sense of Sentence on the U.N.

Hatch/Kennedy, Technical Amendments.

Hatch/Kennedy, Adamha.

Leadership, S. 2793, Anti-Corruption Act Amendments.

Packwood, Customs Reauthorization.

Biden, Penalties for Anabolic Steroids.

DeConcini, National Guard.

Chiles, Protection for Columbian Officials.

DeConcini, Technical.

Kennedy, Technical.

Leadership, Transfer Financial Records to D.O.J.

Domenici, Mental Health Study.

Gramm, Increased Mandatory Sentences for Offenses With Minors.

Levin, Death Penalty Changes.

Mr. BYRD. Mr. President, I ask unanimous consent that those amendments which were listed "to be offered," category 3, appear in the RECORD at this point.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

AMENDMENT TO BE OFFERED

Levin, Death Penalty Modifications.

Kennedy, Racial Justice Modification to Death Penalty.

Simon, Death Penalty Related.

Kerry, Money Laundering.

Wilson, Random Testing for Driver's License.

Gramm, Loss of Federal Benefits.

Domenici/Gramm, Imposition of Civil Penalties.

Hatfield/Evans/Levin, Substitute Mandatory Life Sentence Without Parole for Both the 20-Year Minimum and Death Penalty Maximum Presently in the Bill.

Dodd, Expedited procedures

Mr. BYRD. Mr. President, I ask unanimous consent that the amendments in category 2 titled "Amendments Under Review "Subject to Agreement of Leadership," appear in the RECORD at this point.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

AMENDMENTS UNDER REVIEW—SUBJECT TO AGREEMENT OF LEADERSHIP

Simon, Uniform Mandatory Data Collection.

Indian Affairs Comm., Treatment and Education for Native Americans.

Bradley, Tobacco Labeling.

Helms, Minimum Sentence for Crack Possession.

Johnston, Grants to Insular Areas.

Kennedy, Authorize Additional Federal Judges.

Gramm, Funding Formula for State and Local.

D'Amato, Money Laundering/IRS.

Simon, Hate Crime Statistics.

Heinz, Criteria to Determine High Density Drug Area.

Helms, Mandatory Revocation of Parole for Possession of Drugs.

Sanford, Coast Guard Navigation in North Carolina.

Biden, Sense of Senate on Funding.

Kennedy, Certain Offenses on or Near Schools.

Warner, Nuclear Reactor Personnel.

Helms, Sense of the Senate—Customs Service.

Levin, Death Penalty.

Dodd, Expedited Procedures (if Helms agrees) subject to agreement of 2 leaders with the recommendation of the co-chairs.

Co-chairs: Rudman, D'Amato, Wilson, Gramm, Moynihan and Nunn.

Mr. BYRD. Mr. President, all amendments now that were on the list, and which have been gone over carefully with the two leaders and with the members of the core group, are listed in the RECORD. And we will come in tomorrow morning at 9:30 and—come in at 9?

Mr. ARMSTRONG. Mr. President, is any Senator addressing the Chair?

The PRESIDING OFFICER. The majority leader has the floor.

Mr. BYRD. Mr. President, I would be happy to yield to the distinguished Senator.

Mr. ARMSTRONG. I would be grateful if the leader would yield.

Mr. BYRD. I yield.

Mr. ARMSTRONG. I want to congratulate the leader on his decision to lay over until tomorrow his unanimous-consent request. And I want to express, again, the motion that I expressed earlier that I came to work this morning disposed to support a drug bill. In fact, all through the day I intended to support a drug bill. In fact for weeks I have been intending to support a drug bill and I have watched with admiration the work that some Senators are doing to try to put together a bill that we can all agree to.

I know that everybody is not going to be satisfied. I never saw myself as an active participant in those negotiations and I do not want to become an active participant in those negotiations.

I have consulted from time to time over the last several weeks with a number of our Members, particularly the Senator from New Hampshire, the Senator from New Mexico, the Senator from North Carolina and others, who have emerged as experts on our side of the aisle. And I believe that we are going to get a good drug bill.

But somewhere during the course of the decisionmaking tonight the process began to deeply rankle me. And It dawned on me that, while I am for the drug bill, I am very much disturbed by the kind of process which brings us here on the 12th of October at 10:30 at night trying to make, on horseback, decisions about important amendments to a very important bill.

I do not want to dispute this matter at length but I do not want to let the matter quite rest yet. I pointed out earlier that we spent a lot of time on bills which no Senator that I know felt had a realistic chance of passage. I am not one to criticize any Senator, least of all the majority leader, for proposing legislation that he believes in. In fact, we all know that in many cases the predicate to passing legislation is to call it up and talk about it, sometimes at length, have votes on it, perhaps over and over again. And I do not criticize any Senator who does that.

If somebody wants to have us occupy a week or a month or 2 months on the textile bill, and on parental leave and minimum wage, that is their privilege.

But where I do draw the line, Mr. President, is the suggestion that then, on October 12, when we finally get around to the drug bill, that it is irresponsible or puts in jeopardy the ultimate passage of this important legislation if Senators want to see amendments or want to follow the regular procedure by which Senators may offer amendments to the bill. I am not saying to the leader that I intend to object to the request when he puts it tomorrow. I may or may not. I am going to get up tomorrow morning remembering how important this is and how I want to accommodate the leadership on both sides and how eager I am to go home and how little I want to object.

Let me say to the leader, I just do not buy the notion that it is my fault or the fault of the Senator from New Mexico or the fault of the Senator from North Carolina that we did not get to this until now. The majority leader sets the schedule and the majority leader is the one who called up and insisted we stay on the parental leave bill. I do not criticize that.

I do not think it is a family bill. I think the notion that that is a pro family bill is some spin doctor's idea. That is the furthest thing from a pro family bill. It is a bill I do not think anybody thought was going to pass, but that is not to say we should not get to it. But it is to say the reason we did not get to the drug bill is because the leader decided to call up the parental leave bill and stay on it for a long period of time, call up minimum wage and the tax bill, all of which are important matters, and others.

I am not going to come back to this I think tomorrow unless the leader does, or unless I get up in an extraordinarily cranky frame of mind or read something in the paper that sets me off again, but I want to point out to the leader if he again tomorrow tries to put someone like myself or others who want to protect the rights of Senators as they see them in the position of holding in jeopardy or hazarding the ultimate passage of a drug bill, then it is not going to enhance the prospect for a unanimous-consent agreement, in my opinion.

If I could have just one more word because I hope to come here tomorrow and not keep on this matter. I hope that whatever concerns I have will be resolved by tomorrow. So let me say my piece tonight. I hope that in addition to whatever other adjustments may be made in the UC the Senator will find a way to avoid this mysterious two-tier process. I say that not because of any concern about the particular amendment in that basket 2, or list 2, or page 2, or whatever it is, but because the process troubles me. I am concerned about the process.

I mentioned that earlier and one of my colleagues, one of the Members of this body who I admire and indeed who I love, a member of the Republican leadership, came up to me and said, "Well, that is something we worked out and we ought to back it because all the good guys are behind it. The Senator from New Hampshire is behind it, the Senator from Texas is behind it, and they all invented that idea."

Come to find out, that is not exactly the way it happened. I do not know if the Senator who jumped on me is listening to this proceeding, but if he is, let me put him on notice that all the guys he said thought up that did not think it up or at least he is not admitting to the parentage now. I do not care and I do not know what amendments are in the basket, but I care about the process and about the precedent.

Last, Mr. President, if I may have just a few seconds more of the leader's indulgence, I am to think over the recess, if there be a recess, over the Thanksgiving holiday and over the Christmas holiday and over New Years when I take my wife for a vacation and all of the things that I look forward to doing during what I hope will be a lengthy and uninterrupted recess, I am going to think about what a wonderful thing it would be if some Senator, not the Senator from Colorado, some Senator came here on the first day of the session and just announced, "Mr. President, without knowing what is going to come up, it will be my intention and purpose to object to all unanimous-consent requests propounded after 6 p.m."

I think it would be presumptuous for the Senator from Colorado to make such an announcement, but I am going to reflect on it. I might even hope that someone else who is brasher and less restrained than I might offer to do that.

I do not say that entirely idly. Once upon a time, I was the majority leader of the State senate in Colorado. On the first day that I became the majority leader of the State senate of Colorado, I put through a change in the rules which addressed itself to the practice that was prevalent in those days of night sessions. We used to have a lot of night sessions in the State senate of Colorado. They were not very productive. They were an embarrassment, and though they were not televised, they were an embarrassment to the members of the Senate because some of them showed up on the floor and occasionally were intoxicated and occasionally said things they regretted and often passed legislation we wished we had not.

On the first day I became the majority leader, knowing that would be the zenith of my influence in the body, I put through a change in the rules in the Senate which simply said passage of any bill on second or third reading after 6 p.m. at night would require a two-thirds majority vote. That was the rule in the Senate for about 12 or 15 years, and it put a stop to the night sessions.

I do not think we could do that here. But some of us could get together and just say, "By gosh, henceforth, without prejudice to any bill, person or proposition, we are just going to object to anything that happens at night," and sometimes, especially nights like this, I think that would be a good idea.

I thank the leader for his patience, and I look forward to cooperating with him on a unanimous consent tomorrow.

Mr. BYRD. Mr. President, I look forward to cooperating with the Senator tomorrow. Any Senator may object to anything he wishes to object to in this body. I have been around quite some time, and I have listened to the complaints and suggestions and proposals and the requests and the admonitions and the importuning and beseeching of many Senators over the years. I have learned that the virtue of patience is possibly one of the greatest virtues.

If I followed my inclinations, I could very easily respond quite at length to the lessons that I am taught by the distinguished Senator from Colorado. I might have been offended, but I am not. He has a right to voice his opinion, and I have a right to voice mine. I also have a responsibility of being the leader, and I will fulfill that responsibility to the best of my ability.

If Senators wish to stand on the floor at 6 o'clock at night and object to any unanimous-consent request—I will not be the leader next year—but they had that opportunity while I was leader and there are ways to handle those situations within the Senate procedures.

I have heard it said tonight that this is outside the regular procedure. This is the regular procedure. It is not the procedure that is followed every day, but it is a regular procedure that we come to the floor and try to get a unanimous-consent agreement, and when we get a unanimous-consent agreement, there are Senators who give up certain rights which they otherwise have: The right to stand on their feet, talk at length, offer any amendment they wish, make any motions they wish. But for the sake of a unanimous-consent agreement, they give up some of those rights, but they do it by unanimous-consent. Any Senator can object. He not only protects his own rights to stand on his feet, but protects everybody else's. But the business has to be done, and I have found it many times the better part of wisdom not to seek to retaliate and respond, just to let it go by, because in the morning, I think the Senator from Colorado will be in a different mood.

He has had his say tonight. I have not challenged anything that he has said. He can go on feeling good about it. It will be there in the RECORD for that fine grandchild of his to read, and the grandchild might interpret it that the majority leader took a good lecturing tonight. That is all right for a grandchild. I would take it that way if I were that grandchild, and I would feel proud of my granddaddy. "Boy, he put the majority leader down. He really told him."

Mr. ARMSTRONG. Whoa, now, Mr. President.

Mr. BYRD. "He gave the majority leader a good talking to because I note in this RECORD he mentioned the majority leader. He did not leave any inference to be drawn. He pointed to the majority leader. It doesn't show him pointing his finger at the majority leader, but I can just imagine, knowing his verbiage and his courage and determination and his moxie, I will just bet you he pointed his finger at the majority leader."

Mr. ARMSTRONG. Mr. President, will the majority leader yield?

Mr. BYRD. Yes.

Mr. ARMSTRONG. Mr. President, the leader surely jests because he knows full well the Senator from Colorado would not instruct the majority leader. The Senator from Colorado pointed out to the leader, which is a well-known fact, which all Senators, especially those on this side of the aisle, are keenly aware of and that is that the majority leader sets the scheduling. To some extent that is a participatory decision, but in the broad analysis, it is the majority leader who decides what bill comes up on what day and at what time. Other Senators can complain about it. Other Senators can grouse about it. Occasionally, there can be a vote on it if some Senator wants to push it.

The point the Senator from Colorado makes is that it is the majority leader who sets the schedule. And so if a bill comes up early in the session, that is because the majority leader has scheduled it then. If a bill comes up late in the session, it is because the majority leader has scheduled it that way. I think the leader will recall that the Senator from Colorado does not dispute that prerogative. He never has so far as I can recall. I have not always agreed with the priorities of the leader but I recognize, as do all Senators, especially on this side of the aisle, who makes that decision. We know that somebody has to make it. We know that some Senator has to take the lead to decide in what order we are going to take things up.

Mr. President, I do not think the leader should try to shrug off the responsibility for that decision. The most important prerogative of the majority leader is to set the agenda, but having set it he should not complain when we are late in the session to get to the drug bill.

Mr. BYRD. I have no complaint, none. The Senator has not heard me complain. I know full well that the majority leader has that responsibility. I have it. I never shirked it. I never tried to pass it on to anybody else. I have no apologies for any decision I have ever made. I have no apologies for calling up what I considered to be the family package. I have no apology for that.

I have no hesitation at all in saying the Senator made a good point tonight. He persuaded me. If I had not heard from any other Senator, I would have been persuaded by the Senator that he was right, that he had a right to see these amendments, a list of them, and had a right to wait until tomorrow to agree. I thank him for that.

ORDER FOR RECOGNITION OF THE MAJORITY LEADER

Mr. BYRD. Mr. President, the Senate will come in at 11. I ask unanimous consent that following the two leaders I be recognized.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. BYRD. Mr. President, on tomorrow I will retain the same rights that I had today under the order of going to the drug bill upon consultation with the distinguished Republican leader. It will be my intention or hope at least to move to the House bill and then to offer at some point the substitute which will be the core bill containing—if we cannot get the unanimous-consent agreement, just write those amendments in that we agreed would be in the core bill. That would be a substitute.

Let me state to the Senate what the options are so that all Senators might understand.

Mr. President, may we have order in the Senate.

The PRESIDING OFFICER. The Senate will be in order.

Mr. BYRD. Mr. President, I ask the Chair to maintain order in the Senate without a Senator from the floor having to make a point of it.

These are the options: Call up the House bill, offer a substitute, offer a second substitute, offer a third substitute, stack the tree in accordance with the schematic drawing on page 70 of the Book of Senate Procedure. That can be done. The distinguished Republican leader did it. I did not like it, but he did what he could do under the rules and I did not question that. So that is one option. I do not want to do it that way, but that is an option.

Second, call up the House bill, offer a substitute to a substitute to a substitute, and let somebody else offer the perfecting amendment to the first substitute and top that with an amendment in the second degree, let somebody else offer a perfecting amendment to the bill and top that. There you are. Offer a cloture motion and see if we can get cloture. Maybe we cannot. If we do not get cloture, go home, the drug bill is dead because the Senate would not vote for cloture. Let those who vote for cloture assume the responsibility.

The next option is to call up the House bill and try to get an agreement. That is the way I want to go, try to get an agreement. We have listed the amendments that have been gone over very carefully and screened by the task group on both sides. They really did the work. I sat in part of the time. They sat in all the time. The distinguished Republican leader probably sat in more than I did. But it is the task force that we entrusted this responsibility to, and I think they have acted faithfully and have tried to represent all of their colleagues. We all know what the amendments are that have been discussed this evening.

The distinguished Republican leader will meet with a group of his people tomorrow morning. That is one reason we are not coming in until 11 o'clock. I am having a conference on my side at 10. Five minutes after the session begins, I could come on the floor and represent my party and leave someone else in charge of the conference. But inasmuch as the Republican leader feels that there is a need for him to have some discussion with his colleagues until about 11, we will not come in until 11.

Now, I hope that Senators will have an opportunity to study the amendments and that we can get an agreement tomorrow morning. I am about as pliable a Senator as there is in this body I think. I did not just come to this task yesterday. I have been at it a long, long time, and I have tried to demonstrate fairness, patience, and at the same time doggedness in an effort to get the work done. I am willing to continue to do that.

So tomorrow, I will propound the request again shortly after 11, after talking with the Republican leader, and I hope that we will be able to go forward and finish the bill. We can stay here into tomorrow evening; we can stay in here Friday; we can stay Friday evening; we can stay Saturday; we can come back in next week—that is another option—or we can try to get unanimous consent tomorrow. There comes a time I guess when patience no longer is a virtue; we have done the best we can do; we go home without a drug bill.

Mr. President, I yield to the distinguised Republican leader.

Mr. DOLE. Mr. President, I have nothing further except to indicate we will have a meeting at 10 and see if we can resolve some of the problems. We will be contacting Senators who were on the floor this evening plus a few others who I think may have some concerns. I think the one problem we have is maybe a number as the Senator from Colorado pointed out—maybe if we did not have list 1, list 2, and list 3. It does confuse it a bit, particularly No. 2, and it may be in the morning that some of those amendments can be resolved between now and 11 or 9 or 12. I think some Members are reluctant to agree if they are in list No. 2 because if it is not agreed to, then they would not have an opportunity to offer it for a vote. But my view is we probably can get consent tomorrow. I believe that once we start on this bill, it is going to go rather quickly. I do believe that there has been a lot of dedicated—I do not believe it. There has been a lot of dedicated work.

I am like the majority leader. I did not do it for 4 months, but I have been active through staff and briefings and things of that kind. It is a good cross section of this Senate who have been working on this bill. So no one point of view prevails. I would hope we could complete action on this bill, if not by late tomorrow night midnight, maybe midnight on Friday.

Mr. BYRD. Mr. President, I thank the Republican leader for his patience, his cooperation, and for the effort he has put forth.

I think we have had a good airing of the matter tonight. I believe it will help us tomorrow toward getting an agreement.

ORDER FOR RECESS UNTIL 11 A.M. TOMORROW

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 11 o'clock tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL TOMORROW AT 11 A.M.

Mr. BYRD. Mr. President, if the distinguished Republican leader has any further statement or any other business, I would be happy to yield the floor.

Mr. President, there being no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until the hour of 11 o'clock tomorrow morning.

The motion was agreed to; and, the Senate, at 10:50 p.m., recessed until Thursday, October 13, 1988, at 11 a.m.

HOUSE OF REPRESENTATIVES—*Wednesday, October 12, 1988*

The House met at 12 noon and was called to order by the Speaker pro tempore [Mr. FOLEY].

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
October 11, 1988.

I hereby designate the Honorable THOMAS S. FOLEY to act as Speaker pro tempore on Wednesday, October 12, 1988.

JIM WRIGHT,
Speaker of the House of Representatives.

PRAYER

The Reverend Robert Brown, Church of the Ascension and St. Agnes Episcopal Church, Washington, DC, offered the following prayer:

Almighty God, who hast given us this good land for our heritage: We humbly beseech Thee that we may always prove ourselves a people mindful of Thy favor and glad to do Thy will.

Bless our land with honorable industry, sound learning, and pure manners. Save us from violence, discord, and confusion; from pride and arrogance, and from every evil way. Defend our liberties, and fashion into one united people the multitudes brought hither out of many kindreds and tongues.

Endue with the spirit of wisdom those to whom in Thy name we entrust the authority of government, that there may be justice and peace at home, and that, through obedience to Thy law, we may show forth Thy praise among the nations of Earth.

In the time of prosperity, fill our hearts with thankfulness, and in the day of trouble, suffer not our trust in Thee to fail; for Thine is the kingdom, and the power, and the glory, forever and ever. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentlewoman from South Carolina [Mrs. PATTERSON] come forward, please, and lead us in our Pledge of Allegiance.

Mrs. PATTERSON. Thank you, Mr. Speaker.

I would like to invite our guests in the balcony to please stand and recite with us our Pledge to our flag.

Mrs. PATTERSON led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment bills, joint resolutions, and concurrent resolutions of the House of the following titles:

H.R. 3029. An act to designate the new Post Office Building in Gretna, Louisiana, as the "William W. Pares, Jr., Post Office Building";

H.R. 5325. An act to establish a commission to review and make recommendations for the improvement of the Federal crop insurance program;

H.R. 5423. An act to authorize continued storage of water at Abiquiu Dam in New Mexico;

H.J. Res. 488. Joint resolution designating November 6-12, 1988, as "National Women Veterans Recognition Week";

H.J. Res. 648. Joint resolution to encourage increased international cooperation to protect biological diversity;

H. Con. Res. 276. Concurrent resolution expressing the sense of Congress that the Surgeon General should declare that drunk driving is a national crisis; and

H. Con. Res. 371. Concurrent resolution concerning the United States response to the atrocities reportedly carried out in Burundi in August.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills and a joint resolution of the House of the following titles:

H.R. 791. An act to authorize the water resources research activities of the U.S. Geological Survey, and for other purposes;

H.R. 3515. An act to amend the Solid Waste Disposal Act to require the Administrator of the Environmental Protection Agency to promulgate regulations on the management of infectious waste;

H.R. 4333. An act to make technical corrections relating to the Tax Reform Act, 1986, and for other purposes;

H.R. 5280. An act to require the Secretary of the Treasury to mint coins in commemoration of the Bicentennial of the U.S. Congress; and

H.J. Res. 597. Joint resolution to authorize entry into force of the Compact of Free Association between the United States and the Government of Palau, and for other purposes.

The message also announced, that the Senate agrees to the amendment of the House to the amendment of the Senate to the bill (H.R. 900) "An act to protect and enhance the natural, scenic, cultural, and recreational values of certain segments of the New, Gauley, Meadow, and Bluestone Rivers in West Virginia for the benefit of present and future generations, and for other purposes.

The message also announced, that the Senate agrees to the amendment of the House to the amendment of the Senate to the bill (H.R. 990) "An act to direct the Secretary of the Interior to convey a certain parcel of land located near Ocotillo, CA."

The message also announced, that the Senate agrees to the amendment of the House to the amendment of the Senate numbered 9 to the bill (H.R. 2772) entitled "An act to authorize the Lyman-Jones West River, and Oglala Sioux Rural Water Development Projects."

The message also announced, that the Senate recedes from its amendments numbered 1, 2, 3, 4, 5, 6, 7, and 8 to the above-entitled bill.

The message also announced, that the Senate agrees to the amendment of the House to the amendment of the Senate to the bill (H.R. 4345) "An act to amend the United States Grain Standards Act to extend through September 30, 1993, the authority contained in section 155 of the Omnibus Reconciliation Act of 1981 and Public Law 98-469 to charge and collect inspection and weighing fees, and for other purposes."

The message also announced, that the Senate agrees to the amendment of the House to the bill (S. 391) entitled "An act for the relief of Hyong Cha Kim Kay."

The message also announced, that the Senate agrees to the amendment of the House to the bill (S. 508) entitled "An act to amend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited personnel practices, and for other purposes."

The message also announced, that the Senate agrees to the amendments of the House to the bill (S. 744) entitled "An act to authorize the Environmental Protection Agency to assist States in development of radon programs, to conduct a study to determine the extent to which radon in the Nation's schools poses a threat to chil-

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

dren and employees in such schools, and for other purposes."

The message also announced that the Senate agrees to the amendment of the House to the bill (S. 836) entitled "An act to amend the Department of Energy Organization Act to authorize protective force personnel who guard the strategic petroleum reserve or its storage and related facilities to carry firearms while discharging their official duties and in certain instances to make arrests without warrant; to establish the offense of trespass on property of the strategic petroleum reserve, and for other purposes."

The message also announced that the Senate agrees to the amendment of the House to the bill (S. 2018) entitled "An act to expand the boundaries of the Congaree Swamp National Monument, to designate wilderness therein, and for other purposes."

The message also announced that the Senate insists upon its amendment to the bill (H.R. 4333) "An act to make technical corrections relating to the Tax Reform Act of 1986, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. BENTSEN, Mr. MATSUNAGA, Mr. MOYNIHAN, Mr. BAUCUS, Mr. BOREN, Mr. PACKWOOD, Mr. DOLE, Mr. ROTH, and Mr. DANFORTH to be the conferees on the part of the Senate.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3235) "An act to amend the Public Health Service Act to revise the program of assistance for health maintenance organizations."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4585) "An act to extend the authorization of appropriations for the Taft Institute through fiscal year 1991."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1630) entitled "An act to provide for retirement and survivors' annuities for bankruptcy judges and magistrates, and for other purposes."

The message also announced that the Senate disagrees to the amendments of the House to the bill (S. 2030) entitled "An act to amend the Marine Protection, Research, and Sanctuaries Act," agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. MOYNIHAN, Mr. BURDICK, Mr. MITCHELL, Mr. LAUTENBERG, Mr. CHAFEE, Mr. STAFFORD, and Mr. PRESSLER to be the conferees on the part of the Senate.

The message also announced that the Senate had passed bills, joint resolutions, and concurrent resolutions of the following titles, in which the concurrence of the House is requested:

S. 850. An act to amend the Wild and Scenic Rivers Act to designate a segment of the Rio Chama River in New Mexico as a component of the National Wild and Scenic Rivers Systems;

S. 1048. An act to amend the Communications Act of 1934 to provide authorization of appropriations for the Federal Communications Commission, and for other purposes;

S. 1727. An act to amend the Public Health Service Act to establish within the National Institutes of Health a National Institute on Deafness and Other Communication Disorders;

S. 2545. An act to redesignate Salinas National Monument in the State of New Mexico, and for other purposes.

S. 2752. An act to declare that certain lands be held in trust for the Quinault Indian Nation, and for other purposes;

S.J. Res. 278. Joint resolution designating November 20-26, 1988, as "National Family Caregivers Week";

S.J. Res. 280. Joint resolution to designate the week of November 27, 1988 through December 3, 1988 as "National Home Care Week";

S.J. Res. 301. Joint resolution designating January 20, 1989, as "National Skiing Day";

S.J. Res. 327. Joint resolution commemorating January 28, 1989, as a "National Day of Excellence" in honor of the crew of the space shuttle *Challenger*;

S.J. Res. 337. Joint resolution acknowledging the sacrifices that military families have made on behalf of the Nation and designating November 21, 1988, as "National Military Families Recognition Day";

S.J. Res. 346. Joint resolution to designate March 25, 1989, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy";

S.J. Res. 352. Joint resolution designating September 24, 1989, as "United States Marshals Bicentennial Day";

S.J. Res. 355. Joint resolution designating October 7, 1988, as "National Teacher Appreciation Day";

S.J. Res. 363. Joint resolution designating November 28 through December 2, 1988, as "Vocational-Technical Education Week";

S.J. Res. 365. Joint resolution to designate January 28, 1989, as "National Challenger Center Day" to honor the crew of the space shuttle *Challenger*;

S.J. Res. 372. Joint resolution to designate the week beginning November 21, 1988, through November 27, 1988, as "National Adoption Week";

S.J. Res. 385. Joint resolution to designate September 11 through 17, 1988, as "National Youth 2000 Week";

S.J. Res. 386. Joint resolution to designate the week of June 18 through June 24, 1989, as "National Grasslands Week";

S. Con. Res. 76. Concurrent resolution to acknowledge the contribution of the Iroquois Confederacy of Nations to the development of the United States Constitution and to reaffirm the continuing government-to-government relationship between Indian tribes and the United States established in the Constitution;

S. Con. Res. 152. Concurrent resolution commending the Republic of Korea in hosting the Games of the XXIV Olympiad, and for other purposes;

S. Con. Res. 158. Concurrent resolution to authorize a correction in the enrollment of H.R. 4585;

S. Con. Res. 159. Concurrent resolution to make corrections in the enrollment of the bill H.R. 4174; and

S. Con. Res. 160. Concurrent resolution to authorize a correction in the enrollment of S. 508.

REV. ROBERT BROWN

(Mr. SYNAR asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SYNAR. Mr. Speaker, it is a distinct honor today and a special treat that I have the privilege to introduce the priest who gave our opening prayer. Robert Brown and I were classmates at Muskogee High School and also served as acolytes together at Grace Episcopal Church in Muskogee and presently is now a staff member on my staff and also a law student at Howard University.

He has been what I would say is an inspiration to me, throughout my years in service of Congress, but more importantly as a young man and now an inspiration for all those who have come in contact with him here in Washington, as well as home.

I welcome him today and I want to say this is a special treat because it is two Muskogee boys on the floor of the House of Representatives at the same time.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair announces, pursuant to the provisions of House Resolution 563 that the House will consider 16 additional suspensions of the rules. Members may review the list of suspensions in their respective Cloakrooms.

The Chair will receive 1-minute statements.

IT IS TIME TO ABOLISH THE ELECTORAL COLLEGE

(Mr. GLICKMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GLICKMAN. Mr. Speaker, this election may prove to be the test of a constitutional anachronism—the electoral college. Indications are that the electoral vote may not reflect the popular vote. What would be the reaction of the American people to a President who received a majority of the electoral vote and a minority of the popular vote? I hope we do not have to face the consequences of such an outcome. I think it is time to lay the groundwork for doing away with a system that no longer makes sense. Last week

I introduced a joint resolution to amend the Constitution and provide for direct election of the President. Next year I will actively work for its passage and I hope my colleagues will join me.

Many Americans are unaware that they cast their vote on election day for a slate of electors, not for a Presidential candidate. The real election takes place in December, when the electoral college meets. In all States but Maine, the candidate who wins the majority of the popular vote wins the entire slate of electors for that State. Thus, a winner-take-all system precludes each American's vote from really counting and discourages individual participation in the election. So, a slim victory in a few key electoral States can result in a landslide in the electoral college.

Two hundred years ago the Founding Fathers feared direct election of the President in a country where the population lacked information about the candidates and the education to make a wise choice. Now the public is better educated, has immediate access to information about the candidates, and our democracy has withstood the test of time. There is no reason to retain the electoral college. It's time that all Americans, wherever they live, have an equal right to determine the next President. Abolishing the electoral college, and moving to the direct election of the President will do more than anything else to increase voter turnout, raise American consciousness of Presidential elections and restore participatory democracy in electing the leader of America and the free world.

MEDICARE PREMIUM INCREASE

(Mr. DEFAZIO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DEFAZIO. Mr. Speaker, this week notices of the 29-percent Medicare premium increase and the new tax for the so-called Catastrophic Care Act began to arrive in the mail in my district. Many of my seniors are surprised and almost all are outraged. A 29-percent Medicare premium increase, a new 15-percent surtax, the first time in the history of this Nation we have ever levied a tax that is dependent upon age. It is only levied against one age group, and more than 50 percent of our seniors will pay for benefits that very, very few will ever be able to use. I voted against the catastrophic care bill, so-called. I urge the President to veto it, and now the machinery is gearing up to levy this burdensome tax and this new burdensome premium increase. I urge my colleagues to join in cosponsoring legislation to delay implementation of this tax, to delay implementation of this premium increase for at least 12 months until we can revisit this issue in the next Congress.

WHY IS NORIEGA STILL IN POWER?

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, Federal prosecutors have nailed General Noriega's bank. Eighty-four people associated with the money laundering scheme have been indicted and bank executives have been arrested. These indictments, however, shed more light on General Noriega. His poison evidently keeps spreading like a spider's web. Why in God's name is Noriega still in power in Panama?

Well, I applaud Customs Commissioner William Von Raab on cracking this money laundering scheme. I must question now the State Department and the CIA. No one yet has answered the question, did we know Noriega was running drugs? If we did, did we turn a deaf ear on that because of the Contras?

The American people deserve to know the truth. It is time for President Reagan to go in after Noriega. This indictment of Noriega is nothing more than a charade, like a 6-month notice. I think it is time the American people know the truth.

ABOLISHING FADA

(Mr. KANJORSKI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KANJORSKI. Mr. Speaker, one of the major stated ambitions of President Reagan when he took office was to abolish unnecessary, expensive and inefficient bureaucracies. Today we have an opportunity to put aside our partisan differences as Democrats and Republicans and fulfill that commitment.

My bill, H.R. 4646, abolishing the Federal Asset Disposition Association [FADA] was approved by a bipartisan 42-to-8 majority of the House Banking Committee.

A majority of the Republicans on our committee joined a majority of the Democrats in just saying no to outrageous salaries, runaway expense accounts, sweetheart contracts, golden parachutes, and failure to comply with Government procurement, ethics, and conflict-of-interest laws.

Our bipartisan 42-to-8 majority said yes to fewer bureaucrats, more free and open competition for contracts, and better use of the private sector in asset disposition.

Mr. Speaker, the General Accounting Office, committee investigators, the Johns Hopkins Center for the Study of American Government, the American Bankers Association, the Independent Bankers Association, and even the Chairman of the Federal Deposit Insurance Corporation have all been harshly critical of FADA and have called for its abolition.

In the closing days of the 100th Congress let us win one for the Gipper, and the American taxpayer, by abolishing this unnecessary, expensive, and inefficient bureaucracy.

GEORGE BUSH'S POOR RECORD ON CRIME AND DRUGS

(Mr. EDWARDS of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EDWARDS of California. Mr. Speaker, candidate GEORGE BUSH is talking tough on crime. Then how does he explain the Government report issued this week that shows a nearly 2-percent increase in crime nationwide last year? According to the Government's own statistics, there were nearly a quarter of a million more personal crimes—rapes, murders, and robberies—last year than there were the year before.

Worse yet is this administration's dismal record on drugs. After 7½ years of Ronald Reagan and GEORGE BUSH, the supply of marijuana in this country is up and the price is down. Last year, wholesale cocaine prices in the United States were the lowest ever reported and purity remained high, indicating widespread availability. Illicit manufactured drugs, Asian heroin, and Mexican opium were all on the increase last year.

GEORGE BUSH was in charge of drug interdiction, and has pledged to put his Vice President, DAN QUAYLE, in charge of the war on drugs if they are elected. Given the tragic failure of GEORGE BUSH to address the drug problem, his rhetoric on crime seems to be a diversionary tactic.

ABOLISH FADA

(Mrs. PATTERSON asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. PATTERSON. Mr. Speaker, today we have a unique opportunity to do away with a costly and inefficient Government entity. It is not an opportunity that we get very often. So, I urge my colleagues to consider your vote on H.R. 4646 carefully this afternoon.

The Federal Asset Disposition Association was created to assist the FSLIC in selling the inventory of assets from failed savings and loans. Unfortunately, FADA became a Frankenstein agency wandering the countryside completely out of control.

FADA paid its past president a salary as high as $250,000—more than we pay the President of the United States.

FADA exists for only one reason—to avoid the valid restrictions we put on Federal employees. FADA is not covered by Government salary caps, personnel hiring rules, Federal travel and expense laws, or conflict of interest and ethics laws.

If you have ever told your constituents that you are against waste, you should vote for H.R. 4646.

□ 1215

LET US HAVE AN AUDIT OF THE SAVINGS AND LOAN INDUSTRY

(Mr. OWENS of New York asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OWENS of New York. Mr. Speaker, I understand that a conference report that we will be considering this week will call upon us to give away another $5 billion to the savings and loan associations. This process of socializing the banking industry in America continues, unfortunately. We have not only bailed out savings and loan associations but we have also bailed out the Continental Bank to the tune of $4 billion from FDIC; a large Texas bank was bailed out to the tune of $4 billion; another bank is in trouble in Texas, I understand.

I wonder how long is the process of socializing the banking industry going to go on? FDIC is managing banks. Why? Let us have a public audit.

I think the Members of Congress need to know before we give another billion away to the banking industry, what is going on. Let us have an audit to tell us what deregulating the banking industry has done. How much incompetence has there been? How much crookedness has there been?

Let us have some laws to punish the people who have been crooked, let us expose those who have been incompetent but let us not go forward and continue to give more and more billions to the banking industry. We do not need a socialized banking industry in America. We have lots of other needs that need to be met.

This giveaway that was begun with the Continental Bank continues on and on.

Congress should know the facts. The American people ought to know the facts. Before we give another billion dollars away, put the facts before us and let us see the spread sheets, let us have an audit before we continue socializing the banking industry.

CANDIDATE QUAYLE'S INSENSITIVITY WITH RESPECT TO LEGISLATION

(Mr. SCHEUER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHEUER. Mr. Speaker, GEORGE BUSH talks often about creating "a kinder, gentler society." But while his Vice Presidential running mate says that he would continue Mr. BUSH's policies in the unfortunate event he ascends to the Presidency, DAN QUAYLE's voting record shows he cares little about creating "a kinder, gentler society."

DAN QUAYLE's voting record shows him to be way out of the mainstream on a wide variety of issues. He consistently opposed legislation to improve our education system, to provide health care for women and children and to improve the quality of our environment.

But one act of all shows the Republican Vice Presidential candidate's utter insensitivity to and lack of compassion for common people and their problems. That was his leadership role in fighting against legislation that would require employers to give their workers 60 days notice prior to closing a plant.

Just last July DAN QUAYLE took the lead on the Senate floor to try to prevent a veto override of the plant-closing notification bill. This young man who was born with a silver spoon in his mouth, who was born into the lap of luxury, would deny to working men and women the opportunity to have 60 days to replan their lives and to lessen the trauma of the terrible blow of losing their jobs.

DAN QUAYLE was unquestionably out of the mainstream on this issue. The plant-closing notification legislation was overwhelmingly supported by the American public, and the veto was overridden by a vast bipartisan vote of Democrats and Republicans alike.

But the most disturbing aspect of DAN QUAYLE's leadership role in opposing the plant-closing notification bill was that it exhibited a total lack of the compassion, the sensitivity, and the garden variety common human decency we expect from our national leaders.

CONGRESSMAN DORNAN WANTS TO SEE HIS GRANDCHILDREN PLAY SOCCER BEFORE TOO LONG

(Mr. DORNAN of California asked and was given permission to address the House for 1 minute.)

Mr. DORNAN of California. Mr. Speaker, I am not violating our distinguished House rules this morning. This is not a political button and it is not advertising any product. On this is a picture of my grandson.

Now I am wearing this button to make the point that I hope that we can get out of here at least by Tuesday or Wednesday of next week, Mr. Speaker. In all of this year I have not seen either of my oldest male grandchildren play soccer, even once. The American people wonder what we do here. We work hard, but we also give up a lot of good family time.

I am one of these lucky people who is getting to start life all over again with my wife. We are grandparents of seven who are just as exciting as the five we raised.

This handsome little guy here, Kevin Griffin of San Juan Capistrano is turning out to be a soccer star of the future. Ricky Cobban of this area in Springfield, VA, is another emerging soccer star.

Mr. Speaker, I would like to see one or two games. Please, Mr. Speaker, before they are already playing in the professional leagues and I have not had the opportunity to watch them grow up, let us wrap it up around here.

THE TAXPAYERS' BILL OF RIGHTS

(Mr. TALLON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TALLON. Mr. Speaker, the taxpayers' bill of rights is the most comprehensive statutory change in the Internal Revenue Service Code in the last 30 years about what the taxpayer can and cannot do in paying taxes and what the Internal Revenue Service can and cannot do in the collection of those taxes.

We are today making a major and substantial change in the fundamental relationship between the taxpayer and the tax collector.

From the notice of audit and the actual interview between the taxpayer and the agents in the IRS to the final issue of seizure and collection of certain assets, this legislation grants to the American taxpayer certain basic rights.

The time is now to restore some of those basic safeguards that the taxpayer deserves.

The taxpayers' bill of rights will ensure that every American taxpayer knows their rights and also their obligations.

This law will protect those rights and will protect the taxpayer from the abuses of sometimes overzealous IRS agents.

It will send a very clear message to our country and to all taxpayers, small and large, that taxpayers do in fact have certain basic due process rights, and the Internal Revenue Service is going to honor those rights.

The taxpayers' bill of rights is basically for that small business, that small farmer, that someday might get behind a little bit with their taxes or might make a mistake or might want to correct through the IRS a small mistake.

This bill makes sure that the little guy is not penalized unnecessarily or excessively.

FEDERAL ASSET DISPOSITION ASSOCIATION DISSOLUTION ACT

The SPEAKER pro tempore (Mr. FOLEY). The unfinished business is the question of suspending the rules and passing the bill, H.R. 4646, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Rhode Island [Mr. ST GERMAIN] that the House suspend the rules and pass the bill, H.R. 4646, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 247, nays 130, answered "present" 1, not voting 53, as follows:

[Roll No. 442]

YEAS—247

Ackerman
Akaka
Alexander
Anderson
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Bates
Beilenson
Bennett
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Boehlert
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brown (CA)
Brown (CO)
Bruce
Bryant
Bustamante
Byron
Campbell
Cardin
Carper
Chapman
Chappell
Clarke
Clay
Clement
Coleman (TX)
Collins
Conte
Conyers
Cooper
Coyne
Crockett
Darden
DeFazio
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Downey
Dreier
Dwyer
Dymally
Early
Eckart
Edwards (CA)
Emerson
English
Erdreich
Evans
Fascell
Fazio
Feighan
Flake
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Gallo
Garcia
Gaydos
Gejdenson
Gephardt
Gilman
Glickman
Gradison
Grandy
Grant
Gray (IL)
Gray (PA)
Guarini
Hall (OH)
Hamilton
Hammerschmidt
Harris
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefner
Hertel
Hochbrueckner
Hopkins
Hoyer
Hubbard
Hughes
Hunter
Hutto
Jacobs
Jenkins
Johnson (SD)
Jontz
Kanjorski
Kaptur
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
LaFalce
Lancaster
Lantos
Leath (TX)
Lehman (CA)
Lehman (FL)
Levin (MI)
Levine (CA)
Lewis (FL)
Lewis (GA)
Lipinski
Lloyd
Lowry (WA)
Manton
Markey
Martinez
Matsui
Mavroules
McCloskey
McCollum
McCurdy
McDade
McHugh
McMillan (NC)
McMillen (MD)
Meyers
Mfume
Miller (CA)
Miller (WA)
Mineta
Moakley
Mollohan
Moody
Morella
Morrison (CT)
Mrazek
Murtha
Nagle
Neal
Nelson
Nichols
Nowak
Oakar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Panetta
Pashayan
Patterson
Payne
Pease
Penny
Pickett
Price
Rahall
Rangel
Ravenel
Ray
Richardson
Rinaldo
Roberts
Robinson
Rodino
Roe
Rose
Rostenkowski
Roth
Roukema
Rowland (GA)
Roybal
Sabo
Saiki
Savage
Sawyer
Saxton
Scheuer
Schneider
Schroeder
Sharp
Sikorski
Skelton
Slattery
Slaughter (NY)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Denny (OR)
Snowe
Solarz
Spratt
St Germain
Staggers
Stark
Stenholm
Stokes
Studds
Swift
Synar
Tallon
Tauzin
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Vento
Visclosky
Walgren
Watkins
Waxman
Weiss
Wheat
Whitten
Williams
Wilson
Wise
Wolpe
Wyden
Yates
Yatron

NAYS—130

Andrews
Archer
Armey
Badham
Baker
Ballenger
Barnard
Bartlett
Barton
Bateman
Bentley
Bliley
Broomfield
Buechner
Bunning
Burton
Callahan
Chandler
Cheney
Clinger
Coats
Coble
Combest
Coughlin
Craig
Crane
Dannemeyer
Daub
Davis (IL)
Davis (MI)
DeWine
DioGuardi
Edwards (OK)
Fawell
Fields
Fish
Frenzel
Gallegly
Gekas
Gingrich
Goodling
Green
Gunderson
Hall (TX)
Hansen
Hastert
Hefley
Henry
Herger
Hiler
Holloway
Horton
Houghton
Huckaby
Hyde
Inhofe
Ireland
Jeffords
Johnson (CT)
Kasich
Kolbe
Kyl
Lagomarsino
Latta
Lent
Lewis (CA)
Lightfoot
Livingston
Lowery (CA)
Lujan
Luken, Thomas
Lukens, Donald
Lungren
Madigan
Marlenee
Martin (IL)
Martin (NY)
Mazzoli
McCandless
McCrery
McEwen
McGrath
Michel
Miller (OH)
Molinari
Moorhead
Morrison (WA)
Myers
Natcher
Nielson
Oberstar
Oxley
Perkins
Petri
Porter
Pursell
Quillen
Regula
Rhodes
Ritter
Rowland (CT)
Schaefer
Schuette
Schulze
Sensenbrenner
Shays
Shumway
Shuster
Sisisky
Skeen
Slaughter (VA)
Smith (TX)
Smith, Robert (NH)
Smith, Robert (OR)
Solomon
Stangeland
Stump
Sundquist
Taylor
Thomas (CA)
Upton
Vander Jagt
Vucanovich
Walker
Whittaker
Wolf
Wortley
Wylie
Young (AK)
Young (FL)

ANSWERED "PRESENT"—1

Gonzalez

NOT VOTING—53

Boulter
Brennan
Brooks
Carr
Coelho
Coleman (MO)
Costello
Courter
de la Garza
DeLay
Dickinson
Dowdy
Durbin
Dyson
Espy
Frost
Gibbons
Gordon
Gregg
Jones (NC)
Jones (TN)
Kemp
Konnyu
Leach (IA)
Leland
Lott
Mack
MacKay
Mica
Montgomery
Murphy
Packard
Parris
Pelosi
Pepper
Pickle
Ridge
Rogers
Russo
Schumer
Shaw
Skaggs
Smith (FL)
Spence
Stallings
Stratton
Sweeney
Swindall
Tauke
Valentine
Volkmer
Weber
Weldon

☐ 1244

Mr. FRENZEL and Mr. HALL of Texas changed their vote from "yea" to "nay."

Messrs. HUNTER, BILIRAKIS, GLICKMAN, and RAVENEL, Ms. SNOWE, Mr. GILMAN, and Mr. EMERSON changed their vote from "nay" to "yea."

So (twk-thirds not having voted in favkr thereof) the motion was rejected.

The result of the vote was announced as above recorded.

☐ 1245

CONFERENCE REPORT ON H.R. 5261, INDIAN HEALTH CARE AMENDMENTS OF 1988

Mr. UDALL submitted the following conference report and statement on the bill (H.R. 5261) to reauthorize and amend the Indian Health Care Improvement Act, and for other purposes:

CONFERENCE REPORT (H. REPT. 100-1075)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5261) to reauthorize and amend the Indian Health Care Improvement Act, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Indian Health Care Amendments of 1988".

TABLE OF CONTENTS

SEC. 2. Table of contents.

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. References.
Sec. 4. Appropriation; availability.

TITLE I—INDIAN HEALTH MANPOWER

Sec. 101. Health professions recruitment program for Indians.
Sec. 102. Health professions preparatory scholarship program.
Sec. 103. Indian Health Service extern programs.
Sec. 104. Indian health professions scholarship program.
Sec. 105. Continuing education allowances.
Sec. 106. Native Hawaiian health professions scholarship program.
Sec. 107. Community health representatives.
Sec. 108. Indian health service clinical staffing.
Sec. 109. Other recruitment and retention provisions.
Sec. 110. Report on recruitment and retention.

TITLE II—HEALTH SERVICES

Sec. 201. Improvement of Indian health status.
Sec. 202. Catastrophic health program.

Sec. 203. Health promotion and disease prevention.
Sec. 204. Reimbursement of certain expenses; research.

TITLE III—HEALTH FACILITIES

Sec. 301. Consultation; closure of facilities; reports.
Sec. 302. Safe water and sanitary waste disposal facilities.
Sec. 303. Use of non-Service funds for renovation.
Sec. 304. Bethel, Alaska, hospital.

TITLE IV—ACCESS TO HEALTH SERVICES

Sec. 401. Medicare provisions.
Sec. 402. Demonstration program.

TITLE V—URBAN INDIAN HEALTH SERVICES

Sec. 501. Revision of program.
Sec. 502. Urban Indian organization.

TITLE VI—ORGANIZATIONAL IMPROVEMENTS

Sec. 601. Establishment of the Indian Health Service as an agency of the Public Health Service.

TITLE VII—MISCELLANEOUS PROVISIONS

Sec. 701. Leasing and other contracts.
Sec. 702. Arizona as a contract health service delivery area.
Sec. 703. Eligibility of California Indians.
Sec. 704. California as a contract health service delivery area.
Sec. 705. Contract health facilities.
Sec. 706. National Health Service Corps.
Sec. 707. Health services for ineligible persons.
Sec. 708. Infant and maternal mortality; fetal alcohol syndrome.
Sec. 709. Contract health services for the Trenton Service Area.
Sec. 710. Indian health service and Veterans' Administration health facilities and services sharing.
Sec. 711. Reallocation of base resources.
Sec. 712. Provision of services in Montana.
Sec. 713. Demonstration projects for tribal management of health care services.
Sec. 714. Health care for rural areas.
Sec. 715. Child sexual abuse treatment program.
Sec. 716. Pueblo substance abuse treatment project for San Juan Pueblo, New Mexico.
Sec. 717. Study with respect to nuclear resource development health hazards.
Sec. 718. Limitation on use of funds appropriated to the Indian Health Service.
Sec. 719. Eligibility for services.

TITLE VIII—SEVERABILITY PROVISION

Sec. 801. Severability.

REFERENCES

SEC. 3. Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Indian Health Care Improvement Act (25 U.S.C. 1601, et seq.).

APPROPRIATION; AVAILABILITY

SEC. 4. Any new spending authority (described in subsection (c)(2) (A) or (B) of section 401 of the Congressional Budget Act of 1974) which is provided under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

TITLE I—INDIAN HEALTH MANPOWER

HEALTH PROFESSIONS RECRUITMENT PROGRAM FOR INDIANS

SEC. 101. Subsection (c) of section 102 (25 U.S.C. 1612 (c)) is amended to read as follows:

"(c) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $600,000 for fiscal year 1989,
"(2) $650,000 for fiscal year 1990,
"(3) $700,000 for fiscal year 1991, and
"(4) $750,000 for fiscal year 1992.".

HEALTH PROFESSIONS PREPARATORY SCHOLARSHIP PROGRAM

SEC. 102. (a) Section 103 (25 U.S.C. 1613) is amended by striking out subsection (d) and inserting in lieu thereof the following:

"(d) The Secretary shall not deny scholarship assistance to an eligible applicant under this section solely on the basis of the applicant's scholastic achievement if such applicant has been admitted to, or maintained good standing at, an accredited institution.

"(e) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $3,000,000 for fiscal year 1989,
"(2) $3,700,000 for fiscal year 1990,
"(3) $4,400,000 for fiscal year 1991, and
"(4) $5,100,000 for fiscal year 1992.".

(b) Subsection (c) of section 103 is amended by striking out "expenses" and inserting in lieu thereof "expenses of a grantee while attending school full time".

INDIAN HEALTH SERVICE EXTERN PROGRAMS

SEC. 103. Subsection (d) of section 105 (25 U.S.C. 1614) is amended to read as follows:

"(d) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $300,000 for fiscal year 1989,
"(2) $350,000 for fiscal year 1990,
"(3) $400,000 for fiscal year 1991, and
"(4) $450,000 for fiscal year 1992.".

INDIAN HEALTH PROFESSIONS SCHOLARSHIP PROGRAM

SEC. 104. (a) Section 104 is amended to read as follows:

"INDIAN HEALTH PROFESSIONS SCHOLARSHIPS

"SEC. 104. (a) In order to provide health professionals to Indian communities, the Secretary, acting through the Service and in accordance with this section, shall make scholarship grants to Indians who are enrolled full time in appropriately accredited schools of medicine, osteopathy, podiatry, psychology, dentistry, environmental health and engineering, nursing, optometry, public health, allied health professions, and social work. Such scholarships shall be designated Indian Health Scholarships and shall be made in accordance with section 338A of the Public Health Service Act (42 U.S.C. 254l), except as provided in subsection (b) of this section.

"(b)(1) The Secretary, acting through the Service, shall determine who shall receive scholarships under subsection (a) and shall determine the distribution of such scholarships among such health professions on the basis of the relative needs of Indians for additional service in such health professions.

"(2) An individual shall be eligible for a scholarship under subsection (a) in any year in which such individual is enrolled full time in a health profession school referred to in subsection (a).

"(3) The active duty service obligation prescribed under section 338C of the Public Health Service Act (42 U.S.C. 254m) shall be met by a recipient of an Indian Health Scholarship by service—

"(A) in the Indian Health Service;

"(B) in a program conducted under a contract entered into under the Indian Self-Determination Act;

"(C) in a program assisted under title V of this Act; or

"(D) in the private practice of the applicable profession if, as determined by the Secretary, in accordance with guidelines promulgated by the Secretary, such practice is situated in a physician or other health professional shortage area and addresses the health care needs of a substantial number of Indians.

"(c) For purposes of this section, the term 'Indian' has the same meaning given that term by subsection (c) of section 4 of this Act, including all individuals described in clauses (1) through (4) of that subsection.

"(d) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $5,100,000 for fiscal year 1989,
"(2) $6,000,000 for fiscal year 1990,
"(3) $7,100,000 for fiscal year 1991, and
"(4) $8,234,000 for fiscal year 1992.".

(b)(1) Section 338I of the Public Health Service Act (42 U.S.C. 254r) is repealed.

(2) Scholarships that have been provided under section 338I of the Public Health Service Act (42 U.S.C. 254r) on or before the date of enactment of this Act—

(A) shall continue to be provided under the provisions of such section that were in effect on the day before the date of enactment of this Act,

(B) shall be subject to the same terms and conditions to which such scholarships were subject on the day before the date of enactment of this Act, and

(C) shall be funded from funds appropriated to carry out section 104 of the Indian Health Care Improvement Act, as amended by this Act.

CONTINUING EDUCATION ALLOWANCES

SEC. 105. Subsection (b) of section 106 (25 U.S.C. 1615(b)) is amended to read as follows:

"(b) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $500,000 for fiscal year 1989,
"(2) $526,300 for fiscal year 1990,
"(3) $553,800 for fiscal year 1991, and
"(4) $582,500 for fiscal year 1992.".

NATIVE HAWAIIAN HEALTH PROFESSIONS SCHOLARSHIP PROGRAM

SEC. 106. Subpart III of part D of title III of the Public Health Service Act (42 U.S.C. 254b, et seq.) is amended by adding at the end thereof the following new section:

"SEC. 338J. NATIVE HAWAIIAN HEALTH SCHOLARSHIPS.

"(a) Subject to the availability of funds appropriated under the authority of subsection (d), the Secretary shall provide scholarship assistance, pursuant to a contract with the Kamehameha Schools/Bishop Estate, to students who—

"(1) meet the requirements of section 338A(b), and

"(2) are Native Hawaiians.

"(b)(1) The scholarship assistance provided under subsection (a) shall be provided under the same terms and subject to the same conditions, regulations, and rules that apply to scholarship assistance provided under section 338A.

"(2) The Native Hawaiian Health Scholarship program shall not be administered by or through the Indian Health Service.

"(c) For purposes of this section, the term 'Native Hawaiian' means any individual who is—

"(1) a citizen of the United States,

"(2) a resident of the State of Hawaii, and

"(3) a descendant of the aboriginal people, who prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii, as evidenced by—

"(A) genealogical records,

"(B) Kupuna (elders) or Kama'aina (long-term community residents) verification, or

"(C) birth records of the State of Hawaii.

"(d) There are authorized to be appropriated $1,800,000 for each of the fiscal years 1990, 1991, and 1992 for the purpose of funding the scholarship assistance provided under subsection (a).".

COMMUNITY HEALTH REPRESENTATIVES

SEC. 107. Title I is amended by adding at the end thereof the following new section:

"COMMUNITY HEALTH REPRESENTATIVE PROGRAM

"SEC. 107. (a) Under the authority of the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, the Secretary shall maintain a Community Health Representative Program under which the Service—

"(1) provides for the training of Indians as health paraprofessionals, and

"(2) uses such paraprofessionals in the provision of health care, health promotion, and disease prevention services to Indian communities.

"(b) The Secretary, acting through the Community Health Representative Program of the Service, shall—

"(1) provide a high standard of training for paraprofessionals to Community Health Representatives to ensure that the Community Health Representatives provide quality health care, health promotion, and disease prevention services to the Indian communities served by such Program,

"(2) in order to provide such training, develop a curriculum that—

"(A) combines education in the theory of health care with supervised practical experience in the provision of health care, and

"(B) provides instruction and practical experience in health promotion and disease prevention activities,

"(3) develop a system which identifies the needs of Community Health Representatives for continuing education in health care, health promotion, and disease prevention and develop programs that meet the needs for such continuing education,

"(4) develop and maintain a system that provides close supervision of Community Health Representatives,

"(5) develop a system under which the work of Community Health Representatives is reviewed and evaluated, and

"(6) promote traditional health care practices of the Indian tribes served consistent with the Service standards for the provision of health care, health promotion, and disease prevention.".

INDIAN HEALTH SERVICE CLINICAL STAFFING

SEC. 108. Title I, as amended by section 107 of this Act, is further amended by adding at the end thereof the following new sections:

"INDIAN HEALTH SERVICE LOAN REPAYMENT PROGRAM

"SEC. 108. (a)(1) The Secretary, acting through the Service, shall establish a program to be known as the Indian Health Service Loan Repayment Program (hereinafter referred to as the 'Loan Repayment Program') in order to assure an adequate supply of trained physicians, dentists, nurses, nurse practitioners, physician assistants, clinical and counseling psychologists, graduates of schools of public health, graduates of schools of social work, and other health professionals necessary to maintain accreditation of, and provide health care services to Indians through, Indian health programs.

"(2) For the purposes of this section—

"(A) the term 'Indian health program' means any health program or facility funded, in whole or part, by the Service for the benefit of Indians and administered—

"(i) directly by the Service;

"(ii) by any Indian tribe or tribal or Indian organization pursuant to a contract under—

"(I) the Indian Self-Determination Act, or

"(II) section 23 of the Act of April 30, 1908 (25 U.S.C. 47), popularly known as the 'Buy-Indian' Act; or

"(iii) by an urban Indian organization pursuant to title V of this Act; and

"(B) the term 'State' has the same meaning given such term in section 331(i)(4) of the Public Health Service Act.

"(b) To be eligible to participate in the Loan Repayment Program, an individual must—

"(1)(A) be enrolled—

"(i) as a full-time student in the final year of a course of study or program in an accredited institution, as determined by the Secretary, within any State; or

"(ii) in an approved graduate training program in medicine, osteopathy, dentistry, or other health profession; or

"(B) have—

"(i) a degree in medicine, osteopathy, dentistry, or other health profession;

"(ii) completed an approved graduate training program in medicine, osteopathy, dentistry, or other health profession in a State, except that the Secretary may waive the completion requirement of this clause for good cause; and

"(iii) a license to practice medicine, osteopathy, dentistry, or other health profession in a State;

"(2)(A) be eligible for, or hold, an appointment as a commissioned officer in the Regular or Reserve Corps of the Public Health Service;

"(B) be eligible for selection for civilian service in the Regular or Reserve Corps of the Public Health Service;

"(C) meet the professional standards for civil service employment in the Indian Health Service; or

"(D) be employed in an Indian health program without a service obligation;

"(3) submit an application to participate in the Loan Repayment Program; and

"(4) sign and submit to the Secretary, at the time of submission of such application, a written contract (described in subsection (f)) to accept repayment of educational loans and to serve (in accordance with this section) for the applicable period of obligated service in an Indian health program.

"(c)(1) In disseminating application forms and contract forms to individuals desiring to participate in the Loan Repayment Program, the Secretary shall include with such forms a fair summary of the rights and liabilities of an individual whose application is approved (and whose contract is accepted) by the Secretary, including in the summary a clear explanation of the damages to which the United States is entitled under subsection (l) in the case of the individual's breach of the contract. The Secretary shall provide such individuals with sufficient information regarding the advantages and disadvantages of service as a commissioned officer in the Regular or Reserve Corps of the Public Health Service or a civilian employee of the Indian Health Service to enable the individual to make a decision on an informed basis.

"(2) The application form, contract form, and all other information furnished by the Secretary under this section shall be written in a manner calculated to be understood by the average individual applying to participate in the Loan Repayment Program.

"(3) The Secretary shall make such application forms, contract forms, and other information available to individuals desiring to participate in the Loan Repayment Program on a date sufficiently early to ensure that such individuals have adequate time to carefully review and evaluate such forms and information.

"(d)(1) The Secretary, acting through the Service and in accordance with subsection (k), shall annually—

"(A) identify the positions in each Indian Health program for which there is a need or a vacancy, and

"(B) rank those positions in order of priority.

"(2) Consistent with the priority determined under paragraph (1), the Secretary, in determining which applications under the Loan Repayment Program to approve (and which contracts to accept), shall give priority to applications made by—

"(A) Indians; and

"(B) individuals recruited through the efforts of Indian tribes or tribal or Indian organizations.

"(e)(1) An individual becomes a participant in the Loan Repayment Program only on the Secretary's approval of the individual's application submitted under subsection (b)(3) and the Secretary's acceptance of the contract submitted by the individual under subsection (b)(4).

"(2) The Secretary shall provide written notice to an individual promptly on—

"(A) the Secretary's approving, under paragraph (1), of the individual's participation in the Loan Repayment Program; or

"(B) the Secretary's disapproving an individual's participation in such Program.

"(f) The written contract referred to in this section between the Secretary and an individual shall contain—

"(1) an agreement under which—

"(A) subject to paragraph (3), the Secretary agrees—

"(i) to pay loans on behalf of the individual in accordance with the provisions of this section, and

"(ii) to accept (subject to the availability of appropriated funds for carrying out this section) the individual into the Service or place the individual with a tribe or Indian organization as provided in subparagraph (B)(iii), and

"(B) subject to paragraph (3), the individual agrees—

"(i) to accept loan payments on behalf of the individual;

"(ii) in the case of an individual described in subsection (b)(1)—

"(I) to maintain enrollment in a course of study or training described in subsection (b)(1)(A) until the individual completes the course of study or training, and

"(II) while enrolled in such course of study or training, to maintain an acceptable level of academic standing (as determined under regulations of the Secretary by the educational institution offering such course of study or training);

"(iii) to serve for a time period (hereinafter in this section referred to as the 'period of obligated service') equal to 2 years or such longer period as the individual may agree to serve in the full-time clinical practice of such individual's profession in an Indian health program to which the individual may be assigned by the Secretary;

"(2) a provision permitting the Secretary to extend for such longer additional periods, as the individual may agree to, the period of obligated service agreed to by the individual under paragraph (1)(B)(iii);

"(3) a provision that any financial obligation of the United States arising out of a contract entered into under this section and any obligation of the individual which is conditioned thereon is contingent upon funds being appropriated for loan repayments under this section;

"(4) a statement of the damages to which the United States is entitled under subsection (l) for the individual's breach of the contract; and

"(5) such other statements of the rights and liabilities of the Secretary and of the individual, not inconsistent with this section.

"(g)(1) A loan repayment provided for an individual under a written contract under the Loan Repayment Program shall consist of payment, in accordance with paragraph (2), on behalf of the individual of the principal, interest, and related expenses on government and commercial loans received by the individual for—

"(A) tuition expenses;

"(B) all other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the individual; and

"(C) reasonable living expenses as determined by the Secretary.

"(2)(A) Except as provided in subparagraph (B) and paragraph (3), for each year of obligated service for which an individual contracts to serve under subsection (f), the Secretary may pay up to $25,000 on behalf of the individual for loans described in paragraph (1).

"(B) Any arrangement made by the Secretary for the making of loan repayments in accordance with this subsection shall provide that any repayments for a year of obligated service shall be made no later than the end of the fiscal year in which the individual completes such year of service.

"(3) In addition to payments made under paragraph (2), in any case in which payments on behalf of an individual under the Loan Repayment Program result in an increase in Federal, State, or local income tax liability for such individual, the Secretary may, on the request of such individual, make payments to such individual in a reasonable amount, as determined by the Secretary, to reimburse such individual for all or part of the increased tax liability of the individual.

"(4) The Secretary may enter into an agreement with the holder of any loan for which payments are made under the Loan Repayment Program to establish a schedule for the making of such payments.

"(h) Notwithstanding any other provision of law, individuals who have entered into written contracts with the Secretary under this section, while undergoing academic training, shall not be counted against any employment ceiling affecting the Department of Health and Human Services.

"(i) The Secretary shall conduct recruiting programs for the Loan Repayment Program and other Service manpower programs at educational institutions training health professionals or specialists identified in subsection (a).

"(j) Section 214 of the Public Health Service Act (42 U.S.C. 215) shall not apply to individuals during their period of obligated service under the Loan Repayment Program.

"(k) The Secretary shall ensure that the staffing needs of Indian health programs administered by any Indian tribe or tribal or Indian organization receive consideration on an equal basis with programs that are administered directly by the Service.

"(l)(1) An individual who has entered into a written contract with the Secretary under this section and who—

"(A) is enrolled in the final year of a course of study and who—

"(i) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary);

"(ii) voluntarily terminates such enrollment; or

"(iii) is dismissed from such educational institution before completion of such course of study; or

"(B) is enrolled in a graduate training program, fails to complete such training program, and does not receive a waiver from the Secretary under subsection (b)(1)(B)(ii),

shall be liable, in lieu of any service obligation arising under such contract, to the United States for the amount which has been paid on such individual's behalf under the contract.

"(2) If, for any reason not specified in paragraph (1), an individual breaches his written contract under this section by failing either to begin, or complete, such individual's period of obligated service in accordance with subsection (f), the United States shall be entitled to recover from such individual an amount to be determined in accordance with the following formula:

$$A=3Z(t-s/t)$$

in which—

"(A) 'A' is the amount the United States is entitled to recover;

"(B) 'Z' is the sum of the amounts paid under this section to, or on behalf of, the individual and the interest on such amounts which would be payable if, at the time the amounts were paid, they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States;

"(C) 't' is the total number of months in the individual's period of obligated service in accordance with subsection (f); and

"(D) 's' is the number of months of such period served by such individual in accordance with this section.

Amounts not paid within such period shall be subject to collection through deductions in Medicare payments pursuant to section 1892 of the Social Security Act.

"(3)(A) Any amount of damages which the United States is entitled to recover under this subsection shall be paid to the United States within the 1-year period beginning on the date of the breach or such longer period beginning on such date as shall be specified by the Secretary.

"(B) If damages described in subparagraph (A) are delinquent for 3 months, the Secretary shall, for the purpose of recovering such damages—

"(i) utilize collection agencies contracted with by the Administrator of the General Services Administration; or

"(ii) enter into contracts for the recovery of such damages with collection agencies selected by the Secretary.

"(C) Each contract for recovering damages pursuant to this subsection shall provide that the contractor will, not less than once each 6 months, submit to the Secretary a status report on the success of the contractor in collecting such damages. Section 3718 of title 31, United States Code, shall apply to any such contract to the extent not inconsistent with this subsection.

"(m)(1) Any obligation of an individual under the Loan Repayment Program for service or payment of damages shall be canceled upon the death of the individual.

"(2) The Secretary shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment by an individual under the Loan Repayment Program whenever compliance by the individual is impossible or would involve extreme hardship to the individual and if enforcement of such obligation with respect to any individual would be unconscionable.

"(3) The Secretary may waive, in whole or in part, the rights of the United States to recover amounts under this section in any case of extreme hardship or other good cause shown, as determined by the Secretary.

"(4) Any obligation of an individual under the Loan Repayment Program for payment of damages may be released by a discharge in bankruptcy under title 11 of the United States Code only if such discharge is granted after the expiration of the 5-year period beginning on the first date that payment of such damages is required, and only if the bankruptcy court finds that nondischarge of the obligation would be unconscionable.

"(n)(1) By not later than the first of March of each year, the Secretary shall, beginning with fiscal year 1990, submit to the Congress an annual report for the preceding fiscal year setting out—

"(A) the number of such applications filed with respect to each type of health profession;

"(B) the health professional positions maintained by the Service or by tribal or Indian organizations for which recruitment or retention is difficult;

"(C) the number of contracts described in subsection (f) that are entered into with respect to each health profession; and

"(D) the amount of loan payments made in total and by health profession.

"(2) Not later than the first of July of each year, beginning in 1989, the Secretary shall submit to Congress a report on—

"(A) the number of providers of health care that will be needed by Indian health programs by location and profession, during the three fiscal years beginning after the date the report is filed; and

"(B) the measures the Secretary plans to take to fill the health professional positions maintained by the Service or by tribes or tribal or Indian organizations for which recruitment or retention is difficult.

"(o) There are authorized to be appropriated such sums as may be necessary for each fiscal year to carry out the provisions of this section.

"TRAVEL EXPENSES FOR RECRUITMENT

"SEC. 109. (a) The Secretary may reimburse health professionals seeking positions in the Service, including individuals considering entering into a contract under section 108, and their spouses, for actual and reasonable expenses incurred in traveling to and from their places of residence to an area in which they may be assigned for the purpose of evaluating such area with respect to such assignment.

"(b) There are authorized to be appropriated $100,000 for each of the fiscal years

1990, 1991, and 1992, for the purpose of carrying out the provisions of this section.

"TRIBAL RECRUITMENT AND RETENTION PROGRAM

"SEC. 110. (a) The Secretary, acting through the Service, shall fund, on a competitive basis, projects to enable Indian tribes and tribal and Indian organizations to recruit, place, and retain health professionals to meet the staffing needs of Indian health programs (as defined in section 108(a)(2)).

"(b)(1) Any Indian tribe or tribal or Indian organization may submit an application for funding of a project pursuant to this section.

"(2) Indian tribes and tribal and Indian organizations under the authority of the Indian Self-Determination Act shall be given an equal opportunity with programs that are administered directly by the Service to compete for, and receive, grants under subsection (a) for such projects.

"(c) There are authorized to be appropriated $1,000,000 for each of the fiscal years 1990, 1991, and 1992, for the purpose of carrying out the provisions of this section.

"ADVANCED TRAINING AND RESEARCH

"SEC. 111. (a) The Secretary, acting through the Service, shall establish a program to enable health professionals who have worked in an Indian health program (as defined in section 108(a)(2)) for a substantial period of time to pursue advanced training or research in areas of study for which the Secretary determines a need exists.

"(b) An individual who participates in a program under subsection (a), where the educational costs are borne by the Service, shall incur an obligation to serve in an Indian health program for a period of obligated service equal to at least the period of time during which the individual participates in such program. In the event that the individual fails to complete such obligated service, the individual shall be liable to the United States for the period of service remaining. The Secretary shall develop standards for appropriate recoupment for such remaining service.

"(c) Health professionals from Indian tribes and tribal and Indian organizations under the authority of the Indian Self-Determination Act shall be given an equal opportunity to participate in the program under subsection (a).

"(d) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section.

"NURSING PROGRAM

"SEC. 112. (a) The Secretary, acting through the Service, shall provide grants to—

"(1) public or private schools of nursing,

"(2) tribally controlled community colleges, and

"(3) nurse midwife programs, and nurse practitioner programs, that are provided by any public or private institution,

for the purpose of increasing the number of nurses, nurse midwives, and nurse practitioners who deliver health care services to Indians.

"(b) Grants provided under subsection (a) may be used to—

"(1) recruit individuals for programs which train individuals to be nurses, nurse midwives, or nurse practitioners,

"(2) provide scholarships to individuals enrolled in such programs that may pay the tuition charged for such program and other expenses incurred in connection with such program, including books, fees, room and board, and stipends for living expenses,

"(3) provide a program that encourages nurses, nurse midwives, and nurse practitioners to provide, or continue to provide, health care services to Indians,

"(4) provide a program that increases the skills of, and provides continuing education to, nurses, nurse midwives, and nurse practitioners, or

"(5) provide any program that is designed to achieve the purpose described in subsection (a).

"(c) Each application for a grant under subsection (a) shall include such information as the Secretary may require to establish the connection between the program of the applicant and a health care facility that primarily serves Indians.

"(d) In providing grants under subsection (a), the Secretary shall extend a preference to—

"(1) programs that provide a preference to Indians,

"(2) programs that train nurse midwives or nurse practitioners,

"(3) programs that are interdisciplinary, and

"(4) programs that are conducted in cooperation with a center for gifted and talented Indian students established under section 5324(a) of the Indian Education Act of 1988.

"(e) The active duty service obligation prescribed under section 338C of the Public Health Service Act (42 U.S.C. 254m) shall be met by each individual who receives training or assistance described in paragraph (1) or (2) of subsection (b) that is funded by a grant provided under subsection (a). Such obligation shall be met by service—

"(A) in the Indian Health Service;

"(B) in a program conducted under a contract entered into under the Indian Self-Determination Act;

"(C) in a program assisted under title V of this Act; or

"(D) in the private practice of nursing if, as determined by the Secretary, in accordance with guidelines promulgated by the Secretary, such practice is situated in a physician or other health professional shortage area and addresses the health care needs of a substantial number of Indians.

"(f)(1) There are authorized to be appropriated for each of the fiscal years 1990, 1991, and 1992, $5,000,000 for the purpose of carrying out the provisions of this section.

"(2) Of the amounts appropriated under the authority of paragraph (1) for each fiscal year, the Secretary shall use at least $1,000,000 to provide grants under subsection (a) for the training of nurse midwives.".

OTHER RECRUITMENT AND RETENTION PROVISIONS

SEC. 109. Title I, as amended by section 108 of this Act, is further amended by adding at the end thereof the following new sections:

"TRIBAL CULTURE AND HISTORY

"SEC. 113. (a) The Secretary, acting through the Service, shall establish a program under which appropriate employees of the Service who serve particular Indian tribes shall receive educational instruction in the history and culture of such tribes and in the history of the Service.

"(b) To the extent feasible, the program established under subsection (a) shall—

"(1) be carried out through tribally-controlled community colleges (within the meaning of section 2(4) of the Tribally Controlled Community College Assistance Act of 1978), and

"(2) be developed in consultation with the affected tribal government, and

"(3) include instruction in Native American studies.

"(c) There are authorized to be appropriated for each of the fiscal years 1990, 1991, and 1992, $1,000,000 to carry out the provisions of this section.

"INMED PROGRAM

"SEC. 114. (a) The Secretary is authorized to provide grants to at least 3 colleges and universities for the purpose of maintaining and expanding the Native American health careers recruitment program known as the 'Indians into Medicine Program' (hereinafter in this section referred to as 'INMED') as a means of encouraging Indians to enter the health professions.

"(b) The Secretary shall provide one of the grants authorized under subsection (a) to maintain the INMED program at the University of North Dakota, unless the Secretary makes a determination, based upon program reviews, that the program is not meeting the purposes of this section.

"(c)(1) The Secretary shall develop regulations for the competitive awarding of the grants provided under this section.

"(2) Applicants for grants provided under this section shall agree to provide a program which—

"(A) provides outreach and recruitment for health professions to Indian communities including elementary, secondary and community colleges located on Indian reservations which will be served by the program,

"(B) incorporates a program advisory board comprised of representatives from the tribes and communities which will be served by the program,

"(C) provides summer preparatory programs for Indian students who need enrichment in the subjects of math and science in order to pursue training in the health professions,

"(D) provides tutoring, counseling and support to students who are enrolled in a health career program of study at the respective college or university, and

"(E) to the maximum extent feasible, employs qualified Indians in the program.

"(d) By no later than the date that is 3 years after the date of enactment of the Indian Health Care Amendments of 1988, the Secretary shall submit a report to the Congress on the program established under this section including recommendations for expansion or changes to the program.

"(e) There are authorized to be appropriated for each of the fiscal years 1990, 1991, and 1992, $1,000,000 to carry out the provisions of this section.

"HEALTH TRAINING PROGRAMS OF COMMUNITY COLLEGES

"SEC. 115. (a)(1) The Secretary, acting through the Service, shall award grants to community colleges for the purpose of assisting the community college in the establishment of programs which provide education in a health profession leading to a degree or diploma in a health profession for individuals who desire to practice such profession on an Indian reservation or in a tribal clinic.

"(2) The amount of any grant awarded to a community college under paragraph (1) for the first year in which such a grant is provided to the community college shall not exceed $100,000.

"(b)(1) The Secretary, acting through the Service, shall award grants to community colleges that have established a program described in subsection (a)(1) for the purpose

of maintaining the program and recruiting students for the program.

"(2) Grants may only be made under this section to a community college which—

"(A) is accredited,

"(B) has access to a hospital facility, Service facility, or hospital that could provide training of nurses or health professionals,

"(C) has entered into an agreement with an accredited college or university medical school, the terms of which—

"(i) provide a program that enhances the transition and recruitment of students into advanced baccalaureate or graduate programs which train health professionals, and

"(ii) stipulate certifications necessary to approve internship and field placement opportunities at service unit facilities of the Service or at tribal health facilities,

"(D) has a qualified staff which has the appropriate certifications, and

"(E) is capable of obtaining State or regional accreditation of the program described in subsection (a)(1).

"(c) The Secretary shall encourage community colleges described in subsection (b)(2) to establish and maintain programs described in subsection (a)(1) by—

"(1) entering into agreements with such colleges for the provision of qualified personnel of the Service to teach courses of study in such programs, and

"(2) providing technical assistance and support to such colleges.

"(d) Any program receiving assistance under this section that is conducted with respect to a health profession shall also offer courses of study which provide advanced training for any health professional who—

"(1) has already received a degree or diploma in such health profession, and

"(2) provides clinical services on an Indian reservation, at a Service facility, or at a tribal clinic.

Such courses of study may be offered in conjunction with the college or university with which the community college has entered into the agreement required under subsection (b)(2)(C).

"(e) For purposes of this section—

"(1) The term 'community college' means—

"(A) a tribally controlled community college, or

"(B) a junior or community college.

"(2) The term 'tribally controlled community college' has the meaning given to such term by section 2(4) of the Tribally Controlled Community College Assistance Act of 1978.

"(3) The term 'junior or community college' has the meaning given to such term by section 312(e) of the Higher Education Act of 1965 (20 U.S.C. 1058(e)).

"(f) There are authorized to be appropriated for each of the fiscal years 1990, 1991, and 1992, $1,500,000 to carry out the provisions of this section.

"ADDITIONAL INCENTIVES FOR HEALTH PROFESSIONALS

"SEC. 116. (a) The Secretary may provide the incentive special pay authorized under section 302(b) of title 37, United States Code, to civilian medical officers of the Indian Health Service who are assigned to, and serving in, positions included in the list established under subsection (b)(1) for which recruitment or retention of personnel is difficult.

"(b)(1) The Secretary shall establish and update on an annual basis a list of positions of health care professionals employed by, or assigned to, the Service for which recruitment or retention is difficult.

"(2)(A) The Secretary may pay a bonus to any commissioned officer or civil service employee, other than a commissioned medical officer, dental officer, optometrist, and veterinarian, who is employed in or assigned to, and serving in, a position in the Service included in the list established by the Secretary under paragraph (1).

"(B) The total amount of bonus payments made by the Secretary under this paragraph to any employee during any 1-year period shall not exceed $2,000.

"(c) The Secretary may establish programs to allow the use of flexible work schedules, and compressed work schedules, in accordance with the provisions of subchapter II of chapter 61 of title 5, United States Code, for health professionals employed by, or assigned to, the Service.

"(d) By no later than the date that is 6 months after the date of enactment of the Indian Health Care Amendments of 1988, the Secretary shall submit a report to the Congress on the limitation imposed on amounts of premium pay for overtime to any individual employed by, or assigned to, the Service. The report shall include an explanation of existing overtime pay policy, an estimate of the budget impact of removing limitations on overtime pay, a summary of problems associated with overtime pay limitations, and recommendations for changes to the overtime pay policy.

"(e) There are authorized to be appropriated $600,000 for each of the fiscal years 1990, 1991, and 1992 to carry out the provisions of this section.".

"RETENTION BONUS

"SEC. 117. (a) The Secretary may pay a retention bonus to any physician or nurse employed by, or assigned to, and serving in, the Service either as a civilian employee or as a commissioned officer in the Regular or Reserve Corps of the Public Health Service who—

"(1) is assigned to, and serving in, a position included in the list established under section 116(b)(1) for which recruitment or retention of personnel is difficult,

"(2) the Secretary determines is needed by the Service,

"(3) has—

"(A) completed 3 years of employment with the Service, or

"(B) completed any service obligations incurred as a requirement of—

"(i) any Federal scholarship program, or

"(ii) any Federal education loan repayment program, and

"(4) enters into an agreement with the Service for continued employment for a period of not less than 1 year.

"(b) The Secretary may establish rates for the retention bonus which shall provide for a higher annual rate for multiyear agreements than for single year agreements referred to in subsection (a)(4), but in no event shall the annual rate be more than $25,000 per annum.

"(c) The retention bonus for the entire period covered by the agreement described in subsection (a)(4) shall be paid at the beginning of the agreed upon term of service.

"(d) Any physician or nurse failing to complete the agreed upon term of service, except where such failure is through no fault of the individual, shall be obligated to refund to the government the full amount of the retention bonus for the period covered by the agreement, plus interest as determined by the Secretary in accordance with section 108(l)(2)(B).

"(e) There are authorized to be appropriated $3,200,000 for each of the fiscal years 1990, 1991, and 1992 to carry out the provisions of this section.".

REPORT ON RECRUITMENT AND RETENTION

SEC. 110. (a) The Secretary of Health and Human Services shall establish an advisory panel composed of—

(1) 10 physicians or other health professionals who are employees of, or assigned to, the Indian Health Service,

(2) 3 representatives of tribal health boards, and

(3) 1 representative of an urban health care organization.

(b) The advisory panel established under subsection (a) shall conduct an investigation of—

(1) the administrative policies and regulatory procedures which impede the recruitment or retention of physicians and other health professionals by the Indian Health Service, and

(2) the regulatory changes necessary to establish pay grades for health professionals employed by, or assigned to, the Service that correspond to the pay grades established for positions provided under sections 4103 and 4104 of title 38, United States Code, and the costs associated with establishing such pay grades.

(c) By no later than the date that is 18 months after the date of enactment of this Act, the advisory panel established under subsection (a) shall submit to the Congress a report on the investigation conducted under subsection (b), together with any recommendations for administrative or legislative changes in existing law, practices, or procedures.

TITLE II—HEALTH SERVICES

IMPROVEMENT OF INDIAN HEALTH STATUS

SEC. 201. (a) Section 201 (25 U.S.C. 1621) is amended to read as follows:

"IMPROVEMENT OF INDIAN HEALTH STATUS

"SEC. 201. (a) The Secretary is authorized to expend funds which are appropriated under the authority of subsection (h), through the Service, for the purposes of—

"(1) raising the health status of Indians to zero deficiency,

"(2) eliminating backlogs in the provision of health care services to Indians,

"(3) meeting the health needs of Indians in an efficient and equitable manner, and

"(4) augmenting the ability of the Service to meet the following health service responsibilities with respect to those Indian tribes with the highest levels of health resources deficiency:

"(A) clinical care (direct and indirect) including clinical eye and vision care;

"(B) preventive health;

"(C) dental care (direct and indirect);

"(D) mental health, including community mental health services, inpatient mental health services, dormitory mental health services, therapeutic and residential treatment centers, and training of traditional Indian practitioners;

"(E) emergency medical services;

"(F) treatment and control of, and rehabilitative care related to, alcoholism and drug abuse (including fetal alcohol syndrome) among Indians;

"(G) accident prevention programs;

"(H) home health care;

"(I) community health representatives; and

"(J) maintenance and repair.

"(b)(1) Any funds appropriated under the authority of subsection (h) shall not be used to offset or limit any appropriations made to the Service under the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, or any other provision of law.

"(2) Funds which are appropriated under the authority of subsection (h) may be allocated to, or used for the benefit of, any Indian tribe which has a health resources deficiency level at level I or II only if a sufficient amount of funds have been appropriated under the authority of subsection (h) to raise all Indian tribes to health resources deficiency level II.

"(3)(A) Funds appropriated under the authority of subsection (h) may be allocated on a service unit basis but such allocation shall be made in a manner which ensures that the requirement of paragraph (2) is met. The funds allocated to each service unit under this subparagraph shall be used by the service unit (in accordance with paragraph (2)) to raise the deficiency level of each tribe served by such service unit.

"(B) The apportionment of funds allocated to a service unit under subparagraph (A) among the health service responsibilities described in subsection (a)(4) shall be determined by the Service in consultation with the affected Indian tribes.

"(c) For purposes of this section—

"(1) The health resources deficiency levels of an Indian tribe are as follows:

"(A) level I—0 to 20 percent health resources deficiency;

"(B) level II—21 to 40 percent health resources deficiency;

"(C) level III—41 to 60 percent health resources deficiency;

"(D) level IV—61 to 80 percent health resources deficiency; and

"(E) level V—81 to 100 percent health resources deficiency.

"(2) The term 'health resources deficiency' means a percentage determined by dividing—

"(A) the excess, if any, of—

"(i) the value of the health resources that the Indian tribe needs, over

"(ii) the value of the health resources available to the Indian tribe, by

"(B) the value of the health resources that the Indian tribe needs.

"(3) The health resources available to an Indian tribe include health resources provided by the Service as well as health resources used by the Indian tribe, including services and financing systems provided by any Federal programs, private insurance, and programs of State or local governments.

"(4) Under regulations, the Secretary shall establish procedures which allow any Indian tribe to petition the Secretary for a review of any determination of the health resources deficiency level of such tribe.

"(d)(1) Programs administered by any Indian tribe or tribal organization under the authority of the Indian Self-Determination Act shall be eligible for funds appropriated under the authority of subsection (h) on an equal basis with programs that are administered directly by the Service.

"(2) If any funds allocated to a tribe or service unit under the authority of this section are used for a contract entered into under the Indian Self-Determination Act, a reasonable portion of such funds may be used for health planning, training, technical assistance, and other administrative support functions.

"(e) By no later than the date that is 60 days after the date of enactment of the Indian Health Care Amendments of 1988, the Secretary shall submit to the Congress the current health services priority system report of the Service for each Indian tribe or service unit, including newly recognized or acknowledged tribes. Such report shall set out—

"(1) the methodology then in use by the Service for determining tribal health resources deficiencies, as well as the most recent application of that methodology;

"(2) the level of health resources deficiency for each Indian tribe served by the Service;

"(3) the amount of funds necessary to raise all Indian tribes served by the Service below health resources deficiency level II to health resources deficiency level II;

"(4) the amount of funds necessary to raise all tribes served by the Service below health resources deficiency level I to health resources deficiency level I;

"(5) the amount of funds necessary to raise all tribes served by the Service to zero health resources deficiency; and

"(6) an estimate of—

"(A) the amount of health service funds appropriated under the authority of this Act, or any other Act, including the amount of any funds transferred to the Service, for the preceding fiscal year which is allocated to each service unit, Indian tribe, or comparable entity;

"(B) the number of Indians eligible for health services in each service unit or Indian tribe; and

"(C) the number of Indians using the Service resources made available to each service unit or Indian tribe.

"(f)(1) The President shall include with the budget submitted to the Congress under section 1105 of title 31, United States Code, for each fiscal year a separate statement which specifies the amount of funds requested to carry out the provisions of this section for such fiscal year.

"(2) Funds appropriated under authority of this section for any fiscal year shall be included in the base budget of the Service for the purpose of determining appropriations under this section in subsequent fiscal years.

"(g) Nothing in this section is intended to diminish the primary responsibility of the Service to eliminate existing backlogs in unmet health care needs, nor are the provisions of this section intended to discourage the Service from undertaking additional efforts to achieve parity among Indian tribes.

"(h) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $19,000,000 for fiscal year 1990,

"(2) $19,000,000 for fiscal year 1991, and

"(3) $20,000,000 for fiscal year 1992.

Any funds appropriated under the authority of this subsection shall be designated as the 'Indian Health Care Improvement Fund'.".

(b) Section 4 (25 U.S.C. 1603) is amended by striking out subsections (i), (j), and (k), and by inserting in lieu thereof the following new subsections:

"(i) 'Area office' means an administrative entity including a program office, within the Indian Health Service through which services and funds are provided to the service units within a defined geographic area.

"(j) 'Service unit' means—

"(1) an administrative entity within the Indian Health Service, or

"(2) a tribe or tribal organization operating health care programs or facilities with funds from the Service under the Indian Self-Determination Act,

through which services are provided, directly or by contract, to the eligible Indian population within a defined geographic area.".

CATASTROPHIC HEALTH PROGRAM

SEC. 202. Title II is amended by adding at the end thereof the following new section:

"CATASTROPHIC HEALTH EMERGENCY FUND

"SEC. 202. (a)(1) There is hereby established an Indian Catastrophic Health Emergency Fund (hereafter in this section referred to as the 'Fund') consisting of—

"(A) the amounts deposited under subsection (d), and

"(B) the amounts appropriated under subsection (e).

"(2) The Fund shall be administered by the Secretary, acting through the central office of the Service, solely for the purpose of meeting the extraordinary medical costs associated with the treatment of victims of disasters or catastrophic illnesses who are within the responsibility of the Service.

"(3) The Fund shall not be allocated, apportioned, or delegated on a service unit, area office, or any other basis.

"(4) No part of the Fund or its administration shall be subject to contract or grant under any law, including the Indian Self-Determination Act.

"(b) The Secretary shall, through the promulgation of regulations consistent with the provisions of this section—

"(1) establish a definition of disasters and catastrophic illnesses for which the cost of treatment provided under contract would qualify for payment from the Fund;

"(2) provide that a service unit shall not be eligible for reimbursement for the cost of treatment from the Fund until its cost of treating any victim of such catastrophic illness or disaster has reached a certain threshold cost which the Secretary shall establish at not less than $10,000 or not more than $20,000;

"(3) establish a procedure for the reimbursement of the portion of the costs incurred by—

"(A) service units or facilities of the Service, or

"(B) whenever otherwise authorized by the Service, non-Service facilities or providers,

in rendering treatment that exceeds such threshold cost;

"(4) establish a procedure for payment from the Fund in cases in which the exigencies of the medical circumstances warrant treatment prior to the authorization of such treatment by the Service; and

"(5) establish a procedure that will ensure that no payment shall be made from the Fund to any provider of treatment to the extent that such provider is eligible to receive payment for the treatment from any other Federal, State, local, or private source of reimbursement for which the patient is eligible.

"(c) Funds appropriated under subsection (e) shall not be used to offset or limit appropriations made to the Service under authority of the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, or any other law.

"(d) There shall be deposited into the Fund all reimbursements to which the Service is entitled from any Federal, State, local, or private source (including third party insurance) by reason of treatment rendered to any victim of a disaster or catastrophic illness the cost of which was paid from the Fund.

"(e) There are authorized to be appropriated for the purpose of carrying out the provisions of this section—

"(1) $12,000,000 for fiscal year 1989, and

"(2) for each of the fiscal years 1990, 1991, and 1992, such sums as may be necessary to restore the Fund to a level of $12,000,000 for such fiscal year.

Funds appropriated under the authority of this subsection shall remain available until expended.".

HEALTH PROMOTION AND DISEASE PREVENTION

SEC. 203. (a) The Congress finds that health promotion and disease prevention activities will—

(1) improve the health and well being of Indians, and

(2) reduce the expenses for medical care of Indians.

(b) Section 4 (25 U.S.C. 1603), as amended by section 201(b) of this Act, is further amended by adding at the end thereof the following new subsections:

"(k) 'Health promotion' includes—

"(1) cessation of tobacco smoking,

"(2) reduction in the misuse of alcohol and drugs,

"(3) improvement of nutrition,

"(4) improvement in physical fitness,

"(5) family planning,

"(6) control of stress, and

"(7) pregnancy and infant care (including prevention of fetal alcohol syndrome).

"(l) 'Disease prevention' includes—

"(1) immunizations,

"(2) control of high blood pressure,

"(3) control of sexually transmittable diseases,

"(4) prevention and control of diabetes,

"(5) control of toxic agents,

"(6) occupational safety and health,

"(7) accident prevention,

"(8) fluoridation of water, and

"(9) control of infectious agents.".

(c) Title II (25 U.S.C. 1621, et seq.), as amended by section 202 of this Act, is further amended by adding at the end thereof the following new sections:

"HEALTH PROMOTION AND DISEASE PREVENTION SERVICES

"SEC. 203. (a) The Secretary, acting through the Service, shall provide health promotion and disease prevention services to Indians.

"(b) The Secretary shall submit to the President for inclusion in each statement which is required to be submitted to the Congress under section 201(f) an evaluation of—

"(1) the health promotion and disease prevention needs of Indians,

"(2) the health promotion and disease prevention activities which would best meet such needs,

"(3) the internal capacity of the Service to meet such needs, and

"(4) the resources which would be required to enable the Service to undertake the health promotion and disease prevention activities necessary to meet such needs.

"(c)(1) The Secretary shall establish at least 1 demonstration project (but no more than 4 demonstration projects) to determine the most effective and cost-efficient means of—

"(A) providing health promotion and disease prevention services,

"(B) encouraging Indians to adopt good health habits,

"(C) reducing health risks to Indians, particularly the risks of heart disease, cancer, stroke, diabetes, anxiety, depression, and lifestyle-related accidents,

"(D) reducing medical expenses of Indians through health promotion and disease prevention activities,

"(E) establishing a program—

"(i) which trains Indians in the provision of health promotion and disease prevention services to members of their tribe, and

"(ii) under which such Indians are available on a contract basis to provide such services to other tribes, and

"(F) providing training and continuing education to employees of the Service, and to paraprofessionals participating in the Community Health Representative Program, in the delivery of health promotion and disease prevention services.

"(2) The demonstration project described in paragraph (1) shall include an analysis of the cost effectiveness of organizational structures and of social and educational programs that may be useful in achieving the objectives described in paragraph (1).

"(3)(A) The demonstration project described in paragraph (1) shall be conducted in association with at least one—

"(i) health profession school,

"(ii) allied health profession or nurse training institution, or

"(iii) public or private entity that provides health care.

"(B) The Secretary is authorized to enter into contracts with, or make grants to, any school of medicine or school of osteopathy for the purpose of carrying out the demonstration project described in paragraph (1).

"(C) For purposes of this paragraph, the term 'school of medicine' and 'school of osteopathy' have the respective meaning given to such terms by section 701(4) of the Public Health Service Act (42 U.S.C. 292a(4)).

"(4) The Secretary shall submit to Congress a final report on the demonstration project described in paragraph (1) within 60 days after the termination of such project.

"(5) The demonstration project described in paragraph (1) shall be established by no later than the date that is 12 months after the date of enactment of the Indian Health Care Amendments of 1988 and shall terminate on the date that is 30 months after the date of enactment of such amendments.

"(6) There are authorized to be appropriated $500,000 for the purpose of carrying out the provisions of this subsection, such sum to remain available without fiscal year limitation.

"DIABETES PREVENTION, TREATMENT, AND CONTROL

"SEC. 204. (a)(1) The Secretary, in consultation with the tribes, shall determine—

"(A) by tribe and by service unit of the Service, the incidence of, and the types of complications resulting from, diabetes among Indians; and

"(B) based on subparagraph (A), the measures (including patient education) each Service unit should take to reduce the incidence of, and prevent, treat, and control the complications resulting from, diabetes among tribes within that service unit.

"(2) Within 18 months after the date of enactment of the Indian Health Care Amendments of 1988, the Secretary shall prepare and transmit to the President and the Congress a report describing the determinations made and measures taken under paragraph (1) and making recommendations for additional funding to prevent, treat, and control diabetes among Indians.

"(b) The Secretary shall screen each Indian who receives services from the Service for diabetes and for conditions which indicate a high risk that the individual will become diabetic. Such screening may be done by a tribe or tribal organization operating health care programs or facilities with funds from the Service under the Indian Self-Determination Act.

"(c)(1) The Secretary shall continue to maintain during fiscal years 1988 through 1991 each of the following model diabetes projects which are in existence on the date of enactment of the Indian Health Care Amendments of 1988:

"(A) Claremore Indian Hospital in Oklahoma;

"(B) Fort Totten Health Center in North Dakota;

"(C) Sacaton Indian Hospital in Arizona;

"(D) Winnebago Indian Hospital in Nebraska;

"(E) Albuquerque Indian Hospital in New Mexico;

"(F) Perry, Princeton, and Old Town Health Centers in Maine; and

"(G) Bellingham Health Center in Washington.

"(2) The Secretary shall establish in fiscal year 1989, and maintain during fiscal years 1989 through 1991, a model diabetes project in each of the following locations:

"(A) Fort Berthold Reservation;

"(B) the Navajo Reservation;

"(C) the Papago Reservation;

"(D) the Zuni Reservation; and

"(E) the States of Alaska, California, Minnesota, Montana, Oregon, and Utah.

"(d) The Secretary shall—

"(1) employ in each area office of the Service at least one diabetes control officer who shall coordinate and manage on a full-time basis activities within that area office for the prevention, treatment, and control of diabetes;

"(2) establish in each area office of the Service a registry of patients with diabetes to track the incidence of diabetes and the complications from diabetes in that area; and

"(3) ensure that data collected in each area office regarding diabetes and related complications among Indians is disseminated to all other area offices.

"(e) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section. Funds appropriated under subsection (c) in any fiscal year shall be in addition to base resources appropriated to the Service for that year.

"NATIVE HAWAIIAN HEALTH PROMOTION AND DISEASE PREVENTION

"SEC. 205. (a)(1) The Secretary shall, acting through the Public Health Service, establish in the State of Hawaii, as a demonstration project, a Native Hawaiian Program for Health Promotion and Disease Prevention for the purpose of exploring ways to meet the unique health care needs of Native Hawaiians.

"(2) The demonstration program that is to be established under paragraph (1) shall—

"(A) provide necessary preventive-oriented health services, including health education and mental health care,

"(B) develop innovative training and research projects,

"(C) establish cooperative relationships with the leadership of the Native Hawaiian community,

"(D) ensure that a continuous effort is made to establish programs which can be of direct benefit to other Native American people, and

"(E) assure a comprehensive effort to reduce the incidence of diabetes among Native Hawaiians.

"(3) The Secretary is authorized to enter into contracts with Native Hawaiian organizations for the purpose of assisting the Secretary in meeting the objectives of the demonstration program that is to be established under paragraph (1).

"(b)(1) In fulfillment of the objective set forth in subsection (a)(2)(E), the Secretary shall enter into a contract with a Native Hawaiian organization to conduct a study to determine—

"(A) the incidence of diabetes among Native Hawaiians;

"(B) activities which should be undertaken—

"(i) to reduce the incidence of diabetes among Native Hawaiians,

"(ii) to provide Native Hawaiians with guidance in the prevention, treatment, and control of diabetes,

"(iii) to provide early diagnosis of diabetes among Native Hawaiians, and

"(iv) to ensure that proper continuing health care is provided to Native Hawaiians who are diagnosed as diabetic.

"(2) The Secretary shall enter into a contract with a Native Hawaiian organization for the purpose of preparing an inventory of all health care programs (public and private) within the State of Hawaii that are available for the treatment, prevention, or control of diabetes among Native Hawaiians.

"(3) By no later than the date that is two years after the date of enactment of this section, the Native Hawaiian organization with whom the Secretary has entered into a contract, shall prepare and transmit to the Secretary a report describing the determinations made under paragraph (1), containing the inventory prepared under paragraph (2), and describing the research activities conducted under this subsection. The Secretary shall submit the report to the Congress and the President.

"(c)(1) By no later than the date that is three years after the date of enactment of this section, the Secretary shall enter into a contract with a Native Hawaiian organization for the purpose of implementing a program designed—

"(A) to establish a diabetes control program;

"(B) to screen those Native Hawaiian individuals that have been identified as having a high risk of becoming diabetic;

"(C) to effectively treat—

"(i) individuals diagnosed as diabetics in order to reduce further complications from diabetes,

"(ii) individuals who have a high risk of becoming diabetic in order to reduce the incidence of diabetes, and

"(iii) short-term and long-term complications of diabetes;

"(D) to conduct for Federal, State, and other Native Hawaiian health care providers (including Native Hawaiian community health outreach workers), training programs concerning current methods of prevention, diagnosis, and treatment of diabetes and related complications among Native Hawaiians;

"(E) to determine the appropriate delivery to Native Hawaiians of health care services relating to diabetes;

"(F) to develop and present health education information to Native Hawaiian communities and schools concerning the prevention, treatment, and control of diabetes; and

"(G) to ensure that proper continuing health care is provided to Native Hawaiians who are diagnosed as being diabetic.

"(2) The Secretary shall enter into a contract with a Native Hawaiian organization for the purpose of—

"(A) promoting coordination and cooperation between all health care providers in the delivery of diabetes related services to Native Hawaiians; and

"(B) encouraging and funding joint projects between Federal programs, State health care facilities, community health centers, and Native Hawaiian communities for the prevention and treatment of diabetes.

"(3)(A) The Secretary shall enter into a contract with a Native Hawaiian organization for the purpose of establishing a model diabetes program to serve Native Hawaiians in the State of Hawaii.

"(B) The Secretary shall enter into a contract with a Native Hawaiian organization for the purpose of developing and implementing an outreach program to ensure that the achievements and benefits derived from the activities of the model diabetes program established under subparagraph (A) are applied in Native Hawaiian communities to assure the diagnosis, prevention, and treatment of diabetes among Native Hawaiians.

"(4) The Secretary shall submit to the Congress an annual report outlining the activities, achievements, needs, and goals of the Native Hawaiian diabetes care program established under this paragraph.

"(d) The Secretary shall enter into a contract with a Native Hawaiian organization, for the purpose of developing a standardized system to collect, analyze, and report data regarding diabetes and related complications among Native Hawaiians. Such system shall be designed to facilitate dissemination of the best available information on diabetes to Native Hawaiian communities and health care professionals.

"(e) The Secretary shall enter into a contract with a Native Hawaiian organization for the purpose of—

"(1) conducting research concerning the causes, diagnosis, treatment, and prevention of diabetes and related complications among Native Hawaiians, and

"(2) coordinating such research with all other relevant agencies and units of the government of the State of Hawaii and the Department of Health and Human Services which conduct research relating to diabetes and related complications.

"(f) The Secretary shall submit to the Congress an annual report on the status and accomplishments of the progress established under this section during each of the fiscal years 1990, 1991, and 1992.

"(g)(1) The Secretary shall include in any contract which the Secretary enters into with any Native Hawaiian organization under this subsection such conditions as the Secretary considers necessary to ensure that the objectives of such contract are achieved.

"(2) The Secretary shall develop procedures to evaluate compliance with, and performance of, contracts entered into by Native Hawaiian organizations under this subsection.

"(3) The Secretary shall conduct an evaluation of each Native Hawaiian organization which has entered into a contract under this subsection for purposes of determining the compliance of such organization with, and evaluating the performance of such organization under, such contract.

"(4) If, as a result of the evaluations conducted under paragraph (3), the Secretary determines that a Native Hawaiian organization has not complied with or satisfactorily performed a contract entered into under this subsection, the Secretary shall, prior to renewing such contract, attempt to resolve the areas of noncompliance or unsatisfactory performance and modify such contract to prevent future occurrences of such noncompliance or unsatisfactory performance. If the Secretary determines that such noncompliance or unsatisfactory performance cannot be resolved and prevented in the future, the Secretary shall not renew such contract with such organization and is authorized to enter into a contract under this subsection with another Native Hawaiian organization that serves the same population of Native Hawaiians which is served by the Native Hawaiian organization whose contract is not renewed by reason of this subparagraph.

"(5) In determining whether to renew a contract entered into with a Native Hawaiian organization under this subsection, the Secretary shall—

"(A) review the records of the Native Hawaiian organization, and

"(B) shall consider the results of the onsite evaluations conducted under paragraph (3).

"(6) All contracts entered into by the Secretary under this subsection shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and need not conform to the provision of the Act of August 24, 1935 (40 U.S.C. 270a, et seq.).

"(7) Payments made under any contract entered into under this subsection may be made in advance, by means of reimbursement, or in installments and shall be made on such conditions as the Secretary deems necessary to carry out the purposes of this subsection.

"(8) Notwithstanding any other provision of law, the Secretary may, at the request or consent of a Native Hawaiian organization, revise or amend any contract entered into by the Secretary with such organization under this subsection as necessary to carry out the purposes of this subsection.

"(9)(A) For each fiscal year during which a Native Hawaiian organization receives or expends funds pursuant to a contract entered into under this subsection, such organization shall submit to the Secretary a quarterly report on—

"(i) activities conducted by the organization under the contract,

"(ii) the amounts and purposes for which Federal funds were expended, and

"(iii) such other information as the Secretary may request.

"(B) The reports and records of any Native Hawaiian organization which concern any contract entered into under this subsection shall be subject to audit by the Secretary and the Comptroller General of the United States.

"(10) The Secretary shall allow as a cost of any contract entered into under this subsection the cost of an annual private audit conducted by a certified public accountant.

"(11) The authority of the Secretary to enter into contracts under this subsection shall be to the extent, and in amounts, provided for in appropriation Acts.

"(h) For purposes of this subsection—

"(1) The term 'Native Hawaiian' means any individual who—

"(A) is a citizen of the United States,

"(B) is a resident of the State of Hawaii, and

"(C) is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii, as evidenced by—

"(i) genealogical records,

"(ii) Kupuna (elders) or Kama'aina (long-term community residents) verification, or

"(iii) birth records of the State of Hawaii.

"(2) The term 'Native Hawaiian organization' means any organization—

"(A) which serves and represents the interests of Native Hawaiians,

"(B) which is recognized by the Department of Health of the State of Hawaii, the Office of Hawaiian Affairs of the State of Hawaii, and E Ola Mau for the purpose of planning, conducting, or administering pro-

grams (or portion of programs) authorized under this Act for Native Hawaiians, and

"(C) in which Native Hawaiian health professionals significantly participate in the planning, management, monitoring, and evaluation of health services.

"(i) There are authorized to be appropriated $750,000 for each of the fiscal years 1990, 1991, 1992, and 1993, for the purpose of carrying out the provisions of this subsection.

"(j) The programs and services established by this section shall not be administered by or through the Indian Health Service nor shall any funds appropriated to the Indian Health Service be used to supplement funding of such programs and services.".

REIMBURSEMENT OF CERTAIN EXPENSES; RESEARCH

Sec. 204. Title II, as amended by section 203(c), is further amended by adding at the end thereof the following new sections:

"REIMBURSEMENT FROM CERTAIN THIRD PARTIES OF COSTS OF HEALTH SERVICES

"Sec. 206. (a) The United States shall have the right to recover the reasonable expenses incurred by the Secretary in providing health services, through the Service, to any individual to the same extent that such individual, or any nongovernmental provider of such services, would be eligible to receive reimbursement or indemnification for such expenses if—

"(1) such services had been provided by a nongovernmental provider, and

"(2) such individual had been required to pay such expenses and did pay such expenses.

"(b) Subsection (a) shall provide a right of recovery against any State, or any political subdivision of a State, only if the injury, illness, or disability for which health services were provided is covered under—

"(1) workers' compensation laws, or

"(2) a no-fault automobile accident insurance plan or program.

"(c) No law of any State, or of any political subdivision of a State, and no provision of any contract entered into or renewed after the date of enactment of the Indian Health Care Amendments of 1988, shall prevent or hinder the right of recovery of the United States under subsection (a).

"(d) No action taken by the United States to enforce the right of recovery provided under subsection (a) shall affect the right of any person to any damages (other than damages for the cost of health services provided by the Secretary through the Service).

"(e) The United States may enforce the right of recovery provided under subsection (a) by—

"(1) intervening or joining in any civil action or proceeding brought—

"(A) by the individual for whom health services were provided by the Secretary, or

"(B) by any representative or heirs of such individual, or

"(2) instituting a separate civil action, after providing to such individual, or to the representative or heirs of such individual, notice of the intention of the United States to institute a separate civil action.

"CREDITING OF REIMBURSEMENTS

"Sec. 207. (a) Except as provided in section 202(d), title IV, and section 713 of this Act, all reimbursements received or recovered, under authority of this Act, Public Law 87-693 (42 U.S.C. 2651, et seq.), or any other provision of law, by reason of the provision of health services by the Service or by a tribe or tribal organization under a contract pursuant to the Indian Self-Determination Act shall be retained by the Service or that tribe or tribal organization and shall be available for the facilities, and to carry out the programs, of the Service or that tribe or tribal organization to provide health care services to Indians.

"(b) The Service may not offset or limit the amount of funds obligated to any service unit or any entity under contract with the Service because of the receipt of reimbursements under subsection (a).

"HEALTH SERVICES RESEARCH

"Sec. 208. Of the amounts appropriated for the Service in any fiscal year, other than amounts made available for the Indian Health Care Improvement Fund, not less than $200,000 shall be available only for research to further the performance of the health service responsibilities of the Service. Indian tribes and tribal organizations contracting with the Service under the authority of the Indian Self-Determination Act shall be given an equal opportunity to compete for, and receive, research funds under this section.".

TITLE III—HEALTH FACILITIES

CONSULTATION; CLOSURE OF FACILITIES; REPORTS

Sec. 301. Section 301 (25 U.S.C. 1631) is amended to read as follows:

"CONSULTATION; CLOSURE OF FACILITIES; REPORTS

"Sec. 301. (a) Prior to the expenditure of, or the making of any firm commitment to expend, any funds appropriated for the planning, design, construction, or renovation of facilities pursuant to the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, the Secretary, acting through the Service, shall—

"(1) consult with any Indian tribe that would be significantly affected by such expenditure for the purpose of determining and, whenever practicable, honoring tribal preferences concerning size, location, type, and other characteristics of any facility on which such expenditure is to be made, and

"(2) ensure, whenever practicable, that such facility meets the standards of the Joint Commission on Accreditation of Hospitals by not later than 1 year after the date on which the construction or renovation of such facility is completed.

"(b)(1) Notwithstanding any provision of law other than this subsection, no Service hospital or other outpatient health care facility of the Service, or any portion of such a hospital or facility, may be closed if the Secretary has not submitted to the Congress at least 1 year prior to the date such hospital or facility (or portion thereof) is proposed to be closed an evaluation of the impact of such proposed closure which specifies, in addition to other considerations—

"(A) the accessibility of alternative health care resources for the population served by such hospital or facility;

"(B) the cost effectiveness of such closure;

"(C) the quality of health care to be provided to the population served by such hospital or facility after such closure;

"(D) the availability of contract health care funds to maintain existing levels of service; and

"(E) the views of the Indian tribes served by such hospital or facility concerning such closure.

"(2) Paragraph (1) shall not apply to any temporary closure of a facility or of any portion of a facility if such closure is necessary for medical, environmental, or safety reasons.

"(c) The President shall include with the budget submitted under section 1105 of title 31, United States Code, for each of the fiscal years 1990, 1991, and 1992, program information documents for the construction of 10 Indian health facilities which—

"(1) comply with applicable construction standards, and

"(2) have been approved by the Secretary.

"(d)(1) The Secretary shall submit to the Congress an annual report which sets forth—

"(A) the current health facility priority system of the Service,

"(B) the planning, design, construction, and renovation needs for the 10 top-priority inpatient care facilities and the 10 top-priority ambulatory care facilities (together with required staff quarters),

"(C) the justification for such order of priority,

"(D) the projected cost of such projects, and

"(E) the methodology adopted by the Service in establishing priorities under its health facility priority system.

"(2) The first report required under paragraph (1) shall be submitted by no later than the date that is 180 days after the date of enactment of the Indian Health Care Amendments of 1988 and, beginning in 1990, each subsequent annual report shall be submitted by the date that is 60 days after the date on which the President submits the budget to the Congress under section 1105 of title 31, United States Code.

"(3) In preparing each report required under paragraph (1) (other than the initial report), the Secretary shall—

"(A) consult with Indian tribes and tribal organizations including those tribes or tribal organizations operating health programs or facilities under any contract entered into with the Service under the Indian Self-Determination Act, and

"(B) review the needs of such tribes and tribal organizations for inpatient and outpatient facilities, including their needs for renovation and expansion of existing facilities.

"(4) For purposes of this subsection, the Secretary shall, in evaluating the needs of facilities operated under any contract entered into with the Service under the Indian Self-Determination Act, use the same criteria that the Secretary uses in evaluating the needs of facilities operated directly by the Service.

"(5) The Secretary shall ensure that the planning, design, construction, and renovation needs of Service and non-Service facilities which are the subject of a contract for health services entered into with the Service under the Indian Self-Determination Act are fully and equitably integrated into the development of the health facility priority system.

"(e) All funds appropriated under the Act of November 2, 1921 (25 U.S.C. 13), for the planning, design, construction, or renovation of health facilities for the benefit of an Indian tribe or tribes shall be subject to the provisions of sections 102 and 103(b) of the Indian Self-Determination Act.".

SAFE WATER AND SANITARY WASTE DISPOSAL FACILITIES

Sec. 302. Section 302 (25 U.S.C. 1632) is amended to read as follows:

"SAFE WATER AND SANITARY WASTE DISPOSAL FACILITIES

"Sec. 302. (a) The Congress hereby finds and declares that—

"(1) the provision of safe water supply systems and sanitary sewage and solid waste disposal systems is primarily a health consideration and function;

"(2) Indian people suffer an inordinately high incidence of disease, injury, and illness directly attributable to the absence or inadequacy of such systems;

"(3) the long-term cost to the United States of treating and curing such disease, injury, and illness is substantially greater than the short-term cost of providing such systems and other preventive health measures;

"(4) many Indian homes and communities still lack safe water supply systems and sanitary sewage and solid waste disposal systems; and

"(5) it is in the interest of the United States, and it is the policy of the United States, that all Indian communities and Indian homes, new and existing, be provided with safe and adequate water supply systems and sanitary sewage waste disposal systems as soon as possible.

"(b)(1) In furtherance of the findings and declarations made in subsection (a), Congress reaffirms the primary responsibility and authority of the Service to provide the necessary sanitation facilities and services as provided in section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a).

"(2) The Secretary, acting through the Service, is authorized to provide under section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a)—

"(A) financial and technical assistance to Indian tribes and communities in the establishment, training, and equipping of utility organizations to operate and maintain Indian sanitation facilities;

"(B) ongoing technical assistance and training in the management of utility organizations which operate and maintain sanitation facilities; and

"(C) operation and maintenance assistance for, and emergency repairs to, tribal sanitation facilities when necessary to avoid a health hazard or to protect the Federal investment in sanitation facilities.

"(3) Notwithstanding any other provision of law—

"(A) the Secretary of Housing and Urban Affairs is authorized to transfer funds appropriated under the Housing and Community Development Act of 1974 (42 U.S.C. 5301, et seq.) to the Secretary of Health and Human Services, and

"(B) the Secretary of Health and Human Services is authorized to accept and use such funds for the purpose of providing sanitation facilities and services for Indians under section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a).

"(c) Beginning in fiscal year 1990, the Secretary, acting through the Service, shall develop and begin implementation of a 10-year plan to provide safe water supply and sanitation sewage and solid waste disposal facilities to existing Indian homes and communities and to new and renovated Indian homes.

"(d) The financial and technical capability of an Indian tribe or community to safely operate and maintain a sanitation facility shall not be a prerequisite to the provision or construction of sanitation facilities by the Secretary.

"(e) The provisions of this section shall not diminish the primary responsibility of the Indian family, community, or tribe to establish, collect, and utilize reasonable user fees, or otherwise set aside funding, for the purpose of operating and maintaining sanitation facilities.

"(f) Programs administered by Indian tribes or tribal organizations under the authority of the Indian Self-Determination Act shall be eligible for—

"(1) any funds appropriated pursuant to subsection (h), and

"(2) any funds appropriated for the purpose of providing water supply or sewage disposal services,

on an equal basis with programs that are administered directly by the Service.

"(g)(1) The Secretary shall submit to the Congress an annual report which sets forth—

"(A) the current Indian sanitation facility priority system of the Service;

"(B) the methodology for determining sanitation deficiencies;

"(C) the level of sanitation deficiency for each sanitation facilities project of each Indian tribe or community;

"(D) the amount of funds necessary to raise all Indian tribes and communities to a level I sanitation deficiency; and

"(E) the amount of funds necessary to raise all Indian tribes and communities to zero sanitation deficiency.

"(2) The first report required under paragraph (1) shall be submitted by no later than the date that is 180 days after the date of enactment of the Indian Health Care Amendments of 1988 and, beginning in 1990, each subsequent annual report shall be submitted by the date that is 60 days after the date on which the President submits the budget to the Congress under section 1105 of title 31, United States Code.

"(3) In preparing each report required under paragraph (1) (other than the initial report), the Secretary shall consult with Indian tribes and tribal organizations (including those tribes or tribal organizations operating health care programs or facilities under any contract entered into with the Service under the Indian Self-Determination Act) to determine the sanitation needs of each tribe.

"(4) The methodology used by the Secretary in determining sanitation deficiencies for purposes of paragraph (1) shall be applied uniformly to all Indian tribes and communities.

"(5) For purposes of this subsection, the sanitation deficiency levels for an Indian tribe or community are as follows:

"(A) level I is an Indian tribe or community with a sanitation system—

"(i) which complies with all applicable water supply and pollution control laws, and

"(ii) in which the deficiencies relate to routine replacement, repair, or maintenance needs;

"(B) level II is an Indian tribe or community with a sanitation system—

"(i) which complies with all applicable water supply and pollution control laws, and

"(ii) in which the deficiencies relate to capital improvements that are necessary to improve the facilities in order to meet the needs of such tribe or community for domestic sanitation facilities;

"(C) level III is an Indian tribe or community with a sanitation system which—

"(i) has an inadequate or partial water supply and a sewage disposal facility that does not comply with applicable water supply and pollution control laws, or

"(ii) has no solid waste disposal facility;

"(D) level IV is an Indian tribe or community with a sanitation system which lacks either a safe water supply system or a sewage disposal system; and

"(E) level V is an Indian tribe or community that lacks a safe water supply and a sewage disposal system.

"(6) For purposes of this subsection, any Indian tribe or community that lacks the operation and maintenance capability to enable its sanitation system to meet pollution control laws may not be treated as having a level I or II sanitation deficiency.

"(h)(1) There are authorized to be appropriated for each of the fiscal years 1990, 1991, and 1992, $3,000,000 for the purpose of providing funds necessary to implement the responsibilities of the Service described in subsection (b)(2).

"(2) In addition to the amount authorized under paragraph (1), there are authorized to be appropriated for each of the fiscal years 1990, 1991, and 1992, $850,000 for the sanitation service account of the Service which shall be used to carry out the responsibilities of the Service described in subsection (b)(2).".

USE OF NON-SERVICE FUNDS FOR RENOVATION

SEC. 303. (a) Section 305 (25 U.S.C. 1634) is amended to read as follows:

"EXPENDITURE OF NON-SERVICE FUNDS FOR RENOVATION

"SEC. 305. (a) Notwithstanding any other provision of law, the Secretary is authorized to accept any major renovation or modernization by any Indian tribe of any Service facility, or of any other Indian health facility operated pursuant to a contract entered into under the Indian Self-Determination Act, including—

"(1) any plans or designs for such renovation or modernization, and

"(2) any renovation or modernization for which funds appropriated under any Federal law were lawfully expended,

but only if the requirements of subsection (b) are met.

"(b) The requirements of this subsection are met with respect to any renovation or modernization if the renovation or modernization—

"(1) does not require or obligate the Secretary to provide any additional employees or equipment,

"(2) is approved by the appropriate area director of the Service, and

"(3) is administered by the Indian tribe in accordance with the rules and regulations prescribed by the Secretary with respect to construction or renovation of Service facilities.

"(c) A renovation or modernization shall not be authorized by this section if such renovation or modernization would require the diversion of funds appropriated to the Service from any project which has a higher priority under the health facility priority system of the Service.

"(d) If any Service facility which has been renovated or modernized by an Indian tribe under this section ceases to be used as a Service facility during the 20-year period beginning on the date such renovation or modernization is completed, such Indian tribe shall be entitled to recover from the United States an amount which bears the same ratio to the value of such facility at the time of such cessation as the value of such renovation or modernization (less the total amount of any funds provided specifically for such facility under any Federal program that were expended for such renovation or modernization) bore to the value of such facility at the time of the completion of such renovation or modernization.".

(b) The paragraph relating to administrative provisions of the Health Services Administration under the heading "Department of Health and Human Services" in title II of the matter contained in section 101(c) of Public Law 98-473 (98 Stat. 1864) is amended by striking out the sixth proviso.

BETHEL, ALASKA, HOSPITAL

SEC. 304. Title III is amended by adding at the end thereof the following new section:

"BETHEL, ALASKA, HOSPITAL

"SEC. 306. (a) If a final administrative ruling by the Department of the Interior holds that the Bethel Native Corporation is entitled to conveyance under the Alaska Native Claims Settlement Act of the title to the real property described in subsection (d)(1), such ruling shall be subject to judicial review.

"(b) The Secretary is authorized to enter into an agreement with Bethel Native Corporation for an exchange of the real property described in subsection (d)(1) for—

"(1) the lands described in subsection (d)(2), or

"(2) any other Federal property which Bethel Native Corporation would have been able to select under the Alaska Native Claims Settlement Act.

"(c) If an agreement for the exchange of land is not entered into under subsection (b) before the date that is 90 days after the date on which a ruling described in subsection (a) becomes final and is no longer appealable, the Secretary shall, subject to the availability of funds provided by Appropriations Acts, purchase the lands described in subsection (d)(1) at fair market value.

"(d)(1) The real property referred to in subsection (a) is United States Survey Numbered 4000, other than the lands described in paragraph (2).

"(2) The lands referred to in subsection (b)(1) are the lands identified as tracts A and B in the determination AA-18959 of the Bureau of Land Management issued on September 30, 1983, pursuant to the Alaska Native Claims Settlement Act.".

TITLE IV—ACCESS TO HEALTH SERVICES

MEDICAID PROVISIONS

SEC. 401. (a) Subsection (c) of section 402 (42 U.S.C. 1396j, note) is amended—

(1) by striking out "or skilled nursing facility" and inserting in lieu thereof "skilled nursing facility, or any other type of facility which provides services of a type otherwise covered under a State plan for medical assistance approved under title XIX of the Social Security Act",

(2) by striking out "a State plan approved under title XIX of the Social Security Act" and inserting in lieu thereof "such a State plan", and

(3) by striking out "The preceding sentence shall" and inserting in lieu thereof "In making payments from such fund, the Secretary shall ensure that each service unit of the Indian Health Service receives at least 50 percent of the amounts to which the facilities of the Indian Health Service, for which such service unit makes collections, are entitled by reason of section 1911 of the Social Security Act, if such amount is necessary for the purpose of making improvements in such facilities in order to achieve compliance with the conditions and requirements of title XIX of the Social Security Act. This subsection shall".

(b) Subsection (b) of section 402 (42 U.S.C. 1396j, note) is repealed.

(c) The amendments made by this section shall apply to services performed on or after the date of the enactment of this Act.

DEMONSTRATION PROGRAM

SEC. 402. Title IV is amended by adding at the end thereof the following new section:

"DEMONSTRATION PROGRAM FOR DIRECT BILLING OF MEDICARE, MEDICAID, AND OTHER THIRD PARTY PAYORS

"SEC. 405. (a) The Secretary shall establish a demonstration program under which Indian tribes, tribal organizations, and Alaska Native health organizations, which are contracting the entire operation of an entire hospital or clinic of the Service under the authority of the Indian Self-Determination Act, shall directly bill for, and receive payment for, health care services provided by such hospital or clinic for which payment is made under title XVIII of the Social Security Act (medicare), under a State plan for medical assistance approved under title XIX of the Social Security Act (medicaid), or from any other third-party payor. The last sentence of section 1905(b) of the Social Security Act shall apply for purposes of the demonstration program.

"(b)(1) Each hospital or clinic participating in the demonstration program described in subsection (a) shall be reimbursed directly under the medicare and medicaid programs for services furnished, without regard to the provisions of section 1880(c) of the Social Security Act and sections 402(c) and 713(b)(2)(A) of this Act, but all funds so reimbursed shall first be used by the hospital or clinic for the purpose of making any improvements in the hospital or clinic that may be necessary to achieve or maintain compliance with the conditions and requirements applicable generally to facilities of such type under the medicare or medicaid program. Any funds so reimbursed which are in excess of the amount necessary to achieve or maintain such conditions or requirements shall be used—

"(A) solely for improving the health resources deficiency level of the Indian tribe, and

"(B) in accordance with the regulations of the Service applicable to funds provided by the Service under any contract entered into under the Indian Self-Determination Act.

"(2) The amounts paid to the hospitals and clinics participating in the demonstration program described in subsection (a) shall be subject to all auditing requirements applicable to programs administered directly by the Service and to facilities participating in the medicare and medicaid programs.

"(3) The Secretary shall monitor the performance of hospitals and clinics participating in the demonstration program described in subsection (a), and shall require such hospitals and clinics to submit reports on the program to the Secretary on a quarterly basis (or more frequently if the Secretary deems it to be necessary).

"(4) Notwithstanding section 1880(c) of the Social Security Act or section 402(c) of this Act, no payment may be made out of the special fund described in section 1880(c) of the Social Security Act, or section 402(c) of this Act, for the benefit of any hospital or clinic participating in the demonstration program described in subsection (a) during the period of such participation.

"(c)(1) In order to be considered for participation in the demonstration program described in subsection (a), a hospital or clinic must submit an application to the Secretary which establishes to the satisfaction of the Secretary that—

"(A) the Indian tribe, tribal organization, or Alaska Native health organization contracts the entire operation of the Service facility;

"(B) the facility is eligible to participate in the medicare and medicaid programs under sections 1880 and 1911 of the Social Security Act;

"(C) the facility meets any requirements which apply to programs operated directly by the Service; and

"(D) the facility is accredited by the Joint Commission on Accreditation of Hospitals, or has submitted a plan, which has been approved by the Secretary, for achieving such accreditation prior to October 1, 1990.

"(2) From among the qualified applicants, the Secretary shall, prior to October 1, 1989, select no more than 4 facilities to participate in the demonstration program described in subsection (a). The demonstration program described in subsection (a) shall begin by no later than October 1, 1991, and end on September 30, 1995.

"(d)(1) Upon the enactment of the Indian Health Care Amendments of 1988, the Secretary, acting through the Service, shall commence an examination of—

"(A) any administrative changes which may be necessary to allow direct billing and reimbursement under the demonstration program described in subsection (a), including any agreements with States which may be necessary to provide for such direct billing under the medicaid program; and

"(B) any changes which may be necessary to enable participants in such demonstration program to provide to the Service medical records information on patients served under such demonstration program which is consistent with the medical records information system of the Service.

"(2) Prior to the commencement of the demonstration program described in subsection (a), the Secretary shall implement all changes required as a result of the examinations conducted under paragraph (1).

"(3) Prior to October 1, 1990, the Secretary shall determine any accounting information which a participant in the demonstration program described in subsection (a) would be required to report.

"(e) The Secretary shall submit a final report at the end of fiscal year 1995, on the activities carried out under the demonstration program described in subsection (a) which shall include an evaluation of whether such activities have fulfilled the objectives of such program. In such report the Secretary shall provide a recommendation, based upon the results of such demonstration program, as to whether direct billing of, and reimbursement by, the medicare and medicaid programs and other third-party payors should be authorized for all Indian tribes and Alaska Native health organizations which are contracting the entire operation of a facility of the Service.

"(f) The Secretary shall provide for the retrocession of any contract entered into between a participant in the demonstration program described in subsection (a) and the Service under the authority of the Indian Self-Determination Act. All cost accounting and billing authority shall be retroceded to the Secretary upon the Secretary's acceptance of a retroceded contract.".

TITLE V—URBAN INDIAN HEALTH SERVICES

REVISION OF PROGRAM

SEC. 501. Title V (25 U.S.C. 1651, et seq.) is amended to read as follows:

"TITLE V—HEALTH SERVICES FOR URBAN INDIANS

"PURPOSE

"SEC. 501. The purpose of this title is to establish programs in urban centers to make health services more accessible to urban Indians.

"CONTRACTS WITH URBAN INDIAN ORGANIZATIONS

"SEC. 502. Under authority of the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, the Secretary, through the Service, shall enter into contracts with urban Indian organizations to assist such organizations in the establishment and administration, within the urban centers in which such organizations are situated, of programs which meet the requirements set forth in this title. The Secretary, through the Service, shall include such conditions as the Secretary considers necessary to effect the purpose of this title in any contract which the Secretary enters into with any urban Indian organization pursuant to this title.

"CONTRACTS FOR THE PROVISION OF HEALTH CARE AND REFERRAL SERVICES

"SEC. 503. (a) Under authority of the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, the Secretary, through the Service, shall enter into contracts with urban Indian organizations for the provision of health care and referral services for urban Indians residing in the urban centers in which such organizations are situated. Any such contract shall include requirements that the urban Indian organization successfully undertake to—

"(1) estimate the population of urban Indians residing in the urban center in which such organization is situated who are or could be recipients of health care or referral services;

"(2) estimate the current health status of urban Indians residing in such urban center;

"(3) estimate the current health care needs of urban Indians residing in such urban center;

"(4) identify all public and private health services resources within such urban center which are or may be available to urban Indians;

"(5) determine the use of public and private health services resources by the urban Indians residing in such urban center;

"(6) assist such health services resources in providing services to urban Indians;

"(7) assist urban Indians in becoming familiar with and utilizing such health services resources;

"(8) provide basic health education, including health promotion and disease prevention education, to urban Indians;

"(9) establish and implement training programs to accomplish the referral and education tasks set forth in paragraphs (6) through (8) of this subsection;

"(10) identify gaps between unmet health needs of urban Indians and the resources available to meet such needs;

"(11) make recommendations to the Secretary and Federal, State, local, and other resource agencies on methods of improving health service programs to meet the needs of urban Indians; and

"(12) where necessary, provide, or enter into contracts for the provision of, health care services for urban Indians.

"(b) The Secretary, through the Service, shall by regulation prescribe the criteria for selecting urban Indian organizations to enter into contracts under this section. Such criteria shall, among other factors, include—

"(1) the extent of unmet health care needs of urban Indians in the urban center involved;

"(2) the size of the urban Indian population in the urban center involved;

"(3) the accessibility to, and utilization of, health care services (other than services provided under this title) by urban Indians in the urban center involved;

"(4) the extent, if any, to which the activities set forth in subsection (a) would duplicate—

"(A) any previous or current public or private health services project in an urban center that was or is funded in a manner other than pursuant to this title; or

"(B) any project funded under this title;

"(5) the capability of an urban Indian organization to perform the activities set forth in subsection (a) and to enter into a contract with the Secretary under this section;

"(6) the satisfactory performance and successful completion by an urban Indian organization of other contracts with the Secretary under this title;

"(7) the appropriateness and likely effectiveness of conducting the activities set forth in subsection (a) in an urban center; and

"(8) the extent of existing or likely future participation in the activities set forth in subsection (a) by appropriate health and health-related Federal, State, local, and other agencies.

"CONTRACTS FOR THE DETERMINATION OF UNMET HEALTH CARE NEEDS

"SEC. 504. (a) Under authority of the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, the Secretary, through the Service, may enter into contracts with urban Indian organizations situated in urban centers for which contracts have not been entered into under section 503. The purpose of a contract under this section shall be the determination of the matters described in subsection (b)(1) in order to assist the Secretary in assessing the health status and health care needs of urban Indians in the urban center involved and determining whether the Secretary should enter into a contract under section 503 with the urban Indian organization with which the Secretary has entered into a contract under this section.

"(b) Any contract entered into by the Secretary under this section shall include requirements that—

"(1) the urban Indian organization successfully undertake to—

"(A) document the health care status and unmet health care needs of urban Indians in the urban center involved; and

"(B) with respect to urban Indians in the urban center involved, determine the matters described in clauses (2), (3), (4), and (8) of section 503(b); and

"(2) the urban Indian organization complete performance of the contract within one year after the date on which the Secretary and such organization enter into such contract.

"(c) The Secretary may not renew any contract entered into under this section.

"EVALUATIONS; CONTRACT RENEWALS

"SEC. 505. (a) The Secretary, through the Service, shall develop procedures to evaluate compliance with, and performance of contracts entered into by urban Indian organizations under this title. Such procedures shall include provisions for carrying out the requirements of this section.

"(b) The Secretary, through the Service, shall conduct an annual onsite evaluation of each urban Indian organization which has entered into a contract under section 503 for purposes of determining the compliance of such organization with, and evaluating the performance of such organization under, such contract.

"(c) If, as a result of the evaluations conducted under this section, the Secretary determines that an urban Indian organization has not complied with or satisfactorily performed a contract under section 503, the Secretary shall, prior to renewing such contract, attempt to resolve with such organization the areas of noncompliance or unsatisfactory performance and modify such contract to prevent future occurrences of such noncompliance or unsatisfactory performance. If the Secretary determines that such noncompliance or unsatisfactory performance cannot be resolved and prevented in the future, the Secretary shall not renew such contract with such organization and is authorized to enter into a contract under section 503 with another urban Indian organization which is situated in the same urban center as the urban Indian organization whose contract is not renewed under this section.

"(d) In determining whether to renew a contract with an urban Indian organization under section 503 which has completed performance of a contract under section 504, the Secretary shall review the records of the urban Indian organization, the reports submitted under section 507, and, in the case of a renewal of a contract under section 503, shall consider the results of the onsite evaluations conducted under subsection (b).

"OTHER CONTRACT REQUIREMENTS

"SEC. 506. (a) Contracts with urban Indian organizations entered into pursuant to this title shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and need not conform to the provisions of the Act of August 24, 1935 (40 U.S.C. 270a, et seq.).

"(b) Payments under any contracts pursuant to this title may be made in advance or by way of reimbursement and in such installments and on such conditions as the Secretary deems necessary to carry out the purposes of this title.

"(c) Notwithstanding any provision of law to the contrary, the Secretary may, at the request or consent of an urban Indian organization, revise or amend any contract entered into by the Secretary with such organization under this title as necessary to carry out the purposes of this title.

"(d) In connection with any contract entered into pursuant to this title, the Secretary may permit an urban Indian organization to utilize, in carrying out such contract, existing facilities owned by the Federal Government within the Secretary's jurisdiction under such terms and conditions as may be agreed upon for the use and maintenance of such facilities.

"(e) Contracts with urban Indian organizations and regulations adopted pursuant to this title shall include provisions to assure the fair and uniform provision to urban Indians of services and assistance under such contracts by such organizations.

"(f) Urban Indians, as defined in section 4(f) of this Act, shall be eligible for health care or referral services provided pursuant to this title.

"REPORTS AND RECORDS

"SEC. 507. (a) For each fiscal year during which an urban Indian organization receives or expends funds pursuant to a contract entered into pursuant to this title, such organization shall submit to the Secretary a quarterly report including—

"(1) in the case of a contract under section 503, information gathered pursuant to clauses (10) and (11) of subsection (a) of such section;

"(2) information on activities conducted by the organization pursuant to the contract;

"(3) an accounting of the amounts and purposes for which Federal funds were expended; and

"(4) such other information as the Secretary may request.

"(b) The reports and records of the urban Indian organization with respect to a contract under this title shall be subject to audit by the Secretary and the Comptroller General of the United States.

"(c) The Secretary shall allow as a cost of any contract entered into under section 503 the cost of an annual private audit conducted by a certified public accountant.

"LIMITATION ON CONTRACT AUTHORITY

"SEC. 508. The authority of the Secretary to enter into contracts under this title shall be to the extent, and in an amount, provided for in appropriation Acts.".

URBAN INDIAN ORGANIZATION

SEC. 502. Subsection (h) of section 4 (25 U.S.C. 1603(h)) is amended by inserting "urban" after "governed by an".

TITLE VI—ORGANIZATIONAL IMPROVEMENTS

ESTABLISHMENT OF THE INDIAN HEALTH SERVICE AS AN AGENCY OF THE PUBLIC HEALTH SERVICE

SEC. 601. (a) Title VI (25 U.S.C. 1661) is amended to read as follows:

"TITLE VI—ORGANIZATIONAL IMPROVEMENTS

"ESTABLISHMENT OF THE INDIAN HEALTH SERVICE AS AN AGENCY OF THE PUBLIC HEALTH SERVICE

"SEC. 601. (a) In order to more effectively and efficiently carry out the responsibilities, authorities, and functions of the United States to provide health care services to Indians and Indian tribes, as are or may be hereafter provided by Federal statute or treaties, there is established within the Public Health Service of the Department of Health and Human Services the Indian Health Service. The Indian Health Service shall be administered by a Director, who shall be appointed by the Secretary. The Director of the Indian Health Service shall report to the Secretary through the Assistant Secretary for Health of the Department of Health and Human Services.

"(b) The Indian Health Service shall be an agency within the Public Health Service of the Department of Health and Human Services, and shall not be an office, component, or unit of any other agency of the Department.

"(c) The Secretary shall carry out through the Director of the Indian Health Service—

"(1) all functions which were, on the day before the date of enactment of the Indian Health Care Amendments of 1988, carried out by or under the direction of the individual serving as Director of the Indian Health Service on such day;

"(2) all functions of the Secretary relating to the maintenance and operation of hospital and health facilities for Indians and the planning for, and provision and utilization of, health services for Indians; and

"(3) all health programs under which health care is provided to Indians based upon their status as Indians which are administered by the Secretary, including (but not limited to) programs under—

"(A) this Act;

"(B) the Act of November 2, 1921 (25 U.S.C. 13);

"(C) the Act of August 5, 1954 (42 U.S.C. 2001, et seq.);

"(D) the Act of August 16, 1957 (25 U.S.C. 2005, et seq.); and

"(E) the Indian Self-Determination Act (25 U.S.C. 450f, et seq.).

"(d)(1) The Secretary, acting through the Director of the Indian Health Service, shall have the authority—

"(A) except to the extent provided in paragraph (2), to appoint and compensate employees for the Service in accordance with title 5, United States Code;

"(B) to enter into contracts for the procurement of goods and services to carry out the functions of the Service; and

"(C) to manage, expend, and obligate all funds appropriate for the Service.

"(2) Notwithstanding any other law, the provisions of section 12 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 472), shall apply to all personnel actions taken with respect to new positions created within the Service as a result of its establishment under subsection (a).

"AUTOMATED MANAGEMENT INFORMATION SYSTEM

"SEC. 602. (a)(1) The Secretary shall establish an automated management information system for the Service.

"(2) The information system established under paragraph (1) shall include—

"(A) a financial management system,

"(B) a patient care information system for each area served by the Service,

"(C) a privacy component that protects the privacy of patient information held by, or on behalf of, the Service, and

"(D) a services-based cost accounting component that provides estimates of the costs associated with the provision of specific medical treatments or services in each area office of the Service.

"(3) By no later than September 30, 1989, the Secretary shall submit a report to Congress setting forth—

"(A) the activities which have been undertaken to establish an automated management information system,

"(B) the activities, if any, which remain to be undertaken to complete the implementation of an automated management information system, and

"(C) the amount of funds which will be needed to complete the implementation of a management information system in the succeeding fiscal years.

"(b)(1) The Secretary shall provide each Indian tribe and tribal organization that provides health services under a contract entered into with the Service under the Indian Self-Determination Act automated management information systems which—

"(A) meet the management information needs of such Indian tribe or tribal organization with respect to the treatment by the Indian tribe or tribal organization of patients of the Service, and

"(B) meet the management information needs of the Service.

"(2) The Secretary shall reimburse each Indian tribe or tribal organization for the part of the cost of the operation of a system provided under paragraph (1) which is attributable to the treatment by such Indian tribe or tribal organization of patients of the Service.

"(3) The Secretary shall provide systems under paragraph (1) to Indian tribes and tribal organizations providing health services in California by no later than September 30, 1990.

"(c) Notwithstanding any other provision of law, each patient shall have reasonable access to the medical or health records of such patient which are held by, or on behalf of, the Service.".

(b) All personnel, records, equipment, facilities, and interests in property that are administered by the Indian Health Service on the day before the date on which the amendments made by this section take effect shall be transferred to the Indian Health Service established by the amendment made by subsection (a) of this section. All transfers must be accomplished within 9 months of the date of enactment of this section. The Secretary is authorized to waive the Indian preference laws on a case-by-case basis for temporary transfers involved in implementing this section during such 9-month period.

(c)(1) Except as provided in paragraph (2), section 601 of the Indian Health Care Improvement Act added by subsection (a) of this section shall take effect 9 months from the date of the enactment of this section.

(2) Notwithstanding subsections (b) and (c)(1), any action which carries out such section 601 that is taken by the Secretary before the effective date of such section 601 shall be effective beginning on the date such action was taken.

(d) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following:

"Director, Indian Health Service, Department of Health and Human Services.".

TITLE VII—MISCELLANEOUS PROVISIONS

LEASING AND OTHER CONTRACTS

SEC. 701. Section 704 (25 U.S.C. 1674) is amended—

(1) by striking out "Notwithstanding", and inserting in lieu thereof "(a) Notwithstanding", and

(2) by adding at the end thereof the following new subsection:

"(b) The Secretary may enter into leases, contracts, and other legal agreements with Indian tribes or tribal organizations which hold—

"(1) title to;

"(2) a leasehold interest in; or

"(3) a beneficial interest in (where title is held by the United States in trust for the benefit of a tribe);

facilities used for the administration and delivery of health services by the Service or by programs operated by Indian tribes or tribal organizations to compensate such Indian tribes or tribal organizations for costs associated with the use of such facilities for such purposes. Such costs include rent, depreciation based on the useful life of the building, principal and interest paid or accrued, operation and maintenance expenses, and other expenses determined by regulation to be allowable.".

ARIZONA AS A CONTRACT HEALTH SERVICE DELIVERY AREA

SEC. 702. (a) Subsection (a) of section 708 (25 U.S.C. 1678(a)) is amended—

(1) by striking out "1984" and inserting in lieu thereof "1991", and

(2) by striking out "Indians in such State" and inserting in lieu thereof "members of federally recognized Indian tribes of Arizona".

(b) Section 708 (25 U.S.C. 1678(c)) is amended by striking out subsection (c).

ELIGIBILITY OF CALIFORNIA INDIANS

SEC. 703. Section 709 (25 U.S.C. 1679) is amended to read as follows:

"ELIGIBILITY OF CALIFORNIA INDIANS

"SEC. 709. (a)(1) In order to provide the Congress with sufficient data to determine which Indians in the State of California should be eligible for health services provided by the Service, the Secretary shall, by no later than the date that is 3 years after the date of enactment of the Indian Health Care

Amendments of 1988, prepare and submit to the Congress a report which sets forth—

"(A) a determination by the Secretary of the number of Indians described in subsection (b)(2), and the number of Indians described in subsection (b)(3), who are not members of an Indian tribe recognized by the Federal Government,

"(B) the geographic location of such Indians,

"(C) the Indian tribes of which such Indians are members,

"(D) an assessment of the current health status, and health care needs, of such Indians, and

"(E) an assessment of the actual availability and accessibility of alternative resources for the health care of such Indians that such Indians would have to rely on if the Service did not provide for the health care of such Indians.

"(2) The report required under paragraph (1) shall be prepared by the Secretary—

"(A) in consultation with the Secretary of the Interior, and

"(B) with the assistance of the tribal health programs providing services to the Indians described in paragraph (2) or (3) of subsection (b) who are not members of any Indian tribe recognized by the Federal Government.

"(b) Until such time as any subsequent law may otherwise provide, the following California Indians shall be eligible for health services provided by the Service:

"(1) Any member of a federally recognized Indian tribe.

"(2) Any descendant of an Indian who was residing in California on June 1, 1852, but only if such descendant—

"(A) is living in California,

"(B) is a member of the Indian community served by a local program of the Service, and

"(C) is regarded as an Indian by the community in which such descendant lives.

"(3) Any Indian who holds trust interests in public domain, national forest, or Indian reservation allotments in California.

"(4) Any Indian in California who is listed on the plans for distribution of the assets of California rancherias and reservations under the Act of August 18, 1958 (72 Stat. 619), and any descendant of such an Indian.

"(c) Nothing in this section may be construed as expanding the eligibility of California Indians for health services provided by the Service beyond the scope of eligibility for such health services that applied on May 1, 1986.".

CALIFORNIA AS A CONTRACT HEALTH SERVICE DELIVERY AREA

SEC. 704. Section 710 (25 U.S.C. 1680) is amended to read as follows:

"CALIFORNIA AS A CONTRACT HEALTH SERVICE DELIVERY AREA

"SEC. 710. The State of California, excluding the counties of Alameda, Contra Costa, Los Angeles, Marin, Orange, Sacramento, San Francisco, San Mateo, Santa Clara, Kern, Merced, Monterey, Napa, San Benito, San Joaquin, San Luis Obispo, Santa Cruz, Solano, Stanislaus, and Ventura shall be designated as a contract health service delivery area by the Service for the purpose of providing contract health services to Indians in such State.".

CONTRACT HEALTH FACILITIES

SEC. 705. Title VII is amended by adding at the end thereof the following new section:

"CONTRACT HEALTH FACILITIES

"SEC. 711. The Service shall provide funds for health care programs and facilities operated by tribes and tribal organizations under contracts with the Service entered into under the Indian Self-Determination Act—

"(1) for the maintenance and repair of clinics owned or leased by such tribes or tribal organizations,

"(2) for employee training,

"(3) for cost-of-living increases for employees, and

"(4) for any other expenses relating to the provision of health services,

on the same basis as such funds are provided to programs and facilities operated directly by the Service.".

NATIONAL HEALTH SERVICE CORPS

SEC. 706. Title VII, as amended by section 705 of this Act, is further amended by adding at the end thereof the following new section:

"NATIONAL HEALTH SERVICE CORPS

"SEC. 712. The Secretary of Health and Human Services shall not—

"(1) remove a member of the National Health Service Corps from a health facility operated by the Indian Health Service or by a tribe or tribal organization under contract with the Indian Health Service under the Indian Self-Determination Act, or

"(2) withdraw funding used to support such member,

unless the Secretary, acting through the Service, has ensured that the Indians receiving services from such member will experience no reduction in services.".

HEALTH SERVICES FOR INELIGIBLE PERSONS

SEC. 707. (a) Title VII, as amended by section 706 of this Act, is further amended by adding at the end thereof the following new section:

"HEALTH SERVICES FOR INELIGIBLE PERSONS

"SEC. 713. (a)(1) Any individual who—

"(A) has not attained 19 years of age,

"(B) is the natural or adopted child, stepchild, foster-child, legal ward, or orphan of an eligible Indian, and

"(C) is not otherwise eligible for the health services provided by the Service,

shall be eligible for all health services provided by the Service on the same basis and subject to the same rules that apply to eligible Indians until such individual attains 19 years of age. The existing and potential health needs of all such individuals shall be taken into consideration by the Service in determining the need for, or the allocation of, the health resources of the Service. If such an individual has been determined to be legally incompetent prior to attaining 19 years of age, such individual shall remain eligible for such services until one year after the date such disability has been removed.

"(2) Any spouse of an eligible Indian who is not an Indian, or who is of Indian descent but not otherwise eligible for the health services provided by the Service, shall be eligible for such health services if all of such spouses are made eligible, as a class, by an appropriate resolution of the governing body of the Indian tribe of the eligible Indian. The health needs of persons made eligible under this paragraph shall not be taken into consideration by the Service in determining the need for, or allocation of, its health resources.

"(b)(1)(A) The Secretary is authorized to provide health services under this subsection through health facilities operated directly by the Service to individuals who reside within the service area of a service unit and who are not eligible for such health services under any other subsection of this section or under any other provision of law if—

"(i) the Indian tribe (or, in the case of a multi-tribal service area, all the Indian tribes) served by such service unit requests such provision of health services to such individuals, and

"(ii) the Secretary and the Indian tribe or tribes have jointly determined that—

"(I) the provision of such health services will not result in a denial or diminution of health services to eligible Indians, and

"(II) there is no reasonable alternative health facility or services, within or without the service area of such service unit, available to meet the health needs of such individuals.

"(B) In the case of health facilities operated under a contract entered into under the Indian Self-Determination Act, the governing body of the Indian tribe or tribal organization providing health services under such contract is authorized to determine whether health services should be provided under such contract to individuals who are not eligible for such health services under any other subsection of this section or under any other provision of law. In making such determinations, the governing body of the Indian tribe or tribal organization shall take into account the considerations described in subparagraph (A)(ii).

"(2)(A) Persons receiving health services provided by the Service by reason of this subsection shall be liable for payment of such health services under a schedule of charges prescribed by the Secretary which, in the judgment of the Secretary, results in reimbursement in an amount not less than the actual cost of providing the health services. Notwithstanding section 1880(c) of the Social Security Act, section 402(c) of this Act, or any other provision of law, amounts collected under this subsection, including medicare or medicaid reimbursements under titles XVIII and XIX of the Social Security Act, shall be credited to the account of the facility providing the service and shall be used solely for the provision of health services within that facility. Amounts collected under this subsection shall be available for expenditure within such facility for not to exceed one fiscal year after the fiscal year in which collected.

"(B) Health services may be provided by the Secretary through the Service under this subsection to an indigent person who would not be eligible for such health services but for the provisions of paragraph (1) only if an agreement has been entered into with a State or local government under which the State or local government agrees to reimburse the Service for the expenses incurred by the Service in providing such health services to such indigent person.

"(3)(A) In the case of a service area which serves only one Indian tribe, the authority of the Secretary to provide health services under paragraph (1)(A) shall terminate at the end of the fiscal year succeeding the fiscal year in which the governing body of the Indian tribe revokes its concurrence to the provision of such health services.

"(B) In the case of a multi-tribal service area, the authority of the Secretary to provide health services under paragraph (1)(A) shall terminate at the end of the fiscal year succeeding the fiscal year in which at least 51 percent of the number of Indian tribes in the service area revoke their concurrence to the provision of such health services.

"(c) The Service may provide health services under this subsection to individuals who are not eligible for health services provided by the Service under any other subsec-

tion of this section or under any other provision of law in order to—

"(1) achieve stability in a medical emergency,

"(2) prevent the spread of a communicable disease or otherwise deal with a public health hazard,

"(3) provide care to non-Indian women pregnant with an eligible Indian's child for the duration of the pregnancy through post partum, or

"(4) provide care to immediate family members of an eligible person if such care is directly related to the treatment of the eligible person.

"(d) Hospital privileges in health facilities operated and maintained by the Service or operated under a contract entered into under the Indian Self-Determination Act may be extended to non-Service health care practitioners who provide services to persons described in subsection (a) or (b). Such non-Service health care practitioners may be regarded as employees of the Federal Government for purposes of section 1346(b) and chapter 171 of title 28, United States Code (relating to Federal tort claims) only with respect to acts or omissions which occur in the course of providing services to eligible persons as a part of the conditions under which such hospital privileges are extended.

"(e) For purposes of this section, the term 'eligible Indian' means any Indian who is eligible for health services provided by the Service without regard to the provisions of this section.".

INFANT AND MATERNAL MORTALITY; FETAL ALCOHOL SYNDROME

SEC. 708. Title VII, as amended by section 707 of this Act, is further amended by adding at the end thereof the following new section:

"INFANT AND MATERNAL MORTALITY; FETAL ALCOHOL SYNDROME

"SEC. 714. (a) By no later than January 1, 1990, the Secretary shall develop and begin implementation of a plan to achieve the following objectives by January 1, 1994:

"(1) reduction of the rate of Indian infant mortality in each area office of the Service to the lower of—

"(A) twelve deaths per one thousand live births, or

"(B) the rate of infant mortality applicable to the United States population as a whole;

"(2) reduction of the rate of maternal mortality in each area office of the Service to the lower of—

"(A) five deaths per one hundred thousand live births, or

"(B) the rate of maternal mortality applicable to the United States population as a whole; and

"(3) reduction of the rate of fetal alcohol syndrome among Indians served by, or on behalf of, the Service to one per one thousand live births.

"(b) The President shall include with the budget submitted under section 1105 of title 31, United States Code, for each fiscal year a separate statement which specifies the total amount obligated or expended in the most recently completed fiscal year to achieve each of the objectives described in subsection (a).".

CONTRACT HEALTH SERVICES FOR THE TRENTON SERVICE AREA

SEC. 709. Title VII, as amended by section 708 of this Act, is further amended by adding at the end thereof the following new section:

"CONTRACT HEALTH SERVICES FOR THE TRENTON SERVICE AREA

"SEC. 715. (a) The Secretary, acting through the Service, is directed to provide contract health services to members of the Turtle Mountain Band of Chippewa Indians that reside in the Trenton Service Area of Divide, McKenzie, and Williams counties in the State of North Dakota and the adjoining counties of Richland, Roosevelt, and Sheridan in the State of Montana.

"(b) Nothing in this section may be construed as expanding the eligibility of members of the Turtle Mountain Band of Chippewa Indians for health services provided by the Service beyond the scope of eligibility for such health services that applied on May 1, 1986.".

INDIAN HEALTH SERVICE AND VETERANS' ADMINISTRATION HEALTH FACILITIES AND SERVICES SHARING

SEC. 710. Title VII, as amended by section 709 of this Act, is further amended by adding at the end thereof the following new section:

"INDIAN HEALTH SERVICE AND VETERANS' ADMINISTRATION HEALTH FACILITIES AND SERVICES SHARING

"SEC. 716. (a) The Secretary shall examine the feasibility of entering into an arrangement for the sharing of medical facilities and services between the Indian Health Service and the Veterans' Administration and shall, in accordance with subsection (b), prepare a report on the feasibility of such an arrangement and submit such report to the Congress by no later than September 30, 1990.

"(b) The Secretary shall not take any action under this section or under subchapter IV of chapter 81 of title 38, United States Code, which would impair—

"(1) the priority access of any Indian to health care services provided through the Indian Health Service;

"(2) the quality of health care services provided to any Indian through the Indian Health Service;

"(3) the priority access of any veteran to health care services provided by the Veterans' Administration;

"(4) the quality of health care services provided to any veteran by the Veterans' Administration;

"(5) the eligibility of any Indian to receive health services through the Indian Health Service; or

"(6) the eligibility of any Indian who is a veteran to receive health services through the Veterans' Administration.

"(c)(1) Within 30 days after the date of enactment of this section, the Director of the Indian Health Service and the Administrator of Veterans' Affairs are authorized and directed to implement an agreement under which—

"(A) individuals in the vicinity of Roosevelt, Utah, who are eligible for health care from the Veterans' Administration could obtain health care services at the facilities of the Indian Health Service located at Fort Duchesne, Utah; and

"(B) individuals eligible for health care from the Indian Health Service at Fort Duchesne, Utah, could obtain health care services at the Veterans' Administration medical center located in Salt Lake City, Utah.

"(2) Not later than 2 years after the date of enactment of this section, the Secretary and the Administrator of Veterans' Affairs shall jointly submit a report to the Congress on the health care services provided as a result of paragraph (1).

"(d) Nothing in this section may be construed as creating any right of a veteran to obtain health services from the Indian Health Service except as provided in an agreement under subsection (c).".

REALLOCATION OF BASE RESOURCES

SEC. 711. Title VII, as amended by section 710 of this Act, is further amended by adding at the end thereof the following new section:

"REALLOCATION OF BASE RESOURCES

"SEC. 717. (a) Notwithstanding any other provision of law, any allocation of Service funds for a fiscal year that reduces by 5 percent or more from the previous fiscal year the funding for any recurring program, project, or activity of a service unit may be implemented only after the Secretary has submitted to the Congress a report on the proposed change in allocation of funding, including the reasons for the change and its likely effects.

"(b) Subsection (a) shall not apply if the total amount appropriated to the Service for a fiscal year is less than the amount appropriated to the Service for previous fiscal year.".

PROVISION OF SERVICES IN MONTANA

SEC. 712. (a) The Secretary of Health and Human Services, acting through the Indian Health Service, shall provide services and benefits for Indians in Montana in a manner consistent with the decision of the United States Court of Appeals for the Ninth Circuit in McNabb for McNabb v. Bowen, 829 F.2d 787 (9th Cir. 1987).

(b) The provisions of subsection (a) shall not be construed to be an expression of the sense of the Congress on the application of the decision described in subsection (a) with respect to the provision of services or benefits for Indians living in any State other than Montana.

DEMONSTRATION PROJECTS FOR TRIBAL MANAGEMENT OF HEALTH CARE SERVICES

SEC. 713. Title VII, as amended by section 711 of this Act, is amended by adding at the end thereof the following new section:

"DEMONSTRATION PROJECTS FOR TRIBAL MANAGEMENT OF HEALTH CARE SERVICES

"SEC. 718. (a)(1) The Secretary, acting through the Service, shall make grants to Indian tribes to establish demonstration projects under which the Indian tribe will develop and test a phased approach to assumption by the Indian tribe of the health care delivery system of the Service for members of the Indian tribe living on or near the reservations of the Indian tribe through the use of Service, tribal, and private sector resources.

"(2) A grant may be awarded to an Indian tribe under paragraph (1) only if the Secretary determines that the Indian tribe has the administrative and financial capabilities necessary to conduct a demonstration project described in paragraph (1).

"(b) During the period in which a demonstration project established under subsection (a) is being conducted by an Indian tribe, the Secretary shall award all health care contracts, including community, behavioral, and preventive health care contracts, to the Indian tribe in the form of a single grant to which the regulations prescribed under part A of title XIX of the Public Health Service Act (as modified as necessary by any agreement entered into between the Secretary and the Indian tribe to achieve the purposes of the demonstration project established under subsection (a)) shall apply.

"(c) The Secretary may waive such provisions of Federal procurement law as are nec-

essary to enable any Indian tribe to develop and test administrative systems under the demonstration project established under subsection (a), but only if such waiver does not diminish or endanger the delivery of health care services to Indians.

"(d)(1) The demonstration project established under subsection (a) shall terminate on September 30, 1993.

"(2) By no later than September 30, 1994, the Secretary shall evaluate the performance of each Indian tribe that has participated in a demonstration project established under subsection (a) and shall submit to the Congress a report on such evaluations and demonstration projects.

"(e) There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.".

HEALTH CARE FOR RURAL AREAS

SEC. 714. Title VII of the Public Health Service Act is amended by adding at the end thereof the following:

"PART I—HEALTH CARE FOR RURAL AREAS

"HEALTH CARE FOR RURAL AREAS

"SEC. 799A. (a) The Secretary is authorized to make grants to, or enter into contracts with, any eligible applicant to help such applicant fund authorized activities under an application and approved under subsection (d).

"(b)(1) Amounts provided under subsection (a) shall be used by the recipients to fund interdisciplinary projects designed to use new and innovative methods and models to—

"(A) train health care practitioners to provide services in rural areas;

"(B) provide access to cost-effective, comprehensive health care to individuals residing in rural areas;

"(C) enhance the amount of research conducted concerning health care delivery in rural areas; and

"(D) increase the recruitment and retention of health care practitioners in rural areas and make rural practice a more attractive career choice for health care practitioners.

"(2) A recipient of funds under subsection (a) may use various methods in carrying out the projects described in paragraph (1), including—

"(A) the distribution of stipends to students of eligible applicants;

"(B) the establishment of a post-graduate fellowship program;

"(C) the training of faculty in the economic and logistical problems confronting rural health care delivery systems; or

"(D) the purchase or rental of transportation and telecommunication equipment where the need for such equipment due to unique characteristics of the rural area is demonstrated by the recipient.

"(3)(A) An applicant shall not use more than 10 percent of the funds made available to such applicant under subsection (a) for administrative expenses.

"(B) Not more than 10 percent of the individuals receiving training with funds made available to an applicant under subsection (a) shall be trained as doctors of medicine or doctors of osteopathy.

"(c) Applicants eligible to obtain funds under subsection (a) shall include nonprofit organizations and public or nonprofit colleges, universities, or schools of, or programs that specialize in, nursing, psychology, social work, optometry, public health, dentistry, osteopathy, physicians assistants, pharmacy, podiatry, medicine, chiropractic, and allied health professions if such applicants submit applications approved by the Secretary under subsection (d). Applicants eligible to obtain funds under subsection (a) shall not include for-profit entities, either directly or through a subcontract or subgrant.

"(d)(1) In order to receive a grant or contract under subsection (a) an entity shall submit an application to the Secretary.

"(2) An application submitted under this subsection shall be in such form, be submitted by such date, and contain such information as the Secretary shall require.

"(3) Applications submitted under this subsection shall—

"(A) be jointly submitted by at least two eligible applicants with the express purpose of assisting individuals in academic institutions in establishing long-term collaborative relationships with health care providers in rural areas;

"(B) designate a rural health care agency or agencies for clinical treatment or training, including hospitals, community health centers, migrant health centers, rural health clinics, community mental health centers, long-term care facilities, facilities operated by the Indian Health Service or an Indian tribe or tribal organization or Indian organization under a contract with the Indian Health Service under the Indian Self-Determination Act, or Native Hawaiian health centers; and

"(C) provide any additional information required by the Secretary.

"(e)(1) The Secretary shall enter into a contract to conduct a study of manpower training needs in rural areas, with attention focused on the supply of health professionals and whether such supply is adequate to meet the demands for health care services in rural communities.

"(2)(A) The study conducted under paragraph (1) shall include statistics and projections on—

"(i) the supply of health care practitioners in rural areas; and

"(ii) suggested methods of improving access to health care services in rural areas. The study shall pay particular attention to the needs of the elderly in rural areas.

"(B) The study conducted under paragraph (1) shall evaluate existing models for health care training and service delivery and propose innovative alternative models to enhance the quality and availability of health care services in rural areas and to increase the retention of health professionals in rural areas.

"(3) The Secretary shall evaluate the effectiveness of the health care training and service delivery models developed with funds made available under this section and compare such models with programs designed to increase the availability of health care providers in rural areas, including the National Health Service Corps program authorized by subpart II of part D of the Public Health Service Act (42 U.S.C. 254d et seq.) and the area health education center program authorized under section 781 of such Act (42 U.S.C. 295g-1).

"(4) Not later than 18 months after the date of the signing of the contract for the health care study under paragraph (1), the Secretary shall submit to the appropriate committees of the Congress a report that describes the results of the study conducted under paragraph (1).

"(f)(1) Each application for a grant or contract under this section shall be submitted to a peer review group for an evaluation of the merits of the proposals made in the application.

"(2) The Secretary shall establish such peer review groups as may be necessary to carry out paragraph (1). The Secretary shall make appointments to the peer review groups from among appropriately qualified persons who are not officers or employees of the United States.

"(3) With respect to applications referred to in paragraph (1), a peer review group established pursuant to paragraph (2) shall report its findings and recommendations to the Secretary. The Secretary may not approve such an application unless a peer review group has recommended the application for approval.

"(4) This paragraph shall be carried out by the Secretary, acting through Health Resources and Services Administration.

"(g) For the purposes of this section, the term 'rural area' includes a frontier area, which is an area in which the population density is less than 7 individuals per square mile.

"(h)(1) There are authorized to be appropriated to carry out the provisions of this section, other than subsection (e), $5,000,000 for fiscal year 1989.

"(2) There are authorized to be appropriated $1,000,000 for fiscal year 1989 to carry out subsection (e).

"(g) This section shall cease to be effective on October 1, 1989.".

CHILD SEXUAL ABUSE TREATMENT PROGRAMS

SEC. 715. Title VII, as amended by section 713 of this Act, is amended by adding at the end thereof the following new section:

"CHILD SEXUAL ABUSE TREATMENT PROGRAMS

"SEC. 719. (a) The Secretary and the Secretary of the Interior shall, for each of the fiscal years 1989, 1990, and 1991, continue to provide through the Hopi Tribe and the Asiniboine and Sioux Tribes of the Fort Peck Reservation the demonstration programs involving treatment for child sexual abuse that were conducted during fiscal year 1988 through such tribes.

"(b) There are authorized to be appropriated for each of the fiscal years 1989, 1990, and 1991 such sums as may be necessary to carry out the provisions of this section.".

PUEBLO SUBSTANCE ABUSE TREATMENT PROJECT FOR SAN JUAN PUEBLO, NEW MEXICO

SEC. 716. Title VII, as amended by section 715, is further amended by adding at the end thereof the following new section:

"PUEBLO SUBSTANCE ABUSE TREATMENT PROJECT FOR SAN JUAN PUEBLO, NEW MEXICO

"SEC. 720. (a) The Secretary, through the Service, shall make grants to the Eight Northern Indian Pueblos Council, San Juan Pueblo, New Mexico, for the purpose of providing substance abuse treatment services to Indians in need of such services.

"(b) There are authorized to be appropriated to carry out this section $250,000 for each of the fiscal years 1990 and 1991.".

STUDY WITH RESPECT TO NUCLEAR RESOURCE DEVELOPMENT HEALTH HAZARDS

SEC. 717. (a) The Secretary of Health and Human Services (acting through the Indian Health Service), the Secretary of the Interior (acting through the Bureau of Indian Affairs), and the Secretary of Energy shall jointly conduct a study for the purpose of determining—

(1) the number of active nuclear resource development sites on Indian lands in the United States;

(2) the Federal agencies that carry out Federal responsibilities with respect to each such site;

(3) the health hazards that exist as a result of such sites;

(4) the remedial actions which have been undertaken with respect to such health hazards;

(5) remedial actions that are needed with respect to such health hazards; and

(6) the amount of funds that would be necessary each year to implement and maintain such needed remedial actions and the date by which the remedial actions would be implemented if sufficient funds were to provide for the remedial actions.

(b) By no later than the date that is 2 years after the date of enactment of this Act, a report shall be submitted to the Congress describing the findings and conclusions made as a result of carrying out the study required in subsection (a).

LIMITATION ON USE OF FUNDS APPROPRIATED TO THE INDIAN HEALTH SERVICE

SEC. 718. Section 706 (25 U.S.C. 1676) is amended to read as follows:

"LIMITATION ON USE OF FUNDS APPROPRIATED TO THE INDIAN HEALTH SERVICE

"SEC. 706. Any limitation on the use of funds contained in an Act providing appropriations for the Department of Health and Human Services for a period with respect to the performance of abortions shall apply for that period with respect to the performance of abortions using funds contained in an Act providing appropriations for the Indian Health Service.".

ELIGIBILITY FOR SERVICES

SEC. 719. (a) During the period of the moratorium imposed by Public Law 100-446 on implementation of the final rule published in the Federal Register on September 16, 1987, by the Health Resources and Services Administration of the Public Health Service, relating to eligibility for the health care services of the Indian Health Service, the Indian Health Service shall provide services pursuant to the criteria for eligibility for such services that were in effect on September 15, 1987, subject to the provisions of section 709 of the Indian Health Care Improvement Act, as amended by this Act.

(b) The Secretary of Health and Human Services, acting through the Indian Health Service, shall, by contract or any other means, conduct a study to determine the impact of the final rule described in subsection (a) and of any other proposed rules which would change the eligibility criteria for medical services provided by the Indian Health Service.

(c) The study conducted under subsection (b) shall include—

(1) full participation and consultation with Indian and Alaskan Native tribal governments and representatives of urban Indian health care programs;

(2) statistics for each of the service areas of the Indian Health Service on the number of Indians who are currently eligible for the services of the Indian Health Service;

(3) statistics for each of the service areas of the Indian Health Service on the number of Indians who would be eligible for such services if the final rule described in subsection (a), or any alternative rule changing eligibility, were implemented;

(4) consideration of the financial impact of such final rule or any other proposed rule on the contract health care budget and on the clinical services budget of the Indian Health Services;

(5) consideration of the health status, cultural, social, and economic impact on Indian reservations and urban Indian populations of such final rule or any other rule changing the eligibility criteria;

(6) consideration of the alternatives, if any, that would be available to those Indians who would not be eligible for such services by reason of any such final rule; and

(7) consideration of the program changes that the Indian Health Service would be required to make if the eligibility requirements for such services that were in effect on September 15, 1987, were modified.

(d) The Secretary of Health and Human Services shall submit to the Congress a report on the study required under subsection (b).

(e) Before submitting to Congress the report on the study required under subsection (b), the Secretary of Health and Human Services shall provide Indian tribes, Alaska Native villages and urban Indian health care programs an opportunity to comment on the report and shall incorporate the comments of such Indian groups into the report.

(f) There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this section.

TITLE VIII—SEVERABILITY PROVISION

SEC. 801. If any provision of this Act, any amendment made by this Act, or the application of such provision or amendment to any person or circumstances is held to be invalid, the remainder of this Act, the remaining amendments made by this Act, and the application of such provision or amendment to persons or circumstances other than those to which it is held invalid, shall not be affected thereby. And the Senate agree to the same.

From the Committee on Interior and Insular Affairs:

MO UDALL,
BILL RICHARDSON,
BEN NIGHTHORSE CAMPBELL,
DON YOUNG,
JOHN J. RHODES,

From the Committee on Energy and Commerce:

JOHN D. DINGELL,
HENRY A. WAXMAN,
RON WYDEN,
HOWARD C. NIELSON,

Managers on the Part of the House.

DANIEL K. INOUYE,
JOHN MELCHER,
DENNIS DECONCINI,
QUENTIN N. BURDICK,
TOM DASCHLE,
DANIEL J. EVANS,
FRANK MURKOWSKI,
JOHN MCCAIN,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5261) to reauthorize and amend the Indian Health Care Improvement Act, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees and minor drafting and clarifying changes.

The Senate recedes from its amendments to sections numbered 3 of House bill, 101, 106(d), 107, 109, 201(a), 201(e), 201(g), 201 (h)(1)(B), 201(j), 202(d), 202 (e), 203(a)(2), 203(a)(3), 203(c), 203(d), 205, 401, 501, 502, 503, 504, 505, 506, 507, 508, 601 of House bill, 702, 703, 704, 705, 706, 707, 708, 711, 712, 717, 614 of House bill, 615 of House bill, 616 of House bill, 801, 802, 803, 804, 805, 806, 807, 1002, 1004, 1005, 1006, 1101, 1102, and 1109.

The House recedes from its disagreement to the amendments of the Senate to sections numbered 1, 2, 3, 102, 103, 105, 106 (a), 201(b), 201(c), 201 (d), 201(d), 201(f), 201(h)(1)(A), 201(h)(2), 201(i), 201(b), 202(a), 202(b), 202(c), 203(a)(1), 203(b), 203(e), 204, 301, 304, 601, 616 of House bill, 701, 710, 716, 902, 904, 1103, 1104, 1105, 1110 and 1201.

Amendment to section numbered 104:

That the Senate recede from its disagreement to the amendment of the House numbered 104(a), and agree to the same with an amendment as follows: *To include in section 104(a) of the bill, in the list of appropriately accredited schools, schools of social work.*

Amendments to section numbered 106:

That the House recede from its disagreement to the amendment of the Senate numbered 106(a), and agree to the same with an amendment as follows: *To provide that the Secretary shall provide scholarship assistance pursuant to a contract with the Kamehameha Schools Bishop Estate for the administration of the Native Hawaiian Health Scholarship program.*

That the Senate recede from its disagreement to the amendment of the House numbered 106(b)(2), and agree to the same with an amendment as follows: *To provide that the Native Hawaiian Health Scholarship program shall not be administered by or through the Indian Health Service.*

That the House recede from its disagreement to the amendment of the Senate nunbered 106(c), and agree to the same with an amendment as follows: *To provide that the term "Native Hawaiian" means any individual who is—(1) a citizen of the United States, (2) a resident of the State of Hawaii, and (3) a descendent of the aboriginal people, who prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii, as evidenced by—(A) genealogic records, (B) Kupuna (elders) or Kama'aina (long-term community residents) verification, or (C) birth records of the State of Hawaii.*

That the Senate recede from its disagreement to the amendment of the House numbered 106(d), and agree to the same with an amendment as follows: *To strike the authorization of appropriations for fiscal year 1989.*

Amendments to section numbered 108:

That the House recede from its disagreement to the amendment of the Senate numbered 108(b)(2), and agree to the same with an amendment as follows: *To strike the authorization for institutions or programs that receive grants under subsection (a) to allow individuals who are receiving training, or advanced skill training, in nursing or nurse midwifery to participate in joint programs that allow the individual to obtain degrees in other academic disciplines.*

That the House recede from its disagreement to the amendment of the Senate numbered 108(e)(1), and agree to the same with an amendment as follows: *To strike the au-*

thorization of appropriations for fiscal year 1989.

That the House recede from its disagreement to the amendment of the Senate numbered 108, and agree to the same with an amendment as follows: *To provide that the active duty service obligation prescribed under section 338C of the Public Health Service Act (42 U.S.C. 254m) shall be met by each individual who receives training or assistance under paragraph (A) or (B) of subsection (b)(1) of section 108 that is funded by a grant provided under subsection (a) of section 108; and to provide further that such obligation shall be met by service—(A) in the Indian Health Service; (B) in a program conducted under a contract entered into under the Indian Self-Determination Act; (C) in a program assisted under title V of this Act; or (D) in the private practice of nursing if, as determined by the Secretary, in accordance with guidelines promulgated by the Secretary, such practice is situated in a physician or other health professional shortage area and addresses the health care needs of a substantial number of Indians.*

Amendments to section 201:

That the House recede from its disagreement to the amendment of the Senate numbered 201(e), and agree to the same with an amendment as follows: *To strike the amendment of the Senate numbered 201(e).*

That the House recede from its disagreement to the amendment of the Senate numbered 201(g), and agree to the same with an amendment as follows: *To strike the amendment of the Senate numbered 201(g).*

That the House recede from its disagreement to the amendment of the Senate numbered 201(j), and agree to the same with an amendment as follows: *To strike the authorization for appropriations for fiscal year 1989.*

Amendments to section 202:

That the House recede from its disagreement to the amendment of the Senate numbered 202(e), and agree to the same with an amendment as follows: *To strike the authorization for appropriations for fiscal year 1989.*

Amendments to section 203:

That the House recede from its disagreement to the amendment of the Senate numbered 203(a), and agree to the same with an amendment as follows: *To strike Congressional findings set forth in sections 203(a)(2) and 203(a)(3).*

That the House recede from its disagreement to the amendment of the Senate numbered 203(f)(3)(A)(iii)(I), and agree to the same with an amendment as follows: *In lieu of the term "newly diagnosed diabetics", insert the words "individuals diagnosed as diabetics".*

That the House recede from its disagreement to the amendment of the Senate numbered 203(f)(7)(C), and agree to the same with an amendment as follows: *Strike the words "annual onsite" before the words "evaluation of each Native Hawaiian organization".*

That the House recede from its disagreement to the amendment of the Senate numbered 203(f)(7)(H), and agree to the same with an amendment as follows: *Strike the words "except that whenever such organization requests retrocession of any contract entered into under this subsection, such retrocession shall become effective upon a date specified by the Secretary that is not more than 120 days after the date of the request by such organization or at such later date as may be mutually agreed to by the Secretary and such organization.", and insert a period after the words "purposes of this subsection".*

That the House recede from its disagreement to the amendment of the Senate numbered 203(f)(8), and agree to the same with an amendment as follows: *To provide that the term "Native Hawaiian" means any individual who—(i) is a citizen of the United States, (ii) is a resident of the State of Hawaii, (iii) is a descendant of the aboriginal people who, prior to 1778, occupied and excercised sovereignty in the area that now constitutes the State of Hawaii, as evidenced by—(I) genealogical records, (II) Kupuna (elders) or Kama'aina (long-term community residents) verification, or (III) birth records of the State of Hawaii.*

That the House recede from its disagreement to the amendment of the Senate numbered 203(f)(9), and agree to the same with an amendment as follows: *To strike the authorization for appropriations for fiscal year 1989.*

Amendment to section 302:

That the House recede from its disagreement to the amendment of the Senate numbered 302(h)(2), and agree to the same with an amendment as follows: *To strike the reference to "30 new full-time equivalents".*

Amendment to section 303:

That the House recede from its disagreement to the amendment of the Senate numbered 303(d), and agree to the same with an amendment as follows: *To strike the words "subject to the availability of funds provided by Appropriations Acts".*

Amendment to section 402:

That the House recede from its disagreement to the amendment of the Senate numbered 402(b), and agree to the same with an amendment as follows: *To provide that the proposed amendments amend the relevant provisions of the Indian Health Care Improvement Act, rather than the provisions of the Social Security Act.*

Amendment to section 403:

That the House recede from its disagreement to the amendment of the Senate numbered 403, and agree to the same with an amendment as follows: *To provide that the Federal medical assistance percentage under the medicaid program shall be consistent with the requirements of section 1905(b) of the Social Security Act.*

Amendment to section 709:

That the House recede from its disagreement to the amendment of the Senate numbered 709, and agree to the same with an amendment as follows: *To delete the requirement that the Secretary's plan for the reduction of fetal alcohol syndrome and fetal alcohol effect must include the objective of reducing such rates to "the rate of fetal alcohol syndrome and such fetal alcohol effect applicable to the United States population as a whole".*

Amendment to section 713:

That the House recede from its disagreement to the amendment of the Senate numbered 713, and agree to the same with an amendment as follows: *To insert as subsection (a) the language contained in the amendment of the Senate numbered section 713, and to add at the end thereof a new subsection (b) which provides that "(b) the provisions of subsection (a) shall not be construed to be an expression of the sense of the Congress on the application of the decision described in subsection (a) with respect to the provision of services or benefits for Indians living in any State other than Montana."*

Amendment to section 714:

That the House recede from its disagreement to the amendment of the Senate numbered 714, and agree to the same with an amendment as follows: *To change the termination date of the demonstration program from September 30, 1992, to September 30, 1993.*

That the House recede from its disagreement to the amendment of the Senate numbered 714, and agree to the same with an amendment as follows: *To change the evaluation date of the demonstration program from September 30, 1992, to September 30, 1994.*

That the House recede from its disagreement to the amendment of the Senate numbered 714, and agree to the same with a provision in the statement of the managers as follows: *It is the intent of the conferees that because the Tohono O'Odham Demonstration Program serves as the basis for the authority established in section 714 of the Senate amendment, and because the Tohono O'Odham Nation has completed two of four years of its demonstration program, as provided for in Appropriations Acts of the Congress, the conferees agree that the Tohono O'Odham Demonstration Program should be given a priority in the receipt of funding in any appropriations that are made available under the authority of this section, or any other provision of law, for purposes of this demonstration program.*

Amendments to section 715:

That the House recede from its disagreement to the amendment of the Senate numbered 715, and agree to the same with amendments as follows: *Delete all references to "frontier areas" and define the term under the definition of "rural areas"; to require peer review of all grant or contract applications; to delete the term "health care providers" and insert in lieu thereof the term "health care practitioners" wherever the former term appears; to provide that a recipient of funds must demonstrate a need for the purchase or rental of transportation and telecommunication equipment based on the unique characteristics of the rural area; to provide that applicants eligible to obtain funds under subsection (a) shall not include for profit entities, either directly or through a subcontract or grant; to provide that for the conduct of a study of manpower training needs in rural areas, that the requirement that Secretary shall contract "with a non-profit health care association with expertise in rural and frontier health care and membership representing the full range of health care professional and health care providers" is deleted; to provide the section shall cease to be effective on October 1, 1989; and to direct that the program shall be administered by the Health Resources and Service Administration; and to amend the Public Health Service Act.*

Amendment to sections 901 and 902:

That the House recede from its disagreement to the amendments of the Senate numbered 901 and 902, and agree to the same with an amendment as follows: *To strike sections 901 and 902, and insert in lieu thereof the following language: "During the period of the moratorium imposed by Public Law 100-446 on implementation of the final rule published in the Federal Register on September 16, 1987, by the Health Resources and Services Administration of the Public Health Service, relating to eligibility for the health care services of the Indian Health Service, the Indian Health Service shall provide services pursuant to the criteria for eligibility for such services that were in effect on September 15, 1987, subject to the provisions of section 709 of the Indian*

Health Care Improvement Act, as amended by this Act."

Amendment to section 903:

That the House recede from its disagreement to the amendment of the Senate numbered 903, and agree to the same with an amendment as follows: *To strike all references in the section to the Office of Technology Assessment, and to provide that the study and the report to the Congress and the comment requirements of section 903 be carried out by the Secretary of Health and Human Services, acting through the Indian Health Service, by contract or any other means.*

Amendment to section 1001:

That the Senate recede from its disagreement to the amendment of the House numbered 108(a)(1), and agree to the same with an amendment as follows: *To include within the list of professions for which an adequate supply might be assured under the terms of the Indian Health Service Loan Repayment Program, the term "clinical and counseling psychologists, graduates of schools of public health, graduates of schools of social work."*

Amendment to section 1003:

That the Senate recede from its disagreement to the amendment of the House numbered 108(c)(1), and agree to the same with an amendment as follows: *To include the requirement contained in the first sentence of Senate amendment 1003(b)(2), to provide that: "The Secretary shall provide such individuals with sufficient information regarding the advantages and disadvantages of service as a commissioned officer in the Regular or Reserve Corps of the Public Health Service or a civilian employee of the Indian Health Service to enable the individual to make a decision on an informed basis."*

Amendment to section 1107:

That the House recede from its disagreement to the amendment of the Senate numbered 1107, and agree to the same with an amendment as follows: *To make the provision of incentive special pay, the provision of bonuses, and the allowance of the use of flexible work schedules and compressed work schedules, matters of Secretarial discretion; and to limit the amounts authorized for appropriations to carry out the provisions of section 1107 to $600,000 for each of the fiscal years 1990 through 1992.*

Amendment to section 1108:

That the House recede from its disagreement to the amendment of the Senate numbered 1108, and agree to the same with an amendment as follows: *To make the payment of retention bonuses and the establishment of rates for retention bonuses, matters of Secretarial discretion; to establish that the requirement to refund to the government the full amount of the retention bonus plus interest for failure to complete the agreed upon term of service, is to be determined by the Secretary in accordance with House amendment numbered 108(1)(2)(B); and to limit the amounts authorized for appropriations to carry out the provisions of section 1108 to $3,200,000 for each of the fiscal year 1990 through 1992.*

Amendment to section 1109:

That the Senate recede from its disagreement to the amendment of the House striking section 1109, and agree to the same with the inclusion of language in the statement of managers as follows: *It is the intention of the conferees that the Secretary should undertake an evaluation of the feasibility of using foreign medical graduates to assist in the delivery of health care in hospital facilities of the Indian Health Service, consistent with the assessments and requirements contemplated in section 1109.*

From the Committee on Interior and Insular Affairs:

Mo Udall,
Bill Richardson,
Ben Nighthorse Campbell,
Don Young,
John J. Rhodes,

From the Committee on Energy and Commerce:

John D. Dingell,
Henry A. Waxman,
Ron Wyden,
Howard C. Nielson,

Managers on the Part of the House.

Daniel K. Inouye,
John Melcher,
Dennis DeConcini,
Quentin N. Burdick,
Tom Daschle,
Daniel J. Evans,
Frank Murkowski,
John McCain,

Managers on the Part of the Senate.

PERMISSION FOR COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION AND FOR SUBCOMMITTEE ON PUBLIC BUILDINGS AND GROUNDS OF THAT COMMITTEE TO SIT TOMORROW DURING 5-MINUTE RULE

Mr. BOSCO. Mr. Speaker, I ask unanimous consent that the Committee on Public Works and Transportation and the Subcommittee on Public Buildings and Grounds of the Committee on Public Works and Transportation be permitted to sit tomorrow, Thursday, October 13, 1988, during the 5-minute rule in the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. Gray of Illinois). Pursuant to the provisions of clause 5 of rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken after debate has been concluded on all motions to suspend the rules today or tomorrow.

TELECOMMUNICATIONS ACCESSIBILITY ENHANCEMENT ACT OF 1988

Mr. MARKEY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4992) to expand our national telecommunications system for the benefit of the hearing-impaired and speech-impaired populations, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4992

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Telecommunications Accessibility Enhancement Act of 1988".

SEC. 2. DEFINITIONS.

As used in this Act—

(1) The term "TDD" means a Telecommunications Device for the Deaf, a machine which employs graphic communications in the transmission of coded signals through the nationwide telecommunications system.

(2) The term "Federal agency" has the meaning given such term by section 3(b) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472(b)).

SEC. 3. FEDERAL TELECOMMUNICATIONS SYSTEM REQUIREMENTS.

(a) Accessibility of Telecommunications Systems.—The Administrator of General Services, after consultation with the Architectural and Transportation Barriers Compliance Board, the Interagency Committee on Computer Support of Handicapped Employees, the Federal Communications Commission, and affected Federal agencies, shall, by regulation, take such actions in accordance with this section as may be necessary to assure that the Federal telecommunications system is fully accessible to hearing-impaired and speech-impaired individuals, including Federal employees, for communications with and within Federal agencies.

(b) Specific Requirement.—In carrying out subsection (a), the Administrator shall—

(1) provide for the continuation of the existing Federal relay system for users of TDD's;

(2) within 90 days after the date of enactment of this Act, expand such relay system by employing at least one additional operator;

(3) within 180 days after such date of enactment—

(A) conduct, as part of the rulemaking proceeding required by subsection (a), an analysis of modifications to the Federal telecommunications system that the Administrator, in his discretion, determines to be necessary to achieve the objectives of subsection (a); and

(B) submit a report on the results of such analysis to each House of the Congress;

(4) within 180 days after completion of such analysis, prescribe the regulations required by subsection (a);

(5) assemble, publish, and maintain a directory of TDD and other devices used by Federal agencies to comply with such regulations, and publish, in Federal agency directories, access numbers of TDD's and such other devices; and

(6) after consultation with the Architectural and Transportation Barriers Compliance Board, adopt the design of a standard logo to signify the presence of a TDD or other device used by a Federal agency to comply with such regulations.

(c) Congressional Oversight.—The Administrator shall not prescribe the regulation required by subsection (a) before the end of the 90-day period beginning on the date the Administrator submits the report required by subsection (b)(3)(B).

SEC. 4. ADDITIONAL REQUIREMENTS.

(a) Support for Research.—The Administrator shall, in consultation with the Federal Communications Commission, seek to promote research by Federal agencies, State agencies, and private entities to reduce the cost and improve the capabilities of telecommunications devices and systems that provide accessibility to hearing-impaired and speech-impaired individuals.

(b) PLANNING TO ASSIMILATE TECHNOLOGICAL DEVELOPMENTS.—The Administrator, in planning future alterations to and modifications of the Federal telecommunications system, shall take into account results of the analysis required by section 3(b)(3) and any technological improvements in telecommunications devices and systems that provide accessibility to hearing-impaired and speech-impaired individuals.

SEC. 5. INQUIRY REGARDING INTERSTATE TDD RELAY SYSTEM.

The Federal Communications Commission shall, within 9 months after the date of enactment of this Act, complete its existing inquiry regarding an interstate relay system for users of TDD's.

SEC. 6. TDD INSTALLATION BY CONGRESS.

As soon as practicable, each House of the Congress shall establish a policy under which Members of the House of Representatives and the Senate, as the case may be, may obtain TDD's for use in communicating with hearing-impaired and speech-impaired individuals, and for the use of hearing-impaired and speech-impaired employees.

The SPEAKER pro tempore. Is a second demanded?

Mr. RINALDO. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. MARKEY] will be recognized for 20 minutes and the gentleman from New Jersey [Mr. RINALDO] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today to ask the support of my colleagues for H.R. 4992, the Telecommunications Accessiblity Enhancement Act of 1988.

This bill will expand our national telecommunications system and increase the access of the hearing- and speech-impaired to Federal agencies through telecommunications devices for the deaf [TDD's] or another, more advanced technological system. The bill was referred to three committees; Energy and Commerce, Government Operations, and House Administration. Consideration of H.R. 4992 would not have been possible today were it not for the cooperation and commitment of the chairmen and ranking minority members of these committees. Our combined efforts have allowed us to expeditiously bring to the floor this very important and functional bill before the termination of the 100th Congress.

Congress has a commitment to providing universal service to all Americans, and today, through passage of H.R. 4992, we can succeed in opening yet another line of access to our public. Telephones are no longer a luxury enjoyed by a select number of the population, but a definite necessity for health, employment, and security in our society. Today Congress can show that it will go to great lengths, to ensure that we fulfill our responsibility to the speech- and hearing-impaired.

Too many of the hearing- and speech-impaired are denied their right of access to the Federal Government because most agencies lack necessary telecommunications equipment. This act will rectify this injustice by requring that all Federal agencies provide access to either the existing system of telecommunications devices for the deaf, or a forthcoming technologically superior system.

Telecommunications devices for the deaf [TDD's] are small electronic instruments, which, when used in conjunction with an effective operator relay system, allow a hearing- or speech-impaired person to type a question or reply onto a screen, transmit it to a relay operator or a TDD at the connecting telephone, and receive typewritten responses from voice telephone users.

We have worked together in a bipartisan fashion with the minority in our committee, the gentleman from New Jersey [Mr. RINALDO], in producing this particular piece of legislation. We have done it again on an expeditious legislative track in order to present a bill for signature this year.

Now the gentleman from New Jersey [Mr. RINALDO] and I have as a result tried to construct an expedited process that would be able to move through well satisfying all of the desire for participation in the drafting of the legislation.

The gentleman from New York [Mr. LENT] and the gentleman from Michigan [Mr. DINGELL], as well, worked closely with us at the full committee level to push this bill out to the floor.

We also worked closely with the gentleman from Illinois [Mr. ANNUNZIO], with the gentleman from California [Mr. COELHO], the gentleman from North Carolina [Mr. ROSE], and the gentleman from Oklahoma [Mr. ENGLISH].

The gentleman from Texas [Mr. BROOKS] is deserving of special recognition in the passage of this piece of legislation at this time, and his intense concern, I think, is reflected in the quality of the legislation.

I would also like to recognize the efforts of the gentleman from Wisconsin [Mr. GUNDERSON] and certainly Senators HOLLINGS, INOUYE, and MCCAIN who deserve credit for their work on the companion legislation in the Senate.

The gentleman from Wisconsin [Mr. GUNDERSON] worked in the House and was part of the minority/majority team that worked to put this bill together, and I would like to publicly compliment him for his work at this time.

Mr. Speaker, I reserve the balance of my time.

Mr. BROOKS. Mr. Speaker, H.R. 4992 was jointly referred to three committees of the House: Energy and Commerce, Government Operations, and House Administration. Its stated purpose is to improve accessibility to our national telecommunications system generally, and the Federal Government's telecommunications system specifically, by the hearing-impaired and speech-impaired. As introduced, the bill would have done so by mandating the installation of telecommunications devices for the deaf [TDD's].

There should be no question in anyone's mind about the desirability—the simple justice—of pursuing the general goal of improving access by the hearing-impaired and speech-impaired. However, the specific language of H.R. 4992 as introduced and ordered reported by the Committee on Energy and Commerce, caused me a great deal of concern in my role as Chairman of the Committee on Government Operations. First, it would have assigned to the Federal Communications Commission responsibility for undertaking a rulemaking that would "ensure that Federal departments and agencies are equipped with TDD's to provide to hearing-impaired and speech-impaired individuals direct access to the resources of those departments and agencies. * * *"

There would have been serious problems involved with giving this authority to the FCC. Notwithstanding the presence of the word "communications" in its title, that agency has no more to do with the internal operation of the Federal Government's telecommunications system than does NASA. The Federal Government's phone system is operated by the General Services Administration, and assigning responsibility to any other agency would have been a prescription for delay and duplication.

Further, the imprecision of the original bill's requirement that "Federal departments and agencies" be equipped with TDD's also caused us some concern. There was nothing in the legislative record to suggest that meant equipping every one of the thousands of Social Security offices, agricultural extension offices, and Veterans' Administration offices across the Nation with a TDD—an expensive and potential ineffective step—or whether it meant one TDD in the headquarters here in Washington—which would have been useless as a means of providing the hearing impaired and speech impaired with access to the resources of those agencies.

Finally, H.R. 4992 as introduced mandated the equipping of Federal agencies with one specific device and technology—the TDD. While I recognize that the TDD may be the best technology currently available for providing access to the telecommunications system, I believe that it would be a grievous mistake to lock the Federal Government into this technology and foreclose the exploration of alternative and emerging technologies.

For instance, there might be applications where a facsimile machine would be the answer to improving communication with and among Federal agencies by the hearing impaired. In addition, it may very well be that in a few years the use of personal computers will be so pervasive through the Federal Government that some software modification will permit their use as a communications device.

The amendment in the nature of a substitute that is being considered today addresses these concerns. It requires the General Services Administration, after consultation with specified agencies and groups, to "take such actions * * * as may be necessary to assure that the Federal telecommunications system is fully accessible to hearing-impaired and speech-impaired individuals, including Federal employees, for communications with and within Federal agencies." The Administrator of General Services is to undertake an analysis of modifications to that system to achieve those objectives, and to submit a report to Congress on that analysis. In order to be sure that the Federal Government keeps pace with technology in this area, the amendment encourages research to reduce the cost and improve the capabilities of telecommunications devices and systems that improve accessibility for the hearing impaired and speech impaired, and it requires the Administrator, in planning future alterations to and modifications to the Federal telecommunications system, to take into account the analysis of accessibility needs as well as technological improvements.

Mr. Speaker, I would have preferred that H.R. 4992 had gone through the normal legislative process of full consideration by all committees of jurisdiction. Nevertheless, because of the importance of passing legislation on this matter before the end of this session, all three committees have worked together to fashion a bill that is workable and meaningful and that should improve accessibility for the hearing impaired and speech impaired.

I want to thank Chairman JOHN DINGELL of Energy and Commerce Committee, and ED MARKEY of its Telecommunications Subcommittee, for their cooperation in this effort, along with Chairman FRANK ANNUNZIO of the Committee on House Administration. Together, we have formulated a good proposal, and I urge its adoption.

Mr. RINALDO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the basic purpose of the Communications Act is to ensure that the full benefits of telecommunications technology in this country can be enjoyed by all of our citizens. However, there are at least 24 million Americans who are denied equal access to the essential tool of the modern era—the telephone.

This Nation has recognized that physical disabilities do not limit a man's or woman's ability to contribute to society. However, for many deaf- and hearing-impaired individuals the telephone can be the greatest barrier to full participation and success in life. It was only recently that Congress began to address this real problem.

Earlier this year, this subcommittee approved the Hearing Aid Compatibility Act, and took the first step to ensure that these individuals could have full and equal access to the finest telephone network in the world. Now, H.R. 4992 takes another necessary step by requiring the Federal Government to expand its relay system through which the deaf and hearing impaired communicate by using so-called telecommunications devices for the deaf, or TDD's. These devices permit deaf- and hearing-impaired individuals to place telephone calls and communicate by typing messages on a keyboard.

The Federal TDD relay system enables these individuals to communicate with those that hear through a third party that transmits messages back and forth. But the existing system is hopelessly understaffed. All TDD calls now are routed through a single operator. Moreover, the FCC's authority to mandate interstate relay systems has been unclear. As a result, many TDD users have been unable to communicate across State lines.

The inadequate and haphazard structure of the existing Federal and private TDD relay systems must be improved. It's time we gave the process a legislative push forward. This bill will provide the deaf and hearing impaired with full access to the Federal Government through an improved relay system. The General Services Administration will coordinate the Government's effort, and consult many agencies, including the expert in telecommunications, the FCC. The FCC would be required to complete its inquiry into interstate TDD relay systems within 9 months after enactment of the legislation. Finally, the bill urges Congress to obtain TDD's for employees as soon as practicable. It is my hope that all these measures will bring total, equal access for the deaf- and hearing- impaired in the near future.

This bill is not a cure all. Instead, it plays catchup to bring all of our citizens the opportunity to use and share the complete benefits of this Nation's telephone network. But, as I mentioned earlier, it is the second legislative effort to improve telephone access by the deaf- and hearing-impaired to be considered by the Energy and Commerce Committee this year. I know it will not be the last, because this is one of those truly bipartisan concerns that are common in the area of telecommunications. All members of this committee have an interest in this area, as our work earlier this year on the Hearing Aid Compatibility Act showed.

I commend the bill's principal sponsor the gentleman from Wisconsin [Mr. GUNDERSON]. I also commend the committee chairman, the gentleman from Michigan [Mr. DINGELL]; the committee's ranking Republican, the gentleman from New York [Mr. LENT]; and the subcommittee chairman, the gentleman from Massachusetts [Mr. MARKEY] for bringing this bill before the House so quickly, especially with so little time left in this Congress. Finally, I wish to thank the chairman and ranking Republicans on the Government Operations and House Administration Committees, Mr. BROOKS, Mr. HORTON, Mr. ANNUNZIO, and Mr. FRENZEL, for their cooperation and help in improving this legislation. This kind of effort by three House committees indicates just how serious this issue is for all our deaf and hearing-impaired citizens. I know the House will agree that it is time to improve access to the Federal Government for all our citizens, and H.R. 4992.

Mr. Speaker, I reserve the balance of my time.

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to note the work of the gentleman from Michigan [Mr. BONIOR] who played a role in expediting this piece of legislation down to the floor, the gentleman from Ohio [Mr. ECKART], a member of our subcommittee, and I would like to just pass on this bit of information:

Mr. Speaker, if this bill does not pass, the pilot project, which is in place, will expire, and there will be no replacement program which is available for those who are deaf or speech impaired to in fact take advantage of the full technological revolution which is taking place in our society. With the passage of this legislation, what we will see is a maintenance and expansion of that access, and all of us, I think, over the past years, whether it be the Gallaudet students or the National Association for the Deaf have become much more sensitive to the real plight, to the plight that exists in that community, and this bill really helps to much more fully enfranchise those citizens as full players in our modern society.

Mr. Speaker, I would hope that this piece of legislation with that consensus of support which exists would pass here with an overwhelming vote.

Mr. Speaker, I reserve the balance of my time.

Mr. RINALDO. Mr. Speaker, I yield 4 minutes to the gentleman from Wisconsin [Mr. GUNDERSON].

Mr. GUNDERSON. Mr. Speaker, today, in the closing days of the 100th session of Congress, I am very proud that we have the opportunity to take a significant step with the passage of H.R. 4992, and in the words of Dr. I. King Jordan, president of Gallaudet University, offer "a hopeful beginning to finally achieving equal telephone access" for all Americans.

H.R. 4992, the Telecommunications Accessibility Enhancement Act, requires the General Services Administration [GSA], by regulation, to assure that the Federal Government's telecommunications system is fully accessible for the more than 24 million hearing and 2.8 million speech impaired Americans.

Passage of H.R. 4992 allows the Federal Government to fulfill its telecommunication commitment to all Americans. By enacting the Communications Act of 1934 Congress provided for the right of all Americans to have equal access to our Nation's telecommunications network. Thirty-nine years after the enactment of the Communications Act, sections 501 and 504 of the Rehabilitation Act of 1973 were enacted requiring the Federal Government to be accessible to job applicants and beneficiaries, and prohibiting discrimination on the basis of handicap in activities and programs conducted by our Federal Government. With the adoption of H.R. 4992, the Federal Government can fulfill its promise by significantly improving our Federal Government's telecommunications system for persons with hearing or speech impairments.

Cosponsored by 94 House Members, this bipartisan legislation before us today responds to our immediate telecommunication needs for full access to the Federal Government. It also provides us with a blueprint for the future. Full telecommunications access to our Federal Government will be achieved by eight provisions outlined in H.R. 4992:

First, continuing the existing Federal relay system for TTY/TDD users and employ appropriate staff.

Second, initiating an analysis and proposed regulations for modifying our Federal telecommunications system to achieve full access for hearing and speech impaired individuals, and report the findings to Congress.

Third, publishing and maintaining a directory to TTY's/TDD's and other devices used by Federal departments and agencies, including access numbers.

Fourth, adopting a standard logo signifying the presence of a TTY/TDD of other similar devices in Federal buildings.

Fifth, promoting research by both public and private entities to reduce the cost and improve the capabilities of communications devices and systems that provide access to hearing and speech impaired individuals.

Sixth, planning future changes to Federal telecommunications system to include technological improvements to telecommunications devices and systems for hearing and speech impaired persons.

Seventh, directing the FCC to complete its existing inquiry regarding an interstate relay system for TTY/TDD users within nine months of enactment.

And, finally, requiring Congress to establish policies under which Members may obtain TTY's/TDD's for use in communicating with hearing and speech impaired individuals outside Congress, and for use by hearing and speech impaired employees.

Realizing that H.R. 4992 has been on the fast track since I introduced it in the House of Representatives on July 7, 1988, I want to specifically extend my appreciation to my colleagues and their staff on the Telecommunications and Finance Subcommittee and the Government Operations Committee for their energy and time spent on perfecting this legislation.

To our former House colleague, Senator JOHN McCAIN, I congratulate him for his foresight in initiating this legislation in the other body and his strong commitment and leadership to improve access for all Americans to their Federal Government. It was a pleasure to work with Senator McCAIN on this initiative.

I would be sorely remiss if I did not salute the real champions of this legislation, the countless number of individuals throughout the country who actively campaigned in support of H.R. 4992. I especially want to commend the tireless efforts of the Gallaudet University community, the National Association of the Deaf, the National Technical Institute for the Deaf, the Alexander Graham Bell Association for the Deaf, Inc., and Telecommunications for the Deaf, Inc. The commitment and unwaivering support by individuals and organizations alike for this legislation made it possible for us to act on it today.

To conclude, I thank my colleagues for the sensitivity and support they have demonstrated toward this legislation throughout this process, and ask them to join me once more in supporting passage of H.R. 4992. Let us make Dr. Jordan's hopeful beginning into a new beginning for all Americans.

Mr. HORTON. Mr. Speaker, I rise in strong support of H.R. 4992. I support this legislation because it provides what every citizen ought to have: Full access to the Federal Government.

For hearing impaired and speech impaired individuals, this bill does more than simply provide better access. It promises that the Federal communications system will keep pace with technological improvements.

H.R. 4992 makes the General Services Administration, the GSA, responsible for implementing full access. This makes sense. The GSA will be procuring the Federal Government's new telecommunications system; access devices for the hearing and speech impaired will have to work within that system.

H.R. 4992 contains other provisions which will improve access to the Federal Government. The current TDD relay system will be continued—and expanded. The Federal Communications Commission, the FCC, will complete its inquiry regarding an interstate TDD relay system. And in conjunction with the FCC, the GSA shall promote research to reduce the cost of access to the Government for hearing impaired and speech impaired individuals.

In addition, H.R. 4992 will make the system more user friendly by requiring the GSA to maintain and publish a directory of access numbers for TDD and other devices. A standardized logo will be created to signify the presence of TDD or other access devices.

Mr. Speaker, passage of H.R. 4992 is especially important to me. It's important because I know firsthand the marvelous accomplishments and contributions that hearing impaired and speech impaired individuals make to this country.

I know of these achievements because many of these achievers reside in my district. Most of them don't vote there, but they live there. These wonderful folks are the young men and women who study at the National Technical Institute for the Deaf. The institute is part of the Rochester Institute of Technology. It's a fine school with a challenging curriculum. Its students are on the cutting edge of technology. Armed with the education and experience gained at the institute, graduates are helping the best of our companies solve their engineering problems.

Because of this legislation's importance, I am proud that the Government Operations Committee, where I serve as ranking member, had the opportunity to help mold the final product.

Mr. Speaker, H.R. 4992 is legislation that every Member should support. I urge its passage.

Mr. WOLF. Mr. Speaker, I rise in support of H.R. 4992, a bill to expand telecommunications systems within the Federal Government. I also want to extend my appreciation to my colleque, Representative STEVE GUNDERSON, for introducing this important legislation.

By improving the Federal Government's telecommunications system, the hearing and speech impaired community will have full and direct access to the Federal Government. With implementation of this five-part program, the frustrations the hearing and speech impaired community experience in trying to contact the Federal Government by phone will be alleviated.

Most individuals take their communication abilities for granted. Over 24 million Americans are hearing impaired and need the kind of assistance that H.R. 4992 will provide. I urge my colleagues to vote for this bill which will take the hearing and speech impaired community a giant step forward in establishing easier and direct communication with the Federal Government.

Mr. BARTLETT. Mr. Speaker, I rise in support of H.R. 4992 which will expand our national telecommunications system for the benefit of hearing-impaired and speech-impaired individuals so that they will have full and equal communication access to the Federal Government.

Hearing-impaired individuals use telecommunication devices for the deaf [TDD's] to communicate directly by telephone with another individual using a TDD or communicate with a hearing-impaired individual using an operator relay system. Currently, the Federal

Government serves TDD users through a demonstration pilot relay system which handles TDD calls for the entire Federal system. Messages are received by the relay system from TDD users and forwarded to the appropriate Federal agency for a response. Unfortunately, this temporary relay system does not allow TDD users to communicate directly with all Federal agencies.

H.R. 4992 requires the GSA to establish and implement a telecommunications relay system designed to increase access to governmental services and benefits for TDD users to communicate with and within Federal agencies and departments. By expanding telephone access, H.R. 4992 will provide job opportunities for hearing-impaired and speech-impaired individuals. For example, the Government may have a job opening which requires that telephone calls be made regularly to hearing individuals within the Federal Government. Without a relay system, a potential employer may be reluctant to hire a hearing-impaired individual for the job because he may not believe that the hearing-impaired applicant may be able to fulfill this basic requirement of the job. With the relay system, however, that hearing-impaired employee can be considered for the position and will not be rejected because he does not have access to hearing persons via the telephone.

In addition, H.R. 4992 will continue the existing operator relay system and provide for its expansion; publish a TDD directory of Government access numbers; adopt a logo identifying TDD stations; and require that the Congress install TDD's and assure their accessibility in congressional offices as soon as practicable.

H.R. 4992 will provide 24 million hearing-impaired and 2.8 million speech-impaired Americans with telephone access to the Federal Government so that they can communicate their concerns about Federal policies, find out about Federal services, and compete equally for Federal jobs. I urge my colleagues to support this legislation.

□ 1300

Mr. RINALDO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MARKEY. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts [Mr. MARKEY] that the House suspend the rules and pass the bill, H.R. 4992, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MARKEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 4992, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

NATIONAL NUTRITION MONITORING AND RELATED RESEARCH ACT OF 1988

Mr. ROE. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1081) to establish a coordinated National Nutrition Monitoring and Related Research Program, and a comprehensive plan for the assessment of the nutritional and dietary status of the U.S. population and the nutritional quality of the U.S. food supply, with provision for the conduct of scientific research and development in support of such program and plan as amended.

The Clerk read as follows:

S. 1081

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "National Nutrition Monitoring and Related Research Act of 1988".

PURPOSES

SEC. 2. The purposes of this Act are to—

(1) make more effective use of Federal and State expenditures for nutrition monitoring, and enhance the performance and benefits of current Federal nutrition monitoring and related research activities;

(2) establish and facilitate the timely implementation of a coordinated National Nutrition Monitoring and Related Research Program, and thereby provide a scientific basis for the maintenance and improvement of the nutritional status of the people of the United States and the nutritional quality (including, but not limited to, nutrient and non-nutritive content) of food consumed in the Ujited States;

(3) establish and implement a comprehensive plan for the National Nutrition Monitoring and Related Research Program to assess, on a continuing basis, the dietary and nutritional status of the people of the United States and the trends with respect to such status, the state of the art with respect to nutrition monitoring and related research, future monitoring and related research priorities, and the relevant policy implications;

(4) establish and improve the quality of national nutritional and health status data and related data bases and networks, and stimulate research necessary to develop uniform indicators, standards, methodologies, technologies, and procedures for nutrition monitoring;

(5) establish a central Federal focus for the coordination, management, and direction of Federal nutrition monitoring activities;

(6) establish mechanisms for addressing the nutrition monitoring needs of Federal, State, and local governments, the private sector, scientific and engineering communities, health care professionals, and the public in support of the foregoing purposes; and

(7) provide for the conduct of such scientific research and development as may be necessary or appropriate in support of such purposes.

DEFINITIONS

SEC. 3. As used in this Act—

(1) the term "nutrition monitoring and related research" means the set of activities necessary to provide timely information about the role and status of factors that bear on the contribution that nutrition makes to the health of the people of the United States, including—

(A) dietary, nutritional, and health status measurements;

(B) food consumption measurements;

(C) food composition measurements and nutrient data banks;

(D) dietary knowledge and attitude measurements; and

(E) food supply and demand determinations;

(2) the term "coordinated program" means the National Nutrition Monitoring and Related Research Program established by section 101(a);

(3) the terms "Interagency Board for Nutrition Monitoring and Related Research" and "Board" mean the Federal coordinating body established by section 101(c);

(4) the term "comprehensive plan" means the comprehensive plan prepared under section 103;

(5) the term "Joint Implementation Plan for a Comprehensive National Nutrition Monitoring System" means the plan of that title submitted to Congress in September 1981 by the Department of Agriculture and the Department of Health and Human Services, under section 1428 of the Food and Agriculture Act of 1977 (7 U.S.C. 3178);

(6) the terms "National Nutrition Monitoring Advisory Council" and "Council" mean the advisory body established under section 201;

(7) the term "Secretaries" means the Secretary of Agriculture and the Secretary of Health and Human Services, acting jointly;

(8) the term "local government" means a local general unit of government or local educational unit; and

(9) the term "nutritional quality" means—

(A) the appropriate levels of individual nutrients in the diet;

(B) the appropriate levels between nutrients in the diet;

(C) the bio-availability of nutrients such as absorption, digestion, and utilization; and

(D) the nutritional importance of non-nutrient substances such as fiber, phytate, and such substances that are naturally found in the food supply.

TITLE I—NUTRITION MONITORING AND RELATED RESEARCH

ESTABLISHMENT OF THE COORDINATED PROGRAM

SEC. 101. (a) There is established a ten-year coordinated program, to be known as the National Nutrition Monitoring and Related Research Program, to carry out the purposes of this Act.

(b) The Secretaries shall be responsible for the implementation of the coordinated program.

(c) To assist in implementing the coordinated program, there is established an Interagency Board for Nutrition Monitoring and Related Research, of which an Assistant Secretary in the Department of Agriculture (designated by the Secretary of Agriculture) and an Assistant Secretary in the Department of Health and Human Services (designated by the Secretary of Health and Human Services) shall be joint chairpersons. The remaining membership of the

Board shall consist of additional representatives of Federal agencies, as determined appropriate by the joint chairpersons of the Board. The Board shall meet no less often than once every three months for the two-year period following the date of the enactment of this Act, and when appropriate thereafter.

(d) To establish a central focus and coordinator for the coordinated program, the Secretaries may appoint an Administrator of Nutrition Monitoring and Related Research. The Administrator shall—

(1) be an individual who is eminent in the field of nutrition monitoring and related areas, and be selected on the basis of the established record of expertise and distinguished service of such individual; and

(2) administer the coordinated program with the advice and counsel of the joint chairpersons of the Board, serve as the focal point for the coordinated program, and serve as the Executive Secretary for the National Nutrition Monitoring Advisory Council.

FUNCTIONS OF THE SECRETARIES

SEC. 102. (a) The Secretaries, with the advice of the Board, shall—

(1) establish the goals of the coordinated program and identify the activities required to meet such goals, and identify the responsible agencies with respect to the coordinated program;

(2) update the Joint Implementation Plan for a Comprehensive National Nutrition Monitoring System, and integrate it into the coordinated program;

(3) ensure the timely implementation of the coordinated program and the comprehensive plan prepared under section 103;

(4) include in the coordinated program and the comprehensive plan a competitive grants program, in accordance with the provisions of this Act, to encourage and assist the conduct, by Federal and non-Federal entities on an appropriate matching funds basis, of research (including research described in section 103(a)(3)) that will accelerate the development of uniform and cost-effective standards and indicators for the assessment and monitoring of nutritional and dietary status and for relating food consumption patterns to nutritional and health status;

(5) include in the coordinated program and the comprehensive plan a grants program, in accordance with the provisions of this Act, to encourage and assist State and local governments in developing the capacity to conduct monitoring and surveillance of nutritional status, food consumption, and nutrition knowledge and in using such capacity to enhance nutrition services (including activities described in sections 103(a)(5) and 103(b)(9));

(6) include in the coordinated program each fiscal year an annual interagency budget for each fiscal year of the program;

(7) foster productive interaction, with respect to nutrition monitoring and related research, among Federal efforts, State and local governments, the private sector, scientific communities, health professionals, and the public;

(8) contract with a scientific body, such as the National Academy of Sciences or the Federation of American Societies for Experimental Biology, to interpret available data analyses, and publish every two years, or more frequently if appropriate, a report, on the dietary, nutritional, and health-related status of the people of the United States and the nutritional quality (including, but not limited to, nutrient and non-nutrititve content) of food consumed in the United States; and

(9)(A) foster cost recovery management techniques in the coordinated program; and

(B) impose appropriate charges and fees for publications of the coordinated program, including print and electronic forms of data and analysis, and use the proceeds of such charges and fees for purposes of the coordinated program (except that no such charge or fee imposed on an educational or other nonprofit organization shall exceed the actual costs incurred by the coordinated program in providing the publications involved).

(b) The Secretaries shall submit to the President for transmittal to Congress by January 15 of each alternate year, beginning with January 15 following the date of the enactment of this Act, a biennial report that shall—

(1) evaluate the progress of the coordinated program;

(2) summarize the results of such coordinated program components as are developed under section 103;

(3) describe and evaluate any policy implications of the analytical findings in the scientific reports required under subsection (a)(8), and future priorities for nutrition monitoring and related research;

(4) include in full the annual reports of the Council provided for in section 202; and

(5) include an executive summary of the report most recently published by the scientific body, as provided for in subsection (a)(8).

DEVELOPMENT OF THE COMPREHENSIVE PLAN FOR THE NATIONAL NUTRITION MONITORING AND RELATED RESEARCH PROGRAM

SEC. 103. (a) The Secretaries, with the advice of the Board, shall prepare and implement a comprehensive plan for the coordinated program which shall be designed to—

(1) assess, collate data with respect to, analyze, and report, on a continuous basis, the dietary and nutritional status of the people of the United States, and the trends with respect to such status (dealing with such status and trends separately in the case of preschool and school-age children, pregnant and lactating women, elderly individuals, low income populations, blacks, Hispanics, and other groups, at the discretion of the Secretaries), the state of the art with respect to nutrition monitoring and related research, future monitoring and related research priorities, and relevant policy implications of findings with respect to such status, trends, and research;

(2) sample representative subsets of identifiable low income populations (such as Native Americans, Hispanics, or the homeless), and assess, analyze, and report, on a continuous basis, for a representative sample of the low-income population, food and household expenditures, participation in food assistance programs, and periods experienced when nutrition benefits are not sufficient to provide an adequate diet;

(3) sponsor or conduct research necessary to develop uniform indicators, standards, methodologies, technologies, and procedures for conducting and reporting nutrition monitoring and surveillance;

(4) develop and keep updated a national dietary and nutritional status data bank, a nutrient data bank, and other data resources as required;

(5) assist State and local government agencies in developing procedures and networks for nutrition monitoring and surveillance; and

(6) focus the activities of the Federal agencies.

(b) The comprehensive plan, at a minimum, shall include components to—

(1) maintain and coordinate the National Health and Nutrition Examination Survey (NHANES) and the Nationwide Food Consumption Survey (NFCS);

(2) provide, by 1990, for the continuous collection, processing, and analysis of nutritional and dietary status data through stratified probability samples of the people of the United States designed to permit statistically reliable estimates of high-risk groups and geopolitical or geographic areas, and to permit accelerated data analysis (including annual analysis, as appropriate);

(3) maintain and enhance other Federal nutrition monitoring efforts such as the Centers for Disease Control Nutrition Surveillance Program and the Food and Drug Administration Total Diet Study, and, to the extent possible, coordinate such efforts with the surveys described in paragraphs (1) and (2);

(4) incorporate, in survey design, military and (where appropriate) institutionalized populations;

(5) complete the analysis and interpretation of the data sets from the surveys described in paragraph (1) collected prior to 1984 within the first year of the comprehensive plan;

(6) improve the methodologies and technologies, including those suitable for use by States and localities, available for the assessment of nutritional and dietary status and trends;

(7) develop uniform standards and indicators for the assessment and monitoring of nutritional and dietary status, for relating food consumption patterns to nutritional and health status, and for use in the evaluation of Federal food and nutrition intervention programs;

(8) establish national baseline data and procedures for nutrition monitoring;

(9) provide scientific and technical assistance, training, and consultation to State and local governments for the purpose of—

(A) obtaining dietary and nutrition status data;

(B) developing related data bases; and

(C) promoting the development of regional, State, and local data collection services to become an integral component of a national nutritional status network;

(10) establish mechanisms to identify the needs of users of nutrition monitoring data and to encourage the private sector and the academic community to participate in the development and implementation of the comprehensive plan and contribute relevant data from non-Federal sources to promote the development of a national nutritional status network;

(11) compile an inventory of Federal, State, and nongovernment activities related to nutrition monitoring and related research;

(12) focus on national nutrition monitoring needs while building on the responsibilities and expertise of the individual membership of the Board;

(13) administer the coordinated program, define program objectives, priorities, oversight, responsibilities, and resources, and define the organization and management of the Board and the Council; and

(14) provide a mechanism for periodically evaluating and refining the coordinated program and the comprehensive plan that facilitates cooperation and interaction by State and local governments, the private

sector, scientific communities, and health care professionals, and that facilitates coordination with non-Federal activities.

(c) The comprehensive plan shall—

(1) allocate all of the projected functions and activities under the coordinated program among the various Federal agencies and offices that will be involved;

(2) contain an affirmative statement and description of the functions to be performed and activities to be undertaken by each of such agencies and offices in carrying out the coordinated program; and

(3) constitute the basis on which each agency participating in the coordinated program requests authorizations and appropriations for nutrition monitoring and related research during the 10-year period of the program.

(d)(1) Within 12 months after the date of enactment of this Act, the Secretaries shall publish in the Federal Register a proposed comprehensive plan for public review for a comment period of no less than 60 days.

(2) Within 60 days after the comment period under paragraph (1) expires, and after considering any comments received, the Secretaries shall submit to the President, for submission to the Congress and for publication in the Federal Register, the final comprehensive plan.

(e) Nothing in this section may be construed as modifying, or as authorizing the Secretaries or the comprehensive plan to modify, any provision of an appropriation Act (or any other provision of law relating to the use of appropriated funds) that specifies—

(1) the department or agency to which funds are appropriated; or

(2) the obligations of such department or agency with respect to the use of such funds.

IMPLEMENTATION OF THE COMPREHENSIVE PLAN

SEC. 104. (a) The comprehensive plan shall be carried out during the period ending with the close of the ninth fiscal year following the fiscal year in which the comprehensive plan is submitted in its final form under section 103(d)(2), and shall be—

(1) carried out in accord with, and meet the program objectives specified in, section 103(a) and paragraphs (1) through (11) of section 103(b);

(2) managed in accord with paragraphs (12) through (14) of section 103(b);

(3) carried out, by the Federal agencies involved, in accord with the allocation of functions and activities under section 103(c); and

(4) funded by appropriations made to such agencies for each fiscal year of the program.

(b) Nothing in this title may be construed to grant any new regulatory authority or to limit, expand, or otherwise modify any regulatory authority under existing law, or to establish new criteria, standards, or requirements for regulation under existing law.

SCIENTIFIC RESEARCH AND DEVELOPMENT IN SUPPORT OF THE COORDINATED PROGRAM AND COMPREHENSIVE PLAN

SEC. 105. The Secretaries shall coordinate the conduct of, and may contract with the National Science Foundation, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, the National Institute of Standards and Technology, and other suitable Federal agencies, for such scientific research and development as may be necessary or appropriate in support of the coordinated program and the comprehensive plan and in furtherance of the purposes and objectives of this Act.

ANNUAL BUDGET SUBMISSION

SEC. 106. (a) The President, at the same time as the submission of the annual budget to the Congress, shall submit a report to the Committees on Agriculture and Science, Space, and Technology of the House of Representatives and to the Committees on Agriculture, Nutrition, and Forestry and Governmental Affairs of the Senate on expenditures required for carrying out the coordinated program and implementing the comprehensive plan. The report shall detail, for each of the agencies that are allocated responsibilities under the coordinated program—

(1) the amounts spent on the coordinated program during the fiscal year most recently ended;

(2) the amounts expected to be spent during the current fiscal year; and

(3) the amounts requested in the annual budget for the fiscal year for which the budget is being submitted.

(b) Nothing in this title is intended to either—

(1) authorize the appropriation or require the expenditure of any funds in excess of the amount of funds that would be authorized or expended for the same purposes in the absence of the coordinated program; or

(2) limit the authority of any of the participating agencies to request and receive funds for such purposes (for use in the coordinated program) under other laws.

TITLE II—NATIONAL NUTRITION MONITORING ADVISORY COUNCIL

ESTABLISHMENT OF THE COUNCIL

SEC. 201. (a)(1) The President shall establish, within ninety days after the date of the enactment of this Act, a National Nutrition Monitoring Advisory Council. The Council shall assist in carrying out the purposes of this Act, provide scientific and technical advice on the development and implementation of the coordinated program and comprehensive plan, and serve in an advisory capacity to the Secretaries.

(2) The Council shall consist of nine voting members, of whom—

(A) five members shall be appointed by the President; and

(B) four members shall be appointed by Congress, of whom—

(i) one shall be appointed by the Speaker of the House of Representatives;

(ii) one shall be appointed by the minority leader of the House of Representatives;

(iii) one shall be appointed by the President pro tempore of the Senate; and

(iv) one shall be appointed by the minority leader of the Senate.

(3) The Council also shall include the joint chairpersons of the Board as ex officio nonvoting members.

(b) Each person appointed to the Council shall be—

(1) eminent in the field of administrative dietetics, clinical dietetics, community nutrition research, public health nutrition, nutrition monitoring and surveillance, nutritional biochemistry, food composition and nutrient analysis, health statistics management, epidemiology, food technology, clinical medicine, public administration, health education, nutritional anthropology, food consumption patterns, food assistance programs, agriculture, or economics; and

(2) selected solely on the basis of an established record of distinguished service.

(c) The persons appointed to the Council by the President shall include—

(1) one member who is a director of a nutrition research unit that is primarily supported by Federal funds, and who has a specialized interest in nutrition monitoring;

(2) one member who is an employee of a State government and has a specialized interest in nutrition monitoring;

(3) one member who is an employee of a local government and has a specialized interest in nutrition monitoring; and

(4) one member who is an appointed representative of the Food and Nutrition Board, National Academy of Sciences.

(d) The Council membership, at all times, shall have representatives from various geographic areas, the private sector, academia, scientific and professional societies, agriculture, minority organizations, and public interest organizations.

(e) The Chairperson of the Council shall be elected from and by the Council membership. The term of office of the Chairperson shall not exceed five years. If a vacancy occurs in the Chairpersonship, the Council shall elect a member to fill such vacancy.

(f) The term of office of each of the voting members of the Council shall be five years, except that of the five members first appointed by the President, two shall be appointed for a term of two years, two for terms of three years, and one for a term of four years, as designated by the President at the time of appointment. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor of such member was appointed shall be appointed for the remainder of such term. No member shall be eligible to serve continuously for more than two consecutive terms.

(g) The initial members of the Council shall be appointed or designated not later than ninety days after the date of the enactment of this Act.

(h) The Council shall meet on a regular basis at the call of the Chairperson, or on the written request of one-third of the members. A majority of the appointed members of the Council shall constitute a quorum.

(i) Appointed members of the Council may not be employed by the Federal Government and shall be allowed travel expenses as authorized by section 5703 of title 5, United States Code.

(j) The Administrator of Nutrition Monitoring and Related Research (if appointed under section 101(d)) shall serve as the Executive Secretary of the Council.

(k) The Council shall terminate 10 years after the final comprehensive plan is prepared under section 103.

FUNCTIONS OF THE COUNCIL

SEC. 202. The Council shall—

(1) provide scientific and technical advice on the development and implementation of all components of the coordinated program and the comprehensive plan;

(2) evaluate the scientific and technical quality of the comprehensive plan and the effectiveness of the coordinated program;

(3) recommend to the Secretaries, on an annual basis, means of enhancing the comprehensive plan and the coordinated program; and

(4) submit to the Secretaries annual reports that—

(A) shall contain the components specified in paragraphs (2) and (3); and

(B) shall be included in full in the biennial reports of the Secretaries to the President for transmittal to Congress under section 102(b).

TITLE III—DIETARY GUIDANCE

ESTABLISHMENT OF DIETARY GUIDELINES

SEC. 301. (a)(1) By January 1, 1990, and at least every five years thereafter, the Secretaries shall publish a report entitled "Dietary Guidelines For Americans". Each such report shall contain nutritional and dietary information and guidelines for the general public, and shall be promoted by each Federal agency in carrying out any Federal food, nutrition, or health program.

(2) The information and guidelines contained in each report required under paragraph (1) shall be based on the preponderance of the scientific and medical knowledge which is current at the time the report is prepared.

(b)(1) Any Federal agency which proposes to issue any dietary guidance for the general population or identified population subgroups, shall submit the text of such guidance to the Secretaries sixty days before the publication of the notice of availability for comment required to be published in the Federal Register under this section.

(2)(A) During the sixty-day review period established in paragraph (1), the Secretaries shall review and approve or disapprove such guidance to assure that the guidance either is consistent with the "Dietary Guidelines for Americans" or that the guidance is based on medical or new scientific knowledge which is determined to be valid by the Secretaries. If after such sixty-day period neither Secretary notifies the proposing agency that such guidance has been disapproved, then such guidance may be issued by the agency. If both Secretaries disapprove of such guidance, it shall be returned to the agency. If either Secretary finds that such guidance is inconsistent with the "Dietary Guidelines for Americans" and so notifies the proposing agency, such agency shall follow the procedures set forth in this subsection before disseminating such proposal to the public in final form. If after such sixty-day period, either Secretary disapproves such guidance as inconsistent with the "Dietary Guidelines for Americans" the proposing agency shall—

(i) publish a notice in the Federal Register of the availability of the full text of the proposal and the preamble of such proposal which shall explain the basis and purpose for the proposed dietary guidance;

(ii) provide in such notice for a public comment period of thirty days; and

(iii) make available for public inspection and copying during normal business hours any comment received by the agency during such comment period.

(B) After review of comments received during the comment period either Secretary may approve for dissemination by the proposing agency a final version of such dietary guidance along with an explanation of the basis and purpose for the final guidance which addresses significant and substantive comments as determined by the proposing agency.

(C) Any such final dietary guidance to be disseminated under subparagraph (B) shall be announced in a notice published in the Federal Register, before public dissemination along with an address where copies may be obtained.

(D) If after the thirty-day period for comment as provided under subparagraph (A)(ii), both Secretaries disapprove a proposed dietary guidance, the Secretaries shall notify the Federal agency submitting such guidance of such disapproval, and such guidance may not be issued, except as provided in subparagraph (E).

(E) If a proposed dietary guidance is disapproved by both Secretaries under subparagraph (D), the Federal agency proposing such guidance may, within fifteen days after receiving notification of such disapproval under subparagraph (D), request the Secretaries to review such disapproval. Within fifteen days after receiving a request for such a review, the Secretaries shall conduct such review. If, pursuant to such review, either Secretary approves such proposed dietary guidance, such guidance may be issued by the Federal agency.

(3) For purposes of this subsection, the term "dietary guidance for the general population" does not include any rule or regulation issued by a Federal agency.

(4) For purposes of this subsection, the term "identified population subgroups" shall include, but not be limited to, groups based on factors such as age, sex, or race.

(c) This section does not place any limitations on—

(1) the conduct or support of any scientific or medical research by any Federal agency;

(2) the presentation of any scientific or medical findings or the exchange or review of scientific or medical information by any Federal agency; or

(3) the authority of the Food and Drug Administration under the provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq.).

NUTRITION TRAINING REPORT

SEC. 302. The Secretary of Health and Human Services, in consultation with the Secretaries of Agriculture, Education, and Defense, and the Director of the National Science Foundation, shall submit, within one year after the date of enactment of this Act, a report describing the appropriate Federal role in assuring that students enrolled in United States medical schools and physicians practicing in the United States have access to adequate training in the field of nutrition and its relationship to human health.

TITLE IV—DRUG-FREE WORKPLACE

DRUG-FREE WORKPLACE

SEC. 401. (a) No department, agency, or instrumentality of the United States receiving funds authorized to be appropriated under this Act for fiscal years 1989 through 1999, or under any other Act authorizing appropriations for such department, agency, or instrumentality for fiscal years 1989 through 1999, shall obligate or spend any such funds, unless such department, agency, or instrumentality has in place, and will continue to administer in good faith, a written policy designed to ensure that all of its work places are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act) by the officers and employees of such department, agency, or instrumentality.

(b) No funds so authorized to be appropriated to any such department, agency, or instrumentality shall be available for payment in connection with any grant, contract, or other agreement, unless the recipient of such grant, contract, or party to such agreement, as the case may be, has in place and will continue to administer in good faith a written policy, adopted by such recipient, contractor, or party's board of directors or other governing authority, satisfactory to the head of the department, agency, or instrumentality making such payment, designed to ensure that all of the workplace of such recipient, contractor, or party are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act) by the officers and employees of such recipient, contractor, or party.

The SPEAKER pro tempore. Is a second demanded?

Mr. LUJAN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New Jersey [Mr. Roe] will be recognized for 20 minutes and the gentleman from New Mexico [Mr. Lujan] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. Roe].

Mr. ROE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I strongly support S. 1081, the National Nutrition Monitoring and Related Research Act of 1988, as amended by the Committee on Science, Space, and Technology. S. 1081 was introduced by Senator Jeff Bingaman of New Mexico on April 23, 1987, and on the same day an identical bill, H.R. 2151, was introduced by our colleagues Congressmen Buddy McKay of Florida, George E. Brown, Jr., of California, and Doug Walgren of Pennsylvania. Each of these gentlemen have given a great deal of effort to creating a legislative vehicle which is supported by a broad cross section of organizations involved in the collection, the analysis, and the use of nutrition and health data.

I want also to recognize the spirit of cooperation which this bill has enjoyed in the Science, Space, and Technology Committee under the leadership of Mr. Lujan of New Mexico, the ranking Republican on the committee and Mr. Boehlert of New York, the ranking Republican on the Subcommittee on Science, Research and Technology.

I wish to especially recognize the assistance of our colleagues on the Agriculture Committee, the chairman of the Agriculture Committee, Mr. E de la Garza of Texas, the chairman of the Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition, Mr. Panetta of California, and the ranking Republican of that subcommittee, Mr. Emerson of Missouri. Mr. Brown of California has given double service to this important legislation, as it was referred to the Subcommittee on Department Operations, Research, and Foreign Agriculture which he chairs and to the Subcommittee on Science, Research and Technology of which he is a longstanding member.

S. 1081 was referred to the Committee on Agriculture as well as the Committee on Science, Space, and Technology. To expedite consideration of the bill, the Agriculture Committee has graciously deferred consideration of the legislation before us. This action should not be considered in any respect to waive jurisdiction with regard to the issues addressed in the bill. I ask that Mr. DE LA GARZA's letter regarding this action be made a part of the record. If time had permitted, prior to filing the report, Mr. PANETTA of California, Mr. EMERSON of Missouri, and Mr. JEFFORDS of Vermont would like to have been recorded as original cosponsors of the bill.

Although S. 1081 has been reported by the Committee on Science, Space, and Technology and consideration deferred by the Committee on Agriculture, it is clear that the subject matter of this legislation is also directly within the jurisdiction of the Committee on Energy and Commerce. I particularly want to recognize the cooperation of Mr. DINGELL of Michigan, the distinguished chairman of the Committee on Energy and Commerce, and to recognize his committee's interest as well as express our appreciation for the expedited consideration that committee has given this bill. I ask that Mr. DINGELL's letter regarding this action be made a part of the record.

The amendment in the nature of a substitute before us has been worked out and agreed upon by the Committee on Agriculture and the Committee on Science, Space, and Technology in the House and the Committee on Governmental Affairs and the Committee on Agriculture, Nutrition, and Forestry in the Senate. The amendment clarifies terminology and makes minor technical changes. At this time, I would like to recognize the leadership of the Senate Agriculture Committee and the Senate Governmental Affairs Committee for their efforts in shaping this legislation into an excellent public policy.

A proposal for a comprehensive national nutrition monitoring system was called for in Public Law 95-113, the Food and Agriculture Act of 1977. Over the past 10 years, such a system has been planned and replanned without defining sequential priorities and resources required. Components of the system in place prior to 1977 have been continued and modified in a piecemeal fashion, and other components have been endlessly delayed. Today, the United States still does not have in place a strategic and coordinated system to assess and guide the nutritional health of the public or to establish priorities for the allocation of limited budgetary resources for federal nutrition monitoring activities.

Data resulting from a comprehensive national nutrition monitoring system will not only provide imperative early warning signals and trends regarding the nutritional status of the public, but will provide information essential to the establishment of prudent national nutrition policies, human nutrition research agendas, nutrition education guidelines, as well as food, nutrition, and health care intervention programs designed to enhance the quality of life of our citizens. Without accurate and timely nutritional status data, neither the scientific community, the executive branch, nor the legislative branch has objective data on which to determine Federal priorities and the appropriate expenditures for nutrition related activities.

The U.S. Department of Agriculture opposes S. 1081, a proposal for the development and implementation of a comprehensive and coordinated national nutrition monitoring system, on three major points: First, the lack of an authorization of appropriations; second, the requirement of a mechanism to coordinate and fix responsibility, viewed to be cumbersome and costly; and third, that the progress of current efforts is adequate. Let me address the intent of the bill on each of these issues:

FUNDING

The bill does not contain authorization of appropriations. However, section 106 requires each agency committed to implementing the coordinated program and comprehensive plan, to request annual funding levels, to support each agency's commitment to the plan, consistent with an interagency budget developed by the executive branch. This provision gives the executive branch the flexibility to propose both the priorities and the level of effort warranted and required by those priorities. Likewise, this provision gives the public and the legislative branch, for the first time ever, the opportunity to evaluate the priorities and the appropriateness of the budget request within the annual congressional authorization and appropriation process.

In fact, the number one purpose of S. 1081 is to "make more effective use of Federal and State expenditures for nutrition monitoring, and enhance the performance and benefits of current Federal nutrition monitoring and related research activities." USDA maintains that the requirements of this bill, to develop programs to stimulate methods research and to assist State and local governments in developing the capacity to conduct monitoring and surveillance of nutritional status, would drain money away from funds appropriated for other programs. They apparently do not realize that investment in enhanced methods research and assistance to State and local governments could make extremely significant contributions to reduce the cost and increase the benefits of the current system.

COORDINATION STRUCTURE

The Administration has contended that the requirement of a Federal Interagency Board for Nutrition Monitoring and Related Research and a non-Federal National Nutrition Monitoring Advisory Council are cumbersome and costly. However, several interagency committees on nutrition monitoring and human nutrition research are currently in place. S. 1081 gives the joint chairpersons of the Board the flexibility to delegate the functions designated to the Board to an existing intergovernmental coordinating mechanism, such as the Interagency Committee on Human Nutrition Research.

A National Nutrition Monitoring Advisory Council is established to represent the scientific and technical views and recommendations of a broad range of experts, and to serve as a communication link among the public and private sectors, the executive branch and the legislative branch. This provision simply ensures the nutrition monitoring plan and program will have a non-Federal advisory group to provide recommendations on the development of the plan and on evaluation of the outcomes. In my view, the availability of scientific and technical advice on an activity as complex and underdeveloped as nutrition monitoring is not costly, but rather cost-effective. The benefits could far outweigh the cost of the investment.

CURRENT PROGRESS

The administration has also expressed concern that the sponsors of this bill are unaware of the progress which has been made and that the sponsors continue to cite problems prior to 1981. On the other hand, they admit that much of the progress has resulted from the pressure of frequent hearings and directives by the House Science, Space, and Technology Committee and the Agriculture Committee, as well as the threat of a legislative mandate as proposed in S. 1081.

The administration has indeed implemented several provisions of the bill, in part to illustrate that the bill is no longer necessary. I believe the reverse is true. Let me give a few examples.

In 1983, USDA and DHHS contracted with the National Academy of Sciences to review the uses of food consumption data. Unfortunately, the study focused only on dietary intake data and did not include the related biochemical data used to determine nutritional status.

A Joint Nutrition Monitoring Evaluation Committee was established and a report issued in July 1986. The report included 14 recommendations, many of which remain to be implemented. However, these recommendations are in concert with the proposals set forth in S. 1081, and in many cases are identical.

These examples illustrate that some progress has been made. They also illustrate the need for legislation to provide the public and Congress alike with an operable plan to be used as a guide for monitoring future programs, setting budgetary priorities, and ensuring that a cost-effective national nutrition monitoring system which takes advantage of appropriate recommendations is in place.

I urge my colleagues to support S. 1081, as amended. We owe our constituents a system which can determine the nutritional health and well-being of Americans and guide health promotion nationwide. Establishing an effective and efficient nutrition monitoring system as a national priority is long overdue.

COMMITTEE ON AGRICULTURE,
Washington, DC, October 4, 1988.
Hon. ROBERT A. ROE,
Chairman, Committee on Science, Space, and Technology, Washington, DC.

DEAR MR. CHAIRMAN: On October 3, the Committee on Science, Space, and Technology ordered reported S. 1081, the National Nutrition Monitoring and Related Research Act of 1988, with an amendment in the nature of a substitute. You have requested that this bill be scheduled for floor consideration under suspension of the rules on Wednesday, October 5, 1988.

As you know, S. 1081 was referred jointly to the Committee on Agriculture and the Committee on Science, Space, and Technology.

I have reviewed S. 1081 as reported by your Committee, and I am agreeable to deferring consideration of the substitute legislation by the Committee on Agriculture so that the bill can be considered expeditiously by the House. I do so without in any respect waiving jurisdiction with regard to the issues addressed in the bill. Should any provisions of the bill become an issue in the Senate, I expect the Committee on Agriculture to be represented in any meetings or conference that may be held.

Please make this letter a part of the record during consideration of S. 1081 by the House.

Sincerely,
E (KIKA) DE LA GARZA,
Chairman.

COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, October 6, 1988.
Hon. ROBERT ROE,
Chairman, Committee on Science, Space, and Technology, Washington, DC.

DEAR BOB: I want to congratulate Chairman Kika de la Garza, Subcommittee Chairman Doug Walgren and yourself for your efforts in moving S. 1081, the "National Nutrition Monitoring and Related Research Act of 1988," to the House Calendar. Like an earlier version in the 99th Congress (H.R. 2436) on which I corresponded with you, it is good legislation that is clearly timely.

Doug Walgren is particularly aware that the bill covers health and related matters that are of concern to our Committee. However, I have indicated to him that our review of the bill, as reported by your Committee and supported by the Committee on Agriculture which waived jurisdiction, indicates that we really have no problem with the bill and are supportive of it.

Nevertheless, we are concerned as we were in the last Congress, about changes made as a result of Senate action and would, in such case, request to be represented on any Conference. I believe that Congressman Walgren undertands this and will work with us in this regard and will make it clear when the bill is considered on the House Floor, that our jurisdiction will be recognized and preserved. Indeed, I believe, as in 1984 and 1986, a letter to be included in the floor debate and conforming these understandings will be helpful.

With best wishes.

Sincerely,
JOHN D. DINGELL,
Chairman.

Mr. LUJAN. Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, I am firmly committed to the objective of a comprehensive, well-coordinated and effective national nutrition monitoring system. I have been a supporter since the 1977 farm bill passed creating such a coordinated system. The Committee on Science, Space and Technology has conducted detailed reviews of these programs for the past four Congresses and we have followed the steady improvement and expansion in the interagency mechanisms for collecting, analyzing, and disseminating data from comprehensive national nutrition surveys. I wish to commend the Secretary of Agriculture and the Secretary of Health and Human Services for their progress in these programs.

The bill which we are considering today under suspension of the House rules requires the Secretary of Agriculture and the Secretary of Health and Human Services to develop and implement a new National Nutrition Monitoring and Related Research Program. The bill requires preparations of a new comprehensive plan that contains 14 specific elements for monitoring and reporting the dietary and nutritional status of the people of the United States. The bill includes two new grants programs to accelerate development of uniform measurement standards and to assist State and local governments in developing their capacity to conduct nutrition monitoring activities. The bill also establishes a new advisory council. There are no authorizations for appropriations in this bill—the resources to conduct these activities must come from existing programs.

One new title in this bill requires review by the Secretary of Agriculture and the Secretary of Health and Human Services of dietary information to be released in Federal publications. I endorse this new requirement as a positive step in getting sound dietary guidance to the American people.

Mr. Speaker, both Secretary of Agriculture Richard Lyng and Secretary of Health and Human Services Otis Bowen wrote the committee on October 3 stating their opposition to the enactment of S. 1081. Their objections to the legislation are numerous, and I include their two letters for printing in the RECORD, as follows:

DEPARTMENT OF AGRICULTURE,
Washington, DC, October 3, 1988.
Hon. ROBERT A. ROE,
Chairman, Committee on Science, Space and Technology, U.S. House of Representatives, Washington, DC.

DEAR CHAIRMAN: The U.S. Department of Agriculture (USDA) opposes enactment of S. 1081, as passed by the Senate, a bill "To establish a coordinated National Nutrition Monitoring and Related Research Program, and a comprehensive plan for the assessment of the nutritional and dietary status of the United States population and the nutritional quality of the United States food supply, with provision for the conduct of scientific research and development in support of such program and plan."

For the reasons stated below, we recommend that the bill not be enacted.

The bill requires the Secretary of Agriculture and the Secretary of Health and Human Services to develop and implement a National Nutrition Monitoring and Related Research Program to carry out the purpose of this Act. This program would cover a ten year period and would identify activities required and identify responsible agencies. An annual interagency budget would be required.

The bill requires the Secretaries to prepare and implement a comprehensive plan for the coordinated program that contains fourteen specific components including continuous assessment, collation, analysis and reporting of the dietary and nutritional status of the people of the United States. Specific reference is made to data collection for the population subgroups such as preschool and school-age children, pregnant and lactating women, elderly individuals, low-income population, blacks and Hispanics.

The Secretaries are directed to include two grants programs in the coordinated program and the comprehensive plan. One is a competitive grants program to accelerate development of uniform cost-effective standards and indicators for assessment and monitoring of nutritional and dietary status. The other is a grants program to encourage and assist State and local governments in developing the capacity to conduct monitoring and surveillance activities.

A management structure reporting to the Secretaries is established and includes an Administrator, an Interagency Board and a nine-member Advisory Council. The Secretaries and the Advisory Council are required to make regular reports to Congress on progress made.

In addition, a report on the dietary, nutritional and health-related status of the population and the nutritional quality of the national food supply is required every two years.

The Department of Agriculture is committed to the need for a comprehensive and well-coordinated National Nutrition Monitoring System. Such a system is currently being implemented jointly by USDA and Department of Health and Human Services (DHHS) under a plan submitted to Congress in 1981 pursuant to the Food and Agriculture Act of 1977, Public Law 95-113, and updated in 1987. Under this plan, USDA has major responsibilities in the area of nutrition monitoring as well as nutrition guidance and education.

A new type of survey, the Continuing Survey of Food Intakes by Individuals (CSFII), was begun in the Spring of 1985. A nationally representative sample of women 19 to 50 years of age at all incomes and their children 1 to 5 years of age were surveyed for their dietary intake and eating habits at regular intervals (one day's intake every two months) for twelve months. A similar survey was conducted using low-income women and their children as respondents. We are very proud of this new survey, which is the culmination of much research and improvements in methodology, as well as in the nutrient data base with which these data were interpreted.

The first results from the CSFII all income surveys were released in December 1985, less than one year from the time of collection. The last report of these data was released in March, 1988. Similar data were collected in 1986 and the reports have been issued in an equally timely manner.

Data collection for the Nationwide Food Consumption Survey (NFCS), conducted approximately every ten years and coordinated with DHHS' National Health and Nutrition Examination Survey (NHANES) has just been completed. These surveys are major components of the 1981 National Nutrition Monitoring Implementation Plan. The plan called for and has resulted in greatly increased efforts to coordinate the nutrition monitoring activities of the two departments. For example, DHHS is relying on USDA's national nutrient data base for the evaluation of dietary data collected in the Hispanic HANES and the NHANES III.

Regular meetings are being held between the appropriate staff members of the agencies to address questions of comparability between these two large surveys each with a different primary focus. The Interagency Committee for Nutrition Monitoring (ICNM) has been chartered and is chaired by the Assistant Secretary for Health (DHHS) and the Assistant Secretary for Food and Consumer Services (USDA). The first meeting of ICNM was held on July 12, 1988.

An evaluation of the nutrition status of the nation was published July 15, 1986. This study, carried out by the Joint Nutrition Monitoring Evaluation Committee, is part of the 1981 implementation plan. A second evaluation is currently underway and is expected to be completed by the end of 1989. The 1987 Operational Plan continues all of these activities and expands coordination efforts to the other monitoring activities.

Obviously, any system can be improved. However, we believe that S. 1081, as passed by the Senate, would hinder improvement of our nutrition monitoring system for the following reasons:

The management structure proposed—an Administrator and a nine-member Council, in addition to an Interagency Board would be cumbersome and likely to delay rather than enhance the achievement of the stated monitoring goals. The burden of providing adequate support to these management components would result in a reduction of staff time and resources for actual monitoring efforts.

S. 1081, as passed by the Senate, requires two grants programs to be set up and that the Secretaries coordinate appropriate scientific research and development by the National Science Foundation, National Aeronautic and Space Administration, National Oceanic and Atmospheric Administration and the National Bureau of Statistics. This detracts from other collection efforts.

There are references throughout the bill to poorly defined concepts, such as the nutritional quality of the food supply and data collection allowing reliable estimates for geopolitical or geographic areas. It is impossible to estimate new costs associated with the bill until these terms are clarified.

S. 1081, as passed by the Senate, imposes an additional paperwork burden by requiring two biennial reports, one by the Secretaries and one by a scientific body, as well as an annual report by the Advisory Council. An additional paperwork burden would also result from the need to expand current survey efforts in order to meet the coordinated program requirements.

These objectives, along with the positive results from the current nutrition monitoring system, lead us to the conclusion that S. 1081, as passed by the Senate, is unnecessary and potentially harmful in achieving our monitoring goals, which are consistent with those of the proposed legislation.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Richard E. Lyng,
Secretary.

The Secretary of
Health and Human Services,
Washington, DC, October 3, 1988.

Hon. Robert A. Roe,
Chairman, Committee on Science, Space and Technology, House of Representatives, Washington, DC.

Dear Mr. Chairman: I am writing to share our concerns about S. 1081, a bill "To establish a coordinated National Nutrition Monitoring and Related Research Program, and a comprehensive plan for the assessment of the nutritional and dietary status of the United States population and the nutrition quality of the United States food supply, with provision for the conduct of scientific research and development in support of such program and plan."

We are firmly committed to the objective of a coordinated and effective National Nutrition Monitoring System. However, we continue to believe that S. 1081 would not contribute to reaching this objective and might even impede progress. We therefore oppose enactment of S. 1081.

Our concern centers on the mandating of specific administrative structures that are unnecessary and may be counterproductive. We have taken administratively many of the steps proposed in S. 1081, and other improvements will be pursued in the future. The time and resources required to implement new administrative structures would have to be drawn form existing resources; this would impede our current nutrition monitoring data collection and analysis activities.

Further, we have several concerns about the procedures to be followed by Federal agencies publishing dietary information for the American people, including review by the Secretaries of Health and Human Services and of Agriculture of all such proposed Federal publications. We believe that this process would be so cumbersome that it would be impossible to implement and would hinder provision of appropriate dietary guidance information, not only to the general public, but especially to those subgroups of the population with special nutritional needs.

These objections, along with the positive results from the current nutrition monitoring system, lead us to the conclusion that S. 1081 is unnecessary and potentially harmful in achieving our monitoring goals, which are consistent with those of the proposed legislation.

I sincerely regret any confusion that may have resulted from comments made by one of our witnesses at your September 30 hearing. Those comments do not reflect the official position of this Department, which is to oppose enactment of S. 1081.

Sincerely,

Otis R. Bowen, M.D.,
Secretary.

Mr. Speaker, the primary objections of these two Secretaries are that the bill before the House today is unnecessary and potentially counter-productive in achieving our common nutrition monitoring goals. I find the Secretaries' arguments persuasive. As I noted before, there are many common shared objectives addressed by this legislation. I regret that in the waning hours of the 100th Congress, we must consider such legislation under expedited processes which severely limit Members' options to offer amendments which, if accepted, would move us toward accomplishment of those common goals. I must join the Secretaries in opposing this legislation in its current form.

Mr. ROE. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Pennsylvania [Mr. Walgren], chairman of the Subcommittee on Science, Research and Technology of the Committee on Science, Space, and Technology.

Mr. WALGREN. Mr. Speaker, S. 1081, the National Nutrition Monitoring and Related Research Act of 1988, is supported by a wide range of the American community. Over 45 national organizations, including not just health organizations, but food and agriculture groups, religious organizations, civic groups, public interest groups, all have consistently supported this legislation over the several years it has been under active consideration.

A similar bill passed the House in 1986 by a vote of 305 to 85.

This is a very important piece of legislation that is widely supported and certainly deserves the support of Members from both parties.

The Federal Government has been carrying out components of a national nutrition monitoring system since 1936. We now spend something more than $300 million in nutrition activities on the Federal level, and yet there is no comprehensive plan for spending that amount of money that can assure us that the left hand knows what the right is doing.

It is fundamentally important for the Congress to take responsibility for the proper and good management of all Federal programs. There are those in Congress, I am afraid, who would rather prevent the Government from properly managing its spending and then point to waste and inefficiency in the programs as the reason why Government should not be involved.

S. 1081 fixes responsibility for coordination in this area jointly to both the Department of Health and Human Services, on the one hand, and the U.S. Department of Agriculture on the other.

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We all recognize that a legislative mandate cannot create the will to put aside turf fights in any bureaucracy. Bureaucratic turf battles have clearly been the main cause of the lack of viable nutrition monitoring effort in the past. By specifically assigning responsibility to HHS and the Department of Agriculture, S. 1081 will make it possible for congressional oversight to ensure that these monitoring objectives are met and that turf considerations are put aside in the pursuit of established national priorities.

In the name of progress within the past several years, the administration has cited numerous reports and formation of committee after committee. But as the chairman of the Committee on Science, Space, and Technology has said, all we can point to is planning and replanning, and after that, almost no execution. As the National Cattlemen's Association testified: "Programs now carried out by the Federal Government, if coordinated, could provide much more useful information than they do now. As the Cattlemen's Association said, "The components of a national system already exist. But they need to be coordinated to achieve the goal of a national nutrition monitoring system."

Mr. Speaker, we will hear charges from those opposed to S. 1081 that somehow this bill will increase spending and, therefore, should be opposed. Nothing could be further from the truth. The truth is that present administration accounting cannot even tell us how much is being spent by the various agencies involved in conducting elements of nutrition related activity.

In reality, the bill provides no increased spending. It only mandates the development of a comprehensive plan for Congress and the administration to evaluate, to use to set priorities, and to serve as a basis for annual budget requests for each responsible agency.

Under the provisions of the bill, the Federal agencies could request either more or less resources. The Congress can then allocate either more or less, depending on our judgment of the value of efforts in this area.

Mr. Speaker, I would like to make special note of an amendment proposed by the gentleman from New Mexico [Mr. LUJAN] calling for a report to the Congress on the appropriate Federal role in assuring that students in U.S. medical schools and practicing physicians have adequate training in nutrition. Certainly we all are increasingly aware of the critical importance of nutrition to health. This amendment can make a great contribution to improving the health status of all Americans.

I urge all in the Congress to support S. 1081, as amended. It is time we have a means for properly managing present spending in Federal nutrition programs. Mr. Speaker, I will include a list of national organizations urging support for this bill.

The list follows:

ORGANIZATIONAL ENDORSERS OF S. 1081

The Alliance for Aging Research.

The American Academy of Pediatrics.

The American Association of Retired Persons.

The American Baptist Churches USA.

The American College of Preventive Medicine.

The American Dietetic Association.

The American Farm Bureau Federation.

The American Heart Association.

The American Home Economics Association.

The American Institute of Nutrition.

The American Meat Institute.

The American Medical Students Association.

The American Nurses Association.

The American Public Health Association.

The American School Food Service Association.

The American Society for Clinical Nutrition.

The Association of State and Territorial Health Officers.

The Association of Schools of Public Health.

The Association of Teachers of Preventive Medicine.

Bread for the World.

Center on Budget and Policy Priorities.

Coalition on Block Grants and Human Needs.

Food Research and Action Center.

Lutheran Office for Government Affairs.

Mennonite Central Committee.

National Association of WIC Directors.

National Broiler Council.

National Cattlemen's Association.

National Consumers League.

National Council of La Raza.

National Farmers' Union.

National Grange.

National Milk Producers Federation.

National Osteoporosis Foundation.

National PTA.

National Perinatal Association.

National Pork Producers Council.

National Student Campaign Against Hunger.

Public Voice for Food and Health Policy.

Service Employees International Union.

Society for Nutrition Education.

United Egg Association.

United Egg Producers.

United Fresh Fruit and Vegetable Association.

United States Conference of Local Health Officers.

World Hunger Education Service.

World Hunger Year.

Mr. LUJAN. Mr. Speaker, I yield 4 minutes to the gentleman from New York [Mr. BOEHLERT].

Mr. BOEHLERT. Mr. Speaker, this bill is based on a very old notion: We are what we eat. The more science learns about nutrition—a very young science—the truer that old adage seems.

In response to these findings, the Government has conducted massive surverys for many years to determine what we eat and what we are. But because the Agriculture Department finds out what we eat and the Department of Health and Human Services measures what we are—that is, what food does in our bodies—the data from the two sides of the equation cannot always be easily compared.

This situation has improved a great deal, largely as a result of congressional pressure. Even the agencies acknowledge this.

We need to keep up this pressure, and this bill seeks to do so in a very reasonable way.

It requires a 10-year coordinated plan outlining how nutrition monitoring will be maintained and improved; it requires that Congress be provided complete and meaningful budget information about nutrition monitoring; it requires the establishment of an advisory council to ensure the Government has access to all the ideas it can get on nutrition monitoring, and it requires that all dietary guidance issued by the Government be revised by both the Secretaries of Agriculture and Health and Human Services to maintain the Government's credibility.

It requires nothing radical, nothing unaffordable, nothing unattainable.

That was not always true. While I have always supported the bill, I worked in the last Congress to delete the most controversial sections of the bill, such as those creating new government positions. I don't believe any such problems remain.

At this point, arguments about the costs of this bill are red herrings—a food with no nutritional value. The CBO cost estimate for the bill is $500,000, and that includes money for a new position which the bill does not require. In testimony, the Agriculture Department suggested the bill could cost $100,000 to implement.

It's true that the 10-year plan will include major new undertakings, but none may be initiated without further congressional action. I don't see anything wrong with having agencies give us a sense of what they think we should be doing to improve our knowledge of nutrition.

In fact, I think the agency opposition to this bill does not actually derive from cost concerns at all, but rather from a basic human emotion—the desire to be left alone. But if Congess had left these agencies alone, we might not have the information we have already on diet and health.

At a time when Americans seem more concerned than ever about what they should eat, Congress should not hesitate to pass a bill that will help provide the public with such information.

Congress has chewed over this bill for at least three Congresses and as a result its form has become more palatable to both this body and outside groups. It's time we finally made the commitment to good nutrition—and swallow.

Mr. ROE. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from California, Mr. GEORGE BROWN, chairman of the Subcommittee on Department Operations, Research, and Foreign Agriculture of the Committee on Agriculture.

Mr. BROWN of California. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I have had the privilege of working on this bill both in my role as the chairman of the Subcommittee on Department Operations, Research, and Foreign Agriculture in the Committee on Agriculture and as a member of the Committee on Science, Space, and Technology, which has also considered it. We have wrestled with this bill for the last 10 years. I recognize, and I think all the Members will recognize, that we are dealing with one of the trickiest elements of legislation when we seek to improve the coordination between multiple departments in the Federal Government. There is always a great deal of resistance to that, and that is what we see in this legislation.

Mr. Speaker, I will tell the Members that I was honestly very disturbed at the objection of the Department of Agriculture, and I sought to make sure that none of our agriculture constituencies would be adversely affected by this legislation. Members will note on page 40 of the report a list of the endorsers of this bill. That list includes almost all of the major agriculture organizations of this country, such as the American Meat Institute, the National Broiler Council, the National Cattlemen's Association, the National Farmers' Union, the Grange, the American Farm Bureau, the National Pork Producers, the United Egg Association, and the United Fresh Fruit and Vegetable Association. These are the constituent groups that I think ought to carry very great weight in consideration of this legislation from the standpoint of its impact, on agriculture, and they all agree that this is necessary and useful legislation.

Mr. Speaker, I want to pay very particular tribute to the gentleman from Pennsylvania [Mr. WALGREN] and the gentleman from New York [Mr. BOEHLERT], the ranking member of the Subcommittee on Science, Research, and Technology of the Science Committee, who have worked so hard on this legislation, and to the gentleman from Florida [Mr. MACKAY], who is the primary sponsor. Unfortunately because of other engagements, he could not be here today. He has worked very diligently for the past several years to secure the passage of this legislation, and I know that it is for one reason only, that he is deeply concerned about economy in Government, about efficient operations of the Government, and he perceived very quickly that in the situation that we have at the present time that we were wasting a great amount of the taxpayers' dollars through lack of adequate coordination.

Mr. Speaker, we have now worked closely with all of the concerned agencies here. The bill was passed by the House once before, as the gentleman from Pennsylvania [Mr. WALGREN] indicated, by a vote of 305 to 85. Those 85 opposing votes were due to the opposition of the Departments of Agriculture and Health and Human Services. We have worked with the Departments to make optional many things they objected to. They have no legitimate basis for complaint that they have been forced into a straitjacket by this legislation.

Mr. Chairman, the issue of national nutrition monitoring has surfaced approximately every 5 years since 1940, usually in response to testimonials regarding hunger and malnutrition in the United States. Each time concerns of the public were expressed, the President, the executive branch, or the legislative branch urgently initiated short-term and piecemeal surveys to obtain objective data on the dietary and nutritional status of the population. Examples of those initiatives include: In 1967, a congressional mandate that led to the National Nutrition Survey, commonly known as the Ten-State Nutrition Survey; in 1971, a Presidential directive that resulted in a decision by the Secretary of Health, Education, and Welfare to transform the National Nutrition Surveillance Survey into what is known as the National Health and Nutrition Examination Survey [NHANES]; and in 1977, a congressional mandate, in the Food and Agriculture Act (Public Law 95-113), for a proposal for a comprehensive nutritional status monitoring system.

Unfortunately, the results of each of those surveys became available several years after the urgent situation that had prompted their mandate. Therefore, what was perceived to be an immediate public need was addressed through new policies and intervention strategies without the benefit of the survey that was designed to guide those actions.

Today, the nationwide food consumption survey [NFCS] conducted by the U.S. Department of Agriculture [USDA] and NHANES conducted by the Department of Health and Human Services [DHHS] are the cornerstones of nutrition monitoring. The attention that has been given to nutrition monitoring by the executive branch and the Congress alike has focused almost entirely on these two surveys. Other surveys, such as the total diet study conducted by the DHHS Food and Drug Administration and the consumer expenditure survey conducted by the Bureau of Labor Statistics have been ignored. There is little indication that all surveys are linked, complement rather than duplicate each other, or operate in tandem as part of a strategic, continuous, or comprehensive system.

Obtaining an assessment of the Nation's nutritional and health status is, of course, the ultimate goal of nutrition monitoring. While most of the attention has been placed on the administration of the surveys, the infrastructure necessary to improve the accuracy, use, and cost effectiveness of the resulting data has received inadequate support. Scientific methods and technology to assess nutritional and dietary status were declared costly, imprecise, and nonstandardized at hearings of the Subcommittee on Science, Research, and Technology in 1979, which I chaired, and little has changed almost 10 years later.

The Federal Government must accept the responsibility for developing the infrastructure and science base for the support of nutrition monitoring activities undertaken at both Federal and State levels. However, nutrition monitoring plans have either omitted dietary and biochemical methods research or identified these deficiencies while, at the same time, excluding them from the list of priorities necessary for completion before conducting the next series of planned surveys.

Investments in methods research will not only reduce the cost and improve the accuracy of the Nation's nutrition monitoring capabilities, but will also contribute to the health of the public as well as to the effectiveness of their health care. In addition, as the accuracy of the methods used are improved, the sample size or frequency of data collection could be reduced, thus possibly decreasing the cost of Federal and State nutrition monitoring activities. This administration and preceding administrations apparently did not realize that the purpose of investing in research is to achieve long-term gains that will improve the outcomes as well as the benefits derived from future nutrition monitoring surveys.

The dietary and biochemical methods so important to the usefulness of nutrition monitoring surveys are the same methods that are used to assess and guide the health of individuals. Thus, investments in methods research would not only make more effective use of funds expended for nutrition monitoring surveys but could also improve the tools of nutriton researchers and health-care practitioners. It is difficult for me to believe that a sustained and planned effort would not result in innovative, less invasive, and less costly indicators and measures of nutritional and health status.

In addition to USDA and DHHS, many departments support research important to nutritional status measurements. The value of the work and the results could be optimized if integrated into a coordinated plan. For example, in addition to the thousands of blood cholesterol tests conducted by NHANES, nearly 100 million of these tests are performed yearly in conjunction with the disease prevention and health promotion programs of individuals. For many years concern has been expressed about the accuracy of the test results. Reference materials with known values to assure that the analytical instruments used to measure cholesterol give reliable results were not available. Through a 10-year cooperative effort of the National Bureau of Standards and the College of American Pathologists, research to develop materials for improving the reliability of cholesterol tests was recently completed, and these standard reference materials became available for the first time in 1987.

Methods research is but one component of the infrastructure that is needed to realize a truly comprehensive system. Other components include a central Federal focus for the development, coordination, and implementation of a strategic plan and program; timely and continuous collection, analysis, and interpretation of data; technology transfer mechanisms to assist and enhance efforts of State and local government; and a forum for obtaining recommendations from scientists and data users in the public and private sectors. These are the components and goals of S. 1081, National Nutrition Monitoring and Related Research Act of 1988.

Many States are placing increased emphasis on the need for nutritional and health status data to use as a basis for establishing food and health service priorities and determining how to target the limited funds available where they are most needed. For example, in September 1986, the Governor of California signed into law the California Nutrition Monitoring Development Act of 1986. The law requires the State department of health services to "determine the availability and types of nutrition monitoring information currently available and what information is needed and to assess the feasibility of establishing a prototype data system".

At the request of the Association of State and Territorial Public Health Nutrition Directors, USDA and DHHS have begun to conduct conferences to assist States in developing dietary and nutritional status data, as required in S. 1081. If effective use of Federal and State funds for nutrition monitoring is to be realized, a "National Minimum Data Set for Nutrition" as recommended by the Association of State and Territorial Public Health Nutrition Directors, and encompassed in this bill, must also be developed. Such a data set should become an integral part of a national nutrition status network and is imperative if the potential benefits of improved nutrition are to be achieved. The administration has been reluctant to develop such a data system and network.

In testimony before the House Science, Space, and Technology and Agriculture Committee, the administration has repeatedly indicated that progress has been made to enhance current nutrition monitoring activities. As I review these statements of progress, the activities appear to focus on interagency meetings and the development of reports and revised plans. However, the outcomes of these meeting appear to have resulted in little concrete evidence of progress toward creating a unified national nutrition monitoring program. A few examples follow:

The major goal of the 1981 USDA/DHHS joint implementation plan for a comprehensive national nutrition monitoring system was to "Conduct in fiscal year 1987 the first coordinated NFCS-NHANES survey, based on previous research and field-tests undertaken in fiscal year 1983-85." This goal focused on the surveys of USDA and DHHS only and did not incorporate the related surveys of other Federal agencies. A coordinated survey did not begin in fiscal year 1987; rather, as independent entities the NFCS began data collection and NHANES-III began field testing in 1987.

In 1987, the joint implementation plan was extended to an operational plan for the national nutrition monitoring system. As in the 1981 joint implementation plan, the operational plan includes neither the identification of resources needed or a commitment that the resources will be requested. Without a commitment, delayed data collection and reduction of the sample size below that necessary to give valid estimates of the dietary and nutritional status of high risk groups will be perpetuated.

Scientific expertise has been used to assist with data interpretation and to recommend mechanisms for improving the current system. However, a scientific advisory body has not been utilized to review the design of the surveys in the aggregate or assess the merits of proposed activities. The cost of a comprehensive national nutrition monitoring system is not insignificant. As currently implemented, the USDA and DHHS surveys alone require approximately $150 million throughout the data collection phase. Other biomedical or agricultural research projects of this magnitude and significance are subject to merit review by scientific peers. Neither the current survey designs nor the operational plan for a comprehensive national nutrition monitoring system have the benefit of a scientific advisory council as called in for S. 1081.

More than 10 years have passed since the first congressional mandate for a proposal for a comprehensive nutrition monitoring system. Presently, the survey components are beginning new data collection phases. As the 1987 USDA/DHHS operational plan indicates the comparability and coordination of the surveys are far from optimum and the infrastructure to support an effective and efficient system is not yet operational.

There are no public laws which mandate or establish a national nutrition monitoring system. The programs, through the years, have been driven by the whims of the Congress, the executive branch, and the Office of Management and Budget [OMB]. For years Congress has been blindly authorizing and appropriating funds for a piecemeal approach without any idea of the specific budgetary resources the seven or more agencies involved were allocating to this important national resource. As a result, Congress has no direct means to assess either the direction or the adequacy of federal nutrition monitoring activities.

In my view, a legislative mandate is necessary to ensure a national nutrition monitoring system exists from one Congess to another and from this administration to the next. Although a legislative mandate cannot change the will to put aside turf for the sake of national priorities, a legislative directive would focus responsibility and accountability within the Federal Government. If all components of the proposed law are currently being accomplished, I fail to understand why the administration opposes incorporating present activities and projecting future activities into a coordinated program and comprehensive plan. As you know, a similar bill, H.R. 2436, passed the House on June 26, 1986, by a vote of 305 to 85. As a member of both the Committee on Science, Space, and Technology and the Committee on Agriculture, to whom S. 1081 was jointly referred. I am committed to work with the Senate and my colleagues in the House to insure passage of this important legislation in the 100th Congress.

Mr. LUJAN. Mr. Speaker, I yield 4 minutes to the gentleman from Missouri [Mr. EMERSON], our ranking member.

Mr. EMERSON. Mr. Speaker, the National Nutrition Monitoring and Related Research Act of 1988, that we bring before the House of Representatives today, represents several years of work by both the Committee on Agriculture and the Committee on Space, Science and Technology. A similar bill passed the Senate on August 9, 1988, which, in fact, was similar to the bill passed by the House of Representatives in 1986 on a 305-to-85 vote.

The purpose of the bill before us today is to establish a 10-year coordinated nutrition monitoring program in which public and private interests and priorities concerning this issue are analyzed and evaluated in a cooperative manner. The bill establishes an Interagency Board for Nutrition Monitoring and Related Research, comprised of representatives of Federal agencies involved in nutrition monitoring; a National Nutrition Monitoring Advisory Council comprised of persons providing scientific and technical assistance on nutrition monitoring; and, a grants program for development of uniform standards for monitoring dietary status and for State and local governments to develop the capacity to conduct nutrition monitoring.

I fully support nutrition monitoring activities. In fact I was the author of an amendment to the 1985 farm bill that directs the Secretary of Agriculture to include in the USDA nationwide food consumption survey, a sample that is representative of low-income individuals. In addition, the USDA will collect information on food purchases and other expenditures by low-income individuals when conducting the Department's continuing survey of individual food intake and any nationwide food consumption survey. The USDA must continue to maintain its nutrient data base and encourage research by public and private entities relating to effective standards, methodologies, and technologies for accurate assessment of nutritional and dietary status.

It is my hope that this bill will improve the system for nutrition monitoring and will provide more accurate and up-to-date information on the nutritional status of Americans. It must be noted that since 1977 the Federal Government has been moving toward creation of a national nutrition monitoring system and such a system has been considered during the past three Congresses. In addition, the President's task force on food assistance recommended that several steps be taken to improve information on the nutritional status of Americans.

There are two national surveys that are the basis for data concerning the nutritional status of Americans. They are the national food consumption survey—conducted by the USDA—and the health and nutrition examination survey—conducted by the Department of Health and Human Services. These are national suveys of a sample of the population that is representative of the entire population. Both are very useful in that they identify the general well-being of the population and provide reference points by which other surveys of limited scope may be evalauted. The bill before the House today requires continuation and coordination of these two studies and a plan designed to assess, on a continuous basis, a representative sample of the low-income population to determine, among other information, food expenditures and participation in food assistance programs.

In addition, the USDA initiated a new type of survey in 1985 entitled the continuing survey of food intakes by individuals. A nationally representative sample of women from 19 to 50 years of age at all income levels and their children from ages 1 to 5 were surveyed for their dietary intake and eating habits for 12 months. A similar survey was conducted for low-income women and their children. The first results of this survey were released in December 1985 and the most recent data was released in March 1988. This is an important survey because it provides timely information on the adequacy of the diets of a selected group of people and an early indication of dietary changes.

Such information, coupled with the work of both the USDA and HHS, will serve to improve our knowledge and programs aimed at bettering the lives of all Americans. No one should assume that the Federal Government is not active in the area of nutrition monitoring. Within the USDA alone there are eight agencies—with different areas of responsibility—operating ongoing programs which promote and implement dietary guidelines for Americans. These include:

The Extension Service operates food and nutrition education programs in cooperation with the Cooperative Extension System to disseminate knowledge and applied research directly to the public. In addition, they operate the Expanded Food and Nutrition Education Program for low-income families and children.

The Human Nutrition Information Service coordinates dietary guidance policy, develops research-based dietary guidance materials for the public and reports results from its research in food composition, food consumption and nutrition education to professionals.

The National Agricultural Library collects and disseminates information on a wide range of nutritional topics and accumulates and loans nutrition education materials to educators.

I know that the Federal agencies involved in nutrition monitoring and nutrition education consider these subject to be a high priority. I commend them for their attention to this goal. Nevertheless, the bill before us today will serve to accentuate such activities and to provide the American public with a clear and comprehensive program aimed at assessing the nutritional status of the population.

We have included a specific title in the bill before us to ensure that the Federal Government speaks with one voice when it disseminates information on dietary guidance to Americans. Title III requires the Secretary of Agriculture and the Secretary of Health and Human Services to publish the document—Dietary Guidelines for Americans—at least every 5 years. The information contained in the guidelines is to be based on the medical and scientific evidence available. Title III also contains the procedures to be followed for the issuance of all dietary guidelines by Federal agencies. This procedure will serve to ensure that such dietary guidelines are consistent with the publication Dietary Guidelines for Americans and that Federal agenices are not out in left field when advising Americans of proper and healthful diets.

I commend the two Departments—USDA and HHS—for the improvements already made to the nutrition monitoring system and look forward to an even better system. Significant achievements have been made by the two Departments over the past several years. Further improvements can be accomplished through passage of the bill before the House of Representatives today. I urge my Colleagues to support the National Nutrition Monitoring and Related Research Act of 1988.

Mr. ROE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from California [Mr. PANETTA], chairman of the Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition of the Committee on Agriculture

Mr. PANETTA. Mr. Speaker, I rise in strong support of the House amendment to S. 1081, the National Nutrition Monitoring and Related Research Act of 1988.

The Senate bill was referred to both the Committee on Agriculture and the Committee on Science and Technology. The Committee on Agriculture on which I have the honor to serve has worked with the Committee on Science and Technology to ensure that this legislation will put in place a coordinated national nutrition policy. To achieve this objective, the National Nutrition Monitoring and Related Research Act has three major components:

First, the Secretaries of Agriculture and Health and Human Services will be required to develop and implement a national nutrition monitoring and research plan to chart out the Federal Government's activities in this area of the next decade. Instead of disjointed, noncoordinated nutrition research and data collection, we will for the first time have a coordinated plan of action.

Second, to ensure that the Federal nutritional monitoring effort has the benefit of the knowledge and experience of the nutrition experts from academia, the research community, and organizations which provide nutrition information to the public, the legislation creates the National Nutrition Monitoring Advisory Council.

Third, the Federal Government will be required to speak with one voice when dietary guidelines or guidance is issued to the American people. Dietary guidelines for Americans will be published by the Secretaries of Agriculture and Health and Human Services every 5 years beginning January 1, 1990. In addition if any Federal agency wishes to issue dietary guidance for the general population or identified population subgroups, the text of such guidance must be approved by the two Secretaries to assure that the guidance is consistent with the Dietary Guidelines for Americans or is based on medical or new scientific knowledge. In the event that the two Secretaries cannot agree on whether or not to approve dietary guidance, the legislation calls for a public review procedure.

The Congress has been debating this issue for 9 years. We now have a bill that has the enthusiastic support of nutrition experts, the advocacy community, and the groups which represent the farmers who produce the food which Americans consume. With such a consensus, we should act now. We have the opportunity to ensure that the Federal Government does not confuse the American people with contradictory or incomplete information on nutrition and has a comprehensive long-term plan to assess the nutritional status of Americans.

I urge approval of the amendment to S. 1081.

□ 1330

Mr. LUJAN. Mr. Speaker, I yield 5 minutes to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding time to me.

We get some bad bills at the end of every session. This is one of those bills at the end of this session. It is interesting to note it has been a bad bill at the end of nearly every session in the last several years, one of those that they try to sneak through at the end when they hope no one is looking at the specific provisions of the bill.

This happens to have a few minor problems we might want to focus on. One little minor problem that the administration is concerned about in this bill is that it is unconstitutional. They have a bit of a problem with that. The fact they have set up a nutritional monitoring advisory council with members appointed by Members and the Congress appearing to violate a clause of the Constitution is a little thing, I have to admit, but might be of interest to some parading and talking about the bicentennial of the Constitution.

Another little problem is it creates a bunch of new, requires or creates a bunch of new grant programs, interagency board, creates an expanded data collection network, and it does so without providing any money for those things. Now that is real nice. We will have new programs, we will have an interagency board and we will have expanded data collection with no money. Now guess where the money comes from? Where it comes from, the heart of the very programs the gentleman from California just addressed, those programs being children and going and feeding the needy in our country. That is where the money comes from; the Food Stamp Program, out of WIC, out of all the programs we have set up to help the needy, they will be robbed in order to pay for the new program. They like that idea. They will love this bill.

It duplicates existing activities, they like to add a bunch of things to government, and if we need more government, here is what we want to do, duplicate that which we are already doing, exactly what we do in this bill.

It establishes a management structure and mandates certain reporting requirements which would unnecessarily make the system for monitoring of nutrition programs. Let us understand, all this bill does and everyone agrees on this, both proponents and opponents agree, all this bill does is it sets up an advisory council, sets up budgetary figures, sets up a few more reports and sets up a dietary guidance oversight mechanism. That is what it does. There is no national nutrition monitoring system here. This is simply a duplicative program that adds on to what we now have, and it is doing so by taking away from programs that are presently in place. Those are programs I would remind that serve the real needy, and also I remind my colleagues, takes away from something we added to the other week, takes away from AIDS research. We are asking money to the national effort on AIDS be expanded and what are we doing with programs like this, because we will not authorize money, we take away from that kind of research.

It is going to compete with the financial resources that are in the homeless programs, in the welfare reform programs, and our assistance for hunger relief. It seems to me that this bill is a bill that ought not be passed at the last minute.

We had a last minute hearing on the bill. We had the representatives from the Department of Agriculture and the Department of HHS and they said flatly this is a not a helpful bill, this is a harmful bill from the standpoint of administering nutritional programs, the wrong action to take.

A final note I would make for my colleagues is this bill will be vetoed. We have a message from the administration that makes it clear that the Department of Agriculture, the Department of Health and Human Services will recommend a veto and the Office of Management and Budget. Why? Because Agriculture and Human Services believe that this is going to undermine our nutritional monitoring programs, not enhance them, and OMB believes it is a very costly program that ends up robbing from programs that are presently there.

Another question I ask of the people when they testify is do we have extra money to put this program into effect, is there some kind of extra money, and they say no, the nutritional programs we now have are underfunded, and what we have is a program to add on to programs already underfunded. A bad bill that ought not be brought up at the end of the session or at all, and it should be defeated.

Mrs. MORELLA. Mr. Speaker, I rise in strong support of S. 1081, the National Nutrition Monitoring Act. As a cosponsor of this bill, I was pleased to support the legislation when it was approved by the Committee on Science, Space, and Technology, on which I serve. The legislation is the result of 8 years of work in Congress and enjoys the support of a broad bipartisan coalition.

The bill would create a comprehensive national nutrition surveillance system in the United States, thereby improving our efforts to meet the nutritional needs of high risk groups, such as low-income children and the elderly. It focuses assistance to States and localities in their nutrition data collection, thus giving them the resources necessary to best address local priorities. To date, our nutrition surveillance efforts have been fragmented, and have not provided the guidance necessary to most effectively determine the nutrition needs of our population.

Mr. Speaker, I urge my colleagues to join me in voting for this important legislation which will assist us in addressing nutritional deficiencies in our Nation.

Mr. LELAND. Mr. Speaker, I applaud the work of our colleagues on both the Science and Technology and Agriculture Committees in their careful crafting of the nutrition monitoring bill before us today. Since 1981, efforts to implement and maintain a nutrition monitoring system have evolved from the need to establish a longitudinal data base of the nutritional status of the American people. This activity also stems from recognition of the need for a structure to develop nutritional guidance information that will apply some of the findings from the data to improve the nutritional status of Americans.

While I particularly support language in the bill to provide technical assistance to State and local governments to enhance development and implementation of a national nutritional status surveillance system, I believe we must actively encourage an expanded number of States and localities to take advantage of these services and we must facilitate the sharing of information with communities involved in nutrition related data collection.

The bill also authorizes the assessment, analysis and reporting of information detailing household food expenditures, participation in Federal food assistance programs and nutrition benefits adequacy for a sample of the low-income population. Again, I support this initiative. However, at some point down the line we are going to have to acknowledge that the food sources or low-income persons extend beyond the scope of existing Federal programs. Testimony received by the House Select Committee on Hunger, which I chair, and research conducted by numerous groups across the country indicate a growing dependence on food pantries, soup kitchens, and other nonconventional sources. I would certainly hope that considerations of benefit adequacy address the issue of food security—the ability to ensure access of the poor and other nutritionally vulnerable persons to conventional food sources on a consistent basis.

Steps to improve nutrition monitoring in this country are certainly warranted and I believe S. 1081 would strengthen our ability to achieve this goal. I am going to vote for this legislation and I strongly encourage my colleagues to join me.

Mr. JEFFORDS. Mr. Speaker, in 1893, Congress granted to the U.S. Department of Agriculture the authority to conduct research on nutrition. Since that time, the Federal Government has sponsored numerous studies of the nutritional health of our country. The most recent efforts in this area include the publication this year of the "Surgeon General's Report on Nutrition and Health" and the start this month of the third National Health and Nutrition Examination Survey [NHANES].

All of these projects have provided very valuable information. Unfortunately, there has been no coordination of these efforts. The bill now before us, S. 1081, the National Nutrition Monitoring And Related Research Act of 1988, would provide some focus to these efforts. The bill would create a national advisory council that would outline the best way to coordinate nutrition monitoring efforts in the future. The council would be required to report regularly to Congress on the progress of its efforts.

Of practical importance to all Americans is the bill's requirement that the Secretary of Health and Human Services and the Secretary of Agriculture together issue updated dietary guidelines for the general public every 5 years. When dietary guidelines have been issued in the past they have served to heighten public awareness about a number of important nutritional facts, including the need for Americans to reduce their intake of foods that are high in fats and the importance of fiber in the diet.

This legislation should allow us to reduce duplicative efforts and provide for ongoing and comprehensive study of the nutritional health of Americans. I urge all of my colleagues to support this legislation.

Mr. DE LA GARZA. Mr. Speaker, I rise in support of S. 1081, as amended by the Committee on Science, Space, and Technology.

This legislation was referred jointly to the Committee on Science, Space, and Technology and the Committee on Agriculture, both of which considered similar legislation in the 98th and 99th Congresses.

The Committee on Agriculture fully supports the intent of S. 1081 which is to coordinate all Federal agency activities relating to nutrition monitoring and thereby make more effective use of Federal and State moneys allocated to nutrition monitoring activities. Additionally, the committee fully endorses the provisions of the bill specifying that: First, both the Secretary of Agriculture and the Secretary of Health and Human Services will jointly publish the "Dietary Guidelines for Americans" and second, any Federal agency intending to publish any dietary guidance must first submit such information to the Secretaries for review and approval.

I am pleased to add that among the agricultural groups supporting S. 1081, as amended, are the American Farm Bureau Federation, the American Meat Institute, the National Cattlemen's Association, the National Farmer's Union, the National Grange, the National Pork Producers Council, the United Egg Association, the United Egg Producers, and the United Fresh Fruit and Vegetable Association.

The Committee on Agriculture worked closely with the Committee on Science, Space, and Technology in formulating this substitute amendment, and I thank Chairman ROBERT ROE and his staff for their cooperation in this regard. I have written to Chairman ROE that the Committee on Agriculture has deferred formal consideration of the bill in order to expedite its action by the House. This deferral, however, in no way waives the jurisdiction of the Committee on Agriculture on any of the provisions of this legislation.

Mr. Speaker, there are a number of Federal agencies involved to some extent in nutrition activities, including nutrition monitoring. Unfortunately, these activities are not adequately coordinated among the various agencies, and it is difficult to ascertain exactly how much is spent by the Federal Government each year on monitoring the nutritional status of the American people. This legislation will correct these flaws and bring our Federal nutritional monitoring efforts more into focus.

I urge my colleagues to give S. 1081, as amended, a vote of approval.

Mr. LUJAN. Mr. Speaker, I have no further request for time, and I yield back the balance of my time.

Mr. ROE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The **SPEAKER** pro tempore (Mr. GRAY of Illinois). The question is on the motion offered by the gentleman from New Jersey [Mr. ROE] that the House suspend the rules and pass the Senate bill S. 1081, as amended.

The question was taken.

Mr. WALKER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The **SPEAKER** pro tempore. Pursuant to clause 5, rule I, and the Chair's prior announcement, further proceeding on the motion will be postponed.

GENERAL LEAVE

Mr. ROE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate bill just considered.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H.R. 775. An act to provide for the establishment of the Poverty Point National Monument, and for other purposes;

H.R. 1864. An act for the relief of Helen Lannier;

H.R. 2985. An act to designate the facility of the U.S. Postal Service located at 850 Newark Turnpike in Kearny, NJ, as the "Dominick V. Daniels Postal Facility";

H.R. 3559. An act to authorize and direct the acquisition of lands for Canaveral National Seashore, and for other purposes;

H.R. 4375. An act to improve the management of certain public lands in the State of Michigan;

H.R. 4554. An act to remove certain restrictions on land acquisitions for Antietam National Battlefield;

H.R. 5059. An act to quiet title and possession with respect to a certain private land claim in Sumter County, AL;

H.R. 5318. An act to amend the Egg Research and Consumer Information Act to limit the total costs that may be incurred by the Egg Board in collecting producer assessments and having an administrative staff, to eliminate egg producer refunds, and to delay the conducting of any referendum by egg producers on the elimination of such refunds;

H.R. 5395. An act to designate the Sipsey River as a component of the National Wild and Scenic Rivers System, to designate certain areas as additions to the Sipsey Wilderness, to designate certain areas as conditions to the Cheaha Wilderness, and to preserve over thirty thousand acres of pristine natural treasures in the Bankhead National Forest for the aesthetic and recreational benefit of future generations of Alabamians, and for other purposes; and

H.R. 5471. An act to amend the Public Health Service Act to revise the authority for the regulation of clinical laboratories.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 4182. An act to authorize the establishment of the Zuni-Cibola National Historical Park in the State of New Mexico, and for other purposes; and

H.R. 5050. An act to amend the Small Business Act to establish programs and initiate efforts to assist the development of small business concerns owned and controlled by women, and for other purposes.

The message also announced that the Senate agrees to the amendments of the House to the amendment of the Senate to the bill (H.R. 3408) "An act to increase the amounts authorized for the Colorado River Storage Project," with amendments.

The message also announced that the Senate agrees to the amendments of the House to the bill (S. 1382) entitled "An act to amend the National Energy Conservation Policy Act to improve the Federal Energy Management Program and for other purposes," an amendment.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 515) "An act to provide for more detailed and uniform disclosure by credit and charge card issuers with respect to information relating to interest rates and other fees which may be incurred by consumers through the use of any credit or charge card."

The message also announced, that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2749) "An act to authorize appropriations for fiscal year 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes."

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 1704. An act to authorize the establishment of the Lewis and Clark National Historic Trail Interpretive Center in the State of Montana, and for other purposes;

S. 1985. An act to improve the protection and management of archeological resources on Federal land;

S. 2114. An act entitled the "Public Telecommunications Act of 1988";

S. 2148. An act to amend the Wild and Scenic Rivers Act of 1968, and for other purposes;

S. 2264. An act to authorize the Secretary of the Interior to exchange certain Federal mining rights for certain lands in New Mexico; and

S. 2457. An act to transfer lands in the State of Montana and to relieve the Town of Neihart, Montana, of any obligation to pay consideration for lands conveyed to it under authority of the Small Tracts Act.

STEEL AND ALUMINUM ENERGY CONSERVATION AND TECHNOLOGY COMPETITIVENESS ACT OF 1988

Mr. ROE. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2470) to promote energy conservation and technology competitiveness in the American steel and aluminum industries, as amended.

The Clerk read as follows:

S. 2470

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) maintaining viable domestic steel, aluminum, copper, and other metals industries is vital to the national security and economic well being of the United States; and

(2) the promotion of technology competitiveness and energy conservation in the American steel and aluminum industries by the Federal Government through a program of joint research and development will help maintain viable domestic steel and aluminum industries.

(b) PURPOSES.—The purposes of this Act are to—

(1) increase the energy efficiency and enhance the competitiveness of American steel, aluminum, and copper industries by providing Federal incentives for the establishment of public-private sector research and development partnerships to undertake scientific research and development to develop advanced technologies utilizing the expertise of the steel aluminum, copper, and other metals industries, Government-owned laboratories of the Department of Energy and the National Institute of Standards and Technology, universities, State development agencies, and others; and

(2) continue steel research and development initiative efforts begun under title II of the Interior and Related Agencies portion of the joint resolution entitled "Joint Resolution making further continuing appropriations for the fiscal year 1986, and for other purposes", approved December 19, 1985 (Public Law 99-190).

SEC. 3. DEFINITIONS.

As used in this Act—

(1) the term "Secretary" means the Secretary of Energy;

(2) the term "domestic company" means a company which is substantially involved in the United States domestic production, processing, or use of steel, aluminum, copper, or other metals and has a substantial percentage of its operations located within the United States;

(3) the terms "management plan" and "plan" mean the Steel Initiative Management Plan issued on April 1, 1987, by the Department of Energy, which establishes the management framework for the steel research and development initiative, and updates to that plan; and

(4) the term "research plan" means the Steel Initiative Research Plan issued in April 1988 by the Department of Energy, and updates to that plan.

SEC. 4. ESTABLISHMENT OF SCIENTIFIC RESEARCH AND DEVELOPMENT PROGRAM TO DEVELOP COMPETITIVE MANUFACTURING TECHNOLOGIES AND INCREASE ENERGY EFFICIENCY IN THE STEEL AND ALUMINUM INDUSTRIES.

(a) GENERAL AUTHORITY.—The Secretary, pursuant to the authority provided under provisions of the Federal Nonnuclear Research and Development Act of 1974 (42 U.S.C. 5901, et seq.), shall reestablish an industrial energy conservation and competitive technology program to conduct scientific research and development of steel and aluminum technologies to carry out the purposes of this Act. Such program shall provide the financial and technical assistance and other incentives which, in the judgment of the Secretary, are necessary to carry out the purposes of this Act.

(b) MANAGEMENT PLAN.—Within 6 months after the date of enactment of this Act, the Secretary shall publish an update of the management plan to expand the steel research and development initiative to include aluminum and to carry out the purposes of this Act. The Secretary, from time to time, may further update the management plan. The management plan shall be subject to the following conditions:

(1) For newly initiated research and development proposals submitted under the revised management plan, the non-Federal financial share shall equal at least 30 percent of the total cost of any project.

(2) Existing facilities, equipment, supplies, and other property may be included in the non-Federal share under this section only when they are directly relevant to the project.

(3) The knowledge resulting from research and development activities conducted under this Act shall be developed for the benefit of the domestic companies who provide financial resources to the program.

(4) The Secretary, for a period of up to 5 years after the development of information that—

(A) results from research and development activities conducted under this Act; and

(B) would be a trade secret or commercial or financial information that is privileged or confidential, as described in section 5(a), if the information had been obtained from a domestic company,

may provide appropriate protections against the dissemination of such information, including exemption from subchapter II of chapter 5 of title 5, United States Code.

(5) The plan shall assure basic research support, for the research carried out under the research plan, from independent laboratories, universities, and nonprofit organizations, by coordinating activities under the research plan with the basic research efforts of the Department of Energy, such as the Energy Conversion and Utilization Technologies Program and the Materials Processing and Sensor and Controls programs within the Office of Industrial Programs.

(c) PRIORITIES.—Within 6 months after the date of enactment of this Act, the Secretary shall publish an update of the research plan. In reviewing research and development activities for possible inclusion in the research plan, the Secretary shall consider the following:

(1) STEEL PROJECTS.—

(A) The direct production of liquid steel from domestic materials.

(B) The production of near-net shape forms from liquid, powder, or solid steel.

(C) The development of universal grades of steel.

(D) The application of automatic processing technology.

(E) The removal of residual elements from steel scrap.

(F) The treatment and storage of waste materials and other byproducts from steel production and processing.

(G) The development of super-plastic steel processing.

(H) The development of advanced coatings for sheet steels.

(I) The development of technologies and equipment related to the production of steel that enhance the protection of the environment and the safety and health of workers.

(J) Other steel technologies which, in the judgment of the Secretary, further the purposes of this Act.

(2) ALUMINUM AND OTHER PROJECTS.—

(A) The production of aluminum.

(B) The application of automatic processing technology.

(C) The treatment and storage of waste materials and other byproducts from aluminum production and processing.

(D) The manufacture of aluminum mill products.

(E) Aluminum recycling technologies.

(F) The development of technologies and equipment related to the production of aluminum that enhance the protection of the environment and the safety and health of workers.

(G) Aluminum, copper, and other metals technologies which, in the judgment of the Secretary, further the purposes of this Act.

(d) INDUSTRY PARTICIPATION AND REVIEW.—The Secretary shall arrange for participation and review by representatives of each affected industry and by labor in the updating of the management and research plans and in the evaluation of the progress of research and development activities for their industry conducted under this Act.

SEC. 5. PROTECTION OF PROPRIETARY RIGHTS.

(a) PROPRIETARY RIGHTS.—No trade secrets or commercial or financial information that is privileged or confidential, under the meaning of section 552(b)(4) of title 5, United States Code, which is obtained from a domestic company shall be disclosed in the conduct of the management plan or research plan, or as a result of activities under this Act.

(b) PATENT RIGHTS VESTED IN THE UNITED STATES.—All patent rights from inventions developed under the management plan or the research plan implemented pursuant to this Act shall be vested in accordance with section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901).

SEC. 6. COORDINATION.

The Secretary shall coordinate the research and development conducted under this Act with other research and development being conducted by the Department of Energy and other Federal agencies in order to increase efficiency and avoid duplication of effort.

SEC. 7. EXPANDED STEEL AND ALUMINUM RESEARCH PROGRAM IN NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

The National Institute of Standards and Technology, through its Institute for Materials Science and Engineering and, as appropriate, in coordination with the Department of Energy and other Federal agencies, shall conduct an expanded program of steel and aluminum research to provide necessary instrumentation and measurement research and development in support of activities conducted under this Act.

SEC. 8. REPORTS.

The Secretary shall prepare and submit annually to the President and the Congress at the close of each fiscal year a complete report of the research and development activities carried out under this Act during the fiscal year involved, including the actual and anticipated obligation of funds, for such activities, together with such recommendations as the Secretary may consider appropriate for further legislative, administrative, and other actions, including actions by the American steel and aluminum industries, which should be taken in order to achieve the purposes of this Act. The report submitted at the close of fiscal year 1991 shall also contain a complete summary of activities under the management plan and the research plan from the first year of their operation, along with an analysis of the extent to which they have succeeded in accomplishing the purposes of this Act.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

(a) To THE SECRETARY.—(1) There are authorized to be appropriated to the Secretary, to carry out the functions of the Department of Energy under this Act, $2,000,000 for fiscal year 1989, $20,000,000 for fiscal year 1990, and $25,000,000 for fiscal year 1991.

(2) Funds previously appropriated for the steel research and development initiative—

(A) under title II of the Interior and Related Agencies portion of the joint resolution entitled "Joint Resolution making further continuing appropriations for the fiscal year 1986, and for other purposes", approved December 19, 1985 (Public Law 99-190); or

(B) under subsequent appropriation Acts, which remain available under the terms of such Acts may be used for the purposes of this Act.

(b) To THE INSTITUTE.—There are authorized to be appropriated to the Director of the National Institute of Standards and Technology to carry out the functions of the Institute under this Act, $3,000,000 for each of the fiscal years 1989, 1990, and 1991.

SEC. 10. RELATION OF EXISTING PROGRAM.

Proposals received by the Department of Energy before the date of enactment of this Act may be carried out without regard to changes in the management plan and research plan required by this Act.

SEC. 11. DRUG-FREE WORKPLACE.

(a) No department, agency, or instrumentality of the United States receiving funds authorized to be appropriated under this Act for fiscal year 1989, fiscal year 1990, or fiscal year 1991, or under any other Act authorizing appropriations for fiscal year 1989, fiscal year 1990, or fiscal year 1991, shall obligate or spend any such funds, unless such department, agency, or instrumentality has in place, and will continue to administer in good faith, a written policy designed to ensure that all of its work places are free from illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act) by the officers and employees of such department, agency, or instrumentality.

(b) No funds so authorized to be appropriated to any such department, agency, or instrumentality shall be available for payment in connection with any grant, contract, or other agreement, unless the recipient of such grant, contract, or party to such agreement, as the case may be, has in place and will continue to administer in good faith a written policy, adopted by such recipient, contractor, or party's board of directors or other governing authority, satisfactory to the head of the department, agency, or instrumentality making such payment, designed to ensure that all of the workplace of such recipient, contractor, or party are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act) by the officers and employees of such recipient, contractor, or party.

The SPEAKER pro tempore. Is a second demanded?

Mr. LUJAN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New Jersey [Mr. ROE] will be recognized for 20 minutes and the gentleman from New Mexico [Mr. LUJAN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. ROE].

Mr. ROE. Mr. Speaker, I yield myself such time as I may consume.

Mr. ROE. Mr. Speaker, I rise today to offer my strongest support and endorsement of S. 2470, the Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988. This legislation is critically needed by our domestic steel and aluminum industries.

Let me say at the outset that I want to thank Mr. WALGREN of Pennsylvania, chairman of the Subcommittee on Science, Research and Technology and Mrs. LLOYD of Tennessee, chairman of the Subcommittee on Energy Research and Development for expeditiously moving this legislation from their subcommittees through full committee to the floor. I also want to offer praise to Mr. BOEHLERT of New York, ranking Republican member of the Subcommittee on Science, Research and Technology and Mr. MORRISON of Washington, ranking Republican member on the Energy Research and Development Subcommittee, for their help in crafting this legislation.

This measure continues and expands the efforts known as the Steel Initiative, a joint Government-private sector program designed to enhance the domestic production of steel and to increase its technological competitiveness. This initiative was launched in 1986 and must be continued; unless this measure is enacted, the initiative may soon expire.

The initiative was a joint Government-private sector effort to halt the tremendous decline the industry experienced during the first part of this decade. For the 5-year period from 1982 to 1986, steel producers lost $12 billion, two major firms filed for chapter 11 bankruptcy, and balance sheets were drained by ballooning debt and rising pension costs incurred by plant shutdowns. As a result of these rapidly declining profits, the industry drastically cut back its research and development efforts. In addition, the domestic market lost production orders to steel imports from foreign companies, and faced greater competition from new materials and composites.

Despite its decline, the U.S. steel industry today accounts for approximately 7 percent of the Nation's total industrial energy consumption. The efficiency of the industry has increased by roughly one-third since the early 1970's. This increased efficiency is due almost exclusively to three changes in the industry: increasing the use of continuous casting, increasing the use of scrap metal, and closing of the most outmoded and inefficient steel facilities.

For the near term, the continued implementation of these three changes in the domestic steel industry is expected to sustain and further the industry's energy efficiency improvements. However, these changes will soon begin yielding diminishing energy conservation improvements and we must look for even greater efficiency improvements through the development of other efficient steelmaking technologies. In contrast, the steelmaking industries of Italy, Sweden, and Germany use 25 to 40 percent less energy to produce each ton of steel than does the United States steel industry. To ensure American leadership in the production of quality steel, aluminum, copper, and other metals, we need to pass S. 2470.

The purposes of S. 2470 are, to increase the energy efficiency and enhance the competitiveness of American steel, aluminum, copper, and other metals industries by providing Federal incentives for the establishment of public-private sector partnerships to undertake scientific research and development to develop advanced technologies utilizing the expertise of the steel, aluminum, copper, and other metals industries, Government-owned laboratories of the Department of Energy and the National Institute of Standards and Technology, universities, State development agencies and others. The bill is also designed to continue efforts begun under title II of the Interior and Related Agencies portion of the joint resolution entitled "Joint Resolution Making Further Continuing Appropriations for the Fiscal Year 1986, and for Other Purposes," approved December 19, 1985—Public Law 99-190. These efforts are commonly known as the Steel Initiative.

Under this bill, the Department of Energy will reestablish an industrial energy conservation and competitive technology program which will focus on scientific research and development in the steel and aluminum industries. The Department is required to update its steel initiative management plans to clarify cost-sharing arrangements and to expand the program to cover aluminum, copper, and possibly other metals, if energy savings can be identified. Research and development priorities ultimately will be set in response to the proposals submitted to the Department by the domestic aluminum and steel industries. In those proposals, the non-Federal financial share must equal at least 30 percent of the cost of the project.

The management plan in the bill before you differs very slightly from the bill as reported. We have worked with the Committee on Government Operations to make sure the language of the plan is consistent with title V of the United States Code. We have also worked with the Senate Committee on Energy and Natural Resources to ensure that the research program in this bill is coordinated with other programs related to steel research in the Department of Energy. We hope that these changes are sufficient to enable the Senate to accept this bill, if passed by the House, and to clear it for the President in its present form.

This legislation also requires the Department of Energy to publish and update research plans, and suggests a number of specific steel and aluminum research and development activities which may be included in those research plans. Equally important, this bill calls for industry participation and review in updating the management and research plans and in the evaluation of the progress of research and development underway. This review, to be arranged by the Secretary of Energy, will help to ensure that the projects funded by this bill will have the fullest cooperation and support of the private sector.

This vitally needed legislation also calls for coordination of steel and aluminum research and development among the various Federal agencies, sets up an expanded steel and aluminum research program in the National Institute of Standards and Technology, mandates the Secretary of Energy to submit an annual report to the Congress and the President on the progress of the legislation, continues the existing steel initiative, and contains language requiring a drug-free workplace.

Mr. Speaker, the funding authorized for S. 2470 is indeed modest, and well within budgetary constraints. For the Department of Energy, this bill would authorize, over a 3-year period, $47 million, and for the National Institute of Standards and Technology, $9 million over the 3-year period. Thus, the total amount of money for this bill is $56 million. That is indeed a modest number when one considers what the stakes are here: America maintaining its preeminent position in the steel and aluminum industries. I can only conclude by asking my colleagues in the House to vote in support of this most important measure.

Mr. Speaker, I reserve the balance of my time.

Mr. LUJAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of S. 2470, the Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988.

This bill received strong bipartisan support in the Committee on Science, Space, and Technology, and I want to commend the strong leadership exhibited by the committee chairman, Mr. ROE; the chairman and ranking Republican member of the Subcommittee on Energy Research and Development, Mrs. LLOYD and Mr. MORRISON; the chairman and ranking Republican member of the Subcommittee on Science, Research, and Technology, Mr. WALGREN and Mr. BOEHLERT and Mr. RITTER.

I am particularly pleased, Mr. Speaker, that the committee adopted my amendment which broadens the Senate-passed bill to provide for public-private R&D partnerships to develop advanced copper technologies, as well as advanced steel and aluminum technologies.

Copper—after iron and aluminum—is the world's third most widely used metal. Copper is valuable in electrical and telecommunication products, building construction, industrial machinery and equipment, transportation, and consumer products. Copper is also a strategic material, for it is a key ingredient in the production of equipment essential to the national defense—including ordnance—as well as command-communication-control-intelligence, military transportation, and advanced weaponry systems.

The domestic copper industry fell on hard times in the early 1980's. In 1979, when the U.S. copper industry was at its peak, it employed over 90,000 people, with total shipments of its products exceeding $10 billion. Over 25 major mines, 17 smelters, and 22 refineries were in operation.

The price of copper peaked in 1980, and then fell by more than 50 percent by the end of 1984. By the mid-1980's, U.S. mine production had fallen to the lowest level since the 1960's, and the United States lost its position as the world's leading copper producer for the first time in a century. From March 1981 to January 1983, 28 domestic mines were closed or cut back production, and U.S. mine capacity dropped to 65 percent. At the end of 1982, the industry had laid off about 42 percent of its work force. Domestic companies lost well over $1.5 billion during the period 1981-85, and in 1985, only two U.S. copper firms reported profits from their operations.

The copper industry responded by modernizing their equipment and cutting their costs—mainly by reducing capacity through permanent closures of outdated production facilities. In addition, a number of companies went out of the business, so that by 1987, when prices began to rise, the U.S. copper industry as a whole was profitable again, although production was at lower levels, and the U.S. share of the world market decreased.

This may only be a brief respite, however. Many analysts predict another copper price slump inevitable in the early 1990's as new mines throughout the world come on line. If prices again stay low for several years, U.S. copper companies will have to find new ways to cut costs if they are to survive, and new technologies that reduce these costs and increase productivity will play a major role.

S. 2470 provides the opportunity for the copper industry—in partnership with the Federal Government, the national laboratories, and universities—to develop those new technologies that it will need in the near future if it is to maintain its competitive position in the world marketplace, and I urge its adoption.

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Mr. ROE. Mr. Speaker, I yield 1 minute to the distinguished gentlewoman from Tennessee [Mrs. LLOYD], chairman of our Subcommittee on Energy Research and Development.

Mrs. LLOYD. I thank the gentleman for yielding time to me.

Mr. Speaker, I am pleased to join my distinguished colleague and chairman of the Committee on Science, Space, and Technology in bringing this legislation to the floor. The Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988 seeks to increase energy efficiency and enhance competitiveness of American steel, aluminum, and other metals' industries by providing Federal incentives for establishment of industry-Federal cost-shared projects.

I believe the legislative package offered here today will aid the steel and aluminum industries by providing technical and financial assistance to allow them to become competitive in the international technology marketplace.

The legislation will provide research and development continuity in this important program, something that has been lacking within the Department of Energy. I believe that there is a real need for the legislation and I am proud to have joined my colleagues in bringing this legislation here today.

Mr. ROE. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Pennsylvania, Mr. DOUG WALGREN, chairman of our Subcommittee on Science, Research and Technology.

Mr. WALGREN. I thank the chairman for yielding time to me.

Mr. Speaker, I rise today to offer my strongest support for S. 2470, the Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988. This legislation is a good bill and fully deserves your support. This bill is the outgrowth of legislation I have introduced and promoted for 3 years to create a Government-industry research program to develop "leapfrog" steelmaking technology.

I want to thank Chairman ROE, the ranking minority member LUJAN, our distinguished colleague from Tennessee, Mrs. LLOYD, chairman of the Energy Research and Development Subcommittee; Mr. MORRISON of Washington, ranking Republican of the Energy Subcommittee, and Mr. BOEHLERT, ranking Republican of the Subcommittee on Science, Research and Technology, for expeditiously moving this very important measure through subcommittee and full committee. Their help in crafting this legislation was indispensable.

It is certainly an understatement to affirm that the Federal Government feels a certain responsibility when American industries are substantially undermined by foreign competition. A major part of that responsibility is expressed by the traditional role of the Federal Government in funding research, particularly the kind of basic research that results in quantum changes and steps forward in technology.

Joint Government/industry research efforts can certainly bring the best minds and the best direction to a research project. With the assistance of the Federal laboratories, the Government can join in finding ways to sustain two basic industries.

Why do we need this legislation?

First, the United States must mount a major modernization effort of its steelmaking ability to remain competitive in the world economy. The National Academy of Sciences says that in the last 15 years, there has been a global shift of technological leadership in steelmaking from the United States to Japan. Most Japanese steel plants have been built since World War II. In Japan, the average yield when processing raw steel into finished steel, is about 12 to 16 percent greater than that of the United States. Quite simply, we have to out compete the competition and the competition is not standing still.

Japan's Ministry of International Trade and Industry will invest $230 million over the next 8-year period to develop next-generation steel-manufacturing methods to replace the current blast furnace method. Eighteen Japanese firms have formed a new research company called Rheotechnology Ltd, to develop semisolid processing technology for metals. For every million tons of steel produced, Japan has twice the employees working on R&D compared to the United States. Even the private sector in Japan spent twice as much on steel R&D in 1978, 1.36 percent of sales, United States industry spends 0.6 percent of sales on R&D.

Second, we have tremendous resources in our national laboratories, unavailable elsewhere, which can help the steel industry match its overseas competition. It was the President's science adviser, George Keyworth, who said that the national laboratories, with their tradition of large-scale, long-term multidisciplinary R&D, are an ideal setting for a Government-industry research partnership. Neither Government, nor industry or nor the universities have the resources to do this job alone, especially after the steel industry's disastrous troubles over the past decade. As part of its survival strategy when faced with billions in losses, the steel industry cut its research staffs by more than 50 percent. A collaborative effort combining the talents of all is now the only way to get this vital job done.

A third reason I am supporting this bill is that the industry wants it. Industry representatives came to me several years ago, suggesting that I follow up on the suggestion of Dr. Keyworth's, President Reagan's former science adviser. They took me to steel mills and talked about what was possible. They have committed to cost sharing in this program. They are helping develop the program's goals and through their cost sharing, setting its priorities. And after all, they are the ones who know the needs and problems the best.

Finally, there are the energy and environmental implications. Without gas pump lines, it is easy for the American people to be lulled into thinking we have abundant energy resources. But in my view, we must always be searching for new ways to use our limited energy resources more efficiently. Streamlined steelmaking processes could bring up to 35 percent in energy savings and eliminate some of the steelmaking steps that currently produce pollution.

S. 2470, strongly relies upon the best minds of Government and private industry. This measure is a continuation and expansion of the program known as the Steel Initiative, a joint Government-private sector program, that was funded in 1986, but never legislatively enacted. The Steel Initiative was designed to help the domestic steel industry recover from the staggering losses it experienced during the first part of this decade. This measure will codify that initiative, and expand it to include aluminum.

This measure directs the Department of Energy to reestablish an Industrial Energy Conservation and Competitive Technology Program concentrating on scientific research and development in the steel and aluminum industries. It requires the Department to update its steel initiative management plan and to expand the plan to include aluminum, copper, and other metals as appropriate. In those proposals, the non-Federal financial share must equal at least 30 percent of the Federal share of the cost of the project.

For the Department of Energy, the bill authorizes $2 million in fiscal year 1989, $20 million for fiscal year 1990, and $25 million in fiscal year 1991. For the National Institute of Standards and Technology, the bill authorizes $3 million for fiscal 1989, 1990, and 1991.

Mr. Speaker, this legislation would also require the Department of Energy to publish and update the Steel Initiative research plan, and to review a number of specific steel and aluminum research and development activities for possible inclusion in the revised plan. Just as important, this measure calls for industry participation and review in the updating of the management and research plans and in the evaluation of the progress of the overall research and development program. The Secretary of Energy is to organize this review, which will help to ensure that the projects funded by this bill will have the fullest cooperation and support of the private sector.

A goal of S. 2470 is to provide assistance to the domestic steel and aluminum industries. For that reason, the bill prohibits the disclosure of trade secrets of domestic companies involved in the activities described by this bill in the carrying out of the management and research plans.

This vitally needed legislation also calls for coordination of steel and aluminum research and development among the various Federal agencies, sets up an expanded steel and aluminum research program in the National Institute of Standards and Technology, mandates the Secretary of Energy to submit an annual report to the Congress and the President on the progress of the legislation, grandfathers the current R&D efforts known as Steel Initiative, and contains language requiring the drug-free workplace.

I would like to clarify the intention of the Committee on Science and Technology with regard to the drug-free workplace language of section 11 of this bill. First, section 11 provides that every agency which obligates or spends funds authorized under this act shall maintain and administer a policy to ensure that all workplaces are free from illegal use, possession, or distribution of controlled substances by employees of the agency. Second, section 11 provides that all grantees and contractors of agencies have in place and administer a policy satisfactory to the head of the department, agency, or instrumentality to ensure that the workplace of the grantee or contractor is free from illegal use, possession, or distribution of controlled substances.

On September 22, the House approved and sent to the Senate H.R. 5210, the Omnibus Drug Initiative Act, which includes carefully constructed drug-free workplace provisions for Federal grantees and contractors. H.R. 5210 imposes specific conditions and requirements on Federal Government contractors and grantees such as providing employees with written notice that use of drugs in the workplace is prohibited; establishing education programs; dealing with workplace drug convictions by imposing sanctions on workers involved or by requiring participation in drug rehabilitation or treatment programs. It is our intention that section 11 of S. 2470, before us today, requires recipients of funds under this bill to develop policies consistent with the requirements of the House-passed omnibus drug initiative, H.R. 5210.

I also wish to make it clear that nothing in this bill is intended to override a covered employer's obligation, under the various Federal collective-bargaining laws, to bargain with the exclusive representative of the employer's employees with respect to the terms and conditions of employment, including those terms and conditions relating to the disciplining or treating of employees guilty of possessing or using illegal drugs. Nor is it our intention to prevent any employer from entering into a fully binding collective-bargaining agreement covering such matters. I hope this will provide clarification for the legislative record of the committee's intentions in this section of S. 2470.

Study after study has emphasized that modernization of the steel industry is critical. According to the Office of Technology Assessment, the trend of improving and changing technology is necessary to maintain competitiveness, improve profitability, and improve product quality and innovations. President Reagan's own Steel Advisory Committee found that modernization and increased productivity are essential to the survival of the American steel industry.

A continuous and adequate supply of steel is the foundation of our economy and our national security. Many industries, like automobiles, depend on steel; many communities have steel at their core. The National Academy of Sciences has observed that there are four times as many indirect jobs in industries dependent on steel for business per year as there are direct jobs in the steel industry. In terms of national defense, almost every item of military hardware contains steel in some form and there are no other materials that can provide the required properties at an acceptable cost. Furthermore, industries that are vital to the military like equipment, transport, and support depend on steel. "There is no debate on the issue of whether we should maintain a steel industry capable of providing for a strong national defense," noted the Academy.

Mr. Speaker, I like to note that the United States has invested heavily in research in agriculture and aerospace. In fact, 72 percent of aerospace R&D is Government supported. It is no accident that in these fields, we are world leaders. The funding authorized for S. 2470 is indeed modest, and well within budgetary constraints. The total amount of money for this bill is $57 million. That is indeed a modest number when one considers what the stakes are here: Maintaining America's preeminent position in the steel and aluminum industries. I ask my colleagues in the House to vote for this most important measure.

Mr. KONNYU. Mr. Speaker, I rise today in opposition to S. 2470, the Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988. Today, we are considering passage of a bill at a time when U.S. steelmakers have rebounded back.

In the early part of this decade, this Nation's steel industry suffered losses totaling near $12 billion. The ramifications of uncompetitive pricing and antiquated production processes hit the steelmakers hard. In addition, the domestic market lost production orders to steel imports from foreign companies, and faced greater competition from new materials and composites. The future of America's steel industry was bleak.

In 1985, Congress responded to the crisis with the "Keyworth initiative". The Keyworth initiative was developed as a cost-shared effort with industry, using the Department of Energy's national laboratories to create steelmaking technology that would improve our industrial competitiveness abroad. The goal was to develop a strong partnership between Government, universities and industry. Under Public Law 99-190, funds began to be appropriated for this critical steel initiative.

In the past 2 years, we have worked together to revitalize the U.S. steel and aluminum industry—our efforts have not been in vain. According to a recent report in the September 26 Business Week, "with costs in line and world markets for steel booming, industry profits are expected to double this year, to $2 billion." Furthermore, "since 1981 the industry has slashed capacity by 27 percent, reduced employment by one-half, and spent $11 billion on plant modernization, making it the world's most productive. It now costs major United States steel makers $435 to produce a ton of steel, compared to $472 for Japanese rivals. Aided by the weak dollar, United States steel exports are expected to increase 45 percent over last year, to 1.6 million tons." Once more, through American ingenuity, we were able to combine private and public-sector initiatives to overcome the pending extinction of the U.S. steel industry. The aluminum industry has seen a resurgence also.

Likewise, in a joint subcommittee hearing held by the Science, Research and Technology and the Energy Research and Development Subcommittees on September 15, 1988, Mr. Robert E. Cole, vice president of government affairs for Kaiser Aluminum and Chemical Corp., testified that his company's investments in technological and process improvements over the past few years—had lead to substantial increases in capacity and substantial reductions in cost of converting primary metal to flat-roll production.

Thus, it is the private sector's investments—not the Federal Government's—which are necessary to maintain viable domestic steel and aluminum industrial capabilities in this country.

In addition, according to a recent OTA report, the U.S. copper industry as a whole, bounced back. By 1987, this industry also was profitable and is expected to be so over the next few years.

I ask you, at a time when this Nation is facing a national debt of over $2 trillion, why are we considering further subsidization of an industry that has come back to be profitable? We have already spent $13.134 million, I question the viability of spending much more.

[From Business Week, Sept. 26, 1988]

THE QUOTAS THAT SAVED STEEL ARE BACKFIRING ON BUYERS

The situation was grim. In 1984 the U.S. steel industry was reeling from a worldwide recession that dried up its markets and a soaring dollar that gave foreign competitors huge cost advantages. Imported steel flooded the market, eventually grabbing a 26% share. By 1984, the industry had racked up losses of $5.6 billion, and that was just the beginning. Several large producers, including Wheeling-Pittsburgh Steel Corp. and LTV Corp., later filed for Chapter 11. To protect the industry from illegally underpriced foreign steel, President Reagan negotiated a five-year cap on imports of steel from 29 nations.

Now the U.S. steelmakers have come roaring back. With costs in line and world markets for steel booming, industry profits are expected this year to double, to $2 billion. Still, the steel industry isn't taking any chances. Producers are already gearing up efforts to persuade the next U.S. President to extend the quotas, called voluntary restraint agreements, when they expire on Oct. 1, 1989.

This time around, that fight may be tougher. Tight supplies have pushed up steel prices. On Sept. 9, General Motors Corp. agreed to a 2% to 3% price hike from the nation's major steelmakers—the first in six years. And a growing number of steel buyers, such as Caterpillar Inc. and Deere & Co., are publicly opposing an extension of the quotas. "The worm has turned," says Richard G. Wharton, director of materials at farm-equipment maker Deere & Co. "Now Deere is being victimized by the quotas."

BARGAINING POWER

The timing of the controversy is no coincidence. The Presidential election is likely to renew public debate over protecting basic U.S. industries from foreign competition. Indeed, Democratic candidate Michael Dukakis has already confirmed plans to extend the restraints. And campaign officials for George Bush have assure steel executives their candidate is "sympathetic" to an extension.

The current quota system limits the level of steel imports to 20.5% of the U.S. market. In return, U.S. steelmakers have agreed not to press a rash of antidumping suits against foreign suppliers. But many steel users blame import limits for sporadic steel shortages and soaring prices. To buy additional imported steel, manufacturers had to file for permission from the Commerce Dept.—a process that can take months.

The Big Three auto makers, which haven't opposed the import quotas, have plenty of barginaing power—enough to win low-price contracts. But smaller buyers say soaring prices and shortages earlier this year badly disrupted their production. If the dollar increases in value, they warn, rising materials costs will put U.S. manufacturers at a disadvantage. "We had the opportunity to pick up business overseas, but we couldn't get enough [steel]," says Richard P. Walsh, an executive vice-president at Mondie Forge Co.

At construction-equipment maker Caterpillar, the cost of steel plate has jumped 17% this year. At one point, steel shortages forced the company to airlift finished steel parts from Japan, rather than make them in U.S. plants. Finished parts are not subject to the restrictions. Because of tough competition in its own markets, Cat says it can't pass those cost increases along to its customers. "Even though we've had a supply constraint situation, we haven't taken our prices up [as much]," says George A. Schaefer, Caterpillar's chief executive.

But the steel industry, which suffered losses of $12 billion from 1982 to 1986, maintains it needs more time to rebuild weakened balance sheets and modernize factories before protection lapses. Industry executives argue the quotas didn't succeed in reducing imports to target levels until 1986. And they attribute price increases to soaring demand, rather than trade restrictions. Steel prices have risen 11% on average in the past two years, but they are still 3% below 1981 levels. "That's damn responsible pricing," retorts David M. Roderick, chairman of USX Corp.

Moreover, because of excess world capacity among steel producers and the willingness of foreign governments to subsidize production, steel executives argue that protection is crucial. "The conditions which spawned trade abuses still exist," says Thomas C. Graham, president of USX's steel division.

But the steelmakers' robust recovery belies that argument. Since 1981 the industry has slashed capacity by 27%, reduced employment by half, and spent $11 billion on plant modernization, making it the world's most productive. It now costs major U.S. steelmakers $435 to produce a ton of steel compared with $472 for their Japanese rivals. Aided by the weak dollar, U.S. steel exports are expected to increase 45% over last year, to 1.6 million tons.

That progress hasn't escaped the notice of U.S. trade officials. "The industry does not have an inalienable right to permanent protection," says one source at the International Trade Commission. If steel profits stay strong, winning further trade protection may prove tougher than beating back foreign rivals.

(By Gregory L. Miles in Pittsburgh, with Kathleen Deveny in New York and bureau reports.)

Mr. RITTER. Mr. Speaker, I want to thank you for moving S. 2470 to the House floor. I know that the rush to legislate in this session's twilight resembles the seventh game of a World Series; all of the excitement happens now, because there's almost no tomorrow. Well, as Yogi Berra once said, "It ain't over 'til it's over," and we have a very important bill to pass before the 100th Congress becomes history.

We have a chance today to pull off a victory for basic industry in America, by supporting an aggressive R&D program to help the steel industry build its technological base to become more competitive. S. 2470 is the direct descendant of H.R. 4416, which DOUG WALGREN and I introduced in 1986. Both bills establish a public-private sector partnership R&D program, with the aim of increasing productivity in the steel industry and decreasing energy consumption. Both bills use the expertise of the research facilities of the Department of Energy and the National Bureau of Standards, reconstituted as the National Institutes of Standards and Technology, as the catalyst for research. Both bills call for a research and development plan, with potential projects spelled out—I might add that many of the research priorities remain the same—finally, both bills authorize funds over multiyear authorization cycles.

I commend our subcommittee chairmen, DOUG WALGREN and MARILYN LLOYD, for their leadership in moving the bill forward. S. 2470 is a bill which we need now. In my own district, the Lehigh Valley of Pennsylvania, I've seen what the erosion of an industry as important as steel can mean to individuals, families, and the entire community. But steel is on the rebound. It's coming back by improving quality and productivity after undergoing a painful restructuring.

We need teamwork in order to continue this revitalization. The steel industry must continually improve its processes and products. And given the tremendous Federal role in R&D in other key industries, it's only natural that the Federal Government be involved in public-private sector initiatives that will lead to advances in steelmaking. Steel is still our primary engineering material. The Walgren-Ritter bill of 1986 recognized that, and so does the bill before you today. Ground-breaking research in steel, aluminum, and other metals will proceed under the umbrella of the Steel Initiative.

We can make great progress in steelmaking, through the pursuit of such projects as:

Making steel directly from ore, bypassing the blast furnace;

Achieving near-net shape casting;

Working toward automatic processing technology;

Removing residual elements from scrap steel;

Creating a "superplastic" steel that allows the easy formation of intricate shapes;

Developing advanced coatings for steel, to resist corrision, perform at high temperatures, and so forth, and much more.

S. 2470 is a well-balanced approach to initiating a Team America vision for the technological evolution of the steel industry. I urge you to give it your support.

Mr. LUJAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. ROE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GRAY of Illinois). The question is on the motion offered by the gentleman from New Jersey [Mr. ROE] that the House suspend the rules and pass the Senate bill, S. 2470, as amended.

The question was taken; and (two-thirds having voted in favor thereof), the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ROE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 2470, the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

COMMEMORATING SUCCESSFUL RETURN TO FLIGHT BY SPACE SHUTTLE "DISCOVERY"

Mr. ROE. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 574) to commemorate the successful return to flight by the space shuttle *Discovery*.

The Clerk read as follows:

H. RES. 574

Whereas the Space Shuttle Discovery was launched successfully from the Kennedy Space Center at 11:37 a.m. on September 28, 1988, returning the United States to manned space operations;

Whereas the Discovery and its crew of Frederick H. Hauck, Richard O. Covey, John M. Lounge, David C. Hilmers, and George D. Nelson successfully completed four days of onorbit operations, including the deployment of the Tracking and Data Relay Satellite (TDRS–C);

Whereas the Discovery successfully reentered the Earth's atmosphere and landed on schedule at Edwards Air Force Base on October 3, 1988;

Whereas this successful mission was preceded by a thorough review of the design and certification of all elements of the Space Shuttle, accompanied by the redesign and recertification of selected elements of flight hardware;

Whereas this successful mission was the direct result of the hard work and unwavering dedication of the many thousands of men and women that comprise the NASA/industry team;

Whereas this successful mission demonstrated the Nation's ability to conduct manned space activities safely and reliably; and

Whereas the space program has received the strong and consistent support of the Congress throughout the 30-year history of the National Aeronautics and Space Administration: Now, therefore, be it

Resolved, That the House of Representatives congratulates the National Aeronautics and Space Administration, the flight crew for STS-26, the other members of NASA's astronaut corps, the prime contractors, the associate contractors, the thousands of subcontractors, and the tens of thousands of dedicated workers who contributed to the successful return of the Space Shuttle Discovery to safe operations in outer space.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from New Jersey [Mr. ROE] will be recognized for 20 minutes and the gentleman from New Mexico [Mr. LUJAN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. ROE].

Mr. ROE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, 2 weeks ago most of the Members of this body felt compelled to stop what they were doing and join with tens of millions of our fellow countrymen to watch the launch of the space shuttle *Discovery.* In fact, some Members had the privilege and honor of being present at the Kennedy Space Center to witness this historic event.

Americans of all ages, from all walks of life were filled with emotion and pride as the *Discovery* majestically lifted off the launch pad and rocketed toward space.

For many Americans, the space shuttle has become a symbol of our technical prowess and a focus of our national pride. The successful return of the *Discovery* to safe space flight provides an excellent opportunity for all of us to be proud of our country, proud of our accomplishments, proud of the many thousands of men and women at NASA and its associated contractors, and proud of the brave astronauts who reached out for us from space.

Mr. Speaker, last Wednesday I offered a resolution along with BILL NELSON, MANUEL LUJAN, and BOB WALKER to commemorate the historic return to flight of the space shuttle *Discovery.* This resolution (H. Res. 574) offers the congratulations of the House of Representatives to those who had a part in making this mission a success. Clearly, these congratulations are well deserved.

Mr. Speaker, I reserve the balance of my time.

Mr. LUJAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of House Resolution 574, a resolution to commemorate the successsful return to flight by the space shuttle *Discovery.*

Mr. Speaker, it has been nearly 3 years since the *Challenger* tragedy effectively grounded America's manned space program, and like many Americans, I have sometimes wondered why it should take so long to fix the problem and get on with the program.

Americans are a proud and an impatient people, and we don't like it when we think we're being beaten at anything—especially the race to explore and conquer space. We're a nation of explorers and we don't like being told we can't. Well, now we don't have to hear the word can't anymore. We're back in space again, and once again we can hold our heads up with pride. And, we're especially proud of these five brave Americans who had faith in themselves and their many coworkers who made this flight possible.

Mr. Speaker, I have been impatient—but I also recognize the importance of making absolutely certain that everything possible was being done to make manned space travel as safe as it can be. We all know that space travel can never be perfectly safe—for that matter no travel, even here on earth will ever be perfectly safe—but we cannot afford to be careless in our pursuit of space exploration.

We still have a long road ahead of us. One day our children or our children's children will find space travel routine. One day man will be able to live in space and will be able to travel to distant plants. This successful flight of *Discovery* is just the first step to the future, but it was an important and a necessary step.

Mr. Speaker, our congratulations go to those thousands of NASA employees, to all the astronauts, to all the contractors on this project, and of course it is with great pride that I welcome these astronauts back and join my colleagues in commemorating this happy occasion.

Mr. Speaker, I reserve the balance of my time.

Mr. ROE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, just 2 weeks ago this Thursday the space shuttle *Discovery* lifted off from launch complex 39-B at the Kennedy Space Center.

The mission of STS-26 was declared "an absolute stunning success" by Rear Adm. Richard H. Truly, NASA's Chief of Spaceflight.

This flight was our return to space after the tragic loss of the *Challenger* and her gallant crew. The period following that accident on January 1986 until the present has been a hard one for NASA. But throughout that period the thousands of NASA and contractor employees have demonstrated unwavering dedication. Today we celebrate the safe return to flight and the achievements and contributions of all of the aerospace community.

In the words of capsule communicator Blaine Hammond as *Discovery* returned, "A great end to a new beginning."

Mr. MCMILLEN of Maryland. Mr. Speaker, I rise in tribute to the brave pilots of the space shuttle *Discovery* and commend them for the successful completion of their journey. In doing so, I would like to associate myself with the remarks of the distinguished chairman of the House Science, Space, and Technology Committee, Representative ROBERT ROE, and to support his resolution regarding the shuttle astronauts, House Resolution 574.

As a member of the Space, Science, and Applications Subcommittee, I am especially pleased to see such a triumphant return to space flight. It signifies the return of our Nation's preeminence in manned space travel, and opens yet another chapter of scientific, technological, and exploration achievements.

Mr. Speaker, we must seize this moment to renew our commitment to space travel and exploration. With past failures and delays, it is easy to lose sight of the myriad of contributions from NASA. From the Goddard Space Flight Center in Greenbelt, MD, to Mission Control in Houston, this Federal agency has made immeasurable progress in a variety of scientific fields. In sending *Discovery* aloft, we must remember that we are not only reestablishing the domestic Space Program, but we are also reaffirming our collective desire to expand the realm of scientific knowledge. In the words of essayist Dennis Overbye, "when we explore the universe, we explore ourselves."

Mr. LUJAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. ROE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey [Mr. ROE] that the House suspend the rules and agree to the resolution (H. Res. 574).

The question was taken.

Mr. LUJAN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. ROE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on

House Resolution 574, the resolution just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

VETERANS' BENEFITS AND PROGRAMS IMPROVEMENT ACT OF 1988

Mr. MONTGOMERY. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2049) to establish an independent Commission on the Veterans' Administration Home Loan Guaranty Program; to amend title 38, United States Code, to authorize reductions in the interest rate on loans made by the Veterans' Administration to finance the sales of properties acquired by the Veterans' Administration as the result of foreclosures, and to establish creditworthiness requirements and require a 0.5 per centum fee for assumptions of such loans other than those sold without recourse, and for other purposes, as amended.

The Clerk read as follows:

S. 2049

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans' Benefits and Programs Improvement Act of 1988".

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—EDUCATION PROGRAMS

PART A—PROVISIONS RELATING TO MONTGOMERY GI BILL AND CERTAIN OTHER EDUCATION PROGRAMS

SEC. 101. MONTGOMERY GI BILL DEATH BENEFIT.

(a) IN GENERAL.—Subchapter II of chapter 30 is amended by adding at the end the following new section:

"§ 1417. Death benefit

"(a)(1) In the event of the service-connected death of any individual—

"(A) who—

"(i) is entitled to basic educational assistance under this chapter; or

"(ii) is on active duty in the Armed Forces and but for section 1411(a)(1)(A)(i) or division (i) or (ii) of section 1412(a)(1)(A) of this title would be eligible for such basic educational assistance; and

"(B) who dies while on active duty,

the Administrator shall make a payment, subject to paragraph (2)(B) of this subsection, in the amount described in subsection (b) of this section to the person or persons described in paragraph (2)(A) of this subsection.

"(2)(A) The payment referred to in paragraph (1) of this subsection shall be made to the person or persons first listed below who is surviving on the date of such individual's death:

"(i) The beneficiary or beneficiaries designated by such individual under the individual's Servicemen's Group Life Insurance policy.

"(ii) The surviving spouse of the individual.

"(iii) The surviving child or children of the individual, in equal shares.

"(iv) The surviving parent or parents of the individual, in equal shares.

"(B) If no such person survives such individual, no payment shall be made under this section.

"(b) The amount of any payment made under this section shall be equal to—

"(1) the amount reduced from the individual's pay under section 1411(b), 1412(c), or 1418(c) of this title, less

"(2) the total of—

"(A) the amount of educational assistance that has been paid to the individual under this chapter before the payment is made under this section; and

"(B) the amount of accrued benefits paid or payable with respect to such individual in connection with this chapter.

"(c) A payment under this section shall be considered to be a benefit under this title and, for purposes of section 1435(b)(1), it shall be considered to be an entitlement earned under this subchapter.".

(b) CLERICAL AMENDMENT.—The table of sections for subchapter II of chapter 30 is amended by adding at the end the following new item:

"1417. Death benefit.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as of July 1, 1985.

SEC. 102. MONTGOMERY GI BILL ELIGIBILITY FOR INDIVIDUALS DISCHARGED FOR PRE-SERVICE MEDICAL CONDITIONS OR DUE TO REDUCTIONS IN FORCE.

(a) IN GENERAL.—Section 1411(a)(1) is amended—

(1) in clauses (A)(ii)(I) and (B)(ii)(I), by inserting after "disability" the following: ", for a medical condition which preexisted such service on active duty and which the Administrator determines is not service connected,";

(2) in clauses (A)(ii) and (B)(ii), by striking out ", or (II)" and inserting in lieu thereof "; (II)"; and

(3) by inserting before "; or" at the end of clause (A)(ii) and before the semicolon at the end of clause (B)(ii) the following: "; or (III) involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy".

(b) CONFORMING AND TECHNICAL AMENDMENTS.—(1)(A) Section 1412(b)(1) is amended to read as follows:

"(b)(1)(A) The requirement of two years of service under clauses (1)(A)(i) and (1)(B)(i) of subsection (a) of this section is not applicable to an individual who is discharged or released, during such two years, from active duty in the Armed Forces (i) for a service-connected disability, (ii) for a medical condition which preexisted such service on active duty and which the Administrator determines is not service connected, (iii) for hardship, (iv) in the case of an individual discharged or released after 20 months of such service, for the convenience of the Government, or (v) involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

"(B) The requirement of four years of service under clauses (1)(A)(ii) and (1)(B)(ii) of subsection (a) of this section is not applicable to an individual—

"(i) who, during the two years of service described in clauses (1)(A)(i) and (1)(B)(i) of subsection (a) of this section, was discharged or released from active duty in the Armed Forces for a service-connected disability or for a medical condition which preexisted such service on active duty and which the Administrator determines is not service connected, if the individual was obligated, at the beginning of such two years of service, to serve such four years of service; or

"(ii) who, during the four years of service described in clauses (1)(A)(ii) and (1)(B)(ii) of subsection (a) of this section, is discharged or released from service in the Selected Reserve (I) for a service-connected disability, (II) for a medical condition which preexisted the individual's becoming a member of the Selected Reserve and which the Administrator determines is not service connected, (III) for hardship, (IV) in the case of an individual discharged or released after 30 months of such service, for the convenience of the Government, or (V) involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.".

(B) Paragraphs (1)(A)(i) and (1)(B)(i) of section 1412(a) are each amended by inserting ", subject to subsection (b) of this section," after "Forces".

(2) Section 1413(a)(2) is amended by inserting "or (III)" after "section 1411(a)(1)(A)(ii)(I)" and after "section 1411(a)(1)(B)(ii)(I)" the first place each appears.

(3) Clause (F) of section 3103A(b)(3) is amended to read as follows:

"(F) to benefits under chapter 30 of this title by reason of—

"(i) a discharge or release from active duty for the convenience of the Government, as described in sections 1411(a)(1)(A)(ii)(II) and 1412(b)(1)(A)(iv) of this title;

"(ii) a discharge or release from active duty for a medical condition which preexisted service on active duty and which the Administrator determines is not service connected, as described in clauses (A)(ii)(I) and (B)(ii)(I) of section 1411(a)(1) of this title and in section 1412(b)(1)(A)(ii) of this title; or

"(iii) an involuntary discharge or release from active duty for the convenience of the Government as a result of a reduction in force, as described in clauses (A)(ii)(III) and (B)(ii)(III) of section 1411(a)(1) of this title and in section 1412(b)(1)(A)(v) of this title.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect—

(1) as of July 1, 1985, with respect to individuals discharged or released for a medical condition which preexisted service on active duty or in the Selected Reserve and which the Administrator determines is not service connected; and

(2) as of October 1, 1987, with respect to individuals involuntarily discharged or released for the convenience of the Government as a result of a reduction in force.

SEC. 103. OPPORTUNITY FOR MONTGOMERY GI BILL ENROLLMENT FOR CERTAIN ACTIVE-DUTY NONPARTICIPANTS.

(a) IN GENERAL.—Subchapter II of chapter 30 is amended by adding at the end the following new section (after the section added by section 101(a) of this Act):

"§1418. Opportunity for certain active-duty personnel to withdraw election not to enroll

"(a) Notwithstanding any other provision of this chapter, during the period beginning December 1, 1988, and ending June 30, 1989 (hereinafter in this section referred to as the 'open period'), an individual who—

"(1) first became a member of the Armed Forces or first entered on active duty as a member of the Armed Forces during the period beginning July 1, 1985, and ending June 30, 1988;

"(2) has continuously served on active duty without a break in service since the date the individual first became such a member or first entered on active duty as such a member; and

"(3) is serving on active duty during the open period,

shall have the opportunity, in accordance with this section and on such form as the Secretary shall prescribe, to withdraw an election made under section 1411(c)(1) or 1412(d)(1) of this title not to receive educational assistance under this chapter.

"(b) An individual described in clauses (1) through (3) of subsection (a) of this section who made an election under section 1411(c)(1) or 1412(d)(1) of this title and who—

"(1) while serving on active duty during the open period, makes a withdrawal of such an election;

"(2) continues to serve the period of service which, at the beginning of the open period, such individual was obligated to serve;

"(3)(A) serves the obligated period of service described in clause (2) of this subsection;

"(B) before completing such obligated period of service, is discharged or released from active duty for (i) a service-connected disability, (ii) a medical condition which preexisted such service and which the Administrator determines is not service connected, or (iii) hardship; or

"(C) before completing such obligated period of service, is (i) discharged or released from active duty for the convenience of the Government after completing not less than 20 months of such period of service, if such period was less than three years, or 30 months, if such period was at least three years, or (ii) involuntarily discharged or released from active duty for the convenience of the Government as a result of a reduction in force, as determined by the Secretary concerned in accordance with regulations prescribed by the Secretary of Defense;

"(4) before completing such obligated period of service, has completed the requirements of a secondary school diploma (or an equivalency certificate); and

"(5) upon completion of such obligated period of service—

"(A) is discharged from service with an honorable discharge, is placed on the retired list, is transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or is placed on the temporary disability retired list;

"(B) continues on active duty; or

"(C) is released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service,

is entitled to basic educational assistance under this chapter.

"(c) The basic pay of an individual withdrawing, under subsection (b)(1) of this section, an election under section 1411(c)(1) or 1412(d)(1) of this title shall be reduced by—

"(1) $1,200; or

"(2) in the case of an individual described in clause (B) or (C) of subsection (b)(3) of this section whose discharge or release from active duty prevents the reduction of the basic pay of such individual by $1,200, an amount less than $1,200.

"(d) A withdrawal under subsection (b)(1) of this section is irrevocable.".

(b) CONFORMING AMENDMENTS.—(1) The second sentence of section 1411(b) and of section 1412(c) are each amended by striking out "subsection" and inserting in lieu thereof "chapter".

(2) Section 1413 is amended—

(A) by redesignating subsection (c) as subsection (d); and

(B) by inserting after subsection (b) the following new subsection:

"(c)(1) Subject to section 1795 of this title and except as provided in paragraph (2) of this subsection, each individual entitled to basic educational assistance under section 1418 of this title is entitled to 36 months of educational assistance under this chapter (or the equivalent thereof in part-time educational assistance).

"(2) Subject to section 1795 of this title, an individual described in clause (B) or (C) of section 1418(b)(3) of this title whose discharge or release from active duty prevents the reduction of the basic pay of such individual by $1,200 is entitled to the number of months of assistance under this chapter that is equal to the lesser of—

"(A) 36 multiplied by a fraction the numerator of which is the amount by which the basic pay of the individual has been reduced under section 1418(c) and the denominator of which is $1,200; or

"(B) the number of months the individual has served on continuous active duty after June 30, 1985.".

(3) Section 1415(b) is amended by inserting "or 1418" after "section 1411".

(4) Section 1416 is amended by adding at the end the following new subsection:

"(c) A member of the Armed Forces who—

"(1) completes at least two years of service on active duty after June 30, 1985;

"(2) after such service continues on active duty without a break in service; and

"(3) but for section 1418(b)(3)(A) of this title would be entitled to basic educational assistance under this chapter,

may receive such assistance for enrollment in an approved program of education while continuing to perform the service described in section 1418(b)(2) of this title.".

(5) Section 1421 is amended—

(A) in subsection (a) in the matter preceding clause (1), by inserting "or 1418" after "section 1411"; and

(B) in subsection (b) in the matter preceding clause (1), by inserting "or 1418" after "section 1412".

(c) CLERICAL AMENDMENT.—The table of sections for subchapter II of chapter 30 is amended by adding the following new item (after the item added by section 101(b) of this Act):

"1418. Opportunity for certain active-duty personnel to withdraw election not to enroll.".

SEC. 104. MONTGOMERY GI BILL SECONDARY SCHOOL DIPLOMA REQUIREMENTS.

(a) ACTIVE DUTY PARTICIPANTS.—Clause (2) of section 1411(a) is amended to read as follows:

"(2) who completed the requirements of a secondary school diploma (or equivalency certificate) not later than—

"(A) the original ending date of the individual's initial obligated period of active duty in the case of an individual described in clause (1)(A) of this subsection, regardless of whether the individual is discharged or released from active duty on such date; or

"(B) December 31, 1989, in the case of an individual described in clause (1)(B) of this subsection;

except that an individual described in clause (1)(B) of this subsection may meet the requirement of this clause by having successfully completed the equivalent of 12 semester hours in a program of education leading to a standard college degree; and".

(b) SELECTED RESERVE PARTICIPANTS.—Section 1412(a)(2) is amended—

(1) by striking out "received" and inserting in lieu thereof "completed the requirements of"; and

(2) by inserting the following before the semicolon: ", except that an individual described in clause (1)(B) of this subsection may meet the requirement of this clause by having successfully completed the equivalent of 12 semester hours in a program of education leading to a standard college degree".

SEC. 105. CHOICE OF MONTGOMERY GI BILL BENEFITS FOR CERTAIN RESERVISTS.

Section 1412 is amended by adding at the end the following new subsection:

"(e)(1) An individual described in subclause (I) or (III) of subsection (b)(1)(B)(ii) of this section may elect entitlement to basic educational assistance under section 1411 of this title, based on an initial obligated period of active duty of two years, in lieu of entitlement to assistance under this section.

"(2) An individual who makes the election described in paragraph (1) of this subsection shall, for all purposes of this chapter, be considered entitled to educational assistance under section 1411 of this title and not under this section. Such an election is irrevocable.".

SEC. 106. REFRESHER, REMEDIAL, AND DEFICIENCY COURSES.

(a) MONTGOMERY GI BILL ACTIVE DUTY PROGRAM.—Subsection (a) of section 1434 is amended—

(1) by inserting "(1)" before "Except";

(2) by designating the second sentence as paragraph (2) thereof;

(3) in paragraph (2) (as so designated), by striking out "those provisions" and inserting in lieu thereof "the provisions of the sections enumerated in paragraph (1) of this subsection"; and

(4) by adding at the end the following new paragraph:

"(3) The Administrator may, without regard to the application to this chapter of so much of the provisions of section 1671 of this title as prohibit the enrollment of an eligible veteran in a program of education in which the veteran is 'already qualified', and pursuant to such regulations as the Administrator shall prescribe, approve the enrollment of such individual in refresher courses (including courses which will permit such individual to update knowledge and skills or be instructed in the technological advances which have occurred in the individual's field of employment), deficiency courses, or other preparatory or special education or training courses necessary to enable the individual to pursue an approved program of education.".

(b) POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM.—Section 1641 is amended—

(1) in subsection (a), by—

(A) inserting "(1)" after "(a)"; and

(B) adding at the end the following new paragraph:

"(2) The Administrator may, without regard to the application to this chapter of so much of the provisions of section 1671 of this title as prohibit the enrollment of an eligible veteran in a program of education in which the veteran is 'already qualified', and pursuant to such regulations as the Administrator shall prescribe, approve the enrollment of such individual in refresher courses (including courses which will permit such individual to update knowledge and skills or be instructed in the technological advances which have occurred in the individual's field of employment), deficiency courses, or other preparatory or special education or training courses necessary to enable the individual to pursue an approved program of education."; and

(2) in subsection (b), by striking out "1691(a)(1)" and inserting in lieu thereof "1691(a) (other than clause (1))".

(c) SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE PROGRAM.—Subsection (a) of section 1733 is amended to read as follows:

"(a)(1) Any eligible person shall be entitled to the benefits provided an eligible veteran (with no dependents) under section 1691 (if pursued in a State) of this title.

"(2) Educational assistance under this chapter for the first five months of full-time pursuit of a program (or the equivalent thereof in part-time educational assistance) consisting of such course or courses shall be provided without charge to entitlement.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on August 15, 1989.

SEC. 107. TUTORIAL ASSISTANCE.

(a) ASSISTANCE UNDER THE MONTGOMERY GI BILL FOR ACTIVE-DUTY PARTICIPANTS.—(1) Subchapter II of chapter 30 is amended by adding at the end the following new section (after the section added by section 103(a) of this Act):

"§ 1419. Tutorial assistance

"(a) An individual entitled to an educational assistance allowance under this chapter shall also be entitled to benefits provided an eligible veteran under section 1692 of this title, subject to the conditions applicable to an eligible veteran under such section.

"(b) The amount of such benefits payable under this section may not exceed $100 per month, for a maximum of twelve months, or until a maximum of $1,200 is utilized. This amount is in addition to the amount of educational assistance allowance payable to the individual under this chapter.

"(c)(1) An individual's period of entitlement to educational assistance under this chapter shall be charged only with respect to the amount of tutorial assistance paid to the individual under this section in excess of $600.

"(2) An individual's period of entitlement to educational assistance under this chapter shall be charged at the rate of one month for each amount of assistance paid to the individual under this section in excess of $600 that is equal to the amount of the monthly educational assistance allowance which the individual is otherwise eligible to receive for full-time pursuit of an institutional course under this chapter.".

(2) Section 1435 is amended by adding at the end the following:

"(e) Payments for tutorial assistance benefits under section 1419 of this title shall be made—

"(1) in the case of the first $600 of such benefits paid to an individual, from funds appropriated, or otherwise available, to the Veterans' Administration for the payment of readjustment benefits; and

"(2) in the case of payments to an individual for such benefits in excess of $600, from—

"(A) funds appropriated, or otherwise available, to the Veterans' Administration for the payment of readjustment benefits;

"(B) the Department of Defense Education Benefits Fund established under section 2006 of title 10; and

"(C) funds appropriated to the Department of Transportation,

in the same proportion as the Fund described in subclause (B) of this clause and the funds described in subclause (A) or (C) of this clause are used to pay the educational assistance allowance to the individual under this chapter.".

(3) The table of sections for subchapter II of chapter 30 is amended by adding the following new item (after the item added by section 103(c) of this Act):

"1419. Tutorial assistance.".

(b) POST-VIETNAM ERA EDUCATIONAL ASSISTANCE PROGRAM.—(1) Subchapter III of chapter 32 is amended by inserting after section 1633 the following new section:

"§ 1634. Tutorial assistance

"(a) An individual entitled to benefits under this chapter shall also be entitled to the benefits provided an eligible veteran under section 1692 of this title, subject to the conditions applicable to an eligible veteran under such section. Any amount paid to an individual under this section shall be in addition to the amount of other benefits paid under this chapter.

"(b) An individual's period of entitlement to educational assistance under this chapter shall be charged only with respect to the amount of educational assistance paid to the individual under this section in excess of $600.

"(c) An individual's period of entitlement to educational assistance under this chapter shall be charged at the rate of one month for each amount of assistance paid to the individual under this section in excess of $600 that is equal to the amount of monthly educational assistance the individual is otherwise eligible to receive for full-time pursuit of an institutional course under this chapter.

"(d) Payments of benefits under this section shall be made—

"(1) in the case of the first $600 of such benefits paid to an individual, from funds appropriated, or otherwise available, to the Veterans' Administration for the payment of readjustment benefits; and

"(2) in the case of payments to an individual for such benefits in excess of $600, from the fund from contributions made to the fund by the veteran and by the Secretary of Defense in the same proportion as these contributions are used to pay other educational assistance to the individual under this chapter.".

(2) The table of sections for subchapter III of chapter 32 is amended by inserting after the item relating to section 1633 the following new item:

"1634. Tutorial Assistance.".

(c) INCREASE IN MAXIMUM TUTORIAL ASSISTANCE PAYMENTS.—(1) Section 1692(b) is amended by striking out "$84" and "$1,008" and inserting in lieu thereof "$100" and "$1,200", respectively.

(2)(A) The heading of section 1692 is amended to read as follows:

"§ 1692. Tutorial assistance".

(B) The item relating to section 1692 in the table of sections at the beginning of chapter 34 is amended to read as follows:

"1692. Tutorial assistance.".

SEC. 108. COOPERATIVE TRAINING.

(a) MONTGOMERY GI BILL.—(1) Section 1402(3)(B) is amended—

(A) by inserting "(i)" before "a full-time"; and

(B) by inserting before the period at the end ", and (ii) a cooperative program (as defined in section 1682(a)(2) of this title)".

(2) Section 1432 is amended by adding at the end the following new subsection:

"(d)(1) The amount of the monthly educational assistance allowance payable to an individual pursuing a cooperative program under this chapter shall be 80 percent of the monthly allowance otherwise payable to such individual under section 1415 and section 1422, if applicable, of this title.

"(2) For each month that an individual is paid a monthly educational assistance allowance for pursuit of a cooperative program under this chapter, the individual's entitlement under this chapter shall be charged at the rate of 80 percent of a month.".

(b) POST-VIETNAM-ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM.—(1) Section 1602(2)(B) is amended—

(A) by inserting "(i)" after "includes"; and

(B) by inserting after "of this title" the following: ", and (ii) in the case of an individual who is not serving on active duty, a cooperative program (as defined in section 1682(a)(2) of this title)".

(2) Section 1631 is amended by adding at the end the following new subsection:

"(d)(1) The amount of the monthly benefit payment to an individual pursuing a cooperative program under this chapter shall be 80 percent of the monthly benefit otherwise payable to such individual (computed on the basis of the formula provided in subsection (a)(2) of this section).

"(2) For each month that an individual is paid a monthly benefit payment for pursuit of a cooperative program under this chapter, the individual's entitlement under this chapter shall be charged at the rate 80 percent of a month.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1989.

SEC. 109. EXTENSION OF DELIMITING PERIODS BY REASON OF ALCOHOL CONDITIONS.

Section 105 is amended by adding at the end the following new subsection:

"(c) For the purposes of any provision relating to the extension of a delimiting period under any education-benefit or rehabilitation program administered by the Veterans' Administration, the disabling effects of chronic alcoholism shall not be considered to be the result of willful misconduct.".

SEC. 110. MONTGOMERY GI BILL SELECTED RESERVE PROGRAM.

(a) PAYMENT FOR LESS THAN HALF-TIME PURSUIT OF A PROGRAM OF EDUCATION.—Section 2131(b) of title 10, United States Code, is amended—

(1) by striking out "and" at the end of clause (2);

(2) by striking out the period at the end of clause (3) and inserting in lieu thereof "; and"; and

(3) by inserting at the end the following new clause:

"(4) an appropriately reduced rate, as determined under regulations which the Administrator of Veterans' Affairs shall prescribe, for each month of less than half-time pursuit of a program of education, except that no payment may be made to a person for less than half-time pursuit if tuition assistance is otherwise available to the person for such pursuit from the military department concerned.".

(b) Time of Eligibility.—Section 2132(b) of such title is amended to read as follows:

"(b) Educational assistance may not be provided to a member under this chapter until the member has completed the initial period of active duty for training required of the member.".

SEC. 111. TECHNICAL AMENDMENTS.

(a) Title 38 Amendments—Title 38 is amended as follows:

(1) Section 1402(3)(B) is amended by striking out "includes" and inserting in lieu thereof "in the case of an individual who is not serving on active duty, includes".

(2)(A) Section 1411(a)(1)(A)(i)(I) is amended by inserting ", as the individual's initial obligated period of active duty," after "serves".

(B) Section 1412(a)(1)(A)(i) is amended by inserting ", as the individual's initial obligated period of active duty," after "serves".

(3) Section 1411 is amended by adding the following new subsection at the end:

"(d)(1) For purposes of this chapter, any period of service described in paragraph (2) of this subsection shall not be considered a part of an individual's initial obligated period of active duty.

"(2) The period of service referred to in paragraph (1) is any period terminated because of a defective enlistment and induction based on—

"(A) the individual's being a minor for purposes of service in the Armed Forces;

"(B) an erroneous enlistment or induction; or

"(C) a defective enlistment agreement.".

(4) Section 1413 is amended—

(A) in subsection (a)(2)—

(i) by striking out "In" and inserting in lieu thereof "Subject to section 1795 of this title and subsection (c) of this section, in"; and

(ii) by striking out "active duty" and all that follows through the period and inserting in lieu thereof "continuous active duty served by such individual after June 30, 1985, as part of the individual's initial obligated period of active duty in the case of an individual described in section 1411(a)(1)(A)(ii)(I) or (III) of this title, or in the case of an individual described in section 1411(a)(1)(B)(ii)(I) or (III) of this title, after June 30, 1985."; and

(B) in subsection (b)(1), by striking out "active duty" and all that follows through "title, and" and inserting in lieu thereof "continuous active duty served by such individual after June 30, 1985, as part of the individual's initial obligated period of active duty in the case of an individual described in section 1412(a)(1)(A) of this title, or in the case of an individual described in section 1412(a)(1)(B) of this title, after June 30, 1985, and".

(5)(A) Section 1415(a) is amended by striking out "Subject" and all that follows through "except" and inserting in lieu thereof "The amount of payment of educational assistance under this chapter is subject to section 1432 of this title. Except".

(B) Section 1422(a) is amended by striking out "Subject" and all that follows through "except" and inserting in lieu thereof "The amount of payment of educational assistance under this chapter is subject to section 1432 of this title. Except".

(6) Section 1431(a) is amended by striking out "beginning on" and all that follows through the period and inserting in lieu thereof the following: "beginning on the date of such individual's last discharge or release from active duty, except that such 10-year period shall begin—

"(1) in the case of an individual who becomes entitled to such assistance under clause (A) or (B) of section 1412(a)(1) of this title, on the later of the date of such individual's last discharge or release from active duty or the date on which the four-year requirement described in clause (A)(ii) or (B)(ii), respectively, of such section 1412(a)(1) is met; and

"(2) in the case of an individual who becomes entitled to such assistance under section 1411(a)(1)(B), on the later of the date of such individual's last discharge or release from active duty or January 1, 1990.".

(7)(A) Section 1432 is amended by adding at the end the following new subsection (after the subsection added by section 108(a)(2) of this Act):

"(e)(1)(A) The amount of the educational assistance allowance payable under this chapter to an individual who enters into an agreement to pursue, and is pursuing, a program of education exclusively by correspondence is an amount equal to 55 percent of the established charge which the institution requires nonveterans to pay for the course or courses pursued by such individual.

"(B) For purposes of this paragraph, the term 'established charge' means the lesser of—

"(i) the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency; or

"(ii) the actual charge to the individual for such course or courses.

"(2) Such allowance shall be paid quarterly on a pro rata basis for the lessons completed by the individual and serviced by the institution.

"(3) In each case in which the rate of payment to an individual is determined under paragraph (1) of this subsection, the period of entitlement of such individual under this chapter shall be charged at the rate of one month for each payment of educational assistance to the individual that is equal to the amount of monthly educational assistance the individual would otherwise be eligible to receive for full-time pursuit of an institutional course under this chapter.".

(B) Section 1434 (as amended by section 106(a) of this Act) is amended—

(i) in subsection (a)(1), by inserting "1786(a)," after "1780(g),";

(ii) by striking out subsection (c); and

(iii) by redesignating subsection (d) as subsection (c).

(8) Section 1432(c)(3) is amended—

(A) by striking out "For" and inserting in lieu thereof "(A) Except as provided in subparagraph (B) of this paragraph, for";

(B) by redesignating clauses (A), (B), and (C) as clauses (i), (ii), and (iii), respectively; and

(C) by adding at the end the following new subparagraph:

"(B) Any such charge to the individual's entitlement shall be reduced proportionately in accordance with the reduction in payment under paragraph (2) of this subsection.".

(9) Section 1673(d) is amended—

(A) by inserting "or under chapter 106 of title 10" before the period at the end of the first sentence; and

(B) by inserting "or under chapter 106 of title 10" after "of this title" in the third sentence.

(b) Chapter 106 Amendments.—Chapter 106 of title 10, United States Code, is amended as follows:

(1) Section 2131(c)(2) is amended by inserting before the period at the end the following: "(or the equivalent thereof in part-time educational assistance)".

(2) Section 2132(a)(2) is amended—

(A) by striking out "received" and inserting in lieu thereof "completed the requirements of"; and

(B) by inserting before the semicolon the following: ", or in the case of an individual who reenlists or extends an enlistment as described in paragraph (1)(A) of this subsection, has completed such requirements at any time before such reenlistment or extension".

(3) Section 2132(c) is amended by adding the following sentence at the end: "At the request of the Administrator of Veterans' Affairs, the Secretary of Defense shall transmit a notice of entitlement for each such person to the Administrator.".

(4) Section 2132(d) is amended to read as follows:

"(d) An individual who serves in the Selected Reserve may not receive credit for such service under both the program established by chapter 30 of title 38 and the program established by this chapter but shall elect (in such form and manner as the Administrator of Veterans' Affairs may prescribe) the program to which such service is to be credited.".

(5) Section 2133 is amended—

(A) in subsection (a), by striking out "section" and inserting in lieu thereof "chapter";

(B) in subsection (b), by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively, and by adding as paragraph (1) the following new paragraph:

"(b)(1) In the case of a person separated from the Selected Reserve because of a disability which was not the result of the individual's own willful misconduct incurred on or after the date on which such person became entitled to educational assistance under this chapter, the period for using entitlement prescribed by subsection (a) shall be determined without regard to clause (2) of such subsection."; and

(C) in paragraph (2) of subsection (b), as redesignated by subparagraph (B) of this paragraph, strike out "1431(e)" and insert in lieu thereof "1431(f)".

(6) Section 2135 is amended—

(A) in subsection (a)(1), by inserting ", and during which the member has received such assistance," after "chapter"; and

(B) by striking out clause (A) of subsection (b)(1) and inserting in lieu thereof the following:

"(A) the number of months of obligated service the person has remaining under the agreement entered into under section

2131(a) of this title divided by the original number of months of such obligation; and".

PART B—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

SEC. 121. COURSE WITHDRAWALS.

(a) IN GENERAL.—Section 1780(a)(4) is amended by inserting after "circumstances" the following: ", except that, in the first instance of withdrawal by an eligible veteran or person from a course or courses with respect to which such veteran or person has been paid assistance under this title, mitigating circumstances shall be considered to exist with respect to courses totaling not more than six semester hours or the equivalent thereof".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply so as to require that mitigating circumstances be considered to exist only with respect to withdrawals from a course or courses being pursued with assistance under title 38, United States Code, that occur on or after June 1, 1989.

SEC. 122. EDUCATIONAL ASSISTANCE FOR CERTAIN INCARCERATED VETERANS UNDER THE POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM.

Section 1631 is amended by adding at the end the following new subsection (after the subsection added by section 108(b)(2) of this Act):

"(e)(1) Subject to the provisions of paragraph (2) of this subsection, the amount of the educational assistance benefits paid to an eligible veteran who is pursuing a program of education under this chapter while incarcerated in a Federal, State, or local penal institution for conviction of a felony may not exceed the lesser of (A) such amount as the Administrator determines, in accordance with regulations which the Administrator shall prescribe, is necessary to cover the cost of established charges for tuition and fees required of similarly circumstanced nonveterans enrolled in the same program and the cost of necessary supplies, books, and equipment, or (B) the applicable monthly benefit payment otherwise prescribed in this section or section 1633 of this title. The amount of the educational assistance benefits payable to a veteran while so incarcerated shall be reduced to the extent that the tuition and fees of the veteran for any course are paid under any Federal program (other than a program administered by the Administrator) or under any State or local program.

"(2) Paragraph (1) of this subsection shall not apply in the case of any veteran who is pursuing a program of education under this chapter while residing in a halfway house or participating in a work-release program in connection with such veteran's conviction of a felony.".

SEC. 123. VETERANS' ADVISORY COMMITTEE ON EDUCATION.

Section 1792(c) is amended by striking out "December 31, 1989" and inserting in lieu thereof "December 31, 1993".

SEC. 124. REPEAL OF EXPIRED PROGRAM OF ACCELERATED-PAYMENT LOANS.

(a) REPEAL.—Sections 1682A, 1686, 1737, and 1738 are repealed.

(b) CONFORMING AMENDMENTS.—Section 1798 is amended—

(1) by striking out "or person" each place it appears;

(2) in subsection (a)(1)—

(A) by striking out "and eligible person"; and

(B) by inserting "(if the program of education is pursued in a State)" after "subchapter";

(3) in subsection (b)—

(A) in paragraph (1), by striking out "or eligible person"; and

(B) in paragraph (3), by striking out "or subchapter II of chapter 35, respectively,";

(4) in subsection (e)—

(A) in paragraph (2), by striking out "or person's"; and

(B) by amending paragraph (3)(B) to read as follows:

"(B) data regarding the default experience and default rate with respect to loans made under this section.";

(5) in subsection (f)—

(A) by striking out paragraphs (1) and (3); and

(B) by striking out "(2)"; and

(6) in subsection (g)(2)(A)—

(A) in the first sentence, by striking out "and eligible persons"; and

(B) in the second sentence, by striking out "or eligible person".

(c) CLERICAL AMENDMENTS.—

(1) The table of sections at the beginning of chapter 34 is amended by striking out the items relating to sections 1682A and 1686.

(2) The table of sections at the beginning of chapter 35 is amended by striking out the items relating to sections 1737 and 1738.

(3) The table of sections at the beginning of chapter 36 is amended by striking out the heading relating to subchapter III and inserting in lieu thereof the following:

"SUBCHAPTER III—EDUCATION LOANS."

(4) Chapter 36 is amended by striking out the heading for subchapter III and inserting in lieu thereof the following:

"SUBCHAPTER III—EDUCATION LOANS".

TITLE II—REHABILITATION FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES

SEC. 201. TRAINING AND WORK EXPERIENCE WITHOUT PAY IN STATE AND LOCAL GOVERNMENT AGENCIES.

Section 1515 is amended—

(1) in subsection (a)(1), by inserting ", or of any State or local government agency receiving Federal financial assistance," after "Administration)".

(2) in subsection (b)—

(A) in paragraph (1), by inserting "at a Federal agency" after "section"; and

(B) by striking out paragraph (3) and inserting in lieu thereof:

"(3) Use of the facilities of a State or local government agency under subsection (a)(1) of this section or use of facilities and services under subsection (a)(4) of this section, shall be procured through contract, agreement, or other cooperative arrangement.

"(4) The Administrator shall prescribe regulations providing for the monitoring of training and work experiences provided under such subsection (a)(1) at State or local government agencies and otherwise ensuring that such training or work experience is in the best interest of the veteran and the Federal Government.".

SEC. 202. USE OF FOR-PROFIT ORGANIZATIONS FOR EMPLOYMENT ASSISTANCE AND INDEPENDENT LIVING PROGRAMS.

(a) EMPLOYMENT ASSISTANCE.—Section 1517(a)(2)(C) is amended—

(1) by striking out "and" at the end of subclause (iii); and

(2) by inserting before the period at the end ", and (v) any for-profit entity in a case in which the Administrator has determined that services necessary to provide such assistance are available from such entity and that comparably effective services are not available, or cannot be obtained cost-effectively, from the entities described in subclauses (i) through (iv) of this clause.".

(b) INDEPENDENT LIVING PROGRAMS.—Section 1520(a) is amended—

(1) in paragraph (1), by striking out "public" and all that follows through "organizations" and inserting in lieu thereof "entities described in paragraph (7) of this subsection"; and

(2) by adding at the end the following new paragraph:

"(7) Entities described in this paragraph are (A) public or nonprofit agencies or organizations, and (B) for-profit entities in cases in which the Administrator determines that services comparable in effectiveness to services available from such an entity are not available, or cannot be obtained cost-effectively from, public or nonprofit agencies or through facilities of the Department of Medicine and Surgery.".

TITLE III—HOME LOAN GUARANTY PROGRAM

SEC. 301. INTEREST RATE REQUIREMENTS FOR VENDEE LOANS.

Section 1833(a) is amended by adding at the end the following new paragraph:

"(7) The Administrator shall make a loan to finance the sale of real property described in paragraph (1) of this subsection at an interest rate that is lower than the prevailing mortgage market interest rate in areas where, and to the extent, the Administrator determines, in light of prevailing conditions in the real estate market involved, that such lower interest rate is necessary in order to market the property competitively and is in the interest of the long-term stability and solvency of the Veterans' Administration Loan Guaranty Revolving Fund established by section 1824(a) of this title.".

SEC. 302. CREDITWORTHINESS DETERMINATIONS AND FEES WITH RESPECT TO ASSUMPTIONS OF VENDEE LOANS.

Section 1814 is amended—

(1) in subsection (a)(1), in the matter preceding clause (A)—

(A) by striking out "If" and inserting in lieu thereof "Except as provided in subsection (f) of this section, if"; and

(B) by striking out "guaranteed, insured, or direct housing loan obtained by a veteran" and inserting in lieu thereof "loan guaranteed, insured, or made"; and

(2) by striking out subsection (f) and inserting in lieu thereof the following:

"(f)(1) This section shall apply—

"(A) in the case of loans other than loans to finance the purchase of real property described in section 1833(a)(1) of this title, only to loans for which commitments are made on or after March 1, 1988; and

"(B) in the case of loans to finance the purchase of such property, only to loans which are closed more than 45 days after the date of the enactment of the Veterans' Benefits and Programs Improvement Act of 1988.

"(2) This section shall not apply to a loan which the Administrator has sold without recourse.".

SEC. 303. AUTHORITY FOR INCREASED PROCUREMENT OF SERVICES THROUGH THE LOAN GUARANTY REVOLVING FUND.

Section 1824 is amended by adding at the end the following new subsection:

"(e)(1) Notwithstanding subsection (b) of this section, the Fund shall be available to the Administrator, to such extent as is or in such amounts as are provided for in appropriation Acts and subject to paragraph (3) of this subsection, for—

"(A) contracts for the performance of such supplementary services described in paragraph (2) of this subsection for which the Administrator is otherwise authorized to contract; and

"(B) the acquisition of such supplementary equipment described in such paragraph,

(not including services or equipment for which the Fund is available under subsection (b) of this section), as the Administrator determines would assist in ensuring the long-term stability and solvency of the Fund.

"(2) The supplementary services and equipment referred to in paragraph (1) of this subsection are services or equipment not performed or available during fiscal year 1988, or services in excess of the level of such services performed during fiscal year 1988, and may include, among other things, the services of—

"(A) appraisers to review appraisal reports and issue certificates of reasonable value;

"(B) loan-servicing companies and individuals to perform personal supplemental servicing of loans guaranteed, insured, or made under this chapter;

"(C) accounting firms to conduct on-site audits of lenders making such loans and to review lender submissions regarding such loans;

"(D) real estate brokers to promote the sale of real property acquired by the Administrator as the result of a default on a loan guaranteed, insured, or made under this chapter;

"(E) contractors to review loan documents in order to achieve compliance with Veterans' Administration requirements under this chapter and to issue guaranty certifications;

"(F) contractors to list for sale in local newspapers real property acquired by the Administrator as the result of a default on a loan guaranteed, insured, or made under this chapter;

"(G) contractors to prepare closing documents and review them after closing; and

"(H) contractors to provide automated data processing equipment, supplies, services, and software for carrying out the program administered under this chapter.

"(3) The Administrator may not in any fiscal year obligate more than $25,000,000 for services or equipment under this subsection.".

TITLE IV—EMPLOYMENT

SEC. 401. VETERANS PREFERENCE WITHIN LOCAL HIRE OF ALASKA CONSERVATION SYSTEM UNITS.

Section 1308 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3198) is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following new subsection:

"(b) PREFERENCE ELIGIBLES WITHIN LOCAL HIRE.—Notwithstanding the provisions of subsection (a), any individual who is eligible to be selected for a position under the provisions of subsection (a) and is a preference eligible as defined in section 2108(3) of title 5, United States Code, shall be given an employment preference, consistent with the preference in the competitive service as defined in section 2102 of such title for which such person is eligible under subchapter I of chapter 33 of such title, in selection to such position.".

SEC. 402. COORDINATION OF INFORMATION AND ASSISTANCE.

(a) PURPOSE.—It is the purpose of this section to ensure that veterans who are dislocated workers eligible for assistance under title III of the Job Training Partnership Act (29 U.S.C. 1651 et seq.) or are otherwise unemployed receive, to the extent feasible, assistance (including information on vocational guidance or vocational counseling, or information on both vocational guidance or vocational counseling), including information on counseling, needed by such veterans—

(1) to apply for services and benefits for which they are eligible as veterans, dislocated workers, or unemployed persons;

(2) to obtain resolution of questions and problems relating to such services and benefit; and

(3) to initiate any authorized administrative appeals of determinations or other actions relating to such services and benefits.

(b) MEMORANDUM OF UNDERSTANDING.—(1) Not later than one year after the date of the enactment of this Act, the Secretary of Labor and the Administrator of Veterans' Affairs shall enter into a memorandum of understanding to carry out the purpose of this section. The memorandum shall include provisions that define the relationships and responsibilities of the Veterans' Administration, the Department of Labor, and State and local agencies with respect to the provision of the following information, forms, and assistance:

(A) Information on services and benefits referred to in subsection (d).

(B) All application forms and related forms necessary for individuals to apply for such services and to claim such benefits.

(C) Assistance in resolving questions and problems relating to receipt of such services and benefits.

(D) Assistance in contacting other Federal Government offices and State offices where such services or benefits are provided or administered.

(2) The memorandum of understanding entered into pursuant to paragraph (1) shall include a provision for the periodic evaluation, by the Secretary of Labor and the Administrator of Veterans' Affairs, of the implementation of their respective responsibilities under such memorandum.

(c) COORDINATION OF DEPARTMENT OF LABOR ACTIVITIES.—The Assistant Secretary of Labor for Veterans' Employment and Training, in consultation with the office designated or created under section 322(b) of the Job Training Partnership Act, shall, except as the Secretary of Labor may otherwise direct, coordinate the activities of the components of the Department of Labor performing the responsibilities of the Secretary of Labor under this section.

(d) COVERED SERVICES AND BENEFITS.—This section applies with respect to the following services and benefits:

(1) Employment assistance under—

(A) part C of title IV of the Job Training Partnership Act (96 Stat. 1380; 29 U.S.C. 1721 et seq.); and

(B) the Veterans' Job Training Act (97 Stat. 443; 29 U.S.C. 1721 note).

(2) Employment and training assistance for dislocated workers under title III of the Job Training Partnership Act (29 U.S.C. 1651 et seq.).

(3) Employment assistance and unemployment compensation under the trade adjustment assistance program provided in chapter 2 of title II of the Trade Act of 1974 (29 U.S.C. 2271 et seq.) and under any other program administered by the Employment and Training Administration of the Department of Labor.

(4) Educational assistance under—

(A) the Adult Education Act (20 U.S.C. 1201 et seq.); and

(B) chapters 30, 31, 32, 34, and 35 of title 38, United States Code, and chapter 106 of title 10, United States Code.

(5) Certification of a veteran as a member of a targeted group eligible for the targeted jobs credit determined under section 51 of the Internal Revenue Code of 1986.

(e) DEFINITION.—In this section, the term "veteran" has the meaning given such term in section 101(2) of title 38, United States Code.

TITLE V—EXTENSIONS OF CERTAIN AUTHORITIES

SEC. 501. CONTINUED OPERATION OF VETERANS' ADMINISTRATION REGIONAL OFFICE IN THE PHILIPPINES.

(a) THREE-YEAR EXTENSION.—Section 230(b) is amended by striking out "September 30, 1988" and inserting in lieu thereof "September 30, 1991".

(b) RATIFICATION FOR LAPSED PERIOD.—Any action by the Administrator of Veterans' Affairs in providing, during the period beginning on October 1, 1988, and ending on the date of the enactment of this Act, for a Veterans' Administration Regional Office in the Republic of the Philippines under section 230 of title 38, United States Code, is hereby ratified with respect to that period.

SEC. 502. ALCOHOL AND DRUG TREATMENT PROGRAM.

(a) THREE-YEAR EXTENSION.—(1) Subsection (e) of section 620A is amended by striking out "September 30, 1988" and inserting in lieu thereof "September 30, 1991".

(2) Any action by the Administrator of Veterans' Affairs in providing, during the period beginning on October 1, 1988, and ending on the date of the enactment of this Act, for care and treatment and rehabilitative services under section 620A of title 38, United States Code, is hereby ratified with respect to that period.

(b) CLINICAL EVALUATION AND REPORTS.—Subsection (f) of such section is amended to read as follows:

"(f)(1) During the period before October 1, 1997, the Administrator shall conduct an ongoing clinical evaluation in order to determine the long-term results of drug and alcohol abuse treatment furnished to veterans in contract residential treatment facilities under this section.

"(2) The evaluation shall include an assessment of the following:

"(A) The long-term results of treatment referred to in paragraph (1) of this subsection on drug and alcohol use by veterans who may have received such treatment.

"(B) The need for hospitalization of such veterans for drug and alcohol abuse after completion of the residential treatment.

"(C) The employment status and income of such veterans.

"(D) The extent of any criminal activity of such veterans.

"(E) Whether certain models and methods of residential treatment for drug and alcohol abuse are more successful for veterans with specific abuses, specific levels of resources available to them, and specific needs than are other models and methods.

"(3) To the extent feasible, the Administrator shall select for consideration in the evaluation veterans whose treatment for drug and alcohol abuse in contract residential treatment facilities under such section represents a variety of models and methods of residential drug and alcohol abuse treatment.

"(4) The Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives the following reports on the evaluation under this subsection:

"(A) Not later than February 1, 1993, an interim report containing information obtained during the first four years of the evaluation and any conclusions that the Administrator has drawn on the basis of that information.

"(B) Not later than March 31, 1998, a final report containing information obtained during the evaluation and the determinations and conclusions of the Administrator based on that information.".

The SPEAKER pro tempore. Is a second demanded?

Mr. SOLOMON. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Mississippi [Mr. MONTGOMERY] will be recognized for 20 minutes and the gentleman from New York [Mr. SOLOMON] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Mississippi [Mr. MONTGOMERY].

Mr. MONTGOMERY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of S. 2049, as amended, the Veterans' Benefits and Programs Improvement Act of 1988. Although no firm agreement has been reached with the other body, based on preliminary discussions we have had, we believe this measure is an excellent compromise which blends the provisions of several House and Senate bills. Major provisions contained in the bill, as amended, are as follows.

Titles I and II of S. 2049, as amended, would amend the Montgomery GI bill and other veterans' education and rehabilitation programs. These titles contain provisions derived from H.R. 4213, the Montgomery GI Bill Amendments of 1988, which passed the House on September 13, 1988, and S. 2011, the Veterans' Benefits and Programs Improvement Act of 1988, which was reported by the Senate Committee on Veterans' Affairs on August 1, 1988.

S. 2049, as amended, would authorize payment of a death benefit to certain survivors of a Montgomery GI bill [MGIB] participant who dies while serving on active duty. Testimony received by the committee demonstrated that, in the interest of equity and fairness, such a benefit should be provided. I believe the inclusion of the death benefit as amended in this bill is a humane and compassionate gesture. I am hopeful it will be agreed to by the Senate.

The measure would also establish entitlement to education benefits for a Montgomery GI bill participant who is discharged due to a preexisting medical condition or reduction in force and, as a result, does not meet the length-of-service requirements for entitlement under the program. Under current law, a GI bill participant discharged under these circumstances is ineligible to receive educational assistance benefits. As contained in the proposed amendments, an individual would be entitled to 1 month of educational assistance for each month of active duty served by the program participant.

Additionally, the proposed House amendments would provide an opportunity for enrollment in the Montgomery GI bill for service personnel who first became a member of the Armed Forces or first entered active duty during the period July 1, 1985, through June 30, 1988, and elected to disenroll from the program. This "window of opportunity" would open on December 1, 1988, and close June 30, 1989. During hearings, persuasive testimony was presented to the committee indicating that the early implementation of the Montgomery GI bill was, in some instances, inadequate and ineffective. As a result, there were young people who, because of the lack of accurate information, elected to disenroll from the program. The temporary period of enrollment contained in S. 2049, as amended, would provide these individuals with an opportunity to reconsider their initial decision and participate in this educational assistance program.

Also included in title I of the proposed amendments is a provision which would establish December 31, 1989, as the date by which servicemembers with eligibility for the Vietnam era GI bill who served on active duty from October 19, 1984, through June 30, 1988, must have received a secondary school diploma, or an equivalency certificate, in order to be eligible to receive Montgomery GI bill benefits after December 31, 1989. Because there was confusion earlier this year regarding this date, we expect the services to make every effort to alert affected individuals that the deadline has been clarified.

The bill, as amended, contains several provisions which would provide veteran students with the assistance sometimes necessary to successfully pursue their education. First, it would provide authority for pursuit of refresher, remedial, and deficiency courses under the Montgomery GI bill, the Veterans' Educational Assistance Program [VEAP], and chapter 35—Survivors' and Dependents' Educational Assistance Program. Additionally, the bill would make Montgomery GI bill and VEAP participants eligible for individualized tutorial assistance.

S. 2049, as amended, would provide that for the purposes of any provision relating to the extension of a delimiting period under any education benefit or rehabilitation program administered by the Veterans' Administration, the disabling effects of chronic alcoholism shall not be considered to be the result of willful misconduct. As a result, individuals with entitlement to VA education or rehabilitation programs would be eligible for delimiting-period extensions based on chronic alcoholism on the same basis that extensions are granted for physical or mental disabilities.

I never had any doubt about the outcome of the Supreme Court ruling in the much-publicized Traynor case. In its decision, the Supreme Court upheld the VA's refusal to extend the period of time which a person has to complete a program of education under the GI bill. Since that ruling has been made, I believe now is the time to resolve this issue. Recovering alcoholics should be greatly assisted in their efforts to overcome the effects of chronic alcoholism by this provision.

In developing this provision, the committee staff worked closely with representatives of the National Council on Alcoholism and other organizations who have expressed concern about this issue. Their help in resolving this issue is deeply appreciated.

The proposed amendments would also authorize payment for less than half-time training under the Montgomery GI bill-selected reserve—chapter 106, title 10, United States Code. Current law requires an individual going to school under this program to attend school on at least a half-time basis. Extensive testimony was presented to the committee which demonstrated that many of those training under chapter 106 are employed full time at their civilian jobs and are attending classes at night. Those who want to continue their schooling have limited time available for this purpose and should not be excluded from using benefits under the Montgomery GI bill. S. 2049 would also eliminate the requirement under current law that an individual complete 180 days in the Selected Reserve before receiving educational assitance under the chapter 106 program.

I want to comment on a related education issue at this point. S. 2011, as reported by the Senate Committee on Veterans' Affairs, contains a provision which would provide Vietnam era GI bill eligibility for certain 1977 and 1978 graduates of the service academies. This eligibility would be restricted, however, to those graduates who enrolled in the Veterans' Educational Assistance Program, known as VEAP.

The eligibility restriction proposed by the Senate is not acceptable. If, as a matter of right and equity Vietnam era GI bill eligibility should be extended to the 1977 and 1978 service academy graduates, that eligibility should be granted to all members of those graduating classes, not just those who participated in VEAP. Accordingly, we have offered to accept the Senate provision but with the elimination of the VEAP restriction. As of this date, the Senate committee has not agreed to accept our compromise offer.

Title II of S. 2049, as amended, includes two provisions which would enhance the effectiveness of services available to service-conncted disabled veterans. First, the measure would authorize the Veterans' Administration to expand opportunities for veterans training under chapter 31 to include unpaid training or work experience with State or local government agencies. Current law restricts these programs to those provided by a Federal agency. Consequently, only those veterans who live near a Federal facility can be reasonably expected to take advantage of this training or work experience. The proposed changes in current law would greatly assist those veterans who could benefit from this training but, because of location, cannot now participate.

The measure would also remove the bar to use of for-profit organizations for employment assistance and independent living programs. Contracts with for-profit entities could only be entered into in the event the Administrator determines that services necessary to provide such assistance are not available from, or cannot be provided cost-effectively through, public or nonprofit organizations.

Mr. Speaker, title III of S. 2049, as amended, contains three significant provisions which affect the Veterans' Administration Home Loan Guaranty Program.

The first would require the Veterans' Administration to offer below-market interest rates on vendee loans under circumstances where it is determined that this reduced rate is necessary in order to market foreclosed property competitively.

When the VA sells foreclosed properties it has acquired as the result of foreclosure, the purchase may either be for cash or financed by the Veterans' Administration. Current law requires the VA to finance no more than 65 percent nor less than 50 percent of these properties.

The VA's financing of these property sales is known as vendee loans. Vendee loans have historically been made at favorable interest rates which tend to correspond to the ceiling on VA-guaranteed mortgages. Qualifications for this financing include meeting the VA's credit underwriting criteria as well as a 5-percent downpayment requirement. The VA may offer certain enhancements to make the sale more attractive such as reduced closing costs and waiving or reducing the 5-percent downpayment requirement.

This provision to offer reduced interest rates would create another sales tool with which to market properties competitively. Mr. Speaker, it should be noted that other Federal agencies, such as the Federal Housing Authority, currently do this, and it seems only fair to extend this authority to the Veterans' Administration. Emphasize, however, that these below-market interest rates may be offered only when it would be in the interest of the long-term stability and solvency of the loan guaranty revolving fund—in other words, when the costs associated with lowering the interest rate would be less than the cost of either reducing the purchase price of the property to the extent necessary to sell the property or of continuing to hold and maintain the property.

The second provision would impose the creditworthiness requirements and 0.5 percent fee applicable to assumptions of VA-guaranteed loans to vendee loan sold by the VA with recourse.

One of the perceived advantages to the VA Home Loan Guaranty Program has traditionally been the easy assumability of such loans when a veteran decides to dispose of the property. However, this can also enable individuals to buy homes who might not otherwise qualify. It can also lead to potential fraud and abuse such as equity skimming, thus leading to additional defaulted loans and increased costs to the Government. Public Law 100-198 required that before VA-guaranteed loans can be assumed, the creditworthiness of the purchaser must be established.

This provision simply makes vendee loans assumability consistent with VA guaranteed loan assumability and hopefully will serve to prevent potential abuses resulting from the free assumability of loans.

The last loan guaranty provision would amend section 1824 of title 38 to give the Administrator the authority for increased procurement of services through the loan guaranty revolving fund, but in no event could the Administrator use this authority to procure services the cost of which exceeds $25 million.

The loan guaranty revolving fund is available for all home loan guaranty and insurance operations, except for administrative expenses. In regard to these administrative expenses, staffing shortages have severally hampered the VA's ability to provide many loan guaranty program services on an adequate and timely basis.

It is believed that permitting the Administrator to use funds from the loan guaranty fund to pay for certain additional contractual services or equipment purchases not currently authorized allows for a more consistent, comprehensive, and cost-effective provision of services in the Home Loan Program.

Title IV of the proposed amendments addresses veterans' employment issues. Of particular note is the provision which provides for the coordination of services and benefits for veterans seeking employment assistance. Although we believe Public Law 100-323, which was enacted earlier this year, will greatly improve the delivery of veterans' employment services, the clarification of roles and responsibilities included in this provision will further enhance the ability of our Nation's veterans to obtain and maintain suitable employment.

Title V of S. 2049, as amended, contains miscellaneous program extensions which have previously passed the House. First, the measure would extend authority through September 1991, for the VA to contract with halfway houses and other community treatment facilities for treatment of veterans with alcohol or drug abuse problems. According to a report submitted to the Congress in February of this year, this program is a very good one. Of the veterans who had completed the contract residential treatment program, 75.4 percent were found at a 6-month followup to be abstaining from any substance abuse compared with 58 percent who had dropped out of treatment. Also, at the time of followup, 46.8 percent of the treatment group were employed compared to 16.1 percent at the time of admission to treatment. The average per diem rate paid by the VA for this treatment mode was about $26 compared with about $93 to $103 per day for alcohol and drug abuse treatment respectively in VA inpatient settings.

Additionally, the proposed amendments would, as requested by the Administrator, extend the Administrator's authority to operate the VA regional office, in the Republic of the Philippines for an additional 3 years, until September 30, 1991. Present authority expired on September 30, 1988. This section also contains provisions ratifying any actions taken by the Administrator in providing for the operation of the regional office during the period between September 30, 1988, and the date of enactment of this act.

The VA administers programs providing compensation, pension, and education benefits, through the VA regional office in Manila, to Filipinos who were in or attached to the U.S. Armed Forces during World War II. During fiscal year 1987 over $122 million in benefits were paid to these individuals or their survivors. We believe that operating a regional office in the Philippines is the most cost-effective means of administering VA programs for Filipino beneficiaries and that continuation of the Administrator's authority is essential.

Mr. Speaker, according to the Congressional Budget Office, the enactment of the House amendments would result in outlay savings of $18 million in fiscal year 1989. Outlay costs in fiscal year 1990 would be $2 million; fiscal year 1991, $18 million; and fiscal year 1992, $21 million. There follows a more detailed cost estimate of the bill:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 11, 1988.

MEMORANDUM

To: Mack Fleming.
From: Richard Curley and Nina Shepard.
Subject: Table of Costs for House Substitute for S. 2049.

The attached table reflects the costs for the October 7 draft of the House amendment in the nature of a substitute to S. 2049, the Veterans' Benefits and Programs Improvement Act of 1988. These estimates are preliminary and have not been reviewed by the Director of the Congressional Budget Office.

S. 2049.—VETERANS' BENEFITS AND PROGRAM IMPROVEMENT ACT OF 1988

[By fiscal years, in millions of dollars]

	1989	1990	1991	1992	1993
TITLE I: EDUCATION PROGRAM					
Sec. 101 Montgomery GI bill (MGIB) death benefit:					
Budget authority	1	(1)	1	1	1
Outlays	1	(1)	1	1	1
Sec. 102 MGIB eligibility in case of pre-service medical discharge:					
Budget authority	(1)	(1)	(1)	(1)	(1)
Outlays	(1)	(1)	(1)	(1)	(1)
Sec. 103 MGIB temporary enrollment period:					
Budget authority	−22	−12	2	3	4
Outlays	−22	−12	2	3	4
Sec. 104 MGIB secondary school diploma requirement:					
Budget authority	(1)	(1)	(1)	(1)	(1)
Outlays	(1)	(1)	(1)	(1)	(1)
Sec. 105 MGIB benefit choice for reservists:					
Budget authority	(1)	(1)	(1)	(1)	(1)
Outlays	(1)	(1)	(1)	(1)	(1)
Sec. 106 Refresher courses:					
Function 050:					
Budget authority	(1)	6	4	4	4
Outlays	(1)	6	4	4	4
Function 700:					
Budget authority	(1)	7	9	10	12
Outlays	(1)	5	9	10	12
Sec. 106 Total:					
Budget authority	(1)	13	13	14	16
Outlays	(1)	11	13	14	16
Sec. 107 Tutorial Assistance:					
Budget authority	(1)	(1)	(1)	(1)	(1)
Outlays	(1)	(1)	(1)	(1)	(1)
Sec. 108 Cooperative training:					
Budget authority	(1)	(1)	(1)	(1)	(1)
Outlays	(1)	(1)	(1)	(1)	(1)
Sec. 109 Extension of delimiting periods by reason of alcohol conditions:					
Budget authority	(1)	(1)	(1)	(1)	(1)
Outlays	(1)	(1)	(1)	(1)	(1)
Sec. 110 MGIB selected Reserve program changes:					
Budget authority	(1)	(1)	(1)	(1)	(1)
Outlays	3	1	(1)	(1)	(1)
Sec. 121 Course withdrawals:					
Budget authority	(1)	2	2	3	4
Outlays	(1)	2	2	3	4
Sec. 122 Education assistance for incarcerated veterans:					
Budget authority	(1)	(1)	(1)	(1)	(1)
Outlays	(1)	(1)	(1)	(1)	(1)
Sec. 123 Veterans' Advisory Committee on Education:					
Budget authority	0	(1)	(1)	(1)	(1)
Outlays	0	(1)	(1)	(1)	(1)
Sec. 124 Repeal of expired loan programs:					
Budget authority	0	0	0	0	0
Outlays	0	0	0	0	0
Title I total:					
Function 050:					
Budget authority	(1)	6	4	4	4
Outlays	(1)	6	4	4	4
Function 700:					
Budget authority	−21	−3	14	17	21
Outlays	−18	−4	14	17	21
Total:					
Budget authority	−21	3	18	21	25
Outlays	−18	2	18	21	25
TITLE II: REHABILITATION FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES					
Sec. 201 Training and work experience in State and local agencies:					
Budget authority	(1)	(1)	(1)	(1)	(1)
Outlays	(1)	(1)	(1)	(1)	(1)
Sec. 202 Use of for-profit organizations for certain programs:					
Budget authority	(1)	(1)	(1)	(1)	(1)
Outlays	(1)	(1)	(1)	(1)	(1)
Title II total:					
Budget authority	(1)	(1)	(1)	(1)	(1)
Outlays	(1)	(1)	(1)	(1)	(1)
TITLE III: HOME LOAN GUARANTY PROGRAM					
Sec. 301 Below market interest rates for vendee loans:					
Budget authority	(1)	(1)	(1)	(1)	(1)
Outlays	(1)	(1)	(1)	(1)	(1)
Sec. 302 Assumption requirements for vendee loans:					
Budget authority	(1)	(1)	(1)	(1)	(1)
Outlays	(1)	(1)	(1)	(1)	(1)
Sec. 303 Procurement of services by LGRF:					
Authorization level	25	25	25	25	25
Outlays	25	25	25	25	25
Title III total:					
Authorizations	25	25	25	25	25
Outlays	25	25	25	25	25
Budget authority	(1)	(1)	(1)	(1)	(1)
Outlays	(1)	(1)	(1)	(1)	(1)
TITLE IV: EMPLOYMENT					
Sec. 401 Veterans preference in Alaska:					
Budget authority	0	0	0	0	0
Outlays	0	0	0	0	0
Sec. 402 Coordination of services with DOL:					
Budget authority	(1)	(1)	(1)	(1)	(1)
Outlays	(1)	(1)	(1)	(1)	(1)
Title IV total:					
Budget authority	(1)	(1)	(1)	(1)	(1)
Outlays	(1)	(1)	(1)	(1)	(1)
TITLE V: EXTENSIONS OF EXPIRING AUTHORITIES					
Sec. 501 Extension of R.O. in the Philippines:					
Authorization level	(1)	(1)	(1)	(1)	(1)
Outlays	(1)	(1)	(1)	(1)	(1)
Sec. 502 Extension of Alcohol and Drug Treatment Program:					
Authorization level	6	6	6	0	0
Outlays	6	6	6	0	0
Title V total:					
Authorization level	6	6	6	(1)	(1)
Outlays	6	6	6	(1)	(1)
BILL TOTALS					
Function 050:					
Budget authority	(1)	6	4	4	4
Outlays	(1)	6	4	4	4
Function 700:					
Authorization level	31	31	31	25	25
Outlays	31	31	31	25	25
Budget authority	−21	−3	14	17	21
Outlays	−18	−4	14	17	21
TOTAL					
Authorization level	31	31	31	25	25
Outlays	31	31	31	25	25
Budget authority	−21	3	18	21	25
Outlays	−18	2	18	21	25

[1] Less than $500,000.

The costs of this bill fall within budget functions 050 and 700.

Mr. Speaker, I want to express my appreciation to the ranking minority member of the Veterans' Affairs Committee, JERRY SOLOMON of New York, for his assistance and support in developing this proposed compromise. We believe the proposed House amendments will be accepted by the other body.

Special thanks should also go to the chairman of the Subcommittee on Education, Training and Employment, my colleague and good friend from Mississippi, WAYNE DOWDY, and the ranking minority member of that subcommittee, CHRIS SMITH of New Jersey, for their leadership and cooperation.

I also want to recognize the chairman and ranking minority member of the Armed Services Subcommittee on Military Personnel and Compensation, BEVERLY BYRON and HERB BATEMAN, for their hard work on the original Montgomery GI bill as well as the proposed amendments.

Additionally, I want to extend my sincere thanks to the chairman of the Senate Committee on Veterans' Affairs, ALAN CRANSTON, and the ranking minority member of the committee, FRANK MURKOWSKI, for their support and cooperation in resolving differences between the two bodies.

Finally, I want to express my gratitude to Joe Womack of the Office of the Legislative Counsel for his patience and skill in drafting all of our education and housing provisions during this session of Congress. He has been great to work with, and he is a professional in the truest sense of the word.

Mr. Speaker, the amendments we are proposing to the other body are good ones, and I urge my colleagues to support S. 2049, as amended.

□ 1400

Mr. SOLOMON. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, I commend the gentleman from Mississippi [Mr. MONTGOMERY].

These amendments are very worthwhile. They cost nothing, but they do a lot for the veterans of this Nation and for our armed services.

Mr. Speaker, the gentleman has very eloquently explained the bill before us today. This legislation contains several important veterans training, veterans housing, and veterans education provisions. The Montgomery GI bill program is one of the most effective readjustment and recruitment tools our country has ever seen.

In our continuing evaluation of the program, I can think of no more appropriate action than to allow for the awarding of death benefits to the survivors of the young service man or woman who dies while in service to their country, and who were never afforded the opportunity to use their education benefits.

Under current law, the education payroll deductions of a GI who dies in the line of duty are forever fortified. This is an inequity to our service personnel who have elected to participate in the program and was unforeseen by Congress in the development of the Montgomery GI bill.

I support allowing these hard-earned contributions to be channeled to the loved ones of the deceased GI. I also strongly support the housing provision of the bill which will allow the VA to offer below-market interest rates on vendee loans when it is necessary to market foreclosed properties competitively.

This provision will assist veterans in regions of the country where the housing market is depressed and will strengthen the solvency of the VA Housing Program.

Congressman WAYNE DOWDY, the chairman of the Subcommittee on Education, Training and Unemployment and the ranking member CHRIS SMITH are to be commended for their work on the bill. I wish also to express our appreciation to our friends on the Armed Services Committee, BEVERLY BYRON and HERB BATEMAN for their excellent contribution to this legislation.

Mr. Speaker, in the waning hours of the Congress, our distinguished chairman, Mr. MONTGOMERY has once again accomplished what few others would be capable of. He has forged a workable compromise which will provide needed assistance to America's veterans. I urge my colleague to support S. 2049.

Mr. HAMMERSCHMIDT. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. I yield to the gentleman from Arkansas.

Mr. HAMMERSCHMIDT. Mr. Speaker, I rise in strong support of S. 2049, the Veterans' Benefits and Programs Improvement Act. As was explained by Chairman MONTGOMERY, this measure contains elements of the original S. 2049, as well as provisions from H.R. 4213, H.R. 5114 and S. 2011.

The legislation provides new authorizations to assist disabled veterans in obtaining job training. It contains new authorizations to assist veterans in economically depressed regions in selling their homes. It also contains new Montgomery GI bill authorizations to further extend this great education program for our veterans.

Mr. Speaker, the fact that we were able to reach a compromise on this important legislation before the end of the 100th Congress is testimony, once again, to the accomplishments of the great chairman of the House Veterans' Affairs Committee, SONNY MONTGOMERY.

We should recognize the hard work put into this bill by the chairman of the Subcommittee on Education, Training and Unemployment, WAYNE DOWDY, and CHRIS SMITH, the ranking subcommittee member, as well as the ranking member of the full committee, Congressman JERRY SOLOMON. I urge all Members of the House to support S. 2049.

Mr. McEWEN. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. I yield to the gentleman from Ohio.

Mr. McEWEN. Mr. Speaker, I rise in strong support of the legislation.

Mr. SOLOMON. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GRAY of Illinois). The question is on the motion offered by the gentleman from Mississippi [Mr. MONTGOMERY] that the House suspend the rules and pass the Senate bill, S. 2049, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

The title of the Senate bill was amended so as to read: "An act to amend title 38, United States Code, to improve the education, home loan guaranty, and other programs of the Veterans' Administration; and for other purposes."

A motion to reconsider was laid on the table.

EXPRESSING OPPOSITION OF THE HOUSE TO CONTINUED CONTROL OF CATHEDRAL IN VILNIUS, LITHUANIA, BY THE U.S.S.R.

Mr. FASCELL. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 300) expressing the opposition of the House of Representatives to the continued control of the cathedral in Vilnius, Lithuania, by the Union of Soviet Socialist Republics.

The Clerk read as follows:

H. RES. 300

Whereas 1988 is the 600th anniversary of the erection of the cathedral in Vilnius, Lithuania;

Whereas the site on which the Vilnius Cathedral stands was once the location of a pagan temple and has served for centuries as the location of a pagan temple and has served for centuries as the symbolic center of religious life for the people of Lithuania;

Whereas the founding and erection of the Vilnius Cathedral is closely related to the conversion of Lithuania from paganism to Christianity in 1387, and the Vilnius Cathedral is called the "cradle of Lithuania Christianity";

Whereas the Vilnius Cathedral is both a religious and a national shrine, and the remains of prominent religious and secular rulers of Lithuania have been interred in the cathedral, including the remains of the patron saint of Lithuania, Casimir, and the greatest ruler of Lithuania, Grand Duke Vytautas;

Whereas, despite numerous natural and man-made disasters that caused the partial or complete destruction of the Vilnius Cathedral, the religious faithful in Lithuania always rebuilt it;

Whereas the Soviet Army invaded Lithuania in June 1940, and the Soviet Government incorporated Lithuania into the Union of Soviet Socialist Republics;

Whereas the Soviet Government nationalized church property in Lithuania, seized scores of churches, and converted them to other uses against the wishes of the Roman Catholic community in Lithuania;

Whereas Soviet officials, over the protests of the Roman Catholic Church leadership in Lithuania, announced in 1950 that the Vilnius Cathedral would be transferred to Government control and transformed the cathedral into an art gallery in 1956;

Whereas the seizure and desecration of the Vilnius Cathedral by the Soviet Government violates the provisions on religious liberty contained in the Universal Declaration of Human Rights, the international Covenants on Human Rights, and the Final Act of the Conference on Security and Cooperation in Europe;

Whereas Roman Catholics in Lithuania have never reconciled themselves to the loss of the Vilnius Cathedral;

Whereas in 1985 the Lithuanian Christianity Jubilee Committee, led by Bishop Juozas Preiksas, applied to the Soviet Government for the return of the Vilnius Cathedral and two other churches as part of the 600th anniversary of the Christianization of Lithuania;

Whereas over the last few years hundreds of priests in Lithuania, including 60 percent of the priests in the Vilnius Archdiocese, have publicly petitioned for the return of the Vilnius Cathedral; and

Whereas Soviet authorities have met such petitions with either silence of outright refusal: Now, therefore, be it

Resolved, That in observation of the 600th anniversary of the erection of the cathedral in Vilnius, Lithuania, the House of Representatives—

(1) expresses its deepest concern over the refusal of the Government of the Union of Soviet Socialist Republics to return the Vilnius Cathedral to the control of the Roman Catholic Church;

(2) voices its support to the Lithuanian people in their efforts to secure—

(A) the return of the Vilnius Cathedral, and

(B) the right to exercise fundamental religious rights so long denied them;

(3) calls upon the President and the Secretary of State to—

(A) raise the issue of the return of the Vilnius Cathedral in meetings with Soviet officials, and

(B) direct representatives of the United States Government at international human rights forums to speak out forcefully for the return of the Vilnius Cathedral;

(4) strongly encourages Members of Congress who visit the Union of Soviet Socialist Republics to include the return of the Vilnius Cathedral on the agenda in discussions with Soviet officials; and

(5) urges the Soviet Government to—

(A) reverse its policy of denying to Roman Catholics in Lithuania the right to worship in the Vilnius Cathedral, and

(B) return the cathedral to Roman Catholic Church control before the end of 1988.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Florida [Mr. FASCELL] will be recognized for 20 minutes and the gentleman from Michigan [Mr. BROOMFIELD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. FASCELL].

Mr. FASCELL. Mr. Speaker, I yield myself such time as I may consume.

GENERAL LEAVE

Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resolution presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FASCELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the title of the resolution is self-explanatory. This cathedral was erected 600 years ago. We think it is about time it was returned to the Catholic Church, and we urge the Soviets to do so.

Mr. Speaker, I rise in support of House Resolution 300 and urge its adoption. This resolution, a version of which passed the other body on September 16, 1988, expresses the House's deep concern about the Soviet Union's continued control of the Vilnius Cathedral in Soviet-occupied Lithuania. It calls upon the President and Secretary of State to raise this issue with Soviet officials and urges the Soviet Government to allow Catholics in Lithuania to worship at the Vilnius Cathedral and to return the cathedral to the control of the Catholic Church before the end of 1988.

In early 1988, the House passed a resolution commemorating the 600th anniversary of Christianity in Lithuania. The Vilnius Cathedral, which for centuries was the symbolic center of Christian religious life in Lithuania, was erected 600 years ago. It is particularly fitting, therefore, that we express our hope that the Vilnius Cathedral, which was confiscated by the Soviets and converted into an art gallery in 1956, will be returned to the Catholic Church and allowed to resume its rightful role as the central place of worship during this anniversary year. I understand that Soviet authorities, earlier this year, did allow another church that had been confiscated to resume functioning as a place of worship.

We are thus hopeful that, as part of the greater liberalization now going on in the Soviet Union, the illegally annexed states of Latvia, Estonia, and Lithuania will enjoy greater cultural and religious freedoms, including the ability to exercise religious rights freely and without interference. The return of the Vilnius Cathedral to the Catholic Church would be a welcome step toward that end.

I urge immediate adoption of House Resolution 300 and commend its author, my colleague from Pennsylvania, Mr. BORSKI, for bringing this important issue to our attention.

Mr. BROOMFIELD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, for the past 600 years, the cathedral in Vilnius, Lithuania, has been considered the symbolic center of religious life for the people of Lithuania, and has been called the "Cradle of Lithuanian Christianity."

Yet while the cathedral building remains intact, for decades it has not been utilized as a place of worship by Roman Catholics of Lithuania. In June 1940, Soviet troops rolled into Lithuania and began an occupation of that nation which continues to this day. In 1950, the Soviet Government brought the cathedral in Vilnius under government control, and then in 1956 converted this revered and important Lithuanian Cathedral into an art gallery.

Mr. Speaker, the cathedral in Vilnius is another clear example of the despotism and disregard of human rights that characterizes the Soviet Government. Even though a signatory of various international human rights declarations and agreements, the Soviet Union continues to ignore its responsibilities by desecrating religious objects, and violating principles of religious liberty.

House Resolution 300 which condemns the continued control of the cathedral in Vilnius by the Soviet Government, calls for the return of the cathedral to the Roman Catholic Church, and supports the Lithuanian people and their efforts to secure religious freedom—deserves our support. A similar resolution passed the Senate on September 16.

As a people who enjoy the blessings of religious freedom, the House of Representatives, through the passage of House Resolution 300, can add its voice in support of those who also seek the return of religious freedom in Lithuania and the rest of the Soviet Union.

Mr. FASCELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I join my colleague, the gentleman from Michigan [Mr. BROOMFIELD] in urging adoption of this resolution. This is a very vital expression by the Congress of the United States with respect to a very important religious matter.

Mr. DONNELLY. Mr. Speaker, I rise today in support of House Resolution 300, legislation urging the Soviet Government to return the control of the cathedral at Vilnius, Lithuania, to the Roman Catholic Church, and calling for greater religious tolerance within the Soviet Union.

The Vilnius Cathedral was constructed 600 years ago, which marks the point in time when Lithuania adopted Christianity as its first organized religion. Today the cathedral stands not only as a monument to this historic event, but also as a symbol of the struggle of the Lithuanian people to retain their cultural integrity and regain their independence.

Since their annexation of Lithuania in June 1940, the Soviet Government has worked to integrate the Lithuanian people into their social and political system. "Sovietization" of Lithuania and the other Baltic States has included systematic attacks on all aspects of their culture; their religion, language, and traditions.

The vast majority of Lithuanians are Catholic, and religion is an integral part of Lithuanian culture. Religious freedom is a central to Lithuanians in their struggle for independence, and the Vilnius Cathedral has become symbolic focal point of this entire struggle. For well over 1 year, Vilnius and the cathedral have been the scenes of huge rallies in support of the church and independence.

We are all familiar with the reforms advocated by Secretary Gorbachev in his policy of "perestroika," the restructuring of the Soviet economic and social structure. In addition, Mr. Gorbachev has stated publicly that he is committed to a policy of greater regional sovereignty. It is time for the Soviet leadership to demonstrate its commitment to this principle, and move toward greater independence for Lithuania and the other Baltic States.

As long as the Vilnius Cathedral is controlled by the Soviet Government it will remain a symbol of Soviet dominance, and a reminder of the brutal repression which the Lithuanian people have endured for the past 70 years. Returning control of the cathedral to the Catholic Church, and allowing regular services there, would mark an important step toward perestroika.

Mr. Speaker, freedom of religion is an inalienable right, of which the Lithuanian people are being deprived. I hope my colleagues will support House Resolution 300, and I urge the Soviet Government to restore control of the Vilnius Cathedral to the Catholic Church, and return religious freedom to the people of Lithuania.

Mr. BORSKI. Mr. Speaker, I encourage you and all Members to join me in supporting efforts to return a center of worship to the Catholic citizens of Lithuania. You can express your opposition to the Soviet confiscation of the Vilnius Cathedral by supporting the passage of House Resolution 300.

The Vilnius Cathedral, located in the capital city of Lithuania, is the historical center of religious faith for the people of that Baltic country. It was erected in 1388 on the site of a pagan temple, shortly after the people of Lithuania adopted Christianity.

The Soviet Government seized the cathedral in 1950, over the protests of Roman Catholic leaders. The cathedral was coverted into an art gallery 6 years later and continues to be used for that purpose today.

The Roman Catholic community in predominantly Catholic Lithuania has never reconciled itself to the loss and desecration of its most important religious shrine. Over the last few years alone, hundreds of Roman Catholic priests in Lithuania have petitioned the government to return the cathedral to religious use.

So far, the Soviet Government has rebuffed these requests. However, there is cause for hope if enough public attention is brought to this matter. Earlier this year, following petitions by hundreds of thousands of believers, the Soviets finally did agree to hand over another church in Lithuania which they had seized and had vowed never to return to religious use.

House Resolution 300 notes that 1988 marks the 600th anniversary of the founding of the cathedral and asks the Soviet Government to return it to religious use before the end of the coming year. It also calls upon the President and Secretary of State to raise the issue of the cathedral's return in appropriate forums.

Mr. Speaker, I would like to thank the chairman, Mr. FASCELL and the ranking member, Mr. BROOMFIELD for their support of this resolution and ask that all Members help put the Vilnius Cathedral back to religious use again.

Mr. GILMAN. Mr. Speaker, I rise in support of House Resolution 300, expressing opposition to the continued control of the cathedral in Vilnius, Lithuania, by the Union of Soviet Socialist Republics.

Over the last few years, hundreds of priests in Lithuania have petitioned for the return of the Vilnius Cathedral. Soviet authorities have met these petitions with outright denial. We must urge the Soviet Government to reverse its policy of denying Roman Catholics in Lithuania the right to worship in the Vilnius Cathedral.

Mr. Speaker, I urge my colleagues to support the passage of House Resolution 300. The "Cradle of Lithuanian Christianity" should be returned to church control without further delay.

Mr. FASCELL. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. FASCELL] that the House suspend the rules and agree to the resolution (H. Res. 300).

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON S. 2749, DEFENSE AUTHORIZATION AMENDMENTS AND BASE CLOSURE AND MILITARY REALIGNMENT ACT

Mr. GORDON, from the Committee on Rules, reported the following privileged resolution (H. Res. 581, Rept. No. 100-1076), which was referred to the House Calendar and ordered to be printed:

H. RES. 581

Resolved, That upon the adoption of this resolution it shall be in order to consider the conference report on the bill (S. 2749) to authorize appropriations for fiscal year 1989 for military activites of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes, and all points of order against the conference report and against its consideration are hereby waived. The conference report shall be considered as having been read when called up for consideration.

Mr. GORDON. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 581 and ask for its immediate consideration.

The SPEAKER pro tempore. The Clerk will report the resolution.

The Clerk read the resolution.

The SPEAKER pro tempore. the question is, Will the House now consider House Resolution 581?

The question was taken; and (two-thirds having voted in favor thereof) the House agreed to consider House Resolution 581.

The SPEAKER pro tempore. The gentleman from Tennessee [Mr. GORDON] is recognized for 1 hour.

Mr. GORDON. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the gentleman from Ohio [Mr. LATTA] pending which I yield myself such time as I may consume.

Mr. Speaker, the rule before the House waives all points of order against the conference report on S. 2749 and against its consideration. The bill would provide for the realignment and closure of military bases. The rule also provides that the conference report is to be considered as having been read when it is called up for consideration.

Mr. Speaker, the base-closing bill has been the subject of extended debate during this session of Congress and thanks to the conference committee the House now has the opportunity to clear this important legislation and send it to the President.

The conference report is—in every important respect—similar to the Defense Savings Act which was passed by the House on July 12 of this year. The legislation would facilitate a one-time process for the closing and realignment of military bases as recommended by a commission appointed for that purpose. Once the Commission completes its recommendations and reports them to the President, and once the President approves the report and forwards it to Congress, those recommendations are to be carried out unless a joint resolution of disapproval is enacted.

Mr. Speaker, I urge adoption of the rule so that the House may consider the conference report.

Mr. LATTA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I know of no opposition to taking up this conference agreement.

Under the conference agreement, recommendations of the Commission on Base Realignment and Closure (transmitted to Congress by January 16, 1989) will be implemented unless disapproved by joint resolution of Congress (to be considered under expedited procedures). No action may be initiated before January 1, 1990, to ensure adequate notice to affected communities. All closures and realignments must be initiated by the end of fiscal year 1991 and completed by the end of fiscal year 1995. The conference agreement provides for a limited expansion of the commission to ensure geographic balance and for the appointment of a co-director of the staff. The agreement waives applicability of environmental laws during preparation of the commission's report (but not with respect to implementation) and provides for deposit of proceeds from property disposal by the Department of Defense into a base-closure fund. Funds may be used for implementation, economic and community adjustment assistance, and environmental restoration.

Mr. Speaker, I would just like to add one comment. In this Member's humble opinion, we would not be at this stage in this base closure matter if it had not been for the persistence and the hard work of the gentleman from Texas [Mr. ARMEY], and I commend him for it.

Mr. Speaker, I have no requests for time.

Mr. GORDON. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. ASPIN. Mr. Speaker, pursuant to the provisions of House Resolution 581, I call up the conference report on the Senate bill (S. 2749) to authorize appropriations for fiscal year 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Pursuant to the provisions of House Resolution 581, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of Tuesday, October 11, 1988, at page 29661.

The SPEAKER pro tempore. The gentleman from Wisconsin [Mr. ASPIN] will be recognized for 30 minutes and the gentleman from Alabama [Mr. DICKINSON] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Wisconsin [Mr. ASPIN].

Mr. ASPIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today the Committee on Armed Services brings to the floor the conference report to accompany S. 2749, to provide expedited procedures for military base closings and additional defense authorizations for fiscal year 1989.

With regard to base closings, the conference agreement is very similar to the version of the bill passed by the House on July 12, by a vote of 374 to 39. The only differences are that the conference agreement adds three additional members to the Commission identifying bases to be closed and shifts responsibility for disposing of surplus property from the Administrator of General Services to the Secretary of Defense.

As under the House bill, the bases to be closed or realigned would be identified by a Commission on Base Closure and Realignment chartered by the Secretary of Defense on May 3, 1988. Like the House bill, the conference agreement would prohibit any alterations in the Commission's recommendations—either by the Secretary of

Defense or by the Congress—and would provide for the automatic implementation of the Commission's recommendations unless both Houses of Congress disapprove the entire list.

The list of bases to be closed or realigned must be submitted to Congress by January 16, 1989, but none of the closures or realignments could be initiated until January 1990. The conference agreement further provides expedited procedures for congressional consideration of the Commission's recommendations, and it specifies deadlines for completing the various steps.

While the agreement does not require that overseas bases be considered for inclusion in the list of bases to be closed, it does require that the Defense Department conduct a study of U.S. overseas bases to determine if money can be saved by closing or realigning any of them. The agreement would extend the deadline for completion of that report from September 15, 1988, the date in the House bill, to October 15, 1988.

The agreement directs the Secretary of Defense to dispose of surplus property on the bases being closed or realigned in accordance with the Federal Property and Administrative Services Act. It further establishes a base closure account to receive funds from the sale of property, from transfers from other Defense Department accounts, and from direct appropriations to defray the cost associated with the closures and realignments.

The conference agreement also contains several provisions unrelated to base closings. Among those provisions are the following:

Authorization of $36.3 million for military construction projects funded by the Fiscal Year 1989 Military Construction Appropriations Act, but not authorized in the fiscal year 1989 Defense Authorization Act;

Denial of certain waivers, which would allow full-scale production of the Army Air Defense Antitank System [ADATS] before operational testing is completed, and which would allow multiyear contracts for the TOW missile without the required 12 percent savings;

Requirement for a report on close air support alternatives to be submitted by March 31, 1989;

Grants a waiver of the congressional review period and allows the transfer of obsolete submarines to the town of Ocean City, MD, and the Buffalo and Erie County Naval and Serviceman's Park in New York;

Extends the term of office of the Vice Chairman of the Joint Chiefs of Staff from February 6, 1989 to June 1, 1989, to provide for an orderly transition when the new President takes office; and

Extends the deadline for a report on alternative U.S. nuclear force postures under START from September 15, 1988 to March 15, 1989.

Mr. Speaker, this conference agreement represents 7 months of work. I think we have produced a good piece of legislation that deserves the approval and support of the House. This is historic legislation that provides a window of opportunity for closing unneeded military bases and frees up scarce resources for more important missions. I urge my colleagues to support this conference report to accompany S. 2749.

Mr. Speaker, I reserve the balance of my time.

Mr. DICKINSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we have come to the end of a very long and perhaps tortuous road. For 2 years now we have been attempting to put in place a provision or a vehicle by which we can close surplus and redundant or perhaps unneeded military bases. Historically, we have been unable to do this, at least for 12 years, because of political considerations or whatever.

We have finally put in place, with the acquiescence and agreement of the Secretary of Defense and the administration and a majority on both sides of the House and now of the Senate, a vehicle by which we are finally able to close bases that are no longer needed or are in excess of our requirements. I think this is a fair bill. I think it is necessary. I think we have reached this point because of a unique situation whereby we have a Secretary of Defense who is no longer going to be on board, under a so-called lame duck administration, so that political considerations are minimal. We have put in place provisions that, as much as can possibly be done, do away with political considerations and get to the very essence of what is necessary, excluding all political considerations.

□ 1415

Mr. Speaker, I think it is a good bill. I think it is necessary, and I am convinced that, if we do not do it now, it will never be done, certainly not within the next 10 or 15 years.

Mr. Speaker, we have been giving it a lot of consideration. I think the two chairmen, cochairmen, former Congressman Jack Edwards and former Senator Abe Ribicoff bring to it an expertise, a balanced judgment, and I really think it is a good thing to do.

Mr. Speaker, this is the only time we will have to do this. It is very much needed, and I think it is an opportunity that we cannot pass up.

Mr. Speaker, I yield 5 minutes to the gentleman from Texas [Mr. Armey], who initiated this idea 2 years ago. At his instigation the bill was introduced in the last session. It came within six votes of passing then. It was reintroduced. Since then the administration has come on board with both the chairman and I supporting it. I think it is a good thing.

Mr. ARMEY. Mr. Speaker, I thank the gentleman from Alabama [Mr. Dickinson] for yielding this time to me.

Mr. Speaker, let me begin by congratulating the conference and the conferees and assuring all my colleagues in the House that this work product that we have from this conference is a good product. We have refined the essential integrity of the bill. It will be able in this form which it has been brought to the House today to complete its mission.

Mr. Speaker, the conference did a good job, and there is no one who has voted for this bill in the past that should be the least bit reluctant to vote for this conference report with enthusiasm.

Mr. Speaker, this is for me the end of 2 years of very intense involvement in this bill. It is for me very gratifying because we have worked on this bill for 2 years, and I have had the pleasure of working with and getting to know a great many people that, without this effort, I might not have gotten to know and come to respect.

I would like to, if I may, just take a moment to thank a few people in particular for what they have done to make this bill come to the floor on this day and in this shape to which the American citizens can benefit as much as I anticipate they will. I would certainly begin with the distinguished chairman of the Committee on Armed Services, the gentleman from Wisconsin [Mr. Aspin] and the gentleman from Alabama [Mr. Dickinson], the ranking member. Without their input, and their guidance and their continued pushing on this bill, it would not be here today. In addition, members of the Committee on Armed Services have been there consistently; the gentleman from Arizona [Mr. Stump], the gentleman from Arizona [Mr. Kyl], the gentlewoman from Illinois [Mrs. Martin], the gentlewoman from Maryland [Mrs. Byron]. On the Committee on Rules, where we went so often, the gentleman from California [Mr. Beilenson] was there early and always consistently helpful, and then from the membership at large there were some people, and one of the things I found gratifying in this effort was the number of Members of different political and philosophical persuasions that got together. For example, the gentleman from Indiana [Mr. Sharp], the gentleman from Oregon [Mr. AuCoin], the gentleman from New York [Mr. Schumer] and the gentleman from California [Mr. Berman] were with this bill in its effort consistently. The gentleman from California [Mr. Dellums] and the gentleman from Wisconsin [Mr. Obey] demonstrated that even though they may be in a key committee where they may block something and may not agree with it, that they are willing and able and certainly will give it a good hearing.

Mr. Speaker, if I might make one observation that perhaps is a little bit more personal; and for me, personally, after these 2 hard years, I would like to thank the gentleman from Mississippi [Mr. MONTGOMERY], my good friend. SONNY has taught me during these 2 years and with respect to this bill that one can deal with a gentleman from the other side of the aisle, from the other side of the issue, and not only gain an enormous respect for the gentleman, but gain an enormous affection for the gentleman, and I must say for me that was a lesson worth 2 years' hard work, and I hope in the future I will live up to it.

With those comments, Mr. Speaker, let me again encourage everybody to vote for this. It is a good piece of work, and everybody who has affected this bill has made it better, and it is a bill that does honor to the whole House, and the whole Senate and the whole Congress.

Mr. Speaker, someone once said that there are two things that no one wants to watch being made. The first is sausage, and second is legislation. Whatever truth there may be in that, it is certainly true that the base closing bill's journey through the legislative process has hardly followed the path described in the textbooks. This has been a difficult fight. In the beginning, few thought that Congress would accept a bill that strikes so directly at pork barrel spending. In the intervening 2 years, it has nearly died a half dozen times and at one point or another been distorted almost beyond recognition before it finally arrived in the fine condition that it is in today.

Following a narrow defeat on the House floor in the spring of 1987, the legislation was revised and prepared as an amendment to be offered to the defense authorization bill. A week before the defense bill came up, however, base closing was placed on a whole new track, introduced as a separate bill and farmed out to no less than four House committees. There it was scrutinized in five hearings and subjected to six committee and subcommittee markups, emerging from the process in an entirely different form. The House then decided, over 2 days of full floor debate, to strike the committee language and insert yet another, further improved version.

By the time the battle hardened H.R. 4481 made its way to the Senate, several months had passed, and there was again an expectation that it would be included in the defense authorization bill. But instead, the defense authorization was included in it; the Senate voted to strike the base closing language and place its entire defense bill under H.R. 4481. That left base closing hanging in legislative limbo until it was placed under another bill number, sent to a House-Senate conference where a few relatively minor changes were made, and ultimately returned to the House for final approval today in astonishingly good shape.

I recount this not to cast aspersions on our hallowed legislative processes. To the contrary, I think that the adventures of the base closing bill serve to demonstrate the strength of our system. Our cumbersome legislative procedures ensure not only that it is much harder to make a law than it is to prevent a law from being made, but that any bill that completes the complex dance of legislation has been thoroughly considered and deliberated. Over the last 2 years, every conceivable objection to this admittedly novel concept has been thoroughly ventilated. Every Member with a legitimate concern has had a chance to be heard, and specific votes have been called and recorded on virtually every aspect. The final result is a bill which is very well through out and has the strong support of the House.

In the coming years, it is almost certain that some members will attempt to reverse the waste reduction program which we are beginning today. Closing and realigning obsolete bases is a 5-year process under this bill, and I have no doubt that during that period, some will try to abort the program and break the commitment which we have made. I can only hope that they will recall that Congress did not enter into this commitment lightly, and that they will have the devotion to the general good to see this process through to the end.

I would like to finish by extending a heartfelt thank you to all those who participated in moving this legislation to passage. This victory belongs to the House and to the many Members that have worked hard toward its enactment. At the risk of leaving someone out, there are a few that I would especially like to recognize.

On the Armed Services Committee, BILL DICKINSON, BOB STUMP, JON KYL, LYNN MARTIN, and BEVERLY BYRON played crucial roles. TONY BEILENSON of the Rules Committee was an early supporter who was extremely helpful throughout. In the body at large, PHIL SHARP, LES AUCOIN, HOWARD BERMAN, CHARLES SCHUMER offered their indispensable assistance. And needless to say, this legislation would not have been possible without the persistence and strong backing of the distinguished chairman of the Armed Services Committee, LES ASPIN.

I would also like to thank Steve Conver and Alma Moore of the Armed Services Committee staff who have been very generous to me and my staff throughout this process.

DAVID O'B. MARTIN and RON DELLUMS of the Installations Subcommittee had reservations about the bill, but both of them were very kind to me and I will always be greateful to them for that.

Finally, the Citizens Against Government Waste did a superb job leading a coalition of groups in support of this bill, and I am convinced that it could not have passed without the help of the Business Executives for National Security and the National Taxpayers Union.

Mr. ASPIN. Mr. Speaker, I yield 1 minute to the gentleman from Alabama [Mr. ERDREICH].

Mr. ERDREICH. Mr. Speaker, I thank the gentleman from Wisconsin [Mr. ASPIN], the chairman, for yielding this time to me, and the gentleman from Alabama [Mr. DICKINSON], the ranking member, my colleagues, both for helping move this bill to its final ending product.

My colleagues know that cost cutting is as difficult on the civilian side of our Government as the defense side, and this effort is one I think we all can hail as a finality and something that indeed is going to result in possibly a low of $2 billion and maybe higher dollars, tax dollars, saved that do not need to go to bases that are no longer needed in our country.

Again I strongly endorse the bill, and I urge its passage and congratulate all Members for bringing it to its final conclusion.

Mr. DICKINSON. Mr. Speaker, I yield 3 minutes to the gentleman from New York [Mr. MARTIN], the ranking minority member of the Subcommittee on Military Installations and Facilities.

Mr. MARTIN of New York. Mr. Speaker, I thank the gentleman from Alabama [Mr. DICKINSON] for yielding this time to me.

The gentleman from Texas [Mr. ARMEY] pointed out that this was the end for him of 2 years' work. I doubt that very much. It would be difficult for me to believe that this issue is going to be something that, once this legislation is passed, the Commission will decide one way or another and it will not have the constant oversight of Mr. ARMEY. It is a tribute to the gentleman from Texas who has worked so long and so hard.

Mr. Speaker, other Members certainly have worked on other pieces of legislation long and hard, but I want to pay particular tribute to the gentleman from Texas [Mr. ARMEY] because of his resilience and doggedness. In all of the hearings he never passed up an opportunity to work with anyone who had objections, certainly myself, to try to craft an appropriate piece of legislation that is going to deal with this problem that we have had for a number of years and have been unable to tackle in a reasonable fashion.

So, I am sure that the gentleman from Texas [Mr. ARMEY] will be watching with considerable interest as the Commission makes their report by the deadline, and again I want to take the opportunity, while I do not agree with every aspect of the legislation, to say it is worthy of our support, and I urge my colleagues' support of this conference report.

Mr. ASPIN. Mr. Speaker, I yield 1 minute to the gentleman from Oregon [Mr. AUCOIN.]

Mr. AUCOIN. Mr. Speaker, I rise in strong support of the base closings bill.

This legislation is long overdue and its a change in priorities that I greatly welcome in these times of triple digit deficits.

If we are going to cut waste, if we are going to buy smart defense rather than merely throwing money at it, and if are going to stop treating our defense budget as a welfare program, we need this bill.

A specific feature of this legislation that is critical to its success is the provision allowing Congress the opportunity to disapprove the full list of recommended bases, rather than requiring positive approval, or allowing votes on individual bases recommended by the Commission for closure.

It is essential that there be little or no opportunity for congressional intervention once the bases to be closed have been identified. That's a tough thing to say, but our record shows that horsetrading has too often prevailed over budget discipline and unnecessary bases have remained opened.

Bases must be judged on their ability to meet sound military objectives, not whether they provide economic development. Reducing deficits demand we pass this bill. Sound national security objectives demand we pass this bill. And, the taxpayers in this country demand we pass this bill.

Mr. DICKINSON. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. DeLay].

Mr. DeLAY. Mr. Speaker, as a member of the Military Construction Appropriations Subcommittee, I have followed the issue of military base closings with great interest for more than 2 years. My friend and colleague Mr. Armey has dedicated an extensive amount of his time in support of this idea—an idea which will prove very helpful in reducing the Federal deficit.

Three months ago, in this Chamber, we passed base-closing legislation by a substantial margin. However, for one reason or another, this legislation has failed to move any closer to the President's desk until today.

Mr. Speaker, we finally have the chance to make this fiscally responsible measure a reality. We owe it to the American people to cut out the obvious waste created by keeping obsolete military bases in operation.

If base closing legislation is left to die in the 100th Congress, we will be doing a great disservice to the American people who are already fed up with the wasteful spending practices of the Federal Government.

It has become very clear to me that there are those who want to go on wasting taxpayers dollars and there are those who are willing to resist special interest pressure and generate significant savings by closing unnecessary military bases.

Let us get this base-closing legislation on the President's desk. Let us pass this conference agreement.

Mr. ASPIN. Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. Kostmayer] for the purpose of entering into a colloquy.

Mr. KOSTMAYER. Mr. Speaker, section 2 of the charter of the Defense Secretary's Commission on Base Realignment and Closure states that by November 15, 1988, the Commission shall establish the best process and criteria for identifying bases to be closed or realigned. In addition, section 2 list nine minimum criteria the Commission shall use in evaluating U.S. military installations.

Is it your understanding, based on this charter and your work on the legislation before us, that as soon as possible, and no later than November 15, 1988 the Commission on Base Realignment and Closure shall prepare a comprehensive list of all the criteria they intend to use to evaluate U.S. military installations for possible realignment or closure?

Mr. ASPIN. Mr. Speaker, if the gentleman will yield, yes. The final, comprehensive list of criteria is to be completed by November 15, 1988.

Mr. KOSTMAYER. Is it also your understanding that this list of criteria, which shall include but not be limited to the minimum criteria set forth in the Commission charter, shall be made readily available to the public and to the Congress immediately upon its completion, and prior to the transmittal of the list of recommended closure and realignments?

Mr. ASPIN. Yes, It is my understanding and intention that the Commission shall draft a comprehensive list of criteria to be used to evaluate bases for possible closure or realignment as quickly as possible, and that that list will be made available to the public upon its completion.

Mr. KOSTMAYER. I thank the gentleman.

Mr. ASPIN. Mr. Speaker, I yield 1 minute to the gentleman from Indiana [Mr. Sharp].

Mr. Speaker, I simply want to rise in strong support of the legislation. It has been a long, hard struggle to get to this point because of the natural parochial concerns of folks who have military bases in their area, but it is very important from the point of view of a more efficient use of our tax dollars, which we are, in fact, in great need of given the massive deficits that we have racked up in this country in recent years, and I want to thank the gentleman from Wisconsin [Mr. Aspin], the distinguished chairman of the committee, and the gentleman from Alabama, the ranking minority member, the gentleman from Texas [Mr. Armey] and others for their hard work.

Mr. Speaker, I think this is the right thing to do for the country and for the taxpayers, and we are hopefully going to see a followup that in fact the legislation is carried out.

Mr. DICKINSON. Mr. Speaker, I yield 1 minute to the gentleman from Florida [Mr. Shaw].

Mr. SHAW. Mr. Speaker, I thank the gentleman from Alabama [Mr. Dickinson] for yielding this time to me.

Mr. Speaker, I would like to compliment the gentleman from Texas [Mr. Armey] for this very fine piece of legislation, as well as the members of the committee for shepherding it through and bringing it to us today.

Mr. Speaker, this is one area in our defense budget where we can find waste that is politically motivated that we can get rid of. This really gives us a foundation to work with, and I would like to extend appreciation to those who came up with the wonderful idea of this legislation which I support.

Mr. Speaker, I ask for all the Members to support this legislation.

Mr. ASPIN. Mr. Speaker, I yield 1 minute to the gentleman from Delaware [Mr. Carper].

Mr. CARPER. Mr. Speaker, I think all of us want a strong national defense. All of us want to preserve jobs in our districts and in our States if at all possible. All of us also want to reduce budget deficits.

Mr. Speaker, it is difficult to reconcile those three goals. Sometimes they are add ons with one another. Sometimes they are competing against one another. I think this legislation before us today does an admirable job in trying to reconcile each of those three goals, and with the adoption of this legislation we will do a better job, a significantly better job, in targeting our scarce defense dollars where they will do the most good.

Mr. Speaker, I want to salute the gentleman from Wisconsin [Mr. Aspin], the chairman of the committee, for the work he has done. I particularly want to salute the gentleman from Texas [Mr. Armey] for the work he has done in putting together this compromise.

Mr. Speaker, this bill by itself will not close every military base in this country that probably should be closed, but it will close a lot more that should have been closed since 1977, which has been zero, and I think we are going to improve on that record significantly.

Mr. DICKINSON. Mr. Speaker, I yield 2 minutes to the gentleman from Washington [Mr. Chandler].

Mr. CHANDLER. Mr. Speaker, I rise in strong support of this bill today. I am proud to be one of the original cosponsors of the legislation, and I also want to congratulate the gentleman from Texas [Mr. Armey], my colleague. I think his leadership on this issue has been not only outstanding, but tenacious, and that is why we are here today.

Mr. Speaker, since 1985 Congress has reduced the annual depth of the defense operating budget by about 5 percent in real terms, yet we continue to prevent the Pentagon from saving about $2 billion annually with 400 domestic military installations considered by the Pentagon to be of no use to U.S. national security.

□ 1430

No domestic U.S. bases in the United States have been closed since 1978. Recommendations for base closings by this nonpartisan commission would automatically be implemented, unless both Houses of Congress disapprove the recommendations.

Now, of course, this provision has been criticized. It eliminates the role of Congress, opponents say, and I say that is good. Congress has definitely failed to do its job in this area.

Now, I understand the sensitivity of someone having a base in his district and not wanting to see it closed. That is why we have to pass this legislation, because if that parochialism is allowed to continue, we never will make any progress in this area.

I urge my colleagues to vote yes on this conference report, and congratulate its sponsors.

Mr. ASPIN. Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania [Mr. FOGLIETTA].

Mr. FOGLIETTA. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in opposition to the conference report on S. 2749.

Mr. Speaker, this conference report has been extensively debated by Members of this body and the Senate. We have worked significantly to strengthen its provisions; however, I am still opposed to its final passage, because I believe that many of the arguments used by its supporters remain terribly flawed.

For instance, speakers before me have referred to using the money saved from base closings to apply to the deficit in this Nation. Nothing could be further from the truth.

In answer to a question that I submitted to Secretary Carlucci at a hearing, Secretary Carlucci said that the savings realized by base closings would not be applied to the deficit, but would rather be used for other military programs, such as the SDI.

Another, many Members argue that no bases have been closed since 1979, somehow implying that that is the fault of Congress. That is simply untrue. This administration has never submitted to Congress a list of bases for closure. The current law regarding base closures has never been tried. Do we not owe it to the American people to check and to see if the system actually is broke before we try to fix it?

In addition, the bill's supporters have argued that this would save $5 billion annually. Now I see that figure has been called hyperbole, and the estimated savings have declined drastically. I remain skeptical of any claims of savings. In fact, closing bases may actually cost the Pentagon more taxpayers' dollars, not less. The functions just do not go away. They must be relocated elsewhere.

Moreover, I am concerned about the lack of time for the Commission to make its recommendations. Now, less than 3 months before the deadline, only three hearings have taken place. Clearly, the Commission members do not have sufficient time available to study the pros and cons of all 871 military installations in the United States.

Therefore, I fear that the final list may simply be a replay of the politically loaded recommendations of the past.

Finally, I believe this legislation undercuts precisely the reason that we are elected to this body. We are chosen to make decisions for the good of our constituents and for the good of the United States of America. We should not delegate this authority to a group of unelected men and women. While I have great respect for the qualifications of every one of the members of that Commission, I believe these decisions impact too many people to literally tie the hands of Congress, as this legislation would do.

I urge my fellow colleagues to vote no on this conference report.

Mr. DICKINSON. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Nebraska [Mr. BEREUTER].

Mr. BEREUTER. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in strong support of the conference report. This reform legislation has been a long time coming, but I want to commend the distinguished chairman, the gentleman from Wisconsin [Mr. ASPIN], and the distinguished gentleman from Alabama [Mr. DICKINSON] for their efforts and for others who assisted them in the conference to bring this important reform legislation to the House and moving it along toward passage and signature by the President.

The gentleman from Texas [Mr. ARMEY] indeed does deserve commendation for being tenacious and for the initiative that he took in proposing the legislation on which this resolution closely parallels. I do commend the gentleman for his success and the extraordinary benefits his initiative can bring to the defense of the Nation and to the American taxpayers.

Mr. Speaker, the military base closing bill is the result of an effort that began in the early 1980's. The bill will allow the Department of Defense to cut its operating costs by $2 billion by closing a significant number of obsolete military bases.

As a charter member of the military reform caucus that was organized in 1981, I shared many of my colleagues' concern that there was an apparent inability of Congress and the administration to close obsolete and costly military bases. Since Congress imposed elaborate procedural requirements on base closing proposals in 1976, there had been a virtual moratorium on large-scale base closings. The members of the military reform caucus recognized that any successful base closing procedure would have to be nonpartisan, nonparochial and de-politicized.

This Member became a cosponsor of the House bill introduced by the distinguished gentleman from Texas [Mr. ARMEY] in 1987 that set out a procedure to overcome the political difficulties inherent to the base closing proposal. The legislation waives environmental impact studies and gives the Secretary of Defense the power to choose a commission charged with selecting bases to be closed. Neither the Secretary of Defense nor the Congress can alter the list of bases to be closed. Only the Congress can block the closures by adopting a joint resolution in the specified period of time to block the entire list. This legislation thus will provide a rare opportunity to take action that will save the Federal Government a significant amount of money when the deficit agreement is requiring us to examine all spending measures.

Those of us who have given our strong support to this measure believe that it is clearly in the national interest to provide for an efficiently operated Defense Department. The military base closing measure affords us the opportunity to provide for this efficiency and effectiveness in the national defense effort for which the Congress appropriates funds.

Mr. Speaker, I urge my colleagues to support this legislation overwhelmingly.

Mr. ASPIN. Mr. Speaker, I yield 1 minute to the gentleman from Mississippi [Mr. MONTGOMERY].

Mr. MONTGOMERY. Mr. Speaker, I thank the gentleman for yielding me this 1 minute.

Mr. Speaker, I rise in opposition to the conference report. I support what the gentleman from Pennsylvania has said and will not repeat some of the strong points he made. I do want to compliment the gentleman from Texas, who was very kind to me earlier in his remarks. We have been in opposition to this legislation. He supported it and is the author. For over 2 years now we have become good friends disagreeing on this legislation.

No question what will happen today. This legislation and conference report will be adopted, but I would like to point out, Mr. Speaker, I hope these bases that will be closed are obsolete and will not hurt the defense of this country.

This Commission must be careful not to close bases that effect the training and preparedness that helps to keep this Nation strong.

The Commission has an awesome job but they on the Commission are distinguished Americans and will work hard not to weaken the defense of this country.

Mr. DICKINSON. Mr. Speaker, it is my pleasure to yield 1 minute to the very distinguished and able gentleman from Arizona [Mr. KOLBE].

Mr. KOLBE. Mr. Speaker, I rise in strong support of this legislation and want to commend the chairman and the ranking member for their work on it and, of course, as my other colleagues have done, to the gentleman from Texas [Mr. ARMEY] who really has brought this legislation to the attention of the House.

The basic reasons for supporting this, as we did a few weeks ago, remain today. The changes that have been made in the conference committee I think are changes that make it acceptable and make it worthy of the support of everybody. Those who had concerns before, I think those concerns have been addressed.

We have the ability for an expedited vote on this legislation, as we should have.

There is a provision for a separate vote on overseas base closings, something that I addressed when we considered this bill several weeks ago.

Two additional Commission members have been added to address the geographic concerns of the Commission, and there is a satisfactory timetable for working out the report of the Commission and being sure that it is reported out expeditiously.

Mr. Speaker, this conference report is worthy of our support. At a time of declining dollars for defense spending, we should be looking for ways to save money. This legislation permits us to do that.

Mr. Speaker, I urge support for the conference report.

Mr. DICKINSON. Mr. Speaker, I yield 1 minute to the very distinguished gentlewoman from Maryland [Mrs. MORELLA].

Mrs. MORELLA. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in support of this legislation. I would like to take this opportunity to commend, first of all, the gentleman from Texas [Mr. ARMEY] for his hard work, commitment, and persistence in support of this legislation. I also want to recognize the Members on both sides of the aisle, and in the other body, for their work on this legislation.

Mr. Speaker, I am pleased to be a cosponsor of this legislation, which for the first time in more than 10 years holds out the possibility that our Government can start closing obsolete and unnecessary military bases. Passage and implementation of this bill means that we will be able to realize a savings of between $2 and $5 billion annually, and is an important step in our efforts to reduce the budget deficit.

It has been noted that this, the 100th Congress, has seen the passage and enactment into law of much landmark legislation. I am pleased that we are able to add this important legislation to our list of accomplishments this term.

Mr. DICKINSON. Mr. Speaker, I yield 2 minutes to the very distinguished gentleman from Virginia [Mr. BATEMAN], who represents Norfolk and points south and who has a long and abiding interest in this piece of legislation and has been very helpful as we worked it along.

Mr. BATEMAN. Mr. Speaker, I thank the distinguished gentleman from Alabama for yielding time to this Member from Newport News, across Hampton Roads from Norfolk.

Mr. Speaker, I join with my colleagues who have commended the distinguished gentleman from Wisconsin [Mr. ASPIN], and my distinguished colleague, the gentleman from Alabama [Mr. DICKINSON], and of course, the distinguished gentleman from Texas [Mr. ARMEY], all of whom have done a very, very conscientious and sincere job in bringing this legislation to where, with the adoption of the committee report, it will be enacted into law.

I do commend them for those efforts, though I cannot share with them in the joy of voting to approve this conference report.

It had been my desire throughout this discussion to vote for an objective nonpartisan, nonpoliticized methodology, by which we might determine which, if any, military installations should be closed in the interests of economy, while at the same time not jeopardizing our national security.

I find this bill flawed, as much as I respect the objective and the conscientiousness of those who support it, flawed in that this bill is an all or nothing proposition where the Secretary of Defense must accept all recommendations of a Commission, and as distinguished as that Commission is, I think that is misconceived as a matter of police.

The Secretary of Defense, we will assume, having accepted the all or nothing at all proposed list, we in the Congress must then accept it all or nothing at all, and if we then even choose to object to it, we can only do so by passing a resolution of disapproval by a majority vote, which on that vote if both bodies have concurred in disapproving, it would go to a White House that might then veto it, putting us in a position where a list of all or nothing at all gets implemented over the objections of 50 percent of the Members of either or both Houses of the Congress.

I look upon that as being excessive and it does not meet the standards of what I thought I could vote for in terms of a sound procedure and methodology for making the decision on which, if any, bases should be closed.

Mr. DICKINSON. Mr. Speaker, I yield myself such time as I may consume, as the concluding speaker on this side.

Just let me say to the gentleman from Fort Monroe that Norfolk is not a bad place, but I realize he is from Newport News. I am sorry that I made that mistake. I do not think we are going to close anything in either place.

Mr. Speaker, this has been a long and somewhat tortuous trail to arrive at this particular point. We have gone over may obstacles. We have encountered many setbacks.

I think, though, that the American people will be well-served by this particular piece of legislation. I think it will make substantial savings.

The chairman of our full committee, of course, has been very helpful. Although some other speakers have given accolades to the gentleman from Texas, so well-deserved, I would like to add my 2 cents worth to it by saying that if it had not been for his persistence, his tenacity and his perseverance, his foresightedness, perhaps we would not be at this point today. I am convinced that is true, so he is to be congratulated on a major piece of legislation that he has shepherded through the halls of Congress, both on this side and the other side. I think the American people will be the beneficiaries of what we do here today. It is a good piece of legislation. It really has been a long time coming, and it is long past due. I would urge all my colleagues to please support this bill. I think it is a good bill. It should be supported, and if it cannot be unanimous, certainly it should be overwhelming.

Mr. DICKINSON. Mr. Speaker, I yield back the balance of my time.

Mr. ASPIN. Mr. Speaker, I have no further requests for time, I yield back the balance of my time, and I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ASPIN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Mrs. COLLINS. Mr. Speaker, as chairwoman of the Government Activities and Transportation Subcommittee and a conferee, I rise in support of the conference report on S. 2749. The Government Activities and Transportation Subcommittee of the Committee on Government Operations has jurisdiction over the Federal Property and Administrative Services Act of 1949, which provides for utilization and disposal of excess and surplus property. When the original House bill (H.R. 4481) was introduced, I became particularly concerned that the bill authorized the Secretary of Defense to implement the closing or realigment of military installations without regard to "any provision of the Federal Property and Administrative Services Act of 1949 restricting the Secretary from disposing of real property and facilities."

My concern was based on the fact that the established procedures of the Federal Property Act, whose implementation my subcommittee oversees, have worked successfully for many years to achieve further Federal agency utilization of excess real property and thereafter disposal of the property as surplus. Disposals in the past have also included properties involved in base closures.

During the Government Operations Committee's consideration of the bill, Chairman BROOKS, myself, and the other members of the committee, majority and minority, succeeded in reporting out an amended version of the bill which substantially preserved the authorities and procedures of the Federal Property Act and the functions of the Administrator of General Services in connection with property utilization and disposal. The House, however, passed a version of H.R. 4481 which omitted the detailed synthesis with the Federal Property Act and instead made a more general reference to transfer of real property to the Administrator for utilization and disposal.

The Senate version, on the other hand, provided for waiver of any provision of the Federal Property Act restricting the Secretary of Defense from disposing of real property. This version had the support of the Secretary of Defense.

As the Committee on Government Operations noted in House Report 100-735, part 2, there has developed a trend toward giving the Department of Defense special statutory authorities to dispose of specific lands under its control. Over the past 3 years, there have been at least 54 such ad hoc deviations from the Federal Property Act's excess and surplus property disposal procedures. Giving the Secretary authority to waive the Federal Property Act for properties available as a result of base-closure and realignment would, we felt, be a further precedent moving away from the existing framework of the Federal Property Act, which centralizes property management and disposal authority in GSA. The second Hoover Commission's report bears reemphasis in its pronouncement that exemptions from GSA's authority in connection with the reporting and screening of excess real property and the disposal of real property should be held to a minimum.

Mr. Speaker, I am pleased that the House and Senate have been able to reach a compromise now on this issue. The conference report preserves the framework of the Federal Property Act and related statutes, at the same time preserving for the Secretary of Defense the immediate, active role in affecting utilization and disposal of real property. It does so by directing the Administrator, under the broad power of delegation that the Federal Property Act gives him, to delegate, on a one-time basis and for the unique purpose of the base-closure legislation, his excess property utilization and surplus property disposal authority to the Secretary. Under the conference agreement, the Secretary will manage utilization and disposal of such properties but under the already established policies and procedures. These include not only safeguards with respect to sales and exchanges but also a wide range of opportunities for cost-free public-benefit transfers and other special planning and acquisition opportunities for States, local governments, and certain nonprofit entities under existing law.

I should point out that regulatory changes which may be necessary to carrying out the delegated authority may be made only after the Secretary's consultation with the Administrator of General Services. These may not include changes prescribing general policies and methods for utilizing excess property and disposing of surplus property. We should keep in mind the principle that a delegation of authority does not divorce the delegator from overall responsibility and supervision with respect to exercise of the delegated functions.

Also, Mr. Speaker, we expect that GSA and the Defense Department will cooperate in making agreements under existing general law that may result in GSA's providing certain of its specialized operational and technical services to the Department.

Mr. Speaker, while I should have preferred that the bill employ the approach contained in the version approved by the Committee on Government Operations last June, the conference agreement represents a compromise which can satisfy a good deal of the concern that has engaged the Government Operations Committee. With good will and cooperation on the part of GSA and the Defense Department, I am confident that property utilization and disposal processes will be expeditiously and effectively carried out to further the objectives of the conference agreement. I therefore urge my colleagues to vote for its approval.

Mr. DONNELLY. Mr. Speaker, I rise in strong opposition to S. 2749, the Base Closure and Military Realignment Act. This legislation, as has been widely reported and as my colleagues know, makes it easier to shut down certain military bases—bases that are considered unneeded in the eyes of some Government bureaucrats. This legislation is a classic example of Congress abdicating its responsibility to a political commission, with its own agenda, and I refuse to endorse this process.

S. 2749, in relevant part, authorizes a commission to come up with a list of military bases that would be closed if the commission determines that the bases are unneeded. If a joint resolution of disapproval is not adopted—a resolution which may not be amended—the closings would go into effect. This resolution would be subject to a Presidential veto, so in reality, it would take a two-thirds vote of Congress to prevent these base closings from going into effect.

Of course, the money saved from closing down these bases will wind up being used to pay for the commission's salaries and expenses. It's a little like having toll booths on a highway to collect just enough money to pay the toll keepers. In my view, this is a terrible way to legislate, and it's a terrible way to reduce expenses.

All that this legislation will do is leave in the hands of some nameless, faceless government bureaucrats a decision which will ignore the needs of communities in which military bases are located. The commission will, no doubt, ignore the positive impact that military bases may have on a local economy. It will, I am sure, ignore the many positive effects that a military base may have in a community. In passing this legislation, we will be handing over our responsibility as legislators—and local governments' responsibility to their constituents—to a political commission. I will not be a party to this process.

If Congress were serious about reducing military spending, we would make the tough choices. Certainly, there are legitimate disagreements over military spending, but you don't solve those disagreements by abdicating responsibility as legislators. This legislation will not save any real money, and I cannot support it. I urge my colleagues to vote against this legislation.

Mr. LAGOMARSINO. Mr. Speaker, I rise in strong support of the military base closings conference report (H.R. 4481). For a while, I was very concerned that we would not consider and pass this very worthy legislation. However, I commend my friend from Texas, Mr. ARMEY, for his tireless efforts to being this measure before us and help eliminate this one source of wasteful spending. I am proud to have cosponsored Mr. ARMEY's bill.

Billions of dollars are wasted annually in maintaining and operating unneeded and unwanted military bases. Of the 4,000 domestic military installations, as many as 400 of these bases are unneeded, serving no military purpose and wasting citizens' hard earned tax dollars. For example, Fort Monroe, VA, with its surrounding moat designed to repel British Redcoats during the War of 1812 and Fort Douglas, UT, built for the purpose of protecting stagecoaches crossing the frontier from bandits and Indian raids are two such superfluous bases.

For the past 4 years the defense budget has grown "negatively" as the majority party in Congress has continued to cut our defense budget in real dollars—to the detriment of our national security. I agree that we must balance the budget and eliminate the Federal deficit, and that defense spending, like all other spending, but not at the expense of our national security and safety. The deep cuts advocated by some, in the name of "economy," could seriously and irreparably damage our ability to provide an adequate and credible defense. These cuts, which target important programs, systems, and personnel—not unneeded and unwanted expenditures like maintaining obsolete bases—can be both dangerous and irresponsible. In reality, they may provide no savings at all.

We must ensure that our defense dollars are wisely spent. Waste, fraud, and abuse cannot be tolerated and must be eliminated. This legislation provides the opportunity to take action against waste. By making it possible to close obsolete military bases in a fair and nonpolitical way, which this bill does, we could eliminate billions of dollars in waste. This legislation targets unwanted fat, not needed muscle. Incidentally, the estimated savings H.R. 4481 could provide would be as much as current spending on the SDI, the Peacekeeper [MX] ICBM and the small ICBM [Midgetman] combined.

No major base has been closed since 1977. In fact, 13 have been created within the last decade. This bill would help streamline and depoliticize the closing of bases. Only those military bases recommended by a nonpartisan commission could be closed by under more efficient and cost-effective procedures.

The assumption that closing these obsolete bases will impose severe economic damage on local communities proves false in most instances. In fact, while this myth claims that base closings will prove disastrous to constituents, in reality, closing obsolete bases actually can lead to economic bonanzas.

Actions speak much louder than words. If we are serious about cutting waste, then we should not miss this important opportunity to do something about it. I am very encouraged that the significant provisions, such as actually closing these unneeded bases unless Congress, through joint resolution, disapproves were retained in the final report. This is a truly nonpartisan way to cut out waste. I strongly urge my colleagues to join me in supporting this measure.

Mr. BUSTAMANTE. Mr. Speaker, I rise in opposition to the conference report on S. 2749, the base closure bill. Proponents of this bill have found a way to save billions of defense dollars by relieving ourselves of our responsibility to deliberate the major national security and economic implications of military base closings. This bill relegates Congress' responsibility to a bipartisan commission already appointed by the Secretary of Defense. This commission will not have the time to visit over 3,800 bases in 45 days. As such the commission will merely rubberstamp recommendations from the services. Without having all the information, I fear extraneous consideration will influence the commission's recommendations.

Since I support initiatives for a frugal and cost-efficient government, I wonder why this process is only being applied to a narrow area of potential defense savings. Why is the commission not required to recommend overseas base closures as part of the overall package. The cost of our overseas bases amounts to $35.5 billion this fiscal year and $37 billion next year. These are not negligible costs and should also be included in this bill. The future viability of our overseas bases needs to be taken into account at a time when we consider closing bases inside the United States. Otherwise, we will fritter away the bill's purported savings.

If we are to really address wasteful programs of questionable value to our national security, we should also include in this bill wasteful and ineffective weapons programs. It is just as difficult, if not more difficult, to cancel a bad weapons program than close an unneeded military base. Why, then, have the proponents of this legislation not included weapons systems in their efforts to save defense dollars? I am sure there are more dollars to be saved in weapons procurement than in military bases. I hope that it is not because bases are more expendable than businesses and that Government employees are less important that private sector employees.

Mr. Speaker, we need to make sure that the legislation's purported savings are as real as its impact on the affected communities. While many smaller savings schemes have failed to materialize in the past, the consequences of this one to the socioeconomic well-being of many of our communities should require everyone to pause and reflect before taking a leap. I urge my colleagues to reject the conference report.

Ms. SNOWE. Mr. Speaker, I rise in opposition to the conference report on S. 2749, a bill that would discard important legislative procedures and abdicate Congress' duty in a misguided effort to save money.

When the House passed its version of this bill on July 12 as H.R. 4481, I outlined at some length my objections to its extraordinary shifting of power from the American people's elected representatives in Congress to the Secretary of Defense and his appointed commission.

I also described the hasty, ill-considered and short-sighted attempt to close an important Air Force base in Maine some years ago, and I emphasized the need for the congressional oversight and evaluation of base-closing proposals that now exist in current law.

Mr. Speaker, I am disappointed that the conferees have made virtually no changes to the House bill, and my reservations remain equally strong about S. 2749.

My principal objection to this legislation is that neither the President nor Congress would be allowed to evaluate or approve the specific realignments of bases proposed by the unelected base-closing commission.

Only the commission members and the Secretary of Defense would make the vital decisions about how to realign our Nation's military bases. I think every Member of this Congress should be deeply disturbed by this abdication of our constitutional prerogatives, not to mention the abdication of our duty to the citizens of this Nation.

It is equally disturbing to me that no provision is made in this bill for the commission to consider the views of citizens who live in base communities. These are the people who know the local issues best and who would be directly affected by base realignments.

I might point out that no provision is made in the commission's work for the input of Members of Congress, either, other than the magnanimous afterthought of allowing us to pass a joint resolution of disapproval to block implementation of the commission's plan—and by a two-thirds majority sufficient to override a veto, at that.

Perhaps most galling to me is the manner in which Congress appears to feel that the only way it can make tough decisions about our Nation's military bases is by passing the buck—dodging the issue altogether and turning it over to the executive branch and its appointees, in a lame attempt to spare ourselves from the political heat of potentially unpopular decisions.

The kind of irresponsible legislation we are considering today should be an unpopular decision. Citizens throughout this country are entitled to ask why their elected representatives are so eager to abdicate Congress' most fundamental role, depriving the people of their voice in the base closing process to boot.

Let's place the responsibility for this issue where it belongs. If the administration wishes to close or realign legitimately obsolete military bases, let it propose doing so to Congress. It hasn't made one such proposal in the 7½ years.

And if Members wish to expedite the realignment of legitimately obsolete military bases, let them work with the administration to evaluate and to approve base closing proposals through the existing procedures. After all, Congress legislated these very procedures in the first place, for very sound reasons, and there is nothing in current law to prevent closing any military base.

Perhaps it is time for the Members of this House to acknowledge the painful reality that this bill is not about "defense savings" but rather political expediency. And our political expediency today may have a dangerous impact on Congress' proper role, the Nation's defense, and local communities everywhere.

I hope that my colleagues will give serious consideration to these less apparent, but perhaps more salient, facts, and vote today not to approve this conference report.

Mr. ROTH. Mr. Speaker, I rise in strong support of the conference report on military base closings and commend Mr. ARMEY of Texas for his diligent work on this issue. As a cosponsor of H.R. 4481, I am pleased that we have moved forward on this responsible plan to eliminate wasteful, needless spending by the Defense Department.

The bill before us today will take a big step toward eliminating pork barrel politics from closing obsolete military bases. Since 1977, Congress has been searching for the fortitude to responsibly address the problem of eliminating military bases that contribute little or nothing to our national security. In the last 10 years, the Defense Department has attempted 20 such closures and run into a congressional roadblock at every turn.

The base closure bill will empower the nonpartisan Commission on Base Realignment and Closure set up earlier this year by Defense Secretary Carlucci with the authority to prepare a list of bases for closure. The 12-member Commission must submit the list to Congress no later than January 16, 1989. After submittal, the recommendations will automatically be implemented unless Congress passes a resolution of disapproval.

Estimates on the annual budget savings from this bill range from the Grace Commission's $2 billion projection to as high as the $5 billion figure calculated by the Office of

Management and Budget. Even if only $2 billion or less is saved, it is sound fiscal policy to eliminate military bases that are no longer strategically needed. This bill trims the fat off the Defense budget and saves potential expenditures for the coming years.

Antiquated bases such as Fort Douglas in Utah, built in 1862 to protect stagecoach routes from Indian raids, and Fort Monroe in Virginia, built to stave off the British in the War of 1812, are two examples of bases which have great historic importance but play an insignificant role in our strategic defenses. These two bases and at least 30 other similar bases can be readily consolidated or eliminated.

A base closing can often be an economic boon to a community. Former military bases have been turned into industrial parks, municipal airports, colleges, and historical sites. A Pentagon analysis of 100 of the bases closed since 1961 cited a total of 138,138 civilian jobs now located on former defense facilities, replacing 93,424 jobs lost when the military left.

With our budget deficit still out of control, the closing of unnecessary military bases is a good way to achieve savings. It is a responsible step to eliminate waste in defense spending and trim budget deficits.

Moreover, this bill will permit the Defense Department to reallocate funds to better support our men and women in uniform, who are manning the more critical bases that we really need. This bill both saves taxpayer's money and helps our military services.

Mr. Speaker, I urge my colleagues to remember their responsibility to our Nation's taxpayers and vote for this proposal which is clearly in the national interest.

The vote was taken by electronic device, and there were—yeas 370, nays 31, not voting 30, as follows:

[Roll No. 443]

YEAS—370

Ackerman
Akaka
Anderson
Andrews
Annunzio
Anthony
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Badham
Baker
Ballenger
Barnard
Bartlett
Barton
Bates
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boggs
Boland
Bonior
Bonker
Bosco
Boucher
Broomfield
Brown (CA)
Brown (CO)
Bryant
Buechner
Bunning
Burton
Byron
Callahan
Campbell
Cardin
Carper
Carr
Chandler
Chapman
Chappell
Cheney
Clarke
Clay
Clement
Clinger
Coats
Coble
Coleman (TX)
Collins
Conte
Conyers
Cooper
Coughlin
Coyne
Craig
Crane
Crockett
Dannemeyer
Darden
Daub
Davis (IL)
Davis (MI)
de la Garza
DeFazio
DeLay
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Dorgan (ND)
Dornan (CA)
Downey
Dreier
Durbin
Dwyer
Dymally
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
Erdreich
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Flippo
Foley
Ford (MI)
Ford (TN)
Frank
Frenzel
Frost
Gallegly
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Gradison
Grandy
Grant
Gray (IL)
Green
Guarini
Gunderson
Hall (TX)
Hamilton
Hammerschmidt
Hansen
Harris
Hastert
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefley
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Henry
Herger
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Holloway
Hopkins
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Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hyde
Inhofe
Ireland
Jacobs
Jeffords
Jenkins
Johnson (CT)
Johnson (SD)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kemp
Kennedy
Kennelly
Kildee
Kleczka
Kolbe
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Kostmayer
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LaFalce
Lagomarsino
Lancaster
Lantos
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
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Levin (MI)
Levine (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Livingston
Lloyd
Lowery (CA)
Lowry (WA)
Lujan
Luken, Thomas
Lukens, Donald
Lungren
Manton
Markey
Marlenee
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCollum
McCrery
McCurdy
McDade
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
Meyers
Mfume
Michel
Miller (CA)
Miller (OH)
Miller (WA)
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Moakley
Molinari
Mollohan
Moody
Moorhead
Morella
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Nagle
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Nowak
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Oberstar
Obey
Olin
Owens (NY)
Owens (UT)
Oxley
Panetta
Parris
Pashayan
Patterson
Payne
Pease
Penny
Pepper
Petri
Pickett
Porter
Price
Pursell
Quillen
Rahall
Rangel
Ravenel
Ray
Regula
Rhodes
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Sabo
Sawyer
Saxton
Schaefer
Scheuer
Schneider
Schuette
Schulze
Schumer
Sensenbrenner
Sharp
Shaw
Shays
Shumway
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stangeland
Stenholm
Stokes
Studds
Stump
Sundquist
Sweeney
Swift
Synar
Tauzin
Taylor
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traxler
Udall
Upton
Vander Jagt
Vento
Visclosky
Walgren
Walker
Waxman
Weiss
Weldon
Wheat
Whittaker
Whitten
Williams
Wilson
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)

NAYS—31

Bateman
Borski
Boxer
Bruce
Bustamante
Combest
Costello
Donnelly
Dyson
English
Evans
Florio
Foglietta
Hall (OH)
Horton
Hutto
Lewis (CA)
Madigan
McCloskey
Montgomery
Natcher
Ortiz
Perkins
Saiki
Schroeder
Snowe
Stark
Tallon
Traficant
Vucanovich
Watkins

NOT VOTING—30

Alexander
Boulter
Brennan
Brooks
Coelho
Coleman (MO)
Courter
Dowdy
Espy
Gray (PA)
Gregg
Jones (NC)
Jones (TN)
Lipinski
Lott
Mack
MacKay
Mica
Packard
Pelosi
Pickle
Russo
Savage
Stallings
Stratton
Swindall
Tauke
Valentine
Volkmer
Weber

□ 1503

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERMISSION FOR SUBCOMMITTEE ON GOVERNMENT ACTIVITIES AND TRANSPORTATION OF THE COMMITTEE ON GOVERNMENT OPERATIONS TO SIT TOMORROW DURING 5-MINUTE RULE

Mrs. COLLINS. Mr. Speaker, the Government Activities and Transportation Subcommittee of the Committee on Government Operations has scheduled an oversight hearing tomorrow to consider providing shelter for the homeless on Federal properties.

Mr. Speaker, I ask unanimous consent that the subcommittee be permitted to sit for that purpose.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentlewoman from Illinois?

There was no objection.

FEDERAL EMPLOYEES LEAVE ACT OF 1988

Mr. ACKERMAN. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 3757) to amend title 5, United States Code, to permit voluntary transfers of leave by Federal employees where needed because of a medical or other emergency situation.

The Clerk read as follows:

Senate amendment: Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Employees Leave Act of 1988".

SEC. 2. VOLUNTARY TRANSFERS OF LEAVE.

(a) IN GENERAL.—Chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following new subchapters:

"SUBCHAPTER III—VOLUNTARY TRANSFERS OF LEAVE

"§ 6331. Definitions

"For the purpose of this subchapter—

"(1) the term 'employee' means an employee as defined by section 6301(2), excluding

an individual employed by the government of the District of Columbia;

"(2) the term 'leave recipient' means an employee whose application to receive donations of leave under this subchapter is approved;

"(3) the term 'leave donor' means an employee whose application to make 1 or more donations of leave under this subchapter is approved; and

"(4) 'medical emergency' means a medical condition of an employee or a family member of such employee that is likely to require the prolonged absence of such employee from duty and to result in a substantial loss of income to such employee because of the unavailability of paid leave.

"§ 6332. General authority

"Notwithstanding any provision of subchapter I, and subject to the provisions of this subchapter, the Office of Personnel Management shall establish a program under which annual leave accrued or accumulated by an employee may be transferred to the annual leave account of any other employee if such other employee requires additional leave because of a medical emergency.

"§ 6333. Receipt and use of transferred leave

"(a)(1) An application to receive donations of leave under this subchapter, whether submitted by or on behalf of an employee—

"(A) shall be submitted to the employing agency of the proposed leave recipient; and

"(B) shall include—

"(i) the name, position title, and grade or pay level of the proposed leave recipient;

"(ii) the reasons why transferred leave is needed, including a brief description of the nature, severity, anticipated duration, and, if it is a recurring one, the approximate frequency of the medical emergency involved;

"(iii) if the employing agency so requires, certification from 1 or more physicians, or other appropriate experts, with respect to any matter under clause (ii); and

"(iv) any other information which the employing agency may reasonably require.

"(2) If an agency requires that an employee obtain certification under paragraph (1)(B)(iii) from 2 or more sources, the agency shall ensure, either by direct payment to the expert involved or by reimbursement, that the employee is not required to pay for the expenses associated with obtaining certification from more than 1 of such sources.

"(3) An employing agency shall approve or disapprove an application of a proposed leave recipient for leave under this subchapter, and, to the extent practicable, shall notify the proposed leave recipient (or other person acting on behalf of the proposed recipient, if appropriate) of the decision of the agency, in writing, within 10 days (excluding Saturdays, Sundays, and legal public holidays) after receiving such application.

"(b) A leave recipient may use annual leave received under this subchapter in the same manner and for the same purposes as if such leave recipient had accrued that leave under section 6303, except that any annual leave, and any sick leave, accrued or accumulated by the leave recipient and available for the purpose involved must be exhausted before any transferred annual leave may be used.

"(c) Transferred annual leave—

"(1) may accumulate without regard to any limitation under section 6304; and

"(2) may be substituted retroactively for any period of leave without pay, or used to liquidate an indebtedness for any period of advanced leave, which began on or after a date fixed by the employing agency of the employee as the beginning of the medical emergency involved.

"§ 6334. Donations of leave

"(a) An employee may, by written application to the employing agency of such employee, request that a specified number of hours be transferred from the annual leave account of such employee to the annual leave account of a leave recipient in accordance with section 6332.

"(b)(1) In any one leave year, a leave donor may donate no more than a total of one-half of the amount of annual leave such donor would be entitled to accrue during the leave year in which the donation is made.

"(2) A leave donor who is projected to have annual leave that otherwise would be subject to forfeiture at the end of the leave year under section 6304(a) may donate no more than the number of hours remaining in the leave year (as of the date of the transfer) for which the leave donor is scheduled to work and receive pay.

"(3) The employing agency of a leave donor may waive the limitation under paragraphs (1) and (2). Any such waiver shall be made in writing.

"(c) The Office of Personnel Management shall prescribe regulations to include procedures to carry out this subchapter when the leave donor and the leave recipient are employed by different agencies.

"§ 6335. Termination of medical emergency

"(a) The medical emergency affecting a leave recipient shall, for purposes of this subchapter, be considered to have terminated on the date as of which—

"(1) the leave recipient notifies the employing agency of such leave recipient, in writing, that the medical emergency no longer exists;

"(2) the employing agency of such leave recipient determines, after written notice and opportunity for the leave recipient (or, if appropriate, another person acting on behalf of the leave recipient) to answer orally or in writing, that the medical emergency no longer exists; or

"(3) the leave recipient is separated from service.

"(b)(1) The employing agency of a leave recipient shall, consistent with guidelines prescribed by the Office of Personnel Management, establish procedures to ensure that a leave recipient is not permitted to use or receive any transferred leave under this subchapter after the medical emergency terminates.

"(2) Nothing in section 5551, 5552, or 6306 shall apply with respect to any annual leave transferred to a leave recipient under this subchapter.

"§ 6336. Restoration of transferred leave

"(a)(1) The Office of Personnel Management shall establish procedures under which, except as provided in paragraph (2), any transferred leave remaining to the credit of a leave recipient when the medical emergency affecting the leave recipient terminates shall be restored on a prorated basis by transfer to the appropriate accounts of the respective leave donors.

"(2) Nothing in paragraph (1) shall require the restoration of leave to a leave donor—

"(A) if the amount of leave which would be restored to such donor would be less than 1 hour or any other shorter period of time which the Office may by regulation prescribe;

"(B) if such donor retires, dies, or is otherwise separated from service, before the date on which such restoration would otherwise be made; or

"(C) if such restoration is not administratively feasible, as determined under regulations prescribed by the Office.

"(b) At the election of the leave donor, transferred annual leave restored to such leave donor under subsection (a) may be restored by—

"(1) crediting such leave to the leave donor's annual leave account in the then current leave year;

"(2) crediting such leave to the leave donor's annual leave account, effective as of the first day of the first leave year beginning after the date of the election; or

"(3) donating such leave in whole or part to another leave recipient; if a leave donor elects to donate only part of restored leave to another recipient, the donor may elect to have the remaining leave credited to the donor's annual leave account in accordance with paragraph (1) or (2).

"(c) The Office shall prescribe regulations under which this section shall be applied in the case of an employee who is paid other than on the basis of biweekly pay periods.

"(d) Restorations of leave under this section shall be carried out in a manner consistent with regulations prescribed to carry out section 6334(c), if applicable.

"§ 6337. Accrual of leave

"(a) For the purpose of this section—

"(1) the term 'paid leave status under subchapter I', as used with respect to an employee, means the administrative status of such employee while such employee is using sick leave, or annual leave, accrued or accumulated under subchapter I; and

"(2) the term 'transferred leave status', as used with respect to an employee, means the administrative status of such employee while such employee is using transferred leave under this subchapter.

"(b)(1) Except as otherwise provided in this section, while an employee is in a transferred leave status, annual leave and sick leave shall accrue to the credit of such employee at the same rate as if such employee were then in a paid leave status under subchapter I, except that—

"(A) the maximum amount of annual leave which may be accrued by an employee while in transferred leave status in connection with any particular medical emergency may not exceed 5 days; and

"(B) the maximum amount of sick leave which may be accrued by an employee while in transferred leave status in connection with any particular medical emergency may not exceed 5 days.

"(2) Any annual or sick leave accrued by an employee under this section—

"(A) shall be credited to an annual leave or sick leave account, as appropriate, separate from any leave account of such employee under subchapter I; and

"(B) shall not become available for use by such employee, and may not otherwise be taken into account under subchapter I, until, in accordance with subsection (c), it is transferred to the appropriate leave account of such employee under subchapter I.

"(c)(1) Any annual or sick leave accrued by an employee under this section shall be transferred to the appropriate leave account of such employee under subchapter I, effective as of the beginning of the first applicable pay period beginning after the date on which the employee's medical emergency terminates as described in paragraph (1) or (2) of section 6335(a).

"(2) If the employee's medical emergency terminates as described in section 6335(a)(3), no leave shall be credited to such employee under this section.

"§ 6338. Prohibition of coercion

"(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right which such employee may have with respect to contributing, receiving, or using annual leave under this subchapter.

"(b) For the purpose of subsection (a), the term 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as an appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

"§ 6339. Additional leave transfer programs

"(a) For the purpose of this section—

"(1) the term 'excepted agency' means—

"(A) the Central Intelligence Agency;

"(B) the Defense Intelligence Agency;

"(C) the National Security Agency;

"(D) the Federal Bureau of Investigation; and

"(E) as determined by the President, any Executive agency or unit thereof, the principal function of which is the conduct of foreign intelligence or counterintelligence activities; and

"(2) the term 'head of an excepted agency' means—

"(A) with respect to the Central Intelligence Agency, the Director of Central Intelligence;

"(B) with respect to the Defense Intelligence Agency, the Director of the Defense Intelligence Agency;

"(C) with respect to the National Security Agency, the Director of the National Security Agency;

"(D) with respect to the Federal Bureau of Investigation, the Director of the Federal Bureau of Investigation; and

"(E) with respect to an Executive agency designated under paragraph (1)(E), the head of such Executive agency, and with respect to a unit of an Executive agency designated under paragraph (1)(E), such individual as the President may determine.

"(b) Notwithstanding any other provision of this subchapter, neither an excepted agency nor any individual employed in or under an excepted agency may be included in a leave transfer program established under any of the preceding provisions of this subchapter.

"(c)(1) The head of an excepted agency shall, by regulation, establish a program under which annual leave accrued or accumulated by an employee of such agency may be transferred to the annual leave account of any other employee of such agency if such other employee requires additional leave because of a medical emergency.

"(2) To the extent practicable, and consistent with the protection of intelligence sources and methods (if applicable), each program under this section shall be established—

"(A) in a manner consistent with the provisions of this subchapter applicable to the program; and

"(B) without regard to any provisions relating to transfers or restorations of leave between employees in different agencies.

"(d) The Office of Personnel Management shall provide the head of an excepted agency with such advice and assistance as the head of such agency may request in order to carry out the purposes of this section.

"§ 6340. Inapplicability of certain provisions

"Except to the extent that the Office of Personnel Management may prescribe regulations, nothing in section 7351 shall apply with respect to a solicitation, donation, or acceptance of leave under this subchapter.

"SUBCHAPTER IV—VOLUNTARY LEAVE BANK PROGRAM

"§ 6361. Definitions

"For the purpose of this subchapter the term—

"(1) 'employee' means an employee as defined by section 6301(2), but shall exclude any individual employed by the government of the District of Columbia;

"(2) 'executive agency' means any executive agency or any administrative unit thereof;

"(3) 'leave bank' means a leave bank established under section 6363;

"(4) 'leave contributor' means an employee who contributes leave to an agency leave bank under section 6365;

"(5) 'leave recipient' means an employee whose application under section 6367 to receive contributions of leave from a leave bank is approved; and

"(6) 'medical emergency' means a medical condition of an employee or a family member of such employee that is likely to require the prolonged absence of such employee from duty and to result in a substantial loss of income to such employee because of the unavailability of paid leave.

"§ 6362. General authority

"(a) Notwithstanding any provision of subchapter I, and subject to the provisions of this subchapter, the Office of Personnel Management shall establish a program under which—

"(1) annual leave accrued or accumulated by an employee may be contributed to a leave bank established by the employing agency of such employee; and

"(2) leave from such a leave bank may be made available to an employee who requires such leave because of a medical emergency.

"(b) To test voluntary leave bank programs under the provisions of this subchapter, the Office of Personnel Management shall establish a demonstration project in at least 3 Executive agencies, of which—

"(1) one such agency shall include approximately, but not less than, the equivalent of 100,000 full-time positions;

"(2) one such agency shall include approximately, but not less than, the equivalent of 25,000 full-time positions; and

"(3) one such agency shall include approximately, but not less than, the equivalent of 1,000 full-time positions.

"§ 6363. Establishment of leave banks

"Each agency that establishes a leave bank program under section 6362 shall establish 1 or more leave banks in accordance with regulations prescribed by the Office of Personnel Management.

"§ 6364. Establishment of Leave Bank Boards

"(a)(1) Each agency that establishes a leave bank shall establish a Leave Bank Board consisting of 3 members, at least one of whom shall represent a labor organization or employee group, to administer the leave bank under the provisions of this subchapter, in consultation with the Office of Personnel Management.

"(2) An agency may establish more than 1 Leave Bank Board based upon the administrative units within the agency. No more than 1 board may be established for each leave bank.

"(b) Each such Board shall—

"(1) review and approve applications to the leave bank under section 6367;

"(2) monitor each case of a leave recipient; and

"(3) monitor the amount of leave in the leave bank and the number of applications for use of leave from the bank; and

"(4) maintain an adequate amount of leave in the leave bank to the greatest extent practicable.

"§ 6365. Contributions of annual leave

"(a)(1) An employee may, by written application to the Leave Bank Board, request that a specified number of hours be transferred from the annual leave account of such employee to the leave bank established by such agency.

"(2) An employee may state a concern and desire to aid a specified proposed leave recipient or a leave recipient in the application filed under paragraph (1).

"(b)(1) Upon approving an application under subsection (a), the employing agency of the leave contributor may transfer all or any part of the number of hours requested for transfer, except that the number of hours so transferred may not exceed the limitations under paragraph (2).

"(2)(A) In any one leave year, a leave contributor may contribute no more than a total of one-half of the amount of annual leave such contributor would be entitled to accrue during the leave year in which the contribution is made.

"(B) A leave contributor who is projected to have annual leave that otherwise would be subject to forfeiture at the end of the leave year under section 6304(a) may contribute no more than the number of hours remaining in the leave year (as of the date of the contribution) for which the leave contributor is scheduled to work and receive pay.

"(c) The Leave Bank Board of a leave contributor may waive the limitations under subsection (b)(2). Any such waiver shall be in writing.

"(d) The Office of Personnel Management shall prescribe regulations establishing an open enrollment period during which an employee may contribute leave under subsection (a) for a leave year.

"§ 6366. Eligibility for leave recipients

"(a) An employee is eligible to be a leave recipient if such employee—

"(1) experiences a medical emergency and submits an application pursuant to section 6367(a); and

"(2)(A) contributes the minimum number of hours as required under subsection (b) of accrued or accumulated annual leave to the leave bank of the employing agency of such employee, in the leave year (beginning in and including any part of a leave year in which such leave bank is established) that such employee submits an application to be a leave recipient under section 6367(a); and

"(B) such contribution is made before such employee submits an application under section 6367(a).

"(b)(1) An employee shall contribute the minimum number of hours required under subsection (a)(2)(A), if such employee is an employee—

"(A) for less than 3 years of service and contributes a minimum of 4 hours;

"(B) for between 3 years and less than 15 years of service and contributes a minimum of 6 hours; or

"(C) for 15 years or more of service and contributes a minimum of 8 hours.

"(2) Notwithstanding the provisions of paragraph (1), the Leave Bank Board of an agency, after consultation with the Office of Personnel Management, may—

"(A) reduce the minimum number of hours required under paragraph (1) for any leave

year, if such Board determines there is a surplus of leave in the leave bank; and

"(B) increase the number of minimum hours required under paragraph (1) for the succeeding leave year, in any leave year in which the Board determines there is a shortage of leave in the leave bank.

"(c) An employee shall meet the requirements of subsection (a)(2)(A) if such employee contributes the minimum number of hours as required under subsection (b) of accrued or accumulated annual leave to the leave bank with which such employee submits an application to be a leave recipient under section 6367(a).

"(d) The provisions of subsection (a) may not be construed to limit the amount of the voluntary contribution of annual leave to a leave bank, which does not exceed the limitations of section 6365(b).

"§ 6367. Receipt and use of leave from a leave bank

"(a) An application to receive contributions of leave from a leave bank, whether submitted by or on behalf of an employee—

"(1) shall be submitted to the Leave Bank Board of the employing agency of the proposed leave recipient; and

"(2) shall include—

"(A) the name, position title, and grade or pay level of the proposed leave recipient;

"(B) the reasons why leave is needed, including a brief description of the nature, severity, anticipated duration, and, if it is a recurring one, the approximate frequency of the medical emergency involved;

"(C) if such Board so requires, certification from 1 or more physicians, or other appropriate experts, with respect to any matter under subparagraph (B); and

"(D) any other information which such Board may reasonably require.

"(3) If a Board requires that an employee obtain certification under paragraph (2)(C) from 2 or more sources, the agency shall ensure, either by direct payment to the expert involved or by reimbursement, that the employee is not required to pay for the expenses associated with obtaining certification from more than 1 of such sources.

"(b) The Leave Bank Board of an employing agency may approve an application submitted under subsection (a).

"(c) A leave recipient may use annual leave received from the leave bank established by the employing agency of such employee under this subchapter in the same manner and for the same purposes as if such leave recipient had accrued such leave under section 6303, except that any annual leave and, if applicable, any sick leave accrued or accumulated to the leave recipient shall be used before any leave from the leave bank may be used.

"(d) Transferred annual leave—

"(1) may accumulate without regard to any limitation under section 6304; and

"(2) may be substituted retroactively for any period of leave without pay, or used to liquidate an indebtedness for any period of advanced leave, which began on or after a date fixed by the employing agency of the employee as the beginning of the medical emergency involved.

"(e) Except to the extent that the Office of Personnel Management may prescribe regulations, nothing in the provisions of section 7351 shall apply to any solicitation, contribution, or use of leave to or from a leave bank under this subchapter.

"§ 6368. Termination of medical emergency

"(a) The medical emergency affecting a leave recipient shall, for purposes of this subchapter, be considered to have terminated on the date as of which—

"(1) the leave recipient notifies the Leave Bank Board in writing, that the medical emergency no longer exists;

"(2) the Leave Bank Board of such leave recipient determines, after written notice and opportunity for the leave recipient (or, if appropriate, another person acting on behalf of the leave recipient) to answer orally or in writing, that the medical emergency no longer exists; or

"(3) the leave recipient is separated from service.

"(b)(1) The Leave Bank Board of a recipient shall, consistent with guidelines prescribed by the Office of Personnel Management, establish procedures to ensure that a leave recipient is not permitted to use or receive any transferred leave under this subchapter after the medical emergency terminates.

"(2) Nothing in section 5551, 5552, or 6306 shall apply with respect to any annual leave transferred to a leave recipient under this subchapter.

"§ 6369. Restoration of transferred leave

"The Office of Personnel Management shall establish procedures under which any transferred leave remaining to the credit of a leave recipient when the medical emergency affecting the leave recipient terminates, shall be restored to the leave bank.

"§ 6370. Prohibition of coercion

"(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right which such employee may have with respect to contributing, receiving, or using annual leave under this subchapter.

"(b) For the purpose of subsection (a), the term 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as an appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

"§ 6371. Accrual of leave

"While using leave made available to an employee from a leave bank, annual and sick leave shall accrue to the credit of such employee and shall become available for use by such employee in the same manner as provided for under section 6337.

"§ 6372. Additional leave bank programs

"(a) For the purpose of this section—

"(1) the term 'excepted agency' has the same meaning as such term is defined under section 6338(a)(1) of this title; and

"(2) the term 'head of an excepted agency' has the same meaning as such term is defined under section 6338(a)(2) of this title.

"(b) Notwithstanding any other provision of this subchapter, neither an excepted agency nor any individual employed in or under an excepted agency may be included in a leave bank program established under any of the preceding provisions of this subchapter.

"(c)(1) The head of an excepted agency may, by regulation, establish a voluntary leave bank program under which annual leave accrued or accumulated by an employee of such agency may be contributed to a leave bank, and any other employee of such agency may receive additional leave from such leave bank because of a medical emergency.

"(2) To the extent practicable, and consistent with the protection of intelligence sources and methods (if applicable), each program under this section shall be established in a manner consistent with the provisions of this subchapter applicable to the program.

"(d) The Office of Personnel Management shall provide the head of an excepted agency with such advice and assistance as the head of such agency may request in order to carry out the purposes of this section.

"§ 6373. Limitation on employee participation

"An employee in a unit of an agency that establishes a leave bank program under the provisions of this subchapter may not participate in a leave transfer program under the provisions of subchapter III.".

(b) CONFORMING AMENDMENT.—The table of sections for chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER III—VOLUNTARY TRANSFERS OF LEAVE

"Sec.

"6331. Definitions.
"6332. General authority.
"6333. Receipt and use of transferred leave.
"6334. Donations of leave.
"6335. Termination of medical emergency.
"6336. Restoration of transferred leave.
"6337. Accrual of leave.
"6338. Prohibition of coercion.
"6339. Additional leave transfer programs.
"6340. Inapplicability of certain provisions.

"SUBCHAPTER IV—VOLUNTARY LEAVE BANK PROGRAM

"6361. Definitions.
"6362. General authority.
"6363. Establishment of leave banks.
"6364. Establishment of Leave Bank Boards.
"6365. Contributions of annual leave.
"6366. Eligibility for leave recipients.
"6367. Receipt and use of leave from a leave bank.
"6368. Termination of medical emergency.
"6369. Restoration of transferred leave.
"6370. Prohibition of coercion.
"6371. Accrual of leave.
"6372. Additional leave bank programs.
"6373. Limitation on employee participation.".

(c) IMPLEMENTATION OF LEAVE TRANSFER AND LEAVE BANK PROGRAMS.—(1) No later than 3 months after the date of the enactment of this Act, the Office of Personnel Management shall prescribe regulations to implement leave transfer programs pursuant to the amendments made by this Act.

(2) No later than 6 months after the date of the enactment of this Act—

(A) the head of each agency involved under sections 6332 and 6339 of title 5, United States Code, shall establish and begin operating a leave transfer program in accordance with applicable provisions of subchapter III of chapter 63 of title 5, United States Code, and applicable regulations prescribed by the Office; and

(B) the Office of Personnel Management shall prescribe regulations to implement leave bank programs pursuant to the amendments made by this Act.

(3) No later than 9 months after the date of the enactment of this Act, the head of each agency involved under section 6362 of title 5, United States Code, shall establish and begin operating a leave bank in accordance with subchapter IV of chapter 63 of title 5, United States Code, and applicable regulations prescribed by the Office.

(d) TERMINATION OF LEAVE TRANSFER AND LEAVE BANK PROGRAMS AFTER 5 YEARS.—(1)(A) Subchapters III and IV of chapter 63 *of title 5, United States Code, are repealed effective 5 years after the date of the enactment of this Act.*

(B) The table of sections for subchapter III and the table of sections for subchapter IV of chapter 63 of title 5, United States Code, are repealed effective 5 years after the date of the enactment of this Act.

(2) If a leave transfer program under subchapter III of chapter 63 of title 5, United States Code, or the leave bank program under subchapter IV of such chapter, terminates before the termination of the medical emergency affecting a leave recipient under such program, any leave which was transferred to the leave recipient before the termination of the program shall remain available for use (including by restoration to leave donors or leave contributors, as the case may be, and if applicable) as if the program had remained in effect.

(3)(A) Any annual leave remaining in an agency's leave bank under subchapter IV of chapter 63 of title 5, United States Code, shall, upon the repeal of such subchapter be dispensed in accordance with subparagraph (B).

(B) If there are any employees who, based on applications submitted before the effective date of the repeal of such subchapter, are found (before, on, or after that date) to be eligible to receive leave in connection with any medical emergency, annual leave contributed to the leave bank before such date shall, until the last such emergency has terminated, remain available for use by any such employee under the same terms and conditions as if the program had remained in effect.

(4) For the purpose of this subsection, "medical emergency", "leave recipient", "leave bank", and "employee" each has the meaning given that term under subchapter III or subchapter IV of chapter 63 of title 5, United States Code, as applicable.

(e) REPORT TO THE CONGRESS.—(1)(A) Within 2 years after the date of the enactment of this Act and again no later than 6 months before the scheduled termination date of any program under subchapter III or subchapter IV of chapter 63 of title 5, United States Code (excluding any program under sections 6339 and 6372 of such chapter) the Office of Personnel Management shall submit a written report to the Congress with respect to the operations of such programs.

(B) The Office of Personnel Management may require agencies to maintain such records and to provide such information as the Office may need to carry out subparagraph (A).

(2) The excepted agencies that establish programs under sections 6339 and 6372 of title 5, United States Code, shall report to the Congress on the operation of such programs within 2 years after the date of the enactment of this Act and again no later than 6 months before the scheduled termination of any such programs.

(f) CONTINUATION OF TEMPORARY LEAVE TRANSFER PROGRAMS.—Any temporary program allowing for transfers of leave among officers or employees of the Federal Government may, if such program is being implemented with respect to an agency (or any unit thereof) as of the date of the enactment of this Act, continue to be implemented with respect to such agency (or unit), notwithstanding any provision of law which would otherwise terminate the authority for such program, pending the commencement of a leave transfer program with respect to such agency pursuant to amendments made by this Act. The Office of Personnel Management (or, in the case of a program established by another agency, such other agency) shall prescribe regulations to ensure that any leave which has been transferred to the credit of an officer or employee and which remains unused as of the date on which any such temporary program terminates (and a successor program commences pursuant to amendments made by this Act) shall not be lost by reason of that termination.

SEC. 3. TRAVEL EXPENSES OF CAREER APPOINTEES.

Section 5724(a)(3)(A) of title 5, United States Code, is amended by striking out "during the five years preceding eligibility to receive an annuity under subchapter III of chapter 88, or of chapter 84 of this title, and thereafter" and inserting in lieu thereof "during or after the five years preceding eligibility to receive an annuity under subchapter III of chapter 88, or of chapter 84 of this title".

SEC. 4. EFFECTIVE DATE.

Section 6 of the Civil Service Miscellaneous Amendments Act of 1983 (Public Law 98-224; 98 Stat. 49) is amended by striking out "September 30, 1990." and inserting in lieu thereof "September 30, 1995,".

SEC. 5. DISABILITY FROM ASSASSINATION ATTEMPT.

Section 8112 of title 5, United States Code, is amended—

(1) by redesignating such section as subsection (a) of section 8112; and

(2) by adding at the end thereof the following new subsection:

"(b) The provisions of subsection (a) shall not apply to any employee whose disability is a result of an assault which occurs during an assassination or attempted assassination of a Federal official described under section 351(a) of title 18, and was sustained in the performance of duty.".

The **SPEAKER** pro tempore. Is a second demanded?

Mrs. **MORELLA**. Mr. Speaker, I demand a second.

The **SPEAKER** pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The **SPEAKER** pro tempore. The gentleman from New York [Mr. ACKERMAN] will be recognized for 20 minutes and the gentlewoman from Maryland [Mrs. MORELLA] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York [Mr. ACKERMAN].

GENERAL LEAVE

Mr. **ACKERMAN**. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 3757.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. **ACKERMAN**. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3757 requires the Office of Personnel Management to establish a 5-year program under which Federal employees may voluntarily donate annual leave to coworkers who face a prolonged absence from work due to a medical emergency.

In addition, H.R. 3757 requires OPM to establish three leave bank demonstration projects at different sized agencies.

These demonstration projects will also last for 5 years. At the end of the 5-year period, Congress will be able to judge which type of leave-sharing program is best for the Federal Government and Federal employees.

Mr. Speaker, the Senate has also attached three other amendments to H.R. 3757. First, section 3 of the bill corrects a technical error in the "last move home" provision that was included in the Treasury-Postal appropriations bill for fiscal year 1989—Public Law 100-440.

Section 4 of the bill extends the authorization of the Navy's China Lake personnel demonstration project until September 30, 1995.

Last, section 5 of the bill removes the limitation on disability payments to Federal employees whose disability is the result of an assault which occurs during an assassination or attempted assassination of a Federal official and was sustained in the performance of duty.

Mr. Speaker, the Senate amendments to H.R. 3757 are the result of extensive discussions between the House and Senate and I urge my colleagues to support the Senate amendments.

Mr. Speaker, I reserve the balance of my time.

Mrs. **MORELLA**. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the minority has no objection to the Senate amendments to H.R. 3757. The Senate amendments make H.R. 3757 a stronger bill in extending the sunset provision from 3 to 5 years and including a demonstration leave bank provision which would enable employees to donate leave to be distributed by a leave bank board established by each participating agency. Additionally, extending the provision of the bill to those associated with the Federal Government in the Cabinet level is a prudent measure.

I would like to commend the gentleman from New York [Mr. ACKERMAN] for his interest and perseverance in working on this important legislation which will be beneficial to the Federal work force. I further endorse his corrective, technical amendments which will correct some of the deficiencies in the bill and will extend the provisions of the legislation to the executive branch. I also commend my colleague from Virginia, Mr. WOLF, who introduced the first bill on leave sharing.

Mr. Speaker, this legislation is one of the most humanitarian bills extended to the Federal employee. I believe it will boost the morale of employees who are facing long-term absence from their jobs because of family emergencies. By donation of leave, employees can help to ease the burden of their colleagues who are in situations where they have depleted their sick and annual leave because of an emergency situation.

This is not a new concept, Mr. Speaker. It has worked very well in both the private and public sectors in other parts of our country. There is much employee interest in this bill.

When this bill passed the House in March, the vote was an overwhelming 408 to 9. I urge my colleagues to vote favorably for this amended version.

I am proud to be cosponsor of H.R. 3757 and again take this opportunity to commend the distinguished gentleman from New York, chairman of the Subcommittee on Compensation and Employee Benefits.

Mr. Speaker, I yield 3 minutes to the gentleman from Virginia [Mr. WOLF].

Mr. WOLF. Mr. Speaker, I rise in support of the Senate amendments to H.R. 3757 and urge my colleagues to support this permanent leave-share legislation. The passage of legislation establishing a permanent Governmentwide leave-sharing program has been long in coming. I would like to extend my appreciation to my colleagues, Senators PETE DOMENICI and DAVID PRYOR and Representatives GARY ACKERMAN and BILL LEHMAN, for their commitment to making Federal leave sharing a reality.

As many of our colleagues may recall, after the leave-sharing idea was brought to my attention, the Office of Personnel Management was directed in 1986 to conduct a Federal leave-sharing study. The study was tremendously successful.

I learned of the leave-sharing idea after a constituent, Robert Hague, wrote me about his desire to share some of his leave with a blind colleague, Barbara DiPietrantonio, who, as a relatively new employee, had not accrued enough leave to cover time needed to train a new guide dog. Barbara's ability to carry out her job effectively is dependent on the mobility she has achieved, through reliance on a guide dog.

Over the next several months, I was contacted by individuals from across the country who wanted to give their leave to fellow employees who were experiencing personal or medical emergencies and had exhausted their leave.

There is the case of Debra Moorelghen, for example, a Navy civilian employee who wrote me describing the difficulty she has caring for her two children, an 8-year-old who has cancer and a 6-year-old who is a spastic quadriplegic and is unable to talk, walk, or sit and is classified as blind. This is typical of the severity of some of these hardship situations.

Congress approved an amendment last December to the fiscal year 1988 continuing appropriations bill creating a 1-year governmentwide leave-sharing program for Federal employees who are facing medical or family emergencies. Congress approved language again this year which will extend the leave-sharing program through fiscal year 1989.

Clearly, however, we need the authority that a permanent leave-sharing program will extend to Government agencies. As a result of the Federal Aviation Administration's leave-sharing program, FAA employees have been able to contribute a total of 14,201 hours to fellow colleagues in need of the gift of time. Without a permanent leave-sharing program, Federal employees may be in danger of losing this generous gift.

On March 22 the House passed H.R. 3757 by a vote of 408 to 9 to extend leave-sharing legislation permanently. I urge a unanimous vote on the final version of this legislation to give the Federal Government the chance to develop leave sharing without the threat that the program may be dissolved.

It is important to continually look for innovative ways to improve civil service and its benefits. Let us not pass up an opportunity to develop something positive for the Federal workplace and to encourage the best to stick with civil service.

Mrs. MORELLA. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. ACKERMAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from New York [Mr. ACKERMAN] that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 3757.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

□ 1515

CORRECTING TECHNICAL ERRORS IN ENROLLMENT OF H.R. 3757, FEDERAL EMPLOYEES LEAVE TRANSFER ACT OF 1988

Mr. ACKERMAN. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 388) to correct technical errors in the enrollment of the bill, H.R. 3757.

The Clerk read as follows:

H. CON. RES. 388

Resolved by the House of Representatives (the Senate concurring), that in the enrollment of the bill (H.R. 3757) to amend title 5, United States Code, to permit voluntary transfers of leave by Federal employees where needed because of a medical or other emergency situation, the Clerk of the House of Representatives shall make the following corrections: (1) In section 1, strike "Leave Act" and insert "Leave Sharing Act".

(2) In section 2(a) (adding section 6372(a)(1) of title 5, United States Code), strike "section 6338(a)(1) of" and insert "section 6339(a)(1) of".

(3) In section 2(a) (adding section 6372(a)(2) of title 5, United States Code), strike "section 6338(a)(2) of" and insert "section 6339(a)(2) of".

(4) In section 3 (amending section 5724(a)(3)(A) of title 5, United States Code), strike "chapter 88" each place it appears and insert "chapter 83".

(5) In section 5 (adding section 8112(b) of title 5, United States Code), insert "or 1751(a)" after "section 351(a)".

The SPEAKER pro tempore. (Mr. MONTGOMERY). Is a second demanded?

Mrs. MORELLA. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New York [Mr. ACKERMAN] will be recognized for 20 minutes and the gentlewoman from Maryland [Mrs. MORELLA] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York [Mr. ACKERMAN].

Mr. ACKERMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Concurrent Resolution 388, to correct technical errors in the enrollment of the bill, H.R. 3757, makes purely technical corrections involving the short title of the bill and erroneous section references contained in the bill.

Mr. Speaker, I urge my colleagues to support House Concurrent Resolution 388.

Mrs. MORELLA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the minority has no objection to this concurrent resolution.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. ACKERMAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York [Mr. ACKERMAN] that the House suspend the rules and agree to the concurrent resolution (H. Con. Res. 388).

The question was taken; and (two-thirds having voted in favor thereof), the rules were suspended and the concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

AUTHORIZING A CORRECTION IN ENROLLMENT OF S. 508, WHISTLEBLOWER PROTECTION ACT OF 1987

Mrs. SCHROEDER. Mr. Speaker, I move to suspend the rules and concur in the Senate concurrent resolution (S. Con. Res. 160) to authorize a correction in the enrollment of the text of the bill (S. 508) to amend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited personnel practices, and for other purposes.

The Clerk read as follows:

S. CON. RES. 160

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the text of the bill (S. 508) to amend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited personnel practices, and for other purposes, the Secretary of the Senate is authorized and directed in the enrollment of such bill to make the following correction: in section 1219(a)(3) of title 5, United States Code, as added by section 3(a) of the bill, strike out "subsection (f)" and insert in lieu thereof "subsection (e)".

The SPEAKER pro tempore. Is a second demanded?

Mr. HORTON. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentlewoman from Colorado [Mrs. SCHROEDER] will be recognized for 20 minutes and the gentleman from New York [Mr. HORTON] will be recognized for 20 minutes.

The Chair recognizes the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, Senate Concurrent Resolution 160 corrects one inconsequential error in S. 508, the Whistleblower Protection Act, which passed the House last week. The error was noted after House action.

The error is in the section concerning public information requirements of the Office of the Special Counsel. The section requires the Special Councial to maintain and make available to the public a list of matters referred to agency heads by the Special Counsel and having to do with a violation of law other than a prohibited personnel practice or a crime. While the bill should have referred to section 1214(e), which deals with such referrals, S. 508, as passed, referred to section 1215(f), having to do with disciplinary actions during a special counsel investigation.

This correction resolution merely corrects a typographical error which we should have caught earlier. I urge its adoption.

Mr. Speaker, I reserve the balance of my time.

Mr. HORTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is a very technical correction. It has nothing to do with the substance of the bill. I support the resolution and urge its adoption.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mrs. SCHROEDER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Colorado [Mrs. SCHROEDER] that the House suspend the rules and concur in the Senate concurrent resolution (S. Con. Res. 160).

The question was taken; and (two-thirds of those having voted in favor thereof), the rules were suspended and the Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

MAKING CORRECTIONS IN ENROLLMENT OF S. 2723, HOOPA-YUROK SETTLEMENT ACT

Mr. UDALL. Mr. Speaker, I move to suspend the rules and concur in the Senate concurrent resolution (S. Con. Res. 156) to correct the enrollment of the Senate bill (S. 2723) to partition certain reservation lands between the Hoopa Valley Tribe and the Yurok Indians, to clarify the use of tribal timber proceeds, and for other purposes.

The Clerk read as follows:

S. CON. RES. 156

Resolved by the Senate (the House of Representatives concurring), That, in the enrollment of the Act (S. 2723) to partition certain reservation lands between the Hoopa Valley Tribe and the Yurok Indians, to clarify the use of tribal timber proceeds, and for other purposes, the Secretary of the Senate shall make the following corrections:

In paragraph (2) of section 2(c) of such Act, strike out the second and third sentences thereof.

In subparagraph (A) of section 2(c)(3) of such Act, insert "from willing sellers" after "many acquire".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Arizona [Mr. UDALL] will be recognized for 20 minutes and the gentleman from Arizona [Mr. RHODES] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Arizona [Mr. UDALL].

Mr. UDALL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, Senate Concurrent Resolution 156 provides for the correction of the enrollment of S. 2723, the Hoopa-Yurok Indian Settlement Act. S. 2723 was passed by the House under suspension of the rules on October 4. My committee had worked with the Senate Select Committee on Indian Affairs to agree upon a bill which the House could pass without amendment.

However, S. 2723 was reported by the Senate committee and passed by the Senate with a provision to which we had not agreed and which was not supported by Senator CRANSTON and Congressman BOSCO, the sponsors of this legislation.

This provision would have adversely affected national park lands within the Yurok Indian reservation. Unfortunately, we were not made aware that S. 2723 contained the provision.

The inclusion of this matter in the bill is opposed by the administration and by my committee. Senate Concurrent Resolution 156 would authorize that matter to be deleted from the bill.

I urge its passage.

Mr. Speaker, I reserve the balance of my time.

Mr. RHODES. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as the chairman of the committee indicated, this bill passed the House overwhelmingly on October 4. Senate Concurrent Resolution 156 simply deletes a provision calling for a study opposed by the administration. I support Senate Concurrent Resolution 156 and urge my colleagues to do likewise.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. UDALL. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona that the House suspend the rules and concur in the Senate concurrent resolution (S. Con. Res. 156).

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON H.R. 1807, BUSINESS OPPORTUNITY DEVELOPMENT REFORM ACT OF 1988

Mr. LAFALCE. Mr. Speaker, I move to suspend the rules and agree to the conference report on the bill (H.R. 1807) to amend the Small Business Act to reform the Capital Ownership Development Program, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is a second demanded?

Mr. McDADE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There were no objections.

(For conference report and statement, see proceedings of the House of October 7, 1988, at page H 9916.)

The SPEAKER pro tempore. The gentleman from New York [Mr. LAFALCE] will be recognized for 20 minutes and the gentleman from Pennsylvania [Mr. McDADE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York [Mr. LAFALCE].

Mr. LAFALCE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of the conference report on H.R. 1807, the Business Opportunity Development Reform Act of 1988. This bill represents the culmination of literally years of work on the major Federal program designed to assist small minority-owned business concerns. The Small Business Capital Ownership Development Program, more commonly called the Section 8(a) Program, is responsible for the award of $3.5 billion a year in Federal contracts to disadvantaged business concerns. This represents over 60 percent of all Federal prime contract awards to these businesses.

Unfortunately, the program has been misused, mismanaged, and misunderstood. While we have had a number of successful program graduates, these successes have been far too rare. The program has not achieved its full potential and, accordingly, it has not fairly serviced the legitimate needs of the minority business community. H.R. 1807 will, however, restore the original intent and purposes of the program.

H.R. 1807 redirects the 8(a) Program to its original business development objectives. No longer should the measure of program success be the number of dollars or the number of firms that pass through the program. Rather, the measure will be the number of firms that successfully pass the program and go on to become competitive businesses in the mainstream economy.

The conferees have, for the first time, mandated competition within the program and have mandated that firms seek and obtain non-8(a) business outside of the program in order to remain eligible. Within the program 8(a) contracts above $5 million for manufacturing, and above $3 million for everything else must be competed. This means, in effect, that large dollar value contracts can no longer be dispensed based on political favoritism.

The conference report also permits competition to take place below these thresholds on a limited case-by-case basis at the discretion of SBA.

In regard to competition outside of the program, the conference report requires firms that are in their fifth and subsequent years of program participation to steadily increase their sales from non-8(a) sources. As detailed in the conference report, SBA is to set percent targets, by regulation, for non-8(a) sales. It is our intent that, generally, non-8(a) sales should be at least 25 percent of total sales by the end of the fifth and sixth years in the program; increase to 50 percent in the 2 following years and that, by the end of year 9, at least 75 percent of total sales should come from sources external to the program. A failure to meet these targets triggers remedial measures and, depending upon the extent and nature of the failure, the remedies to be taken will include a reduction in 8(a) contract support or, in flagrant or persistent cases, program termination. While these actions may seem stringent to some, they are absolutely required to insure that firms leaving the program do not have a precipitous decrease in total sales that can jeopardize the very life of the business, once it leaves the 8(a) program.

In addition to these provisions dealing with contracting, the bill provides substantial business development assistance for section 8(a) firms. Each firm will be statutorily required to have a detailed business plan, with sales forecasts and a narrative of what targets, objectives, and goals the firm needs to meet in order to overcome its economic disadvantage. SBA is also given a variety of financial and business development tools to assist these program participants.

During the first 4 years in the program—the developmental stage—qualified 8(a) firms could receive certain limited exemptions under the Walsh-Healey and Miller Acts; the transfer of technology and surplus property owned by the Government; business loans; management assistance; and job training assistance for the employees of 8(a) firms. In the last 5 years in the program—the transitional stage—an eligible 8(a) firm could receive the transfer of technology and surplus property; business loans; management assistance, and participation in a newly established effort to encourage agencies to include 8(a) firms in teaming agreements or similar arrangements on major system acquisitions.

It is the conferees' expectation that this assistance will be used aggressively by SBA in order to promote the business development objectives of the program participants.

The bill also contains a number of provisions dealing with improved management and program integrity. For example, criminal fines for front companies are increased from $50,000 to $500,000 and from 5 years imprisonment to 10 years. SBA employees would be strictly prohibited from engaging in politically motivated activity and would be required to report to the inspector general any instance where politically motivated activity has been solicited. Section 8(a) firms would be required to report on fees paid to consultants in order to assist in obtaining Federal contracts and, finally, the head of the program would be required to be a career appointee.

Minority firms have often voiced legitimate concern about the time delay a business must face before SBA completely processes its application for program admission. It usually takes from 1 to 2 years for SBA to make a final decision on an application. Under the bill this processing period would be reduced to a total of 90 days.

There is also considerable agreement among business and academic experts that the present maximum 7-year term of program participation provided for in regulation is too short a period to develop a truly competitive concern, particularly in some sophisticated high technology industries. Therefore, the conferees have agreed to extend the program participation term to a total of 9 years from the date of certification.

In order to monitor the effects of all these program changes and to evaluate the effectiveness of minority business programs generally, the conference report establishes a Commission on Minority Business Development. The bill, in addition, requires a GAO review of the specific changes made by this act to the Section 8(a) Program.

Finally, at the urging of the Senate a title was added to this bill dealing with the traditional small business set-aside program. Both the House and the Senate are in agreement that small business set-asides should be equitably distributed among all classes of items and services purchased by the Government. Unfortunately, this is not what is happening. Instead, buying agencies have used set-asides to dominate certain markets, such as construction, while ignoring set-asides in other markets, such as the purchase of communications equipment.

In an attempt to deal with this problem, the Congress enacted section 921 of Public Law 99-661 in 1986 which required SBA to reduce size standards in certain designated pilot industries where set-asides dominated in order to bring down the set-aside rate to less than 30 percent of total purchases.

However, when implementing section 921 the SBA proposed size-standard cuts that were exceedingly severe and not in conformity with the legislative intent. In addition, neither the House or Senate Committee on Small Business had the opportunity to consider section 921 since it was enacted as part of a DOD authorization bill.

This year the House Small Business Committee proposed that in lieu of section 921 the SBA be instructed, in statute, to limit set-asides to 50 percent of each designated pilot industry. The agency was given wide discretion to accomplish this purpose, including size-standard reductions. In return for these reductions, our committee's proposal also mandated that agencies engage in certain specified steps to increase the small business share in industries where small business potential was not being fully utilized.

However, this 50 percent compromise proposal, which was attached in committee to the House version of the SBA authorization bill, was withdrawn on the floor when it became obvious that the Senate wanted to discuss the set-aside issue as a part of the 8(a) reform bill. In order to expedite consideration of the issue given the impending implementation of section 921, the House Small Business Committee agreed.

The original set-aside reform proposal of the Senate would have effectively suspended set-asides altogether in the pilot industries and would have reinstated them only if the small business share in open competition fell below 30 percent. The House, however, thought that the 30 percent trigger was too low and, more importantly, wanted to insure that truly small firms at the lower half of the size standard would still be afforded some sheltered market.

In order to reach a compromise, avoid the implementation of the severe size-standard reductions under section 921 of Public Law 99-661 which would have been made effective this month, and move the 8(a) reform bill forward, the House conferees agreed to a modified Senate proposal. The compromise would raise the trigger below which set-asides would be reinstated from 30 percent to 40 percent. In addition, the small business reserve amount for each four-digit standard industrial code that is part of the pilot would have to be raised to a level high enough so that at least 15 percent of total purchases in each test area would be reserved for exclusive competition among these truly small firms.

The conferees also agreed to establish an alternative test program for the purchase of clothing and textiles by the military. Under this program, DOD would be allowed to purchase 50 percent of all clothing and textile products through unrestricted competition. The remaining 50 percent must be made available exclusively for awards under section 8(a), set-asides under section 1207(a) of Public Law 99-661, and small business set-asides under the so-called rule of two test established under part 19.5 of the Federal Acquisition Regulations.

As with the House proposal, the compromise also contains a provision that requires agencies to take affirmative steps to increase small business participation rates in underrepresented industries. Each agency is required to identify 10 such industries for this intensive remedial action.

I believe the reforms this bill will work on the 8(a) program are both substantial and beneficial to the disadvantaged business community. The program has been redirected to achieve its business development objectives; competition has been introduced; dependency on program contracts will be reduced; substantial types of developmental assistance are provided; the program term has been extended; paperwork and administrative delays greatly eliminated; and strong antifraud and abuse provisions cemented into the law. I am proud of this accomplishment by the House and Senate Committees on Small Business and believe we have made the 8(a) program a much more useful tool for the minority business community.

On the issue of set-aside reform the Small Business conferees were joined by conferees from the House Committees on Armed Services and Government Operations. We have made some very hard decisions on these most complex issues. Hopefully, we have agreed upon an approach that can best achieve our common objective to help small business across all industries. However, we must monitor these provisions very closely in the future and be constantly mindful of any potential dislocation which might go beyond the intent of the conferees.

I wish to thank all of the Members that have worked so long and hard on this bill, including Joe McDade, Nick Mavroules, and Silvio Conte. Also our colleague from the Armed Services Committee, Dave McCurdy, and the chairman of the Government Operations Committee, Jack Brooks, provided extremely valuable assistance to their fellow conferees on set-aside reform, and I am very much appreciative.

Finally, I want to thank my good friend Senator Dale Bumpers, chairman of the Senate Small Business Committee for his commonsense, persistence, and willingness to work through difficult issues in a way which made this very important reform legislation possible.

Mr. Speaker, this is a good bill that, literally, has taken years to produce. I urge my colleagues to support this most important measure for the small and small disadvantaged business community.

□ 1530

Mr. Speaker, I reserve the balance of my time.

Mr. McDADE. Mr. Speaker, I yield myself such time as I may consume.

Mr. McDADE. Mr. Speaker, I rise in strong support of the conference report on H.R. 1807, the Business Opportunity Development Reform Act of 1988. If ever it can be said of any bill that comes before this body that the relevant issues received the closest scrutiny and were debated with vigor and that true negotiation and compromise made this bill possible, then surely it must be said of this bill. This conference report is the product of long and diligent effort to achieve a consensus measure that brings meaningful reform to the so-called 8(a) program. I would like to commend chairman, John LaFalce, subcommittee chairman, Nick Mavroules, ranking minority subcommittee member Sil Conte, and members of the full and subcommittee for their hard work and for delivering this bill today in good order. I also want to recognize the fine efforts of Don Terry, Tom Trimboli, Bill Angelo, Cathy Garman, and other staffers.

H.R. 1807 amends the Small Business Act to reform the Capital Ownership Development Program, commonly referred to as the section 8(a) program. The goal of this program is to promote the development and growth of firms which are owned by individuals who are deemed to be socially and economically disadvantaged. Recent abuses of the program, such as the highly publicized Wedtech scandal and mismanagement of the program, have made reform not only necessary but imperative.

H.R. 1807 provides for greater simplicity in and streamlining of admission requirements and management of the 8(a) program. Under the bill, the program participation term for certified firms is raised from 7 to 9 years. Participating firms are eligible for the assistance available in each of the new program phases. This help is crucial to the development of 8(a) concerns' business and expertise.

For the first time since the program's inception in 1969 under President Nixon, the 8(a) program will now require competition among 8(a) firms for contracts above a certain dollar threshold. Competition for contracts below the established thresholds will also be conducted in limited instances. Competition is the centerpiece of this crucial reform package, and it is the cornerstone of our free enterprise system. Competition presupposes that businesses that can compete fairly for contract opportunities can reap not only the reward of a contract but also can develop and strengthen skills and capabilities. I believe that competition is the most effective means for promoting the economic viability of small minority firms and will determine, in large measure, their success in the free market system.

The legislation also requires firms to develop their commercial business base in an effort to reduce their dependency on Federal Government contracts. For the first time in the history of the program, participants will be required to achieve a business mix of both 8(a) and commercial contract support. This newly added requirement will have a salutory effect on firms nearing the end of their program participation. It should save future graduates from suffering the cliff effect that caused the demise of several previous 8(a) graduates.

This phenomenon is generally observed among more mature 8(a) firms which have become overly reliant on 8(a) sole source contracts and fail to develop a viable commercial support base as their graduation date approaches. The cliff effect takes place when the firm exiting the program must finally confront the stark reality of competition for which it is woefully unprepared. In addition, the firm experiences a second shock with the often abrupt cutoff of sole source contracts and the sudden realization that it has failed to build a commercial business base to compensate for that unanticipated loss. This pattern of certain failure has been typical for many 8(a) program graduates.

Program abuses have diminished the effectiveness of the program and have cast the future of the program in a dubious light. The conferees have adopted a series of reform measures and steps that are aimed at improving management and ensuring program integrity. Tougher termination and graduation standards have been added. Stiffer criminal penalties are provided to ensure against future abuses. A new data collection system will furnish a quantitative basis for tracking and assessing the progress of 8(a) firms and the performance and efficacy of the program. The elimination of wasteful business development expense grants and their replacement with a new minority business loan program will add a degree of fiscal responsibility to the program.

Title VII of the conference report includes a small business competitiveness demonstration project. This test program is a solution to a longstanding and often contentious situation which centers on a trend to concentrate setasides in a small number of industry areas. The result is market domination by small business in those areas at the expense of all the remaining industrial segments for the sake of achieving small business setaside goals. This imbalance results in neglect of the set-aside effort in the remaining industry categories contrary to the spirit and intent of the Small Business Act which intends participation across the whole procurement spectrum.

The compromise adopted by House and Senate conferees is one in which I take personal pride because it represents the proposal I tendered on behalf of a number of my House conferees. Elements of that proposal are incorporated in the final compromise. It establishes an annual small business participation goal of 40 percent of all contract awards by annual dollar value in the present area of concentration and represents a 100-percent increase over the actual annual dollar share.

The project also creates a program directed at the bottom half of the industry size standard providing that 15 percent of annual contract dollars be reserved for this segment of the small business community. This will enable emerging small businesses to develop and grow, sheltered from larger firms who may dominate the market and thereby increase the competitive base.

Each Federal agency is directed to undertake significant efforts to increase small business participation in Federal contracts in those industry categories where small business potential exists but where small firm participation is lacking.

H.R. 1807 has made the necessary reforms to ensure the continuity of the program and the fulfillment of its intended objectives. Enhanced efforts aimed at control of previously troublesome areas of the program will go a long way toward encouraging the development of a more competitive spirit among 8(a) firms, promoting the achievement of managerial excellence, and establishing know-how about producing and supplying quality goods and services at the lowest possible cost. H.R. 1807 will help to place within the reach of other socially and economically disadvantaged individuals the rewards of participation in the free enterprise system and the dream of entrepreneurship.

I urge my colleagues to support the conference report.

Mr. LaFALCE. Mr. Speaker, I yield 1 minute to the gentleman from Missouri [Mr. SKELTON].

Mr. SKELTON. Mr. Speaker, I rise to support the conference report on H.R. 1807 and to urge my colleagues to support what I believe is a good bill. It certainly represents a great deal of hard work. I congratulate my chairman, Mr. LAFALCE and Mr. MCDADE for their hard work and also Mr. MAVROULES, Mr. CONTE and the members of my subcommittee who took an active role in putting this bill together.

I think this bill will go a long way toward tightening the 8(a) program and incorporating the lessons we have learned from some of the failure we have seen in the past.

Let me also take some time to mention the title VII of the bill, added by the Senate, which sets up a demonstration program for specified categories of contracts that are overwhelmingly dominated by small business set-aside contracts.

The demonstration would suspend small business set-asides and reinstate them when necessary to ensure adequate small business participation in the specified categories. The title provides a workable alternative to the current law which requires reducing the size standards in specified categories and cutting 50,000 or more small businesses out of their current contracts over night.

One of the most important aspects of the demonstration program is the flexible procurement procedures or mechanism described in section 713 of the bill. I want to take this opportunity to discuss the procedures in some detail, in order to provide legislative intent and clarification of this section.

Two fundamental concepts compose section 713: First, the small business participation goal should first be achieved in an unrestricted full and open competitive market in accordance with section 713(a); and second, if small business concerns cannot attain the 40-percent goal through unrestricted competition—including work won pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) or section 1207 of the National Defense Authorization Act for fiscal year 1987—use of restricted set-aside competition under 15(a) of the Small Business Act (15 U.S.C. 644(a) may be used to supplement the work won on an unrestricted basis.

The cornerstone of the demonstration program lies in that the restricted competition provision, 713(b) only comes into play when the participation goal is not achieved through unrestricted competition and then only to the extent necessary to achieve that goal. At all times, the first means of attaining the 40-percent goal remains through unrestricted full and open competition.

To illustrate how the demonstration program procurement procedures work, consider this example:

Agency X has a budget of $1 million for construction —major group 15—as defined in section 717.

After 1 year in the demonstration program, a review of the contracting reveals:

Type of contract	*Percentage*
Full and open	35
Section 8(a) set-asides	5
Section 1207 set-asides	5
Under $25,000 contracts	2
Total, small business participation	47

Given the participation goal of 40 percent is achieved, no set-asides under section 713(b) of the bill need be used.

After reviewing contract data during the second year, the following is revealed:

Type of contract	*Percentage*
Full and open	25
Section 8 (a) set-asides	5
Section 1207 set-asides	5

Type of contract	*Percentage*
Under $25,000 contracts	2
Total Small Business Participation	37

To achieve the 40 percent, agency X, in accordance with section 713(b), may solicit contracts through set-asides pursuant to section 15(a). The set-asides should amount to 3 percent—that is, contracts worth approximately $30,000—in order to attain the overall goal of 40 percent.

If after further monitoring during the second year the small business participation has risen above 40 percent and review of the contracting reveals at least 40 percent is through means other than section 713(b) set-asides, then operation of 713(b) is canceled and no further contracting is set aside until further reviews establish the need to do so.

In this competitive world, I believe it is important that we place emphasis on the ability of our small business concerns to win work in the unrestricted market. The Small Business Competitiveness Demonstration Program does this, while at the same time ensuring small business a fair proportion of the Federal Government market by establishing a 40-percent goal that can be attained if need be through set-asides.

One section of the demonstration program that still causes me concern is the portion which deals with refuse systems and related services. Contrary to past precedent, and contrary to the language of the bill, the goals in this area will be achieved by segmenting the 4-digit SIC codes to find a class of small business refuse collectors small enough to ensure that large businesses will have no problem taking a large percentage of their business.

I think that this is a bad precedent, although in this case it is true that the SIC codes are hopelessly inadequate to describe the activities included in the category. Segmenting the category, in this case, will simply mean that refuse haulers will now be competing with companies that are large enough to simply bury their competition.

I hope that those agencies administering the program will watch the progress of the refuse haulers' contracts very closely to make sure they are being handled fairly and without inflicting permanent damage on the small businesses in this category. Under the provisions of this bill and the conference, they at least will be able to have a hand in how the segmentation is done or if it is even necessary. The agencies in charge should take great care and listen to the small refuse collectors to insure that these businesses are not damaged.

Mr. McDADE. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. HORTON].

Mr. HORTON. Mr. Speaker, I support the conference report. I was one of the conferees. It is a good conference report, and I urge its adoption.

Mr. Speaker, in July of this year the House passed H.R. 1807, the Small Business Competitiveness Demonstration Program. One of the most important purposes of this Small Business Competitiveness Program is to demonstrate whether the competitive capabilities of small business firms in certain industry categories will enable them to successfully compete on an unrestricted basis for Federal contracting opportunities. Federal agencies shall seek to achieve their small business goals through unrestricted competition, and shall resort to restrictions on competition only if they cannot achieve their goals in the first instance. Agencies will assess their performance on a quarterly basis for each of the designated industry groups—not for each standard industrial classification code [SIC] within those designated groups.

This bill is designed to assist small business in doing business with the Federal Government. It will help them compete in a competitive marketplace and not be totally dependent on the set-asides program. Once a small business graduates from that program—and they will eventually graduate, they will be equipped with the experience and the know how to effectively compete in the Federal marketplace.

Mr. LAFALCE. Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts [Mr. MAVROULES].

The success of this program will depend on its administrative workability. Measuring the dollar value in each industry category in each agency will enable the Congress to know just how competitive small businesses can be.

I want to commend all of the committees which have worked so long on this report for their efforts, their concern for the small business community, and for their interests in furthering competition in the Federal marketplace.

Mr. Speaker, I urge my colleagues to support this conference report.

Mr. LAFALCE. Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts [Mr. MAVROULES].

Mr. MAVROULES. Mr. Speaker, I thank the gentleman very much for yielding me this time.

Mr. Speaker, Mr. Speaker, I would like to echo the strong support of Chairman LAFALCE for the conference report on H.R. 1807—the Business Opportunity Development Reform Act of 1988.

As the original author of H.R. 1807, I believe it is appropriate that during this historic 100th Congress we take this action to strengthen an important small business program, the Minority Small Business and Capital Ownership Development, or 8(a) program. H.R. 1807 represents the first major reform of this program in over 10 years.

As originally established by Public Law 95-507, the purpose of the capital ownership development program is to promote the "competitive viability" of firms owned and controlled by socially and economically disadvantaged individuals. The section 8(a) authority allows agencies to award contracts through the Small Business Administration [SBA] to these disadvantaged firms and is only one of many tools available to SBA to promote the competitiveness of disadvantaged business.

Unfortunately, the section 8(a) program has deviated from its congressional objective and has become a revolving door that randomly spins off firms that have completed an arbitrary participation period regardless of whether or not they indeed have become competitively viable. The 8(a) authority has been used merely to issue "hunting licenses" in the hopes that minority owned firms can capture a maximum amount of single source negotiated contracts during their term.

The system must be changed and must be changed now if we want to save this program.

That is why, when I served as chairman of the Subcommittee on Procurement, Innovation and Minority Enterprise Development, I introduced an 8(a) reform package, H.R. 1807.

During the six days of hearings that my subcommittee held on this proposal, we heard from several trade organizations and the 8(a) firms themselves. Certainly, those most affected are in the best position to give us a realistic and practical evaluation of this bill. I am also proud that our former chairman, Parren J. Mitchell, and the Reverend Jesse Jackson were able to take the time to testify at our hearings, bringing with them their extensive knowledge of the minority business community.

I am pleased that today, after more than a year of hard work we can present to you a strong bipartisan bill which will clarify the congressional intent that the 8(a) program is first and foremost a business development program.

I would like to commend the Chairman of the Small Business Committee, the gentleman from New York [Mr. LAFALCE], the ranking minority member, the gentleman from Pennsylvania [Mr. MCDADE], and, of course, my friend, the gentleman from Massachusetts [Mr. CONTE], as well as all my fellow conferees, including members of the Black Caucus and the Hispanic Caucus, who contributed so greatly to this reform. And certainly all members of the staffs in both houses, particularly Tom Trimboli of the Small Business Committee of the House, who is the backbone of the staff, are to be thanked for the long hours they have put in to help us perfect this proposal.

Chairman LAFALCE already has outlined several of the major provisions of H.R. 1807—most important of which is the repeal of the current fixed program participation term, which we have extended out to 9 years. This term will be divided into a two-phase process of which 4 years will be in the developmental stage and 5 years in the transition stage. In each phase, we have provided development assistance, in addition to 8(a) contracts, that is aimed at providing the firm with what it needs to become competitive in its industry. This development assistance includes employee training, technology, and surplus property transfers, exemptions from the Walsh-Healy and Miller Acts and special loan programs.

Furthermore, everyone involved with the 8(a) Program has recognized that in order to assist minority firms to become competitive we must introduce competition into the 8(a) Program. The question has always been how much competition and at what level. For that reason, we would allow competition above thresholds of $5 and $3 million.

I would like to take this opportunity to comment on a couple of provisions about which I feel most strongly.

In the first phase of the program, we provided financial assistance for firms to train or upgrade the skills of their employees. I want to stress that this assistance is not a duplication of the jobs training partnership act or other Federal programs which train unemployed individuals.

I think the words in our committee's report accurately sums up the reason why this particular assistance is needed:

> Labor, as any other factor of production, has a cost associated with it. Part of that cost is the training and upgrading of job skills. Small minority concerns, because of their relatively small capital base and generally lower incomes, are more disadvantaged when it comes to competing for labor than are other business. * * * It is necessary, therefore, that the program address this issue and, in some way assist 8(a) firms to secure the skilled workers they need to become successful.

Job training is as critical to success as capital and management yet until now this aspect of business development has been ignored. I am pleased that my fellow conferees ensured that this important training provision remained in the bill. The $2 million that we have authorized in this proposal will enable at least 800 employees of minority firms to receive training.

Another provision relates to the director of small and disadvantaged business utilization at the Department of Defense. This provision has important implications for all small and small disadvantaged businesses.

Until last Congress, the Sadbu directors in every agency reported directly to the head of any agency or that person's deputy. This director reporting requirement was intended to give the Sadbu director immediate access to top level policymakers and maximize his/her effectiveness as an advocate for small and disadvantaged businesses.

The National Defense Authorization Act for fiscal year 1987, Public Law 99-661, created a new position of Under Secretary of Defense for Acquisition who would direct all other offices in the Secretary of Defense's office who have acquisition responsibilities.

This has meant that the Sadbu director within DOD is in an inferior position—relative to other Sadbu Directors—relegated to the "remote corridors" of the Pentagon and denied a meaningful opportunity to affect policies and procedures affecting small business issues. I believe that it also is ineffectual to have the Sadbu Director report to the very person whose duties that director was intended to monitor.

I am pleased that we have reached a compromise on this matter—agreeing that the Sadbu Director for the Defense Department should report to the Secretary or his designee. With the critical importance of the Department's 5 percent program for minorities, and our desire to expand the military industrial base by reaching out to more small businesses, I am confident that the secretary will understand the necessity of having the Sadbu Director report directly to him. This position has become too critical to delegate the responsibilities or downgrade this position.

I also want to emphasize my support for a provision inserted by my colleague from California, Esteban Torres. As we all know, most Government contracts must contain subcontracting plans. However, investigations by the Small Business Committee found many instances of noncompliance by prime contractors. Congressman TORRES, therefore, added a sanction calling for liquidated damages if a contractor fails in good faith to live up to his subcontracting agreement.

The Defense Department has argued that the use of incentives may ensure greater compliance. I must point out that such incentive clauses have been on the books for years yet contractors still fail to fulfull their obligations. I am hopeful that the use of liquidated damages will encourage contractors to comply with the terms of their subcontracting agreements. Maximum utilization of small and small disadvantaged small businesses as subcontractors is in our national interest.

Before concluding, there is one additional section that I must comment on, which was by the Senate Small Business Committee. There is no question in anyone's mind that small businesses should receive a fair share of Federal contracts across all categories of items required by the Government. Agencies, however, have tended to use set-asides in industries where small businesses dominate, while ignoring small businesses that operate in other more high-tech areas.

Working together, the former chairman of the House Small Business Committee and the chairman of the Armed Services Committee attempted to correct this problem in the last Congress. As part of the Department of Defense authorization bill, the Congress enacted section 921 of Public Law 99-661, which required SBA to reduce size standards in four pilot industries in which small businesses dominated in order to reduce the set-aside level to 30 percent of total purchases.

Unfortunately, the SBA has proposed size standard reductions that are extremely severe. In the construction industry, SBA used size standards which varied with each individual four digit SIC code. Congressmen LES ASPIN, DAVE MCCURDY and I wrote to the SBA indicating that nothing precluded the establishment of the same size standard for several related SIC codes. This would have served the industry's concerns and still accomplished the purposes of Public Law 99-661. I might add that the SBA did not heed this advice.

Since then, the Senate expressed its intention to revisit the set-aside issue as a part of the 8(a) reform package. The original Senate proposal called for the suspension of set-asides in the four pilot industries, allowing them to be reinstated only if the small business share in open competition for those industries fell below 30 percent.

In order to reach a compromise, and not jeopardize the 8(a) reform package, I joined with my House conferees in accepting a modified Senate proposal. This compromise raises the set-aside trigger to 40 percent. Also, small businesses in the lower half of the size standard in the four pilot industries would be guaranteed 15 percent of total purchases for contracts that fell within the small business reserve amount. As with an earlier House proposal, this compromise requires agencies to take action to increase small business participation in underrepresented industries.

While I remain concerned over potential dislocation in the affected industries, I am hopeful that we have fashioned an approach that will meet our objective of increasing overall small business participation in the Federal marketplace. As with my program, we must carefully monitor these provisions and take corrective steps when necessary.

To return to the 8(a) Program reforms, I believe that the requirements in H.R. 1807 will ensure that the legitimate needs and concerns of the 8(a) population will be properly heard and served. More small disadvantaged businesses should be able to participate in not only this effort but all Federal procurement programs. Our entire economy will benefit.

Mr. Speaker, I urge my colleagues to support this important bill.

Mr. McDADE. Mr. Speaker, I am pleased to yield 4 minutes to my distinguished colleague, the gentleman from Massachusetts [Mr. Conte].

Mr. CONTE. Mr. Speaker, I rise in support of H.R. 1807, the Business Opportunity Development Reform Act of 1988. I am pleased to commend the chairman of the Small Business Committee, John LaFalce and my very good friend, Joe McDade, the ranking minority for their tremendous efforts on behalf of small disadvantaged businesses. I coauthored this bill in committee along with my good friend and colleague from Massachusetts, Nick Mavroules, and have had the privilege of sitting in conference with the other body to craft this legislation reforming the SBA 8(a) program.

My small business colleagues and I have worked most diligently to make H.R. 1807 a comprehensive reform bill that incorporates mandatory competition, the development of a non-8(a) business base, a fixed program term, simplified program admission, a comprehensive data base, and better agency management of the 8(a) portfolio. Most of these provisions and others now included in H.R. 1807 were first proposed in H.R. 2269, the Conte 8(a) reform bill. When I introduced H.R. 2269 I argued strongly for competition in the program and maintenance of size standards. I also proposed provisions establishing a division of certification, technical and management assistance, a fixed term of participation, paperwork reduction, abolishment of business development expenses, participation goals for all goods and services, appeals process, promoting SDB subcontracting, establishment of a comprehensive data base, protection against adverse impact for nonminority small businesses and increased penalties for misrepresentation. All of my provisions have been incorporated into 1807, and I believe they will effectively promote the development of a strong minority small business programs.

According to the latest report of the President on "The State of Small Business," of our Nation's 14.5 million small businesses approximately 850,000 are minority owned. Business ownership as a percent of the population is 1.8 percent for all minorities versus 6.4 percent nationwide. Sales per minority firm averaged $54,000 versus $474,000 nationwide. While minorities comprise 22 percent of the national population, they account for approximately 6 percent of government procurement dollars.

While these figures demonstrate the need for continued efforts in support of SDB's, they also contrast sharply with much higher receipts for firms in the 8(a) program.

ACTIVE 8(A) COMPANIES

Number of years in program	Number of companies	Total number of contracts	Total amount of contracts
Less than one	322	52	$14,500,286.96
01	370	399	89,277,908.60
02	452	1,090	346,507,971.34
03	463	1,852	787,392,769.16
04	552	3,097	1,091,052,460.49
05	169	1,775	1,097,018,834.48
06	56	763	263,359,687.03
07	131	1,959	858,263,402.83
08	130	2,452	1,492,137,679.70
09	84	2,551	1,401,548,938.54
10	62	1,874	672,261,852.40
11	33	889	293,796,839.35
12	22	873	245,305,252.66
13	20	861	299,340,212.37
14	9	381	76,463,132.20
15	2	78	21,487,495.63
16	4	122	34,005,626.32
17	2	97	98,432,225.57
18	0	0	
19	0	0	
20	0	0	
Total	2,883	21,165	9,182,152,575.63

Clearly firms in the 8(a) program have done well in the receipt of government contracts. Yet 8(a) firms do not fare well in the competitive marketplace when they graduate. This is because of their dependency on sole source contracts. The Senate did a study of graduated 8(a) firms (S. Report 100-29, May 12, 1987) that stated, in part:

> The committee continues to be concerned about the probable out of business rate of graduates and the high level of criticism lodged against various aspects of the 8(a) program by many participants. The 30 percent of the total survey sample that may be out of business, coupled with 22 percent of the respondents who indicated they were not doing well are troubling statistics. Moreover, the perception of many graduates that the program did not significantly contribute to their ability to survive is a clear indication that the program is not effectively or consistently developing or preparing businesses for the competitive marketplace and suggests that fundamental changes in the program are needed.

Clearly with those kinds of results a sole source program isn't making firms competitive—rather it is making participants permanent supplicants of Federal largess. Once the sole sourcing ends so does their business. Obviously, one of the fundamental changes needed in the program is the introduction of full and open competition—competition where the lowest responsible bidder gets the award. In its current anticompetitive form, the 8(a) program can be likened to Infant Industry policies of emerging nations.

The infant industry theory proposes that an underdeveloped domestic industry needs protection from competition so that it can weather the initial period of experimentation and financial stress. Proponents of this theory assert that this initial period of protection will provide the industry with the opportunity to develop the skills and techniques necessary for it to become competitive.

Like proponents of the infant industry theory, who claim that tariffs should be implemented until underdeveloped domestic industries have a chance to grow out of the infantile stage, many proponents of a sole source 8(a) program believe competition should be kept to a minimum so that 8(a) participants can have the breathing room necessary to evolve into viable firms.

But experience has demonstrated that protected young industries are more likely to become perpetual infants rather than competitive firms in the marketplace. One of the fundamental flaws with protecting infant industries is that even firms employing inefficient technologies will become profitable. In fact, as one noted economist states, "a duty tends merely to encourage socially inefficient production as long as the State is willing to provide protection." Thus duties create inefficient firms that can thrive under protective cover, but as soon as the firms are exposed to a competitive environment, they fail to grow into efficient, competitive firms.

A number of my small business colleagues and I have fought to introduce competition into the 8(a) program. In H.R. 1807 (sec. 303b) competition is now required for all manufacturing contracts over $5 million (including options) and $3 million (including options) for all other categories. While the number of contracts is not great, the dollar amount is a considerable portion of all 8(a) contracts, averaging 35 percent between 1980-88. As firms grow larger in the program, these thresholds should provide for more and more competitively won contracts. Additionally, at my suggestion in conference, discretionary competition (sec. 303b) will also be permitted below the threshold. No limitations were discussed, proposed or even suggested by conferees and it certainly is not my intent to limit in any way this discretionary competition. Rather, it is my expectation that agencies will fully utilize this provision to maximize the competition so desperately needed in the program.

Coupled with competitive thresholds and discretionary competition is a provision (sec. 303a) requiring an 8(a)/non-8(a) business mix for firms in the transitional stage (years 5-9) of the program.

The objectives of the 8(a) program are to stop unhealthy dependency on sole source contracts and to establish competitive viability in the marketplace. The ideal plan of action would expose 8(a) firms to sheltered competition and require them to develop a commercial business base. H.R. 1807 fails because it allows the transfer of dependency from one Government program to other programs. The business mix is classified as 8(a)/non-8(a) but non-8(a) could be—the DOD section 1207 program (which provides limited competition) or unrestricted competitive contracts which provide a 10 point bid preference to minority firms (a virtual certainty of award). While conferees agree that non-8(a) includes commercial business, there is no specific provision making non-8(a) strictly a commercial business base. Because dependency could be expanded to other Government programs, demands will ultimately be made to make permanent the section 1207 program and the 10 point bid preference. Absent specific provisions defining non-8(a) business, the SBA should encourage program participants to maximize the commercial aspect while minimizing Government contracts. Failure to do so will result in more of the same—dependency on the Government. This problem, failure to maximize commercial markets, is explored in an excellent *Washington Post* article dated October 10, 1988 entitled "Facing Life Beyond the Government." Essentially many Government contractors are now looking to develop commercial business because of budget cuts and increased Government regulation. These Government contractors have to overcome severe problems when moving into private markets, problems that include the following: lack of recognition for their name and product(s), the extraordinary nature of commercial competition that is driven by price and quality, differences in accounting and pricing systems and finally the pace of the systems where Government contracts average 3-5 years versus 6-12 months in the private market. Unquestionably 8(a) firms should maximize their commercial efforts and business base while in the program and avoid a hard lesson after graduation.

Mr. Speaker, I also have some additional recommendations for improving this bill which should be fully considered by the appropriate agencies when implementing this legislation:

First. Section 201, program admission should include consideration of competitive needs of the program (rule of two) as well as geographic and industrial distribution.

Second. Section 203, grandfathering should be 9 years from date of certification with an immediate mandatory business mix fixed to years in program as is proposed for new participants.

Fixed program participation terms [FPPT] were established in 1982. Nine years from FPPT, as proposed in H.R. 1807, places graduation in 1991. Many of these firms had time in the program prior to FPPT so that when 1991 rolls around you could graduate firms with 15, 16, etc. years in the program.

Extending grandfathering is unfair because it favors bigger firms who will grab all available sole source contracts to load up prior to graduation. There are currently about 110 firms now ready to exit the program with over 9 years in the program who will benefit from this provision. This provision deprives newer smaller 8(a) participants of the full value of the program.

Third. Section 206, eligibility reviews should be amended to provide that a contracting officer's protest is always considered timely whether filed before or after the award.

Fourth. Section 304, subcontracting assistance. When measuring subcontracting goals the following items should be excluded from the subcontract base for reporting purposes: customer directed sources; companies with unique products, processes, or services; qualified sources for follow-on contracts; complex system which require unique large company resources; and foreign purchases encouraged by U.S. Government policies.

Fifth. Section 407, contract performance should include the concerns of the Department of Justice, to wit:

A provision that would subject the Government to substantial additional costs is the requirement contained in section 16(c)—now section 407—of the bill, that the Government terminate for convenience section 8(a) contracts if the owners upon whom section 8(a) eligibility was based relinquish control of the firm. While we agree that the benefits of the section 8(a) program should not be enjoyed by ineligible concerns, requiring the Government to terminate contracts for convenience is not an appropriate mechanism for attaining this goal.

Additionally, the Government's termination of a contract for convenience entitles the contractor to recover the costs it has incurred in performing the contract to the date of termination and necessary preparation costs, as well as a reasonable profit upon those costs. Because of this, the Government could be required to pay substantial sums to companies whose contracts were terminated because they were no longer controlled by eligible individuals.

Sixth. Section 601, Relationship With Other Procurement Programs. It is my expectation that enactment of this enhanced 8(a) program will not adversely impact on the section 15(a) and section 1207 programs just as this section provides an adverse impact provision for the enactment of the 1207 program.

Small business participation in Government procurement should be encouraged and increased. Small business and SDB's should not be pitted against each other in a misguided attempt to grow one segment at the expense of the other. Rather, proper application of statute requires that total small business participation should increase as a percentage of all Government contracting.

In support of this concept I authored H.R. 3921, a bill to enhance the powers of Breakout Procurement Center representatives so that their actions may generate more contracting opportunities for all small business. My bill is included in H.R. 4174, the SBA Reauthorization and Amendment Act of 1988, as section 110.

As coauthor of this legislation and as a conferee, I believe that implementation of these recommendations will greatly improve the effectiveness of this legislation.

Mr. Speaker, I wish to thank all those organizations and individuals who were involved in the public process of writing this reform legislation. There is no dearth of interest in the program, nor is there a shortage of willing advocates for various concepts and provisions. That is good. That is healthy. All of us who participated in the process share the same goals and concerns—what can we do to help strengthen and promote small disadvantaged business participation in the national marketplace. While there were differences, they were honest differences that have all now finally coalesced into this landmark legislation.

Mr. Speaker, the Small Business Committee has spend the better part of 2 years crafting this legislation. It is my fervent hope that my colleagues in the House and Senate will support our efforts and approve the conference report.

Mr. LaFALCE. Mr. Speaker, I yield such time as he may consume to the gentleman from Maryland [Mr. Mfume].

Mr. MFUME. Mr. Speaker, I rise in support of this legislation.

Mr. LaFALCE. Mr. Speaker, I yield 1 minute to the gentlewoman from Maryland [Mrs. Byron].

Mrs. BYRON. Mr. Speaker, let me say that I rise in support of the conference report on H.R. 1807, the Small Business Administration Minority Business Development Program.

Particularly, I would like to thank the chairman of the Committee on Small Business, the gentleman from New York [Mr. LaFalce], for his hard work and dedication in getting this important piece of legislation to the floor. It has not been easy.

After several years of hard work and many negotiations, the gentleman from New York [Mr. LaFalce] has included a provision that I have supported that limits small business setasides of military clothing and textiles to 50 percent of the yearly business.

This provision opens up the competition for military clothing to the country. We have all read the horror stories of military clothing problems. In my Sixth Congressional District, I have London Fog, which employs 1,670 individuals, and this legislation will benefit them greatly because of their small business stature. This western Maryland company will now be able to compete with other businesses in the country for military clothing contracts.

I commend the gentleman from New York [Mr. LaFalce], the gentleman from Pennsylvania [Mr. McDade], and the staff of the Committee on Small Business. Also I have to commend Colleen Preston of the staff of the Committee on Armed Services.

London Fog employs 1,670 individuals, as I said, and they are in small plants, four of them in Hancock, Williamsport, Boonsboro, and one in Carroll County.

Mr. Speaker, I urge all my colleagues to support this important conference report.

Mr. McDADE. Mr. Speaker, I am delighted to yield 4 minutes to the very able gentleman from Florida [Mr. Ireland.]

Mr. IRELAND. Mr. Speaker, I rise in strong support of H.R. 1807, and I would like to take this opportunity to commend the leadership of our committee on both sides of the aisle, the gentleman from New York [Mr. LaFalce], the gentleman from Pennsylvania [Mr. McDade], and others, for their perseverence and foresight in crafting this legislation and moving it to this point.

I would like to highlight a section of the legislation which addresses a particular small business setaside and the general problem it represents.

The Small Business Act provides for small business setasides in order to maintain the defense mobilization base and assure that a fair proportion of Government work on the Federal level goes to small business. The goal is twofold—first, lower, prices through competition, and second, availability of multiple sources in the case of emergencies. Unfortunately, in recent years Federal agencies have been directing most small business work into a handful of industry categories, thus concentrating most small business in a few areas. The result is to shut larger business out of most of the work in certain areas while shutting small business out in more than 90 percent of the rest of the Federal Government procurement.

This is a problem that should be addressed throughout the Federal Government, but is one that has been sorely neglected. Fortunately, in one instance, the dredging industry, it has been addressed in this legislation.

The dredging industry was a focal point of much of the debate concerning setasides as this legislation was developed. It was brought out that in 1984, 1985, and 1986 small dredgers were awarded 16.6 percent of all Federal dredging under the setaside program. Then all of a sudden, in 1987, this percentage droped to 10.2 percent. Also in 1987, one large dredger alone did more than 43 percent of all Federal work. In other words, this one dredger did $147 million out of $342 million in contracts awarded by the Corps of Engineers.

I might add that in the last 2 years this very same dredger and its subsidaries have pleaded guilty to five sets of bid-rigging charges and paid some $18 million in fines and civil penalties.

Mr. Speaker, despite these figures and this background, a legislative attempt was made to further reduce small business participation in dredging by proposing a cap of 15 percent on work available to small dredgers.

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Fortunately, as a result of a compromise, while a cap appears in the bill, it is one that guarantees small dredgers more than they have gotten in the past because it is across the board and not just in a single category of dredging. Historically, programs were sought to assure small business participation, and Government contracting has been structured in such as manner that procuring agencies were asked to meet certain percentage goals within their annual procurement program for contract awards to small business. Contracting officers working within this goal-oriented system were free to reserve or not reserve contracts, as they saw fit. This has led to the situation in which certain industry segments were overrepresented by small business contract reservations while others had virtually none. To overcome this skewed representation it is time we considered a new method of assuring fairness to small business in Government contracting.

Mr. Speaker, it is time to consider the prohibition of award of any contract to a company which is other than small after the procuring agency is awarded 25 percent of its annual contract expenditures to other companies unless the contracting officer has first made an affirmative finding that there exists no small business that can do the job. If all small business in any one area gets only 25 percent of the pie, why should any one single business receive more thn 25 percent?

Mr. Speaker, we should support H.R. 1807 and turn our further attention to set size and competition in the 101st Congress.

Mr. CONTE. Mr. Speaker, contained in Public Law 99-661, the Defense Authorization Act of 1987, is section 921 which if enacted might properly be labeled "Nightmare on Elm Street" for America's small businesses. Section 921 is a program to cap small business participation in certain industry groups. The SBA estimates that enactment of 921 would adversely impact approximately 50,000 small businesses with a resultant loss of $2.3 billion in Government contracts. Fortunately, title VII of H.R. 1807 repeals section 921. I do believe, that Andy Ireland has a good idea and that we should explore it in the 101st Congress.

Mr. LaFALCE. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan [Mr. Conyers].

Mr. CONYERS. Mr. Speaker, I rise today in support of the conference report on the Small Business Administration's 8(a) program offered today. For nearly 2 years, we members of the Small Business committees have been hammering out legislation that would blend business development aspects with needed reforms, and I believe that the overall package will provide much needed improvements. I would like to thank Chairman LaFalce and Bumpers for their diligence and leadership on this important legislation, and former subcommittee chairman Mavroules for having the vision and the energy to craft this bill.

The 8(a) program is one of the key methods of promoting growth among the minority business community. In 1986, despite attempts by the Reagan administration to eliminate or gut the Small Business Administration, the program provided minority firms with a badly needed $3.1 billion dollars in Government contract awards. The reforms this bill will establish should help increase that support, and produce stronger, more competitive minority firms.

As a conferee, I was pleased to see that the positions of the Black and Hispanic Caucuses were largely adopted in this bill. This reform package will improve the 8(a) program in several significant ways: firms will now have nine years in the program to mature and prepare for full competition; competition has been introduced into the program, but not for firms that are still unprepared for full competition; the threshold requirements, which mandate competition for certain contracts, are not unduly burdensome; recent graduates of the program will be given more leeway in raising capital; and firms that suffered from the Small Business Administration's mismanagement have been given an additional 18 months in the program. In addition, this bill provides for advanced training that is unavailable from JTPA, and would give the DOD's Small and Disadvantaged Business officers a direct line to the Secretary of Defense, instead of forcing them to report to the people they are supposed to oversee.

Despite the advances this bill will bring to the program, I do have some concerns about several provisions in the bill. The suspension of set-asides under Senator Dixon's proposal is a bit of a gamble. The smallest of the small businesses are protected from having to compete with the larger companies because contracts below certain dollar amounts will still be set aside, and the 8(a) and 1207 programs have been exempted from this experiment. Other small businesses in certain test industries, however, will not be so fortunate; all of their contracts will have to be won competitively. Now, because these industries, particularly construction, are largely comprised of small and competitive businesses, this program could work well. But if the program misfires for some reason, thousands of small businesses could be left out in the cold.

Under normal circumstances, I would have opposed this program. But in this case, an alternative program that would have devastated nearly 50,000 small businesses would have gone into effect if we had not acted by October 1. Because this gun had been placed at the head of so many small businesses, I thought that this eleventh-hour compromise was unavoidable. But I promise the small business community that the House Small Business and Government Operations Committees will monitor this program very closely. And if the program fails to protect small businesses adequately, I would urge my colleagues to join me in promptly revisiting the issue.

On the whole, I believe the 8(a) reform legislation will reduce the high failure rate of graduates, will increase the emphasis on technical assistance and business development, and will reduce the possibility of fraud and abuse. I hope that my colleagues will join me in supporting this legislation.

Mr. McDADE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from New Jersey [Mr. GALLO].

Mr. GALLO. Mr. Speaker, I rise today in strong support of the conference report on H.R. 1807, a bill to reform the Capital Ownership Development Program. I was pleased to be part of this conference committee and to work with the House and Senate conferees to achieve a workable result.

The conference agreement underscores the need for competition in the program which I strongly support. Competition is a fundamental component of our free enterprise system. The introduction of competition to the 8(a) Program will afford program participants an opportunity to confront the challenges that come with it and the opportunities for personal development and growth that are possible through it. I firmly believe that the provisions of this reform package will enable minority small businesses to grow, survive, and prosper long after graduation from the program.

In addition, I strongly support the provisions of the bill that encourage small businesses to increase their share of private sector business as they progress through the program. Our goal is not to make these firms dependent on Federal contracts, a dependency that can lead to certain failure. Rather, our goal is to help small minority firms gain an ever increasing share of their business support from the commercial sector and from other Government procurement opportunities.

There are several provisions in the bill aimed at streamlining the administration of the 8(a) Program. The bill requires comprehensive data collection to monitor and evaluate firm and program performance, simplifies procedures for program admission, and increases criminal penalties for misrepresentation.

I can proudly point to two provisions in the conference report that I authored and which the conferees supported. The first concerns joint ventures between small minority firms and other businesses. The conferees concurred with my recommendation that the Small Business Administration should examine the need for encouraging the formation of joint venture partnerships between 8(a) Program incumbents and other firms. I believe that small minority firms could benefit from these cooperative arrangements which would enable them to develop capabilities through the sharing of information and expertise. The second provision regards the negotiation of prices on unpriced options, the conference report requires that, within 60 days after the enactment of this act, the Small Business Administration, and the appropriate Federal agency, shall make substantial and sustained efforts to negotiate contract modifications for fair market price for any and all unpriced options contained in contracts previously awarded pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) with the contractor that was initially awarded such contract.

During this 30-day period, such agencies shall refrain from procuring such requirements from alternative sources except that, no delay may be incurred that would cause substantial harm to a public interest.

This provision protects current and graduated 8(a) firms that have unpriced options on contracts awarded to them prior to a ruling issued by the General Accounting Office that prohibits the exercise of unpriced options.

While public attention has been focused on a few isolated abuses in the program, I do not believe Wedtech is typical of 8(a) firms or fairly represents the 8(a) Program. The typical 8(a) firm is a struggling, but potentially successful, minority enterprise that will generate increasing numbers of jobs, income, and tax dollars. Our efforts to clean house and come up with a more effective Minority Business Development Program will work to benefit minority enterprises in the long run.

I am also confident that the establishment of the Small Business Competitiveness Program will enable small businesses to successfully compete on an unrestricted basis for Federal contracting opportunities. Although I supported a test program requiring that participation goals be achieved by SIC code, it is now my understanding that measurements will be made by whole industry categories under our final compromise agreement.

In summary, the 8(a) Program is worth keeping and worth improving. I urge my colleagues to support the conference report.

Mr. McDADE. Mr. Speaker, I yield 4 minutes to the gentleman from Louisiana [Mr. LIVINGSTON].

Mr. LIVINGSTON. Mr. Speaker, I want to commend the conferees for including in title VII of H.R. 1807 a new definition of "architecture, engineering and related services" under the Brooks Act, Public Law 92-582.

As a member of the Committee on Appropriations, I have been interested in the application of this law to mapping and related contracts by the Defense Mapping Agency. In fact we had a provision in our bill in fiscal year 1986 and strong report language in 1987. It is my understanding the provision in title VII will clarify and make permanent the application of the Brooks A/E law to services of surveying and mapping firms and other appropriate services to all Federal agencies.

During the debate on the provisions in the appropriations bills, some confusion has existed with regard to the influence of State licensing laws on mapping contracts. Of course, in most States, mapping services are not governed by licensing laws. Moreover, mapping work on land outside the borders of the United States would not be governed by State law. So the fact of the matter is this provision is governed by State law, only if applicable. The effect of this amendment will be to open DMA mapping contracts to more firms because there would not be an applicable State law to limit competition to licensed architects and engineers. By implementing the qualifications-based selection method, and by assuring contract awards to the most qualified firm subject to negotiation of a fee that is fair and reasonable to the Government I am confident the agency will have a wider array of contractors to choose from and more firms will compete for this highly technical and specialized work because of confidence the selection process will be fair and will place a needed emphasis on quality.

Again, I commend my colleagues for including this provision.

Mr. McDADE. Mr. Speaker, I have no further requests for time, but I believe it would be appropriate for me, before yielding back the balance of my time, to publicly express our thanks to the very able staff on the committee who labored long and hard to help us produce this piece of legislation.

Mr. LAFALCE. Mr. Speaker, I also wish to extend our thanks to our staff, and I now yield such time as he may consume to the gentleman from Illinois [Mr. HAYES].

Mr. HAYES of Illinois. Mr. Speaker, I rise in support of this conference report and in support of this 8(a) Program.

Mr. Speaker, as a member of the conference committee on 8(a) reform, I am proud to rise today to express my strong support for the adopted conference report.

It has been a long battle since the beginning of this Congress when the Small Business Subcommittee on Minority Enterprise began to address the issue of a comprehensive reform of the 8(a) Program. I strongly feel that we have developed a fair compromise between the House and the Senate.

As you know, section 8(a) of the Small Business Act authorizes the SBA to set aside contracts and provide business development assistance to minority small businesses. The legislation before us today seeks to revamp the 8(a) Program so that it will more effectively meet its mandate to provide adequate and comprehensive assistance to minority business.

I would like to take this time to commend the chairmen of the House and Senate Small Business Committees, Mr. LAFALCE and Mr. BUMPERS, for their leadership on this issue. Additionally, my colleague, Mr. MAVROULES, has truly been a guiding force behind this legislation and, along with other Members of the House and Senate, has worked very diligently to produce a solid piece of legislation.

I feel that overall we have strengthened and improved the 8(a) Program and once this legislation is enacted, it will certainly, positively enhance development and success for our Nation's minority business community. However, there are specific provisions in the conference report, that we will soon consider, which are deserving of special attention.

I would like to take one brief moment to bring to your attention a provision that I hope will improve minority contracting with the Department of Defense. I must thank my colleague, Mr. MAVROULES, for adding a provision which requires that the Small and Disadvantaged Business Utilization [SADBU] Office within the Department of Defense [DOD] report to the Secretary of Defense.

The SADBU Office makes recommendations to contracting officers regarding whether a contract should be awarded as a small business set-aside, an 8(a) contract, or a section 1207 award. It also monitors the small business procurement and contracting activities of the agency.

Currently, the SADBU Office within the DOD reports directly to the Under Secretary for Acquisition, the very person or operation that the SADBU Office is to monitor. It is necessary that the SADBU Office be allowed to report directly to the Secretary, otherwise it is impossible for it to carry out its mandate when required to report to the very same person it is to monitor.

I believe that most would agree that the Department of Defense has not taken the 5-percent goal, mandated by this Congress, seriously. It is a fact that there has not been a noticeable increase in the percentages of contracts issued to minority businesses by the Department of Defense over the last 2 years. I strongly feel that the Mavroules provision clearly is needed to help ensure improvement in minority contracting with the Department of Defense and I wanted to take this time to make my colleagues aware.

Again, I feel that this conference report is a great accomplishment and will certainly help the minority business community. Mr. Speaker, as a member of the conference committee on 8(a) reform, I strongly urge that my colleagues vote in favor of the passage of this report.

Mr. HILER. Mr. Speaker, I rise today to take a few moments to comment on title VII of H.R. 1807, known as the Small Business Competitiveness Demonstration Program. Passage of this particular title should resolve, finally, one of the most complex, confusing and contentious issues under the jurisdiction of the Committee on Small Business: The impact of the small and minority business set-aside program on certain industries.

As my colleagues will recall, in the 99th Congress a provision was added to the Defense Authorization bill (section 921 of Public Law 99-661) which sought to reform the small business size standard and set-aside program. This was a modified version of a proposal previously rejected by the Small Business Committee. Fortunately, a 1-year delay was added to the final conference report, thus giving Congress an opportunity to review the matter. Another delay was added at the end of the first session of this Congress.

The House Small Business Committee responded earlier this year with a proposal that was included in the SBA reauthorization bill, H.R. 4174, and several of my colleagues and I filed minority views due, in part, to our dissatisfaction with the set-aside provisions. That provision was eventually dropped from the bill. In the meantime, a more attractive provision was included in S. 1993, the Minority Business Development Program Reform Act.

As you can tell, a rather protracted history has led us to this welcome accommodation we find in the conference report, and the conferees are to be commended, and thanked, for their work.

Title VII establishes a Small Business Competitiveness Demonstration Program, designed to enhance small business participation in Federal procurement. It does so by reducing the almost exclusive dependence on set-asides in some industry categories while encouraging more small business participation in other sectors where small businesses have not received a fair and adequate share of Federal procurement dollars.

I am particularly pleased with this aspect of title VII because many Indiana small businesses, especially those in the Third Congressional District, will have greater opportunities to compete for and win contracts in such areas as engine and vehicle accessories and components, equipment modification, aircraft accessories components, and others. At the same time, fair and open competition for Federal contracts will increase for architecture and engineering firms, survey and mapping companies, as well as construction firms (including dredging), refuse companies, ship repair companies and others.

As some of my colleagues have mentioned, set-asides are important tools that should be used by contracting officers to ensure small business participation when such participation cannot be achieved in unrestricted competition. Historically, there have been too many set-asides in the industries listed in title VII and not enough in others.

For those industries with too many set-asides, several problems resulted. When virtually all contracts are set-aside, there is a disincentive for firms to grow. It makes no sense for a firm to grow out of its size standard if it means the firm can no longer compete for Federal contracts successfully. Additionally, when virtually every business in an industry is defined as small, the smallest find no benefit from a set-aside since they must still compete against the giants, the so-called "big smalls."

Title VII ends this wasteful, illogical practice by leaving no less than 60 percent of the Federal contract market open to unrestricted competition. Firms of all sizes can compete, which removes the penalty on firms that grow, capitalize, hire new employees and otherwise contribute to the economic growth of our Nation. Title VII also establishes a goal of 40 percent for participation by small businesses. If that goal is not met in unrestricted competition, set-asides would be re-imposed to ensure that goal is achieved.

Within this 40 percent small business participation goal, 15 percent would be targeted for emerging small firms, or those in the lower half of a particular size standard. To concentrate opportunities for emerging small firms, all contracts of $25,000 or less are part of this subreserve.

For those industry categories with inadequate small business participation, and where set-asides have not been sufficiently used as tools, title VII creates a program to increase the amount of Federal contract dollars and opportunities going to emerging small firms as prime contractors, subcontractors, through joint ventures, teaming agreements, and other arrangements.

Mr. Speaker, I would point out that passage of title VII of H.R. 1807 implements parts of two recommendations of the 1986 White House Conference on Small Business. This includes recommendations 18 and 28, which call for an increased small business share of Federal procurement through measures that distribute set-asides by each procurement agency evenly across all categories of goods and services, ease "graduation shock" for companies moving out of their small business size standards, and ensure that small business receives a larger and more equitable share of procurement funds.

I am pleased the issue has finally been resolved, and I look forward to working with my colleagues, as well as the Small Business Administration and Office of Federal Procurement Policy, on prompt and proper implementation of this title of the bill.

Mr. BROOMFIELD. Mr. Speaker, I rise in support of the conference report on H.R. 1807. As a conferee on this bill, I'd like to address the small business set-aside reform provisions contained in title VIII.

For nearly 10 years Congress has wrestled with the program that reserves many Federal contracts solely for small business. The result has been more confusion than clarity.

The small business set-aside program has particularly impacted the design professions, construction firms, refuse companies, dredgers, ship builders, and textile manufacturers. The Small Business Administration [SBA] consistently promulgates definitions of small business called "size standards," that define some 98 percent of the Nation's firms in each of these industries as small business. With all firms currently defined by SBA as small businesses, agencies consistently set-aside virtually all their contracts.

When virtually every firm in the Nation is defined as small business, then the set-aside program fails to assist the very firms it is intended to help—the truly small, emerging firm. The smallest firms must still compete against nearly every giant, because these giant firms are considered "small" under the SBA's definition.

To remedy the situation, Congress reformed the Small Business Act in 1986 with a package of amendments in section 921 of Public Law 99-661, the Defense authorization bill. The law attempted to assure small business a fair proportion of contracts in each industry category rather than just a few. The most controversial part of the package was a provision ordering the SBA to review the size standards in four industry categories—construction, architecture, engineering, and refuse systems. It would reduce those industry size standards to a point where approximately 30 percent of government contracts will be set-aside for four small minority firms and 70 percent open to competition by firms of all sizes and ownership.

Section 921 would not have helped many of the industry groups it was intended to help. Thousands of firms would have lost their small business status, with no assurance that there would be any Federal market in which those firms could compete. Many of the affected industries were more fearful of the solution than they were of the problem.

Fortunately, that part of the law has not been put into effect, thanks to the efforts of Senator DAN QUAYLE, and our distinguished colleague from Pennsylvania [Mr. MCDADE] who delayed its implementation.

This gave the Small Business Committee sufficient time to adopt a better solution, which is before us today.

The purpose of title VIII is to provide firms of all sizes and ownership ample opportunities to compete for Federal contracts. It targets a reasonable share of contracts, 15 percent, for truly small firms. This includes the hundreds of contracts valued at $25,000 or less. Under these provisions, such contracts are reserved for firms in the lower half of their industry's size standard.

The goal of this program is small business participation, not set-asides. The goal of a small business enhancement program should be participation by a variety of means—open competition, subcontracts, joint ventures, or set-asides. Set-asides should only be used to achieve this goal.

Set-asides can and should be an effective tool in those industries in which small businesses have not adequately participated. Title VIII requires each agency to expand small business participation in ten industry categories which have historically demonstrated low rates of small business participation.

What we are seeking is balance. Historically, the set-aside program has been too heavy in some industries, and too few small businesses have participated in Federal contracts in other industries. Title VIII shifts the load from those industries which do not need the set-asides to those that do. To me, it is a win-win situation.

Mr. Speaker, title VIII is supported by a wide variety of organizations representing small businesses, and firms of all sizes. I urge my colleagues to approve this conference report.

Mr. MYERS of Indiana. Mr. Speaker, included in title VII of H.R. 1807, are reforms to the Small Business Set-Aside Program as it applies to large, small, and minority firms in certain industries. Among the provisions is a new definition of "architecture, engineering, and related services" under title IX of the Federal Property and Administrative Services Act of 1949.

As my colleagues are aware, since the measures known as the Brooks Act was enacted in 1972, there have been a number of Comptroller General decisions which have had the effect of narrowing the application of the law, particularly in the field of surveying and mapping. The purpose of the new definition in the bill before us is to recognize the realities of current professional practice and new technology in engineering and related design professions. It also clarifies the intent of Congress with regard to those relevent GAO decisions.

The Appropriations Committee has worked with the gentleman from Texas [Mr. BROOKS] and the gentleman from New York [Mr. HORTON] to clarify this issue as it relates to surveying and mapping services contracted by several key agencies, such as the Corps of Engineers, the Bureau of Reclamation, and the Defense Mapping Agency. It is the intent of this new definition and an identical provision in the House-passed OFPP Act amendments (section 8 of H.R. 3345) to clarify and make permanent the application of the Brooks A/E law to the services of surveying and mapping firms and other appropriate services for all Federal agencies.

Mr. TORRES. Mr. Speaker, I am pleased to rise in strong support of this important legislation. A little over 18 months ago, I joined my colleagues on the House Small Business Committee in developing legislation to strengthen and reform the Capital Ownership Development Program—commonly known as the 8(a) program. While much of the impetus for this legislation resulted from a few isolated but highly publicized scandals in the program, the need to address programmatic deficiencies and reaffirm business development objectives was equally, if not more compelling. The bill before us today represents a reasonable and balanced approach to achieving these objectives.

Achieving this compromise was not an easy task. The balance required to prevent future abuses without unintentionally penalizing the program's participants or restricting business development is a delicate one. I am not completely comfortable with each and every provision in this bill. But I firmly believe that the overall package will help prevent future abuses in the program and enhance minority businesses development.

The legislation extends program participation to 9 years, allowing firms more time to develop and grow. It streamlines the certification process to reduce the time it takes a firm to enter the program. And it revises the process by which fair market price [FMP] is determined to provide firms with an accurate assessment of the marketplace during contract negotiations. The bill also enhances subcontracting opportunities for small and minority businesses by strengthening compliance with current Federal subcontracting requirements.

As a Member of Congress who represents a large Hispanic business community, I brought a somewhat different perspective to the process. I felt it important to introduce this perspective during our deliberations. I want to commend Chairman JOHN LAFALCE and my colleagues for their courtesy and willingness to consider my views. As a result, the conference agreement incorporates some of my ideas and addresses many of my concerns.

I also want to thank the House and Senate Committee staffs for their assistance on this legislation. I particularly want to commend Tom Trimboli and Bill Montalto for their tireless efforts in drafting the bill and for their keen insight into the Federal procurement process. Finally, I want to thank Albert Jacquez for his valuable assistance to me throughout the legislative process.

COMPETITIVE THRESHOLDS

One of the major issues addressed by the legislation involves the use of competition as a business development tool. The bill requires 8(a) contracts above $5 million for manufacturing and $3 million for all other contracts to be competed among other program participants. Program participants may continue to negotiate sole-source contracts for procurement requirements priced below the threshold levels. To ensure that the competition above the threshold levels does not hinder business development or result in the loss of procurement contracts set aside for the program, the bill mandates an expedited competition process. In addition, the SBA is instructed to include criteria, in addition to price, as factors in determining competitive contract awards. Contracts that are in the latter stages of negotiation would be exempt from the competition requirements. A Blue Ribbon Commission is also created to closely monitor and report to Congress on the effects of such competition.

BUSINESS MIX

A Senate survey of 8(a) graduates found that extreme reliance on negotiated sole-source contracts by program participants may have hindered their success after graduation. To address this problem, the Senate initially proposed that program participants be required to meet rigid business targets for competitive contract awards. However, it was determined that inflexible business targets would hinder business development and stunt growth. Therefore, the legislation provides a clear yet flexible policy to encourage program diversification. It directs the SBA to establish a fair and equitable system of targets for business outside of the program which are reasonably achievable.

ECONOMIC DISADVANTAGE

Another important provision of the legislation seeks to clarify the eligibility criteria for program participation. The bill directs the SBA to establish a threshold of personal net worth below which a program applicant is presumed to be eligible for participation. The threshold only applies to program admission and will not be used to determine subsequent participation.

The SBA recently proposed a threshold of personal net worth that included the value of an applicant's business assets and primary personal residence. Because of the varying cost of housing and different capital needs inherent in business, application of the SBA's standards would result in injustice. Therefore, the legislation prohibits the inclusion of these assets in any determination of personal net worth, except in clear cases of mismanagement or abuse.

TRANSITION

While the legislation primarily focuses on the development of current and future program participants, the need to provide a reasonable transition for those firms about to exit the program is also recognized. The bill provides an additional 18 months of program participation to firms that would not otherwise benefit from the grandfather provisions of the legislation. Such a transition will help mitigate against the possible failure of these firms by allowing them to benefit from the improvements in the program. It will also provide them with the time necessary to develop the competitive viability that the program was intended to achieve.

LIQUIDATED DAMAGES

The legislation includes a provision I authored to enhance compliance with current Federal subcontracting requirements, thereby increasing small and minority business participation in Federal procurement. Under current law, prime contractors are required to submit subcontracting plans for certain large contracts. If the prime contractor does not comply with the subcontracting plans, Federal procurement policy allows the Government to terminate the contract, negotiate a reduction in the price of the contract or require a revision in the contract. However, Government efforts to monitor these requirements have been sporadic and enforcement of subcontracting goals almost nonexistent.

The bill provides for penalties against prime contractors that fail in good faith to comply with the subcontracting plans which are required under current law. These penalties, or liquidated damages, would be decided upon between the Federal buying agency and the prime contractor prior to the execution of the contract.

In determining whether breaches have been made in bad faith, the administration should evaluate whether the contractor has made reasonable efforts to carry out the representations made in the approved subcontracting plan. Failure to comply due to occurrences beyond the contractor's control does not constitute bad faith.

The amount of the penalty assessed should be based upon the administrative or other expenses incurred by the Government in an attempt to secure compliance with the plan. The penalty should also reflect the amount by which the contractor failed to meet its goal. In determining the damages to be assessed for noncompliance in commercial contracts, the penalty should reflect the share of the contractor's total sales to the Government during the period covered by the plan.

Subcontracting goals should be tailored to the individual contract and the maximum amount of available subcontracting opportunities. These goals should not be established on an agency-wide goal. However, goals which are substantially less than the goals established in prior plans submitted for similar requirements should not be accepted by an agency. The legislation is intended to ensure that the prime contractor does not establish unrealistically low goals.

SMALL AND DISADVANTAGED BUSINESS UTILIZATION

The legislation allows Small and Disadvantaged Business Utilization [SADBU] officers to make recommendations to contracting officers regarding contract decisions. Contracting officers are required to document any failure to accept such recommendation. The bill requires the Department of Defense SADBU to report directly to the Secretary of Defense or a designee of the Secretary. However, given the DOD's dismal record in meeting small disadvantaged business participation goals, and the newly mandated subcontracting requirements, it is strongly recommended that the Secretary not delegate the responsibility to a lower level of authority.

In conclusion, I believe that the legislation before us today is a reasonable and balanced measure. It will help prevent abuses in the program and foster increased business development. I strongly urge my colleagues to support this legislation.

Mr. KLECZKA. Mr. Speaker, I rise in support of the conference report on H.R. 1807 as a conferee from the Government Operations Committee on titles VI and VII of the bill.

Title VII of this legislation, known as the Small Business Competitiveness Demonstration Program, resolves a longstanding problem in certain industries—architecture, engineering, surveying and mapping, construction, including dredging, ship repair, refuse collection, and textiles—which have high size standards and an overwhelming number of small businesses, and a high rate of set-asides.

This title also addresses a related problem: industries which have numerous small businesses, but very few set-asides and very low rates of small business participation.

When the Government has too many set-asides in industries that do not need them, and not enough set-asides in other industries that need the assistance of this special tool, the program is obviously failing to achieve a proper balance.

Title VII provides this balance. It sets a goal of 40 percent small business participation in the above-mentioned industries. If this goal is not met in free and fair competition, then set-asides may be reimposed until the 40 percent participation level is reached.

Serving on the Government Operations Committee, I am well aware of our overall responsibility for all Federal procurement policy. With this responsibility in mind, we must seek a balance between our desire to see small business gain an enhanced share of Federal contracts and the need to make sure that Federal contracts are being distributed efficiently and cost effectively through as high a level of competition as possible.

The success of this demonstration program depends on its administrative workability so that it can be determined whether the expanded use of full and open competition adversely affects the ability of small businesses to successfully win contracts in certain industry categories. Measuring the dollar value of contracts awarded to small business in each industry in each category will enable the Congress to know just how competitive small business can be.

I might also add that there are several respected Wisconsin firms which have previously done quality work for the Federal Government that have recently been adversely impacted by the current system. Our work on title VII of H.R. 1807 will help keep these fine firms in the Federal market.

Mr. Speaker, I support this conference report which arrived at a good, workable solution to a very difficult problem, and urge all my colleagues in the House of Representatives to do likewise.

Mr. KLECZKA. Mr. Speaker, this body has recently considered and approved H.R. 1807, the Business Opportunity Development Reform Act of 1988. This piece of legislation is so critical for virtually every small business in this country that I would like to add additional information to my previous statement on this issue. The changes made by this legislation will help ensure that small business concerns are provided the opportunity to compete in today's Federal marketplace.

Included in title VII of H.R. 1807 is the Small Business Competitiveness Demonstration Program Act of 1988. This section is the result of sustained efforts by several Members of this body who deserve special recognition. These Members are my distinguished Chairman Jack Brooks of the House Committee on Government Operations, Chairman John LaFalce of the House Committee on Small Business, and Chairman Les Aspin of the House Committee on Armed Services. These chairmen with their fellow House conferees, including myself, have spent countless hours in trying to arrive at a Demonstration Program that will help put an end to problems that have developed in the small business set aside program.

The demonstration program is the product of efforts that began almost 2 years ago when Chairman Aspin, working with then-Chairman Mitchell of the House Small Business Committee, developed amendments to the Small Business Act enacted in section 921 of Public Law 99-591 and 99-661. These amendments had the very same purposes as the new Demonstration Program: first, to ensure that small business receives a fair proportion of Government contracts in each industry category; and second, to ensure that a sufficient number of contracting opportunities will be available to firms of all sizes.

The focus of this 2-year effort has been on industry categories that have a preponderance of both small business competitors and set aside contracts. Accordingly, the industry categories targetted for review are: construction; architecture and engineering—including surveying and mapping—and refuse. In each of these categories, small businesses represent the vast majority of the competitors for Government contracts, and the vast majority of the contracts have been set aside for the small firms. In fact, the procuring agencies have always loaded up these industry categories with set asides. They have done so to meet overall small business goals without having to look for small business contract opportunities in other industry categories. To confront this problem, section 921 and now the Demonstration Program were designed to limit set asides based on evidence that small businesses in these industries will receive a fair proportion of Government contracts without set aside assistance. Further, with more contracts awarded on an unrestricted basis, there will be sufficient work available to firms of all sizes.

Anyone familiar with the history of these efforts also knows how reluctant some Federal agencies have been to fulfill the clearly stated purposes of these congressional initiatives. For example, in two of the three industries targetted for attention in section 921, surveying and mapping, and refuse, the SBA failed to include in its review an entire segment of contracts in each of these industry categories. I am concerned that the very same problems of statutory interpretation, data gathering and data interpretation that plagued the section 921 review also will hinder proper implementation of the Demonstration Program.

It is my understanding that the new Demonstration Program requires contracting agencies to meet a 40-percent small business participation goal in each of the four designated industry groups. Based on the guidance we provide in this legislation, the agencies will have to identify the appropriate contracts to count toward the goal for each of the industry groups. Section 717(b) through (d) of the legislation lists certain standard industrial classification [SIC] codes to help identify the contracts to be included in the test for each designated industry. In addition, section 717(e) permits the agencies to use, as alternative data, the pertinent Federal Product and Service Code [PSC] as a way to identify appropriate contracts to count toward the goals.

Use of this alternative PSC data will be essential in industry categories, such as refuse, in which the assigned SIC codes do not conform precisely to the industry category defined in section 717(c). To ensure that the agencies count the proper contracts toward the goals for the industry category of refuse, the contracts intended to be included in the demonstration program are contracts for refuse systems and related services contracts assigned either to "SIC Code 4953, Refuse Systems" or "SIC Code 4212, Local Trucking Without Storage," and also assigned to "Product and Service Code S205, Garbage Collection." Contracts that are identified by SIC Code 4212 or 4953 that either do not involve refuse collection and disposal, or involve activities not normally engaged in by the typical refuse collection firm—such as hazardous waste disposal contracts classified under Product Service Code S221—are not, and never were, intended to be included in the Demonstration Program.

With this guidance, it will be the responsibility of the participating agencies to ensure that the appropriate contracts are counted toward the applicable small business participation goals. Otherwise the data and results will be distorted and the test's purposes frustrated.

The results of this Demonstration Program could lead to fundamental and beneficial changes in the way Government agencies contract with small businesses to meet program needs. Properly implemented, this program will ensure that small businesses in the designated industries receive their fair share of Government contracts, while firms of all sizes may also participate in Government contracting in these same, as well as other, industries.

I am pleased to have been able to support this effort.

Mr. ASPIN. Mr. Speaker, with the final enactment of H.R. 1807, the Business Opportunity Development Reform Act of 1988, we will have taken a significant step in developing new and better methods for helping small businesses compete in today's Federal marketplace. In particular, title VII of this legislation, known as the Small Business Competitiveness Demonstration Program, represents a major step forward in determining how best to strike a balance between our policies of encouraging small business participation and promoting full and open competition in Federal procurement.

Those of my colleagues familiar with the recent history of changes in the small business set-aside programs are well aware of both the importance of these changes and the considerable amount of debate they have generated. These changes will have a particularly significant impact on the Department of Defense as the single largest user of small businesses and small business programs. Therefore, as chairman of the House Armed Services Committee, I have participated actively in these discussions and helped formulate the several iterations of the legislation that now have been considered by the various committees of Congress.

I would like to emphasize that this process is not yet complete. The demonstration program represents our best efforts to date to establish a baseline from which Congress can revisit this issue, in 4 years time, to make broader reaching corrections if necessary. The results of the demonstration program should help us assess the effect of cutting back on set-asides in certain industry categories while increasing their use in other industry categories. The demonstration program will be only as useful as the data collected and reported, however. Therefore, I thought it important to set out what efforts we have made to date to provide needed agency guidance in this area.

HISTORICAL PERSPECTIVE

The small business set-aside programs are based on congressional policy that dates back to the time of the original enactment of the Armed Services Procurement Act of 1947. That act provided that small business concerns were to receive a "fair proportion" of defense-related Government contracts and purchases. Set-aside contracts were to be part of an overall congressional effort to offer assistance to small business concerns unable to compete effectively in the Federal marketplace.

In 1953, Congress enacted the Small Business Act providing assistance to small business concerns in obtaining Government contracts where it would "be in the interest of mobilizing the Nation's full productive capacity, or * * * be in the interest of war or national defense programs." Small Business Act of 1953, section 214, 67 Stat. 238 (1953). The legislative history of the 1953 Act indicated that mobilization and defense contracts were to be "earmarked in whole or in part for exclusive award to small-business concerns." House Report No. 494, 83d Congress 1st session, reprinted in [1953] U.S. Code & Ad. News 2020, 2027.

When Congress amended in the act in 1958, at the suggestion of the General Services Administration, the scope of the set-aside program was expanded to allow a fair proportion of all Government contracts to be awarded to small business concerns. This authorized use of the set-aside program on a peacetime basis, without regard to any relationship to the maintenance of full productive capacity or to war or civil defense programs. Senate Report No. 1714, 85th Congress, 2d session, reprinted in [1958] U.S. Code & Ad. News 3071, 3080.

In their efforts to meet these yearly small business contracting goals, agency officials have tended to load a few industry categories with high percentages of set-aside contracts rather than spread set-asides more evenly throughout all industries. Thus, an agency could report to Congress that it had met its overall small business contracting goals, and avoid any extra effort to ensure that small business concerns in all industry categories were receiving a fair share of Federal contracts.

Throughout the early 1980's, the Congress heard repeated complaints from industry groups burdened by disproportionately high percentages of set-aside contracts. The House Committees on Small Business and Armed Services began to investigate the agencies' loading practices. For example, according to fiscal year 1986 data, in 46 of the 645 product and service code categories with more than 25 contract actions, 70 percent of the total procurement dollars was set aside. By contrast, in 279 of those categories less than 10 percent of the total contract dollars was set aside.

It also became clear, that loading does create problems and produces undesirable results that are contrary to the basic policy goals of the set-aside program. Furthermore, the Small Business Administration's size standards in certain industry categories appeared to be artifically high in an effort to achieve small business contracting goals.

In response, the Armed Services and Small Business Committees developed amendments to the Small Business Act which ultimately were enacted in section 921 of Public Laws

99-591 and 99-661. In the accompanying committee report, we listed the undesirable conditions that result from loading of set-asides in just a few industries:

> 1. Small businesses (below the SBA size standard) have a disincentive to achieve economics of scale, or to make the capital investment needed to grow and modernize plant and equipment. In such a market, a decision to grow past the size standard is, in effect, a decision to abandon the Federal market since there are relatively few contracts open to unrestricted competition;
>
> 2. Businesses above the size standard are precluded from the Federal market regardless of price competitiveness or technical capability;
>
> 3. The "smaller" small businesses, as well as new market entrants, are not afforded the benefits of set-asides since the "larger" small businesses can dominate the set-aside market. This is expecially true in those industrial areas that have relatively high entrance barriers, and results in denying the Government an intended benefit of the set-aside program—the encouragement of new market entrants.
>
> 4. Small businesses in such market have a de facto incentive to "game" size standards by spinning off affiliated firms and engaging in other practices commonly characterized as "fronting or brokering". Unfortunately, the fact that there is no market beyond set-asides encourages such unscrupulous practices. H. Rep. 99-718, 99th Cong. 2d Sess. 256, 257 (1986).

The 1987 amendments changed the set-aside program in several significant ways. First, they established the clear statutory policy that small business concerns should receive a fair proportion of contracts in each industry category, defined with reference to the standard industrial classification [SIC] codes developed by the Office of Management and Budget. Second, the amendments directed SBA to review the level of set-asides in four categories: construction; architectural and engineering services, including surveying and mapping services; shipbuilding and ship repair; and refuse systems and related services. Based on that review, the SBA was to lower the size standard in any such industry in which more than 30 percent of the total contract dollars was awarded through set-aside contracts. The size standard was to be set at a level such that no more than 30 percent of the total dollars in an industry category would be set aside. The intended result was that a significant portion of the contract opportunities would be awarded on an unrestricted basis. This would enable firms of all sizes to compete. It also was intended to incentivize the smaller firms to grow into effective competitors in the open market.

Prior to the effective date of these changes, SBA was required to study and report to Congress on the advisability and feasibility of implementing the 1987 amendments. On July 14, 1987, SBA reported that it found nearly all the amendments advisable and feasible. As to size standards, however, SBA was uncertain as to whether the method Congress selected to revise size standards would, in fact, reduce the level of set-aside contracts in the affected industries. Part of the SBA's concern was based on difficulties if encountered in using a SIC code standard to generate contract award information. SBA suggested, instead, that data based on product and service codes be used, or a cap be placed on set-aside awards on a government-wide or agency-wide basis.

A special problem arose with SBA's analysis of the industry designated in section 921 as "Refuse Systems and Related Services." During its review, SBA decided that the statutory term "Refuse Systems and Related Services" referred only to the SIC code 4953 entitled "Refuse Systems." SBA failed to acknowledge two important facts. First, the SIC code definiton of services classified under SIC code 4953, at the time section 921 was established, did not include "hazardous waste material disposal sites." Therefore, such contracts should not be included in any test designed to analyze contracting data for traditional refuse and garbage collection activities. Second, companies classified as SIC code 4953 companies are generally larger with the resources necessary to engage in both the collection of refuse and the actual operation of disposal sites. It is the smaller companies, which generally only collect refuse and deposit it at disposal sites operated by others, that are classified under SIC code 4212, local trucking without storage. To honor the congressional intent to study those industry categories in which set-aside awards predominate, it was incumbent on SBA to analyze the refuse industry by looking at refuse contracts assigned to either SIC 4953 or 4212.

SBA did not attempt to identify any contracts within SIC code 4212 that would be included in the segment "and related services" of the designated industry category of "refuse systems and related services." SBA clearly should have done so because its own size standard regulations interrelate the two SIC codes. The prefatory language to SIC code 4953 states in relevant part that "[e]stablishments primarily engaged in collecting and transporting refuse without disposal are classified in Industry code 4212." The SBA regulations also include a footnote to SIC code 4953 stating, "'Garbage and Refuse, Collecting and Transportation: Without Disposal,' a component of SIC-4212, has the same size standard as SIC-4953."

To clarify which types of refuse contracts Congress intended SBA to review, the following statement was included in the conference report accompanying the Defense Authorization Act for fiscal year 1988, Public Law 100-180:

> . . . the conferees recognize that agencies report contract awards using the product and service codes of the Federal Procurement Data System (FPDS) rather than SIC codes. For purposes of meeting the Congressional mandate that a fair proportion of awards be made in each industry category, a reasonable correlation of FPDS [product] and service code to SIC code groupings is acceptable
>
> The importance of relating FPDS data to SIC codes was clearly demonstrated when SBA analyzed the procurement set-aside data pertaining to the industry category of "refuse systems and related services" for the purpose of lowering the size standard in accordance with the requirements of section 921(f). SBA focused its attention on the set-aside procurement activity under one code, SIC 4953 (Refuse Systems), and ignored the substantial procurement activity in this industry category set-aside under SIC 4212 (Local Trucking with Storage). Had SBA reviewed the FPDS product service code S205 (Garbage Collection Services), a set-aside rate of 73 percent would have been established as opposed to the 22.4 percent figure reached by reviewing only SIC 4953. In the opinion of the conferees, corrective action appears warranted and should be reflected in the proposed SBA regulations implementing Section 921.

In accordance with this guidance, SBA subsequently issued proposed regulations on August 15, 1988, based on data for refuse and garbage collection contract activities as reported for firms in either SIC code 4953 or 4212. It segmented the contracts for refuse and garbage collection services—whether assigned to SIC code 4953 or 4212—from contracts for what SBA termed the "residual activities" in both SIC codes. SBA then analyzed the refuse and garbage collection contracts and found high percentages of small business concerns competing for such contracts and a high percentage of those awards based on restricted competition.

DEMONSTRATION PROGRAM

After additional hearings were held by both the House and Senate, it became clear that Congress should develop a new approach to small business contracting in the industries previously targeted for review. Thus, the demonstration program was designed to increase the number of contracting opportunities available in open competition. This would be done—not by reducing size standards—but by using set-aside procedures only when small businesses were not receiving a fair proportion of the total contracts awarded in each industry category.

This demonstration program effectively replaces portions of the section 921 amendments to the Small Business Act that were never implemented. It is my hope that SBA and the participating Federal agencies will properly interpret and implement the demonstration provisions. Their tasks will be considerably easier if they keep in mind the basic goals and purposes that Congress is trying to achieve. The Congress is expecting to see major changes in contracing practices. We will not be satisfied with results that reflect merely recordkeeping changes or administrative reshuffling.

For example, the demonstration program permits the participating agencies to report contract awards either by SIC codes or by PSC code. This is to eliminate doubt whenever the SIC code categories identified in section 717 of the Program do not correlate exactly to the types of services defined by each designated industry title. The designated industry category of "refuse systems and related services" is a case in point.

Section 717(c) defines this category as including "contract awards assigned to standard industrial classification codes 4212 or 4953." This does not mean, however, that all contracts identified by SIC code 4212 or 4953 are necessarily to be counted toward the small business participation goals fo the industry category of "refuse systems and related services." As set forth in the joint explanatory statement of the managers of the conference report on title VII of H.R. 1807:

The conference agreement provides that the industry group designated 'Refuse systems and related services' shall include certain contract awards assigned to SIC Codes 4212 and 4953. The conferees intend the Demonstration Program to test small firms' competitiveness generally in government procurements for the collection, transportation, and disposal of residential and nonhazardous commercial garbage, refuse and waste materials that do not require the operation of the disposal facility by the contractor, and for the transportation only of refuse or waste material. Examples of the type of contracts to be included in the demonstration program are the regular collection and disposal at a publicly or privately operated landfill of residential and nonhazardous commercial solid waste material, garbage, debris, or other refuse from military installations, federal office buildings, and other federal facilities and operations and garbage processing and recycling activities. Examples of the type of contract activities not intended to be included in the Demonstration Program are contracts for the operation of dumps, landfills, sludge disposal sites, sea disposal operations, incinerators, the collection and disposal of acid, radioactive, or other hazardous waste materials. For this latter class of contract opportunities, the participating agencies are encouraged to promote joint ventures, teaming agreements and other similar arrangements to permit small business concerns to compete effectively for such contract opportunities for which such concerns by themselves would lack the requisite capacity or capability to establish responsibility for award of the contract.

In other words, contracts assigned to SIC code 4212 that are for trucking or transfer of other than refuse materials—for example, transfer of baggage, farm produce, furniture, live animals, logs, mail, et cetera—are to be excluded. Similarly, contracts assigned to SIC code 4953 for the turnkey disposal of hazardous waste materials were never intended to be and should not be counted.

I am satisfied that, if implemented properly, the demonstration program will provide Congress with the data necessary to determine if further statutory changes in the basic set-aside programs are necessary. Full cooperation of the participating agencies will help accomplish these ambitious objectives.

Mr. LaFALCE. Mr. Speaker, I yield back the balance of my time.

Mr. McDADE. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from New York [Mr. LaFALCE] that the House suspend the rules and agree to the conference report on the bill, H.R. 1807.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the conference report was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. LaFALCE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous matter, on the conference report just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair would like to make the announcement that an additional five suspensions have been added to the list for the day. The following bills have been added to the list: S. 136, and the conference report, H.R. 3621.

The House will also consider motions to concur in Senate amendments to H.R. 4182, H.R. 3408, and H.R. 5102.

The Chair would point out that the list just mentioned is in the two cloakrooms.

WOMEN'S BUSINESS OWNERSHIP ACT OF 1988

Mr. LaFALCE. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 5050) to amend the Small Business Act to establish programs and initiate efforts to assist the development of small business concerns owned and controlled by women, and for other purposes.

The Clerk read as follows:

Senate amendment: Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act, together with the following table of contents, may be cited as the "Women's Business Ownership Act of 1988".

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TITLE I—CONGRESSIONAL FINDINGS AND PURPOSES

SEC. 101. FINDINGS AND PURPOSES.

Section 2 of the Small Business Act (15 U.S.C. 631) is amended by adding at the end thereof the following new subsection:

"(h)(1) With respect to the programs and activities authorized by this Act, the Congress finds that—

"(A) women owned business has become a major contributor to the American economy by providing goods and services, revenues, and jobs;

"(B) over the past two decades there have been substantial gains in the social and economic status of women as they have sought economic equality and independence;

"(C) despite such progress, women, as a group, are subjected to discrimination in entrepreneurial endeavors due to their gender;

"(D) such discrimination takes many overt and subtle forms adversely impacting the ability to raise or secure capital, to acquire managerial talents, and to capture market opportunities;

"(E) it is in the national interest to expeditiously remove discriminatory barriers to the creation and development of small business concerns owned and controlled by women;

"(F) the removal of such barriers is essential to provide a fair opportunity for full participation in the free enterprise system by women and to further increase the economic vitality of the Nation;

"(G) increased numbers of small business concerns owned and controlled by women will directly benefit the United States Government by expanding the potential number of suppliers of goods and services to the Government; and

"(H) programs and activities designed to assist small business concerns owned and controlled by women must be implemented in such a way as to remove such discriminatory barriers while not adversely affecting the rights of socially and economically disadvantaged individuals.

"(2) It is, therefore, the purpose of those programs and activities conducted under the authority of this Act that assist women entrepreneurs to—

"(A) vigorously promote the legitimate interests of small business concerns owned and controlled by women;

"(B) remove, insofar as possible, the discriminatory barriers that are encountered by women in accessing capital and other factors of production; and

"(C) require that the Government engage in a systematic and sustained effort to identify, define and analyze those discriminatory barriers facing women and that such effort directly involve the participation of women business owners in the public/private sector partnership.".

TITLE II—DEMONSTRATION PROJECTS

SEC. 201. ESTABLISHMENT.

Subsection (c) of section 8 of the Small Business Act (15 U.S.C. 637(c)) is amended to read as follows:

"(c)(1) Subject to the requirements of paragraph (2), the Administration shall provide financial assistance to private organizations to conduct demonstration projects for the benefit of small business concerns owned and controlled by women.

"(2) No amount of financial assistance shall be provided pursuant to this subsection unless the recipient organization agrees, as a condition of receiving such assistance, that—

"(A) it will obtain, after its application has been approved but prior to the disbursement of funds pursuant to this subsection, cash contributions from private sector sources in an amount at least equal to the amount of funds such organization will receive under this subsection; and

"(B) it will provide the types of services and assistance to present and potential women owners of small business concerns as are described in paragraph (3). For the purposes of this subsection such concerns may be either 'start-up' businesses or established 'on-going' concerns.

"(3) The types of services and assistance referred to in paragraph (2)(B) shall include the following:

"(A) Financial assistance, which assistance shall include training and counseling in how to apply for and secure business credit and investment capital; prepare and present financial statements; manage cashflow and otherwise manage the financial operations of a business concern.

"(B) Management assistance, which assistance shall include training and counseling in how to plan, organize, staff, direct, and control each major activity and function of a small business concern; and

"(C) Marketing assistance, which assistance shall include training and counseling in how to identify and segment domestic and international market opportunities; prepare and execute marketing plans; develop pricing strategies; locate contract opportunities; negotiate contracts; and utilize varying public relations and advertising techniques.

"(4) Applications for financial assistance pursuant to this subsection shall be evaluated and ranked in accordance with predetermined selection criteria that shall be stated in terms of relative importance. Such criteria and their relative importance shall be made publicly available and stated in each solicitation for applications made by the Administration. Such criteria shall include—

"(A) a criterion that specifically refers to the experience of the offering organization in conducting programs or on-going efforts designed to impart or upgrade the business skills of women business owners or potential owners;

"(B) a criterion that specifically refers to the present ability of the offering organization to commence a demonstration project within a minimum amount of time; and

"(C) a criterion that specifically refers to the ability of the applicant organization to provide training and services to a representative number of women who are both socially and economically disadvantaged.

"(5) The financial assistance authorized pursuant to this subsection shall be made by grant, contract, or cooperative agreement and may contain such provision, as necessary, to provide for payments in lump sum or installments, and in advance or by way of reimbursement.

"(6)(A) The Administration shall prepare and transmit a report to the Committees on Small Business of the Senate and House of Representatives on the effectiveness of all demonstration projects conducted under the authority of this subsection. Such report shall provide information concerning—

"(i) the number of individuals receiving assistance;

"(ii) the number of start-up business concerns formed;

"(iii) the gross receipts of assisted concerns;

"(iv) increases or decreases in profits of assisted concerns; and

"(v) the employment increases or decreases of assisted concerns.

"(B) The report required pursuant to subparagraph (A) shall cover at least a twenty-four-month period and shall be submitted not later than thirty months after the effective date of this paragraph.

"(7) This subsection shall cease to be effective after September 30, 1991.".

SEC. 202. TECHNICAL.

Subsection (b) of section 8 of the Small Business Act (15 U.S.C. 637(b)) is amended by—

(1) striking out "and" at the end of paragraph (14);

(2) striking out "public." at the end of paragraph (15) and inserting in lieu thereof "public; and" and

(3) by adding the following new paragraph:

"(16) to make studies of matters materially affecting the competitive strength of small business, and of the effect on small business of Federal laws, programs, and regulations, and to make recommendations to the appropriate Federal agency or agencies for the adjustment of such programs and regulations to the needs of small business.".

SEC. 203. AUTHORIZATION.

There is authorized to be appropriated $10,000,000 to carry out the demonstration projects required pursuant to section 201. The initial projects authorized to be financed by this title shall be funded by January 31, 1989. Notwithstanding any other provision of law, the Small Business Administration may use such expedited acquisition methods as it deems appropriate to achieve the purposes of this section, except that it shall ensure that all eligible sources are provided a reasonable opportunity to submit proposals.

SEC. 204. DEFINITION.

For the purposes of this title, the term "small business concern owned and controlled by women" means any small business concern—

(1) that is at least 51 per centum owned by one or more women; and

(2) whose management and daily business operations are controlled by one or more of such women.

TITLE III—ACCESS TO CAPITAL

SEC. 301. AMENDMENTS TO THE CONSUMER CREDIT PROTECTION ACT.

Subsection (a) of section 703 of the Consumer Credit Protection Act (15 U.S.C. 1691b(a)) is amended to read as follows:

"(a)(1) The Board shall prescribe regulations to carry out the purposes of this title. These regulations may contain but are not limited to such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith.

"(2) Such regulations may exempt from the provisions of this title any class of transactions that are not primarily for personal, family, or household purposes, or business or commercial loans made available by a financial institution, except that a particular type within a class of such transactions may be exempted if the Board determines, after making an express finding that the application of this title or of any provision of this title of such transaction would not contribute substantially to effecting the purposes of this title.

"(3) An exemption granted pursuant to paragraph (2) shall be for no longer than five years and shall be extended only if the Board makes a subsequent determination, in the manner described by such paragraph, that such exemption remains appropriate.

"(4) Pursuant to Board regulations, entities making business or commercial loans shall maintain such records or other data relating to such loans as may be necessary to evidence compliance with this subsection or enforce any action pursuant to the authority of this Act. In no event shall such records or data be maintained for a period of less than one year. The Board shall promulgate regulations to implement this paragraph in the manner prescribed by chapter 5 of title 5, United States Code.

"(5) The Board shall provide in regulations that an applicant for a business or commercial loan shall be provided a written notice of such applicant's right to receive a written statement of the reasons for the denial of such loan.".

SEC. 302. FORM SIMPLIFICATION AND PREFERRED FINANCING.

(a) CERTIFIED LOAN PROGRAM.—Section 7 of the Small Business Act (15 U.S.C. 636) is amended by adding to subsection (a) the following new paragraph:

"(19) During fiscal years 1989, 1990, and 1991, in addition to the preferred lenders program authorized by the proviso in section 5(b)(7), the Administration is authorized to establish a certified loan program for lenders who establish their knowledge of Administration laws and regulations concerning the loan guarantee program and their proficiency in program requirements. In order to encourage certified lenders and preferred lenders to provide loans of $50,000 or less in guarantees to eligible small business loan applicants, the Administration (A) shall develop and shall allow participating lenders in the certified loan program and in the preferred loan program to solely utilize a uniform and simplified loan form for such loans and (B) shall allow such lenders to retain one-half of the fee collected pursuant to section 7(a)(16) on such loans: Provided, That a participating lender may not retain any fee pursuant to this paragraph if the amount committed and outstanding to the applicant would exceed $50,000 unless such excess amount was not approved under the provisions of this paragraph. The designation of a lender as a certified lender shall be suspended or revoked at any time that the Administration determines that the lender is not adhering to its rules and regulations or if the Administration determines that the loss experience of the lender is excessive as compared to other lenders: Provided further, That any suspension or revocation of the designation shall not affect any outstanding guarantee: And, provided further, That the Administration may not reduce the per centum of guarantee as a criterion of eligibility for participation in this program, except as otherwise provided by law.".

(b) REPORTS.—The Administration shall take appropriate steps to expand participation in the certified loan program and shall report to the Small Business Committees of the Senate and the House of Representatives on the amount of loans approved and the amount of losses sustained under the provisions of section 7(a)(19) of the Small Business Act. An interim report shall be submitted not later than one year after date of enactment of this Act and a final report shall be submitted not later than 18 months after the date of enactment.

TITLE IV—NATIONAL WOMEN'S BUSINESS COUNCIL

SEC. 401. ESTABLISHMENT.

There is established a Council to be known as the "National Women's Business Council" (hereinafter in this title referred to as the Council).

SEC. 402. DUTIES OF THE COUNCIL.

(a) The Council shall review—

(1) the status of women owned business nationwide, including progress made and barriers that remain in order to assist such businesses to enter the mainstream of the American economy;

(2) the role of the Federal Government and State and local governments in assisting and promoting aid to, and the promotion of, women owned business;

(3) data collection procedures and the availability of data relating to (A) women owned businesses; (B) women owned small business, and (C) small business owned and controlled by socially and economically disadvantaged women; and

(4) such other government initiatives as may exist relating to women owned business including, but not limited to, those relating to Federal procurements.

(b) Based upon its review, the Council shall, by December 31, 1989, and every twelve months thereafter, recommend to the Congress and the President—

(1) new private sector initiatives that would provide management and technical assistance to women owned small business;

(2) ways to promote greater access to public and private sector financing and procurement opportunities for such businesses; and

(3) detailed multiyear plans of action, with specific goals and timetables, for both public and private sector actions needed to overcome discriminatory barriers to full participation in the economic mainstream.

(c) For the purposes of this title the term "small business concern owned and controlled by women" shall have the same meaning as that term is given in section 204 of this Act.

SEC. 403. MEMBERSHIP.

(a) The Council shall be composed of nine members to be selected as follows:

(1) the Administrator of the Small Business Administration, the Secretary of Commerce (or such Secretary's deputy) and the Chairman of the Federal Reserve Board (or such Chairman's designee, who shall be a member of the Board);

(2) two members shall be appointed by the majority leader, and one member shall be appointed by the minority leader of the Senate.

(3) two members shall be appointed by the Speaker, and one member shall be appointed by the minority leader of the House of Representatives.

(b)(1) Appointments under section (a) (2) and (3) shall be made from individuals who are specially qualified to serve on the Council by virtue of their education, training, and experience and who are not officers or employees of the Federal Government nor of the Congress.

(2)(A) Of the individuals to be appointed under subsection (a) (2) and (3)—

(i) no more than two members to be appointed under each such paragraph of such subsection shall be of the same political party;

(ii) at least two members appointed under each such paragraph of such subsection shall be women; and

(iii) at least two members to be appointed under each such paragraph of such subsection shall be owners of small business concerns as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(B) Appointments made pursuant to subsection (a) (2) and (3) shall be made in the following sequence—

(i) appointments under (a)(2) shall be made within ninety days of the effective date of this title; and

(ii) appointments under (a)(3) shall be made within one hundred and twenty days of the effective date of this title.

(3) In making appointments under subsection (a), the appointing authorities shall give due consideration to achieving balanced geographical representation.

(C) Members appointed under subsection (a) (2) and (3) shall be appointed for a three-year term, except if any such appointee becomes an officer or employee of the Federal Government or of the Congress, such individual may continue as a member of the Council for not longer than the thirty-day period beginning on the date such individual becomes such an officer or employee.

(D) A vacancy on the Council shall be filled in the manner in which the original appointment was made.

(E) Members of the Council shall serve without pay for such membership, except members of the Council shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions of the Council, in the same manner as persons employed intermittently in the Federal Government are allowed expenses under section 5703 of title 5, United States Code.

(F)(1) Two members of the Council shall constitute a quorum for the receipt of testimony and other evidence.

(2) A majority of the Council shall constitute a quorum for the approval of a recommendation or report submitted pursuant to section 402 or section 406.

(G) The Chairperson and Vice Chairperson of the Council shall be designated by the President. The term of office of the Chairperson and Vice Chairperson shall be at the discretion of the President.

(H) The Council shall meet not less than four times a year. Meetings shall be at the call of the Chairperson.

SEC. 404. DIRECTOR AND STAFF OF THE COUNCIL.

(a)(1) The Council shall have a Director who shall be appointed by the Chairperson. Upon recommendation by the Director, the Chairperson may appoint and fix the pay of four additional personnel.

(2) The Director and staff of the Council may be appointed without regard to section 5311(b) of title 5, United States Code, and without regard to the provisions of such title governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

(b) The Council may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(c) Upon request of the Chairperson, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of such agency to the Council to assist the Council in carrying out its duties under this title without regard to section 3341 of title 5 of the United States Code.

SEC. 405. POWERS OF THE COUNCIL.

(a) The Council may, for the purpose of carrying out this title sit and act at such times and places, hold such hearings, take such testimony, receive such evidence, and consider such information, as the Council considers appropriate. The Council may administer oaths or affirmations for the receipt of such testimony.

(b) Any member or person within the employ of the Council may, if so authorized by the Council, take any action which the Council is authorized to take by this section.

(c) Except as otherwise prohibited by law, the Council may secure directly from any department or agency of the United States information necessary to enable it to carry out its duties under this Act. Upon the request of the Chairperson of the Council, the head of such department or agency shall promptly furnish such information to the Council.

(d) The Council may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

(e) The Administrator of the General Services Administration shall provide to the Council, on a reimbursable basis, such administrative support services as the Council may request. In addition, the Administrator shall, as appropriate, provide to the Council, upon its request, access to and use of such Federal facilities as may be necessary for the conduct of its business.

SEC. 406. REPORTS.

The Council shall transmit to the President and to each House of the Congress a report no less than once in every twelve-month period. The first such report shall be submitted no later than December 31, 1989. Such reports shall contain a detailed statement on the activities of the Council, and the findings and conclusions of the Council, together with its recommendations for such legislation and administrative actions as it considers appropriate based upon its reviews conducted under section 402.

SEC. 407. AUTHORIZATION.

There are authorized to be appropriated such sums as may be necessary to carry out this title and they may remain available until expended. New spending authority or authority to enter into contracts as authorized in this Act shall be effective only to such extent and in such amounts as are provided in advance in appropriation Acts. This title shall cease to be effective five years after the date of enactment.

TITLE V—STATISTICAL DATA AND EFFECT ON OTHER PROGRAMS

SEC. 501. CENSUS DATA.

(a) BUREAU OF LABOR STATISTICS.—The Bureau of Labor Statistics of the Department of Labor shall include in any census report it may prepare on women owned business data on—

(1) sole proprietorships;

(2) partnerships; and

(3) corporations.

(b) BUREAU OF THE CENSUS.—The Bureau of the Census of the Department of Commerce shall include in its Business Census for 1992 and each such succeeding census data on the number of corporations which are 51 per centum or more owned by women.

(c) COMBINED STUDY.—Not later than one hundred and eighty days after the effective date of this section, the Office of the Chief

Counsel for Advocacy of the Small Business Administration (hereinafter referred to in this subsection as the "Office") shall conduct a study and prepare a report recommending the most cost effective and accurate means to gather and present the data required to be collected pursuant to subsections (a) and (b). The Department of Commerce and the Department of Labor shall provide the Office such assistance and cooperation as may be necessary and appropriate to achieve the purposes of this subsection.

SEC. 502. PROCUREMENT DATA.

(a) REPORTING.—Each Federal agency shall report to the Office of Federal Procurement Policy the number of small businesses owned and controlled by women and the number of small business concerns owned and controlled by socially and economically disadvantaged businesses, by gender, that are first time recipients of contracts from such agency. The Office of Federal Procurement Policy shall take such actions as may be appropriate to ascertain for each fiscal year the number of such small businesses that have newly entered the Federal market.

(b) DEFINITIONS.—For purposes of this section the terms "small business concern owned and controlled by women" and "small business concerns owned and controlled by socially and economically disadvantaged individuals" shall be given the same meaning as those terms are given under section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and section 204 of this Act.

SEC. 503. STATE OF SMALL BUSINESS REPORT.

Section 303 of Public Law 96-302 (15 U.S.C. 631(b)) is amended by adding the following new subsection:

"(e) The information and data required to be reported pursuant to subsection (a) shall separately detail those portions of such information and data that are relevant to—

"(1) small business concerns owned and controlled by socially and economically disadvantaged individuals, by gender, as defined pursuant to section 8(d) of the Small Business Act; and

"(2) small business concerns owned and controlled by women.".

SEC. 504. DISADVANTAGED SMALL BUSINESSES.

Nothing contained in this Act is intended to reduce or limit any programs, benefit, or activity that is authorized by law to assist small business concerns owned and controlled by socially and economically disadvantaged individuals as defined pursuant to section 8(d)(3) of the Small Business Act (15 U.S.C. 637 (d)(3)).

The SPEAKER pro tempore. Is a second demanded?

Mr. McDADE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New York [Mr. LAFALCE] will be recognized for 20 minutes and the gentleman from Pennsylvania [Mr. McDADE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York [Mr. LAFALCE].

Mr. LAFALCE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, last week, H.R. 5050, the women's business ownership bill passed the House by a vote of 389 to 7. I am pleased to report that the Senate approved this legislation last night by unanimous consent with three minor changes.

The first change deletes a study concerning the availability of capital to the service sector of the American economy. The study would have been undertaken jointly by the Federal Reserve Board, the Comptroller of the Currency, the Department of Commerce, and the Small Business Administration. We have been informed that the Fed is currently in the process of a comprehensive study of small business capital needs which will provide much of the information covered by section 303 of the bill, and, therefore, we concur in its deletion.

Second, the Senate amendment would add a 5-year sunset provision to title IV, which establishes a Women's Business Council. I have no objection to this change. If important issues remain at the end of the 5-year period, the matter can be revisited and the Council reauthorized at that time.

Finally, the Senate amendment would make some technical changes to conform the language to the SBA reauthorization bill passed just a few days ago. The changes also would clarify the rulemaking procedures within the Fed in regard to the Equal Credit Opportunity Act of 1974, and the method of reporting the statistical data required by title V. These changes are acceptable to the Small Business Committee.

Mr. Speaker, it is not necessary that I express again my belief in the importance of this legislation. I have already stated those beliefs in my statement of October 3 when the House first considered H.R. 5050. But let me reemphasize the historic significance of this occasion. This legislation is the first congressional statement of the importance of women entrepreneurs and the first official recognition of the contribution women business owners are making and should continue to make to the economic future of our Nation. I am proud to have been a part of this effort.

I want to thank my colleagues in the House, and, in particular, I want to thank Senator BUMPERS for his efforts in the Senate. Without his support, today's victory would have been impossible.

Mr. Speaker, I urge the concurrence of the House in this amendment to H.R. 5050.

Mr. McDADE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I will be extremely brief. The chairman has very effectively explained the provisions of this bill. I believe it is a very important bill. I was pleased to be a cosponsor, and I urge its adoption by the House.

Mr. Speaker, I yield back the balance of my time.

Mr. LAFALCE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York [Mr. LAFALCE] that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 5050.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

□ 1600

GENERAL LEAVE

Mr. LAFALCE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous material, on the Senate amendment to H.R. 5050 just concurred in.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

CONCURRING IN SENATE AMENDMENT TO H.R. 3097, ORGAN TRANSPLANT AMENDMENTS ACT OF 1988, WITH AN AMENDMENT

Mr. WAXMAN. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 582) to take from the Speaker's table the bill (H.R. 3097) to amend the Public Health Service Act to revise and extend the program of assistance to organ procurement organizations, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment with an amendment.

The Clerk read as follows:

H. RES. 582

Resolved,

Upon adoption of this resolution, the House shall be considered to have taken from the Speaker's table the bill, H.R. 3097, an Act to amend the Public Health Service Act to revise and extend the program of assistance to organ procurement organizations, and for other purposes, with the Senate amendment thereto, and concurred in the Senate amendment with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION. 1. SHORT TITLE AND REFERENCE.

(a) SHORT TITLE.—This title may be cited as the "Organ Transplant Amendments Act of 1988".

(b) REFERENCE.—Whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

SEC. 2. ASSISTANCE FOR ORGAN PROCUREMENT ORGANIZATIONS.

(a) ADDITIONAL GRANT AUTHORITY.—Section 371(a) (42) U.S.C. 273(a)) is amended—

(1) in paragraph (2), by inserting "consolidation," after "operation,";

(2) by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following new paragraph:

"(3) The Secretary may make grants for special projects designed to increase the number of organ donors."; and

(3) in paragraph (4) (as redesignated in paragraph (2) of this subsection)—

(A) by striking "and" at the end of subparagraph (A);

(B) by striking the period at the end and inserting ", and"; and

(C) by adding at the end the following new subparagraph:

"(C) with respect to carrying out paragraph (3), give special consideration to proposals from existing organ procurement organizations.".

(b) LIMITATIONS ON ADDITIONAL GRANT AUTHORITY.—Section 374(b)(3) (42 U.S.C. 274(b)(3)) is amended in the first sentence by striking "section 371" and all that follows through "organizations" and inserting "paragraphs (2) and (3) of section 371(a)".

(c) DESCRIPTION OF ORGAN PROCUREMENT ORGANIZATION.—

(1) Section 371(b) (42 U.S.C. 273(b)) is amended—

(A) in paragraph (1)(E)—

(i) by striking "size which" and inserting "size such that"; and

(ii) by striking "will include" and all that follows through "year" and inserting the following: "the organization can reasonably expect to procure organs from not less than 50 donors each year";

(B) in paragraph (2)(C), by striking "372(b)(2)(D)," and inserting the following: "372(b)(2)(E), including arranging for testing with respect to preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,";

(C) in paragraph (2)(E)—

(i) by inserting "equitably" after "organs"; and

(ii) by striking "centers and "; and

(D) in paragraph (2)—

(i) by striking "and" at the end of subparagraph (I);

(ii) by striking the period at the end and inserting ", and"; and

(iii) by adding at the end the following new subparagraph:

"(K) assist hospitals in establishing and implementing protocols for making routine inquiries about organ donations by potential donors.".

(2) Section 371(b)(1)(B)(i)(III) is amended by inserting before the comma the following: "or an individual with a doctorate degree in a biological science with knowledge, experience, or skill in the field of histocompatibility".

(3) The amendment made by paragraph (1)(A) shall not apply to an organ procurement organization designated under section 1138(b) of the Social Security Act until 2 years after the initial designation of the organization under such section.

(d) AUTHORIZATIONS OF APPROPRIATIONS.—Section 371(c) (42 U.S.C. 273(c)) is amended to read as follows:

"(c) For grants under subsection (a), there is authorized to be appropriated $5,000,000 for each of the fiscal years 1988 through 1990.".

SEC. 3. ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK.

(a) DUTIES.—Section 372(b)(2) (42 U.S.C. 274(b)(2)) is amended—

(1)(A) by redesignating subparagraphs (B) through (H) as subparagraphs (C) through (I), respectively; and

(B) by adding after subparagraph (A) the following new subparagraph:

"(B) establish membership criteria and medical criteria for allocating organs and provide to members of the public an opportunity to comment with respect to such criteria,";

(2) in subparagraph (D) (as redesignated in paragraph (1)(A) of this subsection), by striking "organs which" and all that follows and inserting "organs,"'

(3) in subparagraph (E) (as redesignated in paragraph (1)(A) of this subsection), strike "organs," and insert the following: "organs, including standards for preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,";

(4) in subparagraph (F) (as redesignated in paragraph (1)(A) of this subsection, by striking "basis," and inserting the following: "basis (and, to the extent practicable, among regions or on a national basis),";

(5)(A) by striking "and" at the end of subparagraph (H) (as redesignated in paragraph (1)(A) of this subsection);

(B) by striking the period at the end and inserting ", and"; and

(C) by adding at the end the following new subparagraph:

"(J) carry out studies and demonstration projects for the purpose of improving procedures for organ procurement and allocation.".

(b) CONSIDERATION OF CRITICAL COMMENTS.—Section 372 (42 U.S.C. 274) is amended by adding at the end the following new subsection:

"(c) The Secretary shall establish procedures for—

"(1) receiving from interested persons critical comments relating to the manner in which the Organ Procurement and Transplantation Network is carrying out the duties of the Network under subsection (b); and

"(2) the consideration by the Secretary of such critical comments.".

SEC. 4. REQUIREMENTS OF ESTABLISHMENT OF BONE MARROW REGISTRY.

(a) IN GENERAL.—Section 373 (42 U.S.C. 274a) is amended—

(1) by inserting "(a)" after the section designation; and

(2) by adding at the end the following new subsection:

"(b)(1) Not later than October 1, 1988, the Secretary shall, by grant or contract, establish a registry of voluntary bone marrow donors.

"(2) For the purpose of carrying out paragraph (1), there are authorized to be appropriated $1,500,000 for fiscal year 1989 and $1,600,000 for fiscal year 1990.".

(b) CONFORMING AMENDMENT.—Section 373 (42 U.S.C. 274a) is amended in the title by inserting "AND BONE MARROW REGISTRY" after "REGISTRY".

SEC. 5. ADMINISTRATION.

Section 375 (42 U.S.C. 274c) is amended—

(1) in the manner preceding paragraph (1), by striking "1985, 1986, 1987, and 1988," and inserting "1985 through 1990,"; and

(2) in paragraph (4), by striking "one year" and all that follows through "annual report" and inserting the following: "not later than April 1 of each of the years 1989 and 1990, submit to the Congress a report".

SEC. 6. REPORT.

Section 376 (42 U.S.C. 274d) is amended by striking "shall annually" and inserting the following: "shall, not later than October 1 of each year,".

SEC. 7. FETAL ORGAN TRANSPLANTS.

Section 301(c)(1) of the National Organ Transplant Act (42 U.S.C. 274e(c)(1)) is amended to read as follows:

"(1) The term 'human organ' means the human (including fetal) kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin or any subpart thereof and any other human organ (or any subpart thereof, including that derived from a fetus) specified by the Secretary of Health and Human Services by regulation.".

SEC. 8. ESTABLISHMENT OF BLOCK GRANT PROGRAM.

(a) IN GENERAL.—Title XIX of the Public Health Service Act (42 U.S.C. 300w et seq.) is amended by adding at the end thereof the following new part:

"PART D—IMMUNOSUPPRESSIVE DRUG THERAPY BLOCK GRANT

"SEC. 1931. DEFINITIONS.

"For purposes of this part:

"(1) ELIGIBLE PATIENT.—The term 'eligible patient' means an organ transplant patient who is not eligible to receive reimbursement for the cost of immunosuppressive drug therapy under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), under the State's medicaid plan under title XIX of such Act (42 U.S.C. 1396 et seq.), or under private insurance.

"(2) IMMUNOSUPPRESSIVE DRUG THERAPY.—The term 'immunosuppressive drug therapy' means drugs and biologicals that are to be used for the purpose of preventing the rejection of transplanted organs and tissues and that can be administered by the transplant patient.

"(3) TRANSPLANT CENTER.—The term 'transplant center' means a transplant center that is a member of the Organ Procurement and Transplantation Network established under section 372.

"SEC. 1932. AUTHORIZATION OF APPROPRIATIONS.

"For the purpose of making allotments to States to carry out this part, there are authorized to be appropriated $5,000,000 for each of the fiscal years 1988 through 1990.

"SEC. 1933. ALLOTMENTS.

"(a) AMOUNT.—

"(1) IN GENERAL.—From amounts appropriated under section 1932 for each of the fiscal years 1988 through 1990, the Secretary shall allot to each State an amount that bears the same ratio to the total amount appropriated under such section for such fiscal year as the total number of eligible patients in the States bears to the total number of eligible patients in the United States.

"(2) MINIMUM ALLOTMENT.—Notwithstanding paragraph (1), the allotment of any State in any fiscal year under this subsection shall not be less than $50,000. If, under paragraph (1), the allotment of any State in any fiscal year will be less than $50,000, the Secretary shall increase the allotment of such State to $50,000 and shall proportionately reduce the allotments of all other States whose allotment exceeds $50,000 in a manner that will insure that the allotment of each State in such fiscal year is at least $50,000.

"(b) UNALLOTTED FUNDS.—

"(1) In general.—Subject to paragraph (2), to the extent that all the funds appropriated under section 1932 for a fiscal year and available for allotment in such fiscal year are not otherwise allotted to States because—

"(A) one or more States have not submitted an application or description of activities in accordance with section 1936 for such fiscal year;

"(B) one or more States have notified the Secretary that they do not intend to use the full amount of their allotment; or

"(C) some State allotments are offset or repaid under section 1906(b)(3) (as such section applies to this part pursuant to section 1936(d));

such excess shall be allotted among each of the remaining States in proportion to the amount otherwise allotted to such States for such fiscal year without regard to this subsection.

"(2) Organ transplant centers.—

"(A) Application.—If a State does not submit an application for an allotment or description of activities in accordance with section 1936 for a fiscal year or notifies the Secretary that the State does not intend to use the full amount of the allotment of the State, an organ transplant center in the State may submit an application in accordance with section 1936 for the amount of the allotment not allocated to the State.

"(B) Allotment.—Subject to subparagraph (C), if an applicant center complies with the requirements imposed on the State by this part, the Secretary shall provide to the center the amount of the allotment not allocated to the State.

"(C) Multiple applicants.—If two or more applicant centers in a State meet the requirements of subparagraph (B), the Secretary shall divide among the eligible applicant centers in an equitable manner the amount of the allotment not allocated to the State.

"(D) Distribution to other states.—If one or more centers in a State receive an allotment under this paragraph for a fiscal year, the allotment shall not be made available to remaining States under paragraph (1).

"SEC. 1934. PAYMENTS UNDER ALLOTMENTS TO STATES.

"(a) In General.—For each fiscal year, the Secretary shall make payments, as provided by section 6503(a) of title 31, United States Code, to each State from its allotments under section 1933 from amounts appropriated for that fiscal year.

"(b) Carryover Funds.—Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available for the next fiscal year to such State for the purposes for which it was made.

"SEC. 1935. USE OF ALLOTMENTS.

"(a) In General.—

"(1) Use.—Except as provided in subsections (b) and (c), amounts paid to a State under section 1934 from its allotment under section 1933 for any fiscal year shall be used by the State to provide immunosuppressive drug therapy for eligible patients.

"(2) Methods.—A State may use amounts paid to the State under section 1934 from its allotment under section 1933 to provide immunosuppressive drug therapy for eligible patients—

"(A) by purchasing the drugs and biologicals for such therapy and distributing such drugs and biologicals to transplant centers or eligible patients;

"(B) by certifying that an individual is an eligible patient for purposes of this part and by reimbursing a transplant center for the costs of immunosuppressive drug therapy provided by such center to such individual;

"(C) by any other method prescribed by the Secretary by regulation (other than the method described in subsection (b)(1)).

"(3) Copayments.—A State may require an eligible patient to whom immunosuppressive drug therapy is provided with amounts paid to the State under this part to make copayments for part of the costs of such therapy, without regard to section 1916 of the Social Security Act (42 U.S.C. 1396o).

"(b) Limitations.—A State may not use amounts paid to it under section 1934 to—

"(1) make direct payments to organ transplant patients; or

"(2) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

"(c) Administrative Costs.—Not more than 10 percent of the total amount paid to any State under section 1934 from its allotment under section 1933 for any fiscal year may be used for administering the funds made available under section 1934. The State will pay from non-Federal sources the remaining costs of administering such funds.

"SEC. 1936. APPLICATION AND DESCRIPTION OF ACTIVITIES; REQUIREMENTS.

"(a) Application Required.—In order to receive an allotment for a fiscal year under section 1933, each State shall submit an application to the Secretary. Each such application shall be in such form and submitted by such date as the Secretary shall require. Each such application shall contain assurances that the State will meet the requirements of subsection (b).

"(b) Requirements.—As part of the annual application required by subsection (a), the chief executive officer of each State shall—

"(1) certify that the State agrees to use the funds allotted to the State under section 1933 in accordance with the requirements of this part;

"(2) agrees to cooperate with Federal investigations undertaken in accordance with section 1907 (as such section applies to this part pursuant to subsection (d) of this section); and

"(3) certify that the State agrees that Federal funds made available under section 1934 for any period will be so used as to supplement and increase the level of State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the activities for which funds are provided under such section and will in no event supplant such State, local, and other non-Federal funds.

"(c) Description of Activities.—

"(1) In general.—The chief executive officer of a State shall, as part of the application required by subsection (a), also prepare and furnish the Secretary (in accordance with such form as the Secretary shall provide) with a description of the intended use of the payments the State will receive under section 1934 for the fiscal year for which the application is submitted, including information on the programs and activities to be supported.

"(2) Public comment.—The description shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during development of the description and after its transmittal.

"(3) Revisions.—The description shall be revised (consistent with this section) throughout the year as may be necessary to reflect substantial changes in the programs and activities assisted by the State under this part. Any revision shall be subject to paragraph (2).

"(d) Administration.—Unless inconsistent with this part, section 1903(b), section 1906(a), paragraphs (1) through (5) of section 1906(b), and sections 1907, 1908, and 1909 shall apply to this part in the same manner as such provisions apply to part A of this title.

"(e) Additional Information.—Each annual report submitted by a State to the Secretary under section 1906(a) (as such section applies to this part pursuant to subsection (d) of this section) with respect to its activities under this part shall contain—

"(1) a specification of the number of eligible patients in the State receiving immunosuppressive drug therapy with amounts paid to the State under this part;

"(2) a description of the amount of any copayment required by the State under section 1935(a)(3)); and

"(3) a certification that amounts paid to the State under this part are being used in accordance with this part.

"SEC. 1937. TERMINATION DATE.

"The amendments made under part D of this Act shall terminate effective January 1, 1991.".

(b) Report.—

(1) In general.—Not later than 24 months after the date of enactment of this Act, the Secretary of Health and Human Services shall prepare and transmit to the Congress a report concerning the impact of part D of title XIX of the Public Health Service Act (as added by section 7 of this Act).

(2) Contents.—The report shall contain—

(A) A description of the effect of the program established under such part on organ transplants in the United States;

(B) an analysis of the effects of such program on the costs of organ transplants and renal dialysis;

(C) an analysis of the extent to which amounts paid to States under such part are used for purposes other than the purposes specified by such part, including an analysis of the extent to which drugs and biologicals purchased with such amounts are provided to individuals who are not eligible patients under such part; and

(D) such recommendations as the Secretary considers appropriate, including recommendations as to whether financial assistance under such program should be continued during fiscal years after fiscal year 1990.

The SPEAKER pro tempore. Is a seond demanded?

Mr. NIELSON of Utah. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. Waxman] will be recognized for 20 minutes and the gentleman from Utah [Mr. Nielson] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. Waxman].

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on House Resolution 582, the resolution now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume.

The purpose of this resolution is to concur, with minor and technical amendments, in the Senate amendments to H.R. 3097.

H.R. 3097 is primarily a reauthorization of the National Organ Transplant Act of 1984. The 1984 act passed the House by a vote of 396 to 6. This bill passed the House last year on the Suspension Calendar. It just recently passed the Senate, with an amendment.

As it passed the House, H.R. 3097 had three objectives:

First, it would extend the 1984 act for 3 years.

Second, it would improve the grant program for community-based organ procurement organizations and the Organ Procurement and Transplantation Network, which is responsible for matching donated organs with needy patients.

Third, it would establish a national registry for voluntary donors of bone marrow. Bone marrow transplants are now recognized as the treatment of choice for certain diseases, particularly among children. The Navy's Office of Research has developed such a donor registry and is currently making arrangements to transfer it to the National Institutes of Health.

The Senate amendment did not revise any of these provisions in H.R. 3097. It did add two other provisions:

One clarifies that the provision in the 1984 act which prohibits the buying and selling of organs is specifically applicable to fetal organs.

The other would authorize a grant program to enable States to provide immunosuppressive drugs to transplant patients who are not eligible for Medicare, Medicaid, or private insurance coverage.

This resolution would make technical and clarifying amendments in the bill as passed by the Senate. We have discused these changes with the Senate and they have agreed to them.

Several Members made valuable contributions to this bill. I want particularly to commend my colleagues and the ranking member of the subcommitte, Mr. MADIGAN, and to note the continuing and active support of Mr. WALGREN. I also wish to commend Congressman BILL YOUNG for his vigorous efforts on behalf of the bone marrow registry.

I urge my colleagues to support the resolution.

Mr. NIELSON of Utah. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to support H.R. 3097, the Organ Transplant Amendments Act of 1988. H.R. 3097 will extend and revises certain provisions of the National Organ Transplant Act of 1984.

The grants to organ procurement organizations are reauthorized and the bill makes it clear that the grants should be used to consolidate and improve existing agencies rather than to establish new agencies.

The bill amends the responsibilities of the National Organ Transplantation Network and requires that its membership and medical criteria be subjected to public comment. Also, this bill reauthorizes the Public Health Service Office of Organ Transplantation through fiscal year 1990 and makes other improvements to the management of this program.

Finally, the bill requires the Secretary to establish and maintain a voluntary bone marrow registry which will enable improved matching of blood characteristics between unrelated bone marrow transplant donors and recipients.

I believe that H.R. 3097 contains many important provisions which will help to further develop an efficient organ transplant network in this Nation. I urge my colleagues to join me in support of this legislation.

Mr. Speaker, I would just like to relate that we had our colleague, the gentleman from South Carolina [Mr. SPENCE] speak to the prayer breakfast recently in which he told us about his double-lung transplant. He indicated a young man in Texas had been killed and prior to his being killed, 3 days prior, had indicated he wanted to have his organs donated to various people. The liver went to one, the kidney to another, the heart to another, the lungs to the gentleman from South Carolina [Mr. SPENCE], and the eyes to someone else. Six different people now are using his organs through that program, and I certainly endorse it.

Mr. Speaker, I would also like to commend the chairman, the gentleman from California [Mr. WAXMAN], the gentleman from Pennsylvania [Mr. WALGREN], the gentleman from Florida [Mr. YOUNG], and also the gentleman from Illinois [Mr. MADIGAN] for their efforts.

Mr. NIELSON of Utah. Mr. Speaker, I yield back the balance of my time.

Mr. WAXMAN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. WAXMAN] that the House suspend the rules and agree to the resolution House Resolution 582.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

MINORITY BUSINESS DEVELOPMENT ACT of 1987

Mr. SKELTON. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1769) to establish a Minority Business Development Administration in the Department of Commerce, to clarify the relationship between such Administration and the Small Business Administration and for other purposes, as amended.

The Clerk read as follows:

H.R. 1769

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Minority Business Development Act of 1987".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that—

(1) the opportunity for full participation in our free enterprise system by socially and economically disadvantaged individuals is essential if we are to obtain social and economic equality for such individuals and improve the functioning of our national economy;

(2) that many such individuals are socially disadvantaged because of their identification as members of certain groups that have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control;

(3) such groups include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and other minorities;

(4) it is in the national interest to expeditiously ameliorate the conditions of socially and economically disadvantaged groups;

(5) such conditions can be improved by providing the maximum practicable opportunity for the development of business concerns owned by members of socially and economically disadvantaged groups;

(6) such opportunity cannot be fully realized unless the Federal Government secures the participation and cooperation of the private sector in a joint effort to promote the development of business owned by disadvantaged individuals; and

(7) such effort will result in a more equitable share of productive resources being devoted to business owned by the disadvantaged and will promote a balanced economy and increased competition.

(b) It is, therefore, the purpose of this Act to—

(1) establish an Administration within the Department of Commerce which will promote and administer programs in the private and public sectors to assist the development of business owned by the disadvantaged; and

(2) achieve such development through the conduct of programs which will result in increased access to skilled labor, capital, management, and technology by such business.

DEFINITIONS

SEC. 3. As used in this Act:

(1) The term "Secretary" means the Secretary of Commerce.

(2) The terms "State", "States", and "United States" include the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories of the Virgin Islands, Guam, and American Samoa, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(3) The terms "socially and economically disadvantaged business concerns" and "disadvantaged business" means any for-profit business enterprise which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and whose management and daily business operations are controlled by one or more of such individuals.

(4) The term "socially disadvantaged individuals" means those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

(5)(A) The term "economically disadvantaged individuals" means those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.

(B) The Assistant Secretary shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act, other individuals so designated by the Minority Business Development Agency under section 1400.1 of title 15 of the Code of Federal Regulations (as in effect on October 1, 1986), and other individuals belonging to other minority groups which the Small Business Administration may, from time to time, determine to be socially and economically disadvantaged groups pursuant to Public Law 95-507.

(6) The term "Administration" means the Minority Business Development Administration established by this Act.

(7) The term "Assistant Secretary" means the Assistant Secretary of the Minority Business Development Administration.

(8) The term "agency" means any executive agency as defined in section 105 of title 5, United States Code, and the military departments as defined by section 102 of title 5, United States Code.

(9) The term "public sector" means any State, State agency, political subdivision of a State, or agency of such a political subdivision.

(10) The term "private sector" means any entity which is not in the public sector excluding the Federal Government, its agencies and instrumentalities.

MINORITY BUSINESS DEVELOPMENT ADMINISTRATION

SEC. 4. (a) The Minority Business Development Agency in the Department of Commerce is hereby redesignated and established as the "Minority Business Development Administration". The Administration shall be headed by an Assistant Secretary of Commerce appointed by the President, by and with the advice and consent of the Senate. The Assistant Secretary shall be compensated at the rate now or hereafter provided for level IV of the Executive Schedule and shall have responsibility for the administration of this Act. This position shall be in addition to the other positions of Assistant Secretary which are authorized by law.

(b) Within one hundred and twenty days after the effective date of this subsection, the Secretary shall inform appropriate committees of both the Senate and House of Representatives of—

(1) the organizational structure established within the Administration;

(2) the organizational position of the Administration within the Department of Commerce; and

(3) a description of how the Administration shall function in relation to the operations of other agencies within the Department.

TITLE I—MARKET DEVELOPMENT

PRIVATE SECTOR

SEC. 101. (a) It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary or appropriate—

(1) to assist disadvantaged business concerns penetrate domestic and foreign markets by making available to such concerns, either directly or in cooperation with private sector organizations, management, and technological assistance, a skilled labor pool and financial and marketing services; and

(2) to encourage disadvantaged firms to establish joint ventures and projects either among themselves or in cooperation with public or private sector organizations for the purpose of increasing the share of any market activity now being performed by disadvantaged business.

(b) For purposes of subsection (a)(2):

(1) The Assistant Secretary may, after consultation with the Attorney General and the Chairman of the Federal Trade Commission, and with the prior written approval of the Attorney General, approve any agreement between such disadvantaged firms or public or private sector organizations providing for a joint program for market development if the Assistant Secretary finds that the joint program proposed will maintain and strengthen the free enterprise system and the economy of the Nation. The Assistant Secretary or the Attorney General may at any time withdraw approval of the agreement and the joint program for market development covered thereby, if either finds that the agreement or the joint program carried on under it is no longer in the best interests of the competitive free enterprise system and the economy of the Nation. A copy of the statement of any such finding and approval intended to be within the coverage of this paragraph, and a copy of any modification or withdrawal of approval, shall be published in the Federal Register. The authority conferred by this on the Assistant Secretary shall not be delegated.

(2) No act or omission to act, pursuant to and within the scope of any joint program for market development under an agreement approved by the Assistant Secretary under the subsection, shall be construed to be within the prohibitions of the antitrust laws or the Federal Trade Commission Act. Upon publication in the Federal Register of the notice of withdrawal of his approval of the agreement granted under this paragraph, either by the Assistant Secretary or by the Attorney General, the provisions of this paragraph shall not apply to any subsequent act or omission to act.

(c) At least one party to each agreement for a joint program for market development approved under (b) shall be a small business concern, as defined pursuant to section 3 of the Small Business Act (15 U.S.C. 632). If there are more than two parties to such an agreement, a majority of the parties shall be small business concerns.

(d) In order to carry out the purposes of this section, the Administration is hereby authorized to provide financial assistance in the form of contracts, grants, or cooperative agreements to and with public and private sector organizations, including any association, business firm, trade association, or business organization. No assistance may be provided under the authority of this subsection if such assistance is primarily intended to facilitate the use by disadvantaged business of federally administered programs (not otherwise established by this Act) unless the Assistant Secretary obtains the prior concurrence and written approval of the Associate Administrator for Minority Small Business and Capital Ownership Development of the Small Business Administration.

PUBLIC SECTOR

SEC. 102. (a) It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary or appropriate—

(1) to consult and cooperate with State and local governments for the purpose of leveraging local resources to promote the position of disadvantaged business in the local economy, including, but not be limited to, assisting such governments to establish—

(A) procurement programs and goals for the utilization of disadvantaged business,

(B) management and technological assistance programs,

(C) financial and marketing assistance programs,

(D) mobilization activities designed to attract skilled labor for use by disadvantaged firms, and

(E) an informational program designed to inform local disadvantaged business of the availability of programs conducted under the authority of this section, and

(2) to convene meetings with leaders and officials of State and local governments for the purpose of recommending and promoting local administrative and legislative initiatives needed to advance the position of disadvantaged business in the local economy.

(b)(1) In order to carry out the purposes of subsection (a) the Administration is hereby authorized to provide financial assistance to State and local governments in the form of contracts, grants, or cooperative agreements.

(2) At least one hundred and twenty days before the beginning of each fiscal year, the Administration shall publish for public comment in the Federal Register the actual or anticipated amount of financial assistance that will or may be available in the immediately succeeding fiscal year for grants, contracts and cooperative agreements planned to be awarded pursuant to this section. Such publication shall also identify the proposed allocation of funds between the several States (and cities within such States) and the exact methodology used by the Administration to make such proposed allocations.

(3) At least sixty days prior to the beginning of each fiscal year, the Administration shall publish in the Federal Register its re-

sponse to comments received pursuant to paragraph (2) and any change in the allocation methodology which may be adopted as a result thereof including its effect on the allocation of funds on the several States (and cities within such States) for the immediately succeeding fiscal year.

TITLE II—CAPITAL FORMATION

ACCESS TO EQUITY CAPITAL

SEC. 201. (a) The Administration is hereby authorized to defray all or part of the costs of pilot or demonstration projects conducted by public or private organizations which are designed to assist disadvantaged business in obtaining access to equity capital.

(b) The Securities and Exchange Commission shall consult and cooperate with the Administration in an effort to promote access by disadvantaged business to securities markets and otherwise achieve the purposes of this title.

MBDA STUDY ON CAPITAL FORMATION ALTERNATIVES

(a) The Administrator shall conduct a study on alternatives for providing capital formation assistance to qualified disadvantaged business concerns, including—

(1) the implementation of a revolving fund the proceeds of which would be used to provide financial assistance to qualified disadvantaged business concerns through the purchase of equity investment in such concerns; and

(2) the implementation of a surety bond referral assistance program, specifically the implementation of an individual surety bond referral program.

(b) The Administrator shall submit a report to the Committee on Small Business of the House of Representatives and of the Senate within six months after the date of the enactment of this Act that contains the Administrator's findings of the study conducted under subsection (a). Such report shall specifically address the feasibility of the alternatives described in paragraphs (1) and (2) of such subsection and any other alternative explored by the Administration concerning the provision of capital formation assistance to qualified disadvantaged business concerns.

TITLE III—MANAGEMENT EDUCATIONAL DEVELOPMENT

DUTIES OF THE ADMINISTRATION

SEC. 301. It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary or appropriate to—

(1) promote and assist the education and training of disadvantaged individuals in subjects directly related to business administration and management;

(2) join with and encourage accredited colleges and universities, leaders in business and industry, or other public or private entities, particularly for profit entities owned and operated by socially and economically disadvantaged individuals, to develop programs to offer scholarships and fellowships, apprenticeships, internships, and to sponsor seminars and conferences, and similar activities related to business for the benefit of disadvantaged individuals;

(3) stimulate and accelerate curriculum design and improvement in support of disadvantaged business development; and

(4) encourage and assist private institutions and organizations and State and local government agencies to undertake similar activities.

TITLE IV—RESEARCH AND INFORMATION

DUTIES OF THE ADMINISTRATION

SEC. 401. (a) Not later than one year after the effective date of this subsection, the Administration shall submit to the Congress a report detailing the types and amounts of productive resources (both public and private) needed to advance and represent disadvantaged business at all phases and levels of the economic system in numbers representative of the relative population of disadvantaged individuals in the United States. The report shall provide separate recommendations for achieving such representation through a phased approach involving short-term and long-term goals and objectives.

(b)(1) In order to achieve the purposes of this Act, the Administration shall—

(A) collect and analyze data, including, but not limited to, the causes for success or failure of businesses owned by the disadvantaged,

(B) perform evaluations of private and public sector programs designed to assist the development of disadvantaged business; and

(C) conduct research, studies, and surveys of economic conditions generally and how such conditions particularly affect the development of disadvantaged business.

(2) The Administration is hereby authorized to provide financial assistance by contract, grant, or cooperative agreement to public and private organizations to assist the Administration in carrying out the provisions of paragraph (1).

(3) The Administration is hereby authorized to—

(A) develop and maintain, on a current basis, a data bank on disadvantaged business, except that—

(i) such activity shall be conducted in cooperation and consultation with the Associate Administrator for Minority Small Business and Capital Ownership Development of the Small Business Administration, and

(ii) such data bank does not duplicate the information stored or capable of being stored by the procurement automated source system (PASS) maintained by the Small Business Administration; and

(B) establish and maintain an information clearinghouse for the collection and dissemination of demographic, economic, financial, managerial, and technical data pertinent to disadvantaged business and, to this end, to take such steps as the Administration may deem necessary and desirable to search for, collect, classify, coordinate, integrate, record, and catalog such information.

TITLE V—ADMINISTRATIVE AND MISCELLANEOUS POWERS OF THE ADMINISTRATION

ADMINISTRATIVE POWERS

SEC. 501. In performing the duties under this Act, the Administration is authorized to—

(1) adopt and use a seal for the Minority Business Development Administration which shall be judicially noticed;

(2) hold hearings, sit and act, and take testimony as the Administration may deem advisable;

(3) acquire in any lawful manner any property as the Administration may deem necessary or appropriate to conduct the activities authorized in this Act;

(4) make advance payments under grants, contracts, and cooperative agreements;

(5) donate without cost (except for costs of care and handling) for use in any Federal, State, or local government or in any recipient nonprofit organization for purposes of the development of disadvantaged business any real or tangible personal property acquired by the Administration under this Act. The Administration may impose reasonable terms, conditions, reservations, and restrictions upon the use of any property donated under this section;

(6) enter into agreements with other Federal agencies;

(7) employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, to compensate individuals so employed at rates not in excess of the per diem rate authorized for GS-18 of the General Schedule, including traveltime, and allow them travel expenses (including per diem in lieu of subsistence) while away from their homes or regular places of business, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently, while so employed: *Provided, however,* That contracts for such employment may be renewed annually;

(8) sue and be sued in any court of record of a State having general jurisdiction or in any United States district court, and jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy; but no attachment, garnishment, or other similar process, mesne or final, shall be issued against the Administration or its property. Nothing herein shall be construed to except the activities under this Act from application of sections 507(b), 517, and 2679 of title 28, United States Code; and

(9) prescribe such rules, regulations, and procedures as the Administration may deem appropriate to carry out the provisions of this Act.

AUDITS

SEC. 502. (a) Each recipient of assistance under this Act shall keep such records as the Administration shall prescribe, including records which fully disclose the amount and the disposition by the recipient of the proceeds of such assistance, the total cost of the undertaking for which such assistance is given or used, the amount and nature of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Assistant Secretary, the Inspector General of the Department of Commerce, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit, investigation, and examination to any books, documents, papers, records, and other materials of the recipient which are pertinent to the assistance received under this Act.

(c) Not later than eighteen months after the date of the enactment of this Act, the Comptroller General of the United States shall conduct a thorough review of the programs authorized by this Act and shall transmit to the Congress a detailed report of the Comptroller's findings, including therein an evaluation of the effectiveness of the programs authorized to achieve the purpose of this Act, a description of any failure to comply with the requirements of this Act, and recommendations for corrective legislative or administrative action.

ANNUAL REPORT

SEC. 503. The Assistant Secretary shall, not later than one hundred and twenty days after the close of each fiscal year, submit to the President a full report of the Administration's activities hereunder during the previous fiscal year. Further, the Assistant Secretary shall, from time to time, submit to the President recommendations for legislation or other actions as the Assistant Secretary deems desirable to promote the purposes of this Act. Each Federal agency shall consult with the Assistant Secretary on a timely basis so that the Assistant Secretary may consider them for the Assistant Secretary's report and recommendations to the President.

SEPARABILITY

SEC. 504. If any provision of this Act or the application thereof to any persons or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act or its application to other persons and circumstances, but shall be confined in its operation to the provision of this Act or the application thereof to the persons and circumstances directly involved in the controversy in which such judgment shall have been rendered.

AUTHORITY OF ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT

SEC. 505. (a) Section 7(j)(11) of the Small Business Act is amended to read as follows:

"(11) The Associate Administrator for Minority Small Business and Capital Ownership Development shall be responsible for coordinating and formulating policies relating to assistance provided by Federal agencies (excluding the Minority Business Development Administration) to small business concerns described in section 7(i) and small business concerns owned and controlled by the socially and economically disadvantaged as defined pursuant to section 8(d).".

(b) Nothing in this Act is intended to duplicate or limit any programs or projects administered by the Small Business Administration.

(c) Each Federal agency shall cooperate and consult with the Administration and the Small Business Administration to facilitate the accomplishment of the purposes of this Act and the Small Business Act.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 506. There are hereby authorized to be appropriated such sums as may be necessary and appropriate to carry out the provisions and purposes of this Act other than those for which appropriations may from time to time be specifically authorized.

TERMINATION OF AUTHORITY UNDER EXECUTIVE ORDER NUMBERED 11625

SEC. 507. Beginning on the date of the enactment of this Act, the powers and duties of the Administration shall be determined without regard to Executive Order Numbered 11625.

The SPEAKER pro tempore. Is a second demanded?

Mr. CONTE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Missouri [Mr. SKELTON] will be recognized for 20 minutes and the gentleman from Massachusetts [Mr. CONTE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Missouri [Mr. SKELTON].

Mr. SKELTON. Mr. Speaker, I would first like to commend my colleague, the gentleman from Maryland [Mr. MFUME] for his outstanding work and his leadership in putting this bill together, which came to the subcommittee that I chair on the Small Business Committee.

Let me also say that we could not have gotten as far as we have without the cooperation and interest of the ranking minority member on our subcommittee, the gentleman from Massachusetts [Mr. CONTE], who has helped in every way to get this bill to the floor.

Mr. Speaker, the purpose of H.R. 1769, the Minority Business Development Act of 1988, is to establish the Minority Business Development Administration within the Department of Commerce and to clarify its relation with the Small Business Administration. This bill seeks to make the Minority Business Development Agency, which exists pursuant to Executive Order 11458, a congressionally mandated program. The Minority Business Development Administration Director would receive Assistant Secretary status within the Department of Commerce.

The bill would accomplish these goals, for the most part, by a transfer of the powers of the existing agency to the new administration. In addition, the bill would have the Congress find that it is in the national interest to set policy and establish programs to lessen the disadvantage of certain groups by enhancing the opportunity of individuals within such groups to start and maintain a business.

H.R. 1769 empowers the administration to work with the public and the private sectors to help these disadvantaged businesses penetrate foreign and domestic markets. It is authorized to provide grants, technical or labor pool assistance and to approve joint agreements between businesses to accomplish market development. The administration is directed to work with State and local governments to help them provide assistance to the businesses in their area.

The bill provides that the Federal Government shall assist in attempting to alleviate the problem suffered by socially and economically disadvantaged businesses in gaining access to equity capital. It permits the administration to defray the cost of pilot projects and requires the Security and Exchange Commission to promote such access. In addition, the bill directs the Administrator to study the revolving fund concept and the surety bond assistance referral program and in particular, the individual surety bond referral program among other alternative methods of gaining access to equity capital.

The bill calls upon the administration to improve the education delivery systems for the benefit of disadvantaged individuals. It also makes provision for the collection of the data, both technical and demographic and to produce the necessary research to be able to provide assistance to the socially and economically disadvantaged in an informed manner.

Mr. Speaker, this is a good bill that is desired by every minority organization. I strongly urge its passage.

Mr. CONTE. Mr. Speaker, I yeild myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 1769, the Minority Business Development Act of 1988. I am pleased to commend the gentleman from Maryland, KWEISI MFUME, for initiating this important legislation of which I am proud to be the coauthor. I also wish to commend my colleagues on the Small Business Committee for their support—particularly the members of the Procurement Subcommittee and our distinguished chairman, and my very good friend, Ike Skelton.

Mr. Speaker, H.R. 1769 makes permanent the Minority Business Development Administration. It sends a message to the minority business community that the Congress is genuinely concerned with the Federal Government's role in minority business development, as MBDA is the only Federal agency specifically created to promote and enhance minority business enterprise.

H.R. 1769 embodies the best and most acceptable elements of the administration's philosophy of government responsibility, namely: First, that minority business development is a shared responsibility, therefore, the minority clients as well as the award recipients share the cost of administering this program; second, that the MBDC program focuses greater resources than any other Federal agency on the procurement and contract opportunities available at the city, State, and municipal levels, thereby, opening new markets to all sizes of entrepreneurs; third, that the MBDA's promotion of minority business in the private sector is a more acceptable alternative to continued Federal noncompetitive contracting; and fourth, that the MBDC program has consistently achieved a higher level of performance, including a $64 nationwide return of funding for each Federal program dollar expended by MBDA in fiscal year 1987.

In relation to performance, H.R. 1769 will provide for continuation of the MBDC program, which has assisted approximately 14,500 clients annually in the past 3 years.

Ninety-one percent of each year's business clients have had paid employees, representing approximately 83,000 jobs.

Approximately 19 percent of the total clients assisted have been minority females.

MBDA has assisted approximately 400 8(a) firms and helped obtain 500 8(a) contracts for clients on an annual basis.

MBDA has assisted approximately 10,200 operating businesses a year.

Thirty percent of MBDC clients have been in the services industry, while 27 percent have been in construction and 13 percent have been in retail trade and manufacturing.

Ninety-three percent of clients have had gross sales in the range of zero to $999,000 and 7 percent have had sales of $1 million and above.

Annually, MBDC's collect approximately $1.4 million in client fees which represents 81 percent of total billings.

H.R. 1769 is needed to strengthen the working relationship of MBDA and SBA in the promotion of SBA's 8(a) program. Because the MBDC program is administered by established business organizations, H.R. 1769 will strengthen their involvement in the total Federal role in minority business development.

H.R. 1769 provides an ideal opportunity for the Congress to institutionalize and strengthen the objectives of Executive Order 12432, as signed by President Reagan, to promote greater Federal response to minority business development issues.

H.R. 1769 will move the Department of Commerce, and its Cabinet status, into the unique role of determining the Federal Government's accountability in promoting minority business development.

H.R. 1769 is important because there is a need for a results-oriented program which puts emphasis on the competitive viability of a minority business.

Mr. Speaker, I would like to note for the record the differences between the original H.R. 1769 and H.R. 1769, the Conte-Mfume substitute now under consideration.

First, adds presumption of eligibility for Hasidic Jews.

Second, requires antitrust exemptions for joint ventures to include a small business or that the majority of parties be small businesses. Deletes antitrust waiver for big business.

Third, removes restrictive financial distribution formula for State and local government aid.

Fourth, substitutes capital formation study for government equity revolving fund.

Fifth, provides preference for entities owned by disadvantaged individuals to develop business related activities.

Sixth, changes implementation date for audit report.

Mr. Speaker, I would also like to note for the record statistics demonstrating the successful commitment of this administration in promoting increased minority participation in Federal contracting and investment financing.

SBA 8A CONTRACT AWARDS

Fiscal year	Number of contracts	Total amount
1969	28	8,857,771.00
1970	199	22,520,209.00
1971	808	68,220,378.00
1972	1,645	143,036,463.00
1973	1,974	214,853,475.00
1974	2,302	278,349,813.99
1975	2,140	320,423,606.00
1976	2,898	480,806,529.26
1977	2,774	561,693,627.39
1978	3,410	761,452,449.10
1979	4,408	1,013,934,740.29
1980	5,222	1,662,691,177.83
1981	4,997	2,017,810,869.26
1982	4,242	1,983,629,310.14
1983	4,938	2,327,989,684.83
1984	5,138	2,765,979,028.42
1985	5,240	2,725,910,287.25
1986	4,586	2,991,558,042.02
1987	4,366	3,070,448,197.29
1988 as of August 1988	2,474	2,041,091,614.53

TABLE 1.—PRIME CONTRACT ACTIONS AWARDED TO BUSINESS FIRMS, DEPARTMENT OF DEFENSE, FISCAL YEARS 1981 TO 1987

[Billions of dollars]

Fiscal year	1987	1986	1985	1984	1983	1982	1981
Total dollars, all firms	135.3	136.5	139.6	124.9	121.1	102.5	87.2
Small firm and award dollars	26.6	26.9	26.1	23.8	22.8	20.1	17.8
Percent of total	19.7	19.7	18.7	19.1	18.8	19.7	20.4
Small disadvantaged firm dollars	3.3	3.1	2.9	2.7	2.4	2.2	1.9
Percent of total	2.5	2.3	2.1	2.2	2.0	2.1	2.1

TABLE 2.—PRIME CONTRACT ACTIONS AWARDED TO SMALL DISADVANTAGED BUSINESS, DEPARTMENT OF DEFENSE, FISCAL YEARS 1986 AND 1987

[Millions of dollars]

	Fiscal year	Section 8(a) awards	Other direct awards	Total	Goal [1]	Percent of goal achieved
DOD total	1987	2,168.7	1,147.9	3,316.6	6,767.0	49.0
	1986	1,940.9	1,181.3	3,122.2	6,825.0	45.7
Army	1987	882.7	406.8	1,289.5	1,643.1	78.5
	1986	789.8	401.8	1,191.6	1,651.4	72.2
Navy	1987	632.1	302.5	934.6	2,447.2	38.2
	1986	575.9	250.7	826.5	2,211.6	37.4
Air Force	1987	504.0	223.0	727.0	2,030.8	35.8
	1986	436.1	193.2	629.3	2,086.9	30.2
Defense Logistics Agency	1987	86.9	202.1	289.0	461.6	62.6
	1986	117.4	327.0	444.4	675.2	65.8
Other Defense Agencies	1987	63.0	13.5	76.5	184.4	41.5
	1986	21.7	8.6	30.3	199.9	15.2

[1] Goal is 5 percent of all prime contract awards to all business firms, therefore 5 percent × $136.5 billion = $6,825 million in fiscal year 1986 and $6,767 million in fiscal year 1987.

Source: Department of Defense, Office of Small and Disadvantaged Business Utilization.

SBIC AND MESBIC FINANCING TO SMALL BUSINESSES, CALENDAR YEARS 1973 TO 1987

[Dollar in millions]

Calendar year	SBIC's		MESBIC's		Total	
	Finance	Amount	Finance	Amount	Finance	Amount
1973	1,815	$185.9	286	$7.4	2,101	$193.3
1974	1,541	126.8	367	12.4	1,908	139.2
1975	1,655	122.7	323	13.0	1,978	135.7
1976	1,720	129.4	344	13.6	2,064	143.0
1977	2,071	206.3	439	22.6	2,510	228.9
1978	2,087	232.6	463	32.0	2,550	264.6
1979	2,257	280.1	441	35.1	2,698	315.2
1980	2,090	295.2	547	42.2	2,637	337.4

SBIC AND MESBIC FINANCING TO SMALL BUSINESSES, CALENDAR YEARS 1973 TO 1987—Continued

[Dollar in millions]

Calendar year	SBIC's		MESBIC's		Total	
	Finance	Amount	Finance	Amount	Finance	Amount
1981	2,434	332.7	742	54.4	3,176	387.1
1982	2,177	322.9	764	47.0	2,941	369.9
1983	2,464	412.9	783	55.9	3,247	468.8
1984	2,755	425.5	1,235	88.5	3,990	514.0
1985	2,756	434.6	1,449	107.7	4,205	542.3
1986	2,675	475.9	1,658	144.9	4,333	620.8
1987	2,522	537.9	1,606	142.7	4,128	680.6
Jan. 1988 to June 1988	989	284.5	772	73.1	1,761	357.6
Total 1979–1st ½ calendar 1988	23,119	3,802.3	9,997	791.5	33,116	4,593.8

Mr. Speaker, I would also like to note for the record excerpts from a report entitled "MBDA in the Eighties: Successfully Moving Minorities Into the Economic Mainstream of America."

MBDAs return on its investment has more than tripled over a five-year period. In 1983, the rate of return was $20.40 for each dollar invested. By 1987, the return on investment had reached $64.00.

Clients growth reflects MBDA's ability to reach out and assist all minorities:

American Indians participation increased from 994 to 1,444; nearly a 50% increase. Asians served increased from 927 to 1290; more than a 33⅓% increase. Other minorities served increased from 493 to 569; greater than a 26% increase.

Contracts approved:

MBDA's ability to secure larger contracts for its clients has also increased. In 1983, it secured 4,182 contracts worth $532.2 million; an average contract value of $126,000. In 1987, MBDA was able to secure 4,995 contracts worth $1,050.5 million; an average contract value of $210,000. Moreover, the dollar value of contracts approved increased 97.36% from 1983 to 1987.

Financial packages approved:

The value of financial packages approved for clients of MBDA increased over 320% between 1983 and 1987. These packages grew from $190.7 million in 1983 to $610.6 million in 1987.

Financing of loan packages:

MBDA has been able to utilize a mosaic of traditional financial techniques to provide financing for minority entrepreneurs. These techniques include loans, trade credit, bonds, equity investment and other sources. Significantly, 90% of the financing came from non-government sources.

MBDA assistance to 8(a) firms:

The number of contracts secured increased more than 350% from 1983 to 1987. Contracts secured were 199 in 1983 and 750 in 1987. The dollar value of the contracts secured increased more than 50%. These contract dollars increased from $163.8 million in 1983, to $298.5 million in 1987. Financial packages increased more than 140%. They went from 113 in 1983, to 270 in 1987. Moreover, the dollar value of financial packages increased almost 300%. In 1983, financial packages worth $33.7 million were prepared while the value of those prepared in 1987 was $132 million.

A summary statement of Federal agency performance for minority business development:

There occurred more than a 50% increase in obligating federal funds to minorities between 1983, ($7,432,170,000) and 1987 ($11,670,592,968). The breakdown by category of federal funds obligated for minority business development shows how significant the level of increase has been. Procurement 8(a) by Federal agencies, similarly, increased nearly 75% between 1983, ($2,058,280,000) and 1987 ($3,510,505,473). Direct procurement by federal agencies, similarly, increased by over 40% from 1983, ($2,758,950,000) to 1987 ($4,006,454,544). Equally notable was the increase in financial grants, loans and guarantees by federal agencies. This group increased by over 50% from 1983, to 1987.

We continue to see the previous pattern of significant growth when we compare total procurement growth to minority procurement growth as a percentage of total procurement. Total procurement increased by 18% from 1983, to 1987, but minority procurement increased by 33⅓% for the same period.

Mr. Speaker, the Republican Party, through the initiative of President Richard M. Nixon, created the MBDA. The Republican party, through the efforts of President Ronald W. Reagan, committed the Federal government to encouraging greater economic opportunities for minority businesses. My Republican Small Business colleagues and I now seek to make permanent the only agency specifically created to promote and enhance minority business enterprise. H.R. 1769 is consistent with Republican goals and objectives of increasing minority business participation in the national marketplace. It is important we all support this legislation.

In closing Mr. Speaker, I submit for the RECORD copies of President Reagan's December 17, 1982, Presidential statement and his Executive Order 12432 demonstrating his commitment to minority enterprise.

STATEMENT BY THE PRESIDENT

This Administration is committed to the goal of greater opportunity for economic progress and independence for all Americans. We began movement toward this goal last year with enactment of major elements of our Economic Recovery Program. By reducing inflation and stimulating economic growth, this program will promote the kind of economic environment essential to the formation and development of business enterprise. In addition, our economic program will result in increased private savings through incentives provided by tax rate reductions and will slow the growth of government spending. Both actions will expand the pool of financial resources from which business can obtain capital for development.

But these steps are only a beginning. We must maintain the momentum by keeping the tax rate cuts in place and by retaining the tax indexing scheduled to begin in 1985. This indexing will prevent inflation from forcing individuals, including investors, workers and small business owners, into higher and higher tax brackets.

Our Administration, however has not stopped there. Today, I am announcing additional steps to promote an economic environment in which minority entrepreneurs can better marshal their talents and skills to achieve better lives for themselves and, in so doing, contribute to a stronger economic base for America.

A healthy, growing economy is fundamental to creating the opportunity for the formation and growth of minority-owned business.

Greater economic independence for minority Americans will best be achieved through increased opportunities for private employment and business ownership.

Creativity, private entrepreneurship, and individual initiative will ultimately determine the success or failure of individual minority businesses.

Expanded involvement of other private firms is crucial to minority enterprise developmental efforts.

The specific steps, which reflect these principles, along with key elements of our economic recovery program, will provide the basis for a renewed and vigorous minority business effort for the 1980s.

The Minority Business Development Agency of the Department of Commerce and the Small Business Administration will assist directly in the formation of at least 60,000 new minority businesses over the next ten years.

During the same period, this Administration will assist in the expansion of at least 60,000 minority businesses or 10 percent of the approximately 600,000 new minority businesses that already operate in America today. We will place particular emphasis on labor intensive businesses and those in industries with high growth potential.

The Federal government will procure an estimated $15 billion in goods and services from minority businesses during the three-year period comprising Fiscal Years 1983, 1984, and 1985, based upon our current overall procurement plans. Actual procurement objectives will be set on an annual basis and will be based upon this Administration's objective on increasing the share of total procurement supplied by minority businesses. This does not include minority business procurement by recipients of Federal grants and cooperative agreements, which could amount to an additional $6 to $7 billion during this three-year period.

We will make available approximately $1.5 billion in credit assistance and $300 million in management and technical assistance to promote minority business development during this same three-year period.

To expand minority enterprise participation in Federal government subcontracts, I am directing department and agency heads to develop and implement incentive techniques that will encourage greater minority business subcontracting by Federal prime contractors.

To continue full minority business participation in procurement resulting from government grants and cooperative agreements, I am directing the major Federal grantmaking agencies to encourage their grantees to achieve a reasonable minority business participation in contracts let from their grants and agreements. This will be done in a manner consistent with the Administration's commitment to the principles of federalism.

In order to spur private sector involvement in minority business development, I will ask the business leaders of this country to work with me to encourage private firms to expand their business transactions with minority enterprises.

I am asking the Vice President's Task Force on Regulatory Reform to explore opportunities for reducing regulatory and other barriers to small and minority business expansion, and for promoting meaningful entry into the international trade arena.

In order to ensure the success of these Federal initiatives, I will be issuing a new Executive Order on Minority Business Development which reaffirms the Federal commitment. It will prescribe specific policies and actions to be taken in these programs and direct the Interagency Council for Minority Business to establish uniform guidelines for all Federal minority business efforts. It will also direct the Cabinet Council on Commerce and Trade to submit an annual plan specifying minority-enterprise-development objectives for each agency.

The Minority Business Development Agency has established a national network of Minority Business Development Centers which, in concert with existing SBA Small Business Development Centers, will provide management and technical assistance to minority firms and promote increased participation of private firms and other public sector resources.

I am directing Federal contracting agencies to increase minority business procurement objectives for 1983 by at least 10 percent over actual procurement in 1982. In addition, we are taking measures designed to expand the number of minority firms participating in Federal procurement programs.

And beginning next year, I will designate annually the first full week in October as Minority Enterprise Development Week.

Together, our policies and programs for minority business development should set the stage for the expanded development of minority business. But most important are the steps to be taken by minority entrepreneurs themselves and other private concerns. Recognizing that the realization of the American Dream is ultimately achieved in the private marketplace, we can, though a greater commitment to public and private cooperation, help minority Americans to achieve fuller participation in the market economy.

RONALD REAGAN.
December 17, 1982.

EXECUTIVE ORDER 12432

MINORITY BUSINESS ENTERPRISE DEVELOPMENT

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including Section 205(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(a)), in order to provide guidance and oversight for programs for the development of minority business enterprise pursuant to my statement of December 17, 1982 concerning Minority Business Development; and to implement the commitment of the Federal government to the goal of encouraging greater economic opportunity for minority entrepreneurs, it is hereby ordered as follows:

Section 1. *Minority Business Development Plans.* (a) Minority business enterprise development plans shall be developed by each Federal agency having substantial procurement or grantmaking authority. Such agencies shall submit these plans to the Cabinet Council on Commerce and Trade on an annual basis.

(b) These annual plans shall establish minority enterprise development objectives for the participating agencies and methods for encouraging both prime contractors and grantees to utilize minority business enterprises. The plans shall, to the extent possible, build upon the programs administered by the Minority Business Development Agency and the Small Business Administration, including the goals established pursuant to Public Law 95-507.

(c) The Secretary of Commerce and the Administrator of the Small Business Administration, in consultation with the Cabinet Council on Commerce and Trade, shall establish uniform guidelines for all Federal agencies to be utilized in establishing the minority business programs set forth in Section 2 of this Order.

(d) The participating agencies shall furnish an annual report regarding the implementation of their programs in such form as the Cabinet Council on Commerce and Trade may request, and at such time as the Secretary of Commerce shall designate.

(e) The Secretary of Commerce shall provide an annual report to the President, through the Cabinet Council on Commerce and Trade, on activities under this Order and agency implementation of minority business development programs.

Sec. 2. *Minority Business Development Responsibilities of Federal Agencies.* (a) To the extent permitted by law and consistent with its primary mission, each Federal agency which is required to develop a minority business development plan under Section 1 of this Order shall, to accomplish the objectives set forth in its plan, establish programs concerning provision of direct assistance, and management and technical assistance to minority business enterprises.

(b) Each Federal agency shall, to the extent permitted by law and consistent with its primary mission, establish minority business development programs, consistent with Section 211 of Public Law 95-507, to develop and implement incentive techniques to encourage greater minority business subcontracting by Federal prime contractors.

(c) Each Federal agency shall encourage recipients of Federal grants and cooperative agreements to achieve a reasonable minority business participation in contracts let as a result of its grants and agreements. In cases where State and local governments are the recipients, such encouragement shall be consistent with principles of federalism.

(d) Each Federal agency shall provide the Cabinet Council on Commerce and Trade such information as it shall request from time to time concerning the agency's progress in implementing these programs.

RONALD REAGAN.

THE WHITE HOUSE, *July 14, 1983.*

Mr. SKELTON. Mr. Speaker, I yield 5 minutes to the gentleman from Maryland [Mr. MFUME].

Mr. MFUME. Mr. Speaker, let me preface my remarks by thanking again the gentleman from Missouri [Mr. SKELTON], the chairman of the subcommittee which had oversight over this particular legislation for allowing the legislation to be heard and for working with myself and others as we grappled with some form of a compromise to end up with a committee print and ultimately a bill that everyone was in fact satisfied with. I thank the gentleman for that and his sensitivity toward that issue.

My thanks also goes out to the former chairman of that committee, the gentleman from Massachusetts [Mr. MAVROULES], who also was supportive of this legislation and who offered his support both as chairman and afterward and who offered certainly all sorts of encouragement to get us to this particular point.

I have to say also, Mr. Speaker, that I am particularly happy to have the pleasure of serving on that committee with the distinguished gentleman from Massachusetts [Mr. CONTE] with whom it has been a pleasure to work.

This bill as it originally came out was a bill that I think many members of the committee had ideas about and certainly had suggestions about. It was under the leadership of the gentleman from Massachusetts [Mr. CONTE] really that we got to the point where we are now. I say that and I say it with a great deal of admiration. I appreciate his support for this bill and for working toward a compromise, as we ultimately did.

My thanks also to the chairman, the gentleman from New York [Mr. LAFALCE] and the ranking minority member, the gentleman from Pennsylvania [Mr. MCDADE] for their support.

Let me just also if I might, Mr. Speaker, indicate my pleasure at the way the committee worked in a bipartisan fashion in formulating the language that we have all come to agree upon. In many ways the bill was strengthened and I am happy that today we are able to offer this joint substitute which ultimately became the form of the committee print, which ultimately became the bill which we are about to vote on now.

□ 1615

We know that over the years blacks and other racial and ethnic minorities have suffered the effects of racial discrimination, discrimination which has impaired the ability of many within the minority business community to be able to access resources and markets that have been essential to economic viability. Both the Congress and various administrations over the past have sought to formulate programs designed to counteract the perpetuated inequities, and one such administration was the Nixon administration, which issued an Executive Order No. 1-1458 in 1969, which established essentially the Minority Business Development Agency under that Executive order.

The MBDA was created, as we have heard previously, to preserve and strengthen minority businesses. This is the only Agency of our Government created specifically to promote the creation and/or expansion of minority businesses.

The Executive order under which the MBDA currently operates identified a compelling Government interest in obtaining social and economic justice and improving the functions of our national economy.

The means were further established through a Cabinet-level agency under the direct supervision of the Secretary of Commerce. The creation of the Minority Business Development Agency within the Department of Commerce was carefully thought out and recognized the Federal Government's role in helping to remove the barriers which minority businesses too often were faced with, and so codifying this Agency within the Department of Commerce is really our opportunity as a nation to continue providing for equitable participation of minorities in the mainstream of American business life. This bill, which was offered again by myself and the gentleman from Massachusetts [Mr. CONTE], addresses concerns about access to equity capital, not through the originally proposed revolving fund but, rather, through the mandate of a study into alternate ways of providing access to capital.

We have been able to agree on a number of other minor changes in the language, and members of other committees have all had a chance to add in that.

Mr. Speaker, I argue, as I have for the last year as it relates to this particular bill, that the Minority Business Development Agency must be placed on solid ground. Today we are taking a great step in that direction by ridding the MBDA of its vulnerable statutes, and by codifying it and thereby bringing it at long last under the full control of the Agency and within the greater reach of the Congress, and providing ourselves also with a chance to play a role in furthering and strengthening the Agency's goals and its objectives.

It has been a pleasure again to work with this particular bill. It has been a learning experience. I, again, thank the gentleman from Massachusetts and my distinguished chairman, the gentleman from Missouri, for all of the help in this matter.

Mr. SKELTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to again thank the gentleman from Massachusetts [Mr. CONTE] for his excellent assistance, and a special word of thanks to the original author of this bill, for it would not be here but for the diligence and hard work and determination of the gentleman from Maryland [Mr. MFUME]. I congratulate him for his efforts in this behalf.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Missouri [Mr. SKELTON] that the House suspend the rules and pass the bill, H.R. 1769, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SKELTON. Mr. Speaker, I ask that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 1769, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

FEDERAL ENERGY MANAGEMENT IMPROVEMENT ACT

Mr. SHARP. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the House amendments to the Senate bill (S. 1382) to amend the National Energy Conservation Policy Act to improve the Federal Energy Management Program, and for other purposes.

The Clerk read as follows:

Senate amendment to House amendments: Page 12, after line 20 of the House engrossed amendment, insert:

SEC. 4. PENALTIES FOR ENTERING INTO COMMERCE OF IMITATION FIREARMS.

(a) It shall be unlawful for any person to manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm unless such firearm contains, or has affixed to it, a marking approved by the Secretary of Commerce, as provided in subsection (b).

(b)(1) Except as provided in paragraph (2) or (3), each toy, look-alike, or imitation firearm shall have as an integral part, permanently affixed, a blaze orange plug inserted in the barrel of such toy, look-alike, or imitation firearm. Such plug shall be recessed no more than 6 millimeters from the muzzle end of the barrel of such firearm.

(2) The Secretary of Commerce may provide for an alternate marking or device for any toy, look-alike, or imitation firearm not capable of being marked as provided in paragraph (1) and may waive the requirement of any such marking or device for any toy, look-alike, or imitation firearm that will only be used in the theatrical, movie or television industry.

(3) The Secretary is authorized to make adjustments and changes in the marking system provided for by this section, after consulting with interested persons.

(c) For purposes of this section, the term "look-alike firearm" means any imitation of any original firearm which was manufactured, designed, and produced since 1898, including and limited to toy guns, water guns, replica nonguns, and air-soft guns firing nonmetallic projectiles. Such term does not include any look-alike, nonfiring, collector replica of an antique firearm developed prior to 1898, or traditional B-B, paint-ball, or pellet-firing air guns that expel a metallic projectile through the force of air pressure.

(d) The Director of the Bureau of Justice Statistics is authorized and directed to conduct a study of the criminal misuse of toy, look-alike and imitation firearms, including studying police reports of such incidences and shall report on such incidences relative to marked and unmarked firearms.

(e) The Director of National Institute of Justice is authorized and directed to conduct a technical evaluation of the marking systems provided for in subsection (b) to determine their effectiveness in police combat situations. The Director shall begin the study within 3 months after the date of enactment of this section and such study shall be completed within 9 months after such date of enactment.

(f) This section shall become effective on the date 6 months after the date of its enactment and shall apply to toy, look-alike, and imitation firearms manufactured or entered into commerce after such date of enactment.

(g) The provisions of this section shall supersede any provision of State or local laws or ordinances which provide for markings or identification inconsistent with provisions of this section provided that no State shall—

(i) prohibit the sale or manufacture of any look-alike, nonfiring, collector replica of an antique firearm developed prior to 1898, or

(ii) prohibit the sale (other than prohibiting the sale to minors) of traditional B-B, paint ball, or pellet-firing air guns that expel a metallic projectile through the force of air pressure.

The SPEAKER pro tempore. Is a second demanded?

Mr. MOORHEAD. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Indiana [Mr. SHARP] will be recognized for 20 minutes and the gentleman from California [Mr. MOORHEAD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Indiana [Mr. SHARP].

Mr SHARP. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I reserve the balance of my time.

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise to express my support for the energy efficiency provisions of this legislation. They are identical to those which were passed by the House in H.R. 4065, on June 27, 1988. I gave an extended statement of the reasons for the bill at that time and will not repeat myself here.

Mr. Speaker, I rise to ask my colleagues to concur with the Senate amendment to S. 1382, the Federal Energy Management Improvement Act.

The bill will strengthen the Federal Government's efforts to reduce energy use in its own buildings. This is important because the Federal Government spent over $3 billion on energy for its buildings last year.

The House originally passed this bill as H.R. 4226, by voice vote. It had strong bipartisan support and was cosponsored by my colleague from across the aisle, Mr. MOORHEAD of California.

We then substituted a compromise version of H.R. 4226 for S. 1382 and again passed it with a voice vote.

The Senate has now accepted that compromise added on an additional nonenergy amendment. Therefore, the Federal Energy Management Improvement Act is exactly the same as when the House last approved it. I urge my colleagues to do so again by passing a bill that provides leadership to cut Federal energy costs.

While I have the floor, I would also like to speak on the amendment of the Senate to this bill that addresses the hazards posed by realistic-looking toy guns. The Senate added to the energy bill the toy gun amendment that was contained in the Senate-passed version of H.R. 4445, the Firearms Detection Act. Senator DOLE has been the principal architect of this legislation in the other body.

The potential hazards and misuses of an object that resembles a deadly weapon ought to be evident to everyone. A person threatened with such an object can scarcely conduct a detailed examination to determine whether it is in fact real. Similarly, a police officer can hardly be expected to make a detailed inquiry concerning just how real the object in the hands of an adversary is before firing his gun. For these reasons, misuse of toy guns presents a real hazard and a problem that needs to be addressed.

The Senate amendment addresses the hazard by requiring that all toy or replica guns be made with a blaze orange plug in the muzzle of the toy or replica. It gives the Secretary of Commerce the power to provide for alternate marking devices or to waive the requirement altogether for replica guns to be used in TV or the movies. In addition, the marking requirement applies only to replicas resembling firearms developed after 1989. This last provision is to protect the manufacturers of antique replica firearms, whose sales depend on the realistic look of the object and whose expensive replicas are almost never involved in crimes or accidental shootings by police. The amendment also exempts BB, pellet, and paint-ball guns.

The amendment also provides for additional study of the problem of the misuse of toy or replica firearms, as well as examples of accidental shootings of persons carrying such toys or replicas. Manufacturers are given 6 months to comply with the new law. The difficult issue of state preemption is addressed by superseding any State laws dealing with inconsistent markings or identifications. The amendment presumably preserves some existing local bans of toy or replica guns, where the toy or replica is of a firearm developed after 1898.

The amendment is supported by the toy industry. The National Rifle Association takes no position on it. I believe that it represents a reasonable legislative response to a national problem. I urge my colleagues to support the bill.

Mr. Speaker, I reserve the balance of my time.

Mr. SHARP. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan [Mr. DINGELL], the chairman of the Committee on Energy and Commerce.

Mr. DINGELL. Mr. Speaker, I thank my dear friend and colleague, the gentleman from Indiana, for yielding me this time.

Mr. Speaker, I commend him for his outstanding leadership on this legislation, and also I commend the distinguished gentleman from California [Mr. MOORHEAD], for the fine leadership he has given.

Mr. Speaker, I support this bill in its entirety. The bill, as it comes back from the Senate, is a satisfactory and workable solution to a number of problems.

I urge my colleagues to support this legislation.

Mr. Speaker, I commend the gentleman from Indiana [Mr. SHARP] for bringing S. 1382 to the House floor. It is good legislation which serves the public interest and I support its passage.

At this time, I would like to explain the reason for the inclusion by the other body of a so-called toy gun provision in S. 1382, and to make clear to all concerned in industry, law enforcement, and Government just what is involved with this provision. The provision, which falls within the jurisdiction of the House Energy and Commerce Committee, is quite simple in its thrust. It requires toy guns, replicas, look-alikes, imitations, water guns, and others, with certain exceptions, to have blaze orange plugs or similar markings permanently attached to the barrel. Industry would be given 6 months to come into compliance for markings of new production and to exhaust existing stocks of unmarked items.

The impetus for this provision comes from the Hobby and Toy Industry of America and the Toy Manufacturers of America. The amendment also is very similar to laws that have been in effect in Spain and Italy, and is essentially identical to State legislation recently enacted in Connecticut. Unfortunately, recently a few States and local jurisdictions have enacted laws or ordinances with inconsistent or conflicting provisions. Some have banned the sales of a few items altogether, while others have required different methods of marking. The amendment is designed to allow continued production, sale, and distribution of these items while at the same time reducing the potential for misuse as much as possible.

PROVISIONS OF THE AMENDMENT

The amendment makes it unlawful for any person to manufacture, import, ship, transport or receive any toy, look-alike or imitation firearm unless it has affixed to it a blaze orange plug inserted in the barrel. The plug is to be recessed no more than 6 mm and must be clearly visible. In certain instances where the item is not capable of being marked with a visible plug, the Secretary of Commerce is authorized to provide for an alternate marking or device which accomplishes the same purpose. Certain kinds of water guns and air-soft guns would be examples where alternate markings would be necessary. If there is no muzzle face, then the barrel tip should be distinctively marked.

Specific exemptions to coverage under this act are provided for imitation nonfiring replicas of any real firearm manufactured, designed and produced in 1898 or earlier. It does not make sense to exempt real antique firearms from coverage under the Gun Control Act of 1968 and then include imitations of these weapons under coverage of this act. For example, a nonfiring replica of a Colt model 1851 Navy revolver or single action revolver first manufactured in 1873 and subsequently manufactured since 1898 are not to be covered under this act.

B-B or pellet firing air guns such as those made by the Daisy Manufacturing Co. and Crosman air guns are also exempted. Similarly, the provision does not intend that paint-pellet guns firing projectiles for marking trees, or paintball games or other similar purposes such as those manufactured by the Nelson Paint Co. be covered.

It is contemplated that implementing regulations be issued by the Secretary of Commerce under his general regulatory authority. At the same time two independent studies or evaluations would be commissioned to determine the nature and scope of the misuse of toy guns and the adequacy of the marking systems established in this legislation. The Director of the National Institute of Justice would be directed to conduct a 6-month evaluation of the markings in simulated police combat situations, while the Director of the Bureau of Justice statistics would conduct a detailed study of police reports of misuse of toy and replica guns, both marked and unmarked.

This provision is to come into effect 6 months after enactment. This will allow sufficient time for manufacturers, importers, and dealers to exhaust existing inventories of unmarked lookalikes, toys, and imitations and to produce and distribute items that do comply. It will also allow the Secretary of Commerce or his designee to engage in an orderly rulemaking process under the Administrative Procedures Act.

Any State or local laws or ordinances which provide for inconsistent or conflicting marking or identification shall be preempted and superseded. For example, a local ordinance banning sale of traditional B-B, paint ball, or pellet-firing air guns would be of no force and effect. Also, if there were a State law that required a green colored plug or a red stripe on the side, it too would be nullified.

Nonguns can be mailed through the U.S. mails whereas real firearms are nonmailable except between licensed manufacturers and dealers.

The U.S. Customs Service also will play an important role in the importation of these items. My information is that the vast majority of these items are now manufactured abroad and imported in the United States by various organizations. It is at the point of entry where the determination can and should be made whether a particular item is marked in compliance with the law.

It is anticipated that the Secretary will work closely with the affected industries and their representatives. There also should be close cooperation and coordination with law enforcement organizations and interested State and local agencies.

Mr. Speaker, I understand that as a result of discussions between representatives from several police organizations and the leadership of the other body, two provisions were added to evaluate the marking system contained in the legislation and to engage in a nationwide survey of police reports of incidents involving the misuse of toy and replica guns. The Secretary would be given additional authority, after appropriate rulemaking, to modify the marking system in the wake of the evaluations.

Mr. LEVINE of California. Mr. Speaker, I rise today in support of the Federal Energy Management Improvement Act, and the toy gun amendment that was attached to it in the Senate. I must preface my support, however, with the caution that this legislation is merely the first step toward solving a complicated problem which very well may need to be readdressed during the upcoming session of Congress.

My interest in the issue of toy guns in a result of some tragic toy gun-related incidents that have occurred in or near my district in southern California during the past few years. Subsequently, there have been a flurry of toy gun incidents around the country, some of which have resulted in fatalities.

These incidents can be attributed to the proliferation of toy weapons that are alarmingly realistic, and are the same shape and size as real guns. Toys that resemble the type of street weapons that gang members and drug dealers wield are being sold for the use of little children.

I support this amendment because it allows States which have imposed bans on unmarked realistic toy guns to continue to do so, and allows them to go further in terms of enforcing age requirements on the purchase of BB, pellet and paint ball guns.

The amendment sets a minimum marking standard of an orange blaze plug, which is to be inserted in the barrel of the gun. This truly is the bare minimum in terms of distinctive markings, and its effectiveness may be questioned by the States and by law enforcement. The amendment provides for a study to be conducted by the National Institute of Justice, which is supposed to give a technical evaluation of the effectiveness of the orange plug from the standpoint of law enforcement.

This study should utilize the input of police officers in the field, who on a day-to-day basis must make split-second decisions on whether or not to shoot. They know best of all what it is like to look down the barrel of a gun, and whether or not an orange plug will make an adequate distinction for them under field conditions. This issue of imitation of the marking by criminals should also be evaluated. Many law enforcement officers have expressed their concern that an organge plug can be easily mimicked by a criminal, and could therefore be utilized as a device for slowing down a policeman's response to a situation.

Should the study determine a need to improve upon the orange plug in terms of distinguishing between a real weapon and a toy, it is incumbent upon the Secretary of Commerce to take this analysis and reassess the marking provision with the input of law enforcement and the States. The industry must comply with the needs of the consumer and law enforcement. Congress must ensure that lives are protected before profit.

Finally, I would like to thank Congressman SHARP for his assistance on this legislation, and Chairmen FLORIO and WAXMAN for their support on the issue of toy gun safety.

Mr. MOORHEAD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SHARP. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Indiana [Mr. SHARP] that the House suspend the rules and concur in the Senate amendment to the House amendments to the Senate bill, S. 1382.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment to the House amendments was concurred in.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SHARP. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate amendments to the House amendments just concurred in.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

CONCURRING IN SENATE AMENDMENT TO H.R. 2266, PIPELINE SAFETY REAUTHORIZATION ACT OF 1988, WITH AN AMENDMENT

Mr. SHARP. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 583) to take from the Speaker's table the bill (H.R. 2266) to amend the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 to authorize appropriations for fiscal years 1988 and 1989, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment with an amendment.

The Clerk read as follows:

H. RES. 583

Resolved, That, upon the adoption of this resolution, the House shall be considered to have taken from the Speaker's table the bill H.R. 2266, to amend the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 to authorize appropriations for fiscal years 1988 and 1989, and for other purposes, with the Senate amendment thereto, and concurred in the Senate amendment with an amendment as follows:

In lieu of the matter inserted by the Senate amendment for the text of the bill, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Pipeline Safety Reauthorization Act of 1988".

(b) TABLE OF CONTENTS.—

TITLE I—NATURAL GAS PIPELINE SAFETY

Sec. 101. Certification authority.

Sec. 102. State notification and pipeline inventory.

Sec. 103. State enforcement.

Sec. 104. Qualifications for State grant programs.
Sec. 105. Federal-State cooperation in case of accident.
Sec. 106. Increased civil penalties.
Sec. 107. Destruction of signs or markers.
Sec. 108. Additional inspection and testing.
Sec. 109. State prenotification of testing.
Sec. 110. Authorization for appropriations.

TITLE II—HAZARDOUS LIQUID PIPELINE SAFETY

Sec. 210. Certification authority.
Sec. 202. State notification and pipeline inventory.
Sec. 203. State enforcement.
Sec. 204. Qualifications for State grant programs.
Sec. 205. Increased civil penalties.
Sec. 206. Destruction of signs or markers.
Sec. 207. Additional inspection and testing.
Sec. 208. State prenotification of testing.
Sec. 209. Federal-State cooperation in case of accident.
Sec. 210. Authorization for appropriations.
Sec. 211. Carbon dioxide.

TITLE III—GENERALLY APPLICABLE PIPELINE SAFETY PROVISIONS

Sec. 301. Grants-in-aid authorization.
Sec. 302. Additional hirings.
Sec. 303. Minimum requirements for one-call notification systems.
Sec. 304. Internal inspection of pipelines.
Sec. 305. Emergency flow restricting devices.
Sec. 306. Feasibility of regulating excavation activities.
Sec. 307. Pipeline safety instructors.
Sec. 308. Clarification of congressional intent.

TITLE IV—MOTOR VEHICLE INFORMATION AND COST SAVINGS

Sec. 401. Transfer of titles held by lienholders.

TITLE I—NATURAL GAS PIPELINE SAFETY

SEC. 101. CERTIFICATION AUTHORITY.

Section 3(a)(1) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1672(a)(1)) is amended by inserting after the second sentence the following: "Such standards may include a requirement that all individuals responsible for the operation and maintenance of pipeline facilities be tested for qualifications and certified to perform such functions.".

SEC. 102. STATE NOTIFICATION AND PIPELINE INVENTORY.

Section 3 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1672) is amended by adding at the end the following new subsections:

"(e) NOTIFICATION STANDARDS.—Not later than 1 year after the date of the enactment of this subsection, the Secretary shall establish by regulation minimum Federal standards requiring operators of pipeline facilities subject to this Act (to the extent practicable) to provide, and revise as necessary, information relating to the operations of such facilities. Such information shall be completed and maintained and be provided, upon request, to the Secretary and an appropriate official of a State, as the case may be. Such information shall include the following:

"(1) The business name, address, and telephone number, including an operations emergency telephone number, of the operator.

"(2) An accurate map or maps, along with an appropriate supplementary geographic description, showing the location of major pipeline facilities including all transmission lines and significant distribution lines, of such operator in the State.

"(3) A description of the characteristics of the operator's pipelines within the State.

"(4) A description of all products transported through the operator's pipelines within the State.

"(5) The manual which governs operations and maintenance of the pipeline facilities located in the State.

"(6) An emergency response plan describing the operator's procedures for responding to and containing releases, including—

"(A) an identification of specific actions which will be taken by the operator on discovery of a release;

"(B) liaison procedures with State and local government agencies for emergency response; and

"(C) communication and alert procedures for immediate notification of State and local officials at the time of any release.

"(7) Any other information the Secretary considers useful and necessary to inform the States of the presence of pipeline facilities and operations within their boundaries.

"(f) PIPELINE INVENTORY STANDARDS.—The Secretary shall, by regulations, establish minimum Federal standards to require, not later than 1 year after the date of the enactment of this subsection, operators of pipeline facilities subject to this Act, to the extent practicable, to complete and maintain for the Secretary, and to reviews as appropriate thereafter, an inventory with appropriate information with respect to all types of pipe used for the transmission of gas in such operators's system, along with additional information such as the material history and the leak history of such pipe. Such inventory shall exclude equipment used with the compression of gas.".

SEC. 103. STATE ENFORCEMENT.

Section 5(a)(3) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1674(a)(3)) is amended by inserting "through means which include inspections conducted by State employees who meet qualifications established by the Secretary under subsection (d)" after "each such standard".

SEC. 104. QUALIFICATIONS FOR STATE GRANT PROGRAMS.

Section 5(d) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1674(d)) is amended by adding at the end the following new paragraph:

"(5) QUALIFICATIONS FOR STATE GRANT PROGRAMS.—The Secretary may establish by regulation qualifications for States to meet in order to participate in the pipeline safety grant program under this subsection, including qualifications for State employees who perform inspection activities pursuant to either an annual certification by a State agency or an agreement relating to inspection between a State agency and the Secretary. Such regulations may take into account the experience and training of the State employee, may mandate training or other requirements, and may provide for conditional approval of qualifications pending satisfaction of specified requirements.".

SEC. 105. FEDERAL-STATE COOPERATION IN CASE OF ACCIDENT.

Section 9 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1676) is amended—

(1) by inserting "(a) GENERAL RULE.—" before "Whenever"; and

(2) by adding at the end of the following new subsection:

"(b) COORDINATION PROCEDURES.—Not later than 1 year after the date of the enactment of this subsection, the Secretary, after consultation with appropriate State officials, shall establish procedures to promote more effective coordination between the agencies of the United States and of the States with regulatory authority over pipeline facilities with respect to responses to pipeline accidents.".

SEC. 106. INCREASED CIVIL PENALTIES.

Section 11(a)(1) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1679a(a)(1)) is amended—

(1) by inserting ", after notice and an opportunity for a hearing," after "Secretary";

(2) by striking out "$1,000" and inserting in lieu thereof "$10,000"; and

(3) by striking out "$200,000" and inserting in lieu thereof "$500,000".

SEC. 107. DESTRUCTION OF SIGNS OR MARKERS.

Section 11(c) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1679a(c)) is amended by adding at the end the following new paragraph:

"(3) DESTRUCTION OF SIGNS OR MARKERS.—Any person who willfully and knowingly defaces, damages, removes, or destroys any pipeline sign or right-of-way marker required by Federal law or regulation shall, upon conviction, be subject, for each offense, to a fine of not more than $5,000, imprisonment for a term not to exceed 1 year, or both.".

SEC. 108. ADDITIONAL INSPECTION AND TESTING.

(a) INSPECTION AND TESTING.—Section 13 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1680) is amended—

(1) by inserting "(a) PIPELINE OPERATOR'S RESPONSIBILITIES.—" before "Each person who engages"; and

(2) by adding at the end the following new subsection:

"(b) SECRETARY'S RESPONSIBILITIES.—

"(1) IN GENERAL.—The Secretary shall inspect and, as appropriate, shall require testing of pipeline facilities subject to this Act and not covered by an agreement or certification under section 5 to ensure the safety of such pipeline facilities. To the extent and in such amounts as are provided in advance by appropriation Acts, such inspections shall be at intervals determined under paragraph (2) but no less frequently than once every 2 years thereafter; except that the Secretary may reduce the frequency of such inspections with respect to master meter systems. Such inspections shall begin as soon as feasible, but in no event more than 1 year after the date of the enactment of this subsection. Such testing shall be performed using the most appropriate technology practicable.

"(2) CRITERIA FOR FREQUENCY AND TYPE.—The frequency and type of inspection and testing under this subsection shall be determined by the Secretary on a case-by-case basis after consideration of the following factors:

"(A) The location of the pipeline facilities.

"(B) The type, size, age, manufacturer, method of construction, and condition of the pipeline facilities.

"(C) The nature and volume of the materials transported through the pipeline facilities and the pressure at which they are transported.

"(D) The climatic, geologic, and seismic characteristics of, and conditions (including soil characteristics) associated with the areas in which the pipeline facilities are located, and the existing and projected population and demographic characteristics associated with such areas.

"(E) The frequency of leaks, if any.

"(F) Any other factors determined by the Secretary to be relevant to the safety of pipeline facilities.".

(b) Instrumented Internal Inspection Devices.—Section 3 of such Act (49 U.S.C. App. 1672) is amended by adding at the end the following new subsection:

"(g) Instrumented Internal Inspection Devices.—The Secretary shall, by regulation, establish minimum Federal safety standards requiring that—

"(1) the design and construction of new transmission facilities, and

"(2) when replacement of existing transmission facilities or equipment is required, the replacement of such existing facilities.

be carried out, to the extent practicable, in a manner so as to accommodate the passage through such transmission facilities of instrumented internal inspection devices (commonly referred to as 'smart pigs').".

(c) Improvement of Master Meter Inspection Program.—

(1) Study.—The Secretary of Transportation shall undertake a study to assess the need for an improved inspection program for master meter systems.

(2) Report.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Transportation shall submit to Congress a report detailing the Secretary's findings under paragraph (1) together with any recommendations of the Secretary for appropriate legislation.

SEC. 109. STATE PRENOTIFICATION OF TESTING.

Section 14(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1681(a)) is amended by inserting after the first sentence the following new sentence: "Prior to requiring such testing, the Secretary shall notify the appropriate State official in the State in which the affected pipeline facility is located.".

SEC. 110. AUTHORIZATION FOR APPROPRIATIONS.

Section 17(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1684(a)) is amended—

(1) by striking "and" at the end of paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting in lieu thereof a semicolon; and

(3) by adding at the end the following:

"(6) $3,733,000 for the fiscal year ending September 30, 1988;

"(7) $3,978,000 for the fiscal year ending September 30, 1989;

"(8) $4,086,000 for the fiscal year ending September 30, 1990; and

"(9) $4,270,000 for the fiscal year ending September 30, 1991.

The Secretary may credit to any appropriation authorized under this subsection funds received from non-Federal sources for reimbursement for expenses incurred by the Secretary in providing training. The Secretary may expend in fiscal year 1989 or fiscal year 1990 not to exceed $50,000 of funds appropriated pursuant to this subsection for such fiscal year for establishing a training program for persons who install, operate, and maintain a system of providing natural gas for more than one unit in a definable area (including a building or series of buildings, a mobile home park, a housing project, or an apartment complex) through use of a master metering system in lieu of separate meters.".

TITLE II—HAZARDOUS LIQUID PIPELINE SAFETY

SEC. 201. CERTIFICATION AUTHORITY.

Section 203(c) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2002(c)) is amended by inserting after the first sentence the following: "Such standards may include a requirement that all individuals responsible for the operation and maintenance of pipeline facilities be tested for qualifications and certified to perform such functions.".

SEC. 202. STATE NOTIFICATION AND PIPELINE INVENTORY.

Section 203 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2002) is amended by adding at the end the following new subsections:

"(i) Notification Standards.—Not later than 1 year after the date of the enactment of this subsection, the Secretary shall establish by regulation minimum Federal standards requiring operators of pipeline facilities subject to this title (to the extent practicable) to provide, and revise as necessary, information relating to operation of such facilities. Such information shall be completed and maintained and be provided, upon request, to the Secretary and an appropriate official of a State, as the case may be. Such information shall include the following:

"(1) The business name, address, and telephone number, including an operations emergency telephone number, of the operator.

"(2) An accurate map or maps, along with any appropriate supplementary geographic description, showing the location of major pipeline facilities of such operator in the State.

"(3) A description of the characteristics of the operator's pipelines within the State.

"(4) A description of all products transported through the operator's pipelines within the State.

"(5) The manual which governs operations and maintenance of the pipeline facilities located in the State.

"(6) An emergency response plan describing the operator's procedures for responding to and containing releases, including—

"(A) an identification of specific actions which will be taken by the operator on discovery of a release;

"(B) liaison procedures with State and local government agencies for emergency response; and

"(C) communication and alert procedures for immediate notification of State and local officials at the time of any release.

"(7) Any other information the Secretary considers useful and necessary to inform the States of the presence of pipeline facilities and operations within their boundaries.

"(j) Pipeline Inventory Standards.—The Secretary shall, by regulation, establish minimum Federal standards to require, not later than 1 year after the date of the enactment of this subsection, operators of pipeline facilities subject to this title, to the extent practicable, to complete and maintain for the Secretary, and revise as appropriate thereafter, an inventory with appropriate information with respect to all types of pipe used for the transmission of hazardous liquids in such operator's system, along with additional information such as the material history and the leak history of such pipe. Such inventory shall exclude equipment associated only with the pipeline pumps or storage facilities.

SEC. 203. STATE ENFORCEMENT.

Section 205(a)(3) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2004(a)(3)) is amended by inserting "through means which include inspections conducted by State employees who meet qualifications established by the Secretary under subsection (d)" after "each such standard".

SEC. 204. QUALIFICATIONS FOR STATE GRANT PROGRAMS.

Section 205(d) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2004(d)) is amended by adding at the end the following new paragraph:

"(5) Qualifications for State Grant Programs.—The Secretary may establish by regulation qualifications for States to meet in order to participate in the pipeline safety grant program under this subsection, including qualifications for State employees who perform inspection activities pursuant to either an annual certification by a State agency on an agreement relating to inspection between a State agency and the Secretary. Such regulations may take into account the experience and training of the State employee, may mandate training or other requirements, and may provide for conditional approval of qualifications pending satisfaction of specified requirements.".

SEC. 205. INCREASED CIVIL PENALTIES.

Section 208(a)(1) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2007(a)(1)) is amended—

(1) by inserting ", after notice and an opportunity for a hearing," after "Secretary";

(2) by striking out "$1,000" and inserting in lieu thereof "$10,000"; and

(3) by striking out "$200,000" and inserting in lieu thereof "$500,000".

SEC. 206. DESTRUCTION OF SIGNS OR MARKERS.

Section 208(c) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2007(c)) is amended by adding at the end the following new paragraph:

"(3) Destruction of Signs or Markers.—Any person who willfully and knowingly defaces, damages, removes, or destroys any pipeline sign or right-of-way marker required by Federal law or regulation shall, upon conviction, be subject, for each offense, to a fine of not more than $5,000, imprisonment for a term not to exceed 1 year, or both.".

SEC. 207. ADDITIONAL INSPECTION AND TESTING.

(a) Inspection and Testing.—Section 210 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2009) is amended by adding at the end the following new subsection:

"(d) Secretary's Responsibilities.—

"(1) In general.—The Secretary shall inspect and, as appropriate, shall require testing of pipeline facilities subject to this title and not covered by an agreement or certification under section 205 to ensure the safety of such pipeline facilities. To the extent and in such amounts as are provided in advance by appropriation Acts, such inspections shall be at intervals determined under paragraph (2) but no less frequently than once every 2 years thereafter. Such inspection shall begin as soon as feasible, but in no event more than 1 year after the date of the enactment of this subsection. Such testing shall be performed using the most appropriate technology practicable.

"(2) Criteria for frequency and type.—The frequency and type of inspection and testing under this subsection shall be determined by the Secretary on a case-by-case basis after consideration of the following factors:

"(A) The location of the pipeline facilities.

"(B) The type, size, age, manufacture, method of construction, and condition of the pipeline facilities.

"(C) The nature and volume of the materials transported through the pipeline facilities and the pressure at which they are transported.

"(D) The climatic, geologic, and seismic characteristics of, and conditions (including soil characteristics) associated with the areas in which the pipeline facilities are located, and the existing and projected population and demographic characteristics associated with such areas.

"(E) The frequency of leaks, if any.

"(F) Any other factors determined by the Secretary to be relevant to the safety of pipeline facilities.".

(b) Instrumented Internal Inspection Devices.—Section 203 of such Act (49 U.S.C. App. 2002) is amended by inserting at the end the following new subsection:

"(k) Instrumented Internal Inspection Devices.—The Secretary shall, by regulation, establish minimum Federal safety standards requiring that—

"(1) the design and construction of new pipeline facilities, and

"(2) when the replacement of existing pipeline facilities or equipment is required, the replacement of such existing facilities,

be carried out, to the extent practicable, in a manner so as to accommodate the passage through such pipeline facilities of instrumented internal inspection devices (commonly referred to as 'smart pigs').".

(c) Technical Correction.—Section 210 of such Act (49 U.S.C. App. 2009) is amended by striking the last sentence of subsection (c)(3) and inserting such sentence at the end of subsection (a).

SEC. 208. STATE PRENOTIFICATION OF TESTING.

Section 211(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2010(a)) is amended by inserting after the first sentence the following new sentence: "Prior to requiring such testing, the Secretary shall notify the appropriate State official in the State in which the affected pipeline facility is located.".

SEC. 209. FEDERAL-STATE COOPERATION IN CASE OF ACCIDENT.

Section 212 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2011) is amended by adding at the end the following new subsection:

"(d) Coordination Procedures.—Not later than 1 year after the date of the enactment of this subsection, the Secretary, after consultation with appropriate State officials, shall establish procedures to promote more effective coordination between the agencies of the United States and of the States with regulatory authority over pipeline facilities with respect to responses to pipeline accidents.".

SEC. 210. AUTHORIZATION FOR APPROPRIATIONS.

Section 214(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2013(a)) is amended—

(1) by striking "and" at the end of paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting in lieu thereof a semicolon; and

(3) by adding at the end the following:

"(6) $921,000 for the fiscal year ending September 30, 1988;

"(7) $995,000 for the fiscal year ending September 30, 1989;

"(8) $1,021,000 for the fiscal year ending September 30, 1990; and

"(9) $1,067,000 for the fiscal year ending September 30, 1991.

The Secretary may credit to any appropriation authorized under this subsection funds received from non-Federal sources for reimbursement for expenses incurred by the Secretary in providing training.".

SEC. 211. CARBON DIOXIDE.

(a) Regulation.—The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001 et seq.) is further amended by adding at the end the following new section:

"SEC. 219. CARBON DIOXIDE.

"(a) General Rule.—In addition to hazardous liquids, the Secretary shall regulate under this title carbon dioxide which is transported by pipeline facilities.

"(b) Regulations.—The Secretary, as necessary and appropriate, shall amend regulations issued with respect to hazardous liquids under this title and shall issue new regulations to ensure the safe transportation of carbon dioxide by pipeline facilities.".

"(b) Conforming Amendment.—The table of contents in section 1(b) of the Hazardous Liquid Pipeline Safety Act of 1979 is amended by inserting

"Sec. 219. Carbon dioxide."

after

"Sec. 218. Savings provisions.".

"(c) Effective Date.—Section 219(a) of the Hazardous Liquid Pipeline Safety Act of 1979, as added by subsection (a) of this section, shall take effect 18 months after the date of the enactment of this Act.

TITLE III—GENERALLY APPLICABLE PIPELINE SAFETY PROVISIONS

SEC. 301. GRANTS-IN-AID AUTHORIZATION.

"(a) In General.—Subsection (c) of section 17 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1684) is amended—

(1) by striking "and" after "September 30, 1986,"; and

(2) by inserting ", $5,000,000 for the fiscal year ending September 30, 1988, $5,500,000 for the fiscal year ending September 30, 1989, $5,500,000 for the fiscal year ending September 30, 1990, and $5,500,000 for the fiscal year ending September 30, 1991" after "September 30, 1987".

(b) Maximum Allocation on Indirect Expenses.—

(1) In General.—Subsection (d) of such section is amended by inserting "(1) Set aside for hazardous liquid grants-in-aid program.—" before "Not less than" and by adding at the end thereof the following new paragraph:

"(2) Maximum allocation to indirect expenses.—Not more than 20 percent of the amount of a pipeline safety grant made to a State under section 5(d) of this Act and section 205(d) fo the Hazardous Pipeline Safety Act of 1979 may be allocated to indirect expenses.".

(2) Conforming amendments.—Such subsection is further amended—

(A) by inserting "Limitation on Grants-in-Aid Funds.—" after "(d)" the first place it appears; and

(B) by indenting paragraph (1), as designated by this subsection, and aligning such paragraph with paragraph (2) of such section, as added by this subsection.

(c) Additional Funding.—Such section is further amended by adding at the end the following new subsection:

"(e) Additional Funding.—

"(1) Additional grant funds.—The Secretary shall make available for grants to the States any funds appropriated for fiscal years 1986 and 1987 which have not been expended in making grants under section 5(d) of this Act and section 205(d) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2004(d)).

"(2) Eligibility.—Grants made under this subsection shall be available to States which in 1988 or thereafter (A) undertake new responsibilities under section 5(a) of this Act or section 205(a) of the Hazardous Liquid Pipeline Safety Act of 1979, or (B) implement a one-call damage prevention program established under State law.

"(3) Limitations.—Nothing in this subsection shall result in any State receiving grant funds under this Act or under the Hazardous Liquid Pipeline Safety Act of 1979 in excess of 50 percent of its allowable pipeline safety costs. No State shall receive funds under this subsection in excess of $75,000.

"(4) Availability.—Funds made available under this subsection shall remain available until expended.".

SEC. 302. ADDITIONAL HIRINGS.

Section 17 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1684) is amended by adding at the end thereof the following new subsection:

"(f) Additional Hiring.—For purposes of hiring 8 additional inspectors to carry out inspections under section 13(b) of this Act and section 210(d) of the Hazardous Liquid Pipeline Safety Act of 1979 and necessary support staff, there is authorized to be appropriated $500,000 for fiscal year 1989. For purposes of retaining the persons hired under the preceding sentence and for hiring 8 additional inspectors to carry out such inspections and necessary support staff, there is authorized to be appropriated $1,000,000 for fiscal year 1990. For purposes of retaining the persons hired under the two preceding sentences, there is authorized to be appropriated $1,000,000 for fiscal year 1991.".

SEC. 303. MINIMUM REQUIREMENTS FOR ONE-CALL NOTIFICATION SYSTEMS.

(a) Requirement and Grant Program.—The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671-1686) is amended by adding at the end thereof the following new section:

"SEC. 20. MINIMUM REQUIREMENTS FOR ONE-CALL NOTIFICATION SYSTEMS.

"(a) State Adoption of System.—In making allocations under section 5 of this Act, and under section 205 of the Hazardous Liquid Pipeline Safety Act of 1979, the Secretary shall consider whether a State has adopted or is seeking adoption of a one-call notification system under subsection (b). If the Secretary determines that any State has not adopted, and is not seeking adoption of, such a system, such State may not receive the full reimbursement under such sections to which it would otherwise be entitled.

"(b) One-Call Notification Systems.—Not later than 18 months after the date of the enactment of this section, the Secretary shall issue regulations establishing minimum Federal requirements for establishment and operation of one-call notification systems for adoption by States as described in subsection (a) relating to notification of operators of pipeline facilities of activities in the vicinity of a pipeline facility which could threaten the safety of such facility. Such regulations shall include, but not be limited to, the following:

"(1) A requirement that the system or systems apply to all areas of the State containing underground pipeline facilities.

"(2) A requirement that any person intending to engage in any activity, as determined by the Secretary, which could cause physical damage to an underground pipeline facility must contact the appropriate one-call notification system to determine if there are underground pipeline facilities present in the area of the intended activity.

"(3) A requirement that all operators of underground pipeline facilities participate in an appropriate one-call notification system.

"(4) Qualifications for operation of such a system whether by operators of pipeline facilities, private contractors, or State or local agencies.

"(5) Procedures for advertisement and notice of the availability of such a system.

"(6) Requirements for the information to be provided by persons contacting the system under paragraph (2).

"(7) Requirements for the response of the operator of such notification system and of the operator of the pipeline facility after contact by a person under this subsection.

"(8) A requirement that each State determine whether the notification system will be toll free or not.

"(9) Requirements for sanctions substantially the same as are provided under sections 11 and 12 of this Act.

"(c) Grants to States.—The Secretary may make grants to States for development and establishment of one-call notification systems which are consistent with all of the requirements established under subsection (b).

"(d) Limitation.—Nothing in this section or any regulation issued under this section shall alter any liability established under Federal or State law for damages caused by activities described in subsection (b)(2).

"(e) Pipeline Facility Defined.—As used in this section, the term 'pipeline facility' includes, in addition to pipeline facilities as defined by this Act, any pipeline facility which is described in section 202(4) of the Hazardous Liquid Pipeland Safety Act of 1979.

"(f) Authorization of Appropriations.—For purposes of carrying out subsection (c), there is authorized to be appropriated $1,000,000 per fiscal year for each of fiscal years 1990 and 1991. Such sums shall remain available until expended.".

(b) Conforming Amendments.—(1) Section 5(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1674(a)) is amended by striking "section 19" and inserting in lieu thereof "sections 19 and 20".

(2) Section 17(a) of such Act (49 U.S.C. 1684(a)) is amended by inserting "or section 20" after "subsection (b) or (c)".

SEC. 304. INTERNAL INSPECTION OF PIPELINES.

(a) Study.—The Secretary of Transportation shall undertake a study assessing the feasibility of requiring the inspection of transmission facilities with instrumented internal inspection devices at periodic intervals determined after consideration of the factors set forth in section 13(b)(2) of the Natural Gas Pipeline Safety Act of 1968 and section 219(d)(2) of the Hazardous Liquid Pipeline Safety Act of 1979.

(b) Report.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Transportation shall submit to Congress a report detailing the Secretary's findings under subsection (a) together with any recommendations of the Secretary for appropriate legislation.

SEC. 305. EMERGENCY FLOW RESTRICTING DEVICES.

(a) Study.—The Secretary of Transportation shall undertake a study of the safety, cost, feasibility, and effectiveness of requiring operators of pipeline facilities subject to the Natural Gas Pipeline Safety Act of 1968 and operators of pipeline facilities subject to the Hazardous Liquid Pipeline Safety Act of 1979 to install emergency flow restricting devices in existing and future pipeline systems in varying circumstances and locations. The Secretary of Transportation shall also assess the cost and effectiveness of initiating a demonstration project of such emergency flow restricing devices.

(b) Report.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall submit to Congress a report detailing the Secretary's findings under subsection (a) together with any recommendations of the Secretary for appropriate legislation.

SEC. 306. FEASIBILITY OF REGULATING EXCAVATION ACTIVITIES.

(a) Assessment and Report.—The Secretary of Transportation shall assess the feasibility of regulating persons whose excavation activities may result in damage to pipeline facilities (as defined under section 2 of the Natural Gas Pipeline Safety Act of 1968 and under section 202 of the Hazardous Liquid Pipeline Safety Act of 1979) and, not later than 1 year after the date of the enactment of this Act, transmit to Congress a report on the results of such assessment together with any legislative recommendations of the Secretary concerning regulation of such persons.

(b) Funding.—The Secretary of Transportation may use such sums as may be necessary of funds appropriated pursuant to section 17(a) of the Natural Gas Pipeline Safety Act of 1968 and section 214(a) of the Hazardous Liquid Pipeline Safety Act to carry out this section.

SEC. 307. PIPELINE SAFETY INSTRUCTORS.

To the extent and in such amounts as are provided in advance by appropriation Acts, the Secretary of Transportation shall increase by not less than 2 the number of instructors of pipeline safety at the Transportation Safety Institute of the Department of Transportation.

SEC. 308. CLARIFICATION OF CONGRESSIONAL INTENT.

The Act entitled "An Act to revise, codify, and enact without substantive change the Interstate Commerce Act and related laws as subtitle IV of title 49, United States Code, 'Transportation'", approved October 17, 1978 (92 Stat. 1337; Public Law 95-473) does not repeal and has no substantive effect on any rights, obligations, liabilities, or remedies of oil pipelines, including those arising under any provisions of the Interstate Commerce Act (49 U.S.C. App. 1 et seq.) or the Pomerene Bills of Lading Act (49 U.S.C. App. 81 et seq.), before any Federal department or agency or official thereof or a court of competent jurisdiction.

TITLE IV—MOTOR VEHICLE INFORMATION AND COST SAVINGS

SEC. 401. TRANSFER OF TITLES HELD BY LIENHOLDERS.

Section 408(d)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1988(d)(1)) is amended by adding at the end thereof the following new subparagraph:

"(C) In the case of a transferor to whom title to a motor vehicle has been issued by any State and such title is, at the time of a transfer of such motor vehicle, physically held by a lienholder, nothing in this subsection shall be construed to prohibit for purposes of the mileage disclosure requirements of this section the use of a written power of attorney (if otherwise permitted by State law) in a form, and under reasonable conditions, prescribed by rule by the Secretary before February 1, 1989. The rule shall (i) ensure disclosure on the power of attorney document of the actual mileage at the time of the transfer, and (ii) ensure that such mileage will be restated exactly by the person exercising the power of attorney in the space referred to in paragraph (2)(A)(iii). The rule, consistent with the purposes of this Act and the need to facilitate enforcement thereof, shall prescribe that the form be issued by the State to the transferee in accordance with paragraph (2)(A)(i) and shall provide for retention of a copy of such power of attorney and for the original to be submitted back to the State by the person granted such power of attorney. The provisions of sections 412 and 413 shall apply to any person granting or granted such power or attorney.".

The SPEAKER pro tempore. Is a second demanded?

Mr. MOORHEAD. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Indiana [Mr. Sharp] will be recognized for 20 minutes and the gentleman from California [Mr. Moorhead] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Indiana [Mr. Sharp].

Mr. SHARP. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the legislation before us will significantly improve the safety of the nation's pipeline system. Pipelines are normally a safe mode of transportation; nonetheless, there is room to make them even safer, and this has been our primary goal in developing this bill. The pipeline industry has supported this bill out of a desire to improve their safety record.

The majority of pipeline accidents are cause by one of three factors: External damage, corrosion, or operator error.

Each of these factors has been considered in this legislation.

External damage is reduced through an initiative to expand "one call" notification systems which serve to locate underground utilities and prevent damage through careful identification and location of pipelines and other underground utilities.

Corrosion related accidents will be reduced through increased inspections and initiatives to promote and require the increased use of "smart pigs." Contrary to their name, smart pigs are not part of a Department of Agriculture genetic engineering research program. Smart pigs are high technology internal inspection devices that actually travel inside the pipelines and use space-age technology to inspect the pipeline from the inside.

Operator error is minimized through increased training requirements associated with a new operator testing program.

The bill has been carefully written to target the pipeline safety's problem areas in a cost effective manner.

This bill was jointly referred to the Committee on Energy and Commerce and the Committee on Public Works and Transportation. The cooperation shown by the Committee on Public Works and Transportation and its distinguished chairman, Mr. ANDERSON, was sincerely appreciated. I also wish to thank Chairman DINGELL of the Energy and Commerce Committee, and the members of the minority, Mr. LENT and Mr. MOORHEAD, for their leadership and assistance in this essential bill. Mr. VENTO, Mr. SIKORSKI, and Mr. OBERSTAR of Minnesota were also very helpful, for they saw in their State the tragic results of a pipeline accident.

This amendment in the nature of a substitute is very similar to the language which passed the House several months ago. This substitute restores several provisions which were deleted during debate in the other body. The most significant of these restorations is the requirement that the Secretary of Transportation include carbon dioxide pipelines in the Federal Pipeline Safety Program. The biggest difference between what was presented to the House in April 1988 and that before us today is the additional year of funding authorization for fiscal year 1991.

The major provisions in the bill that have essentially remained unchanged since original House passage are:

Authority to allow DOT to test and certify pipeline operators;

Development of a definitive inventory of the Nation's pipeline system;

Mandates for additional inspection and testing of pipelines;

Authority to hire additional inspectors so the DOT will be able to comply with additional inspection requirements;

A requirement that future pipelines be constructed to accommodate the passage of "smart pigs;" and

Studies related to emergency flow restriction devices and inspection of master meters systems.

These provisions represent a cost effective way to improve the safety of this Nation's pipeline system and the safety of our citizens who work and live near pipelines.

I urge my colleagues to pass this essential piece of safety legislation, which already received overwhelming support when it passed in April 1988 in a slightly different form.

Mr. Speaker, I reserve the balance of my time.

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today for the purpose of expressing support for this legislation to reauthorize and reform the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979.

This legislation is intended to improve upon a program that is already working very well. The movement of natural gas and hazardous liquids is accomplished in a safe manner. A comparison of the safety record of the pipeline operators with the record of other transporters makes this point quite clear.

This does not mean that improvements cannot be made, indeed, H.R. 2266 makes several important improvements to the existing statutory regime which should enhance the safety of pipeline operations. Most of these new safety procedures are to be implemented by the pipelines themselves, and it is to their credit that they have endorsed these procedures and have cooperated in drafting technically correct language.

I am particularly pleased with the "one-call" provision of this bill. This one call system provides an accurate, up to date and readily accessible source of information to the location of underground pipe that will help ensure against accidents arising from excavation work. The legislation encourages States to establish these one call systems and authorizes additional grant funds to defray their expenses in doing so.

Finally, I would note that the spending on the Federal Pipeline Safety Program, including the grants to States, are recouped through user fees assessed on the regulated companies. Thus, these safety activities are implemented at no net cost to the Treasury.

I urge my colleagues to support passage of this important legislation.

I wish to close by expressing my appreciation for the leadership and cooperation of subcommittee Chairman PHIL SHARP, and committee Chairman JOHN DINGELL.

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Mr. Speaker, I reserve the balance of my time.

Mr. SHARP. Mr. Speaker, I yield 5 minutes to the gentleman from California [Mr. ANDERSON], the distinguished chairman of the Committee on Public Works and Transportation.

Mr. ANDERSON. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in support of House Resolution 583, which provides for concurring in the Senate amendment to H.R. 2266, to amend the Natural Gas Pipeline Safety Act and the Hazardous Liquid Pipeline Safety Act, with an amendment. The bill H.R. 2266 authorizes funds to carry out the Natural Gas Pipeline Safety Act and the Hazardous Liquid Pipeline Safety Act. The bill, as amended by the Senate, represents a compromise among the House Committees on Public Works and Transportation, and Energy and Commerce; as well as the Senate Committee on Commerce, Science and Transportation. I would like to thank my colleagues on these committees for their splendid cooperation in reaching agreement on this legislation.

By way of background, the House Subcommittee on Surface Transportation held hearing on pipeline safety in May 1987. H.R. 2266 addresses the two principal concerns regarding pipeline safety identified in these hearings—how to improve the quality and quantity of pipeline inspections, and how to enhance the safety aspects of one-call notification systems.

The bill provides a strong foundation for improving the quality of pipeline inspections by providing the Secretary of Transportation with the authority to establish qualifications for State inspectors under the Pipeline Safety Grant Program. H.R. 2266 also authorizes an increase in the number of Federal inspectors from 20 to 36 over a 2-year period.

The bill also provides the Department with the authority to formulate a model one-call notification system for adoption by the States. One-call systems notify operators of pipeline facilities of activities in the vicinity of such facilities which could threaten their safety. The implementation of one-call systems, which are widely supported by the pipeline industry and by public safety experts, will help prevent the leading cause of pipeline accidents—outside construction activities.

Other provisions of the bill provide for better knowledge of pipeline location, product movement, and emergency response procedures. Finally, the bill provides for the regulations of carbon dioxide under the Hazardous Liquid Pipeline Safety Act. These provisions, along with others aimed at leak and corrosion detection and damage containment, will further improve the safety record of the pipeline industry.

Mr. Speaker, the provisions of H.R. 2266, as amended, have been made acceptable to the Senate without jeopardizing any of the improvements to pipeline safety anticipated by the House when it passed this bill on April 19 of this year. I urge my colleagues to support H.R. 2266.

Mr. HAMMERSCHMIDT. Mr. Speaker, will the gentleman from California yield?

Mr. ANDERSON. I yield to the gentleman from Arkansas.

Mr. HAMMERSCHMIDT. Mr. Speaker, I rise in support of this resolution which has the effect of taking from the Speaker's table the bill H.R. 2266, the Pipeline Safety Reauthorization Act of 1988, and the Senate amendment thereto, and concurring in the Senate amendment with an amendment.

I would like to thank the distinguished chairman of the Public Works and Transportation Committee, Mr. ANDERSON, and the ranking minority member of the Subcommittee on Surface Transportation, Mr. SHUSTER, for their able leadership in the management of this bill.

I also commend the leadership of the Energy and Commerce Committee for their cooperation and hard work.

This legislation originally passed the House on April 19, 1988, and it was amended and passed by the Senate on September 30, 1988.

The bill as amended reauthorizes the Pipeline Safety Program of the Department of Transportation for fiscal years 1988 through 1991. The bill also contains several provisions which will improve enforcement of safety regulations on our Nation's pipeline systems and require new safety measures to reduce accidents on these pipelines.

The amendment we are adopting here today makes a number of changes in the original House-passed version of the bill. These changes were worked out with the Senate. We anticipate that the Senate will pass the bill as we send it to them; thus, clearing it for what we hope will be Presidential approval. I would like to highlight a few of these changes.

First, the bill includes a mechanism for redistributing unused grant moneys from previous fiscal years to States that assume new safety responsibilities or implement one-call systems.

For fiscal years 1986 and 1987 this sum is estimated at approximately $400,000.

Second, the bill revises the items to be provided by pipeline operations to the Secretary of DOT to include accurate maps, operations and maintenance manuals and an emergency response plan.

Third, the bill provides for an increase in civil penalties for pipeline violations from $1,000 to $10,000.

Fourth, the bill provides for the hiring of at least two new instructors in pipeline safety at the Transportation Safety Institute in Oklahoma City.

Mr. Speaker, this bill does much to assure that our Nation's natural gas and hazardous liquid pipeline systems continue to maintain a good safety record. It is in our best interest to promptly enact the legislation and send it to the President. I urge my colleagues to support enactment of H.R. 2266.

Mr. MOORHEAD. Mr. Speaker, I yield 5 minutes to the gentleman from Kansas [Mr. WHITTAKER].

Mr. WHITTAKER. Mr. Speaker, I rise in support of the House amendment to the Senate amendments to H.R. 2266. In particular, I support the compromise we have reached on a provision relating to odometer fraud.

Under the Truth in Mileage Act, the mileage of a motor vehicle must be recorded on the title whenever the title passes. In some States, the lienholder physically holds the title to the vehicle. Thus, when a dealer or other person buys a used vehicle, he must first go to the lienholder and get the title. Then he must go back to the seller with the title so that the seller can record the mileage. This last step is often difficult and can be avoided if the seller executes a power of attorney to the buyer authorizing the buyer to record the mileage upon receipt of the title.

A proposed regulation of the National Highway Traffic Safety Administration would have the effect of prohibiting the use of powers of attorney in certain cases for purposes of recording mileage on titles of motor vehicles. We feel that this would impose an undue burden on dealers.

We have drafted the amendment in a very narrow fashion. It permits the power of attorney to be given to the buyer only when the title is physically held by the lienholder. It requires disclosure of the actual mileage on the power of attorney document and it requires that persons exercising the power of attorney restate that mileage exactly. The provision also requires that the original power of attorney document be submitted to the State and that the transferee retain a copy.

In short, I believe that this amendment resolves a technical problem for purchasers of used motor vehicles without increasing the burden on States or lessening our ability to fight odometer fraud.

I would like to make clear that we have not adopted a much more onerous provision proposed by the Senate which would have required the disclosure of mileage on annual registration forms. This provision would impose an unreasonable burden on individuals, businesses owning fleets of cars, and the States, without significantly improving enforcement of odometer fraud laws.

I commend my colleagues, Chairmen DINGELL and LUKEN, for their work in resolving this issue.

I urge adoption of the House amendment.

Mr. SHARP. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan [Mr. DINGELL], the distinguished chairman of the Committee on Energy and Commerce.

Mr. DINGELL. Mr. Speaker, I rise in support of this pipeline safety legislation as amended by the distinguished chairman of the Energy and Power Subcommittee, Congressman PHIL SHARP. The amendment includes an odometer provision regarding powers of attorney. It is a modified version of a similar provision offered by the Senate. It resolves a problem with recently adopted regulations, while maintaining the antifraud provisions of the law. I urge the support of the House.

Mr. Speaker, included with the Senate-passed bill were several nongermane amendments to title IV of the Motor Vehicle Information and Cost Savings Act on Odometer Fraud. This committee amended that law in 1986 by enacting the Truth in Mileage Act of 1986. Regulations to implement that law were recently promulgated. Suddenly, the Senate has proposed a number of changes in the law, some of which the House rejected in 1986 and others of which we never even knew about until a few days ago.

Because of the lateness of the session, because of opposition of the American Association of Motor Vehicles Administrators, the National Highway Traffic Safety Administration, and others, and because of our inability to ascertain all the pros and cons about some of these provisions, the bill includes only one of these provisions in a more limited form which seeks to eliminate legitimate concerns expressed by the National Highway Traffic Safety Administration in an October 11, 1988, letter to the committee. That relates to an issue that has arisen regarding the use of power of attorneys in commercial transactions involving the sale of vehicles.

At the outset, I think it is clear that the law, as enacted by Congress, does not prohibit the use of power of attorneys. Indeed, the National Highway Traffic Safety Administration allows them by regulation in certain instances. However, the recently promulgated rule apparently could be construed as precluding their use in other important instances in furtherance of regular, legal, and normal commercial transactions. According to the National Highway Traffic Safety Administration, the dealers and others have petitioned the National Highway Traffic Safety Administration to reconsider the regulation and its impact. Based on my knowledge of the matter, I believe such reconsideration is needed and essential. The Congress, in enacting this law, wants to prevent fraud, not to alter or interfere with such proper transactions. In furtherance of that intent, the amendments offered by Chairman SHARP include a provision to the cost savings act clearly authorizing another limited use of power of attorneys. Should this bill, however, fail to be enacted for any reason, I urge the National Highway Traffic Safety Administration to reconsider its regulations and to follow the approach suggested by this amendment.

The amendment makes it clear that powers of attorney are not prohibited by existing law. It specifically refers to situations where a vehicle's title, because of financing, is held by a lienholder, such as a bank, and not the consumer. In such cases, the consumer cannot fill in the mileage disclosure requirements because he or she does not physically hold the title. It is not reasonable to assume that the consumer will come back to the dealer several days or weeks later to fill in a title received from the bank by the dealer after paying off the loan. It is also not safe to rely on the mails to send the valuable title document to the consumer or to rely on the consumer to return the document in a timely fashion. To resolve this problem, the amendment specifies that a power of attorney is an instrument to be used in these cases, assuming it is permitted under State law.

The amendment requires that the National Highway Traffic Safety Administration promulgate before next February 1 appropriate regulations prescribing the form of the power of attorney and reasonable conditions for its use by the transferor. It is intended that the form to be issued by the state, subject to such fee as the State wants to charge, will be no less secure than the title document itself. The amendment and existing law give the National Highway Traffic Safety Administration reasonable flexibility, consistent with the need to balance the rigors of commercial transactions and the rigors of preventing and punishing fraud, to write an effective rule to implement this requirement and, if necessary, to address other concerns where a power of attorney is appropriate and necessary. At the same time, it makes it clear that both the person granting the power of attorney and the person exercising it must be aware that they are subject to penalties for any false disclosure or other violation of law.

I want to stress that this amendment does not change the present requirement of the law that the proper mileage be disclosed on the transferor's title.

Before closing, I want to observe that some have suggested that the amendment also cover lost titles. We have not done so because of concerns by the National Highway Traffic Safety Administration and the State administrators and because we believe it is possible to obtain replacements for lost titles. Also, the present law allows the National Highway Transporation Safety Administration to, by rule, deal with this problem before next February. I expect the National Highway Traffic Safety Administration to do so or advise the committee in writing why they cannot or will not address this potential problem administratively.

I urge support for the legislation.

Mr. MOORHEAD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SHARP. Mr. Speaker, I yield 2 minutes to the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. Mr. Speaker, I rise in strong support of this resolution which will agree to the final form of H.R. 2266, the Pipeline Safety Reauthorization Act.

I want to commend Chairman SHARP of the Energy and Commerce Subcommittee on Energy and Power and Chairman ANDERSON of the Public Works Subcommittee on Surface Transportation, the ranking minority members and their staffs for the work in bringing this important legislation back to the floor today. I am pleased that the Senate has finally agreed to adopt most of the House language which will increase the margin of safety for hazardous liquid and natural gas pipeline operations and regulate carbon dioxide pipelines.

I also want to commend my colleagues from Minnesota, Congressmen JIM OBERSTAR and GERRY SIKORSKI, for their important work in focusing national attention on this issue as well as Senator DURENBERGER for his advocacy in the U.S. Senate for improved pipeline regulation and safety.

Mr. Speaker, nearly 6 years ago, I first introduced legislation to improve pipeline safety following a number of serious pipeline spills in my district. I again introduced similar but stronger legisation in 1986 and 1987 following a fatal explosion due to a reptured fuel pipeline.

This legislation received strong bipartisan support. In 1984, I requested the General Accounting Office [GAO] to assess the Office of Pipeline Safety. The GAO's report was incredible, the report pointed out that there were only 17 inspectors responsible for monitoring the safety of 1.7 million miles of hazardous liquid and natural gas pipelines. The GAO uncovered serious recordkeeping deficiencies at OPS. In 1986, promptly after the fatal Minnesota accident, working with my colleague, Congressman MARTIN SABO, we were successful in providing funding for the hiring of two additional OPS inspectors for the Midwest Office of Pipeline Safety.

Mr. Speaker, Minnesotans know first hand just how important this legislation is and what the consequences can be when safety slips between the cracks.

In July 1986 the seam failure of a Williams Pipeline Co. gasoline pipeline caused an inferno in Mounds View, MN, which killed a mother and her daughter. The National Transportation Safety Board [NTSB] investigation which followed this tragedy clearly showed that it could have been prevented had Williams maintained adequate surveillance of this pipeline and if the Federal Office of Pipeline Safety had done a better job of monitoring Williams' compliance with Federal safety laws.

The Mounds View tragedy is not an isolated incident. There have been many other accidents and spills nationwide which testify to the need for stricter safety standards and better Federal and State oversight. There are important lessons to be learned from all of these accidents.

Our regulators need both the will and the resources to regulate. That is why this legislation grants DOT's Office of Pipeline Safety [OPS] greater authority to regulate pipeline operations, to set higher standards for operators and inspectors, and to add 16 additional Federal inspectors over the next 2 years.

We have certainly learned that State authorities and local firefighters and police need to know, and have a right to know, before an accident occurs where pipelines are located and what products they are carrying so that they can do their jobs quickly and effectively in an emergency. That is why this legislation requires pipeline operators to provide maps and operating information so that firefighters don't have to guess about where a pipeline runs or where a shutoff valve is located.

Many pipeline accidents are caused by third-party damage by excavators who don't know about some of the risks which lie underground. This measure calls upon DOT to develop a model "One Call" system and provides grants to the States to establish such systems providing the public in general, and excavators specifically, the information about where pipelines are buried and the potential risk and hazard. H.R. 2266 creates a new Federal criminal/civil offenses with tough new penalties for the removal or destruction of pipeline warning signs and markers.

In the Mounds View tragedy, the lack of an automatic or remote-control shut off valve meant that an undetermined amount of gasoline flowed back and fed the inferno which devastated that community. While I would have preferred stronger legislation mandating the installation of rapid shutoff valves on major pipeline systems, nevertheless, this measure takes an important first step in that direction by requiring DOT to initiate a study of various rapid shutoff technologies and to make recommendations to Congress about whether such technology should be made mandatory on existing and future pipelines.

Mr. Speaker, many of these proposals which we will adopt today were made by the Minnesota Commission on Pipeline Safety, which was appointed by Gov. Rudy Perpich in the wake of the Mounds View accident. Cochairmen Steve Novak and Jon Grunseth as well as all of the individuals who served on this commission did an outstanding job. Their efforts are reflected in the legislation before the House today. I strongly urge my colleagues to support this legislation which will make our Nation's hazardous liquid and natural gas pipelines safer.

Mr. SHARP. Mr. Speaker, I yield 3 minutes to the gentleman from Tennessee [Mr. Clement].

Mr. CLEMENT. Mr. Speaker, I rise in strong support of H.R. 2266, the Pipeline Safety Reauthorization Act of 1988.

I would like to comment on a provision added to the bill by the Senate which allowed the use of powers of attorney in the sale of an automobile and the completion of Federal mileage disclosure requirements.

The Senate amendment responded to a recent National Highway Traffic Safety Administration rule which prevented an auto dealer from signing as both transferor and transferee of the title to the vehicle. Under the Senate provision an auto dealer could be on both sides of the sales transaction and could also use powers of attorney to further transfer ownership of the vehicle.

Upon adoption of this amendment on the Senate floor, I was contacted by officials at the Tennessee Division of Consumer Affairs who felt the amendment was a little too open-ended and could exacerbate the problem of odometer fraud. In the State of Tennessee alone odometer tampering accounted for 9,000 of the 15,000 consumer complaints received by the State last year. Some State experts estimate that the number of actual tamperings could be three times the number reported.

From the perspective of the automobile dealers, preventing the use of powers of attorney makes the sales paperwork more burdensome and expensive. According to many auto dealers who have contacted me, there is some difficulty in getting the former carowner back to the dealership so he or she can complete the mileage disclosure forms and sign the title over to the dealer once it has arrived from the lienholder—typically a bank, credit union, or financing company.

Working with representatives of the National Automobile Dealers Association the National Highway Traffic Safety Administration, Tennessee consumer affairs' officials, and the chairmen and staffs of the Energy and Commerce Committee and the Public Works Committee, a compromise has been fashioned which I understand meets the concerns of all interested parties.

In particular, the provision now contained in the bill allows carowners to whom a State has issued title to grant a power of attorney to the automobile dealer where title at the time of the sale is physically held by a lienholder. Limiting the use of the power of attorney to this "first sale" instance should assist auto dealers in completing the sales transaction while affording sufficient safeguards against odometer fraud. In particular, the provision prevents auto dealers from executing powers of attorney in later transfers of the vehicle and from creating long paper trails that are difficult for law enforcement officials to trace.

In our effort to balance the competing demands of auto dealers and State consumer affairs' officials, I believe it is important to reiterate Congress' desire to protect the ultimate purchaser of the used car. The policy which underlies the Federal truth-in-mileage laws is to protect the consumer from unscrupulous car salesmen who roll back odometers and fraudulently represent high-mileage autos as low-mileage ones. I hope the use of powers of attorney in auto sales does not exacerbate the problem of odometer tampering. However, if it does, I expect that my colleagues will join me in working with State officials and the National Highway Traffic Safety Administration in cracking down on such fraud, notwithstanding any perceived inconvenience for auto sales.

I would like to thank again Chairman Glenn Anderson and Chairman John Dingell and their staffs and commend them for their cooperation and assistance in this important issue.

Mr. SHARP. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. Gray of Illinois). The question is on the motion offered by the gentleman from Indiana [Mr. Sharp] that the House suspend the rules and agree to the resolution, House Resoulution 583.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SHARP. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on House Resolution 583, the resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

POSTEMPLOYMENT RESTRICTIONS ACT OF 1988

Mr. FRANK. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5043) to amend section 207 of title 18, United States Code, relating to restrictions on postemployment activities, as amended.

The Clerk read as follows:

H.R. 5043

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Post-Employment Restrictions Act of 1988".

SEC. 2. RESTRICTIONS ON POST-EMPLOYMENT ACTIVITIES.

(a) Restrictions.—Section 207 of title 18, United States Code, is amended to read as follows:

"§ 207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches; restrictions on partners of certain current officers and employees of the executive branch

"(a) Restrictions on All Officers and Employees of the Executive Branch and Certain Other Agencies.—

"(1) Permanent restrictions.—Any person who is an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States (including the Government Printing Office and the General Accounting Office), including the President, the Vice President, and any special Government employee, and who, after his or her service or employment with the United States Government terminates, knowingly—

"(A) acts as agent or attorney for, or otherwise represents, aids, or advises any other person (except the United States) concerning any formal or informal appearance before, or

"(B) makes, with the intent to influence, any communication on behalf of any other person (except the United States) to,

any department, agency, court, or court-martial of the United States, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter—

"(i) in which such person knows that the United States is a party or has a direct and substantial interest,

"(ii) in which the person participated personally and substantially as such officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, and

"(iii) which involved a specific party or specific parties at the time of such participation,

shall be punished as provided in subsection (g).

"(2) Two-year restrictions.—Any person subject to the restrictions contained in paragraph (1) who, within 2 years after his or her service or employment with the United States Government terminates, knowingly—

"(A) acts as agent or attorney for, or otherwise represents, any other person (except the United States) in any formal or informal appearance before, or

"(B) makes, with the intent to influence, any communication on behalf of any other person (except the United States) to,

any department, agency, court, or court-martial of the United States, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter—

"(i) in which such person knows that the United States is a party or has a direct and substantial interest,

"(ii) which such person knows was actually pending under his or her official responsibility as such officer or employee within a period of 1 year before the termination of his or her service or employment with the United States Government, and

"(iii) which involved a specific party or specific parties at the time it was so pending,

shall be punished as provided in subsection (g).

"(3) One-year restrictions with respect to trade negotiations.—Any person subject to the restrictions contained in paragraph (1) who, within 1 year after his or her service or employment with the United States Government terminates, knowingly—

"(A) acts as agent or attorney for, or otherwise represents, aids, or advises any other person (except the United States) concerning any formal or informal appearance before, or

"(B) makes, with the intent to influence, any communication on behalf of any other person (except the United States) to,

any department, agency, court, or court-martial of the United States, or any officer or employee thereof, in connection with any trade negotiation—

"(i) in which such person knows that the United States is a party or has a direct and substantial interest, and

"(ii)(I) which such person knows was actually pending under his or her official responsibility as such officer or employee within a period of 1 year before the termination of his or her service or employment with the United States Government, or

"(II) in which such person participated personally and substantially as such officer or employee within a period of 1 year before the termination of his or her service or employment with the United States Government,

shall be punished as provided in subsection (g). For purposes of this paragraph, the term 'trade negotiation' means negotiations undertaken to enter into a trade agreement pursuant to section 1102 of the Omnibus Trade and Competitiveness Act of 1988. This paragraph applies only in a case in which neither paragraph (1) or (2) of this subsection applies.

"(b) One-Year Restrictions on Certain Senior Executive Branch Personnel.—

"(1) Restrictions.—In addition to the restrictions set forth in subsection (a), any person who is an officer or employee of the executive branch or an independent agency (including the Government Printing Office and the General Accounting Office), who is referred to in paragraph (2) (other than a special Government employee who serves less than 60 days in the 1-year period before his or her service or employment as such employee terminates), and who, within 1 year after his or her service or employment as such officer or employee terminates, knowingly—

"(A) acts as agent or attorney for, or otherwise represents, any other person (except the United States) in any formal or informal appearance before, or,

"(B) makes, with the intent to influence, any communication on behalf of any person (except the United States) to,

any department or agency in which such person served within 1 year before such person's service or employment as such officer or employee terminated, or any officer or employee thereof, in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, which such person knows is pending before such department or agency or in which such person knows that such department or agency has a direct and substantial interest, shall be punished as provided in subsection (g).

"(2) Persons to whom restrictions apply.—(A) Paragraph (1) shall apply to a person (other than a person subject to the restrictions of subsection (c) or (d))—

"(i) employed at a rate of pay fixed according to subchapter II of chapter 53 of title 5, or a comparable or greater rate of pay under other authority, or

"(ii) employed in a position which involves significant decisionmaking or supervisory responsibility, as designated by the Director of the Office of Government Ethics, in consultation with the department or agency concerned.

Only positions which are not referred to in clause (i), and for which the basic rate of pay is equal to or greater than the basic rate of pay payable for GS-17 of the General Schedule, or positions which are established within the Senior Executive Service pursuant to the Civil Service Reform Act of 1978, or positions held by active duty commissioned officers of the uniformed services who are serving in a grade or rank for which the pay grade (as specified in section 201 of title 37) is pay grade 0-7 or 0-8, may be designated under clause (ii).

"(B) With respect to persons in positions designated under subparagraph (A)(ii), the Director of the Office of Government Ethics may limit the restrictions of paragraph (1) to permit a former officer or employee, who served in a separate agency or bureau within a department or agency, to make appearances before or communications to persons in an unrelated agency or bureau, within the same department or agency, having separate and distinct subject matter jurisdiction, upon a determination by the Director that there exists no potential for use of undue influence or unfair advantage based on past government service. On an annual basis, the Director of the Office of Government Ethics shall review the designations made under subparagraph (A)(ii) and the determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of the Director's responsibilities under this paragraph.

"(c) Restrictions on Other Senior Executive Branch Personnel.—In addition to the restrictions set forth in subsection (a), any person who—

"(1) is appointed to a position in the executive branch or an independent agency (including the Government Printing Office and the General Accounting Office) which is listed in section 5314, 5315, or 5316 of title 5, or

"(2) is appointed by the President to a position under section 105(a)(2)(B) of title 3 or by the Vice President to a position under section 106(a)(1)(B) of title 3,

and who, within 1 year after that person's service in that position terminates, knowingly—

"(A) acts as agent or attorney for, or otherwise represents, any other person (except the United States) in any formal or informal appearance before, or

"(B) makes, with the intent to influence, any communication on behalf of any other person (except the United States) to,

any department or agency in which such person served within 1 year before such person's service in such position terminated, or any officer or employee thereof, in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which such person knows that the United States is a party or has a direct and substantial interest, shall be punished as provided in subsection (g).

"(d) Restrictions on Very Senior Executive Branch Personnel.—(1) In addition to the restrictions set forth in subsection (a), any person who—

"(A) serves in the position of President or Vice President of the United States,

"(B) is appointed to a position in the executive branch or an independent agency (including the Government Printing Office and the General Accounting Office) which is listed in section 5312 or 5313 of title 5,

"(C) is appointed by the President to a position under section 105(a)(2)(A) of title 3 or by the Vice President to a position under section 106(a)(1)(A) of title 3, or

"(D) serves on active duty as a commissioned officer of a uniformed service in a grade or rank for which the pay grade (as specified in section 201 of title 37) is pay grade 0-9 or 0-10,

and who, within 1 year after that person's service in that position terminates, knowingly—

"(i) acts as agent or attorney for, or otherwise represents, any other person (except the United States) in any formal or informal appearance before, or

"(ii) makes, with the intent to influence, any communication on behalf of any other person (except the United States) to,

any department, agency, or person described in paragraph (2), in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which such person knows that the United States is a party or has a direct and substantial interest, shall be punished as provided in subsection (g).

"(2) The departments, agencies, and persons referred to in paragraph (1) with respect to appearances or communications by a person in a position described in subparagraph (A), (B), (C), or (D) of paragraph (1) are—

"(A) any department or agency in which such person served in such position within a period of 1 year before such person's service or employment terminated, and any officer or employee of such department or agency,

"(B) any other person appointed to a position in the executive branch which is listed in section 5312, 5313, 5314, 5315, or 5316 of title 5, and

"(C) in the case of a former President or Vice President, the following: any department or agency in the executive branch of the United States Government, any independent agency of the United States, and any officer or employee of any such department or agency.

"(e) Restrictions on Members of Congress and Officers and Employees of the Legislative Branch.—

"(1) Members of congress and elected officers.—(A) Any person who is a Member of Congress or an elected officer of either House of Congress and who, within 1 year after that person leaves office, knowingly—

"(i) acts as agent or attorney for, or otherwise represents, any other person (except the United States) in any formal or informal appearance before, or

"(ii) makes, with the intent to influence, any communication on behalf of any other person (except the United States) to,

any of the persons described in subparagraph (B), in connection with any matter which such former Member of Congress or elected officer knows is pending before the Congress or any matter on which such former Member of Congress or elected officer seeks action by the Congress or by a Member of Congress in his or her official capacity, shall be punished as provided in subsection (g).

"(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former Member of Congress or elected officer, are any Member of Congress, elected officer, or employee of the House of Congress in which such former Member or officer served.

"(2) PERSONAL STAFF.—(A) Any person who is an employee of a Senator or an employee of a Member of the House of Representatives and who, within 1 year after that employment terminates, knowingly—

"(i) acts as agent or attorney for, or otherwise represents, any other person (except the United States) in any formal or informal appearance before, or

"(ii) makes, with the intent to influence, any communication on behalf of any other person (except the United States) to,

any of the persons described in subparagraph (B), in connection with any matter which such former employee knows is pending before the Congress or any matter on which such former employee seeks action by the Congress or by a Member of Congress in his or her official capacity, shall be punished as provided in subsection (g).

"(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a person who is a former employee are the following:

"(i) the Senator or Member of the House of Representatives of whom that person was an employee; and

"(ii) any employee of that Senator or Member of the House of Representatives.

"(3) COMMITTEE STAFF.—Any person who is an employee of a committee of Congress and who, within 1 year after that person's employment as such employee terminates, knowingly—

"(A) acts as agent or attorney for, or otherwise represents, any other person (except the United States) in any formal or informal appearance before, or

"(B) makes, with the intent to influence, any communication on behalf of any other person (except the United States) to,

any person who is an employee of that committee of Congress, in connection with any matter which such former employee knows is pending before the Congress or any matter on which such former employee seeks action by the Congress or by a Member of Congress in his or her official capacity, shall be punished as provided in subsection (g).

"(4) LEADERSHIP STAFF.—(A) Any person who is an employee on the leadership staff of the House of Representatives or an employee on the leadership staff of the Senate and who, within 1 year after that person's employment on such staff terminates knowingly—

"(i) acts as agent or attorney for, or otherwise represents, any other person (except the United States) in any formal or informal appearance before, or

"(ii) makes, with the intent to influence, any communication on behalf of any other person (except the United States) to,

any of the persons described in subparagraph (B), in connection with any matter which such person knows is pending before the Congress or any matter on which such former employee seeks action by the Congress or a Member of Congress in his or her official capacity, shall be punished as provided in subsection (g).

"(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the following:

"(i) in the case of a former employee on the leadership staff of the House of Representatives, those persons are any Member of the leadership of the House of Representatives, and any employee on the leadership staff of the House of Representatives; and

"(ii) in the case of a former employee on the leadership staff of the Senate, those persons are any Member of the leadership of the Senate, and any employee on the leadership staff of the Senate.

"(5) LIMITATION ON RESTRICTIONS.—(A) The restrictions contained in paragraphs (2), (3), and (4) apply only to acts by a former employee who was paid for services rendered as such employee at a rate of pay equal to or greater than the basic rate of pay payable for GS-17 of the General Schedule under section 5332 of title 5, for a period of more than 60 days during the 1-year period before that former employee's service as such employee terminated.

"(B) The restrictions contained in paragraphs (2), (3), and (4) shall not apply to any appearance, communication, or representation by a former Member of Congress, elected officer, or employee which is made in carrying out official duties as an officer or employee of the United States Government.

"(6) DEFINITIONS.—As used in this subsection—

"(A) the term 'committee of Congress' includes standing committees, joint committees, and select committees;

"(B) a person is an employee of a House of Congress if that person is an employee of the Senate or an employee of the House of Representatives;

"(C) the term 'employee of the House of Representatives' means an employee of a Member of the House of Representatives, an employee of a committee of the House of Representatives, an employee of a joint committee of the Congress whose pay is disbursed by the Clerk of the House of Representatives, and an employee on the leadership staff of the House of Representatives;

"(D) the term 'employee of the Senate' means an employee of a Senator, an employee of a committee of the Senate, an employee of a joint committee of the Congress whose pay is disbursed by the Secretary of the Senate, and an employee on the leadership staff of the Senate;

"(E) a person is an employee of a Member of the House of Representatives if that person is an employee of a Member of the House of Representatives under the clerk hire allowance;

"(F) a person is an employee of a Senator if that person is an employee in a position in the office of a Senator;

"(G) the term 'employee on the leadership staff of the House of Representatives' means an employee of the office of a Member of the leadership of the House of Representatives described in subparagraph (K), the minority sergeant at arms, and any policy-level employee appointed under authority of the minority party leadership of the House of Representatives;

"(H) the term 'employee on the leadership staff of the Senate' means an employee of the office of a Member of the leadership of the Senate described in subparagraph (L);

"(I) the term 'Member of Congress' means a Senator or a Member of the House of Representatives;

"(J) the term 'Member of the House of Representatives' means a Representative in, or a Delegate or Resident Commissioner to, the Congress;

"(K) the term 'Member of the leadership of the House of Representatives' means the Speaker, majority leader, minority leader, majority whip, minority whip, chief majority whip, chief minority whip, Democratic Steering Committee, Democratic Caucus, Republican Conference, Republican Research Committee, and Republican Policy Committee, of the House of Representatives; and

"(L) the term 'Member of the leadership of the Senate' means the Vice President, and the President pro tempore, Deputy President pro tempore, majority leader, minority leader, majority whip, minority whip, Conference of the Majority, Conference of the Minority, chairman and secretary of the Conference of the Majority or Conference of the Minority, Majority Policy Committee, and Minority Policy Committee, of the Senate.

"(f) OFFENSES LIMITED TO ACTS FOR COMPENSATION.—(1) An act does not constitute an offense under subsection (a), (b), (c), (d), or (e) unless the act is done for compensation.

"(2) As used in this subsection, the term 'compensation' means anything of value which is provided, directly or indirectly, for services rendered, including a payment, gift, benefit, reward, favor, or gratuity.

"(g) PENALTIES.—The punishment for an offense under subsection (a), (b), (c), (d), or (e) is the following:

"(1) Any person who engages in the conduct constituting the offense shall be imprisoned for not more than 1 year or fined in the amount set forth in this title, or both.

"(2) Any person who willfully engages in the conduct constituting the offense shall be imprisoned for not more than 2 years or fined in the amount set forth in this title, or both.

"(h) GENERAL EXCEPTIONS.—

"(1) CERTAIN ELECTED OFFICIALS AND EMPLOYEES.—(A) The restrictions contained in subsection (a) shall not apply to any appearance, communication, or representation which is made in carrying out official duties as an elected official of a State or local government.

"(B) The restrictions contained in subsections (a)(2), (a)(3), (b), (c), (d), and (e) shall not apply to any appearance, communication, or representation by a former Member of Congress or officer or employee of the executive or legislative branch, which is made in carrying out official duties as—

"(i) an elected official of a State or local government, or

"(ii) an employee of (I) an agency or instrumentality of a State or local government, (II) an institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or (III) a hospital or medical research organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, if the appearance, communication, or representation is on behalf of such government, institution, hospital, or organization.

"(2) INTERNATIONAL ORGANIZATIONS.—The restrictions contained in subsections (a)(2), (a)(3), (b), (c), (d), and (e) shall not apply to the representation of, or advice or aid to, an international organization of which the United States is a member.

"(3) PUBLIC SPEECHES AND APPEARANCES.—The restrictions contained in subsections (b), (c), (d), and (e) shall not apply to the making of public speeches or public appearances.

"(i) DESIGNATIONS OF SEPARATE STATUTORY AGENCIES AND BUREAUS.—

"(1) DESIGNATIONS.—For purposes of subsections (b) and (c), and except as provided in paragraph (2), whenever the Director of the Office of Government Ethics determines that a separate statutory agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency, the Director shall by rule designate such agency or bureau as a separate department or agency.

"(2) INAPPLICABILITY OF DESIGNATIONS.—(A) A designation of an agency or bureau under paragraph (1) shall not apply with respect to—

"(i) a former head of that designated agency or bureau; and

"(ii) any former officer or employee of the department or agency within which the designated agency or bureau exists, if the official responsibilities of the officer or employee included supervision of that designated agency or bureau.

"(B) No agency or bureau within the Executive Office of the President may be designated under paragraph (1) as a separate department or agency.

"(C) Even if an agency or bureau is designated under paragraph (1), a person subject to the restrictions set forth in subsection (c) may not make any representation or other appearance prohibited by that subsection before, and may not make any communication prohibited by that subsection to, any person who is serving in a position set forth in section 5312, 5313, 5314, 5315, or 5316 of title 5, in the department or agency within which the designated agency or bureau exists.

"(j) EXCEPTION FOR SCIENTIFIC OR TECHNOLOGICAL INFORMATION.—The restrictions contained in subsections (a), (b), (c), and (d) shall not apply with respect to the making of communications by a former officer or employee solely for the purpose of furnishing scientific or technological information, if such communications are made under procedures acceptable to the department or agency concerned or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

"(k) RESTRICTIONS ON PARTNERS OF OFFICERS AND EMPLOYEES.—Any person who is a partner of an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States (including the Government Printing Office and the General Accounting Office), including the President, the Vice President, and any special Government employee, and who knowingly acts as agent or attorney for anyone other than the United States before any department, agency, court, or court-martial of the United States, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which such person knows that—

"(1) the United States is a party or has a direct and substantial interest, and

"(2) such officer or employee or special Government employee participates or has participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise,

shall be imprisoned for not more than 1 year or fined in the amount set forth in this title, or both.

"(l) EXCEPTION FOR TESTIMONY.—Nothing in this section shall prevent a former Member of Congress or officer or employee of the executive or legislative branch from giving testimony under oath, or from making statements required to be made under penalty of perjury.

"(m) ADMINISTRATIVE DEBARMENT.—

"(1) AUTHORITY.—If the head of a department or agency in which a former officer or employee of the executive branch or of an independent agency served finds, after notice and an opportunity for a hearing, that such former officer or employee knowingly engaged in conduct constituting an offense under subsection (a), (b), (c), or (d) of this section, such department or agency head may prohibit that person from making, on behalf of any other person (except the United States), any informal or formal appearance before, or, with the intent to influence, any communication to, such department or agency on a pending matter of business for a period of not more than 5 years, or may take other appropriate disciplinary action. For purposes of this subsection, proof of conduct constituting an offense must be established by a preponderance of the evidence.

"(2) REVIEW OF DISCIPLINARY ACTION.—Any disciplinary action under paragraph (1) shall be subject to review in an appropriate United States district court.

"(3) PROCEDURES.—Departments and agencies in the executive branch and independent agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out this subsection.

"(n) CIVIL PENALTIES.—The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under subsection (a), (b), (c), (d), (e), or (j) and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than $50,000, or the amount of compensation which the person receives for the prohibited conduct, whichever amount is greater. The imposition of a civil penalty under this subsection does not preclude any other remedy which is available by law to the United States or any other person.

"(o) INJUNCTIVE RELIEF.—If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense under subsection (a), (b), (c), (d), (e), or (j), the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court shall order the trial of the action on the merits to be advanced and consolidated with the hearing on the petition. The court may issue such order if it finds that such conduct constitutes such an offense. The filing of a petition under this subsection does not preclude any other remedy which is available by law to the United States or any other person.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 11 of title 18, United States Code, is amended by amending the item relating to section 207 to read as follows:

"207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches; restrictions on partners of certain current officers and employees of the executive branch.".

SEC. 3. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsection (b), this Act and the amendments made by this Act take effect 9 months after the date of the enactment of this Act.

(b) EFFECT ON EMPLOYMENT.—(1) The amendments made by this Act apply only to persons whose service as a Member of Congress or an officer or employee to which such amendments apply terminates on or after the effective date of such amendments.

(2) With respect to service as an officer or employee which terminates before the effective date of this Act, section 207 of title 18, United States Code, as in effect at the time of the termination of such service, shall continue to apply, on and after such effective date, with respect to such service.

The SPEAKER pro tempore. Is a second demanded?

Mr. COBLE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. FRANK] will be recognized for 20 minutes and the gentleman from North Carolina [Mr. COBLE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, last week the House, in a courageous fashion, adopted a resolution which dealt with the question of the rights of employees.

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It dealt with that very small minority of situations when employees might be aggrieved because, I believe from my experience in 8 years that legitimate complaints would arise in only a small minority of cases. We are here today to deal with another situation where I believe our respect for this institution calls on us to pass a law which will probably be not needed in very many cases. But I think it is important that we show that we are fully prepared to live under the laws that we set for other people.

When Lyn Nofziger was convicted of lobbying his former colleagues he pointed out that the act he had been convicted of did not apply to Members of Congress. He was right. That, of course, is no justification for him knowingly to have violated the law. But I do believe that it is legitimate for us to pass this law which among other things, would apply to Members of Congress the restrictions on lobbying one's former colleagues for a 1-year period.

We do not come here today because any pattern of egregious abuse has been brought foward. We do not have a pattern of Members abusing it. Members ought to know, yes, there are former Members who are allowed on the floor of this House who use other facilities. In my 8 years here I have never been lobbied on the floor of the House by an ex-Member. I believe that ex-Members are quite scrupulous in observing the propriety with regard to that.

But there are ex-Members who do serve as legislative representatives, a logical way for them to be employed.

What this bill says is not that that is an inherently evil practice, but that a cooling-off period ought to exist. We are in a very collegial occupation. We work with each other, we lobby each other, we do each other favors, we try to persuade each other. The nature of the legislative process demands collegiality or it does not work. If there were 435 atavistic individuals, each deciding on his or her own to do exactly what he or she wanted, the place would simply grind to a halt. Good personal relationships among Members are an essential part of this institution.

What this bill says is not that there is any pool of corruption here, not that people here are particularly prone to abuse. Indeed, I believe after 8 years of service here that quite the contrary is true, that the average level of ethical and moral concern here is higher than it is in the society at large.

But what we are saying is this: There ought to be a cooling off period for 1 year. Why 1 year? Well, there is never any magic to 1 year as opposed to 6 months or 1½ years, but 1 year seems about right.

What we are saying is this: There ought to be a 1-year lapse between the time that we work with each other as colleagues, as co-Members and the time when one of us approaches another on behalf of a private interest. Lobbying is a very legitimate function. None of us could work well, this institution would not work well without well-informed and responsible lobbyists.

But there ought to be a cooling-off period between the time when we approach each other as full colleagues and when one approaches the other as a lobbyist. That is one of the things this bill does.

Another thing it does is to address some of the concerns that Whitney North Seymour outlined when he made his public statement after the Deaver case was concluded.

Under the law as it exists now, the office of Government Ethics can compartmentalize agencies for the purposes of this law. So that, as Michael Deaver argued, he was allowed in his judgment to lobby the Office of Management and Budget because he was a special assistant to the President.

Our version of the bill substantially restricts compartmentalization. It wipes it out with regard to the high level executives, the levels 1 and 2 of the executive compensation and severely restricts it with regard to lower levels.

There was also a provision in the bill, as it now exists, as the law now exists, which says that you cannot lobby someone only on a matter that is of significance to him. So one defense was, "Well, I lobbied the guy, but he didn't care about it so I am okay."

We have substantially responded, I believe, to what Whitney North Seymour did.

Now there are other differences between our bill and the bill which passed the Senate. The differences are primarily with regard to Members of Congress, congressional staffs, and nonpresidentially appointed civil servants.

Our bill is not as restrictive.

With regard to political people, elected Members of both Houses and top Presidential appointees, I believe we are essentially the same. I think we target a little better in some ways, but essentially we are the same. We do not act as strictly with regard to committee staff and Members' staffs and with regard to civil servants. I am pleased with our position there. One thing that I received as subcommittee chairman from the Reagan administration were a number of letters, from the Justice Department, the SEC and others, saying that the Senate restrictions with regard not to the political appointees, but to the high level civil servants would make it difficult for us to recruit people.

I am not worried about recruitment of Secretaries of State and Members of the House and the Senate. Shame on anyone who would turn down a Cabinet job or the enormous privilege of serving in this body or the Senate. And it may this week seem less of a privilege than it sometimes does. But it is still about as great a privilege as can be bestowed upon someone in a democratic society. Anyone who is deterred from accepting that honor because he or she might have diminished postemployment opportunities does not concern me. But when we are talking about the hard-working staff, the staff that sits next to me here that did such excellent work on this bill and that served all of us so well, when we are talking about GS-17's and 18's, I want to be restrictive the way we are in our bill. The 17's and 18's, they cannot switch sides, they cannot work for the Government and then go work for the opposition. But they are not subject to the kind of restrictive and I think excessive bans as they are in the Senate.

Finally, I want to pay tribute to a couple of our colleagues who sit here; the gentlewoman from Ohio [Ms. KAPTUR] and the gentleman from Michigan [Mr. WOLPE] because of their concern as representatives of American working people with people who would work for the American Government in a trade area and then quit and use the expertise acquired in that work to help people compete with Americans.

We have in fact some stronger language than the Senate does, specifically with regard to people who would work for the U.S. Trade Representative or elsewhere in trade, to prevent that kind of side-switching to the detriment of Americans.

Mr. Speaker, I hope that our bill is enacted. I am going to yield to other Members. I do at this point want to mention the excellent work done by a couple of people. The gentleman from Kansas [Mr. GLICKMAN] who preceded me as chairman, who had a very important set of hearings on this and really began grappling with this enormously difficult issue where it is possible to do great harm under the guise of reform. I think we avoid that. The gentleman from Kansas is the one who began confronting that issue.

I am enormously grateful to that very helpful legacy that he left me.

I also want to pay tribute to the chairman of the committee, the gentleman from New Jersey [Mr. RODINO]. I know this is not his favorite bill. He is a man who has served himself here for 40 years as an absolute model of integrity and I can understand his concern to make sure that no one thinks that in passing this bill we are pointing fingers at people. Because, a man who like himself has brought honor to this body for 40 years is entitled, in his last days, to emphasize that this is a place for honorable people who do honorable things.

I appreciate the guidance and concern he has been willing to show. I thought it would be especially relevant for me to pay him this tribute on what he knows is really Columbus Day, no matter what the law says. I am delighted to be able to pay that tribute to the gentleman from New Jersey today.

Finally, on the minority side, my former ranking Member who decamped for rarified precincts over at the Committee on Ways and Means, but who participated with his staff in a very helpful way in drafting the bill that I think we can be proud of, and his successor. And one other of our colleagues, let me mention the gentleman from Texas [Mr. SMITH] who cannot be with us today, because he was legitimately called away by a longstanding engagement that he made when he thought we were going to be adjourned.

He has made an enormous contribution to this bill as well.

Mr. Speaker, I hope we will pass the bill.

Mr. Speaker, I reserve the balance of my time.

Mr. COBLE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as the ranking member of the Subcommittee on Administrative Law and Governmental Relations wherein this bill was initially considered in the House, I rise in support of this legislation. Postemployment restrictions on Federal Government employees, Mr. Speaker, is not a new concept to this Government. Some form of postemployment restriction has existed on our executive branch for close to a hundred years. The law under which we are currently operating—title 18, section 207 was enacted in 1978 as part of the "Ethics in Government Act." The 1978 act created ethical safeguards which covered all three branches of our Government and broadened postemployment restrictions on our executive branch personnel.

As we have observed over the last several years, Congress has enjoyed the ability to point fingers at executive branch personnel who have violated postemployment restrictions imposed upon them by us, however, we have no such laws restricting our ability to earn a living after we leave the legislative branch even if it includes lobbying Congress. Two former executive branch employees have been indicted based indirectly and directly on violations of postemployment laws. Now it is our turn to show that we don't agree with the double standard which imposes laws on others and excludes us. H.R. 5043 provides us that opportunity, Mr. Speaker, by imposing postemployment restrictions on Members of Congress and our staff here in the legislation branch and I think it is high time we did so.

I think it is important to note here, Mr. Speaker, that approximately 1 year ago, during this body's deliberations on legislation to reauthorize the independent counsel statute, an amendment was offered to include Members of Congress within the group of executive branch personnel who live under the shadow of that law. I supported that amendment to include Members of Congress, explicitly under the independent counsel statute. That amendment, however, failed directly down party lines. Ironically, although many of my colleagues chose to exclude themselves from the independent counsel provision of the Ethics in Government Act just 1 year ago, we find ourselves here today, less than 30 days away from a Presidential election, seemingly ecstatic to include ourselves in other provisions of the Ethics in Government Act. Mr. Speaker, I supported equal treatment then, and I support equal treatment today.

It is further important to note, Mr. Speaker, that several amendments were offered during the Judiciary Committee's deliberations on this bill which would have strengthened this bill, but which were defeated. I offered an amendment, Mr. Speaker, which would preclude employees of the Federal Government who had access to classified U.S. Government information from working for any foreign government for 18 months after they leave their employ. I believe that was an important amendment, Mr. Speaker, because, in my opinion, if a conflict of interest exists within the private sector of this country for people who formerly worked for our Government, I think such a conflict certainly exists with regard to former Government employees working for a foreign government; especially if they had access to classified information. Unfortunately, that amendment was defeated along party lines, with all Republicans in support.

My Republican colleague from Pennsylvania, Mr. GEKAS, with whom I serve on the Judiciary Committee, offered an amendment to this bill during committee debate to include the judicial branch under the restrictions which we impose on the executive branch. That amendment would have done away with the double standard which exists in our ethics laws today. We sit here proudly today, claiming to rid our laws of a double standard which exists in our ethics laws because we are acting to include ourselves under the same rules which we have applied to the executive branch, however, we refuse to apply it to all three branches of our Government. Unfortunately, this double standard will continue to exist until we apply the same rules to all three branches of our Government. Mr. Speaker, that amendment was also defeated along party lines with Republicans in support. It appears to me, Mr. Speaker, that while we have the opportunity today to address a serious discrepancy that exists in our Federal ethics laws, we are willing to only solve half the problem, because it is the more politically ripe half of the problem.

Despite its shortcomings, Mr. Speaker, I support this bill today and I commend this body for moving this legislation forward. It is my hope that the next time this body addresses the issue of ethics, that it will not be during a Presidential election year, so that we will be able to address the issue from a legislative perspective, not a political one.

Mr. Speaker, I reserve the balance of my time.

Mr. FRANK. Mr. Speaker, I yield 2 minutes to the gentleman from Kansas [Mr. GLICKMAN].

□ 1700

Mr. GLICKMAN. Mr. Speaker, this is an important bill. It does many significant things to improve our ethics and the appearance that we are operating within the highest standards of ethics possible.

No. 1, it applies postemployment restrictions to Members of Congress, and it prohibits us as House Members, once we leave this place, from lobbying our colleagues for 1 year, and it prohibits Senators, once they leave the Senate, from lobbying their colleagues for 1 year.

It is important to protect the integrity and appearance of integrity of the legislative process that we do this. The public perception is that the revolving door unfairly benefits high-level government employees like Members of Congress. The public perception is also that we often treat ourselves differently than the executive branch or private sector. This bill assures that we are subject to the same and similar restrictions in connection with the revolving door that high-level government employees are currently subject to.

Second of all, Mr. Speaker, in the enforcement area of our ethics law this bill does something very significant. It establishes civil penalties and injunctive relief to insure effective enforcement of the law.

The point of this is that under current law we essentially have to show a criminal violation with that standard of burden of proof, and we must basically get a conviction in order to punish people for violating ethics laws. Under this bill we have that remedy as well, but we also have civil damages and, more importantly, injunctive relief to stop offenders' actions as it is about ready to begin.

For example, in the trade area we all know that there is serious damage that can be done to this country if people go to work and relate national secrets or trade secrets to foreign governments or to foreign companies. This injunctive action will be very, very helpful in making sure that our ethics laws work, and the civil and injunctive penalties together will form a tremendous complement with our criminal penalties to make sure that these laws work very, very well.

So I think this is an important bill. It is not the be-all and end-all to ethics issues, but it is a good start.

Mr. Speaker, I would like to pay special tribute to the chairman of our full committee, the gentleman from New Jersey [Mr. RODINO], not only because his point of view in this legislation has helped to get it to the floor, but the fact that he is in my judgment one of the most distinguished Members of this body that I have ever met. I have had the opportunity to serve with him for about 7 of my 12 years since I have been in this Congress. He has had a great personal impact on me, and to this body and to this country generally. I know that he will get lots of lattitudes and all sorts of special orders on this particular legislation, one that is very important to the future integrity of the House, and the Senate, and the legislative branch and our Government as a whole. Mr. Speaker, I think that he deserves special credit.

Mr. COBLE. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from Florida [Mr. SHAW].

Mr. SHAW. Mr. Speaker, as the gentleman from Kansas [Mr. GLICKMAN] rightfully pointed out, we deal with perceptions. I think at all levels of politics people deal with perceptions. The perceptions out there, my colleagues, are not too bright. We are not at all times held in great esteem by the American people, and that is despite the fact that the majority of the men and women who labor in this hall are fine, outstanding people who are here for the sole purpose of trying to make a better country. But, nevertheless, there is another perception out there that is correct, and that perception is that this House of Representatives does exclude itself from many bills that it passes that affect the ethics and conduct of the executive branch, that affects the ethics and conduct of the private sector.

Mr. Speaker, this is a giant step that we are taking today. We are applying the same standard of conduct for post-employment here in the House of Representatives and in the U.S. Senate as we have substantially applied upon the executive branch. And these are a very serious, serious set of laws that we are talking about because in some instances it is going to limit what former staff members and former Members of this House can and cannot do once they leave employment here in the House of Representatives.

But in doing so, Mr. Speaker, we are substantially duplicating what we have placed upon the executive branch, which incidentally is also made up of very fine, dedicated, hard-working men and women who want nothing more than to make this a better country.

Not long ago I tried to do the same thing with special counsel, and I still believe that it is very important that this body apply the laws applying to special counsel to itself that it has applied to the executive branch.

But anyway I think that it is important to recognize today that this is a landmark day, and this is a landmark piece of legislation. I sincerely hope that the chairman and the ranking member can work their will and go through conference in order to have this bill passed into final law before this Congress comes to an end, and in doing so, as a former ranking member on the Subcommittee on Administrative Law and Governmental Relations, I would like to compliment my former chairman, the gentleman from Massachusetts, who has labored long and hard to get this bill through, and the new ranking member, the gentleman from North Carolina, for all the good work that they have done in bringing this bill along this far.

Mr. Speaker, this has not been the most popular bill to ever come to the Committee on the Judiciary, but it is one of the best, and I would say that this is a red-letter day for the Congress and the Committee on the Judiciary.

Mr. Speaker, as the former ranking member of the Subcommittee on Administrative Law and Governmental Relations, I had the opportunity to participate in the hearings on and subcommittee consideration of H.R. 5043. Based on my observations of the testimony and amendments which were favorably considered at subcommittee on this bill, I rise in support of H.R. 5043.

As has been stated here today, postemployment restrictions on our executive branch have existed for many years. However, no such restrictions have existed on members of this branch regarding the same postemployment conflicts of interest. This body's partisan attacks on the Reagan administration over the last several years regarding ethical and alleged ethical violations by members of the executive branch have highlighted the double standard to which we hold ourselves and members of our executive branch. I don't think the discrepancy which exists between our postemployment laws with regard to executive and legislative branch coverage is fair. I do not think it is right, and I think it is appropriate that we cure that double standard by passing H.R. 5043 here today.

While there have been arguments made that no evidence exists of abuse by former Members of Congress or former congressional staff regarding postemployment activities, it is the perception here that I think we must address. If there is a perception in the public eye that our Government, and especially this body, is not covering itself with laws prohibiting unethical behavior, then I think we do a great disservice to the public by avoiding the issue. By considering H.R. 5043 here today, we are seizing an opportunity to cure that perception or misperception, as the case may be, and show the American public that we will pass laws to prohibit such activities.

You may recall, Mr. Speaker, that during this body's deliberations last year on legislation to reauthorize the independent counsel law, I offered an amendment to specifically cover members of this body as well as members of the executive branch under that law. The same double standard applied there as it does here, and I've heard all the specious arguments about why that is a different issue. I don't agree. There exist ethical canons and rules covering lawyers and judges and conflicts of interest similar to what this legislation addresses. But we choose here today to explicitly include under a criminal statute Members of Congress. We should have done the same under the independent counsel law and for the same reasons.

Despite our shortsightedness in the past, I see much support here today in the shadow of a Presidential election to include Members of Congress under additional provisions of the Ethics in Government Act. I supported doing so last year and I support doing so again here today. I urge my colleagues to support H.R. 5043; it is much-needed legislation.

Mr. Speaker, I yield back the balance of my time.

Mr. FRANK. Mr. Speaker, let me again thank the gentleman from Florida [Mr. SHAW] for his cooperation.

Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey [Mr. RODINO].

Mr. Speaker, we use the word a lot, but the gentleman from New Jersey [Mr. RODINO] is the enormously distinguished chairman of the full committee who is drawing to a close one of the most impressive congressional careers, I believe, in our country's history.

Mr. RODINO. Mr. Speaker, I want to thank the gentleman from Massachusetts [Mr. FRANK], the chairman of the subcommittee. I must commend him for being sensitive to the concerns that have been expressed by many of us who did not want to overreach.

However, Mr. Speaker, I must say that the measure has been dealt with, as I described, sensitively and with concern for the possibility that we might overreach.

H.R. 5043, the Post-Employment Restrictions Act of 1988 strengthens and clarifies the current criminal conflict of interest statutes that apply to the post-employment activities of executive branch personnel; and establishes new criminal conflict of interest prohibitions to apply to the post-employment activities of legislative branch personnel.

H.R. 5043 addresses loopholes in current law. First, this legislation prevents the compartmentalization of the Executive Office of the President. Under current law, the EOP has been subdivided by the Director of the Office of Government Ethics into nine compartments. It is generally agreed that this authority to compartmentalize the EOP is unnecessary and allows the current statute to be avoided by White House personnel. In addition, H.R. 5043 makes it clear that trade negotiations are covered by post-employment restrictions. There is some question whether, under current law, this area is covered.

When the Ethics in Government Act was enacted in 1978, it included post-employment restrictions. I supported those restrictions, as I have always supported ethics laws which address demonstrated problems and which are designed to promote and protect the integrity of the Government decision-making process.

There is no doubt of the necessity for strong ethics laws. At the same time, the balance which has been struck in the current statute preserves the ability of the Federal Government to attract and retain employees of the highest caliber to carry out the diverse, far ranging, and essential functions of the Government. Thus, the current statute balances several considerations: the danger of possible influence peddling by former Federal employees; the right of former Federal employees to earn a living after leaving Government service; and the ability of the Government to attract qualified individuals to Government service.

While it is critical that actual loopholes in the current law be addressed as is done by H.R. 5043, it is equally important that we not move in the direction of overly severe postemployment restrictions which will hurt the ability of the entire Government to recruit new employees and to retain its current ones. When Congress passed the Ethics in Government Act in 1978, there was a massive exodus of career and political executive branch employees. This occurred because the law, or originally enacted—and we were very enthusiastic about the law at the time—would have prevented many individuals from earning a living after leaving Government service. As a result, it was necessary to amend the law less than 1 year after its original enactment—in fact, before it even became effective—in order to remove those punitive and overbroad restrictions. It was imperative to the governmental process that we not lose some valuable employees and the institutional and substantive knowledge they possessed.

It is generally agreed that the so-called revolving door between private life and Government service is a distinctly American institution that is one of the real strengths of our Government. By attracting top people from the private sector to serve the Nation, even for limited periods of time, we infuse new blood and new ideas into the bureaucracy. Therefore, even the career civil service is not made up exclusively of permanent office holders. Moreover, as testimony during our committee hearings pointed out, "the importance of recruiting talented leaders—from the private sector—for government service has increased as both the functions of government and the technological complexity of governmental decisions have increased." Thus, our system of Government is strengthened by making it more vital and by trying it more closely to the people it serves.

I am concerned about the new provisions relating to postemployment restrictions on the legislative branch for several reasons. First, there is no documentation of any abuse. Not a single instance of specific evidence of abuse is described in the extensive hearings in either the House or Senate.

Second, the legislative responsibilities require Members of Congress to be informed about legislative proposals and about currents of opinion concerning that legislation. Our rights as Members to inform ourselves, even through unsolicited information, are protected by the speech of debate clause of the Constitution. By applying postemployment restrictions to the legislative branch, we potentially deprive ourselves of valuable sources of information simply because the communicator is a former legislative branch officer or employee. And those who seek "redress of grievance" also have rights restricted by these bans—the right to select the person they want to present their grievance and to represent them.

Finally, the legislative branch differs in operation from the executive branch. Almost every legislative function is performed on the public record. There are exceptions, but most decisions by Congress are made in public—committee hearings and markups, as well as floor debate and votes. On the other hand, because of its very nature, executive branch decisionmaking is often cloaked in secrecy, and it is, therefore, difficult to hold people individually accountable for their actions. Also unlike the executive branch, the legislative branch makes collective decisions, not individual ones.

Several questions are raised concerning coverage of former Members of Congress by postemployment restrictions. How does contact by former Members of Congress differ from contacts by campaign contributors, political parties, business corporations, public interest groups, and even close friends of current officials? Does a former elected official of one political party really have the potential to unduly influence a current elected official of another political party?

In addition, Members of Congress are already subject to a more stringent accountability. We must be reelected and therefore, must answer to our constituencies at each election—for those of us in the House, this accountability comes every 2 years. If our constituents think we have been, or are subject to being, unduly or improperly influenced, they can refuse to reelect us.

I think the real problem of ethics concerning the Congress is not a post-employment revolving door, but the problem of honoraria and campaign contributions given to current Members of Congress. Being lobbied by a former Member of Congress is less an appearance of a conflict problem than being lobbied by one who contributes to a Member's political campaign or who have paid him an honorarium. This is where there is a genuine danger of undue influence.

The proposed prohibitions on the legislative branch raise questions about the first amendment rights both of former Members and employees of the legislative branch. The proposal to cover elected Members of Congress also treats the legislative branch more harshly than the executive branch. The legislative branch is covered by a no contact ban, while the executive branch coverage has a nexus test for most of the officers and employees subject to restrictions.

Executive branch employees are covered by civil service job protections, such as tenure and due process rights to prevent arbitrary dismissal. Although the House recently adopted the fair labor resolution, legislative branch employee protections are not as potent as executive branch employee protections. For example, even with passage of the fair labor resolution, a legislative branch employee who is fired has no recourse for reinstatement. Executive branch employees have individual authority to award contracts, approve regulations, and take other binding actions that may mean millions of dollars to a private interest. Legislative branch personnel must act through the institution and publicly. Executive branch personnel often make decisions behind closed doors. Any legislative branch decision that affects those outside of Congress must be acted on publicly and by the Members, not by staff.

The difficulty of enacting strong and fair restrictions on postemployment activity should not be underestimated. It is important not to go too far and create new criminal laws that are so onerous as to unfairly punish many valuable public servants. H.R. 5043 has been finely tuned to address only those issues where a problem has been demonstrated or a real potential for a problem exists.

Mr. COBLE. Mr. Speaker, I yield 3 minutes to the distinguished gentlewoman from Ohio [Ms. KAPTUR].

Ms. KAPTUR. Mr. Speaker, I thank the gentleman from North Carolina [Mr. COBLE] for his kindness.

Mr. Speaker, I rise in strong support of H.R. 5043, the Postemployment Restrictions Act of 1988.

It is time, high time, to stop former public officials from taking advantage of their privileged insider knowledge gained at taxpayer expense. Integrity in public service should never be called into question.

Mr. Speaker, my interest in this legislation stems from its provision to ban former executive branch officials from representing, aiding, or advising a party about a trade negotiation which was under the employee's responsibility while working for the Government. Since 1985 the gentleman from Michigan [Mr. WOLPE] and I have pushed this legislation to prohibit former top U.S. Government officals from representing a foreign interest on a matter before the U.S. Government for a cooling-off period after our officials leave government service.

The need for this particular bill became apparent to me in 1984 when a businessman from my district expressed his complete loss of trust in our Federal Government and our public officials. After giving a senior level Commerce Department official confidential information about his business during a trade mission to Japan, he was dismayed to learn during a subsequent visit to Washington that this same individual has left Government service to lobby on behalf of his Japanese competitors.

Mr. Speaker, America can do better than that.

What I did not know when we first introduced this bill was that history was but the tip of the iceberg where so many of our citizens unfortunately put their own pocketbook interests ahead of the interests of this Republic. People like Robert Watkins, who, while he was involved in trade negotiations on behalf of the United States, was soliciting postemployment opportunities with the Japanese Government in their auto firms, or Wally Lenahan who divulged the United States trade position on textiles at the Geneva meeting, or Eric Garfinkle, who, while in the employment of the United States, when he was negotiating on machine tools, before the agreement was even signed, went to work on behalf of Japanese machine tool interests.

□ 1715

I think that what makes it so attractive for these people to do this is that they are paid five times more on average than their salaries with the U.S. Government.

Although I do not believe this legislation goes far enough to stop the mass exodus that occurs yearly from the U.S. Trade Representative's office and the Department of Commerce and other Government agencies where we lose people where they go to work in lobbying activities on the other side, I believe the bill goes a long way and is a positive step to restoring integrity to the institutions we rely on to protect America's economic interest in the global marketplace.

Mr. Speaker, I want to end by thanking the gentleman from Massachusetts [Mr. FRANK] for his legislative skill in working with all the various interests on this bill and for his diligence and sensitivity to all the Members.

Also I want to congratulate the gentleman from New Jersey [Mr. RODINO], the chairman of the committee, for his always being Mr. Integrity and whenever it was a question of protecting America's interests, that has been the hallmark of his career.

Mr. FRANK. Mr. Speaker, the gentlewoman was on a roll and we did not want to interrupt her.

Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey [Mr. FLORIO].

Mr. FLORIO. Mr. Speaker, I rise in support of H.R. 5043, a bill to strengthen the restrictions on postemployment lobbying by public officials.

In the past year, the public has grown increasingly alarmed at the abuses of former high-level officials like Michael Deaver and Lyn Nofziger who have used their connections to influence the Government and at the same time enrich themselves with large lobbying fees.

The convictions of these two men show that Congress and the courts refuse to tolerate such unethical behavior. But for too long now we in Congress have lived by a double standard, exempting ourselves from measures prohibiting the same type of behavior which we condemn in others. The time has come for that double standard to end, and H.R. 5043 would do just that. It would impose, for the first time, restrictions on lobbying by former Members of Congress and their top staff.

Some Members of this body have pointed out that there are few, if any, actual examples of unethical behavior involving former Members of Congress lobbying on Capitol Hill. But there is no denying that the present system with its absolute lack of restrictions offers the potential for abuse. We must not wait for such abuse to occur. As elected representatives, we need to set the highest standards of excellence in Government. Those whom we serve deserve to know that we will never betray their trust for our own personal profit.

H.R. 5043 is a carefully crafted, thoughtful approach to ensuring that the opportunity for abuse no longer exists. It provides for a 1-year cooling off period during which Congressmen and Senators would be prohibited from lobbying in the Chamber in which they had served, and legislative staff making over $72,500 would be prohibited from lobbying the Congressman or Senator for whom they had worked.

H.R. 5043 takes a positive first step toward creating higher ethical standards throughout the Federal Government. I feel, that even stronger measures can and should be taken. All former Members of Congress, for example, should be restricted for 1 year from lobbying anywhere within the legislative branch. In addition, tougher penalties should be imposed upon those who do violate the public's trust.

Despite potential improvements that could be made, I am proud to be a cosponsor of H.R. 5043, and I hope that my colleagues will join me in supporting this measure.

Mr. FRANK. Mr. Speaker, I yield 3 minutes to the gentleman from Michigan [Mr. WOLPE].

Mr. WOLPE. Mr. Speaker, I rise in strong support of H.R. 5043, the Post Employment Restriction Act of 1988. And I want to begin my remarks by paying special tribute to Mr. FRANK for his creative and sensitive leadership in bringing this bill to the floor this year, and to Mr. GLICKMAN, for all of his work on this issue in the last session of Congress.

I recognize that there are many in this House that would have preferred to see this legislation buried for the indefinite future—feeling that the inclusion of Members of Congress within its coverage represents a solution in search of a problem. Yet I submit that the failure to include Members of Congress would only deepen public cynicism about the self-serving nature of our national institutions.

The fact of the matter is we do have a problem. Watergate, ABSCAM, Irangate, Deavergate, and Pentagon contractor scandals have all taken their toll in an erosion of public trust and confidence in our political institution. A recent public opinion survey revealed that no more than 40 percent of the American public thought of their Government as honest. And poll after poll attests to the sense of a large number of Americans that average citizens count for very little nowadays and that public policy is controlled by an array of powerful, well-financed special interests.

There is enormous danger here. A democracy cannot long function if its citizens do not trust the integrity of their political institutions and leaders, or find them to be unresponsive to the popular will. And, indeed, the past couple of decades have witnessed a sharp falling away from political participation. People, feeling increasingly powerless, have in effect become powerless.

The erosion of public confidence in our national institutions will not be reversed overnight. It will take time to restore trust, and it will take a very different kind of example than that which has been set by the Michael Deavers and Rita Lavelles and Ed Meeses of this administration.

But the legislation before us, the Postemployment Restrictions Act of 1988, takes an important step by addressing one of the most egregious and frequent violations of the public trust: High-level public officials using the insider information and special access they have acquired through their public service for their private gain. Time and time again, we have seen key officials leave their Government posts to take enormously lucrative positions with the very interests that fell within their regulatory, administrative, or legislative responsibilities. And in the process, not only have they compromised the trust that had been placed in them, but they have also compromised the agencies or institutions within which they had operated. The revolving door has been endemic, and it is time the revolving door be slammed shut. And that is the purpose of the bill before us.

I want to draw particular attention

to the bill's fair trade negotiations section. This section incorporates the thrust of legislation Congresswoman MARCY KAPTUR and I introduced 3 years ago. Our Foreign Agents Compulsory Ethics in Trade ACT-IT—was a response to a series of journalistic exposés and the work of economist Pat Choate. These writings documented a number of high-ranking American officials, particularly in the Office of the U.S. Trade Representative, leaving their Government employment and turning up, virtually the next day, in the employment of foreign governments or foreign companies. Indeed, it seems as if the Federal Government has become, for some, little more than a finishing school for the highly paid lobbyists of foreign interests.

This is wrong. Dead wrong. American taxpayers have a right to expect that those who are negotiating on America's behalf are doing so with American interests foremost, and are not being diverted or tempted by the prospect of lucrative post-Government employment with the foreign interest that sits on the opposite side of the bargaining table.

The legislation before us would prohibit American trade officials from representing, aiding or advising any person other than the United States in a trade negotiation for a period of 1 year following their departure from the American Government. Frankly, I wish the prohibition could be substantially longer. Our original face-it bill called for a 10-year ban. And a more recent version proposed a 4-year prohibition. Our feeling has been that more time is needed for the advantages—of insider knowledge and special access—which a former Government official brings to his or her foreign clients, to dissipate. But even a 1-year ban on such post-Government employment will help insulate Government agencies and personnel from the kinds of improper influences and temptations that may well compromise the integrity of Federal agencies. This legislation takes a small step, but it is an important one. I hope it will receive the overwhelming bipartisan support of this body.

Mr. COBLE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from California [Mr. EDWARDS].

Mr. EDWARDS of California. Mr. Speaker, I rise in opposition to this bill. Others before me have said that this bill is a legislative solution in search of a problem. I agree. Even the distinguished chairman of the Administrative Law Subcommittee and floor manager of this bill has conceded that there is no evidence of abuse in the legislative branch. Congress may have its share of ethics related problems—certainly the papers have been full of stories in recent weeks and months that, if true, might give voters pause about the scruples of their elected representatives. But none of these stories, or the incidents they describe, are in any way affected by this bill.

On the contrary, this bill focuses only on the postemployment activities of former executive and legislative branch officials and employees. Lately there have been a couple of highly publicized incidents of postemployment abuses by two former members of the Reagan administration. Those two individuals were indicted and convicted, if not for ethics violations, for crimes arising directly out of ethical abuses.

I suspect that much of the impetus for this bill stems from those two cases. But I suggest that those cases prove that the current laws work, not that we need more of them.

Some have argued that those two cases revealed loopholes in the law that need to be closed; others have said that, as a matter of parity or fairness, Congress ought to be covered as well as the executive branch. Neither of those arguments requires us to turn a blind eye to the Constitution or to act in haste. We have only to look at what has been happening in both Houses of Congress in recent days to know that haste, particularly in an election year, frequently spells disaster—or at the very least, disregard for the Constitution.

We may need a new ethics bill; I don't know. Nothing I've heard so far has convinced me that the current law needs changing. But if there is going to be a bill, and I suspect there is, then why not have one that addresses the serious constitutional concerns that surround any effort to restrict first amendment activity.

Let's be clear about that: lobbying Congress and the executive branch is activity protected by the first amendment. Getting paid for it doesn't make it any less protected.

The Supreme Court has laid down a strict two part test against which to measure Government efforts to regulate first amendment activity: first, the regulation must serve a compelling State interest and second, it must be narrowly drawn to serve that purpose and no more.

The bill's sponsors admit there is no evidence of a compelling need and, as the bill has moved forward, it has been broadened not narrowed. The bill flunks the test. I urge a "no" vote.

Mr. COBLE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Iowa [Mr. NAGLE].

Mr. NAGLE. It is ironic, Mr. Speaker, to be here today and to think back to the early 1970's and the mid-1970's when we raced to watch a TV that was installed in our office to watch the proceedings of the Watergate hearings and to realize that in the last week of the tenure of the chairman of the Judiciary Committee, the gentleman from New Jersey [Mr. RODINO], that I have the opportunity to speak on our bill that has been produced by his committee. It is an honor to do so, an honor particularly in light of his record.

Mr. Speaker, I come at this I think perhaps from a different perception than others. New to the body, I must confess that I have been impressed by it. I have been impressed by the integrity of the Members. I have been impressed by the effort to gather factual information that goes into our process. I have been impressed by the diversity of our membership and I have been impressed by the fact that the institution, despite all its flaws that it produces, does seem to work well.

I have been distressed, distressed by the seeming willingness of Members to attack the institution for their own political gain or to somehow appear superior to the rest of us.

The ethics bill that we debate today as it pertains to Members really has on it two fronts. One is to remove any possible perception that somehow the information Congress received is biased, whether we acted in a special or unevenhanded manner, to preserve our integrity by preserving the public's perception of the integrity of the institution.

The second goes to the very process of gathering the information itself, to see that the information Congress does consider is considered on the basis of the merits of the idea that is presented to us and not on the basis of who presents it, not on the basis of what form it comes in to us.

I think the bill is necessary and profitable from a perception standpoint and from the standpoint of insuring that the integrity of the institution is maintained. I support it. I support it strongly, and I think it is a positive step and I think it is a salute to the chairman of our Judiciary Committee that we undertake this legislation in his last week.

Mr. SMITH of Texas. Mr. Speaker, the 1978 Ethics in Government Act's "revolving door" restrictions apply only to former officials and employees of the executive branch. The Post-Employment Restrictions Act of 1988 extends this act's restrictions to the Congress despite flaws. For this reason it deserves support.

Better we seize the opportunity and pass this bill than to allow Congress to continue to exempt former Members and their staff from the Ethics Act. Corrections must be left to further legislative action and judicial review.

My concerns about the bill are twofold: First, that certain provisions of the bill may unconstitutionally interfere with the ability of elected officials to receive information; and second, that the inclusion of compensation as a requirement for an act to be illegal is a serious loophole that will substantially weaken the law.

Still, this bill provides an extraordinary legislative opportunity to adopt a policy that makes the revolving door laws applicable to the Congress.

I wish to thank the chairman of the House Administrative Law Subcommittee, Mr. FRANK, for his commitment and leadership in guiding this bill through the House.

I also wish to thank the subcommittee's ranking minority member, Mr. COBLE, for his support during consideration of this bill.

Mrs. SCHROEDER. Mr. Speaker, the Reagan-Bush administration has a remarkable record of providing job opportunities—but mostly by hiring sleazy characters to Government jobs. Over 250 administration appointees have been charged with criminal wrongdoing, abuse of power, and offensive behavior. These individuals came to Washington on the pledge of good government and instead, as former Republican Congressman Caldwell Butler said "put all four feet and a snout in the trough."

H.R. 5043 bars officials from jumping to lucrative positions by cashing in on their Government relationships—the Deaver-Nofziger syndrome. Immediately upon leaving his White House job, Michael Deaver formed a lobbying business and sold his contacts with high level administration officials to foreign nations and corporate giants with huge stakes in Federal spending. Lyn Nofziger, also a former White House aide and longtime adviser to President Reagan, lobbied administration officials on behalf of his clients. Mr. Nofziger even suggested that President Reagan could help persuade the Army to give the Wedtech Corp. a military contract.

By limiting high officials from trading on their Government service, legislation will discourage the even more brazen group of administration rogues who start capitalizing on their Government positions while still on the public payroll.

Consider the following cases:

Hal Albert, while head of the Defense Audio Visual Agency in the Department of Defense, supervised contract negotiations with Dynalectron in May 1984, and in July joined the company to become manager of the $23 million contract with the Pentagon.

Arthur P. Brill, Jr., while Director of Public Affairs for the President's Commission on Organized Crime, allegedly used official stationary and mailed at Government expense an announcement to hundreds on his media list that he was starting his own "media crisis management" business.

Guy W. Fiske, while Deputy Secretary of the Department of Commerce, allegedly negotiated the sale of the weather satellites to Comsat at the same time he was negotiating a high level job for himself with the same company.

Michael Frost, while an official of the Office of Personnel Management, took Government paid trips to California during which he arranged to be appointed to a position by Governor Deukmajian.

Mary Ann Gilleece, while Deputy Under Secretary of the Department of Defense and the Pentagon's top procurement regulator, solicited business from defense contractors for a firm she intended to establish after leaving the Government.

James E. Jenkins, while Deputy Counselor to the President, allegedly was instrumental in the Wedtech Corp.'s successful bid on a military contract and later became the contractor's chief Washington representative.

Norman B. Ture, while Under Secretary for Tax and Economic Affairs at the Department of Treasury, urged the Department to purchase an economic model from an accounting firm that was in the process of buying the rights to the model from him.

H.R. 5043 will send a loud signal to prospective appointees that Government service is a rewarding pursuit in itself but not a ticket to later gold.

Mr. FRENZEL. Mr. Speaker, it is always tough to vote against a so-called reform bill. Many Members and constituents equate criticism of the Congress with goodliness. I know, because I have, early and often, taken that position myself. It is normally a valid position.

But, messing around with constitutional issues is a risky adventure. We need to be sure there is a real need and a responsible reaction to the need. Unless it has been pretty clearly demonstrated that the system is broken, repairs are best not under taken.

As has been noted here, there is no clear evidence of abuse. The rationale here is that two ex-administration members broke the law, and the legislative is the same as the executive. Neither is a good excuse for this bill.

In the first place, the law-breakers were already caught. In their case, the existing law was adequate. In the second place, the legislative branch is quite different from the executive branch.

Any reform law that grandfathers not only past members and employees, but also grandfathers an exclusion for those now contemplating retirement, must be immediately suspect. If we need to worry about last year's retirees, and this year's, perhaps we ought to worry about next year's too. If we don't have to worry, we don't need the bill.

I have not seen wrong-doing as the main issue here. We have had ethics and conflict of interest laws on our books for over 100 years. I will conceed that improvement is always possible. I am concerned that the revolving door laws which already apply to the executive branch have slowed the movement of able people into Government. Those who made the sacrifice to get into Government, ought to be able to return to their previous vocations. America doesn't have so many able, experienced people trying to do the public's business that it can afford to discourage very many of them.

The legislative branch is another problem. I am not contemplating retirement. I don't plan to lobby when I do. Even so, when a person subjects himself or herself to biannual ratification, there ought not be a restriction on that individual's right to work or speak when voluntarily or involuntarily retired.

We have lots of ex-colleagues lobbying us. Some are said to be good; some are said to be less so. I have yet to see action on their part that would be improved by this legislation, or, conversely, I have seen no good that would have come from preventing them from doing whatever they are doing. Nor does the committee's record give any evidence of wrong-doing that would have been prevented by this bill.

A last point may be a familiar one. Again we have been subjected to a limited debate, no amendment process which is contrary to democratic procedures, and surely is a source of sloppy lawmaking. To handle a bill with controversial constitutional questions is to invite trouble. A good rule for me is that when in doubt, vote against bills on the Suspension Calendar.

Very few people will dare vote against the bill. It's pretty hard to explain why a Member voted against reform. I will cast my "no" vote with reluctance, and with regret. But until the managers can show a need, and a good result, it is not possible for me to vote "yes."

Mr. FORD of Michigan. Mr. Speaker, I rise in opposition to H.R. 5043 as brought before the House today. While I have no problem with the intent of the bill; namely, prohibiting Members of Congress and senior Government executives in both the legislative and executive branches from banking on "revolving door" arrangements, I must oppose the bill because I find its limitations to be unreasonable in certain circumstances.

I agree that Members of Congress and senior executives should not be able to spend a few years in the Government's employ only to turn around, go to the private sector, and cash in on connections made and information gained through their Federal employment.

However, for those who have chosen to make a career of public service or whose service is terminated by circumstances beyond their control, the provisions of the bill are unduly onerous.

In all honesty, I do not see how we can ask our professional staff to spend years developing their expertise for the low salaries that we are able to pay them and then tell them that they cannot go into private practice as professionals if they plan to deal with the Government.

Clearly, from my experience of almost 24 years in Congress, this bill attempts to solve a problem that doesn't exist.

Had this bill been considered under normal procedures, I was prepared to offer an amendment which would have exempted from provisions of the bill Members of Congress and congressional employees who retire from their positions on an immediate annuity. I see no reason why a retiree, someone who has completed a career with the Federal Government, shall be foreclosed from making use of experience garnered over many years.

The amendment would have exempted from the bill's restrictions Members of Congress who lose their bids for reelection or whose congressional seats are lost through redistricting. I think it unfair to restrict the employment of these people whose employment is terminated through what can best be termed "involuntary separation."

While I laud the intent of the sponsors of the legislation and commend the subcommittee chairman, Mr. FRANK, for his expedience in bringing this important matter before the House, I am discouraged by the process under which this legislation is being considered and must oppose its passage.

Mr. COBLE. Mr. Speaker, I yield back the balance of my time.

Mr. FRANK. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts [Mr. FRANK] that the House suspend the rules and pass the bill, H.R. 5043, as amended.

The question was taken.

Mr. COBLE. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I, and the

Chair's prior announcement, further proceedings of this motion will be postponed.

GENERAL LEAVE

Mr. FRANK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5043, the bill just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

BERNE CONVENTION IMPLEMENTATION ACT OF 1988

Mr. KASTENMEIER. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 4262) to amend title 17, United States Code, to implement the Berne Convention for the Protection of Literary and Artistic Works, as revised at Paris on July 24, 1971, and for other purposes.

The Clerk read as follows:

Senate amendment: Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE AND REFERENCES TO TITLE 17, UNITED STATES CODE.

(a) Short Title.—This Act may be cited as the "Berne Convention Implementation Act of 1988".

(b) References to Title 17, United States Code.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to or a repeal of a section or other provision, the reference shall be considered to be made to a section or other provision of title 17, United States Code.

SEC. 2. DECLARATIONS.

The Congress makes the following declarations:

(1) The Convention for the Protection of Literary and Artistic Works, signed at Berne, Switzerland, on September 9, 1886, and all acts, protocols, and revisions thereto (hereafter in this Act referred to as the "Berne Convention") are not self-executing under the Constitution and laws of the United States.

(2) The obligations of the United States under the Berne Convention may be performed only pursuant to appropriate domestic law.

(3) The amendments made by this Act, together with the law as it exists on the date of the enactment of this Act, satisfy the obligations of the United States in adhering to the Berne Convention and no further rights or interests shall be recognized or created for that purpose.

SEC. 3. CONSTRUCTION OF THE BERNE CONVENTION.

(a) Relationship With Domestic Law.—The provisions of the Berne Convention—

(1) shall be given effect under title 17, as amended by this Act, and any other relevant provision of Federal or State law, including the common law; and

(2) shall not be enforceable in any action brought pursuant to the provisions of the Berne Convention itself.

(b) Certain Rights Not Affected.—The provisions of the Berne Convention, the adherence of the United States thereto, and satisfaction of United States obligations thereunder, do not expand or reduce any right of an author of a work, whether claimed under Federal, State, or the common law—

(1) to claim authorship of the work; or

(2) to object to any distortion, mutilation, or other modification of, or other derogatory action in relation to, the work, that would prejudice the author's honor or reputation.

SEC. 4. SUBJECT MATTER AND SCOPE OF COPYRIGHTS.

(a) Subject and Scope.—Chapter 1 is amended—

(1) in section 101—

(A) in the definition of "Pictorial, graphic, and sculptural works" by striking out in the first sentence "technical drawings, diagrams, and models" and inserting in lieu thereof "diagrams, models, and technical drawings, including architectural plans";

(B) by inserting after the definition of "Audiovisual works", the following:

"The 'Berne Convention' is the Convention for the Protection of Literary and Artistic Works, signed at Berne, Switzerland, on September 9, 1886, and all acts, protocols, and revisions thereto.

"A work is a 'Berne Convention work' if—

"(1) in the case of an unpublished work, one or more of the authors is a national of a nation adhering to the Berne Convention, or in the case of a published work, one or more of the authors is a national of a nation adhering to the Berne Convention on the date of first publication;

"(2) the work was first published in a nation adhering to the Berne Convention, or was simultaneously first published in a nation adhering to the Berne Convention and in a foreign nation that does not adhere to the Berne Convention;

"(3) in the case of an audiovisual work—

"(A) if one or more of the authors is a legal entity, that author has its headquarters in a nation adhering to the Berne Convention; or

"(B) if one or more of the authors is an individual, that author is domiciled, or has his or her habitual residence in, a nation adhering to the Berne Convention; or

"(4) in the case of a pictorial, graphic, or sculptural work that is incorporated in a building or other structure, the building or structure is located in a nation adhering to the Berne Convention.

For purposes of paragraph (1), an author who is domiciled in or has his or her habitual residence in, a nation adhering to the Berne Convention is considered to be a national of that nation. For purposes of paragraph (2), a work is considered to have been simultaneously published in two or more nations if its dates of publication are within 30 days of one another."; and

(C) by inserting after the definition of "Copyright owner", the following:

"The 'country of origin' of a Berne Convention work, for purposes of section 411, is the United States if—

"(1) in the case of a published work, the work is first published—

"(A) in the United States;

"(B) simultaneously in the United States and another nation or nations adhering to the Berne Convention, whose law grants a term of copyright protection that is the same as or longer than the term provided in the United States;

"(C) simultaneously in the United States and a foreign nation that does not adhere to the Berne Convention; or

"(D) in a foreign nation that does not adhere to the Berne Convention, and all of the authors of the work are nationals, domiciliaries, or habitual residents of, or in the case of an audiovisual work legal entities with headquarters in, the United States;

"(2) in the case of an unpublished work, all the authors of the work are nationals, domiciliaries, or habitual residents of the United States, or, in the case of an unpublished audiovisual work, all the authors are legal entities with headquarters in the United States; or

"(3) in the case of a pictorial, graphic, or sculptural work incorporated in a building or structure, the building or structure is located in the United States.

For the purposes of section 411, the 'country of origin' of any other Berne Convention work is not the United States.";

(2) in section 104(b)—

(A) by redesignating paragraph (4) as paragraph (5); and

(B) by inserting after paragraph (3) the following new paragraph:

"(4) the work is a Berne Convention work; or";

(3) in section 104 by adding at the end thereof the following:

"(c) Effect of Berne Convention.—No right or interest in a work eligible for protection under this title may be claimed by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto. Any rights in a work eligible for protection under this title that derive from this title, other Federal or State statutes, or the common law, shall not be expanded or reduced by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto."; and

(4) by inserting after section 116 the following new section:

"§ 116A. Negotiated licenses for public performances by means of coin-operated phonorecord players

"(a) Applicability of Section.—This section applies to any nondramatic musical work embodied in a phonorecord.

"(b) Limitation on Exclusive Right if Licenses Not Negotiated.—

"(1) Applicability.—In the case of a work to which this section applies, the exclusive right under clause (4) of section 106 to perform the work publicly by means of a coin-operated phonorecord player is limited by section 116 to the extent provided in this section.

"(2) Determination by Copyright Royalty Tribunal.—The Copyright Royalty Tribunal, at the end of the 1-year period beginning on the effective date of the Berne Convention Implementation Act of 1988, and periodically thereafter to the extent necessary to carry out subsection (f), shall determine whether or not negotiated licenses authorized by subsection (c) are in effect so as to provide permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the 1-year period ending on the effective date of that Act. If the Copyright Royalty Tribunal determines that such negotiated licenses are not so in effect, the Tribunal shall, upon making the determination, publish the determination in the Federal Register. Upon such publication, section 116 shall apply with respect to musical works that are not the subject of such negotiated licenses.

"(c) Negotiated Licenses.—

"(1) Authority for Negotiations.—Any owners of copyright in works to which this section applies and any operators of coin-operated phonorecord players may negotiate and agree upon the terms and rates of royalty payments for the performance of such works and the proportionate division of fees paid among copyright owners, and may designate common agents to negotiate, agree to, pay, or receive such royalty payments.

"(2) Arbitration.—Parties to such a negotiation, within such time as may be speci-

fied by the Copyright Royalty Tribunal by regulation, may determine the result of the negotiation by arbitration. Such arbitration shall be governed by the provisions of title 9, to the extent such title is not inconsistent with this section. The parties shall give notice to the Copyright Royalty Tribunal of any determination reached by arbitration and any such determination shall, as between the parties to the arbitration, be dispositive of the issues to which it relates.

"(d) LICENSE AGREEMENTS SUPERIOR TO COPYRIGHT ROYALTY TRIBUNAL DETERMINATIONS.—License agreements between one or more copyright owners and one or more operators of coin-operated phonorecord players, which are negotiated in accordance with subsection (c), shall be given effect in lieu of any otherwise applicable determination by the Copyright Royalty Tribunal.

"(e) NEGOTIATION SCHEDULE.—Not later than 60 days after the effective date of the Berne Convention Implementation Act of 1988, if the Chairman of the Copyright Royalty Tribunal has not received notice, from copyright owners and operators of coin-operated phonorecord players referred to in subsection (c)(1), of the date and location of the first meeting between such copyright owners and such operators to commence negotiations authorized by subsection (c), the Chairman shall announce the date and location of such meeting. Such meeting may not be held more than 90 days after the effective date of such Act.

"(f) COPYRIGHT ROYALTY TRIBUNAL TO SUSPEND VARIOUS ACTIVITIES.—The Copyright Royalty Tribunal shall not conduct any ratemaking activity with respect to coin-operated phonorecord players unless, at any time more than one year after the effective date of the Berne Convention Implementation Act of 1988, the negotiated licenses adopted by the parties under this section do not provide permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the one-year period ending on the effective date of such Act.

"(g) TRANSITION PROVISIONS; RETENTION OF COPYRIGHT ROYALTY TRIBUNAL JURISDICTION.—Until such time as licensing provisions are determined by the parties under this section, the terms of the compulsory license under section 116, with respect to the public performance of nondramatic musical works by means of coin-operated phonorecord players, which is in effect on the day before the effective date of the Berne Convention Implementation Act of 1988, shall remain in force. If a negotiated license authorized by this section comes into force so as to supersede previous determinations of the Copyright Royalty Tribunal, as provided in subsection (d), but thereafter is terminated or expires and is not replaced by another licensing agreement, then section 116 shall be effective with respect to musical works that were the subject of such terminated or expired licenses."; and

(b) TECHNICAL AMENDMENTS.—(1) Section 116 is amended—

(A) by amending the section heading to read as follows:

"§ 116. Scope of exclusive rights in nondramatic musical works: Compulsory licenses for public performances by means of coin-operated phonorecord players";

(B) in subsection (a) in the matter preceding paragraph (1), by inserting after "in a phonorecord," the following: "the performance of which is subject to this section as provided in section 116A,"; and

(C) in subsection (e), by inserting "and section 116A" after "As used in this section".

(2) The table of sections at the beginning of chapter 1 is amended by striking out the item relating to section 116, and inserting in lieu thereof the following:

"116. Scope of exclusive rights in nondramatic musical works: Compulsory licenses for public performances by means of coin-operated phonorecord players.
"116A. Negotiated licenses for public performances by means of coin-operated phonorecord players.".

SEC. 5. RECORDATION.

Section 205 is amended—

(1) by striking out subsection (d); and

(2) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

SEC. 6. PREEMPTION WITH RESPECT TO OTHER LAWS NOT AFFECTED.

Section 301 is amended by adding at the end thereof the following:

"(e) The scope of Federal preemption under this section is not affected by the adherence of the United States to the Berne Convention or the satisfaction of obligations of the United States thereunder.".

SEC. 7. NOTICE OF COPYRIGHT.

(a) VISUALLY PERCEPTIBLE COPIES.—Section 401 is amended—

(1) in subsection (a), by amending the subsection heading to read as follows:

"(a) GENERAL PROVISIONS.—";

(2) in subsection (a), by striking out "shall be placed on all" and inserting in lieu thereof "may be placed on";

(3) in subsection (b), by striking out "The notice appearing on the copies" and inserting in lieu thereof "If a notice appears on the copies, it"; and

(4) by adding at the end the following:

"(d) EVIDENTIARY WEIGHT OF NOTICE.—If a notice of copyright in the form and position specified by this section appears on the published copy or copies to which a defendant in a copyright infringement suit had access, then no weight shall be given to such a defendant's interposition of a defense based on innocent infringement in mitigation of actual or statutory damages, except as provided in the last sentence of section 504(c)(2).".

(b) PHONORECORDS OF SOUND RECORDINGS.—Section 402 is amended—

(1) in subsection (a), by amending the subsection heading to read as follows:

"(a) GENERAL PROVISIONS.—";

(2) in subsection (a), by striking out "shall be placed on all" and inserting in lieu thereof "may be placed on";

(3) in subsection (b), by striking out "The notice appearing on the phonorecords" and inserting in lieu thereof "If a notice appears on the phonorecords, it"; and

(4) by adding at the end thereof the following new subsection:

"(d) EVIDENTIARY WEIGHT OF NOTICE.—If a notice of copyright in the form and position specified by this section appears on the published phonorecord or phonorecords to which a defendant in a copyright infringement suit had access, then no weight shall be given to such a defendant's interposition of a defense based on innocent infringement in mitigation of actual or statutory damages, except as provided in the last sentence of section 504(c)(2).".

(c) PUBLICATIONS INCORPORATING UNITED STATES GOVERNMENT WORKS.—Section 403 is amended to read as follows:

"Sections 401(d) and 402(d) shall not apply to a work published in copies or phonorecords consisting predominantly of one or more works of the United States Government unless the notice of copyright appearing on the published copies or phonorecords to which a defendant in the copyright infringement suit had access includes a statement identifying, either affirmatively or negatively, those portions of the copies or phonorecords embodying any work or works protected under this title.".

(d) NOTICE OF COPYRIGHT; CONTRIBUTIONS TO COLLECTIVE WORKS.—Section 404 is amended—

(1) in subsection (a), by striking out "to satisfy the requirements of sections 401 through 403", and inserting in lieu thereof "to invoke the provisions of section 401(d) or 402(d), as applicable"; and

(2) in subsection (b), by striking out "Where" and inserting in lieu thereof "With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, where".

(e) OMISSION OF NOTICE.—Section 405 is amended—

(1) in subsection (a), by striking out "The omission of the copyright notice prescribed by" and inserting in lieu thereof "With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, the omission of the copyright notice described in";

(2) in subsection (b), by striking out "omitted," in the first sentence and inserting in lieu thereof "omitted and which was publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988,"; and

(3) by amending the section heading to read as follows:

"§ 405. Notice of copyright: Omission of notice on certain copies and phonorecords"

(f) ERROR IN NAME OR DATE.—Section 406 is amended—

(1) in subsection (a) by striking out "Where" and inserting in lieu thereof "With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, where";

(2) in subsection (b) by inserting "before the effective date of the Berne Convention Implementation Act of 1988" after "distributed";

(3) in subsection (c)—

(A) by inserting "before the effective date of the Berne Convention Implementation Act of 1988" after "publicly distributed"; and

(B) by inserting after "405" the following: "as in effect on the day before the effective date of the Berne Convention Implementation Act of 1988"; and

(4) by amending the section heading to read as follows:

"§ 406. Notice of copyright: Error in name or date on certain copies and phonorecords".

(g) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 4 is amended by striking out the items relating to sections 405 and 406 and inserting in lieu thereof the following:

"405. Notice of copyright: Omission of notice on certain copies and phonorecords.

"406. Notice of copyright: Error in name or date on certain copies and phonorecords.".

SEC. 8. DEPOSIT OF COPIES OR PHONORECORDS FOR LIBRARY OF CONGRESS.

Section 407(a) is amended by striking out "with notice of copyright".

SEC. 9. COPYRIGHT REGISTRATION.

(a) REGISTRATION IN GENERAL.—Section 408 is amended—

(1) in subsection (a), by striking out "Subject to the provisions of section 405(a), such" in the second sentence and inserting in lieu thereof "Such";

(2) in subsection (c)(2)—

(A) by striking out "all of the following conditions—" and inserting in lieu thereof "the following conditions:";

(B) by striking out subparagraph (A); and

(C) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

(b) INFRINGEMENT ACTIONS.—

(1) REGISTRATION AS A PREREQUISITE.—Section 411 is amended—

(A) by amending the section heading to read as follows:

"§ 411. Registration and infringement actions";

(B) in subsection (a) by striking out "Subject" and inserting in lieu thereof "Except for actions for infringement of copyright in Berne Convention works whose country of origin is not the United States, and subject"; and

(C) in subsection (b)(2) by inserting ", if required by subsection (a)," after "work".

(2) TABLE OF SECTIONS.—The table of sections at the beginning of chapter 4 is amended by striking out the item relating to section 411 and inserting in lieu thereof the following:

"411. Registration and infringement actions.".

SEC. 10. COPYRIGHT INFRINGEMENT AND REMEDIES.

(a) INFRINGEMENT.—Section 501(b) is amended by striking out "sections 205(d) and 411," and inserting in lieu thereof "section 411,".

(b) DAMAGES AND PROFITS.—Section 504(c) is amended—

(1) in paragraph (1)—

(A) by striking out "$250", and inserting in lieu thereof "$500"; and

(B) by striking out "$10,000", and inserting in lieu thereof "$20,000"; and

(2) in paragraph (2)—

(A) by striking out "$50,000.", and inserting in lieu thereof "$100,000."; and

(B) by striking out "$100.", and inserting in lieu thereof "$200.".

SEC. 11. COPYRIGHT ROYALTY TRIBUNAL.

Chapter 8 is amended—

(1) in section 801, by adding at the end of subsection (b) the following: "In determining whether a return to a copyright owner under section 116 is fair, appropriate weight shall be given to—

"(i) the rates previously determined by the Tribunal to provide a fair return to the copyright owner, and

"(ii) the rates contained in any license negotiated pursuant to section 116A of this title."; and

(2) by amending section 804(a)(2)(C) to read as follows:

"(C)(i) In proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in section 115, such petition may be filed in 1990 and in each subsequent tenth calendar year, and at any time within 1 year after negotiated licenses authorized by section 116A are terminated or expire and are not replaced by subsequent agreements.

"(ii) If negotiated licenses authorized by section 116A come into force so as to supersede previous determinations of the Tribunal, as provided in section 116A(d), but thereafter are terminated or expire and are not replaced by subsequent agreements, the Tribunal shall, upon petition of any party to such terminated or expired negotiated license agreement, promptly establish an interim royalty rate or rates for the public performance by means of a coin-operated phonorecord player of nondramatic musical works embodied in phonorecords which had been subject to the terminated or expired negotiated license agreement. Such interim royalty rate or rates shall be the same as the last such rate or rates and shall remain in force until the conclusion of proceedings to adjust the royalty rates applicable to such works, or until superseded by a new negotiated license agreement, as provided in section 116A(d).".

SEC. 12. WORKS IN THE PUBLIC DOMAIN.

Title 17, United States Code, as amended by this Act, does not provide copyright protection for any work that is in the public domain in the United States.

SEC. 13. EFFECTIVE DATE; EFFECT ON PENDING CASES.

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act take effect on the date on which the Berne Convention (as defined in section 101 of title 17, United States Code) enters into force with respect to the United States.

(b) EFFECT ON PENDING CASES.—Any cause of action arising under title 17, United States Code, before the effective date of this Act shall be governed by the provisions of such title as in effect when the cause of action arose.

The SPEAKER pro tempore. Is a second demanded?

Mr. MOORHEAD. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Wisconsin [Mr. KASTENMEIER] will be recognized for 20 minutes and the gentleman from California [Mr. MOORHEAD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Wisconsin [Mr. KASTENMEIER].

Mr. KASTENMEIER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, on May 10 when the House of Representatives first considered my bill (H.R. 4262) to pave the way for United States adherence to join the Berne Copyright Convention, I observed that it was a historic occasion. The full House never before had considered implementing legislation to allow the United States to join the Berne Convention for the Protection of Literary and Artistic Works, the world's most prestigious copyright treaty. On that day, we made history by passing H.R. 4262 by a recorded vote of 420 to 0.

Today we can complete the concluding legislative chapter by considering—and endorsing—the Senate amendment to H.R. 4262. The Senate passed H.R. 4262, as amended, on October 5, 1988 by a recorded vote of 90 to 0. The amendment is a compromise between the House-passed bill and the bill favorably reported by the Senate Committee on the Judiciary—on May 20, 1988. Between May and October, the House and Senate worked together on a bipartisan basis to draft an acceptable compromise, with input from the Copyright Office and the administration. I commend the Senate amendment to you and ask that it be approved.

The Senate amendment dovetails nicely with the House-passed bill. In most regard, the amendment respects the proposition that United States adherence to the Berne Convention can be accomplished with only minimal changes to American law. As you recall, minimalism was the fundamental basis for H.R. 4262, as passed by the House of Representatives.

Many people should be recognized for their hard work on the measure. My success is their success. First and foremost is the ranking minority member of the subcommittee, the gentleman from California [Mr. MOORHEAD]. We have worked well together in this Congress and so have our staffs. We will be appearing together on other measures during the next couple days, and we will jointly reap the fruits of our labors. But the Berne bill will be our most important success. In this regard, Mr. MOORHEAD was the original cosponsor of my initial bill and the sponsor of the administration's bill. From the beginning, he has played a pivotal role in processing the Berne Convention Implementation Act of 1988.

Three other members of our Berne team, the gentleman from California [Mr. BERMAN], the gentleman from New York [Mr. FISH], and the gentleman from Illinois [Mr. HYDE], should be mentioned. They participated in the several days of consultations with foreign experts which were so important in deciding how to draft minimalist legislation. Further, the efforts of several other members of my subcommittee who cosponsored the legislation, including Mr. SYNAR, Mrs. SCHROEDER, Mr. CROCKETT, Mr. BRYANT, Mr. CARDIN, Mr. DEWINE, Mr. COBLE, and Mr. SLAUGHTER of Virginia, should be underlined.

Without strong leadership in the other body, the measure would not be before us today. I thank my friends and sister subcommittee chairmen, Mr. LEAHY and Mr. DECONCINI, for their diligence, hard work, and cooperation. From the outset, the House and Senate bills were remarkably similar, and although several differences required resolution, the Senators and their excellent staffs kept their eyes on the ball, placing United States adherence to Berne before any single difference in the bills. The resulting compromise—acceptable to the House, as I previously mentioned—is before us now.

Last, but certainly not least, I would like to recognize the contributions of Dr. Arpad Bogsch, the Director General of the World Intellectual Property Organization. Dr. Bogsch has been of enormous assistance in understanding the Berne Convention and the administration of the convention by the WIPO. Beginning with his testimony before the Senate Judiciary Committee and up to our European consultations, his expert advice has been unequaled.

On March 16, 1987, when I introduced my original bill (H.R. 1623) I noted in the Record that even under the best of circumstances, Berne adherence faced a long, uphill climb. We have achieved what I thought to be impossible. As Members will readily concede, it often takes many years to enact legislation. In a year and one-half, with interbranch cooperation and a bipartisan spirit, Congress has nearly attained the summit. House passage of the measure before us today will send it directly to the President for his signature.

Shortly thereafter, and hopefully in the next day or two, the Senate can give its advice and consent and ratify the treaty itself. After we pass the bill today, I will call the chairman of the Senate Committee on Foreign Relations, Mr. Pell, and inform him of our action so that he might process the treaty.

I, of course, cannot speak for the President. But I can predict a Presidential signature. I recently received a letter from the U.S. Department of State in strong support for the legislation. The letter, dated July 7, 1988, from Assistant Secretary J. Edward Fox—states in part:

> The Administration strongly supports U.S. adherence to the Berne Convention. We agree unreservedly with your statement on May 10, 1988 * * * that this convention is the most important copyright treaty in the world. Evidence of the excellent preparatory work regarding the legislation carried out by you and your Subcommittee is the unanimous approval of the House. The Department would like to take this opportunity to express our appreciation for your leadership on this issue.

In conclusion, H.R. 4262 is one of the most important bills that will be considered by the 100th Congress. The unanimity of support enjoyed by the legislation should not decrease its importance. Ask authors and creators in the motion picture industry, the recording industry, book publishing, computer software and others about the importance of Berne membership to U.S. interests. Ask trade experts. Ask copyright lawyers and professors.

They will tell you that the benefits of the legislation will be numerous. The United States will establish multilateral copyright relations with 24 countries with whom such relations do not currently exist. U.S. membership in the Berne Union is a part in the larger picture of reform of our trade laws, as the Berne standards may ultimately serve as standards for the General Agreement on Tariffs and Trade [GATT]. Since the United States runs a positive balance of trade for copyrighted items, Berne membership will contribute to a continuation of that net advantage. The United States can join the union while maintaining a strong and vibrant Library of Congress, which of course serves the public by being a depository of our cultural heritage. Finally, by placing American copyright law on a footing similar to most other countries, especially in the industrial world, our domestic law as well as the international legal system are improved. The net benefits will flow to American authors and to the American public.

I strongly recommend House passage of the Senate amendments to H.R. 4262. Let us send this bill to the President.

☐ 1730

Mr. Speaker, I reserve the balance of my time.

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 4262 is historic and important legislation that as the gentleman from Wisconsin [Mr. Kastenmeier] noted, passed the House on the Suspension Calendar by a vote of 420 to 0 on May 10, 1988. I want to personally commend the gentleman from Wisconsin [Mr. Kastenmeier] for his leadership on this issue, as well as the gentleman from New York [Mr. Fish] for his work and leadership that help make this legislation possible. H.R. 4262 is strongly supported by the administration and the copyright community. The late Secretary of Commerce, Malcolm Baldrige, the U.S. representative, Clayton Yeutter, and Under Secretary of State Alan Wallace, all testified that United States adherence to Berne was in the best interests of this country and urged Congress to act quickly. By the same token, President Reagan highlighted the importance of United States adherence to Berne in his State of the Union Address.

The Berne legislation was the subject of several days of very extensive and thorough hearings held by the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice. Working in conjunction with the World Intellectual Property Organization [WIPO] which administers the Berne Convention, the Courts Subcommittee also held 2 days of hearings in Geneva, Switzerland. During those hearings members were able to explore the ramifications of United States adherence to Berne with expert witnesses representing 11 different countries who are members of Berne. The subcommittee also received valuable input from the director general of WIPO, Dr. Arpad Bogsch, and we are indeed grateful and appreciative for his assistance. We are hopeful that we can receive similar assistance from WIPO on another important issue, the design patent legislation.

I urge support for H.R. 4262.

Before I yield back the balance of my time, I have a question for the gentleman from Wisconsin. Could he briefly explain the substance of the Senate amendment to H.R. 4262?

Mr. KASTENMEIER. If the gentleman will yield, yes, I would be pleased to describe the Senate amendment.

As I previously noted, and as Senators Leahy and DeConcini observed in their floor remarks, the House passed bill and the Senate Judiciary Committee approved bill were remarkably similar. From the outset, we agreed on such key subjects as self-execution, the public domain and retroactivity, the "moral rights" of authors, and architectural works. There were some drafting differences in these sections, but reconciliation of the differences was quite easy.

The major difference in the House and Senate approaches was in the area of formalities, particularly as relates to registration and recordation as a prerequisite to lawsuit. The House passed bill left current law intact, finding that current recordation and registration are not formalities prohibited by Berne. The Senate Judiciary bill eliminate both registration and recordation as prerequisites to lawsuits, finding that they were Berne incompatible. The Senate amendment is a compromise, creating a two-tier solution to the registration issue. Registration is continued as a prerequisite to suit by domestic authors. Only foreign origin works are excepted from the registration requirement. Further, recordation is eliminated, although it will continue to be encouraged. Last, in order to promote voluntary registration, current statutory damages are doubled.

The changes on registration and recordation were politically necessary in order to compromise; they should not be considered as a congressional finding that they are minimally mandated by the convention itself. Nothing in the compromise signifies that any future amendments in these areas to return them in the direction of current law would be deemed as Berne incompatible.

The Senate amendment makes other changes to the House-passed bill, regarding the definition of the Berne Convention, the jukebox compulsory license and the Copyright Royalty Tribunal, and the effective date. These changes, however, were all minor.

As the gentleman from California well knows, we have drafted a joint explanatory statement on the Senate amendment to H.R. 4262. Rather than reading this statement into the RECORD in its entirety, I will place it in the RECORD.

JOINT EXPLANATORY STATEMENT ON HOUSE-SENATE COMPROMISE INCORPORATED IN SENATE AMENDMENT TO H.R. 4262 (BERNE CONVENTION IMPLEMENTATION ACT OF 1988)

[References to the House bill are to H.R. 4262, as passed by the House of Representatives on May 10, 1988; references to the Senate bill are to S. 1301 as reported by the Senate Committee on the Judiciary on May 20, 1988; and references to the Senate amendment are to the House-Senate compromise embodied in H.R. 4262, as passed by the Senate on October 5, 1988.]

SECTION 1. Short Title and References to Title 17, United States Code [sections 1 and 2 of the House bill].

The House and Senate provisions relating to the short title of the proposed legislation—the Berne Convention Implementation Act of 1988—are identical.

The House bill provides that whenever in the Act an amendment or repeal is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to a section or other provision of Title 17, United States Code. The Senate bill does not have a comparable provision.

The Senate amendment accepts the House provision on references to Title 17, United States Code.

SEC. 2. Declarations [section 3 of the House bill].

The House and Senate bills are similar, but have two differences.

First, the House bill refers to the Berne Convention as being all acts, protocols, and revisions thereto, up to and including the revision done at Paris, France, in 1971. The Senate bill covers all acts, protocols and revisions (including future ones). The House recedes to the Senate on the question of whether the Berne Convention refers to future revisions. Both bills clearly state that the Convention is not self-executing under the Constitution and laws of the United States. This proposition applies to future revisions.

Second, the drafting of the House and Senate bills differ on language describing the effect that U.S. adherence will have on rights and interests. Both specify that no rights or interests in addition to those arising under the Act or existing law shall be recognized if created for the purpose of satisfying such obligations. The bills are identical in terms of intended effect. The Senate amendment adopts the language of the Senate bill.

SEC. 3. Construction of the Berne Convention [Section 4 of the House bill].

The House and Senate bills are similar in substance, but contains drafting differences. The Senate amendment incorporates drafting suggestions from both bills, with no changes in meaning from either bill: (a) the provisions of the Berne Convention shall only be given effect under title 17, United States Code, and shall not be enforceable in any action brought pursuant to the provisions of the Convention; and U.S. adherence to the Convention does not expand or reduce any right of an author of a work to claim authorship of the work or to object to any distortion, mutilation of, or other derogatory action in relation to the work that would prejudice the author's honor or reputation.

One of the fundamental features of both bills concerns the implementation of United States obligations under the Berne Convention and the relationship between implementation and the fact that the treaty is not self-executing under United States law. Every witness, including representatives of the Executive Branch, who testified before the House and Senate Committees confirmed that the Berne Convention, as is the case for other intellectual property treaties, is not self-executing. The House and Senate bills confirm this proposition.

In hearings and in consultations with foreign copyright law experts, it was agreed that whether the Berne Convention can be self-executing depends entirely upon the Constitutional law of each State of the Berne Union and the decisions of States in this matter are not reviewable internationally. While many experts view the Convention as not expressly intended to be self-executing by the contracting parties, that issue is not free of doubt and practices of countries have varied.

There is no doubt, however, under the express provisions of the Senate amendment, that the Convention—including future revisions—will not be self-executing in the United States. This reflects a judgment that transcends in importance the particular concerns regarding moral rights and pre-emption which have made non-self-execution of Berne an important element of the compromises in this bill. That consideration is that Article I, Section 8 of the Constitution, by conferring expressly the power to legislate copyright protection upon the Congress, necessarily calls into serious question whether the Supremacy Clause can ever function in the copyright field. In short, for any act of the Berne Union to be effectively implemented in the United States will depend upon Congress so legislating.

SEC. 4. Subject Matter and Scope of Protection [Sections 5, 6 and 7 of the House bill].

Section 4 of the Senate amendment contains several House provisions: (1) definitions; (2) national origin; and (3) the jukebox compulsory license. It does not contain another provision found in the Senate bill relating to reproduction by libraries and archives.

The Senate amendment reflects a drafting compromise on organizational format, providing one section for definitions, national origin, preemption and the jukebox compulsory license. The Senate amendment adopts the House position on the matter relating to libraries and archives. No change in the present practices of libraries is contemplated.

The House bill defines "Berne Convention" as all acts, protocols, and revisions thereto, up to and including the revision done at Paris, France, in 1971. The Senate bill similarly defines Berne Convention, but also includes future revisions. The Senate amendment defines the Berne Convention as including future revisions.

However, no future revisions of the Berne Convention can be self-executing. The amendment defines the Convention to include future revisions of the treaty because the United States, as a Berne member, may be obligated to protect works originating in countries adhering to any new revision of Berne after the United States already has joined. But, no future revision of Berne can have any effect on American copyright law. Our law is controlled by what is passed by the House of Representatives and the Senate and then signed by the President. Nothing in this definition changes that fundamental principle.

The House and Senate bills are virtually the same on the definition of a Berne Convention work. The Senate amendment replaces the word "State" with "nation". No change of meaning is intended.

In the same definitional provision, another amendment replaces the term "simultaneously published" with "simultaneously first published", clarifying that the site of first publication, not of some publication occurring more than thirty days after first publication, is determinative in some circumstances of whether a published work is a Berne Convention work.

The Senate bill, as reported, amends section 108 of the Copyright Act, relating to reproduction of works by libraries and archives. The Senate bill repeals subsection (a)(3)—which requires notice of copyright for reproduction and distribution of copyrighted works—finding that such notice requirement is no longer necessary in light of other changes in the bill regarding notice. The House has no comparable provision. The Senate amendment adopts the House approach because elimination of the mandatory notice requirement is not required to meet Berne standards. The burden is on users rather than authors and copyright holders.

The House and Senate bills are virtually identical as related to national origin. The Senate amendment accepts the House drafting.

The House and Senate bills are similar in terms of substantive treatment of the jukebox compulsory license. Both create a negotiated licensing system, with the current compulsory license used as a fall-back if negotiations fail.

The bills use different drafting approaches: the House bill creates a new section 116A of title 17, United States Code, with current section 116 left in the statute books; the Senate bill repeals section 116, establishing a new section 116 and holding old section 116 in reserve if the statutory conditions arise. The Senate amendment adopts the House approach on organizational format and drafting. From a practical standpoint, leaving old section 116 "on the books" is preferable. Potential reliance on section 116, which could well occur in future years if negotiations fail, will not necessitate a search through old statute books for its contents.

The Senate amendment basically tracks the language of the House bill and does not contain a specific antitrust exemption. In this regard, the House-Senate compromise is contingent on agreement with language in the House Report (H. Rep. No. 100-609 at 25-26) regarding the procompetitive effects of collectively negotiated licensing agreements.

SEC. 5. Recordation.

The House bill does not change the recordation provisions in the Copyright Act. The Senate bill eliminates recordation as a prerequisite to a lawsuit for copyright infringement.

The Senate amendment adopts the provisions of the Senate bill and therefore recordation will no longer be a precondition to suit. Recordation, however, will continue to be encouraged through the constructive notice provisions which remain unchanged.

SEC. 6. Preemption with Respect to Other Laws not Affected [Section 5 of the House bill].

Both bills contain amendments to section 301 of title 17, United States Code, regarding preemption with respect to other laws not being affected—that is, these laws are neither expanded or reduced—by the adherence of the United States to the Berne Convention or the satisfaction of United States obligations thereto. There is no difference of meaning in the two bills.

The Senate amendment essentially adopts the House language.

SEC. 7. Notice of Copyright [Section 8 of the House bill].

Visually perceptible copies; phonorecords of sound recordings. The House and Senate bills are similar in terms of eliminating mandatory notice of copyright as a condition for maintaining copyright for works published after the effective date of the Act. To encourage use of notice, both bills create incentives to use notice, specifying that in the case of defendants who have access to copies bearing proper notice, courts shall not give any weight to a claim of innocent infringement in mitigation of damages.

The compromise adopts provisions of secondary importance from both bills in provisions affecting (1) visually perceptible copies; and (2) phonorecords of sound recordings. The Senate amendment reflects this compromise.

Publications incorporating United States Government works. The Senate amendment incorporates the provisions of the Senate bill relating to notice and publications incorporating United States Government works, providing that the section 403 notice is subject to the same voluntary incentives that apply to all other published works. It is expected that the Copyright Office will provide guidance as to the content and position of the statement contemplated by this section.

Omission of notice. the House and Senate bills are essentially the same. The current mandatory notice requirement is eliminated and replaced with an incentive for voluntary notice. The Senate bill specifies that this section does not apply to works publicly distributed without notice by authority of the copyright owner before the effective date of the Act. The Senate amendment adopts a provision from the House bill, to clarify that the presence of voluntary notice affects only the ability of the defendant to seek mitigation of damages and not the ability of a library, archives, or public broadcasting defendant to seek remission of damages under a reasonable belief that "fair use" is present.

SEC. 8. Deposit of Copies or Phonorecords for Library of Congress [Section 9 of the House bill].

The House and Senate bills are virtually identical and the Senate amendment reflects this agreement

SEC. 9. Copyright Registration [Section 10 of the House bill].

The House and Senate bills differ on this important issue. The House bill maintains current law regarding copyright registration as a prerequisite to lawsuit. The Senate bill eliminates registration as a prerequisite to a lawsuit. The House found this registration requirement compatible with Berne under the minimalist approach taken in this legislation. The Senate Committee on the Judiciary, while recognizing that its conclusion is not free from doubt, decided on the record before it that existing section 411(a) of title 17, United States Code, is a prohibited formality under Berne and therefore eliminated the requirement.

Both the House and Senate approaches recognize that any possible incompatibility is limited to a certain class of works: those whose country of origin is a Berne member country other than the United States. The House and Senate agreed on a compromise that would exempt such "foreign origin" works from the requirement of section 411(a).

The compromise involves a new definition of "country of origin" in section 101 of title 17, United States Code, to exempt the relevant foreign works; and a conforming amendment to section 411(a) of title 17, United States Code, to exempt the relevant foreign origin works from the ongoing registration requirement.

The House would have preferred to make no change in section 411, for the reasons given in the House Report (H. Rep. No. 100-609 at 40-43). The Senate bill eliminated the requirement of registration as a prerequisite to suit for all works, domestic and foreign. Such total elimination of the registration requirement for all works is clearly not necessary to make American law compatible with Berne, as the Senate Judiciary Committee recognized in its report (S. Rep. No. 100-352 at 13). Since the Senate amendment changes 411 only to the extent necessary to make it compatible with Berne even under the strictest interpretation, a compromise between the House and Senate bills was possible.

The amendment to section 411 constitutes an exception to the general principle of our law that registration should be attempted and granted or denied by the Copyright Office before suit for copyright infringement can be maintained. It is the plaintiff's responsibility to plead and prove that his or her case comes within the exception for works originating in a foreign country adhering to Berne. Unless a work is shown to be a work whose country of origin is not the United States, and therefore exempted from the requirements of section 411(a), then the work's country of origin is the United States and section 411(a) must be satisfied. As the factors establishing the non-United States origin of the work (whether situs of publication or nationality of the author or authors) are likely to be peculiarly within the knowledge of the copyright claimant, and since the exemption for works of non-United States origin is an exception to the general rule imposing a registration prerequisite, it is the obligation of the claimant in a work not submitted for registration to demonstrate the applicability of the exception.

Both the House and Senate bills leave unaffected the provisions of existing law granting prima facie evidentiary statutory damages and attorneys' fees upon timely registration of claims to copyright in order to assure a strong, accurate, and effective public record and deposit of works for the benefit of the Library of Congress. Furthermore, these provisions are designed to relieve the evidentiary burdens placed on Federal judges who must adjudicate copyright controversies.

The two-tier solution is a reasonable compromise for American authors and their attorneys because of their familiarity with the American justice system and Copyright Office procedures. There is no real discrimination against American authors because foreign authors must also register in order to obtain the important benefits of the presumption of validity and statutory damages. In essence, all authors are treated equally.

The courthouse door is not barred to American authors because they maintain the right to litigate even upon a denial of registration.

In conclusion, the compromise should not be considered as the first step towards elimination of registration for all authors. To the contrary, it reaffirms the importance of registration—to the public, the Library of Congress, the judiciary, and the copyright community—and its ongoing validity.

SEC. 10. Copyright Infringement and Remedies.

In order to promote voluntary registration, the Senate bill doubles statutory penalties (which were last set in the Copyright Reform Act of 1976). The House bill has no comparable provision.

The Senate amendment adopts the provisions of the Senate bill. This compromise on statutory damages is related to the compromise, discussed above, on creation of a two-tier solution to the registration issue. Standing alone, there is nothing in the Berne Convention that would have mandated any changes in statutory damages.

The new statutory damages will only apply to registrations made on or after the effective date of the Act.

SEC. 11. Copyright Royalty Tribunal [Section 11 of the House bill].

The provisions in both bills relating to the Copyright Royalty Tribunal are necessitated by changes to the jukebox compulsory license. *See* section 8 of the House bill and section 4(2) of the Senate bill. Both bills set forth procedures to be followed by the Tribunal if negotiations for the new voluntary license fail.

In this regard, there are three differences between the bills.

Deference given to previous rates. In determining whether a rate is fair, under the House approach the Tribunal must give "substantial deference" to previous rates. Under the Senate bill, the Tribunal must give "appropriate weight". The Senate amendment opts for the approach of the Senate bill.

The authority of the Tribunal to establish interim royalty rates. The House bill is silent on whether the CRT can set an interim rate while it engages in a new ratemaking process. The Senate bill specifies that the CRT can establish an interim rate. The Senate amendment sets forth a compromise on this difference, specifying that the CRT can set an interim royalty rate which continues in effect the current rate.

The authority of the Tribunal to establish retroactive royalty rates. The House bill does not confer authority on the CRT to establish retroactive rates. The Senate bill confers such authority. The Senate amendment does not authorize the CRT to engage in retroactive decision-making.

SEC. 12. Works in the Public Domain [Section 12 of the House Bill].

The House and Senate bills are indentical. As noted in the House Report (H. Rep. No. 100-609 at 51-52), the public domain is neither expanded nor reduced by the Act.

SEC. 13. Effective date; Effective on Pending Cases [Section 13 of the House Bill].

The bills are essentially the same with one difference. The House bill provides that the Act takes effect on the day after the date on which the Berne Convention enters into force with respect to the United States. The Senate bill provides that the Act takes effect on the same day that the Convention enters into force. The Senate amendment makes a drafting change to specify that the Act will take effect on the "date on which" the Berne Convention enters into force with respect to the United States.

The amendment clarifies that the changes made to American law by the Act take effect simultaneously with the official action that requires the United States to meet its Berne obligations. The executive branch is urged to seriously consider specifying in the instrument of accession with the Director General of the W.I.P.O. not only a date certain but also a precise hour for the coming into force of the Convention for the United States in accordance with Articles 29(2)(b) of the Convention. Pursuant to Article 29, the date of entry into force of a new member country is three months after the Director General of the W.I.P.O. notifies other member countries of its accession, unless some later date is indicated. This procedure would avoid any gap between the time that American law is amended and the time that Berne enters into force for the United States. Establishing a date certain in advance would provide certainty in the law. Moreover, clarity and predictability among authors and users, both domestic and foreign, would commend such an approach.

In determining whether to amend and how to amend American copyright law, the goal of the Berne Convention Implementation Act of 1988 is to place American law is compliance with the provisions of the Berne Convention. As noted in the House Report (H. Rep. No. 100-609 at 20), "the approach used in all sections of the bill, including the findings and declarations, is the same: to modify American law minimally to place it in compliance with the provisions of the Berne Convention while respecting the constitutional provisions that apply to all such legislative endeavors." The House bill remained true to this "minimalist" approach. The Senate bill basically agreed with this approach, but proceeded upon a more expansive theory of Berne requirements in the areas of registration and recordation.

By reconciling differences between the House bill and the Senate bill, and therefore in drafting the compromise embodied in the Senate amendment, the strict minimalism in the House bill was admittedly weakened. Specifically, the compromise provisions on registration and recordation go further than that required by the minimalist approach. They were politically necessary to ensure passage of a bill by both Houses of Congress, but were not necessitated by the Berne Convention.

These compromise provisions therefore should not and cannot be considered as a congressional finding that they are minimally mandated by the provisions of the Berne Convention. The view of the House of Representatives continues to be that expressed in the House legislative history. The Convention does not require changes to current law regarding registration and recordation. Nothing in the compromise signifies that any future amendments in these areas to return them in the direction of current law—although not expected at this time—would be deemed as Berne incompatible.

ROBERT W. KASTENMEIER.
CARLOS MOORHEAD.

Mr. MOORHEAD. Mr. Speaker, I thank the gentleman from Wisconsin for his explanation. My name appears on the explanatory statement, and I note that it accurately describes the House-Senate compromise.

I have a second question for the gentleman from Wisconsin. Last November when we held our consultations at the World Intellectual Property Organization, we learned that the United States was in arrears in its annual contributions as a member state of intellectual property treaties. Our arrearages raise significant questions about us joining another international organization and then not paying our dues. You and I—with Mr. BERMAN, Mr. FISH, and Mr. HYDE—wrote to the State Department inquiring about the situation. Has the problem been solved?

Mr. KASTENMEIER. In response to the gentleman's question, the problem has only been partially solved. I have written several letters to the State Department, following our earlier letter. Some of our arrearages have been paid, and others have not.

As regards the U.S. contributions for the Berne membership, the State Department has requested adequate funds for fiscal years 1988 and 1989. I expect—and sincerely hope—that when we join the Berne Union that we will pay our dues.

This treaty is very important to the creative interests in the United States, and to the balance of trade. We should join Berne with our heads held high and assume a position of leadership, rather than coming in through the back door.

Mr. MOORHEAD. I agree wholeheartedly with the gentleman's response. As the ranking minority member of the subcommittee, I can assure him that we will continue to work together not only to pay all of our arrearages but also to ensure that we pay our Berne membership contributions in whole and on time.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. FISH].

Mr. FISH. Mr. Speaker, I rise in support of H.R. 4262, the Berne Convention Implementation Act of 1988, which is truly landmark legislation. I would like to commend the chairman of the Subcommittee on Courts, Civil Liberties and the Administration of Justice, the gentleman from Wisconsin, BOB KASTENMEIER, and the ranking minority member, the gentleman from California, CARLOS MOORHEAD, for their leadership on this important issue.

It was 102 years ago on September 9, 1886, that 10 nations formed the Berne Convention. Today 76 countries are members of the Berne Convention. However, the United States is not a member. This is despite the fact that almost all of the countries that are the major consumers of our copyrighted works are members of Berne.

While the debate over whether or not the United States should join Berne has ebbed and flowed over the last century, two important points stand out. First, Berne provides the highest level of copyright protection to its member nations. Second, the United States is the largest exporter of copyrighted works in the world and as such would substantially benefit by becoming a member of Berne. With the enactment of H.R. 4262 the United States will end over 100 years of debate and finally become a member of Berne, thus taking its rightful place in the international copyright community.

Once the United States adheres to Berne we will receive its higher levels of protection in 24 countries where currently we receive varying degrees of protection or no protection at all for our copyrighted works. This is because these 24 countries are members of Berne, but not the UCC to which the United States is a signatory. Clearly, the individuals and businesses in the United States that rely on copyrighted protection for their creative works will reap substantial benefits as a result of having a new and stronger relationships with these 24 additional countries.

In his testimony before the Courts Subcommittee, the late Secretary of Commerce, Malcolm Baldrige testified that the copyright industries have made significant contributions to the U.S. economy and our balance of trade. For example, in a 1984 study, the Copyright Office estimated that in 1982 the copyright and information-related industries contributed over $153 billion to the U.S. economy and employed 2.2 percent of the civilian labor force. Also, in 1984 the International Trade Commission estimated that in 1982 the copyright industries earned a trade surplus of over $1.2 billion. As compelling as these numbers are, they would be even better if piracy of copyrighted materials was not such a major problem.

In a recent report prepared by the International Trade Commission entitled "Foreign Protection of Intellectual Property Rights and the Effect on U.S. Industry and Trade." It was pointed out that: "Piracy, particularly of audio and video tapes and computer software, is probably the most easily accomplished large-scale violation of an intellectual property. This vulnerability, and its high profit potential, combine to make such piracy the most widespread violation in the world." In 1985, the international intellectual property alliance estimated that in 1984 the copyright industries lost $1.3 billion to piracy in only 10 selected countries.

One of the major impediments to obtaining stronger copyright protection for U.S. copyrighted works overseas is the fact that we are not a member of the Berne Convention. Ambassador Clayton Yeutter, United States Trade Representative, highlighted this point in his testimony before the Courts Subcommittee. "Too often we have found that our non-adherence to Berne is the basis for resistance to making changes in their inadequate laws. * * * Achieving meaningful results in negotiations requires leverage. In this area, the leverage comes from setting the right example for the rest of the world, and that requires adherence to the Berne Convention."

This legislation along with what we have completed in the trade bill on process patents is going to be very helpful in our dealings with our trading partners. I urge my colleagues' support for the bill.

Mr. KASTENMEIER. Mr. Speaker, I yield myself 30 seconds.

I wanted to state that the President did list that U.S. adherence to the Berne Convention is one of his priorities. I well remember the subcommittee's hearing when the administration presented its position in support of the legislation. It was Secretary of Commerce Malcolm Baldrige who appeared, and it was his last Hill appearance before he met his untimely death in a freakish rodeo accident.

In part, this bill should be considered as a tribute to the memory of Secretary Baldrige, and I should underline the unceasing, unwavering efforts of another Cabinet official, United States Trade Representative Clayton Yeutter, for this measure.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MOORHEAD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The **SPEAKER** pro tempore. The question is on the motion offered by the gentleman from Wisconsin [Mr. Kastenmeier] that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 4262.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate amendment to the bill, H.R. 4262, just concurred in.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

NATIVE HAWAIIAN HEALTH CARE ACT OF 1988

Mr. WAXMAN. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 136) to improve the health status of Native Hawaiians, and for other purposes, as amended.

The Clerk read as follows:

S. 136

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Native Hawaiian Health Care Act of 1988".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the United States retains the legal responsibility to enforce the administration of the public trust responsibility of the State of Hawaii for the betterment of the conditions of Native Hawaiians under section 5(f) of Public Law 86-3 (73 Stat. 6; commonly referred to as the "Hawaii Statehood Admissions Act");

(2) in furtherance of the State of Hawaii's public trust responsibility for the betterment of the conditions of Native Hawaiians, contributions by the United States to the provision of comprehensive health promotion and disease prevention services to maintain and improve the health status of Native Hawaiians are consistent with the historical and unique legal relationship of the United States with the government that represented the indigenous native people of Hawaii; and

(3) it is the policy of the United States to raise the health status of Native Hawaiians to the highest possible level and to encourage the maximum participation of Native Hawaiians in order to achieve this objective.

SEC. 3. COMPREHENSIVE HEALTH CARE MASTER PLAN FOR NATIVE HAWAIIANS.

(a) Development.—The Secretary may make a grant to, or enter into a contract with, Papa Ola Lokahi for the purpose of developing a Native Hawaiian comprehensive health care master plan designed to promote comprehensive health promotion and disease prevention services and to maintain and improve the health status of Native Hawaiians. The master plan shall be based upon an assessment of the health care status and health care needs of Native Hawaiians. To the extent practicable, assessments made as of the date of such grant or contract shall be used by Papa Ola Lokahi, except that any such assessment shall be updated as appropriate.

(b) Authorization of Appropriations.—There is authorized to be appropriated $700,000 for fiscal year 1990 to carry out subsection (a).

SEC. 4. NATIVE HAWAIIAN HEALTH CENTERS.

(a) Comprehensive Health Promotion, Disease Prevention, and Primary Health Services.—(1)(A) The Secretary, in consultation with Papa Ola Lokahi, may make grants to, or enter into contracts with, any qualified entity for the purpose of providing comprehensive health promotion and disease prevention services as well as primary health services to Native Hawaiians.

(B) In making grants and entering into contracts under this paragraph, the Secretary shall give preference to Native Hawaiian health centers and Native Hawaiian organizations, and, to the extent feasible, health promotion and disease prevention services shall be performed through Native Hawaiian health centers.

(2) In addition to paragraph (1), the Secretary may make a grant to, or enter into a contract with, Papa Ola Lokahi for the purpose of planning Native Hawaiian health centers to serve the health needs of Native Hawaiian communities on each of the islands of O'ahu, Moloka'i, Maui, Hawai'i, Lana'i, Kaua'i, and Ni'ihau in the State of Hawaii.

(b) Qualified Entity.—An entity is a qualified entity for purposes of subsection (a)(1) if the entity is—

1) a Native Hawaiian health center;

(2) a Native Hawaiian organization; or

(3) a public or nonprofit private health provider.

(c) Services to be Provided.—(1) Each recipient of funds under subsection (a)(1) shall provide the following services:

(A) Outreach services to inform Native Hawaiians of the availability of health services.

(B) Education in health promotion and disease prevention of the Native Hawaiian population by (wherever possible) Native Hawaiian health care practitioners, community outreach workers, counselors, and cultural educators.

(C) Services of physicians, physicians' assistants, or nurse practitioners.

(D) Immunizations.

(E) Prevention and control of diabetes, high blood pressure, and otitis media.

(F) Pregnancy and infant care.

(G) Improvement of nutrition.

(2) In addition to the mandatory services under paragraph (1), the following services may be provided pursuant to subsection (a)(1):

(A) Identification, treatment, control, and reduction of the incidence of preventable illnesses and conditions endemic to Native Hawaiians.

(B) Collection of data related to the prevention of diseases and illnesses among Native Hawaiians.

(C) Services within the meaning of the terms "health promotion", "disease prevention", and "primary health services", as such terms are defined in section 8, which are not specifically referred to paragraph (1) of this subsection.

(3) The health care services referred to in paragraphs (1) and (2) which are provided under grants or contracts under subsection (a)(1) may be provided by traditional Native Hawaiian healers.

(d) Limitation on Number of Entities.—During a fiscal year, the Secretary under this Act may make a grant to, or hold a contract with, not more than nine qualified entities in the State of Hawaii, as follows:

(1) Two entities serving individuals on Kaua'i, from which individuals on Ni'ihau shall also be served.

(2) Two entities serving individuals on O'ahu.

(3) One entity serving individuals on Moloka'i, from which individuals on Lana'i shall also be served.

(4) Two entities serving individuals on Maui.

(5) Two entities serving individuals on Hawai'i.

(e) Matching Funds.—The Secretary may not make a grant or provide funds pursuant to a contract under subsection (a)(1) to an entity—

(A) in an amount exceeding 75 percent of the costs of providing health services under the grant or contract; and

(B) unless the entity agrees that the entity will make available, directly or through donations to the entity, non-Federal contributions toward such costs in an amount equal to not less than $1 (in cash or in kind under paragraph (2)) for each $3 of Federal funds provided in such grant or contract.

(2) Non-Federal contributions required in paragraph (1) may be in cash or in kind,

fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government or services assisted or subsidized to any significant extent by the Federal Government may not be included in determining the amount of such non-Federal contributions.

(3) The Secretary may waive the requirement established in paragraph (1) if—

(A) the entity involved is a nonprofit private entity described in subsection (b); and

(B) the Secretary, in consultation with Papa Ola Lokahi, determines that it is not feasible for the entity to comply with such requirement.

(f) Restriction on Use of Grant and Contract Funds.—The Secretary may not make a grant to, or enter into a contract with, an entity under subsection (a)(1) unless the entity agrees that amounts received pursuant to such subsection will not, directly or through contract, be expended—

(1) for any purpose other than the purposes described in subsection (c);

(2) to provide inpatient services;

(3) to make cash payments to intended recipients of health services; or

(4) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment.

(g) Limitation on Charges For Services.—The Secretary may not make a grant, or enter into a contract with, an entity under subsection (a)(1) unless the entity agrees that, whether health services are provided directly or through contract—

(1) health services under the grant or contract will be provided without regard to ability to pay for the health services; and

(2) the entity will impose a charge for the delivery of health services, and such charge—

(A) will be made according to a schedule of charges that is made available to the public, and

(B) will be adjusted to reflect the income of the individual involved.

(h) Authorization of Appropriations.—(1) There is authorized to be appropriated $5,000,000 for fiscal year 1991 and $10,000,000 for fiscal year 1992 to carry out subsection (a)(1).

(2) There is authorized to be appropriated for fiscal year 1990, $900,000 to carry out subsection (a)(2)

SEC. 5. ADMINISTRATIVE GRANT FOR PAPA OLA LOKAHI.

(a) In General.—In addition to any other grant or contract under this Act, the Secretary may make grants to, or enter into contracts with, Papa Ola Lokahi for—

(1) coordination, implementation, and updating (as appropriate) of the comprehensive health care master plan developed pursuant to section 3;

(2) training for the persons described in section 4(c)(1)(B); or

(3) identification of and research into the diseases that are most prevalent among Native Hawaiians, including behavioral, biomedical, epidemiological, and health services.

(b) Authorization of Appropriations.—There is authorized to be appropriated $1,000,000 for each of the fiscal years 1990, 1991, and 1992, to carry out subsection (a).

SEC. 6. ADMINISTRATION OF GRANTS AND CONTRACTS.

(a) Terms and Conditions.—The Secretary shall include in any grant made or contract entered into under this Act such terms and conditions as the Secretary considers necessary or appropriate to ensure that the objectives of such grant or contract are achieved.

(b) Periodic Review.—The Secretary shall periodically evaluate the performance of, and compliance with, grants and contracts under this Act.

(c) Administrative Requirements.—The Secretary may not make a grant or enter into a contract under this Act with an entity unless the entity—

(1) agrees to establish such procedures for fiscal control and fund accounting as may be necessary to ensure proper disbursement and accounting with respect to the grant or contract;

(2) agrees to ensure the confidentiality of records maintained on individuals receiving health services under the grant or contract;

(3) with respect to providing health services to any population of Native Hawaiians a substantial portion of which has a limited ability to speak the English language—

(A) has developed and has the ability to carry out a reasonable plan to provide health services under the grant or contract through individuals how are able to communicate with the population involved in the language and cultural context that is most appropriate; and

(B) has designated at least one individual, fluent in both English and the appropriate language, to assist in carrying out the plan;

(4) with respect to health services that are covered in the plan of the State of Hawaii approved under title XIX of the Social Security Act—

(A) if the entity will provide under the grant of contract any such health services directly—

(i) the entity has entered into a participation agreement under such plan; and

(ii) the entity is qualified to receive payments under such plan; and

(B) if the entity will provide under the grant or contract any such health services through a contract with an organization—

(i) the organization has entered into a participation agreement under such plan; and

(ii) the organization is qualified to receive payments under such plan; and

(5) agrees to submit to the Secretary and to Papa Ola Lokahi an annual report that describes the utilization and costs of health services provided under the grant or contract (including the average cost of health services per user) and that provides such other information as the Secretary determines to be appropriate.

(d) Contract Evaluation.—(1) If, as a result of evaluation conducted by the Secretary, the Secretary determines that an entity has not complied with or satisfactorily performed a contract entered into under section 4, the Secretary shall, prior to renewing such contract, attempt to resolve the areas of noncompliance or unsatisfactory performance and modify such contract to prevent future occurrences of such noncompliance or unsatisfactory performance. It the Secretary determines that such noncompliance or unsatisfactory performance cannot be resolved and prevented in the future, the Secretary shall not renew such contract with such entity and is authorized to enter into a contract under section 4 with another entity referred to in section 4(b) that provides services to the same population of Native Hawaiians which is served by the entity whose contract is not renewed by reason of this subsection.

(2) In determining whether to renew a contract entered into with an entity under this Act, the Secretary shall consider the results of evaluations under this section.

(3) All contracts entered into by the Secretary under this Act shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and may be exempted from the provisions of the Act of August 24, 1935 (40 U.S.C. 270a et seq.).

(4) Payments made under any contract entered into under this Act may be made in advance, by means of reimbursement, or in installments and shall be made on such conditions as the Secretary deems necessary to carry out the purposes of this section.

(e) Limitation on the Use of Funds For Administrative Expenses.—Except for grants and contracts under section 5, the Secretary may not make a grant to, or enter into a contract with, an entity under this Act unless the entity agrees that the entity will not expend more than 10 percent of amounts received pursuant to this Act for the purpose of administering the grant or contract.

(f) Report.—(1) For each fiscal year during which an entity receives or expends funds pursuant to a grant or contract under this Act, such entity shall submit to the Secretary and to Papa Ola Lokahi a quarterly report on—

(A) activities conducted by the entity under the grant or contract;

(B) the amounts and purposes for which Federal funds were expended; and

(C) such other information as the Secretary may request.

(2) The reports and records of any entity which concern any grant or contract under this Act shall be subject to audit by the Secretary, the Inspector General of Health and Human Services, and the Comptroller General of the United States.

(g) Annual Private Audit.—The Secretary shall allow as a cost of any grant made or contract entered into under this Act the cost of an annual private audit conducted by certified public accountant.

SEC. 7. ASSIGNMENT OF PERSONNEL.

(a) In General.—The Secretary is authorized to enter into an agreement with any entity under which the Secretary is authorized to assign personnel of the Department of Health and Human Services with expertise identified by such entity to such entity on detail for the purpose of providing comprehensive health promotion and disease prevention services to Native Hawaiians.

(b) Applicable Federal Personnel Provisions.—Any assignment of personnel made by the Secretary under any agreement entered into under the authority of paragraph (1) shall be treated as an assignment of Federal personnel to a local government that is made in accordance with subchapter VI of chapter 33 of title 5, United States Code.

SEC. 8. DEFINITIONS.

For purposes of this Act:

(1) Disease prevention.—The term "disease prevention" included—

(A) immunizations,

(B) control of high blood pressure,

(C) control of sexually transmittable diseases,

(D) prevention and control of diabetes,

(E) control of toxic agents,

(F) occupational safety and health,

(G) accident prevention,

(H) fluoridation of water,

(I) control of infectious agents, and

(J) provision of mental health care.

(2) Health promotion.—The term "health promotion" includes—

(A) pregnancy and infant care, including prevention of fetal alcohol syndrome,

(B) cessation of tobacco smoking,

(C) reduction in the misuse of alcohol and drugs,

(D) improvement of nutrition,

(E) improvement in physical fitness,

(F) family planning, and

(G) control of stress.

(3) NATIVE HAWAIIAN.—The term "Native Hawaiian" means any individual who has any ancestors that were natives, prior to 1778, of the area that is now the State of Hawaii as evidenced by—

(A) genealogical records,

(B) Kupuna (elders) or Kama' aina (long-term community residents) verification, or

(C) birth records of the State of Hawaii.

(4) NATIVE HAWAIIAN HEALTH CENTER.—The term "Native Hawaiian health center" means an entity—

(A) which is organized under the laws of the State of Hawaii,

(B) which provides or arranges for health care services through practitioners licensed by the State of Hawaii, where licensure requirements are applicable,

(C) which is a public or nonprofit private entity, and

(D) in which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health services.

(5) NATIVE HAWAIIAN ORGANIZATION.—The term "Native Hawaiian organization" means any organization—

(A) which serves the interests of Native Hawaiians,

(B) which is—

(i) recognized by Papa Ola Lokahi for the purpose of planning, conducting, or administering programs (or portion of programs) authorized under this Act for the benefit of Native Hawaiians, and

(ii) certified by Papa Ola Lokahi as having the qualifications and capacity to provide the services, and meet the requirements, under the contract the organization enters into with, or grant the organization receives from, the Secretary under this Act,

(C) in which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health services, and

(D) which is a public or nonprofit private entity.

(6) PAPA OLA LOKAHI.—The term "Papa Ola Lokahi" means an organization composed of—

(A) E Ola Mau;

(B) the Office of Hawaiian Affairs of the State of Hawaii;

(C) Alu Like Inc.;

(D) the University of Hawaii; and

(E) the Office of Hawaiian Health of the Hawaii State Department of Health.

(7) PRIMARY HEALTH SERVICES.—The term "primary health services" means—

(A) services of physicians, physicians' assistants, and nurse practitioners;

(B) diagnostic laboratory and radiologic services;

(C) preventive health services (including children's eye and ear examinations to determine the need for vision and hearing correction, perinatal services, well child services, and family planning services);

(D) emergency medical services;

(E) transportation services as required for adequate patient care;

(F) preventive dental services; and

(G) pharmaceutical services, as may be appropriate for particular health centers.

(8) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

(9) TRADITIONAL NATIVE HAWAIIAN HEALER.—The term "traditional Native Hawaiian healer" means a practitioner—

(A) who—

(i) is of Hawaiian ancestry, and

(ii) has the knowledge, skills, and experience in direct personal health care of individuals, and

(B) whose knowledge, skills, and experience are based on a demonstrated learning of Native Hawaiian healing practices acquired by—

(i) direct practical association with Native Hawaiian elders, and

(ii) oral traditions transmitted from generation to generation.

SEC. 9. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to restrict the authority of the State of Hawaii to license health practitioners.

SEC. 10. REPEAL OF DEMONSTRATION PROJECT.

Section 205 of the Indian Health Care Improvement Act, as added by section 203(c) of the Indian Health Care Amendments of 1988, is repealed.

SEC. 11. COMPLIANCE WITH BUDGET ACT.

Any new spending authority (described in subsection (c)(2) (A) or (B) of section 401 of the Congressional Budget Act of 1974) which is provided under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

SEC. 12. SEVERABILITY.

If any provision of this Act, or the application of any such provision to any person or circumstances is held to be invalid, the remainder of this Act, and the application of such provision or amendment to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

The **SPEAKER** pro tempore. Is a second demanded?

Mr. **NIELSON** of Utah. Mr. Speaker, I demand a second.

The **SPEAKER** pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The **SPEAKER** pro tempore. The gentleman from California [Mr. WAXMAN] will be recognized for 20 minutes and the gentleman from Utah [Mr. NIELSON] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. WAXMAN].

GENERAL LEAVE

Mr. **WAXMAN**. Mr. Speaker, I ask that all Members may have 5 legislative days in which to revise and extend their remarks on S. 136, the Senate bill now under consideration.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. **WAXMAN**. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the purpose of this bill is to improve the health status of Native Hawaiians by making primary care services, and health promotion and disease prevention services, available to them. According to the Office of Technology Assessment, the health status of Native Hawaiians is inferior to that of the U.S. population as a whole, as evidenced by a 34 percent higher death rate. Native Hawaiians are particularly vulnerable to diabetes; the death rate of Native Hawaiians from diabetes is more than three times greater than that from diabetes from the U.S. population.

The Federal Government has a responsibility to help Native Hawaiians address these severe health conditions.

Under the bill as amended, the Secretary of Health and Human Services would be authorized to fund the planning and operation of up to nine Native Hawaiian health centers to deliver health promotion and disease prevention services, as well as primary care services, to Native Hawaiians. The bill would authorize $900,000 in fiscal year 1990 for planning of the health centers. To operate the health centers in fiscal year 1991 and fiscal year 1992, the bill would authorize $5 million and $10 million, respectively. Funds would not be available for construction.

The Native Hawaiian centers would be required to provide a range of outpatient services, including pregnancy and infant care, and education in health promotion and disease prevention. In order to receive funds, they would have to match 25 percent of the cost of operation from non-Federal funds, subject to a waiver by the Secretary in exceptional circumstances. No more than 10 percent of their funds could be spent on administration; the rest would have to be applied to the provision of health care services.

To supplement the development and operation of the health centers, the bill authorizes $700,000 in fiscal year 1990 for the development of a comprehensive health care master plan for Native Hawaiians. In addition, the bill authorizes $1 million for each of the fiscal years 1990, 1991, and 1992 to fund the coordination of the master plan and to fund research into the diseases most prevalent among Native Hawaiians.

The total cost of this 3-year authorization is $19.6 million. This is a modest initiative to address a very serious health problem.

This amendment makes a number of changes in the bill as passed by the Senate. First, it cuts the funding by 60 percent, from $48.5 million over 5 years in the Senate bill, to $19.6 million over 3 years. Second, it cuts in half the number of new programs authorized, from six in the Senate bill to three. Third, it requires the Native Hawaiian health centers to match 25 percent of the local operating funds from non-Federal sources. This will assure a serious local commitment to the establishment and operation of these centers.

I believe that this bill, as amended, is a responsible and badly needed response to the pressing health needs of Native Hawaiians. I urge my colleagues to suspend the rules and pass S. 136 as amended.

Mr. Speaker, I reserve the balance of my time.

Mr. NIELSON of Utah. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill has been discussed with the minority. We have no objections to the bill.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. WAXMAN. Mr. Speaker, I yield 1 minute to the gentleman from Hawaii [Mr. AKAKA].

Mr. AKAKA. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in support of the House amendment to S. 136, the Native Hawaiian Health Care Act, and to commend Chairman DINGELL, ranking member LENT, Chairman WAXMAN, and ranking member MADIGAN for their outstanding leadership on this matter. I support this bill in its entirety, and urge its adoption by the House.

The health needs of our country's Native Hawaiians are great, and this bill attempts to address those needs in the most expeditious and thorough way possible.

The bill is the culmination of many hours of effort, debate and review, and has undergone extensive modification while under consideration in the House. The staff of the Energy and Commerce Committee have been extremely helpful and insightful in their efforts to assist us in bringing this measure to the floor in an acceptable manner, and the result is a greatly improved bill from that considered by the Senate. I want to thank the Energy and Commerce Committee staff for their diligence.

Mr. Speaker, the health care statistics of Native Hawaiians are alarming. In 1985, a study conducted by the Native Hawaiian Health Research Consortium and submitted to the U.S. Department of Health and Human Services, examined the health care needs of Native Hawaiians. The study found that in comparison to statewide population estimates, Native Hawaiians experienced the highest age-sex standardized mortality rate in the State of Hawaii.

Native Hawaiians experience a lower life expectancy than any other population group in the State of Hawaii; Native Hawaiians experience a higher rate of infant mortality, congenital abnormalities, and underweight infants than any other population in the State of Hawaii; and Native Hawaiians have the greatest risk of diabetes, heart disease, and some forms of cancer than any other population in the State of Hawaii. Native Hawaiians experience the onset of diabetes, heart disease, and hypertension at earlier ages than other populations in the State of Hawaii; Native Hawaiians have significantly higher rates of heart disease and hypertension than other populations in the State of Hawaii; Native Hawaiians have one of the highest cancer rates of any population in the United States and Native Hawaiians have the poorest survival rates from cancer than any other population in the State of Hawaii.

In addition, Native Hawaiian pregnant women rank the highest of all population of pregnant women in the State of Hawaii in receiving late or no prenatal care, smoking and alcohol consumption during pregnancy, toxemia and urinary tract infections during pregnancy, and complications of pregnancy over age 35.

Also, Native Hawaiians have higher rates of suicide among young adult and elderly males than the statewide population as a whole; Native Hawaiian children have one of the highest periodontal disease rates and the poorest dental hygiene of any other population in the State of Hawaii; Native Hawaiians have higher proportions of alcohol and narcotics use and school performance impairment than the statewide population as a whole; and Native Hawaiians have higher levels of stress than the statewide population as a whole.

Based on leading stress indicators; Native Hawaiians are underrepresented in rates of participation in health education, health promotion, screening and referral programs. Utilization of mental health services by Native Hawaiians is significantly below that of other populations in the State of Hawaii, and Native Hawaiians are underrepresented in the health professions.

This bill is designed to raise the health status of Native Hawaiians to the highest possible level and to encourage the maximum participation of Native Hawaiians in order to achieve this objective. It is a sorely needed initiative of which I am proud to be a part.

I urge the adoption of the bill.

Mrs. SAIKI. Mr. Speaker, I am well acquainted with the unique difficulties and needs of native Hawaiians. I stand in full support of S. 136, the Native Hawaiian Health Care Act of 1988, to establish and administer health programs specifically for native Hawaiians.

Statistics have shown that native Hawaiians suffer overwhelmingly from a number of very serious health problems; and this Native Hawaiian Health Care Act would go a long way to address the unique problems of this group.

This legislation contains vigorous health promotion and disease prevention strategies. Its well planned prevention devices include an authorization for the Secretary of Health and Human Services to work with a native Hawaiian organization to provide health education to native Hawaiian children.

According to this mandate the work of nine Native Hawaiian Health Care Centers will be coordinated by a comprehensive health care master plan and the Native Hawaiian Health Board, Papa Ola Lokahi. Individuals will be charged for services on a sliding scale according to income. I have every expectation that the key provisions to develop the comprehensive health care master plan and establish the Native Hawaiian Health Centers will greatly improve the health profiles of native Hawaiian people.

Thank you for this opportunity to express my support for this worthwhile measure. I look forward to seeing the provisions of S. 136 enacted and implemented.

Mr. WAXMAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. WAXMAN] that the House suspend the rules and pass the Senate bill, S. 136, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

REQUEST TO AUTHORIZE CLERK TO MAKE CORRECTION IN ENGROSSMENT OF H.R. 3097, ORGAN TRANSPLANT AMENDMENTS ACT OF 1987

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that, in the engrossment of the House amendment to the Senate amendments to the bill (H.R. 3097) pursuant to House Resolution 582, the Clerk be authorized to make a technical correction to properly indicate House action in amending the Senate amendment to the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. WALKER. Mr. Speaker, reserving the right to object, we have tried to develop a process around here that allows us to deal with such of these issues in a proper kind of way. I am now getting the impression that there are a number of these bills that we are having problems with enrollments, and we are having problems with technical corrections and so on.

I have been attempting to assure that we consider all of these things as a matter of course, and that this kind of thing be put on the Suspension Calendar and considered as a part of the regular legislative process. I do not know why all of a sudden we need to do this one by unanimous consent.

Mr. WAXMAN. Mr. Speaker, if the gentleman will yield, we took up earlier the suspension bill on organ transplants, and there was a drafting error that we now seek to correct in that legislation, and that is all we are doing by this unanimous-consent request.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. WALKER. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Utah [Mr. NIELSON].

Mr. NIELSON of Utah. Mr. Speaker, I support the chairman of the Health and Environment Subcommittee. It is a proper correction, and I support it.

Mr. WALKER. Mr. Speaker, further reserving the right to object, I have no doubt that what they are doing is entirely appropriate, but they are in fact asking us to change legislation that has been passed by the House. What I think the proper way to proceed on this would be to make the technical correction, put it into a bill, bring it out here under the Suspension Calendar and take care of it that way. That is the way other committees have been taking care of this, and it is the appropriate way to proceed at this point.

Mr. WAXMAN. Mr. Speaker, if the gentleman will yield further, the error was legislative counsel's on identification of the short title. It is simply a drafting error, and we seek to correct that. We could go to the Suspension Calendar, or we could go back and get a rule for technical amendments, but it seems to me rather wasteful of everyone's time to do that. I would plead with the gentleman to allow us to go on further.

Mr. WALKER. Further reserving the right to object, as the gentleman knows, there is no need to get a rule. I would say to the gentleman that there have been a number of other bills where there have been enrollment errors that are this kind of thing, and one reason the process is kept as clean as possible is to go through the regular process.

What I would ask the gentleman is to simply withdraw this request, put the bill on the Suspension Calendar with the technical correction request, and we would have no problem taking care of it. All we have to give is an hour's notice, and he can probably get it up tonight.

Mr. NIELSON of Utah. Mr. Speaker, if the gentleman would yield further, I would hope that he would not press his reservation. This bill passed unanimously in committee, passed the Senate almost unanimously, passed on the Suspension Calendar on a voice vote, and the correction has no effect on the impact of the bill or the substance at all. I would hope that he would withdraw his request.

Mr. WALKER. Mr. Speaker, further reserving the right to object, I appreciate what the gentleman is saying, and I am sure there would be no problem with the bill in making the appropriate correction, but I think that we need to have some processes around here that assure the membership of how we proceed, and the gentleman has the knowledge that he can in fact bring it back under the Suspension Calendar yet this evening with an hour's notice.

Mr. WAXMAN. Mr. Speaker, if the gentleman would yield further, I do not think that is a practical matter for us. We are in conferences on a number of health bills, and we are trying to resolve the differences with the Senate that would require us to be away from the floor, and that may jeopardize the corrections on this bill. I do not see any real accomplishment in that, but if that is what the gentleman hopes to accomplish today in his legislative career, then why does he not make the objection?

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Mr. WALKER. Mr. Speaker, reserving the right to object, I am trying to assure we have an orderly process, and if the gentleman wants to be petty on the orderly process and do what he wants, and the gentleman will have it at his discretion as to whether we consider the legislation, but I do think at the end of the session it makes sense to proceed with orderly processes rather than a lot of unanimous-consent requests because once we open the floodgate to that, we open the floodgate to all kinds of unanimous consents. It is amazing other committees found it very appropriate to do this kind of thing and bring it back with technical corrections. In the Suspension Calendar it has worked well. I say to the gentleman it is something that can work well for him.

Mr. WAXMAN. Mr. Speaker, I withdraw my unanimous-consent request.

IMPORTED VEHICLE SAFETY COMPLIANCE ACT OF 1987

Mr. THOMAS A. LUKEN. Mr. Speaker, I move to suspend the rules and concur in the Senate amendments to the bill (H.R. 2628) to amend the National Traffic and Motor Vehicle Safety Act of 1966 respecting the importation of motor vehicles in anticipation of compliance with safety standards under such act.

The Clerk read as follows:

Senate amendments:

Page 1, line 5, strike out "1987" and insert "1988".

Page 3, strike out lines 8 to 13, and insert:

"(i)(I) the motor vehicle is determined to be substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114, and of the same model year (as defined by regulation by the Secretary) as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards; or

"(II) where there is no substantially similar United States motor vehicle, the Secretary determines that the safety feastures of the vehicle comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as the Secretary determines to be adequate,

Page 3, line 15, strike out "(F)" and insert "(D)".

Page 4, line 9, strike out "(G)" and insert "(E)".

Page 4, strike out all after line 13 over to and including line 9 on page 6, and insert:

"(C)(i) The Secretary shall make the determination under paragraph (3)(A)(i)—

"(I) on the petition of any registered importer or any manufacturer, or

"(II) on the Secretary's own initiative.

"(ii) The Secretary shall establish by regulation (I) the information required to be provided by the petitioner to clearly show that the vehicle is capable of being brought into compliance with all applicable Federal motor vehicle safety standards and (II) the procedures for considering such petitions. In establishing such procedures, the".

Page 6, line 18, strike out "regarding the similarity of motor vehicles".

Page 6, line 19, strike out "those" and insert "the same model of".

Page 6, line 20, strike out "cles until the end of 12" and insert "cle until the end of 3".

Page 6, line 23, strike out "of motor vehicle similarity".

Page 7, line 1, after "ment" insert "consistent with ensuring expeditious, but full, consideration and avoid delay by any person".

Page 7, line 6, strike out "regarding the similarity of motor vehicles".

Page 7, line 7, strike out "those motor vehicles" and insert "the same model of motor vehicle".

Page 7, line 8, strike out "12" and insert "3".

Page 7, line 13, strike out "motor vehicles" and insert "same model of motor vehicle".

Page 7, line 14, after "made." insert "A positive determination shall be sufficient authority for any other registered importer to import a vehicle of the same model under this subsection provided such registered importer complies with all the terms and conditions of such determination.".

Page 7, line 15, strike out "(F)" and insert "(D)".

Page 8, line 16, strike out "(G)" and insert "(E)".

Page 8, line 17, strike out "(G)" and insert "(E)".

Page 9, line 22, strike out "concealed".

Page 10, line 2, strike out "concealed".

Page 11, line 20, strike out "(G)" and insert "(E)".

Page 13, line 9, strike out "1987" and insert "1988".

Page 14, line 25, strike out "1987" and insert "1988".

Page 15, line 7, strike out "1987" and insert "1988".

Page 17, lines 11 and 12, strike out "(b)" and inserting thereof "subsections (b), (c), and (d)".". and insert "(b) of.".

Page 17, line 24, strike out "(F)" and insert "(D)".

Page 18, line 5, strike out "(E)" and insert "(C)".

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is a second demanded?

Mr. WHITTAKER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. THOMAS A. LUKEN] will be recognized for 20 minutes and the gentleman from Kansas [Mr. WHITTAKER] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio [Mr. THOMAS A. LUKEN].

Mr. THOMAS A. LUKEN. Mr. Speaker, I yield myself such time as I may consume.

GENERAL LEAVE

Mr. THOMAS A. LUKEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate amendments to H.R. 2628.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. THOMAS A. LUKEN. Mr. Speaker, I yield myself as much time as I may consume.

Last December the House passed by voice vote the Imported Vehicle Safety Compliance Act of 1987, H.R. 2628. Last week the Senate passed H.R. 2628 with a few minor amendments.

This bill addresses the problem of ensuring the safety of foreign motor vehicles that are designed to be used in foreign countries but are, in fact, imported for use into this country. These vehicles, because they are designed for use in foreign countries, do not meet all the safety and emissions standards of our Government and are commonly called "gray market" vehicles.

The ranking Minority member of our subcommittee, Mr. WHITTAKER, has worked long and hard for several years to enact legislation in this area, and I want to commend him for his efforts as we appear to be reaching the end of our legislative journey.

The bill requires the Secretary of Transportation to establish procedures for registering importers of gray market vehicles. A registered importer is prohibited from releasing custody of any motor vehicle for use until 30 days after the registered importer certifies that the vehicle complies with all applicable Federal safety standards. The importer will have to post a bond. Registered importers will have to attach a label to the gray market vehicle identifying the importer and indicating that the vehicle is a gray market vehicle, and the registered importer is responsible for any subsequent notification or remedy of a defect in the vehicle. The Secretary must periodically inspect a representative number of gray market vehicles that have been certified to ensure that in fact the vehicles comply with NHTSA's safety standards. The Secretary is empowered to revoke the registration of any importer who fails to comply with the law.

Mr. Speaker, one portion of the Senate amendment clarifies the vehicle covered by the bill; the other portions of the Senate amendment are of a technical nature. The substantive part of the Senate amendment makes it clear that the law will cover imported cars for which there is no comparable U.S. model. The Senate amendment is acceptable to me, and I urge my colleagues to pass this legislation to help prevent unsafe gray market vehicles from being driven on our highways.

The amendments provide that an importer petitioning to import a gray market vehicle will have to choose whether to claim that the vehicle is "substantially similar" to a certified vehicle or to demonstrate by test data or other information that the vehicle can be modified to comply with all applicable Federal safety standards. If he chooses to claim substantial similarity, the importer will have the burden of establishing the vehicle's similarity in a public proceeding, in accordance with regulations to be issued by the Secretary of Transportation. The record of this proceeding and other information available to the Secretary will be the basis for the Secretary's determination that the vehicle is substantially similar and that it can be readily modified to conform to Federal safety standards. If the importer elects not to claim substantial similarity, he may submit data from destructive testing, or such other data as the Secretary may specify, to establish that the vehicle can be modified to conform to Federal safety standards.

A positive determination by the Secretary will permit the importation of the vehicle model in question, both by the petitioning importer and by other importers. The permission would relate only to the vehicle model, which may be described in the terms and conditions of the Secretary's determination. For example, if the Secretary wishes to limit the "substantial similarity" determination to a particular engine or transmission option within a model designation, he could place such a condition on his determination. If the vehicle meets any such terms and conditions, an importer would be able to import it and to modify it in any appropriate manner that enables him to certify its conformity with the applicable Federal safety standards. This process is consistent with the intent of the Vehicle Safety Act that manufacturers and importers certify the compliance of their vehicles.

Mr. Speaker, it is my view that these amendments carry out the intent of the bill and that they should be adopted.

At the same time, I want to be assured that the rulemaking effort under this bill will not slow other rulemaking at NHTSA. I am aware that NHTSA has a small rulemaking staff and that it is engaged in other safety rulemaking, such as side impact rulemaking. This committee and the Appropriations Committee wants NHTSA to continue that work according to schedule and not let this bill interfere with that. I expect NHISA to inform us if a problem occurs.

Mr. Speaker, I reserve the balance of my time.

Mr. WHITTAKER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased that we have the opportunity today to concur in the Senate amendments to H.R. 2628, the Imported Vehicle Safety Compliance Act of 1988, and to send the bill on to the President for his signature. This bill, with the Senate amendments, is a good compromise that institutes reforms in the Gray Market Automobile Program to ensure that all imported motor vehicles meet Federal safety standards. The bill leaves the gray market open to those who wish to import nonconforming vehicles, so long as they can and do modify those vehicles to meet our safety standards. The bill establishes procedures to make sure the modifications are made.

The Senate amendments do not change the basic substance of the House bill which we approved in December of last year by a voice vote. They do, however, make some important improvements in the way the Gray Market Program will operate in the future. I would like to take a moment to briefly describe the amendments.

First, under both the House bill and the Senate amendments, a nonconforming vehicle cannot be imported unless it is "substantially similar" to a vehicle manufactured for the U.S. market, or is capable of being modified to comply with U.S. safety standards. The Senate amendments simplify the procedure by which these determinations are made and leave more discretion with the National Highway Traffic Safety Administration to make these determinations. I don't believe that there is any significant substantive difference between the House and Senate bills on this point, and I do believe that the Senate amendments will facilitate the administration of the program.

Second, under the House bill, if an importer wants to demonstrate that a vehicle is capable of being modified to comply with U.S. safety standards he must do so with test data. The Senate amendments would allow this demonstration to be made with destructive test data or with "such other evidence as the Secretary determines to be adequate". This amendment does not change the basic provision which requires that a vehicle be capable of being modified to comply with standards before it can be imported. It merely leaves open the possibility that evidence other than testing data can be used to make that showing. Thus, the amendment creates more opportunities for individuals to import limited edition vehicles.

Finally, the House bill provides that if a person is denied a petition for a determination that a vehicle is substantially similar to a U.S. model, he must wait 12 months before filing another petition for the same model. The Senate amendments reduce that waiting period to 3 months. This is intended primarily to protect an importer if another importer submits a weak petition that is rejected. Under the Senate amendments the importer will have to wait only 3 months before filing a new petition for the same model.

In summary, this bill makes needed improvements in the Auto Gray Market Program to ensure that imported motor vehicles that do not meet U.S. safety standards are brought into compliance with our safety laws. I commend my colleagues, Chairman Dingell of the Committee on Energy and Commerce, Chairman Luken of the Transportation Subcommittee, and Mr. Lent the ranking Republican member of the committee for their diligent work on this bill. I urge all Members to vote for the Senate amendments.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. WHITTAKER. Mr. Speaker, I yield to the gentleman from Pennsylvania who appears to have some inquiries over the changes from the Senate side.

Mr. WALKER. Mr. Speaker, I raised concerns about this bill when it went through last year and my concerns were largely as to the impact that this would make on certain collectors that seek to bring cars in that they would modify.

Can the gentleman tell me how the bill has been modified to take care of the concerns?

Mr. WHITTAKER. Mr. Speaker, I would be happy to explain to the gentleman from Pennsylvania that there are a number of changes made in the Senate amendments, and from my understanding of the concerns which he raised a year ago, the gentleman will be relatively pleased with the changes.

First, there are provisions in the bill providing that for a true antique, there are no requirements imposed upon the importation. Thus any automobile 25 years or older is able to come in. In addition, a broad category we are putting in would allow for importation "for purposes of research, investigation, studies, demonstrations or training, or competitive racing events." All those separate activities would likewise be exempt. But I will tell the gentleman that if an automobile is going to be imported in any sizable numbers and would likely be on our public thoroughfares they would have to show that they had the ability to be modified.

I would further add to the inquiry of the gentleman from Pennsylvania that the bill has also been liberalized to the point that other evidence can be used instead of crash data, which I think was your concern last year. If it were an exotic model in a very limited number, obviously you do not have the expendable model to put them through that procedure, and the cost of doing so is prohibitive. Now it is allowed in the Senate amendments that other evidence, such as computer simulation model information available to the manufacturer, could be considered by the Secretary for determining whether the vehicle is substantially similar to a U.S. model or is capable of being modified to comply.

Mr. WALKER. If the gentleman will yield, if I understand correctly, if we have a very, very low volume exotic car, we could, in fact, use computer simulation data to show that that can meet U.S. standards rather than having to actually run it into a wall? If we have an antique car, it is not covered at all by the bill, and if we have a car that is used for specialized use such as competition, that also would not be covered under the bill, is that correct?

Mr. WHITTAKER. The gentleman from Pennsylvania is basically correct. An antique would have to be 25 years old or older. The very rare model would have to be shown it could be brought into compliance but need not be crashed, if the importer could make this showing with other evidence such as computer model simulations. They would have to show it would be able to comply.

Mr. WALKER. Is that only for cars utilized on the highway, or some collector was bringing a car in that was never going to be used on a highway but being put into a collection or museum?

Mr. WHITTAKER. I do not believe the gentleman should have any concern. The paragraph I read concerning research, investigation, study, demonstration, which in my terminology or understanding would be a show car, or training or competitive racing events would be exempt.

Mr. WALKER. Mr. Speaker, I thank the gentleman.

Mr. WHITTAKER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio [Mr. Thomas A. Luken] that the House suspend the rules and concur in the Senate amendments to the bill, H.R. 2628.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendments were concurred in.

A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair announces that one additional bill, H.R. 5462, has been added for possible consideration this afternoon under suspension of the rules.

MEDICAL WASTE TRACKING ACT OF 1988

Mr. THOMAS A. LUKEN. Mr. Speaker, I move to suspend the rules and concur in the Senate amendments to the bill (H.R. 3515) to amend the Solid Waste Disposal Act to require the Administrator of the Environmental Protection Agency to promulgate regulations on the management of infectious waste.

The Clerk read as follows:

Senate amendments:

Page 1A, strike out all after line 19 over to and including line 1 on page 2, and insert:

"(b) Opt Out.—(1) If the Governor of any State covered under subsection (a) which is not contiguous to the Atlantic Ocean notifies the Administrator that such Senate elects not to participate in the demonstration program, the Administrator shall remove such State from the program.

"(2) If the Governor of any other State covered under subsection (a) notifies the Administrator that such State has implemented a medical waste tracking program that is no less stringent than the demonstration program under this subtitle and that such State elects not to participate in the demonstration program, the Administrator shall, if the Administrator determines that such State program is no less stringent than the demonstration program under this subtitle, remove such State from the demonstration program.

"(3) Notifications under paragraphs (1) or (2) shall be submitted to the Administrator no later than 30 days after the promulgation of regulations implementing the demonstration program under this subtitle.

Page 3, line 13, after "Contaminated" insert "animal".

Page 4, strike out lines 8 to 11, and insert:

"(10) Biological waste and discarded materials contaminated with blood, excretion, excudates or secretion from human beings or animals who are isolated to protect others from communicable diseases.

"(11) Such other waste material that results from the administration of medical care to a patient by a health care provider and is found by the Administrator to pose a threat to human health or the environment.

Page 17, line 19, strike out "9 months" and insert "24 months".

The SPEAKER pro tempore. Is a second demanded?

Mr. WHITTAKER. Mr. Speaker, I demand a second.

The SPEAKER, pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. THOMAS A. LUKEN] will be recognized for 20 minutes and the gentleman from Kansas [Mr. WHITTAKER] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio [Mr. THOMAS A. LUKEN].

Mr. THOMAS A. LUKEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I urge the House to pass H.R. 3515, the Medical Waste Tracking Act of 1988, as amended by the Senate on October 7, 1988.

The bill the Senate sends back to us is in nearly all regards the same bill we passed on October 6, 1988, by a vote of 390 to 28. It remains a forceful first assault in the battle against the illegal disposal of medical waste.

As we have seen this summer, medical waste pollution is spreading like a contagious disease across America. We have a critically ill medical waste disposal system—and the hypodermic needles and vials of infected blood that washed ashore from Massachusetts to Florida and New York to Ohio are the leading symptoms of this illness.

It is imperative that Congress take decisive action to address the problems of medical waste pollution. This repulsive and potentially lethal form of pollution causes thousands of healthcare workers and waste haulers to contract infectious diseases like hepatitis B each year. It has washed up on beaches from Massachusets to Florida and New York to Ohio, crippling local tourist economies. And sometimes it gets into the hands of innocent children, who jeopardize their lives by playing "doctor" with the contaminated hypodermic needles and vials of blood.

H.R. 3515 addresses these problems by directing the U.S. Environmental Protection Agency to establish a 2-year demonstration program for tracking and handling medical wastes in New York, New Jersey, Connecticut, and the Great Lakes States.

The centerpiece of this program is the uniform tracking system for monitoring medical waste generated in these States from "cradle to grave." Under this system, States must use the Federal form developed by EPA but can add to this form such additional information requirements as they desire. This system is designed to guarantee that medical waste gets to the designated treatment or disposal facility, just as the hazardous waste manifest system does under subtitle C.

The Senate amendments that we consider today preserve this approach.

As passed by the House, the bill allowed a State to opt out of participation in the demonstration program if it so notifies EPA within 30 days of promulgation of regulations implementing the program. The Senate amendments, however, allow New York, New Jersey, and Connecticut to opt out only if they have State tracking programs no less stringent than the EPA program.

But the Senate amendments do not affect the ability of the Great Lakes States to opt out. Because the legislation is being first implemented as a demonstration program in a limited number of States, it is only fair to give these States the option to decide if they want to participate or not. Plus, there is little need to restrict the ability of the Great Lakes States to opt out of the program. The Council of Great Lakes Governors has written key Members of Congress to urge that their States be included in any Federal tracking program.

The Senate amendments further clarify the types of medical waste to be tracked under the demonstration program. The definition of "isolation wastes" has been modified to clarify that EPA need not track all solid wastes from the rooms of patients in isolation, but only those that have been in actual contact with infectious agents such as blood or other body fluids. In addition, the Senate amendments make explicit what was previously implicit—that EPA has authority to require tracking of other types of medical waste if EPA finds that the waste poses a threat to human health or the environment.

And another amendment clarifies that the intent of section 11002(a)(5) was to reach only animal carcasses and animal body parts.

Finally, the Senate amendments extend the time for completion of the health study by the Agency for Toxic Substances and Disease Registry from 9 months to 24 months. While additional time beyond 9 months may be necessary for completion of the final report, ATSDR should nevertheless be prepared to appear before congressional committees before the completion of its report to provide such information about the health effects of medical waste pollution as may be available to it. Congress will undoubtedly be considering comprehensive medical waste legislation before completion of the final report, and when it does so, the information that ATSDR has gathered will prove very helpful.

Mr. Speaker, my colleagues and I are willing to accept these amendments as improvements to the bill. We congratulate the Senate for moving expeditiously so that the Environmental Protection Agency can begin the task of controlling the rising tide of medical waste in these States.

In sum, this is sound legislation. It has support on both sides of the aisle. It also has the endorsement of the U.S. Environmental Protection Agency, which supports the bill in its entirety.

I urge your support of this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. WHITTAKER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am very pleased that today we are considering important legislation that directs the Environmental Protection Agency to implement a program to track medical waste. We forwarded this bill to the other body last week, and I commend my colleagues there in wasting no time in reviewing the legislation and returning it to us for final passage. The one amendment adopted by the other body contained a few noncontroversial changes to the bill. I urge my colleagues to support the bill as amended, so that we may complete action and send H.R. 3515 to the President.

By passing legislation this year, we should have a tracking program in place before next summer. While this bill won't solve all the problems associated with waste washing up on our beaches, it certainly is a step in the right direction. I want to commend my colleagues on both sides of the aisle who worked so hard on this bill—it went through subcommittee and full committee markup and both Houses in about 3 weeks.

Mr. Speaker, there is no question that this country has a serious solid waste disposal problem. Major media stories such as the wandering garbage barge and beach closings constantly remind us that the problem is getting worse—not better. In addition to establishing the tracking program, H.R. 3515 should produce information we need to develop additional improvements to the Nation's management of medical waste.

Mr. Speaker, I reserve the balance of my time.

Mr. THOMAS A. LUKEN. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey [Mr. FLORIO], who has worked assiduously and who deserves a good deal of the credit for what I might add is very significant legislation.

□ 1800

Mr. FLORIO. Mr. Speaker, I rise in support of the amended version of H.R. 3515, to establish a demonstration tracking system for medical waste. Last week, the House overwhelmingly approved H.R. 3515 and sent it to the Senate where it was again approved with some additional amendments. I urge my colleagues to again join in approving this final version of this bill and sending it to the President for his signature.

Mr. Speaker, endless days of closed beaches this summer produced the momentum needed to get an effective medical waste bill through this year. Several minor changes were made by the Senate under the leadership of Senator LAUTENBERG to tighten up the bill and I wish to register my support of this amended version. Essentially, the amended version makes it tougher for States on the Atlantic Ocean, including New York, New Jersey, and Connecticut, to opt out of the Federal Demonstration Program. A State may opt out only if the Governor can demonstrate that his State has a State program that is no less stringent than the Federal program.

However, I wish to emphasize that no change was made to the actual definitions of the medical waste must be included, not to the procedure EPA must follow to remove a listed waste from the program. I wish to refer my colleageus to the statement that I included during original passage of H.R. 3515 last week. This statement reflects our intent on the items that must be included in the demonstration program.

Again, I urge my colleagues to pass this bill and send it on for enactment.

Mr. WHITTAKER. Mr. Speaker, I yield 5 minutes to the gentleman from Michigan [Mr. SCHUETTE].

Mr. SCHUETTE. I thank the gentleman for yielding.

Mr. Speaker, I rise today in strong support of H.R. 3515 and ask my colleagues to accept the Senate amendment. This important legislation will require the Administrator of the Environmental Protection Agency to develop regulations and guidelines for the handling, treatment, storage, and disposal of infectious wastes. In addition, this legislation would beef up enforcement and includes a much-needed medical waste tracking pilot program in New York and New Jersey and in the States surrounding the Great Lakes, like my home State of Michigan.

In my view, this legislation is long overdue and will be a significant step toward improving both the management of such wastes and in developing a system of accountability. Indeed, this legislation will be a large step in halting would-be polluters from pillaging our ocean shores and our precious Great Lakes.

I commend the gentleman from Ohio for his leadership on this issue and ask all my colleagues in the House to support this measure.

However, at the same time I want to remind my colleagues that this is by no means the final battle in our war against the tragedy of medical and infectious wastes which have littered our shores. I have seen it in my State of Michigan and this must be stopped.

Congress will need to take additional steps to address this issue including, in my view, passage of new even tougher criminal penalties and the resources to do the difficult job of enforcement.

We need the toughest criminal penalties, Mr. Speaker, so that the polluters know that the penalty for illegal dumping is to make it more expensive to pollute than to legally dispose of these potentially lethal wastes.

Mr. Speaker, the people of Michigan, Ohio, New Jersey, and New York know firsthand how the appearance of such wastes on their shores is a tragedy of the highest order. They know how the presence of such wastes littering their shores can cripple tourism, robbing many families of their livelihood and, more specifically, damage the sanctity of our environmental health chain. Moreover, in my own State of Michigan many citizens rely on the Great Lakes for their drinking water.

This bill is a good start. In fact, it is a very good start in putting an end to this problem. This Congress has made important progress on this important issue facing many Americans and families in my own State of Michigan.

While I urge all my colleagues to support this important legislation, I likewise urge them to be mindful that more can and needs to be done in order to put potential dumpers on notice that we intend to protect our shores and our Great Lakes.

Mr. THOMAS A. LUKEN. Mr. Speaker, for purposes of a colloquy, I yield 2 minutes to the gentleman from Oregon [Mr. WYDEN].

Mr. WYDEN. I thank the gentleman for yielding.

Mr. Speaker, I would like to engage the gentleman from Ohio in a very brief colloquy.

As the gentleman knows and his hearings pointed out, one of the things most distressing about this issue is that the Government has dragged its feet in assessing the health effects of these medical wastes. In the language that we passed originally, it was our intent that we would get some information from the Agency for Toxic Substances and Disease Registry within a relatively short period of time, 9 months. But the other body, as part of a compromise, has extended that period to 24 months.

I would just like the assurance of the chairman of the subcommittee that it is his intent that we get the Agency for Toxic Substances and Disease Registry to give us an interim report on the health effects of these medical wastes next summer, because I think we need that information in order to address the medical waste problem in the Resource Conservation and Recovery Act reauthorization next year.

Mr. Speaker, is it the intent of the chairman of the subcommittee that we get an interim report from the Agency for Toxic Subtances and Disease Registry?

Mr. THOMAS A. LUKEN. Mr. Speaker, will the gentleman yield?

Mr. WYDEN. I yield to the gentleman from Ohio.

Mr. THOMAS A. LUKEN. I thank the gentleman for yielding.

Mr. Speaker, the answer to the gentleman's question is "Yes."

Further amplifying, in fact, the Agency for Toxic Substances and Disease Registry should consider providing interim reports to Congress on a schedule like that set out in section 11008 for EPA's environmental reports.

Mr. WYDEN. I thank the gentleman for yielding. I think that the question that the country really wants to have addressed is, What are the health effects of these medical wastes? The Government has dragged its feet on it. By next summer we ought to have that information from the Agency for Toxic Substances and Disease Registry.

Mr. WHITTAKER. Mr. Speaker, I reserve the balance of my time.

Mr. THOMAS A. LUKEN. Mr. Speaker, I yield such time as he may consume to the gentleman from Georgia [Mr. RAY], a member of the Committee on Armed Services.

Mr. RAY. Mr. Speaker, on Tuesday, October 4, I addressed this body to explain my concerns over the sovereign immunity provision of H.R. 3515, the medical waste tracking bill.

Although the House and Senate have passed this legislation, my concerns about the effect of this provision still remain.

The effect of the provision would be to strip away virtually all sovereign immunity for purposes of enforcement of any State and local requirement involving the handling and disposal of medical waste.

Furthermore, this waiver of sovereign immunity would apply not only to the U.S. Government but to its civilian employees and military personnel.

There are three potential effects of this provision which, in my opinion, make it harmful rather than helpful;

First, the exposure of DOD civilian and military personnel to any and all sanctions related to the handling of medical waste could result in widespread institution paralysis that could not only undermine national security, but also bar the effective implementation of this legislation.

Second, exposing Department of Defense appropriations to an unconstrained State and local government quest for penalties and fees could divert funding intended for other defense programs.

Third, despite the clear fact that this section could impact on Department of Defense operations, the Armed Service Committee has not been given the opportunity to review and consider these issues.

For these reasons, Mr. Speaker, I continue to oppose H.R. 3515.

Mr. WHITTAKER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. THOMAS A. LUKEN. Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey [Mr. HUGHES].

Mr. HUGHES. I thank the gentleman for yielding.

Mr. Speaker, I want to congratulate the gentleman and also the ranking member of the subcommittee as well as the other conferees for bringing this conference report forward.

I do not have to tell you that in New Jersey we were bombarded this past summer with medical wastes of all kinds washing up on our beaches.

That has practically decimated in many respects our tourist economy, the largest in our State. We estimate that our economy was off by as much as 35 percent this past summer. Part of that is the perception that the water off of our shores is dirty because of a number of things washing up on the beaches. Medical wastes was one of them.

It is unfortunate because it is a perception that the waters are dirty; that does not happen to be the case. But certainly one of the things it pointed up was just how much we need to do in this whole area of medical waste tracking.

I am persuaded, Mr. Speaker, that we have a major problem throughout the country, not just in the Northeast. I think what we have seen in the Northeast is just the tip of the iceberg.

Now we find medical wastes washing up on the beaches off of Florida, North Carolina, South Carolina. It is a national problem. This legislation will put in place in our area a tracking system that will enable us to create a paper trail so that prosecutors can track from the generators to the disposers medical wastes of all kinds. It is a good bill. Mr. Speaker, I am very happy to stand before you today and support it. It will provide, in fact, the tools we need in law enforcement to identify those who are illegally dumping so that we can prosecute them and put them in jail.

Mr. BRUCE. Mr. Speaker, I have been shocked and saddened by the sight of our Nation's shores plagued by refuse. It is especially disturbing to see medical and potentially infectious waste washing up on our beaches. This legislation, H.R. 3515, will begin a demonstration program to tackle this problem. I intend to support this legislation but would like to make several observations to keep in mind when we act on legislation in the future.

First, this is a demonstration program. It is not clear to me that we want to follow the same approach for medical and infectious waste as we do for hazardous wastes under other environmental statutes such as the Resource Conservation and Recovery Act [RCRA] or the Superfund Program. Not all of these wastes require the full range of response authorized by these statutes. Ultimately our control program, enforcement measures, and penalties should reflect what we learn through the demonstration program rather than our existing methods for controlling hazardous wastes.

Second, I am concerned that this legislation does not require EPA to consult with the Center for Disease Control or the National Institutes of Health regarding definitions of medical or infectious waste. These agencies are well prepared to assist with properly defining those terms.

Third, I am especially concerned with the implications of future regulation on the availability of insurance for hospitals. The civil and criminal penalties in the legislation may be excessive for the risks posed by some elements of this waste stream. Hospital liability insurance premiums are certain to increase to cover any new penalties. This indicates to me that we must carefully calibrate penalties to match the environmental risk posed by medical and infectious wastes.

With this demonstration program we will gain a better understanding of how to remove this blight from our shores. I do not think that we will best address this problem by adopting wholesale strategies which have been successful in Superfund and under RCRA. Rather, we need to tailor our ultimate legislative response to the medical waste problem to fit the peculiarities of that waste stream.

Mr. FLORIO. Mr. Speaker, I would like to rise in support of H.R. 3515, the Medical Waste Tracking Act of 1988, as amended by the Senate. Last week, the House overwhelmingly approved this important legislation which will address the problems of medical waste washing up on our beaches, and I am pleased that we have before us for approval the final version of H.R. 3515. I urge my colleagues to join me in passing this bill and sending it to the President for his signature.

I would like to detail for my colleagues the changes made to this bill by the other body to underscore that these changes in no way affect the scope of the bill, in terms of the definition of the medical waste that will be included in this program. First, the Senate has amended the opt-out provisions as they apply to New York, New Jersey, and Connecticut to make it more difficult for these States to opt out of the program. Under the amendment, only these States may opt out of the demonstration program only if they have State programs that are no less stringent than the Federal program. The Senate amendment strengthens this bill by ensuring that the States which have been hardest hit by beach washups of medical waste will have controls which are at least as stringent as those contained in this legislation.

The Senate has also amended the definition of medical waste contained in section 11002 of the subtitle. The Senate amendment adds on language which clarifies EPA's authority to identfy and list medical wastes not covered under the previous 10 categories of medical waste identified. This amendment also narrows the scope of the 10th medical waste category covering solid waste resulting from the isolation of human beings or animals to protect others from communicable diseases. This amendment is intended to exclude those wastes generated in isolation settings which are truly innocuous and closely resemble other forms of nonmedical solid waste.

Notwithstanding these changes, the bulk of the legislative provisions pertaining to the definitions of medical waste remain unchanged and have been approved by the Senate. For this reason, I would like to refer my colleagues to my floor statement of October 4, 1988, which explains in detail the basis for provisions defining and listing medical wastes to be included in the program. These comments apply equally to the final form of H.R. 3515, as approved by the Senate.

An additional Senate amendment extends the deadline for completion of a health impact report as required by section 11009 of this subtitle but does retain the original deadlines for completion by the EPA of the three reports to Congress on medical waste generation and management. Again, I refer my colleagues to my October 4, 1988, floor statement which discusses the scope and timing of these key reports.

Again, I urge my colleagues to support this important effort and to join me in working to protect our beaches and the public from further mismanagement of medical waste.

Mr. THOMAS A. LUKEN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GRAY of Illinois). The question is on the motion offered by the gentleman from Ohio [Mr. THOMAS A. LUKEN] that the House suspend the rules and concur in the Senate amendments to the bill H.R. 3515.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendments were concurred in.

A motion to reconsider was laid on the table.

REQUIRING THE LABELING OF CHRONICALLY HAZARDOUS ART MATERIALS

Mr. FLORIO. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4847) to amend the Federal Hazardous Substances Act to require the labeling of chronically hazardous art materials and for other purposes.

The Clerk read as follows:

H.R. 4847

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Hazardous Substances Act is amended by adding at the end the following:

"LABELING OF ART MATERIALS

"SEC. 23. (a) On and after the last day of the 2-year period beginning on the date of the enactment of this section, the requirements for the labeling of art materials set forth in the version of the standard of the American Society for Testing and Materials designated D-4236 that is in effect on the date of the enactment of this section and as modified by subsection (b) shall be deemed to be a regulation issued by the Commission under section 3(b).

"(b) The following shall apply with respect to the standard of the American Society of Testing and Materials referred to in subsection (a):

"(1) The term 'art material or art material product' shall mean any substance marketed or represented by the producer or repackager as suitable for use in any phase of the creation of any work of visual or graphic art of any medium. The term does not include economic poisons subject to the Federal Insecticide, Fungicide, and Rodenticide Act or drugs, devices, or cosmetics subject to the Federal Food, Drug, and Cosmetics Act.

"(2) The standard referred to in subsection (a) as modified by this subsection applies to art materials intended for users of any age.

"(3) Each producer or repackager of art materials shall describe in writing the criteria used to determine whether an art material has the potential for producing chronic adverse health effects. Each producer or repackager shall be responsible for submitting to the Commission these criteria and a list of art materials that require hazard warning labels under this section.

"(4) Upon the request of the Commission, a producer or repackager of art materials shall submit to the Commission product formulations and the criteria used to determine whether the art material or its ingredients have the potential for producing chronic adverse health effects.

"(5) All art materials that require chronic hazard labeling pursuant to this section must include on the label the name and address of the producer or repackager of the art materials and an appropriate telephone number and a statement signfying that such art materials are inappropriate for use by children.

"(6) If an art material producer or repackager becomes newly aware of any significant information regarding the hazards of an art material or ways to protect against the hazard, this new information must be incorporated into the labels of such art materials that are manufactured after 12 months from the date of discovery. If a producer or repackager reformulates an art material, the new formulation must be evaluated and labeled in accordance with the standard referred to in subsection (a) as modified by this subsection.

"(7) If the Commission determines that an art material in a container equal to or smaller than one fluid ounce (30 ml) (if the product is sold by volume) or one ounce net weight (28 g) (if the product is sold by weight) has the potential for producing chronic adverse health effects with customary or reasonably foreseeable use despite its small size, the Commission may require the art material to carry a label which conveys all the information required under the standard referred to in subsection (a) as modified by this subsection for art materials in a container greater than one fluid ounce or one ounce net weight. If the information cannot fit on the package label, the Commission shall require the art material to have a package insert which conveys all this information. If the art material has a package insert, the label on the product shall include a signal word in conformance with paragraph 5 of the standard referred to in subsection (a), a list of potentially harmful or sensitizing components, and the statement 'see package insert before use'. For purposes of this subsection, the term 'package insert' means a display of written, printed, or graphic matter upon a leaflet or suitable material accompanying the art material. This requirement is in addition to, and is not meant to supersede, the requirement of paragraph 5.8 of the standard designated D-4236.

"(8) In determining whether an art material has the potential for producing chronic adverse health effects, including carcinogenicity and potential carcinogenicity, a toxicologist shall take into account opinions of various regulatory agencies and scientific bodies.

"(c) If the Commission determines that a revision proposed by the American Society for Testing and Materials is in the public interest, it shall incorporate the revision into the standard referred to in subsection (a) as modified by subsection (b) after providing notice and an opportunity for comment. If at any time the Commission finds that the standard referred to in subsection (a) as modified by subsection (b) is inadequate for the protection of the pubic interest, it shall promulgate an amendment to the standard which will adequately protect the public interest. Such final standard shall be promulgated pursuant to section 553 of title 5, United States Code, except that the Commission shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

"(d)(1) Within 1 year of the date of the enactment of this section, the Commission shall issue guidelines which specify criteria for determining when any customary or reasonably foreseeable use of an art material can result in a chronic hazard. In developing such guidelines the Commission shall conduct a public hearing and provide reasonable opportunity for the submission of comments.

"(2) The guidelines established under paragraph (1) shall include—

"(A) criteria for determining when art materials may produce chronic adverse health effects in children and criteria for determining when art materials may produce such health effects in adults,

"(B) criteria for determining which substances contained in art materials have the potential for producing chronic adverse health effects and what those effects are,

"(C) criteria for determining the bioavailability of chronically hazardous substances contained in art materials when the products are used in a customary or reasonably foreseeable manner, and

"(D) criteria for determining acceptable daily intake levels for chronically hazardous substances contained in art materials.

Where appropriate, criteria used for assessing risks to children may be the same as those used for adults.

"(3) The Commission shall periodically review the guidelines established under paragraph (1) to determine whether the guidelines reflect relevant changes in scientific knowledge and in the formulations of art materials, and shall amend the guidelines to reflect such changes.

"(e) The Commission shall develop information and educational materials about art materials and shall distribute the informational and educational materials to interested persons.

"(f) The Commission may bring an action under section 8 to enjoin the purchase of any art material required to be labeled under this Act which is for use by children in prekindergarten, kindergarten, or grades 1 through 6.".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from New Jersey [Mr. FLORIO] will be recognized for 20 minutes and the gentleman from New Jersey Mr. RINALDO] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. FLORIO].

Mr. FLORIO. Mr. Speaker, I yield myself such times as I may consume.

Mr. Speaker, I strongly support this legislation.

This consensus legislation would require the labeling of art supplies for chronic hazards. The labeling requirement of the legislation is based on an existing voluntary standard. The legislation is a compromise supported by both art supply manufacturers and consumer groups, and will ensure that America's artists are fully informed of the hazards presented by some art materials.

The bill before us is identical to an amendment to the Consumer Product Safety Commission authorization bill adopted by the Energy and Commerce Committee in August by voice vote. I particularly commend the two gentleman from New Jersey, Mr. DWYER, the author of the legislation, and Mr. RINALDO, the sponsor of the amendment in committee. I also appreciate the support of the gentleman from Ohio [Mr. LUKEN], whose assistance was instrumental in the legislation's progress.

More specifically, the bill requires the Consumer Product Safety Commission [CPSC] to adopt the voluntary standard developed by the American Society for Testing and Materials, for chronic hazard labeling of art supplies, with changes, as a hazardous substances labeling standard under the Federal Hazardous Substances Act. This places the responsibility for enforcing the standard with the CPSC. I should note that the version of the standard currently in effect is designated as D-4236-88.

The legislation specifies certain changes to be made in the voluntary standard, allows for revisions and amendments in the standard, and requires the CPSC to issue guidelines specifying the criteria for determining the chronic hazards of art supplies. The bill requires the Commission to develop informational and educational materials about art materials and to distribute the materials to interested persons, which would include groups such as State education departments, school boards, and organizations of teachers. Finally, the legislation allows the CPSC to bring enforcement actions.

Since the legislation before us is identical to the amendment offered in the Energy and Commerce Committee as section 110 of H.R. 3343, the CPSC authorization bill, the analysis of that section in the committee report on the CPSC bill, which appears at pages 49 and 50 of House Report 100-962, should serve as legislative history for this legislation.

Mr. Speaker, this is a good bill and I urge its support.

Mr. Speaker, I reserve the balance of my time.

Mr. RINALDO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 4847, which was introduced by my good friend and colleague, Mr. DWYER of New Jersey, requires manufacturers of art and craft materials to place comprehensive labels on their products to warn consumers of chronic hazards. The bill directs the Consumer Product Safety Commission to promulgate a regulation consisting of a voluntary labeling program currently observed by a majority of the art supply manufacturing industry. Under this voluntary standard, labels must contain the word "warning"; a list of chronically hazardous components; a statement of potential hazards; a statement regarding safe use of the product; and a statement identifying a source for additional health information. In addition, the bill requires the Commission to develop information and educational materials about art materials and their labeling for distribution to schools and other interested groups.

This bill represents a true compromise between industry and consumer groups. The Art Supplies Labeling Coalition, consisting of six national trade associations representing art material manufacturers, dealers, health professionals, and artists themselves, negotiated on behalf of the industry. Consumer interests were represented by the U.S. Public Interest Research Group. These two groups, worked hard in an unprecedented joint effort and reached a true compromise of this difficult and technical issue. Both of them deserve commendation. The legislation is also supported by the American Academy of Pediatrics, the National Parents and Teachers Association, and the American Public Health Association.

The Committee on Energy and Commerce, to which this bill was referred, considered it during the markup on Consumer Product Safety Commission reauthorization. The committee adopted an amendment to that reauthorization bill that is identical to H.R. 4847. Thus, this bill has not bypassed the committee markup process, but has, in fact, been through the normal legislative process.

I want to commend my colleague from New Jersey, the chairman of the Subcommittee on Commerce, Consumer Protection, and Competitiveness, for his support for this important measure. I also want to commend the gentleman from Michigan, the chairman of the full committee, his efforts on behalf of this bill. I urge my colleagues to support this bill so that millions of American consumers can continue to enjoy the pleasure of art and craft activities knowing that they have the information necessary to project themselves from harm.

Mr. Speaker, I reserve the balance of my time.

Mr. FLORIO. Mr. Speaker, I yield 1 minute to the gentleman from Ohio [Mr. THOMAS A. LUKEN].

Mr. THOMAS A. LUKEN. Mr. Speaker, I hate to break up this New Jersey combine, but I want to congratulate all of the New Jersey representatives who have brought this bill along.

Mr. Speaker, I would like to voice my support for H.R. 4847, legislation to require appropriate labeling of art materials which contain chronically toxic ingredients.

Certain art supplies contain toxics such as solvents and heavy metals, which can threaten health. The art supply industry recognizes that consumers of these products including schools where children are involved in art activities, have a fundamental need to know about these possible threats to health. H.R. 4847 would accomplish this by adopting the current voluntary chronic hazard labeling standard of the American Society of Testing and Materials.

Without this legislation, which is national in scope, the art supply industry will continue to be mired in confusion due to conflicting State laws for labeling art supplies. This hodgepodge of State requirements is on a collision course with the interests of both art supply manufacturers, who want to label their products in an informative and uniform manner, and the tens of millions of Americans who ought to be adequately informed about the art materials which they use professionally, educationally, or for recreation.

The voluntary labeling standards codified by this bill represent an agreement between the Art Supplies Labeling Coalition and the U.S. Public Interest Research Group. The bill is supported by the National Education Association, the PTA, the American Association of School Administrators, and the American Public Health Association.

This legislation was referred both to the Subcommittee on Transportation, Tourism, and Hazardous Materials which I chair and to the Subcommittee on Commerce, Consumer Protection, and Competitiveness. I commend the gentleman from New Jersey for bringing it to the floor expeditiously and we hope the Senate will be able to act before adjournment.

I also want to commend Mr. DWYER, sponsor of the bill, for bringing this matter before us. Without his perseverance the bill would not have made it to the floor.

In closing, I highly commend the parties—representatives of the art supply industry, health associations, and educators—whose cooperative efforts have resulted in legislation which clearly benefits both this industry and its consumers.

Mr. FLORIO. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey [Mr. DWYER], the original author of the legislation.

Mr. DWYER of New Jersey. Mr. Speaker, I would like to thank the Energy and Commerce Committee for expeditiously moving this legislation to the floor. In particular Representatives DINGELL, THOMAS LUKEN, FLORIO, RINALDO, and LENT for all their assistance. In addition, I thank all the cosponsors of this legislation for their support.

H.R. 4847 would require the manufacturers of art and craft materials to place comprehensive labels on their products warning consumers of chronic hazards. Unknown to many consumers, some art and craft materials contain ingredients known to cause chronic or long-term illnesses.

Under existing law, the Federal Hazardous Substances Act requires the labeling of consumer products which pose acute hazards. Acute hazards are those which cause immediate adverse effects such as burns, eye damage or poisoning. Under the Occupational Safety and Health Act, chronic hazards in the workplace are regulated. But because consumers use art products primarily in their homes or in classrooms, they are not protected through either regulatory scheme.

To address this problem, I introduced the Art and Craft Materials Labeling Act, H.R. 2866. After further perfecting this legislation, I introduced a compromise version, H.R. 4847, which we are considering today. H.R. 4847 enjoys the full support of consumer groups, the art materials industry and artists. In addition, this legislation has the support of the National Parents and Teachers Association, the National Education Association, the American Health Association, and the American Association of School Administrators.

Under H.R. 4847, the Consumer Product Safety Commission would be required to promulgate a regulation similar to a voluntary labeling program currently observed by a majority of the art supply manufacturing industry. Under this voluntary standard, labels must contain the signal word "Warning", a list of chronically hazardous components, a statement of potential hazards, and a statement identifying a source for additional health information. In addition, the bill requires the Consumer Product Safety Commission to develop and distribute to schools and other interested groups informational and educational materials about art materials and their labeling.

Seven States have already enacted art supply labeling laws of their own. The enactment of diverse State laws and regulations raises the likelihood that conflicts may result. A Federal labeling law would benefit consumers and industry alike by providing uniform labeling standards.

H.R. 4847 is long overdue and will ensure that millions of American consumers can enjoy arts and crafts activities while having the necessary information to protect themselves from harm. I urge my colleagues to support this important legislation.

Mr. SLATTERY. Mr. Speaker, I rise in support of H.R. 4847, the Arts and Crafts Materials Labeling Act, which I am cosponsoring. This important health awareness and protection measure has been endorsed by industry groups and consumer groups, including secondary schools. The result of several years of research and testing, this measure represents a consensus on the need for a national standard for chronic health labeling of artists' supplies.

This measure, in addition to setting a Federal standard for art supplies labeling, requires a Federal Government oversight process to assure that labeling practices are uniformly adhered to by manufacturers, including those participating in voluntary certification programs and manufacturers who self-certify their labeling. These manufacturers are given the flexibility needed to take into account new developments in the field of toxicology relating to chronic health effects.

I commend the art supplies labeling coalition for their efforts in support of this bill. With enactment of H.R. 4847, we will help to ensure that millions of Americans can enjoy arts and crafts activities while having the necessary information to protect themselves from harm. I urge my colleagues to join me in supporting this legislation.

Mr. RINALDO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FLORIO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey [Mr. FLORIO] that the House suspend the rules and pass the bill, H.R. 4847.

The question was taken; and (two-thirds having voted in favor thereof), the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FLORIO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 4847, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

OMNIBUS OREGON WILD AND SCENIC RIVERS ACT OF 1988

Mr. VENTO. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2148) to amend the Wild and Scenic Rivers Act of 1968, and for other purposes.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—OMNIBUS OREGON WILD AND SCENIC RIVERS ACT OF 1988

SEC. 101. SHORT TITLE.

This title may be referred to as the "Omnibus Oregon Wild and Scenic Rivers Act of 1988".

SEC. 102. AMENDMENTS TO THE WILD AND SCENIC RIVERS ACT.

Section 3(a) of the Wild and Scenic Rivers Act (Public Law 90-542, 82 Stat. 907), as amended, is further amended by adding the following new paragraphs at the end thereof:

"( ) BIG MARSH CREEK, OREGON.—The 15-mile segment from the northeast quarter of section 15, township 26 south, range 6 east, to its confluence with Crescent Creek in the northeast quarter of section 20, township 24 south, range 7 east, as a recreational river; to be administered by the Secretary of Agriculture: *Provided,* That nothing in this Act shall prohibit the Secretary from undertaking construction activities to enhance and restore wetland resources associated with Big Marsh Creek.

"( ) CHETCO, OREGON.—The 44.5-mile segment from its headwaters to the Siskiyou National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) The 25.5-mile segment from its headwaters to Boulder Creek at the Kalmiopsis Wilderness boundary as a wild river;

"(B) the 8-mile segment from Boulder Creek to Steel Bridge as a scenic river; and

"(C) the 11-mile segment from Steel Bridge to the Siskiyou National Forest boundary, one mile below Wilson Creek, as a recreational river.

"( ) CLACKAMAS, OREGON.—The 47-mile segment from Big Springs to Big Cliff; to be administered by the Secretary of Agriculture in the following classes:

"(A) The 4-mile segment from Big Springs to the Forest Service Road 4690 bridge as a scenic river;

"(B) the 3.5-mile segment from the Forest Service Road 4690 bridge to the junction with Oregon State Highway 224 as a recreational river;

"(C) the 10.5-mile segment from Oregon State Highway 224 to the June Creek Bridge as a scenic river;

"(D) the 9-mile segment from June Creek Bridge to Tar Creek as a recreational river;

"(E) the 5.5-mile segment from Tar Creek to just south of Indian Henry Campground as a scenic river; and

"(F) the 14.5-mile segment just south of Indian Henry Campground to Big Cliff as a recreational river.

"( ) CRESCENT CREEK, OREGON.—The 10-mile segment from the southwest quarter of section 11, township 24 south, range 6 east, to the west section line of section 13, township 24 south, range 7 east, as a recreational river; to be administered by the Secretary of Agriculture.

"( ) CROOKED, OREGON.—The 15-mile segment from the National Grassland boundary to Dry Creek; to be administered by the Secretary of the Interior in the following classes:

"(A) The 7-mile segment from the National Grassland boundary to River Mile 8 south of Opal Spring as a recreational river; and

"(B) the 8-mile segment from Bowman Dam to Dry Creek as a recreational river.

"( ) DESCHUTES, OREGON.—Those portions as follows:

"(A) The 40.4-mile segment from Wickiup Dam to northern boundary of Sunriver at the southwest quarter of section 20, township 19 south, range 11 east as a recreational river; to be administered by the Secretary of Agriculture;

"(B) the 11-mile segment from the northern boundary of Sunriver at the southwest quarter of section 20, township 19 south, range 11 east, to Lava Island Camp as a scenic river; to be administered by the Secretary of Agriculture;

"(C) the 3-mile segment from Lava Island Camp to the Bend Urban Growth Boundary at the southwest corner of section 13, township 18 south, range 11 east, as a recreational river; to be administered by the Secretary of Agriculture;

"(D) the 19-mile segment from Oden Falls to the Upper End of Lake Billy Chinook as a scenic river; to be administered by the Secretary of the Interior;

"(E) the 100-mile segment from the Pelton Reregulating Dam to its confluence with the Columbia River as a recreational river; to be administered by the Secretary of the Interior through a cooperative management agreement between the Confederated Tribes of the Warm Springs Reservation, and the State of Oregon as provided in section 10(e) of this Act and section 105 of the Omnibus Oregon Wild and Scenic Rivers Act of 1988.

"( ) DONNER UND BLITZEN, OREGON.—Those segments, including its major tributaries, as a wild river; to be administered by the Secretary of the Interior as follows:

"(A) the 16.75-mile segment of the Donner und Blitzen from its confluence with the South Fork Blitzen and Little Blitzen;

"(B) the 12.5-mile segment of the Little Blitzen from its headwaters to its confluence with the South Fork Blitzen;

"(C) the 16.5-mile segment of the South Fork Blitzen from its headwaters to its confluence with the South Fork Blitzen;

"(D) the 10-mile segment of Big Indian Creek from its headwaters to its confluence with the South Fork Blitzen;

"(E) the 3.7-mile segment of Little Indian Creek from its headwaters to its confluence with Big Indian Creek; and

"(F) the 13.25-mile segment of Fish Creek from its headwaters to its confluence with the Donner und Blitzen.

"( ) EAGLE CREEK, OREGON.—The 27-mile segment from its headwaters below Eagle Lake to the Wallowa-Whitman National Forest boundary at Skull Creek; to be administered by the Secretary of Agriculture in the following classes:

"(A) The 4-mile segment from its headwaters below Eagle Lake to the Eagle Cap Wilderness boundary at Hummingbird Mountain as a wild river;

"(B) the 15.5-mile segment from the Eagle Cap Wilderness boundary at Hummingbird Mountain to Paddy Creek as a recreational river;

"(C) the 6-mile segment from Paddy Creek to Little Eagle Creek as a scenic river; and

"(D) the 1.5-mile segment from Little Eagle Creek to the Wallowa-Whitman National Forest boundary as a recreational river.

"( ) Elk, Oregon.—The 19-mile segment to be administered by the Secretary of Agriculture in the following classes:

"(A) The 17-mile segment from the confluence of the North and South Forks of the Elk to Anvil Creek as a recreational river; and

"(B) the 2-mile segment of the North Fork Elk from the falls to its confluence with the South Fork as a wild river.

"( ) Grande Ronde, Oregon.—The 43.8-mile segment from its confluence with the Wallowa River to the Oregon-Washington State line in the following classes:

"(A) the 1.5-mile segment from its confluence with the Wallowa River to the Umatilla National Forest boundary in section 11, township 3 north, range 40 east, as a recreational river; to be administered by the Secretary of Agriculture;

"(B) the 17.4-mile segment from the Umatilla National Forest boundary in section 11, township 3 north, range 40 east, to the Wallowa-Whitman National Forest boundary approximately one-half mile east of Grossman Creek as a wild river; to be administered by the Secretary of Agriculture;

"(C) the 9-mile segment from the Wallowa-Whitman National Forest boundary approximately one-half mile east of Grossman Creek to Wildcat Creek as a wild river; to be administered by the Secretary of the Interior; and

"(D) the 15.9-mile segment from Wildcat Creek to the Oregon-Washington State line as a recreational river; to be administered by the Secretary of the Interior.

"( ) Imnaha, Oregon.—Those segments, including the South Fork Imnaha; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 6-mile segment from its confluence with the North and South Forks of the Imnaha River to Indian Crossing as a wild river;

"(B) the 58-mile segment from Indian Crossing to Cow Creek as a recreational river;

"(C) the 4-mile segment from Cow Creek to its mouth as a scenic river; and

"(D) the 9-mile segment of the South Fork Imnaha from its headwaters to its confluence with the Imnaha River as a wild river.

"( ) John Day, Oregon.—The 147.5-mile segment from Service Creek to Tumwater Falls as a recreational river; to be administered through a cooperative management agreement between the State of Oregon and the Secretary of the Interior as provided in section 10(e) of this Act.

"( ) Joseph Creek, Oregon.—The 8.6-mile segment from Joseph Creek Ranch, one mile downstream from Cougar Creek, to the Wallowa-Whitman National Forest boundary as a wild river; to be administered by the Secretary of Agriculture.

"( ) Little Deschutes, Oregon.—The 12-mile segment from its source in the northwest quarter of section 15, township 26 south, range 6½ east to the north section line of section 12, township 26 south, range 7 east as a recreational river; to be administered by the Secretary of Agriculture.

"( ) Lostine, Oregon.—The 16-mile segment from its headwaters to the Wallowa-Whitman National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 5-mile segment from its headwaters to the Eagle Cap Wilderness boundary as a wild river; and

"(B) the 11-mile segment from the Eagle Cap Wilderness boundary to the Wallowa-Whitman National Forest boundary at Silver Creek as a recreational river.

"( ) Malheur, Oregon.—The 13.7-mile segment from Bosonberg Creek to the Malheur National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 7-mile segment from Bosonberg Creek to Malheur Ford as a scenic river; and

"(B) the 6.7-mile segment from Malheur Ford to the Malheur National Forest boundary as a wild river.

"( ) McKenzie, Oregon.—The 12.7-mile segment from Clear Lake to Scott Creek; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 1.8-mile segment from Clear Lake to the head of maximum pool at Carmen Reservoir as a recreational river;

"(B) the 4.3-mile segment from a point 100 feet downstream from Carmen Dam to the maximum pool at Trail Bridge Reservoir as a recreational river; and

"(C) the 6.6-mile segment from the developments at the base of the Trail Bridge Reservoir Dam to Scott Creek as a recreational river.

"( ) Metolius, Oregon.—the 28.6-mile segment from the south Deschutes National Forest boundary to Lake Billy Chinook in the following classes:

"(A) the 11.5-mile segment from the south Deschutes National Forest boundary (approximately 2,055.5 feet from Metolius Springs) to Bridge 99 as a recreational river; to be administered by the Secretary of Agriculture;

"(B) the 17.1-mile segment from Bridge 99 to Lake Billy Chinook as a scenic river; by the Secretary of Agriculture, through a cooperative management agreement between the Secretary of the Interior and the Confederated Tribes of the Warm Springs Reservation, as provided in section 10(e) of this Act and section 105 of the Omnibus Oregon Wild and Scenic Rivers Act of 1988: *Provided*, That the river and its adjacent land area will be managed to provide a primitive recreational experience as defined in the ROS User's Guide.

"( ) Minam, Oregon.—The 39-mile segment from its headwaters at the south end of Minam Lake to the Eagle Cap Wilderness boundary, one-half mile downstream from Cougar Creek, as a wild river; to be administered by the Secretary of Agriculture.

"( ) North Fork Crooked, Oregon.—The 32.3-mile segment from its source at Williams Prairie to one mile from its confluence with the Crooked River in the following classes:

"(A) the 3-mile segment from its source at Williams Prairie to the Upper End of Big Summit Prairie as a recreational river; to be administered by the Secretary of Agriculture;

"(B) the 3.7-mile segment from the Lower End of Big Summit Prairie to the bridge across from the Deep Creek Campground as a recreational river; to be administered by the Secretary of Agriculture;

"(C) the 8-mile segment from the bridge across from the Deep Creek Campground to the Ochoco National Forest boundary, one-half mile from Lame Dog Creek as a scenic river; to be administered by the Secretary of Agriculture;

"(D) the 1.5-mile segment from the Ochoco National Forest boundary to Upper Falls as a scenic river; to be administered by the Secretary of the Interior;

"(E) the 11.1-mile segment from Upper Falls to Committee Creek as a wild river; to be administered by the Secretary of the Interior; and

"(F) the 5-mile segment from Committee Creek to one mile from its confluence with the Crooked River as a recreational river; to be administered by the Secretary of the Interior.

"( ) North Fork John Day, Oregon.—The 54.1-mile segment from its headwaters in the North Fork of the John Day Wilderness Area at section 13, township 8 south, range 36 east, to its confluence with Camas Creek in the following classes:

"(A) the 3.5-mile segment from its headwaters in the North Fork of the John Day Wilderness at section 13, township 8 south, range 36 east, to the North Fork of the John Day Wilderness boundary as a wild river; to be administered by the Secretary of Agriculture;

"(B) the 7.5-mile segment from the North Fork of the John Day Wilderness boundary to Trail Creek as a recreational river; to be administered by the Secretary of Agriculture;

"(C) the 24.3-mile segment from Trail Creek to Big Creek as a wild river; to be administered by the Secretary of Agriculture;

"(D) the 10.5-mile segment from Big Creek to Texas Bar Creek as a scenic river; to be administered by the Secretary of Agriculture; and

"(E) the 8.3-mile segment from Texas Bar Creek to its confluence with Camas Creek as a recreational river; to be administered by the Secretary of Agriculture.

"( ) North Fork Malheur, Oregon.—The 25.5-mile segment from its headwaters to the Malheur National Forest boundary as a scenic river; to be administered by the Secretary of Agriculture.

"( ) North Fork of the Middle Fork of the Willamette, Oregon.—The 42.3-mile segment from Waldo Lake to the Willamette National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 8.8-mile segment from Waldo Lake to the south section line of section 36, township 19 south, range 5½ east as a wild river;

"(B) the 6.5-mile segment from the south section line of section 36, township 19 south, range 5½ east to Fisher Creek as a scenic river; and

"(C) the 27-mile segment from Fisher Creek to the Willamette National Forest boundary as a recreational river.

"( ) North Fork Owyhee, Oregon.—The 8-mile segment from the Oregon-Idaho State line to its confluence with the Owyhee River as a wild river; to be administered by the Secretary of the Interior.

"( ) North Fork Smith, Oregon.—The 13-mile segment from its headwaters to the Oregon-California State line; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 6.5-mile segment from its headwaters to Horse Creek as a wild river;

"(B) the 4.5-mile segment from Horse Creek to Baldface Creek as a scenic river; and

"(C) the 2-mile segment from Baldface Creek to the Oregon-California State line as a wild river.

"( ) North Fork Sprague, Oregon.—The 15-mile segment from the head of River Spring in the southwest quarter of section 15, township 35 south, range 16 east, to the northwest quarter of the southwest quarter of section 11, township 35 south, range 15 east, as a scenic river; to be administered by the Secretary of Agriculture.

"( ) North Powder, Oregon.—The 6-mile segment from its headwaters to the Wallowa-Whitman National Forest boundary at River Mile 20 as a scenic river; to be administered by the Secretary of Agriculture.

"( ) North Umpqua, Oregon.—The 33.8-mile segment from the Soda Springs Powerhouse to Rock Creek in the following classes:

"(A) the 25.4-mile segment from the Soda Springs Powerhouse to the Umpqua National Forest boundary as a recreational river; to be administered by the Secretary of Agriculture; and

"(B) the 8.4-mile segment from the Umpqua National Forest boundary to its confluence with Rock Creek as a recreational river; to be administered by the Secretary of the Interior.

"( ) Powder, Oregon.—The 11.7-mile segment from Thief Valley Dam to the Highway 203 bridge as a scenic river; to be administered by the Secretary of the Interior.

"( ) Quartzville Creek, Oregon.—The 12-mile segment from the Willamette National Forest boundary to slack water in Green Peter Reservoir as a recreational river; to be administered by the Secretary of the Interior.

"( ) Roaring, Oregon.—The 13.7-mile segment from its headwaters to its confluence with the Clackamas River; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 13.5-mile segment from its headwaters to one-quarter mile upstream of the mouth as a wild river; and

"(B) the 0.2-mile segment from one-quarter mile upstream of the mouth to its confluence with the Clackamas River as a recreational river.

"( ) Salmon, Oregon.—The 33.5-mile segment from its headwaters to its confluence with the Sandy River in the following classes:

"(A) the 7-mile segment from its headwaters to the south boundary line of section 6, township 4 south, range 9 east as a recreational river; to be administered by the Secretary of Agriculture: *Provided*, That designation and classification shall not preclude the Secretary from exercising discretion to approve the construction, operation, and maintenance of ski lifts, ski runs, and associated facilities for the land comprising the Timberline Lodge Winter Sports Area insofar as such construction does not involve water resources projects;

"(B) the 15-mile segment from the south boundary line at section 6, township 4 south, range 9 east to the junction with the South Fork of the Salmon River as a wild river; to be administered by the Secretary of Agriculture;

"(C) the 3.5-mile segment from the junction with the south fork of the Salmon River to the Mt. Hood National Forest boundary as a recreational river; to be administered by the Secretary of Agriculture;

"(D) the 3.2-mile segment from the Mt. Hood National Forest boundary to Lymp Creek as a recreational river; to be administered by the Secretary of the Interior; and

"(E) the 4.8-mile segment from Lymp Creek to its confluence with the Sandy River as a scenic river; to be administered by the Secretary of the Interior.

"( ) Sandy, Oregon.—Those portions as follows:

"(A) The 4.5-mile segment from its headwaters to the section line between sections 15 and 22, township 2 south, range 8 east as a wild river; to be administered by the Secretary of Agriculture;

"(B) the 7.9-mile segment from the section line between sections 15 and 22, township 2 south, range 8 east to the Mt. Hood National Forest boundary at the west section line of section 26, township 2 south, range 7 east as a recreational river; to be administered by the Secretary of Agriculture; and

"(C) the 12.5-mile segment from the east boundary of sections 25 and 36, township 1 south, range 4 east in Clackamas County near Dodge Park, downstream to the west line of the east half of the northeast quarter of section 6, township 1 south, range 4 east, in Multnomah County at Dabney State Park, the upper 3.8 miles as a scenic river and the lower 8.7 miles as a recreational river; both to be administered through a cooperative management agreement between the State of Oregon, the Secretary of the Interior and the Counties of Multnomah and Clackamas in accordance with section 10(e) of this Act.

"( ) South Fork John Day, Oregon.—The 47-mile segment from the Malheur National Forest to Smokey Creek as a recreational river; to be administered by the Secretary of the Interior.

"( ) Squaw Creek, Oregon.—The 15.4-mile segment from its source to the hydrologic Gaging Station 800 feet upstream from the intake of the McAllister Ditch, including the Soap Fork Squaw Creek, the North Fork, the South Fork, the East and West Forks of Park Creek, and Park Creek Fork; to be administered by the Secretary of Agriculture as follows:

"(A) The 6.6-mile segment and its tributaries from the source to the Three Sisters Wilderness boundary as a wild river; and

"(B) the 8.8-mile segment from the boundary of the Three Sisters Wilderness Area to the hydrologic Gaging Station 800 feet upstream from the intake of the McAllister Ditch as a scenic river: *Provided*, That nothing in this Act shall prohibit the construction of facilities necessary for emergency protection for the town of Sisters relative to a rapid discharge of Carver Lake if no other reasonable flood warning or control alternative exists.

"( ) Sycan, Oregon.—The 59-mile segment from the northeast quarter of section 5, township 34 south, range 17 east to Coyote Bucket at the Fremont National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) the 26.4-mile segment from the northeast quarter of section 5, township 34 south, range 17 east to the west section line of section 22, township 32 south, range 14½ east, as a scenic river;

"(B) the 8.6-mile segment from the west section line of section 22, township 32 south, range 14 east, to the Fremont National Forest boundary in the southeast quarter of section 10, township 33 south, range 13 east, as a recreational river; and

"(C) the 24-mile segment from the Fremont National Forest boundary in the southwest quarter of section 10, township 33 south, range 13 east, to Coyote Bucket at the Fremont National Forest boundary, as a scenic river.

"( ) Upper Rogue, Oregon.—The 40.3-mile segment from the Crater Lake National Park boundary to the Rogue River National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

"(A) The 0.5-mile segment from the Crater Lake National Park boundary to approximately 0.1-mile downstream from the forest road 6530760 (West Lake Road) crossing as a scenic river;

"(B) the 6.1-mile segment from approximately 0.1-mile downstream from the Forest road 6530760 (West Lake Road) crossing to Minehaha Creek as a wild river; and

"(C) the 33.7-mile segment from Minehaha Creek to the Rogue River National Forest boundary as a scenic river.

"( ) Wenaha, Oregon.—The 21.55-mile segment from the confluence of the North Fork and the South Fork to its confluence with the Grande Ronde River; to be administered by the Secretary of Agriculture in the following classes:

"(A) The 18.7-mile segment from the confluence of the North Fork and South Fork to the Umatilla National Forest as a wild river;

"(B) the 2.7-mile segment from the Umatilla National Forest boundary to the easternmost boundary of the Wenaha State Wildlife Area as a scenic area; and

"(C) the 0.15-mile segment from the easternmost boundary of the Wenaha State Wildlife Area to the confluence with the Grande Ronde River as a recreational river.

"( ) West Little Owyhee, Oregon.—The 51-mile segment from its headwaters to its confluence with Owyhee River as a wild river; to be administered by the Secretary of the Interior.

"( ) White, Oregon.—The 46.5-mile segment from its headwaters to its confluence with the Deschutes River in the following classes:

"(A) The 2-mile segment from its headwaters to the section line between sections 9 and 16, township 3 south, range 9 east, as a recreational river; to be administered by the Secretary of Agriculture: *Provided*, That designation and classification shall not preclude the Secretary from exercising discretion to approve construction, operation, and from exercising discretion to approve construction, operation, and maintenance of ski lifts, ski runs, and associated facilities for the land comprising the Mt. Hood Winter Sports Area insofar as such construction does not involve water resource projects and is consistent with protecting the values for which the river was designated.

"(B) the 13.6-mile segment from the section line between sections 9 and 16, township 3 south, range 9 east, to Deep Creek as a recreational river; to be administered by the Secretary of Agriculture;

"(C) the 6.5-mile segment from Deep Creek to the Mt. Hood National Forest boundary as a scenic river; to be administered by the Secretary of Agriculture;

"(D) the 17.5-mile segment from the Mt. Hood National Forest boundary to Three Mile Creek as a scenic river; to be administered by the Secretary of the Interior;

"(E) the 5.3-mile segment from Three Mile Creek to River Mile 2.2 as a recreational river; to be administered by the Secretary of the Interior; and

"(F) the 1.6-mile segment from River Mile 1.6 to its confluence with the Deschutes

River as a recreational river; to be administered by the Secretary of the Interior.".

SEC. 103. WILD AND SCENIC RIVER STUDIES.

Section 5(a) of the Wild and Scenic Rivers Act (Public Law 90-542, 82 Stat. 910), as amended, is further amended by adding the following new paragraphs at the end thereof:

"( ) Blue, Oregon.—The segment from its headwaters to the Blue River Reservoir; by the Secretary of Agriculture.

"( ) Chewaucan, Oregon.—The segment from its headwaters to the Paisley Urban Growth boundary to be studied in cooperation with, and integrated with, the Klamath River Basin Plan; by the Secretary of Agriculture.

"( ) North Fork Malheur, Oregon.—The segment from the Malheur National Forest boundary to Beulah Reservoir; by the Secretary of the Interior.

"( ) South Fork McKenzie, Oregon.—The segments from its headwaters to the upper end of Cougar Reservoir and from the lower end of Cougar Reservoir to its confluence with the McKenzie River; by the Secretary of Agriculture.

"( ) Steamboat Creek, Oregon.—The entire creek; by the Secretary of Agriculture.

"( ) Wallowa, Oregon.—The segment from its confluence with the Minam River to its confluence with the Grande Ronde River; by the Secretary of Agriculture.".

SEC. 104. UPPER KLAMATH RIVER STUDY.

Section 5(d) of the Wild and Scenic Rivers Act Public Law 90-542, 82 Stat. 910) is amended by inserting "(1)" after "(d)" and by inserting the following new paragraph at the end thereof:

"(2) The Congress finds that the Secretary of the Interior, in preparing the Nationwide Rivers Inventory as a specific study for possible additions to the National Wild and Scenic Rivers System, identified the Upper Klamath River from below the John Boyle Dam to the Oregon-California State line. The Secretary, acting through the Bureau of Land Management, is authorized under this subsection to complete a study of the eligibility and suitability of such segment for potential addition to the National Wild and Scenic Rivers System. Such study shall be completed, and a report containing the results of the study shall be submitted to Congress by April 1, 1990. Nothing in this paragraph shall affect the authority or responsibilities of any other Federal agency with respect to activities or actions on this segment and its immediate environment.".

SEC. 105. INDIAN TREATY LANDS AND ADMINISTRATIVE PROVISIONS.

(a)(1) Lands now or hereafter held in trust by the United States for the benefit of an Indian tribe or individual Indian shall not be included within the boundaries of the Deschutes or Metolius Rivers as designated by this title without the consent of the applicable tribal council.

(2) When Indian treaty lands exist in association with lands included in the National Wild and Scenic Rivers System under this title, the Secretaries of the Interior and Agriculture, as appropriate, shall fully consult and enter into written cooperative management agreements with the affected Indian tribe for planning, administration, and management of such areas as provided in section 10(e) of this Act.

(b) Nothing in this title shall affect:

(1) the jurisdiction or responsibilities of an Indian tribe with respect to fish, wildlife, land, and water management;

(2) the treaty or other rights of an Indian tribe;

(3) the water and land claims, present or future, of an Indian tribe;

(4) the relicensing or amending the license of the Pelton Hydroelectric Project, FERC Project No. 2030 so long as such project does not adversely affect the values for which the Deschutes River was designated;

(5) the rights or jurisdiction of Indian tribes over waters or any river or stream within the affected river area or stream, or over any ground water resource; or

(6) the beneficial ownership interest of land held in trust, now or hereafter, by the United States for Indian Tribes or individual Indians.

(c) Nothing in this title shall preclude or impair the use by the City of Portland, Oregon, of water in the Bull Run and Little Sandy Rivers to the extent that such water is necessary for the purpose of municipal water supply.

SEC. 106. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal years after the fiscal year 1988—

(a) for the purpose of acquisition of lands, waters, and interests therein pursuant to this title, not to exceed $5,000,000; and

(b) for the purpose of preparing the studies for the rivers and river segments listed in section 103 of this title, not to exceed $2,500,000; and

(c) for the purpose of preparing the study of the river segment listed in section 104 of this title, not to exceed $200,000.

TITLE II—UMATILLA BASIN PROJECT, OREGON

SEC. 201. SHORT TITLE.

This title may be cited as the "Umatilla Basin Project Act".

SEC. 202. AUTHORIZATION OF PROJECT.

(a) For purposes of mitigating losses to anadromous fishery resources and continuing water service to the Hermiston, West Extension, Westland, and Stanfield Irrigation Districts, for the project water exchange, the Secretary of the Interior, acting pursuant to the Federal reclamation laws (Act of June 17, 1902, and Acts amendatory thereof and supplementary thereto), is authorized to construct, operate, and maintain the Umatilla Basin Project, Oregon, substantially in accordance with the report entitled: "Umatilla Basin Project, Oregon, Planning Report" dated February 12, 1988, in the manner specified by this title. The principal work of the project shall consist of—

(1) lands, water rights, or interests therein acquired for the benefit of fishery resources;

(2) measures to conserve water and improve the efficiency of the existing conveyance, distribution, and drainage systems of the Umatilla Project, where such measures are found to make water available for the benefit of fishery resources;

(3) pumping plants and related diversion, conveyance, and distribution features;

(4) works incidental to the rehabilitation or modification of existing irrigation systems necessary to accomplish a water exchange required to fulfill the purposes of this title;

(5) fish passage and protective facilities and other necessary mitigation measures;

(6) a program to monitor and regulate project operations; and

(7) a program to evaluate fishery resource mitigation measures.

SEC. 203. INTEGRATION AND OPERATION OF PROJECT.

Project facilities and features authorized by this title shall be integrated and coordinated, from an operational standpoint, into existing features of the Umatilla Project, and shall be operated in a manner consistent with Federal reclamation laws and water rights established pursuant to State law including the contract rights of water users. Prior to the initiation of project construction, the Secretary shall secure the necessary State and local permits and other authorities for the operation of project facilities, and through the conclusion of appropriate agreements with the State of Oregon, the relevant irrigation districts, and the Confederated Tribes of the Umatilla Indian Reservation provide for the monitoring and regulation of project-related water supplies for the purposes herein identified.

SEC. 204. POWER FOR PROJECT PUMPING.

The Administrator of the Bonneville Power Administration, consistent with provisions of the Columbia River Basin Fish and Wildlife Program established pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697), shall provide for project power needed to effect the water exchange with irrigation districts for purposes of mitigating anadromous fishery resources. The cost of power shall be credited to fishery restoration goals of the Columbia River Basin Fish and Wildlife Program.

SEC. 205. OPERATION AND MAINTENANCE COSTS.

Non-Federal interests shall be responsible for the cost of operating and maintaining the project, except for those costs associated with implementation of section 204 of this title, and to fulfill the purpose of mitigating losses to anadromous fisheries resources.

SEC. 206. INTERIM FLOW AUGMENTATION.

Until the facilities authorized in this title are constructed and in operation, and as an interim measure to provide flow augmentation of the Umatilla River for anadromous fishery resources, funds are authorized to be appropriated to the Secretary, through the end of fiscal year 1998, to provide for interim operation and maintenance of existing pumps or other facilities for the purpose of providing flow augmentation for anadromous fish.

SEC. 207. NON-FEDERAL COSTS.

(a) Credit For Non-Federal Fishery Resource Improvements.—The Umatilla Basin Project authorized by this title is a Federal action to improve streamflow and fish passage conditions and shall be considered part of a comprehensive program to restore the Umatilla River basin anadromous fishery resource. Related fishery resource improvement facilities which utilize funding sources under the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (94 Stat. 2697) and programs of the State of Oregon and other entities shall be consolidated in any final calculation of required cost sharing.

(b) Treatment of Non-Federal Costs Incurred in Implementing Project Features Before Appropriations.—To the extent any public or private entity shares in the cost of or constructs any feature of the project or portion thereof prior to the appropriation of funds for construction of such feature, the costs incurred shall be credited to the total amount of any cost sharing required for the project. The Secretary is authorized to accept title to facilities appropriate to the project without compensation and thereafter to operate and maintain such facilities.

SEC. 208. CONJUNCTIVE USE OF PUMPING FACILITIES.

When project pumping capacity is available in excess of that needed for fishery resource benefits as determined by the Secretary of the Interior, such project pumping capacity may be made available for use on presently irrigated lands eligible for service within the irrigation districts that participate in the project authorized in this title at a rate based on the operation and maintenance costs related to such conjunctive use and an appropriate share of capital costs for such use as specified by an agreement between the Secretary of the Interior and the irrigation districts: *Provided*, That (a) boundaries of the irrigation districts may be modified, upon approval of the Secretary of the Interior, to include such lands that received irrigation water service from those districts prior to October 1, 1988; and (b) that such use shall be considered as secondary to the purpose of providing water for fishery resource purposes. Pumping power for this purpose shall be provided to the Bureau of Reclamation by the Administrator of the Bonneville Power Administration. The Administrator's rate for this service during the peak period shall be the forecasted average rate to be paid by public agencies for irrigation loads during peak periods. The rate during the off peak period shall be the rate paid by public agencies for irrigation loads during off peak periods. The cost of power for such pumping, and the cost of transmitting power from the Federal Columbia River Power System to the project pumping facilities shall be borne by irrigation districts receiving the benefit of such water.

SEC. 209. LEASE AND PURCHASE OF WATER.

The Secretary is authorized to acquire from willing parties land, water rights, or interests therein for benefit of fishery resources consistent with the purpose of this title: *Provided*, That acquisition of water rights shall be in accordance with applicable State law. There is hereby authorized to be appropriated not more than $1,000,000 to accomplish the purposes of this section.

SEC. 210. AUTHORIZATION OF APPROPRIATIONS.

(a) There is hereby authorized to be appropriated for construction of the Umatilla Basin Project and the study authorized by section 213 of this title the sum of $42,400,000 (April 1987 prices), less any amounts previously appropriated for the project, plus or minus such amounts as may be required by reason of changes in the cost of construction work of the types involved therein as shown by applicable engineering cost indices and exclusive of facilities indicated in section 210(b) of this title: *Provided*, That such funds are authorized to be appropriated only through the tenth fiscal year after which construction funds are first made available: *Provided further*, That all costs, including operation and maintenance costs, allocated to the mitigation of anadromous fish species and the study authorized in section 213 of this title shall be nonreimbursable. There are also authorized to be appropriated such sums as may be required for the Federal share of operation and maintenance of the project, including the monitoring and evaluation of project accomplishments.

(b) Related fish passage and protective facilities constructed or to be constructed by the Bonneville Power Administration that are features of the Columbia River Fish and Wildlife Program established pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697) shall be consolidated into calculations of project costs and benefits: *Provided*, That the Secretary shall not request an appropriation of funds to construct any such facilities.

SEC. 211. WATER RIGHTS.

Nothing in this title shall be construed to—

(1) impair the validity of or preempt any provision of State water law, or of any interstate compact governing water;

(2) alter the rights of any State to any appropriated share of the waters of any body or surface or ground water, whether determined by past or future interstate compacts, or by past or future legislative or final judicial allocations;

(3) preempt or modify any State or Federal law or interstate compact dealing with water quality or disposal;

(4) confer upon any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resources; or

(5) affect any water rights of any Indian or Indian tribe if such rights were established by the setting aside of a reservation by treaty, Executive order, agreements, or Act of Congress.

SEC. 212. REHABILITATION AND BETTERMENT AUTHORIZATION.

For purposes of encouraging water conservation and improvements to water supply systems of the irrigation districts participating in the project authorized by this title, Stanfield and Westland Irrigation Districts shall be eligible to receive financial assistance, in an amount not to exceed $2,000,000 each, as deemed appropriate by the Secretary, under provisions of the Rehabilitation and Betterment Act of October 7, 1949 (63 Stat. 724), as amended.

SEC. 213. REVIEW OF UMATILLA PROJECT OPERATIONS.

Within one year from the date of enactment of this title, the Secretary shall complete a review of current operations of the Umatilla Project, for the purpose of identifying opportunities to further mitigate losses to anadromous fishery resources. Within 90 days of the completion of this review, the Secretary shall transmit a report thereon, together with any conclusions and recommendations to improve the management of the existing project, including measures that may require additional legislation, to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The review shall include, but not be limited to the following:

(a) contract negotiation and administration;

(b) water conservation plans and activities required by section 210 of the Reclamation Reform Act of 1982 (Public Law 97-293);

(c) allocation of reservoir storage space;

(d) water deliveries outside the authorized service area; and

(e) water rights held by the United States.

The SPEAKER pro tempore. Is a second demanded?

Mr. LUJAN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Minnesota [Mr. VENTO] will be recognized for 20 minutes and the gentleman from New Mexico [Mr. LUJAN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. VENTO].

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 2148, the Senate bill presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 2148, which was considered and passed by the Senate on October 7, 1988, would, in title I, designate 40 river segments in the State of Oregon as components of the National Wild and Scenic Rivers System, and provide for studies of six other river segments for possible inclusion in the System. Title II of the act contains an authorization for the Umatilla basin water project in Oregon.

The provisions of title I of S. 2148 are substantially similar to the bill, H.R. 4164, which was reported to the House on October 4, 1988, by the Committee on Interior and Insular Affairs. H.R. 4164, which was introduced by Representatives DEFAZIO, AUCOIN and WYDEN, would, as amended by the committee, provide for designation of 43 river segments in the State of Oregon and studies of 11 other river segments.

The State of Oregon possesses a large and significant system of rivers and streams, yet only 4 river segments, totaling 317 miles, are presently part of the National Wild and Scenic Rivers System. Many more rivers in Oregon merit designation and have been identified as such in the 1982 nationwide rivers inventory, and the land management planning processes undertaken by the U.S. Forest Service and Bureau of Land Management within the State.

The proposal before us was not without controversy but I think it is important to put that controversy in perspective. Both the U.S. Forest Service and BLM were supportive of the intent of the legislation and have offered constructive comments. There was some controversy on certain river segments, but I would note that this controversy varied considerably in intensity and was limited to basically 8 river segments as compared to nearly 40 rivers that lack controversy. S. 2148 to the greatest degree possible has addressed potential concerns with the legislation. In fact there are several instances where I feel the bill has gone further than necessary in responding to the limited concerns that were expressed and I would certainly not feel bound in any other instances to treat these as precedents for future legislation.

Wild and scenic designation will not be onerous to the State of Oregon, the opposite is true. As the U.S. Forest Service pointed out in its testimony it would have little effect on the timber harvest within the State or the day-to-day management of the river corridors. Its importance lies in the policy decision for their proper care and management of the nationally significant resources contained in the rivers of Oregon. Unfortunately, some of the information that has been disseminated regarding management of lands and waters within and around a designated river corridor have distorted the facts and misconstrued the provisions of this bill and the Wild and Scenic Rivers Act itself.

Mr. Speaker, S. 2148 is the first comprehensive statewide wild and scenic rivers bill to be considered by the House. It is fitting in this the 20th anniversary year of enactment of the Wild and Scenic Rivers Act, that we are taking action to put into deed what has been a national policy for the protection of certain outstanding free-flowing rivers. I want to commend the Oregon delegation, especially our colleague PETER DEFAZIO, an able member of the Parks and Public Land Subcommittee for the leadership and foresight shown in undertaking this effort for the rivers of Oregon. As with many good overall legislative products S. 2148 contains compromises, and while not to everyone's complete satisfaction including my own, are nevertheless a sound and workable policy. I support adoption of S. 2148 and urge its passage by the House.

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Mr. Speaker, I reserve the balance of my time.

Mr. LUJAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this has been a very difficult issue for this Congress because it involves conflicts over private property rights on the one hand and environmental protection on the other. I would say however, that the bill as it comes to us from the Senate is a much improved bill. As introduced, the bill would have designated 40 rivers totaling 1,700 miles under the Wild and Scenic Rivers Act. As amended, the bill proposes 1,400 miles of river for inclusion under the act. By reducing the number of miles which would be included, the bill deletes many of the more contentious areas particularly ones where private land was an issue. Furthermore, S. 2148 provides for a study of the Upper Klamath River in a way that does not interfere with the present consideration the Federal Energy Regulatory Commission is giving an application by the city of Klamath Falls for a hydroelectric project on the Klamath.

Notwithstanding these improvements, Mr. Speaker, there remains opposition to the bill. In particular, my colleague from Oregon, Mr. Bob Smith, whose district includes most of the rivers designated in this legislation has concerns about the bill.

Mr. Speaker, I reserve the balance of my time.

Mr. VENTO. Mr. Speaker, I yield 3 minutes to the gentleman from Oregon [Mr. DEFAZIO].

Mr. DEFAZIO. Mr. Speaker, today my colleagues from Oregon and I are asking the House to pass S. 2148. The Senate passed this bill by voice vote last Friday, October 7.

This legislation is the result of nearly a year of research and public comment. The original legislation, which has been substantially amended in this bill, contained rivers that were recommended by the U.S. Forest Service and the Bureau of Land Management. We have worked closely with the senior Senator from Oregon in developing this bill. All told, there have been three Senate field hearings and one informal hearing in Oregon, two informal House hearings in the State, and committee hearings in both the House and the Senate here in Washington, DC. The legislation has been extensively reviewed by the U.S. Forest Service and the Bureau of Land Management. During the hearings they testified in support of both bills, offering suggested amendments, almost all of which we have incorporated into the compromise.

This compromise is supported by 6 of the 7 members of the Oregon congressional delegation. It is supported by Gov. Neil Goldschmidt and by his opponent in the last election, Mrs. Norma Paulus, now a member of the Northwest Power Planning Council. Prominent leaders in the State legislature support it, including the Senate President and majority leader. Fishing and conservation groups in the State consider passage of this legislation to be a top priority. We have worked long and hard with all interested parties to develop a bill that is fair and responsible.

Many significant compromises have been made; compromises that should alleviate the concerns of the gentleman representing Oregon's Second Congressional District, Mr. SMITH.

We have accepted compromise language for a study of the Klamath River that allows continuing review of the city's license application. I'm not happy with this compromise; I don't know anyone who is, except perhaps the city of Klamath Falls. But at least we'll have a recommendation from the agency regarding the eligibility of this outstanding river for designation.

All of the rivers with over 50 percent private lands adjacent have been removed from the bill. Thus there is no threat of condemnation for fee title. Of particular concern to Mr. SMITH should be the fact that large parts of the John Day, of Joseph Creek, of the Little Deschutes, and all of the Williamson and the Burnt have been removed.

After all the work we have done on this bill, I am confident that the rivers contained in it belong in the Nation's Wild and Scenic Rivers System. That's not to say that these are the only rivers in Oregon that deserve designation. Many others were considered, but controversy or lack of good information counseled restraint. One notable river that I believe deserves consideration is Opal Creek. Unfortunately, a great deal of controversy surrounded the issue. The Forest Service, admittedly on very short notice, was unable to provide us with a reliable estimate on the potential impact of designation on timber harvest in the drainage. Mr. DENNY SMITH noted the possibility that those impacts, being concentrated in a relatively small area, could have substantial impact on local economies. In order to minimize controversy in this bill, we dropped Opal Creek from consideration. I would hope, however, that the Forest Service will do everything possible to protect the outstanding water quality and scenic values in and along Opal Creek. Congress may yet choose to study Opal Creek for possible addition to the Nation's Wild and Scenic Rivers System.

Chief among the concerns expressed during development of this bill was the fear of condemnation of private lands. I'd like to point out that the Wild and Scenic Rivers Act in no way increases the Federal Government's power to condemn private lands or interests in private lands. In fact, the act places a variety of limits on that power. As I mentioned, all of the rivers with over 50 percent private lands adjacent were dropped from the bill. Therefore, by law, condemnation is precluded on any river in this bill. It should also be noted that condemnation for easements or other interests is very rare, and it should be. The agencies have indicated that they operate on a willing seller basis. I encourage them to continue to do so. Clearly, condemnation should be the last resort and, in fact, has been.

Other concerns were raised regarding this bill's impacts on multiple uses on public lands. I want to stress that we recognize that multiple uses will continue, both within designated wild and scenic corridors and on adjacent lands. These activities include grazing, farming, mining, and timber harvest. The Wild and Scenic Rivers Act seeks to maintain the status quo, and will even allow new uses where those uses are compatible with the purposes of the act.

In particular, I note that the Forest Service's management guidelines for Wild and Scenic River corridors allow harvest "under standard restrictions" within the corridor and apply no restrictions to area outside the corridor. Scenic and wild designations are, of course, more restrictive. I further note that the Forest Service, in its testimony before the Subcommittee on Parks and Public Lands, stated that * * * "designation would have little effect on day-to-day management of the river corridor;" and that * * * "designation would have very little effect on timber harvest."

The Forest Service estimated the reduction in annual sale quantities if H.R. 4164 were enacted to be about 6 million board feet. That's a little over one-tenth of 1 percent of the annual sale quantity, a miniscule reduction by any standard. In short, we expect management practices to follow existing statutory guidelines to protect the values for which the rivers are designated.

One additional concern was raised regarding the possibility that a strict interpretation of the State of Oregon's water quality standards, especially the State's antidegradation policy, might preclude harvest in areas outside the river corridor. It is my understanding that the State currently holds that best management practices, as defined by State and Federal agencies, are sufficient to meet the State's guidelines regulating nonpoint sources of pollution. Other members of the delegation and I recently exchanged correspondence with the Governor's office to that effect. The State is, apparently, reviewing its guidelines. I'm confident that the State will continue to cooperate with Federal agencies to protect the outstanding water quality values both within and without the Wild and Scenic River corridors.

Mr. Speaker, this bill also authorizes an anadromous fish enhancement project in the Umatilla Basin of northeastern Oregon. The basin is in the district of my colleague, Bob Smith, and the project enjoys the support of the entire Oregon congressional delegation.

This project is necessary to resolve the decades old loss of streamflow critical to fish runs in the Umatilla River. The Confederated Tribes of the Umatilla Reservation historically depended on salmon runs in the river. In the early years of this century the Bureau of Reclamation built the Federal Umatilla reclamation project which has been the major cause of streamflow depletion. In addition, the giant Columbia River hydroelectric dams downstream from the Umatilla River further decimated the salmon runs.

Since passing the Pacific Northwest Electric Power Planning and Conservation Act, the Federal Government and the Northwest have undertaken an effort to restore the Columbia Basin anadromous fish runs. The Umatilla Basin project is part of this coordinated effort.

The project will draw water from the Columbia River to replenish flows in the Umatilla River during the spring and fall salmon runs. It will meet the United States' treaty obligations to the tribes. The Pacific Northwest, however, shares in the costs of this project through the Bonneville Power Administration which will supply the electricity for the pumps. These costs will be borne by the ratepayers of the Northwest. The Pacific Northwest Power Planning Council approved this participation by including the Umatilla Basin project in its regional fish and wildlife restortation plan.

Mr. Speaker, I support this project because it meets the region's fish and wildlife restoration goals in both an environmentally and economically sound way. Though meeting the treaty obligations to the Umatilla Tribes is a Federal responsibility, the restoration of the Umatilla fish runs has regional benefits and the region is sharing in the costs through our payments for the Bonneville Power Administration.

Mr. Speaker, this legislation represents sound and responsible management of Oregon's river resources. I would like to extend my congratulations especially to Senator Hatfield for his outstanding leadership on this issue. Without his efforts, we wouldn't be on the floor today. I would urge my colleagues to pass this legislation today.

Mr. LUJAN. Mr. Speaker, I yield such time as he may consume to the gentleman from Oregon [Mr. Denny Smith].

Mr. DENNY SMITH. Mr. Speaker, this bill is a historic opportunity to preserve some of Oregon's most pristine rivers. I have been involved with the development of this bill for several months, and believe that in its current form it addresses many of the concerns addressed by Oregon in hearing throughout the State.

By altering or deleting river segments, we have effectively eliminated the ability of Federal agencies to condemn for fee simple title purchased by the Government. In addition, in the committee report we have explicitly recognized that a variety of uses including, but not limited to grazing, timber harvest, mining, agriculture and residential uses will continue to take place on private and public lands within the wild and scenic river corridors.

Another concern which I was able to have addressed in the report language is the ability of utilities and railroads to access existing facilities in or near the corridors. Oregon's businesses, farmers, and ranchers must be able to continue operating along these rivers, and can certainly do so under provisions of this act as written.

This bill is designed to provide protection for certain Oregon rivers. It must not be used to create de factor wilderness areas. Many business interests, including much of the timber industry, have supported the goals of this legislation. Theirs is a good faith effort, and I intend to work to ensure that this bill's impact is not extended beyond the congressional intent in this bill.

Mr. Speaker, in closing I just want to reiterate my support for this legislation, and urge my colleagues to vote for the bill.

Mr. VENTO. Mr. Speaker, I yield 2 minutes to the gentleman from Oregon [Mr. AuCoin].

Mr. AuCoin. Mr. Speaker, as we debate this magnificant piece of legislation, I am reminded of the words of Chief Seattle, an ancient Indian leader in the Northwest. He said, "If you sell our land," and he was talking to the white man, "you must remember and teach your children that the rivers are our brothers and yours, and you must henceforth give the rivers the kindness you would give any brother."

Mr. Speaker, I think those words are worth repeating today as we have before us a piece of legislation that is a major chapter in conservation history. This is the first time in history that on a statewide basis wild and scenic rivers have been legislated in a comprehensive and thoughtful manner.

Mr. Speaker, Oregon leads the way through the help of the Congress in this action. The 40 rivers included in this bill have been the subject of intensive debate, and agency and congressional review. They are Oregon's most outstanding rivers. They are real resources, real assets, something that, preserved in this way, the people of Oregon deserve, and will remember and be able to enjoy for years and years to come.

Mr. Speaker, this is why 6 Members of the Oregon congressional delegation support this bill. It is why it passed on a voice in the Senate last week supported by the Governor, both Republican Senators, and it deserves the overwhelming support of my colleagues tonight.

Mr. Speaker, Oregon and Oregonians have been national leaders in conserving and protecting its land, water, and natural resources.

Our State government took steps decades ago to retain the public's right to use the beaches on our coastline.

Several years back, the State also passed the first-in-the-nation bottle bill.

And, we enacted a comprehensive land use law to regulate development and conservation of private land around the State.

Congress, for its part, has taken dramatic steps to protect and promote Oregon's finest areas.

Four years ago, this body passed the Oregon Wilderness Act.

Two years ago, we passed the Columbia River Gorge National Scenic Area Act.

At other times, we in Congress have taken steps to conserve and promote Yaquina Head, Cascade Head, Steens Mountain, and Crater Lake, just to name a few of Oregon's outstanding natural treasures.

The bill before us today is a major new chapter in this great conservation history.

The 40 rivers included in this bill have been the subject of intense public, agency, and congressional review. They are Oregon's outstanding rivers, and they deserve the protection which will come from this bill.

That, Mr. Speaker, is why six of seven Members of the Oregon congressional delegation support this bill, and why it passed on a voice vote in the Senate last week.

That's why Oregon Governor Neil Goldschmidt supports the bill. That's why both the Forest Service and the Bureau of Land Management support it, too. And that's why the House should support it as well.

I also want to say a few words about those in Oregon who have indicated they oppose this bill. To my friends in eastern Oregon in particular who have farming and ranching operations on their own lands within wild and scenic river corridors designated by this bill, I can tell you that the Forest Service and the BLM cannot, should not, and will not regulate the use of your property under this law.

As a member of the House Interior Appropriations Subcommittee, which writes the budgets for the Forest Service and the BLM, I can pledge to you that I will be very vigilant over implementation of this bill so the agencies live up to the letter, spirit, and intent of the law.

And, to those who are concerned that designation brings with it changes in the applicability of current water quality standards, I will indicate that, through an exchange of letters between the Oregon delegation and the director of Oregon DEQ, we learned that designation in and of itself does not result in additional constraints on upstream activities, and that Oregon's water quality standards and nonpoint source control programs comply with valid EPA policies and applicable Federal laws.

Finally, I would like to comment on the inclusion in this bill of a section 5(d) suitability study of the Klamath River. As many Oregonians know, the 10 mile stretch of the Klamath below John Boyle Dam and the Oregon border is threatened by the license application filed by the city of Klamath Falls with the Federal Energy Regulatory Commission for construction of the Salt Caves Dam.

While I firmly believe this stretch of the Klamath is suitable for designation under the law, others believe the FERC process should continue, and that immediate designation would preempt the FERC process.

Thus, we have developed a compromise; one which permits continued consideration of the Salt Caves Dam license application, but which also authorizes completion of a wild and scenic suitability study.

Based on my confidence that wild and scenic designation is the best use of this stretch of the Klamath, I am sure that the dam ultimately will not be built and that protection of this most threatened stretch of river from hydroelectric development will be instituted.

I urge my colleagues to vote for protection of Oregon's outstanding rivers.

Office of the Governor,
Salem, OR, October 12, 1988.

Hon. Les AuCoin,
House of Representatives, Rayburn House Office Building, Washington, DC.

Dear Les: I understand the S. 2148, the Oregon Omnibus Wild and Scenic Rivers bill, may be considered by the full House of Representatives today. I support passage of this bill and urge you to support it. The bill insures the protection of some of Oregon's outstanding remaining free-flowing rivers and authorizes the construction of the Umatilla Basin project. I am confident that if the bill is passed, we will be able to work successfully with federal land management agencies to assure that private property rights are protected in its implementation.

Thank you for your support of this important legislation.

Sincerely,

Neil Goldschmidt,
Governor.

U.S. Senate,
Washington, DC, September 14, 1988.

Mr. Fred Hansen,
Director, Department of Environmental Quality, Portland, OR.

Dear Mr. Hansen: As you may know, we are working on legislation to designate over 40 Oregon rivers and streams for protection under the National Wild and Scenic Rivers Act. It is important that we provide these outstanding national resources waters the recognition and protection they deserve. At the same time, it is imperative that we do so in a fashion that minimizes any adverse effects on Oregon's economy and does not result in any unintended impacts on upstream activities.

We are, therefore, writing to you to make sure that we have an accurate understanding of the applicability of Oregon's water quality standards, including the state's antidegradation policy, to the control of activities that have the potential to generate nonpoint source pollution in areas upstream from designated national wild and scenic river segments. This is a concern raised in testimony by forest landowners, including the USDA Forest Service.

Under existing federal Environmental Protection Agency policy, affirmed most recently in an August 19, 1987, EPA policy memorandum, EPA has stated in relevant part, that:

"EPA's water quality standards regulation (40 CFR 131) provides that *State adopted water quality standards shall include designated beneficial uses and water quality criteria to protect those uses as well as include an antidegradation policy.* It is intended that proper installation of State approved BMPs [best management practices] will achieve water quality standards. Therefore, water quality standards are to be used to measure the effectiveness of BMPs. In the review and revision of water quality standards as provided for in the CWA [Clean Water Act], the State should ensure that water quality standards are achievable and that water quality criteria reflect what is needed to assure protection of beneficial uses. As provided for in EPA's National Nonpoint Source Policy Statement, *there should be 'flexibility in water quality standards to address the impact of time and space components of NPS as well as naturally occurring events.'* This involves the consideration of the variability of natural conditions, magnitude and frequency of impact, and level of acceptable risk.

"For proposed management actions, BMPs designed and implemented in accordance with a State approved process will normally constitute compliance with the CWA. The CWA does not itself directly establish a mechanism for enforcing WQSs directly against NPS. BMPs developed under a State approved process may be used as performance standards for proposed actions. Applicable water quality standards along with water quality monitoring should be used to measure the effectiveness of BMPs.

"Once BMPs have been approved by the State, the BMPs become the primary mechanism for meeting water quality standards. Proper installation, operation and maintenance of State approved BMPs are presumed to meet a landowner's or manager's obligation for compliance with applicable water quality standards." (Emphasis added).

Oregon's water quality standards promulgated by the EPA properly reflect this direction. At OAR 340-41-026 (1) (b) (7) the rules require that "logging and forest management activities shall be conducted in accordance with the Oregon Forest Practices Act so as to minimize adverse effects on water quality." It is our understanding that, consistent with existing federal EPA policy, the state's forest practice rules are the state-approved BMPs and, therefore, "are presumed to meet a landowner's or manager's obligation for compliance with applicable water quality standards," including the state's antidegradation policy at OAR 340-41-026 (1)(a).

The situation on federal lands administered by the USDA Forest Service and the Bureau of Land Management is similar. The aforementioned EPA policy memorandum suggests that:

"States and operators, managers and/or owners of large tracts of private or public land containing areas of high quality water, where changes in the use of management of the land could pose a threat of degradation, may find it advantageous to negotiate and establish comprehensive planning and operating procedures for the NPS management of such tracts or major portions thereof, consistent with this guidance. Such agreements would include, among other things, understanding regarding monitoring responsibilities, BMP implementation and plan enforcement.

"Such procedures could be incorporated into memoranda of understandings (MOUs) between the parties, which should be reviewed and reexecuted periodically to allow for changes in conditions and/or policy."

It is our understanding that both the USDA Forest Service and the Bureau of Land Management have entered into such memoranda of understandings with the DEQ, and that the requirements and practices contained in Forest Service and BLM timber sales contracts are deemed to be equivalent to those in the state forest practices rules. It is our further understanding with respect to the Forest Service, that the state is reviewing each draft plan prepared under the provisions of the National Forest Management Act of 1976 with the expressed purpose of assuring, among other things, that any new land allocations, standards, or guidelines contained in the draft plans would not contribute to a violation of the state's water quality standards.

Based upon the provisions of the preferred alternatives in the draft plans, the Forest Service has informed us in testimony that the designation of wild and scenic river segments as contemplated in our bill should not, by itself result in any additional restriction of forest management activities in areas upstream from the designated stream segments as a consequence of the provisions of OAR 340-41-026. The Forest Service is confident that existing mechanisms for working with the DEQ are adequate to assure compliance with the state's water quality standards program without significant timber harvest impacts as the NFMA plans are put into final form.

Would you please confirm whether our understanding of these matters is accurate, and whether the state concurs with the Forest Service's assessment of the extent of any upstream impacts from the proposed legislation. It is our intention to include your response in the legislative history of the final bill so that there will be no confusion over the applicability or impact of Oregon's water quality standards on streams above a segment designated in the legislation.

We may move to mark-up this bill as early as next week. Thank you for a prompt response to this inquiry.

Sincerely,

Bob Packwood, U.S. Senator; Les AuCoin, Member of Congress; Denny Smith, Member of Congress; Mark O. Hatfield, U.S. Senator; Ron Wyden, Member of Congress; and Peter DeFazio, Member of Congress.

DEPARTMENT OF ENVIRONMENTAL QUALITY,
Portland, OR, September 22, 1988.
Senator MARK O. HATFIELD,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR HATFIELD: I am pleased to respond to your letter of September 14, 1988 and confirm our discussion with your staff that occurred prior to September 22, 1988 regarding the applicability of Oregon's water quality standards, including the antidegradation policy, to the control of forest management activities or other activities that have the potential to generate nonpoint source pollution in areas upstream from designated national wild and scenic river segments.

Your letter accurately reflects our understanding of EPA policy direction regarding state water quality standards, the required antidegradation policy, and control of nonpoint sources of pollution. Your letter also accurately reflects Oregon's current adopted standards and program for control of forest management related nonpoint sources of pollution. Finally, we generally agree with the assessment of the U.S. Forest Service relative to the extent of any upstream impacts from the proposed legislation.

Establishment of a wild and scenic river segment, by itself, will not automatically result in additional restrictions on activities upstream from a designated segment. Under existing laws and rules, such activities would have to be conducted in a manner which assures that best management practices are applied, that existing water quality standards are not violated, and that beneficial uses of the waterway downstream from the activity are not adversely affected by changes in water quality.

Perhaps the most significant issue is whether the antidegradation policy contained in Oregon's Water Quality Standards would be interpreted to mean "no scientifically measurable change" in any physical, chemical or biological properties of the water when applied to a wild and scenic river segment. Water quality varies naturally. Some variation or change in water quality can occur without adversely affecting beneficial uses of a stream. We understand that designation of a wild and scenic river segment would not arbitrarily preclude activities upstream by reinterpreting the existing antidegradation policy as a "no measurable water quality change" policy. In order to protect beneficial uses and the special values associated with a designated wild and scenic river segment, however, it is appropriate to make sure that water quality changes resulting from activities upstream are minimized to the maximum extent practicable by use of best management practices.

The Department of Environmental Quality and Environmental Quality Commission are currently in the process of reviewing it's non-point source pollution control program. This review process is expected to result in greater emphasis on monitoring and evaluating the effectiveness of best management practices in meeting water quality standards. Improved monitoring may identify the need in some instances to modify current best management practices to assure that water quality standards are met. In addition, the federal Clean Water Act requires states to review and update water quality standards on a three year cycle as appropriate. In conjunction with this process, and pursuant to Environmental Quality Commission policy direction, the current antidegradation policy is being reviewed. Any clarifications of existing rules resulting from these processes would be generally applicable on a statewide basis.

However, if through ongoing review processes, current best management practices are determined to be insufficient to protect the beneficial uses and values in wild and scenic river segments, and perhaps other segments, improved or additional best management practices may be required, or it may be necessary to control more strictly or limit specific activities in portions of the upstream area.

Sincerely,

FRED HANSEN,
Director.

U.S. DEPARTMENT OF AGRICULTURE,
Washington, DC, October 11, 1988.
Hon. LES AUCOIN,
House of Representatives, Washington, DC.

DEAR CONGRESSMAN AUCOIN: As you requested, we are writing to provide you with information on the Forest Service position on S. 2148, the Omnibus Oregon Wild and Scenic Rivers Act of 1988.

During hearings on S. 2148 before the Senate Subcommittee on Public Lands, National Parks and Forests, we testified in support of S. 2148, if amended. We recommended that over 230 river-miles, affecting 14 rivers, be deleted from the bill. We also recommended numerous technical changes regarding river classification, jurisdiction, and mileage. The Senate Committee on Energy and Natural Resources amended S. 2148 to delete approximately 209 river-miles affecting 11 rivers. Virtually all the technical changes we recommended were adopted by the Committee.

The Committee added three "new" rivers to S. 2148: Squaw Creek, North Fork Malheur, and Malheur. We support designation of these three rivers. We would, however, prefer designation of only 11.2 miles of the North Fork Malheur, rather than the 25.5 miles now included in S. 2148.

We believe S. 2148, as reported by the Senate Committee on Energy and Natural Resources, would provide appropriate protection for the affected rivers.

Sincerely,

F. DALE ROBERTSON, *Chief.*

Mr. LUJAN. Mr. Speaker, I yield such time as he may consume to the gentleman from Oregon [Mr. ROBERT F. SMITH].

Mr. ROBERT F. SMITH. Mr. Speaker, I thank the gentleman from New Mexico [Mr. LUJAN] for yielding me this time.

Mr. Speaker, this is the bad and the beautiful, the Jekyl and Hyde, issue, and let me discuss that with my colleagues because that is the way this bill appears to me as we discuss it here this evening.

The Umatilla project, which is wound in and connected to this bill, is an essential project in my district satisfying some 100-year claims over water, providing Indian fisheries with sufficient water to protect the fishery and, beyond that, providing irrigaters with water sufficient to irrigate their land, an essential project. It was hooked to this wild and scenic river bill by the Senate at a very late date and appears before my colleagues as a joint issue.

Mr. Speaker, I totally support the Umatilla project, and I congratulate the gentleman from California [Mr. MILLER] and the Committee on the Interior for accepting reasonable amendments which, I think, took the fire out of that issue, and the Umatilla Basin project is agreeable to everybody.

Now we have the wild and scenic river question. It is a highly emotional issue in my area, and it might appear that I stand alone, and I do. There are six Members of the Oregon delegation that support this measure, and I oppose it. And my colleagues ought to know why. Why is that?

Mr. Speaker, it is simply because 85 percent of the rivers involved in this bill are in my district, and I suppose I might speak for the last and the least of the Oregonians, but, if I did not, who would?

So I am here to suggest to my colleagues that there are 500,000 acres of land involved in this new designation of wild and scenic rivers, 1,400 miles, an area halfway across the United States of America by the way. Fourteen hundred miles of rivers, 500,000 acres, and there would be those who would lead my colleagues to believe that this is only on public land. It is not.

Mr. Speaker, there are 150,000 acres of private lands involved in these rivers including and involved with the wild and scenic designation. Now what does that mean? It means another Federal land use on private lands in the State of Oregon.

Mr. Speaker, we already have a State land use law. This is another level of control of direction to those private lands that are already highly regulated. It freezes the use on all private lands of mining, of agriculture, of harvesting.

The heartburn here is where the private lands are added, and the question is why.

Mr. Speaker, there is no one in Oregon that is as avid as I in the protection of rivers and streams, and I want to say to my colleagues that there is no Oregonian that would violate rivers and streams in our State because that is the way we live. We live 5 days a week from the harvest of renewable, natural resources, most of which come from public lands, many from private lands, and any more intrusion into that makes a highly emotional issue, which this does.

□ 1830

Over 52 percent of Oregon is owned and controlled by the Federal Government. Seventy-five percent of most of the counties that I represent is already controlled and owned by the Federal Government and here we have another intrusion.

Therefore, I suggest that this is a bittersweet issue. I hope no Member of Congress ever is placed in this situation where two issues are so confrontational, both in your district, one of which you oppose, one of which you support. I hope you are never there, because it is agony, I can tell you.

So the only thing I can do, Mr. Speaker, is to suggest to you that the Umatilla District is important to me. The Wild and Scenic River issue is a penetration of private landownership in the direction of agriculture and timber in my district in mining, and it hurts.

So I leave you with that explanation and I leave the destiny of this bill to the House of Representatives.

Mr. VENTO. Mr. Speaker, I yield 2 minutes to the sponsor of this measure, the gentleman from Oregon [Mr. WYDEN].

Mr. WYDEN. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, it seems to me if we pass this bill we do one simple thing, and that is protect Oregon's finest rivers for all time, for our kids and our grandkids.

This bill protects Oregon's rivers from those who would dam or divert or despoil them. I think it is a celebration of some of the best of Oregon, because there are rivers from all over our State, rivers from our forests, our deserts, our mountains and our valleys, and literally this bill has something for every Oregonian.

I am particularly proud that this bill includes the Sandy River, which flows through my district. The lower segment of the Sandy is part of the State's scenic waterway system. Under this bill, the State will be able to continue its excellent management of the Sandy, but the river will have national recognition of its recreational values.

I am also pleased that this bill is structured to protect the concerns of private property owners, particularly those who are concerned about condemnation of private lands.

I offered a suggestion as we considered this legislation to link designation of the South Fork and the main stem of the Imnaha so no river in this bill has enough private land to trigger the full condemnation powers in the Wild and Scenic Rivers Act.

Now, this year the Wild and Scenic Rivers Act of 1968 turns 20 years old. I cannot think of a better way to mark that milestone than by passing the Omnibus Oregon Wild and Scenic Rivers Act, which adds 40 magnificent rivers to our national system.

Finally, Mr. Speaker, at the urging of our colleague from eastern Oregon, the gentleman from Oregon [Mr. ROBERT F. SMITH] this legislation contains a project, the Umatilla project, that will be a real shot in the arm to Oregon's fisheries, so it is a bill that is good for all Oregon. I urge my colleagues to support this bipartisan legislation.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I think that one of the amendments made on this bill on the House side that we were not able to act on was, of course, to name these rivers after the distinguished senior Senator from Oregon. I hope that at some point maybe we can make a technical correction to this act to name this the Mark Hatfield Act, because I think he has done an outstanding job.

With that, Mr. Speaker, I want to recommend this bill strongly to the Members. It is a very important bill.

Mr. MILLER of Washington. Mr. Speaker, I rise in support of H.R. 4164, the Oregon Wild and Scenic Act Rivers Act of 1988.

As a resident of Washington State and as a river rafting enthusiast, I want to congratulate my colleagues from Oregon for developing this fine bill. Mr. Speaker, this bill will protect 40 critical and outstanding rivers in the State of Oregon. The bill also designates seven other river segments for study. It is a good bill and should be passed.

Mr. Speaker, over 20 years ago, I helped write the first wild and scenic rivers bill for Washington State. Now, Mr. Speaker, I want to note that Washington State has yet to have a major congressional rivers bill. It is my hope that next term, my colleagues from Washington State can develop a similar bill which will preserve and protect many of our rivers.

H.R. 4164 was based, in part, on the forest planning process which took place over the past several years. We in Washington are near completing a similar planning process. To date, the Forest Service has recommended including over 20 rivers. I also introduced a bill to designate the Pratt River a wild river.

We should recognize that the Wild and Scenic Rivers Act protects a wide range of values such as scenery, recreation, wildlife habitat, and fisheries, including our marvelous salmon and steelhead runs.

Mr. LUJAN. Mr. Speaker, I yield back the balance of my time.

Mr. VENTO. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Minnesota [Mr. VENTO] that the House suspend the rules and pass the Senate bill, S. 2148.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill as passed.

A motion to reconsider was laid on the table.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its Clerks, announced that the Senate has passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 3621. An act to declare that certain lands located in California and held by the Secretary of the Interior are lands held in trust for the benefit of certain bands of Indians and to declare such lands to be part of the reservation with which they are contiguous.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 3621) "An act to declare that certain lands located in California and held by the Secretary of the Interior are lands held in trust for the benefit of certain bands of Indians and to declare such lands to be part of the reservation with which they are contiguous," disagreed to by the House agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. Inouye, Mr. Melcher, Mr. DeConcini, Mr. Burdick, Mr. Daschle, Mr. Evans, Mr. Murkowski, and Mr. McCain to be the conferees on the part of the Senate.

APPOINTMENT OF CONFEREES ON H.R. 4333, MISCELLANEOUS REVENUE ACT OF 1988

Mr. ROSTENKOWSKI. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4333) to make technical corrections relating to the Tax Reform Act of 1986, and for other purposes with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

MOTION TO INSTRUCT OFFERED BY MR. SCHULZE

Mr. SCHULZE. Mr. Speaker, I offer a motion to instruct.

The Clerk read as follows:

> Mr. Schulze moves that the managers on the part of the House, at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill H.R. 4333, be instructed to agree to the Taxpayer Bill of Rights contained in sections 763 through 785 of the Senate Amendment with such improvements within the scope of conference as the managers on the part of the House deem necessary.

The SPEAKER. The gentleman from Pennsylvania [Mr. Schulze] is recognized for 1 hour.

Mr. SCHULZE. Mr. Speaker, I yield 30 minutes, for the purpose of debate only, to the distinguished chairman of the Committee on Ways and Means, the gentleman from Illinois [Mr. Rostenkowski], pending which I yield myself such time as I may consume.

Mr. Speaker, it is fitting that today I offer this motion to instruct conferees. In fact, I sponsored—with my colleague on the Ways and Means Committee Ronnie Flippo—H.R. 3470, the omnibus taxpayers' bill of rights. Currently, our bill carries the names of over 220 House cosponsors. And today, those of us who support taxpayer rights have an opportunity to instruct House conferees to adopt what is, in essence, H.R. 3470.

Our bill and the Senate amendment provide a good start in addressing problems which our constituents have brought to our attention over the years, many of which Congress has failed to remedy. Momentum for taxpayer safeguards has been building since the fiascoes of 1985 when thousands of tax refunds checks were lost and delayed and thousands of letters unanswered.

Congress has responded by increasing IRS appropriations so that it could perform the job expected of our collections arm of the Government. In addition, the Subcommittee on Oversight, on which I serve as ranking member, recommended that additional sums be directed toward taxpayer services, which ultimately Congress approved. These congressional responses were appropriate and worthwhile. However, a larger IRS budget has not diminished appreciably the number of day-to-day tangles involving overzealous IRS agents and average taxpayers who have no intention to defraud the U.S. Government.

Although it is by no means perfect, the Senate amendment goes a long way to address the unpleasant encounters with third class enforcment tactics. Like H.R. 3470, the Senate amendment provides additional safeguards and procedures to protect honest taxpayers from bureaucratic incompetence and to ensure that proper checks are placed on the IRS.

I am very hopeful that the final version of the taxpayer bill of rights which emerges from the conference will in fact be the kind of tough, fair, effective protection for taxpayers to which I am personally committed. That is why I stand here today offering this motion to instruct our conferees.

The opportunity is here again to let our constituents know we believe their concerns come first and that their faith in Government is intrinsic to the well-being of our voluntary tax collection system. I urge the House to vote in favor of my motion.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield such time as he may consume to the gentleman from Alabama [Mr. Flippo], who has done a great deal of work in this area. I am sure that through his recommendations the conferees could very well come up with something that would satisfy the membership of the House of Representatives.

Mr. FLIPPO. Mr. Speaker, I thank the distinguished chairman of the committee for his comments.

Mr. Speaker, I rise in strong support for this motion to instruct the House conferees to consider and negotiate over the taxpayers bill of rights.

The time has come to provide all American taxpayers with the basic rights they deserve and need in dealing with the Federal tax collector.

Just 2 years ago, Congress approved the most sweeping overhaul of our tax system in a generation. The goal of this legislation was to provide a greater degree of fairness and equity for all taxpayers. However, the perception still exists that unfairness lurks within the tax system. Honest citizens who have nothing to hide are sometimes made to feel like criminals, and as if they have no rights at all when they have difficulty with the IRS.

The taxpayers bill of rights, as passed by the Senate, provides a reasonable and workable system of rights for a taxpayer. The enactment of this measure would complete the process of tax reform.

Mr. Speaker, there is one word that describes the Omnibus Taxpayers Bill of Rights Act. That word is accountability. The bill clearly sets out the rights of the American taxpayer to fair and equitable treatment under the tax laws of our country. It establishes clear and unambiguous standards for the IRS to follow in administering the tax laws and in dealing with individual taxpayers.

The American taxpayers must be protected from abusive, arbitrary, and capricious enforcement of the tax laws. The taxpayers bill of rights would provide this protection. The IRS would be held accountable for their action.

There is overwhelming support in this House for the taxpayers bill of rights. A majority of the House has joined as a cosponsor of H.R. 3470 as introduced by the gentleman from South Carolina, Mr. Tallon, and Mr. Schulze, my distinguished colleague from Pennsylvania, and myself. There is strong support for these provisions on the Committee on Ways and Means.

The enactment of this measure already passed by the Senate would help to restore the American taxpayers faith and support for the voluntary tax collection system. It would help restore confidence among the public that the tax laws will be administered fairly and applied equally to every American.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield 3 minutes to the gentleman from South Carolina [Mr. Tallon].

Mr. TALLON. Mr. Speaker, I thank the distinguished chairman of the Ways and Means Committee for yielding this time to me.

Mr. Speaker, I am very pleased to be here today after 3 long years of work on this legislation.

Mr. Speaker, the motion before the House is simple and long overdue. Congress has the opportunity, and I believe the obligation, to ensure the enactment of the taxpayers bill of rights through the technical corrections bill.

Unfortunately, in recent years, it has become much more certain that if a taxpayer finds him or herself in disagreement with the Government over taxes due, that taxpayer is likely to face pressures of Government power that would not be tolerated under any other condition.

That is why I believe it is vital that Congress more clearly define and limit the power of the Internal Revenue Service in its pursuit of tax collection and thereby ensure the protection of legitimate individual rights.

That is why the Senate demonstrated its support for the taxpayers bill of rights by making it part of its technical corrections bill.

That is why over 220 House Members have signed on to the taxpayers bill of rights as original cosponsors.

That is why this bill has been endorsed by a range of interest groups including the U.S. Chamber of Commerce, the American Civil Liberties Union, the National Taxpayers Union, National Federation of Independent Business, and the National Urban League.

And, that is why there has been a groundswell of support for this measure across the country, in every district of every Member of this House.

The taxpayers bill of rights will help ensure that we maintain a proper balance between governmental intrusion and individual freedom in collecting revenues.

Our bill includes provisions requiring the IRS to better notify taxpayers of their rights, giving taxpayers more protection against abusive or erroneous IRS collection and seizure practices, and permitting redress for taxpayers who have been harmed by unfair IRS actions.

The Joint Committee on Taxation's most recent estimation of the cost of the taxpayers bill of rights put it at $183 million. Some Members say this is too much. But, how many millions have the wrongful acts of the IRS cost America's taxpayers?

What about the Nevada motel manager who had her salary attached and a lien placed on her house because the IRS was trying to recover $92,000 in back taxes allegedly owed by her ex-husband. But she had not been married to him when he incurred the liability. Only after she hired a tax consultant did the IRS remove the levy on her salary. It wasn't until a year later that the agency finally withdrew the lien on her home?

What about the 10-year-old girl in California whose $694 in savings from collecting aluminum cans and performing household chores was confiscated by the IRS because her unemployed father couldn't pay $1,000 in back taxes and his name was also on her account?

What about the businessman who owed $40,000 in back taxes after he employed a manager who failed to pay withholding taxes. The IRS put a lien of $400,000 on the man's property—virtually everything he owned—for a debt one-tenth that amount. Even when he managed to pay off half his indebtendness, the IRS failed to discharge any of its liens, and when he paid the balance, it took the IRS 2 months to discharge the liens?

And, what about the IRS raid in Michigan of a day-care center which owed $14,000 in back taxes. The IRS agents placed the children, ranging in age from 18 months to 10 years in two rooms.

The horror stories go on and on.

Ladies and gentlemen, IRS reform is a priority for the American people. Go home. Listen to your caseworkers. Listen to your constituents.

Last year, Congress passed the most sweeping overhaul of our tax structure in years, with fairness as its cornerstone. Guaranteeing equity in the tax collection process is the next logical step.

After all, if taxes are the price we pay for a civilized society, then we should make sure they are collected in a civil manner.

IMPORTANT PROVISIONS

The following are the provisions that do the most to spell out the obligations of both taxpayers and the IRS:

First, the provision allowing taxpayers to have duly authorized representatives. Most taxpayers are unfamiliar with the Code, their tax liabilities and are afraid of the IRS. Representation of taxpayers, therefore, is crucial to maintain voluntary compliance and protect the rights of taxpayers. This provision has always been intended to preserve the right of a taxpayer to representation, a right that until this bill was not questioned.

Second, the authority of the taxpayer ombudsman to issue a taxpayer assistance order. I have been told by many practitioners that they feel this is the single most important provision of the bill. It allows the ombudsman to suspend actions under certain circumstances. This authority will prcvide a cooling-off period that may enable disputes to be resolved in a more favorable environment.

Third, it prevents the evaluation of IRS employees based on production goals and quotas. From my experience, most trouble people have with the IRS stems from their involvement with agents who are under tremendous pressure to make levies, seizures and criminal referrals. The IRS says there have been no quotas for many years. But testimony from IRS agents and internal IRS documents show that quotas are still relied upon heavily. The focus of the IRS should be on the quality of service, not on any artifical quotas. This provision will give IRS agents, most of whom I believe are trying to do a good job, a law to provide them with the authority to resist quotas.

Fourth, the requirement that all tax due notices of deficiency notices contain a description of the basis for the tax, interest, additions to the tax and penalties. If taxpayers were given an explanation as to the tax they owe and why they owe it, much time and money will be saved in resolving disputes and collecting tax liabilities.

Fifth, standards for installment payment agreements. Bottom line: the IRS needs to keep to simple agreements it makes. If the IRS would live up to the agreements that they make with taxpayers, their life would be much easier and certainly taxpayers' lives would be improved significantly. If a taxpayer enters into an agreement to pay taxes in installments, they ought to be sure the agreement will be abided by, just as the IRS expects taxpayers to keep their end of the agreement.

Sixth, extension of notice for collection action from 10 to 30 days. The current 10-day waiting period is unreasonable and misleading. As a rule, the taxpayer is given less than 10 days notice because there is a mail delay. Nor does 10 days allow time to question the amount in dispute. Extension of the waiting period to 30 days would prevent unnecessary seizures of property.

The taxpayers' bill of rights is the most comprehensive statutory change in the Internal Revenue Service Code in the last 30 years about what the taxpayer can and cannot do in paying taxes and what the Internal Revenue Service can and cannot do in the collection of those taxes.

We are today making a major and substantial change in the fundamental relationship between the taxpayer and the tax collector.

From the notice of audit and the actual interview between the taxpayer and the agents in the IRS to the final issue of seizure and collection of certain assets, this legislation grants to the American taxpayer certain basic rights.

The time is now to restore some of those basic safeguards that the taxpayer deserves.

The taxpayers' bill of rights will ensure that every American taxpayer knows their rights and also their obligations.

This law will protect those rights and will protect the taxpayer from the abuses of sometimes overzealous IRS agents.

It will send a very clear message to our country and to all taxpayers, small and large, that taxpayers do in fact have certain basic due process rights, and the Internal Revenue Service is going to honor those rights.

The taxpayers' bill of rights is basically for that small business, that small farmer, that someday might get behind a little bit with their taxes or might make a mistake or might want to correct through the IRS a small mistake.

This bill makes sure that the little guy is not penalized unnecessarily or excessively.

□ 1845

Mr. ROSTENKOWSKI. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SCHULZE. Mr. Speaker, I have no further requests for time, I yield back the balance of my time, and I move the previous question on the motion.

The previous question was ordered.

The SPEAKER. The question is on the motion to instruct offered by the gentleman from Pennsylvania [Mr. SCHULZE].

The motion was agreed to.

The SPEAKER. The Chair appoints the following conferees for consideration of the House bill, and the Senate amendment, and modifications committed to conference: Messrs. ROSTENKOWSKI, GIBBONS, PICKLE, RANGEL, STARK, ARCHER, VANDER JAGT, and CRANE.

GENERAL LEAVE

Mr. SCHULZE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the motion to instruct conferees on H.R. 4333 just considered and agreed to.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. Debate has now been concluded on certain motions to suspend the rules.

Pursuant to clause 5 of rule I, the Chair will now put the question on the motions to suspend the rules on which further proceedings were postponed in the order in which that motion was entertained. Votes will be taken in the following order:

S. 1081, by the yeas and nays; and

House Resolution 574, by the yeas and nays.

The Chair will reduce to 5 minutes the time for any electronic votes after the first such vote in this series.

Additional motions to suspend the rules previously noticed will be debated after these suspensions with recorded votes, and their votes will be postponed until tomorrow.

Two additional suspensions may be entertained today: S. 2346 and S. 1704.

NATIONAL NUTRITION MONITORING AND RELATED RESEARCH ACT OF 1988

The SPEAKER. The pending business is the question of suspending the rules and passing the Senate bill, S. 1081, as amended.

The Clerk read the title of the Senate bill.

The SPEAKER. The question is on the motion offered by the gentleman from New Jersey [Mr. ROE] that the House suspend the rules and pass the Senate bill, S. 1081, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 311, nays 84, not voting 36, as follows:

[Roll No. 444]

YEAS—311

Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Baker
Barnard
Bartlett
Bates
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Boehlert
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brown (CA)
Bruce
Bryant
Buechner
Bunning
Bustamante
Byron
Campbell
Cardin
Carper
Carr
Chandler
Chapman
Chappell
Clarke
Clay
Clement
Clinger
Coble
Coleman (TX)
Collins
Combest
Conte
Conyers
Cooper
Costello
Coyne
Crockett
Darden
Davis (MI)
de la Garza
Dellums
Derrick
DeWine
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Downey
Durbin
Dwyer
Dymally
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Espy
Evans
Fascell
Fawell
Fazio
Feighan
Fish
Flake
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frost
Gallo
Garcia
Gaydos
Gejdenson
Gephardt
Gibbons
Gilman
Glickman
Gonzalez
Goodling
Gordon
Grandy
Grant
Gray (IL)
Gray (PA)
Green
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Harris
Hatcher
Hayes (IL)
Hayes (LA)
Hefner
Henry
Herger
Hertel
Hochbrueckner
Holloway
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Inhofe
Jacobs
Jeffords
Jenkins
Johnson (CT)
Johnson (SD)
Jontz
Kanjorski
Kaptur
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Konnyu
Kostmayer
LaFalce
Lancaster
Lantos
Leach (IA)
Lehman (CA)
Lehman (FL)
Leland
Levin (MI)
Levine (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Lloyd
Lowery (CA)
Lowry (WA)
Luken, Thomas
Manton
Markey
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCrery
McCurdy
McGrath
McHugh
McMillen (MD)
Meyers
Mfume
Miller (CA)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Montgomery
Morella
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Nagle
Natcher
Neal
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (UT)
Panetta
Patterson
Payne
Pease
Pelosi
Penny
Pepper
Perkins
Pickett
Porter
Price
Pursell
Rahall
Rangel
Ravenel
Ray
Richardson
Ridge
Rinaldo
Ritter
Roberts
Rodino
Roe
Rogers
Rose
Rostenkowski
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Savage
Sawyer
Saxton
Scheuer
Schroeder
Schuette
Schulze
Schumer
Sharp
Shaw
Shays
Sikorski
Sisisky
Skaggs
Skeen
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Robert (OR)
Snowe
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stangeland
Stark
Stenholm
Stokes
Studds
Swift
Synar
Tallon
Tauzin
Taylor
Thomas (GA)
Towns
Traficant
Udall
Upton
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walgren
Watkins
Waxman
Weber
Weiss
Weldon
Wheat
Whittaker
Williams
Wilson
Wise
Wolf
Wolpe
Wortley
Wyden
Yates
Yatron

NAYS—84

Archer
Armey
Badham
Ballenger
Barton
Bateman
Bliley
Brown (CO)
Burton
Callahan
Cheney
Coats
Craig
Crane
Dannemeyer
Daub
Davis (IL)
DeLay
Dickinson
Dornan (CA)
Dreier
Fields
Frenzel
Gallegly
Gekas
Gingrich
Gradison
Hammerschmidt
Hansen
Hastert
Hefley
Hopkins
Hunter
Hyde
Ireland
Kasich
Kemp
Kyl
Lagomarsino
Latta
Leath (TX)
Lent
Lewis (CA)
Livingston
Lujan
Lukens, Donald
Lungren
Madigan
Marlenee
Martin (IL)
McCandless
McCollum
McEwen
McMillan (NC)
Michel
Miller (OH)
Moorhead
Myers
Nielson
Oxley
Parris
Pashayan
Petri
Quillen
Regula
Rhodes
Robinson
Roth
Schaefer
Sensenbrenner
Shumway
Shuster
Skelton
Slaughter (VA)
Smith, Denny (OR)
Smith, Robert (NH)
Stump
Sundquist
Sweeney
Thomas (CA)
Walker
Wylie
Young (AK)
Young (FL)

NOT VOTING—36

Ackerman
Boulter
Brooks
Broomfield
Coelho
Coleman (MO)
Coughlin
Courter
DeFazio
Dowdy
Dyson
Gregg
Hawkins
Hiler
Jones (NC)
Jones (TN)
Lott
Mack
MacKay
McDade
Mica
Moody
Owens (NY)
Packard
Pickle
Schneider
Smith (TX)
Stallings
Stratton
Swindall
Tauke
Torres
Torricelli
Traxler
Valentine
Whitten

□ 1907

Mrs. BENTLEY, Mr. BUECHNER, and Mr. LIGHTFOOT changed their vote from "nay" to "yea."

So (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

The result of the vote was announced as above recorded.

The title of the Senate bill was amended so as to read: "An act to establish a coordinated National Nutrition Monitoring and Related Research Program, and a comprehensive plan for the assessment of the nutritional and dietary status of the U.S. population and the nutritional quality of food consumed in the United States, with the provision for the conduct of scientific research and development in support of such program and plan."

A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. Gray of Illinois). Pursuant to the provisions of clause 5, rule I, the Chair announces tht he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device may be taken on the additional motion to suspend the rules on which the Chair has postponed further proceedings.

COMMEMORATING SUCCESSFUL RETURN TO FLIGHT BY SPACE SHUTTLE "DISCOVERY"

The SPEAKER pro tempore. The pending business is the question of suspending the rules and agreeing to the resolution, House Resolution 574.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey [Mr. Roe] that the House suspend the rules and agree to the resolution (H. Res. 574) on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 395, nays 0, not voting 36, as follows:

[Roll No. 445]

YEAS—395

Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Badham
Baker
Ballenger
Barnard
Bartlett
Barton
Bateman
Bates
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brown (CA)
Brown (CO)
Bruce
Bryant
Buechner
Bunning
Burton
Bustamante
Byron
Callahan
Campbell
Cardin
Carper
Carr
Chandler
Chapman
Chappell
Cheney
Clarke
Clay
Clement
Clinger
Coats
Coble
Coleman (TX)
Collins
Combest
Conte
Conyers
Cooper
Costello
Coyne
Craig
Crane
Crockett
Dannemeyer
Darden
Daub
Davis (IL)
Davis (MI)
de la Garza
DeFazio
DeLay
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Downey
Dreier
Durbin
Dwyer
Dymally
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Espy
Evans
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frenzel
Frost
Gallegly
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Gradison
Grandy
Grant
Gray (IL)
Gray (PA)
Green
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Hansen
Harris
Hastert
Hatcher
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hertel
Hochbrueckner
Holloway
Hopkins
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
Jeffords
Jenkins
Johnson (CT)
Johnson (SD)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kemp
Kennedy
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Konnyu
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Lloyd
Lowery (CA)
Lowry (WA)
Lujan
Luken, Thomas
Lukens, Donald
Lungren
Madigan
Markey
Marlenee
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
Meyers
Mfume
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Montgomery
Moorhead
Morella
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Nagle
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (UT)
Oxley
Panetta
Parris
Pashayan
Patterson
Payne
Pease
Pelosi
Penny
Pepper
Perkins
Petri
Pickett
Porter
Price
Pursell
Quillen
Rahall
Rangel
Ravenel
Ray
Regula
Rhodes
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Savage
Sawyer
Saxton
Schaefer
Scheuer
Schroeder
Schuette
Schulze
Schumer
Sensenbrenner
Sharp
Shaw
Shays
Shumway
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stangeland
Stark
Stenholm
Stokes
Studds
Stump
Sundquist
Sweeney
Swift
Synar
Tallon
Tauzin
Taylor
Thomas (CA)
Thomas (GA)
Towns
Traficant
Udall
Upton
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walgren
Walker
Watkins
Waxman
Weber
Weiss
Weldon
Wheat
Whittaker
Williams
Wilson
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)

NOT VOTING—36

Ackerman
Boulter
Brooks
Broomfield
Coelho
Coleman (MO)
Coughlin
Courter
Dowdy
Dyson
Gregg
Hawkins
Hiler
Jones (NC)
Jones (TN)
Lott
Mack
MacKay
Manton
McDade
Mica
Moody
Owens (NY)
Packard
Pickle
Schneider
Smith (TX)
Stallings
Stratton
Swindall
Tauke
Torres
Torricelli
Traxler
Valentine
Whitten

☐ 1916

So (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING THE CLERK TO MAKE TECHNICAL CORRECTION IN THE PREAMBLE TO HOUSE RESOLUTION 574, COMMEMORATING SUCCESSFUL RETURN TO FLIGHT BY SPACE SHUTTLE "DISCOVERY"

Mr. ROE. Mr. Speaker, I ask unanimous consent that the Clerk be authorized to make a technical correction in the preamble to the resolution just agreed to.

The SPEAKER pro tempore (Mr. Gray of Illinois). Is there objection to the request of the gentleman from New Jersey?

There was no objection.

POSTEMPLOYMENT RESTRICTIONS ACT OF 1988

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 5043, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts [Mr. Frank] that the House suspend the rules and pass the bill, H.R. 5043, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 374, nays 19, answered "present" 2, not voting 36, as follows:

[Roll No. 446]

YEAS—374

Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Baker
Ballenger
Barnard
Bartlett
Barton
Bateman
Bates
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boggs
Boland
Bonior
Bonker
Borski
Boucher
Boxer
Brennan
Brown (CA)
Brown (CO)
Bruce
Bryant
Buechner
Bunning
Burton
Bustamante
Byron
Callahan
Campbell
Cardin
Carper
Carr
Chandler
Chapman
Chappell
Cheney
Clarke
Clement
Clinger
Coats
Coble
Coleman (TX)
Collins
Combest

Conte
Conyers
Cooper
Costello
Coyne
Craig
Crockett
Dannemeyer
Darden
Davis (IL)
Davis (MI)
de la Garza
DeFazio
Dellums
Derrick
DeWine
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Downey
Dreier
Durbin
Dwyer
Dymally
Early
Eckart
Edwards (OK)
Emerson
English
Erdreich
Espy
Evans
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frost
Gallegly
Gallo
Garcia
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Goodling
Gordon
Gradison
Grandy
Grant
Gray (IL)
Gray (PA)
Green
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hansen
Harris
Hastert
Hatcher
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hertel
Hochbrueckner
Holloway
Hopkins
Horton
Houghton
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
Jeffords
Jenkins
Johnson (CT)
Johnson (SD)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kemp
Kennedy
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Konnyu
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
Latta
Leach (IA)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Lloyd
Lowery (CA)
Lowry (WA)
Lujan
Luken, Thomas
Lukens, Donald
Madigan
Markey
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
Meyers
Mfume
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Montgomery
Moorhead
Morella
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Myers
Nagle
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (UT)
Oxley
Panetta
Parris
Pashayan
Patterson
Payne
Pease
Pelosi
Penny
Pepper
Petri
Pickett
Porter
Price
Pursell
Quillen
Rahall
Rangel
Ravenel
Ray
Regula
Rhodes
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Savage
Sawyer
Saxton
Schaefer
Scheuer
Schroeder
Schuette
Schulze
Schumer
Sensenbrenner
Sharp
Shaw
Shays
Shumway
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stangeland
Stark
Stenholm
Stokes
Studds
Sundquist
Sweeney
Swift
Synar
Tallon
Tauzin
Thomas (CA)
Thomas (GA)
Towns
Traficant
Udall
Upton
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walgren
Walker
Watkins
Waxman
Weber
Weiss
Weldon
Wheat
Whittaker
Wilson
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)

NAYS—19

Badham
Bosco
Clay
Crane
DeLay
Dickinson
Edwards (CA)
Frenzel
Gaydos
Gonzalez
Hammerschmidt
Leath (TX)
Livingston
Marlenee
Murtha
Perkins
Stump
Taylor
Williams

ANSWERED "PRESENT"—2

Daub
Lungren

NOT VOTING—36

Ackerman
Boulter
Brooks
Broomfield
Coelho
Coleman (MO)
Coughlin
Courter
Dowdy
Dyson
Gregg
Hawkins
Hiler
Jones (NC)
Jones (TN)
Lott
Mack
MacKay
Manton
McDade
Mica
Moody
Owens (NY)
Packard
Pickle
Schneider
Smith (TX)
Stallings
Stratton
Swindall
Tauke
Torres
Torricelli
Traxler
Valentine
Whitten

□ 1924

Mr. GONZALEZ changed his vote from "yea" to "nay."

So (two-thirds having voted in favor thereof), the rules were suspended, and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. LUNGREN. Mr. Speaker, on the vote just taken, I voted "present" in view of the fact that as a retiring Member I would be affected specifically by one element of that bill.

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 4352, OMNIBUS McKINNEY HOMELESS ASSISTANCE ACT OF 1988

Mr. ST GERMAIN. Mr. Speaker, I ask unanimous consent that the managers have until midnight tonight to file the conference report on the bill (H.R. 4352) to amend the Stewart B. McKinney Homeless Assistance Act to extend programs providing urgently needed assistance for the homeless, and for other purposes.

The gentleman from Ohio, Mr. WYLIE, the ranking minority member, concurs in this request.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

LEGISLATIVE PROGRAM

(Mr. MICHEL asked and was given permission to address the House for 1 minute.)

Mr. MICHEL. Mr. Speaker, I take this time in order to inquire of the majority leader if he could enlighten us on the program for the balance of this day, tomorrow, the balance of the week and when the heck we get out of here, things like that.

Mr. FOLEY. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I am happy to yield to the distinguished majority leader, the gentleman from Washington [Mr. FOLEY].

Mr. FOLEY. I thank the gentleman for yielding.

Mr. Speaker, we will be working on seven additional suspensions, debate only, tonight and tomorrow we will have four additional suspensions and vote on those and any other votes ordered this evening. In addition, we have conference reports on the Fair Credit and Charge Card Disclosure Act, the Taft Institute authorization extension, and the Senate amendments to Library Services and Construction Act.

We would hope to conclude early tomorrow in part in order to allow those Members who wish to attend the debate between Vice President GEORGE BUSH and the Governor of Massachusetts, Michael Dukakis.

And on Friday we would assume we would have a pro forma session unless there is a likelihood of the drug legislation being received in the House from the Senate. I think there is a hope that the Senate can conclude the drug bill by the end of this week, but it is doubtful that it would be ready to vote on, the differences being worked out and so forth, before Tuesday or Wednesday of next week.

So our intention will be to bring the House back in at noon on Tuesday. And on Tuesday if the drug bill is ready we will take it up. If not we will be taking up other legislation and we assume the drug bill will be ready for Wednesday. And then, of course, there would be nothing to prevent sine die adjournment or at least a recess pending final Senate and House action.

Mr. MICHEL. One of my contacts in the other body has given me the impression there could be a possibility of their completing their action on the drug bill by tomorrow evening. Would that make any change in the gentleman's assessment of where we are?

Mr. FOLEY. Well, with the greatest respect, I think that that probably is not likely. But even if it were to occur, it is probable that it would take two days or so, in my judgment, to resolve the differences between the two bodies on this important legislation. And to keep the House in waiting for a resolution that might not come by the end of this week would seem to be unwise. And I think Members would be better served by having an opportunity to return home and to come back on

Tuesday and complete the business next week.

Mr. MICHEL. Could I inquire of the distinguished majority leader if that scenario then is played out, what assurance can we give the Members here that then that will be our final week of being around here?

Mr. FOLEY. I can give the Members absolute assurance that when the drug bill is concluded we will stand ready to adjourn sine die.

□ 1930

Mr. GINGRICH. Mr. Speaker, will the gentleman from Washington [Mr. FOLEY], the majority leader, yield to me?

Mr. MICHEL. I yield to the gentleman from Georgia.

Mr. GINGRICH. I would like to ask. I thought last week we had a colloquy that was of some use, and Members got to go home longer than they might have, and I thought particularly for the westerners it was probably quite a useful period of time.

In the spirit of bipartisanship we discussed last week, might there not be some way to have an agreement between the leadership of both parties that, rather than come back here and handle whatever cats and dogs that can be rounded up on a daily basis to pretend we are doing vital business, that we would be better off to have an agreement that with either 48 or 72 hours notice of both leaderships that we will come back in because we will have completed the tax bill, and we will have completed the drug bill, come back in for 1 day, give Members adequate notice to make the arrangements and get back here, not hang around for 2 days because candidly, much as I love the other body, it is conceivable that the other body might notice we are coming back next week and still not quite have that final rush to judgment, which is the habit over there, and so I just think for a lot of Members it will be healthier to let the joint membership of both parties have an agreement that, if they decide to call us back in, there is no time-urgent bill here as long as before the election the democratically controlled Congress passes the drug bill, and so I thought it would be useful for that kind of flexibility to then come back once and get it done.

Mr. FOLEY. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Washington.

Mr. FOLEY. Mr. Speaker, I think we have a strong assumption now that the Senate will conclude the drug bill this week. If something should interrupt that, that likelihood, if for some reason; I do not expect that the other body would not finish this week, then that would be a material fact to alter our decision on the schedule, and we would promptly announce to the membership any alterations in the schedule.

But, Mr. Speaker, at the present time we feel fairly confident that we could have the bill ready by Tuesday based on the assumption that by the end of this week the Senate would have sent the drug bill here.

Mr. MICHEL. Maybe by that statement the gentleman from Washington [Mr. FOLEY] has answered the question I failed to put earlier, and that would be, if we are coming back on Tuesday, should the Members expect votes on Tuesday?

Mr. FOLEY. The gentleman from Illinois [Mr. MICHAEL] is correct. At the present time they should.

Mr. LUNGREN. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from California.

Mr. LUNGREN. Mr. Speaker, if I might make an inquiry of the minority leader, the gentleman from Illinois [Mr. MICHEL]. Tomorrow he is making a good-faith effort to allow Members to get out of here in time to get to Los Angeles for the debate. A number of us were unaware that flexibility would be available, and, upon making inquiries about getting plane flights tomorrow afternoon, found there are none available, and thus we are going to be leaving, some of us, in the morning in order to get out there.

Mr. Speaker, I would hope that that would be kept in mind so there would not be an urgent feeling on the part of Members on both sides to call votes to justify us being here.

The only point I am trying to make is that I think it is appropriate that accommodations are being made to Members who evidently knew we were going to get out early. For some of the rest of us it was impossible to make those same accommodations. We must leave earlier in order to get out there, and I hope that would be kept in mind tomorrow in terms of conference reports or any other matters that may come up.

Mr. FOLEY. Mr. Speaker, I certainly think the concern of the gentleman from California [Mr. LUNGREN] is useful. I cannot remember when this side has particularly followed the policy of multiplying votes, but certainly, if the gentleman is addressing the request to the body as a whole, it is worth considering.

I might say that certainly the reason the planes are crowded is not because of the Members of this side of the aisle occupying all the reservations, if the gentleman meant to imply that. There are some Members going, but hardly enough to occupy even one airplane of the many that are flying westward.

Mr. MICHEL. Mr. Speaker, may I ask one other further question of the distinguished majority leader?

Several Members have inquired as to why we would not withhold any votes on Tuesday until, say, Wednesday to permit them, for whatever reason, to do all that much more this weekend, and then to formally program again getting out the following weekend. I suspect that maybe the majority leader would feel pretty much as the minority leader, that, as the gentleman knows, further delay only exacerbates our problem, that frankly, if there is a bill from the other body having to do with drugs and an opportunity for—if we are going to have a conference, to appoint conferees, and to get on with it. We probably best do that as quickly as we can.

Is that the assessment of the gentleman from Washington [Mr. FOLEY] of where we are?

Mr. FOLEY. Mr. Speaker, I think that we all are interested in bringing this session to a close and that, if we were to roll votes from Tuesday to Wednesday, that might just present a very, very heavy day on Wednesday where we would be struggling to finish the business on Wednesday. I think it is better, if there is any business to do, and I believe there will be, to attempt to do it in the 2-day period with a strong likelihood that we could then adjourn sine die on Wednesday.

We expect the drug bill to be available for Wednesday and for that to be, most likely, the last day of the session.

Mr. OBEY. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Wisconsin.

Mr. OBEY. Mr. Speaker, I thank the gentleman from Illinois [Mr. MICHEL] for yielding to me.

Mr. Speaker, if I could just ask the majority leader this question:

I certainly understand that it is the hope and intention that we would try to adjourn Wednesday, but, from a couple of comments I have heard around the floor, I think that some Members may have gotten the impression that they could count on not being here with absolute certainly on Thursday or Friday. I do not think the gentleman is absolutely swearing to that; is he?

Mr. FOLEY. Mr. Speaker, I thank the gentleman from Wisconsin [Mr OBEY] for that question because all Members should understand that we are basing the assumption of a Tuesday and Wednesday conclusion on actions in the other body which may change.

I think there is a higher degree of probability to adjournment on Tuesday or Wednesday, more likely than going on in the week, but it is very possible that we could be here on Thursday or even Friday if delays in the other body would occasion that.

Mr. Speaker, Members would be unwise, if they have not already done, so, to make commitments that would be difficult for them to change on Thursday or Friday of next week. I do not want to alarm the membership into thinking we are going to go on into the next weekend or next week's weekend, but that is always a possibility at the end of the session.

Mr. Speaker, I thank the gentleman from Wisconsin [Mr. Obey] for that reminder.

Mr. GINGRICH. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Georgia.

Mr. GINGRICH. Mr. Speaker, first of all, if I might, I want to say that it is always helpful to the House, I think, to hear from the distinguished majority leader, the gentleman from Washington [Mr. Foley] in a positive and optimistic way about the other body.

I just have two suggestions. First, I am told by some of my colleagues on this side that, if the Taft Institute conference report were to be laid over until Tuesday and not brought up tomorrow, that we would almost certainly not have to have votes on our side tomorrow, and, therefore, those of our colleagues who had to leave early would be able to do so, and we would want to accommodate those who want to go to the west coast for the debate.

Second, I would simply urge the leadership on both sides, particularly on the Democratic side, which has the authority to schedule, to canvass the Members. My hunch is that most of the Democrats and most of the Republicans would rather come back for a very long Wednesday even though there will be a long and heavy day than to have to come back Tuesday for three or four votes, lay over until Wednesday anyway and still end up hanging around for the other body.

So, I would urge the leadership to canvass the Members before deciding to have votes on 2 days, and I think they would find the Members would prefer a long single day on Wednesday.

Mr. FOLEY. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Washington.

Mr. FOLEY. Mr. Speaker, I say to the gentleman from Georgia [Mr. Gingrich] that we will try to go half way to his suggestion and bring up the Taft Institute bill first tomorrow or second so it will be considered before noon. If any Members want to leave at noon or otherwise, they will be able to do so without missing that vote, if the vote is called on.

Mr. WATKINS. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Oklahoma.

Mr. WATKINS. Mr. Speaker, I thank the gentleman from Illinois [Mr. Michel], the minority leader, for yielding.

Mr. Speaker, I would just like to indicate the gentleman from Georgia [Mr. Gingrich] mixing the long working day on Wednesday, taking that under consideration, or, since he has indicated we will probably be in on Tuesday for votes, or Wednesday, give us maybe an earliest date, earliest time, at least on the vote on the drug bill, that it would not be any earlier than Wednesday, and, if some of us had to miss on Tuesday, we miss on Tuesday, but we know that the drug bill would not be up any earlier than, say, Wednesday for a vote.

Mr. FOLEY. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Washington.

Mr. FOLEY. Mr. Speaker, I think it is most unlikely that the drug bill would be up for a vote before Wednesday. I am a little reluctant to tell the gentleman from Oklahoma [Mr. Watkins] that, if the drug bill were ready for action on Tuesday, that we would hold the day over and do nothing until Wednesday. But I think there is a high degree of probability that the bill will be Wednesday at the earliest.

Mr. WATKINS. Mr. Speaker, if the gentleman will continue to yield, I think that uncertainty is what some people are wondering about, how to try to go ahead and fit this because many of them are wanting out earlier, and we could not work that out, but I think, if we can work with some kind of certainty, that the drug bill would not be up any earlier then so people could work that schedule and cats and dogs. If we had to miss those, we miss those.

Mr. Speaker, I thank the gentleman from Illinois [Mr. Michel] for yielding. I just wanted to express my feelings and the feelings of a lot of people out here being discussed as to what they could count on.

Mr. FOLEY. Mr. Speaker, I think we could probably tell the gentleman more tomorrow, but my strong impression is that it is most unlikely that the drug bill would come up on Tuesday.

Mr. MICHEL. If I might then quickly recap, Mr. Speaker. The balance of the evening we are going to take up some additional suspensions, and three or four tomorrow, and, if there are any votes required on any of those, they will be scheduled then for tomorrow.

Is that not correct?

Mr. FOLEY. Mr. Speaker, we would intend to take up the suspensions and three conference reports. We would intend to vote on those suspensions tomorrow. And we would then adjourn at an early hour. We think it is 1 or 2 o'clock.

Mr. MICHEL. Mr. Speaker, I thank the gentleman from Washington.

Mr. FOLEY. Mr. Speaker, I think we may also want to debate some suspensions tomorrow in the afternoon with votes postponed until Tuesday. But there would be no votes; we do not expect votes, after 1 o'clock tomorrow.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 5031

Mr. BATES. Mr. Speaker, I ask unanimous consent that the name of the gentleman from Virginia [Mr. Parris] be removed as a cosponsor from the bill, H.R. 5031, the Rural Electrification Administration Lending Assistance Improvement Act.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

REPORT ON RESOLUTION WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 515, FAIR CREDIT AND CHARGE CARD DISCLOSURE ACT OF 1987, AND AGAINST CONSIDERATION OF SUCH CONFERENCE REPORT

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 100-1080) on the resolution (H. Res. 584) waiving all points of order against the conference report on the bill (H.R. 515) to provide for more detailed and uniform disclosure by credit and charge card issuers with respect to information relating to interest rates and other fees which may be incurred by consumers through the use of any credit or charge card, and against the consideration of such conference report, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 4585, TAFT INSTITUTE AUTHORIZATION AND AGAINST CONSIDERATION OF SUCH CONFERENCE REPORT

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 100-1081) on the resolution (H. Res. 585) waiving all points of order against the conference report on the bill (H.R. 4585) to extend the authorization of appropriations for the Taft Institute through fiscal year 1991, and against the consideration of such conference report, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR A MOTION TO TAKE H.R. 4416 TITLES V AND VI AUTHORIZATION OF LIBRARY SERVICES AND CONSTRUCTION ACT, FROM THE SPEAKER'S TABLE, WITH A SENATE AMENDMENT, AND CONCUR IN THE SENATE AMENDMENT

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 100-1082) on the resolution (H. Res. 586) providing for a motion to take the bill (H.R. 4416) to extend the authorization of appropriations for titles V and VI of the Library Services and Construction Act through fiscal year 1989, from the Speaker's table together with the Senate amendment and to concur in the Senate amendment, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF S. 2752 DECLARING CERTAIN LANDS TO BE HELD IN TRUST FOR QUINAULT INDIAN NATION

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 100-1083) on the resolution (H. Res. 587) providing for the consideration of the bill (S. 2752) to declare that certain lands be held in trust for the Quinault Indian Nation, and for other purposes, which was referred to the House Calendar and ordered to be printed.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore pursuant to the provisions of clause 5 of rule I, the Chair announces that he will postpone further proceedings today on the remaining motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken tomorrow.

□ 1945

CONFERENCE REPORT ON H.R. 3621, SOUTHERN CALIFORNIA INDIAN LAND TRANSFER ACT

Mr. UDALL submitted the following conference report and statement on the bill (H.R. 3621) to declare that certain lands located in California and held by the Secretary of the Interior are lands held in trust for the benefit of certain bands of Indians and to declare such lands to be part of the reservation with which they are contiguous:

CONFERENCE REPORT (H. REPT. 100-1084)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3621) to declare that certain lands located in California and held by the Secretary of the Interior are lands held in trust for the benefit of certain bands of Indians and to declare such lands to be part of the reservation with which they are contiguous, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendments of the Senate numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 and agree to the same.

That the House recede from its disagreement to the amendment of the Senate numbered 11 and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by Senate amendment numbered 11, insert the following:

TITLE II—INDIAN DEVELOPMENT FINANCE CORPORATION

Subtitle A—General Provisions

SHORT TITLE

SEC. 201. This title may be cited as the "Indian Development Finance Corporation Act".

CONGRESSIONAL FINDINGS AND PURPOSE

SEC. 202. (a) The Congress finds that—

(1) a special relationship has existed between the United States and the Indian tribes which is recognized in clause 3, section 8, article I of the United States Constitution,

(2) Congress, through statutes, treaties and the exercise of administrative authorities, has implemented the Federal Government's responsibility for the protection and preservation of Indian tribes and their resources,

(3) despite the availability of abundant, natural resources on Indian lands and a rich, cultural legacy which places great value on self-determination, self-reliance and independence, American Indians and Alaskan Natives experience poverty and unemployment along with the associated incidences of social pathology, to an extent unequaled by any other group in America,

(4) the reasons for such unparalleled poverty and unemployment have been widely studied and documented by the Congress, the General Accounting Office, the United States Department of the Interior, private academic institutions and the Indian tribes themselves and that such studies have consistently identified as fundamental obstacles to balanced economic growth and progress—

(A) the very limited availability of long term development capital and sources of financial credit necessary to support the development of a private sector economy in Indian country comprised of Indian owned business enterprises,

(B) the lack of effective control by the Indians over their own lands and resources, and

(C) the scarcity of experienced Indian managers and technicians,

(5) previous efforts of the Federal Government directed at stimulating Indian economic development through the provision of grants, direct loans, loan guarantees, and interest subsidies have fallen far short of their objectives due to—

(A) inadequate funds,

(B) lack of coordination,

(C) arbitrary project selection criteria,

(D) politicalization of the delivery system, and

(E) other inefficiencies characteristic of a system of publicly administered financial intermediation, and

(6) the experience acquired by multilateral lending institutions among the so-called lesser developed countries has demonstrated the value and necessity of development financing institutions in achieving economic growth in underdeveloped economies and societies which are strikingly similar to Indian and Alaskan Native communities in relation to such matters as control over natural resource management and the absence of experienced, indigenous managers and technicians, as well as the availability of long term development capital and private sources of financial credit.

(b) It is hereby declared to be the policy of Congress that, in fulfillment of its special and longstanding responsibility to the Indian tribes, the Federal Government should provide assistance to the Indian people in their efforts to break free from the devastating effects of extreme poverty and unemployment and achieve lasting economic self-sufficiency through the development of the private sector of tribal economies by establishing a federally chartered, mixed ownership development financing institution which shall provide a broad range of financial intermediary services including working capital, direct loans, loan guarantees and project development assistance utilizing the proven efficiencies of the private market mode of operation.

DEFINITIONS

SEC. 203. For purposes of this title—

(1) The term "Indian" means any person who is a member of any Indian tribe.

(2) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, which is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians including any Alaska Native village or regional or village corporation as defined in, or established under, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(3) The term "reservation" means any Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma.

(4) The term "tribal organization" means the governing body of any Indian tribe or any entity established, controlled, or owned by such governing body.

(5) The term "Indian business enterprise" means any commercial, industrial or business entity—

(A) at least 51 percent of which is owned by one or more Indian tribes or Indians who are members of Indian tribes which are shareholders of the Corporation,

(B) which produces or furnishes goods, services, or facilities, which is operated, or organized on a for-profit basis, and

(C) whose—

(i) principal place of business is located within, or adjacent to, the boundaries of an Indian reservation or land held by any Alaska Native village or regional or village corporation (as defined in, or established under, the provisions of the Alaska Native Claims Settlement Act), or

(ii) principal business activities in addition to the production of a stream of income are determined by the Corporation to be directly beneficial to an Indian tribe, to contribute to the economy of such Indian tribe,

and to have a significant impact on the entrepreneurial and employment opportunities and levels within an Indian reservation or within Indian lands.

Such term includes any subsidiary entity which is owned and controlled by any commercial, industrial or business activity described in the preceding sentence.

(6) The term "Corporation" means the Indian Development Finance Corporation established under section 211(a).

(7) The term "Secretary" means the Secretary of the Interior.

CONSTRUCTION OF THIS TITLE

SEC. 204. Except as may be specifically provided in this title, nothing in this title may be construed to—

(1) affect the sovereign immunity of any Indian tribe,

(2) authorize the Corporation to acquire any trust assets of an Indian tribe, or

(3) diminish the trust obligation of the United States to any Indian tribe or any member of an Indian tribe.

Subtitle B—Establishment of Corporation

CREATION

SEC. 211. (a) There is hereby established the Indian Development Finance Corporation.

(b) The Corporation shall have succession until dissolved by Act of Congress. Only the Congress shall have the authority to revise or amend the charter of the Corporation.

FUNCTIONS

SEC. 212. (a) It shall be the duty of the Corporation to—

(1) assist in strengthening Indian tribal economies through the development of Indian business enterprises whose activities are directed at contributing to such economies by having a significant positive impact on the employment opportunities within Indian reservations or Indian lands of tribal members;

(2) provide development capital through the financial services that the Corporation is authorized to provide under subsections (b), (c), and (d);

(3) encourage the development of new and existing Indian business enterprises eligible for its assistance by providing and coordinating the availability of—

(A) long term capital and working capital,

(B) loans, loan guarantees and other forms of specialized credit, and

(C) technical and managerial assistance and training;

(4) maintain broad based control of the Corporation in its voting stockholders; and

(5) encourage active participation in the Corporation by Indian tribes by ownership of its equity securities.

(b)(1) The Corporation may—

(A) make loans or commitments for loans to any Indian business enterprise, or

(B) purchase, insure or discount any obligations of an Indian business enterprise, if such enterprise meets the requirements of paragraph (2).

(2) An Indian business enterprise meets the requirements of this paragraph if the Corporation makes an independent determination that—

(A) such enterprise has or will have—

(i) a sound organizational and financial structure,

(ii) income in excess of its operating costs,

(iii) assets in excess of its obligations, and

(iv) a reasonable expectation of a continuing demand for—

(I) its production, goods, commodities, or services, or

(II) its facilities, and

(B) the loan or obligation of such enterprise will be fully repayable in accordance with the terms and conditions of such loan or obligation.

(3)(A) In setting the terms, rates, and charges for loans made under this subsection the objective of the Corporation shall be to provide the type of credit needed by Indian business enterprises at the lowest reasonable cost and on a sound business basis, taking into account—

(i) the cost of money to the Corporation,

(ii) the necessary reserve and expenses of the Corporation, and

(iii) the technical and other assistance attributable to loans made available by the Corporation under this subsection.

(B) The terms of any loan made under this subsection may provide for interest rates which vary from time to time during the repayment period of the loan in accordance with the rates being charged by the Corporation for new loans at such times.

(4) The proceeds of a loan made under this subsection may be advanced or reloaned by the borrower to its members or stockholders for the development of individually owned businesses on or adjacent reservations, or land held by any Alaska Native village or regional or village corporation (as defined in, or established under, the provisions of the Alaska Native Claims Settlement Act), under circumstances permitted under the bylaws or rules of the Corporation.

(c)(1) The Corporation may guarantee up to, but not exceeding, 90 percent of the principal and interest of any loan made by any State or federally chartered lending institution to any Indian business enterprise if—

(A) such loan is to an Indian business enterprise that meets the requirements of subsection (b)(2), and

(B) such loan was made on terms and conditions (including the rate of interest) which would be permissible terms and conditions if such loan were a direct loan made by the Corporation.

(2) The Corporation may impose a charge for any loan guarantee made under this subsection.

(3) No loan may be guaranteed by the Corporation under this subsection if the income from such to the lender is excludable from such lender's gross income for purposes of chapter 1 of the Internal Revenue Code of 1986.

(4) Any loan guarantee made under this subsection shall be assignable to the extent provided in the contract of guarantee entered into by the Corporation.

(5) Any guarantee made under this subsection shall be uncontestable, except in the case of fraud or misrepresentation of which the holder had actual knowledge at the time he acquired the loan.

(6) The Corporation, in lieu of requiring the original lender to service a loan guaranteed under this subsection until final maturity or liquidation, may purchase such guaranteed loan for an amount equal to the balance of the principal and the amount of interest accrued thereon without penalty if the Corporation determines that the purchase would not be detrimental to the interests of the Corporation and—

(A) the liquidation of such guaranteed loan would result in the insolvency of the borrower or deprive the borrower of assets essential to its continued operation,

(B) such guaranteed loan will be repayable with revision of the loan rates, terms, payment periods, or other conditions consistent with loans made by the Corporation under subsection (b), and

(C) the lender or other holder of such guaranteed loan is unwilling to make such revision.

(d)(1) For purposes of providing long-term capital and working capital to Indian business enterprises, the Corporation is authorized to purchase, or make commitments to purchase, no more than 30 percent of the equity or ownership interest in any Indian business enterprise if the Corporation determines, after a full and complete appraisal of all project and business plans associated with the investment taking into account the criteria set forth in subsection (b)(2) that such an investment does not expose the Corporation to any unreasonable business risks considering the applicable standards prevailing in the field of development finance as applied to Indian economic development (or, in light of the socio-economic, political and legal conditions unique to Indian reservations).

(2) The Corporation is also authorized to supervise or participate in the management of Indian business enterprises in which an investment has been made under paragraph (1) according to such terms and conditions as are agreed to by the Corporation and the principals of the enterprise, including the assumption of a directorship in the corporate body of such Indian business enterprise by an officer of the Corporation.

GENERAL POWERS

SEC. 213. In carrying out the provisions of this title, the Corporation shall have the power, consistent with the provisions of this title—

(1) to adopt and alter a corporate seal, which shall be judicially noticed,

(2) to make agreements and contracts with persons, Indian tribes, and private or governmental entities and to make payments or advance payments under such agreements or contracts without regard to section 3324 of title 31, United States Code, except that the Corporation shall provide financial assistance only in accordance with this title,

(3) to—

(A) lease, purchase, accept gifts or donations of, or otherwise to acquire,

(B) own, hold, improve, use, or otherwise deal in or with, and

(C) sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of,

any property, real, personal, or mixed, or any interest therein,

(4) to sue and be sued in its corporate name and to complain and defend in any court of competent jurisdiction,

(5) to represent itself, or to contract for representation, in all judicial, legal, and other proceedings,

(6) to make provision for and designate such committees, and the functions thereof, as the Board of Directors may deem necessary or desirable,

(7) with the approval of the agency concerned, to make use of services, facilities, and property of any board, commission, independent establishment, or executive agency or department of the executive branch in carrying out the provisions of this title and to pay for such use (such payments to be credited to the applicable appropriation that incurred the expense),

(8) to use the United States mails on the same terms and conditions as the executive departments of the United States Government,

(9) to obtain insurance or make other provisions against losses,

(10) to participate with one or more other financial institutions, agencies, instrumen-

talities, trusts, or foundations in loans or guarantees made under this title on terms as may be agreed upon,

(11) to accept guarantees from other agencies for which loans made by the Corporation may be eligible,

(12) to establish, as soon as practicable, regional offices in order to more efficiently serve the widely disbursed Indian population,

(13) to buy and sell—

(A) obligations of, or instruments insured by, the United States or any agency or instrumentalities thereof, or

(B) securities backed by the full faith and credit of any such agency or instrumentality,

(14) to make such investments as may be authorized by the Board of Directors of the Corporation,

(15) to establish such offices within the Corporation as may be necessary including offices for—

(A) Project Development,

(B) Project Evaluation and Auditing,

(C) Fiscal Management,

(D) Research and Development, and

(E) any other offices as may from time to time be authorized by the Board of Directors, and

(16) to exercise all other lawful powers necessarily or reasonably related to the establishment of the Corporation in order to carry out the provisions of this title and the exercise of its powers, purposes, functions, duties, and authorized activities.

BOARD OF DIRECTORS

SEC. 214. (a) The powers of the Corporation shall be vested in the Board of Directors.

(b)(1) The Board of Directors shall consist of the following 15 members:

(A) 1 officer of the United States Government designated by the Secretary of the Interior,

(B) 13 individuals appointed by the President by and with the advice and consent of the Senate, and

(C) the President of the Corporation.

(2)(A) Of the members of the Board of Directors described in paragraph (1)(B)—

(i) at least 7 members shall be Indians, and

(ii) no more than 7 members may be members of the same political party.

(B) In making appointments under paragraph (1)(B) and paragraph (4), the President shall take into account the experience of the individual in private business enterprises and in development or commercial finance and shall consult with, and receive recommendations from Indian tribes.

(3)(A) Of the initial members of the Board of Directors appointed by the President under paragraph (1)(B)—

(i) 3 members shall have a term of office of 1 year,

(ii) 3 members shall have a term of office of 2 years,

(iii) 3 members shall have a term of office of 3 years, and

(iv) 4 members shall have a term of office of 4 years.

The term of office assigned to each of these initial members of the Board of Directors shall be determined by the President at the time of appointment.

(B) Except as otherwise provided in this paragraph, the term of office for any members of the Board of Directors described in paragraph (1)(B) shall be 4 years.

(4) If a vacancy occurs on the Board of Directors prior to the expiration of the term of office to which a member described in paragraph (1)(B) was appointed, the President shall appoint an individual, by and with the consent of the Senate, to fill such vacancy until the expiration of such term of office.

(5) A member of the Board of Directors may be removed from office by the President only for neglect of duty or malfeasance in office.

(c)(1) The Board of Directors shall establish the policies of the Corporation and shall supervise the management of the Corporation.

(2)(A) A majority of the Board of Directors shall constitute a quorum.

(B) Except as provided in subparagraph (C), any action of the Board of Directors shall be effected by majority vote of the members of the Board of Directors.

(C) The Board of Directors may take an action which is contrary to a policy adopted, or decision made, by the shareholders of the Corporation in an election held under the bylaws of the Corporation only if two-thirds of the members of the Board of Directors vote to take such contrary action.

(3) The Board of Directors shall annually elect from among the members described in subsection (b)(1)(B) a Chairman and Vice Chairman.

(4) The Board of Directors shall adopt, and may amend, such bylaws as are necessary for the proper management and functioning of the Corporation.

(5)(A) The Board of Directors shall meet at any time pursuant to the call of the Chairman and as may be provided by the bylaws of the Corporation, but not less than quarterly.

(B) Subject to such rules adopted by the Board of Directors as are necessary for the orderly conduct of business, all meetings of the Board of Directors shall be open to representatives of Indian tribes, Indian business enterprises, and Indian organizations and any individual who has an identifiable interest in the affairs of the Corporation. The Board of Directors may meet in private executive session if the matter under discussion in such session involves any matter which may impinge on the right of privacy of any individual.

(d) Each member of the Board of Directors not otherwise employed by the Federal Government or a State government shall receive compensation at a rate equal to the daily rate for GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day, including traveling time, the member is engaged in the actual performance of duties as a member of the Board of Directors. A member of the Board of Directors who is an officer or employee of the United States Government or of a State government shall serve without additional compensation. All members of the Board of Directors shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

OFFICERS; EMPLOYEES

SEC. 215. (a) The Board of Directors shall appoint a President of the Corporation. The President of the Corporation may be removed from office by the Board of Directors in accordance with the bylaws of the Corporation.

(b) The President of the Corporation shall serve as the chief executive officer of the Corporation. Subject to the direction of the Board of Directors and the general supervision of the Chairman, the President of the Corporation shall have the responsibility for carrying out the policies and functions of the Corporation, and shall have authority over all personnel and activities of the Corporation.

(c) The President of the Corporation, with the approval of the Board of Directors, shall have the authority to appoint and fix the compensation and duties of such officers and employees as may be necessary for the efficient administration of the Corporation. Such appointments and compensation may be made without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and chapter 51 and subchapter III of chapter 53 of title 5, United States Code.

CONFLICTS OF INTEREST AND FINANCIAL DISCLOSURE

SEC. 216. (a) The financial disclosure provisions of the Ethics in Government Act of 1978 (92 Stat. 1824; Public Law 95-521) applicable to individuals occupying positions compensated under the Executive Schedule shall apply to the members of the Board of Directors, the officers of the Corporation and to employees of the Corporation whose position is compensated at a rate equivalent to that payable for grade GS-16 or above of the General Schedule established by chapter 53 of title 5, United States Code. The financial disclosure provisions of the Ethics in Government Act of 1978 shall apply to the Corporation as if it were a Federal agency.

(b)(1) Except as permitted by paragraph (3), no member of the Board of Directors shall vote on any matter respecting any application, contract, claim, or other particular matter pending before the Corporation, in which, to his knowledge—

(A) such member,

(B) his spouse, child, or partner,

(C) an organization (other than the Corporation) in which he is serving as officer, director, trustee, partner, or employee, or

(D) any person or organization with whom he is negotiating, or has any arrangement concerning, prospective employment,

has a financial interest.

(2) Action by any member of the Board of Directors contrary to the prohibition contained in paragraph (1) shall be cause for removal of such member pursuant to section 214(b)(5), but shall not impair or otherwise affect the validity of any otherwise lawful action by the Corporation in which such member participated.

(3) The prohibition contained in paragraph (1) shall not apply if the member first advises the Board of Directors of the nature of the particular matter in which he or she proposes to participate and makes full disclosure of such financial interest, and the Board of Directors determines by majority vote that the financial interest is too remote or too inconsequential to affect the integrity of such member's services for the Corporation in that matter. The member involved shall not participate in such determination.

(c) Subsection (a) of section 207 of title 18, United States Code (and subsections (f), (h), and (j) of such section to the extent they relate to subsection (a)) shall apply to former members of the Board of Directors, officers, and employees of the Corporation as if they were former officers or employees of the executive branch of the United States Government. Such section shall apply to the Corporation as if it were an agency of the executive branch of the United States Government.

ANNUAL MEETINGS

SEC. 217. (a) The Corporation shall hold an annual meeting of its shareholders which shall be open to the public. At such meeting, the Corporation shall give a full report of its *activities during the year and its financial condition and may present proposals for future action and other matters of general concern to shareholders and Indian business enterprises eligible for services from the Corporation.*

(b) Shareholders and representatives of Indian business enterprises may present motions or resolutions at the annual meeting of shareholders relating to matters within the scope of this title and may participate in the discussion thereof and other matters on the agenda of such meeting.

(c) At least 30 days notice of the time and place of the annual meeting required under subsection (a) shall be given to all shareholders.

(d) Each member tribe shall be entitled to vote their common stock on all matters before the annual shareholders meeting.

REPORTS TO CONGRESS

SEC. 218. (a) The Board of Directors of the Corporation shall report annually to the appropriate committees of the Congress on the Corporation's capital, operations, and financial condition. Such report shall include recommendations for legislation needed to improve the services of the Corporation.

(b) At the close of the first Calendar year beginning after enactment of this title, the Corporation shall submit to the Congress a comprehensive, 5-year organizational development plan which includes:

(1) financial projections,

(2) a description of a corporate structure and locations, and

(3) operational guidelines, particularly the coordinating relationship the Corporation has, or will have, with Federal domestic assistance programs which allocate financial resources and services to Indian tribes and reservations for economic and business development purposes.

(c) By no later than the date that is 3 years after the date of enactment of this Act, the Secretary shall submit to the Congress a report on an evaluation of the activities of the Corporation that the Secretary shall conduct for purposes of determining whether there is excessive duplication of services between the activities of the Corporation and the credit and financial activities of the Secretary, conducted through the Bureau of Indian Affairs, under the authority of the Indian Financing Act of 1974 (25 U.S.C. 1451, et seq.). The report shall include recommendations on—

(1) appropriate actions that the Congress should take, and

(2) the advisability of transferring the administration of such credit and financial activities of the Secretary to the Corporation.

ADVISORY COUNCIL

SEC. 219. (a) There is hereby established the Advisory Council to the Indian Development Finance Corporation (hereafter in this section referred to as the "Council"), which shall provide advice on the policies and operations of the Corporation.

(b) The Council shall consist of—

(1) the Comptroller of the Currency,

(2) the Secretary of Interior, and

(3) the Chairman of the Board of Governors of the Federal Reserve System.

(c) The Council shall—

(1) recommend to the Board of Directors of the Corporation general policy directives,

(2) be available to provide financial and technical assistance upon request of the Board of Directors,

(3) transmit to the Board of Directors and the Congress an annual report with respect to the policies of the Corporation that contains data on the operations and policies of the Corporation, recommendations concerning the Corporation, and such other data and material as the Council may deem appropriate, and

(4) make reports and recommendations to the Board of Directors as it may from time to time request or as the Council may consider necessary to more effectively or efficiently accomplish the purposes of this section or the purposes for which the Council is created.

(d) The Board of Directors of the Corporation shall keep the Council fully informed of its activities and shall provide the Council with such further information or data in its possession as the Council may deem necessary to the appropriate discharge of the responsibilities of the Council under this section.

CONFORMING AMENDMENTS

SEC. 220. (a) Paragraph (2) of section 9101 of title 31, United States Code, is amended by adding at the end thereof the following new subparagraph:

"(K) the Indian Development Finance Corporation."

(b) Paragraph (3) of section 9107(c) of such title is amended by inserting "the Indian Development Finance Corporation," after "the Regional Banks for Cooperatives,".

(c) Paragraph (2) of section 9108(d) of such title is amended by inserting "the Indian Development Finance Corporation," after "the Regional Banks for Cooperatives,".

(d) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new item:

"President, Indian Development Finance Corporation.".

Subtitle C—Capitalization

ISSUANCE OF STOCK

SEC. 231. (a)(1) The Corporation is authorized to issue shares of stock in the Corporation in an amount and of such class as may be determined by the Board of Directors subject to the provisions of this section.

(2) Shares of stock in the Corporation may only be issued to and may only be held by Indian tribes and the United States.

(3) The Corporation is authorized to redeem or repurchase any share of stock issued by the Corporation at a price determined by the Board of Directors.

(b)(1) The Corporation shall make an initial offering of a total of 2,100,000 shares of common stock of the Corporation for sale at $50 per share to Indian tribes.

(2) The number of such shares of stock required to be purchased by each Indian tribe in order to become a member of the Corporation shall be determined on the basis of an equitable formula established by the Board of Directors taking into account indicators of the economic condition of each tribe applying for membership such economic indicators to be developed by the Board and thereafter applied on a uniform basis.

(3)(A) Twenty percent of the value of the stock to be purchased by each tribe as a condition of membership shall be paid into the Corporation in the form of cash or cash equivalent securities and 80 percent shall be in the form of a legally binding commitment available for call by the Board to meet the obligations of the Corporation but not for use of the Corporation in lending activities or for administrative expenses.

(B) For the purposes of this paragraph, the term "legally binding commitment" shall not include any trust assets except that contingent upon the approval of the Secretary, it may include callable assignments of income from specified trust sources.

(C) For the purpose of entering into such legally binding commitment, Indian tribes may enter into contracts providing for a limited waiver of sovereign immunity, except that such waivers of sovereign immunity shall be limited as specifically provided in such contracts and shall not extend beyond the terms of such contracts.

(c)(1) The Secretary is authorized to subscribe to 2,000,000 shares of capital stock in the Corporation.

(2) The Secretary—

(A) shall, subject to availability of appropriations made in advance for this purpose, pay $20,000,000, representing 20 percent of the value of the shares of capital stock in the Corporation subscribed under paragraph (1), to the Corporation within a 2-year period beginning on the date of enactment of this Act, and

(B) beginning in fiscal year 1991, is authorized to agree on behalf of the United States to pay up to $80,000,000, representing 80 percent of the value of the shares of capital stock in the Corporation subscribed under paragraph (1), or any portion thereof, to the Corporation upon call of the Board of Directors of the Corporation. The amount of this request for funds to establish a reserve for loss, will be determined by the Secretary of Interior and the Board of Directors based upon an assessment of need, taking into account a risk analysis of the investment and credit policies and practices of the Corporation. Any commitment to make such contributions shall be made subject to obtaining the necessary appropriations, and shall be made when funds are required to meet obligations of the Corporation for funds borrowed by the Corporation or for loans guaranteed by the Corporation, but not for use of the Corporation in lending activities of the Corporation or for administrative expenses of the Corporation.

(3) The capital stock subscribed by the Secretary on behalf of the United States under paragraph (1)—

(A) shall be valued at $50 per share,

(B) shall be nonvoting stock,

(C) shall not accrue dividends, and

(D) may not be transferred to any person or entity other than the Corporation.

(d) The board shall establish policies for payment of dividends to the Corporation's shareholders to be based on sound business practices and fiscal management principles and which shall give a priority to providing a return on investment based on each shareholders pro-rata interest in income generated from the capital contribution of common stock shareholders as compared to income attributable to capital contributed by the United States.

(e) The stock or other securities or instruments issued by the Corporation shall, to the same extent as securities which are the direct obligations of the United States, be exempted securities, within the meaning of the laws administered by the Securities and Exchange Commission.

BORROWING AUTHORITY

SEC. 232. (a) The Corporation is authorized, subject, in any fiscal year, to appropriations made in advance, to issue bonds, notes, and other evidences of indebtedness. Such obligations shall be issued at such times, bear interest at such rates, and contain such terms and conditions as the Board of Directors shall determine after consultation with the Secretary of the Treasury.

(b) The aggregate amount of obligations issued under subsection (a) shall not exceed an amount equal to—

(1) the product of ten multiplied by the sum of—

(A) the paid-in capital of the Corporation, plus

(B) retained earnings and profits of the Corporation, and

(2) the book value of callable capital represented by the total commitments of tribal shareholders and the $80 million subscribed to by the United States as provided for in section 231(c)(2)(B) of this title.

(c) An obligation issued under subsection (a) may be sold through an agent by negotiation, offer, bid, syndicate sale or otherwise and such transaction completed by book entry, wire transfer, or such other means as may be appropriate.

Subtitle D—Authorization of Appropriations

GENERAL OPERATIONAL EXPENSES

SEC. 241. In addition to amounts authorized to be appropriated under section 242, there are authorized to be appropriated—

(1) $2,000,000 for fiscal year 1989 for the purpose of carrying out the provisions of this title,

(2) $2,500,000 for each of the fiscal years 1989, 1990, 1991, 1992 and 1993 for the purpose of project development activities, and

(3) such sums as may be necessary to carry out the provisions of this title for each of the fiscal years 1990 and 1991.

AUTHORIZATIONS FOR PAID-IN CAPITAL STOCK

SEC. 242. There are authorized to be appropriated for each of the fiscal years 1989 and 1990, $10,000,000 for the purpose of carrying out the provisions of section 231(c)(2)(A). Such sums shall remain available until expended. Beginning in fiscal year 1991, such amounts, not to exceed a total of $80,000,000, are authorized to be appropriated for the purpose of carrying out the provisions of section 231(c)(2)(B).

DELAYED FUNDING

SEC. 243. If no funds are appropriated under the authority of this subtitle for fiscal year 1989, sections 241 and 242 shall be applied by substituting—

(1) "1990" for "1989",
(2) "1991" for "1990",
(3) "1992" for "1991",
(4) "1993" for "1992", and
(5) "1994" for "1993".

And the Senate agree to the same.

Mo Udall,
Bill Richardson,
Don Young,
Managers on the Part of the House.

Daniel Inouye,
John Melcher,
Dennis DeConcini,
Quentin Burdick,
Tom Daschle,
Daniel J. Evans,
Frank H. Murkowski,
John McCain,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The Managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3621) to declare that certain lands located in California and held by the Secretary of the Interior are lands held in trust for the benefit of certain bands of Indians and to declare such lands to be part of the reservation with which they are contiguous, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The amendments of the Senate numbered 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 are conforming amendments to the House bill that are necessitated by Senate amendment numbered 11, which adds a title II to the House bill. The House recedes from its disagreement to the amendments of the Senate numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 and agrees to the same.

The House recedes from its disagreement to the amendment of the Senate numbered 11 with an amendment which is a substitute for the Senate amendment. The difference between the Senate amendment and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

A clarification has been made to specify that Indian business enterprises must be 51 percent owned by members of tribes which are shareholders of the corporation. Language that would have required that such business enterprises be chartered or controlled by such tribes has been deleted to assure that Alaskan natives will be included in the definition.

A more detailed description has been included stating that the principal business activities in addition to the production of a stream of income must be determined by the Corporation to be directly beneficial to an Indian tribe, and to have a significant impact on the entrepreneurial and employment opportunities and levels within an Indian reservation or within Indian lands. This assures that nontribal-owned off-reservation activity must provide immediate and beneficial economic opportunities, including job opportunities on the reservation.

A 30 percent cap has been placed on the amount of equity or ownership interest in any Indian business enterprise that the Corporation may purchase.

Authorization language has been adopted to provide fiscal year flexibility for start-up funds, so that if no funds are appropriated in FY89, authorization will authomatically be pushed back one year.

A statement has been included to acknowledge that unless specifically provided for, nothing in the Act will affect the sovereign immunity of an Indian tribe; authorize the Corporation to acquire any trust assets of an Indian Tribe; diminish the trust obligation of the United States to any Indian tribe.

A 90 percent limit has been placed on the amount of the corporation's guarantees.

"Legally binding commitment" has been defined to exclude trust assets except upon approval from the Secretary. A limited waiver of sovereign immunity not extending beyond the terms of such contracts has also been included.

Three years after enactment of this legislation the Secretary of the Interior shall evaluate the activities of the Corporation to detemine whether there is excessive duplication between credit and finance activities of the Bureau of Indian Affairs and the Corporation. The report should include recommendations regarding the advisibility of transferring the administration of such credit and financing programs.

Mo Udall,
Bill Richardson,
Don Young,
Managers on the Part of the House.

Daniel Inouye,
John Melcher,
Dennis DeConcini,
Quentin Burdick,
Tom Daschle,
Daniel J. Evans,
Frank H. Murkowski,
John McCain,
Managers on the Part of the Senate.

CONFERENCE REPORT ON H.R. 5261, INDIAN HEALTH CARE AMENDMENTS OF 1988

Mr. UDALL. Mr. Speaker, I move to suspend the rules and agree to the conference report on the bill (H.R. 5261) to reauthorize and amend the Indian Health Care Improvement Act, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. Gray of Illinois). Is a second demanded?

Mr. YOUNG of Alaska. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

(For conference report and statement, see prior proceedings of the House of today, October 12, 1988.)

The SPEAKER pro tempore. The gentleman from Arizona [Mr. Udall] will be recognized for 20 minutes and the gentleman from Alaska [Mr. Young] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Arizona [Mr. Udall].

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report on H.R. 5261 now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. UDALL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to bring before the House the conference report on H.R. 5261, the Indian Health Care Amendments of 1988.

The House passed this bill on September 13 of this year. I introduced the bill on behalf of myself and Congressman Waxman, chairman of the Subcommittee on Health of the Energy Committee. The bill represents a compromise between our two committees on this legislation.

The Senate passed the bill on September 28 with several amendments. We have reached an agreement on our differences as represented by this conference report.

Mr. Speaker, the conference report, in general, is very similar to the bill as passed by the House, so I will not go into detail. This legislation has been pending before the Congress for 6 years.

It reauthorizes programs begun under the Indian Health Care Improvement Act of 1976 and makes other important reforms in Indian health programs and in the administration of those programs by the Indian Health Service.

Mr. Speaker, we have too long delayed this legislation which is so important to our Indian citizens.

I urge adoption of the conference report.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference report on H.R. 5261, the Indian health care amendments.

The conference report is very similar to the version of H.R. 5261 which passed the House on September 13, 1988, without opposition. In conference, provisions from the Senate version concerning the recruitment and retention of medical personnel in the Indian Health Service were modified and retained. Additionally, the House accepted the Rural and Frontier Nursing Program which the Senate had added.

This bill has been 6 years in the making. I urge my colleagues to support the conference report on H.R. 5261.

Mr. NIELSON of Utah. Mr. Speaker, I am pleased to support the conference report on H.R. 5261, the Indian health care amendments. This conference report reflects a significant amount of give and take on the part of all the conferees. I believe the end result is fair and balanced and will do much to improve the health status of the Indian population in this country.

I am pleased that the conference report on H.R. 5261 does not include the provisions in the original House and Senate bills that would have required Presidential appointment and Senate confirmation of the nomination of the Director of the Indian Health Service and would have provided the IHS Director with authorities independent of the Secretary of the Department of Health and Human Services. In addition, the conference report does not include the mandate that tribal specific health plans be developed for each tribe. The development of these detailed plans would have cost in excess of $20 million and would have yielded little benefit to the health status of our Indian population.

The Indian Health Care Improvement Act was first enacted in 1976. It was designed to bring the health status of American Indians and Alaskan Natives up to a level equal to that of the general population. We have made some progress in reaching that goal but must continue to fund specific programs to fully succeed. Passage of this legislation will go a long way in helping such progress.

I urge my colleagues to join me in supporting this conference report.

Mr. YOUNG of Alaska. Mr. Speaker, I yield back the balance of my time.

Mr. UDALL. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona [Mr. UDALL] that the House suspend the rules and agree to the conference report on the bill, H.R. 5261.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the conference report was agreed to.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON H.R. 3621, SOUTHERN CALIFORNIA INDIAN LAND TRANSFER ACT

Mr. UDALL. Mr. Speaker, I move to suspend the rules and agree to the conference report on the bill (H.R. 3621) to declare that certain lands located in California and held by the Secretary of the Interior are lands held in trust for the benefit of certain bands of Indians and to declare such lands to be part of the reservation with which they are contiguous.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is a second demanded?

Mr. YOUNG of Alaska. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

(For conference report and statement, see prior proceedings of the House of today, October 12, 1988).

The SPEAKER pro tempore. The gentleman from Arizona [Mr. UDALL] will be recognized for 20 mintues and the gentleman from Alaska [Mr. YOUNG] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Arizona [Mr. UDALL].

Mr. UDALL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3621, introduced by Mr. DUNCAN HUNTER of California, already passed the House and came coming back from the Senate with a new title II. The House called for a conference and we now have to agree to the conference report.

As originally passed by the House, the bill provided for the transfer of some 5,100 acres of Federal land in San Diego County to 11 bands of Mission Indians. This land consists of some isolated tracts currently administered by the Bureau of Land Management.

In addition to providing for the transfer of these 5,100 acres of land, the Senate added a title II which would establish an Indian Development Finance Corporation. This would be a federally chartered corporation owned by both the Federal Government and the Indian tribes. The Corporation would provide financial development assistance for Indian business enterprises through a combination of equity assistance, direct loans, and loan guarantees.

The Corporation would be governed by a board of directors appointed by the President and confirmed by the Senate.

Mr. Speaker, economic conditions on Indian reservations are still deplorable and one of the reasons is the lack of access to investment capital. This bill provides an innovative approach towards resolution of this problem.

This bill is very similar to legislation which was introduced in the House by my colleague, Mr. RICHARDSON from New Mexico and on which hearings were held by the House Interior Committee. I urge approval of the conference report.

Mr. Speaker, I yield such time as he may consume to the gentleman from New Mexico [Mr. RICHARDSON].

Mr. RICHARDSON. Mr. Speaker, I rise today in support of the conference report to H.R. 3621. In conference, we adopted an amendment proposed by the other body which is substantially similar to legislation which I have introduced, the proposed Indian Development Finance Corporation Act.

The Indian Development Finance Corporation created by this act will provide long-term capital and technical assistance to foster the growth of businesses owned and operated by Native Americans. This legislation is the result of considerable work and commitment by a great number of people over the past 2 years, and I believe it represents a strong and viable program to alleviate the extreme poverty which exists on many of our Nation's Indian reservations. As a member of the Interior Committee and as a Representative of many of New Mexico's Indian residents, I have personally witnessed this poverty. Reservation unemployment continues to hover around 50 percent—10 times the national rate. Per capita incomes remain dramatically lower than the national average. I agree with the opinion of many economists and business experts who have stated that much of this poverty is due to conditions on our reservations which make it extremely difficult for potential Indian entrepreneurs to gain access to new business capital. Our committee has itself held hearings on this legislation and I know it shares the support of our distinguished chairman, Mr. UDALL.

There are those who say that Federal appropriations should not be used to support such a development institution, particularly in this time of budget cuts. However, given the severe poverty, high unemployment, and accompanying social problems prevalent in Indian communities across our Nation, I believe we cannot afford anything less than a strong and committed response. This legislation was developed thoughtfully and with the input of economic and business experts who agree that it represents a viable solution to this critical problem.

There are those, too, who say that these provisions are unnecessary because they duplicate existing sources of investment capital, particularly the Bureau of Indian Affairs grant and loan programs. Economists who have studied the obstacles to private capital availability on Indian lands—and would be Indian entrepreneurs who confront these obstacles—know this argument to be false. In contrast to existing Federal programs, including the BIA investment funding programs, the Indian Development Finance Corporation would be managed by individuals with extensive business experience and would offer, not only capital, but technical and business development assistance. In addition, as an independent intermediary in private capital markets, the Corporation would be able to overcome many of the financing limitations and delays which have characterized Federal financial programs, thereby going beyond the resources of such existing programs.

I consider it sound public policy as well as our responsibility to give Indian tribes the tools they require to reduce their long-term dependence on the Federal Government through private sector growth. We do not hestiate to participate in international development institutions that build the economies of other nations. This legislation would allow us to make a similar commitment to the economic independence and self-sufficiency of Native Americans.

I want to conclude by saying that the Indian Development Finance Corporation has been long-awaited by Indian people across the country. Through the bill's passage by the Senate and its introduction in the House, a considerable legislative history and widespread support have been established. We cannot afford to lose this momentum by repeating our efforts to pass this legislation in the 101st Congress.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference report on H.R. 3621, the Southern California Indian Land Transfer Act.

The Senate amended the bill adding a new title which would authorize the formation of an Indian Development Finance Corporation to assist Indian businesses. In conference we have amended the Finance Corporation provisions to protect the Federal investment and to assure access by certain Native-owned businesses, particularly in Alaska.

I believe the Finance Corporation will be a positive force in Indian country and in Alaska, and I urge my colleagues to support the conference report.

Mr. YOUNG of Alaska. Mr. Speaker, I yield back the balance of my time.

Mr. UDALL. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona [Mr. UDALL] that the House suspend the rules and agree to the conference report on the bill, H.R. 3621.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the conference report was agreed to.

A motion to reconsider was laid on the table.

REDESIGNATING SALINAS NATIONAL MONUMENT IN NEW MEXICO

Mr. VENTO. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2545) to redesignate Salinas National Monument in the State of New Mexico, and for other purposes, as amended.

The Clerk read as follows:

S. 2545

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—SALINAS NATIONAL MONUMENT

SEC. 101.

(a) That the Salinas National Monument, as designated by section 601 of the Act of December 19, 1980 (94 Stat. 3231), is hereby redesignated as Salinas Pueblo Missions National Monument.

(b) Any reference in any record, map, or other document of the United States of America to Salinas National Monument shall hereafter be deemed to be a reference to Salinas Pueblo Missions National Monument.

TITLE II—CORONADO NATIONAL TRAIL STUDY

SEC. 201. SHORT TITLE.

This title may be cited as the "Coronado National Trail Study Act of 1988".

SEC. 202. FINDINGS.

The Congress finds that—

(1) Francisco Vasquez de Coronado led an expedition from Compostela on the Southwest Coast of Mexico, into the American Southwest in search of the legendary Seven Cities of Cibola between 1540 and 1542;

(2) Coronado's expedition of approximately 300 Spanish soldiers and 1,000 Indian allies and servants marched through the State of Arizona, then through the States of New Mexico, Texas, Oklahoma, and Kansas;

(3) Coronado and his troops found Pueblo Indian settlements, including the Zuni villages of western New Mexico, Acoma along the Rio Grande River, as far north as Taos, and east to Pecos, as well as those of the Hopi in Arizona and Plains groups in Texas, Oklahoma, and Kansas; and

(4) members of the Coronado expedition became the first Europeans to see the Grand Canyon in Arizona, the Palo Duro Canyon in Texas, and many other Southwestern landmarks.

SEC. 203. DESIGNATION OF TRAIL.

Section 5(c) of the National Trails System Act (82 Stat. 919; 16 U.S.C. 1244(c)) is amended by adding at the end thereof the following new paragraph:

"(32) Coronado Trail, the approximate route taken by the expedition of the Spanish explorer Francisco Vasquez de Coronado between 1540 and 1542, extending through portions of the States of Arizona, New Mexico, Texas, Oklahoma, and Kansas. The study under this paragraph shall be prepared in accordance with subsection (b) of this section. In conducting the study under this paragraph, the Secretary shall provide for (A) the review of all original Spanish documentation on the Coronado Trail, (B) the continuing search for new primary documentation on the trail, and (C) the examination of all information on the archeological sites along the trail.".

TITLE III—NATIONAL MIMBRES CULTURE STUDY

SEC. 301. SHORT TITLE.

This title may be cited as the "National Mimbres Culture Study Act of 1988".

SEC. 302. AUTHORIZATION OF STUDY.

(a) AUTHORIZATION.—The Secretary of the Interior is authorized to conduct a study of the Mimbres culture to determine its significance in illustrating and commemorating the prehistory of the Southwest. The study shall include an analysis of the significance of the culture as it relates to the Mogollon, Salado, and Casas Grandes cultures and shall include a list of appropriate sites for interpreting the culture.

(b) RECOMMENDATIONS.—The study shall include recommendations with respect to—

(1) measures for the preservation of resources associated with the Mimbres culture located in and around the vicinity of Silver City, New Mexico; and

(2) indications of types and general intensities of development, including a visitor facility with sufficient space to accommodate exhibits of Mimbres pottery and information regarding the Masau Trail, that would be associated with public enjoyment and use of the sites, including general location and anticipated costs.

(c) COMPLETION OF STUDY.—The study shall be completed and transmitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate not later than one year after the date on which funds are appropriated for the study.

SEC. 303. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

TITLE IV—SPANISH COLONIZATION COMMEMORATIVE STUDY

SEC. 401. SHORT TITLE.

This title may be cited as the "Spanish Colonization Commemorative Act of 1988".

SEC. 402. AUTHORIZATION OF STUDY.

(a) AUTHORIZATION.—The Secretary of the Interior is authorized to conduct a study of the Spanish Frontier culture and Spanish Borderlands story to determine their significance in illustrating and commemorating the Spanish colonization of the Southwest, the Spanish colonial frontier culture, and Spanish colonialism in New Mexico. The study shall include an analysis of the significance of the San Gabriel Historic Landmark and the Los Luceros Hacienda as they relate to the Spanish Borderlands story of the Southwest.

(b) RECOMMENDATIONS.—The study shall include recommendations with respect to—

(1) measures for the preservation and interpretation of resources associated with the Spanish colonization of the Southwest; and

(2) indications of types and general intensities of development, including the feasibility of visitor facilities, that would be associated with public enjoyment and use of the sites, including general location and anticipated costs.

(c) COMPLETION OF STUDY.—The study shall be completed and transmitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate not later than two years after the date on which funds are appropriated for the study.

SEC. 403. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

TITLE V—"A" MOUNTAIN LAND EXCHANGE

SEC. 501.

The Secretary of the Interior is authorized to exchange certain lands as identified for disposal in the Southern Rio Grande Plan Amendment for certain mining claims on lands withdrawn for the National Aeronautic and Space Administration and New Mexico A and M College (now New Mexico State University) under P.L.O. 3685 and P.L.O. 2051. Once the United States determines the claims are valid under existing law, the exchange authorized by the preceding sentence shall be made on an equal value basis as determined by an independent appraisal.

SEC. 502.

(a) The Secretary of the Interior is authorized and directed to make available for exchange the Federal interests in the lands described in subsection (b) for the private interests in the lands described in subsection (c). The exchange shall be made in a manner consistent with applicable provisions of law and shall be on the basis of equal value as provided in section 206 of the Federal Land Management Act of 1976 (43 U.S.C. 1716).

(b) The Federal interests to be made available for exchange under this section are those lands in sections 14, 22, 23, 26, and 35 of township 23 south, range 2 east, New Mexico Principal Meridian which are encompassed by P.L.O. 2051.

(c) The private interests to be exchanged pursuant to this section are those lands owned by New Mexico State University in sections 19, 29, 30, and 31 of township 22 south, range 4 east, and section 6 of township 23 south, range 4 east, New Mexico Principal Meridian. The exchange may be made regardless of the reverter provision contained in the patent of those lands to the Regents of the Agricultural College of New Mexico and shall not be deemed to constitute the basis for reversion.

(d) Lands not acquired by New Mexico State University pursuant to this section and which are encompassed by P.L.O. 2051 may be disposed of, when available for disposition, by sale to or exchange with the State of New Mexico, New Mexico State University, or other public entities in accordance with the Recreation and Public Purposes Act (43 U.S.C. 869 et seq.): *Provided, however,* That New Mexico State University is given a right of first refusal on any proposed disposition.

(e) None of the lands transferred to New Mexico State University pursuant to this section shall be sold by New Mexico State University. All such lands shall be used for the purposes of promoting directly or indirectly educational, scientific, and research activities, including those activities currently authorized under P.L.O. 2051, or promoting the utilization of the natural geothermal resources located within the boundaries of the lands transferred. In the event that the lands transferred to New Mexico State University pursuant to this section are used for any purpose other than those for which conveyance is authorized by this subsection, title to that portion of the lands upon which there is an unauthorized use shall immediately revert to the United States without the necessity for further action to accomplish the reversion of title to the United States.

(f) Notwithstanding any other provision of law or court order, the Secretary of the Interior, if the Secretary determines it is necessary and appropriate for the purpose of consummating a conveyance of lands or interests therein under this Act, is hereby authorized and directed to revoke P.L.O. 2051 or any portion thereof necessary to consummate the transaction authorized by this title.

TITLE VI—AZTEC RUINS NATIONAL MONUMENT

SEC. 601. REVISION OF BOUNDARY.

The boundary of Aztec Ruins National Monument is hereby revised to include the area generally depicted on the map entitled "Aztec Ruins, Addition, Aztec Ruins National Monument," numbered 319/80,015, and dated October 16, 1987. Such map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

SEC. 602. LAND ACQUISITION.

The Secretary of the Interior is authorized to acquire lands, interests in lands, and improvements thereon within the boundary of the national monument as amended by section 601 by donation, exchange, or purchase with donated or appropriated funds.

SEC. 603. ADMINISTRATION.

The Secretary of the Interior shall administer the Aztec Ruins National Monument in accordance with the provisions of law generally applicable to units of the National Park System including the Act of August 25, 1916 (39 Stat. 535), as amended and supplemented, and the Act of August 21, 1935 (49 Stat. 666).

SEC. 604. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

TITLE VII—GEORGIA O'KEEFFE STUDY

SEC. 701.

(a) That in recognition of the significant impact Georgia O'Keeffe had on the world of art, the Secretary of the Interior is authorized and directed to conduct a study of the most appropriate way to interpret these nationally significant contributions. The study shall include but not be limited to an evaluation of the feasibility of marking and interpreting the landscapes consisting of the scenes and physical features from which Georgia O'Keeffe drew much of her inspiration.

(b) The study shall be completed and transmitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate within one year of the date on which funds are appropriated for the study.

SEC. 702.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

TITLE VIII—WARM SPRINGS STUDY

SEC. 801. SHORT TITLE.

This title may be cited as the "Warm Springs Study Act of 1988".

SEC. 802. STUDY OF WARM SPRINGS CULTURE.

(a) IN GENERAL.—The Secretary of the Interior is authorized and directed to conduct a study of the culture that evolved around Warm Springs in Southwestern, New Mexico, to determine its significance in illustrating and commemorating American frontier military history and the development of American Indian policy.

(b) SPECIFICS OF STUDY.—The study shall include—

(1) an evaluation of the history of the people from the Warm Springs area in Victorio's War in relation to American frontier military history and the development of American Indian policy; and

(2) an evaluation of historic and prehistoric resources surrounding the Warm Springs at the headwaters of Canada de Alamosa and the potential for preservation and public use.

(c) COMPLETION OF STUDY.—The study shall be completed and transmitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate within 1 year of the date on which funds are appropriated for the study.

SEC. 803. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

The SPEAKER pro tempore. Is a second demanded?

Mr. YOUNG of Alaska. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Minnesota [Mr. VENTO] will be recognized for 20 minutes and the gentleman from Alaska [Mr. YOUNG] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. VENTO].

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 2545, the Senate bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 2545, a bill to redesignate the Salinas National Monument in New Mexico to the Salinas Pueblo

Missions National Monument was amended by the Senate to include several other bills. All of these bills deal with different aspects of New Mexico's heritage, both Historic and prehistoric. They range from the Mimbres, a culture that lasted from the first century A.D. to the 12th century, to Georgia O'Keeffe who only recently died.

The bill would rename the Salinas National Monument, in New Mexico, as the Salinas Pueblo Missions National Monument. A name which more accurately indicates the historic significance of the area encompassed within the national monument. An identical bill (H.R. 3541) was passed by the House in July of this year, and so, of course, we concur in this action of the Senate.

Title II of S. 2545 includes legislative language on a study of the Coronado Trail that is identical to language that previously was considered by the House as part of the text of S. 1693. The bill before us today would provide for a study of the Coronado Trail, under the provisions of the National Trails System Act, to assess the trail's suitability for inclusion in the National Trails System. The expedition of explorer Francisco Vasquez de Coronado from 1540 to 1542 covered much of the present day southwestern United States and opened the way for Spanish settlement and development of the region.

The Mimbres people inhabited this area almost 2,000 years ago. They left a rich heritage of distinctive pottery which today is recognized for its unique and beautiful qualities. The bill directs the National Park Service to conduct a study of the Mimbres culture and that culture's significance to the history of southwestern New Mexico. The current Senate bill also directs the Park Service to study ways to preserve the Mimbres cultural resources, and to study development alternatives. The study is to be completed 1 year after money is appropriated for it.

The bill also incorporates the Spanish Colonization Commemorative Act which directs the Secretary to study Spanish frontier culture and Spanish borderlands story. The Secretary is directed to include recommendations for the preservation and interpretation of the resources associated with Spanish colonization of the southwest as well as recommendations for the development of related visitor facilities. I note that the National Park Service currently has the Spanish Colonial Research Center in Albuquerque and expect that center will play a large role in undertaking such a study. The study will be completed 2 years after funds are appropriated for it.

The Senate also included in this bill provisions relating to the exchange of certain public lands in New Mexcio for some mining claims of lands withdrawn for New Mexico State University, in Las Cruces. While no similar bill was ever considered in the House, we have reviewed these provisions and believe that they are acceptable.

Aztec Ruins National Monument, one of the oldest units of the National Park System—it was proclaimed in 1923—preserves ancient walls and kivas. This bill expands the boundary of the National Monument in order to ensure the protection of its resources and to provide better administrative services. The bill also authorizes acquisition of the additional lands in the enlarged boundary. The land surrounding Aztec Ruins National Monument is irrigated, with damaging effects on the ruins themselves. In addition, various superb prehistoric resources are located near the monument that relate to it. By expanding the boundary, the National Park Service will be able to acquire this land and protect ancient treasures.

Georgia O'Keeffe internationally known American painter, gathered much of her inspiration—and subsequent fame—from the landscapes of New Mexico. This bill authorizes a study of those landscapes. It would further our understanding of the relationship between her art and the landscape that she painted. I believe it would help us preserve and interpret them.

The Warm Springs Apache bill authorizes the National Park Service to study the history and prehistory of this area. The Park Service is directed to study Warm Springs for the part it played in the history of frontier relationships between the U.S. Military and the Native Americans and to study its role in the development of American Indian policy. The Park Service is directed to complete the study 1 year after money is appropriated. I endorse this study, but want to note that the study needs to compare and contrast the history of Warm Springs with that of Fort Bowie National Historic Site, an existing unit of the National Park System.

Mr. Speaker, this bill will help the National Park Service preserve existing parts of Aztec and Salinas and will authorize several studies to determine future preservation and interpretation needs. I urge its passage.

Mr. Speaker, I yield such time as he may consume to the gentleman from New Mexico [Mr. RICHARDSON].

Mr. RICHARDSON. Mr. Speaker, once again I wish to commend the chairman, the gentleman from Minnesota [Mr. VENTO] for his leadership and his prolific production of legislation in this session of Congress as a freshman of the Subcommittee on National Parks and Public Lands of the Committee on the Interior.

I also wish to commend my colleague, the gentleman from New Mexico [Mr. LUJAN] for his very active work on these bills. The entire New Mexico delegation has concurred in support of this legislation, which is very important and which will hopefully lead to new national trail systems in the next session of Congress.

Mr. Speaker, I rise in support of S. 2545, a bill that is of great importance to my State of New Mexico. S. 2545 renames the Salinas National Monument as the Salinas Pueblo Missions National Monument to better indicate the significance of the site.

In addition to this renaming of Salinas, S. 2545 contains provisions directing the National Park Service to study five historical sights in New Mexico and expand the boundaries of Aztec Ruins National Monument. These studies include the Coronado Trail, which was the route of the first European exploration of the Southwest by the great explorer Fransico Vasquez de Coronado in 1540. This study will help lead to designation of the Coronado Trail as part of our National Trail System. The Park Service will also study the Spanish colonization of the Southwest, focusing on Los Luceros Hacienda and San Gabriel National historic landmark in northern New Mexico as the sites of the first settlement in the colonization of the United States.

I strongly support both studies and their emphasis on the crucial role played by the Spanish explorers and the Hispanic colonization of the Southwest in our Nation's history. I have introduced companion legislation in the House.

S. 2545 also directs the National Park Service to study the life and art of Georgia O'Keefe who was inspired by the magnificent landscapes near her home in Abiquiu, NM.

Finally, the bill authorizes a much needed expansion of the boundaries of Aztec Ruins National Monument. This expansion will bring into the monument many unexcavated Chacaon and later Mesa Verde culture ruins, including such dramatic features as several great kivas. These precious resources are threatened today by urban development and looting. They are of great scientific importance because they are largely undisturbed. This bill may well be our last chance to preserve these irreplacable ruins.

To preserve the great archaeological and historic resources of New Mexico and to save our national heritage, I urge my colleagues to support S. 2545.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of S. 2545, the Omnibus New Mexico Parks legislation.

The Members on my side of the aisle support this legislation. I understand the gentleman from New Mexico [Mr.

LUJAN] has submitted a statement for the RECORD in support of this bill.

Mr. Speaker, I urge my colleagues to support this legislation.

Mr. LUJAN. Mr. Speaker, I rise in support of S. 2545, the omnibus New Mexico parks bill. This legislation was originally introduced as a companion bill to my legislation, H.R. 3541, to redesignate the Salinas National Monument as the Salinas Pueblo Missions National Monument. However, during Senate action on S. 2545, it was amended to include provisions from several other bills which would increase public awareness of a number of unique historical and cultural sites in the State of New Mexico.

Title I of S. 2545 contains the provisions revising the name of Salinas National Monument. My companion bill (H.R. 3541) passed the House in July 1988. As I mentioned during House consideration of the bill at that time, although this change seems relatively minor, it is very important to the people associated with the monument. The monument includes three Pueblo missions which were significant in the history of the Southwest. By changing the name to include the word "Pueblo," it will more adequately describe the resources of the monument and hopefully increase visitation to this Park Service unit.

Title II includes the provisions of S. 1693 providing for a study of the Coronado Trail for potential addition to the National Trails System. The trail follows the route taken by Spanish explorer Francisco Vasquez de Coronado between 1540 and 1542 in his search for the fabled "seven cities of Cibola." The route included portions of the present States of Arizona, New Mexico, Texas, Oklahoma and Kansas. Appropriately, the study is to be completed by 1992—the year of the 500th anniversary of the discovery of the new world by Columbus, an event closely associated with the Coronado expedition.

Title III contains provisions of S. 1912 authorizing a 1-year study of the Mimbres culture to determine its significance in illustrating and commemorating the prehistory of the Southwest. The study would include recommendations concerning the preservation and display of pottery and other information and materials associated with the Mimbres culture. The Mimbres inhabited New Mexico from 200 to 1200 A.D. and have become known for their distinctive style of black and white pottery. While I do not oppose such a study, I might note for the record that some concern has been expressed that these provisions would encourage recognition of artifacts as a primary purpose for National Park Service involvement, rather than the customary involvement on the basis of the remains of settlements. Therefore, I will look forward to the recommendations which will hopefully consider this important point.

Title IV contains provisions from S. 2157, the Spanish Colonization Commemorative Act. It authorizes three, 2-year feasibility studies in the State of New Mexico regarding the significance of the San Gabriel Historic Landmark and the Los Luceros Hacienda, as well as the preservation and interpretation of resources associated with the Spanish colonization of the Southwest. These studies will explore the culture and history of the Spanish frontier area beginning with the establishment of the Spanish empire's most northern outpost in the new world, New Mexico, nearly four centuries ago.

Title V incorporates the provisions of S. 2264, to resolve a conflict over the competing uses of a parcel of land known as "a" mountain in Las Cruces, NM. "A" mountain is currently owned by the Bureau of Land Management [BLM], but has been withdrawn for use by New Mexico State University [NMSU] and the National Aeronautics and Space Administration [NASA] to operate a satellite tracking observatory. There are also several unpatented mining claims on this land, of which two are being operated as commerical gravel pits. Because traffic at the pits has disturbed NASA's readings, section 1 of title V directs BLM to transfer the mining claims within the land withdrawals on mountain "a" for other BLM lands of equal value in the vicinity.

Section 2 of this title permits BLM and NMSU to enage in an exchange of lands within "a" mountain and BLM's existing Aguirre Springs recreation area. This will allow BLM to consolidate its lands in this area. It will also permit NMSU to expand its campus in the future and prevent encroachment on its existing research facilities. A reverter clause prohibits NMSU from selling the land and ensures its use for educational, scientific and research activities or for the development of geothermal resources. This exchange could normally be conducted administratively. However, such an exchange is currently blocked due to the ongoing lawsuit between BLM and the National Wildlife Federation. This bill will allow this important exchange to go forward while the lawsuit is pending.

Title VI contains the provisions of S. 2617 expanding the boundaries of Aztec Ruins National Monument in the State of New Mexico to include an additional 292 acres of adjacent private land. The monument, which preserves the ruins of the Chacoan and Mesa Verde cultures, was established in 1923 and is currently 27 acres in size. Unfortunately, irrigation activities have raised ground water levels and flooded the monument in recent years. These provisions, which are supported by the local landowners, will protect the monument from future flooding through acquisition of the irrigated land.

Title VII includes the provisions of S. 2750 authorizing a 1-year study on methods to commemorate the contributions of the late Georgia O'Keefe. Ms. O'Keefe was a well-known artist whose works focused on the landscape of New Mexico. The study would include evaluating the feasibility of establishing a "landscape museum" of the scenes and features painted by Ms. O'Keefe. While it is not clear what this would entail, I would point out for the record that this would be a new type of National Park designation and I would urge careful evaluation of such a proposal if it were recommended following completion of the study.

Title VIII contains the provisions of S. 2767 authorizing a 1-year study of the history and culture of Warm Springs, NM. This area has been the home of several cultures throughout history, including the Mimbres Indians and the Warm Springs Apaches. The remains of Fort Harmony are also located at the site. The study will determine the significance of Warm Springs in illustrating and commemorating American frontier military history and the formulation of American Indian policy.

Mr. Speaker, S. 2545 includes several provisions aimed at protecting the significant resources of New Mexico and improving the recreational opportunities for its citizens and visitors to the State. It enjoys broad-based support and has already been approved by the Senate. Therefore, I urge its adoption by this body today.

Mr. YOUNG of Alaska. Mr. Speaker, I yield back the balance of my time.

Mr. VENTO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Minnesota [Mr. VENTO] that the House suspend the rules and pass the Senate bill, S. 2545, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

ZUNI-CIBOLA NATIONAL HISTORICAL PARK ESTABLISHMENT ACT OF 1988

Mr. VENTO. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 4182) to authorize the establishment of the Zuni-Cibola National Historical Park in the State of New Mexico, and for other purposes.

The Clerk read as follows:

Senate amendment: Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Zuni-Cibola National Historical Park Establishment Act of 1988".

SEC. 2. ESTABLISHMENT OF PARK.

(a) ESTABLISHMENT.—In order to preserve and protect for the benefit of present and future generations certain nationally significant historical, archeological, cultural, and natural sites and resources associated with the Zuni Tribe, and in order to assist members of the Zuni Tribe in preserving and interpreting their tribal culture, there is hereby established the Zuni-Cibola National Historical Park. The park shall consist of lands with respect to which the Secretary of the Interior has accepted a leasehold pursuant to section 3 of this Act.

(b) EFFECTIVE DATE.—This section shall take effect on the date of publication by the Secretary, pursuant to section 3 of this Act, of a notice that the Secretary has accepted a leasehold interest that meets the requirements of this Act.

(c) TERMINATION.—This section shall terminate and shall be ineffective 24 months after the date of enactment of this Act unless prior to the end of such 24-month period the Secretary has published a notice of acceptance of a leasehold pursuant to section 3 of this Act.

SEC. 3. ACQUISITION OF LEASEHOLD.

(a) AUTHORITY OF SECRETARY.—If, no later than 18 months after the date of enactment of this Act, the Zuni Tribe, after consultation with the Bureau of Indian Affairs, offers to the Secretary a leasehold interest in trust lands of the Zuni Indian Reservation, in New Mexico, meeting the requirements of this Act, the Secretary is authorized and directed to accept such leasehold on behalf of the National Park Service and to publish in the Federal Register a notice of such acceptance.

(b) Requirements.—The Secretary shall accept a leasehold under subsection (a) of this section if such leasehold—

(1) would continue for a period of at least 99 years;

(2) would require no rentals or other payments by the United States to the Zuni Tribe or any other party;

(3) would be applicable to no more than 800 acres of lands within the Zuni Indian Reservation that the Director of the National Park Service, after consultation with the Zuni Tribe and the Bureau of Indian Affairs, has determined to be necessary and adequate to carry out the purposes specified in section 4(a) of this Act; and

(4) would not be inconsistent with any of the provisions of this Act.

(c) Map.—As soon as possible after publication of a notice of acceptance pursuant to subsection (a) of this section, the Secretary shall prepare a map of the park and shall provide copies of such map to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources and the Select Committee on Indian Affairs of the Senate.

(d) Boundary Adjustments.—The Secretary, after consultation with the Advisory Commission and with the agreement of the Zuni Tribe, may make minor revisions in the boundary of the park. Prior to making any such revision, the Secretary shall provide notice of the proposed change in the boundary to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources and Select Committee on Indian Affairs of the Senate. No such revision shall take effect sooner than 60 days after such notice has been provided to such Committees. After the effective date of any such revision, the Secretary shall prepare a revised map of the park, copies of which shall be provided to such Committees.

SEC. 4. MANAGEMENT.

(a) Purposes.—(1) The Secretary, acting through the Director of the National Park Service, and in consultation with the Advisory Commission established pursuant to section 6 of this Act, shall manage the lands covered by any leasehold accepted by the Secretary pursuant to section 3 as a unit of this Act, and the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1 et seq.), as amended and supplemented, and the Act of August 21, 1935 (49 Stat. 666; 15 U.S.C. 461), as amended.

(2) The Secretary shall protect, manage, and administer the park for the purposes of preserving the historical, archeological, natural, scientific, cultural, and other resources and values of the park and providing for the public understanding and enjoyment of the same in such a manner as to perpetuate these resources and values for future generations.

(3) In implementing this Act, the Secretary shall cooperate with the Zuni Tribe.

(b) Jurisdiction.—The Secretary is authorized to accept concurrent jurisdiction from the Zuni Tribe for the purpose of law enforcement.

(c) Consultation.—The Secretary, acting through the Director of the National Park Service, shall consult regularly with the Commission established pursuant to section 6 of this Act. The Commission shall advise the Secretary on the management and operation of the park.

(d) Fees.—All enrolled members of the Zuni Tribe shall be exempt from the payment of fees for admission into the park.

(e) Training.—In furtherance of the purposes specified in subsection (a)(2), and after consultation with the Advisory Commission established by section 6, the Secretary is authorized to enter into cooperative agreements with the Zuni Tribe, its subordinate boards, committees and enterprises, and individual members of the Zuni Tribe for the purpose of providing training of Zuni tribal members in the interpretation, management, protection, and preservation of archaeological and historical properties and in the provision of public services on the Zuni Indian Reservation needed for the fulfillment of the purposes specified in subsection (a)(2).

(f) Preference.—To the extent feasible, the Secretary shall exercise existing authorities so as to give preference to employing qualified members of the Zuni Tribe in the development interpretation, and management of the park and in carrying out other activities related to the park.

SEC. 5. FEDERAL CONSISTENCY.

(a) Federal Actions.—The head of any Federal agency conducting or supporting activities directly or indirectly affecting the park shall—

(1) consult with, cooperate with, and, to the maximum extent practicable, coordinate its activities with the Secretary and with the Advisory Commission; and

(2) conduct or support such activities in a manner which—

(A) to the maximum extent practicable is consistent with the standards and criteria established pursuant to the plan required in section 7 of this Act, and

(B) will not have a significant adverse effect on the resources or values of the park, as determined by the Secretary.

(b) Permits.—No Federal agency may issue any license or permit to any person to conduct any activity within the park or which could affect the resources or values of the park unless the Secretary determines that any such proposed activity within the park will be conducted in a manner consistent with the standards and criteria established pursuant to the plan required in section 7 of this Act and wherever occurring will not have a significant adverse effect on the resources or values of the park.

(c) Limitation.—The provisions of this section shall apply only with respect to activities begun and licenses or permits issued after the date of enactment of this Act.

SEC. 6. ESTABLISHMENT OF ZUNI-CIBOLA ADVISORY COMMISSION.

(a) Establishment.—(1) There is established within the Department of the Interior a commission to be known as the Zuni-Cibola National Historical Park Advisory Commission which shall advise regularly the Director of the National Park Service on the planning, management, and administration of the park. The Advisory Commission shall consist of the Governor of the Zuni Tribe, the Director of the National Park Service, the Secretary of the Smithsonian Institution, the State Historic Preservation Officer of New Mexico (or their designees), and three members appointed by the Secretary from recommendations made by the Governor of the Zuni Tribe.

(2) The Advisory Commission is authorized to employ an administrative director who shall be appointed by the Advisory Commission and who shall be paid at a rate not to exceed the rate of pay payable for grade GS-12 of the General Schedule.

(3) The administrative director of the Advisory Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51, and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that the individual so appointed may not receive pay in excess of the annual rate of basic pay payable for grade GS-12 of the General Schedule.

(4) The Administrator of the General Services Administration shall provide to the Advisory Commission on a reimbursable basis such administrative support services as the Advisory Commission may request.

(b) Terms.—The initial terms of members of the Advisory Commission appointed by the Secretary pursuant to subsection (a) shall be staggered, as determined by the Secretary, in order to assure continuity in the administration of the Advisory Commission. Thereafter the term shall be four years. Any member of the Advisory Commission appointed for a definite term may serve after the expiration of such member's term until a successor is appointed. A vacancy in the Advisory Commission shall be filled in the manner in which the original appointment was made. The Advisory Commission shall exist for the duration of a leasehold accepted by the Secretary pursuant to section 3, and any extensions or renewals thereof.

(c) Expenses.—The non-Federal members of the Advisory Commission appointed pursuant to subsection (a) while away from their homes or regular places of business in the performance of services for the Advisory Commission, shall be allowed travel and all other related expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(d) Chair.—The Governor of the Zuni Tribe shall be the Chair of the Advisory Commission. Other officers of the Advisory Commission shall be elected by a majority of the members of the Advisory Commission to serve for terms established by the Advisory Commission.

(e) Meetings.—The Advisory Commission shall meet at the call of the Chair or a majority of its members. Consistent with the public meeting requirements of the Federal Advisory Committee Act, the Advisory Commission shall from time to time meet with persons concerned with park issues relating to the Zuni Tribe.

(f) Application of Federal Advisory Committee Act.—Except with respect to any requirement for reissuance of a charter and except as otherwise provided in this Act, the provisions of the Federal Advisory Committee Act shall apply to the Advisory Commission established by this section.

SEC. 7. PARK PLAN.

(a) Deadline.—No later than 3 years after the date of the publication of a notice pursuant to section 3(a), the Secretary, acting through the Director of the National Park

Service and in consultation with the Advisory Commission, shall develop and transmit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources and the Select Committee on Indian Affairs of the Senate, a general management plan for the park which shall describe the appropriate uses and development of the park consistent with the purposes of this Act.

(b) Elements.—The park plan shall include (but not be limited to) the following:

(1) Plans for implementation of a continuing program of interpretation and visitor education about the resources and values of the park.

(2) Proposals for visitor use facilities to be developed for the park.

(3) Plans for management of the natural and cultural resources of the park in order to carry out the purposes specified in section 4(a)(2) of this Act, with particular emphasis on the preservation and long-term scientific use of archeological resources, giving high priority to the enforcement of the provisions of the Archeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.) and the National Historic Preservation Act (16 U.S.C. 470 et seq.) within the park. The natural and cultural resources management plans shall be prepared in close consultation with the New Mexico State Historic Preservation Office and the Zuni Tribe and their traditional cultural and religious authorities.

(4) Proposals for training members of the Zuni Tribe in such fields as interpretation, management, and artifact curation.

(5) A plan to implement the provisions of section 8 of this Act so as to ensure the protection of the right of the Zuni people to practice traditional Zuni religious activities within the park boundaries in a manner consistent with the purpose and intent of the American Indian Religious Freedom Act of August 11, 1978 (42 U.S.C. 1996).

(6) Proposals for cooperative research and interpretive programs within the park to be carried out by the Zuni Tribe through its archeology program, with technical assistance from the National Park Service.

(7) Proposals for implementing the provisions of this Act relating to the operation and supply of park concessions by qualified Zuni-owned businesses.

SEC. 8. CULTURAL AND RELIGIOUS USES.

In furtherance of the American Indian Religious Freedom Act, the Secretary, upon the request of an appropriate official of the Zuni Tribe, may, from time to time, temporarily close to general public use one or more specific portions of the park in order to protect the privacy of religious activities in such areas by Indian people. Any such closure shall be made so as to affect the smallest practicable area for the minimum period necessary for such purposes. Not later than 7 days after the first day on which any such closure takes effect, the Secretary shall provide written notification of such action to the Energy and Natural Resources Committee and Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

SEC. 9. DEFINITIONS.

As used in this Act—

(1) the term "Advisory Commission" means the Zuni-Cibola National Historical Park Advisory Commission established under section 6;

(2) the term "park" means lands constituting a Zuni-Cibola National Historical Park established under section 2;

(3) the term "park plan" means the general management plan developed pursuant to section 7; and

(4) the term "Secretary" means the Secretary of the Interior.

SEC. 10. ADDITION TO MASAU TRAIL.

The first sentence of section 202 of the Act of December 31, 1987 (P.L. 100-225; 101 Stat. 1540) is amended by striking out "and Gila Cliff Dwelling National Monument." and inserting in lieu thereof "Gila Cliff Dwellings National Monument, and Zuni-Cibola National Historical Park.".

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary for the purposes of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. YOUNG of Alaska. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Minnesota [Mr. Vento] will be recognized for 20 minutes and the gentleman from Alaska [Mr. Young] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. Vento].

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate amendment to H.R. 4182 now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, earlier this month the House and Senate each passed a bill providing for establishment of a Zuni-Cibola National Historical Park on the Zuni Indian Reservation, in New Mexico, which is an area of very great historic and cultural significance. The House bill was sponsored by the gentleman from New Mexico [Mr. Richardson] and the distinguished gentleman from Arizona [Mr. Udall], the chairman of the Committee on Interior and Insular Affairs.

Since the passage of these slightly different bills, discussions have been held and agreement has been reached on revisions to the House bill that would address some of the points where the two bills differed, so that a compromise bill could be developed.

The Senate amendments incorporate the changes in the House bill that have been agreed to at each end of the Capitol. There are two major differences between this compromise and the House-passed bill.

One is that the substitute would provide for an acreage limit on the park, as did the Senate bill—but instead of the Senate limit of 600 acres, the compromise provides for an 800-acre limit.

The other is that the compromise would not include the redesignation of the established vehicular tour route known as the "Masau Trail." The House bill would have redesignated this as the "Masau Route," in order to be consistent with actions the Interior Committee has subsequently taken regarding similar tour routes. For those other designations, we have avoided use of the term "trail" so as to avoid confusion with units of the National Trails System. I think that the committee has adopted a sound policy, but since the "Masau Trail" was designated by legislation already on the books, and work has already begun on implementing that designation, I have agreed to accept that designation and permit it to stand.

There are a number of other differences between the compromise and the House-passed bill, but they are relatively minor. For example, under the substitute now before us the membership of the advisory commission would be smaller by one member than under the House bill, and some additional time has been provided for the Zuni Tribe to offer lands to be included in the park.

Overall, however, this substitute conforms closely to the House-passed bill, H.R. 4182 as reported by the Interior Committee. I urge concurrence in the Senate amendments, and note that the Interior Committee's report (H. Rept. 100-942) provides a detailed explanation of the bill.

Mr. Speaker, I yield such time as he may consume to the gentleman from New Mexico [Mr. Richardson], the sponsor of the legislation.

Mr. RICHARDSON. Mr. Speaker, I rise in support of H.R. 4182, as amended by the Senate, to establish the Zuni-Cibola National Historical Park on the Zuni Pueblo in New Mexico. The Zuni-Cibola National Historical Park will be the first national park on Indian land. I am hopeful that this park will serve as a model for a system of American Indian national parks that will mark a new era of cooperation between the Indian tribes and the Federal Government in the preservation and interpretation of the historical and scenic treasures on Indian lands.

The Senate has made some minor changes in the House bill which I support and which have the support of the Zuni Tribe, the National Park Service, conservationists, and archeologists. These changes include a limit of 800 acres on the size of the Park and reducing the size of the advisory commission, which will advise the Park Service on planning, management, and administration of the park, from eight to seven members. The advisory commission will be chaired by the Governor of the Zuni Tribe and will include three members recommended by the Governor, the State historic preservation officer, a representative from the National Park Service and a representative from the Smithsonian.

The Senate has retained the House provision giving preference in hiring for park positions to qualified members of the Zuni Tribe. The bill also calls for training members of the Zuni Tribe in interpretation, management, and artifact curation. In this way, the Zuni people who best know the cultural and historical context of the park resources will be intimately involved in their interpretation.

Under this bill we depart from our past practice of taking Indian land for our national parks. The Zuni-Cibola park land will remain part of the Zuni Pueblo under a no-cost lease to the National Park Service and the Zuni Tribe will work with the National Park Service in preserving and interpreting the great heritage that exists at Zuni.

The Zuni culture is one of the richest indian cultures in North America. The archaeological sites, ruins, sacred lands, and other physical evidence associated with Zuni span 2,000 years and form the framework for today's living Zuni culture. Nowhere in the National Park System is there a continuum of this magnitude. The Zuni-Cibola National Historical Park will open to the public some of the most historically valuable sites in the Nation, including Hawikuh, one of the fabled "Seven Cities of Cibola" discovered by the Spanish explorer Coronado.

The Zuni-Cibola National Historical Park has been a dream of the Zuni people for 20 years and I want to commend Governor Robert Lewis of Zuni for his dedication in bringing this dream to reality. A special tribute must go to former Secretary of the Interior Steward Udall. It was Steward Udall who first conceived of establishing national parks on our Indian lands to work with the Indian tribes to preserve the great cultural and scenic resources that exist there. Steward Udall has wisely noted that with this bill we are not simply creating another national park—we are making history.

I also want to thank my colleague from New Mexico, MANUEL LUJAN, and the two Senators from our great State for their support for this new park. Finally, I want to thank Interior Committee chairman, Mo UDALL, and the chairman of the National Parks and Public Lands Subcommittee, BRUCE VENTO, for their support and counsel in establishing this unique park.

I strongly urge my colleagues to join with us in support of H.R. 4182, the Zuni-Cibola National Historical Park bill.

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Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the amended version of H.R. 4182 before the House today. Mr. Speaker, with this legislation we will be providing recognition for one of the greatest cultural heritage traditions in this country, that of the pueblo of Zuni within the State of New Mexico.

Mr. Speaker, the amended version of the bill which we are considering today is only a slight modification of the bill passed recently by this body. I believe the amendments will improve this bill by providing additional time in which to ensure a proper boundary is established and by requiring full involvement of the Bureau of Indian Affairs in establishment of this area.

Mr. Speaker, it is appropriate to again recognize the gentlemen from Arizona and New Mexico for their work on this innovative bill. The bill's sponsors have worked toward a strong partnership between the people of the pueblo of Zuni and the Federal Government with this bill and I urge all my colleagues to join me in supporting it.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. VENTO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GRAY of Illinois). The question is on the motion offered by the gentleman from Minnesota [Mr. VENTO] that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 4182.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

AUTHORIZING ESTABLISHMENT OF LEWIS AND CLARK NATIONAL HISTORIC TRAIL INTERPRETIVE CENTER IN MONTANA

Mr. VENTO. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1704) To authorize the establishment of the Lewis and Clark National Historic Trail Interpretive Center in the State of Montana, and for other purposes.

The Clerk read as follows:

S. 1704

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

The Congress finds that—

(1) the site at which the historic Lewis and Clark Expedition commenced in St. Louis, Missouri, and the site at which the expedition terminated at Fort Clatsop in Oregon have been recognized as sites of historic significance on the Lewis and Clark National Historic Trail; and

(2) the historic significance of the travels of Lewis and Clark on the High Plains and their portage around the Great Falls of the Missouri requires additional recognition and interpretation.

SEC. 2. ESTABLISHMENT.

(a) LEWIS AND CLARK NATIONAL HISTORIC TRAIL INTERPRETIVE CENTER.—That to further the public's understanding and provide appropriate interpretation of the scope and accomplishments of the Lewis and Clark Expedition, within the State of Montana and along the Lewis and Clark National Historic Trail, the Secretary of Agriculture (hereinafter in this Act referred to as the "Secretary") is authorized to establish the Lewis and Clark National Historic Trail Interpretive Center (hereinafter in this Act referred to as the "Center"). The Secretary shall establish the Center upon the transfer by the State of Montana to the United States of the lands described in subsection (b) and such additional easements and other rights as the Secretary deems necessary to ensure adequate public access to the Center.

(b) MAP.—The Center shall consist of those lands, located in the vicinity of Great Falls, Montana, donated by the State of Montana, not to exceed fifty acres, as generally depicted on the map entitled "Boundary Map, Proposed Lewis and Clark National Historic Trail Interpretive Center," dated June 1980. The map shall be on file and available for public inspection in the offices of the Chief, United States Forest Service, Department of Agriculture, and the State of Montana Department of Fish, Wildlife, and Parks.

(c) REVERSION OF LANDS.—Any lands or portions of lands granted to the Secretary by the State of Montana for use in connection with the Center shall revert to the State of Montana if, at any time, the Secretary uses such lands for any purpose other than those authorized under this Act.

SEC. 3. ADMINISTRATION.

(a) AUTHORIZATION.—The Secretary shall administer the Center in accordance with this Act and the laws, rules, and regulations applicable to the national forests in such manner as will best provide for the interpretation of the scope and accomplishments of the Lewis and Clark Expedition, along the Lewis and Clark National Historic Trail within the State of Montana. In no event shall the Center be used for purposes other than those provided for by this Act.

(b) PLAN.—Within two years after the establishment of the Center, the Secretary shall prepare and submit to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the Senate, a plan for the development and interpretation of the Center. Such plan shall include but not be limited provisions for—

(1) interpretation to the public of available historic resources, documents, and artifacts associated with the Lewis and Clark Expedition, and

(2) development of facilities for public use and enjoyment of the area.

(c) DONATIONS.—Notwithstanding any other provision of law, the Secretary may accept donations of funds, property, or services from individuals, foundations, corporations, or public entities for the purpose of providing services and facilities which he deems consistent with the purposes of this Act.

(d) Cooperative Agreements.—In administering the Center, the Secretary is authorized to enter into cooperative agreements with the State of Montana, or any political subdivision thereof, for the rendering, on a reimbursable basis, of rescue, firefighting, and law enforcement services and cooperative assistance by nearby law enforcement and firefighting departments or agencies. The Secretary is also authorized to enter into cooperative agreements with other Federal agencies, and with State or local public agencies for the development and operation of facilities and services in furtherance of the purposes of this Act. The Secretary is encouraged to develop, in conjunction with the State of Montana, a cooperative management plan for the entire Giant Springs Park which will enhance the general public's opportunity to use and enjoy the Center as well as the nearby historical sites, and other State and Federal lands.

(e) Cooperating Association.—The Secretary is authorized and directed to enter into an agreement with the Portage Route chapter of the Lewis and Clark Heritage Foundation or a similarly affiliated organization to provide educational and interpretive materials to the public that highlight the travels of Lewis and Clark, High Plains Indians, explorers, or other historical features of the area, that are compatible with the purposes of the Center. Such agreement shall include but not be limited to each of the following:

(1) Provisions requiring the Foundation to obtain and maintain its status as a nonprofit tax-exempt organization.

(2) A provision permitting the Secretary to have access to the documents and records of the Foundation that involve the Center.

(3) The Foundation shall agree to return to the Center the profits earned from the sale of educational and interpretive materials.

(4) Minimum operating requirements and procedures for the sale of educational and interpretive materials at the Center.

(5) A procedure to settle disagreements between the Foundation and the Secretary.

(6) Reasonable rent and maintenance costs for the use of an area within the Center.

(7) Other items of mutual agreement.

The Secretary may terminate the agreement for good cause.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

(a) In General.—Except as provided in subsection (b), there is hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act, including such sums as may be necessary for the planning and designing of, and site preparation for, the Center and associated structures and improvements.

(b) Construction of Interpretive Center.—There is hereby authorized to be appropriated not more than $3,500,000 for the construction of the Lewis and Clark National Historic Trail Interpretive Center and associated structures and improvements.

(c) Any new spending authority described in subsection (c)(2)(A) of section 401 of the Congressional Budget Act of 1974 which is provided under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

SEC. 5. MISSOURI RIVER WILD AND SCENIC RIVER.

Subsection (g) of section 203 of the Act approved October 12, 1976 (90 Stat. 2327, 2329), is amended as follows:

(1) Strike out "except" in paragraph (1)(G) and insert in lieu thereof "including".

(2) Strike out "National Park Service" in paragraph (2) and insert in lieu thereof "Bureau of Land Management".

The SPEAKER pro tempore. Is a second demanded?

Mr. YOUNG of Alaska. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Minnesota [Mr. Vento] will be recognized for 20 minutes and the gentleman from Alaska [Mr. Young] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. Vento].

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 1704, the Senate bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 1704 was considered and passed by the Senate on October 11, 1988. The text of the bill is identical to H.R. 1982 which passed the House on July 26, 1988.

The legislation before the House today provides for the establishment of an interpretive center in association with already designated Lewis and Clark National Historic Trial. The center will be located on land donated by the State of Montana in the vicinity of Great Falls and will be managed for the public's education and enjoyment by the U.S. Forest Service, which already has a significant presence in the area at the Lewis and Clark National Forest. The center will make use of State, local and nonprofit assistance in providing interpretive programs and materials to the public on the accomplishments of the Lewis and Clark expedition.

Mr. Speaker, the Lewis and Clark expedition was a monumental event in the development of the Western United States. It is an important part of our national heritage. I know of no controversy with the legislation and urge its passage by the House.

Mr. Speaker, I reserve the balance of my time.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we support enactment of this legislation which was introduced by my friend and colleague from Montana, Ron Marlenee. Through his hard work and leadership, the city of Great Falls will finally be able to commemorate the place where Lewis and Clark labored for many months to portage around the Great Falls of the Missouri. They fought grizzlies, they fought adversity of weather and they fought tremendous physical odds in order to get around the falls and continue their heroic exploration of the west.

Mr. Speaker, I encourage my colleagues to support this legislation.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. VENTO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Minnesota [Mr. Vento] that the House suspend the rules and pass the Senate bill, S. 1704.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

REAUTHORIZING SLEEPING BEAR DUNES NATIONAL LAKESHORE ADVISORY COMMISSION

Mr. VENTO. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2436) to reauthorize the Sleeping Bear Dunes National Lakeshore Advisory Commission.

The Clerk read as follows:

S. 2436

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4 of Public Law 91-479, relating to the establishment of Sleeping Bear Dunes National Lakeshore, is amended—

(1) in subsection (a) striking "ten" and inserting "twenty"; and

(2) by amending subsection (e) to read as follows:

"(e) The Secretary or his designee shall consult with the Commission with respect to—

"(1) matters relating to the development of the lakeshore and with respect to the provisions of sections 9, 12, and 13 of this Act; and

"(2) matters relating to the implementation of the General Management Plan provided for in section 6(b).".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Minnesota [Mr. Vento] will be recognized for 20 minutes and the gentleman from Alaska [Mr. Young] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. Vento].

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 2436, the Senate bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 2436 amends the 1970 legislation that authorized Sleeping Bear Dunes National Lakeshore on Lake Michigan. The bill simply extends the Sleeping Bear Dunes Advisory Commission for 10 more years and specifies that the Secretary of the Interior or his designee shall consult with the Advisory Commission on matters relating to the implementation of the general management plan.

The Lakeshore, formally established in 1977, has a diverse landscape with massive sand dunes, quiet birch-line streams, white sand beaches, dense beech-maple forests, clear lakes and rugged bluffs towering above Lake Michigan as well as two offshore wilderness islands. Visitors can hike, explore the dunes, boat, fish, swim, and camp in the diverse resources Sleeping Bear Dunes National Lakeshore offers.

The Advisory Commission began functioning in 1977, with a 10-year mandate that has now expired. S. 2436 would extend this mandate for 10 more years. I would expect that the Commission would work to be constructive in its assistance to the National Park Service and would encourage the preservation and interpretation of this gem of the Great Lakes. Mr. Speaker, I accept this bill and recommend its passage.

Mr. Speaker, I reserve the balance of my time.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of S. 2436, to reauthorize the Sleeping Bear Dunes National Lakeshore Advisory Commission for an additional 10 years. The Commission was established 10 years ago to allow for local citizen input on land acquisition and development plans for the park. The authority for the Commission—an all-volunteer board—expired in October. However, there are a number of major projects within the park that are currently pending. Therefore, the advisory Commission is still needed to provide a forum for local views on park development and assist with informing the public of activities and plans within the park.

I would like to commend the gentlewoman from Michigan, Representative Vander Jagt, who introduced the House companion bill, H.R. 4953, for his work on this issue. He has invested a great deal of time and effort in securing passage of this important legislation.

Mr. Speaker, S. 2436 enjoys broad-based, bipartisan support. I urge my colleagues to approve it.

Mr. LEHMAN of California. Mr. Speaker, I rise in strong support of H.R. 3408 which addresses my friends from Utah's concerns about water. In addition there is another provision of the bill which is very important to me—section 6 which prohibits increasing the size of existing dams within Yosemite National Park.

I first became interested in our national policy with regard to dams in national parks when I learned about a 1981 systemwide power study for the city of San Francisco which recommended raising O'Shaughnessy Dam in a national park which I represent—Yosemite. The city believed it could raise the dam by 50 to 160 feet which would inundate the Tuolumne River upstream and flood 500-900 acres of this premier national park. The never ending authority cited for expansion of Hetch Hetchy facilities is a law Congress passed 75 years ago, known as the Raker Act.

In 1985 in the course of responding to my objection to an additional generator on the Tuolumne River outside Yosemite National Park, the Department of the Interior agreed with me as a matter of administrative law that: "No further expansion of the Hetch Hetchy Water and Power system will be permitted by the Department of the Interior within Yosemite National Park."

Mr. Speaker, the time has come to embody this important in statutory law so that the future of Yosemite is not left to future interpretations by Departments of the Interior, the courts or the City of San Francisco.

The situation at Yosemite led me and the House Subcommittee on National Parks and Public Lands to explore the problem elsewhere in the Nation. We learned that 18 of our 48 national parks contain 108 dams, some small but some very large indeed. Most importantly, we learned that the very best of our American landscape—our national parks—does not have clear and unambiguous statutory protection from future water and power construction.

According to the Congressional Research Service, there are at least three instances when existing law may be inadequate in this regard. First, questions still exist about hydroelectric facilities which could be built in parks created after 1921—when the Federal Power Act prohibited the issuance of licenses for hydro projects within the limits of parks and monuments as then constituted. Second, existing law is unclear about construction of dams without hydroelectric components inside national parks. Third, it is not clear whether or not the Federal Government itself is prohibited from constructing dams in national parks.

Mr. Speaker, I believe it is time do draw the line on new dam construction in national parks. During the 1913 congressional debate over building a dam in Yosemite National Park, the Director of Reclamation Frederick H. Newell said: "I have naturally come to the conclusion that there is nothing more beautiful than a well-built dam with a reservoir behind it." I confess that I too like well-built dams with reservoirs behind them—but not in our national parks and monuments. It is time to replace the old policies of 1913 with the new priorities of 1988.

I regret that last month, a minority in the other body made it abundantly clear that they did not see eye to eye with the House's simple, straightforward proposition that in the future we should not construct new dams within the boundaries of our national parks—America's premier landscapes. It is a source of great disappointment to me that we cannot press forward on a nationwide basis with the complete package which I have proposed since 1986 and which the House of Representatives has adopted unanimously on three different occasions.

Nevertheless, if we must proceed one step at a time, we will. H.R. 3408, which draws the line on new or larger reservoirs within Yosemite National Park is the first step toward a national commitment to protect our National Park System from turn-of-the-century policies. I would note that in the beginning the Yosemite prohibitions were the most controversial provisions of my legislation. I am very pleased to say that protection of Yosemite National Park from future water projects is no longer controversial. Over the past 3 years, the city of San Francisco and other public officials reevaluated their position so that a consensus exists in California and throughout the Nation that Yosemite should be off limits for new and expanded dams.

Our charge for the future is to build the same commitment to all our national parks that we have to Yosemite. I look forward to working with Senator FOWLER and others in the U.S. Senate to expand the protections we have given Yosemite to national parks everywhere in America.

With passage of H.R. 3408 we have written the last chapter on the controversies surrounding the Tuolumne River in Yosemite National Park. I appreciate the bipartisan spirit of the House which has brought us that far. I urge my colleagues to work with me again in the 101st Congress to finish for all our national parks the work we have started at Yosemite in the 100th Congress.

[From the Los Angeles Times, Oct. 8, 1988]

DRYING UP THE DAMS

A tiny group of U.S. senators never saw a dam they didn't like, even if it happened to be in a national park. Because of this, American's national parks must go at least another year without an essential bit of protection: a law that would prohibit the construction of new dams in the parks or enlargement of any of the 108 existing dams.

The bill, sponsored by Rep. Richard H. Lehman (D-Sanger), passed the House of Representatives without a dissenting vote in both 1986 and 1987. The city of San Francisco had withdrawn its opposition to the bill, and it seemed certain to win final congressional approval this year. But the bill became bottled up in the Senate Energy and Natural Resources Committee by critics led by Sens. Malcolm Wallop (R-Wyo.) and Frank H. Murkowski (R-Alaska). The committee is not expected to meet again this year so the bill is dead, said Sen. Wyche Fowler Jr. (D-Ga.), its chief Senate proponent.

Wallop and Murkowski insisted on an amendment that would have exempted dams built on non-federal lands within a park's boundaries, allowed the enlargement of existing dams and would have given the secretary of the interior authority to allow new dams in any park unit. That was worse than no bill at all.

The Reagan Administration signaled its opposition even though the whole fuss started over San Francisco's talk several years ago of someday enlarging O'Shaughnessy Dam on the Tuolumne River in Yosemite's Hetch Hetchy Valley. Interior Secretary Donald P. Hodel caused a big stir a year ago when he suggested not only that the dam not be expanded, but that it should be torn down and the valley restored over time to its natural state.

There is no reason to build new dams in national parks or national monuments. There is no reason to enlarge any existing dams. The idea of a dam is totally contrary to the concept of the national parks. There were hopes of a last-ditch amendment that would apply merely to O'Shaughnessy Dam. But Lehman and others must keep working until a total prohibition on new dams becomes law.

Mr. VANDER JAGT. Mr. Speaker, I strongly support S. 2436, legislation to reauthorize the Sleeping Bear Dunes National Lakeshore Advisory Commission. As the sponsor of the companion bill in the House of Representatives, H.R. 4953, I know the importance of continuing the Commission to many of the citizens of our Ninth Congressional District of Michican.

Sleeping Bear Dunes National Lakeshore will always have an environmental and economic impact on the Ninth District and we believe that a legislatively mandated Commission is crucial to ensure that the Park Service is responsive to the concerns and needs of the people. I wish to comment Senator DON RIEGLE, for his leadership on this issue in the Senate and to express my sincere gratitude to both Congressman BRUCE VENTO and Congressman DON YOUNG, who were instrumental in bringing this bill to the floor for consideration. I urge approval of the measure.

Mr. YOUNG of Alaska. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. VENTO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Minnesota [Mr. VENTO] that the House suspend the rules and pass the Senate bill, S. 2436.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

INCREASING AMOUNTS AUTHORIZED FOR COLORADO RIVER STORAGE PROJECT

Mr. OWENS of Utah. Mr. Speaker, I move to suspend the rules and concur in the Senate amendments to the House amendments to the Senate amendment to the bill (H.R. 3408) to increase the amounts authorized for the Colorado River storage project.

The Clerk read as follows:

Senate amendments to House amendments:

Page 1, lines 9 and 10 of the House engrossed amendment, strike out "numbered 426-80, 015A and dated June 1988" and insert "numbered 426-80, 015B and dated July 1988".

Page 3, strike out lines 1 to 8.

Page 3, line 9, strike out "SEC. 7" and insert "SEC. 6".

The SPEAKER pro tempore. Is a second demanded?

Mr. YOUNG of Alaska. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Utah [Mr. OWENS] will be recognized for 20 minutes and the gentleman from Alaska [Mr. YOUNG] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Utah [Mr. OWENS].

GENERAL LEAVE

Mr. OWENS of Utah. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate amendments to the House amendments to the Senate amendment to H.R. 3408.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

Mr. OWENS of Utah. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, enactment of this legislation will ensure that construction of certain critical features of the central Utah project continues without interruption.

H.R. 3408 would authorize an interim increase of approximately $45 million in the authorized cost ceiling of the project. This will allow construction of features needed for municipal and industrial water development and deliveries to continue for 1 year. The House first passed this bill on September 13, 1988, by voice vote.

Mr. Speaker, on September 30, at the behest of my colleague, Senator JAKE GARN, the Senate amended the bill by adding a provision dealing with the management of lands surrounding the Strawberry Reservoir in Utah. This amendment will transfer to the U.S. Forest Service ownership and management of the surface rights to certain lands now owned by the Strawberry Water Users' Association. The association will receive $15 million in compensation. After the lands are transferred, the Forest Service will begin a long-term program to rehabilitate the lands at a cost not to exceed $3 million. The House agreed on October 6 to accept the Senate amendment.

The amendments agreed to by the House on October 6 also added three additional provisions to H.R. 3408. The first provision would authorize the expansion of the John Muir National Historic Site, CA. This language is identical to H.R. 4315, which passed the House earlier this year. The second provision would have waived certain requirements to facilitate stream bank stabilization along certain reaches of the Missouri River. This provision was included in S. 640, which passed the House last year. The third provision would prohibit the expansion of any reservoir within Yosemite National Park, CA. This provision was included in H.R. 1173, which passed the House earlier this year.

The Senate has deleted from the House amendments the Missouri River stream bank stabilization provision when it passed the bill yesterday. The motion I am offering today is to concur in the action taken by the Senate on yesterday.

Mr. Speaker, the Utah delegation, the Interior Committee, local water users, environmentalists, sportsmen's organizations, and many others have worked long and hard toward enactment of a comprehensive reauthorization bill for the Central Utah project.

With the final passage today of H.R. 3408, we will take a giant step closer to that goal. We now send this bill to the White House for the President's signature.

Mr. Speaker, it is my hope that next year we can resolve the few remaining differences and pass a comprehensive reform bill early in the 101st Congress. I am confident we can quickly come to agreement on an acceptable bill.

The current Senate amendments to H.R. 3408 which are now before us are acceptable to the chairman of the Subcommittee on Water and Power Resources, the gentleman from California [Mr. MILLER], and to me.

Mr. Speaker, I urge favorable consideration of the Senate amendments to H.R. 3408, expressing appreciation to our distinguished chairmen of the subcommittee and of the full committee, to our distinguished committee staffers as well who have served so valiantly and so well, and special appreciation to Mr. Don Christiansen, executive director of the Central Utah Water Conservancy, the Utah Roundtable of Sportsmen and Fishermen and conservationists and other sports and conservation groups who have been so helpful and so effective.

Mr. Speaker, I reserve the balance of my time.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3408.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. OWENS of Utah. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Utah [Mr. OWENS] that the House suspend the rules and concur in the Senate amendments to the House amendments to the Senate amendment to the bill, H.R. 3408.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendments to the House amendments to the Senate amendment were concurred in.

A motion to reconsider was laid on the table.

VACATING SPECIAL ORDER

Mr. BLILEY. Mr. Speaker, I ask unanimous consent that the special order for the gentleman from Nebraska [Mr. BEREUTER] for 60 minutes today be vacated.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

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TEXANS HONOR JIM WRIGHT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Mississippi [Mr. MONTGOMERY] is recognized for 5 minutes.

Mr. MONTGOMERY. Mr. Speaker, I and other Members of Congress had the privilege of attending a thank-you celebration for our great Speaker JIM WRIGHT, given by the people of Fort Worth on Tuesday night, October 11. Over 9,500 Texans turned out to honor their Congressman.

In my years in the Congress I have never seen such enthusiasm for a native son. This was a bipartisan event, where Gov. Bill Clements and Mayor Bob Bolen were very complimentary of JIM WRIGHT.

The featured speaker was New York Gov. Mario Cuomo, along with Congressman JACK BROOKS, and both were outstanding in their remarks about the Speaker. A nonpartisan 17-minute film about the Speaker was shown and Members of the House on both sides of the aisle participated. They were all very generous in their comments about the leadership offered by the honoree.

I would like to include in the RECORD the remarks made by Speaker WRIGHT in Fort Worth, which many said was one of the best speeches JIM WRIGHT has ever given.

I want to thank the Speaker for giving me the opportunity to attend this all-American event.

REMARKS OF CONGRESSMAN JIM WRIGHT, OCTOBER 11, 1988

When I look out among this crowd and reflect upon the thousands of individual human dramas that you represent * * * the battles we've fought together, the solutions we've sought together, the deeds you have done and some victories we've won * * *

I am reminded of the letter by St. John to the church at Smyrna. he wrote: "I know your works, your tribulations and your poverty, but you are rich!"

In one sense we all are rich, to live in this bountiful land and to enjoy its freedoms.

Sometimes I think I am the richest one of all.

No, not in material wealth. But rich in things that matter more.

If my net worth at age 65 is no better than it was at 31, it is because I've wanted other things. And wealth was never important to me.

But this is important: how many people do you know who've been allowed to do in life exactly what they've wanted to do?

I am one such person. Thanks to you, I am. I've been in Congress for more than half of my life. For all this while, because of your help, I've been permitted to serve the greatest nation on earth.

Thanks to your confidence, and that of my colleagues, the former Mayor of Weatherford serves today in the most important legislative job on earth.

As Speaker of the U.S. House of Representatives, I have received more free advice, and more harsh criticism in the past year than in all my previous life combined. But I also may have been able to do more good for more people in the past year than in all my previous life combined—thanks to you.

Yes, I am rich. You remind me that I am rich in what may be the most precious commodity of all: I'm rich in friends!

An event of this kind could easily go to anyone's head. Hubert Humphrey said, "flattery won't hurt you—if you don't inhale!"

It is written that Julius Caesar on returning from battle, would hire a colleague to stand behind him on his chariot as he rode through the streets lined with vocally supportive Romans. The man was to whisper continuously in Caesar's ear: "Remember, Julius, you are only a man!"

Today, of course, a man in public life doesn't need to hire someone to remind him of his mortal shortcomings: for that we have the newspapers!

And if I'm ever tempted to think them unfair—or unduly sensational—or that they accentuate the negative and eliminate the positive—

I only have to think what kind of country this might be if we didn't have the newspapers, whatever their excesses—

And I thank God for the free press!

Even so, I am continually amazed that a politician of any prominence, target of repeated journalistic bombardment, can retain any friends at all.

Maybe that's the difference between friends and admirers, and maybe I am rich because I have friends like you.

You may have heard the bit of dogrel:

"A friend is one who's not taken in by sham;

A friend is one who knows your faults. . .

And doesn't give a damn!"

With as many faults as I have, I need friends.

Some of my faults are king-sized.

Dan Quayle boasted in the debate last week that he is the "most investigated" candidate ever to seek public office. . .

I wonder if he would settle for "second most investigated."

I do hope that my errors and sins, plentiful though they be, are those of the warm-hearted, not those of the cold blooded.

I can say unabashedly in the lyrics of that old song that "I love the dear hearts and gentle people"—and some not so gentle—"who live in my hometown."

I love this town and want it to succeed.

If it is a sin to love too much and try too hard or to be too sympathetic to plain people who come to their congressman for help, then maybe I'm guilty of that.

I love this country and want it to fulfill its promise.

If it is wrong to insist too strongly that it live up to its ideals, respect the rights of others and lead not so much by force as by example—and to do in the world what we say in the world—then maybe I am wrong.

I am a populist and an egalitarian. I believe in the brotherhood of man—and woman—not as an abstract theory, but as a reality.

I supported civil rights when it was politically unpopular to do do—because I believed it was right.

When I was very young my father told me never to look down on anyone—and never to let anyone look down on me.

That is my heritage. It is Texas, the heritage of the plains. I think it is quintessentially American.

That is what makes America different. We believe in giving everyone a chance. Governor Cuomo calls it the politics of inclusion.

There is a joy in helping people. Plain people. People who otherwise are powerless—and without my voice in their behalf might be voiceless.

I am a child of the depression. I have seen its devastation and felt its heartache. I want to do whatever may be in my power to save America from ever going through that wrenching experience again.

It bothers me to see a homeless family. I want to do something about it. It disturbs me to see a man stand at an intersection in Fort Worth, holding a sign that reads: "Will work for food." It gets to me to watch a human being leave the employment office in disappointment and sell a pint of his blood for enough money to last out the day.

I think America can do better than that. It is part of my history that I cannot change.

And, yes, I've known war. I have made war and hated it. I am not unacquainted with its pain.

I have seen a plane on my wing erupt in flames and careen crazily toward the earth . . . and known that the fellow who joked with me in the mess hall the night before was at that moment gorging his lungs with thick hot fumes.

I have stood beside an empty aircraft revetment at the end of a mission, awaiting the return of close friends—waiting—waiting—waiting—and they never came.

I have seen war as war is—and I want to devote a portion of what remains in my life to making peace.

No, not peace at any price. But peace with honor. Peace and freedom. Peace that lifts the cloud from over the head of the next generation.

Peace is not passive. Peace must be waged by deeds of good will. The way to have a friend is to be a friend. The way to be understood is to understand.

Let understanding start with our nearest neighbors. First with Mexico, with whom we share 2,000 miles of border. We need each other. What happens to Mexico happens to us.

When its economy fails, we are inundated with the refugees of that failure.

Mexicans are a proud and friendly people. They've never asked nor accepted foreign aid. We need their oil. They need some understanding on their debts. To work together with Mexico should be our first international priority.

In Central America poverty reigns and streets have been turned into rivers of blood. War and economic blockade have brought near starvation. Children go hungry and fear for their lives when rifles ring out and machine guns begin their frenized chatter. People deserve better than that.

When President Reagan asked me in August of last year to join him in sponsoring a call for peace, I joined him readily. Our bipartisan call resulted in adoption of a peace plan, the Arias plan. I embraced it wholeheartedly and invited President Arias to speak to our Congress of the prospect and promise of a peaceful solution.

In Nicaragua the guns were silenced and six years of pointless bloodshed have been replaced by a truce. Neither side is blameless. But I think we must keep trying for peace and democracy in our hemisphere.

There are some in our government who do not want a negotiated peace. They are out to undermine the peace process. They want the war to resume in the vain hope of a military settlement, bought by our money and other people's blood and established upon the graves of more innocent victims of both sides.

Because I have persisted in continuing the quest for peace and orderly democracy, they have turned the full fury of their anger upon me—with sneak attacks upon my integrity, with inaccurate leaks of the most personal kind of news journals—with a concerted effort to destroy my credibility, to destroy my influence and thus to intimidate others into timid compliance with their plans.

There attacks have not succeeded. Those who know me, homefolks and colleagues, are not impressed by the phony charges. After 65 years of living and giving, my reputation is fully intact. I am not intimidated and neither are my friends. I have sworn to uphold the Constitution of the United States and the Constitution role of the legislative branch and in this I will not be silenced.

Yet I seek no quarrel, nor partisan political advantage in a matter of foreign affairs. I extend the olive branch to those in our Executive department and offer my respect to those who disagree with me. I offer my friendship, my help and honest counsel to the new President, whoever he may be. In foreign affairs we should be bipartisan. To that end I have worked for more than 30 years with seven Presidents. To that end I shall continue earnestly to offer my consultations privately. But I cannot pretend publicly to things that are not so.

I cherrish the process of our democracy. Some think of "politics" as a dirty word. But Webster defines it as "the science and art of government". Politics and political campaigns are as necessary to the function of a free society as water is to the flow of a river. They do not have to be filthy and corrupted by dirty charges against one another.

A dirty campaign is like a polluted stream from which we drink only at our peril.

I am proud that in 23 elections extending over more than 40 years I have never stooped to the gutters of negative campaigning.

Negative campaigns, with their malodorous attacks are like burning wet leaves. All smoke and no fire. A stench in the nostrils. They poison the air of democracy.

I deplore the rotten tendency to question one another's patriotism, to claim the American flag as the exclusive property of any one political party, or to cast aspersions upon the personal honor of our honorable opposition. Politicians owe the public better than that.

After all, we are Americans and our system has survived for 200 years upon the oxygen of decent and intelligent discourse.

I thank my good friend Governor Bill Clements for being here tonight. We need each other. Democrats and Republicans need each other.

New York and Texas need each other. Neither one of us will survive if our country fails.

We are honored at the presence among us and grateful for the inspiring words of the distinguished governor and outstanding American, Governor Mario Cuomo of New York.

Instead of tearing one another down, let us join in building America up.

I do not accept that our future is behind us and our best days are done. America can do better than that.

It is not good enough to indulge a credit card whim and send bills to our grandchildren for things we'll use up and wear out and they'll never have, but will have to pay for. America is better than that! America is more honest than that.

I shall not sit idle while America loses its industrial base, American jobs are shipped overseas, and the world's number one lender nation of a few years ago resigns to a flabby fate of the world's biggest debtor where foreigners take over our financial systems and our machines of production.

We can do better than that, and we must. This year in the trade bill we've made a great start. And more must be done!

I want America to be first again—first in trade, first in education, first in industrial power, first in home ownership, first in our standards of pay and in our quality of life.

Mediocrity is not our destiny.

We do not have to accept shoddy workmanship, defaulting student loans, rising crime rates, and the prevalence of drugs in our streets, in our factories, on our schoolgrounds. We can do better than that.

Our drug bill is a start, and there's more to be done. And we'll do it!

We should not settle for increasing foreclosures on America's family farms, increasing bankruptcies among our small businesses, the increasing failure of American banks, and trade deficits out of control. We can do better than that.

I see an America resurgent in world commerce, where "Made in the USA" is once again a stamp of quality and value throughout the world.

I see an America revived in spirit and rededicated to the goal of quality education, not just for an elite few who can afford it but for every American child.

And I see an America renewed, an America composed not of an abstract and disconnected collection of self-centered individuals, but rather a team whose members are reinforced by the inner strength of collective self-confidence and genuine caring for one another.

That is the American dream. You are a part of that dream. I invite us to dream it together—and together we'll make it come true!

SPECIAL TRIBUTE TO THE 776TH TACTICAL AIRLIFT SQUADRON

The **SPEAKER** pro tempore. Under a previous order of the House, the gentleman from Florida [Mr. NELSON] is recognized for 5 minutes.

Mr. NELSON of Florida. Mr. Speaker, like so much of the heroism and sacrifice of American veterans of the Vietnam conflict, the contribution of the 776th Tactical Airlift Squadron has gone largely unnoticed and unrewarded.

In March 1975 a young man from my district, Maj. David F. Antoon, was a member of this squadron stationed at Clark Air Force Base in the Philippines. As a C-130 pilot, he and his unit were called upon to assist in the evacuation of Saigon between March 21 and March 29. During this time, these men made eight flights in total darkness under enemy missile attack and carried thousands of innocent people to safety.

Mr. Speaker, it is difficult to imagine how these young men must have felt as they headed into the night on these missions. But I can tell you, many lives were surely changed with each flight. Mark Twain said courage is, "resistance to fear, mastery of fear—not absence of fear." Mr. Speaker, these men had much to fear. They made their approach from 20,000 feet to avoid detection and the risk of enemy missile attack. A crewman was stationed at each door with a flare gun to shoot at incoming heat-seeking missiles. If an incoming missile had been detected, the C-130 pilot had orders to turn his craft toward the missile to keep its exhausts away from missile sensors.

A C-130 plane is equipped to carry 88 people, yet each mission lifted 250 refugees to safety. Eight attempts and eight successes almost make it sound easy. But other missions were not so fortunate—on March 29 a C-130 was hit by mortar fire and lost as it landed. Another was attacked by a captured American A-37 flown by a North Vietnamese pilot. This same A-37 bombed a helicopter during the operation killing approximately 100 people.

Mr. Speaker, efforts to secure specific awards and medals on behalf of Major Antoon and the airmen of the 776th Tactical Airlift Squadron to officially recognize their heroism and afford them the dignity they so well deserve have been unsuccessful. I hope that my words here today will serve to remind us of this unit's achievements and the individual acts of brave men who deserve our full support, respect, and admiration.

TAX FAIRNESS FOR FARM AND OTHER SMALL BUSINESS FAMILIES

The **SPEAKER** pro tempore. Under a previous order of the House, the gentleman from California [Mr. PANETTA] is recognized for 5 minutes.

Mr. PANETTA. Mr. Speaker, I am introducing legislation today which would address an inconsistency in the U.S. Tax Code with regard to families who inherit a family farm or business.

Section 2032A of the code permits an heir to reduce the estate tax burden on a family farm or business if the property was being used for the purpose by the decedent and it was passed on to a family member who continues to participate in running the operation. Under this provision, the property is valued, for determining the estate tax, as a business or farm instead of at fair market value. There are set dollar limits on how much a family can reduce their estate tax burden by using this method.

If the heir sells the property to a nonfamily member or stops participating in running the business, or if the property is not used as a farm or business, the benefits of the estate tax cut are lost, and additional tax must be paid.

Another Tax Code provision, section 6166, permits the estate tax burden on a small business or farm, regardless of who inherits and runs it, to be spread over a 15-year period.

However, there is an inconsistency in present law which can harm family members utilizing section 2032A, and that inconsistency is what my bill is intended to correct.

Under section 2032A, if the heir sells or gives the property to another family member who also would have been an eligible heir under the provision, the benefits of the provision—the lower property valuation—continue.

However, if this occurs, the benefits of the 15-year payments do not continue. The tax must be paid in full immediately. This is because the benefits of section 6166 do not continue if the property is transferred from the original heir, regardless of whether the parties are related to the decedent.

Mr. Speaker, this does not seem fair to me. Obviously, in enacting section 2032A, Congress decided to encourage the continuation of family farms and businesses. I strongly support that goal, and I believe Congress still supports it. But in this instance, we are discouraging the transference of the farm or business to an heir who is a family member and is going to continue operating it. And if we are discouraging that, then we are encouraging the sale of the property to a third party, and probably bringing about the end of a family farm or business.

I do not oppose the general restriction of section 6166 to the original heir. However, in this particular instance, it contradicts the intention of Congress to encourage families to continue running their farms and businesses.

Under the legislation I am introducing today, section 6166 would be amended to permit the 15-year payments to continue if the property is transferred, but only if the property has been covered by section 2032A and is transferred to another direct family member of the decedent who still qualifies for section 2032A. So rather than have to pay the estate tax immediately, the family member could continue the 15-year schedule of payments. All others taking advantage of section 6166 would still be required to pay their estate tax immediately in the event of a transfer.

Mr. Speaker, my colleagues are well aware of the difficulties faced by family farms and businesses in recent years. We have attempted to address one aspect of their problems by enacting special provisions designed to ease their estate tax burden. By approving this bill, we can remove a serious inconsistency in those provisions and continue to encourage the institution of the family farm and the family business.

Following is the text of my bill:

H.R. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DISPOSITION OF SPECIALLY VALUED PROPERTY TO MEMBER OF QUALIFIED HEIR'S FAMILY NOT TO RESULT IN ACCELERATION OF DEFERRED ESTATE TAX.

(a) IN GENERAL.—Paragraph (1) of section 6166(g) of the Internal Revenue Code of 1986 (relating to acceleration of payment) is amended by adding at the end thereof the following new subparagraph:

"(G) EXCEPTION FOR CERTAIN DISPOSITIONS OF PROPERTY VALUED UNDER SECTION 2032A.—

"(i) IN GENERAL.—Subparagraph (A)(i) shall not apply to a disposition of property if—

"(I) the value of such property for purposes of chapter 11 was determined under section 2032A, and

"(II) such disposition is to a member of the family (as defined in section 2032A(e)(2)) of the qualified heir (as defined in section 2032A(e)(1)).

"(ii) CESSATION OF QUALIFIED USE TREATED AS DISPOSITION.—If—

"(I) subparagraph (A)(i) did not apply to a disposition to an individual by reason of clause (i) of this subparagraph, and

"(II) an additional estate tax is imposed by section 2032A(c)(1) by reason of a cessation (described in section 2032A(c)(1)(B)) by such individual,

such cessation shall be treated for purposes of this section as a disposition to which subparagraph (A)(i) applies."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to estates of decedents dying after the date of the enactment of this Act.

FREE TRADE ARRANGEMENT WITH JAPAN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. CRANE] is recognized for 5 minutes.

Mr. CRANE. Mr. Speaker, today, in conjunction with the distinguished chairman of our Ways and Means Trade Subcommittee, SAM GIBBONS, I am introducing a bill for the purpose of authorizing the negotiation of a free trade arrangement with Japan. The idea hardly originated with me, rather it has the support of a number of highly esteemed experts in the area of United States-Japanese relations, including the United States Ambassador to Japan, Mike Mansfield.

As the possibility of an FTA with Japan became more and more the subject of discussion, the International Trade Commission was requested to explore the advantages and disadvantages of such an undertaking. The report revealed a large universe of positive ideas about such an agreement, and as experts reflect further, the possibility of improving the bilateral relationship seems to be gaining in popularity. Consequently, I am determined to move the process closer to reality.

As our second largest trading partner, with total two-way trade exceeding $100 billion, developing a long-term trading relationship with Japan has never been more important. A free trade arrangement would provide us with the opportunity to develop that relationship. By eliminating all trade barriers in both the United States and Japan and establishing new mechanisms for resolving trade differences, the United States will profit considerably. The removal of trade tension and the overall feeling of good will, which generally accompanies an agreement of this nature, will finally provide the United States with our long desired free access to the Japanese marketplace.

My bill draws on the positive features of the ITC report and derives from it a very basic set of objectives necessary for the negotiation of a United States-Japan FTA. Chief among the negotiating objectives set forth in my bill are the removal of formal and informal trade barriers, the creation of new mechanisms for dispute settlement, and most importantly, the improvement of market access in both countries as a means of stabilizing the bilateral balance of trade. My bill also would allow both countries to determine the initiation date for negotiations by mutually agreeing to the forum, structure, and timetable. This would assure that both countries plan to oblige themselves to reciprocal trade disciplines. Success in these areas will ultimately lead to the improvement of the United States-Japanese political atmosphere, increased economic benefits, and the advancement of other United States trade objectives.

Rather than continue trade negotiations with Japan in the ad-hoc manner with which we have become accustomed, an FTA offers both countries the opportunity to improve our political atmosphere. It is likely that a dispute settlement mechanism would eliminate the friction we now experience under our current system. The special trade relationship that we have gained with Israel and anticipate we will achieve through the United States-Canada FTA, will increase our willingness to reach mutually desired goals.

The principal reason for entering into a free trade agreement is the economic benefits it will provide to the manufacturers and consumers in the signatory countries. Open markets increase competition, thus eliminating inefficiency, which ultimately results in lower costs to the consumer. There is no reason to believe that a United States-Japan FTA will have anything less than the desired result.

Additionally, an FTA will advance other U.S. trade objectives. Our trading partners will see clearly that the United States intends to pursue the most open and mutually advantageous trade arrangements that are possible, whether it be through multilateral or bilateral agreements. Rather than sit idly by watching the enormous economic progress of nations engaged in free trade, hesitant nations will likely learn the value of joining progressive trade efforts and of contributing to improved trade disciplines worldwide. The bilateral process, therefore, can enhance the multilateral process.

My purpose of exposing the advantages of an FTA is not to misrepresent the ITC report, as indeed, it too explored the disadvantages of such an agreement as well. Admittedly, the differences in our languages, customs, and business practices present some difficulties. However, the hurdles we must overcome shrink in comparison to the enormous benefits we will gain as a result of our endeavor to create a free trade area with Japan.

ORDER OF BUSINESS

Mr. BLILEY. Mr. Speaker, I ask unanimous consent to take a special order out of order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Virginia [Mr. BLILEY] is recognized.

Mr. BLILEY. My purpose in rising is to pay tribute to a friend, a patriot, and a man of the first order—the man who skillfully represented the district I am privileged to serve for 16 years—the honorable David E. Satterfield III. As you know, Dave passed away this past week as a result of congestive heart failure.

Dave Satterfield's life was a life of service to his community and to his country. Born in Richmond in 1920, he was educated at St. Christophers's School and the University of Richmond. He left the University of Richmond in 1942 to serve his country as a pilot in World War II. He was wounded in combat in the Pacific campaign. Dave was awarded a Purple Heart and later received four Air Medals for his wartime service.

Following the war, Dave earned his law degree from the University of Virginia and served as assistant U.S. attorney from 1951-53. Dave served as a member of city council in Richmond from 1954 to 1956 and as a member of the Virginia House of Delegates from 1960 to 1964 prior to his election to the House in 1964.

From his election in 1964 until his retirement in 1980, Dave Satterfield represented the people of Virginia's Third Congressional District with distinction and with honor. Dave was a conservative Democrat who refused to yield his principles to political expediency even if the personal cost was great.

As chairman of the Medical Benefits and Facilities Subcommittee of the Committee on Veterans' Affairs, Dave played a key role in overseeing our Nation's commitment to his fellow veterans. And as a senior member of the Interstate and Foreign Commerce Committee—now called the Energy and Commerce Committee—Dave was a staunch defender of the tobacco industry which plays a key role in the Richmond area's enconomy.

Mr. Speaker, men are more than their resumes. Dave Satterfield was a committed public servant and a friend. I think the Richmond Times-Dispatch said it best in its editorial on Monday, October 3. "Sometimes plain folks go to Congress and get intoxicated on a little power. Their need for ego gratification swells while their concern for the people who sent them to Washington shrinks. Preserving congressional perks, and extending one's own tenure, become the paramount concerns. David E. Satterfield III * * * was the antithesis of the imperial representative."

When I took office following Dave's retirement, he only asked one thing of me: To let him know what he could do to help me. And that attitude continued as he embarked on his career as a private attorney and lobbyist. When Dave Satterfield visited my office, it was not to ask for my help—it was to ask what he could do to assist us. I know my colleagues understand what a welcome breath of fresh air an individual like Dave Satterfield provided.

For his advice, counsel, and support, I and the people of the Third Congressional District say a heartfelt "Thank you." He will truly be missed. To his widow Anne and to the rest of his family, I extend the deepest sympathy and sincerest condolences.

Mr. Speaker, I include for The RECORD the editiorial published in the October 3, 1988 Richmond Times-Dispatch. I will also include other material paying tribute to Dave at this point, including some comments by our former colleague from North Carolina, the honorable Horace R. Kornegay.

DAVID E. SATTERFIELD III

Sometimes plain folks go to Congress and get intoxicated on a little power. Their need for ego gratification swells while their concern for the people who sent them to Washington shrinks. Preserving congressional perks, and extending one's own tenure, become the paramount concerns.

David E. Satterfield III, who died Friday at the age of 67, was the antithesis of the imperial representative. He went to Washington as 3rd District representative in 1964 and retained his simple, dignified manner—and his conscientious work habits—throughout his years of service. And in 1980, although he probably could have held the seat for several more years, he stepped aside, modestly concluding that he had been in Congress long enough. That was an act of humility too infrequently repeated in government.

Dave Satterfield was a conservative Democrat, which (though not exactly uncommon in Virginia) was something of a contradiction in terms in a national party dominated by the likes of George McGovern, Jimmy Carter and Ted Kennedy. Mr. Satterfield refused to compromise his principles to please his party's liberal elders, and that once cost him a subcommittee chairmanship. The majority of people in the 3rd District, however, appreciated his refusal to bow to expedience and his unwavering devotion to fiscal conservatism.

A much-decorated World War II Navy fighter pilot who was wounded in action over Wake Island, Mr. Satterfield put that experience to good use as chairman of the medical facilities and benefits subcommittee of the Veterans Affairs Committee. His panel exercised oversight of veterans hospitals throughout the nation. A graduate of the University of Richmond and the University of Virginia Law School, Mr. Satterfield also served this community with distinction as a member of City Council from 1954 to 1956 and of the House of Delegates from 1960 to 1964.

The Satterfield name, in fact, is synonymous with public service in the Richmond area. Mr. Satterfield's father, who died in 1946, had represented the 3rd Congressional District from 1937 to 1946. And his widow, Anne P. Satterfield, has been active in a great variety of constructive community endeavors. To her and to other members of Mr. Satterfield's family, we offer our sincerest condolences.

COMMENTS OF THE HONORABLE HORACE R. KORNEGAY, FORMER REPRESENTATIVE FROM NORTH CAROLINA

Mr. Speaker, my first obligation is to express my deep gratitude to Congressman Tom Bliley for inviting me to participate in this final tribute to a good and longtime friend, David E. Satterfield III.

My friendship and fondness for Dave Satterfield goes back to January of 1965 when he entered the 89th Congress as the representative from the Third District of Virginia. We both had the good fortune of serving on the Interstate and Foreign Commerce Committee and the Committee on Veterans Affairs. It was through our activities and work on these two committees that I quickly observed and came to know of his sterling traits of character, his deep sense of loyalty to his country and his constituents and his dogged determination to uphold and perpetuate the fundamental principles upon which our government is based. As a congressman, he was highly respected by his colleagues and loved by his constituents in the Richmond area and his legion of friends throughout the Commonwealth of Virginia.

His legacy of unselfish and dedicated public service leaves an exemplary standard for others to emulate and will always be a matter of great pride to his family and friends.

After he retired from the Congress in 1980 and entered the practice of law in Washington, DC, our association and friendship continued, and we worked together on many matters of mutual interest for the benefit of his native state of Virginia and mine of North Carolina.

His sudden death leaves us with sorrow and grief and a void that only time, with its miraculous healing powers, will fill. His friendship I will always cherish and to his wonderful and devoted wife, Anne, to his children and grandchildren, my wife, Annie Ben, and I extend our deepest and heartfelt sympathies.

Mr. PICKETT. Mr. Speaker, those of us in the House lost a good friend last week with the passing of former Congressman David Satterfield.

Dave's life was the epitome of public service, and the Virginia delegation takes great pride in his career in this House.

Congressman Satterfield was a decorated Navy pilot during World War II. He served as an assistant U.S. attorney in the early 1950's and later as a member both of the Richmond City Council and the Virginia House of Delegates.

But of course his most distingusihed service was the eight terms he spent in this body.

As those who served with him know, Dave was a conservative Virginian through and through, and he made no bones about it. He was unwavering in his commitment to fiscal responsibility and limited government. He stood firmly for a strong national defense. And his eight terms will be especially remembered for his good work on the Veterans' Affairs Committee.

I had the pleasure of seeing Dave just a week before his untimely death. As always, he was kind, courteous, and full of optimism and good humor. That is the way Congressman Satterfield always was, and that is the way he will be remembered.

Mr. Speaker, throughout our history, Virginians have taken enormous pride in the tradition of producing, and sharing with the Nation, some of America's finest public servants.

Congressman Dave Satterfield will be remembered as an important part of that tradition. He will be sorely missed.

I thank my distinguished colleague from Richmond, Mr. BLILEY, for organizing this special order.

Mr. CRANE. Mr. Speaker, the death of our friend, David Satterfield, came as a shock to all of us who thought so highly of this former member of the U.S. House of Representatives who served his State of Virginia and his country with such distinction

He surprised political friend and foe alike when he decided to retire from this Chamber 8 years ago. The constituents of his Third Congressional District in the Richmond area were prepared to send this conservative Democrat back here for many more terms when he announced he would no longer seek to represent the district. He stepped down from office as graciously as he had served during the eight terms which followed his first election in 1964.

David Satterfield was a true Jeffersonian from the Old Dominion. Like Jefferson, he was unwavering in his belief that this country should be guided by a limited constitutional government. He wanted the individual citizen to be served by his government, not dominated by it.

Like many others who had witnessed war, he believed in a strong defense to protect the freedoms of the people of this unique Republic of ours.

And David Satterfield's war record was certainly one to be proud of. During World War II, he served as a U.S. Navy fighter pilot flying off of carriers. He was awarded the Purple Heart for wounds received during the Pacific campaign. In addition, he also won four Air Medals.

He served with wisdom and compassion as chairman of the Medical Facilities and Benefits Subcommittee of the House Veterans' Affairs Committee. The subcommittee had jurisdiction over veterans hospitals throughout the Nation.

David Satterfield's absence has been noted and felt for the past 8 years in this Chamber. His passing means more than the loss of a friend. He was a fine person who handled his congressional duties with dignity, pride and wisdom.

Our prayers go out to his lovely wife, Anne, and his two sons.

Mr. SPENCE. Mr. Speaker, the untimely death of our former colleague and dear friend, Dave Satterfield, is a very sad event in the lives of those of us who were privileged to serve with him.

In the great tradition of the Commonwealth of Virginia, Dave Satterfield was a staunch defender of the Constitution and individual rights. He was a Jeffersonian Democrat in the truest sense of the word, and he never waivered from the ideals of men like Thomas Jefferson and other fellow Virginians who throughout the history of America have championed limited government and the rights of a free people.

Recent news accounts of the Presidential race have centered on the military service of the various candidates. Whether this is a viable and legitimate issue can only be determined by the voters, but when it comes to an elected official like Dave Satterfield no one could ever question his service record. In 1942, Dave left the University of Richmond in his hometown and enlisted in the Navy. As a U.S. carrier-based fighter pilot in the Pacific theater during World War II, he flew numerous missions. He received the Purple Heart for severe combat wounds and was awarded four Air Medals.

Dave Satterfield and I held the rank of captain in the Naval Reserve. He was understandably proud of his association with the Navy and was a trustee of the Naval Aviation Museum. When Dave came to Congress in 1965, one of his major legislative objectives was to help America's veterans. He did this with untiring devotion, and like the great chairman of the House Veterans' Affairs Committee, SONNY MONTGOMERY, Dave Satterfield always promoted the best interests of our veterans. In addition, he served as a civilian adviser to the National Health Services Corporation.

During the decades of the 1960's and 1970's when the Federal establishment grew by leaps and bounds, Dave Satterfield was one of the best friends the American taxpayer had in Congress. As a key member of the House Interstate and Foreign Commerce Committee, he was an effective spokesman for free enterprise, and he could always be counted upon to fight against unnecessary Federal regulations which strangle American business.

Dave Satterfield made his mark on Congress and the Nation. Leaders like him are difficult to replace, and I am thankful for the opportunity to have known him and to have had the privilege of calling him a friend. To his family I extend my profound sympathy at their great loss.

Mr. RUSSO. Mr. Speaker, I was saddened to receive the news of the passing of our distinguished former colleague, Congressman Dave Satterfield, and I am pleased to have this opportunity to participate in a special order in honor and memory of this fine gentleman.

Dave had been here some 10 years when I arrived in Congress and it was a pleasure to make friends with him and discover that he, like some others was helpful and thoughtful to those of us learning the ropes. Later I was to work with Dave on the Energy and Commerce Committee and this too was a pleasure.

Dave had a strong influence on the committee. He evidenced the hard-work and dedication that wins the respect of one's colleagues. It was especially gratifying, as we battled some of the tough issues before that committee, to work with someone like Dave who kept an open mind, who listened. I've found these are the people you can go to when you want to learn something.

Dave was a thoughtful man—about his legislative work, about others. We missed him when he retired. Now I know what a sad loss this is for his family and I join with my colleagues in extending sincere condolences to them.

Mr. BATEMAN. Mr. Speaker, Justice Louis D. Brandeis, in a 1927 decision of the U.S. Supreme Court, wrote that "those who won our independence believed that the final end of the State was to make men free to develop their faculties; and that in its Government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty."

David E. Satterfield III was a man who valued that liberty and possessed that courage. It was evident during World War II, when, as a carrier-based fighter pilot in the Navy, Dave was awarded the Purple Heart and four air medals. We saw it again in this House during his 16 years of service.

During his tenure, Dave twice had the opportunity to obtain a prestigious subcommittee chairmanship, which would have capped off his distinguished public service career. But he was told he was out of step with his party and would have to change his ways or be prevented from serving in this position.

This was a compromise of principle Dave Satterfield was not prepared to make, thus giving real meaning to a description that has become a cliche—a man who had the courage of his convictions.

Despite this defeat, Dave Satterfield went on to serve with distinction as chairman of the Hospitals and Health Care Subcommittee of the Veterans Committee.

Mr. Speaker, Dave Satterfield retired from this House after eight consecutive terms as dean of the Virginia delegation, but he left before some of the causes he championed came to fruition. He fought to modernize this Nation's defenses at a time our policy took us in the other direction. It is only in recent years Congress has seen the wisdom of Dave Satterfield's warnings. It was also after his tenure that natural gas deregulation became, in large measure, a reality.

It is said that life ends, but memory lives. I believe that the memory of Dave Satterfield's character and courage in public service will live for many years to come.

Mr. WOLF. Mr. Speaker, I join my colleague TOM BLILEY from Virginia to honor a former Member of Congress who died on Friday, September 30, at age 67.

My colleagues may recall Congressman David Satterfield, who served for eight terms from 1964 to 1980 and represented the Third District of Virginia. His father also represented the Third Congressional District from 1937 to 1945. While in Congress, he was a member of the Veterans' Affairs Committee and chairman of the Medical Facilities and Benefits Subcommitte.

During World War II, Congressman Satterfield served in the Air Force as a fighter pilot and was awarded a Purple Heart and four other medals for his wartime service. He then received a law degree from the University of Virginia and served as an assistant U.S. attorney, a member of the Richmond City Council and in the Virginia House of Delegates before running for Congress in 1964.

Congressman Satterfield will always be remembered in the Halls of Congress for his contributions to veterans and his strong dedication to Virginia and the American people.

We are all deeply saddened by the loss of our distinguished colleague and offer our condolences to his wife Anne and his family.

Mr. SISISKY. Mr. Speaker, today we honor the memory of one of Virginia's most dedicated public servants, our late colleague David Satterfield of Richmond.

During his 16-year tenure here in the House, Dave established himself as a conservative's conservative. I never heard him refer to himself that way, but I don't think he would mind. He was a man of integrity and clear principles and he made no apologies for his conservative beliefs.

Nor should he. For, If a person holds strong beliefs and stands up for them, as he did, then we must respect him for being true to his convictions, and respect him, I did for many good reasons.

Certainly, I shared some of his views, especially on our need for a strong national defense. I differed with Dave on some issues, but in all of my dealings with him, Dave treated me as he did all others, with a gentleness and sincerity which was his gift.

Dave Satterfield's service to this country did not begin when he stood in this well and took the oath of office. It had started during World War II when he was a Pacific Navy fighter pilot. His bravery earned him the Purple Heart and four Air Medals.

His civilian public service began with his position as an assistant U.S. attorney; he later went on to the Richmond City Council and the Virginia House of Delegates before coming to Washington in 1965.

By the time he got here, he had a mature mind and very strong political beliefs which he held to and acted upon without reserve. He represented his district with distinction and, at his retirement, was dean of the Virginia delegation.

In no area did he stand by his beliefs more than in the realm of national security. He believed, as George Washington said, that "To be prepared for war is one of the most effectual means of preserving peace." He voted that way and he fought hard to keep America prepared and strong.

He did not forget that our country also owes a special gratitude to those who do serve and protect this country. Through his service on the Veterans' Affairs Committee, he was an aggressive and effective advocate for all veterans.

Dave's life was full and blessed in many ways, through love of family and community, through service to his country. Still it is true, as it has been said, "death is always and under all circumstances a tragedy, for if it is not, then it means that life itself has become one." Dave's death robs us of leadership and commitment which is hard to match; and that is a tragedy.

As we remember Dave today, I am also reminded of these words of Thomas Paine: "The summer soldier and the sunshine patriot will, in . . . crisis, shrink from the service of their county; but he that stands it . . ., deserves the love and thanks and of man and women. . . ."

Dave Satterfield did not shrink, he stood up for his country and for his beliefs, and for that, we offer our love and thanks and extend our sincerest sympathy to his family and many friends.

TRIBUTE TO HON. MANUEL LUJAN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Mexico [Mr. SKEEN] is recognized for 60 minutes.

Mr. SKEEN. Mr. Speaker, I appreciate having this time because I am here tonight to pay tribute to a Member of the House of Representatives, a Member who has spent some 20 years of a productive part of his life in this body, a Member from the State of New Mexico, MANUEL LUJAN, JR., who is leaving to retire, and I wanted to take this time not to eulogize this gentleman but to commend him on the wisdom of knowing when it is time to leave this august body and to enjoy living outside, and there is a life outside of the House of Representatives.

We did not want his passing or his leaving to go without notice because of the contributions that MANUEL LUJAN, JR., has given to his country, to this body, and to the people of the State of New Mexico foremost of which is the ability to give constituents service. I think without any question at all MANUEL LUJAN was noted for the kind of service that he gave his constituency in the First Congressional District of New Mexico. Without any question a superb servant of those people.

When he came to this body he served with great distinction on the Committee on Interior and Insular Affairs and on the Committee on Science, Space, and Technology. Having known MANUEL for over 20 years, much longer than the time he has served here, and a man of his family before him, it has been a real privilege to finally wind up serving in this body with him.

So I want to commend him for the contribution he has made to this country and this body, to the committees, to the legislative issues that he has worked so hard on, but also to congratulate his family for the support that they have given him for these 20 years of service; his wife, Jean, one of the loveliest ladies anywhere abouts in this Capitol Hill, four children and grandchildren, and so tonight I wanted to take this opportunity to pay tribute to him.

Mr. Speaker, I yield to the gentleman from New York [Mr. SCHEUER].

Mr. SCHEUER. Mr. Speaker, I thank the gentleman for yielding.

I have had the pleasure of working on the Committee on Science, Space, and Technology for a number of years with MANUEL LUJAN, who is the ranking minority member of that committee. I was chairman of a Subcommittee on Natural Resources, Agriculture, Research and Environment. As such I had an enormously enriching experience working with MANUEL LUJAN. He is a man of vision, a man of total integrity, a man whose word is his bond, a man who is cool, calm, and collected and a joy to work with on the many complicated issues that came through my subcommittee alone. He played a leading role in space, in all aspects of science and technology and the environment on our committee above and beyond the confines of our subcommittee.

I knew him and worked with him, particularly with reference to these matters, natural resources, agriculture research, and the environment. I am interested to note that he was responsible for legislation that declared 600,000 acres of New Mexico land a wilderness area, a beautiful piece of New Mexico land, preserved for all time for the benefit and enjoyment of future generations. This is the kind of vision that all of us hope to achieve but most of us do not. This is the kind of courage of soldiers who go out in battle, of old men who plant trees under which they know they will never sit, the kind of vision that creates a 600,000-acre oasis of the beautiful New Mexico wilderness area for the benefit of all mankind the future.

I know that MANUEL LUJAN has served longer than any other Representative in Congress for the State of New Mexico and it is no wonder. He is so beloved here and so beloved in his home State. He is respected and admired by all of his colleagues. He and his wife, Jean, are a marvelous couple whose friendship is treasured by all the Members of the committee, on both sides of the aisle, and I found out from experience that MANNY LUJAN is as much respected and admired and loved in his congressional district as he is here in the Halls of Congress.

I had a hearing, I shared a hearing last year on the problems of ground water in MANUEL LUJAN's district, and I spent 2 days down there, and I found from standing and walking and sitting at MANUEL LUJAN's side that the same wellspring of affection and high regard that MANUEL LUJAN has created here in Washington, also existed in vast measure for him in his own district.

He will be very much missed here, not only for his sharp understanding of the broad range of issues affecting science, technology, and natural resources and the environment, but also the warmth of his friendship and the pleasure that we have had knowing him and his wife, Jean.

I join, I am sure, all the members of the Committee on Science, Space, and Technology, in wishing MANUEL and Jean LUJAN decades of health, happiness, enjoyment in his retirement, good luck on all his ventures, and I know my colleagues join me in sending affectionate regards to the LUJANS.

Mr. SKEEN. Mr. Speaker, I thank the gentleman for his comments and think they are well taken and appreciate his remaining to participate in this special order this evening.

I would like to recognize the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding and particularly appreciate his taking a few moments in time here to say how much we have appreciated the service of MANUEL LUJAN in the U.S. Congress.

MANUEL and I came to the Committee on Science, Space, and Technology together. I was a freshman Congressman. He was a more senior Member who decided to move over and take that assignment. It has been a fascinating committee on which to work but particularly fascinating because of the kinds of leadership abilities that MANUEL has shown. He rose through the ranks to become Republican vice chairman of that committee, and I think that the country should realize that in large part the recovery of the Space Shuttle Program over the last several years was the work of the committee as a whole, certainly, but demonstrated the leadership abilities that MANUEL showed from the minority side.

He is also someone who I think in the future will be remembered as a visionary who understood that as we move into space, that we need to get beyond just what Government does in space and begin to look at the commercial applications that can be made in our space future, and he helped push through legislation and helped advance the idea of commercial space activities. I think as we look back he will be seen as a visionary in that regard.

He was also someone who on that committee, I think, showed a great deal of visionary leadership in the field of energy. He understood the value that nuclear power plays in our whole energy economy. He also recognized that we need to have the kind of research and development work that goes on in the energy areas that produce new kinds of energy for the future. He was a great promoter of Los Alamos and the research work that goes on there, and on many occasions led groups of Members out there to see what we were funding at Los Alamos for the good of the entire Nation.

So he is somebody who had a national perspective and yet also blended in his New Mexico roots very well to that national perspective. He will be deeply missed here and he will be missed by all of us who have worked with him. His wife, Jean, will be particularly missed by all of us who have gotten to know her. We know that they will be back and visit us often, but MANUEL's service is something which certainly needs to be remembered.

Mr. Speaker, I thank the gentleman for giving me an opportunity to reflect on this a little bit.

Mr. SKEEN. Mr. Speaker, I thank the gentleman for his gracious comments and for taking the time to be here, and certainly highlighting some of the contributions that MANUEL LUJAN has made in science and technology along with the other committee assignments.

Mr. Speaker, I now yield to the gentlewoman from Maryland [Mrs. MORELLA].

Mrs. MORELLA. Mr. Speaker, I appreciate the gentleman having this special order for someone who deserves the accolades for service.

There is a line from Hamlet which goes something like this:

> Time is like a fashionable host, that slightly shakes his parting guest by the hand, and with his arms outstretched, as he would fly, grasps in the comer: welcome ever smiles, and farewell goes out sighing.
>
> —*Hamlet*, III, iii, 168

Today we do more than shake the parting guest by the hand, for we are losing a friend and colleague in the House: MANUEL LUJAN, who has given great warmth and cheer to us all. Is there any amongst us who has seen MANUEL frown? Who has seen him show anger? Even when upholding a minority position, he has remained cheerful under fire, and often disarms his opponents with his good nature.

My earliest recollection of MANUEL is when he called me to discuss his plans for serving as ranking minority member of the Science, Space, and Technology Committee. I soon learned that he would fulfill his pledge then to be a fair leader, one who would take great pains to allow all those with less seniority than he had to be fully heard. I also had the feeling that he would do whatever was appropriate to support me if I asked for some help with a particular position. In my 2 years on the committee, I never felt any criticism or disapproval even if I chose to take a position other than the one he took. He led by example—always being on hand and always knowing how to make the participants at a hearing feel welcome.

MANUEL is extremely well liked and respected by the committee staff and enjoys a reputation for consistent and fair positions. He communicates easily, and I thank him for his patience and understanding in guiding a freshman colleague through the complexities of the high technology, advanced science world. He gave me lessons I will never forget. He has inspired all who know him.

New Mexico's gain is our loss, but I am hopeful that we will be able to bring him out of his sunny home State to visit us again. I wish him and his wonderful wife, Jean, good health, and a happy retirement. He deserves it.

Thank you, my friend; we will miss you.

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Mr. SKEEN. I thank the gentlewoman for her gracious comments.

I have to note that one of the things that you realize when you watch MANUEL LUJAN operate in this place is that sincerity of his concern for Members who are junior to his position on these committees and he has always been a great counselor. Of course we have him sitting in the Chamber now so we can talk directly to him. But that has been one of the greatest attributes of any Member of Congress, his willingness to share experience with new Members, to help them learn the ropes, including myself, and I had legislative experience in the State legislature, but it is a whole different ball game when you come here.

MANUEL made the transition very easy for me. I have also been the beneficiary of a great deal of real good, sound counseling from this great conservative MANUEL LUJAN and I want him to know that along with you folks that I really appreciate the time and effort that he has taken with me.

Mr. ROE. Mr. Speaker, it is with the greatest pride and admiration that I rise today to pay homage to a dear colleague whose contributions to our Nation during the past two decades could well serve as the ultimate measuring stick of public service for all of us in the U.S. House of Representatives.

I am speaking, of course, of my most distinguished colleague, the Honorable MANUEL LUJAN, JR., of New Mexico, who is retiring at the end of this session. Having been here since 1969, I have had the distinct privilege of serving with Mr. LUJAN for almost all of his 20 years in the U.S. House of Representatives. And while it has always been an honor to work with him, the last 2 years have been notably special. It has been during this time, as chairman of the House Science, Space, and Technology Committee, that I have had the opportunity to work closely with MANUEL, the committee's distinguished Republican leader, on critical issues that will have a direct bearing on the future of our Nation. And while I know we all admire everything that MANUEL has accomplished, I am certain no one could be more proud of him today than his loving family; his lovely wife, Jean, and his four fine children, Terra, Jay, Barbara and Jeff.

As but one small way of thanking Mr. LUJAN, the House Science, Space, and Technology Committee has adopted the following resolution in honor of his many accomplishments, not just in terms of the committee, but in terms of his multitude of contributions to our Nation. The resolution reads as follows:

RESOLUTION COMMEMORATING THE RETIREMENT OF THE HONORABLE MANUEL LUJAN, JR., IN THE COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY, OCTOBER 12, 1988

Whereas the Honorable Manuel Lujan has contributed twenty years of dedicated public service to his country as a Member of the U.S. House of Representatives;

Whereas the Honorable Manuel Lujan has served longer than any other Member elected to the U.S. House of Representatives from New Mexico;

Whereas the Honorable Manuel Lujan, in his long tenure and leadership on the Interior and Insular Affairs Committee, has been a protector of the Nation's parks, monuments, and wilderness areas, and a champion of environmental policies to safeguard pure water and clean air for current and future generations;

Whereas the Honorable Manuel Lujan has been the Ranking Republican Member of the Science, Space, and Technology Committee for the ninety-ninth and the one-hundredth Congresses;

Whereas the Honorable Manuel Lujan has provided continuous leadership in promoting America's scientific and technological excellence;

Whereas the Honorable Manuel Lujan has strongly supported America's space exploration program for the benefit of all mankind;

Whereas the Honorable Manuel Lujan has been an unswerving advocate of energy research and development to provide America with both energy independence and economical energy costs;

Whereas the Honorable Manuel Lujan, representing the State of New Mexico with several of the nation's largest federal laboratories, has worked to improve the technology transfer process from federally-funded research and development programs to the commercial sector;

Whereas the Honorable Manuel Lujan has helped develop national policy in rapidly changing fields such as superconductivity and semiconductor manufacturing;

Whereas the Honorable Manuel Lujan has been committed unconditionally to strong broad-based science and engineering education at all levels, and to the increased participation of women and minorities in all phases of the scientific enterprise;

Whereas the Honorable Manuel Lujan has worked for international cooperation in science, space, and technology, especially among the nations of Pan America;

Whereas the Honorable Manuel Lujan is distinguished among Members of Congress in his special ability to communicate his ideas and beliefs in both English and Spanish thus reaching a broader public both nationally and internationally: Now, therefore be it

Resolved, That the House of Representatives wishes to pay tribute to its fellow Member and good friend Manuel Lujan, Jr., for his long and distinguished service to his country, his leadership in promoting and protecting America's scientific and technological development, and his great good will and spirit of compromise to forward the nation's progress and prosperity.

Mr. DE LA GARZA. Mr. Speaker, as this Congress comes to a close we lose one of our finest colleagues with the retirement of MANUEL LUJAN, JR. While I can certainly understand his wanting to spend more time in the glorious State of New Mexico from which he hails, it is with a great sadness that I say goodbye.

MANNY's legislative contributions are too numerous to list and they go beyond what he has done for his district and State for many affect our national and international interests. Take for example his work with the space program. It is these efforts which have laid the groundwork of the future exploration of space throughout this century and well beyond the year 2000.

Though I have not had the privilege of serving on the same committees as my distinguished colleague I have profited from his generous counsel on numerous occasions. He is a man of wisdom, dedication, compassion and fairness, but moreover, he is a man who possesses a strong sense of "noblesse oblige," the idea that it is his duty to serve, his obligation as a citizen to do his part.

He has its courtesy and civility, which does not have anything snobbish about it, but which means you treat all people the same way—with respect. He has its sense of honor. This is why I say the House is losing some special qualities when it loses MANUEL LUJAN, JR.

As he ends a distinguished congressional career I want to say I wish MANNY the best in all that the future has to hold as well as add I look forward to our continued association and friendship.

Mr. GALLO. Mr. Speaker, I want to echo the sentiments of my colleagues who have gathered to honor our good friend, Representative MANUEL LUJAN, on the occasion of his retirement from the House.

I have had the pleasure of MANUEL LUJAN's good company and the benefit of his saged advice on many occasions, as our offices are located in close proximity on the third floor of the Longworth Building.

We all know him as a soft-spoken man with a ready smile and warm greeting for friends and colleagues.

We also know him as an effective and experienced Member of Congress who has served 10 successful terms in the House representing the great State of New Mexico. He is a true pioneer, who came to Congress during a turbulent time in our Nation's history and made his mark through perseverance and energetic advocacy of programs that work for people.

He has served with distinction as the ranking member of the Committee on Science, Space, and Technology.

In spite of his easy-going manner, we all know that when the chips are down and the battle rages, there is no more determined nor dedicated fighter for a cause that is right and just than MANUEL LUJAN.

His sense of humor and his good advice will be greatly missed in the 101th Congress. I wish MANUEL LUJAN all of the best as he accepts new challenges in the future.

Mr. BENNETT. Mr. Speaker, my colleague Congressman MANUEL LUJAN has announced that he is not coming back to Congress next term, and that will be a disappointment to all of us on each side of the aisle. He has represented his district and State well in the U.S. Congress in his 20 years here, and his work has been characterized by not only his abilities in drafting and forwarding legislation, but also in the personal qualities which he has brought to bear on the work here in Congress; personal qualities of dedicated American patriotism, hard work, and family and spiritual standards of the very highest nature.

Truly we will all miss him, and we all wish him and his family a full enjoyment in the many years we hope lie ahead them.

Mr. BUSTAMANTE. Mr. Speaker, I want to thank my colleague from New Mexico, Mr. SKEEN, for taking this time to pay tribute to our good friend, MANUEL LUJAN, who is retiring after serving two decades in the House of Representatives.

Although I had the privilege to serve with him for only two terms, I got to know him and his work well. In my many dealings with him, I have found him to be a receptive and objective Member of Congress. As the senior Hispanic Republican in the House, MANNY has debated me in Spanish about nearly every issue under the Sun—from SDI to child care. Despite our political differences, he puts his friendship above partisanship—a real sign of leadership.

Throughout his service as member of the Congressional Hispanic Caucus, he has been an active and integral participant in our deliberations. His contributions have made the Hispanic Caucus a truly bipartisan body, and we are grateful to him for that.

MANNY LUJAN has served his area well and, as ranking member of the Science, Space, and Technology Committee, he has been instrumental in getting our country back in space. I will miss his presence here together with the rest of my colleagues. I wish him and his family the very best and hope that he will keep in touch and provide us with his valuable advice and friendship. Manuel, buena suerte.

Mr. MARTINEZ. Mr. Speaker, I rise today to honor our colleague from New Mexico, Mr. MANUEL LUJAN, on the occasion of his retirement, for his 20 years of service to our country as a Member of this body.

I first met MANUEL in his 14th—my first—year in Congress. When I first met him, I liked him and found him to be a gentleman in every respect. During the 6 years that followed, MANUEL LUJAN repeatedly reinforced the impression he first made on me. Indeed, this was no easy task since we often held opposing viewpoints on the issues being considered by this body. Fortunately, MANUEL has a way of disagreeing without being disagreeable. In fact, he is almost humble in pointing out his objections to arguments made by his colleagues. Finally, if there was ever a person who could put partisan politics aside for the good of the country, it was MANUEL LUJAN.

To be sure, MANUEL will be missed as the ranking minority member on the Committee on Science, Space, and Technology and as a senior member of the Interior and Insular Affairs Committee. Where he will be missed the most, however, is the Congressional Hispanic Caucus. I have served on the Congressional Hispanic Caucus with MANUEL and I know that he has always had a stabilizing influence on our organization. His soft-spoken ability to calm the Hispanic Caucus will be sorely missed.

MANUEL may be leaving this body, but he is not leaving us. He will be back to counsel us because his experience is too valuable to go unused. Therefore, to MANUEL it is so long for now, but not goodbye.

Mrs. MEYERS of Kansas. Mr. Speaker, at the end of this Congress, the Honorable MANUEL LUJAN, my colleague, and ranking Republican member of the House Science, Space, and Technology Committee, will be retiring. This year marks MANUEL's 20th year in the U.S. House of Representatives. As a former member of the Science, Space, and Technology Committee, I enjoyed working with MANUEL, and I want to commend him for his effective leadership on the committee, and to thank him for his excellent service.

Together we spent many hours listening to testimony presented to the committee regarding the *Challenger* incident, and I am very pleased that the United States has successfully returned to space. Individuals, like my friend MANUEL, played an important role in making certain that the shuttle, *Discovery,* would be safe to fly again. As a strong supporter of the U.S. space program, he worked to ensure that Congress performed its oversight role. His contributions to the committee and his strong leadership will be long remembered.

On a more personal note, I will always remember MANUEL as a Member who was always compassionate, fair, willing to listen to all viewpoints, resourceful, intelligent, and good humored. I am sure that members of the Science, Space, and Technology Committee will miss him as much as I will, and I know that Congress will not be the same without him. I wish him well.

Mr. BEREUTER. Mr. Speaker, I am honored to join my colleagues this evening in paying tribute to one of the great leaders of this body: Congressman MANUEL LUJAN.

It was 20 years ago that citizens of New Mexico first elected MANUEL LUJAN to the House of Representatives. They sent to Washington one of their best, and he returned their affection and respect many times over as he worked diligently to represent them in the Nation's Capital. Their distinguished Representative rose to leadership positions on two committees vital to the interests of New Mexico and the Nation. As vice chairman of the House Science, Space, and Technology Committee, he oversees the State's two Department of Energy national laboratories at Sandia and Los Alamos. As the senior Republican member of the House Interior and Insular Affairs Committee, he also closely follows and influences the activities of the Department of Interior as well as the Nuclear Regulatory Commission.

I first met MANUEL when I was elected to Congress and gained membership on the House Interior and Insular Affairs Committee. At that time, he was in a senior position on the committee, and then became the ranking Republican member. My first impressions of MANUEL 10 years ago remain the same today. His calm, patient, and highly competent method of resolving issues that came before the committee, his fairness, his integrity, and his commitment to public service are the qualities that have marked this man as superb and a very special Congressman.

MANUEL LUJAN will always be held in a position of respect and affection by this Member because of the particularly helpful assistance he provided to me during my first two terms in the Congress when I served with him on the Interior Committee. In 1984 President Reagan signed into law a bill that I sponsored and worked on for over 2 years. The High Plains Groundwater Recharge Demonstration Act has set in motion a major study to determine techniques for ground water recharge.

Throughout the legislative process, I was assisted by a number of my colleagues on the Interior Committee on both sides of the aisle. Certainly one of my principal supporters was MANUEL LUJAN. Whatever roadblock was in the way, he effectively helped me push it aside. Whenever it appeared that the momentum for passage had slowed, MANUEL gave it an extra push.

Tonight I say "thank you" to MANUEL and I join all of my colleagues in this body in wishing you and your family the very best as you retire. You will be greatly missed, but we hope to see you frequently. MANUEL, your friendly demeanor, unfailing good humor, and expertise will be greatly missed by your colleagues who remain in the Congress. Well done, Representative MANUEL LUJAN of the great State of New Mexico.

Mr. SHUMWAY. Mr. Speaker, I appreciate having this opportunity to pay tribute to the accomplishments and contributions of our friend and colleague, MANUEL LUJAN, and to extend every best wish to him as he prepares to retire from this body.

For some 20 years, MANUEL LUJAN has served the people of New Mexico with quiet, effective action. As the gentleman from New Mexico, Mr. SKEEN, has pointed out, MANUEL LUJAN's ability to make friends on both sides of the aisle is both legendary and prodigious. He is a sincere, dedicated, caring individual whose leadership and experience have contributed to the betterment not only of his district and his State, but also that of the Nation.

I know we will all miss MANUEL LUJAN, just as we will remember with warmth and pride how enjoyable it was to serve with him in the Congress. I extend every best wish for his future endeavors, as well as every best personal regard to him.

Mr. SENSENBRENNER. Mr. Speaker, it is with great pride that I pay tribute to MANUEL LUJAN, a 20th-century conquistador of liberalism and our hearts.

I have had the privilege of working with MANUEL on the Science, Space, and Technology Committee since 1984, when he became the ranking member of the committee. Like the conquistadors of old, he took on this new legislative territory with enthusiasm, knowing that all the potential riches of the committee's work had yet to be tapped and utilized for the public good.

His diligent work to improve our country's space program after the *Challenger* space shuttle accident will long be remembered. It will be because of MANUEL LUJAN and others that we will realize our Nation's dream in space.

It has been an honor and pleasure to work with MANUEL LUJAN. MANUEL and Jean, buena suerte in your new endeavors.

Mr. CRANE. Mr. Speaker, November 5 will mark the 20th anniversary of the first election to the U.S. House of Representatives of our friend and colleague, MANUEL LUJAN. For 10 terms he has served the citizens of the State of New Mexico.

Now, he has decided to retire from this body where he has striven for two decades to work in the interest of the people of his native State as well as those of the Republic.

He convinced fellow Republicans he should be elected to committees where he could be of most assistance to New Mexico. For 20 years, on the House Interior Committee, he has worked on legislation vital to his State. And on the House Science Committee, where he now serves as vice chairman, he shares jurisdiction over two national laboratories in New Mexico.

But, of course, he hasn't confined himself to matters relating only to his home State. MANUEL LUJAN has long been a leader in the Chamber in this struggle against waste in government spending. He has been in the forefront seeking a constitutional amendment requiring a balanced budget. And he has supported efforts designed to provide this Nation with a strong defense.

But, today, just isn't an occasion to bid farewell to a most able legislator. It's also a sad moment when we say adios to a friend. We'll always remember MANUEL as a warm person, one who was interested in others and gave freely of his time and energies. We certainly hope his plans include frequent visits to this Chamber where he has served with such distinction.

Mr. UDALL. Mr. Speaker, a good man and a good friend, MANUEL LUJAN of New Mexico, is retiring this year and I'm going to miss him in this House.

MANNY and I have served together on the House Interior Committee for a long time. For many of those years, he sat as the ranking Republican. His opposition was always firm, fair and evenhanded and we've always managed to agree not to be disagreeable.

He is one of the most decent people you'll ever meet. And he has a sharp wit and the ability to see the bright side of things.

Both of us, of course, share a common bond—we're both Westerners, and beyond that, Southwesterners. We represent States with a common border and a lot of similar problems. And in those areas, MANNY LUJAN has always contributed, and the people of the Southwest will miss him as much as the people of New Mexico.

I'm grateful to MANNY for his advice, for all of his hard work and for his many contributions to this institution.

MANNY, I wish you and Jean all the very best in the coming years.

Mr. REGULA. Mr. Speaker, it is fitting that we should be taking this time to pay tribute to our friend MANUEL LUJAN so close upon the heels of the successful *Discovery* mission.

It is easy to be a fan when your team is winning, but following the *Challenger* disaster NASA and the space program were not a winning team. MANUEL was willing to take on the tough task of rebuilding the space program and reexamining U.S. space policy following the 1986 tragedy.

He did not hesitate to take NASA to task and ask the tough questions following the *Challenger* disaster. It is due in part, to his hard work and his dedication to returning the space program to its former greatness, that the recent *Discovery* mission was successful.

Few in this body get the opportunity to be recognized for our work on two committees, but in addition to his stint as the senior Republican on the Science Committee, MANUEL also served in that capacity on the Interior Committee. I am sure after that stint in the early 1980's, during the Jim Watt era, handling the shuttle disaster seemed easy.

In my capacity as the senior Republican on the Interior Appropriations Subcommittee, I also came to know MANUEL as an eloquent advocate for funding for projects in New Mexico and his district.

During his 20 years in Congress, whatever the task, MANUEL has proved up to it. We will miss his leadership, hardwork and dedication. Upon your retirement MANUEL, I wish you many more years of health and happiness and continued success in all your endeavors.

Mr. SCHULZE. Mr. Speaker, I rise to offer special tribute to my colleague, MANUEL LUJAN, JR., of New Mexico, who will be retiring from the House of Representatives at the close of this 100th Congress. It has truly been an honor to serve in this body with MANUEL. MANUEL has been a leader in this Congress on many issues, and his guidance on many issues will be missed.

MANUEL, the senior member of the New Mexico delegation, leaves us with several achievements and distinctions to be proud of during his 20 years in the House of Representatives. Chief among those is his work in the House Interior and Insular Affairs Committee. Through his work in this committee, he helped to forge public policy on some of the most difficult and intricate issues, such as striking the delicate and appropriate balance between wilderness preservation and the continuing progress and development of land. MANUEL LUJAN has indeed proven himself a true friend of environmental protection and his contributions in this area will be long remembered.

MANUEL has also set his sights to the future as a member of the President's National Space Commission, helping to develop U.S. space policy for the next 20 years. This service helps to underscore his commitment and work on the Science and Technology Committee to ensure our country is prepared to meet the challenges of the next century that lie ahead in space.

Education is another area that has benefited by having MANUEL in Congress. He has not just talked about the need for a college education, he helped to make it possible to the students of New Mexico's First District by helping community leaders organize a scholarship fund program. That program is now a model for other States. Through initiatives such as the scholarship fund program, MANUEL showed us all how together the public and private sectors can positively interact to produce a better community.

Surely, MANUEL is one Member of Congress not returning for the 101st Congress whose absence will be noticed and missed. I join my colleagues today in wishing MANUEL LUJAN the best of luck and success in the future.

Mr. GARCIA. Mr. Speaker, for the past 20 years we have had the good fortune to serve with the gentleman from New Mexico. He has been a good friend and a good Member of Congress.

MANNY has served on the Interior and Science Committees. He has served with me as a member of the Congressional Hispanic Caucus. MANNY achieved not only stature within this body but within his party as well, being mentioned as a possible Secretary of the Interior on a couple of different occasions.

As a member of the Science, Space, and Technology Committee, he has been a defender of U.S. science and tech programs. I know that as the ranking Republican on that committee, he has shown himself to be a hard worker and fair legislator.

As the sole member of the Hispanic caucus from the Republican Party, MANNY had his work cut out for him. Yet, he always maintained an interest in the Hispanic community, and he was living proof that our community needs friends and workers from both sides of the aisle.

MANNY has been a capable legislator and a good friend. He has a good sense of humor, and he is an honest man. In short, we will all miss MANNY LUJAN, and we will wish him well in his future endeavors.

Mr. HUTTO. Mr. Speaker, I am pleased to join with my colleagues and those of Congressman MANUEL LUJAN, JR., in extending sincerest best wishes on the occasion of his retirement from the United States Congress.

MANUEL has been an outstanding Member of the House, especially effective as ranking minority member of the Interior and Insular Affairs Committee. He has done a fine job in serving his constituents and his country and will be sorely missed by all of us.

I join with his many friends in wishing Congressman LUJAN and his family a retirement filled with much joy and happiness. May the years ahead abound with God's richest blessings for them all.

Mr. KONNYU. Mr. Speaker, I appreciate the opportunity today to pay tribute to my distinguished colleague from New Mexico, MANUEL LUJAN. As this second session of the 100th Congress draws to a close, the U.S. House of Representatives will be bidding farewell to one of its finest and most admired Members.

As a freshman Member, I feel richer to have served this term on the Science, Space, and Technology Committee with MANUEL, our ranking Republican member. His keen insight and sensible advice have proven to be invaluable to me in serving the Silicon Valley area. And on a broader note, I would like to commend my colleague on his efforts in reestablishing this Nation's leadership position in the space race. His perseverance was instrumental in returning the U.S. shuttle program to operational status, and his faith in the manned space program rejuvenated NASA and the American people. In a word, MANUEL's contributions have been inspiration.

In the 12 years that I have known MANUEL, I have grown to respect him as a legislator, admired him as the top Republican Hispanic leader of our country, and as an honorable human being. There is a particular scene that I want to share with this audience that best reflects the strong conservatism within MANUEL's fiber. It was the fiscal 1988 science and technology spending bill—and MANUEL, on behalf of the administration and the House Republican leadership, supported a $10 million cut in a particular spending area. After a voice vote defeat he offered a $1 million cut which also failed. Disappointed, but not having lost his fighting spirit, he finally offered a very specific $180,000 cut. Arguing in the most pleasant way with total gentleness, he said that "we ought to do at least a tiny bit"—yes, his left arm went up, his index finger within a quarter inch of his thumb—"for controlling the deficit." Chairman ROE, reading Congressman LUJAN's determination—gaveled, without editorial comment, and with a voice full of respect, declared passage of the amendment. Yes, Congressman LUJAN is the ideal image of the term—public servant. MANUEL's integrity and dedication during his 20 years of service have been appreciated by his constituency and his colleagues, alike. Yet as we reflect on the loss of MANUEL as a respected Member of Congress, we must remember what will be gained as he pursues new challenges that will lie before him.

To MANUEL, I would like to say, thank you. You have been a good teacher and a great friend. I will miss you, our colleagues will miss you, and this Nation will miss you. I wish you well.

Mr. YATRON. Mr. Speaker, I rise at this time to honor my esteemed colleague and good friend, MANUEL LUJAN, JR. MANUEL will be retiring upon the conclusion of this 100th Congress and we will all greatly miss him.

MANUEL and I were in the same freshman class, having entered the Congress in 1968. In our 20 years in office, we have seen many notable accomplishments and achievements by MANUEL LUJAN both on a national level and within the State of New Mexico. His work through the House Interior Committee and the Science, Space and Technology Committee warrant high praise. More than once he was considered for Secretary of the Interior, his expertise in the area surely serving as an asset to the administration. He has been equally effective in his assignments on the Science and Technology Committee, proving a strong supporter of the space program. He was one of four congressional members of the President's National Commission on Space, established to set long term goals for U.S. space policy. He has been instrumental in ensuring that past problems and disasters within the space program, such as the space shuttle *Challenger,* are not repeated.

As the voice in Washington of the people of the First District of New Mexico, MANUEL has, time and time again done his very best to fully and fairly represent those issues of importance to these New Mexicans. As a result, he has served in Congress longer than any other Republican in New Mexico and is well-regarded, admired and revered back home. He has fought and worked hard for legislation in the best interest of New Mexico and done much for the economy and overall well-being of the State. He has also been a powerful voice in Congress for Hispanics, having served many years as a member of the Congressional Hispanic Caucus. Those in both New Mexico and in the Congress, and indeed, throughout the Nation, have benefited by MANUEL's public servitude.

I am very proud to have served with MANUEL during his tenure in the House and am honored that I was able to witness his many feats. His work will long be remembered and I hope that he will continue to be met with every future success. I know that my colleagues will join me in expressing our sadness at MANUEL's departure from the House, but wish him and his family the very best in all of their further endeavors.

Mr. RITTER. Mr. Speaker, as this session of the 100th Congress finally draws to a close, I personally feel a bit of sadness upon hearing that our friend and colleague MANUEL LUJAN of New Mexico is leaving us to return to his home State.

I have had the great pleasure of serving with MANUEL on the Science, Space, and Technology Committee, where he has been an exceptional leader and a true friend. As our ranking minority member, he's provided the spark that's helped us to tackle the difficult issues, which confront the Service Committee. He's done it all with a great sense of humor, a knack for bringing those on both sides of the aisle together, and an enthusiasm for the job that will be hard to match. In areas such as technological competitiveness, where MANUEL was instrumental in our efforts on the trade bill, space policy, superconductivity, and a host of others, MANUEL has worked to move important legislation.

I am pleased to join with my colleagues who have been saluting MANUEL and his wife Jean as they prepare to depart from Washington. I'm sure that given his command of the challenges facing America's scientific community, we'll be seeing a lot more of MANUEL in the future.

MANUEL, you've been right there when we needed you, and you have all of my best wishes for a joyful and happy retirement. I will miss you.

Mr. MAZZOLI. Mr. Speaker, I want to join with my colleagues in paying tribute to MANUEL LUJAN of New Mexico, who will be retiring from the House at the end of the 100th Congress following 20 years of service.

Though MANUEL and I have not served on committees together, everyone in the House knows him as a friendly, good-natured fellow who conducts himself as a gentleman, even when on the opposite side of an issue.

During his tenure in the House, MANUEL has served the interests of his constituents well through his work as a senior member on the House Interior and Insular Affairs Committee, balancing energy and environmental considerations. And, more recently as the ranking Republican member of the Science, Space, and Technology Committee, he has helped set a course for the future of our Nation's space program. It certainly has been a difficult few years for those Members responsible for oversight on the space program following the *Challenger* disaster. I know that MANUEL's experience and steady hand on the committee's activities will be missed.

I wish MANUEL the best of health and happiness in his retirement.

Mr. SKEEN. Mr. Speaker, I yield to the gentleman from New Mexico [Mr. LUJAN].

Mr. LUJAN. I thank the gentleman. I just want to take this time to say, "thank you" to the gentleman for taking out this special order. It is very, very nice and very gratifying. Also to CONNIE and all of the others who have said such kind words, perhaps undeserved kind words, but nevertheless very much appreciated, I would like to say that I have enjoyed my 20 years here in the Congress.

I have enjoyed the associations that I have made throughout the years.

While one looks forward to going home, certainly always feels that weight of not being together the rest of you in doing the things that we all enjoy doing.

So I just wanted to take these few moments to say to the gentleman in the well, Mr. SKEEN, "thank you." I have enjoyed our working together in the Congress. I hope that in some small way we might have been able to benefit our State and of course our Nation. But I thank you very much for taking this special order.

Mr. SKEEN. The gentleman is more than welcome. We appreciate his contributions.

By the way, because of the lateness of the hour and the circumstances here in the waning days of the Congress, it makes these special orders very difficult to arrange. But it was a real pleasure in this case because of the true admiration, and I have here a long list of individuals who responded to the special order to say that they would either insert material or come by and talk with us.

But before we wind this up tonight I would like to make mention of two other great elements of MANUEL's makeup and the work that he has done that should not go unrecognized.

One is this business of talking about economy in government. Now I have known MANUEL for many years and if there is one person who lives economically and conservatively in his own habits, in his own way of life, this gentleman carries it right through to the practice of government and he always practices that which he preaches, because he is not loose with the dollar.

I can tell you that because we have various schemes come up and I can tell you this, he always gets the most out of every cent that is spent, not only in his personal life but also in the work that he has done here in Congress.

He is much to be admired because he has never wavered from his principle.

But above all with all the work he has done on science and technology, with the work he has done on his Committee on Interior and Insular Affairs and the other committees he has worked with and on, I want to talk about the First Congressional District's scholastic fund. This is an innovation that I think probably many other Members of Congress should emulate because it is one of the most far-reaching programs that I have ever seen an individual Member of Congress initiate and operate. But in doing it he always has fun.

I found out MANUEL is more or less a restrained impresario. He would really love to have been the promoter of prize fighting events, car racing events. So he combined that ability and he does it very well, to raise money for a scholastic fund for the First Congressional District. He raised some of that money out of the Second Congressional District and also the Third Congressional District in order to send the youngsters to school.

It has been a very significant contribution and so selflessly done but so valuable because he understands, I think, the most important thing that this country and this Government is all made up for and that is how do you propagate it? The best way to do it is to help educate our young folks and keep them interested not only in making a livelihood but in government as well.

He served as a great example. It is one of the finest things I have ever seen, one of the finest institutions I have ever seen. This was all done at his own volition, his own ingenuity, his innovation and he did it very well.

I want recognition for that because I think it would be well for many Members of Congress to emulate the same kind of activity. It was totally voluntary.

So MANUEL, we love you dearly. We appreciate the great contributions you have made along with your family and staff.

I would like to mention Lucy Salazar, one of the finest ladies anywhere who has been MANUEL's administrative assistant and a great New Mexico lady. I want to give her acknowledgement and make note of her contribution as well because it takes a lot of staff effort to keep us going up here. All those folks have contributed but it has been MANUEL's leadership. And we appreciate every bit of it. We are going to miss him here.

I am fortunate because I get to see him back in the State of New Mexico and I know that will be often. But I thank the gentleman from the bottom of our hearts. It has been a real pleasure to take this special order.

GENERAL LEAVE

Mr. SKEEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous material on the subject of my special order.

The SPEAKER pro tempore. (Mr. BARNARD). Is there objection to the request of the gentleman from New Mexico?

There was no objection.

GENERAL LEAVE

Mr. SKEEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous material on the subject of the special order today by the gentleman from Virginia [Mr. BLILEY].

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Mexico?

There was no objection.

COMMUNICATION FROM CHAIRMAN OF COMMITTEE ON THE BUDGET REGARDING CURRENT LEVEL OF SPENDING AND REVENUES FOR FISCAL YEAR 1989

(Mr. DERRICK asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. DERRICK. Mr. Speaker, on behalf of Chairman WILLIAM H. GRAY III, pursuant to the procedures of the Committee on the Budget and section 311 of the Congressional Budget Act of 1974, as amended, I am submitting for printing in the CONGRESSIONAL RECORD the official letter to the Speaker advising him of the current level of spending, credit, and revenues for fiscal year 1989. Since the last report, filed on September 23, 1988, the following appropriations bills have been cleared by the Congress and signed by the President: Agriculture (Public Law 100-460); Commerce, Justice, State (Public Law 100-459); Defense (Public Law 100-463); District of Columbia (Public Law 100-462); Foreign Operations (Public Law 100-461); Legislative Branch (Public Law 100-458); and Transportation (Public Law 100-457). The Congress has cleared and the President has signed the National Defense Authorization Act (Public Law 100-456). Congress has also completed action on the Family Welfare Reform Act (H.R. 1720). These actions changed the estimates for budget authority, outlays and revenues.

The term "current level" refers to the estimated amount of budget authority, outlays, credit authority, and revenues that are available—or will be used—for the full fiscal year in question based only on enacted law.

Current level reports are intended to provide Members information to compare enacted spending and revenues with the aggregate ceilings on budget authority, outlays, and revenues established in a budget resolution, and also to compare enacted legislation with the allocations of new discretionary budget authority, entitlement authority, and credit authority made to a committee pursuant to subsection 302(a) of the Budget Act. This report compares the spending, credit, and revenue levels in current level with those assumed in the budget resolution for fiscal year 1989—House Concurrent Resolution 268—adopted on June 6, 1988.

Subsection 311(b) provides an exception to the 311(a) point of order for measures that would breach the ceilings on total spending set in the budget resolution but would not cause a committee to exceed its "appropriate allocation" of discretionary spending authority made pursuant to section 302(a) of the Budget Act. Such an exception was first provided by the budget resolution for fiscal year 1985—House Concurrent Resolution 280, 98th Congress. The exception was made permanent by the amendments to the Budget Act included in the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177, Gramm-Rudman-Hollings). This exception is intended to protect a committee that has stayed within its allocation of discretionary budget authority and new entitlement authority from points of order if the total spending ceilings have been breached for reasons outside of its control. For fiscal year 1989, the 302(a) allocations to House committees made pursuant to the conference report on House Concurrent Resolution 268 were printed in House Report 100-662, June 1, 1988.

Section 311(c) of the Budget Act provides that, for purposes of enforcing section 311, the levels of new budget authority, entitlement authority, outlays, and revenues shall be determined on the current basis of estimates made by the Committee on the Budget. Current level reports represent partial fulfillment of this enforcement responsibility of the Budget Committee by providing both estimates of enacted aggregate spending and revenues, and, for purposes of determining the applicability of the section 311(b) exception, estimates of the relationship between the budgetary effect of enacted legislation within a committee's jurisdiction and the allocation of spending authority made to that committee.

The estimates in this report are based on economic and technical assumptions in place at the time of the adoption of the budget resolution, House Concurrent Resolution 268, on June 6, 1988. This is intended to protect committees which acted on the basis of the assumptions of the budget resolution from changes in economic and technical factors over which they have no control. Unless the Congress adopts a subsequent budget resolution for a fiscal year that alters the assumptions about legislative actions, committees should be able to expect that measures that conform with the budget resolution will not be subject to points of order for violation of the Budget Act. To do otherwise and base enforcement on constantly changing economic and technical estimates would seriously disrupt the legislative process, penalize committees that are unable to complete work on legislation within a short period after adoption of a budget resolution, and undermine respect for budget enforcement procedures.

In addition to section 311, the Budget Act contains another point of order that requires Budget Committee estimates for enforcement. Section 302(f)(1) of the Budget Act prohibits the consideration of a measure providing new budget authority, new entitlement authority, or new credit authority if the adoption of that measure would cause a committee to exceed its allocation of new spending or credit authority made pursuant to subsection 302(b) of the Budget Act. The 302(b) allocation is a subdivision of the new spending, new entitlement, and new credit authority allocated to a committee pursuant to section 302(a), among either the subcommittees of that committee or among programs over which the committee has jurisdiction. This point of order was added to the Budget Act by the amendments included in the Balanced Budget and Emergency Deficit Control Act of 1985.

Section 302(g) provides that the enforcement of section 302 shall be based on estimates of spending and credit authority made by the Committee on the Budget. The Budget Committee fulfills this responsibility by providing, as necessary, a separate section 302 status report to the Speaker.

For information purposes only current level reports will continue to include a comparison of the budget and credit authority divided among the Appropriations Subcommittees by that committee's 302(b) division with the actual enacted spending and credit legislation within each subcommittee's jurisdiction.

As chairman of the Budget process task force, and on behalf of Chairman GRAY, I intend to keep the House informed regularly on the status of the current level.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE BUDGET,
Washington DC, October 12, 1988.

Hon. JAMES C. WRIGHT, Jr.,
Speaker, U.S. House of Representatives, Washington, DC.

DEAR MR. SPEAKER: On January 30, 1976, the Committee on the Budget outlined the procedure which it has adopted in connection with its responsibilities under Section 311 of the Congressional Budget Act of 1974, as amended, to provide estimates of the current level of revenues and spending.

I am herewith transmitting the status report under H. Con. Res. 268, the Concurrent Resolution on the Budget for Fiscal year 1989.

In the House of Representatives, the procedural situation with regard to the spending ceiling (total budget authority and total outlays) is affected by Section 311(b) of the Congressional Budget Act of 1974, as amended by P.L. 99-177. Enforcement against possible breaches of the spending ceilings under 311(a) of the Budget Act would not apply when a measure would not cause a committee to exceed its "appropriate allocation" of "new discretionary budget authority" or "new entitlement authority" made pursuant to Section 302(a) of the Budget Act. It should be noted that under this procedure the committee's outlay allocation is not considered.

The intent of Section 311(b) of the Budget Act is to protect a committee that has stayed within its spending authority allocations—discretionary budget authority or new entitlement authority—from points of order if the total spending ceilings have been breached for reasons outside of its control. The 302(a) allocations to House committees made pursuant to the conference report on H. Con. Res. 268 were printed in H. Reprt. 100-662 (June 1, 1988).

The enclosed tables compare enacted legislation to each committee's 302(a) allocation of discretionary budget authority, new entitlement authority, new direct loan obligations and new primary loan guarantee commitments. The estimates of spending

and revenues for purposes of the application of points of order under the Budget Act are based upon the economic and technical assumptions underlying the fiscal year 1989 budget resolution, H. Con. Res. 268.

The Energy and Commerce Committee and the Ways and Means Committee have exceeded their targets for new entitlement authority because of the enactment of P.L. 100-360, the Medicare Catastrophic Coverage Act and the completion of H.R. 1720, the Family Welfare Reform Act. The Concurrent Resolution on the Budget for Fiscal Year 1989 assumed enactment of both pieces of legislation but made no allocations for them. The House report on the Budget Resolution explained that such legislation, if deficit-neutral, would be appropriate even though it exceeded the Resolution's Section 302 allocations or spending aggregates.

Revenues exceed the revenue floor established by the Concurrent Resolution on the Budget for Fiscal Year 1989 because of enactment of P.L. 100-360, the Medicare Catastrophic Coverage Act and the completion of H.R. 1720, the Family Welfare Reform Act. Passage of this legislation was assumed in the Budget Resolution but not reflected in the revenue floor. The Budget Resolution assumed deficit-neutral catastrophic health and welfare reform legislation, but not a specific dollar amount. As explained in the House report on the Budget Resolution, the revenue increases in P.L. 100-360 and H.R. 1720 were intended to offset and make deficit neutral the multi-year spending in those bills. Therefore, it would not be consistent with the assumptions in the Budget Resolution to enact any additional revenue-losing legislation beyond P.L. 100-418, the Omnibus Trade Act and P.L. 100-449, the Canada—U.S. Free Trade Agreement.

Sincerely,

WILLIAM H. GRAY III,
Chairman.

REPORT TO THE SPEAKER OF THE U.S. HOUSE OF REPRESENTATIVES FROM THE COMMITTEE ON THE BUDGET ON THE STATUS OF THE FISCAL YEAR 1989 CONGRESSIONAL BUDGET, ADOPTED IN HOUSE CONCURRENT RESOLUTION 268

REFLECTING COMPLETED ACTION AS OF OCTOBER 11, 1988

[In millions of dollars]

	Budget authority	Outlays	Revenues
Appropriate level	1,231,700	1,099,700	964,400
Current level	1,231,540	1,099,666	964,780
Amount under ceilings	160	34	...
Amount over ceilings	...	...	...
Amount under floor	...	...	...
Amount over floor	...	...	380

BUDGET AUTHORITY

Any measure providing budget or entitlement authority which is not included in the current level estimate and that exceeds $160 million in budget authority for fiscal year 1989, if adopted and enacted, would cause the appropriate level of budget authority for that year as set forth in H. Con. Res. 268 to be exceeded.

OUTLAYS

Any measure providing budget or entitlement authority which is not included in the current level estimate and that exceeds $34 million in outlays for fiscal 1989, if adopted and enacted, would cause the appropriate level of outlays for that year as set forth in H. Con. Res. 268 to be exceeded.

REVENUES

Any measure that would result in a revenue loss which is not included in the current level estimate and that exceeds $380 million in revenues for fiscal year 1989, if adopted and enacted, would cause revenues to be less than the appropriate level for that year as set forth in H. Con. Res. 268.

Fiscal year 1989 discretionary action budget authority comparison of current level and budget resolution allocation by committee pursuant to section 302

[In millions of dollars]

	Current level budget authority
House committee:	
Agriculture	(+412)
Appropriations [1]	(−718)
Armed Services	(. . .)
Banking, Finance, and Urban Affairs	(. . .)
District of Columbia	(. . .)
Education and Labor	(. . .)
Energy and Commerce	(. . .)
Foreign Affairs	(. . .)
Government Operations	(. . .)
House Administration	(. . .)
Interior and Insular Affairs	(. . .)
Judiciary	(. . .)
Merchant Marine and Fisheries	(. . .)
Post Office and Civil Service	(. . .)
Public Works and Transportation	(. . .)
Science and Technology	(. . .)
Small Business	(. . .)
Veterans' Affairs	(−4)
Ways and Means	(−79)

[1] See next table for detail.

NOTE.—Committees are (+) or under (−) their 302(a) allocation for "discretionary action".

FISCAL YEAR 1989 HOUSE APPROPRIATIONS COMMITTEE DISCRETIONARY ACTION—COMPARISON OF CURRENT LEVEL AND BUDGET RESOLUTION SUBDIVISIONS OF THE HOUSE APPROPRIATIONS COMMITTEE PURSUANT TO SECTION 302

[In millions of dollars]

House Appropriations Subcommittee subdivisions	Current level budget authority	Direct loans	Primary loan guarantees
Commerce, State, Justice	(−127)	(−3)	(........)
Defense	(−224)	(........)	(........)
District of Columbia	(−6)	(........)	(........)
Energy and Water	(−47)	(+3)	(........)
Foreign Operations	(........)	(−3,632)	(........)
HUD/Independent Agencies	(........)	(........)	(........)
Interior	(........)	(........)	(........)
Labor, HHS, Education	(−264)	(−33)	(........)
Legislative Branch	(−41)	(........)	(........)
Military Construction	(........)	(........)	(........)
Rural Development and Agriculture	(+9)	(−243)	(+6)
Transportation	(−18)	(........)	(........)
Treasury, Postal Service	(........)	(........)	(........)
Total	(−718)	(−3,908)	(+6)

Note.—Subcommittees are over (+) or under (−) their 302(b) subdivisions of discretionary action.

FISCAL YEAR 1989 ALLOCATION OF NEW ENTITLEMENT AUTHORITY (NEA) PURSUANT TO SECTION 302

[In millions of dollas]

Committee	Allocation	Reported [1]	Enacted [2]	Enacted over (+) under (−) allocation
Agriculture	....	+611	+542	+542
Armed Services	....	+2,234	+2,234	+2,234
Energy and Commerce	....	+75	+55	+55
Interior and Insular Affairs	....	+20	....	....
Judiciary	....	+41	....	....
Veterans' Affairs	+408	+359	+40	−368
Ways and Means	....	+1,624	+1,381	+1,381
Undistributed to committees	+125	....	....	....

[1] These figures are used for 401(b)(2) of the Budget Act.

[2] These figures are used for 302(f) points of order.

Note.—The Energy and Commerce and the Ways and Means Committees have exceeded their targets because of the enactment of P.L. 100–360, the Medicare Catastrophic Act, and the completion of H.R. 1720, the Family Welfare Reform Act the Fiscal Year 1989 Budget Resolution assumed enactment of such legislation but made no allocations for it. The House report on the Budget Resolution explained that such legislation, if deficit-neutral, would be appropriate even though it exceeded the Resolution's Section 302 allocations or spending aggregates.

Further, P.L. 100-48, the Omnibus Trade and Competitiveness Act, provided $111 million of NEA that is scored in the "enacted" column against the Ways and Means Committee Allocation. This amount can be counted against the undistributed $125 million in NEA that was assumed by the Budget Conferees to be available for programs in functions 500, 550 and 600.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 12, 1988.

Hon. WILLIAM H. GRAY III,
Chairman, Committee on the Budget, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended, this letter and supporting detail provide an up-to-date tabulation of the current levels of new budget authority, estimated outlays, estimated revenues, and direct and guaranteed loan levels in comparison with the appropriate levels for those items contained in the most recently agreed to concurrent resolution on the 1989 budget (H. Con. Res. 268). This report for fiscal year 1989 is tabulated as of close of business October 11, 1988. A summary of this tabulation is as follows:

[In millions of dollars]

Current	Resolution level	Budget level +/− H. Con. Res. 268	Current resolution
Budget authority	1,231,540	1,231,700	−160
Outlays	1,099,666	1,099,700	−34
Revenues	964,780	964,400	380
Direct loan obligations	24,370	28,300	−3,930
Guaranteed loan commitments	110,956	110,950	6

Since my report on September 23, the National Defense Authorization Act (P.L. 100-456) and the following appropriations bills have been cleared by Congress and signed by the President: Agriculture (P.L. 100-460), Commerce, Justice, State (P.L. 100-459), Defense (P.L. 100-463), District of Columbia (P.L. 100-462), Foreign Operations (P.L. 100-461), Legislative Branch (P.L. 100-458), Transportation (P.L. 100-457). Congress has also completed action on the Family Welfare Reform Act (H.R. 1720). These actions changed the estimates for budget authority, outlays, and revenues.

Sincerely,

JAMES L. BLUM,
Acting Director.

PARLIAMENTARIAN STATUS REPORT, 100TH CONGRESS, 2D SESSION, HOUSE SUPPORTING DETAIL, FISCAL YEAR 1989 AS OF CLOSE OF BUSINESS OCTOBER 11, 1988

[In millions of dollars]

	Budget authority	Outlays	Revenues
I. Enacted in previous sessions:			
Revenues			964,750
Permanent appropriations and trust funds	853,695	707,069	
Other appropriations		210,305	
Offsetting receipts	−180,560	−180,560	
Total enacted in previous sessions	673,134	736,813	964,750
II. Enacted this session:			
Appropriations:			
Commerce, Justice, State, and Judiciary (P.L. 100–459)	14,851	11,408	
Offsetting receipts	−108	−108	
Defense (P.L. 100–463)	282,412	170,670	
District of Columbia (P.L. 100–462)	537	537	
Energy and water development (P.L. 100–371)	16,556	10,177	
Foreign Operations (P.L. 100–461)	12,766	5,159	
Offsetting receipts	−41	−41	
HUD-Independent Agencies (P.L. 100–404)	59,536	34,773	
Offsetting receipts	−150	−150	
Interior (P.L. 100–446)	9,352	6,750	
Labor-HHS-Education (P.L. 100–436)	125,228	104,726	
Offsetting receipts	−31,445	−31,445	
Legislative branch (P.L. 100–458)	1,808	1,627	
Military construction (P.L. 100–447)	8,797	2,618	
Rural development-agriculture (P.L. 100–460)	34,806	26,272	
Transportation (P.L. 100–457)	10,794	9,604	
Treasury-Postal Service (P.L. 100–440)	16,020	14,127	
Offsetting receipts	−4,859	−4,859	
Dire emergency supplemental (P.L. 100–393)		75	
Other spending:			
Veterans Home Loan Program emergency amendments (P.L. 100–253)		1	
Nevada-Florida Land Exchange Act (P.L. 100–275)	−3	−3	
Assistance and support for Central America (P.L. 100–276)		−17	
Atomic Veterans Compensation Act (P.L. 100–321)[1]			
Veterans Benefits and Services Act of 1988 (P.L. 100–322)	−4	3	−6
College-aid annual appropriation for territories (P.L. 100–339)	(2)	(2)	
Catastrophic health care (P.L. 100–360)	321	101	315
Disaster assistance (P.L. 100–387)	410	410	
Relief for the Coushatta Tribe (P.L. 100–411)	1	1	
Omnibus Trade and Competitiveness Act (P.L. 100–418)			−255
Reservation for Grand Ronde Tribes (P.L. 100–425)	2	2	
Hunger Prevention Act (P.L. 100–435)[3]			
Geothermal Steam Act Amendments (P.L. 100–443)	−1	−1	
U.S.-Canada Free Trade Agreement (P.L. 100–449)	2	2	−97
National Defense Authorization Act (P.L. 100–456)		23	
Total enacted this session	557,592	362,443	−43
III. Continuing resolution authority			
IV. Conference agreements ratified by both Houses:			
Other spending:			
Family Welfare Reform Act of 1987 (H.R. 1720)	−400	−400	73
V. Entitlement authority and other mandatory items requiring further appropriation action:			
Dairy Indemnity Program	(2)	(2)	
Special milk	4		
Food Stamp Program	253		
Federal Crop Insurance Corporation fund	144		
Compact of Free Association	1	1	
Federal unemployment benefits and allowances	31	31	
Worker training	32	32	
Special benefits	37	37	
Payments to the Farm Credit System	35	35	
Payment to the civil service retirement and disability trust fund	(85)	(85)	
Supplemental security income	201	201	
Special benefits for disabled coal miners	3		
Medicaid:			
P.L. 100–360	45	45	
H.R. 1720	10	10	
Family support payments to States:			
Previous law	355	355	
H.R. 1720	63	63	
Total entitlement authority	1,214	810	
Total current level as of October 11, 1988	1,231,540	1,099,666	964,780
1989 budget resolution H. Con. Res. 268	1,231,700	1,099,700	964,400
Amount remaining:			
Over budget resolution			380
Under budget resolution	160	34	

[1] This act increased the current law estimate for veterans compensation which is included in the HUD-Independent Agencies Appropriations Bill, Public Law 100–404.

[2] Less than $500,000.

[3] This act increased the current law estimates for child nutrition, food stamps, temporary emergency food assistance, and cash and commodities for selected groups. Amounts are included in the Rural Development Appropriations Bill, Public Law 100–460.

Notes: Numbers may not add due to rounding.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. Alexander (at the request of Mr. Foley) for today after 1:30 p.m., on account of personal business to attend a funeral.

Mr. Tauke (at the request of Mr. Michel) on account of a death in the family.

Mr. McDade (at the request of Mr. Michel) after 6 p.m. today on account of illness.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. Bliley) to revise and extend their remarks and include extraneous material:)

Mr. Jeffords, for 5 minutes, on October 14.

Mr. Dannemeyer, for 5 minutes, today.

Mr. Dornan of California, for 60 minutes, on October 18, 19 and 20.

Mr. Gingrich, for 60 minutes, on October 13.

Mr. Horton, for 60 minutes, on October 18.

Mr. Bereuter, for 5 minutes, today.

Mr. Crane, for 5 minutes, today.

(The following Members (at the request of Mr. Owens of Utah) to revise and extend their remarks and include extraneous material:)

Mr. Montgomery, for 5 minutes, today.

Mr. Nelson of Florida, for 5 minutes, today.

Mr. Panetta, for 5 minutes, today.

Mr. Stenholm, for 60 minutes, on October 13.

Mr. Hutto, for 5 minutes, on October 13.

Mr. Hughes, for 60 minutes, on October 18 and 19.

Mr. Gray of Illinois, for 60 minutes, on October 18 and 19.

Mr. Edwards of California, for 60 minutes, on October 17.

Mr. Morrison of Connecticut, for 60 minutes, on October 18.

Mr. Weiss, for 60 minutes, on October 19.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. Bliley) and to include extraneous matter:)

Mr. Broomfield.

Mrs. Morella in three instances.

Mr. Coughlin.

Mr. Petri.

Mr. Gunderson.

Mr. Thomas of California.

Mr. Gilman in two instances.

Mr. Solomon in two instances.

Mr. Ritter.

Mr. Blaz in two instances.

Mr. DeWine.

Mr. Rowland of Connecticut.

Mr. Lent.

Mrs. Bentley in five instances.

Mr. Lagomarsino.

Mr. Rogers.

Mr. Dornan of California.

Mr. Pursell.

Mr. Courter.

Mr. Burton of Indiana in two instances.

Mr. Roth in two instances.

(The following Members (at the request of Mr. Owens of Utah) and to include extraneous matter:)

Mr. Mavroules.

Mr. McMillen of Maryland.

Mr. Hamilton.

Mr. Mazzoli in three instances.

Mr. Fazio.

Mr. Edwards of California.

Mr. Kanjorski in two instances.

Mr. Aspin.

Mr. Hawkins.

Mr. Stark.

Mr. Panetta.

Mr. Roe in two instances.

Mr. Hoyer.

Mr. Mineta.

Mr. Skelton.

Mr. Berman in two instances.

Mr. Coelho.

Mr. Traficant in four instances.

Mr. Studds.

Mr. Sabo.

Mr. Gephardt.

Mr. Donnelly.

Mr. Downey of New York.

Mr. Murtha.

Mr. Nowak.

Mr. Bruce in two instances.

Mr. Dyson.

Mr. Cardin in two instances.

Mr. Wolpe.
Mr. Hertel.
Mr. Rangel.
Mr. Lantos in two instances.
Mr. Florio in two instances.
Mr. Manton.
Mr. Lipinski.
Mr. Dorgan of North Dakota.
Mr. Conyers.
Mr. Harris.
Mr. Wyden.
Mr. Hubbard.
Mr. Erdreich.

SENATE BILLS, JOINT, AND CONCURRENT RESOLUTIONS REFERRED

Bills, joint, and concurrent resolutions of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 1704. An act to authorize the establishment of the Lewis and Clark National Historic Trail Interpretive Center in the State of Montana, and for other purposes; to the Committee on Interior and Insular Affairs.

S. 1985. An act to improve the protection and management of archeological resources on Federal land; to the Committee on Interior and Insular Affairs.

S. 2264. An act to authorize the Secretary of the Interior to exchange certain Federal mining rights for certain lands in New Mexico; to the Committee on Interior and Insular Affairs.

S. 2457. An act to transfer certain lands in the State of Montana and to relieve the Town of Neihart, Montana, of any obligation to pay consideration for lands conveyed to it under authority of the Small Tracts Act; to the Committee on Interior and Insular Affairs.

S.J. Res. 280. Joint resolution to designate the week of November 27, 1988 through December 3, 1988 as "National Home Care Week;" to the Committee on Post Office and Civil Service.

S.J. Res. 301. Joint resolution designating January 20, 1989, as "National Skiing Day;" to the Committee on Post Office and Civil Service.

S.J. Res. 327. Joint resolution commemorating January 28, 1989, as a "National Day of Excellence" in honor of the crew of the space shuttle *Challenger*; to the Committee on Post Office and Civil Service.

S.J. Res. 337. Joint resolution acknowledging the sacrifices that military families have made on behalf of the Nation and designating November 21, 1988, as "National Military Families Recognition Day;" to the Committee on Post Office and Civil Service.

S.J. Res. 346. Joint resolution to designate March 25, 1989, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy;" to the Committee on Post Office and Civil Service.

S.J. Res. 352. Joint resolution designating September 24, 1989, as "United States Marshals Bicentennial Day;" to the Committee on Post Office and Civil Service.

S.J. Res. 355. Joint resolution designating October 7, 1988, as "National Teacher Appreciation Day;" to the Committee on Post Office and Civil Service.

S.J. Res. 365. Joint resolution to designate January 28, 1989, as "National Challenger Center Day" to honor the crew of the space shuttle *Challenger*, to the Committee on Post Office and Civil Service.

S.J. Res. 372. Joint resolution to designate the week beginning November 21, 1988, through November 27, 1988, as "National Adoption Week;" to the Committee on Post Office and Civil Service.

S.J. Res. 385. Joint resolution to designate September 11 through 17, 1988, as "National Youth 2000 Week;" to the Committee on Post Office and Civil Service.

S.J. Res. 386. Joint resolution to designate the week of June 18 through June 24, 1989, as "National Grasslands Week;" to the Committee on Post Office and Civil Service.

S. Con. Res. 152. Concurrent resolution commending the Republic of Korea in hosting the Games of the XXIV Olympiad, and for other purposes, to the Committee on Foreign Affairs.

ENROLLED BILLS SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 900. An act to protect and enhance the natural, scenic, cultural, and recreational values of certain segments of the New, Gauley, and Bluestone Rivers in West Virginia for the benefit of present and future generations, and for other purposes;

H.R. 1720. An act to revise the AFDC program to emphasize work, child support, and family benefits, to amend title IV of the Social Security Act to encourage and assist needy children and parents under the new program to obtain the education, training, and employment needed to avoid long-term welfare dependence, and to make other necessary improvements to assure that the new program will be more effective in achieving its objectives;

H.R. 2399. An act to provide for study and research on the decline in United States forest productivity and to determine the effects of atmospheric pollutants on forest environments, and for other purposes;

H.R. 3029. An act to designate the new Post Office Building in Gretna, LA, as the "William W. Pares, Jr., Post Office Building;"

H.R. 3235. An act to amend the Public Health Act to revise the program of assistance for health maintenance organizations; for other purposes;

H.R. 4345. An act to amend the United States Grain Standards Act to extend through September 30, 1983, the authority contained in section 155 of the Omnibus Reconciliation Act of 1981 and Public Law 98-469 to charge and collect inspection and weighing fees, and for other purposes;

H.R. 5423. An act to authorize continued storage of water at Abiquiu Dam in New Mexico;

H.J. Res. 488. Joint resolution designating November 6-12, 1988, as "National Women Veterans Recognition Week;" and

H.J. Res. 648. Joint resolution to encourage increased cooperation to protect biological diversity.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following titles:

S. 391. An act for the relief of Hyong Cha Kim Kay; and

S. 2393. An act to amend the Protection and Advocacy for Mentally Ill Individuals Act of 1986 to reauthorize such, Act, and for other purposes.

ADJOURNMENT

Mr. SKEEN. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 40 minutes p.m.), the House adjourned until tomorrow, Thursday, October 13, 1988, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4450. A letter from the Director, Office of Financial Management, General Services and Controller, General Accounting Office, transmitting the fiscal year 1986 and 1987 annual report of the Comptrollers General retirement system, pursuant to 31 U.S.C. 9503(a)(1)(B); to the Committee on Government Operations.

4451. A letter from the Secretary of the Interior, transmitting the Federal coal management report, fiscal year 1987, pursuant to 30 U.S.C. 208-2; to the Committee on Interior and Insular Affairs.

4452. A letter from the Chairman, National Research Council, transmitting a report entitled, "Transportation in an Aging Society: Improving Mobility and Safety for Older Persons" in conjunction with the National Academy of Sciences, pursuant to 23 U.S.C. 401 nt.; to the Committee on Public Works and Transportation.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. UDALL: Committee on conference. Conference report on H.R. 5261 (Rept. 100-1075). Ordered to be printed.

Mr. GORDON: Committee on Rules. House Resolution 581. Resolution waiving all points of order against the conference report on S. 2749 and against the consideration of such conference report (Rept. 100-1076). Referred to the House Calendar.

Mr. JONES of North Carolina: Committee on Merchant Marine and Fisheries. H.R. 3423. A bill to establish the Grays Harbor National Wildlife Refuge; with an amendment (Rept. 100-1077. Referred to the Committee of the Whole House on the State of the Union.

Mr. DINGELL: Committee on Energy and Commerce. H.R. 4984. A bill to amend the Public Health Service Act to establish an International Health Corps. (Rept. 100-1078, Pt. 1). Ordered to be printed.

Mr. de la Garza: Committee on Agriculture. H.R. 4936. A bill to authorize the Secretary of Agriculture and other agency heads to enter into agreement with foreign fire organizations for assistance in wildfire protection; with amendments (Rept. 100-1079, Pt. 1). Ordered to be printed.

Mr. HALL of Ohio: Committee on Rules. House Resolution 584. Resolution waiving all points of order against the conference report on H.R. 515 and against the consideration of such conference report. (Rept. 100-1080). Referred to the House Calendar.

Mr. WHEAT: Committee on Rules. House Resolution 585. Resolution waiving all points of order against the conference report on H.R. 4585 and against the consideration of such conference report. (Rept. 100-1081). Referred to the House Calendar.

Mr. BONIOR: Committee on Rules. House Resolution 586. Resolution, providing for a motion to take the bill H.R. 4416 from the Speaker's table together with the Senate amendment and to concur in the Senate amendment. (Rept. 100-1082). Referred to the House Calendar.

Mr. BEILENSON: Committee on Rules. House Resolution 587. Resolution providing for the consideration of S. 2752, a bill to declare that certain lands be held in trust for the Quinault Indian Nation, and for other purposes (Rept. 100-1083). Referred to the House Calendar.

Mr. UDALL: Committee of conference. Conference report on H.R. 3621 (Rept. 100-1084). Ordered to be printed.

SUBSEQUENT ACTION ON A REPORTED BILL SEQUENTIALLY REFERRED

Under clause 5 of rule X the following action was taken by the Speaker:

H.R. 5132. Referral to the Committees on Armed Services and the Judiciary extended for a period ending not later than October 18, 1988.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. HAWKINS (for himself, Mr. PEPPER, Mr. RINALDO, Mr. MARTINEZ, and Ms. SNOWE):

H.R. 5500. A bill to amend the Age Discrimination in Employment Act of 1967 to provide a rule with respect to the waiver of rights under that act without supervision, and for other purposes; to the Committee on Education and Labor.

By Mr. ACKERMAN:

H.R. 5501. A bill to amend the Public Health Service Act to establish programs to increase the supply of professional nurses and provide educational assistance to nurses and for other purposes; jointly, to the Committees on Energy and Commerce, Ways and Means, and the Judiciary.

By Mr. CRANE (for himself and Mr. GIBBONS):

H.R. 5502. A bill to authorize the establishment of a United States-Japan Free Trade Area; to the Committee on Ways and Means.

By Mr. DeLAY:

H.R. 5503. A bill to require the coloring of certain gasolines in order to enable the public to better identify the octane of the gasoline purchased; to the Committee on Energy and Commerce.

By Mr. DORGAN of North Dakota:

H.R. 5504. A bill to increase Federal payments in lieu of taxes to units of general local government, and for other purposes; jointly, to the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries.

By Mr. DOWNEY of New York:

H.R. 5505. A bill to amend chapter 38 of the Internal Revenue Code of 1986 to establish new environmental taxes; to the Committee on Ways and Means.

By Mr. EMERSON:

H.R. 5506. A bill to restore income averaging for farmers; to the Committee on Ways and Means.

By Mr. FLORIO:

H.R. 5507. A bill to establish minimum standards for health insurance coverage of drug and alcohol abuse treatment; to the Committee on Energy and Commerce.

By Mr. JEFFORDS:

H.R. 5508. A bill to provide for a Federal program for the improvement of child care services; to provide grants and tax incentives for small businesses to establish child care centers for children of employees; to amend the Internal Revenue Code of 1986 to increase the amount of the credit for dependent care expenses, to make such credit refundable, and to provide that certain respite care expenses are eligible for such credit; to provide for child care liability risk reduction; and for other purposes; jointly, to the Committees on Ways and Means, Education and Labor, and Small Business.

By Mr. JEFFORDS (for himself, Mr. CONTE, and Mr. PANETTA):

H.R. 5509. A bill to establish a critical languages and area studies program; to the Committee on Education and Labor.

By Mr. LENT (for himself, Mr. DOWNEY of New York, Mr. MRAZEK, Mr. McGRATH, Mr. HOCHBRUECKNER, Mr. SCHEUER, Mr. McCANDLESS, Mr. SHAW, Mr. LEWIS of California, Mr. DORNAN of California, and Mr. BADHAM):

H.R. 5510. A bill to provide primary commercial television service by very high frequency television stations to metropolitan areas with large populations that do not currently receive such service, and for other purposes; to the Committee on Energy and Commerce.

By Mr. MURPHY:

H.R. 5511. A bill to establish the Commission on the Importation of Japanese Semiconductors and Integrated Circuits, and for other purposes; jointly, to the Committees on Ways and Means and Small Business.

By Mr. PANETTA:

H.R. 5512. A bill to amend the Internal Revenue Code of 1986 to provide that the extension of time for payment of the estate tax on property valued under section 2032A of such code shall not be terminated by reason of a disposition of the property to a member of the qualified heir's family; to the Committee on Ways and Means.

By Mr. SKELTON (for himself and Mr. STENHOLM):

H.R. 5513. A bill to protect the used oil recycling system and for other purposes; to the Committee on Energy and Commerce.

By Mr. SPRATT:

H.R. 5514. A bill to transfer certain lands to the South Carolina Commission of Forestry, an agency of the State of South Carolina; to the Committee on Merchant Marine and Fisheries.

By Mr. STARK:

H.R. 5515. A bill to amend title XVIII of the Social Security Act to protect the rights of, and improve the quality of services provided to, end stage renal disease patients; jointly, to the Committees on Ways and Means and Energy and Commerce.

By Mr. TORRICELLI:

H.R. 5516. A bill to amend title 10, United States Code, to require that the President award the Legion of Merit to any member of the Armed Forces who has received three or more Purple Hearts; to the Committee on Armed Services.

By Mr. WALGREN:

H.R. 5517. A bill to amend title XIX of the Social Security Act to require nursing facilities participating in the Medicaid Program to pay nursing personnel at a rate at least equal to the mean rate paid nursing personnel employed outside nursing facilities; to the Committee on Energy and Commerce.

H.R. 5518. A bill to establish the Congressional Scholarships for Science, Mathematics, and Engineering, and for other purposes; to the Committee on Science, Space, and Technology.

By Mr. WYDEN (for himself, Mr. LaFALCE, Mr. McDADE, Mr. MAZZOLI, Mr. SKELTON, Mr. HATCHER, and Mr. ECKART):

H.R. 5519. A bill to modify the application of the antitrust laws to increase competition in trade by encouraging small businesses to jointly manufacture and distribute products; to the Committee on the Judiciary.

By Mr. YOUNG of Alaska:

H.R. 5520. A bill to extend certain commercial fishing permits and for other purposes: to the Committee on Merchant Marine and Fisheries.

By Mr. FORD of Michigan:

H. Con. Res. 388. Concurrent resolution to correct technical errors in the enrollment of the bill H.R. 3757; considered under suspension of the rules and agreed to.

By Mr. BROWN of California (for himself, Miss SCHNEIDER, Mr. ROE, Mr. SHARP, Mr. WALGREN, Mr. BOEHLERT, Mr. SCHEUER, Mr. SENSENBRENNER, Mr. SMITH of New Hampshire, Mr. RITTER, Mr. HENRY, Mr. HALL of Texas, Mr. HUNTER, and Mr. UDALL):

H. Con. Res. 389. Concurrent resolution expressing the sense of the Congress that the United States should develop a national policy and enter into international agreements to mitigate global warming from the greenhouse effect; jointly, to the Committees on Foreign Affairs and Energy and Commerce.

By Mrs. COLLINS:

H. Con. Res. 390. Concurrent resolution concerning appropriate notification of hospital closings; jointly, to the Committees on Ways and Means and Energy and Commerce.

By Mr. WAXMAN:

H. Res. 582. Resolution concurring in the Senate amendment to H.R. 3097 with an amendment; considered under suspension of the rules and agreed to.

By Mr. SHARP:

H. Res. 583. Resolution providing for concurring in the Senate amendment to H.R. 2266, to amend the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 to authorize appropriations for fiscal years 1988 and 1989, and for other purposes, with an amendment; considered under suspension of the rules and agreed to.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 42: Mr. SMITH of New Jersey.

H.R. 190: Mr. HILER.

H.R. 672: Mr. BORSKI.

H.R. 757: Mrs. MEYERS of Kansas, Mr. WILSON, and Mr. BLAZ.

H.R. 1028: Mr. LENT, Mr. SABO, Mr. THOMAS of Georgia, Mr. DeFAZIO, Mr. DWYER of New Jersey, and Mr. NELSON of Florida.

H.R. 1076: Mr. COELHO and Mr. FOGLIETTA.

H.R. 1352: Mr. CROCKETT and Mr. HORTON.

H.R. 1794: Mr. BUSTAMANTE.

H.R. 1966: Mr. CROCKETT and Mr. HORTON.

H.R. 1990: Mr. BONIOR of Michigan.

H.R. 2036: Mr. TORRES.

H.R. 2125: Mr. BILIRAKIS.

H.R. 2181: Mr. COMBEST.

H.R. 2183: Mr. ORTIZ, Mr. STANGELAND, Mr. SCHUETTE, Mr. WISE, Mr. BOUCHER, Mr. HORTON, and Mr. McDADE.

H.R. 2328: Mr. GRANT and Mr. GALLEGLY.

H.R. 2580: Mr. SAXTON.

H.R. 2852: Mr. HUGHES.

H.R. 3065: Mr. MACK, Mr. de LUGO, Mr. STANGELAND, Mr. SWINDALL, and Mr. THOMAS of California.

H.R. 3132: Mr. FLORIO.

H.R. 3470: Mr. LEHMAN of California and Mr. YATRON.

H.R. 3565: Mr. CRAIG.

H.R. 3760: Mr. DeWINE.

H.R. 3889: Mr. AuCOIN.

H.R. 3919: Mr. ORTIZ.

H.R. 3950: Mr. MARKEY and Mr. HOYER.

H.R. 4015: Mrs. VUCANOVICH.

H.R. 4131: Mr. RIDGE.

H.R. 4226: Mr. LELAND.

H.R. 4576: Mr. NIELSON of Utah.

H.R. 4680: Mr. BATES, Mrs. BOXER, and Mr. GEJDENSON.

H.R. 4940: Mrs. MORELLA and Mr. HOYER.

H.R. 4947: Mr. SMITH of Florida.

H.R. 4991: Mr. BARNARD and Mr. SCHULZE.

H.R. 5017: Mr. LELAND.

H.R. 5036: Mr. ECKART and Mr. WEISS.

H.R. 5061: Mr. HYDE, Mr. GUNDERSON, Mr. AuCOIN, Mr. SIKORSKI, Mr. ROBINSON, Mr. CAMPBELL, Mr. HANSEN, Mr. HOLLOWAY, and Mr. MARTINEZ.

H.R. 5075: Mr. HORTON.

H.R. 5122: Mr. BERMAN and Mr. LEWIS of Georgia.

H.R. 5167: Mr. BATEMAN and Ms. SNOWE.

H.R. 5193: Mr. PRICE of North Carolina, Mr. FAZIO, Mr. SHAW, Mr. NEAL, Mr. GRAY of Pennsylvania, Mrs. ROUKEMA, Mr. BEILENSON, and Mr. ROBERTS.

H.R. 5271: Mr. WAXMAN.

H.R. 5324: Mr. DeFAZIO.

H.R. 5346: Mr. ACKERMAN, Mr. SOLOMON, Mr. TRAXLER, Mr. MURPHY, Mr. LEWIS of California, Mr. BORSKI, Mr. MACK, Mr. ATKINS, Mr. LELAND, Mr. ST GERMAIN, Mr. PEPPER, Mr. FLORIO, Mr. BRYANT, and Mr. HATCHER.

H.R. 5351: Mr. SOLOMON and Mr. BILIRAKIS.

H.R. 5352: Mr. SOLOMON and Mr. BILIRAKIS.

H.R. 5353: Mr. SOLOMON and Mr. BILIRAKIS.

H.R. 5354: Mr. SOLOMON and Mr. BILIRAKIS.

H.R. 5355: Mr. SOLOMON and Mr. BILIRAKIS.

H.R. 5356: Mr. SOLOMON and Mr. BILIRAKIS.

H.R. 5357: Mr. SOLOMON and Mr. BILIRAKIS.

H.R. 5358: Mr. SOLOMON and Mr. BILIRAKIS.

H.R. 5359: Mr. SOLOMON and Mr. BILIRAKIS.

H.R. 5360: Mr. SOLOMON and Mr. BILIRAKIS.

H.R. 5361: Mr. SOLOMON and Mr. BILIRAKIS.

H.R. 5362: Mr. SOLOMON and Mr. BILIRAKIS.

H.R. 5363: Mr. SOLOMON and Mr. BILIRAKIS.

H.R. 5364: Mr. SOLOMON and Mr. BILIRAKIS.

H.R. 5365: Mr. SOLOMON and Mr. BILIRAKIS.

H.R. 5366: Mr. SOLOMON and Mr. BILIRAKIS.

H.R. 5371: Mr. YATRON.

H.R. 5374: Mr. SOLOMON and Mr. BILIRAKIS.

H.R. 5378: Mr. BUSTAMANTE.

H.R. 5394: Mr. CROCKETT and Mr. OWENS of Utah.

H.R. 5396: Mr. SUNDQUIST, Mr. McCOLLUM, Mr. YOUNG of Alaska, Mr. NEAL, Mr. SPENCE, Mr. FRANK, Mr. LELAND, Mr. RANGEL, Mr. RAVENEL, Mr. McEWEN, Mr. BROWN of Colorado, and Mr. DeLAY.

H.R. 5400: Mr. WILSON.

H.R. 5426: Mr. BEILENSON, Mr. BARTON of Texas, Mr. BATEMAN, Mr. IRELAND, Mr. HANSEN, Mr. HORTON, Mr. HUTTO, Mr. SMITH of New Hampshire, Mr. SMITH of New Jersey, Mr. HAMMERSCHMIDT, Mr. McCANDLESS, Mr. McCRERY, and Mr. BILBRAY.

H.R. 5457: Mr. HUGHES, Mr. FRANK, and Mr. FLORIO.

H.R. 5458: Mr. FRANK, and Mr. FLORIO.

H.R. 5462: Mr. BARTLETT.

H.R. 5475: Mr. ROE.

H.R. 5492: Mr. PERKINS.

H.J. Res. 446: Mr. ENGLISH, Mr. SAWYER, Mr. FEIGHAN, Mr. DeLAY, Mr. MACK, Mr. SKEEN, Mr. McCOLLUM, Mr. LOWRY of Washington, Mr. BENNETT, Mr. DELLUMS, and Mr. ASPIN.

H.J. Res. 501: Mr. McGRATH, Mr. MacKAY, Mr. FRENZEL, and Mr. HORTON.

H.J. Res. 510: Mr. LEVINE of California, Mr. RANGEL, Mr. MARTIN of New York, Mr. BOUCHER, Mr. DONNELLY, Mr. McHUGH, Mr. DURBIN, Mr. NEAL, Mr. SIKORSKI, Mr. WOLPE, Mr. YATRON, Mr. GILMAN, Mr. JONTZ, Mr. CAMPBELL, Mr. LELAND, Mrs. MORELLA, and Ms. SLAUGHTER of New York.

H.J. Res. 515: Mr. BILIRAKIS, and Mr. CRAIG.

H.J. Res. 526: Mr. GUNDERSON, Mr. HORTON, Mr. KEMP, Mr. SAXTON, Mr. SKEEN, Mr. BURTON of Indiana, Mr. EMERSON, Mr. DeWINE, Mr. HUBBARD, Mr. RODINO, Mr. WOLF, Mrs. SAIKI, Mr. PEPPER, Mrs. BOXER, Mr. STRATTON, and Mr. MARTINEZ.

H.J. Res. 604: Mr. BARTLETT, Mr. FRENZEL, Mr. OWENS of New York Mr. DIXON, Mr. BALLENGER, and Mr. BATEMAN.

H.J. Res. 608: Mr. ALEXANDER, Mr. CAMPBELL, Mr. COELHO, Mr. KASTENMEIER, Mr. HEFNER, Mr. GRANDY, Mr. NICHOLS, Mr. BUECHNER, Mr. MINETA, Mr. SKELTON, Mr. BARTLETT, Mr. SHAYS, and Mr. KOSTMAYER.

H.J. Res. 638: Mr. ROWLAND of Connecticut, Mr. RAHALL, Mr. BONIOR of Michigan, and Mr. TOWNS.

H.J. Res. 639: Mr. HUGHES, and Mr. SMITH of New Hampshire.

H.J. Res. 649: Mr. RANGEL, Mr. YOUNG of Florida, Mrs. MEYERS of Kansas, Mr. ACKERMAN, Mrs. BENTLEY, Mr. NAGLE, Mr. KILDEE, Mr. LEHMAN of California Mr. HAYES of Louisiana, Mr. SHUMWAY, Mr. PERKINS, Mr. LUNGREN, and Ms. KAPTUR.

H.J. Res. 651: Mr. McEWEN, and Mr. MOLLOHAN.

H.J. Res. 653: Mr. ROBINSON, Mrs. VUCANOVICH, Mr. HUGHES, and Mr. HAMMERSCHMIDT.

H.J. Res. 654: Mr. SAXTON, Mr. ERDREICH, Mr. RITTER, Mr. LEHMAN of California, Mr. LELAND, Ms. KAPTUR, Mr. BOSCO, Mr. KILDEE, Mr. McGRATH, Mr. RAHALL, Mr. LAGOMARSINO, Mr. LEVINE of California, Mr. LUNGREN, Mr. ACKERMAN, Mr. MOODY, Mr. INHOFE, Mr. PEPPER, and Mr. GUNDERSON.

H.J. Res. 660: Mr. SKEEN, Mr. FOGLIETTA, Mr. GRAY of Pennsylvania, Mr. WHEAT, Mr. MACK, Mr. BROOMFIELD, Mr. SAVAGE, Mr. DURBIN, Mr. FORD of Tennessee, Mr. DENNY SMITH, Mr. COSTELLO, Mr. GALLO, Mr. TRAFICANT, Mr. FRENZEL, Mr. INHOFE, Mr. COURTER, Mr. UDALL, Mr. de LUGO, Ms. PELOSI, Mr. CARDIN, Mr. HAYES of Illinois, Mrs. SAIKI, Mr. CAMPBELL, Mr. SPENCE, Mr. DELLUMS, Mr. COBLE, Mr. ROSE, Mr. STENHOLM, Mr. SAWYER, Mr. HUBBARD, and Mr. SABO.

H.J. Res. 669: Mr. HYDE, Mr. FEIGHAN, Mr. VALENTINE, Mr. UPTON, Mr. DeLAY, Mr. HORTON, Mr. MARKEY, Mr. BOLAND, Mr. FASCELL, Mr. HERGER, Mr. GRANT, Mr. BUSTAMANTE, Mr. SHARP, Ms. OAKAR, Mr. KOSTMAYER, Mr. SMITH of New Hampshire, Mr. DENNY SMITH, Mr. PEPPER, Mr. MURTHA, Mr. LEVIN of Michigan, Mr. TALLON, Mr. VANDER JAGT, Mrs. COLLINS, Mr. SKEEN, Mr. CARPER, Mr. CLEMENT, Mr. SCHAEFER, Mr. BRUCE, Mr. KONNYU, Mr. GEPHARDT, Mr. MILLER of California Mr. MAZZOLI, Mr. COOPER, Mr. FRENZEL, Mr. CARR, Mr. HEFNER, Mr. DONNELLY, Mr. BOULTER, Mr. SMITH of Texas, Mr. MAVROULES, Mr. WILSON, Mr. McCRERY, Mr. OWENS of Utah, Mr. CONTE, Mr. BILBRAY, Mr. STUDDS, Mr. HOPKINS, Mr. BALLENGER, Mr. EDWARDS of Oklahoma, Mr. PICKETT, Mr. GINGRICH, Mr. LaFALCE, Mr. BENNETT, Mr. VENTO, Mr. WEISS, Mr. GALLEGLY, Mr. ALEXANDER, Mr. FLORIO, Mr. KENNEDY, Mr. GRANDY, Mr. MARTINEZ, Mrs. MORELLA, Mr. LAGOMARSINO, Mr. LEWIS of Florida, Mr. LOWRY of Washington, Mr. DURBIN, Mr. FIELDS, Mr. JOHNSON of South Dakota, and Mr. STENHOLM.

H. Con. Res. 194: Mr. HOLLOWAY.

H. Con. Res. 258: Mr. KENNEDY.

H. Con. Res. 317: Mr. PASHAYAN, Mr. BOULTER, Mr. DeWINE, Mrs. KENNELLY, Mr. JONTZ, Mr. MARLENEE, Mr. SENSENBRENNER, Mr. SMITH of Texas, Mr. ATKINS, Mr. GREGG, Mrs. VUCANOVICH, Mr. SOLOMON, Mr. LEVINE of California, Mr. KONNYU, Mr. ST GERMAIN, Mr. SHUMWAY, Mr. VANDER JAGT, Mr. HUBBARD, Mr. HERGER, Mr. GRANT, Mr. BATEMAN, Mr. CHENEY, Mr. FISH, Mr. LEATH of Texas, Mr. BONIOR, of Michigan, Mr. GUARINI, and Mr. SPENCE.

H. Con. Res. 352: Mr. FUSTER, Mr. PEASE, Mr. GRAY of Illinois, Mr. DELLUMS, Mr. STUDDS, Mr. RAHALL, Mr. WISE, Mrs. BENTLEY, and Mr. FRANK.

H. Con. Res. 362: Mr. HUGHES, Mr. McEWEN, and Mr. YATRON.

H. Con. Res. 366: Mr. BLAZ.

H. Con. Res. 380: Mr. McCURDY, Mr. HAYES of Illinois, Mr. TORRES, Mr. BONIOR, Mrs. LLOYD, Mr. RAHALL, and Mr. ROYBAL.

H. Con. Res. 385: Mr. McEWEN.

H. Res. 439: Mr. SWINDALL.

H. Res. 580: Mr. BARNARD, Mr. DAVIS of Illinois, Mr. de la GARZA, Mr. MONTGOMERY, and Mr. TRAFICANT.

PETITIONS, ETC.

Under clause 1 of rule XXII,

238. The SPEAKER presented a petition of Mr. Ron Johnson, Flagstaff, AZ, relative to a redress of grievances; which was referred to the Committee on the Judiciary.

EXTENSIONS OF REMARKS

NEED TO BETTER PROTECT KIDNEY PATIENTS FROM SUBSTANDARD CARE

HON. FORTNEY H. (PETE) STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. STARK. Mr. Speaker, today I am introducing the End Stage Renal Disease Patient Protection and Quality Assurance Act to insure that kidney dialysis patients receive the best care possible.

The Medicare Program provides medical coverage for nearly every American who suffers from end stage renal disease [ESRD] or kidney failure. There are approximately 100,000 ESRD Medicare beneficiaries who are dialyzed three times a week for their disease in outpatient maintenance dialysis facilities.

These Medicare beneficiaries are a population at risk whose very lives depend upon successful dialysis treatments. By and large the treatments are safe and permit thousands of beneficiaries to live relatively normal lives. Without dialysis treatment, or transplantation, these people would quickly die.

Given the life-sustaining nature of dialysis treatments any change in Medicare payments or policy creates concern among ESRD beneficiaries. While there is no clear documentation that quality of care is a problem there has been a growing uneasiness in the renal community that some facilities have reduced services and staffing in a way which could jeopardize the health and safety of patients.

Without adequate safeguards I am concerned that Medicare beneficiaries' health and very lives could be placed in danger if a patient's rights program and outcome-oriented patient survey process does not become a part of Medicare law.

To achieve this goal I am introducing legislation to protect ESRD beneficiaries and require higher standards of care in outpatient maintenance facilities.

First, my bill spells out a number of rights ESRD beneficiaries should have. Currently many of these rights are contained in regulations governing the program but there is concern that these rights are not being fully implemented nor are there effective means of enforcing them.

Second, the legislation requires a new survey and certification process for ESRD outpatient facilities that is patient out-come oriented and will be better able to assure quality of care.

LIke every facility based program under Medicare, ESRD facilities are surveyed and certified to determine compliance with Medicare's conditions of participation. Unfortunately, the ESRD survey and certification process is more a paper compliance procedure than a patient oriented system.

Until recently this was true of all the Medicare survey systems in place. Recognizing the inadequacy of the survey processes that were more concerned with bricks and mortar and checking credentials of staff and patient records, the Congress in 1987 established new Medicare survey and certification programs for nursing facilities and home health agencies.

The legislation I am introducing mirrors the reforms made in the Medicare Nursing Facilities Survey and Certification Program. Under the bill each ESRD facility would be subject to an annual survey to be conducted without prior notice to the facility. The survey would include, for a sample of patients, a survey of the quality of care furnished, as measured by indicators of medical, nursing, and rehabilitation care. To ensure a more patient oriented survey process, ESRD beneficiaries would be interviewed to determine satisfaction with care provided by the facility.

In addition, the surveyors would be required to review patients' plans of care, and records as well as compliance with patients' rights. In reviewing patients' records, the surveyors would be required to pay particular attention to infection and hospitalization rates which are key indicators of quality of care. Causes of death would also be carefully scrutinized to determine if the cause of death is accurately described and if inappropriate or poor quality facility care was a cause or contributing factor in the death of the beneficiary. Facility staffing and in-service training programs would also be reviewed.

In order to promote consistency of surveys, new standards would be established for the survey team which would include comprehensive training programs for the surveyors and the use of a standard protocol developed by the Secretary.

The bill also establishes new enforcement procedures. Currently, Medicare may only terminate a facility's participation in Medicare if it fails to meet the conditions of participation. The one exception to this rule is Medicare's ability to limit payment to a facility if it fails to participate in the facility's ESRD network goals.

These sanctions have not given the surveyors enough leverage to enforce compliance. As might be expected surveyors are very reluctant to terminate a facility's participation in Medicare because the penalty is far too harsh for minor infractions and could create access to care problems for beneficiaries in an area with few facilities.

Under the Medicare/Medicaid Patient and Program Protection Act, the Congress sought to provide alternative sanctions by authorizing the Secretary to deny payment for new patients to a facility if it did not substantially comply with Medicare's rules but did not immediately jeopardize the health and safety of the patients. To date the Secretary has not issued regulations to establish this sanction.

My bill would clearly spell out enforcement procedures that would include not only conditions for termination but intermediate sanctions which would provide the surveyors with more effective means of enforcing compliance.

Specifically, if the surveyors found a facility's deficiencies immediately jeopardized the health or safety of the patients, the Secretary could either terminate the facility's participation or appoint temporary management. If the surveyors found a facility's deficiencies did not immediately jeopardize the health or safety of the patients, the Secretary could: First, deny payment for existing or new patients; second, impose a civil monetary penalty in an amount not to exceed $10,000 for each day of noncompliance; or third, appoint temporary management.

Third, to help develop uniform protocols for quality standards, the Secretary would be required to establish an advisory board. The advisory board would include physicians, registered professional nurses, other experts and Medicare ESRD beneficiaries.

Fourth, as a condition of participation facilities would be required to employ at least one registered professional nurse experienced in dialytic therapy to directly supervise patient care personnel during dialysis treatment. This means a nurse on the floor, in contact with the patients—not a nurse in the backroom, processing paperwork.

Lastly, staff assisted dialysis suppliers would be required to provide data to the Network Council and Medical Review Board on beneficiaries they supply in the networks area and to participate in medical care evaluation studies.

Below is a more detailed summary of the legislation.

I have introduced the bill at this time in order to give all of those interested in the topic a chance to review my bill and provide me and my staff with their comments. I intend to reintroduce an updated version of the bill in the 101st Congress, and will seek its early enactment.

Mr. Speaker, Medicare ESRD beneficiaries deserve the best quality care modern medicine can provide. My bill would establish rights to such care and ensure through the survey process that facilities live up to such standards.

SUMMARY OF END STAGE RENAL DISEASE PATIENT PROTECTION AND QUALITY ASSURANCE ACT OF 1988

Medicare beneficiaries with End Stage Renal Disease (ESRD) would be given extensive rights concerning their medical care and a new survey and certification program would be established for outpatient maintenance dialysis facilities.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

I. PATIENT RIGHTS

As a condition of participation all renal dialysis facilities would be required to adopt written policies regarding the rights and responsibilities of patients and procedures to implement the policies. These policies and procedures would have to be made available to patients and staff would have to be trained in executing the policies.

1. Informed Patients.—All patients in a facility are to be fully informed of—

All rights and responsibilities and of all rules and regulations governing patient conduct and responsibilities.

All services available in the facility and related charges.

The name of the physician who has primary responsibility and other physicians providing care.

As much information as necessary to give informed consent to treatment.

In advance of the time and location of appointments for dialysis treatment and the physician providing care, and be provided reasonable continuity of care.

Their medical condition, unless medically contraindicated and to have the information remitted to third parties at the discretion of the patient.

Full information regarding the relationships of the facility with other organizations, corporations and institutions.

And not have treatment jeopardized or prejudiced because the patient seeks other medical opinions regarding modes of treatment.

Information about facilities available to transient patients.

2. Participation in Planning.— All patients treated in a facility—

Be afforded the opportunity to participate in the planning of their medical treatment and to refuse to participate in experimental research.

Be able to refuse treatment to the extent permitted by law without jeopardy to the attending physician, including the right to be made aware of the medical consequences of this course of action.

Be transferred or discharged only for medical reasons or for the patient's welfare, or that of other patients, or for nonpayment of fees (except as prohibited by Medicare), or are given advance notice to ensure orderly transfer or discharge.

3. Respect and Dignity.— All patients are treated with consideration, respect and full recognition of their individuality and personal needs, including the need for privacy in treatment.

4. Confidentiality.— All patients are ensured confidential treatment of their personal and medical records and may approve or refuse release of such records to any individual outside the facility, except in case of transfer to another health care institution or as required by Federal, State or local law and the Secretary for proper administration of the program.

5. Grievance Mechanism.—All patients are encouraged and assisted in understanding and exercising their rights. Grievances and recommended changes in policies and services may be addressed directly and through any representative of the patient's choice, without restraint or interference and without fear or discrimination or reprisal.

Role of ESRD Networks.—Each Network would be required to inform patients of these rights and conduct surveys to make sure that facilities and suppliers inform, protect and promote these rights.

II. QUALITY ASSURANCE STANDARDS IN ESRD FACILITIES

1. Establishment of New Survey and Certification Process.—

Each State would be responsible for certifying compliance of facilities. Each ESRD outpatient maintenance dialysis facility (both freestanding and hospital-based) would be subject to a standard survey to be conducted without prior notice to the facility. The Secretary would be required to review each State's procedure for scheduling and conduct of surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

Contents.—Each survey would include for a sample of patients—

(I) a survey of the quality of care furnished, as measured by indicators of medical, nursing and rehabilitation care,

(II) a review of the staffing, or in-service training, and if appropriate, of contracts with consultants.

(III) a review of written plans of care.

(IV) a review of patient records, for items such as potential for transplantation, hospitalizations, recurrent pericarditis, and infections.

(V) a review of compliance with patient's rights.

(VI) interviews with patients to determine satisfaction with care provided.

(VII) a review of the records of each patient who has been hospitalized or has died to determine the quality of care provided and to determine if the cause of death was accurately described.

Frequency.—

(I) In general.—Each ESRD facility would be subject to a standard survey not later than 15 months after the date of the previous standard survey conducted under this subparagraph. The Statewide average interval between standard surveys of ESRD facility would not exceed 12 months.

(II) Special surveys.—A standard survey may be conducted within 2 months of any change of ownership, administration, management of a ESRD facility in order to determine whether the change has resulted in any decline in the quality of care furnished in the facility.

Survey Protocol.—Standard surveys would be conducted—

(I) based upon a protocol which the Secretary has developed, tested and validated by not later than October 1, 1990, and

(II) by individuals, of a survey team who meet such minimum qualifications as the Secretary establishes by not later than such date.

Secretarial Action. —The failure of the Secretary to develop, test, or validate such protocols or to establish such minimum qualifications would not relieve any State of its responsibility (or the Secretary of the Secretary's responsibility) to conduct surveys.

Consistency of Surveys.—Each State and the Secretary would implement programs to measure and reduce inconsistency in the application of survey results among surveyors.

Survey Teams. —

(I) In general.—Survey would be conducted by a multidisciplinary team of professionals (including a registered professional nurse).

(II) Prohibition of conflicts of interest.—A State may not use as a member of a survey team an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the facility surveyed respecting compliance, who has a personal or familial financial interest in the facility being surveyed.

(III) Training.—The Secretary would provide for the comprehensive training of State and Federal surveyors in the conducting of standard surveys. No individual shall serve as a member of a survey team unless the individual has successfully completed a training and testing program in survey and certification techniques that has been approved by the Secretary.

Special Surveys of Compliance.—Where the Secretary has reason to question the compliance of a facility with any of the requirements, the Secretary may conduct a survey of the facility, and on that basis, make independent and binding determinations concerning the extent to which the facility meets such requirements.

Disclosure of Results of Inspections and Activities.—Each State and the Secretary would make available to the public information respecting all surveys and certifications made respecting the facility, including statements of deficiencies and plans of corrections.

Notice to Physicians.—If the State finds a facility has provided substandard quality of care, the State would notify the attending physician of each patient.

2. Enforcement Process.—

Immediate Jeopardy Situations.—If a State finds, on the basis of a standard survey, that a facility's deficiencies immediately jeopardize the health and safety of the patients, the State would recommend to the Secretary that it either:

(1) terminate the facility's participation in Medicare, or

(2) appoint temporary management and

(3) may also impose denial of payment or a civil monetary penalty.

Non-Immediately Jeopardy Situations.—If a State finds, on the basis of a standard survey, that a facility's deficiencies do not immediately jeopardize the health and safety of the patients, the State may recommend to the Secretary that the Secretary impose any of the following remedies:

(1) Denial of Payment.—The Secretary may deny any further Medicare payments with respect to all Medicare patients in the facility or with respect to any new Medicare patients admitted to the facility after the date of the finding.

(2) Authority To Impose Civil Monetary Penalty.—The Secretary may impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance and the Secretary would impose and collect such a penalty in the same manner as civil money penalties are imposed and collected under current law.

(3) Appointment of Temporary Management.—The Secretary may appoint temporary management to oversee the operation of the facility and to assure the health and safety of the patients, where there is a need for temporary management while there is an orderly closing of the facility, or improvements are made in order to bring the facility into compliance.

Secretary Establishes Criteria.—The Secretary would specify criteria, as to when and how each of the remedies would be applied, the amounts of any fines and the severity of each of the remedies to be used in the imposition of the remedies.

Continuation of Payment Pending Remediation.—The Secretary may continue payments over a period of not longer than 6 months for a facility found not in compliance.

ASSURING PROMPT COMPLIANCE.—If a facility has not complied with any of the requirements within 3 months after the date the facility is found to be out of compliance, the Secretary would be required to deny payment for all patients admitted after the date the facility is first found out of compliance.

EFFECTIVE PERIOD OF DENIAL OF PAYMENT.—A finding to deny payment would be terminated when the Secretary found that the facility is in substantial compliance.

III. ESTABLISHMENT OF ADVISORY BOARD

ADVISORY BOARD.—The Secretary would be required to convene an advisory board made up of physicians, registered professional nurses, other experts and patients to advise the Secretary in establishing the protocol on quality standards for facilities to meet including standards in the areas of hypertension control, bone disease prevention, anemia, nutrition and rehabilitation and water treatment.

IV. NURSE STAFFING REQUIREMENT

As a condition of participation facilities would be required to employ at least one registered professional nurse experienced in dialytic therapy to directly supervise patient care personnel (technicians) during dialysis treatment.

V. NETWORKS AND STAFF-ASSISTED DIALYSIS SUPPLIERS

The Secretary would require that staff-assisted dialysis suppliers be required to provide data to the Network Council and Medical Review Board on beneficiaries they supply and to participate in medical care evaluation studies.

LETTER FROM DR. SAMI REPISHTI

HON. JOSEPH J. DioGUARDI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. DIOGUARDI. Mr. Speaker, I am in receipt of a copy of a letter that Dr. Sami Repishti, a noted expert on Yugoslavia, sent to my friend and colleague, Congresswoman HELEN BENTLEY. I request that the text of Dr. Repishti's letter be included in today's CONGRESSIONAL RECORD.

BALDWIN, NY, *August 18, 1988.*

Hon. HELEN BENTLEY,
U.S. House of Representatives,
Washington, DC.

DEAR CONGRESSWOMAN BENTLEY: Recently, I have had the opportunity to read your statement of June 30, 1988 "Serbs Observe Anniversary of Kosovo" (Congressional Record, House, H 4966-67-68). Thank you for giving us the benefit of your views on "the problem of Kosovo." Today, I am taking the liberty of expressing my views on the same problem, hoping that an exchange of views will eventually facilitate a much needed dialogue on the subject.

Historical facts.

1. Historical books say that the 1389 Battle of Kosovo was a joint effort to stop the Turkish invasion. According to the British historian, Lord Kinross, "* * * Serbians, Bosnians, Albanians, Bulgarians, Wallachians and Hungarians from the frontier provinces all rallied around (the Serbian King) Lazar as never before in a determination to drive the Turks out of Europe * * * The battle was lost due to the treason of the Serbian prince Vuk Stankovid * * * Lazar's son, Stephen, himself was quick to come to terms with the Turks * * * (Sultan) Bayezid made an amicable alliance with Stephen which was to endure throughout his reign * * * gave his sister Despina in marriage to Bayezid * * * paid an annual tribute, undertook to command a contingent in the Ottoman army and furnished Serbian troops whenever and wherever Bayezid required them—their earlier grievances now removed by an equitable share in the body. Meanwhile, colonies of Moslems were settled in parts of the conquested Serbian territories. Kosovo was thus forgiven—though never in Serbian legend, forgotten." "The Ottoman Centuries," W. Morow and Co., New York, 1977, pp. 57 and 63. The defeat was transformed by the legend into a victory, nourishing among the Serbs a spirit of vengeance, directed especially against the newly converted to Islam.

2. Once the Serbs were fully defeated again in 1448, history indicates that "* * * in Albania, Skanderbeg from his impregnable fortress of Croia, held out by effective guerrilla warfare against all attempts at conquest, to the humiliation of Murad in his declining years, and under Mehmet for twenty years to come." (Ibid. p. 93.)

Nor did Albanian resistance end with Skanderberg's death. In 1477, the Turks turned "* * * full attention to Scutari (Shkoder), the last remaining bastion of the West * * * Two major assaults were launched by the Turks, but without appreciable success, and the Sultan with the bulk of his army, decided to retreat, leaving a force to invest and blockade the fortress. Now almost isolated in occupied territory, it was soon reduced to starvation, the inhabitants living on bread and water, with no meat left for their sustenance—not even that or rats and mice. "(Kinross, p.135) Therefore, it is inaccurate to say that the last resistance to Turks was in Serbia.

Unfortuantely, present-day reality cannot be lived based on the emotional heritage of the past, glorified by legends. How the map of today's Europe would be if past empires and kingdoms were to be reestablished is easy to conceive—and reject. To whom does Constantinople-Istanbul belong, to use the example as an illustration of the Kosovo case?

3. It is disturbing to read statements such as in "Kosovo Serbs and other Yugoslavs have become a minority people in their own country." Kosovo, we believe, belongs to all the people who inhabit it, without distinction, it belongs to all who love it, cultivate that land, care for it, live from it and for it, to all Albanians, Serbs and others who call it "motherland." The claim that Kosovo is a "Serbian land" is an intentional distortion of historical facts, I regret to say. From the 11th to the 14th century, Serbs had their kingdoms there, but the local population was mixed. Furthermore, Kosovo was not an empty land before the Serbs' arrival there: it was inhabited by the Illyrian tribes called Dardanians, who in the opinion of most historians were the ancestors of the present Albanian-Kosovars. Thus, Albanians have not "migrated in large number eastward into Kosovo"; they have been there before the Serbs, and may have lost their majority due to Serbian invasion of Kosovo during the 11th and 14th centuries, a situation that began to change with the Serb movements northward to better protected areas. The vacuum was filled mostly by new Turkish settlers, and partially by high birth rate among the Albanians. When in 1878, and later in 1912-1913 Balkan wars, Serbo-Montenegrin armies invaded Kosovo, they found the region populated by non-Serbs, and decided to reverse the trend forcefully: what happened then is a sad story of massive massacres, expulsions, and the crematoria against Albanians as illustrated in the writings of the Serbian social-democratic leaders such as D. Tucović, K. Novaković and others.

4. The enumerated historical events from 1941 to the present are either inaccurate or misinterpreted. In 1941, Kosovo-Albanians did not join fascist Italians. Rather, it was fascist Italy that invaded Albania in April 1939, and later Kosovo in April 1941. Being both Albania and Kosovo under Italian occupation, they were organzied as a single administrative unit due to their common identity in language and nationality. Albania and Kosovo were thus both occupied territories with no independent administration.

5. The term "Greater Albania" was coined by the fascists to deceive the local population, and had no meaning among the Albanians. The concept of a "Greater Albania" is a sheer propaganda slogan used to denigrate Albanians' demand for independence in the lands they inhabit for centuries. It is common knowledge that from the 19th century and up to 1920, Serbian and Montenegrin governments have done their best to tally deny even the existence of an independent state of Albania, And, when this state was established in November, 1912, the Serbo-Montenegrin invasions ensued to strangle the newly-born neighbor. Diplomatic documents of the 1913 London Conference and the 1919-1920 Paris Peace Conference are abundant and confirm the Sebro-Montenegrin determination to block the birth of Albania. The same policies were pursued by the Kingdom of Serbs-Croats-Slovenes, later the Kingdom of Yugoslavia during the 1920-1941 years, and more recently by the Tito Communist movement which tried to incorporate Albania as the seventh republic of the Yugoslav Federation. The explanation for these policies is the fact that an independent Albania will always serve as a magnetic pole for all Albanians in Yugoslavia, as a mother country which in their hearts holds the promise of national reunification. Serbs outside Serbia know quite well this feeling from the days of the Austro-Hungarian Empire. And, this is why they are now fighting it, hoping to stop the natural course of events.

6. It is inaccurate to say that the 1912 Albanian state "included the Serbian plain of Kosovo," rather, in 1912, the entire Kosovo and half of Albania were occupied by the Serb and Montenegrin armies (The Balkan Wars) trying to prevent the establishment of the present state of Albania. Under these circumstances, how can Albania expell 100,000 Serbs from Kosovo? On the contrary, Yugoslav statistics indicate that during the 1912-1913 years alone, 12,777 Albanians were massacred by the Serb and Montenegrin armies. The massacres drew the attention of the British Government and ultimately reached the office of President W. Wilson, through the Reports filed by the US Army's Colonel Sherman Miles. (*See: Foreign Relations of the United States,* 1913-1920, US Government Printing Office) A detailed account of the massacres was also given by the Carnegie Foundation Commission of Inquiry on the War Crimes in the Balkans, 1914.

7. It is correct that a division of Albanian prisoners of war (formerly of the Royalist Army of Yugoslavia) was organized by the

Germans in 1943 and disbanded in 1944 for lack of loyalty. However, in Serbia we had the Quisling Government of General Nedic and its auxiliary forces, the ill-famous Acimovic and its police forces, Voivoda Kosta Pechanac, youth leader Ljotic as well as many well-known Serbian politicians who collaborated with the Nazis up to their last days.

Here, it is appropriate to point out—with no intention of offending the feelings of the brave Serbian people—that even General Drazhe Mihailović's role, oftentimes portrayed as a war hero by chauvinistic elements, is less than heroic, indeed! M.J. Milazzo's "The Chetnik Movement" (John Hopkins U.P. 1975) may be the best monograph on the subject, after having profusely documented Mihajlović's activities during the German and Italian occupations of Yugoslavia wrote:

The overwhelming bulk of the Serb civilian population mostly villagers and small independent peasants wanted security and armed protection, and in moments of overwhelming crisis, were willing to join an armed band Partisan or Chetnik, for purposes of defense, plunder or national revenge * * * (p. 187) He concludes:

* * * The failure of the officers and the Serb non-Communist armed movement was just one reflection of the thorough disintegration which Yugoslavia suffered during World War II * * * World War II was of enormous significance to Yugoslavia not only because of the group it brought to power, but also because of those it eliminated. Had Mihajlović's officers and the Serb civilian nationalist leaders triumphed with some sort of decisive Allied intervention on the Greek model, the restoration of the monarchy would surely had been accompanied by violent political purges and a reign of Serbian vengeance. (Last paragraph)

Therefore, to judge the Albanian people, or the Serbian people, by the actions of those who, consciously or not, erred during the fascist occupation years, is a gross injustice to the history of the two brave peoples who, for centuries, withstood the pressure of the invaders and the suffering brought by them. In addition, the forces of the anti-fascist resistance, in Albania, Kosovo and Serbia have been by far more numerous, and have enjoyed greater popular support than the local German puppets.

8. It is surprising that even A. Ranković, generally known as the sworn enemy of Albanians, Hungarians, and other non-Slavic people of Yugoslavia, seems to find favor in your statements. And yet, detailed lists of his crimes—including names and places—are made public by the Yugoslav press itself.

9. It is incorrect to say that Albanian language became "official language" in Kosovo. Nor it is true that Kosovo children were educated with Albania's books which made up only for about 2 percent of all textbooks used in Kosovo. It is incorrect to say that Serbs and Montenegrins, Turks and Gypsies are leaving Kosovo under pressure from Albanians. If there is a pressure, that pressure is economic and social:

(a) Economic-unemployment, underdevelopment, rapid increase in population while the land remains the same, undersupported education, no cultural life to speak of, poor health services, anemic infrastructure etc. While Serbs and Montenegrins have the privilege of settling north next to their brothers and start a new life there, ethnic Albanians in Kosovo have tied their fate to the land they inherited from fathers and ancestors. The same situation of Serbian migration north exists in districts of Presheve, Bujanovac, and Medvedje located not in Kosovo but in Serbia Proper: they are leaving the area. Why have the Serbs totally deserted the Raška region, the cradle of the Serbian empire, where there are no Albanians? The answer is one and the same: economic stagnation; or put it simply: no bread to feed their families. . . .

(b) The social aspect of the problem is even uglier. There is almost no Serb or Montenegrin who openly accepts to be neighbor to an Albanian: Albanians, as the Blacks and Hispanic in some areas of the United States, are unwanted, despised, rejected, treated as inferior human beings, offensively referred to as "Siftari"—the equivalent of "kafr" in South Africa.

10. From V. Djordjevic's 1913 assertion that Albanians are sub-humans who spend their nights sleeping on the trees, fastening their tails around the branches, to the present Serbian assertions that Albanians, are animal-like with whom it is impossible to co-exist Serbia's anti-Albanian psychosis has made no progress towards normality: if anything, it has regressed, as it is evident in the avalanche of writings originating in Belgrade and made available to the general public of Yugoslavia. It is in this context that one should see the drowning of truth about Kosovo by a sea of lies and misinformations which portrays them, to use the Congresswoman's words "Albanian chauvinists (who) are using murder, rape, pillage, humiliation, property damage, desecration—their old-age, proven methods—to ensure their goal of an ethnically clean Kosovo."

(According to the statistics made available by the local authorities, between 1984 and 1985, two Albanians killed two Serbs, and three Serbs killed three Albanians. Since 1985 no killings have taken place among the two nationalities. In 1987, no rape against the Serbs took place in Kosovo. When we take into consideration that Kosovo has a population of nearly two million, one should ask the question: where is the country with a lower rate of crime? The irony of the entire anti-Albanian campaign fabricated by Serbian chauvinists is that the highest crime rate is found in Serbia Proper where there are very few Albanians.)

Listening to the abusive anti-Albanian statements coming from Belgrade, one cannot help thinking of the 19th century imperialist methods of colonialization: a press campaign depicting the natives of Africa and Asia as barbarians; then a provoked incident, usually a white man killed or a white woman raped, the front-page titles in the newspapers, parliaments voting war budgets, officers calling for a fight to restore "the national honor", and the inevitable follows: "la mission civilisatrice" of the colonial armies bringing death and destruction on behalf of law and order in a country that is not theirs. It appears now that Serbian hysteria over Kosovo is following the same path: Serbian army units may be on the ready to enter Kosovo, as the July 30, 1988 calls at the Party meeting in Belgrade indicate.

This is also why one aspect of your presentation is especially disturbing. I am referring to your qualifications of the Albanian people as murderers, rapists, arsonists, collaborators with fascists, or expressions such as "the oppression of Turks and Albanians, Facists and Communists," where the analogy is as clear as it is false. Because, one finds it difficult to believe that these passages were pronounced by the Honorable Helen Bentley, of the Congress of the United States. To accuse an entire nation of being inclined to committing, by atavism, such crimes and of being collectively guilty for such outrageous behavior is to flirt with racism in its ugliest form. Today, such expressions are heard from the government of Bootha, in South Africa, and are universally condemned. They also seem as the English translation of what is being said or written by many chauvinists in Belgrade, today. Nevertheless, these statements pronounced before the Congress of the United States are, in our opinion, immensely harmful to the moral prestige of our legislative Body and highly inflammatory for the future relations between Albanians and Serbs. They contain the seeds of a confrontation presently boiling in Yugoslavia, and which could easily be exported to the United States to poison the relations between the Albanian and Serb communities, who are both loyal American citizens, a negative development which would do great disservice to our adopted country.

The problem of Kosovo remains a territorial problem, alas, for the Serbs. It is a matter of existence for Albanians.

The present SAP of Kosovo, as it is officially known, is inhabited almost 85 percent by Albanians, who even by Serbian admission came there at least since the 1690 "Serb exodus," from Kosovo. Even this version—not accepted by indigenous Albanians—makes of Albanian settlers in Kosovo residents for at least 300 years. How can one in good conscience request from them, today, to give up their rights to determine their own fate in favor of a 14th century legend, such as the Battle of Kosovo?

How can one, in good conscience, ask them to submit to the wishes and whims of the 10 percent Serbo-Montenegrin minority because this minority holds the central power in Belgrade, and is willing to use it against them?

How can one, in good conscience, ask them to be quiet when their empty stomachs growl for lack of food, their arms are crossed and still due to the high unemployment, their homes—whenever they have one—are frozen for lack of heat, when their children labor in the fields because they can not go to school, when Albanians are used and abused in the most menial jobs far away from their homes serving the Slavic "gospodar's" (lords) all around the country, as Blacks in S. Africa do, when they are offended and humiliated for their different "Albanian" culture, customs, habits, ways of life, even for their "Moslem" religion?

How can one, in good conscience, expect them to endure the atrocious poverty that has been wrapping them for decades forcing them to live daily that atrocious poverty, to live in the most pauperized areas of Yugoslavia, to be underrepresented in the Government, and as a result to be ruled by "outsiders" who come to Kosovo only to command, supervise, be paid, and return in luxurious limousines to spend the nights in sumptuous Belgrade apartments?

How can one expect, in good conscience, the young generation of Albanians to accept silently the lack of perspective, a present without promise, a future that doesn't promise, while their Serbian and Montenegrin peers are fully employed and welcomed all over the country and Albanian youth roam in the streets of Kosovo looking for a job that doesn't exist there and is denied them elsewhere?

How can one, in good conscience, remain silent when Albanian student demonstrators in Kosovo are massacred by the Yugoslav army tanks and helicopter gunships by hundreds, may be as many as one thousand according to Prof. Pedro Ramet of the Wilsonian Institute, while demonstrators in Belgrade are simply allowed to vent their spleen followed by a police that doesn't arrest them, let alone kill them or send them to jail up to 20 years, as is the case of Albanians in Kosovo?

It is this human aspect of Albanians' suffering that we, Albanians in America, are protesting against. It is not the political destabilization of Yugoslavia that we are pursuing. The political developments in Yugoslavia are the prerogatives of the Yugoslav people who are the sole legitimate actors of the contemporary Yugoslav political scene. Yet, to see people persecuted, as ethnic Albanians are, and their rights constantly violated as they have been since the 1878 Serbo-Montengrin assault against the Albanian lands, and still remain silent, it means to sin by silence. World War II has taught us that silence kills. It would be twice unforgiveable, if we would choose silence again. Therefore, we have opted for the forceful and public denunciation of the repressive Yugoslav Communist regime in general, and particularly on behalf of the ethnic Albanians, who are target number one of the oppression, as the enclosed paper indicates. Furthermore, the House Concurrent Resolution 162 and Senate Concurrent Resolution 65, were prepared in this spirit and within this context, thus deserving full Congressional support.

DEAR HONORABLE BENTLEY: We applaud your statement that "Members of the Congress should keep in mind that no nationality in Yugoslavia favors a Communist system. Unfortunately, there are times some of these groups blame each other for their plight. Consequently, if Members of the Congress are inclined to respond to injustices in Yugoslavia they should do so on behalf of all the peoples there."

At the same time, we regret to disagree with your statement that ethnic Albanians in Yugoslavia have in fact sought to create a state within a state. Yugoslavia itself is a federation of six states within one state. That's the nature of the country. What ethnic Albanians have asked for is their right to equality with the other "nations" of Yugoslavia who enjoy the right to their own "republic." The Government's assumption, and it is simply an assumption, that once established as a republic, Kosovo will join with Albania is an old political ploy with fear that does not stand the scrutiny of the facts. A secession from the SFR of Yugoslavia is a practical impossibility, since it must receive the approval of *all* other republics; and, one must be insane to expect such an approval from Serbia, Montenegro and Macedonia. And yet, this propaganda has been used with some success even here in the United States.

Your fears concerning the international ramifications of the Kosovo problem are, of course, justified to a large extent. Kosovo could become an explosive point in a dangerous area, which is one more reason why we should do our best to mitigate the circumstances. However, it is not the Albanian demand for republic status and equal treatment as a national group that will destabilize Yugoslavia. One can reasonably expect one day that justice will prevail in that country, and the nations of Yugoslavia will realize the benefits deriving from a fair treatment of ethnic Albanians in a federated state of Yugoslavia. There are now four times more Albanians than Montenegrins, and twice as many as Macedonians; yet, Montenegro and Macedonia have their own republics because they are *Slavic nations*. Albanians are not *Slavic*, but this is not an acceptable reason for denying them the right to their own republic, and it sounds more as a racist explanation.

It is more probable that the destabilization of Yugoslavia will be brought by the powerful political forces now in action, as some recent developments tend to confirm. Kosovo authorities, doubly controlled by the Serbian republican and Yugoslav federal powers, are in no position to shake the foundation of the SFR of Yugoslavia. Serbia, the largest and the strongest of the six republics, is. According to the book by the former president of the SR of Serbia, Ivan Stambolić, "An Analysis of the SR of Serbia, 1979-1987 (Delo:Lubljana, 1987) there are highly placed forces in Serbia who are calling "for the settling of the accounts with the Albanians with the help of a foreign power, who should solve our (Serbian) problem." * * * "We must discover," he wrote, "who is so involved in such things that they call for foreign intervention. We must find out who is doing such things, who is inciting demands for protection by the Soviet Union, for a journey to Gorbachev or the Soviet Embassy in Belgrade, and other things of this kind; we must find out how directives are given from the Serbian nationalist staff, who is formulating slogans, who the idelogical leaders are, and who is giving direct instructions in this field." (FBIS-EEU-88-143, July 26, 1988, Albania, pp 10-11.) The attack leaves no doubts that it was directed against Slobodan Molosević the present chairman of the Yugoslav Communist League for Serbia, who, on his part, expelled Stambolić from te ranks of the Central Committee of the Party. The Serbian scenario is frightening, indeed!

The Yugoslav Government claims that it is the only authority to keep Yugoslavia together, and avoid the internal struggle among the various nations of Yugoslavia, or an external intervention. This thesis is flawed in many aspects, although it seems to have your approval. As for myself, it seems to indicate a lack of confidence in the ability of the Yugoslav peoples to take care of their own affairs. I have great faith in the Yugoslav peoples ability, including of course, Albanians and Serbs, to opt for freedom and to build for themselves a democratic society where human rights and Western values are respected and promoted instead of being violated, as they are now by the present Yugoslav Communist administration. What the peoples of Yugoslavia need the most is not the blind acceptance of the present regime, but the encouragement of democracy in a country whose eyes are turned everyday more and more towards the Western world.

It is not by stressing the divisiveness of the past, but by encouraging democratic ideals of freedom and human rights that one can help the SFR of Yugoslavia get out of the present morass, and as a result help both Albanians and Serbs choose freely their ways of life and the government they prefer. To insist on the 19th century Serbocentrism attitudes versus Kosovo, a region where Albanians and Serbs have lived together in peace for centuries—anytime that Government or outside interferences were not used—it means to destory the foundations of peace in that region, a course of action that would bring untold suffering to all the inhabitants of Kosovo. Here, being distant from the heat that burns that region, we can help, by showing restraint in our judgments and by avoiding inflammatory statements.

In concluding, I would like to express my readiness to co-operate with anyone whose aim is to serve the cause of peace and democracy in Kosovo, in Serbia, and in Yugoslavia. For, blood and tears roll without asking whether the body and the faces they cover is that of an Albanian victim or of a Serb. We are, first and foremost, members of the one and only human race.

Very truly yours,

SAMI REPISHTI, Ph.D.,
Human Rights Activist,
Member, Amnesty International.

SUBSTANCE ABUSE PREVENTION

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. SKELTON. Mr. Speaker, in a time when we in House are deliberating on how to deal with the drug problem that is wracking our Nation, it is gratifying to hear of a community level program that is doing much in the way of educating the public on drug prevention. I am specifically speaking of the Community Team Training for Substance Abuse Prevention, sponsored by the Missouri Safety Center, Central Missouri State University, and the Missouri Division of Highway Safety.

The major goal of team training is to train teachers and others to help reduce alcohol and other drug abuse and related destructive behaviors, including traffic accidents—the greatest killer of our youth. The school team training approach was originally developed by the U.S. Department of Education's Division of Alcohol and Drug Abuse Education. The foundation model was implemented in Wichita, KS, in 1981 and the community team training, patterned after the successful "Kansas School Team Training," was conducted in Columbia, MO from June 26 through July 1, 1988. Gary Lowe, project manager, Vicky Williams, safety specialist, and Sharee Galnore, Cape Girardeau coordinator, are to be congratulated for engineering one of the most meaningful local programs in Missouri to date.

More than 30 Warrensburg participants in community team training have already begun to make an impact on the Warrensburg community. A recent presentation by the team has increased the awareness of the Warrensburg Board of Education concerning current techniques for combating alcohol and substance abuse, as well as, plans for implementing various programs in the Warrensburg public schools.

It is obvious that in order to effectively fight the Nation's current drug problem more local programs as this one in Missouri are needed to provide valuable information about alcohol and drug abuse as well as to develop substance abuse strategies.

THE GIFT OF LIFE

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. MAZZOLI. Mr. Speaker, I would like to commend to the attention of my colleagues the eloquent words of my constituent and good friend, Jim Burrice, from Louisville, KY.

Jim is a very inspirational young man with whom I have developed a close friendship over the years. Jim has cerebral palsy. But he has not allowed that daunting obstacle to break his spirit nor impede his efforts to become an important and productive member of our community.

Both before and since Jim graduated from Cerebral Palsy School and Bellarmine College in Louisville, he has amazed me with the time and energy he devotes to his church and many other civic activities in behalf of handicapped individuals. Because of the sterling example Jim and millions of other Americans of talent and ability give us daily, in the eyes of the world these persons are no longer "handicapped," but "handi-capable."

Jim writes an annual essay on the meaning of life, and it was my honor to read Jim's essay at the 1988 fund-raising banquet for the Cerebral Palsy School.

His thoughts are a moving personal testimony to the precious opportunities life provides us all, regardless of our mental or physical limitations. I draw enormous strength from the simple wisdom of Jim's words.

Every day—and particularly in the hurly-burly, rush to the finish of this 100th Congress—is a perfect time to pause and reflect on those things in life which make all else seem trivial by comparison. I thank Jim Burrice for sharing with me and with us his remarkable gift. Following is Jim's essay:

We welcome you to our 14th Annual Cerebral Palsy School Golf Tournament and Banquet. What a glorious day this has been and what a glorious evening we are going to share! As always, we are so happy and grateful to have you with us!

This evening I would like to talk with you about Life. What is Life? At first thought the answer to this question might seem quite obvious. Upon deeper reflection, however, the question isn't as easily answered.

Even though we live it everyday, exactly what is life? I would like to offer this definition: Life is everything that happens to you—and everything that you make happen—from the instant that you enter this world until the instant that you leave it.

Life is laughter and tears. It is joy and sorrow; success and failure; serenity and frustration. Life is caring and sharing; it is being with those you love and it is loneliness. Life is loving and being loved.

God has blessed me with the strength and enthusiasm to execute many important and worthy endeavors. One of the most sacred and most rewarding privileges that I have is that of sharing in, and contributing to, the lives of others. When I have a definite plan or intention to do something for another person, I begin my day much more excited and eager to get to work than when I have no such plan or intention in mind. To help others is a responsibility that I accept gladly, gratefully, and seriously.

I love and enjoy life because as I work in my office each day, I can think warmly of my friends—friends whom I love and care about and who love and care about me. I like to work, to accomplish things, and to make good things happen. Indeed, I have the right to work and to succeed. I also have the right to try and to fail.

While it is true that I have reached my present level of achievement by the grace of God and largely through my own efforts and perseverence, I would be remiss if I did not acknowledge with deepest gratitude my wonderful, loving, and loyal family for having done so much throughout my lifetime to help me reach my goals and realize my aspirations. Also, I want to say a very warm and sincere "Thank You" to my many cherished friends for sharing in my life and for giving me the privilege of sharing in theirs. All these people have added happiness, meaning, and fulfillment to my life. Without my family and friends, I certainly would not be where I am today.

This is not to say that life is always smooth and carefree for me. Like everyone, I have disappointments, frustrations, and difficult moments. For me, two of the biggest frustrations in life are its uncertainty and my own dependency. It is said that the only real certainty in life is its uncertainty. I realize this more and more each day. As I ponder my future, I wonder: What will life be like for me next month? Next year? Five years from now? Who will be there when I need help, when I need comforting, when I need love? I am not preoccupied by these questions every day, but I am aware of them. I must be, for someday I will have to deal with them.

Although one of my greatest joys is helping others, I also realize my dependency on them for basic assistance. While coping with my physical limitations and my resultant dependence on others, I also must deal with two related problems which affect my personal situation. Lack of mobility and loneliness.

If someone were to ask me: "Jimmie, do you ever get lonely?," in all honesty I would have to answer: "Yes, sometimes I do get lonely."

Sometimes I get lonely because I yearn to be with my friends, but I can't. As I work in my office or relax in my den, I can "see" my friends in my heart, but I can't see them with my eyes. I can feel their love and their warmth, but not their hugs and their embraces. I can "hear" and reflect upon things they've said to me in the past, but I can't hear their words of encouragement and support at that moment. Sometimes the pain of physical separation is difficult for me.

Perhaps it could be said to me: "Jimmie, your parents are right there with you all the time, so why should you ever be lonely?" True, my dear Dad and Mother are with me and care for me constantly, but I have come to realize—from my own feelings and experiences as well as from the sharing and counsel of friends whom I love and whose wisdom I respect and value highly—that your family can't always meet all of your needs, no matter how much they love you and how hard they try to always make you feel happy and secure. Sometimes you need to go outside your family for companionship, for encouragement and support, for that special kind of love and warmth that only friends can give. I cherish my friends, and I love them dearly.

Despite its inherent problems and frustrations, with each passing day I realize more profoundly and more vividly what a beautiful life this is—and how beautiful the people are who give life its beauty. With each passing day my gratitude for being a part of this life—for being a part of God's Divine Plan—deepens and becomes more profound. Each day I resolve to carry out my responsibilities—whatever they might be—with Faith, Courage, and Dignity. Each day I thank God for the strength and the courage to deal with life's problems.

The title of an inspirational song, "One Day at a Time," teaches us the way life must be lived. Sure, we make plans to do things in the future—we have to, for this the way we give order and direction to our lives. But basically, we must take one day at a time. As we do this—as we journey along the Road of Life—let us strive to live each day to the fullest, to give as much as we can. Above all, each day let us love with every breath and with every ounce of strength that is in us, for What is Life? Life is Love. Thank you for your love for our—and your—"Children Pretty Special." God bless you.

FAIR TELEVISION SERVICE ACT OF 1988

HON. THOMAS J. DOWNEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. DOWNEY of New York. Mr. Speaker, I am very pleased to be introducing today, along with my distinguished colleague from Long Island, NORMAN LENT, and 12 other cosponsors, the Local Television Service Act of 1988. This bill is designed to remedy a void in television service for Long Island and other similarly situated areas. This remedy is long overdue, and I am hopeful that it can receive speedy consideration in Congress.

The importance of television in our daily lives cannot be denied. Poll after poll show year after year that television is the principal source of news and entertainment for most Americans.

Congress too recognized the value of broadcasting when it enacted the Communications Act of 1934, and section 307(b) of that law required the Federal Communications Commission to distribute broadcast licenses throughout the country in a way that would be "fair, efficient, and equitable."

The FCC tried to honor that mandate when it assigned television licenses to communities throughout the country in 1952. The Commission understandably assigned the most powerful television stations to the largest cities. In making these choices, the Commission had to distinguish between very high frequency [VHF] television channels—2 to 13—and ultra high frequency [UHF] channels—14 to 69. VHF channels generally have a more powerful signal and are therefore able to serve a larger audience than UHF channels. Consequently, the FCC generally assigned the VHF channels to the largest cities.

These assignments were to have a direct bearing on the program service which the American people would receive. For the broadcaster's principal obligation was and is to serve its community of license. Outlying areas are deemed to be of only secondary importance.

No VHF stations were assigned to any communities in Long Island in 1952. This omission was hardly surprising at the time. Long Island had a small population, and the communities of any size on the western portion were deemed to be little more than suburbs of New York City.

Much has changed for Long Island since the FCC made its television assignments in 1952. Long Island has now become a major population center of 2.6 million people with its own distinct social, economic, and political needs and interests—a stature reflected in the Census Bureau's designation of Nassau and Suffolk Counties as separate primary metropolitan statistical area. No longer can it be said that Long Island is simply an extension of New York City.

Despite its many advances, broadcast technology cannot accommodate these population changes. It is not possible to establish a new VHF television station that can be assigned to a community in Long Island. To do so would result in impermissible interference to existing VHF television stations. Nor is there any refuge in an FCC order requiring one of the New York City stations to relocate to Long Island. Such an order would not only create the impossible task of selecting the particular broadcaster to move; of equal significance, however the selection was made, it would be unfair to require one broadcaster to bear the brunt of the FCC's inability in 1952 to foresee the dramatic changes that Long Island would experience over the next few decades.

Nassau and Suffolk Counties are not the long large PSMA to face this dilemma. Indeed, four of these other PMSA's have a population in excess of 1 million: the Bergen-Passaic County PMSA in New Jersey; the Anaheim-Santa Ana PMSA in California; the Riverside-San Bernardino PMSA in California; and the Fort Lauderdale-Hollywood-Pompano Beach PMSA in Florida.

The Local Television Service Act of 1988 offers a practical solution to the problem faced by Long Island and other PMSA's of more than 1 million persons which do not have a locally assigned VHF television station. The bill draws upon Congress' experience in providing New Jersey with its first VHF television service in 1982. In adding a new section 331 to the Communications Act at the time, Congress did not require any broadcaster to move from New York City or Philadelphia to New Jersey; rather, the legislation simply promised a new 5-year license to any broadcaster who would make the move voluntarily—and this benefit was enough to inspire RKO to relocate channel 9 from New York City to Secaucus, NJ.

Similarly, the Local Television Service Act of 1988 does not require any broadcast to relocate to Long Island or other underserved PMSA's; rather, the bill offers a positive incentive—insulation from any competing applications for one 5-year term. In other words, a broadcaster who decides voluntarily to relocate its station or have the community of license hyphenated with a community in the underserved PMSA—so that the broadcasters' primary service area will include that hyphenated community—will not have to face a competing application for at least 5 years. This provision will not only protect the broadcaster—it will serve the public's interest as well. For the insulation from competition will afford the broadcaster an opportunity to develop a record of substantial service to the community thus entitle it to a renewal expectancy under FCC policies.

There is no illusion that this voluntary incentive will immediately result in the relocation or hyphenation of television stations in all, or perhaps even any, of the affected PMSA's. For that reason, the bill also directs the FCC to conduct a study to explore other ways in which television program service for these large PMSA's can be improved. The bill requires the Commission to report its findings to Congress within 12 months after enactment.

Although the legislative process may result in refinements, we should not doubt the need for this legislation. "The life of the law," Supreme Court Justice Oliver Wendell Holmes once observed, "has not been logic; it has been experience." However logical the FCC's table assignments for television may have appeared in 1952, experience has proven—at least for Long Island and four other PMSA's—that it is inadequate to serve the needs of a changing society. For example, monitoring studies by the Long Island Coalition for Fair Broadcasting—a broad-based civic group that has worked on this issue for almost 10 years—show that the New York City VHF television stations are providing better coverage of issues and events in their community of license than to the outlying areas in Long Island. While this approach may satisfy the stations' legal obligations, it does little for the citizen who lives on Long Island.

The time has now come for the law to adapt to this experience. The Local Television Service Act of 1988 performs that function—and it does so in a way that advances the public good without imposing any private burdens. I, therefore, hope and expect that this legislation will receive the careful consideration it deserves and lead the way for better television services for millions of citizens in Long Island and elsewhere.

CIVIL WAR REENACTMENT

HON. HELEN DELICH BENTLEY

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mrs. BENTLEY. Mr. Speaker, my district is a place rich in history, a location filled with handsome mansions, venerable churches, and memories of bygone eras. Yet history means little if it is forgotten, and I am proud to say that my constituents love to recall their origins. And when they do, it's usually in grand fashion.

Recently the Ballestone Preservation Society, in conjunction with the 52d Virginia Infantry Regiment, sponsored a Civil War reenactment at the historic Ballestone Mansion in Essex, MD. Both the house and its grounds are blessed with very historic roots, and I am proud to salute them here.

This area's historic significance began in 1659, when Cecilius Calvert granted 459 acres of land to a man named William Balle. The latter was the ancestor of a famous Virginia planter and soldier. His name was George Washington.

In 1780 Dixon Stansbury built a farmhouse on the area. Additions to the house were made in 1850 and 1880. The house changed hands several times, and an effort was made in 1969 to even tear it down. Yet a grassroots effort was launched by concerned members of the community, and Ballestone was saved. Thank heavens for the efforts of these fine folks.

This recent Civil War reenactment gave many of my constituents a unique look into the past, one which mere books could not hope to give. I send my heartiest thanks and congratulations to all its organizers and participants for a job well done.

A CONGRESSIONAL SALUTE TO BONNIE HARRIS, WOMAN OF ACHIEVEMENT FOR 1988

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. ANDERSON. Mr. Speaker, it gives me great pleasure to rise today and pay tribute to an outstanding professional woman of my district, Bonnie Harris. She holds the honor and the distinction of being named Woman of Achievement for 1988, by the Business and Professional Women of Wilmington, CA.

Mrs. Harris has a long list of achievements to her credit. A native of Little Rock, AR, Mrs. Harris and her husband, John, settled in California 24 years ago. It was here, in 1979, that they together founded Buckeye Trucking Co., of Wilmington. As you know, starting a new business places many demands upon its founders. Yet despite the challenges posed by the fledgling company, Mrs. Harris still found the time for numerous other tasks benefiting not only her own family, but her entire community as well.

As a mother, Mrs. Harris had the challenge of raising three children. Her involvement with her own children, and her concern for those of her area, led her in 1970 to membership in the Parent Teachers Association. And her interest has been more than just passing, as she has gone on to hold offices in the Los Angeles Tenth District and Avalon Council, and still maintains her active membership to this day.

Mrs. Harris' interest in our young people also extends beyond the schoolhouse door. From 1972 through 1981, she was an active Boy Scout and Girl Scout leader. Furthermore, as a member of the Wilmington Boys and Girls Club, she has served as both a regular director and associate director of the group. Most recently, she chaired the annual fund raising and awards dinner, which I have heard was an outstanding success.

Mrs. Harris' service to the community includes professional endeavors as well. In 1983, she joined the Wilmington Chamber of Commerce. Over these past 5 years, she has managed to serve as both a director and secretary in that organization, as well as serve as chairman for many committees and activities. In addition, she was also named honorary vice-mayor of Wilmington, 1986.

It is the Business and Professional Women of Wilmington which honor Bonnie Harris now. Her activity in this organization dates to 1985. In this brief span, she has aspired to the office of secretary, after already having served as editor of the association's Bulletin. And if there are already not enough demands on her time, Mrs. Harris has recently joined the Harbor City-Lomita Lions Club. One can only wonder what challenges she will undertake next.

At this time, I too, along with my wife Lee, would like to extend our hearty congratulations and best wishes to Bonnie Harris, an outstanding woman of achievement. She has seen a world of challenge and opportunity, and met it head on. And her successes of the past, and her endeavors for the future, have and will make our community and our Nation all the richer. For this, we salute you.

TRIBUTE TO THE CAPTAIN CHARLES M. MARINO POST 3, OF THE ITALIAN AMERICAN WAR VETERANS OF THE UNITED STATES, INC.

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. TRAFICANT. Mr. Speaker, I rise today in order to pay tribute to a wonderful organization in my 17th Congressional District of Ohio, the Charles M. Marino Post 3 of the Italian American War Veterans of the United States, Inc., who are celebrating their 50th anniversary this year.

The post was organized in 1938 and recognized by the National Department in 1941. Since that time they have been serving our community in a multitude of ways. The post has conducted military funerals for those who have made the supreme sacrifice for their country. The members are frequent participants in area parades. Through their services to disabled members and the widows and orphans of the deceased veterans the members are proud to uphold their pledge to service of both their community and their country.

The Ladies Auxiliary of Post 3 makes a monthly visit to veterans of Brecksville Medical Center in Brecksville, OH. They invite the veterans to their post home occasionally for spaghetti dinners. They hold bingo parties every Monday night, from which they have donated over $125,000 to various organizations in the Mahoning County area.

The post has occupied several homes in their 50 years, but none so impressive as the headquarters they assumed in 1974. Through the generosity of Mr. Edward J. DeBartolo, Sr., the post was able to acquire 3 acres of land on which they built "the largest and most beautiful" post home in the National Department of the Italian American War Veterans.

It is with great pleasure that I stand before the House today, to pay tribute to the Charles M. Marino Post 3, of the Italian American War Veterans of the United States, Inc. These great people have proven time and again their love and dedication to their country and to their community as well. I am proud to serve as their Congressman.

CONGRATULATIONS TO POLICE OFFICER CHARLES PETROTTI

HON. RICHARD A. GEPHARDT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. GEPHARDT. Mr. Speaker, I would like to bring to the attention of my colleagues, and the Nation, the achievements of Police Officer Charles Petrotti, a member of the St. Louis Metropolitan Police Department. His many years of dedicated service to this police department have been an asset to my district and the city of St. Louis.

On November 11, 1988, Officer Petrotti will conclude his long and distinguished career of 29 years as part of the St. Louis Metropolitan Police Department. His involvement as a member of the canine section in the department has shown the importance of the use of canines in high pressure situations. Since 1964, Officer Petrotti has demonstrated expertise in utilizing canines in handling potentially dangerous situations and crowd control, such as those at the World Series and the city jail.

He has displayed devotion to his work through participation in over 1,000 canine demonstrations to various civil, social, and service groups. The superior job that Officer Petrotti has done in the line of duty is well proven by the numerous letters of praise and commendation that he has received. Such awards include: six chief's letters of commendation, two department awards of excellence, and over 20 letters of recognition from the German Shepherd Dog Club of St. Louis. The level of professionalism that he brings to his work makes Officer Petrotti deserving of such recognition.

Officer Petrotti is a symbol of the American tradition of pride in, dedication and commitment to, law enforcement in cities throughout our Nation. It is for his contribution in this area that the citizens of St. Louis and I would like to thank him as we congratulate him on a job well done.

THE JOE DOHERTY EXTRADITION CASE

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. GILMAN. Mr. Speaker, permit me to take this opportunity to call to my colleagues' attention the case of Joseph Patrick Doherty. In 1984, the United States District Court of the Southern District of New York, after a full hearing, denied the British request to extradite Mr. Doherty. The court decided that his offenses were political and not civil in nature, thereby precluding him from extradition.

In 1986, the Board of Immigration Appeals issued an order to deport him, pursuant to his request, to the Irish Republic. This decision ended 4 years of litigation during which time Mr. Doherty remained incarcerated in U.S. Federal prison without being charged with a crime in this country.

On July 14, 1988, United States Attorney General Meese ordered Mr. Doherty's deportation to the United Kingdom, rather than to the Irish Republic. It appears that the Attorney General's decision did not address issues of law. By overturning two court decisions, there is an implication, in this case, that our legal system has been influenced by political concerns. I have cosponsored legislation calling for Mr. Doherty's immediate release.

Mr. Speaker, I join with Archbishop Cardinal John O'Conner in protesting Mr. Doherty's deportation. I strongly believe that in the case of Joseph Patrick Doherty, the separation of the executive and judicial branches, which is so importantly enshrined in the Constitution, has been violated.

TRIBUTE TO LT. ALBERT PHILLIP SAMUELS

HON. ROY DYSON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. DYSON. Mr. Speaker, I rise with sadness in my heart to pay my respects to Lt. Albert Phillip Samuels, who passed away October 9. I join with his family and friends in paying tribute to this fine man.

Lieutenant Samuels was a veteran of the U.S. Capitol Police, serving from 1958 to 1984. He earned the respect of his colleagues, and as a result was appointed supervisor of the firearms branch. In this position he was in charge of the instruction and supervision of all police personnel for qualification and familiarization with firearms. Lieutenant Samuels also commanded all special operations units.

Mr. Speaker, I am especially saddened because Lieutenant Samuels was a constituent of mine from Waldorf, MD. He was a great help to me when I came to Capitol Hill, giving me the value of his extensive Hill experience. He was always very friendly and supportive. His death has deprived me of a friend.

Lieutenant Samuels was a fine officer and a fine man, and we will all miss him. I join my colleagues in extending my deepest sympathy to his widow Mary, and his daughters Snowie, Donna, and Jan.

A TRIBUTE TO LEONARDO CAMPOS TENORIO

HON. BEN BLAZ

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. BLAZ. Mr. Speaker, I rise today to mark the passing of a remarkable gentleman, Leonardo Campos Tenorio, one of the oldest residents of my district and a respected and revered leader of Guam.

Born before the turn of the century, Leonardo Tenorio's life spanned the length of

Guam's American history. This gentleman witnessed the close of the 19th and most of the 20th century, survived two World Wars, watched as the advance of technology swept Americans from the beaches of Kitty Hawk to the lunar surface, and lived during the Depression, the Japanese occupation of Guam, the Naval Administration of the Island, and saw the people of Guam emerged from military wards to full-fledged American citizens.

His life truly was an American odyssey.

The world changed very much during his lifetime. Yet those who knew him can attest to the fact that in some things always remain unchanged, like the strength, warmth, caring, and wisdom of the American man.

On September 17, 1988, the Guam Legislature honored this proud Chamorro leader with a state funeral. The eulogy for Tun Leonardo was delivered by Dr. Benit Camacho Dungca. I insert the eulogy into the RECORD as a tribute to and in memory of Leonardo Campos Tenorio and for the benefit of my colleagues:

TRIBUTE TO TUN LEONARDO CAMPOS TENORIO, 1899-1988

(By Dr. Benit Camacho-Dungca)

The laurels of Tun Leonardo Campos Tenorio are not marked with earthly rewards and recognitions but rather of the heavenly virtues of humility, honesty and faithfulness. For indeed Tun Daddo, as we affectionately and respectfully call him, is, in the words of his oldest grand-daughter, Maria Ana Tenorio Rivera, "* * * A self-made man humble and full of strength from his undying love of doing only those things that are good and righteous under God's law."

To his late wife, Tan Lucia, he was the faithful, loving, and patient husband who humored her and cared for her up to the very end of their long and happy life together here on Earth.

To his sons, difunto Manet, Leonardo, and John and his daughters-in-law, Tita, Mag, and Gloria, he was the affectionate, patient, supportive, and caring father who was always there to lend a helping hand whenever and however he was needed.

To his grandchildren and great grandchildren, he was the Tata and Bihu who spoke softly and lovingly to them, loving them unconditionally and always encouraging them to be the best that they can be.

To the many people especially those of Talofofo, who sought him out for his wisdom and guidance he was an image of love and source of hope.

And to the people of Guam, especially to those of us here today, he left us with a shining example of a humble, honest, and devoted human being worth emulating.

Indeed Tun Daddo, you are the manifestation of a promise fulfilled. You lived a long and happy life because you lived honorably. You honored your mother and your father and now, three generations of people are here to attest to all the goodness you have been.

Thank you Tun Daddo. We love you and will surely miss you. Sad as we are about you leaving us, we are consoled with the knowledge that you will join your loving wife, Tan Lucia, your dear son Manet, and the many other people of God, who like you are called ahead of us.

Adios guinaiyan-mami na sainan-mami Tun Leonardo Campos Tenorio. Umitde, unesto, yan dibotu na setbienten Yu'os.

VETERANS' NIGHTMARE—JANE FONDA'S CLONE HEADS UP THE DUKAKIS TRANSITION

HON. GERALD B. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. SOLOMON. Mr. Speaker, I would like to alert those Americans, like myself who are still angry with Jane Fonda for making anti-American broadcasts from Hanoi during the Vietnam war. In my view, these broadcasts were an attempt to demoralize the American troops fighting for their lives, and they certainly provided aid to our enemy.

Well, guess who Michael Dukakis has chosen to head up his transition team, should he be elected to the Presidency? David Ifshin who, during the Vietnam war, like Jane Fonda, made anti-American broadcasts from Hanoi. This is the person Dukakis has placed in the position to make recommendations to fill key Cabinet posts. Would his mentor, Jane Fonda, be our first Secretary of Veterans' Affairs?

Mr. Speaker, I wish to insert into the RECORD today a recent story by William Buckley regarding Michael Dukakis' choice as head of his transition.

REMEMBER, DUKE AIDE DID A HANOI JANE

(By William Buckley)

During this season, we have devoted much attention to one Republican's record during wartime. Dan Quayle sought the National Guard rather than the front lines. It is, of course, the Democrats who are in high dudgeon, which brings up the interesting case of a gentleman I have, in this space, previously dubbed Little Lord Haw Haw.

Lord Haw Haw, some will remember, is the Irish-American who worked for the Nazis, broadcasting to his countrymen in the accents of the British upper class. After the war, the British brought him back to London and hanged him.

In 1970, a young man traveled to Hanoi where, in the manner of Lord Haw Haw, he broadcast to American troops. He said, "My name is David Ifshin, and I'm president of the National Students Association of the United States (since defunct) and I was student body president at Syracuse University last year." That was the introduction designed to wow the troops otherwise engaged in avoiding booby traps, ambushes and sniper fire.

Having properly introduced himself, Little Lord Haw Haw went on to give American troops the benefit of the extensive knowledge that a Syracuse student body president would be expected to have. He said, "The Thieu-Ky regime is one of the most oppressive regimes in history." Accordingly, he counseled 500,000 Americans in South Vietnam that there was only one right thing to do.

"I realize especially after this trip (to Hanoi) that the U.S. government does not go to South Vietnam to fight for democracy or to defend the right of the people, but they go there and send us to murder the people of Vietnam in order to make South Vietnam into one large U.S. military base, not to defend the U.S. but to aggressively threaten other countries. The fear is that if the people of Vietnam are allowed to determine for themselves their own interests, they will not support the investment of private capital."

The next thing we knew about David Ifshin was when he suddenly popped up as general counsel to Walter Mondale when Mondale was running for President. The item caught my attention, and I divulged Ifshin's record. This brought on a press conference at which Ifshin issued his qualified regrets. He does not apologize for his opposition to the Vietnam War. He said he was politically immature at the time he was lecturing U.S. soldiers, and as to the broadcast, "I'm as appalled as anyone else by it." He added that he, too, had expected to be drafted. Accordingly, he obtained a deferment, worked on a kibbutz in Israel, then enrolled at Stanford Law school in 1974.

Now he serves as chief of the transition team of Michael Dukakis. That is to say, if Dukakis wins, Ifshin will preside over the transitional arrangements from Ronald Reagan to Michael Dukakis.

People do make mistakes, but it is good to acknowledge these were mistakes. It would certainly be refreshing to hear from Quayle that, although he has the highest respect for the National Guard he cannot conceal that his entry into it was in part motivated by a desire to get on with the study of law, which is hard to do while dodging Vietnamese bullets.

And it would be nice to hear from the man who briefly deserved the name Little Lord Haw Haw that he regrets animadversions by Democratic officials on Dan Quayle's activities back in the days when Dan Quayle and David Ifshin were 21 years old.

WASHINGTON FAILS TO REJUVENATE HONDURAN ECONOMY

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. BERMAN. Mr. Speaker, Honduras, with the second lowest per capita income in the Western Hemisphere, has received massive amounts of aid under the Reagan administration. Yet, that assistance has not significantly improved the standard of living of the majority of Hondurans, nor substantially improved the nation's economy. The perilous condition of the Honduran economy should be of concern to us, because we, in part, are responsible for it. Honduras is a key ally in Central America, and, while it has not suffered the bloody civil unrest common to the nations it borders, Hondurans are increasingly resentful of the U.S. military presence in the country and our influence on its leaders. In order to provide some background on the state of the Honduran economy and the impact of U.S. assistance to Tegucigalpa, I wish to insert into the RECORD an article which first appeared in the September 28 edition of the Washington Report on the Hemisphere, a biweekly publication of the Washington-based Council on Hemispheric Affairs [COHA]. I encourage my colleagues to read this timely report authored by COHA research associate Kelly Damore.

WASHINGTON FAILS TO REJUVENATE HONDURAN ECONOMY

(By Kelly Damore [1])

Reports of a draft U.S.-Honduran agreement allowing Washington to build "permanent structures" in that country have generated some concern on Capitol Hill that the White House is planning to make the "temporary" U.S. troop presence more permanent. The secret deal would allow $20 million in military construction over the next three years and gives U.S. forces increased access to Honduran airfields and ports, as well as to Honduran vessels to make drug checks.

The leases on present U.S. military bases in Panama expire in 1999, and, since General Manuel Noriega, that country's de facto leader, has voiced the intention not to extend them, congressional staffers argue that the draft agreement with Tegucigalpa is a first step to relocating the U.S. Southern Command from Panama to Honduras. Such a move would also serve to institutionalize the U.S. threat to Nicaragua as the contra forces wither from a lack of congressional funding.

Since coming to office, the Reagan administration has cultivated a strong relationship with Tegucigalpa, granting massive infusions of military and economic aid, ostensibly to foster Honduras' emerging democracy. The administration has requested $209 million in combined economic and military aid for FY1989, up from $187 million in FY1988, which represents more than a twenty-fold increase since FY1981.

However, this largess only minimally has helped the Honduran economy, with the generous military aid packages serving mainly to strengthen the influence of the armed forces and weaken civilian rule. As Honduran Foreign Minister Carlos Lopez Contreras told U.S. Secretary of State George Shultz during his visit in late June, "Honduras' central position and its three borders have resulted in incalculable damage to its economic investment, social and ecological balance and security."

Some analysts suggest that the extremely high levels of U.S. aid in recent years were designed to foster in Honduras an alternative economic model to what the Sandinistas are doing in Nicaragua. But almost half of the funds dispatched to the country have been allocated to the military to help secure its acquiescence to the use of Honduran territory by the contras, the CIA, and the Pentagon in order to stage an endless series of military maneuvers aimed at intimidating the Sandinistas. Although sectors of the military have handsomely prospered from payoffs, the vast majority of the civilian population has seen little improvement and foreign interests remain skittish about making new investments in an area of rising conflict.

Honduras' economic problems are characterized by major budget deficits, an overvalued currency, high labor costs, and a 40 percent unemployment rate. According to Vice President Jaime Rosenthal, a banker, the current fiscal deficit is $300 million, and the trade shortfall adds up to $313 million. Despite eight years of increasing external assistance, Honduras still has the second lowest per capita income in the hemisphere. "When you take a hard look at the country's economic indicators, you quickly conclude that there's no way out of the current crisis," asserted Miguel Angel Funez, secretary general of the Honduran College of Economists.

Recent economic indicators suggest Honduras' problems have become more profound. Demand for Honduran goods has declined, particularly for sugar, one of the country's major exports. This group is partly due to U.S. price supports for its domestic sugar industry and reduced sugar imports quotas, as well as protectionist policies of other development countries. Exports fell three percent in the past year and, since 1977, have dropped 26 percent, further exacerbating the trade deficit.

The country is having problems attracting investors, especially from the United States. Gilberto Goldstein, chairman of the Honduras Sugar Growers Association and a member of the National Assembly, explained, "We're completely surrounded by violence. . . . Everybody says the war hasn't come to Honduras yet. But this is what scares people. The word 'yet' implies that it will come some day." Public and private investment has fallen sharply, from 15.2 percent of the gross national product (GNP) to 7.4 percent of the GNP. Usually, only companies who have a long relationship with the country, such as United Brands Co., are making new equity commitments. As one foreign economist put it, Honduras is "automatically excluded" by many Americans considering investment.

Honduras' foreign debt has more than tripled over the decade, from $989 million in 1980 to $3 billion in 1988. Due to a drastic fall in world prices of the country's main exports, disbursements of approved loans were suspended by the IMF, IDB, and World Bank. This cutoff occurred while the nation paid the IMF and World Bank $277 in debt service in 1987, according to Honduran authorities.

The World Bank had offered $70 million in new credits if President Jose Azcona fired 5,000 public employees, cut the government budget by $25 million, and generated $50 million in new public income. Specifically, the IMF and World Bank insisted that Tegucigalpa freeze salaries, shrink the agrarian reform budget, and slash $5–8 million from the armed forces budget (perhaps politically impossible, given the military's unqualified influence).

Agreement has just been reached on a joint Japanese-World Bank $100 million loan. The new loan package commits $50 million from Japan and an equal amount from the World Bank. According to an official of the Agency for International Department (AID), under the agreement Tegucigalpa must reduce its deficit (measured as a percentage of the GDP), from its current rate of 6.6% to 5.5% by the end of 1988, and down to 3.5% in 1989. The AID official suggested that harsh austerity measures will be necessary to achieve targeted deficit reductions, including reducing protectionist import laws, devaluing the lempira, and cutting government employment. Such unpopular steps will be difficult to implement with Honduran elections scheduled for November 1989.

A second key reform, intended to address the overvalued Honduran currency, is to allow the creation of a kind of secondary exchange market through the use of negotiable certificates denominated in dollars. Businesses requiring hard currency for imports may choose to pay more in lempiras than the official exchange rate in order to have access to dollars.

Symbolic of investors' restraint and the military's influence is the long unfinished shell of the Sheraton Hotel in Tegucigalpa, which was taken over by the Honduran armed forces in 1986 and converted into a military hospital. Even though Honduras has received from abroad well over a half of billion dollars since 1981, the aid has obviously failed to remedy the country's lagging economy. Rather than fortifying the nation's democratic sectors, many independent observers believe that Washington's swelling financial packages seem primarily to have helped buttress the power of the armed forces, at the expense of civilian rule.

ST. MATTHEW STATION POST OFFICE IN SAN MATEO PLACED ON THE NATIONAL REGISTER OF HISTORIC PLACES

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. LANTOS. Mr. Speaker, in this age of preoccupation with what is modern, new, and the most au courant, we sometimes lose sight of the value of our past. I am delighted to report to my colleagues that the progressive people of the city of San Mateo are also willing to consider their past. The St. Matthew Station Post Office in San Mateo, which has served the community for half a century, has been placed on the National Register of Historic places.

One of the great philosphers of our age, Charlie Chaplin, said, "There are more valid facts and details in works of art than there are in history books." The St. Matthew Station is a confirmation of that truth. The design and decoration of the building recall the Spanish and native American heritage of San Mateo, the conditions under which it was built recall the era of the 1930's when development of the area began, and the building has contributed to the vitality of the peninusula for the last half century.

The St. Matthew Station was designed and built through the Works Progress Administration under President Franklin D. Roosevelt, and it was decorated with murals and wood carvings that were commissioned under the Treasury Recovery Arts Program during that same era.

The St. Matthew Station was built in the mission revival architectural style, which was popular during the early part of this century. Its architectural elements and design highlight the Spanish tradition of California. The gabled ceiling, clay-tiled roof, heavy wooden doors, and iron fixtures hark back some two centuries to the time that California was settled by the followers of Father Junipero Serra.

The murals on the lobby walls by depression-era artist Tom Laman contribute to the harmony of the building. They depict the ranch life of the early Spanish residents of San Mateo County. The wood carving by Zygmund Szaevich above the main entrance to the post office is entitled "Indian Maiden." It reminds us of the native American heritage of our peninsula, that stretches back still futher.

For half a century, this St. Matthew Station Post Office has served the people of San

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[1] Kelly Damore is a research associate with the Washington-based Council on Hemispheric Affairs.

Mateo—the mail of three generations of San Mateans has passed through its doors, as have thousands of young men and women who answered the call to serve in our Nation's armed forces.

Mr. Speaker, it is great honor for the St. Matthew Station in San Mateo to be placed on the National Register of Historic Places. It is a tribute to the architects who designed it, builders who constructed it, and the artists who decorated it. But equally, it is a tribute to the people of San Mateo for whom this building is the center of the community and the source of essential communications that link them with the rest of the Nation and the world. I invite my colleagues to join me in honoring the St. Matthew Station and the people of San Mateo.

LOCAL ATHLETE FULFILLS DREAM AND JOINS OLYMPIC TEAM IN SEOUL, KOREA

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. FLORIO. Mr. Speaker, it is my distinct pleasure to bring to the attention of my colleagues a young man of the First Congressional District in New Jersey, Dennis Mitchell of Winslow Township, who has just returned from participating in the XXIV Olympiad in Seoul, Korea as a member of the United States track team.

As a young boy, Dennis had always dreamed of being a member of the Olympic Team and trained with an unwavering commitment to achieve that goal. Throughout high school, Dennis excelled in track and field events and set three State records in the 400 meter event as well as the 100 meter and 200 meter dash. While continuing to improve as an athlete, Dennis has also excelled in academics and has recently been awarded with a scholarship to the University of Florida where he will continue to distinguish himself as a student and an athlete. Mr. Speaker, you may also be interested in learning that Dennis' sister, Denise, is also an excellent athlete but fell short of qualifying for the Olympic Team. Denise, as well as Dennis, can now set her sights on the XXV Olympiad at Barcelona, Spain.

In Seoul, Dennis was a member of the 4 by 100 meter relay team which was unfortunately disqualified in the event. However, Dennis performed admirably by placing in the top eight in the 100 meter dash and can be very proud of this accomplishment. Indeed, by his participation in the Olympics, representing the United States among 160 other nations, Dennis proved himself to be not only a remarkable athlete but a thoughtful and respected delegate to this spectacular world event.

I appreciate the opportunity to inform my colleagues about Dennis Mitchell and wish him every success in all of his endeavors. I am confident that Dennis will ensure that the Olympic spirit continues to burn brightly.

TRIBUTE TO MARC JEFFREY STREIDEL

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mrs. MORELLA. Mr. Speaker, a few weeks ago, Montgomery County, MD, suffered a loss of a very special little boy. Marc Jeffrey Streidel, a 6-year-old from Bethesda, MD, in my district, was fatally injured when a public mailbox upon which he had climbed fell on him. The mailbox was not properly bolted to the ground in spite of complaints by neighbors to authorities over several years.

The purpose of my remarks is not to chastise the Postal Service or any other agency charged with ensuring the safety of our streets and public facilities. Steps already have been taken to prevent accidents like the one that killed little Marc from happening again. But, as we all know, children are curious and unaware of the numerous potential hazards that surround us. As public servants, we have an obligation to do whatever we can to eliminate those hazards when they are brought to our attention.

The main reason for addressing you today is to share with you the impact that Marc's passing has had on me. I have spoken with members of Marc's family and some of his friends. He was a remarkable child whose zest for life was surpassed only by the contribution that he made to his community in his few short years with us. He was a bright, happy child. He played hard, but he had a sensitive side as well. He had many friends, and he loved his family. There is no doubt that Marc's life was meaningful and that he will be remembered.

When I learned of Marc's death, I looked at my own children and was reminded of how vulnerable and precious they are. As parents, we cannot protect them from everything. After all, we must allow them to explore and experience if they are to learn to stand on their own feet.

In the busy and hectic world in which we live, it is often difficult to find the time and patience that children demand of us. But we must. They need us and we need them. Please join me in this tribute to Marc Jeffrey Streidel who has touched all of us.

HONORING ALLEN QUILLE AND SAMUEL WINIK

HON. BENJAMIN L. CARDIN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. CARDIN. Mr. Speaker, I rise today to honor two outstanding men from my home district of Baltimore, MD. Allen Quille and Samuel Winik have been chosen to be "Brothers for Humanity" for the Golden Eagle Square and Compass Club of Maryland, and will be honored at a United Nations Day dinner in 2 weeks, on Monday, October 24 at Martin's West.

Allen Quille and Sam Winik have been involved in the Baltimore community, both business and charitable, for a long time. Sam was the cofounder of the Haar-Win Parking Co., and worked there for many years until he took an early retirement. Allen owned Quille Parking Lots throughout Baltimore County. After Sam became restless in retirement, he joined Allen at Quille Parking Lots.

Both men have given generously of both their time and their money when others have needed help. They are fixtures in the Baltimore philanthropic community, and I don't know where we would be without them.

Mr. Speaker, I can think of no more fitting recipients of this prestigous honor than Sam Winik and Allen Quille. I urge my colleagues to join me in honoring these outstanding citizens of Baltimore.

ENDANGERING THOSE WHO DARE TO SPEAK

HON. DAN BURTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. BURTON of Indiana. Mr. Speaker, just yesterday, Adolfo Calero, the brave Nicaraguan Democratic Resistance Leader, published a poignant article in the Washington Times. Every Member of this House should take a look at that article, and I am placing it into the RECORD to make it easier to do so. Now, I understand that we all have our differences, and honest people can disagree. Nonetheless, I think we need to keep in mind the consequences of what we say and heed the words of Adolfo Calero: "I would ask that the next time you feel the urge to speak out on Nicaragua, you will think twice * * * the people of Nicaragua deserve better than this." For goodness sakes, when will we learn that when Washington sneezes, our neighbors catch the germs? Each one of us needs to search the innermost depths of his soul and determine whether or not we have kept faith with our Nicaraguan friends. Regardless of where you stand politically, remember, lives are at stake, and freedom is too.

[From the Washington Times, Oct. 11, 1988]

ENDANGERING THOSE WHO DARED TO SPEAK

(By Adolfo Calero)

By linking internal opposition activities in Nicaragua to the Central Intelligence Agency, Speaker of the House Jim Wright has all but destroyed the hearts and minds of those Nicaraguans brave enough to stand up to the Sandinistas.

The coalition that has been formed to oppose the totalitarian policies of the Sandinista-Communists within Nicaragua has enough trouble staying alive without Jim Wright working against them.

The fact is that whether the statements by Mr. Wright were made legally or illegally makes no difference to those already in Sandinista jails. Jim Wright effectively signed their jail sentence by claiming CIA involvement with Nicaraguan opposition activities.

This irresponsible behavior by the speaker of the U.S. House of Representatives is as inexcusable as it is tragic.

Why, I ask, is it so difficult for Mr. Wright to believe that conditions in Nicaragua can be so miserable that a mass, grassroots campaign of dissent cannot arise without the help of the CIA?

Not only is this belief naive, but it is an affront to those men, women and children risking their lives to rid Nicaragua of the dictatorial communists ruining their country.

Families who are starving because the Sandinistas spend the majority of Soviet aid on the military do not have to be told by the CIA to go out to protest. Mothers of the thousands of teen-agers, some as young as 14, who have been forcibly kidnapped from their homes to serve in the Sandinista army do not need provocation from the CIA to speak out.

Does Jim Wright think so little of the people of Nicaragua that he cannot comprehend the fact that 10,000 of them would actually gather to send a signal to the world that they are fed up with the disastrous, Stalinist-like policies of the Sandinistas without CIA involvement?

The men, women and children of Nicaragua do not need outside help of any kind in feeling repelled by the Nicaraguan tragedy of the last nine years.

The Sandinistas and their militaristic policies have prompted the internal opposition within my country, Mr. Wright, not some U.S. agency.

The economy is virtually non-existent. Political murders, beatings and jailings are now common occurrences in the daily lives of Nicaraguan civilians. It is this disrespect for the dignity of the individual that has caused the opposition rallies to surface in Nicaragua.

The fact that a man can no longer support his family with a hard day's work, the fact that a mother cannot see her young son through his teenage years because he has been conscripted into the Sandinista army at the age of 14, the fact that people are jailed for speaking out against the Sandinistas at any level, and sometimes murdered if suspected of being a Contra sympathizer, are the reasons the people of Nicaragua are saying "no" to the Sandinistas; not because the U.S. Central Intelligence Agency is telling them to do so.

House Speaker Wright has led the fight against aiding the Nicaraguan Resistance. This has been both distressing and unfortunate for those of us at the forefront of the resistance movement. However, being an American citizen, he is entitled to his opinion.

The problem with Jim Wright's most recent actions is that he seemingly has crossed the line into being an open supporter of the Sandinistas. This death and destruction to the opposition within Nicaragua that we have already begun to see as a result of Jim Wright's linking Nicaraguan civilians to the CIA is inexcusable.

The damage has already been done. The Sandinistas will now be able systematically to blame all opposition activity inside Nicaragua on the CIA, thus giving another convenient excuse to the tyrannical communists in Managua to continue their "campaign of terror" against the population of Nicaragua.

I would ask that the next time you feel the urge to speak out on Nicaragua, you will think twice, Mr. Wright. The people of Nicaragua deserve better than this.

FEDERAL GUARANTEES OF FSLIC OBLIGATIONS: AN OPEN QUESTION

HON. TOBY ROTH

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. ROTH. Mr. Speaker, one of the most difficult and troubling issues facing Congress and the American taxpayer is the growing crisis in our savings and loan industry. The dimensions of this crisis are now clear. While most of our 3,150 federally insured institutions are in good shape, we do have about 500 which are on the brink of insolvency. As a result, the Federal Savings and Loan Insurance Corporation, which insures deposits up to $100,000 in virtually all S&L's, faces a shortfall of at least $50 billion if it had to cover all the insured accounts in these marginal institutions.

The Federal Home Loan Bank Board, which operates FSLIC, has taken over some 123 failing S&L's this year, and in most cases has attempted to rescue the organizations by attracting buyers and investors who can bring new capital and new management. These actions are taken pursuant to the Board's very broad authority to protect the insurance fund from loss.

However, there is a major fiscal policy concern related to these actions. The Board has issued nearly $13 billion in promissory notes to help shore up the balance sheets of the failed institutions and make them candidates for purchase. In addition, the Board has issued almost $8 billion in "assistance guarantees which are open-ended commitments to protect the new buyers from any losses in trying to nurse the S&L's back to solvency.

In hearings before our Banking Committee, the Bank Board has contended that the "full faith and credit" of the United States stands behind these notes and guarantees. I and several of my committee colleagues questioned that contention, and could not get a clear answer from Bank Board Chairman Wall. To pursue this further, I wrote to the Comptroller General and asked for his analysis of the justification for the Board's contention.

I have now received the Comptroller General's response, and am entering it and my original letter into the RECORD. Every Member of this House should carefully read this analysis, because it reveals what some of us have suspected: The widespread acceptance of the "full faith and credit" argument is based solely on the application of a series of Attorney General opinions in circumstances similar to FSLIC. Their relevance to FSLIC obligations has not been tested in any court, nor has this interpretation been the subject of any legislation.

While GAO presents the standard line of argument that the absence of an explicit statutory denial of Federal guarantee implies that the Attorney General opinions apply to FSLIC, the GAO analysis should drive home the point that this question is, in fact, unresolved until Congress acts.

This means that the assumption of Federal backing of $13 billion in outstanding notes and at least $8 billion in other obligations rests on shaky ground. The American taxpayer is being told that they are ultimately responsible for these obligations when in fact their Representatives in Congress have never acted on this issue.

It is especially curious that in researching the legal history of this issue, GAO found that the House Banking Committee had stated in its report on the original FSLIC authorization that FSLIC issues "are not insured or guaranteed by the United States." Our committee must delve more deeply into the genesis of this early warning against extending taxpayer liability to FSLIC.

There is no question that the 101st Congress will have to confront the savings and loan crisis head on, early in 1989. We have established a special study commission to give us the best advice available on what to do.

Today, I am adding these documents as evidence that the American people deserve a clear resolution of their liability for the ever-growing billions in FSLIC obligations. I for one intend to protect the taxpayers' interests first and foremost.

U.S. HOUSE OF REPRESENTATIVES,
September 13, 1988.

Hon. CHARLES BOWSHER,
Comptroller General of the United States General Accounting Office, Washington, DC.

DEAR MR. BOWSHER: As a member of the Financial Institutions Subcommittee of the House Banking Committee, I am writing to request your assistance in answering several important questions regarding the use of promissory notes and assistance guarantees by the Federal Home Loan Bank Board. These notes, now amounting to nearly $11 billion, and the open-ended guarantees, have been issued as part of the Board's restructuring of a number of failed savings and loans around the country.

At a Committee hearing on September 3, I questioned FHLBB Chairman Wall about the legal authority for issuance of notes and guarantees, about the appropriateness of using these instruments as part of the restructuring arrangements, and about the impact on the federal budget and the deficit. Chairman Wall was not able to provide clear answers.

The hearing was held to examine a request by the Board that legislation be enacted to pledge the full faith and credit of the federal government against these instruments. Mr. Wall argued that such legislation is essential to carry out the Board's actions, through the FSLIC. Today, however, the Board has withdrawn its request for legislation, advising me that it will ask the Attorney General to determine whether current law extends federal gurantees to the Board's actions.

With Congress due to adjourn sine die in several weeks, it is crucial that I and my colleagues on the Banking Committee have your independent assessment of this situation, so that we are able to take whatever action is appropriate now to protect the savings and loan insurance system and the federal budget from any harmful effects of this financing mechanism being used by the Board.

Accordingly, I would appreciate having your response to the following questions:

(1) Does the FHLBB, in operating FSLIC, have statutory authority to issue promisso-

ry notes and assistance guarantees as part of its "resolution" of failed S&Ls?

(2) In issuing these instruments on the assumption of federal gurantee, has the Board properly coordinated its actions with the Treasury Department and the Office of Management and Budget?

(3) Under current law, does the full faith and credit of the federal government stand behind these notes and financial guarantees? Are these instruments properly accounted for in the federal government's books? How does the Board's issuance of notes and guarantees, either past or future, affect the federal budget?

Your prompt response to these questions will be most helpful in discharging my responsibility on the Banking Committee.

Sincerely,

TOBY ROTH,
Member of Congress.

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, DC, October 11, 1988.
B-233063.
Hon. TOBY ROTH,
House of Representatives.

DEAR MR. ROTH: By letter dated September 13, 1988, you asked several questions concerning the Federal Home Loan Bank Board's (FHLBB) use of promissory notes and assistance guarantees to restructure failed savings and loan institutions insured by the Federal Savings and Loan Insurance Corporation (FSLIC). As agreed with your staff, we have undertaken to answer on an expedited basis two of your questions and will separately address your remaining questions at a later date. In connection with the analysis of these two questions, we have not undertaken any review of the details of specific mergers, acquisitions, or other restructuring arrangements involving FSLIC assistance, such as the actions taken under the so-called Southwest Plan or the proposed acquisition of American Savings and Loan Association, a unit of Financial Corporation of America. We are currently reviewing information on these arrangements and will report on the results of this review later.

You first ask whether the FHLBB, in operating FSLIC, has the statutory authority to issue promissory notes and assistance guarantees as part of its "resolution" of failed institutions. For the reasons discussed in the enclosed analysis, we think the FHLBB, in operating FSLIC, has the requisite authority to issue promissory notes and assistance guarantees as part of its resolution of failed or failing institutions.

Your second question asks whether the promissory notes and assistance guarantees issued by FSLIC are backed by the full faith and credit of the United States. Applying the criteria contained in a long line of Attorney General opinions, we are of the opinion that FSLIC's promissory notes and assistance guarantees are obligations of the United States, backed by its full faith and credit. A detailed analysis of this issue also is enclosed.

I trust this responds to your questions and will assist the Congress in addressing the problems presently confronting the savings and loan industry. As we advised your staff, we will make copies of this opinion publicly available.

Sincerely yours,

CHARLES A. BOWSHER,
Comptroller General of the United States.

Enclosure.

LEGAL ANALYSIS OF FSLIC NOTES AND GUARANTEES

AUTHORITY TO ISSUE NOTES AND GUARANTEES

Congress in title IV of the National Housing Act (Act), as amended, created FSLIC to insure the accounts of eligible institutions, to liquidate failed institutions, and to provide assistance to failed or failing institutions. 12 U.S.C. §§ 1725, 1728, 1729. Congress specifically provided in section 402(a) of the Act that FSLIC shall be under the direction of the FHLBB and operated by it under such bylaws, rules and regulations as the FHLBB shall prescribe. 12 U.S.C. § 1725(a).

To discharge its obligations to depositors and to address the problems posed by failed and failing institutions, FSLIC has adopted a strategy to maximize its financial resources in order to act on seriously troubled institutions, particularly those in the Southwest. FSLIC's strategy emphasizes the use of acquisitions or mergers rather than liquidations. To the extent possibile, FSLIC provides assistance in the form of notes and guarantees rather than cash. Between January 1 and September 30 of this year, FSLIC acted on the problems of 126 savings and loan institutions: 106 institutions were merged with and/or acquired by other institutions in 52 transactions, and 20 institutions were liquidated. In carrying out these transactions, FSLIC issued a total of 28 notes, with combined principal amounts of $8.2 billion. The terms of the notes vary, ranging from 6 months to 15 years, and, for the most part, carry variable interest rates.

In addition, in merger-type transactions, FSLIC often agrees to compensate acquirers of failed institutions for future losses. Assistance agreements can take a variety of forms but typically provide for guarantees covering net capital losses due to write-downs or sale of problem assets, yield subsidies on nonperforming assets to ensure a specified rate of return on assets, indemnification against undisclosed liabilities or litigation, and purchase of certain impaired assets from the failed thrift.

Sections 402 and 406 of the Act amply authorize the issuance of such notes and assistance guarantees. In this regard, section 402(d) provides that "[f]or the purposes of [title IV of the Act]," FSLIC is empowered "to issue notes, bonds, debentures or other such obligations upon such terms and conditions as [the FHLBB] may determine." 12 U.S.C. § 1725(d).

Section 406(f) of the Act authorizes FSLIC to provide various forms of assistance to insured institutions when the institution is in default, or, in FSLIC's judgment, is in danger of default. Section 406(f)(1) of the Act permits FSLIC to provide assistance directly to an insured institution to provide assistance directly to an insured institution to prevent the institution's default or to restore the institution to normal operation. In such cases, FSLIC is authorized, in its sole discretion and upon such terms and conditions as it prescribes, to make loans to, to make deposits in, to purchase the assets or seurities of, to assume the liabilities of, or to make contributions to, the institution. 12 U.S.C. § 1729(f)(1) (1982).

Under section 406(f)(2) of the Act, FSLIC may provide assistance to facilitate a merger or consolidation of a troubled institution, or a sale of assets and assumption of liabilities of the troubled institution to another insured institution. In such cases, FSLIC is authorized, in its sole discretion and upon such terms and conditions as it prescribes, to purchase assets or assume liabilities of the troubled institution, to make loans or contributions to, or purchase the securities of, the other institution, to guarantee the other institution against loss from its merging and consolidating with, or purchasing assets and assuming liabilities of, the troubled institution, or to take any combination of the actions described above. 12 U.S.C. § 1929(f)(2) (1982).[1]

Accordingly, in view of the explicit authority provided FSLIC in section 402(d) of the Act to issue notes and other obligations, the broad discretion provided FSLIC in section 406(f) to assume liabilities and make contributions in its sole discretion and upon such terms and conditions as it prescribes, the absence of any statutory provision prohibiting or limiting the use of FSLIC notes as part of a section 406(f) assistance plan, and the explicit authority in section 406(f)(2) to guarantee an institution against loss from its merging or consolidating with, or assuming the liabilities and purchasing the assets of, a troubled institution, we conclude that FSLIC has the requisite authority to issue notes and guarantees as part of its resolution of failed or failing institutions.

FULL FAITH AND CREDIT

A series of Attorney General opinions dating back to 1953 provides an analytical framework for addressing whether the full faith and credit of the United States attaches to the notes and assistance guarantees issued by FSLIC. The early Attorney General opinions concerned statutes containing various types of pledges of the credit or faith of the United States. In 41 Op. A.G. 138 (1953), the Attorney General addressed the liability of the United States for paying annual contributions under contracts between the Public Housing Administration (PHA) and local public housing agencies. Many local agencies issued bonds to finance their housing projects and pledged the PHA annual contributions as security for the payment of the principal and interest on the bonds. The applicable statute provided that the faith of the United States was pledged to the payment of annual contributions under the PHA contracts. Reasoning that Congress' constitutional authority to pay the debts of the United States encompasses the power to incur debts and to do so through the agencies Congress creates, the Attorney General concluded that the PHA contracts to pay annual contributions are binding obligations of the United States.

The Attorney General applied essentially the same analysis in 41 Op. A.G. 363 (1958) concerning insurance contracts entered into by the Secretary of Commerce under the Merchant Marine Act of 1936, as amended. This opinion is noteworthy for several reasons. First, it concluded that insuring loans and mortgages through a contract or commitment of insurance by the Secretary of Commerce creates a legal obligation binding on the United States just like any other contract of the United States. Id. at 366–67. Second, after explaining that there is no distinction between a pledge of the faith of the United States, a pledge of its credit, and a pledge of its faith and credit, the Attorney General concluded that the expression of such pledges merely recognizes the obligation of the United States. The Attorney General emphasized that in the absence of congressional action disclaiming the liability of the United States, there is no legal distinction between valid obligations of the United States accompanied by a pledge of faith or credit over those not so accompanied. Id. at 369. In so concluding, the Attorney General opined that Congress expressly pledged the faith of the United States in the Merchant Marine Act to negate any implication that obligations under the Act would be limited to amounts in the applicable insurance fund. Finally, the Attorney General pointed out that the need for future appropriations to pay obligations created under the insurance contracts does not lessen or affect the validity of the obligation of the United States. Id. at 370.

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[1] FSLIC may not provide assistance to an institution if the amount of the assistance exceeds the cost of liquidation, unless FSLIC determines that the continued operation of an institution is essential to provide adequate savings or home financing services in its community. 12 U.S.C. § 1729(f)(4)(A) (1982).

These two opinions formed the basis for the Attorney General's conclusion in 41 Op. A.G. 403 (1959) that guarantees issued by the Interstate Commerce Commission were obligations of the United States even though Congress did not pledge the faith or credit of the United States. The Attorney General reasoned that it "is enough to create an obligation of the United States if an agency or officer is validly authorized to incur such obligation on its behalf and validly exercises that power." Id. at 405. The Attorney General reached an identical conclusion in 41 Op. A.G. 424 (1959) with respect to loan guarantees issued by the Secretary of Defense under the Armed Services housing mortgage insurance program.

These opinions were followed by two opinions involving entities, like FSLIC, subject to the Government Corporation Control Act. In 42 Op. A.G. 21 (1961), the Attorney General addressed loan guarantees made by the Development Loan Fund under the Mutual Security Act of 1954. The Fund was an agency of the United States, corporate in form, and subject to the Government Corporation Control Act. After restating the general principles noted above, the Attorney General addressed whether the conclusion that the Fund's obligations were obligations of the United States under these general principles should be upset due to the 1958 transformation of the Fund from an organization within an executive branch agency to a government corporation. The Attorney General concluded that Congress' choice of a corporate form to facilitate the Fund's operations did not alter the Fund's obligations as those of the United States. The Attorney General reached an identical conclusion with respect to the guarantees of the Export-Import Bank, another government corporation, in 42 Op. A.G. 327 (1966).

Application of the principles enunciated in these Attorney General opinions leads us to conclude that the promissory notes and assistance guarantees issued by FSLIC to carry out the purposes of title IV of the Act are obligations of the United States. Clearly Congress may create or use such agencies or instrumentalities as it deems appropriate to execute laws Congress enacts pursuant to the legislative powers conferred on it by the Constitution. Here Congress has designated the FHLBB, an independent agency in the executive branch, 12 U.S.C. § 1473(b), which directs and operates FSLIC, a corporate instrumentality of the United States, 12 U.S.C. § 1725(c), to stabilize and regulate the savings and loan industry through a program of deposit insurance and regulation. In order to carry out its assigned functions, Congress has authorized the Board, through FSLIC, to incur obligations through issuance of notes or assistance guarantees. In our opinion, unless Congress has disclaimed liability, any such obligations incurred as a result of FSLIC's valid exercise of delegated powers constitute obligations of the United States. In contrast to the obligations of the Financing Corporation that was created to recapitalize FSLIC and whose obligations are expressly declared not to be obligations of the United States, 12 U.S.C. § 1441(e)(7), no statutory provision governing the FHLBB or FSLIC contains such a disclaimer.

One additional issue merits discussion, however. The report by the House Committee on Banking and Currency on its version of the bill that ultimately became the National Housing Act, states that the debentures and other obligations FSLIC issues "are not insured or guaranteed by the United States." H.R. Rep. No. 1922, 73d Cong., 2d Sess. 4 (1934). In our opinion, this remark should not be viewed as controlling. Where, as here, the meaning of a statute viewed in light of well-established legal principles is clear, it is assumed that the clear meaning and effect of the statute was intended absent compelling and convincing reasons to the contrary. Significantly, we find nothing in the language of the Act, the most authoritative source of congressional intent, that makes manifest an intent to disclaim liability. Further, when Congress so desires, it has expressly stated that the obligations of congressionally authorized instrumentalities are not obligations of the United States. *See, e.g.,* 12 U.S.C. § 1721(b) (requiring Government National Mortgage Association to state in its obligations that they are not debts of the United States) and 12 U.S.C. § 1441(e)(7) (obligations of Financing Corporation, a corporation chartered by the FHLBB and classified as a mixed-ownership government corporation, are clear meaning of the statute obtained by application of the Attorney General opinions argues against reading into the Act a limitation on FSLIC's obligations as obligations of the United States on the basis of one remark in the Act's legislative history.

In summary, we agree with the criteria and analysis expressed in the Attorney General opinions for determining when obligations of government instrumentalities are obligations of the United States. We believe the statutory scheme governing the FHLBB and FSLIC and the obligations they issue are similar to those instances in which the Attorney General has concluded that an obligation of the United States exists. Accordingly, we conclude that FSLIC obligations are obligations of the United States.

STRENGTHENING THE NATION'S SCIENTIFIC BASE: CONGRESSIONAL SCHOLARSHIPS FOR SCIENCE, MATH, AND ENGINEERING

HON. DOUG WALGREN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. WALGREN. Mr. Speaker, today I am introducing a bill to strengthen America's scientists and engineers: the Congressional Scholarships for Science, Mathematics, and Engineering Act.

This bill would create a program in the National Science Foundation to select one female and one male student from each congressional district to receive a college scholarship of up to $5,000 per year to study science, math, or engineering.

As a nation, we are struggling to improve our ability to compete. A key element of competitiveness is our strength in science and technology—the ability to create new knowledge and apply it in new products. That in turn depends on our human capital—the quality and quantity of our scientists and engineers.

We cannot take the supply of scientific talent for granted. Relatively few high school students go on to get an undergraduate degree in science of engineering. Because of a 25-percent decline in the number of children born—the number of high school students will shrink in the decade ahead. Moreover, the proportion of students entering college who are interested in studying science and engineering is declining.

Recently, the United States graduated 77,871 young people with bachelor degrees in engineering; the Soviet Union graduated 334,970—almost five times as many. Japan with half our population, graduated almost as many engineers as the United States. Taken together, these two trends foretell trouble for our country ahead.

One of the most effective responses, suggested by the Office of Technology Assessment, would be to target support for undergraduates who major in science or engineering. This is an unparalleled opportunity to offer substantial encouragement to talented young people—and at the same time to remind all of us of the importance of this human capital to our national security and our economic well-being.

This bill would create congressional awards for science and engineering [CASE], modeled in part on the congressional appointments of young men and women to our military academies. The awards would be 4-year fellowships, based on merit and a competitive selection process, for study in science and engineering at a U.S. undergraduate institution of the student's choice. Two such awards would be made every year in each congressional district—one to a young man, the other to a young woman—ensuring opportunity to bright students from all corners of the country.

Because of their broad geographical distribution, CASE fellowships would serve as a highly visible stimulus and source of role models for high shool students—especially if, as we hope, the fellowships come to symbolize the national stake in science and engineering. The awarding of these fellowships—perhaps during National Science and Technology Week—would remind Members of Congress and the public of the importance of science to our national goals.

The awards would be funded through the National Science Foundation, where they would help the Foundation meet its mandate to strengthen science and engineering education, while ensuring improved geographical distribution in its programs. And it is important to add that the CASE fellowships would come from new money provided to the NSF and not come at the expense of any present program.

The cost of this kind of program is well within our means, and it is hard to imagine money better spent. As I conceive it, CASE would award roughly 870 new scholarships each year at an annual stipend of $5,000 each. The award would be an incentive meant to attract additional financial aid from other sources as needed by the student. When fully operational, the program would provide approximately $18 million in scholarship funds each year.

Through its visibility and example, however, the program would accomplish far more—providing a local focus on science and engineering education throughout the United States and signaling congressional support for meeting the critical national need for scientific talent.

H.R. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Congressional Scholarships for Science, Mathematics, and Engineering Act".

SEC. 2. PURPOSES.

It is the purpose of this Act—

(1) to strengthen the United States science, mathematics, and engineering base by offering opportunities to pursue postsecondary education in science, mathematics, and engineering;

(2) to encourage role models in scientific, mathematical, and engineering fields for young people; and

(3) to strengthen the United States scientific, mathematics, and engineering potential by encouraging equal participation of women with men in scientific, mathematics, and engineering fields.

SEC. 3. CONGRESSIONAL SCHOLARSHIPS FOR SCIENCE, MATHEMATICS, AND ENGINEERING.

(a) Establishment of Program.—The Director of the National Science Foundation (hereafter in this Act referred to as the "Director") shall establish and implement a competitive, merit-based program for selecting one male and one female from each congressional district of the United States each year to receive a four-year Congressional Scholarship for Science, Mathematics, and Engineering.

(b) Notification of Secondary Schools.—The Director shall notify all public and private secondary schools and all institutions of higher education in the United States annually of the availability of scholarships under this Act.

(c) Nominating Committees.—The Director shall establish for each congressional district, or, to the extent a contiguous group of congressional districts reflects a geographic region similar in demographics, geography, and economic status and activity, for each such group of congressional districts, a broad-based committee of educators, scientists, mathematicians, and engineers who shall submit to the Director nominations of one male and one female from each congressional district for scholarships under this Act. The membership of each committee shall reflect geographic distribution within its area.

(d) Eligibility.—Only individuals who are citizens or nationals of the United States, or who are aliens lawfully admitted to the United States for permanent residence shall be eligible for scholarships under this Act. In addition, prior to receiving a scholarship, an individual must have been accepted for admission to an institution of higher education in the United States that is currently accredited by a nationally recognized accrediting agency or association.

(e) Criteria for Nomination and Selection.—Individuals shall be nominated and selected for scholarships under this Act on the basis of potential to successfully complete a postsecondary program in science, mathematics, or engineering, and on the basis of motivation to pursue a career in science, mathematics, or engineering. The Director shall determine the criteria for measuring the potential and motivation of nominees.

(f) Nature and Amount of Scholarships.—Scholarships awarded under this Act may be used only for tuition, fees, and room and board expenses. Such scholarships shall be limited to a maximum of $5,000 per year, except as necessary to accommodate a recipient completing a four-year academic program in less than four years.

(g) Maintaining Eligibility.—(1) In order to maintain eligibility to receive funds pursuant to a scholarship awarded under this Act, a student must—

(A) be enrolled at an institution of higher education in the United States that is currently accredited by a nationally recognized accrediting agency or association;

(B) major in any field of science, mathematics, or engineering;

(C) maintain academic performance in good standing, as determined by such institution; and

(D) except as provided in paragraph (2), carry a full-time academic work load, as determined by the institution in which the student is enrolled under standards applicable to all students enrolled in that student's program.

(2) The Director shall make exceptions to the requirement under paragraph (1)(D) in the case of—

(A) active duty as a member of the armed services;

(B) disability certified by a qualified physician; or

(C) exceptional personal circumstances or emergencies, as determined by the Director.

(h) Notification of Members of Congress.—The Director shall notify each Member of Congress of selections made from such Member's district before public announcement of such selections is made.

(i) Monitoring Implementation and Compliance.—The Director shall monitor the implementation of and compliance of the nominating committees with this Act.

SEC. 4. NONDISCRIMINATION.

(a) Solicitation, Nomination, and Selection of Students.—The Director shall ensure that the solicitation, nomination, and selection of students for the program established by this Act shall be carried out without discrimination on the basis of race, age, handicap, religion, ethnic background, economic status, marital status, parental status, or sexual preference.

(b) Selection of Nominating Committees.—The Director shall ensure that the selection of nominating committees under section 3(a) shall be carried out without discrimination on the basis of race, age, handicap, religion, ethnic background, economic status, sex, marital status, parental status, or sexual preference.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the National Science Foundation for the purpose of carrying out this Act $5,500,000 for the fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990, 1991, and 1992.

SENATE—*Thursday, October 13, 1988*

(Legislative day of Wednesday, October 12, 1988)

The Senate met at 11 a.m., on the expiration of the recess and was called to order by the Honorable Richard C. Shelby, a Senator from the State of Alabama.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Come unto me, all ye that labour and are heavy laden, and I will give you rest. Take my yoke upon you, and learn of me; for I am meek and lowly in heart: and ye shall find rest unto your souls. For my yoke is easy, and my burden is light.—Matthew 11:28-30.

Loving Lord, may this gracious invitation fall upon hearing ears and receptive hearts, that in the midst of growing tension, peace prevails. As pressure feeds frustration, frustration fuels pressure, heated emotions threaten explosion. Help the busy men and women in this place to respond to the simple invitation by taking time, however briefly, to turn to the Lord for His promised refreshing. In confidence in His Majesty, we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The **PRESIDING OFFICER.** The clerk will please read a communication to the Senate from the President pro tempore [Mr. Stennis].

The legislative clerk read the following letter:

U.S. Senate,
President pro tempore,
Washington, DC, October 13, 1988.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable Richard C. Shelby, a Senator from the State of Alabama, to perform the duties of the Chair.

John C. Stennis,
President pro tempore.

Mr. SHELBY thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

Mr. BYRD. Mr. President, I ask unanimous consent that the time of the two leaders be reserved.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there be a period for morning business, not to exceed 20 minutes, and that Senators may speak therein for not to exceed 5 minutes each, and that no action be taken on any resolutions, conference reports, or messages between the House while the two leaders are off the floor.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Wisconsin.

HOW TO CUT THE FEDERAL GOVERNMENT DEFICIT

Mr. PROXMIRE. Mr. President, the most costly illusion in the American Government today is the notion that our country's military power has been and continues to be weak and vulnerable compared to the Soviet Union. This is wrong. It is causing us to waste billions of dollars. The Soviet Union has been militarily inferior to the United States every year since the end of World War II. Somehow, our country has been hoodwinked and hypnotized into the notion that the Russians and their Eastern European allies pose a serious military threat to our country or at least to Western Europe. This is the big lie. We have become the victim of what President Eisenhower so prudently warned us about—the military-industrial complex.

The fact is that there has never been a time in the more than 40 years since the end of World War II when the Soviet Union and its Warsaw Pact allies have had anything like the military strength of the United States and its NATO allies. But, somehow, in the name of security against the phoney threat of a powerful Communist military machine, Congress has been seduced into spending untold hundreds of billions of dollars in a wholly useless and unnecessary military buildup. Defense contractors have made massive profits. The Nation's precious scientific genius has been diverted from such productive purposes as cancer research and the development of technologies that would increase the quality and lower the price of American homes and automobiles and of our office and manufacturing equipment to a military technology that was already far in advance of the Soviet Union and its allies.

Mr. President, there has never been a time when the Soviet military technology was in the same ball park as our military technology. Year after year, the Defense Department's own Under Secretary of Research and Development reports to Congress on where we stand compared to the Soviet Union in the important military technologies. Every year, without exception, the report shows the United States ahead, far ahead in the overwhelming majority of major weapons categories. Our submarines are quieter and far more difficult to track. Our military aircraft—bombers, fighters, reconnaissance planes—are years ahead of the Soviet Union. In every struggle between United States-produced planes and Soviet-produced planes, the United States planes superiority has been stunning. For instance, a few years ago when Syrian pilots met Israeli pilots in a major shootout between American fighters with Israeli pilots and Soviet fighters with Syrian pilots, the Syrians lost 72 of the Soviet designed and manufactured planes. The Israelies lost exactly none—zero—zip—of the American manufactured planes. There is no question of the vast superiority of the American Navy—in every category of ship—over the Soviet Navy. But the single most important advantage that the United States has enjoyed has been the superior training and skill of our personnel. American naval military personnel has far more time at sea than their Soviet opposite numbers. Our airmen have two to three times as much flying time. Our Army personnel spend a great deal more time on maneuvers, simulating military action, than the Soviet Army personnel. American military morale is at an all-time high, based on objective measures. There is less absence without leave, less drunkness, less drug abuse than ever. In all these categories, the Soviets suffer a far worse record and a record that has not been improving.

But the big advantage for the United States is in the quality of our allies, the French, the British, the West Germans and others have provided a level of military excellence, particularly in the quality of personnel, that is in the sharpest contrast to the resentful, embittered support the Soviet Union receives from its Eastern European allies in Poland, Romania, Bulgaria, East Germany, and elsewhere.

We have an even greater advantage in two other vital areas. The level of

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

scientific capability is high among our European allies and by comparision pathetically low among the Soviet's Warsaw Pact allies. Of course, the real crusher for the Soviets is in the most critical area of military strength—economic productivity. The capacity to turn out the latest, state-of-the-art military equipment—the best tanks, the artillery, the planes—bombers and fighters—the warships—from submarines to mine sweepers to landing craft to battle cruisers. Economic production in NATO countries is literally three times greater than in Warsaw Pact countries.

It is true, of course, that the Soviets and the pact allies have more tanks and planes and personnel deployed in Eastern Europe at this time than the United States and the NATO alliance. But the numbers are meaningless. Both the Soviets and the NATO commanders know it.

Why is this preponderance of Communist military weapons and personnel on the NATO front not a threat? Because the NATO defense is far more effective. Consider what a Soviet attack on the West would face. First, the NATO troops have tanks that are sharply superior in quality. Soviet tanks go back almost to World War II. In tanks designed and built since 1980, there are 3,000 more NATO tanks than pact tanks. The same decisive quality advantage lies with the NATO forces in planes, in artillery, and especially in the level of training of military personnel. A Soviet Union that has just retreated in embarrassing defeat from primitive, little Afghanistan, after 8 years of war, is not going to lead its motley, alienated, economically feeble pact alliance successfully against the best armed and trained troops in military history.

The Soviets fully understand that any major attack on NATO would lead either to a prompt defeat or to a devestating nuclear defense. NATO is ready and willing, if necessary, to use tactical nuclear weapons. NATO troops are fully equipped with short-range nuclear weapons with up to 300 miles in range. The nuclear weapons would, if necessary, be used in the event of a successful pact breakthrough. If somehow the pact' forces should break through the superior NATO conventional defense and the tactical and short-range nuclear defense, both the French and the British have nuclear weapons that could reach every city in European Russia. Rather than accept a Communist domination of their countries, there is every reason to believe these European countries would use their ultimate weapons that would utterly destroy the Soviet Union.

Mr. President, I have described a realistic scenario that the Soviet leaders fully understand. They know that war in Europe in this nuclear age would leave only dead and dying losers. This is why the Soviets are ready for a mutual verifiable agreement to sharply reduce military forces on both sides and to achieve parity in the number of weapons at a much lower level. Such an agreement would sharply enhance the military security of both sides. It would take an immense economic burden off the back of both the United States and the Soviet Union.

THE RETIREMENT OF LT. COL. DAVID C. KOZAK, USAF

Mr. PROXMIRE. Mr. President, I want to draw to the attention of the Senate and the public the career of Lt. Col. David C. Kozak, U.S. Air Force, who has only recently retired. Lt. Col. Kozak spent much of his career in what is called professional military education. He was extraordinarily qualified. He held a Ph.D. from the University of Pittsburgh in public policy. He served a year as an American Political Science Fellow here on Capitol Hill. He has published a wide range of articles and books on the subject of Congress and the American Government.

Lt. Col. Kozak taught for 7 years at the U.S. Air Force Academy and for 9 years at the National War College here at Fort McNair in Washington, DC. He taught both elective courses and in the core curriculum on the subject of Congress, the Presidency, the Constitution, and public policy. By everyone's testimony, he did a superb job.

His basic purpose in teaching students was to broaden their perspectives. They needed this because of the highly technical competence demanded of the modern military. Here is personnel that will spend most of the time flying airplanes, driving ships and tanks. This requires extraordinary skills in scientific and technical matters. Our senior military officers, in order to function in today's world, must know technical matters. They must also function in the world of politics and diplomacy, in the best sense of those words.

Lt. Col. Kozak took a hands-on approach to his job. Year after year, he has brought his students to the Hill to talk with Members and leaders on both sides of the aisle. He has taught his students that those who help to manage the national security of this country do so as the servants of democracy. Therefore, they need an understanding of American democratic institutions. Lt. Col. Kozak used Washington as a living laboratory, where his students visited the White House, Congress, the Supreme Court, and the institutions of the press and media.

One example will suffice. Long before it was done at any other place, Lt. Col. Kozak organized a day each year when senior advisers from every Presidency from Eisenhower through Reagan appeared either individually or as panelists to discuss the organization of the White House, national security policy, and the personal traits affecting public policy of the President each one of them served.

This country has had a loyal and representative military. It has not been an aristocratic military or a mercenary military but a military selected from every region of the country and from every class of people in the country. We have had no conspiracies or palace coups. Why? It is the result in part of the military educational system and of the kind of faculty personified by Lt. Col. Kozak who believe deeply in political democracy, who understand the pluralistic political system of our country, and believe in the division of power and the shared power which the Constitution provides.

On the occasion of his retirement we thank Lt. Col. Kozak for a job well done.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

RETURN OF THE "DISCOVERY" SPACE SHUTTLE

Mr. GRASSLEY. Mr President, on September 29, America once again began a new era of pride and joy with the successful mission of the space shuttle *Discovery*. After a long 2½ year absence from space, the people of this country were delighted to have manned space exploration a successful venture again.

The great State of Iowa also has many reasons to be proud of the *Discovery* crew, because two of the *Discovery* astronauts have their roots firmly planted in the State of Iowa.

The State of Iowa has many reasons to be proud of the shuttle program. Equipment for the shuttle was built in Cedar Rapids and Creston. And also two of the *Discovery* astronauts have called the cities of Clinton and Dewitt their home. Lt. Col. David C. Hilmers was born in Clinton and grew up in Dewitt. His parents, Matilda and Paul Hilmers, still live in the area.

Dr. George "Pinky" Nelson is a civilian astronomer who was born in Charles City, IA. His parents, Tess and George Nelson, now reside in Clinton.

Yet another Clinton native, Navy commander and former astronaut Dale A. Gardner, who is a veteran of two shuttle missions, also calls Clinton his hometown.

Iowa is also proud to say that Kathy (Allbaugh) Covey, wife of yet another *Discovery* astronaut, Dick Covey is also from Iowa. Kathy is from Emmetsburg. The family of an astronaut, as we all know is a very important part of the team.

Dave, Pinky, and Dale have brought great pride to Iowa and the United States. Men like these have given enormous contributions to the space program. We owe a great deal to the men and women who have risked there lives for space exploration, the advancement of science resulting therefrom and also for our national security. So I want to thank these gentlemen and their families for the contributions they have given their country.

We know that later today the Senate majority leader is hosting a reception in the honor of the ones I named plus all of the *Discovery* crew. I look forward to being there to welcome them, especially the Iowans, and wish them God's speed on their next mission.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

THE WILDERNESS BILL

Mr. MELCHER. Mr. President, Western States like Montana have been diligently over the past several years pursuing agreement on wilderness bills.

Our Montana wilderness bill is now ready for action. It has been difficult to iron out all of the problems, all of the various interests of the State when we consider the national forest lands within Montana, to come up with a balanced bill that recognizes the various interests.

Right down to the last minute, two of the key issues involving water and also involving the so-called release language that is in the bill was a difficult set of problems to resolve. They have been resolved.

Western Senators are very much interested in what the water issues are and what the release issues are and how the language in the States wilderness bill is handled. In regard to those two issues that have been resolved.

The environmental groups such as the Wilderness Society of America and the Sierra Club have a grave interest in these issues also and they have been resolved to the satisfaction of them.

But more importantly, perhaps, because each wilderness bill does set some sort of a guideline on how other wilderness bills will be handled in the future involving the States national forest lands it is important that Western Senators come to an agreement on those two portions of the bill.

I am pleased to say that the ranking Republican member of the Senate Energy and Natural Resources Committee, Senator MCCLURE, has been deeply involved in this and has been very helpful and is now satisfied that those two portions of the bill involving water and release language are satisfactory to him.

The usual procedure once a State's wilderness bill has progressed that far is to pass it by unanimous consent here in the Senate. So far we have not been able to clear up all of the holds that have been placed on the bill by our colleagues on the other side of the aisle. We would like to satisfy those holds and have the bill come up by unanimous consent. If that is impossible to do in the short time we have remaining the majority leader has notified the minority leader that he would like to have the bill called up anyway and proceed through debate and have a vote on final passage of the bill.

I do not believe that is too much to ask of the Senate since we have obliged all other States when they reach this same stage. We have obliged all other Senators in other States when they have reached agreement and worked out the problems that are involved in their bill. We obliged them by allowing the bill to move through the Senate and hopefully become law.

The interest of the State of Montana is deeply involved in whether or not this bill is passed. For the most part the forest products industry in the State of Montana are very much interested in the passage of the bill because it will please those lands that are not going to become part of the wilderness system, release those lands for multiple use purposes and management by the Forest Service.

The Forest Service is very much in favor of passage of the bill. I might also say that the energy companies in Montana are in favor of passage of the bill as are a number of mining companies operating in the State. I cannot say that all energy companies or all mining companies in Montana are in favor of the bill, but the bulk of them are.

The economic interests of Montana are at stake in the passage of the bill.

I call this to the attention of the Senate this morning because we will be working throughout the day to gain acceptance by any Senator on either side of the aisle. We are now assured on this side of the aisle that the bill is ready to go. There are no holds. We would hope that we would have the same comity and the same acceptance on the other side of the aisle by my colleagues there.

Mr. President, I point out again that the bill is of such interest to our State that we believe it is essential that before the Senate adjourns in this Congress that we do address the bill itself and that we have an opportunity to call up the bill and have it voted upon.

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

CONGRESS HAS A CHOICE: EITHER ACT ON BANKING REFORM LEGISLATION OR CONTINUE TO WATCH THE REGULATORS ACT; THERE WILL BE NO MORATORIUM

Mr. DIXON. Mr. President, last March 1, the moratorium on further actions by the Federal banking regulators on bank asset powers issues expired. The very next day, March 2, the Senate Banking Committee voted to report S. 1886, the Proxmire Financial Modernization Act of 1988, to the Senate floor by an 18-to-2 margin. By the end of the month, March 30 to be exact, the full Senate endorsed the committee's action, passing the bill by an overwhelming 94-to-2 vote with virtually no amendments.

The Senate therefore kept its part of the promise the Congress made last year during debate on S. 790 and H.R. 27, which ultimately became law as the Competitive Equality Banking Act of 1987. That bill did not address fundamental banking law reform issues, but section 203(a) stated:

> It is the intent of the Congress, through the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives to conduct a comprehensive review of our banking and financial laws and to make decisions on the need for financial restructuring legislation in the light of today's changing financial environment both domestic and international before the expiration of such moratorium.

It is now over 6 months later, and while the House committees with jurisdiction over the bill acted on banking reform legislation, there have been no negotiations with the Senate. I will have more to say on another occasion about the failure of the House to find a way to seriously negotiate these critical issues with the Senate. I simply want to remind my colleagues in the House, however, that blocking the Senate reform bill will not block the reform process.

I strongly believe, Mr. President, that Congress, not the regulators or the courts, should control the reform process. Having said that, however, I also want to point out that the Senate recognizes that the regulators and the courts have been acting because Congress has not acted. They have stepped into the vacuum caused by our own lack of progress.

Further, it is important to remember that the regulators and the courts are not trying to change the law. Rather, they are playing a catch-up game—trying to keep our regulatory system somewhat relevant to the changed economic situation in our financial markets.

It seems to me, therefore, that we have a simple choice: Either enact reform legislation along the lines of the Senate bill that really does begin to address the underlying factors that create the demand for reform, or continue to leave the issues to the regulators and the courts to address as best they can.

I do not want to leave the issues to the regulators and courts, but I am also convinced that the Senate will not enact legislation that puts Congress in the place of King Canute—trying to hold back the tide. That cannot be done, and we should not even try.

I know I don't have to tell anyone that we are almost out of time in this Congress, but I believe there is still time to produce a good bill if the House is willing. If we do not address the real issues, however, I want to repeat what I said back in May—there will be no moratorium.

I am beginning to hear whispers and vague rumors from the House about the prospects of acting on a new moratorium before we adjourn. I cannot believe that a majority in the House would ever seriously consider such a course, but to those few Members of the other body who may be considering this idea, I have a simple response: It will not happen. No matter what bill a moratorium might be put on, it will not pass the Senate.

I want to remind my colleagues from the other body that it was just last year that we passed the Competitive Equality Banking Act. Section 203(b) of that statute put Congress clearly on record on any future moratoriums. It states:

> It is the intent of the Congress not to renew or extend the moratorium established under section 201 whether or not subsequent banking legislation is passed by the Congress.

Let me repeat that for my colleagues. The moratorium will not be renewed even if there is no further action on banking legislation in this Congress.

Ths is one Senator, Mr. President, that intends to do everything he can to see that we live up to that pledge. I believe a strong majority in the Senate supports that pledge and I have no doubt that the Senate will consign any moratorium amendment to the legislative garbage dump, no matter what it is attached to; no "must" vehicle will save it.

I strongly urge the House to work with the Senate to finalize action on the Proxmire Financial Modernization Act before we adjourn. That is the constructive course we should be following. It is the only course that will produce a bill we can send to the President. The Senate is committed to reform. We will either legislate it, or we will watch the regulators and the courts promote it. There are no other acceptable alternatives.

Mr. President, I think it is a really serious mistake on the part of the House to not accept what I think was exceedingly fine legislation passed by the Senate, named after the distinguished chairman of our committee who has devoted a great many years to the effort.

I want to mention in particular Senator PROXMIRE and Senator GARN, who spent so many years in this good struggle. This Senator has been on that committee for 8 years devoting a good deal of time to it. The occupant of the Chair has spent a good deal of time on it.

We have a very fine bill that ought to be a law. If some in the House think that they are going to force those of us in this Senate to accept some kind of mealymouthed legislation that does not address the problem or else extend the moratorium, they are absolutely wrong.

I would remind them of the 94-to-2 vote and say that the Senate stays resolute in its position, Mr. President. We are here to say that we will ultimately get the kind of fine banking legislation named after the distinguished chairman of the committee, Senator PROXMIRE, in his honor, that does the kind of job that should be done to make American financial institutions competitive in the international marketplace.

I yield back the balance of my time.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

DRUNKEN DRIVERS—A LOADED WEAPON

Mr. REID. Mr. President, I was heartened by several news stories that recently appeared in Nevada newspapers. Earlier this month, the headline of the Lahonton Valley News read "Local DUI Arrests at Record High." Fallon, NV, police chief, Danny Wood, said the police department has always had a strong DUI arrest program. "If you're stopped on that," Wood said, "there are no breaks." I commend police chief Wood for his work. Mr. President, if you are stopped for drunken driving, there should be no breaks. There were no breaks in Kentucky last May for the bus full of teenagers who were killed while returning from an amusement park. There were no breaks for 10-year-old Katrina Furguson who was killed while standing hand-in-hand with her mother in their own driveway, in a D.C. suburb. There were no breaks for Bill Cramer's young wife Valerie and their 9-year-old daughter Brianna who were killed last July in Los Angeles. There were no breaks for any of the 24,000 people who were murdered by drunken drivers on our highways last year. And there were no breaks for their families or their friends.

Drunken drivers are a loaded weapon pointed directly at all of us who drive, or go near a road or highway. Our only protection is to get them off the road. We need tough laws. Tough laws work.

An editorial in last Friday's Las Vegas Sun shows what tough laws and tough enforcement can do. John Moran, the sheriff of the Las Vegas Metropolitan Police Department, has cracked down on drunken drivers. This get tough policy has worked.

According to the editorial, this June, July, and August, Metro—the Las Vegas Metropolitan Police Department—made 727 DUI arrests, nearly 100 more than for the same 3 months a year ago. In that same period, Metro reported 121 DUI-related accidents, nearly 40 less than for the same 3 months last year.

The relationship is clear. The more arrests, the fewer accidents. As Metro Police Lt. Michael Zagorski said, "If we get them off the road before they crash, we save some lives."

I am proud of the record of the Las Vegas Metropolitan Police Department. In fact, I asked them to appear at a drunk driving hearing we had in the Environment and Public Works Committee earlier this year. At the hearing, Lt. Randy Oaks advised the committee that drunk driving was a priority issue for Metro. The results of this policy are clear. Mr. President, tough laws work. They save lives.

We in the Senate must do all we can to encourage the States to crack down on drunk drivers. It is literally a matter of life and death.

Mr. President, I ask unanimous consent that the article from the Lahonton Valley News of October 1, 1988, and an article from the Las Vegas Sun insight section be printed in the RECORD.

I yield the floor.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Lahontan Valley News, Oct. 1, 1988]

LOCAL DUI ARRESTS AT RECORD HIGH

(By Ann Diggins)

Driving under the influence arrests were at a record high for the month of September in Churchill County, but officials aren't sure of the reason.

In all, 25 people were arrested and charged with DUI by officers of the sheriff's department, Nevada Highway Patrol and the Fallon Police.

Police officers were responsible for 17 of those arrests. Last year, September arrests by police officers for DUI totaled only five. This September's arrests are a 71 percent jump over last year at the same time.

Sheriff's deputies and NHP troopers each made four arrests in September. No data was available for the number of arrests made last year in the same month, but officials in those departments said they didn't believe that was abnormally high.

And while the numbers are clear-cut, the reasons for the increase aren't.

Police Chief Danny Wood said the police department has always had a strong DUI arrest program.

"If you're stopped on that there are no breaks," he said.

But he added that enforcement measures hadn't increased and September wasn't one of the typical months during the year when officials expected an increase in DUI offenders.

In fact the one holiday in September, Labor Day, was really fairly quiet in the way of DUI arrests, according to Wood. Most of September's arrests have come in the last two to three weeks.

"The officers have just been in the right place at the right time," he said.

Wood said those type of offenses seem to go in cycles, but couldn't explain this recent one.

"It's the full moon, I guess," he said. "It's just one of those busy cycles."

Wood said that while driving under the influence of alcohol, much more common than DUI offenses which involve drugs, is more socially acceptable an offense than others.

And that could be part of the reason why DUI offenses are not declining despite harsher consequences, Wood speculated. DUI offenders tend not to get the social stigmas that are often attached to other offenses.

"People view DUI cases differently because it is probably something anybody could be susceptible to if they don't take precautions," he said.

METRO'S NEW DUI SQUAD ACHIEVES PROMISING RESULTS

A lot of us are thoroughly disgusted, dodging drunk drivers and uncaring motorists who blithely zip through red lights. It is, therefore, quite heartening to learn the results of Metro's DUI crackdown.

This June, July and August, Metro made 727 DUI arrests, nearly 100 more than for the same three months a year ago. In that same time period, Metro reported 121 DUI-related accidents, nearly 40 less than for the same three months last year.

But what impressed us most was how Sheriff John Moran managed to take such a bite out of the problem: with two Metro officers, working between 6 p.m. and 4 a.m. during those three months on Thursday, Friday and Saturday nights.

The two unnamed officers rolled around town in a police van, watching for such things as erratic driving, speeding or someone driving uncommonly slow.

Those two officers stopped 346 vehicles and found 102 drivers to be under the influence of alcohol or drugs. That's pretty close to one car in every three with a tipsy driver.

And with all the extravagant "crackdown" programs we hear so much about, this one was a surprise: The two Metro officers were paid extra for their efforts. Total cost: $208.98.

Metro had been real polite in notifying drivers where they'd be setting up weekend roadblocks—usually on the roads to Lake Mead or Mount Charleston. Such efforts have been quite productive, although many drinking drivers probably took other routes to avoid the announced checkpoints.

The roving van concept, however, sends the officers out with the entire Las Vegas Valley as their oyster, so to speak.

Metro Police Lt. Michael Zagorski thinks there's a relationship between the increase in DUI arrests and the reduction in DUI accidents.

"If we got them off the road before they crashed," he said, "we saved some lives."

One man who had his license suspended says it cost him nearly $3,500 for his latest DUI, counting attorney fees and court fines. That's a lot of money in anyone's book.

We motorists are thankful Sheriff Moran's troops are paying that extra bit of attention to the DUI problem—and we can't kick a bit about the $203.98 price tag.

VA'S FISCAL YEAR 1986 PATIENT TREATMENT FILE MORTALITY ANALYSIS

Mr. CRANSTON. Mr. President, according to an October 11, 1988, Washington Post article entitled "VA Researchers Ordered To Report Fewer Problem Hospitals," it is alleged that the Veterans' Administration altered the design of a statutorily mandated mortality study so that more favorable results would be obtained. According to the article, the confidence limits—the range within which there is a probability of concluding that there is a true or real difference between the observed and predicted—were expanded from 95 to 99 percent when the diagnostic categories relating to a specific VA hospital were aggregated. The information concerning primary diagnostic categories by patient group for each individual hospital apparently continues to utilize a 95-percent confidence limit as originally planned.

It is my understanding that such a change might result in decreasing the number of VA medical centers erroneously identified as having a higher mortality rate than predicted, but would also have the potential for missing those hospitals with a higher than predicted mortality rate and in need of further study.

According to the article, over the objection of the then-Director of Quality Assurance in the VA Department of Medicine and Surgery, the VA's Chief Medical Director [CMD] "ordered the researchers" to come up with a lower number of potential problem hospitals because the CMD reportedly was concerned that the "VA could not withstand the criticism that 'inevitably' would result from comparison between its survey" and the survey of mortality rates among private hospitals released by the Health Care Financing Administration [HCFA] of the Department of Health and Human Services in December 1987.

For almost 20 years I have either chaired or been the ranking minority member of the Senate committee or subcommittee having oversight responsibilities for the VA medical system, and, during that time, I have been very concerned about the quality of care within VA medical facilities and the methods used to ensure that the care furnished is the best available. On December 3, 1985, Public Law 99-166 was enacted with a provision requiring the VA Administrator to establish a comprehensive program to monitor and evaluate the quality of health care furnished by the VA and requiring the CMD to determine the prevailing national mortality and morbidity standards for each type of surgical procedure performed by the Department of Medicine and Surgery [DM&S], compare those statistics to that experienced in the VA, and report the results to Congress. More recently, on May 20, 1988, based in part on my bill, S. 1443, Public Law 100-322 was enacted with a provision requiring the Administrator to take actions to upgrade the Office of Quality Assurance within DM&S and upgrade and expand the activities of the VA's inspector general in overseeing, monitoring, and evaluating the operations of the Department's quality assurance programs.

Because of the emphasis which has been placed on quality assurance over the years, and the CMD's expressed concern that quality care be the VA's first priority when addressing the problems associated with the VA's anticipated fiscal year 1989 shortfall of $635 million which I addressed in floor remarks on October 6 (RECORD S14756), I was very distressed to read the Post account. I am committed to ensuring that reliable data on the quality of care furnished to our Nation's veterans is forthcoming, and, therefore, have written to request reviews by both the General Accounting Office [GAO] and the Office of Technology Assessment [OTA].

Mr. President, in requesting the assistance of these two agencies, two separate issues will be studied. First, I have requested OTA to review the VA methodology actually utilized to determine its scientific reliability and validity. In that regard, I have asked that OTA specifically address the appropriateness of using either 95- or 99-percent confidence limits and the appropriateness of changing the confidence limits after the data have been gathered. In a June 1988 GAO report entitled "VA Hospital Care—A Comparison of VA and HCFA Methods for Analyzing Patient Outcomes" (GAO/PEMD-88-29), the GAO described the VA process and compared it to HCFA's study. At that point, the GAO did not know that the confidence limits used by the VA were 99 percent, but relied instead upon VA Circular 10-88-17, dated February 16, 1988, in which the confidence limits were described as being set at 95 percent.

Second, I have requested GAO to determine: First the point in time at which the decision was made to use a higher confidence level for measuring overall mortality rates between hospitals; second, why the decision was made to use the higher confidence limits for the aggregate data; third, the person or persons responsible for making that decision; and fourth, if the CMD or any other VA official inappropriately attempted to give the appearance of fewer quality-assurance problems within VA medical centers than actually exist. I believe this information is critical. If a decision was made prior to the results of the study being known, then I believe a different interpretation of that action could be made than if the decision was made after the results of a 95-percent confidence limit were available.

Mr. President, I have also asked that these studies be undertaken expeditiously. We must have confidence in the quality-assurance information we are receiving from the VA. More importantly, veterans utilizing that system for their health-care needs must have confidence that they are being furnished a good quality of care. Without reliable, accurate, and valid data there is no way to ensure this result. I am committed to discerning the facts and anxiously await OTA's and GAO's results. I will keep my colleagues informed of progress on these matters. I ask unanimous consent that the full texts of the Post article and my letter to GAO and OTA be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC, October 12, 1988.

Hon. CHARLES A. BOWSHER,
Comptroller General of the United States, General Accounting Office, Washington, DC.

Dr. JOHN GIBBONS,
Director, Office of Technology Assessment, Washington, DC.

DEAR CHARLES AND JACK: I am writing to request that both the General Accounting Office and the Office of Technology Assessment look into matters pertaining to the Veterans' Administration's (VA) FY 1986 Patient Treatment File Mortality Analysis.

Enclosed is an October 11, 1988, *Washington Post* article, entitled "VA Researchers Ordered to Report Fewer Problem Hospitals", in which it is alleged that the VA altered the design of its mortality study so that more favorable results would be obtained. According to the article, the confidence limits—the range within which there is a probability of concluding that there is a true or real difference between the observed and predicted—were expanded from 95 percent to 99 percent. It is my understanding that such a change might result in decreasing the number of VA medical centers erroneously identified as having a higher mortality rate than predicted, but would also have the potential for missing some centers with a higher than predicted mortality rate and in need of further study. According to the article, over the objection of the VA's then-Director of Health-Care Quality Assurance, the VA's Chief Medical Director (CMD) "ordered the researchers" to come up with a lower number of potential problem hospitals because the CMD reportedly was concerned that the "VA could not withstand the criticism that 'inevitably' would result from comparison between its survey" and the survey of mortality in private hospitals released by the Health Care Financing Administration (HCFA) in December 1987.

I believe that these allegations and the VA's methodology warrant a detailed study and investigation at this time. Thus, as Chairman of the Veterans' Affairs Committee, I am requesting that the Office of Technology Assessment carry out a study designed to address the following issues:

1. Was the methodology utilized by the VA when analyzing its hospital's mortality rates a scientifically valid and reliable methodology? In responding, please specifically address the appropriateness of using either 95-percent or 99-percent confidence limits and of changing the confidence limits after the data have been gathered.

2. Is the methodology utilized by the VA comparable to that utilized by HCFA? If not, in what ways do they differ and is one methodology preferable to the other?

I am requesting that the General Accounting Office investigate the following matters:

1. At what point in the development and implementation of this study was the decision made to use higher confidence limits for measuring overall mortality rates between VA medical centers, why was that decision made, and who was responsible for making that decision?

2. Did the Chief Medical Director or any other VA official inappropriately attempt to give the appearance of fewer quality-assurance problems at VA medical centers than actually exist?

Because of the serious nature of the allegations and the need to keep the public informed of the degree to which high quality health care is being provided within all VA medical centers, I am requesting that these studies be expeditiously undertaken.

Thank you for your continuing assistance. I look forward to working with you in proceeding with these reviews. Should you have any questions, please have your staff contact Sandi Isaacson, Professional Staff Member (244-9126).

With warm regards,
Cordially,

ALAN CRANSTON,
Chairman.

[From the Washington Post, Oct. 11, 1988]

VA RESEARCHERS ORDERED TO REPORT FEWER PROBLEM HOSPITALS

(By Bill McAllister)

Warned that a preliminary survey indicated that as much as 12 percent of Veterans Administration hospitals appear to have excessively high mortality rates, the VA's chief medical officer directed researchers to produce a smaller number of questionable hospitals.

The decision by Dr. John A. Gronvall, the VA's senior medical executive, provoked an angry protest from the doctor in charge of the survey, who complained that the action might be seen as "self-serving" and could make the VA "vulnerable to charges of a coverup."

Gronvall acknowledged in an interview that he ordered researchers to come up with a lower number earlier this year, fearing that the VA could not withstand the criticism that "inevitably" would result from comparison between its survey and another federal survey that found 2.5 percent of the nation's private hospitals had higher-than-expected mortality rates.

The VA's 172 hospitals have long been plagued by questions about the quality of medical care, and Gronvall said he feared the study would create a new image problem for the agency.

Officials of two major statistical organizations declined comment on the VA study, but each said that planning any study to reach a predetermined answer is considered improper.

"You don't design a study to fit another study," said Barbara Bailar, executive director of the American Statistical Association and a former associate director of statistical standards for the Census Bureau. Her comments were echoed by an official of the American Association of Public Opinion Research.

In the interview, Gronvall rejected an accusation by the late Dr. Francis E. Conrad, the VA's director of quality assurance, that he was attempting to mask problems inside the VA, the nation's larget hospital system, by insisting on a lower number. "That is a wholly . . . outrageous and inappropriate comment," Gronvall said.

Gronvall's directive upset Conrad. The psychiatrist, who was killed in April after he came to the aid of an apartment manager in Chicago, fought the directive and warned in memorandums prepared before meetings with Gronvall that the director was making a serious mistake.

"The PR [public relations] potential for negative reaction is certainly a factor to be considered, but it can be countered and is short-lived in any event," Conrad said in a memo prepared for a Jan. 29 meeting. Conrad also argued that the VA has a greater responsibility for the quality of care in its system than the federal officials who survey private hospitals, because the VA owns and operates the hospitals it is checking.

Before the meetings with Gronvall, Conrad's office had prepared a statistical mode, patterned after one used by the Health Care Financing Administration (HCFA) in a similar study. Like the HCFA study, Conrad initially planned to test his results at what statisticians call a 95 percent confidence level, which the VA acknowledges is the generally accepted level for such studies. A confidence level is essentially a statement of the mathematical probability that the test could be duplicated, in this case in 95 of 100 times, and produce the same general result. Such a statement gives researchers confidence that their findings are an accurate reflection of reality.

Memos prepared by Conrad do not indicate when the VA decided to use a higher confidence level for measuring overall mortality rates between its hospitals, but an individual familiar with the discussions said it was after Gronvall's intervention.

The standard that the VA selected called for a certainty that the results be considered accurate in 99 of 100 cases. That seemingly minor change had the immediate effect of reducing the number of hospitals that would be suspect.

Peter V. Miller, an associate professor of communications at Northwestern University and chairman of the American Association of Public Opinion Research's standards committee, said the "textbook" approach for research studies calls for confidence levels to be set before any findings are calculated. To change confidence levels afterward is "really fudging," he said.

Although overall mortality for each VA hospital was calculated at the 99 percent level, separate calculations for various disease categories were run at a 95 percent rate. Terry L. Thomas, the VA epidemiologist who handled the statistical work on the study, said in an interview that she made the decision to run the overall results at the 99 percent level, but she said she could not recall if she made the decision after Gronvall voiced his concerns about the potential findings.

Thomas said she opted for the higher level because the overall patient numbers were large and at the 95 percent level she was likely to get "too many red flags"—a large number of hospitals that had relatively small differences between their actual and predicted mortality rates.

At the 99 percent level, Thomas said she was more confident that she would be highlighting hospitals that deserved study by Gronvall. Thomas said she "wasn't too happy with" the study and believed the most useful data was the data by patient and disease category given for each of the 172 hospitals.

Conrad, however, told Gronvall he considered use of data at the 99 percent confidence level to be a major deviation from the HCFA study and one that would allow some VA hospitals with potentially serious mortality problems to escape scrutiny.

Gronvall acknowledged in an interview that he knows little about statistical methods but said he believes the actions he ordered were proper. His entire effort was directed at making the VA study similar to the HCFA study, he said.

The medical director said his decision was based on the belief, shared by Thomas, that HCFA officials deliberately limited the number of problem hospitals they would find to 2.5 percent of the 6,000 they surveyed.

". . . If HCFA had adopted a model that, as I say, that picked off 10 percent or 15 percent for that kind of scrutiny, than I would have wanted us to do the same," Gronvall said.

"That's absolutely not true," said John Spiegel, deputy director for HCFA's Health Standards and Quality Bureau. He said the agency, part of the Department of Health and Human Services, did not predetermine how many hospitals it would classify as having excessively high mortality rates. "The numbers just came out where the numbers came out," he said.

Gronvall said he feared the comparisons between HCFA and the VA would be "inappropriate and invidious," upsetting the VA's critics in Congress and elsewhere and leading to a widespread impression that VA's medical care is much worse than that in private hospitals.

Veterans' service groups, which monitor the VA's hospital system, recently served notice that they intend to press for increased funding of the hospitals, charging that the agency is sacrificing medical funds to make up for budget cuts.

Donna St. John, a VA spokeswoman, said the concerns about the study were misplaced. She said the study was completed in February.

Using the 99 percent confidence level, the study came up with six problem hospitals, or 3.5 percent of the 172 VA hospitals, St. John said. She and Thomas said they were unfamiliar with the 12.8 percent figure mentioned by Conrad in his briefing papers and by another source familiar with the VA study.

Thomas and Gronvall said in separate interviews that HCFA executives has decided before they began their study that they would identify 2.5 percent of the private hospitals as troublesome. Gronvall said he merely was making the same "policy decision" to keep the VA study in line with the HCFA investigation.

One of his major worries, the VA executive said, was the survey's potential impact on the VA hospital system, the largest in the country and one that often has been beset by charges of ineffectivenes. ". . . I believe that the inappropriate and invidious comparison that everyone would make is not worth the small, additional gains from reviewing the small additional number of hospitals," Gronvall said, defending his decision.

The medical director declined to identify the six hospitals, citing a decision by VA Administrator Thomas K. Turnage to withhold the data until after the follow-up studies are completed, probably in late December.

Gronvall, who came to the VA in 1983 after a career in academic medicine at the University of Michigan, said he eagerly embraced the HCFA model because, despite its imperfections, it was one of the first such tools available for measuring the quality of care within a system.

"If there is a yardstick being developed in the private sector, I want us to voluntarily adopt it in the VA, because, if care in our hospitals is deficient, I'd like us to know that and then I'd like to set about to fix it."

Gronvall said he had no preconceptions about how many VA hospitals might have problems or which ones they might be. He said the survey results surprised most VA health executives with the hospitals it cited as potential problems.

"I've always said that the standard of quality is set in the best of the private-sector medicine," he said. "And so, I think it is appropriate for us to be measured against that."

Even so, in initially setting out the criteria for the VA mortality study, Gronvall declared in an Oct. 22, 1987, memo to Conrad that "it is understood that, although highly desirable, the analysis will not permit statistically meaningful comparisons to be made directly between VA and non-VA mortality rates because of significant differences in the respective data bases."

The General Accounting Office and several members of Congress recently praised the VA for its methodology and its decision to attempt to validate any hospital's mortality rate before releasing names of suspect hospitals.

HCFA's mortality studies have been highly controversial among hospital administrators who accuse the agency of making no attempt to validate its findings before releasing the names of hospitals with high death rates. The agency has said that the studies offer consumers and administrators valuable information and that they should be used as the basis for further study at individual hospitals.

MORTALITY STUDY OF RADIATION-EXPOSED VETERANS

Mr. CRANSTON. Mr. President, I have worked for many years to address the concerns of veterans exposed to ionizing radiation through participation in the U.S. Government's nuclear weapons testing program and the American occupation of Hiroshima or Nagasaki, Japan. I am proud to have authored legislation which, in Public Law 98-160, mandated epidemiological study of the long-term health effects on those veterans of exposure to ionizing radiation.

Unfortunately, after more than 3 years of evaluations, the scientists determined that it is not scientifically feasible to conduct a morbidity (health) study of those radiation-exposed veterans. However, at my suggestion, a mortality (cause of death) study of the 42,000 veterans who participated in Operation Crossroads—the 1946 two-detonation series in the Pacific—is underway. The Veterans' Administration has contracted with the National Research Council to conduct this study, which is expected to be completed in November 1990.

According to the VA, the study population consists of deceased veterans with a VA record of participation in Operation Crossroads and a control group of an equal number of veterans of the same service period who did not participate in the test. The VA reports that there have been approximately 25,000 deaths among participants and controls through 1985.

I look forward to progress on this study and to the final results.

AMBASSADOR HARRY BARNES

Mr. LEAHY. Mr. President, 2 years ago, Rodrigo Rojas, a 19-year-old resident of the United States, and a young Chilean woman Carmen Quintana Arancibia, were brutally beaten, doused with gasoline, and set on fire by members of the Chilean security forces. Mr. Rojas died from his burns, and Ms. Arancibia was severely scarred for life.

We remember Mr. Rojas and the outrageous way he died as a tragic symbol of the suffering endured by millions of Chileans during the 15 years of military rule forced upon them by Gen. Augusto Pinochet. During that period, the threat of arbitrary arrest, torture, and death were ever-present for thousands of Chileans, from church workers, human rights activists and the urban poor to members of political opposition parties.

For 15 years the Chilean people endured General Pinochet's drive for power and control. They saw their democratic institutions trampled. And they mourned their sons and daughters who, unwilling to see their country destroyed, took to the streets and lost their freedom and their lives.

Throughout this black period in Chile's history, the United States often did not do all it could or should have done to pressure Pinochet to permit the return of democracy. For years the United States stood by silently as he consolidated his power by intimidating and eliminating his opponents.

That sorry record came to an end in 1985, thanks in large part to the courageous and persistent diplomacy of one American, Ambassador Harry G. Barnes, Jr. The appointment of Harry Barnes to be Ambassador to Chile could not have been better.

Ambassador Barnes, a close friend of mine since his appointment, has been a tireless advocate for a return to democracy in Chile. It has been, as a recent New York Times article noted, "a test of wills between (Ambassador Barnes) and Gen. Augusto Pinochet in which the general has had the upper hand."

General Pinochet had the upper hand and he played it to the end, but the credit for his resounding defeat in Wednesday's plebiscite belongs in part to Harry Barnes. Throughout that period, Harry maintained close contact with a wide range of opposition leaders in Chile, letting them know that the United States wanted a return to democracy and respect for human rights. His personal commitment to that goal was clear when he attended the funeral of Mr. Rojas, where Harry and his wife were among those overcome by tear gas fired by the police. That demonstration of courage and commitment by an American Ambassador will not be forgotten and is spoken of with admiration in Chile.

Few Chileans who saw firsthand the ruthless tactics Pinochet used to hold onto power believed he would ever accept defeat. Indeed, many still assume he will refuse to step down in 1990 when democratic elections are to be held. If the achievement of the plebiscite is not to be lost, and the courage and hard work of Harry Barnes not to be in vain, the United States and the rest of the international community must make clear to Pinochet that that is no longer an option.

Harry Barnes is coming to the end of a long and distinguished career in the U.S. Foreign Service. Next month he will retire, after having served his country in many posts, including Ambassador to India and Rumania, and 5 years as Director General of the Foreign Service. I am delighted and honored, but not surprised, that Harry Barnes has decided to retire in Vermont, where he will take on, among other activities, his new role as Ambassador Emeritus. He will continue to contribute in many ways to our understanding of the world, and I look forward to many stimulating discussions with him. Every time I have been with him I have left with more admiration for this outstanding American and true professional.

Mr. President, I ask unanimous consent that the New York Times article on Ambassador Barnes be included in the RECORD in full.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Oct. 4, 1988]

AS CHILE PREPARES TO VOTE, U.S. ENVOY IS PRAISED

(By Shirley Christian)

SANTIAGO, CHILE, Oct. 3—Among the items hanging in the office of Harry G. Barnes Jr. is a newspaper cartoon that shows him knocking in vain on the doors of Chile's fortress-like presidential palace.

"Closed," the cartoon says. "No Service. Don't Insist.

It reflects what most people attuned to Chilean politics have concluded: that Mr. Barnes's three years here as the Ambassador of the United States have been a test of wills between him and Gen. Augusto Pinochet in which the general has had the visible upper hand.

But when General Pinochet faces the voters Wednesday in a presidential plebiscite, it will be under circumstances in which opponents think they have a fair chance of defeating him. And part of the reason, people in both the pro-and anti-Pinochet camps say, is the hand of Harry Barnes.

THE PRESSURES PAID OFF

Mr. Barnes is credited with helping to make possible, through continual United States pressure, the relatively free campaign environment and reasonable assurance of an honest proceeding.

In the plebiscite, designed at General Pinochet's direction as part of a slow transition to democracy, people will vote yes or no to giving him eight more years in power, after which he would call open elections. If he fails to get a majority on Wednesday, he is supposed to call free elections at the end of next year.

Mr. Barnes, who will end both his assignment here and his 38-year diplomatic career in November, indicated in an interview that he will leave happier if General Pinochet is defeated in the plebiscite.

"I look forward to coming back in March 1990, when the first democratically elected President would be inaugurated if the 'No' wins, rather than having to wait until 1997, the 62-year-old Ambassador said.

'GREAT AUDACITY' NOTED

"At this point, I think the 'No' will win, if the process doesn't get interrupted," he continued. "That opens the way to free elections. Our whole approach has been to promote a rapid return to democracy, so it would be a nice way to leave, knowing that step had been taken."

In a country where influence by foreigners in internal affairs has always been a sensitive issue, no one wants to praise a United States Ambassador openly. But privately many say he has been an effective advocate of American policy, despite his limited access to the President.

"He is acting out a policy very clearly decided by the United States Government, and he has done it with great audacity," an opposition leader said. "In conversations with us he expressed very critical opinions about the opposition for our inability during such a long time to produce a viable alternative to the Pinochet regime, for our inability to get behind one candidate of our own."

He added that the Ambassador had been "very discreet" in not expressing his own views on specifics of how Chile's democratic transition should occur.

A politician from a party supporting General Pinochet said the Ambassador's public pressures on the Government had helped "to obtain a better ambiance" for the voting.

But he said that General Pinochet and his closest colleagues had "hidden power" from the Ambassador.

"Pinochet was a master with Barnes," the politician said. "He kept the doors closed to him. I think he saw him about four times. Why? Because Pinochet wanted to send a clear message to Washington. He was saying, 'I'm not going to be a crying Marcos on the telephone asking if I have the support of the United States.'"

AMBASSADOR SINCE 1985

Mr. Barnes was named Ambassador to Chile in November 1985, at a time when the Reagan Administration was frustrated by its seeming inability to influence General Pinochet toward liberalization or to persuade him to plan a democratic transition.

A former Congressional staff member in Washington familiar with the selection said that when Elliott Abrams was named Assistant Secretary of State for Inter-American Affairs in April 1985 he had "looked around for a world-class ambassador to handle a difficult situation."

Mr. Barnes was then completing a three-and-a-half-year posting as Ambassador to India. He had been director general of the Foreign Service from 1977 to 1981 and Ambassador to Rumania, and had held lower-level posts in Bombay, Prague, Moscow and Katmandu, but he had never worked in South America.

Mr. Barnes said that even before this appointment the Reagan Administration had begun to get "a sense of what a difficult customer Pinochet is and that it is hard to make much of a dent."

He said he came with the feeling that both Congress and the Administration thought "we ought to be clearer about what was important to us in Chile." He said that narrowed down to wanting an early return to democracy and respect for human rights.

A CONSENSUS ON POLICY

While emphasizing contacts with politicians ranging from center-right to center-left—excluding the Communists and the most radical Socialist faction—Mr. Barnes has also sought to keep communications open with the business community and with military leaders other than General Pinochet.

Two former Congressional staff members in Washington, one Republican and one Democrat, praised Ambassador Barnes as having been able to find consensus on Chile policy between the two parties and between Congress and the Administration.

He also weathered criticism from a leading conservative voice in the Senate, Jesse Helms, Republican of North Carolina. Visiting Chile in July 1986, shortly after two young demonstrators were set ablaze by army troops, Senator Helms publicly attacked the Ambassador for attending the funeral of one of the victims, Rodrigo Rojas de Negri, a resident of the United States. Members of the Communist Party and other extreme leftist groups turned the funeral into a political event.

Ambassador Barnes, who along with his wife, Betsy, and other diplomats at the funeral was overcome by tear gas, said he had felt "shock and horror" at the killing and thought that "if the United States was trying to be clear about our concern for human rights the death had to be protested."

DOE NUCLEAR WEAPONS FACILITIES

Mr. BIDEN. Mr. President, a disturbing story has been unfolding at the Department of Energy's nuclear weapons production facilities. Developments of recent days have led to charges and counter charges, none of which have served the public interest and make it more difficult to fix the problems and get the plants back on line.

The Savannah River Plant in Aiken, SC, was the focus of the first news reports. E.I. du Pont de Nemours and Co., Inc., the sole operator of that plant during its 38 years of existence, was initially charged with failing to report incidents at the plant. DOE has now acknowledged that this charge is untrue, and that Du Pont has, in fact, complied with all reporting requirements for the Savannah River plant.

In 1950, at the request of President Truman, Du Pont agreed to design, build, and operate the Savannah River plant under a rather unique arrangement. Du Pont was reluctant to operate the plant, but agreed to do so as a public service, accepting no profit.

Mr. President, I know Du Pont employees from all levels of the company. Pride runs high in the work and safety conditions at their plants. Allegations that Du Pont intentionally covered up conditions at the plant were unbelievable to these employees, going to the very core of safety programs they are familiar with in their parts of the company. Ultimately, their faith in the company's actions was found to be justified.

Now we must move on to the central issue of how to resolve the concerns over safety at Savannah River and other DOE facilities. DOE has announced an assessment will be undertaken by a special board, a review that is obviously needed but which must be unbiased, critical, and thorough if it is to restore confidence.

For the longer term, the 101st Congress will have a role in deciding how seriously these concerns will be treated. The next President will forward his nominees for the Defense Nuclear Facilities Safety Board, an independent board for the review of conditions like those that have been reported at the DOE facilities, and one that will most likely have a leading role in the future of those plants.

The reports of the past 2 weeks should reinforce in the President, and in all Senators, the stakes that are involved. As an editorial in the New York Times of October 13 indicates, these safety problems must be addressed because nothing less than our national security is at risk. The first nominee will set the tone for the Board. We all have an interest in making sure they set the right one.

I ask unanimous consent that the New York Times editorial be reprinted at the end of my remarks.

There being no objection, the editorial was ordered to be printed in the Record, as follows:

[From the New York Times, Oct. 13, 1988]

THE CANDIDATES AND THE BOMB ALARM

America's capacity to build nuclear weapons is disintegrating. Worried military planners contemplate cannibalizing their components. Worried members of Congress discover that the capacity to build them safely has eroded. And what is the response?

Energy Secretary John Herrington says sunnily, incredibly: Give us a couple of months and we'll be back in business. Meanwhile, the message from the Presidential candidates about this alarm in the night is, as they head into their last televised debate, even more astonishing. Neither has said a word.

That's no surprise. After years of neglect, complacency and mismanagement, the complex of plants that make nuclear material is becoming too decrepit to operate. The accumulated bill for remodeling and repair amounts to $130 billion.

The next President thus will have three choices: Find that huge sum, keep the present plants running despite mounting risk of disaster, or face unilateral nuclear disarmament.

Recent investigations by the Department of Energy and others are turning up an array of safety problems. The last three production reactors, at Savannah River, S.C., have been temporarily shut down. This week the department said it had closed its plutonium processing center at Rocky Flats, Colo., site of pervasive inadequacies in worker protection, maintenance and fire prevention.

The safety problems at Savanna River may not be as bad as feared but could still cause a production crisis. Du Pont, which runs the plant, cites its outstanding record of minimizing worker exposure to radiation as proof the plant has been operated safely. This is probably true, though outside experts see room for extra safety measures, like those adopted at commercial reactors after the Three Mile Island accident. Hence the three Savannah River reactors have already been put on half power and then closed down.

Richard Heckert, chairman of Du Pont, says the Savannah River plant is safe and fully capable of producing all the nuclear materials needed until new reactors are built. Energy Secretary Herrington says he intends to restart one of the ractors by December. But any delay could prompt a crisis in the supply of tritium.

Tritium, used to boost the yield of fission trigger devices, decays by 5 percent a year. Without fresh supplies, the United States would be forced to retire about 1,200 of its 22,000 nuclear warheads a year. "To have these reactors not operational is tantamount to unilateral nuclear disarmament," says a senior Pentagon official.

How could the Department of Energy allow such a risk to arise? It skimped on modernization, ignoring for a decade Du Pont's request to build a new Savannah River reactor. The Reagan Administration has run the whole aging complex at full speed making weapons. The Department has let toxic and radioactive waste accumulate in a thousand dump sites.

These problems have grown over decades but have now reached a point of crisis. It's none too soon for the next President to say how he will meet it.

TRIBUTE TO SENATOR BILL PROXMIRE

Mr. HATFIELD. Mr. President, it has been a genuine privilege to serve with Bill Proxmire over the last 24 years, and it is with deep respect for his service that I rise today to pay tribute to him. When this Congress adjourns, Bill and his wife Ellen will move back to Wisconsin—we wish them well, but will miss them very much.

George Bernard Shaw once observed that "The reasonable man adapts himself to the world. The unreasonable one persists in trying to adapt the world to himself. Therefore, all progress depends on the unreasonable man."

Mr. President, people told Abraham Lincoln that it was "unreasonable" to believe that the Union could be saved. Others told the Wright brothers that it was "unreasonable" to think that man could fly. Still others told the Rev. Martin Luther King that it was "unreasonable" to suggest that blacks and whites could eat at the same counter just 30 years ago. Mr. President, we owe a great debt to these and thousands of other "unreasonable" men and women who had the nerve to challenge conventional wisdom. And we owe a great debt to Bill Proxmire.

As I reflect on the 22 years Senator Bill Proxmire and I have served together in the Senate, I see another one of those "unreasonable" men: asking questions about foreign business practices that nobody else wanted to ask; taking positions on arms control that few others were willing to take; and caring about issues like the Genocide Convention that everyone else had ignored or forgotten.

Of course Senator Proxmire was well into his second term by the time I arrived inWashington in 1967, and his "unreasonable" reputation had begun long before that. It was, after all, an unreasonable young man who ran against incumbent Gov. Walter J. Kohler in 1952—and lost by more than 400,000 votes. It was an unreasonable man who ran again for Governor in 1945 and 1956, and for the Senate in 1957, the first Democrat in 25 years to win a Wisconsin Senate seat. And it is an unreasonable man who runs to work every day!

By the time I arrived in Washington, Bill Proxmire already had started his string of rollcall votes—not a single one missed since 1966! The list of feats that sets him apart goes on and on. On that list is the fact that he returned $1 million to the Federal Treasury by cutting his personal and committee staff. Also on that list is the election he won by 72 percent of the vote by spending a total of $697 on his campaign—for gas money! And finally, Mr. President, who will forget the Golden Fleece Awards?

Of all the things that set BILL PROXMIRE apart, however, the one I will remember most is his tireless championing of the truth. Mr. President, BILL PROXMIRE is devoted to the truth—however popular or unpopular it may be. He has been the Senate's wakeup call to conscience, reminding us over and over again that we aspire not to good government but to great government.

I will miss the company of this unique statesman. I have never known the Senate without him, and will remember our years of service together with gratitude and respect.

SENATOR ROBERT STAFFORD

Mr. HATFIELD. Mr. President, at the end of the 100th Congress, the Senate will bid farewell to a great public servant and force of balance in the Republican Party—Senator ROBERT STAFFORD.

There is hardly an office Senator STAFFORD has not occupied during his more than 40 years of public service. As Vermont's most durable and successful politician, he has held statewide offices in Vermont since 1954, an was a county attorney, city attorney and World War II veteran before that.

When I first met ROBERT STAFFORD, he was already well into his distinguished public career. He already had served as deputy attorney general, attorney general, and Lieutenant Governor of Vermont. As Republican Governors from progressive States who had overcome a strong national Democratic sweep in order to win the statehouse, we struck an immediate friendhsip.

In 1961, Governor Stafford left the statehouse to enter the 87th Congress as Vermont's Representative at Large, a position he held for nearly a decade. Following the death of Senator Winston Prouty in 1971, he was appointed to the Senate. He has won every Senate election since.

As two of the six Republicans who were once known as the Gang of Six, we often have found ourselves out of the mainstream of partisan politics. Republicans have not always believed in the same things—diversity has been the strength of the party. And undoubtedly, the diversity that Senator STAFFORD has brought to the Senate will be missed. Whether within or outside of the political mainstream, he is recognized as a man of conviction and integrity.

Senator STAFFORD has worked hard to achieve his objectives. His record of success was not earned by idly standing by or through show of force or power. He has managed to earn his reputation as a man who succeeds through compromise and consensus rather than confrontation, without having to sacrifice his convictions. He has never been afraid to roll up his sleeves in order to learn the "nitty-gritty" of an issue in order to shepherd his initiatives into public law. Although this has not always been the quickest way to succeed, it has been effective, and it has been BOB STAFFORD's hallmark. Through more than 17 years, he has quietly influenced the course of the Senate and served as a champion of education and environmental legislation.

His commitment has helped mold much of the congressional legislative agenda on these matters and he has skillfully guided several controversial and complex pieces of legislation through the Senate and to the President.

With his guidance, the reauthorization of the Higher Education Act increased Federal aid to needy students and encouraged those not in financial need to work harder to achieve higher standards of scholarship. Aside from his efforts on education, he has often stood alone in an endless battle against the atmospheric contamination which produces acid rain.

Mr. President, many people will reflect on the career of ROBERT STAFFORD and recall his legislative accomplishments. But for those of us in this body, we likely will recall his quiet, courteous and unassuming manner that has earned him the great respect of his collleagues.

Senator STAFFORD has created diversity within our party and has added a dimension of stability to the Senate that will be missed by all of us. The Senate will lose a trusted friend and a skilled legislator. Perhaps the greatest complement we can pay to Senator STAFFORD is that he is a model for future leaders of both parties to emulate.

TANGIER ISLAND SEAWALL

Mr. TRIBLE. Mr. President, this is an important day in the life of historic Tangier Island, VA. Today, on Tangier Island, in the middle of the Chesapeake Bay, Secretary of the Army John Marsh will sign an agreement with the Commonwealth of Virginia to build a 5,700-foot seawall which will protect the island's western shore from storms, winds, and tides.

Tangier Island was discovered in 1608 when Capt. John Smith sailed up the Chesapeake Bay and landed on the 5-mile-long island. The first permanent English settlement on Tangier was established in 1686 and at least a portion of the 302-year-old community is now threatened by the 20-foot-per-year erosion the island suffers.

This project involves the construction of an offshore rubble mound seawall approximately 5,700 feet in length and 8 feet in height with a crest elevation of 6 feet. The base width will be 50 feet. The Army will advertise for bids for the new project in November, with bid opening in December and contract award in Janauary. The project is scheduled for completion in February 1990.

The Federal Government will pay 65 percent of the project cost and the Commonwealth of Virginia will pay 35 percent under the terms of the Water Resources Development Act of 1986. Congress funded the project under an emergency provision "in view of the national, historic, and cultural value of the island."

The Army Corps of Engineers is no stranger to Tangier Island, with two navigation projects currently underway. The first, the Tangier Channel to Tangier Sound, connects Tangier Sound to an anchorage basin adjacent to the town. The second, the Tangier Channel to Chesapeake Bay, extends from the Anchorage basin northwesterly through Tangier Creek to the Chesapeake Bay. Both serve as principal access routes to the island.

This new project on Tangier underscores the Federal Government commitment to the Chesapeake Bay and the preservation and protection of the environment.

This day has special significance for me. My own life has been shaped by the Chesapeake Bay. My home overlooks the mouth of the great Wicomico River and the bay. As a boy, I came to love and respect these special waters and the people who claim the bay as their own. One of my earliest memories was spending time with an old Tangierman who crabbed on Mill Creek and now my son, Paul, looks forward to his special times with Mr. Dise.

I also identify with those traditional values of hard work, family, and independence—so much a part of the waterman's life.

That's why I have felt a special kinship with this historic island from my first days as a Congressman from Virginia's First District 12 years ago. That's why I have worked so hard to protect Tangier Island and want to recognize the role the Congress has played in making this seawall a reality. We can now get on with the task of protecting a special place and a special people.

BUMPER'S BUDDIES

Mr. CHILES. Mr. President, I want to bring to the attention of my colleagues a very special school volunteer from Miami. His friends, and those who have met him, call him Bumper. I might have had him in the gallery so that he could have listened to my statement, but this would have been difficult because he is a 950-pound, 1-year-old bull. Bumper is a very unusual baby bull. He was born at the Miami Agricultural School, which is one of our Dade County public schools.

Bumper is an orphan. From birth he was fed by the staff at the agricultural school and by a group of students who formed a club which is called Bumper's Buddies. Because he has always been cared for by people, Bumper loves people, especially children. He has had a wonderful effect on the lives of 15 students who were in the sixth grade at Westview Elementary School last year and who this year are students at Westview Junior High. These 15 students, whose identical T-shirts all indicate that they are Bumper's Buddies, have been part of a heartwarming and pragmatic school volunteer program knows as the animal companionship project.

The animal companionship project was created by Dr. Richard Dillman, a retired veterinarian, in cooperation with Westview Elementary School, the Miami Agricultural School and the Department of Community Participation of Dade County, FL, school system.

All of the students who were chosen for the project were considered to be at risk of dropping out of school. Three mornings a week, throughout the entire school year, the students spent 2 hours at the agricultural school. Dr. Dillman taught them to train animals, including rabbits, cats, birds, dogs and, of course, Bumper. This year, the students will be taking the animals they trained on visits to their adopted grandparents at a nearby nursing home. They will be sharing the joy that the animals have brought to them with the elderly residents.

Bumper's Buddies have already taken Bumper on a visit to Epworth Retirement Village. As you can imagine, Bumper was the hit of the retirement village's country and western day.

The animal companionship project has the potential of becoming a wonderful communication link between the young and old. But, equally important, it has already dramatically changed the lives of 15 students who admit they did not like school very much before. This is very important in my State because it has the dubious honor of having the highest dropout rate in the Nation.

Before they began working with Dr. Dillman, and their animal companions, their attendance record was a combined 57 percent. By the end of the school year, their attendance averaged 97 percent. Their conduct and grades also improved greatly over the school year. Best of all, their attitude toward school completely turned around. Before, they thought school was dull, now they think school is fun.

While both Dr. Dillman and Dr. Richard Artmeier, Westview's principal, hoped this animal companionship project would bring new enthusiasm for learning to students who just did not enjoy school, they had no idea it would produce the turnaround in these kids that it did. Dade County hopes to implement similar programs, in 10 additional schools, in this school year. Dr. Dillman feels that the program could help up to 15,000 students who are at risk.

Since Bumper cannot be here, I know that my colleagues join me in expressing gratitude to his partner, Dr. Richard Dillman, for his giving such a tremendous amount of his time, his expert knowledge of animals and his patience and love to help our students. It is not any wonder that the directors of all volunteer agencies in Miami chose Dr. Dillman as the outstanding adult volunteer of the year, last year, for all of Dade County.

SAVANNAH RIVER PLANT AND THE NEW PRODUCTION REACTOR

Mr. THURMOND. Mr. President, over the past several months, there have been disturbing press accounts about safety and other concerns at our Nation's nuclear weapons production plants. The subject of much of this coverage has been the Savannah River Plant, located near the town of Aiken, SC, which I have called home for many years. Before the 100th Congress closes, I wanted to make a few observations about the current situation, and the relationship of the current situation to the new production reactor project.

I shall not take the time of my colleagues with a recitation of the news stories that have recently commanded front page status. My colleagues from Idaho have placed many of these articles in the RECORD while drawing a relationship with new production reactor capacity, a matter that I will return to in a few moments.

Mr. President, much of the focus of recent press coverage has been properly on operating practices at the aging Savannah River reactors, and whether or not there has been and continues to be an adequate concern for safety. I share the view recently reiterated by President Reagan's press spokesman, that safety would take precedence over production in any decision to restart the reactors.

Over the years, the operators of the Savannah River Plant can take pride in the fact that the operations of the Savannah River Plant have met the Nation's defense requirements and no nuclear incident at Savannah River has ever resulted in an injury at the plant or off site. That is not to say that the record at Savannah River has been perfect, as the recently disclosed summary of SRP Reactor Incidents of Greatest Significance makes clear. However, it is worth noting that the 1985 analysis reported that only 2 of the 20 most significant incidents occurred within the last 12 years, only 1 of, those within the last 5 years, and only 2 of the 20 incidents required cleanup and decontamination operations. R.E. Heckert, chairman of E.I. Du Pont de Nemours & Co. has provided additional perspective on these incidents in a speech delivered in the National Press Club earlier this week.

Mr. President, recent events at the Savannah River Plant, especially those surrounding the attempted restart of the P-Reactor, indicated a need for decisive action by the Department of Energy to improve communications and procedures associated with both DOE and contractor operations at the Savannah River Plant. On Monday, Secretary of Energy Herrington announced a number of specific actions that will be taken prior to the restart of each SRP reactor, including "tightening the formal procedures and technical operations used by the contractor; strengthening the Department's on-site technical expertise and safety oversight; increasing DOE presence in the plants; and resolving outstanding technical issues. Mr. President, I will ask for unanimous consent that the full text of Secretary Herrington's prepared press release be incorporated in the RECORD at the conclusion of my remarks.

Mr. President, I had urged the Department of Energy, as a matter of first and obviously urgent priority, to take decisive steps to ensure confidence in the management and safe operation of the existing weapons production complex and I believe the steps announced by Secretary Herrington are responsive to that end. I further believe that the independent DOE Defense Nuclear Facilities Safety Board that was just established in law will complement the Department's action, and should be made operational as soon as possible. It is important to the viability of the new production reactor project, to which I shall now turn, that the public have confidence in the ability of the Department of Energy to operate it safely, and to manage technically complex programs effectively.

Mr. President, my colleagues from Idaho have presented a persuasive case for the need for a safe and secure source of critical nuclear materials on an urgent basis. Today, the Nation depends entirely on the three remaining reactors at the Savannah River Plant for its supply of tritium, which is essential for the continued effectiveness of our existing nuclear deterrent force. These three reactors are currently shut down for routine maintenance and the incorporation of safety upgrades. The Department of Energy recently announced an acquisiton strategy to replace existing reactor capacity to assure reliable production of tritium in quantities that will satisfy future defense needs. As Deputy Secretary of Energy Joseph Salgado recently testified to the Armed Services Committee, the current tritium production capacity has been reduced substantially as a result of the safety issues raised about the Savannah River Reactors and the urgency of our need for new production capacity has intensified.

The new production reactor acquisiton strategy recommended by the Secretary of Energy involves proceeding on an urgent schedule with construction of a heavy water reactor at Savannah River which can produce 100 percent of expected tritium requirements and concurrent preparation leading to the construction of a modular high temperature gas cooled reactor at the Idaho National Engineering Laboratory which can produce 50 percent of expected requirements.

The Secretary of Energy is to be congratulated for his recommendation and the thoroughness of the evaluation and selection process that led to the recommendation. The underlying objectives of the strategy—safety, assured tritium supply on an urgent basis and duality—are objectives that I support on their merits. However, as my friend from Nebraska, Senator EXON, the distinguished chairman of the Strategic Forces and Nuclear Deterrence Subcommittee observed at last week's hearing on the new production reactor, we will have to set funding priorities in the anticipated budget environment. In the course of the hearing, the chairman asked Secretary Salgado to announce the Department of Energy's priorities among safety, urgency and duality, and the Secretary made it very clear that safety and urgency are of equal and highest priority, and duality, while extremely important so that the Nation not rely on one reactor as the sole source for tritium, was of lesser priority. Duality in the words of the Secretary was the insurance, the backup. Duality also would provide a source of plutonium should that be needed at the turn of the century.

In pursuing the affordability issue during the hearing, it was established that the cost of building two new production reactors is estimated to be $6.8 billion in 1988 dollars. This estimate includes $3.2 billion for a heavy water reactor at the Savannah River Plant that will provide 100 percent of the tritium requirement; and $3.6 billion for the high temperature gas reactor that will provide 50 percent of the tritium requirement. In short, the heavy water reactor can provide twice the material production for less than half the cost of the high temperature gas reactor!

Mr. President, I strongly support the full acquisition strategy laid out by the Secretary of Energy and I would urge my colleagues to do likewise. At the same time, I am not encouraged by testimony that the new production reactor program is currently not budgeted within the future planning guidelines provided to the Department of Energy. It is assumed, I suspect, that the critical nature of this program will warrant a transfer of funds within the 050 defense function account, and I am sure that will happen. I am less sure, that under circumstances when the Department of Defense is reducing their own outyear planning by billions of dollars, that duality, which is characterized as insurance or a backup, however, important, will stand up to the budget priority test.

I was reassured to hear in response to questions during last week's hearing that if the Department is faced with budgetary pressures beyond those now envisioned: One, the urgency of providing goal quantities of tritium should take priority over duality; two, we should not delay the heavy water reactor at the Savannah River Plant to preserve duality; and three, the acquisition strategy for the high temperature gas reactor program has been structured with "exit ramps" to slow or accelerate that technology.

Mr. President, providing for an assured source of tritium on an urgent basis will require a long term, bipartisan consensus, for even under the most ideal circumstances, it will take 10 years to make a new reactor operational. In the meantime, we will be totally dependent on the three existing reactors at the Savannah River Plant to provide the tritium needed for our nuclear deterrent. The increasing scrutiny of the operations of these reactors since the Chernobyl disaster has resulted in a number of safety initiatives, including oversight bodies, technical and operational enhancements that we as a nation must hope carry the safe operation of these rectors through the next decade until new production reactor capacity is available.

I ask unanimous consent that the press release to which I referred be printed in the RECORD.

There being no objection, the press release was ordered to be printed in the RECORD, as follows:

ACTIONS BEING TAKEN ON SRP REACTORS

FACT SHEET

BACKGROUND

Since 1986, under the direction of Secretary John S. Herrington, the Department of Energy has been conducting a series of intensive reviews of the safety of its nuclear facilities. In addition to reviews and appraisals performed by the department and expert consultants, the Secretary requested that the National Academy of Sciences conduct a detailed study of the department's reactors, including the three production reactors at Savannah River. The reports from all of these reviews have been made public.

As a result of the department's safety initiative, a number of issues were identified involving the Savannah River reactors. The DOE has made a firm commitment to resolve all of the issues raised. In addition, the Department has announced its intention to replace the three Savannah River reactors, which were built in the 1950's, with new production reactors expected to be built at Savannah River and at the Idaho National Engineering Laboratory.

The three Savannah River reactors are the nation's only current source of the tritium needed for the nation's nuclear deterrent. At present all of the three reactors are out of service for routine maintenance and accelerated safety upgrades.

The department is implementing a comprehensive program at SRP to enable the facility to resume production of tritium within acceptable margins of safety. The program is designed to resolve uncertainties about safety issues, improve operations, improve the department's technical vigilance and strengthen oversight. The program will result in a sequenced restart of K, L and P reactors in a timely and safe manner. The sequence for initiating restart activities is:

Reactor—time:

K reactor—late 1988.

L reactor—1st Quarter 1989.

P reactor—3rd Quarter 1989.

PHASED RESTARTS

The schedule and procedures for restarting each reactor will include a formal and structured program with milestones where the Department's operations, program and safety managers will examine work completed before approving the next step.

SPECIFIC ACTIONS

Specific actions will be taken prior to restart, including tightening the formal procedures and technical operations used by the contractor; strengthening the department's on-site technical expertise and safety oversight; increasing DOE presense in the plants; and resolving outstanding technical issues.

I. DOE Operations:

DOE will augment both DOE program and safety staff at Savannah River Operations Office:

High level manager added on site environment and safety office.

Special team will develop formal startup plan including milestones for DOE review and decision. Team to be headed by Grover Smithwick, former Principal Deputy Assistant Secretary for ES&H.

II. Contractor Operations:

Significant upgrading of control room staffing and operating procedures:

Control room shift supervisor must be degreed engineer.

Add technical support personnel for each shift, including advisors with commercial reactor experience.

Add fifth shift to make time for operator training.

Training for reactor operators to provide technical background and safety consciousness.

Revised operating procedures and technical specifications which will be reviewed and approved by DOE.

Tougher internal technical reviews, including greater use of INPO.

III. Hardware/Procedures:

Complete seismic reviews and make modifications as needed in all reactors.

Revise startup procedures, including technical guidelines and reactivity controls.

Recheck of all safety systems.

Add fourth loop to P reactor emergency cooling system.

STATUS OF SAVANNAH RIVER REACTORS

P-reactor

Began operations, February 1954.

Down, August 1988.

Reason, DuPont responding to DOE's concerns regarding operations.

Current status, the fourth emergency core cooling system (ECCS) is being designed. Seismic walk-downs have been completed.

Target restart, initiate restart activities during third quarter of 1989.

K-reactor

Began operations, October 1954.

Down, April 1988.

Reason, annual maintenance.

Current status, fourth ECCS loop has been installed. Currently undergoing seismic walk-down.

Target restart, initiate restart activities by the end of 1988.

L-reactor

Began operations, July 1954 to February 1968; resumed October 1985.

Down, June 1988.

Reason, normal summer closing due to cooling lake temperature and annual maintenance.

Current status, currently undergoing seismic walk-down; construction underway to upgrade electrical distribution system.

Target restart, initiate restart activities during first quarter of 1989.

THE RETIREMENT OF DAN EVANS

Mr. LEVIN. Mr. President, after being the Governor of Washington for 12 years, Dan Evans came to the U.S. Senate in 1983. As a Senator, Dan Evans has been an ardent proponent of the interests of Washington State on crucial issues like the siting of nuclear waste facilities and other important environmental issues.

Senator Evans was also extremely helpful in keeping the Senate intellectually honest at times when it would have been easier to have simply followed the prevailing political winds. Most recently, we note with admiration his efforts in opposition to the death penalty.

None of us can deny that we begrudge him his reason for leaving the Senate: to lead a normal life. Dan Evans has often been correct in pointing out that the way the Senate sometimes conducts its business is well beyond the realm of what should be considered reasonable. It is possible that if were able to enact meaningful reform of the rules governing Senate procedure that we might not be losing Dan Evans at the end of this session.

Senator Evans has made many notable contributions to the Senate and the Nation during his brief tenure. I, for one, will miss the deep resonance of his baritone voice filling the Senate Chamber and the deeper resonance of his gentle and decent spirit. I wish he and his wife Nancy the best of luck in their future endeavors.

FAREWELL, BILL PROXMIRE

Mr. LEVIN. Mr. President, when the current session of Congress comes to a close we will lose one of the Senate's true characters, in the finest sense of the word: Senator Bill Proxmire. We are all aware of Senator Proxmire's unbroken string of successive votes since 1966, totaling over 10,200 votes. This is a record we can all marvel at.

Senator Proxmire is also well known for his tireless commitment to issues that are of particular concern to him. Issues like the ratification of the international genocide convention, for which he made over 3,000 speeches before it was finally approved by the Senate in 1986. These speeches, made over a 20-year period, were crucial in gaining Senate approval of the treaty.

He also shepherded through the most ambitious banking deregulation bill ever considered by Congress during his tenure as chairman of the Senate Banking, Housing, and Urban Affairs Committee. Senator Proxmire's record shows that he has also been able to hold the Senate floor, along with the best of them, to emphasize his concerns.

He has been a careful guardian of the Treasury, and consistently urged a frugal approach to Federal expenditures, and he was a leader in these efforts.

Senator Proxmire managed to accomplish these goals and was also able to get reelected by a substantial margin even though he only spent a few hundred dollars in each campaign. I am certain that there are more than a few other Members of the Senate who wish they could spend such a small amount of money to get reelected. But Senator Proxmire's reputation for hard work and integrity brought him these successes.

Senator Proxmire's approach may be unorthodox, but it has proved effective on many occasions. Over the past 38 years he has added immeasurably to the Senate and the Nation. His departure will leave a gap that will not be filled soon. I wish him well in the years ahead.

JUNIOR ROTC BASIC HIGH SCHOOL, HENDERSON, NV

Mr. REID. Mr. President, each year, the Marine Corps Reserve Officers' Association selects one unit of the Junior Reserve Officers' Training Corps as the most outstanding in the Nation. I am proud to tell you this most distinguished honor was presented to the junior ROTC unit at Basic High School in Henderson, NV, for the school year 1987-88.

The Basic High School students participating in this program deserve the highest recognition. These are young people who have expressed a sincere commitment to our Nation's future.

The purpose of the Junior ROTC Program is to develop informed and responsible citizens, strengthen character, help form habits of self-discipline, and develop respect for, and an understanding of, the need for constituted authority in a democratic society. I think these are honorable goals.

The students at Basic High School and their instructor, Lt. Col. Robert F. Ott, U.S. Marine Corps, retired, give us reason to be proud. These dedicated young people represent not only the next generation of Nevadans, but the next generation of Americans, and they also represent my alma mater.

25TH ANNIVERSARY OF THE A-6 INTRUDER

Mr. GLENN. Mr. President, this month marks the 25th anniversary of the introduction of the Navy and Marine Corps tactical aircraft, the A-6 Intruder. The Intruder, built by the Grumman Corp., is a two-place, twin-jet, all-weather bomber, and is flown by both the Navy and Marine Corps from aircraft carriers and land bases.

For the last 25 years, the A-6 series aircraft has been the backbone of Navy and Marine Corps tactical air power and remains today one of the most capable long-range, night, all-weather tactical bombers in the free world.

So Mr. President, as a member of the Armed Services Committee, I rise today to salute and pay tribute to the hundreds of men and women who for the past 25 years, have developed, flown, and sustained this combat proven aircraft.

To begin with, I would like to salute the pilots and bombadier/navigators who fly the A-6 Intruder in harm's way. Entering combat for the first time in the Vietnam war, the A-6 was used extensively by Navy and Marine Corps crews in flying nearly 35,000 combat missions by the end of the war. In many of those missions, the A-6 was used at night and in bad weather to attack targets in the most heavily defended regions in and around Hanoi and Haiphong.

Those perilous night missions were graphically described in Stephen Coonts 1986 best selling novel "Flight of the Intruder." Mr. Coonts, is a former Navy A-6 bombadier/navigator himself, and a combat veteran of Vietnam.

Although Mr. Coonts' novel is fiction, his book accurately and with extraordinary realism documents the challenges facing A-6 crews in combat, especially the night, low altitude, high speed bombing missions against the difficult targets in Vietnam. Mr. George Wilson, long-time Washington Post military affairs writer, whose own novel "Super Carrier" was written after spending 6 months aboard a deployed aircraft carrier, described the challenges facing A-6 crews as presented in "Flight of the Intruder" this way: "To understand what the country is asking of the men in the cockpit when the Navy is ordered to bomb some distant target, go along or read Coonts' book. It's art imitating life."

The Vietnam war proved conclusively that the A-6 could seek out and destroy both fixed and moving ground targets unimpeded by adverse weather or darkness. While A-6 squadrons represented only 25 percent of Navy tactical air, they accomplished over 50 percent of the total primary missions. This fact was the result of the high incidence of bad weather facing United States tactical air forces in Southeast Asia, especially during monsoon conditions common in that part of the world.

Mr. President, since the Vietnam war, whenever this country has had to call on its Armed Forces, it is a pretty safe bet that you would find the A-6 Intruder involved. For example, in the Gulf of Sidra off Lybia in March 1986, A-6's were launched from aircraft carriers to conduct night attacks against Libyan patrol boats that were threatening naval surface forces in the area. Again in April 1987, A-6's were launched at night to conduct a major retaliatory strike against military targets in Libya; and as recent as April of this year, A-6's were involved in combat with Iranian naval forces in the Persian Gulf.

So I would say, Mr. President, if you want to go where the action is, become an A-6 pilot or bombadier/navigator. You will certainly earn your flight pay—and most likely combat pay to go with it.

Another critical element of the Intruder team I would like to salute on this 25th anniversary, are the men and women—officers and enlisted—who keep the A-6's flying. Maintaining the sophisticated but aging A-6, especially aboard an aircraft carrier or an austere forward deployed base, is truly a difficult task. It is, however, a task that has been and continues to be met by a group of totally dedicated Navy and Marine Corps aircraft maintenance professionals.

Mr. President, I recently had the opportunity to visit a Navy aircraft carrier operating off the Virginia coast. As chairman of the Armed Services Manpower Subcommittee, I found it particularly gratifying and rewarding to see the quality and enthusiasm of the young people in our Armed Forces today. I saw it last year in the Persian Gulf and I am convinced that the caliber of the men and women in the service today—as exemplified by the men and women who keep the A-6 combat ready—has never been higher.

Another vital part of the A-6 team I would like to salute on this 25th anniversary, is the developer and manufacturer of the A-6 Intruder—the Grumman Corp. Together with the Pratt & Whitney Corp. who builds the engines, the Norden Systems Division of United Technologies who builds the multimode radar, the Hughes Aircraft Co. who produce the FLIR [forward looking infra-red] and laser sensors, and hundreds of other suppliers, the Grumman team has produced yet another "Grumman Iron Works" aircraft that can get the job done. The A-6 clearly is an outstanding example of the superior combat aircraft produced by the Grumman Corp. over the last 60 years.

Design of the A-6 began in 1956, and with its fleet introduction in 1963, it provided the Navy and Marine Corps a superior night and all-weather tactical bomber. It was the first tactical aircraft to employ digital computer technology to fully integrate its navigation and weapons system. This technology included a navigation and terrain avoidance radar, inertial and Doppler navigation systems, electronic countermeasures, and crew displays. Of equal importance, the A-6 was designed to carry a wide variety of ordnance, and in fact can carry more bombs than a B-17 flying fortress carried in World War II.

The A-6 has been systematically upgraded over the past 25 years, and five different bombers and one tanker version have been produced. The first bomber version, designated the A-6A, was first flown in 1958.

During the Vietnam war, two special purpose attack versions of the basic A-6A were developed in response to wartime needs. Nineteen A-6B standard arm missile aircraft were developed and equipped with radar-locating sensors and long-range antiradiation missiles. These aircraft were used to locate and attack enemy surface-to-air missile sites. There also were 12 A-6C TRIM [trail/road interdiction mode] aircraft produced which were equipped with an early generation FLIR and low light level television capability. These additional sensors improved the ability of the A-6 to identify targets at night and to attack more difficult targets such as jungle supply routes and storage areas.

Development of the A-6E bomber version began in 1968, and initial production deliveries were made in 1971. Principal goals of the A-6E were to increase navigation and bombing accuracy, and to improve maintenance reliability.

The A-6E TRAM [target recognition attack multisensor] aircraft, the fifth bomber version, was introduced in 1976. The TRAM system contains a high resolution FLIR, a laser ranger/designator and a laser spot tracker. The A-6E TRAM configuration currently is being retrofitted into earlier A-6E aircraft, and will have been incorporated in all aircraft by 1989. An integral part of the A-6E and A-6E TRAM upgrades has been the integration of newer weapons, including the antiship Harpoon missile, the Maverick air-to-ground missile, and the HARM antiradiation missile.

In 1970, an inflight refueling tanker version, the KA-6D aircraft, was produced from conversion of older A-6A's. Ninety KA-6D aircraft were built and 86 are in use today. Since its introduction, the KA-6D has been the primary tanker for carrier based aircraft.

Finally, Mr. President, I would like to salute and pay tribute to perhaps the most important part of the Intruder team on this 25th anniversary—the wives and families of the A-6 community. Their job may be the hardest—and their contributions the greatest.

In my opinion, not enough credit is ever given to military wives and families. As a marine officer for 23 years, I know the difficulties that my wife Annie faced as we made our way through two wars, long separations and countless moves, while at the same time raising two children.

But was it also fun? You bet it was—and also rewarding. A military career with the full support of a strong military family can be one of the most professionally rewarding and personally satisfying experiences for everyone involved.

So Mr. President, I believe it is fitting and most appropriate that as we honor the 25th anniversary of the A-6 Intruder, we recognize and emphasize the unique contributions made by the wives and families of the A-6 community.

Mr. President, in closing this tribute, I can think of no better examples that epitomize men and women of the A-6 community than Navy Comdr. Mike Smith and Navy Capt. Frederick "Rick" Hauck, and their families.

Commander Smith, a former A-6 pilot and combat veteran of Vietnam, was the pilot of the space shuttle *Challenger* when that tragedy occurred in 1986. Captain Hauck, also a former A-6 pilot and combat veteran of Vietnam, was the mission commander of the space shuttle *Discovery's* historic flight just completed last week.

The contributions and sacrifices these men and their families and others like them have made and are continuing to make in service to our country are very great indeed.

So Mr. President, I will end by saying that the men and women of the A-6 community—past and present—have very much to be proud of on their 25th anniversary. I ask my Senate colleagues to join me today in saluting them and thanking them for a job well done.

Thank you Mr. President, I yield the floor.

TRIBUTE TO WILLIAM AND PAULINE GOLDMANN

Mr. REID. Mr. President, today I want to honor two outstanding Americans, two outstanding Nevadans—William and Pauline Goldmann of Las Vegas.

Bill and Pauline are dedicated to improving the lives of many Nevadans, and are active in voter registration and increasing the awareness of issues among senior citizens. They organized the Nevada Council of Senior Citizens, a statewide organization for seniors. They are leaders among the senior citizens' community in southern Nevada, and have been active Democrats for many, many years.

Bill's family is a coal mining family, his father having come to this country from Germany and working in mines in Kansas, Colorado, Utah, and New Mexico. Through his early involvement with the mines, Bill quickly learned of the difficulties involved in creating and building unions. And, just as quickly, he learned of the benefits to all workers when representative unions were born.

Through Bill's work in the meat packing industry and the automotive industry, he became a leader in the building of unions. In fact, he was fired from his meat packing job because he tried to organize a union. Eventually, he became a key leader in the United Auto Workers local in Los Angeles, the local union for the Chrysler Corp. He was such an efficient and effective leader that he served on the staff of the International Auto-Aerospace Union and was promoted to the position of assistant director of the UAW for the Northwestern States in 1962.

Bill also was able to help effect changes in our Nation's policy toward the working man. During the Roosevelt years, he pushed for the Social Security Act, the Unemployment Insurance Act, the Workmen's Compensation Act, and the Wagner Labor Relations Act.

Bill, who had lost his first wife to cancer in 1964, married Pauline Nelson a few years later. Pauline, herself an active union organizer, has been active in the International Brotherhood of Electrical Workers.

As you can see, both Bill and Pauline Goldmann have been selfless, giving of themselves so that others may be able to work in safe surroundings, and so that they may enjoy the quality of life they deserve.

Bill and Pauline deserve our commendation today. With their activism in their younger years and their activism today in the senior citizens groups in Nevada, they rightly should enjoy our salute for their commitment to our country.

150TH ANNIVERSARY OF ROMEO, MI

Mr. LEVIN. Mr. President, this year the village of Romeo, MI, is commemorating the 150th anniversary of its founding. Romeo is a special place. And it's a place I associate with the pleasure of apple-picking outings in the fall and of strolling down beautiful tree-lined streets. My children are grown now but I know that they share the warm feelings and warm memories Barbara and I have about this village of 3,500 in Macomb County.

Romeo is one of those hundreds of gems that make up the State of Michigan. Long before historic preservation became a national concern, the people of Romeo took care to preserve their special place. They have done a fine job. Visiting Romeo is a visit to a place where the Victorian era still lives. Homes, churches, and shops provide a living lesson about Victorian charm and whimsy. Romeo reminds us of a time when life was slower and, in many ways, more gracious. It is for these reasons that Romeo was in 1971 designated a National and State Historic District.

But Romeo is not a mere time capsule. It is also a living vibrant place in which to live and work. The Romeo area is home to 28 industries manufacturing a wide diversity of products including tractors, recreational vehicles, pharmaceuticals, and parts and fittings for the automotive and defense industries. Romeo is well-known throughout southeast Michigan for its fine schools and cultural amenities. In short, Romeo is a place every Michiganite can be proud of. I wish all the people of Romeo the best during this sesquicentennial year and in the years ahead.

RETIREMENT OF WALTER P. MUTHER, PRESIDENT, ASSOCIATED INDUSTRIES OF MASSACHUSETTS

Mr. KERRY. Mr. President, I want to take this opportunity to pay tribute to a leader in the business community and an outstanding citizen, Walter P. Muther, who is retiring as president of the Associated Industries of Massachusetts.

Over his 30 years with Associated Industries, Walter has established a reputation as a leader in the economic development of Massachusetts. He has been a builder of bridges—seeking cooperation, not confrontation. Walter has worked to bring people together, forming partnerships between business and Government and working with labor leaders rather than against them.

As the chief legislative counsel for AIM Walter Muther quickly gained the respect of legislators throughout the Commonwealth. During his years as one of the industry's top lobbyists, this gifted communicator has helped to create a constructive working environment out of which responsible economic growth has taken place. Under Walter's leadership, AIM has put industrial development on the public policy agenda, and through his efforts AIM is now in an excellent position to address some of the challenges that lie ahead for Massachusetts' industry.

Walter's achievements extend far beyond his work on behalf of industry. He has been extremely active in the community, serving as chairman of the Massachusetts Chapter of the National Multiple Sclerosis Society, and previously as director of the Boston Urban League and the Greater Boston Council on Alcoholism. Despite his rigorous schedule, he has always made it a priority to find time to help those in need.

Walter Muther is indeed a very special person, and he will certainly be missed by the Massachusetts business community and everyone who has worked with him. I am confident that his years of hard work on behalf of a strong economic climate in the Commonwealth will endure. Mr. President, I know that I speak for all my colleagues in wishing Walter a happy and healthy retirement.

BICENTENNIAL MINUTE

SEPTEMBER 14, 1943: SUPPLY OF SENATE BEAN SOUP DRIES UP

Mr. DOLE. Mr. President, whatever uncertainties may exist within the Senate of the United States, one thing is for certain: Bean soup is available in the Senate's restaurants every day. Bean soup has been featured on the Senate menu for at least 85 years. On only one occasion did the kettles stop bubbling. That landmark event occurred 45 years ago, on September 14, 1943. The Washington Times Herald reported that even though bean soup was on the menu that day at 10 cents a cup, 15 cents a bowl, it wasn't cooking on the stove. This was because war-time rationing had slashed the Senate's supply of white Michigan beans. Somehow, by the next day, more beans were found and bowls of bean soup have been ladled up without interruption ever since.

It is often stated that bean soup is served in the Senate restaurants every single day by decree. The origins of that culinary edict have been lost in antiquity, but there are several oft-told legends. One story has it that Senator Fred Thomas DuBois of Idaho, while presiding over the Rules Committee that supervised the Senate Restaurant at the turn of the century, gaveled through a resolution requiring that bean soup, his personal favorite, be on the menu every day. Another account attributes the bean soup mandate to Senator Knute Nelson of Minnesota, who expressed his fondness for bean soup in 1903 and asked that it be served each day. The ubiquitous presence of beans in the restaurants of the House of Representatives is linked with Speaker Joe Cannon. One hot Washington day in 1904, finding no bean soup on the menu, the speaker is said to have roared, "thunderation, I had my mouth set for bean soup. From now on, hot or cold, rain, snow, or shine, I want it on the menu every day."

Between the Senate and the House there are many differences. The chief difference between their bean soups is an onion. The Senate recipe calls for onions braised in butter; the House recipe omits them.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The time for morning business has expired.

UNANIMOUS-CONSENT REQUEST

Mr. BYRD. Mr. President, the distinguished leader and others are prepared now to discuss the time agreement. I know Senators have some additional morning business and they will have an opportunity to do that.

Mr. CHAFEE. Mr. President, I wonder if the majority leader would yield for a minute? I would like to introduce a piece of legislation with a 30-second statement, if I may.

Mr. BYRD. I do not object to that.

Mr. President, I ask the Senator may be recognized for 1 minute to introduce legislation as in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Rhode Island.

(The remarks of Mr. Chafee pertaining to the introduction of legislation are located in today's Record under "Statements on Introduced Bills and Joint Resolutions.")

NEW MEXICO HIGHWAY ROADWORK

Mr. BYRD. Mr. President, I ask unanimous consent that Mr. Domenici may proceed for not to exceed 2 minutes in order that he might introduce a bill on behalf of himself and Mr. Bingaman which has been cleared for action by both sides.

The ACTING PRESIDENT pro tempore. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 2886 on behalf of myself and Senator Bingaman.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 2886) to provide a method under which the State of New Mexico can continue certain highway roadwork.

The ACTING PRESIDENT pro tempore. Without objection, the bill will be considered as having been read the second time by title and the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill.

Mr. DOMENICI. Mr. President, I rise to offer a bill, along with my colleague, Senator Bingaman, which relates to the construction of several new roads in the State of New Mexico that will be used by trucks hauling transuranic waste from defense-related facilities to the new waste isolation pilot project [WIPP] planned for outside Carlsbad, NM.

The future of WIPP is clouded now and embroiled in significant controversy. When the facility will actually open is unclear. Legislation to withdraw lands for the facility is unresolved and will not be passed by the Congress this year.

While this controversy exists, I want to make it perfectly clear from the outset that this bill is outside the scope of the debate over whether WIPP is safe or whether it should be opened and when.

Let me also inform this body that this bill does not authorize one penny for road work in New Mexico.

What the bill does do is direct the Secretary of Energy to enter into an agreement to reimburse the State of New Mexico for any funds it chooses to spend now on WIPP road construction from any future Federal appropriations earmarked for these roads.

This is a matter of safety for thousands of New Mexico citizens.

The roads that need to be constructed are bypasses around major cities in the State. If these bypasses are not built in a timely manner and WIPP opens, that means that trucks hauling transuranic wastes will be traveling directly through urban areas of the State.

Needless to say, that is not an acceptable situation to the many residents in those cities.

The State of New Mexico is faced with a difficult situation. The Congress this year is not passing WIPP legislation which authorizes these roads, and yet work needs to continue so that when WIPP does open, our road system will be able to accommodate the WIPP shipments.

Quite frankly, Mr. President, this bill does not really solve my State's problem; it only goes half-way. Ideally, we should be authorizing $200 million for this road work, thereby assuring the State that the Federal Government will meet its commitment to help build an adequate road system to serve this facility.

The bill does not provide that guarantee. The worst scenario would be that the State of New Mexico will spend its limited resources on these projects, WIPP will never open, and the State will have expended significant funds on projects that are not as high a priority as some others.

But, at this point, the State really does not seem to have much alternative. A commitment to the safety of the residents of New Mexico is just too important.

Mr. President, I urge my colleagues to put aside all of the other debates on WIPP and support this bill.

Mr. President, this bill concerns only my State. It permits the Secretary of Energy to enter into an agreement to reimburse the State of New Mexico for certain bypass expenditures in the event legislation known as the waste isolate pilot project passes the Senate and New Mexico is awarded funds for such facilities.

We would start on them early, in other words, and reimburse New Mexico later if the events I have just described occur.

The ACTING PRESIDENT pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed as follows:

S. 2886

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. The Secretary of Energy is authorized and directed to enter into an agreement with the State of New Mexico for the purpose of reimbursing such State, under current Department of Transportation procedures, in such manner and in such amounts as may hereafter be provided in appropriation Acts, for certain costs incurred by it for the construction or upgrading of certain highways and relief routes in the State of New Mexico for the transportation or radioactive waste generated during defense-related activities, including those identified in an August 4, 1987, agreement between the State of New Mexico and the United States Department of Energy."

Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BOSCHWITZ. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The ACTING PRESIDENT pro tempore. The majority leader.

OMNIBUS DRUG INITIATIVE ACT OF 1988

UNANIMOUS-CONSENT REQUEST

Mr. BYRD. Mr. President, the distinguished Republican leader and Mr. Nunn and Mr. Levin and I have met this morning, following meetings that the distinguished Republican leader has had with colleagues on his side of the aisle.

I think we are now ready to propound a unanimous-consent request. Let me preface the formal request by saying that the amendments that were in certain categories, referred to as category 1, category 2, category 3 last night, have been printed in the Record overnight and Senators have had an opportunity to see the lists of amendments. They were entitled to do that and to have time to do it. So they have had that time now.

Let me just repeat what we mean by those categories. Category 1 would be amendments that are to be included in a joint leadership package to be introduced and cosponsored by Mr. Dole and myself and certainly any other Senators who wish to join. That leadership package would be the last amendment that would be offered. No amendments would be in order to that package except—no amendments would be in order to it. It would be an up or down vote on the package itself, or a tabling motion would be in order.

That amendment is amendments that have been agreed upon by the joint members of the task force, cochairmen and the other members and the two leaders. For those amendments are not to be considered controversial, and they are just all included in this package which has been carefully gone over by the task force group, and other Senators now have had an opportunity to see the list and to make inquiries about the list as to what precisely is involved.

Category 3 is the list of those amendments that are going to be offered and will require some debate and they are controversial to some degree, some more than others, perhaps. That is category 3. The list was put in the Record last night.

Category 2, which probably most of all caused the confusion last night, is titled "Amendments Under Review Subject to Agreement of the Leadership." The list was put in the Record last night, so I need not repeat it here.

The agreed-upon procedure is for two cochairs on my side of the aisle, two cochairs on Senator Dole's side of the aisle, to be out in the Vice President's room reviewing the amendments in category 2. Those amendments are subject to the agreement by those cochairs. If the cochairs agree that the amendments are of a nature they should be entitled to be considered and adopted, those amendments then will go into the No. 1 category, into the overall package which will be offered by Mr. Dole and me at the end of the debate.

Let me say this, too. There may be some Senators who feel that they did not have an opportunity or a timely opportunity, at least, to at least have the cochairs consider an amendment. Well, those Senators may yet, even though the amendment is not on the list, go and counsel with the four cochairs in the Vice President's room and present their proposed amendments. The cochairs will look at those amendments, consider them and resolve the question as to whether or not those amendments should be included in category 2 or should be called up at all. As I say, if those Senators who are cochairs agree that those amendments are eligible for category 1, to be included in the leadership package, that will be done. If the four cochairs agree, then it would be passed on to Mr. Dole and myself.

If the amendments are ruled out or if the four cochairs do not agree, then Senator Dole and I will constitute the so-called court of highest appeals. In other words, we would be eligible for membership in the House of Lords if we were in the business of Parliament.

They have only two chances of getting their amendments into category 1, the package, first by going to the four cochairs, and if they are rejected there, Senator Dole and I will hear the appeal, and we have to agree. If Senator Dole objects, the amendment cannot go in category 1. If I object, the amendment cannot go in there.

I can think of no fairer way for Senators to have an opportunity to call up, at least present their amendments to the group that has been working than that which I have outlined. It gives them an opportunity still to get their amendment in package 1 even though it is not in yet.

For those amendments that are to be offered, category 3, the list having been included in the Record last night, only amendments that are germane and relevant to the underlying amendment may be offered.

Let me ask Mr. Dole, Mr. Nunn, and Mr. Rudman if I have overlooked anything before I make the request.

Mr. DOLE. If the majority leader will yield.

Mr. BYRD. Yes.

Mr. DOLE. You made it clear, but there were some Senators who came to us, and I think maybe have come to your side, saying, "Well, I at least would like an opportunity to present my amendment and discuss it, as I do in any other committee process, with my colleagues." Maybe it is acceptable. We have had two or three of those this morning. Senator Specter, I know of, Senator Helms, Senator Nickles.

So even though they are not on that list No. 2, any Senator who has an amendment that he wants considered should meet with Senator Nunn, Senator Rudman, and others, and if it is approved, it will go on list No. 1, which is going to be agreed upon, hopefully, by a voice vote later today.

I think it is fair. I think it is probably more consideration then we have given any other legislation. Here we have Senators themselves, not staff, but Senators sitting down with their colleagues looking at the amendments, checking with Justice, checking with the appropriate agencies. It is a very thorough screening process. I see Senator Metzenbaum here. I think if plastic guns is cleared, that will go on list No. 1.

Mr. METZENBAUM. I thank the leader.

Mr. BYRD. Mr. President, I count seven conversations that are going on in the Chamber. We are trying to reach an agreement on a very complicated matter.

The ACTING PRESIDENT pro tempore. If the majority leader will withhold, the Senate is not in order.

Mr. BYRD. Mr. President, there was one other item I left out of the overall agreement, as I see it, before I place the request and then the other two Senators will be recognized. That is that it would be contemplated that there would be a 2½-hour time agreement on the amendment to be offered by Senators Hatfield, Evans, and Levin dealing with the death penalty, 2½ hours to be equally divided. That amendment will be called up first and Senators could debate that amendment while the working group—Mr. Nunn, Mr. Rudman, and others—are beginning to screen the amendments in the Vice President's room that are to be placed in category No. 1.

The Senate will be working while Senators have the opportunity to follow the process that has been suggested.

Mr. Rudman.

Mr. RUDMAN. I thank the distinguished leader for yielding.

I just want to make an observation to our colleagues who are listening or watching. One of the concerns expressed has been that obviously the language of the amendments on list 1, the leadership package, is not yet in everyone's hands nor, in fact, is the language on lists 2 or 3. I want to just point out that it is the intention of the leadership, as I understand it, that before that package is offered for a vote, that each of those amendments will be in the hands of the Senate for each Senator to examine to determine his or her position on it.

The second thing I would like to suggest to the leadership is that those Senators who do have amendments on the leadership package, category 1, are really urged to get them to the leadership posthaste so that we can expedite the process.

And the third thing I would like to say to those who are watching and listening are that those who have amendments on list 2 that are supposed to attempt to have them cleared at this time, we would also urge them to please come over at their earliest convenience with their amendments drafted since Senator Nunn and I and Senator Gramm and Senator Moynihan will be anxiously awaiting them.

I want to just point that out to the leader.

Mr. BYRD. It is a very good matter to make clear here; the mechanical and clerical problems in dealing with this are not easy. I yield to the Senator from Georgia.

Mr. NUNN. I agree with everything the Senator from New Hampshire said. I thank the leadership for helping arrange this, to me, last clear, best chance to get a drug package through. I think it is the only way we can get it through. If we start debating it without having any procedure at all, we will be here a month. We could be here to Christmas for that matter. So I say this is the way to go.

Here is a board of appeals. If the working group decides that they cannot accept an amendment on list No. 2, then the two leaders could agree jointly and they could be brought up for a vote in the Senate. So it would be moved really to list No. 3 for a vote if the leadership approved. If we do agree to it, it will go on list 1 and be folded into the leadership package which will be presented later in the day.

I would like to underscore what the Senator from New Hampshire said on one point. We have amendments that are described here by author and by title. On many of them, we do not have a draft of the amendment. The description of the amendment is now oral in many cases and so we are going to have to have the written draft of the amendment. It is the only way we can clear it. We have to read every word of it. We have to know what it says. We are not going to get into a situation where we put a lot of things in there that only have an author and a title. So we have to have the amendment itself and the sooner people provide the amendment, the better chance it has of being considered early in the day. I would say the later in the day this goes, it is like anything else, the less chance it has of getting in. So we are going to be working all day long and as long tonight as we are in and I hope we can get full cooperation.

Mr. METZENBAUM. Will the distinguished leader yield?

Mr. DOLE. If I might ask the leader a question.

Mr. BYRD. I yield to the Republican leader.

Mr. DOLE. It was just pointed out to me by staff, I think it would be important for the chairmen and ranking committee members or their staffs to be available because some of these involve different committees. We are just sort of an ad hoc group. We cannot overstep committee jurisdiction. So we may want to make certain that the ranking member and the chairmen of the committees have cleared it and that will be part of that process. So I urge staff members on the various committees to be available to Senators NUNN and RUDMAN in that process.

Mr. NUNN. The Senator is exactly right. We have asked the staff to be available and we would like the ranking members and the chairmen to be available or any other member who has an interest because there will be amendments here that we will need help on. We cannot analyze every one of these amendments ourselves. We do not pretend to be able to. We will be calling people in for their advice.

Mr. BINGAMAN. Will the Senator yield?

Mr. BYRD. I yield first to the Senator from New Mexico, Mr. BINGAMAN, and then to Mr. METZENBAUM.

Mr. BINGAMAN. As I understand the proposal, or the proposal that we are expecting to offer, if we had an amendment that we felt should be considered on list 2, it is not on list 2, the second list, and it was rejected by one of the people heading up the working group, we would still have the opportunity at that point to have it shifted over to group 3 and get a vote on it? Is that right?

Mr. BYRD. No.

Mr. BINGAMAN. I am a little concerned about the arrangement where any member of the working group could veto any amendment that is on the second list.

Mr. BYRD. Senators will still have the court of appeals, the highest court of appeals, of which Senator DOLE and I will be the chief justice.

Mr. BINGAMAN. If a Member on the minority side wished to object and called upon his leader to do so on his behalf, are we essentially signing a unanimous-consent agreement here to allow any Member to veto any item that comes up on list 2?

Mr. BYRD. We have to have a process, may I say to my good friend, Mr. BINGAMAN. There has to be somebody somewhere who says "OK" or "No" because this is a time agreement. Obviously, if we do not have a place that can render a final verdict on that, we might as well just open up the list to any and all comers. We might as well not have this meeting out in the Vice President's room because they can be sure of getting their amendment up no matter what these Senators say or the two leaders. It is a fair process. I am sure any Senator who gets such a turndown will be because it is an amendment that is not germane.

Mr. BINGAMAN. Meritorious.

Mr. BYRD. Not relevant and has no business on this bill. This is a drug bill and not a welfare bill. We have passed a welfare bill. It is not a trade bill. We passed a trade bill.

Mr. NUNN. It is not a continuing resolution.

Mr. BYRD. It is not a continuing resolution.

Mr. BINGAMAN. With the leader's assurance that the process is fair and every effort will be made to accommodate Senators, I will not object to the unanimous-consent agreement. I do have an amendment which is not on list 2 which I will be presenting to the working group and hopefully I will not have to go to the court of last resort. I thank the Senator.

Mr. BYRD. There will not be any charge. I thank the distinguished Senator.

Mr. Metzenbaum.

Mr. METZENBAUM. It is my understanding that the plastic gun bill that Senator METZENBAUM, Senator THURMOND, and Senator KASSEBAUM cosponsored will go on list 1 provided it has the exact same language as it was when it passed the Senate absent the Dole amendment, which has already been taken care of in another way.

Mr. DOLE. That is correct.

Mr. METZENBAUM. Am I correct?

Mr. DOLE. That is right.

Mr. METZENBAUM. I thank the Senator. I thank both the managers.

Mr. CHAFEE. I would like to ask the majority leader a question.

Mr. BYRD. Mr. President, I should say that the Senator is talking about putting that in category 1, is he not?

Mr. METZENBAUM. Yes.

Mr. BYRD. That is the package which is all or nothing. Senators vote up or down or move to table it but we do not break out those amendments for separate votes. If we do it in one instance, we are going to have to do it in others.

Mr. DOLE. He is not asking that.

Mr. BYRD. No, he did not. But I have just received a note that there is another Senator who will object if plastics does not have a separate vote. So I would suggest that any Senator who wishes to object to this package, now is the time to do it. We have to do it one way or another, and if we open this package up to separate votes—we have 30 amendments in there, I believe, and someone would ask for a division. If one Senator is entitled to have a vote, why we can have a division and have 30 votes.

Mr. CHAFEE. Will the leader yield?

Mr. BYRD. Yes.

Mr. CHAFEE. Back to category 2, pursuing the illustration of the Senator from New Mexico, let us say that in category 2 there is an objection by one of the group, the core group, if you want to call it that.

Mr. BYRD. Yes.

Mr. CHAFEE. Then there is an appeal to the two leaders.

Mr. BYRD. Yes.

Mr. CHAFEE. If the leaders sustain the appeal, then that item goes into category 1?

Mr. NUNN. No. No. That would have to go into category 2.

Mr. CHAFEE. That is what I thought.

Mr. NUNN. Which is coming to the body for a decision after debate. It is one of those items we would then debate.

Mr. CHAFEE. That is what I thought, but that is not what the majority leader just said. Now, is that clear? Because I do not believe that is what the majority leader said before unless I misunderstood.

Mr. BYRD. No; that is preeminently clear and it is as the Senator from Georgia stated. I am at fault for not making it clear. Those amendments that go into category—I would assume that most of the amendments that are approved by Senators NUNN and MOYNIHAN, et al., Mr. RUDMAN and others, I would assume that most of the amendments can go into that category.

Mr. CHAFEE. That is understood.

Mr. BYRD. That is as far as I went. The Senator has asked a very pertinent question. Those amendments would have to pass the obstacle course and run into problems there. The Senator can call them up.

Mr. CHAFEE. So, there is appeal to the Supreme Court here.

Mr. BYRD. Yes.

Mr. CHAFEE. If the decision is that it is OK, the item is all right, then it goes into category 3 where it comes up for a vote.

Mr. BYRD. Yes; and any amendments to that would again have to be germane and relevant.

Mr. CHAFEE. I thank the Senator very much.

Mr. BYRD. Now, Mr. President, do we have another question? Mr. COHEN.

Mr. COHEN. If the Senator will yield, last Friday I filed two amendments at the desk dealing with the drug czar, and they are both interrelated. My understanding is that only one is now on the leadership list, and I would simply like to reserve my right to offer it as perhaps category 3, the second part of that amendment. They are interrelated. It has to do with the status of the drug czar, of being a permanent member of the National Security Council, which I would have strong objections to. Second, it has to do with the executive pay level, which puts the drug czar higher than the DCI. So I would like—I think they are both interrelated, and yet one has been separated out for consideration from the other.

Mr. NUNN. Could I suggest to my friend from Maine that both of those be considered category 2, if he would like to consider it that way. I think one has already been approved, though, in category 1. We would be glad to sit down and talk to the Senator about that. We have not focused on it, but I am familiar with the subject matter. I believe we can work those out. We may not be able to. What we are trying to do is keep those off category 3 that we cannot work out unless they are put on by the majority and minority leaders. The reason being we have so many that if we start doing that, we will just never get through with this process. We would be glad to sit down and work with the Senator on both of those amendments to see if we can work them out.

Mr. BYRD. Anyone else? Senator MELCHER.

Mr. MELCHER. Mr. President, I think getting this unanimous consent is a monumental job, and it probably can be obtained. I hope it is obtained. It will serve to prove that the Senate can function under the rules, and that there is comity among Senators on both sides of the aisle to advance a bill that is in the national interest.

There are at times some bills that are of interest only to one State. We have such a bill that is being held up. It is the Montana wilderness bill. It is of interest only to Montana. It is a very important bill for our State. We have had 5 years in developing it, and getting to an agreement. We now have it cleared of all the interests that are obviously coming into conflict from time to time. The environmental groups, and the basic industries in Montana are now in agreement. They very much want the bill passed.

We have cleared all the hurdles on this side of the aisle. We have all of the problems resolved with the ranking member of the Senate Energy and Natural Resources Committee, Senator MCCLURE. I might point out that because it only involves one State there are still issues that set a precedent, such as how the water language is treated or the release language is treated.

We have been conscious of that and have worked that out. However, we find out that despite the ordinary comity of the Senate in allowing a State to have its own wilderness bill passed as we have done for so many other States, there are those on the other side of the aisle involving our bill.

Since it is of such importance to Montana, all the way across, in every facet of the State, I ask the majority leader and the distinguished Republican leader if we might have some assistance in bringing up our bill so it can be considered and passed this Congress.

Mr. BYRD. Mr. President, I will render all the assistance that I possibly can to the Senator. There are some limitations as the Senator understands. I will do everything I can do. I may fail, but I will try.

Mr. MELCHER. I thank the majority leader.

I might ask the distinguished Republican leader if we might expect some decisions on that side because that is where our problem is.

Mr. DOLE. I would be glad to discuss it on this side.

Mr. BAUCUS. Mr. President, will the majority leader yield?

Mr. BYRD. Yes. I yield.

Mr. BAUCUS. I thank the leader for yielding.

Mr. President, the issue that my senior colleague from Montana raised is a very important one. I think it is very proper for Members of the Senate at the appropriate time to object to the proposed unanimous-consent request on major issues. Certainly the drug bill is a very major issue. It is also appropriate for Members to try to work together to allow a bill of this importance, like the drug bill, to come up.

I hope we can work out a resolution. I hope the unanimous-consent agreement that the leader will be propounding will be agreed to.

There are other issues though that are not so cosmic in nature as the drug bill. One is the Montana wilderness bill. That is a different category. That bill essentially addresses the needs of only one State, the State of Montana. The Montana Senators, both of them, are attempting to pass the Montana wilderness bill. The Montana Senators are in agreement, in total agreement as to the provisions of the Montana wilderness bill.

We also met with many Senators on both sides of the aisle trying to work out substantive questions that Senators legitimately raised concerning natural resource issues, National Forest Service policy, reserve water rights, et cetera. The Montana Senators have met with each of those Senators, and we have worked out resolutions with each of those Senators who have specific questions with respect to national and natural resource policy. They have all been resolved.

To recap, the Montana Senators are in favor of the provisions of the bill. All substantive issues have been worked out, and yet there are four or five holds on the other side of the aisle—preventing the Montana wilderness bill from coming up.

We are unable to find any substantive objection. There are these vague holds. I must say, Mr. President, it does not smell quite right. Sometimes you cannot see specifically what is going on. Sometimes you can. This is one of those instances where there are no substantive objections but there are these vague invisible holds somewhere on the other side of the aisle only. There are no holds on this side, only on that side.

What I am saying is we are coming to the time where the Montana Senators have no alternative but to place holds on all bills for sponsors on the other side of the aisle because that is the position we face right now. We in Montana are not about to do that yet because we in Montana like to deal in good faith. We like to sit down and reason out differences with people. We also assume the other side is reasonable, too.

From what we can gather at this point, we hope the other side can be more reasonable and lift its holds so the U.S. Senate can take up the Montana wilderness bill.

I do not want to take any more of the Senator's time. I see the leader pushing to get on. I very much want the leader to get on.

I would like the Senators on the other side of the aisle to know they are now on notice. It would be helpful for the resolution of this body regarding much legislation if they would come out in the open, not be so invisible, so that we can get the bill passed.

I thank the leader for yielding so much time.

Mr. BYRD. Mr. President, I thank the Senator.

Mr. President, I see no other Senators—I yield to the distinguished Senator from Massachusetts, Mr. KENNEDY.

Mr. KENNEDY. Mr. President, I want to join with others, both last night and this morning, commending both the majority leader and the minority leader, and the groups that have been working on these proposals, and again indicate my very strong feeling that there has been very substantial good faith efforts to include or consider a variety of different issues that have been raised with this legislation.

As the leaders know, there are three or four items which are, I think, of enormous importance for consideration during this debate. One deals with the civil penalties which the Senator from New Mexico will offer, and the way that he explained it to the group, it certainly seemed to meet many of the concerns that have been expressed. I saw him just a few moments ago, and he indicated language was on its way up from the Justice Department.

Another was the whole issue of terminating the user benefits of certain Federal programs for those that have been convicted of substance abuse. It is the measure of the Senator from Texas. He explained it. He indicated that language would be available.

Those are privileged matters as well as items dealing with the habeas corpus and the exclusionary rule.

I want to indicate to the leaders, as well as to the proponents of those amendments, who worked hard to try to make that language available, but those are measures I hope on which we would at least have the measures available in written form prior to the time the consent would be considered.

I want to indicate that I will certainly work with the leadership in every possible way to expedite whatever they want to consider on those measures. But I hope we will have an opportunity to review those prior to the time the consent request is made. I thank the leader.

Mr. MOYNIHAN. Mr. President, will the majority leader yield?

Mr. BYRD. Yes.

Mr. MOYNIHAN. Mr. President, may I say to the distinguished majority leader and the Republican leader that I will say what I have said at least 50 times in the last 4 days. We are basically dealing with a public health epidemic. What is happening is a poison is racing through the population. It is deadly. It is particularly deadly to children. While we are very much involved in peripheral issues of law enforcement, I hope we will not forget that the majority of new funding in the core bill is devoted to treatment and prevention.

We have a great achievement in the core bill. We should not give up now.

Mr. BYRD. I thank the Senator. I also thank him and Senator KENNEDY for the work they have done on this.

Mr. President, I am ready now to propound the request.

Time the consoler, time the anodyne. How sweet it is! A good night's rest so often helps.

Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the House drug bill, H.R. 5210, with the proviso that an amendment—I think what I should do is include in the request that the Senate core bill as presented to the leaders, as introduced by the leaders and the Senators who have worked on it, be offered immediately as a substitute.

Mr. President, I ask unanimous consent that the Senate proceed immediately to the consideration of H.R. 5210; that the title be considered as having been read; that the Senate then proceed to the consideration of S. 2852, the Senate core bill, which will be a substitute for the House bill, thus allowing the Senate to work on the Senate substitute to the House bill.

Provided, further that the reading of the title of that bill be dispensed with; that it be in order for Senators HATFIELD, EVANS, and LEVIN to proceed to the amendment concerning the death penalty; that there be a time limitation thereon of 2½ hours, the time to be equally divided between and among Senators HATFIELD, and others, and Senator D'AMATO; that the substitute be considered as original text for the purpose of further amendments; that amendments which have been described as fitting category 1 be included in the package at such time as the leadership proposes the package; that it not be subject to division but that it be subject only to a vote up or down or a tabling motion.

Provided, further, that amendments in category 3, as listed in the RECORD and as may be drawn later in accordance with the colloquy, may be subject to amendments, only if such amendments to the underlying amendment are germane and relevant.

Provided, further, that the managers on both sides be the two leaders or their designees.

The PRESIDING OFFICER (Mr. ADAMS). Is there objection?

Mr. SIMON. Mr. President, reserving the right to object—and I shall not object—I just want to make sure that this resolution is in here at some point, which everybody has agreed to, and that is important to anyone who is traveling in this country, that we get this word out.

Mr. BYRD. I hope the Senator will not have his objection on this bill.

Mr. SIMON. I just want assurance from the majority leader and the minority leader that we move on this the first chance we can, to move on something that will take 5 minutes.

Mr. BYRD. I gave that assurance earlier.

Mr. SIMON. I just wanted to make sure.

Mr. BYRD. The problem is that in a situation like this, every minute we delay—I hope there is not anything else coming. The Senator has that assurance.

Mr. KENNEDY. Mr. President, reserving the right to object—and I do not intend to object—we do not have the language dealing with habeas corpus and the exclusionary rule. I indicated to the leadership that I do not want to interfere and would not interfere if the leader wants to go to the death penalty for a discussion. I am prepared to go into my debate on it.

I have indicated to the leaders that on the habeas corpus and the exclusionary rule as well as the benefits legislation and the user—Senator GRAMM just brought over the user language, and we are reviewing that—but I think on those matters of constitutional importance there has been agreement, and I support the agreements which have been outlined. But I think we have to see how the agreement that was entered into with the leaders is put down on paper.

Mr. NUNN. There is going to be no agreement on the habeas corpus without the Senator being included.

Mr. KENNEDY. Did the request as to the package include the habeas corpus?

Mr. THURMOND. Mr. President, the legislative counsel is looking over the habeas corpus agreement and is making little changes necessary to carry out what we did agree on, and we hope to get that back in a few minutes.

Mr. KENNEDY. I hope we might be able to go on with the consent on the death penalty.

Mr. BYRD. I hope the Senator will appreciate that any amendments to the amendment in category 3 have to be germane and relevant.

Mr. KENNEDY. I understand that.

Mr. BYRD. I am not sure I understand.

Mr. KENNEDY. As I understood it—and I was visiting with a colleague here—part of the consent request now that is being advanced under category 1 would include what had been agreed on with the habeas corpus and the exclusionary rule.

Mr. BYRD. Yes.

Mr. KENNEDY. I will object to that until I see the language of any unanimous-consent request. I have indicated that to the majority leader as well as to the ranking Member. I have no intention of doing it. It may be written or transcribed, but I will not agree until I have a chance to look at the language.

Mr. BYRD. Mr. President, will the Senator agree to this, that we proceed with the request, but that those two amendments would for the time being be moved to category 2? That would fully protect the Senator because they would not be able to get back into category 1 unless the foursome——

Mr. DOLE. Mr. President, if the majority leader will yield, I think that would create a problem because these are things we have gone over for hours. I do not think we prejudiced his rights. We did not suggest it is probably going to end up even in 1 when we gave it to the leadership and we would offer it.

I assume the Senator is going to look at the language.

Mr. NUNN. If the majority leader will yield, I think the Senator is fully protected. For one thing there is no time agreement on the leadership package. If the Senator does not like what is in the leadership package on that language there is no rule or anything that would keep him from taking the floor and keeping us here.

Mr. KENNEDY. That could be true about other things. We have worked in good faith.

I am reluctant, Mr. President, but I will not agree to the consideration on the habeas corpus and exclusionary rule until we have a chance to look at the language of the amendments, not just this amendment, but other amendments.

I reluctantly do that, but I indicated that was the position, and that applies as well to the other amendments dealing with the civilian penalties as well as the termination of benefits.

The Senator from Texas just handed me this amendment which is different from what was described in that yesterday. I think it is a better amendment, quite frankly, but it was different than what was described yesterday. And I will object until I have a chance to study the language.

Mr. NUNN. I do not think the Senator understands the agreement because on that point the amendment of the Senator from Texas is on his No. 3. There is no preclusion in this request for a second-degree amendment to that. There is no time agreement on that.

So the Senator is not in any way forfeiting his rights on anything.

Mr. KENNEDY. What I will not forfeit my right on is the general description of a constitutional issue that is being advanced here today. If they are asking consent, this Senator is going to object if that is what the issue is. I do not care how many rights I have. I will object to the issues on habeas corpus and exclusionary being propounded. If I have that right to do so I will object until I see it.

A parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. KENNEDY. What was the request?

The PRESIDING OFFICER. The most recent statement by the majority leader was he was willing to have the exclusionary rule and the habeas corpus rule moved into category 2.

Now, the request that is presently pending was to move the House bill, substitute the Senate bill, and to the substitute the first amendment offered would be the Hatfield, et cetera, death penalty amendment.

That is where the request is at this time.

Mr. KENNEDY. That is just on the Hatfield amendment?

The PRESIDING OFFICER. There is a time limit on the Hatfield amendment of 2½ hours equally divided.

Mr. RUDMAN. Mr. President, will the Senator from Massachusetts yield for just 1 minute?

Mr. KENNEDY. I yield.

Mr. RUDMAN. I believe within the next 5 minutes we could give the Senator from Massachusetts what he is looking for. I would just point out that the habeas corpus language was drafted by the staff of Senator BIDEN, the chairman of the Judiciary Committee. It deals strictly with language simply saying that we are waiting for the commission report. When the report comes out, there will be expedited procedures with or without recommendations.

The other language is all drafted. I will get a copy to the Senator very promptly.

I would point out to the Senator that in the agreement that the majority leader has just propounded, it simply listed those on 3, that would be considered as controversial and, obviously, be voted on, could be amended, no time agreements.

But on list 1, those two items that the Senator raises have been drafted. I am not sure why the Senator does not have copies of them. Let us try to get copies to the Senator over the next 5 or 10 minutes because I am sure he will clear them when he sees them.

Mr. KENNEDY. Mr. President, I do not want to delay this. I was under the impression, perhaps falsely, that there was a request to move those two items into category 1 dealing with habeas corpus and exclusionary.

Mr. BYRD. Mr. President, let me state they are in category 1 and they were in category 1 when it was placed in the RECORD last night, and I read them into the RECORD last night, and I thought we all met and had an understanding as to what we meant. As I said last night, if I may complete my statement, as I said last night, these items are in category 1 may appear to be very formidable to some Senators but I feel that upon the proper explanation of them they will understand precisely what is meant and what is contained in those amendments.

I thought we all had a discussion of that and it was clear.

But if the distinguished Senator would like I have suggested—I have not included in the request—that those two items, exclusionary rule and habeas corpus, come out of package 1 and be moved to category 3 which would allow them to be offered and would allow amendments in the second degree to be offered to them if such amendments were germane and relevant.

Mr. KENNEDY. That will be entirely satisfactory, and I have great regret in raising this because I have the utmost good faith in those who are drafting the others. But I for one would prefer that course of action the way requested by the leader.

Mr. DOLE. Mr. President, if the majority leader will yield, I do not know where the Senator from Massachusetts has been. We have been discussing this in his presence for about 4 or 5 hours, plus about 2 hours last night. If they go into category 2 there is no certainty they are ever going to get back into category 1, then we would be giving up something very important to some of us, including Senators on that side of the aisle.

We agreed in good faith these would be category 1. We did not agree that they were ever going to be considered until the language had been approved by any Senator, and I could not agree to that.

Mr. NUNN. May I make a suggestion?

Mr. KENNEDY. Since I was referred to, will the minority leader tell me is it the language of Senator BIDEN? Is that the language that is being included on habeas corpus?

Mr. DOLE. I would have to check.

Mr. KENNEDY. I would have to ask where the Senator has been then because I know where I have been, and I have supported the Senator's language.

It was one of the Republican Senators who said they want to alter and change it.

So I know where I have been. If you do not understand what the language of the Senator from Delaware is, that is not my problem.

Mr. DOLE. There are 30 amendments there. I have not gone over the 30 amendments.

Mr. KENNEDY. Do not ask where I have been.

Mr. DOLE. I thought we have all been in good faith around here.

Mr. KENNEDY. I know where I have been.

The PRESIDING OFFICER. Senators will please address the Chair.

The majority leader has the floor, and he can yield time to various Senators as he wishes.

Let us have order.

Mr. NUNN. Mr. President, will the majority leader yield?

Mr. BYRD. I yield to the Senator from Georgia.

Mr. NUNN. The Senator from Massachusetts has been very much involved in those two matters, and I understand he feels very keenly about them, as do many others on both sides of the aisle.

They were always in category 1. If they are taken out of category 1, then it seems to me that we do not have really an overall framework because that puts a different nature on them altogether.

Now, category 1, as I understand, is being dealt with here in a general way. We are not going to approve anything on category 1 until there is agreement on both sides of the aisle. We certainly are not going to approve category 1 amendments like those two without the Senator from Massachusetts being able to look at every word, every comma, every period, and others who have a vital interest in them. So we are really not talking about anything practical here at all. There is nobody losing there rights in this unanimous consent. We are simply getting a framework here with which to deal.

I can assure the Senator from Massachusetts that nothing is going to be in this category 1 package on habeas corpus if he has not had a chance to look at it as well as people on the other side of the aisle.

So I really think we are quarreling over something that has no practical effect.

Mr. BIDEN. Mr. President, will the leader yield just for a moment?

Mr. BYRD. Yes, I yield.

Mr. BIDEN. I may be part of the reason for the need for this discussion.

It was my responsibility to draft both the habeas corpus amendment that was agreed to and the exclusionary amendment or at least part of that.

The habeas corpus amendment is, as they say, "as we speak" with the legislative counsel. There was no one there available last night. It should be here within a few moments.

Is it here? It is here.

So we will have an opportunity to distribute that immediately.

I also would like to point out that we drafted the exclusionary rule. As pointed out by one of my colleagues, the distinguished Senator from New Hampshire, the exclusionary rule was drafted by Senator—my staff. It went beyond what he and others were prepared to agree to, which reinforces the point the Senator from Massachusetts was making. Even though I attempted in good faith to draft both of these to meet everyone's needs, I assume that we will find that the habeas one meets all the requirements agreed to, the exclusionary rule one went beyond—in the mind of the Senator from New Hampshire, and I think he is probably right—what we had agreed to.

The point I am trying to make is you are all right. You are all correct. The Senator from Massachusetts is correct that even though in good faith I attempted to do these in a way everyone agreed to, it is wiser for everyone to see them before we merely consent to my drafting. And my colleagues were pointing out that we can go forward with this on category 1 on the understanding that every Senator has to sign off on what we in good faith agreed to.

Mr. NUNN. There is nothing going into the category 1 package or habeas corpus or exclusionary rule that the parties to the agreement do not still agree with. It has got to carry out the agreement made in good faith. We are basically operating on a modicum of good faith here and I feel keenly obligated to the Senator from Massachusetts and I know others on the other side of the aisle would feel strongly on this not to have this go into No. 1 until every word, every letter, every period, every comma has been agreed to. We have great confidence in the draftsmanship of the Senator from Delaware.

Mr. BIDEN. You have more confidence than I do.

Mr. KENNEDY. Mr. President, the reason I raise this is I understand it was at least the intention to have one vote and include all of these measures.

Mr. BYRD. That is correct.

Mr. KENNEDY. So the reason for this point, as was mentioned by the Senator from Delaware, is just so when we put those items in which are the leadership items that we have a full knowledge and awareness and understanding in written form on those.

As I understand what the request now would be, it would just be to put those two items in category 3, whatever you want, so we can come back in later on?

Mr. BYRD. No. I say to my friend that was my proposal, my suggestion. But it would not be agreed to.

Mr. DOLE. Not unless you put everything in category 2.

Mr. BYRD. That raises problems.

Mr. LEVIN. Would the majority leader yield on this point?

Mr. BYRD. I would be happy to.

Mr. LEVIN. If my friend from Massachusetts will indulge me, I just glanced at the draft of the habeas amendment. It is significantly different from the one that we discussed in your office late yesterday afternoon. I can tell you in what way and maybe—is the Senator from New Hampshire——

Mr. RUDMAN. Right here.

The PRESIDING OFFICER. The majority leader has the floor. Does the majority leader yield to the Senator from New Hampshire? I just want to be certain Senators' rights are all protected. The majority leader has already yielded to the Senator from Michigan. The Senator from Michigan now is under the yielding from the majority leader, who has not yielded the floor.

Mr. LEVIN. I wonder if the majority leader would yield to me so I could inquire of my friend from New Hampshire.

Mr. BYRD. Yes, Mr. President, I yield for that purpose. I ask the Chair to protect my rights on the floor in the final analysis, but I yield.

Mr. LEVIN. I think the Senator from Georgia would also recollect the detail of this item. Yesterday it was very explicit on the habeas corpus discussion that it would be made the pending business and that was it; that there would be an expedited procedure to get it to the point where it was the pending business and then we said that was where all bets are off.

This is very different. This puts a time limit on the debate after it is the pending business. At least if I am reading it correctly.

Mr. BIDEN. Will the Senator yield?

Mr. LEVIN. I do not know that I can yield.

The PRESIDING OFFICER. The majority leader has the floor. Does the majority leader yield to the Senator from Delaware?

Mr. BYRD. Yes, Mr. President. I yield to the Senators for colloquy.

The PRESIDING OFFICER. The leader's rights are protected as previously ordered.

Mr. BIDEN. I thank the leader.

The Senator from Michigan is correct. The first draft that went up reflected the agreement as you have stated. Other staff concluded that they wanted to "tighten it up." Not my staff. And the changes that you see, that I have seen for the first time, that do not reflect the agreement, were incorporated.

Both of these must be dealt with and "cleaned up" and done so quickly. I am confident we can do it. But neither of these, neither exclusionary or habeas, as drafted, accurately reflect the full agreement.

Mr. LEAHY. Mr. President, would the majority leader yield to me without losing his right to the floor?

Mr. BYRD. Oh, yes.

Mr. LEAHY. Mr. President, I have just seen the draft of the habeas corpus amendment. It does not follow, as I understood it, our agreement yesterday. I thought we reached a good agreement which was basically that we would wait until the Powell Commission report came back. We would have that as a guideline. We would expedite procedures. I believe we were talking about either 30 or 60 days of session. And that we would have expedited procedures both here in the Senate and in the other body.

As the draft comes back, it says we have 15 days of session to introduce a bill——

Mr. NUNN. Would the Senator yield?

Mr. LEAHY. If I could finish this point.

Mr. NUNN. We could go on forever on this debate out here on the floor. I just would suggest to the majority leader that we remove category 1 completely from this unanimous consent, from this unanimous-consent request, get the rest of the unanimous-consent request, nobody loses any rights, everybody gets a chance to look at the amendment.

My feeling is nobody is going to lose any rights anyway. But we are going to carry out the spirit of that habeas corpus. It has just got to be drafted. So, if we get out here and debate every one of these on this unanimous-consent request, we are never going to get anywhere.

Let us just take the unanimous-consent request and amend it and take out anything relating to category 1 at this stage. That is my suggestion.

Mr. LEAHY. Mr. President, if I can finish what I was saying, it will only take about 1 more minute. The Senator from Georgia raises a good point.

My concern, and the reason I mentioned habeas corpus, is that we had worked very, very hard on that; Members on both sides of the aisle. The two leaders were unfailing in their efforts to bring us together.

My concern is that there could be a number of other issues like this that will keep coming up that the drafting is so far off what we agreed on, it will create further stumbling blocks. I hope those doing the drafting may call in the Senators who are making the agreement to make sure as they do it—most of us are on call, ready to come in at any moment—to make sure they do it right.

I yield the floor and I thank the leader for his courtesy.

Mr. BYRD. Mr. President, there is not much left of the agreement. We took out package No. 1. The agreement would still hold with respect to category No. 3 and the taking up——

The PRESIDING OFFICER. The taking up of the substitute for the House bill and pending amendment.

Mr. BYRD. That can all be done without unanimous consent. What I am saying is as far as the unanimous consent, about all that would be left hanging here would be category 3.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The majority leader has the floor.

Mr. GRAHAM. Will the leader yield?

Mr. BYRD. Yes.

Mr. GRAHAM. Mr. President, I have some concerns if we pass list 1, do not arrive at unanimous consent on that and do on list 3. That is, if we were unable to arrive at a resolution that will allow a particular item to be included in list 1, will it be protected in that it can then be offered under list 3?

Mr. BYRD. Well, at this point I think, probably, everybody is protected to do anything he wants. To do anything.

I do not mean to give the Senator a flippant answer. I do not mean that at all. His question was pertinent. But I thought we had crossed these obstacles. Obviously we have not.

If we remove that portion of the request that deals with category 1 we do not have much left. We have what I would term as the rump portion of the overall request.

So I am tempted just to simply withdraw the request and not go on the bill until we get some resolution of this because I am somewhat hesitant to get into this thing without some kind of agreement. We do not have any time agreement on anything other than the Hatfield-Evans-Levin amendment. If we are just going to go into it without anything other than that, I do not know where this thing might go.

Mr. NUNN. Will the majority leader yield?

Mr. BYRD. It may all fall.

Yes.

Mr. NUNN. The majority leader is correct. The thing that I regret about this dialog is that there are other amendments in category 1 that are just as important to the people who have them in there as the Senator feels about habeas corpus. That whole list is important.

I can assure everyone that the spirit of the agreement is going to be carried out and that category 1 list is not going to come out here until people are satisfied with it.

If we do not have an element of good faith in this, we are not going to finish, and if the Senator from Massachusetts does not accord anyone an element of good faith, then there is no one else who has an important matter on the list who is going to accord that, too, and then the agreement breaks down.

The majority leader is correct. I would urge the Senator from Massachusetts not to object to this with the assurances he will be given every opportunity to look at the habeas corpus language, exclusionary rule, just as the other people will. The whole thing will break down if we do not get an agreement. The Senator is not losing one iota of any right. If we do not get this overall package, we really cannot get started on this.

I hope nobody complains Saturday night, next Monday night, or Tuesday to the people working on this that we are staying too long on this package. I hope no one complains, on the other hand, the the majority leader and Republican leader decides we cannot make it. We tried to deal with people on the basis of good faith, and we have to be accorded some degree of good faith from everyone here.

Mr. BYRD. Mr. President, for the moment, I withdraw the request and will not go on the bill because if we do, there will be any and all kinds of amendments offered and we can get into that political sideshow that has nothing to do with the amendments we are talking about. But without an agreement, I am hesitant to get on the bill.

Mr. DOLE. Will the majority leader yield?

Mr. BYRD. Yes.

Mr. DOLE. I want to try to encourage the majority leader not to do that if we can agree that upon completion of the part of the agreement dealing up to and including the death penalty that the majority leader be recognized. At least we would get it started and there would not be anybody coming in with a prayer amendment, South Africa, whatever. I think once we have a couple of hours, different people with Senator NUNN and Senator RUDMAN, all these things are going to go away.

I agree with Senator KENNEDY, we are not going to try to shaft anybody in the process. There are 30 amendments involved and when we all agree, when they are all worked out, you are going to come back with the package. If we cannot work it out, we are not going to have a package.

I am afraid if we do not get started, it may be 4, 5 o'clock again before we begin anything. I know Senator HATFIELD is prepared to start right now on his amendment.

Mr. BYRD. Mr. President, the Apostle Paul in Colossians tells us to walk in wisdom toward those that are without. I think that the distinguished Republican leader has just indicated a clear living by that admonition by Paul, and I am the one toward whom he has walked. He has walked in wisdom toward those that are without. So, I am going to follow that suggestion.

Let me repeat my request so it will be loud and clear and indubitably understandable as well as I can make it so.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the House drug bill and that the Senate drug bill be offered as a substitute for the House bill; that the titles be considered to have been read and that Senators HATFIELD, EVANS, and LEVIN be allowed to call up their amendment, which is in category 3 and deals with the death penalty; and that amendment I hope we all understand what they have drawn because I do not want to put a 2½-hour limitation on an open-ended death penalty. If anybody has any question about that amendment, now is the time to raise it.

Mr. DOLE. It is a motion to strike, I think.

Mr. LEVIN. It is a motion to strike the substitute mandatory life, minimum 20 years, and maximum death, as I understand the Senator's amendment.

Mr. BYRD. Very well. There will be a 2½-hour limitation on that amendment, equally divided between and among the three authors of the amendment and Mr. D'AMATO. He will have time in opposition thereto. And that upon disposition of that amendment, the majority leader be recognized to propound a unanimous-consent request at that time if we agree to one and I will determine at that time if we go forward on the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senate proceeded to consider the bill.

Mr. STEVENS. Mr. President, before we leave that matter, if my friend will yield for one question.

Mr. BYRD. Yes; I yield.

Mr. STEVENS. Mr. President, I wonder if it is also possible to get an agreement now so long as we are on this bill that all amendments will have to be relevant or germane.

Mr. BYRD. No; I do not propose to make that request now. That will be part of the request when I make the request if I make the request.

Mr. STEVENS. I thank the Senator.

AMENDMENT NO. 3677

The PRESIDING OFFICER. Presently pending before the Senate is the substitute amendment. That is the pending question. Under the unanimous-consent order just entered, the pending amendment is an amendment by Senators EVANS, HATFIELD, and LEVIN. There are 2½ hours on that amendment. The manager in opposition is Senator D'AMATO from New York.

(The text of amendment No. 3677 appears in today's RECORD under Amendments Submitted.)

Mr. BYRD. Mr. President, will the Chair allow me, I ask unanimous consent that the distinguished Senator from Illinois [Mr. SIMON] may proceed with a matter that has been cleared and he raised earlier for not to exceed 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Illinois.

SENSE-OF-THE-SENATE RESOLUTION REGARDING AIRPORT SAFETY AT O'HARE

Mr. SIMON. Mr. President, I thank the leader. I want to thank not only the leader and Senator DOLE but also my cosponsors.

Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 497) to express the sense of the Senate that the Federal Aviation Administration shall submit to Congress a plan on immediate and long-term solutions to the air traffic problems at O'Hare International Airport in Chicago, Illinois.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. SIMON. Mr. President, I want to thank my cosponsors, Senator DIXON and Senator KASSEBAUM. I also want to thank Senator FORD and Senator HOLLINGS who helped to work out the language.

We have a problem at O'Hare Airport. We have had 30 near-misses so far this year. The next biggest, most heavily-traveled airport is Atlanta. They have had six.

The day before yesterday I had a meeting with the FAA. They are reporting some long-range recommendations. This resolution is simply a sense of the Senate that has been cleared on both sides that says to the FAA, "Come in with some short-term recommendations to improve air safety at O'Hare."

Mr. President, O'Hare International Airport in Chicago today faces a crisis, and that means the national air traffic control system faces a crisis.

Within a recent 4-day period, there were four near misses over Chicago bringing this year's total to date to 30 near misses within the Chicago airspace. This compares to 12 near misses in 1987 and to the record set in 1986 of 22 near misses.

Responding to these new instances of air control errors at O'Hare, the Federal Aviation Administration last week imposed emergency rules that have limited aircraft access at O'Hare during peak periods. This has meant more than 100 flight delays, day after day, not only for passengers at O'Hare, but for passengers enroute to O'Hare and for passengers involved with connecting flights to or from O'Hare.

Clearly, this is an unacceptable situation.

Chicago's O'Hare is the Nation's busiest airport. The second busiest terminal, Atlanta's Hartsfield Airport, accounts for only six near misses to date this year. This is a difference that cannot be tolerated any longer, by the Federal Aviation Administration, by the airlines using the three Chicago airports, or by the thousands of passengers who are bearing the brunt of this crisis. It is all too clear today—and it has been all too clear for years—that inaction has made a manageable situation unmanageable without the extreme steps FAA has invoked recently at O'Hare. Inaction has made O'Hare a disaster waiting to happen.

This situation has smouldered since 1981. Sometimes smouldering embers break out into a real fire, and that is the situation we face today in Chicago. This Senator and other Senators have come to this floor time and time and time again to warn about what is happening at O'Hare and to urge action. The Administration has uncreasingly opposed each and every initiative we have brought forward in our frustration with the inaction.

Over the past year several investigations have been conducted and reports issued on the air traffic control at O'Hare, including reports by the General Accounting Office, the National Transportation Safety Board and the Better Government Association of Chicago. All have warned about inadequate staffing and experience behind the radar screens at O'Hare. And this fact in itself is not new; the number of fully qualified controllers at O'Hare has not come close to the agency's own standard for O'Hare since 1981. Today, there are 32 fully qualified controllers, matched against FAA's authorized standard for O'Hare of 72.

It was not until August, however, that we saw the first signs that FAA recognized the seriousness of the situation and was beginning to move toward a plan to solve it. In early June, a National Transportation Safety Board team went to O'Hare after another period of unusually high controller error. In their report following the investigation, NTSB noted serious understaffing, mandatory overtime, antiquated equipment and inadequate training as all contributing to the risks in air traffic control at

O'Hare. It was only then that the FAA put together its team to undertake its own review of O'Hare. The agency sent a team of investigators to Chicago, and the report they have compiled—with the cooperation of airport authorities, controllers and others—will be officially released on Friday. It is a list of steps to remedy O'Hare's problems. I am gratified to see this progress, however belated. But these are mostly long-term solutions. And O'Hare faces a short-term emergency.

This is a crisis that demands a clear course of action, including a timetable for the step-by-step improvements we will need to restore O'Hare to full capacity and to equip O'Hare for the challenges of the future. Today I am introducing a resolution, with my colleagues Senators Kassebaum and Dixon, asking for the FAA to report back to Congress, by October 25, with a specific timetable for implementation of the immediate and long-term recommendations included in their analysis of the problems at our busiest airports, and including also other proposals that may not be included in their analysis. This resolution would not have the force of law, but given the constructive nature of my recent discussions with FAA officials, I believe it will have the effect of law.

We know what the problems are at O'Hare; the FAA knows what the problems are at O'Hare. I have assured FAA I will work with my colleagues to facilitate their work in instances where congressional action may be needed.

It is my hope that we in this body can act quickly in taking this step—a step that is one of many that will be needed to assure safety in the skies.

Mrs. KASSEBAUM. Mr. President, I rise in support of the resolution by the Senator from Illinois [Mr. Simon], expressing the sense of the Senate regarding the need for immediate action by the Federal Aviation Administration with respect to air traffic control at O'Hare Tower, O'Hare International Airport.

Recent press reports detailing operational errors and near misses at O'Hare have resulted in a very real sense of concern over the safety of air travel into, and out of, the Chicago area. Those reports are viewed with an increasing sense of alarm by the traveling public, and by the Congress.

The FAA should move quickly, and decisively, to address the situation at O'Hare. This resolution puts the Senate clearly on record on the matter. It suggests the FAA should move immediate to implement a short-term "fix," and expeditiously to find a long-term solution to the air traffic control problems at O'Hare.

It should be noted, for the record, that the FAA is presently working to improve the safety of air traffic operations at O'Hare. The FAA has ordered a cut back in the number of flights handled per hour, and is currently studying options for further action. Nevertheless the need for further action is pressing.

It will not be easy to find a solution to the traffic problems at O'Hare which preserves the margin of safety the Congress demands while maintaining the capacity levels the public has come to expect. If such a solution cannot be found then the FAA must move swiftly to further restrict the level of air traffic operating into, and out of, O'Hare.

SENDING MORE CONTROLLERS TO O'HARE

Mr. DIXON. Mr. President, I wish that Senator Simon and I did not have to be standing here today offering this resolution, but the Federal Aviation Administration has been treating the air traffic control problems at O'Hare as though it were the fault of the controllers who are now on duty. These controllers are overworked and underpaid, and considering the way they've been treated, they are doing a darn good job. What we desperately need are at least 30 new full performance controllers working the tower at O'Hare right now. When Senator Simon asked the FAA how they were going to deal with the problems developing at O'Hare Airport, they responded by saying they were working on bringing in two new controllers per month. I am sorry, but at that rate we may as well just close up the airport altogether.

The FAA is justifiably concerned about the number of controller mistakes at O'Hare. There have been 30 so far this year, far surpassing the 1986 record of 22.

I find that record appalling. It is simply indefensible, and it demonstrates the total bankruptcy of the way this administration is handling our air traffic control system.

Today, the Nation's busiest airport still has only 35 full performance level journeymen controllers, instead of the full strength level of 72.

These latest restrictions at O'Hare make clear the fact that we need a more permanent answer to the problems in our crowded skies. Administration leaders have had 7 years, and where are they—no where. Their priority was maintaining their rigid ideological opposition to hiring back any fired controllers. They seem much less concerned as to whether there is a controller work force that is large enough and well trained enough to safely meet our air travel needs. When the mistakes get so numerous and so serious, as at O'Hare, that even they can no longer ignore them, they respond with Band Aids instead of the real care that is required.

Today we are asking that the FAA examine the patient, and give us a diagnosis soon. The American traveling public deserves it, and so do the Nation's air traffic controllers.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the resolution.

The resolution (S. Res. 497) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. Res. 497

Whereas between Friday, September 28, 1988, and Tuesday, October 1, 1988, there were four near misses over Chicago's O'Hare International Airport;

Whereas the positions of a significant number of full performance level air traffic controllers were vacated at O'Hare Tower at O'Hare International Airport, the Nation's busiest airport;

Whereas the Federal Aviation Administration has not been able to meet the agency's own requirement of 70 percent full performance level air traffic controllers at O'Hare Tower;

Whereas the National Transportation Safety Board, the General Accounting Office and the Better Government Association of Chicago have documented the hazards of the Chicago airspace and recommended staffing improvements in the operation at O'Hare Airport Tower;

Whereas in 1988, 30 operational errors at O'Hare Tower have already been documented, surpassing the previous record of 22 in 1986;

Whereas air traffic at O'Hare International Airport has increased 15 percent since 1981;

Whereas air traffic at O'Hare International Airport in one recent week reached an all-time record of 3,853 takeoffs and landings, surpassing the peak load of traffic during the summer; and

Whereas an even greater holiday traffic season demand is now anticipated; and

Whereas the Federal Aviation Administration has now completed a comprehensive review of air safety at O'Hare International Airport: Now therefore be it

Resolved, That it is the sense of Congress that not later than October 25, the Federal Aviation Administration shall develop and transmit to Congress a plan outlining both the immediate and long term actions the agency shall take, and the timetable for such actions, to ensure that FAA's own standards for air traffic controller staffing and experience levels at O'Hare International Airport are fulfilled as expeditiously as possible, to resolve the present emergency and to ensure adequacy of air traffic control operations in the Chicago airspace in the future.

Mr. SIMON. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

OMNIBUS DRUG INITIATIVE ACT OF 1988

The Senate continued with the consideration of the bill.

Mr. BYRD. Mr. President, I think I have an understanding about the amendment, if I can have the attention of the distinguished Republican leader. This is an amendment to strike and insert; is that correct?

Mr. HATFIELD. That is correct, Mr. President.

The PRESIDING OFFICER. The amendment has not been sent to the desk.

Mr. HATFIELD. That is correct.

Mr. BYRD. If it is an amendment to strike and insert, no amendment to the amendment is in order, but ordinarily an amendment is in order to the material to be stricken and an amendment is in order also to the material to be substituted.

I hope that we all understand that no amendments to that amendment are in order—no amendments. It is strictly the strike and insert. No amendments to the underlying material to be stricken will be in order. No amendments to the language that will be substituted in lieu thereof are in order. Otherwise, it is wide open for all kinds of death penalty amendments, and I will not be a part of that. Is that agreeable?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. I thank the Chair and I thank all Senators.

The PRESIDING OFFICER. The Senator from Oregon.

AMENDMENT NO. 3678

(Purpose: To substitute a life sentence without release for the death penalty in the case of drug related killings)

Mr. HATFIELD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon, Mr. HATFIELD, for himself, Mr. EVANS, Mr. LEVIN, and Mr. CHAFEE proposes an amendment No. 3678.

Mr. HATFIELD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In lieu of title VII of the bill, insert the following:

TITLE VII—LIFE SENTENCE WITHOUT RELEASE IN CASE OF DRUG RELATED KILLINGS

SEC. 7001. LIFE SENTENCE WITHOUT RELEASE FOR DRUG-RELATED KILLINGS.

Section 408 of the Controlled Substances Act (21 U.S.C. 848) is amended—

(1) by redesigning subsection (e) as subsection (f); and

(2) by adding a new subsection (e) as follows: "Life sentence without release

"(e)(1) In addition to the other penalties set forth in this section—

"(A) any person engaging in a continuing criminal enterprise, or anyone working in furtherance of a continuing criminal enterprise who intentionally, or with reckless indifference to human life, kills or participates substantially in the killing of any individual, shall be sentenced to life imprisonment without the possibility of release; and

"(B) any person, during the commission of, in furtherance of, or while attempting to avoid apprehension, prosecution or service of a prison sentence for, a felony violation of the Controlled Substances Act (21 U.S.C. 801 et seq.) who intentionally, or with reckless indifference to human life, kills or participates substantially in the killing of any Federal, State, or local law enforcement officer engaged in, or on account of, the performance of such officer's official duties, shall be sentenced to life imprisonment without the possibility of release.

"(2) As used in paragraph (1)(b), a 'law enforcement officer' is a public servant authorized by law or by a Government agency or Congress to conduct or engage in the prevention, investigation, prosecution or adjudication of an offense, and includes those engaged in corrections, probation, or parole functions.".

Mr. HATFIELD. Mr. President, it is with great disappointment that I once again rise to oppose enactment of a Federal death penalty. Clearly the need is not for Congress to think up more punative measures to fight drugs but for Congress to give the additional assistance necessary to effectively administer those measures that we already have.

My amendment would strike the death penalty provision in this drug bill and, instead, mandate—I underscore the word mandate—life imprisonment with no chance of parole for drug related killings or the killing of a law enforcement officer.

I might note that the Senate bill gives a range of 20 years to the death penalty, whereas my amendment is straightforward.

I am greatly disappointed at the leadership's decision to include the death penalty in the Omnibus Anti-Substance Abuse Act because there is so much in this bill I can vigorously support and would deserve the support of all of my colleagues. Just last March, I joined Senators DECONCINI, D'AMATO and many other colleagues in cosponsoring S. 2205, the original anti-drug abuse bill. With the exception of the death penalty, the bipartisan legislation before us is a remarkable achievement and represents months of hard work and countless hours of negotiation by Senators and staff alike. It must be frustrating for those who have worked so long and hard on this bill to see that effort jeopardized by the last-minute decision to tack on the death penalty.

With that exception, I applaud the rest of the bill. Without the death penalty, this legislation will help strengthen our Federal criminal law, enhance our drug law enforcement efforts, provide greater cooperation and coordination with State and local law enforcement agencies, and revitalize critical drug treatment and education programs.

I am particularly pleased that the legislation creates greater safety in the National Forest System by granting the Forest Service the additional authority necessary to effectively deal with the growth of marijuana and the production of other controlled substances in our national forests. I am also gratified that the measure reauthorizes the Justice Assistance Act, the Runaway and Homeless Youth Act, the Family Violence Prevention Act and provides funding for prevention and treatment programs relating to juvenile gangs, juvenile drug abuse and juvenile drug trafficking.

And I am hopeful that the managers will accept my amendment to establish a Joint Federal Task Force on Illegal Drug Laboratories and to provide assistance to State and local governments for demonstration projects in cleaning up those drug laboratories and safely disposing of their toxic contents.

The majority of the bill directly responds to the country's greatest needs in fighting this war on drugs. It provides greater assistance for law enforcement on the Federal, State, and local level, and pays greater attention to drug treatment and education, particularly to those in our country who are the most vulnerable—the young, the poor, and the homeless.

Mr. President, in an ideal world, where substance takes priority over mean-spiritedness, rhetoric, and politics, we would take a good look at these provisions designed to address the heart of the drug problem in this country, and promptly pass them. That is what the public expects.

But those provisions in the bill do not get the headlines, nor do they satisfy our lust for revenge against those in our society who are responsible for the pain, suffering, and death that the illegal drug underworld brings. So we focus our energies on controversial provisons which are either in the bill, like the death penalty, or which will be offered as amendments, such as limitations on the exclusionary rule and on writs of habeas corpus.

As a result, our focus becomes misdirected to those amendments which get all the attention, but do nothing to address the need. In our "get tough" response to the drug menace, we must be careful not to infringe upon or ignore the rights of each and every citizen as guaranteed by our Constitution. I refer to such rights as the freedom from unreasonable searches and seizures, the freedom from cruel and unusual punishment, and the freedom from suspension of the writ of habeas corpus for prisoners. Those are rights which we must protect from infringement not only when to do so brings praise, but most especially when, because of the passion of the moment, to speak against measures which impact those rights brings accusations on this floor of being "soft on crime" or "soft on drugs."

I was saddened that my greatest fears about election year politics riding roughshod over the Bill of Rights were realized when the House considered its drug bill. As the Washington Post recently observed: "The House never disappoints on a drug bill, certainly not in an election year. Give the Members a choice between a tinpot gesture and constructive legislation and they'll take the gesture every time."

And so it goes, Mr. President. Adoption by the House of a Federal death penalty, further limitations on the exclusionary rule, and numerous "user accountability" measures make for great passionate politics but poor public policy. The excesses displayed on the House floor caused Representative DON EDWARDS, a former FBI agent who chairs the House Judiciary Committee's Subcommittee on Civil and Constitutional rights, to declare in a recent Post article that the House bill is an "assault on the Constitution" and a "shameful, excessive election-year disgrace."

Many Members of the House publically expressed the hope that when the Senate considered its drug bill, cooler heads would prevail and these offending provisions would be defeated. We need not turn this war on drugs into a war on the Bill of Rights or an effort to rewrite the fourth and eighth amendments to the Constitution. I am thankful that, with the exception of the death penalty, these offending provisions which were added to the House drug bill are not now in this Senate bill and I commend my Senate colleagues for that. I pray that the Senate will have the good sense not to adopt them now.

However, Mr. President, deciding to attach a Federal death penalty title to this bill is simply a continuation of the same image-over-substance mentality. The provision taints the entire package and I am greatly disappointed that I must vote against the bill should the death penalty provision remain.

Obviously, to oppose the death penalty does not mean in any way to be soft on crime or to condone the brutal acts of murderers, whether the killings are drug-related or not. The damage inflicted by these criminals has been done, and the pain, suffering and grief of the victims and their families can never be wiped away. No one grieves for those victims of senseless acts of violence or detests the criminals who commit them more than I. But in our disgust and outrage, we must now grow numb to the principles which are called into question by this provision. The desire for vengence, for eye-for-an-eye justice, is a principle and a mentality unworthy of civilized government and of this body.

Because I support the rest of the bill, as introduced, I am moving to strike the death penalty and impose, in lieu thereof, a mandatory life sentence with no chance of parole for drug related killings or the killing of a law enforcement officer.

So Senators can take a tough stand on crime and criminals, without sanctioning legalized killing, by voting for my amendment. My colleagues, with this amendment you can say to the drug dealer contemplating the assassination of an innocent person or a law enforcement officer, "If you are caught and convicted, you will never be outside of a prison for as long as you live."

Mr. President, I believe the public turns to the death penalty in their frustration at learning that criminals who have been sentenced to life in prison are parolled after 10 or 15 or even a less number of years. The amendment I am offering says that life imprisonment for these criminals means life imprisonment. It says that society will punish you severely, by placing you behind bars forever if you commit one of the specified crimes.

The amendment makes another, but equally important, statement. And it is that our Government, as the embodiment of the highest ideals to which we as Americans aspire, will not sanction the taking of a life as punishment for the taking of a life. We would be making the point that the killing of a criminal who killed an innocent person serves only to perpetuate a circle of hate and violence, ultimately cheapens the value of life and performs no function worthy of civilized government.

For the murder of an innocent person, I believe that the killer must be punished severely, and certainly life in prison accomplishes that in a most forceful way. But I do not believe our society should ever be one to say "this one lives, this one dies." Those criminals who make that same decision should be punished, and my amendment provides for precisely that. But it draws the line where one should be drawn, at the point where the Government is about to take a life.

Mr. President, how is it possible that the issue of being "tough on drugs" has come to be framed on how one votes on the question of the death penalty? Why is it that the Senate's resolve to fight drug abuse and drug-related crime hangs on whether we will flip the switch on an electric chair? Indeed the death penalty has appeal, but so does mob rule. It might make us feel good to exact revenge, but as has been proven time and time again, violence begets violence. Gandhi said that the means are the ends in the making; and so our embracing correctional practices which kill the offender serves only to dull the consicence of society little by little, our lives growing more numb to killing and our hearts further hardening to the needs of the world.

All we have to do is look at how we have embraced abortion on demand and the millions of lives that have been snuffed out by the use publicly-sanctioned abortion.

Like our foreign policy, our domestic policy, and public policy should not be written in blood, should not be implemented with violent means, should not be destroying life. As leaders of the free world, we should be seeking to sustain life at all stages of its development. Capital punishment, by nature, does not sustain life. It does not bring the victim back and, as numerous studies have shown, it does not serve as a deterrent to others.

We have seen those studies in those States that have a death penalty. And the rates of murder and other violent crimes are in some cases higher than in those States that do not have the death penalty.

I offered an amendment not too many months ago; to respond to those who say that the death penalty is truly a deterrent, which would help maximize that deterrent by publically televising the execution. Let all Americans see that kind of barbarism that the State performs, if it is truly a deterrent. But that amendment was set aside. Why? Because we want to do it in the dark of night or we want to hide the reality of execution from the public because it would be revolting.

The empirical evidence showing clearly the death penalty's ineffectiveness has been cited so often on this floor, to Senators which have long since ceased to listen, that is repetition has become an almost meaningless exercise. However, the question remains: Why, then, are we rushing to enact a Federal death penalty?

Mr. President, I believe the death penalty fits nicely into the 1980's trend of combatting complex, intractable problems with quick solutions and effortless remedies. So if we want to address a drought in South Africa, we hold a rock concert. If we want to cut the Federal deficit, we pretend we can grow out of it and then give everyone a little more pocket change. And now with the war on drugs, we just enact a Federal death penalty, appropriate a few billion dollars and send out the press releases claiming victory over drugs. All of these solutions are seductively appealing, but they do nothing to address the root causes of the problems and will not stand the test of time.

Mr. President, at its most basic level, our war on drugs is a war over values. We have a terrible problem with illegal drugs because we have millions of our citizens who, because of dispair, have turned to their use as an escape from reality. Many of our youth who turn to drugs do so as the pressures and pain of a broken home cause them to see no future for themselves. Some begin to deal in drugs because of abject poverty and the lust to get rich quick, at all costs. And those addicted to drugs do whatever they have to do to get to the next fix.

Now I am not saying that our society is to bear all the blame for the drug problem. Nor am I absolving any individual from their responsibility to uphold our laws and to respect them. What I am saying is that if America does not look to the root causes of our problems, including drugs, then our efforts here will only ease the symptoms, but will never provide a cure. America is hurting, and many of our young peoples' lives are being squandered. We had better take a look at housing, nutrition, illiteracy, education, health care, civil rights, and job training. We had better look at abortion, which is doing more to speed the erosion of our values than we can fully comprehend. We had better look to the problems of our poor, our homeless and our desperate. For these problems, there are no trendy solutions or quick fixes.

Mr. President, I support the provisions of this bill that go to the heart of our drug problem: drug education, drug treatment, and yes, greater law enforcement. The essence of this bill takes that important first step in addressing the root causes of our drug problem. But I cannot support the total package if it means sanctioning legalized killing.

I urge my colleagues to support me in calling for passage of this bill without provisions such as the death penalty, that serve only to divide this country and to cloud the real issues and the real needs which cry out for response. I urge my colleagues to join me in severly punishing offenders with imprisonment forever, but not with killing.

Mr. President, I have proposed this amendment on behalf of Senators EVANS, LEVIN, and CHAFEE.

I would like to inquire at this time how much time I have used on my allocation of an hour and 15 minutes.

The PRESIDING OFFICER. The Senator has used 16½ minutes.

Mr. HATFIELD. I thank the Chair.

Mr. President, I yield the floor.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I am only going to speak for a few moments at this time, and yield the floor to my distinguished colleague from Pennsylvania [Mr. SPECTER].

Mr. President, S. 2852, the drug bill, as the Senator from Oregon has pointed out, Senator HATFIELD, is a good bill. No one, no matter how ardently we may feel that the death penalty is necessary and long overdue, has a weapon for the incredible butchery that is taking place on America's streets.

I am not even going to enter into the debate about deterrence. There has been much said about deterrence. There have been criminals who have indicated, yes, they knew there was no death penalty, it ran through their mind, and had there been, they would not have been as reckless, and would not have brought about the murder of their victim. That has been testified to countless times.

I am going to simply say that society has a right to bring to bear that punishment which is appropriate in some of these incredible, dastardly, inhuman, savage crimes of murder, which run the whole gamut from youngsters in a house who are machine-gunned to a young, 22-year-old police officer who is in his patrol car at 2 a.m. and is executed.

Society has a right to say that this will be the punishment for people who, without cause, without justification, without mitigating factors, will pay with their lives.

No one—not this Senator—claims that the death penalty will turn the tide in the drug war. That is not what this is about. We are saying it is long overdue that that punishment be available for people who, with cold, reckless disregard of the rights and lives of others, would take a life, under very carefully-crafted language that protects their constitutional rights.

Mr. President, I intend to expand upon these remarks. But, again, I resent the characterization that sometimes so nimbly we see on the screens or in the media, describing us who are proponents of the death penalty as saying that this is going to end the scourge of drugs.

We need the education and rehabilitation, and we need to put the dollars in to fight that battle. We have never really engaged the enemy. So let us not attempt to say that those of us who are proponents of the death penalty hold this out as a panacea for the drug war that we have never waged.

At this time I yield the floor to my friend, the Senator from Pennsylvania [Mr. SPECTER].

The PRESIDING OFFICER (Ms. MILULSKI). The Senator from Pennsylvania.

Mr. SPECTER. Madam President, I thank my distinguished colleague from New York.

I support the use of the death penalty in this drug bill, and I do so because of my experience with the death penalty as an effective deterrent.

I have enormous respect for our distinguished colleague from Oregon, Senator HATFIELD, and I have listened closely to the comments he has made, and I am in agreement with much that he has said. I am in agreement that it is necessary to direct considerable resources to the underlying causes of crime. This Senator has joined Senator HATFIELD and others in the support of welfare reform, education, housing, and important social legislation to deal with the underlying causes of crime.

However, Madam President, notwithstanding what our maximum efforts may be in that regard, the brutal fact of life is that there are brutal killings and murders in our society, day in and day out. We have vicious contract killings. We have innocent bystanders, children, on the streets of Philadelphia, in the course of the past several weeks, who are the murder victims of gunplay by those in the drug rackets. We have extraordinary cases of brutality that this Senator will not dwell upon because they are all well known to us. The essential issue is, does the death penalty have a legitimate role in the arsenal of weapons in dealing with crime?

Madam President, my experience in this field started some 29 years ago, when I was 29 and an assistant district attorney in the city of Philadelphia. From experience in the magistrates' courts, where I saw the full range of criminal conduct—robberies and burglaries and rapes and assaults and murders—I became convinced that the death penalty was an effective deterrent.

My experience later as district attorney convinced me that the death penalty was a deterrent and that it ought to be reserved only for the most egregious cases. While I was district attorney, with a large staff of 160 assistant D.A.'s, I reserved the final judgment as to what cases the Commonwealth of Pennsylvania, the city and county of Philadelphia, would ask for the death penalty. It was the sole province of the district attorney in whom that obligation was delegated.

I will recount one case which I submit is illustrative of a situation where robbers, burglars, and especially professional criminals are concerned about the possible imposition of the death penalty. I submit that in these cases they reconsider the use of weapons in the course of a robbery or burglary because they do not want to face the possibility of the death penalty.

One case that is illustrative is the case of Williams, Caters, and Rivers. Williams was 19, Caters was 18, and Rivers was 17. Williams chose Rivers, the 17-year-old, because he did not have a criminal record and, therefore, could open the door of the grocery store they planned to rob without leaving fingerprints.

As the statements of Williams and Rivers and Caters disclosed—and they were all in agreement on the underlying planning of the robbery which resulted in murder—Williams importuned the two younger men. Williams had a gun. Caters and Rivers said: "We're not going along on the robbery if you take the gun, because we're afraid that you may use the gun. There may be a killing, there may be a murder, and we might face the possibility of the death penalty."

So Williams put the revolver in a drawer and slammed it shut. Caters and Rivers got up and walked out of the room. Then, unbeknownst to Caters and Rivers, Williams got the gun out of the drawer, put it in his pocket, and, as you have suspected, Williams used the revolver on a storekeeper in north Philadelphia, and a murder resulted.

I argued the case on appeal in the Supreme Court of Pennsylvania, as an assistant district attorney, in the early 1960's. Williams received the death penalty because of his calculated, malicious decision to carry the weapon in the course of a robbery which resulted in death and first-degree murder.

Caters and Rivers received life imprisonment because the facts showed that they did not have the degree of malice that Williams possessed, although technically, as a matter of law, any coconspirator can be held to the same level of complicity.

The significant fact of this case is that a 17-year-old like Rivers and an 18-year-old like Caters, with marginal IQ's in the 90's, knew that the death penalty was a potential result of their robbery if a gun was carried, and they refused to go along if that gun were to be in the possession of Williams.

I have seen that illustrated in many, many cases with professional robbers and professional burglars, where they make a conscious decision not to carry a weapon because of their concern for the death penalty.

The statistics go in all directions on this issue. You can find statistics to support absolutely anything. But I believe that the empirical experience by those who have had experience in law enforcement is that the death penalty is a deterrent.

An experienced ex-New York City police officer who serves on my staff, Tom Madine, commented about the increases in murder in New York State as a result of the death penalty having been eliminated there.

Simply stated, the evidence is overwhelming, in the opinion of this Senator, that the death penalty is a deterrent.

When Senator HATFIELD talks about vengeance, an eye for an eye and a tooth for a tooth, I agree with him that there is no place in our system of criminal justice for vengeance.

When we view the public opinion polls and see that the overwhelming majority of Americans want the death penalty, that, too, I think is no argument in favor of the death penalty.

I believe that the judgment has to be made in terms of whether or not the death penalty is an effective deterrent against crimes of violence, and I believe that to be so.

So far as this Senator is concerned, it is not an election-year issue and it is not an issue which attaches solely to the drug bill.

Earlier in this session, just a few days ago, actually, I introduced legislation which would conform the Federal death penalty statutes to the decisions of the Supreme Court of the United States since Furman versus Georgia.

It may surprise people to know that there is no valid death penalty on the books of the Federal Government today on any crime.

The Federal statutes call for the death penalty on many offenses, the assassination of a President, espionage, sabotage, hijacking, crimes committed in connection with Federal banks, train wrecks, and many others, but none of those statutes is valid because the requirements of the Supreme Court of the United States have not been met.

Only one bill has been passed since 1972 when the Supreme Court of the United States established those standards in Furman versus Georgia, and the 1974 Federal legislation on the death penalty does not meet standards of later Supreme Court decisions.

The death penalty provision introduced in this bill does meet those standards.

I think that significance ought to be attached to the fact that in our evolving forms of justice, the Supreme Court has required the death penalty not be imposed unless aggravating circumstances are proved to the satisfaction of the jury, that mitigating circumstances are considered by the jury, and that every possible benefit is given to the defendant. The death penalty will not be imposed unless it is, simply stated, a clear-cut case of heinous, outrageous, egregious conduct for which no other penalty will suffice.

The most powerful argument that I know of against the death penalty is the possibility of mistake, and that is always a problem, no matter how exacting the procedures are in a criminal courtroom. But today with the array of rights which a defendant has and with the current levels of scrutiny, review, and proof of aggravating circumstances and evaluation of mitigating circumstances, it seems to me that the risk is very, very remote indeed.

This Senator believes that there has to be an analysis and a balancing of victims' rights, and I am absolutely convinced that the presence of the death penalty will save innocent people and will be effective in dissuading criminals.

When the distinguished Senator from Oregon talks about a mandated sentence of life imprisonment without parole, the problem with that proposition is that there is no such thing. It is not possible to have life without parole, and if you flick on your television screen, you cannot miss the celebrated case of Willie Horton on the Massachusetts Furlough Program, a man who received life without parole. I do not raise this issue for any collateral purpose, but only to cite a well-known case where the person was given a furlough, although he was serving a sentence of life without parole, and he went to the State of Maryland where he captured an innocent couple and brutally assaulted the man and raped the woman.

The fact is that if it is life without parole, that is a clear signal, a factual indication to would-be criminals that they may get out of jail because life without parole can be commuted. For that matter, the death penalty can be commuted. But the death penalty is a matter of real concern and real fright and has demonstrated that the would-be criminals and the would-be robbers like Caters and Rivers and thousands or tens of thousands of others are influenced when you talk about the death penalty. Simply stated, they are not influenced when you talk about life imprisonment.

I believe that this is a good bill and I intend to talk about other portions of the bill at a later stage. But when we take into account the totality of circumstances in our criminal courts, we need to construct a system of responses which accommodate to the individual. We need to have realistic rehabilitation for first time offenders, youthful offenders, and some second offenders. In the District of Columbia we have recently put into operation literacy programs and vocational training programs in order to give the first time offenders, second offenders, and juvenile offenders a chance to escape from the wheel of crime.

It is not surprising that if you have a functional illiterate, someone who cannot read or write who is freed from jail without a trade or a skill will get involved again in a life of crime. That is why we need to approach that level of offender with an opportunity for realistic rehabilitation.

However, when that individual becomes a career criminal and a career criminal is defined as someone who has committed three or more crimes of violence, than I would suggest that the armed career criminal bill which this Congress enacted in 1984 takes the correct tack of imposing a mandatory sentence of 15 years to life.

Bear in mind when you talk about a life sentence under our system, a person serving a life sentence in the Federal system is eligible for parole after 15 years. Those tough sentences for career criminals are the appropriate course, although we need to provide jails, but beyond that category there is a need to have the most extreme penalty, the death penalty, because that, I submit, is an effective deterrent.

Madam President, I would suggest to you, at least speaking for myself, that the judgment on moving to capital punishment is not one that this Senator comes to lightly. It is not one that I would seek out of a spirit of vengence or retribution, and not one that I would seek without a rational plan of trying to work on the causes of the crime. I submit that we should be trying to work with first offenders, juvenile offenders, second offenders, rehabilitation for drug addicts, provide vocational training in prisons to give people an opportunity to succeed on the outside world. However, we need long sentences for career criminals, and then when they reach the level of the kinds of brutal, outrageous, heinous crimes with the protections afforded for a defendant in such a criminal case, that it is appropriate to have the death penalty. I submit that it would save the lives of many innocent victims in this country, many victims from crime, and it ought to be a part of the penal process in the Federal system and it ought to be included in this bill.

The **PRESIDING OFFICER.** The Senator from Oregon.

Mr. **HATFIELD.** Madam President, we constantly hear about the role the death penalty plays in the matter of deterrence. I suppose if we repeat an old conundrum often enough it eventually is believed. But the point that the death penalty serves as a deterrent is simply without fact.

Let me review some of the more recent, authoritative studies on the subject. Let us take a look at the murder rates per 100,000 people in each of the 50 States. The review will show that the murder rates are nearly twice as great in the States with the death penalty than in the States without the death penalty.

For example, in 1985, the average murder rate in the 38 States with the death penalty was 6.97 per 100,000. The average murder rate in the 12 States without the death penalty was 4.76 per 100,000.

In 1986, the average murder rate in the 37 States with the death penalty was 7.46 per 100,000; the average murder rate in the 13 States without the death penalty was 4.8 percent.

Madam President, when studying the homicides of 11 U.S. States, Thorsten Sellin, who is one of the best-known authorities on the deterrent effect of the death penalty, came to this conclusion:

> If any conclusion can be drawn from all the above data, it is that there is no evidence that the abolition of the death penalty generally causes an increase in criminal homicides or that its reintroduction is followed by a decline. The explanation of changes in homicide rates must be found elsewhere.

That is one of the outstanding authorities on this subject.

For those who believe deterrence is an attribute of capital punishment, I want to refer again to the fact that I offered to maximize that effect, much to the aghast of those who supported the death penalty, by publically, televising the execution.

Now, there appears to be, I suppose you could say, superficial logic that deterrence is in attribute of the death penalty, but the effectiveness of the death penalty statutes aimed at deterring offenders, particularly violent ones, is negligible at best. I think the statistics clearly bear out the fact that capital punishment does not really act as a deterrent.

Justice Brennan stated, in the landmark case *Furman* v. *Georgia,* 408 U.S. 304:

> * * * It is certainly doubtful that the infliction of death by the State does in fact strengthen the community's moral code; if the deliberate extension of human life has any effect at all, it more likely tends to brutalize our values.

I concur, Madam President, with Justice Brennan's observations, one of our outstanding Supreme Court Justices, because they emphatically decry the use of capital punishment as a means of restoring civility to society.

Madam President, let me make two other points. I think one of the most disturbing parts of executions or the use of capital punishment has been the degree to which it has impacted the minorities and the poor. The application of death penalties are very seldom applied to the wealthy and the people who can buy the services of outstanding lawyers. And so you find a disproportionate share of those who are victims of capital punishment amongst the poor, the illiterate, and the minorities of our country.

I have seen the application of the death penalty as a Governor. I have seen the distinctions within my own State. We have not only rural and urban distinctions, but we have east of the mountains, west of the mountains, we have all kinds of distinctions of cultural patterns of Oregonians, each one differing from the other.

I have seen how the application of a death penalty has been exercised during a time when we had the death penalty. I found that for a similar crime, in one area, it would be very difficult to escape without the death penalty as part of a jury decision or court decision, and in another jurisdiction, it would be very difficult to get one, even for similar crimes within one State. So you have the variability, the variance of the application of the death penalty that again shows the inequities involved.

Now I know in this particular bill it provides for the death penalty for any particular crimes. But again we have to go back to the process of law. You have to convict the person first in a court of law and there again you find potentially inequitable results due, in part, to the variance between a highly skilled criminal lawyer charging some exhorbitant fee per hour as against a court-appointed attorney to take care of the needs of the poor and the minorities.

Well, I could go on and on to indicate that the death penalty does not deter crime as supported by the studies and the people who are experts in this field. And, again, I emphasize the fact that where capital punishment does exist, the inequity, the unfairness, the discrimination in its application should cause us all to be revolted and to deny the death penalty as an extension of a Federal act here under this drug bill.

Madam President, first of all may I inquire of the Senator from New York, does the Senator from New York wish to speak at this time?

Mr. **D'AMATO.** I see that the Senator from Michigan is here, so I have no objection to the Senator yielding to the Senator from Michigan.

Mr. **HATFIELD.** I would be very happy to yield the floor to the Senator. Madam President, the Senator from Michigan, a cosponsor of the amendment, had asked for 20 minutes and I would yield 20 minutes to him if that is satisfactory with the Senator from New York.

Mr. **D'AMATO.** If I might speak for a few moments.

Mr. **HATFIELD.** Madam President, I yield the floor at this time.

The **PRESIDING OFFICER.** The Senator from New York.

Mr. **D'AMATO.** I thank the Senator from Oregon for yielding the floor.

Madam President, let me, if I might, refer to the Senate Judiciary Committee's report of September 1983. There are some who would offer as an inducement for not supporting this the fact that this has not been well considered. Indeed, the Senate and the House of Representatives, over a period of years, have held hearings, have considered the death penalty and its application. As a matter of fact, it was just in June of this year that we had a debate and voted on the very same amendment. This amendment would substitute life imprisonment for the death penalty for those who were convicted of the kind of murders that we have outlined, where there are no mitigating factors, no circumstances that would lead one to conclude that this was a person who did not really fully comprehend what he or she was doing; or that this was a person who may have committed this crime in a moment of passion or in fear, that he himself was going to be a victim.

No, we were clear about setting the guidelines under which the death penalty can be applied.

Let me refer to the Senate Judiciary Committee report of September 1983, when it said that in some cases imprisonment is simply not sufficient as a safeguard against the future actions of criminals. We in New York had a situation where we had a person sentenced to life imprisonment. His name was Lemuel Smith. Let me tell you what Lemuel Smith did. He killed, strangled, and mutilated a prison guard, Donna Paynt, in 1983.

This is not the only case of a guard who has been killed or an innocent victim who has been killed by someone who is sentenced to be incarcerated for the rest of his life so that he will not present a threat to society.

Let me suggest to you that the Supreme Court of the United States, more than a dozen years ago, said in Gregg versus Georgia:

> There are carefully contemplated murders, such as murder for hire, where the possible penalty of death may well enter into the cold calculus that precedes a decision to act. And there are some categories of murder, such as murder by a life prisoner, where other sanctions may not be adequate.

That is what we are suggesting. I will yield the floor after I give one other example.

Here is what a killer said, Luis Vera, in New York. He killed someone in the course of a burglary, Rosa Valez. After shooting the victim to death in her home in a burglary in Brooklyn, when he was caught, he said, "Yeah, I shot her. She knew me, and I knew I wouldn't go to the chair."

Here is a real life situation, one that can't be measured by all the statistics you want, that comes from a defendant who says that he actually murdered her because he was not afraid of facing the ultimate penalty. I suggest, as I have on the floor before, that the contract killers, that the drug kingpins who bring about the assassination of others, be they in drug trafficking, be they innocent women and children, be they police officers, are fearless today and it is about time that we struck fear into their hearts.

I yield the floor.

The **PRESIDING OFFICER**. Who yields time?

Mr. **HARKIN** addressed the Chair.

The **PRESIDING OFFICER**. Who yields the Senator from Iowa time?

Mr. **HARKIN**. Madam, President, it was my understanding the manager of the bill, Mr. HATFIELD, was going to yield me 10 minutes' time.

I ask unanimous consent that I be given 10 minutes of time off the time of Senator HATFIELD.

The **PRESIDING OFFICER**. Without objection, the Senator from Iowa may proceed.

Mr. **HARKIN**. Madam President, I rise in strong support of the Hatfield amendment.

Madam President, I first of all want to compliment the distinguished Senator from Oregon for his excellent, outstanding opening statement in regard to his amendment that he offered 45 minutes ago. The Senator from Oregon, in his usual calm, self-assured, reasonable approach, laid out what I consider to be the legal, moral, and practical reasons why the death penalty contained in the bill ought to be amended with the Hatfield-Levin-Evans amendment.

Madam President, I remember back when I was in college doing a research paper on the death penalty for one of my classes. This would have been back aound about 1961. At that time I had no strong feelings about the death penalty one way or the other. But through the process of research for a paper that I was doing on the death penalty and the imposition of the death penalty, it became clear to me that the death penalty was administered in a very discriminatory manner.

Now, I suppose some could argue that since that time things have changed and it is not quite as discriminatory as it used to be. That is probably true. Nonetheless, I have not seen anything changed in those intervening 25 years that in any way changes the fact that the death penalty today is still administered to the poor, the black, and the disenfranchised.

Those who have money and those who have the wherewithall to hire high-powered attorneys never suffer the death penalty. Let us be honest about it. And they are not going to. So it is still administered in a very discriminatory manner.

Also, 25 years ago it occurred to me that the death penalty was impractical in that, because of the legal recourses that have been built up, to impose the death penalty on an individual takes copious hours, hundreds of thousands of dollars, attorneys' time, the government's time, to wind through the entire thicket of the protections of the Bill of Rights to ensure that all due process requirements are met before the death penalty is imposed. So it becomes an impractical, expensive method of punishment.

But all those reasons aside, Madam President, there is one real fundamental reason why I am opposed to the death penalty. The Senator from Oregon alluded to this in his remarks and I want to expand upon it a little bit.

Madam President, one of the opening chapter of the Book of Genesis, Chapter 4, talks about the slaying of Abel by his brother Cain.

I am going to take the time here just to read from the Bible that sits every day on the President's desk on the floor of the Senate.

> And Cain talked with Abel his brother: and it came to pass, when they were in the field, that Cain rose up against Abel his brother, and slew him.
>
> And the LORD said unto Cain, Where *is* Abel thy brother? And he said, I know not: *Am* I my brother's keeper?
>
> And he said, What hast thou done? the voice of thy brother's blood crieth unto me from the ground.
>
> And now *art* thou cursed from the earth, which hath opened her mouth to receive thy brother's blood from thy hand;
>
> When thou tillest the ground, it shall not henceforth yield unto thee her strength; a fugitive and a vagabond, shalt thou be in the earth.
>
> And Cain said unto the LORD, My punishment *is* greater than I can bear.
>
> Behold, thou hast driven me out this day from the face of the earth; and from thy face shall I be hid; and I shall be a fugitive and a vagabond in the earth; and it shall come to pass, *that* every one that findeth me shall slay me.
>
> And the LORD said unto him, Therefore whosoever slayeth Cain, vengeance shall be taken on him sevenfold. And the LORD set a mark upon Cain, lest any finding him should kill him.

So, if you accept the Bible as historical truth and as theological truth, it becomes clear that in the opening chapters of the Bible, when Cain slew his own brother Abel, the Lord did not take vengeance and therefore slay Cain. Quite to the contrary. He let him live and said that anyone who ever shall slay Cain, vengeance shall be taken upon that person sevenfold.

I think there lies the lesson for generations and centuries after that; that, indeed, no individual has the right to take another individual's life. And, furthermore, I do not believe that individuals acting together in the name of the State have the right to take a life. And if we approve the death penalty that is, in fact, what we are doing. Maybe individually we are not taking that life. But we are collectively, as a society, as a State.

I once read in a Methodist church in which I had been asked to speak—a plaque that said:

> Why do we kill people who kill people to show that killing people is wrong,

So it is for these moral, legal, and practical reasons that I think the death penalty is wrong. I think the Bible shows quite clearly that it is morally wrong. And the practical reason is that it is not a deterrent. Drug kingpins on the streets face the death penalty every day. Not from law enforcement people but from their own kind, from the other drug dealers. They face a greater certainty of death from their own kind than they do from any law enforcement measures. And I also oppose capital punishment, Madam President, because the Hatfield amendment is much tougher on drugh dealers than is what is in the bill. I think a lot of people forget this.

The bill itself allows for anywhere from 20 years to life, for those who are convicted of murder in the dealing of drugs, 20 years to life—or possibly the death penalty.

We know how tough it is to get a death sentence. Twenty years, that is too lenient. The Hatfield amendment, I would point out to the Senator from New York, provides for a mandatory life sentence without the possibility of parole. No 20 years. No 20 years at all. Mandatory life sentence without the possibility of parole. You talk about a tough deterrent? That is a deterrent. Not the death penalty.

How many people ever get sentenced to death?

And I just ask my friend from New York. I know his strong feelings in this area. All you have to do is look at what happened to that guy that was dealing in drugs out on the west coast—what was his name—Delorean. Made that fancy car. He had millions of dollars. They caught him on film, redhanded, dealing in drugs. Is he in prison today? Of course not.

If you had the death penalty, would he have suffered the death penalty? Of course not. He had enough money to hire the best attorneys in this country to get him off. And that is what happened.

Mr. D'AMATO. If my friend will yield?

Mr. HARKIN. Yes, I will yield to the Senator from New York.

Mr. D'AMATO. I simply make the observation that the Senator does not attempt to say that we should, although as a matter of fact we have taken some 17 provisions that have been offered in the best of faith, to safeguard the rights of defendants, particularly in the application of the death penalty. But when one asks about who would or would not have paid, maybe we should ask the family of the young woman who was strangled and killed by Lemuel Smith in 1983 what they think. Because he was sentenced to life in prison. And so, when one says let us look at the application of the death penalty and what happens, it is a deterrent.

Mr. HARKIN. Will the Senator yield?

Mr. D'AMATO. Had Lemuel Smith been executed, he would not have been able to commit that crime, and we can provide example after example of similar situations.

The PRESIDING OFFICER. The Chair must advise the Senator from Iowa that his time has expired.

Mr. HARKIN. I wonder if I could ask Senator HATFIELD if the Senator would give me more time, if I could ask unanimous consent for an additional 10 minutes? Can I have an additional 10 minutes?

Mr. HATFIELD. I yield 5 minutes.

Mr. HARKIN. Five minutes?

The PRESIDING OFFICER. The Senator is recognized for 5 minutes.

Mr. HARKIN. The Senator from New York talks about heinous crimes, and of course we are all repulsed by heinous crimes. But should we ask that family what they think? Does the Senator suggest, somehow, that we should allow people to take the law into their own hands?

I know if something like that happened to a member of my own family, my daughter or my wife, my initial human reaction would be: Kill that person. But him in my hands and let me at him. I will tear him limb from limb to limb. Give me a gun and I will blow him away. But that is why we have laws to tame the savage beast that lies in all of us. We are human beings. Of course we seek retribution, but that is why we are a society that tries to bring civilized mores and norms to the surface, and we try to suppress those most debased human instincts—revenge, retribution, and put people to death. That is what I thought civilization was all about.

The Senator from New York also talked about all the safeguards they put in this bill. You ought to read them. Page after page of different things they have to go through before you can impose the death penalty. No one is going to suffer the death penalty under this provision. You have to go through so many hoops. It will take years, hundreds of thousands of dollars, countless thousands of hours of legal time and what do you get? You might get 20 years under the bill. You get 20 years; when under the Hatfield amendment, mandatory life sentence without the possibility of parole would be the sentence.

Do you know why this capital punishment provision is in the bill? Do you know why? Because it is a politically potent argument before an election, to talk about the death penalty for drug kingpins, those that are ruining the youth of our Nation by dealing in drugs. Sure, it sounds nice, sure, it is politically potent, but to stop and just think, if we really want to be tough on these drug kingpins, if we really want to have a deterrent, adopt the Hatfield amendment. I say take away the possibility of 20 years that the Senator from New York seems to think is quite legitimate to be put in the bill, 20 years to life.

So I think those who take the time to get past the emotional arguments, to get past the politically potent arguments 26 days before an election on having the death penalty for those drug kingpins, to get past that kind of emotionalism, can recognize that if you really want to be tough, the Hatfield amendment is tough. It is the toughest of all because it is something that will work. It will not take hours and hours and hours of attorneys' time, countless hundreds of thousands of dollars in the courtrooms to wind up with maybe 20 years.

The Hatfield amendment is clean, it is swift, it is sure, and that is the biggest deterrent to the crime. The swiftness and the assurance of punishment is the biggest deterrence to crime.

If you put the death penalty in there, criminals may or may not suffer it. They will drag it out for 10 or 15 years. If you put the Hatfield amendment in, mandatory life sentence without the possibility of parole, something that is swift and sure, that will be the biggest deterrent to any of these drug kingpins.

Madam President, I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Will the Senator yield me some time?

Mr. D'AMATO. I will, Madam President. I ask my distinguished friend to permit me several minutes, and I will yield to him.

Mr. HATCH. Will the Senator permit me 1 minute to comment?

Mr. D'AMATO. Certainly.

Mr. HATCH. Madam President, I heard the argument of the distinguished Senator from Iowa. All over this country people have had mandatory life sentences without parole and they are walking out on the streets sooner or later. Who is kidding whom? In Malaysia, or is it Micronesia, where they do not have any drug problem at all, they put people to death for handling drugs.

One of the big issues of this Presidential campaign is the fact that we have convicted murderers out on furlough. There may be a purpose for furloughs and there may be some legitimate criminal purpose for furloughs, but not that type of furlough.

Frankly, one thing that the death penalty does do, even though it takes a lot of time—and I do believe people's rights ought to be protected; that is one of the great things about this country—that person who has perpetrated that type of heinous offense is never going to perpetrate it again and no one is going to be harmed or hurt because of that person's activities.

Let me tell my colleagues this country has to start getting tough on these people. I want to tell the distinguished Senator from New York how much I appreciate his willingness to stand up for this particular measure. I thank him for giving me this minute. I do have a few more things I would like to say about it later.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Madam President, let me respond to my friend and colleague from Iowa, and he is my friend. We have worked together on many things. We disagree on this. This is not some election ploy. This matter was considered on June 10 and this very same legislative proposal was adopted. There is a legislative history going back to 1984 in the Senate, 1986 in the House, and I would have just assumed that this matter would have been disposed of. It has been passed by the House of Representatives.

On June 9, the day we debated it on this Senate floor, I said some cases are so absolutely outrageous that imposing the death penalty is society's way of expressing its moral indignation.

That is a judgment that I will not be making or my colleague from Iowa or my colleague from Utah will make. It will be up to a jury and a judge and, even after a conviction, a jury to determine whether or not the death penalty should be applied. None of us here will be making that kind of a judgment. That will be left to the jurors, to society.

Let me suggest to you that the Supreme Court has answered this question when it said that capital punishment may be the appropriate sanction in extreme cases, an expression of the community's belief that certain crimes are themselves so grievous an affront to humanity that the only adequate response may be the penalty of death.

We are elected to represent the people. I do not think that we should quote surveys just because the people may say they feel a particular way at a particular period of time, but the fact is that it is the overwhelming feeling of the citizens of this country, not just this year or last year or the year before, but for the past decade, that they want the opportunity to bring to bear the death penalty in those cases that are so outrageous, such an affront to humanity.

Madam President, I yield the floor to my colleague from Utah.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, people of the United States established the Constitution not only to provide for the common defense against external enemies but also to ensure domestic tranquility. I wish our results were the latter were commensurate with the results of the former. Drug dealing threatens our very domestic tranquility like nothing else. Even if drug thugs abjured the use of guns, they would still kill. Crack kills; dope kills. There is no question about it, no matter how peaceful their ingestion or how involuntary their initial consumption, drugs kill.

Mr. HARKIN. Will the Senator yield on that point?

Mr. HATCH. Yes.

Mr. HARKIN. Will the Senator add alcohol to that, please?

Mr. HATCH. Yes, and alcohol kills, too. I happen to be one of those who very firmly believes that and, as you know, our alcohol warning labels on alcoholic beverages and spent a lot of time trying to get people to consider abstaining from alcohol as well. But it is a little bit different when you have something that has been an acceptable use form in our society across the board compared to something that is unacceptable, compared to something that is illegal, compared to something that is devastating this country and building organized crime like nothing ever has. To me there is a distinction even though I think that alcohol kills also.

But I will give the Senator his due. I will say, yes, it does. But at least that is legal. Now, if the Senator wants to lead a fight to outlaw alcohol, I will certainly consider spending some time with him on it. But right now we are talking about hard drugs. We are talking about these people making billions of dollars off our young kids in this society, billions of dollars killing our young kids. Look at that professional football player who just lost his life this week because of an overdose of cocaine, or at least that is what it was alleged to be.

The drug thugs are not content to kill with their product alone. Their instruments of death not only include powders and pills but bullets. They rarely kill in passion. They purchases their weapons for a purpose, and that is to maintain their reign of terror in our inner cities. No longer is it rare to hear of deliberate executions that kill kids firing-squad style to teach a lesson. They kill bystanders and innocents to stake their turf and deliberately, intentionally, kill policemen.

Aware of the anguish of those left to mourn, troubled by brazen defiance of law, angered by the treatment of life as trash, we in this body cannot allow the dealers to win the war over drugs. Yet this amendment would leave us, in one important regard, unilaterally disarmed.

The death penalty already exists for drug-related killings, make no mistake about it. The cop on a raid, the kid on a drug run, the bystanders on the wrong end of the gun—the death penalty is all too real for them, far more real than for the warlords behind the carnage.

Like the good men sponsoring this amendment, I, too, hate to contemplate past cases where innocence was proven only after execution. I, too, realize that the death penalty is irrevocable. I, too, am troubled by the taking of life, whether it occurs at the hands of a citizen or the State.

But the primary duty of the State is to protect its citizens. Capital punishment serves that end. Capital punishment affirms the sanctity of life.

This is no paradox. Among the rights we hold inalienable are life and liberty. Yet we agree that one who abuses his liberty no longer merits liberty, and is denied that liberty by incarceration. One who takes life intentionally, under the grim circumstances described in this bill, has committed an offense so abominable that he no longer merits life. His other crime is so evil that the only just punishment is death. To attach any lesser penalty is tacitly to condone his activity. To attach any lesser penalty is to undermine our system of justice.

The Supreme Court has affirmed the public's right, under the Constitution, to exact serious punishment for serious crimes. And the Court has affirmed the public's right to exact the most serious punishment, death, for the most serious crimes—those alienating the inalienable right to life which that document was designed to protect. Such are the crimes at issue now.

Many here oppose the death penalty because they remain unconvinced that it deters murder. But I am satisfied that the death penalty saves lives. Those who oppose capital punishment must prove that it is ineffective as a deterrent if they are to forbid its use here. We are asked by proponents of this amendment, "What if just one innocent defendant were executed?" I ask in return, "What if just one innocent victim were spared?" Maybe that is a better question.

The Federal Government has not the right, but the duty, to rid itself of those who have committed the ugliest crimes in the most aggravated manner. I do not feel justified in jeopardizing the lives of innocent citizens, whether they are children or adults, civilians or police officers, by agreeing to this amendment.

So, Madam President, I urge this amendment's defeat. I think the people in this country are fed up with what is going on. I think it is time that we stood up on these issues. Again, I thank the distinguished Senator from New York for standing up on these issues. It has been a long, hard, arduous ordeal and many of us have been cheering him on. We appreciate that he did take this battle on even though he can be criticized by those who feel the other way. He happens to be right on this issue, and if we are ever going to make any real inroads on deterring this kind of heinous drug-filled activity and the results that come from that, then it seems to me his amendment is absolutely crucial.

Mr. D'AMATO. Will the Senator yield?

Mr. HATCH. I yield the floor.

Mr. D'AMATO. Madam President, I thank Senator HATCH and commend him on the eloquence of his presentation.

I am going to say something that may appear to be somewhat chiding. I think that this measure is not adequate, does not go far enough because, you see, I really do believe that the drug kingpins, not only should they be held accountable for the assassinations that they plan, perpetrate, or order, but that if we are ever really going to win this battle, they should not only face the death penalty as a result of these killings, for the killing of innocent people who are caught between these marauders, but I honestly believe that the death penalty should be applicable to the major dealers and traffickers in the poison of drugs just for that act.

Maybe some day if we want to bring real deterrence into this battle we will debate that issue. As a matter of fact, I think the American people would say that they feel, for those traffickers and dealers who are spilling this poison into our neighborhoods and communities, who are inundating us with it, that they should face the possibility of not life in prison but the application of the death penalty.

I understand that that might be a view which some may hold in some disdain. I think if we are really serious about what is happening in this country, maybe we ought to begin to consider that for those who traffic in the business of death, destroying the domestic tranquility of this country, our children, holding so many of us captive in our homes—and that is exactly what this scourge has brought about—that indeed those who traffic in death should face the death penalty. This is almost a miniscule move in the direction of saying that we are going to bring some deterrence.

I think this provision falls far short of bringing about respect for law and an understanding that drug criminals cannot take the lives of people by their conduct and then face maybe some lesser penalty, as my friend expressed, before some sharp lawyer may be able to get you out of it.

I yield the floor.

Mr. LEVIN addressed the Chair.

Mr. HATFIELD. Madam President, I yield 15 minutes to the Senator from Michigan.

The **PRESIDING OFFICER**. The Senator has been yielded 15 minutes. The Senator may proceed.

Mr. LEVIN. I thank the Chair. I thank my friend from Oregon.

Madam President, the amendment of the Senator from Oregon, which Senator EVANS, I, and a few others have cosponsored, makes sense for many reasons. Before I get to a few of those reasons let me concur with what I think is everybody's feeling around here; that we face in our streets and society some brutal, outrageous, and heinous crimes. We all want to do something about it. We all want to be effective, and we all want to do it in a way that is consistent with our Constitution and our mores. We do not differ in that regard.

Those of you who favor the mandatory life sentence without parole option to this 20-year life option that is the bill feel that it does exactly that.

Let me say one thing first about this amendment which is perhaps overlooked by many but which goes to the heart of it.

This amendment provides certainty. The bill in front of us provides uncertainty. It provides a 20-year minimum. Can any of us really say regarding the brutal murders that we know about, read about, or from our own experience, that somebody convicted of the kind of murder covered by this statute should walk away from prison in 20 years? Is that what is called being tough on crime—a bill like the bill in front of us, which offers the possibility of a 20-year sentence, to somebody who has committed the kind of brutal and heinous crimes which have been described on this floor, and with which we are all too familiar?

So the minimum sentence of 20 years make no sense. It is too weak a response. This bill contains that 20-year weak response as a minimum sentence. The bill also contains capital punishment as a possible maximum response. That response is the wrong one for a number of reasons which we have heard, and which I will go into in a moment as well. But the first point that I want to make is that this amendment does not strike capital punishment and stop there. It strikes the 20-year minimum, and substitutes for both of them a mandatory sentence of life without the possibility of release.

Some of the opponents of this amendment say, well, all that business about mandatory life without the possibility of release just does not mean a thing. Well, it means a thing if you write it tough enough in the statute so there are no loopholes or exceptions to it. As a matter of fact, the bill in front of us contains exactly that language as an alternative for sentence. The minimum is 20, the maximum is death penalty, but the bill also provides the possibility that a court—I hear many quoting on page 591—"If a person is convicted of an offense and the court does not impose the penalty of death, the court may impose a sentence of life imprisonment without the possibility of parole."

So the people who oppose this amendment say that language does not mean anything, and yet the bill that they are defending against this amendment contains the same language.

I have said that this pending bill which we seek to amend is too weak in one regard. It has a 20-year minimum, and that is not a tough enough response for these kinds of crimes. But I have also said it contains the maximum of capital punishment, and that does not make sense for many reasons.

The first reason why it does not make sense is that you cannot correct your mistakes. Our system of justice is not foolproof. Rarely a week goes by that we do not read of somebody who is convicted on death row, and suddently just barely in time we discover that the wrong person was convicted of the crime. We know of dozens, indeed perhaps hundreds of cases of people who have been executed who were innocent of the crime. We all have to worry about that. We all have to worry about a system of justice which is imperfect, and miscarriages of justice occur. We all know about them. Many of us personally know about them, and the risk of error is great enough and has been sufficiently documented through our history that we ought to be concerned about it.

Just the other day, literally yesterday we read in the paper that a pardon is going to be urged for a man convicted of a murder in Virginia. This person was convicted, apparently a terrible miscarriage of justice, and believe it or not this person even confessed.

This person in 1984 was convicted of a crime to which he confessed. Now the State attorney of Virginia acknowledges that this person is totally innocent. How did that happen? This person was facing the death penalty and decided to plea bargain. Confronted with the possibility that he might lose his life, he decided he better confess to anything when confronting that possibility. So he confessed to second-degree murder. Now 4 years later the Commonweath attorney of Virginia acknowledges it is a total miscarriage of justice, the totally wrong person.

Madam President, I ask unanimous consent that this article in yesterday's Washington Post relative to the case of 41-year-old David Vasquez now serving a 35-year sentence for a crime which the Commonweath attorney believes he was not involved in be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

PARDON URGED FOR MAN CONVICTED OF VIRGINIA MURDER—NEW EVIDENCE IN 1984 ARLINGTON SLAYING POINTS TO RICHMOND FELON

(By Dana Priest)

Arlington Commonwealth's Attorney Helen F. Fahey said yesterday she plans to ask Virginia's governor to pardon a man imprisoned on a murder conviction since 1984 because new evidence links a recently convicted murderer with the crime.

Fahey said she is seeking the release of 41-year-old David Vasquez, now serving a 35-year sentence, because she does not "believe he was involved" in the slaying of Washington lawyer Carolyn Jean Hamm. Vasquez pleaded guilty to second-degree murder in February 1985 in exchange for having capital murder charges against him dropped.

Fahey said tests of semen found on Hamm's body linked the killing to Temothy J. Spencer, who was found guilty by an Arlington Circuit Court jury in July of the rape and murder of Arlington resident Susan Tucker.

In September, a jury sentenced him to death for the 1987 rape and strangulation of Debbie Davis of Richmond.

Fahey said Spencer would not be charged with the Hamm slaying because of the two death sentences against him.

The request for pardon, which could take months, must go to the Virginia Parole Board, which then makes a recommendation to the governor.

Thomas J. Kelley, Spencer's attorney during his Arlington trial, said Fahey's decision "showed a lot of guts." But, he cautioned, "there's been absolutely nothing presented in any court in Arlington linking" Spencer to Hamm's death or any other crime in this area.

The Tucker case this summer was the first in Virginia to rely on genetic DNA testing to link a suspect to a crime. Fahey said police were unable to perform DNA tests in the Hamm case because of the condition of the four-year-old evidence. But, she said, tests that identify blood type and other components in semen revealed that the semen found on Hamm's body "matches Spencer's."

Fahey said Vasquez's case was reopened in December when Arlington police were investigating Tucker's slaying. She said Arlington detectives and FBI investigators, who were asked to reexamine the evidence in the Vasquez case, concluded "that whoever committed the Tucker homicide committed the Hamm homicide."

Fahey said Arlington authorities also have linked Spencer to 15 other incidents, including eight rapes in 1983 that occurred between the time he was released from a Virginia state prison and rearrested in Alexandria on a burglary charge in January 1984.

Spencer still faces rape and capital murder charges in the death of another Richmond woman and a Chesterfield County teenager.

Spencer was a resident of a halfway house in Richmond that allowed him weekend and night furloughs during the time the Richmond and Arlington slayings were committed, according to court testimony. He pleaded not guilty in those cases.

The Hamm case, which began in 1984, drew considerable community attention because of the brutality of the crime and the complexity of the case. Police said Hamm's nude body was found in the basement of her Arlington home, and she apparently had been hung from an overhead water pipe and sexually assaulted.

Richard J. McCue, Vasquez's attorney, said he spoke to Vasquez yesterday about the possible pardon. "He is pleased this step is being taken, but he's not going to be completely relieved until he is released."

At the time of Vasquez's trial, Henry E. Hudson, then Arlington's commonweath's attorney, described the case as "undoubtedly the most complicated" of his career as a prosecutor. He said at the time that Vasquez was in a trancelike state when he made statements to police about the slaying, creating "a case encased with a dream."

Vasquez is incarcerated at the Buckingham Correctional Facility in Dillwyn, Va.

Mr. LEVIN. Madam President, I personally have had experience with cases of error where innocent people were convicted in capital cases. When I was a young lawyer I was assigned to represent a man who had been in prison about 30 years. We do not have the death penalty in Michigan so he was not put to death. But he was convicted for a crime which he consistently claimed, like obviously many do, that he did not commit.

He was found guilty of killing a store owner in the presence of that store owner's daughter about 30 years before. And the daughter identified him at trial, and based upon that eyewitness of a fairly young woman at the time, despite the denials of this person that he was there, and his testimony that he was somewhere else, Charles Clark was convicted of first-degree murder.

Now 30 years later, our office is assigned to represent this man who is in prison. We sent out an investigator to find this young lady. This young lady no longer a young woman now in her mid-50's testified that when she testified at trial that this was the person who had killed her father 30 years before that, the reason she had done so was because that is what the detective told her to testify to. She did not realize there was anything unusual about that, and she very willingly gave us an affidavit. Charles Clark was given a new trial, and walked out a free man.

If we had the death penalty in Michigan—Charles Clark, a totally innocent man, with 30 years of his life in prison, would have been put to death. But at least he had some life. If there was a death penalty, you cannot correct that error.

Mr. President, few specters hang over the criminal justice system as ominously as that of the wrongful execution of an innocent person. Though the common belief is that such tragedies are extremely unlikely, the fact is that we not only can convict and execute an innocent person in this country, we have.

For years our justice system has strived to reduce the risk of an innocent person being convicted or executed. Lengthy appeals processes have been created to protect a criminal defendant's right to a fair trial. Despite the best efforts of the American court system, innocent people have been convicted, sentenced to death or to lengthy terms in prison, and executed in this century. Equally troubling is evidence that the causes of these mistakes, and the randomness of their discovery, cannot easily be remedied.

In the face of new documentation of these "miscarriages of justices," as we contemplate the reenactment of a Federal death penalty we must weigh the supposed benefits of capital punishment against the possibility of sending an innocent person to the electric chair.

A comprehensive study of innocent persons on death row or convicted of potentially capital crimes was released in November 1987 in the Stanford Law Review. The research by Hugo Bedau of Tufts University and Michael Radelet of the University of Florida, parts of which have been previously reported, found that 350 innocent people have been sentenced to death in the 20th century—between 1900 and 1986—and 23 have been executed.

Bedau and Radelet do not claim that these 350 cases form a complete list of innocent people convicted in this century. Because of the nature of our judicial system and the difficulties in settling issues of guilt or innocence, it is nearly certain that additional wrongful convictions have been made but are as yet undiscovered. Indeed, Mr. President, in 1987, eight men were released from death rows in four States after their innocence was determined. Briefly, the circumstances of their cases are as follows: I will discuss some of them in greater detail later on in my remarks.

First, Anthony Peck was acquitted in his third trial for a 1977 Florida murder—January 17, 1987;

Second, Perry Cobb and Darby Williams were acquitted in their fifth trial in Chicago after serving 7 years on death row—January 20, 1987;

Third, Vernon McManus left Texas death row after charges against him were dropped—January 21, 1987;

Fourth, in Florida, Joseph Green Brown was released after 13 years on death row—he once came within 15 hours of execution—for a crime he did not commit—March 5, 1987;

Fifth, on March 11, 1987, Texas death row prisoner John Henry Knapp was freed after 12 years on death row;

Sixth, Juan Ramos was acquitted at retrial for a 1983 rape-murder in Florida—April 24, 1987; and

Seventh, James Hill was released in May 1987 after his conviction and death sentence was reversed by the Florida Supreme Court.

Mr. President, already in 1988, six men have been released from death row after their innocence was proven.

Mr. President, the study conducted by Bedau and Radelet should convince the most ardent supporters of capital punishment that the system is indeed fallible. Despite our best efforts, we are not able to guarantee to the accused or to the public that we "have the right person" when we go to trial, or even to death row. Miscarriages of justice will continue to occur in the country, and as long as the death penalty is available, the possibility of an innocent person being executed continues to plague the entire institution. In fact, as Bedau and Radelet point out, even today, we can safely assume that some of the now nearly 2,000 men, women and children currently awaiting execution in this country have committed no capital crime. Capital punishment leaves no room for error. In a system that is as error prone as this recent report suggests, the outcome of such an inflexible punishment can only be a tragic one. An individual who is wrongfully imprisoned may be returned to his family and friends. An individual who is wrongfully executed can not be returned to life.

Such is the case, Mr. President, in the following two cases of probable innocence. The reports of these cases featured in major newspapers across America—copies of which I will ask to be printed in the RECORD—and in a television documentary shocked and saddened us all.

Edward Earl Johnson was sentenced to death for the murder of a Walnut Grove town marshall in June 1979. The only certain crime that Johnson—a black man—then 18 committed on the night that town marshall Jake Trest was killed was to suffer an automobile breakdown in the neighborhood where an unnamed white woman was attacked and town marshall Trest subsequently murdered. A telephone call Johnson made for repairs made known to authorities his presence in the vicinity.

Edward Johnson had been reared by his grandparents, and he and they were favorably known in Walnut Grove. The youth had no criminal record. Only a minor traffic violation. Yet the sheriff went at once to his home, picked him up and took him to the house of the woman who had been assaulted. His grandmother insisted on accompanying them. Within hours after the assault and in the presence of his grandmother, the white woman said that Edward Earl Johnson was not the man who had attacked her. Johnson was released.

Two days later, without a warrant or probable cause, the sheriff again came to Johnson's home, saying he wanted to take him to Jackson, MS, for a lie-detector test.

In the 8 years that elapsed up to and including the night of his execution, Johnson consistently held that he was not taken to Jackson but to some woods where the sheriff and other officers threatened him and his grandparents with violence and death. Johnson knew that they were capable of it if he didn't do as they asked. Under fear and duress, he confessed to shooting Trest.

At the first opportunity—months later—Johnson recanted and explained that he confessed only in fear. But after his confession was made, the woman changed her story and identified Johnson as the man who attacked her.

The confession and the woman's dubious testimony were sufficient to convict Johnson, who was inadequately represented at his trial and through his appeals process. When counsel finally was appointed to represent him, it was so deficient that he couldn't have done worse attempting to represent himself. His attorneys later on admitted that they "ineffectively represented" him.

Willie Jasper Darden from January 23, 1974, to March 15, 1988, sat on death row. From January 23, 1974, to March 15, 1988, protested his innocense. William Darden, who in January 1988, was interviewed by "20/20" and "West 57th Street," related his story of being arrested because he fit a description even though he was somewhere else at the time of the murder. He was sentenced to death for the murder of furniture store-owner Carl Turman during a robberty at the store in Lakeland, FL. He and his lawyers claimed that the conduct of the trial was so racially biased and handled so badly by his original attorney as to be inherently unjust. They are not alone in this judgment; the conduct of the prosecutor was condemned by every court that reviewed it.

Throughout the whole course of events, there has been question as to the eyewitness testimony given in the original trial. The only agreed upon description of the murderer between three eyewitnesses was that the man was "colored." One witness never called was Christine Bass, who came to the courthouse during Darden's trial, wanting to tell the court that Darden was in front of her house repairing his car while the murder was taking place. The other significant factor involves a minister that was called upon to be with the victim's wife immediately after the shooting. Another key witness, Rev. Sam Sparks was never questioned by the police or by Darden's initial trial attorney.

Racism played a key role in Darden's sentencing. He was sentenced by an all white jury after a prosecutor described Darden as subhuman, "an animal that should be placed on a leash" and not let loose on society again. The jury influenced by racists remarks had no information to arrive properly at a fair decision.

Willie Darden survived six death warrants while being on death row, before his execution on March 15, 1988.

Willie Darden's trial was riddled with inconsistencies, was rife with injustice, fraught with doubt, and almost wholly determined by what one Federal court called "a textbook illustration of a violation of the Code of Professional Conduct," the guide to prosecutorial ethics. Justice Blackmun, who participated in reviewing the case four times summed up Willie Darden's case well. "If ever a man received an unfair trial, Darden's did."

Mr. President, I would also like to share with my colleagues the circumstances of two earlier cases contained in the Bedau-Radelet study of innocent persons executed in this century.

James Adams, a black man, executed on May 10, 1984, for felony murder of a white man named Edgar Brown. Adams steadily maintained his innocence before, during, and subsequent to his trial. One witness at Adams' trial testified that the person he saw leaving the victim's house around the time of the crime was definitely not Adams. Forensic evidence gathered by the Florida Office of Law Enforcement strongly suggested that Adams was not the perpetrator of the crime. That evidence was withheld from defense attorneys until after the trial and sentencing.

Recent investigation by the 25 veterans of the Philadelphia Police Department's Homicide Unit argues convincingly that Adams was innocent, and posits the identity of the real perpetrator.

Timothy George Baldwin was executed September 10, 1984. He was a 42-year-old white male, father of seven children.

On July 28, 1978, Tim Baldwin was convicted of the April 4, 1978, murder of Mary James Peters, an elderly, 85 years old, woman in West Monroe, LA. He was sentenced to die.

Although Baldwin has been convicted of several other crimes, this was his first conviction for a violent crime.

Tim has always maintained his innocence. He went to trial only after 3 months from his arrest. His court-appointed attorney had never worked on a capital case before and was involved in another case the same time Baldwin was going to trial. Hence, Tim's defense was poorly planned and at times terribly inconsistent.

Tim claims he was 70 miles away in El Dorado, AR, on the evening the murder occurred. Five months after the trial, Tim's lawyers acquired a motel receipt, indicating Tim was in El Dorado on the date—April 4—the murder occurred.

The initial police bulletin described the killer as in his 20's, driving a goldish/brown Dodge van. Tim was 38 at the time, and driving a black van.

No evidence other than Tim's testimony was introduced at the trial to support his version of the facts. Only two defense witnesses were called—Tim and his wife. Trial counsel conducted no investigation into Tim's alibis.

The trial jury was never instructed by the judge on the elements of first degree murder; defense counsel ignored its duty to have the jury so instructed.

The penalty phase of the trial lasted only 50 minutes. Only Tim's wife and two stepdaughters testified on his behalf. No effort was made to delve into Tim's life history; no nonfamily witnesses were sought out or called on to testify.

Mr. President, as I mentioned earlier in my remarks, in the late 1960's, when I was the deputy chief defender of the Legal Aid and Defender Association in Detroit, I was assigned to the case of Charles Clark, a man who had spent 30 years in prison for a murder he said he never committed. By the time I was assigned to his case, Charles Clark had refused commutation of his sentence by a number of Governors because that would have not have proven his innocence.

Charles Clark was convicted of the first-degree murder of a grocery store owner in Michigan in 1937. The jury was persuaded that Clark committed the murder by the only eyewitness who placed him at the scene of the crime—the daughter of the store owner, Jenny Stefancyk. Her testimony during the trial was unshakable. During the trial she was asked: "Are you sure that Charles Clark was the man that stood behind you?" She answered, "I am." She was asked: "Are you positive that he had a gun in his hand?" She answered, "I am." It was Jenny Stefancyk's testimony alone that convicted Charles Clark.

Thirty years later, when I was assigned to the case, our investigation revealed that Jenny Stefancyk had at first told the police that she could not identify her father's murderer. After much effort, we were able to track down Jenny to ask her about the case. She told us then that her testimony in 1937 was a result of her being told by a detective that Charles Clark was the man who killed her father. We were able to get an affidavit from her which stated that the basis of her testimony was suggestion on the part of the detective and not her own identification. In 1967 Charles Clark finally walked out of prison a free man—but only because Michigan did not have capital punishment.

Mr. President, Charles Clark is only one man but his story has been repeated time and time again.

Mr. President, another case I am personally familiar with involved the near execution of three Michigan men who were sentenced to death in New Mexico for a crime they never committed.

These are three Michigan men who were on death row in New Mexico for a crime, as it turned out, they never committed.

By the way, they were not model citizens—a pretty rough motorcycle gang. The crime was one of the most degrading and heinous crimes anybody can imagine. The description of that crime would be difficult for this official reporter to take down. That is how gruesome the crime was.

These men were convicted and were on death row in New Mexico. But there was a newspaper, a crusading newspaper, in Michigan that just had a feeling that there was something wrong here. They went after as much evidence as they could, went after witnesses, and finally, despite all kinds of objections from the State's attorney, were able to dig out a witness who led to another witness, which led to the total unraveling of the testimony against these three men. These three men were ultimately released, and then others were convicted of the same crime. They were on death row.

Had it not been for the unrelenting efforts of a Detroit News investigative team who had been tipped off by one of the biker's girlfriends these young men may all have been innocent victims of the New Mexico gas chamber. They were freed after having spent 11 years in jail, including 18 months on death row.

I ask unanimous consent to have a brief newspaper account of the incident from the April 16, 1975, edition of the Detroit News, printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

The New Mexico Case: Was Justice Done?

When a judge chooses to believe that a witness would travel 1,600 miles to perjure herself in behalf of four convicted murderers she earlier had claimed had raped her and slashed her with knives, one is grateful that there is a higher tribunal to rule on his opinion.

In New Mexico last week, Albuquerque District Judge William F. Riordan denied a new trial to four men awaiting death in the gas chamber after being convicted of a particularly atrocious murder.

The men, members of a motorcycle gang, were convicted of slaying one William Velten Jr. almost entirely on the "eyewitness" testimony of a motel waitress named Judy Weyer. Mrs. Weyer testified that two of the men then raped her and slashed her body with heated knives.

Given the unsavory lifestyles of the four defendants, community revulsion at the manner in which Velten was killed and, finally, Mrs. Weyer's account of viewing the slaying, conviction of the bikers was almost foreordained.

But a number of discrepancies in the prosecution's case caused The Detroit News to make an exhaustive investigation, culminating in this newspaper's conclusion that the four men were being "railroaded" to the gas chamber through perjured testimony and inflamed public opinion.

The initial suspicions of The News investigators were confirmed in January when Mrs. Weyer, in the presence of her husband, told News Assistant Managing Editor Boyd Simmons and Reporter Stephen Cain that her entire story was a fabrication. Most of the details of her testimony, she said, were placed in her mouth beforehand by police investigators and buttressed by repeated coaching.

She did not see the murder of Velten, nor was she raped or tortured with knives by the defendants, she said.

This recantation in Mrs. Weyer's home was regarded as of sufficient significance by the New Mexico Supreme Court that it ordered a hearing on a new trial motion brought by the defendants.

Further doubt was cast on the conviction when a cell neighbor of a man recently convicted of another atrocious New Mexico murder said the latter had described killing Velten.

At the retrial hearing last week, Mrs. Weyer repeated on the stand exactly what she had told Simmons and Cain—that her original testimony had been a complete falsehood.

But it was even more impressive than her original repudiation, made in the security of her home. She had gone to the hostile atmosphere of a New Mexico courtroom to say that she had perjured herself in a case involving the lives of four men, knowing full well that she faced possible perjury charges, either for her original, repudiated testimony or for her second version—that she knew nothing of the slaying.

Yet Judge Riordan, who had presided at the original trial, chose to believe that her second version—that she knew nothing of the murder—was a lie that she had traveled 1,600 miles to tell on the stand.

Also ignored was medical testimony that the alleged knife "scars" originally claimed by Mrs. Weyer were only the result of tight undergarments.

Fortunately, the four defendants' attorneys were as baffled by Riordan's ruling as is this newspaper.

As a result, they will carry their request for a new trial to the New Mexico Supreme Court, which presumably will hear the new evidence in a less emotion-charged atmosphere than Albuquerque.

The retrial hearing was notable for insinuations by the prosecution that The News investigators had "pressured" Mrs. Weyer to change her testimony.

Apparently the prosecution found it incomprehensible that this newspaper should be concerned whether four social misfits lived or died.

We can only repeat that when justice is eroded for one individual or group, it is an easy step for it to be eroded eventually for all.

Mr. LEVIN. Mr. President, here is case after case: the Washington Post, January 16, 1988, "Pair Freed After Years on Death Row." The names of those two half-brothers were William Riley Jent and Earnest Lee Miller. They were innocent.

I ask unanimous consent to have this article printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

[From the Washington Post, Jan. 16, 1988]

Pair Freed After Years on Death Row—Half Brothers Once Neared Execution

(By Athelia Knight)

Half-brothers who four years ago came within 16 hours of execution for a woman's murder in Florida were set free yesterday after pleading guilty to second-degree murder, according to their defense attorneys.

The men—William Riley Jent and Earnest Lee Miller—made their pleas in a brief appearance in a Florida courtroom as part of an agreement worked out between their lawyers and the state attorney's office. In accepting their pleas, Pasco County Circuit Court Judge Maynard Swanson Jr. sentenced them to 12 years, but immediately released them because of the time they had already served and time off for good behavior.

Jent, 36, and Miller, 31, had spent more than eight years on Florida's death row for a murder that they claimed they never committed. Last November, a federal judge ordered a new trial for them after defense attorneys argued that the men were wrongly convicted by a jury that was not presented crucial evidence.

Despite yesterday's pleas, Jent and Miller maintained their innocence outside of the courtroom.

Miller told the Associated Press that they accepted the plea agreement because "we were up against the same system as last time. * * * It was tearing our family apart."

"They framed us once," Jent told Associated Press. "What was to stop them from doing it again? If they want us to say we committed perjury, let them prove we were innocent of murder. I'll take the perjury charge."

Lawyers for the defendants said the plea agreement was bittersweet. "I'm happy for Bill and Ernie today because they are alive * * * but the taste is bitter because the price was a lie," Eleanor Jackson Piel, a lawyer for Jent, said last night.

"Anytime that anybody can walk out of death row is virtually a miracle," said Howardene Garrett, a defense lawyer who has been involved in the case since 1983.

However, Doug Crowe of the Pasco County state attorney's office told the Associated Press, "The issue of guilt is resolved. We were satisfied they committed the murder before plea negotiations began. In this case, I'm certain innocent people were not induced to plead guilty."

From the beginning, the case was controversial. The murder victim was never fully identified. Key witnesses changed their stories. Some claimed they were pressured to recant. Law enforcement officials failed to pursue several leads.

The murder victim was finally identified in 1985 after a Washington Post reporter, who was investigating the conviction of Jent and Miller, linked a set of fingerprints in Tennessee of a missing woman, Linda Gale Bradshaw, to prints taken from the partially burned body of the murder victim. They matched. The Florida Department of Law Enforcement then conducted its own investigation and concluded that the victim was Bradshaw.

That was a relief to Bradshaw family members, who had maintained since 1979 that the badly burned corpse was that of Linda Gail Bradshaw. The body, buried in a pauper's grave, was finally turned over to the family in August 1986.

Defense lawyers claim that the identity of the murder victim is important to the case because there is a witness who says he saw Bradshaw killed by her boyfriend, Charles Robert (Bobby) Dodd Jr. Bradshaw family members also believe Gail Bradshaw was killed by Dodd, who is currently in a Georgia jail on unrelated charges.

Last night, Bradshaw's sister, Ruby Vaughn, said, "I'm glad that the boys are free, but now that they have admitted guilt, that means they [law enforcement officials] will never do anything to Bobby Dodd."

Vaughn said she understood why the men took the plea agreement. "I don't blame the boys because they have lost eight years of their lives," she said. "* * * There is no guarantee that they would get out alive."

After yesterday's hearing, Piel said Miller and Jent, appearing at a news conference, asked Bradshaw's family to pardon them.

Last November, when U.S. District Court Judge George Carr in Tampa ordered a new trial for the two men, Carr said the prosecutors had withheld "favorable evidence" from defense lawyers, evidence that came to light after two Florida newspapers successfully argued before an appeals court that the sheriff's reports on the murder should be released. Prosecutors, who had earlier persuaded a lower court to deny access to the records, made the reports public in 1986.

Mr. LEVIN. "Jerry Banks: An Innocent Man and a Sentence of Death." He was on death row for 6 years for a crime he did not commit, in Georgia.

I ask unanimous consent to have the article printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JERRY BANKS: AN INNOCENT MAN AND A SENTENCE OF DEATH

It may be old news that Jerry Banks, a twenty-nine-year-old black man who sat on Georgia's death row for nearly six years for a crime he didn't commit, was set free three days before Christmas last year. And it may be old news that the people Jerry Banks supposedly killed were white and that there is strong evidence that the investigation and prosecution of the case by the Henry County Sheriff's department, was, to be polite, inept. And it is certainly old news that Mr. Banks' original attorney, since disbarred, gave his client less than adequate representation both times Mr. Banks was tried and sentenced to death and that new attorneys, Wade Crumbley and A.J. Welch, working without pay, forced the prosecution to look at evidence that had been present in the case from the beginning.

But old news or not, Jerry Banks' case reveals all too clearly the "news" that our judicial system is not sufficiently purged of prejudice and inequities such that anyone could ever think that application of the death penalty is now or will ever be done with fairness.

The frightening thing about Jerry Banks' case, aside from the fact that a man had to spend some of the best years of his life in one of the worst possible lockups in this country simply because he discovered two dead bodies, is that with growing numbers of people facing capital punishment at trial and on appeal, the number of resources available to stay executions cannot keep pace. There will be Jerry Bankses in the future who will not find their Wade Crumbleys and A.J. Welches.

Because it is often the case that the one argument against the death penalty people will listen to is that with capital punishment innocent people are bound to be executed, *Lifelines* would like to present, briefly, some of the facts of the Jerry Banks case, gleaned from reporting in Tom Wicker's two columns on the case.

On November 7, 1974, Jerry Banks, then an unemployed 23-year-old, found two dead bodies around 4:30 p.m., while hunting with his dog near Stockbridge, Georgia. He went to a road, flagged down a motorist who called the sheriff. The victims, a high school band leader and his nineteen-year-old babysitter, had been shot twice each in the back at about 2:30 that afternoon, an autopsy later revealed. Shotgun shells found near the bodies were assumed to be the shells from the murder weapon. A month later, detectives asked Jerry Banks for his gun and, after test firings, on December 13 charged him with the murders.

On January 31, 1975, he was tried and convicted and on February 1 he was sentenced to death. His brother testified that he had been hunting in the woods where the bodies were found and could have left the shell casings then. A neighbor testified that Jerry Banks had been at her house, with her husband, at the time of the murders.

After the trial, the motorist who had gone for the sheriff asked to be called as a witness. On the strength of this, the Georgia Supreme Court granted a new trial but this time Jerry's lawyer called only the motorist and once again did not have his client take the stand. Again, Jerry Banks was sentenced to die.

Jerry Banks' new lawyers, after much hard work on a cold trail, found that seven people, including the police chief of Stockbridge and his son, also a policeman, heard the four shots that killed the two victims, reported hearing the shots to the sheriff's department and were never called as witnesses. Their calls are not recorded by the sheriff's office. The testimony they were prepared to give indicates that the four shots could not have come from Jerry Banks' gun. One witness, again who never testified, said he saw a black van and a white man with what looked like an automatic shotgun near the scene of the crime. Another witness saw two men and a woman arguing in a station wagon like the band leader's a half mile from the murder site. He was not called to testify though he contacted the sheriff's office. And on top of all that some other shell casings found near the scene of the crime are now missing.

There is now some questions about just how the shells found near the bodies came to be there and some allegations have been made about the propriety of some of the actions of the chief investigator in the case. It was because of these allegations and an investigation into them that Jerry Banks did not have to go through a third trial for his life and was set free. Nothing to date has been done with that investigation and nothing will be done, most likely.

Old news like this should be in every newspaper in the country.

[EDITOR'S NOTE.—On March 29th Jerry Banks, distraught over the pending separation and divorce from his wife Virginia, critically wounded her with a .38 caliber pistol and then killed himself. Murphy Davis, of the Southern Prison Ministry, who had visited Jerry on death row and had worked long hours for his release, spoke about the tragedy in these words. "It was something set into motion—a very powerful death machine—that just couldn't be stopped. You take six years of a person's life, you tell them they are going to die. You tell his wife and kids that and you set a tragedy in motion. At the end of six years you don't go back and say it was all a mistake. I don't think anybody could understand the pain and tragedy that tore up Jerry's heart."]

Mr. LEVIN. Mr. President, there is another article: "Convicted Rapist Freed After Pardon in Texas." He got a pardon because of new evidence.

Here is another article: "Death Row Prisoner Goes Free." This is March 8, 1987.

I ask unanimous consent to have the article printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Charlotte Observer Mar. 8, 1987]

DEATH ROW PRISONER GOES FREE

(By Tom Scherberger)

TAMPA.—Joseph Green Brown, who came within 15 hours of being executed for a murder he said he didn't commit, is free now.

After 13 years, a prosecutor has decided there wasn't enough evidence against him.

Brown, 37, is in Gainesville, relishing his freedom. He's been shopping with his girlfriend for new clothes, calling some friends and listening to a little classical music.

"It's appropriate I was freed in the spring," he said Friday. "It's new birth, new beginning."

Brown walked out of the Hillsborough County jail in Tampa Thursday night with $5 in his pocket and a cardboard box under his arm containing all his possessions—legal papers and a radio.

He had given everything else he owned to other inmates.

Brown, who lived most of his life in Orlando, said he plans to stay in Gainesville and work with death penalty opponents. He said his case should send a message to supporters of capital punishment.

"What if I was not lucky that a judge decided to review my case? I would not be here. An innocent man would be dead."

Brown was convicted in 1974 of murdering Earlene Barksdale in her north Tampa clothing store called the Just Kids Shop. Barksdale, the wife of a prominent Tampa, lawyer, had been robbed, raped and shot once in the head.

He was to be executed Oct. 18, 1983, but the sentence was stayed by a federal judge.

The case against Brown was based almost soley on the testimony of Ronald Floyd, who placed Brown at the scene of the crime and claimed Brown told him he had committed the murder with another man named "Poochie." The other man was never found.

Within eight months of Brown's conviction. Floyd testified that he * * *.

They had agreed not to prosecute Floyd for being an accessory to the murder, and he was given probation for robbing a motel. Brown also was convicted in the robbery and was given 20 years.

It was 11 years later—on March 17, 1986—that Brown's lawyers won a new trial. The 11th U.S. Circuit Court of Appeals in Atlanta ruled that prosecutor Robert Bonanno had allowed Floyd to lie and then misled jurors during his closing arguments.

Brown was transferred from death row to the Hillsborough County Jail to await the new trial.

It was scheduled for March 30. But when investigators for Hillsborough State Attorney Bill James began preparations, they found Floyd had changed his story again.

Floyd said during a polygraph examination Feb. 19 that he had lied about Brown's involvement in the murder. He said he was trying to get even with Brown because Brown had implicated him in the motel robbery.

Without Floyd's testimony, James said, there was no case against Brown.

Henry Lavandera, the assistant state attorney who was assigned the case, stopped short of calling Brown an innocent man.

"I don't like the word 'innocent,'" Lavandera said Friday. "I'm not in a position to even speculate on that. I am convinced at this time that we could not go forward with the prosecution in good faith."

Although Lavandera said it was "an unfortunate circumstance" that Brown spent 12 years on death row, he said Brown probably would have been in prison just as long for the motel robbery.

Brown said his worst moment came a few days before his scheduled execution, when he was measured for his burial suit.

"It was so mechanical," he said. "I was standing there and thinking, 'These people have the audacity to measure me for a suit.' That's the part that I think angered me the most. That was the only real emotion I felt. Anger."

Mr. LEVIN. Mr. President, this is an Oklahoma case of Clifford Henry Bowen. I ask unanimous consent to have the article printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From the Washington Post, Aug. 31, 1986]

Death Row Inmate Freed on Bond Amid New Doubts in Murder Case—Supreme Court Has Evidence Suggesting Oklahoma Man's Innocence

(By Ray Robinson)

Oklahoma City.—When Clifford Henry Bowen left his death row cell at the Oklahoma State Penitentiary, his most immediate concern wasn't the prospect of execution by lethal injection, it was finding a job.

Bowen had spent more than five years under a death sentence for the underworld killings of three men at an Oklahoma City motel, and once came within 17 days of being executed.

Now, the U.S. Supreme Court has before it new evidence that raises the possibility that Bowen may be the wrong man. Two federal courts have ruled that the evidence casts serious doubt on Bowen's guilt. On July 30, Supreme Court Justice Byron R. White took the extraordinary step of ordering Bowen freed from death row on a $100,000 bond while the high court decides whether to review the case.

Bowen's lead attorney, Jack Zimmermann of Houston, calls the conviction and sentence "probably the greatest miscarriage of justice in Oklahoma history."

Mr. LEVIN. Mr. President, here is the case Izzy Zimmerman, in New York, who almost went to the electric chair for a murder he did not commit.

I ask unanimous consent to have the New York Times article of January 6, 1985, printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

When the State is Wrong

Izzy Zimmerman was nearly sent to New York State's electric chair for a murder he didn't commit. William Fisher served 11 years before persuading a court that his manslaughter conviction rested on trumped-up evidence. Ahmed Kassim served seven years for a stabbing he didn't commit.

The injustice of Mr. Zimmerman's conviction was compounded by the runaround he later received. He was two hours away from execution when his sentence was commuted to life imprisonment. He won release after 24 years by proving that a prosecutor had used perjured testimony and had suppressed evidence. Then he spent 20 years imploring the state to let him sue for redress. Mr. Zimmerman died in 1983 at the age of 66, four months after winning $1 million in damages.

Mr. Fisher and Mr. Hassim endured similar indignities. Governor Cuomo vetoed their special bills, saying, correctly, that New York needed a more systematic way of dealing with claims of injustice. He pressed for, and obtained, the new law that provides it. Then, recognizing that Mr. Fisher and Mr. Hassim deserved special relief because their cases were so old, he signed new bills for them.

All New Yorkers stand taller because this state now acknowledges that there is no value to sovereignty that perpetuates injustice.

Mr. LEVIN. Mr. President, here is another one: "Innocent Man Still Haunted By Death Row." This is Earl Charles, who spent 3½ years on death row for a murder he did not commit. I ask unanimous consent to have the article printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

Innocent Man Still Haunted by Death Row

(By Gayle White)

The 3½ years Earl Charles spent on death row for a crime he did not commit ended in July 1978, but the effects of the nightmare experience still haunt him, according to his attorney.

Charles was convicted in 1975 of murdering Savannah merchants Max and Fred Rosenstein, despite testimony by two witnesses that at the time of the murders he was working in Tampa.

Eventually, his attorneys were able to find a police detective who corroborated that contention. The case was reopened, and Charles was freed.

He said at the time that he did not feel bitter. "I've always been a believer," he said.

But after his release, Charles filed a $7 million lawsuit against the Savannah detective who investigated the murders.

The jury found in favor of the policeman, but its verdict was overturned and the case returned to U.S. District Court. In 1983, Judge B. Avant Edenfield ruled that the detective, Cpl. F.W. Wade, showed "reckless conduct" in his investigation and awarded Charles $417,000.

The judge ruled that Wade had not intended to "frame an innocent man for murder," but that his investigation involved "reckless, if not intentional disregard" for Charles' civil rights.

There were appeals and more appeals. It was not until earlier this year that the matter was finally settled out of court for $75,000, said Dennis N. Balske, attorney for Charles.

Before the suit was settled, Charles spent almost four years on the lecture circuit speaking out against the death penalty. He admitted during those talks that "there is a certain amount of anger there. I feel good at being free, but I still feel I deserve something. I wasn't even given cab fare home when I was released."

Charles, who has no telephone, is now living in Savannah, Balske said. Charles' emotional state has made it difficult for him to hold a job, his attorney said.

"He's having a lot of problems that stem from this whole thing. He's had a couple of DUI arrests. . . . I wish I could say he is living happily ever after, but he's not," Balske said.

Mr. LEVIN. Mr. President, here is the case of Joseph Brown, who came within 15 hours of being electrocuted for a murder he did not commit.

I ask unanimous consent to have the article printed in the Record.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the St. Petersburg Times, Mar. 14, 1987]

FREED PRISONER TALKS OF BRUSH WITH DEATH

(By Bob Port)

JACKSONVILLE.—"Fifteen hours," he said.

Joseph Green Brown remembers a lonely wait in October 1983 when he was only 15 hours and a 30-foot walk from death in Florida's electric chair.

Then, suddenly, a stay of execution came. Brown, or Shabaka (the Swahili name he now prefers), was spared from a death warrant signed by former Gov. Bob Graham. And almost two years later, a federal appeals court in Atlanta ruled that Brown's prosecutor, now a circuit judge in Tampa, had "knowingly used false testimony" during Brown's 1973 murder trial.

A year after that, Tampa's prosecutors concluded there wasn't enough evidence to prove Brown had robbed, raped and murdered the wife of a former Tampa attorney.

On March 5, Brown was set free from the Hillsborough County Jail. "I was mopping the floor," he recalled, at the time he was told he was released.

On Friday, Brown, 37, was lounging around the Jacksonville Airport Hilton. He was granted interviews to several newspaper reporters before slipping into seclusion with his fiance of 10 years "to decompress" and begin life anew.

The attorney who won Brown's appeal in the 11th U.S. Circuit Court of Appeals in Atlanta is Richard Blumenthal of Stamford, Conn., the U.S. attorney in Connecticut from 1977 to 1981. He is now with a law firm in Stamford.

As U.S. attorney, Blumenthal was never confronted with a death-penalty case. "To the extend I had an opinion on it, I probably would have been in favor of it," he said Friday in Jacksonville., "This case has made me opposed to it."

Blumenthal said expenses for Brown's appeal total about $40,000. The effort consumed between $200,000 and $300,000 worth of labor before he joined his present law firm and "at least that much more since then."

"Frankly," he said, "we haven't kept track."

Brown's abrupt release has left law enforcement officials in Tampa, and the public, to consider whether an innocent man narrowly avoided execution. All along, Brown—while pleading guilty to a separate robbery charge in 1973 that got him a 20-year prison sentence—insisted he was innocent of the murder, rape and robbery charges that resulted in a death sentence and two consecutive life sentences.

He did so on the witness stand at his own trial and according to federal appeals court records he passed three polygraph tests.

Whatever he was before enduring 13 years on Florida's death row, Brown is now a soft-spoken, soul searching, rather articulate man who pauses and ponders before speaking."

On death row, he said, "you develop a sixth sense."

Brown's death warrant was signed Sept. 24, with his execution date only three weeks away. "I knew immediately when the officer came up, because they have certain officers that will come. You know." The warrant was read. Brown was entitled to one phone call, which he used to contact Blumenthal.

"Even though, I was always confident that a stay would come, your family has got to matter. They may not believe that. They may hope and pray, but there is no way that you can really assure them that I am all right and I will be all right," he said. "So there was deep concern for my mother and my family.

"I had already been moved up from death row and put on death watch. The minute your warrant is signed, you are placed on death watch, which is about 30 feet from the chair."

Other inmates on death row are held in an area apart from the execution area at Florida State Prison in Starke, Brown explained, but they have ways of telling "the moment an actual execution has taken place.

"We don't have to be outside or see the white flag wave. We know. You have feelings for certain things. We know.

"Each one of us had our own way of dealing with it. I'd deal with it my way. Some people deal with it by talking, some by just laying back."

Brown was accused of the July 7, 1973 robbery, rape and murder of Earlene Treva Barksdale at her Just Kids Shoppe at 4701 E. Busch Blvd. in Tampa. Mrs. Barksdale's nude body was found lying on the floor with a gunshot wound below the left ear from what was later determined to be a bullet from a "38 special" revolver.

There were no fingerprints found. Tests of body fluids taken to determine who had raped Mrs. Barksdale were inconclusive, but suggested two separate assailants. An FBI weapons expert determined that a 38-caliber Smith & Wesson revolver linked to Brown and introduced into evidence could not have fired the bullet that killed Mrs. Barksdale.

The case against Brown—headed by then Assistant State Attorney Robert Bonanno, now Circuit Judge Bonanno—hinged on the testimony of one witness: Ronald J. Floyd, who testified to being an accomplice to Mrs. Barksdale's murder as he waited with a car across the street. Floyd testified that Brown and a mysterious person known only as "Poochie" entered Mrs. Barksdale's shop. He said he heard gunfire and the next day heard Brown admit he had committed the murder.

Floyd has never been prosecuted, and on the witness stand he denied that he had any promise of immunity from prosecutors for his cooperation.

It was on that point that three federal judges in Atlanta disagreed. They concluded Bonanno had made such a promise and "knowingly" allowed Floyd to lie about it under oath. The judges ruled the omission could reasonably be expected to affect the jury's ruling and ordered a new trial. Floyd has since recanted his testimony.

The way the 11th Circuit talked about it was not the way it happened," Bonanno said Friday. "My case was reviewed by several courts, including the Florida Supreme Court * * * it was affirmed, affirmed, affirmed," he said.

Bonanno said Brown and Blumenthal simply searched "until they found a court that was sympathetic."

"I don't see what is so interesting about this case, said Bonanno, who contended that publicity about it is meant "just to sell newspapers.

"It's not interesting. It's not interesting * * * it's just a run-of-the-mill case.

"There's nothing that went on that was improper," he said. "I was convinced * * * years ago that he committed the murder and nothing has changed since then that has changed my mind * * * I have no apologies to make for the prosecution or the record. I think it was a fair trial."

Did Brown rob, rape, or shoot Mrs. Barksdale?

"I did not. I did not. I did not," Brown said Friday.

Blumenthal tried to convince Florida's Cabinet to spare the life of Brown who still would have faced the two life sentences. "One of the ironies here," Blumenthal noted, "is that if Gov. Graham had granted him clemency, he would have been in prison for the rest of his life. It's fortunate that I was unsuccessful at that.

Brown's life on death row has left Florida with a bitter opponent of the death penalty. "It is unjust," Brown said.

"It cannot be applied fairly. Regardless of what laws are on the books, regardless of how fair the judge, the prosecutor or defense attorney are, it cannot be applied fairly. Because you never know if you're convicting the right person. I'm a living example of that.

"Certain lives are valued more than others. In life, black individuals and so-called minority individuals are valued less what we call Caucasians, male or female Caucasians. This is not a swipe, okay. I'm stating a fact. It is not only those on death row, but, I think, if you go through the courts of the United States and look at conviction rates of people, whether it's on death row or life in prison, you'll see.

"It's prejudice. When you have that type of system, you cannot begin to talk about justice and impartiality. Those words are meaningless."

Even if, somehow, a way were found to apply the death penalty fairly, Brown said, he would still oppose it.

"I'm a spiritual person. I believe only the creator himself has that right. His son, the messiah, gave the example of the shepherd and a lost sheep where that shepherd left the 99 to go back and get that one that went astray," he said.

"If we as a people would put ourselves up in front of the world as being just, as being free—and I don't like the use of that word, "free," it's sometimes used too much—then, man, we've got to get out of the business of killing.

"We criticize Iran, apartheid in South Africa or what's going on in other, what we call communist, countries when we are doing the same thing. I don't believe that you can find a system where capital punishment, however it is applied, is just * * *.

"I'm bitter in the sense of what it's done to my family, those that I love, and bitter in the sense that people act out hatred and emotions rather than out of calmness. Really, there is no reconciliation.

"I'm bitter that a man's death occurs, that the press immediately plays on the emotions of the relatives of victims, that the instinct comes out that all humans have to strike back, that the healing process never has a chance to take place. Even years after the crime, that healing process never begins. There's no reconciliation of the feelings and emotions that a person goes through. And that same thing is placed upon the family and loved ones * * * because they are our families, not because they committed any crimes.

"The death penalty is convenient. It's a pacifier. It serves no legal or moral purpose * * * because only a selected few are given it.

"You've got, what, 260 people in Florida's death row right now? If you cleaned death row out, if you killed one a month, it'd take you over five years and every time you'd be killing you would still be replacing. For every (person) executed there are two taking his place.

"It will steadily grow.

"I don't think America or the state of Florida," Brown said, "is ready to kill two or three people a week for the next few years."

Mr. LEVIN. Here are the clippings. We know it is possible. Even people who favor the death penalty have to concede that this system is imperfect and we make terrible mistakes, and we cannot correct our errors.

Mr. President, I ask unanimous consent that another article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Chicago Tribune, Dec. 23, 1985]

NICARICO CASE LIGHTS UP WRONGFUL EXECUTION ISSUE

(By R. Bruce Dold)

Lloyd Eldon Miller Jr. was a cabdriver in Downstate Canton who, according to some who knew him, believed that every time something bad happend in the small town, he was blamed.

Miller's death sentence and later vindication in the murder of a young girl has some striking similarities to the case of Rolando Cruz and Alex Hernandez. The two men are on death row after being convicted of the murder of Jeanine Nicarico, but the case is under further investigation because of recent claims by admitted sex-slayer Brian Dugan that he killed the Naperville girl.

The two cases raise questions about the death penalty's potential for tragedy.

Janice May, 8, was found beaten to death near her home in Fulton County on a winter day in 1955. Like Jeanine, authorities said she was sexually assaulted.

Miller, like Cruz and Hernandez, was convicted largely because of a witness who said Miller talked about the crime and on circumstantial evidence, including a pair of shorts that prosecutors said were soaked with blood that matched the girl's type.

Like Cruz and Hernandez, Miller was sentenced to death.

Miller spent 10 years on death row while defense attorneys attempted to unravel the case that led to his conviction. He received 10 stays of execution, one coming just seven hours before he was to be put to death.

In 1967, after investigation disclosed that the reddish-brown stain on the shorts was actually paint and a key witness who had implicated Miller said she had lied, the U.S. Supreme Court overturned his conviction.

Miller, who is now believed to be living in Mexico, was lucky.

Since 1900, at least 25 people have been executed in the United States for crimes they didn't commit and 19 others came within hours of execution before being spared, according to a recent study by professors from Tufts University in Massachusetts and the University of Florida. In one case, authorities had shaved the head of a Texas man in preparation for his electrocution when another man confessed to the crime, the study reports.

Opponents of the death penalty point to such cases in their argument for abolishing capital punishment, but they concede that they are fighting a losing battle.

Opinion polls show that 75 percent or more of the public approves of the death penalty. Since the U.S. Supreme Court in 1972 ruled that all existing death penalty statutes were unconstitutional, 37 states have enacted new death penalty laws designed to meet a court test for consistent application of the sentence. Since the 1977 execution of Gary Gilmore marked the revival of capital punishment in the U.S., 50 prisoners in 12 states have been put to death.

Illinois carried out its last execution in 1962, when James E. Dukes, convicted of slaying Chicago Police Detective John J. Blyth, was electrocuted. Since Gov. James Thompson signed legislation in 1977 reinstating capital punishment, 104 people have been sentenced to death in Illinois.

"It's clear that public opinion and political opinion heavily favors it," said Henry Schwarzschild, director of the Capital Punishment Project of the American Civil Liberties Union, which advocates elimination of the death penalty. "The public seems in an angry and retributive mood.

"But every major religious institution, minority organization, and public interest law group opposes the death penalty. That isn't a bunch of off-the-wall, bleeding-heart liberals. It is a very thoughtful, significant opinion," he said.

"It really is a reflection of the state in which we have gotten on the subject of crime," said U.S. District Court Judge George N. Leighton, who as a private attorney represented Miller in his appeals.

Proponents of the death penalty say that it saves many more lives than it takes because the threat of being put to death is a deterrent for some would-be criminals. Some studies have held that the publicity surrounding each execution prevents as many as 18 killings, although the validity of such studies is hotly disputed.

A proponent of the death penalty, Fordham University Professor Ernest van den Haag, argues that the study documenting 25 wrongful executions is actually a strong argument for keeping the death penalty.

"There have been about 7,000 executions, and if 25 of those were innocent, that seems to me a fairly acceptable ratio. I don't mean I like it, but we accept risks. If you ask me what number of traffic accident deaths are acceptable, I would come up with a figure," van den Haag said.

It is an argument that death penalty opponents find appalling. "I can't think of anything more cruel than that thought. My God, that a perfectly innocent man or woman would be executed is all right," Leighton said.

One aspect on which opponents and proponents of the death penalty agree is that the time it takes for the appeals process is cruelly long. Some of the 82 inmates currently on death row in Illinois have been living under the shadow of impending execution for as long as six years while their appeals wend through the court system.

"Even if we were to free someone years later, we've done psychological damage to him. It's a horrible punishment," said Sandy Bietila, director of the Illinois Coalition Against the Death Penalty.

Last August, the Illinois House Judiciary II Committee heard testimony on legislation to end capital punishment in Illinois. Although a bill may be called for a vote next spring, its prospects for winning legislative approval are dubious at best.

The U.S. Supreme Court has agreed to hear two death penalty cases next year, but neither case is expected to result in a favorable ruling for death penalty opponents, Schwarzschild said.

But the battle to ban the death penalty will continue, drawing more attention each time a case such as Brian Dugan's confession raises questions about whether an innocent person is on death row.

"The simple lesson is, our legal system can malfunction and does malfunction more often than we're willing to admit," Leighton said. "The tragedy is the cases we never know about."

Mr. LEVIN. Mr. President, something has been said here about deterrence: Does not at least the death penalty deter? There may be individual instances in which it does. Indeed, there may be individual instances in which mandatory life, without parole, will deter, where a 20-year minimum sentence prospect will not.

We have a bill before us that holds out the prospect of one of the murderers covered in this bill getting as little as 20 years. That is the minimum sentence in this bill. This amendment will substitute mandatory life, without the possibility of release, for the 20-year minimum sentence.

So I think it is very likely that if in individual cases somebody thinks about these things, they also would contemplate, "What about the possibility of my going away for life and the key being thrown away and my never being released?" That also is a deterrent. Certainty is a deterrent. The bill before us has no certainty. It is a 20-year to capital punishment range.

The amendment has certainty: You are convicted, you are going away for life, no possibility of release, no loopholes. The key is thrown away. That is a deterrent, too.

Looking at the statistics—because you try to look at the death penalty overall—you get some kind of feel to determine whether or not the death penalty deters.

Senator HATFIELD has given statistics showing that in death penalty States, there is a higher murder rate than in States without the death penalty. The statistics we have bear that out.

By the way, Senator HATFIELD's statistics are particularly interesting because they show that in the last year for which we have statistics, the murder rate went up significantly more as a percentage in the death penalty States than it went up in the non-death penalty States.

A comparison of the FBI's statistics on homicide rates show that States with capital punishment have a higher average murder rate than States without capital punishment. In 1986, the average murder rate per 100,000 people in the 13 States that do not have the death penalty is 7.18. In the 37 States that do have the death penalty the murder rate per 100,000 is 9.02. So the murder rate in States with the death penalty is significantly higher than in those States without the death penalty.

Canada used to have the death penalty. At the time the death penalty was abolished in 1975, the murder rate was 3.09. In 1983, the murder rate had dropped in Canada to 2.74.

Mr. President, these facts and statistics were also cited by former Supreme Court Justice Louis Powell during his August 11 address to a conference of law enforcement officials in Toronto, Canada. In Powell's own words, "the death penalty in the U.S. should be abolished, as it is ineffective."

According to a distinguished professor and noted authority on this issue, Eleanor Holmes Norton, professor of law at the Georgetown University Law Center, and I quote from her letter to me:

> An assortment of arguments are made in favor of the death penalty on public policy grounds. The argument likely to be most convincing is that a federal death penalty will deter. Between 1930 and 1982, 3,865 persons were executed in the United States and since the Supreme Court decision in Furman, there have been 56 executions. Throughout this period there has been no indication that we have been any safer; indeed the evidence suggests that the opposite is true. Proponents of the deterrence argument virtually concede that they have not met the burden of showing that the death penalty serves as a unique deterrent to serious crime. They rely instead on "common sense" to argue that we should rush down the road of national executions. This argument is patently flawed. The "common sense" of the death penalty as a deterrent to crime is open to serious question. If anything, "common sense" would likely indicate that a government does not teach respect for human life, a prerequisite to a saner and safer society, when the government itself commits the ultimate violence upon its citizens."

So we have a situation where the statistics show that the death penalty does not deter. Again, obviously, it could in individual States, just the way the certainly of a mandatory life sentence, without the possibility of parole, can deter in an individual case.

The PRESIDING OFFICER (Mr. GRAHAM). The time of the Senator has expired.

Mr. HATFIELD. Mr. President, I thank the Senator from Michigan, a cosponsor of this amendment, for his eloquent statement.

I yield 17 minutes to the Senator from Washington.

Mr. EVANS. Mr. President, we will soon face a unanimous-consent request, I suppose, to limit the amendments to this drug bill. While I will not suggest one, I think it might be appropriate to have an amendment requiring that any drug bills passed in the future, any comprehensive bills, could be passed only in odd-numbered years; because there is simply no question that 2 years ago, in 1986, and again in 1988 we are passing a drug bill heavily larded with politics. The death penalty is a particularly big chunk of that political card.

There are only three reasons for a death penalty; deterrence, incapacitation, or retribution.

Much has already been said about the deterrence of a death penalty. I have not run across, in the almost 30 years of my concern about the death penalty, any competent indication that suggests that the death penalty is a real deterrent. Others on the floor earlier have spoken already on statistics showing that perhaps quite the contrary is true.

The second reason would be incapacitation. Certainly, those who advocate the death penalty say that incapacitation is pretty absolute, that you have executed someone. But it has already been pointed out on the floor that the proposal by Senator HATFIELD, Senator LEVIN, and me, would incapacitate those who engage in capital crime far more effectively than the proposal now in the bill. Life sentence, without hope of parole, as both a minimum and a maximum sentence for these murders, is an obviously stronger penalty in terms of incapacitation than the array of penalties from 20 years, with time off for good behavior, up to and including execution.

So that really is not a credible interest on the part of those who suggest the death penalty and so we must turn to the third reason. It is not deterrence. There is no credible evidence that it is. If it is not incapacitation, because this amendment is a better incapacitator of a murderer, then it simply must be, has to be, the third, and that is retribution, simple, straightforward retribution.

I suppose that is a direction our society could take, engage in retribution.

We have a several-thousand-year history in this world of descending into the dark ages, the dark ages measured by violence and retribution of the most horrendous kind. Those were the days of the Spanish inquisition. Those were the days earlier on the eye-for-an-eye and a tooth-for-a-tooth of the Old Testament. Even in modern times those who would opt for the Moslem Sharia set of punishments, would opt for that eye-for-an-eye and a tooth-for-a-tooth, mutilation. That is retribution. It is not mutilation to the extent of execution. But why should we stop simply with execution?

If we really believe in retribution, let us make retribution up and down the line from the simplest to the most extensive kind.

We emerged from the dark ages into an era of enlightenment several hundred years ago.

Where are we now headed? Are we back to brutalizing society? If that is where we are headed with retribution, even with the best of intentions, that is no civilization.

Mr. President, I do not take second row to anyone in this Chamber in my concern and abhorrence of the illegal use of drugs and the remarkably expensive—both in human and dollar terms—result of the use of those drugs. They are a scourge.

Our Surgeon General, a remarkable man, a candid man, a man I think generally looked up to by citizens all over this country, has pointed out in recent months that if you measure currently the effects of drugs on our society, both in terms of dollars and in terms of deaths, tobacco and liquor far exceed the dollars and the deaths of illegal drugs. All of them in their abuse are a scourge on society.

But we are focused now on attempting to arrest the spread of illegal drugs in our society, and I applaud and uphold the efforts we are making to do so.

The core bill, which is now in front of us, is a remarkably good bill, distilled for many, many ideas. We will face, if we get to them, a series of amendments that are controversial in their entirety. I believe they along with the death penalty will do something to our society, do something that is not positive but rather negative.

We simply have to answer the question on this specific amendment, will the help of a death penalty outweigh what we do to ourselves as a people and what we do to our society?

I think the answer is a resounding "no."

We have an alternative to retribution, and that is incapacitation, and that is the appropriate direction for us to take and it is the direction this amendment would take us.

Mr. President, let me speak for a few moments on the broader scope of this legislation and its direction. While much of it is good, I believe we have focused too heavily on the supply side of the equation and too lightly on the demand side of the equation, just as we have in the past in terms of alcohol as a drug. It once was illegal, now it is legal. We focused on the supply side through prohibition and it simply did not work. We ended up relegalizing liquor, and it has been in the last few years that we have finally seen a slow but steady decline in the use of alcohol or particularly the abuse of alcohol. And why? Not because we added penalties. But because we through education, through the recognition of the health consequences, have finally begun to get across to our citizens what happens when you abuse alcohol.

That should be some lesson to us. We should listen a little to history and remember our own past. We tried the supply side equation and it did not work.

We move now collectively with all that is being done from the Surgeon General on down to the demand side, to education, to rehabilitation, to understanding the consequences of use. And it is beginning slowly to work.

Mr. President, my concern over this particular proposal for the death penalty is only one of the concerns about the whole array of similar penalty elements which will soon be proposed to this bill. When you add them all together they concern me deeply.

The Senator from New York has shown a deep concern for drugs and the evils they put on society. I applaud him for the remarkable work he has done in consistently pointing out the problems of illegal drugs. But he just a short time ago in his remarks mentioned something that struck me. He talked about returning domestic tranquility. That is important.

There have been lots of societies in our history who maintained domestic tranquility but they are not the kind of societies we want here in this country. They are dictatorial societies. They find their way mostly through punishment to maintain domestic tranquility.

That term "domestic tranquility" obviously came from the preamble to our Constitution, and it is one element that is important to all of us in our free society. But it is not the only one, and we ought to remember what the other elements were in that preamble to the Constitution.

To form a more perfect union. Do we form a more perfect union by engaging in the execution of others no matter how quilty of a crime?

The preamble says to establish justice. Are we really establishing justice throught he potential of an irretrievable accident in the execution of an innocent person?

And finally, the preamble says to secure the blessings of liberty to ourselves and our posterity. It seems to this Senator at least that one of the most important ways we can do this to ourselves and our posterity is to work as hard as we can to eradicate the evil of illegal drugs but at the same time be very careful to maintain the civilized society which is so important to all of us.

I believe this bill is simply in sports terms a slam dunk before election. Everyone will go home and be able to talk loudly and longly about what they have done to eradicate drugs in our society.

Mr. President, I would be willing to wager that next spring, after the election and the beginnings of a new administration, we would not pass the same bill that we are likely to pass in this frenzy just before an election.

I implore my colleagues: Do not be stampeded even by sincere efforts. I do not anticipate that we will adopt this amendment, but it would be a striking statement if we did—a striking statement not of weakness but of strength; a striking expression that we will not brutalize our society even with the extraordinary provocations of those who deal in illegal drugs and who themselves are brutalizing society.

If we were to adopt this amendment, Mr. President, we would be moving toward a gentler, not a harsher society, but also a firm society, one that might not let someone off easily as this bill would do but would have a firm, strong, consistent punishment for those who engage in murder.

Finally, Mr. President, the passage of this amendment would show that we are not a frightened society; that we have sufficient confidence in ourselves that we will maintain the civilization we have built over the past 200 years and not return even one small step toward the Dark Ages from which we have emerged.

The PRESIDING OFFICER. Who yields time?

Mr. D'AMATO. Mr. President, I respect immensely the concern that my colleague, Senator EVANS, has expressed for humanity and for the deliberate manner in which he expressed his concern that we not return to the Dark Ages. But I think, Mr. President, we are in the Dark Ages.

I hate to think of how a society blessed with what we have been endowed with, which God has given this great Nation, with the system of laws that we have, with basically some rather strong institutions, and good ones, has been humbled, has been brought to our knees, where good and decent people become the people who are locked away.

We have lost domestic tranquility. Let me tell you, I agree with my friend that we would not have a drug bill—forget about the death penalty—were it not an election year.

Somehow, we are well behind the curve giving the people what they want. We do not have the guts to raise taxes—I said the bad word, "taxes"—to fight a real war.

It is a good bill as far as it goes. Where is the money? Where is the real meat? That does not mean, for the people who violate continually our communities, our homes, our children, that they should not face the death penalty. That is our answer for the kind of terror that they bring and for the lives that they have snuffed out with no regard for the individual whose life was taken or for society or for the bereaved families that they have left behind.

So I, unfortunately, have to concur with my good friend and say that we probably would not have a drug bill were it not for an election. I make no apology about that. We would never have galvanized the forces, as diverse as they are, to support the drug bill. As inadequate as it may be, we would not have any.

Maybe instead of saying, "Well, this is just election such and such," we should say, "That is part of the process that gets both the House and the Senate to respond." And thank God we have elections, because otherwise we would never address these problems.

I have become somewhat cynical. And maybe the people are right. And is that not a shame? Because there will be precious few who are still here to raise the issue of how we win this battle, how we address the demand side, how we really begin to educate and build self-worth, self-esteem and teach it to these youngsters, particularly those who have no family to turn to? How can we do better to lift the spirits of our citizens and our youngsters?

Mr. President, I yield 5 minutes to the distinguished Senator from South Carolina, Senator THURMOND.

The PRESIDING OFFICER. The Senator yields 5 minutes. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I thank my distinguished colleague. I rise today in strong support of the provision contained in S. 2852, the core bipartisan drug package, which authorizes the death penalty for drug-related murder and establishes constitutional procedures necessary for the imposition of such a penalty.

Without question, drug kingpins, those involved in major drug operations and those who violate the controlled substances laws, will murder law enforcement officers, innocent bystanders, or others if necessary to further their drug distribution efforts. This provision authorizes the death penalty for these violent killers.

As the Nation has repeatedly witnessed, a byproduct of drugs is death. Death not only caused by drug overdoses, but death caused by the violence which is an integral part of the drug world. In Congress, we speak of waging "a war on drugs." How can we effectively wage a war without the proper weapons? This provision is a step toward providing a necessary weapon.

As well, without question the death penalty is an effective deterrent. The potential for imposition of the death penalty would send a definite signal to drug kingpins and others involved in drugs that they will pay a high price for killing in furtherance of their illicit business.

In the omnibus drug bill in 1986, Congress amended the drug laws to provide enhanced penalties for drug offenses. At that time we stopped short of providing the most effective penalty—the death penalty. In the 100th Congress, the Senate overwhelmingly approved a measure similar to this provision by a vote of 65 to 29. Further, this provision is similar to a provision recently added during House consideration of an omnibus drug package. We must act without further delay to provide the death penalty for such drug-related murder.

In the past, the death penalty issue has been extensively debated in the Judiciary Committee as well as on the Senate floor. The procedures contained in this bill are similar to ones that the Judiciary Committee has previously approved. These procedures comport with the constitutional requirements outlined by the Supreme Court. In past debates on the death penalty, opponents have argued that the death penalty should not be authorized because an innocent defendant may be sentenced to death. No one would want that to happen. However, the procedures outlined in this bill are well thought out and designed to guard against the possibility that the death penalty will be imposed upon an innocent defendant. Under this bill, the jury is sufficiently guided in its decision as to innocence or guilt and its decision as to whether or not to impose the death penalty. The defendant is given every fair and just opportunity to present evidence to show why he should not be given a sentence of death.

As my colleagues are aware, I have been a strong supporter of the death penalty for many years. In this Congress, I introduced S. 277 which provides for the imposition of the death penalty for the numerous Federal crimes for which the death penalty is currently authorized—such as murder, treason, and espionage—as well as authorizes the death penalty for new crimes such as an attempt to assassinate the President, murder by a Federal prisoner who is serving a life term, and drug-related murder. Although the death penalty provision contained in the bill before the Senate today is not as broad as the bill that I introduced, it is a step toward the full implementation of four death penalty laws.

In closing, I would like to remind my colleagues that the Senate in 1984 approved a broader death penalty bill by a vote of 63 to 32, approximately a 72-to-1 vote. Further, public opinion polls indicate that there is overwhelming support for the death penalty. We must not allow the 100th Congress to adjourn without enactment of this vital provision. I strongly urge my colleagues to vote in favor of this important measure and to oppose any amendments which would weaken or eliminate the death penalty from this bill.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. D'AMATO. I yield 5 minutes to the Senator from California.

Mr. WILSON. Mr. President, I rise again as on many prior occasions, first to compliment my colleague, my friend from New York, the Senator who has with great singleness of purpose had the courage and the constancy to see through to enactment a Federal death penalty which is so much needed to give credibility to the efforts of law enforcement.

Mr. President, I heard Senator D'AMATO make a comment a moment ago that he admired the concerns that moved those to oppose his legislation; that he had a full appreciation of the nature of their objections. I share his admiration for, if not their judgment, at least the very human motivation that makes them so unwilling to take a life. Indeed, that is something that we do not only share because it is bred into it, we are taught that from the earliest moment of our consciousness.

But we have as a society found it necessary to make certain exceptions. In time of war all but conscientious objectors are expected to bear arms in defense of this Nation and its freedom. We are not so naive to think it a perfect world in which we do not require police officers to function to protect us from those who are outlaws.

The debate traditionally about the death penalty is that we should not engage in retribution, that that is not a civilized thing to do. Mr. President, I would not want to argue that position to Matthew Byrne, whose 22-year-old son was a patrolman who was blown away in cold blood by a paid hit man who was to make a point to the New York police that they should not be too aggressive in protecting witnesses, not too aggressive in the pursuit of those criminals for profit who are perfectly willing to take lives, whether it be those they take through drug overdose or those they take by pulling a trigger.

If you hear anger in my voice or if you detect that you do, you are quite correct. I, as a mayor, have been to too many police officers' funerals. I have read since that time of an increasing number of young police officers, men and women, whose lives have been ended because they have been mindlessly blown away, in some cases by those whose minds have been blown away by drug use. But in all too many others what we had were very cold-blooded rational acts for which those that performed the murders were well compensated.

The other part of the traditional debate about the death penalty was whether it deterred crime. Mr. President, I do not think the death penalty deters crimes of passion. Some night when the worm turns and some henpecked husband of 30 years picks up his wife's pot or pan and hits her with it, that may be a crime of passion. The death penalty is not going to deter that.

But we are not talking about a crime of passion. The drug traffic is not a crime of passion. It is a crime motivated by profit, the greed and lust for the big money that has come to the drug kingpins and to all whom they employ, including hit men.

Not long ago two career agents of the Drug Enforcement Administration, Federal agents, were gunned down in the streets of a quiet suburban neighborhood in San Marino, CA. They were about to make what they thought was an undercover drug purchase. And, in fact, the foreign nationals with whom they were dealing I think had no reason to suspect that they were anything except bona-fide pushers.

But what really happened is that they were reasonably confident that the agents, whom they did not know to be agents, carried the cash. They had in fact seen the cash, $80,000 to make this buy. And on a prearranged signal two of them pulled out revolvers and shot in cold blood two Federal officers; shot them in the heart. The third officer managed to escape.

Mr. President, they were murdered in cold blood for profit. Patrolman Byrne was murdered in cold blood for profit. He was guarding a witness in a drug case. Those who were fearful that the testimony of the witness would convict a kingpin hired a killer to kill Patrolman Byrne.

My contribution to the D'Amato-Wilson death penalty legislation was the legislation that I introduced earlier this year to protect law enforcement officers. And there is anger in my voice, Mr. President. I never knew my grandfather on my mother's side. He was a young detective and, believe it or not, in 1908 he was killed by a criminal in Chicago, one suspected of being in a robbery ring and a cocaine-selling ring, even 80 years ago.

But, if I had never known that that was why I was deprived of knowing him, there would be anger in my voice. Because when I hear my friends say we are not a frightened society, that is the signal we will send if we do not enact the death penalty. I must tell him we are a frightened society and with very good reason, because we have allowed the streets to be taken over by the drug kingpins and those in their employ and those who are would-be purchasers of drugs from drug dealers. The violent crime that afflicts our society, that makes us an unsafe America, that kind of thing that makes us a frightened society, is attributable about 98 percent to the drug traffic.

So the D'Amato-Wilson legislation is essential for us to be a civilized society. Because no society can claim to be civilized that does not take the utmost effort, first and foremost, to protect its people. That is the first duty of a democracy. The first duty, I submit, of a civilized society is to protect decent, law-abiding, civilized citizens against those who are uncivilized. That is why a death penalty is required and for those who question its deterrent value, I can guarantee that if you go to a preassigned place with the impunity that comes with the knowledge that if you take a life, you will not pay for it with your own, it is much easier to pull the trigger.

Mr. President, civilization is not worthy of the name if the decent and law-abiding are not protected against the uncivilized. And, in particular, those who lay their lives on the line, who are at risk daily, as police officers, are owed this much by us. We must have this protection.

The PRESIDING OFFICER. Who yields time? The Senator from New York.

Mr. D'AMATO. Mr. President, let me commend my friend and colleague from California because he played an integral part in the draftsmanship and the sponsorship of this legislation and particularly in drafting that part which dealt with the death penalty and its application to the killing of law enforcement officers in drug-related crimes. I want to express my gratitude to him.

Mr. President, I yield 5 minutes to the Senator from Iowa, Senator GRASSLEY.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I thank the Senator from New York for yielding to me for the purpose of my speaking in opposition to the amendment by Senator HATFIELD, Senator STEVENS, and Senator LEVIN. I do this reluctantly because I have high regard for each of these three colleagues of mine. But there are honest differences of philosophy here on the best way to send a very clear signal that we are determined to win this war on drugs.

I find it altogether appropriate that this is the first amendment offered to the drug bill because this is about the ultimate criminal sanction that can be levied; the death penalty.

It is the predominant responsibility of the Federal Government to protect American citizens. That is a given. As long as there is a substantial reason to believe that capital punishment serves as a deterrent, then I believe it should be retained in the bill.

The Senator from Pennsylvania earlier made a compelling case on the issue of deterrence and I am not going to add to that.

Of course, in view of its irrevocable nature, I have attempted to explore every aspect of the capital punishment sanction. This study has strengthened my belief that certain offenses, such as drug-related killings, are so abominable that the only just punishment we can mete out is death. To attach any lesser penalty is to mock our system of justice.

That is why I have joined my distinguished colleague from New York, Senator D'AMATO, as an original cosponsor and supporter of S. 2455, the legislation imposing the death penalty for drug-related killings.

As my colleagues will recall, on June 10 of this year, this body voted 65 to 29 in favor of S. 2455. Similarly, the other body added a death penalty provision to its drug legislation last month. As we are all aware, the debate over the propriety of the imposition of the death penalty is ongoing.

We know about the Furman case in 1972 invalidating the statutes that authorize the death penalty in all States and the Federal Government. In Furman, the court held that the unlimited discretion afforded to judges and juries, at that time, to impose the death sentence was prohibited by the Eighth Amendment.

During the intervening years, many of the States have reinstituted the death sentence with appropriate safeguards of due process in deference to the Supreme Court's decision in that Furman case.

Most of these State statutes have undergone very strict scrutiny. Many have been upheld by our U.S. Supreme Court. I want to commend the States for the responsible manner in which they have reformulated their capital punishment statutes. Their work is indicative of the overwhelming popular support for the reinstitution of capital punishment.

The public supports the imposition of capital punishment in instances that are necessary and very appropriate. I believe such circumstances include the intentional killing of an individual by the perpetrator of a drug-related felon. The public also supports, as I do, providing for due process safeguards during any judicial proceeding that will determine whether or not the death penalty will be imposed.

I believe that title VII of this bill is a responsible, measured response and wholly consistent with the Supreme Court's guidance to the threat posed by drug kingpins and other thugs involved in such crimes against individuals and our society.

Title VII provides that the death penalty may be imposed in only two instances: First, when a murder is committed by any person engaging in or working in furtherance of a continuing criminal enterprise, and second, when a murder of a law-enforcement officer engaged in official duties is committed by any person committing a felony violation of the Controlled Substances Act, or while any person is attempting to avoid apprehension, prosecution, or service of a prison sentence on such a violation.

I believe that title VII is also in keeping with the mandate of the Supreme Court because it provides necessary due process safeguards such as a separate hearing on the imposition of the penalty, an opportunity to consider aggravating and mitigating factors, and the right to appeal before there can be any imposition of that death penalty.

Mr. President, in closing, I suggest that we send a strong signal and that we leave this provision in the bill by voting against the amendment to strike it.

I yield the floor.

Mr. DECONCINI. Mr. President, in order to further strengthen our law enforcement efforts against those who traffic and deal in illegal drugs, I rise in support of the death penalty provision which has been included in the Senate drug bill. I want to first commend my good friend Senator D'AMATO for his efforts in crafting the death penalty provision. I would also point out that this is the same D'Amato amendment that this body overwhelmingly approved earlier this year.

We have before us a comprehensive, bipartisan drug bill that has taken a special task force several months to draft. This bill addresses all areas of the battle against illegal drugs, including drug education, treatment, enforcement, and interdiction. I believe the death penalty provision is the final piece to the puzzle. I believe, like a majority of Americans do, that the death penalty will provide the kind of deterrent that will truly send a message to drug traffickers and drug dealers—that this country takes this problem seriously, and we are ready to deal with it in a serious manner.

Those who deal in illicit drugs have demonstrated a total disregard for human life. Law enforcement officials believe the Jamaican drug gangs are responsible for over 800 murders nationwide in the past 3 years.

Let me provide a couple of examples of the brutality and ruthlessness of those who deal in drugs.

In Los Angeles recently, a plainclothes police officer was shot to death by machinegun wielding gang members who earlier wounded three people, including a woman doing her laundry. According to Police Chief Daryle Gates, the police officer and his partner had heard a radio report of a drive-by shooting. Noting that the description of the car matched a vehicle that passed them on the road, the officers began tailing it. The car pulled into a gasoline station and made a U-turn, speeding past the unmarked car as a passenger fired an automatic weapon. The officer was wearing a bulletproof vest but was hit by gunfire in the face.

Mr. President, I ask unanimous consent that an article describing a drug shootout be printed in the RECORD.

There being no objection, the article was ordered to be printed in the Record, as follows:

Drug Shootout Kills Boy

Philadelphia.—A 5-year-old boy was killed and two other children were wounded in the crossfire between drug dealers, police said.

Marcus Yates was playing a video game with his brother, 6, and cousin, 8, in a West Philadelphia grocery store Monday night when two men stepped in and fired at the owner, who fired back. Yates was wounded and died hours later.

In Norwalk, Conn., mean-while, doctors delivered a baby by Caesarean section, minutes after her mother, Everne Johnson, who was 25 and eight months pregnant, died from a stray bullet fired in what police described as a drug turf war at the Roodner Court Housing Project.

The baby was in critical condition.

Mr. DeCONCINI. The American people have consistently demonstrated in opinion polls that they strongly support the death penalty. More than 80 percent of my constituents in Arizona favor the death penalty. Some argue that the death penalty should not be implemented because of the possibility of mistake. I find this argument to be unconvincing in light of the extensive procedural safeguards for capital defendants.

A chronology of the legal procedures required and available to these defendants would convince any reasonable person that the system has done everything possible to minimize the possibility of mistake. It is my opinion that this country is in dire need of the protection afforded to society by the death penalty provision included in this drug bill.

The PRESIDING OFFICER (Mr. Moynihan). The Senator from New York.

Mr. D'AMATO. Mr. President, I believe the time has come for us to vote, I am waiting for Senator Hatfield, but I will ask for the yeas and nays. I do not believe they have been ordered.

The PRESIDING OFFICER Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. D'AMATO. Mr. President, let me in the few monents that remain before we close our debate and go to final passage suggest that indeed there are good reasons for capital punishment, particularly as it relates to drug kingpins or the assassination of others, whether they be killings of others who are dealing drugs or whether they be killings to enforce the code of silence. We have had, Mr. President, as you and I well know, the terrible affliction and scourage of that kind of enforcement by drug criminals in the State of New York.

New York City, this year, on the upper west side Manhattan, the brutality of the gangs accounted for 500 slayings over a 5-year period of time. Stories told of people being killed in the open to demonstrate the gang's absolute disdain for law and to attempt to send a message to the community that "You cross us and you will pay for it with your life."

As a matter of fact, it became a common-day occurrence to have those who would testify against the drug dealers not only assassinated but murdered in broad daylight to demonstrate to all that the code of silence was that anyone who talked would pay with his or her life.

Mr. President, it is about time that we recognize that we are in a brutal war and that we have to stand up and to give a tough answer to those in the law-enforcement area and to those people in the community who say, "Well, what will you do if someone commits these murders or orders them; what will their fate be?" Will it be a life imprisonment which really is not life imprisonment?

Mr. President, let me return to the case of Lemuel Smith, and I have raised it as an example of life imprisonment. Lemuel Smith had been convicted of several murders, and during his incarceration at Greenhaven State Penitentiary, brutally killed and mutilated a guard.

Mr. President, let me suggest that this case represents the height of irony. Lemuel Smith is now in prison after having brought suit against the State of New York protesting his conditions of incarceration, protesting that he was placed in solitary confinement because of his absolute deadly, crazed state. People were fearful of him. He actually sued the State protesting his deprivation. As a matter of fact, he won one aspect of the case because paralegals were excluded from coming in to see him. He actually received a damage award of $1. He is now at Great Meadows serving 15 years in a special housing area for prisoners with disciplinary problems.

I want to ask my colleagues, do we say to the family of that prison guard who was brutally murdered that there is no place in society for the death penalty? I do not agree. I do not think the family of Ed Byrne, the 22-year-old police officer assassinated in Brooklyn, or any of the police officers who have been cut down deliberately, would agree that the death penalty is not appropriate.

Let me suggest that there are some murderers who are so depraved that capital punishment is the only appropriate and the only just response. To paraphrase President Reagan on September 22, he said that indeed, for those people who come and machine-gun their neighborhoods, who kill people, that indeed the death penalty is appropriate.

I agree with the President.

Mr. President, I am prepared to yield back the remainder of my time if my colleague will.

Mr. HATFIELD. Mr. President, one of the cosponsors of the amendment wishes to be heard, Senator Chafee, and I am happy to yield to him 4 minutes.

The PRESIDING OFFICER (Mr. Fowler). The Senator from Rhode Island [Mr. Chafee] is recognized.

Mr. CHAFEE. Mr. President, I rise today in opposition to the inclusion of the death penalty in the drug bill that is before us for consideration. One of the reasons for my opposition, not the principal reason but one of the reasons, is the enormous importance of addressing our country's drug crisis. The inclusion of the death penalty clearly is a divisive issue and indeed could threaten passage of this important drug bill.

But more importantly than that, I believe that the death penalty should never be resorted to because it is both ineffective and, by definition, it is irreversible. I come to this conclusion because of the experience in my own State that has left an indelible impression on all of us who have served in State government there. The facts are that an execution took place in my State on Valentine's Day 1845, 140-some years ago. On that day we executed what we believed to be the murderer of one of the principal-manufacturers in our State from the Sprague family, Amasa Sprague. But it subsequently occurred that we had hung the wrong person, and it was all well and good to extend apologies to the family of the executed man, but it did very little for the one who had been hung, a poor Irish man named John Gordon. And so following this horrible mistake the State legislature in Rhode Island, in 1852, abolished the death penalty, and since then life has gone serenely along in our State. We certainly have no higher rate of vicious crime than does any other State. Those crimes that come to trial in our State are not conducted in the circus-like atmosphere that accompanies trials where the penalty is death. They are conducted in a sober manner without news makers appearing from all over the country because, if the accused is convicted, he will "fry" or he will "hang by the neck until dead."

And so I believe from that experience and from what I have seen in our own State, the death penalty, as I say, is irreversible—and that irreversibility leads to injustice. The truth of the matter is, even our justice system makes mistakes.

Mr. President, in the current atmosphere the viciousness of the effects of drugs upon our society are conducive to juries quick to find guilt. Surely we shouldn't make their finding irreversible.

Along with being irreversible, the death penalty is also ineffective as a deterrent. Now, let me quickly look at some statistics. A 20-year study comparing crime rates in Chicago and Detroit and found that despite 55 executions in Chicago during those 20 years, the rate of violent crime against police—this was the cause for the convictions—was half again greater in Chicago than it was in Detroit where there were no executions. So the idea that the death penalty is a deterrent just is not substantiated by the facts.

Mr. President, I wholeheartedly support the drug bill that is before us. I believe the treatment and rehabilitation provisions mark a new level of understanding of the very roots of the drug problem. I urge my colleagues, therefore, to get on with the issue at hand, the drug bill, and to reject the distraction of such controversial and inflammatory issues as the death penalty.

I thank the Chair and I pay tribute to the distinguished principal sponsor of this amendment, the distinguished senior Senator from Oregon.

The PRESIDING OFFICER. Does the Senator from Oregon yield back the remainder of his time?

Mr. HATFIELD. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Oregon has 2½ minutes. The Senator from New York, [Mr. D'AMATO] has 5½ minutes.

Mr. HATFIELD. Mr. President, I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. It is the Chair's understanding that the yeas and nays have already been ordered.

Mr. HATFIELD. Mr. President, I would like to merely wind up the argument on our side by indicating that the death penalty does not belong in this bill. We have some very excellent provisions in this bill which addresses the root causes of our drug problem, which is the issue at hand. The death penalty has not been a deterrent to crime in this country. That has been demonstrated time and time again. Third, when the death penalty is exercised, it has fallen heavily and unfairly upon the poor, the blacks, the Hispanics, the minorities, the people in the lower incomes. It has not been equitably applied.

We could continue argue this issue. When I hear cries on this floor that the criminal must be punished, indeed he must be punished, and this amendment to substitute life imprisonment for the death penalty does precisely that. It mandates life imprisonment with no hope of parole. Now, that is in itself harsh punishment, so you cannot say the option is either the death penalty or letting the criminal go free. We do mandate a hard penalty in this substitute.

Mr. President, I thank my colleagues who have supported this bill, and I am hopeful that we will adopt this amendment. I yield to the Senator from Illinois any time that I have remaining.

The PRESIDING OFFICER. The Senator has 30 seconds.

Mr. SIMON. I thank my colleague from Oregon. Let me just say very plainly, simply, capital punishment is a punishment we reserve for poor people, period. The evidence that it is a deterrent is just not there. Let us give punishment, let us make it sure and quick and severe, but that is not what we are doing. The death penalty is public relations, let us face it, just before an election. It is not what we ought to be doing.

The PRESIDING OFFICER. All time of the Senator from Oregon has expired. The Senator from New York.

Mr. D'AMATO. Mr. President, this is not the first time we have debated this question. I have a difficult time understanding how it is that a killer for hire, who is convicted of killing someone, hired by a drug dealer to do so, should not face the judgment of his peers, of society, of a jury and be held accountable for that act and, yes, face the ultimate penalty when the jury convicts him and finds that there are no mitigating circumstances barring the death penalty.

Let me quote something Justice Holmes said about common law. He said, "The first requirement of a sound body of law is that it should correspond with the actual feelings and demands of the community."

That is one of the shortcomings we have in today's society because we are not listening to our community. We have usurped the sound feelings and judgment of Americans in community after community with the most twisted, distorted, contorted logic. I have heard it said that if you vote for the death penalty, you are not voting for swift action. But somehow if you have life imprisonment, you are going to have sure punishment. Absolute nonsense.

Mr. President, I think President Reagan said it best on September 22 when he said, "We believe justice demands that a crack dealer with a machine gun who murders a police officer in the line of duty should give up his life as his punishment. We must protect our protectors and that means the death penalty for these vicious killers."

The PRESIDING OFFICER. All time has expired.

The question is on agreeing to the amendment of the Senator from Oregon——

Mr. HATFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, in behalf of myself and Senator HATCH, I send to the desk a bill, and ask for its immediate consideration—I withhold the request.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I send a bill to the desk——

The PRESIDING OFFICER. The Chair must advise the Senator that the Senate is in a nondebatable posture on amendments. The Senator must ask for unanimous consent.

Mr. KENNEDY. Mr. President, I ask unanimous consent to be able to proceed for 2 minutes.

The PRESIDING OFFICER. Is there objection? Hearing no objection, it is so ordered.

AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT

Mr. KENNEDY. Mr. President, I send to the desk a bill in behalf of myself and the Senator from Utah [Mr. HATCH] and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection?

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, reserving the right to object, I will not object, but I ask unanimous consent that there be a 3-minute limitation on the consideration of the bill, and that no amendments be in order thereto.

The PRESIDING OFFICER. Is there objection? Hearing no objection, it is so ordered.

Mr. HATFIELD. Mr. President, reserving the right to object, I would like to ask when we are going to vote on my amendment. We have the yeas and nays ordered.

The PRESIDING OFFICER. The Senator from Oregon reserves the right to object. Will he direct the question to the majority leader?

Mr. KENNEDY. Mr. President, this omnibus bill includes——

The PRESIDING OFFICER. If the Senator will suspend for one moment, hearing no objection, the request of the majority leader is agreed to.

The clerk will report.

The legislative clerk read as follows:

A bill (S. 2889) to amend the Public Health Service Act to establish certain health programs, to revise and extend certain health programs, and for other purposes.

The **PRESIDING OFFICER**. The bill will be considered as having been read the second time by title and, without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill.

Mr. **KENNEDY**. Mr. President, this legislation includes the various National Institutes of Health authorization, the research programs on AIDS, the organ transplant legislation, all of the health manpower, nurses' education programs, and food and drug legislation as well. In passing this measure, the Senate is underscoring the fact that the AIDS epidemic constitutes both a national and international public health emergency. The AIDS epidemic has created unique and complex new problems for virtually every sector of our society. The consequences of the epidemic for certain groups in the population—particularly gay and bisexual males, intravenous drug users, blacks, Hispanics, and native Americans—are already devastating. The potential consequences for all others are equally grave unless decisive and effective education and prevention programs are rapidly implemented to halt the continued spread of HIV infection.

The AIDS virus does not discriminate based on sex, age, race, ethnic or national origin, or sexual orientation. HIV can infect anybody who has unprotected sexual contact with an infected individual. HIV can infect anybody who shares intravenous needles or syringes. HIV can be passed from mother to unborn child. As a result of the development of screening tests for HIV antibody, transmission of the virus through contaminated blood or blood products has been virtually eliminated in the United States. However, prior to the advent of the screening test, tens of thousands of Americans became infected with HIV through blood transfusions or the use of Factor VIII concentrates used in the management of hemophilia. However, in many developing nations unable to afford implementation of screening measures, contaminated blood continues to be a significant route of transmission of this lethal virus.

Recognizing that AIDS and the HIV epidemic has now reached every one of the 50 States and into the territories and possessions of the United States, the Senate has gone on record that a new and concerted national effort is required to mobilize the resources of this Nation to overcome the menace that AIDS poses to the American people and to all future generations.

The elimination of AIDS and the HIV epidemic will require the best efforts of our Nation and our civilization for many years to come. Arresting the spread of HIV infection will not occur as a result of legislative fiat or the adoption of punitive approaches imposed upon individuals who are already infected with the AIDS virus. Halting the spread of HIV is fundamentally dependent upon encouraging and achieving changes in personal behaviors, both on the part of individuals who are infected and those who are uninfected. Achieving such fundamental behavior change will require the active participation of individuals and institutions at every level of our society.

The HIV epidemic has brought with it not only pain, suffering, and death, but also confusion, fear, and hatred. In some instances, those infected with HIV have come to be treated as villains. Individuals who are sick and in need of help have been met with rejection rather than compassion and assistance. Fear of discrimination has had a chilling effect on the acceptance and implementation of potentially useful and effective public health measures. I share the disappointment of Congressman WAXMAN and Congressman MADIGAN that we have not today put into place a fair and reasonable standard of confidentiality concerning HIV counseling and testing.

The leadership of the Senate Labor and Human Resources—and I believe the majority of Members of the Senate—understand that voluntary counseling and testing programs are an essential component of the response to this virus. Coercive and punitive approaches are not the solution. We need the full cooperation of those at greatest risk of infection in order to achieve the behavior change which is our only current vaccine against AIDS.

I will make it a priority in the 101st Congress to pass legislation that does include a reasonable and rational confidentiality standard for HIV counseling and testing. I believe that Senator HATCH is ready to join me in this all critical effort. In addition, I feel deeply that we must also address the very real problem of senseless discrimination against people with HIV disease. The Presidential Commission on the HIV epidemic placed antidiscrimination safeguards at the top of its list of recommendations of how to halt this health crisis. Commission Chairman WATKINS urged that the antidiscrimination safeguards be included in a comprehensive plan to protect all individuals with disabilities. I have joined Senator HARKIN and Senator WEICKER as a cosponsor of the Americans With Disabilities Act which would set this kind of policy. Until the Federal Government sends a clear signal that this country will not tolerate the unnecessary breach of privacy and the violation of basic human rights for people with HIV infection, our effort to persuade people to come forward to be tested will be hampered.

In the meantime, this legislation provides $100 million to States that choose to operate counseling and testing programs in which the individual's identity remains completely anonymous. And we are mandating that the Secretary of Health and Human Services rapidly conduct a study to find out just how the States are handling counseling and testing confidentiality. It must be our intention to chart a reasonable course of action through this very complex issue.

This legislation does create a program that will allow the States to apply for Federal funding to implement counseling and testing programs for specific categories of convicted prisoners. The discussion on the floor concerning this provision last April made it explicit that this provision does not mandate all States to implement this type of program.

Given the problems of overcrowding and scarce resources in so many prison systems, a Federal mandate is obviously not an option. State correction officials will need to carefully consider the implications of implementing this type of screening program and decide whether they wish to apply for Federal assistance. I am confident that some will choose to wait until policies to safeguard prisoner confidentiality and safety have been adequately developed.

I also want to make it very clear that the intention of this provision is to support testing programs at prisons. And the specific categories of convicted prisoners that may be tested are clearly delineated in the statute.

This epidemic has taken an appreciable toll on America's institutions, including our hospitals and health care system, Government at every level, businesses, religious and voluntary organizations, emergency service agencies and the schools. This Nation has no clear plan for how it will come to terms with the economic impact of AIDS and HIV infection. AIDS is a problem that no one could have anticipated even a decade ago, yet it has brought with it financial burdens measured in the tens of billions of dollars this year, perhaps much more in decades to come. As of yet, there is no accepted formula for apportioning the unavoidable costs of AIDS care and treatment. We need to develop new strategies for coping with this catastrophic illness.

As a consequence, this bill includes a landmark program to provide home health care for people with AIDS and related diseases. It will provide up to $100 million a year to the States to develop more compassionate and cost effective care programs for AIDS. We know that people with AIDS can be cared for in their own homes—if we are prepared to fund appropriate skilled health services. Many treatments can be delivered in the home setting at much lower cost than in an acute care hospital. In many instances, the only thing that is keeping people with AIDS—including babies with AIDS—hospitalized is the fact that there is no way to pay for the simplest home health aide services. Our intention is develop the care networks to change that and provide a well-planned home health plan for the individual patient. We expect that mental health and social services can be a part of such a total health plan.

By saying yes to this legislation, the Senate has recognized that the AIDS crisis requires additional support for our Nation's research and medical systems. We provide resources, including manpower and space, to relieve the tremendous strain that AIDS has placed on our national programs of basic and clinical research, drug development and approval, and disease prevention. And we require that specific Federal agencies will respond promptly to AIDS priority requests from public health and research agencies leading the battle to conquer this insidious virus.

This bill also responds to the urgent need to expedite the award of research and prevention funds to nongovernment researchers and organizations. The Secretary of Health Human Services must now expedite procedures for the review of AIDS research and prevention proposals. We ask that every effort be made to expeditiously process funding requests pertaining to AIDS, however we have also provided the Secretary with the authority to extend the period of review in the case of specific proposals which will require more detailed evaluation. In the case of grant or contract applications involving multiple institutions or centers, complex cooperative agreements or projects which require onsite review of facilities and institutional capability, more time may be needed. The U.S. Senate is fully committed to scientific excellence in our battle against AIDS. What we are asking is that absolutely every effort be made to eliminate bureaucratic procedures that slow down action. If that means getting more talented and creative researchers and scientists involved in the process of grant review, we ask that it be done. We ask that every individual involved in the research and prevention funding system examine that process and suggest ways to cut out lag time.

Our bill also requires the Secretary of Health and Human Services shall appoint and fix the compensation of not less than 780 employees for the Public Health Service, above and beyond the number of employees assigned to agencies of the PHS on December 31, 1987. The bill managers intend that of these additional employees, not less than 300 shall be assigned to the National Institutes of Health, 350 to the Centers for Disease Control, 50 to the Food and Drug Administration, 25 to the Health Resources and Services Administration, and 45 to ADAMHA. We urge the Public Health Service and the Secretary to make those allocations and start the process of recruiting top personnel right away. Money alone cannot do the job, we need bright and committed people. We will no longer tolerate bureaucratic maneuvering that delays the hiring of these workers.

This act also establishes a Clinical Research Review Committee within the National Institute of Allergy and Infections Diseases to advise the Director about research and findings about treatments for AIDS. We intend that the committee be made up of physicians whose practice includes patients with AIDS, doctors who have the front line expertise and are confronting the daily realities of caring for people who are sick and sometimes desperate. We want the NIH to adhere to its long established principles of scientific excellence in its AIDS clinical research efforts. At the same time, we must not overlook the human dimension of conducting experimental drug trials. The community based physician can play an immensely useful role in the design and operation of ethical and workable experimental studies.

Obviously, there are no easy answers in our search for effective treatments for AIDS and HIV disease. Carefully controlled clinical studies are absolutely essential if we are to discover which drugs work and which do not. In certain circustances, there is very likely no substitute for the use of a placebo in such trials. What is essential is that we apply the highest ethical standards and display compassion in designing and developing drug studies.

It is our intention that the Director of NIAID form this Clinical Research Review Committee as rapidly as practical. We believe that the Director may feel that it is best to have the committee be a subcommittee of the Institute's existing advisory panel. I don't think that this new panel has to be treated as a statutory committee. What's most important is convening a good working group.

In this bill, we also authorize the Secretary to provide support for community-based clinical evaluation of experimental treatments for AIDS. It is our intention that the first job of this program will be to provide core support funding to develop the scientific, clinical, and administrative capabilities of community organizations—including organizations founded by people with HIV infection—that have been organized for the purpose of conducting AIDS drug studies.

In the Labor and Human Resources Committee, we have heard the pleas of people with AIDS asking to become involved in the drug study process and asking for increased access to experimental treatments. Our strong hope in authorizing this program is to provide the resources and a framework that will bring the concerns of the community organizations into closer alignment with the concerns of the research community. It can't be said often enough: in battling this disease or any other, there is no substitute for good science. Let us invest the time and the energy to help front-line doctors and their patients understand the principals of drug development. But let's also make sure that the communications channel works in both directions. If there are drugs out there that have the ability to slow the onset of the terrible infections seen in AIDS, let us use them as the part of other compassionately designed drug protocols. In particular, I am thinking of those drugs that may prevent the pneumonia that strikes people with AIDS as well as the experimental antiviral drug DHPG which has been shown to prevent blindness in AIDS. It is my understanding, for instance, that this drug has now been approved for use in the United Kingdom.

We are also deeply conceived about the impact of this virus beyond our own borders and have authorized the Secretary, acting through NIH and CDC, to support international research and prevention projects. With the funds awarded through the National Institutes of Health, it is our intention that emphasis be given to programs and projects that will enable developing nations confronting AIDS to develop the capability to evaluate the scientific and ethical merits of clinical trials of experimental treatments and vaccines for AIDS—and begin to have the resources to carry them out.

This act also directs the Secretary of HHS to develop comprehensive guidelines concerning methods by which the etiologic agent for AIDS can be transmitted. These guidelines should serve as the basis for education programs for emergency response employees concerning methods of protection from possible exposure.

We ask that such education and training efforts be expeditiously developed and initiated in order to assist emergency response workers to recognize occupational incidents that actually entail risk of exposure, as well as situations that don't pose a risk. Knowledge and common sense are our best weapons in this war. Every health care worker and every emergency service worker should understand how to protect themselves.

Because information is so important, we also provide for the creation of a comprehensive education and prevention program to reach every sector of our society. We must teach all Americans about the behavior changes that can protect them from becoming infected. And we have to be sure that people who may be carrying the AIDS virus know how to avoid transmitting to others. This bill contains a host of provisions to get AIDS risk reduction information to everybody. It includes the authority for the Director of the Centers for Disease Control, to develop and purchase paid advertising for the purpose of delivering AIDS prevention and risk reduction messages. We expect that every effort will be made to insure that 90 percent of American households shall receive such messages at a frequency of not less than 15 times during a 6-month period. And we intend that emphasis be given to the development and delivery of appropriate prevention messages to minority populations at risk of infection with the AIDS virus.

This legislation also a National Commission on AIDS and requires that appointees be selected on the basis of expertise and experience in the fields of science, public health, research, medicine, mental health, substance abuse, social science, social services, health care and health finance, law, and ethics. We expect this to be a bipartisan panel that can serve as an expert advisory panel to both the administration and the Congress. The bill report delineates functions that will not duplicate the work of the Presidential Commission on the HIV Epidemic, but build upon that work for the purpose of developing a national consensus on strategies that are required to cope with this public crisis.

AIDS and the HIV epidemic have placed a great strain on our national programs of basic and clinical research, drug development and approval, health care delivery and finance, mental health and behavioral research, disease prevention and drug treatment as well as systems for training professionals at all levels to serve within these programs. We urge the National Commission to pay particular attention to identifying opportunities to improve the operation and effectiveness of such programs and systems, including resource and manpower needs.

It is clear that AIDS has raised complex problems of ethics and law, morality and community values. I believe strongly that the resolution of these problems and concerns can be achieved through the balanced application of common sense, compassion, and sound public health principals which are consistent with this Nation's concern for individual civil and human rights. We look to this Commission to help us in the search for this balance. The National Commission's Chairman may wish to give careful consideration to recruiting some of the staff members who served the Presidential Commission with such diligence and excellence. In light of the tremendous time commitment required to investigate and understand the complex issues raised by AIDS, we have also included provisions that would allow, but do not require, the Chairman or certain other members of the Commission to be paid for their services.

Finally, we believe that it is essential to develop a national consensus on strategies that are required to cope with this public crisis. This Commission can serve as a forum for the development of such a consensus. Recommendations alone, no matter how carefully developed and documented, will not result in the adoption and implementation of sound and comprehensive national policy on AIDS. A national policy on AIDS, backed by action and resources, is urgently needed. It will require the full support of the American people, of the Nation's civic and private sector leaders, and of the individuals and communities directly affected by AIDS.

I want to thank Senator HATCH and his staff as well as Congressmen WAXMAN and MADIGAN and their staffs for the tremendous work that has made this bill possible. Let us unite in action for life and an end to AIDS.

Mr. HATCH. Mr. President, I want to compliment the distinguished Senator from Massachusetts.

Mr. President, I am pleased to support this bipartisan compromise amendment offered by Senator KENNEDY and myself. This amendment contains a number of titles. These titles reauthorize the National Institutes of Health for a 2-year period with a ban on fetal research for 2 years. A new AIDS title covering education, research, services, and a 6-month study of State confidentiality and discrimination laws.

The bill also would reauthorize such important existing public health programs such as our health manpower programs, our nursing programs, the prevention block grant, the sexually transmitted disease program, and other important programs.

Mr. President, these programs are complex, and I would like to further explain the provisions of these reauthorizations in a more comprehensive way in a longer statement I will submit. It is important that we do this for the benefit of all who have to administer these programs.

Mr. CRANSTON. Mr. President, I rise in strong support of the omnibus public health bill that the Senate is now considering. I want first to congratulate the managers of the bill—on both sides of the aisle and on both sides of the Capitol—for successfully bringing this measure before us. It contains many, many important provisions concerning ongoing health programs, including the reauthorization of biomedical research at the National Institutes of Health, that have been passed by both Houses.

Mr. President, I am particularly pleased that this legislation includes provisions that will bring us closer to ending the AIDS epidemic. This bill is the result of long and hard negotiations. Although many provisions were not included in the final package, this initiative is a positive step toward eradicating AIDS. It is the most comprehensive AIDS legislation to be passed by the Congress and, I believe, sends a strong message to the American people that Congress is serious about stopping the AIDS epidemic.

Mr. President, this legislation would help expedite and accelerate research on AIDS. It would ensure that research proposals are processed quickly and that progress is not stymied for lack of laboratory space.

In addition, this legislation would launch an aggressive education and prevention campaign. It would enable community-based organizations to continue their life-saving education programs and would ensure that information that is culturally sensitive can be targeted to individuals and populations with a variety of needs and levels of understanding. I congratulate the managers for modifying the restrictive Helms amendment language that was adopted during Senate debate of the AIDS bill to conform closely with the Cranston-Kennedy amendment that was included in the fiscal year 1989 Labor-HHS Appropriations Act. I contacted the chairman of the Committee on Labor and Human Resources [Mr. KENNEDY] to urge that such a modification be made and will ask unanimous consent that a copy of my October 3, 1988, letter be printed in the RECORD at the conclusion of my remarks.

Mr. President, in particular, I would like to highlight two provisions that I am very pleased are included in the package. First, the bill provides for three long-term care demonstration projects for people with AIDS. This is based on an amendment I authored to S. 1220 in order to help people with AIDS to move out of the hospital and into more appropriate residential settings where they could receive nursing and attendant care. This program will be of a particular benefit to San Francisco, which is in the process of converting the former public health hospital at the Presidio, that has been used most recently as a language school by the Army, into a nursing home for people with AIDS.

Second, Mr. President, the consensus bill includes a provision to establish a National Commission on AIDS to continue the superb efforts begun by the Presidential Commission. This provision is based on an amendment No. 1663, which I offered to H.R. 2881, the House-passed Commission bill, introduced by my friend from the House

Veterans' Affairs Committee Representative ROWLAND.

AIDS will continue to be a national crisis demanding the full attention of an expert panel—working with full cooperation and information from the Federal Government—in order to help ensure the development, based on the most expert public health advice, of the policies necessary to bring an end to this tragic epidemic.

Mr. President, I am disappointed that the compromise does not include the counseling, testing, and confidentiality provisions that the House passed in H.R. 5142 and that are included in S. 1575, of which I am a cosponsor. Those provisions would have provided for expanded voluntary testing and counseling programs at family planning clinics, substance abuse clinics, sexually transmitted disease clinics, and other health facilities and would have ensured the confidentiality of the results of the HIV antibody test. People with AIDS and those who are infected with the HIV are too often victims of discrimination. Without confidentiality protections, they may be unwilling to be tested, to find out their antibody status, and to receive the education and counseling about how to prevent the spread of AIDS. Although the more extensive provisions were not included, I congratulate the managers for ensuring that $100 million would be authorized to be appropriated for anonymous testing programs.

Mr. President, this legislation demonstrates what Congress can do, when it has the will and determination to respond constructively to a serious national problem. This legislation is based on public health, not politics.

Ending AIDS requires a total commitment. Preserving life demands no less.

Mr. President, I urge all my colleagues to support this bill.

Mr. President, I ask unanimous consent that a copy of my letter to which I referred earlier be printed in the RECORD.

There being no objection the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, October 3, 1988.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR TED: I'm writing regarding the pending conference regarding S. 1220, the AIDS Information and Research Act. I urge conferees to take action regarding AIDS education materials that reflects the Senate's most recent action on this issue.

As you know, when the Senate considered the FY 1989 Labor-HHS-Education Appropriations Act on July 27, you and I offered an amendment regarding AIDS education. The amendment appropriately and reasonably addressed issues regarding the content of AIDS education materials. It prohibits federal funds from being used to support educational curricula that are designed to promote sexual activity—heterosexual or homosexual. At the same time, however, our amendment provides for effective AIDS education materials and requires that such materials include information to reduce the risk of exposure to the AIDS virus. It enables community-based organizatons to continue their life-saving education programs and ensures that information that is culturally-senstive can be targeted to individuals and populations with a variety of needs and levels of understanding.

The Senate voted 61 to 37 in support of our amendment and then rejected three parliamentary moves to overturn the vote. The Senate then defeated an amendment offered by Senator Helms—nearly identical to the amendment adopted on S. 1220 in April—to restrict AIDS education programs. Our amendment was enacted into law in the Appropriations Act on September 20 (Public Law 100-436).

Through these actions, the Senate—and later the Congress—has made clear its intent: The federal government must not interfere with or hamstring public health efforts to educate all Americans, including gay and bisexual men, about AIDS, as long as such programs are not designed to promote sexual activity. Thus, I would urge you to substitute in S. 1220 the Cranston-Kennedy Appropriations Act language for that contained in the Helms amendment regarding AIDS education.

In addition, I urge you to apply that language to all programs funded under the legislation. I understand that under the House-passed version funds would be prohibited from being used to provide for counseling that "promotes or encourages, directly, homosexual or unsafe heterosexual activity or intravenous substance abuse".

I am concerned that this language could interfere with the ability of counselors to practice their profession. As you recall, in response to the Helms amendment on the FY 1988 Labor-HHS-Education Appropriations Act, many states reported that they discontinued their AIDS education programs because they were unclear about the interpretation of the amendment and did not want to violate federal law.

The Cranston-Kennedy language, if applied uniformly across all programs under S. 1220, would set a consistent standard for all grantees. Therefore, there would be no additional need for specific language addressing counseling programs, and I would urge that the House provision be dropped.

Ted, I believe that these changes are critical to ensuring that the education and counseling programs authorized under this legislation are able to accomplish their goals—education Americans about AIDS and saving lives. I would greatly appreciate your assistance in this matter.

Cordially,

ALAN CRANSTON.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2889

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF TITLES.

(a) SHORT TITLE.—This Act may be cited as the "Health Omnibus Programs Extension of 1988".

(b) TABLE OF TITLES.—

Title I—National Institute on Deafness and Other Communication Disorders and Health Research Extension Act of 1988
Title II—Programs with Respect to Acquired Immune Deficiency Syndrome
Title III—Preventive Health, Health Services, and Health Promotion
Title IV—Organ Transplant Amendments of 1988
Title V—Food and Drug Administration
Title VI—Health Professions Reauthorization Act of 1988
Title VII—Nursing Shortage Reduction and Education Extension Act of 1988
Title VIII—Revision and Extension of Programs of Health Care for the Homeless
Title IX—Testing of Convicted Felons

TITLE I—NATIONAL INSTITUTE ON DEAFNESS AND OTHER COMMUNICATION DISORDERS AND HEALTH RESEARCH EXTENSION ACT OF 1988

SEC. 100. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This title may be cited as the "National Institute on Deafness and Other Communication Disorders and Health Research Extension Act of 1988".

(b) REFERENCES TO PUBLIC HEALTH SERVICE ACT.—Except as otherwise specifically provided, any reference made in this title to an amendment or repeal of a section or other provision shall be considered to be made to a section or other provision of the Public Health Service Act (42 U.S.C. 201 et seq.).

Subtitle A—National Institute on Deafness and Other Communication Disorders

SEC. 101. ESTABLISHMENT AND TRANSFER OF FUNCTIONS.

Title IV (42 U.S.C. 281 et seq.) is amended—

(1) in section 401(b)(1)—

(A) by striking "and Communicative" in subparagraph (J); and

(B) by adding at the end the following new subparagraph:

"(M) The National Institute on Deafness and Other Communication Disorders.";

(2) in the heading for subpart 10 of part C, by striking "and Communicative";

(3) in section 457—

(A) by striking "and Communicative"; and

(B) by striking "disorder, stroke," and all that follows and inserting "and disorder and stroke."; and

(4) in Part C, by adding at the end the following new subpart:

"Subpart 13—National Institute on Deafness and Other Communication Disorders

"PURPOSE OF THE INSTITUTE

"SEC. 464. The general purpose of the National Institute on Deafness and Other Communication Disorders (hereafter referred to in this subpart as the 'Institute') is the conduct and support of research and training, the dissemination of health information, and other programs with respect to disorders of hearing and other communication processes, including diseases affecting hearing, balance, voice, speech, language, taste, and smell.

"NATIONAL DEAFNESS AND OTHER COMMUNICATION DISORDERS PROGRAM

"SEC. 464A. (a) The Director of the Institute, with the advice of the Institute's advisory council, shall establish a National Deafness and Other Communication Disorders Program (hereafter in this section referred to as the 'Program'). The Director or the Institute shall, with respect to the Program, prepare and transmit to the Director of NIH a plan to initiate, expand, intensify and coordinate activities of the Institute respecting disorders of hearing (including tinnitus) and other communication processes, including diseases affecting hearing, balance, voice, speech, language, taste, and smell. The plan shall include such comments and recommendations as the Director of the Institute determines appropriate. The Director of the Institute shall periodically review and revise the plan and shall transmit any revisions of the plan to the Director of NIH.

"(b) Activities under the Program shall include—

"(1) investigation into the etiology, pathology, detection, treatment, and prevention of all forms of disorders of hearing and other communication processes, primarily through the support of basic research in such areas as anatomy, audiology, biochemistry, bioengineering, epidemiology, genetics, immunology, microbiology, molecular biology, the neurosciences, otolaryngology, psychology, pharmacology, physiology, speech and language pathology, and any other scientific disciplines that can contribute important knowledge to the understanding and elimination of disorders of hearing and other communication processes;

"(2) research into the evaluation of techniques (including surgical, medical, and behavioral approaches) and devices (including hearing aids, implanted auditory and nonauditory prosthetic devices and other communication aids) used in diagnosis, treatment, rehabilitation, and prevention of disorders of hearing and other communication processes;

"(3) research into prevention, and early detection and diagnosis, of hearing loss and speech and language disturbances (including stuttering) and research into preventing the effects of such disorders on learning and learning disabilities with extension of programs for appropriate referral and rehabilitation;

"(4) research into the detection, treatment, and prevention of disorders of hearing and other communication processes in the growing elderly population with extension of rehabilitative programs to ensure continued effective communication skills in such population;

"(5) research to expand knowledge of the effects of environmental agents that influence hearing or other communication processes; and

"(6) developing and facilitating intramural programs on clinical and fundamental aspects of disorders of hearing and all other communication processes.

"DATA SYSTEM AND INFORMATION CLEARINGHOUSE

"SEC. 464B. (a) The Director of the Institute shall establish a National Deafness and Other Communication Disorders Data System for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with disorders of hearing or other communication processes, including where possible, data involving general populations for the purpose of identifying individuals at risk of developing such disorders.

"(b) The Director of the Institute shall establish a National Deafness and Other Communication Disorders Information Clearinghouse to facilitate and enhance, through the effective dissemination of information, knowledge and understanding of disorders of hearing and other communication processes by health professionals, patients, industry, and the public.

"MULTIPURPOSE DEAFNESS AND OTHER COMMUNICATION DISORDERS CENTER

"SEC. 464C. (a) The Director of the Institute shall, after consultation with the advisory council for the Institute, provide for the development, modernization, and operation (including care required for research) of new and existing centers for studies of disorders of hearing and other communication processes. For purposes of this section, the term 'modernization' means the alteration, remodeling, improvement, expansion, and repair of existing buildings and the provision of equipment for such buildings to the extent necessary to make them suitable for use as centers described in the preceding sentence.

"(b) Each center assisted under this section shall—

"(1) use the facilities of a single institution or a consortium of cooperating institutions; and

"(2) meet such qualifications as may be prescribed by the Secretary.

"(c) Each center assisted under this section shall, at least, conduct—

"(1) basic and clinical research into the cause diagnosis, early detection, prevention, control and treatment of disorders of hearing and other communication processes and complications resulting from such disorders, including research into rehabilitative aids, implantable biomaterials, auditory speech processors, speech production devices, and other otolaryngologic procedures;

"(2) training programs for physicians, scientists, and other health and allied health professionals;

"(3) information and continuing education programs for physicians and other health and allied health professionals who will provide care for patients with disorders of hearing or other communication processes; and

"(4) programs for the dissemination to the general public of information—

"(A) on the importance of early detection of disorders of hearing and other communication processes, of seeking prompt treatment, rehabilitation, and of following an appropriate regimen; and

"(B) on the importance of avoiding exposure to noise and other environmental toxic agents that may affect disorders of hearing or other communication processes.

"(d) A center may use funds provided under subsection (a) to provide stipends for health professionals enrolled in training programs described in subsection (c)(2).

"(e) Each center assisted under this section may conduct programs—

"(1) to establish the effectiveness of new and improved methods of detection, referral, and diagnosis of individuals at risk of developing disorders of hearing or other communication processes; and

"(2) to disseminate the results of research, screening, and other activities, and develop means of standardizing patient data and recordkeeping.

"(f) The Director of the Institute shall, to the extent practicable, provide for an equitable geographical distribution of centers assisted under this section. The Director shall give appropriate consideration to the need for centers especially suited to meeting the needs of the elderly, and of children (particularly with respect to their education and training), affected by disorders of hearing or other communication processes.

"(g) Support of a center under this section may be for a period not to exceed seven years. Such period may be extended by the Director of the Institute for one or more additional periods of not more than five years if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director, with the advice of the Institute's advisory council, if such group has recommended to the Director that such period should be extended.

Subtitle B—Biotechnology Information

SEC. 105. ESTABLISHMENT OF NATIONAL CENTER FOR BIOTECHNOLOGY INFORMATION.

Part D of title IV (42 U.S.C. 286 et seq.) is amended by adding at the end the following new subpart:

"Subpart 3—National Center for Biotechnology Information

"PURPOSE, ESTABLISHMENT, FUNCTIONS, AND FUNDING OF THE NATIONAL CENTER FOR BIOTECHNOLOGY INFORMATION

"SEC. 478. (a) In order to focus and expand the collection, storage, retrieval, and dissemination of the results of biotechnology research by information systems, and to support and enhance the development of new information technologies to aid in the understanding of the molecular processes that control health and disease, there is established the National Center for Biotechnology Information (hereinafter in this section referred to as the "Center") in the National Library of Medicine.

"(b) The Secretary, through the Center and subject to section 465(d), shall—

"(1) design, develop, implement, and manage automated systems for the collection, storage, retrieval, analysis, and dissemination of knowledge concerning human molecular biology, biochemistry, and genetics;

"(2) perform research into advanced methods of computer-based information processing capable of representing and analyzing the vast number of biologically important molecules and compounds;

"(3) enable persons engaged in biotechnology research and medical care to use systems developed under paragraph (1) and methods described in paragraph (2); and

"(4) coordinate, as much as is practicable, efforts to gather biotechnology information on an international basis.

"(c) For the purpose of performing the duties specified in subsection (b), there are authorized to be appropriated $8,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990. Funds appropriated under this subsection shall remain available until expended.".

Subtitle C—National Institutes of Health

SEC. 111. APPOINTMENT AND AUTHORITY OF THE DIRECTOR.

Section 402(b)(6) (42 U.S.C. 282(b)(6)) is amended by inserting "and scientific program advisory committees" after "scientific peer review groups".

SEC. 112. REPORT OF DIRECTOR OF NIH.

Section 403 (42 U.S.C. 283) is amended—

(1) in paragraph (3), by striking out "and";

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3), the following new paragraph:

"(4) a description of the health related behavioral research that has been supported by the National Institutes of Health in the preceding 2-year period, and a description of any plans for future activity in such area; and".

Subtitle D—General Provisions Respecting National Research Institutes

SEC. 116. APPOINTMENT AND AUTHORITY OF THE DIRECTORS.

Section 405 (42 U.S.C. 284) is amended—

(1) in subsection (b), in the matter preceding subparagraph (A) of paragraph (1), by striking "the human diseases" and inserting "human diseases"; and

(2) in subsection (c)—

(A) by amending paragraph (3) to read as follows:

"(3) may, in consultation with the advisory council for the Institute and the approval of the Director of NIH, establish technical and scientific peer review groups in addition to those established under section 402(b)(6); and";

(B) by striking "and" at the end of paragraph (2); and

(C) by adding at the end the following new paragraph:

"(4) may publish, or arrange for the publication of, information with respect to the purpose of the Institute without regard to section 501 of title 44, United States Code.".

SEC. 117. ADVISORY COUNCILS.

(a) Voting Status.—Section 406(b)(1) (42 U.S.C. 284a(b)(1)) is amended by adding at the end the following: "The ex officio members shall be nonvoting members.".

(b) Appointment of Members.—Section 406(b)(3)(A) (42 U.S.C. 284a(b)(3)(A)) is amended by inserting after "(including" the following: "not less than two individuals who are leaders in the fields of".

(c) Termination of Memberships.—Section 406(h)(2)(A)(v) (42 U.S.C. 284a(h)(2)(A)(v)) is amended—

(1) by inserting "shall be nonvoting members and" after "the Board"; and

(2) by striking out "and the Assistant Secretary of Defense for Health Affairs" and inserting in lieu thereof "the Assistant Secretary of Defense for Health Affairs, and the Director of the Office of Energy Research of the Department of Energy".

SEC. 118. AUTHORIZATION OF APPROPRIATIONS.

(a) In General.—Paragraphs (1) and (2) of section 408(a) (42 U.S.C. 284c(a)) are amended to read as follows:

"(1)(A) For the National Cancer Institute (other than its programs under section 412), there are authorized to be appropriated $1,500,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990.

"(B) For the programs under section 412, there are authorized to be appropriated $100,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990.

"(2)(A) For the National Heart, Lung, and Blood Institute (other than its program under section 419), there are authorized to be appropriated $1,100,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990. Of the amounts appropriated for the National Heart, Lung, and Blood Institute (other than its program under section 419) for a fiscal year, the Secretary shall make available not less than 15 percent for programs respecting diseases of the lung and not less than 15 percent for programs respecting blood diseases and blood resources.

"(B) For the program of the National Heart, Lung, and Blood Institute under section 419 there is authorized to be appropriated $101,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990.".

(b) Applicability of Certain Provisions to Nurses and Allied Health Professionals.—Section 408(b) (42 U.S.C. 284c(b)) is amended by adding at the end the following new paragraph:

"(5) For fiscal year 1989 and subsequent fiscal years, amounts made available to the National Institutes of Health shall be available for payment of nurses and allied health professionals in accordance with payment authorities, scheduling options, benefits, and other authorities provided under chapter 73 of title 38, United States Code, for nurses of the Veterans' Administration.".

Subtitle E—National Cancer Institute

SEC. 121. PURPOSE.

Section 410 (42 U.S.C. 285) is amended by inserting ", rehabilitation from cancer," after "treatment of cancer".

SEC. 122. SPECIAL AUTHORITIES OF THE DIRECTOR.

Section 413 (42 U.S.C. 285a-2(b)) is amended—

(1) in subsection (a)—

(A)(i) in the first sentence, by striking "information and education center" and inserting "information and education program"; and

(ii) in the second sentence, by inserting after "between the Institute" the following: "and the public and between the Institute and"; and

(B) by inserting "(1)" after the subsection designation and adding at the end the following new paragraph:

"(2) In carrying out paragraph (1), the Director of the Institute shall—

"(A) provide public and patient information and education programs, providing information that will help individuals take personal steps to reduce their risk of cancer, to make them aware of early detection techniques and to motivate appropriate utilization of those techniques, to help individuals deal with cancer if it strikes, and to provide information to improve long-term survival;

"(B) continue and expand programs to provide physicians and the public with state-of-the-art information on the treatment of particular forms of cancers, and to identify those clinical trials that might benefit patients while advancing knowledge of cancer treatment;

"(C) assess the incorporation of state-of-the-art cancer treatments into clinical practice and the extent to which cancer patients receive such treatments and include the results of such assessments in the biennial reports required under section 407;

"(D) maintain and operate the International Cancer Research Data Bank, which shall collect, catalog, store, and disseminate insofar as feasible the results of cancer research and treatment undertaken in any country for the use of any person involved in cancer research and treatment in any country; and

"(E) to the extent practicable, in disseminating the results of such cancer research and treatment, utilize information systems available to the public."; and

(2) in subsection (b)—

(A) in paragraph (5), by striking "with the approval of" and inserting "after consultation with"; and

(B)(i) by adding "and" at the end of paragraph (8); and

(ii) by striking paragraph (9) and redesignating paragraph (10) as paragraph (9).

SEC. 123. NATIONAL CANCER RESEARCH AND DEMONSTRATION CENTERS.

Section 414(a)(1) (42 U.S.C. 285a-3(a)(1)) is amended by inserting "control," after "prevention,".

Subtitle F—National Heart, Lung, and Blood Institute

SEC. 126. INFORMATION AND EDUCATION.

The second sentence of section 420 (42 U.S.C. 285b-2) is amended to read as follows: "In carrying out this section, the Director of the Institute shall place special emphasis upon the utilization of collaborative efforts with both the public and private sectors to—

"(1) increase the awareness and knowledge of health care professionals and the public regarding the prevention of heart and blood vessel, lung, and blood diseases and the utilization of blood resources; and

"(2) develop and disseminate to health professionals, patients and patient families, and the public information designed to encourage adults and children to adopt healthful practices concerning the prevention of such diseases.".

SEC. 127. RESOURCES PROGRAM.

Section 421 (42 U.S.C. 285b-3) is amended—

(1) in subsection (a)(1)(D), by inserting "and rehabilitation from" after "treatment of"; and

(2) in subsection (b), by striking out ", after approval of" in paragraph (1) and inserting "after consultation with";

SEC. 128. NATIONAL RESEARCH AND DEMONSTRATION CENTERS.

Section 422(a)(1) (42 U.S.C. 285b-4(a)(1)) is amended—

(1) in subparagraph (A), by inserting "and rehabilitation" after "treatment"; and

(2) in subparagraph (B), by inserting "and rehabilitation" after "treatment".

SEC. 129. INTERAGENCY TECHNICAL COMMITTEE.

Subpart 2 of Part C of title IV (42 U.S.C. 285b et seq.) is amended by striking section 423 and redesignating section 424 as section 423.

Subtitle G—National Institute of Diabetes and Digestive and Kidney Diseases

SEC. 131. ADVISORY BOARDS.

Section 430 (42 U.S.C. 285c-4) is amended by striking subsection (k) and redesignating subsection (l) as subsection (k).

Subtitle H—National Institute of Arthritis and Musculoskeletal and Skin Diseases

SEC. 136. NATIONAL ARTHRITIS AND MUSCULOSKELETAL DISEASES PROGRAMS.

Section 436 (42 U.S.C. 285d-1) is amended—

(1) in the section heading, by inserting "AND SKIN" after "MUSCULOSKELETAL";

(2) in the first sentence of subsection (a), by inserting "and skin" after "musculoskeletal" each place it appears;

(3) in subsection (b)—

(A) in the matter preceding paragraph (1), by inserting "and skin" after "musculoskeletal" each place it appears;

(B) in paragraph (1), by inserting "and skin" after "musculoskeletal" each place it appears; and

(C) in paragraph (2), by inserting "and skin" after "musculoskeletal"; and

(4) in subsection (c), by inserting "and skin" after "musculoskeletal".

SEC. 137. MULTIPURPOSE DISEASE CENTERS.

Section 441(b)(2)(A) (42 U.S.C. 285d-6(b)(2)(A)) is amended by inserting "and rehabilitation from" after "treatment of".

Subtitle I—National Institute on Aging

SEC. 141. CENTERS OF GERIATRIC RESEARCH AND TRAINING.

Subpart 5 of part C of title IV (42 U.S.C. 285e et seq.) is amended by adding at the end the following new section:

"CENTERS OF GERIATRIC RESEARCH AND TRAINING

"SEC. 445A. (a) The Director of the Institute shall enter into cooperative agreements with, and make grants to, public and private nonprofit entities for the development or expansion of centers of excellence in geriatric research and training of researchers.

"(b) Each center developed or expanded under this section shall—

"(1) utilize the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such research and training qualifications as may be prescribed by the Director; and

"(2) conduct—

"(A) research into the aging processes and into the diagnosis and treatment of diseases, disorders, and complications related to aging; and

"(B) programs to develop individuals capable of conducting research concerning aging and concerning such diseases, disorders, and complications.

"(c) In making cooperative agreements and grants under this section for the development or expansion of centers, the Director of the Institute shall ensure that, to the extent practicable, any such centers are distributed equitably among the principal geographic regions of the United States.".

SEC. 142. TRANSFER OF CERTAIN PROVISIONS WITH RESPECT TO ALZHEIMER'S DISEASE AND RELATED DEMENTIAS.

(a) IN GENERAL.—Sections 931, 941, 942, 951, and 952 of the Alzheimer's Disease and Related Dementias Services Research Act of 1986 (42 U.S.C. 11201 et seq.) are—

(1) transferred to subpart 5 of part C of title IV (42 U.S.C. 285e et seq.);

(2) redesignated as sections 445B through 445F, respectively; and

(3) in the appropriate sequence, inserted after section 445A (42 U.S.C. 285e-2).

(b) AVAILABILITY OF APPROPRIATIONS.—With respect to amounts made available in appropriation Acts for the purpose of carrying out the programs transferred by subsection (a) to the Public Health Service Act, such subsection may not be construed to affect the availability of such funds for such purpose.

(c) TECHNICAL AND CONFORMING AMENDMENTS TO ALZHEIMER'S DISEASE AND RELATED DEMENTIAS SERVICES RESEARCH ACT OF 1986.—

(1) The Alzheimer's Disease and Related Dementias Services Research Act of 1986 (42 U.S.C. 11201 et seq.) is amended—

(A) by striking sections 932 and 953;

(B) by striking the part designation and the heading for part D;

(C) by striking the part designation and the heading for part F;

(D) by redesignating parts E and G as parts D and E, respectively; and

(E) in section 912(b)(1), in the first sentence, by striking "part E" and inserting "part D".

(2) Part D of the Alzheimer's Disease and Related Dementias Services Research Act of 1986 (as redesignated by paragraph (1)(D) of this subsection) is amended—

(A) by striking section 943;

(B) by redesignating sections 944 through 949C as sections 931 through 939, respectively;

(C) by striking the subpart designation and the heading for subpart 1; and

(D) by redesignating subparts 2 through 4 as subparts 1 through 3, respectively.

(d) TECHNICAL AND CONFORMING AMENDMENTS TO PUBLIC HEALTH SERVICE ACT.—Subpart 5 of part C of title IV (42 U.S.C. 285e et seq.), as amended by subsection (a), is further amended—

(1) in section 445B—

(A) in subsection (a), in the first sentence, by striking "the National Institute on Aging" and inserting "the Institute";

(B) in subsection (b)—

(i) by striking "the National Institute on Aging" and inserting "the Institute"; and

(ii) by striking "of the Public Health Service Act";

(C) in subsection (c), by striking "the National Institute on Aging" and inserting "the Institute"; and

(D) in subsection (d), by striking "the National Institute on Aging" and inserting "the Institute";

(2) in section 445C—

(A) in subsection (a), by striking "the National Institute on Aging" and inserting "the Institute";

(B) in subsection (b)—

(i) in paragraph (1), in the first sentence—

(I) by striking "this Act" and inserting "the Alzheimer's Disease and Related Dementias Services Research Act of 1986"; and

(II) by striking "the National Institute on Aging" and inserting "the Institute";

(ii) in paragraph (1), in subparagraph (B), by striking "of the Public Health Service Act"; and

(iii) in paragraph (2), by striking "the National Institute on Aging" and inserting "the Institute"; and

(C) in subsection (c), by striking "the National Institute on Aging" and inserting "the Institute";

(3) in section 445D—

(A) by striking "the National Institute on Aging" and inserting "the Institute"; and

(B) by striking "this subpart" and inserting "section 445C and this section";

(4) in section 445E—

(A) in subsection (a), by striking "the National Institute on Aging" and inserting "the Institute"; and

(B) in subsection (c)—

(i) by striking "the National Institute on Aging" and inserting "the Institute"; and

(ii) by striking "part E" and inserting "part D"; and

(5) in section 445F—

(A) in subsection (a), by striking "the National Institute on Aging" and inserting "the Institute"; and

(B) in subsection (d), in the first sentence, by striking "the National Institute on Aging" and inserting "the Institute".

Subtitle J—National Library of Medicine

SEC. 146. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—The first sentence of section 469 (42 U.S.C. 286b) is amended to read as follows: "For the purpose of grants and contracts under sections 472 through 476, there are authorized to be appropriated $14,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990.".

(b) GRANT AMOUNT.—Section 474(b)(2) (42 U.S.C. 286b-5(b)(2)) is amended by striking out "$500,000" and inserting in lieu thereof "$750,000".

Subtitle K—Awards and Training

SEC. 151. NATIONAL RESEARCH SERVICE AWARDS.

Section 487(d) (42 U.S.C. 288(d)) is amended—

(1) in the matter preceding paragraph (1), by amending the first sentence to read as follows: "For the purpose of making payments under National Research Service Awards and under grants for such Awards, there are authorized to be appropriated $300,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990."; and

(2) in paragraph (3), by inserting after "made available" the first place it appears the following: "to the Secretary, acting through the Administrator of the Health Resources and Services Administration,".

Subtitle L—Fetal Research Moratorium

SEC. 156. EXTENSION OF MORATORIUM.

Section 498(c) (42 U.S.C. 289g(c)) is amended—

(1) in paragraph (2), by striking "thirty-six month period beginning on the date of enactment of this section" and inserting "24-month period beginning on the date of the enactment of the National Institute on Deafness and Other Communication Disorders and Health Research Extension Act of 1988"; and

(2) in paragraph (3), by striking "1988" and inserting "1990".

SEC. 157. BOARD AND STUDY.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 381(e) (42 U.S.C. 275(e)) is amended by striking "and" after "1987," and inserting before the period the following: ", $2,000,000 for fiscal year 1989, and $2,500,000 for fiscal year 1990".

(b) STUDY.—Section 498(c)(1) (42 U.S.C. 289g(c)(1)) is amended by striking "thirty months after the date of enactment of this section" and inserting "24 months after the date of the enactment of the National Institute on Deafness and Other Communication Disorders and Health Research Extension Act of 1988".

Subtitle M—Miscellaneous

SEC. 161. STUDY OF THYROID MORBIDITY FOR HANFORD, WASHINGTON.

(a) IN GENERAL.—In carrying out the purposes of section 301 of the Public Health Service Act (42 U.S.C. 241), the Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control (hereafter referred to in this section as the "Director"), shall conduct a study of thyroid morbidity of the population (including Indian tribes and tribal organizations) in the vicinity of Hanford, in the State of Washington, during the years 1944 through 1957.

(b) PEER REVIEW.—As soon as is practicable after the date of the enactment of this Act, the Director shall establish a peer review committee that shall, along with the Centers for Disease Control, make any determinations as to the conduct of the study required under this section.

(c) CONTRACTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Director may contract out any portion of the study required under this section if the Director considers such appropriate, except that such contractor shall not have any direct or indirect interest in the outcome of such study including, contracts with the Department of Energy.

(2) RELATIONSHIPS.—Contractors that currently are parties to contracts with the Department of Energy (or who have previously been parties to such) shall be given consideration pursuant to paragraph (1), except that the Director shall make a determination in each such circumstance that the relationship of the contractor with the De-

partment of Energy does not represent a conflict of interest or the appearance of such a conflict regarding the conduct of the study required under this section.

(d) REPORT.—Not later than 42 months after the date of enactment of this section, the Director shall transmit a report including such study to the Congress, the chief executive officers of the States of Oregon and Washington, and the governing officials of the Indian tribes in the vicinity of Hanford, Washington.

SEC. 162. NATIONAL COMMISSION ON SLEEP DISORDERS RESEARCH.

(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this Act, the Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary"), after consultation with the Director of the National Institutes of Health, shall establish a National Commission on Sleep Disorders Research (hereafter in this section referred to as the "Commission").

(b) COMPOSITION.—

(1) APPOINTED MEMBERS.—The Commission shall be composed of 10 members to be appointed as follows:

(A) Six members shall be appointed by the Secretary from among scientists, physicians, and other health professionals who are not in the employment of the Federal Government, and who have primary expertise in sleep disorders research or medicine.

(B) Two members shall be appointed by the Secretary from the general public, of whom one of which shall have personal or close family experience with sleep disorders.

(C) Two members shall be appointed by the Secretary from among the personnel of the National Institutes of Health, and such members interest shall be in the field of sleep disorders research.

(2) EX OFFICIO MEMBERS.—The Director of the National Institutes of Health, the Director of the National Institute of Neurological and Communicative Disorders and Stroke, the Directors of the National Heart, Lung and Blood Institute, the National Institute on Mental Health, the National Institute on Aging, the National Institute on Child Health and Human Development, the Director of the Center for Disease Control, the Chief Medical Director of the Veterans' Administration, and the Secretary of Defense shall be ex officio members of the Commission, or their designees.

(c) CHAIRPERSON.—The members of the Commission shall select a Chairperson from among the appointed members of the Commission.

(d) MEETINGS.—Not later than 60 days after the establishment of the Commission, the Commission shall meet as directed by the Secretary, and thereafter shall meet at the call of the Chairperson of the Commission, but in no event shall the Commission meet less often than three times during the life of the Commission. The Commission may hold such hearings, take such testimony, and sit and act at such time and places as the Commission considers appropriate.

(e) PERSONNEL.—

(1) EXECUTIVE SECRETARY.—

(A) APPOINTMENT.—The Commission may appoint and fix the compensation of an executive secretary to effectively carry out the functions of the Commission.

(B) COMPENSATION.—The executive secretary shall be appointed subject to title 5, United States Code, governing appointments in the competitive service, and shall receive compensation in accordance with chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(2) ADDITIONAL PERSONNEL.—The Secretary shall, to the extent practicable, provide the Commission with such additional professional and clerical staff, such information, and the services of such consultants as the Commission determines to be necessary to carry out its functions effectively.

(f) COMPENSATION.—

(1) OFFICERS OR EMPLOYEES OF THE FEDERAL GOVERNMENT.—Members of the Commission who are officers or employees of the Federal Government shall serve as members of the Commission without compensation in addition to that received in their regular public employment.

(2) NON-FEDERAL GOVERNMENT MEMBERS.—Members of the Commission who are not officers or employees of the Federal Government shall receive compensation at a rate not to exceed the daily equivalent of the annual rate in effect for Grade GS-18 of the General Schedule for each day (including traveltime) that such members are engaged in the performance of their duties as members of the Commission.

(3) EXPENSES.—All members of the Commission, while serving away from their homes or regular places of business in the performance of services for the Commission, shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as such expenses are authorized by section 5703 of title 5, United States Code, for persons in Government Service employed intermittently.

(g) DUTIES.—

(1) STUDY.—The Commission shall—

(A) conduct a comprehensive study of the present state of knowledge of the incidence, prevalence, morbidity, and mortality resulting from sleep disorders, and of the social and economic impact of such disorders;

(B) evaluate the public and private facilities and resources (including trained personnel and research activities) available for the diagnosis, prevention, and treatment of, and research into, such disorders; and

(C) identify programs (including biological, physiological, behavioral, environmental, and social programs) by which improvement in the management and research into sleep disorders can be accomplished.

(2) DEVELOPMENT OF PLAN.—Based on the study conducted under paragraph (1), the Commission shall develop a long-range plan for the use and organization of national resources to effectively deal with sleep disorders research and medicine.

(3) COOPERATION.—Each Federal entity administering programs and activities related to sleep disorders shall, on request, assist the Commission in carrying out its duties under this subsection.

(h) DEVELOPMENT OF ESTIMATES.—The Commission shall recommend, for each of the Institutes of the National Institutes of Health whose activities are to be affected by the long-range plan, estimates of the expenditures needed to carry out each Institute's part of the overall program. Such estimates shall be prepared for the fiscal year beginning immediately after completion of the plan under subsection (g)(2) and for each of the next 2 fiscal years.

(i) REPORT.—Not later than 18 months after the initial meeting of the Commission (as prescribed by subsection (d)), the Commission shall prepare and submit to the appropriate Committees of Congress, a final report describing—

(1) the long-range plan developed under subsection (g);

(2) the expenditure estimates required under subsection (h); and

(3) any recommendations of the Commission for legislation.

(j) TERMINATION.—The Commission shall cease to exist on the 30th day following the date of the submission of the final report under subsection (i).

SEC. 163. MISCELLANEOUS AMENDMENTS.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended—

(1)(A) with respect to section 303(a), by transferring the matter after and below paragraph (2) of such section to section 301;

(B) by designating such matter as subsection (d); and

(C) by adding subsection (d) (as so designated) at the end of section 301;

(2) in section 301(d) (as so designated)—

(A) in the first sentence, by striking "research on mental health, including" and inserting the following: "biomedical, behavioral, clinical, or other research (including research on mental health, including"; and

(B) by striking "drugs," and inserting "drugs)"; and

(3) in section 330, by redesignating the second subsection (j) (as added by section 4 of Public Law 100-386) as subsection (k).

TITLE II—PROGRAMS WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME

SEC. 200. SHORT TITLE.

This title may be cited as the "AIDS Amendments of 1988".

Subtitle A—Research Programs

SEC. 201. ESTABLISHMENT OF CERTAIN PROGRAMS.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended—

(1) by redesignating title XXIII as title XV;

(2) by redesignating sections 2301 through 2303 as sections 2501 through 2503, respectively;

(3) by redesignating sections 2306 through 2316 as sections 2504 through 2514, respectively; and

(4) by inserting after title XXII the following new title:

"TITLE XXIII—RESEARCH WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME

"PART A—ADMINISTRATION OF RESEARCH PROGRAMS

"SEC. 2301. REQUIREMENT OF ANNUAL COMPREHENSIVE REPORT ON ALL EXPENDITURES BY SECRETARY WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME.

"(a) IN GENERAL.—Not later than December 1 of each fiscal year, the Secretary shall prepare and submit to the Congress a report on the expenditures by the Secretary of amounts appropriated for the preceding fiscal year with respect to acquired immune deficiency syndrome.

"(b) INCLUSION OF CERTAIN INFORMATION.—The report required in subsection (a) shall, with respect to acquired immune deficiency syndrome, include—

'(1) for each program, project, or activity with respect to such syndrome, a specification of the amount obligated by each office and agency of the Department of Health and Human Services;

"(2) a summary description of each such program, project, or activity;

"(3) a list of such programs, projects, or activities that are directed towards members of minority groups;

"(4) a description of the extent to which programs, projects, and activities described in paragraph (3) have been coordinated between the Director of the Office of Minority Health and the Director of the Centers for Disease Control;

"(5) a summary of the progress made by each such program, project, or activity with respect to the prevention and control of acquired immune deficiency syndrome;

"(6) a summary of the evaluations conducted under this title; and

"(7) any report required in this Act to be submitted to the Secretary for inclusion in the report required in subsection (a).

"SEC. 2302. REQUIREMENT OF EXPEDITING AWARDS OF GRANTS AND CONTRACTS FOR RESEARCH.

"(a) In General.—The Secretary shall expedite the award of grants, contracts, and cooperative agreements for research projects relating to acquired immune deficiency syndrome (including such research projects initiated independently of any solicitation by the Secretary for proposals for such research projects).

"(b) Time Limitations With Respect to Certain Applications.—

"(1) With respect to programs of grants, contracts, and cooperative agreements described in subsection (a), any application submitted in response to a solicitation by the Secretary for proposals pursuant to such a program—

"(A) may not be approved if the application is submitted after the expiration of the 3-month period beginning on the date on which the solicitation is issued; and

"(B) shall be awarded, or otherwise finally acted upon, not later than the expiration of the 6-month period beginning on the expiration of the period described in subparagraph (A).

"(2) If the Secretary makes a determination that it is not practicable to administer a program referred to in paragraph (1) in accordance with the time limitations described in such paragraph, the Secretary may adjust the time limitations accordingly.

"(c) Requirements With Respect to Adjustments in Time Limitations.—With respect to any program for which a determination described in subsection (b)(2) is made, the Secretary shall—

"(1) if the determination is made before the Secretary issues a solicitation for proposals pursuant to the program, ensure that the solicitation describes the time limitations as adjusted by the determination; and

"(2) if the determination is made after the Secretary issues such a solicitation for proposals, issue a statement describing the time limitations as adjusted by the determination and individually notify, with respect to the determination, each applicant whose application is submitted before the expiration of the 3-month period beginning on the date on which the solicitation was issued.

"(d) Annual Reports to Congress.—Except as provided in subsection (e), the Secretary shall annually prepare, for inclusion in the comprehensive report required in section 2301, a report—

"(A) summarizing programs for which the Secretary has made a determination described in subsection (b)(2), including a description of the time limitations as adjusted by the determination and including a summary of the solicitation issued by the Secretary for proposals pursuant to the program; and

"(B) summarizing applications that—

"(i) were submitted pursuant to a program of grants, contracts, or cooperative agreements referred to in paragraph (1) of subsection (b) for which a determination described in paragraph (2) of such subsection has not been made; and

"(ii) were not processed in accordance with the time limitations described in such paragraph (1).

"(e) Quarterly Reports for Fiscal Year 1989.—For fiscal year 1989, the report required in subsection (d) shall, not less than quarterly, be prepared and submitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

"SEC. 2303. REQUIREMENTS WITH RESPECT TO PROCESSING OF REQUESTS FOR PERSONNEL AND ADMINISTRATIVE SUPPORT.

"(a) In General.—The Director of the Office of Personnel Management or the Administrator of General Services, as the case may be, shall respond to any priority request made by the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, the Director of the Centers for Disease Control, the Commissioner of Food and Drugs, or the Director of the National Institutes of Health, not later than 21 days after the date on which such request is made. If the Director of the Office of Personnel Management or the Administrator of General Services, as the case may be, does not disapprove a priority request during the 21-day period, the request shall be deemed to be approved.

"(b) Notice to Secretary and to Assistant Secretary for Health.—The Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, the Director of the Centers for Disease Control, the Commissioner of Food and Drugs, and the Director of the National Institutes of Health, shall, respectively, transmit to the Secretary and the Assistant Secretary for Health a copy of each priority request made under this section by the agency head involved. The copy shall be transmitted on the date on which the priority request involved is made.

"(c) Definition of Priority Request.—For purposes of this section, the term 'priority request' means any request that—

"(1) is designated as a priority request by the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, the Director of the Centers for Disease Control, the Commissioner of Food and Drugs, or the Director of the National Institutes of Health; and

"(2)(A) is made to the Director of the Office of Personnel Management for the allocation of personnel to carry out activities with respect to acquired immune deficiency syndrome; or

"(B) is made to the Administrator of General Services for administrative support or space in carrying out such activities.

"SEC. 2304. ESTABLISHMENT OF CLINICAL RESEARCH REVIEW COMMITTEE.

"(a) In General.—After consultation with the Commissioner of Food and Drugs, the Secretary, acting through the Director of the National Institute of Allergy and Infectious Diseases, shall establish within such Institute an advisory committee to be known as the AIDS Clinical Research Review Committee (hereafter in this section referred to as the 'Committee').

"(b) Composition.—The Committee shall be composed of physicians whose clinical practice includes a significant number of patients with acquired immune deficiency syndrome.

"(c) Duties.—The Committee shall—

"(1) advise the Director of such Institute on appropriate research activities to be undertaken with respect to clinical treatment of such syndrome, including advice with respect to—

"(A) research on drugs for preventing or minimizing the development of symptoms or conditions arising from infection with the etiologic agent for such syndrome; and

"(B) research on the effectiveness of treating such symptoms or conditions with drugs that—

"(i) are not approved by the Commissioner of Food and Drugs for the purpose of treating such symptoms or conditions; and

"(ii) are being utilized for such purpose by individuals infected with such etiologic agent;

"(2)(A) review ongoing publicly and privately supported research on clinical treatment for acquired immune deficiency syndrome, including research on drugs described in paragraph (1); and

"(B) periodically issue, and make available to health care professionals, reports describing and evaluating such research.

"(3) conduct studies and convene meetings for the purpose of determining the recommendations among physicians in clinical practice on clinical treatment of acquired immune deficiency syndrome, including treatment with the drugs described in paragraph (1); and

"(4) conduct a study for the purpose of developing, with respect to individuals infected with the etiologic agent for acquired immune deficiency syndrome, a consensus among health care professionals on clinical treatments for preventing or minimizing the development of symptoms or conditions arising from infection with such etiologic agent.

"Part B—Research Authority

"SEC. 2311. CLINICAL EVALUATION UNITS AT NATIONAL INSTITUTES OF HEALTH.

"(a) In General.—The Secretary, acting through the Director of the National Cancer Institute and the Director of the National Institute of Allergy and Infectious Diseases, shall for each such Institute establish a clinical evaluation unit at the Clinical Center at the National Institutes of Health. Each of the clinical evaluation units—

"(1) shall conduct clinical evaluations of experimental treatments for acquired immune deficiency syndrome developed within the preclinical drug development program; and

"(2) may conduct clinical evaluations of experimental treatments for such syndrome that are developed by any other national research institute of the National Institutes of Health or by any other entity.

"(b) Personnel and Administrative Support.—

"(1) For the purposes described in subsection (a), the Secretary, acting through the Director of the National Institutes of Health, shall provide each of the clinical evaluation units required in such subsection—

"(A)(i) with not less than 50 beds; or

"(ii) with an outpatient clinical capacity equal to not less than twice the outpatient clinical capacity, with respect to acquired immune deficiency syndrome, possessed by the Clinical Center of the National Institutes of Health on June 1, 1988; and

"(B) with such personnel, such administrative support, and such other support services as may be necessary.

"(2) Facilities, personnel, administrative support, and other support services provided pursuant to paragraph (1) shall be in addition to the number or level of facilities, personnel, administrative support, and other support services that otherwise would be available at the Clinical Center at the National Institutes of Health for the provision of clinical care for individuals with diseases or disorders.

"(c) Authorization of Appropriations.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

"SEC. 2312. USE OF INVESTIGATIONAL NEW DRUGS WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME.

"(a) Encouragement of Applications With Respect to Clinical Trials.—

"(1) If, in the determination of the Secretary, there is preliminary evidence that a new drug has effectiveness in humans with respect to the prevention or treatment of acquired immune deficiency syndrome, the Secretary shall, through statements published in the Federal Register—

"(A) announce the fact of such determination; and

"(B) with respect to the new drug involved, encourage an application for an exemption for investigational use of the new drug under regulations issued under section 505(i) of the Federal Food, Drug, and Cosmetic Act.

"(2)(A) The AIDS Clinical Research Review Committee established pursuant to section 2304 shall make recommendations to the Secretary with respect to new drugs appropriate for determinations described in paragraph (1).

"(B) The Secretary shall, as soon as is practicable, determine the merits of recommendations received by the Secretary pursuant to subparagraph (A).

"(b) Encouragement of Applications With Respect to Treatment Use in Circumstances Other Than Clinical Trials.—

"(1) In the case of a new drug with respect to which the Secretary has made a determination described in subsection (a) and with respect to which an exemption is in effect for purposes of section 505(i) of the Federal Food, Drug, and Cosmetic Act, the Secretary shall—

"(A) as appropriate, encourage the sponsor of the investigation of the new drug to submit to the Secretary, in accordance with regulations issued under such section, an application to use the drug in the treatment of individuals—

"(i) who are infected with the etiologic agent for acquired immune deficiency syndrome; and

"(ii) who are not participating in the clinical trials conducted pursuant to such exemption; and

"(B) if such an application is approved, encourage, as appropriate, licensed medical practitioners to obtain, in accordance with such regulations, the new drug from such sponsor for the purpose of treating such individuals.

"(2) If the sponsor of the investigation of a new drug described in paragraph (1) does not submit to the Secretary an application described in such paragraph (relating to treatment use), the Secretary shall, through statements published in the Federal Register, encourage, as appropriate, licensed medical practitioners to submit to the Secretary such applications in accordance with regulations described in such paragraph.

"(c) Technical Assistance With Respect to Treatment Use.—In the case of a new drug with respect to which the Secretary has made a determination described in subsection (a), the Secretary may, directly or through grants or contracts, provide technical assistance with respect to the process of—

"(1) submitting to the Secretary applications for exemptions described in paragraph (1)(B) of such subsection;

"(2) submitting to the Secretary applications described in subsection (b); and

"(3) with respect to sponsors of investigations of new drugs, facilitating the transfer of new drugs from such sponsors to licensed medical practitioners.

"(d) Definition.—For purposes of this section, the term "new drug" has the meaning given such term in section 201 of the Federal Food, Drug, and Cosmetic Act.

"SEC. 2313. COMMUNITY-BASED EVALUATIONS OF EXPERIMENTAL THERAPIES.

"(a) In General.—After consultation with the Commissioner of Food and Drugs, the Director of the National Institutes of Health, acting through the National Institutes of Allergy and Infectious Diseases, may make grants to public entities and nonprofit private entities concerned with acquired immune deficiency syndrome, and may enter into contracts with public and private such entities, for the purpose of planning and conducting, in the community involved, clinical trials of experimental treatments for infection with the etiologic agent for such syndrome that are approved by the Commissioner of Food and Drugs for investigational use under regulations issued under section 505 of the Federal Food, Drug, and Cosmetic Act.

"(b) Requirement of Certain Projects.—

"(1) Financial assistance under subsection (a) shall include such assistance to community-based organizations and community health centers for the purpose of—

"(A) retaining appropriate medical supervision;

"(B) assisting with administration, data collection and record management; and

"(C) conducting training of community physicians, nurse practitioners, physicians' assistants and other health professionals for the purpose of conducting clinical trials.

"(2)(A) Financial assistance under subsection (a) shall include such assistance for demonstration projects designed to implement and conduct community-based clinical trials in order to provide access to the entire scope of communities affected by infections with the etiologic agent for acquired immune deficiency syndrome, including minorities, hemophiliacs and transfusion-exposed individuals, women, children, users of intravenous drugs, and individuals who are asymptomatic with respect to such infection.

"(B) The Director of the National Institutes of Health may not provide financial assistance under this paragraph unless the application for such assistance is approved—

"(i) by the Commissioner of Food and Drugs;

"(ii) by a duly constituted Institutional Review Board that meets the requirements of part 56 of title 21, Code of Federal Regulations; and

"(iii) by the Director of the National Institutes of Allergy and Infectious Diseases.

"(c) Participation of Private Industry and Schools of Medicine.—Programs carried out with financial assistance provided under subsection (a) shall be designed to encourage private industry and schools of medicine to participate in, and to support, the clinical trials conducted pursuant to the programs.

"(d) Requirement of Application.—The Secretary may not provide financial assistance under subsection (a) unless—

"(1) an application for the assistance is submitted to the Secretary;

"(2) with respect to carrying out the purpose for which the assistance is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

"(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"(e) Authorization of Appropriations.—

"(1) For the purpose of carrying out subsection (b)(1), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.

"(2) For the purpose of carrying out subsection (b)(2), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.

"SEC. 2314. EVALUATION OF CERTAIN TREATMENTS.

"(a) Establishment of Program.—

"(1) After consultation with the Clinical Research Review Committee established pursuant to section 2304, the Secretary shall establish a program for the evaluation of drugs that—

"(A) are not approved by the Commissioner of Food and Drugs for the purpose of treatments with respect to acquired immune deficiency syndrome; and

"(B) are being utilized for such purpose by individuals infected with the etiologic agent for such syndrome.

"(2) The program established under paragraph (1) shall include evaluations of the effectiveness and the risks of the treatment involved, including the risks of foregoing treatments with respect to acquired immune deficiency syndrome that are approved by the Commissioner of Food and Drugs.

"(b) Authority With Respect to Grants and Contracts.—

"(1) For the purpose of conducting evaluations required in subsection (a), the Secretary may make grants to, and enter into cooperative agreements and contracts with, public and nonprofit private entities.

"(2) Nonprofit private entities under paragraph (1) may include nonprofit private organizations that—

"(A) are established for the purpose of evaluating treatments with respect to acquired immune deficiency syndrome; and

"(B) consist primarily of individuals infected with the etiologic agent for such syndrome.

"(c) Scientific and Ethical Guidelines.—

"(1) The Secretary shall establish appropriate scientific and ethical guidelines for the conduct of evaluations carried out pursuant to this section. The Secretary may not provide financial assistance under subsection (b)(1) unless the applicant for such assistance agrees to comply with such guidelines.

"(2) The Secretary may establish the guidelines described in paragraph (1) only after consulting with—

"(A) physicians whose clinical practice includes a significant number of individuals with acquired immune deficiency syndrome;

"(B) individuals who are infected with the etiologic agent for such syndrome; and

"(C) other individuals with appropriate expertise or experience.

"(d) Authorization of Appropriations.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

"SEC. 2315. SUPPORT OF INTERNATIONAL EFFORTS.

"(a) Grants and Contracts for Research.—

"(1) Under section 307, the Secretary, acting through the Director of the National Institutes of Health—

"(A) shall, for the purpose described in paragraph (2), make grants to, enter into cooperative agreements and contracts with, and provide technical assistance to, international organizations concerned with public health; and

"(B) may, for such purpose, provide technical assistance to foreign governments.

"(2) The purpose referred to in paragraph (1) is promoting and expediting international research concerning the development and evaluation of vaccines and treatments for acquired immune deficiency syndrome.

"(b) Grants and Contracts for Additional Purposes.—After consultation with the Administrator of the Agency for International Development, the Secretary, acting through the Director of the Centers for Disease Control, shall under section 307 make grants to, enter into contracts with, and provide technical assistance to, international organizations concerned with public health and may provide technical assistance to foreign governments, in order to support—

"(1) projects for training individuals with respect to developing skills and technical expertise for use in the prevention, diagnosis, and treatment of acquired immune deficiency syndrome; and

"(2) epidemiological research relating to acquired immune deficiency syndrome.

"(c) Special Programme of World Health Organization.—Support provided by the Secretary pursuant to this section shall be in furtherance of the global strategy of the World Health Organization Special Programme on Acquired Immunodeficiency Syndrome.

"(d) Preferences.—In providing grants, cooperative agreements, contracts, and technical assistance under subsections (a) and (b), the Secretary shall—

"(1) give preference to activities under such subsections conducted by, or in cooperation with, the World Health Organization; and

"(2) with respect to activities carried out under such subsections in the Western Hemisphere, give preference to activities conducted by, or in cooperation with, the Pan American Health Organization or the World Health Organization.

"(e) Requirement of Application.—The Secretary may not make a grant or enter into a cooperative agreement or contract under this section unless—

"(1) an application for such assistance is submitted to the Secretary;

"(2) with respect to carrying out the purpose for which such assistance is to be provided, the application provides assurances of compliance satisfactory to the Secretary; and

"(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"(f) Authorization of Appropriations.—For the purpose of carrying out this section, there are authorized to be appropriated $40,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

"SEC. 2316. RESEARCH CENTERS.

"(a) In General.—

"(1) The Secretary, acting through the Director of the National Institute of Allergy and Infectious Diseases, may make grants to, and enter into contracts with, public and nonprofit private entities to assist such entities in planning, establishing, or strengthening, and providing basic operating support for, centers for basic and clinical research into, and training in, advanced diagnostic, prevention, and treatment methods for acquired immune deficiency syndrome.

"(2) A grant or contract under paragraph (1) shall be provided in accordance with policies established by the Secretary, acting through the Director of the National Institutes of Health, and after consultation with the advisory council for the National Institute of Allergy and Infectious Diseases.

"(3) The Secretary shall ensure that, as appropriate, clinical research programs carried out under paragraph (1) include as research subjects women, children, hemophiliacs, and minorities.

"(b) Use of Financial Assistance.—

"(1) Financial assistance under subsection (a) may be expended for—

"(A) the renovation or leasing of space;

"(B) staffing and other basic operating costs, including such patient care costs as are required for clinical research;

"(C) clinical training with respect to acquired immune deficiency syndrome (including such training for allied health professionals); and

"(D) demonstration purposes, including projects in the long-term monitoring and outpatient treatment of individuals infected with the etiologic agent for such syndrome.

"(2) Financial assistance under subsection (a) may not be expended to provide research training for which National Research Service Awards may be provided under section 487.

"(c) Duration of Support.—Support of a center under subsection (a) may be for not more than five years. Such period may be extended by the Director for additional periods of not more than five years each if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

"(d) Authorization of Appropriations.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

"SEC. 2317. INFORMATION SERVICES.

"(a) Establishment of Program.—The Secretary shall establish, maintain, and operate a program with respect to information on research, treatment, and prevention activities relating to infection with the etiologic agent for acquired immune deficiency syndrome. The program shall, with respect to the agencies of the Department of Health and Human Services, be integrated and coordinated.

"(b) Toll-Free Telephone Communications for Health Care Entities.—

"(1) After consultation with the Director of the Office of AIDS Research, the Administrator of the Health Resources and Services Administration, and the Director of the Centers for Disease Control, the Secretary shall provide for toll-free telephone communications to provide medical and technical information with respect to acquired immune deficiency syndrome to health care professionals, allied health care providers, and to professionals providing emergency health services.

"(2) Information provided pursuant to paragraph (1) shall include—

"(A) information on prevention of exposure to, and the transmission of, the etiologic agent for acquired immune deficiency syndrome; and

"(B) information contained in the data banks established in subsections (c) and (d).

"(c) Data Bank on Research Information.—

"(1) After consultation with the Director of the Office of AIDS Research, the Director of the Centers for Disease Control, and the National Library of Medicine, the Secretary shall establish a data bank of information on the results of research with respect to acquired immune deficiency syndrome conducted in the United States and other countries.

"(2) In carrying out paragraph (1), the Secretary shall collect, catalog, store, and disseminate the information described in such paragraph. To the extent practicable, the Secretary shall make such information available to researchers, physicians, and other appropriate individuals, of countries other than the United States.

"(d) Data Bank on Clinical Trials and Treatments.—

"(1) After consultation with the Commissioner of Food and Drugs, the Clinical Research Review Committee, and the Director of the Office of AIDS Research, the Secretary shall, in carrying out subsection (a), establish a data bank of information on clinical trials and treatments with respect to infection with the etiologic agent for acquired immune deficiency syndrome (hereafter in this section referred to as the 'Data Bank').

"(2) In carrying out paragraph (1), the Secretary shall collect, catalog, store, and disseminate the information described in such paragraph. The Secretary shall disseminate such information through information systems available to individuals infected with the etiologic agent for acquired immune deficiency syndrome, to other members of the public, to health care providers, and to researchers.

"(e) Requirements With Respect to Data Bank.—The Data Bank shall include the following:

"(1) A registry of clinical trials of experimental treatments for acquired immune deficiency syndrome and related illnesses conducted under regulations promulgated pursuant to section 505 of the Federal Food, Drug and Cosmetic Act that provides a description of the purpose of each experimental drug protocol either with the consent of the protocol sponsor, or when a trial to test efficacy begins. Information provided shall include eligibility criteria and the location of trial sites, and must be forwarded to the Data Bank by the sponsor of the trial not later than 21 days after the approval by the Food and Drug Administration.

"(2) Information pertaining to experimental treatments for acquired immune deficiency syndrome that may be available under a treatment investigational new drug application that has been submitted to the Food and Drug Administration pursuant to part 312 of title 21, Code of Federal Regulations. The Data Bank shall also include information pertaining to the results of clinical trials of such treatments, with the consent of the sponsor, of such experimental treatments, including information concerning potential toxicities or adverse effects associated with the use or administration of such experimental treatment.

"SEC. 2318. DEVELOPMENT OF MODEL PROTOCOLS FOR CLINICAL CARE OF INFECTED INDIVIDUALS.

"(a) In General.—

"(1) The Secretary may make grants to public and nonprofit private entities for the establishment of projects to develop model protocols for the clinical care of individuals infected with the etiologic agent for acquired immune deficiency syndrome.

"(2) The Secretary may not make a grant under paragraph (1) unless—

"(A) the applicant for the grant is a provider of comprehensive primary care; or

"(B) the applicant for the grant agrees, with respect to the project carried out pursuant to paragraph (1), to enter into a cooperative arrangement with an entity that is a provider of comprehensive primary care.

"(b) Requirement of Provision of Certain Services.—The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that, with respect to patients participating in the project carried out with the grant, services provided pursuant to the grant will include—

"(1) monitoring, in clinical laboratories, of the condition of such patients;

"(2) clinical intervention for infection with the etiologic agent for acquired immune deficiency syndrome, including measures for the prevention of conditions arising from the infection;

"(3) information and counseling on the availability of treatments for such infection approved by the Commissioner of Food and Drugs, on the availability of treatments for such infection not yet approved by the Commissioner, and on the reports issued by the Clinical Research Review Committee under section 2304(c)(2)(B);

"(4) support groups; and

"(5) information on, and referrals to, entities providing appropriate social support services.

"(c) Limitation on Imposition of Charges for Services.—The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that, if the applicant will routinely impose a charge for providing services pursuant to the grant, the applicant will not impose the charge on any individual seeking such services who is unable to pay the charge.

"(d) Evaluation and Reports.—

"(1) The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees, with respect to the project carried out pursuant to subsection (a), to submit to the Secretary—

"(A) information sufficient to assist in the replication of the model protocol developed pursuant to the project; and

"(B) such reports as the Secretary may require.

"(2) The Secretary shall provide for evaluations of projects carried out pursuant to subsection (a) and shall annually submit to the Congress a report describing such projects. The report shall include the findings made as a result of such evaluations and may include any recommendations of the Secretary for appropriate administrative and legislative initiatives with respect to the program established in this section.

"(e) Authorization of Appropriations.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.

"SEC. 2319. NATIONAL BLOOD RESOURCE EDUCATION PROGRAM.

"After consultation with the Director of the National Heart, Lung, and Blood Institute and the Commissioner of Food and Drugs, the Secretary shall establish a program of research and education regarding blood donations and transfusions to maintain and improve the safety of the blood supply. Education programs shall be directed at health professionals, patients, and the community to—

"(1) in the case of the public and patients undergoing treatment—

"(A) increase awareness that the process of donating blood is safe;

"(B) promote the concept that blood donors are contributors to a national need to maintain an adequate and safe blood supply;

"(C) encourage blood donors to donate more than once a year; and

"(D) encourage repeat blood donors to recruit new donors;

"(2) in the case of health professionals—

"(A) improve knowledge, attitudes, and skills of health professionals in the appropriate use of blood and blood components;

"(B) increase the awareness and understanding of health professionals regarding the risks versus benefits of blood transfusion; and

"(C) encourage health professionals to consider alternatives to the administration of blood or blood components for their patients; and

"(3) in the case of the community, increase coordination, communication, and collaboration among community, professional, industry, and government organizations regarding blood donation and transfusion issues.

"SEC. 2320. ADDITIONAL AUTHORITY WITH RESPECT TO RESEARCH.

"(a) Data Collection With Respect to National Prevalence.—

"(1) The Secretary, acting through the Director of the Centers for Disease Control, may, through representative sampling and other appropriate methodologies, provide for the continuous collection of data on the incidence in the United States of cases of acquired immune deficiency syndrome and of cases of infection with the etiologic agent for such syndrome. The Secretary may carry out the program of data collection directly or through cooperative agreements and contracts with public and nonprofit private entities.

"(2) The Secretary shall encourage each State to enter into a cooperative agreement or contract under paragraph (1) with the Secretary in order to facilitate the prompt collection of the most recent accurate data on the incidence of cases described in such paragraph.

"(3) The Secretary shall ensure that data collected under paragraph (1) includes data on the demographic characteristics of the population of individuals with cases described in paragraph (1), including data on specific subpopulations at risk of infection with the etiologic agent for acquired immune deficiency syndrome.

"(4) In carrying out this subsection, the Secretary shall, for the purpose of assuring the utility of data collected under this section, request entities with expertise in the methodologies of data collection to provide, as soon as is practicable, assistance to the Secretary and to the States with respect to the development and utilization of uniform methodologies of data collection.

"(5) The Secretary shall provide for the dissemination of data collected pursuant to this section. In carrying out this paragraph, the Secretary may publish such data as frequently as the Secretary determines to be appropriate with respect to the protection of the public health. The Secretary shall publish such data not less than once each year.

"(b) Epidemiological and Demographic Data.—

"(1) The Secretary, acting through the Director of the Centers for Disease Control, shall develop an epidemiological data base and shall provide for long-term studies for the purposes of—

"(A) collecting information on the demographic characteristics of the population of individuals infected with the etiologic agent for acquired immune deficiency syndrome; and

"(B) developing models demonstrating the long-term domestic and international patterns of the transmission of such etiologic agent.

"(2) The Secretary may carry out paragraph (1) directly or through grants to, or cooperative agreeements or contracts with, public and nonprofit private entities, including Federal agencies.

"(c) Long-Term Research.—The Secretary may make grants to public and nonprofit private entities for the purpose of assisting grantees in conducting long-term research into treatments for acquired immune deficiency syndrome developed from knowledge of the genetic nature of the etiologic agent for such syndrome.

"(d) Social Sciences Research.—The Secretary, acting through the Director of the National Institute of Mental Health, may make grants to public and nonprofit private entities for the purpose of assisting grantees in conducting scientific research into the psychological and social sciences as such sciences relate to acquired immune deficiency syndrome.

"(e) Authorization of Appropriations.—

"(1) For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.

"(2) Amounts appropriated pursuant to paragraph (1) to carry out subsection (c) shall remain available until expended.

"Part C—Research Training

"SEC. 2341. FELLOWSHIPS AND TRAINING.

"(a) In General.—The Secretary, acting through the Director of the Centers for Disease Control, shall establish fellowship and training programs to be conducted by the Centers for Disease Control to train individuals to develop skills in epidemiology, surveillance, testing, counseling, education, information, and laboratory analysis relating to acquired immune deficiency syndrome. Such programs shall be designed to enable health professionals and health personnel trained under such programs to work, after receiving such training, in national and international efforts towards the prevention, diagnosis, and treatment of acquired immune deficiency syndrome.

"(b) Programs Conducted by National Institute of Mental Health.—The Secretary, acting through the Director of the National Institute of Mental Health, shall conduct or support fellowship and training programs for individuals pursuing graduate or postgraduate study in order to train such individuals to conduct scientific research into the psychological and social sciences as such sciences relate to acquired immune deficiency syndrome.

"(c) Relationship to Limitation on Number of Employees.—Any individual receiving a fellowship or receiving training under subsection (a) or (b) shall not be included in any determination of the number of full-time equivalent employees of the Department of Health and Human Services for the purpose of any limitation on the number of such employees established by law prior to, on, or after the date of the enactment of the AIDS Federal Policy Act of 1988.

"(d) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.

"PART D—SPECIAL AUTHORITIES OF THE DIRECTOR OF THE NATIONAL INSTITUTES OF HEALTH

"SEC. 2351. ESTABLISHMENT OF AUTHORITIES.

"(a) IN GENERAL.—In carrying out research with respect to acquired immune deficiency syndrome, the Secretary, acting through the Director of the National Institutes of Health—

"(1)(A) shall establish an office to be known as the Office of AIDS Research, which Office shall be headed by a Director appointed by the Director of the National Institutes of Health; and

(B) shall provide administrative support and support services to the Director of such Office;

"(2) shall coordinate activities relating to acquired immune deficiency syndrome conducted by the national reseach institutes and the agencies of the National Institutes of Health;

"(3) shall develop and expand clinical trials of treatments and therapies for infection with the etiologic agent for acquired immune deficiency syndrome, including such clinical trials for women, infants, children, hemophiliacs, and minorities;

"(4) may establish or support the large-scale development and preclinical screening, production, or distribution of specialized biological materials and other therapeutic substances for research relating to acquired immune deficiency syndrome and set standards of safety and care for persons using such materials;

"(5) may, in consultation with the advisory council for the appropriate national research institute of the National Institutes of Health, support—

"(A) research relating to acquired immune deficiency syndrome conducted outside the United States by qualified foreign professionals if such research can reasonably be expected to benefit the people of the United States;

"(B) collaborative research involving American and foreign participants; and

"(C) the training of American scientists abroad and foreign scientists in the United States;

"(6) may encourage and coordinate research relating to acquired immune deficiency syndrome conducted by any industrial concern that evidences a particular capability for the conduct of such research;

"(7)(A) may, in consultation with such advisory council, acquire, improve, repair, operate, and maintain laboratories, other research facilities, equipment, and such other real or personal property as the Director of the National Institutes of Health determines necessary;

"(B) may, in consultation with such advisory council, make grants for the construction or renovation of facilities; and

"(C) may, in consultation with such advisory council, acquire, without regard to the Act of March 3, 1877 (40 U.S.C. 34) by lease or otherwise through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the National Institutes of Health for a period not to exceed ten years; and

"(8) subject to section 405(b)(2) and without regard to section 3324 of title 31, United States Code, and section 3709 of the Revised Statutes (41 U.S.C. 5), may enter into such contracts and cooperative agreements with any public agency, or with any person, firm, association, corporation, or educational institution, as may be necessary to expedite and coordinate research relating to acquired immune deficiency syndrome.

"(b) REPORT TO SECRETARY.—The Director of the National Institutes of Health, acting through the Director of the Office of AIDS Research, shall each fiscal year prepare and submit to the Secretary, for inclusion in the comprehensive report required in section 2301(a), a report—

"(1) describing and evaluating the progress made in such fiscal year in research, treatment, and training with respect to acquired immune deficiency syndrome conducted or supported by the Institutes;

"(2) summarizing and analyzing expenditures made in such fiscal year for activities with respect to acquired immune deficiency syndrome conducted or supported by the National Institutes of Health; and

"(3) containing such recommendations as the Director considers appropriate.

"(c) PROJECTS FOR COOPERATION AMONG PUBLIC AND PRIVATE HEALTH ENTITIES.—In carrying out subsection (a), the Director of the National Institutes of Health shall establish projects to promote cooperation among Federal agencies, State, local, and regional public health agencies, and private entities, in research concerning the diagnosis, prevention, and treatment of acquired immune deficiency syndrome.

"PART E—GENERAL PROVISIONS

"SEC. 2361. DEFINITION.

"For purposes of this title, the term 'infection with the etiologic agent for acquired immune deficiency syndrome' includes any condition arising from infection with such etiologic agent.".

SEC. 202. AUTHORIZATION OF ADDITIONAL PERSONNEL.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Health and Human Services, shall, in accordance with the civil service and classification laws, appoint and fix the compensation of not less than 780 employees for the Public Health Service in addition to the number of employees assigned to such Service as of December 31, 1987.

(b) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall report to the Congress on the allocation among the agencies of the Public Health Service of the 780 additional employees required in subsection (a).

(c) LIMITATION OF AVAILABILITY OF APPROPRIATIONS.—The requirement established in subsection (a) shall be carried out only to the extent of amounts made available in appropriations Acts for such purpose.

(d) EXPIRATION OF REQUIREMENT.—Effective October 1, 1990, this section is repealed.

SEC. 203. REQUIREMENT OF CERTAIN RESEARCH STUDIES.

(a) MORTALITY RATES.—After consultation with the Director of the National Center for Health Services Research and Health Care Technology Assessment, the Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control, shall conduct a study for the purpose of determining the mortality rates with respect to acquired immune deficiency syndrome among individuals of various groups at risk of such syndrome, among various geographic areas, and among individuals with varying financial resources for the payment of health care services.

(b) USE OF CONSORTIA FOR RESEARCH AND DEVELOPMENT.—The Secretary of Health and Human Services shall request the National Academy of Sciences and other similar appropriate nonprofit institutions to report to the Secretary findings made by such institutions with respect to—

(1) the manner in which research on, and the development of, vaccines and drugs for the prevention and treatment of acquired immune deficiency syndrome and related conditions can be enhanced by the establishment of consortia—

(A) designed to combine and share resources needed for such research and development; and

(B) consisting of businesses involved in such research and development, of nonprofit research institutions, or of combinations of such businesses and such institutions; and

(2) the appropriate participation, if any, of the Federal Government in such consortia.

(c) REPORTS TO CONGRESS.—The Secretary of Health and Human Services shall submit to the Congress a report describing the findings made as a result of each of the studies required or requested in this section. The report for the study required in subsection (a) shall be submitted not later than 18 months after the date of the enactment of this Act. The report for the study requested in subsection (b) shall be submitted not later than 1 year after such date.

SEC. 204. CONFORMING AMENDMENTS.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended—

(1) in section 305(i), by striking "2313" each place it appears and inserting "2511";

(2) in section 465(f), by striking "2301" and inserting "2501"; and

(3) in section 497, by striking "2301" and inserting "2501".

Subtitle B—Health Services

SEC. 211. STATE FORMULA GRANTS, SUBACUTE CARE, AND COUNSELING AND TESTING.

The Public Health Service Act (42 U.S.C. 201 et seq.), as amended by section 201, is further amended by inserting after title XXIII the following new title:

"TITLE XXIV—HEALTH SERVICES WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME

"PART A—FORMULA GRANTS TO STATES FOR HOME AND COMMUNITY-BASED HEALTH SERVICES

"SEC. 2401. ESTABLISHMENT OF PROGRAM.

"(a) ALLOTMENTS FOR STATES.—For the purpose described in subsection (b), the Secretary shall for each of the fiscal years 1989 and 1990 make an allotment for each State in an amount determined in accordance with section 2408. The Secretary shall make payments each such fiscal year to each State from the allotment for the State if the Secretary approves for the fiscal year involved an application submitted by the State pursuant to section 2407.

"(b) PURPOSE OF GRANTS.—The Secretary may not make payments under subsection (a) for a fiscal year unless the State involved agrees to expend the payments only for the purpose of providing services in accordance with section 2402.

"(c) Eligible Individual Defined.—For purposes of this part:

"(1) The term 'eligible individual' means an individual infected with the etiologic agent for acquired immune deficiency syndrome who either is medically dependent or chronically dependent.

"(2) The term 'medically dependent' means, with respect to an individual, that the individual has been certified by a physician as—

"(A) requiring the routine use of appropriate medical services (which may include home intfavenous drug therapy) to prevent or compensate for the individual's serious deterioration, arising from infection with the etiologic agent for acquired immune deficiency syndrome, of physical health or cognitive function, and

"(B) being able to avoid long-term or repeated care as an inpatient or resident in a hospital, nursing facility, or other institution if home and community-based health services are provided to the individual.

"(3) The term 'chronically dependent' means, with respect to an individual, that the individual has been certified by a physician as—

"(A) being unable to perform, because of physical or cognitive impairment (without substantial assistance from another individual) arising from infection with the etiologic agent for acquired immune deficiency syndrome, at least 2 of the following activities of daily living: bathing, dressing, toileting, transferring, and eating, or

"(B) having a similar level of disability due to cognitive impairment (as defined by the Secretary).

"(d) Home and Community-Based Health Services Defined.—For purposes of this part, the term 'home and community-based health services'—

"(1) means, with respect to an eligible individual, skilled health services furnished to the individual in the individual's home pursuant to a written plan of care established by a health care professional for the provision of such services and items and services described in paragraph (2);

"(2) includes—

"(A) durable medical equipment,

"(B) homemaker/home health aide services and personal care services furnished in the individual's home,

"(C) day treatment or other partial hospitalization services,

"(D) home intravenous drug therapy (including prescription drugs administered intravenously as part of such therapy), and

"(E) routine diagnostic tests administered in the individual's home,

furnished pursuant to such plan of care; but

"(3) does not include, except as specifically provided in paragraph (2)—

"(A) diagnostic tests,

"(B) inpatient hospital services,

"(C) nursing facility services, and

"(D) prescription drugs.

"SEC. 2402. PROVISIONS WITH RESPECT TO CARRYING OUT PURPOSE OF GRANTS.

"(a) Required Uses of Funds.—The Secretary may not make payments under section 2401(a) unless the State involved agrees that the State will—

"(1) provide for home and community-based health services for eligible individuals pursuant to written plans of care established by health care professionals for providing such services to such individuals;

"(2) provide for the identification, location, and provision of outreach to eligible individuals;

"(3) provide for coordinating the provision of services under this part with the provision of similar or related services by public and private entities; and

"(4) give priority to the provision of outreach and home and community-based services to eligible individuals with low incomes.

"(b) Authority for Grants and Contracts.—A State may make payment for services under subsection (a) through grants to public and nonprofit private entities and through contracts with public and private entities. In providing such financial assistance, a State shall give priority to public and nonprofit private entities that have demonstrated experience in delivering home and community-based health services to individuals with the etiologic agent for acquired immune deficiency syndrome.

"SEC. 2403. REQUIREMENT OF SUBMISSION OF DESCRIPTION OF INTENDED USES OF GRANT.

"The Secretary may not make payments under section 2401(a) to a State for a fiscal year unless—

"(1) the State submits to the Secretary a description of the purposes for which the State intends to expend such payments for the fiscal year;

"(2) such description provides information relating to the services and activities to be provided, including a description of the manner in which such services and activities will be coordinated with any similar services and activities of public and private entities; and

"(3) such description includes information relating to (A) the process for determining which eligible individuals are medically dependent or chronically dependent and (B) the process for establishing written plans of care for the provision of home and community-based health services under this part.

"SEC. 2404. RESTRICTIONS ON USE OF GRANT.

"(a) In General.—The Secretary may not make payments under section 2401(a) for a fiscal year to a State unless the State agrees that the payments will not be expended—

"(1) to provide for items or services described in section 2401(d)(3);

"(2) to make cash payments to intended recipients of services;

"(3) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment; or

"(4) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

"(b) Limitation on Administrative Expenses.—The Secretary may not make payments under section 2401(a) for a fiscal year unless the State involved agrees that the State will not expend more than 5 percent of the payments made to the State under such section for administrative expenses with respect to carrying out the purpose of this part.

"(c) Limitation on Total Payments.—

"(1) Before March 1, 1989, for fiscal year 1989 and before September 1 of 1989 for fiscal year 1990, the Secretary shall determine and publish the national average monthly payments, for extended care services under part A of title XVIII of the Social Security Act, for each resident of a skilled nursing facility the Secretary estimates will be paid in the fiscal year.

"(2) The Secretary may not make payments under section 2401(a) for a fiscal year to a State to the extent that the average monthly payments for eligible individuals provided home and community-based health services under this part in the State exceeds 65 percent of the national average monthly payments determined and published for the fiscal year under paragraph (1).

"SEC. 2405. REQUIREMENT OF REPORTS AND AUDITS BY STATES.

"(a) Reports.—

"(1) The Secretary may not make payments under section 2401(a) for a fiscal year unless the State involved agrees to prepare and submit to the Secretary, by not later than January 1 following the fiscal year, an annual report in such form and containing such information as the Secretary determines (after consultation with the States and the Comptroller General of the United States) to be necessary for—

"(A) securing a record and a description of the purposes for which payments received by the State pursuant to section 2401(a) were expended and of the recipients of such payments;

"(B) determining whether the payments were expended in accordance with the purpose of this part; and

"(C) determining the percentage of payments received pursuant to section 2401(a) that were expended by the State for administrative expenses during the fiscal year involved.

"(2) Each report by a State under paragraph (1) for a fiscal year also shall include—

"(A) information on the number and type of eligible individuals provided home and community-based health services by the State under this part for the fiscal year;

"(B) information on the types of home and community-based health services so provided;

"(C) information on the average monthly costs of such services and a comparison of such costs with costs of providing services in hospitals, nursing facilities, and similar institutions; and

"(D) such other information as the Secretary may require to provide for an evaluation of the program under this part and its cost-effectiveness.

"(b) Audits.—

"(1) The Secretary may not make payments under section 2401(a) for a fiscal year unless the State involved agrees to establish such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursal of, and accounting for, amounts received by the State under such section.

"(2) The Secretary may not make payments under section 2401(a) for a fiscal year unless the State involved agrees that—

"(A) the State will provide for—

"(i) a financial and compliance audit of such payments; or

"(ii) a single financial and compliance audit of each entity administering such payments;

"(B) the audit will be performed biennially and will cover expenditures in each fiscal year; and

"(C) the audit will be conducted in accordance with standards established by the Comptroller General of the United States for the audit of governmental organizations, programs, activities, and functions.

"(3) The Secretary may not make payments under section 2401(a) for a fiscal year unless the State involved agrees that, not later than 30 days after the completion of an audit under paragraph (2), the State will provide a copy of the audit report to the State legislature.

"(4) For purposes of paragraph (2), the term 'financial and compliance audit' means an audit to determine whether the financial statements of an audited entity present fairly the financial position, and the results of financial operations, of the entity in accordance with generally accepted accounting principles, and whether the entity has complied with laws and regulations that may have a material effect upon the financial statements.

"(c) AVAILABILITY TO PUBLIC.—The Secretary may not make payments under section 2401(a) unless the State involved agrees to make copies of the reports and audits described in this section available for public inspection.

"(d) EVALUATIONS BY COMPTROLLER GENERAL.—The Comptroller General of the United States shall, from time to time, evaluate the expenditures by the States of payments under section 2401(a) in order to assure that expenditures are consistent with the provisions of this part.

"SEC. 2406. ADDITIONAL REQUIRED AGREEMENTS.

"(a) IN GENERAL.—The Secretary may not make payments under section 2401(a) for a fiscal year unless the State involved agrees that—

"(1) the legislature of the State will conduct public hearings on the proposed use and distribution of the payments to be received from the allotments for each such fiscal year;

"(2)(A) the State will, to the maximum extent practicable, ensure that services provided to an individual pursuant to the program involved will be provided without regard to the ability of the individual to pay for such services and without regard to the current or past health condition of the individual;

"(B) if any charges are imposed for the provision of home and community-based health services for which assistance is provided under this part, such charges (i) will be pursuant to a public schedule of charges, (ii) will not be imposed on any eligible individual with an income that does not exceed 100 percent of the official poverty line, and (iii) for an eligible individual with an income that exceeds 100 percent of the official poverty line, will be adjusted to reflect the income of the individual;

"(3) the State will provide for periodic independent peer review to assess the quality and appropriateness of home and community-based health services provided by entities that receive funds from the State pursuant to section 2401(a);

"(4) the State will permit and cooperate with Federal investigations undertaken under 2409(e);

"(5) the State will maintain State expenditures for home and community-based health services for individuals infected with the etiologic agent for acquired immune deficiency syndrome at a level equal to not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying to receive payments; and

"(6) the State will not make payments from allotments made under section 2401(a) for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service (i) under any State compensation program, under an insurance policy, under any Federal or State health benefits program, or (ii) by an entity that provides health services on a prepaid basis.

"SEC. 2407. REQUIREMENT OF SUBMISSION OF APPLICATION CONTAINING CERTAIN AGREEMENTS AND ASSURANCES.

"The Secretary may not make payments under section 2401(a) to a State for a fiscal year unless—

"(1) the State submits to the Secretary an application for the payments containing agreements in accordance with sections 2401 through 2406;

"(2) the agreements are made through certification from the chief executive officer of the State;

"(3) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary;

"(4) the application contains the description of intended expenditures required in section 2403; and

"(5) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

"SEC. 2408. DETERMINATION OF AMOUNT OF ALLOTMENTS FOR STATES.

"(a) MINIMUM ALLOTMENT.—Subject to the extent of amounts made available in appropriations Acts, the amount of an allotment under section 2401(a) for—

"(1) each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico, for a fiscal year shall be the greater of—

"(A) $100,000, and

"(B) an amount determined under subsection (b); and

"(2) each territory of the United States (as defined in section 2413(5)) shall be $25,000.

"(b) DETERMINATION UNDER FORMULA.—

"(1) The amount referred to in subsection (a)(1)(B) for a State is the product of—

"(A) an amount equal to the amount appropriated pursuant to section 2414(a) for the fiscal year involved; and

"(B) the ratio of the distribution factor for the State to the sum of the distribution factors for all the States.

"(2) In paragraph (1)(B), the term 'distribution factor' means, for a State, the product of—

"(A) the number in the State of additional cases of acquired immune deficiency syndrome, as indicated by the number of such cases reported to and confirmed by the Secretary for the most recent fiscal year for which such data are available, and

"(B) the ratio (based on the most recent available data) of (i) the average per capita income of individuals in the United States to (ii) the average per capita income of individuals in the State;

except that the distribution factors for all the States and territories shall be proportionally reduced to the extent necessary to assure that the total of the allotments under subsection (a) for all the States and territories for each fiscal year does not exceed the amount appropriated pursuant to section 2414(a) for the fiscal year.

"(c) INDIAN TRIBES.—

"(1) Upon the request of the governing body of an Indian tribe or tribal organization within a State to the Secretary, the Secretary shall—

"(A) reserve from the amount that otherwise would be allotted for the fiscal year to the State under subsection (a) an amount determined in accordance with paragraph (2); and

"(B) grant the amount reserved under subparagraph (A) to the Indian tribe or tribal organization serving eligible individuals who are members of the Indian tribe or tribal organization.

"(2) The amount reserved under paragraph (1)(A) shall be an amount equal to the product of—

"(A) the amount that otherwise would be allotted to the State under subsection (a) for the fiscal year; and

"(B) the Secretary's estimate of the proportion of the number of additional cases described in subsection (b)(2)(A) that are attributable to members of the Indian tribe or tribal organization.

"(3) The Secretary may not make a grant under paragraph (1)(B) to an Indian tribe or tribal organization unless the Indian tribe or tribal organization submits to the Secretary an application meeting the requirements of such an application under section 2407.

"(d) DISPOSITION OF CERTAIN FUNDS APPROPRIATED FOR ALLOTMENTS.—

"(1) Amounts described in paragraph (2) shall, in accordance with paragraph (3), be allotted by the Secretary to States receiving payments under section 2401(a) for the fiscal year (other than any State referred to in paragraph (2)(B)).

"(2) The amounts referred to in paragraph (1) are any amounts that are not paid to States or territories under section 2401(a) as a result of—

"(A) the failure of any State or territory to submit an application under section 2407 within a reasonable time period established by the Secretary; or

"(B) any State or territory informing the Secretary that the State or territory does not intend to expend the full amount of the allotment made to the State or territory.

"(3) The amount of an allotment under paragraph (1) for a State for a fiscal year shall be an amount equal to the product of—

"(A) an amount equal to the amount described in paragraph (2) for the fiscal year involved; and

"(B) the ratio determined under subsection (b)(1)(B) for the State.

"SEC. 2409. FAILURE TO COMPLY WITH AGREEMENTS.

"(a) REPAYMENT OF PAYMENTS.—

"(1) The Secretary may, subject to subsection (c), require a State to repay any payments received by the State under section 2401(a) that the Secretary determines were not expended by the State in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 2407.

"(2) If a State fails to make a repayment required in paragraph (1), the Secretary may offset the amount of the repayment against the amount of any payment due to be paid to the State under section 2401(a).

"(b) WITHHOLDING.—

"(1) The Secretary may, subject to subsection (c), withhold payments due under section 2401(a) if the Secretary determines that the State involved is not expending amounts received under such section in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 2407.

"(2) The Secretary shall cease withholding payments from a State under paragraph (1) if the Secretary determines that there are reasonable assurances that the State will expend amounts received under section 2401(a) in accordance with the agreements referred to in such paragraph.

"(c) OPPORTUNITY FOR HEARING.—Before requiring repayment of payments under subsection (a)(1), or withholding payments under subsection (b)(1), the Secretary shall provide to the State an opportunity for a hearing conducted within the State.

"(d) Technical Violations.—The Secretary may not require repayment under subsection (a)(1), or withhold payments under subsection (b)(1), for a technical violation, as determined by the Secretary, of any agreement required to be contained in the application submitted by the State pursuant to section 2407.

"(e) Investigations.—

"(1) The Secretary shall conduct in the several States in each fiscal year investigations of the expenditure of payments received by the States under section 2401(a) in order to evaluate compliance with the agreements required to be contained in the applications submitted to the Secretary pursuant to section 2407.

"(2) Each State, and each entity receiving funds from payments made to a State under section 2401(a), shall make appropriate books, documents, papers, and records available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefor.

"(3)(A) In conducting any investigation in a State, the Secretary and the Comptroller General of the United States may not make a request for any information not readily available to the State, or to an entity receiving funds from payments made to the State under section 2401(a), or make an unreasonable request for information to be compiled, collected, or transmitted in any form not readily available.

"(B) Subparagraph (A) shall not apply to the collection, compilation, or transmittal of data in the course of a judicial proceeding.

"SEC. 2410. PROHIBITION AGAINST CERTAIN FALSE STATEMENTS.

"(a) In General.—A person may not knowingly make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which amounts may be paid by a State from payments received by the State under section 2401(a).

"(b) Criminal Penalty for Violation of Prohibition.—Any person who violates a prohibition established in subsection (a) may for each violation be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both.

"SEC. 2411. TECHNICAL ASSISTANCE AND PROVISION BY SECRETARY OF SUPPLIES AND SERVICES IN LIEU OF GRANT FUNDS.

"(a) Technical Assistance.—Upon the request of a State receiving payments under section 2401(a), the Secretary may, without charge to the State, provide to the State (or to any public or private entity designated by the State) technical assistance with respect to the planning, development, and operation of this part. The Secretary may provide such technical assistance directly, through contract, or through grants.

"(b) Provision by Secretary of Supplies and Services in Lieu of Grant Funds.—

"(1) Upon the request of a State receiving payments under section 2401(a), the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the State in carrying out this part and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

"(2) With respect to a request described in paragraph (1), the Secretary shall reduce the amount of payments under section 2401(a) to the State by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

"SEC. 2412. REPORT BY SECRETARY.

"Not later than March 1, 1990, the Secretary shall report to the Congress on the activities of the States under this part. Such report shall include a recommendation as to whether or not the program under this part should be extended beyond fiscal year 1990 and may include any recommendations of the Secretary for appropriate administrative and legislative initiatives.

"SEC. 2413. DEFINITIONS.

"For purposes of this part:

"(1) The terms 'Indian tribe' and 'tribal organization' have the same meaning given such terms in sections 4(b) and 4(c) of the Indian Self-Determination and Education Assistance Act.

"(2) The term 'infected with the etiologic agent for acquired immune deficiency syndrome' includes any condition arising from infection with such etiologic agent.

"(3)(A) An individual is considered to have low income if the individual's income does not exceed 200 percent of the official poverty line.

"(B) The term 'official poverty line' refers, with respect to an individual, to the official poverty line defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981, applicable to a family of the size involved.

"(4)(A) The term 'State' means, except as provided in subparagraph (B), each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory of the United States.

"(B) For purposes of section 2408(d), the term 'State' means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

"(5) The term 'territory of the United States' means each of the following: the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"SEC. 2414. FUNDING.

"(a) Authorization of Appropriations.—For the purpose of making grants under section 2401, there are authorized to be appropriated $100,000,000 for each of the fiscal years 1989 and 1990.

"(b) Availability to States.—Any amounts paid to a State or territory under section 2401(a) shall remain available to the State or territory until the expiration of the 1-year period beginning on the date on which the State or territory receives such amounts.

"SEC. 2415. SUNSET.

"Effective with respect to appropriations made for any period after fiscal year 1990, part A of title XXIV of the Public Health Service Act is repealed.

"Part B-Subacute Care

"SEC. 2421. DEMONSTRATION PROJECTS.

"(a) As used in this section:

"(1) The term 'patients infected with the human immunodeficiency virus' means persons who have a disease, or are recovering from a disease, attributable to the infection of such person with the human immunodeficiency virus, and as a result of the effects of such disease, are in need of subacute-care services.

"(2) The term 'subacute care' means medical and health care services that are required for persons recovering from acute care episodes that are less intensive than the level of care provided in acute-care hospitals, and includes skilled nursing care, hospice care, and other types of health services provided in other long-term-care facilities.

"(b) The Secretary shall conduct three demonstration projects to determine the effectiveness and cost of providing the subacute-care services described in subsection (b) to patients infected with the human immunodeficiency virus, and the impact of such services on the health status of such patients.

"(c)(1) The services provided under each demonstration project shall be designed to meet the specific needs of patients infected with the human immunodeficiency virus, and shall include—

"(A) the care and treatment of such patients by providing—

"(i) subacute care;

"(ii) emergency medical care and specialized diagnostic and therapeutic services as needed and where appropriate, either directly or through affiliation with a hospital that has experience in treating AIDS patients; and

"(iii) case management services to ensure, through existing services and programs whenever possible, appropriate discharge planning for patients; and

"(B) technical assistance, to other facilities in the region served by such facility, that is directed towards education and training of physicians, nurses, and other health-care professionals in the subacute care and treatment of patients infected with the human immunodeficiency virus.

"(2) Services provided under each demonstration project may also include—

"(A) hospice services;

"(B) outpatient care; and

"(C) outreach activities in the surrounding community to hospitals and other health-care facilities that serve patients infected with the human immunodeficiency virus.

"(d) The demonstration projects shall be conducted—

"(1) during a 4-year period beginning not later than 9 months after the date of enactment of this section; and

"(2) at sites that—

"(A) are geographically diverse and located in areas that are appropriate for the provision of the required and authorized services; and

"(B) have the highest incidence of AIDS cases and the greatest need for subacute-care services.

"(e) The Secretary shall evaluate the operations of the demonstration projects and shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate—

"(1) not later than 18 months after the beginning of the first project, a preliminary report that contains—

"(A) a description of the sites at which the projects are being conducted and of the services being provided in each project; and

"(B) a preliminary evaluation of the experience of the projects in the first 12 months of operation; and

"(2) not later than 6 months after the completion of the last project, a final report that contains—

"(A) an assessment of the costs of subacute care for patients infected with the human immunodeficiency virus, including a breakdown of all other sources of funding for the care provided to cover subacute care; and

"(B) recommendations for appropriate legislative changes.

"(f) Each demonstration project shall provide for other research to be carried out at the site of such demonstration project including—

"(1) clinical research on the acquired immunodeficiency syndrome, concentrating on research on the neurological manifestations resulting from infection with the human immunodeficiency virus; and

"(2) the study of the psychological and mental health issues related to the acquired immunodeficiency syndrome.

"(g)(1) To carry out this section, there are authorized to be appropriated $10,000,000 for fiscal year 1988 and such sums as are necessary for each of the fiscal years 1989 through 1991.

"(2) Amounts appropriated pursuant to paragraph (1) shall remain available until September 10, 1992.

"(h) The Secretary shall enter into an agreement with the Administrator of the Veterans' Administration to ensure that appropriate provision will be made for the furnishing, through demonstration projects, of services to eligible veterans, under contract with the Veterans' Administration pursuant to section 620 of title 38, United States Code.

"PART C—OTHER HEALTH SERVICES

"Subpart I—Counseling and Testing

"SEC. 2431. GRANTS FOR ANONYMOUS TESTING.

"The Secretary may make grants to the States for the purpose of providing opportunities for individuals—

"(1) to undergo counseling and testing with respect to the etiologic agent for acquired immune deficiency syndrome without being required to provide any information relating to the identity of the individuals; and

"(2) to undergo such counseling and testing through the use of a pseudonym.

"SEC. 2432. REQUIREMENT OF PROVISION OF CERTAIN COUNSELING SERVICES.

"(a) COUNSELING BEFORE TESTING.—The Secretary may not make a grant under section 2431 to a State unless the State agrees that, before testing an individual pursuant to such section, the State will provide to the individual appropriate counseling with respect to acquired immune deficiency syndrome (based on the most recent scientific data relating to such syndrome), including—

"(1) measures for the prevention of exposure to, and the transmission of, the etiologic agent for such syndrome;

"(2) the accuracy and reliability of the results of such testing;

"(3) the significance of the results of such testing, including the potential for developing acquired immune deficiency syndrome; and

"(4) encouraging individuals, as appropriate, to undergo testing for such etiologic agent and providing information on the benefits of such testing.

"(b) COUNSELING OF INDIVIDUALS WITH NEGATIVE TEST RESULTS.—The Secretary may not make a grant under section 2431 to a State unless the State agrees that, if the results of testing conducted pursuant to such section indicate that an individual is not infected with the etiologic agent for acquired immune deficiency syndrome, the State will review for the individual the information provided pursuant to subsection (a) with respect to such syndrome, including—

"(1) the information described in paragraphs (1) through (3) of such subsection; and

"(2) the appropriateness of further counseling, testing, and education of the individual with respect to acquired immune deficiency syndrome.

"(c) COUNSELING OF INDIVIDUALS WITH POSITIVE TEST RESULTS.—The Secretary may not make a grant under section 2431 to a State unless the State agrees that, if the results of testing conducted pursuant to such section indicate that the individual is infected with the etiologic agent for acquired immune deficiency syndrome, the State will provide to the individual appropriate counseling with respect to such syndrome, including—

"(1) reviewing the information described in paragraphs (1) through (3) of subsection (a);

"(2) reviewing the appropriateness of further counseling, testing, and education of the individual with respect to acquired immune deficiency syndrome;

"(3) the importance of not exposing others to the etiologic agent for acquired immune deficiency syndrome;

"(4) the availability in the geographic area of any appropriate services with respect to health care, including mental health care and social and support services;

"(5) the benefits of locating and counseling any individual by whom the infected individual may have been exposed to the etiologic agent for acquired immune deficiency syndrome and any individual whom the infected individual may have exposed to such etiologic agent; and

"(6) the availability, if any, of the services of public health authorities with respect to locating and counseling any individual described in paragraph (4).

"(d) RULE OF CONSTRUCTION WITH RESPECT TO COUNSELING WITHOUT TESTING.—Agreements entered into pursuant to subsections (a) through (c) may not be construed to prohibit any grantee under section 2431 from expending the grant for the purpose of providing counseling services described in such subsections to an individual who will not undergo testing described in such section as a result of the grantee or the individual determining that such testing of the individual is not appropriate.

"(e) USE OF FUNDS

"(1) The purpose of this part is to provide for counseling and testing services to prevent and reduce exposure to, and transmission of, the etiologic agent for acquired immune deficiency syndrome.

"(2) All individuals receiving counseling pursuant to this part are to be counseled about the harmful effects of promiscuous sexual activity and intravenous substance abuse, and the benefits of abstaining from such activities.

"(3) None of the fund appropriated to carry out this part may be used to provide counseling that is designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous drug abuse.

"(4) Paragraph (3) may not be construed to prohibit a counselor who has already performed the counseling of an individual required by paragraph (2), to provide accurate information about means to reduce an individual's risk of exposure to, or the transmission of, the etiologic agent for acquired immune deficiency syndrome, provided that any informational materials used are not obscene.

"SEC. 2433. FUNDING.

"For the purpose of grants under section 2431, there are authorized to be appropriated $100,000,000 for each of the fiscal years 1989 and 1990.

"Subpart II—Counseling and Mental Health Services

"SEC. 2441. DEMONSTRATION PROJECTS FOR INDIVIDUALS WITH POSITIVE TEST RESULTS.

"(a) IN GENERAL.—The Secretary may make grants to public and nonprofit private entities for demonstration projects for the development, establishment, or expansion of programs to provide counseling and mental health treatment—

"(1) for individuals who experience serious psychological reactions as a result of being informed that the results of testing for the etiologic agent for acquired immune deficiency syndrome indicate that the individuals are infected with such etiologic agent; and

"(2) for the families of such individuals, and for others, who experience serious psychological reactions as a result of being informed of the results of such testing of such individuals.

"(b) PREFERENCES IN MAKING GRANTS.—In making grants under subsection (a), the Secretary shall give preference to applicants that are based at, or have relationships with, entities providing comprehensive health services to individuals who are infected with the etiologic agent for acquired immune deficiency syndrome.

"(c) REQUIREMENT OF PROVISION OF INFORMATION ON PREVENTION.—The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that counseling provided pursuant to such subsection will include counseling relating to measures for the prevention of exposure to, and the transmission of, the etiologic agent for acquired immune deficiency syndrome.

"(d) AUTHORITY FOR TRAINING.—A grantee under subsection (a) may expend the grant to train individuals to provide the services described in such subsection.

"(e) REQUIREMENT OF IDENTIFICATION OF NEEDS AND OBJECTIVES.—The Secretary may not make a grant under subsection (a) unless the applicant for the grant submits to the Secretary—

"(1) information demonstrating that the applicant has, with respect to mental health treatment related to the etiologic agent for acquired immune deficiency syndrome, identified the need for such treatment in the area in which the program will be developed, established, or expanded; and

"(2) a description of—

"(A) the objectives established by the applicant for the conduct of the program; and

"(B) the method the applicant will use to evaluate the activities conducted under the program and to determine the extent to which such objectives have been met.

"(f) REQUIREMENT OF APPLICATION.—The Secretary may not make a grant under subsection (a) unless—

"(1) an application for the grant is submitted to the Secretary;

"(2) with respect to carrying out the purpose for which the grant is to be made, the application provides assurances of compliance satisfactory to the Secretary;

"(3) the application contains the information required to be submitted under subsection (e); and

"(4) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"(g) Requirement of Minimum Number of Grants for Fiscal Year 1989.—Subject to the extent of amounts made available in appropriations Acts, the Secretary shall, for fiscal year 1989, make not less than 6 grants under subsection (a).

"(h) Technical Assistance and Administrative Support.—The Secretary, acting through the Director of the National Institute of Mental Health, may provide technical assistance and administrative support to grantees under subsection (a).

"(i) Definition.—For purposes of this section, the term 'mental health treatment' means individual, family or group services designed to alleviate distress, improve functional ability, or assist in changing dysfunctional behavior patterns.

"(j) Authorization of Appropriations.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.".

Subtitle C—Prevention

SEC. 221. FORMULA GRANTS TO STATES.

The Public Health Service Act (42 U.S.C. 201 et seq.), as amended by section 211, is further amended by inserting after title XXIV the following new title:

"TITLE XV—PREVENTION OF ACQUIRED IMMUNE DEFICIENCY SYNDROME

"SEC. 2500. USE OF FUNDS.

"(a) In General.—The purpose of this part is to provide for the establishment of education and information programs to prevent and reduce exposure to, and the transmission of, the etiologic agent for acquired immune deficiency syndrome.

"(b) Contents of Programs.—All programs of education and information receiving funds under this title shall include information about the harmful effects of promiscuous sexual activity and intravenous substance abuse, and the benefits of abstaining from such activities.

"(c) Limitation.—None of the funds appropriated to carry out this title may be used to provide education or information designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous substance abuse.

"(d) Construction.—Subsection (c) may not be construed to restrict the ability of an education program that includes the information required in subsection (b) to provide accurate information about various means to reduce an individual's risk of exposure to, or the transmission of, the etiologic agent for acquired immune deficiency syndrome, provided that any informational materials used are not obscene.

"Part A—Formula Grants to States

"SEC. 2501. ESTABLISHMENT OF PROGRAM.

"(a) Allotments for States.—For the purpose described in subsection (b), the Secretary shall for each of the fiscal years 1989 through 1991 make an allotment for each State in an amount determined in accordance with section 2507. The Secretary shall make payments each such fiscal year to each State from the allotment for the State if the Secretary approves for the fiscal year involved an application submitted by the State pursuant to section 2503.

"(b) Purpose of Grants.—The Secretary may not make payments under subsection (a) for a fiscal year unless the State involved agrees to expend the payments only for the purpose of carrying out, in accordance with section 2502, public information activities with respect to acquired immune deficiency syndrome.

"SEC. 2502. PROVISIONS WITH RESPECT TO CARRYING OUT PURPOSE OF GRANTS.

"A State may expend payments received under section 2501(a)—

"(1) to develop, establish, and conduct public information activities relating to the prevention and diagnosis of acquired immune deficiency syndrome for those populations or communities in the State in which there are a significant number of individuals at risk of infection with the etiologic agent for such syndrome;

"(2) to develop, establish, and conduct such public information activities for the general public relating to the prevention and diagnosis of such syndrome;

"(3) to develop, establish, and conduct activities to reduce risks relating to such syndrome, including research into the prevention of such syndrome;

"(4) to conduct demonstration projects for the prevention of such syndrome;

"(5) to provide technical assistance to public entities, to nonprofit private entities concerned with such syndrome, to schools, and to employers, for the purpose of developing information programs relating to such syndrome;

"(6) with respect to education and training programs for the prevention of such syndrome, to conduct such programs for health professionals (including allied health professionals), public safety workers (including emergency response employees), teachers, school administrators, and other appropriate education personnel;

"(7) to conduct appropriate programs for educating school-aged children with respect to such syndrome, after consulting with local school board;

"(8) to make available to physicians and dentists in the State information with respect to acquired immune deficiency syndrome, including measures for the prevention of exposure to, and the transmission of, the etiologic agent for such syndrome (which information is updated not less than annually with the most recently available scientific data relating to such syndrome);

"(9) to carry out the initial implementation of recommendations contained in the guidelines and the model curriculum developed under section 2525; and

"(10) to make grants to public entities, and to nonprofit private entities concerned with acquired immune deficiency syndrome, for the purpose of the development, establishment, and expansion of programs for education directed towards individuals at increased risk of infection with the etiologic agent for such syndrome and activities to reduce the risks of exposure to such etiologic agent, with preference to programs directed towards populations in which there is significant evidence of such infection.

"SEC. 2503. REQUIREMENT OF SUBMISSION OF APPLICATION CONTAINING CERTAIN AGREEMENTS AND ASSURANCES.

"(a) In General.—The Secretary may not make payments under section 2501(a) for a fiscal year unless—

"(1) the State involved submits to the Secretary a description of the purposes for which the State intends to expend the payments for the fiscal year;

"(2) the description identifies the populations, areas, and localities in the State with a need for the services for which amounts may be provided by the State under this part;

"(3) the description provides information relating to the programs and activities to be supported and services to be provided, including a description of the manner in which such programs and activities will be coordinated with any similar programs and activities of public and private entities; and

"(4) the State submits to the Secretary an application for the payments containing agreements in accordance with this part;

"(5) the agreements are made through certification from the chief executive officer of the State;

"(6) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary; and

"(7) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

"(b) Opportunity for Public Comment.—The Secretary may not make payments under section 2501(a) for a fiscal year unless the State involved agrees that, in developing and carrying out the description required in subsection (a), the State will provide public notice with respect to the description (including any revisions) and will facilitate comments from interested persons.

"SEC. 2504. RESTRICTIONS ON USE OF GRANT.

"(a) In General.—The Secretary may not make payments under section 2501(a) for a fiscal year unless the State involved agrees that the payments will not be expended—

"(1) to provide inpatient services;

"(2) to make cash payments to intended recipients of services;

"(3) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment; or

"(4) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

"(b) Limitation on Administrative Expenses.—The Secretary may not make payments under section 2501(a) for a fiscal year unless the State involved agrees that the State will not expend more than 5 percent of the payments for administrative expenses with respect to carrying out the purpose described in section 2501(b).

"SEC. 2505. REQUIREMENT OF REPORTS AND AUDITS BY STATES.

"(a) Reports.—The Secretary may not make payments under section 2501(a) for a fiscal year unless the State involved agrees to prepare and submit to the Secretary an annual report in such form and containing such information as the Secretary determines to be necessary for—

"(1) securing a record and a description of the purposes for which payments received by the State pursuant to such section were expended and of the recipients of such payments;

"(2) determining whether the payments were expended in accordance with the needs within the State required to be identified pursuant to section 2503(a)(2);

"(3) determining whether the payments were expended in accordance with the purpose described in section 2501(b); and

"(4) determining the percentage of payments received pursuant to such section that were expended by the State for administrative expenses during the preceding fiscal year.

"(b) Audits.—

"(1) The Secretary may not make payments under section 2501(a) for a fiscal year unless the State involved agrees to establish such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursal of, and accounting for, amounts received by the State under such section.

"(2) The Secretary may not make payments under section 2501(a) for a fiscal year unless the State involved agrees that—

"(A) the State will provide for—

"(i) a financial and compliance audit of such payments; or

"(ii) a single financial and compliance audit of each entity administering such payments;

"(B) the audit will be performed biennially and will cover expenditures in each fiscal year; and

"(C) the audit will be conducted in accordance with standards established by the Comptroller General of the United States for the audit of governmental organizations, programs, activities, and functions.

"(3) The Secretary may not make payments under section 2501(a) for a fiscal year unless the State involved agrees that, not later than 30 days after the completion of an audit under paragraph (2), the State will provide a copy of the audit report to the State legislature.

"(4) For purposes of paragraph (2), the term 'financial and compliance audit' means an audit to determine whether the financial statements of an audited entity present fairly the financial position, and the results of financial operations, of the entity in accordance with generally accepted accounting principles, and whether the entity has complied with laws and regulations that may have a material effect upon the financial statements.

"(c) AVAILABILITY TO PUBLIC.—The Secretary may not make payments under section 2501(a) for a fiscal year unless the State involved agrees to make copies of the reports and audits described in this section available for public inspection.

"(d) EVALUATIONS BY COMPTROLLER GENERAL.—The Comptroller General of the United States shall, from time to time, evaluate the expenditures by States of payments received under section 2501(a) in order to ensure that expenditures are consistent with the provisions of this part.

"SEC. 2506. ADDITIONAL REQUIRED AGREEMENTS.

"The Secretary may not, except as provided in subsection (b), make payments under section 2501(a) for a fiscal year unless the State involved agrees that—

"(1) all programs conducted or supported by the State with such payments will establish objectives for the program and will determine the extent to which the objectives are met;

"(2) information provided under this part will be scientifically accurate and factually correct;

"(3) in carrying out section 2501(b), the State will give priority to programs described in section 2502(10) for individuals described in such section;

"(4) with respect to a State in which there is a substantial number of individuals who are intravenous substance abusers, the State will place priority on activities under this part directed at such substance abusers;

"(5) with respect to a State in which there is a significant incidence of reported cases of acquired immune deficiency syndrome, the State will—

"(A) for the purpose described in subsection (b) of section 2501, expend not less than 50 percent of payments received under subsection (a) of such section for a fiscal year—

"(i) to make grants to public entities, to migrant health centers (as defined in section 329(a)), to community health centers (as defined in section 330(a)), and to nonprofit private entities concerned with acquired immune deficiency syndrome; or

"(ii) to enter into contracts with public and private entities; and

"(B) of the amounts reserved for a fiscal year by the State for expenditures required in subparagraph (A), expend not less than 50 percent to carry out section 2502(10) through grants to nonprofit private entities, including minority entities, concerned with acquired immune deficiency syndrome located in and representative of communities and subpopulations reflecting the local incidence of such syndrome;

(For purposes of this section, the term 'significant percentage' means at least a percentage of 1 percent of the number of reported cases of such syndrome in the United States);

"(6) with respect to programs carried out pursuant to section 2502(10), the State will ensure that any applicant for a grant under such section agrees—

"(A) that any educational or informational materials developed with a grant pursuant to such section will contain material, and be presented in a manner, that is specifically directed towards the group for which such materials are intended;

"(B) to provide a description of the manner in which the applicant has planned the program in consultation with, and of the manner in which such applicant will consult during the conduct of the program with—

"(i) appropriate local officials and community groups for the area to be served by the program;

"(ii) organizations comprised of, and representing, the specific population to which the education or prevention effort is to be directed; and

"(iii) individuals having expertise in health education and in the needs of the population to be served;

"(C) to provide information demonstrating that the applicant has continuing relationships, or will establish continuing relationships, with a portion of the population in the service area that is at risk of infection with the etiologic agent for acquired immune deficiency syndrome and with public and private entities in such area that provide health or other support services to individuals with such infection;

"(D) to provide a description of—

"(i) the objectives established by the applicant for the conduct of the program; and

"(ii) the methods the applicant will use to evaluate the activities conducted under the program to determine if such objectives are met; and

"(E) such other information as the Secretary may prescribe;

"(7) with respect to programs carried out pursuant to section 2502(10), the State will give preference to any applicant for a grant pursuant to such section that is located in, has a history of service in, and will serve under the program, any geographic area in which—

"(A) there is a significant incidence of acquired immune deficiency syndrome;

"(B) there has been a significant increase in the incidence of such syndrome; or

"(C) there is a significant risk of becoming infected with the etiologic agent for such syndrome;

"(8) the State will establish reasonable criteria to evaluate the effective performance of entities that receive funds from payments made to the State under section 2501(a) and will establish procedures for procedural and substantive independent State review of the failure by the State to provide funds for any such entity; and

"(9) the State will permit and cooperate with Federal investigations undertaken in accordance with section 2509(e);

"(10) the State will maintain State expenditures for services provided pursuant to section 2501 at a level equal to not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying to receive payments.

"SEC. 2507. DETERMINATION OF AMOUNT OF ALLOTMENTS FOR STATES.

"(a) MINIMUM ALLOTMENT.—The allotment for a State under section 2501(a) for a fiscal year shall be the greater of—

"(1) the amount described in subsection (b); or

"(2) the amount determined in accordance with subsection (c).

"(b) DETERMINATION OF MINIMUM ALLOTMENT.

"(1) If the total amount appropriated under section 2516(a) for a fiscal year exceeds $100,000,000, the amount referred to in subsection (a)(1) is $300,000 for the fiscal year.

"(2) If the total amount appropriated under section 2514(a) for a fiscal year equals or exceeds $50,000,000, but is less than $100,000,000, the amount referred to in subsection (a)(1) is $200,000 for the fiscal year.

"(3) If the total amount appropriated under section 2514(a) for a fiscal year is less than $50,000,000, the amount referred to in subsection (a)(1) is $100,000 for the fiscal year.

"(c) DETERMINATION UNDER FORMULA.—

"(1) The amount referred to in subsection (a)(2) is the sum of—

"(A) the amount determined under paragraph (2); and

"(B) the amount determined under paragraph (3).

"(2) The amount referred to in paragraph (1)(A) is the product of—

"(A) an amount equal to 50 percent of the amounts appropriated pursuant to section 2514(a); and

"(B) a percentage equal to the quotient of—

"(i) the population of the State involved; divided by

"(ii) the population of the United States.

"(3) The amount referred to in paragraph (1)(B) is the product of—

"(A) an amount equal to 50 percent of the amounts appropriated pursuant to section 2514(a); and

"(B) a percentage equal to the quotient of—

"(i) the number of additional cases of acquired immune deficiency syndrome reported to and confirmed by the Secretary for the State involved for the most recent fiscal year for which such data is available; divided by

"(ii) the number of additional cases of such syndrome reported to and confirmed by the Secretary for the United States for such fiscal year.

"(d) DISPOSITION OF CERTAIN FUNDS APPROPRIATED FOR ALLOTMENTS.—

"(1) Amounts described in paragraph (2) shall be allotted by the Secretary to States receiving payments under section 2501(a) for the fiscal year (other than any State referred to in paragraph (2)(C)). Such amounts shall be allotted according to a formula established by the Secretary. The formula shall be equivalent to the formula described in this section under which the allotment for the State for the fiscal year involved was determined.

"(2) The amounts referred to in paragraph (1) are any amounts that are not paid to States under section 2501(a) as a result of—

"(A) the failure of any State to submit an application under section 2507;

"(B) the failure, in the determination of the Secretary, of any State to prepare within a reasonable period of time such application in compliance with such section; or

"(C) any State informing the Secretary that the State does not intend to expend the full amount of the allotment made to the State.

"SEC. 2508. FAILURE TO COMPLY WITH AGREEMENTS.

"(a) REPAYMENT OF PAYMENTS.—

"(1) The Secretary may, subject to subsection (c), require a State to repay any payments received by the State under section 2501(a) that the Secretary determines were not expended by the State in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 2507.

"(2) If a State fails to make a repayment required in paragraph (1), the Secretary may offset the amount of the repayment against the amount of any payment due to be paid to the State under section 2501(a).

"(b) WITHHOLDING.—

"(1) The Secretary may, subject to subsection (c), withhold payments due under section 2501(a) if the Secretary determines that the State involved is not expending amounts received under such section in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 2507.

"(2) The Secretary shall cease withholding payments from a State under paragraph (1) if the Secretary determines that there are reasonable assurances that the State will expend amounts received under section 2501(a) in accordance with the agreements referred to in such paragraph.

"(3) The Secretary may not withhold funds under paragraph (1) from a State for a minor failure to comply with the agreements referred to in such paragraph.

"(c) OPPORTUNITY FOR HEARING.—Before requiring repayment of payments under subsection (a)(1), or withholding payments under subsection (b)(1), the Secretary shall provide to the State an opportunity for a hearing conducted within the State.

"(d) PROMPT RESPONSE TO SERIOUS ALLEGATIONS.—The Secretary shall promptly respond to any complaint of a substantial or serious nature that a State has failed to expend amounts received under section 2501(a) in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 2507.

"(e) INVESTIGATIONS.—

"(1) The Secretary shall conduct in several States in each fiscal year investigations of the expenditure of payments received by the States under section 2501(a) in order to evaluate compliance with the agreements required to be contained in the applications submitted to the Secretary pursuant to section 2507.

"(2) The Comptroller General of the United States may conduct investigations of the expenditure of funds received under section 2501(a) by a State in order to ensure compliance with the agreements referred to in paragraph (1).

"(3) Each State, and each entity receiving funds from payments made to a State under section 2501(a), shall make appropriate books, documents, papers, and records available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefor.

"(4)(A) In conducting any investigation in a State, the Secretary and the Comptroller General of the United States may not make a request for any information not readily available to the State, or to an entity receiving funds from payments made to the State under section 2501(a), or make an unreasonable request for information to be compiled, collected, or transmitted in any form not readily available.

"(B) Subparagraph (A) shall not apply to the collection, compilation, or transmittal of data in the course of a judicial proceeding.

"SEC. 2509. PROHIBITION AGAINST CERTAIN FALSE STATEMENTS.

"(a) IN GENERAL.—

"(1) A person may not knowingly make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which amounts may be paid by a State from payments received by the State under section 2501(a).

"(2) A person with knowledge of the occurrence of any event affecting the right of the person to receive any amounts from payments made to the State under section 2501(a) may not conceal or fail to disclose any such event with the intent of fraudulently securing such amounts.

"(b) CRIMINAL PENALTY FOR VIOLATION OF PROHIBITION.—Any person who violates a prohibition established in subsection (a) may for each violation be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both.

"SEC. 2510. TECHNICAL ASSISTANCE AND PROVISION BY SECRETARY OF SUPPLIES AND SERVICES IN LIEU OF GRANT FUNDS.

"(a) TECHNICAL ASSISTANCE.—The Secretary may provide training and technical assistance to States with respect to the planning, development, and operation of any program or service carried out pursuant to this part. The Secretary may provide such technical assistance directly or through grants or contracts.

"(b) PROVISION BY SECRETARY OF SUPPLIES AND SERVICES IN LIEU OF GRANT FUNDS.—

"(1) Upon the request of a State receiving payments under this part, the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the State in carrying out such part and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

"(2) With respect to a request described in paragraph (1), the Secretary shall reduce the amount of payments under the program involved to the State by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

"SEC. 2511. EVALUATIONS.

"The Secretary shall, directly or through grants or contracts, evaluate the services provided and activities carried out with payments to States under this part.

"SEC. 2512. REPORT BY SECRETARY.

"The Secretary shall annually prepare a report on the activities of the States carried out pursuant to this part. Such report may include any recommendations of the Secretary for appropriate administrative and legislative initiatives. The report shall be submitted to the Congress through inclusion in the comprehensive report required in section 2301.

"SEC. 2513. DEFINITION.

"For purposes of this part, the term 'infection with the etiologic agent for acquired immune deficiency syndrome' includes any condition arising from such etiologic agent.

"SEC. 2514. FUNDING.

"(a) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making allotments under section 2501(a), there are authorized to be appropriated $165,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

"(b) AVAILABILITY TO STATES.—Any amounts paid to a State under section 2501(a) shall remain available to the State until the expiration of the 1-year period beginning on the date on which the State receives such amounts.

"PART B—NATIONAL INFORMATION PROGRAMS

"SEC. 2521. AVAILABILITY OF INFORMATION TO GENERAL PUBLIC.

"(a) COMPREHENSIVE INFORMATION PLAN.—The Secretary, acting through the Director of the Centers for Disease Control, shall annually prepare a comprehensive plan, including a budget, for a National Acquired Immune Deficiency Syndrome Information Program. The plan shall contain provisions to implement the provisions of this title. The Director shall submit such plan to the Secretary. The authority established in this subsection may not be construed to be the exclusive authority for the Director to carry out information activities with respect to acquired immune deficiency syndrome.

"(b) CLEARINGHOUSE.—

"(1) The Secretary, acting through the Director of the Centers for Disease Control, may establish a clearinghouse to make information concerning acquired immune deficiency syndrome available to Federal agencies, States, public and private entities, and the general public.

"(2) The clearinghouse may conduct or support programs—

"(A) to develop and obtain educational materials, model curricula, and methods directed toward reducing the transmission of the etiologic agent for acquired immune deficiency syndrome;

"(B) to provide instruction and support for individuals who provide instruction in methods and techniques of education relating to the prevention of acquired immune deficiency syndrome and instruction in the use of the materials and curricula described in subparagraph (A); and

"(C) to conduct, or to provide for the conduct of, the materials, curricula, and methods described in paragraph (1) and the efficacy of such materials, curricula, and methods in preventing infection with the etiologic agent for acquired immune deficiency syndrome.

"(c) Toll-Free Telephone Communications.—The Secretary shall provide for the establishment and maintenance of toll-free telephone communications to provide information to, and respond to queries from, the public concerning acquired immune deficiency syndrome. Such communications shall be available on a 24-hour basis.

"SEC. 2522. PUBLIC INFORMATION CAMPAIGNS.

"(a) In General.—The Secretary, acting through the Director of the Centers for Disease Control, may make grants to public entities, and to nonprofit private entities concerned with acquired immune deficiency syndrome, and shall enter into contracts with public and private entities, for the development and delivery of public service announcements and paid advertising messages that warn individuals about activities which place them at risk of infection with the etiologic agent for such syndrome.

"(b) Requirement of Application.—The Secretary may not provide financial assistance under subsection (a) unless—

"(1) an application for such assistance is submitted to the Secretary;

"(2) with respect to carrying out the purpose for which the assistance is to be provided, the application provides assurances of compliance satisfactory to the Secretary; and

"(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"SEC. 2523. PROVISION OF INFORMATION TO UNDERSERVED POPULATIONS.

"(a) In General.—The Secretary may make grants to public entities, to migrant health centers (as defined in section 329(a)), to community health centers (as defined in section 330(a)), and to nonprofit private entities concerned with acquired immune deficiency syndrome, for the purpose of assisting grantees in providing services to populations of individuals that are underserved with respect to programs providing information on the prevention of exposure to, and the transmission of, the etiologic agent for acquired immune deficiency syndrome.

"(b) Preferences in Making Grants.—In making grants under subsection (a), the Secretary shall give preference to any applicant for such a grant that has the ability to disseminate rapidly the information described in subsection (a) (including any national organization with such ability).

"SEC. 2524. AUTHORIZATION OF APPROPRIATIONS.

"(a) In General.—For the purpose of carrying out sections 2521 through 2523, there are authorized to be appropriated $105,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

"(b) Allocations.—

"(1) Of the amounts appropriated pursuant to subsection (a), the Secretary shall make available $45,000,000 to carry out section 2522 and $30,000,000 to carry out this part through finanical assistance to minority entities for the provision of services to minority populations.

"(2) After consultation with the Director of the Office of Minority Health and with the Indian Health Service, the Secretary, acting through the Director of the Centers for Disease Control, shall, not later than 90 days after the date of the enactment of this section, publish guidelines to provide procedures for applications for funding pursuant to paragraph (1) and for public comment.".

Subtitle D—National Commission on Acquired Immune Deficiency Syndrome

SEC. 241. SHORT TITLE.

This subtitle may be cited as the "National Commission on Acquired Immune Deficiency Syndrome Act".

SEC. 242. ESTABLISHMENT.

There is established a commission to be known as the "National Commission on Acquired Immune Deficiency Syndrome" (hereinafter in this Act referred to as the "Commission").

SEC. 243. DUTIES OF COMMISSION.

(a) General Purpose of the Commission.—The Commission shall carry out activities for the purpose of promoting the development of a national consensus on policy concerning acquired immune deficiency syndrome (hereinafter in this subtitle referred to as "AIDS") and of studying and making recommendations for a consistent national policy concerning AIDS.

(b) Succession.—The Commission shall succeed the Presidential Commission on the Human Immunodeficiency Virus Epidemic, established by Executive Order 12601, dated June 24, 1987.

(c) Functions.—The Commission shall perform the following functions:

(1) Monitor the implementation of the recommendations of the Presidential Commission on the Human Immunodeficiency Virus Epidemic, modifying those recommendations as the Commission considers appropriate.

(2) Evaluate the adequacy of, and make recommendations regarding, the financing of health care and research needs relating to AIDS, including the allocation of resources to various Federal agencies and State and local governments and the roles for and activities of private and public financing.

(3) Evaluate the adequacy of, and make recommendations regarding, the dissemination of information that is essential to the prevention of the spread of AIDS, and that recognizes the special needs of minorities and the important role of the family, educational institutions, religion, and community organizations in education and prevention efforts.

(4) Address any necessary behavioral changes needed to combat AIDS, taking into consideration the multiple moral, ethical, and legal concerns involved, and make recommendations regarding testing and counseling concerning AIDS, particularly with respect to maintaining confidentiality.

(5) Evaluate the adequacy of, and make recommendations regarding, Federal and State laws on civil rights relating to AIDS.

(6) Evaluate the adequacy of, and make recommendations, regarding the capability of the Federal Government to make and implement policy concerning AIDS (and, to the extent feasible to do so, other diseases, known and unknown, in the future), including research and treatment, the availability of clinical trials, education and the financing thereof, and including specifically—

(A) the streamlining of rules, regulations, and administrative procedures relating to the approval by the Food and Drug Administration of new drugs and medical devices, including procedures for the release of experimental drugs; and

(B) the advancement of administrative consideration by the Health Care Financing Administration relating to reimbursement for new drugs and medical devices approved by the Food and Drug Administration.

(7) Evaluate the adequacy of, and make recommendations regarding, international coordination and cooperation concerning data collection, treatment modalities, and research concerning AIDS.

SEC. 244. MEMBERSHIP.

(a) Number and Appointment.—

(1) Appointment.—The Commission shall be composed of 15 members as follows:

(A) Five members shall be appointed by the President—

(i) three of whom shall be—

(I) the Secretary of Health and Human Services;

(II) the Administrator of Veterans' Affairs; and

(III) the Secretary of Defense;

who shall be nonvoting members, except that, in the case of a tie vote by the Commission, the Secretary of Health and Human Services shall be a voting member; and

(ii) two of whom shall be selected from the general public on the basis of such individuals being specially qualified to serve on the Commission by reason of their education, training, or experience.

(B) Five members shall be appointed by the Speaker of the House of Representatives on the joint recommendation of the Majority and Minority Leaders of the House of Representatives.

(C) Five members shall be appointed by the President pro tempore of the Senate on the joint recommendation of the Majority and Minority Leaders of the Senate.

(2) Congressional committee recommendations.—In making appointments under subparagraphs (B) and (C) of paragraph (1), the Majority and Minority Leaders of the House of Representatives and the Senate shall duly consider the recommendations of the Chairmen and Ranking Minority Members of committees with jurisdiction over laws contained in chapter 17 of title 38, United States Code (relating to veterans' health care), title XIX of the Social Security Act (42 U.S.C. 1901 et seq.) (relating to Medicaid), and the Public Health Service Act (42 U.S.C. 201 et seq.) (relating to the Public Health Service).

(3) Requirements of appointments.—The Majority and Minority Leaders of the Senate and the House of Representatives shall—

(A) select individuals who are specially qualified to serve on the Commission by reason of their education, training, or experience; and

(B) engage in consultations for the purpose of ensuring that the expertise of the 10 members appointed by the Speaker of the House of Representatives and the President pro tempore of the Senate shall provide as much of a balance as possible and, to the greatest extent possible, cover the fields of medicine, science, law, ethics, health-care economics, and health-care and social services.

(4) Term of members.—Members of the Commission (other than members appointed under paragraph (1)(A)(i)) shall serve for the life of the Commission.

(5) Vacancy.—A vacancy on the Commission shall be filled in the manner in which the original appointment was made.

(b) Chairman.—Not later than 15 days after the members of the Commission are appointed, such members shall select a Chairman from among the members of the Commission.

(c) Quorum.—Seven members of the Commission shall constitute a quorum, but a lesser number may be authorized by the commission to conduct hearings.

(d) Meetings.—The Commission shall hold its first meeting on a date specified by the Chairman, but such date shall not be earlier than September 1, 1988, and not be later than 60 days after the date of the enactment of this Act, or September 30, 1988, whichever is later. After the initial meeting, the Commission shall meet at the call of the Chairman or a majority of its members, but shall meet at least three times each year during the life of the Commission.

(e) Pay.—Members of the Commission who are officers or employees or elected officials of a government entity shall receive no additional compensation by reason of their service on the Commission.

(f) Per Diem.—While away from their homes or regular places of business in the performance of duties for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under sections 5702 and 5703 of title 5, United States Code.

(g) Deadline for Appointment.—Not earlier than July 11, 1988, and not later than 45 days after the date of the enactment of this Act, or August 1, 1988, whichever is later, the members of the Commission shall be appointed.

SEC. 245. REPORTS.

(a) Interim Reports.—

(1) In general.—Not later than 1 year after the date on which the Commission is fully constituted under section 244(a), the Commission shall prepare and submit to the President and to the appropriate committees of Congress a comprehensive report on the activities of the Commission to that date.

(2) Contents.—The report submitted under paragraph (1) shall include such findings, and such recommendations for legislation and administrative action, as the Commission considers appropriate based on its activities to that date.

(3) Other reports.—The Commission shall transmit such other reports as it considers appropriate.

(b) Final Report.—

(1) In general.—Not later than 2 years after the date on which the Commission is fully constituted under section 244(a), the Commission shall prepare and submit a final report to the President and to the appropriate committees of Congress.

(2) Contents.—The final report submitted under paragraph (1) shall contain a detailed statement of the activities of the Commission and of the findings and conclusions of the Commission, including such recommendations for legislation and administrative action as the Commission considers appropriate.

SEC. 246. EXECUTIVE DIRECTOR AND STAFF.

(a) Executive Director.—

(1) Appointment.—The Commission shall have an Executive Director who shall be appointed by the Chairman, with the approval of the Commission, not later than 30 days after the Chairman is selected.

(2) Compensation.—The Executive Director shall be compensated at a rate not to exceed the maximum rate of basic pay payable under GS-18 of the General Schedule as contained in title 5, United States Code.

(b) Staff.—With the approval of the Commission, the Executive Director may appoint and fix the compensation of such additional personnel as the Executive Director considers necessary to carry out the duties of the Commission.

(c) Applicability of Civil Service Laws.—The Executive Director and the additional personnel of the Commission appointed under subsection (b) may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(d) Consultants.—Subject to such rules as may be prescribed by the Commission, the Executive Director may procure temporary or intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals not to exceed $200 per day.

(e) Detailed Personnel and Support Services.—Upon the request of the Commission for the detail of personnel, or for administrative and support services, to assist the Commission in carrying out its duties under this Act, the Secretary of Health and Human Services and the Administrator of Veterans' Affairs, either jointly or separately, may on a reimbursable basis (1) detail to the Commission personnel of the Department of Health and Human Services or the Veterans' Administration, respectively, or (2) provide to the Commission administrative and support services. The Secretary and the Administrator shall consult for the purpose of determining and implementing an appropriate method for jointly or separately detailing such personnel and providing such services.

SEC. 247. POWERS OF COMMISSION.

(a) Hearings.—For the purpose of carrying out this Act, the Commission may conduct such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(b) Delegation.—Any member or employee of the Commission may, if authorized by the Commission, take any action that the Commission is authorized to take under this Act.

(c) Access to Information.—The Commission may secure directly from any executive department or agency such information as may be necessary to enable the Commission to carry out this Act, except to the extent that the department or agency is expressly prohibited by law from furnishing such information. On the request of the Chairman of the Commission, the head of such department or agency shall furnish nonprohibited information to the Commission.

(d) Mails.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

SEC. 248. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for fiscal year 1989 $2,000,000, and such sums as may be necessary in any subsequent fiscal year, to carry out the purposes of this Act. Amounts appropriated pursuant to such authorization shall remain available until expended.

SEC. 249. TERMINATION.

The Commission shall cease to exist 30 days after the date on which its final report is submitted under section 245(b). The President may extend the life of the Commission for a period of not to exceed 2 years.

Subtitle E—General Provisions

SEC. 251. REQUIREMENT OF STUDY WITH RESPECT TO MINORITY HEALTH AND ACQUIRED IMMUNE DEFICIENCY SYNDROME.

(a) In General.—The Secretary of Health and Human Services, acting through the Director of the Office of Minority Health, shall conduct a study for the purpose of determining—

(1) the level of knowledge within minority communities concerning acquired immune deficiency syndrome, the risks of the transmission of the etiologic agent for such syndrome, and the means of reducing such risk; and

(2) the effectiveness of Federal, State, and local prevention programs with respect to acquired immune deficiency syndrome in minority communities.

(b) Report.—The Secretary shall, not later than 12 months after the date of enactment of this Act, complete the study required in subsection (a) and submit to the Congresss a report describing the findings made as a result of the study.

SEC. 252. ESTABLISHMENT OF OFFICE WITH RESPECT TO MINORITY HEALTH AND ACQUIRED IMMUNE DEFICIENCY SYNDROME.

The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control, shall establish an office for the purpose of ensuring that, in carrying out the duties of the Secretary with respect to prevention of acquired immune deficiency syndrome, the Secretary develops and implements prevention programs targeted at minority populations and provides appropriate technical assistance in the implementation of such programs.

SEC. 253. INFORMATION FOR HEALTH AND PUBLIC SAFETY WORKERS.

(a) Development and Dissemination of Guidelines.—Not later than 90 days after the date of the enactment of this title, the Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary"), acting through the Director of the Centers for Disease Control, shall develop, issue, and disseminate emergency guidelines to all health workers, public safety workers (including emergency response employees) in the United States concerning—

(1) methods to reduce the risk in the workplace of becoming infected with the etiologic agent for acquired immune deficiency syndrome; and

(2) circumstances under which exposure to such etiologic agent may occur.

(b) Use in Occupational Standards.—The Secretary shall transmit the guidelines issued under subsection (a) to the Secretary of Labor for use by the Secretary of Labor in the development of standards to be issued under the Occupational Safety and Health Act of 1970.

(c) Development and Dissemination of Model Curriculum for Emergency Response Employees.—

(1) Not later than 90 days after the date of the enactment of this title, the Secretary, acting through the Director of the Centers for Disease Control, shall develop a model curriculum for emergency response employees with respect to the prevention of exposure to the etiologic agent for acquired immune deficiency syndrome during the process of responding to emergencies.

(2) In carrying out paragraph (1), the Secretary shall consider the guidelines issued by the Secretary under subsection (a).

(3) The model curriculum developed under paragraph (1) shall, to the extent practicable, include—

(A) information with respect to the manner in which the etiologic agent for acquired immune deficiency syndrome is transmitted; and

(B) information that can assist emergency response employees in distinguishing between conditions in which such employees are at risk with respect to such etiologic agent and conditions in which such employees are not at risk with respect such etiologic agent.

(4) The Secretary shall establish a task force to assist the Secretary in developing the model curriculum required in paragraph (1). The Secretary shall appoint to the task force representatives of the Centers for Disease Control, representatives of State governments, and representatives of emergency response employees.

(5) The Secretary shall—

(A) transmit to State public health officers copies of the guidelines and the model curriculum developed under paragraph (1) with the request that such officers disseminate such copies as appropriate throughout the State; and

(B) make such copies available to the public.

SEC. 254. CONTINUING EDUCATION FOR HEALTH CARE PROVIDERS.

(a) IN GENERAL.—The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") may make grants to nonprofit organizations composed of, or representing, health care providers to assist in the payment of the costs of projects to train such providers concerning—

(1) appropriate infection control procedures to reduce the transmission of the etiologic agent for acquired immune deficiency syndrome; and

(2) the provision of care and treatment to individuals with such syndrome or related illnesses.

(b) LIMITATION.—The Secretary may make a grant under subsection (a) to an entity only if the entity will provide services under the grant in a geographic area, or to a population of individuals, not served by a program substantially similar to the program described in subsection (a).

(c) REQUIREMENT OF MATCHING FUNDS.—

(1) The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees, with respect to the costs to be incurred by the applicant in carrying out the purpose described in such subsection, to make available, directly or through donations from public or private entities, non-Federal contributions (in cash or in kind under paragraph (2)) toward such costs in an amount equal to not less than $2 for each $1 of Federal funds provided in such payments.

(2) Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(d) REQUIREMENT OF APPLICATION.—The Secretary may not make a grant under subsection (a) unless—

(1) an application for the grant is submitted to the Secretary;

(2) with respect to carrying out the purpose for which the grant is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(e) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.

SEC. 255. TECHNICAL ASSISTANCE.

The Secretary of Health and Human Services shall provide technical assistance to public and nonprofit private entities carrying out programs, projects, and activities relating to acquired immune deficiency syndrome.

SEC. 256. MISCELLANEOUS PROVISIONS.

(a) PUBLIC HEALTH EMERGENCY FUND.—Section 319 of the Public Health Service Act (42 U.S.C. 247d) is amended—

(1) in subsection (a), by inserting "the Administrator of Health Resources and Services," before "or the Director"; and

(2) in subsection (b)(1), by striking "$30,000,000" the second place it appears and inserting in lieu thereof "$45,000,000".

(b) CERTAIN USE OF FUNDS.—None of the funds provided under this Act or an amendment made by this Act shall be used to provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs, unless the Surgeon General of the United States determines that a demonstration needle exchange program would be effective in reducing drug abuse and the risk that the public will become infected with the etiologic agent for acquired immune deficiency syndrome.

(c) REPORT ON CERTAIN ETHICAL ISSUES.—The Congressional Biomedical Ethics Board shall report to Congress within eighteen months from the effective date of this Act on the ethical issues connected with the administration of nutrition and hydration to dying patients. This report shall include a review of State laws, regulations and court decisions on this topic. The report shall also discuss the arguments concerning the appropriate roles of the patient, the patient's family, the care provider, the State and the appropriate Federal role.

(d) STUDY OF STATE LAWS.—

(1) The Secretary of Health and Human Services shall conduct a study for the purpose of determining—

(A) the laws and policies of the States relating to confidentiality and disclosure of information with respect to records of the counseling and testing of individuals regarding the etiologic agent for acquired immune deficiency syndrome; and

(B) the laws and policies of the States relating to discrimination against individuals infected with such etiologic agent or regarded as being so infected.

(2) Not later than 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall complete the study required in subsection (a) and submit to the Congress a report describing the findings made as a result of the study.

TITLE III—PREVENTIVE HEALTH, HEALTH SERVICES, AND HEALTH PROMOTION

Subtitle A—Preventive Health and Health Services

SEC. 301. BLOCK GRANTS.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 1901(a) of the Public Health Service Act (42 U.S.C. 300w(a)) is amended by striking "and" after "1986," and by inserting before the period the following: ", $110,000,000 for fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 and 1991".

(b) USE OF ALLOTMENTS.—Section 1904(a)(1) of the Public Health Service Act (42 U.S.C. 300w-3(a)(1)) is amended—

(1) in subparagraph (B), by inserting before the period the following: "and elevated serum cholesterol";

(2) in subparagraph (C), by inserting before the period the following: ", including programs designed to reduce the incidence of chronic diseases";

(3) in subparagraph (D), by inserting before the period the following: ", including immunization services";

(4) in subparagraph (F), in the second sentence, by striking "systems (other" and all that follows and inserting the following: "systems, except that such amounts may be used for the payment of not more than 50 percent of the costs of purchasing communications equipment for the systems."; and

(5) by inserting after subparagraph (G) the following new subparagraph:

"(H) Establishing and maintaining preventive health service programs for screening for, the detection, diagnosis, prevention, and referral for treatment of, and follow-up on compliance with treatment prescribed for, uterine cancer and breast cancer."

(c) APPLICATION AND DESCRIPTION OF ACTIVITIES.—Section 1905(d) of the Public Health Service Act (42 U.S.C. 300w-4(d)) is amended by adding at the end the following new sentence: "The description shall include a statement of the public health objectives expected to be achieved by the State through the use of the payments the State will receive under section 1903.".

(d) REPORTS AND AUDITS.—

(1) Section 1906(a) of the Public Health Service Act (42 U.S.C. 300w-5(a)) is amended by adding at the end the following new paragraph:

"(3) Each annual report required in paragraph (1) shall include—

"(A) information and data on the number of individuals who received services provided through the use of payments under section 1903, the types of such services provided, the types of health care providers that delivered such services, and the cost of each type of such service;

"(B) such other information and data as the Secretary may require; and

"(C) an evaluation of the extent to which such services have been effective towards meeting the public health objectives described in the statement submitted to the Secretary pursuant to section 1905(d).".

(2) Section 1906(b)(6) of the Public Health Service Act (42 U.S.C. 300w-5(b)(6)) is amended by striking "1983," and inserting "1990,".

SEC. 302. GRANTS FOR EMERGENCY MEDICAL SERVICES FOR CHILDREN.

(a) DURATION OF GRANT.—Section 1910(a) of the Public Health Service Act (42 U.S.C. 300w-9(a)) is amended in the second sentence by striking "shall be for" and all that follows and inserting the following: "shall be for not more than a two-year period, subject to annual evaluation by the Secretary.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 1910(d) of the Public Health Service Act (42 U.S.C. 300w-9(d)) is amended by inserting before the period the following: ", $3,000,000 for fiscal year 1989, $4,000,000 for fiscal year 1990, and $5,000,000 for fiscal year 1991".

SEC. 303. REPEAL OF PROGRAM OF STATE PLANNING GRANTS.

Part A of title XIX of the Public Health Service Act (42 U.S.C. 300w et seq.) is amended by striking section 1910A.

Subtitle B—Programs With Respect to Sexually Transmitted Diseases, Health Information, and Health Promotion

SEC. 311. GRANTS FOR PREVENTION OF SEXUALLY TRANSMITTED DISEASES.

Section 318 of the Public Health Service Act (42 U.S.C. 247c) is amended—

(1) in the title, by striking "and acquired immune deficiency syndrome";

(2) by striking subsections (d) and (f);

(3) by redesignating subsection (e) as subsection (d) and subsection (g) as subsection (e); and

(4) in subsection (d)(1) (as so redesignated)—

(A) in the first sentence—

(i) by striking "(b), (c), and (d)" and inserting "(b) and (c)";

(ii) by striking "and" after "1986,";

(iii) by striking the period and inserting a comma; and

(iv) by adding at the end the following: "$78,000,000 for fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 and 1991.";

(B) in the third sentence, by striking "(b), (c), or (d)" and inserting "(b) or (c)"; and

(C) by striking the last sentence.

SEC. 312. HEALTH INFORMATION AND HEALTH PROMOTION.

(a) Authorization of Appropriations.—Title XVII of the Public Health Service Act (42 U.S.C. 300u et seq.) is amended—

(1) in section 1701(b)—

(A) by striking "this title," and inserting "sections 1701 through 1705,"; and

(B) by striking "and" after "1986," and inserting before the period the following: ", and $10,000,000 for each of the fiscal years 1989 through 1991"; and

(2) in section 1706(e), by striking "and" after "1986," and inserting before the period the following: ", $6,000,000 for fiscal year 1989, $8,000,000 for fiscal year 1990, and $10,000,000 for fiscal year 1991".

(b) Model Programs for Employee Health Promotion and Disease Prevention.—

(1) Section 1701(a) of the Public Health Service Act (42 U.S.C. 300u(a)) is amended—

(A) by redesignating paragraphs (7) through (10) as paragraphs (8) through (11), respectively; and

(B) by inserting after paragraph (6) the following new paragraph:

"(7)(A) develop model programs through which employers in the public sector, and employers that are small businesses (as defined in section 3 of the Small Business Act), can provide for their employees a program to promote healthy behaviors and to discourage participation in unhealthy behaviors;

"(B) provide technical assistance to public and private employers in implementing such programs (including private employers that are not small businesses and that will implement programs other than the programs developed by the Secretary pursuant to subparagraph (A)); and

"(C) in providing such technical assistance, give preference to small businesses;".

(2) Not later than 18 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall complete the development of the model programs required in section 1701(a)(7)(A) of the Public Health Service Act (as added by paragraph (1)(B) of this subsection).

(c) Technical and Conforming Amendments.—Section 1701(a) of the Public Health Service Act (42 U.S.C. 300u) is amended—

(1) in paragraph (9) (as redesignated by subsection (b)(1)(A) of this section), by striking "paragraph (7)" and inserting "paragraph (8)"; and

(2) in the matter after and below paragraph (11)(D) (as so redesignated)—

(A) by striking the first sentence; and

(B) by striking "paragraph (10)" and inserting "paragraph (11)".

TITLE IV—ORGAN TRANSPLANT AMENDMENTS OF 1988

SEC. 401. SHORT TITLE AND REFERENCE.

(a) Short Title.—This title may be cited as the "Organ Transplant Amendments Act of 1988".

(b) Reference.—Whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

SEC. 402. ASSISTANCE FOR ORGAN PROCUREMENT ORGANIZATIONS.

(a) Additional Grant Authority.—Section 371(a) (42 U.S.C. 273(a)) is amended—

(1) in paragraph (2), by inserting "consolidation," after "operation,";

(2) by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following new paragraph:

"(3) The Secretary may make grants for special projects designed to increase the number of organ donors."; and

(3) in paragraph (4) (as redesignated in paragraph (2) of this subsection)—

(A) by striking "and" at the end of subparagraph (A);

(B) by striking the period at the end and inserting ", and"; and

(C) by adding at the end the following new subparagraph:

"(C) with respect to carrying out paragraph (3), give special consideration to proposals from existing organ procurement organizations.".

(b) Limitations on Additional Grant Authority.—Section 374(b)(3) (42 U.S.C. 274b(b)(3)) is amended in the first sentence by striking "section 371" and all that follows through "organizations" and inserting "paragraphs (2) and (3) of section 371(a)".

(c) Description of Organ Procurement Organization.—

(1) Section 371(b) (42 U.S.C. 273(b)) is amended—

(A) in paragraph (1)(E)—

(i) by striking "size which" and inserting "size such that"; and

(ii) by striking "will include" and all that follows through "year" and inserting the following: "the organization can reasonably expect to procure organs from not less than 50 donors each year";

(B) in paragraph (2)(C), by striking "372(b)(2)(D)," and inserting the following: "372(b)(2)(E), including arranging for testing with respect to preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,";

(C) in paragraph (2)(E)—

(i) by inserting "equitably" after "organs"; and

(ii) by striking "centers and"; and

(D) in paragraph (2)—

(i) by striking "and" at the end of subparagraph (I);

(ii) by striking the period at the end and inserting ", and"; and

(iii) by adding at the end the following new subparagraph:

"(K) assist hospitals in establishing and implementing protocols for making routine inquiries about organ donations by potential donors.".

(2) Section 371(b)(1)(G)(i)(III) is amended by inserting before the comma the following: "or an individual with a doctorate degree in a biological science with knowledge, experience, or skill in the field of histocompatibility".

(3) The amendment made by paragraph (1)(A) shall not apply to an organ procurement organization designated under section 1138(b) of the Social Security Act until 2 years after the initial designation of the organization under such section.

(d) Authorizations of Appropriations.—Section 371(c) (42 U.S.C. 273(c)) is amended to read as follows:

"(c) For grants under subsection (a), there is authorized to be appropriated $5,000,000 for each of the fiscal years 1988 through 1990.".

SEC. 403. ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK.

(a) Duties.—Section 372(b)(2) (42 U.S.C. 274(b)(2)) is amended—

(1)(A) by redesignating subparagraphs (B) through (H) as subparagraphs (C) through (I), respectively; and

(B) by adding after subparagraph (A) the following new subparagraph:

"(B) establish membership criteria and medical criteria for allocating organs and provide to members of the public an opportunity to comment with respect to such criteria,";

(2) in subparagraph (D) (as redesignated in paragraph (1)(A) of this subsection), by striking "organs which" and all that follows and inserting "organs,";

(3) in subparagraph (E) (as redesignated in paragraph (1)(A) of this subsection), strike "organs," and insert the following: "organs, including standards for preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,";

(4) in subparagraph (F) (as redesignated in paragraph (1)(A) of this subsection), by striking "basis," and inserting the following: "basis (and, to the extent practicable, among regions or on a national basis),"; and

(5)(A) by striking "and" at the end of subparagraph (H) (as redesignated in paragraph (1)(A) of this subsection);

(B) by striking the period at the end and inserting ", and"; and

(C) by adding at the end the following new subparagraph:

"(J) carry out studies and demonstration projects for the purpose of improving procedures for organ procurement and allocation.".

(b) Consideration of Critical Comments.—Section 372 (42 U.S.C. 274) is amended by adding at the end the following new subsection:

"(c) The Secretary shall establish procedures for—

"(1) receiving from interested persons critical comments relating to the manner in which the Organ Procurement and Transplantation Network is carrying out the duties of the Network under subsection (b); and

"(2) the consideration by the Secretary of such critical comments.".

SEC. 404. REQUIREMENT OF ESTABLISHMENT OF BONE MARROW REGISTRY.

(a) In General.—Section 373 (42 U.S.C. 274a) is amended—

(1) by inserting "(a)" after the section designation; and

(2) by adding at the end the following new subsection:

"(b)(1) Not later than October 1, 1988, the Secretary shall, by grant or contract, establish a registry of voluntary bone marrow donors.

"(2) For the purpose of carrying out paragraph (1), there are authorized to be appropriated $1,500,000 for fiscal year 1989 and $1,600,000 for fiscal year 1990.".

(b) Conforming Amendment.—Section 373 (42 U.S.C. 274a) is amended in the title by inserting "and bone marrow registry" after "registry".

SEC. 405. ADMINISTRATION.

Section 375 (42 U.S.C. 274c) is amended—

(1) in the matter preceding paragraph (1), by striking "1985, 1986, 1987, and 1988," and inserting "1985 through 1990,"; and

(2) in paragraph (4), by striking "one year" and all that follows through "annual report" and inserting the following: "not later than April 1 of each of the years 1989 and 1990, submit to the Congress a report".

SEC. 406. REPORT.

Section 376 (42 U.S.C. 274d) is amended by striking "shall annually" and inserting the following: "shall, not later than October 1 of each year,".

SEC. 407. FETAL ORGAN TRANSPLANTS.

Section 301(c)(1) of the National Organ Transplant Act (42 U.S.C. 274e(c)(1)) is amended to read as follows:

"(1) The term 'human organ' means the human (including fetal) kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin or any subpart thereof and any other human organ (or any subpart thereof, including that derived from a fetus) specified by the Secretary of Health and Human Services by regulation.".

SEC. 408. ESTABLISHMENT OF BLOCK GRANT PROGRAM.

(a) In General.—Title XIX of the Public Health Service Act (42 U.S.C. 300w et seq.) is amended by adding at the end thereof the following new part:

"Part D—Immunosuppressive Drug Therapy Block Grant

"SEC. 1931. DEFINITIONS.

"For purposes of this part:

"(1) Eligible patient.—The term 'eligible patient' means an organ transplant patient who is not eligible to receive reimbursement for the cost of immunosuppressive drug therapy under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), under the State's medicaid plan under title XIX of such Act (42 U.S.C. 1396 et seq.), or under private insurance.

"(2) Immunosuppressive drug therapy.—The term 'immunosuppressive drug therapy' means drugs and biologicals that are to be used for the purpose of preventing the rejection of transplanted organs and tissues and that can be administered by the transplant patient.

"(3) Transplant center.—The term 'transplant center' means a transplant center that is a member of the Organ Procurement and Transplantation Network established under section 372.

"SEC. 1932. AUTHORIZATION OF APPROPRIATIONS.

"For the purpose of making allotments to States to carry out this part, there are authorized to be appropriated $5,000,000 for each of the fiscal years 1988 through 1990.

"SEC. 1933. ALLOTMENTS.

"(a) Amount.—

"(1) In general.—From amounts appropriated under section 1932 for each of the fiscal years 1988 through 1990, the Secretary shall allot to each State an amount that bears the same ratio to the total amount appropriated under such section for such fiscal year as the total number of eligible patients in the State bears to the total number of eligible patients in the United States.

"(2) Minimum allotment.—Notwithstanding paragraph (1), the allotment of any State in any fiscal year under this subsection shall not be less than $50,000. If, under paragraph (1), the allotment of any State in any fiscal year will be less than $50,000, the Secretary shall increase the allotment of such State to $50,000 and shall proportionately reduce the allotments of all other States whose allotment exceeds $50,000 in a manner that will insure that the allotment of each State in such fiscal year is at least $50,000.

"(b) Unallotted Funds.—

"(1) In general.—Subject to paragraph (2), to the extent that all the funds appropriated under section 1932 for a fiscal year and available for allotment in such fiscal year are not otherwise allotted to States because—

"(A) one or more States have not submitted an application or description of activities in accordance with section 1936 for such fiscal year;

"(B) one or more States have notified the Secretary that they do not intend to use the full amount of their allotment; or

"(C) some State allotments are offset or repaid under section 1906(b)(3) (as such section applies to this part pursuant to section 1936(d));

such excess shall be allotted among each of the remaining States in proportion to the amount otherwise allotted to such States for such fiscal year without regard to this subsection.

"(2) Organ transplant centers.—

"(A) Application.—If a State does not submit an application for an allotment or description of activities in accordance with section 1936 for a fiscal year or notifies the Secretary that the State does not intend to use the full amount of the allotment of the State, an organ transplant center in the State may submit an application in accordance with section 1936 for the amount of the allotment not allocated to the State.

"(B) Allotment.—Subject to subparagraph (C), if an applicant center complies with the requirements imposed on the State by this part, the Secretary shall provide to the center the amount of the allotment not allocated to the State.

"(C) Multiple applicants.—If two or more applicant centers in a State meet the requirements of subparagraph (B), the Secretary shall divide among the eligible applicant centers in an equitable manner the amount of the allotment not allocated to the State.

"(D) Distribution to other states.—If one or more centers in a State receive an allotment under this paragraph for a fiscal year, the allotment shall not be made available to remaining States under paragraph (1).

"SEC. 1934. PAYMENTS UNDER ALLOTMENTS TO STATES.

"(a) In General.—For each fiscal year, the Secretary shall make payments, as provided by section 6503(a) of title 31, United States Code, to each State from its allotments under section 1933 from amounts appropriated for that fiscal year.

"(b) Carryover Funds.—Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available for the next fiscal year to such State for the purposes for which it was made.

"SEC. 1935. USE OF ALLOTMENTS.

"(a) In General.—

"(1) Use.—Except as provided in subsections (b) and (c), amounts paid to a State under section 1934 from its allotment under section 1933 for any fiscal year shall be used by the State to provide immunosuppressive drug therapy for eligible patients.

"(2) Methods.—A State may use amounts paid to the State under section 1934 from its allotment under section 1933 to provide immunosuppressive drug therapy for eligible patients—

"(A) by purchasing the drugs and biologicals for such therapy and distributing such drugs and biologicals to transplant centers or eligible patients;

"(B) by certifying that an individual is an eligible patient for purposes of this part and by reimbursing a transplant center for the costs of immunosuppressive drug therapy provided by such center to such individual;

"(C) by any other method prescribed by the Secretary by regulation (other than the method described in subsection (b)(1)).

"(3) Copayments.—A State may require an eligible patient to whom immunosuppressive drug therapy is provided with amounts paid to the State under this part to make copayments for part of the costs of such therapy, without regard to section 1916 of the Social Security Act (42 U.S.C. 1396o).

"(b) Limitations.—A State may not use amounts paid to it under section 1934 to—

"(1) make direct payments to organ transplant patients; or

"(2) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

"(c) Administrative Costs.—Not more than 10 percent of the total amount paid to any State under section 1934 from its allotment under section 1933 for any fiscal year may be used for administering the funds made available under section 1934. The State will pay from non-Federal sources the remaining costs of administering such funds.

"SEC. 1936. APPLICATION AND DESCRIPTION OF ACTIVITIES; REQUIREMENTS.

"(a) Application Required.—In order to receive an allotment for a fiscal year under section 1933, each State shall submit an application to the Secretary. Each such application shall be in such form and submitted by such date as the Secretary shall require. Each such application shall contain assurances that the State will meet the requirements of subsection (b).

"(b) Requirements.—As part of the annual application required by subsection (a), the chief executive officer of each State shall—

"(1) certify that the State agrees to use the funds allotted to the State under section 1933 in accordance with the requirements of this part;

"(2) agrees to cooperate with Federal investigations undertaken in accordance with section 1907 (as such section applies to this part pursuant to subsection (d) of this section); and

"(3) certify that the State agrees that Federal funds made available under section 1934 for any period will be so used as to supplement and increase the level of State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the activities for which funds are provided under such section and will in no event supplant such State, local, and other non-Federal funds.

"(c) Description of Activities.—

"(1) In general.—The chief executive officer of a State shall, as part of the application required by subsection (a), also prepare and furnish the Secretary (in accordance with such form as the Secretary shall provide) with a description of the intended use of the payments the State will receive under section 1934 for the fiscal year for which the application is submitted, including information on the programs and activities to be supported.

"(2) Public comment.—The description shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during development of the description and after its transmittal.

"(3) Revisions.—The description shall be revised (consistent with this section) throughout the year as may be necessary to reflect substantial changes in the programs and activities assisted by the State under this part. Any revision shall be subject to paragraph (2).

"(d) Administration.—Unless inconsistent with this part, section 1903(b), section 1906(a), paragraphs (1) through (5) of section 1906(b), and sections 1907, 1908, and 1909 shall apply to this part in the same manner as such provisions apply to part A of this title.

"(e) Additional Information.—Each annual report submitted by a State to the Secretary under section 1906(a) (as such section applies to this part pursuant to subsection (d) of this section) with respect to its activities under this part shall contain—

"(1) a specification of the number of eligible patients in the State receiving immunosuppressive drug therapy with amounts paid to the State under this part;

"(2) a description of the amount of any copayment required by the State under section 1935(a)(3); and

"(3) a certification that amounts paid to the State under this part are being used in accordance with this part.

"SEC. 1937. TERMINATION DATE.

"The amendments made under part D of this Act shall terminate effective January 1, 1991.".

(b) Report.—

(1) In general.—Not later than 24 months after the date of enactment of this Act, the Secretary of Health and Human Services shall prepare and transmit to the Congress a report concerning the impact of part D of title XIX of the Public Health Service Act (as added by section 407 of this title).

(2) Contents.—The report shall contain—

(A) a description of the effect of the program established under such part on organ transplants in the United States;

(B) an analysis of the effects of such program on the costs of organ transplants and renal dialysis;

(C) an analysis of the extent to which amounts paid to States under such part are used for purposes other than the purposes specified by such part, including an analysis of the extent to which drugs and biologicals purchased with such amounts are provided to individuals who are not eligible patients under such part; and

(D) such recommendations as the Secretary considers appropriate, including recommendations as to whether financial assistance under such program should be continued during fiscal years after fiscal year 1990.

TITLE V—FOOD AND DRUG ADMINISTRATION

SEC. 501. SHORT TITLE.

This title may be cited as the "Food and Drug Administration Act of 1988".

SEC. 502. FINDINGS.

Congress finds that—

(1) the public health has been effectively protected by the presence of the Food and Drug Administration during the last eighty years;

(2) the presence and importance of the Food and Drug Administration must be guaranteed; and

(3) the independence and integrity of the Food and Drug Administration need to be enhanced in order to ensure the continuing protection of the public health.

SEC. 503. ESTABLISHMENT OF ADMINISTRATION BY LAW.

(a) Establishment.—Chapter IX of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 391 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 903. FOOD AND DRUG ADMINISTRATION.

"(a) In General.—There is established in the Department of Health and Human Services the Food and Drug Administration (hereinafter in this section referred to as the "Administration").

"(b) Commissioner.—

"(1) Appointment.—There shall be in the Administration a Commissioner of Food and Drugs (hereinafter in this section referred to as the "Commissioner") who shall be appointed by the President by and with the advice and consent of the Senate.

"(2) General powers.—The Secretary, through the Commissioner, shall be responsible for—

"(A) providing overall direction to the Food and Drug Administration and establishing and implementing general policies respecting the management and operation of programs and activities of the Food and Drug Administration;

"(B) coordinating and overseeing the operation of all administrative entities within the Administration;

"(C) research relating to foods, drugs, cosmetics, and devices in carrying out this Act;

"(D) conducting educational and public information programs relating to the responsibilities of the Food and Drug Administration; and

"(E) performing such other functions as the Secretary may prescribe.

"(c) Technical and Scientific Review Groups.—The Secretary through the Commissioner of Food and Drugs may, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, establish such technical and scientific review groups as are needed to carry out the functions of the Administration, including functions under the Federal Food, Drug, and Cosmetic Act, and appoint and pay the members of such groups, except that officers and employees of the United States shall not receive additional compensation for service as members of such groups.".

(b) Conforming Amendments.—Title 5, United States Code, is amended—

(1) in section 5316, by striking out the item relating to the Commissioner of Food and Drugs, Department of Health and Human Services; and

(2) in section 5315, by adding at the end thereof the following new item:

"Commissioner of Food and Drugs, Department of Health and Human Services".

(c) Effective Date.—

(1) Except as provided in paragraph (2), the amendments made by this title shall take effect on the date of enactment of this Act.

(2) Section 903(b)(1) of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a) of this section) shall apply to the appointments of Commissioners of Food and Drugs made after the date of enactment of this Act.

TITLE VI—HEALTH PROFESSIONS REAUTHORIZATION ACT OF 1988

SEC. 601. SHORT TITLE; REFERENCE.

(a) Short Title.—This Act may be cited as the "Health Professions Reauthorization Act of 1988".

(b) Reference.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

SEC. 602. FEDERAL PROGRAM OF INSURED LOANS TO GRADUATE STUDENTS IN HEALTH PROFESSIONS SCHOOLS.

(a) Establishment of Additional Credit Authority.—Section 728(a) (42 U.S.C. 294a(a)) is amended in the first sentence by striking "and" after "1987;" and by inserting before the period the following: "; $325,000,000 for fiscal year 1989; $375,000,000 for fiscal year 1990; and $400,000,000 for fiscal year 1991".

(b) Extension of Period for Insurance of New Loans.—Section 728(a) (42 U.S.C. 294a(a)) is amended—

(1) by inserting before the period at the end of the second sentence the following: ", and if in any fiscal year no ceiling has been established, any difference carried over shall constitute the ceiling for making new loans (including loans to new borrowers) and paying installments for such fiscal year."; and

(2) in the third sentence by striking "1991," and inserting "1994,".

(c) Prohibition Against Apportionments of Credit Authority.—Section 728(a) (42 U.S.C. 294a(a)) is amended by adding at the end the following new sentence: "The total principal amount of Federal loan insurance available under this subsection shall be granted by the Secretary without regard to any apportionment for the purpose of chapter 15 of title 31, United States Code, and without regard to any similar limitation.".

(d) Priority in Provision of Insurance.—Section 728(b) (42 U.S.C. 294a(b)) is amended by inserting "(1)" after the subsection designation and by adding at the end the following new paragraph:

"(2) In providing certificates of insurance under section 732 through comprehensive contracts, the Secretary shall give priority to eligible lenders that agree—

"(A) to make loans to students at interest rates below the rates prevailing, during the period involved, for loans covered by Federal loan insurance pursuant to this subpart; or

"(B) to make such loans under terms that are otherwise favorable to the student relative to the terms under which eligible lenders are generally making such loans during such period.".

(e) Frequency of Compounding of Interest.—Section 731(a)(2)(D)) (42 U.S.C. 294d(a)(2)(D)) is amended by inserting "not more frequently than" after "compounded".

(f) Determination of Financial Need of Students.—Section 731 (42 U.S.C. 294d) is amended by adding at the end the following new subsection:

"(e) With respect to any determination of the financial need of a student for a loan covered by Federal loan insurance under this subpart, this subpart may not be construed to limit the authority of any school to make such allowances for students with special circumstances as the school determines appropriate.".

(g) Authority for Assignment of Loans With Respect to Secondary Market.—Section 732(d) (42 U.S.C. 294e(d)) is amended by striking "eligible lender, or" and inserting the following: "eligible lender (including a public entity in the business of purchasing student loans), or".

(h) Clarification With Respect to Reference to Holders of Federally Insured Loans.—Section 733(d) (42 U.S.C. 294f(d)) is amended in the first sentence by inserting "eligible lender or" before "holder";

(i) Amount of Loss Pursuant to Default.—Section 733(e)(2) (42 U.S.C. 294f(e)(2)) is amended by inserting before the semicolon the following: ", less the amount of any judgment collected pursuant to default proceedings commenced by the eligible lender or holder involved".

(j) Clarification With Respect to Effect of Bankruptcy.—Section 733(g) (42 U.S.C. 294f(g)) is amended by inserting "any chapter of" before "title 11,".

(k) Provisions With Respect to Actions for Default.—

(1) Section 733(a) (42 U.S.C. 294f(a)) is amended by striking "(including, if appropriate, commencement of a suit)" and inserting the following: "(including, subject to subsection (h), commencement and prosecution of an action)".

(2) Section 733 (42 U.S.C. 294f) is amended—

(A) in subsection (b), by adding at the end thereof the following new sentence: "The Secretary may sell without recourse to eligible lenders (or other entities that the Secretary determines are capable of dealing in such loans) notes or other evidence of loans received through assignment under the first sentence."; and

(B) by adding at the end the following new subsections:

"(h)(1) With respect to the default by a borrower on any loan covered by Federal loan insurance under this subpart, the Secretary shall, under subsection (a), require an eligible lender or holder to commence and prosecute an action for such default unless—

"(A) in the determination of the Secretary—

"(i) the eligible lender or holder has made reasonable efforts to serve process on the borrower involved and has been unsuccessful with respect to such efforts, or

"(ii) prosecution of such an action would be fruitless because of the financial or other circumstances of the borrower;

"(B) for such loans made before the date of the enactment of the Health Professions Reauthorization Act of 1988, the loan involved was made in an amount of less than $5000; or

"(C) for such loans made after such date, the loan involved was made in an amount of less than $2500.

"(2) With respect to an eligible institution that has commenced an action pursuant to subsection (a), the Secretary shall make the payment required in such subsection, or deny the claim for such payment, not later than 60 days after the date on which the eligible institution notifies the Secretary that judgment has been entered with respect to the action.

"(i) The Secretary may establish reasonable limits for default rates for borrowers in each of the health professions identified in section 737(1). If the eligible institutions within any of the health professions, taken as a group, exceed such limits, the Secretary may suspend, terminate, or otherwise restrict the eligibility of such group of schools for borrowing under this section.".

(l) State Designations of Eligible Lenders.—Section 737(2) (42 U.S.C. 294j(2)) is amended—

(1) by striking "or" after "State," the second place such term appears; and

(2) by inserting before the period the following: ", or a nonprofit private entity designated by the State, regulated by the State, and approved by the Secretary".

(m) Reissuance and Refinancing Agreements Authorized.—Subpart I of part C of title VII (42 U.S.C. 294 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 739A. REISSUANCE AND REFINANCING OF CERTAIN LOANS.

"(a) In General.—Any borrower who received a loan insured under this subpart bearing an interest rate that is fixed at a rate in excess of 12 percent per year may enter into an agreement with the eligible lender that made such loan for the reissuance of such loan in order to permit the borrower to obtain for such loan the interest rate in effect for loans insurable under this subpart on the date the borrower submits an application to such lender for such reissuance.

"(b) Procedures.—

"(1) Discharge by obtaining loan.—Any borrower who received a loan under this subpart bearing an interest rate that is fixed at a rate in excess of 12 percent per year may obtain a loan from an eligible lender (other than the original lender) for the purpose of discharging the loan from such original eligible lender. A loan made for such purpose—

"(A) shall bear interest at the interest rate in effect for loans insurable under this subpart on the date the borrower submits an application for a loan under this subsection; and

"(B) shall be applied to discharge the borrower from any remaining obligation to the original eligible lender with respect to the original loan.

"(2) Certification.—Each new eligible lender may accept certification from the original eligible lender to the borrower's original loan in lieu of presentation of the original promissory note.

"(c) Time of Payment.—Any loan reissued under subsection (a) or refinanced under subsection (b) shall be payable during the repayment period applicable to the loan made under this subpart prior to the date of enactment of this section, and such reissuance or refinancing shall not result in the extension of the duration of the loan.

"(d) Administrative Costs.—An eligible lender reissuing a loan under subsection (a) or refinancing a loan under subsection (b) may charge a borrower an amount not in excess of $100 to cover the administrative costs of such reissuance or refinancing.

"(e) Insurance.—The reissuance of a loan under subsection (a) or the refinancing of a loan under subsection (b) shall not affect any insurance applicable to such loan, and no additional insurance premium maybe charged with respect to such loan.

"(f) Notification.—Each holder of a loan made under this subpart shall, not later than January 1, 1989, in the case of loans made before the date of enactment of this section, notify the borrower of such loan—

"(1) of the reissuance or refinancing options for which the borrower is eligible under this section;

"(2) of those options which will be made available by the holder; and

"(3) that, with respect to any option that the holder will not make available, the holder will, to the extent practicable, refer the borrower to an eligible lender offering such option.

"(g) Regulations.—The Secretary shall promulgate regulations to implement this section.

"(h) Definition.—For purposes of this section, the term 'eligible lender' includes the Student Loan Marketing Association.".

SEC. 603. FEDERAL CAPITAL CONTRIBUTIONS INTO STUDENT LOAN FUNDS.

(a) Standards With Respect to Loan Collection.—Section 740(c)(1) (42 U.S.C. 294m(c)(1)) is amended by adding at the end the following new sentence: "This subsection may not be construed to require such schools to reimburse the student loan fund under this subpart for loans that became uncollectible prior to August 1985 or to penalize such schools with respect to such loans.".

(b) Reduction in Interest Rate.—Section 741(e) (42 U.S.C. 294n(e)) is amended by striking "9" and inserting "5".

(c) Grace Period for All Full-Time Students.—Section 741(c)(1) (42 U.S.C. 294n(c)(1)) is amended by striking "and" at the end of subparagraph (B) and by adding at the end the following new subparagraph:

"(D) during which the borrower is pursuing a full-time course of study at such a school; and".

(d) Striking of Date Certain With Respect to Distribution of Assets of Loan Funds.—Section 743 (42 U.S.C. 294p) is amended—

(1) in subsection (a), by amending the matter preceding paragraph (1) to read as follows: "If a school terminates a loan fund established under an agreement pursuant to section 740(b), or if the Secretary for good cause terminates the agreement with the school, there shall be a capital distribution as follows:"; and

(2) by amending subsection (b) to read as follows:

"(b) If a capital distribution is made under subsection (a), the school involved shall, after the capital distribution, pay to the Secretary, not less often than quarterly, the same proportionate share of amounts received by the school in payment of principal or interest on loans made from the loan fund established pursuant to section 740(b) as was determined by the Secretary under subsection (a)."

SEC. 604. LOAN REPAYMENT PROGRAM FOR ALLIED HEALTH PERSONNEL.

Part C of title VII (42 U.S.C. 294 et seq.) is amended by inserting after subpart II the following new subpart:

"Subpart III—Loan Repayment Program for Allied Health Personnel

"SEC. 751. ESTABLISHMENT OF PROGRAM.

"(a) In General.—The Secretary shall establish a program of entering into agreements with allied health personnel and with allied health professions students under which such individuals agree, in consideration of the agreement described in subsection (b) (relating to loan repayment), to serve as an allied health professional for a period of not less than two years in an Indian Health Service health center, in a Native Hawaiian health center, in a rural health clinic, in a rural health facility that is a sole community provider, in any other rural hospital, in a rural home health agency, in a rural or urban hospital that serves a substantial number of patients pursuant to title XIX of the Social Security Act, in a private nursing facility 60 percent of whose patients are patients pursuant to title XIX of such Act, in a public nursing facility, in a migrant health center, in a community health center, or in a health facility determined by the Secretary to have a critical shortage of nurses.

"(b) Payments by Federal Government.—The agreement referred to in subsection (a) is an agreement, made by the Federal Government in consideration of the agreement described in paragraph (1) with respect to service as an allied health professional, under which the Federal Government agrees to pay—

"(1) for the first year of such service, 30 percent of the balance of the principal and interest of the educational loans of the individual;

"(2) for the second year of such service, 30 percent of such balance; and

"(3) for the third year of such service, 25 percent of such balance.

"(c) Administration.—With respect to the National Health Service Corps Loan Repayment Program established in subpart III of part D of title III, the provisions of such subpart shall, except as inconsistent with this section, apply to the program established in this section in the same manner and to the same extent as such provisions apply to the National Health Service Corps Loan Repayment Program established in such subpart.

"(d) Authorization of Appropriations.—For the purpose of carrying out this section, there are authorized to be appropriated $2,000,000 for each of the fiscal years 1989 through 1991.".

SEC. 605. SCHOLARSHIPS FOR FIRST-YEAR STUDENTS OF EXCEPTIONAL FINANCIAL NEED.

(a) Scholarships for Students of Exceptional Financial Need.—Section 758 (42 U.S.C. 294z) is amended—

(1) in subsection (a), by striking out "and who are in their first year of study at such school"; and

(2) in subsection (b)—

(A) in paragraph (1), by striking out "in their first year of study at such school";

(B) in paragraph (2)—

(i) by striking out "shall consist" and inserting in lieu thereof "may consist of all or part"; and

(ii) by inserting "not in excess" before "of $400" in subparagraph (B);

(C) in paragraph (5), by inserting "maximum allowable" before "monthly stipend"; and

(D) by striking out paragraph (6).

(c) Authorization of Appropriations.—Section 758(d) (42 U.S.C. 294z(d)) is amended by striking "and" after "1987," and inserting before the period the following: ", $7,300,000 for fiscal year 1989, $30,000,000 for fiscal year 1990, and $30,000,000 for fiscal year 1991".

SEC. 606. CAPITATION GRANTS FOR SCHOOLS OF PUBLIC HEALTH.

(a) Authorization of Appropriations.—Section 770(e) (42 U.S.C. 295f) is amended by striking "and" after "1987," and by inserting before the period the following: ", $4,700,000 for fiscal year 1989, and $3,000,000 for fiscal year 1990".

(b) Sunset Provision.—Part E of title VII (42 U.S.C. 295f et seq.) is amended by adding at the end the following new section:

"SEC. 773. SUNSET PROVISION.

"Effective October 1, 1990, this part is repealed.".

SEC. 607. AUTHORIZATION OF APPROPRIATIONS FOR PROJECT GRANTS FOR ESTABLISHMENT OF DEPARTMENTS OF FAMILY MEDICINE.

Section 780(d) (42 U.S.C. 295g(d)) is amended—

(1) by striking "There" and inserting "For the purpose of carrying out this section, there";

(2) by striking "and" after "1987," and inserting after "1988" the following: ", and $7,000,000 for each of the fiscal years 1989 through 1991"; and

(3) by striking "for payments under grants under subsection (a)".

SEC. 608. AREA HEALTH EDUCATION CENTERS.

(a) Minimum Number of Individuals in Certain Internships.—Section 781(d)(2)(C) (42 U.S.C. 295g-1(d)(2)(C)) is amended by striking "six" and inserting "four".

(b) Authorization of Appropriations for General Program of Area Health Education Centers.—(1) Section 781(a) (42 U.S.C. 295g-1(a)) is amended by adding at the end of paragraph (2) the following new subparagraph:

"(C) In the case of the requirement that an area health education center be neither a school of medicine or osteopathy, the parent institution of such a school, nor a branch campus or other subunit of a school of medicine or osteopathy or its parent institution, or a consortium of such entities, to be eligible to enter into a contract under this section, the Secretary shall waive such requirement with respect to an area health education center having, at the time of initial application to enter into such contract under this section or a previous authorizing law, an operating program supported by both appropriations of a State legislature and local resources.".

(2) Section 781(d)(2)(F) is amended by striking out "and nurse practitioners" and inserting in lieu thereof ", nurse practitioners, and nurse midwives".

(3) Section 781(h) (as redesignated by subsection (c)(1) of this section) is amended in the first sentence—

(A) by striking "There are authorized" and all that follows through "this section" and inserting the following: "For the purpose of carrying out this section other than subsection (f), there are authorized to be appropriated"; and

(B) by striking "and" after "1987," and inserting before the period the following: ", $18,700,000 for the fiscal year 1989, and $20,000,000 for each of the fiscal years 1990 and 1991".

(c) Health Education and Training Centers.—Section 781 (42 U.S.C. 295g-1) is amended—

(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(2) by adding after subsection (e) the following new subsection:

"(f)(1) The Secretary shall enter into contracts with schools of medicine and osteopathy for the purpose of planning, developing, establishing, maintaining, and operating health education and training centers—

"(A) to improve the supply, distribution, quality, and efficiency of personnel providing (in the United States) health services along the border between the United States and Mexico;

"(B) to improve the supply, distribution, quality, and efficiency of personnel providing, in other urban and rural areas (including frontier areas) of the United States, health services to any population group, including Hispanic individuals, that has demonstrated serious unmet health care needs; and

"(C) to encourage health promotion and disease prevention through public education in the areas described.

"(2) The Secretary may not enter into a contract under paragraph (1) unless the applicant for such assistance agrees, in carrying out the purpose described in such paragraph, to enter into arrangements with one or more public or nonprofit private entities in the State that have expertise in providing health education to the public.

"(3) The Secretary shall, after consultation with health education and training centers, designate the geographic area in which each such center will carry out the purpose described in paragraph (1). The service area of such a center shall be located entirely within the State in which the center is located. Each border health education and training center shall be located in a county (or other political subdivision) of the State in close proximity to the border between the United States and Mexico.

"(4) The Secretary may not enter into a contract under paragraph (1) unless the applicant for such assistance agrees—

"(A) to establish an advisory group comprised of health service providers, educators and consumers from the service area and of faculty from participating schools;

"(B) after consultation with such advisory group, to develop a plan for carrying out the purpose described in paragraph (1) in the service area;

"(C) to enter into contracts, as needed, with other institutions or entities to carry out such plan; and

"(D) to be responsible for the evaluation of the program.

"(5) The Secretary may not make a grant or enter into a contract under paragraph (1) unless the applicant for such assistance agrees—

"(A) to evaluate the specific service needs for health care personnel in the service area;

"(B) to assist in the planning, development, and conduct of training programs to meet the needs identified pursuant to subparagraph (A);

"(C) to conduct or support not less than one training and education program for physicians and one program for nurses for at least a portion of the clinical training of such students;

"(D) to conduct or support training in health education services, including training to prepare community health workers to implement health education programs in communities, health departments, health clinics, and public schools that are located in the service area;

"(E) to conduct or support continuing medical education programs for physicians and other health professionals (including allied health personnel) practicing in the service area;

"(F) to support health career educational opportunities designed to provide students residing in the service area with counseling, education, and training in the health professions;

"(G) with respect to border health education and training centers, to assist in coordinating its activities and programs carried out pursuant to paragraph (1)(A) with any similar programs and activities carried out in Mexico along the border between the United States and Mexico; and

"(H) to make available technical assistance in the service area in the aspects of health care organization, financing and delivery.

"(6) In carrying out this subsection, the Secretary shall ensure that—

"(A) not less than 75 percent of the total funds provided to a school or schools of medicine or osteopathy will be expended in the development and operation of the health education and training center in the service area of such program;

"(B) to the maximum extent feasible, the school of medicine or osteopathy will obtain from nongovernmental sources the amount of the total operating funds for such program which are not provided by the Secretary;

"(C) no grant or contract shall provide funds solely for the planning or development of a health education and training center program for a period in excess of two years;

"(D) not more than 10 percent of the annual budget of each program may be utilized for the renovation and equipping of clinical teaching sites; and

"(E) no grant or contract shall provide funds to be used outside the United States except as the Secretary may prescribe for travel and communications purposes related to the conduct of a border health education and training center.

"(7) For purposes of this subsection:

"(A) The term 'border health education and training center' means an entity that is a recipient of a contract under paragraph (1) and that is carrying out (or will carry out) the purpose described in subparagraph (A) of such paragraph.

"(B) The term 'health education and training center' means an entity that is a recipient of a contract under paragraph (1).

"(C) The term 'service area' means, with respect to a health education and training center, the geographic area designated for the center under paragraph (3).

"(8)(A) Of the amounts appropriated pursuant to subsection (h)(2) for a fiscal year, the Secretary shall make available 50 percent for allocations each fiscal year for applications approved by the Secretary for border health education and training centers. The amount of the allocation for each such center shall be determined in accordance with subparagraph (B).

"(B) The amount of an allocation under subparagraph (A) for a fiscal year shall be determined in accordance with a formula prescribed by the Secretary, which formula shall be based—

"(i) with respect to the service area of the border health education and training center involved, on the low-income population, including Hispanic individuals, along the border between the United States and Mexico and the growth rate of such population;

"(ii) on the need of such population for additional personnel to provide health care services along such border; and

"(iii) on the most current information concerning mortality and morbidity and other indicators of health status for such population.".

(d) AUTHORIZATION OF APPROPRIATIONS FOR HEALTH EDUCATION AND TRAINING CENTERS.—Section 781(h) (as redesignated by subsection (c)(1) of this section) is amended by inserting "(1)" after the subsection designation and by adding at the end the following new paragraph:

"(2) For the purpose of carrying out subsection (f), there are authorized to be appropriated $4,000,000 for fiscal year 1989, $8,000,000 for fiscal year 1990, and $12,000,000 for fiscal year 1991.".

SEC. 901. AUTHORIZATION OF APPROPRIATIONS FOR GRANTS FOR TRAINING, TRAINEESHIPS, AND FELLOWSHIPS IN GENERAL INTERNAL MEDICINE AND GENERAL PEDIATRICS.

(a) COORDINATION CRITERIA.—Section 784(b) (42 U.S.C. 295g-4(b)) is amended by inserting before the period the following: ", and coordination of curriculum development and resident teaching activities with departments of family medicine where there is a department within the same school".

(b) AUTHORIZATIONS.—Section 784(c) (42 U.S.C. 295g-4(c)) is amended—

(1) by striking "There" and all that follows through "section" and inserting "For the purpose of carrying out this section, there are authorized to be appropriated"; and

(2) by striking "and" after "1987," and by inserting before the period the following: ", $23,000,000 for fiscal year 1989, $23,000,000 for fiscal year 1990, and $25,000,000 for fiscal year 1991".

SEC. 610. FAMILY MEDICINE AND GENERAL PRACTICE OF DENTISTRY.

(a) GENERAL PRACTICE OF DENTISTRY.—Part F of title VII (42 U.S.C. 295g et seq.) is amended—

(1) in section 786—

(A) in the title, by striking "AND GENERAL PRACTICE OF DENTISTRY"; and

(B) by striking subsection (b) and redesignating subsections (c) and (d) as subsections (b) and (c), respectively; and

(2) by inserting after section 784 the following new section:

"SEC. 785. RESIDENCY PROGRAMS IN GENERAL PRACTICE OF DENTISTRY.

"(a) IN GENERAL.—The Secretary may make grants to, and enter into contracts with, any public or nonprofit private school of dentistry or accredited postgraduate dental training institution—

"(1) to plan, develop, and operate an approved residency program in the general practice of dentistry or an approved advanced educational program in the general practice of dentistry; and

"(2) to provide financial assistance (in the form of traineeships and fellowships) to participants in such a program who are in need of financial assistance and who plan to specialize in the practice of general dentistry.

"(b) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated $4,000,000 for fiscal year 1989, $6,000,000 for fiscal year 1990, and $8,000,000 for fiscal year 1991.".

(b) AUTHORIZATION OF APPROPRIATIONS FOR FAMILY MEDICINE.—Section 786(c) (as redesignated by subsection (a)(1)(B) of this section) is amended to read as follows:

"(c) For the purpose of carrying out this section, there are authorized to be appropriated $37,900,000 for fiscal year 1989, $40,000,000 for fiscal year 1990, and $40,000,000 for fiscal year 1991.".

SEC. 611. EDUCATIONAL ASSISTANCE TO INDIVIDUALS FROM DISADVANTAGED BACKGROUNDS.

(a) AUTHORITY FOR STIPENDS FOR ADDITIONAL CATEGORIES OF STUDENTS.—Section 787(a)(2) (42 U.S.C. 295g-7(a)(2)) is amended—

(1) by striking "and" at the end of subparagraph (E);

(2) by striking the period at the end of subparagraph (F) and inserting "; and"; and

(3) by inserting after subparagraph (F) the following new paragraph:

"(G) paying such stipends as the Secretary may approve for such individuals for any period of education at any school described in subsection (a)(1), except schools of medicine, osteopathy, or dentistry.".

(b) INCREASED ENROLLMENTS.—Section 787 (42 U.S.C. 295g-7) is amended by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by adding after subsection (a) the following:

"(b)(1) Schools of medicine, osteopathy, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic, podiatry, and public and nonprofit schools that offer graduate programs in clinical psychology that receive a grant under subsection (a) shall, during a period of 3 years commencing on the date of the award of the grant, increase their first year enrollments of individuals from disadvantaged backgrounds by at least 20 percent over enrollments in the base year 1987.

"(2) The Secretary shall give priority for funding, in years subsequent to the expiration of the 3-year period described in paragraph (1)—

"(A) to schools that attain such increase in their first year enrollment by the end of such 3-year period, and

"(B) to schools that attain a 20 percent increase over such base year enrollment.

"(3) The requirement for at least a 20 percent increase in such enrollment shall apply only to those schools referred to in paragraph (1) that have a total enrollment of such individuals from disadvantaged backgrounds that is less than 200 percent of the national average percentage of such individuals in all schools of each health professions discipline.

"(4) Determination of both first year and total enrollment of such individuals shall be made by the Secretary in accordance with section 708.".

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 787(c) (42 U.S.C. 295g-7(c)) (as so redesignated) is amended in the first sentence by striking "and" after "1987," and by inserting before the period the following: ", $31,200,000 for fiscal year 1989, $34,000,000 for fiscal year 1990, and $36,000,000 for fiscal year 1991".

(d) SET-ASIDES.—Section 787(c) (42 U.S.C. 295g-7(c)) (as so redesignated) is amended in the second sentence by striking "Not less" and all that follows through "fiscal year" and inserting the following: "Of the amounts appropriated under this section for any fiscal year, 10 percent shall be obligated for community-based programs and 70 percent".

(e) STIPENDS.—Section 787(c) (42 U.S.C. 295g-7(c)) (as so redesignated) is amended by adding at the end the following: "Such stipends shall be administered and awarded in the same manner and subject to the same regulations as scholarships under section 758.".

(f) REPORT.—Not later than September 30, 1991, the Secretary shall prepare and submit, to the Committee on Energy and

Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report that develops a tracking system to evaluate—

(1) the success of the programs established under section 787 of the Public Health Service Act in enhancing the professional education of individuals from disadvantaged backgrounds; and

(2) the gains experienced by institutions in the retention of students from disadvantaged backgrounds.".

SEC. 612. RETENTION PROGRAM FOR HEALTH PROFESSIONS SCHOOLS WITH INDIVIDUALS FROM DISADVANTAGED BACKGROUNDS.

Part F of title VII is amended by inserting after section 787 (42 U.S.C. 295g-7) the following new section:

"SEC. 787A. RETENTION PROGRAM FOR HEALTH PROFESSIONS SCHOOLS WITH INDIVIDUALS FROM DISADVANTAGED BACKGROUNDS.

"(a) Establishment.—The Secretary shall establish a supplemental grant program to award grants to schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, pharmacy, or public health that demonstrate sufficient graduation of students from disadvantaged backgrounds.

"(b) Payment Formula.—

"(1) In general.—Payments to an eligible institution under this section shall be calculated in accordance with this subsection.

"(2) Eligible institutions.—An institution shall be eligible for funds under this section for a fiscal year in an amount determined under paragraph (5), if the disadvantaged graduate figure for the institution (as determined under paragraph (3)) exceeds the nondisadvantaged graduate figure for the institution (as determined under paragraph (4)).

"(3) Disadvantaged graduate figure.—For each fiscal year, the Secretary shall determine the disadvantaged graduate figure for the institution by dividing—

"(A) the number of students from disadvantaged backgrounds who graduated from the institution as part of such class; by

"(B) the number of students from disadvantaged backgrounds who matriculated into the institution as part of a class.

"(4) Nondisadvantaged graduate figure.—For each fiscal year, the Secretary shall determine the nondisadvantaged graduate figure for the institution by multiplying—

"(A) the quotient determined by dividing—

"(i) the number of students from nondisadvantaged backgrounds who graduated from the institution as part of such class; by

"(ii) the number of students from nondisadvantaged backgrounds who matriculated into the institution as part of a class; by

"(B) .9.

"(5) Amount of grant.—An institution determined to be eligible to receive a grant under this subsection shall be entitled to an amount determined by multiplying—

"(A) the quotient determined by dividing—

"(i) the total amount of funds made available to carry out this section during such preceding fiscal year; by

"(ii) the number of students from disadvantaged backgrounds who graduated from eligible institutions during the preceding fiscal year; by

"(B) the number of students from disadvantaged backgrounds who graduated from the eligible institution during such preceding fiscal year.

"(c) Use of Funds.—Payment received by the institution under subsection (b) shall be used to provide—

"(1) financial aid services for individuals from disadvantaged backgrounds who choose to attend such institution;

"(2) retention services or for other retention purposes for individuals for disadvantaged backgrounds.

"(e) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section, $2,000,000 in each of the fiscal years 1990 and 1991.".

SEC. 613. TWO-YEAR SCHOOLS OF MEDICINE, INTERDISCIPLINARY TRAINING, AND CURRICULUM DEVELOPMENT.

(a) Special Projects.—Section 788 (42 U.S.C. 295g-8(e)) is amended to read as follows:

"SEC. 788. SPECIAL PROJECTS.

"(a) Two-Year Schools.—

"(1) In general.—The Secretary may make grants to maintain and improve schools that provide the first or last 2 years of education leading to the degree of doctor of medicine or osteopathy. Grants provided under this paragraph to schools that were in existence on September 30, 1985, may be used for construction and the purchase of equipment.

"(2) Eligibility.—To be eligible to apply for a grant under paragraph (1), the applicant must be a public or nonprofit school providing the first or last 2 years of education leading to the degree of doctor of medicine or osteopathy and be accredited by or be operated jointly with a school that is accredited by a recognized body or bodies approved for such purpose by the Secretary of Education.

"(b) Faculty and Curriculum Development and Clinical Training Sites.—

"(1) Grants and contracts.—

"(A) In general.—The Secretary may make grants to and enter into contracts with any health professions institution or any other public or private nonprofit entity for the development and implementation of model projects in areas such as faculty and curriculum development, and development of new clinical training sites.

"(B) Allocation of funds.—Priority shall be given to schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, podiatry, public health, chiropractic, allied health, and to graduate programs at public and nonprofit private schools in health administration and clinical psychology in the allocation of funds under this subsection. Funds shall be allocated to each profession for award within that profession on the basis of competitive applications. Investigator-initiated projects should be encouraged. Funding priorities may be determined by the Secretary on consultation with the health professions schools and the National Advisory Council on the Health Professions Education.

"(C) Peer review.—Any application for a grant to institutions described in subparagraph (A) shall be subject to appropriate peer review by peer review groups composed principally of non-Federal experts. The Secretary may not approve an application unless a peer review group has recommended it for approval.

"(2) Health professions institutions and allied health institutions.—

"(A) Set-aside.—At least 75 percent of the amounts available for grants and contracts under this subsection from amounts appropriated under subsection (e) shall be obligated for grants to and contracts with health professions institutions and allied health institutions.

"(B) Peer review.—Any application for a grant to institutions described in subparagraph (A) shall be subject to appropriate peer review by peer review groups composed principally of non-Federal experts.

"(C) Prerequisites.—The Secretary may not approve or disapprove an application for a grant to an institution described in subparagraph (A) unless the appropriate peer review group required under subparagraph (B) has recommended such approval and the Secretary has consulted with the National Advisory Council on Health Professions Education with respect to such application.

"(c) Training in Preventive Medicine.—

"(1) In general.—The Secretary may make grants to and enter into contracts with schools of medicine, osteopathy, and public health to meet the costs of projects—

"(A) to plan and develop new residency training programs and to maintain or improve existing residency training programs in preventive medicine; and

"(B) to provide financial assistance to residency trainees enrolled in such programs.

"(2) Administration.—

"(A) Amount.—The amount of any grant under paragraph (1) shall be determined by the Secretary.

"(B) Application.—No grant may be made under paragraph (1) unless an application therefor is submitted to and approved by the Secretary. Such an application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe.

"(C) Eligibility.—To be eligible for a grant under paragraph (1), the applicant must demonstrate to the Secretary that it has or will have available full-time faculty members with training and experience in the fields of preventive medicine and support from other faculty members trained in public health and other relevant specialties and disciplines.

"(D) Other funds.—Schools of medicine, osteopathy, and public health may use funds committed by State, local, or county public health officers as matching amounts for Federal grant funds for residency training programs in preventive medicine.

"(d) Programs for Physician Assistants.—

"(1) In general.—The Secretary may make grants to and enter into contracts with public or nonprofit private schools of medicine and osteopathy and other public or nonprofit private entities to meet the costs of projects to plan, develop, and operate or maintain programs for the training of physician assistants (as defined in section 701(8)).

"(2) Applications.—No grant or contract may be made under paragraph (1) unless the application therefor contains or is supported by assurances satisfactory to the Secretary that the school or entity receiving the grant or contract has appropriate mechanisms for placing graduates of the training program with respect to which the application is submitted in positions for which they have been trained.

"(e) Certain Projects With Respect to Hospitals and Schools of Podiatric Medicine.—The Secretary may make grants to, and enter into contracts with, public and nonprofit private hospitals and schools of podiatric medicine for the purpose of planning and implementing projects in primary care training for podiatric physicians in approved or provisionally approved residency programs which shall provide financial assistance in the form of traineeships to residents who participate in such projects and who plan to specialize in primary care.

"(f) Authorizations.—(1)(A) For the purpose of carrying out subsections (a), (b), and (e), there are authorized to be appropriated $2,400,000 for fiscal year 1989, $4,000,000 for fiscal year 1990, and $4,000,000 for fiscal year 1991.

"(B) Of the amounts appropriated pursuant to subparagraph (A) for each of the fiscal years 1989 through 1991, the Secretary shall make available 20 percent of such amounts to carry out subsection (a) and 25 percent of such amounts to carry out subsection (e).

"(2)(A) For the purpose of carrying out subsections (c), there are authorized to be appropriated $1,500,000 for fiscal year 1989, $2,500,000 for fiscal year 1990, and $4,000,000 for fiscal year 1991.

"(B) For the purpose of carrying out subsection (d), there are authorized to be appropriated $4,500,000 for fiscal year 1989, $5,200,000 for fiscal year 1990, and $5,400,000 for fiscal year 1991.".

SEC. 614. GRANTS FOR MINORITY EDUCATION.

(a) Reorganization.—Section 788A (42 U.S.C. 295g-8a) is transferred to immediately after section 781 (42 U.S.C. 295g-1) and redesignated as section 782.

(b) Period of Grants.—Subsection (b) of section 782 (as transferred and redesignated by subsection (a)) is amended by inserting after "(b)", the following new sentence: "The Secretary may award grants for periods not to exceed 3 years.".

(c) Eligibility.—Subsection (c) of section 782 (as transferred and redesignated by subsection (a)) is amended to read as follows:

"(c) Only health professions schools shall be eligible for a grant under this section, and to be eligible such schools must—

(1) be a school described in section 701(4); and

(2) have received a contract under section 788A for fiscal year 1987.".

SEC. 615. GERIATRIC PROGRAMS.

(a) Geriatric Education Centers and Geriatric Training.—Part F of title VII is amended by inserting after section 788B (42 U.S.C. 295g-8b) the following new section:

"SEC. 789. GERIATRIC EDUCATION CENTERS AND GERIATRIC TRAINING.

"(a) Geriatric Education Centers.—

"(1) In general.—The Secretary may make grants to and enter into contracts with accredited health professions schools, including schools of allied health, referred to in section 701(4) or 701(10) and programs referred to in section 701(8) to assist in meeting the costs of such schools or programs of providing projects to—

"(A) improve the training of health professionals in geriatrics;

"(B) develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;

"(C) expand and strengthen instruction in methods of such treatment;

"(D) support the training and retraining of faculty to provide such instruction;

"(E) support continuing education of health professionals and allied health professionals who provide such treatment; and

"(F) establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric medicine.

"(2) Approval of applications.—

"(A) Peer review.—Any application for a grant or contract under this subsection shall be subject to appropriate peer review by peer review groups composed principally of non-Federal experts.

"(B) Prerequisites.—The Secretary may not approve or disapprove an application for a grant or contract under this subsection unless the Secretary has received recommendations with respect to such application from the appropriate peer review group required under subparagraph (A) and has consulted with the National Advisory Council on Health Professions Education with respect to such application.

"(b) Geriatric Training.—

"(1) In general.—The Secretary may make grants to, and enter into contracts with, schools of medicine, schools of osteopathy, teaching hospitals, and graduate medical education programs, for the purpose of providing support (including residencies, traineeships, and fellowships) for geriatric training projects to train physicians and dentists who plan to teach geriatric medicine or geriatric dentistry.

"(2) Requirements.—Each project for which a grant or contract is made under this subsection shall—

"(A) be staffed by full-time teaching physicians who have experience or training in geriatric medicine;

"(B) be staffed, or enter into an agreement with an institution staffed by full-time or part-time teaching dentists who have experience or training in geriatric dentistry;

"(C) be based in a graduate medical education program in internal medicine or family medicine, or in a department of geriatrics in existence as of December 1, 1987;

"(D) provide participants in the project with exposure to a population of elderly individuals;

"(E) provide training in geriatrics and exposure to the physical and mental disabilities of elderly individuals through a variety of service rotations, such as geriatric consultation services, acute care services, dental services, geriatric psychiatry units, day and home care programs, rehabilitation services, extended care facilities, geriatric ambulatory care and comprehensive evaluation units, and community care programs for elderly mentally retarded individuals; and

"(F) provide training in geriatrics through one or both of the training options described in subparagraphs (A) and (B) of paragraph (3).

"(3) Training options.—The training options referred to in subparagraph (F) of paragraph (2) shall be as follows:

"(A) A 1-year retraining program in geriatrics for—

"(i) physicians who are faculty members in departments of internal medicine, family medicine, gynecology, geriatrics, and psychiatry at schools of medicine and osteopathy; and

"(ii) dentists who are faculty members at schools of dentistry or at hospital departments of dentistry.

"(B) A 1-year or 2-year internal medicine or family medicine fellowship program providing emphasis in geriatrics, which shall be designed to provide training in clinical geriatrics and geriatrics research for—

"(i) physicians who have completed graduate medical education programs in internal medicine, family medicine, psychiatry, neurology, gynecology, or rehabilitation medicine; and

"(ii) dentists who have completed postdoctoral dental education programs.

"(4) Definitions.—For purposes of this subsection:

"(A) Graduate medical education program.—The term 'graduate medical education program' means a program sponsored by a school of medicine, a school of osteopathy, a hospital, or a public or private institution that—

"(i) offers postgraduate medical training in the specialties and subspecialties of medicine; and

"(ii) has been accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association through its Committee on Postdoctoral Training.

"(B) Post-doctoral dental education program.—The term 'post-doctoral dental education program' means a program sponsored by a school of dentistry, a hospital, or a public or private institution that—

"(i) offers post-doctoral training in the specialties of dentistry, advanced education in general dentistry, or a dental general practice residency; and

"(ii) has been accredited by the Commission on Dental Accreditation.

"(c) Authorization of Appropriations.—

"(1) Geriatric education centers.—For grants and contracts under subsection (a), there are authorized to be appropriated $7,000,000 for fiscal year 1989, $10,000,000 for fiscal year 1990, and $13,000,000 for fiscal year 1991.

"(2) Geriatric training.—For grants and contracts under subsection (b), there are authorized to be appropriated $7,000,000 for fiscal year 1989, $10,000,000 for fiscal year 1990, and $13,000,000 for fiscal year 1991.".

(b) Conforming Amendments.—Section 783 (42 U.S.C. 295g-3) is repealed.

SEC. 616. GENERAL PROVISIONS.

(a) Minimum Amount of Grant for Certain Grantees.—Section 790 (42 U.S.C. 295g-10) is amended—

(1) in paragraph (3), by striking "The amount" and inserting the following: "Except as provided in paragraph (4), the amount"; and

(2) by adding at the end the following new paragraph:

"(4) With respect to grants under any of sections 780, 784, 785, and 786 for fiscal year 1989 and subsequent fiscal years, if an entity has been a grantee under the section involved for two consecutive fiscal years and the Secretary approves an application under such section from the entity for any subsequent consecutive fiscal year, the amount of the grant for such fiscal year may not be less than an amount equal to 20 percent of the average of the amounts received under such section by the entity for the consecutively preceding fiscal years.".

(b) Requirement of Peer Review for Certain Programs.—Section 790 (42 U.S.C. 295g-10), as amended by subsection (a) of this section, is further amended by adding at the end the following new paragraph:

"(5)(A) Each application for a grant under any of sections 784 through 786 shall be submitted to a peer review group for an evaluation of the merits of the proposals made in the evaluation. Each application for a grant under section 780 may be submitted to such peer review group for such an evaluation.

"(B) The Secretary shall establish such peer review groups as may be necessary to carry out subparagraph (A). The Secretary shall make appointments to the peer review groups from among appropriately qualified persons who are not officers of employees of the United States.

"(C) With respect to applications referred to in subparagraph (A), a peer review group established pursuant to such subparagraph shall report its findings and recommendations to the Secretary. The Secretary may not approve such an application unless a peer review group has recommended the application for approval.

"(D) This paragraph shall be carried out by the Secretary, acting through the Administrator of the Health Resources and Services Administration.".

(c) Certain Provisions With Respect to Hispanic Individuals and Other Members of Minority Groups.—

(1) Section 708(b)(2) (42 U.S.C. 292h(b)(2)) is amended by adding at the end the following new sentence: "Such studies shall include studies determining by specialty and geographic location the number of health professionals (including allied health professionals and health care administration personnel) who are members of minority groups, including Hispanics, and studies providing by specialty and geographic location evaluations and projections of the supply of, and requirements for, health professionals (including allied health professionals and health care administration personnel) to serve minority groups, including Hispanics.".

(2)(A) The Secretary of Health and Human Services shall conduct a study for the purpose of determining—

(i)(I) the extent to which health care is being provided to Hispanic individuals in medically underserved areas by health care professionals who are unable to communicate with such individuals in the most appropriate language and cultural context; and

(II) whether the extent of the provision of health care to Hispanic individuals by such health care professionals is detrimental to the health of such individuals; and

(ii)(I) the extent to which Hispanic individuals in medically underserved areas rely on allied health personnel as the primary source of health care;

(II) whether the extent of such reliance is detrimental to the health of such individuals; and

(III) if the extent of such reliance is detrimental to such individuals, whether area health education center programs (as defined in section 781(g), as redesignated by section 8(c)(1) of this Act) can be utilized with respect to providing appropriate health care to such individuals.

(B) The Secretary of Health and Human Services shall, not later than 1 year after the date of the enactment of this Act, complete the study required in subparagraph (A) and submit to the Congress a report describing the findings made as a result of the study.

SEC. 617. SPECIAL PROJECTS.

Part F of title VII (42 U.S.C. 295f-2 et seq.) is amended by adding at the end the following new section:

"SEC. 790A. SPECIAL PROJECTS.

"(a) Grants.—The Secretary may make grants to, and enter into contracts with, schools of public health for the costs of planning, developing, demonstrating, operating, and evaluating projects—

"(1) for preventive medicine;

"(2) for health promotion and disease prevention;

"(3) for increasing the enrollment in such schools of individuals from disadvantaged backgrounds (as determined in accordance with criteria established by the Secretary under section 787(a)); and

"(4) to improve access and quality in health care.

"(b) Prohibitions.—The Secretary may not make a grant under subsection (a) unless—

"(1) an application for the grant is submitted to the Secretary;

"(2) with respect to carrying out the purpose for which the grant is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

"(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"(c) Limitations.—The Secretary may make a grant under this subsection only—

"(1) pursuant to the issuance of solicitations for such grants; and

"(2) if the application for such a grant has been recommended for approval by an appropriate peer review group.

"(d) Authorization of Appropriations.—For the purpose of carrying out subsection (a), there are authorized to be appropriated $1,500,000 for fiscal year 1989, $3,500,000 for fiscal year 1990, and $5,000,000 for fiscal year 1991.".

SEC. 618. GRANTS FOR GRADUATE PROGRAMS IN HEALTH ADMINISTRATION.

(a) Minimum Number of Students.—Section 791(c)(2)(A)(i) (42 U.S.C. 295h(c)(2)(A)(i)) is amended—

(1) by striking "25" and inserting "15"; and

(2) by striking "except that" and all that follows through "in such school year".

(b) Authorization of Appropriations.—Section 791(d) (42 U.S.C. 295h(d)) is amended by striking "and" after "1987," and by inserting before the period the following: ", $1,420,000 for fiscal year 1989, $1,420,000 for fiscal year 1990, and $1,700,000 for fiscal year 1991".

SEC. 619. AUTHORIZATION OF APPROPRIATIONS FOR TRAINEESHIPS FOR STUDENTS IN OTHER GRADUATE PROGRAMS.

Section 791A(c) (42 U.S.C. 295h-1a(c)) is amended by striking "and" before "$500,000" and by inserting before the period the following: "; and $500,000 for each of the fiscal years 1989 through 1991".

SEC. 620. PROVISIONS WITH RESPECT TO GRADUATE PROGRAMS IN CLINICAL PSYCHOLOGY.

(a) Definition of Graduate Program in Clinical Psychology.—

(1) Section 701(4) (42 U.S.C. 292a(4)) is amended by inserting at the end the following new sentence: "The term 'graduate program in clinical psychology' means an accredited graduate program in a public or nonprofit private institution in a State which provides training leading to a doctoral degree in clinical psychology or an equivalent degree.".

(2) Section 701 (42 U.S.C. 292a) is amended by striking paragraph (14).

(b) National Advisory Council on Health Professions Education.—Section 702(a) (42 U.S.C. 292b(a)) is amended—

(1) in the first sentence, by striking "twenty members appointed" and inserting "twenty-one members appointed"; and

(2) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking "twelve" and inserting "thirteen"; and

(B) in subparagraph (A), by inserting before the semicolon the following: "and graduate programs in clinical psychology".

(c) Discrimination on Basis of Sex.—Section 704 (42 U.S.C. 292d) is amended—

(1) in the first sentence, by inserting after "allied health personnel" the following: ", or graduate program in clinical psychology,"; and

(2) in the second sentence, by striking "school or training center" and inserting "school, training center, or graduate program".

SEC. 621. AUTHORIZATION OF APPROPRIATIONS FOR PUBLIC HEALTH TRAINEESHIPS.

Section 792(c) (42 U.S.C. 295h-1b(c)) is amended by striking "and" after "1987;" and by inserting before the period the following: "; $4,100,000 for fiscal year 1989; $4,200,000 for fiscal year 1990; and $4,300,000 for fiscal year 1991".

SEC. 622. TRAINING OF HEALTH PROFESSIONALS WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME.

Section 788B is amended to read as follows:

"SEC. 788B. TRAINING WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME.

"(a) Grants.—The Secretary may make grants and enter into contracts to assist schools and academic health science centers in meeting the costs of projects—

"(1) to train the faculty of schools and graduate departments of medicine, nursing, osteopathy, dentistry, public health, psychology, and allied health to teach health professions students to provide for the health care needs of individuals with acquired immune deficiency syndrome;

"(2) with respect to improving clinical skills in the diagnosis, treatment, and prevention of such syndrome, to educate and train the health professionals and clinical staff of schools of medicine, osteopathy, and dentistry; and

"(3) to develop and disseminate curricula relating to the care and treatment of individuals with acquired immune deficiency syndrome.

"(b) Preference.—In making grants under subsection (a), the Secretary shall give preference to projects which will—

"(1) train, or result in the training of, health professionals who will provide treatment for minority individuals with acquired immune deficiency syndrome and other individuals who are at high risk of contracting such syndrome; and

"(2) train, or result in the training of, minority health professionals and minority allied health professionals to provide treatment for individuals with acquired immune deficiency syndrome.

"(c) Application.—No grant or contract may be made under subsection (a) unless an application is submitted to the Secretary in such form, at such time, and containing such information, as the Secretary may prescribe.

"(d) Peer Review.—

"(1) In general.—An application for a grant or contract under subsection (a) shall be subject to appropriate peer review by peer review groups composed principally of non-Federal experts.

"(2) Limitation.—The Secretary may not approve an application for a grant or contract under subsection (a) unless the appropriate peer review group required under paragraph (1) has recommended such approval and the Secretary has consulted with the National Advisory Council on Health Professions Education with respect to such application.

"(e) Authorization of Appropriations.—There are authorized to be appropriated for grants under subsection (a), such sums as may be necessary for each of the fiscal years 1989 through 1991.

"(f) Dental Schools.—

"(1) In general.—The Secretary may make grants to assist dental schools and programs described in section 788(e)(4)(B) with respect to oral health care to AIDS patients.

"(2) Application.—Each dental school or program described in section 788(e)(4)(B) may annually submit an application documenting the unreimbursed costs of oral health care provided to AIDS patients by that school or hospital during the prior year.

"(3) Distribution.—The Secretary shall distribute the available funds among all eligible applicants, taking into account the number of AIDS patients served and the unreimbursed oral health care costs incurred by each institution as compared with the total number of patients served and costs incurred by all eligible applicants.

"(4) The Secretary shall not make a grant under this subsection if doing so would result in any reduction of State funding or allocation for such purposes.

"(5) Authorization of appropriations.—For the purpose of carrying out this subsection, there is authorized to be appropriated such sums as may be necessary in fiscal year 1990 and fiscal year 1991.".

SEC. 623. DEFINITIONS.

(a) School of Allied Health.—Section 701(10) (42 U.S.C. 292a(10)) is amended—

(1) in the matter preceding subparagraph (A), by striking "university—" and inserting "university or hospital-based educational entity—"; and

(2) in subparagraph (B), by inserting before the semicolon the following: "(except that this subparagraph shall not apply to any hospital-based educational entity)".

(b) Allied Health Professionals.—Section 701(13)(C) (42 U.S.C. 292a(13)(C)) is amended—

(1) by striking out "an individual" and inserting in lieu thereof "a health professional";

(2) by striking out "or" before "a doctoral degree in clinical psychology"; and

(3) by inserting before the period the following: ", or a degree in social work or an equivalent degree

SEC. 624. ALLIED HEALTH PROJECT GRANTS AND CONTRACTS.

Section 796 (42 U.S.C. 295h-5) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary may make grants to and enter into contracts with eligible entities to assist them in meeting the costs of planning, developing, establishing, operating, and evaluating projects relating to:

"(1) Improving and strengthening the effectiveness of allied health administration, program directors, faculty, and clinical faculty.

"(2) Improving and expanding program enrollments in those professions in greatest demand and whose services are most needed by the elderly.

"(3) Interdisciplinary training programs that promote the effectiveness of allied health practitioners in geriatric assessment and the rehabilitation of the elderly.

"(4) Demonstration centers to emphasize innovative models to link allied health clinical practice, education, and research.

"(5) Adding and strengthening curriculum units in allied health programs to include knowledge and practice concerning prevention and health promotion, geriatrics, long-term care, home health and hospice care, and ethics.

"(6) The recruitment of individuals into allied health professions, including projects for—

"(A) the identification and recruitment of highly qualified individuals, including the provision of educational and work experiences for recruits at the secondary and collegiate levels;

"(B) the identification and recruitment of minority and disadvantaged students, including the provision of remedial and tutorial services prior and subsequent to admission, the provision of work-study programs for secondary students, and recruitment activities directed toward primary school students; and

"(C) the coordination and improvement of recruitment efforts among official and voluntary agencies and institutions, including official departments of education, at the city, county, and State, or regional level.";

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c) For purposes of subsection (a), the term 'eligible entities' means entities which are—

"(1) schools, universities, or other educational entities which provide for allied health personnel education and training and which meet such standards as the Secretary may by regulation prescribe; or

"(2) other public or nonprofit private entities capable, as determined by the Secretary, of carrying out projects described in subsection (a)."; and

(3) by striking out subsection (d) and inserting in lieu thereof the following new subsection:

"(d) For the purpose of making payments under grants and contracts under subsection (a), there are authorized to be appropriated $2,000,000 for each of the fiscal years 1990 and 1991.".

SEC. 625. TRAINEESHIPS FOR ADVANCED TRAINING OF ALLIED HEALTH PERSONNEL.

Section 797 (42 U.S.C. 295h-6) is amended to read as follows:

"SEC. 797. TRAINEESHIPS FOR ADVANCED TRAINING OF ALLIED HEALTH PERSONNEL.

(a) Grants.—The Secretary may make grants to and enter into contracts with training centers for allied health professions to meet the costs of projects designed to—

"(1) plan, develop, establish, expand, and operate doctoral programs for the advanced speciality training of allied health professionals who plan to teach and conduct research in an allied health training program; and

"(2) provide financial assistance in the form of traineeships or fellowships to doctoral students who are participants in any such program and who plan to teach and conduct research in an allied health discipline or to post doctoral students who are continuing specialized study and research in an allied health discipline.

"(b) Limitation.—The Secretary shall limit grants and contracts made or entered into under subsection (a) to those allied health fields or specialities as the Secretary shall, from time to time, determine to have—

"(1) the most significant national or regional shortages of practitioners;

"(2) insufficient numbers of qualified faculty in entry level or advanced educational programs; and

"(3) a significant role in the care and rehabilitation of patients and clients who are elderly or disabled.

"(c) Authorization of Appropriations.—For the purposes of making payments under grants under subsection (a), there are authorized to be appropriated $2,000,000 for each of the fiscal years 1990 and 1991.

"(d) Availability of Funds.—Funds appropriated under this section for any fiscal year shall remain available until expended or through fiscal year 1991.".

SEC. 626. ALLIED HEALTH PROFESSIONS DATA.

Section 708 (42 U.S.C. 292h) is amended by adding at the end the following:

"(h)(1) In carrying out subsection (a), the Secretary may make grants, or enter into contracts and cooperative agreements with, and provide technical assistance to, any nonprofit entity in order to establish a uniform allied health professions data reporting system to collect, compile, and analyze data on the allied health professions personnel.

"(2) In the first report under subsection (d) made 2 years after the date of enactment of this Act and in each biennial report thereafter, the Secretary include a description and analysis of data collected pursuant to paragraph (1).".

SEC. 627. COUNCIL ON GRADUATE MEDICAL EDUCATION.

Section 799 (42 U.S.C. 295i) is amended by adding at the end the following:

"(k) There is authorized to be appropriated $1,000,000 for each of the fiscal years 1989, 1990, and 1991 to carry out this section.".

SEC. 628. REFERENCES WITH RESPECT TO PODIATRIC MEDICINE.

Title VII (42 U.S.C. 292a et seq.) is amended—

(1) in section 701—

(A) in paragraph (4), by striking "'school of podiatry'" and inserting "'school of podiatric medicine'" and by striking "'doctor of podiatry'" and inserting "doctor of podiatric medicine"; and

(B) in paragraph 13(C), by striking "podiatry" and inserting "podiatric medicine";

(2) in section 702(a)(1)(A), by striking "podiatry," and inserting "podiatric medicine,";

(3) in section 704, in the first sentence, by striking "podiatry," and inserting "podiatric medicine,";

(4) in section 721—

(A) in subsection (c)(3), in subparagraphs (A) and (B), by striking "podiatry," each place it appears and inserting "podiatric medicine,";

(B) in subsection (d)(1)(A), by striking "podiatry," and inserting "podiatric medicine,"; and

(C) in subsection (f)—

(i) in paragraph (1), in the first sentence, by striking "podiatry," and inserting "podiatric medicine,"; and

(ii) in paragraph (3)(A), by striking "podiatry," and inserting "podiatric medicine,";

(5) in section 729(a), in the first and second sentences, by striking "podiatry," each place it appears and inserting "podiatric medicine,";

(6) in section 737(1), by striking "podiatry," and inserting "podiatric medicine,";

(7) in section 740—

(A) in subsection (a), by striking "podiatry," and inserting "podiatric medicine,";

(B) in subsection (b)(4), by striking "podiatry" and inserting "podiatric medicine"; and

(C) in subsection (c)—

(i) in paragraph (1), by striking "podiatry," and inserting "podiatric medicine,"; and

(ii) in paragraph (3)(C), by striking "podiatry," and inserting "podiatric medicine,";

(8) in section 741—

(A) in subsection (b)(1), by striking "podiatry" and inserting "podiatric medicine";

(B) in subsection (f)(1)(A), by striking "podiatry" and inserting "podiatric medicine"; and

(C) in subsection (l)(4), by striking "podiatry," and inserting "podiatric medicine,";

(9) in section 758(a), by striking "podiatry," and inserting "podiatric medicine,";

(10) in section 787(a)(1), by striking "podiatry," and inserting "podiatric medicine,"; and

(11) in section 788—

(A) in subsection (c)(1), in the first sentence, by striking "podiatry," and inserting "podiatric medicine,"; and

(B) in subsection (f), by striking "podiatry" and inserting "podiatric medicine".

SEC. 629. REFERENCES WITH RESPECT TO OSTEOPATHIC MEDICINE.

(a) TECHNICAL AMENDMENTS TO TITLE III.—Title III (42 U.S.C. 241 et seq.) is amended—

(1) in section 327A(b)(1), by inserting "schools of osteopathic medicine," after "schools of medicine," and by inserting "professions" after "health";

(2) by striking "osteopathy" each place such term appears and inserting "osteopathic medicine"; and

(3) by striking "osteopaths" each place such term appears.

(b) TECHNICAL AMENDMENTS TO TITLE VII.—Title VII (42 U.S.C. 292a et seq.) is amended—

(1) by striking "school of osteopathy" and "schools of osteopathy" each place such terms appear and inserting "school of osteopathic medicine" and "schools of osteopathic medicine", respectively;

(2) by striking "school of medicine, osteopathy" and "schools of medicine, osteopathy" each place such terms appear and inserting "school of medicine, osteopathic medicine" and "schools of medicine, osteopathic medicine", respectively; and

(3) by striking "medical or osteopathic" each place it precedes "school", "student", or "clinical education" and by inserting "medical (M.D. and D.O.)".

SEC. 630. STUDY BY GENERAL ACCOUNTING OFFICE OF STATE PRACTICES IN ENDORSEMENT LICENSING OF FOREIGN PHYSICIANS.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study for the purpose of determining the practices and policies of the States in licensing by endorsement physicians who are graduates of schools of medicine located in countries other than the United States. In carrying out the study, the Comptroller General shall—

(1) with respect to such licensing of such physicians—

(A) make a comparison with the practices and policies of the States in licensing by endorsement physicians who are graduates of American schools of medicine; and

(B) determine the merits of any additional requirements imposed on physicians who are graduates of medical schools of other countries, including a determination of the relative proficiency of such physicians and a determination of the relevancy of any requirement of producing additional information or records;

(2) determine whether the graduates of schools of medicine located in other countries are being discriminated against with respect to licensing by endorsement in the United States; and

(3) if such discrimination is occurring, determine the geographic areas in which the discrimination is occurring and the circumstances under which the discrimination is occurring.

(b) CONSULTATION WITH APPROPRIATELY QUALIFIED INDIVIDUALS.—In carrying out the study required in subsection (a), the Comptroller General of the United States shall consult with individuals with appropriate expertise.

(c) TIME FOR COMPLETION.—Not later than 9 months after the date of the enactment of this Act, the Comptroller General of the United States shall complete the study required in subsection (a) and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the findings made as a result of the study.

SEC. 631. IDENTIFICATION AND NOTIFICATION OF POTENTIAL GRANTEES UNDER CERTAIN PROGRAMS.

The Secretary of Health and Human Services shall identify entities that would be appropriate applicants for grants under section 788(a) of the Public Health Service Act (42 U.S.C. 295g-8(a)) and shall notify such entities of such fact.

SEC. 632. RESEARCH WITH RESPECT TO HEALTH RESOURCES AND SERVICES ADMINISTRATION.

With respect to any program of research pursuant to the Public Health Service Act, any such program carried out in fiscal year 1987 by an agency other than the Health Resources and Services Administration (or appropriate to be carried out by such an agency) may not, for each of the fiscal years 1989 through 1991, be carried out by such Administration.

SEC. 633. REQUIREMENTS WITH RESPECT TO APPLICATION AND AWARD PROCESS FOR CERTAIN PROGRAMS.

(a) SEMIANNUAL GRANT SOLICITATIONS.—With respect to grants under any of sections 780, 784, 785, and 786 for fiscal year 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants, and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation.

(b) PRELIMINARY REVIEW FOR TECHNICAL SUFFICIENCY.—In reviewing applications for grants referred to in subsection (a), the Secretary shall—

(1) make a preliminary review of each such application in order to determine whether the application involved is sufficient with respect to the minimum technical requirements established by the Secretary for applications under the program involved; and

(2) if the Secretary determines pursuant to the preliminary review that any such application is not sufficient with respect to such requirements—

(A) prepare a statement explaining the insufficiencies of the application; and

(B) return the application, together with such statement, by a date that permits the applicant involved a sufficient period of time in which to prepare a timely second application for submission pursuant to the solicitation with respect to which the first application is being returned.

SEC. 634. ESTABLISHMENT OF LOAN REPAYMENT PROGRAM FOR RESEARCH AT NATIONAL INSTITUTES OF HEALTH WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME.

(a) IN GENERAL.—Part F of title IV is amended by inserting after section 487 the following new section:

"SEC. 487A. LOAN REPAYMENT PROGRAM FOR RESEARCH WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME.

"(a) IMPLEMENTATION OF PROGRAM.—

"(1) IN GENERAL.—Not later than one year after the date of the enactment of the Health Professions Reauthorization Act of 1988, the Secretary shall, subject to paragraph (2), establish and implement a program of entering into agreements with appropriately qualified health professionals under which such health professionals agree to conduct, as employees of the National Institutes of Health, research with respect to acquired immune deficiency syndrome in consideration of the Federal Government agreeing to repay, for each year of such service, not more than $20,000 of the principal and interest of the educational loans of such health professionals.

"(2) LIMITATION.—The Secretary may not enter in an agreement with a health professional pursuant to paragraph (1) unless such professional—

"(A) has a substantial amount of educational loans relative to income; and

"(B) was not employed at the National Institutes of Health during the 1-year period preceding the date of the enactment of the Health Professions Reauthorization Act of 1988.

"(b) APPLICATION.—With respect to the National Health Service Corps Loan Repayment Program established in subpart III of part D of title III, the provisions of such subpart shall, except as inconsistent with subsection (a) of this section, apply to the program established in such subsection (a) in the same manner and to the same extent as such provisions apply to the National Health Service Corps Loan Repayment Program established in such subpart.

"(c) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—For the purpose of carrying out subsection (a), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.

"(2) AVAILABILITY.—Amounts appropriated pursuant to paragraph (1) for a fiscal year shall remain available until the expiration of the second fiscal year beginning after the fiscal year for which the amounts were appropriated.".

SEC. 635. NATIONAL RESEARCH SERVICE AWARDS WITH RESPECT TO TITLE VII PROGRAMS.

Section 487(d)(3) (42 U.S.C. 288) is amended by inserting after "made available", the first time such appears, the following: "to the Secretary, acting through the Administrator of the Health Resources and Services Administration,".

SEC. 636. CLARIFICATION WITH RESPECT TO APPLICABILITY OF CERTAIN FEDERAL REGULATIONS TO SECONDARY MARKETS FOR STUDENT LOANS.

Section 728(c) (42 U.S.C. 294a(c)) is amended by adding at the end the following new paragraph:

"(3) With respect to Federal regulations for lenders, this subpart may not be construed to preclude the applicability of such regulations to the Student Loan Marketing Association or to any other entity in the business of purchasing student loans, including such regulations with respect to applications, contracts, and due diligence.".

SEC. 637. HEALTH CARE FOR RURAL AREAS.

(a) Health Care for Rural Areas.—Title VII of the Public Health Service Act is amended by adding at the end thereof the following:

"Part I—Health Care for Rural Areas

"SEC. 799A. HEALTH CARE FOR RURAL AREAS.

"(a) Grants.—The Secretary may make grants to, or enter into contracts with, any eligible applicant to help such applicant fund authorized activities under an application approved under subsection (d).

"(b) Use of Amounts.—

"(1) In general.—Amounts provided under subsection (a) shall be used by the recipients to fund interdisciplinary training projects designed to—

"(A) use new and innovative methods to train health care practitioners to provide services in rural areas;

"(B) demonstrate and evaluate innovative interdisciplinary methods and models designed to provide access to cost-effective, comprehensive health care;

"(C) deliver health care services to individuals residing in rural areas;

"(D) enhance the amount of relevant research conducted concerning health care issues in rural areas; and

"(E) increase the recruitment and retention of health care practitioners in rural areas and make rural practice a more attractive career choice for health care practitioners.

"(2) Methods.—A recipient of funds under subsection (a) may use various methods in carrying out the projects described in paragraph (1), including—

"(A) the distribution of stipends to students of eligible applicants;

"(B) the establishment of a post-doctoral fellowship program;

"(C) the training of faculty in the economic and logistical problems confronting rural health care delivery systems; or

"(D) the purchase or rental of transportation and telecommunication equipment where the need for such equipment due to unique characteristics of the rural area is demonstrated by the recipient.

"(3) Administration.—

"(A) In general.—An applicant shall not use more than 10 percent of the funds made available to such applicant under subsection (a) for administrative expenses.

"(B) Training.—Not more than 10 percent of the individuals receiving training with funds made available to an applicant under subsection (a) shall be trained as doctors of medicine or doctors of osteopathy.

"(c) Eligible Applicants.—Applicants eligible to obtain funds under subsection (a) shall include local health departments, nonprofit organizations and public or nonprofit colleges, universities, or schools of, or programs that specialize in, nursing, psychology, social work, optometry, public health, dentistry, osteopathy, physicians assistants, pharmacy, podiatry, medicine, chiropractic, and allied health professions if such applicants submit applications approved by the Secretary under subsection (d). Applicants eligible to obtain funds under subsection (a) shall not include for-profit entities, either directly or through a subcontract or subgrant.

"(d) Applications.—

"(1) Submission.—In order to receive a grant under subsection (a) an entity shall submit an application to the Secretary.

"(2) Forms.—An application submitted under this subsection shall be in such form, be submitted by such date, and contain such information as the Secretary shall require.

"(3) Requirements.—Applications submitted under this subsection shall—

"(A) be jointly submitted by at least two eligible applicants with the express purpose of assisting individuals in academic institutions in establishing long-term collaborative relationships with health care providers in rural areas;

"(B) designate a rural health care agency or agencies for clinical treatment or training, including hospitals, community health centers, migrant health centers, rural health clinics, community mental health centers, long-term care facilities, facilities operated by the Indian Health Service or an Indian tribe or tribal organization or Indian organization under a contract with the Indian Health Service under the Indian Self-Determination Acts, or Native Hawaiian health centers; and

'"(C) provide any additional information required by the Secretary.

"(e) Study.—

"(1) In general.—The Secretary shall enter into a contract to conduct a study of manpower training needs in rural areas, with attention focused on the supply of health professionals and whether such supply is adequate to meet the demands for health care services in rural communities.

"(2) Contents.—

"(A) Statistics.—The study conducted under paragraph (1) shall include statistics and projections on—

"(i) the supply of health care practitioners in rural areas; and

"(ii) suggested methods of improving access to health care services in rural areas. The study shall pay particular attention to the needs of the elderly in rural areas as well as the individuals in the rural areas who are not eligible for Medicare.

"(B) Evaluation.—The study conducted under paragraph (1) shall evaluate existing models for health care training and service delivery and propose innovative alternative models to enhance the quality and availability of health care services in rural areas and to increase the retention of health professionals in rural areas.

"(3) Health care training and service delivery models.—The Secretary shall evaluate the effectiveness of the health care training and service delivery models developed with funds made available under this section and compare such models with programs designed to increase the availability of health care providers in rural areas, including the National Health Service Corps program authorized by subpart II of part D of the Public Health Service Act (42 U.S.C. 254d et seq.) and the area health education center program authorized under section 781 of such Act (42 U.S.C. 295g-1).

"(4) Submission to Congress.—Not later than 18 months after the date of the signing of the contract for the health care study under paragraph (1), the Secretary shall submit to the appropriate committees of the Congress a report that describes the results of the study conducted under paragraph (1).

"(f) Peer Review.—

"(1) In general.—Each application for a grant or contract under this section shall be submitted to a peer review group for an evaluation of the merits of the proposals made in the application.

"(2) Establishment.—The Secretary shall establish such peer review groups as may be necessary to carry out paragraph (1). The Secretary shall make appointments to the peer review groups from among appropriately qualified persons who are not officers or employees of the United States.

"(3) Report of findings.—With respect to applications referred to in paragraph (1), a peer review group established pursuant to such subparagraph shall report its findings and recommendations to the Secretary. The Secretary may not approve such an application unless a peer review group has recommended the application for approval.

"(4) Administration.—This paragraph shall be carried out by the Secretary, acting through the Director of the Indian Health Service.

"(g) Definition.—For the purposes of this section, the term 'rural area' includes a frontier area, which is an area in which the population density is less than 7 individuals per square mile.

"(h) Authorization of Appropriations.—

"(1) In general.—There is authorized to be appropriated to carry out this section, other than subsection (e), $5,000,000 for each of the fiscal years 1989, 1990, and 1991.

"(2) Subsection (e).—There is authorized to be appropriated $1,000,000 for each of the fiscal years 1989, 1990, and 1991 to carry out subsection (e).".

(b) Repeal.—Section 714 of the Indian Health Care Amendments of 1988 is repealed upon the date of the enactment of this Act.

SEC. 638. ADVANCEMENT OF HEALTH CARE SERVICES.

(a) In General.—Of the amounts appropriated in each of the fiscal years 1989 through 1991 to carry out title VII of the Public Health Service Act, the Secretary of Health and Human Services shall, for each such fiscal year, make available $500,000 for the purpose of advancing the health care services furnished by qualified hospitals. For purposes of this subsection, the term "qualified hospital" means a hospital located in a rural county that—

(1) is adjacent to three counties, one of which is a central county of a Metropolitan Statistical Area, and all of which are classified as urban;

(2) has a workforce of which at least 12.2 percent of such workers commute from the rural county to the central counties of the two immediately adjacent Metropolitan Statistical Areas (out-commuting), and the total in-commuting rate from the two immediately adjacent Metropolitan Statistical Areas to the rural county is at least 6.1 percent, so that when added to the out-commuting rate from the rural county the total in/out-commuting rate is at least 18 percent;

(3) is also impacted by a third Metropolitan Statistical Area with an out-commuting rate from the rural county to that Metropolitan Statistical Area that is at least .15 percent and the in-commuting rate from the Metropolitan Statistical Area to such rural county is at least .15 percent;

(4) has more than 73,500 residents but less than 74,000 residents according to the 1980 census; and

(5) that has a health-related labor pool that is competitively impacted by, in addition to the normal competitive pressures of an urban labor market, the location in one of the adjacent Metropolitan Statistical Areas of at least three large health-related facilities, each with more than 375 beds, including a State-owned medical school/hospital complex with more than 4,000 employees, and a large Veterans Administration Hospital with more than 400 beds.

(b) Pro-Rata Determination.—In making available amounts for a fiscal year for purposes of subsection (a), the Secretary of Health and Human Services may not reduce the amounts available for each program authorized under title VII of the Public Health Service Act by more than the amount equal to the product of—

(1) the amounts appropriated, after the date of the enactment of this Act, for carrying out the program involved for the fiscal year; and

(2) a percentage equal to the quotient of—

(A) $500,000; divided by

(B) the amounts appropriated, after the date of the enactment of this Act, for carrying out such title VII.

SEC. 639. ASSESSMENTS OF HEALTH MANPOWER SHORTAGES.

(a) Request for Information.—Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services shall contact the chief executive officer of each State, the Mayor of the District of Columbia, and the chief executive officer of the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, and request that each such individual submit to the Secretary an assessment of the greatest health manpower shortages by discipline of health care providers and by allopathic and osteopathic specialty, of such individual's State, District, Commonwealth, or Territory.

(b) Report.—The Secretary of Health and Human Services shall compile and analyze the information obtained under subsection (a) and prepare and submit, to the appropriate Committees of Congress, as part of the October 1, 1991, report required under section 708(d)(1) of the Public Health Services Act (42 U.S.C. 292h(d)(1)), a report containing such information and analysis.

TITLE VII—NURSING SHORTAGE REDUCTION AND EDUCATION EXTENSION ACT OF 1988

SEC. 700. SHORT TITLE.

(a) Short Title.—This title may be cited as the "Nursing Shortage Reduction and Education Extension Act of 1988".

(b) Reference.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

Subtitle A—Special Projects

SEC. 701. SPECIAL PROJECT GRANTS AND CONTRACTS.

(a) Transfer of Program for Individuals From Disadvantaged Backgrounds.—Part A of title VIII (42 U.S.C. 296k et seq.) is amended—

(1) by inserting after the heading for such part the following new heading:

"Subpart I—Special Projects in General",

(2) by striking section 820(a)(1), and

(3) by adding at the end the following new subpart:

"Subpart II—Nursing Education Opportunities for Individuals From Disadvantaged Backgrounds

"SPECIAL PROJECTS

"Sec. 827. (a) The Secretary may make grants to public and nonprofit private schools of nursing and other public or nonprofit private entities, and enter into contracts with any public or private entity, to meet the costs of special projects to increase nursing education opportunities for individuals from disadvantaged backgrounds, as determined in accordance with criteria prescribed by the Secretary—

"(1) by identifying, recruiting, and selecting such individuals,

"(2) by facilitating the entry of such individuals into schools of nursing,

"(3) by providing counseling or other services designed to assist such individuals to complete successfully their nursing education,

"(4) by providing, for a period prior to the entry of such individuals into the regular course of education at a school of nursing, preliminary education designed to assist them to complete successfully such regular course of education,

"(5) by paying such stipends (including allowances for travel and dependents) as the Secretary may determine for such individuals for any period of nursing education,

"(6) by publicizing, especially to licensed vocational or practical nurses, existing sources of financial aid available to persons enrolled in schools of nursing or who are undertaking training necessary to qualify them to enroll in such schools, and

"(7) by providing training, information, or advice to the faculty of such schools with respect to encouraging such individuals to complete the programs of nursing education in which the individuals are enrolled.

"(b) No grant or contract may be made under this section unless an application therefor has been submitted to and approved by the Secretary. The Secretary may not approve or disapprove such an application except after consultation with the National Advisory Council on Nurse Education. Such an application shall provide for such fiscal control and accounting procedures and reports, and access to the records of the applicant, as the Secretary may require to assure proper disbursement of and accounting for Federal funds paid to the applicant under this section.

"(c) For payments under grants and contracts under subsection (a), there are authorized to be appropriated $3,000,000 for fiscal year 1989, $4,000,000 for fiscal year 1990, and $5,000,000 for fiscal year 1991.".

(b) Striking of Certain Programs.—Section 820(a) (42 U.S.C. 296k(a)) is amended—

(1) by striking paragraphs (3), (7), and (9), and

(2) by redesignating paragraphs (2), (4), (5), (6), and (8) as paragraphs (1) through (5), respectively.

(c) Geriatric Training.—Section 820(a)(2) (as redesignated by subsection (b)(2)) of this section) is amended to read as follows—

"(2) demonstrate, through geriatric health education centers and other entities, improved geriatric training in preventive care, acute care, and long-term care (including home health care and institutional care);".

(d) Upgrading Skills.—Section 820(a) (42 U.S.C. 296k(a)) is amended—

(1) by amending paragraph (3) (as redesignated by subsection (b)(2) of this section) to read as follows:

"(3)(A) increase the supply of adequately trained nursing personnel (including bilingual nursing personnel) to meet the health needs of rural areas; and

"(B) provide nursing education courses to rural areas through telecommunications via satellite;", and

(2) by amending paragraph (4) (as so redesignated) to read as follows:

"(4) provide training and education—

"(A) to upgrade the skills of licensed vocational or practical nurses, nursing assistants, and other paraprofessional nursing personnel with priority given to rapid transition programs toward achievement of professional nursing degrees; and

"(B) to develop curricula for the achievement of baccalaureate degrees in nursing by registered nurses and by individuals with baccalaureate degrees in other fields;".

(e) Coordination Projects With Respect to Loan Repayments for Service in Health Facilities.—Section 820(a) (42 U.S.C. 296k(a)) is amended by adding after paragraph (5) (as redesignated by subsection (b)(2) of this section) the following new paragraph:

"(6)(A) collect the names and addresses of health facilities willing to enter into agreements with nursing students and nursing personnel under which such individuals agree to serve as nurses in the health facilities in consideration of the health facilities agreeing to repay the principal and interest of the educational loans of such individuals;

"(B) collect data on the specific terms of such agreements offered by health facilities;

"(C) collect the names and addresses of nursing students identified pursuant to section 827(a), of other nursing students, and of nursing personnel, willing to enter into such agreements; and

"(D) coordinate and facilitate communications between health facilities and such individuals with respect to such agreements.".

(f) Geriatric Health Education Centers.—Section 820 (42 U.S.C. 296k) is amended—

(1) by redesignating subsections (b) through (d) as subsections (e) through (g), respectively, and

(2) by adding after subsection (a) the following new subsection:

"(b)(1) The Secretary may make grants to, and enter into contracts with, accredited schools of nursing to assist in meeting the costs of such schools in providing projects—

"(A) to improve the training of nurses in geriatrics;

"(B) to develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;

"(C) to expand and strengthen instruction in methods of such treatment;

"(D) to support the training and retraining of faculty to provide such instruction;

"(E) to support continuing education of nurses who provide such treatment; and

"(F) to establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric health care.

"(2)(A) Any application for a grant or contract under this subsection shall be subject to appropriate peer review by peer review groups composed principally of non-Federal experts.

"(B) The Secretary may not approve or disapprove an application for a grant or contract under this subsection unless the Secretary has received recommendations with respect to such application from the appropriate peer review group required under paragraph (1) and has consulted with the Advisory Council on Nurses Education with respect to such application.

"(C) For the purpose of carrying out this subsection, the Secretary may obligate each fiscal year not more than $2,000,000 of the amounts made available for such purpose pursuant to subsection (g)(2).".

(g) Innovative Hospital Nursing Practice Models.—Section 820 (42 U.S.C. 296k), as amended by subsection (f) of this section, is further amended by inserting after subsection (b) the following new subsection:

"(c)(1) The Secretary may make grants to public and nonprofit private entities for the purpose of demonstrating innovative hospital nursing practice models designed to reduce vacancies in professional nursing positions and to make such positions a more attractive career choice.

"(2) The Secretary may not make a grant under paragraph (1) unless the applicant for the grant agrees that hospital nursing practice models demonstrated pursuant to such subsection will include initiatives—

"(A) to restructure the role of the professional nurse, through changes in the composition of hospital staffs and through innovative approaches for interaction between hospital administration and nursing personnel, in order to ensure that the particular expertise of such nurses is efficiently utilized and that such nurses are engaged in direct patient care during a larger proportion of their work time;

"(B) to test innovative wage structures for professional nurses in order to—

"(i) reduce vacancies in work shifts during unpopular work hours; and

"(ii) provide financial recognition based upon experience and education; and

"(C) to evaluate the effectiveness of providing benefits for professional nurses, such as pensions, sabbaticals, and payment of educational expenses, as a means of developing increased loyalty of such nurses to health care institutions and reducing turnover in nursing positions.".

(h) Long-Term Care Nursing Practice Demonstrations.—Section 820 (42 U.S.C. 296k), as amended by subsection (g) of this section, is further amended by inserting after subsection (c) the following new subsection:

"(d)(1) The Secretary may make grants to public and nonprofit private entities accredited for the training of nurses for the purpose of—

"(A) demonstrating innovative nursing practice models for—

"(i) the provision of case-managed health care services (including adult day care) and health care services in the home; or

"(ii) the provision of health care services in long-term care facilities; or

"(B) developing projects to increase the exposure of nursing students to clinical practice in nursing home, home health, and gerontologic settings through collaboration between such accredited entities and entities that provide health care in such settings.

"(2) The Secretary may not make a grant under paragraph (1) unless the applicant for the grant agrees that models demonstrated pursuant to such paragraph will be designed—

"(A) to increase the recruitment and retention of nurses to provide nursing care for individuals needing long-term care; and

"(B) to improve nursing care in home health care settings and nursing homes.".

(i) Authorization of Appropriations.—Section 820(g) (as redesignated by subsection (b)(2) of this section) is amended to read as follows:

"(g)(1) For payments under grants and contracts under this section, there are authorized to be appropriated $13,000,000 for fiscal year 1989, $16,000,000 for fiscal year 1990, and $20,000,000 for fiscal year 1991.

"(2) Of the amounts appropriated pursuant to paragraph (1), the Secretary shall obligate not less than 20 percent to carry out subsection (a)(2) and subsection (b) (subject to subsection (b)(2)(C)), not less than 20 percent to carry out paragraph (3) of subsection (a), and not less than 10 percent to carry out paragraph (4) of such subsection. Of the amounts appropriated pursuant to paragraph (1) for fiscal year 1989, the Secretary shall obligate not less than 20 percent to carry out section 827.".

SEC. 702. ADVANCED NURSE EDUCATION.

Section 821(b) (42 U.S.C. 296l(b)) is amended to read as follows:

"(b) For payments under grants and contracts under this section, there are authorized to be appropriated $13,000,000 for fiscal year 1989, $13,000,000 for fiscal year 1990, and $20,000,000 for fiscal year 1991.".

SEC. 703. NURSE PRACTITIONER AND NURSE MIDWIFE PROGRAMS.

(a) Required Number of Students in Training Programs.—Section 822(a)(2)(B)(ii) (42 U.S.C. 296m(a)(2)(B)(ii)) is amended by striking "not less than eight students" and inserting "not less than six full-time equivalent students".

(b) Commitment Under Traineeship Program to Serve in Certain Areas or Facilities.—Section 822(b)(3) (42 U.S.C. 296m(b)(3)) is amended by striking "332)" and all that follows and inserting the following: "332), in an Indian Health Service health center, in a Native Hawaiian health center, in a public health care facility, in a migrant health center (as defined in section 329(a)(1)), in a rural health clinic (as defined in section 1861(aa)(2) of the Social Security Act), or in a community health center (as defined in section 330(a))".

(c) Assurances of Compliance With Guidelines.—Section 822(c) (42 U.S.C. 296m(c)) is amended—

(1) by inserting "under subsection (a) or (b)" after "operate a program"; and

(2) by striking "midwives unless this application" and inserting "midwives unless the application".

(d) Authorization of Appropriations.—Section 822(d) (42 U.S.C. 296m(d)) is amended to read as follows:

"(d) For payments under grants and contracts under subsections (a) and (b), there are authorized to be appropriated $12,000,000 for fiscal year 1989, $17,000,000 for fiscal year 1990, and $21,000,000 for fiscal year 1991.".

SEC. 704. ENHANCEMENT OF QUALITY CARE.

(a) In General.—Of the amounts appropriated for each of the fiscal years 1989 through 1991 to carry out titles VII and VIII of the Public Health Service Act, the Secretary of Health and Human Services shall, for each of such fiscal years, make available $650,000 for the purpose of enhancing the ability of a qualified hospital to provide high-quality inpatient services. For purposes of this subsection, the term "qualified hospital" means a hospital that, as of the date of the enactment of this Act, is the only general short-term acute care hospital located in a rural county that is adjacent to 7 counties, of which 1 such adjacent county is a county described in paragraph (8)(B) of section 1886(d) of the Act referred to in section 371(b)(1)(C) of the Public Health Service Act and, of the remaining 6 such adjacent counties, 5 such counties are (or are treated as) urban counties for purposes of such section 1886(d) and 1 such county is not (or is not treated as) an urban county for purposes of such section.

(b) Pro Rata Determination.—In making available amounts for a fiscal year for purposes of subsection (a), the Secretary of Health and Human Services may not reduce the amounts available for each program of titles VII and VIII of the Public Health Service Act by more than an amount equal to the product of—

(1) the amounts appropriated, after the date of the enactment of this Act, for carrying out the program involved for the fiscal year; and

(2) a percentage equal to the quotient of—

(A) $650,000; divided by

(B) the amounts appropriated, after the date of the enactment of this Act, for carrying out such titles VII and VIII.

SEC. 705. IMPROVING HEALTH CARE SERVICES.

(a) In General.—Of the amounts appropriated for each of the fiscal years 1989 through 1991 to carry out titles VII and VIII of the Public Health Service Act, the Secretary of Health and Human Services shall, for each of such fiscal years, make available $210,000 for the purpose of improving the health care services furnished by a qualified hospital. For purposes of this subsection, the term "qualified hospital" means a hospital located in a rural county—

(1) that is adjacent to 6 counties, of which 3 adjacent counties are urban (2 of the urban counties being located in another State), and of which 2 of the adjacent rural counties are without hospital facilities,

(2) that is located within 7 miles of another urban county in a separate Metropolitan Statistical Area from the Metropolitan Statistical Area in which the urban counties adjacent to the rural counties are located,

(3) that has more than 17,500 residents but less than 17,550 residents according to the 1980 census,

(4) that has a workforce of which more than 39.5 percent of those reporting workplace commute to the adjacent urban counties to the 1980 census, and

(5) that has a health-related labor pool which is competitively impacted by, in addition to the normal competitive pressures of an urban labor market, the location in 1 of the adjacent urban counties (in another State) of several large health-related facilities, including that State's sole State-owned medical school/hospital complex with more than 5,500 employees, a large Veterans Administration Hospital with more than 1,000 beds, and a United States Army hospital with more than 350 beds.

(b) Pro Rata Determination.—In making available amounts for a fiscal year for purposes of subsection (a), the Secretary of Health and Human Services may not reduce the amounts available for each program of titles VII and VIII of the Public Health Service Act by more than an amount equal to the product of—

(1) the amounts appropriated, after the date of the enactment of this Act, for carrying out the program involved for the fiscal year; and

(2) a percentage equal to the quotient of—

(A) $210,000; divided by

(B) the amounts appropriated, after the date of the enactment of this Act, for carrying out such titles VII and VIII.

SEC. 706. INCENTIVE SPECIAL PAY FOR PUBLIC HEALTH SERVICE NURSES.

Subsection (a) of section 208 (42 U.S.C. 210(a)) is amended by adding at the end the following new paragraph:

"(3) Commissioned nurse officers in the Regular and Reserve Corps shall, while on active duty, be paid incentive special pay in the same amounts as, and under the same terms and conditions which apply to, the incentive special pay now or hereafter paid to commissioned nurse officers of the Armed

Forces under chapter 5 of title 37, United States Code.".

SEC. 707. EXTENSION OF PERIOD FOR INSURANCE OF NEW LOANS.

Section 728(a) (42 U.S.C. 294a(a)) is amended—

(1) by inserting before the period at the end of the second sentence the following: ", and if in any fiscal year no ceiling has been established, any difference carried over shall constitute the ceiling for making new loans (including loans to new borrowers) and paying installments for such fiscal year."; and

(2) in the third sentence by striking "1991," and inserting "1994,".

Subtitle B—Assistance to Nursing Students

SEC. 711. TRAINEESHIPS FOR ADVANCED EDUCATION OF PROFESSIONAL NURSES.

(a) Traineeships for Certain Part-Time Students in Advanced Nursing Programs.—Section 830 (42 U.S.C. 297) is amended by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following new subsection:

"(c)(1) The Secretary may make grants to public and nonprofit private schools of nursing to cover the costs of traineeships for students—

"(A) who are enrolled at least half-time in programs offering a masters degree in nursing; and

"(B) who agree to complete the requirements for degrees from such programs not later than the end of the academic year during which the student is to receive the traineeship.

"(2) In making grants under paragraph (1), the Secretary shall give special consideration to applications for traineeship programs that educate nursing students to serve in and prepare for practice as nurse practitioners, clinical specialists, or nurse midwives.".

(b) Authorization of Appropriations for Traineeship Programs.—Section 830 (42 U.S.C. 297) is amended by amending subsection (d) (as redesignated by subsection (a) of this section) to read as follows:

"(d)(1)(A) For the purposes of subsections (a) and (c), there are authorized to be appropriated $13,000,000 for fiscal year 1989, $15,000,000 for fiscal year 1990, and $16,000,000 for fiscal year 1991.

"(B) Of the amounts made available pursuant to subparagraph (A), the Secretary shall make available not less than 25 percent to carry out subsection (c).

"(2) For the purposes of subsection (b), there is authorized to be appropriated $1,100,000 for each of the fiscal years 1989 through 1991.".

SEC. 712. NURSE ANESTHETISTS.

(a) Traineeships and Other Programs.—

(1) Section 831(a)(1) (42 U.S.C. 297-1(a)(1)) is amended to read as follows:

"(1) The Secretary may make grants to public or private nonprofit institutions to cover the costs of traineeships for licensed registered nurses to become nurse anesthetists and to cover the costs of projects to develop and operate programs for the education of nurse anesthetists. In order to be eligible for such a grant, the program of an institution must be accredited by an entity or entities designated by the Secretary of Education and must meet such requirements as the Secretary shall by regulation prescribe.".

(2) Section 831(a)(2) (42 U.S.C. 29701(a)(2)) is amended by amending the second sentence to read as follows: "Payments for traineeships shall be limited to such amounts as the Secretary determines to be necessary to cover the costs of tuition and fees and a stipend and allowances (including travel and subsistence expenses) for trainees.".

(b) Authorization of Appropriations.—The first sentence of section 831(c) (42 U.S.C. 297-1(c)) is amended to read as follows: "For the purpose of making grants under this section, there is authorized to be appropriated $1,800,000 for each of the fiscal years 1989 through 1991.".

SEC. 713. LOAN PROVISIONS.

(a) Rule of Construction With Respect to Certain Uncollectable Loans.—Section 835(c)(1) (42 U.S.C. 297a(c)(1)) is amended by adding at the end the following new sentence: "With respect to the student loan fund established pursuant to such agreements, this subsection may not be construed to require such schools to reimburse such loan fund for loans that became uncollectable prior to 1983.".

(b) Increases With Respect to Annual and Aggregate Loan Totals.—Section 836(a) (42 U.S.C. 297b(a)) is amended—

(1) in the first sentence, by inserting before the period the following: ", except that for the final two academic years of the program involved, such total may not exceed $4,000"; and

(2) in the second sentence, by striking "$10,000" and inserting "$13,000".

(c) Preference Category of Exceptional Financial Need.—Section 836(a) (42 U.S.C. 297b(a)) is amended in the third sentence by striking "practical nurses and" and inserting "practical nurses, to persons with exceptional financial need, and".

(d) Reduction of Eligibility Standard of Need.—Section 836(b)(1)(C) (42 U.S.C. 297b(b)(1)(C)) is amended to read as follows: "(C) with respect to any student enrolling in the school after June 30, 1986, is of financial need (as defined in regulations issued by the Secretary).".

(e) Deferral Period for Half-Time Professional Training.—Section 836(b)(2)(B) (42 U.S.C. 297b(b)(2)(B)) is amended—

(1) by striking "(up to five years)" and inserting "(up to ten years)"; and

(2) by inserting after "full-time" the following: "or half-time".

(f) Reduction in Interest Rate.—Section 836(b)(5) (42 U.S.C. 297b(b)(5)) is amended by striking "6 per centum" and inserting "5 percent".

(g) Striking of Low-Income Provisions With Respect to Loan Repayment.—Section 836(j) (42 U.S.C. 297b(j)) is amended by adding "and" at the end of paragraph (2), by striking paragraph (3), and by redesignating paragraph (4) as paragraph (3).

(h) Use of Certain Unexpended Funds for Allotments.—

(1) Section 838(a)(3) (42 U.S.C. 297d(a)(3)) is amended—

(A) by inserting "(A)" after the paragraph designation; and

(B) by adding at the end the following new subparagraph:

"(B) With respect to funds available pursuant to subparagraph (A), any such funds returned to the Secretary and not alloted by the Secretary, during the period of availability specified in such subparagraph, shall be available to carry out section 843 and, for such purpose, shall remain available until expended.".

(2) Except as provided in Public Law 100-436, the amendment made by paragraph (1) shall take effect as if such amendment had been effective on September 30, 1988, and as if section 843 of the Public Health Service Act, as added by section 805 of this title, had been effective on such date.

(i) Extension of Date Certain for Capital Distribution.—Section 839 (42 U.S.C. 297e) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking "1991" and inserting "1994"; and

(B) in paragraph (1), by striking "1991" and inserting "1994"; and

(2) in subsection (b), by striking "1991" each place it appears and inserting "1994".

SEC. 714. LOAN REPAYMENTS FOR SERVICE IN CERTAIN HEALTH FACILITIES.

(a) Agreements for Loan Repayments.—Section 836(h)(1)(C) (42 U.S.C. 297b(h)(1)(C)) is amended to read as follows:

"(C) who enters into an agreement with the Secretary to serve as nurse for a period of not less than two years in an Indian Health Service health center, in a Native Hawaiian health center, in a public hospital, in a migrant health center, in a community health center, in a nursing facility, in a rural health clinic, or in a health facility determined by the Secretary to have a critical shortage of nurses;".

(b) Priorities With Respect to Agreements.—Section 836(h) (42 U.S.C. 297b(h)) is amended by adding at the end the following new paragraph:

"(5) In entering into agreements under paragraph (1), the Secretary shall give priority—

"(A) to applicants with the greatest financial need; and

"(B) to applicants that, with respect to health facilities described in such paragraph, agree to serve in such health facilities located in geographic areas with a shortage of and need for nurses, as determined by the Secretary.".

(c) Definitions.—Section 836(h) (42 U.S.C. 297b(h)), as amended by subsection (b) of this section, is further amended by adding at the end the following new paragraph:

"(6) For purposes of this subsection:

"(A) The term 'community health center' has the meaning given such term in section 330(a).

"(B) The term 'migrant health center' has the meaning given such term in section 329(a)(1).

"(C) The term 'nursing facility' has the meaning given such term in section 1919(a) of the Social Security Act (as such section is in effect during fiscal year 1991 and subsequent fiscal years), except that for fiscal years 1989 and 1990, such term means an intermediate care facility and a skilled nursing facility, as such terms are defined in subsections (c) and (i), respectively, of section 1905 of the Social Security Act.

"(D) The term 'rural health clinic' has the meaning given such term in section 1861(aa)(2) of the Social Security Act.".

(d) Authorization of Appropriations for Loan Repayments.—Subpart II of part B of title VIII (42 U.S.C. 297a et seq.) is amended by inserting after section 837 the following new section:

"AUTHORIZATION OF APPROPRIATIONS FOR LOAN REPAYMENTS FOR SERVICE IN CERTAIN HEALTH FACILITIES

"Sec. 837A. For the purpose of payments under agreements entered into under section 836(h), there is authorized to be appropriated $5,000,000 for each of the fiscal years 1989 through 1991.".

SEC. 715. NURSING SCHOLARSHIPS.

Part B of title VIII (42 U.S.C. 297 et seq.) is amended by adding at the end the following new subpart:

"Subpart III—Scholarships

"UNDERGRADUATE EDUCATION OF PROFESSIONAL NURSES

"SEC. 843. (a) The Secretary may make grants to public and nonprofit private schools accredited for the training of professional nurses for the purpose of providing scholarships to individuals who are enrolled (or accepted for enrollment) as nursing students of such schools and who are in financial need with respect to attending such schools.

"(b) The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that, in providing scholarships pursuant to the grant, the applicant will give preference to individuals from disadvantaged backgrounds (as determined in accordance with criteria prescribed by the Secretary under section 844(a)).

"(c) The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that, in providing scholarships pursuant to the grant, the applicant will provide a scholarship to an individual only if the individual agrees that, upon graduating from the program of nursing education offered by the applicant, the individual will serve as nurse for a period of not less than two years in an Indian Health Service health center, in a Native Hawaiian health center, in a public hospital, in a migrant health center, in a community health center, in a nursing facility, in a rural health clinic, or in a health facility determined by the Secretary to have a critical shortage of nurses.

"(d) The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that a scholarship provided pursuant to such subsection for attendance at a school described in such subsection may not, for any year of such attendance for which the scholarship is made, provide an amount exceeding an amount equal to the amount of the tuition and any fees for the year involved.

"(e) For purposes of this section:

"(1) The term 'community health center' has the meaning given such term in section 330(a).

"(2) The term 'migrant health center' has the meaning given such term in section 329(a)(1).

"(3) The term 'nursing facility' has the meaning given such term in section 1919(a) of the Social Security Act (as such section is in effect during fiscal year 1991 and subsequent fiscal years), except that for fiscal years 1989 and 1990, such term means an intermediate care facility and a skilled nursing facility, as such terms are defined in subsections (c) and (i), respectively, of section 1905 of the Social Security Act.

"(4) The term 'rural health clinic' has the meaning given such term in section 1861(aa)(2) of the Social Security Act.

"(f) For the purpose of making grants under this section, there are authorized to be appropriated $15,000,000 for fiscal year 1989 and $30,000,000 for each of the fiscal years 1990 and 1991.".

SEC. 716. ESTABLISHMENT OF DEMONSTRATION PROGRAM FOR STUDENT LOANS WITH RESPECT TO SERVICE IN CERTAIN HEALTH CARE FACILITIES IN UNDERSERVED AREAS.

Part B of title VIII (42 U.S.C. 297 et seq.), as amended by section 805 of this title, is further amended by adding at the end the following new subpart:

"Subpart IV—Demonstration Program For Student Loans With Respect to Service in Certain Health Care Facilities in Underserved Areas

"SEC. 847. ESTABLISHMENT OF PROGRAM.

"(a) IN GENERAL.—The Secretary may, subject to subsections (c) and (d), make loans to individuals to assist the individuals in attending schools of nursing if the individuals enter into contracts with health facilities to engage, in consideration of the agreements made pursuant to subsection (d) (relating to loan repayments), in full-time employment as nurses for a period of time equal to not more than the period of time during which the individuals receive loan assistance under this section.

"(b) PREFERENCES IN MAKING LOANS.—In making loans under subsection (a), the Secretary shall give preference to disadvantaged and minority individuals underrepresented in the nursing profession, as determined in accordance with criteria established by the Secretary.

"(c) CERTAIN REQUIREMENTS WITH RESPECT TO STUDENTS.—The Secretary may not make a loan under subsection (a) unless—

"(1) the applicant for the loan is enrolled (or accepted for enrollment) as a full-time student in a public or nonprofit school accredited for the training of professional nurses;

"(2) the applicant agrees to expend the loan only for the payment of the costs of tuition, reasonable living expenses, books, fees, and necessary transportation; and

"(3) the applicant agrees that, if the applicant is dismissed from the school for academic reasons, voluntarily terminates academic training as a nurse, or violates the contract entered into pursuant to subsection (a), the applicant will be liable to the United States in an amount equal to 100 percent of the principal and interest due on the loan.

"(d) CERTAIN REQUIREMENTS WITH RESPECT TO HEALTH CARE FACILITIES.—The Secretary may not make a loan under subsection (a) unless, with respect to contracts referred to in such subsection—

"(1) the applicant for the loan has entered into such a contract with a health care facility that is a nonprofit hospital or a long-term care facility certified under title XVIII or XIX of the Social Security Act;

"(2) such health care facility is located in a geographic area that is underserved with respect to the services of nurses, as designated pursuant to subsection (e);

"(3) the contract provides that the health care facility will repay 100 percent of the principal and interest of the loan made to the applicant under subsection (a);

"(4) the contract provides that, in serving as a nurse at the health care facility, the payments made by the facility on behalf of the applicant in repayment of the loan will be in addition to the pay that the applicant would otherwise receive for such service; and

"(5) the contract provides that, in the event the health care facility violates the contract, the facility will be liable to the United States in an amount equal to 100 percent of the principal and interest due on such loan.

"(e) DESIGNATION OF UNDERSERVED GEOGRAPHIC AREAS.—For purposes of subsection (d)(2), the Secretary shall through regulation establish criteria for the designation of such areas. The Secretary may, as appropriate, designate geographic areas using criteria in section 330(b)(4).

"(f) MAXIMUM AMOUNT OF LOAN.—The Secretary may not provide a loan under subsection (a) in an amount exceeding 100 percent of the costs described in subsection (c)(2).

"(g) INTEREST.—Loans awarded under this section shall bear interest on the unpaid balance of the loan at a rate of 5 percent per annum. Such interest shall accrue from the date the individual involved is no longer enrolled in the nursing program.

"(h) WAIVER OR SUSPENSION OF STUDENT OBLIGATIONS.—The Secretary shall by regulation provide for the waiver or suspension of any obligation of any individual receiving a loan under subsection (a) whenever compliance by the individual is impossible or would involve extreme hardship to the individual.

"(i) REQUIREMENT OF APPLICATION.—The Secretary may not make a loan under subsection (a) unless—

"(1) an application for the loan is submitted to the Secretary;

"(2) with respect to carrying out the purpose for which the loan is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

"(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"(j) SET-ASIDE WITH RESPECT TO RURAL AREAS.—Of the amounts appropriated for a fiscal year pursuant to subsection (l), the Secretary shall make available not less than 35 percent for loans under subsection (a) to individuals who will, pursuant to such loan, serve as nurses in rural areas designated under subsection (e) as geographic areas that are underserved with respect to the services of nurses.

"(k) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making loans under subsection (a), there is authorized to be appropriated $5,000,000 for the fiscal years 1989 through 1991.

"(l) SUNSET.—The authority to make loans under subsection (a) terminates September 30, 1991.".

Subtitle C—General Provisions of Title VIII

SEC. 721. NATIONAL ADVISORY COUNCIL ON NURSE TRAINING.

(a) IN GENERAL.—Section 851 (42 U.S.C. 298) is amended—

(1) in the section heading, by striking "NATIONAL ADVISORY COUNCIL ON NURSE TRAINING" and inserting in lieu thereof "ADVISORY COUNCIL ON NURSES EDUCATION"; and

(2) in subsection (a)—

(A) in the first sentence—

(i) by striking "National Advisory Council on Nurse Training" and inserting in lieu thereof "Advisory Council on Nurses Education"; and

(ii) by striking "nineteen" and inserting "twenty-one"; and

(B) in the second sentence, by striking "general public" and inserting the following: "general public, one of the appointed members shall be selected from practicing professional nurses, one of the appointed members shall be selected from among representatives of associate degree schools of nursing,".

(b) CONFORMING AMENDMENTS.—

(1) Section 820 (42 U.S.C. 296k) is amended—

(A) in subsection (e) (as redesignated by section 801(b)(2)), by striking "National Advisory Council on Nurse Training" and inserting "Advisory Council on Nurses Education"; and

(B) in subsection (f) (as so redesignated), in the second sentence, by striking "National Advisory Council on Nurse Training" and inserting "Advisory Council on Nurses Education".

(2) Section 856(1) (42 U.S.C. 298b-3(1)) is amended by striking "National Advisory Council on Nurse Training" and inserting "Advisory Council on Nurses Education".

SEC. 722. EVALUATIONS AND REPORTS.

Part C of title VIII (42 U.S.C. 298 et seq.) is amended by adding at the end the following new section:

"EVALUATIONS

"SEC. 859. (a) The Secretary shall, directly or through contracts with public and private entities, provide for evaluations of projects carried out pursuant to this title and for the dissemination of information developed as a result of such projects. Such evaluations shall include an evaluation of the effectiveness of such projects in increasing the recruitment and retention of nurses.

"(b)(1) The Secretary shall, not later than January 10, 1989, submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the manner in which the Secretary intends to carry out subsection (a).

"(2) The Secretary shall, not later than January 10, 1991, and biannually thereafter, submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report summarizing evaluations carried out pursuant to subsection (a) during the preceding two fiscal years.

"(c) Of the amounts appropriated each fiscal year to carry out this title, the Secretary shall make available one percent to carry out this section.".

Subtitle D—Waiver of Liability for Certain Sale of Facility Under Program of Construction and Modernization of Medical Facilities

SEC. 731. ESTABLISHMENT OF WAIVER AUTHORITY.

(a) IN GENERAL.—If, pursuant to subsection (b) of section 832, the Secretary of Health and Human Services makes a certification of compliance with the conditions described in subsection (a) of such section, section 609 of the Public Health Service Act (42 U.S.C. 291i) shall not, with respect to the transferor and transferee described in subsection (b), apply to the sale on November 26, 1986, of the medical facility—

(1) located in Blanding, in the State of Utah;

(2) known, prior to such date, as San Juan County Nursing Home; and

(3) with respect to which funds were received during the years 1967 through 1970 pursuant to title VI of the Public Health Service Act (42 U.S.C. 291 et seq.).

(b) DESCRIPTION OF PARTIES TO SALE.—In the sale described in subsection (a), the transferor is San Juan County, a political subdivision of the State of Utah, and the transferee is Auburn Manor Holding Corporation, a corporation under the laws of the State of California.

SEC. 732. CONDITIONS OF WAIVER.

(a) IN GENERAL.—The conditions referred to in section 831(a) are that, not later than the expiration of the 12-month period beginning on the date of the enactment of this Act—

(1)(A) San Juan County establish an irrevocable trust with a residual of $321,057 for the sole purpose of satisfying, with respect to the medical facility described in section 831(a), the obligation of San Juan County under regulations issued under clause (2) of section 603(e) of the Public Health Service Act (42 U.S.C. 291c(e));

(B) except to the extent inconsistent with this title, San Juan establish such trust in accordance with regulations issued under section 609(d)(1)(A) of such Act for trusts established pursuant to such section; and

(C) San Juan County agree—

(i) except to the extent inconsistent with this title, to administer such trust in accordance with regulations issued under such section 609(d)(1)(A) of such Act; and

(ii) with respect to the obligation described in subparagraph (A)—

(I) to carry out such obligation at the medical facility known as San Juan County Hospital and located in Monticello, in the State of Utah;

(II) to ensure that uncompensated services provided at any location other than such medical facility will not be reimbursed from the trust established pursuant to subparagraph (A); and

(III) not to seek contribution from Auburn Corporation towards the satisfaction of such obligation; and

(2) Auburn Corporation agree—

(A) to satisfy, with respect to the medical facility described in section 831(a), the obligation of San Juan County under regulations issued under clause (1) of section 603(e) of the Public Health Service Act;

(B) to satisfy such obligation at the medical facility described in section 831(a); and

(C) not to seek contribution from San Juan County towards the satisfaction of such obligation.

(b) DETERMINATION AND CERTIFICATION OF SATISFACTION OF CONDITIONS.—The Secretary shall make a determination of whether the conditions described in subsection (a) are satisfied by San Juan County and Auburn Corporation within the period described in such subsection. If the Secretary makes a determination that the conditions have been satisfied, the Secretary shall certify to the Congress the fact of such determination.

SEC. 733. MONITORING OF COMPLIANCE WITH AGREEMENTS AND EFFECT OF FAILURE TO COMPLY.

(a) MONITORING.—The Secretary shall determine the extent to which San Juan County and Auburn Corporation are carrying out their respective duties under the agreements made pursuant to the conditions described in section 832(a).

(b) FAILURE TO COMPLY.—

(1) If the conditions described in section 832(a) are not satisfied by San Juan County and Auburn Corporation within the period described in such section, the Secretary shall ensure that proceedings under section 609 of the Public Health Service Act (42 U.S.C. 291i) with respect to the sale described in section 831(a) are commenced or continued against San Juan County or Auburn Corporation, or both, as determined by the Secretary.

(2) If San Juan County or Auburn Corporation fails to carry out its duties under the agreements made pursuant to the conditions described in section 832(a), the Secretary shall ensure that proceedings described in paragraph (1) are commenced or continued against San Juan County or Auburn Corporation, respectively.

SEC. 734. DEFINITIONS.

For purposes of this subtitle:

(1) The term "Auburn Corporation" means Auburn Manor Holding Corporation, a corporation under the laws of the State of California.

(2) The term "San Juan County" means San Juan County, a political subdivision of the State of Utah.

(3) The term "Secretary" means the Secretary of Health and Human Services.

TITLE VIII—REVISION AND EXTENSION OF PROGRAMS OF HEALTH CARE FOR THE HOMELESS

Subtitle A—Categorical Grants for Primary Health Services and Substance Abuse Services

SEC. 801. INCREASE IN REQUIRED AMOUNT OF MATCHING FUNDS AND MODIFICATION IN ELIGIBILITY FOR WAIVER WITH RESPECT TO MATCHING FUNDS.

(a) INCREASE IN REQUIRED AMOUNT.—Section 340(e)(1)(A) of the Public Health Service Act (42 U.S.C. 256(e)(1)(A)) is amended—

(1) in clause (i), by striking "under the grant; and" and inserting the following: "for the first fiscal year of payments under the grant and 66⅔ percent of the costs of providing such services for any subsequent fiscal year of payments under the grant; and"; and

(2) in clause (ii), by striking "Federal funds" and all that follows and inserting the following: "Federal funds provided for the first fiscal year of payments under the grant and not less than $1 (in cash or in kind under such subparagraph) for each $2 of Federal funds provided for any subsequent fiscal year of payments under the grant.".

(b) EFFECTIVE DATE FOR INCREASE.—The amendments made by subsection (a) shall take effect October 1, 1989.

(c) MODIFICATION IN ELIGIBILITY FOR WAIVER.—Section 340(e)(2) of the Public Health Service Act (42 U.S.C. 256(e)(2)) is amended to read as follows:

"(2) The Secretary may waive the requirement established in paragraph (1)(A) if the applicant involved is a nonprofit private entity and the Secretary determines that it is not feasible for the applicant to comply with such requirement.".

SEC. 802. ESTABLISHMENT OF AUTHORITY FOR TEMPORARY CONTINUED PROVISION OF SERVICES TO CERTAIN FORMER HOMELESS INDIVIDUALS.

(a) IN GENERAL.—Section 340 of the Public Health Service Act (42 U.S.C. 256) is amended—

(1) by redesignating subsections (h) through (q) as subsections (i) through (r), respectively; and

(2) by adding after subsection (g) the following new subsection:

"(h) TEMPORARY CONTINUED PROVISION OF SERVICES TO CERTAIN FORMER HOMELESS INDIVIDUALS.—If any grantee under subsection (a) has provided services described in subsection (f) or (g) to a homeless individual, any such grantee may, notwithstanding that the individual is no longer homeless as a result of becoming a resident in permanent housing, expend the grant to continue to provide such services to the individual for not more than 12 months.".

(b) CONFORMING AMENDMENTS.—

(1) Section 340(d)(1) of the Public Health Service Act (42 U.S.C. 256(d)(1)) is amended—

(A) in subparagraph (C), by striking "(h)" and inserting "(i)";

(B) in subparagraph (D), by striking "(i)" and inserting "(j)";

(C) in subparagraph (E), by striking "(j)" and inserting "(k)"; and

(D) in subparagraph (F), by striking "(k)" and inserting "(l)".

(2) Section 332(a)(3) of the Public Health Service Act (42 U.S.C. 254e(a)(3)) is amended by striking "340(q)(2)" and inserting "340(r)".

(3) Section 536(1) of the Public Health Service Act (42 U.S.C. 290cc-36(1)) is amended by striking "340(q)(2)" and inserting "340(r)".

SEC. 803. CLARIFICATION WITH RESPECT TO CERTAIN PROVISIONS.

(a) Definition of Homeless Individual.—Section 340(r)(2) of the Public Health Service Act (as redesignated in section 902(a)(1) of this title) is amended by striking "living accommodations." and inserting "living accommodations and an individual who is a resident in transitional housing.".

(b) Provision of Technical Assistance.—Section 340(o)(2) of the Public Health Service Act (as redesignated in section 902(a)(1) of this title) is amended by striking "(p)(1)," and inserting "(q)(1) for a fiscal year,".

SEC. 804. AUTHORIZATION OF APPROPRIATIONS.

Section 340(q)(1) of the Public Health Service Act (as redesignated in section 902(a)(1) of this title) is amended by striking "There are authorized" and all that follows and inserting the following: "There are authorized to be appropriated to carry out this section $61,200,000 for fiscal year 1989, $63,600,000 for fiscal year 1990, and $66,200,000 for fiscal year 1991.".

Subtitle B—Block Grant for Community Mental Health Services

SEC. 811. AUTHORIZATION OF APPROPRIATIONS AND CONTINGENT CONVERSIONS TO CATEGORICAL PROGRAM.

(a) In General.—Section 535 of the Public Health Service Act (42 U.S.C. 290cc-35) is amended to read as follows:

"FUNDING

"Sec. 535. (a) Authorization of Appropriations.—For the purpose of carrying out this part, there are authorized to be appropriated $35,000,000 for each of the fiscal years 1989 and 1990 and such sums as may be necessary for fiscal year 1991.

"(b) Effect of Insufficient Appropriations for Minimum Allotments.—

"(1) If the amounts made available pursuant to subsection (a) are insufficient for providing each State with an allotment under section 521(a) of not less than $150,000, the Secretary shall, from such amounts as are made available pursuant to such subsection, make grants to the States for providing to homeless individuals the mental health services described in section 524.

"(2) Paragraph (1) may not be construed to require the Secretary to make a grant under such paragraph to each State.".

(b) Failure of State With Respect to Expending Allotment.—Section 529 of the Public Health Service Act (42 U.S.C. 290cc-29) is amended to read as follow:

"CONVERSION TO STATE CATEGORICAL PROGRAM IN EVENT OF FAILURE OF STATE WITH RESPECT TO EXPENDING ALLOTMENT

"Sec. 529. (a) In General.—Subject to subsection (c), the Secretary shall, from amounts described in subsection (b), make grants to public and nonprofit private entities for the purpose of providing to homeless individuals the mental health services described in section 524.

"(b) Description of Funds.—The amounts referred to in subsection (a) are any amounts made available in appropriations Acts for allotments under section 521(a) that are not allotted under such section to a State as a result of—

"(1) the failure of the State to submit an application under section 522;

"(2) the failure, in the determination of the Secretary, of any State to prepare within a reasonable period of time such application in compliance with such section; or

"(3) the State informing the Secretary that the State does not intend to expend the full amount of the allotment made to the State.

"(c) Requirement of Provision of Services in Certain States.—With respect to grants under subsection (a), amounts made available pursuant to subsection (b) as a result of the State involved shall be available only for grants to provide services in such State.".

SEC. 812. ELIGIBILITY OF TERRITORIES.

(a) Definition of State.—Section 536(3) of the Public Health Service Act (42 U.S.C. 290cc-36(3)) is amended by striking "Columbia," and all that follows and inserting the following: "Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands.".

(b) Minimum Allotment.—Section 528(a)(1) of the Public Health Service Act (42 U.S.C. 290cc-28(a)(1)) is amended to read as follows:

"(1) $275,000 for each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico and $50,000 for each of Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands; and".

SEC. 813. TECHNICAL AND CONFORMING AMENDMENTS.

Title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended—

(1) in section 521(a), by amending the first sentence to read as follows: "The Secretary shall for each of the fiscal years 1989 through 1991 make an allotment for each State in an amount determined in accordance with section 528.";

(2) in section 541(a)(4), by striking "522" and inserting "543";

(3) in section 545(d), by striking "526" and inserting "547"; and

(4) in section 546(a)(4), by striking "521" and inserting "542".

Subtitle C—Authorization of Appropriations for Community Demonstration Projects

SEC. 821. MENTAL HEALTH SERVICES FOR HOMELESS INDIVIDUALS WITH CHRONIC MENTAL ILLNESS.

The first sentence of section 612(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 290aa-3 note) is amended to read as follows: "For payments pursuant to section 504(f) of the Public Health Service Act, there are authorized to be appropriated $11,000,000 for fiscal year 1989, $11,500,000 for fiscal year 1990, and such sums as may be necessary for fiscal year 1991, in addition to any other amounts authorized to be appropriated for such payments for each of such fiscal years.".

SEC. 822. ALCOHOL AND DRUG ABUSE TREATMENT OF HOMELESS INDIVIDUALS.

Section 513(b) of the Public Health Service Act (42 U.S.C. 290bb-2(b)) is amended to read as follows:

"(b) There are authorized to be appropriated to carry out section 512(c) $14,000,000 for fiscal year 1989, $17,000,000 for fiscal year 1990, and such sums as may be necessary for fiscal year 1991.".

Subtitle D—General Provisions

SEC. 831. EFFECTIVE DATES.

The amendments made by subsection (a) of section 901 shall take effect in accordance with subsection (b) of such section. The amendments otherwise made by this title shall take effect October 1, 1988, or upon the date of the enactment of this Act, whichever occurs later.

TITLE IX—TESTING OF CONVICTED FELONS

SEC. 901. SHORT TITLE.

This title may be cited as the "Prison Testing Act of 1988".

SEC. 902. TESTING OF STATE PRISONERS.

(a) In General.—To be eligible to receive funds under this section, the chief law enforcement officer of each State shall establish a State program to provide for the confidential testing of any individual convicted under State law, of an intravenous drug or sex offense on or after the date of enactment of this title.

(b) Confidentiality.—

(1) In general.—Except as otherwise provided, no person receiving identifying information regarding an individual tested pursuant to this section shall disclose or redisclose such information to any person.

(2) Waiver.—The confidentiality of the testing required under subsection (a) shall be waived only so that—

(A) correctional personnel, as considered necessary under laws of the State or policies established by the State department of health, may have access to the information; and

(B) victims of rape may be informed of the result of the test, if the person convicted of the rape tests positive for exposure to the human immunodeficiency virus.

(c) Medical Treatment of Drug and Sex Offenders.—The chief law enforcement officer of each State receiving funds under this section shall provide education and counseling through existing prison medical facilities to any individual tested for exposure to the human immunodeficiency virus established under subsection (a).

(d) Funding.—

(1) In general.—The program established under subsection (a) shall be conducted in part using funds made available under this section.

(2) Requirement.—A State shall not receive funds under this section unless an application for such has been submitted to, and approved by, the Attorney General.

(3) Contents.—An application submitted under paragraph (1) shall—

(A) be in such form and be submitted in such manner as the Attorney General may by regulation require; and

(B) contain—

(i) assurances by the chief executive officer of the State will provide, through existing medical facilities in State penal institutions, education and pre- and post-test counseling to any individual tested for exposure to the human immunodeficiency virus under this section;

(ii) a 50 percent cost share under subsection (a) by the State; and

(iii) such other information as the Attorney General may by regulation specify.

(e) Definitions.—As used in this section, the term "intravenous drug or sex offense" means—

(1) an offense that is punishable, under a State law relating to intravenous use of a controlled substance (other than a law relating to simple possession of a controlled substance), by imprisonment for a term exceeding one year;

(2) a State offense of the same type described under chapter 99 of title 18, United States Code, relating to rape; or

(3) a State criminal offense involving prostitution.

(f) REGULATIONS.—The Attorney General shall promulgate regulations to carry out this section, including regulations that determine the amount of funds that each State is entitled to receive under this section.

(g) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1988 through 1990.

SEC. 903. STUDY BY ATTORNEY GENERAL.

Not later than 1 year after the date of enactment of this title, the Attorney General of the United States shall complete a study and submit a report to the appropriate Committees of Congress concerning the appropriateness or unappropriateness of mandated prison sentences for any individual convicted of an intravenous drug or sex offense who thereafter knowingly places others at risk of becoming infected with the human immunodeficiency virus.

SEC. 904. EFFECTIVE DATE.

This title shall become effective 180 days after the date of enactment of this Act.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

GENERIC ANIMAL DRUG AND PATENT TERM RESTORATION ACT

Mr. BYRD. Mr. president, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 1016, S. 2843.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 2843) to amend the Federal Food, Drug, and Cosmetic Act to authorize abbreviated new animal drug applications and to amend title 35, United States Code, to authorize the extension of the patents for animal drug products.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3680

Mr. HATCH. Mr. President, I send an amendment in the nature of a substitute to the desk on behalf of myself and Mr. KENNEDY.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for himself and Mr. KENNEDY, proposes an amendment numbered 3680.

(The amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. HATCH. Mr. President, I urge my colleagues to support S. 2843, the Animal Drug Amendments of 1988. I am pleased that Senator KENNEDY has cosponsored this bill. It picks up where we left off after the adoption of the Drug Price Competition and Patent Term Restoration Act of 1984.

I would also like to applaud the work of Congressmen TAUKE and WAXMAN. They have worked long and hard with me to achieve this key legislation.

It promotes generic competition, stimulates research, and increases the development of animal drugs. By establishing an approval mechanism for generic versions of post-1962 animal drugs, the bill will make available more low-cost generic drugs. As with the human drug law, developers of new animal drugs will be able to recoup more of their research and development costs by being able to extend the patent lives of their drugs. Such extensions will also provide companies the time needed to receive Federal agency marketing approval. These important goals would be achieved without any lessening of public health protection.

Essentially, the bill we are introducing today will track FDA's existing policies and procedures for the approval of generic versions of animal drugs approved before 1962, while providing enough flexibility to make case-by-case scientific judgments regarding the data needed to support abbreviated application. Under the bill, a generic animal drug product must be bioequivalent to a pioneer—or listed—animal drug product; however, duplicative safety and effectiveness data need not be submitted. Drugs used in food animals will need to satisfy requirements for human safety. Moreover, because animal drugs may be used in more than one animal species, testing in one or more or the approved species may be required.

I am pleased that the bill has the support of the brand name Animal Drug Manufacturers, the Generic Animal Drug Manufacturers, and the Food and Drug Administration, who worked together to achieve consensus on this important matter. Let me stress two sections of the bill. First, it will protect any animal drug approved between January 1, 1981, and the enactment date from generic competition for up to 3 years after its patent expires or 10 years from the animals drug's approval date, whichever occurs earlier. This extension will lessen the impact of generic competition on recently approved animal drugs developed in reliance on the existing statutory scheme. These transition provisions, which have been developed out of fairness, are consistent with provisions contained in the human drug law. Second, this compromise bill also creates a private right of action for companies entitled to exclusive marketing so the use of unapproved animal drugs may be restrained. This provision will be of great assistance in combating the black market of unapproved bulk animal drugs.

Unlike human drugs, animal drugs must be shown to be safe and effective in animals and in human food. Therefore, this compromise bill also permits a new Animal Drug Manufacturer to waive its 5-year exclusivity entitlement when a drug is first approved for use in nonfood producing animals so the period can be applied when the drug is approved for use in food-producing animals. In this way, the idiosyncrasies of animal drug development are recognized. The bill also provides statutory recognition of the veterinary prescription drug category in the Federal Food, Drug, and Cosmetic Act.

The Drug Price Competition and Patent Term Restoration Act of 1984 has been a significant factor in stimulating competition in the human drug market. The time has come for is to recognize that the same goals should be accomplished in the animal drug industry. Moreover, I believe this legislation is the best mechanism to achieve this goal.

There are several organizations that support this legislation. They include the committee for just animal drug law, the Generic Pharmaceutical Industry Association the National Grange, the American Farm Bureau Federation, the Alabama Farmers Federation, the American Veal Association, the National Turkey Federation, and the United Egg Producers. I hope all Members of the Senate will join me in supporting it.

Mr. BOND. Mr. President, I believe the legislation we have before us today is the result of a delicate compromise—one that proponents feel will lower the cost of generic animal drugs while at the same time maintaining incentives for continued research and development. Although I was not a Member when this issue came before the Senate in 1986, I have researched the bill and now feel comfortable with the vast majority of its provisions. It is apparent that a great deal of work went into developing this legislation and I would like to commend my colleagues, Senators HATCH and KENNDY, for their diligence and perseverance in pursuing it.

Mr. President, I doubt that any member of this body would oppose legislation which lowers the cost of animal drugs—whether it be for the family dog or for feeder cattle. As we all know, livestock producers are continuously searching for ways to lower their cost of production. In the short-run, the development of generic animal drugs will undeniably decrease prices and thus production costs.

However, it is important we remember that lower prices are only half the equation—the other half being the continued research and development of new products. Although the two are not mutually exclusive, they do represent a significant challenge. Without sufficient patent protection, I am concerned that innovators, companies heavily involved in research and development, will have little incentive to pursue new products. Although the bill is very similar to legislation passed in 1984 for human drugs, we must realize that there are major differences in the two markets.

For example, we do not hesitate to provide the best medication when our loved ones are ill, paying little attention to cost. On the other hand, livestock producers must continuously make important cost/benefit decisions which directly impact their profitability. Also, as opposed to the human drug industry, the animal drug industry consists of many small—almost niche markets. According to one recent study, the average animal drug has only $9 million in annual sales. Although average sales are small, research and development costs remain high as products designed for animals to be used for human consumption must be approved by both USDA and FDA. In fact, this approval process is both species and use specific. In other words, a new drug may only be approved for a single ailment in beef cattle. Similar applications for swine would be subject to separate approval.

Mr. President, I remain concerned about this issue of derivative products. Should an innovator be required to make his data available to others to cite for any species, or just the one for which it was originally approved? While patent term restoration is helpful in maintaining the incentive to develop new products, innovators may balk at spending vast sums to continue research efforts if they are assured of patent protection for a sole species or use. As this is a legitimate concern, I am hopeful that my colleagues will join me in monitoring this legislation very closely to ensure that future research and development is not impaired.

Mr. HATCH. I certainly share my colleagues concern and will be happy to join him.

Mr. BOND. I thank my good friend. As I mentioned earlier this legislation seems to have achieved a delicate compromise. It has been considered by several committees in the House and was passed recently under suspension of the rules. Although there is not unanimous support within the animal drug industry, several major farm organizations and commodity groups have endorsed the concepts of the bill.

Mr. President, I would ask my friend, Senator HATCH, if it would be his intention to revisit these issues if we do indeed learn that longer term research and development may be impaired as a result of this bill. In fact, I would hope the relevant committees would conduct regular hearings to review the progress of this legislation.

Mr. HATCH. Without question, we will monitor the effects of this bill very carefully for I can assure him that I too believe we must preserve our long-term R&D efforts.

Mr. BOND. Mr. President, in view of my colleague's assurances the bill will be monitored closely to ensure that research and development efforts are not impaired, I am pleased to support this legislation. Its passage will benefit livestock producers throughout the Nation and I would hope we can pass it expeditiously.

Mr. LEVIN. Mr. President, one of my State's largest employers, the Upjohn Co. of Kalamazoo, MI, is concerned that the legislation before us today might make it unprofitable to remain in the animal health drug business. If companies such as Upjohn abandon this business, the result could be a loss of jobs in my State and elsewhere, and a loss of the health benefits derived from new animal health drugs by livestock and poultry producers, and pet owners.

Upjohn's concern is the issue of just compensation for the cost of compiling data necessary for FDA approval of an animal drug product. Under current law, data generated to meet FDA and USDA regulatory requirements remains the property of the party that paid for it and cannot be given to competitors or others, nor can the Government rely upon it to approve another party's animal drug product.

Fundamental to our system of law is the concept of eminent domain that prevents the Government from taking private property unless the taking is for a public purpose—that is, not primarily for the benefit of a private party—and the owner is then justly compensated.

S. 2843 permits the FDA to rely upon an innovator company's data in the approval of products submitted by the innovator's competitors. Even if we assume that this data is being taken for a "public purpose" and not to benefit a private party, there ought to be compensation to the innovator for the constructive use of his data by his competitors.

The patent term restoration provisions of this bill compensate the innovator company for some of the time lost due to regulatory requirements and review. But patent term restoration does not compensate the innovator for the costs of acquiring the data required by the FDA.

To address my constituent's concern, I had considered offering an amendment to S. 2843 to provide for protection of an innovator's data rights for a reasonable period of time. It seems to me that if a company has gone to all the work and expense involved in developing a new animal health drug, then that company should be able to protect, for some period of time, the rights to data derived in the course of developing that drug. The amendment I had considered offering would have allowed companies such as Upjohn a reasonable period of time to recoup some of the costs incurred in researching and developing new animal health drugs.

I am aware of the enormous amount of work that has gone into this bill and the efforts by its sponsors to address the concerns of innovator companies like Upjohn. Because I do not want to complicate passage of the bill, I will not offer an amendment on data rights.

However, I hope that the bill's sponsors and other interested Senators will be monitoring the effects of this legislation on the animal health drug industry, and will consider necessary adjustments in the future. Specifically, I am concerned about the precedent this legislation might set if Congress at some point considers legislation covering biotechnology products. Since biotechnology products are not patentable, the protection of data rights may be even more important in this area if companies are going to have an economic incentive to perform biotechnology research.

I commend the sponsors of this legislation for their efforts, and look forward to working with them on these issues in the future.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Utah. The amendment is agreed to.

The amendment was agreed to.

Mr. HATCH. I move to reconsider the vote by which the amendment was agreed to.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I compliment the distinguished Senator from Utah for his work on the bill. I also compliment Representative TOM TAUKE of Iowa for his efforts on behalf of this legislation.

Mr. HATCH. Mr. President, I also praise Representative TOM TAUKE, of Iowa. This is a very important bill. Without his help, it would not pass, and he certainly deserves credit for it.

I thank everybody concerned, especially my colleague from Massachusetts.

OMNIBUS DRUG INITIATIVE ACT OF 1988

The Senate continued with the consideration of H.R. 5210.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Oregon [Mr. HATFIELD]. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BOSCHWITZ (when his name was called). Mr. President, on this vote, I have a pair with the Senator from Minnesota [Mr. DURENBURGER]. If he were present and voting, he would vote "yea." If I were at liberty to vote, I would say "nay." Therefore, I withhold my vote.

Mr. BYRD. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Oklahoma [Mr. BOREN], the Senator from California [Mr. CRANSTON], and the Senator from Tennessee [Mr. GORE] are necessarily absent.

Mr. DOLE. I announce that the Senator from Minnesota [Mr. DURENBERGER], the Senator from Nebraska [Mr. KARNES], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Indiana [Mr. QUAYLE], the Senator from Wyoming [Mr. SIMPSON], and the Senator from Wyoming [Mr. WALLOP] are necessarily absent.

I further announce that, if present and voting, the Senator from Nebraska [Mr. KARNES], the Senator from Kansas [Mrs. KASSEBAUM], and the Senator from Wyoming [Mr. WALLOP] would each vote "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 25, nays 64, as follows:

[Rollcall Vote 368 Leg.]

YEAS—25

Biden
Burdick
Chafee
Cohen
Conrad
Danforth
Evans
Glenn
Harkin
Hatfield
Inouye
Kennedy
Kerry
Lautenberg
Leahy
Levin
Matsunaga
Melcher
Mikulski
Mitchell
Pell
Proxmire
Simon
Stennis
Weicker

NAYS—64

Adams
Armstrong
Baucus
Bingaman
Bond
Bradley
Breaux
Bumpers
Byrd
Chiles
Cochran
D'Amato
Daschle
DeConcini
Dixon
Dodd
Dole
Domenici
Exon
Ford
Fowler
Garn
Graham
Gramm
Grassley
Hatch
Hecht
Heflin
Heinz
Helms
Hollings
Humphrey
Johnston
Kasten
Lugar
McCain
McClure
McConnell
Metzenbaum
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pressler
Pryor
Reid
Riegle
Rockefeller
Roth
Rudman
Sanford
Sarbanes
Sasser
Shelby
Specter
Stafford
Stevens
Symms
Thurmond
Trible
Warner
Wilson
Wirth

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Boschwitz, against

NOT VOTING—10

Bentsen
Boren
Cranston
Durenberger
Gore
Karnes
Kassebaum
Quayle
Simpson
Wallop

So the amendment (No. 3678) was rejected.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEAHY. May we have order, Mr. President?

The PRESIDING OFFICER. The Senate will be in order. Senators will please clear the well. The Senate will be in order.

The majority leader.

Mr. BYRD. Mr. President, I had hoped we might be able to pursue the time agreement at this point. I indicated earlier that I would be reluctant to proceed with the bill until such time as we can get an agreement. That is the purpose of the agreement, to limit the amendments and try to expedite the action on the bill so this place does not deteriorate into a circus, a political sideshow.

Mr. President, I yield to the distinguished Senator from Alaska—how much time does he need?

Mr. STEVENS. Five minutes.

Mr. BYRD. Mr. President, I ask unanimous consent that I may yield to the Senator from Alaska for not to exceed 5 minutes and that I retain the floor.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Alaska [Mr. STEVENS], is recognized.

SENATOR JOHN C. STENNIS

Mr. STEVENS. Mr. President, I wish today to join all of my colleagues who have risen to honor the retiring President pro tempore of the Senate, the distinguished senior Senator from Mississippi, JOHN STENNIS.

All of us, here in this body, have special memories of this man, and have worked with him over the years on the full breadth of issues that have faced the country, and this body. It has been my great fortune, and honor, to serve with JOHN STENNIS on the Defense Appropriations panel, an area in which the Senator from Mississippi has been long regarded as the leader of the Congress.

Our Nation's security has always been at the forefront of the work of our esteemed chairman. JOHN STENNIS assumed the responsibilities of chairman of the Armed Services Committee in 1969, in the midst of the Vietnam war. The leadership of JOHN STENNIS during that era, which so divided our country, and at times this institution, stood for all that is best in our system.

The Senator from Mississippi never wavered in his commitment that the men and women of our Armed Forces should not lack for the means to perform the tasks they were given. National policy was a separate issue from providing for the basic needs of the young people in uniform. The profound dignity in which JOHN STENNIS led this body on these issues during and after Vietnam stand out in the history of the Senate.

The hallmark of the dedication of JOHN STENNIS to the men and women in the Armed Forces has always been his special concern for the young, enlisted personnel in the military. JOHN STENNIS never traveled to military bases merely to be feted by generals and admirals, to receive the accolades due the chairman of the Armed Services Committee, and the chairman of the Subcommittee on Defense Appropriations. JOHN STENNIS demanded to meet, in private, with the enlisted people. He went there to find out how we were fulfilling our commitment to these people, whose very lives depended on the weapons, material and support provided by the work of his committees.

I had the privilege of traveling with the Senator in my home State of Alaska, where the military faces special challenges. As to the regard and concern expressed by the Senator from Mississippi for these people, you would have thought every one of them was from Mississippi—and he always insisted on meeting with enlisted personnel to make sure he was getting the straight facts.

I can still see him sitting there in that hotel room. As a matter of fact, Mr. President, he took a listing of the people from this one base and he just said, "Send me every 10th person who is enlisted." And he sat there for a day and interviewed these young people from all over our country. They were just delighted with that opportunity, and I was, too, because he met the best of the young military at that time.

JOHN STENNIS has always viewed and has always performed his responsibilities to the Armed Forces as a special trust. This trust has well tended during his years in the Senate.

In 1983, the Appropriations Committee was privileged by JOHN STENNIS' assumption of the position of ranking member on both the full Committee on Armed Services and the Defense Subcommittee. While long a member of the Appropriations Committee, the focusing of his attention to our process has been the greatest single contribution to our work.

For the past 2 years, Senator STENNIS has served as chairman. Every member of the Senate can take pride in the achievement of the chairman this year of moving all 13 Appropriations bills through the Congress before the end of the fiscal year. JOHN STENNIS committed that the Congress would not resort to another continuing resolution or Omnibus Appropriations Act during the remainder of his tenure, and he fulfilled that promise. He has set for the Appropriations Committee a standard that I hope every member will join with me in a pledge to uphold as long as we are here.

JOHN STENNIS came to the Senate in 1947 with a promise to "plow a straight path". Few Americans have served their country as long as JOHN STENNIS. Only a select number have even approached the contributions made by the Senator from Mississippi.

As a gesture of our Nation's debt to JOHN STENNIS, the President announced in June that the next nuclear aircraft carrier will be named the U.S.S. *John C. Stennis.* This tribute only begins to testify to the work by this man to ensure the security of our Nation, and his steadfast support for the men and women of the Armed Forces.

I plan to be there for the christening of that vessel, at the side of a man I can only poorly pay tribute to today with words. That ship, built of steel, in command of all around it, and determined and dedicated in the performance of its mission, will be a better, living, tribute to a man who demonstrates every day in this body each of those qualities, the qualities that a Senator should demonstrate.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. STENNIS. If the Senator will yield, I am not sure I understand the availability of time. Is there a limitation at all? I want to respond.

Mr. FORD. Mr. President, I ask unanimous consent for the distinguished Senator from Mississippi to take as much time as he might desire to respond to the Senator from Alaska without the majority leader losing his right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STENNIS. I thank the Senator. Let me say to the Senator from Alaska and to all Members of this body, I not only deeply and warmly appreciate the remarks of the Senator—naturally, I appreciate them. I will not overvalue them, I hope, but I will cherish them; I appreciate them from the bottom of my heart. I know you mean what you say and I appreciate your judgment as shown by the content of what you said.

I ought to point out, and will point out, a great deal of my knowledge in the field of the military, military supplies, came from the Senator from Alaska. He was a lesson to me, every day, not varying in his exactness, his willingness to work, his willingness to help, his willingness to reach agreements and make recommendations to the body.

I just never did find him wanting in anything. If it was a matter of duty as a Member of this body, he would find time to do it whether he had the time or not. He was always ready and always prepared.

I appreciate his attitude toward his work here and achievements; his competence. He is of great value to all Members, I think, that have a chance to associate with him in their official work here. It has been my fortune to have been with him for many years.

When I was the chairman, I would look forward to a briefing from him on all the hard questions. There was a willingness behind the work, too, that I highly commend and point it out as a very fine example to others, particularly those that come in new.

If new Senators find a way to confer with him I find they get their bearings as they start their learning and he will stay with them, I know.

The Senator has added a lot to the strength of judgment of this body by his approach, to work out a thing no matter how long it takes and to do the sound, big thing, if I may use that term, for our Nation, for our duties, and responsibilities here in this body and generally through the operation of Government, year after year after year.

So I am among many here that appreciate his fine work and his attitude. It is not only effective, but it is encouraging to all the other Members. I warmly appreciate what you have said and I want to take the liberty of giving it out, one of the copies of the RECORD, at the appropriate time, and put it together with my own remarks.

Thank you very much. I appreciate the Senator from Alaska as a friend, too.

Mr. STEVENS. Mr. President, I thank the Senator.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, I do not believe there is any other Senator who wishes to speak. I am not sure this motion is necessary to retain the floor for the majority leader, but I will do it anyhow.

I ask unanimous consent that we now go into a quorum call and when the quorum call is rescinded, the floor is retained by the majority leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. PRYOR). Without objection, it is so ordered.

Mr. BYRD. Mr. President, is there a request before the Senate?

The PRESIDING OFFICER. The Chair knows of no request.

Mr. BYRD. Mr. President, I believe that it would be possible at this time to proceed with an amendment by Mr. KENNEDY under a 1-hour time limitation to be equally divided in accordance with the usual form with the proviso that no amendments be in order. It is shown in the category 3 amendments: Mr. KENNEDY, racial justice modification to death penalty. We talked about it.

Mr. McCLURE. Mr. President, will the Senator yield,

Mr. BYRD. Yes, I yield.

Mr. McCLURE. Is that amendment available to Members?

Mr. BYRD. Mr. KENNEDY is preparing it right now.

Mr. McCLURE. I have not seen it. I do not know whether it varies from or is identical to the one he offered at an earlier time on a different measure.

The PRESIDING OFFICER. Is there objection? Without objection it is so ordered.

Mr. BYRD. Did a Senator wish to be recognized to speak in the meantime while Mr. KENNEDY is preparing his amendment?

Mr. DECONCINI. I wonder if it would be possible to reserve 1 minute to pass a bill that has finally been cleared on all sides, S. 2840, Mr. President, introduced by myself, Senator MCCAIN, and Senator MCCLURE. It has finally been cleared. We have been working on it for about 10 days and I ask for the leadership's indulgence.

Mr. BYRD. It has not been cleared on the other side yet.

Mr. DOLE. We think it has. We need to make one phone call.

It has been cleared.

ARIZONA-IDAHO CONSERVATION ACT

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1007, S. 2840, and after passage of the bill, I retain my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered. The bill will be stated by title.

The assistant legislative clerk read as follows:

> A bill (S. 2840) to provide for the designation and conservation of certain lands in the States of Arizona and Idaho, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3682

Mr. DeCONCINI. Mr. President, I send an amendment in the nature of a substitute to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona (Mr. DeConcini) for himself and Mr. McCain proposes an amendment numbered 3682.

(The text of the amendment appears later in today's Record under Amendments Submitted.)

Mr. DeCONCINI. Mr. President, I rise in strong support of an amendment in the nature of a substitute to S. 2840, an omnibus package of public lands bill which have enormous impacts for the State of Arizona. S. 2840, as reported by the Energy and Natural Resources Committee, contains the text of S. 2352, the Santa Rita Public Lands Exchange Act of 1988, H.R. 4519, a bill to authorize the exchange of certain lands in the States of Arizona and Florida, and S. 252, a bill to establish the San Pedro Riparian National Conservation Area. All of these bills are very important to my State and I want to take a few minutes to discuss each of them individually.

SAN PEDRO RIPARIAN NATIONAL CONSERVATION AREA

Title I of the bill will establish the San Pedro Riparian National Conservation Area. It contains the text of S. 252. This legislation will place approximately 56,431 acreas of unique BLM lands which run along a 31-mile stretch of the San Pedro River, in southeastern Cochise County, AZ, under the special management of a national conservation area. The San Pedro lands were acquired by the BLM from Tenneco, Inc. on March 6, 1986. The bulk of the lands include two Spanish land grants rich in cultural archeological, paleontological, and wildlife habitat resources of unequaled significance in the Southwest. The Arizona State Director of the BLM, Mr. Dean Bibles, demonstrated brilliant foresight in his acquisition of this important resource area. The value of the lands comprising the San Pedro Riparian Area have been known for many years, and the acquisition of the lands by the BLM, utilizing the management scheme outlined in the pending legislation, will ensure the proper preservation of the San Pedro resources for years to come.

H.R. 568, the House companion measure, and S. 252, have the unanimous support of the entire Arizona congressional delegation. A great deal of effort has gone into crafting a bill which will guarantee the property is managed in a manner different from other public domain lands. Specific provisions have been included in the legislation restricting use so that the delicate riparian resources will not be harmed in any way. For example, section 2 of the bill authorizes the Secretary of the Interior to limit access to the area at any time he feels the resources may be jeopardized by such use. Section 2 also withdraws the area from any form of mineral entry. The San Pedro Riparian National Conservation Area will be managed for the primary purposes of protecting the riparian, aquatic, wildlife, paleontological, scientific, cultural, educational and receational resources.

The bill as introduced would have prohibited the issuance of any special use permits for the grazing of livestock for a period of 15 years. The purpose of this provision was for its research value. There are very few areas in the United States where we have been afforded the opportunity to evaluate the affects on riparian lands in the absence of grazing. At the request of certain committee members, however, this provision was eliminated from the reported bill. Nonetheless, language has been included in the committee report stating the committee's intent that no new grazing leases be issued for this area. Mr. President, I am content with that language as I hope it will accomplish the same goal as the original bill language. I would like to point out, however, that my desire for a livestock grazing moratorium for the San Pedro lands in no way reflects my desire to see a moratorium for other riparian lands. Livestock grazing is an important part of this Nation's tradition and is a very valuable management tool for many of our public lands. The San Pedro lands are very unique and I feel we must fully evaluate the sensitive resources of this important area before we permit any uses which may have an adverse impact.

The San Pedro Riparian National Conservation Area, I believe, will go down in history as one of the wisest Federal acquisitions. Its protective management under the provisions of the legislation now before this body will ensure its preservation for use and enjoyment by future generations. We have many, many individuals to thank for this accomplishment, and I want the record to reflect my sincere and genuine appreciation to all who worked so hard to put this piece of legislation together.

Mr. President, the amendment I am offering to the water rights section in title I of S. 2840, clarifies the process to be utilized by the Secretary of the Interior when claiming the Federal Government's reserve water right created by the establishment of the San Pedro Riparian National Conservation Area. The language included in the bill reported by the committee, requires the Secretary of the Interior to perfect the Federal reserved right in the general stream adjudication presently underway in the Superior Court of the State of Arizona. The language further states that this adjudication is a McCarran amendment proceeding. Since markup of the San Pedro legislation, however, I have learned that a recent ruling of the Superior Court of the State of Arizona for the ongoing stream adjudication has resulted in an appeal. Depending on the outcome of that appeal, there may or may not be a legal challenge as to whether or not the adjudication is a McCarran proceeding. Therefore, it is necessary to amend the current bill language to direct the Secretary to quantify the reserved rights created by this title in the appropriate stream adjudication. This modification is necessary in order to allow for complete judicial review without prejudicing the outcome.

The amendment I have sponsored will delete the last sentence of the water rights language and insert the following: "The Secretary shall file a claim for the quantification of such rights in an appropriate stream adjudication."

Mr. President, this language will still ensure the filing of the Federal reserved claim to water in a general stream adjudication. However, if the ongoing adjudication is found to be in violation of the McCarran amendment, it will preserve for the Federal Government the opportunity to pursue its claims to water rights in whatever is the appropriate forum.

This amendment has the support of the conservation community, Arizona Indian tribes, and others.

SANTA RITA PUBLIC LANDS EXCHANGE ACT OF 1988

The text of S. 2352, contained in title V of the pending legislation, will enact the Santa Rita Public Lands Exchange Act of 1988. It is the product of many, many months of negotiation between Federal, State, local, and private individuals in the State of Arizona, to better manage hundreds of thousands of State and Federal lands within our State. It authorizes an exchange of Arizona State trust lands for Federal lands presently comprising the Santa Rita Experimental Range in southern Arizona. It also transfers to the U.S. Fish and Wildlife Service for refuge management, significant public domain lands presently under the jurisdiction of the BLM. This legislation will save valuable recreation and resource lands owned by the State of Arizona from development. For example, 5,500 acres of State lands within Catalina State Park will be added to the National Forest System. Likewise, 91,360 acres of State trust lands within the Buenos Aires National Wildlife Refuge will be transferred to the U.S. Fish and Wildlife Service and managed as part of the refuge.

Responsible in large part for the formulation of this ingenious series of land exchanges, are Dean Bibles, Arizona State Director of the BLM, and Jean Hassell, Arizona State Land Commissioner. Both of these fine individuals are to be commended for their leadership in initiating the concept and helping to bring it to fruition.

Other exchanges which will take place when the bill is enacted include the following:

Approximately 50,811 acres of BLM lands within the Forest Service's Santa Rita Experimental Range will be transferred to the State of Arizona for research purposes;

Approximately 343 acres of Reclamation withdrawn lands within the Red Mountain Area will be transferred to the State of Arizona for an addition to the Salt River Pima-Maricopa Indian Reservation;

Approximately 2500 acres of Federal lands near Imperial and Lake Havasu National Wildlife Refuges will be transferred to the State of Arizona;

Approximately 60,000 acres of State trust lands noted for archeological significance on Perry Mesa in the Black Canyon Corridor will be transferred to the BLM;

Approximately 1,350 acres of State trust lands in the vicinity of Arivaca Lake will be transferred to the U.S. Forest Service;

Approximately 26,000 acres of State trust lands near Lake Pleasant and New Waddell Dam will be transferred to the Bureau of Reclamation and the BLM; and

Approximately 520 acres of State trust lands near Madera-Elephant Head will be transferred to the U.S. Forest Service.

In total, almost 240,000 acres of Federal and State trust lands in Arizona will change hands when this bill is enacted.

Mr. President, the transfer of the Santa Rita Experimental Range to the State of Arizona has been the subject of legislation enacted earlier this year by the Arizona State Legislature. The Santa Rita lands are very important for long-term range research. The State legislation provides for the continuation of this research by the University of Arizona. Under the provisions of the new State law, its use for research can only be changed by an act of the State legislature. I applaud the leadership in the Arizona State Legislature for this action, and, in particular, the efforts of State Senator John Hays, the sponsor of the legislation. I hope the State legislature will never make a decision to overturn this legislation.

The most controversial element in the land exchange legislation is the provision authorizing the transfer of approximately 42,000 acres of Fish and Wildlife Service lands within the Kofa National Wildlife Refuge to the BLM. The primary purpose of this provision was to eliminate a longstanding management dispute between the Fish and Wildlife Service and the BLM.

Mr. President, it is with great reluctance that I offer an amendment to the pending legislation to strike the Kofa modification provision presently included in the bill as reported by the committee. This provision was included in the bill at my request, and although there was some concern expressed by members of the Energy and Natural Resources Committee during the markup, the Kofa modification provision was adopted with the overwhelming support of the committee.

When I introduced the Santa Rita Public Lands Exchange Act, my primary goal was to insure the protection of Catalina State Park and the Buenos Aires National Wildlife Refuge from the threat of development. The bill before us accomplishes that goal. However, since the Senate report was filed, I have been advised by my colleagues in the House that the inclusion of the Kofa provision in the final bill, will essentially insure that the remaining elements of the Santa Rita package, including Catalina and Buenos Aires, will fail. The chairman of the House Committee on Merchant Marine and Fisheries has informed me that the Kofa provision will most assuredly provide the perfect opportunity for him to resolve the Oregon Inlet controversy. Because protection of several important conservation units, included in the bill, are so critical to so many individuals in the State of Arizona, I am offering an amendment to strike the Kofa boundary provisions and other related provisions from the bill at this time.

This action is certainly regrettable. The arguments raised by those in the conservation community opposed to the Kofa modification notwithstanding, I remain convinced that the boundary modification is in the best interests of both the Fish and Wildlife Service and the Bureau of Land Management. Nonetheless, we have fought the battle, and with no clear victory in sight, I will retreat reluctantly and move to strike sections 506, 507, 508, and 510.

This amendment will eliminate any additions to the Kofa National Wildlife Refuge from the BLM; eliminate the designation of the New Water Mountains wilderness study unit as wilderness; eliminate the addition of approximately 80,000 acres of BLM lands to the Cabeza Prieta National Wildlife Refuge; and finally alter the authorization for full-time employee equivalents for the Black Canyon Corridor to five. Since all of these provisions were included in the original bill as part of the Kofa boundary modification, they too will fall with the Kofa deletion. I am, however, retaining section 509 which withdraws the Kofa National Wildlife Refuge from all forms of mineral entry. This provision is critical to ensuring the long-term preservation of these wildlife lands from the threats of mineral development.

In lieu of the stricken provision, Mr. President, I have included a new section which directs the U.S. Fish and Wildlife Service to expeditiously approve or disapprove applications for rights-of-way access across the Kofa National Wildlife Refuge. This provision does not change existing law, it merely acknowledges the need to insure timely decisions on these applications.

In reference to the acquisitions to be made by the Secretary of the Interior of the State trust lands referred to in section 502, it is the clear intent of the sponsors of this measure that the BLM acquire all of the State trust lands in Catalina State Park and the Buenos Aires National Wildlife Refuge. If there are not sufficient lands remaining in the Santa Rita Experimental Range for all of the acquisitions authorized under section 502, I want the record to reflect that the sponsors intend for the Secretary to acquire all of the State trust lands in the Catalina unit and the Buenos Aires unit first. Placing these lands in the Federal systems should be the first priority.

ARIZONA-FLORIDA LAND EXCHANGE

Also included in this bill is the Arizona-Florida Land Exchange Act of 1988, H.R. 4519. This bill will effectuate a land exchange between the Federal Government and the Collier family in Florida. The Big Cypress Addition, Ten Thousand Islands National Wildlife Refuge and the Florida Panther Wildlife Refuge, which are environmentally significant lands in southeastern Florida, will be transferred by the Colliers to the Federal Government in exchange for approximately 68 acres of the Phoenix Indian School property located in Phoenix, AZ. In addition, the Collier family will pay $34.9 million into a trust fund to meet the educational needs of Arizona's Indian children whose school is being closed as a result of this legislation. The remaining acreage will be used to provide the city of Phoenix with a 20-acre public park and to provide the Veterans' Administration with 16 acres for the expansion of the VA medical center and a future State nursing home for veterans. So the bill benefits everyone—the Indian community, the veterans, the city of Phoenix and the Federal Government.

H.R. 4519 was introduced in the House on May 3, 1988, and was favorably reported by the House Interior, the Veterans' Affairs and the Education and Labor Committees by July 14, 1988. The House passed the bill on July 27, 1988.

The Senate Indian Affairs and Energy and Natural Resources Committees held a joint hearing on this measure on July 25, 1988, to give all interested parties the opportunity to comment on the various components of the bill. We received testimony from the Arizona Indian community, the developer, the Federal Government, the environmentalists and the city of Phoenix. On September 14 and 15, H.R. 4519 was favorably reported by both committees. Because of concerns raised by Members of Congress, the General Accounting Office, and various newspaper accounts, this proposed land exchange was subjected to the intense scrutiny of five different congressional committees.

Much of the concern has focused on the land values involved in the exchange. Some critics have questioned the appraisal methods used to establish the value of the Florida and Arizona lands. The Arizona delegation recognized that to convince our colleagues that we had a fair exchange the appraisals of the two parcels of land had to be evaluated. GAO did a very careful analysis of the appraisals which provided the values used to negotiate the exchange agreement by the Department. GAO determined that the Florida land appraisals met all established standards. It is important to point out that the Department's negotiations did establish a value on the Florida lands which is 7 percent higher than the value assigned by the Government's appraisers but 23 percent less than the value assigned by Collier's appraisers.

While GAO found no fault with the basic appraisal of the Arizona land by the Government, it confirmed that determining the value of these lands would be more difficult because its ultimate value as commercial property is dependent on having specific zoning and building density in place. Everyone agreed that it would not be wise to adopt a speculative approach in setting the value of these lands. So the bill requires the city of Phoenix and the Colliers to go through the planning and zoning process to produce a specific plan for the development of the property before the 68.4 acres is disposed of.

At the point that the specific plan is developed, the legislation directs the Secretary of the Interior to obtain, at Collier's expense, a current, independent appraisal of the fair market value of the Phoenix property. Upon notice from the Secretary of the fair market value of that property, Collier will be provided an opportunity to close on the land exchange by adjusting the cash equalization payment so that the total price paid by Collier equals the fair market value as determined by the appraisal. However, in no event shall Collier obtain the property for less than the agreed upon price of $80 million.

If Collier does not accept the offer to close on the land exchange at the price determined in the appraisal, the Secretary shall initiate a bidding process by soliciting and advertising for sealed bids for the Phoenix Exchange Property. Under this process, third parties will have 90 days to make an offer consisting only of cash in excess of the $80 million offer of Collier in the proposed exchange plus an additional amount to reimburse Collier for its expenses incurred in the planning and zoning process. If a third party makes a superior offer, then exchange for the Phoenix property by increasing the total value of land and cash to an amount equal to 105 percent of the highest qualifying offer. If the Colliers decide not to match the highest qualifying offer, then the property goes to the highest bidder.

The cash proceeds from this sale will be used to acquire the Florida lands at the value negotiated last year—1987—and to reimburse the Colliers for the costs associated with the planning and zoning process. The balance of the money will be deposited into the Indian education trust funds.

In the meantime, the school will remain open until 1990. This will give the students and employees the time they need to make appropriate plans for their future education and employment. I insisted on providing the Indian tribes and the school with this additional time because I believe that we must protect the educational needs of the Indian students utilizing this school. The development of the individual education plans will require a minimum of 2 years. This bill gives the school administrators the time to work with the individual students and their parents to devise plans tailored to their needs. The employees of the school also deserve to have the full opportunity to find other employment. Many have worked at this school for a long time and the closing of the school will have a significant impact on them and their families. The additional time will give everyone time to prepare and make the transition to new schools and jobs in the least disruptive manner possible.

Throughout this entire process, I have been committed to seeing that the various interests in the State of Arizona were well served by this land exchange. I believe that we have achieved this and would urge my colleagues to join Senator McCAIN and me in support of this bill.

Finally, sections 406, 407, and 408 of title IV of the Arizona-Florida Land Exchange Act amend Public Law 93-531, the Navajo-Hopi Indian Relocation Act. Mr. President, I have always been very concerned with the adverse impact of Public Law 93-531 upon the Navajo families, who have lived on the 1882 reservation for generations, but must relocate from their homelands due to this law. First, I have a fundamental disagreement with this law. I do not believe that requiring people to give up their homelands is the best way to resolve a conflict in tribal government claims to the 1882 reservation lands. I have urged my colleagues to reconsider this policy and adopt a more humane and comprehensive settlement of this dispute.

After all, the legal conflict in land claims by the Navajo and Hopi tribes was created by the Federal Government when it established the reservation in 1882. When the Executive order was written and signed by the President, the reservation land was set aside for use by both Navajo and Hopi tribes without indicating the specific property rights of each tribe. This has been erroneously represented by some to lead people to believe that no Navajos were living on or using these lands prior to the establishment of the 1882 Reservation. There was Navajo settlement of these lands as early as the 1700's although for about 4 or 5 years in the early 1860's many of the Navajo residents were forced to leave the area by the Federal Government.

But when the Federal Government signed a treaty with the Navajo people in 1868, the Navajo people were allowed to return to their ancestral homelands, which included the lands eventually set aside by the 1882 Executive order as a reservation to be used by both tribes. The 1868 Navajo Treaty failed to recognize that the Navajo homelands included what eventually became the 1882 and 1934 Reservations as well as the land designated by the treaty as the Navajo Reservation. So, when the Navajo people returned to what they considered their homelands, they resettled on those lands falling outside of the 1868 Reservation. When the Indian agent told them you can go home, they did exactly that and returned to what is now the 1882 Reservation. They did this as naturally as anyone would when they hear that they can go home. They did not do it to purposefully displace anyone nor were there any new residents of the land to be displaced by their return.

All of these facts can be verified by general and Navajo historical accounts of this area of the Four Corners region during the 18th and 19th centuries as well as by independent archeological and anthropological source documents. While one can say there was no Navajo Reservation before the establishment of the 1882 Reservation, by the same token there was no Hopi Reservation either. It would be more accurate to state that what became the 1882 Reservation was a part of the ancestral homelands of the Navajo people and the Hopi people both at different times in their histories as well as at the same time in recent history. Then in 1882 those lands were set aside as an Indian Reservation for both tribes. What the 1882 Executive order did not recognize was that the members of the two tribes used the lands differently. The Navajo people used the lands more intensively on a daily basis while Hopi use was more sporadic and site specific for religious purposes.

I point all this out to my colleagues because much of this has been overlooked in the effort to make it appear that one tribe has a greater right to the lands. In the end, the individuals who maintained day-to-day use of the lands over this period of time have been made to look like they somehow simply appeared on the lands after the 1882 Reservation was established. I cannot begin to imagine how frustrating it must be to be one of those families who has lived on those lands even before the Federal Government took an interest in the land and its residents to one day read that they were not there before the Government acted to set aside their lands in a reservation.

I believe that it is important to respect people no matter who they are. We all draw great strength from knowing our histories. We use our histories to define ourselves as a people no matter what culture we are from. Our histories provide an important basis on which we interact with other people. It is important to respect the historical records of all people, whether the records are oral or written. After all, all of history as we know it today started out the oral tradition. I urge everyone to remember this and would hope that we will give equal respect to the individual histories of the people who are caught in middle of this unfortunate twist of fate.

To my deep regret, I have not been able to convince Congress to change the policy of using relocation to resolve this land dispute. However, that has not stopped me from looking for ways to ease the trauma and problems which these families are experiencing as a result of the act.

My amendment incorporates a new statutory provision in Public Law 93-531. This provision requires the Commissioner to provide relocation benefits to the individuals in the chronological order they are certified as eligible for the benefits. However, the Commissioner is provided with the flexibility to give priority status on a case-by-case basis to those individuals who may require more immediate assistance due to medical, safety, or humanitarian reasons. The humanitarian reasons may include the readiness of individuals to move either as a single family or as part of an extended family group. The only exception to the chronological order requirement would apply to the families who were evicted from their homes in District 6 pursuant to the court order issued in the Kabinto versus United States case in 1972. The Commissioner must provide benefits to these families as a first priority.

I strongly believe that this new provision is critical. Because the original law does not spell out the priority in which individuals affected by the law are to be provided their relocation benefits, too many of these people have been forced to wait for years before they get the assistance. Many had to leave the Hopi Partitioned Lands because they could not repair existing homes or could not build a new home when the family grew in size or someone in the family got married. They applied in good faith for benefits and expected to be given the assistance they were eligible for. Unfortunately, many of them still are awaiting for those benefits to be provided so they can get a permanent replacement house. Frequently they resort to living in termporary shelters which are so substandard that no one should be living in them. They have come to be referred to as the refugees.

The new language will enable these people to get the assistance they are entitled so they can begin the process of rebuilding their lives and reestablishing themselves wherever they may choose to have a replacement house built. These people have been neglected for too long. They have paid a heavy enough price. Addressing their needs on a seniority basis is the only humane and equitable thing to do. My amendment will make sure that the resources are made available to those who need it now rather than focusing all resources on the people are still living on the Hopi partitioned lands. I have no disagreement with assistance being provided to the HPL residents when they decide they want to move but it should not done to the disadvantage of those who have already left.

The law has caused enough pain and misery. Despite the initial declaration that the relocation program would be generous and humane, we cannot state that we have fulfilled that promise. My intention is to bring us closer to making this law a little more tolerable for those who have to live with it on a daily basis. I still believe that the law is a mistake and that it has no place in the Federal Government's relationships with Indian people. I see changes like this one and the ones which were enacted as part of S. 1236, the Navajo Hopi Indian Relocation Amendments of 1988, as only steps in the process of correcting the mistakes we have made in addressing the Navajo-Hopi land dispute. One day I hope to see the Congress adopt a truly humane solution that is comprehensive and final. I have every intention of pursuing that goal in the coming year. I do not see relocation as the one and only solution to this problem.

Mr. President, the other two amendments are of a clarifying nature which were requested by Representative JOHN KYL. Section 407 will require the Commissioner to keep the funds which were appropriated to the Bureau of Indian Affairs for the development and settlement of the new lands under Public Law 99-190 in a separate account for all the annually appropriated funds.

Section 408 states a specific prohibition against denying relocation assistance with annually appropriated funds to families who have been determined as eligible for benefits regardless of where they live at the time they seek assistance. All families apply and are certified eligible pursuant to the provisions of Public Law 93-531. All annually appropriated funds are authorized by Public Law 93-531. This provision will protect any family who is entitled to benefits under Public Law 93-531.

Finally, I would like to address the chairman of the Senate Select Committee on Indian Affairs, Mr. INOUYE, with some questions. In the past year, the Indian Affairs Committee considered amendments to the Navajo-Hopi Indian Relocation Act. The committee adopted amendments which are embodied in S. 1236 and which are consistent with the amendments incorporated in title IV of S. 2840. I want to ask the distinguished chairman if the purpose of these amendments is to promote the completion of the relocation effort and to provide relocation benefits to those families who are entitled to the benefits as expeditiously and humanely as possible?

Mr. INOUYE. Mr. President, my response to the Senator from Arizona, Mr. DECONCINI, is yes. We want to facilitate the provision of relocation benefits in a manner that is humane and to make it clear that the Commissioner has the authority to ensure that no family is denied the ability to move from the HPL when they are ready to do so and request the assistance.

Mr. DECONCINI. Mr. President, in closing, I want to call attention to title VI of the substitute amendment. This title establishes the Mount Graham International Observatory. At this time, I will yield to my distinguished colleague from Arizona, Mr. MCCAIN, to explain the purpose of this title.

Mr. MITCHELL. Mr. President, I would like to clarify one point on the amendment to this bill with its sponsor, Mr. DECONCINI.

Mr. DECONCINI. I would be happy to respond to the chairman of the Subcommittee on Environmental Protection.

Mr. MITCHELL. Am I correct that the amendment leaves intact the existing administrative decisionmaking process for the Director of the United States Fish and Wildlife Service to either reject or approve applications for utility rights-of-way on Kofa National Wildlife Refuge pursuant to section 4(d) of the National Wildlife Refuge System Administration Act?

Mr. DeCONCINI. The Senator from Maine is correct. Nothing in this provision would change or amend the applications of the "Compatibility Test" under section 4(d) of the Refuge Administration Act to any future right-of-way applications.

Mr. MITCHELL. I thank my colleague from Arizona and would only ask further whether the reference in the text to processing pending applications "as expeditiously as possible" reflects anything more than good governmental practices for any Federal agency?

Mr. DeCONCINI. The Senator is correct. The reference in this provision means that once an application is ripe for administrative review and the project sponsor is prepared to proceed with the project, the U.S. Fish and Wildlife Service must comply with all of the requirements of existing law in processing the application without unreasonable or inexcusable delays. It is not the intent of this language that provisions of existing environmental law be waived or modified in any manner.

Mr. MITCHELL. I thank the Senator for those clarifications, and for his work on this legislation.

The PRESIDING OFFICER. The question is on agreeing to the amendment in the nature of a substitute.

The amendment (No. 3682) was agreed to.

Mr. McCAIN. Mr. President, I am here today to express my strong support for S. 2840. This bill reported from the Senate Committee on Energy and Natural Resources on September 27, 1988, contains the provisions of several bills which will have a profound impact on lands within the State of Arizona. Due to the unique and significant nature of these provisions, I would like to address the merits of each bill individually.

THE SAN PEDRO RIPARIAN NATIONAL CONSERVATION AREA

Upon enactment, S. 2840 would establish the San Pedro Riparian National Conservation Area. This 56,431-acre region would be a welcome and important addition to the lands already set aside in Arizona, and our country. Moreover, the preservation of this terrain is vital if we are going to protect the unique riparian area of the San Pedro River in Cochise County, AZ.

The San Pedro River, which runs through the proposed conservation area, is a long stretch of desert riparian habitat that cannot be found anywhere else in this country. While by no means pristine, this area is in good condition and deserves to be under the stewardship of those who can ensure its preservation.

In addition, the San Pedro area is home to an outstanding array of wildlife. Many rare raptors, such as the gray hawk, Harris hawk, and the black hawk have been spotted in the San Pedro. Even the rarely seen aplomado falcon has been sighted hunting for food in the area.

The San Pedro area, however, also contains more than 120 archeological, paleontological and historic sites. It is the site of the Presidio of Santa Cruz de Terrenate and the location of 11,000-year-old Paleo-Indian sites. The American Revolution-era Presidio is a fortress that is a part of Arizona history, and when one stands at the edge of the ruins they can view practically the same scene the Spaniards had over 200 years ago. Moreover, among the paleontological sites are those containing the fossils of extinct mammoths, camels, bison, horse and deer.

Mr. President, the establishment of the San Pedro Riparian National Conservation Area will assure that future generations of Americans will be able to utilize the recreational, wildlife, educational, and scientific benefits this region has to offer. This area deserves special designation and it is my hope that we can act on this legislation as quickly as possible.

THE ARIZONA-FLORIDA LAND EXCHANGE

Mr. President, S. 2840 contains the provisions of H.R. 4519 in its entirety. As you may know, H.R. 4519 provides for the closing of the Phoenix Indian School and sets forth a legislative plan for allocating the property at the site for future public and private uses. The legislation would ratify a proposed land exchange among the United States, Collier Enterprises, and the Barron Collier Co. Under the terms of the land exchange, the Colliers would transfer to the United States approximately 108,000 acres of environmentally sensitive land in southwest Florida in exchange for approximately 68 acres of the 104 acres at the site of the Phoenix Indian School in Phoenix, AZ. The remaining 36 acres would be divided among the Veterans' Administration, the city of Phoenix, and the State of Arizona.

Mr. President, a lot of time and effort has been expended over the last 2 years in putting this land exchange together. Members of the Arizona congressional delegation have themselves been closely involved in the development of this exchange. This legislation has been the subject of open and extensive public debate, including three congressional hearings.

I believe the Arizona-Florida land exchange is in the best interest of the United States. Not only will 108,000 acres be added to the Big Cypress and the Florida Panther preserves, but 11.5 acres will be provided for the expansion of the existing Veteran's Administration Medical Center in Phoenix. In addition, 20 acres is guaranteed to the city of Phoenix for use as a park, and 4.5 acres will be set aside for the State of Arizona should they elect to establish a State veterans' nursing home in the future. And finally, the Colliers would pay the United States $34.9 million which would be used to establish two educational trust funds for the educational, child welfare, and facility construction needs of Arizona Indian tribes.

A number of questions have been raised concerning the value of the Florida property involved in this exchange. These questions are wholly the result of confusion about the details of the long process underlying the Collier-Department of the Interior negotiation process. Nevertheless, some clarification is required. These questions suggest that the Florida properties have not been properly appraised, and that large portions of the tracts involved in the exchange are underwater and are not actually owned by the Colliers.

First, with respect to the values of the lands, the U.S. Department of the Interior performed appraisals of three of the four tracts of Florida lands, following standard appraisal practice and procedures used for all Interior Department land acquisitions. These appraisals were based on sales of comparable property in the area, and fully comply with nationally accepted commercial appraisal standards.

With respect to the value of the fourth tract, the parties initially set an estimated value of $26.6 million and agreed ultimately to rely on the outcome of a related Florida State Department of Transportation condemnation proceeding to confirm the accuracy of that value. In that proceeding, the value of the Collier land was determined pursuant to appraisals using standard Member of Appraisal Institute practices. These appraisals were undertaken and approved according to well-established Florida Department of Transportation and Federal Highway Administration practices. Under the Florida Department of Transportation proceeding, the value of the lands Collier owns and would convey under the exchange agreement was determined to be $28 million. The result in the exchange at lower than its appraised value.

In short, all the values of the Florida lands were negotiated on the basis of standard commercial appraisal practices, undertaken by or on behalf of public agencies.

One of the four areas to be acquired in the exchange is the land within the Ten Thousand Island area. Approximately 4,000 acres in this area are below the mean high water line and are subject to an unasserted claim by the State of Florida. The remaining 15,000 acres of upland are clearly owned by Collier. In the exchange, the

Interior Department negotiated the 15,000 acres of the upland in the Ten Thousand Islands at $5.8 million. The Interior Department did not assign any value to the submerged lands, and Collier gets no credit for any value of the submerged lands in the exchange. At the request of the Interior Department, Collier has quitclaimed whatever claim of title it may have to the 4,000 submerged acres, but at no additional cost to the United States. If it is ultimately determined that Collier does have title to the 4,000 acres, the United States would have acquired them at no cost. Even if it should ever be determined that the State owns them, these lands will still be in public ownership, which is exactly the right outcome from the perspective of environmental conservation. In either event, the United States has paid nothing for the small parcel of submerged lands in the deal.

Another question that has been raised concerns the value of the Phoenix Indian School property. For purposes of valuing the property, the Department of the Interior conducted two appraisals. The first appraisal found that if the entire property were developed at its highest and best use, that is, high density, high-rise and commercial space, the present value of the property would be approximately $160 million. That appraisal was not accepted by the Interior Department because the consistent position of the city of Phoenix has been that the property would be zoned as a mixed use high- and low-rise development, and that every effort would be made to maximize public open space. The planning and zoning agreement between Collier and the city makes clear that this kind of mixed use zoning is the objective that all parties intend to achieve.

For that reason, the Department of the Interior contracted for a second appraisal, which took into account the likelihood of mixed use zoning and greater public open space. That appraisal resulted in a value of $122.2 million for the total site. Because it will take some time for the zoning process to be completed, particularly given the level of public participation required by the planning process, the appraiser was required to make assumptions as to the likely outcome of the zoning process. The GAO, in its review of the Phoenix appraisal, raised a concern that these zoning assumptions may prove incorrect. This is a legitimate concern; and appraisal is, in effect, an expert's best guess as to what a willing buyer will pay and a willing seller will accept for property in an arm's length transaction. It is therefore, never a totally "reliable" test of the value of a piece of property. This is of particular concern when the property is not zoned, and elaborate assumptions respecting zoning have to be made. If ultimately the zoning permits more intense development, the property value will be higher. If the zoning is more restrictive, the property value could be less.

I am convinced that once the outcome of the zoning process is known, it is important that the value to be paid by Collier should be put to a test to ensure that the value received by the United States represents the full value that a willing buyer would pay. Thus, the only true test is to put the property on the open market, and test the price paid for the land under the exchange agreement against other competitive bids. For that reason, the bill requires that prior to the closing of the exchange transaction, the property will be put up for competitive bid, and other parties will be given an opportunity to bid on the property. If higher offers are received, Collier, who has undertaken the complex zoning effort, will be given a right to match the higher offer. If no offers are received, the value we now assume for the Phoenix Indian School property will have survived a true market test and the land exchange can properly go forward.

Mr. President, after 2 years of hard work on this legislation, I believe the Arizona delegation has put together a defensible and supportable package that maximizes the benefits to everyone with a legitimate claim on the property, while minimizing—if not eliminating—the costs to the Federal taxpayers. And I would like to ask unanimous consent to insert at this point an op-ed written for the Arizona Republic by Congressman Mo UDALL and myself. The article which appeared on September 25, 1988, clearly justifies our course of action.

Finally, Mr. President, I wish to express my appreciation to my colleague, Senator DECONCINI, for his efforts in developing this legislation. I would also like to thank Senator CHILES and Senator GRAHAM for their contributions and support. I am proud to assist them in their efforts to preserve and expand the Everglades.

THE SANTA RITA PUBLIC LANDS EXCHANGE ACT OF 1988

Mr. President, the final portion of S. 2840 that pertains to lands within the State of Arizona is known as the Santa Rita Public Lands Exchange Act of 1988. The original bill of which I am a cosponsor and enthusiastic supporter, and the provisions incorporated in S. 2840 provide for a series of land transfers and administrative actions affecting lands under the jurisdiction of the Bureau of Land Management, the U.S. Fish and Wildlife Service, the Bureau of Reclamation, the U.S. Forest Service and the State of Arizona. Santa Rita is the product of many months of negotiations between Federal, State, local and private individuals in Arizona and in the long run all Americans will benefit when the exchange of several hundred thousand acres of State and Federal lands in Arizona takes place.

I would like to comment on some of the major provisions contained within the Santa Rita measure:

The 51,000 acre Santa Rita Experimental Range south of Tucson would be transferred to the Arizona State Land Department. The area would continue to be managed by the University of Arizona for ecological and range research, but it would be protected from the development which is encroaching on this area day by day. This and certain other transfers under the bill are a repayment to the State of Arizona for the remaining debt for 12,000 acres of State trust land taken south of Tangerine Road for the Central Arizona project [CAP] canal, for compensation for lands taken for the construction of the new Waddell Dam, as well as for acquiring State trust lands within the Buenos Aires National Wildlife Refuge and the Catalina State Park. The latter two will be transferred to the U.S. Fish and Wildlife Service and the Forest Service, respectively.

In addition, 60,000 acres of State trust land on Perry Mesa, which lies within the Black Canyon Corridor, would be transferred to the Bureau to manage the outstanding remains of Pueblos dating from 1200 to 1400 A.D. and other multiple-use values. Under State trust administration, these resources did not receive the protection they will receive under Federal administration. Transfer of an additional 16,000 acres of land north of Lake Pleasant to the Bureau for multiple resource management and expansion of the regional park surrounding Lake Pleasant would consolidate ownerships which are now intermingled and ultimately make the area easier to manage. The Forest Service, in turn, would acquire from the State 520 acres at Madera-Elephant Head Trail and 1,350 acres at Arivaca Lake.

One of the important benefits to be derived from this exchange is the complete elimination of land management and fiscal constraints on the Buenos Aires National Wildlife Refuge caused by State-owned lands, lands lying within refuge boundaries and currently leased by the U.S. Fish and Wildlife Service.

The Buenos Aires Refuge is faced with prohibitively high lease payments for State-owned lands within its boundaries. Over the 10-year lease period, lease payments are scheduled to increase annually from $90,197 in 1988 to $541,185 in 1996. This increase has a crippling effect on the operating budget of the refuge, and would result in the restriction of the budgets of all refuges in Arizona as funds would have to be taken from them to help pay the Buenos Aires lease costs. The increase has arisen from reclassification of the lands by the Arizona State Land Department from grazing to commercial with a concomitant increase in estimated value.

Mr. President, these State-owned acres are integral to the operation of the refuge. Comprising over 80 percent of the total refuge area, the State lands buffer the riparian areas comprising the majority of the watershed and provide potential habitat for the endangered masked bobwhite quail. The only viable solution to the situation was through the complete exchange of lands between the BLM and the Arizona State Land Department, and this is what this bill will accomplish.

Mr. BURDICK. Mr. President, I would like to engage my colleague from Arizona in a colloquy for the purpose of clarifying several key points with respect to the legislation authorizing establishment of the Mount Graham International Observatory Research Site.

First, am I correct that this legislation requires the project in question to comply fully with the requirements of the Endangered Species Act, including the terms and conditions of Reasonable and Prudent Alternative Three in the U.S. Fish and Wildlife Service's Biological Opinion, date July 14, 1988?

Mr. DECONCINI. My colleague from North Dakota is correct—the amendment requires compliance with the terms and conditions of the biological opinion throughout the legislation.

Mr. BURDICK. Second, do the references in this legislation to the "terms and conditions of Reasonable and Prudent Alternative Three of the Biological Opinion" include the measures, terms and conditions to reduce incidental take and the conservation recommendations identified under that alternative of the biological opinion?

Mr. DECONCINI. That is also correct. The measures to reduce incidential take of the Mount Graham red squirrel as well as conservation measures to ensure its existence are certainly well within the intent of the legislation.

Mr. BURDICK. And third, am I correct in my understanding that the environmental impact statement for the site, currently in process will be continued and that all requirements of the National Environmental Policy Act and regulations will be met including opportunities for public comment and consideration of alternatives before decisions are made with respect to the four additional telescopes?

Mr. DECONCINI. The Senator is correct. A provision of the legislation makes clear that the environmental impact statement for the site currently underway will continue and that all procedures under the National Environmental Policy Act will be followed with respect to the four additional telescopes proposed for the site. This provision is included to insure that the Department of the Interior and U.S. Forest Service shall use the environmental impact statement process underway. If a supplemental EIS is found to be necessary as a result of a new section 7 consultation under the Endangered Species Act, then certainly that information would be considered under the provisions and requirements of the National Environmental Policy Act.

MOUNT GRAHAM INTERNATIONAL OBSERVATORY ACT OF 1988

Mr. McCAIN. Mr. President, I am also pleased to join with my colleague, the senior Senator from Arizona, in offering title VI of this legislation, establishing the Mount Graham Astrophysical Observatory site in the Coronado National Forest in Arizona.

Five years ago, the University of Arizona in conjunction with the Smithsonian Institution, the University of Chicago, Ohio State University, the Vatican, the Italian Government, and the German Government began planning a joint effort to establish an astrophysical research site on Mount Graham for the placement of 13 telescopes. Mount Graham is perhaps the only new site left in the continental United States that is really conducive to telescopic research.

As the team leader, the University of Arizona filed an application for the site with the U.S. Forest Service in 1984. That same year, the Forest Service concluded that the project would require an environmental impact statement. In early 1985, that EIS process began.

In 1986, the U.S. Fish and Wildlife Service concluded that a species of squirrel found on Mount Graham was endangered. The squirrel, known as the Mount Graham red squirrel, has been hunted up until 1986 and was further threatened by the introduction of another species of squirrel on Mount Graham. The squirrel's critical habitat was located on top of the mountain, in the same vicinity where the astrophysical research facility was to be located.

This conclusion by the Fish and Wildlife Service that the squirrel was endangered required a biological assessment pursuant to the Endangered Species Act.

In late 1986, the Forest Service released a draft environmental impact statement and provided for a lengthy comment period. At that same time, the Forest Service and the Fish and Wildlife Service began joint discussions on the Mount Graham red squirrel and the Mount Graham observatory site.

In December 1986, the Fish and Wildlife Service began the biological assessment process. Concurrently, and because the Mount Graham red squirrel was deemed to be an endangered species, the University of Arizona reduced the number of planned telescopes on Mount Graham from 13 down to 10.

In June 1987, the Mount Graham red squirrel was formally listed as an endangered species, the biological assessment was concluded and the opinion writing process on the coexistence of the squirrel and the observatory began.

In August 1987, the University of Arizona appealed the Forest Service's draft EIS findings on the basis that they had incorrectly defined the parameters of the project. The Forest Service agreed and conducted a new study using the correct parameters. In the interim, the U.S. Fish and Wildlife Service suspended its biological opinion until the new draft EIS was issued. As a consequence of the Forest Service actions the U.S. Fish and Wildlife Service Biological Opinion was not issued until June 1988. This was a full year after it began. In the meantime, the University of Arizona again amended the consortium's plans for the astrophysical research site on Mount Graham by reducing the number of telescopes from 10 down to 7. It cannot be said that the university has not compromised with the Forest Service and the Fish and Wildlife Service.

The biological opinion issued by the Fish and Wildlife Service contained several alternatives which allowed preservation of the Mount Graham red squirrel and construction of the astrophysical site. The preferred alternative limited the number of telescopes to seven and required that they be built within a 150-acre area on Emerald Peak. It also required closing the existing road to the top of Mount Graham and construction of a new road along an existing jeep trail to access Emerald Peak.

The opinion also called for the closing of vacation cabins and a bible camp in the vicinity of Emerald Peak.

The incredibly lengthy process that was followed to establish the Mount Graham Observatory could, according to the Forest Service, run another 4 years if Congress does not act to establish the observatory in conformance with the biological opinion and the Endangered Species Act.

Unfortunately, the German participants as well as other participants have signaled their intention of withdrawing from the consortium this fall if the process is not concluded. Their patience has justifiably worn then.

I might note that it is estimated that anywhere from two to four squirrels could be negatively affected by the observatory. However, a number of scientists have concluded that the red squirrel population will expand with the steps called for under the biological opinion alternative mentioned above. Many scientists believe that human presence will in itself help the squirrel population.

This legislation is based on, and in conformance with the June 14, 1988 biological opinion of the red squirrel by the Fish and Wildlife Service. Its intent is to provide for the establishment of seven telescopes and support facilities and an access road built in the most scientifically optimum locations within the 150-acre area specified. Three of those telescopes are to be constructed immediately. The remaining four telescopes are to be constructed after reasonable and timely consultation between the Forest Service, Fish and Wildlife, and the University of Arizona on the viability of the squirrel.

After 4 years of study, assessment, reassessment, opinions, appeals, consultation, comments, and hearings, this legislation will allow the seven telescopes to be built—in complete conformance with the prescriptions of the long-awaited biological opinion on the Mount Graham red squirrel. It will provide certainty that three telescopes will be built immediately after the management plan for the site is included. It is intended that this plan be finished and agreed upon within 60 days of the enactment of this legislation, and that the special use authorization be issued within 30 days thereafter. The remaining four can be built after reasonable and timely consultations.

Mr. **DECONCINI**. Will my distinguished colleague yield?

Mr. **McCAIN**. I will be glad to yield to my good friend and colleague from Arizona.

Mr. **DECONCINI**. I thank my distinguished colleague. He has been a strong and vigorous advocate of moving the Mount Graham Observatory and providing the certainty of process that this legislation mandates.

The amendment which I have cosponsored with my friend is the product of a very difficult and lengthy effort to strike a balance between the need to get this project underway and the need to properly address the environmental concerns all of us share over the red squirrel. All of us have had to be patient and all of us have had to give a little to get where we are today. The University of Arizona has effectively cut the size of this project in half, out of concern for the red squirrel.

Our concern for the red squirrel is implicit in the manner in which this legislation has been drafted. A smaller astronomical project will coexist with the red squirrel and help to improve its viability. The university will pay all costs associated with construction of the project, further biological monitoring of the squirrel, and for a full-time biologist on Mount Graham for the Federal Government.

The seven telescopes to be built on Mount Graham will ensure that the United States remains the forefront of astronomy. The lift-off of the *Discovery* on Thursday rekindled this Nation's desire to learn and profit from the world around us. From the days of Galileo, we have had a child-like enthusiasm and ever-increasing ability to learn from the world that lies millions of light years from our own planet. It is ironic that this legislation will result in a clearer eye on the world we cannot see and a closeup look at the miniature world of the red squirrel.

This legislation injects certainty. It makes clear to the public, the courts, and agencies of government that three telescopes will be built on Mount Graham immediately and the remaining four telescopes will be built after consultation between the parties on the viability of the red squirrel.

The legislation conforms to the Endangered Species Act and the biological opinion written by the Fish and Wildlife Service.

The legislation also addresses an area of particular concern to me and the entire congressional delegation—namely, the closing of summer cabins and a bible camp. It is estimated that 1.2 squirrels could be adversely affected by the presence of the cabins and bible camp. For over 50 years families have enjoyed cabins they have built with special use permits on Mount Graham. The cabins have been passed on from generation to generation. In many ways, they are as much a part of the mountain as the red squirrel. I personally believe that the Fish and Wildlife suggestion that these cabins and bible camp might be closed is without merit. The humans who lived on this land for decades have coexisted with the squirrel and the myriad other species who call Mount Graham their habitat. Closing of the cabins might—I repeat, might—affect one and two-tenths of a squirrel. Closing of the bible camp might affect two-tenths of a squirrel. I have difficulty in accepting the logic of displacing the men and women who have come since childhood to the mountain and experienced its wonders because of one and two-tenths of a squirrel might be affected.

The legislation provides that the Forest Service may not terminate any special use authorizations due to the red squirrel for 10 years after the conclusion of the term of the authorization unless it is absolutely necessary to avoid jeopardy to the Mount Graham red squirrel. This is based on the assumptions made by both the Forest Service and the Fish and Wildlife Service in the formulation of the biological opinion. The legislation also requires that two studies be completed before any such proposed terminations. The study is to take into account the minimal amount of land area used by the cabins and camp and the relatively negative impact on the squirrel. If these studies are reasonable and fair—which we expect them to be—I cannot foresee a conclusion that the camp and cabins should be terminated.

Let me also point out that before the remaining four telescopes are built, the on-going environmental impact study must be completed. This is not a new study but rather the completion of the existing EIS. I would, however, urge the Forest Service to move as quickly as possible on this EIS. We have witnessed too much delay, too much unwarranted controversy, and too many contradictions. All parties have become disenchanted with the process.

Finally, let me say that as an Arizonan I take tremendous pride in our role in astronomy. We are home to the Multi-Mirror Telescope on Mount Hopkins. Underneath the bleachers of Arizona Stadium at the University of Arizona, Dr. Roger Angel has made a tremendous breakthrough in the making of large mirrors. While the Soviets currently have the largest telescope mirror—it does not function correctly. Dr. Angel is about to revolutionize mirror-making, a feat which will have tremendous scientific and economic impacts.

As an Arizonan, I also take great pride in the beauty and nature that is Arizona. I have enjoyed the millions of acres of mountain and desert and the species that thrive there.

This legislation strikes a balance that is rarely possible—it allows man's quest for knowledge to coexist with nature and all its wonders. It allows us to move forward on this critical project and, concurrently, nurse the red squirrel back to a thriving population. It allows this Nation to maintain its leadership in astronomy. And, it sends a signal to the Mount Graham partners—the Vatican, the Italian Government, and the Germans—that we are serious about cooperating in astronomy and that our process does come to conclusion.

Mr. **McCAIN**. Mr. President, will my colleague yield?

Mr. **DECONCINI**. I will be glad to yield.

Mr. **McCAIN**. I want to thank Senator DECONCINI for his eloquent and persuasive statement on behalf of this amendment. He has worked diligently to ensure that this process comes to some certainty, that we not go on fighting in the agencies and in the courts, and that we begin the building of the Mount Graham Observatory within the framework of the biological opinion. That has been a most difficult process and the Senator has been a leader in this effort.

I would like to point out to my colleagues that we have had numerous discussions with the U.S. Forest Service and the U.S. Fish and Wildlife Service and both agencies have indicated that they had no objection to this legislation. I think this fact is critical in showing how hard we have endeavored to conclude this process.

If the Senate and House approve this amendment and the President signs the bill, we will be taking a new step into discovering more about ourselves, our world, and its beginnings. Three telescopes will be built immediately. They can no longer be stalled by process, by litigation, or by whim. Four telescopes can be built in the future after a timely conclusion to the EIS and consultation between Fish and Wildlife, Forest Service, and the University of Arizona.

With enactment of this amendment, we will have regained the confidence of our foreign partners. We will have acknowledged the economic importance of astronomy in Arizona. And we will have befriended the sciences and all they mean to our future. Most important, we will have accomplished all of this while maintaining a sensitivity and interest in the smallest of creatures—the Mount Graham red squirrel.

Mr. President, let me again thank my colleague for his leadership on this issue. In the House, Congressman UDALL, Congressman KOLBE, and other members of the delegation worked hard to get us where we are today. The University of Arizona is to be commended for its willingness to compromise when compromise was difficult. Additionally, the Fish and Wildlife Service as well as the Forest Service have been most helpful in crafting a bill which allows the Mount Graham Observatory to become a reality.

Mr. President, I truly believe that S. 2840 is a very good piece of legislation. Its passage would enable the involved Federal and State agencies to better accomplish their goals. It provides future public benefits in areas of research, recreation, economic growth and development, wildlife, cultural, water and land-related programs. As privileged stewards of this Nation's precious resources our Federal land managers strive toward efficient management of our natural resources. This legislation supports that goal. I strongly urge all of my colleagues to support this legislative measure.

Mr. President, I ask unanimous consent to print in the RECORD an article by myself and Congressman UDALL.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

PLAN WOULD BENEFIT ALL, MCCAIN, UDALL ASSERT

(By Morris K. Udall and John McCain)

The Arizona congressional delegation's proposal for the disposition of the Phoenix Indian School is good for Phoenix, good for Arizona and good for the nation.

It will produce new educational opportunities for Arizona Indian children superior to those now being offered at the school. It creates a new public park that is badly needed in central Phoenix. It will make possible expansion of medical facilities for the state's rapidly growing veterans population. It offers a good chance for an outstanding development. It is a major victory in the quarter-century battle to save one of America's most endangered and delicate ecosystems—the Everglades of South Florida.

And it does all this at little or no cost to the federal taxpayers.

These are the facts. It seems to us they have been obscured in the flurry of criticisms aimed at the proposal in recent weeks. Critics make unsubstantiated charges about a sinister "sweetheart deal." Some complain—erroneously—that "our" land shouldn't be swapped for "their" land. Newfound friends of Arizona's Indian tribes rally to "save the school" years after it has fallen into deplorable condition. And many others say we are dealing away Phoenix' last chance for a "Central Park," never answering the tough question about how Phoenix will pay for it or how Indian children asked to make way for this huge park are going to have their educational needs met.

We have wrestled for nearly two years with all the difficult questions and issues raised by the proposal made originally by the Reagan administration. After two years of open and extensive public debate, including three congressional hearings, we are convinced that our proposal is sound and even more convinced of the emptiness of our opponents' attacks.

ADDRESSING SCHOOL'S CLOSURE

Let's start with the basic question of whether the school should be closed in the first place.

The school has fallen into a sad state of disrepair. No non-Indian parent would ever allow their children to attend a school that is so poorly maintined. Moreover, student enrollment is declining and it is not possible to maintain an academic program in grades 9-12 that meets state or regional accreditation, an interscholastic program, a band or other extracurricular activities. It is highly unlikely that Congress will spend the money needed to bring the school up to an acceptable standard.

It makes much more sense to finance educational programs that will directly benefit Arizona Indian children. While boarding schools held favor in the past, today many tribes prefer their children to be educated closer to home. We support tribes in this effort and are proud to have obtained congressional funding to build two new high schools on the Tohono O'Odham and Hopi reservations.

WHAT HAPPENS TO PROPERTY?

If the school is to be closed, then what would happen to this unique property? It is interesting to note that even our critics cannot agree on how best to dispose of the property. Some have suggested turning the school into a vocational facility or study center. Both these proposals are narrow in focus and ignore the best interests of Arizona Indians, veterans or the citizens of Phoenix.

More vocally, a lot of people think it all should be turned over to the city for a park. Whatever the merits of this proposal in this era of massive budget decisions it is not realistic to expect that Congress is just going to give away a piece of federal property out of the goodness of its heart. And even if lightening were to strike, how do the park advocates propose to meet the profound moral obligations this nation has to provide for the educational and social-welfare needs of the Indian children affected by the closure of the school?

WHAT THE PLAN OFFERS

Our proposal guarantees at least 535 million, and possibly more, for the trust funds to pay for Indian education programs in Arizona. They cannot be used for anything else and do not cost the taxpayers anything, as they are financed from the sale of the property.

At the same time, the city of Phoenix receives free of charge the 20 acres it requested for a public park and the right—to be exercised any time at the city's exclusive option—to buy from the developer as much additional land as it wants to expand that park.

We understand entirely, however, that many Phoenix residents are concerned about overdevelopment. They do not want to see a concrete jungle of high-rises. We agree.

That is why, in addition to the city's park land, the legislation locks in an unprecedented planning process requested by the city for development of the property. This process sets new standards for public involvement in the design of the development it wants—a mix of residential and commercial buildings, high and low densities, public and private spaces, and so on. Our bill provides the city that ability to obtain the kind of landmark development it needs and deserves.

NO SWEETHEART DEAL

It is clear to us that an exchange or sale to a private party is the only way to meet the many demands and obligations attached to the Phoenix Indian School site. But, our critics say, this is a lousy one, a "sweetheart" deal. This charge is easier to make than it is to demonstrate.

To complete the land exchange, we had to ensure the deal was fair to the federal taxpayer. Our critics say this land exchange will impose costs on the federal taxpayer, and cite the General Accounting Office report as evidence. Yet, few realize that it was Arizona's congressional delegation that asked the GAO to take a look at the package and tell us what they thought. Their thorough analysis was generally reassuring about the professionalism of the land appraisals. But we were troubled by GAO's valid complaint that the real value of the school size could not be fixed by an appraisal. Great uncertainties make any appraisal at this time less than reliable.

So we insisted that the bill include a provision for a market test of the property's value after the city and the developer complete the public-planning process. New developers will be allowed to make competing offers. Any superior offer must be matched by the current developer or accepted. The taxpayers are assured market value of the property, the tribes receive any additional cash generated by a better offer, and the benefits promised the city and Arizona's veterans are protected.

CONSERVATION ADVANCED

At the other end of the deal our critics have made snide references about Florida swampland. Let's be clear on this point. The lands being acquired in Florida are of unquestioned environmental significance on a national, even international scale. We cannot understand how, in the light of the alarming and well-documented crisis in the accelerating loss of America's vital wetlands, anyone can discuss 108,000 prime acres in the Everglades as useless swamps. By this reasoning, the Grand Canyon is just a big ditch and Arizona's priceless desert refuges are little more than sandboxes.

Nor do we understand the resentment some feel that "our" land is being traded for "their" land. The Phoenix Indian School site is federal property—owned by all the people of the United States. The Florida properties will add to the legacy of conservation lands that benefit all Americans today as well as future generations. We are especially disturbed that groups such as the Sierra Club would ignore this simple fact in opposing the exchange.

WHAT'S BEST FOR THE FUTURE

It would do well for our critics to remember that if matters were left to their normal course, the property would continue to labor in its neglected state or be closed and disposed of by the General Services Administration. To attempt to accomplish all that we have through the regular processes of Congress would cost the taxpayers hundreds of millions of dollars and take many years to achieve if it could be achieved at all. These alternatives are unacceptable.

It should surprise no one that the sudden availability of property like the Phoenix Indian School would spark a lively debate among the citizens of the city and the state about what is best for the future. But after painstaking work, we believe we have put together a defensible and supportable package that maximizes the benefits in everyone with a legitimate claim on the property while minimizing—if not eliminating—the costs to the taxpayers.

● Mr. DURENBERGER. Mr. President, I rise to support and applaud the passage of this bill, S 2840. This bill will, among other things, designate the Mississippi River through the Twin Cities area of Minneapolis and St. Paul, MN, a National River and Recreation Area.

Although the intent is the same, this section of bill is significantly different from the House-passed version. These changes stem from negotiations between Senator BOSCHWITZ, Congressman VENTO, and me. All sides, sharing the same goal but different ideas of how to achieve them, sat down and worked out our differences. We all made compromises; as is generally the case, no one got everything they asked for. Yet through our compromises a stronger more effective bill was achieved.

I first became interested in the Mississippi River and its management in the early 1970's when I chaired the Hennepin County Park Reserve District and Metropolitan Parks and Open Space Commission. At that time I initiated a study identifying open spaces and recreational opportunities within the Minneapolis-St. Paul Metro Area. When I was elected to the Senate in 1978, one of the first projects I worked on was the Metropolitan River Corridor Study Committee. The Committee examined the Twin Cities' portion of the Mississippi River, its governance, and the potential Federal role in its wise development. The committee did a wonderful job, resulting in the publication of its report in January of 1986.

There is now recognition among the governments of the Twin Cities that the Mississippi River is a valuable resource requiring wise management. To do this there should be a mechanism to make the efforts of each community complement and build upon the efforts of their neighbors. The Federal Government must become a partner, providing both expertise and financial assistance. Congressman VENTO took the legislative lead to do this, introducing H.R. 2530 and shepherding it through the House.

Once introduced, I gave H.R. 2530 careful consideration. I reconvened the Corridor Study Committee to discuss it. Three concerns were raised: First, the authority of the Park Service vis-a-vis State, local, and regional governments; second, empowering the Park Service with eminent domain authority; and third, preserving the U.S. Army Corps of Engineers historic authority over river commerce. Yet, because I felt H.R. 2530 to be a fundamentally sound bill, I decided to forego introducing my own bill and sought, instead, to address my concerns by amending H.R. 2530. To this end I prepared draft amendments which were discussed at an informal public hearing March 5, 1988. Having received public comment, and further input from the Ad Hoc Group II—Metro Rivers Study Committee, I developed final amendments. While many of my suggestions were graciously accepted by Congressman VENTO, others required negotiation, and as I have already mentioned, compromises were reached.

Before I address the amendments, Mr. President, I must commend Senator McCLURE. Through his efforts this compromise was reached. His staff spent hours of negotiations working out the compromise before us today. It can be said that without Senator McCLURE's assistance this important day may not have been reached.

The bill before the Senate addresses my concerns. It ensures that the National Park Service will not become an additional bureaucracy in the area. It will not have the authority to act unilaterally, but instead will consult and cooperate with the State of Minnesota and local and regional governments. The bill creates a mechanism that will foster cooperation towards the common goal of managing the river and its adjacent lands for recreational opportunity.

No better evidence of this compromise can be found than in the eminent domain provisions. First, all current land uses are grandfathered in section 705(c)(2). Second, the Park Service can condemn land only when a land use undermines the intent of the act and there is no alternative to preserve the integrity of the area but condemnation. The Park Service's only realistic enforcement tool is found in section 705(d)(3), which requires the Park Service to first withhold Federal moneys from the local government that permits the incompatible use. Third, if Federal moneys are withheld and the situation still does not improve, the Park Service may only pursue eminent domain actions if the State of Minnesota does not take ameliorating action. Thus, the bill gives the Park Service the authority to enforce the act, but does not allow it to supercede State and local authority.

In this respect the bill places the Park Service in an advisory role and not a direct land manager. This is made clear in section 705(d)(1) where the Park Service is directed to enter into agreements with the State or its subdivisions to manage and implement the management plan. In the amendments I offered, I felt the Metropolitan Council can and should serve in this capacity. I still feel this way and urge the Park Service use the Metropolitan Council.

Because the Mississippi River is a working river, with considerable barge traffic, I was concerned that the very important navigation and flood control duties of the U.S. Army Corps of Engineers would be limited unnecessarily under the House-passed version of H.R. 2530. The bill before the Senate today addresses this concern. Although, the corps can continue to perform its navigational, flood control, and other duties, the bill encourages it to do so in accordance with the Management Plan in section 704(b). Should the corps propose action that is incompatible with the management plan, the Park Service cannot veto the proposal but, instead, bring it to Congress' attention. Thus, the corps can perform its traditional mission unimpeded, yet should make every reasonable effort to comply with the management plan.

A final issue of concern was the continuation of traditional hunting and fishing opportunities within the area. This concern is adequately addressed in section 706(d) which explicitly states that State and local fish and wildlife laws are unaffected by Park Service management.

In summary, this bill places the Park Service in an advisory role, providing expert advice to State and local government officials. In this capacity, I assume the Park Service will defer to the State and affected local government officials when making land management decisions. The Park Service should use a light hand. The river area has such potential, I would really hate to see it ruined by divisive heavy-handed Federal actions. What is needed is the Federal, State, regional, and local governments to work together toward the common goal. This goal cannot be achieved without complete cooperation and this bill should go a long way to facilitate cooperation.●

Mr. GRAHAM. Mr. President, I stand before you today to urge support for the Arizona/Florida land exchange embodied in S. 2840. I commend my colleagues, Senator CHILES, Senator DECONCINI, and Senator MCCAIN, for their hard work in obtaining passage of this important piece of legislation.

With the passage of S. 90, the Big Cypress National Preserve addition bill, Congress recognized the importance of designating this environmentally valuable land as a preserve to serve as a part of the larger buffer envisioned for the Everglades National Park.

There had been concerns regarding the fairness of this land exchange. Consequently, I asked the Florida Department of Natural Resources to conduct a review of the Florida appraisals. The report came back that the appraisals of land to be traded or purchased were at or below market value. I studied the General Accounting Office report, I met with the Department of Interior, I met with the Collier's, and I met with environmental groups.

After extensive study and questioning, I decided that what was once thought to be of concern was actually a good deal—a good deal for Florida, for Arizona, for the Indians, for the veterans, for the city of Phoenix, for the Federal Government, and for the environment. The environmental community is also adamantly supporting the exchange now.

In this light, the exchange appears to be one that is fair and good for Florida in the acquisition of valuable land. The full 108,000 acres in the exchange are valued at $45 million. The 70,010 acres in the Eastern township of the Big Cypress Preserve addition are valued at $26.6 million and the 13,060 acres of the addition adjacent to Route 29 is valued at $10.6 million. The State's 20-percent share under S. 90 will include acquisition of remaining lands within the addition.

This Federal/State partnership exemplifies the model of cooperation necessary to acquire the buffer areas needed to protect a national treasure and one of the international biospheres.

The East Everglades Task Force has recommended a Federal/State partnership to acquire the additional land necessary to provide an adequate buffer to that side of the park. We are at a point of needing to redefine the boundaries of the park and the buffer zone. This land exchange to help effectuate acquisition of the Big Cypress Preserve addition is merely one more step in the ongoing process of protecting the park and the entire Everglades system.

The people of Florida were the first to understand the fragile nature of the Everglades and the complexity and vitality of their ecosystems. In 1983, Florida announced the "save our Everglades" initiative. Through this initiative—a partnership of the Federal Government, local agencies, private citizens, and the State of Florida—we are attempting to turn back the clock.

By the year 2000 the Everglades will look and function more like they did at the turn of the century than they did in 1983. A critical element of "Save our Everglades" is the preservation of Everglades National Park by an aggressive program of land acquisition which will build a "protective envelope" or buffer around the park.

Ultimately the protected lands for the entire Everglades system will total about 3,400,000 acres. About 3 million acres of that is currently owned by both the State and Federal Governments. The State of Florida donated most of the land for Everglades National Park when it was formed in 1947. In 1973, the State contributed $40 million to the purchase of the Big Cypress National Preserve. Florida has acquired 1 million acres which protect and benefit the substantial Federal investments in Everglades National Park and the Big Cypress National Preserve.

Over the last 10 years, and more recently with the initiation of the "Save Our Everglades" program, the State has committed itself to continuing to build the buffer zone around Everglades National Park, representing protection of external land areas to the ultimate benefit of the park.

Acquisition of this land simultaneous with land acquisition for conversion of Alligator Alley to Interstate 75 would allow us to make a smooth transition using similar bases for appraisal and fending off speculative development. The severance damages estimated by the Department of Transportation Alligator Alley expansion in the preserve come to $43.8 million.

The buffer zone provided by the Big Cypress Preserve addition is crucial to the success of the "Save Our Everglades" initiative—and to the maintenance of the second largest national park in the continental United States. Everglades National Park is a tropical aquatic preserve—one of the eight U.N.-designated international biosphere reserves in the world—the only subtropical park in the Nation's system.

Unlike any other national park, such as the Grand Canyon or Yosemite which are more or less self-contained, Everglades National Park is dependent on lands outside its own boundaries—dependent on water which can only be ensured if the land over which the water flows is publicly owned. Acquisition of the Big Cypress addition, as well as the Florida Panther Wildlife Refuge and the Ten Thousand Islands included in the exchange, is also necessary for the protection of the largest number of endangered species inhabiting any national park in the country, including the Florida panther, and to provide an enduring drinking water supply for south Florida.

The timely acquisition of this land could help to save one of the most significant and endangered natural resources on this continent. The Everglades system—of which the Big Cypress Preserve is a crucial part—is absolutely unique—one of a kind. It is the key to the survival of countless endangered species—plants and animals and reptiles—all dependent on this one fragile linchpin for their own continued existence.

We have an obligation to the rest of the world—not just to Floridians or even Americans—to preserve the mysterious beauty of the Everglades and the complexities of its function as a water provider—to preserve also the singular plant and animal and marine life species only found in the Everglades hammocks and marshes.

Mr. President, I urge my colleagues to vote for this fair, timely, and extremely important legislation.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill passed.

Mr. DECONCINI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DECONCINI. Mr. President, let me thank the leader for permitting this legislation to pass. It will be subject to technical changes. This agreement is comprehensive and is something that Senator MCCAIN and myself and Senator GRAHAM of Florida have spent many, many hours on, and also Senator CHILES.

I thank all those who participated in permitting this very important legislation to pass.

I yield to my colleague from Arizona.

Mr. MCCAIN. Will the majority leader yield?

Mr. BYRD. Yes.

Mr. MCCAIN. I thank the majority leader and I thank him very much for his cooperation and assistance in bringing this matter to the floor. We are deeply grateful. Our colleagues from Florida, Senator GRAHAM and Senator CHILES, have been very active in this along with others.

It is a very carefully crafted and very agonizing process we have been through, and I would like to especially express my appreciation to our respective staffs that have done such a lot of work on this and thank the leader for allowing me to make these comments.

Mr. BYRD. Mr. President, the Senator is very welcome. I thank both Senators.

Mr. GRAHAM. Will the Senator yield for a very short statement?

Mr. BYRD. Mr. President, I yield to Mr. GRAHAM for a statement.

Mr. GRAHAM. Mr. President, I wish to join in the remarks made by my colleague from Arizona thanking the leader for his graciousness in taking up this matter which relates to the protection of the Florida Everglades. A very significant acquisition by the Federal Government which is authorized in this legislation is a gestation period that has been 5 years aborning, and I am very pleased that this has come to fruition.

I particularly commend my absent colleague, Senator CHILES, who has been carrying this issue for many years. This is an extremely fitting action to be taken in this, his last week of 18 years of distinguished work in the Senate.

Mr. BYRD. Mr. President, I thank the Senator.

NAVAJO AND HOPI INDIAN RELOCATION AMENDMENTS

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1236.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill, from the Senate (S. 1236) entitled "An Act to reauthorize housing relocation under the Navajo-Hopi Relocation Program, and for other purposes," do pass with the following amendment:

Strike out all after the enacting clause, and insert:

SHORT TITLE

SECTION 1. This Act may be cited as the "Navajo and Hopi Indian Relocation Amendments of 1988".

AUTHORIZATION OF APPROPRIATIONS

SEC. 2. Subsection (a) of section 25 of Public Law 93-531 (25 U.S.C. 640d-24(a)) is amended—

(1) by striking out "$7,700,000" in paragraph (4) and inserting in lieu thereof "$13,000,000", and

(2) by striking out "$15,000,000 annually for fiscal years 1983 through 1987" in paragraph (8) and inserting in lieu thereof "$30,000,000 annually for fiscal years 1989, 1990, and 1991".

USE OF DISCRETIONARY FUNDS

SEC. 3. Subsection (b) of section 27 of Public Law 93-531 (25 U.S.C. 640d-25) is amended to read as follows:

"(b) Funds appropriated under the authority of subsection (a) may be used by the Commissioner for grants, contracts, or expenditures which significantly assist the Commissioner or assist the Navajo Tribe or Hopi Tribe in meeting the burdens imposed by this Act.".

COMMISSIONER ON NAVAJO AND HOPI INDIAN RELOCATION

SEC. 4. Subsection 12 of Public Law 93-531 (25 U.S.C. 640d-11 is amended to read as follows:

"(a) There is hereby established as an independent entity in the executive branch the Office of Navajo and Hopi Indian Relocation which shall be under the direction of the Commissioner on Navajo and Hopi Relocation (hereinafter in this Act referred to as the 'Commissioner').

"(b)(1) The Commissioner shall be appointed by the President by and with the advice and consent of the Senate.

"(2) The term of office of the Commissioner shall be 2 years. An individual may be appointed Commissioner for more than one term.

"(3) The Commissioner shall be a full time employee of the United States and shall be paid at the rate of GS-18 of the General Schedule under section 5332 of title 5, United States Code.

"(c)(1)(A) Except as otherwise provided by the Navajo and Hopi Indian Relocation Amendments of 1988, the Commissioner shall have all the powers and be responsible for all the duties that the Navajo and Hopi Indian Relocation Commission had before the enactment of such amendments.

"(B) All funds appropriated to the Navajo and Hopi Indian Relocation Commission before the date on which the first Commissioner on Navajo and Hopi Indian Relocation is confirmed by the Senate that have not been expended on such date shall become available to the Office of Navajo and Hopi Indian Relocation on such date and shall remain available without fiscal year limitation.

"(2) There are hereby transferred to the Commissioner, on January 31, 1989—

"(A) all powers and duties of the Bureau of Indian Affairs derived from Public Law 99-190 (99 Stat. at 1236) that relate to the relocation of members of the Navajo Tribe from lands partitioned to the Hopi Tribe, and

"(B) all funds appropriated for activities relating to such relocation pursuant to P.L. 99-190 (99 Stat. at 1236): *Provided,* That such funds shall be used by the Commissioner for the purpose for which such funds were appropriated to the Bureau of Indian Affairs.

"(d)(1) The Commissioner shall have the power to—

"(A) appoint and fix the compensation of such staff and personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title; and

"(B) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $200 a day for individuals.

"(2) The authority of the commissioner to enter into contracts for the provision of legal services for the Commissioner or for the Office of Navajo and Hopi Indian Relocation shall be subject to the availability of funds provided for such purpose by appropriations Acts.

"(3) There are authorized to be appropriated for each fiscal year $100,000 to fund contracts described in paragraph (2).

"(e)(1) The Commissioner is authorized to provide for the administrative, fiscal, and housekeeping services of the Office of Navajo and Hopi Indian Relocation and is authorized to call upon any department or agency of the United States to assist him in implementing the relocation plan, except that the control over and responsibility for completing relocation shall remain in the Commissioner. In any case in which the Office calls upon any such department or agency for assistance under this section, such department or agency shall provide reasonable assistance so requested.

"(2) On failure of any agency to provide reasonable assistance as required under paragraph (1) of this subsection, the Commissioner shall report such failure to the Congress.

"(f) The Office of Navajo and Hopi Indian Relocation shall cease to exist when the President determines that its functions have been fully discharged.".

(b) Public Law 93-531 is amended by striking out "the Commission" each place it appears and inserting in lieu thereof "the Commissioner".

(c)(1) Notwithstanding any other provisions of law or any amendment made by this Act—

(A) the Navajo and Hopi Indian Relocation Commission shall—

(i) continue to exist until the date on which the first Commissioner is confirmed by the Senate,

(ii) have the same structure, powers and responsibilities such Commission had before the enactment of this Act, and

(iii) assume responsibility for the powers and duties transferred to such Commissioner under section 12(c)(2) of Public Law 93-531, as amended by this Act, until the Commissioner is confirmed,

(B) the existing Commissioners shall serve until the new Commissioner is confirmed by the Senate, and

(C) the existing personnel of the Commission shall be transferred to the new Office of Navajo and Hopi Indian Relocation.

(2) The Navajo and Hopi Relocation Commission shall become known as the Office of Navajo and Hopi Indian Relocation on the date on which the first Commissioner is confirmed by the Senate.

(d) Section 13 of Public Law 93-531 (25 U.S.C. 640d-12) is amended to read as follows:

"(a) By no later than the date that is 6 months after the date on which the first Commissioner is confirmed by the Senate, the Commissioner shall prepare and submit to the Congress a report concerning the relocation of households and members thereof of each tribe and their personal property, including livestock, from lands partitioned to the other tribe pursuant to this Act.

"(b) The report required under subsection (a) shall contain, among other matters, the following:

"(1) the names of all members of the Navajo Tribe who reside within the areas partitioned to the Hopi Tribe and the names of all members of the Hopi Tribe who reside within the areas partitioned to the Navajo Tribe;

"(2) the names of all other members of the Navajo Tribe, and other members of the Hopi Tribe, who are eligible for benefits provided under this Act and who have not received all the benefits for which such members are eligible under this Act;

"(3) the fair market value of the habitations and improvements owned by the heads of households identified by the Commissioner as being among the persons named in clause (1) of this subsection; and

"(4) a report on how funds in the Navajo Rehabilitation Trust Funds will be expended to carry out the purposes described in section 32(d).".

LOBBYING

SEC. 5. Public Law 93-531 is amended by adding at the end thereof the following new section:

"SEC. 31. (a) Except as provided in subsection (b), no person or entity who has entered into a contract with the Commissioner to provide services under this Act may engage in activities designed to influence Federal legislation on any issue relating to the relocation required under this Act.

"(b) Subsection (a) shall not apply to the Navajo tribe or the Hopi tribe, except that such tribes shall not spend any funds received from the Office in any activities designed to influence Federal legislation.".

NEW DEVELOPMENT ON CERTAIN LANDS

SEC. 6. Subsection (f) of section 10 of Public Law 93-531 (25 U.S.C. 640d-9(f)) is amended—

(1) by striking out "Any development" and inserting in lieu thereof "(1) Any development", and

(2) by adding at the end thereof the following new paragraphs:

"(2) Each Indian tribe which receives a written request for the consent of the Indian tribe to a particular improvement, construction, or other development on the lands to which paragraph (1) applies shall respond in writing to such request by no later than the date that is 30 days after the date on which the Indian tribe receives the request. If the Indian tribe refuse to consent to the improvement, construction, or other development, the response shall include the reasons why consent is being refused.

"(3)(A) Paragraph (1) shall not apply to any improvement, construction, or other development if—

"(i) such improvement, construction, or development does not involve new housing construction, and

"(ii) after the Navajo Tribe or Hopi Tribe has refused to consent to such improvement, construction, or development (or after the close of the 30-day period described in paragraph (2), if the Indian tribe does not respond within such period in writing to a written request for such consent), the Secretary of the Interior determines that such improvement, construction, or development is necessary for the health or safety of the Navajo Tribe, the Hopi Tribe, or any individual who is a member of either tribe.

"(B) If a written request for determination described in subparagraph (A)(ii) is submitted to the Secretary of the Interior after the Navajo Tribe or Hopi Tribe has refused to consent to any improvement, construction, or development (or after the close of the 30-day period described in paragraph (2), if the Indian tribe does not respond within such period in writing to a written request for such consent), the Secretary shall, by no later than the date that is 45 days after the date on which such request is submitted to the Secretary, determine whether such improvement, construction, or development is necessary for the health or safety of the Navajo Tribe, the Hopi Tribe, or any individual who is a member of either Tribe.

"(C) Any development that is undertaken pursuant to this section shall be without prejudice to the rights of the parties in the civil action pending before the United States District Court for the District of Arizona commenced pursuant to section 8 of this Act, as amended.".

NAVAJO REHABILITATION TRUST FUND

SEC. 7. Public Law 93-531 is amended by adding at the end thereof the following new section:

"SEC. 32. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the 'Navajo Rehabilitation Trust Fund', which shall consist of the funds transferred under subsection (b) and of the funds appropriated pursuant to subsection (f) and any interest or investment income accrued on such funds.

"(b) All of the net income derived by the Navajo Tribe from the surface and mineral estates of lands located in New Mexico that are acquired for the benefit of the Navajo Tribe under section 11 shall be deposited into the Navajo Rehabilitation Trust Fund.

"(c) The Secretary shall be the trustee of the Navajo Rehabilitation Trust Fund and shall be responsible for investment of the funds in such Trust Fund.

"(d) Funds in the Navajo Rehabilitation Trust Fund, including any interest or investment accruing thereon, shall be available to the Navajo Tribe, with the approval of the Secretary, solely for purposes which will contribute to the continuing rehabilitation and improvement of the economic, educational, and social condition of families, and Navajo communities, that have been affected by—

"(1) the decision in the Healing case, or related proceedings,

"(2) the provision of this Act, or

"(3) the establishment by the Secretary of the Interior of grazing district number 6 as land for the exclusive use of the Hopi Tribe.

"(e) The Navajo Rehabilitation Trust Fund shall terminate when, upon petition by the Navajo Tribe, the Secretary determines that the goals of the Trust Fund have been met and the United States has been reimbursed for funds appropriated under subsection (f). All funds in the Trust Fund on such date shall be transferred to the general trust funds of the Navajo Tribe.

"(f) There is hereby authorized to be appropriated for the Navajo Rehabilitation Trust Fund not to exceed $10,000,000 in each of fiscal years 1990, 1991, 1992, 1993, 1994 and 1995. The income from the land referred to in subsection (b) of this section shall be used to reimburse the General Fund of the United States Treasury for amounts appropriated to the Fund.".

LANDS TRANSFERRED OR ACQUIRED FOR THE NAVAJO TRIBE

SEC. 8. Subsection (h) of section 11 of Public Law 93-531 (25 U.S.C. 640d-10(h)) is amended by striking out "the date of this subsection who are waiting relocation under this Act" and inserting in lieu thereof "the date of enactment of this Act: *Provided,* That the sole authority for final planning decisions regarding the development of lands acquired pursuant to this Act shall rest with the Commissioner until such time as the Commissioner has discharged his statutory responsibility under this Act".

PROVISION OF ATTORNEY FEES FOR THE SAN JUAN SOUTHERN PAIUTE TRIBE

SEC. 9. (a) Subsection (e) of section 8 of Public Law 93-531 (25 U.S.C. 640d-7(e)) is amended by inserting a comma and the words "San Juan Southern Paiute" after the word "Navajo".

(b) Section 8 of Public Law 93-531 is amended by adding at the end thereof the following new subsection:

"(f)(1) Any funds made available for the San Juan Southern Paiute Tribe to pay for attorney's fees shall be paid directly to the tribe's attorneys of record until such tribe is acknowledged as an Indian tribe by the United States: *Provided,* That the tribe's eligibility for such payments shall cease once a decision by the Secretary of the Interior declining to acknowledge such tribe becomes final and no longer appealable.

"(2) Nothing in this subsection shall be interpreted as a Congressional acknowledgement of the San Juan Southern Paiute as an Indian tribe or as affecting in any way the San Juan Southern Paiute Tribe's Petition for Recognition currently pending with the Secretary of the Interior.

"(3) There is hereby authorized to be appropriated not to exceed $250,000 to pay for the legal expenses incurred by the Southern Paiute Tribe on legal action arising under this section prior to enactment of the Navajo and Hopi Indian Relocation Amendments of 1988.".

SEC. 10. Section 15 of Public Law 93-531 is amended by adding the following new subsection (g) at the end thereof:

"(g) Notwithstanding any other provision of law, appeals from any eligibility determination of the Relocation Commission, irrespective of the amount in controversy, shall be brought in the United States District Court for the District of Arizona."

Mr. DECONCINI. Mr. President, in the course of the committee's consideration of the proposal to amend Public Law 93-531, the committee heard much testimony to the effect that the planning and implementation of projects, including the development of housing for the relocatees, on the New Lands has had many difficulties. We received testimony from the Navajo Nation in great quantity which detailed these problems. The Bureau of Indian Affairs itself has allowed that mistakes have been made, although the Bureau felt that its performance was improving. I know that for as long as I have been in the Senate, we have received testimony about the inadequacy of the planning by the Commission. On more than one occasion, planning experts have told us that the problems being encountered by the relocatee families are directly related to the lack of proper planning.

In approving the amendments, did the committee conclude that a new single Commissioner would be better suited to assume the responsibility of planning and development of the New Lands and for the relocation of families to the New Lands?

Mr. INOUYE. Yes; in this legislation, both the Bureau of Indian Affairs and the current Navajo-Hopi Indian Relocation Commission are relieved of these responsibilities.

Mr. DECONCINI. Numerous instances of serious errors in planning, such as the siting of houses with no dependable water supply, the selection of homesites but no plans for the concurrent development of infrastructure needed to maintain these homes, and so forth, were received by the committee. In approving the amendments, is it the sense of the committee that the plans developed by the Bureau of Indian Affairs and by the Relocation Commission have in some ways been inadequate?

Mr. INOUYE. The committee is in receipt of testimony concerning deficiencies in the planning for the New Lands by the BIA and for other relocation sites under the jurisdiction of the Relocation Commission. These amendments seek to address those problems through the consolidation of these functions under a single new Commissioner.

Mr. DECONCINI. Do the amendments proposed by S. 1236 in any way limit or circumscribe the right of the individuals living on the Hopi partitioned lands, the Navajo partitioned lands or the Bennett Freeze area from making essential repairs or replacement of dwellings if the basic structure is so delapidated that simply repairing it would not be appropriate beyond the limits of current law?

Mr. INOUYE. No; the amendments do not in any way specify new limits on the capacity of families or individuals to repair or replace dwellings within the confines of the current law.

Mr. DECONCINI. Mr. President, I thank the Senator for his assistance on this matter of grave concern to this Senator.

Mr. McCAIN. Mr. President, I rise in order to make a statement on S. 1236 as amended by the House, and for the purpose of engaging in a colloquy with the distinguished chairman of the Indian Affairs Committee, Senator INOUYE.

Mr. President, during the past year I have been working closely with my colleague from Arizona, Senator DECONCINI, to develop legislation which would reorganize the existing Navajo-Hopi Indian Relocation Commission, promote the completion of the relocation program and to ensure that those Navajo families who are entitled to relocation benefits receive such benefits as expeditiously and humanely as possible. I am satisfied that we have developed a reasonable bill given the difficult circumstances that always accompany this issue. I am comfortable with the House amendments to the S. 1236. Although there are certain provisions in the House bill that I would rather have not seen incorporated and other provisions in the Senate bill that I would like to have seen retained, I understand the nature of the legislative process and I am satisfied that these particular changes will not significantly diminish the original purpose of S. 1236 as noted above.

Mr. President, I wish to thank my colleague, Senator DECONCINI, for his efforts on this legislation. I would also like to thank the distinguished chairman of the Indian Affairs Committee, Senator INOUYE, for his efforts in this matter. His leadership and concern is appreciated by all parties.

Mr. President, will the distinguished Senator from Hawaii yield for the purpose of entering into a colloquy?

Mr. INOUYE. I will be pleased to yield to my colleague for that purpose.

Mr. McCAIN. I understand the BIA has already spent millions of dollars developing the New Lands for range and housing units to accommodate Navajo families still residing on the HPL and would like assurance that section 8 of S. 1236 is not intended to disrupt such efforts. What is the Senator's understanding in this regard.

Mr. INOUYE. It is my understanding that this section provides the new Commissioner with a necessary measure of flexibility and is not intended to disrupt or delay the current development of the New Lands for the resettlement of Navajo families on the HPL desiring to relocate there.

Mr. McCAIN. I would finally seek to clarify that the statutory modification in the Bennett Freeze area is not intended to influence the deliberations of U.S. District Court for the District of Arizona relative to the Bennett Freeze area scheduled for court consideration next year. Is the legislative history clear in this regard?

Mr. INOUYE. I believe the statute is clear. The section modifying the Bennett Freeze is substantially identical to the Senate provison which, as was made expressly clear in the Senate report, intends that it may be conclusively presumed that any development undertaken pursuant to this statute be undertaken subject to the judgment of the U.S. District Court for the District of Arizona.

Mr. McCAIN. I thank the Senator for this clarification and commend him for his leadership on this difficult issue.

Mr. INOUYE. I thank the distinguished Senator.

Mr. BYRD. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCAIN. Mr. President, will the majority leader yield for a brief comment?

Mr. BYRD. Yes.

Mr. McCAIN. I would like to again thank the majority leader for his consideration on this important bill. As our leader knows, this has been a very difficult and agonizing process going on for many years. I believe this will expedite and help this terrible humanitarian issue.

Again, my thanks to the Senator.

Mr. BYRD. Mr. President, I thank the Senator.

Mr. President, I yield the floor.

OMNIBUS DRUG INITIATIVE ACT OF 1988

The Senate continued with the consideration of the bill.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. As I understand my conversation with the majority leader, he would propound a consent request for an hour's consideration of this amendment. Is that correct?

Mr. BYRD. Yes.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the time start now and I will send the amendment to the desk shortly. When I do I will ask consent to be able to make technical corrections.

Mr. BYRD. Mr. President, the order that was entered was to the effect that no amendment to the amendment would be in order. Perhaps the Senator would like to modify his amendment before he sends it up, or change it.

Mr. KENNEDY. I would be glad to do that. It will take a few more moments. It is basically striking one word, the word "State" as it appears in different parts of the amendment, and it is just a matter of taking some time. That would really be the extent of the technical amendment and I will explain it in the discussion. It will take a few moments or I will make a general statement now. I will be glad to do whatever the leader wants.

Mr. BYRD. If the Senator will yield, that would bring it into conformity with our discussion in the Vice President's room.

Mr. KENNEDY. Mr. President, I ask that we proceed then under the time limitation and I will send the amendment to the desk at an appropriate time.

The PRESIDING OFFICER. Is there objection to the request? Without objection, it is so ordered.

AMENDMENT NO. 3683

Mr. KENNEDY. For those Members of the Senate who are not here but in their offices, this amendment is the Kennedy amendment listed on the October 4 memorandum circulated by the drug task force as the first amendment with the word "State" stricken and also the amendment on the October 11 circulation under the Kennedy death penalty amendment with the word "State" stricken.

Mr. President, race discrimination is unacceptable everywhere, but nowhere is it more intolerable than in capital sentencing—in the determination of who shall live and who shall die. If those awesome decisions are to be made at all, they must be made without even the slightest hint of racial bigotry.

Yet as we debate the death penalty here today, there is compelling evidence that the scourge of race discrimination infects capital sentencing decisions in jurisdictions throughout this country.

In study after study, experts have found that those who kill white people are far more likely to receive the death penalty than are those who kill blacks. And there is disturbing evidence that black defendants are more likely to be given a death sentence than are white defendants.

Perhaps the best example, but by no means the only one, is the evidence before the Supreme Court last year in the case of McCleskey versus Kemp.

Warren McCleskey, the defendant in that case, was a black man charged with killing a white police officer in Fulton County, GA. McCleskey was charged with a terrible crime, but it was by no means an unusual one. Between 1973 and 1980, 17 defendants were charged with killing police officers in Fulton County, but Warren McCleskey was the only one who received a death sentence. In only one other case was the death penalty sought, and there a defendant convicted of killing a black police officer received a life sentence instead.

In challenging his death sentence, McCleskey placed into evidence two studies conducted by teams led by Prof. David Baldus, which analyzed over 2,400 homicide cases that occurred in Georgia between 1973 and 1979. From official State records, the Baldus studies collected data about more than 500 factors in each case—information relating to the characteristics of the defendant and the victim, the circumstances of the crime, the strength of the evidence, and the mitigating and aggravating factors in each case. Using sophisticated statistical techniques, the studies then took account of the effects up to 230 nonracial sentencing factors in their analysis.

Their conclusions are striking: When the characteristics of the crime and the defendant were controlled for, those who kill whites were 4.3 times more likely to receive the death penalty than were killers of blacks. The import of the data was well summarized in the dissent of Justice Brennan in the McCleskey case:

> At some point in this case, Warren McCleskey doubtless asked his lawyer whether a jury was likely to sentence him to die. A candid reply to this question would have been disturbing. First, counsel would have to tell McCleskey that few of the details of the crime or of McCleskey's past criminal conduct were more important than the fact that his victim was white. Furthermore, counsel would feel bound to tell McCleskey that defendants charged with killing white victims in Georgia are 4.3 times as likely to be charged with killing blacks. In addition, frankness would compel the disclosure that it would be more likely than not that the race of McCleskey's victim would determine whether he received a death sentence: 6 out of every 11 defendants convicted of killing a white person would not have received the death penalty if their victims had been black, while, among defendants with aggravating and mitigating factors comparable to McCleskey, 20 out of every 34 would not have been sentenced to die if their victims had been black. Finally, the assessment would not be complete without the information that cases involving black defendants and white victims are more likely to result in a death sentence than cases featuring any other racial combination of defendant and victim. The story could be told in a variety of ways, but McCleskey could not fail to grasp its essential narrative line: there was a significant chance that race would play a prominent role in determining if he lived or died. [107 S.Ct. at 1782].

Commenting on McCleskey's sentence itself, Justice Brennan wrote that "[t]he Baldus study indicates that, after taking into account some 230 nonracial factors that might legitimately influence a sentencer, the jury more likely than not would have spared McCleskey's life had his victim been black." [107 S.Ct. at 1784].

This pattern of race considerations affecting sentencing is repeated in jurisdiction after jurisdiction around the country.

In Florida, a study published in the Standford Law Review found that defendants convicted of killing whites were eight times more likely to receive a death sentence as those convicted of murdering blacks. Another study found that blacks who kill whites received the death penalty 22 percent of the time, while whites who kill whites received the death penalty only 4.6 percent of the time.

In Georgia, blacks who kill whites received the death penalty 16.7 percent of the time, while whites who killed whites received the death penalty only 4.2 percent of the time.

In Illinois, that same study found that killers of whites were six times as likely to receive a death sentence as killers of blacks.

In Maryland, defendants convicted of murdering whites received the death sentence eight times more frequently than killers of blacks.

In Ohio, a 1980 study found that blacks who kill whites received the death penalty 25 percent of the time, while whites who kill whites received the death penalty only 4.6 percent of the time.

In Texas, one 1980 study found that killers of whites were 20 times more likely to received a death sentence, while a 1985 study found that they were over 4 times more likely to do so. Meanwhile, blacks who kill whites received the death penalty 8.7 percent of the time, while whites who killed whites received the death penalty only 1.5 percent of the time.

This pattern also appears in California and Pennsylvania, and nationally as well. A 1985 study of capital sentencing conducted by the Dallas newspaper found that a killer of a white was nearly three times more likely to get a death sentence than a killer of a black.

All of us must agree that that kind of evidence demonstrates that there is a pervasive pattern of racial discrimination in capital sentencing in this country, a pattern that should be unacceptable to each and every Member of the Senate.

Well then, you may ask, what about the McCleskey case? The Supreme Court did not throw out McCleskey's sentence. What about that?

The five members of the Court who voted to affirm McCleskey's sentence did not dispute the accuracy of the Baldus studies. And they admitted that statistical evidence of the kind contained in the studies would be sufficient to prove intentional race discrimination in other areas, such as housing discrimination and discrimination in jury selection, and sufficient to establish employment discrimination claims under title VII of the Civil Rights Act of 1964.

But the majority concluded that capital sentencing was "different," because individual juries and prosecutors made sentencing decisions, and because it would be inappropriate to require the State to call on these individuals to rebut a showing of discrimination.

I believe that the McCleskey decision was wrongly decided, and that the compelling evidence that McCleskey's sentence was affected by racial considerations and should have been sufficient to set aside his sentence.

But regardless of whether the Supreme Court was right or wrong in the decision it reached in the McCleskey case, the Members of the Senate have the authority, and the responsibility, to ensure that gross racial disparities of the kind I have described do not occur in Federal death penalty cases. The Racial Justice Act Amendment now before us is intended to meet that responsibility.

The amendment would prohibit imposition or execution of a death sentence under Federal law if that sentence furthers a "racially disproportionate pattern."

Under my amendment, if such a discriminatory pattern does exist—if a defendant can establish with real evidence, including statistical evidence that the race of defendants, or of victims, is playing a role in sentencing decisions—then the government will have to show by clear and convincing evidence that the racial disparities are not the result of discrimination, but instead simply reflect pertinent nonracial factors, such as the presence or absence of mitigating or aggravating circumstances.

For example, if a criminal defendant offers statistical evidence that demonstrates that blacks receive death sentences in a particular State at a rate that is far higher than whites, and the defendant shows that his or her death sentence was imposed in furtherance of such a racially disproportionate pattern, then the government must show by clear and convincing evidence that the statistical disparity results from other, nonracial factors, such as differences in the nature of the crimes or in the conviction records of the defendants.

If the government cannot meet that burden, the death sentence must be vacated. If we are truly serious about ending race discrimination in capital sentencing, no other result can be acceptable.

By permitting statistical evidence of a pattern of racial disparities to be used to establish a claim of race discrimination, the amendment would make the standard of proof in capital-sentencing cases analagous to that under Federal antidiscrimination statutes like title VII.

In order to ensure that adequate data are available to determine whether or not race discrimination is taking place within a particular jurisdiction, the amendment would require jurisdictions which have the death penalty to collect and maintain data about the nature of crimes for which the death penalty may be imposed, the details of those crimes, and the demographic characteristics of the victims and the defendants.

The Racial Justice Act is supported by a number of leading organizations, including the American Bar Association, the United States Catholic Conference, and the leadership Conference of Civil Rights.

In closing, let me say to my colleagues that we are obviously deeply divided about whether or not there should be a Federal death penalty at all. But all of us are united in the conviction that racial considerations can and should play no role whatsoever in the awesome decision of who shall live and who shall die.

If we are up live up to our responsibility to make good on the Constitution's promise of equal justice for all, then we must ensure that race discrimination in capital sentencing is finally eliminated. My amendment is a strong step in that direction, and I urge my colleagues to support it.

Mr. President, how much time did I use?

The PRESIDING OFFICER. The Senator from Massachusetts has used 11½ minutes.

Mr. KENNEDY. Mr. President, I reserve the remainder of my time.

AMENDMENT NO. 3683

(Purpose: To amend title 28 of the United States Code to prohibit racially disproportionate capital sentencing.)

Mr. KENNEDY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY], proposes an amendment numbered 3683.

Mr. KENNEDY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following new subtitle:

Subtitle B—Racial Justice Act of 1988

SEC. 7101. SHORT TITLE.

This Act may be cited as the "Racial Justice Act of 1988".

SEC. 7102. FINDINGS.

The Congress finds that—

(1) section 5 of the Fourteenth Amendment of the United States Constitution calls upon Congress to enforce the Constitution's promise of equality under law;

(2) equality under law is tested most profoundly by whether a legal system tolerates race playing a role in the determination of whether and when to administer the ultimate penalty of death;

(3) the death penalty is being administered in a pattern that evidences a significant risk that the race of the defendant, or the race of the victim against whom the crime was committed, influences the likelihood that the defendant will be sentenced to death;

(4) the Constitution's guarantee of equal justice for all is jeopardized when the death penalty is imposed in a pattern in which the likelihood of a death sentence is affected by the race of the perpetrator or of the victim;

(5) the United States Supreme Court has concluded that the Federal judiciary is institutionally unable to eliminate this jeopardy to equal justice in the absence of proof that a legislature, prosecutor, judge, or jury acted with racially invidious and discriminatory motives in the case of a particular defendant;

(6) the interest in ensuring equal justice under law may be harmed, not only by decisions motivated by explicit racial bias, but also by government rules, policies, and practices that operate to reinforce the subordinate status to which racial minorities were relegated in our society;

(7) the institutional need of courts to identify invidiously motivated perpetrators is not shared by Congress, which is empowered by section 5 of the Fourteenth Amendment to take system-wide, preventive measures not only to eliminate adjudicated instances of official race discrimination but also to eradicate wide-scale patterns and practices that entail an intolerable danger that persons of different races would be treated differently; and

(8) the persistent racial problems pervading the implementation of the death penalty in many parts of this Nation require the Government of the United States to counteract the lingering effects of racial oppression and prejudice in order to enforce the constitutional guarantee of equal justice for all Americans.

SEC. 7103. AMENDMENT TO TITLE 28.

(a) PROCEDURE.—Part VI of title 28, United States Code, is amended by adding at the end thereof the following new chapter:

"CHAPTER 177—RACIALLY DISPROPORTIONATE CAPITAL SENTENCING

"Sec.
"2921. Definitions.
"2922. Prohibition on the imposition or execution of the death penalty in a racially disproportionate pattern.
"2923. Data on death penalty cases.
"2924. Enforcement of the chapter.
"2925. Construction of chapter.

"§ 2921. Definitions.

"For purposes of the chapter—

"(1) the term 'a racially disproportionate pattern' means a situation in which sentences of death are imposed more frequently—

"(A) upon convicted persons of one race than upon convicted persons of another race; or

"(B) as punishment for crimes against persons of one race than as punishment for crimes against persons of another race,

and the greater frequency is not explained by pertinent nonracial circumstances;

"(2) the term 'death-eligible crime' means a crime for which death is a punishment that is authorized by Federal law to be imposed under any circumstances upon a conviction of that crime;

"(3) the term 'case of death-eligible crime' means a case in which the complaint, indictment, information, or any other initial or subsequent charging paper charges any person with a death-eligible crime; and

"§ 2922. Prohibition on the imposition or execution of the death penalty in a racially disproportionate pattern

"(a) PROHIBITION.—It is unlawful to impose or execute sentences of death under color of Federal law in a racially disproportionate pattern. No person shall be put to death in the execution of a sentence imposed pursuant to any Federal law if that person's death sentence furthers a racially disproportionate pattern.

"(b) ESTABLISHMENT OF A PATTERN.—To establish that a racially disproportionate pattern exists for purposes of this chapter—

"(1) ordinary methods of statistical proof shall suffice; and

"(2) it shall not be necessary to show discriminatory motive, intent, or purpose on the part of any individual or institution.

"(c) PRIMA FACIE SHOWING.—(1) To establish a prima facie showing of a racially disproportionate pattern for purposes of this chapter, it shall suffice that death sentences are being imposed or executed—

"(A) upon persons of one race with a frequency that is disproportioned to their representation among the numbers of persons arrested for, charged with, or convicted of, death-eligible crimes; or

"(B) as punishment for crimes against persons of one race with a frequency that is disproportioned to their representation among the numbers of persons against whom death-eligible crimes have been the subject of arrest, charges, or convictions.

"(2) To rebut a prima facie showing of a racially disproportionate pattern, a Federal entity must establish by clear and convincing evidence that identifiable and pertinent nonracial factors persuasively explain the observable racial disparities comprising the disproportion.

"§ 2923. Data on death penalty cases

"(a) DESIGNATION OF AGENCY.—The Federal government shall designate a central agency to collect and maintain pertinent data on the charging, disposition, and sentencing patterns for all cases of death-eligible crimes.

"(b) RESPONSIBILITIES OF CENTRAL AGENCY.—The central agency designated pursuant to subsection (a) shall—

"(1) affirmatively monitor compliance with this chapter by local officials and agencies;

"(2) devise and distribute to every local official or agency responsible for the investigation or prosecution of death-eligible crimes a standard form to collect pertinent data;

"(3) maintain all standard forms, compile and index all information contained in the forms, and make both the forms and the compiled information publicly available;

"(4) maintain a centralized, alphabetically indexed file of all police and investigative reports transmitted to it by local officials or agencies in every case of death-eligible crime; and

"(5) allow access to its file of police and investigative reports to the counsel of record for any person charged with any death-eligible crime or sentenced to death who has made or intends to make a claim under section 2922 and it may also allow access to this file to other persons.

"(c) RESPONSIBILITY OF FEDERAL OFFICIAL.—(1) The Federal official responsible for the investigation or prosecution of death-eligible crimes shall—

"(A) complete the standard form developed pursuant to subsection (b)(2) on every case of death-eligible crime; and

"(B) transmit the standard form to the central agency no later than 3 months after the disposition of each such case whether that disposition is by dismissal of charges, reduction of charges, acceptance of a plea of guilty to the death-eligible crime or to another crime, acquittal, conviction, or any decision not to proceed with prosecution.

"(2) In addition to the standard form, the Federal official shall transmit to the central agency one copy of all police and investigative reports made in connection with each case of death-eligible crime.

"(d) PERTINENT DATA.—The pertinent data required in the standard form shall be designated by the central agency but shall include, at a minimum, the following information:

"(1) pertinent demographic information on all persons charged with the crime and all victims (including race, sex, age, and national origin);

"(2) information on the principal features of the crime;

"(3) information on the aggravating and mitigating factors of the crime, including the background and character of every person charged with the crime; and

"(4) a narrative summary of the crime.

"§ 2924. Enforcement of the Chapter

"(a) ACTION UNDER SECTIONS 2241, 2254, OR 2255 OF THIS TITLE.—In any action brought in a court of the United States within the jurisdiction conferred by sections 2241, 2254, or 2255, in which any person raises a claim under section 2922—

"(1) the court shall appoint counsel for any such person who is financially unable to retain counsel; and

"(2) the court shall furnish investigative, expert or other services necessary for the adequate development of the claim to any such person who is financially unable to obtain such services.

"§ 2925. Construction of chapter

"Nothing contained in this chapter shall be construed to affect in one way or the other the lawfulness of any sentence of death that does not violate section 2922.".

(b) AMENDMENT TO TABLE OF CHAPTERS.—The table of chapters of part VI of title 28, United States Code, is amended by adding at the end thereof the following new item:

"177. Racially Disproportionate Capital Sentencing .... 2921.".

SEC. 7104. ACTIONS PRIOR TO THE DATE OF ENACTMENT.

No person shall be barred from raising any claim under section 2292 of title 28, United States Code, as added by this Act, on the ground of having failed to raise or to prosecute the same or a similar claim prior to enactment of the Act, nor by reason of any adjudication rendered prior to its enactment.

Mr. KENNEDY. Mr. President, I yield myself 3 more minutes.

I will read a letter from Robert Evans, director, American Bar Association.

The American Bar Association strongly supports your amendment to be offered to the omnibus drug bill, S. 2852, to ensure that the death penalty is not imposed in a racially discriminatory manner.

The American Bar Association has not taken a position on whether or not the ultimate sanction of the death penalty should be imposed on adult offenders. This past August, however, our House of Delegates adopted the position that legislation is needed to correct discriminatory imposition of the death penalty based on race. Numerous studies have indicated a widespread pattern of racial discrimination in the imposition of capital punishment. These studies demonstrate that a defendant is far more likely to receive the death penalty in a capital murder case if his victim is white than if his victim is black. The statistics are so overwhelming that they make it clear that the death penalty is inappropriately applied in many cases.

We understand that the Racial Justice Act of 1988 will be offered as an amendment to the drug bill. This amendment provides that where there is a statistically valid showing that the death penalty has been imposed in a racially disproportionate manner, this ultimate sanction is subject to challenge. Capital defendants who establish a prima facie case of racial discrimination through the use of a valid statistical study would be granted relief absent successful rebuttal that non-racial factors explain the racial disparities in the sentencing scheme.

This amendment would not eliminate the death penalty. If, however, capital punishment is to be imposed, anything less than scrupulous attention to due process is intolerable. It is the basic precept of our system of government that equal justice under the law must be assured to all Americans. A demonstrably discriminatory system for imposing the ultimate sanction of death is repugnant to this central belief.

We urge all Senators to support your amendment on the Senate floor.

Mr. President, this amendment, therefore, is targeted to the Federal death penalty and does not apply at this time to the State.

I reserve the remainder of my time.

Mr. HATCH. Mr. President, will the Senator from New York yield?

Mr. D'AMATO. I yield 10 minutes to the distinguished Senator from Utah.

Mr. HATCH. Mr. President, I would like to make some points with regard to the death penalty.

Capital punishment is our society's ultimate recognition of the sanctity of human life. We can either say that a life, in terms of criminal sanction, is inestimably valuable or we can say that a life is worth life imprisonment with the possibility of parole in 7 years. Only one of these options grants to human life the sanctity it deserves.

We have seen that all over the country. We are given these life imprisonment sanctions and say they are going to be there the rest of their lives, and a few years later they are out on the streets again.

When we discuss capital punishment, too often we focus on the plight of the criminal who is facing the significant consequences of murder. Too often, those criminals are depicted as unwitting victims of society. Without a doubt, a criminal—even one convicted of heinous murder—deserves every protection the Constitution affords. However let us not forget to look at both sides of the grisly picture of a criminal's character.

Earlier this year, I reminded my colleagues of a brutal murder that took place in Ogden, UT, where two men, Pierre Selby and William Andrews, entered a Hi-Fl shop and bound, tortured and raped their victims before murdering them. I will not go into this horrible tale again, nor will I discuss any of the other heinous murders that have motivated juries to reach the sentence of death. But let us not forget the types of crimes and the sort of criminal behavior we are discussing in connection with the death penalty.

We must remember that the Supreme Court has addressed this issue of racially disproportionate capital punishment in the case of McCleskey versus Kemp and rejected this analysis. The Court examined McCleskey's claim that past statistical evidence of racial discrimination—although wholly unrelated to his own murder of the police officer—invalidated the death penalty.

The Supreme Court responded summarily:

> We agree with the Court of Appeals, and every other court that has considered such a challenge, that this claim must fail. (107 S. Crt. at 1766.)

In fact, at the time of this opinion, reliance upon statistical evidence of discrimination in capital sentencing had been rejected in the 4th, 11th, and the 5th Circuits. The courts have been unanimous: statistical justice is no justice. Murderers wreak their havoc without regard to racial statistics and ought to be brought to justice without regard to racial statistics.

Yet, despite this recent authoritative judgment of the Supreme Court, the amendment before the Senate proposes to invalidate the death penalty whenever statistics tend to show a "racially disproportionate pattern." The linchpin of this amendment is the statistics. In the words of the amendment, "To establish a racially disproportionate pattern * * * methods of statistical proof shall suffice." The amendment then specifies the forms these statistics shall take. Once again, statistical justice is no justice at all.

The next line of the amendment is even more astounding. It states that "it shall not be necessary to show discriminatory motive, intent, or purpose on the part of any individual or institution." In other words, actual discriminatory purpose on the part of a juror, prosecutor, or judge is not even to be considered.

Think about this a moment. If discrimination is to occur in the criminal justice system, it will occur because a judge, juror, or prosecutor harbors and puts into effect a racial bias. Yet, the motives and intents of these people are specifically written out of this amendment. It is only concerned about stastistical evidence about past murders that have nothing to do with the current case before the court.

This amendment is advanced on the assumption thast racial discrimination must not be allowed to taint a process that considers implementing the death penalty. On that point—namely, that racial discrimination must not be allowed to influence capital sentencing—entirely agree. Even more important, the Supreme Court agrees.

The *McCleskey* v. *Kemp* decision itself establishes the proposition that racial animus will not be allowed to taint the criminal justice system. At the very outset of its opinion, the Supreme Court establishes that McCleskey would prevail under the equal protection clause and escape the death penalty if he could show "that the decisionmakers in his case acted with discriminatory purpose." (107 S. Crt. at 1766.)

The slightest proof that a single juror, prosecutor, or judge acted with discriminatory purpose would invalidate the sentence. In other words, if McCleskey could produce any evidence at all of discrimination "specific to his own case," he would prevail.

The problem with the McCleskey case and this amendment is that he produced and this amendment requires no evidence "specific to the case." Instead, McCleskey and this amendment rely solely upon statistics about other cases.

As I have repeatedly stated, the current capital sentencing jurisprudence contains adequate safeguards against racial discrimination. This amendment is simply unnecessary. The slightest evidence of discrimination that actually relates to the defendant's case will receive the strictest judicial attention.

To those who fear that jurors might harbor some unspoken racial animus, the criminal justice system once again provides a safeguard. The 1986 *Bazemore* v. *Friday* case established that even the blunt instrument of statistical patterns will be permitted to ensure an unbiased jury selection.

Moreover the 1986 *Batson* v. *Kentucky* case prohibits prosecutors from employing any racial factors in exercising peremptory challenges to jurors. These protections are double and triple guarantees that a jury will be fully devoid of any bias that might influence its determination.

Not only is this amendment unnecessary given current safeguards, but a recent Michigan Law Review article states clearly that this attempt at statistical justice would also be dangerous to the criminal justice system.

The Supreme Court itself said almost as much in Justice Powell's opinion in the McCleskey case:

> McCleskey's claim, taken to its logical conclusion, throws into serious question the principles that underlie our entire criminal justice system * * * if we accepted [his] * * * claim that racial bias has impermissibly tainted the capital sentencing decision, we could soon be faced with similar claims as to other types of penalty. Moreover, the claim that his sentence rests on the irrelevant factor of race easily could be extended to apply to claims based on unexplained discrepancies that correlate to membership in other minority groups * * * such as the defendant's facial characteristics or the physical attractiveness of the defendant or the victim that some statistical study indicates might be very influential in jury decision making. As the these examples illustrate, there is no limiting principle to the type of challenge brought by McCleskey. (107 S. Crt. at 1779-1780.)

The reason for the Court's alarm—and I repeat that these alarming words are found in the opinion of the Supreme Court rejecting statistical justice—is that validating the charge of racial bias would also validate doubts about the fairness of the entire criminal justice system.

As the Supreme Court noted, this notion of statistical justice could be applied elsewhere as well. Can you imagine statistics about racial factors in drug busts overturning our war on drugs? Can you imagine statistics about racial factors in burglary convictions invalidating those prosecutions? And, if racial factors are accepted despite their lack of relevancy, what happens when statistics tend to show that physical attractiveness influences some prosecutions? The current amendment does not extend that far, but the Supreme Court is on target when it states that there is simply no limiting principle with regard to the type of challenge created by this amendment.

Another critical point is that the statistics themselves are faulty and misleading as applied in this context. For example, in the fifth circuit Spinkellink case, the court took a closer look at the statistics. Spinkellink's statistical "expert" was wholly unable to explain away other pertinent variables which explained the difference between "black victim" and "white victim" crimes. The State of Florida demonstrated that most black victim murders involved unpremeditated domestic quarrels and "hot blood" crimes. These unpremeditated crimes, of course, do not generally draw a death penalty.

Thus, most "black victim murders are simply not appropriate to be included in the same count with most white victim murders. The State of Florida also demonstrated that white victim murders generally involve premeditated crimes which were linked to robbery and rape—additional aggravating factors that call for the death penalty. The point is that murders involving black victims were qualitatively different from murders involving white victims; accordingly it is no surprise that white victim murders more often produced a death penalty.

The point here is evident. Statistics are not justice. The statistics which appear to show a difference based on race are actually explained by differences in the types of crimes committed against whites as opposed to the types of crimes committed against blacks. Authoritative studies simply do not support the conclusion drawn by some of the sponsors of this amendment; namely, that racial animus in distoring the capital sentencing system. If such animus exists, however, adequate safeguards exist to prevent and eliminate it.

The Baldus study in the McCleskey case, in its own terms, is far from conclusive. The raw numbers in that study also showed that only 4 percent of black defendants received the death penalty, while 7 percent of white defendants received the death penalty. These numbers indicate that white defendants are more likely to get the dealth penalty overall. In other words, on the basis of this detailed study, a white defendant might well argue that the system is racially biased against him! This is not far-fetched. This is precisely what happened in the Spinkellink case. This only demonstrates again the silliness of relying on inconclusive statistics.

Interestingly, while I have no confidence in this concept of statistical justice, let's look at another study. The 1985 Department of Justice study entitled "Capital Punishment" established that, rather than discriminating against blacks, capital punishment has been disproportionately inflicted upon white defendants:

While only 12 blacks were sent to death row for every 1,000 blacks arrested for murder and manslaughter, 16 out of very 1,000 whites arrested in similar situations were sent to death row. A white killer, according to the Department of Justice study, has a 33-percent greater likelihood of winding up on death row than a black murderer.

While only 1.1 percent of black inmates on death row actually received the death sentence, 1.7 percent of whites were executed. Once again, whites are more often executed.

While 37 percent of black inmates were released from death row by court rulings, a lower percentage—35 percent—of whites escaped the ultimate sanction.

According to the Department of Justice statistics, whites are more likely to be sentenced to death, more likely to be actually executed, and less likely to be released from death row. In fact, seven of the first eight prisoners executed after *Gregg* v. *Georgia* reestablished the death penalty were white.

Because statistics about the race of defendants are not helpful to eliminate the death penalty, the opponents of capital punishment now concentrate more on the race of the victims. Yet as indicated by the Stanford Law Review analysis, this approach too is flawed. Whites are simply more often the victims of aggravated murders that result in death sentences. The 1984 Department of Justice crime studies show that whites are 77 and 89 percent respectively of rape and robbery victims. Therefore, it is only to be expected that a higher number of whites would be killed during a rape or robbery.

The point remains, however, that if racial animus exists in the criminal justice system it would appear most directly in prejudice against a black defendant. In truth, however, the statistics—faulty as they may be—show that whites more than blacks suffer a disparate impact under application of the death penalty.

In fact, this demonstrates nothing more than that statistics have no place in the criminal justice equation. Murderers must be judged and sentenced without regard to statistics. Murderers must be sentenced according the facts of their own particular case—both aggravating and mitigating factors must be fully weighed by an impartial jury. This is what juries now do. Statistical justice, however, would take the determination out of the hands of juries and leave it in the hands of a battery of experts. These experts will labor in vain to untangle the web of statistics.

Statistics are not justice. Our justice system provides layer after layer of protections against all forms of racial bias in jurors, judges, and prosecutors. Even assuming their validity, the statistics prove little or nothing. Yet when these statistics are examined, they reveal no racial bias in the criminal justice system which are not explained by other factors. Introducing statistics into the criminal justice system can only, in the words of the Supreme Court, "throw into serious question the principles that underlie our entire criminal justice system."

I urge my colleagues to oppose this amendment. Statistical justice is no justice at all.

I yield the floor.

The **PRESIDING OFFICER**. The Senator has 10 minutes.

Who yields time?

Mr. **KENNEDY**. Mr. President, I yield myself 3 minutes. I was just wondering how the Senator from Utah accounts for these extraordinary disparities that have reflected themselves in the various studies that have general application nationwide. I am not trying to pick out any particular State. It has been generally shown all across the country, North, South, East, and West.

But in instance after instance we find in one particular State the studies show that defendants convicted of killing whites were eight times more likely to receive a death sentence as those convicted of murdering blacks.

Another study found that blacks who kill whites received the death penalty 22 percent of the time, but whites who kill whites 4.6 percent of the time. There are instance after instance of these disparities.

What conclusion does the Senator draw from those kinds of disparities? Does he draw any conclusion at all as to what we find in jurisdiction after jurisdiction all over the country? I am just wondering, since the Senator has spoken in opposition to this amendment, what kind of conclusion he draws.

Mr. **HATCH**. If I could answer the question, let us just take a look at another study. The 1985 Department of Justice study entitled "Capital Punishment" established that rather than discriminating against blacks, capital punishment has been disproportionately inflicted upon white defendants.

While only 12 blacks were sent to death row for every 1,000 blacks arrested for murder and manslaughter, 16 out of every 1,000 whites arrested in similar situations were sent to death row. A white killer, according to the Department of Justice study, has a 33-percent greater likelihood of winding up on death row than a black murderer.

Mr. **KENNEDY**. If I could——

Mr. **HATCH**. Wait, if I could just continue. I am going to just answer the Senator's question.

While only 1.1 percent of black inmates on death row actually received the death sentence, 1.7 percent of whites were executed. Once again, whites are more often executed.

While 37 percent of black inmates were released from death row by court rulings, a lower percentage—35 percent—of whites escaped the ultimate sanction.

According to the Department of Justice statistics, whites are more likely to be sentenced to death, more likely to be actually executed, and less likely to be released from death row. In fact, seven of the first eight prisoners executed after Gregg versus Georgia reestablished the death penalty were white.

Mr. **KENNEDY**. Mr. President, I do not see what the problem would be in accepting this amendment if the conclusion of the Senator from Utah is that this really is not happening and he has a study to show that it is not happening, which even the five Justices in the Supreme Court indicated the validity of the Balder study which reaches conclusions which are at odds with those that have been identified by the Senator from Utah and supports the presentations and studies that we have outlined here. Then I do not see why there should be any resistance to accepting this because then it would be there in case those circumstances should arrive. I believe that they are there and that five Supreme Court Justices have recognized the validity of the Study. The I do not see there would be an objection to including that measure.

How much time is available now?

The **PRESIDING OFFICER**. The Senator from Masschusetts has 12 minutes remaining.

Mr. **KENNEDY**. I reserve the remainder of my time.

Mr. **D'AMATO**. Mr. President, the Senator from Idaho would like some time.

Mr. **McCLURE**. If the Senator will yield me some time I would appreciate it.

Mr. **D'AMATO**. Certainly.

Mr. McCLURE. Mr. President, how much time does the Senator have remaining?

The PRESIDING OFFICER. The Senator from Idaho has 20 minutes remaining.

Mr. McCLURE. I thank the Chair.

Mr. President, I doubt if there are many Senators who will be fooled by either the purpose or effect of this amendment: The Kennedy amendment would make it impossible to impose the death penalty under this statute.

The Kennedy amendment would impose statistical quotas for both victims and killers. X percent of all killers receiving the death penalty would have to be black. Y percent would have to be white. If there were too many blacks receiving the death penalty or too few blacks, if there were too many whites or too few whites, if there were too many Hispanics or too few Hispanics, if there were too many American Indians or too few American Indians—then the Federal Government would no longer be able to impose the death penalty under this bill.

But this is not all. The Kennedy amendment would also impose statistical quotas for victims. X percent of all killers receiving the death penalty would have to have killed black victims. Y percent would have to have killed white victims. If there were too many victims or too few, if there were too many white victims or too few, if there were too many Hispanic victims or too few, if there were too many Native American victims or too few—then the Federal Government would no longer be able to impose the death penalty under this bill.

If Justice were dispensed by a computer, rather than a jury, then there might be some remote statistical possibility of arriving at the correct percentages of white, black, Hispanic, and Native American killers and victims. Because justice, under our system of government is dispensed by a jury, the Kennedy amendment would effectively outlaw the death penalty.

This means that a vote for the Kennedy amendment is a vote to allow drug kingpins to kill innocent victims without any fear of capital punishment. A vote for the Kennedy amendment is a slap in the face to the law enforcement officers who daily risk their lives in order to go after these criminals. And a vote for the Kennedy amendment is an insult to the bereaved families who now find the loss of their loved one to be subordinated to the so-called rights of the criminal who killed him.

The guts of the Kennedy amendment is contained at section 2922(a), which states:

> It is unlawful to impose or execute sentences of death under color of Federal law in a racially disproportionate pattern.

The amendment goes on to state that it is "not * * * necessary to show discriminatory motive, intent, or purpose on the part of any individual or institution." To the contrary, the underlying language in the Senate amendment requires each juror to make a sworn certification that he or she has not been motivated by racial prejudice.

But the Kennedy amendment is not concerned with nondiscriminatory intent, but rather with statistical quotas. Specifically, it allows the death penalty to be declared unlawful if it can be shown that it is imposed "upon * * * persons of one race" with a frequency that is disproportionate et cetera, to their representation among the numbers of persons convicted of death-eligible crimes under this section.

It is also sufficient to overturn the death penalty if it is imposed "as punishment for crimes against persons of one race" with a frequency that is disproportionate et cetera, to their representation among the number of persons against whom death-eligible crimes under this section have been the subject of arrest, charges, or convictions.

Do the courts consider the statistics applicable to arrests, indictment, or conviction? Do the courts consider, in the case of the felony-murder rule, for instance, only the race of those persons who die as a result of the crime? And, if so, do they consider only those persons who die and are included in the indictment? Or do they consider other victims as well?

In short, the Kennedy amendment is so poorly drafted that it will insure that the death penalty is overturned as being unconstitutionally vague. How odd it is that, after working for two decades to clear up the unconsititutional vagueness identified in the Furman case, we are now, at the last minute, being asked to accept more unconstitutionally vague language which will throw us into another two decades of litigation and legislation.

The Senate does not control the juries. The judges cannot constitutionally tell the juries who should receive the death penalty and who should not as a result of some arbitrary racial quota.

We can require juries to sign affidavits that they have not discriminated in their sentencing, and the underlying language would do exactly that. We can overturn their sentences if actual discrimination is demonstrated, and current law allows that to be done. But we simply cannot insure a statistically exact proportion of black and white defendants receiving the death penalty, because we cannot control juries.

The particular irony of the Kennedy amendment is that the way to solve problems of racial disparity among victims is to impose the death penalty more often. It is odd that death penalty opponents complain that killers of black victims do not receive the death penalty as often as killers of white victims. Is their solution to step up the death penalty for killers of blacks in order to vindicate these black victims? No. What they are arguing is that black murder victims have a right to have killers of white murder victims treated as leniently as their own killers.

This can hardly be much consolation to either the black victims or their families or friends.

There is one final problem with the Kennedy amendment. It is unconstitutional. Assume that the courts set a 5-percent margin of error for statistical disparities under the Kennedy amendment. Assume further that the whites have been executed under the D'Amato bill at a rate of 4.9 percent in excess of the representation in the population of the defendants. What we will have under these circumstances is a case in which the jury can impose the death penalty on a black without triggering the Kennedy amendment, but not on a white. The race of the particular defendant would determine whether he could legally be sentenced to death under the Kennedy amendment.

This is clearly unconstitutional under the 8th and 14th amendments.

In fairness, it is true that the Kennedy amendment allows the death penalty to continue if the Government can reach into the jury rooms and demonstrate, by "clear and convincing evidence," that "identifiable and pertinent nonracial factors pervasively explain the observable racial disparities comprising the disproportion." In practice, there is no chance that the Government can ever meet this level of proof with respect to questions and secret and intangible as what a jury did or did not consider. For the Government to meet this standard, it would be necessary for it to reconvene every jury which had imposed the death penalty and to probe into the minds of each juror. This is simply never going to happen.

Mr. President, the Kennedy amendment should be rejected.

Mr. KENNEDY. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 12 minutes remaining.

Mr. KENNEDY. I yield myself 5 minutes.

Mr. President, I am interested in listening to my friend from Idaho. He misstates my amendment and then differs with his misstatement. It is a classic technique which is occasionally used by Members of this body, but he did it with great generosity in that last explanation.

First of all, with regard to the issue of quotas, Mr. President, under my amendment, the mere fact that blacks may may receive the death penalty more frequently than whites would not even create a prima facie case of discrimination. To establish a prima facie case, the defendant must show that blacks or killers of whites, for example, receive the death penalty with a frequency that is disproportionate to their representation among those arrested or charged with or convicted of death-eligible crimes under this bill.

We are not going to increase the number of capital cases, nor do we expect that we are going to decrease them. We are just going to eliminate race as a consideration. That is the purpose of this amendment.

Even if a prima facie case is established, the Government can rebut the claim by showing, by clear and convincing evidence, that any disparity is the result of nonracial factors. All my amendment is intended to do is to eliminate racism in capital sentencing.

Mr. President, I would add, in response to the Senator from Idaho, an important statement that was made by Justice Blackmun in consideration of the McCleskey decision. This issue was raised by the Senator from Idaho when talking about the effects test and the intention of discrimination and the statistics and the rest. This amendment would not adopt an effects test. It would simply allow intentional race discrimination to be proved through circumstantial statistical evidence. The important thing to understand is that after the McCleskey decision, death penalty cases are the only cases where evidence of this kind is not admissible to prove race discrimination.

I ask my colleagues to listen to what Justice Blackmun said in his dissent. He said:

> The Court today seems to give a new meaning to the recognition that death is different. Rather than requiring a correspondingly greater degree of scrutiny of the capital sentencing determination, the Court relies on the very fact that this is a case involving capital punishment to apply a lesser standard of scrutiny under the equal protection clause.

We have passed provisions in this body this year regarding discrimination in housing. We have done it with regard to the overruling of the Grove City case, the Civil Rights Restoration Act. This body has voted in terms of discrimination in employment, housing, and other areas. We have established criteria and it has been embraced and, by and large, it has worked.

But now, we are talking about the ultimate, the issue of life and death, and we say, "No remedy for that."

"You get a remedy if you are discriminated against in employment or discrimination in other areas, but do not give us any question about whether there is discrimination in capital punishment."

That is what we are trying to do with this amendment. On the basis of the various studies and reviews which were examined and submitted to the Supreme Court in the Baldus Study in the McCleskey case, and where five Supreme Court Justices did not contest the conclusions, the Supreme Court invited congressional and senatorial action, invited us to act. Now, that is the question before us.

In this body, we have concluded this year, I believe, with an admirable record in terms of striking down the barriers of discrimination on race. We did it on housing. We have done it now with discrimination against families. We have eliminated discrimination against the handicapped, but not discrimination on capital cases. They can take your life. Remedy? No way. This is some way to subvert capital punishment. We do not really know what is behind it, but if we accept this, somehow someone might get off.

We are not willing to say that there has been discrimination in the cases we have outlined earlier in the presentation—evidence that has been submitted to the Supreme Court of the United States. The Justices have accepted the validity of these studies, but we are not prepared now to have the Congress and the Senate to take some action. That is really what this debate is about, Mr. President.

I have had the good fortune of being here for over some 25 years. We had really began to start eliminating discrimination in voting, eliminating discrimination in public accommodations, eliminating discrimination in housing, eliminating discrimination against our elderly, eliminating discrimination against families, against the handicapped, and on the basis of race in many areas.

And now we come to the death penalty and we try to set out a procedure to try and ensure that in that ultimate area, perhaps the most important area, that we are not going to permit discrimination.

The PRESIDING OFFICER (Mr. Dodd). The Senator has used his 5 minutes.

Mr. KENNEDY. I retain the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. D'AMATO. Mr. President, I refer to S. 2852, Mr. President, page 589 of the drug bill. In order to attempt to deal with discrimination, the Senator from Massachusetts, his staff, my staff, Senator McClure's staff, Senator Hatch's staff, and a number of others met 5 months ago in June. We came up with and adopted much of the legislative language which was suggested by the Senator from Massachusetts. It is good language.

I would suggest, when it comes to dealing with those cases and seeing to it that we take every step possible to eliminate discrimination by the juries, by the prosecutors, by the judges, we have gone about the business of doing that. If there is further work to do, then we will do it and this Senator will be in the forefront with the Senator from Massachusetts, and I know the Senator from Idaho will join, as well.

"Rights of the Defendant to Justice Without Discrimination," page 589:

> In any hearing held before a jury under this section, the court shall instruct the jury that in its consideration of whether the sentence of death is justified it shall not consider the race, color, national origin, or sex of the defendant or the victim, and that the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for the crime in question no matter what race the defendant, or the victim, may be.

We are going to some lengths. Mr. President, that is not where we stopped, not just with the jury charge. The bill provides:

> The jury shall return to the court a certificate, signed by each juror—

each juror has to certify that in the findings—

> that the consideration of race, color, national origin, creed or sex of the defendant or the victim was not involved in reaching his or her individual decision and that the individual juror would have made that same recommendation regarding a sentence for the crime in question no matter what race the defendant, or the victim, may be.

I think that is far better than some statistical aberration that may appear that may deny justice. That is not what the jury system is about. You do not have computers to determine the guilt or innocence, or whether it is appropriate to have the death penalty.

Mr. President, I yield 5 minutes to the Senator from Florida, Mr. Graham.

The PRESIDING OFFICER. The Senator from Florida is recognized for 5 minutes.

Mr. GRAHAM. Mr. President, there has been an inference here that we are about to erect the last and only safety net for justice in America as it applies to the death penalty. I contest that statement.

As one who has had the responsibility for overseeing a criminal justice system in a large State for a number of years, a State which has the death penalty, a State in which the death penalty has been applied and a State in which it was carried out while I was in that position of responsibility, I can tell you that the safety nets for justice are numerous, are readily available, are working.

From the original indictment for a capital crime through the trial, the appeals to the State court, the appeals to the Federal court, and to ultimately the U.S. Supreme Court, through the collateral habeas corpus at the State level and the appeals there to the highest State courts, to the collateral appeals in the Federal system and again eventually to the U.S. Supreme Court, that anyone who contends that there is not a safety net sufficient to make the determination that there has been the avoidance of invidious discrimination of any sort in the application of the death penalty, I think fundamentally misstates and denigrates the current system of justice in this land.

The bill that we have before us today contains two provisions, one of which has been cited by the Senator from New York, which would relate specifically to this legislation as to the extraordinary steps that will be taken at the specific level of the jury in making the determination that that body of 12 citizens was not acting in a discriminatory manner.

This bill goes beyond what is the thrust of this amendment which applies to the crimes that would be created, capital crimes created under this act, and provides that there will be a further study on the general application of death cases, Federal and State, and that that report will be made back to this Congress.

If this Congress has a suspicion that all of those nets of justice are insufficient, we are about to be placed in an informed position to make that kind of judgment.

I believe the language which is in this legislation, particularly the clauses which precede the actual language, are highly inflammatory and are without sufficient factual justification; language that states that,

> The death penalty is being administered in a pattern that evidences a significant risk that the race of the defendant, or the race of the victim against whom the crime was committed, influences the likelihood the defendant will be sentenced to death.

I consider that to be an extreme and unsupported statement.

The language that says,

> The persistent racial problems pervading the implementation of the death penalty in many parts of this Nation require the Government of the United States to counteract the lingering effects of racial oppression and prejudice in order to enforce the constitutional guarantee of equal justice for all Americans.

I contend, Mr. President, the Federal Government through the appropriate judicial process is providing that guarantee today.

Mr. President, I do not say that we do not have some serious issues in the field of criminal justice. We are dealing with a few of those in the legislation that is before us today. We are setting up what I hope will be a procedure to deal with others.

There is one other study which is in place as well as the one that is referred to in this specific legislation and that is a study of how the Federal habeas corpus system is working in terms of its responsibilities for justice. We will provide, I hope, an amendment to be adopted later today or tomorrow that the results of that study will be brought back to the Senate and to the House of Representatives for our considered judgment. I would suggest that the appropriate time to be considering this proposal would be after we have had the study that is already provided for of the manner in which the death penalty is being carried out in terms of racial, national origin, and other consideration. We are in a better position then to consider how what many of us believe is a principal impediment to reaching real justice, the administration of habeas corpus, is also available to us after a full study.

The **PRESIDING OFFICER**. The time of the Senator has expired.

Who yields time?

Mr. **KENNEDY**. Mr. President, how much time do I have?

The **PRESIDING OFFICER**. The Senator from Massachusetts has 6 minutes remaining.

Mr. **KENNEDY**. Mr. President, I yield myself 3 minutes.

I do not know whether the Senator from Florida was here when I listed in my opening comments what the conclusions of the various studies have been with regard to this problem. Some 30 studies have reached similar conclusions. I will not take the time now but they have been submitted to the Supreme Court, a number of them, for consideration in justifying the positions we have taken here.

But the one point I want to make both to the Senator from Florida and the Senator from New York, I appreciate the willingness of the Senator from New York to take the language which was included previously in the capital punishment amendment of the Senator that would permit instructions to the jury. I think that is progress and I thank the Senator from New York for taking that particular measure.

He also makes reference to a study that will be done. The study is only going to come a year after this goes into effect. If it was the position of the Senator from New York and Florida that there were not going to be any executions in that time, I would say you have an argument. But that is not the case. Executions will go on and they will go on during that period of time.

What we are talking about now is a remedy that does not exist regarding it is the ultimate sanction that determines the difference between life and death.

I will yield on your time. I have not much time.

Mr. **GRAHAM**. Is the Senator suggesting the death penalty in this legislation—will the Senator yield for a question?

Mr. **KENNEDY**. I yielded a minute.

Mr. **GRAHAM**. Is the Senator suggesting the death penalty which is being created in this act, which is the death penalty to which this amendment and the language referred to by the Senator from New York will apply, that there is any prospect that a person would actually be executed within the next 12 months under its provisions?

Mr. **KENNEDY**. The Senator knows very well that this amendment as originally crafted went to the States and it would have affected ongoing executions. That is what I would have preferred. If it had, it would have saved lives, Senator. Out of accommodation to the Senator from Florida we have adjusted it. But the point I think is still a valid one.

I withhold the remainder of my time.

The **PRESIDING OFFICER**. Who yields time?

The Senator from New York.

Mr. **D'AMATO**. How much time do I have left?

The **PRESIDING OFFICER**. The Senator from New York has 4 minutes remaining.

Mr. **D'AMATO**. Mr. President, I know my colleagues are growing anxious. I do not know if the yeas and nays have been ordered yet. I think it would be appropriate to ask for the yeas and nays.

I ask for the yeas and nays.

The **PRESIDING OFFICER**. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. **HARKIN**. Mr. President, I rise in support of the amendment of the senior Senator from Massachusetts. During my statement on the Hatfield amendment earlier today, I listed my concern about discrimination in the application of capital punishment as one reason I have long opposed the death penalty.

I applaud Senator Kennedy for all his work to minimize racial prejudice in the application of capital punishment. I say minimize because I am not convinced it is possible to eliminate racial bias in the implementation of capital punishment as long as racial bias persists in our society. Nevertheless, the adoption of the Kennedy amendment can do much to help resolve the unjust application of the sentence of death.

Senator Kennedy and others have amply demonstrated the existence of a pattern of racial bias in the application of death sentences. David Baldus, a professor of law at the University of Iowa, is one of a number of experts who have extensively studied discrimination and the death penalty. I ask unanimous consent that a review of studies of racial bias and the death penalty, including Professor Baldus' work, compiled by the NAACP's Legal Defense Fund be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HARKIN. The amendment before us allows the use of statistical evidence to demonstrate a proclivity toward racial bias in Federal capital cases. Because of the work and sacrifice of countless Americans, the most blatant forms of discrimination which pervaded this country in past decades are, for the most part, no longer with us. But who among us would argue we have succeeded in eliminating discrimination? In the judicial arena, the current cases of discrimination are much harder to prove than the abuses of the past. But just because they are less visible does not make them less real.

By allowing the use of statistical evidence in Federal capital cases, we will be taking a needed step toward ending racial bias in the United States. I fear that if we do not adopt this amendment, the U.S. Senate will be sending a message that racial bias is acceptable. I hope my colleagues will join me in rejecting that proposition.

EXHIBIT 1

WHERE IS THERE EVIDENCE OF RACIAL BIAS IN THE DEATH PENALTY?

A growing body of research conducted by social scientists since capital punishment was reinstated in 1976 confirms the existence of racial bias in deciding who dies in American death chambers. Nearly all of these studies have used multiple-regression analysis to discount for legitimate factors that influence sentencing—like the defendant's criminal history, seriousness of the crime, number of victims, killing of a police officer, etc.

Alabama: A 1983 study of 128 capital murder cases by Prof. Bernard Bray of Talladega College found that killers of whites are 10 time more likely to be tried for the death penalty and eight times more likely to receive it than killers of blacks.

Arkansas: A 1984 study by Prof. Samuel Gross of Stanford University found that white victim homicides were 3.56 times more likely to get death. Gross & Mauro, "Patterns of Death: An analysis of Racial Disparities in Capital Sentencing and Homicide Victimization," Stanford Law Review, Vol. 37, No. 1 (November 1984).

California: An exhaustive investigative report by the Dallas Times Herald in 1985 found that 6.3 percent of those convicted of killing whites where condemned to die, compared with 2.6 of those convicted of killing blacks. Dallas Times Herald (Nov. 17, 1985).

Colorado: The results of a study of capital murder prosecutions since 1979 by Prof. David Baldus of the University of Iowa revealed that the killer of a white is 20 times more likely to get death than one who has killed a black.

Florida: A 1981 study by Prof. Michael Radelet of the University of Florida concludes that a black on white homicide is 37.7 times more likely to get death. The 1984 Gross and Mauro study reported that 13 percent of the black on white crimes got the death penalty versus 5.2 percent of the white on white and 4.3 percent of the white on black murders.

Georgia: A landmark 1986 study by Prof. David Baldus which examined over 2,000 Georgia homicides between 1973 and 1980, and which controlled for over 230 possible sentencing factors still found that: 22 percent of the blacks who killed whites got death, versus 3 percent of the whites who killed blacks. Overall, killers of whites are 4.3 percent more likely to get the death penalty. Baldus, Pulaski and Woodworth, "Arbitarariness and Discrimination in the Administration of the Death Penalty,"15 *Stetson Law Reveiw* 53 (Spring, 1986). Gross and Mauro in 1984 reported a death odds multiplier of between 4 and 7 times for white victim cases.

Illinois: Gross and Mauro found that, after controlling for 14 different sentencing variables, killers of whites are 4.0 times more likely to be put to death than killers of blacks.

Kentucky: An April, 1988 study by the University of Louisville reveals that between 1976 and 1986, prosecutors sought a death penalty for 45 percent of the eligible blacks who killed whites, but for only 23 percent of the whites who killed whites, and in none of the 14 cases of whites who killed blacks. T. Kell & G. Vito "Race and the Death Penalty in Kentucky Murder Trials," Journal of Criminal Law and Criminology, forthcoming.

Louisiana: A paper presented at the American Society of Criminology Conference by Prof. Dwayne Smit states that while whites constituted 61.5 percent of all murder victims in Louisiana, 85 percent of the cases on death row involved white victims. Margaret Klemm, in a 1985 article on the same topic wrote, "* * * Louisiana does not appear to be that different from other southern states with capital punishment * * * blacks are undervalued as victims."

Maryland: The Dallas Times Herald in its 1985 investigative report found that only 1 percent of the killers of blacks get the death penalty, compared with 7.3 percent of the killers of whites. Dallas Times Herald (Nov. 17, 1985).

Mississippi: A 1984 study by a consultant to the National Academy of Sciences found that white victim homicides are six times more likely than black victim cases to get death. "White victim cases are treated far more harshly, keeping a number of variables constant * * *" R. Berk and J. Lowery, "Sentencing Determinants in Mississippi: A Study of Factors Affecting Penalties for Murder and Manslaughter," (1984) (unpublished manuscript, UC Santa Barbara).

New Jersey: A 1987 study produced by the University of Pennsylvania and Princeton reveals that the death penalty is sought by prosecutors in 50 percent of the black defendant/white victim cases but only 28 percent of the black on black and 10 percent of the hispanic on hispanic cases. L. Bienen, in New Jersey: The Role of Prose-cutorial Discretion," Rutgers Law Review, vol. 41, Spring, 1988.

North Carolina: Gross and Mauro conclude that killers of whites are 4.35 times more likely to receive the death penalty than killers of blacks. A new book corroborates their findings. B. Nakell & K. Hardy, The Arbitrariness of the Death Penalty, Philadelphia: Temple University Press (1987).

Oklahoma: Gross and Mauro's 1984 study of 554 murder cases revealed that after discounting for major sentencing factors, killers of whites are 4.31 times more likely to get death.

South Carolina: A 1982 study found that since 1977, prosecutors sought the death penalty three times as frequently when the victim was white. R. Paternoster, "Sentencing Disparity and Jury Packing: Further Challenges to the Death Penalty," 73 J. Crim. L. & Criminology 379 (1982).

Texas: A September, 1987 study by University of Texas sociologist Sheldon Eckland-Olsen of death sentences since 1977 concludes that "it is clear that cases involving white victims are more likely to result in death sentences than we would expect * * * This is consistent with research in other states * * *"

Virginia: Gross and Mauro conclude that killers of whites are 2.41 times more likely to receive a death sentence than killers of blacks. By comparison, the proven correlation between smoking and heart disease is only 1.7.

Mr. SPECTER. Mr. President, earlier today, I voted in favor of the death penalty after speaking at some length on my reasons for concluding it is an effective deterrent.

I am voting in favor of the Kennedy amendment because I believe a defendant sentenced to death should be given all possible considerations before being executed. There are many vagaries in the proposed statistical test, but it may have some value in ascertaining the fairness of the sentence of death. My doubts are resolved in favor of the defendant, so I am voting for the amendment.

One other consideration is worth noting. If we are to preserve the death penalty, it must be carefully used in only the clearest cases. Accordingly, I support the limitation contained in this amendment.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. In the interest of comity, I am willing to go to an up-or-down vote on this. If the Senator from Massachusetts is prepared to vote on it, I am prepared to yield back the remainder of my time.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I yield back the remainder of my time.

The PRESIDING OFFICER. All times has been yielded back. The question is on agreeing to the amendment.

Mr. KENNEDY. Have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Oklahoma [Mr. BOREN], the Senator from California [Mr. CRANSTON], the Senator from Arizona [Mr. DECONCINI] and the Senator from Tennessee [Mr. GORE] are necessarily absent.

Mr. DOLE. I announce that the Senator from Minnesota [Mr. BOSCH-

WITZ], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Pennsylvania [Mr. HEINZ], the Senator from Nebraska [Mr. KARNES], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Indiana [Mr. QUAYLE], the Senator from Wyoming [Mr. SIMPSON] and the Senator from Wyoming [Mr. WALLOP] are necessarily absent.

I also announce that on this vote, the Senator from Minnesota [Mr. DURENBERGER] is paired with the Senator from Wyoming [Mr. WALLOP].

If present and voting, the Senator from Minnesota would vote "yea" and the Senator from Wyoming would vote "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 35, nays 52, as follows:

[Rollcall Vote No. 369 Leg.]

YEAS—35

Adams
Baucus
Biden
Bradley
Burdick
Chafee
Conrad
Dodd
Evans
Glenn
Harkin
Hatfield
Inouye
Kennedy
Kerry
Lautenberg
Leahy
Levin
Matsunaga
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Pell
Proxmire
Reid
Riegle
Sarbanes
Sasser
Simon
Specter
Stafford
Weicker
Wirth

NAYS—52

Armstrong
Bingaman
Bond
Breaux
Bumpers
Byrd
Chiles
Cochran
Cohen
D'Amato
Danforth
Daschle
Dixon
Dole
Domenici
Exon
Ford
Fowler
Garn
Graham
Gramm
Grassley
Hatch
Hecht
Heflin
Helms
Hollings
Humphrey
Johnston
Kasten
Lugar
McCain
McClure
McConnell
Murkowski
Nickles
Nunn
Packwood
Pressler
Pryor
Rockefeller
Roth
Rudman
Sanford
Shelby
Stennis
Stevens
Symms
Thurmond
Trible
Warner
Wilson

NOT VOTING—13

Bentsen
Boren
Boschwitz
Cranston
DeConcini
Durenberger
Gore
Heinz
Karnes
Kassebaum
Quayle
Simpson
Wallop

So the amendment (No. 3683) was rejected.

Mr. D'AMATO. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. I wonder if we might be able to proceed now with our efforts to get an agreement.

Mr. President, I believe that we can proceed shortly with an amendment by Mr. SIMON, and an amendment by Mr. GRAMM——

The PRESIDING OFFICER (Mr. DASCHLE). If the leader will suspend until we have order in the Senate, it is difficult to hear. And each and every one wants to proceed with this legislation.

The majority leader.

Mr. BYRD. I thank the Chair.

Mr. President, headway is being made on the category 3 amendments. Those were the amendments we recall we expected to be called up under an agreement, if we could get the agreement, and if we can still get the agreement those amendments would be called up. And they would be subject to amendments in the second degree, if such amendments are germane and relevant to the underlying amendment.

Whenever Mr. SIMON is ready, we can proceed. When Mr. GRAMM is ready, Mr. DOMENICI will be ready, and we have listed an amendment by Mr. SIMON, one by Mr. KERRY, one by Mr. WILSON, one by Mr. GRAMM, and one by Senators DOMENICI and GRAMM.

Mr. KENNEDY. Could we have the Gramm amendment and the Domenici amendment? Are they printed and available?

Mr. BYRD. The Domenici-Gramm amendment, imposition of civil penalties. Very well, I understand they are waiting on preparing that amendment.

Mr. BRADLEY. Will the majority leader yield?

Mr. BYRD. Yes.

Mr. BRADLEY. The majority leader knows that there are category 2 amendments that are under consideration. I have one of those amendments that would require labeling on tobacco products, and in addition would have an education program, with tobacco included under alcohol and drug abuse.

As I understand the process we are to meet in the side room and make our cases as to whether this is to be brought up. As I also understand, the Senator from North Carolina and the Senator from Kentucky have objected to me bringing up the amendment, particularly the portion of the amendment that deals with labeling. I hope that we can appeal to them, and to the leader to allow me to bring up only that portion of the amendment that deals with education.

The purpose here is simply to try to prevent 14-year-olds from beginning to smoke. I hope the majority leader will consider this seriously because it is a very serious health issue.

Mr. BYRD. Certainly the distinguished Republican leader and I are working as we had outlined earlier, and will be happy to listen to those Senators, including the distinguished Senator from New Jersey, Mr. BRADLEY, as they appeal on behalf of their amendments.

We would, I think, want the advice of Mr. RUDMAN and Mr. NUNN in each instance. They can file briefs, and if the Senator can get someone to file an amicus curiae on his behalf——

Mr. BRADLEY. I have the Surgeon General.

Mr. BYRD. Well, that is all right.

Mr. FORD. Mr. President, will the majority leader yield for a question?

Mr. BYRD. Yes.

Mr. FORD. As I understand the procedure, as it relates to amendments that have not been accepted for what we refer to as a core bill, then that case went before those who are putting the core bill together. Once that case is presented for and against an amendment that distinguished group then makes a decision. If that decision is negative, then the individual presenting the amendment has a right then to appeal to the two leaders.

Mr. BYRD. Yes.

Mr. FORD. If the two leaders decline or if their position is negative, what is the next step?

Mr. BYRD. There is not any. If the two leaders, say, do not agree that it can be called up under the agreement, which is not in effect yet, the amendment could not be called up; or if either of the two Senators, the two leaders, have to agree for the amendment to be called up.

Mr. FORD. It is my opinion that the request of the distinguished Senator from New Jersey was almost turned down unanimously by those at least who were in the room putting the bill together. I want it to be understood that I did object, presented my case, and they accepted it. And I hope we will not bring that amendment at this late hour and associate tobacco with cocaine.

Mr. BRADLEY. If the leader will yield, I simply appeal to him on behalf of all those families across America who have children who are going to begin smoking this time next year, and the Federal Government, I believe, ought to discourage that from the beginning.

Mr. BYRD. Mr. President, the distinguished Republican leader and I will certainly be happy to hear those Senators who wish to bring their causes to our Chambers. We will don our robes, do the best we can, and we will certainly hear them and attempt to fulfill our responsibilities under the agreement as though there were an agreement because we still have to get one. We still hope to get one.

I believe Mr. SIMON has an amendment.

Mr. DODD. Mr. President, will the Senator yield?

Mr. BYRD. I yield.

Mr. DODD. I inquire of the majority leader: As I understand it, at this point it is still possible to offer amendments in the second degree to category 3 amendments, provided they are germane or relevant, or possibly work out an amendment with the author of the category 3 amendment. Is that still available to Members?

Mr. BYRD. That would be my judgment, yes.

Mr. DODD. I thank the majority leader.

Mr. BYRD. Mr. President, I believe Mr. Simon has an amendment. Is he ready to call up the amendment; and, if so, can we get a time agreement on it?

Mr. SIMON. I have the amendment ready, and I think we could get a time agreement of 30 minutes, 15 minutes on this side and 15 to whoever might oppose it.

Mr. BYRD. I ask unanimous consent that there be a 30-minute time limitation on the amendment, to be divided and controlled in the usual form, and that no amendments be in order to that amendment.

The PRESIDING OFFICER (Mr. Reid). Is there objection? The Chair hears none, and it is so ordered.

Mr. EXON. Mr. President, will the majority leader yield for a question?

Mr. BYRD. I yield.

Mr. EXON. There is another matter that this Senator is interested in which has been brought before the committee, and it has to do with a rollcall vote on the plastic gun amendment that is part of what has been generally referred to as category 1.

The plastic gun amendment was recognized many months ago by this Senator as something on which I wanted to have a rollcall vote. I gave sufficient notice to the proper authorities for that, and it was assumed that there would be a rollcall vote, until this morning about 10 o'clock, when there was an agreement on the floor of the Senate—suddenly and without notice or consultation with this Senator, who had expressed his will to have a rollcall vote on this issue—when it was eventually eliminated by the agreement between the two leaders, that this amendment would magically be put in category 1, where it was never considered to be previously.

It seems to me that this is a matter where a Senator, who as long ago as June of this year requested a rollcall vote on this issue, takes some exception to the fact that an agreement has been entered into without consultation with this Senator; and I probably am being placed in the position of holding up or blowing up the drug bill for a 15-minute rollcall vote, because you have to go along to get along.

Mr. President, the background of this measure, for the Members of the Senate, is this—and I find that memory has failed many people who have been involved in this: The last time we voted in the U.S. Senate on a rollcall vote was, I believe, last December, when an amendment offered by Senator Thurmond and Senator Metzenbaum on the plastic gun issue was defeated by three or four votes. I see some of my colleagues on the floor at the present time who joined me on the losing side in that issue. A great stir was heard about that in the land.

After that time, a reasonable compromise was put together by all parties involved, and we reached the position where, indeed, we recognized the threat of plastic guns, what they could do to legitimate gun ownership in this country, and that measure was passed by a voice vote in the Senate. It went to the House of Representatives, and they came up with their version.

The vote we would have would be a rollcall vote on this very important matter, the first and only rollcall vote that we have ever had in the U.S. Senate. Yet, this Senator has the feeling that somebody said, "If you do that, Senator, you're going to blow up the drug bill."

I do not want to blow up the drug bill, and I do not want to be accused of it; but I just say that, for someone who requested months ago that we have a rollcall vote, to be placed in the position that he is being unreasonable by requesting a rollcall vote, does not wash with me.

So I would like to put the leaders on notice that I am not at this time prepared to enter into any unanimous-consent agreement. That is why I have been on the floor most of this day, to protect my rights in that regard, and I will attempt to be here to protect my rights, as one Senator who feels very strongly about this, as long as it takes.

I am agreeable to compromise, and I am agreeable to consultation; but I do not like the fact that I have been placed in the position of holding up the drug bill when that was not my intention.

Mr. BYRD. Mr. President, there has been no agreement reached.

Mr. EXON. Is the majority leader saying that the majority leader and the minority leader did not agree this morning, about 10 o'clock, to include this matter, which I have been addressing, in category 1?

Mr. BYRD. The Senator heard me. There is no agreement that has been entered by the Senate.

Mr. EXON. So I have a right to object when the unanimous-consent agreement is offered?

Mr. BYRD. Any Senator has the right to object, if he is on the floor. But just come to the floor and not send me a message on the telephone.

Mr. EXON. I did not send you a message on the telephone. I wrote on July 7, 1988.

Mr. BYRD. I received a message on the telephone by someone who brought it to me this morning. I beg the Senator's pardon.

Mr. EXON. You received what message?

Mr. BYRD. A message from the Senator from Nebraska.

Mr. EXON. And it was passed before I had a chance to get here.

Mr. BYRD. It has not been passed.

Mr. EXON. It has been agreed to by the two leaders.

Mr. BYRD. No; it has not been agreed to.

Mr. EXON. It was put in category 1 by the two leaders.

Mr. BYRD. It has not been agreed to. I do not know how much clearer I can make it.

Mr. EXON. Then, I can object. Is that right?

Mr. BYRD. The Senator can object, but he has to be on the floor to do it.

Mr. EXON. All right, I will be here.

Mr. DOLE. Mr. President, I want to clear the record.

We were meeting in my office this morning, and I received a note from the Senator from Ohio saying, "You can put this in category 1." Senator Kassebaum was there, making the same plea.

I said, "It's all right with me."

We are trying to accommodate people. They said, "We're trying to get a vote on this."

We cannot do it both ways. Either we are going to have a drug package or have 30 different votes.

It seems to me that we are trying to comply with the request of the Senator from Ohio and the Senator from Kansas, and we did it, and we get in trouble with the Senator from Nebraska.

I do not know how we can accommodate everybody. I still have the note of the Senator from Ohio in my office, and I can retrieve it, if anyone doubts me. We are trying to accommodate Senators on both sides of the aisle. We did it, and I hope we do not have to vote on each of the 43 or 44 amendments.

Mr. RUDMAN. Mr. President, will the majority leader yield?

Mr. BYRD. I yield.

Mr. RUDMAN. I say to the Senator from Nebraska, because we had a conversation on that this afternoon, that I hope I did not mislead him to indicate there was any agreement. I believe I stated to him that we had hoped that these 30 or 40 different amendments—some of which are more than amendments; they are complete legislation—could be passed with one rollcall vote.

Almost everyone who had major legislation that finally was on the so-called list I had hoped that at sometime they could have a separate vote. But in the interest of getting it done on this last day of the session, it would be done that way.

There has been no agreement and there never was an agreement. There has always been an understanding, a hope, a wish, an assessment, that once this list was agreed to, we could pass it in one vote. That is all it was.

Mr. EXON. Mr. President, will the majority leader yield?

Mr. BYRD. I yield.

Mr. EXON. I assume that the authors of the legislation that the Senator has just referred to were consulted, were they not, on whether or not they should be all folded into one vote?

Mr. RUDMAN. I answer my friend from Nebraska this way. We have been moving at such a pace in the last 24 hours I am not sure that consultation would be the right word. We have served notice on people that this is what we had intended to do. No one to my knowledge has come up and said that they wanted a rollcall vote, although they have a right to do so, of course. They have the right to divide this amendment, I suppose.

But I just want to say to my friend from Ohio there was never any intention on the part of the ad hoc group appointed by the leadership to deprive anybody of anything. What we are trying to do is to get (a) a good drug bill, (b) accommodate a lot of diverse interests, that this is the only way they can be accommodated in the last 48 hours of the session and go home.

Mr. EXON. I reserve the right to make a decision when the unanimous-consent request is presented.

Mr. BYRD. Mr. President, I yield the floor now.

AMENDMENT NO. 3684

(Purpose: To modify the death penalty provisions to include the killing of innocent bystanders)

Mr. BYRD. It is my understanding that Mr. SIMON is ready to proceed with his amendment.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Illinois [Mr. SIMON] proposes an amendment numbered 3684.

Mr. SIMON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 579, line 21, after "individual" insert "who is not engaged in or acting in furtherance of the continuing criminal enterprise".

The PRESIDING OFFICER. The Senator from Illinois controls 15 minutes of the 30 minutes. Who controls the time for the other 15 minutes?

Mr. D'AMATO. Mr. President, I do.

The PRESIDING OFFICER. If there is no objection, the time will be contolled by the Senator from Illinois and the Senator from New York.

The Senator from Illinois has the floor.

Mr. SIMON. Mr. President, first, if I could just in a general way commend the committee and the two leaders who are trying to get this worked out at the last minute. It was tough. And no one of us is going to be able to be accommodated completely.

If I may talk about this amendment specifically, we are talking about drug dealers, we are talking about traffickers. Whom do they kill, primarily? It is other drug dealers and drug traffickers.

My amendment is a very simple one. It says if you kill an innocent bystander, if you kill a police officer, the death penalty applies. But if you kill somebody who is involved in this whole drug trafficking operation, the death penalty does not apply.

Without my amendment, frankly, the death penalty part of it primarily becomes a drug dealer's protection act. That is the reality of it.

We do not say it is a Federal penalty if you rape and maim and kill some innocent woman in Nevada or Illinois or any one of our States. We do not say it is a death penalty Federal crime if you kill some young child, some innocent child.

But we are saying if you kill a drug dealer that is a Federal offense and you can get the death penalty.

That just does not make sense. Without my amendment we have a drug dealer's protection act. My amendment says if you kill a police officer, if you kill an innocent bystander you get the death penalty, but if you kill someone who is involved in this whole drug trafficking business, another drug dealer, the death penalty does not apply.

I think that makes sense. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, we have had this debate in the past. As a matter of fact, the bill was initially characterized as the drug dealer's protection act, because of the death penalty as it relates to imposing that where there are drug dealers who kill other drug dealers. Let us understand that it is not just a question of saying that we will spare those who kill others. You can say let them wage a war on each other. But in the waging of that war there are innocent people who are also killed. There are police officers who are killed. There are witnesses who are killed.

We have to serve notice very clearly that we are not going to countenance this and that if you put out a contract, even if it is on someone in the organized crime family or enforcing the code of silence, enforcing and seeing to it there was a strict discipline that the Colombian gangs bring along where they wipe out members of their own gang for even thinking there may be a betrayal. The death penalty is one heck of a great prosecutor's tool. How does he use it? He gets someone who is hired in the contract killing even within the organization. "You are charged with first-degree murder, death penalty, my friend. Who gave you the orders?"

How do you crack that organization? How do you take it up the level to get the guy at the top? Not by giving him 20 years or life imprisonment with the hope that they will take care of him and they will get him out or they will feed his family.

When that gunman, when that killer faces the possibility of that prosecution and the gas chamber, or the death penalty, you have a hope and an opportunity of getting his cooperation.

It is a pretty useful tool.

I do not think we should make an exception. I think indeed in the fullness of time, once it is applied, it will stop these contract murders or at least they will think twice. You will get prosecutors who will be able to build cases using the fact that that person may be facing the death penalty.

Mr. President, I intend to move to table at the appropriate time after my friend and colleague from Illinois has finished his argument.

The PRESIDING OFFICER. Does the Senator from Illinois wish to use some time now?

Mr. SIMON. How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. The Senator has approximately 13 minutes.

Mr. SIMON. I yield 1 minute to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 1 minute.

Mr. LEVIN. Mr. President, let me congratulate our friend from Illinois for bringing this amendment.

It is important to point out that under this bill as it presently is written unless this amendment is adopted, we are treating the killer of a police officer the same way as we are treating the killer of a drug czar.

I think this society wants to treat people who kill innocents different from people who kill drug czars. The penalty should not be the same, because in the view of this society, the most supreme penalty ought to be reserved to be used against people who kill innocent people, police officers, law enforcement officers, innocent people.

It is bizarre to apply the same penalty to people who kill drug czars as it is to people who kill innocents including law enforcement officers. And the only way we can make that differentiation to carry out that commonsense instinct that we all have in this society would be to adopt the amendment of our friend from Illinois, and I hope we do.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. D'AMATO. Mr. President, if the Senator is willing to yield back his time, I am willing to take this to a vote.

I am going to make a motion to table.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. D'AMATO. Mr. President, I am prepared to yield back the remainder of my time.

Mr. SIMON. Mr. President, I will take a few more minutes here. Then I will be prepared to yield the remainder of the time.

The question is, How do we build a deterrent to drug trafficking?

Frankly, I do not think the death penalty means very much because drug dealers who are worried about death are worried about being shot by other drug dealers. But to the extent that it is a deterrent and, if I may digress for a moment, I talked to some young people in my State and I said, "How can we really reduce demand for drugs?" And they said if you are found guilty of possession, take your driver's license away for 1 year, and you are going to see the demand for drugs drop.

Maybe the pages around here are better at making a judgment on that than we are.

I happen to favor that. I had that as an amendment that was not ruled as part of this overall package.

But to the extent that we apply the death penalty, it should be to those who kill police officers, to those who kill innocent bystanders. It should not——

Mr. D'AMATO. Mr. President, will the Senator yield for a question?

Mr. SIMON. I am pleased to yield for a question.

Mr. D'AMATO. What would be the appropriate penalty? Are we saying that someone, let us say, a low level of drug dealing operations and there is an order that comes that he should be disposed of because they do not think he is reliable for whatever reason, maybe he is skimming money, maybe it looks like he is cooperating with local authorities. The contract is put out, he is murdered, in cold blood, murdered. Under the Senator's provision, if adopted, the hired killer would not face the death penalty under any circumstance, even if it was an extraordinary murder—they tortured him and killed him—he could not be charged, that person who carried out that killing, under this section; right? He would not face the death penalty?

Mr. SIMON. If I may respond to my colleague, first of all, we do not change State law here. In the huge majority of States, that person who is involved in a contract killing would be subject to the death penalty, but the reality is it hardly ever occurs. That is the reality in terms of the death penalty to drug traffickers.

To the extent that the Federal Government gets involved, we ought to get involved to protect innocent people, to protect police officers, not to protect drug dealers.

I do not question the motivation of my friend from New York. I know he wants to stop drugs just as much as I do and as every Member of this body does. But it does not make sense for us to pass an amendment the primary aim of which is to protect drug dealers, and that is what this does without my amendment.

If the Senator from New York is willing to yield back his time, I am willing to yield back my time. I think it is fairly clear what this amendment does.

Mr. D'AMATO. Mr. President, if I might suggest that in my State of New York, if we enacted this, it would be 1 of 13 States that do not have the death penalty, notwithstanding the overwhelming support of the people for it. The State of Michigan does not have one and the State of Hawaii and the State of Massachusetts. I mention them because they have large cities, urban centers in which this kind of criminal activity and the contract hiring, killing and enforcement in these areas of drug distribution, is rather common.

I believe it will be a very useful prosecutor's tool to have in his arsenal to undertake that. I do not think we are protecting drug dealers. I think it will give us the opportunity to crack some of those drug rings and it may even slow down and deter them from that kind of viciousness that they display with such regularity.

I guess we could argue that pro and con. I understand where my colleague from Illinois is coming from. I certainly appreciate his feelings in this matter.

I am prepared to yield back the remainder of my time. As a matter of fact, I yield back the remainder of my time.

Mr. SIMON. Mr. President, I yield back the remainder of my time, also.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SYMMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment No. 3684. The yeas and nays have been ordered.

The Senator from New York.

Mr. D'AMATO. Mr. President, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from New York to lay on the table the amendment of the Senator from Illinois. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. BYRD. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Oklahoma [Mr. BOREN], the Senator from California [Mr. CRANSTON], and the Senator from Tennessee [Mr. GORE] are necessarily absent.

Mr. DOLE. I announce that the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Pennsylvania [Mr. HEINZ], the Senator from Nebraska [Mr. KARNES], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Indiana [Mr. QUAYLE], the Senator from Wyoming [Mr. SIMPSON], and the Senator from Wyoming [Mr. WALLOP] are necessarily absent.

I further announce that, if present and voting, the Senator from Pennsylvania [Mr. HEINZ] and the Senator from Wyoming [Mr. WALLOP], would each vote "Yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 72, nays 16, as follows:

[Rollcall Vote No. 370 Leg.]

YEAS—72

Adams
Armstrong
Baucus
Biden
Bingaman
Bond
Bradley
Breaux
Bumpers
Byrd
Chafee
Chiles
Cochran
Cohen
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dodd
Dole
Domenici
Exon
Ford
Fowler
Garn
Glenn
Graham
Gramm
Grassley
Hatch
Hecht
Heflin
Helms
Hollings
Humphrey
Johnston
Kasten
Kerry
Leahy
Lugar
McCain
McClure
McConnell
Metzenbaum
Mikulski
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pressler
Pryor
Reid
Riegle
Rockefeller
Roth
Rudman
Sanford
Sarbanes
Sasser
Shelby
Specter
Stafford
Stennis
Stevens
Symms
Thurmond
Trible
Warner
Wilson
Wirth

NAYS—16

Burdick
Conrad
Evans
Harkin
Hatfield
Inouye
Kennedy
Lautenberg
Levin
Matsunaga
Melcher
Mitchell
Pell
Proxmire
Simon
Weicker

NOT VOTING—12

Bentsen
Boren
Boschwitz
Cranston
Durenberger
Gore
Heinz
Karnes
Kassebaum
Quayle
Simpson
Wallop

So, the motion to lay on the table amendment (No. 3684) was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. DOMENICI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader is now recognized.

Mr. BYRD. Mr. President, it is hoped that an agreement can be reached on the remaining amendments. If that can be done, the Senate would be in until about 8:30 and then go out until tomorrow. So, let me see how close we are to an agreement.

On the amendments that remain from the original category 3 grouping—in other words, amendments to be called up subject to amendments in the second degree if germane and relevant—there are four: Senator KERRY, Senator WILSON, Senator GRAMM, and one by Senators DOMENICI and GRAMM. So, we have been making progress on that grouping.

The joint chairs have been meeting all during the afternoon and have really done an excellent job. They have met with Senators. They have gone over the amendments and they have placed a considerable number of amendments in the package we have discussed. In other words, there would be one vote on the package. There are some amendments that were discussed with the joint chairs by Senators concerning which the joint working group could not agree should be placed in the package or should be called up. Those amendments are on the appellate docket to be discussed by Mr. DOLE and myself with those Senators. We will want to hear what they have to say about their amendments, and we will also need the advice of Mr. NUNN and Mr. RUDMAN, who have already heard the cases and have for their reasons felt that those items ought to be placed on what we will call the appellate docket. This is a court of common pleas and it originated back in the time of Henry II of England, who reigned from 1154 to 1189. And then there are three that would be in the category of colloquies. Nothing has been said about colloquies.

If we could get this agreement, that would mean we would have a package that would contain in it—it contained 30 amendments this morning and by now must contain 40 or 45. During this next vote on an amendment which will be called up by Senators DOMENICI and GRAMM, why do not Senators come to this desk, or to Mr. RUDMAN, or Mr. NUNN, and look at the list of amendments that are in the package? If we do not have any problems with those, I will put the request that those amendments be considered in a package and subject to only a vote up or down or a tabling motion. Once we can get that done, we are a long way down the road.

Will Senator RUDMAN be here at that point without my reading the amendments out now? Most of them were put into the RECORD last night.

There are 51 amendments on the list to be done with one vote. We want Senators to have the opportunity to come to the desk of Mr. RUDMAN or Mr. DOLE or Mr. NUNN or mine and see what those amendments are. Thirty of them were in the RECORD last night. Twenty-one additional ones have been placed on the list through the process that has been described.

So I will not ask unanimous consent with respect to that list at this point. In the meantime, Senators DOLE and I are available to talk with Senators HELMS, KENNEDY, SIMON, DODD, BRADLEY, SANFORD, SPECTER, NICKLES, KARNES, and BIDEN concerning the amendments that have been passed up to the two leaders by Mr. NUNN and Mr. RUDMAN and others.

In the meantime Senator DOMENICI and Senator GRAMM will proceed with their amendment on imposition of civil penalties. I ask unanimous consent that there be 30 minutes on the amendment——

Mr. DODD. Mr. President, reserving the right to object, maybe this is not—I am not clear if this is the benefits package amendment. Is this another amendment?

Mr. DOMENICI. Yes.

Mr. DODD. Then I apologize.

Mr. BYRD. On this amendment there be 30 minutes to be equally divided between the Senator from New Mexico, Mr. DOMENICI, and who on this side? Who is in opposition to this amendment?

Mr. DOMENICI. This is the civil penalties amendment.

Mr. BYRD. And Senator KENNEDY, the time on the civil penalties amendment to be equally divided between Mr. GRAMM and Mr. KENNEDY.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Senator DOMENICI and Mr. KENNEDY.

Mr. KENNEDY. That is fine, Mr. President. I want to say I had a good opportunity to work with the Senator and I think this is going to be a very commendable amendment.

Mr. BRADLEY. Mr. President, reserving the right to object, and I will not object, I simply want to clarify what the majority leader said earlier and that is that the pending amendment that I have on the labeling of tobacco products and on an education program in high schools to try to prevent 14-year-olds from beginning to smoke, that is a subject I should raise with the Senator and the minority leader in the next hour?

Mr. BYRD. Yes. Yes. These are the amendments, one of which is being referred to by Mr. BRADLEY—I called the names earlier—Senators HELMS, KENNEDY, SIMON, DODD, BRADLEY, SANFORD, SPECTER, NICKLES, KARNES, and BIDEN.

Those are the amendments that have been rejected by the working group. Senator DOLE and I will be happy to discuss those with Senators with the help of the working group, but in the meantime if we could proceed with the amendment by Mr. DOMENICI, 30 minutes equally divided, no amendments to the amendment.

The PRESIDING OFFICER. Is there objection to the request?

Mr. BYRD. No amendments to the amendment.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. BYRD. I thank all Senators.

AMENDMENT NO. 3685

(Purpose: To impose a civil penalty for possession of small amounts of certain controlled substances)

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I believe we are talking about the amendment that I am going to send to the desk in behalf of myself and Senator GRAMM. I want to indicate that in addition to Senator GRAMM from Texas, Senator RUDMAN, Senator DOLE, and Senator BINGAMAN are original cosponsors.

I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from new Mexico [Mr. DOMENICI], for himself, Mr. GRAMM, Mr. RUDMAN, Mr. DOLE, and Mr. BINGAMAN, proposes an amendment numbered 3685.

Mr. DOMENICI. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . CIVIL PENALTY FOR POSSESSION OF SMALL AMOUNTS OF CERTAIN CONTROLLED SUBSTANCES.

(a) IN GENERAL.—Any individual who knowingly possesses a controlled substance that is listed in section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)) in violation of section 404 of that Act (21 U.S.C. 841(b)(1)(A)) in an amount that, as specified by regulation of the Attorney General, is a personal use amount shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each such violation.

(b) INCOME AND NET ASSETS.—The income and net assets of an individual shall not be relevant to the determination whether to assess a civil penalty under this section or to prosecute the individual criminally. However, in determining the amount of a penalty under this section, the income and net assets of an individual shall be considered.

(c) PRIOR CONVICTION.—A civil penalty may not be assessed under this section if the individual previously was convicted of a Federal or State offense relating to a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(d) LIMITATION ON NUMBER OF ASSESSMENTS.—A civil penalty may not be assessed on an individual under this section on more than two separate occasions.

(e) ASSESSMENT.—A civil penalty under this section may be assessed by the Attorney General only by an order made on the record after opportunity for a hearing in accordance with section 554 of title 5, United States Code. The Attorney General shall provide written notice to the individual who is the subject of the proposed order informing the individual of the opportunity to receive such a hearing with respect to the proposed order. The hearing may be held only if the individual makes a request for the hearing before the expiration of the 30-day period beginning on the date such notice is issued.

(f) COMPROMISE.—The Attorney General may compromise, modify, or remit, with or without conditions, any civil penalty imposed under this section.

(g) JUDICIAL REVIEW.—If the Attorney General issues an order pursuant to subsection (e) after a hearing described in such subsection, the individual who is subject of the order may, before the expiration of the 30-day period beginning on the date the order is issued, bring a civil action in the appropriate district court of the United States. In such action, the law and the facts of the violation and the assessment of the civil penalty shall be determined de novo, and shall include the right of a trial by jury, the right to counsel, and the right to confront witnesses. The facts of the violation shall be proved beyond a reasonable doubt.

(h) CIVIL ACTION.—If an individual does not request a hearing pursuant to subsection (e) and the Attorney General issues an order pursuant to such subsection, or if an individual does not under subsection (g) seek judicial review of such an order, the Attorney General may commence a civil action in any appropriate district court of the United States for the purpose of recovering the amount assessed and an amount representing interest at a rate computed in accordance with section 1961 of title 28, United States Code. Such interest shall accrue from the expiration of the 30-day period described in subsection (g). In such an action, the decision of the Attorney General to issue the order, and the amount of the penalty assessed by the Attorney General, shall not be subject to review.

(i) LIMITATION.—The Attorney General may not under this subsection commence proceeding against an individual after the expiration of the 5-year period beginning on the date on which the individual allegedly violated subsection (a).

(j) EXPUNGEMENT PROCEDURES.—The Attorney General shall dismiss the proceedings under this section against an individual upon application of such individual at any time after the expiration of three years if—

(1) the individual has not previously been assessed a civil penalty under this section;

(2) the individual has paid the assessment;

(3) the individual has complied with any conditions imposed by the Attorney General;

(4) the individual has not been convicted of a Federal or State offense relating to a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(5) the individual agrees to submit to a drug test and such test shows the individual to be drug-free.

"A nonpublic record of a disposition under this subsection shall be retained by the Department of Justice solely for the purpose of determining in any subsequent proceeding whether the person qualified for a civil penalty or expungement under this section. If a record is expunged under this subsection, an individual concerning whom such an expungement has been made shall not be held thereafter under any provision of law to be guilty of perjury, false swearing, or making a false statement by reason of his failure to recite or acknowledge a proceeding under this section or the results thereof in response to an inquiry made of him for any purpose.

The PRESIDING OFFICER. The Senator from New Mexico is recognized for up to 15 minutes.

Mr. DOMENICI. I yield myself 8 minutes, Mr. President.

Mr. President, if we are going to actually have a drug-free America by 1995—and this bill is going to put into the goals and objectives some language that came from a number of us that states we want this Nation to be drug-free by 1995—then all of the provisions in this bill are very important but clearly we are still short on the side of making the user of drugs accountable for his or her actions.

Everywhere that we have had expert testimony, they have said we are never going to get rid of those who traffic in drugs, those that bring drugs into our country, those that perpetrate crime on the American streets unless and until the demand for drugs is dramatically reduced.

Then we hear from most of those experts that there must be some way to stop the demand. I want to submit to the U.S. Senate that the United States of America has been engaged in what we call the war on drugs, yet we refuse to acknowledge that it is essentially legal to use drugs. We see evidence of that every day. We see evidence that those who play football can be drug addicts, and they play football. They make $1 million. We see it everywhere in the American lifestyle that while we are busy trying to get those who make a lot of money selling drugs, and while we are going to vote in murder for the drug kingpins, we have not come upon a way that is workable to say to those who are using drugs, "You must suffer some consequence for this use."

So what I am doing here today—and I frankly believe this is going to become law, and it is going to be historic—is proposing a sanction that is going to have a dramatic impact on the use of drugs in the United States. I want to tell the Senate what it will do.

First, we must understand that for an American citizen, man or woman, who possesses drugs in small quantities for their own use, the truth of the matter is nothing is being done to punish them today.

So my amendment for that kind of American, young or old, say the following. The U.S. Attorney General in his discretion may proceed to levy a fine of up to $10,000 on that user. He has to serve them with notice, and they have the right to a hearing. The Attorney General cannot take economic means or net worth or asset value of the drug user into account. In other words, both rich and poor will be subject to the civil penalty, but not if they have been convicted of a drug offense before.

This statute cannot apply to anyone who has been convicted of a drug offense. So for starters, the U.S. Attorney General cannot apply this to anyone who has been convicted of a drug offense. So they are out. They go the criminal route, total criminal route.

An individual can only be fined under this process twice. After that, they must go the criminal process route. When this mechanism is set up across that land, the casual user of drugs will be judged by an administrative tribunal, and a fine will be levied after a hearing if the administrative court finds that the individual has broken the laws.

Mr. President, there has been some concern about the constitutionality of this approach. I want all the Senators to understand that we have now worked with as many experts as we could put together. And we think we have a constitutional provision because any such defendant has the automatic right within 30 days to make an appeal. That appeal will give them to de novo full jury trial. The burden of proof will be on the Federal Government, and the burden of proof will be the criminal burden of proof—proof beyond a reasonable doubt. So anyone who proceeds down this route after the U.S. attorney decides to move with a civil penalty has an automatic right to have a full jury trial so long as he requests the same within 30 days after the imposition of the fine.

Mr. STAFFORD. Mr. President, will the Senator yield for a question?

Mr. DOMENICI. I am pleased to yield.

Mr. STAFFORD. Will the Senator's amendment apply to a person who possesses some controlled substance which he has under the prescription of a doctor?

Mr. DOMENICI. No. It will not because the definition of this is that it has to be an offense under the Controlled Substances Act. That does not include the use of drugs as described by my good friend, Senator STAFFORD.

Mr. STAFFORD. I appreciate the answer.

Mr. DOMENICI. Mr. President, at the request of some Senators I put a provision in this bill which I think will be an incentive in particular on the part of young people, an incentive for them to stay off drugs because we have an expunging clause in this new statute which essentially says the following. Three years after the assessment of the fine, the civil penalty, upon the request of the defendant, the U.S. Attorney General shall expunge the record if that defendant has an absolutely clean drug record, meaning he or she has not been convicted of a drug offense and is willing to prove that he or she is not on drugs by taking a drug test.

It seems to me that to the casual user, and the young person in the United States who truly wants to get off drugs, we want to say to them, "You are going to be penalized if you continue to use drugs." We will have an mechanism now. They will be taken before an administrative judge, they will be fined and then they will be told, "If you do right by your country in the intervening 3 years, we will take this off your record so long as your have paid the fine and behave according to the rules and regulations of our criminal procedures and processes in this land."

Mr. President, I truly believe this, coupled with the approach of my good friend from Texas, which will take away certain privileges, at least permit judges to take away privileges, will clearly set the stage in the United States to address the unanswered part of this war—a war that is realistic, reasonable, credible, and winable—against the user of illegal drugs in the United States.

We will not have to clog the criminal dockets for the first offender, and we will no longer have U.S. Attorney Generals across this country and U.S. attorneys saying, "We are not even going to bother with the user." They will begin to bother with the users, and in their descretion they will proceed to have them fined. In the fining process they will have to take their ecomomic condition into consideration, but I repeat: the prosecutorial descretion to move with the civil penalty cannot be predicated upon the status of one's wealth. It cannot be based upon economic grounds.

So I perceive the U.S. Attorney General will establish regulations regarding this descretion for all U.S. attorneys, and they will have to apply it across the board so long as the defendants, men or women, have not been convicted of drug offenses, and so long as this civil penalty has not been used on that defendant more than two times at the point in time that they are brought before the court.

Mr. President, I think this is an idea whose time has come. It is better than the House provision because it is clearly constitutional. And I believe we have established some guidelines that will make it eminently fair, that will create an incentive to stay off drugs. When you add all of this together, I think it is something that is very good for this war on drugs.

I would like to yield time that I have remaining to my friend from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized for 5 minutes.

Mr. GRAMM. Mr. President, I am happy to join my colleague, Senator Domenici from New Mexico, in cosponsoring this amendment. This amendment is vitally important because it, along with another amendment that will be offered later, represent our effort to deal with the user side of this drug problem.

Mr. President, we have been losing the drug war for a lot of reasons. One reason we have been losing it is we have acted as if the person selling drugs was a criminal, but the person that was buying drugs was a victim. Senator Domenici, about a dozen other Senators and I spent about 3 months meeting once a week for breakfast with experts from around the country to try to look at this problem.

I can sum up what we found in those months of meetings pretty simply. No. 1, trying to deal with the drug problem by interdiction alone is destined to fail. I have supported and I continue to support mandatory sentencing. My provisions are in this bill providing 10 years in prison without parole for a thug that sells drugs to a minor; 20 years for using a minor in the sale or transportation of drugs; and life imprisonment for a repeat offense. That is part of this bill. But, Mr. President, the value of cocaine multiplies 200 times from the time that the primary product is produced in the field in Central America until it is sold on the streets of Washington, DC. What we discovered in our study was that you can take the whole armed forces of the United States, commit them to the war on drugs, and you would be lucky to double the price of cocaine in the street.

Our second sad finding, one corroborated by most studies, is that education is not, at least to this point, very effective in reducing the level of usage. The level of usage among children who have gone through drug awareness programs does not appear to be very much different from those who have not. The level of usage of those who go to college does not appear to be much different from those who do not.

What we will have to do in order to address this problem is to have penalties and sanctions against the 23 million people who use drugs on a regular basis, for it is they who create the profits that have put a drug thug at the door of every high school in America, and it is they who create the profits that produce the drug gangs that kill our agents in Mexico and around the world.

This is a very important amendment because it strikes at the real drug kingpin, and the real drug kingpin is the drug user.

I have notice while writing this drug bill that, in many of our meetings, many of our colleagues want to act as if everybody using drugs is an addict. Studies do not show that. The bulk of the demand for drugs comes from people who are not addicted: they are the casual users, people who have jobs and lead otherwise fairly normal lives.

What this amendment says to them, in very clear terms, is, "You are going to have to change your lifestyle. We are not going to tolerate your drug use because of what it is doing to America."

This is a very important amendment. There are many of us who rejoice in the death penalty being in this bill for those who shoot down our police officers in the street—and I cosponsored that amendment and support it. But in reality, the amendment before us now is going to do more to drive a stake in the heart of the drug industry than the death penalty and all the money we are spending on enforcement.

I am committed to the whole approach affecting supply and demand, but this civil penalty is a critical element in the drug bill. I commend my colleague for his leadership in this area. I am happy to be a cosponsor.

Mr. President, I ask unanimous consent that the names of Senator Helms and Senator Thurmond be added as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAMM. I yield back the remainder of my time.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. DOMENICI. Mr. President, will Senator Kennedy yield me 30 seconds?

Mr. KENNEDY. I yield.

Mr. DOMENICI. Mr. President, I want to summarize by saying that this amendment will put a tool in the hands of the U.S. prosecutors that they can use against the casual user of illegal drugs. They do not have that now. As a consequence, they are doing little or nothing. In the future, they will begin to assess fines, and the user will pay attention.

Mr. KENNEDY. Mr. President, I commend the Senator from New Mexico for this amendment. I intend to support it and to vote for it.

It appeared in a very different form in the House of Representatives, a way in which, I am convinced, it is unconstitutional, on the basis of a number of Supreme Court decisions.

I think the Senator from New Mexico has charted a very important and significant alternative in lieu of going through the criminal justice system. He has provided that, if an individual has been found to have violated the law, he or she, after a period in which that individual has been free from any type of conviction, has a right to have his or her record expunged in terms of that conviction, which I think can provide an important incentive for those individuals who have made mistakes. I think that is very important.

If I may have the attention of the Senator from New Mexico, I ask him this: In the amendment, on page 4, it states, on the expungement procedures:

> The Attorney General shall dismiss the proceedings under this section against an individual upon application of such individual at any time after the expiration of 3 years.

I am wondering whether it would be the Senator's intention to permit the Attorney General any flexibility before the 3-year period has run. We are mandating expungement after the period has run. I think the Senator has done a responsible job in the expungement provisions.

I think we have seen in other State laws where they have had, for example, convictions in terms of some substance abuse, where there has not been a further conviction, an expungement of records. I hope we would be able to encourage the Attorney General, if he made a judgment on his own, that at least the legislative record would indicate that they might have some flexibility to expunge before the 3 years has run.

I did not have an opportunity to talk to the Senator about that type of approach. I applaud the one in here. I think it is a sensible alternative to criminal prosecution. It provides an important incentive for individuals, if they have made a mistake, to resist further contacts with the substances. I think that this aspect, which has been built into this provision by the Senator from New Mexico, is very commendable, and hopefully we can build on it.

I would like the Senator's reaction.

Mr. DOMENICI. I say to the Senator from Massachusetts that I did work with his people, and I did not have a chance to discuss this specific issue with them or with him.

I must say that the way it is now written, the pattern of good behavior is a 3-year pattern, so there is no discretion. I am willing, if we have time here, to talk with the Senator, and perhaps we can make some adjustments. The language is 3 years, and then, upon the request of the defendant, the U.S. attorney must do it, provided the conditions are met.

Mr. KENNEDY. Mr. President, I thank the Senator. I will not delay. I will work with the Senator in the future, after this is adopted.

I want to indicate this to the Senator: I know a number of individuals have had concerns, not only myself, and in having a chance to visit with the Senator, he has responded. I think we have at this time the essence of the Senator's concept. It is a sound and innovative alternative to criminal prosecution, and I think it does have the advantage of accountability and some redeeming qualities.

We have reached a balance, and I hope the Senate will accept this amendment. I intend to support it. I am prepared to yield back my time.

Mr. NUNN. Mr. President, will the Senator yield 1 minute?

Mr. KENNEDY. I yield.

Mr. NUNN. Mr. President, I congratulate the Senator from New Mexico and the Senator from Massachusetts in working this out. I think this concept has always had an appeal, but I believe that the drafting of the original amendment left many questions open. The Senators have worked this out carefully, and I think we have an innovative approach that will greatly facilitate cracking down on use without criminal prosecution.

I congratulate both Senators for this amendment.

Mr. KENNEDY. I am prepared to yield back the time.

The PRESIDING OFFICER (Mr. Dixon). The Senator from Massachusetts yields back the time.

Mr. DOMENICI. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. NUNN. Mr. President, if the Senator will yield for a brief inquiry, it is my understandiang now, and I would like to get the attention of the Senator from New Hampshire, that we have one more amendment, perhaps two more, that can be taken up tonight, the Gramm amendment.

Mr. RUDMAN. The Senator from Texas does have something he must do at 7:15, and he has just advised me that he cannot offer that amendment until later on this evening, which makes me believe it would probably be up first thing in the morning.

I wonder if Senator Kerry, who is on the floor now, is prepared to offer his amendment.

Mr. NUNN. I was going to ask the same question about the Senator from California, Mr. Wilson, whether he is prepared to offer his amendment.

Mr. RUDMAN. I would like to respond to my friend from Georgia. It now appears it is a good possibility that rather than offer that amendment, the Senator from California is working with the Department of Transportation to work out a pilot program embodying what we have all been interested in, this testing, and that is so, I would hope that we might all be able to accept that with enthusiasm.

So the Senator from California would like to defer until such time as he is sure that is going to be accepted. That is my understanding.

Mr. NUNN. The Senator from Massachusetts.

Mr. KERRY. Mr. President, will the Senator yield?

Mr. NUNN. I yield the floor.

Mr. KERRY. I answer the distinguished Senator from New Hampshire that we are still working with the chairman and ranking member of the Banking Committee.

There is some possibility there may be an agreement worked out. If there is not, I would be prepared to proceed forward tomorrow morning, I think, but I think we need a little room here to work.

Mr. RUDMAN. Mr. President, if I could have the attention of my friend from Georgia, I might just say to Senator Nunn that it now appears that after this vote the majority leader is going to present a unanimous-consent request to outline those items that are essentially agreed to. That will probably bring us close to 7:30 or 7:40.

It well may be if we can accomplish that with only three remaining, namely Senator Gramm's amendment, Senator Kerry's amendment, and possibly Senator Wilson's amendment, that we might start early and finish those before noon.

Mr. NUNN. I would say to my friend from New Hampshire maybe our only recourse tonight—I hope we finish one or two more of them tonight—we are always going to have something come up unanticipated. I have learned to anticipate the unanticipated in this body and I would imagine that a reasonable goal to get through by noon tomorrow with this bill is achievable.

Will the Senator from Texas be able to present his amendment between now and 8:30 at some point or would he prefer to wait until the morning?

Mr. RUDMAN. The Senator from Texas will not be back, I understand, until slightly after 8 o'clock. I do not think that under the situation the majority leader described earlier that that would probably work. However, the Senator from Texas is prepared to go very early tomorrow morning and be first up with that amendment at an early hour.

Mr. NUNN. Could we report to the majority leader then as to the status of this? I believe we could give him a brief report. All Senators who are listening could gather where we are now.

We are about to have a rollcall vote, I say to the majority leader on the amendment of the Senator from New Mexico and the Senator from Massachusetts has joined in that.

I think this amendment will pass overwhelmingly. I do not anticipate any complications there.

Then we have essentially three more amendments.

The Senator from Massachusetts informs us that he has an amendment and we are working on that with others and may be able to facilitate some sort of a compromise on that. In any event he would be ready tomorrow morning, hopefully early.

The Senator from Texas will not be back in time to present an amendment and fully debate it that he has on the list No. 3 before about 8 o'clock. That makes it doubtful that it could be completed by 8:30.

The Senator from California is working on a possible pilot project with his amendment and that remains to be seen. But, nevertheless, he will be ready tomorrow morning, whatever the outcome.

So we would, it appears, have three amendments after this rollcall that are on this list No. 3, the critical list, that can be presented tomorrow morning, but it is unlikely we are going to present any more of them this evening. Then we have the whole list that the majority leader already has, the so-called list No. 1, that could be incorporated, and we will continue to work on some of these other areas. But essentially that is where we are at this point in the evening.

Mr. RUDMAN. Mr. President, if my friend will yield, I think that is exactly right. I will say to the majority leader that we could start at a reasonable hour tomorrow.

Senator GRAMM said he would be prepared to go with his. Senator KERRY at that point should know whether or not his will take a rollcall vote as will Senator WILSON.

So in the time agreement we have in mind we could do all three of those amendments somewhere between the hours of 9 in the morning and noon and be ready for action on the leadership package.

Mr. BYRD. I think this is an excellent report by both of these able Senators.

I wonder if Senators have availed themselves of the package list that has been at my desk and my staff member has been here available for Senators to check the list, and Mr. RUDMAN has been on the floor and Mr. NUNN.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment of the Senator from New Mexico.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Oklahoma [Mr. BOREN], the Senator from California [Mr. CRANSTON], and the Senator from Tennessee [Mr. GORE] are necessarily absent.

Mr. DOLE. I announce that the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Pennsylvania [Mr. HEINZ], the Senator from Nebraska [Mr. KARNES], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Indiana [Mr. QUAYLE], the Senator from Wyoming [Mr. SIMPSON], and the Senator from Wyoming [Mr. WALLOP] are necessarily absent.

I further announce that, if present and voting, the Senator from Pennsylvania [Mr. HEINZ] and the Senator from Wyoming [Mr. WALLOP] would each vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 88, nays 0, as follows:

[Rollcall Vote No. 371 Leg.]

YEAS—88

Adams
Armstrong
Baucus
Biden
Bingaman
Bond
Bradley
Breaux
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Conrad
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dodd
Dole
Domenici
Evans
Exon
Ford
Fowler
Garn
Glenn
Graham
Gramm
Grassley
Harkin
Hatch
Hatfield
Hecht
Heflin
Helms
Hollings
Humphrey
Inouye
Johnston
Kasten
Kennedy
Kerry
Lautenberg
Leahy
Levin
Lugar
Matsunaga
McCain
McClure
McConnell
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Proxmire
Pryor
Reid
Riegle
Rockefeller
Roth
Rudman
Sanford
Sarbanes
Sasser
Shelby
Simon
Specter
Stafford
Stennis
Stevens
Symms
Thurmond
Trible
Warner
Weicker
Wilson
Wirth

NAYS—0

NOT VOTING—12

Bentsen
Boren
Boschwitz
Cranston
Durenberger
Gore
Heinz
Karnes
Kassebaum
Quayle
Simpson
Wallop

So the amendment (No. 3685) was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. KENNEDY. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DECONCINI. Mr. President, today the Senate is beginning action on S. 2852, the Omnibus Anti-Substance Abuse Act of 1988—a bill that has been put together by a coalition of Democrats and Republicans over the past 5 months. Although back in March I introduced the first Senate drug bill, S. 2205, with broad bipartisan sponsorship, I am totally committed to passing the underlying "core" bill and urge my colleagues to give it overwhelming support.

Mr. President, I have already discussed the substance and merits of the core bill when the bill was introduced by the two leaders a few weeks ago. But today I rise to not only urge my colleagues to support the bill as introduced, but to provide the appropriations necessary to actually fund the programs and activities that are authorized in S. 2852. Now I know that the House is supposed to originate all spending bills and I hope that they will promptly move on a supplemental appropriation bill while we are working on this authorization bill. Let me tell you why I believe it is critical that we provide the appropriations in the same breath we are authorizing additional funds for law enforcement; drug interdiction; treatment and education; and research activities.

First, as you know, Mr. President, one of the ways that we are going to make room for the total drug bill is to start phase III of an Internal Revenue Service revenue initiative that over two fiscal years will bring in an additional $1.8 billion in uncollected and overdue taxes. Approximately $206 million would be generated in the current fiscal year and could be applied to make room for the drug bill, with the balance occurring in fiscal year 1990. Unless we appropriate the additional funds for the IRS staff that will be required to trigger the revenue initiative, and do so right now, the agency will be unable to hire any additional staff in time for the next tax cycle.

Second, our deficit and sequester situation is not going to get any better between now and next year so we need to act now to provide both the authorization and appropriations, while we still have some room below the sequester "trigger" baseline. As of October 5, according to OMB, we had approximately $385 million left to spend before we hit the sequester "trigger" that we all dread. If we successfully fund the first piece of the IRS initiative, and an additional amount for U.S. attorneys at Justice, we could have as much as $641 million to spend on drug bill programs in fiscal year 1989. If we fail to provide the funding to start both the revenue-producing side and the programmatic side of the drug bill, I believe that we may never recapture the opportunity to fund this bill.

And, finally, Mr. President, there is a political side to the argument in favor of both reauthorizing and appropriating right now before we go home. The American people want a good, tough drug bill that will establish a new framework for how this country attacks the multi-headed "dragon" we call the drug problem. But they don't want hollow promises that we are going to put some muscle into the drug war, only to see Congress leave town without actually funding the new drug bill. In 1986, Congress was criticized for only funding a portion of the Omnibus Anti-Drug Abuse Act of 1986. What will the American people think of us if we don't provide any of the appropriations for the 1988 drug bill? I think we all know the answer.

Mr. President, if I sound frustrated, I am. Back in March I introduced S. 2205, the Omnibus Anti-Drug Abuse Act of 1988 with over half of the Senate on-board as cosponsors. Now that bill has 75 sponsors, including the entire Republican leadership and the two Vice Presidential candidates. It is now sitting on the shelf. I am pleased that the so-called DeConcini-Amato drug bill has served as the foundation for the current drug bill that is before us, and I repeat my total support for the bill that is before us now. But we need to get on with passing this bill, with no amendments if possible, and then provide the appropriations to cover the important programs and activities contained in the drug bill.

Mr. President, I urge the prompt passage of this important piece of legislation.

UNANIMOUS-CONSENT AGREEMENT

The PRESIDING OFFICER. May we have the attention of the Senate? The majority leader is recognized. The Senate will come to order.

Mr. BYRD. Mr. President, I believe now that we are about in a position, hopefully, to get an agreement that would see us go out at this time and come back tomorrow morning and, hopefully, put us within reasonable shooting distance of the end of the bill at a reasonably early hour tomorrow. If I may have the attention of Senators so there will not be any misunderstanding; nobody calling me up on the telephone.

The PRESIDING OFFICER. May we have the attention of the Senate for the remarks of the majority leader who is attempting to bring this bill to conclusion. The majority leader.

Mr. BYRD. Mr. President, I thank the Chair.

Senators will remember last evening and this morning the public discussions and private ones concerning a package amendment. Last night, it had 30 amendments rolled into one. By now, it has 51 amendments rolled into one. These are amendments that have been carefully gone over by the cochairs and those on the two groups that worked with them. They have been placed into the package, which hopefully at some point we can vote on with one vote up or down, with a tabling motion, of course, in order.

All Senators, if I may, if they will listen carefully so I will not have to answer any question on this, certainly from any Senator who is here, I am not asking at this moment that all amendments in this package be voted on with one vote. I hope that we will ultimately be able to do that. We may not be. I am only asking at this moment that this package be placed in the RECORD and that it constitute all the remaining amendments to be called up to this bill, with the following exceptions:

Three of the remaining amendments in the socalled category 3 of last evening, which will be called up separately, or may not be. But if the authors of those amendments wish to call them up separately and get a vote on them they can, with the understanding that amendments in the second degree will be in order if they are germane and relevant. An amendment by Mr. KERRY, money laundering; an amendment by Mr. WILSON, random testing for driver's license; and an amendment by Mr. GRAMM, loss of Federal benefits.

And with the other possible exceptions, these are the amendments that are on the appellate docket.

Mr. NIXON once considered putting me on the Supreme Court of the United States. I do not know why he did that. But anyhow, I am not there and this is about the closest I will ever get, with my brother justice here, Mr. DOLE, who is far more qualified for this job of being a justice than I.

Two amendments by Mr. HELMS, and if it is all right, Senator DOLE, if we could be around for a few minutes with Mr. RUDMAN and Mr. NUNN that Senators could approach the bench. We would be glad to hear their cause with the help of Mr. NUNN and Mr. RUDMAN. These are the Senators: HELMS, KENNEDY, SIMON, DODD, HATCH, BRADLEY, SANFORD, SPECTER, NICKLES, KARNES, and BIDEN. Those Senators have amendments which we will be happy to discuss shortly. Not now. Shortly.

These are all the amendments. So my request, that the amendments on this list, which Senators have had an opportunity to see and which have been carefully screened by the bipartisan task force with the staffs, they constitute all the remaining amendments with the exceptions I named: The three in category 3 and the possible amendments on the list that Senator DOLE and I will hear. That is all.

If we get agreement now that that is all, then tomorrow we will come back and we will take up the three amendments that are in category 3, which are eligible to be called up and amended by germane and relevant amendments. At that time, then, we will see if we can get an agreement to vote on the package of amendments with one vote, up or down, or table. If there are problems with that we will discuss those at that time. And if we get this agreement we go out and come back tomorrow.

So, Mr. President, I ask unanimous consent that the list in the so-called leadership package appear in the RECORD and that no further amendments to the bill be in order, no further amendments, other than the package list and the three amendments, KERRY—money laundering, WILSON—random testing for drivers' licenses, GRAMM—loss of Federal benefits, and such amendments as the leader and I agree may be called up from the following list which I send to the desk; two amendments by Mr. HELMS; one by Mr. KENNEDY; one by Mr. SIMON; one by Mr. DODD; one by Mr. HATCH and Mr. KENNEDY; one by Mr. BRADLEY; another by Mr. KENNEDY; one by Mr. SANFORD and Mr. HELMS; one by Mr. SIMON; two by Mr. SPECTER; one by Mr. HELMS; one by Mr. NICKLES; one by Mr. KARNES; and one by Mr. BIDEN.

The PRESIDING OFFICER. All Senators have heard the request of the majority leader. Is there any objection to the unanimous-consent request by the majority leader.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ARMSTRONG. Reserving the right to object, as I understand it, the leader has now propounded the request which has been under discussion. This incorporates the so-called second basket or second-page approach where certain amendments are listed and may be called up but only upon the approval of some group of Senators, including I think the two leaders.

Mr. President, this has been described as the purgatory approach. It has been described as the appellate approach. It has been discussed a number of times both publicly and privately.

Mr. BYRD. Would the Senator add one appellation to this group, that being Dante's Inferno? [Laughter.]

Mr. ARMSTRONG. Mr. President, I expressed some reservations about this procedure last night. Not about the substance of the amendment nor about the possible outcome with respect to the adoption or rejection of amendments in this basket of purgatory or Dante's Inferno amendments, but just about the process.

I have had 24 hours, more or less, to think about it, and the more I think about it, the less I think this is a good idea. I would like to suggest that a better term to describe this process would be the Rules Committee approach.

Some of us served over in the other body, and I did not like it. I did not like the fact that the Rules Committee decided what could come to the floor and what amendments could be debated. I did not see that abused once in a while. I saw it abused 3 days a week. I saw Members of the other body absolutely denied day after day, week after week, year after year of their rights to even propose amendments, a tradition which continues in the other body until right now. And this is the forerunner, I say to my colleagues, of a rules committee approach for the Senate.

This is not a binding precedent if we agree to it tonight. It is just a step. It is just an expedient. It solves a problem here tonight and it will be easy to resort to the same tactic on another occasion.

Mr. President, on last night the leader was courteous enough to defer his request so we would have a chance to look at the amendments. I think that was gracious and proper of him to do so. I am one who wants to pass a drug bill. So here is how I am going to respond to the request.

I am going to serve notice right now that the next time this request or a similar one is made, I will ojbect. I do not know whether that is going to be another drug bill, a budget bill or whatever it is. I do not know whether it is going to be in this session or next session, but if I am here I am going to do three things:

First, I am going to ask, and I do now ask, that if I am not on the floor when that occurs, that on my behalf the acting Republican manager, whoever that is, just object on my behalf.

Second, that if I am in earshot or telephone distance of the floor that I be summoned to the floor so that I can consider it and object personally.

Third, if I am on the floor, I will object. That is not speculation. I am just going to object. I think it is a bad practice and a bad precedent.

Second, Mr. President, on this occasion, in deference to the leaders and in consideration to a lot of personal reasons as well as my desire to pass this bill, on this one occasion, just this once, I will not object to this extraordinary procedure.

Mr. BYRD. Mr. President, I thank the Senator for his consideration and for his not objecting. May I assure the Senator that this is not a step in the direction of a House-type Rules Committee action, and as long as I am a Member of this body, I will not see this body become another House of Representatives. There are those in here who on various other occasions have suggested other approaches which would probably have an impact, but I have no fear that ROBERT C. BYRD will ever do anything to destroy this body or its role under the Constitution as intended by our forefathers.

I hasten to say there are others in this body on both sides who are just as zealous in guarding the role of the Senate. I think we demonstrated that when we had the INF Treaty come up.

May I take this occasion, since I am a participant in this effort, may I take this occasion to say that there was a lot of pressure on me then from the White House, the other side of the aisle and from some on my own side, "Push ahead, get that done." I said, "No, that is not the role of the Senate." The role of the Senate is not to meet a deadline set by somebody else down at the White House or anywhere else. The role of the Senate in relation to treaties is to have them thoroughly analyzed, probed, scrutinized, studied, and it is my role to call it up when those committees have done that. We can be assured we are getting a good treaty. As a result, the Senate not only approved the ratification of that treaty but it improved the treaty.

So I take no back seat to any Senator when it comes to protecting the prerogatives of this Senate and to protecting Senators on both sides.

I thank the distinguished Senator from Colorado. Let me assure him that this is not a step in the direction of a House Rules Committee. Anytime the Rules Committee in this Senate assumes the responsibility, prerogatives and authority that the House Rules Committee has, everybody in the Senate will have something to say about that. It will only be done by the Senate itself.

And let me tell you one further thing. A lot of Senators are talking about how they are going to change the rules in this Senate. Their intentions are good, but changing the rules in this Senate are about as difficult as cleaning out the stables and there are few people capable of that task.

The PRESIDING OFFICER. Is there any objection to the request of the majority leader?

Mr. DODD. Reserving the right to object.

Mr. GLENN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. We had a discussion here on the floor concerning one of the amendments I believe the group had agreed to and the majority and minority leaders had agreed to. I believe it was taken off the minority leader's calendar. I believe that has not yet been done by the majority leader. I did not want to see this pass without that occurring.

Mr. BYRD. So the ADAMHA amendment will be stricken from the list.

Mr. GLENN. With that assurance, I have no objection.

Mr. DODD. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Reserving the right to object, the last amendment listed—and I will ask the attention of my distinguished colleague from North Carolina—on diplomatic immunity, I just want the assurance, and I believe it to be the case, that this amendment is exactly the same amendment that was reported out of the Foreign Relations Committee, passed by a voice vote by the Senate some months back; is that the exact language?

Mr. HELMS. Will the Senator yield?

Mr. DODD. I will be glad to.

Mr. HELMS. I wanted to check to make certain my understanding is correct. The Senator is correct except for some modifications to meet the objections of this Senator and others.

Mr. DODD. If that is the case, then I thank my colleague.

The PRESIDING OFFICER. Is there objection to the request of the majority leader?

Mr. LEVIN. Reserving the right to object, Mr. President.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Let me quickly congratulate the leaders for what they have done. There may be a little tiny glitch on one of my amendments. Can we add to list 2 an amendment relative to mental retardation? We think it has been cleared. We think it is part of the package but we are not 100-percent sure. Basket 2 is subject to your approval. Can we add that in case it has not been cleared? I thank the leaders. They have done an extraordinary job.

The PRESIDING OFFICER. Is there objection to the request of the leader?

Mr. NUNN. Reserving the right to object, and I shall not object, I have had several inquiries though and I would like to make it clear—I believe I am correct—this does not preclude second-degree amendments that are relevant and germane. Is that a correct understanding?

Mr. BYRD. To those amendments that are in category 3.

Mr. NUNN. To the amendments that are coming up tomorrow morning, category 3. Those are the three amendments.

Mr. BYRD. Yes.

Mr. NUNN. I thank the Senator.

Mr. BYRD. I thank the Senator.

The PRESIDING OFFICER. Is there objection to the request of the majority leader? Without objection, the request of the majority leader is adopted.

Mr. BRADLEY. Will the majority leader yield for a question at that point?

Mr. BYRD. There are three amendments which by oversight I should add. They are sense-of-the-Senate amendments. Senator RUDMAN and Senator NUNN know about these. I believe the Republican leader does also. There are three sense-of-the-Senate amendments, one by JOHNSTON and KENNEDY, one by WILSON, and one by NUNN. So I request that the three sense-of-the-Senate amendments be added.

The PRESIDING OFFICER. Is there objection to the request of the majority leader that the three sense-of-the-Senate resolutions be added to the unanimous-consent list?

Without objection, it is so ordered.

Mr. BRADLEY. Reserving the right to object.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. The three sense-of-the-Senate resolutions authored by?

Mr. BYRD. Offered, the first one, by Mr. JOHNSTON and Mr. KENNEDY, grants to insular areas; the second by Mr. WILSON, funds for youth gangs, and one by Mr. NUNN, State Department air wing.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The text of the agreement is as follows:

Ordered, That during the consideration of H.R. 5210, an act to prevent the manufacturing, distribution, and use of illegal drugs, and for other purposes, the following amendments shall comprise the joint leadership package:

Thurmond—Child pornography;
Leadership—Exclusionary Rule;
Leadership—Habeas Corpus;
Thurmond/Ford—Alcohol warning labels;
Wilson—Penalty for threats against former Government officials;
Domenici—National Commission on Uniform State Laws;
Domenici—Drug free U.S. by 1995 statement;
Cohen—Make Drug Czar member of NSC;
Bingaman—Federal agencies participation in Uniform Crime;
Reporting Program;
Graham—G.A.O. study on impact of criminal penalties;
Kennedy—Deportation;
Durenberger—Health amendment;
Nunn/Warner/Gramm—Drug free workplace suspension;
Domenici—Mental health study;
Lautenberg/Danforth—Drunk driving;
Dodd—Program for children of alcoholics;
Graham—Sense of Senate on the U.N.
Hatch/Kennedy—Technical amendments;
Leadership—S. 2793, Anti-Corruption Act Amendments;
Packwood—Customs reauthorization;
Biden—Penalties for anabolic steroids;
DeConcini—National Guard;
Chiles—Protection for Colombian officials;
DeConcini—Technical;
Leadership—Transfer financial records to D.O.J.;
Gramm—Mandatory minimum penalties for sale to or use of a minor in drug transactions;
Levin—Death penalty package;
Metzenbaum/Kassebaum—Plastic guns;
Stevens—Innocent owner/fishing vessels;
Cohen—Drug Czar/Intelligence activities;
Simon—Uniform mandatory data collection;
Indian Affairs—Treatment and prevention for Native Americans;
Gramm—Funding formula for State and local law enforcement;
D'Amato—IRS money laundering;
Heinz—High density crime area formula;
Biden—Sense of Senate on funding;
Warner—Drug testing for NRC and DOE reactor employees;
Helms—Sense of Senate on U.S. Customs Service;
Hatfield—Clandestine labs;
Harkin—Forest Service;
Specter—Data gathering for treatment;
Specter—Sense of the Congress on International Criminal Court;
Specter—Bolivia crop eradication program;
Specter—International forfeiture fund sharing;
Bingaman—Office of Comprehensive School Health;
Conrad/Burdick/Daschle/McCain—Indian housing;
Helms—Diplomatic immunity;
Helms—Minimum sentence for crack possession;
Helms—Mandatory revocation of parole for possession of drugs;
Johnston/Kennedy—Sense of the Senate, grants to insular areas;
Wilson—Sense of Senate, funds for youth gangs;
Nunn—Sense of Senate, State Department air wing;

Ordered further, That the following amendments be in order to be offered, and that amendments thereto be in order if they are germane and relevant to the underlying amendment:

Kerry—Money laundering;
Wilson—Random testing for driver's license;
Gramm—Loss of Federal benefits;

Ordered further, That the following listed amendments be in order if cleared by the two Leaders:

Kennedy—Additional Federal judges;
Simon—Hate crime statistics;
Dodd—Expedited procedures;
Bradley—Tobacco labeling;
Kennedy—Certain offenses in or near schools;
Simon—Pregnant women categorical grant;
Specter—Ex-Im Bank loans;
Specter—Use of special forces in host countries;
Helms—Panama/Noriega;
Nickles—Prison demo;
Karnes—Rehabilitation act;
Biden—Use of excess forfeiture fund;
Levin—Mental retardation.

Mr. BYRD. Mr. President, before I yield to the Republican leader, I thank all Senators. There will be no more rollcall votes this evening.

Mr. BRADLEY Will the majority leader yield.

Mr. BYRD. Yes.

Mr. BRADLEY As the majority leader knows, he and the minority leader are going to entertain category 2 amendments over the evening into tomorrow morning. I would like the RECORD to reflect that the amendment that I am proposing labels tobacco as addictive and the second half of the amendment includes tobacco under the alcohol and drug abuse funds. Now, during this consideration, I would like Senators to know that I would be prepared not to offer the labeling amendment, that I would like Senators to consider, however, the education amendment simply because, as the majority leader knows—and the distinguished Senator from North Carolina, as we have discussed—there are thousands of 14-, 15-year-olds out there in the country today who are beginning smoking. If they simply had some education, they would refrain from smoking and we would end up saving a lot of taxpayers' dollars. So I would hope the majority leader knows that I am offering this suggestion in good faith and would be prepared not to offer the labeling if there is agreement to the education.

The PRESIDING OFFICER. Does the majority leader have any response?

Mr. BYRD. Yes, just to thank the distinguished Senator and to say that Senator DOLE and I and our two task force Senators will be around for 15 minutes.

Mr. DOLE. If the majority leader will yield, I want to watch BUSH win the debate.

Mr. BYRD. OK, we will be around in the morning then.

Mr. DOLE. I think maybe by inadvertence——

The PRESIDING OFFICER. Is the majority leader yielding the floor? I think the minority leader wants to be recognized.

Mr. BYRD. Yes.

Mr. DOLE. I do not want the floor.

Mr. BYRD. I will be happy to yield.

The PRESIDING OFFICER. The minority leader.

Mr. DOLE. I think I mentioned to the majority leader there may be included on page 1 the Helms amendment on minimum sentence for crack possession and mandatory revocation of parole for possession.

Mr. BYRD. Yes.

Mr. DOLE. Those two amendments have been cleared by Senator KENNEDY working with Senator HELMS and they would now go on the first sheet.

Mr. BYRD. Mr. President, I ask unanimous consent that an amendment by Mr. HELMS on minimum sentence for crack possession and an amendment by Mr. HELMS on mandatory revocation of parole for possession go on the so-called package list, category 1. Those two will be stricken from the appellate docket.

The PRESIDING OFFICER. Is there objection? Without objection, that is the order.

Mr. SYMMS. Mr. President, will the leader yield.

Mr. BYRD. Mr. President, I yield the floor with the understanding that no amendment to the bill be in order at this time.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader yields the floor with that understanding. The minority leader.

Mr. DOLE. I just would say, as has the majority leader, we thank all of our colleagues. I would say to those who are concerned about the process, this has been a very thorough process, probably much more so than the normal bill brought out and the committees look at each other's amendments and say "That's OK." These amendments have been looked at by Senators. Their shop has been open all day. We have added a whole host of amendments that Senators took into Senator RUDMAN and Senator NUNN and Senator GRAMM and Senator MOYNIHAN and others. I commend them for an outstanding job. I believe the end is in sight now of finishing this bill sometime maybe mid-afternoon tomorrow.

Mr. BYRD. Yes. And every Senator's right to come to the floor and to make any objection to any unanimous-consent request has been observed and will continue to be.

Mr. DOLE. This is not a Rules Committee operation.

Mr. BYRD. Not at all.

Mr. SYMMS. Mr. President, will the minority leader yield?

Mr. BYRD. Yes.

Mr. SYMMS. Or the majority leader, whoever has the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. SYMMS. Mr. President, I have been waiting patiently and I did not press during the unanimous consent agreement a resolution that I believe the Senate would probably vote for unanimously, and it deals with expressing the sense of the Senate on unrestricted extension of credit to the Soviet bloc.

I would just like to say to the leader I have been trying to cooperate with Senators. I would hope that before the Senate adjourns, we could address this resolution in the form of a freestanding resolution. I think it is important. I have discussed it with both leaders. I wonder what the majority leader's view would be, that we might work out some time to do this prior to adjournment.

Mr. BYRD. Mr. President, I know of the Senator's deep interest in this matter. There have been some objections from the Foreign Relations Committee; I believe the chairman wanted the matter referred to the committee. We will continue to discuss it with those Senators and with the Senator who is the author of the resolution. Perhaps some way can be found to work it out agreeably.

I cannot give the Senator any assurance beyond that this evening.

Mr. SYMMS. I thank the Senator.

Mr. BYRD. I thank the distinguished Senator for his courtesy.

Mr. President, as I understand it, the amendment that was on the appellate sheet by Senators SANFORD and HELMS has been stricken at their request. That amendment is off the list.

Now, Mr. President, I understand that the amendment by Mr. GRAMM in category 3 would be ready to go in the morning, shall we say 9:30 or 10.

IRRESPONSIBLE FINANCIAL PRACTICES.

Mr. SYMMS. Mr. President, in the New York Times business section this morning, there was a significant story about the success of General Noriega of Panama to circumvent the controls the United States has imposed on his country as a retaliation for his involvement in the international drug trade.

I think it is very critical, Mr. President, as we are here debating the antidrug legislation that we recognize it is in the area of financial dealings that the Western alliance is most vulnerable. That is the reason I have introduced Senate Resolution 492 to express the sense of the Senate against the practice of untied bank lending and lines of credit to the Soviet bloc, and to call for a multilateral voluntary initiative, supervised by the Organization for Economic Cooperation and Development.

I have sent a letter to Secretary of the Treasury Nicholas F. Brady on this subject.

As this session of Congress comes to a close, I wish to join with my colleagues here in expressing our deep disappointment in the news announced yesterday about the largest line of credit to the Soviet Union ever granted by a Western allied nation.

We read in the New York Times yesterday that West Germany has now granted this large $1.7 billion line of credit despite that Government's original assertions of it being directly tied to German exports. Moreover, Mr. President, there are conflicting reports that indicate the German Government has partially or fully insured that line of credit in case of default.

At the time of the confirmation hearings of Secretary Brady, I had requested Finance Committee members to ask him about this issue, and Senator WALLOP did so. Senator WALLOP and I were pleased with the Secretary's response to this question about raising the issue with the G-7 in Berlin.

We believe there are serious national security implications of these credit flows, particularly untied, general purpose loans to Warsaw Pact countries. In the letter I have sent to the Secretary, I have asked him, at the earliest possible opportunity, to provide this Senator—and any other Senator who might want to participate—with a briefing on the specific nature of his official presentation of this issue to the finance ministers of the G-7, and on the reaction of each of our allies to it—an indication of their willingness to help—so we can evaluate the prospects for Alliance consensus over the next few months.

Although 1987 showed a pause in the pattern of relatively heavy borrowing by Soviet bloc countries in 1985 and 1986, depressed hard currency earnings may be creating a new surge of borrowing this year and in 1989. The Congress, on a bipartisan basis, has repeatedly and strongly requested such alliance consultations for over 2 years without any apparent result. The Senators I have referred to would like to be kept informed of any such consultations that may have commenced with our allies, and when they began.

The Soviet entry into the international securities markets—for example, the issuing of bonds—is a particularly troubling development, allowing the Soviets to recruit, for the first time, Western securities firms, pension funds, insurance companies, corporations, and even individuals as lenders of untied funds to Moscow. Over time, hundreds and even thousands of nonbanking institutions and potentially millions of Western citizens could be knowingly and unknowingly holding Soviet paper in their bond portfolios and pension funds. These institutions would have a financial vested interest in supporting continued Western economic, financial, and even political concessions to the U.S.S.R. In addition, credit exposure to the Soviet Union from nonbanks is not even recorded as part of the total indebtedness of the U.S.S.R., compounding the already serious problems of collecting and disclosing data on the volumes and uses of Western credits.

Beyond the national security dangers, countries like Poland and Hungary, with combined debt or roughly $57 billion, have encountered serious difficulties in managing the repayment of debt to the West. Undisciplined lending to sovereign borrowers has proven itself to be a commercially unsound banking practice with costly consequences for Western taxpayers as the trillion dollar international debt crisis has revealed. Why would this or any administration not sound the alarm when banks return to this imprudent practice, particularly given the ease with which our adversaries can divert the proceeds of untied credits for purposes inimical to vital Western security interests?

This problem can no longer be ignored. The Senate resolution of June 15 on this subject passed by unanimous vote of 96 to 0. Economic and financial security policies must become the next major defense burden sharing obligation of the alliance. It is almost surely costing the American people billions of dollars annually in additional defense spending to counter the consequences of undisciplined financial flows to the Soviet empire primarily from West Germany and Japan. The Soviets can use untied money more flexibly to finance their military buildup, fund arms sales to countries engaged in regional aggression, underwrite the failed economies of client states, and for other harmful purposes.

Once an alliance agreement is reached on more disciplined and transparent Western lending to adversaries it must be enforced energetically—unlike the administration's performance concerning United States capital controls directed against Panama.

The latest scandal concerning the activities of the Bank of Credit and Commerce International [BCCI] related to the laundering of drug money and the diversion of funds to General Noriega is part of our broader concern over the damage that can be done to important U.S. interests by financial abuses.

Accordingly, this family of financial security issues should be at the top of the agenda of the April Ministerial of the Organization for Economic Cooperation and Development. The alliance agreement that is forged between now and the OECD Ministerial should be specifically endorsed at the next economic summit in Paris scheduled for May/June 1989. Should this administration, or the one to follow, continue to resist the creation of an alliance consensus and formal agreement on phasing out untied lending and redressing other financial security concerns, the Senate will be compelled to examine legislation to make this alliance burden sharing obligation a reality.

I sincerely hope the next administration, as well as Secretary Brady, shares our concerns and will work with his counterparts in the G-7 and the OECD. This Senator intends to support legislation in Congress next year directed against offending alliance banks operating in the United States if something is not done in a timely way to reduce the dangers of these financial money laundering schemes that are financing the Soviet empire.

Mr. President, I ask unanimous consent that a letter to Hon. Nicholas F. Brady, from myself, dated October 13, 1988, and a resolution, Senate Resolution 492, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, October 13, 1988.

Hon. NICHOLAS F. BRADY,
Secretary of the Treasury,
Washington, DC.

DEAR MR. SECRETARY: As this session of Congress comes to a close, I wish to reiterate to you my deep concern, and that of my Senate colleagues, regarding continued multibillion dollar flows of undisciplined bank credits annually to the Soviet Union, Eastern Europe and Soviet client states. We read in *The New York Times* yesterday that West Germany has now granted the largest-ever line of credit of this type—despite original assertions of it being directly tied to German exports.

During your confirmation hearings, I had requested Finance Committee members to ask you about this issue, and Senator Wallop did so. Senator Wallop and I were pleased with your response to his question about raising the issue with the G-7 in Berlin. We believe there are serious national security implications of these credit flows, particularly untied, general purpose loans to Warsaw Pact countries. Our schedules are quite full in the next month, but at the earliest possible opportunity, we would appreciate a briefing on the specific nature of your demarche and the reaction of each of our allies to help us evaluate the prospects for Alliance consensus over the next few months.

Although 1987 showed a pause in the pattern of relatively heavy borrowing by Soviet bloc countries in 1985 and 1986, depressed hard currency earnings may be creating a new surge of borrowing this year and in 1989. The Congress, on a bipartisan basis, has repeatedly and stronlgy requested such Alliance consultations for over two years without any apparent result. Senator Wallop and I, as well as several other Senators who have taken a public interest in this issue I trust, would like to be kept informed of any such consultations that may have commenced, and when they began.

The Soviet entry into the international securities markets (e.g., the issuing of bonds) is a particularly troubling development, allowing the Soviets to recruit, for the first time, Western securities firms, pension funds, insurance companies, corporations, and even individuals as lenders of untied funds to Moscow. Over time, hundreds and even thousands of non-banking institutions and potentially millions of Western citizens could be knowingly and unknowingly holding Soviet paper in their bond portfolios and pension funds. These institutions would have a financial vested interest in supporting continued Western economic, financial, and even political concessions to the U.S.S.R. In addition, credit exposure to the Soviet Union from non-banks is not even recorded as part of the total indebtedness of the U.S.S.R., compounding the already serious problems of collecting and disclosing data on the volumes and uses of Western credits.

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Once an Alliance agreement is reached on more disciplined and transparent Western lending to adversaries it must be enforced energetically—unlike the Administration's performance concerning U.S. capital controls directed against Panama. The latest scandal concerning the activities of the Bank of Credit and Commerce International (BCCI) related to the laundering of drug money and the diversion of funds to General Noriega is part of our broader concern over the damage that can be done to important U.S. interests by financial abuses. Accordingly, this family of financial security issues should be at the top of the agenda of the April Ministerial of the Organization for Economic Cooperation and Development. The Alliance agreement that is forged between now and the OECD Ministerial should be specifically endorsed at the next Economic Summit in Paris scheduled for May/June 1989. Should this Administration, or the one to follow, continue to resist the creation of an Alliance consensus and formal agreement on phasing out untied lending and redressing other financial security concerns, the Senate will be compelled to examine legislation to make this Alliance burden-sharing obligation a reality.

I am confident you share our concerns and will work with your counterparts in the G-7 and the OECD to avoid consideration of legislation directed against offending Alliance banks operating in the United States.

Sincerely,

STEVE SYMMS,
U.S. Senator.

S. RES. 492

Resolved, That it is the sense of the Senate that the President of the United States should instruct the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, and the Secretary of Commerce to consult immediately with allied governments on the impact on Western security of various types of private and public sector credit flows and debt reschedulings to the Soviet Union, Warsaw Pact countries, Cuba, Vietnam, Libya, and Nicaragua, and to call for multilateral voluntary initiatives, supervised by the Organization for Economic Cooperation and Development, to end untied, general purpose lending to these countries for reasons both of national security and prudent commercial banking.

EXPRESSING CONCERN ABOUT UNTIED LOANS TO THE SOVIET UNION

Mr. BOND. Mr. President, I rise in support of the legislation to express the concern of the Senate regarding untied bank loans to the Soviet Union. The resolution addresses a serious problem and I hope we will be able to approve it quickly.

The problem of untied loans made by Western banks to the Soviet Union is one we have discussed many times before. In the past few months, several of our colleagues have spoken about their concern over the loans; and earlier this year we passed a measure offered by our colleague, the Senator from Wyoming, urging the administration to discuss the problem with our allies. Unfortunately that resolution was not acted upon by the administration. The problem has continued to grow, so we now must try once again to push the administration toward action.

For years, Western banks—especially those in Japan, Germany, and other Western European countries—have been making low-interest untied loans to the Soviet Union. The numbers are appalling. The most recent statistics available suggest that Western banks are writing about $2 billion per month in untied loans to the Soviets. These loans are being made at concessional rates much lower than you or I could get.

We are not talking here about money that is earmarked for specific projects such as improving agriculture or expanding business production. Those loans are not included in any of the totals we have discussed. The money we are talking about is given to the Soviets with no strings attached. It can be put to any use. It can be used to fund Soviet adventurism in Afghanistan or Angola or Nicaragua. It can be used to fund Soviet-backed terrorist activities throughout the world. Or it can be used to prop up Communist regimes in Hanoi or Havana. For example, according to the Washington Times, last year the Soviets bailed out Castro's faltering economy with a $450 million cash loan.

Now, Mr. President, with prices for the Soviets' major foreign exchange exports—oil and gas—remaining low, I ask my colleagues, "Where do you think that $450 million came from?" The unfortunate answer is that it came from the United States and her allies. That, Mr. President, simply does not make sense.

The resolution before us does not in any way attempt to restrict productive economic contacts between the East and the West. It would have no impact on Western bank loans made for specific purposes. What it would do is express the Senate's hope that the President will give priority to working with our allies to end untied loans to the Soviet bloc. At a time when we and our allies are worrying about tightened security budgets, it just makes sense to end our subsidization of Soviet efforts at destabilization.

Mr. President, I ask unanimous consent that an excellent report from the House Republican Research Committee be printed in the Record.

There being no objection, the report was ordered to be printed in the Record, as follows:

Lending to the Soviets: What's at Stake for Western Security

(Prepared by Andrew Goldman)

The financial relationship between East and West has recently emerged as a major issue in foreign policy. Specifically, Western banks and governments have been granting the Soviet Union and its client states extremely generous terms for loans and other financial credits.

The extent of Western lending is impressive: roughly $2 billion per month is going to Warsaw Pact countries. This lending, moreover, is coming at a time when the Soviets and their allies are falling deeper into debt but continuing with a massive arms buildup.

The question this paper will consider is whether it's in the West's interest to provide these cash credits to the Soviets. How are these funds being used? Do they serve to moderate Soviet behavior internationally?

WESTERN CASH AND SOVIET CHOICES

The problem of Western cash credits for the Soviet Union was stated recently by C.R. Neu, senior economist of the Rand Corp., in testimony before Congress: "Without access to foreign credit, the Soviet Union would face a difficult choice: Cut back on support for client states or continue such support only at the cost of reduced imports to the Soviet Union itself."

The reasoning used to justify current lending is that it seeks to coax the Soviet Union along toward reform, offering rewards to Soviet leader Gorbachev when he's good and punishing him when he's bad. To consider the merits of this strategy, the House Armed Services Defense Policy Panel asked several expert witnesses "to identify any concrete and operational changes in military behavior, including procurement, deployment and training practices, that could be attributed to Gorbachev's reform campaign." The Armed Services Committee reported:

"The answer was unanimous. To date, there have been no significant, identifiable changes traceable to Gorbachev's drive to scale back defense spending. * * * In fact, not only has Gorbachev failed to suppress defense spending, but it has actually increased. According to preliminary unclassified intelligence estimates, Soviet military spending grew by about 3 per cent in both 1986 and 1987, almost double the growth of the 1981–1986 period * * * the conclusion is inescapable that so far the military's budget has not been nicked by Gorbachev."

FINANCING SOVIET FOREIGN POLICY

It appears that Moscow maintains its global commitments with the aid of Western lending. As C.R. Neu has explained, "* * * Western creditors have been helping to finance the Soviet foreign assistance program * * * the Soviet Union is passing these funds on to client states—in the form of hard-currency loans and grants and through subsidized exports of goods that might otherwise have been sold for hard currencies."

The obvious problem is that money is fungible, which means funds earmarked for wheat could free other money for arms purchases. The evidence we have indicates that only by virtue of the West's financial generosity does the Soviet Union maintain its global commitments. For example, in 1985, a group of Western banks advanced $500 million to East Germany. According to news reports, within days a check for $20 million from East Germany was sitting in Nicaragua's account in Panama.

The last major study on this subject, done by the Rand Corp. in 1986, found that in 1983 Soviet military aid to such client states as Libya, Cuba and Vietnam cost the Russians more than $15 billion in hard currency. In fact, according to Roger W. Robinson, former NSC official responsible for international finance, "Assuming Soviet hard-currency earnings were earmarked for Western imports and debt service, virtually 100 percent of the Soviet Union's hard currency requirements to support its global commitments were funded on Western capital markets."

HOW MUCH HAS THE WEST FINANCED?

The situation described above has led many to conclude that the West has financed the Soviet empire far too long. What few grasp, however, is the extent of Western financing. At the end of 1987, the Soviet Union had a gross debt to Western banks and to official credit agencies of Western governments of about $40 billion. This amount is almost twice the Soviet Union's outstanding debt in mid-1985.

The problem is underscored when we consider the rapid rate at which Western commercial banks have been transacting business with the Soviets. According to C.R. Neu of the Rand Corp., "Soviet net indebtedness to these banks grew by nearly $8 billion during the three years 1985 through 1987, after adjusting for the effects of exchange rate changes." Despite this mounting debt, in 1986 the West was supplying the Soviet Bloc nations with roughly $2 billion each month in new loans. About 45 percent of these loans are from Japanese banks, 45 percent from European banks, and 10 percent from the United States.

The true nature of the problem is highlighted when we consider the financial portfolio of the entire Soviet Bloc. Its external indebtedness grew from $82 million in 1984 to $130 billion today; in addition, Western banks have already written off their share of Poland's $38 billion in debt, and Hungary is struggling with its $18 billion in debt.

According to almost all observers, the most dangerous type of lending in which the West participates is "untied, general purpose loans," which means that the Soviets can use the money for any purpose without any questions asked by the lender. The amount of untied loans is considerable: nearly $20 billion in 1986, or an estimated 80 percent of the total amount of credits from Western banks and governments.

As to future lending, the Soviet Union and its Western creditors apparently agree that the 1990s could see ever increasing amounts. Consider the statements of two principals on each side of these transactions. Nikolai Shmelev, a leading Soviet economist, was recently quoted in Institutional Investor as saying that, "In the next few years we could probably borrow a few dozen billion more dollars from the world credit markets without overstepping the danger limit." And in the same article, a "senior German commercial banker" boasted that "financing perestroika will be the hottest growth area in international banking over the next five years."

SOVIET PROGRESS IN TAPPING CAPITAL MARKETS

Few today deny the extraordinary penetration the Soviets have made of Western capital markets—in so short a time and under such favorable conditions. As Business Week recently reported, "From Chicago to Tokyo, banks, brokerage houses, and accounting firms are wrangling to grab a piece of perestroika. They are lining up loans and developing techniques to finance new Western-Soviet joint ventures." Consider the following examples:

In February 1987, First Chicago Corp. arranged and led a $200 million syndicated loan to the Soviets. Observers noted two disturbing facts about this loan. First, the Soviets received an interest rate of only one-eighth of one percentage point over the London Inter-Bank offer rate, which is the benchmark rate on spare-cash lent by one bank to another. Second, it was an untied loan, which meant the Soviets could spend the funds on whatever they desired.

In January 1988, the Soviets entered the international securities markets in search of even more untied funds. Accordingly, a Soviet-owned bank in Switzerland sold about $65.3 million worth of bonds in a Swiss-franc trial issue in January.

In a more recent deal in July 1988, three of the United States' largest investment houses (Shearson Lehman, Hutton Inc., Salomon Brothers and Morgan Stanley Co. Inc.) and Citibank helped underwrite an even larger and more generous series of Soviet bonds that went on sale in West Germany. Citibank AG, the German unit of Citicorp, was the senior co-manager of a $270 million offering of seven-year notes, bearing an interest rate of 6⅜ percent. This rate was slightly lower than what the German government was paying on bonds of similar maturity.

Another way in which the Soviets seek Western capital and credits is through joint ventures. The view in the West was best summed up recently in an article in Business Week: "More than anything, bankers see financing Western-Soviet joint ventures within the Soviet Union as the business with the largest potential and the greatest risk." Specifically, the risks are uncertainties about legal restrictions on foreign investment. Despite these concerns, the West has been willing to go forward with joint ventures, focusing on the Soviet market waiting to be tapped.

WHY THE SOVIETS NEED THE CURRENCY

In 1986, total Soviet hard currency was about $30 billion, or, as former National Security official Roger W. Robinson points out, the equivalent of only a bit over one-quarter of the total sales of General Motors that same year. Why are the Soviets so short on this hard currency? First, nearly all of its hard currency comes from just four export items: oil, gas, arms, and gold. Specifically oil and gas provide over 80 percent of the Soviets' exports. Yet oil and gas prices have taken a beating internationally over the years, thus reducing Russia's hard currency stock.

Second, its own currency, the ruble, "is barely worth the paper it's printed on," according to the Wall Street Journal's Moscow bureau chief. Consequently, it's impossible for Moscow to find any trading partners in the West and certainly not anyone expressing any interest in converting the ruble into dollars—even though Moscow has made a virtue out of a necessity by not allowing its currenty outside of the country. This situation accounts for the discussion today in Russia about the need for the Soviets to undertake price restructuring and, ultimately, currency convertibility. In the meantime, the Soviets are relying on the West to meet its hard currency needs of today and the immediate future.

The economic outlook for the Soviet Union

According to many experts, the prospects are slim to nonexistent for the Soviets ever being able to meet their hard currency needs by merely strengthening their economy. Despite Soviet leader Gorbachev's reform efforts, Russia still can't feed its own people or provide for such basic needs of its people as hospital care. Under such circumstances, the economy as a whole suffers greatly. As a recent article in Institutional Investor summed up the situation:

"Since January 1986 * * * the growth rate in net materiel production (the favored Soviet measure of economic activity) has slipped from a respectable 4.1 percent to 2.3 percent. The terms of trade have deteriorated by 6 percent, and foreign currency earnings have fallen so short of the target that [the Soviet Union] is now seeking financing for deals worth as little as $500,000, where three years ago Russians were paying cash on delivery for orders as large as $60 million."

In order to bolster this struggling—if not stagnant—economy, the Soviets have repeatedly turned to the West.

WHY THE WEST LENDS MONEY TO THE SOVIETS

In understanding why the West is lending such sums to the Soviets, we must first examine which countries are most involved with this lending. The Japanese and the Europeans are providing the lion's share of these cash credits. In fact, there are specific banks in Europe and Japan that have lent more money to the Soviets than all their U.S. counterparts combined.

Financial incentives

Despite the experience of the 1970s, when lenders made generous united loans to Latin American borrowers as well as to Poland and Hungary only to face a repayment crisis in the '80s, there is little evidence that banks and governments are being more careful with the Soviets today.

In fact, the collapse of this market for new loans seems to have spurred the European and Japanese banks to look for new outlets for their cash. Hence, the rush to lend to the Soviets. There's an almost unshakable belief among many lenders that they're greasing the wheels for further transactions between Soviet and Western banks and industries.

Political incentives

Many lenders also cite political reasons for their lending practices. As former Treasury Secretary William Simon has written, "Private banks make loans in part because their governments encourage them. The U.S. State Department has endorsed such lending in the naive belief that it would help wean Poland and Hungary away from the Soviet Union. That has not happened, and both countries are now virtually bankrupt. West Germany advocates loans on the equally spurious ground that they will somehow draw East and West closer. This is akin to paying an extortionist in the hope of buying security."

TRACING THE WEST'S MONEY

Most of the Soviet borrowing is done through Vneshkinombank, or what's called the Bank for Foreign Economic Affairs of the USSR (BFEA). Unfortunately, Western creditors have done little to demand proper disclosure from BFEA, as would be necessary for any sovereign borrower when it issues bonds. Yet the Western governments and banks claim that there's no need for disclosure since the loans aren't being insured by the Soviets. As many point out, this argument may be as true as it is irrelevant, since the point is for the West to track its money one way or another.

Another problem involves Soviet banking assets in the West, especially the loan portfolios of Soviet-owned banks in the West. Western security analysts subtract the amount of funds that BFEA has in Western banks from the gross debt of the Soviet Union. The resulting figure, the net gross debt, is used to gauge creditworthiness. The problem, though, is that no one really has a firm idea of how much of the net gross debt is attributable to recycled Western funds; i.e., money the West lent to Moscow that then traveled back to the West and into Soviet-owned banks. In fact, some analysts peg the gross debt of Russia at 35–40 percent above present estimates.

The result of all this is that the West has no sure way of verifying where its money goes. The main reason is that the Soviets do not publish information on their international financial transactions. And as many observers have noted, there does not seem to be one readily accessible and comprehensive source detailing information on Soviet Bloc external debt. To take but one example, inter-German financial flows are not even reported to the Bank for International Settlement.

AN AGENDA FOR REFORM

In trying to deal with the problem of Western cash credits to the Soviet empire, many have tried to propose general policies and some specific reforms.

General Policies

Common Western Position: With the U.S. government and banks constituting only a small share of Western credits to the Soviets, most observers believe American unilateral actions to stop these cash credits will be extremely limited. Any truly effective actions must be multilateral.

The need for multilateral action has led to proposals designed to parallel and complement America's efforts in getting the allies to assume more of the common defense costs. By shaping the financial effort as a form of "burden-sharing," the U.S. could pressure, say, the Japanese to constrain their lending to the Soviets as a way of compensating for Japan spending only one percent of its GNP on defense. When we realize that the Japanese have underwritten an estimated $9.5 billion in loans to Warsaw Pact countries in 1986, we see the enormous room for greater restraint on the part of the Japanese. In addition, by insisting on this form of burden-sharing, the U.S. would be playing to Japan's greatest asset, its financial position.

Significantly, this allied cooperation seems to track Congress's approach to this issue. On June 15, 1988, the Senate passed a non-binding resolution sponsored by Sens. Bradley (D-NJ) and Sasser (D-TN), which in part said: "the President of the United States should consult with the leaders of allied countries on the impact on Western

Security of tied and untied loans, trade credits, direct investment, joint ventures, lines of credit, and guarantees or other subsidies to the Soviet Union, Warsaw Pact countries, Cuba, Vietnam, Libya, or Nicaragua."

Linking Loans with Human Rights: Many have questioned why the West continues its generous lending practices while at the same time the Soviets continue to violate the 1975 Helsinki Accords. In the specific case of Soviet Jewry, Morris Abram, chairman of the National conference on Soviet Jewry, testified before Congress that we might be "missing an opportunity to secure freedom for thousands of Jews who are prevented from living in a country where they may study freely and practice their religion and culture, without fear of anti-Semitism or harassment from authorities."

Similar problems exist with Western loans to Soviet client states that have a poor record on human rights. Roger W. Robinson has written: "Between 1981 and 1985 Scandinavian and West european countries have provided the Sandinistas with grants of roughly $230 million and another estimated $215 million in official credits on generous terms."

Specific policies

Debit the Account: Given the fact that a good deal of the Western loans are ostensibly for Western goods, Western banks could be sure that the funds never leave the originating country. Instead, a lending bank could simply debit the Soviet account in that bank and credit the account of the supplier.

On-site Verification: The Soviet maxim "trust but verify" serves as well in banking as it does in arms control. For example, the West could write into its loan documents restrictions on disbursements of the complete loan being contingent on on-site verification of the actual project targeted for the funds.

Matching Loans with Maturities: Another reform would ensure that all loans have a maturity that matches the duration of the underlying transaction. The point is to avoid giving the Soviets, say, three-year financing for a project that should normally receive no more than a loan with a 180-day maturity.

Reporting Reforms: The usual way for banks and governments to provide information on their transactions is through reports to two international institutions: the Bank for International Settlements (BIS) and the Organization for Economic Cooperation and Development (OECD). Unfortunately, much of the Soviet's transactions escape these reporting requirements for the reasons described earlier. As almost all observers agree, the West needs to firm up its ability to monitor Soviet activity in Western capital markets. The best place to start is to insist on better collection and disclosure of data on Soviet financial flows from the Western governments and banks involved in the transactions. At the very least, there should exist some source that provides an accessible and authoritative data bank on Soviet and East Bloc external debt.

Reporting requirements also could be stiffened to the extent to which the West insures financing for exports to Russia and Eastern Europe. For example, in West Germany, a private company can guarantee export financing and act as an agent for the German government. Similar arrangements exist in England and France. In Japan, the official Export-Import Bank provides export credit financing in cooperation with commercial banks. The point is that this financing has permitted some very good deals for the Soviets—the terms of which are not publicly available.

To a large extent, many of these reporting requirements have been proposed in legislation offered by Reps. Toby Roth (R-WI) and Jack Kemp (R-NY). H.R. 3095, which amends the Export Administration Act, would give the President discretionary authority in a number of cases to control exports of financial capital, goods, and technology as well as requiring banks and financial institutions to report various transactions with the Soviets and the East Bloc.

CONCLUSION

As most economists agree, the West possesses enormous potential financial leverage over the Soviet Union and its allies. Yet far from exercising this leverage, the West has generously extended loans and credits that have allowed the Soviets to underwrite their military buildup.

Fortunately, the West has complete control over its own financial portfolio; to enact reforms the West does not necessarily need the cooperation of the Soviet Union. Yet whether the West is willing to proceed with such reforms is still an open question.

WORLD HABITAT DAY

Mr. CRANSTON. Mr. President, the United Nations designated October 3, 1988, as World Habitat Day. This year's theme is "Shelter and the Community" in an effort to focus attention on the urgent need for increased support for the urban and rural poor in developing countries and their efforts to improve their housing and quality of community life.

The United Nations Center for Human Settlements [UNCHS] is responsible for coordinating and facilitating human settlement activities in the United Nations and is directly responsible for executing shelter and community development projects.

UNCHS is working very hard at bringing together some 58 countries to seek consensus on the dimension and seriousness of worldwide shelter and settlement problems and in developing reasonable and effective approaches to solutions. In New Delhi last April, representatives of some 58 nations agreed on a Global Shelter Strategy for the year 2000. The strategy will be considered by the U.N. General Assembly this month. Given the economic, social and political diversity of the UNCHS membership, getting consensus on the strategy was a significant accomplishment.

However, the focus of World Habitat Day and/or the Global Shelter Strategy should not be confined to developing countries. No country has solved its shelter problem. Adequate shelter for all citizens, especially the poor, remains a persistent problem and an elusive goal for every nation. It is an especially difficult objective for the less developed countries where one-third of the population is homeless and the numbers are increasing.

The UNCHS concluded that "despite efforts of governments and international organizations, more than 1 billion people have shelter unfit for human habitation and that this number will increase dramatically unless determined measures are taken immediately." In 1987, the International Year of Shelter for the Homeless, the work initiated by a host of nations and organizations confirmed the enormous dimension of shelter needs worldwide and mandated increased national and international efforts to produce and deliver improved shelter for all, especially for the poor and disadvantaged.

World Habitat Day promotes the idea that countries can and should assist one another with technical and managerial expertise in getting shelter strategies in place and working, and that the United Nations can coordinate and facilitate efforts to encourage all countries to have effective national shelter strategies in place and working by the year 2000.

Mr. President, as chairman of the Subcommittee on Housing and Urban Affairs and a member of the Foreign Relations Committee, I am pleased to have the opportunity to call the attention of my colleagues to the objectives of World Habitat Day and to endorse those objectives and the work of the United Nations Center for Human Settlements to improve shelter and community life throughout the world.

TRIBUTE TO SENATOR WILLIAM PROXMIRE

Mr. DECONCINI. Mr. President, I rise today to pay tribute to one of the real legends in the U.S. Senate, our distinguished colleague, BILL PROXMIRE.

I could spend the next 2 weeks outlining the many notable achievements of this great U.S. Senator in the area of banking, consumer protection, international affairs, and domestic fiscal policy. But I want to pay particular tribute to BILL PROXMIRE as the real driving force behind reducing the Federal budget deficit.

Mr. President, long before we had a Budget Act; long before Gramm-Rudman-Hollings became the discipline under which we all operate; and long before President Reagan began his 8-year reign of record deficits, BILL PROXMIRE was preaching the gospel of frugality and fiscal restraint and fighting the longely crusade against Government waste. His internationally famous "Golden Fleece"Award soon became a monthly reminder to all of us that we had a long, long way to go before the Federal Government was void of the waste and abuse that has hampered our efforts to bring down the budget deficit and balance the budget.

I remember time and time again, when Senator PROXMIRE would take to the Senate floor to fight amendments or provisions in spending bills that he felt were wasteful or unnecessary. And it was often a lonely, one-man show with my colleagues gnashing their teeth in the Cloakroom or at their seats on the Senate floor. And sometimes he would win and sometimes he would lose. But he was never deterred by how popular or unpopular his efforts might be with his collagues. And that is why Bill Proxmire will always be remembered as a legend in our history of fiscal policy.

Mr. President, as we bid farewell to our distinguished colleague from Wisconsin, we should remember the lessons that he has left us with. Even in the programs that we support and feel most strongly about, there may be opportunities to achieve economies, efficiencies, and make them even better programs. In short, looking for savings and productivity within our favorite Federal programs should not be viewed as an attack on those programs, but as a way to make them better.

Second, we should continue the effort in Congress to find waste, fraud, and abuse wherever we might find it and take steps to root it out. Over my 12 years in the Senate I have tried to do just that. I have called for deep cuts in Government travel, consultant services, public affairs expenditures, motor vehicles, and other low priority programs and activities that can and should be cut back sharply in these lean budget times. I sponsored legislation with Senator Humphrey to cut over $200 million in the operation of our Federal motor vehicle fleet. And I am proud to say that the Subcommittee on Treasury Postal Service that I chair was one of the few to retain the so-called Pryor amendment to dramatically cut back on consultant services in fiscal year 1989. So I hope that I have learned well and if I have, I had a great teacher in Bill Proxmire.

Finally, Mr. President, Senator Proxmire has taught all of us to listen to our constituents and to heed their calls for eliminating unnecessary spending whenever possible. The independent voters of Wisconsin were fortunate to have a Senator like Bill Proxmire who went out into the workforce in Wisconsin; listened to the little guys; heard their call for less Government spending; and went back to Washington to do something about it. This is a lesson not only on the matter of Federal spending but a lesson we should all remember in dealing with our constituents on all matters affecting our States.

Mr. President, the Senate is going to miss Bill Proxmire. We will miss his voice of reason and his constant reminder of our duty to treat each taxpayers dollar as if it were our own. And the citizens of Wisconsin will miss the man who has represented them so well over the past 30 years. My hat is off to Senator "Bill" as his voters fondly call him. We will deeply miss him in the years ahead.

JOHN STENNIS: A LEGEND IN HIS TIME

Mr. PELL. Mr. President, when the Senate reconvenes in January 1989, we will sorely miss the presence of our dear friend and colleague John Stennis, whose character and strength have been such a bulwark to the Senate for four decades.

When I came to the Senate as its lowest ranking freshman at the beginning of the 87th Congress in 1961, John Stennis already ranked 17th in seniority and already had gained a position of wide respect for his probity, his decency, and his honor.

Our respect, admiration, and affection for him has grown and deepened with each passing year since. We have seen him face with extraordinary courage far more than his rightful share of adversity and we have rejoiced in his triumphs and shared his sadness at the passing of his beloved partner, Miss Coy.

Now it can truly be said that he has become a legend in his own time.

The Senate and the Nation have been blessed by the fact that a leader of such sound judgment has been at the helm of the appropriations process as well as at the center of so many important decisions regarding our Armed Forces.

Senator Stennis and I have been allied in many good causes especially in the field of education, and I have always valued his support and his wise counsel.

Now, as John Stennis closes his Senate career, we wish him Godspeed and good health. We who have had the privilege of knowing and working with him will always have fond memories of him and will strive to keep alive his high standards of decency and fairness.

STAFFING THE COMMISSION ON BASE REALIGNMENT AND CLOSURE

Mr. LEVIN. Mr. President, many Senators expressed concern about the importance of fairness in the operations of the Commission on Base Realignment and Closure which the Senate approved yesterday. I was one of those who called attention to the need for an independent and objective staff if the Commission is to conduct its work in an impartial manner. The following is a list of the current staff of the Commission, which all Senators and the general public can use in considering whether or not a fair and unbiased staff has been assembled. I also ask that a letter from the Secretary of Defense that relates to this question be included in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From the Defense Secretary's Commission on Base Realignment and Closure, Washington, DC, October 12, 1988]

Staffing, Base Closing Commission

DEPARTMENT OF DEFENSE

Mr. Doug B. Hansen (SES-1), Research Director, Office of the Secretary of Defense.

Mr. Russel Milnes (GS-15), Counsel, West Point, Corps of Engineers, Office of the Secretary of Defense.

Mr. Charles Flachbarth (GS-15), Attorney, Legislative Affairs, Corps of Engineers.

Colonel(P) Roger F. Yankoupe, U.S. Army, West Point, Corps of Engineers.

Capt.(Sel) Larry Szutenbach, U.S. Navy, Civil Engineer Corps.

Lieutenant Colonel Jeff Sandefur, U.S. Air Force, Overseas Bases and Units.

Mr. Kevin I. Urban (GS-13), Program Analyst, Defense Logistics Agency.

MG Hugh Quinn, USA (Ret), Program Analyst, Source: Private Sector, Retired: 2/88.

OUTSIDE

Mr. Hayden G. Bryan (SES-4), Executive Director, Ph.D., Economics, Source: U.S. Senate.

Mr. Ronald Preston (SES-4), Ph.D., Sociology, Source: Department of Education.

Mr. James Abbee (GS-15), Colonel, USAFR (Ret), Source: Private Sector.

Mr. Doug Brown, Consultant, West Point, Source: Logistics Management Institute (LMI).

Mr. Robert D. Hickson (GS-15), West Point, Corps of Engineers, Source: Professor, Christendom College.

Mr. Van Bandjunis (GS-15), Civil Engineer, Source: Federal Annuitant.

Mr. Charles Barrett, Consultant, Capt., Navy (Ret), Logistics Expert, Source: LMI.

Mr. Ben Sternberg, Consultant, West Point, Corps of Engineers, Writer, Source: Private Sector.

Radm. Donald L. Conner, USN (Ret), Consultant, Facilities Planning Engineer, Source: Private Sector.

Col. Richard Baldwin, USA (Ret), Consultant, Source: LMI.

Hayden G. Bryan,
Executive Director.

Secretary of Defense,
Washington, DC, October 4, 1988.

Hon. Sam Nunn,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

Dear Mr. Chairman: Thank you for your September 15 letter in which you raised concerns about the staff of the Commission on Base Realignment and Closure.

I consider the staff to be of top quality, and so do the Commissioners, several of whom have praised the support they have received from the Commission staff. Still, I agree with you that they have a difficult task and a tight schedule.

Moreover, I understand the special nature of the authority that would be vested in the Commission by pending legislation, and realize that only by having complete confidence in the Commission staff will you and I be comfortable with the Commission's recommendations. Because I am sympathetic to your concerns, I assure you the Department will continue to hire additional talented people to assure that we have a capable Commission staff. In fact, a research analyst has very recently been hired for the Commission staff, and others are being actively recruited.

I sincerely appreciate your leadership in the Congress on this base realignment and closure initiative. I am hopeful that a timely conference on the few items of disagreement between the Senate and House bills will provide us meaningful legislation.

An identical letter was sent to the Chairman, House Armed Services Committee.

Sincerely,

FRANK C. CARLUCCI.

NATIONAL DISABILITY EMPLOYMENT AWARENESS MONTH

Mr. DOLE. Mr. President, every year since 1945 we have recognized the first full week of October as a time to focus national attention on employing people with disabilities. This year, for the first time, the entire month of October is being set aside for the observance of National Disability Employment Awareness Month. This way we can better celebrate the progress that has been made and give more attention to the challenges that remain.

Today two-thirds of working-Age Americans with disabilities do not work, although a large majority want jobs. Too many of those who do work are employed below their capabilities, both in terms of the number of hours spent on the job and the nature of the work performed. Studies indicate that most individuals with disabilities who work do their jobs as well or better than their nondisabled counterparts. Yet disabled people remain America's most unemployed and underemployed demographic group.

All too often, we cannot see beyond as individual's disability to the underlying human potential. The price of this shortsightedness is high. Every year we spend billions of taxpayer dollars to support those Americans with disabilities who are unwillingly and unnecessarily trapped in dependency. While the economic cost is high, the human cost is higher still. Who can quantify the pain and frustration felt by disabled individuals excluded from the work force not for objective reasons, but out of prejudice or ignorance? Or the loss of dignity experienced by the non-working disabled living in a society that measures who you are by what you do?

Although the problem of unemployment among people with disabilities persists, I have still seen much progress since I first spoke before this body on National Employ the Handicapped week in 1970. In Congress, we have passed legislation prohibiting discrimination on the basis of handicap in public employment. We have enacted programs to help individuals with disabilities receive vocational guidance, training, and assistance with placement. We have created tax incentives to encourage employers to hire people with disabilities. And we have begun to remove the disincentives to work from our disability support programs.

The present Congress has built on this record by passing the Civil Rights Restoration Act, which restored institutionwide coverage under section 504 of the Rehabilitation Act. We have also just had our first hearing of the Americans With Disabilities Act. This measure extends to private employers not already covered a prohibition against discrimination on the basis of handicap. The act would also break down the architectural and transportation barriers which are, after the barriers of the mind, perhaps the greatest obstacle to the employment of people with disabilities. And we now the legislation that will make it easier for people with disabilities to obtain assistive devices that will help them function independently in the workplace.

The private sector, too, is coming to recognize that it makes good business sense to employ people with disabilities. A 1987 Harris poll indicated that most employers with experience with disabled workers rated their performance as "good to excellent." The poll also revealed that the majority of employers have found that there is little difference between the cost of making accommodations for persons with disabilities and the cost of employing nondisabled workers.

As we approach an ERA when labor will be in short supply, we must not overlook the fact that individuals with disabilities are the greatest untapped human resource in the country. I am proud to report that the Dole Foundation for Employment of People With Disabilities, which I chair, is working to ensure that individuals with disabilities are a part of the workplace of the future. In the past 3 years we have awarded more than $2.4 million in grants to local programs that provide job training and placement services. We have seen hundreds of men and women with disabilities take the skills they learn through these programs and find meaningful jobs at respectable wages.

Mr. President, people with disabilities want a chance to succeed and the opportunity to contribute. They want their fair share of the American dream. Individuals with disabilities look forward to the time when there will not longer be a need for a special month to remind us of their desire to be part of the economic mainstream. As we celebrate National Disability Employment Awareness Month in the week ahead, let us each commit ourselves to doing what we can to bring that day closer.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Kalbaugh, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 11:45 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the bill (H.R. 5050) to amend the Small Business Act to establish programs and initiate efforts to assist the development of small business concerns owned and controlled by women, and for other purposes.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 4847. An act to amend the Federal Hazardous Substances Act to require the labeling of chronically hazardous art materials, and for other purposes; and

H.R. 5043 An act to amend section 207 of title 18, United States Code, relating to restrictions on post-employment activities.

At 4:58 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, without amendment:

S. 59. An act entitled the "National Forest and Public Lands Nevada Enhancement Act of 1988";

S. 1704. An Act to authorize the establishment of the Lewis and Clark National Historic Trail Interpretive Center in the State of Montana, and for other purposes;

S. 1727. An Act to amend the Public Health Service Act to establish within the National Institutes of Health a National Institute on Deafness and Other Communication Disorders;

S. 1985. An Act to improve the protection and management of archeological resources on Federal land; and

S. 2436. An act to reauthorize the Sleeping Bear Dunes National Lakeshore Advisory Commission.

The message also announced that the House has agreed to the amendment of the Senate to each of the following bills:

H.R. 4182 An act to authorize the establishment of the Zuni-Cibola National Historic Park in the State of New Mexico, and for other purposes; and

H.R. 4416. An act to extend the authorization of appropriations for titles V and VI of the Library Services and Construction Act through fiscal year 1989.

The message further announced that the House agrees to the amendments of the Senate to the amendments of the House to the bill (H.R. 3408) to increase the amounts authorized for the Colorado River Storage Project.

ENROLLED BILLS SIGNED

The message also announced that the Speaker has signed the following enrolled bills:

S. 508. An act to amend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited practices;

S. 659. An act to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes;

S. 836. An act to amend the Department of Energy Organization Act to authorize protective force personnel who guard the strategic petroleum reserve or its storage and related facilities to carry firearms while discharging their official duties and in certain instances to make arrests without warrant; to establish the offense of trespass on property of the strategic petroleum reserve, and for other purposes;

S. 1911. An act to amend title 5, United States Code, to allow all forest fire fighting employees to be paid overtime without limitation while serving on forest fire emergencies;

S. 2018. An act to expand the boundaries of the Congaree Swamp National Monument, to designate wilderness therein, and for other purposes;

S. 2479. An act to amend the Immigration and Nationality Act to make technical corrections in immigration-related laws;

H.R. 1864. An act for the relief of Helen Lannier;

H.R. 2772. An act to authorize the Lyman-Jones, West River, and Oglala Sioux Rural Water Development Projects;

H.R. 2985. An act to designate the facility of the United States Postal Service located at 850 Newark Turnpike in Kearny, New Jersey, as the "Dominick V. Daniels Postal facility"; and

H.R. 5059. An act to quit title and possession with respect to a certain private land claim in Sumter County, Alabama.

The enrolled bills were subsequently signed by the Acting President pro tempore (Mr. SHELBY).

At 5:48 p.m., a message from the House of Representatives, delievered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, without amendment:

S. 2843. An act to amend the Federal Food, Drug, and Cosmetic Act to authorize abbreviated new animal drug applications and to amend title 35, United States Code, to authorize the extension of the patents for animal drug products; and.

S. 2889. An act to amend the Public Health Service Act to establish certain health programs, to revise and extend certain health programs; and for other purposes.

MEASURES REFERRED

The following resolution, which was ordered held at the desk until the close of business on October 11, 1988, was referred as indicated:

S. Res. 492. A resolution to express concern about financing the Soviet Bloc Governments; to the Committee on Foreign Relations.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 5043. An act to amend section 207 of title 18, United States Code, relating to restrictions on postemployment activities.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

The ACTING PRESIDENT pro tempore (Mr. SHELBY) announced that on today, October 13, 1988, he had signed the following enrolled bills and joint resolutions which had previously been signed by the Speaker of the House:

S. 391. An act for the relief of Hyong Cha Kim Kay;

S. 2393. An act to amend the Protection and Advocacy for Mentally Ill Individuals Act of 1986 to reauthorize such act, and for other purposes;

H.R. 900. An act to protect and enhance the natural, scenic, cultural, and recreational values of certain segments of the New, Gauley, and Bluestone Rivers in West Virginia for the benefit of present and future generations, and for other purposes;

H.R. 2399. An act to provide for study and research on the decline in United States forest productivity and to determine the effects of atmospheric pollutants on forest environments, and for other purposes;

H.R. 3029. An act to designate the new Post Office Building in Gretna, Louisiana as the "William W. Pares, Jr. Post Office Building";

H.R. 4345. An act to amend the United States Grain Standards Act to extend through September 30, 1993, the authority contained in section 155 of the Omnibus Reconciliation Act of 1981 and Public Law 98-469 to charge and collect inspection and weighing fees, and for other purposes;

H.R. 5423. An act to authorize continued storage of water at Abiquiu Dam in New Mexico;

H.J. Res. 488. Joint resolution designating November 6-12, 1988, as "National Women Veterans Recognition Week"; and

H.J. Res. 648. Joint resolution to encourage increased cooperation to protect biological diversity.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, October 13, 1988, he had presented to the President of the United States the following enrolled bills:

S. 391. An act for the relief of Hyong Cha Kim Kay;

S. 2057. An act to provide for the establishment of the Coastal Heritage Trail Route on the State of New Jersey, and for other purposes; and

S. 2393. An act to amend the Protection and Advocacy for Mentally Ill Individuals Act of 1986 to reauthorize such Act, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3982. A communication from the Administrator of the U.S. Environmental Protection Agency, transmitting, pursuant to law, a report on the need for leaded gasoline for farm equipment; to the Committee on Agriculture, Nutrition, and Forestry.

EC-3983. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, a violation of law involving an obligation of funds in excess of an approved appropriation; to the Committee on Appropriations.

EC-3984. A communication from the Secretary of the Navy, transmitting, pursuant to law, a proposal to transfer the obsolete submarine *Blenny* to the town of Ocean City, MD, for use as an artificial fishing reef; to the Committee on Armed Services.

EC-3985. A communication from the Assistant Secretary of Defense (Production and Logistics), transmitting, pursuant to law, a report on strategic and critical materials of the National Defense Stockpile operations; to the Committee on Armed Services.

EC-3986. A communication from the Director (Administration and Management), Department of Defense, transmitting, pursuant to law, notice that the Defense Logistics Agency intends to exercise a provision concerning examination of records by the Comptroller General; to the Committee on Armed Services.

EC-3987. A communication from the Administrator of the National Aeronautics and Space Administration, transmitting, pursuant to law, notice of planned funding levels in NASA's current fiscal year 1988 operating plan which exceed amounts authorized; to the Committee on Commerce, Science, and Transportation.

EC-3988. A communication from the Secretary of Transportation, transmitting, pursuant to law, the National Airway System Annual Report for fiscal year 1987; to the Committee on Commerce, Science, and Transportation.

EC-3989. A communication from the Secretary of Energy, transmitting, pursuant to law, a comprehensive report on clean coal technology; to the Committee on Energy and Natural Resources.

EC-3990. A communication from the Acting General Counsel, Department of Energy, transmitting, pursuant to law, a notice of a meeting related to the International Energy Program; to the Committee on Energy and Natural Resources.

EC-3991. A communication from the Assistant Secretary of Interior (Land and Minerals Management), transmitting, pursuant to law, the 1987 annual report describing royalty management and collection activities; to the Committee on Energy and Natural Resources.

EC-3992. A communication from the Federal inspector of the Alaska Natural Gas Transportation System, transmitting, pursuant to law, a report on the first two quarters of project activity; to the Committee on Energy and Natural Resources.

EC-3993. A communication from the Acting Administrator of General Services, transmitting, pursuant to law, a proposed lease prospectus for the U.S. Coast Guard in Martinsburg, WV; to the Committee on Environment and Public Works.

EC-3994. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on the use by States in fiscal year 1987 of moneys made available for Independent Living Initiatives; to the Committee on Finance.

EC-3995. A communication from the Secretary of Agriculture, transmitting, pursuant to law, a report on a new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-3996. A communication from the Administrator of the Health Care Financing Administration, Department of Health and Human Services, transmitting, pursuant to law, a report on a new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-3997. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a report on the first year of implementation of the Compact of Free Association between the United States and the Republic of the Marshall Islands; to the Committee on Energy and Natural Resources.

EC-3998. A communication from the Assistant Secretary of Energy (Management and Administration), transmitting, pursuant to law, notice of a proposed amendment to a Privacy Act system of records; to the Committee on Governmental Affairs.

EC-3999. A communication from the District of Columbia auditor, transmitting, pursuant to law, a report entitled "Review of Purchase of Real Property Located at 1222 V Street, S.E."; to the Committee on Governmental Affairs.

EC-4000. A communication from the Postmaster General of the United States, transmitting, pursuant to law, a report on services available to the homeless; to the Committee on Governmental Affairs.

EC-4001. A communication from the District of Columbia auditor, transmitting, pursuant to law, a report entitled "Annual Report on D.C. Depository Activities for FY 1987"; to the Committee on Governmental Affairs.

EC-4002. A communication from the clerk of the United States Court of Appeals, transmitting, pursuant to law, attachments to the previously filed report of the Special Counsel in "In re Nofziger, Edwin Meese III", Div. No. 87-1; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BURDICK, from the Committee on Environment and Public Works, with an amendment:

S. 1425: A bill to authorize construction of a public building for the Environmental Protection Agency (Rept. No. 100-597).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. NUNN, from the Committee on Armed Services:

Karen R. Keesling, of Virginia, to be an Assistant Secretary of the Air Force;

Clyde O. Glaister, of Virginia, to be Comptroller of the Department of Defense.

Mr. NUNN. Mr. President, from the Committee on Armed Services, I report favorably the attached listing of nominations.

Those identified with a single asterisk (*) are to be placed on the Executive Calendar. Those identified with a double asterisk (**) are to lie on the Secretary's desk for the information of any Senator since these names have already appeared in the Congressional Record and to save the expense of printing again.

The PRESIDING OFFICER. Without objection, it is so ordered.

*1. Captain William L. Schachte, Jr., U.S. Navy, to be appointed to the grade of rear admiral (lower half) while serving as Assistant Judge Advocate General of the Navy (REF. 1247)

*2. George B. Crist, U.S. Marine Corps, to be placed on the retired list in the grade of general (REF. 1376)

*3. Vice Admiral Paul D. Miller, U.S. Navy to be reassigned (REF. 1377)

*4. Lieutenant General James A. Abrahamson, U.S. Air Force, to be placed on the retired list in the grade of lieutenant general (REF. 1378)

*5. Lieutenant General George L. Monahan, Jr., U.S. Air Force, to be reassigned in the grade of lieutenant general (REF. 1379)

*6. Lieutenant General Craven C. Rogers, Jr., U.S. Air Force, to be reassigned in the grade of lieutenant general (REF. 1380)

*7. Major General Thomas A. Baker, U.S. Air Force, to be lieutenant general (REF. 1381)

*8. Vice Admiral Clyde R. Bell, U.S. Navy, to be placed on the retired list in the grade of vice admiral (REF. 1382)

*9. Vice Admiral Walter T. Piotti, Jr., U.S. Navy, to be placed on the retired list in the grade of vice admiral (REF. 1383)

*10. Rear Admiral James F. Dorsey, Jr., U.S. Navy, to be vice admiral (REF. 1384)

*11. Rear Admiral Henry H. Mauz, Jr., U.S. Navy, to be vice admiral (REF. 1385)

*12. Vice Admiral William E. Ramsey, U.S. Navy, to be placed on the retired list in the grade of vice admiral (REF. 1386)

*13. Rear Admiral (Lower Half) John E. Gordon, Judge Advocate General's Corps, U.S. Navy, to be Deputy Judge Advocate General of the Navy (REF. 1387)

*14. Colonel Roger C. Bultman, U.S. Army, to be brigadier general (REF. 1388)

**15. In the Air Force there are 15 promotions to the grade of lieutenant colonel and below (list begins with Daniel W. Abrams) (REF. 1396)

**16. In the Air Force and Air Force Reserve there are 18 appointments to the grade of lieutenant colonel and below (list begins with Roy M. Kring) (REF. 1397)

**17. In the Army there are 6 promotions to the grade of lieutenant colonel and below (list begins with Chester L. Cupp) (REF. 1398)

**18. In the Army there are 7 promotions to the grade of lieutenant colonel and below (list begins with Thomas M. Amon) (REF. 1399)

**19. In the Navy and Naval Reserve there are 17 appointments to the grade of captain and below (list begins with Patrick J. Bruscia) (REF. 1400)

*20. Lieutenant General Anthony Lukeman, U.S. Marine Corps, to be placed on the retired list in the grade of lieutenant general (REF. 1407)

**21. In the Army there are 705 promotions to the grade of colonel (list begins with Larry D. Aaron) (REF. 1408)

**22. In the Air Force Reserve there are 15 promotions to the grade of lieutenant colonel (list begins with James R. Bell) (REF. 1420)

**23. In the Air Force Reserve there are 4 appointments to the grade of lieutenant colonel (list begins with Rodrigo B. Floro) (REF. 1421)

**24. In the Air Force Reserve there are 11 appointments to the grade of colonel and below (list begins with John W. Batcheller) (REF. 1422)

**25. In the Army there are 2 promotions to the grade of lieutenant colonel and below (list begins with Paul W. Schwarz) (REF. 1423)

**26. In the Air Force Reserve there are 24 promotions to the grade of lieutenant colonel (list begins with William B. Blakely) (REF. 1426)

Total: 839.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DOMENICI (for himself and Mr. Bingaman):

S. 2886. A bill to provide a method under which the State of New Mexico can continue certain highway road work; considered and passed.

By Mr. HATFIELD:

S. 2887. A bill for the relief of Rita Luz Juarez to the Committee on the Judiciary.

By Mr. CHAFEE (for himself and Mr. Pell):

S. 2888. A bill to authorize the Secretary of the Department in which the Coast Guard is operating to convey the Block Island Southeast Lighthouse to the Block Island Southeast Lighthouse Foundation; to the Committee on Commerce, Science, and Transportation.

By Mr. KENNEDY:

S. 2889. A bill to amend the Public Health Service Act to establish certain health programs, to revise and extend certain health programs, and for other purposes; considered and passed.

By Mr. MURKOWSKI (for himself and Mr. Symms):

S. 2890. A bill to allow for the use of certain lands in Alaska for small hydropower power projects; to the Committee on Energy and Natural Resources.

By Mr. BENTSEN:

S. 2891. A bill to enhance the prospects for economic development in rural areas by allowing municipal corporations to acquire through eminent domain utility facilities of rural water supply or sewer service corporations; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. RIEGLE:

S. 2892. A bill to prohibit the disposal of solid waste in any State other than the State in which the waste was generated; to the Committee on Environment and Public Works.

By Mr. PELL:

S. 2893. A bill to provide for the establishment of the United States Coast Guard as an independent agency for certain purposes, to transfer certain functions of the Secretary of Transportation to the Commandant of the Coast Guard, and for other purposes; to the Committee on Commerce, Science, and Transportation.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SIMON (for himself, Mr. Dixon, and Mrs. Kassebaum):

S. Res. 497. A resolution to express the sense of the Senate that the Federal Aviation Administration shall submit to Congress a plan on immediate and long term solutions to the air traffic problems at O'Hare International Airport in Chicago, Illinois; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CHAFEE (for himself and Mr. Pell):

S. 2888. A bill to authorize the Secretary of the department in which the Coast Guard is operating to convey the Block Island Southeast Lighthouse to the Block Island Southeast Lighthouse Foundation; to the Committee on Commerce, Science, and Transportation.

SOUTHEAST LIGHTHOUSE PRESERVATION ACT

Mr. CHAFEE. Mr. President, I am pleased to introduce legislation today that will transfer the historic Southeast Lighthouse on Block Island from the U.S. Coast Guard to the Block Island Southeast Lighthouse Foundation. This measure represents the first step in the renovation and renewal of one of Rhode Island's most memorable landmarks: the Southeast Light.

Lighthouses have played a glorious role in maritime history. From their beginnings as beacon fires in the days of the ancient Egyptians to their latest incarnation as steel towers, lighthouses have guided, warned, or reassured mariners during their sea journeys.

But lighthouses have played a particularly special role in the history of the United States. Colonial settlers depended on the sea as their trade, communication, and travel route, and lighthouses began to spread along America's coasts as maritime traffic grew heavier. Today, lighthouses serve as monuments to the skill and determination of those who built them. They are inspiring reminders of our rich maritime heritage, and have become part of our national folklore.

The Southeast Lighthouse, located atop the dramatic Mohegan Bluffs on the south shore of Block Island, was erected in 1873 to alert passing vessels to the perils of the rocky coastline. First illuminated on February 1, 1875, it cast a light visible from 35 miles at sea, and represented the Federal Government's continued efforts to aid navigation around the island. With the establishment of the Federal Lighthouse Service in 1789, the light took its place as an important element in the Government's fight for marine safety.

But it was the lighthouse's combination of utility and beauty that stirred the pride and emotion of the islanders. With its imposing structure and the powerful light of its imported Fresnel lens, the lighthouse was the object of intense local pride, and became a favorite sight for visitors. Tourists, visiting Block Island in the late 19th century, wrote admiringly of the impressive red brick tower and its light.

That same local pride exists today. Block Islanders continue to cherish the light with the same enthusiasm. Indeed, the image of the light has become the most recognizable symbol of Rhode Island, used by many State agencies and commercial organizations to represent the State of Rhode Island and her maritime history. Futhermore, the historical importance of the lighthouse has gained national recognition, as evidenced by its listing in the National Register of Historic Places.

Unfortunately, the rich and colorful era of traditional lighthouses has ended. Most modern lighthouses are automated, and many of the older lighthouses have fallen into disrepair. Of the more than 1,400 lighthouses that were once operational, only 750 are still standing today; about half. The Southeast Light, located less than 100 feet from the eroding cliff edge, is in real danger of joining the shipwrecked vessels at the base of the cliffs.

But a rescue attempt is in progress. The Southeast Lighthouse Foundation, in conjunction with the Rhode Island Historical Preservation Commission, the U.S. Coast Guard, and Block Island residents, is making a valiant effort to raise the money needed for the light's restoration and relocation.

Mr. President, the legislation I am introducing will transfer ownership of the Southeast Lighthouse from the Coast Guard to the Southeast Lighthouse Foundation. The Coast Guard, in its role as custodian, has done a commendable job in its efforts to preserve the light as a monument to maritime history in Rhode Island. But the Guard is hindered by the constraints of time and budget.

The Southeast Lighthouse Foundation, with the full approval of the Coast Guard, will take on full responsibility for the light's renovation. It hopes to raise the necessary funding for the light's survival, and help make the lighthouse for the interpretation and preservation of Block Island's maritime culture. Already the foundation has staged a successful exhibit celebrating the history of the lighthouse and of Block Island.

It is my hope that, with this legislation, the Southeast Lighthouse will be preserved for the sake of future generations. Given the strong commitment of the U.S. Coast Guard, the Block Island Southeast Lighthouse Foundation, the Rhode Island Historical Society, and Block Island residents, I believe that we can successfully maintain this important State landmark.

Mr. President, I ask unanimous consent that the bill be inserted in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 2888

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "Southeast Lighthouse Preservation Act of 1988".

PURPOSE

Sec. 2. The purpose of this Act is to enable the Block Island Southeast Lighthouse Foundation to establish and maintain a nonprofit center for public benefit at the property commonly referred to as the Block Island Southeast Lighthouse in the town of New Shoreham, Rhode Island, and listed on the National Register of Historic Places, for the interpretation and preservation of the material culture of the United States Coast Guard and Block Island's maritime history.

TRANSFER OF LIGHTHOUSE

Sec. 3. The Secretary of the department in which the Coast Guard is operating is authorized to convey, by any appropriate means of conveyance, to the Block Island Southeast Lighthouse Foundation (hereinafter referred to as the "Foundation") of the town of New Shoreham, State of Rhode Island, all right, title, and interest of the United States, in and to certain property comprising the Block Island Southeast Lighthouse in the town of New Shoreham.

TERMS AND CONDITIONS

Sec. 4. The conveyance pursuant to section 3 shall be made without the payment of consideration and shall be made subject to such terms and conditions as the Secretary of the department in which the Coast Guard is operating shall impose.

(b) In addition to any term or condition imposed pursuant to subsection (a), any such conveyance pursuant to this Act shall be made subject to the condition that if the property, or any part thereof, ceases to be used for the purpose of this Act, title to all such property so conveyed shall be deemed to have immediately reverted to the United States.

(c) Such conveyance shall include provisions necessary to assure that—

(1) the light, antennas, sound signal and associated equipment located on the property conveyed, which are active aids to navigation, shall continue to be operated and maintained by the United States;

(2) the Foundation will not interfere or allow interference in any manner with such

aids to navigation without express written permission from the United States;

(3) there is reserved to the United States the right to relocate, replace, or add any aids to navigation or make any changes on any portion of such property conveyed as may be necessary for navigation purposes;

(4) the United States shall have the right, at any time, to enter such property without notice for the purpose of maintaining navigation aids; and

(5) the United States shall have an easement of access to such property for the purpose of maintaining the navigational aids in use on the property conveyed pursuant to this Act.

(d) In no case, however, shall the Foundation have any obligation to maintain any active aid to navigation equipment on such property.

DEFINITION

SEC. 5. For purposes of this Act, the term "Block Island Southeast Lighthouse" means the lighthouse and attached keeper's dwelling, several ancillary buildings, a fog signal, together with such land as may be necessary for the purpose of this Act.

DESCRIPTION

SEC. 6. The Secretary of the department in which the Coast Guard is operating, in his discretion, is authorized to identify, describe, and determine the property and the amount thereof to be conveyed pursuant to this Act.

By Mr. MURKOWSKI (for himself and Mr. SYMMS):

S. 2890. A bill to allow for the use of certain lands in Alaska for small hydroelectric power projects; to the Committee on Energy and Natural Resources.

USE OF CERTAIN ALASKA LANDS FOR HYDROPOWER DEVELOPMENT

Mr. MURKOWSKI. Mr. President, many remote Alaska communities are entirely within the boundaries of national parks, preserves, or monuments, or nearly landlocked by the conservation system units as a result of the 1980 Alaska National Interest Lands Conservation Act [ANILCA]. In some cases, communities could solve their energy needs with environmentally sound hydropower development—ideally suited for the remote Alaska situation—but they are unable to do so because of the restrictive classification placed on lands which surround them.

Many remote villages are interested in replacing their diesel generators with small hydroelectric facilities. Such small hydro facilities are quieter, cleaner, more cost efficient, and safer than diesel generators. Recently, there have been several serious fires in Alaska involving diesel generators, including three cases this year so serious that the Governor declared State disasters and provided appropriate State assistance.

Currently construction of a small 1-megawatt hydroelectric project on the Tazimina River in the Lake Clark National Preserve is planned to provide low-cost energy to the communities of Iliamna, Nondalton, and Newhalen. The project, which would replace diesel generators now in use, would be located on land owned by the village of Iliamna within the boundaries of Lake Clark National Preserve.

The village owns 1,000 acres inside the preserve. On this land is a natural waterfall around which the project would be built. Water would be taken out at the top of the falls, diverted for 250 feet through a turbine, and returned to the river at the bottom of the falls. No dam, no impoundment, no lands inundated. The power would be transmitted by buried cable for 6 miles completely on private lands to the power grid for the three villages. Federal land will never be crossed.

Mr. President, it is not clear that this project would be prohibited by virtue of the fact that it would technically lie within the boundaries of the preserve. However, I understand there is some ambiguity in the law and that the communities involved would probably have to litigate to move forward with the project.

When the law creating the Lake Clark Preserve was passed in 1980, lands owned by the village of Nondalton were specifically exempted from the boundaries of the preserve so that a hydropower project could be pursued at the Tazimina Lakes. The Nondalton project was a larger project involving a dam at the lake mouth and a power-generating station. This project was later abandoned and the Park Service acquired a conservation easement on the Nondalton lands. The run-of-the-river project now contemplated is much smaller and different in concept and is associated with a waterfall on Iliamna Village lands.

Mr. President, my bill would reflect the change in plans for this power project by simply adding the Iliamna Village Corp. lands to the exemption provided for the Nondalton Village lands contained in ANILCA.

My bill also addresses the future energy needs of the city of Ketchikan and surrounding communities in southeast Alaska. At present, a hydroelectric power station on Swan Lake near Ketchikan provides power to this area. When the Swan Lake project was constructed in the late 1970's, the engineers contemplated expansion of the power station by tapping into nearby Grace Lake.

Grace Lake lies at a higher elevation and on the other side of a ridge from Swan Lake. Under the plan, the tunnel would be built from Swan Lake to Grace Lake to provide additional water supplies necessary to operate an expanded power station at Swan Lake. A small impoundment would be built at the mouth of Grace Lake so that lake levels could be maintained. I understand that this project would have a negligible effect on stream flows and lake levels at Grace Lake but the project could create 18 megawatts of new power for the city of Ketchikan, the Metlakatla Indian community, and the towns of Wrangell and Petersberg.

Mr. President, the difficulty is that after the Swan Lake project was built the Misty Fjords National Monument and Wilderness was created and the boundary of the monument was placed between Swan Lake and Grace Lake. Swan Lake is not in the monument and wilderness but Grace Lake is. My bill would allow for the construction of this project inside the boundaries of the mounument at Grace Lake. For the purposes of accessing the waters of Grace Lake for the production of hydroelectric power the national monument and wilderness status of this area would not apply.

I want to stress the environmentally benign nature of this project. Only a small impoundment structure would appear on the surface. The lake would be tapped via a tunnel opening into the bottom of Grace Lake. Lake levels and stream flows would not be significantly affected. All transmission lines and power-generating facilities would be located at Swan Lake—outside the boundaries of the monument.

Mr. President, I urge my colleagues to support this badly needed measure which will allow these remote Alaska communities to utilize nearby natural features to produce cost-efficient power in an environmentally sound manner.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD following my statement.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2890

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,

SECTION 1. LAKE CLARK NATIONAL PRESERVE.—Section 201(7)(b) of Public Law 96-487, Alaska National Interest Lands Conservation Act, is amended by inserting the words "and Iliamna Natives Ltd." after "Nondalton Village Corporation" and by inserting the words "and limits" after "boundaries".

SEC. 2. MISTY FJORDS NATIONAL MONUMENT.—Section 503 of Public Law 96-487, Alaska National Interest Lands Conservation Act, is amended by adding the following new subsection:

"(k) GRACE LAKE HYDROPOWER DEVELOPMENT.—Notwithstanding any provision of this Act or any other law, establishment by this section of Misty Fjords National Monument and designation by section 703 of this Act of the Misty Fjords National Monument Wilderness shall not be deemed to enlarge or add any substantive or procedural requirements otherwise applicable to the use of the waters of Grace Lake and the lands and subsurface adjacent thereto, including necessary utility access, for activities related to the development of a hydroelectric power project to service the Ketchikan area."

By Mr. BENTSEN:

S. 2891. A bill to enhance the prospects for economic development in rural areas by allowing municipal corporations to acquire through eminent domain utility facilities of rural water supply or sewer service corporations; to the Committee on Agriculture, Nutrition, and Forestry.

ACQUISITION OF CERTAIN WATER FACILITIES

● Mr. BENTSEN. Mr. President, I am today introducing legislation aimed at resolving some of the inevitable problems between growing cities and the rural water systems that surround them. An identical bill is being introduced by my distinguished colleague from Texas, Congressman ORTIZ.

This bill will allow cities to grow and attract new industry, and in some cases this will give cities the ability to bring water to nearby colonias, which are unincorporated areas along the border that house the poorest of our Nation's poor. This bill will also continue to protect rural interests—the rural water supply corporations, their customers, and the taxpayers who have loaned them money through the Farmers Home Administration—from being left financially crippled by an unrestricted eminent domain action.

My bill would in essence allow a bill passed by the Texas legislature to work, and would allow other States to pass such legislation as well. The Texas legislature passed a bill allowing cities to use eminent domain to acquire rural water systems. A Federal court later ruled in a Mississippi case that such takings were prohibited by a nonimpairment provision in Federal law designed to protect the collateral of Federal lending agencies. In this case it is the Farmers Home Administration, which makes loans to rural water systems.

The Texas law is designed to provide safeguards to ensure adequate compensation to rural water systems. This bill would allow use of eminent domain in States which have passed laws permitting it and where adequate safeguards are provided in the rural water systems and to the Federal lending agency concerned with repayment ability on the loan.

This bill would allow use of eminent domain to acquire rural water and sewer associations in whole or in part under the following restrictions: First, use of eminent domain must be authorized by State law, second, payment must include compensation for the impact on the ability to repay any FmHA loan, and third, payment shall consider existing and projected future customer base, impact of the taking on the remainder of the system, and any other relevant factors.

Mr. President, this is important legislation, and I strongly urge my colleagues to support it.●

By Mr. RIEGLE:

S. 2892. A bill to prohibit the disposal of solid waste in any State other than the State in which the waste was generated; to the Committee on Environment and Public Works.

DISPOSAL OF SOLID WASTE

● Mr. RIEGLE. Mr. President, today I am introducing a bill to amend the Solid Waste Disposal Act to deal with an issue that is becoming a serious problem, namely, interstate transport of solid waste. This legislation would prohibit the disposal of solid waste in any State other than the State in which the waste was generated without the written consent of the accepting State.

As landfills fill up around the country and the cost of disposal increases, finding suitable sites for solid waste has become more difficult. Some States are starting to send their wastes across State lines for disposal. We all recall the odyssey of the trash barge that floated up and down the east coast looking for a place to deposit its unwanted cargo.

Unfortunately, more and more communities are unwilling to dispose of their own waste. In my State of Michigan, a Pennsylvania company has bought a landfill in Port Huron, MI, and wants to bring in waste from other States. The entire State of Michigan now disposes of about 32,000 tons of garbage daily. This landfill is considering accepting 5,000 tons of trash a day from two Eastern States which would raise Michigan's total amount of waste by 16 percent. The people in that area are concerned that, at this rate, the landfill will fill up quickly and reduce the capacity for wastes generated locally.

The huge volume of solid waste we produce every day has become a major environmental problem in this country. In 1988, communities in the United States will generate about 160 million tons of solid waste. This amount is expected to grow over 190 million tons in the year 2000.

While annual generation of solid waste is increasing, the capacity for acceptable disposal is rapidly decreasing. The Environmental Protection Agency expects half of all existing landfills to close within 5 years. Additionally, the increase in disposal costs has resulted in communities transporting their wastes greater distances. For example, the cost of landfills in States such as New Jersey is $102 to $137 per ton of garbage, while landfills in Michigan charge on the average $20 per ton. This is why waste disposal is no longer merely a local problem.

Although some States have their own solid waste management programs which prohibit interstate disposal, the constitutionality of these programs has been challenged. We must, therefore, address this issue at the national level.

Each State and its citizens should be responsible for the disposal of its own trash. Only when the problem of waste disposal effects people on a local level—as they see landfills and incinerators being built in their neighborhoods—will we finally realize the enormity of this problem. Prohibiting States from shipping wastes across their borders will end the out-of-sight, out-of-mind syndrome and create incentives for increased recycling, reuse, and waste minimization.

Clearly, it is late in this session, and we are not likely to resolve this issue before Congress adjourns. However, Senator BAUCUS has introduced amendments to the Resource, Conservation, and Recovery Act, and there is every indication that issues relating to solid waste disposal will be on the agenda for the 101st Congress. I intend to encourage my colleagues on the Senate Environment Committee to act to prevent States from imposing their unwanted wastes on other States and will be actively involved in resolving the problem of solid waste.●

By Mr. PELL:

S. 2893. A bill to provide for the establishment of the U.S. Coast Guard as an independent agency for certain purposes, to transfer certain functions of the Secretary of Transportation to the Commandant of the Coast Guard, and for other purposes; to the Committee on Commerce, Science, and Transportation.

UNITED STATES COAST GUARD ACT

Mr. PELL. Mr. President, I am today introducing legislation to remove the U.S. Coast Guard from the Department of Transportation and to establish it as an independent agency of the Federal Government.

The Coast Guard is charged with fulfilling some of the most basic functions of government and with providing essential services to the people. Indeed, in recent years, the Congress has added significantly to the duties and responsibilities of the Coast Guard. Today the Coast Guard has the major responsibility not only for the traditional functions of search and rescue and for maritime safety, but also for interdiction of illegal drug shipments, for enforcement of marine environmental protection laws, for enforcement of fishery conservation laws, and for the coastal defense of the nation.

The status of the Coast Guard as just one of many administrative units of the Transportation Department is hampering the Coast Guard in fullfilling its responsibilities. As a result of its placement within the Transportation Department, the Coast Guard has found itself in the middle of national priority and budgetary squabbles between the administration and Congress involving efforts to protect, reduce or eliminate funding in the Federal budget for important transportation programs such as Amtrak, highway and airline safety, and urban mass transportation.

The net result has been that the Coast Guard has borne much of the brunt of budget reductions which have occurred within the annual appropriations for the Department of Transportation. The impact on the Coast Guard has been unfortunate, usually unintended, but nevertheless severe. For example, in December, the Coast Guard was required to absorb on short notice more than $100 million in cuts from its fiscal year 1988 budget. Funds for such high priority functions as drug interdiction were slashed by 55 percent, and vessels and stations available for search and rescue to protect the lives and equipment of fishermen were reduced as well.

During the past 10 years, under both Democratic and Republican administrations, the Coast Guard's ice breaker fleet has dwindled from five vessels to just two ice breakers, a number totally inadequate to fulfill the Coast Guard's mission. And this has happened despite repeated requests by the Coast Guard over the past decade for construction of new ice breakers. The Coast Guard, as a retired admiral observed recently, has just not had the clout necessary to get its legitimate requests heeded and acted on.

Establishing the Coast Guard as an independent agency would help eliminate these problems. It would free the service from entanglement with entirely irrelevant budget considerations within the Department of Transportation. The bill will give the Coast Guard the stature and the visibility necessary to permit consideration of its funding needs at a higher and more appropriate level of national policy.

Mr. President, obviously I do not expect that the 100th Congress will act on this legislation in the few days remaining before adjournment. I introduce at this time, however, because the Senate is a body with a continuity of membership and I hope my colleagues will give this proposal some thought and that many might be persuaded to join as cosponsors when I present this proposal for action by the 101st Congress.

I ask unanimous consent that the text of the bill be printed at the conclusion of my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2893

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States Coast Guard Act of 1988".

SEC. 2. DEFINITIONS.

As used in this Act, unless otherwise provided or indicated by the context—

(1) the term "Coast Guard" means the United States Coast Guard as established under section 1 of title 14, United States Code;

(2) the term "Commandant" means the Commandant of the Coast Guard appointed under section 44 of title 14, United States Code;

(3) the term "Federal agency" has the meaning given to the term "agency" by section 551(1) of such title;

(4) the term "function" means any duty, obligation, power, authority, responsibility, right, privilege, activity, or program; and

(5) the term "office" includes any office, administration, agency, institute, unit, organizational entity, or component thereof.

SEC. 3. AMENDMENTS TO CHAPTER 1 OF TITLE 14, UNITED STATES CODE.

(a) COAST GUARD AS MILITARY SERVICE AND INDEPENDENT ESTABLISHMENT.—Section 1 of title 14, United States Code, is amended to read as follows:

"§ 1. Establishment of Coast Guard

"(a) The Coast Guard as established January 28, 1915, shall be a military service and a branch of the armed forces of the United States at all times. For purposes of all Federal laws, the Coast Guard shall be treated as an independent establishment as defined under section 104 of title 5, except when operating as a service in the Navy.

"(b) For purposes of the preparation and submission of the budget submitted by the President to the Congress under the provisions of section 1105(a) of title 31, the Coast Guard shall be treated as an independent establishment as defined under section 104 of title 5.".

(b) RELATIONSHIP TO NAVY DEPARTMENT.—Section 3 of title 14, United States Code, is amended to read as follows:

"§ 3. Relationship to Navy Department

"Upon the declaration of war or when the President directs, the Coast Guard shall operate as a service in the Navy, and shall so continue until the President, by Executive order, determines the Coast Guard shall act as an independent establishment as defined under section 104 of title 5. While operating as a service in the Navy, the Coast Guard shall be subject to the orders of the Secretary of the Navy who may order changes in Coast Guard operations to render them uniform, to the extent he deems advisable, with Navy operations.".

(c) DEFINITION OF SECRETARY.—Section 5 of title 14, United States Code, is amended to read as follows:

"§ 5. Secretary defined

"As used in this title, the term 'Secretary' means—

"(1) the Secretary of Defense or the Secretary of the Navy, as applicable, when the Coast Guard is operating in the Department of Defense or Department of the Navy; and

"(2) the Commandant of the Coast Guard when the Coast Guard is performing functions which prior to the date of the enactment of the United States Coast Guard Act of 1988, would have been performed while operating in the Department of Transportation.".

SEC. 4. TRANSFERS.

There are transferred to the Commandant all functions which the Secretary of Transportation exercised before the date of the enactment of this Act with regard to the Coast Guard and all related functions of any officer or employee of the Department of Transportation.

SEC. 5. PERSONNEL PROVISIONS.

(a) APPOINTMENTS.—The Commandant may appoint and fix the compensation of such officers and employees, including investigators, attorneys, and administrative law judges, as may be necessary to carry out the functions of the Commandant and the Coast Guard. Except as otherwise provided by law, such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5, United States Code.

(b) EXPERTS AND CONSULTANTS.—The Commandant may obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code, and compensate such experts and consultants for each day (including traveltime) at rates not in excess of the rate of pay for grade GS-18 of the General Schedule under section 5332 of such title. The Commandant may pay experts and consultants who are serving away from their homes or regular place of business travel expenses and per diem in lieu of subsistence at rates authorized by sections 5702 and 5703 of such title for persons in Government service employed intermittently.

SEC. 6. DELEGATION AND ASSIGNMENT.

Except where otherwise expressly prohibited by law or otherwise provided by this Act, the Commandant may delegate any of the functions transferred to the Commandant by this Act and any function transferred or granted to the Commandant after the effective date of this Act to such officers and employees of the Coast Guard as the Commandant may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions by the Commandant under this section or under any other provision of this Act shall relieve the Commandant of responsibility for the administration of such functions.

SEC. 7. REORGANIZATION.

The Commandant is authorized to allocate or reallocate any function transferred under section 4 among the officers of the Coast Guard, and to establish, consolidate, alter, or discontinue such organizational entities in the Coast Guard as may be necessary or appropriate.

SEC. 8. RULES.

The Commandant is authorized to prescribe, in accordance with the provisions of chapters 5 and 6 of title 5, United States Code, such rules and regulations as the Commandant determines necessary or appropriate to administer and manage the functions of the Commandant or the Coast Guard.

SEC. 9. TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL.

Except as otherwise provided in this Act, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this Act, subject to section 1531 of title 31, United States Code, shall be transferred to the Coast Guard. Unexpended funds transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

SEC. 10. INCIDENTAL TRANSFERS.

The Director of the Office of Management and Budget, at such time or times as the Director shall provide, is authorized to make such determinations as may be necessary with regard to the functions transferred by this Act, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this Act. The Director shall provide for the termination of the affairs of all entities terminated by this Act and for such further measures and dispositions as may be necessary to effectuate the purposes of this Act.

SEC. 11. EFFECT ON PERSONNEL.

(a) IN GENERAL.—Except as otherwise provided by this Act, the transfer pursuant to this Act of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer of such employee under this Act.

(b) EXECUTIVE SCHEDULE POSITIONS.—Any person who, on the day preceding the effective date of this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Coast Guard to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such previous position, for the duration of the service of such person in such new position.

(c) TERMINATION OF CERTAIN POSITIONS.—Positions whose incumbents are appointed by the President, by and with the advice and consent of the Senate, the functions of which are transferred by this Act, shall terminate on the effective date of this Act.

SEC. 12. SAVINGS PROVISIONS.

(a) EFFECT ON PREVIOUS DETERMINATIONS.—All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges that—

(1) have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred by this Act; and

(2) are in effect when this Act takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Commandant, a court of competent jurisdiction, or by operation of law.

(b) CONTINUATION OF PROCEEDINGS.—(1) The provisions of this Act shall not affect any proceedings, including notices of proposed rule making, or any application for any license, permit, certificate, or financial assistance pending on the effective date of this Act before the Department of Transportation, which relates to the Coast Guard, or any office thereof with respect to functions transferred by this Act; but such proceedings or applications, to the extent that they relate to functions transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made under such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the Commandant by a court of competent jurisdiction, or by operation of law. Nothing in this subsection prohibits the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(2) The Secretary of Transportation and the Commandant are authorized to issue regulations providing for the orderly transfer of proceedings continued under paragraph (1).

(c) EFFECT ON LEGAL ACTIONS.—Except as provided in subsection (e)—

(1) the provisions of this Act do not affect actions commenced prior to the effective date of this Act, and

(2) in all such actions, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(d) NO ABATEMENT OF ACTIONS OR PROCEEDINGS.—No action or other proceeding commenced by or against any officer in his official capacity as an officer of the Department of Transportation with respect to functions transferred by this Act shall abate by reason of the enactment of this Act. No cause of action by or against the Department of Transportation with respect to functions transferred by this Act, or by or against any officer thereof in his official capacity, shall abate by reason of the enactment of this Act. Causes of action and actions with respect to a function transferred by this Act, or other proceedings may be asserted by or against the United States or the Commandant, as may be appropriate, and, in an action pending when this Act takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this subsection.

(e) SUBSTITUTION.—If, before the date on which this Act takes effect, the Department of Transportation, or any officer thereof in his official capacity, is a party to an action, and under this Act any function of such Department, Office, or officer is transferred to the Commandant, then such action shall be continued with the Commandant substituted or added as a party.

(f) JUDICIAL REVIEW.—Orders and actions of the Commandant in the exercise of functions transferred to the Commandant by this Act shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the Department of Transportation, or any office or officer thereof, in the exercise of such functions immediately preceding their transfer. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function transferred by this Act shall apply to the exercise of such function by the Commandant.

SEC. 13. SEPARABILITY.

If a provision of this Act or its application to any person or circumstance is held invalid, neither the remainder of this Act nor the application of the provision to other persons or circumstances shall be affected.

SEC. 14. TRANSITION.

With the consent of the Secretary of Transportation the Commandant is authorized to utilize—

(1) the services of such officers, employees, and other personnel of the Department of Transportation with respect to functions transferred to the Coast Guard by this Act; and

(2) funds appropriated to such functions for such period of time as may reasonably be needed to facilitate the orderly implementation of this Act.

SEC. 15. REFERENCES.

Reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the United States Coast Guard—

(1) to the Secretary of Transportation shall be deemed to refer to the Commandant of the Coast Guard; and

(2) to the Secretary shall be deemed to refer to—

(A) the Secretary of Defense or the Secretary of the Navy, as applicable, when the Coast Guard is operating in the Department of Defense or Department of the Navy; and

(B) the Commandant of the Coast Guard when the Coast Guard is performing functions which prior to the date of the enactment of this Act, would have been performed while operating in the Department of Transportation.

SEC. 16. ADDITIONAL CONFORMING AMENDMENTS.

(a) RECOMMENDED LEGISLATION.—After consultation with the appropriate committees of the Congress, the Commandant of the Coast Guard shall prepare and submit to the Congress recommended legislation containing technical and conforming amendments to reflect the changes made by this Act to—

(1) title 14, United States Code;
(2) title 5, United States Code;
(3) title 10, United States Code;
(4) title 37, United States Code; and
(5) any other provision of law.

(b) SUBMISSION TO THE CONGRESS.—No later than 6 months after the effective date of this Act, the Commandant shall submit the recommended legislation referred to under subsection (a).

ADDITIONAL COSPONSORS

S. 759

At the request of Mr. BUMPERS, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 759, a bill to amend the direct and guaranteed student loan programs under the Higher Education Act of 1965 to publicize the current loan deferral program for full-time volunteers with the Peace Corps, VISTA, and tax-exempt organizations, and for other purposes.

S. 760

At the request of Mr. BUMPERS, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 760, a bill to amend the direct student loan program under the Higher Education Act of 1965 to provide for partial loan cancellation for full-time volunteer service with a tax-exempt organization, and for other purposes.

S. 1489

At the request of Mr. MOYNIHAN, the names of the Senator from Oklahoma [Mr. NICKLES], the Senator from Georgia [Mr. FOWLER], the Senator from Maryland [Mr. SARBANES], and the

Senator from Utah [Mr. Hatch] were added as cosponsors of S. 1489, a bill to amend section 67 of the Internal Revenue Code of 1986 to exempt certain publicly offered regulated investment companies from the disallowance of indirect deductions through pass-through entities.

S. 1839

At the request of Mr. Melcher, the name of the Senator from California [Mr. Cranston] was added as a cosponsor of S. 1839, a bill to amend title XVIII of the Social Security Act to provide for coverage of adult day health care under the Medicare Program, and for other purposes.

S. 2199

At the request of Mr. Chafee, the name of the Senator from Virginia [Mr. Trible] was added as a cosponsor of S. 2199, a bill to amend the Land and Water Conservation Act and the National Historic Preservation Act, to establish the American Heritage Trust, for purposes of enhancing the protection of the Nation's natural, historical, cultural, and recreational heritage, and for other purposes.

S. 2501

At the request of Mr. Wilson, the name of the Senator from Maine [Mr. Cohen] was added as a cosponsor of S. 2501, a bill to amend the Internal Revenue Code of 1986 to allow periods of out-of-residence care to qualify for the principal residence use requirements of the one-time capital gain exclusion for taxpayers who have attained age 55.

S. 2796

At the request of Mr. Nunn, the name of the Senator from Ohio [Mr. Glenn] was added as a cosponsor of S. 2796, a bill to authorize funding for the Martin Luther King, Jr. Federal Holiday Commission.

S. 2814

At the request of Mr. Reid, the name of the Senator from Nevada [Mr. Hecht] was added as a cosponsor of S. 2814, a bill to provide for the modernization of testing of consumer products which contain hazardous or toxic substances.

SENATE JOINT RESOLUTION 344

At the request of Mr. Burdick, the names of the Senator from North Dakota [Mr. Conrad], the Senator from North Carolina [Mr. Helms], the Senator from Hawaii [Mr. Inouye], the Senator from Iowa [Mr. Grassley], the Senator from Alabama [Mr. Heflin], the Senator from Alaska [Mr. Stevens], the Senator from Indiana [Mr. Lugar], and the Senator from Texas [Mr. Bentsen] were added as cosponsors of Senate Joint Resolution 344, a joint resolution to designate the week of November 20 through November 26, 1988, as "National Family Week."

SENATE JOINT RESOLUTION 347

At the request of Mr. Kennedy, the name of the Senator from Michigan [Mr. Levin] was added as a cosponsor of Senate Joint Resolution 347, a joint resolution in support of the restoration of a free and independent Cambodia and the protection of the Cambodian people from a return to power by the genocidal Khmer Rouge.

SENATE JOINT RESOLUTION 373

At the request of Mr. Byrd, the name of the Senator from North Carolina [Mr. Helms] was added as a cosponsor of Senate Joint Resolution 373, a joint resolution to designate the week beginning November 13, 1988, as "National Craniofacial Deformity Awareness Week."

SENATE JOINT RESOLUTION 388

At the request of Mr. Gore, the names of the Senator from Texas [Mr. Bentsen], the Senator from Delaware [Mr. Biden], the Senator from Arkansas [Mr. Bumpers], the Senator from North Dakota [Mr. Burdick], the Senator from Mississippi [Mr. Cochran], the Senator from New York [Mr. D'Amato], the Senator from Illinois [Mr. Dixon], the Senator from New Mexico [Mr. Domenici], the Senator from Minnesota [Mr. Durenberger], the Senator from Kentucky [Mr. Ford], the Senator from Georgia [Mr. Fowler], the Senator from Ohio [Mr. Glenn], the Senator from Massachusetts [Mr. Kerry], the Senator from New Jersey [Mr. Lautenberg], the Senator from Michigan [Mr. Levin], the Senator from Indiana [Mr. Lugar], the Senator from Arizona [Mr. McCain], the Senator from Idaho [Mr. McClure], the Senator from Maryland [Ms. Mikulski], the Senator from Maine [Mr. Mitchell], the Senator from Arkansas [Mr. Pryor], the Senator from Nevada [Mr. Reid], the Senator from Michigan [Mr. Riegle], the Senator from West Virginia [Mr. Rockefeller], the Senator from Delaware [Mr. Roth], the Senator from Maryland [Mr. Sarbanes], the Senator from Alabama [Mr. Shelby], the Senator from Mississippi [Mr. Stennis], the Senator from South Carolina [Mr. Thurmond], the Senator from Wyoming [Mr. Wallop], the Senator from Virginia [Mr. Warner], the Senator from California [Mr. Wilson], and the Senator from Colorado [Mr. Wirth] were added as cosponsors of Senate Joint Resolution 388, a joint resolution designating October 15, 1988, as "National Fire Fighters Day."

SENATE JOINT RESOLUTION 393

At the request of Mr. Lautenberg, the names of the Senator from Alaska [Mr. Murkowski], the Senator from Mississippi [Mr. Stennis], the Senator from South Carolina [Mr. Hollings], the Senator from Oklahoma [Mr. Boren], the Senator from Hawaii [Mr. Matsunaga], the Senator from Virginia [Mr. Warner], the Senator from Utah [Mr. Garn], the Senator from Connecticut [Mr. Dodd], the Senator from Maryland [Ms. Mikulski], the Senator from Georgia [Mr. Nunn], the Senator from North Dakota [Mr. Burdick], the Senator from Massachusetts [Mr. Kerry], the Senator from West Virginia [Mr. Rockefeller], the Senator from Minnesota [Mr. Durenberger], the Senator from South Carolina [Mr. Thurmond], the Senator from Idaho [Mr. McClure], the Senator from Pennsylvania [Mr. Specter], the Senator from Vermont [Mr. Stafford], and the Senator from New Mexico [Mr. Domenici] were added as cosponsors of Senate Joint Resolution 393, a joint resolution to designate December 7, 1988, as "National Pearl Harbor Remembrance Day" on the occasion of the anniversary of the attack on Pearl Harbor.

SENATE CONCURRENT RESOLUTION 145

At the request of Mr. Mitchell, the name of the Senator from North Carolina [Mr. Helms] was added as a cosponsor of Senate Concurrent Resolution 145, a concurrent resolution expressing the sense of the Congress regarding the state of affairs in Lebanon and urging all parties in Lebanon to work together to resolve the constitutional crisis.

SENATE RESOLUTION 463

At the request of Mr. Roth, the name of the Senator from Idaho [Mr. Symms] was added as a cosponsor of Senate Resolution 463, a resolution expressing the sense of the Congress that Federal laws regarding the taxation of State and local government bonds should not be changed in order to increase revenue.

SENATE RESOLUTION 497—RELATING TO A STUDY OF TRAFFIC PROBLEMS AT O'HARE INTERNATIONAL AIRPORT

Mr. SIMON (for himself, Mrs. Kassebaum, and Mr. Dixon) submitted the following resolution; which was considered and agreed to:

S. Res. 497

Whereas between Friday, September 28, 1988, and Tuesday, October 1, 1988, there were four near misses over Chicago's O'Hare International Airport;

Whereas the positions of a significant number of full performance level air traffic controllers were vacated at O'Hare Tower at O'Hare International Airport, the Nation's busiest airport;

Whereas the Federal Aviation Administration has not been able to meet the agency's own requirement of 70 percent full performance level air traffic controllers at O'Hare Tower;

Whereas the National Transportation Safety Board, the General Accounting Office and the Better Government Association of Chicago have documented the hazards of the Chicago airspace and recommended staffing improvements in the operation at O'Hare Airport Tower;

Whereas in 1988, 30 operational errors at O'Hare Tower have already been documented, surpassing the previous record of 22 in 1986;

Whereas air traffic at O'Hare International Airport has increased 15 percent since 1981;

Whereas air traffic at O'Hare International Airport in one recent week reached an all-time record of 3,853 takeoffs and landings, surpassing the peak load of traffic during the summer; and

Whereas an even greater holiday traffic season demand is now anticipated; and

Whereas the Federal Aviation Administration has now completed a comprehensive review of air safety at O'Hare International Airport: Now, therefore, be it

Resolved, That it is the sense of Congress that not later than October 25, the Federal Aviation Administration shall develop and transmit to Congress a plan outlining both the immediate and long term actions the agency shall take, and the timetable for such actions, to ensure that FAA's own standards for air traffic controller staffing and experience levels at O'Hare International Airport are fulfilled as expeditiously as possible, to resolve the present emergency and to ensure adequacy of air traffic control operations in the Chicago airspace in the future.

AMENDMENTS SUBMITTED

OMNIBUS ANTI-SUBSTANCE ABUSE ACT

BYRD AMENDMENT NO. 3677

Mr. BYRD proposed an amendment to the bill (H.R. 5210) to prevent the manufacturing, distribution, and use of illegal drugs, and for other purposes; as follows:

Strike out all after the enacting clause and insert in lieu thereof the text of S. 2852, as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Omnibus Anti-Substance Abuse Act of 1988".

SEC. 2. ORGANIZATION OF ACT.

The organization of this Act is as follows:

Title I. Organization.
Title II. Crimes and Penalties and Law Enforcement.
Title III. Prevention, Education, and Treatment.
Title IV. International Narcotics Control and Assistance to Foreign Countries.
Title V. User Accountability.
Title VI. Sense of the Congress on drug funding.
Title VII. Death Penalty in Case of Drug Related Killng.

TITLE I—ORGANIZATION

SEC. 1000. TABLE OF CONTENTS.

The table of contents for this title is as follows:

TITLE I—ORGANIZATION

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Sec. 1003. Purposes.
Sec. 1004. Definitions.
Sec. 1005. Establishment of office.
Sec. 1006. Appointment and duties of the director, deputy director and associate director.
Sec. 1007. Duties and responsibilities of the heads of executive branch departments and agencies.
Sec. 1008. Development and submission of national drug control strategy.
Sec. 1009. Submission of national drug control program budget with the annual budget request of the President.
Sec. 1010. High-intensity drug areas.
Sec. 1011. Termination of the National Drug Enforcement Policy Board, the National Narcotics Border Interdiction System, and the White House Drug Abuse Policy Office.
Sec. 1012. Executive reorganization authority.
Sec. 1013. Termination of the Office of National Drug Control Policy.
Sec. 1014. Authorization of appropriations.
Sec. 1015. Effective date.
Subtitle B—Department of Justice Civil Enforcement Enhancement
Sec. 1051. Short title.
Sec. 1052. Findings.
Sec. 1053. Civil enforcement report.
Sec. 1054. Civil enforcement enhancement.
Sec. 1055. Coordination and enhancement of field activities.

Subtitle A—National Drug Control Program

SEC. 1001. SHORT TITLE.

This subtitle may be cited as the "National Narcotics Leadership Act of 1988".

SEC. 1002. FINDINGS.

The Congress finds that—

(1) the problem of illegal drug activity and drug abuse falls across the entire spectrum of Federal activities, both domestically and internationally;

(2) any effective solution to the drug problem of the Nation must involve a comprehensive approach from all levels of government, combining reduction of the demand for drugs through education, research and treatment with rigorous law enforcement and supply reduction initiatives;

(3) an effective solution to the drug problem of the Nation is severely hampered by the large number of Federal agencies with overlapping jurisdiction and fragmented authority which does not encourage effective strategic planning, coordination and cooperation without centralized leadership;

(4) the magnitude and scope of the problem requires a Director of National Drug Control Policy with the responsibility for the coordination and direction of all Federal efforts by the numerous agencies; and

(5) such a director must have sufficient authority and responsibility to lead Federal agencies in making management, policy, and budgetary decisions with respect to all Federal agencies so that a unified and efficient effort can be made to substantially reduce the illegal drug problem.

SEC. 1003. PURPOSES.

The purposes of this subtitle are to—

(1) develop a comprehensive, long-range national drug control strategy for substantially reducing drug trafficking and abuse, particularly among young people;

(2) authorize one official to direct the national drug control policy of the Federal Government, coordinate all United States policy, resources, and operations with respect to drug control, and report directly to the President on all drug control matters;

(3) make such official accountable to the Congress and the people of the United States for the effectiveness of the national drug control strategy; and

(4) provide that the national drug control strategy ensures that Federal, State, and local governments are fully coordinated and efforts are designed to maximize the effectiveness of such strategy.

SEC. 1004. DEFINITIONS.

As used in this subtitle the term—

(1) "drug" shall have the same meaning as the term "controlled substance" as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6));

(2) "drug control" means any activity of a program conducted by a National Drug Control Program agency designed to reduce, directly or indirectly, the availability and use of drugs, including all efforts to decrease the production, manufacture, importation, distribution, or use of drugs through supply reduction and demand reduction programs;

(3) "supply reduction" means any activity of a program conducted by a National Drug Control Program agency that is designed to reduce, directly or indirectly, the supply of drugs in the United States and abroad, including, but not limited to—

(A) international drug control;

(B) foreign and domestic drug enforcement intelligence;

(C) interdiction; and

(D) domestic drug law enforcement;

(4) "demand reduction" means any activity of a program conducted by a National Drug Control Program agency that is designed to reduce, directly or indirectly, the demand for and use of drugs, including, but not limited to—

(A) drug abuse education;

(B) prevention;

(C) treatment;

(D) research; and

(E) private sector initiatives;

(5) "National Drug Control Program" means the drug control programs, policies and activities that—

(A) the National Drug Control Program agencies undertake pursuant to the responsibilities of each such agency under the national drug control strategy; and

(B) are subject to review by the Director and modification by the President;

(6) "National Drug Control Program agencies" mean the agencies and all dedicated units thereof with responsibilities under the national drug control strategy including the—

(A) Department of Justice, including—

(i) the Drug Enforcement Administration;

(ii) the Federal Bureau of Investigation;

(iii) the United States Attorneys;

(iv) the United States Marshals Service;

(v) the Immigration and Naturalization Service;

(vi) National Central Bureau Interpol; and

(vii) the Criminal and Tax Divisions;

(B) Department of the Treasury, including—

(i) the United States Customs Service;

(ii) the Internal Revenue Service;

(iii) the Bureau of Alcohol, Tobacco and Firearms; and

(iv) the United States Secret Service;

(C) Department of Transportation, including—

(i) the Coast Guard; and

(ii) the Federal Aviation Administration;

(D) Department of State, including—

(i) the Bureau of International Narcotics Matters;

(ii) the Agency for International Development; and

(iii) the United States Information Agency;

(E) Department of Defense;

(F) Department of the Interior;

(G) Department of Agriculture;

(H) Food and Drug Administration;

(I) Department of Health and Human Services, including—

(i) the Alcohol, Drug Abuse and Mental Health Administration;

(ii) the Office for Substance Abuse Prevention;

(iii) the National Institute of Drug Abuse; and

(iv) the Indian Health Service;

(J) Department of Education;

(K) Department of Labor;

(L) ACTION;

(M) Office of Personnel Management;

(N) Central Intelligence Agency and all other intelligence community agencies;

(O) staff elements of the Director of National Drug Control Policy; and

(P) other departments or agencies with drug control responsibilities designated—

(i) jointly by the Director for National Drug Control Policy and the head of the relevant department or agency; or

(ii) by the President.

SEC. 1005. ESTABLISHMENT OF OFFICE.

(a) ESTABLISHMENT OF OFFICE.—There is established in the Executive Office of the President the "Office of National Drug Control Policy" (hereafter in this subtitle referred to as the "Office ").

(b) DIRECTOR AND DEPUTY DIRECTORS.—(1) There shall be at the head of the Office, a Director of National Drug Control Policy (hereafter in this subtitle referred to as the "Director").

(2) There shall be two deputy directors of the Office (hereafter in this subtitle referred to as the "Deputy Directors") as follows:

(A) A Deputy Director for Demand Reduction to be responsible for all programs to reduce the demand for drugs, including drug education, prevention, treatment, research, and private sector programs.

(B) A Deputy Director for Supply Reduction to be responsible for all programs to reduce the supply of drugs, including domestic drug law enforcement, interdiction, international and intelligence programs, and any other program designed to halt the production, importation, manufacture, distribution, or use of drugs.

(3) The Deputy Directors shall assist the Director in carrying out the functions of the Director under this Act.

(c) BUREAU OF STATE AND LOCAL AFFAIRS.—(1) There is established in the Office of National Drug Control Policy a Bureau of State and Local Affairs (hereafter in this subtitle referred to as the "Bureau").

(2) There shall be at the head of the Bureau an Associate Director for National Drug Control Policy.

SEC. 1006. APPOINTMENT AND DUTIES OF THE DIRECTOR, DEPUTY DIRECTORS AND ASSOCIATE DIRECTOR.

(a) APPOINTMENT.—(1) The Director, the Deputy Directors, and the Associate Director shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Director, the Deputy Directors, and the Associate Director shall each serve at the pleasure of the President. No person may serve as Director, a Deputy Director, or Associate Director for a period of more than 4 years, unless such person is reappointed to that same office by the President, by and with the advice and consent of the Senate. No person shall serve as Director, a Deputy Director, or Associate Director while serving in any other position in the Federal Government.

(3) The Director shall have the rank of Ambassador Extraordinary and Plenipotentiary.

(4) Section 101(a) of the National Security Act of 1947 (50 U.S.C. 402(a)) is amended in the fourth paragraph—

(1) in clause (6) by striking out "and" at the end thereof;

(2) by redesignating clause (7) as clause (8) and inserting before such clause the following:

"(7) the Director of the Office of Drug Control; and".

(5)(A) Section 5312 of title 5, United States Code, is amended by adding at the end thereof the following:

"Director of National Drug Control Policy.".

(B) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following:

"Deputy Director for Demand Reduction for National Drug Control Policy.

"Deputy Director for Supply Reduction for National Drug Control Policy.".

(C) Section 5315 of title 5, United States Code, is amended by adding at the end thereof:

"Associate Director for National Drug Control Policy.".

(b) FUNCTION OF DIRECTOR.—The Director shall serve as the principal director and coordinator of United States drug control policy.

(c) AUTHORITIES AND RESPONSIBILITIES OF THE DIRECTOR.—(1) The Director is authorized and directed to notify any National Drug Control Program agency that its policies are not in compliance with the responsibilities of such agency under the National Drug Control Strategy.

(2) The head of each National Drug Control Program agency shall ensure that the agency is in compliance with the responsibilities of such agency under the National Drug Control Strategy, as notified pursuant to paragraph (1) of this subsection. The head of any National Drug Control Program agency may appeal to the President any decision of the Director issued under paragraph (1) of this subsection.

(3) The Director shall—

(A) develop, review, implement and enforce Federal Government policy with respect to drug control programs;

(B) direct and coordinate all Federal Government drug supply reduction efforts, including international, intelligence, interdiction, and domestic drug law enforcement and all other programs designed to halt the production, importation, manufacture, provided in section 1008 of this title;

(C) direct and coordinate efforts between the Federal, State, and local governments, including the review of State and local drug control strategies, and the development of a State and local component to the distribution, and use of drugs;

(D) direct and coordinate all Federal Government drug demand reduction efforts, including education, prevention, treatment, research, and private sector programs;

(E) prepare a national drug control strategy as national drug control strategy as provided in section 1008 of this title;

(F) direct and coordinate the collection and dissemination of information necessary to implement United States policy with respect to drug supply and demand reduction efforts; and

(G) develop a consolidated national drug control policy including—

(i) developing, with the advice of the program managers of departments and agencies with responsibilities under the National Drug Control Program, the consolidated National Drug Control Program budget, and presenting such budget proposal to the President for submission to the Congress; and

(ii) initiating, reviewing, and approving all agency requests for reprogramming National Drug Control Program funds, in accordance with guidelines which shall be established by the Office of Management and Budget.

(d) CONSOLIDATING NATIONAL DRUG CONTROL PROGRAM BUDGET.—(1) In developing the National Drug Control Program budget, the Director shall provide each Federal Government program manager, agency head and department head with responsibilities under the national drug control strategy. Each such program manager, agency head, or department head shall submit the drug control budget request of the program, agency, or department to the Director at the same time as such request is submitted to their superiors (and before submission to the Office of Management and Budget) in the preparation of the budget of the President submitted to the Congress under section 1105(a) of title 31, United States Code. The Director shall approve or revise such requests in consultation with the appropriate program manager, agency or department head.

(2) The Director may reprogram funds within National Drug Control Programs.

(3) The Director may transfer, after providing notification to the Committees on Appropriations of the Senate and the House of Representatives, an amount not to exceed 5 per centum of the funds appropriated for one such program to another such program within the same National Drug Control Program agency.

(4) The head of any National Drug Control Program agency may appeal to the President any decision of the Director on budget and reprogramming matters relating to such agency.

(e) POWERS OF DIRECTOR.—In carrying out the responsibilities described under subsection (c) the Director may—

(1) select, appoint, employ, and fix compensation of such officers and employees as shall be necessary to carry out the powers and duties of the Office under this title;

(2) direct, with the concurrence of the Secretary of a department or head of an agency employing such personnel, the temporary reassignment of personnel within the Federal Government in order to implement United States drug control policy;

(3) to use, on a reimbursable basis, the available services, equipment, personnel, and facilities of Federal, State, and local agencies to the extent the Director determines appropriate after considering the effectiveness of such existing services, equipment, personnel, and facilities;

(4) procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, relating to appointments in the Federal Service, at rates of compensation for individuals not to exceed the daily equivalent of the rate of pay payable from time to time for GS-18 of the General Schedule under section 5332 of title 5, United States Code;

(5) accept and use donations of property from all government agencies;

(6) use the mails in the same manner as any other department or agency of the executive branch; and

(7) monitor National Drug Control Program implementation, including—

(A) conducting program and performance audits and evaluations; and

(B) requesting assistance from the Inspector General of the relevant agency in such audits and evaluations.

(f) Personnel Detailed to the Office.—(1) Notwithstanding any provision of chapter 42 of title 5, United States Code, the Director shall provide the evaluation of the performance of any employee detailed to the Office of National Drug Control Policy for purposes of the applicable performance appraisal system established under chapter 43 of title 5, United States Code, for any rating period, or part thereof, that such employee is detailed to the Office.

(2)(A) Subject to the provisions of subparagraph (B), in filling a position within any Executive agency through promotion, the head of such agency shall give preference to any employee who was detailed to the Office of National Drug Control Policy and received satisfactory performance appraisals during such detail, if—

(i) such employee is otherwise qualified for such position; and

(ii) such employee is eligible for appointment to such position.

(B)(i) Notwithstanding the provisions of subparagraph (A), no preference may be given to any employee under such subparagraph, with respect to a preference eligible (as defined under section 2108(3) of title 5, United States Code) who is eligible for the same position.

(ii) The provisions of subparagraph (A) shall apply to no more than one promotion for any employee.

SEC. 1007. DUTIES AND RESPONSIBILITIES OF THE HEADS OF EXECUTIVE BRANCH DEPARTMENTS AND AGENCIES.

(a) Access to Information.—(1) The heads of all executive branch departments and agencies shall—

(A) provide the Director with all information necessary and relevant to the National Drug Control Program and the development of the national drug control strategy; and

(B) give complete consideration to the requests from the Director for appropriate support for National Drug Control Program activities.

(2) The Director of Central Intelligence shall prescribe such regulations as may be necessary to protect the sources and methods of intelligence program information provided to the Director of National Drug Control Policy under this section.

(b) Budget Responsibilities of Executive Departments and Agencies.—The heads of National Drug Control Program agencies shall ensure—

(1) timely development and submission to the Director by the program managers and heads of component activities of proposed drug control programs and budgets in the format designated by the Director; and

(2) that the Director is provided, in a timely and responsive manner, all information necessary to perform the program and budget responsibilities of the Director.

(c) Certification by the Director.—(1) The heads of National Drug Control Program agencies shall, unless exigent circumstances require otherwise, provide the Director in writing with any proposed changes in policies relating to the activities of such department or agency under the National Drug Control Program prior to implementation of such changes. The Director shall promptly review such proposals and certify to the department or agency head in writing whether such changes are consistent with the National Drug Control Program.

(2) If prior notice of a proposed change under paragraph (1) is not possible, the department or agency head shall notify the Director as soon as is practicable. The Director shall review such change and certify to the department or agency head in writing whether such change is consistent with the National Drug Control Program.

(d) General Services Administration.—The Administrator of General Services shall provide to the Director on a reimbursable basis such administrative support services as the Director may request.

SEC. 1008. DEVELOPMENT AND SUBMISSION OF NATIONAL DRUG CONTROL STRATEGY.

(a) Development and Submission of the National Drug Control Strategy.—(1) No later than 180 days after the first Director is confirmed by the Senate, and in each fiscal year thereafter, the President shall submit to the Congress a National Drug Control Program budget and a complete national drug control strategy. Any part of such strategy that involves classified information may be presented to the Congress in closed proceedings.

(2) The national drug control strategy shall—

(A) be a comprehensive, research based, long-range plan for the Nation to follow in reducing drug abuse in the United States;

(B) indicate the balance between resources devoted to supply and demand reduction; and

(C) include a component on State and local drug control to ensure that the United States pursues a well-coordinated and effective drug control program at all levels of government.

(3)(A) In developing the national drug control strategy, the Director shall consult with—

(i) the National Drug Control Program agencies;

(ii) State and local officials;

(iii) private citizens with demonstrated experience and expertise in drug demand reduction; and

(iv) private citizens with experience and expertise in drug supply reduction.

(B) An initial draft of such strategy shall be circulated by the Director for a period of 30 days, during the 180-day period described under paragraph (1), for the purpose of obtaining comments from the National Drug Control program agencies.

(C) After reviewing the comments obtained under subparagraph (B), the Director shall—

(i) compose a final draft strategy;

(ii) circulate such final draft strategy to National Drug Control Program agencies for a period of 30 days; and

(iii) transmit such final draft strategy and all agency comments to the President.

(D) At the time the President submits the national drug control strategy the Director shall transmit a report to the Congress indicating the persons consulted under this paragraph.

(4) Beginning with the second submission of a budget and strategy described under paragraph (1), the Director shall include a complete evaluation of the effectiveness of United States drug control policy during the preceding year.

(b) Goals and Priorities.—The strategy developed pursuant to subsection (a) shall include—

(1) a complete list of goals and priorities in—

(A) international narcotics control;

(B) intelligence efforts relating to drug supply reduction efforts;

(C) interdiction;

(D) domestic drug law enforcement;

(E) drug demand reduction efforts, including education, prevention, treatment, research, and private sector initiatives; and

(F) cooperative efforts between the Federal, State, and local governments in the area of drug control;

(2) 5 year projections for program and budget priorities and achievable projections for reductions of drug availability, purity, and usage;

(3) a complete assessment of the way the program and budget priorities developed under subsection (a) are intended to implement the strategy and whether such resource levels are sufficient to implement the strategy;

(4) a mechanism of independent, outside, annual assessment of the effectiveness of the national drug control strategy and all programs administered thereto;

(5) the designation of the division of authority in each of the major areas of the National Drug Control Program and a mechanism to ensure maximum coordination and cooperation among all involved agencies; and

(6) the designation of lead agencies with areas of principal responsibility for carrying out the strategy.

(c) Areas of Principal Responsibilities of Strategy.—(1) The Director shall require that any National Drug Control Program agency that conducts an activity which is in the area of principal responsibility of a lead agency as designated under subsection (b)(6) shall—

(A) notify such lead agency in writing of the activity; and

(B) provide such notification prior to conducting such activity, unless exigent circumstances require otherwise.

(2) If a lead agency objects to the conduct of an activity described under paragraph (1), the lead agency and the agency planning to conduct such activity shall refer the matter to the Director for resolution.

(3) Nothing in this subsection may be construed to limit the authority of the Director to establish policies relating to the responsibilities of any National Drug Control Program agency under the national drug control strategy.

SEC. 1009. SUBMISSION OF NATIONAL DRUG CONTROL PROGRAM BUDGET WITH THE ANNUAL BUDGET REQUEST OF THE PRESIDENT.

Section 1105(a) of title 31, United States Code, is amended by adding at the end thereof the following:

"(26) a separate statement of the amount of appropriations requested for the Office of National Drug Control Policy and each program of the National Drug Control Program.".

SEC. 1010. HIGH-INTENSITY DRUG AREAS.

(a) Designation and Assistance.—The Director, upon consultation with the Attorney General, National Drug Control Program agencies, and the several Governors, is authorized to designate certain areas of the country as high intensity drug areas. Upon making such a designation and in order to provide Federal assistance to such area, the Director may—

(1) direct, with the concurrence of the Secretary of a department or head of an

agency employing such personnel, the temporary reassignment of Federal personnel to such areas;

(2) transfer, after providing notification to the Committees on Appropriations of the Senate and the House of Representatives, an amount not to exceed 5 per centum of the funds appropriated for one such program to another such program; and

(3) take any other action authorized under section 1006 of this subtitle to provide increased Federal assistance to such areas.

(b) Coordination.—The Director shall coordinate any action taken under subsection (a) of this section with State and local officials.

SEC. 1011. TERMINATION OF THE NATIONAL DRUG ENFORCEMENT POLICY BOARD, THE NATIONAL NARCOTICS BORDER INTERDICTION SYSTEM, AND THE WHITE HOUSE DRUG ABUSE POLICY OFFICE.

(a) National Drug Enforcement Policy Board.—(1) The National Drug Enforcement Policy Board is terminated effective on March 1, 1989. Upon such termination, all records and property of the National Drug Enforcement Policy Board shall be transferred to the Director. The Director of the Office of Management and Budget shall take such actions as are necessary to facilitate such transfer.

(2) All strategies, implementation plans, memoranda of understanding and directives that have been issued or made by the National Drug Policy Board before the date of the enactment of this subtitle shall continue in effect until modified, terminated, superseded, set aside, or revoked by the President or the Director.

(3) The National Narcotics Act of 1984 (21 U.S.C. 1201 et seq.) is repealed effective on March 1, 1989.

(b) National Narcotics Border Interdiction System.—Notwithstanding any other provision of law, no funds may be expended for any activities or operations of the national narcotics border interdiction system after 180 days after the date on which the first Director appointed under this title is confirmed by the Senate. The Director shall provide that the functions of the national narcotics border interdiction system are transferred to other agencies to the extent such activities continue after the date of the enactment of this title. The Director of the Office of Management and Budget shall take such action as is necessary to facilitate such transfer.

(c) White House Office of Drug Abuse Policy.—(1) No later than 90 days after the date of enactment of this title, the White House Drug Abuse Policy Office established under Executive Order No. 12368 shall terminate.

(2) Sections 103, 201, 202, 203, 204, and 206 of the Drug Abuse Prevention, Treatment, and Rehabilitation Act (21 U.S.C. 1103, 1111, 1112, 1113, 1114, and 1116) are repealed. Section 205 of such Act is redesignated as section 201.

SEC. 1012. EXECUTIVE REORGANIZATION AUTHORITY.

(a) Report to the Congress and the President.—No later than 1 year after the date of enactment of this title the Director shall submit a report to the President and the Congress on the necessity to group, coordinate, and consolidate agencies and functions of the Government involved in drug supply reduction and drug demand reduction in order to—

(1) promote better execution of the laws;

(2) provide more effective management of the executive branch;

(3) reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the executive branch; and

(4) reduce the number of agencies by consolidating agencies having similar functions under a single head, and to abolish such agencies or functions as may not be necessary for the efficient conduct of the executive branch.

(b) Legislative Recommendations.—The report submitted under subsection (a) shall include any appropriate legislative recommendations for the Congress.

(c) United States Coast Guard Study.—In addition, the report submitted under subsection (a) shall include a comprehensive review of all options for United States Coast Guard reorganization including the creation of a separate department for the purpose of enhancing the capabilities, manpower and equipment of the United States Coast Guard in order to substantially increase the long-term role of the Coast Guard in drug interdiction and enforcement efforts and to ensure a steady and assured source of funding for this important mission.

SEC. 1013. TERMINATION OF THE OFFICE OF NATIONAL DRUG CONTROL POLICY.

This subtitle and the amendments made by this subtitle are repealed effective on the date occurring 5 years after the date of the enactment of this subtitle.

SEC. 1014. AUTHORIZATION OF APPROPRIATIONS.

For the purposes of carrying out this subtitle, there are authorized to be appropriated $6,500,000 for fiscal year 1989 and such sums as may be necessary for each of the 4 succeeding fiscal years, to remain available until expended.

SEC. 1015. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall be effective on January 21, 1989.

Subtitle B—Department of Justice Civil Enforcement Enhancement

SEC. 1051. SHORT TITLE.

This subtitle may be cited as the "Justice Department Organized Crime and Drug Enforcement Enhancement Act of 1988".

SEC. 1052. FINDINGS.

The Congress finds that—

(1) organized criminal activity contributes significantly to the importation, distribution, and sale of illegal and dangerous drugs;

(2) trends in drug trafficking patterns necessitate a response that gives appropriate weight to—

(A) the prosecution of drug-related crimes; and

(B) the forfeiture and seizure of assets and other civil remedies used to strike at the inherent strength of the drug networks and organized crime groups;

(3) law enforcement components of the Department of Justice should give high priority to the enforcement of civil sanctions against drug networks and organized crime groups; and

(4) the structure of the Department of Justice Criminal Division needs to be reviewed in order to determine the most effective structure to address such drug-related problems.

SEC. 1053. CIVIL ENFORCEMENT REPORT.

(a) Report.—Not later than 1 year after the date of the enactment of this title, the Director of National Drug Control Policy (the Director) in consultation with the Attorney General, shall report to the Congress on the necessity to establish a new division or make other organizational changes within the Department of Justice in order to promote better civil and criminal law enforcement. In preparing such report, the Director shall consider restructuring and consolidating one or more of the following divisions and programs—

(1) the Organized Crime and Racketeering Section of the Criminal Division and all subordinate strike forces therein;

(2) the Narcotic and Dangerous Drug Section of the Criminal Division;

(3) the Asset Forfeiture Office of the Criminal Division; and

(4) the Organized Crime Drug Enforcement Task Force Program;

(b) Legislative Recommendations.—The report submitted under subsection (a) shall include appropriate legislative recommendations for the Congress.

SEC. 1054. CIVIL ENFORCEMENT ENHANCEMENT.

(a) Duty of Attorney General.—The Attorney General shall insure that each component of the Department of Justice having criminal law enforcement responsibilities with respect to the prosecution of organized crime and controlled substances violations, including each United States Attorney's Office, attaches a high priority to the enforcement of civil statutes creating ancillary sanctions and remedies for such violations, such as civil penalties and actions, forfeitures, injunctions and restraining orders, and collection of fines.

(b) Duty of Associate Attorney General.—The Associate Attorney General shall be responsible for implementing the policy set forth in this subsection.

(c) Authorization of Appropriations.—(1) There are authorized to be appropriated $2,175,000 for salaries and expenses to the Department of Justice General Legal Activities Account and $2,175,000 for salaries and expenses for United States Attorneys for fiscal year 1989.

(2) Any appropriation of funds authorized under paragraph (1) shall be—

(A) in addition to any appropriations requested by the President in the 1989 fiscal year budget submitted by the President to the Congress on February 18, 1988, or provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989; and

(B) used to increase the number of field attorneys and related support staff over such personnel levels employed at the Department of Justice on September 30, 1988.

(3) Any increase in full-time equivalent positions described under paragraph (2)(B) shall be exclusively used for asset forfeiture and civil enforcement and be assigned to appropriate field offices of the Organized Crime and Racketeering Section and the Organized Crime Drug Enforcement Task Forces.

(d) Reporting Requirement.—The Attorney General, at the end of each such fiscal year, shall file a report with the Congress setting forth the extent of such enforcement efforts, as well as the need for any enhancements in resources necessary to carry out this policy.

SEC. 1055. COORDINATION AND ENHANCEMENT OF FIELD ACTIVITIES.

(a) Field Offices.—To the greatest extent feasible, field offices of the Organized Crime and Racketeering Section and the Organized Crime Drug Enforcement Task Forces should be colocated with offices of the appropriate United States Attorney in order to enhance and coordinate their respective activities.

(b) Task Force Agents.—To the greatest extent feasible, those agents assigned to the

Organized Crime Drug Enforcement Task Force program shall be dedicated exclusively to and located with the Task Forces so that the Task Force personnel may develop increased expertise and function as a working unit. Those agents assigned to the Task Forces from the various participating agencies shall be given credit for the work of the Task Force, regardless of the statutory authority used to prosecute Task Force cases or the criminal or civil nature of the investigation.

(c) EXPENSES OF TASK FORCES.—(1) Beginning in fiscal year 1990, the Attorney General in his budget shall submit a separate appropriations request for expenses relating to all Federal agencies participating in the Organized Crime Drug Enforcement Task Forces. Such appropriations shall be made to the Department of Justice's Interagency Law Enforcement Appropriation Account for the Attorney General to make reimbursements to the involved agencies as necessary.

(2) The appropriations and reimbursements procedure described under paragraph (1) shall—

(A) provide for the flexibility of the Task Forces which is vital to success;

(B) permit Federal law enforcement resources to be shifted in response to changing patterns of organized criminal drug activities;

(C) permit the Attorney General to reallocate resources among the organizational components of the Task Forces and between regions without undue delay; and

(D) ensure that the Task Forces function as a unit, without the competition for resources among the participating agencies that would undermine the overall effort.

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SEC. 2101. VIOLENT FELONIES BY JUVENILES.

Section 924(e) of title 18, United States Code, is amended—

(1) in paragraph (e)(2)(B), by inserting ", or any act of juvenile delinquency that would be punishable by imprisonment for such term if committed by an adult," after "one year"; and

(2) by adding at the end thereof the following:

"(C) the term 'conviction' includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.".

SEC. 2102. LIFE IN PRISON FOR THREE-TIME DRUG OFFENDER.

(a) PENALTY FOR THIRD OFFENSE.—Section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)) is amended—

(1) in the sentence beginning "If any person commits" by striking "one or more prior convictions" through "have become final" and inserting "a prior conviction for a felony drug offense has become final"; and

(2) adding after such sentence the following: "If any person commits a violation of this subparagraph or of sections 405, 405A, or 405B after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence. For purposes of this subparagraph, the term 'felony drug offense' means an offense that is a felony under any provision of this title or any other Federal law that prohibits or restricts conduct relating to narcotic drugs, marihuana, or depressant or stimulant substances or a felony under any law of a State or a foreign country that prohibits or restricts conduct relating to narcotic drugs, marihuana, or depressant or stimulant substances.".

(b) CONFORMING AMENDMENTS.—(1) Sections 405(b), 405A(b) and 405B(c) of the Controlled Substances Act (21 U.S.C. 845(b), 845a(b) and 845b(c)) are amended—

(A) by striking "a prior conviction or convictions" and inserting "a prior conviction", and

(B) by inserting at the end thereof the following: "Penalties for third and subsequent convictions shall be governed by section 401(b)(1)(A).".

(2) Section 405(b) of the Controlled Substances Act (21 U.S.C. 845(b)) is amended by striking "or subsequent" from the caption.

Subtitle B—Public Corruption

SEC. 2151. NARCOTICS-RELATED PUBLIC CORRUPTION.

(a) IN GENERAL.—Chapter 11 of title 18, United States Code, is amended by inserting after section 219 the following new section:

"§ 220. Narcotics and public corruption.

"(a) Any public official who, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person in return for—

"(1) being influenced in the performance or non-performance of any official act; or

"(2) being influenced to commit or to aid in committing, or to collude in, or to allow or make opportunity for the commission of any offense against the United States or any State;

shall be guilty of a class B felony.

"(b) Any person who, directly or indirectly, corruptly gives, offers or promises anything of value to any public official, or offers or promises any public official to give anything of value to any other person, with intent—

"(1) to influence any official act;

"(2) to influence such public official to commit or aid in committing, or to collude in, or to allow or make opportunity for the commission of any offense against the United States or any State; or

"(3) to influence such public official to do or to omit to do any act in violation of such official's lawful duty;

shall be guilty of a class B felony.

"(c) There shall be Federal jurisdiction over an offense described in this section if such offense involves, is part of, or is intended to further or to conceal the illegal possession, importation, manufacture, transportation, or distribution of any controlled substance or controlled substance analogue.

"(d) For the purpose of this section—

"(1) the term 'public official' means—

"(A) an officer or employee or person acting for or on behalf of the United States, or any department, agency, or branch of Government thereof in any official function, under or by authority of any such department, agency, or branch of Government;

"(B) a juror

"(C) an officer or employee or person acting for or on behalf of the government of any State, territory or possession of the United States (including the District of Columbia), or any political subdivision thereof, in any official function, under or by the authority of any such State, territory, possession, or political subdivision; or

"(D) any person who has been nominated or appointed to be a public official as defined in subparagraph (A), (B), or (C), or has been officially informed that he or she will be so nominated or appointed;

"(2) the term 'official act' means any decision, action or conduct regarding any question, matter, proceeding, cause, suit, investigation, or prosecution which may at any time be pending, or which may be brought before any public official, in such official's official capacity, or in such official's place of trust or profit; and

"(3) the terms 'controlled substance' and 'controlled substance analogue' have the meaning set forth in section 102 of the Controlled Substances Act."

(b) Conforming Amendments.—(1) Section 1961(1) of title 18, United States Code, is amended by inserting "section 220 (relating to narcotics and public corruption)," after "Section 201 (relating to bribery),"; and

(2) Section 2516(1)(c) of title 18, United States Code, is amended by inserting "section 220 (relating to narcotics and public corruption)," after "section 201 (bribery of public officials and witnesses),".

(c) Section Analysis.—The section analysis at the beginning of chapter 11, title 18, United States Code, is amended by inserting the following:

"220. Narcotics and public corruption.".

Subtitle C—Importation

SEC. 2201. PENALTIES FOR IMPORTATION BY AIRCRAFT AND OTHER VESSELS.

(a) In General.—Pursuant to its authority under section 994(p) of title 28, United States Code, and section 21 of the Sentencing Act of 1987, the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines, to provide that a defendant convicted of violating section 1010(a) of the Controlled Substances Import and Export Act (21 U.S.C. 960(a)) under circumstances in which—

(1) an aircraft other than a regularly scheduled commercial air carrier was used to import the controlled substance; or

(2) the defendant acted as a pilot, copilot, captain, navigator, flight officer, or any other operation officer aboard any craft or vessel carrying a controlled substance,

shall be assigned an offense level under chapter 2 of the sentencing guidelines that is—

(A) two levels greater than the level that would have been assigned had the offense not been committed under circumstances set forth in (A) or (B) above; and

(B) in no event less than level 26.

(b) Effect of Amendment.—If the sentencing guidelines are amended after the effective date of this section, the Sentencing Commission shall implement the instruction set forth in subsection (a) so as to achieve a comparable result.

Subtitle D—Schools and Minors

SEC. 2251. ENHANCED PENALTIES FOR OFFENSES INVOLVING CHILDREN.

(a) In General.—Pursuant to its authority under section 994(p) of title 28, United States Code, and section 21 of the Sentencing Act of 1987, the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines, to provide that a defendant convicted of violating sections 405, 405A, or 405B of the Controlled Substances Act (21 U.S.C. 845, 845a or 845b) involving a person under 18 years of age shall be assigned an offense level under chapter 2 of the sentencing guidelines that is—

(1) two levels greater than the level that would have been assigned for the underlying controlled substance offense; and

(2) in no event less than level 26.

(b) Effects of Amendment.—If the sentencing guidelines are amended after the effective date of this section, the Sentencing Commission shall implement the instruction set forth in subsection (a) so as to achieve a comparable result.

(c) Multiple Enhancements.—The guidelines referred to in subsection (a), as promulgated or amended under such subsection, shall provide that an offense that could be subject to multiple enhancements pursuant to such subsection is subject to not more than one such enhancement.

SEC. 2252. EXCEPTION TO MANDATORY MINIMUM PENALTY FOR FIRST OFFENSE.

Section 405(a) of the Controlled Substances Act (21 U.S.C. 845(a)) is amended by inserting at the end the following: "The mandatory minimum sentencing provisions of this subsection shall not apply to offenses involving 5 grams or less of marihuana.".

SEC. 2253. ELIMINATION OF EXCEPTION TO MANDATORY MINIMUM FOR SECOND OFFENSES.

Section 405(b) of the Controlled Substances Act (21 U.S.C. 845(b)) is amended by striking "The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.".

SEC. 2254. POSSESSION WITH INTENT TO DISTRIBUTE WITHIN 1,000 FEET OF A SCHOOLYARD.

Sections 405A (a) and (b) of the Controlled Substances Act (21 U.S.C. 845a(a) and (b)) are amended by inserting ", possessing with intent to distribute," after "distributing".

SEC. 2254A. PLAYGROUNDS, YOUTH CENTERS, SWIMMING POOLS AND VIDEO ARCADES.

(a) Sections 405A (a) and (b) of the Controlled Substances Act (21 U.S.C. 845a (a) and (b)) are amended by inserting ", or within 100 feet of a playground, public or private youth center, public swimming pool, or video arcade facility," after "university".

(b) Section 405A of the Controlled Substances Act (21 U.S.C. 845a) is amended by adding at the end thereof the following subsection:

"(d) For the purposes of this section—

"(1) The term 'playground' means any outdoor facility (including any parking lot appurtenant thereto) intended for recreation, open to the public, and with any portion thereof containing three or more separate apparatus intended for the recreation of children including, but not limited to, sliding boards, swingsets, and teeterboards.

"(2) The term 'youth center' means any recreational facility and/or gymnasium, (including any parking lot appurtenant thereto) intended primarily for use by persons under 18 years of age, which regularly provides athletic, civic, or cultural activities.

"(3) The term 'video arcade facility' means any facility, legally accessible to persons under 18 years of age, intended primarily for the use of pinball and video machines for amusement containing a minimum of ten pinball and/or video machines.

"(4) The term 'swimming pool' includes any parking lot appurtenant thereto.".

SEC. 2255. APPLICATION OF MANDATORY MINIMUM PENALTIES TO PURCHASE OF CONTROLLED SUBSTANCES FROM MINORS.

Section 405b(a) of the Controlled Substances Act (21 U.S.C. 845b(a)) is amended by—

(1) striking "or" after the semicolon in paragraph (1);

(2) striking the period at the end of paragraph (2) and inserting "; or"; and

(3) adding at the end thereof the following:

"(3) receive a controlled substance from a person under 18 years of age in violation of this title or title III.".

Subtitle E—Firearms

SEC. 2302. ENHANCED PENALTIES FOR USE OF CERTAIN WEAPONS IN CONNECTION WITH A CRIME OF VIOLENCE OR DRUG TRAFFICKING CRIME.

Subsection (c)(1) of section 924 of title 18, United States Code, is amended—

(1) in the first sentence—

(A) by striking "five years" and inserting "ten years"; and

(B) by striking "ten years" and inserting "thirty years"; and

(2) in the second sentence—

(A) by striking "ten years" and inserting "twenty years"; and

(B) by striking "20 years" and inserting "life imprisonment without release".

SEC. 2304. PROHIBITION OF DANGEROUS WEAPONS IN FEDERAL FACILITIES.

(a) Offense.—Chapter 44 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 930. Possession of firearms and dangerous weapons in a Federal facility

"(a) Except as provided in subsection (c), whoever knowingly possesses or causes to be present any firearm or dangerous weapon in a Federal facility, or attempts to do so, shall be sentenced to imprisonment for not more than 1 year, or fined in accordance with the provisions of this title, or both.

"(b) Whoever knowingly possesses or causes to be present any firearm or dangerous weapon in a Federal facility, or attempts to do so, with intent that the firearm or dangerous weapon be used in the commission of a crime, shall be sentenced to imprisonment for not more than 5 years, or fined in accordance with the provisions of this title, or both.

"(c) Subsection (a) shall not apply to any act performed in the lawful performance of official duties by an officer, agent, or employee of the United States, a State, or a political subdivision thereof, authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of law, and shall not apply to the authorized possession of a firearm or dangerous weapon by a Federal official or a member of the armed services.

"(d) Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt; nor shall anything in this section interfere with or limit in any way the power of a court of the United States to promulgate rules or orders regulating, restricting, or prohibiting the possession of weapons within any building, or upon any grounds appurtenant thereto, housing any such court or any of its proceedings.

"(e) As used in this section—

"(1) the term 'Federal facility' means any building where Federal employees are regularly present for the purpose of performing their official duties;

"(2) the term 'dangerous weapon' means any weapon, device, instrument, material, or substance, animate or inanimate, that is used or is capable of use to cause death or serious bodily injury.

"(f) Notice to the effect of subsections (a) and (b), shall be posted conspicuously at each public entrance to each Federal facility, and no person shall be convicted of an offense under subsection (a) if such notice is not posted, unless such person had actual notice of the effect of subsection (a).".

(b) TABLE OF SECTIONS.—The analysis at the beginning of chapter 44 of title 18 of the United States Code is amended by adding at the end thereof the following:

"930. Possession of firearms and dangerous weapons in Federal facilities.".

SEC. 2305. INCLUSION OF FEDERAL FIREARMS VIOLATIONS AS PREDICATE WIRETAP OFFENSES.

Section 2516(1) of title 18, United States Code, is amended by adding at the end thereof the following:

"(m) any felony violation of sections 922 and 924 of title 18, United States Code (relating to firearms); and

"(n) any violation of section 5861 of the Internal Revenue Code of 1986 (relating to firearms).".

SEC. 2306. INCREASED PENALTIES FOR CERTAIN FIREARMS OFFENSES.

Section 924(a) of title 18, United States Code, is amended by—

(1) inserting "or 3" after "paragraph 2" in paragraph (1);

(2) striking out "(g), (i), (j)," in subparagraph (a)(1)(B);

(3) redesignating subsection (a)(2) as subsection (a)(3); and

(4) inserting a new subsection (a)(2) to read as follows:

"(2) Whoever knowingly violates subsections (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years or both.".

Subtitle F—Money Laundering

SEC. 2351. MONEY LAUNDERING FORFEITURES.

(a) CIVIL FORFEITURE.—Section 981(a)(1) of title 18, United States Code, is amended—

(1) by striking out subparagraph (A) and inserting in lieu thereof the following:

"(A) Any property, real or personal, involved in a transaction or attempted transaction in violation of section 5313(a) or 5324 of title 31, or of section 1956 or 1957 of this title, or any property traceable to such property. However, no property shall be seized or forfeited in the case of a violation of section 5313(a) of title 31 by a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission or a partner, director, or employee thereof."; and

(2) by striking out subparagraph (C).

(b) CONFORMING AMENDMENT.—Section 981(b) of title 18, United States Code, is amended by striking out "involved in a violation of section 1956 or 1957 of this title investigated by the Secretary of the Treasury, and any property subject to forfeiture under subsection (a)(1)(C) of this section" and inserting in lieu thereof "involved in a violation of section 5313(a) or 5324 of title 31 or of section 1956 or 1957 of this title investigated by the Secretary of the Treasury".

(c) CRIMINAL FORFEITURE.—Section 982(a) of title 18, United States Code, is amended to read as follows:

"(a) The court, in imposing sentence on a person convicted of an offense in violation of section 5313(a) or 5324 of title 31, or of section 1956 or 1957 of this title, shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property. However, no property shall be seized or forfeited in the case of a violation of section 5313(a) of title 31 by a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission or a partner, director, or employee thereof.".

SEC. 2352. FORFEITURE OF SUBSTITUTE ASSETS FOR MONEY LAUNDERING OFFENSE.

Section 982(b) of title 18, United States Code, is amended—

(1) by striking "(o)" both places it appears, and inserting "(p)" in lieu thereof; and

(2) by adding at the end the following: "However, the substitution of assets provisions of subsection 413(p) shall not be used to order a defendant to forfeit assets in place of the actual property laundered where such defendant acted merely as an intermediary who handled but did not retain the property in the course of the money laundering offense.".

SEC. 2353. UNDERCOVER "STING" OPERATIONS IN MONEY LAUNDERING CASES.

Section 1956(a) of title 18, United States Code, is amended by inserting after paragraph (a)(2) the following new paragraph:

"(3) Whoever, with the intent—

"(A) to promote the carrying on of specified unlawful activity;

"(B) to conceal or disguise the nature, location, source, ownership, or control of the proceeds of specified unlawful activity; or

"(C) to avoid a transaction reporting requirement under State or Federal law,

conducts or attempts to conduct a financial transaction involving property represented directly or indirectly by a law enforcement officer to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph, the term 'law enforcement officer' includes any person who, at the time the representation was made, was acting at the direction of a Federal official authorized to investigate or prosecute violations of this section.".

SEC. 2354. SPECIFIED UNLAWFUL ACTIVITY.

Section 1956(c)(7)(D) of title 18, United States Code, is amended by—

(1) inserting "section 542 (relating to entry of goods by means of false statements)," after "securities of States and private entities),";

(2) inserting "section 549 (relating to removing goods from Customs custody)," after "smuggling goods into the United States),"; and

(3) inserting "section 2319 (relating to copyright infringement), section 310 of the Controlled Substances Act (21 U.S.C. 830) (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 1822 of the Mail Order Drug Paraphernalia Control Act (100 Stat. 3207-51; 21 U.S.C. 857) (relating to transportation of drug paraphenalia)," after "postal robbery and theft) of this title,".

SEC. 2355. BANK SECRECY ACT AMENDMENTS.

(a) BUSINESS SIMILAR TO FINANCIAL INSTITUTIONS.—Section 5312(a)(2) of title 31, United States Code, is amended by striking subparagraphs (T) and (U) and inserting the following:

"(T) a business engaged in vehicle sales, including automobile, airplane, and boat sales;

"(U) persons involved in real estate closings and settlements;

"(V) the United States Postal Service;

"(W) an agency of the United States Government or of a State or local government carrying out a duty or power of a business described in this clause (2);

"(X) any other business or agency carrying out a similar, related, or substitute duty or power the Secretary prescribes; or

"(Y) any other business designated by the Secretary whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.".

(b) SECRETARY'S AUTHORITY.—Section 5313 of title 31, United States Code, is amended by adding a new paragraph (c) as follows:

"(c) The Secretary may prescribe that a financial institution, as defined in section 5312(a)(2)(Y) of this subchapter, file a report of receipt of coins or currency (or other monetary instruments as the Secretary prescribes) at a time and in the way the Secretary prescribes. However, the Secretary shall permit such business to comply with any reporting requirement under this section by filing a copy of the return required under section 6050I of the Internal Revenue Code of 1986.".

(c) AUTHORITY.—Section 5318(a)(2) of title 31, United States Code, is amended by inserting "and follow" after "maintain".

(d) PENALTIES FOR VIOLATIONS.—Section 5321(a)(1) of title 31, United States Code, is amended to read as follows:

"(a)(1) A domestic financial institution, and a partner, director, officer, or employee of a domestic financial institution, willfully violating this subchapter or a regulation prescribed under this subchapter (except sections 5314, 5315 and 5318 of this title or a regulation prescribed under section 5314, 5315, or 5318) is liable to the United States Government for a civil penalty of not more than the greater of the amount (not to exceed $100,000) involved in the transaction or $25,000. A domestic financial institution, and a partner, director, officer, or employee of a domestic financial institution willfully violating section 5318(a)(2) of this title or a regulation thereunder is liable to the United States for civil penalty of not more than $10,000. For a violation of section 5318(a)(2) of this title or a regulation prescribed thereunder, a separate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues.".

(e) IDENTIFICATION REQUIREMENT FOR $3,000 TRANSACTION.—(1) Chapter 53 of title 31, United States Code, is amended by adding at the end the following new section:

"§ 5325. Identification required to purchase certain monetary instruments

"(a) A financial institution that sells cashier's checks, traveler's checks, bank checks, money orders or similar instruments prescribed by the Secretary, for coin or currency to any person must, in the case of any such transaction or group of such contemporaneous transactions involving $3,000 or more—

"(1) if the person conducting the transaction has a transaction account with such financial institution, verify that fact through a signature card or other information maintained by such institution and record the method of verification, as prescribed by the Secretary; or

"(2) if the person conducting the transaction does not have a transaction account with such financial institution, require such forms of identification, as the Secretary shall prescribe, and verify and record such information, as the Secretary shall prescribe.

"(b) Information required to be recorded under subsection (a) of the section will be reported to the Secretary upon request.

"(c) For the purpose of this section, the term 'transaction account' shall have the same meaning as is provided in section 19(b)(1)(C) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(C)).".

(2) Conforming Amendment.—The table of sections at the beginning of chapter 53 of such title is amended by adding at the end thereof the following new item:

"5325. Identification required to purchase certain monetary instruments.".

(f) Regulations and Penalties.—Section 21(b) of the Federal Deposit Insurance Act (12 U.S.C. 1829b(b)) is amended to read as follows:

"(b) Regulations and Penalties.—

"(1) Where the Secretary of the Treasury (referred to in this section as the 'Secretary') determines that the maintenance of appropriate types of records and other evidence by insured banks has a high degree of usefulness in criminal, tax or regulatory investigations or proceedings, he shall prescribe regulations to carry out the purposes of this section.

"(2) For each willful or grossly negligent violation of any regulation issued by the Secretary pursuant to paragraph (1) of this subsection, the Secretary may impose on any bank and partner, director, officer, or employee of a bank who participates in the violation, a civil penalty not to exceed $10,000, and for each negligent violation, a civil penalty not to exceed $500. A separate violation occurs for each day the violation continues at each office, branch, or place of business at which a violation occurs. Such penalties will be assessed, mitigated and collected in accordance with the provisions of section 5321 of title 31, United States Code.".

(g) Authority of Secretary.—Section 123(b) of title I of Public Law 91-508 (12 U.S.C. 1953(b)) is amended to read as follows:

"(b) The authority of the Secretary under this section extends to any financial institution and partner, officer, director or employee of a financial institution as defined in section 5312, title 31, United States Code, other than a bank subject to section 21(b) of the Federal Deposit Insurance Act (12 U.S.C. 1829b).".

(h) Monetary Fines.—Section 125 of title I of Public Law 91-508 (12 U.S.C. 1955(a)), is amended by—

(1) replacing "$1,000" with "$10,000';

(2) striking the period and adding at the end thereof the words, ", and for any negligent violation, a civil penalty not exceeding $500."; and

(3) inserting "or grossly negligent" after "willful".

SEC. 2356. EXCEPTION TO REQUIREMENT OF ACTUAL PRESENTATION OF FINANCIAL RECORDS TO GRAND JURY.

Section 1120(1) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 1120(1)) is amended by inserting before the semicolon "unless the volume of such records makes such return and actual presentation impractical in which case the grand jury shall be provided with a description of the contents of the records.".

SEC. 2357. RIGHT TO FINANCIAL PRIVACY ACT AMENDMENT.

Section 1103(c) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3403(c)) is amended by inserting the words "or corporation" after the word "individual".

Subtitle G—Juvenile Justice

SEC. 2401. MINORS CONVICTED OF DRUG TRAFFICKING.

(a) Delinquency Proceedings.—Section 5032 of title 18, United States Code, is amended—

(1) in the first undesignated paragraph, by striking out "section 841, 952(a), 955, or 959 of title 21," and inserting in lieu thereof "section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1003, 1005, 1009, or 1010(b) (1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b) (1), (2), (3)), or section 922(p) of this title,"; and

(2) in the fourth undesignated paragraph—

(A) by striking out "section 841, 952(a), 955, or 959 of title 21," and inserting in lieu thereof "section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959),"; and

(B) by inserting after "2275 of this title," the following: "subsection (b)(1) (A), (B), or (C), (d), or (e) of section 401 of the Controlled Substances Act, or section 1002(a), 1003, 1009, or 1010(b) (1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b) (1), (2), (3)),".

(b) Surrender to State Authorities.—The first undesignated paragraph of section 5001 of title 18, United States Code, is amended by inserting before the period at the end thereof the following: ", unless such surrender is precluded under section 5032 of this title".

Subtitle I—Prisons

SEC. 2501. DRUG OFFENSES WITHIN FEDERAL PRISONS.

(a) Twenty Year Maximum Penalty.—Section 1791(b) of title 18, United States Code, is amended—

(1) by redesignating paragraphs (1) through (4) as (2) through (5), respectively;

(2) by inserting before paragraph (2), as so redesignated, the following new paragraph (1):

"(1) imprisonment for not more than 20 years, or both, if the object is specified in subsection (d)(1)(C) of this section;"; and

(3) in paragraph (3), as so redesignated, by striking "or (c)(1)(C)".

(b) Consecutive Sentences.—Section 1791 of title 18, United States Code, is further amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection (c):

"(c) Any punishment imposed under subsection (b) for a violation of this section by an inmate of a prison shall be consecutive to the sentence being served by such inmate at the time the inmate commits such violation.".

(c) Pursuant to its authority under section 994(p) of title 28, United States Code, and section 21 of the Sentencing Act of 1987, the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines, to provide that a defendant convicted of violating section 1791(a)(1) of title 18, United States Code, and punishable under section 1791(b)(1) of that title as so redesignated, shall be assigned an offense level under chapter 2 of the sentencing guidelines that is—

(1) two levels greater than the level that would have been assigned had the offense not been committed in prison; and

(2) in no event less than level 26.

(d) If the sentencing guidelines are amended after the effective date of this section, the Sentencing Commission shall implement the instruction set forth in subsection (c) so as to achieve a comparable result.

SEC. 2502. PAYMENT OF COSTS OF INCARCERATION BY FEDERAL PRISONERS.

Not later than 1 year after the date of enactment of this section, the Attorney General shall study and, if appropriate, develop and submit to Congress proposed legislation which would require prisoners incarcerated in Federal correctional institutions to pay all costs incident to the prisoner's confinement, including, but not limited to, the costs of food, housing, and shelter. The legislation shall include measures which would allow prisoners unable to pay such costs to work at paid employment within the community, during incarceration or after release, in order to pay the costs incident to the prisoner's confinement. The legislation shall also include an estimate of budget authority necessary for implementation of the legislation.

Subtitle J—Drug Testing as a Condition of Probation and Supervised Release

SEC. 2551. DRUG TESTS AS A CONDITION OF PROBATION AND SUPERVISED RELEASE.

(a) Probation.—(1) Section 3563(a) of title 18, United States Code, is amended by—

(A) striking "and" after the semicolon in paragraph (1);

(B) striking the period at the end of paragraph (2) and inserting "; and";

(C) inserting after paragraph (2) the following:

"(3) for a felony, that the defendant submit to periodic drug tests for use of controlled substances at least once every 60 days, with the defendant to pay the actual cost of the testing unless the court determines it would be unreasonable to impose such cost."; and

(D) inserting after the second sentence the following: "The requirement that drug tests be administered at least once every 60 days under paragraph (3) may be suspended upon motion of the Attorney General if, after at least 1 year of probation, the defendant has passed all drug tests administered pursuant to this section.".

(2) Section 3563 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(e) Drug Testing.—In every case involving a misdemeanor, the court shall make a determination whether, in addition to any conditions of probation imposed under subsections (a) and (b), the defendant should be ordered to submit to periodic drug tests. If the court finds that a defendant committed a misdemeanor involving unlawful conduct with drugs, or that the defendant has a history of drug abuse, the court shall order the defendant to submit to periodic drug testing.".

(3) Section 3565(a) of title 18, United States Code, is amended by adding at the end thereof the following: "Notwithstanding any other provision of this section, if the defendant tests positive for illegal use of controlled substances, thereby violating the condition imposed by section 3563(a), on two separate tests taken at least 3 weeks apart, the court shall, in addition to any other action which may be taken pursuant to this section (A) revoke the sentence of probation and sentence the defendant to a period of imprisonment, (B) require the defendant to reside and participate in a residential community drug treatment center

program, or participate in an outpatient drug treatment program if residential treatment is unavailable or impractical, or (C) require the defendant to remain at his place of residence pursuant to section 3563(b)(20). Notwithstanding any other provision of this section, if the defendant tests positive for the illegal use of controlled substances, thereby violating the condition set forth in section 3563 (a) or (e), on three separate tests taken at least 3 weeks apart, the court shall revoke the sentence of probation and sentence the defendant to not less than one-third of the original sentence."

(4) Section 3565 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(c) Limitation of Actions Based on Drug Testing.—(1) No action may be taken against a defendant pursuant to this section on the basis of a urine test administered to the defendant unless the test was a urine test conducted in accordance with—

"(A) requirements and procedures prescribed by the Director of the Administrative Office of the United States Courts which shall be substantially consistent with the Mandatory Guidelines on Federal Employee Drug Testing Programs issued by the Secretary of Health and Human Services on April 11, 1988; and

"(B) the procedures for urine specimen collection set out in section 2.2 (a)-(d) and (f)-(h) of such guidelines.

"(2) The Director shall include in the regulations referred to in paragraph (1) the following requirements:

"(A) That the laboratory which conducts drug testing engage in urine drug testing in accordance with such regulations.

"(B) That the laboratory follow laboratory analysis procedures, including the chain of custody procedures, required by the guidelines referred to in paragraph (1)(A), except that positive initial tests may be confirmed using Gas Chromatography (GC) techniques or such test as the Secretary of Health and Human Services may determine to be of equivalent accuracy.

"(C) That the laboratory perform Gas Chromatography-Mass Spectrometry (GC-MS) reconfirmation, or such reconfirmation as the Secretary of Health and Human Services may determine to be of equivalent accuracy, in any case in which—

"(i) a defendant's urine specimen is tested using Gas Chromatography techniques for confirmation; and

"(ii) within 10 days after receiving notice of positive test results, the defendant notifies the Director that he disputes such results.

"(D) That the laboratory—

"(i) retain all records pertaining to each urine specimen for at least 2 years after the date on which the results of the testing of such specimen are transmitted to the court; and

"(ii) limit access to any such records in order to protect the confidentiality.

"(E) That, in the case of a urine specimen for which positive test results are obtained, the laboratory retain the specimen in properly secured, long-term frozen storage for a minimum of 1 year after the date on which the test results are transmitted to the court.

"(3) The actual cost of any testing performed in the case of a defendant under paragraph (2)(C) shall be paid by the defendant unless the court determines it would be unreasonable for the defendant to be required to pay such cost.

"(4) To the maximum extent practicable, the results of urine drug tests conducted pursuant to the regulations prescribed in accordance with this subsection shall be kept confidential.

"(5) Nothing in this subsection shall be construed to—

"(A) limit the authority of the Administrator to require that positive initial test results be confirmed using Gas Chromatography-Mass Spectrometry (GS-MS) or equivalent techniques; or

"(B) limit the authority of the Administrator to institute alternative drug tests as an additional means of screening defendants.".

(b) Supervised Release.—(1) Section 3583(d) of title 18, United States Code, is amended in the first sentence by striking the period and inserting "and that, for any felony, or for a misdemeanor involving either unlawful conduct with drugs or a defendant having a history of drug use, the defendant submit to periodic drug tests for use of controlled substances at least once every 60 days. The defendant shall pay the actual costs of such testing unless the court determines it would be unreasonable to impose such cost. The minimum testing requirement of one test every 60 days may be suspended upon motion of the Attorney General if, after at least 1 year of supervised release, the defendant has passed all drug tests administered pursuant to this section."

(2) Section 3583 of title 18, United States Code, is amended by adding at the end thereof the following:

"(g) Use of Controlled Substances.—Notwithstanding any other provision of this section, if the defendant tests positive for illegal use of controlled substances on two separate urine drug tests taken at least 3 weeks apart, the court shall, in addition to any other action which may be taken—

"(1) revoke the term of supervised release and require the defendant to serve a period of imprisonment pursuant to section (e)(4);

"(2) require the defendant to reside and participate in the program of a residential community treatment center or participate in an outpatient drug treatment program if residential treatment is unavailable or impractical; or

"(3) require the defendant to remain at his place of residence during non-working hours pursuant to subsection (e)(5).

Notwithstanding any other provision of this section, if the defendant tests positive for illegal use of controlled substances on three separate urine drug tests taken at least 3 weeks apart, the court shall revoke the term of supervised release pursuant to subsection (e)(4) and require the defendant to serve in prison not less than one-third of the term of supervised release.

"(h) No action may be taken against a defendant pursuant to subsection (g) on the basis of a drug test administered to the defendant unless the urine drug test was conducted by a laboratory which meets the requirements of section 3565(d) of this title and the Director of the Administrative Office of the United States Courts or his or her designee, or any person contracted to perform specimen collection has complied with the requirements of section 3565(e) of this title.".

(c) Effective Date.—The amendments in this section shall apply to offenses occurring or completed on or after January 1, 1989.

SEC. 2552. HOUSE PROBATION AS A CONDITION FOR PROBATION, PAROLE, OR SUPERVISED RELEASE.

(a) Probation.—Section 3563(b) of title 18, United States Code, is amended by—

(1) striking "or" after the semicolon in paragraph (19);

(2) redesignating paragraph (20) as paragraph (21); and

(3) inserting after paragraph (19) the following new paragraph:

"(20) remain at his place of residence during non-working hours and, if the court finds it appropriate, that compliance with this condition be monitored by telephonic or electronic signaling devices; or".

(b) Supervised Release.—(1) Section 3583(d) of title 18, United States Code, is amended in the matter following paragraph (3) by striking "(b)(19)" and inserting "(b)(20)".

(2) Section 3583(e) is amended by—

(1) striking "or" at the end of paragraph (3);

(2) striking the period at the end of paragraph (4) and inserting "; or"; and

(3) inserting at the end the following new paragraph:

"(5) order the person to remain at his place of residence during non-working hours and, if the court so directs, to have compliance monitored by telephone or electronic signaling devices.".

(c) Parole.—Section 4209 of title 18, United States Code, is amended to read as follows:

"(c) Release on parole or release as if on parole (or probation, or supervised release where applicable) may as a condition of such release require—

"(1) a parolee to reside in or participate in the program of a residential community treatment center, or both, for all or part of the period of such parole; or

"(2) a parolee to remain at his place of residence during non-working hours and, if the Commission so directs, to have compliance with this condition monitored by telephone or electronic signaling devices.

A parolee residing in a residential community treatment center pursuant to this subsection or subject to a condition imposed under subparagraph (3) of this subsection, may be required to pay such costs incident to residence or to such condition as the Commission deems appropriate.".

Subtitle K—Minor and Technical Criminal Law Amendments Act Amendments

SEC. 2601. SHORT TITLE.

This subtitle may be cited as the "Minor and Technical Criminal Law Amendments Act of 1988".

SEC. 2602. CORRECTION OF CROSS REFERENCE.

Section 38 of the Criminal Law and Procedure Technical Amendments Act of 1986 is amended by striking "section 23" and inserting "section 34".

SEC. 2603. CORRECTION OF ERRONEOUS REFERENCE.

Section 50(a) of the Criminal Law and Procedure Technical Amendments Act of 1986 is amended by striking "1961(a)" and inserting "1961(l)".

SEC. 2604. CORRECTION OF MISPRINT.

Section 58(g) of the Criminal Law and Procedure Technical Amendments Act of 1986 is amended by striking "Section 3147 Amendments.—Section 3147 of title" and inserting "Repeal.—(1) Title".

SEC. 2605. CORRECTION OF TYPOGRAPHICAL ERROR IN SECTION 31.

Section 31 of title 18, United States Code, is amended by striking "door in opened" and inserting "door is opened".

SEC. 2606. CORRECTION OF TYPOGRAPHICAL ERROR IN SECTION 32.

Section 32(a)(3) of title 18, United States Code, is amended by striking "intefering" and inserting "interfering".

SEC. 2607. CORRECTION OF TYPOGRAPHICAL ERROR IN SECTION 152.

The third paragraph of section 152 of title 18, United States Code, is amended by striking "penalty or perjury" and inserting "penalty of perjury".

SEC. 2608. CONSPIRACY AGAINST CIVIL RIGHTS.

(a) IN GENERAL.—Section 241 of title 18, United States Code, is amended by striking "citizen" and inserting "inhabitant of any State, Territory, or District".

(b) CONFORMING AMENDMENTS.—(1) The heading for section 241 of title 18, United States Code, is amended by striking "of citizens".

(2) The item relating to section 241 in the table of sections at the beginning of chapter 13 of title 18, United States Code, is amended by striking "of citizens".

SEC. 2609. DEPRIVATION OF CIVIL RIGHTS.

Section 242 of title 18, United States Code, is amended by inserting "and if bodily injury results shall be fined under this title or imprisoned not more than ten years, or both;" after "both;".

SEC. 2610. DESIGNATION OF ADDITIONAL HIGH LEVEL OFFICIALS OF THE DEPARTMENT OF JUSTICE TO PERFORM CERTAIN FUNCTIONS RELATING TO CRIMINAL AND ANCILLARY PROCEEDINGS.

(a) APPROVAL OF CERTAIN CIVIL RIGHTS PROSECUTIONS.—Section 245(a)(1) of title 18, United States Code, is amended—

(1) by striking "or the Deputy" and inserting ", the Deputy";

(2) by inserting.—Section 1073 of title 18, United States Code, is amended by inserting ", the Deputy Attorney General, the Associate Attorney General," after "the Attorney General".

(b) APPROVAL OF PROSECUTIONS FOR FLIGHT TO AVOID SERVICE OF PROCESS AND RELATED PROCEEDINGS.—Section 1961(10) of title 18, United States Code, is amended by inserting "the Associate Attorney General of the United States," after "Deputy Attorney General of the United States,".

(c) DEFINITION OF "ATTORNEY GENERAL" FOR PURPOSES OF CERTAIN RACKETEER ", THE ASSOCIATE ATTORNEY GENERAL, OR ANY ASSISTANT ATTORNEY GENERAL SPECIALLY DESIGNATED BY THE ATTORNEY GENERAL" AFTER "DEPUTY ATTORNEY GENERAL".

(d) SUMMONING OF SPECIAL GRAND JURIES.—Section 3331(a) of title 18, United States Code, is amended by inserting ", the Associate Attorney General" after "Deputy Attorney General".

(e) REQUESTING JUDICIAL GRANT OF IMMUNITY IN GENERAL.—Section 6003(b) of title 18, United States Code, is amended—

(1) by inserting ", the Associate Attorney General" after "Deputy Attorney General"; and

(2) by inserting "or Deputy Assistant Attorney General" after "Assistant Attorney General".

(f) REQUESTING JUDICIAL GRANT OF IMMUNITY IN CERTAIN DRUG CASES.—Section 514(c) of the Controlled Substances Act (21 U.S.C. 884(c)) is amended by inserting ", the Associate Attorney General" after "Deputy Attorney General".

(g) OBJECTING TO DISCLOSURE OF CLASSIFIED INFORMATION UNDER THE CLASSIFIED INFORMATION PROCEDURES ACT.—Section 14 of the Classified Information Procedures Act (18 U.S.C. App. 14) is amended by inserting ", the Associate Attorney General," after "Deputy Attorney General".

SEC. 2611. OFF-HIGHWAY VEHICLE IDENTIFICATION OFFENSE.

Section 553(b)(2) of title 18, United States Code, is amended to read as follows:

"(2)(A) in the case of a motor vehicle, is not a violation of section 511 of this title (relating to altering or removing motor vehicle identification numbers); or

"(B) in the case of off-highway mobile equipment, would not be a violation of section 511 of this title if such equipment were a motor vehicle.".

SEC. 2612. REDESIGNATION OF PARAGRAPHS IN SECTION 831.

Paragraphs (3) through (6) of section 831(e) of title 18, United States Code, are redesignated as paragraphs (2) through (5), respectively.

SEC. 2613. IDENTIFICATION FRAUD.

Section 1028(a)(6) of title 18, United States Code, is amended—

(1) by inserting "knowingly" before "possesses";

(2) by inserting "lawful" before "authority" the first place it appears; and

(3) by inserting "such" before "authority" the second place it appears.

SEC. 2614. TRANSMISSION OF WAGERING INFORMATION.

(a) TRANSMISSION OF INFORMATION TO FOREIGN COUNTRIES.—Section 1084(b) of title 18, United States Code, is amended by inserting "or foreign country" after "State" the second place it appears.

(b) DEFINITION OF "STATE".—(1) Section 1084 of title 18, United States Code, is amended by adding at the end the following:

"(e) As used in this section, the term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.".

(2) Section 1084(c) of title 18, United States Code, is amended by striking ", Commonwealth of Puerto Rico, territory, possession, or the District of Columbia".

SEC. 2615. PUNCTUATION CORRECTION IN COND COMMA AFTER "TERMS OF THIS SECTION".

SEC. 2617. CLARIFICATION OF RELATION BETWEEN TWO AMENDMENTS MADE BY PUBLIC LAWS ENACTED IN THE 99TH CONGRESS.

Section 1153 of title 18, United States Code, is amended by striking "maiming" and all SECTION 1111.

Section 1111(a) of title 18, United States Code, is amended by inserting a comma after "arson".

SEC. 2616. PUNCTUATION CORRECTION IN SECTION 1114.

Section 1114 of title 18, United States Code, is amended by striking the sethat follows through "incest" and inserting "maiming, a felony under chapter 109A, incest".

SEC. 2618. CORRECTION OF SUBSECTION DESIGNATION.

Section 1203 of title 18, United States Code, is amended by striking "(C)" the last place it appears and inserting "(c)".

SEC. 2619. OBSTRUCTION OF JUSTICE AMENDMENTS.

(a) EXPANSION OF VENUE FOR SECTIONS 1512 AND 1503 CASES.—Section 1512 of title 18, United States Code, is amended by adding at the end the following:

"(h) A prosecution under this section or section 1503 may be brought in the district in which the official proceeding (whether or not pending or about to be instituted) was intended to be affected or in the district in which the conduct constituting the alleged offense occurred.".

(b) DEFINITION CHANGES.—Section 1515(a)(1)(A) of title 18, United States Code, is amended by inserting "a judge of the United States Tax Court, a special trial judge of the Tax Court, a judge of the United States Claims Court," after "bankruptcy judge,".

(c) CORRUPT PERSUASION.—Section 1512(b) of title 18, United States Code, is amended by striking "or threatens" and inserting "threatens, or corruptly persuades".

(d) DEFINITION.—Section 1515(a) of title 18, United States Code, is amended—

(1) by striking "and" at the end of paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting "; and"; and

(3) by adding at the end the following:

"(6) the term 'corruptly persuades' does not include conduct which would be misleading conduct but for a lack of a state of mind.".

SEC. 2620. CONFORMING AMENDMENT TO TABLE OF SECTIONS.

The item relating to section 1515 in the table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by inserting "; general provision" after "provisions".

SEC. 2621. CROSS REFERENCE CORRECTIONS AND ADDITIONS.

Section 1956(c)(7)(D) of title 18, United States Code, is amended by—

(1) striking "section 511" and inserting "section 513";

(2) striking "section 543" and inserting "section 545"; and

(3) inserting "section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies)," after "section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee),".

SEC. 2622. CROSS REFERENCE CORRECTION AND ADDITIONS.

Section 1961(1) of title 18, United States Code, is amended by striking "section 2320" and inserting "section 2321".

SEC. 2623. SYNTAX CORRECTION IN SECTION 1962.

Section 1962(d) of title 18, United States Code, is amended by striking "subsections" and inserting "subsection".

SEC. 2624. SECTION 1963 AMENDMENTS.

(a) CORRECTION OF TYPOGRAPHICAL ERROR IN SUBSECTION (n).—Section 1963(n) of title 18, United States Code, is amended by striking "act of omission" and inserting "act or omission".

(b) REDESIGNATION.—Subsection (n) of section 1963 of title 18, United States Code, is redesignated as subsection (m).

SEC. 2625. CLERICAL CORRECTION TO TABLE OF CONTENTS FOR CHAPTER 119.

The table of sections at the beginning of chapter 119 of title 18, United States Code, is amended by striking "wire or oral" in the items relating to sections 2511, 2512, 2513, 2516, 2517, 2518, and 2519 and inserting "wire, oral, or electronic".

SEC. 2626. SECTION 2516 AMENDMENTS.

(a) SYNTAX CORRECTION.—Section 2516(1) of title 18, United States Code, is amended—

(1) by inserting "or" after "Associate Attorney General,", and

(2) by striking the comma that follows a comma.

(b) CORRECTION OF CROSS-REFERENCES.—Section 2516(1)(c) of title 18, United States Code, is amended—

(1) by striking "the second section 2320" and inserting "section 2321"; and

(2) by striking "section 2252 or 2253 (sexual exploitation of children),".

(c) PUNCTUATION CORRECTIONS.—

(1) section 2516(1)(a) is amended by striking "(relating to riots);" and inserting "(relating to riots),";

(2) section 2516(1)(j) is amended by striking "or;"; and

(3) section 2516(1)(k) is amended by inserting "or" at the end thereof.

SEC. 2627. CORRECTION OF CROSS REFERENCE.

Section 2702(b)(2) of title 18, United States Code, is amended by striking "2516" and inserting "2517".

SEC. 2628. GOVERNMENTAL ACCESS TO CONTENTS OF ELECTRONIC COMMUNICATIONS IN AND RECORDS OF A REMOTE COMPUTING SERVICE.

Sections 2703(b)(1)(B)(i) and 2703(c)(1)(B)(i) of title 18, United States Code, are amended by inserting "or trial" after "grand jury".

SEC. 2629. DEFINITION OF COURT FOR CERTAIN APPLICATIONS.

Section 2703(d) of title 18, United States Code, is amended by inserting "may be issued by any court that is a court of competent jurisdiction set forth in section 3126(2)(A) of this title and" before "shall issue".

SEC. 2630. SECTION 3124 AMENDMENT.

Section 3124(b) of title 18, United States Code, is amended by inserting "order" after "court" the last place it appears.

SEC. 2631. SENTENCING CLASSIFICATION OF OFFENSES.

(a) REDESIGNATION.—Section 3559(a) of title 18, United States Code, is amended—

(1) by striking "classified—" and all that follows through "is—" and inserting "classified if the maximum term of imprisonment authorized is—"; and

(2) by redesignating subparagraphs (A) through (I) as paragraphs (1) through (9).

(b) CLASS B CLASSIFICATION.—Section 3559(a) of title 18, United States Code, is amended in each of paragraphs (2) and (3) (as so redesignated by subsection (a)), by striking "twenty" and inserting "twenty-five".

SEC. 2632. CORRECTION OF CROSS REFERENCES.

Subsection (h) of section 3663 of title 18, United States Code, is amended to read as follows:

"(h) An order of restitution may be enforced—

"(1) by the United States—

"(A) in the manner provided for the collection and payment of fines in subchapter B of chapter 229 of this title; or

"(B) in the same manner as a judgment in a civil action; and

"(2) by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.".

SEC. 2633. FURLOUGH OF CERTAIN INDIVIDUALS ORDERED TO BE COMMITTED FOR INSANITY.

Section 4243 of title 18, United States Code, is amended by adding at the end thereof the following:

"(h) LIMITATIONS ON FURLOUGHS.—An individual who is hospitalized under subsection (e) of this section after being found not guilty only by reason of insanity of an offense for which subsection (d) of this section creates a burden of proof of clear and convincing evidence, may leave temporarily the premises of the facility in which that individual is hospitalized only—

"(1) with the approval of the committing court, upon notice to the attorney for the Government and such individual, and after opportunity for a hearing;

"(2) in an emergency; or

"(3) when accompanied by a Federal law enforcement officer (as defined in section 115 of this title).".

SEC. 2634. PERIODIC REPORTS RELATING TO CERTAIN HOSPITALIZED PERSONS.

Section 4247(e)(1)(B) of title 18, United States Code, is amended by adding at the end thereof the following: "A copy of each such report concerning a person hospitalized after the beginning of a prosecution of that person for violation of section 871, 879, or 1751 of this title shall be submitted to the Director of the United States Secret Service. Except with the prior approval of the court, the Secret Service shall not use or disclose the information in these copies for any purpose other than carrying out protective duties under section 3056(a) of this title.".

SEC. 2635. INSERTION OF MISSING CLOSE PARENTHESIS.

The last paragraph of section 5034 of title 18, United States Code, is amended by striking "facility upon" and inserting "facility) upon".

SEC. 2636. AMENDMENT TO RULES OF EVIDENCE CONFORMING TERMINOLOGY RELATING TO SEX OFFENSES.

(a) IN GENERAL.—Rule 412 of the Federal Rules of Evidence is amended—

(1) in the heading of such rule, by striking "**Rape**" and inserting "**Sex Offense**";

(2) in subdivisions (a) and (b), by striking "rape or of assault with intent to commit rape" each place it appears and inserting "an offense under chapter 109A of title 18, United States Code";

(3) in subdivision (a), by striking "rape or assault" and inserting "offense";

(4) by striking "rape or assault with intent to commit rape" each place it appears and inserting "an offense under chapter 109A of title 18, United States Code"; and

(5) in subdivision (b)(2)(B), by striking "rape or assault" and inserting "such offense".

(b) CLERICAL AMENDMENT.—The item relating to rule 412 in the table of contents at the beginning of the Federal Rules of Evidence is amended by striking "Rape" and inserting "Sex Offense".

SEC. 2637. EXTENSION OF POWER TO MAKE CERTAIN EXAMINATIONS TO PSYCHOLOGISTS.

(a) SECTION 4247(b).—Section 4247(b) of title 18, United States Code, is amended by striking "clinical psychologist" and inserting "psychologist".

(b) CONFORMING AMENDMENT TO RULE 35.—Rule 35 of the Federal Rules of Civil Procedure is amended—

(1) in subdivision (a), by striking "physical or mental examination by a physician" and inserting "physical examination by a physician, or mental examination by a physician or psychologist";

(2) in subdivision (b), by inserting "or psychologist" after "physician" each time it appears, and by adding "or psychologist" to the heading of the subdivision; and

(3) by adding at the end the following new subdivision:

"(c) For the purpose of this rule, a psychologist is a psychologist licensed or certified by a State or the District of Columbia.".

SEC. 2638. SYNTACTICAL CORRECTION RELATING TO CERTAIN COUNTERFEIT OR FORGED ITEMS.

The second paragraph of section 2315 of title 18, United States Code, is amended by striking "which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken" and inserting "moving as, or which are a part of, or which constitute interstate or foreign commerce".

SEC. 2639. FORM CORRECTION IN FEDERAL RULES OF CIVIL PROCEDURE.

Rule 17(a) of the Federal Rules of Civil Procedure is amended by striking "with him".

SEC. 2640. PUNCTUATION CORRECTION IN FEDERAL RULES OF CIVIL PROCEDURE.

Rule 71A(e) is amended by striking "taking of the defendants property" and inserting "taking of the defendant's property".

SEC. 2641. DEFINITION OF 'UNITED STATES' IN REFERENCE TO TERRORIST ACTS.

Section 3077(4) of title 18, United States Code, is amended to read as follows:

"(4) 'United States,' when used in a geographical sense, includes Puerto Rico and all territories and possessions of the United States;".

SEC. 2642. CROSS REFERENCES PERTAINING TO ARREST AUTHORITY FOR VIOLATION OF RELEASE CONDITIONS.

Section 3062 of title 18, United States Code, is amended by striking "a condition imposed on the person pursuant to section 3142 (c)(2)(D), (c)(2)(E), (c)(2)(H), (c)(2)(I), or (c)(2)(M), or, if the violation involves a failure to remain in a specified institution as required, a condition imposed pursuant to section 3142(c)(2)(J)" and inserting "a condition imposed on the person pursuant to section 3142(c)(1)(B) (iv), (v), (viii), (ix), or (xiii), or, if the violation involves a failure to remain in a specified institution as required, a condition imposed pursuant to section 3142(c)(1)(B)(x)".

SEC. 2643. RENUMBERING OF SECTIONS IN CHAPTER 95.

(a) SECTION 1958.—Section 1952A of title 18, United States Code, is redesignated as section 1958.

(b) SECTION 1959.—Section 1952B of title 18, United States Code, is redesignated as section 1959.

(c) TABLE OF SECTIONS.—The table of sections at the beginning of chapter 95 of title 18, United States Code, is amended—

(1) by striking "1952A" and inserting "1958";

(2) by striking "1952B" and inserting "1959"; and

(3) by inserting the items for redesignated sections 1958 and 1959 at the end of the table.

(d) SECTION 2516(c).—Section 2516(c) of title 18, United States Code, is amended—

(1) by striking "1952A" and inserting "1958"; and

(2) by striking "1952B" and inserting "1959".

SEC. 2644. ADDITION OF RICO PREDICATE.

Section 1961(1)(B) of title 18, United States Code, is amended—

(1) by inserting after "section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity)" the following: ", section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), sections 2251-2252 (relating to sexual exploitation of children)"; and

(2) by inserting after "sections 891-894 (relating to extortionate credit transactions)" the following: ", section 1029 (relative to fraud and related activity in connection with access devices)".

SEC. 2645. ASSET FORFEITURE AMENDMENTS.

(a) Forfeiture of Personal Property in Narcotics Cases.—Section 511(a)(7) of the Controlled Substances Act (21 U.S.C. 881(a)(7)) is amended by striking "All" and inserting "All tangible or intangible personal property, and all".

(b) Restoration of Equitable Sharing Provisions.—Section 511(e) of the Controlled Substances Act (21 U.S.C. 881(e)) is amended by redesignating paragraph (2) as paragraph (3) and inserting a new paragraph (2) as follows:

"(2) The Attorney General shall ensure the equitable transfer pursuant to paragraph (1)(A) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General pursuant to paragraph (1)(A) shall not be subject to review.".

SEC. 2646. AUTHORIZATION OF POSTAL SERVICE TO INVESTIGATE MONEY LAUNDERING.

(a) Jurisdiction.—(1) Section 1956 of title 18, United States Code, is amended by striking all that follows "appropriate" in subsection (e) and inserting the following: "and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Postal Service, and the Attorney General."

(2) Section 1957 of title 18, United States Code, is amended by striking all that follows "appropriate" in subsection (e) and inserting the following: "and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Postal Service, and the Attorney General."

(b) Conforming Amendments.—Section 981 of title 18, United States Code, is amended by—

(1) inserting "or the Postal Service" in subsection (b) following "Secretary of the Treasury" the first two times it appears;

(2) striking "the Attorney General or the Secretary of the Treasury" in subsections (b)(2) and (c) through (e) and inserting "the Attorney General, the Secretary of the Treasury, or the Postal Service";

(3) adding at the end of subsection (d) the following: "The Attorney General shall have sole responsibility for disposing of petitions for remission or mitigation with respect to property involved in a judicial forfeiture proceeding"; and

(4) adding at the end of subsection (e) the following: "The authority granted to the Postal Service pursuant to this subsection shall apply only to property that has been administratively forfeited."

(c) Powers of the Secretary.—Section 5318(a)(1) of title 31, United States Code, is amended by inserting "or the Postal Inspection Service" after "supervising agency".

SEC. 2647. AUTHORITY OF FEDERAL PRISON INDUSTRIES TO BORROW AND INVEST FUNDS.

(a) Grant of Authority.—Chapter 307 of title 18, United States Code, is amended by inserting after section 4128 the following new section:

"§ 4129. Authority to borrow and invest

"(a)(1) As approved by the board of directors, Federal Prison Industries, to such extent and in such amounts as are provided in appropriations Acts, is authorized to issue its obligations to the Secretary of the Treasury, and the Secretary of the Treasury, in the Secretary's discretion, may purchase or agree to purchase any such obligations, except that the aggregate amount of obligations issued by Federal Prison Industries under this paragraph that are outstanding at any time may not exceed 25 percent of the net worth of the corporation. For purchases of such obligations by the Secretary of the Treasury, the Secretary is authorized to use as a public debt transaction the proceeds of the sale of any securities issued under chapter 31 of title 31 after the date of the enactment of this section, and the purposes for which securities may be issued under that chapter are extended to include such purchases. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity. For purposes of the first sentence of this paragraph, the net worth of Federal Prison Industries is the amount by which its assets (including capital) exceed its liabilities.

"(2) The Secretary of the Treasury may sell, upon such terms and conditions and at such price or prices as the Secretary shall determine, any of the obligations acquired by the Secretary under this subsection. All purchases and sales by the Secretary of the Treasury of such obligations under this subsection shall be treated as public debt transactions of the United States.

"(b) Federal Prison Industries may request the Secretary of the Treasury to invest excess moneys from the Prison Industries Fund. Such investments shall be in public debt securities with maturities suitable to the needs of the corporation as determined by the board directors, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.".

(b) Conforming Amendment.—The table of sections at the beginning of chapter 307 of title 18, United States Code, is amended by adding at the end the following new item:

"4129. Authority to borrow and invest.".

(c) Use of Funds.—Section 4126 of title 18, United States Code, is amended—

(1) by designating the first through fifth paragraphs as subsections (a) through (e), respectively;

(2) by amending subsection (c), as designated by paragraph (1) of this section, to read as follows:

"(c) The corporation, in accordance with the laws generally applicable to the expenditures of the several departments, agencies, and establishments of the Government, is authorized to employ the fund, and any earnings that may accrue to the corporation—

"(1) as operating capital in performing the duties imposed by this chapter;

"(2) in the lease, purchase, other acquisition, repair, alteration, erection, and maintenance of industrial buildings and equipment;

"(3) in the vocational training of inmates without regard to their industrial or other assignments;

"(4) in paying, under rules and regulations promulgated by the Attorney General, compensation to inmates employed in any industry, or performing outstanding services in institutional operations, and compensation to inmates or their dependents for injuries suffered in any industry or in any work activity in connection with the maintenance or operation of the institution in which the inmates are confined.

In no event may compensation for such injuries be paid in an amount greater than that provided in chapter 81 of title 5."; and

(3) by adding at the end the following:

"(f) Funds available to the corporation may be used for the lease, purchase, other acquisition, repair, alteration, erection, or maintenance of facilities only to the extent such facilities are necessary for the industrial operations of the corporation under this chapter. Such funds may not be used for the construction or acquisition of penal or correctional institutions, including camps described in section 4125.".

(d) Reports to Congress.—Section 4127 of title 18, United States Code, is amended to read as follows:

"The board of directors of Federal Prison Industries shall submit an annual report to the Congress on the conduct of the business of the corporation during each fiscal year, and on the condition of its funds during such fiscal year. Such report shall include a statement of the amount of obligations issued under section 4129(a)(1) during such fiscal year, and an estimate of the amount of obligations that will be so issued in the following fiscal year.".

(e) Guidelines and Public Comment on New or Expanded Production by Federal Prison Industries.—Section 4122(b) of title 18, United States Code, is amended—

(1) by inserting "(1)" after "(b)";

(2) by striking out "all physically fit inmates in the United States penal and correctional institutions" and inserting in lieu thereof "the greatest number of those inmates in the United States penal and correctional institutions who are eligible to work as is reasonably possible"; and

(3) by adding at the end thereof the following:

"(2) Federal Prison Industries shall conduct its operations so as to produce products on an economic basis, but shall avoid capturing more than a reasonable share of the market among Federal departments, agencies, and institutions for any specific product. Federal Prison Industries shall concentrate on providing to the Federal Government only those products which permit employment of the greatest number of those inmates who are eligible to work as is reasonably possible.

"(3) Federal Prison Industries shall diversify its products so that its sales are distributed among its industries as broadly as possible.

"(4) Any decision by Federal Prison Industries to produce a new product or to significantly expand the production of an existing product shall be made by the board of directors of the corporation. Before the board of directors makes a final decision, the corporation shall do the following:

"(A) The corporation shall prepare a detailed written analysis of the probable impact on industry and free labor of the plans for new production or expanded production. In such written analysis the corporation shall, at a minimum, identify and consider—

"(i) the number of vendors currently meeting the requirements of the Federal Government for the product;

"(ii) the proportion of the Federal Government market for the product currently served by small businesses, small disadvantaged businesses, or businesses operating in labor surplus areas;

"(iii) the size of the Federal Government and non-Federal Government markets for the product;

"(iv) the projected growth in the Federal Government demand for the product; and

"(v) the projected ability of the Federal Government market to sustain both Federal Prison Industries and private vendors.

"(B) The corporation shall announce in a publication designed to most effectively provide notice to potentially affected private vendors the plans to produce any new product or to significantly expand production of an existing product. The announcement shall also indicate that the analysis prepared under subparagraph (A) is available through the corporation and shall invite comments from private industry regarding the new production or expanded production.

"(C) The corporation shall directly advise those affected trade associations that the corporation can reasonably identify of the plans for new production or expanded production, and the corporation shall invite such trade associations to submit comments on those plans.

"(D) The corporation shall provide to the board of directors—

"(i) the analysis prepared under subparagraph (A) on the proposal to produce a new product or to significantly expand the production of an existing product,

"(ii) comments submitted to the corporation on the proposal, and

"(iii) the corporation's recommendations for action on the proposal in light of such comments.

In addition, the board of directors, before making a final decision under this paragraph on a proposal, shall, upon the request of an established trade association or other interested representatives of private industry, provide a reasonable opportunity to such trade association or other representatives to present comments directly to the board of directors on the proposal.

"(5) Federal Prison Industries shall publish in the manner specified in paragraph (4)(B) the final decision of the board with respect to the production of a new product or the significant expansion of the production of an existing product.

"(6) Federal Prison Industries shall publish, after the end of each 6-month period, a list of sales by the corporation for that 6-month period. Such list shall be made available to all interested parties.".

SEC. 2648. CONTROLLED SUBSTANCES AND RELATED AMENDMENTS.

(a) Attempt and Conspiracy Amendments.—Section 406 of the Controlled Substance Act (21 U.S.C. 846) and section 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 963) are amended by striking "is punishable" and all that follows through "punishment" and inserting "shall be subject to the same penalties as those".

(b) Clarifying Amendments Relating to Forfeiture of Proceeds of a Foreign Drug Offense.—Subparagraph (B) of section 981(a)(1) of title 18, United States Code, is amended by—

(1) inserting ", real or personal," after "property";

(2) striking "which represents the proceeds of" and inserting "constituting, derived from, or traceable to, any proceeds obtained directly or indirectly from";

(3) striking "or activity" the first place it appears;

(4) inserting "under the laws of the United States" after "punishable" the second place it appears; and

(5) inserting "constituting the offense against the foreign nation" after "such act or activity".

(c) Clarification of Controlled Substance Analogue Provision.—Section 203 of the Controlled Substances Act (21 U.S.C. 813) is amended by striking "this title and title III" and inserting "any Federal law".

(d) Correction of Reference Relating to Mandatory Prison Terms for Juvenile Drug Trafficking.—Section 405B(e) of the Controlled Substances Act (21 U.S.C. 845b(e)) is amended by striking "required by section 401(b)".

(e) Correction of Typographical Error.—Section 981(a)(2) of title 18, United States Code, is amended by striking "emission" and inserting "omission".

(f) Correction of Reference to Subsection.—Section 981(i)(1) of title 18, United States Code, is amended by striking "subchapter" and inserting "subsection".

(g) Mandatory Minimum Penalty for Trafficking in Substantial Quantity of Methamphetamine.—Subparagraph (A) of section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) is amended—

(1) by striking "or" at the end of clause (vi);

(2) by inserting "or" at the end of clause (vii); and

(3) by adding a new clause (viii), as follows:

"(viii) 100 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 1 kilogram or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;".

(h) Conforming Amendment.—Subparagraph (B) of section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) is amended—

(1) by striking "or" at the end of clause (vi);

(2) by inserting "or" at the end of clause (vii); and

(3) by adding a new clause (viii), as follows:

"(viii) 10 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 100 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;".

SEC. 2649. MONEY LAUNDERING AMENDMENTS.

(a) Insertion of Income Tax Predicate for Money Laundering Offense.—Section 1956(a)(1)(A) of title 18, United States Code, is amended to read as follows:

"(A)(i) with the intent to promote the carrying on of specified unlawful activity; or

"(ii) with intent to violate or promote a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or".

(b) Transmission or Transfer.—Section 1956(a)(2) of title 18, United States Code, is amended by striking "transports or attempts to transport" and inserting "transports, transmits, or transfers, or attempts to transport, transmit, or transfer".

(c) Clarification of Scope of Stay of Civil Forfeiture.—Section 981(g) of title 18, United States Code, is amended by inserting ", Federal, State or local," after "law".

SEC. 2650. PROVISION OF MISDEMEANOR PENALTY FOR CERTAIN ESCAPES.

Sections 751(a) and 752(a) of title 18, United States Code, are amended by inserting ", or for exclusion or expulsion proceedings under the immigration laws," after "extradition".

SEC. 2651. CLARIFICATION OF PREDICATE OFFENSE REQUIREMENTS FOR ARMED CAREER CRIMINAL ACT.

Section 924(e)(1) of title 18, United States Code, is amended by inserting "committed on occasions different from one another," after "for a violent felony or a serious drug offense, or both,".

SEC. 2652. AUTHORITY FOR THE FEDERAL BUREAU OF INVESTIGATION TO INVESTIGATE, UPON REQUEST, FELONIOUS KILLINGS OF STATE OR LOCAL LAW ENFORCEMENT OFFICERS.

(a) Authority.—Chapter 33 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 540. Investigation of felonious killings of State or local law enforcement officers

"The Attorney General and the Federal Bureau of Investigation may investigate felonious killings of officials and employees of a State or political subdivision thereof while engaged in or on account of the performance of official duties relating to the prevention, detection, investigation, or prosecution of an offense against the criminal laws of a State or political subdivision, when such investigation is requested by the head of the agency employing the official or employee killed, and under such guidelines as the Attorney General or his designee may establish.".

(b) Conforming Amendments.—The table of sections of such chapter is amended by adding at the end thereof the following item:

"540. Investigation of felonious killings of State or local law enforcement officers."

SEC. 2653. TRANSPORTATION AND RECEIPT OF STOLEN SECURITIES.

(a) Transmission or Transfer.—The first paragraph of section 2314 of title 18, United States Code, is amended by striking "transports" and inserting "transports, transmits, or transfers".

(b) Inapplicability of Section.—The final paragraphs of sections 2314 and 2315 of title 18, United States Code, are amended—

(1) by striking "or by a bank or corporation of any foreign country"; and

(2) by adding at the end thereof: "This section also shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of any bank note or bill issued by a bank or corporation of any foreign country which is intended by the laws or usage of such country to circulate as money.".

SEC. 2654. MAXIMUM PENALTY ADJUSTMENTS.

(a) Abusive Sexual Contact.—Section 2244(a) of title 18, United States Code, is amended—

(1) in paragraph (1) by striking "five years" and inserting "ten years"; and

(2) in paragraph (3) by striking "one year" and inserting "two years".

(b) Murder for Hire.—Section 1958 of title 18, United States Code, is amended by striking "five years" and inserting "ten years".

(c) Involuntary Manslaughter.—Section 1112(b) of title 18, United States Code, is amended by striking "shall be fined not more than $1,000 or imprisoned not more than three years, or both" and inserting "shall be imprisoned not more than five years, or fined under this title, or both".

(d) Attempted Murder.—Section 1113 of title 18, United States Code, is amended by striking "shall be fined not more than $1,000 or imprisoned not more than three years, or both" and inserting "shall, for an attempt to commit murder be imprisoned not more than twenty years, or fined under this title, or both, and for an attempt to commit manslaughter be imprisoned not more than three years, or fined under this title, or both."

(e) Accessory After the Fact.—Section 3 of title 18, United States Code, is amended by striking "ten" and inserting "twenty-five".

(f) Racketeering Influenced and Corrupt Organizations.—Section 1963(a) of title 18, United States Code, is amended by striking "shall be fined not more than $25,000 or imprisoned not more than twenty years, or both" and inserting "shall be fined under this title and imprisoned for not more than twenty years (or for life, if the violation is predicated on an offense for which the maximum penalty includes life in prison), or both".

SEC. 2655. BALLISTIC KNIFE ACT JURISDICTIONAL CLARIFICATIONS.

The Ballistic Knife Prohibition Act of 1986 (15 U.S.C. 1245) is amended—

(1) by striking "knowingly possesses, manufactures, sells, or imports" and inserting "in or affecting interstate commerce, within any Territory or possession of the United States, within Indian country (as defined in section 1151 of title 18), or within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18), knowingly possesses, manufactures, sells, or imports"; and

(2) by striking "or State" before "crime of violence".

SEC. 2656. COMMON CARRIER OPERATION AMENDMENTS.

(a) Definitional Refinement.—Section 342 of title 18, United States Code, is amended by striking "drugs" and inserting "any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))".

(b) Conformance of Fine Level.—Section 342 of title 18, United States Code, is amended by striking "fined not more than $10,000," and inserting "fined under this title,".

(c) Limitation and Clarification of Presumptions.—Section 343 of title 18, United States Code, is amended—

(1) in paragraph (1) by striking ".10" and inserting ".10 percent" and by striking "conclusively"; and

(2) in paragraph (2) by striking "conclusively".

SEC. 2657. EXPLOSIVES OFFENSES AMENDMENTS.

(a) Expansion of Offense to Certain Airports and Strengthening of Penalty.—Section 844(g) of title 18, United States Code, is amended—

(1) by striking "Whoever" and inserting "(1) Except as provided in paragraph (2), whoever";

(2) by inserting "in an airport that is subject to the regulatory authority of the Federal Aviation Administration, or" after "possesses an explosive";

(3) by inserting "or airport" after "such building";

(4) by striking "not more than one year, or fined not more than $1,000, or both" and inserting "not more than five years, or fined under this title, or both"; and

(5) by adding at the end thereof the following:

"(2) The provisions of this subsection shall not be applicable to—

"(A) the possession of ammunition (as that term is defined in regulations issued pursuant to this chapter) in an airport that is subject to the regulatory authority of the Federal Aviation Administration if such ammunition is either in checked baggage or in a closed container; or

"(B) the possession of an explosive in an airport if the packaging and transportation of such explosive is exempt from, or subject to and in accordance with, regulations of the Research and Special Projects Administration for the handling of hazardous materials pursuant to the Hazardous Materials Transportation Act (49 App. U.S.C. 1801, et seq.).".

(b) Strengthening Offense of Using or Carrying an Explosive in Commission of a Federal Felony.—Section 844(h) of title 18, United States Code, is amended—

(1) by striking "unlawfully" in paragraph (2); and

(2) by striking "shall be sentenced" through the remainder of the subsection and inserting the following:

"including a felony which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device shall, in addition to the punishment provided for such felony, be sentenced to imprisonment for five years. In the case of a second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for ten years. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the felony in which the explosive was used or carried.".

(c) Conforming Definitional Change.—Section 842(d)(5) of title 18, United States Code, is amended to read as follows:

"(5) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).".

(d) Conforming Definitional Change.—Section 842(i)(3) of title 18, United States Code, is amended to read as follows:

"(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).".

SEC. 2658. INTERSTATE AGREEMENT ON DETAINERS ACT AMENDMENTS.

The Interstate Agreement on Detainers Act (84 Stat. 1397) is amended by adding at the end thereof the following new section:

"§ 9. Special Provisions when United States is a Receiving State

Notwithstanding any provision of the agreement on detainers to the contrary, in a case in which the United States is a receiving State—

"(1) any order of a court dismissing any indictment, information, or complaint may be with or without prejudice. In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: The seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of the agreement on detainers and on the administration of justice; and

"(2) it shall not be a violation of the agreement on detainers if prior to trial the prisoner is returned to the custody of the sending State pursuant to an order of the appropriate court issued after reasonable notice to the prisoner and the United States and an opportunity for a hearing.".

SEC. 2659. CLARIFICATION OF PROHIBITION OF POSSESSION WITH INTENT TO DISTRIBUTE CONTROLLED SUBSTANCES ON AIRCRAFT.

Section 1010(a)(3) of the Controlled Substances Import and Export Act (21 U.S.C. 960(a)(3)) is amended by striking "manufactures or distributes a controlled substance" and inserting "manufactures, possesses with intent to distribute, or distributes a controlled substance".

SEC. 2660. CLARIFICATION OF DEFINITION OF DRUG TRAFFICKING CRIMES IN WHICH USE OF FIREARMS AND ARMOR PIERCING AMMUNITION IS PROHIBITED.

Paragraph (2) of subsection 924(c) of title 18, United States Code, and paragraph (2) of subsection 929(a) of title 18, United States Code, are each amended to read as follows:

"(2) for purposes of this subsection, the term 'drug trafficking crime' means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 App. U.S.C. 1901 et seq.)."

SEC. 2661. CLERICAL CORRECTIONS RELATING TO CHAPTER 44.

(a) Section 924(c) Amendments.—Paragraph (1) of section 924(c) of title 18, United States Code, is amended—

(1) by striking "crime,," the first place it appears and inserting "crime";

(2) by striking "crime,," each other place it appears and inserting "crime,";

(3) by striking "including a crime" and inserting "(including a crime";

(4) by striking "crime, which" and inserting "crime which";

(5) by striking "device, for" and inserting "device) for"; and

(6) by striking ", or drug trafficking crime".

(b) Section 929 Amendment.—Paragraph (1) of section 929(a) of title 18, United States Code, is amended by striking "crime," each place it appears and inserting "crime".

(c) Section 922(g) Amendment.—Section 922(g)(3) of title 18, United States Code, is amended by inserting "who" before "is an unlawful user".

(d) Section 923 Amendments.—Section 923 of title 18, United States Code, is amended—

(1) in subsection (a), by striking the period that follows "licensing"; and

(2) in subsection (f)(3), by striking the period that follows a period.

SEC. 2662. INSERTION OF MISSING SUBSECTION HEADING.

Section 2706(c) of title 18, United States Code, is amended by inserting "Exception.—" after "(c)".

SEC. 2663. INSERTION OF MISSING TABLE.

Chapter 113A of title 18, United States Code, is amended by inserting after the heading of such chapter the following table:

"Sec. 2331. Terrorist acts abroad against United States nationals.".

SEC. 2664. CORRECTION OF ITEMS IN TABLES OF CHAPTERS.

(a) Chapter 113A.—The item relating to chapter 113A in the table of sections at the beginning of part I of title 18, United States Code, is amended by striking the final period and inserting ".................2331".

(b) Chapter 121.—The item relating to chapter 121 in the table of sections at the beginning of part I of title 18, United States Code, is amended by striking "Wire and Electronic Communications and Transactional Records Access" and inserting "wire and electronic communications and transactional records access".

(c) Chapter 17A.—The item relating to chapter 17A in the table of sections at the beginning of part I of title 18, United States Code, is amended by striking "Carrier Operation Under the Influence of Alcohol or Drugs" and inserting "carrier operation under the influence of alcohol or drugs........341".

(d) Chapter 109A.—The item relating to chapter 109A in the table of sections at the beginning of part I of title 18, United States Code, is amended by striking "Abuse" and inserting "abuse".

(e) Chapter 11.—The item relating to chapter 11 in the table of sections at the beginning of part I of title 18, United States Code, is amended by striking "Bribery and graft" and inserting "Bribery, graft, and conflicts of interest".

SEC. 2665. INSERTION OF MISSING LETTER.

Section 794(d)(4) of title 18, United States Code, is amended by striking "amount" and inserting "amounts".

SEC. 2666. PUNCTUATION CORRECTION.

Section 1030.—Section 1030(a)(2) of title 18, United States Code, is amended—

(1) by striking the comma that follows a comma; and

(2) by inserting a comma after "financial institution".

SEC. 2667. REFERENCE CORRECTION.

Section 2232(c) of title 18, United States Code, is amended by inserting "of 1978" after "Surveillance Act".

SEC. 2668. CONFORMING AMENDMENT TO TABLE OF SECTIONS.

The item relating to section 2710 in the table of sections at the beginning of chapter 121 of title 18, United States Code, is amended by inserting "for chapter" after "Definitions".

SEC. 2669. CORRECTION OF ITEM IN TABLE OF SECTIONS FOR CHAPTER 206.

The item relating to section 3123 in the table of sections at the beginning of chapter 206 of title 18, United States Code, is amended by striking "trap or trace" and inserting "trap and trace".

SEC. 2670. CORRECTION OF ITEMS IN TABLE OF SECTIONS FOR CHAPTER 46.

The items in the table of sections at the beginning of chapter 46 of title 18, United States Code, are each amended by striking "Forfeiture" and inserting "forfeiture".

SEC. 2671. CORRECTION OF TYPOGRAPHICAL ERROR.

Section 2422 of title 18, United States Code, is amended by striking "of foreign commerce" and inserting "or foreign commerce".

SEC. 2672. CONFORMING AMENDMENT TO TABLE OF SECTIONS FOR CHAPTER 117.

The item relating to section 2424 in the table of sections at the beginning of chapter 117 of title 18, United States Code, is amended by striking "female" and inserting "individual".

SEC. 2673. ELIMINATION OF CROSS REFERENCES TO REPEALED SECTION.

(a) Section 3401.—Section 3401(g) of title 18, United States Code, is amended by striking "and section 4216".

(b) Section 3522.—Section 3522(c) of title 18, United States Code, is amended by striking "4216" and inserting "4215".

(c) Section 4106.—Section 4106(b) of title 18, United States Code, is amended by striking "4216" and inserting "4215".

SEC. 2674. INSERTION OF MISSING WORD.

Section 3142(c)(3) of title 18, United States Code, is amended by inserting "the" before "order".

SEC. 2675. INSERTION OF MISSING COMMA.

Section 351(a) of title 18, United States Code, is amended by inserting a comma after "(as defined in section 3056 of this title)".

SEC. 2676. CORRECTIONS OF ERRORS IN FEDERAL RULES OF EVIDENCE.

(a) Insertion of Missing Word.—Rule 615 of the Federal Rules of Evidence is amended by inserting "a" before "party which is not a natural person.".

(b) Syntax Correction.—Rule 804(a)(5) of the Federal Rules of Evidence is amended by striking "subdivisions" and inserting "subdivision".

(c) Correction of Capitalization.—Rule 1101(a) of the Federal Rules of Evidence is amended—

(1) by striking "Rules" and inserting "rules"; and

(2) by striking "Courts of Appeals" and inserting "courts of appeals".

SEC. 2677. SUPERVISED RELEASE.

Rule 11(c)(1) of the Federal Rules of Criminal Procedure is amended by adding "or term of supervised release" after "special parole term".

SEC. 2678. INJUNCTIONS AGAINST FRAUD.

Section 1345 of title 18, United States Code, is amended by adding "or of section 287, 371 (insofar as it involves a conspiracy to defraud the United States or any agency thereof), or 1001 of this title" after "violation of this chapter,".

SEC. 2679. OBSTRUCTION OF FEDERAL AUDIT.

(a) Offense.—Chapter 73 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1516. Obstruction of Federal audit

"(a) Whoever, with intent to deceive or defraud, endeavors to influence, obstruct, or impede a Federal auditor in the performance of official duties relating to a person receiving in excess of $100,000, directly or indirectly, from the United States in any 1 year period pursuant to a contract or subcontract, shall be fined under this title, or imprisoned not more than 5 years, or both.

"(b) For purposes of this section the term 'Federal auditor' means any person employed on a full or part time or contractual basis to perform an audit or a quality assurance inspection for or on behalf of the United States.".

(b) Section Analysis.—The section analysis for chapter 73 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"1516. Obstruction of Federal audit.".

SEC. 2680. UNAUTHORIZED USE OF THE TERM "SECRET SERVICE".

(a) Unauthorized Use.—Section 709 of title 18, United States Code, is amended by inserting after the undesignated paragraph relating to the Federal Bureau of Investigations the following new paragraph:

"Whoever, except with written permission of the Director of the United States Secret Service, knowingly uses the words 'Secret Service', 'Secret Service Uniformed Division', the initials 'U.S.S.S.', 'U.D.', or any colorable imitation of such words or initials, in connection with, or as a part of any advertisement, circular, book, pamphlet or other publication, play, motion picture, broadcast, telecast, other production, product, or item, in a manner reasonably calculated to convey the impression that such advertisement, circular, book, pamphlet or other publication, product, or item, is approved, endorsed, or authorized by or associated in any manner with, the United States Secret Service, or the United States Secret Service Uniformed Division; or".

(b) Effective Date.—This section shall take effect 90 days after the date of enactment of this Act.

SEC. 2681. AGGREGATION TO PERMIT PROSECUTION OF CERTAIN SCHEMES TO DEFRAUD MULTIPLE VICTIMS.

The second paragraph of section 2314 of title 18, United States Code, is amended by inserting "or persons" after "person" the first place it appears, and by inserting "or those persons" after "person" the second place it appears.

SEC. 2682. TIME FOR REFILING INDICTMENT OR INFORMATION FOLLOWING DISMISSAL.

(a) Indictment Where Defect Found After Period of Limitations.—Section 3288 of title 18, United States Code, is amended—

(1) by inserting after "within six calendar months of the date of the expiration of the applicable statute of limitations" the following: ", or, in the event of an appeal, within 60 days of the date the dismissal of the indictment or information becomes final";

(2) by striking all beginning with "Whenever" through "for any cause," and inserting "Whenever an indictment or information charging a felony is dismissed for any reason";

(3) by adding at the end thereof the following: "This section is not intended to permit the filing of a new indictment or information where the reason for the dismissal was the failure to file the indictment or information within the period prescribed by the applicable statute of limitations, or some other reason that would bar a new prosecution."; and

(4) by amending the section heading to read as follows:

"§ 3288. Indictments and informations dismissed after period of limitations.".

(b) Indictment Where Defect Found Before Period of Limitations.—Section 3289 of title 18, United States Code, is amended—

(1) by inserting after "within six calendar months of the date of the dismissal of the indictment or information" the following: "or, in the event of an appeal, within 60 days of the date the dismissal of the indictment or information becomes final";

(2) by striking all beginning with "Whenever" through "for any cause," and inserting "Whenever an indictment or information charging a felony is dismissed for any reason";

(3) by adding at the end thereof the following: "This section is not intended to

permit the filing of a new indictment or information where the reason for the dismissal was the failure to file the indictment or information within the period prescribed by the applicable statute of limitations, or some other reason that would bar a new prosecution."; and

(4) by amending the section heading to read as follows:

"§ 3289. Indictments and informations dismissed before period of limitations.".

(c) Chapter Analysis.—The analysis for chapter 213 of title 18, United States Code, is amended by striking the items for sections 3288 and 3289 and inserting the following:

"3288. Indictments and information dismissed after period of limitations.

"3289. Indictments and information dismissed before period of limitations.".

SEC. 2683. RESTARTING OF SPEEDY TRIAL ACT TIME PERIOD FOR DEFENDANTS WHO ABSCOND ON EVE OF TRIAL.

Section 3161 of title 18, United States Code, is amended by adding at the end the following:

"(k)(1) If the defendant is absent (as defined by subsection (h)(3)) on the day set for trial, and the defendant's subsequent appearance before the court on a bench warrant or other process or surrender to the court occurs more than 21 days after the day set for trial, the defendant shall be deemed to have first appeared before a judicial officer of the court in which the information or indictment is pending within the meaning of subsection (c) on the date of the defendant's subsequent appearance before the court.

"(2) If the defendant is absent (as defined by subsection (h)(3)) on the day set for trial, and the defendant's subsequent appearance before the court on a bench warrant or other process or surrender to the court occurs not more than 21 days after the day set for trial, the time limit required by subsection (c), as extended by subsection (h), shall be further extended by 21 days.".

SEC. 2684. CRIMINAL FINES AMENDMENTS.

(a) Application of Government Petition for Modification or Remission of Fines to Old Fines.—Section 3573 of title 18, United States Code, is amended by adding at the end thereof the following: "This section shall apply to all fines and assessments irrespective of the date of imposition.".

(b) Application of Statute of Limitations for Special Assessments to Old Assessments.—Section 3013(c) of title 18, United States Code, is amended by adding at the end thereof the following: "This subsection shall apply to all assessments irrespective of the date of imposition.".

(c) Application of Waiver by Attorney General of Interest or Penalty Relating To Fines to Old Fines.—Section 3612(h) of title 18, United States Code, is amended by inserting "or any interest or penalty relating to a fine imposed under any prior law" after "under this section".

(d) Notice Requirements.—Sections 3612(d) and (e) of title 18, United States Code, are amended by striking ", by certified mail,".

SEC. 2685. SYNTAX CORRECTION TO MINIMUM SENTENCE PROVISION.

Section 994(n) of title 28, United States Code, is amended by striking "as minimum sentence" and inserting "as a minimum sentence".

SEC. 2686. REFUND OF FORFEITED BAIL.

(a) Offense.—Chapter 207 of title 18, United States Code, is amended by adding the following new section after section 3150:

"§ 3151. Refund of forfeited bail

"Appropriations available to refund money erroneously received and deposited in the Treasury are available to refund any part of forfeited bail deposited into the Treasury and ordered remitted under the Federal Rules of Criminal Procedure.".

(b) Section Analysis.—The section analysis for chapter 207 of title 18, United States Code, is amended by inserting at the appropriate place the following new item:

"Sec. 3151. Refund of forfeited bail.".

SEC. 2687. SPECIAL ASSESSMENTS ON PERSONS CONVICTED OF OFFENSES FOR WHICH COLLATERAL MAY BE FORFEITED.

Section 3013 of title 18, United States Code, is amended—

(1) in subsection (a), by striking "The court" and inserting "Except as provided in subsection (d) of this section, the court"; and

(2) by inserting at the end the following new subsection:

"(e) No assessment shall be imposed on any person convicted of an offense for which the local rules of the district court in which the case is pending, or other Federal law, establishes that collateral may be posted in lieu of appearance in court.".

SEC. 2688. CONDITIONS OF PROBATION.

Section 3563(a)(2) of title 18, United States Code, is amended by inserting before the period ", unless the court finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which event the court shall impose one or more of the other conditions set forth under subsection (b)".

SEC. 2689. AUTHORITY TO OBTAIN ARREST WARRANT FOR FOREIGN FUGITIVE WHOSE SPECIFIC WHEREABOUTS ARE NOT KNOWN.

Section 3184 of title 18, United States Code, is amended by inserting after the first sentence the following: "Such complaint may be filed before and such warrant may be issued by a judge or magistrate of the United States District Court for the District of Columbia if the whereabouts within the United States of the person charged are not known.".

SEC. 2690. MISUSE OF SOCIAL SECURITY NUMBER.

Section 208 of the Social Security Act (42 U.S.C. 408) is amended—

(1) in the first undesignated paragraph, by striking "not more than $5,000" after "shall be fined";

(2) in the second undesignated paragraph, by striking "not more than $25,000" after "shall be fined"; and

(3) adding at the end the following: "For the purpose of subsection (g), the terms 'social security number' and 'social security account number' mean such numbers as are assigned by the Secretary under section 405(c)(2) of this title whether or not, in actual use, such numbers are called social security numbers.".

SEC. 2691. PETTY OFFENSE AMENDMENTS.

(a) Title 18.—Section 19 of title 18, United States Code, is amended by inserting ", for which the maximum fine is no greater than the amount set forth for such an offense in section 3571(b) (6) or (7) in the case of an individual or section 3571(c) (6) or (7) in the case of an organization" after "infraction".

(b) Rules of Procedure.—Rule 9 of the Rules of Procedure for the Trial of Misdemeanors before United States Magistrates is amended to read as follows:

"Rule 9. Definition

"As used in these rules, 'petty offense' has the meaning set forth in 18 U.S.C. § 19.".

(c) Federal Rules of Criminal Procedure.—Rule 54 of the Federal Rules of Criminal Procedure is amended in the definition of "petty offense" to read as follows:

" 'Petty offense' has the meaning set forth in 18 U.S.C. § 19.".

SEC. 2692. NONMAILABILITY OF LOCKSMITHING DEVICES.

(a) In General.—Title 39, United States Code, is amended by inserting after section 3002 the following:

"§ 3002a. Nonmailability of locksmithing devices.

"(a) Any locksmithing device is nonmailable mail, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs, unless such device is mailed to—

"(1) a lock manufacturer or distributor;

"(2) a bona fide locksmith;

"(3) a bona fide repossessor; or

"(4) a motor vehicle manufacturer or dealer.

"(b) For the purpose of this section, 'locksmithing device' means—

"(1) a device or tool (other than a key) designed to manipulate the tumblers in a lock into the unlocked position through the keyway of such lock;

"(2) a device or tool (other than a key or a device or tool under paragraph (1)) designed for the unauthorized opening or bypassing of a lock or similar security device; and

"(3) a device or tool designed for making an impression of a key or similar security device to duplicate such key or device.".

(b) Chapter Analysis.—The analysis for Chapter 30 of title 39, United States Code, is amended by inserting after the item relating to section 3002 the following:

"3002a. Nonmailability of locksmithing devices.".

(c) Penalties.—Title 18, United States Code, is amended by inserting after section 1716A the following:

"§ 1716B. Nonmailable locksmithing devices

"Whoever knowingly deposits for mailing or delivery, causes to be delivered by mail, or causes to be delivered by any interstate mailing or delivery other than by the United States Postal Service, any matter declared to be nonmailable by section 3002a of title 39, shall be guilty of a class A misdemeanor.".

(d) Chapter Analysis.—The analysis for chapter 83 of title 18, United States Code, is amended by inserting after the item relating to section 1716A the following:

"1716B. Nonmailable locksmithing devices.".

(e) Conforming Amendment.—Section 1716A of title 18, United States Code, is amended by striking "shall be fined not more than $1,000, or imprisoned not more than one year, or both" and inserting "shall be guilty of a class A misdemeanor".

SEC. 2693. ASSIMILATIVE CRIMES ACT AMENDMENTS.

(a) Penalties for Operating a Motor Vehicle While Under the Influence of Drugs or Alcohol.—Section 13 of title 18, United States Code, is amended—

(1) by inserting "(a)" before "Whoever"; and

(2) by adding at the end the following:

"(b) For purposes of subsection (a) of this section, that which may or shall be imposed through judicial or administrative action under the law of a State, territory, possession, or district, for a conviction for operating a motor vehicle under the influence of a drug or alcohol, shall be considered to be a punishment provided by that law. Any limitation on the right or privilege to operate a motor vehicle imposed under this subsection shall apply only to the special maritime and territorial jurisdiction of the United States.".

(b) IMPLIED CONSENT FOR CERTAIN TESTS.—(1) Chapter 205 of title 18, United States Code, is amended by adding at the end the following:

"§ 3117. Implied consent for certain tests

"(a) CONSENT.—Whoever operates a motor vehicle in the special maritime and territorial jurisdiction of the United States consents thereby to a chemical test or tests of such person's blood, breath, or urine, if arrested for any offense arising from such person's driving while under the influence of a drug or alcohol in such jurisdiction. The test or tests shall be administered upon the request of a police officer having reasonable grounds to believe the person arrested to have been driving a motor vehicle upon the special maritime and territorial jurisdiction of the United States while under the influence of drugs or alcohol in violation of the laws of a State, territory, possession, or district.

"(b) EFFECT OF REFUSAL.—Whoever, having consented to a test or tests by reason of subsection (a), refuses to submit to such a test or tests, after having first been advised of the consequences of such a refusal, shall be denied the privilege of operating a motor vehicle upon the special maritime and territorial jurisdiction of the United States during the period of a year commencing on the date of arrest upon which such test or tests was refused, and such refusal may be admitted into evidence in any case arising from such person's driving while under the influence of a drug or alcohol in such jurisdiction. Any person who operates a motor vehicle in the special maritime and territorial jurisdiction of the United States after having been denied such privilege under this subsection shall be treated for the purposes of any civil or criminal proceedings arising out of such operation as operating such vehicle without a license to do so.".

(2) The table of sections at the beginning of chapter 205 of title 18, United States Code, is amended by adding at the end the following:

"3117. Implied consent for certain tests."

SEC. 2694. PROTECTION OF FOREIGN OFFICIALS.

Section 112(b)(3) of title 18, United States Code, is amended by striking "but outside the District of Columbia".

SEC. 2695. BAIL PENDING APPEAL.

Section 3143(b) of title 18, United States Code, is amended by—

(1) striking subparagraph (2) and inserting the following:

"(2) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in—

"(A) reversal,

"(B) an order for a new trial,

"(C) a sentence that does not include a term of imprisonment, or

"(D) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process."; and

(2) inserting before the final period the following: ", except that in the circumstance described in paragraph (b)(2)(D), the judicial officer shall order the detention terminated at the expiration of the likely reduced sentence".

SEC. 2696. EMERGENCY PEN REGISTER AND TRAP AND TRACE DEVICE INSTALLATION.

(a) Chapter 206 of title 18, United States Code is amended—

(1) by renumbering sections 3125 and 3126 as sections 3126 and 3127 respectively; and

(2) by adding after section 3124 the following new section:

"§ 3125 Emergency pen register and trap and trace device installation.

"(a) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer, specially designated by the Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General, or by the principal prosecuting attorney of any State or subdivision thereof acting pursuant to a statute of that State, who reasonably determines that—

"(1) an emergency situation exists that involves—

"(A) immediate danger of death or serious bodily injury to any person; or

"(B) conspiratorial activities characteristic of organized crime,

that requires the installation and use of a pen register or a trap and trace device before an order authorizing such installation and use can, with due diligence, be obtained, and

"(2) there are grounds upon which an order could be entered under this chapter to authorize such installation and use 'may have installed and use a pen register or trap and trace device if, within forty-eight hours after the installation has occurred, or begins to occur, an order approving the installation or use is issued in accordance with section 3123 of this title.'

"(b) In the absence of an authorizing order, such use shall immediately terminate when the information sought is obtained, when the application for the order is denied or when forty-eight hours have lapsed since the installation of the pen register or trap and trace device, whichever is earlier.

"(c) The knowing installation or use by any investigative or law enforcement officer of a pen register or trap and trace device pursuant to subsection (a) without application for the authorizing order within forty-eight hours of the installation shall constitute a violation of this chapter.

"(d) A provider for a wire or electronic service, landlord, custodian, or other person who furnished facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.".

(b)(1) Section 3124(d) of title 18, United States Code, is amended by adding after the words "court order under this chapter" the words "or request pursuant to section 3125 of this title".

(2) Section 3124(e) of title 18, United States Code, is amended by adding after the words "court order" the words "under this chapter, a request pursuant to section 3125 of this title".

(c) The table of sections for chapter 206 of title 18, United States Code, is amended—

(1) by renumbering the items for sections 3125 and 3126 as sections 3126 and 3127, respectively; and

(2) by inserting the following new item: "3125. Emergency pen register and trap and trace device installation".

(d) Section 3124(b) of title 18, United States Code, is amended by adding after the words "shall be furnished" the words ", pursuant to subsection 3123(b) or section 3125 of this title,".

Subtitle L—Sentencing Amendments

SEC. 2701. PRISONERS TRANSFERRED TO THE UNITED STATES.

(a) PRISONERS TRANSFERRED TO THE UNITED STATES.—Chapter 306 of title 18, United States Code, is amended by adding after section 4106 the following new section:

"§ 4106A. Transfer of offenders on parole; parole offenders transferred

"(a) Upon the receipt of an offender who is on parole from the authorities of a foreign country, the Attorney General shall assign the offender to the United States Parole Commission for supervision.

"(b)(1) An offender transferred to the United States to serve a sentence of imprisonment that is longer than the maximum period of time specified in the applicable sentencing guidelines promulgated pursuant to section 994(a)(1) of title 28, United States Code, as determined by the United States Parole Commission upon the recommendation of the United States Probation Service, shall serve in an official detention facility the maximum period of time specified in the applicable sentencing guidelines and shall serve the remainder of the term imposed as a term of supervised release.

"(2) The Parole Commission shall set conditions of supervised release in accordance with section 3583 of this title. Upon the release of the prisoner from confinement and the beginning of the period of supervised release, supervision of the prisoner shall be transferred to the district court of the district where the prisoner resides.

"(3) To the extent permitted by the applicable treaty, a final determination by the Parole Commission as to whether the transferred offender shall serve a term of supervised release and the length of such term may be appealed to the United States court of appeals for the district in which the offender is imprisoned after transfer to the United States, and the court of appeals shall decide and dispose of the appeal in accordance with section 3742 as though the determination appealed had been imposed by the United States district court.

"(4) A determination by the Parole Commission shall be made only after affording the transferred offender an opportunity to submit evidence or information as to the applicable sentencing guideline.

"(c) This section shall apply only to offenses completed on or after November 1, 1987, and the Parole Commission's performance of its responsibilities under this section shall be subject to section 235 of the Comprehensive Crime Control Act of 1984.".

(b) CONFORMING AMENDMENT.—The section analysis at the beginning of chapter 306 of title 18, United States Code, is amended by inserting the following after the item for section 4106:

"4106A. Transfer of offenders on parole; parole of offenders transferred.".

SEC. 2702. RECORDS OTHER THAN TRANSCRIPTS.

Section 3553(c) of title 18, United States Code, is amended by—

(1) inserting after "transcription" the following: "or other appropriate public record"; and

(2) striking "clerk of the" in the last sentence.

SEC. 2703. STANDARD OF REVIEW.

Section 3742 of title 18, United States Code, is amended—

(1) in subsections (a)(2) and (b)(2), by striking "was imposed as a result of an incorrect application of the sentencing guidelines issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)" and inserting "resulted from the use of an inapplicable sentencing guideline range";

(2) in subsection (d)(2), by striking "was imposed as a result of an incorrect application of the sentencing guidelines" and inserting "resulted from the use of an inapplicable sentencing guideline range";

(3) in subsection (e)(1), by striking "imposed as a result of an incorrect application of the sentencing guidelines" and inserting "resulted from the use of an inapplicable sentencing guideline range";

(4) by striking paragraph (3) of subsection (a) and inserting the following:

"(3) is greater than the sentence specified in the applicable guideline range to the extent that the sentence includes a greater fine or term of imprisonment or term of supervised release than the maximum established in the guideline range, or includes a more limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) than the maximum established in the guideline range; or";

(5) by striking paragraph (3) of subsection (b) and inserting the following:

"(3) is less than the sentence specified in the applicable guideline range to the extent that the sentence includes a lesser fine or term of imprisonment or term of supervised release than the minimum established in the guideline range, or includes a less limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) than the minimum established in the guideline range; or";

(6) by striking paragraph (4) of subsection (a) and inserting the following:

"(4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.";

(7) in subsection (b)—

(A) by striking paragraph (4) through the end and inserting the following:

"(4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable."; and

(B) by inserting after "The Government" the following: ", with the personal approval of the Solicitor General or the Attorney General,";

(8) in subsections (d)(3) and (e)(2), by striking "range of the applicable sentencing guideline" and inserting "applicable sentencing guideline range";

(9) in the second sentence of subsection (d), by inserting "and shall give due deference to the district court's application of the guidelines to the facts" after "clearly erroneous"; and

(10) by inserting a new subsection (c), as follows, and by redesignating subsections (c), (d), (e), and (f) as subsections (d), (e), (f), and (g), respectively:

"(c) Plea Agreements.—In the case of a plea agreement which includes a specific sentence under rule 11(e)(1)(B) or (e)(1)(C) of the Federal Rules of Criminal Procedure, a notice of appeal may not be filed—

"(1) by the defendant under paragraphs (3) or (4) of subsection (a) unless the sentence imposed is greater than the sentence specified in such agreement; and

"(2) by the Government under paragraph (3) or (4) of subsection (b) unless the sentence imposed is less than the sentence specified in such agreement."; and

(11) by adding at the end of the section the following new subsection:

"(h) Guideline Not Expressed as a Range.—For the purpose of this section, the term 'sentencing guideline range' includes a sentencing guideline range having the same upper and lower limits.".

SEC. 2704. HIRING OUTSIDE COUNSEL.

Section 995(a) of title 28, United States Code, is amended by—

(1) striking "and" at the end of paragraph (21);

(2) striking the period at the end of paragraph (22) and inserting "; and"; and

(3) adding at the end thereof the following:

"(23) retain private attorneys to provide legal advice to the Commission in the conduct of its work, or to appear for or represent the Commission in any case in which the Commission is authorized by law to represent itself, or in which the Commission is representing itself with the consent of the Department of Justice; and the Commission may in its discretion pay reasonable attorney's fees to private attorneys employed by it out of its appropriated funds. When serving as officers or employees of the United States, such private attorneys shall be considered special government employees as defined in section 202(a) of title 18; and".

SEC. 2705. POWERS OF THE COMMISSION.

Section 995(a)(2) of title 28, United States Code, is amended by striking "grade 18 of the General Schedule pay rates (5 U.S.C. §5332)" and inserting "Level 6 of the Senior Executive Service Schedule (5 U.S.C. §5382)".

SEC. 2706. GRANTING INCENTIVE AWARDS.

(a) Defined as Agency.—Section 4501(1) of title 5, United States Code, is amended by—

(1) striking "and" at the end of subparagraph (F);

(2) adding "and" at the end of subparagraph (G); and

(3) adding at the end thereof the following:

"(H) the United States Sentencing Commission;".

(b) Powers of Commission.—Section 995(a) of title 28, United States Code, is amended by adding at the end thereof the following:

"(24) grant incentive awards to its employees pursuant to chapter 45 of title 5, United States Code.".

(c) Incentive Awards.—Section 996(b) of title 28, United States Code, is amended by inserting before "81", the following: "45 (Incentive Awards),".

SEC. 2707. TECHNICAL CORRECTION.

Section 3582(c) of title 18, United States Code, is amended by striking "28 U.S.C. 994(n)" and inserting "28 U.S.C. 994(o)".

SEC. 2708. PROTECTION OF PUBLIC.

(a) Conditions.—Section 3583(d) of title 18, United States Code, is amended—

(1) in paragraph (1) by inserting "(a)(2)(C)," after "(a)(2)(B),"; and

(2) in paragraph (2) by inserting "(a)(2)(C)," after "(a)(2)(B),".

(b) Modifications or Revocation.—Section 3583(e) of title 18, United States Code, is amended by inserting "(a)(2)(C)," after "(a)(2)(B),".

SEC. 2709. AUTHORITY TO AMEND ANNUAL REPORT.

Section 994(p) of title 28, United States Code, is amended by adding at the end the following: "During the reporting period prescribed in this subsection, the Commission may submit more than one report, and may amend a report, in whole or in part. In the case of an amended report, the one hundred and eighty day period shall run from the date the amended report is submitted to Congress, except that the Commission may specify that the one hundred and eighty day period with respect to the unamended portion of a partially amended report shall run from the date of the initial submission.".

SEC. 2710. CLARIFICATION OF RESTITUTION PROVISION.

Section 3563(b)(3) of title 18, United States Code, is amended by striking "3556" and inserting "3663 and 3664 (but not subject to the limitations of 3663(a))".

SEC. 2711. AMENDMENT TO RULE 4, RULES OF APPELLATE PROCEDURE.

Rule 4(b) of the Rules of Appellate Procedure is amended—

(1) in the first sentence, by inserting "(i)" after "entry of", and inserting "or (ii) a notice of appeal by the Government" at the end; and

(2) in the sentence beginning "When an appeal by the government is authorized", by inserting "(i) after "entry of", and inserting "or (ii) a notice of appeal by any defendant" at the end.

Subtitle M—Miscellaneous

SEC. 2751. MARIHUANA PLANTS.

Section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) is amended—

(1) in paragraph (A)(vii), by inserting ", or 1,000 or more marihuana plants regardless of weight" after "containing a detectable amount of marihuana";

(2) in paragraph (B)(vii), by inserting ", or 100 or more marihuana plants regardless of weight" after "containing a detectable amount of marihuana"; and

(3) in paragraph (D) by striking out "100 or more marihuana plants" and inserting in lieu thereof "50 or more marihuana plants".

SEC. 2752. FINES FOR SIMPLE POSSESSION.

Section 404(a) of the Controlled Substances Act (21 U.S.C. 844(a)) is amended—

(1) in the second sentence—

(A) by striking out "but not more than $5,000";

(B) by striking out "but not more than $10,000"; and

(C) by striking out "but not more than $25,000".

SEC. 2753. CONTINUING CRIMINAL ENTERPRISE.

(a) Increased Penalties.—Section 408(a) of the Controlled Substances Act is amended by—

(1) striking "10 years" and inserting "20 years"; and

(2) striking "20 years" and inserting "30 years".

(b) Redesignation.—Subsections (d) and (e) of section 408 of the Controlled Substances Act are redesignated as (c) and (d).

SEC. 2754. COMMON CARRIER OPERATION UNDER THE INFLUENCE OF ALCOHOL OR DRUGS.

(a) Locomotives.—Section 341 of title 18, United States Code, is amended by adding after "means a" the following: "locomotive, a".

(b) Maximum Penalty.—Section 342 of title 18, United States Code, is amended by striking "five" and inserting "fifteen".

(c) Sentencing Guidelines.—(1) Pursuant to its authority under section 994(p) of title 28, United States Code, and section 21 of the Sentencing Act of 1987, the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines, to provide that—

(A) a defendant convicted of violating section 342 of title 18, United States Code, under circumstances in which death results, shall be assigned an offense level under chapter 2 of the sentencing guidelines that is not less than level 26; and

(B) a defendant convicted of violating section 342 of title 18, United States Code, under circumstances in which serious bodily injury results, shall be assigned an offense level under chapter 2 of the sentencing guidelines that is not less than level 21.

(2) If the sentencing guidelines are amended after the effective date of this section, the Sentencing Commission shall implement the instruction set forth in paragraph (1) so as to achieve a comparable result.

SEC. 2756. ALIEN WITNESS COOPERATION ACT.

(a) In General.—Chapter 204 of title 18, United States Code, is amended by—

(1) redesignating section 3077 as section 3078;

(2) adding at the end of section 3076 the following new sentence: "An officer or employee of any governmental entity is eligible for treatment under this section.";

(3) inserting a new section 3077 after section 3076:

"§ 3077 Aliens; waiver of admission requirements

"If the information which would justify a reward under this chapter or under section 36 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2708) is furnished by an alien, the Attorney General, after consulting with the Secretary of State, may determine that the admission of such alien into the United States is in the public interest and, in that event, such alien and the members of his immediate family may receive immigrant visas and may be admitted to the United States for permanent residence without regard to their inadmissibility under the immigration or any other laws or regulations or the failure to comply with such laws and regulations: *Provided,* That the number of aliens and members of their immediate families admitted to the United States under the authority of this section shall not exceed 50 individuals in any one fiscal year. An officer or employee of any governmental entity is eligible for treatment under this section."; and

(4) in section 3078(4)(B) as redesignated, striking the words "section 3073" and substituting in lieu thereof "section 3077".

(b) Definitions.—The analysis for chapter 204 of title 18, United States Code, is amended by—

(1) striking the word "Definitions" and substituting in lieu thereof "Aliens; waiver of admission requirements"; and

(2) adding at the end of the analysis this new item:

"3078. Definitions.".

(c) Payment Clarification.—Subsection 201(d) of title 18, United States Code, is amended by striking the words "provided by law" and inserting in lieu thereof the phrase ", payments, benefits or otherwise which are authorized by and provided in accordance with provisions of law".

SEC. 2757. AMENDMENT TO THE FEDERAL RULES OF CRIMINAL PROCEDURE.

The Federal Rules of Criminal Procedure are amended by adding after Rule 12.2 the following:

"Rule 12.3. Notice of Defense Based Upon Public Authority

"(a) Notice by Defendant; Government Response; Disclosure of Witnesses.—

"(1) Defendant's notice and government's response.—A defendant intending to claim a defense of actual or believed exercise of public authority on behalf of a law enforcement or Federal intelligence agency at the time of the alleged offense shall, within the time provided for the filing of pretrial motions or at such later time as the court may direct, serve upon the attorney for the Government a written notice of such intention and file a copy of such notice with the clerk. Such notice shall identify the law enforcement or Federal intelligence agency and any member of such agency on behalf of which and the period of time in which the defendant claims the actual or believed exercise of public authority occurred. If the notice identifies a Federal intelligence agency, the copy filed with the clerk shall be under seal. Within ten days after receiving the defendant's notice, but in no event less than twenty days before the trial, the attorney for the Government shall serve upon the defendant or the defendant's attorney a written response which shall admit or deny that the defendant exercised the public authority identified in the defendant's notice.

"(2) Disclosure of witnesses.—At the time that the Government serves its response to the notice or thereafter, but in no event less than twenty days before the trial, the attorney for the Government may serve upon the defendant or the defendant's attorney a written demand for the names and addresses of the witnesses, if any, upon whom the defendant intends to rely in establishing the defense identified in the notice. Within seven days after receiving the Government's demand, the defendant shall serve upon the attorney for the Government a written statement of the names and addresses of any such witnesses. Within seven days after receiving the defendant's written statement, the attorney for the Government shall serve upon the defendant or the defendant's attorney a written statement of the names and addresses of the witnesses, if any, upon whom the Government intends to rely in opposing the defense identified in the notice.

"(3) Additional time.—If good cause is shown, the court may allow a party additional time to comply with any obligation imposed by this rule.

"(b) Continuing Duty To Disclose.—If, prior to or during trial, a party learns of any additional witness whose identity, if known, should have been included in the written statement furnished under subdivision (a)(2) of this rule, that party shall promptly notify in writing the other party or the other party's attorney of the name and address of any such witness.

"(c) Failure To Comply.—If a party fails to comply with the requirements of this rule, the court may exclude the testimony of any undisclosed witness offered in support of or in opposition to the defense, or enter such other order as it deems just under the circumstances. This rule shall not limit the right of the defendant to testify.

"(d) Protective Procedures Unaffected.—This rule shall be in addition to and shall not supersede the authority of the court to issue appropriate protective orders, or the authority of the court to order that any pleading be filed under seal.

"(e) Inadmissibility of Withdrawn Defense Based Upon Public Authority.—Evidence of an intention as to which notice was given under subdivision (a), later withdrawn, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

SEC. 2758. JURISDICTION OVER FEDERAL LANDS.

(a) Findings.—Congress finds that—

(1) the States have law enforcement jurisdiction over approximately 97 percent of federally owned property in the United States;

(2) the States lack jurisdiction to enforce the law on the remaining 3 percent of federally owned property which is subject to exclusive or partial Federal jurisdiction;

(3) to a large extent, exclusive Federal jurisdiction of these parcels results from historical accident, and is unrelated to the use of which the property is being put;

(4) the parcels of federally owned property comprising this 3 percent often are scattered in checkerboard fashion almost at random throughout Federal properties intermixed almost at random with parcels subject to concurrent Federal and State jurisdiction and parcels subject solely to State jurisdiction;

(5) as a result, effective criminal law enforcement on these properties is seriously hampered;

(6) many problems resulting from the jurisdictional maze can be resolved by conferring upon the States criminal law enforcement jurisdiction over the 3 percent of properties currently under executive or partial Federal jurisdiction;

(7) for a very limited number of installations or portions of them, extension of such criminal law enforcement jurisdiction to the States may be inappropriate due to unique military concerns which require exclusive Federal jurisdiction to ensure the proper performance of military functions, missions, and tasks on those properties;

(8) the need for exclusive jurisdiction may change from time to time as the purposes to which installations are dedicated or other conditions change;

(9) on federally owned property over which both the United States and a State have law enforcement jurisdiction, enforcement emergencies arise periodically, albeit infrequently, which involve immediate danger of death or serious physical injury, e.g., a prison riot or hostage situation; and

(10) such law enforcement emergencies require decisive and coordinated action which is best achieved when a single level of government has clear-cut control over the law enforcement response.

(b) In General.—Chapter 1 of title 18, United States Code, is amended by adding after section 19 the following new section:

"§ 20. State criminal laws applicable on Federal enclaves

"(a) The criminal laws of a State and political subdivision thereof shall apply respectively on all Federal property within the State and subdivision thereof. For this purpose the States and their political subdivisions are hereby given jurisdiction to enforce such laws subject to the absolute discretion of a commanding officer of a military installation or the chief Federal operating officer of a nuclear facility of the Department of Energy to restrict the entry of persons, including law enforcement officers of a State or political subdivision thereof, upon the installation or facility.

"(b) The Secretary of Defense, the Secretary of a military department, or (with respect to a facility of the Coast Guard when it is operating as a Service in the Department of Transportation) the Secretary of

Transportation, may from time to time exempt from the operation of subsection (a), by regulation, those military installations or parts thereof that are subject to the exclusive jurisdiction of the United States and with respect to which exclusive Federal criminal jurisdiction is required by the peculiar nature of the military operation conducted thereon or the need to avoid undue interference with the purpose of any activity or project at the installation.

"(c)(1) Nothing in this section shall, in any way, limit the existing jurisdiction of the United States over any property described herein or confer on a State or political subdivision thereof any power to interfere with Federal functions or any additional power to tax not expressly provided for elsewhere in Federal law. The laws of States and political subdivisions thereof made applicable on Federal property by this section shall not apply to the United States or any instrumentality thereof or to officials or employees of the United States while acting in the reasonable belief that they are acting in the performance of their duties or scope of employment.

"(2) Nothing in this section shall impose upon a State or political subdivision thereof any obligation to exercise jurisdiction over the Federal property described herein or create any right or defense for any person charged with a criminal offense in any Federal or State court.

"(d) When the criminal activity occurring on federally owned land involves immediate danger of death or serious physical injury to a person, and both the United States and a State have criminal law enforcement jurisdiction over that property, the Attorney General or the Deputy Attorney General of the United States is authorized to declare, based on his judgment, a law enforcement emergency, thereby suspending the exercise of police powers by the State over the particular criminal activity, except that the State may exercise those police powers necessary to respond to specific requests for assistance made by the Federal Bureau of Investigation. A declaration under this subsection shall be subject to the following conditions:

"(1) The authority to issue such a declaration may not be delegated.

"(2) The declaration is to be in writing and is to specify with particularity the criminal activity which constitutes the law enforcement emergency.

"(3) Unless sooner withdrawn, the declaration remains in effect for a period of 72 hours. In the event the particular criminal activity continues, the declaration may be renewed by the Attorney General or Deputy Attorney General, in increments not to exceed 72 hours, until the criminal activity has been brought to a conclusion.

"(4) The declaration of a law enforcement emergency does not deprive the State of its jurisdiction to prosecute persons responsible for the criminal activity which was the subject of such declaration.

"(e) For purposes of this section—

"(1) the term 'Federal property' includes all real property owned, leased, or used by the United States that is included within the part of the 'special maritime territorial jurisdiction of the United States' described in paragraph (3) of section 7 of this title, but does not include the Indian country as defined in section 1151 of this title;

"(2) the term 'criminal law' includes regulations which provide for a criminal sanction of for both a criminal and administrative sanction; and

"(3) the term 'military installation' means any property described in paragraph (1) that is under the administrative control of—

"(A) the Department of Defense or one or more military departments of the Department of Defense; or

"(B) the Coast Guard.".

(c) AMENDMENT TO CHAPTER ANALYSIS.—The chapter analysis for chapter 1 of title 18, United States Code, is amended by adding after the item pertaining to section 19, the following:

"20. State criminal laws applicable on Federal enclaves.".

(d) EFFECTIVE DATE.—The provisions of this section, with the exception of proposed subsection 20(b) of title 18, United States Code, shall become effective 120 days after the date of enactment of this section.

SEC. 2759. WITNESS SERVING SENTENCE ABROAD.

(a) IN GENERAL.—Chapter 223 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 3508. Custody and return of foreign witnesses

"(a) When the testimony of a person who is serving a sentence, is in pretrial detention, or is otherwise being held in custody, in a foreign country, is needed in a State or Federal criminal proceeding, the Attorney General shall, when he deems it appropriate in the exercise of his discretion, have the authority to request the temporary transfer of that person to the United States for the purposes of giving such testimony, to transport such person to the United States in custody, to maintain the custody of such person while he is in the United States, and to return such person to the foreign country.

"(b) Where the transfer to the United States of a person in custody for the purposes of giving testimony is provided for by treaty or convention, by this section, or both, that person shall be returned to the foreign country from which he is transferred. In no event shall the return of such person require any request for extradition or extradition proceedings, or proceedings under the immigration laws.

"(c) Where there is a treaty or convention between the United States and the foreign country in which the witness is being held in custody which provides for the transfer, custody and return of such witnesses, the terms and conditions of that treaty shall apply. Where there is no such treaty or convention, the Attorney General may exercise the authority described in paragraph (a) if both the foreign country and the witness give their consent.".

(b) TABLE OF CONTENTS.—The table of contents for chapter 223 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"3508. Custody and return of foreign witnesses.".

SEC. 2760. NATIONAL FOREST SYSTEM SAFETY.

(a) FINDINGS.—Congress finds that—

(1) National Forest System lands continue to be a haven for the unlawful production of marijuana and other controlled substances, which—

(A) endangers the public through their use of National Forest System lands;

(B) interferes with the ability of the Forest Service to effectively manage the natural resources and activities within the National Forest System; and

(C) causes damage and destruction of the natural resources and facilities managed by the Forest Service;

(2) the unlawful production of marijuana and other controlled substances often—

(A) is generally harmful to the environment and public health and safety;

(B) pollutes the air, soil, and water; and

(C) is harmful to wildlife;

(3) the Forest Service needs additional authority to adequately deal with the problem of controlled substance production that affect the administration of the National Forest System;

(4) the Forest Service needs to be able to exercise its investigative authorities outside the boundaries of the National Forest System for drug-related crimes arising from within the National Forest System in order to be effective in deterring such crime;

(5) the authority and powers of the Forest Service are not intended to be in conflict or interfere with the statutory authority, powers, or responsibilities of any State or political subdivision thereof; and

(6) the Forest Service, in the exercise of the law enforcement powers possessed by such, should cooperate to every extent possible with any other Federal, State or local law enforcement having jurisdiction in areas where National Forests are located, particularly where coordinated investigative and enforcement actions can be effective to control crime which affects multiple agencies.

(b) POWERS.—Section 15003 of the National Forest System Drug Control Act of 1986 (16 U.S.C. 559c) is amended—

(1) in the matter preceding paragraph (1)—

(A) by striking out "500 officers and employees" and inserting in lieu thereof "1,000 special agents and law enforcement officers"; and

(B) by striking out "within the boundaries of the National Forest System;

(2) in paragraph (2)—

(A) by inserting after "conduct," the following: "within the exterior boundaries of the National Forest System,"; and

(B) by adding at the end thereof the following: "and to conduct such investigations and enforcement actions outside the exterior boundaries of the National Forest System when cross designated by the Attorney General and when in immediate pursuit of such persons suspected of such offenses who are fleeing the National Forest System to avoid arrest;" and

(3) in paragraph (3), by adding at the end the following: "except that such arrests must arise out of an offense committed within the National Forest System, or which affects the administration of the National Forest System;".

(c) COOPERATION.—Section 15004 of the National Forest System Drug Control Act of 1986 (16 U.S.C. 559d) is amended—

(1) in paragraph (1), by striking out "and" at the end thereof;

(2) in paragraph (2), by striking out within the boundaries of the National Forest System." and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following new paragraphs:

"(3) the Forest Service shall cooperate with the Attorney General in carrying out the seizure and forfeiture provisions of section 881 of the Controlled Substances Act (21 U.S.C. 841) as such activity relates to the manufacture, distribution, or dispensing of marijuana or other controlled substances within the National Forest System;

"(4) the Secretary of Agriculture is authorized to designate law enforcement officers of any other Federal agency, when the Secretary determines such to be economical and in the public interest, and with the concurrence of that agency, to exercise the powers and authorities of the Forest Service while assisting the Forest Service in the National Forest System, or for activities administered by the Forest Service; and

"(5) the Forest Service is authorized to accept law enforcement designation from any other Federal or State agency or political subdivision thereof for the purpose of cooperating, as part of multi-agency task force operations, in the investigation and enforcement of laws and regulations of any other Federal or State agency or political subdivision thereof that when violated involve dual jurisdictions.".

(d) PENALTY.—Chapter 91 of Title 18, United States Code, is amended by adding at the end thereof the following new section:

"SEC. 1864. HAZARDOUS, INJURIOUS DEVICES ON PUBLIC LANDS.

"(a) PROHIBITED ACTS.—

"(1) IN GENERAL.—Any individual who—

"(A) places or causes to be placed on any Federal lands, or on any Indian reservation, or any Indian allotment while the title to such shall be held in trust by the Federal government or while the same shall remain inalienable by the allottee without the consent of the United States, any hazardous or injurious device that is designed to cause bodily injury or property damage as a result of the action of any person who comes into contact with such device; or

"(B) disrupts or interferes, or attempts to disrupt or interfere with the administration of any Federal public lands, or the authorized use of such lands, or with the lawful use, removal, harvest, or processing of any timber, mineral, soil, water, or other natural resource belonging to, or under the control of the United States, by placing or causing to be placed any hazardous or injurious device at any place where any person may be injured or the property of another damaged while any such individual or property is engaged in the administration or lawful use of such lands, or the lawful removal, harvest, or processing of any such timber, mineral, soil, water, or other natural resource;

shall be fined not more than $30,000 or imprisoned for not more than 5 years, or both.

"(2) INJURY OR DAMAGE.—Any individual who, in violating paragraph (1), injures any individual or damages the property of another, shall be fined not more than $200,000 or imprisoned for not more than 10 years, or both.

"(3) PRIOR CONVICTIONS.—If an individual commits a violation under paragraphs (1) or (2) after one or more prior convictions under such subsection, such person shall be fined not more than $500,000 or imprisoned for not more than 20 years, or both.

"(b) DEFINITION.—As used in this section, the term 'hazardous or injurious device' shall mean any device, which when assembled or placed, is designed to cause bodily injury, or damage to property by the action of any person making contact with such device. Such term includes guns attached to trip wires or other triggering mechanisms, ammunition attached to trip wires or other triggering mechanisms, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, lines or wires, lines or wires with hooks attached, nails placed so that the sharpened ends are positioned in an upright manner, or tree spiking devices including spikes, nails, or other objects hammered, driven, fastened, or otherwise placed into or on any timber, whether or not severed from the stump.

"(c) EXCEPTION.—This section shall not apply to the use of any hazardous or injurious device authorized by State or Federal law.".

(e) CRIMINAL PENALTY FOR POLLUTING.—Section 401(e) of the Controlled Substances Act (21 U.S.C. 841(e)) is amended by adding at the end thereof the following new paragraph:

"(4) Any person who, in the course of committing or attempting to commit an act in violation of subsection (a)(1), places or causes to be placed any poison or other chemical substance that pollutes or could pollute a stream, river, pond, lake, or other body of water, or that is harmful to humans, wildlife, domestic animals, natural resources, or the environment on Federal lands, shall be sentenced to a term of not more than 5 years or shall be fined not more than $10,000, or both.".

SEC. 2761. UNITED STATES MARSHAL.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Chapter 37 of title 28, United States Code, is amended by striking out sections 561 through 571 and inserting in lieu thereof the following:

"§ 561. United States Marshals Service

"(a) There is hereby established a United States Marshals Service as a bureau within the Department of Justice under the authority and direction of the Attorney General. There shall be at the head of the United States Marshals Service (hereafter in this chapter referred to as the 'Service') a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

"(b) The Director of the United States Marshals Service (hereafter in this chapter referred to as the 'Director') shall, in addition to the powers and duties set forth in this chapter, exercise such other functions as may be delegated by the Attorney General.

"(c) The President shall appoint, by and with the advice and consent of the Senate, a United States marshal for each judicial district of the United States and for the Superior Court of the District of Columbia, except that any marshal appointed for the Northern Mariana Islands may at the same time serve as marshal in another judicial district. Each United States marshal shall be an official of the Service and shall serve under the direction of the Director.

"(d) Each marshal shall be appointed for a term of four years. A marshal shall, unless that marshal has resigned or been removed by the President, continue to perform the duties of that office after the end of that 4-year term until a successor is appointed and qualifies.

"(e) The Director shall designate places within a judicial district for the official station and offices of each marshal. Each marshal shall reside within the district for which such marshal is appointed, except that—

"(1) the marshal for the District of Columbia, for the Superior Court of the District of Columbia, and for the Southern District of New York may reside within 20 miles of the district for which the marshal is appointed; and

"(2) any marshal appointed for the Northern Mariana Islands who at the same time is serving as marshal in another district may reside in such other district.

"(f) The Director is authorized to appoint and fix the compensation of such employees as are necessary to carry out the powers and duties of the Service and may designate such employees as law enforcement officers in accordance with such policies and procedures as the Director shall establish pursuant to the applicable provisions of title 5 and regulations issued thereunder.

"(g) The Director shall supervise and direct the United States Marshals Service in the performance of its duties.

"(h) The Director may administer oaths and may take affirmations of officials and employees of the Service, but shall not demand or accept any fee or compensation therefor.

"(i) There are authorized to be appropriated such sums as may be necessary to carry out the functions of the Service.

"§ 562. Vacancies

"(a) In the case of a vacancy in the office of a United States marshal, the Attorney General may designate a person to perform the functions of and act as marshal, except that the Attorney General may not designate to act as marshal any person who was appointed by the President to that office but with respect to such appointment the Senate has refused to give its advice and consent.

"(b) A person designated by the Attorney General under subsection (a) may serve until the earliest of the following events:

"(1) The entry into office of a United States marshal appointed by the President, pursuant to section 561(c).

"(2) The expiration of the thirtieth day following the end of the next session of the Senate.

"(3) If such designee of the Attorney General is appointed by the President pursuant to section 561(c), but the Senate refuses to give its advice and consent to the appointment, the expiration of the thirtieth day following such refusal.

"§ 563. Oath of office

"The Director and each United States marshal and law enforcement officer of the Service, before taking office, shall take an oath or affirmation to faithfully execute the duties of that office.

"§ 564. Powers as sheriff

"United States marshals, deputy marshals and such other officials of the Service as may be designated by the Director, in executing the laws of the United States within a State, may exercise the same powers which a sheriff of the State may exercise in executing the laws thereof.

"§ 565. Expenses of the service

"The Director is authorized to use funds appropriated for the Service to make payments for expenses incurred pursuant to personal services contracts and cooperative agreements, authorized by the Attorney General, for security guards and for the service of summons on complaints, subpoenas, and notices in lieu of services by United States marshals and deputy marshals.

"§ 566. Powers and duties

"(a) It is the primary role and mission of the United States Marshals Service to provide for the security and to obey, execute, and enforce all orders of the United States District Courts, the United States Courts of Appeals and the Court of International Trade.

"(b) The United States marshal of each district is the marshal of the district court and of the court of appeals when sitting in that district, and of the Court of International Trade holding sessions in that district, and may, in the discretion of the respective courts, be required to attend any session of court.

"(c) Except as otherwise provided by law or Rule of Procedure, the United States Marshals Service shall execute all lawful writs, process, and orders issued under the authority of the United States, and shall command all necessary assistance to execute its duties.

"(d) Each United States marshal, deputy marshal, and any other official of the Service as may be designated by the Director may carry firearms and make arrests without warrant for any offense against the United States committed in his or her presence, or for any felony cognizable under the laws of the United States if he or she has reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

"(e)(1) The United States Marshals Service is authorized to—

"(A) provide for the personal protection of Federal jurists, court officers, witnesses, and other threatened persons in the interests of justice where criminal intimidation impedes on the functioning of the judicial process or any other official proceeding; and

"(B) investigate such fugitive matters, both within and outside the United States, as directed by the Attorney General.

"(2) Nothing in this subsection shall be construed to interfere with or supersede the authority of other Federal agencies or bureaus.

"(f) In accordance with procedures established by the Director, and except for public money deposited under section 2041 of this title, each United States marshal shall deposit public moneys that the marshal collects into the Treasury, subject to disbursement by the marshal. At the end of each accounting period, the earned part of public moneys accruing to the United States shall be deposited in the Treasury to the credit of the appropriate receipt accounts.

"(g) Prior to resignation, retirement, or removal from office—

"(1) a United States marshal shall deliver to the marshal's successor all prisoners in his custody and all unserved process; and

"(2) a deputy marshal shall deliver to the marshal all process in the custody of the deputy marshal.

"(h) The United States marshals shall pay such office expenses of United States Attorneys as may be directed by the Attorney General.".

(2) Additional amendments.—Chapter 37 of title 28, United States Code, is amended—

(A) by striking out sections 572a, 573, and 574; and

(B) by redesignating sections 572, 575, and 576 as sections 567, 568, and 569, respectively.

(3) Conforming amendments.—The chapter heading for chapter 37 of title 28, United States Code, and the table of sections at the beginning of such chapter, are amended to read as follows:

"Chapter 37—United States Marshals Service

"Sec.
"561. United States Marshals Service.
"562. Vacancies.
"563. Oath of office.
"564. Powers as sheriff.
"565. Expenses of the Service.
"566. Powers and duties.
"567. Collection of fees; accounting.
"568. Practice of law prohibited.
"569. Reemployment rights.".

(b) Other Amendment.—Section 755 of title 28, United States Code, is amended by striking out the third paragraph.

(c) Marshals' Fees.—Section 1921 of title 28, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (e); and

(2) by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"(a)(1) The United States marshals or deputy marshals shall routinely collect, and a court may tax as costs, fees for the following:

"(A) Serving a writ of possession, partition, execution, attachment in rem, or libel in admiralty, warrant, attachment, summons, complaints, or any other writ, order or process in any case or proceeding.

"(B) Serving a subpoena or summons for a witness or appraiser.

"(C) Forwarding any writ, order, or process to another judicial district for service.

"(D) The preparation of any notice of sale, proclamation in admiralty, or other public notice or bill of sale.

"(E) The keeping of attached property (including boats, vessels, or other property attached or libeled), actual expenses incurred, such as storage, moving, boat hire, or other special transportation, watchmen's or keepers' fees, insurance, and an hourly rate, including overtime, for each deputy marshal required for special services, such as guarding, inventorying, and moving.

"(F) Copies of writs or other papers furnished at the request of any party.

"(G) Necessary travel in serving or endeavoring to serve any process, writ, or order, except in the District of Columbia, with mileage to be computed from the place where service is returnable to the place of service or endeavor.

"(H) Overtime expenses incurred by deputy marshals in the course of serving or executing civil process.

"(2) The marshals shall collect, in advance, a deposit to cover the initial expenses for special services required under paragraph (1)(E), and periodically thereafter such amounts as may be necessary to pay such expenses until the litigation is concluded. This paragraph applies to all private litigants, including seamen proceeding pursuant to section 1916 of this title.

"(3) For purposes of paragraph (1)(G), if two or more services or endeavors, or if an endeavor and a service, are made in behalf of the same party in the same case on the same trip, mileage shall be computed to the place of service or endeavor which is most remote from the place where service is returnable, adding thereto any additional mileage traveled in serving or endeavoring to serve in behalf of the party. If two or more writs of any kind, required to be served in behalf of the same party on the same person in the same case or proceeding, may be served at the same time, mileage on only one such writ shall be collected.

"(b) The Attorney General shall from time to time prescribe by regulation the fees to be taxed and collected under subsection (a). Such fees shall, to the extent practicable, reflect the actual and reasonable cost of the service provided.

"(c)(1) The United States Marshals Service shall collect a commission of 3 percent of the first $1,000 collected and 1½ percent on the excess of any sum over $1,000, for seizing or levying on property (including seizures in admiralty), disposing of such property by sale, setoff, or otherwise, and receiving and paying over money, except that the amount of commission shall be within the range set by the Attorney General. If the property is to be disposed of by marshal's sale, the commission shall be in such amount, within the range set by the Attorney General, as may be allowed by the court. In any case in which the vessel or other property is sold by a public auctioneer, or by some party other than a marshal or deputy marshal, the commission authorized under this subsection shall be reduced by the amount paid to such auctioneer or other party. This subsection applies to any judicially ordered sale or execution sale, without regard to whether the judicial order of sale constitutes a seizure or levy within the meaning of State law. This subsection shall not apply to any seizure, forfeiture, sale, or other disposition of property pursuant to the applicable provisions of law amended by the Comprehensive Forfeiture Act of 1984 (98 Stat. 2040).

"(2) The Attorney General shall prescribe from time to time regulations which establish a minimum and maximum amount for the commission collected under paragraph (1).

"(d) The United States marshals may require a deposit to cover the fees and expenses prescribed under this section.".

(d) Support of United States Prisoners in Non-Federal Institutions.—

(1) In general.—Chapter 301 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 4013. Support of United States prisoners in non-Federal institutions

"(a) The Attorney General, in support of United States prisoners in non-Federal institutions, is authorized to make payments from funds appropriated to the United States Marshals Service for—

"(1) necessary clothing;

"(2) medical care and necessary guard hire;

"(3) payment of rewards for assistance in the capture or information leading to the capture of a Federal fugitive;

"(4) the housing, care, and security of persons held in custody of a United States marshal pursuant to Federal law under agreements with State or local units of government or contracts with private entities; and

"(5) entering into contracts or cooperative agreements with any State, territory, or political subdivision thereof, for the necessary construction, physical renovation, acquisition of equipment, supplies, or materials required to establish acceptable conditions of confinement and detention services in any State or local jurisdiction which agrees to provide guaranteed bed space for Federal detainees within that correctional system, in accordance with regulations which are issued by the Attorney General and are comparable to the regulations issued under section 4006 of this title, except that—

"(A) amounts made available for purposes of this paragraph shall not exceed the average per-inmate cost of constructing similar confinement facilities for the Federal prison population,

"(B) the availability of such federally assisted facility shall be assured for housing Federal prisoners, and

"(C) the per diem rate charged for housing such Federal prisoners shall not exceed allowable costs or other conditions specified in the contract or cooperative agreement.".

(2) Conforming amendment.—The table of sections at the beginning of chapter 301 of title 18, United States Code, is amended by adding at the end the following:

"4013. Support of United States prisoners in non-Federal institutions.".

(e) Pay of Director of Service.—Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following:

"Director, United States Marshals Service.".

SEC. 2762. THE NATIONAL ADVISORY COMMISSION ON LAW ENFORCEMENT.

(a) DEFINITIONS.—As used in this section—

(1) the term "Commission" means the National Advisory Commission on Law Enforcement;

(2) the term "Commissioner" means a member of the National Advisory Commission on Law Enforcement; and

(3) the term "law enforcement officer" has the same meaning as provided in section 8401(17) of title 5, United States Code.

(b) ESTABLISHMENT.—There is established as an independent commission in the legislative branch of the United States a National Advisory Commission on Law Enforcement, which shall consist of the following members:

(1) four members of the United States Senate, 2 of whom shall be selected by the Majority Leader and 2 of whom shall be selected by the Minority Leader;

(2) four members of the United States House of Representatives, 2 of whom shall be selected by the Speaker and 2 of whom shall be selected by the Minority Leader;

(3) the Comptroller General of the United States, who shall also serve as Chairman of the Commission;

(4) the Director of the Office of Personnel Management;

(5) the Attorney General of the United States and three other officials of the Department of Justice who shall be designated by the Attorney General;

(6) the Secretary of the Treasury and 2 other officials of the Department of the Treasury who shall be designated by the Secretary of the Treasury;

(7) the Inspector Generals of 3 departments or agencies of the executive branch of the United States who shall be designated by the President of the United States; and

(8) three representatives from Federal employee groups to be selected by the Office of Personnel Management after consultation with the Speaker of the House and the Majority Leader of the Senate.

(c) STUDY.—The Commission shall study the methods and rates of compensation, including salary, overtime pay, retirement policies, and other benefits of law enforcement officers in all Federal agencies, as well as the methods and rates of compensation of State and local law enforcement officers in a representative number of areas where Federal law enforcement officers are assigned, in order to determine—

(1) the differences which exist among Federal agencies with regard to the methods and rates of compensation for law enforcement officers;

(2) the rational basis, if any, for such differences, considering the nature of the responsibilities of the law enforcement officers in each agency; the qualifications and training required to perform such responsibilities; the degree of personal risk to which the law enforcement officers in each agency are normally exposed in the performance of their duties; and such other factors as the Commission deems relevant in evaluating the differences in compensation among the various agencies;

(3) the extent to which inequities appear to exist among Federal agencies with regard to the methods and rates of compensation of law enforcement officers, based on consideration of the factors mentioned in paragraph (2) of this subsection;

(4) the feasibility of devising a uniform system of overtime compensation for law enforcement officers in all or most Federal agencies, with due regard for both the special needs of law enforcement officers and the relative cost effectiveness to the Government of such a system compared to those currently in use;

(5) how the salaries paid to Federal law enforcement officers compare to those of State and local officers in the same geographical area, especially those in "high cost-of-living" areas;

(6) the impact of the rates of compensation paid by various Federal agencies on the lifestyle, morale, and general well-being of law enforcement officers, including their ability to subsist;

(7) the recruiting and retention problems experienced by Federal agencies due to: inequities in compensation among such agencies; the differences between rates of compensation paid to Federal law enforcement officers and State and local officers in the same geographical areas; and other factors related to compensation;

(8) the extent to which Federal legislation and administrative regulations may be necessary or appropriate to rectify inequities among Federal agencies in the methods and rates of compensation for law enforcement officers; to address the lack of uniformity among agencies with regard to overtime pay; to provide premiums or special rates of pay for Federal law enforcement officers in high cost-of-living areas; to ensure that the levels of compensation paid to Federal law enforcement officers will be competitive with those paid to State and local officers in the same geographical areas; and to address such other matters related to the determinations made under this subsection as the Commission deems appropriate in the interests of enhancing the ability of Federal agencies to recruit and retain the most qualified and capable law enforcement officers; and

(9) the average retirement age of the Federal agencies and the retirement and benefits policies of Federal agencies.

(d) POWERS OF THE COMMISSION—The Commission shall have the power to—

(1) utilize, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, local, and private agencies and instrumentalities with or without reimbursement therefor;

(2) enter into and perform, without regard to section 3324 of title 31, United States Code, such contracts, leases, cooperative agreements, and other transactions as may be necessary in the conduct of the functions of the Commission, with any public agency, or with any person, firm, association, corporation, educational institution, or nonprofit organization;

(3) request such information, data, and reports from any Federal agency or instrumentality as the Commission may from time to time require and as may be produced consistent with other law; and

(4) hold hearings and call witnesses that might assist the Commission in the exercise of its powers or duties.

The Commission shall have such other powers as may be necessary to carry out its functions under this Act and may delegate to any member or designated person such powers as may be appropriate in the conduct of its functions.

(e) RESOURCES.—(1) Upon the request of the Commission, each Federal agency is authorized and directed to make its resources, services, equipment, personnel, facilities, and information available to the greatest practicable extent to the Commission in the execution of its functions.

(2) Each Commissioner may utilize the resources, services, equipment, personnel, information, and facilities of his or her Federal agency or, in the case of the Commissioners who are Members of Congress, his or her congressional office, as may be necessary in the conduct of the Commissioner's respective functions as a member of the Commission.

(f) QUORUM.—A simple majority of the Commissioners then serving shall constitute a quorum for the conduct of business by the Commission, and the Commission may exercise its powers and fulfill its duties by the vote of a simple majority of the Commissioners present.

(g) MEETING.—The Chairman of the Commission shall call and preside at meetings of the Commission, but the Chairman may delegate to any other Commissioner the authority to preside at meetings of the Commission.

(h) REPORT AND DISSOLUTION OF COMMISSION.—(1) Within 6 months following the date of enactment of this Act, the Commission shall prepare and deliver to the President of the United States, the President of the Senate, and the Speaker of the House of Representatives, a written report setting forth—

(A) the findings and determinations made by the Commission pursuant to section 176(b); and

(B) specific proposals for such legislation and administrative regulations as the Commission has determined to be necessary or appropriate pursuant to section 176(b)(8).

(2) The Commission shall be terminated 60 days following submission of the report mandated by this section.

SEC. 2763. CLARIFICATIONS REGARDING DRUG PARAPHERNALIA.

Section 1822 of the Anti-Drug Abuse Act of 1986 (Public Law 99-570; 21 U.S.C. 857) is amended—

(1) in subsection (d), by striking out "in violation of the Controlled Substances Act" and inserting ", possession of which is unlawful under the Controlled Substances Act"; and

(2) in subsection (f)(2) by striking out "primarily intended for use with" and inserting "traditionally used with".

SEC. 2764. AUTHORIZATION TO ACCEPT MONEY, GOODS AND SERVICES FOR THE PURPOSE OF HOSTING THE INTERPOL AMERICAN REGIONAL CONFERENCE AND FOR THE PURPOSE OF MAKING A COMMEMORATIVE GIFT TO THE INTERPOL GENERAL SECRETARIAT.

(a) Notwithstanding the provisions of section 1342 of title 31, United States Code, the Attorney General is hereby authorized to accept, receive, hold, and administer on behalf of the United States, gifts of money, personal property and services, for the purpose of hosting the International Criminal Police Organization's (INTERPOL) American Regional Conference in the United States in May and June 1989.

(b) The Attorney General is authorized to accept, receive, hold, and administer on behalf of the United States, gifts of money, personal property and services, for the purpose of making a commemorative gift, the value of which shall not exceed $10,000 without the prior concurrence of the Secretary of State, to the INTERPOL General

Secretariat on the opening of its headquarters in Lyon, France.

(c) All moneys received for the purposes provided in this section shall be credited to the appropriation "Salaries and Expenses, general legal activities" for fiscal year 1989 as he deems necessary, to pay expenses of such commemorative gift and hosting such conference, including but not limited to reception and representation expenses. The authority of the Attorney General under this section shall continue through September 30, 1989.

SEC. 2765. RECOVERY OF COSTS INCURRED BY STATE AND LOCAL LAW ENFORCEMENT AGENCIES.

(a) IN GENERAL.—Subchapter B of chapter 78 of the Internal Revenue Code of 1986 (relating to general powers and duties) is amended by adding at the end thereof the following new section:

"SEC. 7624. REIMBURSEMENT TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES.

"(a) AUTHORIZATION OF REIMBURSEMENT.—

"(1) IN GENERAL.—Whenever a State or local law enforcement agency provides information to the Internal Revenue Service that substantially contributes to the recovery of Federal taxes, such agency shall be reimbursed by the Internal Revenue Service for costs incurred in the investigation (including but not limited to reasonable expenses, per diem, salary, and overtime) not to exceed 10 percent of the sum recovered.

"(2) RECORDS; 10 PERCENT LIMITATION.—The Internal Revenue Service shall maintain records of the receipt of information from a contributing agency and shall notify the agency when monies have been recovered as the result of such information. Following such notification, the agency shall submit a statement detailing the investigative costs it incurred. Where more than 1 State or local agency has given information that substantially contributes to the recovery of Federal taxes, the Internal Revenue Service shall equitably allocate investigative costs among such agencies not to exceed an aggregate amount of 10 percent of the taxes recovered.

"(3) NO REIMBURSEMENT WHERE DUPLICATIVE.—No State or local agency shall be entitled to reimbursement under this section if reimbursement has been received by such agency under a Federal or State forfeiture program or under State revenue laws.".

(b) ESTABLISHMENT OF LAW ENFORCEMENT AGENCY ACCOUNT.—Section 7809 of the Internal Revenue Code of 1986 (relating to deposit of collections) is amended by adding at the end thereof the following new subsection:

"(d) DEPOSIT OF FUNDS FOR LAW ENFORCEMENT AGENCY ACCOUNT.—

"(1) IN GENERAL.—In the case of any amounts recovered as the result of information provided by State and local law enforcement agencies, an amount equal to 10 percent of such amounts shall be deposited in a separate account which shall be used to make the reimbursements required under section 7624.

"(2) DEPOSIT IN TREASURY AS INTERNAL REVENUE COLLECTIONS.—If any amounts remain in such account after payment of any qualified costs incurred under section 7624, such amounts shall be withdrawn from such account and deposited in the Treasury of the United States as internal revenue collections.".

(c) DISCLOSURE OF RETURN INFORMATION.—Section 6103(d) of the Internal Revenue Code of 1986 (relating to disclosure to State tax officials) is amended by adding at the end the following new paragraph:

"(3) EXCEPTION FOR REIMBURSEMENT UNDER SECTION 7624.—Return and return information with respect to taxes described in paragraph (1) may be disclosed to State and local law enforcement agencies for the purpose of, and only to the extent necessary to provide reimbursement of costs pursuant to section 7624.".

(d) CONFORMING AMENDMENTS.—(1) The table of sections for subchapter B of chapter 78 is amended by adding at the end thereof the following new item:

"Sec. 7624. Reimbursement to State and local law enforcement agencies.".

(2) The heading for section 6103(d) is amended to read as follows:

"(d) DISCLOSURE TO STATE TAX OFFICIALS AND STATE AND LOCAL LAW ENFORCEMENT AGENCIES.".

(e) REGULATIONS.—The Secretary of the Treasury shall not later than 90 days after the date of enactment of this Act prescribe such rules and regulations as shall be necessary and proper to carry out the provisions of this section. Any rule or regulation prescribed pursuant to this subsection shall be made on the record after opportunity for a hearing.

Subtitle N—State and Local Narcotics Control and Justice Assistance Improvements

CHAPTER 1—STATE AND LOCAL NARCOTICS CONTROL AND JUSTICE ASSISTANCE IMPROVEMENTS

SEC. 2821. BUREAU OF JUSTICE ASSISTANCE AND UNIFIED GRANT PROGRAMS.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by—

(1) striking part M; and

(2) striking parts D and E (42 U.S.C. 3741-3766) and inserting the following:

"PART D—ESTABLISHMENT OF BUREAU OF JUSTICE ASSISTANCE

"SEC. 401. ESTABLISHMENT OF BUREAU OF JUSTICE ASSISTANCE.

"(a) There is established within the Department of Justice, under the general authority of the Attorney General, a Bureau of Justice Assistance (hereafter in this part referred to as the 'Bureau').

"(b) The Bureau shall be headed by a Director (hereafter in this part referred to as the 'Director') who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall report to the Attorney General through the Assistant Attorney General. The Director shall have final authority for all grants, cooperative agreements, and contracts awarded by the Bureau. The Director shall not engage in any employment other than that of serving as the Director, nor shall the Director hold any office in, or act in any capacity for, any organization, agency, or institution with which the Bureau makes any contract or other arrangement under this title.

"SEC. 402. DUTIES AND FUNCTIONS OF THE DIRECTOR.

"The Director shall have the following duties:

"(1) Providing funds to eligible States, units of local government, for-profit organizations, and private, nonprofit organizations pursuant to part D.

"(2) Establishing programs in accordance with subpart 2 of part E and, following public announcement of such programs, awarding and allocating funds and technical assistance in accordance with the criteria of subpart 2, and on terms and conditions determined by the Director to be consistent with subpart 2.

"(3) Cooperating with and providing technical assistance to States, units of local government, and other public and private organizations or international agencies involved in criminal justice activities.

"(4) Providing for the development of technical assistance and training programs for State and local criminal justice agencies and fostering local participation in such activities.

"(5) Encouraging the targeting of State and local resources on efforts to reduce the incidence of drug abuse and crime and on programs relating to the apprehension and prosecution of drug offenders.

"(6) Establishing and carrying on a specific and continuing program of cooperation with the States and units of local government designed to encourage and promote consultation and coordination concerning decisions made by the Bureau affecting State and local drug control and criminal justice priorities.

"(7) Preparing recommendations on the State and local drug enforcement component of the National Drug Control Strategy which shall be submitted to the Associate Director of the Office on National Drug Control Policy. In making such recommendations, the Director shall review the statewide strategies submitted by such States under part E, and shall obtain input from State and local drug enforcement officials. The recommendations made under this paragraph shall be provided at such time and in such form as the Director of National Drug Control Policy shall require.

"(8) Exercising such other powers and functions as may be vested in the Director pursuant to this title or by delegation of the Attorney General or Assistant Attorney General.

"PART E—BUREAU OF JUSTICE ASSISTANCE GRANT PROGRAMS

"Subpart 1—Drug Control and System Improvement Grant Program

"SEC. 501. DESCRIPTION OF THE DRUG CONTROL AND SYSTEM IMPROVEMENT GRANT PROGRAM.

"(a) It is the purpose of this subpart to assist States and units of local government in carrying out specific programs which offer a high probability of improving the functioning of the criminal justice system, with special emphasis on a nationwide and multilevel drug control strategy by developing programs and projects to assist multijurisdictional and multi-State organizations in the drug control problem and to support national drug control priorities.

"(b) The Director of the Bureau of Justice Assistance (hereafter in this part referred to as the 'Director') is authorized to make grants to States, for the use by States and units of local government in the States, for the purpose of enforcing State and local laws that establish offenses similar to offenses established in the Controlled Substances Act (21 U.S.C. 801 et seq.) and to improve the functioning of the criminal justice system with emphasis on violent crime and serious offenders. Such grants shall provide additional personnel, equipment, training, technical assistance, and information systems for the more widespread apprehension, prosecution, adjudication, and detention and rehabilitation of persons who violate these laws, and to assist the victims of such crimes (other than compensation), including—

"(1) demand reduction education programs in which law enforcement officers participate;

"(2) multijurisdictional task force programs that integrate Federal, State, and local drug law enforcement agencies and prosecutors for the purpose of enhancing interagency coordination, intelligence, and facilitating multijurisdictional investigations;

"(3) programs designed to target the domestic sources of controlled and illegal substances, such as precursor chemicals, diverted pharmaceuticals, clandestine laboratories, and cannabis cultivations;

"(4) providing programs that assist citizens in preventing and controlling crime to include special programs that address the problems of crimes committed against the elderly and rural jurisdictions;

"(5) disrupting illicit commerce in stolen goods and property;

"(6) improving the investigation and prosecution of white-collar crime, organized crime, public corruption crimes, and fraud against the government with priority attention to cases involving drug-related official corruption;

"(7) improving the operational effectiveness of law enforcement through the use of crime analysis techniques, street sales enforcement, schoolyard violator programs, gang-related and low-income housing drug control programs;

"(8) career criminal prosecution programs including the enactment of model drug control legislation;

"(9) financial investigative programs that target the identification of money laundering operations and assets obtained through illegal drug trafficking, including the enactment of model legislation, financial investigative training, and financial information sharing systems;

"(10) improving the operational effectiveness of the court process through programs such as court delay reduction programs and enhancement programs;

"(11) programs designed to provide additional public correctional resources and improve the corrections system, including treatment in prisons and jails, intensive supervision programs, and long-range corrections and sentencing strategies;

"(12) providing prison industry projects designed to place inmates in a realistic working and training environment which will enable them to acquire marketable skills and to make financial payments for restitution to their victims, for support of their own families, and for support of themselves in the institution;

"(13) providing programs which identify and meet the treatment needs of adult and juvenile drug-dependent offenders;

"(14) developing and implementing programs which provide assistance to jurors and witnesses, and assistance (other than compensation) to victims of crimes;

"(15)(A) developing programs to improve drug control technology, such as pretrial drug testing programs, programs which provide for the identification, assessment, referral to treatment, case management and monitoring of drug dependent offenders, enhancement of State and local forensic laboratories, and (B) criminal and justice information systems to assist law enforcement, prosecution, courts, and corrections organization;

"(16) innovative programs that demonstrate new and different approaches to enforcement, prosecution, and adjudication of drug control activities;

"(17) improving the criminal and juvenile justice system's response to domestic and family violence, including spouse abuse, child abuse, and abuse of the elderly; and

"(18) drug control evaluation programs which the State and local units of government may utilize to evaluate programs and projects directed at State drug control activities.

"(c) Each program funded under this section shall contain an evaluation component, developed pursuant to guidelines established by the National Institute of Justice, in consultation with the Bureau of Justice Assistance. The Director of the Bureau of Justice Assistance may waive this requirement when, in the opinion of the Director—

"(1) the program is not of sufficient size to justify a full evaluation report; or

"(2) the program is designed primarily to provide material resources and supplies, such as laboratory equipment, that would not justify a full evaluation report.

"SEC. 502. ELIGIBILITY.

"The Bureau is authorized to make financial assistance under this subpart available to a State to enable it to carry out all or a substantial part of a program or project submitted and approved in accordance with the provisions of this subpart.

"SEC. 503. STATE APPLICATIONS.

"To request a grant under this subpart, the chief executive officer of a State shall submit to the Director an application at such time and in such form as the Director may require. Such application shall include the following:

"(1) A statewide strategy for drug control and programs which improve the functioning of the criminal justice system with emphasis on violent crime and serious offenders. The combined strategy shall be prepared after consultation with State and local officials with emphasis on those whose duty it is to enforce drug laws and direct the administration of justice and shall contain—

"(A) a definition and analysis of the drug problem in the State, and an analysis of the problems in each of the major counties and municipalities with major drug control problems;

"(B) an assessment of the efforts existing as of the time of the application to address the drug control problems at the State and local level;

"(C) coordination requirements;

"(D) resource needs;

"(E) the establishment of statewide priorities for drug control activities and programs;

"(F) an analysis of the relationship of the proposed State efforts to the national drug control strategy; and

"(G) a plan for coordinating the programs to be funded under this subpart with federally funded State and local drug abuse education, prevention, research, and treatment programs.

"(2) A certification that Federal funds made available under the formula grant of this subpart will not be used to supplant State or local funds, but will be used to increase the amounts of such funds that would, in the absence of Federal funds, be made available for law enforcement activities.

"(3) A certification that funds required to pay the non-Federal portion of the cost of each program and project for which such grant is made shall be in addition to funds that would otherwise be made available for law enforcement by the recipients of grant funds.

"(4) An assurance that the State application described in this section, and any amendment to such application, has been submitted for review to the State legislature or its designated body (for purposes of this section, such application or amendment shall be deemed to be reviewed if the State legislature or such body does not review such application or amendment within the 30-day period beginning on the date such application or amendment is so submitted).

"(5) An assurance that the State application and any amendment thereto was made public before submission to the Bureau and, to the extent provided under State law or established procedure, an opportunity to comment thereon was provided to citizens and to neighborhood and community groups.

"(6) An assurance that following the first fiscal year covered by an application and for each fiscal year thereafter, a performance evaluation and assessment report concerning the activities carried out pursuant to this section will be submitted to the Bureau.

"(7) A provision for fund accounting, auditing, monitoring, and such evaluation procedures as may be necessary to keep such records that the Bureau shall prescribe to assure fiscal control, proper management, and efficient disbursement of funds reviewed under this section.

"(8) An assurance that the applicant shall maintain such data and information and submit such reports in such form, at such times, and containing such data and information as the Bureau may reasonably require to administer other provisions of this subpart.

"(9) A certification that its programs meet all the requirements of this section, that all the information contained in the application is correct, that there has been appropriate coordination with affected agencies, and that the applicant will comply with all provisions of this subpart and all other applicable Federal laws. Such certification shall be made in a form acceptable to the Bureau and shall be executed by the chief executive or such other officer of the applicant qualified under regulations promulgated by the Office.

"SEC. 504. GRANT LIMITATIONS.

"(a) A grant made under this subpart may not—

"(1) for fiscal years 1989 and 1990 appropriations be expended for more than 75 percent; and

"(2) for fiscal years 1991 and 1992 appropriations be expended for more than 50 percent,

of the cost of the identified uses for which such grant is received to carry out any purpose specified in section 502, except that in the case of funds distributed to an Indian tribe which performs law enforcement functions (as determined by the Secretary of the Interior) for any such program or project, the amount of such grant shall be equal to 100 percent of such cost. The non-Federal portion of the expenditures for such uses shall be paid in cash.

"(b) Not more than 10 percent of a grant made to an eligible State under section 506 may be used for costs incurred to administer such grant.

"(c) States and units of local government or combinations thereof are authorized to use a grant made under section 506 for the expenses associated with participation in the State and Local Task Force Program established by the Drug Enforcement Administration.

"(d) States and local units of government are authorized to use a grant made under section 506 for the expenses associated with conducting the evaluations required under section 501(c) of this part.

"(e) The non-Federal portion of the cost of such program or project shall be in cash. State and local units of government may use cash received under the equitable sharing program to cover the non-Federal portion of the costs of programs funded under section 506.

"(f) No funds may be awarded under this subpart to a grant recipient for a program or project for which funds have been awarded under this title for 4 years (in the aggregate), including any period occurring before the effective date of this subsection.

"SEC. 505. REVIEW OF STATE APPLICATIONS.

"(a) The Bureau shall provide financial assistance to each State applicant under this subpart to carry out the programs or projects submitted by such applicant upon determining that—

"(1) the application or amendment thereto is consistent with the requirements of this subpart; and

"(2) before the approval of the application and any amendment thereto the Bureau has made an affirmative finding in writing that the program or project has been reviewed in accordance with this subpart.

"(b) Each application or amendment made and submitted for approval to the Bureau pursuant to section 503 shall be deemed approved, in whole or in part, by the Bureau not later than 45 days after first received unless the Bureau informs the applicant of specific reasons for disapproval.

"(c) Grant funds awarded under this subpart shall not be used for land acquisition or construction projects, other than penal and correctional institutions.

"(d) The Bureau shall not finally disapprove any application, or any amendment thereto, submitted to the Director under this section without first affording the applicant reasonable notice and opportunity for reconsideration.

"SEC. 506. ALLOCATION AND DISTRIBUTION OF FUNDS UNDER FORMULA GRANTS.

"(a) Of the total amount appropriated for this part in any fiscal year, less amounts set aside for evaluation pursuant to section 520 and section 1001(a)(6), 80 percent shall be set aside for section 502 and allocated to States as follows:

"(1) $750,000 shall be allocated to each of the participating States; and

"(2) of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State bears to the population of all the States.

"(b) Of the amounts set aside for this section, not less than 10 percent shall be used to fund street sales enforcement programs of which the primary goal is to strengthen urban enforcement and prosecution efforts targeted at street level narcotics activity in areas of high-intensity drug trafficking. The Director may, in his discretion, waive this requirement at the request of a State, where the imposition of this requirement is clearly inappropriate given the States documented needs as specified in their statewide strategy. Such projects may include—

"(1) the early involvement of prosecution and court functions in order to ensure that both citizen rights and system impact issues are addressed;

"(2) the training and utilization of uniformed personnel and the certification of uniformed officers as narcotics experts for testifying in court;

"(3) the deployment of street teams for on-going investigations and arrests of street narcotics dealers and buyers, and the involvement of law enforcement personnel to ensure that citizen concerns regarding narcotics conditions are addressed;

"(4) the enhancement of prosecution, adjudication, and corrections resources to accommodate the increased case loads generated through intensive, street-level enforcement programs;

"(5) the organization and deployment of mobile task forces to target those areas of the city where street sales of drugs have become blatant;

"(6) the development and implementation of innovative law enforcement programs, such as undercover buy programs aimed at the street retailer and the enforcement of asset seizure and forfeiture laws; and

"(7) the coordination of such projects with forensic laboratory services.

"(c)(1) Each State which received funds under subsection (a) of this section in a fiscal year shall distribute among units of local government, or combinations of units of local government, in such State for the purposes specified in section 501(b) that portion of such funds which bears the same ratio to the aggregate amount of such funds as the amount of funds expended by all units of local government for criminal justice in the preceding fiscal year bears to the aggregate amount of funds expended by the State and all units of local government in such State for criminal justice in such preceding fiscal year.

"(2) Each State which receives funds under subsection (a) shall provide to units of local government or combinations thereof with a minimum population of 500,000, or if the largest such unit or combination has less than 500,000, to the largest such unit or combination thereof in the State, of the pass through formula, a percentage of such funds which is not less than a portion of such funds which bears the same ratio to the amount of funds expended by such local government or combination thereof to the aggregate amount of funds expended by all units of local government for criminal justice in the preceding fiscal year.

"(3) Any funds not distributed to units of local government under paragraph (1) shall be available for expenditure by the State involved.

"(4) For purposes of determining the distribution of funds under paragraph (1), the most accurate and complete data available for the fiscal year involved shall be used. If data for such fiscal year are not available, then the most accurate and complete data available for the most recent fiscal year preceding such fiscal year shall be used.

"(d) No funds allocated to a State under subsection (a) or received by a State for distribution under subsections (b) and (c) may be distributed by the Director or by the State involved for any program other than a program contained in an approved application.

"(e) If the Director determines, on the basis of information available during any fiscal year, that a portion of the funds allocated to a State for that fiscal year will not be required or that a State will be unable to qualify or receive funds under section 502, or that a State chooses not to participate in the program established under such section, then such portion shall be awarded by the Director to urban, rural, and suburban units of local government or combinations thereof within such State giving priority to those jurisdictions with greatest need.

"(f) Any funds allocated under subsection (a) or (e) that are not distributed under this section shall be available for obligation under subpart 2.

"SEC. 507. STATE OFFICE.

"(a) The chief executive of each participating State shall designate a State office for purposes of—

"(1) preparing an application to obtain funds under section 503;

"(2) administering funds received under such section from the Director, including receipt, review, processing, monitoring, progress and financial report review, technical assistance, grant adjustments, accounting, auditing and fund disbursements; and

"(3) coordinating the distribution of funds provided under this part with State agencies receiving Federal funds for drug abuse education, prevention, treatment, and research activities and programs.

"(b) An office or agency performing other functions within the executive branch of a State may be designated to carry out the functions specified in subsection (a).

"SEC. 508. DISTRIBUTION OF GRANTS TO LOCAL GOVERNMENT.

"(a) Each application made by a local unit of government, or a combination of units of local government, to a State for funds under this subchapter shall be deemed approved, in whole or in part, by the State not later than 45 days after first received unless the State informs the applicant in writing of specific reasons for disapproval. The State shall not finally disapprove any application submitted to the State without first affording the applicant reasonable notice and opportunity for reconsideration.

"(b)(1) Except as provided in paragraph (2), each State which receives funds under section 506 in a fiscal year shall make such funds available to local units of government, or combinations of units of local government, whose application has been submitted to, approved and awarded by the State, within 90-days after the Bureau has approved the State application and has made funds available to such State. If the State does not distribute such funds to any local unit of government, or combination thereof, within that time, the State shall return such funds to the Director who shall directly award such funds to the local unit of government, or combination thereof. The Director shall have the authority to waive the 90-day requirement in this section upon a finding that the State cannot satisfy that requirement consistent with State statutes.

"(2) Each State which receives funds under section 506 in a fiscal year shall make such funds available to local units of government, or combinations thereof, with a minimum population of 500,000, or if the largest such unit or combination has less than 500,000, to the largest such unit or combination thereof in the State, whose application has been submitted to, approved, and awarded by the State, within 45 days after the Bureau has approved the State application and has made funds available to such State. If the State does not distribute such funds within that time, the State shall return such funds to the Director who shall directly award such funds to the local unit of government, or combination thereof. The Director shall have the authority to waive the 45-day requirement in this section upon a finding that the State cannot satisfy that requirement consistent with State statutes.

"Subpart 2—Discretionary Grants

"SEC. 510. PURPOSE.

"(a) The purpose of this subpart is to provide additional Federal financial assistance to public or private agencies and private nonprofit organizations for purposes of—

"(1) undertaking educational and training programs for criminal justice personnel;

"(2) providing technical assistance to States and local units of governments;

"(3) undertaking projects which are national or multijurisdictional in scope and which address the purposes specified in section 502; and

"(4) providing financial assistance to public agencies and private nonprofit organizations for demonstration programs which, in view of previous research or experience, are likely to be a success in more than one jurisdiction.

"(b) In carrying out this subpart, the Director is authorized to make grants to, or enter into contracts with public or private agencies, institutions, or organizations or individuals to carry out any purpose specified in section 501(b). The Director shall have final authority over all funds awarded under this subpart.

"SEC. 511. ALLOCATION OF FUNDS FOR DISCRETIONARY GRANTS.

"Of the total amount appropriated for this part in any fiscal year less amounts set aside for evaluation and research pursuant to section 520 and section 1001(a)(6), 20 percent shall be reserved and set aside for this section in a special discretionary fund for use by the Director in carrying out the purposes specified in section 503. Grants under this section may be made for amounts up to 100 percent of the costs of the programs or projects contained in the approved application.

"SEC. 512. LIMITATION ON USE OF DISCRETIONARY GRANT FUNDS.

"Grant funds awarded under section 511 shall not be used for land acquisition or construction projects.

"SEC. 513. APPLICATION REQUIREMENTS.

"(a) No grant may be made under this subpart unless an application has been submitted to the Director in which the applicant—

"(1) sets forth a program or project which is eligible for funding pursuant to section 511;

"(2) describes the services to be provided, performance goals, and the manner in which the program is to be carried out;

"(3) describes the method to be used to evaluate the program or project in order to determine its impact and effectiveness in achieving the stated goals; and

"(4) agrees to conduct such evaluation according to the procedures and terms established by the Bureau.

"(b) Each applicant for funds under this subpart shall certify that its program or project meets all the requirements of this section, that all the information contained in the application is correct, and that the applicant will comply with all the provisions of this subpart and all other applicable Federal laws. Such certification shall be made in a form acceptable to the Director.

"SEC. 514. PERIOD OF AWARD.

"The Bureau may provide financial aid and assistance to programs or projects under this subpart for a period of not to exceed 4 years. Grants made pursuant to this subpart may be extended or renewed by the Bureau for an additional period of up go 2 years if—

"(1) an evaluation of the program or project indicates that it has been effective in achieving the stated goals or offers the potential for improving the functioning of the criminal justice system; and

"(2) the public agency or private nonprofit organization within which the program or project has been conducted agrees to provide at least one-half of the total cost of such program or project from any source of funds, including Federal grants, available to the eligible jurisdiction.

"Subpart 3—Administrative Provisions

"SEC. 520. PROGRAM AND PROJECT EVALUATION; RESEARCH.

"(a) Of the total amounts appropriated for this part in any fiscal year, 4 percent or $10,000,000, whichever is less, shall be transferred to the National Institute of Justice as follows:

"(1) Fifty percent of the funds transferred to the National Institute of Justice under this section shall be used for program and project evaluation—

"(A) to develop guidelines, in cooperation with the Bureau of Justice Assistance, to assist State and local units of government to conduct the program evaluations as required by section 501(c) of this part; and

"(B) to conduct a reasonable number of comprehensive evaluations of programs funded under section 506 (formula grants) and section 511 (discretionary grants) of this part.

In selecting programs for review, the Director of the National Institute of Justice should consider—

"(i) whether the program establishes or demonstrates a new and innovative approach to drug or crime control;

"(ii) the cost of the program to be evaluated and the number of similar programs funded under section 506 (formula grants) and section 511 (discretionary grants);

"(iii) whether the program has a high potential to be replicated in other jurisdictions; and

"(iv) whether there is substantial public awareness and community involvement in the program. Routine auditing, monitoring, and internal assessment of a State and local drug control program's progress shall be the sole responsibility of the Bureau of Justice Assistance.

"(2) Fifty percent of the funds transferred to the National Institute of Justice under this section shall be used to conduct research and development programs on drug and drug-related crime control programs. The primary focus of such research should be on practical approaches to drug and drug-related crime control to assist State and local law enforcement agencies in their response to these problems.

"(b) The Director of the National Institute of Justice shall annually report to the President, the Attorney General and the Congress on the nature and findings of the evaluation and research and development activities funded under this section.

"SEC. 521. GENERAL PROVISIONS.

"(a) The Bureau shall prepare both a 'Program Brief' and 'Implementation Guide' document for proven programs and projects to be funded under this part.

"(b) The functions, powers, and duties specified in this part to be carried out by the Bureau shall not be transferred elsewhere in the Department of Justice unless specifically hereafter authorized by the Congress by law.

"SEC. 522. REPORTS.

"(a) Each State which receives a grant under section 506 shall submit to the Director, for each year in which any part of such grant is expended by a State or unit of local government, a report which contains—

"(1) a summary of the activities carried out with such grant and an assessment of the impact of such activities on meeting the needs identified in the State strategy submitted under section 503;

"(2) a summary of the activities carried out in such year with any grant received under subpart 2 by such State;

"(3) the evaluation result of programs and projects;

"(4) an explanation of how the Federal funds provided under this part were coordinated with State agencies receiving Federal funds for drug abuse education, prevention, treatment, and research activities; and

"(5) such other information as the Director may require by rule.

Such report shall be submitted in such form and by such time as the Director may require by rule.

"(b) Not later than 180 days after the end of each fiscal year for which grants are made under this part, the Director shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report that includes with respect to each State—

"(1) the aggregate amount of grants made under subpart 1 and subpart 2 to such State for such fiscal year;

"(2) the amount of such grants awarded for each of the purposes specified in subpart 1;

"(3) a summary of the information provided in compliance with paragraphs (1) and (2) of subsection (a);

"(4) an explanation of how Federal funds provided under this part have been coordinated with Federal funds provided to States for drug abuse education, prevention, treatment, and research activities; and

"(5) evaluation results of programs and projects and State strategy implementation.".

(b) AMENDMENT TO TABLE OF CONTENTS.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by striking the items relating to parts D and E and inserting the following:

TABLE OF CONTENTS

"PART D—ESTABLISHMENT OF BUREAU OF JUSTICE ASSISTANCE

"Sec. 401. Establishment of Bureau of Justice Assistance.
"Sec. 402. Duties and functions of the Director.

"PART E—BUREAU OF JUSTICE ASSISTANCE GRANT PROGRAMS

"SUBPART 1—DRUG CONTROL AND SYSTEM IMPROVEMENT GRANT PROGRAM

"Sec. 501. Description of the Drug Control and System Improvement Grant program.
"Sec. 502. Eligibility.
"Sec. 503. State applications.
"Sec. 504. Grant limitations.
"Sec. 505. Review of State applications.
"Sec. 506. Allocation and distribution of funds under formula grants.
"Sec. 507. State office.
"Sec. 508. Distribution of grants to local government.

"SUBPART 2—DISCRETIONARY GRANTS

"Sec. 510. Purpose.

"Sec. 511. Allocation of funds for discretionary grants.
"Sec. 512. Limitation on use of discretionary grant funds.
"Sec. 513. Application requirements.
"Sec. 514. Period of award.

"SUBPART 3—ADMINISTRATIVE PROVISIONS

"Sec. 520. Program and project evaluation; research.
"Sec. 521. General provisions.
"Sec. 522. Reports.".

SEC. 2822. DUTIES AND FUNCTIONS OF THE DIRECTOR OF THE BUREAU OF JUSTICE STATISTICS.

(a) In General.—Section 302 of part C of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. section 3732) is amended in subsection (c) by redesignating paragraphs (16), (17), (18) and (19) as paragraphs (19), (20), (21) and (22), respectively, and inserting the following new paragraphs:

"(16) provide for the collection, compilation, analysis, publication and dissemination of information and statistics about the prevalence, incidence, rates, extent, distribution and attributes of drug offenses, drug related offenses and drug dependent offenders and further provide for the establishment of a national clearinghouse to maintain and update a comprehensive and timely data base on all criminal justice aspects of the drug crisis and to disseminate such information.

"(17) provide for the collection, analysis, dissemination and publication of statistics on the condition and progress of drug control activities at the Federal, State and local levels with particular attention to programs and intervention efforts demonstrated to be of value in the overall national anti-drug strategy and to provide for the establishment of a national clearinghouse for the gathering of data generated by Federal, State, and local criminal justice agencies on their drug enforcement activities.

"(18) provide for the development and enhancement of State and local criminal justice information systems, and the standardization of data reporting relating to the collection, analysis or dissemination of data and statistics about drug offenses, drug related offenses, or drug dependent offenders.".

(b) Technical Amendment.—Section 901(a)(2) of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by striking "407(a)" and inserting "506(a)".

SEC. 2823. JUSTICE ASSISTANCE ACT REAUTHORIZATION.

Section 1001 of part J of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"Sec. 1001. (a)(1) There are authorized to be appropriated $21,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, and 1992 to carry out the functions (other than the functions described in section 305 of part C) of the Bureau of Justice Statistics.

"(2) There are authorized to be appropriated $24,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, and 1992 to carry out the functions of the National Institute of Justice.

"(3) There are authorized to be appropriated $25,500,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, and 1992 to carry out the remaining functions of the Office of Justice Programs and the Bureau of Justice Assistance, other than functions under parts D, E, F, G, L, and M.

"(4) There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out part L of this title.

"(5) There is authorized to be appropriated $275,000,000 for fiscal year 1989; $350,000,000 for fiscal year 1990; $400,000,000 for fiscal year 1991; and such sums as may be necessary for fiscal year 1992 to carry out the programs under parts D and E of this title.

"(6) There is authorized to be appropriated $5,000,000 for each of the fiscal years 1989, 1990, 1991, and 1992 to carry out section 305 of part C of this title: *Provided*, That 1 percent of the amount appropriated for paragraph (5) of this subsection shall be used to carry out the functions specified in subparagraphs (16), (17), and (18) of section 302(c) of part C of this title.

"(7) There are authorized to be appropriated $15,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, and 1992 to carry out the programs under part M of this title.

"(b) Funds appropriated for any fiscal year may remain available for obligation until expended.

"(c) Notwithstanding any other provision of law, no funds appropriated under this section for part E of this title may be transferred or reprogrammed for carrying out any activity which is not authorized under such parts.".

SEC. 1824. TECHNICAL AMENDMENT.

Section 403(a)(12) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3743(a)(12)) is amended by inserting "(including automated fingerprint identification systems)" after "systems" the first place it appears.

CHAPTER 2—JUVENILE JUSTICE AND DELINQUENCY PREVENTION PROGRAMS

SEC. 2825. PREVENTION AND TREATMENT PROGRAMS RELATING TO JUVENILE GANGS AND JUVENILE DRUG ABUSE AND DRUG TRAFFICKING.

(a) Authorization of Appropriations.—

(1) Funds authorized for fiscal years.—Section 261(a) of part D of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671(a)) is amended—

(A) by inserting "(1)" after "(a)";

(B) by inserting "(other than part D)" after "this title"; and

(C) by adding at the end the following:

"(2) subject to subparagraph (B), to carry out part D, there are authorized to be appropriated $15,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, and 1992.".

(2) Allocations.—Section 261(b) of part D of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671(b)) is amended by inserting "(other than part D)" after "this title".

(b) Technical Amendments to Part D of Title II.—Part D of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671-5672 note) is amended—

(1) by amending the heading of such part to read as follows:

"Part E—General and Administrative Provisions";

and

(2) by redesignating sections 261 and 262 as sections 291 and 292, respectively.

(c) Prevention and Treatment Programs Relating to Juvenile Gangs and Juvenile Drug Abuse and Drug Trafficking.—Title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671-5672 note) is amended by inserting after part C the following:

"Part D—Prevention and Treatment Programs Relating to Juvenile Gangs and Drug Abuse and Drug Trafficking

"AUTHORITY TO MAKE GRANTS AND CONTRACTS

"Sec. 281. The Administrator shall, by making grants to and entering into contracts with public and private non-profit agencies, organizations, institutions, and individuals, establish and support programs and activities that involve families and communities and that are designed to carry out any of the following purposes:

"(1) To strengthen the juvenile justice system's ability to deal with juveniles involved in drug trafficking, either individually or as part of distribution networks.

"(2) To develop new and innovative sanctions within the juvenile justice system against juveniles convicted of serious drug trafficking offenses.

"(3) To reduce juvenile involvement in gang-related activity, particularly activities that involve the distribution of drugs by or to juveniles.

"(4) To promote the involvement of juveniles in lawful activities in geographical areas in which gangs commit crimes.

"(5) To provide treatment to juveniles who are members of such gangs, including members who are accused of committing a serious crime and members who have been adjudicated as being delinquent.

"(6) To facilitate Federal and State cooperation with local school officials to identify and assist juveniles who are likely to participate in the activities of gangs that commit crimes and to establish and support programs that facilitate coordination and cooperation among local education, juvenile justice, employment, and social service agencies, for the purpose of preventing or reducing the participation of juveniles in activities of gangs that commit crimes.

"(7) To reduce the incidence of drug-related crime and drug trafficking in elementary and secondary schools.

"(8) To provide pre- and post-trial drug abuse treatment to juveniles in the juvenile justice system.

"(9) To provide drug abuse education, prevention and treatment involving police and juvenile justice officials in demand reduction programs.

"(10) To provide additional personnel, equipment, personnel training, and supplies to assist in improving the adjudicative and corrections components of the juvenile justice system.

In making grants and entering into contracts under this section, the Administrator shall give a preference to entities that have been successful in helping juvenile gangs and preventing juvenile drug abuse and drug trafficking.

"APPROVAL OF APPLICATIONS.

"Sec. 282. (a) Any agency, institution, or individual desiring to receive a grant, or to enter into a contract, under this part shall submit an application at such time, in such manner, and containing or accompanied by such information as the Administrator may prescribe.

"(b) In accordance with guidelines established by the Administrator, each application for assistance under this part shall—

"(1) set forth a program or activity for carrying out one or more of the purposes specified in section 281 and specifically identify each such purpose, such program or activity is designed to carry out;

"(2) provide that such program or activity shall be administered by or under the supervision of the applicant;

"(3) provide for the proper and efficient administration of such program or activity;

"(4) provide for regular evaluation of such program or activity;

"(5) certify that the applicant has requested the State planning agency and local agency designated in section 223, if any, to review and comment on such application and indicate the responses of such State planning agency and local agency to such request;

"(6) attach a copy of the responses of such State planning agency and local agency to such request;

"(7) provide that regular reports on such program or activity shall be sent to the Administrator and to such State planning agency and local agency; and

"(8) provide for such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this title.

"(c) In reviewing applications for grants and contracts under this part, the Administrator shall give priority to applications—

"(1) based on the incidence and severity of crimes committed by gangs whose membership is composed primarily of juveniles or the incidence of juvenile drug abuse and drug trafficking, in the geographical area in which the applicants propose to carry out the programs and activities for which such grants and contracts are requested; and

"(2) for assistance for programs and activities that have the broad support of organizations operating in such geographical areas, as demonstrated by the applicants.

"REPORT TO CONGRESS

"SEC. 283. The Administrator shall annually report to Congress on the status and accomplishments of the programs and activities funded under this part. Such report shall include a detailed evaluation of each program or activity.".

SEC. 2826. AUTHORITY TO MAKE GRANTS.

Section 221 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5631) is amended—

(1) by amending the heading to read as follows:

"AUTHORITY TO MAKE GRANTS AND CONTRACTS",

(2) by inserting "(a)" after "SEC. 221.", and

(3) by adding at the end the following:

"(b)(1) With not to exceed 2 percent of the funds available in a fiscal year to carry out this part, the Administrator shall make grants to and enter into contracts with public and private agencies, organizations, and individuals to provide technical assistance to States, units of general local governments (and combinations thereof), and local private agencies to facilitate compliance with section 223 and implementation of the State plan approved under section 223(c).

"(2) Grants and contracts may be made under paragraph (1) only to public and private agencies, organizations, and individuals that have experience in providing such technical assistance. In providing such technical assistance, the recipient of a grant or contract under this subsection shall coordinate its activities with the State agency described in section 291(c)(1).".

SEC. 2827. ALLOCATION.

(a) MINIMUM ALLOCATION.—Section 222(a) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5632(a)) is amended—

(1) by striking "In" and inserting "(1) Subject to paragraph (2) and in",

(2) by striking the last sentence, and

(3) by adding at the end the following:

"(2)(A) Subject to paragraph (3), if the aggregate amount appropriated for a fiscal year to carry out this title (other than part D) is less than $75,000,000, then the amount allotted to each State for such fiscal year shall be not less than $325,000, except that the amount allotted to the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands shall be not less than $75,000 each.

"(B) Subject to paragraph (3), if the aggregate amount appropriated for a fiscal year to carry out this title (other than part D) equals or exceeds $75,000,000, then the amount allotted to each State for such fiscal year shall be not less than $400,000, except that the amount allotted to the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands shall be not less than $100,000 each.

"(3) If, as a result of paragraph (2), the amount allotted to a State for a fiscal year would be less than the amount allotted to such State for fiscal year 1988, then the amounts allotted to satisfy the requirements of such paragraph shall be reduced pro rata to the extent necessary to allot to such State for the fiscal year the amount allotted to such State for fiscal year 1988.".

(b) TECHNICAL AMENDMENTS.—Section 222(b) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5632(b)) is amended—

(1) in the first sentence by striking "Except for funds appropriated for fiscal year 1975, if" and inserting "If", and

(2) by striking the second sentence.

SEC. 2828. TECHNICAL ASSISTANCE AND TRAINING FUNCTIONS.

Section 244 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5654) is amended—

(1) by amending the heading to read as follows: "TECHNICAL ASSISTANCE AND TRAINING FUNCTIONS",

(2) by striking "National Institute for Juvenile Justice and Delinquency Prevention" and inserting "Administrator, acting through the National Institute for Juvenile Justice and Delinquency Prevention",

(3) by striking paragraph (3),

(4) in paragraph (2) by adding "and" at the end,

(5) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively, and

(6) by inserting before paragraph (2), as so redesignated, the following:

"(1) provide technical assistance and training assistance to Federal, State, and local governments and to courts, public and private agencies, institutions, and individuals in the planning, establishment, funding, operation, and evaluation of juvenile delinquency programs;".

SEC. 2829. TECHNICAL AND CONFORMING AMENDMENTS TO PARTS B AND C OF TITLE II.

(a) TECHNICAL AMENDMENTS.—Title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) is amended—

(1) in part B—

(A) by striking the heading for subpart I, and

(B) by striking subpart II, and

(2) in part C—

(A) by striking the heading for such part and inserting the following:

"PART C—NATIONAL PROGRAMS",

(B) by inserting after the heading for part C the following:

"Subpart I—National Institute for Juvenile Justice and Delinquency Prevention",

(C) by striking sections 245 and 246,

(D) in section 249—

(i) in subsection (a) by striking "section 248" and inserting "section 245",

(ii) in subsection (b) by striking "section 248(b)" and inserting "section 245(b)", and

(iii) in subsection (c) by striking "section 246" and inserting "section 245",

(E) by redesignating sections 247, 248, and 249 as sections 245, 246, and 247, respectively, and

(F) by adding at the end the following:

"Subpart II—Special Emphasis Prevention and Treatment Programs

"AUTHORITY TO MAKE GRANTS AND CONTRACTS

"SEC. 261. (a) The Administrator shall, by making grants to and entering into contracts with public and private nonprofit agencies, organizations, institutions, and individuals provide for each of the following during each fiscal year:

"(1) Establishing or maintaining community-based alternatives to traditional forms of institutionalization of juvenile offenders.

"(2) Establishing or implementing effective means of diverting juveniles from the traditional juvenile justice and correctional system, including restitution and reconciliation projects which test and validate selected arbitration models, such as neighborhood courts or panels, and increase victim satisfaction while providing alternatives to incarceration for detained or adjudicated delinquents.

"(3) Establishing or supporting programs stressing advocacy activities aimed at improving services to juveniles impacted by the juvenile justice system, including services which encourage the improvement of due process available to juveniles in the juvenile justice system, which improve the quality of legal representation of such juveniles, and which provide for the appointment of special advocates by courts for such juveniles.

"(4) Developing or supporting model programs to strengthen and maintain the family unit in order to prevent or treat juvenile delinquency.

"(5) Establishing or implementing special emphasis prevention and treatment programs relating to juveniles who commit serious crimes (including such crimes committed in schools), including programs designed to deter involvement in illegal activities or to promote involvement in lawful activities on the part of gangs whose membership is substantially composed of juveniles.

"(6) Developing or implementing further a coordinated, national law-related education program of—

"(A) delinquency prevention in elementary and secondary schools, and other local sites;

"(B) training for persons responsible for the implementation of law-related education programs; and

"(C) disseminating information regarding model, innovative, law-related education programs to juvenile delinquency programs, including those that are community based, and to law enforcement and criminal justice agencies for activities related to juveniles.

"(7) Addressing efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population.

"(b) The Administrator is authorized, by making grants to and entering into contracts with public and private nonprofit agencies, organizations, institutions, and individuals, to develop and implement new approaches, techniques, and methods designed to—

"(1) improve the capability of public and private agencies and organizations to provide services for delinquents and other juveniles to help prevent juvenile delinquency;

"(2) develop and implement, in coordination with the Secretary of Education, model programs and methods to keep students in elementary and secondary schools, to prevent unwarranted and arbitrary suspensions and expulsions, and to encourage new approaches and techniques with respect to the prevention of school violence and vandalism;

"(3) develop, implement, and support, in conjunction with the Secretary of Labor, other public and private agencies, organizations, business, and industry, programs for the employment of juveniles;

"(4) develop and support programs designed to encourage and assist State legislatures to consider and establish policies consistent with this title, both by amending State laws, if necessary, and devoting greater resources to effectuate such policies;

"(5) develop and implement programs relating to juvenile delinquency and learning disabilities, including on-the-job training programs to assist law enforcement personnel and juvenile justice personnel to more effectively recognize and provide for learning-disabled and other handicapped juveniles;

"(6) develop statewide programs through the use of subsidies or other financial incentives designed to—

"(A) remove juveniles from jails and lockups for adults;

"(B) replicate juvenile programs designated as exemplary by the National Institute of Justice; or

"(C) establish and adopt, based upon the recommendations of the National Advisory Committee for Juvenile Justice and Delinquency Prevention made before the date of the enactment of the Juvenile Justice, Runaway Youth, and Missing Children's Act Amendments of 1984, standards for the improvement of juvenile justice within each State involved; and

"(7) develop and implement model programs, relating to the special education needs of delinquent and other juveniles, which develop locally coordinated policies and programs among education, juvenile justice, and social service agencies.

"(c) Not less than 30 percent of the funds available for grants and contracts under this section shall be available for grants to and contracts with private nonprofit agencies, organizations, and institutions which have experience in dealing with juveniles.

"(d) Assistance provided under this section shall be available on an equitable basis to deal with female, minority, and disadvantaged juveniles, including juveniles who are mentally, emotionally, or physically handicapped.

"(e) Not less than 5 percent of the funds available for grants and contracts under this section shall be available for grants and contracts designed to address the special needs and problems of juvenile delinquency in the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

"CONSIDERATIONS FOR APPROVAL OF APPLICATIONS

"SEC. 262. (a) Any agency, institution, or individual desiring to receive a grant, or enter into a contract, under this part shall submit an application at such time, in such manner, and containing or accompanied by such information as the Administrator may prescribe.

"(b) In accordance with guidelines established by the Administrator, each application for assistance under this part shall—

"(1) set forth a program for carrying out one or more of the purposes set forth in this part and specifically identify each such purpose such program is designed to carry out;

"(2) provide that such program shall be administered by or under the supervision of the applicant;

"(3) provide for the proper and efficient administration of such program;

"(4) provide for regular evaluation of such program;

"(5) certify that the applicant has requested the State planning agency and local agency designated in section 223, if any, to review and comment on such application and indicate the responses of such State planning agency and local agency to such request;

"(6) attach a copy of the responses of such State planning agency and local agency to such request;

"(7) provide that regular reports on such program shall be sent to the Administrator and to such State planning agency and local agency; and

"(8) provide for such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this title.

"(c) In determining whether or not to approve applications for grants and for contracts under this part, the Administrator shall consider—

"(1) the relative cost and effectiveness of the proposed program in carrying out this part;

"(2) the extent to which such program will incorporate new or innovative techniques;

"(3) if a State plan has been approved by the Administrator under section 223(c), the extent to which such program meets the objectives and priorities of the State plan, taking into consideration the location and scope of such program;

"(4) the increase in capacity of the public and private agency, institution, or individual involved to provide services to address juvenile delinquency and juvenile delinquency prevention;

"(5) the extent to which such program serves communities which have high rates of juvenile unemployment, school dropout, and delinquency; and

"(6) the adverse impact that may result from the restriction of eligibility, based upon population, for cities with a population greater than 40,000 located within States which have no city with a population over 250,000.

"(d)(1)(A) Programs selected for assistance through grants or contracts under this part (other than section 241(f)) shall be selected through a competitive process to be established by rule by the Administrator. As part of such a process, the Administrator shall announce in the Federal Register—

"(i) the availability of funds for such assistance;

"(ii) the general criteria applicable to the selection of applicants to receive such assistance; and

"(iii) a description of the procedures applicable to submitting and reviewing applications for such assistance.

"(B) The competitive process described in subparagraph (A) shall not be required if the Administrator makes a written determination that—

"(i)(I) the proposed program is not within the scope of any announcement issued, or expected to be issued, by the Administrator regarding the availability of funds to carry out programs under this part, but can be supported by a grant or contract in accordance with this part; and

"(II) such program is of such outstanding merit, as determined through peer review conducted under paragraph (2), that the award of a grant or contract without competition is justified; or

"(ii) the applicant is uniquely qualified to provide proposed training services as provided in section 244 and other qualified sources are not capable of providing such services, and includes in such determination the factual and other bases thereof.

"(C) If a program is selected for assistance without competition pursuant to the exception provided in subparagraph (B), the Administrator shall promptly so notify the chairman of the Committee on Education and Labor of the House of Representatives and the chairman of the Committee on the Judiciary of the Senate. Such notification shall include copies of the Administrator's determination made under such subparagraph and the peer review determination required by paragraph (2).

"(2)(A) Programs selected for assistance through grants or contracts under this part (other than section 241(f)) shall be reviewed before selection, and thereafter as appropriate, through a formal peer review process utilizing experts (other than officers and employees of the Department of Justice) in fields related to the subject matter of the proposed program.

"(B) Such process shall be established by the Administrator in consultation with the Directors and other appropriate officials of the National Science Foundation and the National Institute of Mental Health. Before implementation of such process, the Administrator shall submit such process to such Directors, each of whom shall prepare and furnish to the chairman of the Committee on Education and Labor of the House of Representatives and the chairman of the Committee on the Judiciary of the Senate a final report containing their comments on such process as proposed to be established.

"(3) The Administrator, in establishing the processes required under paragraphs (1) and (2), shall provide for emergency expedited consideration of the proposed programs if necessary to avoid any delay which would preclude carrying out such programs.

"(e) A city shall not be denied assistance under this part solely on the basis of its population.

"(f) Notification of grants and contracts made under this part (and the applications submitted for such grants and contracts) shall, upon being made, be transmitted by the Administrator, to the chairman of the Committee on Education and Labor of the House of Representatives and the chairman of the Committee on the Judiciary of the Senate.".

(b) CONFORMING AMENDMENTS.—(1) Section 223(a)(1) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5633(a)(1)) is amended by striking "section 261(c)(1)" and inserting "section 291(c)(1)".

(2) Section 246 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 3639), as so redesignated by section (a)(2)(E), is amended by striking "section 248" and inserting "section 245".

SEC. 2830. AUTHORIZATION OF APPROPRIATIONS.

(a) FUNDS AUTHORIZED FOR FISCAL YEARS.—Section 261(a) of part D of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671(a)) is amended—

(1) by inserting "(1)" after "(a)",

(2) by inserting "(other than part D)" after "this title",

(3) by striking "1985, 1986, 1987, and",

(4) by inserting ", 1989, 1990, 1991, and 1992" after "1988", and

(5) by adding at the end the following:

"(2) No funds may be appropriated to carry out part D of this title for a fiscal year unless the aggregate amount appropriated to carry out this title (other than part D) for such fiscal year is not less than the aggregate amount appropriated to carry out this title (other than part D) for the preceding fiscal year.".

(b) ALLOCATIONS.—Section 261(b) of part D of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671(b)) is amended—

(1) by inserting "(other than part D)" after "this title",

(2) in paragraph (1) by striking "7.5 percent" and inserting "5 percent",

(3) in paragraph (2) by striking "81.5 percent" and inserting "70 percent", and

(4) in paragraph (3) by striking "11 percent" and inserting "25 percent".

SEC. 2831. TECHNICAL AMENDMENTS TO PART D OF TITLE II.

Part D of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671-5672 note) is amended—

(1) by amending the heading of such part to read as follows:

"PART E—GENERAL AND ADMINISTRATIVE PROVISIONS",

(2) by striking section 263,

(3) by redesignating sections 261 and 262 as sections 291 and 292, respectively, and

(4) by adding at the end the following:

"WITHHOLDING

"SEC. 293. Whenever the Administrator, after giving reasonable notice and opportunity for hearing to a recipient of financial assistance under this title, finds that—

"(1) the program or activity for which the grant or contract involved was made has been so changed that it no longer complies with this title; or

"(2) in the operation of such program or activity there is failure to comply substantially with any provision of this title;

the Administrator shall initiate such proceedings as are appropriate.

"USE OF FUNDS

"SEC. 294. (a) Funds paid pursuant to this title to any public or private agency, organization, or institution, or to any individual (either directly or through a State planning agency) may be used for—

"(1) planning, developing, or operating the program designed to carry out this title; and

"(2) not more than 50 percent of the cost of the construction of any innovative community-based facility for fewer than 20 persons which, in the judgment of the Administrator, is necessary to carry out this title.

"(b) Except as provided in subsection (a), no funds paid to any public or private agency, or institution or to any individual under this title (either directly or through a State agency or local agency) may be used for construction.

"(c)(1) Funds paid pursuant to section 223(a)(10)(D) and section 261(a)(3) to any public or private agency, organization, or institution or to any individual shall not be used to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device intended or designed to influence a Member of Congress or any other Federal, State, or local elected official to favor or oppose any Acts, bills, resolutions, or similar legislation, or any referendum, initiative, constitutional amendment, or any similar procedure of the Congress, any State legislature, any local council, or any similar governing body, except that this paragraph shall not preclude such funds from being used in connection with communications to Federal, State, or local elected officials, upon the request of such officials through proper official channels, pertaining to authorization, appropriation, or oversight measures directly affecting the operation of the program involved.

"(2) The Administrator shall take such action as may be necessary to ensure that no funds paid under section 223(a)(10)(D) or section 261(a)(3) are used either directly or indirectly in any manner prohibited in this paragraph.

"PAYMENTS

"SEC. 295. (a) Payments under this title, pursuant to a grant or contract, may be made (after necessary adjustment, in the case of grants, on account of previously made overpayments or underpayments) in advance or by way of reimbursement, in such installments and on such conditions as the Administrator may determine.

"(b) Except as provided in the second sentence of section 222(c), financial assistance extended under this title shall be 100 percent of the approved costs of the program or activity involved.

"(c)(1) In the case of a grant under this title to an Indian tribe, if the Administrator determines that the tribe does not have sufficient funds available to meet the local share of the cost of any program or activity to be funded under the grant, the Administrator may increase the Federal share of the cost thereof to the extent the Administrator deems necessary.

"(2) If a State does not have an adequate forum to enforce grant provisions imposing any liability on Indian tribes, the Administrator may waive State liability attributable to the liability of such tribes and may pursue such legal remedies as are necessary.

"(d) If the Administrator determines, on the basis of information available to the Administrator during any fiscal year, that a portion of the funds granted to an applicant under part C for such fiscal year will not be required by the applicant or will become available by virtue of the application of the provisions of section 802 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended from time to time, that portion shall be available for reallocation in an equitable manner to States which comply with the requirements in paragraphs (12)(A) and (13) of section 223(a), under section 261(b)(6).

"CONFIDENTIALITY OF PROGRAM RECORDS

"SEC. 296. Except as authorized by law, program records containing the identity of individual juveniles gathered for purposes pursuant to this title may not be disclosed without the consent of the service recipient or legally authorized representative, or as may be necessary to carry out this title. Under no circumstances may program reports or findings available for public dissemination contain the actual names of individual service recipients.".

CHAPTER 3—RUNAWAY AND HOMELESS YOUTH

SEC. 2835. RUNAWAY AND HOMELESS YOUTH ACT REAUTHORIZATION.

Section 336(a) of the Runaway and Homeless Youth Act (42 U.S.C. 5751(a)), as redesignated by section 2836(a)(2) of this Act, is amended by striking out "1985, 1986, 1987, and 1988" and inserting in lieu thereof "1989, 1990, 1991, and 1992".

SEC. 2836. AUTHORIZATION OF TRANSITIONAL LIVING PROJECTS.

(a) ASSISTANCE TO POTENTIAL GRANTEES.—Section 315 of the Runaway and Homeless Youth Act (42 U.S.C. 5714a) is amended—

(1) by inserting "and transitional living youth projects" after "homeless youth centers",

(2) in paragraph (1) by inserting "or transitional living youth project" after "homeless youth center",

(3) by inserting "or such project" after "such center" each place it appears, and

(4) in paragraph (3) by inserting "and homeless" after "runaway".

(b) LEASE OF SURPLUS FEDERAL FACILITIES.—Section 316 of the Runaway and Homeless Youth Act (42 U.S.C. 5714b) is amended—

(1) in the heading of such section by inserting "OR AS TRANSITIONAL LIVING YOUTH SHELTER FACILITIES" after "HOMELESS YOUTH CENTERS", and

(2) in subsection (a)—

(A) by inserting "or as transitional living youth shelter facilities" after "homeless youth centers", and

(B) in paragraph (1) by inserting "or transitional living youth project, as the case may be, under this title" after "homeless youth center".

(c) REPORTS.—Section 317 of the Runaway and Homeless Youth Act (42 U.S.C. 5715) is amended—

(1) by inserting "(a)" after "SEC. 317.",

(2) by striking "this part" and inserting "part A", and

(3) by adding at the end thereof the following:

"(b) The Secretary shall annually report to the Congress on the status and accomplishments of the transitional living youth projects which are funded under part B, with particular attention to—

"(1) the number and characteristics of homeless youth served by such projects;

"(2) describing the types of activities carried out under such projects;

"(3) the effectiveness of such projects in alleviating the immediate problems of homeless youth;

"(4) the effectiveness of such projects in preparing homeless youth for self sufficiency;

"(5) the effectiveness of such projects in helping youth decide upon future education, employment, and independent living; and

"(6) the ability of such projects to strengthen family relationships, and encourage the resolution of intra-family problems through counseling and the development of self-sufficient living skills.".

(d) Authorization of Appropriations.—Section 331 of the Runaway and Homeless Youth Act (42 U.S.C. 5751) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and

(2) by inserting after subsection (a) the following:

"(b)(1) Subject to paragraph (2), to carry out the purposes of part B of this title, there are authorized to be appropriated $5,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, and 1992.

"(2) No funds may be appropriated to carry out part B of this title for a fiscal year unless the aggregate amount appropriated for such fiscal year to carry out part A of this title exceeds $26,100,000.".

(e) Technical Amendments.—The Runaway and Homeless Youth Act (42 U.S.C. 5701-5751) is amended—

(1) by inserting before the heading for section 315 the following:

"Part C—General Provisions"

and

(2) by redesignating sections 315, 316, 317, 318, 321, and 331, and all references to such sections, as sections 341, 342, 361, 362, 363, and 366, respectively.

(f) Grants for Transitional Living Youth Projects.—The Runaway and Homeless Youth Act (42 U.S.C. 5701-5751) is amended by inserting between section 314 and section 341, as redesignated herein, the following:

"Part B—Transitional Living Grant Program

"PURPOSE AND AUTHORITY FOR PROGRAM

"Sec. 321. (a) The Secretary is authorized to make grants and to provide technical assistance to public and nonprofit private entities to establish and operate transitional living youth projects for homeless youth.

"(b) For purposes of this part—

"(1) the term 'homeless youth' means any individual—

"(A) who is not less than 16 years of age and not more than 21 years of age;

"(B) for whom it is not possible to live in a safe environment with a relative; and

"(C) who has no other safe alternative living arrangement; and

"(2) the term 'transitional living youth project' means a project that provides shelter and services designed to promote a transition to self-sufficient living and to prevent long-term dependency on social services.

"ELIGIBILITY

"Sec. 322. (a) To be eligible for assistance under this part, an applicant shall propose to establish, strengthen, or fund a transitional living youth project for homeless youth and shall submit to the Secretary a plan in which such applicant agrees, as part of such project—

"(1) to provide, directly or indirectly, shelter (such as group homes, host family homes, and supervised apartments) and services (including information and counseling services in basic life skills, interpersonal skill building, educational advancement, job attainment skills, and mental and physical health care) to homeless youth;

"(2) to provide such shelter and such services to individual homeless youth throughout a continuous period not to exceed 540 days;

"(3) to provide, directly or indirectly, on-site supervision at each shelter facility that is not a family home;

"(4) that such shelter facility used to carry out such project shall have the capacity to accommodate not more than 20 individuals (excluding staff);

"(5) to provide a number of staff sufficient to ensure that all homeless youth participating in such project receive adequate supervision and services;

"(6) to provide a written transitional living plan to each youth based on an assessment of such youth's needs, designed to help the transition from supervised participation in such project to independent living or another appropriate living arrangement;

"(7) to develop an adequate plan to ensure proper referral of homeless youth to social service, law enforcement, educational, vocational, training, welfare, legal service, and health care programs and to help integrate and coordinate such services for youths;

"(8) to provide for the establishment of outreach programs designed to attract individuals who are eligible to participate in the project;

"(9) to submit to the Secretary an annual report that includes information regarding the activities carried out with funds under this part, the achievements of the project under this part carried out by the applicant and statistical summaries describing the number and the characteristics of the homeless youth who participate in such project in the year for which the report is submitted;

"(10) to implement such accounting procedures and fiscal control devices as the Secretary may require;

"(11) to submit to the Secretary an annual budget that estimates the itemized costs to be incurred in the year for which the applicant requests a grant under this part;

"(12) to keep adequate statistical records profiling homeless youth which it serves and not to disclose the identity of individual homeless youth in reports or other documents based on such statistical records;

"(13) not to disclose records maintained on individual homeless youth without the consent of the individual youth and parent or legal guardian to anyone other than an agency compiling statistical records or a government agency involved in the disposition of criminal charges against youth; and

"(14) to provide to the Secretary such other information as the Secretary may reasonably require.

"(b) In selecting eligible applicants to receive grants under this part, the Secretary shall give priority to entities that have experience in providing to homeless youth shelter and services of the types described in subsection (a)(1).".

SEC. 2837. GRANTS FOR RUNAWAY AND HOMELESS YOUTH CENTERS.

(a) Technical Amendment.—The heading for section 311 of the Runaway and Homeless Youth Act (42 U.S.C. 5711) is amended to read as follows:

"AUTHORITY TO MAKE GRANTS".

(b) Grant Program.—Subsections (a) and (b) of section 311 of the Runaway and Homeless Youth Act (42 U.S.C. 5711) are amended to read as follows:

"(a) The Secretary shall make grants to public and private entities (and combinations of such entities) to establish and operate (including renovation) local runaway and homeless youth centers to provide services to deal primarily with the immediate needs of runaway or otherwise homeless youth, and their families, in a manner which is outside the law enforcement structure and the juvenile justice system.

"(b)(1) Subject to paragraph (2) and in accordance with regulations promulgated under this title, funds for grants under subsection (a) shall be allotted annually with respect to the States on the basis of their relative population of individuals who are less than 18 years of age.

"(2) Subject to paragraph (3), the amount allotted under paragraph (1) with respect to each State for a fiscal year shall be not less than $75,000, except that the amount allotted to the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands shall be not less than $30,000 each.

"(3) If, as a result of paragraph (2), the amount allotted under paragraph (1) with respect to a State for a fiscal year would be less than the aggregate amount of grants made under this part to recipients in such State for fiscal year 1988, then the amounts allotted to satisfy the requirements of such paragraph shall be reduced pro rata to the extent necessary to allot under paragraph (1) with respect to such State for the fiscal year an amount equal to the aggregate amount of grants made under this part to recipients in such State for fiscal year 1988.

"(4) In selecting among applicants for grants under subsection (a), the Secretary shall give priority to private entities that have experience in providing the services described in such subsection.

"(5) Not less than 90 percent of the funds appropriated under paragraph (1) for a fiscal year shall be available to carry out section 311(a) in such fiscal year.".

(c) Conforming Amendments.—(1) Sections 312 and 313 of the Runaway and Homeless Youth Act (42 U.S.C. 5712, 5713) are each amended by striking "this part" each place it appears and inserting "section 311(a)".

(2) Section 312(a) of the Runaway and Homeless Youth Act (42 U.S.C. 5712(a)) is amended by inserting "and homeless youth" after "proposed runaway".

(3) Section 312(b) of the Runaway and Homeless Youth Act (42 U.S.C. 5712(b)) is amended—

(A) in the matter preceding paragraph (1) by striking "meeting" and all that follows through "center—", and inserting "including assurances that the applicant—".

(B) in paragraph (1)—

(i) by striking "shall be" and inserting "shall operate a runaway and homeless youth center", and

(ii) by inserting "and homeless" after "by runaway", and

(C) in paragraphs (3) and (5) by striking "runaway center" each place it appears and inserting "runaway and homeless youth center",

(D) in paragraphs (4) and (6) by striking "runaway youths" each place it appears and inserting "runaway and homeless youth", and

(E) in paragraphs (5) and (6) by striking "runaway youth" each place it appears and inserting "runaway and homeless youth".

(4) Section 314 of the Runaway and Homeless Youth Act (42 U.S.C. 5714) is amended by striking "runaway center" and inserting "runaway and homeless youth center".

(5) Section 317 of the Runaway and Homeless Youth Act (42 U.S.C. 5715) is amended—

(A) by striking "runaway centers" and inserting "runaway and homeless youth centers", and

(B) by striking "runaway youth" and inserting "runaway and homeless youth".

(6) Section 318(a) of the Runaway and Homeless Youth Act (42 U.S.C. 5716(a)) is amended by striking "acquisition and".

CHAPTER 4—MISSING CHILDREN'S ASSISTANCE ACT

SEC. 2841. MISSING CHILDREN'S ASSISTANCE ACT.

(a) Reauthorization.—Section 408 of the Missing Children's Assistance Act (42 U.S.C. 5777) is amended by—

(1) striking out "$10,000,000 for fiscal year 1985, and"; and

(2) striking out "1986, 1987, and 1988" and inserting "1989, 1990, 1991, and 1992".

(b) National Clearinghouse.—Section 404(b)(2)(D) of the Juvenile Justice and Delinquency Prevention Act is amended by inserting "and training" after "technical assistance".

(c) Competition Amendment.—Section 407 of the Juvenile Justice and Delinquency Prevention Act of 1974 is amended to read as follows:

"Sec. 407. (a) In carrying out the programs by this title (42 U.S.C. 3701, et seq.), the Administrator shall establish—

"(1) annual research, demonstration, and service program priorities for making grants and contracts pursuant to section 406; and

"(2) criteria based on merit for making such grants and contracts.

Not less than 60 days before establishing such priorities and criteria, the Administrator shall publish in the Federal Register for public comment a statement of such proposed priorities and criteria.

"(b) No grant or contract exceeding $50,000 shall be made under this title unless the grantee or contractor has been selected by a competitive process which includes public announcement of the availability of funds for such grant or contract, general criteria for the selection of recipients or contractors, and a description of the application process and application review process.

"(c) Multiple grants or contracts to the same grantee or contractor within any 1 year to support activities having the same general purpose shall be deemed to be a single grant for the purpose of this subsection, but multiple grants or contracts to the same grantee or contractor to support clearly distinct activities shall be considered separate grants or contractors.".

CHAPTER 5—FAMILY VIOLENCE PREVENTION ACT OF 1988

SEC. 2845. SHORT TITLE.

This chapter may be cited as the "Family Violence Prevention Act of 1988".

SEC. 2846. DATA COLLECTION AND REPORTING.

(a) Family Violence Reporting.—Under the authority of section 534 of title 28, United States Code, the Attorney General shall require, and include in uniform crime reports, data that indicate—

(1) the age of the victim; and

(2) the relationship of the victim to the offender, for crimes of murder, aggravated assault, simple assault, rape, sexual offenses, and offenses against children.

(b) National Crime Survey.—The Director of the Bureau of Justice Statistics, through the annual National Crime Survey, shall collect and publish data that more accurately measures the extent of domestic violence in America, especially the physical and sexual abuse of children and the elderly.

(c) Authorization of Appropriations.—There are authorized to be appropriated in fiscal years 1989, 1990, 1991, and 1992, such sums as are necessary to carry out the purposes of this section.

CHAPTER 6—REGIONAL INFORMATION SHARING SYSTEMS GRANTS

SEC. 2851. REGIONAL INFORMATION SHARING SYSTEMS GRANTS.

(a) Grant Authorized.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by this subtitle, is amended by inserting after part L the following new part:

"PART M—REGIONAL INFORMATION SHARING SYSTEMS GRANTS

"SEC. 1301. REGIONAL INFORMATION SHARING SYSTEMS GRANTS.

"(a) The Director of the Bureau of Justice Assistance is authorized to make grants and enter into contracts with State and local criminal justice agencies and nonprofit organizations for the purposes of identifying, targeting, and removing criminal conspiracies and activities spanning jurisdictional boundaries.

"(b) Grants and contracts awarded under this part shall be made for—

"(1) maintaining and operating information sharing systems that are responsive to the needs of participating enforcement agencies in addressing multijurisdictional offenses and conspiracies, and that are capable of providing controlling input, dissemination, rapid retrieval, and systematized updating of information to authorized agencies;

"(2) establishing and operating an analytical component to assist participating agencies and projects in the compilation, interpretation, and presentation of information provided to a project;

"(3) establishing and maintaining a telecommunication of the information sharing and analytical programs in clauses (1) and (2); and

"(4) other programs designated by the Director that are designed to further the purposes of this part.

"(c) The Director is authorized to promulgate such rules and regulations as are necessary to carry out the purposes of this section, including rules and regulations for submitting and reviewing applications."

(b) Technical Amendments.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by striking out the items relating to part N and section 1401, and inserting in lieu thereof the following new items:

"Part M—Regional Information Sharing Systems Grants

"Sec. 1301. Regional information sharing systems grants.

"Part N—Transition; Effective Date; Repealer

"Sec. 1401. Continuation of rules, authorities, and proceedings."

CHAPTER 7—PUBLIC SAFETY OFFICERS' DEATH BENEFITS IMPROVEMENT

SEC. 2855. PUBLIC SAFETY OFFICERS' DEATH BENEFITS IMPROVEMENT.

(a) Basic Level of Death Benefit Payable.—Section 1201(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796) is amended by striking out "$50,000" and inserting in lieu thereof "$100,000, adjusted in accordance with subsection (g)".

(b) Annual Adjustment of Benefit Level.—Section 1201 of title I of the Omnibus Crime Control Act of 1968 (42 U.S.C. 3796) is amended by adding at the end thereof the following new subsections:

"(g) On October 1 of each fiscal year beginning after the effective date of this subsection, the Bureau shall adjust the level of the benefit payable immediately before such October 1 under subsection (a), to reflect the annual percentage change in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, occurring in the 1-year period ending on June 1 immediately preceding such October 1.

"(h) The amount payable under subsection (a) with respect to the death of a public safety officer shall be the amount payable under subsection (a) as of the date of death of such officer.".

(c) Parents as Beneficiaries.—Section 1201(a)(4) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796(a)(4)) is amended by striking out "dependent".

(d) Technical Amendment.—Section 1203 of title I of the Omnibus Crime Control Act of 1968 (42 U.S.C. 3796b) is amended by striking out paragraph (2) and redesignating paragraphs (3), (4), (5), (6), and (7), as paragraphs (2), (3), (4), (5), and (6), respectively.

SEC. 2856. NATIONAL PROGRAMS FOR FAMILIES OF PUBLIC SAFETY OFFICERS WHO HAVE DIED IN THE LINE OF DUTY.

(a) Program Authorization.—Part L of title I of the Omnibus Crime Control and Safe Streets Act (42 U.S.C. 3796a) is amended by—

(1) redesignating sections 1203 and 1204 as sections 1204 and 1205, respectively; and

(2) adding after section 1202 the following new section:

"NATIONAL PROGRAMS FOR FAMILIES OF PUBLIC SAFETY OFFICERS WHO HAVE DIED IN THE LINE OF DUTY

"Sec. 1203. The Director is authorized and directed to use up to $150,000 of the funds appropriated for this part to establish national programs to assist the families of public safety officers who have died in the line of duty.".

(b) Technical Amendment.—The table of contents for title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by—

(1) redesignating the items for section 1203 and 1204 as sections 1204 and 1205, respectively; and

(2) inserting after section 1203 the following:

"Sec. 1203. National and regional program for families of public safety officers who have died in the line of duty.".

CHAPTER 8—CRIMINAL HISTORY RECORD, ARREST WARRANT, AND STOLEN VEHICLE RECORD INFORMATION IMPROVEMENT

SEC. 2861. SHORT TITLE.

This part may be cited as the "Criminal History Record Information Improvement Act of 1987".

SEC. 2862. CRIMINAL HISTORY RECORD, ARREST WARRANT AND STOLEN VEHICLE RECORD INFORMATION.

(a) Grant Authorized.—Part C of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3731-3735) is amended by adding at the end thereof the following new section:

"GRANTS TO IMPROVE CRIMINAL HISTORY RECORD, ARREST WARRANT AND STOLEN VEHICLE RECORD INFORMATION

"Sec. 305. (a) With funds appropriated under section 1001(a)(6) of this title, the Director shall establish and carry out a program to make grants to improve criminal history record information, arrest warrant information and stolen vehicle record information compiled and maintained by State and local criminal justice agencies. Under such program, grants may be made in order to improve the accuracy, inclusiveness, or completeness of criminal history record, arrest record, and stolen vehicle record information, including grants, to develop, establish, or enhance—

"(1) uniform documents, forms, and procedures for reporting, integrating and maintaining such information;

"(2) an editing and verification system in order to identify errors;

"(3) a tracking system to match arrest and charge entries with dispositions;

"(4) a delinquent disposition monitoring system to identify aged entries;

"(5) a capability to audit information systems for the accuracy, or completeness or otherwise to measure the quality of such information;

"(6) an error notification system to facilitate the exchange of updated or corrected information among criminal justice agencies;

"(7) a capability to query the appropriate State central repository or source agency;

"(8) a transaction log system to record and describe the instances of dissemination;

"(9) automated criminal justice information systems, especially integrated systems, that assist in accomplishing information quality objectives or provide the means to measure the accomplishment of such objectives;

"(10) communications with the courts and other parts of the criminal justice system in order to assist in accomplishing information quality objectives;

"(11) initiatives to enhance the use of positive identification techniques;

"(12) programs for verification, validation, and purging of information that is not accurate; or

"(13) such other programs that, as determined by the Director, can reasonably be expected to assist in accomplishing information quality objectives.

"(b) No grant may be made under subsection (a) to an applicant unless the application for such grant—

"(1) contains a detailed summary of the results of an audit of the component or aspect of the criminal justice information system for which the grant is being sought;

"(2) identifies each of the activities specified in subsection (a) for which such grant will be expended and describes in detail how such activities will be carried out;

"(3) specifies with respect to the component or aspect of the criminal justice information system for which the grant is being sought, numeric goals of accuracy, inclusiveness, or completeness that will be achieved as a result of carrying out such activities and the period of time, but not more than 2 years, within which such goals will be achieved;

"(4) provides an assurance that such applicant will conduct an audit, at the applicant's expense, to determine whether the goals established pursuant to paragraph (3) have been achieved; and

"(5) identifies the State or local agency, as the case may be, that will be responsible for administering such grant.

"(c) Any State or unit of local government that—

"(1) receives a grant under subsection (a); and

"(2) fails to achieve each goal of accuracy, inclusiveness, or completeness specified in the application for such grant, as required by subsection (b)(3) within the period to which such goal applies;

is ineligible to receive any other grant under subsection (a) unless the Director determines that the failure to achieve such goal was caused by circumstances beyond the control of the State or unit of local government involved.".

(b) TECHNICAL AMENDMENTS.—Section 303 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3733) is amended—

(1) by striking out "A grant" and inserting in lieu thereof "(a) Except as provided in subsection (b), a grant", and by inserting after the words "for which such grant is made." the following new language: "The Director, in his discretion, may waive the requirements in subsection 305(b) with respect to 100 percent grants awarded under section 305.", and

(2) by adding at the end the following:

"(b) From 80 percent of the funds appropriated for a fiscal year to carry out section 305, each grant may be up to 50 percent of the total cost of the project for which such grant is made. The amount expended by the grant applicant to conduct the audit required by section 305(b)(1) shall be treated as a part of the cost of such project paid by such applicant.".

SEC. 2863. CRIMINAL JUSTICE RECORD INFORMATION DATA QUALITY RESEARCH.

With funds appropriated under section 1001(a)(6) of this title, the Bureau is authorized to conduct or make grants to support research to determine the accuracy, inclusiveness, or completeness of criminal justice record information held by State or local law enforcement agencies, prosecutors, the courts or correctional agencies.

SEC. 2864. TECHNICAL AMENDMENTS.

The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by inserting after the item relating to section 304 the following new item:

"Sec. 305. Grants to improve criminal history record, arrest warrant and stolen vehicle information.".

CHAPTER 9—COLLEGE AND RAILROAD POLICE INFORMATION

SEC. 2865. COLLEGE AND RAILROAD POLICE INFORMATION.

Section 534 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) For purposes of this section, the term 'other institutions' includes—

"(1) railroad police departments which perform the administration of criminal justice pursuant to a State statute and which allocate a substantial part of their annual budget to the administration of criminal justice; and

"(2) police departments of private colleges or universities which perform the administration of criminal justice pursuant to a State statute and which allocate a substantial part of their annual budget to the administration of criminal justice.".

CHAPTER 10—ASSISTANCE TO STATE AND LOCAL COURTS

SEC. 2871. STATE JUSTICE INSTITUTE REAUTHORIZATION.

(a) AUTHORIZATION.—Section 215 of the State Justice Institute Act of 1984 (Public Law 98-620; 42 U.S.C. 10713) is amended to read as follows:

"SEC. 215. There are authorized to be appropriated $15,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, and 1992 to carry out the purposes of this chapter.".

(b) TECHNICAL AMENDMENTS.—(1) Section 203(f) of the State Justice Institute Act of 1984 is amended by striking ", at least thirty days prior to their effective date," and by adding to the end thereof: "The publication of a substantive rule shall not be made less than thirty days before the effective date of such rule, except as otherwise provided by the Institute, for good cause found and published with the rule.".

(2) Section 205(d)(2) of the State Justice Institute Act of 1984 is amended by striking "chapter 83" and inserting in lieu thereof "chapters 83 and 84".

(3) Section 206(c) of the State Justice Institute Act of 1984 is amended by—

(A) inserting "judicial and" before "nonjudicial" in paragraph (3);

(B) repealing paragraph (4); and

(C) redesignating paragraphs (5) through (15) as paragraphs (4) through (14), respectively.

(4) Section 206(d) of the State Justice Institute Act of 1984 is amended by striking out "judicial system" and inserting in lieu thereof "court (or other unit of State or local government)".

(5) Section 207(a) of the State Justice Institute Act of 1984 is amended by—

(A) inserting "and" at the end of paragraph (1)(B);

(B) striking "; and" at the end of paragraph (2) and inserting in lieu thereof a period; and

(C) repealing paragraph (3).

(c) ADMINISTRATIVE PROVISIONS.—Section 209 of the State Justice Institute Act of 1984 is amended to read as follows:

"ADMINISTRATIVE PROVISIONS

"SEC. 209. (a) The Institute shall prescribe procedures to ensure that financial assistance under this title shall not be suspended unless the grantee, contractor, person, or entity receiving financial assistance under this title has been given reasonable notice and opportunity to show cause why such actions should not be taken.

"(b) Except as provided by Federal law other than this title, no officer or employee of the Institute, and no recipient of assistance under the provisions of this title shall use or reveal any research or statistical information furnished under this title by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained in accordance with this title. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.".

CHAPTER 11—VICTIM COMPENSATION AND ASSISTANCE

SUBCHAPTER A—VICTIMS OF CRIME ACT OF 1984 REAUTHORIZATION

SEC. 2875. VICTIMS OF CRIME ACT OF 1984 REAUTHORIZATION.

Paragraph (2) of subsection (c) of section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601) is amended by striking out "September 30, 1988" and inserting in lieu thereof "September 30, 1992.".

SEC. 2876. VICTIMS ASSISTANCE AMENDMENT.

Section 1404(a)(2) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(a)(2)) is amended by adding a new subparagraph (B) and redesignating the other subparagraphs as appropriate:

"(B) certify that funds shall be made available for grants to programs designed to serve previously underserved populations victims. The Director shall issue guidelines to implement this section, after consultation with State and local officials and representatives from private organizations, that provide flexibility to the States in determining the victims populations that may be underserved in their respective States;".

SUBCHAPTER B—ESTABLISHMENT OF OFFICE FOR VICTIMS OF CRIME

SEC. 2881. ESTABLISHMENT OF OFFICE.

The Victims of Crime Act of 1984 is amended by inserting after section 1401 the following new section:

"SEC. 1401A. ESTABLISHMENT OF OFFICE FOR VICTIMS OF CRIME.

"(a) There is established within the Department of Justice, under the general authority of the Attorney General, an Office for Victims of Crime (hereafter in this part referred to as the 'Office').

"(b) The Office shall be headed by a Director (hereafter in this part referred to as the 'Director') who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall report to the Attorney General through the Assistant Attorney General for the Office of Justice Programs. The Director shall have final authority for all grants, cooperative agreements, and contracts awarded by the Office. The Director shall not engage in any employment other than that of serving as the Director, nor shall the Director hold any office in, or act in any capacity for, any organization, agency, or institution with which the Office makes any contract or other agreement under this part.

"(c) The Director shall have the following duties:

"(1) Administering funds made available by section 1402.

"(2) Providing funds to eligible States pursuant to sections 1403 and 1404.

"(3) Establishing programs in accordance with section 1404(c) on terms and conditions determined by the Director to be consistent with that subsection.

"(4) Cooperating with and providing technical assistance to States, units of local government, and other public and private organizations or international agencies involved in activities related to crime victims.

"(5) Such other functions as the Attorney General may delegate.".

SEC. 2882. TECHNICAL AMENDMENTS TO VICTIMS OF CRIME ACT.

(a) Section 1403(a)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10602) is amended by striking "Attorney General" and inserting "Director".

(b) Section 1403(a)(2) of the Victims of Crime Act of 1984 (42 U.S.C. 10602) is amended by striking "Attorney General" and inserting "Director".

(c) Section 1403(b)(6) of the Victims of Crime Act of 1984 (42 U.S.C. 10602) is amended by striking "Attorney General" and inserting "Director".

(d) Section 1404(a)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10603) is amended by striking "Attorney General" and inserting "Director".

(e) Section 1404(a)(2)(C) of the Victims of Crime Act of 1984 (42 U.S.C. 10603) is amended by striking "Attorney General" and inserting "Director".

(f) Section 1404(c)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10603) is amended by striking "Attorney General, acting through the Assistant Attorney General for the Office of Justice Programs" and inserting "Director".

(g) Section 1404(c)(3) of the Victims of Crime Act of 1984 (42 U.S.C. 10603) is amended by striking "Assistant Attorney General for the Office of Justice Programs" and inserting "Director".

(h) Section 1404(c)(3)(D) of the Victims of Crime Act of 1984 (42 U.S.C. 10603) is amended by striking "Attorney General may assign" and inserting "Director deems appropriate".

(i) Section 1404(c)(4) of the Victims of Crime Act of 1984 (42 U.S.C. 10603) is amended by striking "Attorney General" and inserting "Director".

(j) Section 1407(a) of the Victims of Crime Act of 1984 (42 U.S.C. 10604) is amended by—

(1) striking "Attorney General" and inserting "Director";

(2) striking "Attorney General" and inserting "Director"; and

(3) striking "and may delegate to any officer or employee of the Department of Justice any such function as the Attorney General deems appropriate".

(k) Section 1407(b) of the Victims of Crime Act of 1984 (42 U.S.C. 10604) is amended by striking "Attorney General" and inserting "Director".

(l) Section 1407(c) of the Victims of Crime Act of 1984 (42 U.S.C. 10604) is amended by striking "Attorney General or any duly authorized representative of the Attorney General" and inserting "Director".

(m) Section 1407(f) of the Victims of Crime Act of 1984 (42 U.S.C. 10604) is amended by—

(1) striking "Attorney General" the first place it appears and inserting "Director"; and

(2) striking "Attorney General" and inserting "Director" in paragraph (3).

(n) Section 1407(g) of the Victims of Crime Act of 1984 (42 U.S.C. 10604) is amended by—

(1) striking "Attorney General" the first place it appears and inserting "Director"; and

(2) striking "no later than December 31, 1987" and inserting "on December 31, 1990, and on December 31 every 2 years thereafter".

SEC. 2883. CHILDREN'S JUSTICE ACT AMENDMENTS.

(a) Section 10 of the Child Abuse Prevention and Treatment Act (Public Law 100–294) is stricken and sections 11, 12, 13, 14, and 15 are redesignated as sections 10, 11, 12, 13, and 14, respectively.

(b) Section 1404A (42 U.S.C. 10603A) of the Victims of Crime Act of 1984 is amended to read as follows:

"SEC. 1404A. (a) GRANT AUTHORITY.—(1) Amounts made available by section 1402(d)(2) for the purposes of this section shall be obligated and expended by the Attorney General, acting through the Director, to make grants to the States for the purpose of assisting States in developing, establishing, and operating programs designed to improve—

"(A) the handling of child abuse cases, particularly cases of child sexual abuse, in a manner which limits additional trauma to the child victim; and

"(B) the investigation and prosecution of cases of child abuse, particularly child sexual abuse.

"(2) To ensure that programs funded under this section involve a multidisciplinary approach, representatives from a variety of disciplines, the Director shall, in consultation with the representatives from the Department of Health and Human Services and other Federal agencies, develop for each fiscal year, before December 31 of each year, a proposed plan describing the criteria that shall be used in selecting programs for grants under this section. Such report shall also be provided to the appropriate committees of Congress.".

"(b) ELIGIBILITY REQUIREMENTS FOR STATES.—In order for a State to qualify for assistance under this section, such State shall—

"(1) fulfill the eligibility requirements for victim assistance funds under section 1404(a) of the Victims of Crime Act (42 U.S.C. 10603);

"(2) establish a task force as provided in subsection (c);

"(3) fulfill the requirements of subsection (d); and

"(4) submit an application to the Attorney General at such time and containing such information and assurances as the Attorney General considers necessary, including an assurance that the State will—

"(A) make such reports to the Attorney General as may reasonably be required; and

"(B) maintain and provide access to records relating to activities under subsections (a) and (b).

"(c) STATE TASK FORCES.—

"(1) GENERAL RULE.—Except as provided in paragraph (2), a State requesting assistance under this section shall establish or designate a State multidisciplinary task force on children's justice (hereinafter referred to as 'State task force') composed of professionals with knowledge and experience relating to the criminal justice system and issues of child abuse. The State task force shall include—

"(A) individuals representing the law enforcement community;

"(B) judicial and legal officers (including individuals involved with the defense as well as the prosecution of such cases);

"(C) child advocates;

"(D) health and mental health professionals;

"(E) individuals representing child protective service agencies;

"(F) individuals experienced in working with children with handicaps;

"(G) parents; and

"(H) representatives of parents' groups.

"(2) EXISTING TASK FORCE.—As determined by the Attorney General, a State commission or task force established after January 1, 1983, with substantially comparable membership and functions, may be considered the State task force for purposes of this subsection.

"(d) STATE TASK FORCE STUDY.—Before a State receives assistance under this section, the State task force shall—

"(1) review and evaluate State investigative, administrative, and judicial handling of cases of child abuse, particularly child sexual abuse; and

"(2) make recommendations in each of the categories described in subsection (e).

The task force may make such other comments and recommendations as are considered relevant and useful.

"(e) ADOPTION OF STATE TASK FORCE RECOMMENDATIONS.—

"(1) GENERAL RULE.—Subject to the provisions of paragraph (2), before a State receives assistance under this section, a State shall adopt recommendations of the State task force in each of the following categories:

"(A) investigative, administrative, and judicial handling of cases of child abuse, particularly child sexual abuse cases, in a manner which reduces the additional trauma to the child victim and which also ensures procedural fairness to the accused;

"(B) experimental, model, and demonstration programs for testing innovative approaches and techniques which may improve the rate of successful prosecution or enhance the effectiveness of judicial and administrative action in child abuse cases, particularly child sexual abuse cases, and which also ensure procedural fairness to the accused; and

"(C) reform of State laws, ordinances, regulations, and procedures to provide comprehensive protection for children from abuse, particularly child sexual abuse, while ensuring fairness to all affected persons.

"(2) Exemption.—As determined by the Attorney General, a State shall be considered to be in fulfillment of the requirements of this subsection if—

"(A) the State adopts an alternative to the recommendations of the State task force, which carries out the purpose of this section, in each of the categories under paragraph (1) for which the State task force's recommendations are not adopted; or

"(B) the State is making substantial progress toward adopting recommendations of the State task force or a comparable alternative to such recommendations.

"(f) Grants for Indian Country.—The Attorney General, acting through the Director, is authorized to use not more than 15 percent of the funds available for this section to make grants for the purpose of assisting Native American Indian tribes in developing, establishing, and operating programs designed to improve—

"(1) the handling of child abuse cases, particularly cases of child sexual abuse, in a manner which limits additional trauma to the child victim; and

"(2) the investigation and prosecution of cases of child abuse, particularly child sexual abuse.

"(g) Report.—The Director shall include a summary of States funded under this section and the programmatic results when reporting to the President and Congress as required under section 1407(g) of the Victims of Crime Act (42 U.S.C. 10604).".

(c) The amendments made by this section shall not affect the administration of grants made on or before September 30, 1988.

SUBCHAPTER C—OTHER AMENDMENTS TO VICTIMS OF CRIME ACT OF 1984

SEC. 2885. OTHER AMENDMENTS TO VICTIMS OF CRIME ACT OF 1984.

(a) Adding Victims of Drunk Driving and Domestic Violence.—Section 1403(b)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(b)(1)) is amended to read as follows:

"(1) such program is operated by a State and offers compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence by December 30, 1991, for—".

(b) Denial of Compensation.—Section 1403(b) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(b)) is amended by—

(1) redesignating paragraph (6) as paragraph (7); and

(2) adding the following new paragraph (6):

"(6) such program does not deny compensation to any victim because of a familial relationship with the offender or because the victim lived with the offender at the time of the crime, except that the program may establish reasonable regulations, pursuant to Department of Justice guidelines, to prevent the unjust enrichment of the offender;".

(c) Change in Victim Compensation Criteria.—Section 1403(b)(5) (42 U.S.C. 10602(b)(5)) of the Victims of Crime Act of 1984 is amended to read as follows:

"(5) such program provides compensation to victims of Federal crimes occurring within the State on the same basis that such program provides compensation to victims of State crimes.".

(d) Removal of "Grandfather" Clause.—Section 1403 of the Victims of Crime Act of 1984 (42 U.S.C. 10602) is amended by striking subsection (c) and redesignating subsection (d) as subsection (c).

(e) Eyeglasses.—(1) Section 1403(d)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(d)(1)) is amended by adding after "does not include damage to" the following: "eyeglasses and other corrective lenses or".

(2) Section 1403(d)(2) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(d)(2)) is amended by adding after "crime victim compensation program, expenses for" the following: "eyeglasses and other corrective lenses, and for".

Subtitle O—Chemical Diversion and Trafficking Act of 1988

SEC. 2901. SHORT TITLE.

This subtitle may be cited as the "Chemical Diversion and Trafficking Act of 1988".

SEC. 2902. REGULATION OF LISTED CHEMICALS AND CERTAIN MACHINES.

(a) In General.—Section 310 of the Controlled Substances Act (21 U.S.C. 830) is amended to read as follows:

"REGULATION OF LISTED CHEMICALS AND CERTAIN MACHINES

"Sec. 310. (a)(1) Each regulated person who engages in a regulated transaction involving a listed chemical shall keep a record of the transaction—

"(A) for 4 years after the date of the transaction, if the listed chemical is a precursor chemical; and

"(B) for 2 years after the date of the transaction, if the listed chemical is an essential chemical.

"(2) A record under this subsection shall be readily retrievable and shall include the date of the regulated transaction, the identity of each party to the regulated transaction, a statement of the quantity and form of the listed chemical, and a description of the method of transfer. Such records shall be kept and made available for inspection and copying by officers or employees of the United States authorized by the Attorney General.

"(3) It is the duty of each regulated person who engages in a regulated transaction to identify each other party to the transaction. It is the duty of such other party to present proof of identity to the regulated person. The Attorney General shall specify by regulation the types of documents or other evidence that constitute proof of identity for purposes of this paragraph.

"(4) Paragraphs (1), (2), and (3) shall also apply to any regulated transaction involving tableting machines or encapsulating machines except that—

"(A) records shall be kept for 2 years after the date of the transaction; and

"(B) records shall also include the purpose for which the machine is intended, and the serial numbers and make and model of the machine.

"(b) Each regulated person shall report to the Attorney General, in such form and manner as the Attorney General shall prescribe by regulation—

"(1) any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance that the regulated person believes may indicate that the listed chemical may be used in violation of this title;

"(2) any regulated transaction involving a tableting machine or an encapsulating machine that the regulated persons believes may be used in violation of this title;

"(3) any proposed regulated transaction with a person whose description or other identifying characteristics the Attorney General furnishes in advance to the regulated person; and

"(4) any unusual or excessive loss or disappearance of a listed chemical under the control of the regulated person.

For paragraphs (1) and (4), the Attorney General shall issue consultative guidance documents as may be necessary. Each report under paragraphs (1) and (2) shall be made at the earliest practicable opportunity and as much in advance of the actual delivery as possible after the regulated person becomes aware of the circumstance involved. A regulated person may not complete a transaction with a person whose description or identifying characteristic is furnished to the regulated person under paragraph (3) unless the transaction is approved by the Attorney General.

"(c)(1) Except as provided in paragraph (2), any information obtained by the Attorney General under this section which is exempt from disclosure under section 552(a) of title 5, United States Code, by reason of section 552(b)(4) of such title, is confidential and may not be disclosed to any person.

"(2) Information referred to in paragraph (1) may be disclosed only—

"(A) to an officer or employee of the United States engaged in carrying out this title, title III, or the customs laws;

"(B) when relevant in any investigation or proceeding for the enforcement of this title, title III, or customs laws;

"(C) when necessary to comply with an obligation of the United States under a treaty or other international agreement; or

"(D) to a State or local law enforcement, prosecutorial, or judicial officer in conjunction with the enforcement of controlled substance or precursor laws.

"(3) The Attorney General shall—

"(A) take such action as may be necessary to prevent unauthorized disclosure of information by any person to whom such information is disclosed under paragraph (2); and

"(B) issue guidelines that limit, to the maximum extent feasible, the disclosure of proprietary business information, including the names or identities of United States exporters of listed chemicals, to any person to whom such information is disclosed under paragraph (2).".

(b) Clerical Amendment.—The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by striking out the item relating to section 310 and inserting in lieu thereof the following:

"310. Regulation of listed chemicals and certain machines.".

SEC. 2903. IMPORT AND EXPORT.

(a) Export.—(1) Section 1003 of the Controlled Substances Import and Export Act

(21 U.S.C. 953) is amended by adding at the end thereof the following new subsection:

"(f)(1) Except as provided in paragraph (2), it shall be unlawful for a regulated person involved in a regulated transaction to export from the United States to any other country any listed chemical, tableting machine, or encapsulating machine unless there is furnished to the Attorney General, at least 15 days prior to export, in a manner which the Attorney General may by regulation prescribe, a declaration that the exportation is for medical, commercial, scientific, or other legitimate purposes.

"(2) The Attorney General shall provide by regulation for circumstances in which the 15-day requirement does not apply to a transaction between a regulated person and a regular customer of the regulated person.

"(3) A regulated person may not export any listed chemical, tableting machine, or encapsulating machine in any case following notification by the Attorney General that such export may not occur. Such notification shall be communicated in an expeditious manner consistent with the circumstances; and a written statement setting forth the reason that such shipment may not be made shall be provided to the exporter at the earliest practicable opportunity.

"(4) Following the receipt of a notification not to export listed chemicals, tableting machine or encapsulating machine pursuant to paragraph (1), the exporter may file a request for a hearing with the Attorney General. Such hearings will be conducted in conformance with subchapter II of chapter 5 of title 5, United States Code, and will be conducted on an expedited basis no later than 45 days following receipt of a request for a hearing, unless a delay is requested by the exporter.".

(2) Section 1010 of such Act (21 U.S.C. 960) is amended—

(A) in paragraph (a)(1) by adding "or listed chemical, chemical mixture created for the purpose of evading the notification requirements of sections 1002 and 1003, tableting machine or encapsulating machine," following "controlled substance"; and

(B) in paragraph (b)(4) by adding "or listed chemical, chemical mixture created for the purpose of evading the notification requirements of sections 1002 and 1003, tableting machine or encapsulating machine" following "schedule III, IV, or V,".

(3)(A) No later than 45 days after the date of the enactment of this Act, the Attorney General shall forward proposed regulations relating to paragraph (1) to the Office of Management and Budget for review.

(B) No later than 55 days after the date of the enactment of this Act, the Office of Management and Budget shall—

(i) review such proposed regulations of the Attorney General; and

(ii) forward any comments and recommendations for modifications to the Attorney General.

(C) Not later than 60 days after the date of enactment of this Act, the Attorney General shall publish the proposed final regulations as required by the amendments made by paragraphs (1) and (2).

(D) No later than 120 days after the date of the enactment of this Act, the Attorney General shall promulgate final regulations as required by the amendments made by paragraphs (1) and (2).

(E) The provisions of the amendments made by paragraph (1) of this subsection shall take effect 60 days after the promulgation of the final regulations required under paragraphs (1) and (2).

(b) IMPORT.—(1) Section 1002 of the Controlled Substances Import and Export Act (21 U.S.C. 952) is amended by adding at the end thereof the following new subsection:

"(d)(1) Except as provided in paragraph (2), it shall be unlawful for a regulated person involved in a regulated transaction to import into the customs territory of the United States from any place outside thereof (but within the United States) or to import into the United States from any place outside thereof, any listed chemical, tableting machine, or encapsulating machine (including those for the purpose of transshipment) unless there is furnished to the Attorney General at least 15 days prior to import, in a manner which the Attorney General may by regulation prescribe, a declaration that the importation is for medical, commercial, scientific, or other legitimate purposes.

"(2) The Attorney General shall provide by regulation for circumstances in which the 15-day requirement does not apply to a transaction between a regulated person and a regular customer of the regulated person.

"(3) The importer may not import any listed chemical tableting machine or encapsulating machine in any case following notification by the Attorney General that such import may not occur. Such notification shall be communicated in an expeditious manner consistent with the circumstances; and a written statement setting forth the reason that such shipment may not be made shall be provided to the importer at the earliest practicable opportunity.

"(4) Following the receipt of a notice not to import listed chemicals, tableting machines, or encapsulating machines pursuant to paragraph (1), the importer may file a request for a hearing with the Attorney General. Such hearings will be conducted in conformance with subchapter II of chapter 5 of title 5, United States Code, and will be conducted on an expedited basis no later than 45 days following receipt of a request for a hearing, unless a delay is requested by the importer.".

(2) The provisions of the amendments made by paragraph (1) of this subsection shall take effect in the same manner and on the same date as provided in subsection (a)(3).

SEC. 2904. DEFINITIONS.

Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(1) in paragraph (8), by inserting "or a listed chemical, tableting machine or encapsulating machine" after "a controlled substance";

(2) in paragraph (11), by inserting "or a listed chemical, tableting machine or encapsulating machine" after "a controlled substance" both places it appears; and

(3) by adding at the end the following new paragraphs:

"(33) The term 'listed chemical' means any listed precursor chemical or listed essential chemical.

"(34) The term 'listed precursor chemical' means a chemical specified by regulation of the Attorney General as a chemical that is used in manufacturing a controlled substance in violation of this title and is critical to the creation of the controlled substances, and such term includes (until otherwise specified by regulation of the Attorney General) the following chemicals:

"(A) Anthranilic acid, plus salts.

"(B) Benzyl cynide.

"(C) Ephedrine, plus salts, optical isomers and salts of optical isomers.

"(D) Ergonovine, plus salts.

"(E) Ergotamine, plus salts.

"(F) 3,4-Methylenedioxyphenyl-2-propanone.

"(G) N-acetylanthranilic acid, plus salts.

"(H) Phenylacetic acid, plus salts.

"(I) Piperidine, plus salts.

"(J) Pseudoephedrin, plus salts, optical isomers and salts of optical isomers.

"(35) The term 'listed essential chemical' means a chemical specified by regulation of the Attorney General as a chemical that is used as a solvent, reagent, or catalyst in manufacturing a controlled substance in violation of this title, and such term includes (until otherwise specified by regulation of the Attorney General) the following chemicals:

"(A) Acetic anhydride.

"(B) Acetone.

"(C) Benzyl chloride.

"(D) Ethyl ether.

"(E) Potassium permanganate.

"(F) 2-butanone (Methyl ethyl ketone).

"(G) Toluene.

"(36) The term 'regular customer' means, with respect to a regulated person, a customer with whom the regulated person has an established business relationship that is reported according to regulations prescribed by the Attorney General. The reports filed according to such regulations shall include—

"(A) the names and street addresses of the regulated person and the regular customer;

"(B) the phone number and contact person for the regulated person;

"(C) a list of the listed chemicals involved in regulated transactions between the regulated person and the regular customer; and

"(D) such other information that is necessary for the effective implementation of sections 1002 and 1003 of the Controlled Substances Import and Export Act.

"(37) The term 'regulated person' means a person who manufactures, distributes, imports, or exports a listed chemical, a tableting machine or encapsulating machine.

"(38) The term 'regulated transaction' means—

"(A) a distribution, receipt, sale, importation or exportation of a threshold amount, including a cumulative threshold amount for multiple transactions (as determined by the Attorney General, in consultation with the chemical industry and taking into consideration the quantities normally used for lawful purposes), of a listed chemical, except that such term does not include—

"(i) a domestic distribution in the lawful and usual course of business between agents and employees of a single regulated person;

"(ii) the delivery of listed substances to or by a common or contract carrier for carriage in the lawful and usual course of its business, or to or by a warehouseman for storage in the lawful and usual course of its business; but where such carriage or storage is in connection with the distribution, importation, or exportation of substances to a third person, this subparagraph shall not relieve the distributor, importer, or exporter from compliance with section 310(a)(3);

"(iii) any category of transaction specified by regulation of the Attorney General as excluded from this definition as unnecessary for enforcement of this title or title III

"(iv) any transaction in a listed chemica that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act; or

"(v) any transaction in a chemical mixture.

"(B) a distribution, importation or exportation of a tableting machine or an encapsu lating machine except that such term does not include transactions excluded under subsections (A) (i) and (ii).

"(39) the term 'chemical mixture' means a combination of two or more chemical substances, at least one of which is not a listed precursor chemical or a listed essential chemical, except that such term does not include any combination of a listed precursor chemical or a listed essential chemical with another chemical that is present solely as an impurity.".

SEC. 2905. AMENDMENTS TO SECTION 401 OF THE CONTROLLED SUBSTANCES ACT.

(a) Additional Offenses.—Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended by striking out subsection (d) and inserting in lieu thereof the following new subsections:

"(d) Any person who knowingly or intentionally—

"(1) possesses a listed chemical with intent to manufacture a controlled substance except as authorized by this title;

"(2) possesses or distributes a listed chemical knowing that the listed chemical will be used to manufacture a controlled substance except as authorized by this title;

"(3) with the intent of causing the evasion of the recordkeeping or reporting requirements of section 310(a) or the regulations issued thereunder, receives or distributes a reportable amount of any listed chemical in units small enough so that the making of records or filing of reports under section 310(a) is not required;

"(4) with the intent of causing the evasion of the recordkeeping or reporting requirements of section 310(a) or the regulations issued thereunder, creates a chemical mixture in such proportions so that the making of records or filing of reports under section 310(a) is not required;

"(5) possesses any three-neck round-bottom flask, tableting or encapsulating machines, gelatin capsules, or any equipment specially designed or modified to manufacture a controlled substance, knowing that it will be used to manufacture a controlled substance except as authorized by this title; or

"(6) manufactures, distributes, or imports any three-neck round-bottom flask, tableting or encapsulating machines, gelatin capsules, or any equipment specially designed or modified to manufacture a controlled substance, knowing that it will be used to manufacture a controlled substance except as authorized by this title.

shall be fined in accordance with title 18, United States Code, or imprisoned not more than 10 years, or both.

"(e)(1) Whoever knowingly distributes a listed chemical in violation of this title (other than in violation of a recordkeeping or reporting requirement of section 310) shall be fined under title 18, United States Code, or imprisoned not more than 10 years, or both.

"(2) Whoever possesses any listed chemical, tableting machine or encapsulating machine, with knowledge that the recordkeeping or reporting requirements of section 310 have not been adhered to, if, after such knowledge is acquired, such person does not take immediate steps to remedy the violation shall be fined under title 18, United States Code, or imprisoned not more than 1 year, or both.".

(b) Additional Penalty.—Section 401 of the Controlled Substances Act (21 U.S.C. 841), as amended by subsection (a) of this section, is further amended by adding at the end the following new subsection:

"(f) In addition to any other applicable penalty, any person convicted of a violation of this section relating to the receipt, distribution, or importation of a listed chemical, tableting machine or encapsulating machine punishable by imprisonment for more than 1 year may be enjoined from conducting business activities with such chemical, tableting machine or encapsulating machine for not more than 10 years.".

SEC. 2906. AMENDMENTS TO SECTION 402 OF THE CONTROLLED SUBSTANCES ACT.

(a) Confidential Information Amendment.—Section 402(a)(8) of the Controlled Substances Act (21 U.S.C. 842(a)(8)) is amended by inserting after "protection" the following: ", or to use to his own advantage or reveal (other than as authorized by section 310) any information that is confidential under such section".

(b) Identification Amendment.—Section 402(a)(9) of the Controlled Substances Act (21 U.S.C. 842(a)(9)) is amended to read as follows:

"(9) who is a regulated person to engage in a regulated transaction without obtaining the proof of identity required by 310(a)(3).".

(c) Technical Amendment.—Section 402(c)(2) of the Controlled Substances Act (21 U.S.C. 842(c)(2)) is amended by striking out subparagraph (C).

(d) Records Violations.—Section 402(a) of the Controlled Substances Act (21 U.S.C. 842(a)) is amended—

(1) in paragraph (8), as amended by subsection (a) of this section, by striking out "or" at the end of the paragraph;

(2) in paragraph (9), as amended by subsection (b) of this section, by striking out the period at the end of the paragraph and inserting in lieu thereof "; or"; and

(3) by adding at the end the following new paragraph:

"(10) to fail to keep a record or make a report under section 310.".

SEC. 2907. AMENDMENTS TO SECTION 403 OF THE CONTROLLED SUBSTANCES ACT.

(a) Additional Offenses.—Section 403(a) of the Controlled Substances Act (21 U.S.C. 843(a)) is amended—

(1) in paragraph (4)(B), by striking "piperidine" and inserting in lieu thereof "a listed chemical, tableting machine or encapsulating machine";

(2) in paragraph (4)(B), by striking out "or" after the semicolon; and

(3) in paragraph (5), by striking out the period at the end and inserting in lieu thereof a semicolon.

(b) Additional Penalty.—Section 403 of the Controlled Substances Act (21 U.S.C. 843), is amended by adding at the end the following new subsection:

"(d) In addition to any other applicable penalty, any person convicted of a violation of this section relating to the receipt, distribution, or importation of a listed chemical punishable by imprisonment for more than 1 year may be enjoined from conducting business activity with such chemical for not more than 10 years.".

SEC. 2908. SUBPOENA POWER.

The first sentence of section 506(a) of the Controlled Substances Act (21 U.S.C. 876(a)) is amended by inserting "or listed chemicals, tableting machines or encapsulating machines" after "with respect to controlled substances".

SEC. 2909. FORFEITURE.

(a) In General.—Section 511(a) of the Controlled Substances Act (21 U.S.C. 881) is amended by adding at the end the following new paragraph:

"(9) All listed chemicals, all drug manufacturing equipment, all tableting machines, all encapsulating machines, and all gelative capsules, which have been imported, exported, manufactured, possessed, distributed, or intended to be distributed, imported, or exported, in violation of a felony provision of this title or title III.".

(b) Technical Amendment.—Paragraph (3) and paragraph (4) of section 511(a) of the Controlled Substances Act (21 U.S.C. 881(a) and (4)) are each amended by striking out "paragraph (1) or (2)" and inserting in lieu thereof "paragraph (1), (2), or (9)".

SEC. 2910. ACTIVE DEPARTMENT OF JUSTICE CONTROL PROGRAM.

The Attorney General shall maintain an active program, both domestic and international, to curtail the diversion of precursor chemicals and essential chemicals used in the illicit manufacture of controlled substances. The Attorney General through rulemaking is authorized to add chemicals to, and delete chemicals from the lists specified in section 102(34) of the Controlled Substances Act (21 U.S.C. 802(34)) and to promulgate rules and regulations necessary to the administration of this subtitle.

SEC. 2911. EFFECTIVE DATE.

Except as provided in section 1203 (a) and (b), this subtitle shall take effect 120 days after the date of enactment of this subtitle.

Subtitle P—Application Of United States Immigration Laws and Deportation Of Aliens Committing Aggravated Felonies

SEC. 2915. SHORT TITLE.

This subtitle may be cited as the "Violent Criminal Alien Deportation Act".

SEC. 2916. DEFINITION.

Section 101(a) of the Immigration and Nationality Act is amended by adding at the end thereof the following new paragraph:

"(43) The term 'aggravated felony' means murder, kidnapping, rape, or any attempt thereof, or any illicit trafficking in any controlled substance as defined in section 102 of the Controlled Substances Act or any illicit trafficking in any firearms or destructive devices as defined in section 921 of title 18, United States Code. An alien convicted of such felony shall be termed an 'aggravated alien felon'."

SEC. 2917. DEPORTATION OF ALIENS COMMITTING AGGRAVATED FELONIES.

(a) Retention in Custody Upon Arrest.—Section 242(a) of the Immigration and Nationality Act is amended—

(1) in the second sentence, by striking out "Any" and inserting in lieu thereof "Except as provided in paragraph (2), any";

(2) by redesignating clauses (1), (2), and (3) as clauses (A), (B), and (C), respectively;

(3) by inserting "(1)" immediately after "(a)"; and

(4) by adding at the end thereof the following new paragraph:

"(2) Any alien arrested under paragraph (1) pending a determination of whether such alien is deportable on grounds of having been convicted of an aggravated felony shall not be released from custody and shall not be entitled to conditional parole. An alien held in custody under this paragraph by State or local authorities shall promptly be transferred to the custody of the Attorney General.".

(b) Inapplicability of Voluntary Departure.—Section 244(e) of such Act is amended—

(1) by striking out "(e) The" and inserting in lieu thereof "(e)(1) Subject to paragraph (2), the";

(2) by adding at the end thereof the following new paragraph:

"(2) The authority contained in paragraph (1) shall not apply to any alien who is deportable for having been convicted of an aggravated felony.".

(c) Applicablity of Amendments.—The amendments made by this section apply to aliens who have been convicted, on or after the date of enactment of this Act, of an aggravated felony.

SEC. 2918. CRIMINAL PENALTIES FOR REENTRY OF CERTAIN DEPORTED ALIENS.

Section 276 of the Immigration and Nationality Act is amended—

(1) by striking out "Any alien" and inserting in lieu thereof "(a) Subject to subsection (b), any alien";

(2) by adding at the end thereof the following:

"(b) Notwithstanding subsection (a), in the case of any alien described in subsection (a)—

"(1) whose deportation was subsequent to a conviction for commission of a felony (other than an aggravated felony), such alien shall be punishable by imprisonment for not more than 5 years, or a fine of not more than $10,000, or both; or

"(2) whose deportation was subsequent to a conviction for commission of an aggravated felony, such alien shall be punishable by imprisonment for at least 15 years and by a fine of not more than $20,000.".

SEC. 2919. CRIMINAL PENALTIES FOR AIDING OR ASSISTING CERTAIN ALIENS TO ENTER THE UNITED STATES.

(a) In General.—Section 277 of the Immigration and Nationality Act is amended by inserting "(9), (10), (23) (insofar as an alien excludable under this paragraph has in addition been convicted of an aggravated felony)," immediately after "212(a)".

(b) Conforming Amendments.—(1) The section heading for section 277 of such Act is amended by striking out "subversive alien" and inserting in lieu thereof "certain aliens".

(2) The table of contents of such Act is amended by amending the item relating to section 277 to read as follows:

"Sec. 277. Aiding or assisting certain aliens to enter the United States.".

SEC. 2920. CRIMINAL PENALTIES FOR REFUSAL OF CERTAIN ALIENS TO APPEAR.

(a) In General.—Chapter 8 of the Immigration and Nationality Act is amended by adding at the end thereof the following new section:

"CRIMINAL PENALTIES FOR REFUSAL OF CERTAIN ALIENS TO APPEAR

"Sec. 280A. Whoever, having been convicted of an aggravated felony and having been subpoenaed under the provision of the Immigration and Nationality Act (or any other law or regulation relating to the expulsion of aliens) to appear and testify at any proceeding held to determine the deportability or excludability of the alien on grounds of that conviction, neglects or refuses to so appear and testify, if in the power of such person to do so, shall be fined not more than $250,000 or imprisoned not more than five years, or both.".

(b) Amendment to Table of Contents.—The table of contents of such Act is amended by inserting after the item relating to section 280 the following new item:

"Sec. 280A. Criminal penalties for refusal of certain aliens to appear.".

SEC. 2921. SPECIAL DEPORTATION PROCEEDINGS FOR ALIENS CONVICTED OF AGGRAVATED FELONIES.

(a) In General.—The Attorney General shall provide for the availability of special deportation proceedings pursuant to this subtitle at certain Federal, State, and local correctional facilities for aliens convicted of aggravated felonies as defined in this subtitle. Such proceedings shall be conducted in accordance with this subtitle and in such manner which eliminates the need for additional detention at an Immigration and Naturalization Service special processing center and assures expeditious deportation, where warranted, following the end of the sentence.

(b) Implementation.—The Attorney General shall endeavor, to the extent possible, to incarcerate aliens convicted of committing aggravated felonies in select facilities that have a significant number of inmates who are aliens convicted of aggravated felonies. The deportation proceedings held in correctional facilities shall be consistent with sections 242, 291, 292, as amended by this subtitle and any other provision of the Immigration and Nationality Act.

(c) Review.— The Attorney General shall review and evaluate the provision of deportation hearings within correctional facilities and within 18 months submit a report to the appropriate committees of the Congress on the effectiveness of such special deportation proceedings.

SEC. 2922. EXPEDITED PROCEDURES FOR DEPORTATION OF ALIENS CONVICTED OF COMMITTING AGGRAVATED FELONIES; GROUNDS FOR APPEAL.

(a) The Immigration and Nationality Act is amended by inserting after section 241 the following new section:

"EXPEDITED PROCEDURES FOR DEPORTATION OF ALIENS CONVICTED OF COMMITTING AGGRAVATED FELONIES; GROUNDS FOR APPEAL

"Sec. 241A. (a) Notwithstanding any other provision of law, including section 208 but excluding section 243(h) of this Act, any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported as an aggravated alien felon if such alien has been convicted and sentenced in a United States district court or in a court of record of any State, territory, possession, or in the District of Columbia for an aggravated felony and such conviction and sentence shall revoke by operation of law the permanent resident status of any alien and such conviction and sentence shall serve as conclusive evidence of the deportability of any alien.

"(b)(1) Notwithstanding any other provision of law, the District Director of the Service for the district in which it appears that an alien was convicted and sentenced for an aggravated felony shall, on behalf of the Attorney General, issue, upon sentencing, an order of deportation for the alleged aggravated alien felon which shall be effective as of the date of termination of sentence.

"(2) Nothing in this section shall be construed as requiring the Attorney General to effect the immediate deportation of any alien sentenced to actual incarceration, prior to release from the penitentiary or correctional institution where confined, unless at the request, in writing, of the sentencing judge, the chief prosecutor in whose jurisdiction conviction occurred, or the chief correctional official of the system in which the alien is confined.

"(c) Notwithstanding any other provision of law, an order of deportation for an aggravated alien felon in his native language, shall be personally served on the alleged aggravated alien felon named therein. Such deportation order shall be simply worded to inform the alleged aggravated alien felon of at least the following information:

"(1) the date and the court in which the subject of the order of deportation was convicted and sentenced for an alleged aggravated felony;

"(2) a description, including the citation, of the crime alleged to be the aggravated felony;

"(3) a notice that the order of deportation will become a final order of deportation unless the subject of the order petitions a United States district court to vacate the order of deportation within 30 days of its personal service on the alleged aggravated alien felon; and

"(4) an explanation of the procedure to vacate the order of deportation.

"(d)(1) Notwithstanding any other provision of law, a person alleged to be an alien who committed an aggravated felony may petition a United States district court to vacate an order of deportation on the grounds that he is a United States citizen and therefore not subject to an order of deportation, that he is not the person named in the order of deportation as having been convicted and sentenced for the aggravated felony which is the basis for the order of deportation, or that the conviction which is the basis for the order of deportation is not an aggravated felony.

"(2) A petition to vacate an order of deportation by the person named therein as an aggravated alien felon must set forth under oath the ground or grounds, set forth in subsection (d)(1), upon which the alleged aggravated alien felon seeks to vacate his order of deportation. If petitioner claims United States citizenship, he must allege the names of his natural mother and father and the date and place of his birth.

"(3) A petition by an alleged aggravated alien felon to vacate an order of deportation must be served on the United States Attorney for the judicial district in which the petition is filed. Within 30 days of service upon the appropriate United States Attorney, a reply shall be filed with the district court and served upon the alleged aggravated alien felon or his attorney acknowledging or disputing, with appropriate documentary evidence, the ground or grounds alleged in the petition as the basis to vacate the order of deportation.

"(4) Within 30 days of the service on the alleged aggravated alien felon or his attorney of the reply of the United States Attorney, a United States district judge may conduct a hearing, without a jury, to resolve any disputed questions of fact as to whether the person alleged to be an aggravated alien felon is a United States citizen, or as to whether the person who is the subject of the order of deportation was convicted and sentenced for an aggravated felony, or as to whether the crime alleged in the order of deportation is an aggravated felony. The burden of proof by a preponderance of the evidence is upon the petitioner to establish United States citizenship and the burden of proof by a preponderance of evidence is upon the United States to establish that the person named in the order of deportation is petitioner or that petitioner was convicted and sentenced for an aggravated felony. The Federal Rules of Evidence shall apply to this hearing. At the conclusion of the hearing the United States district court shall make a finding as to whether petitioner is a aggravated alien felon and thus subject to deportation pursuant to this section. If petitioner is adjudicated a aggravated alien felon, the court shall issue a final order of deportation.

"(5) Petitioner may appeal a final order of deportation, issued pursuant to this section, to the appropriate United States court of appeals, and such deportation order shall be stayed pending the decision and order of the court of appeals. The United States may appeal the vacatur of an order of deportation, issued pursuant to this section, to the appropriate United States court of appeals.

"(e) Notwithstanding any other provision of law, when the conviction and sentence of an aggravated felony, which served as the basis for the deportation of a person who had previously been lawfully admitted for permanent residence, is reversed by a United States district court or by a court of record of any State, territory, possession, or in the District of Columbia, the alien may petition the Attorney General from his native country for discretionary reinstatement of the status of an alien lawfully admitted for permanent residence.

"(f) Nothing in this section shall be construed as altering the authority of a special inquiry officer with respect to proceedings to determine the deportability of aliens other than aggravated alien felons.".

(b) The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 241 the following new item:

"Sec. 241A. Expedited Procedures for deportation of Aliens convicted of committing aggravated felonies; grounds for appeal.".

SEC. 2923. RESTRICTION ON WITHHOLDING DEPORTATION.

Section 243(h)(2) of the Immigration and Nationality Act is amended—

(1) by striking out "or" at the end of clause (C);

(2) by redesignating clause (D) as clause (E); and

(3) by inserting after clause (C) the following:

"(D) the alien has been previously convicted for trafficking in controlled substances as defined in section 102 of the Controlled Substances Act; or".

SEC. 2924. DEPORTATION FOR WEAPONS VIOLATION.

Section 241(a)(14) of the Immigration and Nationality Act is amended by inserting the following: "any firearm or destructive device (as defined in paragraphs (3) and (4), respectively, of section 921(a), title 18, United States Code, or any revolver or" after "law".

SEC. 2925. WAIVER OF EXCLUDABILITY.

Section 212(h) of the Immigration and Nationality Act is amended by striking out "or (12)" and inserting in lieu thereof "(12), or (31)".

SEC. 2926. AIDING OR ABETTING ILLEGAL ENTRY.

(a) Section 212(a)(31) of the Immigration and Nationality Act is amended by striking out ", knowingly and for gain," and inserting in lieu thereof "knowingly".

(b) Section 241(a)(13) of such Act is amended by striking out ", knowingly and for gain," and inserting in lieu thereof "knowingly".

SEC. 2927. BAR ON REENTRY OF CONVICTED AGGRAVATED ALIEN FELONS.

Section 212(a)(17) of the Immigration and Nationality Act is amended by inserting "(or ten years in the case of an alien convicted of an aggravated felony)" after "within five years".

SEC. 2928. FORFEITURE OF INSTRUMENTALITIES USED IN BRINGING IN AND HARBORING CERTAIN ALIENS.

Section 274(b) of the Immigration and Nationality Act is amended—

(1) in paragraph (1), by inserting ", or instrumentality, including any personal or real property, monies, negotiable instruments, or other things of value," after "vessel, vehicle, or aircraft";

(2) in paragraph (1), by inserting ", proceeds from, facilitates, or is intended to be used" after "is being used";

(3) by inserting "or instrumentality" after "conveyance" each place it appears in subparagraph (B); and

(4) in paragraph (4), by striking out subparagraphs (B) and (C) and inserting in lieu thereof the following:

"(B) transfer custody and ownership of the conveyance or instrumentality to any Federal, State, or local agency pursuant to the Tariff Act of 1930 (19 U.S.C. 1616); or

"(C) place the forfeited monies or proceeds of sale of forfeited conveyances or instrumentalities in the Department of Justice Assets Forfeiture Fund, pursuant to the Comprehensive Crime Control Act of 1984 (28 U.S.C. 524(c)).".

SEC. 2929. CONTROL OF CERTAIN ALIENS IN CUSTODY.

(a) Section 751(a) of title 18, United States Code, is amended by inserting ", or exclusion, deportation, or removal under title 8," after "confinement is for extradition".

(b) Section 752(a) of title 18, United States Code, is amended by inserting ", or exclusion, deportation, or removal under title 8," after "confinement is for extradition".

(c) Section 1791 of title 18, United States Code, is amended by inserting "or any immigration detention facility operated directly by or under contract to the Immigration and Naturalization Service" after "any Federal penal or correctional facility".

(d) Section 1792 of title 18, United States Code, is amended by inserting "or any immigration detention facility operated directly by or under contract to the Immigration and Naturalization Service" after "any Federal penal or correctional facility".

Subtitle Q—Forfeiture and Customs

CHAPTER 1—DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND

SEC. 2931. DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND.

Section 524(c) of title 28, United States Code, is amended to read as follows:

"(c)(1) There is established in the United States Treasury a special fund to be known as the Department of Justice Assets Forfeiture Fund (hereafter in this subsection referred to as the 'Fund') which shall be available to the Attorney General without fiscal year limitation for the following purposes of the Department of Justice—

"(A) the payment, at the discretion of the Attorney General, of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, or sell property under seizure, detention, or forfeited pursuant to any law enforced or administered by the Department of Justice, or of any other necessary expenses including overtime salaries leading to or incident to the seizure, detention, or forfeiture of such property; such payments may include—

"(i) payments for contract services, the employment of outside contractors to operate and manage properties or provide other specialized services as necessary to dispose of such properties in an effort to maximize the return from such properties, and payments to reimburse any Federal, State, or local agency for any expenditures made to perform the foregoing functions, including expenditures resulting from the participation in a Federal task force or a Federal law enforcement network; and

"(ii) payments made pursuant to regulations promulgated by the Attorney General, that are necessary and direct program-related expenses for the purchase or lease of automatic data processing equipment (not less than 90 percent of which use will be program related), training, printing, contracting for services directly related to the identification of forfeitable assets processing of and accounting for forfeitures, and the storage, protection, and destruction of controlled substances;

"(B) the payment of awards for information or assistance directly relating to violations of the criminal drug laws of the United States;

"(C) the payment of awards for information or assistance leading to a civil or criminal forfeiture under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 800 et seq.) or a criminal forfeiture under the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. 1961 et seq.), at the discretion of the Attorney General;

"(D) the compromise and payment of valid liens and mortgages against property that has been forfeited pursuant to any law enforced or administered by the Department of Justice, subject to the discretion of the Attorney General to determine the validity of any such lien or mortgage and the amount of payment to be made, and the employment of attorneys and other personnel skilled in State real estate law as necessary;

"(E) disbursements authorized in connection with remission or mitigation procedures relating to property forfeited under any law enforced or administered by the Department of Justice;

"(F) for equipping for drug law enforcement functions any government-owned or leased vessels, vehicles, and aircraft available for official use by the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, or the United States Marshals Service;

"(G) for purchase of evidence of any violation of the Controlled Substances Act, the Controlled Substances Import and Export Act, chapter 96 of title 18, or sections 1956 and 1957 of title 18; and

"(H) after all reimbursements and program-related expenses have been met at the end of each fiscal year, the Attorney General may transfer deposits from the Fund to the building and facilities account of the Federal prison system for the construction of correctional institutions.

Amounts for paying the expenses authorized by subparagraphs (A)(ii), (B), (C), (F), and (G) shall be specified in appropriations acts. Amounts for other authorized expenditures and payments from the Fund, including equitable sharing payments, are not required to be specified in appropriations acts. The Attorney General may exempt the procurement of contract services under subparagraph (A) under the fund from section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 and following), and other provisions of law as may be necessary to maintain the security and confidentiality of related criminal investigations.

"(2) Any award paid from the Fund for information, as provided in paragraphs (1) (B) or (C), shall be paid at the discretion of the Attorney General or his delegate, under existing departmental delegation policies for the payment of awards, except that the authority to pay an award of $250,000 or more shall not be delegated to any person other than the Deputy Attorney General, the Associate Attorney General, the Director of the Federal Bureau of Investigation, or the Administrator of the Drug Enforcement Administration. Any award for information pursuant to paragraph (1)(B) shall not exceed $250,000. Any award for information pursuant to paragraph (1)(C) shall not exceed the lesser of $250,000 or one-fourth of the amount realized by the United States from the property forfeited.

"(3) Any amount under subparagraph (F) of paragraph (1) shall be paid at the discretion of the Attorney General or his delegate, except that the authority to pay $100,000 or more may be delegated only to the respective head of the agency involved.

"(4) There shall be deposited in the Fund all amounts from the forfeiture of property under any law enforced or administered by the Department of Justice, except all proceeds of forfeitures available for use by the Secretary of the Treasury or the Secretary of the Interior pursuant to section 11(d) of the Endangered Species Act (16 U.S.C. 1540(d)) or section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d)) or the Postmaster General of the United States pursuant to section 2003(b)(7) of title 39.

"(5) Amounts in the Fund which are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States and all earnings on such investments shall be deposited in the Fund.

"(6) The Attorney General shall transmit to the Congress, not later than 4 months after the end of each fiscal year, two detailed reports as follows:

"(A) a report on—

"(i) the estimated total value of property forfeited under any law enforced or administered by the Department of Justice with respect to which funds were not deposited in the Fund; and

"(ii) the estimated total value of all such property transferred to any State or local law enforcement agency; and

"(B) a report on—

"(i) the Fund's beginning balance;

"(ii) sources of receipts (seized cash, conveyances, and others);

"(iii) liens and mortgages paid and amount of money shared with State and local law enforcement agencies;

"(iv) the net amount realized from the year's operations, amount of seized cash being held as evidence, and the amount of money legally allowed to be carried over to next year;

"(v) any defendant's equity in property valued at $1,000,000 or more; and

"(vi) year-end Fund balance.

"(7) The Fund shall be subject to annual financial audits conducted consistent with generally accepted Government auditing standards.

"(8) The provisions of this subsection relating to deposits in the Fund shall apply to all property in the custody of the Department of Justice on or after the effective date of the Comprehensive Forfeiture Act of 1983.

"(9) There are authorized to be appropriated such sums as necessary for the purposes described in subparagraphs (A)(ii), (B), (C), (F), and (G) of paragraph (1).

"(10) For the purposes of this subsection, property is forfeited pursuant to a law enforced or administered by the Department of Justice if it is forfeited pursuant to—

"(A) any criminal forfeiture proceeding;

"(B) any civil judicial forfeiture proceeding; or

"(C) any civil administrative forfeiture proceeding conducted by the Department of Justice,

except to the extent that the seizure was effected by a Customs officer or that custody was maintained by the United States Customs Service in which case the provisions of section 613A of the Tariff Act of 1930 (19 U.S.C. 1613a) shall apply.".

CHAPTER 2—CUSTOMS FORFEITURE FUND

SEC. 2935. CUSTOMS FORFEITURE FUND.

Section 613A of the Tariff Act of 1930 (19 U.S.C. 1613b) is amended to read as follows:

"SEC. 613A. CUSTOMS FORFEITURE FUND.

"(a) In General.—

"(1) There is established in the Treasury of the United States a fund to be known as the 'Customs Forfeiture Fund' (hereafter in this section referred to as the 'Fund'), which shall be available to the United States Customs Service and the United States Coast Guard, subject to appropriation, with respect to seizures and forfeitures by the United States Customs Service and the United States Coast Guard under any law enforced or administered by those agencies for payment, or for reimbursement to the appropriation from which payment was made, for—

"(A) all proper expenses of the seizure (including investigative costs incurred by the United States Customs Service leading to seizures) or the proceedings of forfeiture and sale, including, but not limited to, the expenses of inventory, security, and maintenance of custody of the property, advertisement and sale of the property, and if condemned by the court and a bond for such costs was not given, the costs as taxed by the court;

"(B) awards of compensation to informers under section 619;

"(C) satisfaction of—

"(i) liens for freight, charges, and contributions in general average, notice of which has been filed with the appropriate customs officer according to law, and

"(ii) other liens against forfeited property;

"(D) amounts authorized by law with respect to remission and mitigation; and

"(E) claims of parties in interest to property disposed of under section 612(b), in the amounts applicable to such claims at the time of seizure.

(2) Any payment made under subparagraph (C) or (D) of paragraph (1) with respect to a seizure or a forfeiture of property shall not exceed the value of the property at the time of the seizure.

(3) In addition to the purposes described in paragraph (1), the Fund shall be available for—

"(A) purchases by the United States Customs Service of evidence of—

"(i) smuggling of controlled substances, and

"(ii) violations of the currency and foreign transaction reporting requirements of chapter 51 of title 31, United States Code, if there is a substantial probability that the violations of these requirements are related to the smuggling of controlled substances;

"(B) equipment for any vessel, vehicle, or aircraft available for official use by the United States Customs Service to enable the vessel, vehicle, or aircraft to assist in law enforcement functions;

"(C) the reimbursement, at the discretion of the Secretary, of private persons for expenses incurred by such persons in cooperating with the United States Customs Service in investigations and undercover law enforcement operations;

"(D) publication of the availability of rewards under section 619;

"(E) equipment for any vessel, vehicle, or aircraft available for official use by a State or local law enforcement agency to enable the vessel, vehicle, or aircraft to assist in law enforcement functions if the conveyance will be used in joint law enforcement operations with the United States Customs Service; and

"(F) payment of overtime salaries, travel, fuel, training, equipment, and other similar costs of State and local law enforcement officers that are incurred in joint law enforcement operations with the United States Customs Service.

"(b) United States Coast Guard.—Proceeds in the Fund derived from seizures by the United States Coast Guard shall be available to the United States Coast Guard for—

"(1) equipment for any vessel, vehicle, or aircraft available for official use by the United States Coast Guard to enable the vessel, vehicle, or aircraft to assist in law enforcement functions;

"(2) equipment for any vessel, vehicle, equipment, or aircraft available for official use by a State or local law enforcement agency to enable the vessel, vehicle, or aircraft to assist in law enforcement functions if the conveyance will be used in joint law enforcement operations with the United States Coast Guard;

"(3) payment of overtime salaries, travel, fuel, training, equipment, and other similar costs of State and local law enforcement officers that are incurred in joint law enforcement operations with the United States Coast Guard;

"(4) expenses incurred in bringing vessels into compliance with applicable environmental laws prior to disposal by sinking, and

"(5) sharing with State and local law enforcement agencies that cooperate with the United States Coast Guard in joint drug enforcement operations.

"(c) Deposits.—There shall be deposited into the Fund all proceeds from forfeiture under any law enforced or administered by the United States Customs Service or the United States Coast Guard and all income from investments made under subsection (d).

"(d) Investment.—Amounts in the Fund which are not currently needed for the purposes of this section shall be invested in obligations of, or guaranteed by, the United States.

"(e) Annual Reports; Audits.—

"(1) The Commissioner of Customs shall transmit to the Congress, by no later than February 1 of each fiscal year the following detailed reports:

"(A) a report on—

"(i) the estimated total value of property forfeited under any law enforced or administered by the United States Customs Service with respect to which funds were not deposited in the Fund during the previous fiscal year, and

"(ii) the estimated total value of all such property transferred to any State or local law enforcement agency; and

"(B) a report on—

"(i) the balance of the Fund at the beginning of the preceding fiscal year;

"(ii) sources of receipts (seized cash, conveyances, and others) of the Fund during the previous fiscal year;

"(iii) liens and mortgages paid and amount of money shared with State and local law enforcement agencies during the previous fiscal year;

"(iv) the net amount realized from the operations of the Fund during the previous fiscal year, the amount of seized cash being held as evidence, and the amount of money that has been carried over to the current fiscal year;

"(v) any defendant's equity in property valued at $1,000,000 or more; and

"(vi) the balance of the Fund at the end of the previous fiscal year.

"(2) The Fund shall be subject to annual financial audits that are conducted in a manner consistent with generally accepted Government auditing standards.

"(f) AUTHORIZATION OF APPROPRIATIONS.—

"(1) There are hereby appropriated from the Fund such sums as may be necessary to carry out the purposes set forth in subsection (a)(1).

"(2) There are authorized to be appropriated from the Fund for each fiscal year such sums as are necessary to carry out the purposes set forth in subsection (a)(3) for such fiscal year.

"(3) There are authorized to be appropriated from the Fund for each fiscal year such sums as are necessary to carry out the purposes set forth in subsection (b) for such fiscal year.

"(4) At the end of each fiscal year, any unobligated amount in excess of $15,000,000 remaining in the Fund shall be deposited into the general fund of the Treasury of the United States.".

CHAPTER 4—MISCELLANEOUS FORFEITURE PROVISIONS

SEC. 2945. TRANSFER BY THE ATTORNEY GENERAL OF FOREIGN PROPERTY.

Section 511(e)(1) of the Controlled Substance Act (21 U.S.C. 881(e)) is amended by—

(1) striking "or" after the semicolon in subparagraph (C);

(2) striking the period at the end of subparagraph (D) and inserting "; or"; and

(3) adding at the end thereof the following:

"(E) transfer the forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer—

"(i) has been agreed to by the Secretary of State;

"(ii) is authorized in an international agreement between the United States and the foreign country or where there is an international agreement between the United States and the foreign country which includes an obligation to provide mutual assistance in forfeiture procedures; and

"(iii) is made to a country which, if applicable, has been certified under section 481(h) of the Foreign Assistance Act of 1961.".

SEC. 2946. INNOCENT OWNER PROVISIONS.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Attorney General and the Secretary of the Treasury shall consult and prescribe regulations for expedited administrative procedures for seizures under section 511(a) (4), (6), and (7) of the Controlled Substances Act (21 U.S.C. 881(a) (4), (6), and (7)), section 595 of the Tariff Act of 1930 (19 U.S.C. 1595a(a)), and section 2 of the Act of August 9, 1939 (53 Stat. 1291; 49 U.S.C. app. 782) for violations involving the possession of personal use quantities of a controlled substance.

(b) SPECIFICATIONS.—The regulations prescribed pursuant to subsection (a) shall minimize the adverse impact caused by prolonged detention and provide for a final administrative determination of the case within 21 days of seizure or provide a procedure by which the defendant can obtain release of the property pending a final determination of the case. Such regulations shall provide that the appropriate agency official rendering such determination shall immediately return the property if the following conditions are established:

(1) the owner or interested party did not know of or consent to the violation; and

(2) reasonable steps were taken by the owner or interested party to prevent the illegal use of the property.

SEC. 2947. WARRANTS.

Section 603 of the Tariff Act of 1930 (19 U.S.C. 1603) is amended by striking out "Whenever a seizure of merchandise" and inserting in lieu thereof the following:

"(a) Any property subject to forfeiture to the United States under this subtitle and which is not subject to search and seizure in accordance with the provisions of section 1595 of this chapter, may be seized by the appropriate officer or person upon process issued in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure. This authority is in addition to any seizure authority otherwise authorized by law.

"(b) Whenever a seizure of merchandise".

SEC. 2948. POSTAL SERVICE ASSISTANCE.

(a) DUTIES OF CUSTOMS OFFICERS.—Subsection (d) of section 511 of the Controlled Substances Act (21 U.S.C. 881(d)) is amended by striking "except that such duties as are imposed upon the customs officer" and all that follows and inserting "such duties imposed on the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws may be performed with respect to seizures and forfeitures of property under this subchapter by such officers, agents, or employees of any agency or department of the United States as may be designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.".

(b) POWERS OF POSTAL PERSONNEL.—Section 3061 of title 18, is amended to read as follows:

"§ 3061. Powers of postal personnel

"(a) Subject to subsection (b) of this section, Postal Inspectors or other agents, authorized by the Board of Governors to investigate criminal matters related to the Postal Service and the mails, may—

"(1) serve warrants and subpoenas issued under the authority of the United States;

"(2) make arrests without warrant for offenses against the United States committed in their presence;

"(3) make arrests without warrant for felonies cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony;

"(4) carry firearms; and

"(5) make seizures of property authorized pursuant to law.

"(b) The powers granted by subsection (a) of this section shall be exercised only in the enforcement of laws regarding property of the United States in the custody of the Postal Service, including property of the Postal Service, the use of the mails, other postal offenses; and in the enforcement of those offenses contained in the Controlled Substances laws of the United States which effect the operation of the Postal Service, as determined by and pursuant to limitations contained in an agreement which may be entered into by the Attorney General and the Postmaster General.".

SEC. 2949. TRANSFER BY THE SECRETARY OF THE TREASURY OF FOREIGN PROPERTY.

Subsection (c) of section 616 of the Tariff Act of 1930 (19 U.S.C. 1616a(c)), as amended by section 1936 of this Act, is further amended—

(1) by striking out "The Secretary of the Treasury" and inserting in lieu thereof "(1) The Secretary", and

(2) by adding at the end thereof the following:

"(2) The Secretary may transfer any forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer—

"(A) has been agreed to by the Secretary of State;

"(B) is authorized in an international agreement between the United States and the foreign country or where there is an international agreement between the United States and the foreign country which includes an obligation to provide mutual assistance in forfeiture procedures; and

"(C) is made to a country which, if applicable, has been certified under section 481(h) of the Foreign Assistance Act of 1961.".

CHAPTER 5—ADMINISTRATIVE FORFEITURE

SEC. 2951. ADMINISTRATIVE PROVISION.

Subsection (a)(1) of section 607 of the Tariff Act of 1930 (19 U.S.C. 1607(a)(1)) is amended by striking "$100,000" and inserting in lieu thereof "$500,000".

Subtitle R—United States Magistrates and Court Reforms

SEC. 2956. FELONY PLEAS.

Section 636 of title 28, United States Code, is amended by inserting at the end thereof the following new subsection:

"(i) Under such regulations as the Judicial Conference shall provide and upon designation by the district court, magistrates may accept a plea of guilty for any offense against the United States.".

SEC. 2957. SENTENCING JURISDICTION.

Section 636(a) of title 28, United States Code, is amended by—

(1) striking the period at the end of paragraph (3) and inserting ", and"; and

(2) inserting at the end thereof the following paragraph:

"(4) the power to enter a sentence for a misdemeanor or infraction with the consent of the parties.".

SEC. 2958. DRUG DAYS.

Section 332(d)(1) of title 28, United States Code, is amended by striking the period at the end thereof and inserting the following: "including orders designating certain days in which the courts within the circuit shall only conduct proceedings relating to drug offenses.".

Subtitle S—Military Institutions

SEC. 2961. ADMINISTRATION OF CONFINEMENT FACILITIES LOCATED ON MILITARY INSTALLATIONS BY THE BUREAU OF PRISONS.

In conjunction with the Department of Defense and the Commission on Alternative Utilization of Military Facilities as established in the National Defense Authorization Act of Fiscal Year 1989, the Bureau of Prisons shall be responsible for—

(1) administering the confinement facilities located on military installations in cooperation with the Secretary of Defense;

(2) establishing and regulating drug treatment programs for inmates held in such facilities in coordination and cooperation with the National Institute on Drug Abuse; and

(3) establishing and managing work programs for persons held in such facilities in cooperation with the installation commander.

Subtitle T—Customs Enforcement Amendments

SEC. 2965. AMENDMENTS TO THE TARIFF ACT OF 1930.

(a) Reporting Requirements.—Section 433 of the Tariff Act of 1930 (19 U.S.C. 1433) is amended by—

(1) striking out the section heading and inserting in lieu thereof:

"SEC. 433. VESSELS, VEHICLES, AND AIRCRAFT REPORTING REQUIREMENTS.";

(2) striking out "Arrival" in the heading of subsection (c) and inserting in lieu thereof "Reporting Requirements";

(3) striking out "The pilot" in subsection (c) and inserting in lieu thereof "(1) The pilot"; and

(4) adding at the end of subsection (c) the following:

"(2) The pilot of any aircraft shall, prior to departing the United States, comply with such advance notification and reporting requirements as the Secretary may by regulation prescribe.".

(b) Penalties.—Section 436 of the Tariff Act of 1930 (19 U.S.C. 1436) is amended by—

(1) inserting "(other than a violation of section 433(c)(2))" after "listed in subsection (a)" in subsection (b); and

(2) adding at the end thereof the following new subsection:

"(e) Any aircraft pilot who commits any violation of section 433(c)(2) of this Act, or any regulations promulgated thereunder, is liable for a civil penalty of $25,000 for the first violation, and $100,000 for each subsequent violation, and any conveyance used in connection with any such violation is subject to seizure and forfeiture.".

(c) Penalty for Failure to Declare.—Section 497(a)(2)(A) of the Tariff Act of 1930 (19 U.S.C. 1497), is amended by striking out "200 percent " and inserting in lieu thereof "1,000 percent".

(d) Effect of a Declaration of Forfeiture.—Section 609 of the Tariff Act of 1930 (19 U.S.C. 1609) is amended to read as follows:

"SEC. 609. SEIZURE; SUMMARY OF FORFEITURE AND SALE.

"(a) In General.—If no such claim is filed or bond given within the twenty days hereinbefore specified, the appropriate customs officer shall declare the vessel, vehicle, aircraft, merchandise, or baggage forfeited, and shall sell the same at public auction in the same manner as merchandise abandoned to the United States is sold or otherwise disposed of the same according to law, and shall deposit the proceeds of sale, after deducting the expenses described in section 613, into the Customs Forfeiture Fund.

"(b) Effect.—A declaration of forfeiture under this section shall have the same force and effect as a final decree and order of forfeiture in a judicial forfeiture proceeding in a district court of the United States. Title shall be deemed to vest in the United States free and clear of any liens or encumbrances (except for first preferred ship mortgages pursuant to subsection (o) of section 30 of the Ship Mortgage Act, 1920 (46 Appendix U.S.C. 961)) from the date of the act for which the forfeiture was incurred. Officials of the various States, insular possessions, territories, and commonwealths of the United States shall, upon application of the appropriate customs officer accompanied by a certified copy of the declaration of forfeiture, remove any recorded liens or encumbrances which apply to such property and issue or reissue the necessary certificates of title, registration certificates, or similar documents to the United States or to any transferee of the United States.".

(e) Fines in Certain Cases.—Part V of title IV of the Tariff Act of 1930 is amended by adding at the end thereof the following new section:

"SEC. 630. FINES IN CERTAIN CASES.

"(a) In General.—Any person who is convicted of a criminal offense under any law administered or enforced by the United States Customs Service involving subchapter II of chapter 53 of title 31, United States Code, sections 1956 and 1957 of title 18, United States Code, or the Controlled Substances Act (21 U.S.C. 801 et seq.), shall, in addition to any other criminal penalties provided for such offense, be fined the reasonable costs of the investigation and prosecution of the offense, including the costs of prosecution of an offense as defined in sections 1918 and 1920 of title 28, United States Code.

"(b) Exception.—This section shall not apply, and a fine under this section shall not be imposed, if the court determines under the provision of title 18, United States Code, that the defendant lacks the ability to pay a fine.".

(g) Oaths and Subpoenas.—Part V of title IV of the Tariff Act of 1930, as amended by the preceding subsection, is further amended by adding at the end thereof the following new section:

"SEC. 631. OATHS AND SUBPOENAS.

"(a) In General.—For the purpose of any investigation which, in the opinion of the Secretary of the Treasury, is necessary and proper to the enforcement of any law that prohibits the importation or exportation of any merchandise, the Secretary of the Treasury may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of records (including books, papers, documents, and tangible property which constitute or contain evidence) relevant or material to the investigation. The attendance of witnesses and the production of records may be required from any place within the customs territory of the United States, except that a witness shall not be required to appear at any hearing that is held at a place that is more than 100 miles from the place where the witness was served with the subpoena. Witnesses summoned by the Secretary shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. Oaths and affirmations may be made at any place that is subject to the jurisdiction of the United States.

"(b) Service of Subpoenas.—A subpoena issued by the Secretary of the Treasury may be served by any person designated in the subpoena to serve it. Service upon an individual may be made by personal delivery of the subpoena to such individual. Service may be made upon a domestic or foreign corporation, or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the subpoena to an officer, a managing or general agent, or to any other agent of the corporation, partnership, or association who is authorized by appointment, or by law, to receive service of process. The affidavit of the person serving the subpoena entered on a copy of the subpoena by the person serving it shall be proof of service.

"(c) Orders To Compel Compliance.—In the case of contumacy by, or refusal to obey a subpoena issued to, any person, the Secretary of the Treasury may invoke the aid of any court of the United States within the jurisdiction of which the investigation is carried on, or of which the subpoenaed person is an inhabitant, carries on business, or may be found, to compel compliance with the subpoena issued by the Secretary of the Treasury. The court may issue an order requiring the subpoenaed person to appear before the Secretary of the Treasury to produce records, if so ordered, or to give testimony touching the matter under investigation, and pay the costs of the proceeding. Any failure to obey the order of the court may be punished by the court as a contempt of court. All process in any such case may be served in the judicial district in which the subpoenaed person is an inhabitant or wherever he may be found.".

(h) Technical Corrections.—

(1) Section 431(c)(1)(G) of the Tariff Act of 1930 (19 U.S.C. 1431(c)(1)(G)) is amended by striking out "or" and inserting in lieu thereof "of".

(2) Section 608 of the Tariff Act of 1930 (19 U.S.C. 1608) is amended to read as follows:

"SEC. 608. SEIZURE; CLAIMS; JUDICIAL CONDEMNATION.

"Any person claiming such vessel, vehicle, aircraft, merchandise, or baggage may at any time within twenty days from the date of the first publication of the notice of seizure file with the appropriate customs officer a claim stating his interest therein. Upon the filing of such claim, and the giving of a bond to the United States in the penal sum of $5,000 or 10 percent of the value of the claimed property, whichever is lower, but not less than $250, with sureties to be approved by such customs officer, conditioned that in case of condemnation of the articles so claimed the obligor shall pay all the costs and expenses of the proceedings to obtain such condemnation, such customs officer shall transmit such claim and bond, with a duplicate list and description of the articles seized, to the United States attorney for the district in which seizure was made, who shall proceed to a condemnation of the merchandise or other property in the manner prescribed by law.".

(3) Section 610 of the Tariff Act of 1930 (19 U.S.C. 1610) is amended to read as follows:

"SEC. 610. SEIZURE; JUDICIAL FORFEITURE PROCEEDINGS.

"If any vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 607, the appropriate customs officer shall transmit a report of the case, with the names of available witnesses, to the United States attorney for the district in which the seizure was made for the institution of the proper proceedings for the condemnation of such property.".

(4) Section 612 of the Tariff Act of 1930 (19 U.S.C. 1612) is amended to read as follows:

"SEC. 612. SEIZURE; SUMMARY SALE.

"(a) Whenever it appears to the appropriate customs officer that any vessel, vehicle, aircraft, merchandise, or baggage seized under the customs laws is liable to perish or to waste or to be greatly reduced in value by keeping, or that the expense of keeping the same is disproportionate to the value thereof, and such vessel, vehicle, aircraft, merchandise, or baggage is subject to section 607, and such vessel, vehicle, aircraft, merchandise, or baggage has not been delivered under bond, such officer shall proceed forthwith to advertise and sell the same at auction under regulations to be prescribed by the Secretary of the Treasury. If such vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 607, such officer shall forthwith transmit the appraiser's return and his report of the seizure to the United States attorney, who shall petition the court to order an immediate sale of such vessel, vehicle, aircraft, merchandise, or baggage, and if the ends of justice require it the court shall order such immediate sale, the proceeds thereof to be deposited with the court to await the final determination of the condemnation proceedings. Whether such sale be made by the customs officer or by order of the court, the proceeds thereof shall be held subject to claims of parties in interest to the same extent as the vessel, vehicle, aircraft, merchandise, or baggage so sold would have been subject to such claim.

"(b) If the expense of keeping the vessel, vehicle, aircraft, merchandise, or baggage is disproportionate to the value thereof, and such value is less than $1,000, such officer may proceed forthwith to order destruction or other appropriate disposition of such property, under regulations prescribed by the Secretary of the Treasury.".

(5) Section 589 of the Tariff Act of 1930 (19 U.S.C. 1589), as added by section 320 of title II of Public Law 98-473 (98 Stat. 2056), is hereby repealed.

(6) Section 627 of the Tariff Act of 1930 (19 U.S.C. 1627), as added by section 302 of the Motor Vehicle Theft Law Enforcement Act of 1984 (98 Stat. 2771), is hereby repealed.

SEC. 2966. AMENDMENT TO THE FEDERAL AVIATION ACT OF 1958.

Subsection (f) of section 1109 of the Federal Aviation Act of 1958 (49 Appendix U.S.C. 1509(f)) is amended by adding the following sentence to the end thereof:

"Any person who violates this subsection or any regulation promulgated thereunder shall be subject to a civil penalty of $10,000, and any aircraft for which a report required under this subsection or any regulation promulgated thereunder is not filed, or is filed with material false statements or omissions, shall be subject to seizure and forfeiture as provided for in Customs laws.".

Subtitle U—Authorization of Additional Appropriations for Drug Enforcement and Interdiction

Chapter 1—Authorization of Additional Appropriations for Drug Enforcement Personnel, Fiscal Year 1989

SEC. 2971. IMMIGRATION AND NATURALIZATION SERVICE PERSONNEL ENHANCEMENT.

(a) SALARIES AND EXPENSES.—There is authorized to be appropriated for salaries and expenses for the Immigration and Naturalization Service for fiscal year 1989, $12,300,000: *Provided*, That such appropriation shall be in addition to any appropriations provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989: *Provided further*, That of such additional appropriations authorized in this section, $4,100,000 shall be used to increase the number of inspectors of the Immigration and Naturalization Service by no fewer than 70 over such personnel levels on board at the Service as of September 30, 1988, and for related equipment.

(b) ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCE PILOT PROJECT AND REPORT.—(1) There are authorized to be appropriated out of amounts authorized to be appropriated to the Immigration and Naturalization Service in the Department of Justice under this section for fiscal year 1989, $8,200,000: *Provided*, That such appropriation shall be in addition to any appropriations provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989: *Provided*, That such additional appropriation shall be used to increase the commitment of Immigration and Naturalization Service personnel to the Organized Crime Drug Enforcement Task Forces (OCDETF) for additional special agent and support positions; and for associated training and equipment; and for costs incurred during INS agent participation in OCDETF operations with other Federal, State, and local law enforcement agencies.

(2) The positions described in paragraph (1) shall, under the supervision of a director for the pilot project, be used exclusively to assist Federal and local law enforcement agencies in combatting illegal alien involvement in drug trafficking and crimes of violence.

(3) The Director of the pilot project shall report to the Assistant Commissioner—Investigations and will have the authority to—

(A) hire a limited number of non-Federal law enforcement officers with substantive experience in narcotics investigations should insufficient senior Federal agents be available. Non-Federal law enforcement officers hired under this provision may be over the age of 35, but in that event would only be eligible for nonlaw enforcement retirement benefits;

(B) grant extensions of stay and other discretionary immigration benefits and waivers to witnesses, informants, and others whose presence in the United States is essential to the investigation and prosecution of criminal aliens involved in drug trafficking and crimes of violence.

(4) After the first year of the establishment of this pilot project the Attorney General will provide for an evaluation of its effectiveness, including an assessment by Federal, State, and local prosecutors and enforcement agencies.

(c) LOCAL OFFICE CAPABILITIES IMPROVEMENT PILOT PROJECT.—From the sums appropriated to carry out this section, the Attorney General, through the Investigative Division of the Immigration and Naturalization Service, shall provide a pilot program in 4 cities to establish or improve the capabilities of the local offices of the Service and of local law enforcement agencies to respond to inquiries concerning aliens who have been arrested or convicted for, or are the subject criminal investigation relating to, a violation of any law relating to controlled substances. The Attorney General shall select cities in a manner that provides special consideration for cities located near the land borders of the United States and for large cities which have major concentrations of aliens. Some of the sums made available under the pilot program shall be used to increase the personnel level of the Investigative Division.

SEC. 2972. BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS ARMED CAREER CRIMINAL APPREHENSION PROGRAM PERSONNEL ENHANCEMENT.

There is authorized to be appropriated for salaries and expenses of the Bureau of Alcohol, Tobacco, and Firearms for fiscal year 1989, $10,660,000: *Provided*, That such appropriation shall be in addition to any appropriations provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989: *Provided further*, That such additional appropriations shall be used to increase the number of Armed Career Criminal Apprehension enforcement personnel at the Bureau by no fewer than 244 full-time equivalent positions over such personnel levels onboard at the Bureau as of September 30, 1988, and for related equipment: *Provided further*, That of the amount authorized to be appropriated by this section, $615,000 shall be available for—

(1) the equipping of any vessel, vehicle, equipment, or aircraft available for official use by a State or local law enforcement agency if the conveyance will be used in drug-related joint law enforcement operations with the Bureau of Alcohol, Tobacco, and Firearms; and

(2) the payment of overtime salaries, travel, fuel, training, equipment, and other similar costs of State and local law enforcement officers that are incurred in joint operations with the Bureau of Alcohol, Tobacco, and Firearms.

SEC. 2973. DRUG ENFORCEMENT ADMINISTRATION PERSONNEL ENHANCEMENT.

(a) IN GENERAL.—There is authorized to be appropriated for salaries and expenses of the Drug Enforcement Administration for fiscal year 1989, $49,200,000: *Provided*, That such appropriation shall be in addition to any appropriations provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989: *Provided further*, That $44,280,000 of the additional appropriation authorized in this section shall be used to increase Drug Enforcement Administration enforcement personnel by no fewer than 609 full-time equivalent positions over personnel levels onboard at the Drug Enforcement Administration as of September 30, 1988, and for related equipment and drug enforcement operations, including agents and other personnel engaged in criminal intelligence activities, asset forfeiture, and related support activities: *Provided further*, That $4,920,000 of such additional appropriation authorized in this section shall be used to increase Drug Enforcement Administration operations against criminals involved in youth gang-related organized crime.

(b) DEA DRUG EDUCATION PROGRAM.—There is authorized to be appropriated, out of any funds made available by this or any other Act for the Drug Enforcement Administration, for the fiscal year ending September 30, 1989, such sums as may be necessary to establish and maintain a Drug Enforcement Administration Drug Education Program.

(c) COMPENSATION OF DEPUTY DIRECTOR.—The Deputy Administrator of the Drug Enforcement Administration shall receive compensation at the rate now or hereafter prescribed by law for positions of Level IV of the Executive Schedule Pay Rate (5 U.S.C. 5315).

SEC. 2974. FEDERAL BUREAU OF INVESTIGATION DRUG ENFORCEMENT PERSONNEL ENHANCEMENT.

There is authorized to be appropriated for salaries and expenses of the Federal Bureau of Investigation for fiscal year 1989, $24,600,000: *Provided*, That such appropriation shall be in addition to any appropriations provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989: *Provided further*, That such additional appropriation shall be used to increase the number of drug enforcement agents, including related support staff, at the Bureau by no fewer than 522 full-time equivalent positions over such personnel levels onboard at the Bureau as of September 30, 1988, and for related equipment and drug enforcement operations including asset forfeiture.

SEC. 2975. UNITED STATES MARSHALS SERVICE DRUG ENFORCEMENT PERSONNEL ENHANCEMENT.

There is authorized to be appropriated for salaries and expenses of the U.S. Marshals Service for the fiscal year 1989, $16,400,000: *Provided*, That such appropriation shall be in addition to any appropriations provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989: *Provided further*, That such additional appropriation shall be used as follows:

(1) $4,920,000 for 100 full-time equivalent positions for asset seizure and forfeiture activities;

(2) $5,740,000 for 82 full-time equivalent positions for criminal justice support activities, including prisoner production and transportation;

(3) $3,280,000 for 45 full-time equivalent positions for protection of the Federal judiciary and court facilities resulting from increased drug-related trials; and

(4) $2,460,000 for 26 full-time equivalent positions for increased workloads of the Marshals Service Witness Security Program.

SEC. 2976. SUPPORT OF UNITED STATES PRISONERS.

There is authorized to be appropriated for fiscal year 1989, for support of United States prisoners in non-Federal institutions, $16,400,000 to remain available until expended, of which not to exceed $4,100,000 shall be available under the Cooperative Agreement Program for the purpose of renovating, constructing, and equipping State and local correctional facilities: *Provided*, That the appropriation authorized under this section shall be in addition to any appropriations provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989: *Provided further*, That amounts made available for constructing any local correctional facility shall not exceed the cost of constructing space for the average Federal prisoner population to be housed in the facility, or in other facilities in the same correctional system, as projected by the Attorney General: *Provided further*, That following agreement on or completion of any federally assisted correctional facility construction, the availability of the space required for Federal prisoners with authorized Federal funds shall be assured and the per diem rate charged for housing Federal prisoners in the assured space shall not exceed operating costs for the period of time specified in the cooperative agreement.

SEC. 2977. FEDERAL PRISON SYSTEM.

There is authorized to be appropriated in fiscal year 1989 to the buildings and facilities account, Federal Prison System, Department of Justice, $205,000,000 for planning; acquisition of sites, construction of new facilities; purchase and acquisition of existing facilities and remodeling and equipping of such facilities for penal and correctional use, to alleviate overcrowding in existing prisons and to meet the increased demand for prison space resulting from drug-related offenses: *Provided*, That such appropriation shall be in addition to any appropriations provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989.

SEC. 2978. UNITED STATES ATTORNEYS DRUG ENFORCEMENT PERSONNEL ENHANCEMENT.

There is authorized to be appropriated for salaries and expenses of the United States Attorneys, Department of Justice for fiscal year 1989, $36,080,000: *Provided*, That such appropriation shall be in addition to any appropriations provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989: *Provided further*, That such additional appropriation shall be used to increase the number of United States Attorneys, including related support staff by no fewer than 757 full-time equivalent positions over such personnel levels onboard at the Department of Justice as of September 30, 1988.

SEC. 2979. FEDERAL JUDICIARY.

(a) In General.—There is authorized to be appropriated to the Federal courts for salaries and expenses of the Courts of Appeals, District Courts, and other Judicial Services, $43,132,000 to remain available until expended: *Provided*, That such appropriation shall be in addition to any appropriations provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989: *Provided further*, That the additional funds authorized to be appropriated under this section, shall be made available for the following:

(1) $30,340,000 for probation and pretrial services, including pretrial social services;

(2) $1,640,000 for additional deputy clerks;

(3) $656,000 for additional law clerks and clerical support staff;

(4) $4,100,000 for additional renovation of court facilities;

(5) $4,756,000 for additional United States magistrates; and

(6) $1,640,000 for the Drug Dependent Offenders program.

(b) Judicial Conference.—(1) The Judicial Conference of the United States shall prepare a report evaluating the impact of drug-related criminal activity on the Federal Judiciary. The Judicial Conference shall make its recommendations on the basis of the drug-related resource needs of the district courts. The report shall further contain a complete explanation of the specific criteria used in making its recommendations, including the officials and sources consulted on the impact of drug-related cases in specific judicial district courts. The report shall further contain a complete explanation of the specific criteria used in making its recommendations, including the officials and sources consulted on the impact of drug-related cases in specific judicial districts.

(2) The report required by paragraph (1) shall be transmitted to the United States House of Representatives and the Committee on the Judiciary of the United States Senate not later than 120 days after the date of enactment of this section.

(c) Federal Public Defender and Community Defender.—There is authorized to be appropriated for the operation of Federal Public Defender and Community Defender organizations, the compensation and reimbursement of expenses of attorneys appointed to represent persons under the Criminal Justice Act of 1964, as amended, the compensation and reimbursement of expenses of persons furnishing investigative, expert and other services under the Criminal Justice Act, the compensation (in accordance with Criminal Justice Act maximums) and reimbursement of expenses of attorneys appointed to assist the court in criminal cases where the defendant has waived representation by counsel, $28,700,000 to remain available until expended: *Provided*, That such appropriation shall be in addition to any appropriations provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989.

(d) Jurors Fees and Expenses.—There is authorized to be appropriated to the Federal courts for fees and expenses of jurors and compensation of jury commissioners, $2,378,000 to remain available until expended: *Provided*, That such appropriation shall be in addition to any appropriations provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989.

(e) Security Equipment.—There is authorized to be appropriated to the Federal courts for necessary expenses, not otherwise provided for, incident to the procurement, installation, and maintenance of security equipment and protective services for the United States courts in courtrooms and adjacent areas, including building ingress-egress control, inspection of packages, directed security patrols, and other similar activities, $4,920,000 to remain available until expended: *Provided*, That such appropriation shall be in addition to any appropriations provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989.

CHAPTER 2—DRUG INTERDICTION ASSET AND PERSONNEL ENHANCEMENT

SEC. 2981. SHORT TITLE.

This chapter may be cited as the "National Drug Interdiction Asset and Personnel Enhancement Act of 1988".

Subchapter A—Coast Guard

SEC. 2982. COAST GUARD DRUG INTERDICTION ASSET ENHANCEMENT.

There is authorized to be appropriated for Acquisition, Construction, and Improvement expenses of the Coast Guard for fiscal year 1989, $68,060,000: *Provided*, That such appropriation shall be in addition to any appropriations provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989: *Provided further*, That such appropriation authorized under this section shall be allocated only for procurement of marine and air drug interdiction assets, and operation and maintenance expenses of the Coast Guard.

SEC. 2983. COAST GUARD DRUG INTERDICTION PERSONNEL ENHANCEMENT.

(a) Authorization of Appropriations.—There is authorized to be appropriated for Operating Expenses of the Coast Guard for fiscal year 1989, $16,400,000: *Provided*, That such appropriation shall be in addition to any appropriations provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989: *Provided further*, That such additional appropriations shall be used to increase Coast Guard drug enforcement personnel by no less than 435 full-time equivalent positions over personnel levels onboard in the Coast Guard as of September 30, 1988.

(b) LIMITATION.—Nothing in this section shall require the Coast Guard to recruit, compensate, train, purchase, or deploy any personnel or equipment except to the extent that—

(1) additional appropriations are made available in appropriations Acts for that purpose; or

(2) funds are transferred to the Secretary of Transportation for that purpose pursuant to this Act.

Subchapter B—United States Customs Service

SEC. 2984. UNITED STATES CUSTOMS SERVICE DRUG INTERDICTION ASSET ENHANCEMENT.

There is authorized to be appropriated for Operation and Maintenance, Air Interdiction Program for fiscal year 1989, $57,400,000: *Provided*, That such appropriation shall be in addition to any appropriations provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989: *Provided further*, That such additional appropriation shall be available for the procurement of helicopters; tracking, and interceptor aircraft; and operation and maintenance expenses for these and other assets of the United States Customs Service's air interdiction program.

SEC. 2985. UNITED STATES CUSTOMS SERVICE DRUG INTERDICTION PERSONNEL ENHANCEMENT.

There is authorized to be appropriated for salaries and expenses of the United States Customs Service for fiscal year 1989, $30,340,000: *Provided*, That such appropriation shall be in addition to any appropriation appropriated in any regular appropriations Act or continuing resolution for the fiscal year ending on September 30, 1989: *Provided further*, That of such additional appropriation, $26,240,000 shall be used to increase the number of Customs inspectors for contraband enforcement teams and other drug cargo interdiction personnel at the Customs Service by no fewer than 435 full-time equivalent positions over the level of such personnel onboard at the Customs Service as of September 30, 1988, and for related equipment.

Subchapter C—Drug Enforcement Administration

SEC. 2986. DRUG ENFORCEMENT ADMINISTRATION INTERDICTION ASSET ENHANCEMENT.

There is authorized to be appropriated for salaries and expenses of the Drug Enforcement Administration for fiscal year 1989, $3,280,000: *Provided*, That such appropriation shall be in addition to any appropriations provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989: *Provided further*, That such additional appropriation shall be used for additional analysts and equipment for the enhancement of the El Paso Intelligence Center (EPIC) to provide more tactical intelligence to the Drug Enforcement Administration and all other United States drug enforcement and interdiction agencies.

Subchapter D—Immigration and Naturalization Service/Border Patrol

SEC. 2987. BORDER PATROL DRUG INTERDICTION ASSET ENHANCEMENT.

There is authorized to be appropriated for salaries and expenses of the Border Patrol within the Department of Justice for fiscal year 1989, $16,400,000: *Provided*, That such appropriation shall be in addition to any appropriations provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989: *Provided further*, That such additional appropriation shall be used only for the procurement of drug interdiction-related equipment for Border Patrol drug enforcement personnel, including spare parts for helicopters; 4-wheel drive law enforcement vehicles; and initial procurement of mobile sensor response system and electronic intrusion detection, and for related operation and maintenance expenses.

SEC. 2988. IMMIGRATION AND NATURALIZATION SERVICE/BORDER PATROL DRUG INTERDICTION PERSONNEL ENHANCEMENT.

(a) SALARIES AND EXPENSES.—There is authorized to be appropriated for salaries and expenses of the Border Patrol within the Department of Justice for fiscal year 1989, $16,400,000: *Provided*, That such appropriation shall be in addition to any appropriations appropriated in any regular appropriations Acts or continuing resolutions for the fiscal year ending on September 30, 1989: *Provided further*, That such additional appropriation shall be used to increase drug interdiction officers of the Border Patrol by no fewer than 435 full-time equivalent positions over the level of such personnel onboard at the Border Patrol as of September 30, 1988, and for related equipment.

(b) SAN CLEMENTE BORDER PATROL STATION.—There is authorized to be appropriated, out of any funds made available by section 2987, for the fiscal year ending September 30, 1989, $2,706,000 for the design of improvements for the Immigration and Naturalization Service border patrol station at San Clemente, California.

(c) DRUG EDUCATION OFFICERS PROGRAM.—There is authorized to be appropriated, out of any funds made available by sections 4401 and 4402 of this Act, for the fiscal year ending September 30, 1989, such sums as may be necessary to establish and maintain an Immigration and Naturalization Service Drug Education Officers program, featuring the demonstration of drug detection canine unit capabilities along the southwest border region of the United States.

Subchapter E—Research and Development Programs to Assist Federal Enforcement Agencies

SEC. 2989. USE OF EXISTING FEDERAL RESEARCH AND DEVELOPMENT FACILITIES FOR CIVILIAN LAW ENFORCEMENT.

(a) COMPREHENSIVE PLAN.—The President of the United States shall direct the Office of National Drug Control Policy, established in title I of this Act, to develop a comprehensive plan for utilizing no fewer than eight existing facilities of the Department of Defense, the Department of Justice, the Department of Energy, National Security Agency, and the Central Intelligence Agency, to develop technologies for application to Federal law enforcement agency missions, and to provide research, development, technology, and evaluation support to the law enforcement agencies of the Federal Government. Such plan shall be prepared and submitted to the Congress by no later than 90 days from the date of enactment of this Act.

(b) EXISTING FACILITIES TO BE EXAMINED.—The following existing United States Government facilities shall be examined in developing the comprehensive plan mandated in subsection (a):

(1) For night vision research and development—Department of Defense, Army Materiel Command, Night Vision Laboratory at Fort Belvoir, Virginia;

(2) For ground sensor research and development—Department of Defense, Army Materiel Command, Communications Electronic Command, Fort Monmouth, New Jersey;

(3) For physical/electronic security research and development—Department of Defense, Air Force Systems Command, Electronic Systems Division, Hanscom Field, Massachusetts;

(4) For imaging/electronic surveillance research and development—Central Intelligence Agency and National Security Agency, Washington, DC;

(5) For chemical/biosensor research and development—Department of Defense, Army Materiel Command, Chemical Research Development and Engineering Center, Aberdeen, Maryland;

(6) For chemical/molecular detector research and development—Department of Energy, Sandia National Laboratories, Albuquerque, New Mexico;

(7) For physical/electronic surveillance an tracking, research and development—Department of Justice, Federal Bureau of Investigation and Drug Enforcement Administration, Washington, DC; and

(8) For explosives ordnance detection research and development—Department of Defense, Naval Ordinance Station, Indian Head, Maryland.

(c) PARTICIPATION.—In developing the plan mandated in subsection (a), the Director of National Drug Control Policy shall ensure that representatives of the Federal law enforcement agencies are provided an opportunity to participate in the formulation of the comprehensive plan and that their views and recommendations are integrated into the planning process.

(d) COMPTROLLER GENERAL OVERSIGHT.—The Comptroller General of the United States shall monitor the development of the plan mandated in subsection (a) and report periodically to the appropriate Committees of the Congress on the progress of the development of this research and development program.

SEC. 2990. CARGO CONTAINER DRUG DETECTION RESEARCH AND DEVELOPMENT.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the United States Customs Service for fiscal year 1989, $4,100,000: *Provided*, That such appropriation shall be in addition to any appropriations provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989: *Provided further*, That such additional appropriation shall be used only for accelerating the development and availability of X-ray detection, nitrate detection, or other technologies to be utilized for the detection of illegal narcotics in cargo containers entering the United States at seaports, airports, and land borders.

(b) COORDINATION.—The Commissioner of Customs shall coordinate and share the findings of the research and development authorized in subsection (a) with other Federal departments and agencies with possible mission requirements for such technology, including the Federal Aviation Administration and United States Coast Guard in the Department of Transportation; the Drug Enforcement Administration in the Department of Justice; and the appropriate State, and local law enforcement agencies, including airport authorities, port authorities, and other interested parties.

(c) REPORT.—The Commissioner of Customs shall report his findings in either classified, or unclassified form, to the appropriate Committees of Congress in conjunction with the President's submission of his fiscal year 1990 Budget of the United States.

Subchapter F—Drug Enforcement Training Improvement

SEC. 2991. FEDERAL LAW ENFORCEMENT TRAINING CENTER IMPROVEMENT.

(a) AUTHORIZATION OF APPROPRIATIONS FOR THE FEDERAL LAW ENFORCEMENT TRAINING CENTER.—(1) There is authorized to be appropriated for salaries and expenses of the Federal Law Enforcement Training Center for fiscal year 1989, $5,740,000: *Provided,* That such appropriation shall be in addition to any appropriations provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989: *Provided further,* That $4,100,000 of such additional appropriation shall be used by the Federal Law Enforcement Training Center only to accommodate the advanced in-Service training requirements of the Drug Enforcement Administration that cannot otherwise be met at the Department of Justice training facilities: *Provided further,* That $1,640,000 of such additional appropriation shall be used by the Center to increase the level of drug enforcement training, including basic and advanced training, for Federal, State, and local law enforcement officers: *Provided further,* That the Center shall hire 44 additional direct full-time equivalent positions and maintain an average of not less than 469 direct full-time equivalent positions by the end of fiscal year 1990: *Provided further,* That, on a space available, cost reimbursable basis, the Center shall, to the extent practical, increase the level of training for drug enforcement officers from foreign countries that are cooperating with the law enforcement agencies of the United States Government.

(2) There are authorized to be appropriated for salaries and expenses of the Federal Law Enforcement Training Center, $45,000,000 for the fiscal year ending September 30, 1990, and $50,000,000 for the fiscal year ending September 30, 1991: *Provided,* That in each fiscal year addressed in this paragraph, support for the State and local law enforcement training program and the training programs for drug enforcement officers from foreign countries shall be maintained at no less than the level of support in the fiscal year ending September 30, 1989.

(b) EXPANDED TRAINING.—The Secretary of the Treasury is directed to expand the advanced training programs for Federal law enforcement agencies at the Marana, Arizona, satellite facility of the Federal Law Enforcement Training Center, within the total amount of appropriations authorized for fiscal years 1989, 1990, and 1991.

(c) REPORT.—The Secretary of the Treasury is directed to report in writing to the appropriate committees of the Congress by no later than 90 days from the date of enactment of this Act with his preliminary plans for the increased training activities at the Federal Law Enforcement Training Center facilities to be funded with the additional appropriations authorized in subsection (a)(1) of this section, and the authorized level of appropriations contained in subsection (a)(2).

SEC. 2992. FEDERAL LAW ENFORCEMENT LANGUAGE TRAINING IMPROVEMENT.

(a) DEPARTMENT OF DEFENSE.—The Department of Defense is authorized to provide, on a cost reimbursable basis, foreign language training at the Defense Language Institute to special agents of Federal civilian agencies involved in drug law enforcement.

(b) DEPARTMENT OF STATE.—The Department of State is authorized to provide, on a cost reimbursable basis, foreign language training at the Foreign Service Institute to special agents of Federal civilian agencies involved in drug law enforcement.

(c) DRUG ENFORCEMENT ADMINISTRATION.—The Drug Enforcement Administration is authorized to—

(1) detail special agent personnel for foreign language training to the Defense Language Institute or the Foreign Service Institute; and

(2) reimburse, from appropriated funds, the Departments of Defense and State for the cost of training provided.

(d) CUSTOMS SERVICE.—The Customs Service is authorized to—

(1) detail special agent personnel for foreign language training to the Defense Language Institute or the Foreign Service Institute, or both; and

(2) reimburse, from appropriated funds, the Departments of Defense and State for the cost of training provided.

(e) INS.—The Immigration and Naturalization Service is authorized to—

(1) detail investigative personnel for foreign language training to the Defense Language Institute or the Foreign Service Institute; and

(2) reimburse, from appropriated funds, the Departments of Defense and State for the cost of training provided.

(f) AUTHORIZATION OF APPROPRIATIONS.—The following amounts are authorized to be appropriated to implement the provisions of this section:

(1) to the Commissioner of Customs, only for obligation for special agent foreign language training, $273,000;

(2) to the Administrator of the Drug Enforcement Administration, only for obligation for special agent foreign language training, $273,000; and

(3) to the Commissioner of the Immigration and Naturalization Service, only for obligation for special agent foreign language training, $273,000.

(g) RULES APPLICABLE TO APPROPRIATIONS.—Moneys appropriated pursuant to this section shall—

(1) remain available until expended; and

(2) shall be made available by the United States Customs Service, the Immigration and Naturalization Service, and the Drug Enforcement Administration out of the total amount of additional funds authorized to be appropriated in this Act.

Subchapter G—United States-Bahamas Drug Interdiction Task Force

SEC. 2993. INTERDICTION TASK FORCE PROGRAMS.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for salaries and expenses if the Drug Enforcement Administration for fiscal year 1989, $4,920,000: *Provided,* That such appropriation shall be in addition to any appropriations provided in regular appropriations Acts or continuing resolutions for the fiscal year ending September 30, 1989: *Provided further,* That such appropriations shall be made available for the United States-Bahamas Drug Interdiction Task Force established by section 3301 of subtitle E of title III of the Antidrug Abuse Act of 1986 (21 U.S.C. 801 note) and related activities: *Provided further,* That of these amounts made available for the United States-Bahamas Drug Interdiction Task Force under this section, the Drug Enforcement Administration is authorized to provide grants or other financial assistance to the Commonwealth of the Bahamas in the establishment of a Bahamian Enforcement Strike Team that will conduct unilateral Bahamian Government drug interdiction operations in the southern Bahamian Islands: *Provided further,* That the appropriations authorized under this section shall only be made available for United States-Bahamian drug interdiction operations upon receipt of a $410,000 contribution toward such joint operations by the Commonwealth of the Bahamas in fiscal year 1989.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that—

(1) the Commonwealth of the Bahamas should aggressively pursue the extradition of Nigel Bowe and the consummation of the pending extradition treaty with the United States by the end of 1988;

(2) the Government of the United States should cooperate fully with the Commonwealth of the Bahamas in providing information to the Bahamas regarding allegations of corruption and cooperate in responding to requests from the Commonwealth of the Bahamas for the extradition of United States citizens who have been indicted for drug-related offenses in the Bahamas; and

(3) agents of the Drug Enforcement Agency should be physically present when confiscated or seized illegal drug contraband is destroyed by personnel of the Commonwealth of the Bahamas.

Subchapter H—Standards of Care in Discovering Contraband

SEC. 2994. STANDARDS OF CARE IN DISCOVERING CONTRABAND.

(a) IN GENERAL.—By no later than the date that is 120 days after the date of enactment of this Act and after an opportunity for public comment, the Secretary of the Treasury shall prescribe regulations which sets forth criteria for use by the owner, master, pilot, operator, or officer of, or other employee in charge of, any conveyance in meeting the standards under sections 584 and 594 of the Tariff Act of 1930 (19 U.S.C. 1584; 1594) for the exercise of the highest degree of care and diligence to know whether controlled substances imported into the United States are onboard the conveyance.

(b) AIR CARRIER SMUGGLING PREVENTION PROGRAM.—(1) The Secretary of the Treasury, in consultation with the Secretary of Transportation, shall issue controlled substances regulations for a 2-year demonstration program within 6 months of the enactment of this section. The regulations shall apply to at least three United States International Airports classified as high-risk by Customs and based upon the volume of cargo and number of aircraft arriving from high-risk points of departure. Such regulations shall establish procedures for air carrier development and Customs Service approval of foreign and domestic security and inspection practices. The regulations shall permit air carriers to request the Secretary of the Treasury to permit air carriers, the Customs Service, or an approved agent of the United States Customs Service to inspect at United States airports of entry, and aircraft arriving from foreign locations. The Secretary of the Treasury shall approve such request if the applicant meets the requirements of the regulations. Taking into account all considerations of security, law enforcement, and commercial needs, inspections of aircraft, and cargo shall be conducted and completed within a reasonable period of time.

(2) Air carriers which have applied to the Secretary of the Treasury and which the Secretary determines to be in compliance with the regulations and inspection require-

ments promulgated under paragraph (1) shall be considered participating air carriers. The Secretary of the Treasury shall establish by regulation a procedure for finding a carrier to be a participating carrier and procedures for subsequent removal of that status. The Secretary shall not remove an air carrier from the status of participating air carrier unless he or she shall first have provided it a written notice that the air carrier is not in compliance with the regulations or inspection requirements promulgated under paragraph (1), which notice shall include the reasons for that determination, and shall have provided the air carrier a reasonable opportunity to correct such noncompliance.

(3) Participating air carriers shall be considered to have met the test of the highest degree of care and diligence required under law, and shall not be subject to the penalty or seizure provisions of this Act, if a controlled substance is discovered aboard an aircraft that they may own or operate or in the cargo they carried, if the participating air carrier establishes at an oral presentation that the air carrier was not grossly negligent nor engaged in willful misconduct, and complied with the applicable procedures established in the regulations promulgated under paragraph (1).

(4) For the purpose of this subsection, the term "air carrier" shall mean air carrier or foreign air carrier as those terms are defined in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301).

(5) No provision of this section shall have any effect on air transportation security requirements prescribed pursuant to the Federal Aviation Act of 1958, as amended.

Subchapter I—Interpol—United States National Central Bureau

SEC. 2995. INTERPOL—UNITED STATES NATIONAL CENTRAL BUREAU.

There is authorized to be appropriated for the United States National Central Bureau for fiscal year 1989 $820,000: *Provided*, That such appropriation shall be in addition to any appropriations requested by the President in his fiscal year 1989 budget as presented to Congress on February 18, 1988, or provided in regular appropriations acts or continuing resolutions for the fiscal year ending September 30, 1989: *Provided further*, That such appropriation shall be used to increase personnel by no fewer than 23 full-time equivalent positions over personnel levels as of September 30, 1988 for the purpose of maintaining no fewer than 24-hour operations and for upgrading telecommunications equipment.

Subchapter J—Civil Air Patrol

SEC. 2996. CIVIL AIR PATROL.

(a) Regulations.—Within 45 days, the Secretary of the Air Force shall issue such regulations as are necessary to ensure that the Civil Air Patrol has an integral role in drug interdiction and eradication activities.

(b) Reports.—The Secretary of the Air Force shall submit to the Committees on Appropriations and the Committee on Armed Services of the Senate and the House of Representatives, quarterly reports which include a detailed description of the activities of the Civil Air Patrol in support of the Federal, State, and local government agencies' drug interdiction and eradication programs. The first report shall be submitted on the last day of the first quarter ending not less than 150 days after the date of the enactment.

TITLE III—PREVENTION, EDUCATION, AND TREATMENT

SEC. 3001. SHORT TITLE, TABLE OF CONTENTS.

(a) Short Title.—This title may be cited as the "Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988".

(b) Table of Contents.—The table of contents is as follows:

Sec. 3001. Short title, table of contents.
Sec. 3002. Findings.
Sec. 3003. Purposes.
Sec. 3004. Sense of Congress.
Sec. 3005. References to the Public Health Service Act.

Subtitle A—Alcohol and Drug Abuse and Mental Health Services Block Grants

Sec. 3011. Authorization of appropriations.
Sec. 3012. State comprehensive mental health service plan.
Sec. 3013. Alcohol and drug abuse and mental health services block grants.
Sec. 3014. Data collection.
Sec. 3015. Model plan for seriously mentally ill individuals.
Sec. 3016. Comprehensive substance abuse treatment assistance program.
Sec. 3017. Conforming amendments.

Subtitle B—National Institutes of Alcohol, Drug Abuse, and Mental Health

Sec. 3021. Alcohol, Drug Abuse, and Mental Health Administration.
Sec. 3022. National Institute of Mental Health.
Sec. 3023. Office of Substance Abuse Prevention; demonstration projects for high risk youths.
Sec. 3024. National Institute on Alcohol Abuse and Alcoholism.
Sec. 3025. Drug abuse research.
Sec. 3026. National Institute on Drug Abuse.
Sec. 3027. Drug abuse treatment demonstration projects.
Sec. 3028. Research on alcohol and drug abuse treatment programs.
Sec. 3029. Comprehensive community prevention initiatives.
Sec. 3030. Authorization of appropriations.

Subtitle C—Institute of Medicine

Sec. 3031. Study by the Institute of Medicine.

Subtitle D—Alternative Utilization of Military Facilities

Sec. 3041. Action by national institute on drug abuse and states concerning military facilities.
Sec. 3042. Amendment to title 41.
Sec. 3043. Commission on alternative utilization of military facilities.

Subtitle E—Acquired immunodeficiency syndrome block grants.

Sec. 3051. Acquired immunodeficiency syndrome block grants.

Subtitle F—Miscellaneous

Sec. 3061. Establishment of the Office of Associate Director for Special Populations.
Sec. 3062. Model drug abuse insurance plan.
Sec. 3063. Training awards.
Sec. 3064. Grants for training of personnel to treat drug abuse.
Sec. 3065. Drug testing certification program requirements.
Sec. 3066. Employee assistance programs.
Sec. 3067. Domestic Volunteer Service Act.
Sec. 3068. Reports.
Sec. 3069. Lease purchase authority.

Subtitle G—Drug Education

Sec. 3081. Short title.
Sec. 3082. Authorization of appropriations.
Sec. 3083. New State programs.
Sec. 3084. State applications.
Sec. 3085. Responsibility of State agencies.
Sec. 3086. Local drug and alcohol abuse education and prevention programs.
Sec. 3087. Reports.
Sec. 3088. Teacher training.
Sec. 3089. Federal activities.
Sec. 3090. Drug-free schools model criteria and forms.
Sec. 3091. Development or early childhood education drug abuse prevention curriculum materials.

Subtitle H—Effective Date

Sec. 3092. Effective date.

SEC. 3002. FINDINGS.

Congress finds that—

(1) there are large number of substance abusers in the United States seriously enough impaired to require treatment;

(2) of these abusers, only a small fraction is currently receiving treatment;

(3) substance abuse treatment facilities in the United States are operating above full capacity and many individuals who desire treatment must wait long periods of time before they receive treatment;

(4) drug abuse and the lack of adequate treatment programs poses a threat to our most precious resource, our young people, with almost two-thirds of the graduating high school class of 1985 having used an illicit drug and 17 percent having used cocaine;

(5) increased drug use is strongly linked to violent, gang-related and addiction-related crime; and

(6) treatment for substance abuse is cost-effective and in the best interest of society and the individual.

SEC. 3003. PURPOSES.

(a) Alcohol and Drug Abuse.—It is the purpose of this title to—

(1) continue and expand the partnership that exists between the Federal Government and the States in the development, maintenance, and improvement of the national network of comprehensive, community-based alcohol and drug abuse programs;

(2) provide financial and technical assistance to States and communities to assist in the development and maintenance of a core of prevention services that will significantly reduce the number and scope of alcohol and drug abuse problems;

(3) assist and encourage States in the initiation and expansion of prevention and treatment services for underserved populations;

(4) increase the understanding of the public concerning the extent of alcohol and other forms of drug abuse throughout the United States and the need for appropriate treatment services through—

(A) the expansion of data collection activities; and

(B) the support of research on the comparative cost and efficacy of existing alcohol and drug abuse prevention and treatment services; and

(5) increase to the greatest extent possible the availability and quality of treatment services so that treatment on request may be provided to all individuals desiring to rid themselves of their substance abuse problem.

(b) Mental Health.—It is the purpose of this title to—

(1) encourage the development and provision of community mental health services by the States;

(2) encourage the development of a comprehensive community mental health system within each State;

(3) encourage the implementation of new and expanded community mental health services;

(4) encourage States to provide community mental health services in the least restrictive appropriate environment, and to involve the families of individuals undergoing mental health treatment in the development and provision of such services;

(5) encourage States to ensure respect for the rights and needs of recipients of mental health services and to involve such recipients in the development and provision of services, including the development of client-run services;

(6) foster interagency coordination and integration among a broad range of human service providers, support groups, and advocates to ensure that mental health, rehabilitation, vocational, educational, health, and residential services are available to individuals who need such services;

(7) provide Federal assistance to expand community mental health services within each State; and

(8) increase the understanding of the public concerning the extent of mental illness throughout the United States and the need for appropriate treatment services through—

(A) the expansion of data collection activities; and

(B) the support of research on the comparative cost and efficacy of existing mental health services.

SEC. 3004. SENSE OF CONGRESS.

(a) Findings.—Congress finds that—

(1) alcoholism and other drug dependencies are problems of grave concern and consequence in American society;

(2) the social and economic costs of alcoholism and other drug dependencies, particularly to the health care system, are staggering;

(3) the health consequences of alcoholism and other drug dependencies can be as formidable as those of other diseases;

(4) in 1970, the National Institute on Alcohol Abuse and Alcoholism was created within the Public Health Service, to finance treatment, research, and prevention initiatives;

(5) in 1973, the National Institute on Drug Abuse was created to focus on issues concerning drug abuse treatment, research and prevention;

(6) in 1976, alcoholics and other drug dependent individuals were included within the definition of disabled persons under the Rehabilitation Act of 1973;

(7) Congress itself, as well as organizations such as the American Medical Association, the National Council on Alcoholism, the National Association of Addiction Treatment Providers and the American Medical Society on Alcoholism and Other Drug Dependencies have recognized that alcoholism and other drug dependencies are treatable diseases; and

(8) the public and private sectors endeavor to treat Americans who suffer from these diseases.

(b) Sense of Congress.—It is the sense of Congress that—

(1) alcoholism and drug dependencies are treatable diseases; and

(2) treatment opportunities, in both the public and private sectors can provide a successful means of recovery from alcoholism and other drug dependencies and are essential elements to solving the nation's drug problem.

SEC. 3005. REFERENCES TO THE PUBLIC HEALTH SERVICE ACT.

Except as otherwise specifically provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act (42 U.S.C. 201n et seq.).

Subtitle A—Alcohol and Drug Abuse and Mental Health Services Block Grants

SEC. 3011. AUTHORIZATION OF APPROPRIATIONS.

Section 1911 (42 U.S.C. 300x) is amended—

(1) by striking out "and"; and

(2) by inserting before the period the following: ", $550,500,000 for fiscal year 1988, $700,000,000 for fiscal year 1989, $868,000,000 for fiscal year 1990, and $952,000,000 for fiscal year 1991".

SEC. 3012. STATE COMPREHENSIVE MENTAL HEALTH SERVICE PLAN.

(a) Administrative Expenses.—Subsection (d) of section 1920D (42 U.S.C. 300x-9D(d)) is amended to read as follows:

"(d) The amount referred to in subsections (a), (b), and (c) with respect to a State is the total amount that the State is permitted to expend for administrative expenses under section 1915(d) for fiscal year 1986 from amounts paid to the State under subpart 1 for such fiscal year. If in the judgment of the Secretary the State is making a good faith effort to comply with this subpart, the Secretary may assess the State a penalty that is less than the maximum penalty, but in no event shall the penalty be less than 2 percent of the amount the State is permitted to expend for administrative expenses.".

(b) Report.—Not later than September 30, 1990, the Comptroller General of the General Accounting Office shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report that—

(1) evaluates the status of the implementation of section 1920C of the Public Health Service Act (42 U.S.C. 300x-11) requiring State Mental Health Services Plans; and

(2) includes an assessment of—

(A) the number of States that have submitted such plans;

(B) the number of States that have implemented the plans submitted by such States;

(C) the efficacy of the plans that have been implemented in achieving effective, organized community-based systems of care for seriously mentally ill individuals; and

(D) recommendations on additional legislation that is necessary to facilitate the achievement of the goals of this title.

SEC. 3013. ALCOHOL AND DRUG ABUSE AND MENTAL HEALTH SERVICES BLOCK GRANTS.

(a) Evaluation.—Section 1912 (42 U.S.C. 300x-1) is amended by adding at the end thereof the following new subsection:

"(c) The Secretary may use not to exceed 1 percent of the amounts appropriated under section 1911 in each of the fiscal years 1988 through 1991 to conduct evaluations, and prepare reports for submission to Congress, concerning the functioning and effectiveness of block grant programs conducted under this subpart.".

(b) Allotments.—Section 1913 (42 U.S.C. 300x-1a) is amended to read as follows:

"SEC. 1913. ALLOTMENTS.

"(a) Reservations.—

"(1) Territories and possessions.—The Secretary shall reserve not to exceed $5,025,000 from the amounts appropriated under section 1911 in each of the fiscal years 1989 through 1991 for payments to Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, the Commonwealth of Puerto Rico, and the Northern Mariana Islands, in amounts that bear the same ratio to the amount specified above as the population of the territory or possession bears to the total population of all such territories and possessions, but notwithstanding such allocation, no territory or possession shall receive, subject to the availability of appropriations, the lesser of $100,000, or 105 percent of the combined amount the territory or possession received under this section (as such section existed before the effective date of the Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988) in fiscal year 1987, and for emergency treatment purposes under section 1921(b)(1) (as such section existed before the effective date of such Act), whichever is less.

"(2) Indians.—

"(A) In general.—If the Secretary—

"(i) receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under this part be provided directly by the Secretary to such tribe or organization; and

"(ii) determines that the members of such tribe or tribal organization would be better served by means of grants made directly by the Secretary under this part;

the Secretary shall reserve from amounts which would otherwise be allotted to such State under subsection (b) for the fiscal year the amount determined under subparagraph (B).

"(B) Allotment.—The Secretary shall reserve for the purpose of subparagraph (A), from amounts that would otherwise be allotted to such State under subsection (b), an amount equal to the amount which bears the same ratio to the State's allotment for the fiscal year involved as the total amount provided or allotted for fiscal year 1987 by the Secretary to such tribe or tribal organization under the existing alcohol and drug abuse, and mental health block grant bears to the total amount provided or allotted for such fiscal year by the Secretary to the States and entities (including Indian tribes and tribal organizations) in the State under such provisions of law.

"(C) Recipient.—The amount reserved by the Secretary on the basis of a determination under this subsection shall be granted to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made.

"(D) Plan.—In order for an Indian tribe or tribal organization to be eligible for a grant under this paragraph, such tribe or organization shall submit to the Secretary a plan for such fiscal year that meets such criteria as the Secretary may prescribe.

"(E) Definition.—As used in this subparagraph the terms 'Indian tribe' and 'tribal organization' have the same meaning given such terms in section 4(b) and section 4(c) of the Indian Self-Determination and Education Assistance Act.

"(3) Initial allotment.—Out of the amounts appropriated under section 1911 in each of the fiscal years 1989 through 1991, the Secretary shall reserve $329,975,000 in each such fiscal year unless amounts appropriated are less than such amount, for payments to States, territories, and possessions based on the fiscal year 1984 proportionate share of each State, territory or possession as determined under this section (as such section existed before the effective date of the Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988).

"(b) State Allotment.—

"(1) General rule.—From the remainder of the sums appropriated under section 1911 for each of the fiscal years 1989 through 1991, the Secretary shall allot to each State (excluding jurisdictions referred to in subsection (a)(1)) an amount equal to the product obtained by multiplying—

"(A) the State need; by

"(B) the State fiscal capacity.

"(2) State need.—For purposes of this subsection, the State need of a State shall be an amount equal to the sum of—

"(A) the amount equal to the product of .4 multiplied by the amount equal to the sum of—

"(i) the amount equal to the product of .5 multiplied by the total population of the State residing in urbanized areas, as determined by the Secretary;

"(ii) the amount equal to the product of .3 multiplied by the total population of the State between the ages of 18 and 24 years; and

"(iii) the amount equal to the product of .2 multiplied by the total population of the State between the ages of 25 and 44 years;

"(B) the amount equal to the product of .2 multiplied by the total population of the State between the ages of 25 and 64 years; and

"(C) the amount equal to the product of .4 multiplied by amount equal to the sum of—

"(i) the amount equal to the product of .4 multiplied by the total population of the State between the ages of 18 and 24 years; and

"(ii) the amount equal to the product of .6 multiplied by the total population of the State between the ages of 25 and 44 years.

"(3) State fiscal capacity.—

"(A) General formula.—For purposes of this subsection, the State fiscal capacity of a State shall be an amount equal to the sum of—

"(i) one; minus

"(ii) the percentage equal to the product of 20 percent multiplied by the amount equal to the quotient obtained by dividing—

"(I) the total taxable resources per person in need of a State; by

"(II) the total taxable resources per person in need for all States.

"(B) Taxable resources per person in need of a state.—For purposes of subparagraph (A)(ii)(I), the total taxable resources per person in need of a State shall be an amount equal to the average total taxable resources of the State, as determined by the Secretary of the Treasury based on State gross product as reported by the Bureau of Economic Analysis, for the period of the 3 most recently completed calendar years ending before the date on which an application is submitted under section 1916, divided by the State need as determined under paragraph (2).

"(C) Taxable resources per person in need of all states.—For purposes of subparagraph (A)(ii)(II), the total taxable resources per person in need of all States shall be an amount equal to the average total taxable resources per person in need in all States, as determined by the Secretary of the Treasury based on State gross product, as reported by the Bureau of Economic Analysis, for the period of the 3 most recently completed calendar years ending before the date on which an application is submitted under section 1916, divided by the State need as determined under paragraph (2).

"(4) Minimum allotment.—

"(A) In general.—Except as provided in subparagraph (B), no State shall receive, subject to the availability of appropriations, an allotment of less than $7,000,000, or 105 percent of the combined amount the State received under this section (as such section existed before the effective date of the Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988) in fiscal year 1987, and for emergency treatment purposes under section 1921(b)(1) (as such section existed before the effective date of such Act), whichever is less.

"(B) Special rule.—In the case of each of the fiscal years 1990 and 1991, amounts paid to States under subparagraph (A) shall increase by the same percentage as the remainder of the sums appropriated under section 1911 for purposes of allotments increases as compared to such sums available for allotment in fiscal year 1989.

"(c) Data and Information.—Except as provided in subsection (b)(3), the Secretary shall obtain from each appropriate Federal agency, the most recent data and information necessary to determine the allotments provided for in subsection (b).

"(d) Reallotments.—

"(1) In general.—Any portion of the allotment to a State under subsection (b) that the Secretary determines is not required to carry out activities described in the application approved under section 1916, in the period that the allotment is made available, shall be reallocated by the Secretary to other States in proportion to the original allotment to such States.

"(2) Limitation.—The amount that another State is entitled to under paragraph (1) shall be reduced to the extent that such amount exceeds the sum that the Secretary estimates will be used in that other State to carry out activities described in the application submitted in accordance with the requirements of a State plan approved under section 1916. The amount of such reduction shall be similarly reallotted among States in which the proportionate amount is not reduced.

"(3) Amounts reallotted.—Any amount reallotted to a State under this subsection shall be deemed to be part of the original State allotment under subsection (b) for that year.".

(c) Use of Allotments.—

(1) In general.—Paragraph (2) of section 1915(a) (42 U.S.C. 300x-3(a)(2)) is amended to read as follows:

"(2) planning, developing, and providing community mental health services and related support services with—

"(A) emphasis on the initiation and provision of new or expanded services that contribute to the development of a comprehensive community mental health system as described in section 1916(e); and

"(B) continued support for community mental health center services funded with Federal block grants prior to 1989 to the extent consistent with section 1916(c), and with the State Mental Health Planning Council priorities and the State Comprehensive Mental Health Plan.

(2) Repeal.—Section 1915 (42 U.S.C. 300x-3) is amended by repealing subsection (c).

(d) Application.—Section 1916 (42 U.S.C. 300x-4) is amended to read as follows:

"SEC. 1916. APPLICATION AND DESCRIPTION OF ACTIVITIES.

"(a) Application.—

"(1) In general.—In order to receive an allotment for a fiscal year under section 1913(b) each State shall submit an application to the Secretary.

"(2) Form.—An application submitted under this subsection shall be in such form and submitted by such date as the Secretary shall require.

"(3) Assurances.—An application submitted under this subsection shall contain assurances that the legislature of the State has complied with subsection (b) and that the State will meet the requirements of subsection (c).

"(b) Public Hearings.—After the expiration of the first fiscal year in which a State receives an allotment under section 1913(b), no funds shall be allotted to such State for any fiscal year under such section unless the legislature of the State conducts public hearings on the proposed use and distribution of funds to be provided under section 1914 for such fiscal year.

"(c) Contents of Application.—As part of the annual application required by subsection (a), the chief executive officer of each State shall certify as follows:

"(1) General use of funds.—The State agrees to use the funds allotted to it under section 1913 in accordance with this part.

"(2) Comprehensive mental health services.—The State agrees, to the extent practicable, that grants made to community mental health centers and other entities in the State shall be used for the provision of comprehensive mental health services—

"(A) principally to individuals residing in a defined geographic area (hereinafter in this section referred to as a 'mental health service area'), with special attention to individuals who are seriously mentally ill;

"(B) within the limits of its capacity, to any individual residing or employed in a mental health service area in the State regardless of ability to pay for such services, current or past health condition, or any other factor; and

"(C) that are available and accessible promptly, as appropriate and in a manner that preserves human dignity and assures continuity and high quality care.

"(3) Community mental health centers.—The State agrees to require that any community mental health center in the State receiving a grant prior to fiscal year 1989 from the State under this part provide—

"(A) outpatient services, including specialized outpatient services for children, the elderly, individuals who are seriously mentally ill, and residents of a mental health service area of the State who have been discharged from inpatient treatment at a mental health facility;

"(B) 24-hour-a-day emergency care services;

"(C) day treatment or other partial hospitalization services, or psychosocial rehabilitation services;

"(D) screening for patients being considered for admission to State mental health facilities to determine the appropriateness of such admission; and

"(E) consultation and education services.

"(4) Evaluation criteria.—The State agrees to establish reasonable—

"(A) criteria to evaluate the effective performance of entities that receive funds from the State under this part; and

"(B) procedures for procedural and substantive independent State review of the failure by the State to provide funds for any such entity.

"(5) SPECIFIC USE OF FUNDS.—

"(A) IN GENERAL.—The State agrees to use the funds allotted to the State under section 1913 to carry out the mental health and alcohol drug abuse activities prescribed by section 1915(a) in accordance with this paragraph. The relative amounts provided for mental health activities and drug and alcohol abuse activities shall not exceed an amount that bears the same relationship to the funds allotted to the State for such fiscal year as the funds that would have been received by the State and entities in the State in fiscal year 1987 for mental health activities and drug and alcohol activities (including amounts received from funds allocated under section 1913 and section 1921(b)(1) (as such sections existed before the enactment of the Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988)).

"(B) PERCENT OF FUNDS.—The State may transfer not more than 10 percent of the amounts distributed under subparagraph (A)—

"(i) for mental health activities to amounts used for alcohol and drug abuse activities; and

"(ii) for alcohol and drug abuse activities to amounts used for mental health activities.

"(6) ALCOHOL AND DRUG ABUSE USES.—In any fiscal year, the State agrees to use funds for the alcohol and drug abuse activities prescribed by section 1915(a) as follows:

"(A) Not less than 35 percent of the amount to be made available for such activities relating to alcoholism and alcohol abuse.

"(B) Not less than 35 percent of the amount to be made available for such activities shall be used for programs and activities relating to drug abuse.

"(7) FEDERAL INVESTIGATIONS.—The State agrees to permit and cooperate with Federal investigations undertaken in accordance with section 1918.

"(8) IDENTIFICATION OF NEEDS.—The State has identified those populations, areas, and localities in the State with a need for mental health, alcohol abuse and alcoholism, and drug abuse services.

"(9) FEDERAL FUNDS.—The Federal funds made available under section 1914 for any periods will be so used as to supplement and increase the level of State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the programs and activities for which funds are provided under that section and will in no event supplant such State, local, and other non-Federal funds.

"(10) DISCLOSURE.—The State has in effect a system to protect from inappropriate disclosure patient records maintained by the State in connection with an activity funded under this part or by any entity that is receiving payments from the allotment of State under this part.

"(11) JOB LOCATION.—The State shall develop and implement arrangements, that are not excessively burdensome on the State, to locate jobs for employees affected adversely by actions taken by the State mental health authority to emphasize outpatient mental health services.

"(12) WOMEN.—Of the amount allotted to a State in any fiscal year under this part, the State shall use not less than 5 percent of such amount to provide alcohol and drug abuse services designed specifically for women. Services implemented under paragraph (14) (as such paragraph existed before the effective date of section 103 of the Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments of 1988) may be continued under this paragraph.

"(13) CHILDREN.—Of the amounts allotted in any fiscal year for mental health services, the State agrees to use not less than 10 percent of such amount to provide services and programs for seriously emotionally disturbed children and adolescents. The State shall use not less than 50 percent of the amounts set aside in the preceding sentence by the end of fiscal year 1990 to provide new or expanded services and programs that were not available prior to October 1, 1988, which shall apply to the requirement in paragraph (14).

"(14) NEW MENTAL HEALTH SERVICES AND PROGRAMS.—Of the amounts allotted to a State for mental health activities under this part for fiscal year 1991, the State agrees to use, not less than 55 percent of such amount, to develop and provide community mental health services and programs, not available on October 1, 1988, and shall, with respect to each such service provided pursuant to this paragraph, provide funds for each service only for a limited period of time (as determined by the State), except that funds expended under this part for new services developed between October 1, 1984, and October 1, 1988, may be treated as a new service under this paragraph.

"(d) DESCRIPTION OF INTENDED USE.—

"(1) IN GENERAL.—The chief executive officer of a State shall, as part of the application required by subsection (a), also prepare and furnish the Secretary (in such form as the Secretary may require) with a description of the intended use of the payments the State will receive under section 1914 for the fiscal year for which the application is submitted, including information on the programs and activities to be supported and services to be provided.

"(2) PUBLICATION.—The description shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during development of the description and after its transmittal.

"(3) REVISION.—The description shall be revised (consistent with this section) throughout the year as may be necessary to reflect substantial changes in the programs and activities assisted by the State under this part. Any revision shall be subject to the requirement of publication.

"(e) RECEIPT OF PAYMENTS.—To receive payments under section 1914, a State shall agree that the State, in carrying out the purposes of this part, will facilitate coordination among institutions offering mental health services in the State to establish a State comprehensive community mental health system that—

"(1) provides for the development of a continuum of community mental health services within identified geographic areas;

"(2) ensures that mental health services offered by the system are accessible to individuals of all ages in the State who need the services provided by the system;

"(3) provides mental health services according to the particular needs of the individual for whom the services are sought, including developing plans of care and providing services in the context most appropriate to the age, sex, and cultural background of the individual;

"(4) encourages individuals receiving mental health services to be independent, and encourages the families of such individuals to be supportive of the individual in the attempts of the individual to achieve the optimal level of independence;

"(5) ensures that mental health services are provided in the least restrictive appropriate environment;

"(6) ensures that the mental health services provided by the system meet applicable professional standards for the provision of such services; and

"(7) emphasizes services for individuals who have serious mental illnesses and who—

"(A) are homeless;

"(B) have been institutionalized or at risk of institutionalization;

"(C) are children or youth with serious emotional disturbances;

"(D) are elderly individuals;

"(E) are young adults with diagnoses of both mental illness and alcohol or drug abuse;

"(F) are racial and ethnic minorities;

"(G) are women;

"(H) are people living in poverty; or

"(I) are residents of rural areas.

"The State may use funds provided under section 1914 to develop plans to implement this subsection.

"(f) STATE MENTAL HEALTH SERVICES PLANNING COUNCIL.—

"(1) ESTABLISHMENT.—Not later than 6 months after the effective date of the Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988, or 6 months after the opening of the first State legislative session after the enactment of such Act if legislative action by the State is required to implement this subsection, the chief executive officer of a State shall establish a State mental health services planning council that shall—

"(A) serve as an advocate for seriously mentally ill individuals, seriously mentally ill children, adolescents, elderly individuals, and other individuals with a mental illness or emotional problem; and

"(B) monitor, review, and evaluate, at least once a year, the allocation and adequacy of mental health services within the State.

"(2) COMPOSITION.—The Council shall, subject to paragraph (3), be composed of residents of the State, including at least one representative of—

"(A) the principal State agencies that have jurisdiction over—

"(i) mental health, education, vocational rehabilitation, children's services, criminal justice, housing, and social services; and

"(ii) the development of the State plan submitted pursuant to title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

"(B) public and private entities concerned with the need, planning, operation, funding, and use of mental health services and related support services;

"(C) seriously mentally ill adults who are receiving (or have received) mental health services and the families of such adults or of seriously emotionally disturbed children;

"(D) minorities; and

"(E) organizations functioning as advocates for the mentally ill and for mental health services.

"(3) RESTRICTION.—Not less than 50 percent of the members of the Council shall be individuals who are not State employees or providers of mental health services.

"(4) PLAN PREPARATION.—The Council may assist the State in the preparation the plan required by section 1920C.

"(g) REPORT.—

"(1) IN GENERAL.—The Secretary shall report annually to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on the new services initiated and provided in accordance with paragraphs (13) and (14) of subsection (c).

"(2) CONTENTS.—The report shall include—

"(A) a detailed description of such programs and services;

"(B) an assessment of the adequacy of such programs and services in meeting the alcohol and drug abuse treatment needs of women and mental health needs of severely disturbed children and adolescents; and

"(C) such other information, including legislative and administrative recommendations, as the Secretary considers appropriate.".

(d) EFFECTIVE DATE.—The amendments made by this section shall become effective on October 1, 1988.

SEC. 3014. DATA COLLECTION.

Title V is amended by inserting after section 509C (42 U.S.C. 290aa-10) the following new section:

"SEC. 509D. DATA COLLECTION.

"(a) MENTAL HEALTH.—The Secretary, in cooperation with the mental health agencies of the State and the respective national organizations concerning such, shall collect data on—

"(1) the number and variety of public and nonprofit private treatment programs available for mental health;

"(2) the number and demographic characteristics of individuals receiving treatment through the programs referred to in paragraph (1);

"(3) the type of care received by the individuals referred to in paragraph (2); and

"(4) other programs and activities as may be appropriate.

"(b) ALCOHOL AND DRUG ABUSE AND TREATMENT.—The Secretary, in cooperation with the alcohol and drug agencies of the State and the respective national organizations concerning such, shall develop specifications for the provision of data that is to be reported by State alcohol and drug abuse agencies, and publish such specifications for comment in the Federal Register. Subsequent to the comment period and the publication of final specifications, the Secretary shall, in consultation with the alcohol and drug abuse agencies of the State and the respective organizations concerning such, collect such data that shall include at a minimum—

"(1) the number and variety of public and private treatment programs available for alcohol or drug abuse, including the number and type of patient slots available;

"(2) the number and demographic characteristics of individuals receiving treatment through the programs referred to in paragraph (1) and, to the extent feasible, the number of times per year individuals use such treatment services;

"(3) the type of care received by the individuals referred to in paragraph (2);

"(4) the number of individuals receiving some form of public assistance for treatment;

"(5) the percentage of individuals that complete the appropriate course of treatment through programs referred to in paragraph (1);

"(6) the cost of the different types of treatment modalities referred to in paragraph (1) and the aggregate cost of each treatment modality provided within a State in each fiscal year;

"(7) the estimated level of need for programs referred to in paragraph (1) that is not being served by such programs;

"(8) the number of treated individuals that have private insurance coverage for the costs of the treatment programs referred to in paragraph (1), to the extent such information is available;

"(9) the number of alcohol or drug abuse counselors and other treatment personnel employed in public and private treatment facilities;

"(10) to the extent feasible, the effectiveness of treatment programs referred to in paragraph (1); and

"(11) other programs and activities as may be appropriate.

"(c) STATE SUBMISSION OF DATA.—

"(1) IN GENERAL.—The Secretary shall establish guidelines that require States, to the extent practical, to provide information of the type required under subsections (a) and (b) subsequent to the specifications procedure described in subsection (b). The provision of such information shall be required as a condition of receiving a grant under sections 1913 and 1921.

"(2) COMPREHENSIVE SUBSTANCE ABUSE TREATMENT ASSISTANCE.—In order to receive funds under the program authorized under section 1921, a State shall provide to the Secretary such information as the Secretary may require.

"(3) COOPERATION WITH STATES.—The Secretary shall consult and cooperate with States in developing data elements and designing mechanisms to collect the information and data required under this section.

"(d) REPORT.—The Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate every 2 years, a report that describes—

"(1) the scope of drug and alcohol and mental health services being provided by public and private entities;

"(2) the identification of alcohol and drug abuse and mental health service shortage areas and of gaps in such services;

"(3) the number of alcohol and drug abuse and mental health treatment settings;

"(4) the number and characteristics of the individuals served by the services described in paragraphs (1) and (2); and

"(5) other information that is considered appropriate by the Secretary.".

SEC. 3015. MODEL PLAN FOR SERIOUSLY MENTALLY ILL INDIVIDUALS.

Section 1920E (42 U.S.C. 300x-12) is amended to read as follows:

"SEC. 1920E. MODEL PLAN FOR SERIOUSLY MENTALLY ILL INDIVIDUALS.

"(a) IN GENERAL.—The Secretary, acting through the Director of the National Institute of Mental Health, shall develop and make available from time to time, a model plan for a community-based system of care for seriously mentally ill individuals.

"(b) CONSULTATION.—The plan referred to in subsection (a) shall be developed in consultation with State mental health directors, providers of mental health services, seriously mentally ill individuals, advocates for such individuals, and other interested parties.".

SEC. 3016. COMPREHENSIVE SUBSTANCE ABUSE TREATMENT ASSISTANCE PROGRAM.

Section 1921 (42 U.S.C. 300y) is amended to read as follows:

"SEC. 1921. COMPREHENSIVE SUBSTANCE ABUSE TREATMENT ASSISTANCE PROGRAM.

"(a) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—To carry out this section and sections 1922, 508, and 509A there are authorized to be appropriated $959,000,000 for fiscal year 1989, $2,000,000,000 for fiscal year 1990, $3,000,000,000 for fiscal year 1991, such sums as may be necessary for each of the fiscal years 1992 and 1993.

"(2) ALLOTMENTS.—Of the total amount appropriated under paragraph (1) for a fiscal year—

"(A) 4.5 percent shall be available to carry out section 1922 for such fiscal year; and

"(B) the remainder shall be available for allotments to States under this section for such fiscal year.

"(b) ALLOTMENTS OF STATES.—

"(1) IN GENERAL.—The allotment of a State under this section for a fiscal year shall be the sum of the amounts allotted to such State under paragraphs (2) and (3).

"(2) POPULATION.—Forty-five percent of the amount available for allotment under this section for a fiscal year shall be allotted in accordance with this paragraph. The allotment of a State under this paragraph for a fiscal year shall be an amount that bears the same ratio to the total amount required pursuant to the preceding sentence to be allotted under this paragraph for such fiscal year as the population of such State bears to the population of all States, except that no such allotment shall be less than $50,000.

"(3) NEED.—Fifty-five percent of the amount available for allotment under this section for a fiscal year shall be allotted by the Secretary to States on the basis of the need of each State for amounts for programs and activities for the treatment and rehabilitation of substance abusers. In determining such need for each State under this paragraph, the Secretary shall consider—

"(A) the nature and extent, in the State and in particular areas of the State, of the demand for effective programs and activities for the treatment and rehabilitation of alcohol abuse and drug abuse;

"(B) the number of individuals in the State who abuse drugs or alcohol and the capacity of the State to provide treatment and rehabilitation for such individuals (as determined by the Secretary on the basis of the number of individuals who requested treatment for substance abuse in the State during the most recent calendar year ending prior to the date on which a statement is submitted by the State under subsection (d)); and

"(C) the ability of the State to provide additional services for the treatment and rehabilitation of substance abuse.

"(4) TIMING.—The Secretary shall make allotments to States under paragraphs (2) and (3) for a fiscal year, and shall make payments to States under subsection (c) from such allotments, at the same time that the Secretary makes allotments and payments under sections 1913 and 1914, respectively, for such fiscal year.

"(c) PAYMENTS.—

"(1) PAYMENTS.—For each fiscal year, the Secretary shall make payments, as provided by section 6503 of title 31, United States Code, to each State from its allotment under paragraphs (2) and (3) of subsection (b) from amounts that are appropriated for that fiscal year and available for such allotments.

"(2) CARRYOVER.—Any amount paid to a State under paragraph (1) for a fiscal year and remaining unobligated at the end of such fiscal year shall remain available to such State for the purposes for which it was made for the next fiscal year.

"(3) APPLICABILITY OF OTHER PROVISIONS.—The provisions of part B that are not inconsistent with this part shall apply with respect to allotments made under this section.

"(d) APPLICATIONS.—

"(1) IN GENERAL.—In order to receive an allotment for a fiscal year under subsection (b), each State shall submit an application to the Secretary, which the Secretary must find satisfactory, requesting an allotment under subsection (b)(2) or (b)(3) or both. Each such application shall contain—

"(A) a description of the manner in which the State will periodically (at an interval to be determined by the Secretary but not less frequently than once a year)—

"(i) evaluate programs and activities conducted with payments made to the State under subsection (c), including an evaluation of—

"(I) the number of additional individuals entering treatment;

"(II) the length of the treatment;

"(III) the number of individuals completing the treatment program;

"(IV) the average cost of the treatment per individual for different types of treatment; and

"(V) any other information the Secretary considers necessary;

"(ii) report to the Secretary on the results of such evaluation;

"(iii) develop standards, in consultation with the States, for the evaluation requirements, subsequent to the first grant cycle, and publish such in the Federal Register for comment;

"(B) assurances that current level of efforts in treating substance abusers shall be maintained and that payments made to the State under subsection (c) shall not be used to support existing State and local efforts, but should be used to fund or create new treatment opportunities;

"(C) assurances that such payments shall be targeted to communities with the highest prevalence of substance abuse, in accordance with criteria established by the Secretary to determine those communities with the greatest need, which shall include—

"(i) a demand for services or a need for services that exceeds existing capacity;

"(ii) a high prevalence of substance abuse;

"(iii) a high incidence of drug-related criminal activities; and

"(iv) a high incidence of communicable diseases spread through IV drug use;

"(D) assurances that in developing new treatment opportunities under programs conducted with payments made to the State under subsection (c), the State shall give priority to treatment of abusers of illegal drugs, and treatment for individuals who abuse both alcohol and illegal drugs;

"(E) assurances that populations in greatest need of services, including pregnant women, adolescents, minorities, and women and infants, shall be served;

"(F) assurances that, in fulfilling the priority for pregnant women, the State will assure timely treatment for good post partum care;

"(G) assurances that a State will devise and make available to the Secretary not later than 9 months after receipt of the such payments, a plan that describes how a State can provide services to all individuals seeking treatment services if sufficient resources are available and an estimate of the resource needs to provide such treatment, with such plan and estimates to be in such form as the Secretary may prescribe;

"(H) assurances that the State will provide at least $1 in new State funds or in-kind contributions for every $3 in Federal funds received by the State under subsection (c), and that such funds shall supplement rather than replace existing funds, except that such requirement may be waived by the Secretary for fiscal year 1989 if the chief executive officer of the State certifies that—

"(i) such match cannot be made in such fiscal year because of legislative commitments made by the State prior to the date of enactment of this section; and

"(ii) the State will provide such matching funds as required in subsequent fiscal years;

"(I) such information as the Secretary may prescribe, including information necessary for the Secretary to consider the matters specified in subparagraphs (A) through (D) of subsection (b)(3);

"(J) a description of the manner in which programs and activities conducted with payments under subsection (c) will be coordinated with other public and private programs and activities directed toward individuals who abuse alcohol and drugs; and

"(K) assurances that, in the preparation of any statement under this section, the State will consult with local governments and public and private entities, including community based organizations, involved in the provision of services for the treatment, prevention, and rehabilitation of substance abuse.

"(2) REPORTING AND EVALUATION.—The reporting and evaluation required under paragraph (1)(A) shall be implemented in a manner that is satisfactory to the Secretary, and the Secretary shall, to the extent feasible, assure standardized reporting across the various States. The Secretary shall develop standards, in consultation with the States, for the evaluation requirements, subsequent to the first awarding of grants, and publish such standards in the Federal Register for comment.

"(e) STATE TREATMENT PLANS.—A State shall submit to the Secretary as part of an application for the grant a State treatment plan that describes the proposed use of amounts paid to a State under subsection (c). The plan shall include a description of—

"(1) the total number of existing treatment slots by modality, type of abused substance, providers, community and target populations;

"(2) the number of treatment slots to be created by modality, providers, community and target populations;

"(3) the manpower involved in providing existing treatment and plans for increasing staffing levels to meet the projected increase in treatment slots;

"(4) the projected number of new clients, including the nature of the abused substance and subpopulations to be targeted (including adolescents, minorities, women and infants); and

"(5) methods of outreach to targeted populations (including adolescents, minorities, women and infants).

"(f) USE OF TREATMENT FUNDS.—

"(1) IN GENERAL.—Except as otherwise provided in this section, a State may use amounts made available under subsection (c) for—

"(A) treatment programs for individuals who are abusing or who are addicted to opiods, non-opiod abused drugs, and alcohol, including individuals abusing both alcohol and drugs;

"(B) support services for such individuals, including assistance in seeking and maintaining employment, family education and counseling, and other services designed to rehabilitate such individuals;

"(C) referral to support services needed by such individuals, such as employment and education counseling, income support programs, nutritional support, medical care, and other services;

"(D) outreach to individuals in need of such services; and

"(E) treatment programs for special populations, including adolescents, women, children born with addictions or born to addicted parents.

"(2) PROHIBITIONS.—A State may not use amounts paid to the State under its allotment under this section to—

"(A) provide inpatient hospitalization;

"(B) make cash payments to intended recipients of health services;

"(C) enroll individuals in for-profit treatment programs or provide reimbursement for for-profit treatment programs;

"(D) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds;

"(E) purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment, except as provided in paragraph (3); or

"(F) provide financial assistance to any entity other than a public or nonprofit private entity.

"(3) WAIVER FOR CONSTRUCTION.—The Secretary may grant a waiver to a State to use amounts made available under this section for purchase and construction of a new facility or rehabilitation of existing facility, but not for land acquisition, if the State demonstrates to the Secretary that adequate treatment cannot be provided through the use of existing facilities and that alternative facilities in existing suitable buildings are not available. In granting such a waiver, the Secretary shall allow the use of a specified amount of funds to construct or rehabilitate a specified number of beds for residential treatment, and a specified number of slots for out-patient treatment, based on reasonable estimates by the State of the cost of construction or rehabilitation. In considering waiver applications, the Secretary shall insure that the State has carefully designed a program that will minimize the costs of additional beds

"(4) ADMINISTRATION.—Of the total amount paid to any State under subsection (c) for a fiscal year, not more than 5 percent may be used for administering the funds made available under such subsection. The State will pay from non-Federal sources the remaining costs of administering such funds.

"(g) ASSISTANCE.—The Secretary, on the request of a State, shall provide training and technical assistance to such State in planning and operating activities to be carried out under this section.

"(h) DATA.—The Secretary shall conduct data collection activities to enable the Secretary to carry out this section.".

SEC. 3017. CONFORMING AMENDMENTS.

(a) Section 508(d) (42 U.S.C. 290aa-6(d)) is amended by striking out "the second sentence of section 1921(a)" and inserting in lieu thereof "section 1921(a)(2)".

(b) Section 1917(a)(1) (42 U.S.C. 300x-5(a)(1)) is amended by striking out "(14) and (15)" and inserting in lieu thereof "(13) and (14)".

(c) Part B of title XIX (42 U.S.C. 300x et seq.) is amended by striking out "chronically mentally ill" each place it appears and inserting in lieu thereof "seriously mentally ill" in each such place.

Subtitle B—National Institutes of Alcohol, Drug Abuse, and Mental Health

SEC. 3021. ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION.

(a) In General.—Section 501 (42 U.S.C. 290aa) is amended—

(1) in subsection (b), by adding at the end thereof the following new paragraph:

"(4) The Office for Substance Abuse Prevention.";

(2) in subsection (c), by adding at the end thereof the following new paragraph:

"(3) The Administrator shall evaluate substance abuse prevention and education programs and assist communities and organizations in such evaluation efforts.".

(3) in subsection (e)(1), by striking out "and the National Institute on Drug Abuse" and inserting in lieu thereof "the National Institute on Drug Abuse, and the Office for Substance Abuse Prevention";

(4) in the first sentence of subsection (e)(2)—

(A) by striking out "The" and inserting in lieu thereof "Not less than once every 3 years, the"; and

(B) by striking out "annually";

(5) in subsection (f), by striking out "fraud" each place it appears and inserting in lieu thereof "misconduct";

(6) in subsection (k)(2)(A), by striking out "the National Institute on Drug Abuse" and inserting in lieu thereof "the National Institute on Drug Abuse, the Office of Substance Abuse Prevention"; and

(7) by adding at the end thereof the following new subsections:

"(l) The Administrator may accept voluntary and uncompensated services.

"(m) The Administrator may conduct and support research training—

"(1) for which fellowship support is not provided under section 487; and

"(2) that is not residency training of physicians or other health professionals.".

(b) Renaming of Administration.—

(1) Public health service act.—The Act is amended—

(A) in sections 227, 319(a), 487, 489(a)(2), 501(a) through (c), 1920A, and (1923) (42 U.S.C. 236, 247d(a), 288, 288b(a)(2), 290aa(a)-(c), 300x-9, and 300y-2), by striking out "Alcohol, Drug Abuse, and Mental Health Administration" each place it appears and inserting in lieu thereof "National Institutes of Alcohol, Drug Abuse, and Mental Health"; and

(B) in sections 501, 504(d), 508(a), 509B(a), 509C(a)(1), and 509C(d) (42 U.S.C. 290aa, 290aa-3(d), 290aa-6(a), 290aa-9(a), 290aa-10(a)(1), and 290aa-10(d)), by striking out "Administration" each place it appears and inserting in lieu thereof "National Institutes of Alcohol, Drug Abuse, and Mental Health".

(2) Conforming amendment.—Part A of title V (42 U.S.C. 290aa et seq.) is amended—

(A) by striking out the part heading and inserting in lieu thereof the following new heading:

"Part A—National Institutes of Mental Health, Drugs, and Alcohol and Individual Institutes"; and

(B) in section 501, by striking out the section heading and inserting in lieu thereof the following new heading:

"NATIONAL INSTITUTES OF ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH".

SEC. 3022. NATIONAL INSTITUTE OF MENTAL HEALTH.

(a) Mental Health Demonstration Project Grants.—Part A of title V is amended by inserting after section 504 (42 U.S.C. 290aa-3) the following new section:

"SEC. 504A. MENTAL HEALTH SERVICE GRANTS AND DEMONSTRATION PROJECTS.

"(a) Mental Health Demonstration Projects.—The Secretary, acting through the Director, may make grants to States, political subdivisions of States, and private nonprofit entities for—

"(1) mental health services demonstration projects, (including self-help services), for the planning, coordination, and improvement of community services for seriously mentally ill individuals, seriously emotionally disturbed children and adolescents, elderly individuals (with special emphasis on areas with high concentrations of the elderly), residents of rural areas, and homeless seriously mentally ill individuals;

"(2) demonstration projects relating to the provision of prevention services to individuals who are at risk of developing mental illness;

"(3) demonstration projects for the prevention of youth suicide;

"(4) demonstration projects for the improvement of the recognition, assessment, treatment, and clinical management of depressive disorders;

"(5) demonstration projects for the improvement of post-legal adoption mental health and counseling services; and

"(6) demonstration projects for treatment and prevention relating to sex offenses.

"(b) Grants.—The Secretary may make a grant under subsection (a) for not more than 5 consecutive 1-year periods, except that the Secretary may waive the limitation of this paragraph with respect to a particular grant if the Secretary determines that extenuating circumstances exist that merit such waiver.

"(c) Administrative Expenses.—

"(1) In general.—The Secretary shall not make a grant to an applicant under paragraphs (2) through (7) of subsection (a) unless the applicant agrees that not more than 10 percent of the amount of such grant shall be used for administrative expenses.

"(2) Mental health demonstration projects.—Not more than 25 percent of the total amount of a grant made to a State under subsection (a)(1) for a project for services for seriously mentally ill individuals, seriously emotionally disturbed children and adolescents, elderly individuals, residents of rural areas, and homeless seriously mentally ill individuals in any fiscal year may be used by the State for administrative expenses in carrying out such grant in such fiscal year.

"(d) Authorization of Appropriations.—

"(1) In general.—In order to provide grants under subsection (a) there is authorized to be appropriated—

"(A) $57,700,000 for fiscal year 1988;

"(B) $60,400,000 for fiscal year 1989, of which at least 18 percent shall be used for demonstration projects for homeless individuals;

"(C) $63,400,000 for fiscal year 1990, of which at least 18 percent shall be used for demonstration projects for homeless individuals; and

"(D) such sums as are necessary in fiscal year 1991, of which at least 18 percent shall be used for demonstration projects for homeless individuals.

"(2) Rural resident projects.—Of the amounts appropriated under paragraph (1), the Secretary may use not in excess of $5,000,000 in each of the fiscal years 1988 through 1990, to make grants for rural residents projects described in subsection (a)(1).

"(3) Elderly mental health projects.—Of the amounts appropriated under paragraph (1), the Secretary may use not in excess of $4,500,000 in each of the fiscal years 1988 through 1990, to make grants for demonstration projects relating to mental health services for elderly individuals described in subsection (a)(1).

"(4) Prevention services projects.—Of the amounts appropriated under paragraph (1), the Secretary may use not in excess of $5,000,000 in each of the fiscal years 1988 through 1990, to make grants for projects described in subsection (a)(2).

"(5) Suicide prevention projects.—Of the amounts appropriated under paragraph (1), the Secretary may use not in excess of $5,000,000 in each of the fiscal years 1988 through 1990, to make grants for projects described in subsection (a)(3).

"(6) Depressive disorder projects.—Of the amounts appropriated under paragraph (1), the Secretary may use not in excess of $2,000,000 in fiscal year 1988, and $2,500,000 in each of the fiscal years 1989 and 1990, to make grants for projects described in subsection (a)(4).

"(7) Post-legal adoption services projects.—Of the amounts appropriated under paragraph (1), the Secretary may use not in excess of $2,000,000 in fiscal year 1988, and $2,500,000 in each of the fiscal years 1989 and 1990, to make grants for projects described in subsection (a)(5).

"(8) Sex offenses.—Of the amounts appropriated under paragraph (1), the Secretary may use not in excess of $5,000,000 in fiscal year 1988, and $5,000,000 in each of the fiscal years 1989 and 1990, to make grants for projects described in subsection (a)(6).".

(b) Conforming Amendment.—Effective October 1, 1988, section 504 (42 U.S.C. 290aa-3) is amended—

(1) by striking out subsections (f) and (g); and

(2) by redesignating subsections (h) and (i) as subsections (f) and (g), respectively.

(c) Youth Suicide.—The second sentence of section 504(g) (as redesignated by subsection (b)) is amended by striking out "age of 21" and inserting in lieu thereof "age of 24".

(d) Mental Health Services for the Homeless.—Part C of title V is amended—

(1) in section 521(a) (42 U.S.C. 290cc-21(a)), by striking out "1987 and 1988" and inserting in lieu thereof "1987 through 1990"; and

(2) in section 535 (42 U.S.C. 290cc-35), by striking out "for fiscal year 1988" and inserting in lieu thereof "for each of the fiscal years 1988 through 1990".

(e) Service Research of Community Mental Health Programs.—Part A of title V (42 U.S.C. 290aa et seq.) is amended by inserting after section 504A (as added by subsection (a)) the following new section:

"SEC. 504B. SERVICE RESEARCH OF COMMUNITY MENTAL HEALTH PROGRAMS.

"(a) In General.—The Secretary, acting through the Director of the National Institute of Mental Health, shall develop and maintain an ongoing program of service research of community mental health programs and services, that shall include the evaluation of—

"(1) the most effective methods of providing community-based prevention, treatment, and rehabilitation services for mentally ill individuals of all ages; and

"(2) the comparative cost-effectiveness of different methods of treatment utilized in community mental health programs.

"(b) FUNDING PROGRAM.—Research and evaluation required in subsection (a) may be carried out through grants, contracts, or cooperative agreements.

"(c) PLAN.—Not later than 6 months after the effective date of this section, the Director shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate a plan for the program to be established under subsection (a).".

SEC. 3023. OFFICE OF SUBSTANCE ABUSE PREVENTION; DEMONSTRATION PROJECTS FOR HIGH RISK YOUTHS.

(a) DUTIES OF DIRECTOR.—Section 508(b) (42 U.S.C. 290aa-6(b)) is amended—

(1) by striking out paragraph (1) and inserting in lieu thereof the following new paragraph:

"(1) provide assistance to communities to enable such communities to develop comprehensive, long-term substance abuse prevention strategies;";

(2) by striking out paragraph (5) and inserting in lieu thereof the following new paragraph:

"(5) support clinical training programs for substance abuse counselors and other health professionals involved in drug abuse education, prevention, and intervention;"; and

(3) in paragraph (9), by adding before the period the following: ", and coordinate activities to support and complement the private media efforts of the Partnership for a Drug-Free America".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 508(d) (42 U.S.C. 290aa-6(d)) is amended to read as follows—

"(d)(1) For the purpose of carrying out the activities described in this section and in section 509, and for administering the Office of Substance Abuse Prevention, there are authorized to be appropriated $39,000,000 for fiscal year 1989, $49,500,000 for fiscal year 1990, $54,450,000 for fiscal year 1991, $59,295,000 for fiscal year 1992, and $65,224,500 for fiscal year 1993.

"(2) For the purpose of carrying out the activities described in section 509A, there are authorized to be appropriated $52,000,000 for fiscal year 1989, $66,000,000 for fiscal year 1990, $72,600,000 for fiscal year 1991, $79,860,000 for fiscal year 1992, and $87,846,000 for fiscal year 1993.".

(c) HIGH RISK YOUTH.—Section 509A (42 U.S.C. 290aa-8(b)) is amended—

(1) in subsection (b), by adding at the end thereof the following new paragraph:

"(5) In making grants under this section, the Secretary shall give priority to applications that employ research designs adequate for evaluating the effectiveness of the program."; and

(2) in subsection (f)—

(A) in paragraph (8), by striking out "or";

(B) by striking out paragraph (9) and inserting in lieu thereof the following new paragraph:

"(9) has experienced long-term physical pain due to injury; or"; and

(C) by adding at the end thereof the following new paragraph:

"(10) has experienced chronic failure in school;".

(b) ALCOHOL INFORMATION PROGRAM.—Part A of title V is amended by adding after section 509D the following new section:

"SEC. 509E. FETAL ALCOHOL INFORMATION PROGRAM.

"(a) ESTABLISHMENT.—The Administrator shall establish and implement a public information program on fetal alcohol syndrome to educate the public concerning the syndrome and to reduce the incidence of the occurrence of the syndrome.

"(b) REPORT.—Not later than 24 months after the effective date of the Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988, the Administrator shall submit to the Committee on Energy and Commerce of the House of Representatives and to the Committee on Labor and Human Resources of the Senate a report that describes the effect of the informational program established under subsection (a).".

(c) CONFORMING AMENDMENT.—Section 505(a)(1) (42 U.S.C. 290aa-3a(a)(1)) is amended by striking out "for the National Institute on Drug Abuse," and inserting in lieu thereof "for the National Institute on Drug Abuse, for the Office of Substance Abuse Prevention,"

SEC. 3024. NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM.

Section 513 (42 U.S.C. 290bb-1b) is amended—

(1) in subsection (a), by inserting before the period ", $83,000,000 for fiscal year 1988, and such sums as are necessary for each of the fiscal years 1989 through 1991"; and

(2) in subsection (b), by adding at the end thereof the following new sentence: "There are authorized to be appropriated $15,000,000 in fiscal year 1988, $20,000,000 in fiscal year 1989, $25,000,000 in fiscal year 1990, and such sums as are necessary in 1991, to carry out section 512(c).".

SEC. 3025. DRUG ABUSE RESEARCH.

Section 515(a) (42 U.S.C. 290cc) is amended by striking out paragraphs (5) and (6) and inserting in lieu thereof the following new paragraphs:

"(5) effective methods of drug abuse prevention;

"(6) effective methods of treatment and rehabilitation, including methods of intervention directed at treating the abuse of specific drugs; and

"(7) new and promising behavioral and chemical therapies for the treatment of drug abuse, including the development of chemical antidotes and narcotic antagonists for use in the treatment of cocaine and heroin addiction, that shall be conducted at intramural and extramural locations, and derived from basic and clinical research.".

SEC. 3026. NATIONAL INSTITUTE ON DRUG ABUSE.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 517 (42 U.S.C. 290cc-2) is amended to read as follows:

"SEC. 517. AUTHORIZATION OF APPROPRIATIONS.

"(a) There are authorized to be appropriated to carry out this subpart, and sections 515A and 549, $165,000,000 for fiscal year 1989, and such sums as are necessary for each of the fiscal years 1990 and 1991. There are authorized to be appropriated $10,000,000 in fiscal year 1988, $10,000,000 in fiscal years 1989 and 1990, and such sums as are necessary in fiscal year 1991, to carry out section 516.".

(b) DISSEMINATION OF INFORMATION.—Subpart 2 of part B of title V is amended by adding after section 515 (42 U.S.C. 290cc.) the following new section:

"SEC. 515A. DRUG TREATMENT INFORMATION.

"The Secretary, in cooperation with the Administrator shall disseminate through publications, conferences, professional meetings, the development of curricular materials, and through other appropriate means, information concerning effective treatment methods for drug abuse.".

(c) EVALUATION OF THE VETERANS' ADMINISTRATION INPATIENT AND OUTPATIENT DRUG AND ALCOHOL DRUG TREATMENT PROGRAMS.—Subsection 620A of title 38, United States Code, is amended by adding at the end thereof the following new subsection:

"(h) The Administrator of Veterans' Affairs shall conduct an evaluation of inpatient and outpatient drug and alcohol treatment programs operated by the Veterans' Administration. The evaluation shall include a determination of the medical advantages and cost-effectiveness of such programs, taking into consideration rates of readmission and rate of successful rehabilitation. There are authorized to be appropriated for the purpose of the conduct of such evaluation $1,000,000 in fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.".

(d) ANNUAL SURVEYS.—Subpart 2 of part D of title V (42 U.S.C. 290ee et seq.) is amended by adding at the end thereof the following new section:

"SEC. 549. ANNUAL SURVEYS BY NATIONAL INSTITUTE ON DRUG ABUSE.

"Notwithstanding any other provision of law, the Director of the National Institute on Drug Abuse shall conduct a national household survey on drug abuse and a high school senior survey on an annual basis. The Director shall collect additional information concerning certain groups of individuals who are not currently included or are undercounted in such surveys.".

SEC. 3027. DRUG ABUSE TREATMENT DEMONSTRATION PROJECTS.

Subpart 2 of part D of title V (42 U.S.C. 290ee et seq.) (as amended by section 3026(d) of this title) is further amended by adding at the end thereof the following new section:

"SEC. 550. DRUG ABUSE TREATMENT DEMONSTRATION PROJECTS.

"(a) ESTABLISHMENT.—The Secretary shall establish demonstration projects that provide grants to States for the purpose of enabling such States to provide effective treatment, and referrals for treatment, to individuals who abuse drugs.

"(b) AWARDING OF GRANTS.—

"(1) SELECTION AREAS.—The Secretary shall award grants under subsection (a) to projects that operate in areas—

"(A) in which a demand for drug treatment services exists, or a need for such services exists which exceeds the capacity of organizations operating in that area to provide such services;

"(B) that have a high prevalence of drug abuse;

"(C) that have a high incidence of drug related criminal activities; and

"(D) that meet any other requirements that the Secretary determines are appropriate.

"(2) FOCUS OF ORGANIZATIONS.—In awarding grants under subsection (a), the Secretary shall—

"(A) select three projects each of which focus on at least one of the following areas of treatment:

"(i) treatment of adolescents;

"(ii) treatment of minorities;

"(iii) treatment of pregnant women;

"(iv) treatment of female addicts and the children of such females; and

"(v) treatment of the residents of public housing projects; and

"(B) select at least one project that includes a centralized local referral unit that shall provide—

"(i) an initial analysis of the nature of the individual's problem and refer such individual to appropriate existing drug treatment programs; and

"(ii) assistance to school teachers and other individuals who come into contact with drug abusers when attempting to refer such abusers to appropriate drug treatment programs.

"(c) Application.—A State that desires to participate in a project established under subsection (a) shall submit a written application to the Secretary in such form and containing such information as the Secretary may by regulation request.

"(d) Preferences.—In awarding grants under subsection (a), the Secretary shall give preference to projects that demonstrate a comprehensive approach to the problems associated with drug abuse and provide evidence of broad community involvement and support, including the support of private businesses, law enforcement authorities, health care providers, local school systems, and local governments in the proposed demonstration project.

"(e) Time Period for Projects.—Projects funded under this section shall be for a period of at least three years but in no event to exceed five years.

"(f) Evaluations.—The Secretary shall require, as a condition of awarding grants under this section, a systematic evaluation of the projects funded under this section on a long term basis to record the impact of such projects on treated individuals, and on the community as a whole. The methodology used in the evaluation shall be published in the Federal Register for comment before becoming effective.

"(g) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section $24,000,000 for fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 through 1993.".

SEC. 3028. RESEARCH ON ALCOHOL AND DRUG ABUSE TREATMENT PROGRAMS.

Part D of title V (42 U.S.C. 290dd et seq.) is amended by adding at the end thereof the following new subpart:

"Subpart 3—Provisions Relating to Both Alcohol and Drug Abuse

"SEC. 560. SERVICES RESEARCH ON ALCOHOL AND DRUG ABUSE TREATMENT PROGRAMS.

"(a) In General.—The Secretary, acting through the Directors of the National Institute on Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse, shall develop and maintain an ongoing program of research and evaluation of alcohol and drug abuse treatment programs to—

"(1) determine the most effective methods of treatment for alcohol and drug abuse; and

"(2) assess the comparative efficacy and cost-effectiveness of different methods of alcohol and drug abuse treatment.

"(b) Funding Program.—Research and evaluation required in subsection (a) may be carried out through grants, contracts, or cooperative agreements.

"(c) Plan.—Not later than 6 months after the effective date of the Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate a plan for the program to be established under subsection (a).".

SEC. 3029. COMPREHENSIVE COMMUNITY PREVENTION INITIATIVES.

Part D of title V (42 U.S.C. 290dd et seq.) is amended by adding at the end thereof the following new sections:

"SEC. 561. THE COMMUNITY YOUTH ACTIVITY PROGRAM.

"(a) Block Grant Program.—The Secretary shall make grants to States to enable such States to carry out the activities described in subsection (e).

"(b) Application.—

"(1) In general.—To be eligible to receive a grant under this section, a State shall submit to the Secretary an application that contains such information and is in such form as may be required by the Secretary.

"(2) Demonstration of need.—In the application submitted under paragraph (1), the State shall demonstrate a need for the activities described in subsection (e) and provide a description of those programs that will receive assistance under this section.

"(c) Amount of grant.—

"(1) Minimum amount.—Each State that submits an application under subsection (b) that meets the requirements of the Secretary shall, subject to the availability of appropriations, receive a grant in an amount that equals at least $250,000 in each fiscal year.

"(2) Programs of national significance.—Of amounts appropriated or otherwise available to carry out this section for any fiscal year, the Secretary shall reserve 5% of such amounts to be provided for projects of national significance, such as activities authorized in section 681(a)(2)(F) of the Community Services Block Grant Act (42 U.S.C. Sec. 9910(a)(2)(F)) or other projects expected to have a significant impact in preventing use of drugs among youth.

"(3) Specified appropriations.—

"(A) In general.—If the amount appropriated under subsection (f) is less than $50,000,000, the Secretary shall allot 25 percent of such amount equally among the 50 States with the remainder to be apportioned as described in subparagraph (B).

"(B) Remainder.—Amounts remaining after the allotment under subparagraph (A) shall be disbursed according to priorities developed by the Secretary that are designed to target funds to those States—

"(i) where the highest proportions of school aged children are at risk of substance abuse;

"(ii) where a tangible need has been identified by the State; and

"(iii) where the State has proposed the funding of additional programs targeted at the areas of highest need.

"(d) Priority.—In making grants under this section, the Secretary shall give priority to—

"(1) projects aimed at youth not in school or who are at risk of dropping out of school;

"(2) projects that seek to reinvolve dropouts in educational programs, involve youth community-based activities, develop training or employment opportunities for dropouts, or provide youth with alternatives to substance abuse;

"(3) projects to provide after-school, vacation and weekend activities designed to give youth opportunities to actively participate in a variety of activities;

"(4) projects that include participation by the business community;

"(5) projects that provide outreach to individuals of all ages who are at high risk of involvement with substance abuse;

"(6) projects targeted to communities with the most serious drug problems to enable such communities to develop programs that coordinate Federal, State, and local efforts to develop comprehensive, long-term, community-wide prevention and education strategies; and

"(7) projects that seek to involve youth who are members of gangs or who may join a gang in educational programs, community-based activities, training or employment opportunities or other alternatives to gang involvement and that seek to inform such youth of such services.

"(e) Activities.—The following activities may be conducted with the assistance received under this section:

"(1) Substance abuse education centers.—Funding may be provided for State regional substance abuse education and prevention centers designed to provide technical assistance, outreach, consultation, training, and referral services to schools, organization, community members and individual grantees under this program.

"(2) Community services.—Funding may be provided for community services and partnerships designed to develop community activities targeted at substance abuse prevention through education, training, and recreation projects including local educational agencies, local or State health department or community health or mental health centers, law enforcement agencies, community-based organizations, community action agencies, local or State recreational departments, or business organizations. Applications for grants under this paragraph shall include a description of the method to be used in evaluating the impact the program is having on the drug problem within the community.

"(3) Other projects.—Funding may be provided to other projects or proposals that are consistent with the intent of the program authorized under this section.

"(f) Authorization of Appropriations.—There are authorized to be appropriated to make grants under this section, $40,00,000 for fiscal year 1989, $55,000,000 for fiscal year 1990, $60,000,000 for fiscal year 1991, $66,550,000 for fiscal year 1992, and $73,205,000 for fiscal year 1993.

"(g) Project Evaluations.—The Secretary shall evaluate projects conducted with assistance received under this section and applications for grants under this section shall include a description of the method to be used in evaluating the impact the program is having on the drug problem within the community.

"SEC. 562. EVALUATION OF SUBSTANCE ABUSE EDUCATION AND PREVENTION EFFORT.

"(a) Method.—The Secretary, acting through the Administrator, shall develop and conduct a structured evaluation of the different approaches utilized across the Nation to reduce substance abuse.

"(b) Grants.—The Administrator may enter into grants or contracts with appropriate entities for the purpose of conducting the evaluations required under subsection (a).

"(c) Time of Reports.—The Secretary shall submit reports based on the evaluations prepared under subsection (a) not later than 1 year after the effective date of this section, and another report based on such evaluations not later than 3 years after such date. A final report shall be submitted by the Secretary not later than January 1, 1994.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $12,000,000 in fiscal year 1989, and $15,000,000 for each of the fiscal years 1990 through 1993.".

SEC. 3030. AUTHORIZATION OF APPROPRIATIONS.

(a) TECHNICAL ASSISTANCE.—Sections 541 (42 U.S.C. 290dd) and 545 are amended by adding at the end thereof the following new subsection:

"(c) There are authorized to be appropriated in each of the fiscal years 1988 through 1991, $15,000,000 to carry out this section and section 1920A(1).".

(b) DATA COLLECTION.—Section 509D (as added in section 3014 of this Act) is amended by adding at the end thereof the following new subsection:

"(c) APPROPRIATIONS.—There is authorized to be appropriated in fiscal year 1989 $33,000,000, and for each of the fiscal years 1990 and 1991, $38,000,000 to be used by the Administration to carry out this section.".

Subtitle C—Institute of Medicine

SEC. 3031. STUDY BY THE INSTITUTE OF MEDICINE.

(a) STUDY.—The Secretary of Health and Human Services shall contract with the Institute of Medicine of the National Academy of Sciences to conduct a study concerning the effective and appropriate treatment, rehabilitation, and continuing care of persons suffering from severe and disabling mental illnesses.

(b) REPORT.—Not later than 18 months after the date of the signing of the contract with the Institute of Medicine, the Secretary of Health and Human Services shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report of the results of the study conducted under subsection (1).

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $1,000,000 in fiscal year 1989 to carry out this section.

Subtitle D—Alternative Utilization of Military Facilities

SEC. 3041. ACTION BY NATIONAL INSTITUTE ON DRUG ABUSE AND STATES CONCERNING MILITARY FACILITIES.

Subpart 2 of part D of title V (42 U.S.C. 290ee et seq.) (as amended by sections 3026(d) and 3027 of this title) is further amended by adding at the end thereof the following new section:

"SEC. 551. ACTION BY NATIONAL INSTITUTE ON DRUG ABUSE AND STATES CONCERNING MILITARY FACILITIES.

"(a) NATIONAL INSTITUTE ON DRUG ABUSE.—The Director of the National Institute on Drug Abuse shall—

"(1) coordinate with the agencies represented on the Commission on Alternative Utilization of Military Facilities the utilization of military facilities or parts thereof, as identified by such Commission, established under the National Defense Authorization Act of 1989, that could be utilized or renovated to house nonviolent persons for drug treatment purposes;

"(2) notify State agencies responsible for the oversight of drug abuse treatment entities and programs of the availability of space at the installations identified in paragraph (1); and

"(3) assist State agencies responsible for the oversight of drug abuse treatment entities and programs in developing methods for adapting the installations described in paragraph (1) into residential treatment centers.

"(b) STATES.—With regard to military facilities or parts thereof, as identified by the Commission on Alternative Utilization of Military Facilities established under section 3042 of the Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988, that could be utilized or renovated to house nonviolent persons for drug treatment purposes, State agencies responsible for the oversight of drug abuse treatment entities and programs shall—

"(1) establish eligibility criteria for the treatment of individuals at such facilities;

"(2) select treatment providers to provide drug abuse treatment at such facilities;

"(3) provide assistance to treatment providers selected under paragraph (2) to assist such providers in securing financing to fund the cost of the programs at such facilities; and

"(4) establish, regulate, and coordinate with the military official in charge of the facility, work programs for individuals receiving treatment at such facilities.

"(c) RESERVATION OF SPACE.—Prior to notifying States of the availability of space at military facilities under subsection (a)(2), the Director may reserve space at such facilities to conduct research or demonstration projects.".

SEC. 3042. AMENDMENT TO THE FEDERAL PROPERTIES AND ADMINISTRATIVE PROCEDURES ACT.

Section 203(j)(3)(B) of the Federal Property and Administrative Procedures Act of 1979 (40 U.S.C. 484(j)(3)(B)) is amended by inserting ", drug abuse treatment centers" after "health centers".

Subtitle E—Acquired Immunodeficiency Syndrome Block Grants

SEC. 3051. ACQUIRED IMMUNODEFICIENCY SYNDROME BLOCK GRANTS.

Part B of title XIX (42 U.S.C. 300x et seq.) is amended by adding at the end thereof the following new subpart:

"Subpart 3—Acquired Immunodeficiency Syndrome Grants

"SEC. 1920F. GRANTS.

"(a) AUTHORITY.—To carry out this section, there are authorized to be appropriated $95,000,000 for fiscal year 1989, and such sums as are appropriate for each of the fiscal years 1990 through 1991, to make grants to public and nonprofit private entities for projects and programs that seek to reduce the transmission of the acquired immunodeficiency virus in and by users of illegal intravenous drugs.

"(b) APPLICATIONS.—An allotment to a State shall not be made by the Secretary under subsection (a) unless the State has submitted an information and assurances section as designated in section 1920H(a), and such information and assurances section has been approved by the Secretary in consultation with the Director of the Centers for Disease Control, in accordance with section 1920H(a).

"SEC. 1920G. ALLOTMENTS.

"(a) RESERVATIONS.—The Secretary shall reserve $100,000 of the amount appropriated under section 1920F in each fiscal year for payments to Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, to be allotted in accordance with their respective needs.

"(b) STATE ALLOTMENT.—The allotment of a State under this section shall be based on the State's proportionate share of the number of intravenous drug use related cases of AIDS as reported by the Centers for Disease Control, but, subject to the availability of appropriations, in no case shall a State receive less than $150,000.

"(c) PUERTO RICO.—Puerto Rico shall be treated as a State in the determination of allotments under subsection (b).

"(d) DATA AND INFORMATION.—The Secretary shall obtain from each appropriate Federal agency, the most recent data and information, for the 12-month period immediately preceding the determination of the allotment, necessary to determine the allotments for fiscal year 1988, and for subsequent fiscal years, the Secretary shall obtain the most recent data and information, for the 2-year period immediately preceding the determination of the allotment.

"SEC. 1920H. REQUIRED INFORMATION AND ASSURANCES.

"In order to receive an allotment for a fiscal year under section 1920G, each State shall submit to the Secretary, as part of the alcohol, drug abuse, and mental health block grant application required under section 1916, an information and assurances section that shall contain—

"(1) such information as the Directors of the National Institute on Drug Abuse and the Centers for Disease Control shall require;

"(2) a description of the programs that will be implemented or improved with the assistance given under this subpart and the manner in which such programs will be coordinated with other public and private programs and activities;

"(3) assurances that, in the preparation of any statement under this section, the State will consult with local governments and the public and private entities (including community-based organizations) involved in the provision of services under this subpart;

"(4) a description of the manner in which the State will evaluate the programs and activities conducted with assistance provided under this subpart;

"(5) assurances that the State will prepare and submit a report, as required by the Secretary, on the results of the evaluations referred to in paragraph (4);

"(6) assurances that the State will prepare and submit reports, as required by the Secretary, containing data necessary to monitor relevant epidemiological changes; and

"(7) assurances that assistance provided to the State under this subpart will supplement and not supplant any State or local expenditures for treatment, outreach, prevention, and educational efforts targeted for users of illegal intravenous drugs at risk of contracting acquired immunodeficiency syndrome.

"SEC. 1920I. USE OF ALLOTMENTS.

"Amounts paid to a State under this subpart may be used by the State according to such requirements as the Secretary, acting through the Director of the National Institute on Drug Abuse, and in consultation with the Directors of the Centers for Disease Control, to establish programs that provide—

"(1) treatment for users of illegal intravenous drugs that have contracted, or are at risk of contracting the acquired immunodeficiency syndrome virus;

"(2) outreach services to users of illegal intravenous drugs;

"(3) aggressive efforts to prevent the transmission of the acquired immunodeficiency syndrome virus among users of illegal intravenous drugs; and

"(4) the training and organizational efforts necessary to accomplish all of the above.

"SEC. 1920J. PAYMENTS.

"(a) In General.—For each fiscal year, the Secretary shall make payments, as provided by section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213), to each State that has complied with section 1920H from the allotment under section 1920G (other than any amount reserved under section 1920G) from amounts appropriated for that fiscal year.

"(b) Unexpended Amounts.—

"(1) In general.—Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to such State for the next fiscal year for the purposes for which the payment was made.

"(2) Withholding of funds.—If in the judgment of the Secretary, a State is unlikely to use funds that are available to that State during a fiscal year for the purposes prescribed by the Secretary under section 1920I, the Secretary may withhold the amount otherwise available to that State in subsequent fiscal year.

"(c) Reduction in Payments.—

"(1) In general.—The Secretary, at the request of a State, may reduce the amount of payments under subsection (a) by—

"(A) the fair market value of any supplies or equipment furnished the State by the Federal government for the convenience of and at the request of the State; and

"(B) the amount of the pay, allowances, and travel expenses of any officer or employee of the Federal government when detailed to the State, and the amount of any other costs incurred in connection with the detail of such officer or employee, if such amount is expended for the convenience of and at the request of the State.

"(2) Reduced amounts.—The amount by which any payment is reduced under paragraph (1) shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment or in detailing the personnel, on which the reduction of the payment is based. The amount shall be considered to be part of the payment and to have been paid to the State.

"(d) Reallocations.—To the extent that all the funds appropriated under section 1920F for a fiscal year and available for allotment in such fiscal year are not otherwise allotted to States because—

"(1) one or more States have not submitted a satisfactory application with an information and assurances section in accordance with section 1920H for the fiscal year;

"(2) one or more States have notified the Secretary that they do not intend to use the full amount of their allotment; or

"(3) some State allotments are offset or repaid under subsection (c);

such excess shall be allotted among each of the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this subsection.

"SEC. 1920K. DEFINITION.

"As used in this subpart, the term 'illegal intravenous drug' includes any controlled substance as defined in section 102(6) of the Controlled Substance Act (21 U.S.C. 802(6)).".

Subtitle F—Miscellaneous

SEC. 3061. ESTABLISHMENT OF THE OFFICE OF ASSOCIATE DIRECTOR FOR SPECIAL POPULATIONS.

(a) National Institute on Alcohol Abuse and Alcoholism.—Section 502 (42 U.S.C. 290aa-1) is amended by adding at the end thereof the following new subsection:

"(e)(1) The Director shall designate an Associate Director for Special Populations.

"(2) The Secretary, acting through the Associate Director for Special Populations, shall—

"(A) develop and coordinate prevention, treatment, research, and administrative policies and programs to assure increased emphasis on the needs of women and minorities for the prevention and treatment of alcoholism and alcohol abuse and related problems;

"(B) support programs and projects relating to the delivery of services to women and minorities for the prevention and treatment of alcoholism and alcohol abuse and related problems, including demonstration programs and projects;

"(C) develop a plan to increase the representation of women and minorities in service delivery and manpower programs for the prevention and treatment of alcoholism and alcohol abuse and related problems;

"(D) support programs of basic and applied social and behavioral research on the problems of women and minorities relating to alcoholism and alcohol abuse;

"(E) study the effects of discrimination by institutions against alcoholics and alcohol abusers;

"(F) develop systems to assist women and minority individuals who are alcoholics or alcohol abusers in adapting to, and coping with, the effects of discrimination;

"(G) support and develop research, demonstration, and training programs designed to eliminate institutional discrimination against alcoholics and alcohol abusers; and

"(H) provide increased emphasis on the concerns of women and minorities in training programs, service delivery programs, and research activities of the Institute.".

(b) National Institute on Drug Abuse.—Section 503 (42 U.S.C. 290aa-2) is amended by adding at the end thereof the following new subsection:

"(e)(1) The Director shall designate an Associate Director for Special Populations.

"(2) The Secretary, acting through the Associate Director for Special Populations, shall—

"(A) develop and coordinate prevention, treatment, research, and administrative policies and programs to assure increased emphasis on the needs of women and minorities for the prevention and treatment of drug abuse and related problems;

"(B) support programs and projects relating to the delivery of services to women and minorities for the prevention and treatment of drug abuse and related problems, including demonstration programs and projects;

"(C) develop a plan to increase the representation of women and minorities in service delivery and manpower programs for the prevention and treatment of drug abuse and related problems;

"(D) support programs of basic and applied social and behavioral research on the problems of women and minorities relating to drug abuse;

"(E) study the effects of discrimination by institutions against drug abusers;

"(F) develop systems to assist women and minority individuals who are drug abusers in adapting to, and coping with, the effects of discrimination;

"(G) support and develop research, demonstration, and training programs designed to eliminate institutional discrimination against drug abusers; and

"(H) provide increased emphasis on the concerns of women and minorities in training programs, service delivery programs, and research activities of the Institute.".

SEC. 3062. MODEL DRUG ABUSE INSURANCE PLAN.

Subpart 2 of part D of title V (42 U.S.C. 290ee et seq.) (as amended by sections 3026(d), 3027, and 3043 of this title) is further amended by adding at the end thereof the following new section:

"SEC. 552. MODEL SUBSTANCE ABUSE INSURANCE PLAN.

"(a) Development.—The Secretary, in cooperation with the Directors of the National Institute on Drug Abuse and the National Institute on Alcohol Abuse and Alcoholism, members of the insurance industry, the Director of the Office of Personnel Management, and members of the business community, shall develop a model insurance benefit plan for consideration for adoption by the Administrator of the Office of Personnel Management and the Congress. In developing such a plan, the Secretary shall consider the costs and benefits of alternative coverage designs.

"(b) Report.—Not later than 6 months after the effective date of this title, the Secretary shall prepare and submit, to the appropriate Committees of Congress, a report that contains recommendations concerning the type of insurance described under subsection (a) together with a model plan for the provision of such insurance. The Director of the Office of Personnel Management shall report to the appropriate Committees of Congress concerning the appropriateness of incorporating the model plan developed under this section in the Federal Employee Health Benefit Program.

"(c) Availability of Report.—The report submitted under subsection (b) shall be made available by the Secretary to members of the insurance industry and business community.".

SEC. 3063. TRAINING AWARDS.

Section 487(d) (42 U.S.C. 288) is amended by adding at the end thereof the following: "There are authorized to be appropriated for fiscal year 1989 for payments under National Research Service Awards as provided by the Secretary not less than $10,000,000 more than the amount made available to the National Institute on Drug Abuse under this section in fiscal year 1988.".

SEC. 3064. GRANTS FOR TRAINING OF PERSONNEL TO TREAT DRUG ABUSE.

Subpart 2 of part B of title V (42 U.S.C. 290cc et seq.) is amended by adding at the end thereof the following new section:

"SEC. 518. GRANTS FOR TRAINING OF PERSONNEL TO TREAT SUBSTANCE ABUSE.

"(a) In General.—The Secretary may make grants to or enter into contracts with schools of medicine and osteopathy, health professions schools, schools of allied health professions, nurse training institutions, and institutions or organizations that offer education or continuing medical or health education to enable such institutions or organization—

"(1) to train physicians, psychologists, social workers, nurses, and counselors in the treatment of substance abuse;

"(2) to train health professionals, including physicians, psychologists, social workers, nurses, and counselors in the recognition of substance abuse and in the appropriate diagnosis and manner of referral of individuals who abuse substances for treatment of such abuse;

"(3) to develop curriculum and curricula materials to enable institutions or organizations to engage in the training of the type described in paragraphs (1) and (2); and

"(4) to provide stipends to individuals receiving training of the type described in paragraphs (1) and (2).

"(b) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section, $6,000,000 for fiscal year 1989.".

SEC. 3065. DRUG TESTING CERTIFICATION PROGRAM REQUIREMENTS.

(a) In General.—Not later than 6 months after the date of enactment of this Act, the Secretary of Health and Human Services shall establish a procedure to be used to certify certain clinical laboratories that analyze and determine the results of drug tests conducted by other entities or individuals, and to ensure that such laboratories maintain high quality and appropriate security concerning the results of such tests.

(b) Requirements.—Under the procedures referred to in subsection (a), a laboratory that conducts drug testing shall, as determined under guidelines prescribed by the Secretary of Health and Human Services—

(1) meet the mandatory guidelines, or be determined by the Secretary of Health and Human Services to have met the mandatory guidelines, established by the Secretary under subclauses (I) and (III) of section 503(a)(1)(A)(ii) of the supplemental Appropriations Act, 1987;

(2) have been inspected and accredited by national accrediting bodies approved for such purpose by the Secretary; or

(3) have been a State clinical laboratory certified under a State certification programs that is at least as stringent as that established by the Secretary under subsection (a).

(c) Spending Restriction.—The Secretary of Health and Human Services shall not expend any Federal funds for certification of individual laboratories to conduct drug testing of any Federal employees under this Act (or any amendments made by this Act). Costs associated with such certifications shall be the responsibility of the laboratories seeking the certification, except that this section shall not be construed to prohibit the use of such funds to develop standards, measurement instruments, or such other activities and functions as are necessary to establish and maintain a certification system.

SEC. 3066. EMPLOYEE ASSISTANCE PROGRAMS.

(a) Establishment.—The Secretary of Labor shall establish a program through which the Secretary shall provide grants to, or enter into contract with, employers to enable such employers to develop employee drug and alcohol abuse assistance programs.

(b) Applications.—Employers desiring to receive a grant or contract under this section shall submit to the Secretary of Labor, an application, in such form and containing such information as the Secretary may require.

(c) Regulations.—The Secretary of Labor shall promulgate regulations necessary to carry out this section.

(d) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section, $4,000,000 for fiscal year 1989, and $5,000,000 for each of the fiscal years 1990 and 1991.

SEC. 3067. DOMESTIC VOLUNTEER SERVICE ACT.

Section 501(c) of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5081(c)) is amended by adding at the end thereof the following new sentences: "In addition to the amounts authorized to be appropriated by the preceding sentence, there are authorized to be appropriated $4,000,000 in fiscal year 1989, and $5,000,000 for each of the fiscal years 1990 and 1991 to be available for support of drug abuse prevention, or which $500,000 may be used in each fiscal year for support programs. Notwithstanding any other provision of law, programs operated with funds appropriated under this subsection shall not be limited in time.".

SEC. 3068. REPORTS.

Not later than 1 year after the date of enactment of this title, the Secretary of Health and Human Services shall conduct a study, and prepare and submit, to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report concerning the range of treatment programs for drug abuse utilized with funds provided under the Public Health Service Act (42 U.S.C. 201 et seq.), and other such programs utilized by State and local governments and private organizations. Such report shall identify those programs that demonstrate effective treatment for drug abuse.

SEC. 3069. LEASE PURCHASE AUTHORITY.

Section 301 of the Public Health Service Act (42 U.S.C. 241) is amended by adding at the end thereof the following new subsection:

"(j)(1) Notwithstanding any other provision of law, the Secretary is authorized to enter into lease-purchase contracts, for period not to exceed 30 years, for the acquisition by lease of buildings and facilities needed by the Public Health Service in the pursuit of its mission to continually improve the health of the nation. The authority of the Secretary to enter into any lease-purchase contract shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by Appropriations Acts.

"(2) Office and special purpose facilities acquired under paragraph (1) shall accommodate activities such as research, experiments, investigations, demonstrations, and case studies of the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and impairments of man, as well as the support function necessary for such activities.

"(3) If the lease-purchase contract involves new construction, the building may be built by a private party on land owned by the United States and under the jurisdiction of the Public Health Service or on land not owned by the United States. The title to such health facilities and the associated land leased under this authority, shall vest in the United States on the expiration of the contract term, or at the time the United States fulfills its financial obligation under the contract.

"(4) The Secretary shall notify Congress annually of the terms of the lease-purchase contracts.".

Subtitle G—Drug Education

SEC. 3081. SHORT TITLE.

This subtitle may be cited as the "Drug-Free Schools Amendments of 1988".

SEC. 3082. AUTHORIZATION OF APPROPRIATIONS.

Section 5111(a) of the Drug-Free Schools and Communities Act of 1986 (hereafter in this subtitle referred to as the "Act") is amended by striking out "$250,000,000 for the fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990, 1991, 1992, and 1993" and inserting in lieu thereof "$405,000,000 for fiscal year 1989, $489,500,000 for fiscal year 1990, $538,450,000 for fiscal year 1991, $592,295,000 for fiscal year 1992, and $651,524,500 for fiscal year 1993".

SEC. 3083. NEW STATE PROGRAMS.

(a) Training Activities Priority.—Section 5122(a) of the Act is amended by inserting at the end thereof the following new flush sentence:

"Activities described in paragraph (2) of this subsection shall receive priority for the use of funds allocated under this section.".

(b) State Regional Centers Authorized.—Section 5122(a) of the Act is amended—

(1) by striking out "and" at the end of paragraph (5);

(2) by striking out the period at the end of paragraph (6) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding at the end thereof the following new paragraph:

"(7) State regional drug and alcohol abuse education and prevention centers for providing outreach, consultation, training, and referral services to schools, organizations, and members of the community.".

(c) Innovative Programs.—Section 5122(b) of the Act is amended—

(1) by redesignating subparagraphs (B) through (I) as subparagraphs (C) through (J), respectively; and

(2) by adding after subparagraph (A) the following new subparagraph:

"(B) has experienced chronic failure in school;".

SEC. 3084. STATE APPLICATIONS.

Section 5123(b) of the Act is amended—

(1) by redesignating paragraphs (6) through (9) as paragraphs (7) through (10), respectively;

(2) by adding after paragraph (5) the following new paragraph:

"(6) include a detailed comprehensive plan describing how money allocated to the chief executive officer is to be used;";

(3) by striking out "and" at the end of paragraph (9) (as redesignated by this section);

(4) by striking out the period at the end of paragraph (10) (as redesignated by this section) and inserting in lieu thereof a semicolon; and

(5) by adding at the end thereof the following new paragraph:

"(11) provide a description of State Teacher Certification requirements, if applicable, regarding training in drug and alcohol abuse education and prevention including a description of the extent to which substance abuse education and prevention is included in teacher training curricula in the State.".

SEC. 3085. RESPONSIBILITY OF STATE AGENCIES.

(a) Model Curriculum.—Section 5124(b)(2) of the Act is amended to read as follows:

"(2) the development, identification, and dissemination of model curriculum materials for consideration by local educational agencies and for evaluation of the materials;".

(b) Teacher Training Priority.—Section 5124(b) of the Act is further amended by inserting at the end thereof the following new flush sentence:

"Activities described in paragraph (1) of this subsection shall receive priority for the use of funds allocated under this section.".

SEC. 3086. LOCAL DRUG AND ALCOHOL ABUSE EDUCATION AND PREVENTION PROGRAMS.

(a) Counseling Programs.—Section 5125(a)(4) of the Act is amended by striking out "and parents," and inserting in lieu thereof a comma and the following: "parents, and families,".

(b) Counseling and Referral Services.—Section 5125(a) of the Act is amended—

(1) by redesignating paragraphs (5) through (12) as paragraphs (7) through (14), respectively; and

(2) by adding after paragraph (4) the following new paragraphs:

"(5) outreach activities, drug and alcohol abuse prevention programs, and referral services, for school dropouts;

"(6) counseling programs and referral services for parents and siblings of drug and alcohol abusers;".

SEC. 3087. REPORTS.

Section 5127 of the Act is amended to read as follows:

"SEC. 5127. REPORTS.

"(a) State Reports.—Each State shall submit to the Secretary a biennial report that contains information on the State and local programs conducted with assistance furnished under this Act. Each such report shall be in a standard format and shall request standard information as prescribed by the Secretary and shall include—

"(1) a description of the extent of the current drug and alcohol problem in the elementary and secondary schools in the State;

"(2) a description of the drug and alcohol policy in the schools in the State;

"(3) the number of individuals served by this Act;

"(4) the characteristics of populations served;

"(5) types of service provided and duration of the services;

"(6) information on how the State has targeted the populations listed under section 5122(b)(2) of this Act; and

"(7) a description of the effectiveness of the drug and alcohol abuse education and prevention programs in the State.

"(b) Local Reports.—Each local educational agency receiving funds under this Act shall submit to the appropriate State educational agency such information as is requested by such State educational agency for purposes of preparing the biennial report required in subsection (a). Such information shall be requested by the State educational agency as part of the local educational agency application and progress reports required under section 5126.".

SEC. 3088. TEACHER TRAINING.

(a) In General.—The Act is amended—

(1) by redesignating part C, part D, and part E as part D, part E, and part F, respectively; and

(2) by inserting after part B the following new part:

"PART C—TEACHER TRAINING

"SEC. 5128. PROGRAM AND ALLOCATIONS.

"(a) In General.—From the sum available under section 5112(c), the Secretary shall make grants to State educational agencies, local educational agencies, and institutions of higher education for teacher training programs in accordance with this part.

"(b) Use of Funds.—Funds made available under this part shall be used to establish, expand, or enhance programs and activities for the training of teachers, administrators, counselors, and other educational personnel concerning drug and alcohol abuse education and prevention. Such programs shall be coordinated through the State agency for higher education or State educational agency, as appropriate, and, shall be coordinated, as appropriate, with the activities of the Regional Centers established under section 5135 of this title.

"(c) Applications.—(1) In order to be eligible to receive a grant under this section for any fiscal year, a State educational agency, a local or intermediate educational agency, an institution of higher education, or consortium thereof, shall submit an application to the Secretary at such time and in such manner as the Secretary shall prescribe.

"(2) Each such application shall—

"(A) set forth the activities and programs to be carried out with funds paid under this part;

"(B) contain an estimate of the cost for the establishment and operation of such programs;

"(C) provide assurances that the Federal funds made available under this section shall be used to supplement and, to the extent practical, to increase the level of funds that would, in the absence of such Federal funds, be made available by the applicant for the purpose described in this part, and in no case supplant such funds;

"(D) provide assurances of compliance with the provisions of this part; and

"(E) include such other information and assurances as the Secretary reasonably determines to be necessary.".

(b) Authorization for Part C.—Section 5111(a) of the Act is amended—

(1) by inserting "(1)" after the subsection designation;

(2) by inserting after "title" the following: "(other than part C)"; and

(3) by adding at the end thereof the following:

"(2)(A) Subject to subparagraph (B), for the purpose of carrying out part C, there are authorized to be appropriated $16,000,000 for fiscal year 1989, and $20,000,000 for each of the succeeding fiscal years ending prior to October 1, 1993.

"(B) No funds may be appropriated for any fiscal year under subparagraph (A) unless the amount appropriated under paragraph (1) of this subsection exceeds $230,000,000 for such year.".

SEC. 3089. FEDERAL ACTIVITIES.

(a) In General.—Section 5132(b)(3) of the Act is amended by inserting before the semicolon a comma and the following: "and coordinate activities to support and complement private media efforts of the Partnership for a Drug-Free America".

(b) Studies.—(1) Section 5132(c) of the Act is amended—

(A) by inserting "(1)" before "The"; and

(B) by striking out the last sentence and inserting in lieu thereof the following:

"(2) The Secretary shall summarize and consolidate the reports submitted under section 5127(a) and shall transmit such summary and consolidation, together with recommendations for future education and prevention efforts to the Associate Director of the Office on National Drug Control Policy, and to the Congress.

"(3) The Secretary, in conjunction with the Secretary of Health and Human Services, shall conduct an independent evaluation, directly or by contract, of a representative sample of programs assisted under this title and shall identify successful projects which may be replicated by other local educational agencies throughout the country. The Secretary shall transmit—

"(A) an interim report containing the results of such evaluation and a description of such projects to the Congress not later than October 1, 1991, and

"(B) a final report containing such information not later than January 1, 1994.

In addition, the Secretary shall disseminate such information through the National Diffusion Network, and through the Regional Centers contained in section 5135.".

SEC. 3090. DRUG-FREE SCHOOLS MODEL CRITERIA AND FORMS.

Section 5142 of the Act is amended by redesignating subsection (b) as subsection (c) and inserting the following new subsection after subsection (a):

"(b) Model Criteria and Forms.—The Secretary, in consultation with national organizations, shall develop model criteria and forms for the collection of data and information with respect to programs assisted under this title. In order to enable schools and community-based organizations to share uniform data and information with respect to programs assisted under this part, the model criteria and forms shall be disseminated to the Regional Centers as a resource to State and local educational programs.".

SEC. 3091. DEVELOPMENT OF EARLY CHILDHOOD EDUCATION DRUG ABUSE PREVENTION CURRICULUM MATERIALS.

The Act is further amended—

(1) by redesignating part F as part G; and

(2) by inserting after part E the following new part:

"PART F—DEVELOPMENT OF EARLY CHILDHOOD EDUCATION DRUG ABUSE PREVENTION CURRICULUM MATERIALS

"SEC. 5151. PROGRAM AUTHORIZED.

"(a) General Authority.—The Secretary shall, in consultation with the Secretary of Health and Human Services, provide for the development of age-appropriate drug abuse education and prevention curricula, programs, and training materials for use in early child development programs, and provide for the dissemination of such materials to early child development programs, including Head Start programs, preschool programs funded under chapter 1 of title I of the Education Consolidation and Improvement Act, and such other preschool programs as the Secretary deems appropriate.

"(b) Reservation.—The Secretary shall, from sums appropriated under section 5112(a)(5), reserve not less than $1,000,000 to carry out the development and dissemination of the materials provided for in this part.".

Subtitle H—Effective Date

SEC. 3092. EFFECTIVE DATE.

This title and the amendments made by this title shall become effective on October 1, 1988, or on the date of the enactment of this Act, whichever occurs later.

TITLE IV—INTERNATIONAL NARCOTICS CONTROL AND ASSISTANCE TO FOREIGN COUNTRIES

SEC. 4001. TABLE OF CONTENTS.

The table of contents for this title is as follows:

TITLE V—INTERNATIONAL NARCOTICS CONTROL AND ASSISTANCE TO FOREIGN COUNTRIES

Sec. 4001. Table of contents.

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Sec. 4201. Certification procedures under the Trade Act of 1974 for drug producing and drug-transit countries.
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Subtitle D—Latin American Anti-Drug Strike Force

Sec. 4401. Latin American anti-drug strike force.

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Sec. 4501. Contracting authority.
Sec. 4502. International currency transaction reporting.
Sec. 4503. Policy toward an international drug conference.
Sec. 4504. Sense of the Congress calling for negotiations to create an international drug force.
Sec. 4505. United States reliance on narcotics raw materials from foreign sources.

Subtitle A—Authorization of Appropriations; Allocation of Funds

SEC. 4101. AUTHORIZATIONS OF APPROPRIATIONS.

Section 482(a) of the Foreign Assistance Act of 1961 is amended—

(1) by amending paragraph (1) to read as follows:

"(1) To carry out the purposes of section 481, there are authorized to be appropriated to the President $101,000,000 for the fiscal year 1989."; and

(2) by striking out paragraph (3).

SEC. 4102. AUTHORIZATION OF APPROPRIATIONS FOR MULTILATERAL AND REGIONAL DRUG ABUSE CONTROL PROGRAMS.

Section 302 of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new subsection:

"(j) In addition to amounts otherwise available under this section for such purposes, there are authorized to be appropriated to the President $5,000,000 for fiscal year 1989 to be available only for the United States contribution to multilateral and regional drug abuse control programs. Of the amount authorized to be appropriated by the preceding sentence—

"(1) $3,000,000 shall be for the United States contribution to the United Nations Fund for Drug Abuse Control;

"(2) $600,000 shall be for the Organization of American States (OAS) Inter-American Drug Abuse Control Commission (CICAD) Legal Development Project, except that the proportion which such amount bears to the total amount of contributions to this specific project may not exceed the proportion which the United States contribution to the OAS budget for that fiscal year bears to the total contributions to the OAS budget for that fiscal year; and

"(3) $400,000 shall be for the Organization of American States (OAS) Inter-American Drug Abuse Control Commission (CICAD) Law Enforcement Training Project, except that the proportion which such amount bears to the total amount of contributions to this specific project may not exceed the proportion which the United States contribution to the OAS budget for that fiscal year bears to the total contributions to the OAS budget for that fiscal year.".

SEC. 4103. MACHINE-READABLE DOCUMENT BORDER SECURITY PROGRAM.

(a)(1) There are authorized to be appropriated for the development, procurement, and implementation of a machine-readable travel and identity document border security program for fiscal year 1989, $23,000,000, of which amount $7,000,000 shall be available only for the United States Customs Service, $7,000,000 shall be available only for the Immigration and Naturalization Service in the Department of Justice, and $9,000,000 shall be available only for the Department of State to carry out the provisions of this section.

(2) Appropriations made pursuant to paragraph (1) shall be in addition to any appropriations requested by the President in his budget presented to the Congress on February 18, 1988, or appropriated in any regular appropriations Acts or continuing resolutions for the fiscal year ending on September 30, 1989.

(b) The Department of State, the United States Customs Service, and the Immigration and Naturalization Service shall develop a comprehensive machine-readable travel and identity document border security program that will improve border entry and departure control through automated data capture of machine-readable travel and identity documents. Within 60 days of the date of enactment of this Act, the Department of State, the Customs Service, and the Immigration and Naturalization Service shall jointly submit a detailed implementation plan to the Congress and the President regarding how they intend to carry out the program authorized under this section. Such border security program shall include an integrated cooperative data exchange system that will incorporate law enforcement data on narcotics traffickers, terrorists, convicted criminals, fugitives, and others currently documented in the Lookout Systems of all three agencies and departments. In developing this border security program mandated in this section, the agencies and departments shall ensure that at least the following documents shall be integrated into the program and be machine-readable: border crossing cards; alien registration; pilots licenses; passports; and visas.

(c) The following agencies and organizations shall contribute appropriate law enforcement data to the integrated cooperative data exchange system mandated in subsection (b) and shall update such information into the system on no less than a monthly basis:

(1) the Drug Enforcement Administration in the Department of Justice;

(2) the Federal Bureau of Investigation in the Department of Justice;

(3) INTERPOL;

(4) the Bureau of Alcohol, Tobacco, and Firearms in the Department of Treasury;

(5) the Internal Revenue Service in the Department of Treasury;

(6) the Federal Aviation Administration in the Department of Transportation;

(7) the United States Marshals Service in the Department of Justice; and

(8) the United States Coast Guard in the Department of Transportation.

(d) All agencies participating in the development and implementation of the border security program and systems mandated and authorized in this section shall maintain their participation and contributions to the program and systems authorized under this section at full implementation levels in fiscal years 1990, 1991, and 1992, subject to the availability of appropriations.

SEC. 4104. COOPERATIVE NONMAJOR DRUG-TRANSIT COUNTRIES.

(a) The Assistant Secretary of State for International Narcotics Matters shall give greater attention, and provide more narcotics control assistance, to those countries which are drug-transit countries but are not major drug-transit countries (as defined in section 481(i)(5) of the Foreign Assistance Act of 1961) and which are cooperating fully with the United States in its international narcotics control efforts.

(b) Of the amounts made available for the fiscal year 1989 to carry out chapter 8 of part I of the Foreign Assistance Act of 1961 (relating to international narcotics control), not less than $2,500,000 shall be available only for assistance to countries described in subsection (a).

SEC. 4105. ADDITIONAL FUNDS FOR REWARDS FOR INFORMATION RELATING TO INTERNATIONAL TERRORISM.

Section 36(g) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2708(g)) is amended in the first sentence by striking out "$5,000,000" and inserting in lieu thereof "$6,000,000".

SEC. 4106. REALLOCATION OF FUNDS WITHHELD FROM COUNTRIES WHICH FAIL TO TAKE ADEQUATE STEPS TO HALT ILLICIT DRUG PRODUCTION OR TRAFFICKING.

(a) Chapter 8 of part I of the Foreign Assistance Act of 1961 is amended by adding at the end the following:

"SEC. 486. REALLOCATION OF FUNDS WITHHELD FROM COUNTRIES WHICH FAIL TO TAKE ADEQUATE STEPS TO HALT ILLICIT DRUG PRODUCTION OR TRAFFICKING.

"(a) ADDITIONAL ASSISTANCE FOR COUNTRIES TAKING SIGNIFICANT STEPS.—If any funds authorized to be appropriated for any fiscal year for security assistance are not used for assistance for the country for which those funds were allocated because of the requirements of section 481(h) or any other provision of law requiring the withholding of assistance for countries that have not taken adequate steps to halt illicit drug production or trafficking, the President shall use those funds for additional assistance for those countries which have met their illicit drug eradication targets or have otherwise taken significant steps to halt illicit drug production or trafficking, as follows:

"(1) International narcotics control assistance.—Those funds may be transferred to and consolidated with the funds appropriated to carry out this chapter in order to provide additional narcotics control assistance for those countries. Funds transferred under this paragraph may only be used to provide increased funding for activities previously justified to the Congress. Transfers may be made under this paragraph without regard to the 20-percent increase limitation contained in section 610(a). This paragraph does not apply with respect to funds made available for assistance under the Arms Export Control Act.

"(2) Security assistance.—Any such funds not used under paragraph (1) shall be reprogrammed within the account for which they were appropriated (subject to the regular reprogramming procedures under section 634A) in order to provide additional security assistance for those countries.

"(b) Definition of Security Assistance.—As used in this section, the term 'security assistance' means assistance under chapter 2 of part II of this Act (relating to the military assistance program), chapter 4 of part II of this Act (relating to the Economic Support Fund), chapter 5 of part II of this Act (relating to international military education and training), or the Arms Export Control Act (relating to foreign military sales credits).".

(b) The amendment made by subsection (a) does not apply with respect to funds appropriated prior to the date of enactment of this Act.

SEC. 4107. PILOT AND AIRCRAFT MAINTENANCE TRAINING FOR NARCOTICS CONTROL ACTIVITIES.

(a) Earmarking of Funds.—Not less than $2,000,000 of the funds made available for fiscal years 1989 to carry out chapter 5 of part II of the Foreign Assistance Act of 1961 (relating to international military education and training) shall be available only for—

(1) education and training in the operation and maintenance of equipment used in narcotics control interdiction and eradication efforts for countries in Latin America and the Caribbean; and

(2) the expenses of deploying, upon the request of the government of a foreign country, Department of Defense mobile training teams in that foreign country to conduct training in military-related individuals and collective skills that will enhance that country's ability to conduct tactical operations in narcotics interdiction.

(b) Relationship to International Narcotics Control Assistance Program.—Assistance under this section shall be coordinated with assistance provided under chapter 8 of part I of that Act (relating to international narcotics control).

(c) Waiver of Section 660.—Assistance may be provided pursuant to this section notwithstanding the prohibition contained in section 660 of the Foreign Assistance Act of 1961 (relating to police training).

SEC. 4108. PROCUREMENT OF WEAPONS TO DEFEND AIRCRAFT INVOLVED IN NARCOTICS CONTROL EFFORTS.

(a) Earmarking of MAP Funds.—Of the funds available to carry out chapter 2 of part II of the Foreign Assistance Act of 1961 (relating to grant military assistance), $1,000,000 for the fiscal year 1989 shall be made available to arm, for defensive purposes, aircraft used in narcotic control eradication or interdiction efforts. These funds may only be used to arm aircraft already in the inventory of the recipient country and may not be used for the purchase of new aircraft.

(b) Notification to Congress.—The Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate shall be notified of the use of any such funds for that purpose at least 15 days in advance in accordance with the reprogramming procedures applicable under section 634A of the Foreign Assistance Act of 1961.

Subtitle B—Restrictions on Foreign Assistance and Trade Benefits

SEC. 4201. CERTIFICATION PROCEDURES UNDER THE TRADE ACT OF 1974 FOR DRUG PRODUCING AND DRUG-TRANSIT COUNTRIES.

(a) In General.—Paragraph (1) of section 802(b) of the Trade Act of 1974 (19 U.S.C. 2492(b)(1)) is amended to read as follows:

"(1) Subsection (a) shall not apply with respect to a country if the President determines and so certifies to the Congress, at the time of the submission of the report required by section 481(e) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(e)), that—

"(A) during the previous year that country has cooperated fully with the United States, or has taken adequate steps on its own—

"(i) in preventing narcotic and psychotropic drugs and other controlled substances produced or processed, in whole or in part, in such country or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from being transported, directly or indirectly, into the United States;

"(ii) in preventing and punishing the laundering in that country of drug-related profits or drug-related monies; and

"(iii) in preventing and punishing bribery and other forms of public corruption which facilitate the production, processing, or shipment of narcotic and psychotropic drugs and other controlled substances, or which discourage the investigation and prosecution of such acts; or

"(B) for a country that would not otherwise qualify for certification under subparagraph (A), the vital national interests of the United States require exemption of such country from the provisions of subsection (a).".

(b) Conditions on Certification.—Paragraph (2) of section 802(b) of the Trade Act of 1974 (19 U.S.C. 2492(b)(2)) is amended to read as follows—

"(2) In making the certification required by paragraph (1) of this subsection, the President shall consider whether such government—

"(A) has taken actions that have resulted in maximum reductions in illicit drug production which were determined to be achievable pursuant to subsection (e)(4);

"(B) has taken the legal and law enforcement measures to enforce in its territory, to the maximum extent possible, the elimination of illicit cultivation and the suppression of illicit manufacture of and traffic in narcotic and psychotropic drugs and other controlled substances, as evidenced by seizures of such drugs and substances, and the arrest, prosecution, conviction and incarceration of violators involved in the traffic in such drugs and substances affecting the United States;

"(C) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering in that country of drug-related profits or drug-related moneys, as evidenced by—

"(i) the enactment and enforcement of laws prohibiting such conduct,

"(ii) whether such government has entered into and is cooperating under the terms of mutual legal assistance agreements with the United States governing (but not limited to) money laundering, and

"(iii) the degree to which such government otherwise cooperates with United States law enforcement authorities on anti-money laundering efforts;

"(D) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, bribery and other forms of public corruption which facilitate the production, processing, or shipment of narcotic and psychotropic drugs and other controlled substances, or which discourage the investigation and prosecution of such acts, as evidenced by the enactment and enforcement of laws prohibiting such conduct;

"(E) has, as a matter of government policy, encouraged or facilitated the production or distribution of illegal drugs;

"(F) has any senior official who engages in, encourages, or facilitates the production or distribution of illegal drugs;

"(G) has investigated aggressively all cases in which any member of an agency of the United States Government engaged in drug enforcement activities since January 1, 1985, has been the victim of acts or threats of violence, inflicted by or with the complicity of any law enforcement or other officer of such country or any political subdivision thereof, and has energetically sought to bring the perpetrators of such offense or offenses to justice; and

"(H) having been requested to do so by the United States Government, fails to provide reasonable cooperation to lawful activities of United States drug enforcement agents, including the refusal of permission to such agents engaged in interdiction of aerial smuggling into the United States to pursue suspected aerial smugglers a reasonable distance into the airspace of the requested country.

"(I) has made necessary changes in legal codes in order to enable law enforcement officials to move more effectively against narcotics traffickers, such as new conspiracy laws and new asset seizure laws;

"(J) has expeditiously processed United States extradition requests relating to narcotics trafficking; and

"(K) has not protected or given haven to any known drug traffickers and has expeditiously processed extradition requests relating to narcotics trafficking made by other countries.".

(c) Definition.—Section 805(3) of the Trade Act of 1974 (19 U.S.C. 2495(3)) is amended—

(1) by striking out "or" at the end of clause (B);

(2) by striking out the period at the end of clause (C) and inserting in lieu thereof "; or"; and

(3) by adding at the end thereof the following new clause:

"(D) in which bribery and other forms of public corruption which facilitate the production, processing, or shipment of narcotic and psychotropic drugs and other controlled substances, or which discourage the investigation and prosecution of such acts, are a significant problem.".

(d) MISCELLANEOUS AMENDMENTS.—Subsection (b) of section 802 of the Trade Act of 1974 (19 U.S.C. 2492(b)) is amended—

(1) by striking out "30" in paragraph (3) and inserting in lieu thereof "45";

(2) by striking out "30" each place it appears in paragraph (4) and inserting in lieu thereof "45"; and

(3) by adding at the end thereof the following new paragraph:

"(6) For purposes of this section, any country which was designated in the previous year as a major drug producing or drug transit country may not be considered to be cooperating fully with the United States unless it has entered into a bilateral narcotics agreement with the United States or multilateral agreement which achieves the objectives of this section.".

SEC. 4202. CERTIFICATION PROCEDURES FOR DRUG PRODUCING AND DRUG-TRANSIT COUNTRIES UNDER THE FOREIGN ASSISTANCE ACT OF 1961.

(a) Section 481(h)(2)(A)(i)(I) of the Foreign Assistance Act of 1961 is amended by inserting after "drug-related monies" the following: "and in preventing and punishing bribery and other forms of public corruption which facilitate the production, processing, or shipment of narcotic and psychotropic drugs and other controlled substances, or which discourage the investigation and prosecution of such acts".

(b) Section 481(h)(2)(A) of the Foreign Assistance Act of 1961 is amended by inserting "or a multilateral agreement which achieves the objectives of this subsection" after "(ii)".

(c) Section 585(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Public Law 100-202), is hereby repealed.

SEC. 4203. CRITERIA FOR CERTIFICATIONS.

Subsection 481(h)(3) of the Foreign Assistance Act of 1961 is amended to read as follows:

"(3) In making the certification required by paragraph (2) of this subsection, the President shall consider whether such government—

"(A) has taken actions that have resulted in maximum reductions in illicit drug production which were determined to be achievable pursuant to subsection (e)(4);

"(B) has taken the legal and law enforcement measures to enforce in its territory, to the maximum extent possible, the elimination of illicit cultivation and the suppression of illicit manufacture of and traffic in narcotic and psychotropic drugs and other controlled substances, as evidenced by seizures of such drugs and substances, and the arrest, prosecution, conviction and incarceration of violators involved in the traffic in such drugs and substances affecting the United States;

"(C) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering in that country of drug-related profits or drug-related moneys, as evidenced by—

"(i) the enactment and enforcement of laws prohibiting such conduct,

"(ii) whether such government has entered into and is cooperating under the terms of mutual legal assistance agreements with the United States governing (but not limited to) money laundering, and

"(iii) the degree to which such government otherwise cooperates with United States law enforcement authorities on anti-money laundering efforts;

"(D) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, bribery and other forms of public corruption which facilitate the production, processing, or shipment of narcotic and psychotropic drugs and other controlled substances, or which discourage the investigation and prosecution of such acts, as evidenced by the enactment and enforcement of laws prohibiting such conduct;

"(E) has, as a matter of government policy, encouraged or facilitated the production or distribution of illegal drugs;

"(F) has any senior official who engages in, encourages, or facilitates the production or distribution of illegal drugs;

"(G) has investigated aggressively all cases in which any member of an agency of the United States Government engaged in drug enforcement activities since January 1, 1985, has been the victim of acts or threats of violence, inflicted by or with the complicity of any law enforcement or other officer of such country or any political subdivision thereof, and has energetically sought to bring the perpetrators of such offense or offenses to justice; and

"(H) having been requested to do so by the United States Government, fails to provide reasonable cooperation to lawful activities of United States drug enforcement agents, including the refusal of permission to such agents engaged in interdiction of aerial smuggling into the United States to pursue suspected aerial smugglers a reasonable distance into the airspace of the requested country.

"(I) has made necessary changes in legal codes in order to enable law enforcement officials to move more effectively against narcotics traffickers, such as new conspiracy laws and new asset seizure laws;

"(J) has expeditiously processed United States extradition requests relating to narcotics trafficking; and

"(K) has not protected or given haven to any known drug traffickers and has expeditiously processed extradition requests relating to narcotics trafficking made by other countries.".

SEC. 4204. PERMISSIBLE USES OF AIRCRAFT AND EQUIPMENT.

(a) CERTIFICATION REQUIRED.—Section 481(e)(3) of the Foreign Assistance Act of 1961 is amended—

(1) by redesignating clauses (C) and (D) as clauses (D) and (E), respectively; and

(2) by inserting after clause (B) the following:

"(C) A certification by the Secretary of State that such country has not engaged in a pattern of misuse of United States aircraft or equipment made available under this chapter, including but not limited to spraying of food crops and transportation of troops or munitions for military purposes.".

(b) ELIGIBILITY FOR ASSISTANCE.—Section 482 of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new subsection:

"(b) Assistance may be provided under this chapter to a foreign country only if the Secretary of State has made a certification with respect to that country under section 481(e)(3)(C).".

SEC. 4205. EXEMPTION FOR ASSISTANCE FOR NARCOTICS AWARENESS.

Section 481(i)(4) of the Foreign Assistance Act of 1961 is amended in the text below clause (E)—

(1) by redesignating subclause (vii) as subclause (viii); and

(2) by inserting "(vii) assistance for narcotics education and awareness activities under section 126 of this Act," after "this Act,".

Subtitle C—Reporting Requirements

SEC. 4301. REPORTS CONCERNING CERTAIN COUNTRIES.

Section 2013 of the Anti-Drug Abuse Act of 1986 is amended—

(1) in subsection (a), by striking out "Not later than 6 months after the date of enactment of this Act and every 6 months thereafter," and inserting in lieu thereof "As part of each report required by section 481(e) of the Foreign Assistance Act of 1961,"; and

(2) in subsection (b), before "unless" insert "during the one-year period beginning on the date on which the report in which it was listed was submitted to the Congress".

SEC. 4302. REPORTING ON TRANSFER OF UNITED STATES ASSETS.

Any transfer by the United States Government to a foreign country for narcotics control purposes of any property seized by or otherwise forfeited to the United States Government in connection with narcotics-related criminal activity shall be subject to the regular reprogramming procedures applicable under section 634A of the Foreign Assistance Act of 1961. At the end of each fiscal year, the President shall submit a report to the Congress of all such transfers during that fiscal year, including an estimate of the fair market value and physical condition of each item of property transferred.

SEC. 4303. INFORMATION FROM OTHER AGENCIES IN ANNUAL NARCOTICS CONTROL REPORTS.

Section 481(e)(3) of the Foreign Assistance Act of 1961 is amended by adding after subparagraph (D) the following:

"(E) A section prepared by the Drug Enforcement Administration, a section prepared by the Customs Service, and a section prepared by the Coast Guard, which describes in detail—

"(i) the assistance provided or to be provided (as the case may be) to such country by that agency, and

"(ii) the assistance provided or to be provided (as the case may be) to that agency by such country,

with respect to narcotic control efforts during the preceding fiscal year, the current fiscal year, and the next fiscal year.".

SEC. 4304. REPORTS ON ASSISTANCE DENIED AND ON IDENTITIES OF CORRUPT OFFICIALS.

Section 481(e) of the Foreign Assistance Act of 1961 is amended by adding at the end the following new paragraphs:

"(8) Each report pursuant to this subsection shall describe the United States assistance for the preceding fiscal year which was denied, pursuant to subsection (h), to each major illicit drug producing country and each major drug-transit country.

"(9) Each report pursuant to this subsection shall describe, for each government evaluated under subparagraphs (D) through (G) of subsection (h)(3), the activities and identities of officials whose activities caused such government to be so evaluated.".

SEC. 4305. EXPRESSION IN NUMERICAL TERMS OF MAXIMUM ACHIEVABLE REDUCTIONS IN ILLICIT DRUG PRODUCTION.

Section 481(e)(4) of the Foreign Assistance Act of 1961 is amended by inserting after the second sentence the following: "Each determination of the President under the preceding sentence shall be expressed in numerical terms, such as the number of acres of illicitly cultivated controlled substances which can be eradicated.".

SEC. 4306. REPORT ON ASSISTANCE TO DRUG SOURCE COUNTRIES.

For the first report required pursuant to section 481(e) of the Foreign Assistance Act of 1961 after the date of enactment of this Act, the President shall include an assessment of what, if any, incentives may be appropriately provided to encourage each such country's further cooperation in an international strategy to prevent the illicit cultivation and manufacture of, and traffic in, narcotic and psychotropic drugs and other controlled substances.

SEC. 4307. NOTIFICATION AND REPORT ON DRUG PRODUCING AND DRUG-TRANSIT COUNTRIES.

Section 481(h) of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new paragraph:

"(6)(A) For purposes of identifying those countries which are subject to the restrictions of paragraph (1) and which are eligible for certification pursuant to paragraph (2), the Secretary of State shall prepare and transmit, not later than October 1 of each year, to the Congress a report identifying those countries which he determines, in accordance with subsection (i), to be major illicit drug producing countries and major drug-transit countries.

"(B) At least 30 days before the submission of such report, the Secretary of State shall notify the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives of those countries proposed to be identified in the report.

"(C) Each preliminary notification and report required by this paragraph shall include a description of the criteria used to define major drug-transit countries within the meaning of paragraph (5) of subsection (i).".

Subtitle D—Latin American Anti-Drug Strike Force

SEC. 4401. LATIN AMERICAN ANTI-DRUG STRIKE FORCE.

(a) The President shall direct the United States Ambassador to the Organization of American States, under the direction of the Secretary of State, to initiate diplomatic discussions with member states of the Organization of American States aimed at securing agreement to the formation of a multinational strike force to conduct operations against international illegal drug smuggling organizations wherever they may be found in the Western Hemisphere.

(b)(1) Not later than 6 months after the date of enactment of this Act, the Secretary of State shall report to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives on the progress United States diplomatic efforts have made toward achieving agreement on the establishment of such a multinational strike force.

(2) If diplomatic efforts toward achieving such a multinational strike force demonstrate progress or, if agreement has been reached, within 30 days after receipt of the report required under paragraph (1), the President shall submit to the Congress a supplemental budget request for the fiscal year ending September 30, 1989, and the fiscal year ending September 30, 1990, covering the United States share of the cost of operation and maintenance of the Latin American strike force established pursuant to this section.

Subtitle E—Miscellaneous Provisions

SEC. 4501. CONTRACTING AUTHORITY.

Section 482 of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new subsection:

"(e) All narcotics control program requirements for goods and services authorized to be funded pursuant to section 481 of this Act shall be considered, for purposes of chapter 1 of title 48 of the Code of Federal Regulations, to be of unusual and compelling urgency.".

SEC. 4502. INTERNATIONAL CURRENCY TRANSACTION REPORTING.

(a) FINDINGS AND PURPOSE.—

(1) FINDINGS.—The Congress finds that—

(A) the success of cash transaction and money laundering control statutes in the United States has been significant; and

(B) the United States should play a leadership role in the development of an international system of a similar kind.

(2) PURPOSE.—It is the purpose of this section to urge the United States Government, to the maximum extent practicable, to seek the active cooperation of other countries in the enforcement of these statutes, since only a truly multilateral approach can be effective in eliminating bank haven loopholes through which money launderers can escape.

(b) ESTABLISHMENT OF INTERNATIONAL AGENCY.—The Congress urges the Secretary of the Treasury to negotiate with finance ministers of foreign countries to establish an international currency control agency to—

(1) serve as a central source of information and database for international drug enforcement agencies;

(2) collect and analyze currency transaction reports filed by member countries; and

(3) encourage the adoption, by member countries, of uniform cash transaction and money laundering statutes.

(c) MAINTENANCE OF DOMESTIC EFFORT.—While establishing a multilateral agency will be the most effective method of combatting money laundering, the United States must itself continue to do everything it can to curb international money laundering.

SEC. 4503. POLICY TOWARD AN INTERNATIONAL DRUG CONFERENCE.

It is the sense of the Congress that—

(1) the President should convene as soon as possible an international conference to be known as the "International Conference on Combatting Illegal Drug Production, Trafficking, and Use in the Western Hemisphere";

(2) such conference should involve the heads of state, the highest-ranking law enforcement officers, and other appropriate officials from every government in the Western Hemisphere that is willing to combat the drug trade, and whose cooperation the President determines is essential to that goal; and

(3) such conference should focus exclusively on combatting the drug trade and, in particular, should emphasize enhancing cooperative efforts among the governments of the Western Hemisphere to—

(A) substantially reduce the production, cultivation, and processing of illicit drugs;

(B) eliminate the transshipment of such drugs through countries in the Western Hemisphere;

(C) curb the demand for and use of such drugs in every country in the Western Hemisphere;

(D) combat the problems of drug-related corruption and drug money laundering; and

(E) share intelligence information, extradite drug traffickers, and take other steps necessary to improve law enforcement efforts against the drug trade.

SEC. 4504. SENSE OF THE CONGRESS CALLING FOR NEGOTIATIONS TO CREATE AN INTERNATIONAL DRUG FORCE.

It is the sense of the Congress that the President should call for international negotiations for the purpose of agreeing on the establishment of an international drug force to pursue and apprehend major international drug traffickers.

SEC. 4505. UNITED STATES RELIANCE ON NARCOTICS RAW MATERIAL FROM FOREIGN SOURCES.

(a) REVIEW.—The President shall conduct a review of United States narcotics raw material policy to determine—

(1) the current and reserve international needs for opium-derived pharmaceutical and chemical products, and the relative capabilities for meeting those needs through the opium gum process and the concentrated poppy straw method of production;

(2) whether the United States should continue to rely on a single foreign country for all its licit opium gum;

(3) whether it should be United States policy to encourage all countries which produce licit opium to use the concentrated poppy straw method of production; and

(4) what options are available, consistent with treaties to which the United States is a party, to reduce United States reliance on licit opium gum from foreign sources.

The results of this review shall be reported to the Congress six months after the date of enactment of this Act.

(b) RESTRICTION ON PRESIDENTIAL CERTIFICATION.—Section 481(h)(2)(A) of the Foreign Assistance Act of 1961 is amended—

(1) in clause (i) by striking out "The" and inserting in lieu thereof "Subject to clause (iii), the"; and

(2) by adding at the end thereof the following new clause:

"(iii) The President may make a certification under clause (i)(I) with respect to any major drug producing or drug-transit country which is also a producer of licit narcotics raw materials, such as opium or coca, only if the President determines that such country has taken steps to prevent significant diversion of its licit cultivation and production into the illicit market, maintains production and stockpiles at levels no higher than those consistent with licit market demand, and prevents illicit cultivation and production.".

TITLE V—USER ACCOUNTABILITY

Subtitle A—Opposition to Legalization and Public Awareness

Sec. 5001. Sense of the Congress opposing legalization of drugs.

Sec. 5002. Public awareness campaign.

Subtitle B—National Commission on Drug-Free Schools

Sec. 5051. National commission on drug-free schools.

Subtitle C—Preventing Drug Abuse in Public Housing

CHAPTER 1—REGULATORY AND ENFORCEMENT PROVISIONS

Sec. 5101. Termination of tenancy in public housing.

Sec. 5102. Authority to hire investigators of drug crimes.

Sec. 5103. Amendment for bureau of justice assistance block grant program authorization.

Sec. 5104. Inclusion of a leasehold interest in property subject to forfeiture under the controlled substances act.

CHAPTER 2—PUBLIC HOUSING DRUG ELIMINATION PILOT PROGRAM

Sec. 5125. Short title.
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CHAPTER 3—REPORT ON IMPACT OF PUBLIC HOUSING LEASE AND GRIEVANCE REGULATION ON THE ABILITY OF PHAS TO TAKE ACTION AGAINST TENANTS ENGAGING IN CRIMINAL ACTIVITY

Sec. 5141. Report on impact of public housing lease and grievance regulation on the ability of PHAS to take action against tenants engaging in criminal activity.

Subtitle D—Drug-Free Workplace Act of 1988

Sec. 5201. Short title.
Sec. 5202. Drug-free workplace requirements for Federal contractors.
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Sec. 5207. Definitions.
Sec. 5208. Construction of subtitle.
Sec. 5209. Effective date.

Subtitle E—Transportation Industry Alcohol and Controlled Substances Testing Program

Sec. 5251. Transportation industry alcohol and controlled substances testing program.

Subtitle F—Federal Privileges and Benefits

Sec. 5301. Federal privileges and benefits.

Subtitle G—Restrictions on Passports for Violators of Controlled Substance Laws and Other Laws

Sec. 5351. Restrictions on passports for violators of controlled substance laws and other laws.

Subtitle H—Authorization of Appropriations for President's Media Commission on Alcohol and Drug Abuse Prevention

Sec. 5401. Authorization of appropriations for President's Media Commission on Alcohol and Drug Abuse Prevention.

TITLE V—USER ACCOUNTABILITY

Subtitle A—Opposition to Legalization and Public Awareness

SEC. 5001. SENSE OF THE CONGRESS OPPOSING LEGALIZATION OF DRUGS.

The Congress finds that legalization of illegal drugs, on the Federal or State level, is an unconscionable surrender in a war in which, for the future of our country and the lives of our children, there can be no substitute for total victory.

SEC. 5002. PUBLIC AWARENESS CAMPAIGN.

The Drug Control Director shall within 90 days after confirmation by the Senate develop a program to inform the American public of the provisions of this Act pertaining to penalties for the use or possession of illegal drugs.

Subtitle B—National Commission on Drug-Free Schools

SEC. 5051. NATIONAL COMMISSION ON DRUG-FREE SCHOOLS.

(a) ESTABLISHMENT OF COMMISSION.—There is established a National Commission on Drug-Free Schools (hereinafter referred to as the "Commission").

(b) MEMBERSHIP OF THE COMMISSION.—(1) The Commission shall consist of the following 26 members:

(A) the Secretary of Education (hereinafter referred to as the "Secretary");

(B) the Director of National Drug Control Policy (hereinafter referred to as the "Director");

(C) 16 individuals appointed by the Secretary and the Director;

(D) 4 members of the House of Representatives, of which 2 members shall be appointed by the Speaker of the House of Representatives and 2 members shall be appointed by the Minority Leader of the House of Representatives; and

(E) 4 members of the Senate, of which 2 members shall be appointed by the Majority Leader of the Senate and 2 members shall be appointed by the Minority Leader of the Senate.

(2) The Secretary of Education and the Director of National Drug Control Policy shall cochair the Commission.

(3) The members of the Commission appointed under paragraph (1)(C) shall consist of—

(A) experts in the fields of drug abuse prevention and education;

(B) representatives of State and local school authorities;

(C) representatives of parent-teacher associations;

(D) representatives of national organizations;

(E) representatives of community groups;

(F) representatives of law enforcement officials; and

(G) other appropriate individuals as determined by the Secretary and the Director.

(c) APPOINTMENTS.—The members of the Commission who are to be appointed shall be appointed by no later than the date that is 30 days after the date of enactment of this subtitle.

(d) VACANCIES.—A vacancy in the Commission shall be filled in the same manner as the original appointment was made. A vacancy in the Commission shall not affect the powers of the Commission.

(e) QUORUM.—Fourteen members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(f) DUTIES OF THE COMMISSION.—The Commission shall—

(1) develop recommendations of criteria for identifying drug-free schools and campuses;

(2) develop recommendations for identifying model programs to meet such criteria;

(3) make such other findings, recommendations, and proposals as the Commission deems necessary to carry out the provisions of this section; and

(4) prepare and submit a final report pursuant to subsection (i).

(g) COMPENSATION.—(1) Each member of the Commission who is not an officer or employee of the United States shall be compensated at a rate established by the Commission not to exceed the daily equivalent of the annual rate of basic pay prescribed for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the actual performance of duties as a member of the Commission. Each member of the Commission who is an officer or employee of the United States shall receive no additional compensation for service on the Commission.

(2) While away from their homes or regular places of business in the performance of duties for the Commission, all members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at a rate established by the Commission not to exceed the rates authorized for employees of agencies under sections 5702 and 5703 of title 5, United States Code.

(h) ADMINISTRATIVE PROVISIONS.—(1) The Commission shall appoint an Executive Director who shall be compensated at a rate established by the Commission not to exceed the rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) With the approval of the Commission, the Executive Director may appoint and fix the compensation of such additional personnel as the Executive Director considers necessary to carry out the duties of the Commission.

(3) Subject to such rules as may be issued by the Commission, the cochairmen may procure temporary and intermittent services of experts and consultants.

(4) Upon request of the cochairmen of the Commission, the head of any Federal department, agency, or instrumentality shall make any of the facilities and services of such department, agency, or instrumentality available to the Commission and detail any of the personnel of such department, agency, or instrumentality to the Commission, on a nonreimbursable basis, to assist the Commission in carrying out its duties under this section.

(5) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(6) Service of an individual as a member of the Commission, or employment of an individual by the Commission as an attorney or expert in any business or professional field, on a part-time or full-time basis, with or without compensation, shall not be considered as service or employment bringing such individual within the provisions of any Federal law relating to conflicts of interest or otherwise imposing restrictions, requirements, or penalties in relation to the employment of persons, the performance of services, or the payment or receipt of compensation in connection with claims, proceedings, or matters involving the United States. Service as a member of the Commission, or as an employee of the Commission, shall not be considered service in an appointive or elective position in the Government for purposes of section 8344 of title 5, United States Code, or comparable provisions of Federal law.

(i) REPORT OF COMMISSION.—The Commission shall report the findings and recommendations determined under subsection (f) as well as proposals for any legislative action necessary to implement the recommendations of the Commission to the President and the Congress no later than 1 year after the date of enactment of this Act. The final report of the Commission shall include—

(1) recommended criteria for schools to meet to be considered drug-free, which may include, but shall not be limited to—

(A) establishment of a drug education program for all students in kindergarten through grade 12;

(B) a code of student conduct;

(C) referral to treatment for students found to be using drugs; and

(D) coordinated programs for drug use prevention involving parents, teachers, counselors, local law enforcement personnel, businesses, and community organizations;

(2) a description of the potential benefits and liabilities of measured responses such as—

(A) the notification of parents or guardians and police when drug use by an unemancipated minor is discovered;

(B) the feasibility of separating drug offenders from drug-free students;

(C) the suspension of eligibility for student assistance under title IV of the Higher Education Act upon conviction of a drug-related offense;

(D) the withholding of Federal funds from education systems and institutions which do not meet established criteria for drug-free schools;

(E) the authorization of drug testing in schools; and

(F) any other measured response the Commission deems appropriate;

(3) an analysis of the effects of measured responses described in paragraph (2) on civil liberties, educational programs, nondrug using students, and the traditional family relationship;

(4) the findings of research on the effectiveness of the proposed response in rehabilitating drug using students and deterring use by non-drug-using students;

(5) a description of the assistance required by local school districts to establish drug-free schools and the manner in which local, State and Federal Government may provide such assistance; and

(6) a description of the feasibility of certain programs designed to enhance and raise self-esteem, self-confidence, independence, and responsibility among students.

(j) Powers of Commission.—(1) For the purpose of carrying out this section, the Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(2) Any member or employee of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this subsection.

(3) The Commission may secure directly from any Federal agency such information as may be necessary to enable the Commission to carry out this Act. Upon request of the cochairmen of the Commission, the head of such agency shall furnish such information to the Commission.

(k) Authorization of Appropriations.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section. Such sums shall remain available until expended. Any new spending authority (within the meaning of section 401 of the Congressional Budget Act of 1974) which is provided under this section shall be effective for any fiscal year only to the extent or in such amounts as are provided in appropriation Acts.

Subtitle C—Preventing Drug Abuse in Public Housing

CHAPTER 1—REGULATORY AND ENFORCEMENT PROVISIONS

SEC. 5101. TERMINATION OF TENANCY IN PUBLIC HOUSING.

Section 6(l) of the United States Housing Act of 1937 is amended—

(1) by striking out "and" at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting "; and"; and

(3) by adding at the end the following:

"(5) provide that a public housing tenant, any member of the tenant's household, or a guest or other person under the tenant's control shall not engage in criminal activity, including drug-related criminal activity, on or near public housing premises, while the tenant is a tenant in public housing, and shall be cause for termination of tenancy.

For the purpose of paragraph (5), 'drug-related criminal activity' means the manufacturing, selling, distributing, using, or possessing with intent to manufacture, sell, distribute, or use a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).".

SEC. 5102. AUTHORITY TO HIRE INVESTIGATORS OF DRUG CRIMES.

(a) In General.—Section 6 of the United States Housing Act of 1937 (as amended by section 5101 of this subtitle) is amended by adding at the end the following:

"(o) A public housing agency may, to the extent of funds availability, employ one or more individuals for the purpose of investigating the illegal use of and trafficking in controlled substances in public housing and providing evidence relating thereto in any administrative or court proceedings.".

(b) Study Required.—

(1) In general.—The Secretary of Housing and Urban Development shall conduct a study of the extent to which security activities in public housing projects are funded under the Performance Funding System. The study shall include an analysis of—

(A) the extent to which the Performance Funding System currently takes into account, and should take into account, costs associated with maintaining security, including the hiring of security personnel, investigators, and security liaisons with local law enforcement agencies;

(B) the extent to which public housing agencies have been compelled to shift funds from tenant services, building maintenance, or other eligible activities to security activities; and

(C) an estimate of the per unit additional cost necessary to enable all public housing agencies to provide adequate security.

(2) Report required.—Not later than 6 months after the date of enactment of this Act, the Secretary of Housing and Urban Development shall transmit to the Congress a report on the study required by paragraph (1).

SEC. 5103. AMENDMENT FOR BUREAU OF JUSTICE ASSISTANCE BLOCK GRANT PROGRAM AUTHORIZATION.

Section 403 of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 98-473; 42 U.S.C. 3743(a)) is amended by—

(1) striking "and" in paragraph (17) and all that follows the semicolon;

(2) striking "techniques." in paragraph (18) and inserting "techniques; and"; and

(3) inserting a new paragraph immediately after paragraph (18) as follows:

"(19) addressing the problems of drug trafficking and the manufacture of controlled substances in public housing.".

SEC. 5104. INCLUSION OF A LEASEHOLD INTEREST IN PROPERTY SUBJECT TO FORFEITURE UNDER THE CONTROLLED SUBSTANCES ACT.

Section 511(a)(7) of the Controlled Substances Act (21 U.S.C. 881(a)(7)) is amended by inserting "(including any leasehold interest)" after "right, title, and interest".

CHAPTER 2—PUBLIC HOUSING DRUG ELIMINATION PILOT PROGRAM

SEC. 5125. SHORT TITLE.

This chapter may be cited as the "Public Housing Drug Elimination Act of 1988".

SEC. 5126. FINDINGS.

The Congress finds that—

(1) the Federal Government has a duty to provide public housing that is decent, safe, and free from illegal drugs;

(2) public housing projects in many areas suffer from rampant drug-related crime;

(3) drug dealers are increasingly imposing a reign of terror on public housing tenants;

(4) the increase in drug-related crime not only leads to murders, muggings, and other forms of violence against tenants, but also to a deterioration of the physical environment that requires substantial government expenditures; and

(5) local law enforcement authorities often lack the resources to deal with the drug problem in public housing, particularly in light of the recent reductions in Federal aid to cities.

SEC. 5127. PROGRAM AUTHORIZED.

The Secretary of Housing and Urban Development, in accordance with the provisions of this chapter, is authorized to make grants to public housing agencies for use in eliminating drug-related crime in public housing projects.

SEC. 5128. AUTHORIZED ACTIVITIES.

A public housing agency may use a grant under this chapter for—

(1) the employment of security personnel in public housing projects;

(2) reimbursement of local law enforcement agencies for additional security and protective services for public housing projects;

(3) physical improvements in public housing projects which are specifically designed to enhance security;

(4) innovative programs designed to reduce use of drugs in and around public housing projects; and

(5) providing funding to nonprofit public housing resident management corporation and tenant councils to develop security and drug abuse prevention programs involving site residents.

SEC. 5129. APPLICATION.

(a) In General.—To receive a grant under this chapter, a public housing agency shall submit an application to the Secretary of Housing and Urban Development, at such time, in such manner, and accompanied by such additional information as the Secretary may reasonably require. Such application shall include a plan for addressing the problem of drug-related crime on the premises of public housing projects administered by the public housing agency.

(b) Criteria.—The Secretary of Housing and Urban Development shall approve applications based upon—

(1) the extent of the crime problem in the facilities of the public housing project;

(2) the quality of the plan of the public housing agency to address crime in public housing projects; and

(3) the extent to which the local government and local community support the anti-

crime activities of the public housing agency.

SEC. 5130. IMPLEMENTATION.

The Secretary of Housing and Urban Development shall promulgate rules and regulations to implement this chapter within 180 days of enactment.

SEC. 5131. REPORT TO CONGRESS.

Not later than June 30, 1990, the Secretary of Housing and Urban Development, in consultation with the Director of National Drug Control Policy, shall report to Congress on the success of the program authorized by this chapter with any suggested changes necessary to make the program more effective.

SEC. 5132. AUTHORIZATION.

There are authorized to be appropriated to carry out the provisions of this chapter $8,200,000 for fiscal year 1989.

CHAPTER 3—REPORT ON IMPACT OF PUBLIC HOUSING LEASE AND GRIEVANCE REGULATION ON THE ABILITY OF PHAS TO TAKE ACTION AGAINST TENANTS ENGAGING IN CRIMINAL ACTIVITY.

SEC. 5141. REPORT ON IMPACT OF PUBLIC HOUSING LEASE AND GRIEVANCE REGULATION ON THE ABILITY OF PHAS TO TAKE ACTION AGAINST TENANTS ENGAGING IN CRIMINAL ACTIVITY.

No later than 9 months after the date of the effective date of the Public Housing Tenancy and Administrative Grievance Procedure regulations, implementing section 6(k) of the United States Housing Act of 1937, the Secretary of Housing and Urban Development shall submit to Congress a report on the impact of the implementation of those regulations on the ability of public housing agencies to evict or take other appropriate action against tenants engaging in criminal activity, especially with respect to the manufacture, sale, distribution, use, or possession of controlled substances, as defined in section 102 of the Controlled Substances Act.

Subtitle D—Drug-Free Workplace Act of 1988

SEC. 5201. SHORT TITLE.

This subtitle may be cited as the "Drug-Free Workplace Act of 1988".

SEC. 5202. DRUG-FREE WORKPLACE REQUIREMENTS FOR FEDERAL CONTRACTORS.

(a) DRUG-FREE WORKPLACE REQUIREMENT.—No person or organization shall be considered a responsible source, under the meaning of such term as defined in section 4(8) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(8)), for the purposes of being awarded a contract for the procurement of any property or services from any Federal agency unless such person or organization has certified to the contracting agency that it will provide a drug-free workplace by—

(1) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) establishing a drug-free awareness program to inform employees about—

(A) the dangers of drug abuse in the workplace;

(B) the person's or organization's policy of maintaining a drug-free workplace;

(C) any available drug counseling, rehabilitation, and employee assistance programs; and

(D) the penalties that may be imposed upon employees for drug abuse violations;

(3) making it a requirement that each employee to be engaged in the performance of such contract be given a copy of the statement required by paragraph (1) and that, as a condition of employment on such contract, the employee agree—

(A) to abide by the terms of the statement; and

(B) to notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;

(4) notifying the contracting agency within 10 days after receiving notice under paragraph (3)(B) from an employee or otherwise receiving actual notice of such conviction;

(5) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 5204; and

(6) making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), and (5).

(b) SUSPENSION, TERMINATION, OR DEBARMENT OF THE CONTRACTOR.—

(1) GROUNDS FOR SUSPENSION, TERMINATION, OR DEBARMENT.—Each contract awarded by a Federal agency shall be subject to suspension of payments under the contract or termination of the contract, or both, and the contractor thereunder shall be subject to debarment, in accordance with the requirements of this section if the board of contract appeals of the contracting agency determines that—

(A) the contractor has made a false certification under subsection (a);

(B) the contractor violates such certification by failing to carry out the requirements of paragraph (1), (2), (3), (4), or (5) of subsection (a); or

(C) such a number of employees of such contractor have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a).

(2) CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT PROCEEDINGS.—If a contracting officer determines, in writing, that cause for suspension, termination, or debarment exists, a suspension, termination, or debarment proceeding subject to this subsection shall, on application by a contracting officer of an agency, be conducted by the board of contract appeals of the agency which conducts the procurement. The board of contract appeals shall, based upon a preponderance of the evidence presented, resolve all issues of fact, determine whether a basis exists for the suspension or termination of the contract or debarment of the contractor, and issue a final decision in favor of or against suspension or termination of the contract or debarment of the contractor. A proceeding, decision, or order of the board pursuant to this subsection shall not be subject to interlocutory appeal or review. Determinations and final decisions of the board of contract appeals shall be final unless appealed by the contractor to the United States Court of Appeals for the Federal Circuit within 60 days after the receipt by the contractor of a copy of a final decision of the board of contract appeals. Section 10(b) of the Contract Disputes Act of 1978 (41 U.S.C. 609(b)) shall apply with respect to the finality of such board determinations and decisions under this paragraph.

(3) CONDUCT BY GSA BOARD.—In the case of an agency that has not established a board of contract appeals under section 8(a)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 607(a)(1)), the General Services Administration Board of Contract Appeals shall make the determinations and issue final decisions under paragraph (2) for such agencies. Section 10(b) of the Contract Disputes Act of 1978 (41 U.S.C. 609(b)) shall apply with respect to the finality of such Board determinations and decisions under this paragraph.

(4) EFFECT OF DEBARMENT.—Upon issuance of any final decision under this subsection requiring debarment of a contractor, such contractor shall be ineligible for award of any contract by any Federal agency and for participation in any future procurement by any Federal agency for a period specified in the decision, not to exceed 5 years. Upon issuance of any final decision recommending against debarment of the contractor, the contractor shall be compensated as provided by law or regulations.

SEC. 5203. DRUG-FREE WORKPLACE REQUIREMENTS FOR FEDERAL GRANT RECIPIENTS.

(a) DRUG-FREE WORKPLACE REQUIREMENT.—No person or organization shall receive a grant from any Federal agency unless such person or organization has certified to the granting agency that it will provide a drug-free workplace by—

(1) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) establishing a drug-free awareness program to inform employees about—

(A) the dangers of drug abuse in the workplace;

(B) the grantee's policy of maintaining a drug-free workplace;

(C) any available drug counseling, rehabilitation, and employee assistance programs; and

(D) the penalties that may be imposed upon employees for drug abuse violations;

(3) making it a requirement that each employee to be engaged in the performance of such grant be given a copy of the statement required by paragraph (1) and that, as a condition of employment on such grant, the employee agree—

(A) to abide by the terms of the statement; and

(B) to notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;

(4) notifying the granting agency within 10 days after receiving notice of a conviction under paragraph (3)(B) from an employee or otherwise receiving actual notice of such conviction;

(5) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 5204; and

(6) making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), and (5).

(b) SUSPENSION, TERMINATION, OR DEBARMENT OF THE GRANTEE.—

(1) GROUNDS FOR SUSPENSION, TERMINATION, OR DEBARMENT.—Each grant awarded by a Federal agency shall be subject to suspension of payments under the grant or termination of the grant, or both, and the grantee thereunder shall be subject to debarment, in accordance with the require-

ments of this section if the agency head of the granting agency or his official designee determines, in writing, that—

(A) the grantee has made a false certification under subsection (a);

(B) the grantee violates such certification by failing to carry out the requirements of paragraph (1), (2), (3), (4), or (5) of subsection (a); or

(C) such a number of employees of such grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a).

(2) CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT PROCEEDINGS.—A suspension, termination, or debarment proceeding subject to this subsection shall be conducted in accordance with applicable law, including Executive Order 12549 or any superseding Executive order and any regulations promulgated to implement such law or Executive order.

(3) EFFECT OF DEBARMENT.—Upon issuance of any final decision under this subsection requiring debarment of a grantee, such grantee shall be ineligible for award of any grant from any Federal agency and for participation in any future grant from any Federal agency for a period specified in the decision, not to exceed 5 years. Upon issuance of any final decision recommending against debarment of the grantee, the grantee shall be compensated as provided by law or regulations.

SEC. 5204. EMPLOYEE SANCTIONS AND REMEDIES.

A grantee or contractor shall, within 30 days after receiving notice from an employee of a conviction pursuant to section 5202(a)(2)(B) or 5203(a)(2)(B)—

(1) take appropriate personnel action against such employee up to and including termination; or

(2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

SEC. 5205. WAIVER.

(a) IN GENERAL.—A termination, suspension, or debarment under this Act may be waived by the head of an agency with respect to a particular contract or grant if—

(1) in the case of a waiver with respect to a contract, the head of the agency determines, after the issuance of a final determination under section 3(b) by a board of contract appeals regarding a contract entered into by that agency, that suspension or termination of the contract or debarment of the contractor, or refusal to permit a person or organization to be treated as a responsible source for a contract, as the case may be, would severely disrupt the operation of such agency to the detriment of the Federal Government or the general public; or

(2) in the case of a waiver with respect to a grant, the head of the agency determines that suspension or termination of the grant or debarment of the grantee would not be in the public interest.

(b) EXCLUSIVE AUTHORITY.—The authority of the head of an agency under this section to waive a termination, suspension, or debarment shall not be delegated.

SEC. 5206. AUTHORITY OF BOARDS.

Not later than 90 days after the date of enactment of this subtitle, the chairman of each board of contract appeals shall prescribe rules and procedures governing actions under this subtitle. Each judge of such board may administer oaths and affirmations and issue subpoenas.

SEC. 5207. DEFINITIONS.

For purposes of this subtitle—

(1) the term "drug-free workplace" means a site for the performance of work done in connection with a specific grant or contract described in section 5202 or 5203 of an entity at which employees of such entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of this Act;

(2) the term "employee" means the employee of a grantee or contractor directly engaged in the performance of work pursuant to the provisions of the grant or contract described in section 5202 or 5203;

(3) the term "controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812);

(4) the term "conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(5) the term "criminal drug statute" means a criminal statute involving manufacture, distribution, dispensation, use, or possession of any controlled substance;

(6) the term "grantee" means the department, division, or other unit of a person or organization responsible for the performance under the grant;

(7) the term "contractor" means the department, division, or other unit of a person or organization responsible for the performance under the contract; and

(8) the term "Federal agency" means an agency as that term is defined in section 552(f) of title 5, United States Code.

SEC. 5208. CONSTRUCTION OF SUBTITLE.

Nothing in this subtitle shall be construed to require law enforcement agencies, if the head of the agency determines it would be inappropriate in connection with the agency's undercover operations, to comply with the provisions of this subtitle.

SEC. 5209. EFFECTIVE DATE.

Sections 5202 and 5203 shall be effective 120 days after the date of the enactment of this subtitle.

Subtitle E—Transportation Industry Alcohol and Controlled Substances Testing Program

SEC. 5251. TRANSPORTATION INDUSTRY ALCOHOL AND CONTROLLED SUBSTANCES TESTING PROGRAM.

(a) FINDINGS.—The Congress finds that—

(1) alcohol and drug abuse poses significant dangers to the safety and welfare of the Nation;

(2) millions of the Nation's citizens utilize transportation by aircraft, railroads, trucks, and buses, and depend on the operators of aircraft, railroads, trucks, and buses to perform in a safe and responsible manner;

(3) the greatest efforts must be expended to eliminate the abuse of alcohol and use of illegal drugs, whether on duty or off duty, by those individuals who are involved in the operation of aircraft, railroads, trucks, and buses;

(4) the use of alcohol and illegal drugs has been demonstrated to affect significantly the performance of individuals, and has been proven to have been a critical factor in transportation accidents;

(5) adequate safeguards can be implemented to ensure that testing for abuse of alcohol or use of illegal drugs is performed in a manner which protects an individual's right of privacy, ensures that no individual is harassed by being treated differently from other individuals, and ensures that no individual's reputation or career development is unduly threatened or harmed; and

(6) rehabilitation is a critical component of any testing program for abuse of alcohol or use of illegal drugs, and should be made available to individuals, as appropriate.

(b) TESTING PROGRAM.—(1) Title VI of the Federal Aviation Act of 1958 (49 App. U.S.C. 1421 et seq.) is amended by adding at the end thereof the following:

"ALCOHOL AND CONTROLLED SUBSTANCES TESTING

"TESTING PROGRAM

"SEC. 613. (a)(1) The Administrator shall, in the interest of aviation safety, prescribe regulations within twelve months after the date of enactment of this section. Such regulations shall establish a program which requires air carriers and foreign air carriers to conduct pre-employment, periodic recurring, random and post-accident testing of airmen, crewmembers, airport security screening contract personnel, and other air carrier employees responsible for safety-sensitive functions (as determined by the Administrator), and testing of such individuals upon a reasonable suspicion that they have used, without lawful authorization, alcohol or a controlled substance.

"(2) The Administrator shall establish a program applicable to employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions. Such program shall provide for pre-employment, periodic recurring, random and post-accident testing, and testing of such individuals upon a reasonable suspicion that they have used, without lawful authorization, alcohol or a controlled substance.

"(3) In prescribing regulations under the programs required by this subsection, the Administrator shall require, as the Administrator considers appropriate, the suspension or revocation of any certificate issued to such an individual, or the disqualification or dismissal of any such individual, in accordance with the provisions of this section, in any instance where a test conducted and confirmed under this section indicates that such individual has used, without lawful authorization, alcohol or a controlled substance.

"PROHIBITION ON SERVICE

"(b)(1) No person may use, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section and serve as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions.

"(2) No individual who is determined to have used, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section shall serve as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions unless such individual has completed a program of rehabilitation described in subsection (c) of this section.

"(3) Any such individual determined by the Administrator to have used, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section who (A) refuses to undertake a rehabilitation program described in subsection (c), (B) fails to complete such a rehabilitation program, (C) has previously undertaken or completed such a rehabilitation program, or (D) has been determined by the Administrator to have served as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Adminstrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions while impaired by or under the influence of alcohol or a controlled substance, shall not be permitted to perform the duties relating to air transportation which such individual performed prior to the date of such determination.

"PROGRAM FOR REHABILITATION

"(c)(1) Each air carrier and foreign air carrier shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of employees referred to in subsection (b) of this section in need of assistance in resolving problems with the use, without lawful authorization, of alcohol or controlled substances. Each air carrier and foreign air carrier is encouraged to make such program available to all of its employees other than employees referred to in subsection (b) of this section. Nothing in this subsection shall preclude any air carrier or foreign air carrier from establishing a program under this subsection in cooperation with any other air carrier or foreign air carrier.

"(2) The Administrator shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of those employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

"PROCEDURES

"(d) In establishing the program required under subsection (a) of this section, the Administrator shall develop requirements which shall—

"(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(2) with respect to laboratories and testing procedures, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

"(A) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out this section, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

"(B) specify the drugs for which individuals may be tested; and

"(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out this section;

"(3) provide that all tests which indicate the use, without lawful authorization, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(4) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(5) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(6) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"EFFECT ON OTHER LAWS AND REGULATIONS

"(e)(1) No State or local government shall adopt or put into effect any law, rule, regulation, ordinance, standard or order that is inconsistent with the regulations promulgated under this section, except that the regulations promulgated under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury or damage to property, whether the provisions apply specifically to employees of an air carrier or foreign air carrier, or to the general public.

"(2) Nothing in this section shall preclude the Administrator from adopting or continuing in effect other regulations intended to protect persons or property on the ground or in the air from the hazards to safety associated with the potential use of alcohol or controlled substances by airmen, crewmembers, airport security screening contract personnel, air carrier employees responsible for safety-sensitive functions (as determined by the Administrator), or employees of the Federal Aviation Administration) with responsibility for safetv-sensitive functions.

"(3) In prescribing regulations under this section, the Administrator shall only establish requirements applicable to foreign air carriers that are consistent with the international obligations of the United States, and the Administrator shall take into consideration any applicable laws and regulations of foreign countries. The Secretary of State and the Secretary of Transportation, jointly, shall call on the member countries of the International Civil Aviation Organization to strengthen and enforce existing standards to prohibit the use, without lawful authorization, of a controlled substance by crew members in international civil aviation.

"DEFINITION

"(f) For the purposes of this section, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Administrator has determined poses a risk to transportation safety.".

(2) That portion of the table of contents of the Federal Aviation Act of 1958 relating to title VI is amended by adding at the end thereof the following:

"Sec. 613. Alcohol and controlled substances testing.

"(a) Testing program.

"(b) Prohibition on service.

"(c) Program for rehabilitation.

"(d) Procedures.

"(e) Effect on other laws and regulations.

"(f) Definition.".

(c) FEDERAL RAILROAD SAFETY ACT OF 1970.—Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) is amended by adding at the end thereof the following:

"(l)(1) The Secretary shall, within one year after the date of enactment of this subsection, review existing rules, regulations, standards, and orders governing alcohol and drug use in railroad operations for the purpose of determining whether they are adequate to ensure safety. In conducting such review, the Secretary shall specifically—

"(A) require that all railroad employees responsible for safety-sensitive functions (as determined by the Secretary) be subject to testing on a random basis for the use, without lawful authorization, of alcohol or a controlled substance;

"(B) consider application of existing rules, regulations, orders, and standards to other categories of employees, including employees responsible for the safety of passengers, railroad rolling stock, or track and related structures;

"(C) require, as the Secretary considers appropriate, disqualification for an established period of time or dismissal of any employee determined to have used or to have been impaired by alcohol while on duty; and

"(D) require, as the Secretary considers appropriate, disqualification for an established period of time or dismissal of any employee determined to have used a controlled substance, whether on duty or not on duty, except as permitted for medical purposes by law and any rules, regulations, standards or orders issued under this Act.

Nothing in this subsection shall be construed to restrict the discretion of the Secretary to continue in force, amend, or further supplement any rules, regulations, standards and orders governing alcohol and drug use in railroad operations issued before the date of enactment of this subsection.

"(2) In carrying out the provisions of this subsection, the Secretary shall develop requirements which shall—

"(A) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(B) with respect to laboratories and testing procedures, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

"(i) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out this Act, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

"(ii) specify the drugs for which individuals may be tested; and

"(iii) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out this Act;

"(C) provide that all tests which indicate the use, without lawful authorization, of alcohol or a controlled substance by any employee shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(D) require that all laboratories involved in the testing of any employee under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(E) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this subparagraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(F) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(3) For the purposes of this subsection, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Secretary has determined poses a risk to transportation safety.".

(d) COMMERCIAL MOTOR VEHICLE SAFETY ACT OF 1986.—(1) The Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5223) is amended by adding at the end the following:

"SEC. 12020. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

"(a) REGULATIONS.—The Secretary shall, in the interest of commercial motor vehicle safety, prescribe regulations within twelve months after the date of enactment of this section. Such regulations shall establish a program which requires motor carriers to conduct pre-employment, periodic recurring, random and post-accident testing of the operators of commercial motor vehicles, and testing upon a reasonable suspicion that they have used, without lawful authorization, alcohol or a controlled substance.

"(b) TESTING.—(1) In promulgating such regulations, the Secretary shall require that post-accident testing of the operator of a commercial motor vehicle be conducted in the case of any accident involving a commercial motor vehicle in which occurs loss of human life, or, as determined by the Secretary, other serious accidents involving bodily injury or significant property damage.

"(2) Nothing in subsection (a) of this section shall preclude the Secretary from providing in such regulations that such testing be conducted as part of the medical examination required by subpart E of part 391 of title 49, Code of Federal Regulations, with respect to those operators of commercial motor vehicles to whom such part is applicable.

"(c) PROGRAM FOR REHABILITATION.—The Secretary shall promulgate regulations setting forth requirements for a rehabilitation program for the identification and opportunity for treatment of operators of commercial motor vehicles who are determined to have used, without lawful authorization, alcohol or a controlled substance. The Secretary shall determine the circumstances under which such operators shall be required to participate in such program. Nothing in this subsection shall preclude a motor carrier from establishing a program under this subsection in cooperation with any other motor carrier.

"(d) PROCEDURES FOR TESTING.—In establishing the program required under subsection (a) of this section, the Secretary shall develop requirements which shall—

"(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(2) with respect to laboratories and testing procedures, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

"(A) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out this section, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

"(B) specify the drugs for which individuals may be tested; and

"(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out this section;

"(3) provide that all tests which indicate the use, without lawful authorization, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(4) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(5) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) for employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(6) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(e) EFFECT ON OTHER LAWS AND REGULATIONS.—No State or local government shall adopt or put into effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations promulgated under this section, except that the regulations promulgated under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury or damage to property, whether the provisions apply specifically to commercial motor vehicle employees, or to the general public.

"(f) APPLICATION OF PENALTIES.—(1) Nothing in this section shall be construed to supersede any penalty applicable to the operator of a commercial motor vehicle under this Act or any other provision of law.

"(2) The Secretary shall determine appropriate sanctions for commercial motor vehicle operators who are determined, as a result of tests conducted and confirmed under this section, to have used, without lawful authorization, alcohol or a controlled substance but are not under the influence of alcohol or a controlled substance, as provided in this title.

"(g) DEFINITION.—For the purposes of this section, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Secretary had determined poses a risk to transportation safety.".

(2) The table of contents of the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5223) is amended by adding at the end thereof the following:

"Sec. 12020. Alcohol and controlled substances testing.".

(e) COMMERCIAL MOTOR VEHICLES.—(1) The Secretary shall design, within nine months after the date of enactment of this section, and implement, within fifteen months after the date of enactment of this section, a pilot test program for the purpose of testing the operators of commercial motor vehicles on a random basis to determine whether an operator has used, without lawful authorization, alcohol or a controlled substance.

(2) The Secretary shall solicit the participation of States which are interested in participating in such program and shall select four States to participate in the program.

(3) The Secretary shall ensure that the selection made pursuant to this section is representative of varying geographical and population characteristics of the Nation, and takes into consideration the historical geographical incidence of commercial motor vehicle accidents involving loss of human life.

(4) The pilot program authorized by this section shall continue for a period of 1 year. The Secretary shall consider alternative methodologies for implementing a system of random testing of operators of commercial motor vehicles.

(5) Not later than 30 months after the date of enactment of this section, the Secretary shall prepare and submit to the Congress a comprehensive report setting forth the results of the pilot program conducted under this section. Such report shall include any recommendations of the Secretary concerning the desirability and implementation of a system for the random testing of operators of commercial motor vehicles.

(6) For purposes of carrying out this subsection, there shall be available to the Secretary $5,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 for fiscal year 1988.

(7) For purposes of this subsection, the term—

(1) "commercial motor vehicle" shall have the meaning given to such term in section 12019(6) of the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5241); and

(2) "Secretary" means the Secretary of Transportation.

(f) URBAN MASS TRANSIT.—(1) The Secretary of Transportation shall, in the interest of urban mass transportation safety, prescribe regulations within 12 months after the date of enactment of this section. Such regulations shall establish a program which requires urban mass transportation operations to conduct pre-employment, periodic recurring, random, and post-accident testing of urban mass transportation employees responsible for safety-sensitive functions (as determined by the Secretary), and testing of such employees upon a reasonable suspicion that they have used, without lawful authorization, alcohol or a controlled substance.

(2) In prescribing such regulations, the Secretary shall require that post-accident testing of such an urban mass transportation employee be conducted in the case of

any accident involving urban mass transportation in which occurs loss of human life, or, as determined by the Secretary, other serious accidents involving bodily injury or significant property damage.

(3) The Secretary shall promulgate regulations setting forth requirements for a rehabilitation program for the identification and opportunity for treatment of urban mass transportation employees referred to in paragraph (1) of this subsection who are determined to have used, without lawful authorization, alcohol or a controlled substance. The Secretary shall determine the circumstances under which such employees shall be required to participate in such program. Nothing in this subsection shall preclude an urban mass transportation operation from establishing a program under this subsection in cooperation with any other such operation.

(4) In establishing the program required under paragraph (1) of this subsection, the Secretary shall develop requirements which shall—

(A) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

(B) with respect to the laboratory and testing procedures, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

(i) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out this subsection, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

(ii) specify the drugs for which individuals may be tested; and

(iii) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out this subsection;

(C) provide that all tests which indicate the use, without lawful authorization, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

(D) require that all laboratories involved in the testing of any individual under this subsection shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

(E) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this subparagraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this subsection; and

(F) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

(5) No State or local government shall adopt or put into effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations promulgated under this subsection, except that the regulations promulgated under this subsection shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to urban mass transportation employees, or to the general public.

(6)(A) As the Secretary considers appropriate, the Secretary shall require—

(i) disqualification for an established period of time or dismissal of any employee referred to in paragraph (1) of this subsection determined to have used or to have been impaired by alcohol while on duty; and

(ii) disqualification for an established period of time or dismissal of any such employee determined to have used a controlled substance, whether on duty or not on duty, except as permitted for medical purposes by law or any regulation.

(B) Nothing in this subsection shall be construed to supercede any penalty applicable to an urban mass transportation employee under any other provision of law.

(7) For purposes of this subsection, the term—

(A) "controlled substance" means any substance under section 102(6) of the Controlled Substance Act (21 U.S.C. 802(6)) whose use the Secretary has determined poses a risk to transportation safety; and

(b) "urban mass transportation" means all forms of urban mass transportation whose employees are not covered by either section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) or section 12020 of the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 State. 5223), as added by this section.

(8) A person shall not be eligible for Federal financial assistance under sections 3, 9, or 18 of the Urban Mass Transportation Act of 1964 (49 App. U.S.C. 1602, 1607a, or 1604) or section 103(e)(4) of title 23, United States Code, if such person—

(A) is required, under regulations prescribed by the Secretary under section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431), section 12020 of the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100; Stat. 5223), as added by this section, or subsection (e) of this section, to establish a program of alcohol and controlled substances testing; and

(B) fails to establish such a program in accordance with such regulations.

(g) For purposes of this section, the term—

(1) "person" includes any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of the United States, or any State, commonwealth, territory, district, or possession thereof, or of any foreign country; and

(2) "Secretary" means the Secretary of Transportation.

Subtitle F—Federal Privileges and Benefits

SEC. 5301. FEDERAL PRIVILEGES AND BENEFITS.

(a) List of Privileges and Benefits Recommended for Withholding.—(1) The Director of National Drug Control Policy shall, upon consultation with the Secretary of Health and Human Services and the Attorney General, submit to the Congress no later than 12 months after the enactment of this title a list of any Federal privileges, benefits, grants, and loans, which, if withheld from individuals convicted of a Federal or State drug offense, would significantly deter the use of illegal drugs in the United States. The Director shall not include in the list any grants, loans, and benefits which the Director determines to be essential to the health or well being of the recipient or beneficiary.

(2) The Director shall accompany the list with a report exploring the potential benefits and liabilities of the withholding of privileges, benefits, grants, and loans in the Federal effort to fight substance abuse and explaining the reasoning behind the selection of each of the privileges, benefits, grants, and loans included in the list.

(b) Preparation of List.—(1) In preparing the list and report provided for in subsection (a), the Director shall take into consideration the following factors:

(A) the extent to which the threat of punishment deters drug use among persons addicted to drugs.

(B) the extent to which the threat of withholding Federal privileges, benefits, grants, and loans would be likely to deter individuals from using illicit drugs.

(C) the effect that withholding benefits would have on an individual's efforts to overcome drug dependence.

(D) whether differing State laws with regard to possession of marijuana would result in the uneven application of sanctions imposed by the Federal government.

(E) the potential results of such a program in areas with limited treatment and rehabilitation opportunities.

(F) the burden that should appropriately be placed on individuals applying for Federal privileges, benefits, grants, and loans to prove they have not been convicted of a drug offense.

(G) the means by which Federal and State agencies, courts, and law enforcement agencies will exchange and share the data and information necessary to implement and enforce the withholding of benefits, privileges, grants, and loans.

(2) The Director is authorized to conduct public hearings and such other activities as may be necessary to fulfill this charge.

Subtitle G—Restrictions on Passports for Violators of Controlled Substance Laws and Other Laws

SEC. 5351. RESTRICTIONS ON PASSPORTS FOR VIOLATORS OF CONTROLLED SUBSTANCE LAWS AND OTHER LAWS.

Title I of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2669 et seq.) is amended—

(1) by redesignating section 42 as section 43; and

(2) by inserting after section 41 the following:

"SEC. 42. RESTRICTIONS ON PASSPORTS FOR VIOLATORS OF CONTROLLED SUBSTANCE LAWS.

"(a) Revocation of Passports.—Upon conviction for—

"(1) a violation of the Controlled Substances Import and Export Act (21 U.S.C. 951-970) punishable by imprisonment for more than 1 year;

"(2) a criminal violation of the Bank Secrecy Act (31 U.S.C. 5311-5324) punishable by imprisonment for more than 1 year; or

"(3) a criminal violation of the Money Laundering Control Act (18 U.S.C. 1956, 1957) and any criminal violation of provisions of title 31, United States Code, relating to money laundering, punishable by imprisonment for more than 1 year;

where the violator used a passport or otherwise crossed an international border in committing such violation, the Secretary of State shall revoke the violator's passport and other travel documents. Any person whose passport or other travel documents were revoked under this subsection, or any person convicted for any offense in paragraph (1), (2), or (3) of this section who does not possess a passport, shall not be eligible to receive a passport or other travel documents for 10 years. The period of revocation shall begin after the individual completes the period of incarceration, probation, or parole imposed for conviction of any offense in paragraphs (1), (2), and (3).

"(b) The Secretary of State is authorized to promulgate such rules and regulations as may be necessary to carry out the provisions of this section.".

Subtitle H—Authorization of Appropriations for President's Media Commission on Alcohol and Drug Abuse Prevention

SEC. 5401. AUTHORIZATION OF APPROPRIATIONS FOR PRESIDENT'S MEDIA COMMISSION ON ALCOHOL AND DRUG ABUSE PREVENTION.

There are hereby authorized to be appropriated for the President's Media Commission on Alcohol and Drug Abuse Prevention the following amounts:

(1) $1,000,000 for the fiscal year ending September 30, 1989;

(2) $1,000,000 for the fiscal year ending September 30, 1990; and

(3) $1,000,000 for the fiscal year ending September 30, 1991.

TITLE VI—SENSE OF THE CONGRESS ON DRUG FUNDING

SEC. 6001. SENSE OF THE CONGRESS ON DRUG FUNDING.

It is the Sense of the Congress that—

(1) total authorizations in this Act and subsequent fiscal year 1989 appropriations shall provide that 60 percent of these incremental anti-drug funds shall be provided for drug prevention, treatment, and education programs and that 40 percent of the funds shall be provided for anti-drug law enforcement programs;

(2) the fiscal year 1989 appropriations for these authorizations shall include obligation limitations to the extent necessary to avoid triggering a sequester in fiscal year 1989;

(3) if obligational limitations in appropriations Acts become necessary, they shall have the net effect of providing 50 percent of the available fiscal year 1989 outlays for anti-drug law enforcement programs (up to the amount authorized in this Act) and 50 percent (or any authorized amounts remaining in this Act after all amounts for law enforcement have been appropriated) for drug prevention, treatment, and education programs;

(4) should obligational limitations in appropriations Acts be imposed for fiscal year 1989, subsequent obligations of remaining budget authority provided in this Act shall be made so as to ensure that, overall, 60 percent of the budget authority will be provided for drug prevention, treatment, and education programs and 40 percent shall be provided for anti-drug law enforcement programs; and

(5) revenues from an Internal Revenue Service enforcement and collections initiative and increased receipts from additional United States Attorneys used to improve processing of forfeited assets through the assets forefeiture fund should be used to offset spending associated with this Act.

TITLE VII A—DEATH PENALTY IN CASE OF DRUG-RELATED KILLINGS

SEC. 7001. DEATH PENALTY FOR DRUG-RELATED KILLINGS.

(a) Elements of Offense.—Section 408 of the Controlled Substances Act (21 U.S.C. 848) is amended—

(1) by redesigning subsection (e) as subsection (f); and

(2) by adding a new subsection (e) as follows:

"Death Penalty

"(e)(1) In addition to the other penalties set forth in this section—

"(a) Any person engaging in a continuing criminal enterprise, or anyone working in furtherance of a continuing criminal enterprise who intentionally, or with reckless indifference to human life, kills or participates substantially in the killing of any individual, shall be sentenced to any term of imprisonment, which shall not be less than 20 years, and which may be up to life imprisonment, or may be sentenced to death; and

"(b) Any person, during the commission of, in furtherance of, or while attempting to avoid apprehension, prosecution, or service of a prison sentence for, a felony violation of the Controlled Substances Act (21 U.S.C. 801 et seq.) who intentionally, or with reckless indifference to human life, kills or participates substantially in the killing of any federal, state, or local law enforcement officer engaged in, or on account of, the performance of such officer's official duties, shall be sentenced to any term of imprisonment, which shall not be less than 20 years, and which may be up to life imprisonment, or may be sentenced to death.

"(2) As used in paragraph (1)(b), a 'law enforcement officer' is a public servant authorized by law or by a Government agency or Congress to conduct or engage in the prevention, investigation, prosecution, or adjudication of an offense, and includes those engaged in corrections, probation, or parole functions.".

(b) Procedure Applicable With Respect to the Death Penalty.—Section 408 of the Controlled Substances Act (21 U.S.C. 848) is amended by adding at the end the following:

"Hearing Required with Respect to the Death Penalty

"(g) A person shall be subjected to the penalty of death for any offense under this section only if a hearing is held in accordance with this section.

"Notice by the Government in Death Penalty Cases

"(h)(1) Whenever the Government intends to seek the death penalty for an offense under this section for which one of the sentences provided is death, the attorney for the Government, a reasonable time before trial or acceptance by the court of a plea of guilty, shall sign and file with the court, and serve upon the defendant, a notice—

"(A) that the Government in the event of conviction will seek the sentence of death; and

"(B) setting forth the aggravating factors enumerated in subsection (n) and any other aggravating factors which the Government will seek to prove as the basis for the death penalty.

"(2) The court may permit the attorney for the Government to amend this notice for good cause shown.

"Hearing Before Court or Jury

"(i)(1) When the attorney for the Government has filed a notice as required under subsection (h) and the defendant is found guilty of or pleads guilty to an offense under subsection (e), the judge who presided at the trial or before whom the guilty plea was entered, or any other judge if the judge who presided at the trial or before whom the guilty plea was entered is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. The hearing shall be conducted—

"(A) before the jury which determined the defendant's guilt;

"(B) before a jury impaneled for the purpose of the hearing if—

"(i) the defendant was convicted upon a plea of guilty;

"(ii) the defendant was convicted after a trial before the court sitting without a jury;

"(iii) the jury which determined the defendant's guilt has been discharged for good cause; or

"(iv) after initial imposition of a sentence under this section, redetermination of the sentence under this section is necessary; or

"(C) before the court alone, upon the motion of the defendant and with the approval of the Government.

"(2) A jury impaneled pursuant to paragraph (i)(B) shall consist of 12 members, unless, at any time before the conclusion of the hearing, the parties stipulate with the approval of the court that it shall consist of any number less than 12.

"Proof of Aggravating and Mitigating Factors

"(j) Notwithstanding rule 32(c) of the Federal Rules of Criminal Procedure, when a defendant is found guilty of or pleads guilty to an offense under subsection (e), no presentence report shall be prepared. In the sentencing hearing, information may be presented as to any matter relevant to the sentence and shall include matters relating to any of the aggravating or mitigating factors set forth in subsections (m) and (n), or any other mitigating factor. Where information is presented relating to any of the aggravating factors set forth in subsection (n), information may be presented relating to any other aggravating factor. Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial. Any other information relevant to such mitigating or aggravating factors may be presented by either the Government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. The Government and the defendant shall be permitted to rebut any information received at the hearing and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any of the aggravating or mitigating factors and as to appropriateness in that case of imposing a sentence of death. The Government shall open the argument. The defendant shall be permitted to reply. The Government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the Government, and is not satisfied unless established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless established by a preponderance of the evidence.

"Return of Findings

"(k) The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any aggravating factors set forth in subsection (n), found to exist. If one of the aggravating factors set forth in subsection (n)(1) and another of the aggravating factors set forth in paragraphs (2) through (12) of subsection (n) is found to exist, a special finding identifying any other aggravating factor may be returned. A finding with respect to a mitigating factor may be made by one or more of the members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such a factor established for purposes of this subsection, regardless of the number of jurors who concur that the factor has been established. A finding with respect to any aggravating factor must be unanimous. If an aggravating factor set forth in subsection (n)(1) is not found to exist or an aggravating factor set forth in subsection (n)(1) is found to exist but no other aggravating factor set forth in subsection (n) is found to exist, the court shall impose a sentence, other than death, authorized by law. If an aggravating factor set forth in subsection (n)(1) and one or more of the other aggravating factors set forth in subsection (n) are found to exist, the jury, or if there is no jury, the court, shall then consider whether the aggravating factor or factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall return a finding as to whether a sentence of death is justified.

"Imposition of Sentence

"(l) Upon a finding that a sentence of death is justified, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law. A sentence of death shall not be carried out upon a person who is under 18 years of age at the time the crime was committed. A sentence of death shall not be carried out upon a person who, by reason of a mental disease or defect, is unable to understand his impending death or the reasons for it.

"Mitigating Factors

"(m) In determining whether a sentence of death is to be imposed on a defendant, the following mitigating factors shall be considered but are not exclusive:

"(1) The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to the charge.

"(2) The defendant was under unusual and substantial duress, although not such duress as constitutes a defense to the charge.

"(3) The defendant is punishable as a principal (as defined in section 2(a) of title 18 of the United States Code) in the offense, which was committed by another, but the defendant's participation was relatively minor, although not so minor as to constitute a defense to the charge.

"(4) The defendant could not reasonably have foreseen that his conduct in the course of the commission of murder, or other offense resulting in death for which the defendant was convicted, would cause, or would create a grave risk of causing, death to any person.

"Aggravating Factors for Homicide

"(n) If the defendant is found guilty of or pleads guilty to an offense under subsection (e), the following aggravating factors shall be considered but are not exclusive:

"(1) The defendant—

"(A) intentionally killed the victim;

"(B) intentionally inflicted serious bodily injury which resulted in the death of the victim;

"(C) intentionally engaged in conduct intending that the victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim.

"(D) intentionally engaged in conduct which—

"(i) the defendant knew would create a grave risk of death to a person, other than one of the participants in the offense; and

"(ii) resulted in the death of the victim.

"(2) The defendant has been convicted of another Federal offense, or a State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute.

"(3) The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury upon another person.

"(4) The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance.

"(5) In the commission of the offense or in escaping apprehension for a violation of subsection (e), the defendant knowingly created a grave risk of death to one or more persons in addition to the victims of the offense.

"(6) PROCUREMENT OF THE OFFENSE BY PAYMENT.—The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

"(7) COMMISSION OF THE OFFENSE FOR PAYMENT.—The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

"(8) SUBSTANTIAL PLANNING AND PREMEDITATION.—The defendant committed the offense after substantial planning and premeditation.

"(9) VULNERABILITY OF VICTIM.—The victim was particularly vulnerable due to old age, youth, or infirmity.

"(10) The defendant had previously been convicted of violating a provision of the Controlled Substances Act for which a sentence of five or more years may be imposed or was engaged in a continuing criminal enterprise.

"(11) The violation of this chapter in relation to which the conduct described in subsection (e) occurred was a violation of section 405.

"(12) The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim.

"Right of the Defendant to Justice Without Discrimination

"(o)(1) In any hearing held before a jury under this section, the court shall instruct the jury that in its consideration of whether the sentence of death is justified it shall not consider the race, color, national origin, or sex of the defendant or the victim, and that the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for the crime in question no matter what race the defendant, or the victim, may be. The jury shall return to the court a certificate signed by each juror that consideration of race, color, national origin, creed, or sex of the defendant or the victim was not involved in reaching his or her individual decision, and that the individual juror would have made the same recommendation regarding a sentence for the crime in question no matter what race the defendant, or the victim, may be.

"(2) Not later than one year from the date of enactment of this section, the Comptroller General shall conduct a study of the various procedures used by the several States for determining whether or not to impose the death penalty in particular cases, and shall report to the Congress on whether or not any or all of the various procedures create a significant risk that the race of a defendant, or the race of a victim against whom a crime was committed, influence the likelihood that defendants in those States will be sentenced to death. In conducting the study required by this paragraph, the General Accounting Office shall—

"(A) use ordinary methods of statistical analysis, including methods comparable to those ruled admissible by the courts in race discrimination cases under Title VII of the Civil Rights Act of 1964;

"(B) study only crimes occurring after January 1, 1976; and

"(C) determine what, if any, other factors, including any relation between any aggravating or mitigating factors and the race of the victim or the defendant, may account for any evidence that the race of the defendant, or the race of the victim, influences the likelihood that defendants will be sentenced to death. In addition, the General Accounting Office shall examine separately and include in the report, death penalty cases involving crimes similar to those covered under this section.

"Sentencing in Capital Cases in Which Death Penalty is not Sought or Imposed

"(p) If a person is convicted for an offense under subsection (e) and the court does not impose the penalty of death, the court may impose a sentence of life imprisonment without the possibility of parole.

"Appeal in Capital Cases

"(q)(1) In any case in which the sentence of death is imposed under this section, the sentence of death shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time prescribed for appeal of judgment in section 2107 of title 28 of the United States Code. An appeal under this section may be consolidated with an appeal of the judgment of conviction. Such review shall have priority over all other cases.

"(2) On review of the sentence, the court of appeals shall consider the record, the evidence submitted during the trial, the information submitted during the sentencing hearing, the procedures employed in the sentencing hearing, and the special findings returned under this section.

"(3) The court shall affirm the sentence if it determines that—

"(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor; and

"(B) the information supports the special finding of the existence of every aggravating factor upon which the sentence was based, together with or the failure to find any mitigating factors as set forth or allowed in this section.

In all other cases the court shall remand the case for reconsideration under this section. The court of appeals shall state in writing the reasons for its disposition of the review of the sentence.

"(4) In any post-conviction proceeding under section 2254 or 2255 of title 28, United States Code seeking to vacate or set aside a death sentence, the court shall appoint counsel to represent any defendant who is or becomes financially unable to obtain adequate representation.

"Refusal to Participate by State and Federal Correctional Employees

"(r) No employee of any State department of corrections or the Federal Bureau of Prisons and no employee providing services to that department or bureau under contract shall be required, as a condition of that employment, or contractual obligation to be in attendance at or to participate in any execution carried out under this section if such participation is contrary to the moral or religious convictions of the employee. For purposes of this subsection, the term 'participation in executions' includes personal preparation of the condemned individual and the apparatus used for execution and supervision of the activities of other personnel in carrying out such activities.".

HATFIELD AMENDMENT NO. 3678

Mr. HATFIELD proposed an amendment to the bill H.R. 5210, supra; as follows:

In lieu of title VII of the bill, insert the following:

TITLE VII—LIFE SENTENCE WITHOUT RELEASE IN CASE OF DRUG RELATED KILLINGS

SEC. 7001. LIFE SENTENCE WITHOUT RELEASE FOR DRUG-RELATED KILLINGS.

Section 408 of the Controlled Substances Act (21 U.S.C. 848) is amended—

(1) by redesigning subsection (e) as subsection (f); and

(2) by adding a new subsection (e) as follows:

"Life sentence without release

"(e)(1) In addition to the other penalties set forth in this section—

"(A) any person engaging in a continuing criminal enterprise, or anyone working in furtherance of a continuing criminal enterprise who intentionally, or with reckless indifference to human life, kills or participates substantially in the killing of any individual, shall be sentenced to life imprisonment without the possibility of release; and

"(B) any person, during the commission of, in furtherance of, or while attempting to avoid apprehension, prosecution or service of a prison sentence for, a felony violation of the Controlled Substances Act (21 U.S.C. 801 et seq.) who intentionally, or with reckless indifference to human life, kills or participates substantially in the killing of any Federal, State, or local law enforcement officer engaged in, or on account of, the performance of such officer's official duties, shall be sentenced to life imprisonment without the possibility of release.

"(2) As used in paragraph (1)(b), a 'law enforcement officer' is a public servant authorized by law or by a Government agency or Congress to conduct or engage in the prevention, investigation, prosecution or adjudication of an offense, and includes those engaged in corrections, probation, or parole functions.".

OMNIBUS ANTI SUBSTANCE ABUSE ACT

WILSON AMENDMENT NO. 3679

(Ordered to lie on the table.)

Mr. WILSON submitted an amendment intended to be proposed by him to the bill (S. 2852) to provide for an omnibus Federal, State, and local effort against substance abuse, to provide for a cabinet-level position to centralize and streamline Federal activities with respect to both drug supply—interdiction and law enforcement—and drug demand—prevention, education, and treatment—to expand Federal support to ensure a long-term commitment of resources and personnel for a substance abuse education, treatment, and rehabilitation efforts, to strengthen and improve the enforcement of Federal drug laws and enhance the interdiction of illicit drug shipments, and for other purposes; as follows:

At the end of the bill, add the following:

SEC. . REDUCTION OF FEDERAL HIGHWAY FUNDS TO ANY STATE THAT DOES NOT HAVE A PROGRAM OF RANDOM TESTING FOR DRUG ABUSE OF INDIVIDUALS FOR DRIVER'S LICENSE APPLICANTS.

(a) Chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new section:

"§ 159. Random testing for illegal drug abuse

"(a)(1) The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of paragraphs (1), (2), (5), and (6) of section 104(b) on the first day of each fiscal year succeeding the fiscal year beginning on October 1, 1989, if the State does not have the following programs:

"(A) A program to randomly test for illicit drug use individuals who—

"(i) are seeking the privilege to drive, and

"(ii) have never been issued a driver's license by any State.

prior to the grant of such privilege that makes such individuals subject to random testing during the first year following such grant to further deter drug use and promote highway safety.

"(B) A program that denies an individual driving privileges if drug testing required by subparagraph (A) indicates that such individual has used illicit drugs, with such denial lasting for a period of at least one year following such test or subsequent confirmatory test.

"(2) The program described in subparagraph (B) of paragraph (1) may allow for reinstitution of driving privileges after a period of three months if such reinstitution is accompanied by a requirement that the individual be available for a period of nine months for drug testing on weekly basis. If any such test indicates that the individual has used illicit drugs, then driving privileges must be denied for one year following such test or confirmatory test.

"(b) The Secretary may issue regulations to assist States in implementing the programs described in subsection (a) and to grant temporary exceptions to the application of subsection (a) in appropriate circumstances.

"(c)(1)(A) Any funds withheld under subsection (a) from apportionment to any State on or before September 30, 1991, shall remain available for apportionment to such State as follows:

"(i) If such funds would have been apportioned under section 104(b)(5)(A) but for this section, such funds shall remain available until the end of the fiscal year for which such funds are authorized to be appropriated.

"(ii) If such funds would have been apportioned under section 104(b)(5)(B) but for this section, such funds shall remain available until the end of the second fiscal year following the fiscal year for which such funds are authorized to be appropriated.

"(iii) If such funds would have been apportioned under paragraph (1), (2), or (6) of section 104(b) but for this section, such funds shall remain available until the end of the third fiscal year following the fiscal year for which such funds are authorized to be appropriated.

"(B) No funds withheld under this section from apportionment to any State after September 30, 1991, shall be available for apportionment to such State.

"(2) If, before the last day of the period for which funds withheld under subsection (a) are to remain available for apportionment to a State under paragraph (1), the State has all the programs described in subsection (a), the Secretary shall, on the first day on which the State has all of such programs, apportion to the State the funds withheld under subsection (a) that remain available for apportionment to the State.

"(3) Any funds apportioned pursuant to paragraph (2) shall remain available for expenditure as follows:

"(A) Funds apportioned under section 104(b)(5)(A) shall remain available until the end of the fiscal year succeeding the fiscal year in which such funds are so apportioned.

"(B) Funds apportioned under paragraph (1), (2), (5)(B), or (6) of section 104(b) shall remain available until the end of the third fiscal year succeeding the fiscal year in which such funds are so apportioned.

Sums not obligated at the end of such period shall lapse or, in the case of funds apportioned under section 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with section 118(b).

"(4) If, at the end of the period for which funds withheld under subsection (a) are available for apportionment to a State under paragraph (1), the State does not have a program described in subsection (a), such funds shall lapse or, in the case of funds withheld from apportionment under section 104(b)(5), such funds shall lapse and be made available by the Secretary for projects in accordance with section 118(b).".

(b) The table of contents for chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new item:

"159. Random testing for illegal drug abuse.".

GENERIC ANIMAL DRUG AND PATENT TERM RESTORATION ACT

HATCH (AND KENNEDY) AMENDMENT NO. 3680

Mr. HATCH (for himself and Mr. KENNEDY) proposed an amendment to the bill (S. 2843) to amend the Federal

Food, Drug, and Cosmetic Act to authorize abbreviated new animal drug applications and to amend title 35, United States Code, to authorize the extension of the patents for animal drug products; as follows:

GENERIC ANIMAL DRUG AND PATENT TERM RESTORATION ACT

SEC. 600. SHORT TITLE AND REFERENCE TO ACT.

(a) Short Title.—This title may be cited as the "Generic Animal Drug and Patent Term Restoration Act".

(b) Reference.—

(1) Whenever in subtitle A (other than in section 607(b)) an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act.

(2) Whenever in subtitle B an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 35 of the United States Code.

Subtitle A—New Animal Drug Applications

SEC. 601. ABBREVIATED NEW ANIMAL DRUG APPLICATIONS.

(a) General Rule.—Section 512(b) (21 U.S.C. 360b) is amended—

(1) by inserting "(1)" after "(b)",

(2) by redesignating clauses (1) through (8) as clauses (A) through (H), respectively, and

(3) by adding at the end the following:

"(2) Any person may file with the Secretary an abbreviated application for the approval of a new animal drug. An abbreviated application shall contain the information required by subsection (n).".

(b) Application Requirements.—Section 512 is amended by striking out subsection (n) and inserting in lieu thereof the following:

"(n)(1) An abbreviated application for a new animal drug shall contain—

"(A)(i) except as provided in clause (ii), information to show that the conditions of use or similar limitations (whether in the labeling or published pursuant to subsection (i)) prescribed, recommended, or suggested in the labeling proposed for the new animal drug have been previously approved for a new animal drug listed under paragraph (4) (hereinafter in this subsection referred to as an 'approved new animal drug'), and

"(ii) information to show that the withdrawal period at which residues of the new animal drug will be consistent with the tolerances established for the approved new animal drug is the same as the withdrawal period previously established for the approved new animal drug or, if the withdrawal period is proposed to be different, information showing that the residues of the new animal drug at the proposed different withdrawal period will be consistent with the tolerances established for the approved new animal drug;

"(B)(i) information to show that the active ingredients of the new animal drug are the same as those of the approved new animal drug, and

"(ii) if the approved new animal drug has more than one active ingredient, and if one of the active ingredients of the new animal drug is different from one of the active ingredients of the approved new animal drug and the application is filed pursuant to the approval of a petition filed under paragraph (3)—

"(I) information to show that the other active ingredients of the new animal drug are the same as the active ingredients of the approved new animal drug,

"(II) information to show either that the different active ingredient is an active ingredient of another approved new animal drug or of an animal drug which does not meet the requirements of section 201(w), and

"(III) such other information respecting the different active ingredients as the Secretary may require;

"(C)(i) if the approved new animal drug is permitted to be used with one or more animal drugs in animal feed, information to show that the proposed uses of the new animal drug with other animal drugs in animal feed are the same as the uses of the approved new animal drug, and

"(ii) if the approved new animal drug is permitted to be used with one or more other animal drugs in animal feed, and one of the other animal drugs proposed for use with the new animal drug in animal feed is different from one of the other animal drugs permitted to be used in animal feed with the approved new animal drug, and the application is filed pursuant to the approval of a petition filed under paragraph (3)—

"(I) information to show either that the different animal drug proposed for use with the approved new animal drug in animal feed is an approved new animal drug permitted to be used in animal feed or does not meet the requirements of section 201(w) when used with another animal drug in animal feed,

"(II) information to show that other animal drugs proposed for use with the new animal drug in animal feed are the same as the other animal drugs permitted to be used with the approved new animal drug, and

"(III) such other information respecting the different animal drug or combination with respect to which the petition was filed as the Secretary may require,

"(D) information to show that the route of administration, the dosage form, and the strength of the new animal drug are the same as those of the approved new animal drug or, if the route of administration, the dosage form, or the strength of the new animal drug is different and the application is filed pursuant to the approval of a petition filed under paragraph (3), such information respecting the route of administration, dosage form, or strength with respect to which the petition was filed as the Secretary may require;

"(E) information to show that the new animal drug is bioequivalent to the approved new animal drug, except that if the application is filed pursuant to the approval of a petition filed under paragraph (3) for the purposes described in subparagraph (B) or (C), information to show that the active ingredients of the new animal drug are of the same pharmacological or therapeutic class as the pharmacological or therapeutic class of the approved new animal drug and that the new animal drug can be expected to have the same therapeutic effect as the approved new animal drug when used in accordance with the labeling;

"(F) information to show that the labeling proposed for the new animal drug is the same as the labeling approved for the approved new animal drug except for changes required because of differences approved under a petition filed under paragraph (3), because of a different withdrawal period, or because the new animal drug and the approved new animal drug are produced or distributed by different manufacturers;

"(G) the items specified in clauses (B) through (F) of subsection (b)(1);

"(H) a certification, in the opinion of the applicant and to the best of his knowledge, with respect to each patent which claims the approved new animal drug or which claims a use for such approved new animal drug for which the applicant is seeking approval under this subsection and for which information is required to be filed under subsection (b)(1) or (c)(3)—

"(i) that such patent information has not been filed,

"(ii) that such patent has expired,

"(iii) of the date on which such patent will expire, or

"(iv) that such patent is invalid or will not be infringed by the manufacture, use, or sale of the new animal drug for which the application is filed; and

"(I) if with respect to the approved new animal drug information was filed under subsection (b)(1) or (c)(3) for a method of use patent which does not claim a use for which the applicant is seeking approval of an application under subsection (c)(2), a statement that the method of use patent does not claim such a use.

The Secretary may not require that an abbreviated application contain information in addition to that required by subparagraphs (A) through (H).

"(2)(A) An applicant who makes a certification described in paragraph (1)(G)(iv) shall include in the application a statement that the applicant will give the notice required by subparagraph (B) to—

"(i) each owner of the patent which is the subject of the certification or the representative of such owner designated to receive such notice, and

"(ii) the holder of the approved application under subsection (c)(1) for the drug which is claimed by the patent or a use of which is claimed by the patent or the representative of such holder designated to receive such notice.

"(B) The notice referred to in subparagraph (A) shall state that an application, which contains data from bioequivalence studies, has been filed under this subsection for the drug with respect to which the certification is made to obtain approval to engage in the commercial manufacture, use, or sale of such drug before the expiration of the patent referred to in the certification. Such notice shall include a detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid or will not be infringed.

"(C) If an application is amended to include a certification described in paragraph (1)(G)(iv), the notice required by subparagraph (B) shall be given when the amended application is filed.

"(3) If a person wants to submit an abbreviated application for a new animal drug—

"(A) whose active ingredients, route of administration, dosage form, or strength differ from that of an approved new animal drug, or

"(B) whose use with other animal drugs in animal feed differs from that of an approved new animal drug,

such person shall submit a petition to the Secretary seeking permission to file such an application. The Secretary shall approve a petition for a new animal drug unless the Secretary finds that—

"(A) investigations must be conducted to show the safety and effectiveness, in animals to be treated with the drug, of the active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed which differ from the approved new animal drug, or

"(B) investigations must be conducted to show the safety for human consumption of any residues in food resulting from the proposed active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed for the new animal drug which is different from the active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed of the approved new animal drug.

The Secretary shall approve or disapprove a petition submitted under this paragraph within 90 days of the date the petition is submitted.

"(4)(A)(i) Within 60 days of the date of the enactment of this subsection, the Secretary shall publish and make available to the public a list in alphabetical order of the official and proprietary name of each new animal drug which has been approved for safety and effectiveness before the date of the enactment of this subsection.

"(ii) Every 30 days after the publication of the first list under clause (i) the Secretary shall revise the list to include each new animal drug which has been approved for safety and effectiveness under subsection (c) during the 30 day period.

"(iii) When patent information submitted under subsection (b)(1) or (c)(3) respecting a new animal drug included on the list is to be published by the Secretary, the Secretary shall, in revisions made under clause (ii), include such information for such drug.

"(B) A new animal drug approved for safety and effectiveness before the date of the enactment of this subsection or approved for safety and effectiveness under subsection (c) shall, for purposes of this subsection, be considered to have been published under subparagraph (A) on the date of its approval or the date of enactment, whichever is later.

"(C) If the approval of a new animal drug was withdrawn or suspended under subsection (c)(2)(G) or for grounds described in subsection (e) or if the Secretary determines that a drug has been withdrawn from sale for safety or effectiveness reasons, it may not be published in the list under subparagraph (A) or, if the withdrawal or suspension occurred after its publication in such list, it shall be immediately removed from such list—

"(i) for the same period as the withdrawal or suspension under subsection (c)(2)(G) or (e), or

"(ii) if the listed drug has been withdrawn from sale, for the period of withdrawal from sale or, if earlier, the period ending on the date the Secretary determines that the withdrawal from sale is not for safety or effectiveness reasons.

A notice of the removal shall be published in the Federal Register.

"(5) If an application contains the information required by clauses (A), (G), and (H) of subsection (b)(1) and such information—

"(A) is relied on by the applicant for the approval of the application, and

"(B) is not information derived either from investigations, studies, or tests conducted by or for the applicant or for which the applicant had obtained a right of reference or use from the person by or for whom the investigations, studies, or tests were conducted,

such application shall be considered to be an application filed under subsection (b)(2).

"(o) For purposes of this section, the term 'patent' means a patent issued by the Patent and Trademark Office of the Department of Commerce.".

(c) APPLICATION APPROVAL.—Section 512(c) is amended (1) by inserting "(1)" after "(c)", by redesignating clauses (1) and (2) as clauses (A) and (B), and by adding at the end the following:

"(2)(A) Subject to subparagraph (C), the Secretary shall approve an abbreviated application for a drug unless the Secretary finds—

"(i) the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of the drug are inadequate to assure and preserve its identity, strength, quality, and purity;

"(ii) the conditions of use prescribed, recommended, or suggested in the proposed labeling are not reasonably certain to be followed in practice or, except as provided subparagraph (B), information submitted with the application is insufficient to show that each of the proposed conditions of use or similar limitations (whether in the labeling or published pursuant to subsection (i)) have been previously approved for the approved new animal drug referred to in the application;

"(iii) information submitted with the application is insufficient to show that the active ingredients are the same as those of the approved new animal drug referred to in the application;

"(iv)(I) if the application is for a drug whose active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed is the same as the active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed of the approved new animal drug referred to in the application, information submitted in the application is insufficient to show that the active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed is the same as that of the approved new animal drug, or

"(II) if the application is for a drug whose active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed is different from that of the approved new animal drug referred to in the application, no petition to file an application for the drug with the different active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed was approved under subsection (n)(3);

"(v) if the application was filed pursuant to the approval of a petition under subsection (n)(3), the application did not contain the information required by the Secretary respecting the active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed which is not the same;

"(vi) information submitted in the application is insufficient to show that the drug is bioequivalent to the approved new animal drug referred to in the application, or if the application is filed under a petition approved pursuant to subsection (n)(3), information submitted in the application is insufficient to show that the active ingredients of the new animal drug are of the same pharmacological or therapeutic class as the pharmacological or therapeutic class of the approved new animal drug and that the new animal drug can be expected to have the same therapeutic effect as the approved new animal drug when used in accordance with the labeling;

"(vii) information submitted in the application is insufficient to show that the labeling proposed for the drug is the same as the labeling approved for the approved new animal drug referred to in the application except for changes required because of differences approved under a petition filed under subsection (n)(3), because of a different withdrawal period, or because the drug and the approved new animal drug are produced or distributed by different manufacturers;

"(viii) information submitted in the application or any other information available to the Secretary shows that (I) the inactive ingredients of the drug are unsafe for use under the conditions prescribed, recommended, or suggested in the labeling proposed for the drug, (II) the composition of the drug is unsafe under such conditions because of the type or quantity of inactive ingredients included or the manner in which the inactive ingredients are included, or (III) in the case of a drug for food producing animals, the inactive ingredients of the drug or its composition may be unsafe with respect to human food safety;

"(ix) the approval under subsection (b)(1) of the approved new animal drug referred to in the application filed under subsection (b)(2) has been withdrawn or suspended for grounds described in paragraph (1) of subsection (e), the Secretary has published a notice of a hearing to withdraw approval of the approved new animal drug for such grounds, the approval under this paragraph of the new animal drug for which the application under subsection (b)(2) was filed has been withdrawn or suspended under subparagraph (G) for such grounds, or the Secretary has determined that the approved new animal drug has been withdrawn from sale for safety or effectiveness reasons;

"(x) the application does not meet any other requirement of subsection (n); or

"(xi) the application contains an untrue statement of material fact.

"(B) If the Secretary finds that a new animal drug for which an application is submitted under subsection (b)(2) is bioequivalent to the approved new animal drug referred to in such application and that residues of the new animal drug are consistent with the tolerances established for such approved new animal drug but at a withdrawal period which is different than the withdrawal period approved for such approved new animal drug, the Secretary may establish, on the basis of information submitted, such different withdrawal period as the withdrawal period for the new animal drug for purposes of the approval of such application for such drug.

"(C) Within 180 days of the initial receipt of an application under subsection (b)(2) or within such additional period as may be agreed upon by the Secretary and the applicant, the Secretary shall approve or disapprove the application.

"(D) The approval of an application filed under subsection (b)(2) shall be made effective on the last applicable date determined under the following:

"(i) If the applicant only made a certification described in clause (i) or (ii) of subsection (n)(1)(G) or in both such clauses, the approval may be made effective immediately.

"(ii) If the applicant made a certification described in clause (iii) of subsection (n)(1)(G), the approval may be made effective on the date certified under clause (iii).

"(iii) If the applicant made a certification described in clause (iv) of subsection (n)(1)(G), the approval shall be made effective immediately unless an action is brought for infringement of a patent which is the subject of the certification before the expiration of 45 days from the date the notice provided under subsection (n)(2)(B)(i) is received. If such an action is brought before the expiration of such days, the approval shall be made effective upon the expiration of the 30 month period beginning on the date of the receipt of the notice provided under subsection (n)(2)(B) or such shorter or longer period as the court may order because either party to the action failed to reasonably cooperate in expediting the action, except that if before the expiration of such period—

"(I) the court decides that such patent is invalid or not infringed, the approval shall be made effective on the date of the court decision,

"(II) the court decides that such patent has been infringed, the approval shall be made effective on such date as the court orders under section 271(e)(4)(A) of title 35, United States Code, or

"(III) the court grants a preliminary injunction prohibiting the applicant from engaging in the commercial manufacture or sale of the drug until the court decides the issues of patent validity and infringement and if the court decides that such patent is invalid or not infringed, the approval shall be made effective on the date of such court decision.

In such an action, each of the parties shall reasonably cooperate in expediting the action. Until the expiration of 45 days from the date the notice made under subsection (n)(2)(B) is received, no action may be brought under section 2201 of title 28, United States Code, for a declaratory judgment with respect to the patent. Any action brought under section 2201 shall be brought in the judicial district where the defendant has its principal place of business or a regular and established place of business.

"(iv) If the application contains a certification described in clause (iv) of subsection (n)(1)(G) and is for a drug for which a previous application has been filed under this subsection containing such a certification, the application shall be made effective not earlier than 180 days after—

"(I) the date the Secretary receives notice from the applicant under the previous application of the first commercial marketing of the drug under the previous application, or

"(II) the date of a decision of a court in an action described in subclause (III) holding the patent which is the subject of the certification to be invalid or not infringed,

whichever is earlier.

"(E) If the Secretary decides to disapprove an application, the Secretary shall give the applicant notice of an opportunity for a hearing before the Secretary on the question of whether such application is approvable. If the applicant elects to accept the opportunity for hearing by written request within 30 days after such notice, such hearing shall commence not more than 90 days after the expiration of such 30 days unless the Secretary and the applicant otherwise agree. Any such hearing shall thereafter be conducted on an expedited basis and the Secretary's order thereon shall be issued within 90 days after the date fixed by the Secretary for filing final briefs.

"(F)(i) If an application submitted under subsection (b)(1) for a drug, no active ingredient (including any ester or salt of the active ingredient) of which has been approved in any other application under subsection (b)(1), is approved after the date of the enactment of this paragraph, no application may be submitted under subsection (b)(2) which refers to the drug for which the subsection (b)(1) application was submitted before the expiration of 5 years from the date of the approval of the application under subsection (b)(1), except that such an application may be submitted under subsection (b)(2) after the expiration of 4 years from the date of the approval of the subsection (b)(1) application if it contains a certification of patent invalidity or noninfringement described in clause (iv) of subsection (n)(1)(G). The approval of such an application shall be made effective in accordance with subparagraph (B) except that, if an action for patent infringement is commenced during the one-year period beginning forty-eight months after the date of the approval of the subsection (b) application, the 30 month period referred to in subparagraph (C)(iii) shall be extended by such amount of time (if any) which is required for seven and one-half years to have elapsed from the date of approval of the subsection (b) application.

"(ii) If an application submitted under subsection (b)(1) for a drug, which includes an active ingredient (including any ester or salt of the active ingredient) that has been approved in another application approved under such subsection, is approved after the date of enactment of this paragraph and if such application contains reports of new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food producing animals, human food safety studies (other than bioequivalence or residue studies) essential to the approval of the application and conducted or sponsored by the applicant, the Secretary may not make the approval of an application submitted under subsection (b)(2) for the conditions of approval of such drug in the subsection (b)(1) application effective before the expiration of 3 years from the date of the approval of the application under subsection (b)(1) for such drug.

"(iii) If a supplement to an application approved under subsection (b)(1) is approved after the date of enactment of this paragraph and the supplement contains reports of new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food producing animals, human food safety studies (other than bioequivalence or residue studies) essential to the approval of the supplement and conducted or sponsored by the person submitting the supplement, the Secretary may not make the approval of an application submitted under subsection (b)(2) for a change approved in the supplement effective before the expiration of 3 years from the date of the approval of the supplement.

"(iv) An applicant under subsection (b)(1) who comes within the provisions of clause (i) of this subparagraph as a result of an application which seeks approval for a use solely in non-food producing animals, may elect, within 10 days of receiving such approval, to waive clause (i) of this subparagraph, in which event the limitation on approval of applications submitted under subsection (b)(2) set forth in clause (ii) of this subparagraph shall be applicable to the subsection (b)(1) application.

"(v) If an application (including any supplement to a new animal drug application) submitted under subsection (b)(1) for a new animal drug for a food-producing animal use, which includes an active ingredient (including any ester or salt of the active ingredient) which has been the subject of a waiver under subparagraph (B)(iv) is approved after the date of enactment of this paragraph, and if the application contains reports of clinical or field investigations or human food safety studies (other than bioequivalence or residue studies) essential to the new approval of the application and conducted or sponsored by the applicant, the Secretary may not make the approval of an application (including any supplement to such application) submitted under subsection (b)(2) for the new conditions of approval of such drug in the subsection (b)(1) application effective before the expiration of five years from the date of approval of the application under subsection (b)(1) for such drug. The provisions of this paragraph shall apply only to the first approval for a food-producing animal use for the same applicant after the waiver under subparagraph (B)(iv).

"(G) If an approved application submitted under subsection (b)(2) for a new animal drug refers to a drug the approval of which was withdrawn or suspended for grounds described in paragraph (1) or (2) of subsection (e) or was withdrawn or suspended under this subparagraph or which, as determined by the Secretary, has been withdrawn from sale for safety or effectiveness reasons, the approval of the drug under this paragraph shall be withdrawn or suspended—

"(i) for the same period as the withdrawal or suspension under subsection (e) or this subparagraph, or

"(ii) if the approved new animal drug has been withdrawn from sale, for the period of withdrawal from sale or, if earlier, the period ending on the date the Secretary determines that the withdrawal from sale is not for safety or effectiveness reasons.

"(H) For purposes of this paragraph:

"(i) The term 'bioequivalence' means the rate and extent to which the active ingredient or therapeutic ingredient is absorbed from a new animal drug and becomes available at the site of drug action.

"(ii) A new animal drug shall be considered to be bioequivalent to the approved new animal drug referred to in its application under subsection (n) if—

"(I) the rate and extent of absorption of the drug do not show a significant difference from the rate and extent of absorption of the approved new animal drug referred to in the application when administered at the same dose of the active ingredient under similar experimental conditions in either a single dose or multiple doses;

"(II) the extent of absorption of the drug does not show a significant difference from the extent of absorption of the approved new animal drug referred to in the application when administered at the same dose of the active ingredient under similar experimental conditions in either a single dose or multiple doses and the difference from the approved new animal drug in the rate of absorption of the drug is intentional, is reflected in its proposed labeling, is not essential to the attainment of effective drug concentrations in use, and is considered scientifically insignificant for the drug in attaining the intended purposes of its use and preserving human food safety; or

"(III) in any case in which the Secretary determines that the measurement of the rate and extent of absorption or excretion of the new animal drug in biological fluids is inappropriate or impractical, an appropriate acute pharmacological effects test or other test of the new animal drug and, when deemed scientifically necessary, of the approved new animal drug referred to in the application in the species to be tested or in an appropriate animal model does not show a significant difference between the new animal drug and such approved new animal drug when administered at the same dose under similar experimental conditions.

If the approved new animal drug referred to in the application for a new animal drug under subsection (n) is approved for use in more than one animal species, the bioequivalency information described in subclause (I), (II), and (III) shall be obtained for one species, or if the Secretary deems appropriate based on scientific principles, shall be obtained for more than one species. The Secretary may prescribe the dose to be used in determining bioequivalency under subclause (I), (II), or (III). To assure that the residues of the new animal drug will be consistent with the established tolerances for the approved new animal drug referred to in the application under subsection (b)(2) upon the expiration of the withdrawal period contained in the application for the new animal drug, the Secretary shall require bioequivalency data or residue depletion studies of the new animal drug or such other data or studies as the Secretary considers appropriate based on scientific principles. If the Secretary requires one or more residue studies under the preceding sentence, the Secretary may not require that the assay methodology used to determine the withdrawal period of the new animal drug be more rigorous than the methodology used to determine the withdrawal period for the approved new animal drug referred to in the application. If such studies are required and if the approved new animal drug, referred to in the application for the new animal drug for which such studies are required, is approved for use in more than one animal species, such studies shall be conducted for one species, or if the Secretary deems appropriate based on scientific principles, shall be conducted for more than one species.".

SEC. 602. PATENT INFORMATION.

(a) SECTION 512(b).— Section 512(b)(1) of such Act is amended by adding at the end the following: "The applicant shall file with the application the patent number and the expiration date of any patent which claims the new animal drug for which the applicant filed the application or which claims a method of using such drug and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug. If an application is filed under this subsection for a drug and a patent which claims such drug or a method of using such drug is issued after the filing date but before approval of the application, the applicant shall amend the application to include the information required by the preceding sentence. Upon approval of the application, the Secretary shall publish information submitted under the two preceding sentences.".

(b) OTHER SECTIONS.—

(1) Section 512(c) is amended by adding at the end the following:

"(3) If the patent information described in subsection (b)(1) could not be filed with the submission of an application under subsection (b)(1) because the application was filed before the patent information was required under subsection (b)(1) or a patent was issued after the application was approved under such subsection, the holder of an approved application shall file with the Secretary the patent number and the expiration date of any patent which claims the new animal drug for which the application was filed or which claims a method of using such drug and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug. If the holder of an approved application could not file patent information under subsection (b)(1) because it was not required at the time the application was approved, the holder shall file such information under this subsection not later than 30 days after the date of the enactment of this sentence, and if the holder of an approved application could not file patent information under subsection (b)(1) because no patent had been issued when an application was filed or approved, the holder shall file such information under this subsection not later than 30 days after the date the patent involved is issued. Upon the submission of patent information under this subsection, the Secretary shall publish it.".

(2) The first sentence of section 512(d)(1) is amended by redesignating subparagraphs (G) and (H) as subparagraphs (H) and (I), respectively and by inserting after subparagraph (F) the following:

"(G) the application failed to contain the patent information prescribed by subsection (b)(1);".

(3) The second sentence of section 512(d)(1) is amended by striking out "(H)" and inserting in lieu thereof "(G)".

(4) The first sentence of section 512(e)(1) is amended by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively, and by inserting after subparagraph (C) the following:

"(D) the patent information prescribed by subsection (c)(3) was not filed within 30 days after the receipt of written notice from the Secretary specifying the failure to file such information;".

SEC. 603. REGULATIONS.

(a) GENERAL RULE.—The Secretary of Health and Human Services shall promulgate, in accordance with the notice and comment requirements of section 553 of title 5, United States Code, such regulations as may be necessary for the administration of section 512 of the Federal Food, Drug, and Cosmetic Act, as amended by sections 601 through 603 of this title, within one year of the date of enactment of this Act.

(b) TRANSITION.—During the period beginning 60 days after the date of enactment of this Act and ending on the date regulations promulgated under subsection (a) take effect, abbreviated new animal drug applications may be submitted in accordance with the provisions of section 314.55 and part 320 of title 21 of the Code of Federal Regulations and shall be considered as suitable for any drug which has been approved for safety and effectiveness under section 512(c) of the Federal Food, Drug, and Cosmetic Act before the date of enactment of this Act. If any such provision of section 314.55 or part 320 is inconsistent with the requirements of section 512 of the Federal Food, Drug, and Cosmetic Act (as amended by this title), the Secretary shall consider the application under the applicable requirements of section 512 (as so amended).

SEC. 604. SAFETY AND EFFECTIVENESS DATA.

Section 512 (as amended by section 601(b) of this title) is amended by adding at the end the following:

"(p)(1) Safety and effectiveness data and information which has been submitted in an application filed under subsection (b)(1) for a drug and which has not previously been disclosed to the public shall be made available to the public, upon request, unless extraordinary circumstances are shown—

"(A) if no work is being or will be undertaken to have the application approved,

"(B) if the Secretary has determined that the application is not approvable and all legal appeals have been exhausted,

"(C) if approval of the application under subsection (c) is withdrawn and all legal appeals have been exhausted,

"(D) if the Secretary has determined that such drug is not a new drug, or

"(E) upon the effective date of the approval of the first application filed under subsection (b)(2) which refers to such drug or upon the date upon which the approval of an application filed under subsection (b)(2) which refers to such drug could be made effective if such an application had been filed.

"(2) Any request for data and information pursuant to paragraph (1) shall include a verified statement by the person making the request that any data or information received under such paragraph shall not be disclosed by such person to any other person—

"(A) for the purpose of, or as part of a plan, scheme, or device for, obtaining the right to make, use, or market, or making, using, or marketing, outside the United States, the drug identified in the application filed under subsection (b)(1), and

"(B) without obtaining from any person to whom the data and information are disclosed an identical verified statement, a copy of which is to be provided by such person to the Secretary, which meets the requirements of this paragraph.".

SEC. 605. VETERINARY PRESCRIPTION DRUGS.

Section 503 (21 U.S.C. 353) is amended by adding at the end thereof the following new subsection:

"(c)(1)(A) A drug intended for use by animals other than man which—

"(i) because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary for its use, is not safe for animal use except under the professional supervision of a licensed veterinarian, or

"(ii) is limited by an approved application under subsection (b) of section 512 to use under the professional supervision of a licensed veterinarian,

shall be dispensed only by or upon the lawful written or oral order of a licensed veterinarian in the course of the veterinarian's professional practice.

"(B) For purposes of subparagraph (A), an order is lawful if the order—

"(i) is a prescription or other order authorized by law,

"(ii) is, if an oral order, promptly reduced to writing by the person lawfully filling the order, and filed by that person, and

"(iii) is refilled only if authorized in the original order or in a subsequent oral order promptly reduced to writing by the person lawfully filling the order, and filed by that person.

"(C) The act of dispensing a drug contrary to the provisions of this paragraph shall be deemed to be an act which results in the drug being misbranded while held for sale.

"(2) Any drug when dispensed in accordance with paragraph (1) of this subsection—

"(A) shall be exempt from the requirements of section 502, except subsections (a), (g), (h), (i)(2), (i)(3), and (p) of such section, and

"(B) shall be exempt from the packaging requirements of subsections (g), (h), and (p) of such section, if—

"(i) when dispensed by a licensed veterinarian, the drug bears a label containing the name and address of the practitioner and any directions for use and cautionary statements specified by the practitioner, or

"(ii) when dispensed by filling the lawful order of a licensed veterinarian, the drug bears a label containing the name and address of the dispenser, the serial number and date of the order or of its filling, the name of the licensed veterinarian, and the directions for use and cautionary statements, if any, contained in such order.

The preceding sentence shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail.

"(3) The Secretary may by regulation exempt drugs for animals other than man subject to section 512 from the requirements of paragraph (1) when such requirements are not necessary for the protection of the public health.

"(4) A drug which is subject to paragraph (1) shall be deemed to be misbranded if at any time prior to dispensing its label fails to bear the statement 'Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian.'. A drug to which paragraph (1) does not apply shall be deemed to be misbranded if at any time prior to dispensing its label bears the statement specified in the preceding sentence.".

SEC. 606. DRUGS PRIMARILY MANUFACTURED USING BIOTECHNOLOGY.

Notwithstanding section 512(b)(2) of the Federal Food, Drug, and Cosmetic Act, the Secretary of Health and Human Services may not approve an abbreviated application submitted under such section for a new animal drug which is primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes involving site specific genetic manipulation techniques.

SEC. 607. CONFORMING AMENDMENTS.

(a) BATCH CERTIFICATION.—

(1) Section 201(w) (21 U.S.C. 321(w) is amended by striking out "; or" at the end of paragraph (2) and inserting in lieu thereof a period and by striking out paragraph (3).

(2) Section 512(a)(1) (21 U.S.C. 360b(a)(1)) is amended by inserting "and" at the end of subparagraph (A), by striking out ", and" at the end of subparagraph (B) and inserting in lieu thereof a period, and by striking out subparagraph (C).

(b) TITLE 28.—Section 2201(b) of title 28, United States Code, is amended by inserting "or 512" after "505".

SEC. 608. EFFECTIVE DATE.

The Secretary of Health and Human Services may not make an approval of an application submitted under section 512(b)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(b)(2)) effective before January 1, 1991.

Subtitle B—Patent Terms

SEC. 611. EXTENSION OF PATENT TERM.

(a) SECTION 156(a)(5).—Section 156(a)(5) is amended—

(1) by inserting "or (C)" after "subparagraph (B)" in subparagraph (A),

(2) by striking out "or" at the end of subparagraph (A), and

(3) by striking out the period at the end of subparagraph (B) and inserting "; or" and the following:

"(C) for purposes of subparagraph (A), in the case of a patent which—

"(i) claims a new animal drug or a veterinary biological product which (I) is not covered by the claims in any other patent which has been extended, and (II) has received permission for the commercial marketing or use in non-food-producing animals and in food-producing animals, and

"(ii) was not extended on the basis of the regulatory review period for use in non-food-producing animals,

the permission for the commercial marketing or use of the drug or product after the regulatory review period for use in food-producing animals is the first permitted commercial marketing or use of the drug or product for administration to a food-producing animal.".

(b) SECTION 156(b).—Section 156(b) is amended to read as follows:

"(b) The rights derived from any patent the term of which is extended under this section shall during the period during which the term of the patent is extended—

"(1) in the case of a patent which claims a product, be limited to any use approved for the product—

"(A) before the expiration of the term of the patent—

"(i) under the provision of law under which the applicable regulatory review occurred, or

"(ii) under the provision of law under which any regulatory review described in paragraph (1), (4), or (5) of subsection (g) occurred, and

"(B) on or after the expiration of the regulatory review period upon which the extension of the patent was based;

"(2) in the case of a patent which claims a method of using a product, be limited to any use claimed by the patent and approved for the product—

"(A) before the expiration of the term of the patent—

"(i) under any provision of law under which an applicable regulatory review occurred, and

"(ii) under the provision of law under which any regulatory review described in paragraph (1), (4), or (5) of subsection (g) occurred, and

"(B) on or after the expiration of the regulatory review period upon which the extension of the patent was based; and

"(3) in the case of a patent which claims a method of manufacturing a product, be limited to the method of manufacturing as used to make—

"(A) the approved product, or

"(B) the product if it has been subject to a regulatory review period described in paragraphs (1), (4), or (5) of subsection (g).

As used in this subsection, the term 'product' includes an approved product.".

(c) SECTION 156(c)(2).—Section 156(c)(2) is amended by striking out "and (3)(B)(i)" and inserting in lieu thereof "(3)(B)(i), (4)(B)(i), and (5)(B)(i)".

(d) SECTION 156(d)(1)(C).—Section 156(d)(1)(C) is amended by inserting "or the Secretary of Agriculture" after "Services".

(e) SECTION 156(d)(2)(A).—Section 156(d)(2)(A) is amended to read as follows:

"(2)(A) Within 60 days of the submittal of an application for extension of the term of a patent under paragraph (1), the Commissioner shall notify—

"(i) the Secretary of Agriculture if the patent claims a drug product or a method of using or manufacturing a drug product and the drug product is subject to the Virus-Serum-Toxin Act, and

"(ii) the Secretary of Health and Human Services if the patent claims any other drug product, a medical device, or a food additive or color additive or a method of using or manufacturing such a product, device, or additive and if the product, device, and additive are subject to the Federal Food, Drug, and Cosmetic Act,

of the extension application and shall submit to the Secretary who is so notified a copy of the application. Not later than 30 days after the receipt of an application from the Commissioner, the Secretary receiving the application shall review the dates contained in the application pursuant to paragraph (1)(C) and determine the applicable regulatory review period, shall notify the Commissioner of the determination, and shall publish in the Federal Register a notice of such determination.".

(f) SECTION 156(d)(2)(B).—Section 156(d)(2)(B) is amended to read as follows:

"(B)(i) If a petition is submitted to the Secretary making the determination under subparagraph (A), not later than 180 days after the publication of the determination under subparagraph (A), upon which it may reasonably be determined that the applicant did not act with due diligence during the applicable regulatory review period, the Secretary making the determination shall, in accordance with regulations promulgated by such Secretary, determine if the applicant acted with due diligence during the applicable regulatory review period. The Secretary making the determination shall make such determination not later than 90 days after the receipt of such a petition. For a drug product, device, or additive subject to the Federal Food, Drug, and Cosmetic Act or the Public Health Service Act, the Secretary may not delegate the authority to make the determination prescribed by this clause to an office below the Office of the Commissioner of Food and Drugs. For a product subject to the Virus-Serum-Toxin Act, the Secretary of Agriculture may not delegate the authority to make the determination prescribed by this clause to an office below the office of the Assistant Secretary for Marketing and Inspection Services.

"(ii) The Secretary making a determination under clause (i) shall notify the Commissioner of the determination and shall publish in the Federal Register a notice of such determination together with the factual and legal basis for such determination. Any interested person may request, within the 60-day period beginning on the publication of a determination, the Secretary making the determination to hold an informal hearing on the determination. If such a request is made within such period, such Secretary shall hold such hearing not later than 30 days after the date of the request, or at the request of the person making the request, not later than 60 days after such date. The Secretary who is holding the hearing shall provide notice of the hearing to the owner of the patent involved and to any interested person and provide the owner and any interested person an opportunity to participate in the hearing. Within 30 days after the completion of the hearing, such Secretary shall affirm or revise the determination which was the subject of the hearing and shall notify the Commissioner of any revision of the determination and shall publish any such revision in the Federal Register.".

(g) SECTION 156(f).—Section 156(f) is amended—

(1) by striking out "human" in paragraph (1)(A) and by amending paragraph (2) to read as follows:

"(2) The term 'drug product' means the active ingredient of—

"(A) a new drug, antibiotic drug, or human biological product (as those terms are used in the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act), or

"(B) a new animal drug or veterinary biological product (as those terms are used in the Federal Food, Drug, and Cosmetic Act and the Virus-Serum-Toxin Act) which is not primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes involving site specific genetic manipulation techniques,

including any salt or ester of the active ingredient, as a single entity or in combination with another active ingredient.",

(2) by amending subparagraphs (B) and (C) of paragraph (4) to read as follows:

"(B) Any reference to section 503, 505, 507, 512, or 515 is a reference to section 503, 505, 507, 512, or 515 of the Federal Food, Drug, and Cosmetic Act.

"(C) Any reference to the Virus-Serum-Toxin Act is a reference to the Act of March 4, 1913 (21 U.S.C. 151-158).", and

(3) by adding at the end the following:

"(7) The term 'date of enactment' as used in this section means September 24, 1984, for a human drug product, a medical device, food additive, or color additive.

"(8) The term 'date of enactment' as used in this section means the date of enactment of the Generic Animal Drug and Patent Term Restoration Act for an animal drug or a veterinary biological product.".

(h) SECTION 156(g).—

(1) Paragraph (1) of section 156(g) is amended—

(A) in subparagraph (A), by striking out "human drug product" and inserting in lieu thereof "new drug, antibiotic drug, or human biological product",

(B) in subparagraph (B)—

(i) by striking out "human drug product" in the matter before clause (i) and inserting in lieu thereof "new drug, antibiotic drug, or human biological product", and

(ii) by striking out "human drug product" in clauses (i) and (ii) and inserting in lieu thereof "product".

(2) Paragraph (1)(A) of section 156(g) is amended by striking out "paragraph (4)" and inserting in lieu thereof "paragraph (6)".

(3) Paragraphs (2)(A) and (3)(A) are each amended by striking out "paragraph (4)" and inserting in lieu thereof "paragraph (6)".

(4) Section 156(g) is amended by redesignating paragraph (4) as paragraph (6) and by inserting after paragraph (3) the following:

"(4)(A) In the case of a product which is a new animal drug, the term means the period described in subparagraph (B) to which the limitation described in paragraph (6) applies.

"(B) The regulatory review period for a new animal drug product is the sum of—

"(i) the period beginning on the earlier of the date a major health or environmental effects test on the drug was initiated or the date an exemption under subsection (j) of section 512 became effective for the approved new animal drug product and ending on the date an application was initially submitted for such animal drug product under section 512, and

"(ii) the period beginning on the date the application was initially submitted for the approved animal drug product under subsection (b) of section 512 and ending on the date such application was approved under such section.

"(5)(A) In the case of a product which is a veterinary biological product, the term means the period described in subparagraph (B) to which the limitation described in paragraph (6) applies.

"(B) The regulatory period for a veterinary biological product is the sum of—

"(i) the period beginning on the date the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act became effective and ending on the date an application for a license was submitted under the Virus-Serum-Toxin Act, and

"(ii) the period beginning on the date an application for a license was initially submitted for approval under the Virus-Serum-Toxin Act and ending on the date such license was issued.".

(5) Paragraph (6) (as so redesignated) of section 156(g) is amended—

(A) by striking out "paragraph (1)(B) was submitted" in subparagraph (B)(i) and inserting in lieu thereof "paragraph (1)(B) or (4)(B) was submitted and no request for the authority described in paragraph (5)(B) was submitted",

(B) by striking out "paragraph (2)" in subparagraph (B)(ii) and inserting in lieu thereof "paragraph (2)(B) or (4)(B)", and

(C) in subparagraph (C), by inserting before the period the following: "or in the case of an approved product which is a new animal drug or veterinary biological product (as those terms are used in the Federal Food, Drug, and Cosmetic Act or the Virus-Serum-Toxin Act), three years".

(i) SECTION 271(e).—

(1) Section 271(e)(1) is amended—

(A) by inserting before the last close parenthesis the following: "which is primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes involving site specific genetic manipulation techniques", and

(B) by inserting before the period the following: "or veterinary biological products".

(2) Section 271(e)(2) is amended to read as follows:

"(2) It shall be an act of infringement to submit—

"(A) an application under section 505(j) of the Federal Food, Drug, and Cosmetic Act or described in section 505(b)(2) of such Act for a drug claimed in a patent or the use of which is claimed in a patent, or

"(B) an application under section 512 of such Act or under the Act of March 4, 1913 (21 U.S.C. 151-158) for a drug or veterinary biological product which is not primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes involving site specific genetic manipulation techniques and which is claimed in a patent or the use of which is claimed in a patent,

if the purpose of such submission is to obtain approval under such Act to engage in the commercial manufacture, use, or sale of a drug or veterinary biological product claimed in a patent or the use of which is claimed in a patent before the expiration of such patent.".

(3) Section 271(e)(4) is amended by inserting "or veterinary biological product" after "drug" each place it occurs.

VETERANS DISABILITY COMPENSATION

DASCHLE (AND OTHERS) AMENDMENT NO. 3681

(Ordered to lie on the table.)

Mr. DASCHLE (for himself, Mr. KERRY, Mr. CRANSTON, Mr. BENTSEN, Mr. BIDEN, Mr. BINGAMAN, Mr. CHAFEE, Mr. CONRAD, Mr. DECONCINI, Mr. DODD, Mr. GORE, Mr. HARKIN, Mr. HEFLIN, Mr. HEINZ, Mr. LAUTENBERG, Mr. MATSUNAGA, Mr. MITCHELL, Mr. MOYNIHAN, Mr. PELL, Mr. PRESSLER, Mr. ROCKEFELLER, Mr. SANFORD, Mr. SASSER, and Mr. WIRTH) submitted an amendment intended to be proposed by them to the bill (S. 2011) to increase the rates of Veterans' Administration compensation for veterans with service-connected disabilities and dependency and indemnity compensation for the survivors of certain disabled veterans; as follows:

On page 8, strike out line 19 and all that follows through page 13, line 4, and insert in lieu thereof the following:

SEC. 201. SHORT TITLE.

This title may be cited as the "Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1988".

PART A—AGENT ORANGE PRESUMPTIONS, BENEFITS, RESEARCH, AND OUTREACH MATTERS

SEC. 211. INTERIM PERIOD FOR AWARD OF BENEFITS FOR VIETNAM VETERANS WITH NON-HODGKIN'S LYMPHOMA AND CERTAIN SARCOMAS.

(a) PRESUMPTIVE DISABILITY AND DEATH BENEFITS.—(1) In the case of a veteran—

(A) who served in the active military, naval, or air service in the Republic of Vietnam during the Vietnam era, and

(B) who has—

(i) non-Hodgkin's lymphoma, or

(ii) a soft-tissue sarcoma,

the Administrator shall, except as provided in subsection (b), pay a monthly disability benefit to the veteran in accordance with this section for any disability resulting from that disease.

(2) If a veteran described in paragraph (1) dies from a disease described in clause (B) of such paragraph, the Administrator shall pay a monthly death benefit to the survivors of the veteran in accordance with this section.

(b) EXCEPTIONS.—Benefits may not be paid under this section with respect to a disease described in subsection (a)(1)(B) occurring in a veteran—

(1) where there is affirmative evidence that such disease was not incurred by the veteran during service in the Republic of Vietnam during the Vietnam era; or

(2) where there is affirmative evidence to establish that an intercurrent injury or disease which is a recognized cause of such disease was suffered by the veteran between the date of the veteran's most recent departure from the Republic of Vietnam during active military, naval, or air service and the onset of the disease described in subsection (a)(1)(B).

(c) BENEFIT AMOUNTS.—(1) A disability benefit payable to a veteran under this section for a disability resulting from a disease described in subsection (a)(1)(B) shall be paid at the rate at which compensation would be payable under chapter 11 of title 38, United States Code, to that veteran for the disability resulting from that disease if the disability were determined to be service connected.

(2) A death benefit payable under this section to the survivors of a veteran shall be paid to such survivors based upon the eligibility requirements (other than the requirement that the death be the result of a service-connected or compensable disability) for, and at the rates that are applicable to, dependency and indemnity compensation under chapter 13 of that title.

(d) Non-Duplication of Benefits.—A benefit may not be paid under this section with respect to a disability resulting from a disease described in subsection (a)(1)(B) or the death of a veteran for any month for which compensation is payable to the veteran for that disability under chapter 11 of title 38, United States Code, or for which dependency and indemnity compensation is payable for that death under chapter 13 of that title.

(e) Treatment of Disability or Death as Service-Connected Except for Compensation Purposes.—A disability or death from a disease described in subsection (a)(1)(B) establishing eligibility for a disability or death benefit under this section shall be treated for purposes of all laws of the United States (other than the provisions of chapter 11 (other than sections 357, 358, and 361) of title 38, United States Code, and chapter 13 of such title) as if such disease were service-connected. The receipt of a disability benefit under this section shall be treated for purposes of all laws of the United States as if such benefit were disability compensation under chapter 11 of such title, and the receipt of a death benefit under this section shall be treated for purposes of all other laws of the United States as if such benefit were dependency and indemnity compensation under chapter 13 of title 38, United States Code.

(f) Award of Benefits.—Section 3010(g) of title 38, United States Code, shall apply to the award of benefits under this section.

(g) Expiration of Interim Benefits.—No benefit may be paid or service provided by virtue of this section for any period beginning after the date six months after the later of—

(1) the date on which the Administrator receives the report of the Centers for Disease Control on the final results of the Selected Cancers Study conducted pursuant to section 307 of the Veterans' Health Programs Extension and Improvement Act of 1979 (Public Law 96-151; 38 U.S.C. 219 note);

(2) the date on which Congress receives such report; or

(3) the date on which such report is made public.

(h) Notification of the Provisions of This Section.—(1) The Administrator of Veterans' Affairs shall take all reasonable actions—

(A) to publicize the provisions of this section not later than March 1, 1989; and

(B) to provide actual notice of the provisions of this section, not later than March 1, 1989, to each person described in subsection (a)(1) who, before the date specified in subsection (i), has filed any claim for benefits under programs administered by the Veterans' Administration on the basis of a disease described in subsection (a)(1)(B).

(2) The Administrator shall enclose with at least three distributions of benefits payment checks to each veteran receiving benefits under this section a notice that the authority to pay benefits under this section is temporary. The notice shall contain the approximate date of the expiration of such authority. The first notice shall be enclosed with the first payment of such benefits to a veteran. The last notice shall be enclosed with the last payment of such benefits. At least one notice shall be enclosed with a payment distributed in approximately the middle of the estimated period during which the authority is to be in effect.

(i) Effective Date.—This section, other than subsection (h), shall take effect on March 26, 1989. No benefit may be paid for any period before such date by reason of the enactment of this section.

On page 13, line 5, strike out "sec. 203." and inserting in lieu thereof "sec. 212."

On page 13, between lines 19 and 20, insert the following:

SEC. 213. PRESUMPTIONS RELATING TO CERTAIN DISEASES.

Section 312, as amended by section 212 of this Act, is further amended by adding at the end the following new subsections:

"(e)(1) For the purposes of section 310 of this title, and subject to section 313 of this title, in the case of a veteran who performed active military, naval, or air service in the Republic of Vietnam during the Vietnam era, a disease described in paragraph (2) of this subsection shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of evidence of such disease during the period of such service, if the Administrator—

"(A) determines under section 312A of this title that such disease is reasonably associated with such service; and

"(B) lists such disease in regulations prescribed pursuant to section 312A of this title for the purpose of this section.

"(2) A disease referred to in paragraph (1) of this subsection is—

"(A) non-Hodgkin's lymphoma;

"(B) any soft-tissue sarcoma; or

"(C) any other disease listed for the purposes of this subsection in regulations prescribed by the Administrator pursuant to section 312A of this title.

"(3) For the purposes of this subsection, the term 'soft-tissue sarcoma' means any sarcoma other than osteosarcoma, condrosarcoma, Kaposi's sarcoma, and mesothelioma.

"(f)(1) For the purposes of section 310 of this title, and subject to section 313 of this title, in the case of a veteran who performed active military, naval, or air service in the Republic of Vietnam during the Vietnam era and who, during such service, was exposed to dioxin or any other toxic agent in an herbicide used in support of United States and allied military operations in the Republic of Vietnam, each disease (if any) listed in regulations prescribed by the Administrator for the purposes of this subsection pursuant to section 312A of this title shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of evidence of such disease during the period of such service.

"(2) For the purposes of this subsection, a veteran who performed active military, naval, or air service in the Republic of Vietnam during the Vietnam era and who has a disease referred to in paragraph (1) of this subsection shall be presumed to have been exposed during such service to dioxin or another toxic agent referred to in such paragraph unless there is affirmative evidence to establish conclusively that the veteran was not so exposed during such service. The Veterans' Administration shall have the burden of proof (including the burden of nonpersuasion) for rebutting such presumption.

"(3) The Administrator may extend the applicability of paragraph (1) of this subsection to the case of any veteran who, during the performance of active military, naval, or air service outside the Republic of Vietnam during the Vietnam era, was exposed to dioxin or any other toxic agent referred to in such subsection.".

SEC. 214. DISEASES ASSOCIATED WITH EFFECTS OF EXPOSURE TO CERTAIN TOXIC AGENTS, OR EFFECTS OF SERVICE IN THE REPUBLIC OF VIETNAM, DURING THE VIETNAM ERA.

(a) In General.—(1) Subchapter II of chapter 11 is amended by inserting after section 312 the following new section:

"§ 312A. Procedures for determining diseases associated with effects of exposure to certain toxic agents or effects of service in Vietnam during the Vietnam era

"(a)(1) Subject to subsections (d) and (e) of this section, the Administrator shall enter into an agreement with an appropriate private nonprofit scientific organization that requires such organization—

"(A) to determine on the basis of studies referred to in paragraph (2) of this subsection and other relevant scientific evidence or information, in the case of dioxin and each other known toxic agent in the herbicides used in support of United States and allied military operations in the Republic of Vietnam during the Vietnam era, which diseases (if any) are associated to any degree with—

"(i) the known biological effects of exposure to dioxin or such other agent on humans, and

"(ii) the biological effects on humans that it is reasonable to infer, on the basis of the known biological effects of exposure to dioxin or such other agent on appropriate animal models, result from exposure of humans to dioxin or such other toxic agent, including those effects involving porphyrin synthesis, lung cancer, other cancers, nervous system function, immune function, reproduction, and birth defects;

"(B) to determine whether any disease described in clause (A) or (B) of section 312(e)(2) of this title or any other disease is associated to any degree with military, naval, or air service in the Republic of Vietnam during the Vietnam era; and

"(C) to estimate the strength of any association referred to in clause (A) or (B) of this paragraph using methods as quantitative and as objective as the relevant available data permit.

"(2) In order to make determinations under this subsection and related estimates under paragraph (1) of this subsection, the private nonprofit scientific organization referred to in such paragraph shall—

"(A) conduct, with the assistance of and subject to the review of a peer review panel of recognized experts in toxicology, medicine, epidemiology, and related fields—

"(i) a survey of completed and ongoing scientific studies of, and other scientific evidence or information regarding, the effects that dioxin and other known toxic agents in the herbicides used in support of United States and allied military operations in the Republic of Vietnam during the Vietnam era have on humans or other animals that have been exposed to dioxin or such an agent; and "(ii) a survey of completed and ongoing scientific studies of, and other scientific evidence or information regarding, the health effects of military, naval, or air service in the Republic of Vietnam during the Vietnam era on veterans of such service; and

"(B) review and consider the report, submitted to the Administrator by the Centers for Disease Control, containing the final results of the Selected Cancers Study conducted pursuant to section 307 of the Veterans' Health Programs Extension and Improvement Act of 1979 (Public Law 96-151; 38 U.S.C. 219 note).

To the maximum extent practicable the surveys under clauses (A) and (B) shall include all scientific studies, evidence, and information described in such clauses.

"(3) Not later than 60 days after the date on which the scientific organization referred to in paragraph (1) receives the report on the Selected Cancers Study referred to in paragraph (2) of this subsection, such organization shall transmit to the Administrator and the Committees on Veterans' Affairs of the Senate and the House of Representatives a report, in writing, containing—

"(A)(i) the name of each disease (if any) determined as provided in paragraph (1)(A) of this subsection to be associated to any degree with the biological effects referred to in such paragraph; and

"(ii) a discussion of the biological basis for such association of such disease with such effects; and

"(iii) the estimate of the strength of such association determined as provided in paragraph (1)(C), including a determination of whether the association is applicable to the highest level of exposure to dioxin or any other toxic agent referred to in paragraph (1)(A) of this subsection that is reasonably attributable to active military, naval, or air service in the Republic of Vietnam during the Vietnam era (determined on the basis of the circumstances, duration, and intensity of the exposure associated with the disease); and

"(B)(i) the name of each disease described in clause (A) or (B) of section 312(e)(2) of this title (if any) determined to be associated to any degree with military, naval, or air service in the Republic of Vietnam during the Vietnam era and the name of each other disease (if any) determined to be associated to any degree with such service;

"(ii) a discussion of the biological basis for such association of such disease with such service; and

"(iii) the estimate of the strength of such association determined as provided in paragraph (1)(C).

"(4) Not later than 60 days after the date on which the Administrator receives the report under paragraph (3) of this subsection, the Administrator shall—

"(A)(i) determine, on the basis of such report and all other relevant scientific evidence or information available to the Administrator at the time of the determination, which diseases (if any) are reasonably associated with active military, naval, or air service in the Republic of Vietnam during the Vietnam era as a result of the biological effects referred to in paragraph (1)(A) of this subsection; and

"(ii) issue proposed regulations for the purpose of section 312(f) of this title that list each such disease;

"(B)(i) determine, on the basis of such report and all other relevant scientific evidence or information available to the Administrator at the time of the determination, whether any disease described in clause (A) or (B) of section 312(e)(2) of this title or any other disease, is reasonably associated with military, naval, or air service in the Republic of Vietnam during the Vietnam era; and

"(ii) issue proposed regulations for the purpose of section 312(e) of this title that list each such disease reasonably associated with such service; and

"(C) transmit to the Committees on Veterans' Affairs of the Senate and the House of Representatives—

"(i) a report containing the Administrator's determinations under clauses (A) and (B) of this paragraph and the scientific basis for such determinations; and

"(ii) a copy of the reports referred to in clauses (A)(i) and (B)(i) of this paragraph.

"(5) Not later than 60 days after the date on which the Administrator issues any proposed regulations pursuant to paragraph (4) of this subsection, the Administrator shall—

"(A) issue final regulations, effective on the date of issuance of such regulations, for the purpose of section 312(f) of this title that list each disease (if any) determined by the Administrator to be reasonably associated with the biological effects referred to in paragraph (1)(A) of this subsection; and

"(B) issue final regulations, effective on the date of issuance of such regulations, for the purpose of section 312(e) of this title that list each disease described in clause (A) or (B) of section 312(e)(2) of this title determined by the Administrator to be reasonably associated with military, naval, or air service in the Republic of Vietnam during the Vietnam era (if any) and each other disease (if any) determined by the Administrator to be reasonably associated with such service.

"(b)(1) The Administrator shall provide for a periodic (but not less often than annual) survey of scientific studies, evidence, and information relevant to determinations of which diseases should be listed in regulations for the purposes of subsections (e) and (f) of section 312 of this title. The survey shall include studies described in subsection (a)(2) of this section that have been published or otherwise become available since the last survey under this section. The first periodic review shall be conducted after completion of the actions required under subsection (a). To the maximum extent practicable each such survey shall include all scientific studies described in the first sentence.

"(2) Subject to subsections (d) and (e) of this section, the Administrator shall enter into an agreement with a private nonprofit scientific organization that requires such organization—

"(A) to conduct the survey under paragraph (1) of this subsection; and

"(B) to determine, taking into consideration the results of all of the scientific studies, evidence, and information surveyed under this subsection and subsection (a)(2)(A) of this section and the report referred to in subsection (a)(2)(B) of this section—

"(i) whether there is warranted on a scientific basis any modification of the determinations previously made under this section with respect to diseases associated with the biological effects referred to in subsection (a)(1)(A) of this section and diseases associated with military, naval, or air service in the Republic of Vietnam during the Vietnam era;

"(ii) the name of each disease (if any) that is associated to any degree with the biological effects referred to in subsection (a)(1)(A) of this section;

"(iii) the biological basis for the association of such disease with such effects; and

"(iv) an estimate of the strength of such association (determined using methods as quantitative and as objective as the relevant available data permit), including a determination of whether the association is applicable to the highest level of exposure to dioxin or any other toxic agent referred to in subsection (a)(1)(A) of this section that is reasonably attributable to active military, naval, or air service in the Republic of Vietnam during the Vietnam era (determined on the basis of the circumstances, duration, and intensity of the exposure associated with the disease); and

"(C) to determine—

"(i) the name of each disease described in clause (A) or (B) of section 312(e)(2) of this title (if any) that is associated to any degree with active military, naval, or air service in the Republic of Vietnam during the Vietnam era and the name of each other disease (if any) that is associated to any degree with such service; and

"(ii) the biological basis for the association of such disease with such service; and

"(iii) an estimate of the strength of such association using methods described in clause (B)(iv) of this paragraph.

"(3) After each survey under paragraph (1) of this subsection, the organization conducting the survey shall submit to the Administrator a report on the survey and on the determinations of such organization.

"(4) Upon receiving a report under paragraph (3) of this subsection, the Administrator shall—

"(A) determine, on the basis of such report, all previous reports received under this subsection and subsection (a) of this section, and all other relevant scientific evidence and information available to the Administrator at the time of the determination, whether any disease not previously listed in any regulations prescribed pursuant to this section should be so listed in regulations so prescribed; and

"(B) promptly transmit to the Committees on Veterans' Affairs of the Senate and the House of Representatives—

"(i) a report containing the Administrator's determinations under clause (A) of this paragraph and the scientific basis for such determinations; and

"(ii) a copy of the report received under paragraph (3) of this subsection.

"(5) Not later than 60 days after transmitting a report to the Committees on Veterans' Affairs under paragraph (4)(B)(i) of this subsection, the Administrator shall prescribe regulations amending the regulations referred to in paragraph (4)(A) of this subsection as may be necessary to reflect the Administrator's determinations included in that report. The amended regulations shall take effect 30 days after the date on which such amendatory regulations are prescribed.

"(c) Whenever a determination is required to be made by the Administrator under this section regarding the existence of a reasonable association between a disease and exposure to dioxin or another known toxic agent in the herbicides used in support of United States and allied military operations in the Republic of Vietnam during the Vietnam era, and whenever a determination is required to be made by the Administrator under this section regarding the existence of a reasonable association between a disease and military, naval, or air service in the Republic of Vietnam during the Vietnam era, any reasonable doubt shall be resolved in favor of the existence of such reasonable association.

"(d) The private nonprofit scientific organization referred to in subsections (a)(1) and (b)(2) shall be the National Academy of Sciences, except that the Administrator may enter into an agreement with any other appropriate private nonprofit scientific organization for the purposes of either subsection if—

"(1)(A) in the case of an agreement referred to in subsection (a)(1), the National Academy of Sciences has not entered into an agreement with the Administrator under such subsection by March 1, 1989; or

"(B) in the case of an agreement referred to in subsection (b)(2), the National Academy of Sciences does not enter into an agreement with the Administrator under such subsection;

"(2) the Administrator has transmitted to the Committees on Veterans' Affairs of the Senate and the House of Representatives a notification, in writing, containing the name of the other organization; and

"(3) ninety days have elapsed since the date on which such committees receive such notification.

"(e) The authorities provided in this section to enter into a contract shall be effective for a fiscal year to such extent or in such amount as is provided for in an appropriation Act.

"(f) This section shall cease to be effective on the date 10 years after the first day of the fiscal year in which a private nonprofit scientific organization transmits to the Administrator the report under subsection (a)(3) of this section.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 312 the following new item:

"312A. Procedures for determining diseases associated with effects of exposure to certain toxic agents or effects of service in Vietnam during the Vietnam era.".

(b) INTERIM REGULATIONS.—(1) If the authority to pay benefits under section 211 of this Act expires before the Administrator of Veterans' Affairs issues final regulations under of section 312A(a)(5) of title 38, United States Code (as added by subsection (a)), the Administrator shall issue emergency regulations, effective upon issuance, providing for the payment of disability compensation under chapter 11 of such title to each veteran who receives benefits under section 211 of this Act for a disease listed in regulations proposed by the Administrator under section 312A(a)(4) of such title. Payment of such disability compensation shall be effective on the date of the expiration of the authority under section 211 of this Act. The Administrator shall pay disability compensation to such a veteran pursuant to this paragraph without requiring such veteran to submit an application in addition to the application submitted for benefits under section 211 of this Act.

(2) Payment of disability compensation as provided in paragraph (1) may be terminated in the case of any veteran after the Administrator issues final regulations under section 312A(a)(5) of title 38, United States Code, but only if the Administrator determines that such veteran's disability is not service connected (taking into consideration the applicable presumption under section 312 (e) or (f) of such title (as added by section 213 of this Act)). In no event, however, may a veteran be required, by reason of such a determination, to repay disability compensation paid to the veteran before the date of such a determination.

(c) SPECIAL EFFECTIVE DATE OF AWARD OF DISABILITY COMPENSATION.—(1) If the Administrator of Veterans' Affairs fails to issue final regulations under section 312A(a)(5) of title 38, United States Code (as added by subsection (a)), before the date 180 days after the date determined under paragraph (2), any award of disability compensation under chapter 11 of such title on the basis of a presumption provided in section 312 (e) or (f) of such title (as added by section 213 of this Act) shall be effective on such date, except that benefits may not be paid under chapter 11 of such title for any period pursuant to both this subsection and subsection (b).

(2) The date referred to in paragraph (1) is the date six months after the later of—

(A) the date on which the Administrator receives the report of the Centers for Disease Control on the final results of the Selected Cancers Study conducted pursuant to section 307 of the Veterans' Health Programs Extension and Improvement Act of 1979 (Public Law 96-151; 38 U.S.C. 219 note);

(B) the date on which Congress receives such report; or

(C) the date on which such report is made public.

(d) CONTRACT AUTHORITY SUBJECT TO ADDITIONAL AUTHORIZATION.—Notwithstanding section 312A(d) of title 38, United States Code (as added by subsection (a)), the Administrator of Veterans' Affairs may not enter into an agreement with a private nonprofit scientific organization under such section, other than an agreement with the National Academy of Sciences, until specifically authorized to do so by an Act other than this Act.

SEC. 215. RESULTS OF EXAMINATIONS AND TREATMENT OF VETERANS FOR DISABILITIES RELATED TO EXPOSURE TO CERTAIN HERBICIDES OR TO SERVICE IN VIETNAM.

(a) IN GENERAL.—The Administrator of Veterans' Affairs shall compile and analyze, on a continuing basis, all clinical data that (1) is obtained by the Veterans' Administration in connection with examinations and treatment furnished to veterans by the Veterans' Administration after November 3, 1981, by reason of eligibility provided in section 610(e)(1)(A) of title 38, United States Code, and (2) is likely to be scientifically useful in determining the association, if any, between the disabilities of veterans referred to in such section and exposure to dioxin or any other toxic substance referred to in such section or between such disabilities and active military, naval, or air service in the Republic of Vietnam during the Vietnam era.

(b) ANNUAL REPORT.—The Administrator shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives an annual report containing—

(1) the information compiled in accordance with subsection (a);

(2) the Administrator's analysis of such information;

(3) a discussion of the types and incidences of disabilities identified or treated by the Veterans' Administration in the case of veterans referred to in subsection (a);

(4) the Administrator's explanation for the incidence of such disabilities;

(5) other explanations for the incidence of such disabilities considered reasonable by the Administrator;

(6) the Administrator's views on the scientific validity of drawing conclusions from the incidences of such disabilities, as evidenced by the data compiled under subsection (a), about any association between such disabilities and exposure to dioxin or any other toxic substance referred to in section 610(e)(1)(A) of title 38, United States Code, or between such disabilities and active military, naval, or air service in the Republic of Vietnam during the Vietnam era; and

(7) the evaluation of such report submitted by the Director of the Office of Technology Assessment pursuant to subsection (c)(2).

(c) CONSULTATION WITH OTA.—(1) The Administrator shall consult with the Director of the Office of Technology Assessment before compiling and analyzing any information under this section and shall submit the annual report required by subsection (b) to the Director before submitting such report to the committees referred to in such subsection.

(2) The Director of the Office of Technology Assessment shall review the annual report submitted under paragraph (1) and transmit to the Administrator the Director's evaluation of the contents of the report.

(d) FIRST REPORT.—The first report under subsection (b) shall be submitted one year after the date of the enactment of this Act.

SEC. 216. TISSUE ARCHIVING SYSTEM.

(a) ESTABLISHMENT OF SYSTEM.—For the purpose of facilitating future scientific research on the effects of exposure of veterans to dioxin and other toxic agents in herbicides used in support of United States and allied military operations in the Republic of Vietnam during the Vietnam era, the Administrator of Veterans' Affairs shall establish and maintain a system for the collection and storage of voluntarily contributed samples of blood and tissue of veterans who performed active military, naval, or air service in the Republic of Vietnam during the Vietnam era. The system may be administered by the Veterans' Administration or under a contract awarded by the Administrator, whichever is more cost-effective.

(b) SECURITY OF SPECIMENS.—The Administrator shall ensure that the tissue is collected and stored under physically secure conditions and that the tissue is maintained in a condition that is useful for research referred to in subsection (a).

(c) AUTHORIZED USE OF SPECIMENS.—The Administrator may make tissue available from the system for research referred to in subsection (a) in a manner consistent with the privacy rights and interests of the blood and tissue donors.

(d) LIMITATIONS ON ACCEPTANCE OF SAMPLES.—The Administrator may prescribe such limitations on the acceptance and storage of blood and tissue samples as the Administrator considers appropriate consistent with the purpose specified in the first sentence of subsection (a).

(e) CONSULTATION WITH OTA.—The Administrator shall consult with the Director of the Office of Technology Assessment on the establishment and maintenance of the tissue archiving system under this section, including any limitation to be prescribed under subsection (d).

SEC. 217. FEASIBILITY STUDIES.

(a) STUDIES.—The Administrator of Veterans' Affairs shall establish a program to provide for the conduct of studies of the feasibility of conducting additional scientific research on—

(1) health hazards resulting from exposure to dioxin;

(2) health hazards resulting from exposure to other toxic agents in herbicides used in support of United States and allied military operations in the Republic of Vietnam during the Vietnam era; and

(3) health hazards resulting from active military, naval, or air service in the Republic of Vietnam during the Vietnam era.

(b) Program Requirements.—(1) Under the program established pursuant to subsection (a), the Administrator shall, pursuant to criteria required to be prescribed under paragraph (2), award contracts or furnish financial assistance to non-Government entities for the conduct of studies referred to in subsection (a).

(2) The Administrator shall prescribe criteria for (A) the selection of entities to be awarded contracts or to receive financial assistance under the program, and (B) the approval of studies to be conducted under such contracts or with such financial assistance.

(c) Report.—The Administrator shall promptly report the results of studies conducted under the program to the Committees on Veterans' Affairs of the Senate and the House of Representatives.

(d) Consultation with the National Academy of Sciences.—To the extent provided under any agreement entered into by the Administrator and the National Academy of Sciences (1) the Administrator shall consult with the National Academy of Sciences regarding the establishment and administration of the program under subsection (a), and (2) the National Academy of Sciences shall review the studies conducted under contracts awarded pursuant to the program and the studies conducted with financial assistance furnished pursuant to the program. The agreement shall require the National Academy of Sciences to submit to the Administrator and the Committees on Veterans' Affairs of the Senate and the House of Representatives any recommendations that the National Academy of Sciences considers appropriate regarding any studies reviewed under the agreement.

(e) Contract Authority Subject to Appropriation.—The authority provided in this section to enter into contracts shall be effective for a fiscal year to such extent or in such amount as is provided for in an appropriation Act.

SEC. 218. OUTREACH SERVICES.

(a) In General.—The Administrator of Veterans' Affairs shall—

(1) conduct an active, continuous outreach program for furnishing to veterans of active military, naval, or air service in the Republic of Vietnam during the Vietnam era information relating to (A) the health risks (if any) resulting from exposure during such service to dioxin or any other toxic agent in herbicides used in support of United States and allied military operations in the Republic of Vietnam during the Vietnam era, including annually furnishing updated information on such health risks to such veterans and (B) services and benefits available to such veterans;

(2) take reasonable actions to update the information on veterans contained in the Veterans' Administration Agent Orange Registry; and

(3) take reasonable actions to organize the information contained in such registry in a manner that enables the Administrator promptly to notify a veteran of any increased health risk for such veteran resulting from exposure of such veteran to dioxin or any other toxic agent referred to in clause (1) during Vietnam era service in the Republic of Vietnam whenever the Administrator determines, on the basis of physical examination or other pertinent information, that such veteran is subject to such increased health risk.

(b) Information to Committees on Veterans' Affairs.—The Administrator, promptly after furnishing any information to veterans pursuant to subsection (a)(1), shall furnish such information to the Committees on Veterans' Affairs of the Senate and the House of Representatives.

SEC. 219. REPORT RELATING TO RESEARCH ON TREATMENTS FOR EXPOSURE TO DIOXIN AND OTHER TOXIC AGENTS.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report containing a discussion of the research being conducted to identify and develop treatments for physiological absorption of dioxin and other toxic agents similar to the toxic agents in herbicides used in support of United States and allied operations in the Republic of Vietnam during the Vietnam era, including research relating to exposure to dioxin and other toxic agents outside of the Republic of Vietnam.

On page 13, line 20, strike out "SEC. 204." and insert in lieu thereof "SEC. 220.".

On page 14, line 1, strike out "SEC. 205." and insert in lieu thereof "SEC. 221.".

On page 15, strike out line 11, and all that follows through page 17, line 4.

On page 17, line 5, strike out "SEC. 207." and insert in lieu thereof "SEC. 222.".

On page 18, line 18, strike out "Act" and all that follows through line 21, and insert in lieu thereof the following; "Act, shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report containing the Administrator's decision regarding the need for any such amendments and the reasons for such decision, and take any action required by subparagraph (B).".

On page 18, line 24, strike out ", not later" and all that follows through "paragraph (1)," on line 25.

On page 19, between lines 1 and 2, insert the following:

"(C) Not later than 60 days after the date on which the Administrator issues any proposed amendments to regulations under subparagraph (B), the Administrator shall issue final regulations amending the regulations prescribed pursuant to section 5 of Public Law 98-542.

On page 22, between lines 7 and 8, insert the following:

SEC. 223. DEFINITIONS.

In this part—

(1) the terms "Administrator", "veteran", "service-connected", "active military, naval, or air service", and "Vietnam era" shall have the meanings given those terms in paragraphs (1), (2), (16), (24), and (29), respectively, of section 101 of title 38, United States Code;

(2) the term "disability" refers to a disability within the meaning of chapter 11 of such title; and

(3) the term "soft-tissue sarcoma" means any sarcoma other than osteosarcoma, condrosarcoma, Kaposi's sarcoma, and mesothelioma.

Part B—Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants

SEC. 231. DEFINITIONS.

In this part:

(1) The term "Advisory Committee" means the committee known as the "Advisory Committee on Special Studies Relating to the Possible Long-term Health Effects of Phenoxy Herbicides and Contaminants" which has been established to monitor the conduct of the Ranch Hand Study.

(2) The term "Ranch Hand Study" means the special study, conducted by the Department of the Air Force, relating to the possible long-term health effects of phenoxy herbicides and contaminants on Air Force personnel who participated in Operation Ranch Hand in the Republic of Vietnam during the Vietnam era.

SEC. 232. ADVISORY COMMITTEE PERSONNEL AND SUPPORT.

(a) Composition.—(1) Effective on March 1, 1989, not less than one-third of the total number of members of the Advisory Committee shall be individuals selected by the Secretary of Health and Human Services from among scientists recommended by veterans' organizations and determined by the Secretary to be qualified for service on the Advisory Committee.

(2) A scientist shall be qualified for service on the Advisory Committee if—

(A) the scientist—

(i) has received a doctor of medicine degree or a doctor of philosophy or other advanced degree from an institution of higher education in a field relevant to the responsibilities of the Advisory Committee; and

(ii) has published articles relevant to such responsibilities in peer-reviewed scientific literature; or

(B) the scientist has equivalent qualifications.

(b) Chairman.—On and after March 1, 1989, the Chairman of the Advisory Committee may be an officer or employee of the Federal Government (other than by reason of his or her service as a member of the Advisory Committee) only if the Secretary of Health and Human Services determines that there is no individual qualified and available to serve as Chairman other than an officer or employee of the Federal Government. The Secretary shall report any such determination to the Committees on Veterans' Affairs of the Senate and the House of Representatives.

(c) Administrative Assistance.—The Secretary of Health and Human Services shall furnish the Chairman the logistical and financial support necessary for the operation of the Advisory Committee.

SEC. 233. ADVISORY RELATIONSHIP.

The Advisory Committee may directly consult with and provide information and recommendations to the Department of the Air Force scientists conducting the Ranch Hand Study, and such scientists may directly consult with and provide information and recommendations to the Advisory Committee. No officer or employee of the Federal Government may intervene in or impair direct communication between the Advisory Committee and such scientists under this section except as may be necessary to prevent an inappropriate disclosure of classified information.

SEC. 234. REPORTS.

(a) Schedule of Reports.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall transmit to the Committees on Veterans' Affairs and on Armed Services of the Senate and the House of Representatives a schedule of reports on the Ranch Hand Study and on any other studies conducted by the Department of Defense in order to determine the possible long-term effects of phenoxy herbicides and contaminants on the health of the Air Force personnel who participated in Operation Ranch Hand in the Republic of Vietnam during the Vietnam era. The schedule shall provide for the preparation of annual reports and a final report.

(b) CONTENT OF REPORTS.—(1) The reports referred to in subsection (a) shall contain the following matters:

(A) A discussion of the progress made in the studies referred to in subsection (a) during the period covered by the report.

(B) A summary of the scientific activities conducted during such period and the findings resulting from such activities. Such summary shall be prepared by the scientists conducting such activities.

(2) Such a report need not contain (A) a discussion of progress discussed in any other report, issued by the Department of Defense under this section or otherwise, regarding a study referred to in subsection (a), or (B) a scientific summary included in any other such report unless such discussion or summary needs to be modified in order to be complete, accurate, and current.

(c) TRANSMITTAL OF REPORTS.—The Secretary of Defense shall transmit to the committees referred to in subsection (a) a copy of each report prepared under such subsection.

PART C—EFFECTIVE DATE

SEC. 241. EFFECTIVE DATE.

Except as provided as in section 211(i) of this Act, this title shall take effect on the date of the enactment of this Act.

In the table of contents set out in section 1(b), strike out the items relating to title II (including the items relating sections 201 through 207) and insert in lieu thereof the following:

TITLE II—AGENT ORANGE AND RELATED PROVISIONS

Sec. 201. Short title.

PART A—AGENT ORANGE PRESUMPTIONS, BENEFITS, RESEARCH, AND OUTREACH MATTERS

Sec. 211. Interim period for award of benefits for Vietnam veterans with non-Hodgkin's lymphoma and certain sarcomas.
Sec. 212. Presumptive service connection of chloracne.
Sec. 213. Presumptions relating to certain diseases.
Sec. 214. Diseases associated with effects of exposure to certain toxic agents or effects of service in the Republic of Vietnam during the Vietnam era.
Sec. 215. Results of examinations and treatment of veterans for disabilities related to exposure to certain herbicides or to service in Vietnam.
Sec. 216. Tissue archiving system.
Sec. 217. Feasibility studies.
Sec. 218. Outreach services.
Sec. 219. Report relating to research on treatments for exposure to dioxin and other toxic agents.
Sec. 220. Extension of health-care eligibility based on agent orange or ionizing radiation exposure.
Sec. 221. Income exclusion of certain payments for purposes of eligibility for certain needs-based veterans' benefits.
Sec. 222. Modification of procedures for consideration of certain studies.
Sec. 223. Definitions.

PART B—ADVISORY COMMITTEE ON SPECIAL STUDIES RELATING TO THE POSSIBLE LONG-TERM HEALTH EFFECTS OF PHENOXY HERBICIDES AND CONTAMINANTS

Sec. 231. Definitions.
Sec. 232. Advisory committee personnel and support.
Sec. 233. Advisory relationship.
Sec. 234. Reports.

PART C—EFFECTIVE DATE

Sec. 241. Effective date.

IDAHO-ARIZONA CONSERVATION ACT

DECONCINI (AND MCCAIN) ADMENDMENT NO. 3682

Mr. DECONCINI (for himself and Mr. MCCAIN) proposed an amendment to the bill (S. 2840) to provide for the designation and conservation of certain lands in the States of Arizona and Idaho, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

TITLE I—SAN PEDRO RIPARIAN NATIONAL CONSERVATION AREA

ESTABLISHMENT OF SAN PEDRO RIPARIAN NATIONAL CONSERVATION AREA

SEC. 101. (a) ESTABLISHMENT.—In order to protect the riparian area and the aquatic, wildlife, archeological, paleontological, scientific, cultural, educational, and recreational resources of the public lands surrounding the San Pedro River in Cochise County, Arizona, there is hereby established the San Pedro Riparian National Conservation Area (hereafter in this title referred to as the "conservation area").

(b) AREA INCLUDED.—The conservation area shall consist of public lands as generally depicted on a map entitled "San Pedro Riparian National Conservation Area—Proposed" numbered AZ-040-OZ, dated January 1988, and consisting of approximately 56,431 acres.

(c) MAP.—As soon as is practicable after enactment of this title, a map and legal description of the conservation area shall be filed by the Secretary of the Interior (hereafter in this title referred to as the "Secretary") with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. Each such map shall have the same force and effect as if included in this title. Such map shall be on file and available for public inspection in the Office of the Director of the Bureau of Land Management, Department of the Interior, and in the Bureau of Land Management offices of the State Director for Arizona, and the district office responsible for the management of the conservation area.

MANAGEMENT OF CONSERVATION AREA

SEC. 102. (a) GENERAL AUTHORITIES.—The Secretary shall manage the conservation area in a manner that conserves, protects, and enhances the riparian area and the aquatic, wildlife, archeological, paleontological, scientific, cultural, educational, and recreational resources of the conservation area. Such management shall be guided by this title and, where not inconsistent with this title, by the provisions of the Federal Land Policy and Management Act of 1976 (hereinafter in this title referred to as "FLPMA").

(b) USES.—The Secretary shall only allow such uses of the conservation area as he finds will further the primary purposes for which the conservation area is established. Except where needed for administrative or emergency purposes, the use of motorized vehicles in the conservation area shall only be allowed on roads specifically designated for such use as part of the management plan prepared pursuant to section 103 of this title. The Secretary shall have the power to implement such reasonable limits to visitation and use of the conservation area as he finds appropriate for the protection of the resources of the conservation area, including requiring permits for public use, or closing portions of the conservation area to public use.

(c) WITHDRAWALS.—Subject to valid existing rights, all Federal lands within the conservation area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws; from location, entry, and patent under the United States mining laws; and from disposition under all laws pertaining to mineral and geothermal leasing and all amendments thereto.

(d) WATER RIGHTS.—Congress reserves for the purposes of this reservation, a quantity of water sufficient to fulfill the purposes of the San Pedro Riparian National Conservation Area created by this title. The priority date of such reserve rights shall be the date of enactment of this title. The Secretary shall file a claim for the quantification of such rights in an appropriate stream adjudication.

(e) ENFORCEMENT.—Any person who violates any provision of this title or any regulation promulgated by the Secretary to implement this title shall be subject to a fine of up to $10,000, or imprisonment for up to one year, or both.

MANAGEMENT PLAN

SEC. 103. (a) DEVELOPMENT OF PLAN.—No later than 2 years after the enactment of this title, the Secretary shall develop a comprehensive plan for the long-range management and protection of the conservation area. The plan shall be developed with full opportunity for public participation and comment, and shall contain provisions designed to assure protection of the riparian area and the aquatic, wildlife, archeological, paleontological, scientific, cultural, educational, and recreation resources and values of the conservation area.

(b) RECOMMENDATIONS.—The Secretary shall, in the comprehensive plan referred to in subsection (a), develop recommendations to Congress on whether additional lands should be included in the conservation area.

(c) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with appropriate State and local agencies, pursuant to section 307(b) of FLPMA, to better implement the plan developed pursuant to subsection (a).

(d) RESEARCH.—In order to assist in the development of appropriate management strategies for the conservation area, the Secretary may authorize research on matters including the environmental, biological, hydrological, and cultural resources of the conservation area, pursuant to section 307(a) of FLPMA.

ADVISORY COMMITTEE

SEC. 104. (a) ESTABLISHMENT.—The Secretary shall establish a San Pedro Riparian National Conservation Area Advisory Committee, whose purpose shall be to advise the Secretary with respect to the preparation and implementation of the comprehensive, long-range plan required pursuant to section 103 of this title.

(b) REPRESENTATION.—There shall be 7 members of the Committee, who shall be appointed by the Secretary. Members of the Committee shall be appointed for terms of three years, except that of the members first appointed 2 shall be appointed for terms of 1 year and 3 shall be appointed for terms of 2 years. The Secretary shall appoint one member from nominations supplied by the Governor of the State of Arizona, and one member from nominations supplied by the Supervisors of Cochise County, Arizona. The other members shall be persons with recognized backgrounds in wildlife conservation, riparian ecology, archeology, paleontology, or other disciplines directly related to the primary purposes for which the conservation area was created.

LAND ACQUISITION

SEC. 105. The Secretary may acquire lands or interests in lands within the boundaries of the conservation area by exchange, purchase, or donation, except that any lands or interests therein owned by the State or local government may be acquired by donation or exchange only. Any purchase or exchange of lands to be added to the conservation area shall require the consent of the owner of those lands or rights.

REPORT TO CONGRESS

SEC. 106. No later than five years after the enactment of this title, and every ten years thereafter, the Secretary shall report to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, on the implementation of this title. Such report shall include a detailed statement on the condition of the resources within the conservation area and of the progress of the Bureau of Land Management in achieving the purposes of this title.

AUTHORIZATION

SEC. 107. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

TITLE II—CITY OF ROCKS NATIONAL RESERVE

ESTABLISHMENT OF CITY OF ROCKS NATIONAL RESERVE

SEC. 201. (a) There is hereby established the City of Rocks National Reserve (hereinafter referred to as the "reserve"), in order to preserve and protect the significant historical and cultural resources; to manage recreational use; to protect and maintain scenic quality; and to interpret the nationally significant values of the reserve.

(b) The reserve shall include approximately fourteen thousand three hundred and twenty acres as depicted on the map entitled "Boundary Map, City of Rocks National Reserve, Idaho" numbered P30-80,005 and dated October 1987. The map shall be on file in the offices of the National Park Service, Department of the Interior and the Offices of the Governor, State of Idaho.

(c) Within six months after the enactment of this title, the Secretary of the Interior (hereinafter in this title referred to as the "Secretary") shall file a legal description of the reserve designated under this section with the Committee on Interior and Insular Affairs of the United States House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate. Such legal description shall have the same force and effect as if included in this title, except that the Secretary may correct clerical and typographical errors in such legal description and in the map referred to in subsection (b). The legal description shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior and the offices of the Governor of the State of Idaho.

PLAN AND MANAGEMENT OF RESERVE

SEC. 202. (a) To achieve the purpose of this title, the Secretary, acting through the National Park Service, in cooperation with appropriate State and Federal agencies, local units of government and local residents shall formulate a comprehensive plan for the protection, preservation, and interpretation of the reserve. The plan shall identify those areas or zones within the reserve which would most appropriately be devoted to—

(1) public use and development;

(2) historic and natural preservation; and

(3) private use subject to appropriate local ordinances designed to protect the historic rural setting.

(b) Within eighteen months following the date of enactment of this section, the Secretary shall transmit the plan to the President of the Senate and the Speaker of the House of Representatives and to the Governor of the State of Idaho.

(c) At such time as the State or appropriate units of local government having jurisdiction over land use within the reserve have enacted ordinances or established regulations which in the judgment of the Secretary will protect and preserve the historic and natural features of the area in accordance with the comprehensive plan, the Secretary shall, pursuant to cooperative agreement—

(1) transfer management and administration over all or any part of the property acquired under subsection (d) of this section to the State or appropriate units of local government;

(2) provide technical assistance to such State or units of local government in the management, protection, and interpretation of the reserve; and

(3) make periodic grants, which shall be supplemental to any other funds to which the grantee may be entitled under any other provision of law, to such State or local unit of government to carry out the purposes of this title.

(d)(1) The Secretary is authorized to acquire such lands and interests as he determines are necessary to accomplish the purposes of this title by donation, purchase with donated funds, or appropriated funds, or exchange, except that the Secretary may not acquire the fee simple title to any land without the consent of the owner. The Secretary shall, in addition, give prompt and careful consideration to any offer made by an individual owning property within the reserve to sell such property, if such individual notifies the Secretary that the continued ownership of such property is causing, or would result in, undue hardship.

(2) Lands and waters, and interests therein, within the boundaries of the reserve which were administered by the Forest Service, United States Department of Agriculture or the Bureau of Land Management, Department of the Interior prior to the date of enactment of this title are hereby transferred to the administrative jurisdiction of the Secretary to be administered by the National Park Service in accordance with this title.

(3) Lands and interest therein so acquired shall, so long as responsibility for management and administration remains with the United States, be administered by the Secretary subject to the provisions of the Act of August 25, 1916 (39 Stat. 535), as amended and supplemented, and in a manner consistent with the purpose of this title.

(e) If, after the transfer of management and administration of any lands pursuant to subsection (c) of this section, the Secretary determines that the reserve is not being managed in a manner consistent with the purposes of this title, he shall so notify the appropriate officers of the State or local unit of government to which such transfer was made and provide for a 180-day period in which the transferee may make such modifications in applicable laws, ordinances, rules, and procedures as will be consistent with such purposes. If, upon the expiration of such 180-day period, the Secretary determines that such modifications have not been made or are inadequate, he shall withdraw the management and administration from the transferee and he shall manage such lands in accordance with the provisions of this title.

(f) Congress finds that there are unique circumstances with respect to the water and water-related resources within the Reserve designated by this title. The Congress recognizes that the management of this area may be transferred to the State of Idaho, that the State has committed to providing the water necessary to fulfill the purposes of this title, and that there is little or no water or water-related resources that require the protection of a Federal reserved water right. Nothing in this title, nor any action taken pursuant thereto, shall constitute either an express or implied reservation of water or water right for any purpose: *Provided*, That the United States shall retain that reserved water right which is associated with the initial establishment and withdrawal of the national forest lands which will be transferred to the Reserve under this title.

(g) Subject to valid existing rights, Federal lands and interests therein, within the reserve, are hereby withdrawn from disposition under the public land laws and from entry or appropriation under the mining laws of the United States, from the operation of the mineral leasing laws of the United States, and from operation of the Geothermal Steam Act of 1970, as amended.

(h) There is hereby authorized to be appropriated not to exceed $2,000,000 to carry out the provisions of this title.

TITLE III—HAGERMAN FOSSIL BEDS NATIONAL MONUMENT

ESTABLISHMENT OF HAGERMAN FOSSIL BEDS NATIONAL MONUMENT

SEC. 301. (a) In order to preserve for the benefit and enjoyment of present and future generations the outstanding paleontological sites known as the Hagerman Valley fossil sites, to provide a center for continuing paleontological research, and to provide for the display and interpretation of the scientific specimens uncovered at such sites, there is hereby established the Hagerman Fossil Beds National Monument (hereinafter in this title referred to as the "monument").

(b) The monument shall consist of approximately four thousand three hundred and ninety-four acres as depicted on a map entitled "Boundary Map, Hagerman Fossil Beds National Monument, Idaho" number HAFO-20,012A and dated September, 1987. The map shall be on file and available for public inspection in the office of the Director, National Park Service, Department of the Interior and the Office of the Superintendent, Hagerman Fossil Beds National Monument, Idaho.

(c) Within 6 months after the enactment of the title, the Secretary of the Interior (hereinafter in this title referred to as the "Secretary") shall file a legal description of the monument designated under this section with the Committee on Interior and Insular Affairs of the United States House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate. Such legal description shall have the same force and effect as if included in this title, except that the Secretary may correct clerical and typographical errors in such legal description and in the map referred to in subsection (a). The legal description shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

ACQUISITION OF LANDS

SEC. 302. (a) The Secretary is authorized to acquire lands or interests in lands within the monument only by donation or exchange.

(b) Notwithstanding any other provision of law, any Federal property located within the boundaries of the monument shall be transferred without consideration to the administrative jurisdiction of the Secretary to be administered in accordance with the purposes of this title.

(c) In acquiring non-Federal lands by exchange pursuant to this title, the Secretary shall utilize his existing authority including but not limited to applicable provisions of the Federal Land Policy and Management Act of 1976 (Public Law 94-579).

ADMINISTRATION OF MONUMENT

SEC. 303. The Secretary shall administer the monument established pursuant to this title in accordance with the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1 et seq.), as amended and supplemented.

WATER RIGHTS

SEC. 304. Congress finds that there are unique circumstances with respect to the water and water-related resources within the monument designated by this title. The Congress recognizes that there is little or no water or water-related resources that require the protection of a Federal reserve water right. Nothing in this title, nor any action taken pursuant thereto, shall constitute either an express or implied reservation of water or water right for any purpose.

EFFECT ON EXISTING FACILITIES

SEC. 305. Nothing in this title shall affect electrical generating and transmission and irrigation pumping and transmission facilities in existence within the boundaries of the monument, or the right to operate, maintain, repair, upgrade, and modify such facilities. Such facilities are hereby expressly determined to be compatible and consistent with the purposes of this title.

CONTINUING PALEONTOLOGICAL RESEARCH

SEC. 306. In order to provide for continuing paleontological research, the Secretary shall incorporate in the general management plan provisions for the orderly and regulated use of and research in the monument by qualified scientists, scientific groups, and students under the jurisdiction of such qualified individuals and groups.

MINING PROHIBITION

SEC. 307. Subject to valid existing rights, Federal lands and interests therein, within the monument, are hereby withdrawn from disposition under the public land laws and from entry or appropriation under the mining laws of the United States, from the operation of the mineral leasing laws of the United States, and from operation of the Geothermal Steam Act of 1970, as amended.

AUTHORIZATION OF APPROPRIATIONS

SEC. 308. There are hereby authorized to be appropriated not to exceed $5,000,000 to carry out the purposes of this title.

TITLE IV—ARIZONA-FLORIDA LAND EXCHANGE

DEFINITIONS

SEC. 401. For purposes of this title:

(1) The term "Administrator" means the Administrator of Veterans' Affairs.

(2) The term "Arizona InterTribal Trust Fund" means the fund established pursuant to section 405(a)(1) of this title in the Treasury of the United States for the benefit of Arizona Tribes that were members of the InterTribal Council of Arizona on January 1, 1988, and the members of such Tribes.

(3) The term "Arizona Tribe" means an Indian tribe that has a reservation located partially or totally in the State of Arizona.

(4) The term "City" means the City of Phoenix, Arizona.

(5) The term "Collier" means the nongovernmental parties to the Exchange Agreement identified in the Exchange Agreement as Barron Collier Company, Collier Development Corporation, and Collier Enterprises.

(6) The term "Exchange Agreement" means the Agreement Among the United States, Collier Enterprises, Collier Development Corporation, and the Barron Collier Company, executed on May 15, 1988, and subsequently submitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(7) The term "Florida Lands" means the lands that would be conveyed to the United States by Collier under the terms of the Exchange Agreement or this title, and other lands owned by Collier and located within the boundaries of the Florida Panther National Wildlife Refuge to be acquired by purchase by the United States and managed as part of such Refuge, other than those lands identified for conveyance to the United States pursuant to agreements for purchase and sale of such lands executed by Collier prior to January 1, 1988.

(8) The term "InterTribal Council of Arizona" or "ITCA" means the corporation organized and existing under the laws of the State of Arizona under the name InterTribal Council of Arizona, Inc., or a successor to such corporation organized and existing under the laws of the State of Arizona, the membership of which includes thirteen or more of the Arizona Tribes that were members of the ITCA on January 1, 1988.

(9) The term "Land Exchange" means the transaction providing for the acquisition by the United States of title to lands in Florida owned by Collier and the receipt by the United States of Monetary Proceeds in exchange for the acquisition by Collier of title to land within the School Property.

(10) The term "Monetary Proceeds" means either—

(A) the cash amount required to be paid to the United States by Collier upon closing of the Land Exchange; or

(B) the amount required to be paid to the United States by a Purchaser other than Collier upon closing of the Purchase Transaction, less the amount required to be paid from the account for acquisition of the Florida Lands and reimbursement of costs established under section 402(i) of this title.

(11) The term "Navajo Trust Fund" means the fund established pursuant to section 405(a)(2) of this title in the Treasury of the United States for the benefit of the Navajo Tribe and its members.

(12) The term "Phoenix Exchange Property" means the land within the School Property to be conveyed to a Purchaser under the Land Exchange or the Purchase Transaction, which land shall be the School Property less any parcel of land to be conveyed to the City of Phoenix or transferred to the Veterans' Administration upon closing of the Land Exchange or Purchase Transaction pursuant to section 402 of this title.

(13) The term "Planning and Development Agreement" means the Memorandum of Agreement between the City of Phoenix, Arizona, Collier Enterprises and Barron Collier Company approved by the City Council of Phoenix, Arizona, on July 1, 1987, including any amendments or modifications of such Memorandum of Agreement subsequently agreed to by the parties, or, as the context may require, an agreement between the City of Phoenix, Arizona, and a Purchaser other than Collier that is identical in all material respects to such Memorandum of Agreement.

(14) The term "Public Planning Process" means the land use planning and zoning process applicable to the School Property under the Planning and Development Agreement or other State or local law and regulation applicable to the planning and zoning of such property.

(15) The term "Purchase Transaction" means the cash purchase of the Phoenix Exchange Property by a Purchaser other than Collier under section 402(h) of this title.

(16) The term "Purchaser" means Collier or, in the event that Collier does not accept the offer of the United States to acquire the Phoenix Exchange Property under either section 402(h)(1) or section 402(h) (6) and (7) of this title, any other person that acquires the Phoenix Exchange Property under a Purchase Transaction.

(17) The term "School Property" means the real property used by the Secretary on January 1, 1988, for the Phoenix Indian High School in Phoenix, Arizona.

(18) The term "Secretary" means the Secretary of the Interior.

(19) The term "Trust Fund Payment" means the payment to the United States of the Monetary Proceeds for deposit into, as the context requires, the Arizona InterTribal Trust Fund or the Navajo Trust Fund, in the form of a lump sum payment or annual payments as determined under section 403 of this title.

(20) The term "Trust Fund Payment Agreement" means an agreement providing for payment by the Purchaser of annual Trust Fund Payments for deposit into the Arizona InterTribal Trust Fund or the Navajo Trust Fund or, as the context may require, an agreement between the United

States and a Purchaser other than Collier that is identical in all material respects to such Trust Fund Payment Agreement.

(21) The term "Trust Income" to the Arizona InterTribal Trust Fund or the Navajo Trust Fund means the interest earned on amounts deposited into each such trust fund and any amounts paid into each such trust fund in the form of annual Trust Fund Payments.

(22) The term "Veterans' Administration Property" means the property adjacent to the School Property owned by the United States and under the jurisdiction and control of the Veterans' Administration on January 1, 1988.

DISPOSITION OF SCHOOL PROPERTY

SEC. 402. (a) AUTHORIZATION OF DISPOSAL.—The Secretary is authorized to dispose of the School Property and use the Monetary Proceeds only in accordance with this title. The provisions of this title shall govern the disposal of such property and other provisions of law governing the disposal of Federal property shall not apply to the disposal of the School Property.

(b) EXCHANGE AGREEMENT.—The Exchange Agreement is ratified and confirmed and sets forth the obligations, duties, and responsibilities of the parties to the Exchange Agreement. The Secretary shall implement the Exchange Agreement in accordance with its terms and conditions; except that, the Secretary may, with the concurrence of Collier, make minor and technical amendments in land descriptions and instruments of conveyance, as set forth in the agreement, upon 30 days prior written notice to the House Interior and Insular Affairs and Senate Energy and Natural Resources Committees.

(c) CONVEYANCE OF LANDS; TRANSFER OF JURISDICTION.—If the Phoenix Exchange Property is conveyed under the Land Exchange or a Purchase Transaction, the Secretary is authorized and directed, subject to the requirements of this section, to—

(1) convey to the City by quitclaim deed a parcel of 20 acres of the School Property upon election by the City to accept such conveyance under subsection (e);

(2) transfer jurisdiction and control of a parcel of 11.5 acres of the School Property to the Veterans' Administration pursuant to subsection (f); and

(3) transfer jurisdiction and control of a parcel of 4.5 acres of the School Property to the Veterans' Administration pursuant to subsection (g).

(d) PRELIMINARY NOTICE.—(1) On a date no later than 135 days prior to acceptance by Collier of the offer of the United States under the Exchange Agreement, Collier shall provide preliminary notice in writing of its intent to accept such offer to—

(A) the Secretary;

(B) the Mayor of the City;

(C) the Administrator of Veterans' Affairs;

(D) the InterTribal Council of Arizona;

(E) the governing body of the Navajo Tribe; and

(F) the Governor of the State of Arizona.

The provision of this preliminary notice by Collier shall not affect Collier's right to accept or not to accept the offer of the United States under the Exchange Agreement and in accordance with subsection (h) (1) or (7).

(2) Notwithstanding any provision of the Exchange Agreement, Collier may not provide preliminary notice under paragraph (1) prior to the later of one year following the date of enactment of this title or the submission of a Specific Plan for the Phoenix Exchange Property as provided in the Planning and Development Agreement.

(e) ELECTION BY CITY.—(1) Within 15 days after receipt of notice to the Mayor of the City under subsection (d), the City may advise the Secretary in writing that it elects to accept conveyance of a parcel of 20 acres of land within the School Property identified for conveyance to the City by mutual agreement with Collier in accordance with the Public Planning Process.

(2) On or after conveyance of the Phoenix Exchange Property under the Land Exchange or Purchase Transaction, the Secretary shall convey to the City such parcel of 20 acres of the School Property as the City may elect to receive under paragraph (1), subject to the requirements of this section: *Provided,* That if the City and the Purchaser have not identified 20 acres for conveyance to the City in accordance with the Public Planning Process at the time of closing of the Land Exchange or the Purchase Transaction, the Secretary shall convey to the City a parcel of land consisting of the northernmost 20 acres of the School Property.

(3) Nothing in this title shall be construed as a limitation on the authority of the Purchaser and the City to enter into agreements to exchange, on an acre-for-acre basis, land within the School Property conveyed to the Purchaser for land conveyed by the United States to the City or owned by the City contiguous to the School Property.

(4) Any conveyance to the City by the United States under this subsection shall include the requirement for a right of reverter in favor of the United States restricting the use of such land perpetually to provide for public open space and recreation.

(5) Any conveyance by the Purchaser to the City of land within the School Property pursuant to exchange shall include a right of reverter in favor of the United States restricting the use of such land perpetually to provide for public open space and recreation. The conveyance by exchange of land to the Purchaser from the City shall extinguish any right of reverter restricting the use of land so conveyed to the Purchaser.

(6) Nothing in this subsection shall be construed to alter any right of the City to purchase additional acres of land within the School Property from the Purchaser pursuant to the Planning and Development Agreement or as may otherwise be agreed to by the City and the Purchaser.

(f) TRANSFER TO THE VETERANS' ADMINISTRATION.—(1) Upon the closing of the Land Exchange or the Purchase Transaction, the Secretary shall transfer to the Veterans' Administration jurisdiction and control of a parcel of 11.5 acres (including improvements located thereon) within the School Property to be used for expansion of the Veterans' Administration Medical Center in Phoenix, Arizona.

(2) Such parcel shall be the portion of land designated as Tract C on the metes-and-bounds surveys in the southeast quarter of section 20, township 2 north, range 3 east, of the Gila and Salt River Meridian, Arizona, conducted by the Bureau of Land Management of the Department of the Interior, dated March 22, 1988.

(3)(A) The Administrator shall cooperate with the City in the planning and development of land transferred under this subsection for the purpose of ensuring comprehensive planning of the School Property in accordance with the objectives of the Public Planning Process. The general authorities of the Administrator, including but not limited to those contained in sections 5022(a)(2) and 5024 of title 38, United States Code, shall be available to the Administrator for the purposes of this subsection.

(B) The Administrator shall, within six months after the date of the enactment of this title and every six months thereafter until the cooperative planning referred to in subparagraph (A) is completed, transmit a report to the Committee on Interior and Insular Affairs and the Committee on Veterans' Affairs of the House of Representatives and the Committee on Energy and Natural Resources and the Committee on Veterans' Affairs of the Senate. Each such report shall contain a description of the efforts made by the Veterans' Administration in carrying out such planning during the period for which the report is submitted.

(C) The Secretary shall enter into a memorandum of understanding with the Administrator for the temporary use by the Administrator of the gymnasium constructed on the School Property in 1975. Such temporary use shall not extend beyond the interim period before the transfer or development of the property on which the gymnasium is located.

(g) TRANSFER TO THE STATE OF ARIZONA.—(1) Upon the closing of the Land Exchange or the Purchase Transaction, the Secretary shall transfer to the Veterans' Administration jurisdiction and control of a parcel of 4.5 acres (including improvements located thereon) within the School Property which shall be under the jurisdiction and control of the Veterans' Administration until disposed of in accordance with paragraph (3) or (4).

(2) Such parcel of land shall be contiguous to the parcel of land transferred to the Veterans' Administration under subsection (f) and to the Veterans' Administration Property. Such parcel shall be identified by mutual agreement of the City, the Administrator, Collier, and the State of Arizona in accordance with the objectives of the Public Planning Process for use by the State of Arizona as a site for facilities owned and operated by such State as a home for veterans.

(3) The Administrator shall convey such parcel (including improvements located thereon), without reimbursement, to the State of Arizona when—

(A) the Administrator of Veterans' Affairs has approved the State of Arizona's application for assistance in construction of a State veterans' facility on such parcel pursuant to section 5035 of title 38, United States Code; and

(B) the State of Arizona has appropriated sufficient funds to pay for its portion of the costs of construction of such facility.

(4) If the State of Arizona does not submit an application for assistance described in paragraph (3)(A) and appropriate the funds described in paragraph (3)(B) within three years after such parcel is transferred to the Veterans' Administration under this subsection, the Administrator of Veterans' Affairs shall transfer jurisdiction and control of such parcel to the Secretary.

(5) Such land shall be offered by the Secretary for sale to the City, subject to a right of reverter in favor of the United States restricting the use of such land perpetually to provide for public open space and recreation, at a price determined by the Secretary which shall be representative of the value of such land discounted to account for such restrictions in use. In the event that the City does not accept the offer of the United States to purchase such land within six

months from the date such offer is made, such land shall be offered for sale to the Purchaser at fair market value. The amount received from any sale of such land shall be deposited in the Arizona InterTribal Trust Fund and in the Navajo Trust Fund in accordance with the allocation described in section 405(e).

(h) OFFERS TO PURCHASE.—(1) Upon receipt by the Secretary of the notice of election to receive the parcel of land by the City of Phoenix under subsection (e), but in no event later than 15 days after receipt of preliminary notice to the Secretary by Collier under subsection (d), the Secretary shall notify Collier that, notwithstanding the provisions of subsection (d)(1), Collier may accept the offer of the United States to acquire the Phoenix Exchange Property under the terms of the Exchange Agreement, subject to the requirements that if the fair market value of the Phoenix Exchange Property stated in the current, independent appraisal obtained by the Secretary under subsection (m)(4) is greater than $80 million, then Collier shall pay, in addition to the amount required to be paid under paragraphs 13 and 14 of the Exchange Agreement, an amount equal to the difference between the fair market value stated in such appraisal and $80 million. If Collier notifies the Secretary that it does not accept the offer of the United States under this paragraph, a Purchaser may acquire the Phoenix Exchange Property pursuant to the requirements of paragraphs (2) through (9) of this subsection.

(2)(A) Upon receipt of notice by Collier that it does not accept the offer of the United States under paragraph (1), but in no event later than 15 days following receipt of such notice, the Secretary shall initiate the bidding process under this section by soliciting and advertising widely for sealed bids for purchase of the Phoenix Exchange Property: *Provided,* That no such bid will be accepted unless such bid offers a price of no less than the minimum acceptable price set forth in subsection (h)(4). The Secretary shall solicit and advertise widely for such bids by publishing notice that the Secretary will receive offers by persons other than Collier to purchase the Phoenix Exchange Property in the Federal Register and in newspapers of general circulation and other appropriate publications, including newspapers in Phoenix, Arizona. Such notice shall include—

(i) an accurate description of the Phoenix Exchange Property, and an identification of any parcels of land within the School Property elected for conveyance to the City pursuant to subsection (e), transferred to the Veterans' Administration pursuant to subsection (f), or conveyed to the State of Arizona pursuant to subsection (g);

(ii) the name and address of State and local offices from which information concerning the zoning and other legal requirements applicable to such property may be obtained;

(iii) a description of the terms and conditions for purchase of the Phoenix Exchange Property established under this title pursuant to which the Secretary may accept an offer to purchase the Phoenix Exchange Property;

(iv) a statement of the minimum price that the Secretary may accept for sale of the Phoenix Exchange Property under paragraph (4) of this subsection;

(v) a description of the other terms and conditions for purchase of the Phoenix Exchange Property that the Secretary determines are necessary to ensure that the rights and obligations of a Purchaser under this section are comparable in all material respects to the rights and obligations of Collier under the Exchange Agreement, except as otherwise provided in this title;

(vi) a statement establishing requirements for deposit of bond or other guarantee of credit in an amount determined by the Secretary; and

(vii) any other information that the Secretary, in his discretion, determines is reasonably necessary to permit a bona fide potential purchaser to evaluate the terms and conditions for purchase of the Phoenix Exchange Property.

(B) Upon request, the Secretary shall make available to any potential purchaser a copy of the Exchange Agreement or any other document in the possession of the Secretary which the Secretary in his discretion determines is reasonably necessary to permit a bona fide potential purchaser to evaluate the proposal of the United States to sell the Phoenix Exchange Property.

(3) Any person seeking to acquire the Phoenix Exchange Property by purchase under this section shall, within 90 days after publication of notice in the Federal Register under paragraph (2)(A), deliver to the Secretary in the form prescribed in such notice, a written offer to purchase the Phoenix Exchange Property which offer shall—

(A) offer to purchase the entire Phoenix Exchange Property for cash in a single transaction at a price greater than the minimum acceptable price established under paragraph (4);

(B) by its terms be irrevocable for a period of at least 120 days from the date such offer is delivered to the Secretary and be legally binding on the offeror upon acceptance of such offer by the United States;

(C) offer to enter into a Purchase Agreement with the United States under the terms and conditions for purchase of the Phoenix Exchange Property described in the notice by the Secretary under paragraph (2);

(D) contain an offer to the United States to enter into a Trust Fund Payment Agreement in a form prescribed by the Secretary consistent with the requirements for payment of the Trust Fund Payment in the form of annual payments under section 403, which agreement shall be legally binding upon the offeror upon election of the Secretary to receive payment of the Monetary Proceeds in the form of annual payments under section 403 of this title, including: (i) a detailed description of the collateral to be provided by the offeror to secure the payment obligation under the Trust Fund Payment Agreement upon such election of the Secretary to receive payment in the form of annual payments, and (ii) evidence of ownership and value of such collateral sufficient to permit the Secretary to determine whether such collateral is adequate to secure the payment obligations of the Purchaser under the Trust Fund Payment Agreement;

(E) contain evidence that the offeror has made an offer to the City of Phoenix, legally binding by its terms on the offeror upon approval by the City Council of Phoenix, Arizona, to enter into the Planning and Development Agreement;

(F) contain full and substantial evidence of the capacity of the offeror to enter into and perform each of the obligations required to be undertaken by the offeror under the terms described by the Secretary in accordance with paragraph (2) including a description of any financing arrangements to be undertaken by the offeror in order to perform the payment obligation of the Purchaser upon closing of the Purchase Transaction;

(G) meet any other requirements prescribed by the Secretary in the notice published under paragraph (2)(A) which are reasonably necessary to ensure that any offer accepted by the United States under this subsection will provide public benefits to the United States comparable to those provided to the United States under the Land Exchange; and

(H) be accompanied by the deposit of a bond or other guarantee consistent with the requirements prescribed by the Secretary under paragraph (2).

(4) The minimum acceptable price for sale of the Phoenix Exchange Property is a cash amount equal to the sum of the amount required to be deposited into the account for purchase of the Florida Lands and reimbursement of costs under subsection (i) and an amount equal to the amount required to be paid by Collier under paragraphs 13 and 14 of the Exchange Agreement.

(5)(A) The Secretary shall review any offer to purchase the Phoenix Exchange Property delivered to the Secretary within 90 days after publication of notice under paragraph (2)(A) for the purpose of determining whether such offer meets the requirements under paragraph (3) or other requirements set forth in the notice of the Secretary pursuant to paragraph (2). The Secretary shall identify for consideration as qualifying offers all such offers that meet such requirements subject to the limitations of subparagraph (B).

(B) In determining whether an offer is a qualifying offer under this paragraph, the Secretary shall exclude from consideration any offer that the Secretary in his discretion determines—

(i) does not meet the requirements set forth in the notice of the Secretary pursuant to paragraph (2);

(ii) is made by an offeror without adequate capacity to enter into or perform the payment obligations under this title or the Trust Fund Payment Agreement; or

(iii) has failed to identify collateral that is adequate to secure the obligations under the Trust Fund Payment Agreement.

(C) The Secretary shall, within 105 days after publication of notice in the Federal Register, select from among the qualifying offers the best qualifying offer, which shall be the single offer from among the qualifying offers that contains an offer to pay to the United States the highest lump sum cash payment upon closing of the Purchase Transaction: *Provided,* That nothing in this paragraph shall be construed to limit or alter the right of the Secretary to elect to receive payment of the Monetary Proceeds in the form of annual payments under section 403 of this title.

(6) Within 105 days after publication of notice in the Federal Register under paragraph (2)(A), the Secretary shall advise Collier whether the Secretary has identified a qualifying offer or offers. In the event that the Secretary has not identified any such qualifying offer, he shall advise Collier that Collier may accept the offer of the United States to Collier under the terms of the Exchange Agreement and this title. In the event that the Secretary has identified a qualifying offer, the Secretary shall provide Collier with a copy of the best qualifying offer, and shall advise Collier that Collier may accept the offer of the United States

under the Exchange Agreement subject to the requirement that Collier pay, rather than the amount required to be paid under paragraphs 13 and 14 of the Exchange Agreement, the difference between an amount equal to 105 percent of the price to be paid under the best qualifying offer and $45,100,000.

(7) Collier may accept the offer of the United States by notice to the Secretary within 30 days of receipt of notice under paragraph (6) that Collier accepts such offer under the terms of the Exchange Agreement and subject to the requirement, if any, for additional payment under paragraph (6). If Collier accepts the offer of the United States under this paragraph, closing of the Land Exchange shall occur under the terms of the Exchange Agreement and this title.

(8) If Collier does not accept such offer, the Secretary shall accept the best qualifying offer. If no qualifying offer has been received within the period specified in paragraph (3), the Secretary shall maintain the School Property in accordance with subsection (k) of this section, and notify the Committees on Interior and Insular Affairs and Veterans' Affairs in the House of Representatives, and the Committee on Energy and Natural Resources in the Senate within 60 days of the Secretary's notice to Collier under paragraph (6). Closing of the Purchase Transaction under this subsection shall occur within 90 days after acceptance by the United States of the best qualifying offer, subject to the requirements respecting deposit of payment under subsection (i).

(9) No action of the Secretary under this subsection shall be subject to the provisions of 5 U.S.C. 553 through 558 or 701 through 706.

(i) Account for Purchase Transaction Amounts.—(1) Upon closing of the Purchase Transaction, there shall be established in the Treasury of the United States an account into which shall be deposited from the amount paid to the United States under the Purchase Transaction, at the direction of the Secretary, an amount equal to the sum of—

(A) $49,400,000, less any amount received by Collier in consideration of the conveyance to the United States of any portion of the Florida Lands prior to the closing of the Purchase Transaction, and

(B) an amount equal to the costs determined by the Secretary as reimbursable to Collier under paragraph (2), based on information to be provided to the Secretary by Collier at the time that Collier provides preliminary notice under subsection (d).

(2) For purposes of this subsection, reimbursable costs of Collier shall include—

(A) all costs, including fees for attorneys and consultants, and appraisal costs paid or incurred by Collier in connection with the Public Planning Process and planning and zoning of the School Property, and

(B) an amount for compensation of general administrative costs and overhead, which shall be an amount equal to the costs reimbursable to Collier under subparagraph (A) multiplied by a factor of 0.8.

(3) Upon conveyance by Collier to the United States of title to the Florida Lands pursuant to this subsection, the Secretary shall cause to be paid to Collier from the account established under paragraph (1): (A) $49,400,000, less any amount previously paid to Collier by the United States in consideration of conveyance of any portion of the Florida Lands, and (B) an amount equal to the total amount of costs reimbursable to Collier under this subsection, as determined by the Secretary.

(j) Conveyance of Title.—Upon conclusion of the procedures under subsection (h), the Secretary is authorized and directed to release and quitclaim to the Purchaser all right, title, and interest of the United States to the Phoenix Exchange Property.

(k) Reversion.—Any land within the School Property not conveyed to the Purchaser or the City or transferred to the Veterans' Administration upon closing of the Land Exchange or the Purchase Transaction or which reverts to the United States under subsection (e)(4) or is transferred to the Secretary under subsection (g)(4) and is not sold to the City or the Purchaser shall be maintained under the administrative jurisdiction, management and control of the National Park Service and shall not be disposed of until authorized by an Act of Congress: *Provided, however,* That such lands shall not be considered a unit of the National Park System.

(l) State and Local Authority.—Nothing in this title shall be construed to supersede, abrogate, enlarge, diminish, or otherwise alter the exercise of authority of the State of Arizona, the City or other State and local authority with respect to planning and zoning of the School Property under applicable State or local law.

(m) Specific Plan Reports.—(1) No later than 30 days after the submission of the Specific Plan as provided for in the Planning and Development Agreement, the Comptroller General of the United States shall submit to Congress a report analyzing the Specific Plan, particularly as it relates to the final proposals for zoning of the Phoenix Exchange Property, the alternatives considered, the reasons for rejection of the alternatives, and the effect of the rezoning proposals on the potential value of the property relative to the effects of other zoning proposals.

(2) Within 60 days after acceptance of the Purchasers' offer under subsection (h)(8), or acceptance by Collier of the offer of the United States under subsection (h) (1), (6) or (7), whichever is later, the Comptroller General shall provide a further report on all actions taken subsequent to the submission of the Specific Plan relative to disposition of the Phoenix Exchange Property, particularly as they relate to the value received by the United States and the process by which such value was determined.

(3) The Comptroller General shall transmit all reports required by this section to the Committees on Interior and Insular Affairs and Education and Labor of the House of Representatives and the Committee on Energy and Natural Resources and the Select Committee on Indian Affairs of the Senate.

(4) Within 45 days following submission of the Specific Plan as provided for in the Planning and Development Agreement, the Secretary shall obtain, at Collier's expense, a current, independent appraisal of the Phoenix Exchange Property, based upon the zoning requirements stated in such Specific Plan, which appraisal shall determine the fair market value which Collier must give for the Phoenix Exchange Property if such property is acquired by Collier pursuant to the provisions of subsection (h)(1).

PAYMENT TO THE TRUST FUNDS

Sec. 403. (a) Deposit of Monetary Proceeds.—The Monetary Proceeds shall be paid to the United States for deposit in the Arizona InterTribal Trust Fund and the Navajo Trust Fund in accordance with this section and section 405 of this title.

(b) Election of Lump Sum or Annual Payments.—Subject to the requirements for consultation under subsection (c)(3), the Secretary may, in his discretion, elect to receive the Trust Fund Payment for deposit in the Arizona InterTribal Trust Fund or the Navajo Trust Fund, or both, in the form of either a lump sum payment or 30 annual payments, calculated in accordance with subsection (c). The Secretary shall provide notice of such election to the Purchaser within 90 days after receipt of notice from Collier that it intends to accept the offer of the United States under the Exchange Agreement pursuant to section 402(d).

(c) Method of Payment.—(1) If the Secretary elects to receive a Trust Fund Payment in the form of a lump sum payment, the Purchaser shall, at the time of closing, pay to the United States an amount equal to that portion of the Monetary Proceeds that is properly allocable to the Trust Fund for which such election is made.

(2) If the Secretary elects to receive a Trust Fund Payment in the form of annual payments, the Purchaser shall make—

(A) 30 annual payments equal to the interest due on an amount equal to that portion of the Monetary Proceeds that is properly allocable to the Trust Fund for which such election is made; and

(B) at the time of the last annual payment, a payment equal to that portion of the Monetary Proceeds that is properly allocable to the Trust Fund for which such election is made.

(3) Prior to making any election as to form of the Trust Fund Payment under this subsection, the Secretary shall consult with—

(A) the InterTribal Council of Arizona, concerning the form of the Trust Fund Payment to the Arizona InterTribal Trust Fund; and

(B) the governing body of the Navajo Tribe, concerning the form of the Trust Fund Payment to the Navajo Trust Fund.

(4) If the Secretary elects to receive a Trust Fund Payment in the form of annual payments under subsection (c)(2), the Secretary is directed to execute the Trust Fund Payment Agreement pursuant to which such annual payments will be made.

(5) The interest rate to be used in determining the interest due on annual Trust Fund Payments payable by the purchaser shall be the interest rate being offered on bonds payable in 30 years sold by the United States on the date that notice of the election of the form of the Trust Fund Payment is made by the Secretary plus 0.25 percent, except that in no event shall such interest rate be lower than 8.5 percent or higher than 9.0 percent.

(6) Closing of the Land Exchange or the Purchase Transaction shall occur no sooner than 90 days after notice of the Secretary's election is provided to the Purchaser, except that if the Secretary elects to receive a Trust Fund Payment in the form of annual payments under subsection (c)(2), closing of the Land Exchange or the Purchase Transaction shall not occur unless a Trust Fund Payment Agreement has been executed.

(d) Cash Proceeds.—Any cash proceeds to the United States from the sale of land within the School Property offered to and accepted by the City or the Purchaser subsequent to closing of the Land Exchange or the Purchase Transaction shall be in the form of a lump sum payment, unless otherwise agreed to by the parties, payable to the

United States for deposit into the Arizona InterTribal Trust Fund and the Navajo Trust Fund pursuant to section 405 of this title.

CLOSURE OF THE PHOENIX INDIAN HIGH SCHOOL

SEC. 404. CLOSURE.—Notwithstanding any other provision of law, the Secretary shall close the Phoenix Indian High School on a date determined by the Secretary, which date shall be no earlier than June 1, 1990, and no later than September 1, 1990.

(b) NOTICE.—By January 30, 1990, the Secretary shall notify the tribal governing body of each Arizona Tribe affected by the closing of the Phoenix Indian High School and each person, or parent or guardian of each person, enrolled as a student at the Phoenix Indian High School on January 1, 1991, of the date of closing of the Phoenix Indian High School as determined by the Secretary under subsection (a).

(c) INDIVIDUAL EDUCATION PLANS.—(1) Beginning January 30, 1990, but in no case later than March 1, 1990, the Secretary, through the Assistant Secretary of Indian Affairs, shall—

(A) identify each eligible Indian student who is enrolled or preenrolled for attendance at the Phoenix Indian High School, as of the date of enactment of this title, or who attended the Phoenix Indian High School during the academic year 1988-89, and who did not graduate from a secondary program, and shall—

(i) contact each student, or the parents or guardians of record of each such student,

(ii) notify each student that the Phoenix Indian High School is to be closed at the date established by the Secretary under subsection (a),

(iii) inform each of the alternatives available to each student and their families, including attendance at the Bureau operated facility at Riverside, California, and

(iv) develop the individual education plans required under subparagraph (B);

(B) develop for each student identified under subparagraph (A) an individual education plan, which shall be formulated in a cooperative fashion between Bureau education and other appropriate social services. Each individual education plan shall, at the minimum, include—

(i) an identification of the student;

(ii) an identification of the special educational, social, or academically related cultural needs of each student;

(iii) a description of the consultation and discussions with the student and the parent involved in the formulation of this plan;

(iv) an identification of the alternative service provider chosen by the student or parent to provide educational services;

(v) any actions taken, pursuant to the requirements to protect confidentiality, to contact and coordinate the alternative service provider, the tribe, any appropriate Bureau social service entities, and the Office of Indian Education Program; and

(vi) set out in detail the actions to be taken by the Bureau of Indian Affairs to supplement the program provided with additional services and support for the student, where the student attends a non-Bureau funded program or a Bureau funded program which does not include the services described within the plan; and

(C) take such steps as are necessary to establish a formal internal mechanism for implementing the findings and recommendations of the plans developed under subparagraph (B).

(2)(A) Any other provision of law notwithstanding, the Secretary shall, for the fiscal years ending prior to September 30, 1992, reserve from funds appropriated under section 1128 of Public Law 95-561 and other Bureau of Indian Affairs accounts presently providing support to the Phoenix Indian High School during the fiscal year 1990 an amount equal to the amount determined under subparagraph (B) for the purpose of implementing subparagraph (C).

(B)(i) The amount reserved for the fiscal year ending September 30, 1991, shall be equal to the sum of three-fourths the amount generated under the Indian Student Equalization Formula during fiscal year 1990 for the Phoenix Indian High School plus three-fourths the amount generated under the accounts referenced in subparagraph (A), such funds to be reserved from the respective accounts and administered pursuant to subparagraph (C).

(ii) The amount reserved for the fiscal year ending September 1992 shall be equal to the sum of one-half the amount generated under the Indian Student Equalization Formula during fiscal year 1990 for the Phoenix Indian High School plus one-half the amount generated under the accounts referenced in subparagraph (A), such funds to be reserved from the respective accounts and administered pursuant to subparagraph (C).

(C) From funds reserved pursuant to subparagraph (B), the area education director and the area director shall jointly administer a program to implement the individual education plans developed under paragraph (2), with particular emphasis being placed on monitoring the performance and attendance of students covered by the individual education plans. From such funds, they shall also, to the extent funds are available, conduct such activities as may be necessary to determine those eligible Indian students who reside within the State of Arizona or the jurisdiction of the Phoenix Area Office of the Bureau of Indian Affairs who are of legal age to be attending school but who are not enrolled in any program.

(d) TRANSFER OF JURISDICTION.—Within 60 days after closure of the Phoenix Indian High School under subsection (a), the Secretary shall transfer administrative jurisdiction, management and control of the school property from the Bureau of Indian Affairs to the National Park Service: *Provided*, That, prior to the disposition of the School Property under the terms of the Exchange Agreement or otherwise, the National Park Service shall manage and control such School Property in a manner consistent with the requirements of the Exchange Agreement and subsection (e), except that the Administrator may, during the interim period of administration, take such actions as are necessary to protect the improvements located on the 11.5 acres of land and 4.5 acres of land to be transferred to the Veterans' Administration pursuant to subsections (f) and (g) of section 402. During the interim period of administration the School Property shall not be considered a unit of the National Park System.

(e) TRANSFER OF RESOURCES.—(1) Any other provision of law notwithstanding, the following shall apply to the Sherman Indian School, located in Riverside, California, and operated by the Bureau of Indian Affairs, or its successors, effective on the date of enactment:

(A) The attendance boundaries used by the Bureau of Indian Affairs to govern placements in the Sherman Indian School is expanded to include all of the attendance boundary served in the fiscal year 1991 by the Phoenix Indian High School.

(B) Subject to school board approval, the superintendent of the Sherman Indian School is authorized to pay the recruitment and retention allowance authorized under section 1131(h)(3) of Public Law 95-561.

(C) The Secretary shall inventory all Bureau of Indian Affairs educational property, including personal property, currently located at the Phoenix Indian High School. The superintendent of the Sherman Indian School, and their designees, shall have first option on all materials located at the Phoenix Indian High School and the Secretary shall take all steps necessary to move the materials chosen by the superintendent of the Sherman Indian School to the school as expeditiously as possible. Remaining property shall be made available to other off-reservation boarding schools.

(D) Subject to the provisions of subsection (d), the personnel ceilings at the Sherman Indian School shall be immediately adjusted to reflect employees who transfer from the Phoenix Indian High School and any increase in the student population projected by the closure.

(2) With respect to any employee employed at the Phoenix Indian High School prior to the closure of the academic program—

(A) for the purpose of conducting the reduction in force associated with the closure of the Phoenix Indian High School, Phoenix Indian High School and the Sherman Indian School in Riverside, California shall be considered as one employment area; and

(B) for those who do not elect to exercise the above, or to whom they do not apply, outplacement assistance, including where available job retraining programs, professional resume and other job placement assistance.

ESTABLISHMENT OF THE ARIZONA INDIAN TRUST FUNDS

SEC. 405. (a) ESTABLISHMENT.—Upon disposal of the School Property and receipt by the United States of the Monetary Proceeds, there shall be established in the Treasury of the United States—

(1) a fund to be known as the Arizona InterTribal Trust Fund; and

(2) a fund to be known as the Navajo Trust Fund.

(b) AMOUNTS IN FUNDS.—Each Trust Fund established under this section shall consist of—

(1) an amount equal to the sum of—

(A) that portion of the Monetary Proceeds properly allocable to each such Trust Fund;

(B) that portion of the cash proceeds from the sale by the United States to the City or the Purchaser of additional acres of land within the School Property pursuant to subsection (g)(5) of section 402 of this title properly allocable to each such Trust Fund; and

(C) any interest accruing on any amount deposited in each such Trust Fund,

(2) less the amount of Trust Income from the Trust Fund used by the Secretary pursuant to subsection (d).

(c) INVESTMENT.—(1) If a Trust Fund Payment is made in the form of a lump sum payment under section 403(c)(1) of this title, the Secretary of the Treasury shall invest the amount of such lump sum payment in interest-bearing deposits and securities in accordance with the act of June 24, 1938 (25 U.S.C. 162a).

(2) If a Trust Fund Payment is made in the form of annual payments under section 403(c)(2) of this title, the Secretary of the Treasury shall hold in trust the security

provided in accordance with the Trust Fund Payment Agreement.

(3) At the direction of the Secretary, the Secretary of the Treasury may invest in accordance with the requirements of paragraph (1) any portion of the Trust Income not used by the Secretary in any year.

(d) USE OF TRUST INCOME.—(1) The purpose of these trust funds is to supplement, not supplant, current Federal efforts. The Secretary shall not reduce, rescind, alter or change any distribution of funds to which any Indian tribe or students covered by this section may otherwise be entitled or eligible under any other Federal authority. The Congress also expresses its intention that in determining the amount of any funds to provide services to Indian tribes or students covered by this section, there shall be no amendment, alteration, limitation, or reduction within future congressional action occasioned by the presence of these funds.

(2) Trust Income may be used only for—

(A) supplemental educational and child-welfare programs, activities, and services for the benefit of—

(i) those Arizona Tribes that were members of the InterTribal Council of Arizona on January 1, 1988, in the case of payments from the Arizona InterTribal Trust Fund; and

(ii) the Navajo Tribe, in the case of payments from the Navajo Trust Fund;

(B) the design, construction, improvement, or repair of related facilities; and

(C) the payments referred to in paragraph (4).

(3)(A) To carry out the purposes of paragraph (2), the Secretary, pursuant to appropriations, may make grants—

(i) from the Arizona InterTribal Trust Fund to Arizona tribes that were members of the InterTribal Council of Arizona on January 1, 1988, public school districts on or near reservations of such Tribes in the State of Arizona, and the InterTribal Council of Arizona; and

(ii) from the Navajo Trust Fund to the Navajo Tribe or public school districts on or near the Navajo Reservation in the State of Arizona.

(B) The Secretary shall require, as a condition for making any grant to a public school district, the approval of the governing body of the Arizona Tribe the children of which are to be served by such grant.

(4)(A) An amount equal to 5 percent of the Trust Income during the preceding fiscal year shall be paid annually by the Secretary—

(i) to the InterTribal Council of Arizona from the Arizona InterTribal Trust Fund; and

(ii) to the governing body of the Navajo Tribe from the Navajo Trust Fund.

(B) Payments made under this paragraph shall be used for education, child welfare, community development, and general administrative purposes, and may be made only pursuant to an annual budget adopted by the vote of—

(i) a majority of the members of the InterTribal Council of Arizona, in the case of payments to the Arizona InterTribal Trust Fund; and

(ii) the governing body of the Navajo Tribe, in the case of payments to the Navajo Trust Fund.

(C) The limitation on the amount of payments under this paragraph shall not be construed as a limitation on the authority of the Secretary to make grants to the InterTribal Council of Arizona or the Navajo Tribe under paragraph (3).

(5) None of the Trust Income may be used for scholarship grants for higher education.

(e) ALLOCATION.—In depositing into the Trust Funds the Monetary Proceeds, any payment by the State of Arizona, or the cash proceeds from the sale of land within the School Property—

(1) the amount properly allocable to the Arizona InterTribal Trust Fund shall be 95 percent of the total amount of such payment or cash proceeds to the United States; and

(2) the amount properly allocable to the Navajo Trust Fund shall be 5 percent of the total amount of such payment or cash proceeds to the United States.

NAVAJO-HOPI RELOCATION

SEC. 406. PROVISION OF BENEFITS.—Section 14 of Public Law 93-531 (25 U.S.C. 640d-13) is amended by adding at the end thereof the following new subsection:

"(d)(1) Except as provided in paragraph (2) of this subsection, the Commissioner shall provide relocation benefits under the title to applicants in the chronological order in which the applicants are certified for such benefits, but the Commissioner may grant priority status on a case-by-case basis to applicants based on medical, safety, or humanitarian reasons and the readiness of the applicant to move or in order to continue the policy of moving extended families as units.

"(2) The Commissioner shall give first priority in the provision of relocation benefits under this title to those families who were evicted pursuant to an order issued in the case United States v. Kabinot, 456 F.2d 1087 (1972).".

SEC. 407. ADMINISTRATION OF NEW LANDS FUNDS.—Subsection (c)(2)(B) of section 12 of Public Law 93-531 (25 U.S.C. 640d-11) is amended by adding at the end thereof the following new clause:

"(B) : *Provided further*, That for administrative purposes such funds shall be maintained in a separate account.".

SEC. 408. CLARIFICATION OF ELIGIBILITY.—Public Law 93-531 is amended by adding at the end thereof the following new section:

"SEC. 32. Nothing in this title prohibits the Commissioner from providing relocation assistance to families certified as eligible, regardless of their current place of residence, with funds appropriated to implement Public Law 93-531."

TITLE V—SANTA RITA PUBLIC LANDS EXCHANGE

PAYMENT OF FEDERAL DEBT

SEC. 501. The Secretary of the Interior, acting through the Bureau of Land Management, shall convey to the State of Arizona, a portion of the lands in the Santa Rita Experiment Station lying outside of the National Forest System (comprising 50,810.94 acres as generally depicted on map AZ-020-01, subpart A, dated September 13, 1988), which the Secretary deems necessary to satisfy the remaining Federal debt to the State of Arizona, as of the date of enactment of this title, for relinquishments of lands for the Central Arizona project pursuant to the provisions of the Act of June 20, 1910. The map referenced in this section shall be on file and available for public inspection in the offices of the Arizona State Bureau of Land Management and of the Bureau of Land Management in Washington, DC.

LAND ACQUISITION

SEC. 502. (a) STATE LANDS ACQUISITION.—Upon completion of the actions authorized in section 501, the Secretary shall utilize the remaining Federal lands in the Santa Rita Experiment Station, described in section 501, to acquire through exchange, pursuant to the exchange provisions of the Federal Land Policy Management Act of 1976, all of the State trust lands within Catalina State Park (as generally depicted on map AZ-020-02, subpart B, dated September 13, 1988), Buenos Aires National Wildlife Refuge (as generally depicted on map AZ-020-05, subpart A, dated September 13, 1988), the Black Canyon Corridor (as generally depicted on map AZ-020-03, Subpart A, dated September 13, 1988), Arivaca Lake (as generally depicted on map AZ-020-05, subpart B, dated September 13, 1988), the Madera-Elephant Head Trail area (as generally depicted on map AZ-020-01, subpart C, dated September 13, 1988), and near Lake Pleasant (as generally depicted on map AZ-020-03, subpart B, dated September 13, 1988). The maps described in this subsection shall be on file and available for public inspection in the offices of the Arizona State Bureau of Land Management and of the Bureau of Land Management in Washington, DC.

(b) ADDITIONAL ACQUISITION AUTHORITY.—The Secretary is also authorized to acquire the State lands described in subsection (a) by purchase or eminent domain to the extent determined by him to be appropriate.

(c) LANDS TO BE INCLUDED IN THE NATIONAL WILDLIFE REFUGE SYSTEM.—Those lands within the Buenos Aires National Wildlife Refuge that are acquired in accordance with this title shall be added to the National Wildlife Refuge System and managed in accordance with the National Wildlife Refuge System Administration Act of 1966.

(d) LANDS TO BE ADMINISTERED BY THE BUREAU OF LAND MANAGEMENT.—Those lands near Lake Pleasant and within the Black Canyon Corridor that are acquired in accordance with this title shall be administered by the Bureau of Land Management, in accordance with the provisions of the Federal Land Policy and Management Act of 1976.

ADDITION TO THE CORONADO NATIONAL FOREST

SEC. 503. (a) INCLUSION IN NATIONAL FOREST SYSTEM.—Those lands in the Catalina State Park, Madera-Elephant Head Trail area, and the Arivaca Lake area that are acquired pursuant to this title, shall be included in the Coronado National Forest, and the exterior boundary of the Coronado National Forest shall be modified to include such lands on the date of acquisition by the United States. The Catalina State Park lands shall be managed cooperatively with the Arizona State Parks Department for public access and recreation purposes under the authorities of the National Forest System. Subject to valid existing rights, such lands are hereby withdrawn from all forms of—

(1) entry, appropriation, or disposal under the public lands laws;

(2) location, entry, and patent under the United States mining laws; and

(3) disposition under all laws pertaining to mineral and geothermal leasing.

(b) LANDS EXEMPT FROM FURTHER PLANNING.—The lands added to the Coronado National Forest by this section shall be administered under the laws and regulations applicable to National Forest System lands except that the lands described in this section shall be exempt from any further planning requirements of the National Forest Management Act of 1976 until the final 1986 forest plan for the Coronado National Forest is revised. At that time, future management direction for these lands will be determined as a part of planning for the entire National Forest.

REVOCATION OF SANTA RITA RANGE EXECUTIVE AND PUBLIC LAND ORDERS

Sec. 504. (a) Revocation.—Notwithstanding any other provision of law, in order to facilitate the transfer of certain Federal lands, Executive Order 1222 dated July 1, 1910, and Public Land Order 1363 dated November 14, 1956, which withdrew the Santa Rita Experimental Range for a Forest and Range Experiment Station, are hereby revoked in their entirety.

(b) Effective Date.—The effective date of the revocation made by this section shall be—

(1) for those lands lying within the National Forest System the date of enactment of this Act; or

(2) for those lands lying outside of the National Forest System the date of transfer of patent to the State of Arizona.

WITHDRAWALS FOR ADMINISTRATIVE SITE

Sec. 505. (a) Withdrawal.—Subject to valid existing rights, the following described lands within the Coronado National Forest are hereby withdrawn from all forms of—

(1) entry, appropriation, or disposal under the public lands laws;

(2) location, entry, and patent under the United States mining laws; and

(3) disposition under all laws pertaining to mineral and geothermal leasing:

All of section 19, the SW¼NW¼, and W½SW¼ of section 20, the N½NE¼ of section 30; all in T. 19 S., R. 15 E., G&SRM; containing approximately 751.04 acres. (Florida Canyon)

Such lands shall be used for research purposes in accordance with applicable law.

(b) Revocation of Order.—Notwithstanding any other provision of law, in order to facilitate the administration of the Federal lands described in subsection (a), Public Land Order 1080, dated February 28, 1955, which withdrew lands for forest administrative sites, is hereby revoked as it relates in sec. 19, T. 19 S., R. 15 E., G&SRM.

WITHDRAWALS FOR KOFA NATIONAL WILDLIFE REFUGE

Sec. 506. Subject to valid existing rights, all federally owned lands within the Kofa National Wildlife Refuge as of the date of enactment of this title, are hereby withdrawn from all forms of—

(a) entry, appropriation, or disposal under the public land laws;

(b) location, entry, and patent under the United States mining laws; and

(c) disposition under all laws pertaining to mineral and geothermal leasing.

REVOCATION OF RECLAMATION WITHDRAWALS

Sec. 507. (a) In General.—Notwithstanding any other provision of law, in order to facilitate the transfer of certain Federal lands—

(1) Secretarial Orders dated January 31, 1903, September 8, 1903, June 4, 1930, and October 16, 1931, which withdrew lands from the Colorado River Storage Project and Executive Order 8647 dated January 22, 1941, and Public Land Order 4417 dated May 20, 1968, which withdrew lands for the Havasu National Wildlife Refuge, and Executive Order 8685 dated February 14, 1941, which withdrew lands for the Imperial National Wildlife Refuge are hereby revoked on the following described lands under the administration of the Fish and Wildlife Service:

Sec. 17. T. 5 S., R. 21 W.; portions of secs. 17, 20, 28, and 33, T. 14 N., R. 20 W.; portions of secs. 3 and 10, T. 16 N., R. 21 W.; and portions of secs. 21, 27, and 34, T. 17 N., R. 21 W.; all in G&SRM.

The effective date of the revocation shall be the date of patent to the State of Arizona.

(2) Secretarial Orders dated July 2, 1902, and February 10, 1906, which withdrew certain lands in aid of the Salt River Project, are hereby revoked on the following described lands:

Lots 7, 9, 11, 13, through 15, and 17 through 29 of section 24, T. 2 N., R. 6 E., G&SRM.

The effective date of the revocation shall be the date of patent to the State of Arizona.

(b) Patents.—The following stipulations shall be included in all patents issued by the Secretary of the Interior for the lands described in subsection (a)(2):

(1) Excepting and reserving to the Salt River Project, a right-of-way for electric transmission and distribution lines and access purposes which shall comprise that portion of the east 300 feet of section 24, lying west of a line extending northerly from a point on the south section line of section 24, being 51 feet west of the southeast corner of section 24 to a point on the north section line of section 24, being 129 feet west of the northeast corner of section 24, as generally depicted on the Salt River Project drawing number C-675-439.88, dated June 1988;

(2) The United States and the Salt River Project shall not be liable whatsoever for damages to any lands conveyed herein, which may be caused by flooding in conjunction with any of the United States' or Salt River Project's existing or future facilities or protective works;

(3) The patentee, successors or assigns of the lands conveyed herein shall be held liable to the United States or the Salt River Project for damages caused by the holder's activities which alter drainage and adversely affect adjacent lands, project facilities or protective works of the United States or the Salt River Project; and

(4) Reserving to the United States a right of way for road purposes, as described in Bureau of Land Management A.R. 020234.

ADJUSTMENT OF CORONADO NATIONAL FOREST BOUNDARY

Sec. 508. (a) Modification of Proclamation 1121.—Proclamation 1121, dated April 17, 1911, which established the Coronado National Forest boundary as it related to Township 21 South, Range 18 East, G&SRM, is hereby modified to delete sections 27 and 28, which are not under the jurisdiction of the Forest Service, from inclusion within the National Forest System.

(b) Modification of Proclamation Dated July 19, 1907.—The proclamation dated July 19, 1907, which established the Coronado National Forest boundary as it is related to Township 15 South, Range 17 East, Gila and Salt River Meridian, is hereby modified to delete sections 9, 10, 15 and 22, which are not under the jurisdiction of the Forest Service, from inclusion within the National Forest System.

AUTHORIZATION

Sec. 509. (a) General Appropriation.—There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this title.

(b) Personnel.—There are hereby authorized to be appropriated such sums as are necessary to provide for at least 5 and more, if necessary, full-time equivalent employees of the Bureau of Land Management to perform resource management and law enforcement activities as part of the administration of the Bureau of Land Management lands in Black Canyon Corridor.

Sec. 510. The Director of the U.S. Fish and Wildlife Service shall approve or disapprove applications for rights-of-way access across the Kofa National Wildlife Refuge as expeditiously as possible.

TITLE VI—MT. GRAHAM INTERNATIONAL OBSERVATORY

ESTABLISHMENT OF THE MT. GRAHAM INTERNATIONAL OBSERVATORY SITE

Sec. 601. (a) The Secretary of Agriculture (hereinafter in this Title referred to as the "Secretary") shall issue a Special Use Authorization, subject to the terms and conditions of Reasonable and Prudent Alternative Three of the U.S. Fish and Wildlife Service Biological Opinion, dated July 14, 1988 (hereinafter referred to as "the Biological Opinion"), to the State of Arizona Board of Regents on behalf of the University of Arizona for the establishment of the Mt. Graham International Observatory Research Site (hereinafter referred to as the "Site"), which shall, subject to any subsequent biological opinions issued by the U.S. Fish and Wildlife Service under the Endangered Species Act, and the provisions of this Title, include provision for seven telescopes and necessary support facilities, for the purposes of scientific and astronomical research.

(b) The Site referred to in subsection (a) shall include not more than 24 acres within the 150 acre area of the Coronado National Forest, Arizona, as generally depicted on a map entitled, "Mt. Graham International Observatory Site", dated July 28, 1988. Copies of the map shall be available for public inspection in the Office of the Chief, Forest Service, U.S. Department of Agriculture, Washington, DC, and the Forest Service office located in Tucson, Arizona.

CONSTRUCTION AUTHORIZATION

Sec. 602. (a) Subject to the terms and conditions of Reasonable and Prudent Alternative Three of the Biological Opinion, the requirements of Section 7 of the Endangered Species Act shall be deemed satisfied as to the issuance of a Special Use Authorization for the first three telescopes and the Secretary shall immediately approve the construction of the following items:

(1) Three telescopes to be located on Emerald Peak;

(2) Necessary support facilities; and

(3) An access road to the Site.

(b) Until the road described in subsection (a)(3) above is constructed, the Secretary shall allow the University of Arizona to use Forest roads FR 507 and FR 669 to the extent permitted in the Biological Opinion.

ADDITIONAL TELESCOPE CONSTRUCTION AUTHORIZATION

Sec. 603. (a) The Secretary shall, subject to the requirements of the Endangered Species Act and other applicable law, authorize the construction of four additional telescopes on Emerald Peak.

(b) Consultation under Section 7(a)(2) of the Endangered Species Act with respect to construction of the four additional telescopes referred to in subsection (a) shall consider, among other things, all biological data obtained from monitoring the impact of construction of the first three telescopes upon the Mt. Graham red squirrel. Authorization by the Secretary for the construction of four additional telescopes shall be consistent with requirements deemed necessary to avoid jeopardizing the continued existence of any species listed under and pursuant to the Endangered Species Act.

MANAGEMENT PLAN

SEC. 604. (a) The University of Arizona, with the concurrence of the Secretary, shall develop and implement a management plan, consistent with the requirements of the Endangered Species Act and with the terms and conditions of Reasonable and Prudent Alternative Three of the Biological Opinion, for the Site.

(b) Such management plan shall include provisions for the construction, operation and maintenance of the Site, access to the Site, and related support facilities.

(c) The management plan shall be included in any Special Use Authorization issued by the Secretary to the University of Arizona.

EXISTING SPECIAL USE AUTHORIZATIONS

SEC. 605. (a) Those Special Use Authorizations now in effect for the Columbine Summer Home Tract area and the Arizona Bible School Organization Camp shall continue, subject to the terms and conditions of the authorizations, for the duration of the term specified in each authorization. Prior to the termination, nonrenewal or modification of those Special Use Authorizations for the areas noted above, the Secretary shall, with the assistance of the U.S. Fish and Wildlife Service, conduct a biological study to determine the effects of such special use authorizations upon the Mt. Graham red squirrel and other threatened or endangered species. In making this determination, the Secretary shall consider the small amount of land under special use authorizations. The biological study shall also involve the participation of representatives from the community of Safford, Arizona, all of the affected parties, and any other appropriate interests. In addition to the biological study, the Secretary shall initiate consultation with the U.S. Fish and Wildlife Service pursuant to Section 7(a)(2) of the Endangered Species Act regarding the termination, nonrenewal, extension or modification of the special use authorizations.

(b) Pursuant to Title 2300 of the Forest Service Manual, special use terminations, nonrenewals, or modifications shall not take effect until ten years from the last date of the tenure of existing special use authorizations described in subsection (a). Unless the biological study or the biological opinion issued by the U.S. Fish and Wildlife Service after consultation under the Endangered Species Act concluded that an earlier date was necessary to avoid jeopardizing the continued existence of the Mt. Graham red squirrel or any other threatened or endangered species, such actual terminations, nonrenewals, or modifications shall not take effect before completion of a biological study by the U.S. Fish and Wildlife Service to begin in the year 2000. This additional study shall be subject to the same requirements and involve the same participants as described in subsection (a).

(c) If, after completion of these studies, termination, modification or nonrenewal of special use authorizations described in subsection (a) are prescribed, the U.S. Forest Service shall, with the cooperation and approval of the holders of these special use authorizations, develop a relocation plan for such individuals and entities.

(d) Nothing in this Section is intended to preclude the termination of special use authorizations for breach by the permittee of terms and conditions of the authorizations.

FINANCIAL RESPONSIBILITIES

SEC. 606. In implementing this Title, all costs directly associated with construction and site preparation for telescopes, support facilities, a new access road, the biological monitoring program for the Mt. Graham red squirrel as contained in the terms and conditions of Reasonable and Prudent Alternative Three of the Biological Opinion, and the retention of an on-site biologist, shall be funded by the University of Arizona.

ENVIRONMENTAL IMPACT STATEMENTS

SEC. 607. With reference to the construction of the first three telescopes, related facilities, and the access road within the boundaries of the Site described in Section 601, the requirements of section 102(2)(c) of the National Environmental Policy Act of 1969 shall be deemed to have been satisfied. The Environmental Impact Statement for the Site, currently in process, shall continue and shall use the information developed to date and any additional appropriate information in analyzing the impacts of the four additional telescopes authorized under Section 603 of this Title.

TITLE VII—MISSISSIPPI NATIONAL RIVER AND RECREATION AREA

Subtitle A—Mississippi National River and Recreation Area

SEC. 701. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that:

(1) The Mississippi River Corridor within the St. Paul-Minneapolis Metropolitan Area represents a nationally significant historical, recreational, scenic, cultural, natural, economic, and scientific resource.

(2) There is a national interest in the preservation, protection and enhancement of these resources for the benefit of the people of the United States.

(3) State and local planning efforts along the River Corridor provide a unique foundation for coordinating Federal, State, and local planning and management processes.

(4) Existing Federal agency programs lack sufficient coordination and financial participation with State and local planning and regulatory authorities to provide for adequate and comprehensive resource management and economic development consistent with the protection of the Mississippi River Corridor's nationally significant resources, and the public use and enjoyment of the area.

(5) The preservation, enhancement, enjoyment, and utilization of the nationally significant resources of the Mississippi River Corridor can be accomplished by a cooperative Federal, State, and local comprehensive planning and management effort.

(b) PURPOSES.—The purposes of this subtitle are:

(1) To protect, preserve and enhance the significant values of the waters and land of the Mississippi River Corridor within the St. Paul-Minneapolis Metropolitan Area.

(2) To encourage adequate coordination of all governmental programs affecting the land and water resources of the Mississippi River Corridor.

(3) To provide a management framework to assist the State of Minnesota and its units of local government in the development and implementation of integrated resource management programs for the Mississippi River Corridor in order to assure orderly public and private development in the area consistent with the findings of this subtitle.

SEC. 702. ESTABLISHMENT OF NATIONAL RIVER AND RECREATION AREA.

(a) ESTABLISHMENT.—There is hereby established the Mississippi National River and Recreation Area (hereinafter in this Act referred to as the "Area") which shall consist of the State designated Mississippi Critical Area encompassing that portion of the Mississippi River and adjacent lands generally within the St. Paul-Minneapolis Metropolitan Area, as depicted on the map entitled Mississippi National River and Recreation Area numbered MI-NRA/80,000 and dated April 1987. The map shall be on file and available for public inspection in the offices of the Department of the Interior in Washington, District of Columbia, and in the offices of the Metropolitan Council of the Twin Cities Area in St. Paul, Minnesota.

(b) BOUNDARIES.—The Secretary of the Interior (hereafter referred to as the "Secretary") shall publish in the Federal Register, as soon as practicable after the enactment of this Act a detailed description and map of the boundaries established under subsection (a).

SEC. 703. MISSISSIPPI RIVER COORDINATING COMMISSION.

(a) ESTABLISHMENT.—There is hereby established a Mississippi River Coordinating Commission whose purpose shall be to assist Federal, State, and local authorities in the development and implementation of an integrated resource management plan for those lands and waters as specified in section 702. The Commission shall consist of the following 22 members appointed by the Secretary of the Interior:

(1) The Director of the National Park Service, or his designee.

(2) The Chief of the Corps of Engineers, or his designee.

(3) The Director of the Fish and Wildlife Service, or his designee.

(4) Three individuals, from recommendations by the Governor of Minnesota, to represent the Minnesota Department of Natural Resources, Department of Transportation, and Minnesota Environmental Quality Board.

(5) One individual, to represent the Minnesota Historical Society.

(6) One individual, to represent the Metropolitan Council of the Twin Cities Area.

(7) Four elected officials, to represent the cities of St. Paul and Minneapolis.

(8) Four elected officials, from recommendations by the Governor of Minnesota, to represent the interests of the other affected municipalities and counties.

(9) One individual, to represent the Metropolitan Parks and Open Spaces Commission.

(10) One individual, from recommendations by the Governor of Minnesota, to represent the interests of commercial navigation.

(11) Four individuals, from recommendations by the Governor of Minnesota, to be chosen from the general public.

(b) TERMS.—(1) Except as provided in paragraphs (2) and (3), members (other than ex officio members) shall be appointed for terms of three years.

(2) Of the members first appointed—

(A) Under paragraph (4) of subsection (a):

(i) One shall be appointed for a term of one year.

(ii) One shall be appointed for a term of two years.

(B) Under paragraphs (7) and (8) of subsection (a), one shall be appointed for a term of one year.

(C) Under paragraph (11) of subsection (a):

(i) One shall be appointed for a term of one year.

(ii) One shall be appointed for a term of two years.

(iii) One shall be appointed for a term of four years.

(3) Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

(c) Compensation.—Members of the Commission shall serve without pay. While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(d) Chairperson.—The Chairperson of the Commission shall be appointed by the Secretary from among the members of the Commission nominated by the Governor of Minnesota to serve for a term of three years.

(e) Quorum.—Twelve members of the Commission shall constitute a quorum.

(f) Meetings.—The Commission shall meet at the call of the Chairman or a majority of its members.

(g) Development of Policies and Programs.—As a coordinator and advisory organization, the Commission shall assist the Secretary, the State of Minnesota and local units of government, endeavoring to use existing Federal, State, regional, and local plans and programs where consistent with the intent and goals of this subtitle, in developing the following:

(1) Policies and programs for the preservation and enhancement of the environmental values of the Area.

(2) Policies and programs for enhanced public outdoor recreation opportunities in the Area.

(3) Policies and program for the conservation and protection of the scenic, historical, cultural, natural and scientific values of the Area.

(4) Policies and programs for the commercial utilization of the Area and its related natural resources, consistent with the protection of the values for which the Area is established as the Mississippi National River and Recreation Area.

(h) Staff.—The Secretary shall provide the Commission with such staff and technical assistance as the Secretary, after consultation with the Commission, considers appropriate to enable the Commission to carry out its duties. Upon request of the Secretary, any Federal agency may provide information, personnel, property, and services on a reimbursable basis, to the Commission to assist in carrying out its duties under this subtitle. The Secretary may accept the services of personnel detailed from the State of Minnesota or any political subdivision of the State and may reimburse the State or such political subdivision for such services. The Commission may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code.

(i) Plan.—Within 3 years after enactment of this Act, the Commission shall submit to the Secretary and the Governor of Minnesota a comprehensive plan for land and water use measures for the area to be developed and implemented by the responsible Federal agencies, the State of Minnesota, and local political subdivisions. The plan shall endeavor to use existing Federal, State, regional, and local plans and where consistent with the intent and goals of this subtitle shall coordinate those plans to present a unified comprehensive plan for the Area. The plan shall include but not be limited to each of the following:

(1) A program for management of existing and future land and water use which—

(A) considers and details the applications of a variety of land and water protection and management techniques;

(B) includes a policy statement for the use of Federal, State, and local regulatory responsibilities to manage land and water resources in a manner consistent with the purposes of this subtitle; and

(C) recognizes existing economic activities within the area and provides for the management of such activities, including barge transportation and fleeting and those indigenous industries and commercial and residential developments which are consistent with the findings and purposes of this subtitle.

(2) A program providing for coordinated implementation and administration of the plan with proposed assignment of responsibilities to the appropriate governmental unit at the Federal, State, regional and local levels, including each of the following:

(A) Ways in which local, regional, State, and Federal policies and permits may better be coordinated to the goals and policies of this subtitle.

(B) A financial plan to provide and support the public improvements and services recommended in the plan; and a mechanism for coordinating local, regional, State, and Federal planning to promote the purposes of this subtitle.

(C) How the goals and policies of the management plan will be compatible with the existing channel maintenance program on the Mississippi River, and the existing Federal, State, regional, and local programs and goals on the Minnesota and St. Croix Rivers.

(D) The provisions of the Clean Water Act and the Safe Drinking Water Act (title XIV of the Public Health Service Act) which pertain to the surface waters of the Mississippi National River and Recreation Area.

(3) A coordination and consistency Component which details the ways in which local, State and Federal programs and policies may best be coordinated to promote the purpose of this subtitle.

(4) A program for the coordination and consolidation, to the extent feasible, of permits that may be required by Federal, State, and local agencies having jurisdiction over land and waters within the Area.

(j) Development of Plan.—

(1) In developing the plan the Commission shall consult on a regular basis with appropriate officials of any local government or Federal or State agency which has jurisdiction over lands and waters within the Area.

(2) In developing the plan the Commission shall consult with interested conservation, business, professional and citizen organizations.

(3) In developing the plan the Commission shall conduct public hearings within the Area, and at such other places as may be appropriate, for the purposes of providing interested persons with the opportunity to testify with respect to matters to be addressed by the plan.

(k) Approval of Plan.—The Commission shall submit the plan to the Secretary and the Governor of Minnesota, for their review. The Governor shall act on the plan within 90 days and shall submit the plan to the Secretary along with any recommendations. The Secretary shall approve or disapprove the plan within 90 days. In reviewing the plan the Secretary shall consider each of the following:

(1) The adequacy of public participation.

(2) Assurances of plan implementation from State and local officials.

(3) The adequacy of regulatory and financial tools that are in place to implement the plan.

(4) Plan provisions for continuing oversight of the plan implementation by the Secretary and the Governor of Minnesota.

If the Secretary disapproves the plan, he shall, within 60 days after the date of such disapproval advise the Governor and Commission in writing of the reasons therefor, together with his recommendations for revision. The Commission shall within 90 days of receipt of such notice of disapproval revise and resubmit the plan to the Governor for his review. Following his review, the Governor shall submit the revised plan, together with any recommendations he may have, to the Secretary who shall approve or disapprove the revision within 60 days.

(l) Interim Program.—Prior to the adoption of the Commission's plan, the Secretary and the Commission shall monitor all land and water use activities within the Area to ensure that said activities are in keeping with the purposes of this subtitle, and shall advise and cooperate with the appropriate Federal, State, and local governmental entities to minimize adverse impacts on the values for which the Area is established.

(m) Commission Review.—The Commission shall assist the Secretary and the Governor of Minnesota in reviewing and monitoring the implementation of the plan by Federal, State, and local governmental agencies having jurisdiction in the Area. The Commission may, after providing, for public comment and subject to the review and approval, as set forth in subsection (k), modify said plan, if the Commission determines that such modification is necessary to further the purposes of this subtitle.

(n) Termination of Commission.—The Commission shall terminate on the date 10 years after the enactment of this subtitle. Following termination of the Commission the State is authorized to establish a State Commission which shall exercise the functions and authorities described in subsection (m). The Secretary of the Interior and the Secretary of the Army are authorized and directed to participate as members of such State Commission.

SEC. 704. FEDERAL LANDS AND DEVELOPMENTS.

(a) Lands.—Notwithstanding any other provision of law, any Federal property located within the boundaries of the Area as identified on the map referred to in section 702, is hereby transferred without consideration to the administrative jurisdiction of the Secretary for use by him in implementing the purposes of this subtitle, except as follows:

(1) Facilities and lands administered by the Secretary of the Army through the Corps of Engineers for navigational and flood control purposes may continue to be

used by the Secretary of the Army subject to the provisions of subsection (b).

(2) Federal property on which there is located any building or other structure which is in use (as of the enactment of this subtitle) or for which a lease is in effect shall not be transferred under this subsection without the concurrence of the administering agency.

(b) Federal Agency Activities.—

(1) In general.—Before any department, agency, or instrumentality of the United States issues or approves any license or permit for any facility or undertaking within the Area and before any such department, agency, or instrumentality commences any undertaking or provides any Federal assistance to the State or any local governmental jurisdiction for any undertaking within the Area, the department, agency, or instrumentality shall notify the Secretary. The Secretary shall review the proposed facility or undertaking to assess its compatibility with the plan approved under section 703. The Secretary shall make a determination with respect to the compatibility or incompatibility of a proposed facility or undertaking within 60 days of receiving notice under this subsection. If the Secretary determines that the proposed facility or undertaking is incompatible with the plan, he shall immediately notify such Federal department, agency, or instrumentality and request such department, agency, or instrumentality to take the actions necessary to conform the proposed facility or undertaking to the plan. The Federal department, agency, or instrumentality shall, within 60 days after receiving the Secretary's request, notify the Secretary of the specific decisions made in reponse to the request. To the extent that such department, agency, or instrumentality does not then conform such facility or undertaking to the request of the Secretary, the Secretary is directed to notify the Congress in writing of the incompatibility of such facility or undertaking with the plan approved under section 703.

(2) Navigation.—(A) Nothing in this subtitle shall be deemed to impact or otherwise affect such existing statutory authority as may be vested in the Secretary of the Department in which the Coast Guard is operating or the Secretary of the Army for the maintenance of navigation aids and navigation improvements: *Provided,* That in exercising such authority the Secretary of the Army, through the Corps of Engineers and the Secretary of the Department in which the Coast Guard is operating shall not take any action that would have a direct and adverse effect on the values for which the Area is established unless such action is essential for the protection of public health or safety or is necessary for national security or defense.

(B) In planning for the development and public use of the Area, the Secretary shall consult with the Secretary of the Army to assure that public use of adjacent or related water resource development or flood control projects and that of the area are compatible.

SEC. 705. ADMINISTRATION.

(a) Authorities.—The Secretary shall administer the Area in accordance with this subtitle. Only those lands within the Area under the direct jurisdiction of the Secretary shall be administered in accordance with the provisions of law generally applicable to units of the National Park System. Other lands and waters within the area shall be administered under State and local laws. In the case of any conflict between the provisions of this subtitle and such generally applicable provisions of law, the provisions of this subtitle shall govern.

(b) State and Local Authorities.—The Secretary shall consult and cooperate with the State of Minnesota and its political subdivisions concerning the development and management of Federal lands within the Area.

(c) Land Acquisition.—Within the boundaries of the Area, the Secretary is authorized, in consultation with the State of Minnesota and the affected local governmental unit, to acquire land and interests therein by donation, purchase with donated or appropriated funds, exchange or transfer, except as provided in paragraphs (1) and (2).

(1) Any lands or interests therein owned by the State of Minnesota or any political subdivision thereof may be acquired only by donation.

(2) Privately owned lands or interests therein may be acquired only with the consent of the owner thereof unless the Secretary makes a determination pursuant to subsection (d)(2). In no event may the Secretary use the authority provided in subsection (d)(3) to acquire land or interests in land without the owner's consent for any use exercised prior to January 1, 1987 that is consistent with the plan under section 703.

(d) Review of Local Plans.—

(1) Authority.—For the purpose of protecting the integrity of the Area the Secretary shall cooperate and consult with the State and the appropriate political subdivisions to review all relevant local plans, laws and ordinances to determine whether they substantially conform to the plan approved pursuant to section 703. Additionally the Secretary shall in consultation with the State and its political subdivisions determine the adequacy of enforcement of such plans, laws, and ordinances, including review of building permits and zoning variances granted by local governments, and amendments to local laws and ordinances. The Secretary shall enter into agreements with the State or its political subdivisions to provide, on behalf of the Secretary, professional services necessary for the review of such local plans, laws, and ordinances, and of amendments thereto and variances therefrom, and for the monitoring or the enforcement thereof by local governments having jurisdiction over any areas to which the management plan applies.

(2) Purpose.—The purpose of review under paragraph (1) shall be to determine the degree to which actions by local governments are compatible with the purposes of this Act. Following the approval of the plan under section 703 and after a reasonable period of time has elapsed, upon a finding by the Secretary that such plans, laws and ordinances are nonexistent, are otherwise not in conformance with the plan or are not being enforced in a manner consistent with the plan, and if the Secretary determines that there is no feasible alternative available to prevent uses which would be substantially incompatible with the plan, the Secretary may exercise the authority available to him under the provisions of paragraph (3).

(3) Enforcement.—In those sections of the Area where local plans, laws and ordinances, or amendments thereto or variances therefrom are found by the Secretary not to be in conformance with the plan approved pursuant to section 703, or are not being enforced in a manner consistent with the plan, the Secretary shall notify the local government authority concerned. The Secretary may withhold from the local government authority concerned or, require reimbursement of, (A) Federal funds made available for implementation of the plan, or (B) any grant under section 706(a) if the local plan, law, ordinance, amendment, or variance is not modified to conform with the plan and enforced in such manner as will carry out the purposes of this subtitle. If the State has not initiated, within a 60-day period, such judicial or other action as necessary to ensure conformity with the plan, and if noncompliance with the plan or failure to enforce the plan continues after the end of such 60-day period, the Secretary may acquire, subject to appropriations, land or interests in land under this subsection without the consent of the owner thereof. Land and interests in land acquired pursuant to this subsection shall be restricted to the geographical area of the local governmental unit failing to conform with the plan and shall be limited to those lands clearly and directly required, in the judgment of the Secretary, for the protection of the Area in a manner compatible with the plan.

(e) Retention by Owner of Use and Occupancy.—The Secretary may permit the owner or owners of any improved residential property acquired by the Secretary under this subtitle to retain a right of use and occupancy of the property for noncommercial residential uses not incompatible with the plan approved under section 703. The provisions of subsections (c), (d), and (e) of section 102 of the Act of August 15, 1978 (16 U.S.C. 460ii-1) shall apply to the retention of such rights, except that for purposes of this subtitle, the applicable date shall be January 1, 1987 in lieu of January 1, 1975 and the purposes of this subtitle shall be substituted for the purposes referred to in section 102(d) of such act.

SEC. 706. STATE AND LOCAL ASSISTANCE AND JURISDICTION.

(a) Grants.—Upon approval of the plan under section 703, the Secretary is authorized to make grants to the State of Minnesota, or its political subdivisions, to cover not more than 50 percent of the cost of acquisition and development within the Area of lands and waters or interests therein in a manner consistent with the purposes of this subtitle.

(b) Cooperative Agreements.—The Secretary is authorized to enter into cooperative agreements with the State of Minnesota or any political subdivision thereof pursuant to which he may assist in the planning for and interpretation of non-Federal publicly owned lands within the Area.

(c) Technical Assistance.—To enable the State of Minnesota and its political subdivisions to develop and implement programs compatible with the plan, the Secretary shall provide such technical assistance to the State and its political subdivisons as he deems appropriate.

(d) State and Local Jurisdiction.—Nothing in this subtitle shall diminish, enlarge, or modify any right of the State of Minnesota or any political subdivision thereof, to exercise civil and criminal jurisdiction or to carry out State fish and wildlife laws, rules, and regulations within the Area, or to tax persons, corporations, franchises, or private property on the lands and waters included in the Area.

SEC. 707. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out this subtitle.

Subtitle B—Tri-Rivers Management

SEC. 711. TRI-RIVERS MANAGEMENT BOARD.

(a) Federal Representatives.—In furtherance of the integrated management of those portions of the Mississippi, St. Croix, and Minnesota Rivers within the St. Paul-Minneapolis Metropolitan Area, the Secretary of the Interior and the Secretary of the Army are authorized and directed to appoint representatives to a Tri-Rivers Management Board (hereafter referred to as the "Board"), or any similar organizaion, which may be established by the State of Minnesota to assist in the development and implementation of consistent and coordinated land use planning and management policy for such portions of such rivers.

(b) Personnel.—Upon request of the Board, the Secretary of the Interior and the Secretary of the Army may detail, on a reimbursable basis, any personnel to the Board.

(c) Authorization of Appropriations.—There is hereby authorized to carry out the purposes of this subtitle the sum of $100,000 annually; except that the Federal contribution to the Board shall not exceed one-third of the annual operating costs of the Board.

TITLE VIII—UNITED STATES CAPITOL PRESERVATION COMMISSION

SEC. 201. UNITED STATES CAPITOL PRESERVATION COMMISSION.

(a) Establishment and Purposes.—There is established in the Congress the United States Capitol Preservation Commission (hereafter in this title referred to as the "Commission") for the purposes of—

(1) providing for improvements in, preservation of, and acquisitions for, the United States Capitol;

(2) providing for works of fine art and other property for display in the United States Capitol and at other locations under the control of the Congress; and

(3) conducting other activities that directly facilitate, encourage, or otherwise support any purposes specified in paragraph (1) or (2).

(b) Membership.—The Commission shall be composed of the following Members of Congress:

(1) The President pro tempore of the Senate and the Speaker of the House of Representatives, who shall be co-chairmen.

(2) The Chairman and Vice-Chairman of the Joint Committee on the Library.

(3) The Chairman and the ranking minority party member of the Committee on Rules and Administration of the Senate, and the Chairman and the ranking minority party member of the Committee on House Administration of the House of Representatives.

(4) The majority leader and the minority leader of the Senate.

(5) The majority leader and the minority leader of the House of Representatives.

(6) The Chairman of the Commission on the Bicentennial of the United States Senate and the Chairman of the Commission of the House of Representatives Bicentenary, to be succeeded upon expiration of such commissions, by a Senator or Member of the House of Representatives, as appropriate, appointed by the Senate or House of Representatives co-chairman of the Commission, respectively.

(7) One Senator appointed by the President pro tempore of the Senate and one Senator appointed by the minority leader of the Senate.

(8) One Member of the House of Representatives appointed by the Speaker of the House of Representatives and one Member of the House of Representatives appointed by the minority leader of the House of Representatives.

(c) Designees.—Each member of the Commission specified under subsection (b) (other than a member under paragraph (7) or (8) of such subsection) may designate a Senator or Member of the House of Representatives, as the case may be, to serve as a member of the Commission in place of the member so specified.

(d) Architect of the Capitol.—In addition to the members under subsection (b), the Architect of the Capitol shall participate in the activities of the Commission, ex officio, and without the right to vote.

(e) Staff Support and Assistance.—The Senate Commission on Art, the House of Representatives Fine Arts Board, and the Architect of the Capitol shall provide to the Commission such staff support and assistance as the Commission may request.

SEC. 202. AUTHORITY OF COMMISSION TO ACCEPT GIFTS AND CONDUCT OTHER TRANSACTIONS RELATING TO WORKS OF FINE ART AND OTHER PROPERTY.

(a) In General.—In carrying out the purposes referred to in section 101(a) the Commission is authorized—

(1) to accept gifts of works of fine art, gifts of other property, and gifts of money; and

(2) to acquire property, administer property, dispose of property, and conduct other transactions related to such purposes.

(b) Transfer and Disposition of Works of Fine Art and Other Property.—The Commission shall, with respect to works of fine art and other property received by the Commission—

(1) upon agreement with the Joint Committee on the Library, the Senate Commission on Art, or the House of Representatives Fine Arts Board, as the case may be, transfer such property to the entity with which the agreement is made;

(2) if a transfer described in paragraph (1) is not appropriate dispose of the work of fine art by sale or other transaction; and

(3) in the case of property that is not directly related to the purposes referred to in section 101(a), dispose of such property by sale or other transaction.

(c) Requirements for Conduct of Transactions.—In conducting transactions under this section, the Commission shall—

(1) accept money only in the form of a check or similar instrument made payable to the Treasury of the United States and shall deposit any such check or instrument in accordance with section 103;

(2) in making sales and engaging in other property transactions, take into consideration market conditions and other relevant factors; and

(3) assure that each transaction is directly related to the purposes referred to in section 101(a).

SEC. 203. CAPITAL PRESERVATION FUND.

(a) In General.—There is established in the Treasury a fund, to be known as the "Capitol Preservation Fund" (hereafter in this title referred to as the "fund"), which shall consist of (1) amounts deposited, and interest and proceeds credited, under subsection (d), (2) obligations obtained under subsection (e), and (3) all surcharges received by the Secretary of the Treasury from the sale of coins minted under the Bicentennial of the United States Congress Commemorative Coin Act.

(b) Availability of Fund.—The fund shall be available to the Commission—

(1) for payment of transaction costs and similar expenses incurred under section 102;

(2) for improvement and preservation projects for the United States Capitol;

(3) for disbursement with respect to works of fine art and other property as provided in section 102; and

(4) for such other payments as may be required to carry out section 101 or section 102.

(c) Transaction Costs and Proportionality.—In carrying out this section, the Commission shall, to the extent practicable, take such action as may be necessary—

(1) to minimize disbursements under subsection (b)(1); and

(2) to equalize disbursements under subsection (b) between the Senate and the House of Representatives.

(d) Deposits, Credits, and Disbursements.—The Commission shall deposit in the fund gifts of money and proceeds of transactions under section 102. The Secretary of the Treasury shall credit to the fund the interest on, and the proceeds from sale or redemption of, obligations held in the fund. Disbursements from the fund shall be made on vouchers approved by the Commission and signed by the co-chairman.

(e) Investments.—The Secretary of the Treasury shall invest any portion of the fund that, as determined by the Commission, is not required to meet current withdrawals. Each investment shall be made in an interest bearing obligation of the United Sttes or an obligation guaranteed as to principal and interest by the United States that, as determined by the Commission has a maturity suitable for the fund. In carrying out this subsection, the Secretary may make such purchases, sales, and redemptions of obligations as may be approved by the Commission.

SEC. 204. AUDITS BY THE COMPTROLLER GENERAL.

The Comptroller General shall conduct annual audits of the transactions of the Commission and shall report the results of each audit to the Congress.

SEC. 205. ADVISORY BOARDS.

The Commission may establish appropriate boards to provide advice and assistance to the Commission and to further the purposes of the Commission. The boards shall be composed of members (including chairmen) who shall be appointed by the Commission from public and private life and shall serve at the pleasure of the Commission and each co-chairman of the Commission may appoint one member to any such board. The members of boards under this section may be reimbursed for actual and necessary expenses incurred in the performance of the duties of the boards, at the discretion of the Commission.

SEC. 206. DEFINITION.

As used in this title, the term "Member of the House of Representatives" means a Representative in, or a Delegate or Resident Commissioner to, the Congress.

TITLE III—SENATE PROVISIONS

SEC. 301. PROVISIONS RELATING TO THE SENATE COMMISSION ON ART.

(a) Incorporation.—The provisions of Senate Resolution 382 (Ninetieth Congress; agreed to October 1, 1968) (as amended by this section) and Senate Resolution 95 (Ninety-second Congress; agreed to April 1, 1971) (as amended by this section) are hereby incorporated by reference.

(b) Technical Changes.—Senate Resolution 382 (Ninetieth Congress; agreed to October 1, 1968) is amended—

(1) in section 1(b) by adding at the end "The Secretary of the Senate shall be the Executive Secretary of the Commission";

(2) in section 2(a)—

(A) by striking out "and protect" and inserting in lieu thereof "protect, and make known"; and

(B) by striking out "within the Senate wing of the Capitol", and inserting in lieu thereof "within the Senate wing of the United States Capitol, any Senate Office Buildings"; and

(3) in section 1(a), by striking out "Commission on Art and Antiquities of the United States Senate" and inserting in lieu thereof "Senate Commission on Art".

(c) Name Change.—Senate Resolution 95 (Ninety-second Congress, agreed to April 1, 1971) is amended by striking out "Commission on Art and Antiquities of the United States Senate" and inserting in lieu thereof "Senate Commission on Art".

(d) Senate Rulemaking Power.—The provisions of this section are enacted by the Congress—

(1) as an exercise of the rulemaking power of the Senate, and as such they shall be considered as part of the rules of the Senate, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner, and to the same extent as in the case of any other rule of the Senate.

TITLE IV—HOUSE OF REPRESENTATIVES PROVISIONS

SEC. 401. HOUSE OF REPRESENTATIVES FINE ARTS BOARD.

(a) Establishment and Authority.—There is established in the House of Representatives a Fine Arts Board (hereafter in this title referred to as the "Board"), comprised of the House of Representatives members of the Joint Committee on the Library. The chairman of the Committee on House Administration of the House of Representatives shall be the chairman of the Board. The Board, in consultation with the House office building commission, shall have authority over all works of fine art, historical objects, and similar property that are the property of the Congress and are for display or other use in the House of Representatives wing of the Capitol, the House of Representatives Office Buildings, or any other location under the control of the House of Representatives.

(b) Clerk of the House of Representatives.—Under the supervision and direction of the Board, the Clerk of the House of Representatives shall be responsible for the administration, maintenance, and display of the works of fine art and other property referred to in subsection (a).

(c) Architect of the Capitol.—The Architect of the Capitol shall provide assistance to the Board and to the Clerk of the House of Representatives in the carrying out of their responsibilities under this title.

SEC. 402. ACCEPTANCE OF GIFTS ON BEHALF OF THE HOUSE OF REPRESENTATIVES.

The Board is authorized to accept, on behalf of the House of Representatives, gifts of works of fine art, historical objects, and similar property, including transfers from the United States Capitol Preservation Commission under section 102, for display or other use in the House of Representatives wing of the Capitol, the House of Representatives Office Buildings, or any other location under the control of the House of Representatives.

OMNIBUS ANTI-SUBSTANCE ABUSE ACT

KENNEDY AMENDMENT NO. 3683

Mr. KENNEDY proposed an amendment to the bill H.R. 5210, supra; as follows:

At the end of the bill, add the following new subtitle:

Subtitle B—Racial Justice Act of 1988

SEC. 7101. SHORT TITLE.

This Act may be cited as the "Racial Justice Act of 1988".

SEC. 7102. FINDINGS.

The Congress finds that—

(1) section 5 of the Fourteenth Amendment of the United States Constitution calls upon Congress to enforce the Constitution's promise of equality under law;

(2) equality under law is tested most profoundly by whether a legal system tolerates race playing a role in the determination of whether and when to administer the ultimate penalty of death;

(3) the death penalty is being administered in a pattern that evidences a significant risk that the race of the defendant, or the race of the victim against whom the crime was committed, influences the likelihood that the defendant will be sentenced to death;

(4) the Constitution's guarantee of equal justice for all is jeopardized when the death penalty is imposed in a pattern in which the likelihood of a death sentence is affected by the race of the perpetrator or of the victim;

(5) the United States Supreme Court has concluded that the Federal judiciary is institutionally unable to eliminate this jeopardy to equal justice in the absence of proof that a legislature, prosecutor, judge, or jury acted with racially invidious and discriminatory motives in the case of a particular defendant;

(6) the interest in ensuring equal justice under law may be harmed, not only by decisions motivated by explicit racial bias, but also by government rules, policies, and practices that operate to reinforce the subordinate status to which racial minorities were relegated in our society;

(7) the institutional need of courts to identify invidiously motivated perpetrators is not shared by Congress, which is empowered by section 5 of the Fourteenth Amendment to take system-wide, preventive measures not only to eliminate adjudicated instances of official race discrimination but also to eradicate wide-scale patterns and practices that entail an intolerable danger that persons of different races would be treated differently; and

(8) the persistent racial problems pervading the implementation of the death penalty in many parts of this Nation require the Government of the United States to counteract the lingering effects of racial oppression and prejudice in order to enforce the constitutional guarantee of equal justice for all Americans.

SEC. 7103. AMENDMENT TO TITLE 28.

(a) Procedure.—Part VI of title 28, United States Code, is amended by adding at the end thereof the following new chapter:

"CHAPTER 177—RACIALLY DISPROPORTIONATE CAPITAL SENTENCING

"Sec.
"2921. Definitions.
"2922. Prohibition on the imposition or execution of the death penalty in a racially disproportionate pattern.
"2923. Data on death penalty cases.
"2924. Enforcement of the chapter.
"2925. Construction of chapter.

"§ 2921. Definitions

"For purposes of the chapter—

"(1) the term 'a racially disproportionate pattern' means a situation in which sentences of death are imposed more frequently—

"(A) upon convicted persons of one race than upon convicted persons of another race; or

"(B) as punishment for crimes against persons of one race than as punishment for crimes against persons of another race,

and the greater frequency is not explained by pertinent nonracial circumstances;

"(2) the term 'death-eligible crime' means a crime for which death is a punishment that is authorized by Federal law to be imposed under any circumstances upon a conviction of that crime;

"(3) the term 'case of death-eligible crime' means a case in which the complaint, indictment, information, or any other initial or subsequent charging paper charges any person with a death-eligible crime; and

"§ 2922. Prohibition on the imposition or execution of the death penalty in a racially disproportionate pattern

"(a) Prohibition.—It is unlawful to impose or execute sentences of death under color of Federal law in a racially disproportionate pattern. No person shall be put to death in the execution of a sentence imposed pursuant to any Federal law if that person's death sentence furthers a racially disproportionate pattern.

"(b) Establishment of a Pattern.—To establish that a racially disproportionate pattern exists for purposes of this chapter—

"(1) ordinary methods of statistical proof shall suffice; and

"(2) it shall not be necessary to show discriminatory motive, intent, or purpose on the part of any individual or institution.

"(c) Prima Facie Showing.—(1) To establish a prima facie showing of a racially disproportionate pattern for purposes of this chapter, it shall suffice that death sentences are being imposed or executed—

"(A) upon persons of one race with a frequency that is disproportioned to their representation among the numbers of persons arrested for, charged with, or convicted of, death-eligible crimes; or

"(B) as punishment for crimes against persons of one race with a frequency that is disproportioned to their representation among the numbers of persons against whom death-eligible crimes have been the subject of arrest, charges, or convictions.

"(2) To rebut a prima facie showing of a racially disproportionate pattern, a Federal entity must establish by clear and convincing evidence that identifiable and pertinent nonracial factors persuasively explain the observable racial disparities comprising the disproportion.

"§ 2923. Data on death penalty cases

"(a) Designation of Agency.—The Federal Government shall designate a central agency to collect and maintain pertinent data on the charging, disposition, and sentencing patterns for all cases of death-eligible crimes.

"(b) Responsibilities of Central Agency.—The central agency designated pursuant to subsection (a) shall—

"(1) affirmatively monitor compliance with this chapter by local officials and agencies;

"(2) devise and distribute to every local official or agency responsible for the investigation or prosecution of death-eligible crimes a standard form to collect pertinent data;

"(3) maintain all standard forms, compile and index all information contained in the forms, and make both the forms and the compiled information publicly available;

"(4) maintain a centralized, alphabetically indexed file of all police and investigative reports transmitted to it by local officials or agencies in every case of death-eligible crime; and

"(5) allow access to its file of police and investigative reports to the counsel of record for any person charged with any death-eligible crime or sentenced to death who has made or intends to make a claim under section 2922 and it may also allow access to this file to other persons.

"(c) Responsibility of Federal Official.—(1) The Federal official responsible for the investigation or prosecution of death-eligible crimes shall—

"(A) complete the standard form developed pursuant to subsection (b)(2) on every case of death-eligible crime; and

"(B) transmit the standard form to the central agency no later than 3 months after the disposition of each such case whether that disposition is by dismissal of charges, reduction of charges, acceptance of a plea of guilty to the death-eligible crime or to another crime, acquittal, conviction, or any decision not to proceed with prosecution.

"(2) In addition to the standard form, the Federal official shall transmit to the central agency one copy of all police and investigative reports made in connection with each case of death-eligible crime.

"(d) Pertinent Data.—The pertinent data required in the standard form shall be designated by the central agency but shall include, at a minimum, the following information:

"(1) pertinent demographic information on all persons charged with the crime and all victims (including race, sex, age, and national origin);

"(2) information on the principal features of the crime;

"(3) information on the aggravating and mitigating factors of the crime, including the background and character of every person charged with the crime; and

"(4) a narrative summary of the crime.

"§ 2924. Enforcement of the Chapter

"(a) Action Under Sections 2241, 2254, or 2255 of This Title.—In any action brought in a court of the United States within the jurisdiction conferred by sections 2241, 2254, or 2255, in which any person raises a claim under section 2922—

"(1) the court shall appoint counsel for any such person who is financially unable to retain counsel; and

"(2) the court shall furnish investigative, expert or other services necessary for the adequate development of the claim to any such person who is financially unable to obtain such services.

"§ 2925. Construction of chapter

"Nothing contained in this chapter shall be construed to affect in one way or the other the lawfulness of any sentence of death that does not violate section 2922.".

(b) Amendment to Table of Chapters.—The table of chapters of part VI of title 28, United States Code, is amended by adding at the end thereof the following new item:

"177. Racially Disproportionate Capital Sentencing .... 2921.".

SEC. 7104. ACTIONS PRIOR TO THE DATE OF ENACTMENT.

No person shall be barred from raising any claim under section 2292 of title 28, United States Code, as added by this Act, on the ground of having failed to raise or to prosecute the same or a similar claim prior to enactment of the Act, nor by reason of any adjudication rendered prior to its enactment.

SIMON AMENDMENT NO. 3684

Mr. SIMON proposed an amendment to the bill H.R. 5210, supra; as follows:

On page 579, line 21, after "individual" insert "who is not engaged in or acting in furtherance of the continuing criminal enterprise".

DOMENICI (AND OTHERS) AMENDMENT NO. 3685

Mr. DOMENICI (for himself, Mr. Gramm, Mr. Dole, Mr. Rudman, Mr. Bingaman, Mr. Helms, Mr. Thurmond, and Mr. Trible) proposed an amendment to the bill H.R. 5210, supra; as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . CIVIL PENALTY FOR POSSESSION OF SMALL AMOUNTS OF CERTAIN CONTROLLED SUBSTANCES.

(a) General.—Any individual who knowingly possesses a controlled substance that is listed in section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)) in violation of section 404 of that Act (21 U.S.C. 841(b)(1)(A)) in an amount that, as specified by regulation of the Attorney General, is a personal use amount shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each such violation.

(b) Income and Net Assets.—The income and net assets of an individual shall not be relevant to the determination whether to assess a civil penalty under this section or to prosecute the individual criminally. However, in determining the amount of a penalty under this section, the income and net assets of an individual shall be considered.

(c) Prior Conviction.—A civil penalty may not be assessed under this section if the individual previously was convicted of a Federal or State offense relating to a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(d) Limitation on Number of Assessments.—A civil penalty may not be assessed on an individual under this section on more than two separate occasions.

(e) Assessment.—A civil penalty under this section may be assessed by the Attorney General only by an order made on the record after opportunity for a hearing in accordance with section 554 of title 5, United States Code. The Attorney General shall provide written notice to the individual who is the subject of the proposed order informing the individual of the opportunity to receive such a hearing with respect to the proposed order. The hearing may be held only if the individual makes a request for the hearing before the expiration of the 30-day period beginning on the date such notice is issued.

(f) Compromise.—The Attorney General may compromise, modify, or remit, with or without conditions, any civil penalty imposed under this section.

(g) Judicial Review.—If the Attorney General issues an order pursuant to subsection (e) after a hearing described in such subsection, the individual who is subject of the order may, before the expiration of the 30-day period beginning on the date the order is issued, bring a civil action in the appropriate district court of the United States. In such action, the law and the facts of the violation and the assessment of the civil penalty shall be determined de novo, and shall include the right of a trial by jury, the right to counsel, and the right to confront witnesses. The facts of the violation shall be proved beyond a reasonable doubt.

(h) Civil Action.—If an individual does not request a hearing pursuant to subsection (e) and the Attorney General issues an order pursuant to such subsection, or if an individual does not under subsection (g) seek judicial review of such an order, the Attorney General may commence a civil action in any appropriate district court of the United States for the purpose of recovering the amount assessed and an amount representing interest at a rate computed in accordance with section 1961 of title 28, United States Code. Such interest shall accrue from the expiration of the 30-day period described in subsection (g). In such an action, the decision of the Attorney General to issue the order, and the amount of the penalty assessed by the Attorney General, shall not be subject to review.

(i) Limitation.—The Attorney General may not under this subsection commence proceeding against an individual after the expiration of the 5-year period beginning on the date on which the individual allegedly violated subsection (a).

(j) Expungement Procedures.—The Attorney General shall dismiss the proceedings under this section against an individual upon application of such individual at any time after the expiration of three years if—

(1) the individual has not previously been assessed a civil penalty under this section;

(2) the individual has paid the assessment.

(3) the individual has complied with any conditions imposed by the Attorney General;

(4) the individual has not been convicted of a Federal or State offense relating to a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(5) the individual agrees to submit to a drug test and such test shows the individual to be drug-free.

A nonpublic record of a disposition under this subsection shall be retained by the Department of Justice solely for the purpose of determining in any subsequent proceeding whether the person qualified for a civil penalty or expungement under this section. If a record is expunged under this subsection, an individual concerning whom such an expungement has been made shall not be held thereafter under any provision of law to be guilty of perjury, false swearing, or making a false statement by reason of his failure to recite or acknowledge a proceeding under this section or the results thereof in response to an inquiry made by him for any purpose.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FINANCE

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on October 13, 1988, to hold a hearing on and to consider the nominations of Malcolm M.B. Sterrett to be General Counsel and Mary T. Goedde to be Assistant Secretary for Legislation of the Department of Health and Human Services; Charles H. Dallara to be Assistant Secretary of Policy Development, and Edith E. Holiday to be Assistant Secretary of Public Affairs and Public Liaison of the Department of the Treasury.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on October 13, 1988, to hold a briefing by the crew of the space shuttle *Discovery* regarding their recent mission.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

AMNESTY INTERNATIONAL

● Mr. DECONCINI. Mr. President, I would like to address the recent publication of Amnesty International's Amnesty Report 1988. In this, their latest compilation, Amnesty International has reported 135 countries who they consider to be violating human rights within their borders. These violations range from police brutality, to restriction of speech, to imprisonment and torture without reason.

It is important that we realize what a crucial role an organization such as this plays in the world of politics. Amnesty International has taken an active part in discouraging violations by these countries and in curbing the practice of these illicit and inhumane actions. Only by supporting and applauding organizations such as Amnesty International can we be assured that the spotlight of concern and justice is shining in the shadows of despair.

The report includes sections on two countries of which I am particularly interested, Angola and Chile. I feel that it is extremely important that we, as the leading democratic Nation, act to encourage democratic efforts and reforms occuring in these countries.

At present there is constant suffering and death in Angola. The regime controlling this Nation must be encouraged to negotiate with the democratic opposition to reach a peaceful settlement to the war. In the section on Angola, Amnesty International informs the world of the horrible conditions in this region. The present regime has been known to discourage members involved with the "National Union for the Total Independence of Angola" by imprisoning and torturing dissidents without lawful reason. People are sent to prison camps for everything from holding democratic sentiment to the ridiculous charge of witchcraft. These cases along with many others are clearly human rights infringements.

Furthermore, the situation in Chile continues to demand attention and scrutiny. The plebescite was a great stride in bringing about democracy in Chile, but the country's Government still has a long way to go. Only through constant deliberation and awareness will we be able to help Chile attain a democratic government.

Mr. President, I ask that the following articles on pressing human rights issues be entered into the RECORD as if read. I also encourage my colleagues to read the latest Amnesty International Report.

The articles follow:

[From the New York Times, Oct. 5, 1988]

AMNESTY INTERNATIONAL CITES ABUSES IN 135 NATIONS

LONDON.—Amnesty International today reported that 135 nations committed human rights abuses in the last year, ranging from the jailing of draft evaders in Western Europe to the massacre of unarmed civilians in Iraq and Sudan.

The international rights group said its list of offenders, published in an annual survey that was made public today, was the longest since the group was founded in 1961.

The group, which won the Nobel Peace Prize in 1977, said it uncovered abuses in more than 80 percent of the 159 countries that belong to the United Nations. But the group said it was encouraged by the emergence of 1,000 human rights groups around the world in recent years and by the spread of laws to protect the rights of prisoners.

"In at least half the countries of the world, people are locked away for speaking their minds, often after trials that are no more than a sham," the Amnesty International report said.

The report criticized the United States, where 25 convicted criminals were put to death last year, for executing John Brogdon, a man diagnosed as mentally retarded, and Edward Earl Johnson, despite "substantial doubts" about his guilt. Amnesty International opposes the death penalty.

The report said that in China, more than 200 convicted criminals were known to have been put to death, but that the number represented "only a fraction of the total number of death sentences and executions" that were believed to have been carried out.

The report said that 760 political prisoners were reported executed in 39 countries in 1987, but that the number probably was much higher because of secret executions. It said inquires by India, Britain and Israel into abuses were kept secret or whitewashed.

The group said that Turkey, Czechoslovakia and East Germany hid violations, and that China, Haiti, Syria and South Africa clamped down on the reporting of abuses by denying prisoners access to lawyers or families.

"Today, even one death can set off waves of anger and protest worldwide," the group said, citing the death in January 1987 of a South Korean student, Park Chong Chol. The death set off protests that led to the prosecutions of eight police officers and the resignations of Government ministers.

Among the abuses cited were reports that Sudanese forces massacred hundreds of unarmed Dinka tribespeople; that Iraq executed hundreds of unarmed Kurds; the disappearance of hundreds of Peruvian farmers seized by the Government, and court-ordered executions in South African and Iran.

Spain was cited for reportedly torturing Basque separatist prisoners, Britain for failing to publish a police inquiry into the killings of six unarmed Irish Republican Army guerrillas in 1982, and France, Italy, Austria, Greece, Malta, Norway and Switzerland for jailing draft resisters.

In Israel, the report said, a court allowed the secret service to use "a moderate measure of physical pressure" in the questioning of suspects.

EXECUTIONS AND ARRESTS

Iran executed at least 158 people, "although the true number was probably higher," and another 164 people were hanged in South Africa's Pretoria Central Prison, the group said.

Amnesty said "large numbers" of ethnic Turks in Bulgaria remained imprisoned under a campaign of enforced assimilation. In Rumania and East Germany, where prisoners of conscience were released in amnesties, the group said new arrests were reported of people who spoke out.

The Soviet Union released 259 prisoners, most of them prisoners of conscience, the report said. But nearly 200 were pardoned under secret decrees that falsely implied that they were criminals and that "hid the fact that they had been unjustly imprisoned in the first place," the report said.

Another 300 Soviet prisoners of conscience were jailed, exiled or held in psychiatric hospitals, the report said.

A copy of the report can be obtained by sending $10 to Amnesty International U.S.A., 322 Eighth Avenue, New York, N.Y., 10001. Checks should be payable to Amnesty International U.S.A. An additional $1.25 should be included for postage and handling. Copies of the report can be picked up at the group's New York office.

[From the Christian Science Monitor, Oct. 6, 1988]

VOTERS AND POLICE PLENTIFUL AS CHILE VOTES

SANTIAGO, CHILE.—Military ruler Augusto Pinochet threatened yesterday to crack down hard on any leftist violence as Chileans headed to the polls.

Thousands of troops and police guarded polling stations. And soldiers in armored cars patrolled some poor districts as Chileans turned out early to place their votes.

The 7.4 million-strong electorate appeared to have heeded government and opposition calls to vote early and then go home to avoid potential violence. Long lines built up outside 1,000 polling stations around the country as they opened at 8 a.m. (7 a.m. Eastern time).

Officials and long lines were slowing the vote and might delay the count. Delays were also reported in opening some polling stations because of technical problems or late arrival of monitors.

Just hours before the plebiscite, saboteurs blew up power lines, briefly blacking out Santiago and a 1,000-mile strip of the country. No group claimed responsibility for the blasts. At present time, no further incidents had been reported.

General Pinochet is the sole candidate in the plebiscite, the first direct leadreship vote since he took power at the hand of a coup in 1973. On the ballot, the choice was between "yes," to extend his rule, and "no," to end it. If he wins the majority, Pinochet gains eight more years in office. If he loses, the Constitution says he must call for a multi-candidate election in December 1989.

Official returns are not expected until Friday.

[From the Christian Science Monitor, Oct. 6, 1988]

NEGOTIATORS ON ANGOLA SIT DOWN IN N.Y.

(By E.A. Wayne)

WASHINGTON.—Negotiations from Angola, South Africa, and Cuba will try to build on recent progress when they sit down with US mediators in New York today.

The countries are still trying to reach agreement on a withdrawal schedule for Cuban troops from Angola. This would clear the way for a South African pullout from and independence for Namibia.

There was substantial movement during four days of talks last week, informed sources say. Yet important differences among the parties remain. The key issue is not the length of the withdrawal. Rather, discussions are centered on how much "front loading" should be built into the agreement—specifically how many Cubans should leave early in the withdrawal process and at what intervals.

Parallel to these negotiations, there is movement in an effort by black African leaders to begin a national reconciliation process in Angola, ending the 13-year civil war there. On Saturday, the President of Angola sat down to discuss this issue for the first time with his counterparts from Gabon and the Congo. Previously, Angola has rebuffed efforts to bring about a reconciliation with UNITA anti-government guerrillas, arguing the conflict is an internal matter.

The meetings were reportedly aimed at preparing the way for a summit of African leaders in Zambia, now scheduled for next week. It is not yet clear that the African leaders will be able to develop a real mediation process between the government of Angola and UNITA. The government still publicly opposes any negotiations with its domestic opponents.

[From the Christian Science Monitor, Oct. 6, 1988]

AMNESTY INTERNATIONAL REPORTS RIGHTS ABUSES HIT RECORD HIGH

(By Julian Baum)

LONDON.—Amnesty International reported this week that more countries were charged with human rights abuses last year than at any time in the organization's 27-year history.

Among the 135 countries in which human rights violations were reported, the London-based organization said that torture or ill-treatment of prisoners was reported in 90 countries and prisoners of conscience—who have committed no violent crimes—were being held in 80 countries.

Capital punishment for various crimes is on the law books in 120 states. The most executions reported last year were in South Africa (164), Iran (158), and China (132). The United States was criticized for executing 25 people in 1987 and having another 1,982 on death row.

Despite what Amnesty described as the "ugly picture" of human rights violations worldwide, it was not cynical about the Universal Declaration of Human Rights adopted 40 years ago by the United Nations. In its annual report released this week, Amnesty said that while all members of the UN formally subscribed to the declaration, many considered it "subversive."

Amnesty noted that the human rights movement continues to grow. It includes more than 1,000 organizations in every region of the world, and Amnesty is the largest of its kind. In protecting people against human rights abuses by governments, Amnesty said that exposure to international publicity is "the greatest weapon we have."

As an example, Amnesty cited the torture and death last year of a South Korean student, Park Chong Chol. International publicity brought pressure on the South Korean government and led to the arrest of police officers and the resignation of government ministers.

Such cases are exceptional, however. Amnesty noted that many governments find it easy to prevent abuses from coming to light by blocking the flow of information, censoring the press, restricting journalists, and keeping prisoners incommunicado.

Another common technique is launching an investigation that fails to reach a conclusion, or which glosses over facts.

As an example, Amnesty criticized Britain for failing to publish the results of an inquiry into three incidents of killing in 1982 by security forces in Northern Ireland. The investigation—known in Britain as the Stalker report after its principal investigator, John Stalker—continues to be a sensitive issue in Anglo-Irish relations.

In Latin America, Amnesty reported the increased use of clandestine forces by governments to terrorize political opposition, and the operations of "death squads" in Brazil, Colombia, El Salvador, and Guatemala, among others. Torture by state security forces was widely reported in the region, and the report cited a "marked deterioration" of human rights in Haiti.

Despite the release of political prisoners in Afghanistan, Vietnam, South Korea and Taiwan last year, additional prisoners were taken without fair trials.

China was cited for trying to halt the "widespread use of torture" by local security forces. However, Amnesty noted the absence of adequate legal protection for prisoners in China and the extensive use of the death penalty, including for a variety of non-violent crimes.

Some governments in Africa have improved their human rights record, including Togo, Niger, Rwanda, and Zimbabwe.

But torture and ill-treatment of prisoners were reported in 18 countries on the African continent. Some 4,000 alleged prisoners of conscience were being held in Uganda as opponents of the government and large numbers of such prisoners were also jailed in Angola.

In Europe, large numbers of conscientious objectors to military service are in jail, in France, both Germanys, Italy, Poland, Spain, Switzerland, and the Soviet Union.

Torture was reportedly widespread in Turkey where 17 people died in police custody in 1987. Many prisoners of conscience were released in the Soviet Union last year but some 300 prisoners were still in jail, kept in exile, or held in psychiatric hospitals against their will, according to Amnesty.

[From Amnesty International Report, 1988]

ANGOLA

Many people were imprisoned for alleged membership of the União Nacional para a Independência Total de Angola (UNITA), National Union for the Total Independence of Angola. UNITA, an armed opposition group active in many parts of the country, has received military support from the South African Defence Force. Many of those imprisoned had been arrested in previous years. Most of them were held without charge or trial, although some 10 of these detainees were tried in January along with other political prisoners. At least two people were sentenced to death and the real number of death sentences imposed was believed to be higher. It was not known if there were any executions.

There was continued fighting in many areas between government troops, which had Cuban support, and UNITA and South African military forces. Many people, including civilians, were reported killed in the conflict and both sides accused the other of torturing and killing civilians. It was not possible to verify such allegations or attribute responsibility for individual killings. In September there was a major prisoner exchange in which Captain Wynand du Toit, who had been captured in 1985 in Cabinda, was exchanged for 133 Angolan soldiers held by South Africa.

Many alleged UNITA supporters were taken prisoner during government security force operations against UNITA guerrillas. Others were arrested on suspicion of supporting or assisting UNITA by supplying, for example, food, shelter or information. One of those held was Cláudio Pereira Songamaso, director of legal affairs of the Angolan Red Cross Society. He had been arrested in mid-1986, apparently on suspicion of assisting UNITA, and held incommunicado for several months without charge in the security service detention centre in Luanda. He remained at the centre, known as the "Catete Road prison", until his release in October 1987.

Most of those accused of supporting UNITA were held for long periods without trial. They were reportedly detained in Luanda and various provincial capitals, and in detention camps such as Bentiaba Camp, formerly known as São Nicolau, in Namibe province. For example, Bernardo Cassueca Sautale, allegedly a local UNITA leader and organizer, was believed to remain without trial in Moxico province.

Some detainees were sent to "reeducation" centres for political instruction with the declared aim of "reintegrating" them into society. One such case was that of Silvestre Kiambulo, a former teacher who had joined UNITA's military force. He was officially reported in January to be ready for "reintegration" following a period of "reeducation" which began in October 1985.

Long-term political detainees without links to UNITA included a number of asylum-seekers. Three Zairian asylum-seekers, all former members of the Forces armées zairoises (FAZ), Zairian Armed Forces, were arrested in December 1985 upon arrival in Angola. They remained in detention through 1987 at São Paulo prison in Luanda, although the authorities gave no reasons for their imprisonment and no charges were brought against them.

Some members of the Tocoist Church were detained for long periods after violent disturbances in late 1986 and early 1987 on suspicion of opposing the government. The Church of Our Lord Jesus Christ on Earth, known as the Tocoist Church, had split into two main factions after the death of its founder, Simão Gonçalves Toco, in January 1984. A dispute between the factions resulted in the death of two people in November 1986 near the town of Catete in Bengo province. Jorge Pambu and other members of one faction were subsequently arrested and held in the "Catete Road prison" in Luanda. In February Cristóvão Tavares and other members of the same faction, some of whom were armed, marched to the prison to demand their release. When violence broke out, two members of the security forces and at least 30 demonstrators were reportedly killed. Some unofficial sources estimated the number killed at more than 100. Cristóvão Tavares and a number of others were arrested. There were reports that some sect members who had not been involved in the demonstration were later arrested at their homes and that some of those arrested during the demonstration, who had incurred injuries, died from lack of medical attention in prison. Government spokesmen later accused the leaders of the disturbances of subversive action favouring opponents of the government. Some of those arrested were subsequently released without charge, but Cristóvão Tavares and Jorge Pambu had apparently not been charged or released by the end of the year.

Twenty-nine defendants accused of crimes against the security of the state were tried by the People's Revolutionary Tribunal in January. Fourteen of them were convicted. The charges included treason, conspiracy, rebellion, and economic sabotage. Details of the charges were not made public, but at least six defendants were accused of committing politically-motivated offences in connection with UNITA activities. Four others were charged with membership of a little-known opposition group, the Movimento Nacional de Unidade Socialista Angolano (MUSA), Angolan Socialist Unity Movement. Moisés André Lina, the alleged leader of MUSA, was convicted of treason and sentenced to death. A former major in the armed forces, he had left Angola in 1977 for Portugal, where he formed MUSA. He later returned to Angola secretly and was arrested in 1983. Three other alleged MUSA members were convicted with him and given short prison sentences.

Felix Mateus Murgar, found guilty of murder by the First District Court in Lobito in August, was also sentenced to death. This case was the first in which an ordinary district court was known to have imposed a death sentence. Both he and Moisés André Lina lodged appeals, but the appeals had apparently not been heard by the end of the year. Unofficial sources suggested that further death sentences were imposed by Regional Military Tribunals but this information could not be confirmed. One death sentence imposed in 1986 on an army captain convicted of murder was commuted later that year.

Hundreds of prisoners were held by UNITA during the year. Some 200 of them, including two Cuban pilots, were paraded before journalists in November at UNITA's Jamba headquarters in southeastern Angola. Amnesty International also received reports about the killing of prisoners by UNITA in previous years. For example, Aurora Katalaio and several other people were reportedly accused of witchcraft and put to death in the Jamba area in September 1983. Aurora Katalaio, the widow of a UNITA official, had studied psychology in Switzerland over 10 years earlier.

During the year UNITA reportedly abducted a number of civilians, including expatriates working in Angola, from areas under government control. Three Swedish aid workers were captured north of Luanda in September. One died shortly after his abduction and the other two were released by UNITA at the end of November.

Two nationalist organizations based in Angola, the African National Congress (ANC) of South Africa, and the South West Africa People's Organization (SWAPO) of Namibia, allegedly held prisoners in Angola but their number and the identity of some detainees were not known. At least one person was said to be held near an ANC camp at Quibaxe in Kwanza Norte province, although the reasons for his detention and his legal status in Angola were not clear. Some 100 people suspected of spying for South Africa were also believed to be held by SWAPO at a camp in Kwanza Sul province. They included SWAPO activists who had been prisoners of conscience detained in previous years by the South African administration in Namibia.

Amnesty International was concerned about long-term detention without charge or trial and sought information from the government about the imprisonment of numerous political detainees. The organization received no reply. Amnesty International also appealed to President José Eduardo dos Santos to commute the death sentences imposed on Moisés André Lina and Felix Mateus Murgar if confirmed on appeal.

CANADA

In June the Canadian Parliament voted 148 to 127 against a motion to reinstate the death penalty, which had been abolished for ordinary crimes in 1976.

Following the election of the Progressive Conservative Party to power in 1984, Prime Minister Brian Mulroney had promised to allow a free vote on the subject. During the parliamentary debate he argued that the death penalty did not deter crime and said that Canada's homicide rate had reached a 15-year low since the death penalty was abolished in 1976, with the murder rate in 1986 declining by 20 percent in one year.

Amnesty International wrote to Canadian members of Parliament before the vote, urging them not to support the reintroduction of the death penalty.

In November Amnesty International learned that two prisoners were awaiting extradition to face charges of murder in Florida and Nevada, USA, whose laws provide for the death penalty. Amnesty International urged the Minister of Justice to obtain assurances from the Florida and Nevada authorities that the two men would not be sentenced to death if convicted of murder. It asked the Minister to make such assurances a prerequisite for their extradition.

In June Canada ratified the United Nations Convention against Torture.

CHILE

The harassment of government critics by clandestine groups linked to the security forces intensified in 1987, and torture by the official security forces continued in spite of measures taken by the government which should have been given detainees increased protection. Many political opponents of the government, trade union leaders, journalists and others were detained for short periods and three opposition leaders were banished administratively to remote parts of the country. Judicial irregularities in the trials of political prisoners were reported, and little progress was made in investigating human rights abuses. Three political prisoners were sentenced to death and five new "disappearances" were reported.

The government took preliminary steps to pave the way to a restricted form of civilian government. It prepared for a plebiscite, to be held in 1988 or 1989, opened electoral registers and passed a new law allowing the establishment of non-Marxist political parties. Large numbers of exiles were allowed to return to Chile. The state of siege was not renewed when it lapsed in January and a curfew which had been in force almost continuously since 1973 was lifted. However, the "state of danger to internal peace" and a state of emergency remained in force.

Several steps were taken by the government to protect human rights. In June a new law required the closure of detention centres run by the Central Nacional de Informaciones (CNI), state security police, who had often been cited as responsible for torture. In September the government signed the United Nations Convention against Torture and the Inter-American Convention to Prevent and Punish Torture.

However, the intimidation and harassment of suspected opponents of the government by clandestine groups linked to the security forces intensified. The targets ranged from community leaders and local human rights activists in the poblaciones (poor neighbourhoods) to bishops, actors, politicians and court officials. Chilean human rights groups said that by December they had received reports of over 1,000 cases. Death threats and surveillance were most common. Cats with their throats slit were left outside the homes of some victims. Others had incendiary devices left at their homes, offices or under their cars. Some victims were abducted for up to 24 hours and interrogated either in a vehicle or in a secret detention centre. Many were beaten. Others were given drugs or electric shocks, burned with cigarettes or acid, or had letters or symbols scored into their skin.

The clandestine forces operate with impunity and the government took no effective measures to restrain their activities, despite evidence of the involvement of security forces personnel in some cases. In January, for example, after nearly two years of investigations into the abduction and murder of three Communist Party members in March 1985 (see Amnesty International Report 1986 and 1987), Judge José Canovas concluded that a police unit had been involved. He subsequently closed the case and said that it was impossible for him to proceed because of lack of cooperation from the security forces. In June, however, the investigation was reopened on appeal.

Torture by the official security forces continued. During the first half of the year, a number of political detainees were held incommunicado in CNI detention centers, where they were tortured and interrogated. After the introduction of new legislation in June, the CNI were required to hand over detainees to the regular police forces immediately. However, it emerged that political detainees were being tortured by CNI agents in police stations run by investigaciones (criminal investigations police). Some detainees also said they were taken by the CNI to other unidentified detention centers.

Following agreements reached in 1986, delegates from the International Committee of the Red Cross (ICRC) were able to visit detainees held by the CNI and investigaciones. However, according to detainees' testimony, some had been tortured by the time the visit was allowed to take place. In a number of cases, injuries sustained in police custody were recorded by doctors from the Chilean Institute of Legal Medicine, who were asked by courts dealing with petitions for amparo (similar to habeas corpus) to examine detainees.

Some progress was made in judicial investigations into torture. Judge René García Villegas, in whose jurisdiction lay the main CNI detention centre in Santiago, was investigating about 40 official complaints of torture. He said that his work had led him to the conclusion that the CNI subjected detainees to "terrible tortures", but that the lack of police cooperation was making it impossible to identify those responsible.

Several hundred people were detained for a few hours or days for participation in peaceful political activities such as handing out leaflets and campaigning for free elections. Members of the Christian Democrat and Humanist Parties were arrested while canvassing for signatures to register as a political party under the new law.

Many others were arrested during a strike called on 7 October by the Comando Nacional de Trabajadores (CNT), National Workers Command, in support of a list of workers' demands including higher wages. Three CNT leaders and three leaders of the United Left opposition coalition were imprisoned and charged under the State Security Law for calling the stoppage. By 1 December all had been released on bail.

Restrictions on the right to freedom of expression continued, although four opposition magazines which had been suspended under the state of siege were allowed to resume publication in January. The government took an unprecedented number of legal actions against journalists and editors, as well as politicians and a human rights lawyer whose statements were published in opposition magazines. They were committed for trial on charges of slandering the President or the armed forces. Five journalists were imprisoned for up to two months on similar charges before being released on bail. Juan Pablo Cárdenas, director of the magazine Análisis, was sentenced to spend 541 nights in prison in similar charges: he had to report to prison each night and was released the following morning.

Many exiles were allowed to return from abroad but hundreds remained banned from Chile. Four political leaders challenged the ban by returning secretly and then presenting themselves to the courts. Three were immediately arrested and banished administratively for three months to remote parts of the country by the Interior Ministry, the first time the authorities had used this measure since 1985. After two months the banishment order against former Communist Party Members of Parliament Julieta Campusano and Mireya Baltra was lifted but Clodomiro Almeyda, a Socialist Party leader, completed the three-month term. He was then imprisoned on charges of illegal entry to the country and being as "apologist for terrorism". At the end of 1987 he was still in prison, awaiting the outcome of appeals against two 541-day prison sentences imposed for each offense.

The courts consistently failed to take into account evidence submitted on behalf of victims of human rights abuses. For example, in the case of Carmen Quintana and Rodrigo Rojas, who were burnt in July 1986, both the military prosecutor and the higher courts apparently ignored extensive medical and witness evidence that the two were arrested and set on fire by a military patrol. Instead, they accepted the army version that the two were burnt by accident when Carmen Quintana kicked over a bottle of inflammable liquid. Lawyers acting on behalf of Carmen Quintana complained that she and witnesses had been harassed and reported other procedural irregularities, for example, important witnesses not being called.

Efforts by a few civilian judges to pursue investigations were hampered by the police and military not cooperating or blocked by the transfer of cases to military courts. Some court officials, such as Judge René García Villegas, received death threats. A new law modifying the Code of Military Justice passed in November gave the authorities further extensive powers to refuse to hand over information about police and the armed forces to the courts if they considered it to affect the security of the state or of individuals.

Investigations into approximately 700 "disappearances" between 1973 and 1977 suffered a major setback when the Supreme Court upheld a 1986 Appeal Court decision to close an investigation into 10 "disappearance" cases. Judge Carlos Cerda, a member of the Appeal Court, had uncovered important information about the methods used by the police and military to eliminate political opponents of the government in the mid-1970s. He argued against the Appeal Court decision to apply an amnesty law passed in 1978 to the accused, on the grounds that his investigations were not finished.

Five political activists were reported to have "disappeared" in September, leading to fears that the practice might be reemerging. Alejandro Pinochet Arenas was last seen on 10 September being forced into a car in Santiago by several unidentified civilian assailants believed to be government agents. Human rights lawyers said that the circumstances surrounding the "disappearance" of Julio Muñoz, Manuel Sepulveda, José Peña and Gonzalo Fuenzalida also gave reason to believe that they had been abducted by government agents. The authorities denied holding them.

Long-term political prisoners being tried by military courts held a series of hunger-strikes to draw attention to irregularities in their trials and to protest against the death penalty. Their complaints included restrictions on the rights of the defence, the use of confessions extracted under torture, and long delays in trials. Human rights groups' statistics indicated that only a quarter of the approximately 450 political prisoners had been sentenced by the end of 1987. Some of those awaiting sentence had been in detention since 1984 or earlier.

Particular criticism was levelled against the Special Military Prosecutor, Fernando Torres. He was investigating the cases against approximately 100 defendants in four trials charged in connection with armed actions attributed to the Frente Patriótico Manuel Rodriguez (FPMR), Manuel Rodriguez Patriotic Front, an armed opposition group, including the September 1986 assassination attempt on President Augusto Pinochet. He ordered a number of the defendants to be held incommunicado for up to 40 days after their arrest without access to legal counsel, often after they had been tortured. Other defendants reported that he and his court officials threatened them. In his December report to the U.N. General Assembly, the Special Rapporteur on Chile criticized him for "a bias inappropriate in an official of his rank".

One of those charged by the Special Military Prosecutor was prisoner of conscience Dr. Ramiro Olivares, a doctor working with the church human rights organization, Vicariate of Solidarity. He was accused of "assisting terrorists" after he gave medical treatment to a man, unaware that he had been injured in an attack on a shop. He was eventually released on bail on 29 December after successfully petitioning the Supreme Court for the charges against him to be reduced (see Amnesty International Report 1987). It appeared that the case against Dr. Olivares was intended to obstruct the work of the Vicariate by linking it to armed opposition groups.

Three political prisoners were sentenced to death in April after being convicted of participating in the killing of the military governor of Santiago in 1983. At the end of 1987 they were still awaiting the outcome of an appeal to the Military Appeals Court. One political prisoner, Carlos García Herrera, had his death sentence commuted to life imprisonment in October when the Military Appeals Court failed to reach the unanimous verdict required by Chilean law to uphold a death sentence. However, the government then submitted a complaint to the Supreme Court, which was still pending at the end of 1987, against the one judge who had voted against the death sentence. It argued that he was at fault in voting not to uphold the death sentence.

Twelve alleged FPMR members were killed by the CNI on 15 and 16 June in circumstances suggesting that they were the victims of extrajudicial executions. In one incident, in which seven people died, there was evidence that all the shots were fired from the direction of the security forces and none from where the victims were. In another, it appeared that the victim was shot dead from a van as he was walking along the street near his mother's house.

Amnesty International urged the government to take action against clandestine forces and to give protection to those threatened. It called for further measures to be introduced to prevent torture and appealed to the authorities to permit detainees held incommunicado by police to be given access to lawyers and doctors. The organization called on the authorities to review the judicial procedures in the trials of political prisoners which fell short of international standards for fair trials and appealed for the commutation of all death sentences. It also continued to press for full investigations into all human rights abuses, including "disappearances". An Amnesty International delegation visited Chile in October and met officials of the Ministry of Foreign Affairs, representatives of human rights organizations, political parties, the Archbishop of Santiago and other church representatives.

COLUMBIA

The year was marked by a dramatic increase in human rights violations. Hundreds of suspected opponents of the armed forces were detained, tortured or killed by "death squads" apparently composed of military personnel or civilians acting on behalf of the armed forces or with their acquiescence. The victims extended beyond those identified with the left-wing opposition to include members of virtually any independent organization or profession considered to be critical of the armed forces' campaign against "subversion". Despite mounting evidence of the armed forces' involvement, the government continued to contend that the "death squads" were composed of independent groups of right-wing extremists whom the authorities could neither control nor disband. In certain areas, civilian defence squads organized and equipped by the armed forces to assist in their country-insurgency activities were also alleged to have been responsibile for torture and extrajudicial executions of civilians.

There was increased activity by armed opposition groups and a rise in the number of reported clashes between the armed forces and the largest such group, Furezas Armadas Revolucionarias de Colombia (FARC), the Revolutionary Armed Forces of Colombia, although formally the FARC remained within a peace process initiated in 1984. There were new reports that the FARC and other armed opposition groups had summarily executed a number of their captives.

In December Colombia ratified the United Nations Convention against Torture.

The area most affected by the upsurge in political violence in 1987 was Antioquia department in northeast Colombia. In the banana plantation region of Urabá, more than 50 people, mostly agricultural workers, their union leaders and advisers, were killed in the first half of 1987 against a background of protracted pay negotiations between the major unions and the plantation owners. The killings were carried out by heavily armed men in civilian clothes believed to be employed by landowners acting with the complicity of the armed forces. Extensive counter-insurgency operations made Urabá one of the most heavily militarized zones in Colombia, yet the killers were able to operate with impunity, passing freely thorugh military controls.

There were further "death squad" killings in Medellin, the capital of Antioquia department. Scores of people including trade unionists, students, university professors and human rights activists were killed, particularly during the second half of the year, by groups operating under names such as "Amor a Medellin". Love for Medellin, and "Muerte a Revolucionarios del Nordeste", Death to Revolutionaries of the Northeast. Civic leaders and human rights activists responded by organizing demonstrations demanding the right to life. On 13 August over 3,000 people participated in a "march for life" through Medellin, led by the Comité de Defensa de los Derechos Humanos (CDDH), Medellin Committee for the Defence of Human Rights. The demonstration was in protest against recent "death squad" killings of five students and four lecturers at the University of Antioquia. Some of the victims had been tortured before being shot. The local police said that they saw the killings as isolated incidents, without apparent political motivation. However, seven of the nine victims, it was later established, had been members of a new political group Frente Popular, Popular Front, and had been arrested previously by military personnel during a demonstration on 1 May. They were said to have been held in the headquarters of the army's Fourth Brigade and to have been photographed and fingerprinted before they were released uncharged after a few hours.●

HAIL "DISCOVERY," AND A SALUTE TO MORTON-THIOKOL OF UTAH

● Mr. HATCH. Mr. President, the citizens of Utah take special pride in *Discovery's* launch on September 28. In many ways, we Utahns personified Winston Churchill's commitment to "Defiance in Defeat."

The country felt defeated over the *Challenger* disaster; not only was our space program in disarray, but the private sector, which the 1958 Space Act mandated to lead the charge into space, was also reeling.

Perhaps the most profound sense of loss hung over the families. But anyone who knows the special nature of Utahns, knows also that their grief was acutely shared by the citizens of my State, and more specifically by the employees of the Morton-Thiokol Co.

Like the other citizens of Utah, Thiokol's employees were defiant, determined, and dedicated. They would do whatever it took to restore our Nation to prominence in space.

What did they do? Let me tell you, Mr. President.

Less than 2 months after the *Challenger* tragedy, Thiokol's engineers began planning our reentry into space.

Their efforts began in the laboratory, testing O-ring materials, developing new greases, evaluating the impact of temperature on new designs, and many other procedures.

Then there were the tests—42 in all, before there's a fully redesigned solid rocket motor emerged.

Mr. President, there were also setbacks; some came at a time when Thiokol experienced other disruptions, one involving the loss of life when an engine exploded. Making rocket motors is inherently risky.

Morton-Thiokol never lost its self-confidence; more than 4,500 people committed themselves, their professional stature, and their hearts to their effort. It was a labor of love, and it showed. On Wednesday, the spirits of every American soared with *Discovery*—as President Reagan has said throughout his tenure in office: "America is back."

The people of Utah have helped put us back in space; we retreated a little, but we have come back stronger than ever.●

S. 2607, STEWART-McKINNEY HOMELESS ASSISTANCE REAUTHORIZATION

● Mr. SASSER. Mr. President, it is a pleasure to join my distinguished colleague Senator JOHN GLENN in urging adoption of the conference report on S. 2607, the omnibus Stewart B. McKinney Homeless Assistance Act of 1988.

The Stewart B. McKinney Act provides assistance to the most vulnerable segment of our popultion—the homeless. Oftentimes when we speak of the homeless, we tend to lump them together, and to speak to their needs as if they were a single uniform group. Yet, if we begin to look at the homeless not as faceless street people, but rather as unique individuals each having his own set of problems, a diverse picture of homelessness in America emerges.

Let's take a minute to look beyond the statisics and take a closer look at that group of Americans who we call homeless.

Contrary to popular belief, not all homeless people in America are unemployed. A full 22 percent of homeless Americans are employed either full or part time, pointing up the discrepancy between minimum wage rates and the ability to purchase affordable housing.

Also homelessness is not just a big city problem—it is a national problem. According to the campaign to end hunger and homelessness, in 1987, the city with the highest rate of growth in its homeless population was Kansas City, Missouri—not Washington, or New York, or Los Angeles. And the number of homeless individuals has increased dramatically in rural areas as well. In the State of Iowa, for example, the number of person nights spent in shelters increased from 28,000 in 1984 to 4.57 million in 1987, an increase of 16,000 percent. And this number does not include those homeless individuals who are not fortunate enough to find shelter. Many more are sleeping in abandoned buildings, automobiles, or on the streets.

Finally, oftentimes we tend to think of the homeless as primarily a group of mentally disabled substance abusers—hence the myth of the homeless as a collection of single, male alcoholics on street corners. However, a closer look at these statistics reveals that this is not the case. A full one-third of the homeless are families with children. Indeed, only about 30 percent of the homeless suffer from some form of mental illness.

Mr. President, these are truly the quiet people whose needs this administration has so long ignored. Federally assisted housing starts have declined dramatically during the Reagan years, from 200,000 per year during the Ford and Carter administrations to a current annual level of 25,000. And assistance to the poor has been cut back in other areas as well. Reductions in essential social services spending also have pushed poor families to their limits, further swelling the ranks of the homeless.

As a member of the Senate Governmental Affairs Committee, I was proud to have been a part of last year's efforts to provide assistance to homeless Americans. However, in the ensuing year, State and Federal officials alike have reported growing difficulties in ensuring that Federal aid is being provided to those most in need. S. 2607, as reported by the House and Senate conferees, contains several new provisions designed to enhance the delivery of assistance to homeless Americans. I would like to take a few minutes to elaborate on the merits of some of these provisions.

S. 2607 strengthens Federal efforts at homeless assistance by appointing regional coordinators to oversee efforts at providing assistance to the homeless in each of the 10 Federal regions. These regional coordinators would be required to conduct biennial workshops to assist State governments in the administration of the Stewart-McKinney Act.

To enhance cooperative efforts between the Federal Government and the States, S. 2607 requires the Federal Interagency Council on the Homeless to distribute a bimonthly bulletin to the States summarizing Federal assistance programs and funding deadlines. Federal agencies administering homeless assistance programs are required to submit funding timeliness to the Federal Interagency Council for inclusion in these bimonthly newsletters.

In order to ensure that homeless assistance is targeted to those individuals most in need, S. 2607 requires the Federal Emergency Management Agency to develop new statutory formulas for the administration of emergency food and shelter grants. This restructuring of Federal assistance efforts is essential to ensuring that homeless assistance meets the needs of those individuals it is designed to serve.

Finally, S. 2607 broadens the definition of surplus Federal property to be used by the homeless to include underutilized Federal buildings. This would permit Federal property which has been relinquished only on a temporary basis to be used as shelters for the homeless.

I urge my distinguished colleagues to join with Senator GLENN and myself in support of the conference report on S. 2607. In doing so, we will provide the homeless with the food and shelter so necessary in their hour of need.●

ON BEHALF OF CARLOS ALFERO

● Mr. D'AMATO. Mr. President, I rise to inform my colleagues about yet another disturbing action by General Noriega. Last week, some of Noriega's men abducted a permanent U.S. resident from a flight destined for the United States and held him in costody without any charges for days. He was only recently released.

Mr. President, this man, Carlos Alfero, was down in Panama on business for the Bank of America. Like many Panamanians in the United States, he is a member of the civic crusade from New York.

No charges were placed on Mr. Alfero, and his relatives in Panama, including his mother who is an American citizen, were not notified of his abduction. Most offensively, Mr. President, Carlos Alfero was brutally beaten while he was in captivity.

Carlos Alfero had not been in Panama for nearly a year. His mother and brother are now in Panama. General Noriega apparently believes that Carlos is a part of some larger conspiracy. Well, Mr. President, if it is the conspiracy to move toward a civilian government, with constitutional freedoms, and fair elections, then we are all guilty of such a conspiracy.

What we are witnessing, Mr. President, is a display of raw dictatorial power. He is attempting to brutally neutralized his opposition. We must not allow this without action or protest. Mr. Alfero's abduction caused much uproar in Panama. We must ask ourselves, Mr. President, if there had not been an immediate outcry, would Mr. Alfero be free now? Or, Mr. President, would Mr. Alfero simply have "disappeared?"

Mr. President, Panamanians often say that we helped create the monster called Noriega. In the past 6 months, Mr. President, we have made the monster abominable. The longer the United States remains silent, the farther Noriega will try to go.

Every time we acquiesce to another Noriega outrage, we further abdicate our influence in Panama. Today, it is Carlos Alfero, a U.S. permanent resident. Tomorrow, what will be in store for the nearly 50,000 Americans in Panama? How much more harassment do our servicemen deserve to endure by Noriega? How many more Cubans must we observe in Panama before it becomes a national security concern?

Mr. President, earlier this month when Noriega's men confiscated U.S. military goods at a port near Colon, the United States made gestures toward a military response. Apparently, this persuaded the Panamanians to lift their seizure of this equipment. Mr. President, we need more of this type of response.

It is my hope that a strong message of outrage to General Noriega has been made by our Government regarding the treatment of Carlos Alfero. It must be made very clear that the United States will not tolerate this kind of treatment of U.S. citizens or permanent residents.●

FAIR EMPLOYMENT PRACTICES FOR U.S. SENATE EMPLOYEES

● Mr. GLENN. Mr. President, on Tuesday the House of Representatives passed the fair employment practices resolution (H. Res. 558). The vote on the resolution was 408 to 12 which represents an overwhelming commitment to improving employees' rights in the House. During the debate on the resolution, Congresswoman MARY ROSE OAKAR said, "I would hope that the Senate would follow our example on this bill." I want to align myself with her sentiments. Indeed, I have called for legislation on this issue in the past. However, partly because we have not held hearings on this issue in this Congress, I would not want to introduce a resolution that will die with the end of the session. Mr. President, I intend to introduce legislation early in the 1st session of the 101st Congress which will codify a similar office to the one created in House Resolution 558.

Congressional fair employment legislation is long overdue.

The image that we portray is important to the American people. That image right now is clouded by the appearance of hypocrisy at best and inconsistency, at the very least. The American people see inconsistency in the fact that we vote for and pass laws which affect every member of the work force except the very people who help to draft those laws—our staffs. The inconsistency exists in civil rights laws, in occupational health and safety laws for employees' working conditions, in safety and health conditions, and in other aspects of employment for persons who work on Capitol Hill.

We, in the Congress, are like an island not subject to the mainland's rules and regulations. Should the House and Senate employees be denied the rights that all other employees take for granted? I do not believe so.

There is another aspect to this issue. It is the issue of simple fairness. Is it fair for us as employers to hold up one standard for other employers while not being willing to meet the same standard ourselves. If it is good for them, it should be good for us. I happen to think that the Civil Rights Act of 1964 was good for the country—it should be good for the Congress. The Fair Labor Standards Act of 1938 was good for the country—it should be good for the Congress. The Age Discrimination in Employment Act of 1967 was good for the country—it should be good for the Congress.

I do not believe any Member of this body would consciously discriminate, but the statistics on employment in the U.S. Senate reflect a staff that is not representative of the population at large. For example, of the estimated 850 professional staff positions on our committees and subcommittees, blacks hold less than 30 of those positions. That is less than 5 percent. Blacks, by contrast, make up about 12 percent of our total population.

The situation is roughly equivalent for female staffers. Women only make up less than 25 percent of the professional staff, while being the majority of the overall population.

Mr. President, perhaps the most surprising aspect of those statistics is the fact that they represent improvements over the past several years. While the figures in and of themselves do not prove discriminatory practices, they suggest a need to be much more sensitive to concerns about our hiring and employment conditions and procedures.

The legislation which I intend to introduce early next session will not, I repeat will not, force any member to hire any person that they don't want to hire. The legislation will not seek to impose any quotas in hiring practices. Neither will the legislation impede the firing of incompetent employees.

The legislation will be patterned after the House resolution (H. Res. 558) which merely provides a framework for dealing with charges of discrimination or abuse. It will spell out procedures to be followed in cases where complaints are filed.

Mr. President, I know that some Members are concerned about the separation of power issue. The office created by this legislation will be congressionally created, answerable only to the Congress and staffed only by congressional, not executive branch employees.

I intend to hold hearings on this matter in the Governmental Affairs Committee. Further, I believe that these rights should be firmly encased in a statutory base, not a resolution.

To those Members of this body who may have reservations about the need for this legislation, I maintain that the need is there.

To those of you who have expressed an interest in moving forward on this issue, I assure that we will do so, early in the next Congress.

I know that Senators McCAIN, LEAHY, and LEVIN have all done excellent preliminary work on this issue and I look forward to having their input as we move forward to ensure rights for all congressional employees. It is time to remove the stigma of the Congress being "the last plantation."●

● Mr. D'AMATO. Mr. President, I rise to offer my comments about an individual who has made a great contribution to the Department of Transportation, Deputy Assistant Secretary William H. Fitzgerald. Over the years Bill, or "Fitz" as he is known to many people, has provided invaluable assistance and advice with respect to the Transportation Department's budget. He plans to leave the Department in the coming months which will be a great loss to all of us who have come to rely on his judgment and skill.

As the ranking member of the Transportation and Related Agencies Subcommittee of the Senate Committee on Appropriations, I know that Fitz's advice has been of great value to the subcommittee's work. Fitz has a way of deciphering complex budget documents and translating them into understandable language that has made our work on the Transportation Department's budget much easier. Often under severe time constraints, he has provided assistance to the subcommittee and proved time and again to be the consummate professional that he is.

Fitz is a graduate of the U.S. Coast Guard Academy and retired from the Coast Guard as a captain in 1971. While in the Coast Guard he was awarded a Commendation Medal. He also found time to earn an MBA degree, with distinction, from Harvard Business School in 1958. Since 1972, Fitz has served in various positions at the Department of Transportation starting out as a budget analyst and rising to Deputy Assistant Secretary. He is married to Patricia T. Moriarty, and they have two children, Paul David and Anne Elizabeth Cullinane.

Mr. President, I am sure that all of my Senate and House colleagues and their staffs who have worked with Fitz on transportation issues have the same high regard for him that I do. I wish him and his family the best in the years ahead. He will be missed.●

SUPPORTING GIRL SCOUT "FIGHT DRUGS" INITIATIVE

● Ms. MIKULSKI. Mr. President, as a former Girl Scout I'm delighted to be a supporter of the Girl Scouts of the U.S.A. in their fight to stamp out drug use among our Nation's young people. The Girl Scouts "Fight Drugs" initiative focuses on mobilizing Girl Scouts ages 5 to 8 to take the lead among their peers in the war against drugs. With more than 3 million members, the Girl Scouts is the world's largest voluntary organization for girls. With a commitment to form a learning network by sharing what they have learned about the dangers of drug use with neighbors, schoolmates and family members, I believe the Girl Scouts have established a great way to reach our communities.

I want to thank and commend Ms. Betty F. Pilsbury, the national president of the Girl Scouts of the U.S.A., who served as a 1988 Presidential appointee to the White House Conference for a Drug Free America, for starting this initiative. The "Fight Drugs" program has lead many Girl Scout councils to successfully implement drug education projects in their hometowns.

I am proud and excited to know that the spirit of volunteerism, and community service is still a viable and effective approach that citizens can use to join in and make a difference, to make their communities a better place to live, and to raise their children. I believe every time we get a kid to just say no to drugs, we say yes to America's future. The Girls Scouts have said yes to Americas future. As I told the Girl Scouts at a luncheon meeting last week, "if the Girl Scout promise and the Girl Scout law were good enough for me as a Girl Scout, then they are good enough for me as a U.S. Senator."●

THE WOMEN'S BUSINESS OWNERSHIP ACT OF 1988

● Ms. MIKULSKI. Mr. President, I want to thank the chairman of the Small Business Committee, Senator BUMPERS, for joining me in pushing for speedy consideration of the Women's Business Ownership Act, H.R. 5050. This measure is intended to knock down some of the roadblocks for the fastest growing sector of the American business community: women-owned businesses.

I also want to congratulate the chairman of the House Small Business Committee, Congressman JOHN LAFALCE, for his work in developing H.R. 5050, which was the inspiration for the original women's business ownership bill (S. 2735) that I introduced in the Senate on August 11, 1988.

Frankly, Mr. President, I was prepared for a more lengthy and involved legislative route for my bill. But when Senator BUMPERS has a chance to study this legislation, he saw its merits, and decided it was worthy of immediate consideration. Again, I applaud him and thank him for his vision.

The House Small Business Committee conducted six hearings earlier this year on the issue of women in business, and those hearings demonstrated that the business community still has several barriers to women business owners.

Although women entrepreneurs are building successful and healthy businesses, they are not doing it with the help of the present system. They are doing it in spite of the system.

One of the major obstacles to female entrepreneurship is the lack of management training and technical assistance. This nation has a growing nucleus of female MBA's, but graduate buisness schools produce people oriented to corporate life. They do not train anyone—male or female—for the unique demands of setting up a business on your own.

H.R. 5050, as amended, will set up a limited, $10 million program to finance demonstration projects that give that type of training and assistance.

Women business owners also run into problems when it comes to business loans. The Equal Credit Opportunity Act of 1974 outlaws sex discrimination as far as personal loans are concerned; but it doesn't cover business loans. We think that bears investigation, and H.R. 5050 gives the Federal Reserve Board the authority to look into the possibility of classifying business loans that might be covered by the ECOA provisions.

In focusing on the plight of women in business, we're constrained by the lack of pertinent statistics. So H.R. 5050 lists several ways in which data compiled by the Federal Government will be improved.

And last, the hearings brought to light one key fact: we are just in the initial stages of grappling with this problem. We are flying in the dark with few navigational aids.

So this measure establishes a National Women's Business Council. The council will bring together high-level policymakers and successful business people, who will then put together a multiyear plan of attack. That plan will recommend both legislative and structural changes, and will be presented by the end of 1989. There is also a sunset provision that disbands the Council after five years.

One final observation. Testimony at the House hearings also showed that women now own around 30 percent of all American businesses. But those businesses have only 1 percent of Federal contracts. H.R. 5050 and my companion bill, S. 2735, encouraged Federal agencies to rectify that situation. We have removed the procurement assistance provisions from the revised bill, but the disparity in Federal contracting still needs to be explored. I intend to devote attention to this matter in the upcoming 101st Congress.

Mr. President, this legislation received almost unanimous support in the House of Representatives. It has been endorsed by the National Federation of Independent Business and other groups representing the small business community and women entrepreneurs. I congratulate my colleagues for giving it their endorsement.●

THE RETIREMENT OF LT. GEN. LEONARD PERROOTS

● Mr. BOREN. Mr. President, As chairman of the Senate Select Committee on Intelligence, I have come to know and respect one of the truly outstanding leaders in the U.S. intelligence community and, particularly, a leader in the field of military intelligence. I rise to pay tribute to the Director of Defense Intelligence Agency, Lt. Gen. Leonard H. Perroots, U.S. Air Force, who is retiring in December 1988 after a 34-year career of most distinguished service to this Nation.

The lessons of history, the experiences of the 1980's and the changes we see on the horizon ahead all underscore the vitally important contributions that intelligence can and must make to the security and well-being of the United States. When we speak of intelligence, we are speaking first and foremost of the men and women serving in our intelligence community. General Perroots throughout his career, from his first service as a squadron intelligence officer up through the intelligence ranks at the Tactical Air Command, U.S. Air Force in Europe, Air Force Assistant Chief of Staff for Intelligence and Director, Defense Intelligence Agency stands as the finest example of a truly outstanding military intelligence professional.

During the years General Perroots has served as Director, DIA's responsibilities have significantly expanded and become more critical to the success of the President, other senior policymakers and both to the national level here in Washington and to the operational commanders in the field. Under General Perroots' leadership DIA has grown in stature. I speak for my colleagues on the Senate Select Committee on Intelligence when I praise the magnitude of General Perroots' support and DIA's support to the committee, the timeliness of that support and its professional objectivity. I can think of no better example than the contributions the Defense Intelligence Agency made and that General Perroots made personally over months and months during our committee's involvement in the Intermediate Nuclear Forces [INF] Treaty ratification process.

It is indeed an honor and a privilege to pay tribute to this distinguished military officer who has set the highest standards for military intelligence and who has brought tremendous credit to himself, the Air Force, and the Nation. We extend our thanks to Gen. Lenny Perroots and offer every best wish for future success.●

HOLOCAUST MEMORIAL MUSEUM

● Mr. MURKOWSKI. Mr. President, last Wednesday an historic dedication ceremony took place, marking the laying of the cornerstone of the U.S. Holocaust Memorial Museum.

The Holocaust Museum has a twofold purpose. It is being built in rememberance of those who died at the hands of the Nazis during World War II and it is designed to educate future generations so that this type of tragedy will never happen again.

Last week's ceremony was indeed moving—particularly the keynote address delivered by President Reagan. As a member of the U.S. Holocaust Memorial Council, which is charged with building the museum, I would like to share this moving speech with my colleagues and would ask that President Reagan's remarks at the cornerstone-laying ceremony for the Holocaust Memorial Museum be inserted in the RECORD at this point.

The remarks follow:

REMARKS BY THE PRESIDENT AT CORNERSTONE-LAYING CEREMONY FOR HOLOCAUST MEMORIAL MUSEUM

The PRESIDENT. Thank you very much. Ladies and gentlemen, good morning. We gather here today, as we have been so eloquently told, here for a solemn, profound, saddening, and yet triumphant occasion. It's an occasion that commemorates all we have lost, the irreplaceable humanity whose monstrous end will ever testify to the hellish depths of human evil.

But it's an occasion that commemorates something else as well. It commemorates the seriousness of our intention—as human beings, as Americans, and, in the case of many here today, as Jews—to keep the memory of the six million fresh and enduring.

We who did not go their way owe them this: We must make sure that their deaths have posthumous meaning. We must make sure that from now until the end of days all humankind stares this evil in the face, that all humankind knows what this evil looks like and how it came to be. And when we truly know it for what it was, then and only then can we be sure that it will never come again.

Some people say evil of this degree is incomprehensible. They say we will never understand it. Some people even say that the word "evil" is insufficient to describe the Holocaust—and instead they use terms like mad, crazy, insane. I think they are wrong. What we saw there, at Treblinka and Belsen and Auschwitz and Dachau, was the image of the inferno. That may have been the ultimate purpose of those who made the Holocaust—a grotesque effort to hurl the Earth into the very pit of the serpent.

I believe the Holocaust is comprehensible. Indeed, we must comprehend it. We have no choice; the future of mankind depends upon it. And that's what we are here for—to lay the cornerstone for the United States Holocaust Memorial Museum, which will help us understand and make it impossible for us to forget.

The Holocaust Memorial Council is committed to this purpose. It is composed of Republicans and Democrats and Independents who understand that partisanship has no place here. There are Jews who serve on it, and Catholics, and Protestants, who understand that religious divisions have no place here. It is composed of those who came through the flames of the Holocaust and those who did not, for we've required no rules for membership except an unyielding commitment to our mission to keep the memory alive.

To fulfill that mission, the museum will study the history of the Holocaust, provide an invaluable resource for researchers, and bring together in one place the greatest array of information and knowledge on this necessary subject.

It will examine the nature and meaning of the continuing curse that is anti-Semitism. I think all of us here are aware of those, even among our own countrymen, who have dedicated themselves to the disgusting task of minimizing or even denying the truth of the Holocaust. This act of intellectual genocide must not go unchallenged, and those who advance these views must be held up to the scorn and wrath of all good and thinking people in this nation and across the world.

And yet just as we must challenge it here at home, so too we must challenge anti-Semitism abroad. We know that in certain nations, an infamous and fraudulent document called "The Protocols of the Elders of Zion" is still being distributed and in some cases taught in school. This, the most profoundly cynical piece of anti-Semitic filth ever produced is full of libels toward the Jewish people, particularly the horrifying "blood libel." We must send the message out to all the world—a blood libel against the Jewish people is a blood libel against all humankind, and no decent person will stand for it. (Applause.)

We know that the United Nations, whose peacekeepers were honored only last week for their service to the world, has yet to repeal its infamous resolution equating Zionism and racism. We know where such intellectual infamy can lead. The world has learned that when the truth is turned on its head, holocausts become possible.

And there are the subtler forms of anti-Semitism. There is the anti-Semitism that seeks to deny Jews their independent identity. In these days of glasnost, we hear talk about liberalizing attitudes toward Judaism in the Soviet Union. But it is still true that a Jew must have courage to rise and say with pride, "Yes, I am a Jew, I wish to study Hebrew, and I wish to emigrate to the homeland of my people." Those who speak those words know what follows them—the despair of waiting for permission to do that which is a basic human right—to go where they will when they choose.

There are still tens of thousands—maybe even hundreds of thousands—of Soviet Jews who wait to leave the Soviet Union so that they may live free as Jews. And here, as we lay this cornerstone and vow that the Jewish people will never stand alone against tyranny, I want to ask the Soviet leaders a question. Where are those exit visas? Where are they? (Applause.)

And you and I and all Americans of good will are united in the challenge I propose to the Soviet leaders today. I say, let these people go. (Applause.)

The Jews of silence, Elie Wiesel called them two decades ago, but they're silent no more. They are obeying what the great theologian, Emil Fackenheim, called the 614th Commandment, the Commandment of Auschwitz. And that commandment is this: "Let there be Jews." That commandment is dear to the hearts of all. The Jewish people were on this Earth at the time of the pyramids. Those structures are still standing, and the Jews are still here. We must make sure that when the tall towers of our greatest cities have crumbled to dust in the turnings of time, the Jewish people will still be on this Earth—(applause)—to cast their blessings and remind all of us that this world and the people who live upon it have a history and, yes, even a destiny.

This week we celebrate one of the worst anniversaries of this century. Last Friday, 50 years ago, the European nations met in Munich and accommodated the expansionist designs of Adolf Hitler. Prime Minister Neville Chamberlain returned to Britain and proclaimed that he had brought "peace for our time." And 11 months later the Nazi tanks rolled into Poland and the war began. With the invasion of Poland the West awoke, may God be thanked, but at what—and the Nazis were finally defeated. But at what cost? At what cost?

Even to think about the cost makes sleep impossible. Had the West awakened to the meaning of Hitler, would those dead be with us today? Would there even be a need for this museum?

It's a question without an answer. But we must never allow ourselves to have to ask that question again. American troops who liberated the concentration camps saw things no human eyes should ever see. But if we in America remain strong—if we hold fast and true to the conviction that, yes, there are things worth fighting for, there are things worth dying for, and we will heed the call if we must—humans will never suffer so, nor will others be called upon to save them from such suffering.

Before I go, I'd like to tell those of you who do not know it already about a song that was sung in the camps. It was a Yiddish song, and like many of the camp ballads, it was not about the hunger and the torture and the dying, but about the coming of the Messiah. "What will happen," the song asks, "when the Messiah comes?" And the answer is: "When the Messiah comes, we'll have a banquet."

And the banquet the song describes is no ordinary repast. For at that Messianic banquet, the guests will eat of the creature called the Leviathan, and will drink the finest and sweetest wines. And they will sit and watch while Miriam the prophetess dances for their entertainment. And then they will sit and listen as King David plays songs for them on his harp. And they will sit and listen to a lecture given by the wisest of men, King Solomon. And they will sit and study the Torah with Moses.

I hope you will forgive me if I say that I believe those who perished in the Holocaust have, after long suffering, attended that banquet. I cannot imagine our Lord would deny their request. We here will inscribe their names in human memory, and pray that God may bless us all.●

XERNONA CLAYTON

● Mr. RIEGLE. Mr. President, on October 20-23, the National Association of Media Women, an organization which promotes awareness and broader opportunities for black women in the communications industry will hold its 23d annual meeting in Detroit.

I would like to take this opportunity to pay tribute to a woman who, among other things, has served several terms as national president of this organization, Ms. Xernona Clayton. Ms. Clayton is an accomplished and respected veteran in the competitive communications industry and a committed activist in community and public service efforts.

Ms. Clayton's career spans several decades and is impressive for its depth as well as its scope. In 1967, she began her broadcast in Atlanta as the nationally acclaimed host of "The Xernona Clayton Show," the South's first black-hosted television program. She later became affiliated with the Turner Broadcasting System, where she produced documentary specials, and hosted and later produced a public affairs show. Currently, she is associate corporate vice president of urban affairs for Turner Broadcasting in Atlanta.

She also serves on the board of trustees for five national associations including the Martin Luther King, Jr. Center, the NAACP, and the Multiple Sclerosis Society. In addition she is a member of the National Issues Forum of the Jimmy Carter Presidential Library and has been a guest lecturer at Harvard's Kennedy School of Government.

Ms. Clayton is the recipient of several deserved awards, including being named as "One of the Georgia's Most Prestigious Women" (1984), Black Georgian of the Year (1984) and one of the Top Black Business and Professional Women (1985). She has also received the U.S. Air Force's Recruiting Services's American Spirit Award.

Ms. Clayton's commitment and energy extends to her community as well, particularly through her deep commitment to civil rights. Her work has opened doors and dismantled barriers which have long prevented others from achieving their full professional potential. In 1966 she coordinated the activities of Atlanta's black doctors in a project which resulted in the desegregation of all hospital facilities in Atlanta. This project served as a model for other States and eventually received a national honor from the National Medical Association.

Ms. Clayton's record of professional achievement and community service speaks for itself. She is a woman for whom excellence is not a goal, but a standard. Her example should serve as an inspiration for us all.●

RICHARD BARTON SMITH

● Mr. GORE. Mr. President, I rise to recognize Richard Barton Smith, a fellow Tennessean who has given 25 years of dedicated service to the U.S. Senate. Dick can proudly reflect on a distinguished career under eight Sergeants of Arms.

Dick is a native of the mountainous area of Oneida, TN, where he grew up and attended school. In 1963, during the time that my father, Senator Albert Gore, Sr., served in the Senate, Dick came to Washington and begun his Senate tenure at the young age of 25 as an elevator operator, and soon moved to the Senate Post Office.

In 1972, under the Sergeant of Arms, Bob Dunphy, Dick began a decade of employment in the Service Department as supervisor of the equipment division. He was promoted to deputy director of the Service Department in 1978. In 1982 Dick accepted the position of Doorkeeper of the Family and Staff Galleries.

Tennessee welcomes back Dick, his wife Vivian, and their son Richard. Dick plans to spend his retirement years in Oneida, enjoying the pleasures of doing things he loves to do, such as woodworking.

I would like to personally thank Dick for his many years of exemplary service. I urge my distinguished colleagues to join me in commending Richard Barton Smith for his dedication to the U.S. Senate.●

REFORM AND HUMAN RIGHTS IN THE SOVIET UNION AND EASTERN EUROPE

● Mr. DeCONCINI. Mr. President, during the past 2 years I have had the privilege of serving with my colleague, STENY HOYER, as Cochairman of the Commission on Security and Cooperation in Europe. As this session of the 100th Congress draws to a close, I would like to offer some reflections on current developments in the Soviet Union and Eastern Europe.

It is clear to me that historic changes are underway in these countries. In the Soviet Union, General Secretary Gorbachev has referred to his domestic policy as "a revolution without bloodshed." The phrase is apt. In his efforts to increase the U.S.S.R.'s economic productivity and output, and ensure that his country enters the next century as a superpower in all respects, Mr. Gorbachev is trying to reverse the effects of decades of centralized control. He is attempting to change the attitudes and work habits of factory workers and farmers throughout the Soviet Union, as well as those of bureaucrats in Moscow. He wants to restructure the U.S.S.R.'s basic economic and political institutions, with emphasis upon candor and popular participation at all levels.

Mr. Gorbachev's problem is to demonstrate to a skeptical Soviet work force that his approach will result in tangible improvements in Soviet living standards—meaning primarily more, and higher quality food, housing, and consumer goods. Thus far, he has been unable to do this. In fact, living standards may have declined on a per capita basis since Gorbachev became General Secretary in March 1985.

Initiating political change is evidently easier than economic reform. The General Secretary has announced a major shift of power from the party to the legislature, which is to undergo total reorganization next spring. We have just witnessed dramatic changes in the central party apparatus, with a younger Politburo and Secretariat and a streamlined Central Committee apparatus resulting from the suddenly-convened Central Committee plenum of September 30. And at the Supreme Soviet meeting on the next day, Gorbachev replaced Andrei Gromyko as the U.S.S.R.'s Chief of State.

But just how and when these political changes will impact upon economic reform remains to be seen. Meanwhile, the General Secretary and his supporters must contend with assertive nationalism in Azerbaidzhan, Armenia and the Baltic republics.

As with Gorbachev's domestic policy, his foreign policy thus far has emphasized words rather than deeds. Termed "new political thinking," his declared approach focuses upon common global themes rather than global class struggle. Soviet decisions to withdraw from Afghanistan, to cooperate in seeking a solution to southern African problems and to ratify and effectively verify the INF Treaty offer hope that Soviet international behavior will begin to match the General Secretary's words.

Similarly, we have seen an encouraging evolution in some aspects of Soviet human rights performance, although the situation is far from satisfactory. Emigration figures are up for Soviet Jews, Armenians, and ethnic Germans. A number of prisoners of conscience have been released. The number of bilateral hardship cases has been reduced. Mr. Gorbachev's policies of glasnost and democratization have given unofficial groups and human rights activists new latitude to express their concerns.

In Eastern Europe, the situation and prospects are unclear, as could have been expected from this extremely complex part of the world. Yet what happens in Eastern Europe could play a key role in determining the fate of reform in the Soviet Union. At present, there appear to be grounds for optimism.

The view that East European countries could be casually lumped together with the U.S.S.R. as a monolithic bloc of dictatorships is no longer valid. Though a monopoly of power by Communist parties and centrally planned economies are still characteristic of the region, there are important differences, both objective and subjective, among these countries as well as between them and the Soviet Union.

Objectively, for example, though market-oriented economic reform is clearly necessary in all these states, the urgency is greater in some—(for example Poland)—than in others—(for example the German Democratic Republic). On the subjective plane, whatever Mikhail Gorbachev's opinions may be, the East European leaders have their own priorities, concerns and perspectives on the need for radical change. They have responded very differently to local demands for reform—which vary widely in intensity and effectiveness from country to country—and to the challenge of Gorbachev's program of perestroika.

As a result, political and economic reform has reached different stages in the various countries of the region. At the bottom end of the spectrum is undoubtedly Romania which, correspondingly, has the worst human rights record. Bulgaria, Czechoslovakia and the German Democratic Republic have not followed Romania in totally abjuring reform but have done little to implement it, apart from adopting some of its rhetoric. People do not live in the same climate of fear as do the unfortunate Romanians, but the level of respect for human rights in these countries leaves a great deal to be desired. Most advanced in terms of political and economic reform are Poland and Hungary, where the overall human rights situation, though still far from fully satisfactory, has also greatly improved over the years.

Despite these differences, the general trend in the region offers hope of positive change. Even in those countries where economic reform has not yet made much headway, there is a growing recognition that only basic economic restructuring may avert further decline relative to the West, Japan and the rapidly developing states of Asia. There is also, especially in Poland, Hungary and Czechoslovakia, an active opposition movement. Finally, the reformist Soviet General Secretary has signalled to East European leaders and peoples that Moscow is more willing than before to permit experimentation with political and economic change. In sum, pressures are building that will probably impel party leaderships to eventually loosen their grip on individual and group activities, even if such developments must await generational turnover at the top.

Two events are worth noting, as this session of the 100th Congress concludes: First, the Polish Communist Party is at last preparing to hold talks with Solidarity. We hope that these roundtable negotiations will lead to the institutionalization of opposition activity and societal influence on policymaking. Second, the man though to be responsible for formulating and implementing the Kremlin's more liberal policies toward Eastern Europe, Vadim Medvedev, has just become a member of the Soviet Politburo and holds the very important portfolio of ideology.

Both of these are hoepful signs in a period of transition. But we should always remember that our clearest landmarks in this uncharted wilderness are human rights. We will be better able to assess the meaning and significance of changes in the Soviet Union and Eastern Europe by monitoring their compliance with the Helsinki Final Act. And the best way for us to promote reform in all the Warsaw Pact countries is to maintain our emphasis on human rights and to insist on their implementation of freely accepted obligations under the Helsinki Final Act.

Later this year the Commission on Security and Cooperation in Europe will make its first official trip to the Soviet Union to meet with Supreme Soviet delegates to discuss human rights matters. This Soviet initiative to establish a parliamentary human rights mechanism between our two countries is in itself an encouraging development that we hope will, in time, contribute significantly to the advancement of our humanitarian concerns.●

RETIREMENT OF RICHARD BARTON SMITH

● Mr. SASSER. Mr. President, I rise with great pride today to honor a man who has served this body with distinction for 25 years. A native Tennessean, Scott County to be exact, Richard Barton Smith has worked long and hard in fulfilling his tasks in the U.S. Senate. Indeed, he has performed with extreme dedication to the Senate and to the State of Tennessee.

Dick Smith came to Washington in 1963 at the age of 25. He began his Senate career as an elevator operator after having been appointed by Senator Albert Gore, Sr. Shortly thereafter, he moved to the Senate post office, still under the appointment of the distinguished former Senator from Tennessee.

In 1972, Dick was hired by the Sergeant at Arms, Bob Dunphy, to be supervisor of the Equipment Division of the Senate's Service Department. He became Deputy Director of the Service Department in 1978. In the 10 years he spent in this department, his work was exemplary.

In 1982, Mr. President, I had the great pleasure to secure Dick's appointment at the Family and Staff Galleries in the Senate. In the last 6 years, while in this post, Dick has continued to be a credit to the Senate, the State of Tennessee and to me.

In all, Dick served under eight Sergeants at Arms during his 25 years in the Senate. He will be missed, but he leaves an example, of hard work and dedicated service that will live on as a model for the rest of us.

Mr. President, Dick is now returning to Tennessee, with his wife, Vivian, and his son, Richard, to live in the town of Oneida. There he tells me he plans to devote himself to the things that he has always wanted to do—going fishing with his son and spending more time on his hobby of woodworking. I understand he has brought a tractor and plans to have the best garden in Scott County. I wish him great luck and again express my thanks for his devoted service. I yield the floor.●

HABITAT FOR HUMANITY

● Mr. SASSER. Mr. President, I rise this morning to call the Senate's attention to a very vital and worthy housing program—Habitat for Humanity. Habitat is an ecumenical Christian housing ministry. Its objective is to eliminate poverty housing and to make decent shelter a matter of conscience.

Mr. President, that is a very grand and noble objective. I am pleased to report that Habitat is making progress toward meeting that goal.

As we all know, America is facing a housing crisis. In particular, homelessness is becoming both a national epidemic and a national disgrace. According to the National Academy of Sciences, on any given night in the United States there are 100,000 children sleeping on the streets. And these are not runaways, these are families on the streets. Indeed, one-fifth of the homeless population are families and one-fifth is employed.

Mr. President, this dramatic increase in the number of homeless people is a direct result of the lack of affordable housing in America today.

Habitat for Humanity is one of the very best organizations in operation today that is fighting for affordable housing. In Tennessee and elsewhere, Habitat for Humanity has been instrumental in providing home ownership for low-income families. Indeed, there are over 200 affiliated projects in United States and Canadian cities and over 40 sponsored projects in 18 developing countries.

In Tennessee, Habitat has already built 50 homes, has another 18 presently under construction and has renovated 147 more.

Habitat organizes volunteers to build livable houses for low-income families at prices they can afford. Materials and labor are donated. And no-interest, no-profit loans are arranged.

Importantly, the low-income family is given the opportunity of home ownership, one of the cornerstones of American family life.

Mr. President, I wholeheartedly and enthusiastically endorse the efforts of Habitat for Humanity. This organization is making a monumental contribution in the fight for affordable housing. I yield the floor.●

THE 75TH ANNIVERSARY OF THE ROCKEFELLER FOUNDATION

● Mr. MOYNIHAN. Mr. President, on September 13, 1988, a gathering at the New York Public Library, one of the world's great research institutions, marked the occasion of the 75th anniversary of another remarkable institution—the Rockefeller Foundation. This occasion is most deserving of special note.

Established in 1913 by John D. Rockefeller, who, even before making his fortune in petroleum, understood the importance of sharing the blessings of life, the Rockefeller Foundation has been of invaluable public service to the people of this Nation, and indeed, to mankind. The spirit of philanthropy created by John D. Rockefeller's initial endowment of $35 million in Standard Oil stock certificates to the Rockefeller Foundation to "promote the well-being of mankind throughout the world" soon became the standard of comparison for all the foundations that followed.

The foundation is a unique combination of programs designed to meet human needs, heighten cultural awareness and increase international cooperation. A review of its history reveals support for a range of health, science, and education initiatives. Over the course of the last seven and one-half decades, the $1.8 billion disbursed to thousands of grantees worldwide has helped millions to overcome disease, famine, poverty, and the effects of war.

Notable successes abound. Such deadly killers as yellow fever, malaria, and hookworm were largely defeated, if not eliminated. Cooperative agricultural programs established in Asia, and throughout Central and South America enabled participating nations to develop more stable economies and feed their people. Fellowship programs in international studies, the humanities, social and natural sciences greatly expanded research opportunities and knowledge in these important areas of study. Ongoing support for public health training, education and research here in the United States, as well as abroad, helped to lay the foundation for modern medicine. Over 100 scholars and scientists supported by foundation funding have been awarded Nobel Prizes.

Rockefeller Foundation grants, large and small, have touched the lives of people all across this Nation, and will surely have a lasting effect on American higher learning and culture. Among the programs and projects from all over the country supported by foundation awards: the North Carolina Dance Theatre; the Boston Symphony Orchestra's Berkshire Music Center; academic development at Tuskegee Institute; a consortium of university presses organized to translate into English the works of Latin American writers; Karamu Playhouse in Cleveland; computer design and construction at the Massachusetts Institute of Technology; studies of the Southwest conducted by the Texas State Historical Association; research at the University of Virginia for Dumas Malone's monumental biography of Thomas Jefferson; a theatre building at the University of Iowa; the Office of Population Research at Princeton University; the NAACP Legal Defense and Education Fund; productions of Shakespeare's plays produced by traveling companies in the State of Washington; an interdisciplinary graduate program in women's studies at Sarah Lawrence College; pioneering collaborative research in biology and chemistry at the California Institute of Technology; and a University of Wisconsin study of the State's development. And these are just to name a few!

At the celebration of the foundation's 75th anniversary, David Rockefeller, grandson of John D. Rockefeller, toasted the foundation's ideals and its accomplishments; and the new foundation president, Peter C. Goldmark, Jr., looked forward to the next century.

Through most of the years of the foundation's existence, members of each generation of the Rockefeller family have been involved: John D. Rockefeller, Jr., served as chairman of the board of trustees of the foundation from 1917 to 1940; John D. Rockefeller III, from 1952 to 1971 and John D. Rockefeller IV (now the distinguished Senator from West Virginia) as a trustee from 1968 to 1977 and from 1978 to 1981.

Mr. President, I should like at this point in the Record to include the text of the remarks offered by David Rockefeller and Peter C. Goldmark, Jr. at the Rockefeller Foundation's 75 anniversary celebration, held on September 13, 1988, at the New York Public Library.

The remarks follow:

TOAST BY DAVID ROCKEFELLER TO THE ROCKEFELLER FOUNDATION ON THE OCCASION OF ITS 75TH ANNIVERSARY

THE FIRST CHARITABLE TRUST

75 years ago at the age of 74, my grandfather, John D. Rockefeller, gave $35 million in Standard Oil stock certificates that provided the initial endowment for the Rockefeller foundation and enabled it to pursue its stated purpose: "To promote the well-being of mankind throughout the world." This act brought into being an entirely new kind of organization, the charitable trust, which was virtually unknown at the time. Its only significant precursors were the Russell Sage Foundation and the Carnegie Corporation and his own earlier efforts at modern philanthropy. Nothing else like them had ever existed before.

Even at the time of the creation of the Rockefeller Foundation, however, the idea of charitable giving was hardly new to my grandfather. As a child his mother had instructed him in his religious duty to give 10% of his income to charity. The famous "Ledger A", now held at the Rockefeller Archive Center, bears witness to the thoroughness of his training. As a teenager, earning only a few dollars a week as a clerk in a commission merchant's business, he gave generously and regularly.

GUIDING PRINCIPLES

His later success as the creator of the American petroleum industry—which was, in many ways, at the heart of this nation's rapid industrial expansion based on cheap energy—never caused him to forget his early training. Instead, as his ability to give increased, he simply increased his giving, often exceeding the biblical injunction to tithe by a significant amount. But, my grandfather also believed strongly that there had to be more to philanthropy than simply giving money. And, to this end, he applied to this field the same principles that he had learned in business—the need to organize carefully and to surround oneself with exceedingly able people. These principles helped to transform charity into modern, systematic, philanthropy. And here, one name stands out above all the rest—Dr. Frederick T. Gates.

PIONEERING ENDEAVORS

By 1913, Grandfather had already established a number of impressive institutions: He had worked with William Rainey Harper to found the University of Chicago. He had created the Rockefeller Institute with Drs. Robert H. Welch and Simon Flexner. He had established the General Education Board with Wallace Buttrick and Wickliffe Rose. Each of these institutions were pioneering endeavors and each made impressive contributions. Most of them continue to play an influential role in our society to this day.

A RELISH FOR LIFE

On a more personal note, I think that perhaps I may be the only one here tonight who knew John D. Rockefeller over a period of years with any degree of intimacy. It is true, of course, that Grandfather represented very different things to different people. At the time he created the Foundation, he was being pilloried in the press and was hated by many who decried his successful, but sometimes ruthless tactics, in creating Standard Oil. On the other hand, I knew him during the last 21 years of his life as a tender and loving grandfather who relished life, enjoyed meeting people and encouraged his grandchildren to visit him. He had an endearing, if rather simple, sense of humor and adopted the rather practice of giving dimes as a means of establishing contact with people he would otherwise not have had a chance to meet.

A LEGACY OF ENDURING VALUE

This evening we happily celebrate the first 75 years of the Rockefeller Foundation—75 years of pioneering in modern philanthropy—years of impressive and enduring achievement. My father, John D. Rockefeller, and my oldest brother, John D. Rockefeller 3rd, who served as Chairmen for much of this time, helped to build a legacy of enduring value.

The Foundation has been exceptional in many ways, but certain of its characteristics seem particularly notable to me. First, from the beginning it had a global perspective. Second, it has always been concerned with fundamental issues affecting all of mankind, public health, hunger and the intricate problems of food production, and the insistent and pernicious problem of world population growth. Finally, the Foundation has always recognized that superior achievement in whatever field depends on the nurturing of superior people. Foundation Fellows, drawn from all corners of the world, are still remembered and are still making an important contribution.

CHALLENGES AND OPPORTUNITIES

The challenges and opportunities facing the world today are very different from those of 75 years ago. What has not changed is the need for vision, leadership and a willingness to take risks. There is every reason to believe that those most recently selected to chart its course into the future possess precisely those essential qualities. I am confident that in continuing to carry out the Founder's charge "to promote the well-being of mankind", the new leadership will take into account both the lessons of the past and the imperative to create a "new" philanthropy that reflects the stark realities of poverty, hunger, and accelerating technological change in the world today. In so doing may the Foundation find ways to cooperate with like-minded public and private groups throughout the world so as to leverage its resources and create the effective partnerships needed to produce the sustainable economic growth required to address the staggering problems before us.

With these thoughts in mind, I suggest that we rise and drink a toast to the creativity of the man who brought the Rockefeller Foundation into being, to the dedication and effective leadership of those who managed its affairs so well over the last 75 years, and to those who will guide the Foundation towards a bright and equally productive future.

REMARKS OF PETER C. GOLDMARK, JR., ON THE OCCASION OF THE ROCKEFELLER FOUNDATION'S 75TH ANNIVERSARY

A VERY GOOD YEAR

As the song says, it was a very good year. 1913 was, in fact, a hell of a year.

Some fundamental features of our landscape made their appearance: the assembly line at Ford Motor Company; the income tax; the Federal Reserve System.

Some new products: Camel cigarettes, Brillo, Lifesavers. And the first Indian head/buffalo nickel.

And 1913 saw the opening of Grand Central Station—one of two great New York landmarks which shared 1913 as their birth year with the Rockefeller Foundation. Can you remember what the other one was?

In March, 1913, 5,000 women marched down Pennsylvania Avenue in Washington DC for the right to vote. Crowds of men lined the route and hit them, spit on them, and burned them with lighted cigars.

1913 also saw the appearance in this country of an institution with which more of you in this room come in contact more often than any other I have mentioned tonight—and one which has had zero impact on the course of history: the crossword puzzle.

Are some of you still puzzling over the other great New York landmark that was born in 1913 along with Grand Central Station and the Rockefeller Foundation? It is gone now, that's why you are having trouble thinking of it.

It was a great one—as close to the heart and the spirit of this wonderful city as any will ever be: Ebbets Field. And in the outfield of the team that played in Ebbets Field for the first time that year was a man who, so far as I know, was never considered for membership on the Rockefeller Foundation's Board of Trustees, although he had one of the greatest minds of his time: Charles Casey Stengel.

THE AMERICAN FOUNDATION

The American Foundation is a curious beast. It is as out of place as a meteor crater in the middle of the Great Plains, as distinctive as a coelacanth at the bottom of the Indian Ocean. A foundation is defined not by what it does, whom it serves, or what it builds, but by what it chooses to be.

A foundation must engage in a most bizarre alchemy. It must start with a material which is totally inert, totally dead—money. And it must turn it into something: A building, an education, a program, an institute, a hope. It must turn the inert money into something. That is the philanthropic imperative; that is its trust.

We salute this evening the Rockefeller Foundation—and organization which has engaged in that curious alchemy for 75 years. The salute comes this evening from those who have benefitted from that alchemy; those who have witnessed the movements, changes and achievements it has fueled; those who have managed it; and by all of us who worrry a little about where we on this planet may find ourselves in the years ahead.

TWO VIEWS OF THE WORLD

How we view that planet—that world—is important. For many of us that view is changing.

Let me tell you a wonderful story of how two different people viewed the world.

Bertrand Russell, the British philosopher, was once giving a public lecture on astronomy (not astrology, astronomy). He explained how the moon was revolving around the earth, how the earth was revolving around the sun, how the sun was racing through our galaxy, how our galaxy was spinning amoung the other galaxies—it was exciting stuff.

At the end, a little old lady in the back of the room stood up and said, "Russell, what you've told us is interesting but it's absolute rubbish! Everyone knows that the world is a flat plane supported on the back of a giant tortoise."

Russell paused, smiled a slightly superior smile, and asked, "And then, madam, on what does the tortoise stand?"

The little old lady shot back, "You're clever young man, very clever, but it's turtles all the way down!"

THE YEARS AHEAD: A VERY LONG WAY TO GO

Our view of the world will continue to change in the years ahead. I believe the years ahead will try us and our children beyond our most troubled apprehensions.

How can I make real for you how far we have to go?

Come with me to a hospital in one of our large cities.

A nurse holds a tiny baby in front of us. The baby is in a closed container. It has needles and tubes sticking out all over it. Millions of dollars of research went into the techniques which keep this baby alive.

Hundreds of thousands of dollars were poured into the education of the medical personnel who treat her.

Tens of millions were invested in the equipment and facilities of the hospital.

Look again at the child.

She is very small, unnaturally small; she was born three months early.

She is the child of a 15-year-old mother.

The baby is addicted to cocaine.

How much and how well have we invested in that baby's past—or future?

We have a very long way to go. We have much to do here—at home, in our own country. We will not forget that. We will choose to be defined in part by our willingness to address the toughest problems here at home.

How can we make real for ourselves how much has changed in the world as a whole?

FUNDAMENTAL CHANGES IN HUMAN CAPACITY

Within the lifespan of most of the people in this room four fundamental changes in human capacity have taken place. Any single one of them taken alone would have been momentous enough, in prior history, to have an age or an era named after it. But in your and my lifetime, as Jean Mayer points out, there have been four:

We have developed the capacity to manipulate volumes of information undreamt of in human history. Billions and trillions of pieces of information can be gathered, read, scanned and recombined in fractions of a second.

We are developing the capacity to manipulate genetic structures—becoming, for better or worse, the master of evolution rather than its subject.

We have jumped into nuclear age where men's ability to loose destruction upon one another has escalated beyond anything imagined by the warriors and rulers of the past.

And, of course, we have at last realized one of the very oldest of human aspirations, a dream which has existed for as long as man has written and sung about himself: we have learned to escape the gravity of the earth.

THREE ULTIMATA

With these changes and the historical period they both triggered and epitomize, humankind as a species—as a race—now faces for the first time three ultimata.

The first is that we must develop institutions and patterns of cooperation which will allow us to avoid blowing ourselves up.

The inherent problem here—controlling access to and use of superordinate destructiveness—is essentially with us for good now. And it will not for long be limited to nuclear weapons. But the probelm of possession and proliferation of nuclear weapons is immediate and formidable.

Second, we must understand and reverse the destruction we are wreaking upon the biosphere. The place where life on this planet occurs is a very fragile, very oddly-shaped space. It is an extremely thin layer about 20 miles deep—10-15 mi. above sea level, and 5 mi. below. It is in fact a very thin film wrapped around the earth. If the thickness of this film—15-20 mi.—were traced on a schoolroom globe, it would appear as a thin pencil line. We do not know what we are doing to this biofilm—its composition, its temperature, its hydro- and atmo-dynamics. But there is little reason to think that what we are doing is good.

Wallace S. Broecker, a geochemist at Columbia, puts it this way: "The inhabitants of planet earth are quietly conducting a gigantic environmental experiment. So vast and so sweeping will be the consequences that, were it brought before any responsible council for approval, it would be firmly rejected. Yet it goes on with little interference from any jurisdiction or nation."

The third ultimatum is to find a balance among food production, family size and wealth. This goal was once considered optional—worthy, desirable, ethical, and certainly smart foreign policy for the richer nations, but nevertheless in the final analysis, discretionary.

Now it is a required goal. It is required to minimize warfare, because warfare has become increasingly dangerous. It is required to preserve the biofilm. Most fundamentally, it is required to provide realistic hope for progress and sufficiency as the only conceivable incentive for people to cooperate, to sacrifice, and to modify traditions in the ways that will be necessary. The haves must understand this if they are to save some of what they have. The have nots must realistically expect that they can get a fair share of what they do not have.

COMMON VALUES

This is the job we have to tacke. All of us. Not just foundations. Not just Americans. All of us . . . all of us on the globe. And we will have to do it within a unitary global context. It will have to be conceived and seen through a single prism: that of one world with one future. Action will have to meet one test: does it help build a regime of transnational cooperation, And institutions will have to reflect a common set of values: tolerance, diversity, non-destructiveness.

Who are we that sit here tonight and talk of these things? Of ultimate? Of global values? Of forces and threats which will shape or lives? Of cooperation with people we do not know and may never meet, With some we have been conditioned to hate, Who are we?

We are not representative of the world's 5 billion people. We—and a few like us around the globe—are fortunate to a degree practically unimaginable to the other 5 billion.

A LARGE DEGREE OF CHOICE

But the most valuable thing we have in our lives—more valuable than our education, our economic self-sufficiency, our relative ease—the most valuable and astonishing thing we have is choice. It is our good fortune to have a large degree of choice in our lives—choice in what we eat, what we do, where we go; choice in what we learn, how we spend our resources; choice in what we hope, what we dream, what we dare.

In a very real sense what we honor here tonight is the choice exercised by one individual of extraordinary talent and wealth 75 years ago—an individual who in that act drew upon the better part of himself.

We honor this foundation and all foundations as places where choice can be exercised for the good.

And we, too, call upon the better parts of ourselves—the only parts which can take us successfully through the next difficult period which it is our task and our lot to cross.

ANOTHER GENERATION

The foundation we salute tonight, like so many other institutions in this country, lies now in the hands of an American generation which three times challenged the generation before them.

When this generation acted outside the then law of the land on behalf of civil rights, they were told "no"—that is too dangerous, you are going too fast.

When they questioned the war in Vietnam, they were told "no"—that is wrong, unpatriotic and divisive.

When they challenged the destruction of the environment, they were told "no"—you are exaggerating, and you will jeopardize economic progress.

And there were others of the same generation or spirit in other cities, other streets, other lands. There were those who followed Gandhi or Mandela, as well as those who followed Martin Luther King. There were those who questioned and challenged—in Manila, in Budapest, in Prague and in Soweto, as well as at Kent State.

Why recall this tonight?

To remind ourselves to listen with care and with moral imagination lest we say "no" to the dreams of another generation or shut the voice of another part of the world.

To pledge to each other on this anniversary that we carry forward the work of this foundation not to celebrate what already exists, but to essay what is required for the future.

AIM HIGH, DARE GREATLY, AND WORK HARD

And to remember that the most important and lasting accomplishments of this foundation and of all human institutions come when we aim high, dare greatly, and work hard. These are the true fundamentals.

Because about the rest we cannot be certain.

We may not—will not—always choose will. We will not always organize effectively. We may not, despite our best efforts, understand clearly the consequences of what we undertake.

We will have to aim high, dare greatly and work hard. To do these things, with tolerance, will be the only hope of success and the only guarantee of integrity. To find the road through immense dangers and problems we will have to find and draw upon the best in ourselves, in order to work with others and to build new institutions.

"Rien n'est possible sans les hommes, rien n'est durable sans les institutions."

Those are the words of one of the great world citizens of this century.

"Nothing is feasible without humans; nothing is durable without institutions." wrote Jean Monnet.

This year is the 100th anniversary of Jean Monnet's birth in Cognac . . . by birth in Cognac, I refer to a place in France . . . not to a modern French method of natural childbirth.

We are a species used to counting its history in centuries or millenia. A species which speaks of ages. Whose leaders—like the man who created this foundation—whose sculptors, whose architects and statesmen intended that their achievements would last hundreds or thousand of years.

Now we see that the years likely to be left us to do what we have to do are fewer than we could ever have thought. Today we live in a world where these complex ultimata must be negotiated among all of us. Tonight we understand that each decade of survival will depend in part—upon luck.

We have a past marked by recurring rivalries and awful slaughter. How shall we transcend that?

We share a history which seems to spawn senseless contention and cruel intolerance. How shall we be different?

The verse of T.S. Eliot, whose 100th anniversary we observe this year, reminds us that from the grave our feverish divisions may look less important:

These men, and those who opposed them
And those whom they opposed
Accept the constitution of silence
And are folded in a single party.

We start with the paradox which is our particular opportunity: as a race we have no choice but to start to think differently, act differently, be different; as individuals you and I have great choice in our lives. We start by exercising that choice. We start in the way that humans always start their most difficult, uncertain enterprises: by starting.

TAKING ON THE IMPOSSIBLE

Now if that doesn't do it for you . . . if that doesn't put you in a mind to take on the impossible, I offer an insight even more profound and compelling.

From one of the indisputably great minds of our century.

Remember?

The man who first appeared in the outfield at Ebbets Field in 1913, the year this foundation was established.

Later, when he became a manager . . . Casey introduced the two platoon system to baseball. He had all right-handed hitters facing left-handed pitchers and vice versa. No one had ever thought of this before.

But the sportswriters all though it would never work.

After the game on the first day he did it, the reporters gathered around Casey at the dugout.

"This'll never work—this is impossible," they said. "This won't work."

Casey looked up and said: "You know, a lot of people say these things are impossible. But in the long run, that doesn't work."●

UPDATE ON EFFORT TO IMPROVE MEDICARE'S MENTAL HEALTH BENEFIT

● Mr. INOUYE. Mr. President, I am pleased to take this opportunity to advise my colleagues of new cost data prepared by the Congressional Budget Office [CBO] that could further pave the way for Medicare beneficiaries to obtain greater access to mental health services across the country.

I should note that 22 of my distinguished colleagues, including 5 who serve on the Finance Committee, are cosponsors of S. 123, legislation I have introduced to recognize psychologists as providers of mental health services under the Medicare Program. This long-overdue legislation has received increasing support over the 100th Congress, and is complementary to the recent action taken by Congress to improve Medicare's coverage of mental health through an increase in the mental health benefit. Many members of Congress share my view that making psychologists directly available to Medicare beneficiaries is good health policy. Moreover, it addresses the fact that many mentally ill elderly will not be able to use the increased mental health benefit we have approved because they do not have access to a qualified health provider.

Last December, during the Finance Committee's deliberations on the budget reconciliation bill, a provision seeking to grant psychologists direct reimbursement under Medicare was moved forward by my distinguished colleague from West Virginia, Senator JAY ROCKEFELLER, and received bipartisan support from many other committee members for possible inclusion in the final budget package. Many of us believe that the provision could be law today if it were not for the very steep cost estimate first associated with the provision.

Since that time, Senator ROCKEFELLER and Representative WILLIAM COYNE asked the Congressional Budget Office to examine the proposal in greater detail and to prepare an up-to-date cost estimate. We now have a preliminary CBO estimate which projects that allowing patients direct access to psychologist-provided services would cost only $10 million in startup costs in fiscal year 1989, $15 million in fiscal year 1990, $20 million in fiscal year 1991, $25 million in fiscal year 1992, and $25 million in fiscal year 1993. These figures are dramatically lower than the projection offered verbally last December to the Finance Committee. What we have is a proposal that would cost an average of 0.04 percent per year of total part B expenditures over a 4-year period from 1990 through 1993. The serious unmet mental health needs of our Nation's elderly surely justify this relatively small increase in Medicare expenditures to improve the availability of mental health care.

Mental health care has dramatically changed and improved since the inception of Medicare over 20 years ago. I ask my colleagues to recognize these changes, including the very major role psychologists now play in the delivery of quality mental health treatment and join me in supporting S. 123.

● Mr. ROCKEFELLER. I rise to thank my distinguished colleague, Senator INOUYE, for sharing this very important information and updating our fellow Members on the mental health delivery system within Medicare. Senator INOUYE has been a true leader in the fight to improve mental health care and the availability of psychological services over his many years in Congress, and I am both pleased and honored to share his goals and work with him so closely.

I, too, believe that Congress should act to conform Medicare with the mental health needs of beneficiaries and current, accepted mental health policy. It was only last year that Congress modified Medicare's mental health benefit for the first time since the inception of this vital national program. With the exception of legislation passed last December authorizing Medicare reimbursement for services provided by psychologists who see patients without physician supervision in community mental health centers and rural health clinics, we have still not altered Medicare to recognize the role that providers such as psychologists play in the delivery of mental health care in our country today. In addition, and this does not pertain to Medicare alone, we need to give more serious attention to the various new, innovative, and cost-effective treatment settings that are commonly used in other public programs and in the private sector to deliver mental health care.

I am extremely pleased with the recent developments that show growing support for psychologists' inclusion in Medicare, and am especially heartened by the new cost data available from CBO. There should be no doubt in anyone's mind that this is a minimal investment that will have tremendous return in the alleviation of mental and emotional suffering of our Nation's elderly. I am strongly committed to the goal of making mental health care services more available to the disabled and elderly beneficiaries of Medicare, and believe S. 123 offers one significant solution toward improving the delivery of mental health care in this country. I ask my colleagues to review this new information and join me and the other Members of the Senate who already support this legislation to secure its passage.●

THE PHILIPPINES BASES NEGOTIATIONS

● Mr. KERRY. Mr. President, negotiations between the United States and the Philippines on the future of United States bases in that country have reached a critical stage. The success or failure of these negotiations will depend on whether or not a formula can be agreed upon whereby $100 million in United States Treasury bonds will be made available to the Philippines for each of the next 2 years.

Few would disagree that Clark Air Force Base and Subic Bay Naval Base in the Philippines are two of the most strategic military assets we have anywhere in the world.

In an Op-Ed piece which appeared in the Washington Post on September 21, 1988, Filipino Foreign Minister, Raul Manglapus, laid out very cogent arguments in support of a reasonable base compensation package.

As the Foreign Minister correctly pointed out, the major mission requirement of our bases in the Philippines is to guarantee access to the critical ocean passages between the Pacific and Indian Ocean and the protection of Japan's sea lines of communication. United States security interests from the Republic of Korea in the Far East to the Persian Gulf in the Middle East will be affected by our ability to maintain a continued presence in the Philippines.

In light of the importance of the bases to the United States, I do not believe the Government of the Philippines is taking an unreasonable position. The United States rightfully gives Israel and Egypt $5 billion a year. Pakistan, a non-United States base country, received $608 million in assistance from the United States this year alone.

As the Foreign Minister pointed out, for 33 years after the United States signed a Military Bases Agreement with the Philippines in 1947, compensation was not provided for these bases. Manglapus notes that:

> * * * when at last compensation was allowed in 1980, it was considerably less in absolute as well as relative terms than that given in other host countries, considering the much farther-ranging responsibilities assigned to the Philippine facilities in the U.S. global strategy.

Mr. President, in the aftermath of World War II, we launched the Marshall plan to rebuild Western Europe. Japan was a major beneficiary of that program as well. We believed a strong Western Europe and Japan, economically, was the best bulwark against communism we could have in the West and the East.

Yet, the Philippines suffered as much, if not more, from the ravages of World War II. They deserved then to have been the beneficiary of a Marshall plan type program, particularly in light of the relationship we had enjoyed with that country since the turn of the century. Unfortunately, we did not respond to the needs of the Philippines then. Had we done so, the Filipino people might not be facing the social and economic crisis they are today.

After years of giving support to the dictatorship of Ferdinand Marcos, the United States has a particular obligation to the Philippines to do all we can to see that democracy does not fail this time around. Marcos left the Philippines virtually bankrupt, with a foreign debt of $28 billion. He as able to do so in no small part to the support we gave him for so many years.

Thus, it is imperative that we do all we can to agree to a compensation package for the Philippines that is both fair and recognizes the true value of the bases to our strategic interests. The Filipino Government has the right to expect compensation commensurate with the worth of these bases.

I ask that the Op-Ed piece written by Raul Manglapus be printed in the RECORD.

The article follows:

BLAMING THE PHILIPPINES

(By Raul S. Manglapus)

At a moment when chances have brightened for a settlement of the various issues in the current five-year review of U.S.-Philippine military bases, Jeane Kirkpatrick's op-ed [Sept. 19] is particularly ill-timed. It also shows a lack of information.

It was the United States, not the Philippines, that suggested in 1979 that every five years there shall "be begun and completed a complete and thorough review and assessment of the agreement including its objectives, its provisions, its duration and the manner of implementation, to assure that the agreement continues to serve the mutual benefit of both parties."

I am not in Washington now "to work with Congress on the mini-Marshall Plan immediately following a stormy session with U.S. Ambassador Nicholas Platt." It was during a most cordial session of our panel talks that Ambassador Platt suggested, when he learned of my going to the U.N. General Assembly, that I come to Washington to talk to U.S. leaders about the bases.

When Secretary of State George Shultz came to Manila last June, he and I agreed that the "hard components" (cash and commodities) of the U.S.-Philippine proposals for compensation were not far apart from each other. We both agreed that both sides would explore "creative" ways of raising the compensation to the level President Aquino would find acceptable and useful if she should opt affirmatively for the continuance of our military relationship and therefore needed an impressive package with which to overcome anticipated domestic opposition.

Kirkpatrick perpetuates the condescension that the United States is in the Philippines only to protect the Philippines and therefore it is ungrateful of the Filipinos to demand better terms (even if it is the United States that originally suggested the periodic review).

U.S. experts and policy makers say otherwise. The U.S. Congressional Research Service says that "a major mission requirement for the bases is to guarantee access to the major passages between the Pacific and the Indian Ocean and protection of Japan's Sea Lines of Communication (SLOCs)."

The studies in this respect stress "American and Japanese interests in the Persian Gulf" and only "to a lesser extent" locations in Southeast Asia and the Indian Ocean. "This specifically involves protection of Japan's SLOCs to its major sources of energy and other vital raw materials: the Middle East, Indonesia, and Australia," the report continues.

Out of these requirements emerges the global significance of the bases for U.S. strategy. Secretary Shultz, after speaking of the role of the bases in Philippine defense, stressed (in a speech in July) the "large strategic involvement of the Philippines," which "is global in nature."

Assistant Secretary of State for East Asian and Pacific Affairs Gaston Sigur speaks in Senate testimony of U.S. security commitments to Korea, Japan, Thailand and important national interests in the Persian Gulf, for all of which "the geostrategic location of the Philippines is unsurpassed."

In contrast, the mission requirements for U.S. bases in other locations are relatively modest. Yet, the conditions of each of the basing agreements in these instances are far more favorable to the host countries than those in the Philippine Agreement, including questions of criminal jurisdiction over offending U.S. servicemen, ownership of improvements, status of forces and compensation.

While those host countries were paid compensation by the United States from the very inception of the military facilities, the facilities in the Philippines went without compensation for 33 years after the 1947 Military Bases Agreement was signed. And when at last compensation was allowed in 1980, it was considerably less in absolute as well as relative terms than that given other host countries, considering the much farther-ranging responsibilities assigned to the Philippine facilities in U.S. global strategy.

The compensation of $100 million in 1980 and $180 million in 1985 is even less impressive when placed beside the more than $5 billion given annually to Israel and Egypt, which host no bases but which are expected not to war on each other and to keep the peace in the Middle East—a somewhat more vague mission than the precise transoceanic and transcontinental reach of Clark and Subic.

U.S. experts have also estimated the cost of replacing Subic and Clark. When one such expert suggests that the replacement "might require four to six additional navy battle groups which would cost upwards from $60 billion" (Congressional Research Service, 1986), that is called a scientific study. But when a Filipino cites the study, it is called brinkmanship.

At the conclusion of her piece, Jeane Kirkpatrick, perhaps unwittingly, proves a point that President Aquino has been seeking to make without much success. At the ASEAN summit last December the president reminded her fellow heads of government that "the Philippine factor is said to have contributed to the securing of air space and sea lanes that are vital to the continued economic stability and growth of our neighbors in South East Asia, East Asia and the Pacific."

It was a diplomatically disguised invitation for all to join in the political responsibility for U.S. bases and rescue the Philippines from the divisive and polarizing domestic issue of being the lone bases host in Southeast Asia. Nobody paid heed. Now Jeane Kirkpatrick is suggesting exactly the same thing. Bully for her.

But if that doesn't work—who is ungrateful? Not our country, which hosts the bases and, unlike the many U.S. allies in Western Europe and Northeast Asia, exposes itself alone in our region for the global strategy of the United States.●

AUGUST TRADE DEFICIT

● Mr. BINGAMAN. Mr. President, today we received some bad news on trade. The merchandise trade deficit for August grew by $2.7 billion to almost $12.2 billion. Exports grew by $1 billion but imports increased by $3.7 billion.

There are those, especially in the administration, who would claim that this shows progress. Based on the data from the first 8 months of this year, the deficit will be about $140 billion for this year, compared with a record $170 billion deficit last year.

If this is success, it is very limited success indeed. True, this year's deficit will be below the last year's record level. But, as the last few months show, and August's figures reemphasize, the improvement in our trade deficit has stopped. All of the decline in the deficit occurred in the first 5 months of the year. Since then, the trend has been upward again.

It is clear what has happened. We have had a massive depreciation in the value of the dollar. That has brought our trade defict down a little bit—mostly by expanding exports. But that stimulus has run its course. Unless we do more, our trade deficit will remain stuck at $140 billion per year.

We must continue to reduce the trade deficit, not be complacent about a one time drop caused by a massive devaluation of the dollar. This administration has gone directly from pretending our trade problems do not exist to pretending that they are already solved—without ever stopping to seriously consider the problem.

One of the reasons our continuing trade imbalance is the rapid rise of imports. The depreciation of the dollar, while stimulating exports, has done little to slow imports, which have grown over 26 percent over the past 2 years—has been almost three times faster than our overall rate of growth. Imports have increased in almost every category of product.

One of the most important components of our imports is oil. The volume of crude oil imports for the first 8 months of this year are up over 9 percent compared to the same period last year. Only the recent softness of oil prices has prevented our trade deficit in dollar terms from being even worse. At last year's oil prices, our trade deficit would have been over $3.5 billion higher. In other words, almost 12 percent of the improvement in our trade deficit over last year was due simply to the fall in the price of oil.

Mr. President, today's trade figures show the need for an effective trade policy. Passage of the Omnibus Trade and Competitiveness Act this year was a step in that direction. However, it is clear that until we have an energy policy, we will not have an effective trade policy. I hope the next President, whoever he is, will work with the Congress to craft an energy policy to improve our national security and reduce our trade deficit.●

THOMAS R. BOHRER

● Mr. D'AMATO. Mr. President, I rise today to honor an Olympic medal winner from my home of Long Island, NY. Thomas R. Bohrer, a neighbor from Babylon, NY, was a member of the American four-man without coxswain rowing team in the recent summer Olympics in Seoul, South Korea. With a winning time of 6:06.22, Mr. Bohrer and his three teammates won the Silver Medal.

A "welcome home" ceremony and parade are planned this weekend in Babylon in honor of Thomas Bohrer. I had hoped to attend these festivities, but unfortunately a prior commitment prevents that. But I would like to send my personal congratulations to Mr. Bohrer for this most outstanding achievement. His dedication and years of training and hard work are admirable. I am proud to be the neighbor of one of the few New York Olympic medal winners.

I would also like to commend the town of Babylon for helping to send one of its own to the Olympics. They played a major role in the effort to send Thomas Bohrer to Seoul.

I send my personal congratulations to Thomas Bohrer and to all the American Olympic athletes. They should know that, regardless of the medal count, America knows they are all winners.●

NATIONAL BUSINESS WOMEN'S WEEK AND WOMAN OF THE YEAR

● Mr. D'AMATO. Mr. President, I rise today to recognize National Business Women's Week and in particular, to salute Dewella Dobson, named "Woman of the Year" by the Business and Professional Women's Club of Buffalo.

I would like to acknowledge America's debt to business and professional women everywhere during the week of October 16–22. I salute the progress, achievements and sacrifices made by America's business women. I would like to extend my own special and admiring recognition to the Business and Professional Women's Club of Buffalo.

The club has several events planned for 1988's National Business Women's Week, including the naming of a "Woman of the Year." This year's winner is Dewella Dobson, of Williamsville, NY. For the past 14 years, Ms. Dobson has been an active member of the club, serving as president on the club's local level, and serving on the district and State levels as well. Ms. Dobson is employed by the Computer Task Group, Inc. in Buffalo as a marketing research assistant. Active in community activities, Ms. Dobson also has been involved in the United Way and the Buffalo Red Cross.

I salute Ms. Dobson and her achievement, and send my congratulations to her on being named "Woman of the Year." I send my best wishes to the Business and Professional Women's Club of Buffalo, and the club's chapters everywhere, and urge my colleagues to observe and commend National Business Women's Week.●

PERU'S ANTINARCOTIC EFFORT

● Mr. SYMMS. Mr. President, recently there was an encouraging development from the front in the war on drugs. The Government of Peru has announced a 3-year, antinarcotics program to combat illegal coca cultivation and associated cocaine manufacturing and trafficking. Since Peru is the source country where most of the world's coca is grown, this is a welcome development. Peru's task is complicated by two dangerous Communist insurgencies that have growing ties to well armed traffickers the Government plans to confront. In addition, coca cultivation is 10 times more profitable for Peru's impoverished farmers than any other crop.

In view of these facts, I wish to share with my colleagues a letter from Ambassador Atala to Chairman DANTE FASCELL, in addition to a fact sheet prepared by the Embassy.

The material follows:

EMBASSY OF PERU,
Washington, DC, September 9, 1988.

HON. DANTE B. FASCELL,
Chairman, Committee on Foreign Affairs, Rayburn House Office Building, Washington, DC.

DEAR CONGRESSMAN FASCELL: I am pleased to address this letter to you to express the appreciation of the Government of Peru for the significant efforts being promoted by U.S. Congress and particularly by the Committee on Foreign Affairs of the House of Representatives under your leadership, in order to strengthen the fight against international narcotics trafficking.

In the context of the Peruvian Government's permanent struggle against drugs, President Alan Garcia has recently approved a three year program (1988–1990) with the objective of dealing effectively with the drug problem in our country. Said program stresses the urgency for international cooperation with Peru in order to improve and implement an efficient plan for the eradication of illicit coca leaf production and interdiction activities.

The program above-mentioned involves three different areas in which the efforts of the Peruvian Government will be focused:

1. Interdiction operations in Northeastern Peru,

2. Providing Security for the activities of the coca eradication program and,

3. Durg use prevention.

The estimated cost of this program is US$345'193,225. The Government of Peru will dedicate US$215'723,125 and would seek international financing for the additional amount of US$129'470,100.

Such program seeks to improve the efficiency and technical capabilities of the Police Force (Guardia Civil) which is responsible for developing interdiction operations. Also, it underlines the need to create technical facilities not only in the Upper Huallaga Valley but in the Eastern region in Peru and to seek modern transport and communication equipment.

Within the framework of current limited resources and a climate of violence due to drug traffickers and terrorist groups, my Government is making a significant progress in developing a global strategy to face the drug problem. There were 676 hectares eradicated between January and June 1988, surpassing the 172 hectares eradicated through the same period last year.

Presidente Alan Garcia has stated the willingness of the Peruvian Government to have a high ranking Delegation come to United States to discuss with United States officials an Action Plan in this regard.

Since the U.S. House of Representatives is considering the approval of the "Omnibus Drug Bill" this week, I would like to assure you that the Government of Peru recognizes that much more has to be done. But it also considers that the magnitude of the technical, human and financial resources needed to fight adequately this scourge in my country should be fairly understood in order to encourage a full cooperation between Peru and the United States.

I avail this opportunity to renew to you the assurances of my high consideration.

CESAR G. ATALA,
Ambassador.

FACTSHEET ON PERU'S 1988-90 ANTI-NARCOTICS EFFORT

Recently, the government of Peru committed itself to a three year plan to achieve three separate objectives in its war against cocaine traffickers. These are enhanced interdiction powers and cocaine seizures; (2) substantial increases in coca acreage eradicated; and (3) expanded campaigns to convince citizens not to grow or consume cocaine.

Under this program, the government will build sixteen new bases strategically located in major coca growing regions. Manning these bases will be 25,000 newly hired members of the Civil Guard, a 615-percent increase in the number of personnel assigned. Proportionate to the population of the U.S., this is the equivalent of hiring 300,000 additional DEA agents.

These dramatic steps are being taken in view of the following facts:

1 million out of 20 million in Peru are involved in growing coca;

Coca is grown on 180,000 hectares but only 10,000 hectares is needed to meet legal and traditional Indian demand;

Coca production is concentrated in inaccessible eastern mountain and jungle areas far from major population centers or existing military bases and is largely outside the political control of the government;

After partial processing, illegal coca is flown out of Peru to the north or east, using flight paths across the least populated areas of Peru, from an estimated 100 different hidden clandestine airstrips; a smaller amount is shipped by river into Colombia along the Amazon;

Traffickers are well armed and have growing ties to the rural communist murderous Maoist insurgents known as the Shining Path;

One-third of these incarcerated in Peru have been jailed for narcotics offenses; and

Peru is a poor country and illegal coca growing is enormously profitable.

Under the government's plan, eight new bases will be established in the center of coca growing in Peru, the Upper Huallaga Valley located east of the Andes. Another five will be established in the second largest growing area in east central Peru where the Ene, Urubamba, Tambopata, and Apurimac rivers merge. Another base will be built at Caballococha where the Amazon passes into Colombia. And the final two will be built in the southern portion of Labuyeque provence in the Andes.

From these bases, the Civil Guard will mount interdiction and eradication raids. Their objectives will be to eradicate 10% or 18,000 hectares of coca production, to capture harvested coca plants and manufactured cocaine paste, to locate and destroy hidden airstrips, and to interdict waterborne cocaine traffic. The Civil Guard will also be talking with Peruvian peasants to prevent the number of growers or cocaine consumers from increasing.

The estimated cost of this three year plan is $345 million. Of this amount, Peru is willing to provide $215 million. Peru believes the remaining $130 million should come from foreign sources. In terms of a division of labor, Peru will supply the manpower and the funds to pay them. However, it lacks the technical equipment, such as helicopters and night vision binoculars, that are necessary to carry out the multilateral initiative.

Since it is the demand for cocaine in developed countries that is the cause of tremendous profitability trafficking produces—street prices are thirty times what Peru's peasants receive—, the government believes that foreign assistance is both necessary and appropriate.●

S. 2311 AND A NEW CBO REPORT: "NEW DIRECTIONS FOR THE NATION'S PUBLIC WORKERS"

● Mr. DOMENICI. Mr. President, an issue that the Congress must address next year is the renovation of our public works infrastructure.

Earlier this year, I introduced S. 2311, the Environmental Infrastructure Act. I intend to do all that I can next year to see that this bill, or something close to it, is enacted into law.

America needs to encourage the rebuilding of our public works, not simply with more Federal dollars, but by encouraging State and local governments to invest more, and by encouraging greater public-private partnerships to meet our environmental, as well as other infrastructure, needs.

I was encouraged by the publication last week of a new report issued by the Congressional Budget Office. This report, "New Directions for the Nation's Public Works," addresses many issues on how we, as a nation, can do more to build and renovate our public works.

This report is the third in just over 1 year that deals with this important issue. The first was a report issued by the Senate Budget Committee's Private Sector Advisory Panel on Infrastructure Financing. The second was the report of the National Council on Public Works Improvement. Each offered important insights into the problems and the solutions.

For that reason, Mr. President, I urge my colleagues to examine all three of these reports. To assist in that process, I ask that a copy of the summary and introduction from the CBO report be printed at this point in the RECORD.

The material follows:

SUMMARY AND INTRODUCTION

The importance of the nation's public works infrastructure has been demonstrated recently by mounting delays in highway and air travel and by dramatic episodes such as the closing of the Williamsburg Bridge in New York City. While concern for the state of infrastructure is widespread, no consensus yet exists on how to improve the effectiveness of infrastructure programs or how to pay for them. This report examines ways to reconcile the need for a sound infrastructure with the Congress' commitment to fiscal restraint.

In the last three decades, the federal government has greatly expanded its role in providing public works infrastructure. While continuing its century-old commitment to build major water resources projects, the government has also subsidized state and local investment in transportation and in environmental facilities. By 1988, federal infrastructure outlays totaled $26.6 billion (see Summary Table).

Over the years, the Congress has periodically assessed the adequacy and efficiency of these programs. Recently, the focus of the reviews has shifted from the problems and prospects of individual programs to issues common to infrastructure policies generally. In 1983, for example, the Joint Economic Committee of the Congress conducted a wide-ranging survey of the nation's infrastructure problems. In 1984, the Congress established the National Council on Public Works Improvement to assess the state of the infrastructure. The Congressional Budget Office is required by Public Law 98-501 to review the findings of this Council. Accordingly, the study reviews some of the issues raised by the council's final report, "Fragile Foundations: A Report on America's Public Works" (1988); the appendix focuses more specifically on the Council's findings.

Two difficulties arise in attempting an overall assessment of infrastructure programs. The first is the difficulty of defining infrastructure. This report analyses five major infrastructure modes—highways, aviation, mass transit, wastewater treatment, and water transportation—that are consistent with a definition of infrstructure as those facilities that provide a foundation or basic framework for the national economy, and in which federal policy plays a significant role. A sixth area consistent with this definition—groundwater and surface water resources—will be addressed in a future CBO report. This definition excludes some facilities often thought of as infrastructure—such as public housing, government buildings, private rail service, and schools—and some environmental facilities (such as hazardous or toxic waste sites) where the initial onus of responsibility in on private individuals.

The second difficulty arises in determining how well a particular set of policies meets the variety of objectives that governments pursue in supporting infrastructure development. Here different viewpoints enter—those of economic efficiency, social policy, and national defense, among others. This study is written from an economic perspective and appraises programs in terms of their cost-effectiveness. At the same time, it recognizes that criteria of economic efficiency may have to give way at times to social or political considerations.

SUMMARY TABLE—FEDERAL INFRASTRUCTURE SPENDING, 1988

[Dollars in billions]

Infrastructure area	Outlays	Percent of total
Highways	$13.64	51
Mass transit	3.50	13
Aviation	5.31	20
Water transportation	1.17	4
Wastewater treatment	2.94	11
Total	26.56	100

Source: Congressional Budget Office.

Note: Excludes spending for water resources other than water transportation.

The extent to which the different infrastructure areas examined here share common characteristics is striking. While important differences exist, the infrastructure areas (or "modes") can be thought of as alike in four ways: they have common origins, they have made common achievements, they face common challenges, and their problems may have common solutions. Recognizing these common characteristics should help to set new directions for infrastructure programs.

COMMON ORIGINS

The nation's infrastructure programs were created to serve many purposes, but federal involvement was motivated by three principal concerns. First was the need for coordination. Federal programs in highways, airports, air traffic control, and inland waterways were undertaken because no other jurisdiction could plan a system of such facilities from a national perspective. If left to their own devices, for example, localities would underinvest in roads (since many of the benefits of these investments accrue to people outside their boundaries) or in air traffic control (where a single national system is needed to make commercial air transit possible). Federal programs were designed to lead localities to make investments from a national rather than a local perspective, or to make national investments where localities otherwise would have little reason to do so.

The second motivation for federal involvement was to spread the financial burden. For example, after requiring that all municipalities clean their water to a minimum standard, the federal government provided funds to help them build wastewater treatment plants that would attain this standard. Similarly, when faced with a wave of private transit financial failures in central cities, the Congress enacted a federal mass transit program to lighten the burden of putting these fleets back into operation.

A third motivation was to promote social policy goals. Inland waterways, ports, and water supply projects were all subsidized as a way of promoting or revitalizing economic development in individual regions. Mass transit was seen as part of a policy to revitalize urban cores. Mass transit, aviation, and highways were all conceived, in part, as ways to increase the mobility of the population and to integrate the various regions of the country. In this sense, infrastructure programs have actively sought social goals as a collateral benefit of economic expansion.

COMMON ACHIEVEMENTS

The infrastructure programs share common achievements in two respects: almost all have accomplished their initial goals to a great degree, and together they have forced state and local governments to develop bureaucracies capable of planning, administering, and financing these areas of public life—so much so that many states are now widely recognized as imaginative infrastructure managers.

While all the nation's infrastructure facilities may never be "finished" since there will be ongoing needs for maintenance, expansion, and replacement, significant accomplishments have been made in all areas of infrastructure. The Interstate Highway System as currently planned is about 98 percent complete, and all funds needed for its completion will be obligated by 1993. The United States now has more highways per person than any other industrialized country; its roads are used at only about 15 percent of capacity in rural areas and 40 percent of capacity in urban areas. Water supply projects have led to the regional development of the West, so much so that the Bureau of Reclamation now believes that adequate water supplies often can be achieved more efficiently through conservation than through new construction. About 90 percent of the wastewater treatment plants needed to meet current regulatory standards have been built; as a result, the ongoing deterioration in water quality prevalent only two decades ago has been arrested.

The standard of achievement is not uniform. Mass transit programs have often encouraged localities to apply incorrect solutions to their transit problems: new systems in Miami, Washington, D.C., Pittsburgh, and Atlanta have all raised the cost of providing transit while attracting far fewer riders than predicted. Nationwide, the use of trains and buses continues to decline except for trips from suburbs to urban centers, but such trips now account for only one-seventh of trips to work. Although the largest urban rail systems—New York City, Chicago, Philadelphia, and Boston—are in need of renovation, many smaller urban systems have more capital equipment than they can use although they are still drawing operating subsidies from the federal government. In air transportation, the antiquated traffic control system is a major source of delays, and the rapid recent growth in air traffic has brought peak hour congestion to the airports.

The federal government's initiatives have also led state governments to become more productive partners in infrastructure management. State governments are now more capable of managing their infrastructure systems and many are widely recognized as being innovators in infrastructure finance.

COMMON CHALLENGES

The various infrastructure modes confront, each in its own fashion, similar sets of challenges. The most important of these may be the transition fron an era of construction to an era of management. Just how well federal infrastructure programs perform in this new era will depend, in part, on the incentives that the programs offer to infrastructure users and to state and local infrastructure managers. Federal programs now also confront an institutional environment far different from that for which they were designed.

Management

The transition from an era of construction to one of maintenance, rehabilitation, and replacement is evident in almost all modes. In highways, for example, the rate of return on maintaining the condition of the federal-aid highway system is on the order of 30 percent to 40 percent, while the rate of return on new construction, save in certain urban areas, is very low. For aviation, the most pressing general need is to modernize the air traffic control system.

In mass transit, newly constructed systems have not reversed the decline in transit's share of commuting. Nationwide, mass transit operates at a low level of productivity, and transit fleets are too large. A contradiction may be seen in that the older major urban systems need repair; while nationally an unobligated balance of $850 million sits in transit accounts for lack of new construction projects that qualify for aid.

Similarly, about half of the locks and dams on the inland waterway system will have exceeded their design lives by the year 2000. Many of these locks will require major rehabilitation.

Construction is not a thing of the past, but where construction is needed (as it is to some extent in all modes), the needs are regional rather than national. Moreover, the needs are typically for alleviating congestion rather than anticipating or promoting growth. The area farthest from its initial goal may be wastewater treatment: the Environmental Protection Agency estimates the remaining need for wastewater treatment plants at a total construction cost of $76 billion between now and 2005. Perhaps half of these outlays, however, would be needed even in the absence of federal statutes.

Incentives

As currently structured, federal infrastructure programs fail to provide either infrastructure users or state and local managers with incentives to make efficient choices. Since the benefits of using facilities are not tied to the costs of providing them, federal programs lead to inflated perceptions of the demand for infrastructure. The current programs also give state and local managers no incentives to solve infrastructure problems with "nonstructural" approaches, and often encourage them to select projects that create local, rather than national, benefits.

Infrastructure managers must not only decide what facilities to build, but also price them in a way that will optimize their use. Charging prices that are too high would lead to underuse and reduce the productivity of the infrastructure investment, while making roads, ports, and mass transit available without charge would lead to their overuse and rapid deterioration. In only two of the seven major federal programs—highways and airports—are fees now high enough to defray most of the federal spending. And even in these programs, some users—notably, operators of heavy trucks and private planes—pay less then their share of costs, while other users—light truck operators and airline passengers—make up the difference by paying fees that recover more than the costs they create. In each of these programs, below-cost pricing leads users to request more infrastructure services than they are willing to pay for, while planners get an exaggerated perception of investment needs from these misleading signals about infrastructure demand.

Water transportation projects are conspicuous in their failure to charge users for the costs of water transportation. The 1986 Omnibus Water Resources Development Act required that user fees finance up to 50 percent of the costs of new construction, but in 1988 user fees still covered only 21 percent of the Corps of Engineers construction costs on inland waterways and 9 percent of total Corps costs for inland navigation. Thus, users of the inland water system are subsidized while those who use competing freight modes—particularly rail—are not. Water projects also deliver water that is allocated through historical rights at prices far below costs, leading to overconsumption and underinvestment in conservation. Ironically, this overconsumption of water, particularly in agriculture, increases water runoff and, in turn, water-based pollution and the need for treatment of rivers and streams.

Another set of common problems arises from the incentives given a state and local infrastructure managers. First, the structure of federal financial assistance leads state and local infrastructure managers to substitute federal funds for their own. This phenomenon of "fiscal substitution" takes place in a variety of infrastructure modes, most notably in wastewater treatment (where federal grants appear not to have led to more rapid construction of wastewater plants and may have led to actual deferrals of plant construction). Substituting federal for local funds also occurs in highway programs outside the original Interstate system (where statistical evidence suggests that federal assistance has had far less than its maximum impact).

Second, even where it has truly added to spending, federal assistance may have altered the choices made by local officials without satisfying federal interests. In mass transit, for example, where capital purchases are subsidized to a far greater extent than are maintenance expenditures, municipalities regularly retire buses before the end of their useful lives and purchase new equipment with federal funds in excess of service requirements. In wastewater treatment, plants have commonly been built to subsidize local economic expansion rather than to service current needs.

Institutions

A final challenge that confronts all infrastructure programs is a changing institutional environment. Regions that once depended on inland water transportation now have new alternatives as a result of changing technology and the deregulation of most transportation industries. The deregulation of air travel has led to a more efficient system of "hubs and spokes" for airlines, requiring airports to be more flexible while at the same time leaving them more vulnerable to changes in airline routing. State and local governments, and the capital markets that serve them with funds, are learning how to manage and appraise infrastructure projects. In addition to the traditional general obligation bonds, many state governments now employ new devices such as bond banks, revolving loan funds, and special taxing authorities to finance their projects.

COMMON SOLUTIONS

The chapters that follow evaluate a wide range of options intended to make federal infrastructure policies more responsive to current challenges. While differing in their details, most of these options stem from four approaches: pricing infrastructure services more efficiently; targeting federal assistance more effectively; assigning more infrastructure responsibilities to states and localities; and fostering greater competition among different forms of infrastructure for federal funds. These approaches seek more cost-effective infrastructure programs. Cost-effectiveness is not the only goal of infrastructure spending, however, and sometimes may conflict with other such as income redistribution or the economic development of particular regions.

Pricing infrastructure services

Better pricing of infrastructure services—that is, more reliance on user fees—would help to achieve a number of goals. Better pricing could reveal how much people value different infrastructure services; by giving managers better information about the cost-effectiveness of different projects, user charges could enable them to improve their investment decisions. Proper pricing could also ameliorate congestion, whether that congestion is specific to particular localities (as with highways and inland waterways) or to particular times of day (as in aviation). Varying airport landing fees by time of day, for instance, would shift some traffic to off-peak hours. Similarly, user fees at locks and dams on the inland waterways could cause some cargo to be shipped by rail or other alternative systems.

Most existing user fees are designed simply to recover some portion of infrastructure costs. While increasing those fees could help finance infrastructure investment, it would do little to increase the efficiency of that investment. Most current fees—the highway gas tax, the inland waterways fuel tax, the harbor maintenance tax, the airline ticket tax—are the same throughout the country, although both the demand for services and the cost of providing them vary dramatically by place and time. Current fees reveal little about how users value particular facilities and thus do little to direct investment toward projects that benefit users most. Similarly, landing fees that do not vary with the time of day can recover an airport's relevant operating costs but do little to reduce peak-hour congestion. In many cases, efficient infrastructure pricing would require changes in the structure and the level of fees.

An increased reliance on user fees have two drawbacks. First, the efficient use of facilities may not be the only goal of an infrastructure program. To the extent that federal subsidies are intended to provide nonmonetary income transfers (as in the cases of federal support for water supply, mass transit, and aviation services to small towns), increased user fees clearly would be at odds with this purpose. Sometimes infrastructure programs are intended to spur regional economic development, and in such cases user fees would reduce the regional subsidy.

Targeting Federal assistance

The fact that federal costs are set at fixed shares in most forms of infrastructure implies that national benefits are equal for every project within each mode. In reality, some projects offer greater national benefits than others. One way to improve the targeting of federal assistance would be to vary the share of federal costs according to the expected benefits of each project. This could be accomplished by negotiating the federal share on a project-by-project basis or by defining different shares for different subclasses of projects ("tranches"). The greatest drawback would be the administrative costs involved in conducting many negotiations. Negotiating aid could also make federal aid less stable over time, adding an element of risk to state and local investment planning.

Targeting could also be improved by restructuring programs so that benefits would go directly to the intended beneficiaries. For example, one purpose of urban mass transit is to provide mobility to poor people; this assistance could be furthered by issuing transportation vouchers rather than subsidizing all ridership on mass transit systems. On the other hand, when a program serves a number of purposes (for example, mass transit is also intended to promote urban economic development and reduce congestion and pollution), it may be more efficient to provide services rather than cash.

Assigning more responsibilities to State and local governments

State and local planners may be able to make better decisions than national authorities, given their proximity to local problems and conditions. This advantage will continue only so long as their decisions do not have a significant impact outside their jurisdictions. Where the benefits of infrastructure programs accrue predominantly outside a state's jurisdiction, the federal government may have to act in the interests of other states.

For programs aimed at creating strictly local benefits, state and local governments may be the appropriate level of decision-making. Some may argue that mass transit, for example, is not a national infrastructure problem, but a local one. The original intent of the federal mass transit program was to help municipalities assume responsibility for bankrupt private systems. With that goal accomplished, additional transit investments arguably could be funded at the state and local levels. Similarly, state and local governments already finance all aspects of port development other than dredging. These services could be contracted from the private sector rather than provided on a subsidized basis by the Corps of Engineers.

Even when the benefits of infrastructure programs are primarily local, however, asking states and localities to take on greater financing responsibility might be inconsistent with the social goals of these programs (such as income redistribution or regional economic development). Moreover, increasing state control over infrastructure spending would tend to substitute state spending preferences for federal preferences.

Fostering greater intermodal competition

Investment in all classes of infrastructure could be improved by having federal grants foster competition among infrastructure programs for public and private resources. Among the approaches examined here are:

Allowing states to trade in some portion of their categorical grants in any one accounts for funds in another account, perphaps on less than a dollar-for-dollar basis.

Merging the major parts of all infrastructure programs into one broad-purpose "public infrastructure" block grant.

Creating a national infrastructure financing facility that could perform a range of roles, from formal screening of all large-scale federal projects to financing large facilities on a project-by-project basis.

All of these options would seek to tailor federal infrastructure spending more closely to local conditions. They would give more weight to local interests in allocating funds among infrastructure programs. Most of them would accomplish this by giving states and localities greater flexibility in apportioning funds among in infrastructure categories. Easing conditions on the use of federal funds implicitly assumes either that the national benefits of all infrastructure programs are equal or, more likely, that federal interests can be better pursued by allowing greater variation in the response to local infrastructure problems.

Another argument in favor of greater state and local control is that categorical programs no longer need to be as narrowly defined as they formerly were. Nearly all categorical grant programs for infrastructure were originally designed to create national systems and to marshal state involvement. In large measure, both of these goals have been achieved. Moreover, as capital markets have become more diverse and borrowers more sophisticated, a broader set of projects can now be funded locally.

To be effective, however, these options would require reorganizing the federal and state infrastructure bureaucracies, which have been designed to evaluate only projects within particular infrastructure categories. At the extreme, of curse, merging al programs into a single infrastructure system might deny the legitimate differences among modes or overlook the fact that some level of investment in each is a stipulated national goal regardless of economic merit.

Finally, many of the benefits of greater competition for resources among the infrastructure modes could be achieved by requiring federal program managers to present more explicit statements of gosls, to make more frequent evaluations of past projects, and to use common standards in measuring such variables as the cost of accidents, the value of health improvements, the value of time lost to delay, or the discount rate. Under the current budgeting system, agencies are allowed to plan programs on the basis of the current level of services offered. But circumstances change, as do rates of return and the degree to which agency missions have been accomplished. Requiring agencies to prepare more detailed "sector plans" that took explicity account of the returns on their proposed investments would allow the Congress to make decisions among alternative programs and thus improve the allocation of national resources devoted to infrastructure.●

NATIONAL POW/MIA RECOGNITION DAY PROCLAMATION

● Mr. WIRTH. Mr. President, the United States observed National POW/MIA Recognition Day on September 18, 1988. This day served the important and dual purposes of maintaining this issue in the forefront of the public mind and assuring the families of those still missing that their Nation has not forgotten the sacrifices nor the plight of their loved ones. To further these goals, I request that an honorary proclamation on National POW/MIA Recognition Day, signed by Gov. Roy Romer, of Colorado, be printed in the RECORD.

The honory proclamation follows:

HONORARY PROCLAMATION: POW/MIA RECOGNITION DAY, SEPTEMBER 16, 1988

Whereas, Americans appreciate the dedication and courage of those in the military who defend the nation's democratic principles; and

Whereas, we applaud the dignity, faith and valor of those who gave their lives or were captured and imprisoned; and

Whereas, we appreciate the plight of the families whose loved ones remain missing or unaccounted for; and

Whereas, efforts must be made to secure the release of U.S. personnel who may still be held against their will and to obtain the fullest possible accounting of those still missing;

Now, therefore, I, Roy Romer, Governor of Colorado, proclaim September 16, 1988, as "POW/MIA Recognition Day," in the State of Colorado.

ROY ROMER,
Governor.●

ARTHUR S. WALTZMAN

● Mr. HECHT. Mr. President, it is an honor for me to rise today in tribute to Mr. Arthur S. Waltzman, who will receive the Nate Mack Las Vegas Lodge of B'nai B'rith "Distinguished Man of the Year Award." The ceremony, which takes place October 23, 1988, will highlight the career of this outstanding citizen.

His gracious generosity, and tireless efforts on behalf of the members of the Las Vegas community are indeed commendable. He is active with the United Cerebral Palsy campaign, the Make A Wish Foundation, the Jewish Federation of Las Vegas, and the B'nai B'rith Salute to Seniors Committee.

Arthur Waltzman is a shining example of the American spirit of volunteerism and selflessness. I am proud to join with Las Vegans and Nevadans in congratulating him on this tremendous achievement.●

MI CASA WOMEN'S CENTER DROP-OUT PREVENTION PROGRAM

● Mr. WIRTH. Mr. President, earlier this year I was pleased to bring to the Senate's attention an innovative high school Drop-Out Prevention Program sponsored by the Mi Casa Women's Center in Denver, CO. This program, known as "Project Takeoff," is designed to assist young women who have dropped out of school—and who need special support and encouragement to resume their studies, earn diplomas and secure productive employment. Mi Casa is a United Way Agency that successfully utilizes corporate sponsorships, charitable donations, and the talents of people in the community it serves, to promote education and job training for young women at risk.

As the Senate is continuously challenged to address our Nation's educational needs, the drop-out problem has loomed as one of our most persistent and pressing problems. Dropping-out is particularly devastating for minority and other "at-risk" students. A recent study by the Bureau of the Census indicates that in some parts of the country, half of all Hispanic youngsters leave high school prior to graduation. Unless we act to correct this problem, we may be left with an entire generation of Americans who cannot compete intellectually or economically as our nation enters the next century.

Although it is impossible to accurately measure the cost of the drop-out problem in human terms—in broken lives, lost opportunities, and unfulfilled dreams—we can estimate its economic impacts. A recent Stanford University study estimated that the lifetime cost to society is about $200,000 per individual—including $20,000 in social services, $50,000 in lost tax revenues, and $130,000 in lost net income. There can be no doubt that the drop-out problem represents a real threat to the Nation's long-term economic and social well-being.

That is why I want to take this opportunity to acknowledge the fine work of the Mi Casa Women's Center. Project Takeoff identifies young women who have dropped out of school, and by combining effective counseling and educational services in an intensive 10-week course, redirects them back to school and a brighter future. I particularly want to commend Ms. Geri Gonzalez-Lopez, Project Takeoff's coordinator, for her enthusiasm, energy, and deep commitment to community service.

I also want to acknowledge the courage and spirit of 11 young women from my State who recently graduated from the Project Takeoff Program: Valerie Bailey, Gina Bisonette, Marcella Cespedes, Karen Evans, Leticia Martinez, Victoria Medina, LaVon Romero, Robin Smith, Shawn Taylor, Verkerie Williams, and Rebecca Workcuff.

Each one of these young women deserve our congratulations and our thanks—not only for turning their own lives around—but for setting such a fine example for other young Americans. Their success should underscore how hard work and a commitment to education can make a big difference in individual lives.

I commend the Mi Casa Women's Center Drop-Out Prevention Program to my colleagues in the Senate. It is a prime example of what can be accomplished when you combine corporate dollars, creative community leadership and personal initiative.●

CONGRESSIONAL MICROMANAGEMENT

● Mr. BOSCHWITZ. Mr. President, this is the third in a series of speeches I have made on the role of the Congress in managing the Pentagon. Today, I will speak about congressional micromanagement.

INTRODUCTION

I was first prompted to make these speeches when the Pentagon procurement scandal was revealed in June. I said then—and repeat today—that we must resist the temptation to impose another round of so-called reforms that will only further complicate and burden an already overburdened procurement process. Rather, I ask that we seize the opportunity of the recent Pentagon scandal to explore some of the underlying causes of Pentagon mismanagement.

It is my basic contention that one of these underlying causes is Congress itself. While the Pentagon has its share of problems, we have exacerbated many of them and have even created some of them. Certainly there can be no excuse for those Pentagon officials and consultants who have committed fraud. But by imposing a complex thicket of laws and regulations, we in Congress have contributed in making procurement an unbelievably complex and prolonged undertaking, and have therefore helped to create an environment in which outside advisers are essential to contractors—often separate expert advisers for each step of the way. Short cuts and unethical behavior associated with them become more and more attractive in these circumstances.

BOARD OF DIRECTORS—OR MICROMANAGERS

Congress sets a bad example when we let parochial interests guide our own defense decisions. During consideration of the fiscal 1989 Defense appropriations bill, I offered an amendment to eliminate $1.7 billion of defense spending that the Pentagon did not request—much of it unnecessary pork. Pork is just another indication of congressional micromanagement of the Pentagon. I was asked during debate on that amendment whether Congress should forgo its roll in defense—as though its roll was defined by the amount of pork in the bill. I believe Congress should act as a board of directors—not as hands-on managers—setting broad policies and goals. And yet, with every budget cycle, Congress delves deeper and deeper into more and more details of the defense management process—much of this intervention done by people who have little knowledge or experience in defense.

SIZE OF BILLS

One indication of our growing involvement and micromanagement is the sheer size of the legislation. In 1970, at the height of the Vietnam war, the Defense Authorization Act totaled 9 pages, with a 33-page conference report accompanying the bill. The authorization bill enacted into law in 1975 was just 15. The 1989 bill is 288 pages and the conference report 194 pages. Lots of goodies are tucked away in that massive legislation.

BUDGET TESTIMONY

In addition, as our bills expand, Congress asks the Pentagon for more and more documentation each year. First, during the budget process itself, Defense Department officials provide hundreds of hours of testimony, often duplicative, to congressional committees. In 1983, before the DOD stopped counting, defense witnesses provided 2,160 hours of testimony before 96 different committees and subcommittees, up almost 50 percent from 1982. The 1985 Defense Department funding request was accompanied by more than 20,000 pages of budgetary justification; and this paperwork hasn't gotten smaller since.

It's no wonder that the Blue Ribbon Commission on Defense Management, better known as the Packard Commission, reported that:

> The present method of budget review, involving duplicative effort by numerous congressional committees and subcommittees, centers on either the minutiae of line items or the gross dollar allocation to defense, and obscures important matters of strategy, operational concepts, and key defense issues.

CONGRESS REQUIRED 715 SEPARATE REPORTS

The paperwork doesn't stop after the legislative process ends. When Congress does pass its annual spending and authorization bills, the Department of Defense is left with a heavier and heavier burden of reporting requirements to various congressional committees. This chart illustrates the astounding increase in congressionally imposed reporting requirements. Between 1970 and 1985, the number of DOD reports required by Congress increased 12 times! The 1986 Defense appropriations report required 676 reports from the Pentagon. It took the equivalent of 182 full-time employees a year to get those reports written, at a cost of $18 million. The average cost of one of those reports was $25,714. For most families, that is close to a year's income; for Congress, it only buys one report.

And this burden continues to mount. In fiscal year 1988, Congress required 715 reports from the Pentagon. And now that we are coming to the end of fiscal 1988, I would be interested to know how many of my colleagues found the time to read the report on the "section 501 extension of authority to make temporary promotions of certain Navy lieutenants"? How much did us nonengineers get out of the report on "tensioned architectural structures"? At the same time, I wonder whether a congressionally mandated report on the "number of and expenditures for military bands" did much for our national security? Indeed, Mr. President, the expense of military bands is cause for concern; but is this a matter for congressional attention given the severe limits on our time for defense oversight? Who found time to read the report on morale and recreation programs—or the two reports on the supervision of nurses? Finally, there is a congressionally required report on the subject of—what else?—"Defense Department reporting requirements"!

In addition to the reporting requirements imposed in annual spending bills, there are some 319 provisions of the law which impose periodic reporting requirements on the Pentagon. These interesting reports include a stored equipment report, annual map and chart plant report; and, of course, a very popular report on the "acquisition of power-operated collators for use in facilities other than printing plants."

Few, if any, read the annual report on the cataloging of supplies and stocks by the military departments. And in the age of high technology welfare, do we still need an annual report ensuring that the domestic textile and apparel industry can keep our soldiers clothed. I suspect that that report has more to do with protecting our workers from foreign competition than protecting our soldiers from foreign enemies. Some of these reports really sound unnecessary. The DOD has to explain to Congress every time the weight of a small mobile intercontinental ballistic missile exceeds 30,000 pounds when deployed. Frankly, I am more interested to know whether they will reach their target—even if they do weigh 30,001 pounds. Mr. President, I am sure that religious leaders the world over looked forward to the DOD report on the faith composition of the chaplains of the Armed Forces. But, once again, I doubt whether this is a matter that requires congressional oversight. Also, I wonder how many of our constituents feel more secure knowing that the Congress is checking up on the Pentagon's "Rules and Regulations To Implement, the Archeological Resources Protection Act of 1979."

ALTERING MOST LINE ITEMS

Mr. President, these reports are more than a nuisance: They are an embarrassment—or should be—and more. A 1985 staff report of the Armed Services Committee warned that congressional micromanagement has reached "crisis proportions." It is a crisis when lawmakers sacrifice time best spent considering broad military strategy and spending guidelines and instead focus on individual line items. A study of the fiscal year 1984 budget showed that of the Pentagon's 1,860 line item requests, the House altered

1,190 and the Senate 1,160. A 1985 Washington Post article points out that such intervention is unparalleled in other democracies. While other congresses and parliaments discuss the organization of their armed forces, we focus on what boots our soldiers will wear.

CONCLUSION

Mr. President, I hope that my colleagues and their staff who have heard and reviewed my remarks during the past weeks will be prompted to consider how Congress oversees the Pentagon. A number of reforms have been suggested in recent months: biennal defense budgeting; more multiyear procurement; reform of honarariums; closing the so-called revolving door; creating a civilian procurement agency; and so on. Congress will no doubt review all these proposals. For my part, I would urge us to get our own house in order. Let us establish longer term budgeting. Let us cut our congressional pork in the defense budget. Let us resist the temptation to become involved in every detail and require a report on every action. If we become an effective board of directors again, the business of the Pentagon will be better run as a result.●

IN PRAISE OF A MOST UNIQUE CONDUCTOR

● Mr. PELL. Mr. President, I would like to take this opportunity to call to the attention of my distinguished colleagues a success story brought about by a most remarkable woman and her cadre of persevering individuals dedicated to the betterment of education. The woman is Dr. Lucille McKillop, the president of Salve Regina College in Newport, RI, a small Catholic college whose beautiful campus rests on the shore of the Atlantic Ocean.

Sister Lucille, as she is fondly known on campus, accepted the post of president in 1973. She was well aware at that time that hers was not an easy task to undertake, for the college was experiencing severe financial difficulties and serious morale problems. During her tenure Sister Lucille has brought Salve from a $1.2 million operating budget with a $1 million deficit, to a budget of $20 million operating in the black. The student population has doubled to 2,163 since 1973, and a once rock-bottom faculty salary has risen steadily by approximately 8 percent each year. Not only has Sister Lucille put Salve's fiscal house in order but she has also expanded the academic programs of the college. In addition, a project of campus renovation has taken place both esthetically and technologically in order to keep pace with the changing demands of our time.

Although President Lucille McKillop refuses to accept complete credit for her brillant efforts, modestly asserting that she is "* * * like a conductor * * * taking the bows, but the school is the orchestra * * *," clearly she is the driving force behind the success of this fine institution. I commend Sister Lucille for bringing together various members of the Rhode Island community to raise the funds necessary to bring great strength and vitality to Salve Regina. I am certain we will continue to sing the praises of this most unique and talented conductor for as long as she continues her fine work with a talented and well-tuned orchestra of dedicated and resourceful people.●

AIDS AMENDMENTS OF 1988

● Mr. ARMSTRONG. Mr. President, the Senate has just passed S. 2889, an omnibus act dealing with a number of health-related issues. Title II of that Act is titled the "AIDS Amendments of 1988."

Title II deals with a matter that is of enormous concern to the entire country and to this Senator. And frankly, I am troubled by some of the policies incorporated in title II.

I am concerned, for example, that the version we have just passed does not contain the spousal notification amendment that was in S. 1220 as it orignially passed the Senate. In the original Senate version of S. 1220, States were prohibited from receiving funds under the Act if they had laws or policies that penalized physicians for notifying spouses of a positive AIDS test. The version of S. 1220 that was just passed contains no such requirement.

I am also concerned that the Act we have just passed provides funds for anonymous testing only. Mr. President, anonymous testing is not the only kind of testing that we should be funding under title II of this bill. As many of us know, Colorado has an excellent program of confidential testing and contact tracing. It is not only a thoughtful approach, but many States have turned to Colorado as a model program for dealing with the AIDS crisis. The Colorado program is confidential but it is not anonymous. In Colorado, no AIDS test result has ever been given to a person who did not have a right to it. Colorado's program protects certain information while allowing those who are at risk to be notified.

Between January 1986 and December 1987, the Colorado partner identification program achieved the following successes; 282 HIV positive persons were interviewed and 508 sexual partners were identified.

Of the 508, 414 were found and notified of their risk.

Of the 414 who were warned, 44 had already tested positive but 370 had not been tested.

Of those 370, 74 refused to be tested but 296 took HIV tests.

Of the 296 tested, 45 were HIV positive and 251 were negative.

The Colorado program is enlightened and effective: 45 persons were notified that they carry antibodies to the deadly virus and they were notified before they otherwise would have been aware of their status. I join other citizens of my State in thinking that this kind of program will save lives.

Now, Mr. President, we have just passed a bill that provides grants to States for counseling and testing but only if the counseling and testing are done on individuals who are not "required to provide any information relating to the[ir] identity" and who are allowed to use a pseudonym. The language of the preceding sentence is from that part of S. 2889 that will add a new section 2431 to the Public Health Service Act. Frankly, I was afraid that S. 2889 would not allow Colorado to qualify for counseling and testing funds under S. 2889 because, as I have explained, the Colorado program is confidential but not anonymous. I have been assured, however, that Colorado's program would qualify for testing money under title II of this Act.

Based on that assurance, Mr. President, I informed the managers of the Act that I had no objection to its consideration although, I still have serious reservations about certain provisions.

In my opinion S. 1220 was not a good bill when it first passed the Senate, but a majority of our colleagues thought otherwise. I would have preferred a different bill—indeed, the managers themselves would have preferred a different bill. But, I do not expect bills that pass this body to be in every way acceptable to me. This is a political institution where compromise is standard operating procedure.

When I was assured that title II of S. 2889 would not operate to the detriment of the very excellent Colorado program, nor treat Colorado in a discriminatory manner because of its fine AIDS notification program, I agreed to withdraw my reservations.

I thank the manager on this side of the aisle for his help and assurances on this matter.●

COMMENDING ADMIRAL HAYS ON HIS RETIREMENT

● Mr. NUNN. Mr. President, earlier this month, the Commander in Chief of the U.S. Pacific Command, Adm. Ronald J. Hays, retired from active duty after more than 40 years of military service. I had the good fortune to know Admiral Hays and work with him in a number of his key positions over the years. I would like to take a few minutes to salute this outstanding naval officer on the occasion of his retirement.

Soon after his graduation from the U.S. Naval Academy in 1950, Admiral Hays completed flight training and began a long series of operational assignments in naval aviation units. Those assignments were followed by several staff and command positions of increasing responsibility. In 1980, Admiral Hays became Commander in Chief of U.S. Naval Forces, Europe. Then, 3 years later, he was promoted to the four-star rank of admiral to serve as the Vice Chief of Naval Operations. On September 18, 1985, Admiral Hays assumed the position of Commander in Chief of the U.S. Pacific Command or CINCPAC until he retired on October 1 of this year.

As the senior U.S. military officer in the Pacific and Indian Ocean areas, Admiral Hays led the largest of eight unified combatant commands in our military command structure. He directed Army, Navy, Marine Corps, and Air Force operations across more than 100 million square miles—over 50 percent of the Earth's surface.

It was particularly in this last assignment as Commander in Chief of the U.S. Pacific Command that many Members of Congress and their staffs had the opportunity to work with Admiral Hays. From his vantage point as CINCPAC, he developed an expert and well-balanced perspective on U.S. security interests in his area of command. During Admiral Hays' tenure as Commander in Chief, several developments in the Pacific continued to enlarge the importance of this dynamic region to America's security: Around the rim of Asia, countries from South Korea to Thailand initiated or sustained impressive economic growth; a peaceful revolution reintroduced democracy into the Philippines; South Korea took encouraging steps toward implementing its own democratic reforms; hopes were raised that Vietnam may finally have decided to withdraw from Cambodia; and our security relationship with the People's Republic of China was gradually strengthened. Admiral Hays' views on these developments, as well as on a variety of other security issues, have been invaluable to me and other Members of Congress.

Of particular note was his insistence that we approach U.S. security interests in this region from a standpoint of our overall strategy. The Armed Services Committee also noted his efforts to implement both the spirit and letter of the Goldwater-Nichols Defense Reorganization Act in his command.

On a more personal note, Mr. President, I would like to thank Admiral Hays for his courtesy to me, my staff, and the committee. Over the years, he has been very generous in sharing his time and views with us, whether in public hearings or in private meetings. I greatly appreciate his willingness to help us with our legislative responsibilities.

Again, Mr. President, I commend Admiral Hays for his important contribution to our country. We are all grateful for his service. Although we will miss him on active duty, we wish him and his family all the best and hope that they will keep in touch with their many friends in the Congress.●

MISSISSIPPI NATIONAL RIVER AND RECREATION AREA

● Mr. BOSCHWITZ. Mr. President, I rise today in support of H.R. 2530, the Mississipppi National River and Recreation Area bill.

Mr. President, most Americans know something about the important role that the Mississippi River has played in the history of our country. Also, many tourists visit the source of the mighty Mississippi, at Lake Itasca, in northern Minnesota. But as this mightly river flows south it takes on added commercial use. As it reaches the St. Paul-Minneapolis metro area, there are several State and local planning efforts to help fully utilize the river's resources. A concentrated effort by Federal, State, and local governments is required to balance the historical, recreational, private, and commercial uses of the mighty Mississippi.

This legislation, Mr. President, provides for a Mississippi River Coordinating Commission to assist in the development and implementation of a management plan. The importance of this bill is represented by the fact that the entire Minnesota congressional delegation has cosponsored it. Mr. President, it is indeed a rare piece of legislation that receives such unanimous, bipartisan support from the Minnesota delegation.

While I agree that it is important to have a coordinated plan for the Mississippi River in the Twin Cities metro area, I am also concerned about safeguarding the rights of the State and local governments that are already working to preserve the historic value of the river while utilizing its commercial recreational potential. More than 20 city governments, 5 counties, and the State of Minnesota have worked to this end for years.

I want to commend Senator Durenberger for his diligent effort to work out a compromise that allows for greater coordination of all governmental programs that are involved along the St. Paul-Minneapolis Mississippi River corridor. I am pleased to have assisted in the compromise and urge my colleagues in the Senate to support this legislation.●

The PRESIDING OFFICER. May I interrupt the majority leader momentarily for a piece of business that should be clarified here?

Mr. BYRD. Yes.

APPOINTMENT BY THE PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 100-360, appoints the following Senators to the U.S. Bipartisan Commission on Comprehensive Health Care:

The Senator from Massachusetts [Mr. Kennedy], the Senator from Montana [Mr. Melcher], the Senator from Montana [Mr. Baucus], the Senator from Maine [Mr. Mitchell], the Senator from Minnesota [Mr. Durenberger], and the Senator from Pennsylvania [Mr. Heinz].

The Senator from South Carolina.

SCHEDULE

Mr. THURMOND. Mr. President, I just wanted to propound a question to the distinguished majority leader. As I understand it, when we finish the drug bill, which we should be able to do within a reasonable time on tomorrow, it will be the plan to bring up the bill agreed to on the judges, and some legislation that is pending in connection with those judges. Is that correct?

Mr. BYRD. I hope that can be done.

Mr. THURMOND. I thank the leader very much.

Mr. BYRD. I am confident that progress is being made on that matter. I want it to be made. I am not one of the direct participants. I do not have any dogs in that fight except I want to get as much business as can be transacted done before we go out. We do have a considerable amount of business that awaits the agreement on the judges.

Mr. THURMOND. I think it is all clear. As I understand it, there was some question about one judge from Alabama. Both Senators from Alabama favor the judge. I believe the distinguished Senator from Massachusetts wanted to do a little more investigating, which I believe he has had a chance to do yesterday and today. I have a feeling that by tomorrow he will clear that judge, and that will clear the package.

Mr. BYRD. That may very well be. I cannot speak for that. Being the eternal optimist that I am and as is proving that I have not been, I do not think, wrong in the case of the drug bill, I think that in the matter that the distinguished Senator alludes to there will be an agreement that will free a considerable number of judges and a considerable amount of legislation. But I cannot speak with any definitude to the details of that package.

Mr. THURMOND. There is certain legislation in this package that can be freed up at that time when that is done, including the Genocide Treaty and some other things.

Mr. BYRD. Yes; that would be one of the items, I understand.

Mr. THURMOND. I thank the majority leader.

Mr. BYRD. I thank my good friend, the Senator from South Carolina [Mr. THURMOND].

ORDERS FOR TOMORROW

RECESS UNTIL 9:30 A.M.

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9:30 tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that following the recognition of the two leaders there be a period for morning business until 10 o'clock and that Senators may speak during that period for not to exceed 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

RESUME CONSIDERATION OF THE DRUG BILL—GRAMM AMENDMENT

Mr. BYRD. Mr. President, I ask unanimous consent that at 10 o'clock tomorrow morning the Senate resume consideration of the substitute to the House drug bill, and that an amendment by Mr. GRAMM, loss of Federal benefits, which appears in category 3, be the pending question at that time.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. I further ask that any amendments thereto be germane and relevant; otherwise, that they not be in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, does the distinguished Republican leader have any further statement or business he wishes to transact?

Mr. DOLE. No further business.

Mr. BYRD. Does any other Senator?

RECESS UNTIL TOMORROW AT 9:30 A.M.

Mr. BYRD. Mr. President, I move in accordance with the order previously entered, that the Senate stand in recess until the hour of 9:30 tomorrow morning.

The motion was agreed to; and, the Senate, at 7:59 p.m., recessed until Friday, October 14, 1988, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate October 13, 1988:

DEPARTMENT OF EDUCATION

KENNETH D. WHITEHEAD, OF VIRGINIA, TO BE ASSISTANT SECRETARY FOR POSTSECONDARY EDUCATION, DEPARTMENT OF EDUCATION, VICE RONALD KIMBERLING, RESIGNED.

AFRICAN DEVELOPMENT FOUNDATION

JOHN TRAIN, OF NEW YORK, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE AFRICAN DEVELOPMENT FOUNDATION FOR A TERM EXPIRING SEPTEMBER 22, 1993, VICE CHARLES G. WELLS, TERM EXPIRED.

IN THE FOREIGN SERVICE

THE FOLLOWING-NAMED CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES INFORMATION AGENCY FOR PROMOTION IN THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED:

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF CAREER MINISTER:

JAMES A. MCGINLEY III, OF FLORIDA.
HERWALD H. MORTON, OF MARYLAND.
MICHAEL T. F. PISTOR, OF ARIZONA.
MORTON S. SMITH, OF MARYLAND.

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF MINISTER-COUNSELOR:

ROBERT F. JORDAN, OF TEXAS.
MARILYN MCAFEE, OF FLORIDA.
JOHN M. REID, OF VIRGINIA.
WESLEY D. STEWART, OF VIRGINIA.
RICHARD EDWARD UNDELAND, OF VIRGINIA.

THE FOLLOWING-NAMED CAREER MEMBERS OF THE FOREIGN SERVICE OF THE UNITED STATES INFORMATION AGENCY FOR PROMOTION INTO THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED:

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR:

PETER J. ANTICO, OF NEW YORK.
JOHN B. BARTON, OF FLORIDA.
JOHN THOMAS BURNS, OF FLORIDA.
JAMES BRAERTON CARROLL, OF ILLINOIS.
ANTHONY B. CHILLURA, OF FLORIDA.
GAIL J. GULLIKSEN, OF COLORADO.
BERNARD MICHAEL HENSGEN, OF VIRGINIA.
THOMAS A. HOMAN, OF NEW MEXICO.
MARY ROBERTA JONES, OF THE DISTRICT OF COLUMBIA.
DAVID K. KRECKE, OF MARYLAND.
FREDERICK E. V. LA SOR, OF OHIO.
WILLIAM HENRY MAURER, JR., OF VIRGINIA.
ROBERT E. MCDOWELL, JR., OF KENTUCKY.
ROBERT PETERSEN, OF OHIO.
RICHARD CHARLES SCHOONOVER, OF CALIFORNIA.
JAMES EARL SMITH, OF ARKANSAS.
THOMAS E. E. SPOONER, OF MICHIGAN.

IN THE PUBLIC HEALTH SERVICE

THE FOLLOWING CANDIDATES FOR PERSONNEL ACTION IN THE REGULAR CORPS OF THE PUBLIC HEALTH SERVICE SUBJECT TO QUALIFICATIONS THEREFOR AS PROVIDED BY LAW AND REGULATIONS:

1. FOR APPOINTMENT:

To be medical director

DUANE F. ALEXANDER
JOHN J. CLINTON, JR.
ARTHUR S. LEVINE
JAMES O. MASON
PAUL J. WIESNER

To be senior surgeon

RICHARD L. FODOR
MARK HALLETT
JAMES M. HUGHES
DARREL A. REGIER
EVERETT R. RHOADES
RICHARD G. WYATT
FRANK E. YOUNG

To be surgeon

MARC E. BABITZ
RONALD G. BANKS
JEFFREY A. LYBARGER
RICHARD D. MANDSAGER
JEFFREY J. SACKS
HAROLD W. SCHNEIDER, JR.
STEPHEN B. THACKER
THEODORE F. TSAI

To be senior assistant surgeon

ROBERT F. CHESBRO, JR.
TERENCE L. CHORBA
RICHARD C. DICKER
STEVEN H. FOX
JOSEPH P. ISER
MARTIN J. KILEEN
DAVID M. MANNINO III
WILLIAM J. MARX, JR.
FRANK O. RICHARDS, JR.
WILLIAM M. SAPPENFIELD
PAUL J. SELIGMAN
ROBERT V. TAUXE
ROBERT P. WISE

To be dental surgeon

ROBERT L. NEALON

To be senior assistant dental surgeon

HOWARD A. ANDERSON
WILLIAM D. BAILEY
GREGORY K. BAKER
ROBERT J. BENCIC
ALLEN M. BERGESON
SCOTT BINGHAM
THOMAS B. BORNSTEIN
JAMES L. CARPENTER
MAUREEN P. CLEARY
MICHAEL J. CRISTY
MARTIN E. DUCHSCHER
ROBERT F. FELKER, JR.
MICHAEL A. FOSTER
CHARLES W. GRIM
LORRINE M. HENDERSON
DAVID J. HERMAN
MYRON S. HILTON
RONALD L. JEFFREY
DERRICK T. JOHNSTON
KENNETH T. JONES
THOMAS J. KOVALESKI
RANDALL B. MAYBERRY
ROBERT M. MCCARTHY
GENE J. MCELHINNEY
MARILYN R. MCKEAN
STEVE J. MESCHER
MARK E. NEHRING
ANGEL L. RODRIGUEZ-ESPADA
RAUL A. ROMAGUERA
RICHARD B. TROYER
CLIFFORD D. WHITE
STEPHEN W. WYATT

To be senior nurse officer

JOSEPHINE T. WACONDA

To be nurse officer

SHIRLEY A. BOWMAN
KATHYRN L. MCKEON
BEVERLY R. WRIGHT

To be senior assistant nurse officer

JANICE A. BENNETT
EDWARD J. BOES
MICHAEL D. BROWN
JUDITH H. BUDD
MICHAEL W. CHANEY
PATSY J. CLARK-ANDERSON
DORIS L. CLARKE
LESLIE C. COOPER
CHARLES S. CULVER
HOWARD E. DOTY
JANICE A. DRASS
MELVIN T. EDDLESTON
LINDA G.M. FERGUSON
GALE L. HEAVNER
CLARA L. HENDERSON
DIANE P. HOLZEM
GLENDA O. JARRETT
CHRISTOPHER J. JONES
COLLEEN B. JONES
DOROTHY L JONES
DAVID L. KERSCHNER
MARK P. LECAPITAINE
CALVIN J. MARSHALL
TIMOTHY E. MATHEWS
DEBORAH S. MAYOR
JAMES C. MCCANN
EVANGELINA A. MONTOYA
JOHN S. MOTTER
JOHN D. ORELLA
DEBORAH L. PARHAM
KOLYNN F. POWELL
MERIBETH M. REED
RUDOLF R. REICHELT
CAROLYN K. RILEY
LATRICIA C. ROBERTSON
CHERYL A. SEAMAN
MICHAEL A. SHEETS
ANNETTE C. SIEMENS
DOROTHY J. SOLICK
JAMES T. STACKHOUSE
ANDREW C. STEVERMER
DAVID W. TEBOREK
MICHAEL L. VITCH
MARILYN J. VRANAS
BARBARA L. WARFIELD
JOYCE B. WATSON
GALE G. WHITE
DENISE M. WILLIAMS

To be assistant nurse officer

RANDALL W. BOHAM
THOAMS M. CONRAD
LAURIE S. IRWIN-PINKLEY
ELLEN J. KING
KITTY R. MACFARLANE
CRAIG M. POOLE

To be engineer officer

DONALD B. BAD MOCCASIN
RICHARD M. GARWOOD

To be senior assistant engineer officer

RANDALL L. BACHMAN
DENNIS A. BARBER
ALBERT J. BERRETH
DANIEL J. CARPENTER
KEVIN S. CHADWICK
THOMAS C. CLOUTIER
KENNETH J. EVANS
STEVEN J. FORTHUN
KENNITH O. GREEN
SCOTT L. HAMILTON
WILLIAM B. KNIGHT
PAUL M. LAHR
DOUGLAS E. MARX
CHRISTOPHER G. MCCUNE
RICHARD D. MELTON
DOUGLAS C. OTT
RUSSEL D. PEDERSON
GEORGE D. PRINGLE, JR.
SVEN E. RODENBECK
RICHARD W. THAYER
MICHAEL R. WEAVER
ROBERT L. WILSON
FRED E. WISEMAN, JR.

To be assistant engineer officer

JAMES W. COLLINS

To be scientist

MURRAY L. COHEN

To be senior assistant scientist

GEORGE M. CAUTHEN
MARK S. EBERHARDT
JAMES A. MERCY
ROGER R. ROSA
JOHN M. SPAULDING
PAUL A. STEHR-GREEN
CHING-LONG J. SUN
GLENN D. TODD

To be senior assistant sanitarian

LINDA A. CHANDLER
LARRY J. ELLIOTT
BRUCE M. ETCHISON
JEROME F. JOYCE
DAVID M. MOSIER
DAVID A. PARKER
JON S. PEABODY
DOUGLAS C. PICKUP
WAYNE A. POTTER
ALAN R. SCHROEDER
WALTER M. SNESKO
FRANK H. WILLIAMS

To be assistant sanitarian

JAMES S. SPAHR

To be senior assistant veterinary officer

KIMBERLY S. WAGGIE

To be pharmacist

JIMMY P. DOWDY

To be senior assistant pharmacist

JAMES D. BONA
DARCY S. CUNNINGHAM
MARK L. DEMONTIGNY
JOSEPHINE E. DIVEL
JOHN A. ELTERMANN, JR.
RICHARD M. FEJKA
CATHY L. FOREMAN
CAMEON L. JACOBSON

ALVIN J. LEE
KEVIN M. LEMIEUX
JON A. MCARTHUR
MICHAEL A. MORTON
CLAIRE L. NEALLY
DANIEL P. RILEY
BRYAN L. SCHULZ
LINDA J. SHULL
ROBERT E. STALEY, JR.
JAMES M. THOMPSON
VIRGINIA A. TIBBETTS
THOMAS J. TROSHYNSKI

To be senior assistant dietitian

KAREN M. BACHMAN-CARTER
JOHN E. FINN
DENISE B. FORD
LAURA A. MCNALLY
PAULETTE D. WICKS

To be senior assistant therapist

DAVID J. BRUEGGEMANN
FRANKLIN D. KEEL
EDWARD KOZIATEK

To be senior assistant health services officer

ANNA J. ALBERT
FRANCIS J. BEHAN
REGINA A. BRONSON
WESLEY W. CHARLTON
RUST D. COREY
KATHERINE W. DAVIS
LOIS E. FLOWERS
HOWARD A. GOLDSTEIN
COLLEEN L. GOOD BEAR
RICHARD P. HASKINS
THOMAS M. JAKUB
SANDRA C. KETCHER
GREG J. KULLMAN
NINA R. LALICH
JANE E. LINKLETTER
ARNULFO MANANGAN
BARRY A. MILLER
ANTHONY SANCHEZ
PARBATTEE B. SPANGLER
NANCY A. TOLLISON
ROBERT G. TONSBERG
KENNETH W. WALKER
JOESPH A. ZOGBY

To be assistant health services officer

BEVERLY A. ROTH

DEPARTMENT OF LABOR

JERRY D. BLAKEMORE, OF ILLINOIS, TO BE AN ASSISTANT SECRETARY OF LABOR, VICE DAVID F. DEMAREST, REASSIGNED.

JILL HOUGHTON EMERY, OF NEW YORK, TO BE DIRECTOR OF THE WOMEN'S BUREAU, DEPARTMENT OF LABOR, VICE SHIRLEY DENNIS, RESIGNED.

COMMODITY FUTURES TRADING COMMISSION

WILLIAM P. ALBRECHT, OF IOWA, TO BE A COMMISSIONER OF THE COMMODITY FUTURES TRADING COMMISSION FOR THE TERM EXPIRING APRIL 13, 1993, VICE WILLIAM E. SEALE, RESIGNED.

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

GEORGE TRYON HARDING IV, OF OHIO, TO BE A MEMBER OF THE BOARD OF REGENTS OF THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES FOR THE REMAINDER OF THE TERM EXPIRING MAY 1, 1989, VICE FRANCIS CARTER COLEMAN, DECEASED.

IN THE NAVY

THE FOLLOWING-NAMED EX-U.S. NAVY OFFICERS TO BE APPOINTED PERMANENT COMMANDER IN THE MEDICAL CORPS OF THE U.S. NAVAL RESERVE, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 593.

CHARLES L. RICE
THEODORE G. GOLDFARB
JOSIAH LILLY
ROBERT B. ARMSTRONG
DARYL J. HULSING
RICHARD B. SALSITZ

THE FOLLOWING MEDICAL COLLEGE GRADUATES TO BE APPOINTED PERMANENT COMMANDER IN THE MEDICAL CORPS OF THE U.S. NAVAL RESERVE, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 593.

BERNHARD PENNER
STUART A. BRODSKY
PAUL H. BARNETT

THE FOLLOWING EX-U.S. ARMY OFFICERS TO BE APPOINTED PERMANENT COMMANDER IN THE MEDICAL CORPS OF THE U.S. NAVAL RESERVE, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 593.

PAUL S. DROHAN
FRANKLIN J. DERUSSO

HOUSE OF REPRESENTATIVES—*Thursday, October 13, 1988*

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Open our eyes, gracious God to the suffering and pain and illness of others. We admit that we see statistics of need, we see pictures of suffering and we can show the graphs and know the reality of poverty. So open our hearts, O God, to translate what we see and hear concerning the wrongs in society, into generous deeds of mercy for those about us. May our good works become the evidence of our faith and our deeds demonstrations of our love. This we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from California [Mr. LAGOMARSINO] please come forward and lead us in the Pledge of Allegiance.

Mr. LAGOMARSINO. My colleagues, if you will join in saluting the flag of our country, face front, and place your hand over your heart.

Mr. LAGOMARSINO led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment bills, a joint resolution and a concurrent resolution of the House of the following titles:

H.R. 525. An act for the relief of John M. Gill;

H.R. 945. An act for the relief of Allen H. Platnick;

H.R. 1275. An act for the relief of Joyce G. McFarland;

H.R. 1385. An act for the relief of Travis D. Jackson;

H.R. 3347. An act for the relief of Bibianne Cyr;

H.R. 4410. An act to designate the Federal building at Spring and High Streets in Columbus, OH, as the "John W. Bricker Federal Building";

H.R. 4480. An act to change the name of the Pacific Tropical Botanical Garden, a federally chartered organization, to the National Tropical Botanical Garden, and for other purposes;

H.R. 4557. An act to amend title 46, United States Code, to require alerting and locating equipment on manned uninspected vessels, to provide for exemption of uninspected vessels from certain requirements of that title, and to increase penalties for violations of certain uninspected vessel requirements;

H.R. 4818. An act to establish the National Park of American Samoa;

H.R. 5007. An act to designate the U.S. courthouse at 620 Southwest Main Street, Portland, OR as the "Gus J. Solomon United States Courthouse";

H.R. 5052. An act to amend title 31 of the United States Code to provide for a transfer of control of the General Acccounting Office Building and to improve the administration of the General Accounting Office;

H.R. 5199. An act to make nonmailable any plant, fruit, vegetable, or other matter, the movement of which in interstate commerce has been prohibited or restricted by the Secretary of Agriculture in order to prevent the dissemination of dangerous plant diseases or pests, and for other purposes;

H.R. 5334. An act to make certain technical and conforming amendments to the Education of the Handicapped Act and the Rehabilitation Act of 1973, and for other purposes;

H.R. 5442. An act to provide the Environmental Protection Agency and the public with additional information about asbestos products;

H.J. Res. 644. Joint resolution granting the consent of Congress to the compact entered into between the State of North Carolina and the State of South Carolina establishing the Lake Wylie Marine Commission; and

H. Con. Res. 303. Concurrent resolution commending humanitarian treatment of Southeast Asian refugees and urging further measures to ensure humanitarian treatment of the refugees.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 1133. An act for the relief of Thomas Nelson Flanagan;

H.R. 1388. An act for the relief of David Butler, Aldo Cirone, Richard Denisi, Warren Fallon, Charles Hotton, Harold Johnson, Jean Lavoie, Vincent Maloney, Austin Mortensen, Kurt Olofsson, and John Jenks;

H.R. 2802. An act for the relief of Fleurette Seidman;

H.R. 3614. An act to authorize a study of the Hanford Reach of the Columbia River; and for other purposes;

H.R. 4050. An act for the relief of certain persons in Riverside County, CA, who purchased land in good faith reliance on an existing private land survey;

H.R. 4210. An act to authorize appropriations to carry out titles II and III of the Marine Protection, Research, and Sanctuaries Act of 1972, to establish the National Oceans Policy Commission, and for other purposes; and

H.R. 4612. An act to amend title 28, United States Code, to provide for an exclusive remedy against the United States for suits based upon certain negligent or wrongful acts or omissions of U.S. employees committed within the scope of their employment, and for other purposes.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 59. An act entitled the "National Forest and Public Lands Nevada Enhancement Act of 1988";

S. 575. An act to convey public land to the Catholic Diocese of Reno/Las Vegas, NV;

S. 1549. An act to increase the authorization ceiling for the Closed Basin Division, San Luis Valley project, Colorado;

S. 1991. An act Uranium Mill Tailings Remedial Action Amendments Act of 1988;

S. 2748. An act to extend the authorization in Public Law 96-309 to design and construct a gunite lining on certain reaches of the Bessemer Ditch in the vicinity of Pueblo, CO; and

S. 2885. An act to amend the Hunger Prevention Act of 1988 to make a technical correction.

The message also announced that the Senate agrees to the amendments of the House to the bill (S. 2042) "An act to authorize the Vietnam Women's Memorial Project, Inc., to construct a statue at the Vietnam Veterans Memorial in honor and recognition of the women of the United States who served in the Vietnam conflict," with amendments.

The message also announced that the Senate agrees to the amendment of the House to the bill (S. 1914) "An act to designate a segment of the Wildcat River in the State of New Hampshire as a component of the National Wild and Scenic Rivers System, and for other purposes."

The message also announced that pursuant to section 5(a)(3) of Public Law 100-382, the Chair on behalf of the President pro tempore, appoints Joan Ress Reeves, of Rhode Island, Rebecca Ann Floyd, of Mississippi, and Richard Akeroyd, Jr., of Connecticut, from private life, to the Advisory Committee for the White House Conference on Library and Information Services.

The message also announced that pursuant to section 491 of Public Law 99-498, the Chair on behalf of the President pro tempore, reappoints Dr. James Lloyd Flippin, of Mississippi, to the Advisory Committee on Student Financial Assistance.

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

CONGRATULATIONS TO DONN ANDERSON ON ELECTION TO EXECUTIVE COMMITTEE OF ASSOCIATION OF SECRETARIES GENERAL OF PARLIAMENTS

(Mr. SCHEUER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHEUER. Mr. Speaker, just a few weeks ago I had the pleasure and privilege of attending the 99th annual Inter-Parliamentary Union Conference in Sofia, Bulgaria, in the company of our distinguished colleague, Senator Claude Pepper. It was a marvelous conference, and among those who were part of our delegation was the permanent secretary of our delegation and the Clerk of the House, Donn Anderson.

Donn also serves as a member of the Association of Secretaries General of Parliaments from around the world, which is the organization of chief administrative officers of national parliamentary bodies. They meet from time to time and conduct examinations and exchanges of information on various procedural and administrative matters.

I am very proud to inform the House that at the Sofia Conference our Clerk, Donn Anderson, was unanimously elected to the executive committee of this great Organization of Secretaries General of Parliaments from around the world. As the new Secretary General and as a member of the association, it was an especially great honor for Donn to have his contributions so recognized. Apparently, Mr. Speaker, Donn has achieved and earned the same credibility, respect, and indeed affection among his parliamentary Secretaries General from around the world as he has here in this very Chamber among the 435 Members of the House.

I think we can all take very great pride in that, Mr. Speaker. It is a real expression of respect for the foremost parliamentary body of the world, the U.S. House of Representatives of the U.S. Congress, that our Clerk, Donn Anderson, has achieved this remarkable global recognition among his peers.

THE QUALITY CHILD CARE DEMONSTRATION ACT OF 1988

(Mr. LAGOMARSINO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LAGOMARSINO. Mr. Speaker, today I introduced, with Congresswoman Nancy Johnson, the Quality Child Care Demonstration Act of 1988. I am especially pleased to introduce this bill, as it was inspired through our work with model child development centers in California's 19th Congressional District.

The Quality Child Care Demonstration Act of 1988, establishes a demonstration block grant program to increase the quality and availability of child care by identifying exemplary, center-based child development centers. These models will recruit, train, support, and monitor family care providers, that now often operate unregulated and are difficult for potential consumers to locate. It enables child care providers to inform parents of their services, while encouraging family care providers to associate with high quality child development models. Children also benefit from enhanced care while the emotional security of a sustained relationship with their provider is encouraged through continuity. These model centers also include a child care information center and community outreach program to encourage potential child care providers.

I am pleased to promote a program that provides our parents the freedom to choose quality child care options that suit their individual needs. I invite my colleagues to join me in support of this program.

CONGRATULATIONS TO NATIONAL LEAGUE CHAMPIONSHIP WINNERS, THE LOS ANGELES DODGERS

(Mr. LEVINE of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEVINE of California. Mr. Speaker, nobody said that the Los Angeles Dodgers had much of a chance to win the National League Pennant in 1988. Yet Tommy Lasorda, the Dodgers' superb manager, called this a team of destiny.

Last night America witnessed this gutty and gritty team shut out a powerful New York Mets team and become the National League champions.

Mr. Speaker, I think our colleagues would like to join in extending congratulations to this terrific group of athletes. The pitching performance of Orel Hershiser, both during the season and during the playoffs, is nothing short of amazing. The pitching of Tim Belcher to win two games in this playoff, the clutch hitting of Kirk Gibson, even when injured, the dramatics of Mike Scioscia coming from behind in the ninth inning in the fourth game in New York. The next day Rick Dempsey, whom fans in this area will recall for his clinch heroics in the 1983 World Series in Baltimore, came through with two clutch doubles. Steve Sax was sensational all week—and all year. The play of Mike Marshall, Tim Leary, and the rest of the Dodger lineup, some of whom are not household names, players such as Jeff Hamilton, Alejandro Peña, John Shelby, and Franklin Stubbs, have had an excellent year.

I believe, Mr. Speaker, that it is appropriate for us to join together to congratulate this gutsy team, its marvelous manager, Tom Lasorda, its great organization, led by Peter O'Malley and Fred Claire, and wish them well as they continue to surprise people in the baseball world as they go into the World Series this week in California.

LET US GET PCB VIOLATORS OUT OF THE PCB BUSINESS

(Mr. CLINGER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CLINGER. Mr. Speaker, I would like you to imagine the unimaginable. Try to visualize a company in your hometown, in fact, right down the street from your house, that is licensed to dispose of toxic PCB waste. You eventually become aware that the company is illegally storing PCB waste, is selling scrap metal that is still contaminated with PCB's, and has serious recordkeeping violations that make it virtually impossible to determine what has happened to hundreds of pounds of PCB waste. You notify the Government of the company's violations, but 2 years pass before even an inspection of the company's records takes place.

Finally, after the firm racks up $2 million in civil penalties, the Government decides not to renew the company's PCB disposal permit. You would probably heave a sigh of relief at this point. However, your relief may have been premature.

After losing its permit, the company simply reopens shop, not as a PCB disposer, but as a PCB broker. The firm is still allowed to take in PCB's, still allowed to transfer PCB's and still allowed to store PCB's. The company doesn't need to obtain a permit for its new business, in fact, it doesn't even have to tell the Government that it is once again handling PCB's.

Mr. Speaker, this is not unimaginable—this is not fiction. This is exactly what has happened in the past in Kansas City and what may be currently happening throughout the Nation. As long as PCB brokers remain unregulated and unidentified, this same nightmare remains a possibility.

The Senate has a chance to change the law. It has the opportunity to almost immediately close the loopholes that allow this kind of situation to exist.

The PCB Regulatory Improvement Act is now bottled up in the Senate. I urge my colleagues on the Senate to help prevent a repeat of the travesty I have just described by bringing the

PCB Improvements Act to the floor and supporting its passage.

THE PRESIDENT NEEDS THE LINE-ITEM VETO

(Mr. MAZZOLI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MAZZOLI. Mr. Speaker, I do not agree with every single position that the head of our Democratic ticket has taken this year, Governor Dukakis, but I do agree wholeheartedly with one that he took and which was reported today on the front page of the Washington Times newspaper. That is that among the many steps Governor Dukakis would take if he is elected President to reduce the deficit and control all of this economic turmoil is the selective use of the line-item veto.

A line-item veto, as we know, is possessed by 43 of the Nation's Governors, most of whom are Democrat, and yet it continues to perplex me that my party has a very strong and almost antagonistic stand against the use of the line-item-veto.

But I do salute Governor Dukakis for realizing, as so many Governors have realized, that the only way to get a balanced budget is to give the Chief Executive that authority. I certainly hope that the National Economic Commission, which at this moment is deliberating its report which will be issued in December to the new President, on all of the steps to be taken to reduce the deficit and to balance our budget, I devotedly hope that they will consider prime among their recommendations the adoption by this Congress of a line-item veto.

□ 1015

I have introduced legislation; much of it is pending. If we were to adopt that in the 101st Congress, I do believe we will get to the root of our economic problems and balance the budget once and for all.

SPECIAL TRIBUTE TO THE 776TH TACTICAL AIRLIFT SQUADRON

(Mr. NELSON of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. NELSON of Florida. Mr. Speaker, like so much of the heroism and sacrifice of American veterans of the Vietnam conflict, the contribution of the 776th Tactical Airlift Squadron has gone largely unnoticed and unrewarded.

In March 1975, a young man from my district, Maj. David F. Antoon, was a member of this squadron stationed at Clark Air Force Base in the Philippines. As a C-130 pilot, he and his unit were called upon to assist in the evacuation of Saigon between March 21 and March 29. During this time, these men made eight flights in total darkness under enemy missile attack and carried thousands of innocent people to safety.

Mr. Speaker, it is difficult to imagine how these young men must have felt as they headed into the night on these missions. But I can tell you, many lives were surely changed with each flight. Mark Twain said courage is, "resistance to fear, mastery of fear—not absence of fear." Mr. Speaker, these men had much to fear. They made their approach from 20,000 feet to avoid detection and the risk of enemy missile attack. A crewman was stationed at each door with a flare gun to shoot at incoming heat-seeking missiles. If an incoming missile had been detected, the C-130 pilot had orders to turn his craft toward the missile to keep its exhausts away from missile sensors.

A C-130 plane is equipped to carry 88 people, yet each mission lifted 250 refugees to safety. Eight attempts and eight successes almost make it sound easy. But other missions were not so fortunate—on March 29 a C-130 was hit by mortar fire and lost as it landed. Another was attacked by a captured American A-37 flown by a North Vietnamese pilot. This same A-37 bombed a helicopter during the operation killing approximately 100 people.

Mr. Speaker, efforts to secure specific awards and medals on behalf of Major Antoon and the airmen of the 776th Tactical Airlift Squadron to officially recognize their heroism and afford them the dignity they so well deserve have been unsuccessful. I hope that my words here today will serve to remind us of this unit's achievements and the individual acts of brave men who deserve our full support, respect, and admiration.

STRONG SANCTIONS URGED FOR SOUTH AFRICA

(Mr. WISE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WISE. Mr. Speaker, I rise today to remind my colleagues that while it may not be the most prominent news story at the moment, the situation in South Africa has not changed. The state of emergency remains in effect and thousands, many of whom are children, continue to be held in detention. On August 11, 1988, this body passed a strong sanctions package which I ardently supported. I rise today to encourage my colleagues in the other body to act as well. While time is indeed short, it has not run out. The situation in South Africa demands action, serious and decisive.

Many have argued that sanctions do not and have not worked in the case of South Africa. The GAO report released yesterday proves that sanctions are working—have cost the Botha regime at least $469 million since sanctions were imposed. The progress of the Angola negotiations clearly demonstrate that the apartheid regime is feeling the squeeze. I urge my colleagues in the Senate to pass the same decisive legislation that the House has.

TRIBUTE TO THE HONORABLE "EDDIE" BOLAND

(Mr. MARKEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MARKEY. Mr. Speaker, after 35 years of service in the House of Representatives, and after more than half a century of public service, my friend, and colleague from Massachusetts, EDDIE BOLAND, is retiring.

Let me put the depth and experience of EDDIE BOLAND's service into perspective by pointing out that he was elected to this body when I was 7 years old.

While I grew up, he served this body year in and year out with distinction. He has been here, steady and steadfast, even as the tides of change swept this country through the fifties, sixties, seventies, and eighties.

During all those years he has been this institution's Rock of Gibraltar.

He has always been there, always dependable, always able to deliver. He has always gotten the job done.

In the early part of this decade, as chair of the Select Committee on Intelligence, EDDIE BOLAND became more than a Congressman.

He became a statesman when he wrote the amendment bearing his name which helped bring an end to the Reagan administration's illegal war in Central America.

Millions of Americans learned about EDDIE BOLAND and the Boland amendment during the Iran/Contra hearings.

To many of them, that is how he will be remembered.

But we know that in his decades of service, in his capacity as chair of the HUD-Independent Agencies Subcommittee, as the ranking Democrat on the Appropriations Committee he has done so much more.

I wish him a happy and healthy retirement.

UNITED STATES-MEXICO BORDER REGION HOUSING AND COMMUNITY DEVELOPMENT ACT

Mr. GONZALEZ. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5462) to provide assistance for housing and community development in the United States-Mexico border region of the United States.

The Clerk read as follows:

H.R. 5462

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States-Mexico Border Region Housing and Community Development Act".

SEC. 2. COMMUNITY DEVELOPMENT BLOCK GRANT ASSISTANCE.

(a) Set-Aside for Colonias.—The States of Arizona, California, New Mexico, and Texas shall each make available, for activities designed to meet the needs of the residents of colonias in the State relating to water, sewage, and housing, the following percentage of the amount allocated for the State under section 106(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5306(d)):

(1) First fiscal year.—For the first fiscal year to which this section applies, 10 percent.

(2) Succeeding fiscal years.—For each of the succeeding fiscal years to which this section applies, a percentage (not to exceed 10 percent) that is determined by the Secretary of Housing and Urban Development to be appropriate after consultation with representatives of the interests of the residents of colonias.

(b) Eligible Activities.—Assistance distributed pursuant to this section may be used only to carry out the following activities:

(1) Planning.—Payment of the cost of planning community development (including water and sewage facilities) and housing activities, including the cost of—

(A) the provision of information and technical assistance to residents of the area in which the activities are to be concentrated and to appropriate nonprofit organizations and public agencies acting on behalf of the residents; and

(B) preliminary surveys and analyses of market needs, preliminary site engineering and architectural services, site options, applications, mortgage commitments, legal services, and obtaining construction loans.

(2) Assessments for public improvements.—The payment of assessments (including any charge made as a condition of obtaining access) levied against properties owned and occupied by persons of low and moderate income to recover the capital cost for a public improvement.

(c) Distribution of Assistance.—Assistance shall be made available pursuant to this section in accordance with a distribution plan that—

(1) gives priority to colonias having the greatest need for such assistance; and

(2) is developed by the Commission (or, prior to development of a plan by the Commission, is developed by the State distributing the assistance) in consultation with residents of colonias and representatives of the interest of the residents.

(d) Applicable Law.—Except to the extent inconsistent with this Act, assistance provided pursuant to this section shall be subject to the provisions of title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.).

SEC. 3. RURAL HOUSING ASSISTANCE.

(a) Priority for Colonias.—In considering applications for assistance under title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.) for any fiscal year to which this section applies, the Secretary of Agriculture shall give priority to applications for assistance to be used in any colonia.

(b) Applicable Law.—

(1) In general.—Except to the extent inconsistent with this Act, assistance provided pursuant to this section shall be subject to the provisions of title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.).

(2) Exception.—Section 520 of the Housing Act of 1949 (42 U.S.C. 1490) shall not apply to assistance provided pursuant to this section.

SEC. 4. DEFINITIONS.

For purposes of this Act:

(1) Colonia.—The term "colonia" means any identifiable community that—

(A) is in the State of Arizona, California, New Mexico, or Texas;

(B) is in the United States-Mexico border region;

(C) is designated by the State or county in which it is located as a colonia;

(D) is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and

(E) was in existence and generally recognized as a colonia before the date of the enactment of this Act.

(2) Nonprofit organization.—The term "nonprofit organization" means an organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code.

(3) Persons of low and moderate income.—The term "persons of low and moderate income" has the meaning given the term in section 102(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)).

(4) United States-Mexico border region.—The term "United States-Mexico border region" means the area of the United States within 150 miles of the border between the United States and Mexico, except that the term does not include any standard metropolitan statistical area that has a population exceeding 1,000,000.

SEC. 5. APPLICABILITY.

This Act shall apply only with respect to fiscal years 1989, 1990, and 1991.

The SPEAKER pro tempore (Mr. Bustamante). Pursuant to the rule, a second is not required on this motion.

The gentleman from Texas [Mr. Gonzalez] will be recognized for 20 minutes and the gentleman from Texas [Mr. Bartlett] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. Gonzalez].

Mr. GONZALEZ. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5462 represents a 100-percent bipartisan effort in one of the most innovative bits of legislation that I have seen that was authored as an original author by our very distinguished colleague from Texas, from the 16th District, the gentleman from Texas [Mr. Coleman]. It was a very comprehensive bill originally known as H.R. 4606. It had multiple committee jurisdiction in various portions of the original bill.

One of the more important sections, section 2, was sequentially referred to the Committee on Banking, Finance and Urban Affairs and thence to the Subcommittee on Housing and Community Development where we had hearings and very illustrative, very valuable hearings in which it was clear that this condition, which also the Speaker pro tempore is very knowledgeable of since his district is one of those that adjoins the Mexico-United States border. But along this 2,000 mile border, as Mr. Coleman was quick to recognize, there has been a persistent and an endemic sort of disallowance on the part of us nationally to permit the flexibility in the use of the programs that are in existence. In other words, it is not necessary that we legislate de novo in such areas as housing, Farmers Home Administration Housing, assisted housing programs, HUD, and community development programs such as the Congress has through the years devised and put into action. What is necessary is that we reconstruct and coordinate these policies and laws in order to enable the States to, in turn, focus on individual county unit sections of government up and down the border so that they can be effective in their applications and in their accessibility to these programs.

The conditions as revealed in the hearings, not only the hearings held by our subcommittee, but the hearings held by other committees, the Committee on Public Works, the Committee on Agriculture, reveals that we have a situation on our side of the border that ordinarily we tend to associate with what is sometimes called a situation of Third World countries.

I myself have never believed in such a thing. I think we are all one world.

What we do have, as we have internally and domestically, citizens who for whatever reason are sunk in poverty, in the misery of illness and disease and lack of educational opportunities.

So that I wanted to make clear, though, that the leadership here that has been indispensable has been that of the gentleman from Texas [Mr. Coleman].

Mr. Speaker, I yield such time as he may consume, to the gentleman from Texas [Mr. Coleman].

Mr. COLEMAN of Texas. I thank the gentleman from Texas for yielding this time to me.

I want to say "thank you" on behalf of some residents of the United States, American citizens who live today without water or sewer service.

Mr. Speaker, I rise today in support of H.R. 5462, a bill to assist the "colonias" along the United States-Mexico border region. For those of us who represent the border area, there is no doubt that this region lags behind the rest of the country in developing its economic and human resources, and this bill is an important first step in providing assistance for residents to improve their living conditions.

I want to especially thank the chairman of the Housing Subcommittee, my good friend HENRY B. GONZALEZ, for the great leadership he has provided toward getting this bill on the floor. Without his assistance, I am sure these communities would have no hope of receiving Federal assistance. By the same token, I would like to thank my colleague from Texas [Mr. BARTLETT] for his support of this legislation, and the staff at the Subcommittee on Housing who have worked so hard on this legislation.

Most recently, many of you have probably learned from media accounts about communities along the border commonly known as "colonias," communities where residents live without necessities that you and I take for granted—water and sewage service. You must understand that living without these necessities is not merely an inconvenience, it's a health hazard. We have counties in this country today that have rates of disease higher than many underdeveloped countries. We have children who look forward to their physical education class because they can bathe there and not at home. We have families who have to haul water in jugs for drinking and cooking. I do not believe these are acceptable conditions for our residents. And I do not think you consider these conditions acceptable either.

This is why I would hope you support this legislation. This bill provides the funding mechanism to provide for the costs of preliminary planning, and the construction and assessment costs involved in alleviating some of the conditions in the colonias using the small city CDBG and FMHA programs. It is important to note that this bill does not create a new program and does not call for additional appropriations. We are not seeking to additionally burden our Federal budget. What we propose to do is to target funds from existing programs to our most distressed communities in the border States of California, Arizona, New Mexico, and Texas.

Under this bill, colonias would receive a 10-percent set-aside of the small cities CDBG funds going to each State. For the following fiscal years 1990 and 1991, the set-aside for colonias is not to exceed 10 percent. Because these counties involved have neither the manpower nor resources to effectively accomplish the preliminary planning activities associated with water, sewage, and housing activities, these funds would be used to cover the costs of providing information and technical assistance to the residents of colonias and the States and counties in which they are located. These funds can be used for preliminary surveys and analyses of market needs, preliminary site engineering and architectural services, site options, applications, mortgage commitments, legal services, and obtaining construction loans. This includes the costs of providing information and technical assistance to residents of colonias and may go to non-profit organizations and public agencies acting on behalf of the residents.

The bill also makes colonias eligible for FMHA programs by amending the definition of "rural area" in section 520 of title V of FMHA specifically for the purpose of qualifying colonias for this housing assistance. To ensure that only colonias are affected by the amendment, the term colonias is defined for purposes of this bill. The bill requires that the State give priority to applications received from colonias for FMHA housing assistance grant and loan programs.

I urge my colleagues to support this bill.

□ 1030

Mr. BARTLETT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of this legislation. This legislation has been passed by the Banking Committee, with the support of both sides of the aisle and the support of all members of the committee. In support of this legislation, a statement will be supplied by the ranking member of the Banking Committee, the gentleman from Ohio [Mr. WYLIE].

This is legislation that needs to be adopted, and I want to join with my colleagues, the gentleman from Texas [Mr. COLEMAN] and the gentleman from Texas [Mr. GONZALEZ], representing the San Antonio area, in their support of this legislation. The fact is that in addition to what has been done before, we are passing legislation that helps to correct a problem that seriously needs to be corrected. In this case the sponsors of this bill and the Banking Committee have done it right.

We have not created any new programs or provided any new expenditures of Federal moneys. In fact, what this legislation does is it makes the colonias developments eligible for existing Federal programs. Therein lies the problem, and the solution is with this legislation.

Mr. Speaker, today literally tens of thousands of individuals along the borders live in circumstances of the worst and most unsupportable kinds of living conditions, unsupportable and comparable in many areas with conditions found in Third World countries. The reason for that is they live in these areas called colonias, which are small plots of land side by side, sold and subdivided as plots of land, but without the basic urban infrastructure put into those colonias. They are sold without sewer and water and other items of infrastructure. Thus these people live in very crowded conditions without the infrastructure required under the usual urban conditions.

The problem with the Federal law in this regard is that these colonias are defined neither as rural areas nor urban areas. Indeed they are both, but for purposes of community development block grants and the Farmers Home Administration, the two basic programs that help to provide these kinds of services, the colonias have been defined as neither. So there is a large gap in the law, a gap in definition, and it is that gap in definition that this legislation would seek to correct.

The legislation basically does the following: First of all, it sets aside for these small cities, these nonentitlement cities in the Community Development Block Grant Program, a portion of the CDBG money that is administered by the State. It sets aside 10 percent of those moneys for the four States in which the colonias are an issue.

As a Member of Congress I have to say, like many of my colleagues, that I think we all had a problem with that set-aside and with that micromanagement of what is a State block grant. Nevertheless, in talking with the States, we find the States themselves have no problem with this. In fact, this is an area where States ought to be spending a great deal of their nonentitlement block grant money. So while philosophically it is a problem, as a practical matter this needs to be done, and the States themselves support it.

Second, the most important change in this bill is that it makes the colonias eligible, first, for community block grant development funding for planning for sewer and water development in colonias. This is an activity they are not now eligible for. And that is for the urban areas, and second, for the large rural grant program for the Federal Government to conduct similar activities, it also makes colonias eligible for Farmers Home. Thus we remove the catch-22 in the law that prior to this legislation had made colonias eligible for neither urban grants nor rural grants.

I have one other comment, Mr. Speaker. This legislation is not in and of itself going to solve the colonias' problem.

Mr. DE LA GARZA. Mr. Speaker, will the gentleman yield?

Mr. BARTLETT. I am happy to yield to the gentleman from Texas, the gentleman from the valley with colonias in his district.

Mr. DE LA GARZA. Mr. Speaker, I just want to clarify the issue, because there are many misconceptions or erroneous perceptions of colonias and their problems, and as it relates to

Farmers Home, I want to state to the gentleman that colonias are eligible for Farmers Home assistance if they fit into the program. It is only in some very specific areas that they are not. So the catch-22 is a minimal thing.

There are people living in colonias now that have been given assistance by Farmers Home and that are eligible for Farmers Home assistance if they qualify as to the criteria for population. It is only where they may be within the confines or adjacent to a larger city, but it does not mean that help has not come forward and help has not been given. But in a small area, that is where the problem lies.

Mr. BARTLETT. Mr. Speaker, the gentleman is correct. There still is a problem, and the problem is in those colonias that are adjacent to a large city. It is their adjacency that makes them ineligible.

I would say that the gentleman from the Rio Grande Valley, the chairman of the Committee on Agriculture, has been as prominent and active and supportive as any Member, and he has been more helpful than many, I think, in terms of securing eligibility for the colonias to correct these problems.

I think the gentleman's clarification was helpful, but I would say there is still that catch-22 that this law would seek to remove.

Mr. GONZALEZ. Mr. Speaker, will the gentleman yield?

Mr. BARTLETT. I yield to the chairman of the subcommittee.

Mr. GONZALEZ. Mr. Speaker, I thank my colleague for yielding.

Mr. Speaker, I rise only because at this point it is very important that we understand why this bill is being considered at this time.

Our colleague, the chairman of the Agriculture Committee, the gentleman from Texas [Mr. DE LA GARZA], is correct in saying that the Farmers Home Administration does help except in housing. It provides sewage and water resource grants, but not housing. This is the reason why this subcommittee has acted in this very important respect. The Farmers Home Administration in its subsidizing housing program for rural will not act in a purely defined situation such as we are trying to outline in the colonias areas nor has it any track record of assistance. It does help in sewage and water resource grant activities. It has been, I think, very responsible in that respect.

Mr. DE LA GARZA. Mr. Speaker, will the gentleman yield further?

Mr. BARTLETT. I yield to my colleague, the gentleman from Texas.

Mr. DE LA GARZA. Mr. Speaker, again, very respectfully, let me say that Farmers Home does provide assistance for housing in the rural areas, and there are many colonias in my district, for instance, in Hidalgo County. The residents have secured Farmers Home Administration loans to build houses. It is only where they are out in the population of the community that has the restriction. But I could not let this pass that Farmers Home has not assisted in housing, because they have.

Mr. BARTLETT. Mr. Speaker, I thank the gentleman for his clarification, and I will yield further to the gentleman from Texas [Mr. GONZALEZ] in just a moment.

To make sure that we all understand what this legislation does in the area of Farmers Home, No. 1, it mandates that Farmers Home and, therefore, the Agriculture Secretary, give priority to colonias applying for assistance for the years 1989 through 1991; and, No. 2, it amends section 520 of the Housing Act to allow colonias to apply for Farmers Home assistance.

Both those colonias, as the gentleman from the Rio Grande Valley has stated, that are now eligible in the rural areas and, most importantly, those colonias that are adjacent to an urban area and that under Federal law without this bill are neither rural nor urban are affected, and this essentially says that those colonias adjacent to an urban area will be eligible for both.

Mr. GONZALEZ. Mr. Speaker, will the gentleman yield?

Mr. BARTLETT. I yield to the gentleman from Texas.

Mr. GONZALEZ. Mr. Speaker, I do not rise to be disputatious about this, but the trick is that is the first time an effort has been made to have some kind of a definition made of "las colonias."

My distinguished colleague, the chairman of the Agriculture Committee, in referring to assisted housing grants through the Farmers Home Administration, in his area particularly, is actually targeting areas that qualify under the existing rules and regulations of the Farmers Home Administration for assisted housing but which are not generalized enough to cover those definitions that we are targeting. And the gentleman himself has said that some. So the whole problem is that those areas that have been assisted are really not defined as "colonias," as the colonias are defined in the 16th District or as they would be defined in Arizona or as they might not be defined in California.

So what we are saying, in all fairness to everybody, is this: This is just an attempt to define the scope and remove the limitations that prevent certain sections along the border that are defined as "colonias" and that have not been eligible to receive grants to be able to do so.

Mr. DE LA GARZA. Mr. Speaker, if the gentleman will yield further, I think our distinguished subcommittee chairman has just explained the situation. As all of us agree, it is and should be clear, and as I stated in the beginning, my concern is that the finger cannot be pointed at Farmers Home that it has not been assisting or that it has not been sensitive, that those of us who work in the area with Farmers Home have been insensitive, but, rather, there is that very small exception. And it is almost specifically around El Paso where the problem arises, because in my area the small communities and even the other communities qualify. So the colonias comes in with the small communities, and what we are addressing and what I want to clarify is this: That we cannot say the Farmers Home Administration and those of us who have been working in this area have been insensitive, but, rather, that there is a narrow area where it needs to be defined, and this is what this legislation tries to correct.

Mr. BARTLETT. Mr. Speaker, I thank the gentleman for his clarification.

I think it really must be said that this bill does not attempt to point blame at anyone. This legislation is an attempt to at least provide some portion of the solution, and the fact is that there has been that catch-22 in spite of the good will and the active and able and hard work of the gentleman from the valley, the chairman of the Agriculture Committee, the gentleman from Texas [Mr. DE LA GARZA], and others. In spite of that, there still remains, first, a catch-22 in the law which some colonias were eligible for neither urban nor rural assistance. That is not the intent of the chairman of the Agriculture Committee nor the intent of Congress nor the intent of the Farmers Home Administration, but that is the way it was. And second, this is an enormous problem in the colonias outside of El Paso alone, because there are some 10,000 people living without running water. More than half of the residents of the colonias along the four-State border lack running water. Sewage and waste disposal systems are either nonexistent or woefully inadequate in each of them. So there is an enormous problem, and this bill at least gives additional eligibility to CBDG and the Farmers Home to help to solve the problem, and it would in no way diminish the efforts the Farmers Home Administration has already made within the confines of the law that they had to deal with.

Let me make one other point, Mr. Speaker. I feel compelled to say that this was not a problem that was caused by the Federal Government, and this is not a problem that can be solved by the Federal Government. All of the funds from the Community Development Block Grant Act nationally combined would not be enough to resolve all of the sewer, water, electricity, and infrastructure problems in the colonias. Those problems can only be solved by a combination of State, county, private developers, and the home owners or lot owners in the colonias. That is where the bulk of the funding for the infrastructure has to come from, and we should not fool ourselves into thinking that any level of government, and particularly the Federal Government, can finance the construction of all those sewer and water and infrastructure developments. But what we can do is make Federal programs designed for the infrastructure eligible to provide assistance.

I have one other thing to say, and that is that the essential problem, relating to what allowed the colonias to be built in this way in the first place, has been at least partially resolved in the State of Texas in any event by State legislative action, by granting to counties zoning authority. But that means that those counties have to accept their responsibility and have to require sewer and water tie-ons and the full infrastructure system for these small lots before they permit subdivision and platting. Otherwise the problem will only continue to get larger.

Mr. Speaker, I would also call to the attention of the Members of the House the fact that we have a letter from the Congressional Budget Office dated October 5, 1988, to the chairman of the Banking Committee which says in part: "We estimate these changes" meaning section 203, as amended, "would result in no cost to the Federal Government or to State or local governments."

Mr. Speaker, this is a removing of the catch-22 and the increasing of eligibility for existing programs.

Mr. Speaker, I reserve the balance of my time.

Mr. GONZALEZ. Mr. Speaker, I yield 5 minutes to the gentleman from Texas [Mr. DE LA GARZA].

□ 1045

Mr. DE LA GARZA. Mr. Speaker, I thank my distinguished colleague, the gentleman from Texas [Mr. GONZALEZ], the chairman of the subcommittee, and I extend my appreciation for his interest and assistance in this endeavor.

Mr. Speaker, I would like to state that both the gentleman from Texas [Mr. COLEMAN] and all of the Members from the border have been working diligently as possible, and I commend all of them and would unite my efforts along with them. Sometimes we do not agree on the specifics of which road to take, but that does not mean any less interest in the problem, and, as I have been mentioning prior to our other distinguished colleague from Texas, that, having had the responsibility for Farmers Home, the jurisdiction in the Congress, and having worked with the so-called colonias that are now being discovered by many people of good will and good intentions, but really not knowledgeable of the specifics, that it may cause some problems that in trying to assist may be hindered.

Mr. Speaker, this is not so in this legislation, for this is targeting specific amounts for specific areas, but I did want to clarify that, for example, in my congressional district some $36 to $38 million in the past 10 to 12 years have come in for rural water supply for example. We still have a ways to go, but we have rural water supply districts. The one that serves almost 100 percent of the so-called colonias, and colonias is very difficult to define, and there is no exact way that one could really define it except that they lie in areas because of the developer and his either fraud and/or negligence.

Mr. Speaker, these neighborhoods have sprung up without the adequate resources of water and, sometimes, power for electricity in housing, and the housing has been more a problem of lack of zoning authority by the counties except for those that are adjacent within the territorial limits of a city. So it has not been for lack of effort, but rather that the proliferation that when we brought water, and sewers and power to a colonia, another one springs up. Same developer; just starts all over again.

Mr. Speaker, that is the frustrating part because, for example, there is a colonia called Balboa Acres now within the limits of the city of McAllen. We brought water to Balboa Acres, power was brought to Balboa Acres, assistance in housing has been brought to Balboa Acres, but within 6 months of that springs out a new neighborhood which may or may not be called a colonia.

So the more important thing though is that, as the distinguished chairman of the subcommittee mentioned, that it address an issue that has been a problem, and for that we are thankful and commend him for his interest.

Mr. Speaker, there is some concern that we have been studying; we have had commissions, five commissions and/or groups, that I can remember, and I do not think what we need is another commission or another group to study. As I have mentioned repeatedly, and people quote me now, the first thing, the first thing the commission did, was come and measure our heads with some anthropologists. Well, all we knew was what we needed was jobs, and beyond the jobs we needed water and power, and they still, many of the so-called colonias, do not have paving. For example, the kids cannot get out to school and back, and that of course is with the community or the county that has to help.

But this is a good step forward, and I commend the gentleman from El Paso, my colleague, the chairman of the subcommittee and all of the others of good will that have joined in our effort, and not that we have not been working, not that the existing agencies have not been funneling funds into the area, but we need more assistance, and the end result is going to be jobs.

Jobs, jobs, jobs, and a good income, that will take care of everything because I say to my colleagues, "If you got the money, you buy you a good house, and you buy it in a neighborhood that has power, and water and sewerage."

So, Mr. Speaker, this is an effort to assist like on the fringes of where the problem is. We still have to maintain that a good-paying job is going to be the final solution.

I thank the gentleman from Texas [Mr. GONZALEZ] for having yielded me this time.

Mr. GONZALEZ. Mr. Speaker, I yield 3 minutes to the gentleman from Brownsville, TX [Mr. ORTIZ].

Mr. ORTIZ. Mr. Speaker, I would like to compliment the gentleman from Texas [Mr. GONZALEZ], my good friend; the gentleman from Texas [Mr. BARTLETT], the gentleman from Texas [Mr. COLEMAN], the gentleman from Texas [Mr. DE LA GARZA], the chairman, and Members from the Border Caucus for their tremendous input in helping us with this legislation. I certainly appreciate the gentleman from Texas [Mr. GONZALEZ] bringing this legislation to the floor.

Mr. Speaker, I would like to offer my strongest support for H.R. 5462, and urge my colleagues to support this legislation.

This legislation would target needed funding through the Community Development Block Grant Program to colonias along the United States-Mexico border.

Basic human necessities are not available for many colonia residents.

Clean water is available to few colonia residents, and decent sewage treatment service remains a dream for the many in these communities.

This lack of sanitary facilities leads to high rates of disease, which naturally restricts the residents' ability to attain their full potential in work or school.

This funding could contribute to a long-term solution for the residents of colonias.

All States along the United States-Mexico border would be eligible to receive these funds, because the colonia problem is not restricted by State boundaries.

With these thoughts in mind, I urge my colleagues to support this bill under suspension of the rules.

Mr. GONZALEZ. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I did want the record to show, so that we can establish a little bit of legislative history, that our very distinguished colleague from the valley and the chairman of the Committee on Agriculture, the gentleman from Texas [Mr. DE LA GARZA], had pointed out a matter of concern to him in the legislation having to do with a commission.

Mr. Speaker, I want to make it patently clear that this legislation; that is, H.R. 5462, does not create a commission. What the language referring to a commission in turn refers to is the visualizing of the development of some plan at some subsequent time, at which time other committees having other jurisdictional approaches to this same problem will be able to conform to such a devised plan that may or may not include the formation of a commission. This legislation, I wanted to assure my colleague, in no way creates a commission.

Mr. COLEMAN of Texas. Mr. Speaker, will the gentleman yield?

Mr. GONZALEZ. I yield such time as he may consume to the gentleman from Texas [Mr. COLEMAN].

Mr. COLEMAN of Texas. Mr. Speaker, let me only add that, and I say this respectfully to my colleague from Texas [Mr. DE LA GARZA], that many of us believe that unless and until we have the ability to research and define the areas where help is most needed and where we can best utilize national resources that we will not be able to solve the problem at all.

Mr. Speaker, it is easy to say that all we need is more jobs, but more jobs mean economic development. Economic development is very difficult to acquire in a region of the State where there is no water or where we have sewer problems, where we have, nonetheless, many people ready, willing, and able to work, but we have no economic development.

So, Mr. Speaker, some of us feel very strongly that a commission is the right way to go, but I would say to my colleague from the valley that in this bill we do not have a commission. This is only one piece of what used to be a much larger bill, and I would say that the way that the Subcommittee on Housing and the Committee on Banking, Finance and Urban Affairs handled this legislation is for this time appropriate.

So I would say that while it is easy to be against commissions, I have sought for a long time to find an alternative solution to a commission so that we can provide and target assistance to the areas where it is most needed.

Mr. Speaker, I thank the gentleman from Texas [Mr. GONZALEZ] for yielding this time to me.

Mr. DE LA GARZA. Mr. Speaker, will the gentleman yield?

Mr. GONZALEZ. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas.

Mr. DE LA GARZA. Mr. Speaker, the gentleman from Texas is correct in one respect, that there are many people of good will who now have come forward to try and help, but we have to look at the antecedents. We just suffered through a commission that did nothing. Prior to that was another commission that sought more water initiative.

So, all that I am saying is this has not worked. I have been there. I would hope that they do, and that is my frustration, that just saying another commission is going to solve the issue. I disagree with the gentleman. Jobs are going to solve the issue in the end, and not another commission.

Mr. Speaker, the Vice President's task force, I think, is in existence now, and nothing is happening.

Mr. GONZALEZ. Mr. Speaker, reclaiming my time, let me say that I agree with both of my colleagues. But this is not the issue.

In other words, Mr. Speaker, we are not debating whether we should or should not have a commission. This legislation simply does not provide the issue, it does not set up a commission, and that is all I was trying to really explain and clarify for legislative history purposes.

I want to add that not only the gentleman who spoke last, the gentleman from Texas [Mr. ORTIZ], not only has he been very active, because every one of the gentlemen; the Speaker pro tempore, for example, the gentleman from Texas [Mr. BUSTAMANTE], has a good section of the border, all the way from Del Rio down to Laredo, and the gentleman from Texas [Mr. DE LA GARZA] goes downstream, and for years in the State legislature and since 1964 here in the Congress has represented this border area. So, if anybody is knowledgeable, they certainly are, including the gentleman from Texas [Mr. COLEMAN] with the 16th District upstream, up in the El Paso area and the Big Bend. So, what we have here is that very fortunately our Speaker chose as a Speaker pro tempore to preside over this a gentleman who has not only a district that he is representing, and prior to that he has been in the county of Bexar a county judge, and even in such an urban area as Bexar County we have the equivalent of colonias.

Mr. Speaker, the use of that word "colonias" has been so common among the Mexican descendants going back to the days of heavy Mexican immigration during the revolutionary period in Mexico that in San Antonio for years my family was part of la colonia Mexicana, the Mexican colony, because this is the way it was referred to. So we must understand that in the use of the word "colonia," we have a very, very generalized interpretation.

Let me say, Mr. Speaker, that the gentleman from Texas [Mr. BARTLETT], and the ranking minority member of the subcommittee, the gentlewoman from New Jersey [Mrs. ROUKEMA], who intended to be here, but she has other pressing business, and the gentleman from Ohio [Mr. WYLIE], the ranking minority member of the full committee, and of course we have heard from our distinguished Mr. BARTLETT, have made it possible for us to come here today in a completely unanimous, bipartisan fashion.

Mr. Speaker, the gentleman from Texas [Mr. BARTLETT] has the district in Dallas County, a very urban county, but yet he is very sensitive to the needs of his fellow Texans, and, without the help of all these gentlemen, we would not be here today, and I wanted to be sure that the record reflected their great contributions and indispensable help.

Mr. Speaker, I reserve the balance of my time.

Mr. BARTLETT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I will make three additional points, and this is a clarifying and helpful debate on the discussion on the floor today. In addition to the points that have already been made, I would comment, first of all, that the one place that I find in the bill in which the word "commission" is mentioned in my judgment is an error in drafting because the bill makes no provision—nor should it, I would concur with the chairman of the Committee on Agriculture—nor should it make a reference to the commission.

□ 1100

So from listening to the discussion, I think it is generally agreed that that is an error in drafting, should be regarded as so, and prior to the passage of the bill by the other body or to its enrollment, that error in drafting should be reduced and the debate over a commission should be put off into another piece of legislation. It is not appropriate for this bill, because no commission is created in this bill, nor is there any intent, any legislative intent whatsoever, to use this legislation to create a commission.

No. 2, I would note that there is another leave out of this bill that the next session of Congress could I hope address, and that is the HUD administered Land Sales Act is an act that in this Member's judgment could be used in a much more forceful manner to reduce and eliminate the creation of new colonias. That is an error that has been made by the last several administrations, not just this one, and it is an error that could be corrected by congressional action in making certain that the Interstate Land Sales Act is enforced as to its intent with regard to colonias.

Last, I would say that it is my hope, and I know that the chairman of the Agriculture Committee, the gentleman from Texas [Mr. DE LA GARZA], and also the sponsor of the bill, the gentleman from Texas [Mr. COLEMAN], have visited colonias from time to time, and it would be my hope that sometime over the recess that some kind of a more formal visit led by one of the appropriate committees could be held, and I would seek to join and bring some other nonborder State representatives to meet with the residents and to visit the conditions and to focus on solutions firsthand.

Mr. COLEMAN of Texas. Mr. Speaker, will the gentleman yield?

Mr. BARTLETT. I yield to the gentleman from El Paso, TX.

Mr. COLEMAN of Texas. Mr. Speaker, let me say on behalf of a number of Members of Congress from both sides of the aisle, members of the Public Works Committee, under the subcommittee chairmanship of our colleague, the gentleman from New York [Mr. NOWAK], we have had hearings held in the colonias in several areas. We had them in El Paso, as well as Brownsville. I think they were well done. I think there was an education that really occurred there, and I welcome the gentleman's future visit to the area with Members of both sides of the aisle as well.

I thank the gentleman for the suggestion.

Mr. DE LA GARZA. Mr. Speaker, will the gentleman yield?

Mr. BARTLETT. I yield to the gentleman from Texas.

Mr. DE LA GARZA. Mr. Speaker, I would also like to invite the gentleman to my area of the border, either individually or with a group or under the auspices of a committee.

The Committee on Agriculture also plans to continue oversight, working on legislation to visit and have formal hearings in the area, and hopefully so we may clarify some of the misconceptions that some people have, or try to imagine things that may or may not be. The better we can document that, the better all of us will be.

Mr. Speaker, I thank the gentleman for his interest.

Mr. BARTLETT. Mr. Speaker, I thank the gentleman for his leadership on the subject and for his invitation and look forward to visiting on site to the colonias in south Texas.

Mr. BARTLETT. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GONZALEZ. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. BUSTAMANTE). The question is on the motion offered by the gentleman from Texas [Mr. GONZALEZ] that the House suspend the rules and pass the bill, H.R. 5462.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 4585, EDUCATION PRIORITIES FOR RESEARCH AND CONSTRUCTION, AND AGAINST CONSIDERATION OF SUCH CONFERENCE REPORT

Mr. WHEAT. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 585 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 585

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report on the bill (H.R. 4585) to extend the authorization of appropriations for the Taft Institute through fiscal year 1991, and all points of order against the conference report and against its consideration are hereby waived.

The SPEAKER pro tempore. The gentleman from Missouri [Mr. WHEAT] is recognized for 1 hour.

Mr. WHEAT. Mr. Speaker, for the purposes of debate only, I yield the customary 30 minutes to the gentleman from Tennessee [Mr. QUILLEN], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 585 provides for consideration of the conference report on H.R. 4585, to extend the authorization of appropriations for the Taft Institute through fiscal year 1991. The rule waives all points of order against the conference report and against its consideration.

Mr. Speaker, in addition to authorizing appropriations for the Taft Institute, this bill includes a number of programs adopted by the other body and recommended by the conferees.

Mr. Speaker, the legislation before us is a matter of concern to all of us. I urge that we adopt the rule so that we may proceed to consideration of the conference report.

Mr. QUILLEN. Mr. Speaker, I yield myself as much time as I may use.

Mr. Speaker, as has been stated, this rule waives all points of order on this conference report. This is not unusual, but Members should be aware there is considerable controversy regarding this matter.

When H.R. 4585 passed the House, it was simply an ordinary reauthorization for the Taft Institute. As it returns to the House floor today as a conference report, however, it contains 19 additions costing more than $60 million for the 19 additions alone. So, we have a bill which has been expanded significantly in scope and cost in the conference committee.

Mr. Speaker, I intend to vote against the rule.

Mr. Speaker, I yield 5 minutes to the gentleman from Vermont [Mr. JEFFORDS].

Mr. JEFFORDS. Mr. Speaker, I recognize that there is going to be some controversy on this bill, and that is to be expected at this time of the year. There are always one or two bills at the end of the session which try to do things which under other circumstances probably would not raise many questions. But, as we bring legislation to this floor rapidly and try to give it as much consideration as we can, but try to push things through, there comes a time when people want to say, "Hey, let's rebel against something." I understand there are a number on my side who feel this is the time to rebel.

Well, I disagree with that. It is true that we have some matters in here that you might want to question, but at the same time there are many good provisions.

Also, you have to remember that some of these provisions already have been provided appropriations, but do not have an authorization.

On the other hand, there are some provisions that are authorized or would be authorized here without appropriations. So what we are doing is to put them into the appropriations process and state that these are good ideas, too, and that the Appropriations Committee should consider those programs when the Congress begins the appropriations process next year.

Let me first talk about the Taft Institute. The Taft Institute is also known as the Taft Institute for Two-Party Government and is a living memorial for the late Ohio Senator, Robert A. Taft. The institute's purpose is to promote understanding of the two-party system of government by our citizens. This purpose is accomplished through educational seminars across the country.

Such seminars bring elementary and secondary teachers together on college campuses for 2- to 3-week intensive educational programs. At these seminars these teachers study the U.S. Constitution and examine our system of two-party self-government. It is my understanding that nearly 200 Members here have participated in these seminars.

We get rather discouraging and depressing indications in polls of the lack of knowledge of many of our students in this country's two-party process. I think this is a worthwhile program.

There are other programs which I think certainly deserve our consideration. Items that cannot be reauthorized or authorized without some sort of special legislation, unless you wait several years until either the reauthorization of the Higher Education Act, or the reauthorization of the Hawkins-Stafford bill with respect to primary and secondary education.

Let me just give you an idea of some of these. First, there is a Critical Languages and Area Studies Program, backed by myself and the gentleman from Massachusetts [Mr. Conte] and the gentleman from California [Mr. Panetta]. This important new initiative would allow eligible consortia to apply for grants to operate critical languages and area studies programs. Eligible consortia may develop, construct, and acquire educational equipment, materials, and facilities in order to develop teacher training programs, texts, and other language instruction techniques.

We have very discouraging statistics with respect to the knowledge of foreign languages in our country. Despite evidence that foreign language training should begin at the elementary and secondary levels, fewer than 19 percent of all high school students study foreign languages and fewer than 1 percent become proficient. This legislation would attempt to get us involved more in foreign language studies, to try and increase our proficiency as we move into the new era of trying to be a better world leader and to be able to compete on the international scene with respect to trade.

There are other provisions in here for which money has been appropriated. There is a historically black college, Voorhees College in South Carolina, which needs a new health facility. There are provisions of the bill which need no funds. There is a technical correction which would remove a serious problem in one particular program.

So granted, there are some provisions that could be referred to as special interests. One such program was included as part of the Elementary and Secondary Education Act that we enacted this year. Now there are other regions of the country that want to participate in this program and are ready to move into this era where we can utilize better satellites for educational purposes.

This will give them a chance to get into the appropriations process in order to have an opportunity to develop those programs, along with others that have already received authorization.

So I would hope you would take a look at all 19 of these projects and recognize that we have had witnesses testify before the committee on many of these programs expressing their need and desire for what we are trying to do, including as well the Taft Institute. So I would hope that you would recognize the rule should be approved. We will have an opportunity to discuss in more detail the individual provisions in order to make sure that we give a fair hearing to this bill which has been brought out of conference.

Mr. QUILLEN. Mr. Speaker, I yield 5 minutes to the gentleman from Pennsylvania [Mr. Goodling].

Mr. GOODLING. Mr. Speaker, I would hope that as a matter of fact we could defeat this rule today and that we would then next year do what we should do whenever we consider legislation, that we have the necessary hearings, we have the necessary markup in subcommittee and in full committee and then bring the issue to the floor. When we do these things in the manner that I just described, we generally come up with very sound legislation.

We also show to the public that as a matter of fact we are very responsible people.

It is always embarrassing when you come to the end of the year, the last year of the higher education bill, how embarrassing to sit there and watch the House see whether they can outdo the Senate in adding things that were never really given much consideration.

Here we have a piece of legislation that left the Education and Labor Committee as a straight reauthorization of the Taft Institute.

Now, keep in mind the Taft Institute started in 1961, did not seem to need any Federal funds. It was not until 1980 until we got into the act of federally funding the Taft Institute.

It does some good things, but it did them without our help.

Then the bill went to the Senate and they could not resist in the closing time of this session adding whatever certain Members wanted to add to the bill.

Then it came back to the House, and some might lead you to believe as a matter of fact that we were greatly upset by what the Senate did. There were some of us who were greatly upset with what the Senate did, but there were others who just fell right in line and said, "Well, if the Senate is going to do that kind of thing, then certainly don't count us out. We don't want to be a piker in this deal." So we jumped into the act on our side.

So now we do have 19 additions. I do not say that some of those are not good additions, some of those would not be good legislation, some of those if it went through the process of authorizing and appropriating would certainly pass on the floor of this House. I do not say that as a matter of fact some of them would not pass the grant process, but they should have to go through that process.

Why should we just automatically say forget the grant process?

□ 1115

I heard a lecture that indicated if we wait until the bureaucracy gets around to doing these things, nothing ever will happen. Things will happen and they do happen and the public will know as a matter of fact there was close scrutiny but here we have 19 projects, contrary to what I hear, we had a lot of people we heard from, and so forth, we did not have hearings on many of these issues, in depth hearings. Sure we heard from different constituencies, but look at the issues and look at those who signed the letters saying we should vote for it, and look at where the projects go, and I guess we get a pretty good idea of what that support would be. I think it is a bad way to legislate. I think we are trying to improve our image as a legislative body and it is these last minute things that get passed on to other legislation that causes the public to really question our sincerity in doing things through an orderly legislative process.

It would be my hope that we defeat this rule and next year we take up these issues. I do not even care if we do not reauthorize the Taft Institute at this time. There is not one issue here, including the Taft Institute, that is going to cause the ceiling to fall, if as a matter of fact, we do not take immediate action.

We usually think at last minute sessions, as a matter of fact, we are dealing strictly with emergencies, that the end of the world will happen if we do not do something with it. There is not a thing in this bill that will cause things to get better or worse in the next 6 months if we do not take action whatsoever. But it will be much better if we come back in an orderly fashion, have our hearings, go through the authorization process and then the appropriations process and some of these will be successful, some will not, some will not go to the locations where, as a matter of fact, they are geared to go through this process.

Let us defeat the rule and do the things we are supposed to do that we are sent here to do in an orderly fashion.

Mr. BARTLETT. Mr. Speaker, will the gentleman yield?

Mr. GOODLING. I yield to the gentleman from Texas.

Mr. BARTLETT. I thank the gentleman for yielding, the gentleman who is the ranking minority member of the subcommittee that most of these things would come under.

Have any of these 19 special items that are designated in this bill, have any of the 19 items had a hearing as an item?

Mr. GOODLING. No real hearings.

Mr. QUILLEN. Mr. Speaker, I yield 5 minutes to the gentleman from Texas [Mr. Bartlett].

Mr. BARTLETT. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in the strongest opposition possible to a rule that is both unfair and strikes at the heart of the process in this House. It seems the appropriate thing in the House is to defeat the rule not because we would defeat bringing up a conference report on its own merits. The Committee on Rules could allow the conference report to come up at any time, but because we would oppose waiving the points of order that would legitimately lie against 19 separate designated items in this bill.

So the rule should be defeated because of the process, and if the rule is passed, and I hope it is not and believe it will not be, then, in fact, the committee can discuss these items on the process.

I would inquire of the gentleman carrying the rule for the committee, whom I respect a great deal, the gentleman from Missouri is carrying the rule for the committee, and I know he was not there yesterday. Could the gentleman enlighten us on exactly what points of order where you would propose that we waive?

Mr. WHEAT. The gentleman is aware there are two basic violations that need waivers in this particular legislation. There are scope waivers, as a result of the additions that were put on in the House after the conference committee came back from the Senate, and there are germaneness waivers that are necessary also.

Mr. BARTLETT. Is it the gentleman's contention that those points of order should not be allowed to be made against a bill, since what the gentleman is saying, this bill is clearly out of order of the House rules on at least two points or perhaps others; but for this rule, these items would be subject to a point of order, is that correct?

Mr. WHEAT. Of course the waivers are necessary so that a point of order would not lie, but I think the gentleman recognizes that the contention is, in fact, over the additional items that have been added to the Taft Commission and the opportunity to debate those items is maintained by passing a rule we have proposed before Members.

Mr. BARTLETT. I would further yield to the gentleman to inquire if Members of the Committee on Rules wanted to give the House an opportunity to vote on these items which have never had a hearing or consideration by either the House or the other body, could the Committee on Rules simply bring out a rule that would allow us to vote on those individually?

Mr. WHEAT. I suppose it is possible to craft some kind of a rule that would allow that particular procedure. However, in the waning moments of this session, what we are considering is a conference report that has been considered by both House conferees and Senate conferees, and in their wisdom, this is the particular legislation they brought to the floor and the rule we passed does give full authority to debate the entire scope of the report as it now stands.

Mr. BARTLETT. Is the gentleman aware that the 19 additional items, all 19 save but 2, were added on at the request of an individual member of the conference committee who signed the report? The 2 being 2 other Members from other States, one from the other body and one from the House; is the gentleman aware 17 are in the districts of conferees and except for 2 exceptions, no one else got one of these special projects in the conference report?

Mr. WHEAT. There are a number of items added once the conference report came back to the House that many of these are very worthwhile items, but as to the individual merit of the particular items that were added, I think the appropriate place to discuss those is on the conference report itself.

Mr. BARTLETT. Mr. Speaker, I thank the gentleman for the additional information and I want to make a couple of additional points in opposing the rule.

First, the House needs to understand that this, the Taft Institute, is merely a $750,000 per year reauthorization of an existing program that has some general level of support in this Congress and, in fact, passed the House. That is $750,000, subsequently without any hearings or without any meetings, without any competition, the conferees of the conference committee took it upon themselves to add 19 individual items. I said 17 earlier, it is actually 16. A third is a reauthorization of a program that was a 1-year program originally authorized 16 items earmarked for an individual's specific district. I do not want Members to come to the House floor and not be aware of the details of these earmarks. For example, there is one that will go, is detailed specifically to the Washington Library Consortium for a facility, new construction, of a particular facility in a particular county in Maryland. There is one for a particular council, $1 million going to a council in a city, Hyde Park, VT. There is another for Voorhees College in Denmark, SC. Another for $2.2 million for the Mississippi Law School. There is $400,000 for the University of Montana, not just for the University of Montana but for a specifically named library.

I urge a "no" vote.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. BUSTAMANTE). The Chair has an announcement to make, pursuant to House Resolution 563. The Chair would like to announce the additions to today's schedule of 3 suspensions; H.R. 4210, to reauthorize title II and III of the Marine Protection, Research and Sanctuaries Act of 1972, concur with Senate amendments; a Senate bill or House bill, the omnibus health amendments of 1988; third, a concurrent resolution (H. Con. Res. 159), to correct enrollment of the conference report on H.R. 4174.

WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 4585, TAFT INSTITUTE AUTHORIZATION, AND AGAINST CONSIDERATION OF SUCH CONFERENCE REPORT.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Tennessee [Mr. QUILLEN].

Mr. QUILLEN. Mr. Speaker, I yield 5 minutes to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, I hope that he misspoke when he said he did not think the rule was controversial because in my opinion this rule is a legislative abomination. This rule is certainly controversial because if it were not for this rule we could save the taxpayers $60 million because we have points of order against $60 million worth of spending that is in this bill.

Now, when this original bill passed the House of Representatives, it cost the taxpayers only $750,000. Now, that is a lot of money, but it was a $750,000 bill. As it now comes back to us, it will cost $66 million. That is an 8,700-percent increase put on in a conference committee. That is not for defense spending, folks, that is an 8,700-percent increase in spending that was dictated by this Congress and by this House.

I tell Members this: Anyone in this Congress who stands up and talks about deficits being someplace other than in Congress and votes for this rule is a hypocrite. Anyone who votes for this rule and says that Congress does not have something to do with deficits is a hypocrite because this particular bill is an 8,700-percent increase in spending brought to Members by the conference committee.

Why? Well, let me go through a few of the items in there. It just happens that there is a $1 million item to a Vermont higher education council. Guess what? There were two Members from Vermont on the conference committee. It just happens there is a $4½ million center in South Carolina; there was a Member from South Carolina on the conference committee. There is a library at the University of Montana. Guess what? A Member from Montana was on the conference committee. There just happens to be another thing for a business center in Montana; that Member was on the conference committee. Another thing for Vermont, a consortium; two Members from the committee were from

Vermont. In Pennsylvania, St. Joseph's College thing in there, $5 million; a member on the conference committee was from Pennsylvania. From Massachusetts Corp. for Educational Technology; there was a Senator from Massachusetts on the conference committee. There is a Rocky Mountain State partnership for educational technology that goes to Utah; there was a fellow from Utah on the conference committee. A biotechnology center in there, a bioscience research lab at Montana State University; there was a member of the conference committee, once again, from Montana. A Kentucky Polytech Institute that gets a waiver; a Member from Kentucky on the committee.

Guess where it came from? The conference sat there and divied up $60 million of money that did not pass this House, that was never heard in this House, and I tell Members one thing, this is a disgusting piece of legislation. There is no way that this piece of legislation should come to the floor. No way it shoud be granted waivers under the rule. I tell Members the hypocrisy that goes on. How did they get this through the Rules Committee? It is a sad chapter when the conference committee sat there and decided that one of the things they would put in here is an item for the chairman of the Committee on Rules, so I guess they thought they would get a sympathetic hearing if they just stick in an item for the chairman of the Committee on Rules.

Well, I tell you, if ever there was a bill that the taxpayers should be ultimately disgusted with it is this bill. The taxpayers want to know why we have huge deficits in Washington. This bill is the answer, an 8,700-percent increase in spending given to Members who sit on the conference committee for a few of their friends. That is wrong. That is what has gone wrong.

Mr. COLEMAN of Missouri. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Missouri.

Mr. COLEMAN of Missouri. Mr. Speaker, the gentleman knows when the bill passed the House it was to reauthorize the Taft Institute; now it comes back, even renamed, and it is not the same bill. It is now called the Education Priorities for Research and Construction Act. Now, the gentleman knows the rules of the House. Is it not true that all these were nongermane amendments that would not have been adopted on the floor because they would be ruled out of order, is that correct?

Mr. WALKER. That is right. If we go through the bill, virtually every section exceeds scope or is nongermane. Section 201, nongermane; section 301, 302, nongermane. 304, nongermane; 305, nongermane; 306 exceeds scope; 307 exceeds scope; 309 exceeds scope; 310 exceeds scope. Section 312 exceeds scope; section 313, exceeds scope; section 314, exceeds scope.

All of this could have been knocked out, $60 million knocked out if not for the rule. Any Member who votes for the rule is saying we ought not to have the right to knock out the $60 million in spending.

Mr. COLEMAN of Missouri. Is this the old game the other body plays all the time, putting amendments on our bills that go over there, and we are supposed to swallow real hard, but it goes further, to the conference committee? Some of our own membership picked up the virus by getting theirs in also.

Mr. WALKER. It is disgusting and ought to be voted down overwhelmingly.

Mr. QUILLEN. Mr. Speaker, I yield 3 minutes to the gentleman from Georgia [Mr. GINGRICH].

Mr. GINGRICH. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I want to confirm, because I am confused by this debate. Is it true that this bill, when it left the House, was a very tiny bill that affected only the Taft Institute and was about $700,000? Is that the case? I ask either side.

I will be glad to yield to the distinguished Member of the Committee on Rules.

□ 1130

Mr. WHEAT. That is my understanding.

Mr. GINGRICH. We could not hear you.

Mr. WHEAT. That is my understanding of what the bill contained when it left the House.

Mr. GINGRICH. When the bill left the House we had a tiny good government, $700,000 Taft Institute. It came back then as I understand it as the perfect model for the Taft Institute to study how Congress becomes a pork farm. More little piglets have been put in this veto bait than any bill proportionate. I suspect this may be the all-time "Guinness Book of Records" for how much a bill grew in conference as the pork farmers gathered.

Now I would hope first of all that every Member who has a shred of decency, who has gone home and said they like the line-item veto and said they wanted a balanced budget amendment, I hope every Member who feels that way will vote "no" on the rule, defeat the rule and insist that this group go back to conference, weed out all of the little pigs and bring us back a Taft Institute bill.

Second, I would hope that every Member who has any claim to going back home and claiming they are a fiscal conservative will vote "no" both on the rule and on the bill and will urge the President to veto this turkey—if one can have pigs and a turkey—and recognize that this is a travesty for us to be standing around piously pledging our concern about the deficit except when a little herd of pigs come rushing through from the conference.

Mr. COLEMAN of Missouri. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to my friend, the gentleman from Missouri [Mr. COLEMAN].

Mr. COLEMAN of Missouri. I thank the gentleman for yielding.

Mr. Speaker, I have gotten some flack by calling things "pork" from my pork producers so I am not going to continue the analogy.

Mr. GINGRICH. I apologize to your honest pork farmers.

Mr. COLEMAN of Missouri. I agree with the gentleman's thrust of the gentleman's remarks and the remarks are that this is the proverbial tail wagging the dog. In fact, we can hardly see the dog the tail is so big.

And the fact is the gentleman is absolutely right. What the conferees are doing, because they are going in and splurging themselves on all of this that they are asking us to swallow today, is to jeopardize the Taft reauthorization. Here it is, the Taft reauthorization is an attempt to bring to high school students and college students and others who teach these youngsters the political process and the legislative process. And to do this on this bill is the height of irony and is disgusting, frankly, in how it was done. So, the gentleman is absolutely right.

Mr. Speaker, I want to point out that not all the conferees signed this report. I think if the gentleman checks, if I am not wrong, I think the chairman of the committee did not sign this report, the gentleman from California [Mr. HAWKINS].

Mr. GINGRICH. That is exactly correct.

Mr. COLEMAN of Missouri. There is some point when we cannot swallow this stuff any longer. In order to get to this, let us defeat the rule, let us defeat the rule.

Mr. GINGRICH. That is exactly right.

One further thing, and that is this in its current form is a bill which places politics above consideration.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from Arizona [Mr. KOLBE].

Mr. KOLBE. Mr. Speaker, I rise in strong opposition to this rule for all the reasons we have just heard on this floor. This rule waives all points of order on the conference report to the Taft Institute reauthorization and does not allow a motion to recommit. We are talking about a bill that has grown from a relatively simple

$750,000 authorization to $60 million. As the gentleman from Pennsylvania indicated, an 8,700-percent increase.

Now, I know we are famous around here for having some gargantuan sideshow freaks grow out of almost nothing, but this has got to top it all.

What we are seeing today is a greased pig running around on the floor.

It appears that a few Members of the other body, with the help of some on this side, were able to tackle this little pig and managed quite a game of pin the pork on the pig to the tune of $60 million.

You have heard some of those specific items addressed, the $2.2 million for a law library at the University of Mississippi, $7.5 million for the Washington Library Consortium, $4.5 million for a health and human resources center in South Carolina. The list goes on and on.

If any of these are worthy of support, and I am not sure whether they are or not since we have not had hearings on them. But if they are worthy of support, they will stand the test of the hearings, authorization, and appropriations process in the next Congress. They should be able to stand the peer review and competitive grant process that any other university project has to withstand.

What we are seeing is business as usual. The only difference is we do not have a continuing resolution this year. So, we have to find something to replace the continuing resolution.

Mr. Speaker, we have found it here today with this. The Taft Institute bill is the legislation that is going to be this year's continuing resolution.

Mr. Speaker, I urge defeat of the rule and of the conference report.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from Minnesota [Mr. FRENZEL].

Mr. FRENZEL. Mr. Speaker, if this were not so pitiful it would be funny. We have a little bill that left the House at a tiny amount and to the astonishment of everyone, that bill has grown 90 times. Now the reason that we are astonished is not that it has grown 90 times larger, it is what restrained the managers of the conference committee that they did not let it grow 100 times larger, because that is the size of their normal appetite around here. And it is perhaps less surprising that the chief manager on the part of the House could not bring himself to sign the conference report. I think that speaks volumes about that gentleman's good sense.

What is going to be the net result here is that the House is going to push this through under a rule, probably going to pass it, it is going to go down and get vetoed. And so the party that is going to be hurt, the injured party is going to be the Taft Institute which is exactly the beneficiary that we all intended to help when we passed the bill the first time.

So an item that is not controversial because of the greed and piggishness of individual Members of our Congress is going to be the one that falls by the wayside.

And what that does, Mr. Speaker, is to describe the House and Senate to the people of the United States in terms far more stark than probably has been done anytime this year. Here is a group who cannot keep their fingers out of the taxpayers' money for their own personal chauvinistic greed.

I think the people of the United States will be watching this vote. I think it will be reported rather widely about the country in an awful lot of congressional districts as to how their Representative voted on the major item of greed in the 100th very historical Congress.

Mr. WHEAT. Mr. Speaker, for purposes of debate only, I yield 10 minutes to the gentleman from Montana [Mr. WILLIAMS], the chairman of the Subcommittee on Postsecondary Education.

Mr. WILLIAMS. I thank the gentleman for yielding this time to me.

Let us see if we can cut through the histrionics and the hysterics this morning.

My friends and colleagues on the other side have made it sound as if this is the most egregious piece of legislation to come before the House this year and somehow this rule is a great violation of the procedures of the House, that this rule is somehow extraordinary, that we normally do not pass rules like this on conference committee reports.

This bill has gone through the normal legislative process. This bill is not an appropriations bill. Nothing is being funded with this bill. We are not allowing the expenditure of a single dollar of Federal money with this bill. But we are in the waning hours of this session trying to authorize for the consideration of this House and the Committee on Appropriations of this House, whether or not to appropriate money for certain education items which have been asked for time and time again by many of our constituents, some of whom traveled here to Washington, DC, to ask for many of the items in this bill.

I show the opponents of this rule these hearing reports, an example of the hearing process that preceded the items that are being objected to in this bill.

I only say that so that my colleagues will know that it was not just a few members of the conference committee between the House and the Senate who decided that their districts needed some additional spending and those are the items in this bill reflecting the districts represented by the members of the conference committee. Those who have said that on the other side are incorrect.

Let me read to my colleagues a list of those States that will receive the authorization for some education assistance if this bill is accepted and signed into law. And these States had no representatives on the conference committee that put this bill together.

Florida, Kansas, New Jersey, Oregon, Colorado, Wyoming, Nevada, Alaska, Idaho, Washington, Virginia, and Mississippi. And then our friends from Guam and the Marianas and American Samoa also.

No one from any of those States or territories or commonwealths had a member on the conference committee that put this bill together. And those of us on the conference committee—and I, as chairman of that conference committee—really resent the implication that somehow the members of the conference committee really only are lining the pockets in their own districts.

That simply is not true. We took items which had been asked for by the American people, either directly or through their associations of which they are members, groups and individuals who came to Washington, DC, and testified in favor of these kinds of authorizations.

But let us keep our eyes on the prize, though; that is that this bill reauthorizes the Taft Institute. Some have said this was a good and simple bill when it left the House. And I agree that it was both good and simple. But unless my colleagues misunderstand, I do want you to know that when this bill left the House, it did so with the recommendation of the Secretary of Education that the President of the United States veto this good and simple bill. And since the bill has come back from the Senate, the new Secretary of Education has sent this chairman a letter again saying that "It is the opinion of the Department of Education that the Taft Institute should not be reauthorized."

So my friends, if we face a veto threat, which we do, it is not because of the additions of the educational efforts that have been put onto this bill. It is because the Department of Education does not believe the Taft Institute should be reauthorized.

Mr. BARTLETT. Mr. Speaker, will the gentleman yield?

Mr. WILLIAMS. I yield to the gentleman from Texas.

Mr. BARTLETT. I thank the gentleman for yielding.

Mr. Speaker, are any of these 19 grants that are specified in this bill, are any of them in the gentleman's district or in the State of Montana, by name?

Mr. WILLIAMS. There are items in my district, in Pennsylvania and California, in Vermont, Kentucky, Massachusetts, and Maryland and these represent States that had members on our conference committee. However, more States, the ones that I read earlier, which did not have representatives on our conference committee, are included in this bill.

Mr. BARTLETT. Will the gentleman further yield?

Mr. WILLIAMS. Let me reclaim my time. Because we are in the waning hours of today and of this session, I want to yield in a moment, yield back the balance of my time to the manager of this bill for the Committee on Rules, and simply say to my colleagues this is simply the rule. This is not the bill and the debate—and it is a good debate—should proceed on the bill itself. But I urge my colleagues to vote for this rule, give us an opportunity to go to debate on the bill itself, which will immediately follow and then, if necessary, we can vote on the bill.

Mr. PERKINS. Mr. Speaker, will the gentleman yield?

Mr. WILLIAMS. I yield to my colleague, the gentleman from Kentucky [Mr. PERKINS].

Mr. PERKINS. I thank the gentleman for yielding.

Mr. Speaker, I would question my friend and dear associate from Montana whether or not the various pieces that are included in this legislation are something that we have looked to place in a particular piece of legislation for an extended period of time and simply have not been able to find something that was conducive to carrying forth these types of legislation? And more particularly, I am a little bit concerned that the quality of the things that we are doing in this bill are being overlooked in its entirety. The legislation that we have is very important and goes in a lot of different areas toward trying to improve the overall educational situation across this great country. It does it in specific ways. It does it in a fashion that is perhaps piecemeal, but certainly it contributes to the whole.

□ 1145

Mr. Speaker, I think that the gentleman from Montana [Mr. WILLIAMS] should be commended for the work that he has done on this legislation.

Mr. WILLIAMS. Mr. Speaker, I appreciate the gentleman's comments.

In answer to the gentleman's question as to whether or not the House had attempted to move many of the items in this legislation in other legislation, the answer is, yes. We were going to attempt that in some of these necessary items in the library construction bill, we attempted that in the trade bill, and now we are at the year end so we have a few of these items remaining and we are putting them on this bill.

Mr. WHEAT. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio [Mr. TRAFICANT].

Mr. TRAFICANT. Mr. Speaker, I am going to vote to support the rule because I think Members should have a right to vote on this issue. But I rise today in support of BILL FRENZEL and BOB WALKER on this issue. I believe they are right.

Let me tell the Members why, as a Democrat. My area lost more jobs than anybody else in the country, and every time the Appropriations Committee looked at something on my side of the avenue, they just do not have the money. Well, Mr. Speaker, here is a guy in Congress who is saying, "The ball stops right here with a Democrat who is saying we want some fairness."

Mr. HOYER. Mr. Speaker, will the gentleman yield?

Mr. TRAFICANT. I am not going to yield.

The gentleman is a very good friend of mine, but I will not yield.

I vote 99 percent of the time with the Democrats. I give all my support to them. I want this rule to pass because I think Members should vote this thing down. I think the message should be quite clear. We need an equitable system to take care of the problems in America.

I have poor people, and we need housing. I lost 55,000 jobs in the last 10 years, and no one down here really cares. If you want to add this pork, this is one Democrat who is saying that he stands with BOB WALKER and BILL FRENZEL. I am going to vote for this rule.

Mr. WALKER. Mr. Speaker, if the gentleman will yield, we are against the rule.

Mr. TRAFICANT. I know the gentleman is against the rule. I am going to vote for the rule and vote against the bill.

Mr. QUILLEN. Mr. Speaker, I yield such time as she may consume to the gentlewoman from New Jersey [Mrs. ROUKEMA].

Mrs. ROUKEMA. Mr. Speaker, I rise in opposition to the rule, and I do so because the bill goes beyond the scope of conference to include 60 million dollar's worth of legislative add-ons.

The original intent of H.R. 4585 was to reauthorize the Taft Institute—an educational institute designed to enhance understanding of the legislative process through seminars and forums. However, this original intent has become buried under by millions of dollars of new authorizations.

Nineteen new programs have been added to the Taft bill and earmarked for 60 million dollar's worth of funding. While some of this money has already been appropriated, close to $41 million has not. It is simply inappropriate to authorize vast sums of money without first allowing the committee to review and determine the effective and worth of the programs. If these programs are worthwhile, they will stand the test of the appropriate legislative process next year.

In this time of fiscal austerity, this Congress, in good conscience, simply cannot support 60 million dollar's worth of earmarks. The Labor-HHS appropriations bill has already been signed by the President and conforms with the guidelines set forth by Gramm-Rudman. Now is not the time to authorize further funding.

Next year, this body will have the opportunity to adequately review the legislation included in this bill. Then will be the proper time to determine the merit of these programs, not now when projects are disguised and buried in another bill.

I urge my colleagues to vote no to this bill.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from Missouri [Mr. COLEMAN].

Mr. COLEMAN of Missouri. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I want to amplify on the comments of the gentleman from Ohio. If we are truly against this bill and against this process, we kill the snake right here on the rule. We do not have to go past this point. We can send this back to conference. The fact is that a lot of this junk was put on another bill called the White House Conference of Libraries and the conferees had the backbone to say, "Don't put this stuff on our bill. We want a bill that is passed and signed by the President."

So all this stuff was taken off. The House can act right now and force the conferees to take this stuff off, go back to conference, and send out a clean bill. That is the way it should be. We can do it, and we ought to do it on the rule. If we are really against this process, everybody except for a handful who got something on this ought to stand up and say, "We are gagging on this. This is too much, and we are not going to do it."

Mr. BARTLETT. Mr. Speaker, will the gentleman yield?

Mr. COLEMAN of Missouri. I yield to the gentleman from Texas.

Mr. BARTLETT. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I want to make an inquiry of the gentleman from Montana [Mr. WILLIAMS] again. I heard the gentleman say that in his opinion there had been hearings on these 19 subjects. I serve on the same committee, and I do not recall a single hearing. I want to clarify it. Perhaps the gentleman meant that there were hearings generically on similar subjects.

Has there been a hearing on whether to waive the competitive grant process for a competitive application that was applied for and did not make the cut for the Rocky Mountain station partnership education technology, for $3.5 million, which this bill would waive the competition for a grant that it already had lost in the competition? Has there been a hearing on that particular grant application or on any other grant application?

Mr. WILLIAMS. Mr. Speaker, will the gentleman yield?

Mr. COLEMAN of Missouri. I yield to the gentleman from Montana.

Mr. WILLIAMS. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, there have been many hearings generically on the need for these items, and if the gentleman will permit me to continue for 15 seconds, we can wait on this.

Mr. COLEMAN of Missouri. Why does the gentleman not answer the question? We only have a couple of minutes left. The question can be answered yes or no.

Mr. WILLIAMS. Will the gentleman yield to me later, then?

Mr. COLEMAN of Missouri. Obviously the gentleman does not want to answer the question.

The SPEAKER pro tempore (Mr. Bustamante). The time of the gentleman from Missouri [Mr. Coleman] has expired.

Mr. WHEAT. Mr. Speaker, I yield 1 minute to the distinguished subcommittee chairman, the gentleman from Montana [Mr. Williams].

Mr. WILLIAMS. Mr. Speaker, this is not a court of law, and none of the gentlemen on the other side are attorneys or judges forcing a person being asked a question to answer yes or no and then quickly get out of town. I think I have a right to try to answer the question.

The answer is, "yes," there have been hearings on the necessity of the help that is here for training teachers, on the new facilities that are necessary here, on the absolutely essential nature of the new biotech science research facilities.

Now, we can wait perhaps for years until unelected, unnamed bureaucrats down at the Department of Education make the decision as to where and if we are going to go ahead and fund and authorize these things, and once they make that decision, it will be considered Solomon-like and reflecting their wisdom. But if the House of Representatives does it, it is considered "pork."

Mr. WHEAT. Mr. Speaker, for the purposes of debate only, I yield 2 minutes to the distinguished gentleman from Texas [Mr. Stenholm].

Mr. STENHOLM. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I would like to remind all the Members of the body that this day is a perfect example of why we introduced the truth-in-legislating bill just a few days ago.

What we ought to be doing is voting on each individual one of these projects today. We should not be asked to vote for a rule that waives the kind of discussion that should go into the merits.

The gentleman from Montana [Mr. Williams], I would assume, is correct that every single one of these projects is entirely deserving and has been well heard and is totally deserving of the support of this body. But for no reason should ever be asked to vote, especially at a time when we all talk about deficits, to waive the rules in the last few seconds of the 100th Congress in order that this might be done in an expedited manner.

This is going to be a perfect example for each and every one of us to say we are sincere about deficits and we are sincere about the process of this House of Representatives. Let us say "no" to this rule and send it back to conference. Let us vote on these items on their individual merits in the proper process of the House of Representatives.

Mr. Speaker, I ask the Members to vote no on this rule if they are sincere about deficits in any shape, form, or fashion.

Mr. WHEAT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as I close I want the Members to be clear about what our situation is.

I know those who have been listening to the debate for the last 45 minutes or so may think we have exhausted the debate over the substance of this matter. Mr. Speaker, we have not. What we have been debating is the rule, and should this rule pass, and when this rule passes—and there is nothing unusual about this rule for a conference report—we will still have an opportunity to debate the Taft Institute and the associated education items that have been included with it, and if at that time there are Members who oppose the Taft Institute or who oppose the education improvements that have been included with the Taft Institute, they will still have every opportunity to register their opposition to the Taft Institute and those amendments.

Mr. WALKER. Mr. Speaker will the gentleman yield?

Mr. WHEAT. No, I will not yield at this time.

Mr. Speaker, I think this is a perfectly legitimate rule. The matter before us needs to be debated thoroughly and fully. This rule gives us the opportunity to do that.

Mr. BALLENGER. Mr. Speaker, while I am only in my first term, I have already become acutely aware of some of the pure, unadulterated "pork" this body lets slip through in the waning days of a Congress.

A perfect example is the conference report on H.R. 4585.

When this bill was passed by the House earlier this year, it was a simple reauthorization of the Taft Institute at $750,000. I supported the bill, as did most of our colleagues.

But, when this simple, unassuming little bill came back from the other body, and from consideration by the conference on H.R. 4585, it changed—from Dr. Jekyll into Mr. Hyde.

The other body added 19 new special projects to benefit various districts at a cost to the hardworking American taxpayer of almost $60 million.

Now I know it is an election year, and most Members get brownie points from their constituents for "bringing home the bacon," but this example of pork barrel spending is outrageous.

It is important to look out for our districts, but I believe a higher good is to work to reduce spending and force the Federal Government to live within its means. We are approaching the sequestration point, and Members should be aware of every item calling for the expenditure of more tax dollars.

Rarely do we have an opportunity to vote "no" on pure pork. For the good of the taxpayers, oppose this conference report and demand the conferees send back a "clean" bill without the pork.

Remember, the taxpayers of your district are watching.

Mr. GALLO. Mr. Speaker, we often talk about the importance of educational opportunity for all young people. We talk about cooperative efforts to encourage private sector development of programs that promote quality higher education that is within reach of all talented young men and women, regardless of their economic background. We talk about reclaiming our cities by providing avenues of growth within reach of our urban youth.

Today, I have the opportunity to speak in favor of a program that combines all of these elements.

Seton Hall University, with its main campus in South Orange, NJ, and its school of law, located in Newark, has a long tradition of service within the inner-city community.

Each year, more than 16,000 persons in need of legal counsel are aided by the school's clinics for legal services, family law and juvenile justice. The school operates one of the first bilingual clinics in the United States, serving the more than 125,000 Hispanics residing in the Newark area.

Seton Hall recently reaffirmed its commitment to the inner city and disadvantaged population, by seeking to establish a clinical law center to expand its educational opportunities for students and its services within the community.

I believe that support for the conference report on H.R. 4585 is a vote of confidence for Msgr. John J. Petillo, Seton Hall's chancellor, and for his dedicated staff and faculty, who have created a program that serves as a model for academic involvement and community service.

Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. WHEAT. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 131, nays 256, not voting 44, as follows:

[Roll No. 447]

YEAS—131

Ackerman
Akaka
Anderson
Annunzio
Atkins
AuCoin
Bates
Bennett
Berman
Boggs
Boland
Bonior
Bonker
Borski
Boucher
Boxer
Brown (CA)
Bruce
Bustamante
Campbell
Cardin
Clay
Coleman (TX)
Collins
Conte
Conyers
Costello
Courter
Derrick
Dicks
Dingell
Dixon
Donnelly
Downey
Durbin
Dymally
Dyson
Espy
Evans
Fazio
Flake
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frost
Gallo
Garcia
Gaydos
Gejdenson
Gephardt
Glickman
Gonzalez
Gordon
Gray (PA)
Green
Hayes (IL)
Hoyer
Jeffords
Kennedy
Kennelly
Kildee
Kolter
Kostmayer
Lehman (CA)
Lehman (FL)
Leland
Levin (MI)
Levine (CA)
Lewis (GA)
Lowry (WA)
Manton
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McMillen (MD)
Mfume
Mineta
Moakley
Mollohan
Montgomery
Moody
Morella
Mrazek
Murtha
Natcher
Oakar
Oberstar
Ortiz
Owens (UT)
Pelosi
Pepper
Perkins
Rahall
Rangel
Richardson
Rinaldo
Rodino
Roe
Rose
Rostenkowski
Roybal
Sabo
Savage
Scheuer
Schumer
Slattery
Smith (FL)
Smith (IA)
Smith (NJ)
Solarz
Spence
Spratt
Stokes
Studds
Swift
Synar
Torres
Towns
Traxler
Udall
Waxman
Weiss
Wheat
Whitten
Williams

NAYS—256

Andrews
Anthony
Applegate
Archer
Armey
Baker
Ballenger
Barnard
Bartlett
Barton
Bateman
Beilenson
Bentley
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Brennan
Brown (CO)
Bryant
Buechner
Bunning
Burton
Byron
Callahan
Carper
Carr
Chandler
Chapman
Cheney
Clarke
Clement
Clinger
Coats
Coble
Coleman (MO)
Combest
Cooper
Coughlin
Craig
Crane
Crockett
Dannemeyer
Darden
Daub
Davis (IL)
Davis (MI)
DeLay
DeWine
Dickinson
DioGuardi
Dorgan (ND)
Dwyer
Early
Eckart
Edwards (OK)
Emerson
English
Erdreich
Fascell
Fawell
Feighan
Fields
Fish
Flippo
Frenzel
Gallegly
Gekas
Gibbons
Gilman
Gingrich
Goodling
Grandy
Grant
Guarini
Gunderson
Hall (TX)
Hamilton
Hammerschmidt
Hansen
Harris
Hastert
Hatcher
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hertel
Hiler
Hochbrueckner
Holloway
Hopkins
Horton
Houghton
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jenkins
Johnson (CT)
Johnson (SD)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kleczka
Kolbe
Konnyu
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
Latta
Leach (IA)
Leath (TX)
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Lipinski
Livingston
Lloyd
Lujan
Luken, Thomas
Lukens, Donald
Madigan
Marlenee
Martin (IL)
Martin (NY)
McCandless
McCollum
McCrery
McCurdy
McDade
McEwen
McGrath
McHugh
McMillan (NC)
Meyers
Michel
Miller (OH)
Miller (WA)
Molinari
Moorhead
Morrison (CT)
Morrison (WA)
Murphy
Myers
Nagle
Nelson
Nichols
Nielson
Nowak
Olin
Oxley
Packard
Parris
Pashayan
Patterson
Payne
Pease
Penny
Petri
Pickett
Porter
Price
Pursell
Quillen
Ravenel
Ray
Regula
Rhodes
Ridge
Ritter
Roberts
Robinson
Rogers
Roth
Roukema
Rowland (CT)
Rowland (GA)
Russo
Saiki
Sawyer
Saxton
Schaefer
Schneider
Schroeder
Schuette
Schulze
Sensenbrenner
Sharp
Shaw
Shays
Shumway
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slaughter (NY)
Slaughter (VA)
Smith (NE)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Solomon
St Germain
Staggers
Stallings
Stangeland
Stark
Stenholm
Stump
Sundquist
Sweeney
Tallon
Tauke
Tauzin
Taylor
Thomas (CA)
Thomas (GA)
Traficant
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Walker
Watkins
Weber
Weldon
Whittaker
Wilson
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)

NOT VOTING—44

Alexander
Aspin
Badham
Bosco
Boulter
Brooks
Broomfield
Chappell
Coelho
Coyne
de la Garza
DeFazio
Dellums
Dornan (CA)
Dowdy
Dreier
Edwards (CA)
Gradison
Gray (IL)
Gregg
Hall (OH)
Hawkins
Jacobs
Jones (NC)
Jones (TN)
Kemp
Lott
Lowery (CA)
Lungren
Mack
MacKay
Mica
Miller (CA)
Neal
Obey
Owens (NY)
Panetta
Pickle
Smith (TX)
Stratton
Swindall
Torricelli
Vucanovich
Walgren

□ 1214

Messrs. GUARINI, DWYER of New Jersey, CROCKETT, SAWYER, HERTEL, and NOWAK changed their vote from "yea" to "nay."

Messrs. KOLTER, SMITH of New Jersey, CARDIN, and SMITH of Florida changed their vote from "nay" to "yea."

So the resolution was not agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1215

PERMISSION FOR COMMITTEE ON GOVERNMENT OPERATIONS TO FILE REPORT ENTITLED "COMBATTING FRAUD, ABUSE, AND MISCONDUCT IN THE NATION'S FINANCIAL INSTITUTIONS"

Mr. BARNARD. Mr. Speaker, I ask unanimous consent that the Committee on Government Operations may have until 6 p.m. today to file a report entitled "Combatting Fraud, Abuse, and Misconduct in the Nation's Financial Institutions."

Mr. Speaker, this request has the support of the minority.

The SPEAKER pro tempore (Mr. BUSTAMANTE). Is there objection to the request of the gentleman from Georgia?

There was no objection.

PERMISSION FOR COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT TO TAKE TESTIMONY AND RECEIVE EVIDENCE BY A QUORUM OF ONE UNTIL THE END OF THE 100TH CONGRESS

Mr. DIXON. Mr. Speaker, I ask unanimous consent that for the period from October 13, 1988, to the end of the second session of the 100th Congress the Committee on Standards of Official Conduct be permitted to take testimony and receive evidence by a quorum of one of its members, the provisions of House rule XI, clause 2(h)(1), notwithstanding.

The request has been approved by the minority.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. MYERS of Indiana. Reserving the right to object, Mr. Speaker, and I certainly shall not object, I do so for the purpose of yielding to the gentleman from California to briefly explain this matter.

Mr. DIXON. Mr. Speaker, if the gentleman will yield, I would like to thank the ranking member of the Ethics Committee for his cooperation in this matter.

As the gentleman well knows, the fact is that we will be conducting investigations from the sine die adjournment until we come back in January. This will allow us to sit as a committee of one for depositions and other purposes which will expedite our investigations and certainly accommodate the schedules of Members more adequately.

Mr. MYERS of Indiana. Mr. Speaker, during sine die this is an absolute necessity. I certainly support it and the minority does also.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. pro tempore. It there objection to the request of the gentleman from California?

There was no objection.

PROVIDING FOR A MOTION TO TAKE H.R. 4416, TITLES V AND VI AUTHORIZATION OF LIBRARY SERVICES AND CONSTRUCTION ACT, FROM THE SPEAKER'S TABLE, WITH A SENATE AMENDMENT, AND CONCUR IN THE SENATE AMENDMENT

Mr. BONIOR of Michigan. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 586 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 586

Resolved, That upon the adoption of this resolution it shall be in order to consider in the House, without intervening motion, a motion to take from the Speaker's table the bill (H.R. 4416) to extend the authorization of appropriations for title V and VI of the Library Services and Construction Act through fiscal year 1989, together with the Senate amendment thereto, and to concur in the Senate amendment. Said amendment shall be considered as having been read. Debate on the motion shall continue not to exceed one hour, and the previous question shall be considered as ordered on the motion to final adoption without intervening motion.

Mr. BONIOR of Michigan. Mr. Speaker, I yield the customary 30 minutes to the gentleman from Missouri [Mr. TAYLOR], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 586 provides for the consideration of H.R. 4416, the authorization for titles V and VI of the Library Services and Construction Act. The rule provides for a motion to take from the Speaker's table the bill H.R. 4416 with the Senate amendment and to concur in the Senate amendment.

The Senate amendment will be considered as having been read and the rule provides for 1 hour of debate on the motion.

Mr. Speaker, in early June this year, the House passed this bill by voice vote on suspension.

But, the bill only extended the authorization for titles V and VI through fiscal year 1989. The measure we are voting on today is meant to return those titles to the same authorization schedule as applies to the rest of the titles of the act.

Title V authorizes the Secretary of Education to make grants to State and local public libraries for the acquisition of foreign language materials. Title VI authorizes the Secretary to make grants for supporting literacy programs.

In early October of this year, the Senate passed H.R. 4416 with an amendment in the nature of a substitute. That substitute, in addition to including the authorization extension contained in the House-passed version, also authorized the appropriation of $5 million for fiscal year 1989 and each succeeding year through fiscal year 1993 for the establishment of a program of national geography studies centers to be administered by the National Geographic Society.

The Senate version also authorizes $10 million for each of fiscal years 1989, 1990, and 1991 and $15 million for each of fiscal years 1992 and 1993 for the U.S. Institute of Peace.

Mr. Speaker, I urge the adoption of this rule and I reserve the balance of my time.

Mr. TAYLOR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 586 is a rule under which the House will be asked to authorize $60 million in appropriations for the Institute of Peace over the next 5 years. There will be no opportunity for House amendments.

Under this rule, a motion will be made to take the bill, H.R. 4416, with a Senate amendment from the Speaker's table and to concur in the Senate amendment.

This rule restricts the right of Members to reduce the authorization bill and to shorten the authorization period or to make any change whatsoever in the Senate amendment.

Mr. Speaker, when the Committee on Rules met yesterday, the gentleman from New York [Mr. SOLOMON] asked for the opportunity to offer two simple amendments. He was turned down.

The gentleman from New York [Mr. SOLOMON] reminded us that the House has had no opportunity thus far in the 100th Congress to consider a routine authorization bill for the U.S. Peace Institute. It seems to me this is not an emergency situation. Given the fact that we will be in session next week and perhaps beyond, there is simply no good reason to deny Members of this House the right to offer amendments.

This rule is unfair. It is unfair to the gentleman from New York. It is unfair to the Members of the House.

Mr. Speaker, I urge the House to defeat this rule.

Mr. Speaker, I yield 5 minutes to the gentleman from New York [Mr. SOLOMON].

Mr. SOLOMON. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I have no quarrel with the Library Services Act which passed this House overwhelmingly and passed this House with my vote, because it was a good piece of legislation. I do, however, have a quarrel with the bill in its present form as it was sent back here with Senate amendments, which has added in the reauthorization of the Peace Institute for a 5-year period, with an increase of 300 percent over the last 5-year authorizations.

This last fiscal year the Peace Institute was authorized to expend $4,300,000. This legislation today raises that expenditure from $4,300,000 up to $10 million for this coming year and for the 2 successive years after that, and to $15 million for the fourth and fifth years. That totals $60 million, instead of approximately $15 million that was spent in the last 5 years.

Now, Mr. Speaker, I appeared before the Rules Committee and told them that we had not had the opportunity to debate this issue on the merits, nor had we had the opportunity to debate the amount of money that we were going to spend on this Peace Institute.

I have to remind all of you that I am the ranking Republican on the Veterans' Affairs Committee of this House. I would hope that all of you would contact your veterans hospitals back in each one of your districts. It does not matter which one of those 172 hospitals it is, whether it is in California, Minnesota, Wisconsin, Florida, or New York. You will find that on the average in every single one of those hospitals that there is a shortfall today of an average of $4 million in medical care delivery to the veterans of this Nation.

I have been trying, along with the gentleman from Mississippi [Mr. MONTGOMERY], your Democratic chairman of the Veterans' Affairs Committee, to shake loose some kind of a dire supplemental to make up some of the difference in this shortfall for these hospitals, because if you place that call as I am asking you to do right now your hospital director will tell you that they are turning veterans away who need medical care today.

Now, this House just defeated a rule of 60 million dollars' worth of pork barrel. This is nothing more than the same. This is another $60 million of pork barrel. That is $120 million that we can save here today that we could use on those veterans' hospitals.

I am not here to argue the merits of the Peace Institute, whether that is good or bad, but I would like the opportunity to go back to the Rules Committee and to ask them to put in order my amendment, which simply funds the Peace Institute at the same amount of money that we spent during this present fiscal year, $4,300,000. That is not very much to ask. The administration has not asked for this additional expenditure. The Peace Institute has not asked for it, nor have we had a chance to debate this issue on the floor of this House, or even in committee.

So Mr. Speaker, let us do what is right for the veterans of this Nation.

Let us defeat this rule. We will bring the bill on the floor. We will pass the Library Services Act, as we all want to do, and we will fund again the Peace Institute, but we will do it at the same level that we spent last year, which is simply what they are asking for.

Mr. Speaker, I would hope that we could defeat the rule and have that opportunity.

Mr. BONIOR. Mr. Speaker, I yield 5 minutes to the gentleman from Kansas [Mr. Glickman].

□ 1230

Mr. GLICKMAN. Mr. Speaker, I rise in support of this rule. I rise in support of it not only because it has such a significant amount of authorization for our libraries in this country supported all over this country in every congressional district, but also because it does contain the reauthorization of the U.S. Institute of Peace.

The Institute of Peace was originally authorized as a part of the 1983 defense authorization bill, largely through the help of folks like the gentleman from Wisconsin [Mr. Aspin], Senator Nunn, the gentleman from Georgia [Mr. Gingrich], and others who believed that in addition to having a defense establishment able to provide a method to prevent war, we also needed a system of conflict-resolution techniques in this country to try to determine ways to prevent war in a nonmilitary focus. That institute has been operating for 5 years. President Reagan has supported it and has appointed its President and its Board of Directors, and while it has not done everything that I wanted to see it doing, it has done a great deal in connection with education programs at universities around this country, seminars, fellowships, and articles to try to teach people in the business world, in the military, and in all sectors of our society ways to avoid war through the nonmilitary context.

The Reagan administration recently appointed as the president of the Peace Institute Ambassador Sam Lewis, Ambassador to Israel under both Presidents Carter and Reagan, and he appointed Ambassador Lewis because President Reagan believed the Peace Institute needed somebody at its helm, somebody most experienced in resolving conflicts in a nonmilitary context, and because of Ambassador Lewis' background in the Camp David peace accords, he decided Sam Lewis was the man for the job. The Institute has enjoyed bipartisan support since its creation, and Congress has already appropriated $6.9 million for the Institute's 1989 budget, and I respect my colleague from New York, and he made the same case in the Committee on Rules yesterday, but it is important to realize two things, that this is a reauthorization of the Peace Institute with no substantive changes for all practical purposes. I think he acknowledges that. The dollars are authorized at a higher level, but the Congress has appropriated, the House and the Senate, in the subcommittee of the gentleman from Kentucky [Mr. Natcher], and in the relevant subcommittee $6.9 million for the Institute's 1989 budget.

Therefore, regardless of the authorization for this year, the appropriation has already been handled at a lower level, and that is what will take place.

This funding of $6.9 million is a tiny fraction of the funding we spend in preparation for war. I happen to be one who votes for military budgets, who votes for defense systems, who votes for practically everything we need to service our Nation's veterans. We have one of the finest veterans' hospitals in America in my congressional district, and $6.9 million for ways to prevent a nuclear war in the nonmilitary context, ways to train soldiers, ways to train business people, is really just a small amount.

Mr. Speaker, I would urge that this is a library bill. As a part of the library bill which reauthorizes library function in every congressional district in America, it also includes a very small sum to reauthorize an existing program, not a new program, and I would urge the vote of the Members in favor of the rule.

Mr. DORGAN of North Dakota. Mr. Speaker, will the gentleman yield?

Mr. GLICKMAN. I am happy to yield to the gentleman from North Dakota.

Mr. DORGAN of North Dakota. Mr. Speaker, let me just say that many of us have worked long and hard on the establishment of a Peace Institute, originally discussing it as a Peace Academy.

When we were able to achieve development of a Peace Institute, I think we made a very significant step forward.

The question of whether we are able to study conflict resolution by peaceful means was one that led a lot of us to push for this kind of concept. We spend a great deal of money, and properly should, to analyze how we must fight, how we must conduct wars if in fact we are pulled into a war, God forbid, but we spend almost no money and no time trying, in an organized way, to understand how can we resolve conflicts peacefully. Is there a potential to resolve conflicts peacefully short of war, and this is a study of that.

The Peace Institute, I think, is a very important step forward. It is a very small step, but I share the gentleman's plea to the Members of the House of Representatives that this is not something new, and I think the gentleman from New York understands that. This is not new. This reauthorizes something we have done. It is small, but very, very important, and I hope Members of the House will understand that and help us move along by reauthorizing in this bill.

Mr. GLICKMAN. Mr. Speaker, reclaiming my time, I thank the gentleman for his comments.

Mr. Speaker, I would say a couple of things: President Reagan has appointed all of the directors and president of this organization, and the administration does not support this Institute of Peace at all, and I think it is appropriate in a President who has addressed defense needs so strongly that he has also gone on record in support of methods to resolve conflicts in a nonmilitary context as well. That is a credit to Ronald Reagan.

Mr. Speaker, I urge support of this rule. Again, the main part of this rule is the library reauthorization throughout America.

Mr. TAYLOR. Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania [Mr. Walker].

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. SOLOMON. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I am happy to yield to the gentleman from New York.

Mr. SOLOMON. Mr. Speaker, I thank the gentleman for yielding.

Let me say just briefly that the gentleman from Kansas is one of the Members I admire and respect in this body, as is the gentleman from North Dakota.

We do not question the merits of this issue.

Mr. Speaker, I just want to point out that I thank the gentleman for his comments about our great President Ronald Reagan. Ronald Reagan has sometimes been a little spendthrift, too, and has spent a little more than I would like.

Let me make the point that we are talking about only a $4 or $5 million increase which is, like, 200 percent for this year.

I want the Members to go back and just check with my hospital in Albany, NY, and in the gentleman's hospital in Kansas, and right now the veterans are being turned away for prescription drugs. They are over budget. They do not have the money.

It is not $1 million here and there, but as Everett Dirksen once said, "Now we talk a billion here and a billion there."

We need to save this $60 million here today, the $60 million, and before we adjourn next Wednesday, we are going to get a supplemental budget for the veterans' hospitals of this Nation one way or the other. We will not do it by pushing over more budgets that are over budget just like this one here is today.

Mr. WALKER. Mr. Speaker, reclaiming my time, I thank the gentleman for his comments.

Mr. Speaker, I just want to make a couple of points here. A couple of minutes ago the House did the right thing. We turned down $60 million in pork.

We ought to now take a look at what we are doing here. The library services bill that passed this House passed overwhelmingly, and for anyone to get up and suggest that anyone is opposed to bringing library services back here as a clean bill and passing that is just completely wrong. There is no question about that bill.

What the question is is this add-on provision. We heard from the proponents of this add-on provision that this is a matter that is simply reauthorization.

First of all, the House never authorized this program. We have never had a debate on this program in the House of Representatives. We have never agreed to this program. It has always been a Senate program that has been sent over here in some form.

Last year when we did finally focus in on this program on one appropriation bill, I would remind the House that this House struck the money for this Institute in an appropriation bill last year.

Ultimately the Senate prevailed and put the money back in, but the only time that the House has really focused on this particular provision or this particular program, we struck the money completely for it, and now it comes back here on a bill that adds $60 million over and above what was in the library services bill that originated in this House.

Mr. Speaker, all I am suggesting is that once again the House needs to understand that we are setting priorities. We are allowing the Senate to bring a bill back here that this House does not and has never focused on and has never authorized, and we are supposed to accept, lock, stock, and barrel, the funding amounts that the Senate has put into this bill.

It seems to me to be a wrong course of action to take, because no disservice to the library services bill, I hope we can pass the library services bill as a clean bill. That is exactly the right thing to do.

Mr. Speaker, it is wrong for this House to go on accepting millions and millions and millions and millions and millions of dollars in extra spending that we do not need to have on this floor.

Mr. BONIOR. Mr. Speaker, I yield 1 minute to my friend, the gentleman from North Dakota [Mr. DORGAN].

Mr. DORGAN of North Dakota. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I understand the argument proposed by the gentleman from Pennsylvania.

Mr. Speaker, let me offer another perspective, if I might. We spend a lot of money on defense in this country, and properly should spend money to defend America. However, if we analyze what we spend on defense on a 24-hour basis, 365 days a year, and then understand what we are talking about with respect to the Peace Institute investments, we are talking about 10 to 20 minutes worth of defense expenditures, only 10 to 20 minutes worth of defense expenditures, would fund the entire Peace Institute budget for a year on ways for us to study conflict resolution by peaceful means.

It seems to me that this is an invaluable sort of thing for us to be involved in, and I would hope that we would pay heed to the message by the gentleman from Kansas and continue what we have already started; that is, continue the development and authorization of the Peace Institute that is now under way and serving this country so well. It's no less an investment in national security than spending on needed weapons. Both are needed to prevent the loss of peace and freedom. All I'm saying is that we need a little better balance.

Mr. TAYLOR. Mr. Speaker, I think that as we consider this vote, it is well that we come to the realization that this is a tremendous increase in the funding for the Peace Institute. It is an increase that they have not even asked for, and I think that it is ill-advised to take this Senate amendment and, at a time when we are worried about the fiscal responsibility of our country and our two Presidential candidates will be on television tonight deploring this huge deficit, it is important for us to realize it does not happen in the White House, it happens here, and this is a good instance of it. It goes far beyond what the Peace Institute asked for.

Mr. Speaker, I think it is another irresponsible vote for big spending, and I would hope that we will defeat the rule.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BONIOR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I just want to point out that this is not an increase. It keeps the authorization at the same level, $10 million, for the next 3 years. It does increase it in 1992 and 1993, but for the next 3 years, it stays at the same authorized level of $10 million; and in addition to that, Members ought to be aware that the Committee on Appropriations has not appropriated that $10 million. As I recall, the figure was somewhere in the neighborhood of $6 million. Keep that in mind as we think about this issue.

I recommend the rule highly and the bill eventually when we get to it on another day.

Mr. Speaker, I have no further requests for time, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. TORRES). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. SOLOMON. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 250, nays 118, not voting 63, as follows:

[Roll No. 448]

YEAS—250

Ackerman
Akaka
Anderson
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
Barnard
Bates
Beilenson
Bennett
Berman
Bevill
Bilbray
Bilirakis
Boehlert
Boggs
Bonior
Bonker
Borski
Boucher
Brennan
Brown (CA)
Bruce
Bustamante
Campbell
Cardin
Carper
Carr
Clarke
Clay
Clement
Coleman (TX)
Collins
Conte
Conyers
Cooper
Costello
Crockett
Darden
Davis (MI)
de la Garza
DeFazio
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Downey
Durbin
Dwyer
Dyson
Early
Eckart
Emerson
English
Erdreich
Espy
Evans
Fascell
Fazio
Feighan
Fish
Flake
Flippo
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frost
Garcia
Gaydos
Gejdenson
Gephardt
Gibbons
Gilman
Glickman
Gonzalez
Gordon
Grant
Gray (PA)
Green
Guarini
Gunderson
Hall (TX)
Hamilton
Harris
Hatcher
Hayes (IL)
Hayes (LA)
Hefner
Henry
Hertel
Hochbrueckner
Horton
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Jeffords
Jenkins
Johnson (CT)
Johnson (SD)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
LaFalce
Lancaster
Lantos
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Lujan
Luken, Thomas
Manton
Markey
Martinez
Mavroules
Mazzoli
McCloskey
McCurdy
McGrath
McHugh
McMillen (MD)
Meyers
Mfume
Moakley
Mollohan
Montgomery
Moody
Morella
Morrison (WA)
Mrazek
Myers
Nagle
Natcher
Neal
Nelson
Nichols
Nowak
Oakar
Oberstar
Olin
Ortiz
Owens (UT)
Patterson
Payne
Pease
Pelosi
Penny
Pepper
Perkins
Pickett
Porter
Price
Pursell
Rahall
Ravenel
Ray
Regula
Richardson
Ridge
Rinaldo
Roberts
Rodino
Roe
Rogers
Rostenkowski
Rowland (GA)

Roybal
Russo
Sabo
Saiki
Savage
Sawyer
Scheuer
Schneider
Schroeder
Schumer
Sharp
Shays
Sikorski
Sisisky
Skaggs
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NJ)
Smith, Robert (OR)
Snowe
Solarz
Spence
Spratt
St Germain
Staggers
Stallings
Stokes
Stratton
Studds
Swift
Synar
Tallon
Tauke
Tauzin
Thomas (GA)
Torres
Towns
Traficant
Traxler
Udall
Vento
Visclosky
Volkmer
Watkins
Waxman
Weiss
Weldon
Wheat
Whittaker
Whitten
Williams
Wilson
Wise
Wolf
Wolpe
Wyden
Yates
Yatron

NAYS—118

Archer
Armey
Baker
Ballenger
Bartlett
Barton
Bateman
Bentley
Bereuter
Bliley
Brown (CO)
Buechner
Bunning
Burton
Byron
Callahan
Chandler
Cheney
Clinger
Coats
Coble
Coleman (MO)
Combest
Coughlin
Courter
Craig
Crane
Davis (IL)
DeLay
DeWine
Dickinson
DioGuardi
Edwards (OK)
Fawell
Frenzel
Gallegly
Gallo
Gekas
Gingrich
Goodling
Grandy
Hammerschmidt
Hansen
Hastert
Hefley
Herger
Hiler
Holloway
Hopkins
Houghton
Hunter
Hyde
Inhofe
Ireland
Kolbe
Konnyu
Lagomarsino
Latta
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lloyd
Lukens, Donald
Madigan
Marlenee
Martin (IL)
Martin (NY)
McCandless
McCollum
McCrery
McDade
McEwen
McMillan (NC)
Michel
Miller (OH)
Miller (WA)
Molinari
Moorhead
Murphy
Nielson
Oxley
Packard
Pashayan
Petri
Rhodes
Ritter
Roth
Roukema
Rowland (CT)
Saxton
Schaefer
Schuette
Schulze
Sensenbrenner
Shumway
Shuster
Skeen
Slaughter (VA)
Smith (NE)
Smith, Denny (OR)
Smith, Robert (NH)
Solomon
Stump
Sundquist
Sweeney
Taylor
Thomas (CA)
Upton
Valentine
Vander Jagt
Walker
Weber
Wortley
Wylie
Young (AK)
Young (FL)

NOT VOTING—63

Alexander
AuCoin
Badham
Boland
Bosco
Boulter
Boxer
Brooks
Broomfield
Bryant
Chapman
Chappell
Coelho
Coyne
Dannemeyer
Daub
Dornan (CA)
Dowdy
Dreier
Dymally
Edwards (CA)
Fields
Florio
Gradison
Gray (IL)
Gregg
Hall (OH)
Hawkins
Jacobs
Jones (NC)
Jones (TN)
Kemp
Kyl
Lott
Lowery (CA)
Lowry (WA)
Lungren
Mack
MacKay
Matsui
Mica
Miller (CA)
Mineta
Morrison (CT)
Murtha
Obey
Owens (NY)
Panetta
Parris
Pickle
Quillen
Rangel
Robinson
Rose
Shaw
Smith (TX)
Stangeland
Stark
Stenholm
Swindall
Torricelli
Vucanovich
Walgren

□ 1259

The Clerk announced the following pairs:

On this vote:

Mr. Hawkins for, with Mr. Shaw against.

Mr. Quillen for, with Mr. Swindall against.

Mr. SPENCE, Mrs. JOHNSON of Connecticut, and Mr. SHAYS changed their vote from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1300

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. TORRES). The Chair announces the following additional suspensions may be considered this afternoon, in debate only, at some time: S. 1727, the Deafness Institute Authorization; S. 59, the Nevada Wilderness Authorization; S. 1985, the Protection and Management of Archaeological Reserves on Federal Land; and S. 2843, the Animal Drug and Patent Term Restoration Act.

WELCOMING THE ASTRONAUTS OF THE SHUTTLE "DISCOVERY"

(Mr. ROE asked and was given permission to address the House for 1 minute.)

Mr. ROE. Mr. Speaker and my colleagues, I am here to welcome the five members of our shuttle *Discovery* astronauts who are with us today.

Mr. Speaker, it is a distinct honor and a high privilege for me to welcome the crew of the 26th space shuttle mission.

Discovery's spectacular mission is a proclamation of America's leadership. This momentous event marked the culmination of 32 months of dedicated work on the part of thousands. It demonstrates the resiliency of the American spirit, and the strength of this Nation's commitment to a bold space program.

America intends to lead the world into the space destiny of the 21st century. Our four compass points for the task ahead must be science, space, technology, and education. The successful *Discovery* mission reestablishes firmly a crucial part of our infrastructure to take us into that future.

We are hard at work building the other components that are necessary for the Nation's balanced long-term space effort. We will have a mixed fleet of launch vehicles to provide diversity and strength to our launch capability. We are developing a commercial space launch industry that will compete for a growing share of the world's commercial space market.

We will operate the free world's permanently manned space station with our international partners. The space station will be a workshop of international cooperation. It will be a symbol of international agreement. It will be mankind's stepping stone to the further reaches of our solar system.

We will continue to enhance and expand our space science program. We will launch the magnificent equipment already assembled to plot the stars and probe the planets. We will plan ambitious new space science missions to continue on.

We will do all of this and more because America's citizens support American leadership in space. Thousands stood shoulder to shoulder along the causeway to the Kennedy Space Center to watch *Discovery's* lift off. Millions more repeated the launch countdown in front of their television sets. On the morning of September 29, America registered its affirmation of continuing space leadership. This afternoon Members of the House of Representatives have the great good fortune to be able to thank *Dicovery's* crew in person for a job well done.

Mr. Speaker, the *Discovery* astronauts.

Mr. Speaker, for other words of welcome to our guests who are here today, I would now defer to our distinguished Speaker, the gentleman from Texas [Mr. WRIGHT].

Mr. WRIGHT. Mr. Speaker, I think all of us on both sides of the aisle, Democrats and Republicans, Americans all, are proud of the crew of the space shuttle because they put a smile back on America's face. They have demonstrated that working together with a common goal, we can achieve anything we set our minds and hearts to achieve, anything we give our priority to because this Nation of ours is not finished.

I remember, as do a few others in this Chamber, a day in 1961 when John Fitzgerald Kennedy, speaking here in the Chamber, said that we will have a man on the moon by 1970. Nobody knew how it could be done. The sheer audacity of the challenge arrested us and drove us to do the things together that made it come true.

Many other things have come true. Our new frontier is the space that surrounds the planet Earth. These astronauts are our frontiersmen. They work with a magnificent team composed of thousands of trained specialists who have given their lives to achieving this goal that man, placed here on the Earth, surrounded by the stratosphere, the atmosphere and the troposphere and the limitless bounds of space, may, with God's help, achieve mastery of that space.

To say, as some have said, that science has become our God is to miss the point that science is of God, who created the physical laws of the universe in the first place, who put the electricity in the storm clouds, who locked the Promethean power of the Sun in the tiniest of atoms and who suspended this planet in illimitable space.

So we salute today these splendid young Americans, so exemplary of the best that is in our society, and we pledge that what they have achieved will only be a harbinger of what we will achieve.

Mr. ROE. Mr. Speaker, I yield to the distinguished gentleman from Florida [Mr. NELSON].

Mr. Nelson of Florida. I thank the gentleman for yielding.

Mr. Speaker, I would just like to say to the crew of *Discovery* and to our space team across this Nation, you have lifted our spirits and you have lifted the spirits of America. You have given us cause to look forward, not backward, you have given us a time for hope. And in the wars that we engage in here in the very difficult times of the fiscal austerity and budgetary cutbacks, you also with your success and putting the smile on the face of America, as the Speaker spoke, have given us a pause to look to the future and our future commitments, our future fiscal commitments for this Nation as we fulfill the destiny of what people want in this country, and that is excellence as we explore outer space.

Mr. ROE. Finally, Mr. Speaker, I yield to the distinguished gentleman from New Mexico [Mr. LUJAN].

Mr. LUJAN. I thank the gentleman for yielding.

I want to say, Mr. Speaker, to the astronauts today how very proud we are of them. We were beginning to wonder whether we would ever be back in space again, we were all anxious. Certainly you took those anxieties away from us when you so beautifully swept into space.

Yesterday we had a resolution on this floor commending you for your excellent work, yourselves, the five of you, your fellow astronauts, the thousands of NASA employees and all of the people who have worked on the space program.

You are doing the work that needs to be done, doing the work of America, you are doing the space research.

We all believe and we all know that that will be the workplace of tomorrow.

So again, congratulations to all of you. You have done a superb job and thank you very much.

WE WELCOME OUR HERO ASTRONAUTS

(Mr. WALKER asked and was given permission to address the House for 1 minute.)

Mr. WALKER. Mr. Speaker, I just wanted to join the chairman of the Committee on Science, Space, and Technology in welcoming the astronauts here today. They are certainly heroes throughout America because they have put America back in space. Many of us believe because America is back in space that America is back.

The Speaker spoke of teamwork. We in Congress must be a part of that team. It is the commitment that we show here toward our space program that will continue to allow our space program to fly.

So as we welcome the astronauts here today, I hope we also focus on the future because their future in flight is dependent upon the future that we help define for them.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. BONIOR. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

ADJOURNMENT FROM FRIDAY, OCTOBER 14, 1988, TO TUESDAY, OCTOBER 18, 1988

Mr. BONIOR. Mr. Speaker, I ask unanimous consent that when the House adjourns tomorrow, Friday, October 14, 1988, it adjourn to meet at noon on Tuesday, October 18, 1988.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 4352, OMNIBUS McKINNEY HOMELESS ASSISTANCE ACT OF 1988

Mr. ST GERMAIN. I ask unanimous consent that the managers have until midnight tonight to file the conference report on the bill (H.R. 4352) to amend the Stewart B. McKinney Homeless Assistance Act to extend programs providing urgently needed assistance for the homeless, and for other purposes.

The gentleman from Ohio, Mr. Wylie, the ranking minority member, concurs in this request.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

AUTHORIZATION FOR TITLES V AND VI OF LIBRARY SERVICES AND CONSTRUCTION ACT, FISCAL YEAR 1989

Mr. WILLIAMS. Mr. Speaker, pursuant to House Resolution 586, I move to take from the Speaker's table the bill (H.R. 4416) to extend the authorization of appropriations for titles V and VI of the Library Services and Construction Act through fiscal year 1989, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 586, the Senate amendment is considered as having been read.

The text of the Senate amendment is as follows:

Senate amendment: Strike out all after the enacting clause and insert:

TITLE I—LIBRARY SERVICES AND CONSTRUCTION REAUTHORIZATION

SEC. 101. PROGRAM REAUTHORIZED.

Section 4(a) of the Library Services and Construction Act (20 U.S.C. 351b(a)) is amended by striking out "1988" each place it appears in paragraphs (4) and (5) and inserting "1989".

TITLE II—NATIONAL GEOGRAPHY STUDIES

SEC. 201. SHORT TITLE.

This title may be cited as the "National Geography Studies Centers Act".

SEC. 202. PROGRAM AUTHORIZED.

Part F of title IV of the Elementary and Secondary Education Act of 1965 is amended—

(1) by redesignating section 4607 as section 4608;

(2) by striking out "section 4606" in section 4608(a) (as redesignated by paragraph (1)) and inserting in lieu thereof "sections 4606 and 4607"; and

(3) by adding after section 4606 the following new section:

"SEC. 4607. NATIONAL GEOGRAPHY STUDIES CENTERS.

"(a) PROGRAM AUTHORIZED.—(1) The Secretary is authorized to enter into a contract with the Education Foundation of the National Geographic Society in order to pay the Federal share of the cost of the establishment and operation of National Geography Studies Centers. Each Center shall be for the study of geography in elementary and secondary schools.

"(2) For the purpose of this section—

"(A) the term 'contractor' means the Education Foundation of the National Geographic Society; and

"(B) the term 'Centers' means the National Geography Studies Centers assisted under this section.

"(b) REQUIREMENTS OF CONTRACT.—The contract described in subsection (a)(1) shall provide that—

"(1) funds made available to the contractor pursuant to any contract entered into under this section will be used to pay the Federal share of the cost of establishing and operating the Centers in accordance with this section; and

"(2) the contractor will carry out the provisions of this section.

"(c) ESTABLISHMENT OF CENTERS.—In carrying out the provisions of this section, the contractor may enter into contracts with or make grants to local educational agencies, State educational agencies, State higher educational agencies, institutions of higher education, or consortia thereof, to establish and operate the Centers.

"(d) FUNCTIONS OF THE CENTERS.—(1) Each Center assisted under this section shall—

"(A) support programs for the study of geography for elementary and secondary school students, that may include laboratory schools and summer institutes;

"(B) support programs which provide elementary and secondary school teacher retraining and inservice training in geography and may make provision for teacher stipends for the period of participation in the program; and

"(C) establish procedures, through an advisory panel, for selecting elementary and secondary school students and teachers for the programs supported through the centers. The selection procedures under subparagraph (C), to the extent practicable, shall take into account geographic distribution and the needs for greater access to, and participation in, geography studies by students and teachers from historically underrepresented groups including females, minorities, and individuals with handicaps.

"(2) Each Center may—

"(A) support the development and dissemination of innovative curriculum in geography;

"(B) develop geography curriculum to be used in other subject areas such as environmental studies, science, international culture and politics, history, and foreign language studies; and

"(C) provide technical and resource assistance in geography to elementary and secondary schools in the region served by the Center.

"(e) FEDERAL SHARE.—The Federal share for each fiscal year shall be 75 percent.".

SEC. 203. AUTHORIZATION OF APPROPRIATIONS.

Section 4608 of the Elementary and Secondary Education Act of 1965 (as redesignated by section 202) is amended by adding at the end thereof the following new subsection:

"(d) There are authorized to be appropriated $5,000,000 for the fiscal year 1989, and each succeeding fiscal year ending prior to October 1, 1993, to carry out section 4607.".

TITLE III—UNITED STATES INSTITUTE OF PEACE

SEC. 301. REAUTHORIZATION.

Section 1710(a) of the Department of Defense Authorization Act, 1985 (22 U.S.C. 4609(a)) is amended to read as follows:

"SEC. 1710. (a)(1) For the purpose of carrying out this title (Except for paragraph (9) of section 1705(b)), there are authorized to be appropriated $10,000,000 for fiscal year 1989; $10,000,000 for fiscal year 1990; $10,000,000 for fiscal year 1991; $15,000,000 for fiscal year 1992; and $15,000,000 for fiscal year 1993.

"(2) Funds appropriated pursuant to paragraph (1) are authorized to remain available until expended.".

(b) Section 1707(f)(2) of the United States Institute of Peace Act (22 U.S.C. 4606(f)(2)) is amended by striking out the first sentence thereof.

The SPEAKER pro tempore. The gentleman from Montana [Mr. WILLIAMS] is recognized for 1 hour.

Mr. WILLIAMS. Mr. Speaker, I yield such time as he may consume to the gentleman from Vermont.

Mr. JEFFORDS. I thank the gentleman for yielding time to me.

Mr. Speaker, I rise to approve the amendments that came over to us from the Senate. I do not believe we have any further requests for time on this side.

Mr. WILLIAMS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today we are considering H.R. 4416 as amended by the Senate.

H.R. 4416 does three things. It reauthorizes titles V and VI of the Library Services and Construction Act through fiscal year 1989. It authorizes a new program of national geography studies centers through fiscal year 1993. And it reauthorizes the U.S. Institute of Peace through fiscal year 1993.

The House passed this bill on June 7 as a 1-year extension of titles V and VI of the Library Act. These titles authorized grants for the acquisition of foreign language materials and grants to support literacy programs. This extension was needed to bring these two titles of LSCA into conformity with the other four titles of the act. By doing this, we will have the entire act expire at the same time during the next Congress. And it will make our reauthorization review of this act a smoother process.

When H.R. 4416 reached the Senate, that body added two important amendments. The first amendment would authorize a new program of national geography studies centers. Recently, there have been reports criticizing the lack of understanding that American students have of the world community in which we live. Our students have a very poor knowledge of geography. This new program addresses that problem. It would authorize the establishment of national geography studies centers to support geography programs for elementary and secondary school students. It would also provide teacher retraining and inservice training in geography. This new program would be authorized through fiscal year 1993 at $5 million annually. I think this is a very important program addressing a very real problem.

The second Senate amendment would reauthorize the U.S. Institute of Peace through fiscal year 1993. The authorization would be for $10 million annually through fiscal year 1991, and $15 million annually for fiscal years 1992 and 1993. The Peace Institute supports programs and research in the area of international peace and conflict resolution. Although only 2 years old, the Institute has made a very auspicious start. It has initiated its Jennings Randolph Program for International Peace, named after our distinguished former colleague and a program that has become a cornerstone of the Institute's activities. The Institute has appointed its first eight Jennings Randolph Distinguished Fellows, who will devote their fellowship time to issues of international peace and management of international conflict. Among the first eight fellows are Bradford Morse, former Under Secretary General of the United Nations, Eugene Rostow, former Under Secretary of State for Political Affairs, and Francis Deng, former Ambassador to the United States and Minister of State for Foreign Affairs of Sudan. The institute also conducts a grants program that provides support to nonprofit organizations, public schools, colleges and universities and local governmental agencies to encourage scholarship, education, training, and information dissemination on international peace and conflict management. In addition, the Institute conducts special projects, such as an annual high school essay contest that addresses the fundamental goals and objectives of the institute. The Peace Institute is a very important entity that deserves our support. In a world of increasing conflict, it is absolutely essential that we have a body devoted to exploring ways to reduce or manage that conflict.

I urge my colleagues to concur to the Senate amendments to H.R. 4416. It is a good bill that deserves your support.

Mr. FASCELL. Mr. Speaker, I rise in strong support of H.R. 4416, the Library Services and Construction Reauthorization Act, and specifically the provision which includes a 5-year authorization for the U.S. Institute of Peace.

This is a modest but very important provision which has enjoyed bipartisan support in both bodies. The U.S. Institute of Peace was authorized in 1984 and is mandated to provide research on peace and conflict resolution, education and training for individuals and organizations in both the public and private sectors. The U.S. Institute has provided $2 million in grants to institutions of higher education which is an integral part of the Institute's program and one which I strongly support.

I also support the 5-year authorization which will allow the Institute to engage in long-term planning since the Institute just recently has become fully operational. The Institute has provided and will continue to provide a unique and much needed boost to peace research, education, and training in this country. The 5-year authorization will provide the Institute the ability for the first time to do what they should have been given the opportunity to do from its inception, long-term planning which will only enhance their already admirable record. It is also important to note the progress which the U.S. Institute of Peace has made and I believe that now more than ever that this Institute can serve a vital role in the development and strengthening of research and education in conflict resolution which will be relevant to U.S. policymakers. The U.S. Institute can do much more and deserves the continued support of the Congress to make it a viable and sustainable institution. Further, I would like to take this opportunity to commend the U.S. Institute's distinguished Director, the former U.S. Ambassador to Israel, Sam Lewis, who enjoys the admiration and support for his long and distinguished career at the State Department and now with the U.S. Institute of Peace.

In closing, Mr. Speaker, I would like to take this opportunity to commend my colleague, GUS HAWKINS, the distinguished chairman of the Education and Labor Committee, Mr. PAT WILLIAMS, the chairman of the Postsecondary Education Subcommittee, for their support of the reauthorization of the U.S. Institute of Peace.

Mr. Speaker, I urge the adoption of H.R. 4416.

Mr. JEFFORDS. Mr. Speaker, I rise in support of H.R. 4416, a bill that will reauthorize two titles of the Library Services and Construction Act for 1 year, will establish new authority for National Geography Centers and will authorize the U.S. Institute for Peace for 5 years.

The two titles of the Library Services and Construction Act to be reauthorized are titles V and VI. These titles deal with the Department of Education's foreign language materials acquisition and library literacy programs.

The 1 year reauthorization of these programs will make its authorization cycles contiguous with the remaining titles of the Library Services and Construction Act. Next year, the Education and Labor Committee will consider reauthorization of all of the LSCA.

I believe it is important for modest funding to be provided for support for library literacy programs since we face massive problems in this area. Further, it is important to fund a program for the acquisition of foreign language materials so that we are not so linguistically unaware and isolated as a people.

The Senate amendments to the LSCA authorization include a $5 million authorization to support several geography centers in a contractual arrangement with the National Geographic Society. The National Geographic Society may enter into further contracts with or make grants to local education agencies, State education agencies, State higher education agencies institutions of higher education or consortia to establish and operate the centers.

Each center may support the development and dissemination of innovative curriculum in geography or other related areas and provide technical and resource assistance to elementary and secondary schools.

I support this initiative as necessary to reverse the shocking ignorance of geography among our citizens, especially our young. Far too many people cannot identify simple geographic facts. A recent poll showed that 63 percent of Americans did not know the two parties to the SALT negotiations; a quarter of Dallas seniors did not identify Mexico as the nation on the United States southern border; and Japan could not be located on a map by almost one-half of American students.

It is my hope that this important legislation will result in the education of Americans in the various aspects of geography, which is more than mere map reading, so that we are more cognizant of other cultures and peoples.

The Senate further amends H.R. 4416 to reauthorize for 5 years the U.S. Institute of Peace. The work of the U.S. Institute of Peace is varied. The Institute sponsors fellowship and scholarship programs, conducts research and makes studies into the causes of war and other international conflicts, sponsors education programs in peace and conflict resolution and disseminates information to a number of interested parties and constituencies.

The Institute is an independent agency which strives to be evenhanded and nonpartisan in its administration and programming. Further, the Institute's work recognizes the fact that the conduct of American foreign policy is vested in the Pesident and the Secretary of State with appropriate congressional oversight. Therefore, the Institute operates under the fundamental principle that it will not intervene in specific international disputes.

We invest over a quarter of a trillion dollars each year in building a strong defense. Yet, we have consistently overlooked the diplomatic and societal skills necessary to maintain peace. The Institute is a small investment in peace studies and peace skills. Closer study of history, of conflicts that continually threaten world stability and of conflict resolution techniques hold considerable promise. We cannot afford not to encourage these activities, and I commend the Institute for the start it is making on these tasks.

I urge my colleagues to support H.R. 4416.

Mr. WILLIAMS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Pursuant to the rule, the previous question is ordered on the motion.

The question is on the motion offered by the gentleman from Montana [Mr. Williams].

The motion was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. WILLIAMS. Mr. Speaker, I ask unanimous consent that all Members may have the customary 5 legislative days in which to revise and extend their remarks on H.R. 4416.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Montana?

There was no objection.

WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 515, FAIR CREDIT AND CHARGE CARD DISCLOSURE ACT OF 1988, AND AGAINST CONSIDERATION OF SUCH CONFERENCE REPORT

Mr. BONIOR. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 584 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 584

Resolved, That upon the adoption of this resolution it shall be in order to consider the conference report on the bill (H.R. 515) to provide for more detailed and uniform disclosure by credit and charge card issuers with respect to information relating to interest rates and other fees which may be incurred by consumers through the use of any credit or charge card, and all points of order against the conference report and against its consideration are hereby waived.

The SPEAKER pro tempore. The gentleman from Michigan [Mr. Bonior] is recognized for 1 hour.

Mr. BONIOR. Mr. Speaker, I yield the customary 30 minutes to the gentleman from Ohio [Mr. Latta], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 584 is the rule providing for the consideration of the conference report on H.R. 515, the Fair Credit and Charge Card Disclosure Act of 1988.

Under the rules of the House, conference reports are considered privileged and are considered in the House under the 1-hour rule, and no amendments will be in order. Under this rule, all points of order against the conference report and against its consideration are waived.

The conferees have drafted a conference report which follows closely the matters committed to the conference by both bodies. However, since some of the final provisions may involve technical violations of the rules, a waiver of possible points of order is needed.

Mr. Speaker, the conference agreement on H.R. 515 requires the disclosure of interest rates, grace periods, minimum finance charges, and other fees and costs related to the use of credit cards. The conference report represents the resolution of many credit card disclosure issues, and it enjoys the general support of credit card issuers and consumer groups.

I would urge my colleagues to support this rule so that the House can complete its work on the Fair Credit and Charge Card Disclosure Act.

□ 1315

Mr. LATTA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to commend the chairman and ranking Republican member of the Banking Committee, the gentleman from Rhode Island [Mr. St Germain], and my colleague, the gentleman from Ohio [Mr. Wylie], for a job well done. They have worked out a fair agreement on a difficult subject.

The rule before us provides for the consideration of the conference report on the Fair Credit and Charge Card Disclosure Act. While the rule waives all points of order, there are in fact two rules which are being waived. The first reason for the general waiver is that there is material in the conference report which goes beyond the scope of the conference. There are provisions requiring the disclosure of extra fees, such as cash advance fees, late fees, or over-the-limit fees which were not in either the House or the Senate-passed bills.

The second reason for the general waiver is that the conference report includes Senate provisions which would not have been germane if offered on the House floor. The conference report includes a Senate requirement that a customer be informed of changes in credit insurance provided through a credit card. This provision was not in the House bill.

Mr. Speaker, when the legislation made in order by this rule first passed the House back on October 28, 1987, the vote in favor of the bill was 408 to 1. I supported the bill then, and I will support this rule now so that the House may proceed to the consideration of the conference report on the Fair Credit and Charge Card Disclosure Act of 1988.

Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. WORTLEY].

Mr. WORTLEY. Mr. Speaker, I thank the gentleman for yielding time to me, and I rise in support of this rule.

This is consumer legislation that is long overdue and that America has needed for a long time. I support this rule.

Mr. WYLIE. Mr. Speaker, I rise in support of the rule. This rule, in effect, waives all points of order for violations of clauses 3 and 4 of rule 28 involving scope and germaneness. I should emphasize that these are technical violations. Under the compromise agreed to by the conferees, four additional disclosures were added: minimum finance charges; cash advance fees; late fees; and over-the-credit-limit fees and thus the need for the waiver.

The conference report also includes a provision requiring credit card issuers to provide notice to customers in monthly account statements 1 month prior to changing credit life insurers if the switch will result in an increase in rates or a substantial loss of insurance coverage. This represents a modification of a provision included in the Senate bill, but not originally included in the House bill. These changes are noncontroversial and have the support of both industry and consumer groups.

Mr. Speaker, this is good consumer legislation, and I urge my colleagues to support the rule.

Mr. RIDGE. Mr. Speaker, I rise in support of the conference report on H.R. 515, the Fair Credit and Charge Card Disclosure Act of 1988. As an early supporter of disclosure of terms on credit cards and as a conferee on this bill, I believe we have a balanced bill that provides the consumer with all of the important information they require. The consumer has, in essence, a contract with the credit card offeror and, like any contract, the consumer should know the basic terms before signing.

As agreed to in conference, this legislation required uniform disclosures of the annual percentage rate, information on any variable rates, any membership fees, transaction charges, and the length of any grace period given before finance charges are applied. the means by which the balance is calculated and any other penalties and fees must also be disclosed.

Mr. Speaker, the House of Representatives soundly and properly defeated an amendment that would have placed a cap on credit card interest rates during the original consideration of this legislation. It is surely that the expectation of many of the Members who opposed the cap amendment that a strong disclosure such as the one currently being discussed will do much to allow the market to properly function to force rates lower. Additionally, this legislation requires the Federal Reserve Board to watch closely the credit card industry and to collect information semiannually on the cost of credit cards.

Section 6 of this bill presented the greatest challenge to the conferees on H.R. 515. The compromise on this section now provides that whenever a card issuer proposes to change an insurance carrier, the card issuer must give prior notice of the proposed change. This notice must be descriptive enough so that cardholders can understand the difference between what they have and what is being proposed. Of course, the notice should not be in small print and the differences should be clear. It is more important that the consumer receive this "plain English" notice than receiving a new policy. The Federal Reserve Board is given the specific rulemaking authority to define what constitutes a "substantial decrease in coverage or services" for purposes of notice requirements.

All of the disclosure provisions in this bill, including the notice provisions under section 6, will permit consumers to make informed choices. It should promote fair and adequate competition in the marketplace and fair treatment of consumers. My colleagues, the conference report on H.R. 515 deserves your full support.

Mr. LATTA. Mr. Speaker, I yield back the balance of my time.

Mr. BONIOR. Mr. Speaker, I have no requests for time, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BONIOR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on House Resolution 584, the rule just adopted.

The SPEAKER pro tempore (Mr. GONZALEZ). Is there objection to the request of the gentleman from Michigan?

There was no objection.

CONFERENCE REPORT ON H.R. 515, FAIR CREDIT AND CHARGE CARD DISCLOSURE ACT OF 1988

Mr. ST GERMAIN. Mr. Speaker, pursuant to the provisions of House Resolution 584, I call up the conference report on the bill (H.R. 515) to provide for more detailed and uniform disclosure by credit and charge card issuers with respect to any information relating to interest rates and other fees which may be incurred by consumers through the use of any credit or charge card, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 584, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of October 6, 1988, at page H9804.)

The SPEAKER pro tempore. The gentleman from Rhode Island [Mr. ST GERMAIN] will be recognized for 30 minutes and the gentleman from New York [Mr. WORTLEY] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Rhode Island [Mr. ST GERMAIN].

GENERAL LEAVE

Mr. ST GERMAIN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the conference report now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

Mr. ST GERMAIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, credit and charge cards are part of the contemporary American scene. More than 100 million consumers have one or more credit cards with outstanding balances approaching $150 billion.

H.R. 515, as agreed to in conference, is designed to protect the consumers who receive nearly 2.5 billion solicitations annually for credit cards.

The legislation requires uniform disclosures of interest rates and other fees that consumers face in making a decision to apply for a credit or charge card. Most importantly, the bill requires these disclosures up front before the consumer receives the card—before charges and fees start accruing.

Among other items, the consumer must be told, in a straightforward and clear manner, the annual percentage interest rate, information on any variable rates that might apply, any membership fees, transaction charges, and the length of any grace period granted before finance charges are applied. The consumer must also be provided the method by which the balance is calculated as well as ancillary fees such as cash advance fees, late fees, and over the limit fees.

Mr. Speaker, there was a great deal of discussion about the relationship of the Federal law to the various State disclosure laws.

Some of us, frankly, had hoped that we could avoid a flat preemption of State laws and allow the so-called truth-in-lending approach to apply—an approach which would have allowed States to enact credit card disclosure laws so long as they were not inconsistent with the Federal law.

Ultimately, however, we settled on a compromise which added ancillary fees which brought the provisions of this legislation to the outer limits of the strongest laws now on the books in any State. We also gave the Federal Reserve Board the authority to add disclosures in the future.

Mr. Speaker, this conference report is, without question, a major step forward for the American consumer. It is one of the most important and strongest credit disclosure acts that we have been able to move through the Congress since the first truth-in-lending statute was passed 20 years ago.

In addition to disclosing all the terms relating to the use of the credit card, the legislation also requires the credit card issuer that offers credit life insurance to notify the consumer 30 days prior to any proposal to change the company providing such insurance.

The notice must include information as to any increase in the fees for the insurance and any substantial decrease in service or coverage.

The Federal Reserve Board is required to define in regulations—in an unambiguous fashion—what constitutes "a substantial decrease in coverage or service." If it is to mean anything, this disclosure must be clearly brought to the consumer's attention in a manner that provides meaningful comparisons.

The Federal Reserve is also required to closely monitor the credit card industry and to collect information semiannually on the cost of credit cards. The Board is required to collect the data from the 25 largest issuers of credit cards and at least 125 additional institutions in a manner that will provide a valid national sample. The data is to be made available to the public and the Congress.

Mr. Speaker, H.R. 515 ends the hide-and-seek approach to disclosures on credit card terms. It prevents sneak attacks on unsuspecting consumers who often learn of charges and fees long after the fact—too late to reject the hide-and-seek alternatives.

I want to commend all the members of the Banking Committee—on both sides of the aisle—who worked to produce a strong credit card disclosure bill. The chairman of the Consumer Affairs Subcommittee, Frank Annunzio, deserves special credit for his many hours of hard work for strong disclosures. Our colleagues, Doug Barnard from Georgia and Chuck Schumer of New York, pulled together a consensus package that provided the focal point for strengthening the legislation in the conference. Their work was so important to the final resolution of this conference report.

Mr. Speaker, H.R. 515 is part of the growing consumer bill of rights that is being constructed by the Banking, Finance and Urban Affairs Committee and the Congress.

Mr. Speaker, I yield the balance of my time to the gentleman from Georgia [Mr. Barnard], and I will ask the gentleman from Georgia to manage the conference report for the remainder of my time.

The SPEAKER pro tempore. Without objection, the gentleman may yield his time to the gentleman from Georgia [Mr. Barnard].

There was no objection.

Mr. BARNARD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of this legislation.

It is the result of much hard work on the part of many people, especially myself, Mr. Schumer and Senator Dodd. H.R. 515 was unanimously reported out of the House Committee on Banking and passed the House and Senate by overwhelming majorities.

It is a bill requiring comprehensive fair, simple, and uniform disclosure of the basic terms of credit cards, which are the Nation's third medium of exchange after checks and cash.

Disclosure is fundamental to a competitive economy. Credit is a resource or a commodity like any other and if the price and other relevant terms are disclosed in advance of the transaction, consumers can obtain the best product at the lowest price.

When you go to purchase a TV, you look at the price and other features. Among several TV's of the same size, you may choose the cheapest with fewer features or you may pay more for a feature like remote control even though picture size and quality are the same. You also may be able to purchase that same TV cheaper at another store or you may be willing to pay more at a store that delivers or is close to home. It's your choice, and as long as you have the necessary information you can make the optimum decision for yourself.

The situation is no different for credit cards. Some cards offer a lower rate but no grace period. Others offer features like a grace period, merchandise rebates, travel services and the like. If these terms are disclosed conspicuously in the same manner and location according to the type of application or solicitation, as provided by H.R. 515, then consumers can choose the card and combination of terms best for them.

The disclosures required by H.R. 515 are stringent and comprehensive—they cover, at the time of application virtually every fee presently associated with the possession and use of a credit card. Yet they are presented in a way which is clear and conspicuous to the credit consumer.

In addition, the legislation contains notice provisions pertaining to credit card life insurance. Section 6 of the legislation provides for notice to consumers of any change in carrier. Notice of any substantial decrease in coverage or service that will result from the change is also required. The Federal Reserve Board will define in regulations in an unambiguous fashion what constitutes a substantial decrease in coverage or service. This is made clear in the conference report language. At no time during the conference was there any discussion of the requirement that any disclosure be in the form of a comparison of terms. Additionally, both statutory and report language make it clear that section 6 does not supersede any provision of State law applicable to the regulation of insurance.

Originally, the industry did not want this legislation—but I felt that they needed this bill and convinced them that disclosure was necessary to ensure competition and fairness in what is now a national market. They have gradually come around and now fully support the concepts in H.R. 515. I urge my colleagues to join me in supporting this vital consumer legislation which benefit every consumer.

Mr. WORTLEY. Mr. Speaker, I yield myself such time as I may consume. Mr. Speaker, the Credit Card Savings Act is the product of lengthy public discussion and debate, and this conference report ought to be quickly approved. This law will provide to consumers important information which will protect them from misleading solicitations.

Although the Truth in Lending Act currently requires credit card issuers to provide information concerning the fees and interest rate associated with a credit card, this information is only available after the consumer takes possession of the card. The legislation we are about to approve will inform consumers of such important facts before the consumer selects a particular card.

This is beneficial from two points of view. First, consumers will be in a better position to make wise and informed choices about financial decisions involving their hard-earned money. Second, credit card issuers will be forced to offer a more competitive product as the advantages of slick advertising, mass mailings, and telephone solicitations are outweighed by a clear presentation of the merits and demerits of each card.

The bill will require that any written application or solicitation to open a credit card account must disclose the annual percentage rate applicable, any fees imposed for issuance or use of the card, and any grace period.

In addition, the bill requires that applications made available to the public in retail establishments or catalogs and magazines must be dated and contain accurate information as of that date, and they must inform the consumer that terms are subject to change.

Mr. Speaker, I particularly want to commend today those Members who have been in the forefront of this effort, particularly the chairman of the committee, the gentleman from Rhode Island [Mr. St Germain], the gentleman from Illinois [Mr. Annunzio], the gentleman from New York [Mr. Schumer], the gentleman from Georgia [Mr. Barnard], and from this side of the aisle, the ranking member, the gentleman from Ohio [Mr. Wylie], the gentleman from Indiana [Mr. Hiler], the gentleman from California [Mr. Shumway], and the gentleman from Pennsylvania [Mr. Ridge]. They all deserve our salute and our deep appreciation for the efforts they put forth to reach this conference agreement.

Mr. Speaker, this conference report will implement a commonsense approach which will have a decidedly positive impact on the credit card market. I urge my colleagues to support this bill and this conference report.

Mr. Speaker, I reserve the balance of my time.

Mr. BARNARD. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Illinois [Mr. Annunzio].

Mr. ANNUNZIO. Mr. Speaker, I thank my distinguished friend, the gentleman from Georiga, for the time he has allocated me.

Mr. Speaker, I am strongly opposed to the conference report on H.R. 515. I wish I could stand here today and discuss the conference report at length, but unfortunately, I have not been given an opportunity to see the report. No; that is not unusual in itself, since there are occasions when all Members of the House do not get a chance to see a conference report. But this is an unusual report. I was a member of the conference committee, at least the Speaker appointed me as a member of the conference committee.

Mr. Speaker, I had planned to be a full participant in the conference, and had even prepared a motion for the House conferees to consider that would have, in my opinion, improved the legislation. Once the conference committee met, it became clear to me that I would have little if any role to play in the conference committee, even though I am the chairman of the subcommittee that originally considered H.R. 515, and a senior member of the Committee on Banking, Finance and Urban Affairs. The time of the first meeting of the conference committee was changed without any consultation with me. This time change caused me a great problem, since I had another appointment at the new time.

When the conference committee met, I was not recognized for an opening statement, even though other Members on the House side made such statements, nor was I even recognized when discussion of the legislation began. It was clear that since I was opposed to the legislation, my views would not be considered by the House conferees, and I walked out of the meeting.

A second meeting was held, but I was not told about it nor was my staff allowed to participate in any of the staff sessions dealing with the bill. I have refused to sign the conference report not just because of my treatment, but more importantly because this is a bad bill disguised as a consumer protection bill. It is fitting that we are taking up the conference report in the month of Halloween, because this bill indeed wears a mask. And unlike Halloween, where you at least get the option of trick or treat, this bill offers only trick or trick.

This legislation is opposed by a major consumer organization that has worked the hardest of all the consumer groups on the bill. Two other consumer groups have given lukewarm approval to the conference report, but only after they were told, "this is the best you can get." It is strange to me that both of these consumer groups opposed the legislation when it was before the House because of the provision which prohibits States from enacting stronger credit care disclosure laws, since that same prohibition is in the conference-reported bill. I wonder why these two consumer groups would suddenly change their position, particularly when the U.S. Public Interest Research Group [PIRG], one of the strongest consumer organizations, still opposes this legislation. I am including in my remarks a copy of a press release that U.S. PIRG issued on the conference-reported legislation.

Let me suggest that what Americans want in their credit cards is not more disclosure, but lower interest rates on their charges. There is nothing in this legislation that will cause credit card interest rates to fall. In fact, I predict that this legislation will actually cause credit card interest rates to increase. If this is such a great consumer protection bill, why is it that all major credit card issuing groups support the legislation? These are organizations that traditionally do not support consumer protection legislation, but suddenly they are rallying around this bill.

I believe they see this legislation as an opportunity to increase interest rates and to blame it on Congress. I have already received letters from credit card issuers complaining about the increased disclosures and mailings that they will have to make to their cardholders. It will be only a matter of time before credit card issuers increase the rates on their products and blame the increase on the increased disclosures, paperwork, printing and mailing costs required under this legislation. And the card issuers will have a perfect execuse for raising the rates. They will blame it all on the Congress for passing this burdensome piece of legislation.

I have been the chairman of the Consumer Affairs Subcommittee for 14 years. Over that period, I have seen a great many pieces of consumer credit legislation. Some of those have been substantive laws, such as the Equal Credit Opportunity Act and the Fair Debt Collection Practices Act. Others have been disclosure laws, such as the Truth in Lending Act. Both types of laws have a role in aiding consumers and the marketplace to function most efficiently. Credit disclosure succeeds when it provides consumers with information that is pertinent to their decisionmaking and that they would not otherwise get. It fails when it provides information that is irrelevant, confusing and useless. We acted on that principle in 1980 when we passed the Truth in Lending Simplification Act to get rid of information overload and emphasize the major items.

Unfortunately, H.R. 515 is a retreat from the principles that we have applied to credit disclosures in the past. Rather than provide consumers with relevant and useful information, it is so loaded with loopholes that it makes a lace curtain look like a brick wall. When it takes 25 pages of legalese to define the disclosures, you better look out.

Even more troubling than the disclosure provisions is the complete preemption of State credit card disclosure law.

The Truth in Lending Act provides a workable standard for the relationship between State and Federal law. Under truth-in-lending, State law is not preempted unless it is inconsistent with truth-in-lending. State disclosures in harmony with truth in lending are permitted. This allows States to supplement truth-in-lending disclosures. This preemption standard has been in effect for 20 years and has worked well.

H.R. 515 will strip States of their power to provide additional protection for their citizens. Currently, there are 10 States with credit card disclosure laws. The 82 million citizens of those States—who make up one-third of the population of this Nation—will lose the protections that their elected State representatives gave them if we preempt their laws. The legislatures of the other 40 States will be told that they are barred from protecting their citizens.

When I offered a credit card interest rate cap amendment to this legislation last year, one response was that the States had the authority to set interest rates, and this power should not be taken away from them. I tell you now, States have the power to regulate credit card disclosures, and that power should not be taken away from them.

The unprecedented preemption of State law is the opening move on the part of creditors to completely strip States of the power to regulate consumer credit. Creditors are already arguing that State home equity laws should be preempted by the pending legislation in that area. It will not be long before creditors will want to make total Federal preemption the rule, not the exception.

I can support credit card disclosure legislation—but only without preemption of State law. Preemption is bad policy generally. This preemption provision is particularly bad in that it creates an exception to a preemption standard that has existed for 20 years. If we adopt it, it will not be long before the exception becomes the rule. I will not be part of that process.

CONSUMER GROUP CRITIQUES CREDIT CARD LEGISLATION

WASHINGTON, D.C.—Senate and House conferees met late Wednesday and agreed to credit card disclosure legislation which fails to provide full protection for consumers and preempts states from passing stronger laws.

Leslie Gainer, Consumer Lobbyist with the U.S. Public Interest Research Group (U.S. PIRG) observed, "Unfortunately, Congressional banking conferees crafted a bill which will supersede existing state laws, prohibit states from acting in the future and allow the credit card industry to operate under a single new federal law. Certain loopholes in the bill contradict its title, the 'Fair Credit and Charge Card Disclosure Act of 1988.'"

Gainer added, "We are disappointed that the banking committee conferees accepted the banking industry's ultimatum to preempt state rights, and produced a bill which does not mandate up-front fee disclosure in all solicitations. We applaud Representative Frank Annunzio (D-IL) for his strenuous advocacy in opposition to the preemption of state legislatures."

Gainer added, "While the bill has defects, it provides important disclosures for consumers in the nearly 40 states that have not yet passed disclosure laws. In fact, now, most state laws are not as comprehensive in certain areas as the federal bill is."

The bill requires that all direct mail applications and solicitations contain the following specific information: annual percentage rate, how the variable rate is determined, membership fees, monthly charges, finance charges and grace period. Issuers must provide the range of fees for cash advances, late fees and over-the-limit fees. Charge card issuers will be required to provide similar information in all written applications and solicitations.

However, Gainer criticized the fact that in certain instances the law allows disclosures of key terms and conditions to come after the consumer has applied, and not until the card arrives and is available for immediate use. She said, "The original intent of this legislation was to provide meaningful disclosures before the consumer has to apply for the credit card. The conferees have produced a bill which they camouflage by calling it consumer protection legislation, while in reality a couple of provisions in the bill fail to mandate fee disclosure to consumers as they are being invited to apply for credit cards."

Gainer pointed to a few of the examples of the bill's weaknesses:

Telephone Solicitations—Telemarketers are exempt from orally disclosing the key terms and conditions during their hard-sell pitch if they merely hold back from charging the fees until the consumer receives the card.

By soliciting new accounts over the phone, the issuer does not have to send the disclosures until the card is sent (as long as the information is sent within 30 days of the telephone application).

Take-Ones (Flyers)/Catalogues/Publications—The issuer can avoid making any fee disclosures in catalogues and similar publications, as long as the solicitation does not refer to certain items.

Vague Fee Disclosure—Rather than requiring issuers to reveal the actual fees imposed (as some states now require), the issuer can simply give a range of fees that may be imposed for cash advances, over-the-limit fees, and late payment charges.

Total preemption of existing state laws, and states' power to pass disclosure laws in the future. States which have passed laws include: California, Hawaii, Illinois, Massachusetts, Minnesota, New York, North Carolina, Oregon, Rhode Island, Virginia and Wisconsin.

In a rollback of existing state legislative power under the Truth in Lending Act, the bill takes away the authority of states to require other disclosures not included in the new legislation. Disclosures that states may want to require, but would now be prohibited include: the length that terms offered remain available to prospective applicants; whether the issuer reserves the right to change the terms after the contract has been signed; whether an out-of-state issuer is complying with the state interest rate ceiling.

Gainer said, "This legislation is a slap in the face to state legislators who are being stripped of their right to pass consumer protection laws. As credit card marketing practices evolve at the local level, state officials will be beholden to Congress and the Federal Reserve Board to redress local problems."

She concluded, "While this bill presents the impression of mandating disclosure, in fact there are loopholes that allow advertisers and solicitors to disclose fee information too late. More important, this bill is particularly disappointing because it preempts the rights of states to seek additional protection for consumers."

U.S. PIRG is the national lobbying office for the state PIRGs. PIRGs are non-partisan, non-profit consumer advocacy groups.

□ 1330

Mr. BARNARD. Mr. Speaker, I yield 5 minutes to the gentleman from New York [Mr. SCHUMER], one of the authors of this bill.

Mr. SCHUMER. Mr. Speaker, I thank the gentleman from Georgia [Mr. BARNARD] for yielding this time to me.

Mr. Speaker, first let me thank so many people for their help and leadership on this bill: the chairman of the committee, the gentleman from Rhode Island [Mr. ST GERMAIN]; the chairman of the subcommittee, the gentleman from Illinois [Mr. ANNUNZIO], my friend; the gentleman from Georgia [Mr. BARNARD], and, on the other side of the aisle, the gentleman from Ohio [Mr. WYLIE], the ranking minority Member and my good friend; the gentleman from New York [Mr. WORTLEY], who I will miss very much next year, too. I would also like to thank Senator DODD for his leadership in the other body.

Mr. Speaker, this bill brings much-needed relief to consumers who are puzzled over which credit card they ought to sign up for.

When I first became involved in this issue several years ago, I was shocked to realize that consumers had no way of comparing the interest rates different cards charge. They had no way of knowing the grace period for repayment, and sometimes the annual fee the card charged was not even listed. Credit card consumers were buying a pig in a poke.

Mr. Speaker, so-called plastic money has been a mixed blessing to Americans. On the one hand it has given Americans great flexibility to purchase what they need. But on the darker side is that many people did not know all they were getting in these cards. They had little information about the costs, terms such as interest charges and grace periods.

I am optimistic that this bill will result in millions of savings for consumers. The bill will ensure that every consumer knows the real cost of all credit cards and allows them to shop around for the lowest rates.

Since I began the crusade several years ago to lower rates and since I introduced this bill, credit card companies have begun to compete with each other. Interest rates, which were once locked at 19 or 18 percent for all companies, have begun to be competitive, reducing the costs to consumers. A few years ago a disclosure bill would not have been effective because everyone was charging the same thing. But now that many major firms are charging 10, 11, 12, 13 percent, far more in line with what interest rates ought to be, now that annual fees vary greatly, real competition is possible with real and clear information. This legislation will mandate the so-called Schumer box, a clear concise tabular format, for the four most important pieces of information: interest rates, grace period, annual fee and all balance calculation method. These terms will be disclosed in big letters, in big numbers on every credit card solicitation, and that will make a major difference in competition.

I say to my colleagues, "If we pass this legislation, the fixed market, the oligopoly that the major credit cards' users have had, will indeed begin to disappear."

I would like to say, too, that the industry, and indeed the gentleman from Illinois mentioned this, the industry is supporting the bill. They are, but so are the major consumer groups including Consumer Federation of America, Consumers' Union and Bank cardholders of America. There is but one exception.

I think everyone has realized we do not have a consensus on actual interest rate caps. We do not have a consensus on a lot of other things, but we do have a consensus that it is high time the people were able to find out what they were buying. It is high time there is disclosure.

There has been an argument about preemption, and I would say that this bill does preempt State law. But preemption is immaterial because, first, this bill is tougher than any current State law. That is one of the reasons that we went into conference and made the bill the tougher, and the industry deserves credit for supporting such a tough bill.

The second issue on preemption is that credit cards, unlike mortgages, or auto loans, or home loans, are indeed a national industry. The large issuers control a lot of the market. If they are willing to go for tough disclosure, provided that they do not have to make different types of disclosure in each of the 50 States, that to me is a trade that benefits consumers, and it is a trade that ought to be made.

So, in conclusion, Mr. Speaker, it has been a long, hard road. I have been active in this issue, as so many of my colleagues have, for many, many, many years, and now we are finally seeing some light at the end of the tunnel. We are finally seeing the day when consumers will know what the facts are. And, facing informed consumers, the industry will be forced to compete on rates and on fees.

Mr. Speaker, it is a good day for consumers that this bill, this conference report, has passed the other body and now comes to this floor. We look forward to continuing the battle so that we will have real competition in the credit card market.

Mr. WORTLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I just regret that my esteemed colleague, the gentleman from Illinois [Mr. ANNUNZIO] has seen fit to oppose this bill because he certainly is one of the greatest champions in this body of the American consumers on the floor of this House, in the committee chamber or wherever else. I know his concern is that he would like to see a cap placed upon these interest rates, and many others would like to see the same, but I would have to respond that the consumer is well served in this bill.

Mr. Speaker, this is a free choice by the consumer. The consumer will know what interest rates are being offered, and this is the American marketplace at its very finest when the consumer can make the choice whether to select or whether to reject a particular card.

Mr. Speaker, from this Member's vantage point I would urge my colleagues to support this bill.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BARNARD. Mr. Speaker, I yield 2 minutes to the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. Mr. Speaker, I rise in support of the conference report on H.R. 515, the Fair Credit and Charge Card Disclosure Act of 1988. This legislation is much needed and long overdue. Some of my colleagues want to do much more. But we must be pragmatic in the final days of the 100th Congress, with administration indifference and strong interest groups' opposition; this is a major improvement in the present credit card laws. For too long American consumers have been left at a disadvantage and to chance in determining which credit card is best suited for their needs. Rather than having a road map to make sound economic decisions, consumers are often blindfolded by deceptive and incomplete information.

With today's action, that blindfold should be removed and the American consumer will be given the information and the opportunity they need to make an educated decision. As a result, competition among credit card companies will increase, hopefully forcing competitive roles and a drop in interest rates and other fees.

I am pleased that the conference committee incorporated into the final legislation my amendment requiring full disclosure of costs and fees at the time of annual renewal. With the 30-day notice period in this bill, consumers will have the opportunity and the information to consider the various credit card alternatives.

Mr. Speaker, the disclosure requirements upon renewal will likely have a direct impact on more Americans each year than other provisions of this law. According to a 1987 Wall Street Journal article, there are between 8 and 9 million American Express card holders. In addition, the 10 banks most active in the credit card industry have over 34 million accounts. So, from just those 11 institutions, over 42 million existing account holders will be armed with the details of all fees and interests rates. This disclosure and information and the appropriate time is the ultimate consumer weapon at their disposal and will likely lead to significant savings each year.

Finally, Mr. Speaker, I want to reiterate the intent of this section is to provide consumers with clear disclosure information, in a timely matter, a clear note of their right to cancel continued credit availability, and 30 days to exercise that right and avoid payment of the fee and interest associated with such fee.

Mr. BARNARD. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Delaware [Mr. CARPER].

Mr. CARPER. Mr. Speaker, I thank the gentleman from Georgia [Mr. BARNARD] for yielding this time to me.

Mr. Speaker, I join my colleagues in urging the adoption of this measure, the support of this measure.

What we have really done with this compromise is to say that we want to trust, put our confidence in, consumers that they can and will vote with their feet. They will chose a credit card. If they know what the annual percentage rate is, if they know what the interest rate they will have to pay on the credit card is, if consumers know what the grace period is, when they are going to have to actually start paying that interest rate, if they have some idea of how the balance is going to be calculated, consumers are smart enough in this country to vote with their feet or really to vote with their pocketbooks. This legislation gives them credit for that.

Mr. Speaker, I think this is the right way to go. It provides for competition. It lets competitive forces do their work, and I urge the adoption of this measure. I think it is a good compromise. I think it is good for consumers; I think it is fair to our financial institutions.

Mr. HILER. Mr. Speaker, I rise today in support of the conference report on H.R. 515. I believe that the conferees have done an excellent job in putting together a package that has the support of both industry and consumer groups. I strongly urge my colleagues to join the Senate and adopt the conference report today.

It has been a long, arduous process in getting this legislation to where we are today. Under the leadership of our chairman, Congressman ANNUNZIO, the Banking Committee's Subcommittee on Consumer Affairs and Coinage first held hearings on this issue in March of 1987. The House originally passed H.R. 515 on October 28, 1987, by a vote of 408 to 1. The Senate then passed a modified version of the bill on December 2, 1987. In the intervening 10 months, Members from both Houses have worked to craft an acceptable compromise package. The conference report we adopt today is fine consumer legislation and the conferees, under the leadership of Chairman ST GERMAIN and Congressman WYLIE, should be proud of their work.

The disclosure provisions of the bill will benefit consumers in several ways. First, the disclosure provisions may enhance competition among credit and charge card providers, allowing the marketplace to operate more efficiently and resulting in lower interest rates and other more favorable terms. Second, clear disclosure of key terms will help consumers to understand better what obligations they will incur under various credit card programs. Third, this advance information will allow consumers to make better informed comparisons among credit plans without the need to first complete the application process. Finally, the conference report adopts a single uniform Federal standard that will greatly assist consumers in comparison shopping between credit card programs.

In short, I strongly support the conference report on H.R. 515. H.R. 515 is a necessary and well thought out consumer measure. I urge my colleagues to join me in voting to pass this important legislation today.

Mr. WYLE. Mr. Speaker, I rise in support of the conference report on H.R. 515, the Fair Credit and Charge Card Disclosure Act of 1988. I would like to commend the chairman of the Banking Committee, Mr. St. Germain, as well as the other conferees on H.R. 515 for their splendid work. I believe we have come up with an excellent package that will provide significant consumer benefits. I have always been a strong supporter of credit card disclosure legislation and am pleased that we are able to consider this issue today.

H.R. 515's credit card disclosure provisions will be a great benefit to the American consumer. I believe that there is a need to provide consumers with adequate information upon which to base a decision when they select the credit cards they use. I am a great proponent of the bills disclosure requirements.

H.R. 515, as it was passed by the House, had wide bipartisan support as well as the support of virtually the entire consumer credit industry. The House passed the bill by a vote of 408 to 1. The legislation generally required that card issuers disclose, at the time of application: First, the annual percentage rate charged by the issuer; second, any annual fee charged for card availability; and third, any grace period during which consumers would be free from finance charges. Additionally, the bill would ensure national uniformity of disclosure in connection with credit card applications. I strongly supported the House bill.

The conference report we are considering today embodies the principal components of the House bill. The conference has added certain disclosures and has retained the House's strict Federal preemption standard. The conference report has broad backing from both industry and consumer groups.

In short, I am a strong proponent of credit card disclosure and feel that H.R. 515 represents an important and needed consumer measure. I urge my colleagues to support the conference report. Thank you.

Mr. BARNARD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER pro tempore (Mr. Gonzalez). The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ANNUNZIO. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I, further proceedings on this question will be postponed until Tuesday, October 18, 1988.

The point of no quorum is considered withdrawn.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5 of rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken on Tuesday, October 18, 1988.

MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT OF 1972 REAUTHORIZATION FOR FISCAL YEARS 1989 AND 1990

Mr. LOWRY of Washington. Mr. Speaker, I move to suspend the rules and concur in the Senate amendments to the bill (H.R. 4210) to authorize appropriations to carry out titles II and III of the Marine Protection, Research, and Sanctuaries Act of 1972, to establish the National Oceans Policy Commission, and for other purposes."

The Clerk read as follows:

Senate amendments:

Page 12, line 4, after "304(a)(1)(C)" insert "and (a)(5)".

Page 12, line 5, after "1434(a)(1)(C)" insert "and (a)(5)".

Strike out page 27 through page 42, inclusive.

The SPEAKER pro tempore. Is a second demanded?

Mr. SHUMWAY. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Washington [Mr. Lowry] will be recognized for 20 minutes and the gentleman from California [Mr. Shumway] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Washington [Mr. Lowry].

Mr. LOWRY of Washington. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill has already passed the House and is simply coming back from the other body with very minor modifications. Mr. Speaker, H.R. 4210 would reauthorize title II of the Marine Protection, Research and Sanctuaries Act [MPRSA] at levels of $13,500,000 and $14,500,000 for fiscal years 1989 and 1990, respectively. In addition, H.R. 4210 would require that the Secretary of Commerce ensure that the research program conducted under subsection (a) of title II be consistent with the comprehensive plan developed under section 4 of the National Ocean Pollution Planning Act of 1978, the reauthorization of which we will be marking up later.

The primary purpose of title II of the MPRSA is to provide for short- and long-term research and monitoring on the effects of pollution, overfishing, and other activities on the marine environment, including the specific effects of ocean dumping. The types of programs funded under title II include MOAA's Status and Trends Program, which monitors water quality data from various estuaries around the nation; the Consequences of Contamination Program, which links the chemical data collected in the Status and Trends Program with the actual effects on Marine life; the Strategic Assessment Branch, which prepared data atlases and maps of various estuaries; and the Hazardous Materials Response Program, which is NOAA's research and response capability for meeting hazardous material emergencies and conducting long-term resource assessments under the Superfund law.

As Members recently heard during NOAA's fiscal year budget testimony, the Status and Trends would be rescued by approximately $5.7 million in this year's budget. I believe that this authorization legislation is important to put this committee on record that it supports the Status and Trends Program, as well as other ocean pollution research efforts underway at NOAA to better understand the fate and effects of contaminants and other pollutants which we have discharged into our nation's waterbodies for years.

Mr. Speaker, this bill also includes the text of H.R. 4208, legislation that I introduced on March 21, 1988, with my colleagues, Mr. Jones of North Carolina, Mr. Studds, Mr. Fascell, Mr. Alexander, and Mr. Hughes. The basic purpose of H.R. 4208 is to amend title III of the Marine Protection, Research, and Sanctuaries Act of 1972 to reauthorize the National Marine Sanctuary Program for 4 years with a modest expansion of funding based on the additional requirements of the legislation.

Nationally significant marine resource areas are of great value for research, education, and for promoting general public awareness of our marine environment. As our ocean waters are continuously threatened by pollution and other damaging incidents, the establishment and maintenance of marine sanctuaries for the protection of nationally significant resources is of essential priority if we are to continue to enjoy the benefits of unique ocean and coastal resources to which we have become accustomed. The amendments to the Marine Protection, Research, and Sanctuaries Act that have been incorporated into this piece of legislation recognize issues that require immediate attention. These include the need for: First, improved timeliness and predictability of the national marine sanctuary site designation process; second, clarification of liability for damages to these valuable marine resources; and third, movement toward a uniform enforcement authority to better protect marine resources.

To begin, I would like to point out that existing law contains no deadline regarding site designation. This creates a tremendous problem as too often NOAA has proposed active candidates for site designation, for example Cordell Banks or Flower Garden Banks National Marine Sanctuary, and never completes the process to finally designate the Sanctuary. Section 102 amends title III to require the Secretary to publish a notice of designation with final regulations—or findings detailing reasons why one has not been published—within 30 months of the date which a site is determined to be an "active candidate" from the site evaluation list.

Mr. Speaker, these new provisions would force action that has been delayed in the past. The bill also mandates that decisions not to proceed with designation of a site be explained in writing and referred to the relevant House and Senate committees. This will in turn increase the predictability and accountability of the designation process.

The next section deals with the promotion and coordination of research, special use permits, and cooperative agreements and donations. Section 103 of this act strikes section 308 of the title and adds sections 309, 310, and 311 to deal with the above topics, respectively. Since national marine sanctuaries provide ideal environments for conducting marine research projects, section 309 requests that NOAA give priority to marine research within the marine sanctuaries and consult with Federal and State agencies to actively promote their use of the sanctuaries for research purposes.

Because not all activities can be adequately controlled under existing sanctuary regulations, such as those for research, education, and salvaging, section 310 establishes a special use permitting system to complement those existing regulations. If NOAA determines that a permit is necessary to promote public use and understanding of or to establish access to a sanctuary, it may issue such a permit with a 5-year maximum duration, renewable by the Secretary, under the specific terms established in this section. These terms require that the permittee's activities are compatible with the purposes for which the sanctuary was designated, not resulting in any destruction, loss, or injury to its resources, and that the permittee maintains general liability insurance. The permittee must submit an annual report describing the activities conducted by the end of each year. Should any of these terms be violated, the Secretary is authorized to revoke the permit. Section 310 also establishes a specific method of determining the permit fee and authorizes the Secretary to use these fees for management purposes and permit administration. Under section 311, the Secretary of Commerce is explicitly authorized to enter into cooperative agreements with any nonprofit organizations and to authorize those organizations to solicit private donations for the support of sanctuary activities. This section also allows the Secretary to accept any donations and to expend those donations for sanctuary purposes.

The next section, section 104, establishes a system for restoring those marine sanctuary resources that are destroyed, injured or lost. The section states that any person responsible for such destruction, injury or loss will be held liable to the United States for damages and appropriate response costs. Likewise, any responsible vessels will be held liable in rem. Persons will not be liable if they can establish that the destruction, injury or loss was caused by an act of God, war, or a third party, that the causal activity was authorized by Federal or State law or that the damage is of a de minimis nature. The Secretary is directed to pursue civil actions against those persons who are liable to recover response costs and damages.

Recovered funds will be set aside in a separate account and used to remedy the damaged resources. This provision works in accordance with section 107(f)(1) of the Comprehensive Environmental Response, Liability and Compensation Act [CERCLA]. The set-aside may exist at a maximum of $750,000 to finance the relevant response actions. The bill requires that remaining funds be used to restore, replace, or acquire the equivalent of the damaged resources. In the event that this is not possible, the Secretary is authorized to use the funds for managing and improving the affected sanctuary and then managing other sanctuaries in need of funding.

Mr. Speaker, because of the slow pace of the designation process, specifically with respect to Cordell Banks and Flower Gardens, and because of nationally significant characteristics found in other areas, section 105 of this act establishes a specific schedule for the designation process for four sites: Cordell Banks, Flower Gardens, Monterey Bay, and western Washington outer coast. The section requires that a final notice of designation for the Cordell Banks National Marine Sanctuary be issued no later than December 31, 1988. It is my understanding that this is feasible and that the Administration actually intends to publish the notice prior to this deadline.

A notice of designation for the Flower Gardens National Marine Sanctuary is required by March 31, 1989. Although the designation process for this site has been underway for 10 years, I believe that this date is reasonable now that disputes between NOAA and the State Department regarding NOAA's authority to prohibit harmful anchoring of foreign flag vessels in that area have been resolved. Section 105 requires that Monterey Bay's final notice of designation be issued no later than December 31, 1989. Monterey Bay was previously an active candidate for designation, until NOAA removed it from the list for reasons which are somewhat unclear and inadequate. For example, NOAA felt that this was not a necessary sanctuary because two other sanctuaries in California protect similar resources and that the size of the proposed sanctuary would put a strain on NOAA's existing enforcement capabilities.

California's present sanctuary resources do not include submarine canyons, such as those found in Monterey Bay and are not as accessible to the public as Monterey Bay. In addition, NOAA did not know what the size of the Monterey Bay National Marine Sanctuary would be since the evaluation process was never completed. It turns out, in fact, that the Monterey Bay National Marine Sanctuary would most likely be considerably smaller than either of the two existing California sanctuaries. These facts, coupled with pollution, from various sources, that continues to pose serious health threats which cannot be controlled by existing conservation measures in the area, support my belief that Monterey Bay is certainly appropriate for designation.

The western Washington outer coast was placed on the site evaluation list in August of 1983 and, under this Act, would be finally designated by June 30, 1990. This site is adjacent to the Olympic National Park and holds a nationally significant collection of flora and fauna in addition to its variety of sea birds and marine mammals. However, the boundaries for this site as described when placed on the site evaluation list are not adequate for the protection of the rocky stacks used by the sea birds and marine mammals which are so integral to the significance of this site. Therefore, Mr. Speaker, I would like to make a strong point of directing NOAA to use initial boundary descriptions only as a general point from which further detailed review should stem. The boundaries should be subject to change upon review and open to development until the final notice of designation is issued. Section 105 of this Act also requires that the Secretary submit a prospectus to the

Congress regarding the proposed Northern Puget Sound National Marine Sanctuary by March 31, 1991, and the Stellwagon Banks National Marine Sanctuary by September 30, 1990. These areas contain nationally significant characteristics that should be protected, but is also a source of various human recreational and research activities. Because of the multiple uses of the areas and the fact that extensive consultation is necessary regarding the specific areas to be designated, I believe that these deadlines are appropriate for the prospectuses.

Section 106 of this act recognizes four new areas that may be suitable for designation: American Shoal, Sombrero Key, Alligator Reef, and Santa Monica Bay. This section requires the Secretary to conduct investigations of these areas and to submit, not later than 2 years after the enactment of the act, a report to Congress regarding a decision as to whether any of these areas, or parts thereof, are appropriate for designation as marine sanctuaries or, in the case of the Florida Key areas, for addition to the existing Key Largo or Looe Key National Marine Sanctuaries.

Section 107 makes some amendments regarding enforcement activities as a move toward uniform authority to diminish possible confusion by marine law enforcement agents. These amendments have been modeled after the enforcement provisions of the Magnuson Fishery Conservation and Management Act. Clarifications have been made with respect to civil penalty assessment, property seizure or forfeiture and storage costs. All are consistent with authorities found in the Magnuson Act.

In section 108 of this Act, new sections are added to title III regarding the authorization of appropriations and U.S.S. *Monitor* artifacts and materials. In contrast to past plans, appropriation authorizations would be divided into three categories: First, "general administration," which includes any costs relating to NOAA headquarters operations; second, "management of sanctuaries," which includes any costs relating to onsite management and operations; and third, "site review and analysis," which includes any costs relating to the consideration of a site for national marine sanctuary designation.

Provisions regarding U.S.S. *Monitor* artifacts and materials require the Secretary to submit, within 6 months of the enactment of this Act, a plan that identifies suitable artifacts and materials to be displayed as well as suitable display sites in coastal North Carolina.

Section 109 deals with the protection of the Channel Islands National Marine Sanctuary. It requires that the Secretary of Transportation transmit to Congress provisions that enable response to oil pollution incidents and other incidents which result in damage to the environment in the Channel Islands Sanctuary. The Secretary must also review all Federal, State, and local studies conducted on the hazards of shipping operations and submit recommendations on those studies.

Mr. Speaker, I believe that this is a most worthwhile piece of legislation. Positive action must be taken to protect our important ocean and coastal resources, and this bill is a major step in that direction. I would urge my colleagues to support it. Finally, Mr. Speaker, I would like to thank my colleagues on the Merchant Marine and Fisheries Committee, who have helped to improve this legislation, especially Mr. JONES and Mr. STUDDS, as well as Mr. YOUNG of Alaska, Mr. DAVIS of Michigan, and Mr. SHUMWAY, the ranking minority member of the Oceanography Subcommittee. Thank you, Mr. Speaker.

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Mr. SHUMWAY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 4210 passed the House last week by a substantial margin. Even still, I believe the bill sent back to us today from the Senate and that we are now considering is an improved version of what we passed last week. It no longer includes the provision to establish a National Oceans Policy Commission, which I believe was unwarranted because it would duplicate ongoing ocean-related programs and efforts.

Title I of this bill reauthorized the ocean pollution research programs as authorized in title II of the Marine Protection, Research and Sanctuaries Act.

These programs fund efforts by the Environmental Protection Agency and NOAA to conduct significant ocean pollution related research, and the Administration supports extension of these ocean research programs.

Title II of the bill reauthorizes the National Marine Sanctuaries Program. I support reauthorization of the Sanctuaries Program, as does the Administration; however, I share the concerns of the Administration regarding the legislative designations for certain sanctuaries. I believe these provisions circumvent the carefully crafted administrative procedure which we, the Congress, set up when we last authorized the program in 1984; however, the designations made in this bill are clearly subject to the appropriations process, and it should be clear that operation and maintenance of existing sanctuaries should not suffer any decreases in funding to meet these new legislative designations.

Given this caveat, I am willing to support this legislation to insure that the Marine Sanctuaries Program is reauthorized.

I would like to add, Mr. Speaker, that I am particularly supportive of a provision included by my colleague, the gentleman from California [Mr. LAGOMARSINO] to further protect the Channel Islands Marine Sanctuary off the coast of California from potential oil spills. This is a very important measure, and I congratulate my friend and colleague for his efforts in this regard.

Mr. SHUMWAY. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. LAGOMARSINO].

Mr. LAGOMARSINO. Mr. Speaker, I thank the gentleman from California for yielding this time to me. I want to thank him and the gentleman from Washington for including the provision relating to the Santa Barbara Channel Islands in this legislation. I think it is extremely important to our area that we have these measures that have been included that will protect the Channel Islands. There are some other things that we have in mind, but we can talk about that next year.

The things that have been included here will be very helpful to us, I think, and may well prevent the kind of accident we had in February when two vessels collided, one sank, and there had been a certain amount of pollution from the cargo and we barely escaped having a severe environmental hazard and damage from the fuel oil on board the ship that did sink.

As I say, the measures included here should help to prevent that in the future.

I want to again congratulate and thank the committee for being so cooperative and so helpful in this effort.

Mr. LOWRY of Washington. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank the gentleman from California who just spoke for his statement and contribution.

I again thank the gentleman from California [Mr. SHUMWAY] for his continued work on this whole important area.

Mr. DAVIS of Michigan. Mr. Speaker, I rise in support of H.R. 4210, a bill which was passed overwhelmingly by the House last week. This bill reauthorizes the research and monitoring programs of the National Oceanic and Atmospheric Administration which protect our ocean and Great Lakes waters from additional degradation. Funding levels for this program are increased to guarantee that all coastal areas will benefit from NOAA's work.

The bill also makes needed improvements to the National Marine Sanctuary Program which has suffered from administrative neglect since its creation in 1972. New sanctuaries are designated, enforcement powers are spelled out in greater detail, and lawsuits against those who damage sanctuary resources are authorized with the money collected to be used to repair the harm. In addition, Congressman LAGOMARSINO has also authored a provision to ensure the further protection of the beautiful but threatened Channel Islands National Marine Sanctuary offshore southern California.

I urge my colleagues to again support this bill.

Miss SCHNEIDER. Mr. Speaker, I rise today in support of H.R. 4210, a bill which was passed overwhelmingly by the House last week. This reauthorization is very important, especially in light of the fact that this body has just approved a bill which bans ocean dumping. This bill reauthorizes the research and monitoring programs of the National Oceanic and Atmospheric Administration which protects our ocean and Great Lakes waters from additional degradation. Funding levels for this program are increased to guarantee that all coastal areas will benefit from NOAA's work.

I have been privileged to serve on the two committees which have jurisdiction over this reauthorization, the Merchant Marine and Fisheries Committee and the Science, Space, and Technology Committee. Through my position on these two key committees I recognize the importance of researching and monitoring the effects of ocean dumping even though this Congress is mandating an end to this harmful practice. I have worked to assure that both of these committees have given this reauthorization the proper attention and support.

The bill also makes needed improvements to the National Marine Sanctuary Program which has suffered from administrative neglect since its creation in 1972. New sanctuaries are designated, enforcement powers are spelled out in greater detail, and lawsuits against those who damage sanctuary resources are authorized with the money collected to be used to repair the harm. In addition, Congressman LAGOMARSINO has also authored a provision to ensure the further protection of the beautiful but threatened Channel Islands National Marine Sanctuary offshore southern California.

I strongly urge all of my colleagues to support this bill.

Mr. SHUMWAY. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. LOWRY of Washington. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Washington [Mr. LOWRY] that the House suspend the rules and concur in the Senate amendments to the bill, H.R. 4210.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendments were concurred in.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. LOWRY of Washington. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate amendments to H.R. 4210 just concurred in.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

PERMISSION TO HAVE UNTIL 5 P.M. TOMORROW TO FILE CONFERENCE REPORT ON S. 2030, OCEAN DUMPING REFORM ACT OF 1988

Mr. LOWRY of Washington. Mr. Speaker, I ask unanimous consent that the managers may have until 5 p.m., Friday, October 14, 1988, to file a conference report on S. 2030, the Ocean Dumping Reform Act of 1988.

The SPEAKER pro tempore. (Mr. GONZALEZ). Is there objection to the request of the gentleman from Washington?

There was no objection.

NATIONAL FOREST AND PUBLIC LANDS OF NEVADA ENHANCEMENT ACT OF 1988

Mr. VENTO. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 59) entitled the "National Forest and Public Lands Nevada Enhancement Act of 1988," as amended.

The Clerk read as follows:

S. 59

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "national Forest and Public Lands of Nevada Enhancement Act of 1988".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the public lands transferred by this Act contain valuable natural resources (such as watershed, range, outdoor recreation and wildlife habitat) which will be enhanced by the professional, multiple-use management of the Forest Service; and that certain national forest lands would be enhanced by the professional multiple-use management of the Bureau of Land Management;

(2) the public which uses these natural resources will be benefited by such adjustments in management;

(3) the public lands transferred by this Act to the jurisdiction of the Forest Service are adjacent to existing national forests and, in many cases, are part of the same watersheds and mountain ranges, and placing the management of these lands under the administration of one agency, the Forest Service, will improve efficiency and be cost effective; that similar efficiency and cost effectiveness will result from transferring jurisdiction of certain National Forest lands to the Bureau of Land Management; and

(4) there is a consensus in Nevada that certain lands should be added to the National Forest System and that certain National Forest System lands should be transferred to the Bureau of Land Management for management.

(b) PURPOSES.—The purposes of this Act are—

(1) to transfer to the jurisdiction of the Forest Service, United States Department of Agriculture, certain public lands in Nevada currently administered by the Bureau of Land Management, United States Department of the Interior. These public lands are contiguous to the Toiyabe and Inyo National Forests and will become National Forest System lands; and

(2) to transfer to the jurisdiction of the Bureau of Land Management, United States Department of the Interior, certain lands in Nevada currently administered by the Forest Service, United States Department of Agriculture. These lands are contiguous to other public lands and will be managed as such.

SEC. 3. DEFINITIONS.

As used in this Act—

(a) the term "public lands" means the lands administered by the Bureau of Land Management, United States Department of the Interior, as defined in section 103(3) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701(e)); and

(b) the term "National Forest lands" or "National Forest System lands" means the lands administered by the Forest Service, United States Department of Agriculture, as defined in section 11 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a)).

SEC. 4. TRANSFER OF LANDS.

(a) TRANSFER OF PUBLIC LANDS TO THE FOREST SERVICE.—Effective one hundred and eighty days after the enactment of this Act, the approximately six hundred sixty-two thousand acres of public lands designated for inclusion in the National Forest System on three maps entitled "Nevada Interchange-A", dated January 1987, "Nevada Interchange-B", dated February 1988, and "Nevada Interchange-C", dated August 1988, are hereby withdrawn from the public domain, transferred to the jurisdiction of the Secretary of Agriculture, and shall become part of the Toiyabe National Forest or the Inyo National Forest, as appropriate.

(b) BOUNDARIES OF TOIYABE AND INYO NATIONAL FORESTS.—(1) The boundaries of the Toiyabe National Forest and the Inyo National Forest are hereby modified to reflect the transfer of lands under subsection (a).

(2) For the purpose of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9), the boundaries of the Toiyabe National Forest and the Inyo National Forest, as modified by this subsection, shall be treated as if they were the boundaries of those National Forests as of January 1, 1965.

(c) TRANSFER OF FOREST SERVICE LANDS TO THE BUREAU OF LAND MANAGEMENT.—Effective one hundred and eighty days after the enactment of this Act, the approximately twenty-three thousand acres of National Forest lands identified for management by the Bureau of Land Management on a map entitled "Nevada Interchange-A" and dated January 1987, are hereby transferred to the Secretary of the Interior.

(d) MAPS.—The maps referred to in subsection (a) and subsection (c) shall be on file and available for public inspection in the offices of the Governor of Nevada, the Supervisors of the Toiyabe and Inyo National Forest, the Nevada State Director of the Bureau of Land Management, the Chief of the Forest Service, and the Director of the Bureau of Land Management. The secretaries of Agriculture and the Interior may make minor changes to the maps to correct technical errors.

(e) Effective one hundred and eighty days after enactment of this Act, lands transferred by subsection (a) of this section to the jurisdiction of the Secretary of Agriculture shall be subject to the planning requirements of section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, and lands transferred by subsection (c) of this section to the jurisdiction of the Secretary of the Interior shall be subject to the planning requirements of the Federal Land Policy and Management Act of 1976. All transferred lands shall continue to be managed in accordance with plans in effect on the date of enactment of this Act until considered in plans developed under applicable provisions of law. If no plans are in effect on the date of enactment of this Act, the respective transferred lands shall be managed in a manner consistent with other National Forest or public lands, as the case may be, in the vicinity until a plan is developed under applicable provisions of law. Nothing in this Act shall of itself require the amendment or revision of the existing plans governing public lands or National Forest lands affected by the addition or deletion of lands transferred by this act.

SEC. 5. WILDERNESS SUITABILITY.

(a) BLM WILDERNESS STUDY AREAS.—Any area or portion thereof designated as a Bureau of Land Management Wilderness Study Area, which is made a part of the national Forest System by this Act, shall be managed by the Secretary of Agriculture in accordance with the provisions of section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782), to protect its wilderness character until Congress designates it as wilderness or releases it from further wilderness consideration. At the same time that the Secretary of the Interior submits wilderness recommendations to the Congress with regard to public lands in the State of Nevada, he shall also recommend to the Congress whether any wilderness study area or portion thereof transferred to the jurisdiction of the Forest Service by this Act should be included in the National Wilderness Preservation System.

(b) ROADLESS AREAS NOT RECOMMENDED AS WILDERNESS.—Any roadless area or portion thereof which is made a part of the National Forest System by this Act and which has been considered but not recommended for designation as wilderness pursuant to section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) shall be deemed to have been adequately considered for wilderness for the purposes of the initial land management plans hereafter required for such lands by section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604). The Secretary of Agriculture shall not be required to review the wilderness option for such area prior to the next regular revision of such plans for the National Forest in question, but the Secretary of Agriculture shall review the wilderness option for such area when such plans are revised.

(c) If at any time after the date of enactment of this Act, Congress releases all or any portion of the 160 acres of land described in this subsection from the requirements of section 603(c) of the Federal Land Policy and Management Act, the Secretary of Agriculture is authorized to offer for sale all or any portion of the released lands at fair market value. If the Secretary of Agriculture decides to sell such land, he shall give public notice of such sale and shall establish a date within six months of such notice for the receipt of bids on such land. The Secretary of Agriculture shall sell such land to the party submitting the highest bid (at least equal to fair market value) on or before such date. The land is described as follows:

Mount Diablo Meridian
Township 20 South, Range 57 East,
Section 28
Southeast ¼ of Southeast ¼
Northwest ¼ of Southeast ¼
Northeast ¼ of Northeast ¼
Section 34, Southwest ¼ of Northwest

(d) NO ADDITION TO THE NATIONAL WILDERNESS PRESERVATION SYSTEM.—Nothing in the Act shall be construed to add lands to the National Wilderness Preservation System.

SEC. 6. MANAGEMENT OF MINERAL RESOURCES.

Nothing in this Act shall be construed to change the laws governing the management of mineral resources.

SEC. 7. ADMINISTRATION OF RECEIPTS.

The acreage added to the Toiyabe and Inyo National Forests in the State of Nevada by this Act shall not be counted in determining the distribution of the Twenty-Five Percent Fund between the States of California and Nevada under the Act of May 23, 1908, as amended: Provided, however, That the acreage added to these forests shall be counted in the distribution of the Twenty-Five Percent Fund among the affected counties in Nevada.

SEC. 8. WATER RIGHTS.

(a) Congress hereby expressly reserves the minimum quantity of water necessary to achieve the primary purposes for which the lands transferred pursuant to section 4(a) are withdrawn. The purposes are hereby declared to be solely and exclusively the primary purpose for which the National Forests within which the lands are to be included where established. The priority date for such reserved rights shall be the date of transfer pursuant to this Act.

(b) Congress hereby expressly relinquishes all Federal reserved water rights created by the initial withdrawal from the public domain in the lands transferred pursuant to section 4(c) effective on the date of such transfer.

(c) Nothing in this Act shall create an implied reservation of water.

(d) Nothing in this Act shall affect the right of the United States or of any person to acquire or dispose of water or water rights pursuant to substantive and procedural requirements of the laws of the State of Nevada.

SEC. 9. VALID EXISTING RIGHTS.

(a) Nothing in this Act shall affect valid existing rights of any person under any authority of law.

(b) Authorizations to use lands transferred by this Act which were issued prior to the date of transfer shall remain subject to the laws and regulations under which they were issued. Such authorization shall be administered by the Secretary to whom jurisdiction over affected lands has been transferred by this Act: Any renewal or extension of such authorization shall be subject to the laws and regulations pertaining to the agency which has jurisdiction over the land at the time the renewal or extension is requested. The change of administrative jurisdiction resulting from the enactment of this Act shall not in itself constitute a basis for denying or approving the renewal or reissuance of any such authorization.

SEC. 10. ADMINISTRATIVE APPEALS.

With respect to the lands transferred by section 4, any formal administrative appeal, adjudication, or review pending on the date of transfer of jurisdiction under this Act shall be completed by the Secretary, or his designee, of the Department in which it was initiated.

SEC. 11. TRANSFER OF BUREAU OF RECLAMATION'S WILBUR SQUARE RESPONSIBILITIES TO THE CITY OF BOULDER CITY.

(a) Not withstanding any other provision of law, the Secretary of the Interior is authorized and directed to enter into an agreement with the City of Boulder City, Nevada (hereinafter referred to as the "City"), which will provide that, upon acceptance by the City of title to and financial responsibility for continued maintained of the parcel of land described in this subsection, all remaining repayment obligations owing to the United States, pursuant to contract numbered 14-06-300-978, dated January 4, 1960, between the United States and the City, as of the date of enactment of this Act, shall be discharged. The land shall be maintained as a public park by the City at its own cost and expense, and shall be conveyed to the City, without consideration, by quit claim deed subject to the conditions, restrictions, and protective covenants as established in the Guidelines of the Advisory Council on Historic Preservation (36 Code of Federal Regulations, part 800). Title shall revert to the United States if the land ceases to be used for park purposes. The agreement shall also stipulate that the City shall provide, without cost to the United States, the water supply required to water the Federal grounds surrounding the Bureau of Reclamation's administration building in the City, for as long as Federal ownership is retained, or through the year 2010, whichever occurs first. The land to be conveyed to the City is described as follows: approximately 3.25 acres, comprising all of block six, according to sheet 1 of 20, block plats of Boulder City, Nevada, drawing numbered X-300-460, dated July 15, 1959, and known as Wilbur Square or Government Park.

(b) The Secretary of the Interior is authorized to enter into an agreement for the City to provide gardening services on Bureau of Reclamation land within the City and in partial payment for this gardening service to transfer to the city any or all lawn and garden equipment owned and used by the Bureau of Reclamation as of the date of enactment of this Act, which is used to maintain the Bureau's grounds within the City.

(c) The Secretary of the Interior is authorized to transfer title to the City to all or any portion of the City water supply system which remains in Federal ownership and located outside of the Hoover Dam security area, and to provide the City with a permanent easement across all Federal lands necessary to properly operate and maintain any facility so transferred. The agreement referred to in this section shall also provide that all obligations to make payments to the United States for operation, maintenance, and replacement for works transferred to the City shall be discharged as of the date or dates of said transfer of title or operations and maintenance responsibility to the City.

The SPEAKER pro tempore. Is a second demanded?

Mr. LAGOMARSINO. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Minnesota [Mr. Vento] will be recognized for 20 minutes and the gentleman from California [Mr. Lagomarsino] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. Vento].

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 59, the Senate bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 59 would designate 662,000 acres of Bureau of Land Management public lands in Nevada as national forest to be managed by the Forest Service. The new national forest lands would include the eastern Sierras, the Spring Mountains, and the Hot Creek Range. These lands would be added to the Toiyabe and Inyo National Forests.

The major provisions of S. 59 already have passed the House twice this session as part of two different bills. Furthermore, this proposal passed the House in the 99th Congress, only to fail in the Senate over disagreements about water rights language. I am pleased to report that S. 59 includes a bipartisan compromise on water rights language which guarantees that the national forest lands will have the same Federal reserve water rights found on existing national forests.

The provisions of S. 59 are the result of a grassroots effort on the part of Nevada's citizens. A bipartisan coalition of Nevadans from all walks of life and all parts of the State petitioned Congress to designate these lands as national forests. Nevadans have long recognized the need for national forests. In the first decade of the 1900's, ranchers petitioned Washington to establish national forests in Nevada for the purpose of protecting watersheds and rangelands from overgrazing. As a result of these citizen petitions, the Toiyabe National Forest was established in 1907 and the Humboldt National Forest in 1908. These forests are unique in that most western forests were not established as a result of local initiatives.

In 1985, Nevadans once again organized in support of national forests. The Secretaries of Interior and Agriculture announced a national interchange that included declassification of Nevada's two national forests and the transfer of their lands to the Bureau of Land Management. Nevadan citizens organized the National Forest Task Force to save these forests. Under the leadership of Thomas "Spike" Wilson, Sue Wagner, and Fred Gibson, the task force mobilized over 1,000 Nevadans to oppose the proposal at public hearings. This outpouring of support for national forests resulted in a counterproposal by the task force to add BLM lands which are national forest in character to Nevada's national forests. As a result of their efforts, the Secretaries reversed their position for Nevada and adopted the citizen proposal.

The new national forest lands are contiguous to existing national forest units and contain popular outdoor recreation areas, important watersheds for Reno and Las Vegas, ancient bristlecone pines, one of Nevada's few elk herds and an endemic species of chipmunk found only in the Spring Mountains. If enacted, this would be the first time in over 25 years that Congress has added a large block of land to the National Forest System in the continental United States.

This bill has the united, bipartisan support of Nevada's congressional delegation. I urge my colleagues to join me and them in this rare opportunity to add to the national forest legacy bequeathed to America by Gifford Pinchot and Teddy Roosevelt.

Mr. LAGOMARSINO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this side of the aisle supports this legislation that was first introduced by our colleague, the gentlewoman from Nevada [Mrs. Vucanovich] in the 99th Congress. Although the bill passed the House in that session, it was not passed by the Senate and, of course, did not become law.

The legislation we received from the Senate this year is an improvement over previous measures, and much of the credit for those improvements goes to the gentlewoman from Nevada [Mrs. Vucanovich]. I want to particularly commend her and the committee for working out the water rights language that is included in this bill. I think that does protect the rights of the people of Nevada, and it is to the credit of the committee, and as I say, to the gentlewoman from Nevada [Mrs. Vucanovich], that we have been able to work out this very difficult problem.

I again want to congratulate the chairman of the subcommittee for working on this and bringing the bill before us.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I just want to pay credit to my colleague, the gentleman from Nevada [Mr. Bilbray], and the gentlewoman from Nevada [Mrs. Vucanovich] who serves on the committee with me, who has been so interested in this matter, as well as Senator Hecht and Senator Reid, who have followed through with regard to this issue on the Senate side. There have been a lot of tough issues attached to other matters that were important.

The gentleman from Nevada, as I was saying, has been a key help and adviser in this matter.

Mr. Speaker, I yield such time as he may consume to the gentleman from Nevada [Mr. Bilbray].

Mr. BILBRAY. Mr. Speaker, I rise today to express my support for S. 59, the National Forests and Public Lands of Nevada Enhancement Act.

I would like to thank the chairman of the Public Lands Subcommittee, my good friend Representative Bruce Vento for his work in putting together such a package with the other body that the Nevada delegation supports.

Mr. Speaker, several years ago, the Reagan administration proposed a plan involving over 35 million acres of public lands. Under this proposal, large tracts of land under the control and management of the Forest Service would be transferred to the control and management of the Bureau of Land Management. The impact of this proposal upon Nevada would have resulted in the virtual elimination of national forests within our State.

In response, Nevadans numbering in the thousands opposed the declassification. Joining in a concert of efforts, a broad-based coalition of conservationists, wilderness advocates, miners, ranchers, and others worked toward increasing the size of the national forests in Nevada. In addition, each of the four largest Nevada newspapers have joined in endorsing enhanced national forest service lands for Nevada.

As a result of careful negotiations between the National Forest Task Force of Nevada, the entire Nevada congressional delegation, the Chief of the U.S. Forest Service, representatives of the Governor of Nevada, and the Director of the Bureau of Land Management, legislation was introduced in the 99th Congress which would increase the size of national forests in Nevada. As you may recall, this legislation passed the House but failed to come to a vote in the Senate before adjournment.

The legislation introduced at that time would substantially ease the administrative burden of managing the lands while simultaneously improving the administrative capabilities of both the U.S. Forest Service and the Bureau of Land Management. In particular, the legislation would enhance the management of our land and resources, including sensitive watershed areas, wildlife habitat, grazing resources, mineral resources, and increasingly valuable recreational opportunities.

This measure, which enjoys strong bipartisan support within Nevada, would further enhance administrative efficiency of the management of Nevada public lands by enlarging the Mount Charleston Unit of the Toiyabe National Forest, Hot Creek Range in central Nevada, and the east side of Nevada's Sierra Front.

Mr. Speaker, I urge passage of this measure which is vital to the future of the public lands in Nevada.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as indicated by my colleagues, this is a very significant proposal. It is one of the largest increases in the national forests that we have had in my memory. I think it is an important new responsibility for them.

The people of Nevada, as I said, favor it, and I commend it to my colleagues.

Mr. LAGOMARSINO. Mr. Speaker, I yield back the balance of my time.

Mr. VENTO. Mr. Speaker, I yield back the balance of my time.

The Speaker pro tempore. The question is on the motion offered by the gentleman from Minnesota [Mr. VENTO] that the House suspend the rules and pass the Senate bill, S. 59, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

□ 1400

IMPROVING PROTECTION AND MANAGEMENT OF ARCHEOLOGICAL RESOURCES ON FEDERAL LAND

Mr. VENTO. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1985) to improve the protection and management of archeological resources on Federal land.

The Clerk read as follows:

S. 1985

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Archeological Resources Protection Act of 1979 (Public Law 96-95; 16 U.S.C. 470ii) be amended to add the following new section after section 13:

"Sec. 14. The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority shall—

"(a) develop plans for surveying lands under their control to determine the nature and extent of archeological resources on those lands;

"(b) prepare a schedule for surveying lands that are likely to contain the most scientifically valuable archeological resources; and

"(c) develop documents for the reporting of suspected violations of this act and establish when and how those documents are to be completed by officers, employees, and agents of their respective agencies.".

The SPEAKER pro tempore. (Mr. GONZALEZ). Is a second demanded?

Mr. LAGOMARSINO. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Minnesota [Mr. VENTO] will be recognized for 20 minutes and the gentleman from California [Mr. LAGOMARSINO] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. VENTO].

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 1985, the Senate bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 1985 amends the Archeological Resource Protection Act to direct the Secretaries of the Interior, Agriculture, Defense, and the Chairman of the Board of the Tennessee Valley Authority to develop plans for surveying the lands under their control to assess the nature and extent of archeological resources found there. The bill also directs them to prepare a schedule for surveying those lands expected to have the most scientifically valuable archeological resources. Finally, S. 1985 directs these agency heads to develop means of reporting suspected violations of the Archeological Resources Protection Act.

The principle behind S. 1985 is quite simple: agencies must know what resources they have before they can adequately protect those resources. Agencies should be doing such surveys anyway, but have not been doing them in any proportion to the need. In the meantime, looting of our Nation's archeological heritage continues at an astounding rate. Looters trying to find a few intact pots often damage entire archeological sites and make retrieval of the scientific information such sites contain impossible. That is a loss of our heritage in both tangible artifacts and in knowledge about the past.

S. 1985 makes it very clear that we in the Congress expect archeological resources to receive better protection. It will help in the creation of appropriate data bases for agencies charged with managing vast amounts of land with extensive archeological resources. It will enable us to better protect our Nation's archeological resources. Mr. Speaker, I endorse S. 1985 and urge its passage.

Mr. Speaker, I reserve the balance of my time.

Mr. LAGOMARSINO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the chairman of the subcommittee, the gentleman from Minnesota [Mr. VENTO] has explained the bill very well, and adequately. What it does is to direct the BLM, the Park Service, Forest Service, the chairman of the board of the TVA, and other Federal land managers to survey what they have in the way of archeological resources so we can protect them.

Mr. Speaker, I cannot think of anything more important that they should be doing in any event, so I strongly support the bill and urge my colleagues to vote for this bill.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. VENTO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Minnesota [Mr. VENTO] that the House suspend the rules and pass the Senate bill, S. 1985.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed

A motion to reconsider was laid on the table.

NATIONAL DEAFNESS AND OTHER COMMUNICATIONS DISORDERS ACT OF 1988

Mr. WAXMAN. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1727) to amend the Public Health Service Act to establish within the National Institutes of Health a National Institute on Deafness and Other Communication Disorders.

The Clerk read as follows:

S. 1727

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act shall be cited as the "National Deafness and Other Communications Disorders Act of 1988".

SECTION 2. ESTABLISHMENT AND TRANSFER OF FUNCTIONS.

Title IV of the Public Health Service Act (42 U.S.C. 281 et seq.) is amended—

(1) in section 401(b)(1)—

(A) by striking "and Communicative" in subparagraph (J); and

(B) by adding at the end the following new subparagraph:

"(M) The National Institute on Deafness and Other Communication Disorders.";

(2) in the heading for subpart 10 of part C, by striking "and Communicative";

(3) in section 457—

(A) by striking "and Communicative"; and

(B) by striking "disorder, stroke," and all that follows and inserting "and disorder and stroke."; and

(4) in Part C, by adding at the end the following new subpart:

"Subpart 13—National Institute on Deafness and Other Communication Disorders

"PURPOSE OF THE INSTITUTE

"SEC. 464. The general purpose of the National Institute on Deafness and Other Communication Disorders (hereafter referred to in this subpart as the 'Institute') is the conduct and support of research and training, the dissemination of health information, and other programs with respect to disorders of hearing and other communication processes, including diseases affecting hearing, balance, voice, speech, language, taste, and smell.

"NATIONAL DEAFNESS AND OTHER COMMUNICATION DISORDERS PROGRAM

"SEC. 464A. (a) The Director of the Institute, with the advice of the Institute's advisory council, shall establish a National Deafness and Other Communication Disorders Program (hereafter in this section referred to as the 'Program'). The Director or the Institute shall, with respect to the Program, prepare and transmit to the Director of NIH a plan to initiate, expand, intensify and coordinate activities of the Institute respecting disorders of hearing (including tinnitus) and other communication processes, including diseases affecting hearing, balance, voice, speech, language, taste, and smell. The plan shall include such comments and recommendations as the Director of the Institute determines appropriate. The Director of the Institute shall periodically review and revise the plan and shall transmit any revisions of the plan to the Director of NIH.

"(b) Activities under the Program shall include—

"(1) investigation into the etiology, pathology, detection, treatment, and prevention of all forms of disorders of hearing and other communication processes, primarily through the support of basic research in such areas as anatomy, audiology, biochemistry, bioengineering, epidemiology, genetics, immunology, microbiology, molecular biology, the neurosciences, otolaryngology, psychology, pharmacology, physiology, speech and language pathology, and any other scientific disciplines that can contribute important knowledge to the understanding and elimination of disorders of hearing and other communication processes;

"(2) research into the evaluation of techniques (including surgical, medical, and behavioral approaches) and devices (including hearing aids, implanted auditory and nonauditory prosthetic devices and other communication aids) used in diagnosis, treatment, rehabilitation, and prevention of disorders of hearing and other communication processes;

"(3) research into prevention, and early detection and diagnosis, of hearing loss and speech and language disturbances (including stuttering) and research into preventing the effects of such disorders on learning and learning disabilities with extension of programs for appropriate referral and rehabilitation;

"(4) research into the detection, treatment, and prevention of disorders of hearing and other communication processes in the growing elderly population with extension of rehabilitative programs to ensure continued effective communication skills in such population;

"(5) research to expand knowledge of the effects of environmental agents that influence hearing or other communication processes; and

"(6) developing and facilitating intramural programs on clinical and fundamental aspects of disorders of hearing and all other communication processes.

"DATA SYSTEM AND INFORMATION CLEARINGHOUSE

"SEC. 464B. (a) The Director of the Institute shall establish a National Deafness and Other Communication Disorders Data System for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with disorders of hearing or other communication processes, including where possible, data involving general populations for the purpose of identifying individuals at risk of developing such disorders.

"(b) The Director of the Institute shall establish a National Deafness and Other Communication Disorders Information Clearinghouse to facilitate and enhance, through the effective dissemination of information, knowledge and understanding of disorders of hearing and other communication processes by health professionals, patients, industry, and the public.

"MULTIPURPOSE DEAFNESS AND OTHER COMMUNICATION DISORDERS CENTER

"SEC. 464C. (a) The Director of the Institute shall, after consultation with the advisory council for the Institute, provide for the development, modernization, and operation (including care required for research) of new and existing centers for studies of disorders of hearing and other communication processes. For purposes of this section, the term 'modernization' means the alteration, remodeling, improvement, expansion, and repair of existing buildings and the provision of equipment for such buildings to the extent necessary to make them suitable for use as centers described in the preceding sentence.

"(b) Each center assisted under this section shall—

"(1) use the facilities of a single institution or a consortium of cooperating institutions; and

"(2) meet such qualifications as may be prescribed by the Secretary.

"(c) Each center assisted under this section shall, at least, conduct—

"(1) basic and clinical research into the cause diagnosis, early detection, prevention, control and treatment of disorders of hearing and other communication processes and complications resulting from such disorders, including research into rehabilitative aids, implantable biomaterials, auditory speech processors, speech production devices, and other otolaryngologic procedures;

"(2) training programs for physicians, scientists, and other health and allied health professionals;

"(3) information and continuing education programs for physicians and other health and allied health professionals who will provide care for patients with disorders of hearing or other communication processes; and

"(4) programs for the dissemination to the general public of information—

"(A) on the importance of early detection of disorders of hearing and other communication processes, of seeking prompt treatment, rehabilitation, and of following an appropriate regimen; and

"(B) on the importance of avoiding exposure to noise and other environmental toxic agents that may affect disorders of hearing or other communication processes.

"(d) A center may use funds provided under subsection (a) to provide stipends for health professionals enrolled in training programs described in subsection (c)(2).

"(e) Each center assisted under this section may conduct programs—

"(1) to establish the effectiveness of new and improved methods of detection, referral, and diagnosis of individuals at risk of developing disorders of hearing or other communication processes; and

"(2) to disseminate the results of research, screening, and other activities, and develop means of standardizing patient data and recordkeeping.

"(f) The Director of the Institute shall, to the extent practicable, provide for an equitable geographical distribution of centers assisted under this section. The Director shall give appropriate consideration to the need for centers especially suited to meeting the needs of the elderly, and of children (particularly with respect to their education and training), affected by disorders of hearing or other communication processes.

"(g) Support of a center under this section may be for a period not to exceed seven years. Such period may be extended by the Director of the Institute for one or more additional periods of not more than five years if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director, with the advice of the Institute's advisory council, if such group has recommended to the Director that such period should be extended.

"NATIONAL INSTITUTE ON DEAFNESS AND OTHER COMMUNICATION DISORDERS ADVISORY BOARD

"SEC. 464D. (a) The Secretary shall establish in the Institute the National Deafness and Other Communications Disorders Advisory Board (hereafter in this section referred to as the 'Advisory Board').

"(b) The Advisory Board shall be composed of eighteen appointed members and nonvoting ex officio members as follows:

"(1) The Secretary shall appoint—

"(A) twelve members from individuals who are scientists, physicians, and other health and rehabilitation professionals, who are not officers or employees of the United States, and who represent the specialties and disciplines relevant to deafness and other communication disorders, including not less than two persons with a communication disorder; and

"(B) six members from the general public who are knowledgeable with respect to such disorders, including not less than one person with a communication disorder and not less than one person who is a parent of an individual with such a disorder.

Of the appointed members, not less than five shall by virtue of training or experience be knowledgeable in diagnoses and rehabilitation of communication disorders, education of the hearing, speech, or language impaired, public health, public information, community program development, occupational hazards to communications senses, or the aging process.

"(2) The following shall be ex officio members of each Advisory Board:

"(A) The Assistant Secretary for Health, the Director of NIH, the Director of the National Institute on Deafness and Other Communication Disorders, the Director of the Centers for Disease Control, the Chief Medical Director of the Veterans' Administration, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers).

"(B) Such other officers and employees of the United States as the Secretary determines necessary for the Advisory Board to carry out its functions.

"(c) Members of an Advisory Board who are officers or employees of the Federal Government shall serve as members of the Advisory Board without compensation in addition to that received in their regular public employment. Other members of the Board shall receive compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule for each day (including travel time) they are engaged in the performance of their duties as members of the Board.

"(d) The term of office of an appointed member of the Advisory Board is four years, except that no term of office may extend beyond the expiration of the Advisory Board. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term. A member may serve after the expiration of the member's term until a successor has taken office. If a vacancy occurs in the Advisory Board, the Secretary shall make an appointment to fill the vacancy not later than 90 days from the date the vacancy occurred.

"(e) The members of the Advisory Board shall select a chairman from among the appointed members.

"(f) The Secretary shall, after consultation with and consideration of the recommendations of the Advisory Board, provide the Advisory Board with an executive director and one other professional staff member. In addition, the Secretary shall, after consultation with and consideration of the recommendations of the Advisory Board, provide the Advisory Board with such additional professional staff members, such clerical staff members, such services of consultants, such information, and (through contracts or other arrangements) such administrative support services and facilities, as the Secretary determines are necessary for the Advisory Board to carry out its functions.

"(g) The Advisory Board shall meet at the call of the chairman or upon request of the Director of the Institute, but not less often than four times a year.

"(h) The Advisory Board shall—

"(1) review and evaluate the implementation of the plan prepared under section 464A(a) and periodically update the plan to ensure its continuing relevance;

"(2) for the purpose of assuring the most effective use and organization of resources respecting deafness and other communication disorders, advise and make recommendations to the Congress, the Secretary, the Director of NIH, the Director of the Institute, and the heads of other appropriate Federal agencies for the implementation and revision of such plan; and

"(3) maintain liaison with other advisory bodies related to Federal agencies involved in the implementation of such plan and with key non-Federal entities involved in activities affecting the control of such disorders.

"(i) In carrying out its functions, the Advisory Board may establish subcommittees, convene workshops and conferences, and collect data. Such subcommittees may be composed of Advisory Board members and nonmember consultants with expertise in the particular area addressed by such subcommittees. The subcommittees may hold such meetings as are necessary to enable them to carry out their activities.

"(j) The Advisory Board shall prepare an annual report for the Secretary which—

"(1) describes the Advisory Board's activities in the fiscal year for which the report is made;

"(2) describes and evaluates the progress made in such fiscal year in research, treatment, education, and training with respect to the deafness and other communication disorders;

"(3) summarizes and analyzes expenditures made by the Federal Government for activities respecting such disorders in such fiscal year; and

"(4) contains the Advisory Board's recommendations (if any) for changes in the plan prepared under section 464A(a).

"(k) The National Deafness and Other Communication Disorders Advisory Board shall be established not later than 90 days after the date of the enactment of the National Institute on Deafness and Other Communication Disorders Act.

"INTERAGENCY COORDINATING COMMITTEE

"SEC. 464E. (a) The Secretary may establish a committee to be known as the Deafness and Other Communication Disorders Interagency Coordinating Committee (hereafter in this section referred to as the "Coordinating Committee").

"(b) The Coordinating Committee shall, with respect to deafness and other communication disorders—

"(1) provide for the coordination of the activities of the national research institutes; and

"(2) coordinate the aspects of all Federal health programs and activities relating to deafness and other communication disorders in order to assure the adequacy and technical soundness of such programs and activities and in order to provide for the full communication and exchange of information necessary to maintain adequate coordination of such programs and activities.

"(c) The Coordinating Committee shall be composed of the directors of each of the national research institutes and divisions involved in research with respect to deafness and other communication disorders and representatives of all other Federal departments and agencies whose programs involve health functions or responsibilities relevant to deafness and other communication disorders.

"(d) The Committee shall be chaired by the Director of NIH (or the designee of the Director). The Committee shall meet at the call of the chair, but not less often than four times a year.

"(e) Not later than 120 days after the end of each fiscal year, the Committee shall prepare and transmit to the Secretary, the Director of NIH, the Director of the Institute, and the advisory council for the Institute a report detailing the activities of the Committee in such fiscal year in carrying out subsection (b).

"LIMITATION ON ADMINISTRATIVE EXPENSES

"SEC. 464F. With respect to amounts appropriated for a fiscal year for the National Institutes of Health, the limitation established in section 408(b)(1) on the expenditure of such amounts for administrative expenses shall apply to administrative expenses of the National Institute on Deafness and Other Communication Disorders.".

SEC. 3. TRANSITIONAL AND SAVINGS PROVISIONS.

(a) TRANSFER OF PERSONNEL, ASSETS, AND LIABILITIES.—Personnel employed by the National Institutes of Health in connection with the functions vested under section 2 in the Director of the National Institute on Deafness and Other Communication Disorders, and assets, property, contracts, liabilities, records, unexpended balances of appropriations, authorizations, allocations, and other funds of the National Institutes of Health, arising from or employed, held, used, available to, or to be made available, in connection with such functions shall be transferred to the Director for appropriate allocation. Unexpended funds transferred under this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) SAVINGS PROVISIONS.—With respect to functions vested under section 1 in the Director of the National Institute on Deafness and Other Communication Disorders, all orders, rules, regulations, grants, contracts, certificates, licenses, privileges, and other determinations, actions, or official documents, that have been issued, made, granted, or allowed to become effective, and that are effective on the date of the enactment of this Act, shall continue in effect according to their terms unless changed pursuant to law.

The SPEAKER pro tempore. Is a second demanded?

Mr. MADIGAN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. WAXMAN] will be recognized for 20 minutes and the gentleman from Illinois [Mr. MADIGAN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. WAXMAN].

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 1727, the Senate bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the purpose of S. 1727 is to establish a National Institute on Deafness and Other Communication Disorders within the National Institutes of Health. The legislation is virtually identical to H.R. 3361 which passed the House on July 12 by a vote of 409 to 2.

The passage of S. 1727 will clear the measure for the President's signature. It represents a continuation of and tribute to Representative CLAUDE PEPPER's landmark efforts to support, expand and promote the Nation's commitment to biomedical research.

Deafness and other communication disorders are some of the most frequent health problems in this country. Among children, hearing and speech impairments account for nearly one-fifth of all chronic conditions that limit normal childhood activities. They are second only to asthma and respiratory disorders as the most common of such conditions. National estimates suggest that nearly 10 percent of the population is afflicted with hearing disorders.

Today we have the opportunity to take action on this widespread problem.

Establishment of a new national institute at the NIH to enhance the Federal commitment to research into hearing loss and related disorders is long overdue. Clearly this is an area in which research could vastly improve the quality of life of many of our citizens.

Mr. Speaker, over 100 of our colleagues in the House have cosponsored H.R. 3361, the House version of this important legislation. I urge all Members to join in supporting passage of this worthwhile and constructive legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. MADIGAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, may I say at the outset that it is a pleasure to be here on the floor of the House and to see a gentleman of your vigor and vitality presiding over the Chamber, and I would hope that in December, when your party is in conference, you would consider pursuing that as a full-time obligation.

Mr. Speaker, today we have the opportunity to move forward a bill that will help meet the needs of 26 million communicatively handicapped Americans. In 1968, the visually impaired were aided by the establishment of the National Eye Institute. Currently, the number of totally deaf citizens outnumbers by 2 to 1 the number of totally blind individuals. It is time that disorders affecting this other sense be the subject of intensive research and treatment.

The creation of the National Institute on Deafness and Other Communication Disorders will focus attention on the research that needs to be done to solve the problems that surround disorders of hearing, language, speech, and the other ways we all communicate with one another.

I urge my colleagues to join me in supporting this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the new National Research Institute replaces the Communicative Disorders Program of the National Institute of Neurological and Communicative Disorders and Stroke. The general purpose of the new Institute will be to conduct and support research and training to disseminate health information and to conduct other programs with respect to disorders of hearing and other communication processes including diseases affecting hearing, balance, voice, speech, taste, and smell.

Deafness and other communications disorders represent a widespread and growing problem in the United States. Communication disorders afflict more Americans than any other chronic health problem. Over 30 million individuals, and let me repeat that, 30 million individuals, or more than 1 of every 10 Americans, have communication disorders. Over 22 million people suffer from either partial or total hearing loss. Twenty million have a loss severe enough to make them handicapped, and over 2 million Americans are totally deaf.

Mr. Speaker, furthermore, over 8 million Americans have other communication disorders such as stuttering or tinnitus.

Mr. Speaker, as the U.S. population ages, the prevalence of communication disorders has grown and will continue to grow rapidly. Although these types of disorders afflict Americans of all ages, they claim the very young and the old.

Today approximately 15 million communication impaired persons, or about half of the affected population, are 65 years of age or older. By the year 2000, more than 12 million elderly persons will be significantly affected by some communication disorder. By the year 2050, almost one of every five persons will be 55 years of age or older. Of these estimated 58 million persons, 26 million are expected to have a hearing or other communication impairment unless successful research comes from this Institute, and the work being done throughout the country in the leading research, biomedical research activities of the Nation's universities and colleges.

We must try to avoid if we can such a clear and staggering statistic. A shocking number of infants and small children are victimized by disorders and diseases affecting their hearing and speech. One of every 22 babies born in the United States has, or shortly after birth develops, hearing problems. Ear infections are the most prevalent disease of young children from birth to the age of 7. Seventy-nine percent of all children have at least one severe ear infection by the time they are 7 years of age. At least 1 million children are afflicted with deafness and communication disorders and often left living in a world apart from others throughout the most formative years of their lives. These children often are unable to read beyond a sixth-grade level, because their ability to learn language has been so compromised.

I cannot emphasize enough that we are hearing more and more about learning disabilities and dyslexia and many of the researchers looking at that problem, which is estimated to affect 1 in 10 children who in previous years have been branded as stupid or lazy. For the 10 percent of the children in our schools today with learning disabilities or dyslexia, researchers are conjecturing that some of the ear-infection problems which are normal for almost all children to have may be the reason that learning disabilities occur. There are other reasons, of course, as well.

There is a genetic factor, as we can see in some families, where learning disability is passed on from one generation to another. There are some theories about possible impairment of a child during the course of birth. Scientists are also looking at ear infections, hearing disorders, as a basis for learning disabilities, which is a problem that many of those who are in the education field are claiming is a more serious problem than ever believed before.

□ 1415

In fact, some of the estimates of the people in the prisons is that an enormous percentage of the people in the prisons, when they are examined, have language difficulties, and many never learn to read, not because they do not have educational opportunity to be in the classroom, but in that classroom they still do not have a teacher or a methodology of teaching which would overcome their learning disabilities, which makes language so difficult for them.

The shocking statistics are even more clear when we add to the children we know of, the infant and small children, victimized by disorders and diseases affecting their hearing and speech. One of every 22 babies born in the United States has, or shortly after birth, developed hearing problems. Ear infections are the most prevalent disease of young children from birth to age 7. Seventy-nine percent of all children have a severe ear infection by the time they are 7 years of age.

Communication disorders exact a tremendous economic toll. We talked about the human toll in terms of disease, how it affects people's health, the young and the old, how it sets up barriers to their achieving success, how it affects their self-esteem and their ability to succeed in life, but there is an economic toll as well. Disorders of hearing, speech, and language alone cost the United States economy an estimated $30 billion a year in lost productivity, special education costs, and medical costs. That is a staggering figure, $30 billion. When we talk about the national deficit we talk about deficit numbers of billions of dollars. Lost productivity, people who are not able to live to their fullest extent and realize their potential. The loss to our economy is $30 billion.

The committee found that the level of support given to research and to deafness and to other communication disorders has not been commensurate with the prevalence or costs of this problem area. Communication disorders research within the National Institutes of Health is centered in the National Institute of Neurological and Communicative Disorders and Stroke, the NINCDS, which also supports a number of other diverse areas of health research under their jurisdiction.

It is also estimated that materially supported biomedical research and communication disorders amount to only two-tenths of 1 percent of the national costs of these problems. Our committee felt that it is necessary to establish within the National Institutes of Health a separate National Institute on Deafness and Other Communication Disorders, the NIDCD, to provide this vital research field, the visibility, focus, status, and the program and research support necessary to move research on deafness and other communication disorders up to its scientific potential.

There is so much being done at NIH, so much needs to be done in so many areas, and we want a clear focus on this very important problem. That is why we are suggesting this separate Institute. It is not that research is not being done at all, it is that we think a focus of attention and more research can be done in a revised structure at NIH.

There has been significant work already accomplished in this area through the communicable disorders program through NINCDS but more could be accomplished if the NINCDS research priorities and goals were less fragmented. Currently the NINCDS has program responsibilities in a number of other important areas including Alzheimer's disease, a very important area indeed, multiple sclerosis, stroke, epilepsy, cerebral palsy, Parkinson's disease and amyotrophic lateral sclerosis, ALS, or Lou Gehrig's disease. The committee believes that it is unlikely that the proper level of support and recognition will be given to deafness and communication disorders research without fundamental structural change, and that is why the creation of this new Institute, to study deafness and communication disorders, will provide the same stimulus to this field as creation of the National Eye Institute in 1968 gave to vision research. The committee felt that there is a great need to begin development and training of large numbers of clinical investigators. This is a key area. It is critical that the new Institute support a program of high quality research centers with a major training component sufficient to train and interest large numbers of young investigators in the communication disorders.

For example, it is estimated that there are fewer than 50 physicians currently trained and funded for ongoing clinical investigation in this field, fewer young academicians are being drawn to investigative careers in this field. The new Institute should focus on these needs through a broad range of research training awards and the development of clinical research center development grants and sustaining grants. The new Institute should work closely with the leadership of speech and hearing and other appropriate organizations to develop such programs in the area of hearing, speech, balance, language, voice, chemosensory, and other communication disorders.

When our committee heard testimony, we concluded from that testimony is a very impressive set of hearings and witnesses that we had before us that there currently is an inadequate system of accumulation and dissemination of existing research and information relating to communication disorders.

Systematic data collection relating to incidence, prevention, early detection, and prevention of deafness and other communication disorders and a standardized system of making this information available to researchers and the general public is critical to meeting this important need.

The committee also looked at the effectiveness of efforts in this field and felt it would be greatly enhanced with the establishment of regional multipurpose deafness and other communication disorders centers around the Nation. These multipurpose centers would bring together a wide variety of professionals, from engineers to medical doctors, involved in the diverse areas of basic and clinical communication disorders. The committee felt that the establishment of a data system and information clearinghouse within the new Institute is also necessary for meeting this important need.

In bringing together these diverse disciplines, multipurpose centers will facilitate a more rapid and efficient transfer of accumulated and basic clinical results into the development of technical devices and procedures for the diagnosis, early detection, prevention, rehabilitation, control, and treatment of deafness and other communication disorders. We need to learn to diagnose these disorders, to know when the problem is one of the communication disorders or deafness disorders. Diagnoses and the work at this Institute will help us in the diagnosis. We also need not only to diagnose a problem but to catch it as early as possible.

I had an occasion in Los Angeles a number of years ago to visit a research facility working with young infants where one of the researchers believed that an early detection of a hearing impairment of an infant, even an infant, could allow a reversing of that problem by use of hearing aids, high-powered hearing aids. One of the problems they said to me that they felt occurred with these children if they were not detected early enough was the loss of communications ability that could not be reversed even though there might be partial hearing available to that child.

Early detection may be the key to saving many infants and children from a life of deafness and aloneness as the results of the inability to communicate and in prevention.

How can we prevent this high incidence of communication disorders and hearing impairment? We do not know now, but the research at this new Institute, and of course built upon the research that is being conducted now at NIH, through NIH, and leading academic centers around the country, building on the knowledge that we already have, perhaps we can learn to prevent this problem.

It is the committee's expectation and hope that establishment of the National Institute on Deafness and Other Communication Disorders will result in a significant increase in the overall support within the NIH not only for deafness research but also for the broad field of communication disorders and human communication research.

The new National Institute on Deafness and other Communication Disorders shall have the overall and primary responsibility for communication disorders and human communication research within the National Institutes of Health. However, the committee expects the Neurology Institute to maintain a limited role in the special area of specific neurogenic speech and language disorders. These disorders are intimately connected to the functioning of the brain and neurological processes. The committee understands this area of overlap in research to encompass neurological diseases and disorders such as Alzheimer's disease, Parkinson's disease, and cerebral palsy that can have devastating effects upon an individual's ability to communicate. The committee expects that the NIDCD and the neurology institute will collaborate in areas of study where clear overlap exists. The committee expects that the Director of NIH will assure that there will be close and continuous coordination between the NIDCD and the other institutes involved in related research.

The House companion bill, H.R. 3361, enjoys strong support in and out of Congress. A bipartisan group of 101 Members of the House of Representatives joined Congressman CLAUDE PEPPER, author of the bill, as sponsors of this legislation. In addition, H.R. 3361 is strongly supported by a coalition of over 30 national organizations representing communication impaired

Americans, professionals and other researchers specializing in communication disorders. Included among these groups are: the Deafness Research Foundation, National Association of the Deaf, American Tinnitus Association, National Rehabilitation Association, Gallaudet College, Association for Research in Otolaryngology, Self Help for the Hard of Hearing, Alexander Graham Bell Association for the Deaf, American Society of Deaf Children, American Hearing Research Foundation, Hearing Industries Association, American Association of the Deaf-Blind, American Academy of Otolaryngology, American Deafness and Rehabilitation Association, and the National Fraternal Society of the Deaf.

Mr. Speaker, it is the committee's intent that the National Institute on Deafness and Other Communication Disorders have the overall and primary responsibility within the National Institutes of Health for human communication and communication disorders—including disorders of hearing, balance, voice, speech, language, taste, and smell—research. It is our expectation that all grants and contracts and associated funding assigned or directed to the Communicative Disorders Division of NINDS by the Division of Research Grants as of October 1, 1987, and any additional grants, programs, and contracts the support of which is the responsibility, or which has traditionally been the responsibility of the Communicative Disorders Division, be transferred from NINDS to the new Institute. We expect the National Institute on Neurological Disorders and Stroke to maintain a limited role in the special area of specific neurogenic speech and language disorders. The committee believes that it may therefore be necessary to have grants and contracts in the special area of specific neurogenic speech and language disorders reviewed by a panel of experts independent of NINDS to determine those which would be appropriately maintained within NINDS.

It is our expectation that the new Institute will be established promptly, efficiently, and in a manner which facilitates and enhances the new Institute's independence and development. Every effort should be made to assure prompt awarding of deafness, human communication, and other communication disorders grants, programs, and contracts during the transition period. The Secretary should appoint the National Institute on Deafness and Other Communication Disorders Advisory Council by December 31, 1988. The advisory council should work actively in the establishment, operation, and development of the new Institute. It is our hope that the Director of the new Institute will be appointed no later than February 1, 1989.

Mr. Speaker, I urge support for the legislation.

Mr. MADIGAN. Mr. Speaker, I yield to the gentleman from Florida [Mr. PEPPER].

Mr. PEPPER. Mr. Speaker, it has been my privilege to be the author of this legislation, and I am very grateful to the distinguished chairman of the subcommittee who is bringing this bill to the floor today, that has given us his magnificent support in the consideration of this critical measure.

There are many millions of Americans who are handicapped in life by not being able to hear what is going on around them, by being isolated from their companies and their friends, living lonely in a world that was in movement around them, without knowing what was being said in their vicinity. Not only does that apply to the elderly, which may be 22 million who are handicapped in respect to hearing, it applies to all ages of our population, including children who are born with hearing defects.

One of the things that is most responsible for defective hearing is what we call the dead nerve. I have that impairment myself. We do not know why, but somehow or another the nerve that is the hearing nerve becomes insensitive and so far science has found no way to revive it and make it function as it should. We can try various devices.

If I may, in a moment of levity, Bob Hope asked me if I heard about the 90-year-old man who had AIDS, one in each ear. Well, many of us have one in each ear, but they are not anything like what normal hearing would be.

So I did not initiate this idea. A lady who has been associated for a long time with hearing programs of this country came to me and said, "Why do we not initiate a bill that would set up a separate Institute in the National Institutes of Health to deal with the subject of hearing deficiency." Well, I thought that was a good idea, and I introduced the bill. It has passed the other body and awaiting enactment in this body now, awaiting the approval of the House. I already have had encouraging indications that the President is pleased to anticipate signing this bill, perhaps would even have a ceremony in the Rose Garden. It looks like we have unanimity of important sentiments on behalf of this legislation.

I am very hopeful, my colleagues, that we can give this bill our approval, let the President sign it, and let us set in motion the research, the dedication for finding the answers to the problems of impaired hearing by the people of our country. Let us open up a new world to the elderly who cannot hear. Let us open the windows of speech to the children who do not know what is going on around them.

□ 1430

Let us bring all people who are impaired in hearing into close campanionship and fellowship and pleasant cooperation with their friends and neighbors.

So I want to thank the gentleman from California [Mr. WAXMAN] very much for what he has done to bring this bill forward. I want to thank my colleagues for their support which I hope they will give to it. We can all expect, I believe, favorable results for the people today who have impaired hearing which diminishes their enjoyment of life and their happiness in our good land.

Mr. Speaker, it is with great pride and pleasure that I rise in support of S. 1727. S. 1727 is identical to my bill, H.R. 3361, to establish as the 13th National Institute of Health, a National Institute on Deafness and Communication Disorders. I am pleased to say that H.R. 3361 recently passed the House by a vote of 409-2.

Mr. Speaker, this measure looks to the future. It aims to make life better, healthier and happier for Americans today and for generations and generations to come. It holds great promise for advances in the area of health care research and treatment.

H.R. 3361 would create a separate National Institute on Deafness and Other Communication Disorders within the National Institutes of Health. It is a subject of immense importance to the millions of Americans who are communication impaired.

Communication is obviously one of the most precious aspects of life. Yet, for more than 30 million Americans, or 1 of every 10 of our fellow citizens, hearing and speaking can't simply be taken for granted. In fact, more Americans are disabled by deafness and other communication disorders than by any other chronic health condition.

Over 22 million people suffer from either partial or total hearing loss. 2 million are totally deaf. In addition, over 8 million Americans suffer from speech and other communication disorders, such as stuttering and tinnitus—from mild to severe.

Mr. Speaker, communication disorders claim the very young and the old as their most common victims:

About half of all hearing- and speech-impaired people are over the age of 65.

One of every 22 babies born in the United States has or shortly develops hearing problems.

More than 1 million children are afflicted with deafness and speech disorders. These children often are unable to read beyond a sixth-grade level because their ability to learn language has been so compromised.

Mr. Speaker, we need to make a strong national commitment to combat disorders and impairments which rob so many of the ability to hear and speak. The creation of a separate National Institute on Deafness and Communication Disorders, as called for in H.R. 3361, begins that national commitment.

The Nation's top scientists tell us that they are on the verge of great advancements. Among the many improvements we hope to see in the future from the new institute we could soon:

Develop a vaccine to combat ear infection in children;

Isolate the cause and develop a cure or treatment for nerve deafness, the cause of 80 percent of all hearing loss; and

Provide the profoundly deaf not only with hearing "sounds", but with speech or language through more sophisticated technology.

It is our clear intent that the National Institute on Deafness and other Communication Disorders shall have the overall and primary responsibility within the National Institutes of Health for human communication and communication disorders (including disorders of hearing, balance, voice, speech, language, taste and smell) research. It is our expectation that all grants and contracts and associated funding assigned or directed to the Communicative Disorders Division of NINDS by the Division of Research Grants as of October 1, 1987, and any additional grants, programs and contracts the support of which is the responsibility, or which has traditionally been the responsibility of the Communicative Disorders Division, be transferred from NINDS to the new Institute. The Congress does, however, expect the National Institute on Neurological Disorders and Stroke to maintain a limited role in the special area of specific neurogenic speech and language disorders. We believe that it may, therefore, be necessary to have grants and contracts in the special area of specific neutrogenic speech and language disorders reviewed by a panel of experts independent of NINDS to determine those which would be appropriately maintained within NINDS.

It is the intent of the Congress that the new institute will be established promptly, efficiently and in a manner which facilitates and enhances the new institute's independence and development. We expect that all due efforts will be made to assure prompt awardings of deafness, human communication and other communication disorders grants, programs and contracts during the transition. We also direct the Secretary to appoint the National Institute on Deafness and Other Communication Disorders Advisory Council by December 31, 1988. It is the intent of the Congress that the advisory council work actively in the establishment, operation and development of the new Institute. It is also expectation that the Director of the new Institute will be appointed no later than February 1, 1989.

H.R. 3361 enjoys strong bipartisan support in the House. Over 100 of our colleagues have cosponsored this legislation. The bill also has the strong backing of over 30 national organizations representing the communication impaired and a coalition of very distinguished business and community leaders. I have included with my statement a listing of these supporters which I hope can be included in the RECORD.

Mr. Speaker, I am deeply indebted to my great colleague from California, the Honorable HENRY WAXMAN, chairman of the Subcommittee on Health and the Environment of the Committee on Energy and Commerce. Without his great skill and leadership, this bill would not be before us today. In addition, I want to commend the tremendous efforts of Senator TOM HARKIN of Iowa, the Senate sponsor on the new Institute. He has done a remarkable job in seeing this bill on through to enactment. I am also particularly indebted to Mrs. Geraldine Dietz Fox of the Deafness Research Foundation for her skilled and tireless efforts on behalf of this important legislation. I also want to warmly commend the council of organizational representatives [COR] for their excellent work on behalf of H.R. 3361 and am especially thankful for their important suggestion to amend the bill to include a model advisory council to the institute which would have strong representation of consumers. I strongly support such an amendment and hope that the council could serve as a model of appropriate consumer input into the operations of the other institutes within NIH.

So it is with great pleasure that I urge my colleagues to support this landmark measure. It will do much good for the health and welfare of the American people now and long into the future.

Mr. MADIGAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, our committee approached establishment of a new national research institute with what I think was the appropriate caution. We were sensitive to concerns raised by some voices in the scientific community that the overall size of the National Institutes of Health could become unmanageable and we were aware of suggestions that the number of NIH national research institutes be frozen, reduced or reorganized with those research institutes of the alcohol, drug abuse, and mental health administration.

I think it is important to note that the proposed institute will only be the second national research institute to be created at the National Institutes of Health in the past 14 years.

In the past 25 years, there have been over 180 bills introduced in Congress to establish new national research institutes. With the addition of this Deafness Institute, the number of NIH institutes will total only 13. The committee was sensitive and was concerned that too casual approval of new research entities by the Congress or the administration could fragment its existing scientific efforts and unreasonably increase NIH's administrative burden.

With respect to any additional administrative costs that might be required to initiate the new institute, specific provisions have been included in legislation to assure that new administrative costs would not exceed existing statutory administrative limits that apply to NIH activity. In addition, a study of the organizational history reveals that establishment of new national research institutes is an infrequent if not rare occurrence.

In 1984, the National Academy of Sciences' Institute of Medicine issued a report entitled "Responding to Health Needs and Scientific Opportunity, the Organizational Structure of the National Institutes of Health."

The Institute of Medicine studies concluded that while "There should be a presumption against additions at the institute level, there may however be circumstances in which organizational change is necessary and it is important to recognize those circumstances."

The Deafness Institute is only the second national research institute to be established in the past 14 years and I think that is ample proof that the decision to establish a new research institute is one that the Congress views with the greatest of caution. The Institute of Medicine recognized that there were unique circumstances in which organizational changes in NIH were necessary.

The Institute of Medicine specified five criteria which should be considered in evaluating proposals for organizational changes at NIH.

Before I list these five criteria, Mr. Speaker, I would at this point yield to the gentleman from Minnesota for any remarks that he might care to make about the retiring Member from New York, if this is an appropriate time to do that.

Mr. WEBER. I thank the gentleman for yielding.

I am afraid that in order to do that we are going to need a little bit more time than that. We have a number of Members who want to participate. While I am sympathetic to the schedule that the Committee on Energy and Commerce is trying to meet, I am afraid that I will need a little bit more time than the gentleman may be able to yield to me. I believe we have a number of Members who are waiting to come to the floor in order to participate in the special order honoring our colleague.

So I appreciate the gentleman being generous with his time, but I am afraid I do not quite think that is going to quite work for us.

Mr. MADIGAN. I thank the gentleman.

Mr. Speaker, if I may have the attention of the gentleman from California [Mr. WAXMAN], the chairman of the subcommittee, before I proceed to list these criteria, I wonder if the gentleman has resolved in his own mind how he wishes to proceed. I understand that the time has expired on the gentleman's side, and that we may have some 10 minutes or so left on this side.

As I have indicated to the gentleman, there are a number of Members on my side who do want to proceed with the special order commending our colleague, JACK KEMP, for his many years of distinguished service in this body. Some of those Members have arrangements made for airplanes and the time is growing short for them. I know the gentleman is aware of all those things, and I wonder how he wishes to proceed.

Mr. WAXMAN. Mr. Speaker, will the gentleman yield?

Mr. MADIGAN. I yield to the gentleman from California.

Mr. WAXMAN. I thank the gentleman for yielding.

Mr. Speaker, we are trying to clear with the leadership a request that would permit us to allow this special order to Congressman KEMP to proceed and then permit us further to take up this as well as other legislation, some of which we expect to come very shortly, in a matter of 10 minutes or maybe more, but hopefully no more than 10 minutes, from the other side of the Capitol. If the gentleman would permit, perhaps while we are getting the authorization to do that, we could have an agreement to continue this discussion on this important bill and maybe we can dispose of this bill and then be able to come back and deal with the others.

It seems to me that is the most orderly way for us to proceed.

Mr. MADIGAN. So it would be the gentleman's suggestion that at this point we yield such remaining time and go to a vote on this bill and go to the special order on our colleague, Mr. KEMP, and await the decision of the leadership as to whether or not we would return to our other business?

Mr. WAXMAN. I think the preferable way for us to deal with this is for us to complete the debate on this bill which may take no more than—I do not know how much time the gentleman has—maybe another 5 or 10 minutes. By that time we should be in a position to allow the other group to go forward and have that all cleared.

Does the gentleman have more time, may I inquire?

Mr. MADIGAN. Mr. Speaker, may I inquire how much time remains on this side?

The SPEAKER pro tempore (Mr. GONZALEZ). The gentleman from Illinois [Mr. MADIGAN] has 7 minutes remaining.

Mr. MADIGAN. So those Members wishing to participate in the special order for Mr. KEMP should be on the floor in about 7 minutes. Would that be a reasonable conclusion, Mr. Speaker.

The SPEAKER pro tempore. The Chair has no way of ascertaining when an absent Member will come to the House floor. However, the Chair will advise both sides that there is no impediment to concluding consideration of this. The Chair will then proceed into special orders with the reservation that as soon as that legislative enactment from the Senate side is managed to the House, the Chair will reserve the right to resume consideration of regular legislative business, under suspension of the rules, but limited to S. 2843, Animal Drug and Patent Term Authorization Act and the Omnibus Health Act.

There is no impediment to concluding debate on this bill and proceeding forth with special orders with that reservation that the Chair can recognize for the consideration of substantive legislative matters.

Mr. WAXMAN. Mr. Speaker, if the gentleman would yield further, I would suggest a unanimous-consent request, a proposal that the Chair be empowered to call for the consideration of those two items following the special orders upon authorization by the Speaker or his designee.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. WEBER. Reserving the right to object, Mr. Speaker, I do so in order to ask the gentleman to again clarify. As I understand it, we are going to conclude the 7 minutes or so remaining on this piece of legislation. Then we would move to special orders. And then under the gentleman's unanimous consent request, the Chair would be empowered to basically cut off special orders and go to two other items of legislation when they arrive from the Senate.

Mr. WAXMAN. If the gentleman would yield, that would be correct, the two items announced by the Chair. Under this unanimous consent request, should he have authorization from the Speaker to do so, we would then return those items after the special order.

Mr. WEBER. Further reserving the right to object, and I think the gentleman has answered my question, we would be allowed to conclude the special order that we were engaging in and then following the completion of that special order the two items that the gentleman is referring to would be brought up with the authorization of the Speaker.

Mr. WAXMAN. The gentleman is correct.

Mr. WEBER. But following completion of this item of business we would be going to special orders.

Mr. WAXMAN. The gentleman is correct, under the unanimous-consent request.

Mr. WEBER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WOLF. Mr. Speaker, I rise in support of the conference report to S. 1727 which would establish the National Institute on Deafness and Other Communication Disorders at the National Institutes of Health.

S. 1727 will take a giant step forward in our Nation's efforts to combat deafness and other disorders which limit one's ability to communicate. The creation of a separate National Institute of Deafness and Other Communication Disorders will for the first time give the proper recognition in this Nation to what has largely been a hidden problem.

Most individuals take their communication abilities for granted. Over 24 million Americans are hearing impaired and over 3 million Americans, both children and adults, suffer from a stuttering handicap. By establishing a separate national institute for hearing and other communicative disorders we can look forward to the research development necessary to help those with hearing and speech impairments. As a cosponsor of the House version of this legislation, I urge my colleagues to support this conference report.

Mr. MADIGAN. Mr. Speaker, I have no further requests for time, I yield back the balance of my time, and I urge all Members to support the National Institute for Deafness within the National Institutes of Health.

Mr. WAXMAN. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. WAXMAN] that the House suspend the rules and pass the Senate bill, S. 1727.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 5521, REQUIRING REVOCATION OF CHARTER OF THE FEDERAL ASSET DISPOSITION ASSOCIATION AND REFORMING PROCESS FOR LIQUIDATING ASSETS OF FAILED THRIFT INSTITUTIONS

Mr. PEPPER, from the Committee on Rules, submitted a privileged report (Rept. No. 100-1087) on the resolution (H. Res. 588) providing for the consideration of the bill (H.R. 5521) to require the Federal Savings and Loan Insurance Corporation to revoke the charter of the Federal Asset Disposition Association and reform the process for liquidating assets of failed thrift institutions, and for other purposes, which was referred to the House Calendar and ordered to be printed.

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A TRIBUTE TO THE HONORABLE JACK KEMP UPON HIS RETIREMENT FROM CONGRESS

The SPEAKER pro tempore (Mr. GONZALEZ). Under a previous order of the House, the gentleman from Minnesota [Mr. WEBER] is recognized for 60 minutes.

Mr. WEBER. Mr. Speaker, as we come close to the end of the historic 100th Congress, it is appropriate that we honor many of the Members that will be departing for various reasons at the end of this Congress. It is my privilege to take out this special order, along with my distinguished colleague and friend, the gentleman from New York [Mr. HORTON], for the purposes of honoring one of the most distinguished and best known Members of the 100th Congress who will not be returning to the 101st Congress. I am referring to our friend and colleague from the State of New York, the Honorable JACK KEMP.

JACK has been the chairman of the House Republican Conference and has served in Congress for these last 18 years, representing his district from Buffalo, NY. This year he was a leading candidate for the Presidential nomination of the Republican Party. For that reason he decided to end his career in the House of Representatives at the end of the 100th Congress.

That candidacy was not ultimately successful, and our colleague is today campaigning across the country for the election of GEORGE BUSH. But he leaves behind him a strong and powerful legacy as a leader for his party on foreign policy, as a leader for his party on social policy, as a leader for his party on economic policy, and as a significant political leader in the latter half of the 20th century.

I would simply like to begin, before I yield to my friend, the dean of the New York delegation, by saying that before we talk about his many accomplishments as a legislator and a political leader, to those of us who know JACK KEMP well, one of the most endearing characteristics about him is that he genuinely, in a day when everyone flaunts their family characteristics, is a man dedicated first and foremost to his family. So I would like to begin by saying that as we pay tribute to JACK KEMP, we are also paying tribute to Joanne Kemp, Jeff Kemp, Judith Kemp, Jennifer Kemp, and Jimmy Kemp, who make up the Kemp team and who have become so close to us over the years they have been here in Washington.

I have other remarks I will make, but I know there are many Members of the body who want to share their thoughts about our departing colleague, so I will interject my remarks, Mr. Speaker, as time permits.

At this point, Mr. Speaker, I will yield to my partner in this special order, the dean of the New York delegation, the gentleman from New York, Mr. FRANK HORTON.

Mr. HORTON. Mr. Speaker, I thank the gentleman for yielding, and I join with him in honoring JACK KEMP. As the dean of the New York Republican delegation, I have taken this time for not only Republicans but also for Democrats on both sides of the aisle to pay honor to our good friend, JACK KEMP.

Mr. Speaker, normally when these special orders are held on the occasion of a Member's retirement from the House it is a sign of an ending. In the case of JACK KEMP, however, I find it easy to believe that we are helping to celebrate an entirely new beginning for my friend from upstate New York.

Being an ardent sports fan, I have followed JACK'S career since his days as quarterback of the Buffalo Bills. JACK was the star quarterback for the Buffalo Bills when they played in the American Football League. He was selected all-AFL twice and was named the most valuable player in the league in 1965. It is rumored that the present quarterback of the Buffalo Bills, Jim Kelly, is a little nervous about his starting position because JACK could become a free agent next fall. After leaving the Bills, JACK went on to cofound the American Football League's Players' Association, and served as president of that organization from 1965 to 1970.

JACK'S tenacity on the football arena is equaled only by his tenacity in the political arena. It was our good fortune to have this young football star from southern California brave the Buffalo winters and begin his political career in upstate New York. JACK was first elected to Congress in 1970 and he has served in this body with distinction for the last 18 years. He has represented the good people of the 31st District of New York with conviction and compassion.

JACK has long been a strong proponent of supply-side economics. He stuck to his guns when it seemed that no one would listen until finally the Reagan administration began implementing many of the ideas that he had espoused. These very ideas have helped us achieve our present economic prosperity. As Congressman KEMP promised throughout the 1970's, supply-side economics has brought the lowest inflation rate and the lowest unemployment rate in over a decade.

Regardless of one's political philosophy, no one can doubt JACK'S commitment of making a better life for all persons. JACK has been a strong supporter of legislation making home ownership possible for low-income families. As the ranking Republican on the Appropriations Subcommittee on Foreign Operations, he has also been a key player in the passage of foreign aid bills which have assisted persons in developing countries. To encourage development in blighted urban areas, JACK has pushed for the creation of free-enterprise zones.

JACK has also been vocal in his efforts to ensure that America maintains a strong national defense. When President Reagan needed Members of the House to go to bat for defense initiative, he always knew that he could count on this young man to rally the troops. I am sure that, come January, President BUSH will be hard-pressed to find an ally with the determination and effectiveness of a JACK KEMP within the Halls of Congress.

Through his natural leadership skills, JACK KEMP was able to rise to positions of prominence in the House Republican Party. He served as chairman of the Republican Conference and has played a major role in defining the party's policy positions.

As JACK leaves the House, he will be taking a position with the Heritage Foundation. We look forward to his continued contributions to the political debate and his being a principal advocate of conservative views. Despite his recent unsuccessful bid for the Presidency, I would not at all be surprised if JACK KEMP one day resides in the White House.

On behalf of myself and my wife, Nancy, I would like to wish JACK, his wife Joanne, and his children the very best of luck in the future.

Mr. Speaker, on behalf of the New York delegation, I want to pay tribute to this outstanding member of the New York delegation and wish him well as he goes to his next venture. I thank the gentleman from Minnesota for yielding, and I am very happy that I have been privileged to join with him in these special orders to pay tribute to our friend, JACK KEMP.

Mr. WEBER. Mr. Speaker, I thank the gentleman from New York [Mr. HORTON] for his important contributions.

Mr. PEPPER. Mr. Speaker, will the gentleman yield?

Mr. WEBER. I yield to the senior statesman of the House of Representatives, the distinguished chairman of the Committee on Rules, the gentleman from Florida [Mr. PEPPER].

Mr. PEPPER. Mr. Speaker, I thank the gentleman very much for yielding to me.

Mr. Speaker, there are many of our colleagues in this House who voluntarily are leaving the House at the end of this historic session. One of those is JACK KEMP from the great State of New York.

As JACK KEMP was a great football quarterback and possessed the qualities that enabled him to achieve such a high honor, he also achieved great success and distinction as a Member of this House. The qualities of leadership which he exerted on the football field, the capacity to command the alliance and support and cooperation of his colleagues, and his vision and his ability to see into the future lead him to great achievements as a Member of this House.

There are many fields in which JACK distinguished himself as a Member of this House. One of them was in the field of taxation, where he conceived and eloquently expressed to his fellow citizens a concept of taxation which many, including the President of the United States, thought had great value and great importance to our Nation.

He also has had a great vision of the America he wanted to see come into being in the years ahead. He believed that the greatest America was in the future, not in the past, and he favored every good proposal that made Americans live longer and live healthier lives and that would make this Nation a stronger and more prosperous land.

This House will never forget JACK KEMP for the years he was with us. We will never forget his charming personality, the warm friendship which we enjoyed with him, the cooperative attitude he manifested in dealing with his colleagues on the House floor, and the position of leadership that JACK so often commanded in so many areas of critical moment to his country. This House will long remember and long revere and long admire JACK KEMP. We are sorry to see him go. He carries with him our affectionate good wishes. He carries with him our warmest regards and our ardent hopes for a long life, good health, great happiness, and satisfying success in whatever honorable endeavors he undertakes, and we wish the very best to his family in the years ahead.

Mr. ARCHER. Mr. Speaker, will the gentleman yield?

Mr. WEBER. I yield to the gentleman from Texas.

Mr. ARCHER. Mr. Speaker, I would like to join with my other colleagues in this tribute to a remarkable individual, JACK KEMP. He and I came to Congress together as freshmen in 1971 and have served together continuously since that time.

He is living proof that one Member of the House of Representatives can leave his mark on history for the entire country and the world. He has always been a man of untiring energy and unflagging conviction. He has made a major contribution to the economic well-being of this country by his input with the Reagan administration in lowering tax rates for all Americans, and all Americans can give him compliments in tribute for that accomplishment.

But beyond that, he is an individual dedicated to family, and his wife, Joanne, has been a major supporter in all of his efforts. Without her help, he would never have been able to achieve everything that he has achieved during these years.

As great as was his commitment to spread the good word around the country and as many, many weekends and days and hours that it took him away from his family, he still always made arrangements to be back home to attend the high school football games in which his sons played.

This man is a rare individual, and because he has walked through this House and because he has been a part of our lives, we are all benefited. I say to JACK KEMP and to Joanne and to all of the Kemp children, you have done a great job. There is much still ahead for you to do. God bless and Godspeed.

Mr. WEBER. Mr. Speaker, I thank the gentleman from Texas for his significant contribution.

Mr. Speaker, I was first elected to the Congress in 1980. Many of us who came here in those years were particularly inspired by JACK KEMP and the causes he was fighting for.

Mr. Speaker, I now yield to one of my colleagues who was also in the class of 1980, the gentleman from Omaha, NE [Mr. DAUB].

Mr. DAUB. Mr. Speaker, first, I would like to thank the gentleman from New York [Mr. HORTON] and the gentleman from Minnesota [Mr. WEBER] for making this time available to recognize JACK KEMP's 18 years of distinguished service. It's been an extraordinary privilege to serve in this Chamber with him.

JACK is well-known throughout this Nation as one of our party's leading conservatives—and yet I think this is a misnomer.

Webster's dictionary defines a conservative as one who adheres to traditional views and methods—as one who is cautious.

Well, JACK certainly has traditional views on the family and on faith and on patriotism, but don't be fooled. JACK KEMP is a radical, and he proved it over a decade ago when he came up with this radical idea about making sharp cuts in marginal tax rates.

That was a radical idea when he proposed it—a radical idea that was later endorsed by the House and the Senate and the President of the United States—a radical idea that has spurred 70 months of economic growth and prosperity.

JACK's relentless and arduous work on this issue will serve as his greatest, but hardly singular, public service legacy to this Nation.

In another forum, within our own Republican Party, JACK has applied his fine-tuned leadership skills—and his time and his travels—to another important matter—a goal that we hold in common—and that is the expansion of our party to groups and regions that have not traditionally identified with our party.

This past August, at the Republican National Convention in New Orleans, JACK took time from his hectic schedule to speak before a rally of Asian-Americans and to advocate and articulate our belief that the Republican Party is the party that best addresses the needs and concerns of ethnic and minority Americans.

I especially appreciated his making the time to come to that rally because it was organized by my wife, Cindy, who heads Asian-Americans for Bush. As always, his remarks were welcomed with the same enthusiasm with which they were delivered. JACK KEMP never short-changes an audience, and his optimism is one addiction I can support.

JACK has an incredible ability to always make time for his causes, for his constituents, for his friends and for his family. And Cindy and I certainly feel that JACK and his remarkable wife, Joanne, are treasured friends here in Washington.

So I really appreciate this opportunity to wish JACK all the best in his future endeavors. I know he'll continue to come up with radical ideas that will benefit this Nation, and I know that his contagious enthusiasm guarantees his success.

□ 1500

Mr. WEBER. Mr. Speaker, I thank the gentleman from Nebraska [Mr. DAUB] for his contribution to this special order.

It is now my distinct pleasure, indeed one of the greatest pleasures that all of us have in the House of Representatives, and it is now mine, to yield to the distinguished gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Mr. Speaker, I thank the gentleman from Minnesota [Mr. WEBER], my friend, for his overgenerous remarks and for his thoughtfulness in scheduling this special order on behalf of one of our dearest friends who will be leaving this plateau and ascending, hopefully, to another and higher plateau.

Mr. Speaker, special orders are kind of sad in a way because it is taking leave. It is a bidding farewell to dear friends that we have come to know, and to admire and to develop close relationships with.

I see the gentleman from Nebraska [Mr. DAUB] who just spoke here. Frankly, his loss to this body is a considerable one. He made a great difference, and he brought a lot to this body that we will miss.

The gentleman from California [Mr. LUNGREN] will return to California, and I cannot think of a loss that I will feel more keenly than his.

Of course, we are talking as though they are passing on to their eternal reward. I hope they are passing on to more lucrative rewards and continue in public service by approaching it from outside this institution and not inside this institution.

But this special order is for the gentleman from New York [Mr. KEMP], and I must say he was a man of infinite complexity. There were no enthusiasms that did not capture him.

Mr. Speaker, he was a teacher. He was a behavior modifier. He was involved in the most controversial issues and always, from my perspective, on the correct side, which also was the right side.

He was an expert on defense policy, on arms control. He knew all about NATO. He knew about the Soviet

Union. He was an enthusiast for the strategic defense initiative. He popularized the notion that assured mutual survival makes a lot more sense than assured mutual destruction.

He was a member, a valued member, of the Kissinger Commission, studied the problems that are almost intractable, it seems, in Central America. Mr. Speaker, he gave his intellect, and his energy and enthusiasm to that important inquiry.

He was a dear friend of Jeane Kirkpatrick. I do not know which of those two wonderful people influenced the other more, but it was a happy, symbiotic relationship I am sure.

He was a fierce defender of the Contras, the democratic resistance, in Central America. He had a vision that eclipsed most of us in terms of what might be and what might not be in terms of defending freedom, in terms of not yielding the field by default to the Soviet Union in our hemisphere by not permitting another bridgehead on the land bridge between Texas and the Panama Canal. He understood that we have to support the forces of freedom with every bit of enthusiasm and force as the Soviet Union, and the East bloc states and Cuba supported the forces of Leninism down there, and unfortunately his voice did not prevail. The consequences we will live, I am sure, to regret.

Mr. Speaker, he was an expert in economics. He himself was the legislative congressional progenitor of the centerpiece of the Reagan revolution supply-side economics. One man from Buffalo, NY, a Congressman, not the loftiest forum in the world to move the world, but indeed he did because of the force of his commitment, his personality, his singlemindedness. He more than anyone else made supply-side economics popular, I am sure persuaded the President as to its validity, and we are all enjoying the fruits of that economic system, that economic proposal which has given us 70 months of economic growth, put inflation in the basement down with unemployment and has generally been a blessing to this country.

Monetary policies, one of the most arcane, boring subjects in the world, captured his enthusiasm. He tirelessly campaigned for the gold standard or its equivalent, and who knows but what he is right on that as well as right on tax cuts and so many other things? And I am sure that that subject, which we all shy away from because it is arcane, it is difficult, perhaps his ability to teach us will continue, and we will be the better for that.

The gentleman from New York [Mr. KEMP] was a tireless campaigner. I do not think the word "no" is in his lexicon. If my colleagues needed him in their districts, he was there. He loved to help his colleagues. He loved to instruct us in reality. And he went into the barrios, into the inner cities, he went into suburbia, and he addressed the economic clubs of the various cities, and he talked to them in their own terms no matter where he was.

Mr. Speaker, he was understood because he had an empathy for the problems of people no matter where they were. Of course his wife, Joanne, and his lovely family gave him the indispensable encouragement that all of us must have if we are to devote so much of our waking hours and productive years to the business of legislating.

But the energy that he brought to this job of being a Congressman, the enthusiasm that he brought was indeed contagious, and it showed many of us what one person can do with courage and with a fixed goal ahead of him.

Mr. Speaker, he has been a vital force for good in this country. He has moved this country, and I think so often of the words of King Arthur in "Camelot" where he said, "We are all of us tiny drops in a vast ocean, but some of them sparkle."

The gentleman from New York [Mr. KEMP] indeed sparkled. He was a diamond in a sea of zircons, and may he always sparkle.

Mr. WEBER. Mr. Speaker, I thank the gentleman from Illinois [Mr. HYDE] for his, as always, eloquent contribution, and I know the gentleman from Illinois is one whom our friend, the gentleman from New York [Mr. KEMP] holds in the very highest of regard, and his contribution on this day is particularly appreciated.

I yield to the gentleman from Virginia [Mr. WOLF].

Mr. WOLF. Mr. Speaker, I thank the gentleman from Minnesota [Mr. WEBER] and the gentleman from New York [Mr. HORTON] for holding this special order to salute the gentleman from New York [Mr. KEMP].

Mr. Speaker, I want to join my colleagues to salute the distinguished career of the gentleman from New York [Mr. KEMP] who is retiring at the end of this Congress. I want to say to my good friend and colleague, JACK, that the Halls of Congress really just will not be the same without his presence.

I have had the pleasure of serving with the gentleman from New York [Mr. KEMP] on both the Committee on Appropriations and the Select Committee on Children, Youth, and Families, and have always been impressed by his energy, his optimism, his intensity for working for causes in which he believes and last, perhaps more important than anything, his courage to take on issues that many people do not want to take on.

The gentleman from New York [Mr. KEMP] has been a true conservative voice in Congress and can point with pride to legislative successes such as the 1981 tax cuts, foreign aid funding, antiabortion measures and other initiatives for a strong national defense. He also brought to our attention the need to encourage development in declining urban areas through free-enterprise zones.

Mr. Speaker, he is a natural leader, and his bid for the presidential nomination showed the entire Nation that this former quarterback of the Buffalo Bills from the American Football League, most valuable player, not only was a success on the gridiron, but also has the attributes to be a leader, and a top leader, for the future of America.

It has been an honor to have served in Congress with the gentleman from New York [Mr. KEMP]. His services to his New York constituents and to the Nation will be greatly missed.

But, Mr. Speaker, I have a feeling, and a hope and a prayer that JACK KEMP's days of public service are far from over, and I am hopeful that the next administration will see fit to have him at a very high spot in the administration, and I would say that I think Mr. BUSH would make a fine choice to have JACK KEMP as his Secretary of Defense, and we wish him good health and happiness as he moves on to new and higher heights.

I want to thank the gentleman from Minnesota [Mr. WEBER] again for having this special order.

Mr. WOLF. Mr. Speaker, I want to join with my colleagues to salute the distinguished career of the gentleman from New York, JACK KEMP, who is retiring at the end of the 100th Congress after serving the 31st District of New York since 1971.

I want to say to my good friend and colleague, JACK KEMP, the Halls of Congress just won't be the same without your presence. I have had the pleasure of serving with JACK KEMP on both the Appropriations Committee and the Select Committee on Children, Youth and Families and I've always been impressed with his energy, his optimism, and his intensity in working for causes in which he believes.

JACK KEMP has been a true conservative voice in Congress and can point with pride to legislative successes such as the 1981 tax cuts, foreign aid funding, antiabortion measures, and initiatives for a strong national defense. He's also brought to our attention the need to encourage development in declining urban areas through free enterprise zones.

He's a natural leader and his bid for the Presidential nomination showed the entire Nation that this former quarterback of the Buffalo Bills and American Football League most valuable player not only was a success on the gridiron, but also has the attributes to be a leader for the future of America.

It has been an honor to have served in Congress with JACK KEMP. His service to his New York constituents and to the Nation will be greatly missed. But I have a feeling that JACK KEMP's days of public service are far from over.

We wish him good health and happiness as he moves on to new heights.

Mr. WEBER. Mr. Speaker, I thank the gentleman from Virginia [Mr. WOLF], and I think we all join in his hope that this is just the beginning of the next phase of the Kemp career.

The gentleman from Indiana [Mr. COATS] and Marcia Coats have been two of the Kemp family's closest friends over the many years, and it is my privilege to yield to the gentleman from Indiana.

Mr. COATS. Mr. Speaker, I thank the gentleman from Minnesota [Mr. WEBER] for yielding me this time and for taking out this special order, and I also thank the gentleman from New York [Mr. HORTON] for arranging this.

A number of us are here because we felt so close to the gentleman from New York [Mr. KEMP]. JACK, I wrote some very fancy remarks and had them ready yesterday, and we postponed this until today because of the House schedule, and I left the remarks at home, so what I am going to say to you is maybe not as articulate as it would have been had I given this yesterday, but it is from the heart.

The gentleman from New York [Mr. KEMP] has made a tremendous difference, a difference in this body, a difference in our Nation, and a difference in many of us as individuals because of his involvement and his presence in our lives and presence in the House of Representatives for so many years.

Mr. Speaker, God blessed him with a keen mind.

He has a wealth of ideas that keep pouring forth with more than we can keep up with, but he just keeps running in with new ideas and did so with such an enthusiasm that it was infectious, and many of us became very supportive of what he was doing and very admiring of that wealth of information that just kept pouring out of him.

He was blessed with an abundance of energy. We could not keep up with him there either. He outworked us, outhustled us. I said often, "If we take KEMP's adrenalin and divide it into a thousand parts, we could have a thousand JACK KEMPS running around, and, if we just had a tenth of the adrenalin and energy that JACK KEMP had, and his enthusiasm, think what we could accomplish."

Mr. Speaker, the ability of the gentleman from New York [Mr. KEMP] to communicate was extraordinary. He, as the previous speakers have said, has traveled to all our districts and came and talked to our people and spread his ideas and supported us in our campaigns. His willingness to jump on a plane and go anywhere, as the gentleman from Illinois [Mr. HYDE] said, at any time, this was appreciated and helpful to so many of us and so important in terms of our ability to get here and to stay here and to be part of this body.

What am I going to remember? I am going to remember the time he came to Fort Wayne, IN. He had given, I believe, 35 speeches in 14 days. It was in the campaign season. He was absolutely exhausted. His stop in Fort Wayne for me was the last speech he was going to give. He was emotionally drained. He was tired. He wanted to get home. He had been on the road. It was a tough, tough grind. And he started out in a low-key way, and I thought, "Boy, JACK is just wiped out. He can't do it." But, after a couple of minutes of that, he stopped, took a deep breath, and instead of giving 5, 6, 8, 10 minutes, which he could have easily done and excused himself and caught a plane and gotten home, he took a deep breath and launched into one of the most inspiring, energetic, enthusiastic speeches I have ever heard. He just poured himself out in front of that audience in a professional way. He reached deep down for some reserve of energy that I did not think could possibly be there, and I will always remember that. That is an aspect of him and a quality that he has that I admire very much.

□ 1515

You are a fierce competitor. One thing I am going to remember is being on a tennis court with you as my partner playing two young kids who were college players. You and I had no business even being in the same building, let alone on the same court, and by the sheer will of your determination and competitive spirit, you dragged me along and got me involved in all that. As you remember, we came down to the last point of that match and these kids were lucky to get out of there with their lives.

I am going to remember your campaign for President, because I was there when you made that very first speech and announced your Presidency, and you did it with style and grace and class, and I was so proud to be associated with you.

I was there when you made that last speech of withdrawal, and you did that with an equal amount of grace and class, and I was proud to be standing there with you, and I will always remember that.

Finally, I will remember your family and your devotion to your family, your beautiful and supportive wife, Joanne, and your kids and the efforts you would make to drop everything and get to Jimmy's football game or Jeff's game or to catch it on TV or whatever you would do that you needed to do, extraordinary things that you needed to do to be supportive of what your family was doing, and your devotion to your kids, to your girls and to your sons and your intense involvement and interest in their lives. Despite all these other pressures that you had and all the other things that you had to do, you kept that as a priority. We admire you for that, and I admire you for that.

JACK, we will miss you, but we know that you are going to continue to be a force for change. Please do not go too far away. We need you. The Nation needs you, and we know you are going to be around to support us and lead us for a long time in the future.

God bless, JACK.

Mr. WEBER. Mr. Speaker, I thank the gentleman from Indiana.

Mr. Speaker, I will yield across the aisle at this point to one of JACK's good friends, the gentleman from California [Mr. LANTOS].

Mr. LANTOS. Mr. Speaker, I thank my friend for yielding to me.

I am very proud and delighted to join my Republican colleagues in paying tribute to one of the finest people in the House of Representatives, JACK KEMP.

My wife, Annette, and I had the good fortune of knowing Joanne and JACK well.

I must say, Mr. Speaker, there is nothing finer in American society than a couple as profoundly devoted to public service, as deeply motivated by the finest passions of patriotism and concern for their fellow human beings.

JACK is an extraordinary person. If one watches him in action, one cannot help but be struck by four qualities of this remarkable human being. They are integrity, intelligence, intellectual curiosity, and compassion.

JACK KEMP's integrity is legendary. His word is indeed his bond, and I suspect the fact that he is as respected on this side of the aisle as he is on the other speaks volumes for the name he so rightfully made for himself, not just in this body, but in the country as a whole.

His intelligence is incisive, his analytical ability penetrating. He has an intellectual curiosity which I as a former university professor only rarely saw in my finest graduate students. There is not a topic that he does not enjoy, that he does not play with like a bulldog plays with a fine bone. He examines it from all sides, and he is so open always to new knowledge, new interpretations, new approaches.

It has often been said that minds are like parachutes. They work only when they are open, and whoever coined that phrase must have had my friend, JACK KEMP, in mind, because here is a man deeply convinced of his own convictions, yet wide open to new ideas.

It is this intellectually stimulating ambivalence of JACK that makes him such a remarkably enjoyable companion, morning, noon, or night.

He passionately believes in his position, but he is genuinely eager to listen to others, to conflicting points of view, to new angles, to new interpretations, to new knowledge, to new information.

How refreshing this is, when so many of us are so bound to our own view that at best we make a polite gesture towards listening to the other side. Not JACK KEMP. He is truly prepared to learn new things, to learn new approaches, to keep himself open to intellectual growth.

I had the privilege of working with JACK on many issues, Mr. Speaker, but perhaps none was as poignantly JACK KEMP as our joint attempt to find and provide political asylum for a young woman athlete from mainland China. I read many years ago on the front page of the New York Times the story of a young Chinese tennis player by the name of Hu Na, who came to the United States under the auspices of the Chinese Communist tennis team, but wanted to make her break for freedom, and she went into hiding. I found out that she was hiding in my congressional district.

I wanted to make a bipartisan effort to provide a legal umbrella so she could stay in the United States. Without a moment's hesitation, I picked up the phone and called JACK KEMP. I said, "JACK, I want you to read the New York Times. I want you to read the story of Hu Na, a young Chinese tennis player, who is trying to live in this free and open society. I want to move to provide her political asylum. Will you cosponsor that measure for me?"

And without a moment's hesitation, JACK, of course, said "yes." It was one of our many joint bipartisan efforts over the course of many years which have made me come to respect him, appreciate him, admire him, and yes, love him as a friend.

There is no doubt in my mind, Mr. Speaker, that JACK KEMP's many contributions to this Nation will go on for many, many years to come. The House will be much poorer for his departure, but in other capacities in many ways he will make profound contributions for the benefit of the Nation that he loves so dearly.

Mr. WEBER. Mr. Speaker, I thank the gentleman from California.

Mr. Speaker, I yield to one of JACK's colleagues from the Appropriations Committee, the gentleman from Louisiana [Mr. LIVINGSTON].

Mr. LIVINGSTON. Mr. Speaker, I thank my friend, the gentleman from Minnesota, for yielding to me and for taking this special order for a very special man, a man who we will all miss, who leaves here from his very long and productive role in Congress, but opens up a new chapter in his life.

There are many chapters in the life of JACK KEMP, the former football hero, the family man, the Congressman, the aspirant for the Presidency of the United States, and who knows, maybe the successful aspirant one day.

JACK was a man of many talents, as has been described here today by many speakers, but he was unique, I suppose, and that is what has prompted so many speakers to stand here with us this afternoon.

He is a man of deep religious and philosophical conviction. He was indeed an outstanding Congressman, but that was because he was a man of ideas. His ideas virtually elected many of us on this side, and I can claim to have been one of those. I ran on JACK KEMP's ideas in 1976. I narrowly lost that election. I had another chance the next year and won my election to Congress because I was quoting so much of what JACK KEMP was saying back then as a relatively junior Congressman.

Well, he progressed and his ideas took hold. His ideas were the focal point and perhaps formed the birthplace, if you will, for the Reagan revolution.

Ronald Reagan ran for the Presidency on JACK KEMP's ideas and was elected. Many of Ronald Reagan's accomplishments over the last 8 years were in fact JACK KEMP's ideas. He was the father of the supply side movement. He advocated individual initiative, prompted productivity throughout this Nation through lower tax rates. He succeeded in having many of his ideas implemented, but his ideas never quit.

As has been pointed out, he talked, he thought out, he listened, he cajoled and he was enormously successful in getting many of his programs passed in this Congress. JACK KEMP leaves us in Congress today, but God willing, he with his wife, Joanne, and their kids supporting him as they always have, he will be back, not here in Congress necessarily, but to positions of leadership in the Nation. He has contributed already mightily to his party and to his country, but he has much yet to contribute in the future.

JACK KEMP is a leader. I personally wish him Godspeed in all his future endeavors and lots of success in the future. We need him and I am proud to call him a friend.

Mr. WEBER. Mr. Speaker, I thank the gentleman for his contribution.

Let me just say, Mr. Speaker, before I recognize the next gentleman, that I know for our friend, JACK KEMP, the next gentleman's contribution is going to be especially important.

One of the things JACK has been proudest of in his service in Congress is his part, even though he was a strong partisan competitor, his ability to reach across the aisle and work with specific Members on the other side of the aisle, especially on problems that are not traditionally thought of as matters the Republican Party takes a great interest in, like the problems of the poor and disadvantaged.

I know that JACK's friendship for the gentleman from New York [Mr. GARCIA] has been a special source of pride to him and he often has boasted in his speeches and private conversations about his ability to work with the gentleman from New York, so it is an especial pleasure for me to yield to the gentleman from New York [Mr. GARCIA].

Mr. GARCIA. Mr. Speaker, I thank my colleague, the gentleman from Minnesota, for granting me these few minutes.

Mr. Speaker, today we are without a doubt paying tribute to one of the giants in this body. JACK KEMP has worked with us, and there is no question in my mind, I do not want to talk about him in the past tense, because the fact is, where is he going? He is leaving this body, but he is certainly not leaving the Washington area, and I think that is important.

I guess my relationship with him started back in 1980 during a period of time when Jimmy Carter was President of the United States. I remember standing on this floor, the Governor of Puerto Rico has just died, the ex-Governor of Puerto Rico had just died, Luis Munoz Marin. I was here talking about the progress that Puerto Rico had made over the last several decades, and all of a sudden this Republican, conservative Republican, I might add, gets up on the other side of the aisle and starts to talk about Luis Munoz Marin as if he was his first cousin. It became very clear to me at that particular moment that JACK KEMP's interest went far beyond his congressional district in Buffalo, that he knew a great deal of what was going on.

□ 1530

It was out of that discussion and on the loss of our former Governor of Puerto Rico, Munoz Marin, that he and I established a relationship, and it was from that relationship, Mr. Speaker, that we came up with the enterprise-zone bill. The enterprise-zone bill was finally enacted, I guess, 2 years ago. It came out of the Housing Subcommittee chaired by the distinguished gentleman from Texas [Mr. GONZALEZ], and we had the enterprise zones which became a reality.

The fact of the matter is that while we did not get the revenue part of the bill completed, nonetheless, 37 States across this country identified with the enterprise zones and passed their own enterprise zones.

Mr. Speaker, I am happy to report that through the efforts of JACK KEMP and myself that we were able to get this bill passed and get it out, but I think the history of this lesson is the following: It is that JACK KEMP and I, I am certain, on 90 percent of the issues, possibly 80 percent of the issues, we disagree. But when we can agree, why not?

I remember when we first introduced a bill, and I say this to my colleague from Minnesota, and some said, "Well, why are you doing that? Why are you introducing the bill with a Republican?" I said, "Look, 2 years from now, if the bill becomes law, they could care less whether it is Garcia, whether it is Kemp. The bottom line is that the law is there, and the people are benefiting," and it was interesting that that was my feeling at that time.

Mr. Speaker, to my Republican colleagues now, I want them to know the following: that in 1981 after Ronald Reagan was elected the White House came down very hard on us to change some of the parts of the enterprise-zone bill. They wanted to delete the minimum wage. They wanted to delete some OSHA regulations, and Jack Kemp and I had a long talk about it, and Jack Kemp said to me, and I will never forget this, he said, "We started this together, we are going to finish it together, and I do not care who the administration is, whether it is Democrat or Republican, that that is the way we wrote it and that is the way it is going to stay, and if they change any part of it, I am getting off, and I know you are going to get off." People do not realize that, but in 1981 that was a very hard thing for a guy like Jack Kemp to do, because of the pressures being brought upon by a first-term President, a person who came in and swept in a lot of Republicans where they had control of this body, and Jack Kemp stood tall.

I say that to the gentleman, because I think it is important. Out of that relationship, we were termed by some national magazines as the odd couple. I guess we were the odd couple. Here I am, a Democrat, a fairly liberal voting record, and Jack Kemp, a Republican, a fairly strong conservative record, and we banded together to get the enterprise-zone bill, and I say that to the gentleman, because there are many issues that Jack and I were involved in, and I think my colleague, the gentleman from California [Mr. Lantos], is right, whether it be on a question of Soviet Jewry, whether it be on a question of immigration, he was always there, and another part that I always remember was during the debate on the Martin Luther King holiday bill, it was Jack Kemp who led the forces on that side of the aisle to come forward and to support the Martin Luther King holiday, and it is a reality today.

I find it most interesting that that is the way this Congress should operate, not based on partisan politics, but what we consider to be right, what we consider to be the right thing to do, and Jack Kemp, to me, has always demonstrated that with me, and I can say this to all of the Members here, that as a Democrat, I can say that Jack Kemp is a person that worries me a little bit, because he is so good, but as a friend, and this is the key, as a friend, I am an admirer of Jack Kemp, and I always will be. I wish him well, and I wish his wife well, and I thank my colleague from Minnesota for giving me these few minutes to say what I have to say about the odd couple—Bob Garica and Jack Kemp.

Mr. Speaker, today we are paying tribute not only to one of the giants of this body but a friend of mine, Jack Kemp. Those of us who have worked with Jack over the years will surely miss him.

That is not to say that I have always agreed with Jack. I haven't, but I have always found him to be compassionate and fair. In 1980, Jack and I first began work on our enterprise zone legislation, that was the birth of the so-called "odd couple."

Yet, I first had contact with him even before our work on enterprise zones. I was speaking on the floor in tribute to Munoz Marin, the legendary former Governor of Puerto Rico, and Jack stood up and started praising him, talking about Operation Bootstrap and all that Munoz Marin had done for the people of Puerto Rico.

I looked across the Chamber and thought to myself, who is this guy? I thought he was a conservative Republican. What does he know about Munoz Marin? Well, that was also the last time I underestimated Jack Kemp.

He has proven time and time again that he is a man who cares about people. He is a man who does not use his political philosophy as an excuse to avoid helping the less fortunate.

I like Jack Kemp. I like his integrity. I like his sense of humor. I respect his intellect and sense of fair play. I also from time to time agree with his positions on issues. He has been a staunch defender of Israel and a tireless supporter of the fight to aid Soviet Jewry.

I'll tell you about one thing, Jack may be leaving this body, but we most certainly have not heard the last of him. As a staunch member of the Democratic Party that worries me a little, but as a friend and admirer of Jack Kemp the man, I wish him well.

Mr. WEBER. I thank my colleague and my friend from New York for his contribution.

If the rules permitted it, I would at this point yield to Catherine Hiler, but since she is not a Member, I have to yield to what I am sure would be Jack Kemp's second choice from the Hiler family, his very close and dear friend, my friend and classmate from Indiana, Jack Hiler.

Mr. HILER. Mr. Speaker, I thank the gentleman for yielding.

I think it is true that I would be Jack's second choice today. That does remind me of a time back in 1983 before I was married, and Jack had asked me to speak before one of his groups that he had come out periodically, and it was before a large group of people, and some members of my family happened to have come out to be part of that group. They were in the audience, and when I was getting ready to speak and when Jack was introducing me, he went through, as we all know how Jack can be very effusive in his praise and all the good things, and he went on to say, "My good friend is about to become married." I looked out into the audience where I had several members of my family whose chins dropped down to about their knees, because at that time, I had not even proposed to my wife, never mind alerted my family that I was getting married, so Jack has already taken credit for my marriage. I guess that is why he would rather have Catherine speaking today.

One of the things that I would like to talk about Jack Kemp, and others alluded to it, in 8 years of knowing Jack Kemp, I can never recollect having heard Jack Kemp, say a negative word about anyone in any type of personal sense. Jack, as we all know, had very strongly held views, and woe be to those who might have disagreed with him on one of those views that he held very strongly, but at no time did Jack Kemp ever allow that to impact on him personally or his relationships personally. Never would he, in sitting here listening to other Members debating, turn to someone and make a derogatory comment about a colleague. That just was not Jack's personality.

Jack feels very strongly about so many, many issues. He believes vehemently in his faith in democratic capitalism, and anyone who ever espoused a view at odds with Jack, obviously from an intellectual standpoint, Jack would disagree, but it never was personal. It never was allowed to degrade into something that would in any way hint that Jack might have a nasty word to say about someone.

I was one of those who ran for the first time in 1980, and Jack Kemp, came out to my district and spoke in my behalf. I ran on that platform that Jack Kemp espoused, as many mentioned, in 1976, 1978, and 1980, and when I ran in 1980, I ran on that platform.

I often wonder where Ronald Reagan's first term would have gone had Jack Kemp not been in the Congress for a few years before that paving the way for the supply-side economic revolution, paving the way for the Kemp-Roth tax cuts.

I think it is unquestionably the case that Jack Kemp's work in the trenches for a period of 4 to 6 years in going around the country campaigning for many, many Republican candidates, campaigning for his ideas, it is undoubtedly the case that he paved the way for Ronald Reagan to come in after his election and to articulate a policy that Jack had been so forcefully advocating for so many years, and that allowed us to score some of those very, very big victories in 1981 that resulted in the kind of economic growth that we have had over the last 72 months. I applaud JACK for that.

I would just close by saying two things. No. 1, not very many people appreciated his discourses on monetary policy, but, JACK, I want you to know I enjoyed each and every one of those speeches you gave on monetary policy and on the gold standard, and I want you to know that you are right on, even if no one else particularly cares, but I think it was an important discussion, and I know that you are going to carry that on at the Heritage Foundation.

The second thing that I would mention is that the group of us who were with JACK in his Presidential campaign after he had withdrawn from the race, he had us out, he and Joanne, to his home for dinner, and he gave each of us a book as a memento of the campaign. It was a book about Winston Churchill entitled "Wilderness Years," and I have had a chance to read that book. It was about the time in which Winston Churchill was excluded from his party's leadership, principally during the decade of the 1930's when so many very, very important policy discussions were taking place in Great Britain, and Churchill just was not a part of them within his party except kind of as an outsider. I think what JACK was telling us was that he, too, would probably have his wilderness years after his Presidential race ended, but JACK, like Winston Churchill had back in the 1930's that what carried Winston Churchill through was his belief in his cause, his belief in his mission, and the great friendship and support of so many of his close friends and associates.

We want you to know, JACK, that if there are any wilderness years for you, you can count on so many of us here in the House of Representatives and so many of your friends from around the country, you can count on us to be there to help support you, to help get you through those times when you may not think your voice is being heard. We will be there ready to pick up the banner again at the next time when you emerge in the national scene.

Good luck and God bless, JACK, Joanne.

Mr. WEBER. I thank the gentleman from Indiana very much.

Mr. Speaker, I am pleased to yield to another retiring Member, the gentleman from New York [Mr. STRATTON].

Mr. STRATTON. Mr. Speaker, I thank the gentleman for yielding me this time.

I remember the first time that I ever met JACK KEMP was in Geneva, NY, where I think he had spoken the previous evening to a membership of athletic leaders, and I had never realized, and I was not a fan of, the Buffalo Bills. I had not been aware of JACK KEMP, but I knew in that short time that he was a real figure, not only because of his athletic prowess, but also of his dramatic willingness to meet with young people and give them the drive and stamina that JACK was always recognized for.

As a former Member, not a former Member, but a former member of the New York caucus, I know that he was not always at hand on our meetings and our luncheons, but we knew that JACK KEMP was shooting for higher game and was looking for higher aspects, and all of us were aware that in the New York delegation we had a man who was outstanding as a representative of New York.

Mr. Speaker, we were proud to have him even though he was not able to come around as often as we would have liked to have seen him and could have bent his ear. Probably that was why he stayed away. He was afraid we might keep him for the entire hour and a half.

As one who has differed with JACK KEMP over my years in Congress, because I did not always agree with his economic program, but I think we have to recognize, as several other figures ahead have indicated, that the prosperity that we are enjoying today is a prosperity that was generated with the supply side of JACK KEMP.

The other aspect of my relationship with JACK KEMP was his fantastic capability and knowledge in defense. He was always strong for defense, and he and I had that in common, even if I was not able to understand the secrets of the Laffer curve, but I remember standing up on this side of the aisle on a number of programs of economic and military nature with JACK KEMP, and I always felt that I was doing the right thing for my conscience and the right thing for the country.

Mr. WEBER. Mr. Speaker, I thank the gentleman from New York for his important contribution.

Mr. Speaker, I would just like to inform my colleagues that my time is just about up, and there will be an additional special order taken out by the gentleman from Pennsylvania [Mr. WALKER], and rather than have to interrupt someone, I would like to conclude my special order at this time and allow the gentleman from Pennsylvania to proceed.

GENERAL LEAVE

Mr. WEBER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of my special order this date.

The SPEAKER pro tempore (Mr. GONZALEZ). Is there objection to the request of the gentleman from Minnesota?

There was no objection.

☐ 1545

SPECIAL ORDER PRECEDENCE

Mr. WALKER. Mr. Speaker, I ask unanimous consent that Mr. HORTON's special order precede mine on the same subject matter.

The SPEAKER pro tempore (Mr. GONZALEZ). Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

TRIBUTE TO THE HONORABLE JACK KEMP

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. HORTON] is recognized for 60 minutes.

Mr. HORTON. Mr. Speaker, I thank the gentleman from Pennsylvania for yielding, and I will be glad to recognize him in a moment.

It is my pleasure now to yield to the other gentleman from Pennsylvania [Mr. RITTER].

Mr. RITTER. Mr. Speaker, I thank the gentleman from New York for yielding.

Mr. Speaker, taking a look at the big picture, I personally believe that JACK KEMP has been the most influential Member of Congress of our time. He has been the central congressional figure in the Reagan revolution, especially on the subject of getting America moving forward to fulfill her potential via tax policy and tax reform.

JACK KEMP first advanced the Kemp-Roth bill, a blueprint for the income tax reform package of 1981, but JACK was not just talking about tax rate reduction. JACK KEMP was talking about motivation, incentives, and progress.

JACK KEMP is the ultimate motivator. I think we can say that Ronald Reagan in some very large measure won the Presidency and won the incumbency on JACK KEMP's ideas. The Kemp-Kasten bill introduced in 1984 was the first version of another major tax reform proposal to provide $2,000 exemption and top rate below 30 percent, and President Reagan signed the provisions into law 2 years later as part of the 1986 Tax Reform Act.

Countries all over the world have picked up the Kemp banner on taxes and they have progressed, too. Today we note that our own Treasury Department, in seeking more stable exchange rates, has moved closer to the Kemp ideas on monetary policy. JACK has also been a central player in the Reagan doctrine, a doctrine on foreign policy that has sought to promote freedom and democracy, a doctrine of activist promotion of freedom and democracy. He was a central player in the strategic defense initiative and bringing the ideas of the strategic defense initiative back home to the American people. He has been out front in the debate to overcome doctrinaire policies which would leave Americans unprotected from nuclear holocaust. In 1985 he cosponsored and played a major role in enacting the first U.S. aid to freedom fighters in Southeast Asia, the Cambodian freedom fighters, and now that policy is bearing fruit.

We all know that he worked ceaselessly to encourage foreign aid programs, to promote progrowth economic policies. As a ranking member on the Committee on Appropriations, Subcommittee on Foreign Operations, Export Financing, and Related Program, JACK has been the key Republican in the House in support of increased and continued foreign aid to Israel.

Mr. Speaker, JACK KEMP's dedication to freedom and peace in Central America was unsurpassed in this House, and I know that JACK KEMP feels real personal pain to see Communist tryanny in Nicaragua remaining as he leaves office.

On the other hand, democratic resistance in Nicaragua can have faith that JACK KEMP will never cease to press forward on their behalf. That is JACK KEMP. As a member of the Helsinki Commission, on which I served as the ranking Republican, JACK has always been a leader in the movement to help Soviet Jewry and led to changes in the areas leading the way to changes in Soviet policy. The ideas of JACK KEMP, arising in the highest circles of this administration, are fundamental ideas behind the progress we have made in our relations with the Soviet Union and their movement toward glasnost, more openness, and perestroika restructuring.

JACK's belief in and the love of his country, his optimism and his power to reach out, his ability to cross all political boundaries, have brought him and his ideas into the mainstream of America and the Republican Party. JACK's strategy for winning not only includes bipartisan activism but a philosophy of freedom and hope and undying confidence in the American people to fulfill their destinies when given the chance.

JACK has always been a team player and still is. It is part of his nature. While a member of the San Diego Chargers, JACK first entered politics as a supporter of then California Gov. Ronald Reagan. After being traded to Buffalo he was the quarterback of the Bills' football team for 13 years, winning many awards, before he began his political career in 1970.

JACK initially won the New York congressional seat by 6,000 votes, working with Democrats as well as Republicans in his district with the team approach, and in the 1972 election JACK received 75 percent of the vote and a plurality of 100,000, an incredible showing. Even Ralph Nader, who seldom has good words for Republicans in efficiency ratings of congressional offices, gave JACK high scores for a tireless worker for his constituents and creative thinker for his party.

As we all know, if a colleague has so much outstanding success early on it can produce an aura that infects even Members of one's own party with the occupational disease called envy. However, JACK was not going to allow that to happen. JACK became a persuasive speaker and a tireless campaigner for Republican candidates all over the Nation. He helped me in my district, over the years, four times, the Lehigh Valley of Pennsylvania, blue-collar, ethnic, labor-dominated, Democratic district, loves JACK KEMP.

It was not long before JACK KEMP was elected as chairman of the Republican Conference, the third ranking Republican leadership post in the House. He earned the right. He then earned the privilege of running for President of the United States. In the article "Seriously, Now, a Jock for President" Geoffrey Norman summarized, "Pressure is something an athlete, especially a professional, learns not merely to live with but to use to advantage." He added, "A final asset that a ballplayer brings to politics is an appreciation for the intricate chemistry of teamwork."

Indeed, JACK is a man of ideas who works with others as a team to translate those ideas into reality. The American people have been beneficiaries. It was a pleasure to work with JACK on key issues and to serve as an original member of the Kemp-Core group and as an adviser in his Presidential campaign task force on science and technology issues.

In fact, recently JACK strongly urged all his former Presidential advisers to get active on behalf of the Vice President and our prodefense, progrowth and profamily value movement. He wrote to all of us regarding the Bush campaign, stating, "We must support his efforts to set the agenda for the 1990's." He also emphasized regarding a Dukakis effort, "His program of furloughs, fear and failure, furloughs for criminals, fear of America's responsibilities, and obsession with economic failure, is not what America needs."

All of us here today know that JACK was proud of his adroit and compelling legislative accomplishments which he obtained within the framework, once again, of the team spirit. Although JACK has campaigned hard for Jeff Bell in the New Jersey campaign of 1978 for the Senate, it does not stop him from working closely with Bell's former opponent, Senator BILL BRADLEY, on tax and monetary policy. JACK worked with our colleagues on the other side of the aisle, the gentleman from the South Bronx District of New York City, Mr. GARCIA, and WALTER FAUNTROY, representing Washington, DC, on ideas such as urban enterprise zones and urban home studying, the tenant purchase of public housing.

Mr. Speaker, the list goes on and on. We will all be following JACK and his new assignment with the Heritage Foundation and in anticipation of those great ideas which he will activate and pursue and which we know he will come to us seeking support for.

To be helpful to all of us in this regard, I prepared a summary of JACK's initiatives, which I include at the end of my remarks.

In closing, Mr. Speaker, I emphasize the strong words in defining the problems of the American family that JACK put forth.

> Of all the challenges we face at home, none stand more menacing to the future of our democracy than the threats and the breakup of families and, in all too many cases, their failure even to form; we see the decline of discipline and erosion of values in education; the danger of sexually transmitted diseases; the loss of many young people to lives of crime, drugs, and even to suicide.

JACK was the only Presidential candidate in the primaries to develop a comprehensive family policy including Social Security.

A further personal view, my wife Edie and I and our two children, Jason and Christina, cherish our friendship with the Kemps and respect their strong family ties. JACK has a deep respect and love of his wife, Joanne and their four children, Jeffrey, Jennifer, Judith, and James. He and Joanne provided a fertile ground for cherished family values to take root in their own household.

JACK, it has been a privilege to work with you, and I convey my best wishes to you and the Heritage Foundation. I know that we will all continue to benefit from your efforts as you press forward for progressive change at home and abroad, and a special moment with JACK and his family after the end of his presidential campaign, JACK gave some of his friends in the Core group a copy of the Martin Gilbert biography of Winston Churchill, "The Wilderness Years." JACK, we who know you and who love you encourage you never to lose that energy, that drive, that enthusiasm, and that utterly ridiculous but beautiful commitment to principle. Keep the light shining, JACK, your time will come.

HIGHLIGHTS OF CONGRESSMAN JACK KEMP'S LEGISLATIVE INITIATIVES

A FOREIGN POLICY IN DEFENSE OF FREEDOM

Congressman Kemp is a staunch supporter of democratic resistance movements throughout the world, where people are striving to achieve the fundamental political, economic, and human rights enjoyed by Americans. He believes it is essential that the U.S. challenge the efforts of the Soviet Union and its allies such as Cuba, Nicaragua, Vietnam and Libya to destabilize other nations.

He is a leader in the efforts to provide military and humanitarian aid to the Nicaraguan freedom fighters. He recently introduced the bipartisan Nicaraguan Freedom Act of 1988 to provide $57.14 million in aid to the Nicaraguan Democratic Resistance, including $30 million in military aid. He has proposed ending diplomatic relations with the Sandinista government of Nicaragua and extending recognition to the Nicaraguan democratic resistance.

He has strongly supported aid to El Salvador, Honduras, Guatemala and others threatened by Cuban/Sandinista subversion.

He has consistently supported U.S. assistance to the noncommunist resistance forces in Mozambique, Angola, Afghanistan, and Cambodia.

Congressman Kemp believes that a successful defense policy is based on peace through strength to protect our freedom and assure our defenses and our vital interests.

He has been a vigorous supporter of accelerating the development and deployment of the Strategic Defense Initiative [SDI] system. In 1987, he offered an amendment to the DOD Authorization bill to require full-scale development and testing of the SDI systems to achieve early deployment.

In 1988, he offered an amendment to the DOD Authorization bill calling for the early deployment of a ground-based Accidental Launch Protection System [ALPS] as an initial step to accelerate deployment of a comprehensive SDI.

He has proposed establishing a new department within DOD—the U.S. Defense Force—to defend against aerial threats including missiles and aircraft.

He has supported essential modernization programs to assure that we have effective deterrent forces, both nuclear and conventional.

He supports sound arms control steps requiring full compliance with existing agreements and based on equitable reductions and effective verification.

He believes that the U.S. should seek to ensure that this country and our allies do not provide credit and technology which the Soviets can use for their arms buildup and economic reforms. He has introduced legislation to require U.S. banks to make public the number and financial conditions of untied, low-interest loans made to Soviet bloc countries.

Congressman Kemp is a strong supporter of one of this country's staunchest allies, Israel.

He introduced the Anti-Terrorism Act of 1987 to shut down operations of the Palestine Liberation Organization [PLO] in the U.S. by making it illegal to provide funds or services to this terrorist group. He has called for the termination of the PLO's observer status at the United Nations. He also has proposed reducing U.S. contributions to the UN by the amount used for expenses by pro-PLO groups.

He has called for reducing U.S. funds to the United Nations until that body revokes its resolution declaring that Zionism is a form of racism.

He has consistently opposed the sale of sophisticated military arms to Arab countries that refuse to recognize Israel's right to exist.

Congressman Kemp believes that freedom and human dignity are the rights of all people, and he is a leader in the human rights movement to help ensure that these rights are recognized and respected throughout the world.

As a member of the Helsinki Commission, he has been instrumental in helping to obtain the release of many refuseniks from the Soviet Union. Among those he has helped are Natan Sharansky, Vladimir Feltsman, Vladimir and Maria Slepak, Lev Shapiro, Ida Nudel, and Boris Gulko. He was also very active in having Yelena Bonner and Andrei Sakharov released from internal exile.

Through his position on the Appropriations Committee, he was successful in providing funds to the Solidarity trade union movement in Poland.

IN 1980, he cofounded the Christian Rescue Effort for the Emancipation of Dissidents [CREED] from the Soviet Union.

He has been active in efforts to free Catholic priests who are imprisoned by the Peoples Republic of China because of their faith.

He introduced the bill to give Elie Wiesel a gold medal in recognition of his humanitarian efforts and outstanding contributions to world literature and human rights. He also led the campaign to have the Nobel Peace Prize awarded to Professor Wiesel.

He helped lead the successful effort in 1981 to make Raoul Wallenberg an honorary U.S. citizen, and he also is working to establish a Raoul Wallenberg Memorial. Mr. Wallenberg, who helped save thousands of Jews during World War II from the Nazis, was taken into custody by the Soviet Union after the war and has not been heard from since.

He took the lead in efforts to prevent the removal from the United States of Miroslav Medvid, the Ukrainian sailor who sought asylum in the United States in 1986 and was turned away.

He supports self-determination for the people of Hong Kong.

He was active in the successful effort to suspend most-favored-nation status for Romanian until that country recognizes and protects fundamental human rights such as those spelled out in the Helsinki Accords.

He has been a staunch supporter every year of resolutions on Solidarity Sunday, Helsinki Human Rights Day, Andrei Sakharov Honor and Freedom Day, Baltic Freedom Day, Greek Independence Day, Baltic Freedom Day, Religious Freedom Week, and Jewish Heritage Week.

In 1988, he joined in urging the Soviet Union to proclaim a general amnesty for imprisoned Christians and allow Christians to practice their faith in celebration of the millenium of the Christianization of Kievan-Rus.

In 1981, he was active in efforts to help the "Siberian Seven," two Pentecostal families who sought refuge in the American Embassy in Moscow because of oppression in the Soviet Union.

A PRO-FAMILY FOUNDATION

Congressman Kemp believes in the sanctity of human life and has worked diligently to reverse pro-abortion policies.

He supports a constitutional amendment to protect the right to life of unborn children.

He has consistently supported and voted for the Hyde amendment to ban the use of federal funds for abortions except where the life of the mother would be endangered.

He introduced legislation to prevent organizations that perform or refer for abortions from receiving federal family planning funds.

Through his position on the Appropriations Committee, he successfully barred U.S. funds from going to any organization that participates in a program of coercive abortion. This results in funds being cut off from U.N. organizations that supported a coercive abortion program in the Peoples Republic of China.

He has supported legislation prohibiting health care facilities from permitting handicapped babies to die through deliberate neglect.

Congressman Kemp believes that the tax code should reflect the fact that children are our greatest resource.

His tax reform proposals to double the personal exemption and increase the earned income tax credit for low-income families were incorporated into the 1986 tax reform act.

To encourage families to adopt children, he has proposed allowing families to deduct all adoption expenses.

To help families pay for child care, he has called for changing the existing child care credit into a universal refundable credit available to all families with pre-school children. He also has supported increasing the amount of expenses which could be used in computing the credit.

Congressman Kemp believes that every child should have access to a quality education in order to achieve a better future.

Recognizing the need to improve the quality and standards of public schools, he has worked to increase funding for magnet schools.

To encourage families to save for higher education expenses, he has supported the creation of tax-deferred education savings accounts.

He has supported a constitutional amendment to permit prayer in public schools.

He has been a strong supporter of tuition tax credits.

Congressman Kemp believes that we need a comprehensive national strategy against AIDS based on the principles of caring and responsibility. He introduced the AIDS Prevention Act of 1987 to establish federal grants to states for mandatory, routine or voluntary testing programs; counseling; confidential contact tracing, with stiff penalties for violations of confidentiality; education; and health care planning.

Congressman Kemp is a longtime advocate of strengthening laws against child pornography. He introduced legislation to give investigators and prosecutors additional tools to prosecute offenses. He also has proposed requiring mandatory life sentence for kidnapping children and stiff minimum sentences for repeat offenders of child pornography laws.

Congressman Kemp believes that an effective anti-drug program must include stiffer penalties for users and sellers, a stepped-up international drug control effort, and improvements in interdiction. He supports a death penalty for drug kingpins, creation of a multinational strike force to combat drug trafficking and production, military assistance to countries trying to eradicate their drug crops, and use of the Armed Forces in drug interdiction.

FULL EMPLOYMENT WITHOUT INFLATION

Congressman Kemp believes that lower tax rates are essential to increase the incentives for work, investment, and savings, all necessary for the strong economic growth that allows our country to make progress toward its goals. He has led the successful fight to lower tax rates from 70 percent in 1980 to 28 percent in 1988. His efforts to lower tax rates, simplify the Tax Code, and protect taxpayers from tax increases due to inflation have benefited workers, families, and the poor.

Many features of this "Fair and Simple Tax" plan were incorporated into the 1986 tax reform act, including a top rate of 28 percent, a $2,000 personal exemption, and an expanded earned income tax credit for the working poor.

In 1981, his proposal to reduce tax rates by 25% across-the-board was enacted into law.

He led the opposition to the tax increases of 1982, 1983, and 1984. He also supported efforts to repeal some of the more burdensome provisions of these bills, including the withholding on interest and dividend income.

He introduced the Plant-Opening and Jobs Creation Act of 1988 which provides tax incentives for new jobs, new investment, and new training. These incentives include a reduction in the capital gains tax rate to 15 percent, a repeal of the 1990 payroll tax increase, and continuation of the tax-free treatment of educational assistance to workers. The bill also provides tax incentives to create new jobs and invest in the inner cities. The bill incorporates his pro-growth trade proposal to negotiate a North American Free Trade Area as well as reciprocal expanded trade agreements with our other trading partners.

To spur the creation of investment capital in small businesses, in 1981 Congressman Kemp supported cutting the capital gains tax rate by 50 percent on the sale of equity of small businesses.

In 1975, he introduced the Jobs Creation Act, which increased incentives for savings and investment. Among the bill's proposals were tax credits for personal savings and investment, increases in the amounts individuals could put into retirement savings accounts, an exclusion from gross income of dividends, a partial exclusion of capital gains, a reduction in the corporate tax rate, and an increase in the investment tax credit.

He has been a strong supporter of tax-deferred retirement savings accounts, which would help Americans enjoy a more secure, comfortable retirement. He has proposed increasing the amount that can be put into these accounts, as well as allowing spouses who remain at home to have their own accounts.

A PRO-GROWTH TRADE POLICY

Congressman Kemp believes the answer to our trade problems is to tear down trade barriers and expand trade. He believes expanded trade results in stronger economic growth, more jobs, and a higher standard of living for all Americans.

The American Trade, Growth and Employment Promotion Act of 1987 reflects his strong free-trade agenda. It requires the President to enter into negotiations to establish a North American Free Trade Area comprising the United States, Canada, Mexico, and the Caribbean Basin countries. The President also would receive new authority to negotiate expanded trade agreements with our trading partners, making special provisions for poorer developing nations. The bill requires a consumer impact statement for all trade legislation so that the American people know the costs—or benefits—of the legislation.

He was a strong supporter of the successful negotiations to establish a free trade agreement between the United States and Israel.

He has been a strong supporter of the Caribbean Basin Initiative designed to help spur economic growth and expanded trading opportunities with these countries.

He has been a long-time supporter of creating a free trade area between the United States and Canada.

A NEW WAR ON POVERTY

Congressman Kemp believes that one of our greatest challenges is to expand economic opportunity to all people, including those left behind by the recent economic expansion. He believes that the American dream is for all people, and that all Americans should have a decent job, be able to own a home in a safe neighborhood, and look forward to a better life for themselves and their children.

To encourage economic growth and job creation in our inner cities and poor rural areas, Congressman Kemp has introduced enterprise zone legislation, designed to "greenline" these areas by providing tax incentives for entrepreneurs and small business owners who create jobs in enterprise zones.

His proposals to empower residents of public housing to manage their own projects and to realize the dream of homeownership by purchasing their units at a discount were included in the 1987 housing authorization bill. He believes that the poor living in public housing should have the right to buy their own homes. His proposal would allow public housing residents to purchase their units at a deep discount with a low-interest mortgage.

In order to help the poor and minorities receive the basic skills needed for vocational education, he has proposed making community-based organizations eligible for vocational education grants.

SOUND MONEY

Congressman Kemp has been at the forefront of efforts to reform our monetary system to achieve stable, honest money. He believes that a dollar should be worth as much tomorrow as it was yesterday.

He supports the development of a modernized gold standard to restore balanced budgets, exchange rate stability, and low real interest rates. He has called for prompt disclosure of monetary policy decisions by the Federal Open Market Committee to end uncertainty among investors and the American people.

He opposed the elimination of fixed exchange rates for international currencies, as well as the abolition of the official price of gold.

A SOUND SOCIAL SECURITY SYSTEM

Congressman Kemp believes that Social Security must remain the bedrock of retirement security to protect economically vulnerable older citizens and the family.

In order to protect Social Security benefits from being subject to budget cuts, he has called for removal of the Social Security trust funds from the unified Federal budget.

He introduced legislation to repeal the Social Security earnings test which limits the amount of outside earned income Social Security beneficiaries can earn without having their benefits reduced.

With surpluses in the Social Security trust fund higher than expected, he has proposed repealing the 1988 and 1990 payroll tax increases, which adversely affect small businesses and low-income workers the most.

He has supported repeal of the 1983 provision which requires Social Security recipients to include tax-exempt interest in computing the amount of tax owed on Social Security benefits.

PROTECTING OUR NATURAL RESOURCES

Congressman Kemp believes we can protect our natural resources without impeding strong economic growth.

To reduce pollutants which contribute to acid rain, one of our most serious environmental problems, he introduced legislation to reduce emissions of sulfur dioxide and nitrogen oxide.

Believing that a plentiful, secure supply of domestic energy is crucial to our national security, he supports deregulating natural gas, eliminating government interference in energy markets, and creating additional incentives for new oil and gas drilling, as well as maintaining marginal wells. He also supports environmentally sound drilling of new oil and gas sources in the Arctic National Wildlife Refuge.

He opposed government controls on energy during the 1970s, arguing that they helped create artificial shortages in energy supplies as well as higher prices. He opposed quotas on imported oil, higher gasoline taxes, and price controls on domestic oil.

He was an early proponent of repealing the windfall profits tax.

He was one of the leaders of the successful effort in 1985 to eliminate government subsidies to large corporations involved in commercial development of synthetic fuels.

He has supported tax credits to encourage the recycling of hazardous wastes.

FISCAL RESTRAINT

Congressman Kemp believes that restraining federal spending, along with strong economic growth and a stable monetary policy, are the keys to reducing the federal deficit.

He opposes lumping all of the government spending bills together in an omnibus continuing appropriations resolution, which forces the President to accept all of Congress's spending decisions or risk shutting down the government. He supports legislation requiring a 60% majority vote of both Houses of Congress for passage of continuing resolutions.

He has supported a constitutional amendment giving the President a line-item veto in appropriations bills.

In 1977, he proposed eliminating inactive and overlapping federal programs, requiring programs to be reauthorized at least every 4 years, and establishing a zero-base review of government programs every 4 years.

OTHER SIGNIFICANT INITIATIVES

Congressman Kemp helped win approval of a legal public holiday honoring the birthday of Martin Luther King, Jr. He also serves on the Martin Luther King, Jr. Federal Holiday Commission.

Congressman Kemp supported legislation which presumed that certain diseases developed by Vietnam veterans exposed to Agent Orange in Southeast Asia are service-related. This presumed service connection enables these Vietnam veterans to receive disability benefits.

Congressman Kemp has proposed tougher penalties for criminals who use a gun to commit a felony and also strict mandatory penalties for the use of armor-piercing bullets.

Congressman Kemp has called for repeal of the punitive sanctions imposed on employers who hire illegal aliens.

Mr. HORTON. Mr. Speaker, I thank the gentleman for his very personal and sincere comments about our good friend and colleague, JACK KEMP.

Mr. Speaker, I now yield to the gentleman from North Carolina [Mr. COBLE].

Mr. COBLE. Mr. Speaker, I thank the gentleman for yielding.

As previous speakers have defined this friend of ours from Buffalo, NY, as an arsenal of integrity, an arsenal of intelligence, an arsenal of energy. All are correct.

I recall about 3 years ago when chambers of commerce, from my area in North Carolina, Greensboro, High Point, and Winston-Salem, came on their annual excursion to the Potomac, and JACK KEMP agreed to be the speaker for that group as a favor to me. He arrived in a timely way after he had made nine stops and speeches previously that day from New York all the way down to Washington.

As one of the previous speakers indicated, he was filled with zeal and enthusiasm that night, in spite of his tiring day, and after he left our meeting he announced to us that he was scheduled to appear as a spectator at a football game, and I think he was to see his son or the son of a friend who was to play that night. That indicates the boundless energy that this man possesses and exhibits.

Earlier this year and last year, many Members on this side of the aisle, as the gentleman from New York knows, underwent great frustration because we had many candidates for President who were outstanding candidates, many whom we could support enthusiastically. The three whom I knew the best are Vice President GEORGE BUSH, Senator BOB DOLE, Congressman JACK KEMP. I could have been comfortable supporting any of the three. I elected to go on the Bush wagon.

□ 1600

And I worked enthusiastically for GEORGE BUSH's nomination. Shortly after it became apparent that the Vice President would be our standard bearer, JACK KEMP came to me on the floor of this House and he said, "HOWARD, if there is anything I can do in your district to help you, let me know."

Now keep in mind I had just been trying to beat his britches off for the past 4 or 5 months and he knew that. But he was willing, ready, and able to come to my district to help me.

I think that is the kind of man he is.

And as has been said earlier today, he will be missed on this floor.

JACK KEMP, we wish you, Joanne and your family Godspeed, smooth sailing and many happy years ahead.

Mr. HORTON. I thank the gentleman from North Carolina. I just add to what the gentleman said with regard to the candidates that we had for President that JACK KEMP is not here today because he is in Alabama speaking on behalf of Vice President GEORGE BUSH.

Mr. COBLE. That does not surprise me.

Mr. HORTON. That shows the way he feels.

Mr. Speaker, I am happy to yield to the gentleman from Pennsylvania, BOB WALKER, who yielded me this time so that we could handle this special order.

Mr. WALKER. I thank the gentleman very much and thank him for yielding briefly to me to talk about my friend, JACK KEMP, because I have been impressed for the entire time JACK has been in the House. I was here as a staff member when JACK first came.

What always struck me about JACK KEMP is the fact that he had a sense of history. There are very few people who can really understand where they are in terms of the historic changes taking place around them. JACK seemed to be one of those special people that had a sense for history, who understood this this Nation in the latter part of the 20th century is going through a tremendous period of turmoil as the world is because there is a great change taking place in our economics, in our politics, in our social structures.

He tried to find a way that politics could respond positively to that change and he came upon the theme that if you look back through history, as has always been true, that when change was inevitable men were best in politics if they moved toward the concept of opportunity.

So JACK took opportunity as his cornerstone and began to look for ways that public policies could be developed that would allow this Nation to expand the opportunities of individuals, expand the opportunities for investment, expand the opportunities to grow into the future.

As a result of that sense of vision, as a result of that sense of knowing where this Nation lies in history and what role he might play in it, he has become one of those few people in the House who really makes a difference in changing the Nation.

Very few of us, as a part of our work in the House, get a chance to truly change the Nation, not just affect a couple of pieces of legislation. Most of us are very grateful if we leave here having done that, but to change the course of history as a part of what you do in the House, that is a real achievement.

JACK KEMP is one of those few people who did that.

He did it because he was of enough stature to change a major political party. JACK has often told those of us who spend time with him that you know, you can be a party of the thesis, or you can be a party of the antithesis; you can be a party that is progressive enough to talk about ideas and talk about how you change things for the better or you can be a party simply that complains about that which is."

Now, JACK understood that under the liberal welfare state policies we have been following for 50 years, things were going wrong. He knew it was not good enough just to complain about the liberal welfare state. He know what you had to do was was that you had to have an alternative.

So he put together the concepts that are now called the Conservative Opportunity Society, concepts for lower tax rates, concepts for individual advancement, concepts where everyone from the bottom up benefits from the fact that you go and move forward into the future.

Well, those are historic achievements, to change the direction of history, to change the direction of a party I think is something which is very, very important to the future.

But I think it is also important as we do this special order on the floor that we do not talk in the past tense because I am convinced that what we have seen in the House, on the House floor, and what we have seen in JACK's career is just act one of a multiact play. Who knows how many acts there are to run. But we know that he is a leader of historic dimensions.

He is someone who has already inspired a new generation of political leaders, will continue to inspire new generations of political leaders, and, I am convinced, will play an increasingly important role in this country's history as we change and grow toward the 21st century.

I appreciate the opportunity that the gentleman has given me to say these few words.

Mr. HORTON. I thank the gentleman.

Mr. Speaker, I yield to the gentleman from Nebraska.

Mr. BEREUTER. I thank the gentleman for yielding. As is the case with an overwhelming number of Members of men and women of this House, I have great respect, admiration, and appreciation for JACK KEMP, for his contributions to this body, and for his contributions to the Nation; a respect for his personal integrity and for his unrestrained enthusiasm about the opportunities for America and for every American within the society.

JACK KEMP was an inclusionary leader, an inclusionary politician; that is to say he preached, more importantly he practiced the politics of inclusion. For that we owe him a debt of thanks.

But I think that JACK KEMP made an especially important contribution to the country and to this institution because JACK KEMP is a man of ideas.

JACK's agenda was always based upon ideas and a sense of idealism that is entirely consistent with our country and with this institution.

Jack, I wanted to say extemporaneously these remarks about you, a man of ideas. That is why you stand out here above all else in my judgment. We will miss you here, Jack Kemp, but more importantly this institution will miss you. We are poorer for your retirement from this body. Personally and institutionally I say to you Jack Kemp, thank you, thank you for the country, thank you for your contributions to the Congress of the United States.

Mr. HORTON. I thank the gentleman for his very sincere remarks.

I am sure JACK KEMP appreciates it. I now yield to the gentleman from California, HENRY WAXMAN.

Mr. WAXMAN. I want to thank the gentleman very much for yielding to me in order to give me an opportunity to say a few words about JACK KEMP. I hope I do not ruin his reputation by paying tribute to him. Obviously, we come from different political parties and presumably different philosophies.

Mr. HORTON. I am sure he will feel very honored as a result for your taking the floor to commend him.

Mr. WAXMAN. I thank the gentleman.

We have different philosophies on many issues, economic and political; but one thing that I want to single out in terms of the contribution JACK KEMP has made to Congress, to the American Government, and to our values is his strenuous effort on behalf of human rights. He has been a champion of the fact that human rights and human freedom are important, not only in this country but around the world and our Nation has to stand for fighting for a people that are oppressed in different parts of this world.

I had the privilege of being with him in the Soviet Union when we met with some of the leaders of that country and he spoke out with the rest of us about the oppression of Soviet Jews, Soviet Christians, other people, minority groups within the Soviet Union, various ethnic groups that were being pushed into assimilation where their uniqueness and differences and beliefs and freedoms were being obliterated.

JACK KEMP has never wavered on behalf of fighting for freedom for people, for their rights. And it is a remarkable fact that with all the activities for which he has been paid tribute this evening, from economic activities to political involvement, that he had so broad a range a scope of his participation on the issues that are important to the American people.

I did not realize it until we came here to Washington that JACK went to high school in my district. He went to Fairfax High School. My wife attended Fairfax along with JACK's brother.

So, I had some sense of kinship because he did at one time live in Los Angeles.

I have admired him, I have admired his integrity, his vigor, his sincerity, his willingness to take on issues and to fight for what he believes in.

I want to wish JACK and Joanne the very best.

Mr. HORTON. I thank the gentleman for his very glowing tribute and thank him for taking the time to express his personal thoughts with regard to JACK.

Mr. Speaker, I yield to another gentleman from California, JERRY LEWIS.

Mr. LEWIS of California. I thank the gentleman in the well [Mr. HORTON], and the gentleman from Minnesota [Mr. WEBER], for this effort today on behalf of our collegue, JACK KEMP. I am here to spend a few moments with you to try to share and communicate my feelings about our dear friend, JACK KEMP, and I want you to know, JACK and Joanne, that I come here with nary a note. I do not intend to revise and extend my remarks. So, what you see is what you are going to get.

Now I first heard, Joanne, about your husband when he was a young man playing games at Occidental College. He was not just playing games, he was making a lot of people look silly because he was so talented at what he did. He went further in his career at San Diego. I watched him then. And it was with no small sense of loss or indeed no small sense of envy that we saw the Buffalo Bills benefit from this incredible talent as it matured. It is that talent and it is the maturity that I would like to talk a little bit about today.

I wanted to mention to you, JACK, that it was in 1955, the summer of 1955 that I first decided for certain that I would be involved in public affairs. I had the chance in that summer to travel to the country of India in one of the very early people-to-people programs that preceded the Peace Corps where 14 students per summer would travel to Southeast Asia, to try to go from village to village, to communicate a bit about America to those Indian college students.

During that summer I presumed at the beginning that one day if I was involved in public affairs that I would do so as a Democrat. And at the end of the summer I was convinced that one day politics would be a piece of my work and I knew I would do so most likely as a Republican, largely because it was one thing for me in those days to look in the magazines or look at a movie newsreel and see young people who were starving to death, people who did not have a chance or opportunity in life. It was another thing entirely to have the experience of traveling to India, walking down a mud pathway and step aside rather than step upon a small child who was lying in the mud, watch his mother brush the flies away as he died literally from starvation. That forced me for the first time in my life to begin to think through why the difference between a country like India with so much potential and a country like the United States; why but for the grace of God I might have been there or you might have been there instead of exercising our capabilities here in this country.

When I arrived in the Congress of the United States, I heard a little more about JACK KEMP. Ten-ten-ten was the news in those days; he wanted to cut, squeeze, and trim along with Ronald Reagan. If we could cut back the amount of money the Federal Government received we were pretty well assured we would spend a little bit less. Indeed, his voice was being heard very effectively across the land.

But I must say, beyond football I did not really know exactly what to expect. I got to know JACK best when a couple of years after that I had the privilege of moving to the Committee on Appropriations and JACK suddenly became the ranking member of the Subcommittee on Foreign Operations. That bill decides what we are going to spend and how we are going to spend it in terms of foreign assistance throughout the world. A football player who had come to Congress, a fellow who talked a lot about taxes, suddenly became a real part of my everyday life.

Quickly I found JACK KEMP to be not just a quick study, instead, a very, very talented, caring, passionate man who wanted to make a difference, not just here at home but for people around the world. JACK provided a new kind of leadership on our Subcommittee on Foreign Operations which had Republicans reaching out to make a difference in the world of nations.

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JACK in his passion for ideas and issues was willing to go the extra mile to impact the direction we might take as a country. In the 20 years now that I have been involved in public affairs, I have had one person come to my district to speak on my behalf. That one person was JACK KEMP, and the reason was not because we cannot raise money without speakers in San Bernardino County but, rather, because here was a very unique fellow that I wanted my people to get a piece of, to see firsthand, because he had the audacity to talk about enterprise and opportunity and the importance of the individual in our society. He truly believes that the difference in America in terms of the world is that each individual is important, that each individual being able to exercise his talent, if indeed he is willing to, will make a difference in the future of mankind.

JACK KEMP reflects that in his daily work here in the House. He has not just made a difference in the House of

Representatives; he has made a difference in our country and has impacted the world. That has been said already. But let me say to Jeff, to Judith, to Jennifer, and to Jimmy, I knew your dad long before he knew you, but indeed he is a human being who cares not just about his family, as he does so deeply, he cares about the state of mankind, and he knows that the difference will be each individual exercising his talent and government allowing those individuals to exercise their talents on behalf of all of us, our party, our families, and indeed our country.

God bless you, JACK and Joanne, in the years ahead. We look not to that which you have done in the past but to the next chapter in what has already been a fantastic book that details the story of your lives.

Mr. HORTON. Mr. Speaker, I thank the gentleman from California [Mr. LEWIS]. Like JACK KEMP, he said that right good, and he did not have any notes.

Mr. MADIGAN. Mr. Speaker, will the gentleman yield?

Mr. HORTON. I yield to the gentleman from Illinois.

Mr. MADIGAN. Mr. Speaker, the gentleman from California [Mr. LEWIS] has just made reference to JACK's lovely wife, Joanne, and I do not think this would be complete if someone did not mention the respect and affection that I think all congressional wives have for Joanne Kemp. She is a terrific lady, with firmly held convictions and is very competent and very able of expressing those convictions. She has been a great asset to JACK in his political career as a helpmate.

So I would hope that remarks about Joanne would be included in this special order as well, in addition to these lovely remarks that have been expressed about our departing colleague, the gentleman from Buffalo.

We have a situation in central Illinois that occurs once a year. It is a very prestigious invitation for anyone in public life. It comprises an assembly of about 800 business leaders from throughout central Illinois, and they choose who they want to come annually to speak to them. The speakers throughout history have included Presidents of the United States, Vice Presidents of the United States, Members of this body and Members of the other body, and many Cabinet members as well.

I had the pleasure of accompanying JACK KEMP to this event a few years ago when they extended the invitation to him and he was kind enough to accept it. It was a very rare experience, I would say to my colleague, the gentleman from New York, because JACK talked extemporaneously and talked about the things he has seen in his travels across America. He talked about the poverty he had seen, and he talked about it so eloquently that there were misty eyes throughout that room of 800 men and women.

Then he talked about the things that Government could do, the changes that Government could make that were referred to by our colleague, the gentleman from Pennsylvania [Mr. WALKER]. And he had people smiling. He was also humorous. I remember one line. He said, "If you took all the economists in this country and laid them end to end"—then he paused and said, "wouldn't that be wonderful?" Everybody broke out in applause. There apparently was not a high degree of respect in that audience for members who pursue the economic sciences.

JACK made them laugh, he made them cry, he made them applaud, and when he was through, they gave him a standing ovation that went on for several minutes.

As I said, he did it all extemporaneously, and it was a wonderful performance. It all came from the heart. It was all very real and all very sincere.

I think the gentleman from Pennsylvania [Mr. WALKER] was entirely correct when he said, "This is only act I," that we will certainly see more of many activities, political and otherwise, on the part of the gentleman from New York [Mr. KEMP], who is leaving this body to go on and do other things.

Mr. Speaker, I have certainly enjoyed my service with him. I certainly have respected his leadership abilities, and I thank the gentleman from New York for having this special order.

Mr. HORTON. Mr. Speaker, I thank the gentleman from Illinois [Mr. MADIGAN] for his comments, and I know that JACK will appreciate them very much, too.

Mr. Speaker, I now yield to the final speaker, the gentleman from Minnesota [Mr. WEBER], who took a special order along with me to honor our colleague, JACK KEMP.

Mr. WEBER. Mr. Speaker, I thank the gentleman from New York for yielding.

I know we have had a lot of speakers, and we are almost ready to proceed with the business of the House.

I did not get an opportunity to say much on my own time, so I hope the membership will allow me to make a few comments in concluding this special order that has been going on now for the better part of an hour and a half, I believe.

First of all, let me say that it was really a tremendous experience for me to listen to our colleagues, and I want JACK and Joanne and his family to know that every time I heard DAN COATS or HENRY HYDE or anybody else speak for the last hour and a half, I regretted that I had not spoken first because I kept thinking, "That's what I wanted to say." So I want to associate myself first with all the fine remarks of the Members who preceded me.

Mr. HORTON. That is a good move.

Mr. WEBER. Second of all, let me say that there are a couple of things that did not get hit hard enough, and just as a cleanup batter in this order, I want to make reference to those interests. JACK has been lauded here as a pioneering force in economic growth for opportunity, for peace through strength, and for SDI. That is all very true. But there are a couple of areas that were not mentioned that I know are very close to his heart. Outside of this country and across the ocean, on the other end of the Mediterranean Sea, there is a nation filled with people who are all very grateful to JACK KEMP. I am talking about the State of Israel. One of JACK's consuming interests has been a strong, unswerving, absolute dedication to the American-Israeli partnership, and all across this country there are many people who are aware of that and grateful to him. Through his leadership on the Foreign Operations Committee, he was a leader in trying to convince many often reluctant Republicans and conservatives to support foreign aid and particularly to support aid for Israel. He opposed arms sales, and at every stage of the debate he was a strong advocate of Israel's interests as being in America's interests.

In addition to that, let me say that one of our colleagues who is not able to be with us today but who, I believe, has submitted some comments for the RECORD, is Congressman CHRIS SMITH of New Jersey. The gentleman from New Jersey is chairman of the Congressional Pro-Life Caucus. That is a controversial issue, Mr. Speaker, but it is an issue that should not go unmentioned, because in his years in the Congress, along with HENRY HYDE who spoke earlier, there has been no one who has been a more forceful exponent and proponent of the rights of the unborn than JACK KEMP.

One of the pioneer policy changes in this administration was the articulation of a new population policy in Mexico City a couple of years ago. JACK KEMP was the architect of that policy shift. And as is typical of JACK, his approach to the abortion issue, which again is a controversial issue, is not a nay-saying, negative approach. And in articulating support for the Mexico City policy, JACK's point was that people are a resource, a positive, vital resource. He comes at that issue as positively as he does with so many others.

Finally, let me just talk for a minute or two about JACK on the personal level. As I said to my friend, the gentleman from New York [Mr. HORTON], I had some tremendous opportunities as a supporter of JACK KEMP for President to talk about him, and people often asked me, what was the thing that I wanted to impart most about JACK at the personal level? And I made a small contribution, I believe, to JACK's campaign for President in that I think I was the first one to suggest to a report from the Washington Post that there was an analogy to be made to a great Democratic politician from my State, and that politician was Hubert Humphrey. I said, "Hubert Humphrey was known, of course, as the Happy Warrier, and," I said to David Broder of the Washington Post, "I think JACK KEMP has a lot in common in that area with Hubert Humphrey."

I meant that not philosophically but in the sense that in the core of Hubert Humphrey's being there was nothing dark, there was nothing evil, there was nothing malicious, there was just a good man who loved politics, loved the clash of ideas, and really bore no ill will to the people who disagreed with him.

In private as well as public conversations, I have seen that very strongly in JACK KEMP. To be sure, he is a competitor, a fierce competitor, and to be sure, he is one who believes passionately in his point of view and, with some passion, that people who are on the other side of his point of view are wrong, but always with a strong, deep sense that every individual has a tremendously important contribution to make, and that every point of view is legitimate.

There was indeed and is indeed no dark side that I have been able to see publicly or privately with JACK KEMP. And that is important for people to know in an area where the personal side of politicians is, I think, increasingly subject to a lot of question. We may all get sort of a bad rap on that, but this is a man who, even when engaged in very difficult political combat, always maintained the highest degree of respect and even affection for people with whom he was disagreeing and who genuinely and honestly pursued the marketplace of ideas in political competition as a joy and an opportunity to improve the condition of man.

I think of all the words I have heard spoken here this afternoon there were five that were the most descriptive of what I would say is true about JACK KEMP's involvement in the process, and they came again from our very eloquent friend, HENRY HYDE. He said them without a great deal of emphasis, and I am just going to repeat them. He termed JACK KEMP "a vital force for good." Those are not overpowering words. In fact, they are almost understated. But if we think about it, what could be said that is better about any of us who dedicate ourselves to public life than that we are a vital force for good?

Mr. Speaker, it is my pleasure to have been associated in the past and to be associated in the future with JACK KEMP and to be associated with the good works that I believe he is pursuing.

Mr. HORTON. Mr. Speaker, I thank the gentleman from Minnesota [Mr. WEBER] for that very sincere analysis and for his sincere remarks with regard to his feeling about JACK KEMP and what he has contributed to this country and to this Congress.

On behalf of the New York delegation, we are going to miss JACK in the next session of the next Congress. We have been very proud that he has been a member of our delegation, and we wish him and Joanne and the family every good happening as they proceed into many new adventures in this country.

Mr. SPENCE. Mr. Speaker, as the 100th Congress draws to a close, it is with a sense of sadness that one of my dearest friends, JACK KEMP, will be leaving us for a time. I came to Congress with JACK back in January 1970, and since that time I have come to regard him as a great friend and trusted adviser.

JACK KEMP represented the type of youthful energy and vigor 18 years ago that was essential to the cause of good government and a general attitude on the part of the American people that the time for tired, misused political cliches was over.

From day one, JACK KEMP has demonstrated to young people all over America that thoughtful, compassionate conservatism was the right approach for America's future. With boundless enthusiasm, a sensible message, and a zeal for articulating the American dream he has encouraged millions of people from all walks of life to work hard and build a nation that our children and grandchildren can be proud of.

JACK KEMP believes in America. He believes in free enterprise, and he fights for the American taxpayer. In fact, he has few equals when it comes to understanding the Federal Tax Code and how our tax system should be used to encourage development and growth rather than penalize those who invest and save for America's future.

JACK has accomplished so much in such a short lifetime that it would be virtually impossible to list everything. As one of the premier players in the old American Football League he thrilled millions of football fans with his gutsy determination and hard-nosed play. But more important, he took those football skills and added his natural talent to communicate with people to become an inspiration to America's youth. He has always been a symbol of the very best that competitive sports can offer, and if ever a sports figure was "Jack Armstrong, the All-American Boy," it is JACK KEMP.

While I am going to miss the counsel, wisdom, and dedication of JACK here in the House, like my colleagues, I can take solace in the fact that he will continue to be prominently involved in the affairs of the State of New York and the entire Nation.

JACK, we wish you a first down on every snap of the ball, and we are all a lot better off because of your friendship and dedication to the Congress and our great country.

Mr. GOODLING. Mr. Speaker, I first met JACK KEMP when he appeared at our annual Spring Grove Area High School Athletic Club banquet. My father, who was then a Member of Congress, arranged for his visit. When he began speaking before this high school group of boy and girl athletes, I was afraid that I would be embarrassed because I assumed these young people would become very restless and do the things they sometimes like to do sitting around the banquet table after dinner has been served. I particularly feared this might happen because he was including some rather serious historical facts and considerations in his speech. He held these high school students spellbound for 45 minutes. After that speech, I wrote him a letter as the superintendent of the Spring Grove Area School District thanking him for giving those teenagers so much to think about and suggesting at that time, and I believe this was back in the very early 1970's, that I would expect to have the opportunity to vote for him as President of the United States. I still believe I will some day have that opportunity.

I next met JACK during my orientation period after being elected to Congress of the United States. He saw me in the Hall of the Capitol and asked me on which committees I would like to serve—I told him that since I thought I had some expertise in education, I would like to serve on the Education and Labor Committee. With a grin, he wished me well and indicated that he was just getting off of that committee.

His leadership in the Congress and in my party has been so important to this institution and the Republican Party and to this great Nation. No one will be surprised who has ever been in JACK KEMP's company at whatever he may achieve in his lifetime and that whatever goals he sets will be accomplished, because he will be dedicated to the task and the results will benefit all Americans and the world in general.

I wish JACK and his family the best in the future.

Mrs. MEYERS of Kansas. Mr. Speaker, I want to take this opportunity to express my appreciation for the service of Congressman JACK KEMP. JACK has represented his district well for 18 years, and served as chairman of the House Republican Conference throughout almost all of the Reagan administration. During the early days of the administration, JACK played an important role in guiding the Reagan economic program through the House. By doing so, he helped usher in a economic recovery that is now in its 70th month.

JACK always impressed me with his intelligence and enthusiasm. His leadership ability stemmed from his ability to infect you with his enthusiasm and make you want to follow him. He would speak on a grand scope, and would relate issues in respect to the big picture. Yet, he was also appealing on a personal level. He knew that people were individuals, and were all individually important. As conference chairman, he would make it a point to know everyone's name, and make a junior Member feel a part of this body.

I wish JACK all the best at the Heritage Foundation, and I am sure that he will be just as innovative and effective there as he was in the House.

Mr. NOWAK. Mr. Speaker, I would like to join in bidding a fond farewell to our distinguished colleague from New York, JACK KEMP, as he prepares to leave this House and embark on another career.

It has been a pleasure to work with him during the past 14 years on matters of vital import to our State and the western New York region.

Political party and philosophical differences aside, on many issues affecting the quality of life and the future revitalization of the Buffalo area, JACK KEMP was an enthusiastic and energetic ally.

In a sustained, multiyear effort, for example, the western New York delegation worked to obtain Federal funding for the first segment of a light rail rapid transit line that has served—as we expected and projected—as a catalyst, a stimulus to the broader revitalization of the city of Buffalo.

It was an effort that persisted through several administrations in Washington and a series of Secretaries of Transportation and Urban Mass Transportation Administration administrators.

This kind of unified delegation approach also resulted in continuation of magnet school aid so important to the Buffalo public schools' exemplary program, establishment of a federally funded Earthquake Center at the State University of New York at Buffalo, the naming of the nuclear attack submarine, the U.S.S. *Buffalo*, and sustained funding for the sorely needed Ellicott Creek flood control project, to cite a few other examples.

In recent years, JACK KEMP entered his party's leadership structure in this body and rose to national prominence as a vocal spokesman on economic issues he vigorously espoused.

His tenacious quest for his party's Presidential nomination and his gracious withdrawal from that race were reflections of JACK KEMP at his best.

It has been a pleasure to serve in the Congress with the gentleman from New York during these challenging times for our nation.

Therefore, I congratulate him as he completes 18 years' public service here and wish him continued good health and good fortune.

Mr. LENT. Mr. Speaker, I join with my colleagues in paying tribute to a highly respected colleague and very dear friend, Congressman JACK KEMP. As a classmate of JACK's, elected in 1970, I have been fortunate to have worked with him throughout these many years.

JACK has always excelled in everything he put his mind to. Whether representing the people of the 31st District of New York or quarterbacking for the Buffalo Bills, JACK has consistently "wowed 'em" with his personality, commitment, and outstanding leadership. As the ranking Republican on the Foreign Operations Subcommittee, JACK played a key role in carrying out U.S. foreign policy goals working tirelessly to promote human rights and peace worldwide.

JACK is a man of remarkable dedication and conviction. He is committed to the vision that we all share for a better, stronger America and a world of limitless opportunity and growth. JACK has always recognized the importance of the American family as the foundation of democracy and American life. As a member of the Select Committee on Children, Youth, and Families, he has worked for initiatives that strengthen the family and traditional values, including prolife measures and legislation combating child pornography.

JACK has been a brilliant and eloquent spokesman for the conservative values which over the past 8 years have promoted peace and prosperity throughout our Nation. His leadership and expertise on matters relating to defense and national security have helped to revitalize our weapons systems and ensure the protection of the United States. And equally important, JACK'S profamily agenda has ensured the well-being of this and future generations through expanding economic opportunity and furthering the sanctity of human life.

We, in Congress, have much to thank JACK KEMP for, as do all Americans. His legacy of good works and his idealism will remain long after he has gone from these Halls of Congress. I wish JACK, his lovely wife Joanne, and all their children much success and the very best for the future.

Mr. CRANE. Mr. Speaker, we are about to lose a friend and colleague of almost two decades. New York Congressman JACK KEMP is retiring from the U.S. House of Representatives in January at the end of his ninth term in this Chamber.

He will leave behind a record his successor will find difficult to duplicate.

JACK KEMP will long be remembered as a congressional pioneer. He reached out his hand and led many through the thickets of doubt that originally surrounded the ideas of those who sounded the call for supply side economics. JACK KEMP'S ideas were incorporated into the 1981 tax law which pulled this country into an economic clearing, freeing it from the disastrous entanglements of policies which gripped us with the terrible recession of the administration which preceded that of President Ronald Reagan.

He has been an articulate spokesman for reduced Government interference in the lives of the citizens of this Republic.

JACK'S career has seen him star on the football field as well as on the floor of this House and in its committee meeting rooms. Just as he completed collegiate and professional football passes in a career few men will ever equal, so, too, has he completed his drives for better legislation in a congressional career which so many envy.

It is unfortunate for the Members of this Chamber that JACK has decided to wrap up his congressional career at this time. Ever since his first election in 1970, his upstate New York constituents have sent up loud and clear messages that they wanted JACK KEMP to continue to serve them in the House of Representatives. He will be missed for his leadership in so many areas. He will also be missed as a friend. May the years ahead hold only happiness for JACK, his lovely wife, Joanne, and their four children.

Mr. MILLER of Ohio. Mr. Speaker, the House of Representatives will not be the same with the close of this session and this Congress. Following 18 years of diligent service in the House, our friend and distinguished colleague JACK KEMP will retire. I can't picture this House without JACK's enthusiasm and nonstop pursuit of the issues we consider daily.

He has been one of the most effective legislators I've ever seen in the area of economic recovery and reform. His hard work on behalf of the economic revival this Nation has experienced over the last 8 years has benefitted every working American, and those seeking new opportunities in the workplace, the marketplace, or in education.

JACK, upon your retirement I want you to know that we wish you only the very best in the future. You will be missed, but your excellent example will remain as a reminder of expertise in legislation and leadership.

Mr. ANNUNZIO. Mr. Speaker, I rise to join with my colleagues in the House of Representatives in paying tribute to the Honorable JACK KEMP, who is leaving the Congress after 18 years of dedicated service.

First elected to the 92d Congress in 1970, JACK KEMP has proven himself to be a most capable legislator, worthy of the trust, and confidence of his constituents from the 31st Congressional District of New York, whom he has ably represented for nine terms. He has served the House of Representatives with distinction as a member of the Subcommittee on Foreign Operations, Export Financing, and Related Programs of the House Appropriations Committee, and as a member of the House Select Committee on Children, Youth, and Families. He also has compiled an exemplary record of creative accomplishment in several leadership positions in his party.

JACK KEMP is a man devoted to the people of his district, his State, and his country. He is a fine legislator, and a Congressman of great ability, compassion, and courage, who truly will be missed by all of us in Congress who had an opportunity to know him and to work with him.

I extend to JACK KEMP my best wishes for continued success in all his future endeavors.

Mr. LOWERY of California. Mr. Speaker, we all know JACK KEMP as the 1960's quarterback for the San Diego Chargers who has since refined his sence of leadership to become a driving force in the huddles of Congress.

I would like to recount briefly the path he took to get from the locker room to the Cloakroom.

He was born in Los Angeles, so we accept him as a southern Californian; and we forgive him his shuffle off to Buffalo, NY.

A graduate of Occidental College, he led the Nation's small-college teams in passing his senior year, but in the 1956 prodraft he was a low-round selection. However, success was at hand when in 1960 he got a break with my team, the San Diego Chargers.

There were ups as well as downs for the football player. He was a quarterback for the team until a hand injury sidelined him. The Chargers meant to put him on the injured list but goofed and placed him on waivers. The

Buffalo Bills picked him up for the princely sum of $100.

Now we think he is worth somewhat more than that and the Bills must have thought so too when he quarterbacked the team to four divisional and two league championships. In 1965, he was the AFL's most valuable player.

But there was something different about this football player—he seemed to think he should have something to do in the off-season. In San Diego he went to work for the San Diego Union as a youth-page columnist—than graduated to editorials and political writing. He was part of the Union's team covering the 1964 Republican National Convention.

While he was with the Bills, fans urged him to run for Congress and that effort was the first of many touchdowns in a distinguished career in the House of Representatives.

JACK KEMP rallied the Congress to tax reform back in 1980 and succeeded in lowering taxes under the Kemp-Roth bill in 1981. He has served his country well as a member of the Appropriations Committee.

I consider JACK a close friend and honored colleague, and if the House had such an award, we would have named him MVP. As he leaves the Congress we wish him well and Godspeed and know we will hear much more of this public servant in the years to come.

Mr. SHUMWAY. Mr. Speaker, I am delighted to have this opportunity to join my colleagues in paying tribute to our good friend and loyal colleague JACK KEMP, as he prepares to retire from the House after 18 years of distinguished and dedicated service.

When I was first elected to the House of Representatives 10 years ago, JACK's name was already on its way to becoming a household word—no mean feat for a member of the minority party. In preparing these remarks, I reread a piece JACK authored during our bicentennial year, 1976. Not astonishingly, it is just as true today as it was at the time:

> A tax on productivity is a tax on capital that biases people away from savings and towards consumption. Obviously, that means less capital, therefore lower productivity, fewer new jobs, and a lower rate of growth in real wages. Fewer new jobs mean more unemployment.

JACK's economic acumen impressed me even before I had the privilege to serve with him.

JACK may be a New Yorker today, but he was educated in my own State of California, which gives us an association in common. He is a strong family man, a sound conservative, and an articulate and convincing spokeman for the causes he espouses. He will be missed in the House. He has represented his district, his State, and the Nation with responsible leadership and true commitment. I wish him well in whatever he undertakes, and I have been proud to serve with him.

Mr. REGULA. Mr. Speaker, I rise to pay tribute and bid a fond farewell to my friend and colleague JACK KEMP. I think it is fair to say this place will not be the same. In losing JACK we lose an eloquent spokesman for populist conservatism.

Whether you agreed with him or not you could not help but admire the tenacity and fervency with which he pursued his causes. JACK may have left the football field, but he has yet to lose the competitive spirit and enthusiasm of the professional athlete. It is that spirit and enthusiasm that will be missed most.

But unlike most of my colleagues if I get to missing JACK too much I can always visit the Football Hall of Fame in my district in Canton, OH, where JACK's jersey hangs, and feel as if a part of him is nearby.

It is rare that one so young can boast two successful careers. JACK has distinguished himself both on the football field and in Congress and in both endeavors has served his team, whether it be the Buffalo Bills or the GOP, as an able leader.

I can think of few Members who have as significant a legislative record as JACK KEMP and none who have done so as a member of the minority party. JACK was instrumental in enacting the budget and tax packages in 1981. He has been an eloquent advocate of administration foreign and defense policies through his position as the ranking Republican on the Appropriations Committee's Foreign Operations Subcommittee.

As JACK leaves this body I have a sense that it is not an ending, but rather a new beginning. On whatever field JACK chooses to play next, I am sure he will distinguish himself and I am sure the country has not heard the last of JACK KEMP.

On a personal note, Mary and I will always cherish the friendship of JACK and Joanne. We have appreciated the many times they have answered the call of their fans in the 16th District to share in both party events as well as Football Hall of Fame activities.

Mr. GREEN. Mr. Speaker, I join my colleagues in paying tribute to my fellow New Yorker and fellow Appropriations Committee colleague who is retiring from the Congress, JACK KEMP.

I salute JACK for his diligent efforts to ensure stability in the Middle East through his work on the Appropriations Committee, where, until he began his quest for the Republican Presidential nomination, he served as the ranking Republican on the Foreign Operations Subcommittee. His recognition of the importance of the security of Israel as America's strongest ally in the Middle East has been a critical element in the work of the Foreign Operations Subcommittee.

I wish JACK well in his new career and I know we shall continue to hear from him on the important issues of the day.

Mr. CLAY. Mr. Speaker, I am very happy to participate in this tribute to our good friend and esteemed colleague, the Honorable JACK KEMP on the occasion of his retirement from the U.S. House of Representatives.

By all acounts, Congressman JACK KEMP is a very talented and deeply dedicated public servant who has labored untiringly for the causes he cherishes. Representative KEMP has consistently shown that he is a skilled statesman and an articulate spokesman who is devoted to the human cause. His earnest understanding and practical judgment of the issues earned him a distinguished role in national leadership.

Congressman KEMP has been an idefatigable spokesman for his constituents and a dutiful representative of his district, State and Nation. The people of New York's 31st District have been well served by Congressman JACK KEMP. His contributions to our Nation will benefit generations to come.

JACK KEMP is a fine friend and a distinguished leader. We will miss him in the next Congress. Best wishes for health and happiness in the future.

Mr. GILMAN. Mr. Speaker, I rise to join my colleagues in paying tribute to an outstanding legislator and leader who is departing Capitol Hill, the gentleman from New York [Mr. KEMP].

When JACK KEMP first came to Congress in 1970, some people had reservations about the prospect of a former football star serving the Nation as a legislator. JACK KEMP soon proved them all wrong. It was quickly demonstrated for all that his keen intellect and his vigorous concern for the future of our Nation were just as intense as JACK's performance on the gridiron.

JACK KEMP was born in 1935 in Los Angeles, CA. A graduate of Occidental College, of Long Beach State University, and of California Western, JACK majored in physical education, but his first love was economics. After his fabulously successful football career ended, he intensified his study of that complex field.

Many of us do not remember the fact that JACK KEMP was elected from a congressional district that was traditionally Democratic. Such is the force of his personality and his sterling reputation that he became virtually unbeatable in his home region, despite the fact the district had a long tradition of liberal Democratic representation.

It is indicative that JACK KEMP, like Ronald Reagan, has a background as president of a labor union, the American Football League Players Association. It is ironic that JACK KEMP and Ronald Reagan were both union leaders.

This experience with the AFL Players Association left JACK with an indelible appreciation for the rights of the working man. The blue collar workers of his 31st District have long rallied to JACK KEMP's support.

The years of immersing himself in economic theory paid off with the Kemp-Roth tax proposal; a plan that will long be studied by students of American history as a true turning point in our path to progress.

JACK will also be remembered for his championing the Urban Enterprize Zone proposal. Although this farsighted proposal enjoyed bipartisan support it did not progress in the House. While we did not adopt Urban Enterpirse Zone, the idea has been taken up by many States and cities, with the great success that JACK KEMP predicted.

Although JACK gained a nationwide reputation—indeed, a worldwide reputation—as a spokesperson for conservative causes, JACK always "marched to a different drummer." He was never afraid to vote his conscience on any issue, no matter how much it might surprise his colleagues or his constituents. Accordingly, he voted against Gramm-Rudman, and he opposed the constitutional amendment to balance the budget, because he did not feel these proposals were sound. Jack also was a long-time leader in fighting for Human Rights wherever there was oppression or bigotry. He was particularly a staunch advocate on behalf of Soviet Jewry.

JACK felt, as many of us feel, that we in Congress should not abdicate our responsibility to thoroughly review and balance our budget.

We are going to miss JACK KEMP greatly, but these Halls will echo with his challenges and his intellect for decades to come.

Ever since first coming to Congress in 1972, I have been proud to consider JACK KEMP a friend. I am hopeful that his retirement—if that seems an appropriate word, for people like JACK never retire—brings good health and years of happiness to JACK and Joanne. I am confident all of our colleagues join in extending best wishes to JACK KEMP upon his departure and our best wishes for success in all of his future endeavors.

Mr. WORTLEY. Mr. Speaker, the indomitable spirit of JACK KEMP has left indelible marks upon this House of Representatives, this house of the people of the United States.

No leader of this Congress has done more for the sustained economic growth of America than our colleague and my personal friend, JACK KEMP.

What JACK envisioned when he proposed and fought for tax rate reductions became the battle cry of the Republican Party and later, the policy of the administration of President Ronald Reagan.

The legislative game plan conceived and nurtured by JACK KEMP in the 1970's have been key factors in the addition of 18 million additional jobs in America.

For 72 consecutive months, Americans have enjoyed an economic expansion in peacetime.

The doom and gloom crowd said it couldn't be done.

JACK KEMP said prosperity is boundless.

JACK has been proven right. The doom and gloom crowd, the defeatists, have been proven wrong.

Throughout his life, JACK KEMP has been a winner, not because he has been lucky but because he has fought and disciplined himself to be a leader.

Because JACK has been a winner, all Americans have been winners.

Mr. Speaker, we join individually and collectively to express our appreciation for his past services and wish him well and God speed as he moves on to new challenges.

Mr. SCHULZE. Mr. Speaker, I rise to pay tribute to my colleague, JACK KEMP of New York, on the occasion of his impending retirement. He will be sorely missed by those in Congress who have had the opportunity of knowing, and working with, this accomplished statesman.

Congressman JACK KEMP's election to Congress in 1970, followed a successful 13-year career as a quarterback in the American and National Football Leagues. Throughout his 18-year career in the House of Representatives, Congressman KEMP has demonstrated a commitment to leadership and excellence, and a vision of a future for America and the world, of limitless opportunity and growth.

JACK has served on the House Appropriations, Budget, and Education and Labor Committees, and on the Select Committees on Small Business and Children, Youth and Family. As a member of the Appropriations Committee, JACK served as ranking Republican on the Foreign Operations Subcommittee and, in this capacity, he played a key role in carrying out significant U.S. foreign policy objectives.

JACK also served for 7 years as chairman of the House Republican Conference and as a senior counselor to the President's National Bipartisan Commission on Central America—the Kissinger Commission.

Throughout his congressional career, JACK has demonstrated a profound commitment to the American family. He has worked for initiatives that strengthen the family and traditional values, including an end to abortion, measures to combat child pornography, and initiatives to provide tuition tax credits and to strengthen magnet schools.

With his wife Joanne, JACK has carried out his commitment to worldwide human rights through the founding of CREED, the Christian Rescue Effort for the Emancipation of Dissidents. As a Commissioner on the Helsinki Commission on Human Rights, he has fought for the rights of Soviet Jewry and political dissidents.

JACK is the author of the Kemp-Roth 30-percent across-the-board tax cut, which was adopted by President Reagan during his 1980 Presidential campaign and became the cornerstone of President Reagan's economic recovery plan when it was enacted by Congress and signed into law in 1981.

All in Congress have benefited from JACK's congressional career, and all will deeply miss the leadership and wisdom he has displayed over the last 18 years. I would like to join my colleagues in wishing JACK farewell, also wishing him happiness and success in his future endeavors.

Mr. DICKINSON. Mr. Speaker, JACK KEMP was one of the key leaders in the American Renaissance of the 1980's. His vision for a new era of prosperity and security has come of age, and as JACK goes forward from this Chamber, his leadership will also guide American policy through the years to come.

Although JACK is best known for his efforts in providing Americans with economic security, he also deserves praise for his contributions to our national security. He has been a compelling force in the formulation of our national defense policy, and has been one of the leading advocates for a strong national defense.

He has been a leading proponent of the "Peace Though Strength" philosophy, which recognizes the positive international implications associated with the rebuilding of our Nation's military might.

During the eighties, JACK has been a key player in shaping the debate on defense matters based on the "Peace Through Strength" philosophy, especially as a leading proponent for the strategic defense initiative. With supporters like JACK, we were able to revitalize our military force and advance the SDI Program—a successful combination that ultimately brought the Soviets back to the arms control bargaining table.

Even before the Reagan administration, JACK was at the forefront in defining the proper relationship between foreign policy and defense initiatives, as he stated in his book, "The American Renaissance":

> Perhaps the most damaging aspect of our entire national security apparatus is the manner in which arms control policy has become a substitute for defense policy. I strongly believe that arms control can contribute to national security, but it can never do so if our policy perceives arms control to be an alternative to investment in defense.

Although his influence reaches into many areas, perhaps it is best to sum up the contributions of JACK KEMP by simply acknowledging that he was a key leader in the renaissance of America.

I expect JACK KEMP will continue to lead America into the next century.

Mr. MICHEL. Mr. Speaker, our good friend, former member of the Republican leadership and Presidential candidate, JACK KEMP, will be leaving the House at the close of the 100th Congress. I want to join so many of our colleagues in paying tribute to JACK. Ever since he came to the House in 1971, he has been at the very heart of the movement that eventually became known as the Reagan revolution.

We in the House are usually concerned with the nuts-and-bolts, day-by-day realities of legislative machinery—getting legislation passed, making certain we guide bills through the maze of parliamentary procedure. When we are not involved in that exacting task, we are concerned about reelection because, after all, we are up for election every 2 years. Put all of this together with our duties to our constituents and mending fences back home and it is a hectic schedule with little room for contemplation.

This is what makes JACK KEMP'S congressional career so astounding. Aside from taking care of the normal duties of a Congressman, JACK brought before us something that gets almost no attention in our deliberations—ideas. JACK knows the power of ideas and before the Reagan revolution ever took place, JACK was preaching the virtues of lower taxes and allowing Americans to freely make the economic decisions important to them.

I believe that his unceasing work on behalf of that kind of economic common sense was one of the true revolutionary ideas to influence the House and the Nation since the end of World War II. As we concentrated on how the machine of economic policy works, we were asked by JACK an even more important question: What is the purpose of all this economic policy machinery? Once that became the question, the very nature of economic policy debate was changed.

JACK'S leadership in the field of national security, foreign policy, arms control, aid to the freedom fighters of Nicaragua and Angola are among his major achievements. But I believe history will record that it was his willingness to confront his colleagues with the power of ideas that will remain his greatest legacy.

We Republicans benefited from having JACK in the leadership as chairman of the Republican Conference. His 1988 race for the Presidency showed once more his thoughtful and considered analysis of many complex issues.

JACK'S political career demonstrates that the power of ideas in politics still remains the driving force of political change. In the years ahead, I know we will continue to benefit from his energy, his vision, and his friendship.

Mr. BURTON of Indiana. Mr. Speaker, I would like to add my words of tribute to JACK KEMP, a friend and colleague whom I know we will see much more of in the future. I will not repeat JACK's many accomplishments in his 18 years of service in Congress, my colleagues have adequately done that.

In tribute to JACK I must speak of the future, not the past. JACK KEMP will be a leader of this Nation, whether as President or in some other capacity. He is destined for ever greater leadership than he has shown in Congress because he is truly a man of vision.

I know of no one in politics who has a vision of the world in as many areas as JACK KEMP. From neighborhoods, to tax policy, to geopolitics, to struggles for freedom, JACK KEMP is at the forefront of the war of ideas. In all these areas his guiding principle is freedom, individual freedom—in the marketplace and democratic government, at home and abroad.

I wish him the best of luck in all his endeavors and look forward to working with him and his family for many years to come.

Mr. BOLAND. Mr. Speaker, it is my great pleasure to take part in this special order honoring Congressman JACK KEMP of New York for his fine career in Congress. Although still a young man, JACK is leaving after 18 eventful years in the House. I have been proud to know him here in Congress and to work with him on the Appropriations Committee.

Like many of us, I first noticed JACK KEMP when he was a quarterback in the American Football League. He was a tough competitor who never quit and often found spectacular ways to win the game. He brought those qualities with him when he entered Congress. JACK has shown great leadership qualities here in Congress and he ran a fine Presidential campaign earlier this year. Although we don't always agree on policy, I have found it very easy to work with JACK. He is a good listener, a good negotiator and a good legislator. The people of Buffalo have been blessed to have him here in Congress. He has been a true innovator, often provoking interesting debate on a wide range of issues. Congress is richer for the infusion of ideas from JACK KEMP.

Mr. Speaker, it has been my privilege to call JACK KEMP friend. I am sure he has a great future in the Republican Party and in Government. We will be hearing a lot more about JACK KEMP after he leaves here. JACK, I wish you and your wife Joanne the best in the years ahead. I won't urge you to relax, because I know you will be out working hard for your beliefs after you leave Congress.

Mr. YATRON. Mr. Speaker, I rise to pay tribute to my esteemed colleague from New York, JACK KEMP. As you know, JACK will be retiring from the House of Representatives at the end of the 100th Congress.

It has truly been a pleasure to work with JACK over the last 18 years. He has continually shown an undaunted enthusiasm and ability for taking the lead on important issues and his presence in this body will be missed.

While JACK gained national attention for his leadership qualities, he has always made his constituents his No. 1 priority. I know that the citizens of the 31st District of New York will miss the compassion and commitment that JACK displayed while representing them in Congress.

It has been my privilege to know and work with JACK KEMP. He has served his constituents and his country with honor and dedication, and I wish him and his family continued success and happiness in the future.

Mr. LUNGREN. Mr. Speaker, it is my privilege to pay tribute to one of the most dynamic and productive leaders in Congress over the past 18 years, my distinguished friend and colleague from New York, the Honorable JACK KEMP.

JACK, was first elected to Congress in 1970, following a highly successful 13-year career as a quarterback for the San Diego Chargers and the Buffalo Bills. Parenthetically, I might say that he was truly a childhood hero of mine. When I was in eighth grade, I saw JACK play a scrambling quarterback for the then Los Angeles Chargers in the L.A. Colisium. On the football field, JACK led the Buffalo Bills to league championships in 1964 and 1965. Twice he was selected as "All-League Quarterback," once with the San Diego Chargers in 1960, and again in 1965 with the Buffalo Bills. He was cofounder of the AFL Players Association and president of the association for 5 years, helping negotiate one of the most important pension contracts in professional football. In 1965, JACK was selected as the "Most Valuable Player in the League," and in 1983, he received the National Football Foundation and Hall of Fame's Gold Medal for excellence in leadership on both the football field and the congressional field.

JACK's success at both football and public service has been no coincidence. He began working in politics while he was playing in the AFL. He was a volunteer in both the Nixon and Goldwater Presidential campaigns and in Ronald Reagan's Gubernatorial campaign of 1966. By the late 1960's, he was working in the off-season as an assistant to Gov. Ronald Reagan's chief of staff.

JACK KEMP lives and works at level of intensity that most other men can admire but never hope to match. JACK promotes his political and economic ideals with an enthusiasm and drive that suggests he never quite left professional football. JACK loves his country and the American traditions of individual liberty and free-enterprise with a boundless passion. He exudes an energy and can-do optimism about free-enterprise and pushed forward the most dramatic reductions in federal taxation our Nation has ever had.

JACK KEMP's economic ideals and goals for the Nation came in part from reflections on the America he knew growing up in Los Angeles and the one he represented in Buffalo. JACK grew up in an area with strong economic growth and limited Government intrusiveness. He represented an area that was suffering limited economic growth and was heavily burdened with excessive taxation. He came to believe that Government was overtaxing productive people. A voracious reader, JACK knew that the 19th century British Prime Minister William Gladstone often employed the metaphor that placing high taxes on productive people was like killing the goose that laid the golden egg. Gladstone's tax cuts played an important part in the great economic growth of the British Empire during the 19th century.

JACK popularized the Nation as well as the term "supply-side economics." Without a doubt he is one of America's most forceful and persuasive politicians when he presents his vision of vibrant economic growth and how it can improve the lives of ordinary people. In 1978, JACK introduced the Kemp-Roth tax proposal to make across-the-board tax-cuts of 30 percent over a period of 3 years. JACK'S strength in galvanizing support both inside and outside of Congress for this then radical proposal for economic change was the driving force behind the Reagan revolution and the 1981 tax cuts.

The Kemp-Roth proposal would become the cornerstone of the Reagan economic recovery plan enacted by Congress and signed into law in 1981. The first year of Ronald Reagan's Presidency was a wonderful triumph for JACK. He was very clearly the single most important congressional force in the passage of the landmark budget and tax-cut legislation of the Reagan administration. When Congress passed the bill cutting taxes by 25 percent over the 3 years, JACK could truly claim a unique personal triumph. No one had ever before gotten through a bill like that who was not on the Ways and Means Committee. The result of this bold economic reform has been the Nation's longest peacetime economic expansion. Almost 6 years of uninterrupted economic growth with the creation of 17 million new jobs has buried inflation, reduced employment and brought prosperity and opportunity to our country.

JACK has led the way to further tax rate reductions in order to encourage investment, job creation, and economic security for all Americans by authoring the Kemp-Kasten "fair and simple tax" plan in 1984. This plan which dramatically lowered tax rates on working families removed the tax burden from the poor, doubled the personal exemption to $2,000 for each family member, and created incentives for investment and economic growth. The Kemp-Kasten plan became the basis of the Tax Reform Act of 1986. In large part due to the untiring efforts of JACK KEMP, tax rates have dropped from 70 percent to 28 percent, giving individuals more of their hard earned dollars to keep in their pockets.

JACK has led the way in allowing supply-side economics and free-enterprise to work in solving some of our country's most pressing social problems. JACK has introduced enterprise zone legislation, designed to encourage investment and job creation in inner cities and poor rural areas by providing tax inventives for entrepreneurs and small business owners to create jobs in the enterprise zones. Although never enacted, it won a symbolic House vote in 1986 and has twice been approved by the Senate. Enterprise zone legislation has been adopted by 37 States.

JACK believes that the poor have a right to buy their own homes. In 1987, JACKS'S proposals to allow residents of public housing to manage their own buildings and to realize the dream of homeownership by buying their units at a discount were included in the housing authorization bill of that year. To further bring the benefits of the market to the poor and minorities, Jack has proposed ensuring that they have the basic skills needed to freely compete in the market by making community-based organizations eligible for vocational education grants.

Together with Jack's many lasting accomplishments in the area of economic reform stands his strong commitment to national security and a strong defense. Jack chaired the committee that drafted the Republican defense platform at the 1980 National Convention, which set the course of recovery of our military strength. Since the beginning of the Reagan Presidency, Jack has been a staunch supporter of democratic resistance movements around the globe, where people are fighting to gain the rights most Americans take for granted. To Jack, the safety of our own freedom is tied in part to meeting the challenge posed by the Soviet Union and its allies to all the people of the free world.

Jack has been a leader in the effort to gain military and humanitarian assistance to the Nicaraguan freedom fighters, introducing the bipartisan Nicaraguan Freedom Act of 1980 which provides for over $57 million in aid to the Nicaraguan democratic resistance. He has been a consistent supporter of United States assistance to the democratic resistance groups in such countries as Angola, Mozambique, and Afghanistan.

Jack Kemp led the way in the development and deployment of the strategic defense initiative [SDI], by offering legislation which would require actions to gain early deployment of the system. He has always been a supporter of weapons modernization programs which would be essential to maintain strong credible nuclear and conventional military forces. Part of Jack's policy of maintaining a strong defense is his belief that America and her allies should not be financing new Soviet weapons development through unchecked and unsecured loans to the Soviets and their allies. He has introduced legislation that would require United States banks to disclose the conditions of loans made to the Soviets as well as the number of such loans made by the bank.

Jack Kemp was one of the leading candidates for the Presidential nomination of the Republican Party this year. For that reason, he decided to leave the House after 18 years of service. His bid for the White House was ultimately unsuccessful, but I expect to see a lot of Jack Kemp on the national political scene. This man who has given us all so much has still a lot more to give. America is enjoying the fruits of Jack Kemp's leadership in Congress. From Jack's future endeavors I am confident the Nation will benefit more still.

Mr. MAZZOLI. Mr. Speaker, it is a pleasure to join his many friends in the House in honoring one of our own, a good friend and colleague, Jack Kemp, who is retiring from the House after 18 years of service to the people of New York's 31st Congressional District.

Jack and I came to the House together back in 1971. Though classmates here in the House, our backgrounds are very different. We hail from different regions of the country. We are members of different parties. And, often we are on opposite sides on policy issues.

Nonetheless, I consider Jack a good friend, and I think everyone who comes to know Jack feels the same way. He is an honest, intelligent, hard-working, straightforward kind of guy.

It is no surprise that success would follow Jack here in the House, since that is what characterized his earlier career as a professional football player. In a sense, perhaps, the challenges facing a quarterback are similar to those which come before legislators. To prevail, one must possess energy, intelligence, leadership, and determination. Jack Kemp has all these qualities in abundance.

Throughout his tenure in the House, Jack has been an ardent spokesman for economic and tax reforms. He has raised the level of debate and contributed significantly to the eventual outcome on legislation and policy decisions. Though he leaves the House, I know Jack will continue to work hard and speak out forcefully on those important issues while serving as a distinguished fellow at the Heritage Foundation.

A devoted family man, husband and father, maybe now Jack will be able to share more quality time with his very talented family. I wish Jack much health and happiness in the years ahead.

GENERAL LEAVE

Mr. HORTON. Mr. Speaker, I ask unanimous consent that all Members may have 5 days in which to revise and extend their remarks on the subject of my special order on the life, character, and public service of the gentleman from New York, Mr. Jack Kemp.

The SPEAKER pro tempore (Mr. Gonzalez). Is there objection to the request of the gentleman from New York?

There was no objection.

COMMUNICATION FROM THE HONORABLE DALE E. KILDEE, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from the Honorable Dale E. Kildee, a Representative from the State of Michigan:

House of Representatives,
Washington, DC, October 8, 1988.

Hon. Jim Wright,
Speaker of the House of Representatives,
H204 Capitol.

Dear Mr. Speaker: This is to notify you, pursuant to Rule L (50) of the Rules of the House of Representatives, that an employee in my office has been served with a subpoena duces tecum issued by the State of Michigan, 68th Judicial District.

After consultation with the General Counsel to the Clerk, I will make the determination required by the Rule.

Sincerely,

Dale E. Kildee,
Member of Congress.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 2843. An act to amend the Federal Food, Drug, and Cosmetic Act to authorize abbreviated new animal drug applications and to amend title 35, United States Code, to authorize the extension of the patents for animal drug products, and

S. 2889. An act to amend the Public Health Service Act to establish certain health programs, to revise and extend certain health programs, and for other purposes.

ESTABLISHING AND REVISING AND EXTENDING CERTAIN HEALTH PROGRAMS

Mr. WAXMAN. Mr. Speaker, I move that the House suspend the rules and pass the Senate bill (S. 2889) to amend the Public Health Service Act to establish certain health programs, to revise and extend certain health programs, and for other purposes.

The Clerk read as follows:

S. 2889

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF TITLES.

(a) Short Title.—This Act may be cited as the "Health Omnibus Programs Extension of 1988".

(b) Table of Titles.—

Title I—National Institute on Deafness and Other Communication Disorders and Health Research Extension Act of 1988
Title II—Programs with Respect to Acquired Immune Deficiency Syndrome
Title III—Preventive Health, Health Services, and Health Promotion
Title IV—Organ Transplant Amendments of 1988
Title V—Food and Drug Administration
Title VI—Health Professions Reauthorization Act of 1988
Title VII—Nursing Shortage Reduction and Education Extension Act of 1988
Title VIII—Revision and Extension of Programs of Health Care for the Homeless
Title IX—Testing of Convicted Felons

TITLE I—NATIONAL INSTITUTE ON DEAFNESS AND OTHER COMMUNICATION DISORDERS AND HEALTH RESEARCH EXTENSION ACT OF 1988

SEC. 100. SHORT TITLE; REFERENCES.

(a) Short Title.—This title may be cited as the "National Institute on Deafness and Other Communication Disorders and Health Research Extension Act of 1988".

(b) References to Public Health Service Act.—Except as otherwise specifically provided, any reference made in this title to an amendment or repeal of a section or other provision shall be considered to be made to a section or other provision of the Public Health Service Act (42 U.S.C. 201 et seq.).

Subtitle A—National Institute on Deafness and Other Communication Disorders

SEC. 101. ESTABLISHMENT AND TRANSFER OF FUNCTIONS.

Title IV (42 U.S.C. 281 et seq.) is amended—

(1) in section 401(b)(1)—

(A) by striking "and Communicative" in subparagraph (J); and

(B) by adding at the end the following new subparagraph:

"(M) The National Institute on Deafness and Other Communication Disorders.";

(2) in the heading for subpart 10 of part C, by striking "and Communicative";

(3) in section 457—

(A) by striking "and Communicative"; and

(B) by striking "disorder, stroke," and all that follows and inserting "and disorder and stroke."; and

(4) in Part C, by adding at the end the following new subpart:

"Subpart 13—National Institute on Deafness and Other Communication Disorders

"PURPOSE OF THE INSTITUTE

"SEC. 464. The general purpose of the National Institute on Deafness and Other Communication Disorders (hereafter referred to in this subpart as the 'Institute') is the conduct and support of research and training, the dissemination of health information, and other programs with respect to disorders of hearing and other communication processes, including diseases affecting hearing, balance, voice, speech, language, taste, and smell.

"NATIONAL DEAFNESS AND OTHER COMMUNICATION DISORDERS PROGRAM

"SEC. 464A. (a) The Director of the Institute, with the advice of the Institute's advisory council, shall establish a National Deafness and Other Communication Disorders Program (hereafter in this section referred to as the 'Program'). The Director or the Institute shall, with respect to the Program, prepare and transmit to the Director of NIH a plan to initiate, expand, intensify and coordinate activities of the Institute respecting disorders of hearing (including tinnitus) and other communication processes, including diseases affecting hearing, balance, voice, speech, language, taste, and smell. The plan shall include such comments and recommendations as the Director of the Institute determines appropriate. The Director of the Institute shall periodically review and revise the plan and shall transmit any revisions of the plan to the Director of NIH.

"(b) Activities under the Program shall include—

"(1) investigation into the etiology, pathology, detection, treatment, and prevention of all forms of disorders of hearing and other communication processes, primarily through the support of basic research in such areas as anatomy, audiology, biochemistry, bioengineering, epidemiology, genetics, immunology, microbiology, molecular biology, the neurosciences, otolaryngology, psychology, pharmacology, physiology, speech and language pathology, and any other scientific disciplines that can contribute important knowledge to the understanding and elimination of disorders of hearing and other communication processes;

"(2) research into the evaluation of techniques (including surgical, medical, and behavioral approaches) and devices (including hearing aids, implanted auditory and nonauditory prosthetic devices and other communication aids) used in diagnosis, treatment, rehabilitation, and prevention of disorders of hearing and other communication processes;

"(3) research into prevention, and early detection and diagnosis, of hearing loss and speech and language disturbances (including stuttering) and research into preventing the effects of such disorders on learning and learning disabilities with extension of programs for appropriate referral and rehabilitation;

"(4) research into the detection, treatment, and prevention of disorders of hearing and other communication processes in the growing elderly population with extension of rehabilitative programs to ensure continued effective communication skills in such population;

"(5) research to expand knowledge of the effects of environmental agents that influence hearing or other communication processes; and

"(6) developing and facilitating intramural programs on clinical and fundamental aspects of disorders of hearing and all other communication processes.

"DATA SYSTEM AND INFORMATION CLEARINGHOUSE

"SEC. 464B. (a) The Director of the Institute shall establish a National Deafness and Other Communication Disorders Data System for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with disorders of hearing or other communication processes, including where possible, data involving general populations for the purpose of identifying individuals at risk of developing such disorders.

"(b) The Director of the Institute shall establish a National Deafness and Other Communication Disorders Information Clearinghouse to facilitate and enhance, through the effective dissemination of information, knowledge and understanding of disorders of hearing and other communication processes by health professionals, patients, industry, and the public.

"MULTIPURPOSE DEAFNESS AND OTHER COMMUNICATION DISORDERS CENTER

"SEC. 464C. (a) The Director of the Institute shall, after consultation with the advisory council for the Institute, provide for the development, modernization, and operation (including care required for research) of new and existing centers for studies of disorders of hearing and other communication processes. For purposes of this section, the term 'modernization' means the alteration, remodeling, improvement, expansion, and repair of existing buildings and the provision of equipment for such buildings to the extent necessary to make them suitable for use as centers described in the preceding sentence.

"(b) Each center assisted under this section shall—

"(1) use the facilities of a single institution or a consortium of cooperating institutions; and

"(2) meet such qualifications as may be prescribed by the Secretary.

"(c) Each center assisted under this section shall, at least, conduct—

"(1) basic and clinical research into the cause diagnosis, early detection, prevention, control and treatment of disorders of hearing and other communication processes and complications resulting from such disorders, including research into rehabilitative aids, implantable biomaterials, auditory speech processors, speech production devices, and other otolaryngologic procedures;

"(2) training programs for physicians, scientists, and other health and allied health professionals;

"(3) information and continuing education programs for physicians and other health and allied health professionals who will provide care for patients with disorders of hearing or other communication processes; and

"(4) programs for the dissemination to the general public of information—

"(A) on the importance of early detection of disorders of hearing and other communication processes, of seeking prompt treatment, rehabilitation, and of following an appropriate regimen; and

"(B) on the importance of avoiding exposure to noise and other environmental toxic agents that may affect disorders of hearing or other communication processes.

"(d) A center may use funds provided under subsection (a) to provide stipends for health professionals enrolled in training programs described in subsection (c)(2).

"(e) Each center assisted under this section may conduct programs—

"(1) to establish the effectiveness of new and improved methods of detection, referral, and diagnosis of individuals at risk of developing disorders of hearing or other communication processes; and

"(2) to disseminate the results of research, screening, and other activities, and develop means of standardizing patient data and recordkeeping.

"(f) The Director of the Institute shall, to the extent practicable, provide for an equitable geographical distribution of centers assisted under this section. The Director shall give appropriate consideration to the need for centers especially suited to meeting the needs of the elderly, and of children (particularly with respect to their education and training), affected by disorders of hearing or other communication processes.

"(g) Support of a center under this section may be for a period not to exceed seven years. Such period may be extended by the Director of the Institute for one or more additional periods of not more than five years if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director, with the advice of the Institute's advisory council, if such group has recommended to the Director that such period should be extended.

Subtitle B—Biotechnology Information

SEC. 105. ESTABLISHMENT OF NATIONAL CENTER FOR BIOTECHNOLOGY INFORMATION.

Part D of title IV (42 U.S.C. 286 et seq.) is amended by adding at the end the following new subpart:

"Subpart 3—National Center for Biotechnology Information

"PURPOSE, ESTABLISHMENT, FUNCTIONS, AND FUNDING OF THE NATIONAL CENTER FOR BIOTECHNOLOGY INFORMATION

"SEC. 478. (a) In order to focus and expand the collection, storage, retrieval, and dissemination of the results of biotechnology research by information systems, and to support and enhance the development of new information technologies to aid in the understanding of the molecular processes that control health and disease, there is established the National Center for Biotechnology Information (hereinafter in this section referred to as the 'Center') in the National Library of Medicine.

"(b) The Secretary, through the Center and subject to section 465(d), shall—

"(1) design, develop, implement, and manage automated systems for the collection, storage, retrieval, analysis, and dissemination of knowledge concerning human molecular biology, biochemistry, and genetics;

"(2) perform research into advanced methods of computer-based information processing capable of representing and analyzing the vast number of biologically important molecules and compounds;

"(3) enable persons engaged in biotechnology research and medical care to use systems developed under paragraph (1) and methods described in paragraph (2); and

"(4) coordinate, as much as is practicable, efforts to gather biotechnology information on an international basis.

"(c) For the purpose of performing the duties specified in subsection (b), there are authorized to be appropriated $8,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990. Funds appropriated under this subsection shall remain available until expended.".

Subtitle C—National Institutes of Health

SEC. 111. APPOINTMENT AND AUTHORITY OF THE DIRECTOR.

Section 402(b)(6) (42 U.S.C. 282(b)(6)) is amended by inserting "and scientific program advisory committees" after "scientific peer review groups".

SEC. 112. REPORT OF DIRECTOR OF NIH.

Section 403 (42 U.S.C. 283) is amended—

(1) in paragraph (3), by striking out "and";

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3), the following new paragraph:

"(4) a description of the health related behavioral research that has been supported by the National Institutes of Health in the preceding 2-year period, and a description of any plans for future activity in such area; and".

Subtitle D—General Provisions Respecting National Research Institutes

SEC. 116. APPOINTMENT AND AUTHORITY OF THE DIRECTORS.

Section 405 (42 U.S.C. 284) is amended—

(1) in subsection (b), in the matter preceding subparagraph (A) of paragraph (1), by striking "the human diseases" and inserting "human diseases"; and

(2) in subsection (c)—

(A) by amending paragraph (3) to read as follows:

"(3) may, in consultation with the advisory council for the Institute and the approval of the Director of NIH, establish technical and scientific peer review groups in addition to those established under section 402(b)(6); and";

(B) by striking "and" at the end of paragraph (2); and

(C) by adding at the end the following new paragraph:

"(4) may publish, or arrange for the publication of, information with respect to the purpose of the Institute without regard to section 501 of title 44, United States Code.".

SEC. 117. ADVISORY COUNCILS.

(a) VOTING STATUS.—Section 406(b)(1) (42 U.S.C. 284a(b)(1)) is amended by adding at the end the following: "The ex officio members shall be nonvoting members.".

(b) APPOINTMENT OF MEMBERS.—Section 406(b)(3)(A) (42 U.S.C. 284a(b)(3)(A)) is amended by inserting after "(including" the following: "not less than two individuals who are leaders in the fields of".

(c) TERMINATION OF MEMBERSHIPS.—Section 406(h)(2)(A)(v) (42 U.S.C. 284a(h)(2)(A)(v)) is amended—

(1) by inserting "shall be nonvoting members and" after "the Board"; and

(2) by striking out "and the Assistant Secretary of Defense for Health Affairs" and inserting in lieu thereof "the Assistant Secretary of Defense for Health Affairs, and the Director of the Office of Energy Research of the Department of Energy".

SEC. 118. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Paragraphs (1) and (2) of section 408(a) (42 U.S.C. 284c(a)) are amended to read as follows:

"(1)(A) For the National Cancer Institute (other than its programs under section 412), there are authorized to be appropriated $1,500,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990.

"(B) For the programs under section 412, there are authorized to be appropriated $100,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990.

"(2)(A) For the National Heart, Lung, and Blood Institute (other than its program under section 419), there are authorized to be appropriated $1,100,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990. Of the amounts appropriated for the National Heart, Lung, and Blood Institute (other than its program under section 419) for a fiscal year, the Secretary shall make available not less than 15 percent for programs respecting diseases of the lung and not less than 15 percent for programs respecting blood diseases and blood resources.

"(B) For the program of the National Heart, Lung, and Blood Institute under section 419 there is authorized to be appropriated $101,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990.".

(b) APPLICABILITY OF CERTAIN PROVISIONS TO NURSES AND ALLIED HEALTH PROFESSIONALS.—Section 408(b) (42 U.S.C. 284c(b)) is amended by adding at the end the following new paragraph:

"(5) For fiscal year 1989 and subsequent fiscal years, amounts made available to the National Institutes of Health shall be available for payment of nurses and allied health professionals in accordance with payment authorities, scheduling options, benefits, and other authorities provided under chapter 73 of title 38, United States Code, for nurses of the Veterans' Administration.".

Subtitle E—National Cancer Institute

SEC. 121. PURPOSE.

Section 410 (42 U.S.C. 285) is amended by inserting ", rehabilitation from cancer," after "treatment of cancer".

SEC. 122. SPECIAL AUTHORITIES OF THE DIRECTOR.

Section 413 (42 U.S.C. 285a-2(b)) is amended—

(1) in subsection (a)—

(A)(i) in the first sentence, by striking "information and education center" and inserting "information and education program"; and

(ii) in the second sentence, by inserting after "between the Institute" the following: "and the public and between the Institute and"; and

(B) by inserting "(1)" after the subsection designation and adding at the end the following new paragraph:

"(2) In carrying out paragraph (1), the Director of the Institute shall—

"(A) provide public and patient information and education programs, providing information that will help individuals take personal steps to reduce their risk of cancer, to make them aware of early detection techniques and to motivate appropriate utilization of those techniques, to help individuals deal with cancer if it strikes, and to provide information to improve long-term survival;

"(B) continue and expand programs to provide physicians and the public with state-of-the-art information on the treatment of particular forms of cancers, and to identify those clinical trials that might benefit patients while advancing knowledge of cancer treatment;

"(C) assess the incorporation of state-of-the-art cancer treatments into clinical practice and the extent to which cancer patients receive such treatments and include the results of such assessments in the biennial reports required under section 407;

"(D) maintain and operate the International Cancer Research Data Bank, which shall collect, catalog, store, and disseminate insofar as feasible the results of cancer research and treatment undertaken in any country for the use of any person involved in cancer research and treatment in any country; and

"(E) to the extent practicable, in disseminating the results of such cancer research and treatment, utilize information systems available to the public."; and

(2) in subsection (b)—

(A) in paragraph (5), by striking "with the approval of" and inserting "after consultation with"; and

(B)(i) by adding "and" at the end of paragraph (8); and

(ii) by striking paragraph (9) and redesignating paragraph (10) as paragraph (9).

SEC. 123. NATIONAL CANCER RESEARCH AND DEMONSTRATION CENTERS.

Section 414(a)(1) (42 U.S.C. 285a-3(a)(1)) is amended by inserting "control," after "prevention,".

Subtitle F—National Heart, Lung, and Blood Institute

SEC. 126. INFORMATION AND EDUCATION.

The second sentence of section 420 (42 U.S.C. 285b-2) is amended to read as follows: "In carrying out this section, the Director of the Institute shall place special emphasis upon the utilization of collaborative efforts with both the public and private sectors to—

"(1) increase the awareness and knowledge of health care professionals and the public regarding the prevention of heart and blood vessel, lung, and blood diseases and the utilization of blood resources; and

"(2) develop and disseminate to health professionals, patients and patient families, and the public information designed to encourage adults and children to adopt healthful practices concerning the prevention of such diseases.".

SEC. 127. RESOURCES PROGRAM.

Section 421 (42 U.S.C. 285b-3) is amended—

(1) in subsection (a)(1)(D), by inserting "and rehabilitation from" after "treatment of"; and

(2) in subsection (b), by striking out ", after approval of" in paragraph (1) and inserting "after consultation with";

SEC. 128. NATIONAL RESEARCH AND DEMONSTRATION CENTERS.

Section 422(a)(1) (42 U.S.C. 285b-4(a)(1)) is amended—

(1) in subparagraph (A), by inserting "and rehabilitation" after "treatment"; and

(2) in subparagraph (B), by inserting "and rehabilitation" after "treatment".

SEC. 129. INTERAGENCY TECHNICAL COMMITTEE.

Subpart 2 of Part C of title IV (42 U.S.C. 285b et seq.) is amended by striking section 423 and redesignating section 424 as section 423.

Subtitle G—National Institute of Diabetes and Digestive and Kidney Diseases

SEC. 131. ADVISORY BOARDS.

Section 430 (42 U.S.C. 285c-4) is amended by striking subsection (k) and redesignating subsection (l) as subsection (k).

Subtitle H—National Institute of Arthritis and Musculoskeletal and Skin Diseases

SEC. 136. NATIONAL ARTHRITIS AND MUSCULOSKELETAL DISEASES PROGRAMS.

Section 436 (42 U.S.C. 285d-1) is amended—

(1) in the section heading, by inserting "AND SKIN" after "MUSCULOSKELETAL";

(2) in the first sentence of subsection (a), by inserting "and skin" after "musculoskeletal" each place it appears;

(3) in subsection (b)—

(A) in the matter preceding paragraph (1), by inserting "and skin" after "musculoskeletal" each place it appears;

(B) in paragraph (1), by inserting "and skin" after "musculoskeletal" each place it appears; and

(C) in paragraph (2), by inserting "and skin" after "musculoskeletal"; and

(4) in subsection (c), by inserting "and skin" after "musculoskeletal".

SEC. 137. MULTIPURPOSE DISEASE CENTERS.

Section 441(b)(2)(A) (42 U.S.C. 285d-6(b)(2)(A)) is amended by inserting "and rehabilitation from" after "treatment of".

Subtitle I—National Institute on Aging

SEC. 141. CENTERS OF GERIATRIC RESEARCH AND TRAINING.

Subpart 5 of part C of title IV (42 U.S.C. 285e et seq.) is amended by adding at the end the following new section:

"CENTERS OF GERIATRIC RESEARCH AND TRAINING

"SEC. 445A. (a) The Director of the Institute shall enter into cooperative agreements with, and make grants to, public and private nonprofit entities for the development or expansion of centers of excellence in geriatric research and training of researchers.

"(b) Each center developed or expanded under this section shall—

"(1) utilize the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such research and training qualifications as may be prescribed by the Director; and

"(2) conduct—

"(A) research into the aging processes and into the diagnosis and treatment of diseases, disorders, and complications related to aging; and

"(B) programs to develop individuals capable of conducting research concerning aging and concerning such diseases, disorders, and complications.

"(c) In making cooperative agreements and grants under this section for the development or expansion of centers, the Director of the Institute shall ensure that, to the extent practicable, any such centers are distributed equitably among the principal geographic regions of the United States.".

SEC. 142. TRANSFER OF CERTAIN PROVISIONS WITH RESPECT TO ALZHEIMER'S DISEASE AND RELATED DEMENTIAS.

(a) IN GENERAL.—Sections 931, 941, 942, 951, and 952 of the Alzheimer's Disease and Related Dementias Services Research Act of 1986 (42 U.S.C. 11201 et seq.) are—

(1) transferred to subpart 5 of part C of title IV (42 U.S.C. 285e et seq.);

(2) redesignated as sections 445B through 445F, respectively; and

(3) in the appropriate sequence, inserted after section 445A (42 U.S.C. 285e-2).

(b) AVAILABILITY OF APPROPRIATIONS.—With respect to amounts made available in appropriation Acts for the purpose of carrying out the programs transferred by subsection (a) to the Public Health Service Act, such subsection may not be construed to affect the availability of such funds for such purpose.

(c) TECHNICAL AND CONFORMING AMENDMENTS TO ALZHEIMER'S DISEASE AND RELATED DEMENTIAS SERVICES RESEARCH ACT OF 1986.—

(1) The Alzheimer's Disease and Related Dementias Services Research Act of 1986 (42 U.S.C. 11201 et seq.) is amended—

(A) by striking sections 932 and 953;

(B) by striking the part designation and the heading for part D;

(C) by striking the part designation and the heading for part F;

(D) by redesignating parts E and G as parts D and E, respectively; and

(E) in section 912(b)(1), in the first sentence, by striking "part E" and inserting "part D".

(2) Part D of the Alzheimer's Disease and Related Dementias Services Research Act of 1986 (as redesignated by paragraph (1)(D) of this subsection) is amended—

(A) by striking section 943;

(B) by redesignating sections 944 through 949C as sections 931 through 939, respectively;

(C) by striking the subpart designation and the heading for subpart 1; and

(D) by redesignating subparts 2 through 4 as subparts 1 through 3, respectively.

(d) TECHNICAL AND CONFORMING AMENDMENTS TO PUBLIC HEALTH SERVICE ACT.—Subpart 5 of part C of title IV (42 U.S.C. 285e et seq.), as amended by subsection (a), is further amended—

(1) in section 445B—

(A) in subsection (a), in the first sentence, by striking "the National Institute on Aging" and inserting "the Institute";

(B) in subsection (b)—

(i) by striking "the National Institute on Aging" and inserting "the Institute"; and

(ii) by striking "of the Public Health Service Act";

(C) in subsection (c), by striking "the National Institute on Aging" and inserting "the Institute"; and

(D) in subsection (d), by striking "the National Institute on Aging" and inserting "the Institute";

(2) in section 445C—

(A) in subsection (a), by striking "the National Institute on Aging" and inserting "the Institute";

(B) in subsection (b)—

(i) in paragraph (1), in the first sentence—

(I) by striking "this Act" and inserting "the Alzheimer's Disease and Related Dementias Services Research Act of 1986"; and

(II) by striking "the National Institute on Aging" and inserting "the Institute";

(ii) in paragraph (1), in subparagraph (B), by striking "of the Public Health Service Act"; and

(iii) in paragraph (2), by striking "the National Institute on Aging" and inserting "the Institute"; and

(C) in subsection (c), by striking "the National Institute on Aging" and inserting "the Institute";

(3) in section 445D—

(A) by striking "the National Institute on Aging" and inserting "the Institute"; and

(B) by striking "this subpart" and inserting "section 445C and this section";

(4) in section 445E—

(A) in subsection (a), by striking "the National Institute on Aging" and inserting "the Institute"; and

(B) in subsection (c)—

(i) by striking "the National Institute on Aging" and inserting "the Institute"; and

(ii) by striking "part E" and inserting "part D"; and

(5) in section 445F—

(A) in subsection (a), by striking "the National Institute on Aging" and inserting "the Institute"; and

(B) in subsection (d), in the first sentence, by striking "the National Institute on Aging" and inserting "the Institute".

Subtitle J—National Library of Medicine

SEC. 146. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—The first sentence of section 469 (42 U.S.C. 286b) is amended to read as follows: "For the purpose of grants and contracts under sections 472 through 476, there are authorized to be appropriated $14,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990.".

(b) GRANT AMOUNT.—Section 474(b)(2) (42 U.S.C. 286b-5(b)(2)) is amended by striking out "$500,000" and inserting in lieu thereof "$750,000".

Subtitle K—Awards and Training

SEC. 151. NATIONAL RESEARCH SERVICE AWARDS.

Section 487(d) (42 U.S.C. 288(d)) is amended—

(1) in the matter preceding paragraph (1), by amending the first sentence to read as follows: "For the purpose of making payments under National Research Service Awards and under grants for such Awards, there are authorized to be appropriated $300,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990."; and

(2) in paragraph (3), by inserting after "made available" the first place it appears the following: "to the Secretary, acting through the Administrator of the Health Resources and Services Administration,".

Subtitle L—Fetal Research Moratorium

SEC. 156. EXTENSION OF MORATORIUM.

Section 498(c) (42 U.S.C. 289g(c)) is amended—

(1) in paragraph (2), by striking "thirty-six month period beginning on the date of enactment of this section" and inserting "24-month period beginning on the date of the enactment of the National Institute on Deafness and Other Communication Disorders and Health Research Extension Act of 1988"; and

(2) in paragraph (3), by striking "1988" and inserting "1990".

SEC. 157. BOARD AND STUDY.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 381(e) (42 U.S.C. 275(e)) is amended by striking "and" after "1987," and inserting before the period the following: ", $2,000,000 for fiscal year 1989, and $2,500,000 for fiscal year 1990".

(b) STUDY.—Section 498(c)(1) (42 U.S.C. 289g(c)(1)) is amended by striking "thirty months after the date of enactment of this section" and inserting "24 months after the date of the enactment of the National Institute on Deafness and Other Communication Disorders and Health Research Extension Act of 1988".

Subtitle M—Miscellaneous

SEC. 161. STUDY OF THYROID MORBIDITY FOR HANFORD, WASHINGTON.

(a) IN GENERAL.—In carrying out the purposes of section 301 of the Public Health

Service Act (42 U.S.C. 241), the Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control (hereafter referred to in this section as the "Director"), shall conduct a study of thyroid morbidity of the population (including Indian tribes and tribal organizations) in the vicinity of Hanford, in the State of Washington, during the years 1944 through 1957.

(b) Peer Review.—As soon as is practicable after the date of the enactment of this Act, the Director shall establish a peer review committee that shall, along with the Centers for Disease Control, make any determinations as to the conduct of the study required under this section.

(c) Contracts.—

(1) In general.—Except as provided in paragraph (2), the Director may contract out any portion of the study required under this section if the Director considers such appropriate, except that such contractor shall not have any direct or indirect interest in the outcome of such study including, contracts with the Department of Energy.

(2) Relationships.—Contractors that currently are parties to contracts with the Department of Energy (or who have previously been parties to such) shall be given consideration pursuant to paragraph (1), except that the Director shall make a determination in each such circumstance that the relationship of the contractor with the Department of Energy does not represent a conflict of interest or the appearance of such a conflict regarding the conduct of the study required under this section.

(d) Report.—Not later than 42 months after the date of enactment of this section, the Director shall transmit a report including such study to the Congress, the chief executive officers of the States of Oregon and Washington, and the governing officials of the Indian tribes in the vicinity of Hanford, Washington.0

SEC. 162. NATIONAL COMMISSION ON SLEEP DISORDERS RESEARCH.

(a) Establishment.—Not later than 90 days after the date of enactment of this Act, the Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary"), after consultation with the Director of the National Institutes of Health, shall establish a National Commission on Sleep Disorders Research (hereafter in this section referred to as the "Commission").

(b) Composition.—

(1) Appointed members.—The Commission shall be composed of 10 members to be appointed as follows:

(A) Six members shall be appointed by the Secretary from among scientists, physicians, and other health professionals who are not in the employment of the Federal Government, and who have primary expertise in sleep disorders research or medicine.

(B) Two members shall be appointed by the Secretary from the general public, of whom one of which shall have personal or close family experience with sleep disorders.

(C) Two members shall be appointed by the Secretary from among the personnel of the National Institutes of Health, and such members interest shall be in the field of sleep disorders research.

(2) Ex officio members.—The Director of the National Institutes of Health, the Director of the National Institute of Neurological and Communicative Disorders and Stroke, the Directors of the National Heart, Lung and Blood Institute, the National Institute on Mental Health, the National Institute on Aging, the National Institute on Child Health and Human Development, the Director of the Center for Disease Control, the Chief Medical Director of the Veterans' Administration, and the Secretary of Defense shall be ex officio members of the Commission, or their designees.

(c) Chairperson.—The members of the Commission shall select a Chairperson from among the appointed members of the Commission.

(d) Meetings.—Not later than 60 days after the establishment of the Commission, the Commission shall meet as directed by the Secretary, and thereafter shall meet at the call of the Chairperson of the Commission, but in no event shall the Commission meet less often than three times during the life of the Commission. The Commission may hold such hearings, take such testimony, and sit and act at such time and places as the Commission considers appropriate.

(e) Personnel.—

(1) Executive secretary.—

(A) Appointment.—The Commission may appoint and fix the compensation of an executive secretary to effectively carry out the functions of the Commission.

(B) Compensation.—The executive secretary shall be appointed subject to title 5, United States Code, governing appointments in the competitive service, and shall receive compensation in accordance with chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(2) Additional personnel.—The Secretary shall, to the extent practicable, provide the Commission with such additional professional and clerical staff, such information, and the services of such consultants as the Commission determines to be necessary to carry out its functions effectively.

(f) Compensation.—

(1) Officers or employees of the federal government.—Members of the Commission who are officers or employees of the Federal Government shall serve as members of the Commission without compensation in addition to that received in their regular public employment.

(2) Non-federal government members.—Members of the Commission who are not officers or employees of the Federal Government shall receive compensation at a rate not to exceed the daily equivalent of the annual rate in effect for Grade GS-18 of the General Schedule for each day (including traveltime) that such members are engaged in the performance of their duties as members of the Commission.

(3) Expenses.—All members of the Commission, while serving away from their homes or regular places of business in the performance of services for the Commission, shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as such expenses are authorized by section 5703 of title 5, United States Code, for persons in Government Service employed intermittently.

(g) Duties.—

(1) Study.—The Commission shall—

(A) conduct a comprehensive study of the present state of knowledge of the incidence, prevalence, morbidity, and mortality resulting from sleep disorders, and of the social and economic impact of such disorders;

(B) evaluate the public and private facilities and resources (including trained personnel and research activities) available for the diagnosis, prevention, and treatment of, and research into, such disorders; and

(C) identify programs (including biological, physiological, behavioral, environmental, and social programs) by which improvement in the management and research into sleep disorders can be accomplished.

(2) Development of plan.—Based on the study conducted under paragraph (1), the Commission shall develop a long-range plan for the use and organization of national resources to effectively deal with sleep disorders research and medicine.

(3) Cooperation.—Each Federal entity administering programs and activities related to sleep disorders shall, on request, assist the Commission in carrying out its duties under this subsection.

(h) Development of Estimates.—The Commission shall recommend, for each of the Institutes of the National Institutes of Health whose activities are to be affected by the long-range plan, estimates of the expenditures needed to carry out each Institute's part of the overall program. Such estimates shall be prepared for the fiscal year beginning immediately after completion of the plan under subsection (g)(2) and for each of the next 2 fiscal years.

(i) Report.—Not later than 18 months after the initial meeting of the Commission (as prescribed by subsection (d)), the Commission shall prepare and submit to the appropriate Committees of Congress, a final report describing—

(1) the long-range plan developed under subsection (g);

(2) the expenditure estimates required under subsection (h); and

(3) any recommendations of the Commission for legislation.

(j) Termination.—The Commission shall cease to exist on the 30th day following the date of the submission of the final report under subsection (i).

SEC. 163. MISCELLANEOUS AMENDMENTS.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended—

(1)(A) with respect to section 303(a), by transferring the matter after and below paragraph (2) of such section to section 301;

(B) by designating such matter as subsection (d); and

(C) by adding subsection (d) (as so designated) at the end of section 301;

(2) in section 301(d) (as so designated)—

(A) in the first sentence, by striking "research on mental health, including" and inserting the following: "biomedical, behavioral, clinical, or other research (including research on mental health, including"; and

(B) by striking "drugs," and inserting "drugs)"; and

(3) in section 330, by redesignating the second subsection (j) (as added by section 4 of Public Law 100-386) as subsection (k).

TITLE II—PROGRAMS WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME

SEC. 200. SHORT TITLE.

This title may be cited as the "AIDS Amendments of 1988".

Subtitle A—Research Programs

SEC. 201. ESTABLISHMENT OF CERTAIN PROGRAMS.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended—

(1) by redesignating title XXIII as title XV;

(2) by redesignating sections 2301 through 2303 as sections 2501 through 2503, respectively;

(3) by redesignating sections 2306 through 2316 as sections 2504 through 2514, respectively; and

(4) by inserting after title XXII the following new title:

"TITLE XXIII—RESEARCH WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME

"PART A—ADMINISTRATION OF RESEARCH PROGRAMS

"SEC. 2301. REQUIREMENT OF ANNUAL COMPREHENSIVE REPORT ON ALL EXPENDITURES BY SECRETARY WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME.

"(a) IN GENERAL.—Not later than December 1 of each fiscal year, the Secretary shall prepare and submit to the Congress a report on the expenditures by the Secretary of amounts appropriated for the preceding fiscal year with respect to acquired immune deficiency syndrome.

"(b) INCLUSION OF CERTAIN INFORMATION.—The report required in subsection (a) shall, with respect to acquired immune deficiency syndrome, include—

"(1) for each program, project, or activity with respect to such syndrome, a specification of the amount obligated by each office and agency of the Department of Health and Human Services;

"(2) a summary description of each such program, project, or activity;

"(3) a list of such programs, projects, or activities that are directed towards members of minority groups;

"(4) a description of the extent to which programs, projects, and activities described in paragraph (3) have been coordinated between the Director of the Office of Minority Health and the Director of the Centers for Disease Control;

"(5) a summary of the progress made by each such program, project, or activity with respect to the prevention and control of acquired immune deficiency syndrome;

"(6) a summary of the evaluations conducted under this title; and

"(7) any report required in this Act to be submitted to the Secretary for inclusion in the report required in subsection (a).

"SEC. 2302. REQUIREMENT OF EXPEDITING AWARDS OF GRANTS AND CONTRACTS FOR RESEARCH.

"(a) IN GENERAL.—The Secretary shall expedite the award of grants, contracts, and cooperative agreements for research projects relating to acquired immune deficiency syndrome (including such research projects initiated independently of any solicitation by the Secretary for proposals for such research projects).

"(b) TIME LIMITATIONS WITH RESPECT TO CERTAIN APPLICATIONS.—

"(1) With respect to programs of grants, contracts, and cooperative agreements described in subsection (a), any application submitted in response to a solicitation by the Secretary for proposals pursuant to such a program—

"(A) may not be approved if the application is submitted after the expiration of the 3-month period beginning on the date on which the solicitation is issued; and

"(B) shall be awarded, or otherwise finally acted upon, not later than the expiration of the 6-month period beginning on the expiration of the period described in subparagraph (A).

"(2) If the Secretary makes a determination that it is not practicable to administer a program referred to in paragraph (1) in accordance with the time limitations described in such paragraph, the Secretary may adjust the time limitations accordingly.

"(c) REQUIREMENTS WITH RESPECT TO ADJUSTMENTS IN TIME LIMITATIONS.—With respect to any program for which a determination described in subsection (b)(2) is made, the Secretary shall—

"(1) if the determination is made before the Secretary issues a solicitation for proposals pursuant to the program, ensure that the solicitation describes the time limitations as adjusted by the determination; and

"(2) if the determination is made after the Secretary issues such a solicitation for proposals, issue a statement describing the time limitations as adjusted by the determination and individually notify, with respect to the determination, each applicant whose application is submitted before the expiration of the 3-month period beginning on the date on which the solicitation was issued.

"(d) ANNUAL REPORTS TO CONGRESS.—Except as provided in subsection (e), the Secretary shall annually prepare, for inclusion in the comprehensive report required in section 2301, a report—

"(A) summarizing programs for which the Secretary has made a determination described in subsection (b)(2), including a description of the time limitations as adjusted by the determination and including a summary of the solicitation issued by the Secretary for proposals pursuant to the program; and

"(B) summarizing applications that—

"(i) were submitted pursuant to a program of grants, contracts, or cooperative agreements referred to in paragraph (1) of subsection (b) for which a determination described in paragraph (2) of such subsection has not been made; and

"(ii) were not processed in accordance with the time limitations described in such paragraph (1).

"(e) QUARTERLY REPORTS FOR FISCAL YEAR 1989.—For fiscal year 1989, the report required in subsection (d) shall, not less than quarterly, be prepared and submitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

"SEC. 2303. REQUIREMENTS WITH RESPECT TO PROCESSING OF REQUESTS FOR PERSONNEL AND ADMINISTRATIVE SUPPORT.

"(a) IN GENERAL.—The Director of the Office of Personnel Management or the Administrator of General Services, as the case may be, shall respond to any priority request made by the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, the Director of the Centers for Disease Control, the Commissioner of Food and Drugs, or the Director of the National Institutes of Health, not later than 21 days after the date on which such request is made. If the Director of the Office of Personnel Management or the Administrator of General Services, as the case may be, does not disapprove a priority request during the 21-day period, the request shall be deemed to be approved.

"(b) NOTICE TO SECRETARY AND TO ASSISTANT SECRETARY FOR HEALTH.—The Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, the Director of the Centers for Disease Control, the Commissioner of Food and Drugs, and the Director of the National Institutes of Health, shall, respectively, transmit to the Secretary and the Assistant Secretary for Health a copy of each priority request made under this section by the agency head involved. The copy shall be transmitted on the date on which the priority request involved is made.

"(c) DEFINITION OF PRIORITY REQUEST.—For purposes of this section, the term 'priority request' means any request that—

"(1) is designated as a priority request by the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, the Director of the Centers for Disease Control, the Commissioner of Food and Drugs, or the Director of the National Institutes of Health; and

"(2)(A) is made to the Director of the Office of Personnel Management for the allocation of personnel to carry out activities with respect to acquired immune deficiency syndrome; or

"(B) is made to the Administrator of General Services for administrative support or space in carrying out such activities.

"SEC. 2304. ESTABLISHMENT OF CLINICAL RESEARCH REVIEW COMMITTEE.

"(a) IN GENERAL.—After consultation with the Commissioner of Food and Drugs, the Secretary, acting through the Director of the National Institute of Allergy and Infectious Diseases, shall establish within such Institute an advisory committee to be known as the AIDS Clinical Research Review Committee (hereafter in this section referred to as the 'Committee').

"(b) COMPOSITION.—The Committee shall be composed of physicians whose clinical practice includes a significant number of patients with acquired immune deficiency syndrome.

"(c) DUTIES.—The Committee shall—

"(1) advise the Director of such Institute on appropriate research activities to be undertaken with respect to clinical treatment of such syndrome, including advice with respect to—

"(A) research on drugs for preventing or minimizing the development of symptoms or conditions arising from infection with the etiologic agent for such syndrome; and

"(B) research on the effectiveness of treating such symptoms or conditions with drugs that—

"(i) are not approved by the Commissioner of Food and Drugs for the purpose of treating such symptoms or conditions; and

"(ii) are being utilized for such purpose by individuals infected with such etiologic agent;

"(2)(A) review ongoing publicly and privately supported research on clinical treatment for acquired immune deficiency syndrome, including research on drugs described in paragraph (1); and

"(B) periodically issue, and make available to health care professionals, reports describing and evaluating such research.

"(3) conduct studies and convene meetings for the purpose of determining the recommendations among physicians in clinical practice on clinical treatment of acquired immune deficiency syndrome, including treatment with the drugs described in paragraph (1); and

"(4) conduct a study for the purpose of developing, with respect to individuals infected with the etiologic agent for acquired immune deficiency syndrome, a consensus among health care professionals on clinical treatments for preventing or minimizing the development of symptoms or conditions arising from infection with such etiologic agent.

"PART B—RESEARCH AUTHORITY

"SEC. 2311. CLINICAL EVALUATION UNITS AT NATIONAL INSTITUTES OF HEALTH.

"(a) IN GENERAL.—The Secretary, acting through the Director of the National Cancer Institute and the Director of the National Institute of Allergy and Infectious Diseases, shall for each such Institute establish a clinical evaluation unit at the Clinical Center at the National Institutes of Health. Each of the clinical evaluation units—

"(1) shall conduct clinical evaluations of experimental treatments for acquired immune deficiency syndrome developed within the preclinical drug development program; and

"(2) may conduct clinical evaluations of experimental treatments for such syndrome that are developed by any other national research institute of the National Institutes of Health or by any other entity.

"(b) Personnel and Administrative Support.—

"(1) For the purposes described in subsection (a), the Secretary, acting through the Director of the National Institutes of Health, shall provide each of the clinical evaluation units required in such subsection—

"(A)(i) with not less than 50 beds; or

"(ii) with an outpatient clinical capacity equal to not less than twice the outpatient clinical capacity, with respect to acquired immune deficiency syndrome, possessed by the Clinical Center of the National Institutes of Health on June 1, 1988; and

"(B) with such personnel, such administrative support, and such other support services as may be necessary.

"(2) Facilities, personnel, administrative support, and other support services provided pursuant to paragraph (1) shall be in addition to the number or level of facilities, personnel, administrative support, and other support services that otherwise would be available at the Clinical Center at the National Institutes of Health for the provision of clinical care for individuals with diseases or disorders.

"(c) Authorization of Appropriations.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

"SEC. 2312. USE OF INVESTIGATIONAL NEW DRUGS WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME.

"(a) Encouragement of Applications With Respect to Clinical Trials.—

"(1) If, in the determination of the Secretary, there is preliminary evidence that a new drug has effectiveness in humans with respect to the prevention or treatment of acquired immune deficiency syndrome, the Secretary shall, through statements published in the Federal Register—

"(A) announce the fact of such determination; and

"(B) with respect to the new drug involved, encourage an application for an exemption for investigational use of the new drug under regulations issued under section 505(i) of the Federal Food, Drug, and Cosmetic Act.

"(2)(A) The AIDS Clinical Research Review Committee established pursuant to section 2304 shall make recommendations to the Secretary with respect to new drugs appropriate for determinations described in paragraph (1).

"(B) The Secretary shall, as soon as is practicable, determine the merits of recommendations received by the Secretary pursuant to subparagraph (A).

"(b) Encouragement of Applications With Respect to Treatment Use in Circumstances Other Than Clinical Trials.—

"(1) In the case of a new drug with respect to which the Secretary has made a determination described in subsection (a) and with respect to which an exemption is in effect for purposes of section 505(i) of the Federal Food, Drug, and Cosmetic Act, the Secretary shall—

"(A) as appropriate, encourage the sponsor of the investigation of the new drug to submit to the Secretary, in accordance with regulations issued under such section, an application to use the drug in the treatment of individuals—

"(i) who are infected with the etiologic agent for acquired immune deficiency syndrome; and

"(ii) who are not participating in the clinical trials conducted pursuant to such exemption; and

"(B) if such an application is approved, encourage, as appropriate, licensed medical practitioners to obtain, in accordance with such regulations, the new drug from such sponsor for the purpose of treating such individuals.

"(2) If the sponsor of the investigation of a new drug described in paragraph (1) does not submit to the Secretary an application described in such paragraph (relating to treatment use), the Secretary shall, through statements published in the Federal Register, encourage, as appropriate, licensed medical practitioners to submit to the Secretary such applications in accordance with regulations described in such paragraph.

"(c) Technical Assistance With Respect to Treatment Use.—In the case of a new drug with respect to which the Secretary has made a determination described in subsection (a), the Secretary may, directly or through grants or contracts, provide technical assistance with respect to the process of—

"(1) submitting to the Secretary applications for exemptions described in paragraph (1)(B) of such subsection;

"(2) submitting to the Secretary applications described in subsection (b); and

"(3) with respect to sponsors of investigations of new drugs, facilitating the transfer of new drugs from such sponsors to licensed medical practitioners.

"(d) Definition.—For purposes of this section, the term "new drug" has the meaning given such term in section 201 of the Federal Food, Drug, and Cosmetic Act.

"SEC. 2313. COMMUNITY-BASED EVALUATIONS OF EXPERIMENTAL THERAPIES.

"(a) In General.—After consultation with the Commissioner of Food and Drugs, the Director of the National Institutes of Health, acting through the National Institutes of Allergy and Infectious Diseases, may make grants to public entities and nonprofit private entities concerned with acquired immune deficiency syndrome, and may enter into contracts with public and private such entities, for the purpose of planning and conducting, in the community involved, clinical trials of experimental treatments for infection with the etiologic agent for such syndrome that are approved by the Commissioner of Food and Drugs for investigational use under regulations issued under section 505 of the Federal Food, Drug, and Cosmetic Act.

"(b) Requirement of Certain Projects.—

"(1) Financial assistance under subsection (a) shall include such assistance to community-based organizations and community health centers for the purpose of—

"(A) retaining appropriate medical supervision;

"(B) assisting with administration, data collection and record management; and

"(C) conducting training of community physicians, nurse practitioners, physicians' assistants and other health professionals for the purpose of conducting clinical trials.

"(2)(A) Financial assistance under subsection (a) shall include such assistance for demonstration projects designed to implement and conduct community-based clinical trials in order to provide access to the entire scope of communities affected by infections with the etiologic agent for acquired immune deficiency syndrome, including minorities, hemophiliacs and transfusion-exposed individuals, women, children, users of intravenous drugs, and individuals who are asymptomatic with respect to such infection.

"(B) The Director of the National Institutes of Health may not provide financial assistance under this paragraph unless the application for such assistance is approved—

"(i) by the Commissioner of Food and Drugs;

"(ii) by a duly constituted Institutional Review Board that meets the requirements of part 56 of title 21, Code of Federal Regulations; and

"(iii) by the Director of the National Institutes of Allergy and Infectious Diseases.

"(c) Participation of Private Industry and Schools of Medicine.—Programs carried out with financial assistance provided under subsection (a) shall be designed to encourage private industry and schools of medicine to participate in, and to support, the clinical trials conducted pursuant to the programs.

"(d) Requirement of Application.—The Secretary may not provide financial assistance under subsection (a) unless—

"(1) an application for the assistance is submitted to the Secretary;

"(2) with respect to carrying out the purpose for which the assistance is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

"(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"(e) Authorization of Appropriations.—

"(1) For the purpose of carrying out subsection (b)(1), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.

"(2) For the purpose of carrying out subsection (b)(2), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.

"SEC. 2314. EVALUATION OF CERTAIN TREATMENTS.

"(a) Establishment of Program.—

"(1) After consultation with the Clinical Research Review Committee established pursuant to section 2304, the Secretary shall establish a program for the evaluation of drugs that—

"(A) are not approved by the Commissioner of Food and Drugs for the purpose of treatments with respect to acquired immune deficiency syndrome; and

"(B) are being utilized for such purpose by individuals infected with the etiologic agent for such syndrome.

"(2) The program established under paragraph (1) shall include evaluations of the effectiveness and the risks of the treatment involved, including the risks of foregoing treatments with respect to acquired immune deficiency syndrome that are approved by the Commissioner of Food and Drugs.

"(b) Authority With Respect to Grants and Contracts.—

"(1) For the purpose of conducting evaluations required in subsection (a), the Secretary may make grants to, and enter into cooperative agreements and contracts with, public and nonprofit private entities.

"(2) Nonprofit private entities under paragraph (1) may include nonprofit private organizations that—

"(A) are established for the purpose of evaluating treatments with respect to acquired immune deficiency syndrome; and

"(B) consist primarily of individuals infected with the etiologic agent for such syndrome.

"(c) Scientific and Ethical Guidelines.—

"(1) The Secretary shall establish appropriate scientific and ethical guidelines for the conduct of evaluations carried out pursuant to this section. The Secretary may not provide financial assistance under subsection (b)(1) unless the applicant for such assistance agrees to comply with such guidelines.

"(2) The Secretary may establish the guidelines described in paragraph (1) only after consulting with—

"(A) physicians whose clinical practice includes a significant number of individuals with acquired immune deficiency syndrome;

"(B) individuals who are infected with the etiologic agent for such syndrome; and

"(C) other individuals with appropriate expertise or experience.

"(d) Authorization of Appropriations.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

"SEC. 2315. SUPPORT OF INTERNATIONAL EFFORTS.

"(a) Grants and Contracts for Research.—

"(1) Under section 307, the Secretary, acting through the Director of the National Institutes of Health—

"(A) shall, for the purpose described in paragraph (2), make grants to, enter into cooperative agreements and contracts with, and provide technical assistance to, international organizations concerned with public health; and

"(B) may, for such purpose, provide technical assistance to foreign governments.

"(2) The purpose referred to in paragraph (1) is promoting and expediting international research concerning the development and evaluation of vaccines and treatments for acquired immune deficiency syndrome.

"(b) Grants and Contracts for Additional Purposes.—After consultation with the Administrator of the Agency for International Development, the Secretary, acting through the Director of the Centers for Disease Control, shall under section 307 make grants to, enter into contracts with, and provide technical assistance to, international organizations concerned with public health and may provide technical assistance to foreign governments, in order to support—

"(1) projects for training individuals with respect to developing skills and technical expertise for use in the prevention, diagnosis, and treatment of acquired immune deficiency syndrome; and

"(2) epidemiological research relating to acquired immune deficiency syndrome.

"(c) Special Programme of World Health Organization.—Support provided by the Secretary pursuant to this section shall be in furtherance of the global strategy of the World Health Organization Special Programme on Acquired Immunodeficiency Syndrome.

"(d) Preferences.—In providing grants, cooperative agreements, contracts, and technical assistance under subsections (a) and (b), the Secretary shall—

"(1) give preference to activities under such subsections conducted by, or in cooperation with, the World Health Organization; and

"(2) with respect to activities carried out under such subsections in the Western Hemisphere, give preference to activities conducted by, or in cooperation with, the Pan American Health Organization or the World Health Organization.

"(e) Requirement of Application.—The Secretary may not make a grant or enter into a cooperative agreement or contract under this section unless—

"(1) an application for such assistance is submitted to the Secretary;

"(2) with respect to carrying out the purpose for which such assistance is to be provided, the application provides assurances of compliance satisfactory to the Secretary; and

"(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"(f) Authorization of Appropriations.—For the purpose of carrying out this section, there are authorized to be appropriated $40,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

"SEC. 2316. RESEARCH CENTERS.

"(a) In General.—

"(1) The Secretary, acting through the Director of the National Institute of Allergy and Infectious Diseases, may make grants to, and enter into contracts with, public and nonprofit private entities to assist such entities in planning, establishing, or strengthening, and providing basic operating support for, centers for basic and clinical research into, and training in, advanced diagnostic, prevention, and treatment methods for acquired immune deficiency syndrome.

"(2) A grant or contract under paragraph (1) shall be provided in accordance with policies established by the Secretary, acting through the Director of the National Institutes of Health, and after consultation with the advisory council for the National Institute of Allergy and Infectious Diseases.

"(3) The Secretary shall ensure that, as appropriate, clinical research programs carried out under paragraph (1) include as research subjects women, children, hemophiliacs, and minorities.

"(b) Use of Financial Assistance.—

"(1) Financial assistance under subsection (a) may be expended for—

"(A) the renovation or leasing of space;

"(B) staffing and other basic operating costs, including such patient care costs as are required for clinical research;

"(C) clinical training with respect to acquired immune deficiency syndrome (including such training for allied health professionals); and

"(D) demonstration purposes, including projects in the long-term monitoring and outpatient treatment of individuals infected with the etiologic agent for such syndrome.

"(2) Financial assistance under subsection (a) may not be expended to provide research training for which National Research Service Awards may be provided under section 487.

"(c) Duration of Support.—Support of a center under subsection (a) may be for not more than five years. Such period may be extended by the Director for additional periods of not more than five years each if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

"(d) Authorization of Appropriations.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

"SEC. 2317. INFORMATION SERVICES.

"(a) Establishment of Program.—The Secretary shall establish, maintain, and operate a program with respect to information on research, treatment, and prevention activities relating to infection with the etiologic agent for acquired immune deficiency syndrome. The program shall, with respect to the agencies of the Department of Health and Human Services, be integrated and coordinated.

"(b) Toll-Free Telephone Communications for Health Care Entities.—

"(1) After consultation with the Director of the Office of AIDS Research, the Administrator of the Health Resources and Services Administration, and the Director of the Centers for Disease Control, the Secretary shall provide for toll-free telephone communications to provide medical and technical information with respect to acquired immune deficiency syndrome to health care professionals, allied health care providers, and to professionals providing emergency health services.

"(2) Information provided pursuant to paragraph (1) shall include—

"(A) information on prevention of exposure to, and the transmission of, the etiologic agent for acquired immune deficiency syndrome; and

"(B) information contained in the data banks established in subsections (c) and (d).

"(c) Data Bank on Research Information.—

"(1) After consultation with the Director of the Office of AIDS Research, the Director of the Centers for Disease Control, and the National Library of Medicine, the Secretary shall establish a data bank of information on the results of research with respect to acquired immune deficiency syndrome conducted in the United States and other countries.

"(2) In carrying out paragraph (1), the Secretary shall collect, catalog, store, and disseminate the information described in such paragraph. To the extent practicable, the Secretary shall make such information available to researchers, physicians, and other appropriate individuals, of countries other than the United States.

"(d) Data Bank on Clinical Trials and Treatments.—

"(1) After consultation with the Commissioner of Food and Drugs, the Clinical Research Review Committee, and the Director of the Office of AIDS Research, the Secretary shall, in carrying out subsection (a), establish a data bank of information on clinical trials and treatments with respect to infection with the etiologic agent for acquired immune deficiency syndrome (hereafter in this section referred to as the 'Data Bank').

"(2) In carrying out paragraph (1), the Secretary shall collect, catalog, store, and disseminate the information described in such paragraph. The Secretary shall disseminate such information through information systems available to individuals infected with the etiologic agent for acquired immune deficiency syndrome, to other members of the public, to health care providers, and to researchers.

"(e) Requirements With Respect to Data Bank.—The Data Bank shall include the following:

"(1) A registry of clinical trials of experimental treatments for acquired immune deficiency syndrome and related illnesses conducted under regulations promulgated pursuant to section 505 of the Federal Food, Drug and Cosmetic Act that provides a description of the purpose of each experimental drug protocol either with the consent of the protocol sponsor, or when a trial to test efficacy begins. Information provided shall include eligibility criteria and the location of trial sites, and must be forwarded to the Data Bank by the sponsor of the trial not later than 21 days after the approval by the Food and Drug Administration.

"(2) Information pertaining to experimental treatments for acquired immune deficiency syndrome that may be available under a treatment investigational new drug application that has been submitted to the Food and Drug Administration pursuant to part 312 of title 21, Code of Federal Regulations. The Data Bank shall also include information pertaining to the results of clinical trials of such treatments, with the consent of the sponsor, of such experimental treatments, including information concerning potential toxicities or adverse effects associated with the use or administration of such experimental treatment.

"SEC. 2318. DEVELOPMENT OF MODEL PROTOCOLS FOR CLINICAL CARE OF INFECTED INDIVIDUALS.

"(a) In General.—

"(1) The Secretary may make grants to public and nonprofit private entities for the establishment of projects to develop model protocols for the clinical care of individuals infected with the etiologic agent for acquired immune deficiency syndrome.

"(2) The Secretary may not make a grant under paragraph (1) unless—

"(A) the applicant for the grant is a provider of comprehensive primary care; or

"(B) the applicant for the grant agrees, with respect to the project carried out pursuant to paragraph (1), to enter into a cooperative arrangement with an entity that is a provider of comprehensive primary care.

"(b) Requirement of Provision of Certain Services.—The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that, with respect to patients participating in the project carried out with the grant, services provided pursuant to the grant will include—

"(1) monitoring, in clinical laboratories, of the condition of such patients;

"(2) clinical intervention for infection with the etiologic agent for acquired immune deficiency syndrome, including measures for the prevention of conditions arising from the infection;

"(3) information and counseling on the availability of treatments for such infection approved by the Commissioner of Food and Drugs, on the availability of treatments for such infection not yet approved by the Commissioner, and on the reports issued by the Clinical Research Review Committee under section 2304(c)(2)(B);

"(4) support groups; and

"(5) information on, and referrals to, entities providing appropriate social support services.

"(c) Limitation on Imposition of Charges for Services.—The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that, if the applicant will routinely impose a charge for providing services pursuant to the grant, the applicant will not impose the charge on any individual seeking such services who is unable to pay the charge.

"(d) Evaluation and Reports.—

"(1) The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees, with respect to the project carried out pursuant to subsection (a), to submit to the Secretary—

"(A) information sufficient to assist in the replication of the model protocol developed pursuant to the project; and

"(B) such reports as the Secretary may require.

"(2) The Secretary shall provide for evaluations of projects carried out pursuant to subsection (a) and shall annually submit to the Congress a report describing such projects. The report shall include the findings made as a result of such evaluations and may include any recommendations of the Secretary for appropriate administrative and legislative initiatives with respect to the program established in this section.

"(e) Authorization of Appropriations.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.

"SEC. 2319. NATIONAL BLOOD RESOURCE EDUCATION PROGRAM.

"After consultation with the Director of the National Heart, Lung, and Blood Institute and the Commissioner of Food and Drugs, the Secretary shall establish a program of research and education regarding blood donations and transfusions to maintain and improve the safety of the blood supply. Education programs shall be directed at health professionals, patients, and the community to—

"(1) in the case of the public and patients undergoing treatment—

"(A) increase awareness that the process of donating blood is safe;

"(B) promote the concept that blood donors are contributors to a national need to maintain an adequate and safe blood supply;

"(C) encourage blood donors to donate more than once a year; and

"(D) encourage repeat blood donors to recruit new donors;

"(2) in the case of health professionals—

"(A) improve knowledge, attitudes, and skills of health professionals in the appropriate use of blood and blood components;

"(B) increase the awareness and understanding of health professionals regarding the risks versus benefits of blood transfusion; and

"(C) encourage health professionals to consider alternatives to the administration of blood or blood components for their patients; and

"(3) in the case of the community, increase coordination, communication, and collaboration among community, professional, industry, and government organizations regarding blood donation and transfusion issues.

"SEC. 2320. ADDITIONAL AUTHORITY WITH RESPECT TO RESEARCH.

"(a) Data Collection With Respect to National Prevalence.—

"(1) The Secretary, acting through the Director of the Centers for Disease Control, may, through representative sampling and other appropriate methodologies, provide for the continuous collection of data on the incidence in the United States of cases of acquired immune deficiency syndrome and of cases of infection with the etiologic agent for such syndrome. The Secretary may carry out the program of data collection directly or through cooperative agreements and contracts with public and nonprofit private entities.

"(2) The Secretary shall encourage each State to enter into a cooperative agreement or contract under paragraph (1) with the Secretary in order to facilitate the prompt collection of the most recent accurate data on the incidence of cases described in such paragraph.

"(3) The Secretary shall ensure that data collected under paragraph (1) includes data on the demographic characteristics of the population of individuals with cases described in paragraph (1), including data on specific subpopulations at risk of infection with the etiologic agent for acquired immune deficiency syndrome.

"(4) In carrying out this subsection, the Secretary shall, for the purpose of assuring the utility of data collected under this section, request entities with expertise in the methodologies of data collection to provide, as soon as is practicable, assistance to the Secretary and to the States with respect to the development and utilization of uniform methodologies of data collection.

"(5) The Secretary shall provide for the dissemination of data collected pursuant to this section. In carrying out this paragraph, the Secretary may publish such data as frequently as the Secretary determines to be appropriate with respect to the protection of the public health. The Secretary shall publish such data not less than once each year.

"(b) Epidemiological and Demographic Data.—

"(1) The Secretary, acting through the Director of the Centers for Disease Control, shall develop an epidemiological data base and shall provide for long-term studies for the purposes of—

"(A) collecting information on the demographic characteristics of the population of individuals infected with the etiologic agent for acquired immune deficiency syndrome; and

"(B) developing models demonstrating the long-term domestic and international patterns of the transmission of such etiologic agent.

"(2) The Secretary may carry out paragraph (1) directly or through grants to, or cooperative agreeements or contracts with, public and nonprofit private entities, including Federal agencies.

"(c) Long-Term Research.—The Secretary may make grants to public and nonprofit private entities for the purpose of assisting grantees in conducting long-term research into treatments for acquired immune deficiency syndrome developed from knowledge of the genetic nature of the etiologic agent for such syndrome.

"(d) Social Sciences Research.—The Secretary, acting through the Director of the National Institute of Mental Health, may make grants to public and nonprofit private entities for the purpose of assisting grantees in conducting scientific research into the psychological and social sciences as such sciences relate to acquired immune deficiency syndrome.

"(e) Authorization of Appropriations.—

"(1) For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.

"(2) Amounts appropriated pursuant to paragraph (1) to carry out subsection (c) shall remain available until expended.

"Part C—Research Training

"SEC. 2341. FELLOWSHIPS AND TRAINING.

"(a) In General.—The Secretary, acting through the Director of the Centers for Disease Control, shall establish fellowship and training programs to be conducted by the Centers for Disease Control to train individuals to develop skills in epidemiology, surveillance, testing, counseling, education, information, and laboratory analysis relating to acquired immune deficiency syndrome. Such programs shall be designed to enable health professionals and health personnel trained under such programs to work, after receiving such training, in national and international efforts towards the prevention, diagnosis, and treatment of acquired immune deficiency syndrome.

"(b) Programs Conducted by National Institute of Mental Health.—The Secretary, acting through the Director of the National Institute of Mental Health, shall conduct or support fellowship and training programs for individuals pursuing graduate or postgraduate study in order to train such individuals to conduct scientific research into the psychological and social sciences as such sciences relate to acquired immune deficiency syndrome.

"(c) Relationship to Limitation on Number of Employees.—Any individual receiving a fellowship or receiving training under subsection (a) or (b) shall not be included in any determination of the number of full-time equivalent employees of the Department of Health and Human Services for the purpose of any limitation on the number of such employees established by law prior to, on, or after the date of the enactment of the AIDS Federal Policy Act of 1988.

"(d) Authorization of Appropriations.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.

"Part D—Special Authorities of the Director of the National Institutes of Health

"SEC. 2351. ESTABLISHMENT OF AUTHORITIES.

"(a) In General.—In carrying out research with respect to acquired immune deficiency syndrome, the Secretary, acting through the Director of the National Institutes of Health—

"(1)(A) shall establish an an office to be known as the Office of AIDS Research, which Office shall be headed by a Director appointed by the Director of the National Institutes of Health; and

(B) shall provide administrative support and support services to the Director of such Office;

"(2) shall coordinate activities relating to acquired immune deficiency syndrome conducted by the national reseach institutes and the agencies of the National Institutes of Health;

"(3) shall develop and expand clinical trials of treatments and therapies for infection with the etiologic agent for acquired immune deficiency syndrome, including such clinical trials for women, infants, children, hemophiliacs, and minorities;

"(4) may establish or support the large-scale development and preclinical screening, production, or distribution of specialized biological materials and other therapeutic substances for research relating to acquired immune deficiency syndrome and set standards of safety and care for persons using such materials;

"(5) may, in consultation with the advisory council for the appropriate national research institute of the National Institutes of Health, support—

"(A) research relating to acquired immune deficiency syndrome conducted outside the United States by qualified foreign professionals if such research can reasonably be expected to benefit the people of the United States;

"(B) collaborative research involving American and foreign participants; and

"(C) the training of American scientists abroad and foreign scientists in the United States;

"(6) may encourage and coordinate research relating to acquired immune deficiency syndrome conducted by any industrial concern that evidences a particular capability for the conduct of such research;

"(7)(A) may, in consultation with such advisory council, acquire, improve, repair, operate, and maintain laboratories, other research facilities, equipment, and such other real or personal property as the Director of the National Institutes of Health determines necessary;

"(B) may, in consultation with such advisory council, make grants for the construction or renovation of facilities; and

"(C) may, in consultation with such advisory council, acquire, without regard to the Act of March 3, 1877 (40 U.S.C. 34) by lease or otherwise through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the National Institutes of Health for a period not to exceed ten years; and

"(8) subject to section 405(b)(2) and without regard to section 3324 of title 31, United States Code, and section 3709 of the Revised Statutes (41 U.S.C. 5), may enter into such contracts and cooperative agreements with any public agency, or with any person, firm, association, corporation, or educational institution, as may be necessary to expedite and coordinate research relating to acquired immune deficiency syndrome.

"(b) Report to Secretary.—The Director of the National Institutes of Health, acting through the Director of the Office of AIDS Research, shall each fiscal year prepare and submit to the Secretary, for inclusion in the comprehensive report required in section 2301(a), a report—

"(1) describing and evaluating the progress made in such fiscal year in research, treatment, and training with respect to acquired immune deficiency syndrome conducted or supported by the Institutes;

"(2) summarizing and analyzing expenditures made in such fiscal year for activities with respect to acquired immune deficiency syndrome conducted or supported by the National Institutes of Health; and

"(3) containing such recommendations as the Director considers appropriate.

"(c) Projects for Cooperation Among Public and Private Health Entities.—In carrying out subsection (a), the Director of the National Institutes of Health shall establish projects to promote cooperation among Federal agencies, State, local, and regional public health agencies, and private entities, in research concerning the diagnosis, prevention, and treatment of acquired immune deficiency syndrome.

"Part E—General Provisions

"SEC. 2361. DEFINITION.

"For purposes of this title, the term 'infection with the etiologic agent for acquired immune deficiency syndrome' includes any condition arising from infection with such etiologic agent.".

SEC. 202. AUTHORIZATION OF ADDITIONAL PERSONNEL.

(a) In General.—Notwithstanding any other provision of law, the Secretary of Health and Human Services, shall, in accordance with the civil service and classification laws, appoint and fix the compensation of not less than 780 employees for the Public Health Service in addition to the number of employees assigned to such Service as of December 31, 1987.

(b) Report.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall report to the Congress on the allocation among the agencies of the Public Health Service of the 780 additional employees required in subsection (a).

(c) Limitation of Availability of Appropriations.—The requirement established in subsection (a) shall be carried out only to the extent of amounts made available in appropriations Acts for such purpose.

(d) Expiration of Requirement.—Effective October 1, 1990, this section is repealed.

SEC. 203. REQUIREMENT OF CERTAIN RESEARCH STUDIES.

(a) Mortality Rates.—After consultation with the Director of the National Center for Health Services Research and Health Care Technology Assessment, the Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control, shall conduct a study for the purpose of determining the mortality rates with respect to acquired immune deficiency syndrome among individuals of various groups at risk of such syndrome, among various geographic areas, and among individuals with varying financial resources for the payment of health care services.

(b) Use of Consortia for Research and Development.—The Secretary of Health and Human Services shall request the National Academy of Sciences and other similar appropriate nonprofit institutions to report to the Secretary findings made by such institutions with respect to—

(1) the manner in which research on, and the development of, vaccines and drugs for the prevention and treatment of acquired immune deficiency syndrome and related conditions can be enhanced by the establishment of consortia—

(A) designed to combine and share resources needed for such research and development; and

(B) consisting of businesses involved in such research and development, of nonprofit research institutions, or of combinations of such businesses and such institutions; and

(2) the appropriate participation, if any, of the Federal Government in such consortia.

(c) Reports to Congress.—The Secretary of Health and Human Services shall submit to the Congress a report describing the findings made as a result of each of the studies required or requested in this section. The report for the study required in subsection (a) shall be submitted not later than 18 months after the date of the enactment of this Act. The report for the study requested in subsection (b) shall be submitted not later than 1 year after such date.

SEC. 204. CONFORMING AMENDMENTS.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended—

(1) in section 305(i), by striking "2313" each place it appears and inserting "2511";

(2) in section 465(f), by striking "2301" and inserting "2501"; and

(3) in section 497, by striking "2301" and inserting "2501".

Subtitle B—Health Services

SEC. 211. STATE FORMULA GRANTS, SUBACUTE CARE, AND COUNSELING AND TESTING.

The Public Health Service Act (42 U.S.C. 201 et seq.), as amended by section 201, is further amended by inserting after title XXIII the following new title:

"TITLE XXIV—HEALTH SERVICES WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME

"PART A—FORMULA GRANTS TO STATES FOR HOME AND COMMUNITY-BASED HEALTH SERVICES

"SEC. 2401. ESTABLISHMENT OF PROGRAM.

"(a) ALLOTMENTS FOR STATES.—For the purpose described in subsection (b), the Secretary shall for each of the fiscal years 1989 and 1990 make an allotment for each State in an amount determined in accordance with section 2408. The Secretary shall make payments each such fiscal year to each State from the allotment for the State if the Secretary approves for the fiscal year involved an application submitted by the State pursuant to section 2407.

"(b) PURPOSE OF GRANTS.—The Secretary may not make payments under subsection (a) for a fiscal year unless the State involved agrees to expend the payments only for the purpose of providing services in accordance with section 2402.

"(c) ELIGIBLE INDIVIDUAL DEFINED.—For purposes of this part:

"(1) The term 'eligible individual' means an individual infected with the etiologic agent for acquired immune deficiency syndrome who either is medically dependent or chronically dependent.

"(2) The term 'medically dependent' means, with respect to an individual, that the individual has been certified by a physician as—

"(A) requiring the routine use of appropriate medical services (which may include home intravenous drug therapy) to prevent or compensate for the individual's serious deterioration, arising from infection with the etiologic agent for acquired immune deficiency syndrome, of physical health or cognitive function, and

"(B) being able to avoid long-term or repeated care as an inpatient or resident in a hospital, nursing facility, or other institution if home and community-based health services are provided to the individual.

"(3) The term 'chronically dependent' means, with respect to an individual, that the individual has been certified by a physician as—

"(A) being unable to perform, because of physical or cognitive impairment (without substantial assistance from another individual) arising from infection with the etiologic agent for acquired immune deficiency syndrome, at least 2 of the following activities of daily living: bathing, dressing, toileting, transferring, and eating, or

"(B) having a similar level of disability due to cognitive impairment (as defined by the Secretary).

"(d) HOME AND COMMUNITY-BASED HEALTH SERVICES DEFINED.—For purposes of this part, the term 'home and community-based health services'—

"(1) means, with respect to an eligible individual, skilled health services furnished to the individual in the individual's home pursuant to a written plan of care established by a health care professional for the provision of such services and items and services described in paragraph (2);

"(2) includes—

"(A) durable medical equipment,

"(B) homemaker/home health aide services and personal care services furnished in the individual's home,

"(C) day treatment or other partial hospitalization services,

"(D) home intravenous drug therapy (including prescription drugs administered intravenously as part of such therapy), and

"(E) routine diagnostic tests administered in the individual's home,

furnished pursuant to such plan of care; but

"(3) does not include, except as specifically provided in paragraph (2)—

"(A) diagnostic tests,

"(B) inpatient hospital services,

"(C) nursing facility services, and

"(D) prescription drugs.

"SEC. 2402. PROVISIONS WITH RESPECT TO CARRYING OUT PURPOSE OF GRANTS.

"(a) REQUIRED USES OF FUNDS.—The Secretary may not make payments under section 2401(a) unless the State involved agrees that the State will—

"(1) provide for home and community-based health services for eligible individuals pursuant to written plans of care established by health care professionals for providing such services to such individuals;

"(2) provide for the identification, location, and provision of outreach to eligible individuals;

"(3) provide for coordinating the provision of services under this part with the provision of similar or related services by public and private entities; and

"(4) give priority to the provision of outreach and home and communtity-based services to eligible individuals with low incomes.

"(b) AUTHORITY FOR GRANTS AND CONTRACTS.—A State may make payment for services under subsection (a) through grants to public and nonprofit private entities and through contracts with public and private entities. In providing such financial assistance, a State shall give priority to public and nonprofit private entities that have demonstrated experience in delivering home and community-based health services to individuals with the etiologic agent for acquired immune deficiency syndrome.

"SEC. 2403. REQUIREMENT OF SUBMISSION OF DESCRIPTION OF INTENDED USES OF GRANT.

"The Secretary may not make payments under section 2401(a) to a State for a fiscal year unless—

"(1) the State submits to the Secretary a description of the purposes for which the State intends to expend such payments for the fiscal year;

"(2) such description provides information relating to the services and activities to be provided, including a description of the manner in which such services and activities will be coordinated with any similar services and activities of public and private entities; and

"(3) such description includes information relating to (A) the process for determining which eligible individuals are medically dependent or chronically dependent and (B) the process for establishing written plans of care for the provision of home and community-based health services under this part.

"SEC. 2404. RESTRICTIONS ON USE OF GRANT.

"(a) IN GENERAL.—The Secretary may not make payments under section 2401(a) for a fiscal year to a State unless the State agrees that the payments will not be expended—

"(1) to provide for items or services described in section 2401(d)(3);

"(2) to make cash payments to intended recipients of services;

"(3) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment; or

"(4) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

"(b) LIMITATION ON ADMINISTRATIVE EXPENSES.—The Secretary may not make payments under section 2401(a) for a fiscal year unless the State involved agrees that the State will not expend more than 5 percent of the payments made to the State under such section for administrative expenses with respect to carrying out the purpose of this part.

"(c) LIMITATION ON TOTAL PAYMENTS.—

"(1) Before March 1, 1989, for fiscal year 1989 and before September 1 of 1989 for fiscal year 1990, the Secretary shall determine and publish the national average monthly payments, for extended care services under part A of title XVIII of the Social Security Act, for each resident of a skilled nursing facility the Secretary estimates will be paid in the fiscal year.

"(2) The Secretary may not make payments under section 2401(a) for a fiscal year to a State to the extent that the average monthly payments for eligible individuals provided home and community-based health services under this part in the State exceeds 65 percent of the national average monthly payments determined and published for the fiscal year under paragraph (1).

"SEC. 2405. REQUIREMENT OF REPORTS AND AUDITS BY STATES.

"(a) REPORTS.—

"(1) The Secretary may not make payments under section 2401(a) for a fiscal year unless the State involved agrees to prepare and submit to the Secretary, by not later than January 1 following the fiscal year, an annual report in such form and containing such information as the Secretary determines (after consultation with the States and the Comptroller General of the United States) to be necessary for—

"(A) securing a record and a description of the purposes for which payments received by the State pursuant to section 2401(a) were expended and of the recipients of such payments;

"(B) determining whether the payments were expended in accordance with the purpose of this part; and

"(C) determining the percentage of payments received pursuant to section 2401(a) that were expended by the State for administrative expenses during the fiscal year involved.

"(2) Each report by a State under paragraph (1) for a fiscal year also shall include—

"(A) information on the number and type of eligible individuals provided home and community-based health services by the State under this part for the fiscal year;

"(B) information on the types of home and community-based health services so provided;

"(C) information on the average monthly costs of such services and a comparison of such costs with costs of providing services in hospitals, nursing facilities, and similar institutions; and

"(D) such other information as the Secretary may require to provide for an evaluation of the program under this part and its cost-effectiveness.

"(b) AUDITS.—

"(1) The Secretary may not make payments under section 2401(a) for a fiscal year unless the State involved agrees to establish such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursal of, and accounting for, amounts received by the State under such section.

"(2) The Secretary may not make payments under section 2401(a) for a fiscal year unless the State involved agrees that—

"(A) the State will provide for—

"(i) a financial and compliance audit of such payments; or

"(ii) a single financial and compliance audit of each entity administering such payments;

"(B) the audit will be performed biennially and will cover expenditures in each fiscal year; and

"(C) the audit will be conducted in accordance with standards established by the Comptroller General of the United States for the audit of governmental organizations, programs, activities, and functions.

"(3) The Secretary may not make payments under section 2401(a) for a fiscal year unless the State involved agrees that, not later than 30 days after the completion of an audit under paragraph (2), the State will provide a copy of the audit report to the State legislature.

"(4) For purposes of paragraph (2), the term 'financial and compliance audit' means an audit to determine whether the financial statements of an audited entity present fairly the financial position, and the results of financial operations, of the entity in accordance with generally accepted accounting principles, and whether the entity has complied with laws and regulations that may have a material effect upon the financial statements.

"(c) AVAILABILITY TO PUBLIC.—The Secretary may not make payments under section 2401(a) unless the State involved agrees to make copies of the reports and audits described in this section available for public inspection.

"(d) EVALUATIONS BY COMPTROLLER GENERAL.—The Comptroller General of the United States shall, from time to time, evaluate the expenditures by the States of payments under section 2401(a) in order to assure that expenditures are consistent with the provisions of this part.

"SEC. 2406. ADDITIONAL REQUIRED AGREEMENTS.

"(a) IN GENERAL.—The Secretary may not make payments under section 2401(a) for a fiscal year unless the State involved agrees that—

"(1) the legislature of the State will conduct public hearings on the proposed use and distribution of the payments to be received from the allotments for each such fiscal year;

"(2)(A) the State will, to the maximum extent practicable, ensure that services provided to an individual pursuant to the program involved will be provided without regard to the ability of the individual to pay for such services and without regard to the current or past health condition of the individual;

"(B) if any charges are imposed for the provision of home and community-based health services for which assistance is provided under this part, such charges (i) will be pursuant to a public schedule of charges, (ii) will not be imposed on any eligible individual with an income that does not exceed 100 percent of the official poverty line, and (iii) for an eligible individual with an income that exceeds 100 percent of the official poverty line, will be adjusted to reflect the income of the individual;

"(3) the State will provide for periodic independent peer review to assess the quality and appropriateness of home and community-based health services provided by entities that receive funds from the State pursuant to section 2401(a);

"(4) the State will permit and cooperate with Federal investigations undertaken under 2409(e);

"(5) the State will maintain State expenditures for home and community-based health services for individuals infected with the etiologic agent for acquired immune deficiency syndrome at a level equal to not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying to receive payments; and

"(6) the State will not make payments from allotments made under section 2401(a) for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service (i) under any State compensation program, under an insurance policy, under any Federal or State health benefits program, or (ii) by an entity that provides health services on a prepaid basis.

"SEC. 2407. REQUIREMENT OF SUBMISSION OF APPLICATION CONTAINING CERTAIN AGREEMENTS AND ASSURANCES.

"The Secretary may not make payments under section 2401(a) to a State for a fiscal year unless—

"(1) the State submits to the Secretary an application for the payments containing agreements in accordance with sections 2401 through 2406;

"(2) the agreements are made through certification from the chief executive officer of the State;

"(3) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary;

"(4) the application contains the description of intended expenditures required in section 2403; and

"(5) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

"SEC. 2408. DETERMINATION OF AMOUNT OF ALLOTMENTS FOR STATES.

"(a) MINIMUM ALLOTMENT.—Subject to the extent of amounts made available in appropriations Acts, the amount of an allotment under section 2401(a) for—

"(1) each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico, for a fiscal year shall be the greater of—

"(A) $100,000, and

"(B) an amount determined under subsection (b); and

"(2) each territory of the United States (as defined in section 2413(5)) shall be $25,000.

"(b) DETERMINATION UNDER FORMULA.—

"(1) The amount referred to in subsection (a)(1)(B) for a State is the product of—

"(A) an amount equal to the amount appropriated pursuant to section 2414(a) for the fiscal year involved; and

"(B) the ratio of the distribution factor for the State to the sum of the distribution factors for all the States.

"(2) In paragraph (1)(B), the term 'distribution factor' means, for a State, the product of—

"(A) the number in the State of additional cases of acquired immune deficiency syndrome, as indicated by the number of such cases reported to and confirmed by the Secretary for the most recent fiscal year for which such data are available, and

"(B) the ratio (based on the most recent available data) of (i) the average per capita income of individuals in the United States to (ii) the average per capita income of individuals in the State;

except that the distribution factors for all the States and territories shall be proportionally reduced to the extent necessary to assure that the total of the allotments under subsection (a) for all the States and territories for each fiscal year does not exceed the amount appropriated pursuant to section 2414(a) for the fiscal year.

"(c) INDIAN TRIBES.—

"(1) Upon the request of the governing body of an Indian tribe or tribal organization within a State to the Secretary, the Secretary shall—

"(A) reserve from the amount that otherwise would be allotted for the fiscal year to the State under subsection (a) an amount determined in accordance with paragraph (2); and

"(B) grant the amount reserved under subparagraph (A) to the Indian tribe or tribal organization serving eligible individuals who are members of the Indian tribe or tribal organization.

"(2) The amount reserved under paragraph (1)(A) shall be an amount equal to the product of—

"(A) the amount that otherwise would be allotted to the State under subsection (a) for the fiscal year; and

"(B) the Secretary's estimate of the proportion of the number of additional cases described in subsection (b)(2)(A) that are attributable to members of the Indian tribe or tribal organization.

"(3) The Secretary may not make a grant under paragraph (1)(B) to an Indian tribe or tribal organization unless the Indian tribe or tribal organization submits to the Secretary an application meeting the requirements of such an application under section 2407.

"(d) DISPOSITION OF CERTAIN FUNDS APPROPRIATED FOR ALLOTMENTS.—

"(1) Amounts described in paragraph (2) shall, in accordance with paragraph (3), be allotted by the Secretary to States receiving payments under section 2401(a) for the fiscal year (other than any State referred to in paragraph (2)(B)).

"(2) The amounts referred to in paragraph (1) are any amounts that are not paid to States or territories under section 2401(a) as a result of—

"(A) the failure of any State or territory to submit an application under section 2407 within a reasonable time period established by the Secretary; or

"(B) any State or territory informing the Secretary that the State or territory does not intend to expend the full amount of the allotment made to the State or territory.

"(3) The amount of an allotment under paragraph (1) for a State for a fiscal year shall be an amount equal to the product of—

"(A) an amount equal to the amount described in paragraph (2) for the fiscal year involved; and

"(B) the ratio determined under subsection (b)(1)(B) for the State.

"SEC. 2409. FAILURE TO COMPLY WITH AGREEMENTS.

"(a) REPAYMENT OF PAYMENTS.—

"(1) The Secretary may, subject to subsection (c), require a State to repay any payments received by the State under section 2401(a) that the Secretary determines were not expended by the State in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 2407.

"(2) If a State fails to make a repayment required in paragraph (1), the Secretary may offset the amount of the repayment against the amount of any payment due to be paid to the State under section 2401(a).

"(b) WITHHOLDING.—

"(1) The Secretary may, subject to subsection (c), withhold payments due under section 2401(a) if the Secretary determines that the State involved is not expending amounts received under such section in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 2407.

"(2) The Secretary shall cease withholding payments from a State under paragraph (1) if the Secretary determines that there are reasonable assurances that the State will expend amounts received under section 2401(a) in accordance with the agreements referred to in such paragraph.

"(c) OPPORTUNITY FOR HEARING.—Before requiring repayment of payments under subsection (a)(1), or withholding payments under subsection (b)(1), the Secretary shall provide to the State an opportunity for a hearing conducted within the State.

"(d) TECHNICAL VIOLATIONS.—The Secretary may not require repayment under subsection (a)(1), or withhold payments under subsection (b)(1), for a technical violation, as determined by the Secretary, of any agreement required to be contained in the application submitted by the State pursuant to section 2407.

"(e) INVESTIGATIONS.—

"(1) The Secretary shall conduct in the several States in each fiscal year investigations of the expenditure of payments received by the States under section 2401(a) in order to evaluate compliance with the agreements required to be contained in the applications submitted to the Secretary pursuant to section 2407.

"(2) Each State, and each entity receiving funds from payments made to a State under section 2401(a), shall make appropriate books, documents, papers, and records available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefor.

"(3)(A) In conducting any investigation in a State, the Secretary and the Comptroller General of the United States may not make a request for any information not readily available to the State, or to an entity receiving funds from payments made to the State under section 2401(a), or make an unreasonable request for information to be compiled, collected, or transmitted in any form not readily available.

"(B) Subparagraph (A) shall not apply to the collection, compilation, or transmittal of data in the course of a judicial proceeding.

"SEC. 2410. PROHIBITION AGAINST CERTAIN FALSE STATEMENTS.

"(a) IN GENERAL.—A person may not knowingly make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which amounts may be paid by a State from payments received by the State under section 2401(a).

"(b) CRIMINAL PENALTY FOR VIOLATION OF PROHIBITION.—Any person who violates a prohibition established in subsection (a) may for each violation be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both.

"SEC. 2411. TECHNICAL ASSISTANCE AND PROVISION BY SECRETARY OF SUPPLIES AND SERVICES IN LIEU OF GRANT FUNDS.

"(a) TECHNICAL ASSISTANCE.—Upon the request of a State receiving payments under section 2401(a), the Secretary may, without charge to the State, provide to the State (or to any public or private entity designated by the State) technical assistance with respect to the planning, development, and operation of this part. The Secretary may provide such technical assistance directly, through contract, or through grants.

"(b) PROVISION BY SECRETARY OF SUPPLIES AND SERVICES IN LIEU OF GRANT FUNDS.—

"(1) Upon the request of a State receiving payments under section 2401(a), the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the State in carrying out this part and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

"(2) With respect to a request described in paragraph (1), the Secretary shall reduce the amount of payments under section 2401(a) to the State by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

"SEC. 2412. REPORT BY SECRETARY.

"Not later than March 1, 1990, the Secretary shall report to the Congress on the activities of the States under this part. Such report shall include a recommendation as to whether or not the program under this part should be extended beyond fiscal year 1990 and may include any recommendations of the Secretary for appropriate administrative and legislative initiatives.

"SEC. 2413. DEFINITIONS.

"For purposes of this part:

"(1) The terms 'Indian tribe' and 'tribal organization' have the same meaning given such terms in sections 4(b) and 4(c) of the Indian Self-Determination and Education Assistance Act.

"(2) The term 'infected with the etiologic agent for acquired immune deficiency syndrome' includes any condition arising from infection with such etiologic agent.

"(3)(A) An individual is considered to have low income if the individual's income does not exceed 200 percent of the official poverty line.

"(B) The term 'official poverty line' refers, with respect to an individual, to the official poverty line defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981, applicable to a family of the size involved.

"(4)(A) The term 'State' means, except as provided in subparagraph (B), each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory of the United States.

"(B) For purposes of section 2408(d), the term 'State' means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

"(5) The term 'territory of the United States' means each of the following: the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"SEC. 2414. FUNDING.

"(a) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants under section 2401, there are authorized to be appropriated $100,000,000 for each of the fiscal years 1989 and 1990.

"(b) AVAILABILITY TO STATES.—Any amounts paid to a State or territory under section 2401(a) shall remain available to the State or territory until the expiration of the 1-year period beginning on the date on which the State or territory receives such amounts.

"SEC. 2415. SUNSET.

"Effective with respect to appropriations made for any period after fiscal year 1990, part A of title XXIV of the Public Health Service Act is repealed.

"PART B-SUBACUTE CARE

"SEC. 2421. DEMONSTRATION PROJECTS.

"(a) As used in this section:

"(1) The term 'patients infected with the human immunodeficiency virus' means persons who have a disease, or are recovering from a disease, attributable to the infection of such person with the human immunodeficiency virus, and as a result of the effects of such disease, are in need of subacute-care services.

"(2) The term 'subacute care' means medical and health care services that are required for persons recovering from acute care episodes that are less intensive than the level of care provided in acute-care hospitals, and includes skilled nursing care, hospice care, and other types of health services provided in other long-term-care facilities.

"(b) The Secretary shall conduct three demonstration projects to determine the effectiveness and cost of providing the subacute-care services described in subsection (b) to patients infected with the human immunodeficiency virus, and the impact of such services on the health status of such patients.

"(c)(1) The services provided under each demonstration project shall be designed to meet the specific needs of patients infected with the human immunodeficiency virus, and shall include—

"(A) the care and treatment of such patients by providing—

"(i) subacute care;

"(ii) emergency medical care and specialized diagnostic and therapeutic services as needed and where appropriate, either directly or through affiliation with a hospital that has experience in treating AIDS patients; and

"(iii) case management services to ensure, through existing services and programs whenever possible, appropriate discharge planning for patients; and

"(B) technical assistance, to other facilities in the region served by such facility, that is directed towards education and training of physicians, nurses, and other health-care professionals in the subacute care and treatment of patients infected with the human immunodeficiency virus.

"(2) Services provided under each demonstration project may also include—

"(A) hospice services;

"(B) outpatient care; and

"(C) outreach activities in the surrounding community to hospitals and other health-care facilities that serve patients infected with the human immunodeficiency virus.

"(d) The demonstration projects shall be conducted—

"(1) during a 4-year period beginning not later than 9 months after the date of enactment of this section; and

"(2) at sites that—

"(A) are geographically diverse and located in areas that are appropriate for the provision of the required and authorized services; and

"(B) have the highest incidence of AIDS cases and the greatest need for subacute-care services.

"(e) The Secretary shall evaluate the operations of the demonstration projects and shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate—

"(1) not later than 18 months after the beginning of the first project, a preliminary report that contains—

"(A) a description of the sites at which the projects are being conducted and of the services being provided in each project; and

"(B) a preliminary evaluation of the experience of the projects in the first 12 months of operation; and

"(2) not later than 6 months after the completion of the last project, a final report that contains—

"(A) an assessment of the costs of subacute care for patients infected with the human immunodeficiency virus, including a breakdown of all other sources of funding for the care provided to cover subacute care; and

"(B) recommendations for appropriate legislative changes.

"(f) Each demonstration project shall provide for other research to be carried out at the site of such demonstration project including—

"(1) clinical research on the acquired immunodeficiency syndrome, concentrating on research on the neurological manifestations resulting from infection with the human immunodeficiency virus; and

"(2) the study of the psychological and mental health issues related to the acquired immunodeficiency syndrome.

"(g)(1) To carry out this section, there are authorized to be appropriated $10,000,000 for fiscal year 1988 and such sums as are necessary for each of the fiscal years 1989 through 1991.

"(2) Amounts appropriated pursuant to paragraph (1) shall remain available until September 10, 1992.

"(h) The Secretary shall enter into an agreement with the Administrator of the Veterans' Administration to ensure that appropriate provision will be made for the furnishing, through demonstration projects, of services to eligible veterans, under contract with the Veterans' Administration pursuant to section 620 of title 38, United States Code.

"PART C—OTHER HEALTH SERVICES

"Subpart I—Counseling and Testing

"SEC. 2431. GRANTS FOR ANONYMOUS TESTING.

"The Secretary may make grants to the States for the purpose of providing opportunities for individuals—

"(1) to undergo counseling and testing with respect to the etiologic agent for acquired immune deficiency syndrome without being required to provide any information relating to the identity of the individuals; and

"(2) to undergo such counseling and testing through the use of a pseudonym.

"SEC. 2432. REQUIREMENT OF PROVISION OF CERTAIN COUNSELING SERVICES.

"(a) COUNSELING BEFORE TESTING.—The Secretary may not make a grant under section 2431 to a State unless the State agrees that, before testing an individual pursuant to such section, the State will provide to the individual appropriate counseling with respect to acquired immune deficiency syndrome (based on the most recent scientific data relating to such syndrome), including—

"(1) measures for the prevention of exposure to, and the transmission of, the etiologic agent for such syndrome;

"(2) the accuracy and reliability of the results of such testing;

"(3) the significance of the results of such testing, including the potential for developing acquired immune deficiency syndrome; and

"(4) encouraging individuals, as appropriate, to undergo testing for such etiologic agent and providing information on the benefits of such testing.

"(b) COUNSELING OF INDIVIDUALS WITH NEGATIVE TEST RESULTS.—The Secretary may not make a grant under section 2431 to a State unless the State agrees that, if the results of testing conducted pursuant to such section indicate that an individual is not infected with the etiologic agent for acquired immune deficiency syndrome, the State will review for the individual the information provided pursuant to subsection (a) with respect to such syndrome, including—

"(1) the information described in paragraphs (1) through (3) of such subsection; and

"(2) the appropriateness of further counseling, testing, and education of the individual with respect to acquired immune deficiency syndrome.

"(c) COUNSELING OF INDIVIDUALS WITH POSITIVE TEST RESULTS.—The Secretary may not make a grant under section 2431 to a State unless the State agrees that, if the results of testing conducted pursuant to such section indicate that the individual is infected with the etiologic agent for acquired immune deficiency syndrome, the State will provide to the individual appropriate counseling with respect to such syndrome, including—

"(1) reviewing the information described in paragraphs (1) through (3) of subsection (a);

"(2) reviewing the appropriateness of further counseling, testing, and education of the individual with respect to acquired immune deficiency syndrome;

"(3) the importance of not exposing others to the etiologic agent for acquired immune deficiency syndrome;

"(4) the availability in the geographic area of any appropriate services with respect to health care, including mental health care and social and support services;

"(5) the benefits of locating and counseling any individual by whom the infected individual may have been exposed to the etiologic agent for acquired immune deficiency syndrome and any individual whom the infected individual may have exposed to such etiologic agent; and

"(6) the availability, if any, of the services of public health authorities with respect to locating and counseling any individual described in paragraph (4).

"(d) RULE OF CONSTRUCTION WITH RESPECT TO COUNSELING WITHOUT TESTING.—Agreements entered into pursuant to subsections (a) through (c) may not be construed to prohibit any grantee under section 2431 from expending the grant for the purpose of providing counseling services described in such subsections to an individual who will not undergo testing described in such section as a result of the grantee or the individual determining that such testing of the individual is not appropriate.

"(e) USE OF FUNDS

"(1) The purpose of this part is to provide for counseling and testing services to prevent and reduce exposure to, and transmission of, the etiologic agent for acquired immune deficiency syndrome.

"(2) All individuals receiving counseling pursuant to this part are to be counseled about the harmful effects of promiscuous sexual activity and intravenous substance abuse, and the benefits of abstaining from such activities.

"(3) None of the fund appropriated to carry out this part may be used to provide counseling that is designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous drug abuse.

"(4) Paragraph (3) may not be construed to prohibit a counselor who has already performed the counseling of an individual required by paragraph (2), to provide accurate information about means to reduce an individual's risk of exposure to, or the transmission of, the etiologic agent for acquired immune deficiency syndrome, provided that any informational materials used are not obscene.

"SEC. 2433. FUNDING.

"For the purpose of grants under section 2431, there are authorized to be appropriated $100,000,000 for each of the fiscal years 1989 and 1990.

"Subpart II—Counseling and Mental Health Services

"SEC. 2441. DEMONSTRATION PROJECTS FOR INDIVIDUALS WITH POSITIVE TEST RESULTS.

"(a) IN GENERAL.—The Secretary may make grants to public and nonprofit private entities for demonstration projects for the development, establishment, or expansion of programs to provide counseling and mental health treatment—

"(1) for individuals who experience serious psychological reactions as a result of being informed that the results of testing for the etiologic agent for acquired immune deficiency syndrome indicate that the individuals are infected with such etiologic agent; and

"(2) for the families of such individuals, and for others, who experience serious psychological reactions as a result of being informed of the results of such testing of such individuals.

"(b) PREFERENCES IN MAKING GRANTS.—In making grants under subsection (a), the Secretary shall give preference to applicants that are based at, or have relationships with, entities providing comprehensive health services to individuals who are infected with the etiologic agent for acquired immune deficiency syndrome.

"(c) REQUIREMENT OF PROVISION OF INFORMATION ON PREVENTION.—The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that counseling provided pursuant to such subsection will include counseling relating to measures for the prevention of exposure to, and the transmission of, the etiologic agent for acquired immune deficiency syndrome.

"(d) Authority for Training.—A grantee under subsection (a) may expend the grant to train individuals to provide the services described in such subsection.

"(e) Requirement of Identification of Needs and Objectives.—The Secretary may not make a grant under subsection (a) unless the applicant for the grant submits to the Secretary—

"(1) information demonstrating that the applicant has, with respect to mental health treatment related to the etiologic agent for acquired immune deficiency syndrome, identified the need for such treatment in the area in which the program will be developed, established, or expanded; and

"(2) a description of—

"(A) the objectives established by the applicant for the conduct of the program; and

"(B) the method the applicant will use to evaluate the activities conducted under the program and to determine the extent to which such objectives have been met.

"(f) Requirement of Application.—The Secretary may not make a grant under subsection (a) unless—

"(1) an application for the grant is submitted to the Secretary;

"(2) with respect to carrying out the purpose for which the grant is to be made, the application provides assurances of compliance satisfactory to the Secretary;

"(3) the application contains the information required to be submitted under subsection (e); and

"(4) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"(g) Requirement of Minimum Number of Grants for Fiscal Year 1989.—Subject to the extent of amounts made available in appropriations Acts, the Secretary shall, for fiscal year 1989, make not less than 6 grants under subsection (a).

"(h) Technical Assistance and Administrative Support.—The Secretary, acting through the Director of the National Institute of Mental Health, may provide technical assistance and administrative support to grantees under subsection (a).

"(i) Definition.—For purposes of this section, the term 'mental health treatment' means individual, family or group services designed to alleviate distress, improve functional ability, or assist in changing dysfunctional behavior patterns.

"(j) Authorization of Appropriations.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.".

Subtitle C—Prevention

SEC. 221. FORMULA GRANTS TO STATES.

The Public Health Service Act (42 U.S.C. 201 et seq.), as amended by section 211, is further amended by inserting after title XXIV the following new title:

"TITLE XV—PREVENTION OF ACQUIRED IMMUNE DEFICIENCY SYNDROME

"SEC. 2500. USE OF FUNDS.

"(a) In General.—The purpose of this part is to provide for the establishment of education and information programs to prevent and reduce exposure to, and the transmission of, the etiologic agent for acquired immune deficiency syndrome.

"(b) Contents of Programs.—All programs of education and information receiving funds under this title shall include information about the harmful effects of promiscuous sexual activity and intravenous substance abuse, and the benefits of abstaining from such activities.

"(c) Limitation.—None of the funds appropriated to carry out this title may be used to provide education or information designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous substance abuse.

"(d) Construction.—Subsection (c) may not be construed to restrict the ability of an education program that includes the information required in subsection (b) to provide accurate information about various means to reduce an individual's risk of exposure to, or the transmission of, the etiologic agent for acquired immune deficiency syndrome, provided that any informational materials used are not obscene.

"Part A—Formula Grants to States

"SEC. 2501. ESTABLISHMENT OF PROGRAM.

"(a) Allotments for States.—For the purpose described in subsection (b), the Secretary shall for each of the fiscal years 1989 through 1991 make an allotment for each State in an amount determined in accordance with section 2507. The Secretary shall make payments each such fiscal year to each State from the allotment for the State if the Secretary approves for the fiscal year involved an application submitted by the State pursuant to section 2503.

"(b) Purpose of Grants.—The Secretary may not make payments under subsection (a) for a fiscal year unless the State involved agrees to expend the payments only for the purpose of carrying out, in accordance with section 2502, public information activities with respect to acquired immune deficiency syndrome.

"SEC. 2502. PROVISIONS WITH RESPECT TO CARRYING OUT PURPOSE OF GRANTS.

"A State may expend payments received under section 2501(a)—

"(1) to develop, establish, and conduct public information activities relating to the prevention and diagnosis of acquired immune deficiency syndrome for those populations or communities in the State in which there are a significant number of individuals at risk of infection with the etiologic agent for such syndrome;

"(2) to develop, establish, and conduct such public information activities for the general public relating to the prevention and diagnosis of such syndrome;

"(3) to develop, establish, and conduct activities to reduce risks relating to such syndrome, including research into the prevention of such syndrome;

"(4) to conduct demonstration projects for the prevention of such syndrome;

"(5) to provide technical assistance to public entities, to nonprofit private entities concerned with such syndrome, to schools, and to employers, for the purpose of developing information programs relating to such syndrome;

"(6) with respect to education and training programs for the prevention of such syndrome, to conduct such programs for health professionals (including allied health professionals), public safety workers (including emergency response employees), teachers, school administrators, and other appropriate education personnel;

"(7) to conduct appropriate programs for educating school-aged children with respect to such syndrome, after consulting with local school board;

"(8) to make available to physicians and dentists in the State information with respect to acquired immune deficiency syndrome, including measures for the prevention of exposure to, and the transmission of, the etiologic agent for such syndrome (which information is updated not less than annually with the most recently available scientific data relating to such syndrome);

"(9) to carry out the initial implementation of recommendations contained in the guidelines and the model curriculum developed under section 2525; and

"(10) to make grants to public entities, and to nonprofit private entities concerned with acquired immune deficiency syndrome, for the purpose of the development, establishment, and expansion of programs for education directed towards individuals at increased risk of infection with the etiologic agent for such syndrome and activities to reduce the risks of exposure to such etiologic agent, with preference to programs directed towards populations in which there is significant evidence of such infection.

"SEC. 2503. REQUIREMENT OF SUBMISSION OF APPLICATION CONTAINING CERTAIN AGREEMENTS AND ASSURANCES.

"(a) In General.—The Secretary may not make payments under section 2501(a) for a fiscal year unless—

"(1) the State involved submits to the Secretary a description of the purposes for which the State intends to expend the payments for the fiscal year;

"(2) the description identifies the populations, areas, and localities in the State with a need for the services for which amounts may be provided by the State under this part;

"(3) the description provides information relating to the programs and activities to be supported and services to be provided, including a description of the manner in which such programs and activities will be coordinated with any similar programs and activities of public and private entities; and

"(4) the State submits to the Secretary an application for the payments containing agreements in accordance with this part;

"(5) the agreements are made through certification from the chief executive officer of the State;

"(6) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary; and

"(7) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

"(b) Opportunity for Public Comment.—The Secretary may not make payments under section 2501(a) for a fiscal year unless the State involved agrees that, in developing and carrying out the description required in subsection (a), the State will provide public notice with respect to the description (including any revisions) and will facilitate comments from interested persons.

"SEC. 2504. RESTRICTIONS ON USE OF GRANT.

"(a) In General.—The Secretary may not make payments under section 2501(a) for a fiscal year unless the State involved agrees that the payments will not be expended—

"(1) to provide inpatient services;

"(2) to make cash payments to intended recipients of services;

"(3) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment; or

"(4) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

"(b) Limitation on Administrative Expenses.—The Secretary may not make payments under section 2501(a) for a fiscal year unless the State involved agrees that the State will not expend more than 5 percent of the payments for administrative expenses with respect to carrying out the purpose described in section 2501(b).

"SEC. 2505. REQUIREMENT OF REPORTS AND AUDITS BY STATES.

"(a) Reports.—The Secretary may not make payments under section 2501(a) for a fiscal year unless the State involved agrees to prepare and submit to the Secretary an annual report in such form and containing such information as the Secretary determines to be necessary for—

"(1) securing a record and a description of the purposes for which payments received by the State pursuant to such section were expended and of the recipients of such payments;

"(2) determining whether the payments were expended in accordance with the needs within the State required to be identified pursuant to section 2503(a)(2);

"(3) determining whether the payments were expended in accordance with the purpose described in section 2501(b); and

"(4) determining the percentage of payments received pursuant to such section that were expended by the State for administrative expenses during the preceding fiscal year.

"(b) Audits.—

"(1) The Secretary may not make payments under section 2501(a) for a fiscal year unless the State involved agrees to establish such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursal of, and accounting for, amounts received by the State under such section.

"(2) The Secretary may not make payments under section 2501(a) for a fiscal year unless the State involved agrees that—

"(A) the State will provide for—

"(i) a financial and compliance audit of such payments; or

"(ii) a single financial and compliance audit of each entity administering such payments;

"(B) the audit will be performed biennially and will cover expenditures in each fiscal year; and

"(C) the audit will be conducted in accordance with standards established by the Comptroller General of the United States for the audit of governmental organizations, programs, activities, and functions.

"(3) The Secretary may not make payments under section 2501(a) for a fiscal year unless the State involved agrees that, not later than 30 days after the completion of an audit under paragraph (2), the State will provide a copy of the audit report to the State legislature.

"(4) For purposes of paragraph (2), the term 'financial and compliance audit' means an audit to determine whether the financial statements of an audited entity present fairly the financial position, and the results of financial operations, of the entity in accordance with generally accepted accounting principles, and whether the entity has complied with laws and regulations that may have a material effect upon the financial statements.

"(c) Availability to Public.—The Secretary may not make payments under section 2501(a) for a fiscal year unless the State involved agrees to make copies of the reports and audits described in this section available for public inspection.

"(d) Evaluations by Comptroller General.—The Comptroller General of the United States shall, from time to time, evaluate the expenditures by States of payments received under section 2501(a) in order to ensure that expenditures are consistent with the provisions of this part.

"SEC. 2506. ADDITIONAL REQUIRED AGREEMENTS.

"The Secretary may not, except as provided in subsection (b), make payments under section 2501(a) for a fiscal year unless the State involved agrees that—

"(1) all programs conducted or supported by the State with such payments will establish objectives for the program and will determine the extent to which the objectives are met;

"(2) information provided under this part will be scientifically accurate and factually correct;

"(3) in carrying out section 2501(b), the State will give priority to programs described in section 2502(10) for individuals described in such section;

"(4) with respect to a State in which there is a substantial number of individuals who are intravenous substance abusers, the State will place priority on activities under this part directed at such substance abusers;

"(5) with respect to a State in which there is a significant incidence of reported cases of acquired immune deficiency syndrome, the State will—

"(A) for the purpose described in subsection (b) of section 2501, expend not less than 50 percent of payments received under subsection (a) of such section for a fiscal year—

"(i) to make grants to public entities, to migrant health centers (as defined in section 329(a)), to community health centers (as defined in section 330(a)), and to nonprofit private entities concerned with acquired immune deficiency syndrome; or

"(ii) to enter into contracts with public and private entities; and

"(B) of the amounts reserved for a fiscal year by the State for expenditures required in subparagraph (A), expend not less than 50 percent to carry out section 2502(10) through grants to nonprofit private entities, including minority entities, concerned with acquired immune deficiency syndrome located in and representative of communities and subpopulations reflecting the local incidence of such syndrome;

(For purposes of this section, the term 'significant percentage' means at least a percentage of 1 percent of the number of reported cases of such syndrome in the United States);

"(6) with respect to programs carried out pursuant to section 2502(10), the State will ensure that any applicant for a grant under such section agrees—

"(A) that any educational or informational materials developed with a grant pursuant to such section will contain material, and be presented in a manner, that is specifically directed towards the group for which such materials are intended;

"(B) to provide a description of the manner in which the applicant has planned the program in consultation with, and of the manner in which such applicant will consult during the conduct of the program with—

"(i) appropriate local officials and community groups for the area to be served by the program;

"(ii) organizations comprised of, and representing, the specific population to which the education or prevention effort is to be directed; and

"(iii) individuals having expertise in health education and in the needs of the population to be served;

"(C) to provide information demonstrating that the applicant has continuing relationships, or will establish continuing relationships, with a portion of the population in the service area that is at risk of infection with the etiologic agent for acquired immune deficiency syndrome and with public and private entities in such area that provide health or other support services to individuals with such infection;

"(D) to provide a description of—

"(i) the objectives established by the applicant for the conduct of the program; and

"(ii) the methods the applicant will use to evaluate the activities conducted under the program to determine if such objectives are met; and

"(E) such other information as the Secretary may prescribe;

"(7) with respect to programs carried out pursuant to section 2502(10), the State will give preference to any applicant for a grant pursuant to such section that is located in, has a history of service in, and will serve under the program, any geographic area in which—

"(A) there is a significant incidence of acquired immune deficiency syndrome;

"(B) there has been a significant increase in the incidence of such syndrome; or

"(C) there is a significant risk of becoming infected with the etiologic agent for such syndrome;

"(8) the State will establish reasonable criteria to evaluate the effective performance of entities that receive funds from to payments made to the State under section 2501(a) and will establish procedures for procedural and substantive independent State review of the failure by the State to provide funds for any such entity; and

"(9) the State will permit and cooperate with Federal investigations undertaken in accordance with section 2509(e);

"(10) the State will maintain State expenditures for services provided pursuant to section 2501 at a level equal to not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying to receive payments.

"SEC. 2507. DETERMINATION OF AMOUNT OF ALLOTMENTS FOR STATES.

"(a) Minimum Allotment.—The allotment for a State under section 2501(a) for a fiscal year shall be the greater of—

"(1) the amount described in subsection (b); or

"(2) the amount determined in accordance with subsection (c).

"(b) Determination of Minimum Allotment.

"(1) If the total amount appropriated under section 2516(a) for a fiscal year exceeds $100,000,000, the amount referred to in subsection (a)(1) is $300,000 for the fiscal year.

"(2) If the total amount appropriated under section 2514(a) for a fiscal year equals or exceeds $50,000,000, but is less than $100,000,000, the amount referred to in subsection (a)(1) is $200,000 for the fiscal year.

"(3) If the total amount appropriated under section 2514(a) for a fiscal year is less than $50,000,000, the amount referred to in subsection (a)(1) is $100,000 for the fiscal year.

"(c) Determination Under Formula.—

"(1) The amount referred to in subsection (a)(2) is the sum of—

"(A) the amount determined under paragraph (2); and

"(B) the amount determined under paragraph (3).

"(2) The amount referred to in paragraph (1)(A) is the product of—

"(A) an amount equal to 50 percent of the amounts appropriated pursuant to section 2514(a); and

"(B) a percentage equal to the quotient of—

"(i) the population of the State involved; divided by

"(ii) the population of the United States.

"(3) The amount referred to in paragraph (1)(B) is the product of—

"(A) an amount equal to 50 percent of the amounts appropriated pursuant to section 2514(a); and

"(B) a percentage equal to the quotient of—

"(i) the number of additional cases of acquired immune deficiency syndrome reported to and confirmed by the Secretary for the State involved for the most recent fiscal year for which such data is available; divided by

"(ii) the number of additional cases of such syndrome reported to and confirmed by the Secretary for the United States for such fiscal year.

"(d) DISPOSITION OF CERTAIN FUNDS APPROPRIATED FOR ALLOTMENTS.—

"(1) Amounts described in paragraph (2) shall be allotted by the Secretary to States receiving payments under section 2501(a) for the fiscal year (other than any State referred to in paragraph (2)(C)). Such amounts shall be allotted according to a formula established by the Secretary. The formula shall be equivalent to the formula described in this section under which the allotment for the State for the fiscal year involved was determined.

"(2) The amounts referred to in paragraph (1) are any amounts that are not paid to States under section 2501(a) as a result of—

"(A) the failure of any State to submit an application under section 2507;

"(B) the failure, in the determination of the Secretary, of any State to prepare within a reasonable period of time such application in compliance with such section; or

"(C) any State informing the Secretary that the State does not intend to expend the full amount of the allotment made to the State.

"SEC. 2508. FAILURE TO COMPLY WITH AGREEMENTS.

"(a) REPAYMENT OF PAYMENTS.—

"(1) The Secretary may, subject to subsection (c), require a State to repay any payments received by the State under section 2501(a) that the Secretary determines were not expended by the State in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 2507.

"(2) If a State fails to make a repayment required in paragraph (1), the Secretary may offset the amount of the repayment against the amount of any payment due to be paid to the State under section 2501(a).

"(b) WITHHOLDING.—

"(1) The Secretary may, subject to subsection (c), withhold payments due under section 2501(a) if the Secretary determines that the State involved is not expending amounts received under such section in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 2507.

"(2) The Secretary shall cease withholding payments from a State under paragraph (1) if the Secretary determines that there are reasonable assurances that the State will expend amounts received under section 2501(a) in accordance with the agreements referred to in such paragraph.

"(3) The Secretary may not withhold funds under paragraph (1) from a State for a minor failure to comply with the agreements referred to in such paragraph.

"(c) OPPORTUNITY FOR HEARING.—Before requiring repayment of payments under subsection (a)(1), or withholding payments under subsection (b)(1), the Secretary shall provide to the State an opportunity for a hearing conducted within the State.

"(d) PROMPT RESPONSE TO SERIOUS ALLEGATIONS.—The Secretary shall promptly respond to any complaint of a substantial or serious nature that a State has failed to expend amounts received under section 2501(a) in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 2507.

"(e) INVESTIGATIONS.—

"(1) The Secretary shall conduct in several States in each fiscal year investigations of the expenditure of payments received by the States under section 2501(a) in order to evaluate compliance with the agreements required to be contained in the applications submitted to the Secretary pursuant to section 2507.

"(2) The Comptroller General of the United States may conduct investigations of the expenditure of funds received under section 2501(a) by a State in order to ensure compliance with the agreements referred to in paragraph (1).

"(3) Each State, and each entity receiving funds from payments made to a State under section 2501(a), shall make appropriate books, documents, papers, and records available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefor.

"(4)(A) In conducting any investigation in a State, the Secretary and the Comptroller General of the United States may not make a request for any information not readily available to the State, or to an entity receiving funds from payments made to the State under section 2501(a), or make an unreasonable request for information to be compiled, collected, or transmitted in any form not readily available.

"(B) Subparagraph (A) shall not apply to the collection, compilation, or transmittal of data in the course of a judicial proceeding.

"SEC. 2509. PROHIBITION AGAINST CERTAIN FALSE STATEMENTS.

"(a) IN GENERAL.—

"(1) A person may not knowingly make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which amounts may be paid by a State from payments received by the State under section 2501(a).

"(2) A person with knowledge of the occurrence of any event affecting the right of the person to receive any amounts from payments made to the State under section 2501(a) may not conceal or fail to disclose any such event with the intent of fraudulently securing such amounts.

"(b) CRIMINAL PENALTY FOR VIOLATION OF PROHIBITION.—Any person who violates a prohibition established in subsection (a) may for each violation be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both.

"SEC. 2510. TECHNICAL ASSISTANCE AND PROVISION BY SECRETARY OF SUPPLIES AND SERVICES IN LIEU OF GRANT FUNDS.

"(a) TECHNICAL ASSISTANCE.—The Secretary may provide training and technical assistance to States with respect to the planning, development, and operation of any program or service carried out pursuant to this part. The Secretary may provide such technical assistance directly or through grants or contracts.

"(b) PROVISION BY SECRETARY OF SUPPLIES AND SERVICES IN LIEU OF GRANT FUNDS.—

"(1) Upon the request of a State receiving payments under this part, the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the State in carrying out such part and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

"(2) With respect to a request described in paragraph (1), the Secretary shall reduce the amount of payments under the program involved to the State by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

"SEC. 2511. EVALUATIONS.

"The Secretary shall, directly or through grants or contracts, evaluate the services provided and activities carried out with payments to States under this part.

"SEC. 2512. REPORT BY SECRETARY.

"The Secretary shall annually prepare a report on the activities of the States carried out pursuant to this part. Such report may include any recommendations of the Secretary for appropriate administrative and legislative initiatives. The report shall be submitted to the Congress through inclusion in the comprehensive report required in section 2301.

"SEC. 2513. DEFINITION.

"For purposes of this part, the term 'infection with the etiologic agent for acquired immune deficiency syndrome' includes any condition arising from such etiologic agent.

"SEC. 2514. FUNDING.

"(a) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making allotments under section 2501(a), there are authorized to be appropriated $165,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

"(b) AVAILABILITY TO STATES.—Any amounts paid to a State under section 2501(a) shall remain available to the State until the expiration of the 1-year period beginning on the date on which the State receives such amounts.

"PART B—NATIONAL INFORMATION PROGRAMS

"SEC. 2521. AVAILABILITY OF INFORMATION TO GENERAL PUBLIC.

"(a) COMPREHENSIVE INFORMATION PLAN.—The Secretary, acting through the Director of the Centers for Disease Control, shall annually prepare a comprehensive plan, including a budget, for a National Acquired Immune Deficiency Syndrome Information Program. The plan shall contain provisions to implement the provisions of this title. The Director shall submit such plan to the

Secretary. The authority established in this subsection may not be construed to be the exclusive authority for the Director to carry out information activities with respect to acquired immune deficiency syndrome.

"(b) Clearinghouse.—

"(1) The Secretary, acting through the Director of the Centers for Disease Control, may establish a clearinghouse to make information concerning acquired immune deficiency syndrome available to Federal agencies, States, public and private entities, and the general public.

"(2) The clearinghouse may conduct or support programs—

"(A) to develop and obtain educational materials, model curricula, and methods directed toward reducing the transmission of the etiologic agent for acquired immune deficiency syndrome;

"(B) to provide instruction and support for individuals who provide instruction in methods and techniques of education relating to the prevention of acquired immune deficiency syndrome and instruction in the use of the materials and curricula described in subparagraph (A); and

"(C) to conduct, or to provide for the conduct of, the materials, curricula, and methods described in paragraph (1) and the efficacy of such materials, curricula, and methods in preventing infection with the etiologic agent for acquired immune deficiency syndrome.

"(c) Toll-Free Telephone Communications.—The Secretary shall provide for the establishment and maintenance of toll-free telephone communications to provide information to, and respond to queries from, the public concerning acquired immune deficiency syndrome. Such communications shall be available on a 24-hour basis.

"SEC. 2522. PUBLIC INFORMATION CAMPAIGNS.

"(a) In General.—The Secretary, acting through the Director of the Centers for Disease Control, may make grants to public entities, and to nonprofit private entities concerned with acquired immune deficiency syndrome, and shall enter into contracts with public and private entities, for the development and delivery of public service announcements and paid advertising messages that warn individuals about activities which place them at risk of infection with the etiologic agent for such syndrome.

"(b) Requirement of Application.—The Secretary may not provide financial assistance under subsection (a) unless—

"(1) an application for such assistance is submitted to the Secretary;

"(2) with respect to carrying out the purpose for which the assistance is to be provided, the application provides assurances of compliance satisfactory to the Secretary; and

"(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"SEC. 2523. PROVISION OF INFORMATION TO UNDERSERVED POPULATIONS.

"(a) In General.—The Secretary may make grants to public entities, to migrant health centers (as defined in section 329(a)), to community health centers (as defined in section 330(a)), and to nonprofit private entities concerned with acquired immune deficiency syndrome, for the purpose of assisting grantees in providing services to populations of individuals that are underserved with respect to programs providing information on the prevention of exposure to, and the transmission of, the etiologic agent for acquired immune deficiency syndrome.

"(b) Preferences in Making Grants.—In making grants under subsection (a), the Secretary shall give preference to any applicant for such a grant that has the ability to disseminate rapidly the information described in subsection (a) (including any national organization with such ability).

"SEC. 2524. AUTHORIZATION OF APPROPRIATIONS.

"(a) In General.—For the purpose of carrying out sections 2521 through 2523, there are authorized to be appropriated $105,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

"(b) Allocations.—

"(1) Of the amounts appropriated pursuant to subsection (a), the Secretary shall make available $45,000,000 to carry out section 2522 and $30,000,000 to carry out this part through financial assistance to minority entities for the provision of services to minority populations.

"(2) After consultation with the Director of the Office of Minority Health and with the Indian Health Service, the Secretary, acting through the Director of the Centers for Disease Control, shall, not later than 90 days after the date of the enactment of this section, publish guidelines to provide procedures for applications for funding pursuant to paragraph (1) and for public comment.".

Subtitle D—National Commission on Acquired Immune Deficiency Syndrome

SEC. 241. SHORT TITLE.

This subtitle may be cited as the "National Commission on Acquired Immune Deficiency Syndrome Act".

SEC. 242. ESTABLISHMENT.

There is established a commission to be known as the "National Commission on Acquired Immune Deficiency Syndrome" (hereinafter in this Act referred to as the "Commission").

SEC. 243. DUTIES OF COMMISSION.

(a) General Purpose of the Commission.—The Commission shall carry out activities for the purpose of promoting the development of a national consensus on policy concerning acquired immune deficiency syndrome (hereinafter in this subtitle referred to as "AIDS") and of studying and making recommendations for a consistent national policy concerning AIDS.

(b) Succession.—The Commission shall succeed the Presidential Commission on the Human Immunodeficiency Virus Epidemic, established by Executive Order 12601, dated June 24, 1987.

(c) Functions.—The Commission shall perform the following functions:

(1) Monitor the implementation of the recommendations of the Presidential Commission on the Human Immunodeficiency Virus Epidemic, modifying those recommendations as the Commission considers appropriate.

(2) Evaluate the adequacy of, and make recommendations regarding, the financing of health care and research needs relating to AIDS, including the allocation of resources to various Federal agencies and State and local governments and the roles for and activities of private and public financing.

(3) Evaluate the adequacy of, and make recommendations regarding, the dissemination of information that is essential to the prevention of the spread of AIDS, and that recognizes the special needs of minorities and the important role of the family, educational institutions, religion, and community organizations in education and prevention efforts.

(4) Address any necessary behavioral changes needed to combat AIDS, taking into consideration the multiple moral, ethical, and legal concerns involved, and make recommendations regarding testing and counseling concerning AIDS, particularly with respect to maintaining confidentiality.

(5) Evaluate the adequacy of, and make recommendations regarding, Federal and State laws on civil rights relating to AIDS.

(6) Evaluate the adequacy of, and make recommendations, regarding the capability of the Federal Government to make and implement policy concerning AIDS (and, to the extent feasible to do so, other diseases, known and unknown, in the future), including research and treatment, the availability of clinical trials, education and the financing thereof, and including specifically—

(A) the streamlining of rules, regulations, and administrative procedures relating to the approval by the Food and Drug Administration of new drugs and medical devices, including procedures for the release of experimental drugs; and

(B) the advancement of administrative consideration by the Health Care Financing Administration relating to reimbursement for new drugs and medical devices approved by the Food and Drug Administration.

(7) Evaluate the adequacy of, and make recommendations regarding, international coordination and cooperation concerning data collection, treatment modalities, and research concerning AIDS.

SEC. 244. MEMBERSHIP.

(a) Number and Appointment.—

(1) Appointment.—The Commission shall be composed of 15 members as follows:

(A) Five members shall be appointed by the President—

(i) three of whom shall be—

(I) the Secretary of Health and Human Services;

(II) the Administrator of Veterans' Affairs; and

(III) the Secretary of Defense;

who shall be nonvoting members, except that, in the case of a tie vote by the Commission, the Secretary of Health and Human Services shall be a voting member; and

(ii) two of whom shall be selected from the general public on the basis of such individuals being specially qualified to serve on the Commission by reason of their education, training, or experience.

(B) Five members shall be appointed by the Speaker of the House of Representatives on the joint recommendation of the Majority and Minority Leaders of the House of Representatives.

(C) Five members shall be appointed by the President pro tempore of the Senate on the joint recommendation of the Majority and Minority Leaders of the Senate.

(2) Congressional committee recommendations.—In making appointments under subparagraphs (B) and (C) of paragraph (1), the Majority and Minority Leaders of the House of Representatives and the Senate shall duly consider the recommendations of the Chairmen and Ranking Minority Members of committees with jurisdiction over laws contained in chapter 17 of title 38, United States Code (relating to veterans' health care), title XIX of the Social Security Act (42 U.S.C. 1901 et seq.) (relating to Medicaid), and the Public Health Service Act (42 U.S.C. 201 et seq.) (relating to the Public Health Service).

(3) REQUIREMENTS OF APPOINTMENTS.—The Majority and Minority Leaders of the Senate and the House of Representatives shall—

(A) select individuals who are specially qualified to serve on the Commission by reason of their education, training, or experience; and

(B) engage in consultations for the purpose of ensuring that the expertise of the 10 members appointed by the Speaker of the House of Representatives and the President pro tempore of the Senate shall provide as much of a balance as possible and, to the greatest extent possible, cover the fields of medicine, science, law, ethics, health-care economics, and health-care and social services.

(4) TERM OF MEMBERS.—Members of the Commission (other than members appointed under paragraph (1)(A)(i)) shall serve for the life of the Commission.

(5) VACANCY.—A vacancy on the Commission shall be filled in the manner in which the original appointment was made.

(b) CHAIRMAN.—Not later than 15 days after the members of the Commission are appointed, such members shall select a Chairman from among the members of the Commission.

(c) QUORUM.—Seven members of the Commission shall constitute a quorum, but a lesser number may be authorized by the commission to conduct hearings.

(d) MEETINGS.—The Commission shall hold its first meeting on a date specified by the Chairman, but such date shall not be earlier than September 1, 1988, and not be later than 60 days after the date of the enactment of this Act, or September 30, 1988, whichever is later. After the initial meeting, the Commission shall meet at the call of the Chairman or a majority of its members, but shall meet at least three times each year during the life of the Commission.

(e) PAY.—Members of the Commission who are officers or employees or elected officials of a government entity shall receive no additional compensation by reason of their service on the Commission.

(f) PER DIEM.—While away from their homes or regular places of business in the performance of duties for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under sections 5702 and 5703 of title 5, United States Code.

(g) DEADLINE FOR APPOINTMENT.—Not earlier than July 11, 1988, and not later than 45 days after the date of the enactment of this Act, or August 1, 1988, whichever is later, the members of the Commission shall be appointed.

SEC. 245. REPORTS.

(a) INTERIM REPORTS.—

(1) IN GENERAL.—Not later than 1 year after the date on which the Commission is fully constituted under section 244(a), the Commission shall prepare and submit to the President and to the appropriate committees of Congress a comprehensive report on the activities of the Commission to that date.

(2) CONTENTS.—The report submitted under paragraph (1) shall include such findings, and such recommendations for legislation and administrative action, as the Commission considers appropriate based on its activities to that date.

(3) OTHER REPORTS.—The Commission shall transmit such other reports as it considers appropriate.

(b) FINAL REPORT.—

(1) IN GENERAL.—Not later than 2 years after the date on which the Commission is fully constituted under section 244(a), the Commission shall prepare and submit a final report to the President and to the appropriate committees of Congress.

(2) CONTENTS.—The final report submitted under paragraph (1) shall contain a detailed statement of the activities of the Commission and of the findings and conclusions of the Commission, including such recommendations for legislation and administrative action as the Commission considers appropriate.

SEC. 246. EXECUTIVE DIRECTOR AND STAFF.

(a) EXECUTIVE DIRECTOR.—

(1) APPOINTMENT.—The Commission shall have an Executive Director who shall be appointed by the Chairman, with the approval of the Commission, not later than 30 days after the Chairman is selected.

(2) COMPENSATION.—The Executive Director shall be compensated at a rate not to exceed the maximum rate of basic pay payable under GS-18 of the General Schedule as contained in title 5, United States Code.

(b) STAFF.—With the approval of the Commission, the Executive Director may appoint and fix the compensation of such additional personnel as the Executive Director considers necessary to carry out the duties of the Commission.

(c) APPLICABILITY OF CIVIL SERVICE LAWS.—The Executive Director and the additional personnel of the Commission appointed under subsection (b) may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(d) CONSULTANTS.—Subject to such rules as may be prescribed by the Commission, the Executive Director may procure temporary or intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals not to exceed $200 per day.

(e) DETAILED PERSONNEL AND SUPPORT SERVICES.—Upon the request of the Commission for the detail of personnel, or for administrative and support services, to assist the Commission in carrying out its duties under this Act, the Secretary of Health and Human Services and the Administrator of Veterans' Affairs, either jointly or separately, may on a reimbursable basis (1) detail to the Commission personnel of the Department of Health and Human Services or the Veterans' Administration, respectively, or (2) provide to the Commission administrative and support services. The Secretary and the Administrator shall consult for the purpose of determining and implementing an appropriate method for jointly or separately detailing such personnel and providing such services.

SEC. 247. POWERS OF COMMISSION.

(a) HEARINGS.—For the purpose of carrying out this Act, the Commission may conduct such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(b) DELEGATION.—Any member or employee of the Commission may, if authorized by the Commission, take any action that the Commission is authorized to take under this Act.

(c) ACCESS TO INFORMATION.—The Commission may secure directly from any executive department or agency such information as may be necessary to enable the Commission to carry out this Act, except to the extent that the department or agency is expressly prohibited by law from furnishing such information. On the request of the Chairman of the Commission, the head of such department or agency shall furnish nonprohibited information to the Commission.

(d) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

SEC. 248. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for fiscal year 1989 $2,000,000, and such sums as may be necessary in any subsequent fiscal year, to carry out the purposes of this Act. Amounts appropriated pursuant to such authorization shall remain available until expended.

SEC. 249. TERMINATION.

The Commission shall cease to exist 30 days after the date on which its final report is submitted under section 245(b). The President may extend the life of the Commission for a period of not to exceed 2 years.

Subtitle E—General Provisions

SEC. 251. REQUIREMENT OF STUDY WITH RESPECT TO MINORITY HEALTH AND ACQUIRED IMMUNE DEFICIENCY SYNDROME.

(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Office of Minority Health, shall conduct a study for the purpose of determining—

(1) the level of knowledge within minority communities concerning acquired immune deficiency syndrome, the risks of the transmission of the etiologic agent for such syndrome, and the means of reducing such risk; and

(2) the effectiveness of Federal, State, and local prevention programs with respect to acquired immune deficiency syndrome in minority communities.

(b) REPORT.—The Secretary shall, not later than 12 months after the date of enactment of this Act, complete the study required in subsection (a) and submit to the Congresss a report describing the findings made as a result of the study.

SEC. 252. ESTABLISHMENT OF OFFICE WITH RESPECT TO MINORITY HEALTH AND ACQUIRED IMMUNE DEFICIENCY SYNDROME.

The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control, shall establish an office for the purpose of ensuring that, in carrying out the duties of the Secretary with respect to prevention of acquired immune deficiency syndrome, the Secretary develops and implements prevention programs targeted at minority populations and provides appropriate technical assistance in the implementation of such programs.

SEC. 253. INFORMATION FOR HEALTH AND PUBLIC SAFETY WORKERS.

(a) DEVELOPMENT AND DISSEMINATION OF GUIDELINES.—Not later than 90 days after the date of the enactment of this title, the Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary"), acting through the Director of the Centers for Disease Control, shall develop, issue, and disseminate emergency guidelines to all health workers, public safety workers (including emergency response employees) in the United States concerning—

(1) methods to reduce the risk in the workplace of becoming infected with the etiologic agent for acquired immune deficiency syndrome; and

(2) circumstances under which exposure to such etiologic agent may occur.

(b) Use in Occupational Standards.—The Secretary shall transmit the guidelines issued under subsection (a) to the Secretary of Labor for use by the Secretary of Labor in the development of standards to be issued under the Occupational Safety and Health Act of 1970.

(c) Development and Dissemination of Model Curriculum for Emergency Response Employees.—

(1) Not later than 90 days after the date of the enactment of this title, the Secretary, acting through the Director of the Centers for Disease Control, shall develop a model curriculum for emergency response employees with respect to the prevention of exposure to the etiologic agent for acquired immune deficiency syndrome during the process of responding to emergencies.

(2) In carrying out paragraph (1), the Secretary shall consider the guidelines issued by the Secretary under subsection (a).

(3) The model curriculum developed under paragraph (1) shall, to the extent practicable, include—

(A) information with respect to the manner in which the etiologic agent for acquired immune deficiency syndrome is transmitted; and

(B) information that can assist emergency response employees in distinguishing between conditions in which such employees are at risk with respect to such etiologic agent and conditions in which such employees are not at risk with respect such etiologic agent.

(4) The Secretary shall establish a task force to assist the Secretary in developing the model curriculum required in paragraph (1). The Secretary shall appoint to the task force representatives of the Centers for Disease Control, representatives of State governments, and representatives of emergency response employees.

(5) The Secretary shall—

(A) transmit to State public health officers copies of the guidelines and the model curriculum developed under paragraph (1) with the request that such officers disseminate such copies as appropriate throughout the State; and

(B) make such copies available to the public.

SEC. 254. CONTINUING EDUCATION FOR HEALTH CARE PROVIDERS.

(a) In General.—The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") may make grants to nonprofit organizations composed of, or representing, health care providers to assist in the payment of the costs of projects to train such providers concerning—

(1) appropriate infection control procedures to reduce the transmission of the etiologic agent for acquired immune deficiency syndrome; and

(2) the provision of care and treatment to individuals with such syndrome or related illnesses.

(b) Limitation.—The Secretary may make a grant under subsection (a) to an entity only if the entity will provide services under the grant in a geographic area, or to a population of individuals, not served by a program substantially similar to the program described in subsection (a).

(c) Requirement of Matching Funds.—

(1) The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees, with respect to the costs to be incurred by the applicant in carrying out the purpose described in such subsection, to make available, directly or through donations from public or private entities, non-Federal contributions (in cash or in kind under paragraph (2)) toward such costs in an amount equal to not less than $2 for each $1 of Federal funds provided in such payments.

(2) Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(d) Requirement of Application.—The Secretary may not make a grant under subsection (a) unless—

(1) an application for the grant is submitted to the Secretary;

(2) with respect to carrying out the purpose for which the grant is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(e) Authorization of Appropriations.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.

SEC. 255. TECHNICAL ASSISTANCE.

The Secretary of Health and Human Services shall provide technical assistance to public and nonprofit private entities carrying out programs, projects, and activities relating to acquired immune deficiency syndrome.

SEC. 256. MISCELLANEOUS PROVISIONS.

(a) Public Health Emergency Fund.—Section 319 of the Public Health Service Act (42 U.S.C. 247d) is amended—

(1) in subsection (a), by inserting "the Administrator of Health Resources and Services," before "or the Director"; and

(2) in subsection (b)(1), by striking "$30,000,000" the second place it appears and inserting in lieu thereof "$45,000,000".

(b) Certain Use of Funds.—None of the funds provided under this Act or an amendment made by this Act shall be used to provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs, unless the Surgeon General of the United States determines that a demonstration needle exchange program would be effective in reducing drug abuse and the risk that the public will become infected with the etiologic agent for acquired immune deficiency syndrome.

(c) Report on Certain Ethical Issues.—The Congressional Biomedical Ethics Board shall report to Congress within eighteen months from the effective date of this Act on the ethical issues connected with the administration of nutrition and hydration to dying patients. This report shall include a review of State laws, regulations and court decisions on this topic. The report shall also discuss the arguments concerning the appropriate roles of the patient, the patient's family, the care provider, the State and the appropriate Federal role.

(d) Study of State Laws.—

(1) The Secretary of Health and Human Services shall conduct a study for the purpose of determining—

(A) the laws and policies of the States relating to confidentiality and disclosure of information with respect to records of the counseling and testing of individuals regarding the etiologic agent for acquired immune deficiency syndrome; and

(B) the laws and policies of the States relating to discrimination against individuals infected with such etiologic agent or regarded as being so infected.

(2) Not later than 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall complete the study required in subsection (a) and submit to the Congress a report describing the findings made as a result of the study.

TITLE III—PREVENTIVE HEALTH, HEALTH SERVICES, AND HEALTH PROMOTION

Subtitle A—Preventive Health and Health Services

SEC. 301. BLOCK GRANTS.

(a) Authorization of Appropriations.—Section 1901(a) of the Public Health Service Act (42 U.S.C. 300w(a)) is amended by striking "and" after "1986," and by inserting before the period the following: ", $110,000,000 for fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 and 1991".

(b) Use of Allotments.—Section 1904(a)(1) of the Public Health Service Act (42 U.S.C. 300w-3(a)(1)) is amended—

(1) in subparagraph (B), by inserting before the period the following: "and elevated serum cholesterol";

(2) in subparagraph (C), by inserting before the period the following: ", including programs designed to reduce the incidence of chronic diseases";

(3) in subparagraph (D), by inserting before the period the following: ", including immunization services";

(4) in subparagraph (F), in the second sentence, by striking "systems (other" and all that follows and inserting the following: "systems, except that such amounts may be used for the payment of not more than 50 percent of the costs of purchasing communications equipment for the systems."; and

(5) by inserting after subparagraph (G) the following new subparagraph:

"(H) Establishing and maintaining preventive health service programs for screening for, the detection, diagnosis, prevention, and referral for treatment of, and follow-up on compliance with treatment prescribed for, uterine cancer and breast cancer.".

(c) Application and Description of Activities.—Section 1905(d) of the Public Health Service Act (42 U.S.C. 300w-4(d)) is amended by adding at the end the following new sentence: "The description shall include a statement of the public health objectives expected to be achieved by the State through the use of the payments the State will receive under section 1903.".

(d) Reports and Audits.—

(1) Section 1906(a) of the Public Health Service Act (42 U.S.C. 300w-5(a)) is amended by adding at the end the following new paragraph:

"(3) Each annual report required in paragraph (1) shall include—

"(A) information and data on the number of individuals who received services provided through the use of payments under section 1903, the types of such services provided, the types of health care providers that delivered such services, and the cost of each type of such service;

"(B) such other information and data as the Secretary may require; and

"(C) an evaluation of the extent to which such services have been effective towards meeting the public health objectives described in the statement submitted to the Secretary pursuant to section 1905(d).".

(2) Section 1906(b)(6) of the Public Health Service Act (42 U.S.C. 300w-5(b)(6)) is amended by striking "1983," and inserting "1990,".

SEC. 302. GRANTS FOR EMERGENCY MEDICAL SERVICES FOR CHILDREN.

(a) Duration of Grant.—Section 1910(a) of the Public Health Service Act (42 U.S.C. 300w-9(a)) is amended in the second sentence by striking "shall be for" and all that follows and inserting the following: "shall be for not more than a two-year period, subject to annual evaluation by the Secretary.".

(b) Authorization of Appropriations.—Section 1910(d) of the Public Health Service Act (42 U.S.C. 300w-9(d)) is amended by inserting before the period the following: ", $3,000,000 for fiscal year 1989, $4,000,000 for fiscal year 1990, and $5,000,000 for fiscal year 1991".

SEC. 303. REPEAL OF PROGRAM OF STATE PLANNING GRANTS.

Part A of title XIX of the Public Health Service Act (42 U.S.C. 300w et seq.) is amended by striking section 1910A.

Subtitle B—Programs With Respect to Sexually Transmitted Diseases, Health Information, and Health Promotion

SEC. 311. GRANTS FOR PREVENTION OF SEXUALLY TRANSMITTED DISEASES.

Section 318 of the Public Health Service Act (42 U.S.C. 247c) is amended—

(1) in the title, by striking "and acquired immune deficiency syndrome";

(2) by striking subsections (d) and (f);

(3) by redesignating subsection (e) as subsection (d) and subsection (g) as subsection (e); and

(4) in subsection (d)(1) (as so redesignated)—

(A) in the first sentence—

(i) by striking "(b), (c), and (d)" and inserting "(b) and (c)";

(ii) by striking "and" after "1986,";

(iii) by striking the period and inserting a comma; and

(iv) by adding at the end the following: "$78,000,000 for fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 and 1991.";

(B) in the third sentence, by striking "(b), (c), or (d)" and inserting "(b) or (c)"; and

(C) by striking the last sentence.

SEC. 312. HEALTH INFORMATION AND HEALTH PROMOTION.

(a) Authorization of Appropriations.—Title XVII of the Public Health Service Act (42 U.S.C. 300u et seq.) is amended—

(1) in section 1701(b)—

(A) by striking "this title," and inserting "sections 1701 through 1705,"; and

(B) by striking "and" after "1986," and inserting before the period the following: ", and $10,000,000 for each of the fiscal years 1989 through 1991"; and

(2) in section 1706(e), by striking "and" after "1986," and inserting before the period the following: ", $6,000,000 for fiscal year 1989, $8,000,000 for fiscal year 1990, and $10,000,000 for fiscal year 1991".

(b) Model Programs for Employee Health Promotion and Disease Prevention.—

(1) Section 1701(a) of the Public Health Service Act (42 U.S.C. 300u(a)) is amended—

(A) by redesignating paragraphs (7) through (10) as paragraphs (8) through (11), respectively; and

(B) by inserting after paragraph (6) the following new paragraph:

"(7)(A) develop model programs through which employers in the public sector, and employers that are small businesses (as defined in section 3 of the Small Business Act), can provide for their employees a program to promote healthy behaviors and to discourage participation in unhealthy behaviors;

"(B) provide technical assistance to public and private employers in implementing such programs (including private employers that are not small businesses and that will implement programs other than the programs developed by the Secretary pursuant to subparagraph (A)); and

"(C) in providing such technical assistance, give preference to small businesses;".

(2) Not later than 18 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall complete the development of the model programs required in section 1701(a)(7)(A) of the Public Health Service Act (as added by paragraph (1)(B) of this subsection).

(c) Technical and Conforming Amendments.—Section 1701(a) of the Public Health Service Act (42 U.S.C. 300u) is amended—

(1) in paragraph (9) (as redesignated by subsection (b)(1)(A) of this section), by striking "paragraph (7)" and inserting "paragraph (8)"; and

(2) in the matter after and below paragraph (11)(D) (as so redesignated)—

(A) by striking the first sentence; and

(B) by striking "paragraph (10)" and inserting "paragraph (11)".

TITLE IV—ORGAN TRANSPLANT AMENDMENTS OF 1988

SEC. 401. SHORT TITLE AND REFERENCE.

(a) Short Title.—This title may be cited as the "Organ Transplant Amendments Act of 1988".

(b) Reference.—Whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

SEC. 402. ASSISTANCE FOR ORGAN PROCUREMENT ORGANIZATIONS.

(a) Additional Grant Authority.—Section 371(a) (42 U.S.C. 273(a)) is amended—

(1) in paragraph (2), by inserting "consolidation," after "operation,";

(2) by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following new paragraph:

"(3) The Secretary may make grants for special projects designed to increase the number of organ donors."; and

(3) in paragraph (4) (as redesignated in paragraph (2) of this subsection)—

(A) by striking "and" at the end of subparagraph (A);

(B) by striking the period at the end and inserting ", and"; and

(C) by adding at the end the following new subparagraph:

"(C) with respect to carrying out paragraph (3), give special consideration to proposals from existing organ procurement organizations.".

(b) Limitations on Additional Grant Authority.—Section 374(b)(3) (42 U.S.C. 274b(b)(3)) is amended in the first sentence by striking "section 371" and all that follows through "organizations" and inserting "paragraphs (2) and (3) of section 371(a)".

(c) Description of Organ Procurement Organization.—

(1) Section 371(b) (42 U.S.C. 273(b)) is amended—

(A) in paragraph (1)(E)—

(i) by striking "size which" and inserting "size such that"; and

(ii) by striking "will include" and all that follows through "year" and inserting the following: "the organization can reasonably expect to procure organs from not less than 50 donors each year";

(B) in paragraph (2)(C), by striking "372(b)(2)(D)," and inserting the following: "372(b)(2)(E), including arranging for testing with respect to preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,";

(C) in paragraph (2)(E)—

(i) by inserting "equitably" after "organs"; and

(ii) by striking "centers and"; and

(D) in paragraph (2)—

(i) by striking "and" at the end of subparagraph (I);

(ii) by striking the period at the end and inserting ", and"; and

(iii) by adding at the end the following new subparagraph:

"(K) assist hospitals in establishing and implementing protocols for making routine inquiries about organ donations by potential donors.".

(2) Section 371(b)(1)(G)(i)(III) is amended by inserting before the comma the following: "or an individual with a doctorate degree in a biological science with knowledge, experience, or skill in the field of histocompatibility".

(3) The amendment made by paragraph (1)(A) shall not apply to an organ procurement organization designated under section 1138(b) of the Social Security Act until 2 years after the initial designation of the organization under such section.

(d) Authorizations of Appropriations.—Section 371(c) (42 U.S.C. 273(c)) is amended to read as follows:

"(c) For grants under subsection (a), there is authorized to be appropriated $5,000,000 for each of the fiscal years 1988 through 1990.".

SEC. 403. ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK.

(a) Duties.—Section 372(b)(2) (42 U.S.C. 274(b)(2)) is amended—

(1)(A) by redesignating subparagraphs (B) through (H) as subparagraphs (C) through (I), respectively; and

(B) by adding after subparagraph (A) the following new subparagraph:

"(B) establish membership criteria and medical criteria for allocating organs and provide to members of the public an opportunity to comment with respect to such criteria,";

(2) in subparagraph (D) (as redesignated in paragraph (1)(A) of this subsection), by striking "organs which" and all that follows and inserting "organs,";

(3) in subparagraph (E) (as redesignated in paragraph (1)(A) of this subsection), strike "organs," and insert the following: "organs, including standards for preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,";

(4) in subparagraph (F) (as redesignated in paragraph (1)(A) of this subsection), by striking "basis," and inserting the following: "basis (and, to the extent practicable, among regions or on a national basis),"; and

(5)(A) by striking "and" at the end of subparagraph (H) (as redesignated in paragraph (1)(A) of this subsection);

(B) by striking the period at the end and inserting ", and"; and

(C) by adding at the end the following new subparagraph:

"(J) carry out studies and demonstration projects for the purpose of improving procedures for organ procurement and allocation.".

(b) CONSIDERATION OF CRITICAL COMMENTS.—Section 372 (42 U.S.C. 274) is amended by adding at the end the following new subsection:

"(c) The Secretary shall establish procedures for—

"(1) receiving from interested persons critical comments relating to the manner in which the Organ Procurement and Transplantation Network is carrying out the duties of the Network under subsection (b); and

"(2) the consideration by the Secretary of such critical comments.".

SEC. 404. REQUIREMENT OF ESTABLISHMENT OF BONE MARROW REGISTRY.

(a) IN GENERAL.—Section 373 (42 U.S.C. 274a) is amended—

(1) by inserting "(a)" after the section designation; and

(2) by adding at the end the following new subsection:

"(b)(1) Not later than October 1, 1988, the Secretary shall, by grant or contract, establish a registry of voluntary bone marrow donors.

"(2) For the purpose of carrying out paragraph (1), there are authorized to be appropriated $1,500,000 for fiscal year 1989 and $1,600,000 for fiscal year 1990.".

(b) CONFORMING AMENDMENT.—Section 373 (42 U.S.C. 274a) is amended in the title by inserting "AND BONE MARROW REGISTRY" after "REGISTRY".

SEC. 405. ADMINISTRATION.

Section 375 (42 U.S.C. 274c) is amended—

(1) in the matter preceding paragraph (1), by striking "1985, 1986, 1987, and 1988," and inserting "1985 through 1990,"; and

(2) in paragraph (4), by striking "one year" and all that follows through "annual report" and inserting the following: "not later than April 1 of each of the years 1989 and 1990, submit to the Congress a report".

SEC. 406. REPORT.

Section 376 (42 U.S.C. 274d) is amended by striking "shall annually" and inserting the following: "shall, not later than October 1 of each year,".

SEC. 407. FETAL ORGAN TRANSPLANTS.

Section 301(c)(1) of the National Organ Transplant Act (42 U.S.C. 274e(c)(1)) is amended to read as follows:

"(1) The term 'human organ' means the human (including fetal) kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin or any subpart thereof and any other human organ (or any subpart thereof, including that derived from a fetus) specified by the Secretary of Health and Human Services by regulation.".

SEC. 408. ESTABLISHMENT OF BLOCK GRANT PROGRAM.

(a) IN GENERAL.—Title XIX of the Public Health Service Act (42 U.S.C. 300w et seq.) is amended by adding at the end thereof the following new part:

"Part D—Immunosuppressive Drug Therapy Block Grant

"SEC. 1931. DEFINITIONS.

"For purposes of this part:

"(1) ELIGIBLE PATIENT.—The term 'eligible patient' means an organ transplant patient who is not eligible to receive reimbursement for the cost of immunosuppressive drug therapy under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), under the State's medicaid plan under title XIX of such Act (42 U.S.C. 1396 et seq.), or under private insurance.

"(2) IMMUNOSUPPRESSIVE DRUG THERAPY.—The term 'immunosuppressive drug therapy' means drugs and biologicals that are to be used for the purpose of preventing the rejection of transplanted organs and tissues and that can be administered by the transplant patient.

"(3) TRANSPLANT CENTER.—The term 'transplant center' means a transplant center that is a member of the Organ Procurement and Transplantation Network established under section 372.

"SEC. 1932. AUTHORIZATION OF APPROPRIATIONS.

"For the purpose of making allotments to States to carry out this part, there are authorized to be appropriated $5,000,000 for each of the fiscal years 1988 through 1990.

"SEC. 1933. ALLOTMENTS.

"(a) AMOUNT.—

"(1) IN GENERAL.—From amounts appropriated under section 1932 for each of the fiscal years 1988 through 1990, the Secretary shall allot to each State an amount that bears the same ratio to the total amount appropriated under such section for such fiscal year as the total number of eligible patients in the State bears to the total number of eligible patients in the United States.

"(2) MINIMUM ALLOTMENT.—Notwithstanding paragraph (1), the allotment of any State in any fiscal year under this subsection shall not be less than $50,000. If, under paragraph (1), the allotment of any State in any fiscal year will be less than $50,000, the Secretary shall increase the allotment of such State to $50,000 and shall proportionately reduce the allotments of all other States whose allotment exceeds $50,000 in a manner that will insure that the allotment of each State in such fiscal year is at least $50,000.

"(b) UNALLOTTED FUNDS.—

"(1) IN GENERAL.—Subject to paragraph (2), to the extent that all the funds appropriated under section 1932 for a fiscal year and available for allotment in such fiscal year are not otherwise allotted to States because—

"(A) one or more States have not submitted an application or description of activities in accordance with section 1936 for such fiscal year;

"(B) one or more States have notified the Secretary that they do not intend to use the full amount of their allotment; or

"(C) some State allotments are offset or repaid under section 1906(b)(3) (as such section applies to this part pursuant to section 1936(d));

such excess shall be allotted among each of the remaining States in proportion to the amount otherwise allotted to such States for such fiscal year without regard to this subsection.

"(2) ORGAN TRANSPLANT CENTERS.—

"(A) APPLICATION.—If a State does not submit an application for an allotment or description of activities in accordance with section 1936 for a fiscal year or notifies the Secretary that the State does not intend to use the full amount of the allotment of the State, an organ transplant center in the State may submit an application in accordance with section 1936 for the amount of the allotment not allocated to the State.

"(B) ALLOTMENT.—Subject to subparagraph (C), if an applicant center complies with the requirements imposed on the State by this part, the Secretary shall provide to the center the amount of the allotment not allocated to the State.

"(C) MULTIPLE APPLICANTS.—If two or more applicant centers in a State meet the requirements of subparagraph (B), the Secretary shall divide among the eligible applicant centers in an equitable manner the amount of the allotment not allocated to the State.

"(D) DISTRIBUTION TO OTHER STATES.—If one or more centers in a State receive an allotment under this paragraph for a fiscal year, the allotment shall not be made available to remaining States under paragraph (1).

"SEC. 1934. PAYMENTS UNDER ALLOTMENTS TO STATES.

"(a) IN GENERAL.—For each fiscal year, the Secretary shall make payments, as provided by section 6503(a) of title 31, United States Code, to each State from its allotments under section 1933 from amounts appropriated for that fiscal year.

"(b) CARRYOVER FUNDS.—Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available for the next fiscal year to such State for the purposes for which it was made.

"SEC. 1935. USE OF ALLOTMENTS.

"(a) IN GENERAL.—

"(1) USE.—Except as provided in subsections (b) and (c), amounts paid to a State under section 1934 from its allotment under section 1933 for any fiscal year shall be used by the State to provide immunosuppressive drug therapy for eligible patients.

"(2) METHODS.—A State may use amounts paid to the State under section 1934 from its allotment under section 1933 to provide immunosuppressive drug therapy for eligible patients—

"(A) by purchasing the drugs and biologicals for such therapy and distributing such drugs and biologicals to transplant centers or eligible patients;

"(B) by certifying that an individual is an eligible patient for purposes of this part and by reimbursing a transplant center for the costs of immunosuppressive drug therapy provided by such center to such individual;

"(C) by any other method prescribed by the Secretary by regulation (other than the method described in subsection (b)(1)).

"(3) COPAYMENTS.—A State may require an eligible patient to whom immunosuppressive drug therapy is provided with amounts paid to the State under this part to make copayments for part of the costs of such therapy, without regard to section 1916 of the Social Security Act (42 U.S.C. 1396o).

"(b) LIMITATIONS.—A State may not use amounts paid to it under section 1934 to—

"(1) make direct payments to organ transplant patients; or

"(2) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

"(c) ADMINISTRATIVE COSTS.—Not more than 10 percent of the total amount paid to any State under section 1934 from its allotment under section 1933 for any fiscal year may be used for administering the funds made available under section 1934. The State will pay from non-Federal sources the remaining costs of administering such funds.

"SEC. 1936. APPLICATION AND DESCRIPTION OF ACTIVITIES; REQUIREMENTS.

"(a) Application Required.—In order to receive an allotment for a fiscal year under section 1933, each State shall submit an application to the Secretary. Each such application shall be in such form and submitted by such date as the Secretary shall require. Each such application shall contain assurances that the State will meet the requirements of subsection (b).

"(b) Requirements.—As part of the annual application required by subsection (a), the chief executive officer of each State shall—

"(1) certify that the State agrees to use the funds allotted to the State under section 1933 in accordance with the requirements of this part;

"(2) agrees to cooperate with Federal investigations undertaken in accordance with section 1907 (as such section applies to this part pursuant to subsection (d) of this section); and

"(3) certify that the State agrees that Federal funds made available under section 1934 for any period will be so used as to supplement and increase the level of State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the activities for which funds are provided under such section and will in no event supplant such State, local, and other non-Federal funds.

"(c) Description of Activities.—

"(1) In general.—The chief executive officer of a State shall, as part of the application required by subsection (a), also prepare and furnish the Secretary (in accordance with such form as the Secretary shall provide) with a description of the intended use of the payments the State will receive under section 1934 for the fiscal year for which the application is submitted, including information on the programs and activities to be supported.

"(2) Public comment.—The description shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during development of the description and after its transmittal.

"(3) Revisions.—The description shall be revised (consistent with this section) throughout the year as may be necessary to reflect substantial changes in the programs and activities assisted by the State under this part. Any revision shall be subject to paragraph (2).

"(d) Administration.—Unless inconsistent with this part, section 1903(b), section 1906(a), paragraphs (1) through (5) of section 1906(b), and sections 1907, 1908, and 1909 shall apply to this part in the same manner as such provisions apply to part A of this title.

"(e) Additional Information.—Each annual report submitted by a State to the Secretary under section 1906(a) (as such section applies to this part pursuant to subsection (d) of this section) with respect to its activities under this part shall contain—

"(1) a specification of the number of eligible patients in the State receiving immunosuppressive drug therapy with amounts paid to the State under this part;

"(2) a description of the amount of any copayment required by the State under section 1935(a)(3); and

"(3) a certification that amounts paid to the State under this part are being used in accordance with this part.

"SEC. 1937. TERMINATION DATE.

"The amendments made under part D of this Act shall terminate effective January 1, 1991.".

(b) Report.—

(1) In general.—Not later than 24 months after the date of enactment of this Act, the Secretary of Health and Human Services shall prepare and transmit to the Congress a report concerning the impact of part D of title XIX of the Public Health Service Act (as added by section 407 of this title).

(2) Contents.—The report shall contain—

(A) a description of the effect of the program established under such part on organ transplants in the United States;

(B) an analysis of the effects of such program on the costs of organ transplants and renal dialysis;

(C) an analysis of the extent to which amounts paid to States under such part are used for purposes other than the purposes specified by such part, including an analysis of the extent to which drugs and biologicals purchased with such amounts are provided to individuals who are not eligible patients under such part; and

(D) such recommendations as the Secretary considers appropriate, including recommendations as to whether financial assistance under such program should be continued during fiscal years after fiscal year 1990.

TITLE V—FOOD AND DRUG ADMINISTRATION

SEC. 501. SHORT TITLE.

This title may be cited as the "Food and Drug Administration Act of 1988".

SEC. 502. FINDINGS.

Congress finds that—

(1) the public health has been effectively protected by the presence of the Food and Drug Administration during the last eighty years;

(2) the presence and importance of the Food and Drug Administration must be guaranteed; and

(3) the independence and integrity of the Food and Drug Administration need to be enhanced in order to ensure the continuing protection of the public health.

SEC. 503. ESTABLISHMENT OF ADMINISTRATION BY LAW.

(a) Establishment.—Chapter IX of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 391 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 903. FOOD AND DRUG ADMINISTRATION.

"(a) In General.—There is established in the Department of Health and Human Services the Food and Drug Administration (hereinafter in this section referred to as the "Administration").

"(b) Commissioner.—

"(1) Appointment.—There shall be in the Administration a Commissioner of Food and Drugs (hereinafter in this section referred to as the "Commissioner") who shall be appointed by the President by and with the advice and consent of the Senate.

"(2) General powers.—The Secretary, through the Commissioner, shall be responsible for—

"(A) providing overall direction to the Food and Drug Administration and establishing and implementing general policies respecting the management and operation of programs and activities of the Food and Drug Administration;

"(B) coordinating and overseeing the operation of all administrative entities within the Administration;

"(C) research relating to foods, drugs, cosmetics, and devices in carrying out this Act;

"(D) conducting educational and public information programs relating to the responsibilities of the Food and Drug Administration; and

"(E) performing such other functions as the Secretary may prescribe.

"(c) Technical and Scientific Review Groups.—The Secretary through the Commissioner of Food and Drugs may, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, establish such technical and scientific review groups as are needed to carry out the functions of the Administration, including functions under the Federal Food, Drug, and Cosmetic Act, and appoint and pay the members of such groups, except that officers and employees of the United States shall not receive additional compensation for service as members of such groups.".

(b) Conforming Amendments.—Title 5, United States Code, is amended—

(1) in section 5316, by striking out the item relating to the Commissioner of Food and Drugs, Department of Health and Human Services; and

(2) in section 5315, by adding at the end thereof the following new item:

"Commissioner of Food and Drugs, Department of Health and Human Services".

(c) Effective Date.—

(1) Except as provided in paragraph (2), the amendments made by this title shall take effect on the date of enactment of this Act.

(2) Section 903(b)(1) of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a) of this section) shall apply to the appointments of Commissioners of Food and Drugs made after the date of enactment of this Act.

TITLE VI—HEALTH PROFESSIONS REAUTHORIZATION ACT OF 1988

SEC. 601. SHORT TITLE; REFERENCE.

(a) Short Title.—This Act may be cited as the "Health Professions Reauthorization Act of 1988".

(b) Reference.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

SEC. 602. FEDERAL PROGRAM OF INSURED LOANS TO GRADUATE STUDENTS IN HEALTH PROFESSIONS SCHOOLS.

(a) Establishment of Additional Credit Authority.—Section 728(a) (42 U.S.C. 294a(a)) is amended in the first sentence by striking "and" after "1987;" and by inserting before the period the following: "; $325,000,000 for fiscal year 1989; $375,000,000 for fiscal year 1990; and $400,000,000 for fiscal year 1991".

(b) Extension of Period for Insurance of New Loans.—Section 728(a) (42 U.S.C. 294a(a)) is amended—

(1) by inserting before the period at the end of the second sentence the following: ", and if in any fiscal year no ceiling has been established, any difference carried over shall constitute the ceiling for making new loans (including loans to new borrowers) and paying installments for such fiscal year."; and

(2) in the third sentence by striking "1991," and inserting "1994,".

(c) Prohibition Against Apportionments of Credit Authority.—Section 728(a) (42 U.S.C. 294a(a)) is amended by adding at the end the following new sentence: "The total principal amount of Federal loan insurance available under this subsection shall be granted by the Secretary without regard to any apportionment for the purpose of chapter 15 of title 31, United States Code, and without regard to any similar limitation.".

(d) Priority in Provision of Insurance.—Section 728(b) (42 U.S.C. 294a(b)) is amended by inserting "(1)" after the subsection designation and by adding at the end the following new paragraph:

"(2) In providing certificates of insurance under section 732 through comprehensive contracts, the Secretary shall give priority to eligible lenders that agree—

"(A) to make loans to students at interest rates below the rates prevailing, during the period involved, for loans covered by Federal loan insurance pursuant to this subpart; or

"(B) to make such loans under terms that are otherwise favorable to the student relative to the terms under which eligible lenders are generally making such loans during such period.".

(e) Frequency of Compounding of Interest.—Section 731(a)(2)(D)) (42 U.S.C. 294d(a)(2)(D)) is amended by inserting "not more frequently than" after "compounded".

(f) Determination of Financial Need of Students.—Section 731 (42 U.S.C. 294d) is amended by adding at the end the following new subsection:

"(e) With respect to any determination of the financial need of a student for a loan covered by Federal loan insurance under this subpart, this subpart may not be construed to limit the authority of any school to make such allowances for students with special circumstances as the school determines appropriate.".

(g) Authority for Assignment of Loans With Respect to Secondary Market.—Section 732(d) (42 U.S.C. 294e(d)) is amended by striking "eligible lender, or" and inserting the following: "eligible lender (including a public entity in the business of purchasing student loans), or".

(h) Clarification With Respect to Reference to Holders of Federally Insured Loans.—Section 733(d) (42 U.S.C. 294f(d)) is amended in the first sentence by inserting "eligible lender or" before "holder";

(i) Amount of Loss Pursuant to Default.—Section 733(e)(2) (42 U.S.C. 294f(e)(2)) is amended by inserting before the semicolon the following: ", less the amount of any judgment collected pursuant to default proceedings commenced by the eligible lender or holder involved".

(j) Clarification With Respect to Effect of Bankruptcy.—Section 733(g) (42 U.S.C. 294f(g)) is amended by inserting "any chapter of" before "title 11,".

(k) Provisions With Respect to Actions for Default.—

(1) Section 733(a) (42 U.S.C. 294f(a)) is amended by striking "(including, if appropriate, commencement of a suit)" and inserting the following: "(including, subject to subsection (h), commencement and prosecution of an action)".

(2) Section 733 (42 U.S.C. 294f) is amended—

(A) in subsection (b), by adding at the end thereof the following new sentence: "The Secretary may sell without recourse to eligible lenders (or other entities that the Secretary determines are capable of dealing in such loans) notes or other evidence of loans received through assignment under the first sentence."; and

(B) by adding at the end the following new subsections:

"(h)(1) With respect to the default by a borrower on any loan covered by Federal loan insurance under this subpart, the Secretary shall, under subsection (a), require an eligible lender or holder to commence and prosecute an action for such default unless—

"(A) in the determination of the Secretary—

"(i) the eligible lender or holder has made reasonable efforts to serve process on the borrower involved and has been unsuccessful with respect to such efforts, or

"(ii) prosecution of such an action would be fruitless because of the financial or other circumstances of the borrower;

"(B) for such loans made before the date of the enactment of the Health Professions Reauthorization Act of 1988, the loan involved was made in an amount of less than $5000; or

"(C) for such loans made after such date, the loan involved was made in an amount of less than $2500.

"(2) With respect to an eligible institution that has commenced an action pursuant to subsection (a), the Secretary shall make the payment required in such subsection, or deny the claim for such payment, not later than 60 days after the date on which the eligible institution notifies the Secretary that judgment has been entered with respect to the action.

"(i) The Secretary may establish reasonable limits for default rates for borrowers in each of the health professions identified in section 737(1). If the eligible institutions within any of the health professions, taken as a group, exceed such limits, the Secretary may suspend, terminate, or otherwise restrict the eligibility of such group of schools for borrowing under this section.".

(l) State Designations of Eligible Lenders.—Section 737(2) (42 U.S.C. 294j(2)) is amended—

(1) by striking "or" after "State," the second place such term appears; and

(2) by inserting before the period the following: ", or a nonprofit private entity designated by the State, regulated by the State, and approved by the Secretary".

(m) Reissuance and Refinancing Agreements Authorized.—Subpart I of part C of title VII (42 U.S.C. 294 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 739A. REISSUANCE AND REFINANCING OF CERTAIN LOANS.

"(a) In General.—Any borrower who received a loan insured under this subpart bearing an interest rate that is fixed at a rate in excess of 12 percent per year may enter into an agreement with the eligible lender that made such loan for the reissuance of such loan in order to permit the borrower to obtain for such loan the interest rate in effect for loans insurable under this subpart on the date the borrower submits an application to such lender for such reissuance.

"(b) Procedures.—

"(1) Discharge by obtaining loan.—Any borrower who received a loan under this subpart bearing an interest rate that is fixed at a rate in excess of 12 percent per year may obtain a loan from an eligible lender (other than the original lender) for the purpose of discharging the loan from such original eligible lender. A loan made for such purpose—

"(A) shall bear interest at the interest rate in effect for loans insurable under this subpart on the date the borrower submits an application for a loan under this subsection; and

"(B) shall be applied to discharge the borrower from any remaining obligation to the original eligible lender with respect to the original loan.

"(2) Certification.—Each new eligible lender may accept certification from the original eligible lender to the borrower's original loan in lieu of presentation of the original promissory note.

"(c) Time of Payment.—Any loan reissued under subsection (a) or refinanced under subsection (b) shall be payable during the repayment period applicable to the loan made under this subpart prior to the date of enactment of this section, and such reissuance or refinancing shall not result in the extension of the duration of the loan.

"(d) Administrative Costs.—An eligible lender reissuing a loan under subsection (a) or refinancing a loan under subsection (b) may charge a borrower an amount not in excess of $100 to cover the administrative costs of such reissuance or refinancing.

"(e) Insurance.—The reissuance of a loan under subsection (a) or the refinancing of a loan under subsection (b) shall not affect any insurance applicable to such loan, and no additional insurance premium may be charged with respect to such loan.

"(f) Notification.—Each holder of a loan made under this subpart shall, not later than January 1, 1989, in the case of loans made before the date of enactment of this section, notify the borrower of such loan—

"(1) of the reissuance or refinancing options for which the borrower is eligible under this section;

"(2) of those options which will be made available by the holder; and

"(3) that, with respect to any option that the holder will not make available, the holder will, to the extent practicable, refer the borrower to an eligible lender offering such option.

"(g) Regulations.—The Secretary shall promulgate regulations to implement this section.

"(h) Definition.—For purposes of this section, the term 'eligible lender' includes the Student Loan Marketing Association.".

SEC. 603. FEDERAL CAPITAL CONTRIBUTIONS INTO STUDENT LOAN FUNDS.

(a) Standards With Respect to Loan Collection.—Section 740(c)(1) (42 U.S.C. 294m(c)(1)) is amended by adding at the end the following new sentence: "This subsection may not be construed to require such schools to reimburse the student loan fund under this subpart for loans that became uncollectible prior to August 1985 or to penalize such schools with respect to such loans.".

(b) Reduction in Interest Rate.—Section 741(e) (42 U.S.C. 294n(e)) is amended by striking "9" and inserting "5".

(c) Grace Period for All Full-Time Students.—Section 741(c)(1) (42 U.S.C. 294n(c)(1)) is amended by striking "and" at the end of subparagraph (B) and by adding at the end the following new subparagraph:

"(D) during which the borrower is pursuing a full-time course of study at such a school; and".

(d) Striking of Date Certain With Respect to Distribution of Assets of Loan

FUNDS.—Section 743 (42 U.S.C. 294p) is amended—

(1) in subsection (a), by amending the matter preceding paragraph (1) to read as follows: "If a school terminates a loan fund established under an agreement pursuant to section 740(b), or if the Secretary for good cause terminates the agreement with the school, there shall be a capital distribution as follows:"; and

(2) by amending subsection (b) to read as follows:

"(b) If a capital distribution is made under subsection (a), the school involved shall, after the capital distribution, pay to the Secretary, not less often than quarterly, the same proportionate share of amounts received by the school in payment of principal or interest on loans made from the loan fund established pursuant to section 740(b) as was determined by the Secretary under subsection (a)."

SEC. 604. LOAN REPAYMENT PROGRAM FOR ALLIED HEALTH PERSONNEL.

Part C of title VII (42 U.S.C. 294 et seq.) is amended by inserting after subpart II the following new subpart:

"Subpart III—Loan Repayment Program for Allied Health Personnel

"SEC. 751. ESTABLISHMENT OF PROGRAM.

"(a) IN GENERAL.—The Secretary shall establish a program of entering into agreements with allied health personnel and with allied health professions students under which such individuals agree, in consideration of the agreement described in subsection (b) (relating to loan repayment), to serve as an allied health professional for a period of not less than two years in an Indian Health Service health center, in a Native Hawaiian health center, in a rural health clinic, in a rural health facility that is a sole community provider, in any other rural hospital, in a rural home health agency, in a rural or urban hospital that serves a substantial number of patients pursuant to title XIX of the Social Security Act, in a private nursing facility 60 percent of whose patients are patients pursuant to title XIX of such Act, in a public nursing facility, in a migrant health center, in a community health center, or in a health facility determined by the Secretary to have a critical shortage of nurses.

"(b) PAYMENTS BY FEDERAL GOVERNMENT.—The agreement referred to in subsection (a) is an agreement, made by the Federal Government in consideration of the agreement described in paragraph (1) with respect to service as an allied health professional, under which the Federal Government agrees to pay—

"(1) for the first year of such service, 30 percent of the balance of the principal and interest of the educational loans of the individual;

"(2) for the second year of such service, 30 percent of such balance; and

"(3) for the third year of such service, 25 percent of such balance.

"(c) ADMINISTRATION.—With respect to the National Health Service Corps Loan Repayment Program established in subpart III of part D of title III, the provisions of such subpart shall, except as inconsistent with this section, apply to the program established in this section in the same manner and to the same extent as such provisions apply to the National Health Service Corps Loan Repayment Program established in such subpart.

"(d) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated $2,000,000 for each of the fiscal years 1989 through 1991.".

SEC. 605. SCHOLARSHIPS FOR FIRST-YEAR STUDENTS OF EXCEPTIONAL FINANCIAL NEED.

(a) SCHOLARSHIPS FOR STUDENTS OF EXCEPTIONAL FINANCIAL NEED.—Section 758 (42 U.S.C. 294z) is amended—

(1) in subsection (a), by striking out "and who are in their first year of study at such school"; and

(2) in subsection (b)—

(A) in paragraph (1), by striking out "in their first year of study at such school";

(B) in paragraph (2)—

(i) by striking out "shall consist" and inserting in lieu thereof "may consist of all or part"; and

(ii) by inserting "not in excess" before "of $400" in subparagraph (B);

(C) in paragraph (5), by inserting "maximum allowable" before "monthly stipend"; and

(D) by striking out paragraph (6).

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 758(d) (42 U.S.C. 294z(d)) is amended by striking "and" after "1987," and inserting before the period the following: ", $7,300,000 for fiscal year 1989, $30,000,000 for fiscal year 1990, and $30,000,000 for fiscal year 1991".

SEC. 606. CAPITATION GRANTS FOR SCHOOLS OF PUBLIC HEALTH.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 770(e) (42 U.S.C. 295f) is amended by striking "and" after "1987," and by inserting before the period the following: ", $4,700,000 for fiscal year 1989, and $3,000,000 for fiscal year 1990".

(b) SUNSET PROVISION.—Part E of title VII (42 U.S.C. 295f et seq.) is amended by adding at the end the following new section:

"SEC. 773. SUNSET PROVISION.

"Effective October 1, 1990, this part is repealed.".

SEC. 607. AUTHORIZATION OF APPROPRIATIONS FOR PROJECT GRANTS FOR ESTABLISHMENT OF DEPARTMENTS OF FAMILY MEDICINE.

Section 780(d) (42 U.S.C. 295g(d)) is amended—

(1) by striking "There" and inserting "For the purpose of carrying out this section, there";

(2) by striking "and" after "1987," and inserting after "1988" the following: ", and $7,000,000 for each of the fiscal years 1989 through 1991"; and

(3) by striking "for payments under grants under subsection (a)".

SEC. 608. AREA HEALTH EDUCATION CENTERS.

(a) MINIMUM NUMBER OF INDIVIDUALS IN CERTAIN INTERNSHIPS.—Section 781(d)(2)(C) (42 U.S.C. 295g-1(d)(2)(C)) is amended by striking "six" and inserting "four".

(b) AUTHORIZATION OF APPROPRIATIONS FOR GENERAL PROGRAM OF AREA HEALTH EDUCATION CENTERS.—(1) Section 781(a) (42 U.S.C. 295g-1(a)) is amended by adding at the end of paragraph (2) the following new subparagraph:

"(C) In the case of the requirement that an area health education center be neither a school of medicine or osteopathy, the parent institution of such a school, nor a branch campus or other subunit of a school of medicine or osteopathy or its parent institution, or a consortium of such entities, to be eligible to enter into a contract under this section, the Secretary shall waive such requirement with respect to an area health education center having, at the time of initial application to enter into such contract under this section or a previous authorizing law, an operating program supported by both appropriations of a State legislature and local resources.".

(2) Section 781(d)(2)(F) is amended by striking out "and nurse practitioners" and inserting in lieu thereof ", nurse practitioners, and nurse midwives".

(3) Section 781(h) (as redesignated by subsection (c)(1) of this section) is amended in the first sentence—

(A) by striking "There are authorized" and all that follows through "this section" and inserting the following: "For the purpose of carrying out this section other than subsection (f), there are authorized to be appropriated"; and

(B) by striking "and" after "1987," and inserting before the period the following: ", $18,700,000 for the fiscal year 1989, and $20,000,000 for each of the fiscal years 1990 and 1991".

(c) HEALTH EDUCATION AND TRAINING CENTERS.—Section 781 (42 U.S.C. 295g-1) is amended—

(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(2) by adding after subsection (e) the following new subsection:

"(f)(1) The Secretary shall enter into contracts with schools of medicine and osteopathy for the purpose of planning, developing, establishing, maintaining, and operating health education and training centers—

"(A) to improve the supply, distribution, quality, and efficiency of personnel providing (in the United States) health services along the border between the United States and Mexico;

"(B) to improve the supply, distribution, quality, and efficiency of personnel providing, in other urban and rural areas (including frontier areas) of the United States, health services to any population group, including Hispanic individuals, that has demonstrated serious unmet health care needs; and

"(C) to encourage health promotion and disease prevention through public education in the areas described.

"(2) The Secretary may not enter into a contract under paragraph (1) unless the applicant for such assistance agrees, in carrying out the purpose described in such paragraph, to enter into arrangements with one or more public or nonprofit private entities in the State that have expertise in providing health education to the public.

"(3) The Secretary shall, after consultation with health education and training centers, designate the geographic area in which each such center will carry out the purpose described in paragraph (1). The service area of such a center shall be located entirely within the State in which the center is located. Each border health education and training center shall be located in a county (or other political subdivision) of the State in close proximity to the border between the United States and Mexico.

"(4) The Secretary may not enter into a contract under paragraph (1) unless the applicant for such assistance agrees—

"(A) to establish an advisory group comprised of health service providers, educators and consumers from the service area and of faculty from participating schools;

"(B) after consultation with such advisory group, to develop a plan for carrying out the purpose described in paragraph (1) in the service area;

"(C) to enter into contracts, as needed, with other institutions or entities to carry out such plan; and

"(D) to be responsible for the evaluation of the program.

"(5) The Secretary may not make a grant or enter into a contract under paragraph (1) unless the applicant for such assistance agrees—

"(A) to evaluate the specific service needs for health care personnel in the service area;

"(B) to assist in the planning, development, and conduct of training programs to meet the needs identified pursuant to subparagraph (A);

"(C) to conduct or support not less than one training and education program for physicians and one program for nurses for at least a portion of the clinical training of such students;

"(D) to conduct or support training in health education services, including training to prepare community health workers to implement health education programs in communities, health departments, health clinics, and public schools that are located in the service area;

"(E) to conduct or support continuing medical education programs for physicians and other health professionals (including allied health personnel) practicing in the service area;

"(F) to support health career educational opportunities designed to provide students residing in the service area with counseling, education, and training in the health professions;

"(G) with respect to border health education and training centers, to assist in coordinating its activities and programs carried out pursuant to paragraph (1)(A) with any similar programs and activities carried out in Mexico along the border between the United States and Mexico; and

"(H) to make available technical assistance in the service area in the aspects of health care organization, financing and delivery.

"(6) In carrying out this subsection, the Secretary shall ensure that—

"(A) not less than 75 percent of the total funds provided to a school or schools of medicine or osteopathy will be expended in the development and operation of the health education and training center in the service area of such program;

"(B) to the maximum extent feasible, the school of medicine or osteopathy will obtain from nongovernmental sources the amount of the total operating funds for such program which are not provided by the Secretary;

"(C) no grant or contract shall provide funds solely for the planning or development of a health education and training center program for a period in excess of two years;

"(D) not more than 10 percent of the annual budget of each program may be utilized for the renovation and equipping of clinical teaching sites; and

"(E) no grant or contract shall provide funds to be used outside the United States except as the Secretary may prescribe for travel and communications purposes related to the conduct of a border health education and training center.

"(7) For purposes of this subsection:

"(A) The term 'border health education and training center' means an entity that is a recipient of a contract under paragraph (1) and that is carrying out (or will carry out) the purpose described in subparagraph (A) of such paragraph.

"(B) The term 'health education and training center' means an entity that is a recipient of a contract under paragraph (1).

"(C) The term 'service area' means, with respect to a health education and training center, the geographic area designated for the center under paragraph (3).

"(8)(A) Of the amounts appropriated pursuant to subsection (h)(2) for a fiscal year, the Secretary shall make available 50 percent for allocations each fiscal year for applications approved by the Secretary for border health education and training centers. The amount of the allocation for each such center shall be determined in accordance with subparagraph (B).

"(B) The amount of an allocation under subparagraph (A) for a fiscal year shall be determined in accordance with a formula prescribed by the Secretary, which formula shall be based—

"(i) with respect to the service area of the border health education and training center involved, on the low-income population, including Hispanic individuals, along the border between the United States and Mexico and the growth rate of such population;

"(ii) on the need of such population for additional personnel to provide health care services along such border; and

"(iii) on the most current information concerning mortality and morbidity and other indicators of health status for such population.".

(d) AUTHORIZATION OF APPROPRIATIONS FOR HEALTH EDUCATION AND TRAINING CENTERS.—Section 781(h) (as redesignated by subsection (c)(1) of this section) is amended by inserting "(1)" after the subsection designation and by adding at the end the following new paragraph:

"(2) For the purpose of carrying out subsection (f), there are authorized to be appropriated $4,000,000 for fiscal year 1989, $8,000,000 for fiscal year 1990, and $12,000,000 for fiscal year 1991.".

SEC. 901. AUTHORIZATION OF APPROPRIATIONS FOR GRANTS FOR TRAINING, TRAINEESHIPS, AND FELLOWSHIPS IN GENERAL INTERNAL MEDICINE AND GENERAL PEDIATRICS.

(a) COORDINATION CRITERIA.—Section 784(b) (42 U.S.C. 295g-4(b)) is amended by inserting before the period the following: ", and coordination of curriculum development and resident teaching activities with departments of family medicine where there is a department within the same school".

(b) AUTHORIZATIONS.—Section 784(c) (42 U.S.C. 295g-4(c)) is amended—

(1) by striking "There" and all that follows through "section" and inserting "For the purpose of carrying out this section, there are authorized to be appropriated"; and

(2) by striking "and" after "1987," and by inserting before the period the following: ", $23,000,000 for fiscal year 1989, $23,000,000 for fiscal year 1990, and $25,000,000 for fiscal year 1991".

SEC. 610. FAMILY MEDICINE AND GENERAL PRACTICE OF DENTISTRY.

(a) GENERAL PRACTICE OF DENTISTRY.—Part F of title VII (42 U.S.C. 295g et seq.) is amended—

(1) in section 786—

(A) in the title, by striking "AND GENERAL PRACTICE OF DENTISTRY"; and

(B) by striking subsection (b) and redesignating subsections (c) and (d) as subsections (b) and (c), respectively; and

(2) by inserting after section 784 the following new section:

"SEC. 785. RESIDENCY PROGRAMS IN GENERAL PRACTICE OF DENTISTRY.

"(a) IN GENERAL.—The Secretary may make grants to, and enter into contracts with, any public or nonprofit private school of dentistry or accredited postgraduate dental training institution—

"(1) to plan, develop, and operate an approved residency program in the general practice of dentistry or an approved advanced educational program in the general practice of dentistry; and

"(2) to provide financial assistance (in the form of traineeships and fellowships) to participants in such a program who are in need of financial assistance and who plan to specialize in the practice of general dentistry.

"(b) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carring out this section, there are authorized to be appropriated $4,000,000 for fiscal year 1989, $6,000,000 for fiscal year 1990, and $8,000,000 for fiscal year 1991.".

(b) AUTHORIZATION OF APPROPRIATIONS FOR FAMILY MEDICINE.—Section 786(c) (as redesignated by subsection (a)(1)(B) of this section) is amended to read as follows:

"(c) For the purpose of carrying out this section, there are authorized to be appropriated $37,900,000 for fiscal year 1989, $40,000,000 for fiscal year 1990, and $40,000,000 for fiscal year 1991.".

SEC. 611. EDUCATIONAL ASSISTANCE TO INDIVIDUALS FROM DISADVANTAGED BACKGROUNDS.

(a) AUTHORITY FOR STIPENDS FOR ADDITIONAL CATEGORIES OF STUDENTS.—Section 787(a)(2) (42 U.S.C. 295g-7(a)(2)) is amended—

(1) by striking "and" at the end of subparagraph (E);

(2) by striking the period at the end of subparagraph (F) and inserting "; and"; and

(3) by inserting after subparagraph (F) the following new paragraph:

"(G) paying such stipends as the Secretary may approve for such individuals for any period of education at any school described in subsection (a)(1), except schools of medicine, osteopathy, or dentistry.".

(b) INCREASED ENROLLMENTS.—Section 787 (42 U.S.C. 295g-7) is amended by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by adding after subsection (a) the following:

"(b)(1) Schools of medicine, osteopathy, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic, podiatry, and public and nonprofit schools that offer graduate programs in clinical psychology that receive a grant under subsection (a) shall, during a period of 3 years commencing on the date of the award of the grant, increase their first year enrollments of individuals from disadvantaged backgrounds by at least 20 percent over enrollments in the base year 1987.

"(2) The Secretary shall give priority for funding, in years subsequent to the expiration of the 3-year period described in paragraph (1)—

"(A) to schools that attain such increase in their first year enrollment by the end of such 3-year period, and

"(B) to schools that attain a 20 percent increase over such base year enrollment.

"(3) The requirement for at least a 20 percent increase in such enrollment shall apply only to those schools referred to in paragraph (1) that have a total enrollment of such individuals from disadvantaged backgrounds that is less than 200 percent of the national average percentage of such individuals in all schools of each health professions discipline.

"(4) Determination of both first year and total enrollment of such individuals shall be made by the Secretary in accordance with section 708.".

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 787(c) (42 U.S.C. 295g-7(c)) (as so redesignated) is amended in the first sentence by striking "and" after "1987," and by inserting before the period the following: ", $31,200,000 for fiscal year 1989, $34,000,000 for fiscal year 1990, and $36,000,000 for fiscal year 1991".

(d) SET-ASIDES.—Section 787(c) (42 U.S.C. 295g-7(c)) (as so redesignated) is amended in the second sentence by striking "Not less" and all that follows through "fiscal year" and inserting the following: "Of the amounts appropriated under this section for any fiscal year, 10 percent shall be obligated for community-based programs and 70 percent".

(e) STIPENDS.—Section 787(c) (42 U.S.C. 295g-7(c)) (as so redesignated) is amended by adding at the end the following: "Such stipends shall be administered and awarded in the same manner and subject to the same regulations as scholarships under section 758.".

(f) REPORT.—Not later than September 30, 1991, the Secretary shall prepare and submit, to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report that develops a tracking system to evaluate—

(1) the success of the programs established under section 787 of the Public Health Service Act in enhancing the professional education of individuals from disadvantaged backgrounds; and

(2) the gains experienced by institutions in the retention of students from disadvantaged backgrounds.".

SEC. 612. RETENTION PROGRAM FOR HEALTH PROFESSIONS SCHOOLS WITH INDIVIDUALS FROM DISADVANTAGED BACKGROUNDS.

Part F of title VII is amended by inserting after section 787 (42 U.S.C. 295g-7) the following new section:

"SEC. 787A. RETENTION PROGRAM FOR HEALTH PROFESSIONS SCHOOLS WITH INDIVIDUALS FROM DISADVANTAGED BACKGROUNDS.

"(a) ESTABLISHMENT.—The Secretary shall establish a supplemental grant program to award grants to schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, pharmacy, or public health that demonstrate sufficient graduation of students from disadvantaged backgrounds.

"(b) PAYMENT FORMULA.—

"(1) IN GENERAL.—Payments to an eligible institution under this section shall be calculated in accordance with this subsection.

"(2) ELIGIBLE INSTITUTIONS.—An institution shall be eligible for funds under this section for a fiscal year in an amount determined under paragraph (5), if the disadvantaged graduate figure for the institution (as determined under paragraph (3)) exceeds the nondisadvantaged graduate figure for the institution (as determined under paragraph (4)).

"(3) DISADVANTAGED GRADUATE FIGURE.—For each fiscal year, the Secretary shall determine the disadvantaged graduate figure for the institution by dividing—

"(A) the number of students from disadvantaged backgrounds who graduated from the institution as part of such class; by

"(B) the number of students from disadvantaged backgrounds who matriculated into the institution as part of a class.

"(4) NONDISADVANTAGED GRADUATE FIGURE.—For each fiscal year, the Secretary shall determine the nondisadvantaged graduate figure for the institution by multiplying—

"(A) the quotient determined by dividing—

"(i) the number of students from nondisadvantaged backgrounds who graduated from the institution as part of such class; by

"(ii) the number of students from nondisadvantaged backgrounds who matriculated into the institution as part of a class; by

"(B) .9.

"(5) AMOUNT OF GRANT.—An institution determined to be eligible to receive a grant under this subsection shall be entitled to an amount determined by multiplying—

"(A) the quotient determined by dividing—

"(i) the total amount of funds made available to carry out this section during such preceding fiscal year; by

"(ii) the number of students from disadvantaged backgrounds who graduated from eligible institutions during the preceding fiscal year; by

"(B) the number of students from disadvantaged backgrounds who graduated from the eligible institution during such preceding fiscal year.

"(c) USE OF FUNDS.—Payment received by the institution under subsection (b) shall be used to provide—

"(1) financial aid services for individuals from disadvantaged backgrounds who choose to attend such institution;

"(2) retention services or for other retention purposes for individuals for disadvantaged backgrounds.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $2,000,000 in each of the fiscal years 1990 and 1991.".

SEC. 613. TWO-YEAR SCHOOLS OF MEDICINE, INTERDISCIPLINARY TRAINING, AND CURRICULUM DEVELOPMENT.

(a) SPECIAL PROJECTS.—Section 788 (42 U.S.C. 295g-8(e)) is amended to read as follows:

"SEC. 788. SPECIAL PROJECTS.

"(a) TWO-YEAR SCHOOLS.—

"(1) IN GENERAL.—The Secretary may make grants to maintain and improve schools that provide the first or last 2 years of education leading to the degree of doctor of medicine or osteopathy. Grants provided under this paragraph to schools that were in existence on September 30, 1985, may be used for construction and the purchase of equipment.

"(2) ELIGIBILITY.—To be eligible to apply for a grant under paragraph (1), the applicant must be a public or nonprofit school providing the first or last 2 years of education leading to the degree of doctor of medicine or osteopathy and be accredited by or be operated jointly with a school that is accredited by a recognized body or bodies approved for such purpose by the Secretary of Education.

"(b) FACULTY AND CURRICULUM DEVELOPMENT AND CLINICAL TRAINING SITES.—

"(1) GRANTS AND CONTRACTS.—

"(A) IN GENERAL.—The Secretary may make grants to and enter into contracts with any health professions institution or any other public or private nonprofit entity for the development and implementation of model projects in areas such as faculty and curriculum development, and development of new clinical training sites.

"(B) ALLOCATION OF FUNDS.—Priority shall be given to schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, podiatry, public health, chiropractic, allied health, and to graduate programs at public and nonprofit private schools in health administration and clinical psychology in the allocation of funds under this subsection. Funds shall be allocated to each profession for award within that profession on the basis of competitive applications. Investigator-initiated projects should be encouraged. Funding priorities may be determined by the Secretary on consultation with the health professions schools and the National Advisory Council on the Health Professions Education.

"(C) PEER REVIEW.—Any application for a grant to institutions described in subparagraph (A) shall be subject to appropriate peer review by peer review groups composed principally of non-Federal experts. The Secretary may not approve an application unless a peer review group has recommended it for approval.

"(2) HEALTH PROFESSIONS INSTITUTIONS AND ALLIED HEALTH INSTITUTIONS.—

"(A) SET-ASIDE.—At least 75 percent of the amounts available for grants and contracts under this subsection from amounts appropriated under subsection (e) shall be obligated for grants to and contracts with health professions institutions and allied health institutions.

"(B) PEER REVIEW.—Any application for a grant to institutions described in subparagraph (A) shall be subject to appropriate peer review by peer review groups composed principally of non-Federal experts.

"(C) PREREQUISITES.—The Secretary may not approve or disapprove an application for a grant to an institution described in subparagraph (A) unless the appropriate peer review group required under subparagraph (B) has recommended such approval and the Secretary has consulted with the National Advisory Council on Health Professions Education with respect to such application.

"(c) TRAINING IN PREVENTIVE MEDICINE.—

"(1) IN GENERAL.—The Secretary may make grants to and enter into contracts with schools of medicine, osteopathy, and public health to meet the costs of projects—

"(A) to plan and develop new residency training programs and to maintain or improve existing residency training programs in preventive medicine; and

"(B) to provide financial assistance to residency trainees enrolled in such programs.

"(2) ADMINISTRATION.—

"(A) AMOUNT.—The amount of any grant under paragraph (1) shall be determined by the Secretary.

"(B) APPLICATION.—No grant may be made under paragraph (1) unless an application therefor is submitted to and approved by the Secretary. Such an application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe.

"(C) ELIGIBILITY.—To be eligible for a grant under paragraph (1), the applicant must demonstrate to the Secretary that it has or will have available full-time faculty members with training and experience in the fields of preventive medicine and support from other faculty members trained in public health and other relevant specialties and disciplines.

"(D) OTHER FUNDS.—Schools of medicine, osteopathy, and public health may use funds committed by State, local, or county public health officers as matching amounts for Federal grant funds for residency training programs in preventive medicine.

"(d) PROGRAMS FOR PHYSICIAN ASSISTANTS.—

"(1) IN GENERAL.—The Secretary may make grants to and enter into contracts with public or nonprofit private schools of medicine and osteopathy and other public or nonprofit private entities to meet the costs of projects to plan, develop, and operate or maintain programs for the training of physician assistants (as defined in section 701(8)).

"(2) APPLICATIONS.—No grant or contract may be made under paragraph (1) unless the application therefor contains or is supported by assurances satisfactory to the Secretary that the school or entity receiving the grant or contract has appropriate mechanisms for placing graduates of the training program with respect to which the application is submitted in positions for which they have been trained.

"(e) CERTAIN PROJECTS WITH RESPECT TO HOSPITALS AND SCHOOLS OF PODIATRIC MEDICINE.—The Secretary may make grants to, and enter into contracts with, public and nonprofit private hospitals and schools of podiatric medicine for the purpose of planning and implementing projects in primary care training for podiatric physicians in approved or provisionally approved residency programs which shall provide financial assistance in the form of traineeships to residents who participate in such projects and who plan to specialize in primary care.

"(f) AUTHORIZATIONS.—(1)(A) For the purpose of carrying out subsections (a), (b), and (e), there are authorized to be appropriated $2,400,000 for fiscal year 1989, $4,000,000 for fiscal year 1990, and $4,000,000 for fiscal year 1991.

"(B) Of the amounts appropriated pursuant to subparagraph (A) for each of the fiscal years 1989 through 1991, the Secretary shall make available 20 percent of such amounts to carry out subsection (a) and 25 percent of such amounts to carry out subsection (e).

"(2)(A) For the purpose of carrying out subsections (c), there are authorized to be appropriated $1,500,000 for fiscal year 1989, $2,500,000 for fiscal year 1990, and $4,000,000 for fiscal year 1991.

"(B) For the purpose of carrying out subsection (d), there are authorized to be appropriated $4,500,000 for fiscal year 1989, $5,200,000 for fiscal year 1990, and $5,400,000 for fiscal year 1991.".

SEC. 614. GRANTS FOR MINORITY EDUCATION.

(a) REORGANIZATION.—Section 788A (42 U.S.C. 295g-8a) is transferred to immediately after section 781 (42 U.S.C. 295g-1) and redesignated as section 782.

(b) PERIOD OF GRANTS.—Subsection (b) of section 782 (as transferred and redesignated by subsection (a)) is amended by inserting after "(b)", the following new sentence: "The Secretary may award grants for periods not to exceed 3 years.".

(c) ELIGIBILITY.—Subsection (c) of section 782 (as transferred and redesignated by subsection (a)) is amended to read as follows:

"(c) Only health professions schools shall be eligible for a grant under this section, and to be eligible such schools must—

(1) be a school described in section 701(4); and

(2) have received a contract under section 788A for fiscal year 1987.".

SEC. 615. GERIATRIC PROGRAMS.

(a) GERIATRIC EDUCATION CENTERS AND GERIATRIC TRAINING.—Part F of title VII is amended by inserting after section 788B (42 U.S.C. 295g-8b) the following new section:

"SEC. 789. GERIATRIC EDUCATION CENTERS AND GERIATRIC TRAINING.

"(a) GERIATRIC EDUCATION CENTERS.—

"(1) IN GENERAL.—The Secretary may make grants to and enter into contracts with accredited health professions schools, including schools of allied health, referred to in section 701(4) or 701(10) and programs referred to in section 701(8) to assist in meeting the costs of such schools or programs of providing projects to—

"(A) improve the training of health professionals in geriatrics;

"(B) develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;

"(C) expand and strengthen instruction in methods of such treatment;

"(D) support the training and retraining of faculty to provide such instruction;

"(E) support continuing education of health professionals and allied health professionals who provide such treatment; and

"(F) establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric medicine.

"(2) APPROVAL OF APPLICATIONS.—

"(A) PEER REVIEW.—Any application for a grant or contract under this subsection shall be subject to appropriate peer review by peer review groups composed principally of non-Federal experts.

"(B) PREREQUISITES.—The Secretary may not approve or disapprove an application for a grant or contract under this subsection unless the Secretary has received recommendations with respect to such application from the appropriate peer review group required under subparagraph (A) and has consulted with the National Advisory Council on Health Professions Education with respect to such application.

"(b) GERIATRIC TRAINING.—

"(1) IN GENERAL.—The Secretary may make grants to, and enter into contracts with, schools of medicine, schools of osteopathy, teaching hospitals, and graduate medical education programs, for the purpose of providing support (including residencies, traineeships, and fellowships) for geriatric training projects to train physicians and dentists who plan to teach geriatric medicine or geriatric dentistry.

"(2) REQUIREMENTS.—Each project for which a grant or contract is made under this subsection shall—

"(A) be staffed by full-time teaching physicians who have experience or training in geriatric medicine;

"(B) be staffed, or enter into an agreement with an institution staffed by full-time or part-time teaching dentists who have experience or training in geriatric dentistry;

"(C) be based in a graduate medical education program in internal medicine or family medicine, or in a department of geriatrics in existence as of December 1, 1987;

"(D) provide participants in the project with exposure to a population of elderly individuals;

"(E) provide training in geriatrics and exposure to the physical and mental disabilities of elderly individuals through a variety of service rotations, such as geriatric consultation services, acute care services, dental services, geriatric psychiatry units, day and home care programs, rehabilitation services, extended care facilities, geriatric ambulatory care and comprehensive evaluation units, and community care programs for elderly mentally retarded individuals; and

"(F) provide training in geriatrics through one or both of the training options described in subparagraphs (A) and (B) of paragraph (3).

"(3) TRAINING OPTIONS.—The training options referred to in subparagraph (F) of paragraph (2) shall be as follows:

"(A) A 1-year retraining program in geriatrics for—

"(i) physicians who are faculty members in departments of internal medicine, family medicine, gynecology, geriatrics, and psychiatry at schools of medicine and osteopathy; and

"(ii) dentists who are faculty members at schools of dentistry or at hospital departments of dentistry.

"(B) A 1-year or 2-year internal medicine or family medicine fellowship program providing emphasis in geriatrics, which shall be designed to provide training in clinical geriatrics and geriatrics research for—

"(i) physicians who have completed graduate medical education programs in internal medicine, family medicine, psychiatry, neurology, gynecology, or rehabilitation medicine; and

"(ii) dentists who have completed postdoctoral dental education programs.

"(4) DEFINITIONS.—For purposes of this subsection:

"(A) GRADUATE MEDICAL EDUCATION PROGRAM.—The term 'graduate medical education program' means a program sponsored by a school of medicine, a school of osteopathy, a hospital, or a public or private institution that—

"(i) offers postgraduate medical training in the specialties and subspecialties of medicine; and

"(ii) has been accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association through its Committee on Postdoctoral Training.

"(B) POST-DOCTORAL DENTAL EDUCATION PROGRAM.—The term 'post-doctoral dental education program' means a program sponsored by a school of dentistry, a hospital, or a public or private institution that—

"(i) offers post-doctoral training in the specialties of dentistry, advanced education in general dentistry, or a dental general practice residency; and

"(ii) has been accredited by the Commission on Dental Accreditation.

"(c) AUTHORIZATION OF APPROPRIATIONS.—

"(1) GERIATRIC EDUCATION CENTERS.—For grants and contracts under subsection (a), there are authorized to be appropriated $7,000,000 for fiscal year 1989, $10,000,000 for fiscal year 1990, and $13,000,000 for fiscal year 1991.

"(2) GERIATRIC TRAINING.—For grants and contracts under subsection (b), there are authorized to be appropriated $7,000,000 for fiscal year 1989, $10,000,000 for fiscal year 1990, and $13,000,000 for fiscal year 1991.".

(b) CONFORMING AMENDMENTS.—Section 783 (42 U.S.C. 295g-3) is repealed.

SEC. 616. GENERAL PROVISIONS.

(a) MINIMUM AMOUNT OF GRANT FOR CERTAIN GRANTEES.—Section 790 (42 U.S.C. 295g-10) is amended—

(1) in paragraph (3), by striking "The amount" and inserting the following: "Except as provided in paragraph (4), the amount"; and

(2) by adding at the end the following new paragraph:

"(4) With respect to grants under any of sections 780, 784, 785, and 786 for fiscal year 1989 and subsequent fiscal years, if an entity has been a grantee under the section involved for two consecutive fiscal years and the Secretary approves an application under such section from the entity for any subsequent consecutive fiscal year, the amount of the grant for such fiscal year may not be less than an amount equal to 20 percent of the average of the amounts received under such section by the entity for the consecutively preceding fiscal years.".

(b) REQUIREMENT OF PEER REVIEW FOR CERTAIN PROGRAMS.—Section 790 (42 U.S.C. 295g-10), as amended by subsection (a) of this section, is further amended by adding at the end the following new paragraph:

"(5)(A) Each application for a grant under any of sections 784 through 786 shall be submitted to a peer review group for an evaluation of the merits of the proposals made in the evaluation. Each application for a grant under section 780 may be submitted to such peer review group for such an evaluation.

"(B) The Secretary shall establish such peer review groups as may be necessary to carry out subparagraph (A). The Secretary shall make appointments to the peer review groups from among appropriately qualified persons who are not officers of employees of the United States.

"(C) With respect to applications referred to in subparagraph (A), a peer review group established pursuant to such subparagraph shall report its findings and recommendations to the Secretary. The Secretary may not approve such an application unless a peer review group has recommended the application for approval.

"(D) This paragraph shall be carried out by the Secretary, acting through the Administrator of the Health Resources and Services Administration.".

(c) CERTAIN PROVISIONS WITH RESPECT TO HISPANIC INDIVIDUALS AND OTHER MEMBERS OF MINORITY GROUPS.—

(1) Section 708(b)(2) (42 U.S.C. 292h(b)(2)) is amended by adding at the end the following new sentence: "Such studies shall include studies determining by specialty and geographic location the number of health professionals (including allied health professionals and health care administration personnel) who are members of minority groups, including Hispanics, and studies providing by specialty and geographic location evaluations and projections of the supply of, and requirements for, health professionals (including allied health professionals and health care administration personnel) to serve minority groups, including Hispanics.".

(2)(A) The Secretary of Health and Human Services shall conduct a study for the purpose of determining—

(i)(I) the extent to which health care is being provided to Hispanic individuals in medically underserved areas by health care professionals who are unable to communicate with such individuals in the most appropriate language and cultural context; and

(II) whether the extent of the provision of health care to Hispanic individuals by such health care professionals is detrimental to the health of such individuals; and

(ii)(I) the extent to which Hispanic individuals in medically underserved areas rely on allied health personnel as the primary source of health care;

(II) whether the extent of such reliance is detrimental to the health of such individuals; and

(III) if the extent of such reliance is detrimental to such individuals, whether area health education center programs (as defined in section 781(g), as redesignated by section 8(c)(1) of this Act) can be utilized with respect to providing appropriate health care to such individuals.

(B) The Secretary of Health and Human Services shall, not later than 1 year after the date of the enactment of this Act, complete the study required in subparagraph (A) and submit to the Congress a report describing the findings made as a result of the study.

SEC. 617. SPECIAL PROJECTS.

Part F of title VII (42 U.S.C. 295f-2 et seq.) is amended by adding at the end the following new section:

"SEC. 790A. SPECIAL PROJECTS.

"(a) GRANTS.—The Secretary may make grants to, and enter into contracts with, schools of public health for the costs of planning, developing, demonstrating, operating, and evaluating projects—

"(1) for preventive medicine;

"(2) for health promotion and disease prevention;

"(3) for increasing the enrollment in such schools of individuals from disadvantaged backgrounds (as determined in accordance with criteria established by the Secretary under section 787(a)); and

"(4) to improve access and quality in health care.

"(b) PROHIBITIONS.—The Secretary may not make a grant under subsection (a) unless—

"(1) an application for the grant is submitted to the Secretary;

"(2) with respect to carrying out the purpose for which the grant is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

"(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"(c) LIMITATIONS.—The Secretary may make a grant under this subsection only—

"(1) pursuant to the issuance of solicitations for such grants; and

"(2) if the application for such a grant has been recommended for approval by an appropriate peer review group.

"(d) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out subsection (a), there are authorized to be appropriated $1,500,000 for fiscal year 1989, $3,500,000 for fiscal year 1990, and $5,000,000 for fiscal year 1991.".

SEC. 618. GRANTS FOR GRADUATE PROGRAMS IN HEALTH ADMINISTRATION.

(a) MINIMUM NUMBER OF STUDENTS.—Section 791(c)(2)(A)(i) (42 U.S.C. 295h(c)(2)(A)(i)) is amended—

(1) by striking "25" and inserting "15"; and

(2) by striking "except that" and all that follows through "in such school year".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 791(d) (42 U.S.C. 295h(d)) is amended by striking "and" after "1987," and by inserting before the period the following: ", $1,420,000 for fiscal year 1989, $1,420,000 for fiscal year 1990, and $1,700,000 for fiscal year 1991".

SEC. 619. AUTHORIZATION OF APPROPRIATIONS FOR TRAINEESHIPS FOR STUDENTS IN OTHER GRADUATE PROGRAMS.

Section 791A(c) (42 U.S.C. 295h-1a(c)) is amended by striking "and" before "$500,000" and by inserting before the period the following: "; and $500,000 for each of the fiscal years 1989 through 1991".

SEC. 620. PROVISIONS WITH RESPECT TO GRADUATE PROGRAMS IN CLINICAL PSYCHOLOGY.

(a) DEFINITION OF GRADUATE PROGRAM IN CLINICAL PSYCHOLOGY.—

(1) Section 701(4) (42 U.S.C. 292a(4)) is amended by inserting at the end the following new sentence: "The term 'graduate program in clinical psychology' means an accredited graduate program in a public or nonprofit private institution in a State which provides training leading to a doctoral degree in clinical psychology or an equivalent degree.".

(2) Section 701 (42 U.S.C. 292a) is amended by striking paragraph (14).

(b) NATIONAL ADVISORY COUNCIL ON HEALTH PROFESSIONS EDUCATION.—Section 702(a) (42 U.S.C. 292b(a)) is amended—

(1) in the first sentence, by striking "twenty members appointed" and inserting "twenty-one members appointed"; and

(2) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking "twelve" and inserting "thirteen"; and

(B) in subparagraph (A), by inserting before the semicolon the following: "and graduate programs in clinical psychology".

(c) DISCRIMINATION ON BASIS OF SEX.—Section 704 (42 U.S.C. 292d) is amended—

(1) in the first sentence, by inserting after "allied health personnel" the following: ", or graduate program in clinical psychology,"; and

(2) in the second sentence, by striking "school or training center" and inserting "school, training center, or graduate program".

SEC. 621. AUTHORIZATION OF APPROPRIATIONS FOR PUBLIC HEALTH TRAINEESHIPS.

Section 792(c) (42 U.S.C. 295h-1b(c)) is amended by striking "and" after "1987;" and by inserting before the period the following: "; $4,100,000 for fiscal year 1989; $4,200,000 for fiscal year 1990; and $4,300,000 for fiscal year 1991".

SEC. 622. TRAINING OF HEALTH PROFESSIONALS WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME.

Section 788B is amended to read as follows:

"SEC. 788B. TRAINING WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME.

"(a) GRANTS.—The Secretary may make grants and enter into contracts to assist schools and academic health science centers in meeting the costs of projects—

"(1) to train the faculty of schools and graduate departments of medicine, nursing, osteopathy, dentistry, public health, psychology, and allied health to teach health professions students to provide for the health care needs of individuals with acquired immune deficiency syndrome;

"(2) with respect to improving clinical skills in the diagnosis, treatment, and prevention of such syndrome, to educate and train the health professionals and clinical staff of schools of medicine, osteopathy, and dentistry; and

"(3) to develop and disseminate curricula relating to the care and treatment of individuals with acquired immune deficiency syndrome.

"(b) PREFERENCE.—In making grants under subsection (a), the Secretary shall give preference to projects which will—

"(1) train, or result in the training of, health professionals who will provide treatment for minority individuals with acquired immune deficiency syndrome and other individuals who are at high risk of contracting such syndrome; and

"(2) train, or result in the training of, minority health professionals and minority allied health professionals to provide treatment for individuals with acquired immune deficiency syndrome.

"(c) Application.—No grant or contract may be made under subsection (a) unless an application is submitted to the Secretary in such form, at such time, and containing such information, as the Secretary may prescribe.

"(d) Peer Review.—

"(1) In general.—An application for a grant or contract under subsection (a) shall be subject to appropriate peer review by peer review groups composed principally of non-Federal experts.

"(2) Limitation.—The Secretary may not approve an application for a grant or contract under subsection (a) unless the appropriate peer review group required under paragraph (1) has recommended such approval and the Secretary has consulted with the National Advisory Council on Health Professions Education with respect to such application.

"(e) Authorization of Appropriations.—There are authorized to be appropriated for grants under subsection (a), such sums as may be necessary for each of the fiscal years 1989 through 1991.

"(f) Dental Schools.—

"(1) In general.—The Secretary may make grants to assist dental schools and programs described in section 788(e)(4)(B) with respect to oral health care to AIDS patients.

"(2) Application.—Each dental school or program described in section 788(e)(4)(B) may annually submit an application documenting the unreimbursed costs of oral health care provided to AIDS patients by that school or hospital during the prior year.

"(3) Distribution.—The Secretary shall distribute the available funds among all eligible applicants, taking into account the number of AIDS patients served and the unreimbursed oral health care costs incurred by each institution as compared with the total number of patients served and costs incurred by all eligible applicants.

"(4) The Secretary shall not make a grant under this subsection if doing so would result in any reduction of State funding or allocation for such purposes.

"(5) Authorization of appropriations.—For the purpose of carrying out this subsection, there is authorized to be appropriated such sums as may be necessary in fiscal year 1990 and fiscal year 1991.".

SEC. 623. DEFINITIONS.

(a) School of Allied Health.—Section 701(10) (42 U.S.C. 292a(10)) is amended—

(1) in the matter preceding subparagraph (A), by striking "university—" and inserting "university or hospital-based educational entity—"; and

(2) in subparagraph (B), by inserting before the semicolon the following: "(except that this subparagraph shall not apply to any hospital-based educational entity)".

(b) Allied Health Professionals.—Section 701(13)(C) (42 U.S.C. 292a(13)(C)) is amended—

(1) by striking out "an individual" and inserting in lieu thereof "a health professional";

(2) by striking out "or" before "a doctoral degree in clinical psychology"; and

(3) by inserting before the period the following: ", or a degree in social work or an equivalent degree".

SEC. 624. ALLIED HEALTH PROJECT GRANTS AND CONTRACTS.

Section 796 (42 U.S.C. 295h-5) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) The Secretary may make grants to and enter into contracts with eligible entities to assist them in meeting the costs of planning, developing, establishing, operating, and evaluating projects relating to:

"(1) Improving and strengthening the effectiveness of allied health administration, program directors, faculty, and clinical faculty.

"(2) Improving and expanding program enrollments in those professions in greatest demand and whose services are most needed by the elderly.

"(3) Interdisciplinary training programs that promote the effectiveness of allied health practitioners in geriatric assessment and the rehabilitation of the elderly.

"(4) Demonstration centers to emphasize innovative models to link allied health clinical practice, education, and research.

"(5) Adding and strengthening curriculum units in allied health programs to include knowledge and practice concerning prevention and health promotion, geriatrics, long-term care, home health and hospice care, and ethics.

"(6) The recruitment of individuals into allied health professions, including projects for—

"(A) the identification and recruitment of highly qualified individuals, including the provision of educational and work experiences for recruits at the secondary and collegiate levels;

"(B) the identification and recruitment of minority and disadvantaged students, including the provision of remedial and tutorial services prior and subsequent to admission, the provision of work-study programs for secondary students, and recruitment activities directed toward primary school students; and

"(C) the coordination and improvement of recruitment efforts among official and voluntary agencies and institutions, including official departments of education, at the city, county, and State, or regional level.";

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c) For purposes of subsection (a), the term 'eligible entities' means entities which are—

"(1) schools, universities, or other educational entities which provide for allied health personnel education and training and which meet such standards as the Secretary may by regulation prescribe; or

"(2) other public or nonprofit private entities capable, as determined by the Secretary, of carrying out projects described in subsection (a)."; and

(3) by striking out subsection (d) and inserting in lieu thereof the following new subsection:

"(d) For the purpose of making payments under grants and contracts under subsection (a), there are authorized to be appropriated $2,000,000 for each of the fiscal years 1990 and 1991.".

SEC. 625. TRAINEESHIPS FOR ADVANCED TRAINING OF ALLIED HEALTH PERSONNEL.

Section 797 (42 U.S.C. 295h-6) is amended to read as follows:

"SEC. 797. TRAINEESHIPS FOR ADVANCED TRAINING OF ALLIED HEALTH PERSONNEL.

"(a) Grants.—The Secretary may make grants to and enter into contracts with training centers for allied health professions to meet the costs of projects designed to—

"(1) plan, develop, establish, expand, and operate doctoral programs for the advanced speciality training of allied health professionals who plan to teach and conduct research in an allied health training program; and

"(2) provide financial assistance in the form of traineeships or fellowships to doctoral students who are participants in any such program and who plan to teach and conduct research in an allied health discipline or to post doctoral students who are continuing specialized study and research in an allied health discipline.

"(b) Limitation.—The Secretary shall limit grants and contracts made or entered into under subsection (a) to those allied health fields or specialities as the Secretary shall, from time to time, determine to have—

"(1) the most significant national or regional shortages of practitioners;

"(2) insufficient numbers of qualified faculty in entry level or advanced educational programs; and

"(3) a significant role in the care and rehabilitation of patients and clients who are elderly or disabled.

"(c) Authorization of Appropriations.—For the purposes of making payments under grants under subsection (a), there are authorized to be appropriated $2,000,000 for each of the fiscal years 1990 and 1991.

"(d) Availability of Funds.—Funds appropriated under this section for any fiscal year shall remain available until expended or through fiscal year 1991.".

SEC. 626. ALLIED HEALTH PROFESSIONS DATA.

Section 708 (42 U.S.C. 292h) is amended by adding at the end the following:

"(h)(1) In carrying out subsection (a), the Secretary may make grants, or enter into contracts and cooperative agreements with, and provide technical assistance to, any nonprofit entity in order to establish a uniform allied health professions data reporting system to collect, compile, and analyze data on the allied health professions personnel.

"(2) In the first report under subsection (d) made 2 years after the date of enactment of this Act and in each biennial report thereafter, the Secretary include a description and analysis of data collected pursuant to paragraph (1).".

SEC. 627. COUNCIL ON GRADUATE MEDICAL EDUCATION.

Section 799 (42 U.S.C. 295i) is amended by adding at the end the following:

"(k) There is authorized to be appropriated $1,000,000 for each of the fiscal years 1989, 1990, and 1991 to carry out this section.".

SEC. 628. REFERENCES WITH RESPECT TO PODIATRIC MEDICINE.

Title VII (42 U.S.C. 292a et seq.) is amended—

(1) in section 701—

(A) in paragraph (4), by striking "'school of podiatry'" and inserting "'school of podiatric medicine'" and by striking "'doctor of podiatry'" and inserting "doctor of podiatric medicine"; and

(B) in paragraph 13(C), by striking "podiatry" and inserting "podiatric medicine";

(2) in section 702(a)(1)(A), by striking "podiatry," and inserting "podiatric medicine,";

(3) in section 704, in the first sentence, by striking "podiatry," and inserting "podiatric medicine,";

(4) in section 721—

(A) in subsection (c)(3), in subparagraphs (A) and (B), by striking "podiatry," each place it appears and inserting "podiatric medicine,";

(B) in subsection (d)(1)(A), by striking "podiatry," and inserting "podiatric medicine,"; and

(C) in subsection (f)—

(i) in paragraph (1), in the first sentence, by striking "podiatry," and inserting "podiatric medicine,"; and

(ii) in paragraph (3)(A), by striking "podiatry," and inserting "podiatric medicine,";

(5) in section 729(a), in the first and second sentences, by striking "podiatry," each place it appears and inserting "podiatric medicine,";

(6) in section 737(1), by striking "podiatry," and inserting "podiatric medicine,";

(7) in section 740—

(A) in subsection (a), by striking "podiatry," and inserting "podiatric medicine,";

(B) in subsection (b)(4), by striking "podiatry" and inserting "podiatric medicine"; and

(C) in subsection (c)—

(i) in paragraph (1), by striking "podiatry," and inserting "podiatric medicine,"; and

(ii) in paragraph (3)(C), by striking "podiatry," and inserting "podiatric medicine,";

(8) in section 741—

(A) in subsection (b)(1), by striking "podiatry" and inserting "podiatric medicine";

(B) in subsection (f)(1)(A), by striking "podiatry" and inserting "podiatric medicine"; and

(C) in subsection (l)(4), by striking "podiatry," and inserting "podiatric medicine,";

(9) in section 758(a), by striking "podiatry," and inserting "podiatric medicine,";

(10) in section 787(a)(1), by striking "podiatry," and inserting "podiatric medicine,"; and

(11) in section 788—

(A) in subsection (c)(1), in the first sentence, by striking "podiatry," and inserting "podiatric medicine,"; and

(B) in subsection (f), by striking "podiatry" and inserting "podiatric medicine".

SEC. 629. REFERENCES WITH RESPECT TO OSTEOPATHIC MEDICINE.

(a) Technical Amendments to Title III.—Title III (42 U.S.C. 241 et seq.) is amended—

(1) in section 327A(b)(1), by inserting "schools of osteopathic medicine," after "schools of medicine," and by inserting "professions" after "health";

(2) by striking "osteopathy" each place such term appears and inserting "osteopathic medicine"; and

(3) by striking "osteopaths" each place such term appears.

(b) Technical Amendments to Title VII.—Title VII (42 U.S.C. 292a et seq.) is amended—

(1) by striking "school of osteopathy" and "schools of osteopathy" each place such terms appear and inserting "school of osteopathic medicine" and "schools of osteopathic medicine", respectively;

(2) by striking "school of medicine, osteopathy" and "schools of medicine, osteopathy" each place such terms appear and inserting "school of medicine, osteopathic medicine" and "schools of medicine, osteopathic medicine", respectively; and

(3) by striking "medical or osteopathic" each place it precedes "school", "student", or "clinical education" and by inserting "medical (M.D. and D.O.)".

SEC. 630. STUDY BY GENERAL ACCOUNTING OFFICE OF STATE PRACTICES IN ENDORSEMENT LICENSING OF FOREIGN PHYSICIANS.

(a) In General.—The Comptroller General of the United States shall conduct a study for the purpose of determining the practices and policies of the States in licensing by endorsement physicians who are graduates of schools of medicine located in countries other than the United States. In carrying out the study, the Comptroller General shall—

(1) with respect to such licensing of such physicians—

(A) make a comparison with the practices and policies of the States in licensing by endorsement physicians who are graduates of American schools of medicine; and

(B) determine the merits of any additional requirements imposed on physicians who are graduates of medical schools of other countries, including a determination of the relative proficiency of such physicians and a determination of the relevancy of any requirement of producing additional information or records;

(2) determine whether the graduates of schools of medicine located in other countries are being discriminated against with respect to licensing by endorsement in the United States; and

(3) if such discrimination is occurring, determine the geographic areas in which the discrimination is occurring and the circumstances under which the discrimination is occurring.

(b) Consultation With Appropriately Qualified Individuals.—In carrying out the study required in subsection (a), the Comptroller General of the United States shall consult with individuals with appropriate expertise.

(c) Time for Completion.—Not later than 9 months after the date of the enactment of this Act, the Comptroller General of the United States shall complete the study required in subsection (a) and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the findings made as a result of the study.

SEC. 631. IDENTIFICATION AND NOTIFICATION OF POTENTIAL GRANTEES UNDER CERTAIN PROGRAMS.

The Secretary of Health and Human Services shall identify entities that would be appropriate applicants for grants under section 788(a) of the Public Health Service Act (42 U.S.C. 295g-8(a)) and shall notify such entities of such fact.

SEC. 632. RESEARCH WITH RESPECT TO HEALTH RESOURCES AND SERVICES ADMINISTRATION.

With respect to any program of research pursuant to the Public Health Service Act, any such program carried out in fiscal year 1987 by an agency other than the Health Resources and Services Administration (or appropriate to be carried out by such an agency) may not, for each of the fiscal years 1989 through 1991, be carried out by such Administration.

SEC. 633. REQUIREMENTS WITH RESPECT TO APPLICATION AND AWARD PROCESS FOR CERTAIN PROGRAMS.

(a) Semiannual Grant Solicitations.—With respect to grants under any of sections 780, 784, 785, and 786 for fiscal year 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants, and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation.

(b) Preliminary Review for Technical Sufficiency.—In reviewing applications for grants referred to in subsection (a), the Secretary shall—

(1) make a preliminary review of each such application in order to determine whether the application involved is sufficient with respect to the minimum technical requirements established by the Secretary for applications under the program involved; and

(2) if the Secretary determines pursuant to the preliminary review that any such application is not sufficient with respect to such requirements—

(A) prepare a statement explaining the insufficiencies of the application; and

(B) return the application, together with such statement, by a date that permits the applicant involved a sufficient period of time in which to prepare a timely second application for submission pursuant to the solicitation with respect to which the first application is being returned.

SEC. 634. ESTABLISHMENT OF LOAN REPAYMENT PROGRAM FOR RESEARCH AT NATIONAL INSTITUTES OF HEALTH WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME.

(a) In General.—Part F of title IV is amended by inserting after section 487 the following new section:

"SEC. 487A. LOAN REPAYMENT PROGRAM FOR RESEARCH WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME.

"(a) Implementation of Program.—

"(1) In general.—Not later than one year after the date of the enactment of the Health Professions Reauthorization Act of 1988, the Secretary shall, subject to paragraph (2), establish and implement a program of entering into agreements with appropriately qualified health professionals under which such health professionals agree to conduct, as employees of the National Institutes of Health, research with respect to acquired immune deficiency syndrome in consideration of the Federal Government agreeing to repay, for each year of such service, not more than $20,000 of the principal and interest of the educational loans of such health professionals.

"(2) Limitation.—The Secretary may not enter in an agreement with a health professional pursuant to paragraph (1) unless such professional—

"(A) has a substantial amount of educational loans relative to income; and

"(B) was not employed at the National Institutes of Health during the 1-year period preceding the date of the enactment of the Health Professions Reauthorization Act of 1988.

"(b) Application.—With respect to the National Health Service Corps Loan Repayment Program established in subpart III of part D of title III, the provisions of such subpart shall, except as inconsistent with subsection (a) of this section, apply to the program established in such subsection (a) in the same manner and to the same extent as such provisions apply to the National Health Service Corps Loan Repayment Program established in such subpart.

"(c) Authorization of Appropriations.—

"(1) In general.—For the purpose of carrying out subsection (a), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.

"(2) Availability.—Amounts appropriated pursuant to paragraph (1) for a fiscal year shall remain available until the expiration of the second fiscal year beginning after the fiscal year for which the amounts were appropriated.".

SEC. 635. NATIONAL RESEARCH SERVICE AWARDS WITH RESPECT TO TITLE VII PROGRAMS.

Section 487(d)(3) (42 U.S.C. 288) is amended by inserting after "made available", the first time such appears, the following: "to the Secretary, acting through the Administrator of the Health Resources and Services Administration,".

SEC. 636. CLARIFICATION WITH RESPECT TO APPLICABILITY OF CERTAIN FEDERAL REGULATIONS TO SECONDARY MARKETS FOR STUDENT LOANS.

Section 728(c) (42 U.S.C. 294a(c)) is amended by adding at the end the following new paragraph:

"(3) With respect to Federal regulations for lenders, this subpart may not be construed to preclude the applicability of such regulations to the Student Loan Marketing Association or to any other entity in the business of purchasing student loans, including such regulations with respect to applications, contracts, and due diligence.".

SEC. 637. HEALTH CARE FOR RURAL AREAS.

(a) Health Care for Rural Areas.—Title VII of the Public Health Service Act is amended by adding at the end thereof the following:

"Part I—Health Care for Rural Areas

"SEC. 799A. HEALTH CARE FOR RURAL AREAS.

"(a) Grants.—The Secretary may make grants to, or enter into contracts with, any eligible applicant to help such applicant fund authorized activities under an application approved under subsection (d).

"(b) Use of Amounts.—

"(1) In general.—Amounts provided under subsection (a) shall be used by the recipients to fund interdisciplinary training projects designed to—

"(A) use new and innovative methods to train health care practitioners to provide services in rural areas;

"(B) demonstrate and evaluate innovative interdisciplinary methods and models designed to provide access to cost-effective, comprehensive health care;

"(C) deliver health care services to individuals residing in rural areas;

"(D) enhance the amount of relevant research conducted concerning health care issues in rural areas; and

"(E) increase the recruitment and retention of health care practitioners in rural areas and make rural practice a more attractive career choice for health care practitioners.

"(2) Methods.—A recipient of funds under subsection (a) may use various methods in carrying out the projects described in paragraph (1), including—

"(A) the distribution of stipends to students of eligible applicants;

"(B) the establishment of a post-doctoral fellowship program;

"(C) the training of faculty in the economic and logistical problems confronting rural health care delivery systems; or

"(D) the purchase or rental of transportation and telecommunication equipment where the need for such equipment due to unique characteristics of the rural area is demonstrated by the recipient.

"(3) Administration.—

"(A) In general.—An applicant shall not use more than 10 percent of the funds made available to such applicant under subsection (a) for administrative expenses.

"(B) Training.—Not more than 10 percent of the individuals receiving training with funds made available to an applicant under subsection (a) shall be trained as doctors of medicine or doctors of osteopathy.

"(c) Eligible Applicants.—Applicants eligible to obtain funds under subsection (a) shall include local health departments, nonprofit organizations and public or nonprofit colleges, universities, or schools of, or programs that specialize in, nursing, psychology, social work, optometry, public health, dentistry, osteopathy, physicians assistants, pharmacy, podiatry, medicine, chiropractic, and allied health professions if such applicants submit applications approved by the Secretary under subsection (d). Applicants eligible to obtain funds under subsection (a) shall not include for-profit entities, either directly or through a subcontract or subgrant.

"(d) Applications.—

"(1) Submission.—In order to receive a grant under subsection (a) an entity shall submit an application to the Secretary.

"(2) Forms.—An application submitted under this subsection shall be in such form, be submitted by such date, and contain such information as the Secretary shall require.

"(3) Requirements.—Applications submitted under this subsection shall—

"(A) be jointly submitted by at least two eligible applicants with the express purpose of assisting individuals in academic institutions in establishing long-term collaborative relationships with health care providers in rural areas;

"(B) designate a rural health care agency or agencies for clinical treatment or training, including hospitals, community health centers, migrant health centers, rural health clinics, community mental health centers, long-term care facilities, facilities operated by the Indian Health Service or an Indian tribe or tribal organization or Indian organization under a contract with the Indian Health Service under the Indian Self-Determination Acts, or Native Hawaiian health centers; and

"(C) provide any additional information required by the Secretary.

"(e) Study.—

"(1) In general.—The Secretary shall enter into a contract to conduct a study of manpower training needs in rural areas, with attention focused on the supply of health professionals and whether such supply is adequate to meet the demands for health care services in rural communities.

"(2) Contents.—

"(A) Statistics.—The study conducted under paragraph (1) shall include statistics and projections on—

"(i) the supply of health care practitioners in rural areas; and

"(ii) suggested methods of improving access to health care services in rural areas. The study shall pay particular attention to the needs of the elderly in rural areas as well as the individuals in the rural areas who are not eligible for Medicare.

"(B) Evaluation.—The study conducted under paragraph (1) shall evaluate existing models for health care training and service delivery and propose innovative alternative models to enhance the quality and availability of health care services in rural areas and to increase the retention of health professionals in rural areas.

"(3) Health care training and service delivery models.—The Secretary shall evaluate the effectiveness of the health care training and service delivery models developed with funds made available under this section and compare such models with programs designed to increase the availability of health care providers in rural areas, including the National Health Service Corps program authorized by subpart II of part D of the Public Health Service Act (42 U.S.C. 254d et seq.) and the area health education center program authorized under section 781 of such Act (42 U.S.C. 295g-1).

"(4) Submission to Congress.—Not later than 18 months after the date of the signing of the contract for the health care study under paragraph (1), the Secretary shall submit to the appropriate committees of the Congress a report that describes the results of the study conducted under paragraph (1).

"(f) Peer Review.—

"(1) In general.—Each application for a grant or contract under this section shall be submitted to a peer review group for an evaluation of the merits of the proposals made in the application.

"(2) Establishment.—The Secretary shall establish such peer review groups as may be necessary to carry out paragraph (1). The Secretary shall make appointments to the peer review groups from among appropriately qualified persons who are not officers or employees of the United States.

"(3) Report of findings.—With respect to applications referred to in paragraph (1), a peer review group established pursuant to such subparagraph shall report its findings and recommendations to the Secretary. The Secretary may not approve such an application unless a peer review group has recommended the application for approval.

"(4) Administration.—This paragraph shall be carried out by the Secretary, acting through the Director of the Indian Health Service.

"(g) Definition.—For the purposes of this section, the term 'rural area' includes a frontier area, which is an area in which the population density is less than 7 individuals per square mile.

"(h) Authorization of Appropriations.—

"(1) In general.—There is authorized to be appropriated to carry out this section, other than subsection (e), $5,000,000 for each of the fiscal years 1989, 1990, and 1991.

"(2) Subsection (e).—There is authorized to be appropriated $1,000,000 for each of the fiscal years 1989, 1990, and 1991 to carry out subsection (e).".

(b) Repeal.—Section 714 of the Indian Health Care Amendments of 1988 is repealed upon the date of the enactment of this Act.

SEC. 638. ADVANCEMENT OF HEALTH CARE SERVICES.

(a) In General.—Of the amounts appropriated in each of the fiscal years 1989 through 1991 to carry out title VII of the Public Health Service Act, the Secretary of Health and Human Services shall, for each such fiscal year, make available $500,000 for the purpose of advancing the health care services furnished by qualified hospitals. For purposes of this subsection, the term "qualified hospital" means a hospital located in a rural county that—

(1) is adjacent to three counties, one of which is a central county of a Metropolitan Statistical Area, and all of which are classified as urban;

(2) has a workforce of which at least 12.2 percent of such workers commute from the rural county to the central counties of the two immediately adjacent Metropolitan Statistical Areas (out-commuting), and the total in-commuting rate from the two immediately adjacent Metropolitan Statistical Areas to the rural county is at least 6.1 percent, so that when added to the out-commuting rate from the rural county the total in/out-commuting rate is at least 18 percent;

(3) is also impacted by a third Metropolitan Statistical Area with an out-commuting rate from the rural county to that Metropolitan Statistical Area that is at least .15 percent and the in-commuting rate from the Metropolitan Statistical Area to such rural county is at least .15 percent;

(4) has more than 73,500 residents but less than 74,000 residents according to the 1980 census; and

(5) that has a health-related labor pool that is competitively impacted by, in addition to the normal competitive pressures of an urban labor market, the location in one of the adjacent Metropolitan Statistical Areas of at least three large health-related facilities, each with more than 375 beds, including a State-owned medical school/hospital complex with more than 4,000 employees, and a large Veterans Administration Hospital with more than 400 beds.

(b) PRO-RATA DETERMINATION.—In making available amounts for a fiscal year for purposes of subsection (a), the Secretary of Health and Human Services may not reduce the amounts available for each program authorized under title VII of the Public Health Service Act by more than the amount equal to the product of—

(1) the amounts appropriated, after the date of the enactment of this Act, for carrying out the program involved for the fiscal year; and

(2) a percentage equal to the quotient of—

(A) $500,000; divided by

(B) the amounts appropriated, after the date of the enactment of this Act, for carrying out such title VII.

SEC. 639. ASSESSMENTS OF HEALTH MANPOWER SHORTAGES.

(a) REQUEST FOR INFORMATION.—Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services shall contact the chief executive officer of each State, the Mayor of the District of Columbia, and the chief executive officer of the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, and request that each such individual submit to the Secretary an assessment of the greatest health manpower shortages by discipline of health care providers and by allopathic and osteopathic speciality, of such individual's State, District, Commonwealth, or Territory.

(b) REPORT.—The Secretary of Health and Human Services shall compile and analyze the information obtained under subsection (a) and prepare and submit, to the appropriate Committees of Congress, as part of the October 1, 1991, report required under section 708(d)(1) of the Public Health Services Act (42 U.S.C. 292h(d)(1)), a report containing such information and analysis.

TITLE VII—NURSING SHORTAGE REDUCTION AND EDUCATION EXTENSION ACT OF 1988

SEC. 700. SHORT TITLE.

(a) SHORT TITLE.—This title may be cited as the "Nursing Shortage Reduction and Education Extension Act of 1988".

(b) REFERENCE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

Subtitle A—Special Projects

SEC. 701. SPECIAL PROJECT GRANTS AND CONTRACTS.

(a) TRANSFER OF PROGRAM FOR INDIVIDUALS FROM DISADVANTAGED BACKGROUNDS.—Part A of title VIII (42 U.S.C. 296k et seq.) is amended—

(1) by inserting after the heading for such part the following new heading:

"Subpart I—Special Projects in General",

(2) by striking section 820(a)(1), and

(3) by adding at the end the following new subpart:

"Subpart II—Nursing Education Opportunities for Individuals From Disadvantaged Backgrounds

"SPECIAL PROJECTS

"SEC. 827. (a) The Secretary may make grants to public and nonprofit private schools of nursing and other public or nonprofit private entities, and enter into contracts with any public or private entity, to meet the costs of special projects to increase nursing education opportunities for individuals from disadvantaged backgrounds, as determined in accordance with criteria prescribed by the Secretary—

"(1) by identifying, recruiting, and selecting such individuals,

"(2) by facilitating the entry of such individuals into schools of nursing,

"(3) by providing counseling or other services designed to assist such individuals to complete successfully their nursing education,

"(4) by providing, for a period prior to the entry of such individuals into the regular course of education at a school of nursing, preliminary education designed to assist them to complete successfully such regular course of education,

"(5) by paying such stipends (including allowances for travel and dependents) as the Secretary may determine for such individuals for any period of nursing education,

"(6) by publicizing, especially to licensed vocational or practical nurses, existing sources of financial aid available to persons enrolled in schools of nursing or who are undertaking training necessary to qualify them to enroll in such schools, and

"(7) by providing training, information, or advice to the faculty of such schools with respect to encouraging such individuals to complete the programs of nursing education in which the individuals are enrolled.

"(b) No grant or contract may be made under this section unless an application therefor has been submitted to and approved by the Secretary. The Secretary may not approve or disapprove such an application except after consultation with the National Advisory Council on Nurse Education. Such an application shall provide for such fiscal control and accounting procedures and reports, and access to the records of the applicant, as the Secretary may require to assure proper disbursement of and accounting for Federal funds paid to the applicant under this section.

"(c) For payments under grants and contracts under subsection (a), there are authorized to be appropriated $3,000,000 for fiscal year 1989, $4,000,000 for fiscal year 1990, and $5,000,000 for fiscal year 1991.".

(b) STRIKING OF CERTAIN PROGRAMS.—Section 820(a) (42 U.S.C. 296k(a)) is amended—

(1) by striking paragraphs (3), (7), and (9), and

(2) by redesignating paragraphs (2), (4), (5), (6), and (8) as paragraphs (1) through (5), respectively.

(c) GERIATRIC TRAINING.—Section 820(a)(2) (as redesignated by subsection (b)(2)) of this section) is amended to read as follows—

"(2) demonstrate, through geriatric health education centers and other entities, improved geriatric training in preventive care, acute care, and long-term care (including home health care and institutional care);".

(d) UPGRADING SKILLS.—Section 820(a) (42 U.S.C. 296k(a)) is amended—

(1) by amending paragraph (3) (as redesignated by subsection (b)(2) of this section) to read as follows:

"(3)(A) increase the supply of adequately trained nursing personnel (including bilingual nursing personnel) to meet the health needs of rural areas; and

"(B) provide nursing education courses to rural areas through telecommunications via satellite;", and

(2) by amending paragraph (4) (as so redesignated) to read as follows:

"(4) provide training and education—

"(A) to upgrade the skills of licensed vocational or practical nurses, nursing assistants, and other paraprofessional nursing personnel with priority given to rapid transition programs towards achievement of professional nursing degrees; and

"(B) to develop curricula for the achievement of baccalaureate degrees in nursing by registered nurses and by individuals with baccalaureate degrees in other fields;".

(e) COORDINATION PROJECTS WITH RESPECT TO LOAN REPAYMENTS FOR SERVICE IN HEALTH FACILITIES.—Section 820(a) (42 U.S.C. 296k(a)) is amended by adding after paragraph (5) (as redesignated by subsection (b)(2) of this section) the following new paragraph:

"(6)(A) collect the names and addresses of health facilities willing to enter into agreements with nursing students and nursing personnel under which such individuals agree to serve as nurses in the health facilities in consideration of the health facilities agreeing to repay the principal and interest of the educational loans of such individuals;

"(B) collect data on the specific terms of such agreements offered by health facilities;

"(C) collect the names and addresses of nursing students identified pursuant to section 827(a), of other nursing students, and of nursing personnel, willing to enter into such agreements; and

"(D) coordinate and facilitate communications between health facilities and such individuals with respect to such agreements.".

(f) GERIATRIC HEALTH EDUCATION CENTERS.—Section 820 (42 U.S.C. 296k) is amended—

(1) by redesignating subsections (b) through (d) as subsections (e) through (g), respectively, and

(2) by adding after subsection (a) the following new subsection:

"(b)(1) The Secretary may make grants to, and enter into contracts with, accredited schools of nursing to assist in meeting the costs of such schools in providing projects—

"(A) to improve the training of nurses in geriatrics;

"(B) to develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;

"(C) to expand and strengthen instruction in methods of such treatment;

"(D) to support the training and retraining of faculty to provide such instruction;

"(E) to support continuing education of nurses who provide such treatment; and

"(F) to establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric health care.

"(2)(A) Any application for a grant or contract under this subsection shall be subject to appropriate peer review by peer review groups composed principally of non-Federal experts.

"(B) The Secretary may not approve or disapprove an application for a grant or contract under this subsection unless the Secretary has received recommendations with respect to such application from the appropriate peer review group required under paragraph (1) and has consulted with the Advisory Council on Nurses Education with respect to such application.

"(C) For the purpose of carrying out this subsection, the Secretary may obligate each fiscal year not more than $2,000,000 of the amounts made available for such purpose pursuant to subsection (g)(2).".

(g) Innovative Hospital Nursing Practice Models.—Section 820 (42 U.S.C. 296k), as amended by subsection (f) of this section, is further amended by inserting after subsection (b) the following new subsection:

"(c)(1) The Secretary may make grants to public and nonprofit private entities for the purpose of demonstrating innovative hospital nursing practice models designed to reduce vacancies in professional nursing positions and to make such positions a more attractive career choice.

"(2) The Secretary may not make a grant under paragraph (1) unless the applicant for the grant agrees that hospital nursing practice models demonstrated pursuant to such subsection will include initiatives—

"(A) to restructure the role of the professional nurse, through changes in the composition of hospital staffs and through innovative approaches for interaction between hospital administration and nursing personnel, in order to ensure that the particular expertise of such nurses is efficiently utilized and that such nurses are engaged in direct patient care during a larger proportion of their work time;

"(B) to test innovative wage structures for professional nurses in order to—

"(i) reduce vacancies in work shifts during unpopular work hours; and

"(ii) provide financial recognition based upon experience and education; and

"(C) to evaluate the effectiveness of providing benefits for professional nurses, such as pensions, sabbaticals, and payment of educational expenses, as a means of developing increased loyalty of such nurses to health care institutions and reducing turnover in nursing positions.".

(h) Long-Term Care Nursing Practice Demonstrations.—Section 820 (42 U.S.C. 296k), as amended by subsection (g) of this section, is further amended by inserting after subsection (c) the following new subsection:

"(d)(1) The Secretary may make grants to public and nonprofit private entities accredited for the training of nurses for the purpose of—

"(A) demonstrating innovative nursing practice models for—

"(i) the provision of case-managed health care services (including adult day care) and health care services in the home; or

"(ii) the provision of health care services in long-term care facilities; or

"(B) developing projects to increase the exposure of nursing students to clinical practice in nursing home, home health, and gerontologic settings through collaboration between such accredited entities and entities that provide health care in such settings.

"(2) The Secretary may not make a grant under paragraph (1) unless the applicant for the grant agrees that models demonstrated pursuant to such paragraph will be designed—

"(A) to increase the recruitment and retention of nurses to provide nursing care for individuals needing long-term care; and

"(B) to improve nursing care in home health care settings and nursing homes.".

(i) Authorization of Appropriations.—Section 820(g) (as redesignated by subsection (b)(2) of this section) is amended to read as follows:

"(g)(1) For payments under grants and contracts under this section, there are authorized to be appropriated $13,000,000 for fiscal year 1989, $16,000,000 for fiscal year 1990, and $20,000,000 for fiscal year 1991.

"(2) Of the amounts appropriated pursuant to paragraph (1), the Secretary shall obligate not less than 20 percent to carry out subsection (a)(2) and subsection (b) (subject to subsection (b)(2)(C)), not less than 20 percent to carry out paragraph (3) of subsection (a), and not less than 10 percent to carry out paragraph (4) of such subsection. Of the amounts appropriated pursuant to paragraph (1) for fiscal year 1989, the Secretary shall obligate not less than 20 percent to carry out section 827.".

SEC. 702. ADVANCED NURSE EDUCATION.

Section 821(b) (42 U.S.C. 296l(b)) is amended to read as follows:

"(b) For payments under grants and contracts under this section, there are authorized to be appropriated $13,000,000 for fiscal year 1989, $13,000,000 for fiscal year 1990, and $20,000,000 for fiscal year 1991.".

SEC. 703. NURSE PRACTITIONER AND NURSE MIDWIFE PROGRAMS.

(a) Required Number of Students in Training Programs.—Section 822(a)(2)(B)(ii) (42 U.S.C. 296m(a)(2)(B)(ii)) is amended by striking "not less than eight students" and inserting "not less than six full-time equivalent students".

(b) Commitment Under Traineeship Program to Serve in Certain Areas or Facilities.—Section 822(b)(3) (42 U.S.C. 296m(b)(3)) is amended by striking "332)" and all that follows and inserting the following: "332), in an Indian Health Service health center, in a Native Hawaiian health center, in a public health care facility, in a migrant health center (as defined in section 329(a)(1)), in a rural health clinic (as defined in section 1861(aa)(2) of the Social Security Act), or in a community health center (as defined in section 330(a))".

(c) Assurances of Compliance With Guidelines.—Section 822(c) (42 U.S.C. 296m(c)) is amended—

(1) by inserting "under subsection (a) or (b)" after "operate a program"; and

(2) by striking "midwives unless this application" and inserting "midwives unless the application".

(d) Authorization of Appropriations.—Section 822(d) (42 U.S.C. 296m(d)) is amended to read as follows:

"(d) For payments under grants and contracts under subsections (a) and (b), there are authorized to be appropriated $12,000,000 for fiscal year 1989, $17,000,000 for fiscal year 1990, and $21,000,000 for fiscal year 1991.".

SEC. 704. ENHANCEMENT OF QUALITY CARE.

(a) In General.—Of the amounts appropriated for each of the fiscal years 1989 through 1991 to carry out titles VII and VIII of the Public Health Service Act, the Secretary of Health and Human Services shall, for each of such fiscal years, make available $650,000 for the purpose of enhancing the ability of a qualified hospital to provide high-quality inpatient services. For purposes of this subsection, the term "qualified hospital" means a hospital that, as of the date of the enactment of this Act, is the only general short-term acute care hospital located in a rural county that is adjacent to 7 counties, of which 1 such adjacent county is a county described in paragraph (8)(B) of section 1886(d) of the Act referred to in section 371(b)(1)(C) of the Public Health Service Act and, of the remaining 6 such adjacent counties, 5 such counties are (or are treated as) urban counties for purposes of such section 1886(d) and 1 such county is not (or is not treated as) an urban county for purposes of such section.

(b) Pro Rata Determination.—In making available amounts for a fiscal year for purposes of subsection (a), the Secretary of Health and Human Services may not reduce the amounts available for each program of titles VII and VIII of the Public Health Service Act by more than an amount equal to the product of—

(1) the amounts appropriated, after the date of the enactment of this Act, for carrying out the program involved for the fiscal year; and

(2) a percentage equal to the quotient of—

(A) $650,000; divided by

(B) the amounts appropriated, after the date of the enactment of this Act, for carrying out such titles VII and VIII.

SEC. 705. IMPROVING HEALTH CARE SERVICES.

(a) In General.—Of the amounts appropriated for each of the fiscal years 1989 through 1991 to carry out titles VII and VIII of the Public Health Service Act, the Secretary of Health and Human Services shall, for each of such fiscal years, make available $210,000 for the purpose of improving the health care services furnished by a qualified hospital. For purposes of this subsection, the term "qualified hospital" means a hospital located in a rural county—

(1) that is adjacent to 6 counties, of which 3 adjacent counties are urban (2 of the urban counties being located in another State), and of which 2 of the adjacent rural counties are without hospital facilities,

(2) that is located within 7 miles of another urban county in a separate Metropolitan Statistical Area from the Metropolitan Statistical Area in which the urban counties adjacent to the rural counties are located,

(3) that has more than 17,500 residents but less than 17,550 residents according to the 1980 census,

(4) that has a workforce of which more than 39.5 percent of those reporting workplace commute to the adjacent urban counties to the 1980 census, and

(5) that has a health-related labor pool which is competitively impacted by, in addition to the normal competitive pressures of an urban labor market, the location in 1 of the adjacent urban counties (in another State) of several large health-related facilities, including that State's sole State-owned medical school/hospital complex with more than 5,500 employees, a large Veterans Administration Hospital with more than 1,000 beds, and a United States Army hospital with more than 350 beds.

(b) Pro Rata Determination.—In making available amounts for a fiscal year for purposes of subsection (a), the Secretary of Health and Human Services may not reduce the amounts available for each program of titles VII and VIII of the Public Health Service Act by more than an amount equal to the product of—

(1) the amounts appropriated, after the date of the enactment of this Act, for carrying out the program involved for the fiscal year; and

(2) a percentage equal to the quotient of—

(A) $210,000; divided by

(B) the amounts appropriated, after the date of the enactment of this Act, for carrying out such titles VII and VIII.

SEC. 706. INCENTIVE SPECIAL PAY FOR PUBLIC HEALTH SERVICE NURSES.

Subsection (a) of section 208 (42 U.S.C. 210(a)) is amended by adding at the end the following new paragraph:

"(3) Commissioned nurse officers in the Regular and Reserve Corps shall, while in active duty, be paid incentive special pay in the same amounts as, and under the same terms and conditions which apply to, the incentive special pay now or hereafter paid to commissioned nurse officers of the Armed Forces under chapter 5 of title 37, United States Code.".

SEC. 707. EXTENSION OF PERIOD FOR INSURANCE OF NEW LOANS.

Section 728(a) (42 U.S.C. 294a(a)) is amended—

(1) by inserting before the period at the end of the second sentence the following: ", and if in any fiscal year no ceiling has been established, any difference carried over shall constitute the ceiling for making new loans (including loans to new borrowers) and paying installments for such fiscal year."; and

(2) in the third sentence by striking "1991," and inserting "1994,".

Subtitle B—Assistance to Nursing Students

SEC. 711. TRAINEESHIPS FOR ADVANCED EDUCATION OF PROFESSIONAL NURSES.

(a) TRAINEESHIPS FOR CERTAIN PART-TIME STUDENTS IN ADVANCED NURSING PROGRAMS.—Section 830 (42 U.S.C. 297) is amended by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following new subsection:

"(c)(1) The Secretary may make grants to public and nonprofit private schools of nursing to cover the costs of traineeships for students—

"(A) who are enrolled at least half-time in programs offering a masters degree in nursing; and

"(B) who agree to complete the requirements for degrees from such programs not later than the end of the academic year during which the student is to receive the traineeship.

"(2) In making grants under paragraph (1), the Secretary shall give special consideration to applications for traineeship programs that educate nursing students to serve in and prepare for practice as nurse practitioners, clinical specialists, or nurse midwives.".

(b) AUTHORIZATION OF APPROPRIATIONS FOR TRAINEESHIP PROGRAMS.—Section 830 (42 U.S.C. 297) is amended by amending subsection (d) (as redesignated by subsection (a) of this section) to read as follows:

"(d)(1)(A) For the purposes of subsections (a) and (c), there are authorized to be appropriated $13,000,000 for fiscal year 1989, $15,000,000 for fiscal year 1990, and $16,000,000 for fiscal year 1991.

"(B) Of the amounts made available pursuant to subparagraph (A), the Secretary shall make available not less than 25 percent to carry out subsection (c).

"(2) For the purposes of subsection (b), there is authorized to be appropriated $1,100,000 for each of the fiscal years 1989 through 1991.".

SEC. 712. NURSE ANESTHETISTS.

(a) TRAINEESHIPS AND OTHER PROGRAMS.—

(1) Section 831(a)(1) (42 U.S.C. 297-1(a)(1)) is amended to read as follows:

"(1) The Secretary may make grants to public or private nonprofit institutions to cover the costs of traineeships for licensed registered nurses to become nurse anesthetists and to cover the costs of projects to develop and operate programs for the education of nurse anesthetists. In order to be eligible for such a grant, the program of an institution must be accredited by an entity or entities designated by the Secretary of Education and must meet such requirements as the Secretary shall by regulation prescribe.".

(2) Section 831(a)(2) (42 U.S.C. 29701(a)(2)) is amended by amending the second sentence to read as follows: "Payments for traineeships shall be limited to such amounts as the Secretary determines to be necessary to cover the costs of tuition and fees and a stipend and allowances (including travel and subsistence expenses) for trainees.".

(b) AUTHORIZATION OF APPROPRIATIONS.—The first sentence of section 831(c) (42 U.S.C. 297-1(c)) is amended to read as follows: "For the purpose of making grants under this section, there is authorized to be appropriated $1,800,000 for each of the fiscal years 1989 through 1991.".

SEC. 713. LOAN PROVISIONS.

(a) RULE OF CONSTRUCTION WITH RESPECT TO CERTAIN UNCOLLECTABLE LOANS.—Section 835(c)(1) (42 U.S.C. 297a(c)(1)) is amended by adding at the end the following new sentence: "With respect to the student loan fund established pursuant to such agreements, this subsection may not be construed to require such schools to reimburse such loan fund for loans that became uncollectable prior to 1983.".

(b) INCREASES WITH RESPECT TO ANNUAL AND AGGREGATE LOAN TOTALS.—Section 836(a) (42 U.S.C. 297b(a)) is amended—

(1) in the first sentence, by inserting before the period the following: ", except that for the final two academic years of the program involved, such total may not exceed $4,000"; and

(2) in the second sentence, by striking "$10,000" and inserting "$13,000".

(c) PREFERENCE CATEGORY OF EXCEPTIONAL FINANCIAL NEED.—Section 836(a) (42 U.S.C. 297b(a)) is amended in the third sentence by striking "practical nurses and" and inserting "practical nurses, to persons with exceptional financial need, and".

(d) REDUCTION OF ELIGIBILITY STANDARD OF NEED.—Section 836(b)(1)(C) (42 U.S.C. 297b(b)(1)(C)) is amended to read as follows: "(C) with respect to any student enrolling in the school after June 30, 1986, is of financial need (as defined in regulations issued by the Secretary).".

(e) DEFERRAL PERIOD FOR HALF-TIME PROFESSIONAL TRAINING.—Section 836(b)(2)(B) (42 U.S.C. 297b(b)(2)(B)) is amended—

(1) by striking "(up to five years)" and inserting "(up to ten years)"; and

(2) by inserting after "full-time" the following: "or half-time".

(f) REDUCTION IN INTEREST RATE.—Section 836(b)(5) (42 U.S.C. 297b(b)(5)) is amended by striking "6 per centum" and inserting "5 percent".

(g) STRIKING OF LOW-INCOME PROVISIONS WITH RESPECT TO LOAN REPAYMENT.—Section 836(j) (42 U.S.C. 297b(j)) is amended by adding "and" at the end of paragraph (2), by striking paragraph (3), and by redesignating paragraph (4) as paragraph (3).

(h) USE OF CERTAIN UNEXPENDED FUNDS FOR ALLOTMENTS.—

(1) Section 838(a)(3) (42 U.S.C. 297d(a)(3)) is amended—

(A) by inserting "(A)" after the paragraph designation; and

(B) by adding at the end the following new subparagraph:

"(B) With respect to funds available pursuant to subparagraph (A), any such funds returned to the Secretary and not alloted by the Secretary, during the period of availability specified in such subparagraph, shall be available to carry out section 843 and, for such purpose, shall remain available until expended.".

(2) Except as provided in Public Law 100-436, the amendment made by paragraph (1) shall take effect as if such amendment had been effective on September 30, 1988, and as if section 843 of the Public Health Service Act, as added by section 805 of this title, had been effective on such date.

(i) EXTENSION OF DATE CERTAIN FOR CAPITAL DISTRIBUTION.—Section 839 (42 U.S.C. 297e) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking "1991" and inserting "1994"; and

(B) in paragraph (1), by striking "1991" and inserting "1994"; and

(2) in subsection (b), by striking "1991" each place it appears and inserting "1994".

SEC. 714. LOAN REPAYMENTS FOR SERVICE IN CERTAIN HEALTH FACILITIES.

(a) AGREEMENTS FOR LOAN REPAYMENTS.—Section 836(h)(1)(C) (42 U.S.C. 297b(h)(1)(C)) is amended to read as follows:

"(C) who enters into an agreement with the Secretary to serve as nurse for a period of not less than two years in an Indian Health Service health center, in a Native Hawaiian health center, in a public hospital, in a migrant health center, in a community health center, in a nursing facility, in a rural health clinic, or in a health facility determined by the Secretary to have a critical shortage of nurses;".

(b) PRIORITIES WITH RESPECT TO AGREEMENTS.—Section 836(h) (42 U.S.C. 297b(h)) is amended by adding at the end the following new paragraph:

"(5) In entering into agreements under paragraph (1), the Secretary shall give priority—

"(A) to applicants with the greatest financial need; and

"(B) to applicants that, with respect to health facilities described in such paragraph, agree to serve in such health facilities located in geographic areas with a shortage of and need for nurses, as determined by the Secretary.".

(c) DEFINITIONS.—Section 836(h) (42 U.S.C. 297b(h)), as amended by subsection (b) of this section, is further amended by adding at the end the following new paragraph:

"(6) For purposes of this subsection:

"(A) The term 'community health center' has the meaning given such term in section 330(a).

"(B) The term 'migrant health center' has the meaning given such term in section 329(a)(1).

"(C) The term 'nursing facility' has the meaning given such term in section 1919(a) of the Social Security Act (as such section is in effect during fiscal year 1991 and subsequent fiscal years), except that for fiscal years 1989 and 1990, such term means an intermediate care facility and a skilled nursing facility, as such terms are defined in subsections (c) and (i), respectively, of section 1905 of the Social Security Act.

"(D) The term 'rural health clinic' has the meaning given such term in section 1861(aa)(2) of the Social Security Act.".

(d) Authorization of Appropriations for Loan Repayments.—Subpart II of part B of title VIII (42 U.S.C. 297a et seq.) is amended by inserting after section 837 the following new section:

"AUTHORIZATION OF APPROPRIATIONS FOR LOAN REPAYMENTS FOR SERVICE IN CERTAIN HEALTH FACILITIES

"Sec. 837A. For the purpose of payments under agreements entered into under section 836(h), there is authorized to be appropriated $5,000,000 for each of the fiscal years 1989 through 1991.".

SEC. 715. NURSING SCHOLARSHIPS.

Part B of title VIII (42 U.S.C. 297 et seq.) is amended by adding at the end the following new subpart:

"Subpart III—Scholarships

"UNDERGRADUATE EDUCATION OF PROFESSIONAL NURSES

"Sec. 843. (a) The Secretary may make grants to public and nonprofit private schools accredited for the training of professional nurses for the purpose of providing scholarships to individuals who are enrolled (or accepted for enrollment) as nursing students of such schools and who are in financial need with respect to attending such schools.

"(b) The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that, in providing scholarships pursuant to the grant, the applicant will give preference to individuals from disadvantaged backgrounds (as determined in accordance with criteria prescribed by the Secretary under section 844(a)).

"(c) The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that, in providing scholarships pursuant to the grant, the applicant will provide a scholarship to an individual only if the individual agrees that, upon graduating from the program of nursing education offered by the applicant, the individual will serve as nurse for a period of not less than two years in an Indian Health Service health center, in a Native Hawaiian health center, in a public hospital, in a migrant health center, in a community health center, in a nursing facility, in a rural health clinic, or in a health facility determined by the Secretary to have a critical shortage of nurses.

"(d) The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that a scholarship provided pursuant to such subsection for attendance at a school described in such subsection may not, for any year of such attendance for which the scholarship is made, provide an amount exceeding an amount equal to the amount of the tuition and any fees for the year involved.

"(e) For purposes of this section:

"(1) The term 'community health center' has the meaning given such term in section 330(a).

"(2) The term 'migrant health center' has the meaning given such term in section 329(a)(1).

"(3) The term 'nursing facility' has the meaning given such term in section 1919(a) of the Social Security Act (as such section is in effect during fiscal year 1991 and subsequent fiscal years), except that for fiscal years 1989 and 1990, such term means an intermediate care facility and a skilled nursing facility, as such terms are defined in subsections (c) and (i), respectively, of section 1905 of the Social Security Act.

"(4) The term 'rural health clinic' has the meaning given such term in section 1861(aa)(2) of the Social Security Act.

"(f) For the purpose of making grants under this section, there are authorized to be appropriated $15,000,000 for fiscal year 1989 and $30,000,000 for each of the fiscal years 1990 and 1991.".

SEC. 716. ESTABLISHMENT OF DEMONSTRATION PROGRAM FOR STUDENT LOANS WITH RESPECT TO SERVICE IN CERTAIN HEALTH CARE FACILITIES IN UNDERSERVED AREAS.

Part B of title VIII (42 U.S.C. 297 et seq.), as amended by section 805 of this title, is further amended by adding at the end the following new subpart:

"Subpart IV—Demonstration Program For Student Loans With Respect to Service in Certain Health Care Facilities in Underserved Areas

"SEC. 847. ESTABLISHMENT OF PROGRAM.

"(a) In General.—The Secretary may, subject to subsections (c) and (d), make loans to individuals to assist the individuals in attending schools of nursing if the individuals enter into contracts with health facilities to engage, in consideration of the agreements made pursuant to subsection (d) (relating to loan repayments), in full-time employment as nurses for a period of time equal to not more than the period of time during which the individuals receive loan assistance under this section.

"(b) Preferences in Making Loans.—In making loans under subsection (a), the Secretary shall give preference to disadvantaged and minority individuals underrepresented in the nursing profession, as determined in accordance with criteria established by the Secretary.

"(c) Certain Requirements With Respect to Students.—The Secretary may not make a loan under subsection (a) unless—

"(1) the applicant for the loan is enrolled (or accepted for enrollment) as a full-time student in a public or nonprofit school accredited for the training of professional nurses;

"(2) the applicant agrees to expend the loan only for the payment of the costs of tuition, reasonable living expenses, books, fees, and necessary transportation; and

"(3) the applicant agrees that, if the applicant is dismissed from the school for academic reasons, voluntarily terminates academic training as a nurse, or violates the contract entered into pursuant to subsection (a), the applicant will be liable to the United States in an amount equal to 100 percent of the principal and interest due on the loan.

"(d) Certain Requirements With Respect to Health Care Facilities.—The Secretary may not make a loan under subsection (a) unless, with respect to contracts referred to in such subsection—

"(1) the applicant for the loan has entered into such a contract with a health care facility that is a nonprofit hospital or a long-term care facility certified under title XVIII or XIX of the Social Security Act;

"(2) such health care facility is located in a geographic area that is underserved with respect to the services of nurses, as designated pursuant to subsection (e);

"(3) the contract provides that the health care facility will repay 100 percent of the principal and interest of the loan made to the applicant under subsection (a);

"(4) the contract provides that, in serving as a nurse at the health care facility, the payments made by the facility on behalf of the applicant in repayment of the loan will be in addition to the pay that the applicant would otherwise receive for such service; and

"(5) the contract provides that, in the event the health care facility violates the contract, the facility will be liable to the United States in an amount equal to 100 percent of the principal and interest due on such loan.

"(e) Designation of Underserved Geographic Areas.—For purposes of subsection (d)(2), the Secretary shall through regulation establish criteria for the designation of such areas. The Secretary may, as appropriate, designate geographic areas using criteria in section 330(b)(4).

"(f) Maximum Amount of Loan.—The Secretary may not provide a loan under subsection (a) in an amount exceeding 100 percent of the costs described in subsection (c)(2).

"(g) Interest.—Loans awarded under this section shall bear interest on the unpaid balance of the loan at a rate of 5 percent per annum. Such interest shall accrue from the date the individual involved is no longer enrolled in the nursing program.

"(h) Waiver or Suspension of Student Obligations.—The Secretary shall by regulation provide for the waiver or suspension of any obligation of any individual receiving a loan under subsection (a) whenever compliance by the individual is impossible or would involve extreme hardship to the individual.

"(i) Requirement of Application.—The Secretary may not make a loan under subsection (a) unless—

"(1) an application for the loan is submitted to the Secretary;

"(2) with respect to carrying out the purpose for which the loan is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

"(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"(j) Set-Aside With Respect to Rural Areas.—Of the amounts appropriated for a fiscal year pursuant to subsection (l), the Secretary shall make available not less than 35 percent for loans under subsection (a) to individuals who will, pursuant to such loan, serve as nurses in rural areas designated under subsection (e) as geographic areas that are underserved with respect to the services of nurses.

"(k) Authorization of Appropriations.—For the purpose of making loans under subsection (a), there is authorized to be appropriated $5,000,000 for the fiscal years 1989 through 1991.

"(l) Sunset.—The authority to make loans under subsection (a) terminates September 30, 1991.".

Subtitle C—General Provisions of Title VIII

SEC. 721. NATIONAL ADVISORY COUNCIL ON NURSE TRAINING.

(a) In General.—Section 851 (42 U.S.C. 298) is amended—

(1) in the section heading, by striking "NATIONAL ADVISORY COUNCIL ON NURSE TRAINING" and inserting in lieu thereof "ADVISORY COUNCIL ON NURSES EDUCATION"; and

(2) in subsection (a)—

(A) in the first sentence—

(i) by striking "National Advisory Council on Nurse Training" and inserting in lieu thereof "Advisory Council on Nurses Education"; and

(ii) by striking "nineteen" and inserting "twenty-one"; and

(B) in the second sentence, by striking "general public" and inserting the following: "general public, one of the appointed members shall be selected from practicing professional nurses, one of the appointed members shall be selected from among representatives of associate degree schools of nursing,".

(b) CONFORMING AMENDMENTS.—

(1) Section 820 (42 U.S.C. 296k) is amended—

(A) in subsection (e) (as redesignated by section 801(b)(2)), by striking "National Advisory Council on Nurse Training" and inserting "Advisory Council on Nurses Education"; and

(B) in subsection (f) (as so redesignated), in the second sentence, by striking "National Advisory Council on Nurse Training" and inserting "Advisory Council on Nurses Education".

(2) Section 856(1) (42 U.S.C. 298b-3(1)) is amended by striking "National Advisory Council on Nurse Training" and inserting "Advisory Council on Nurses Education".

SEC. 722. EVALUATIONS AND REPORTS.

Part C of title VIII (42 U.S.C. 298 et seq.) is amended by adding at the end the following new section:

"EVALUATIONS

"SEC. 859. (a) The Secretary shall, directly or through contracts with public and private entities, provide for evaluations of projects carried out pursuant to this title and for the dissemination of information developed as a result of such projects. Such evaluations shall include an evaluation of the effectiveness of such projects in increasing the recruitment and retention of nurses.

"(b)(1) The Secretary shall, not later than January 10, 1989, submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the manner in which the Secretary intends to carry out subsection (a).

"(2) The Secretary shall, not later than January 10, 1991, and biannually thereafter, submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report summarizing evaluations carried out pursuant to subsection (a) during the preceding two fiscal years.

"(c) Of the amounts appropriated each fiscal year to carry out this title, the Secretary shall make available one percent to carry out this section.".

Subtitle D—Waiver of Liability for Certain Sale of Facility Under Program of Construction and Modernization of Medical Facilities

SEC. 731. ESTABLISHMENT OF WAIVER AUTHORITY.

(a) IN GENERAL.—If, pursuant to subsection (b) of section 832, the Secretary of Health and Human Services makes a certification of compliance with the conditions described in subsection (a) of such section, section 609 of the Public Health Service Act (42 U.S.C. 291i) shall not, with respect to the transferor and transferee described in subsection (b), apply to the sale on November 26, 1986, of the medical facility—

(1) located in Blanding, in the State of Utah;

(2) known, prior to such date, as San Juan County Nursing Home; and

(3) with respect to which funds were received during the years 1967 through 1970 pursuant to title VI of the Public Health Service Act (42 U.S.C. 291 et seq.).

(b) DESCRIPTION OF PARTIES TO SALE.—In the sale described in subsection (a), the transferor is San Juan County, a political subdivision of the State of Utah, and the transferee is Auburn Manor Holding Corporation, a corporation under the laws of the State of California.

SEC. 732. CONDITIONS OF WAIVER.

(a) IN GENERAL.—The conditions referred to in section 831(a) are that, not later than the expiration of the 12-month period beginning on the date of the enactment of this Act—

(1)(A) San Juan County establish an irrevocable trust with a res of $321,057 for the sole purpose of satisfying, with respect to the medical facility described in section 831(a), the obligation of San Juan County under regulations issued under clause (2) of section 603(e) of the Public Health Service Act (42 U.S.C. 291c(e));

(B) except to the extent inconsistent with this title, San Juan establish such trust in accordance with regulations issued under section 609(d)(1)(A) of such Act for trusts established pursuant to such section; and

(C) San Juan County agree—

(i) except to the extent inconsistent with this title, to administer such trust in accordance with regulations issued under such section 609(d)(1)(A) of such Act; and

(ii) with respect to the obligation described in subparagraph (A)—

(I) to carry out such obligation at the medical facility known as San Juan County Hospital and located in Monticello, in the State of Utah;

(II) to ensure that uncompensated services provided at any location other than such medical facility will not be reimbursed from the trust established pursuant to subparagraph (A); and

(III) not to seek contribution from Auburn Corporation towards the satisfaction of such obligation; and

(2) Auburn Corporation agree—

(A) to satisfy, with respect to the medical facility described in section 831(a), the obligation of San Juan County under regulations issued under clause (1) of section 603(e) of the Public Health Service Act;

(B) to satisfy such obligation at the medical facility described in section 831(a); and

(C) not to seek contribution from San Juan County towards the satisfaction of such obligation.

(b) DETERMINATION AND CERTIFICATION OF SATISFACTION OF CONDITIONS.—The Secretary shall make a determination of whether the conditions described in subsection (a) are satisfied by San Juan County and Auburn Corporation within the period described in such subsection. If the Secretary makes a determination that the conditions have been satisfied, the Secretary shall certify to the Congress the fact of such determination.

SEC. 733. MONITORING OF COMPLIANCE WITH AGREEMENTS AND EFFECT OF FAILURE TO COMPLY.

(a) MONITORING.—The Secretary shall determine the extent to which San Juan County and Auburn Corporation are carrying out their respective duties under the agreements made pursuant to the conditions described in section 832(a).

(b) FAILURE TO COMPLY.—

(1) If the conditions described in section 832(a) are not satisfied by San Juan County and Auburn Corporation within the period described in such section, the Secretary shall ensure that proceedings under section 609 of the Public Health Service Act (42 U.S.C. 291i) with respect to the sale described in section 831(a) are commenced or continued against San Juan County or Auburn Corporation, or both, as determined by the Secretary.

(2) If San Juan County or Auburn Corporation fails to carry out its duties under the agreements made pursuant to the conditions described in section 832(a), the Secretary shall ensure that proceedings described in paragraph (1) are commenced or continued against San Juan County or Auburn Corporation, respectively.

SEC. 734. DEFINITIONS.

For purposes of this subtitle:

(1) The term "Auburn Corporation" means Auburn Manor Holding Corporation, a corporation under the laws of the State of California.

(2) The term "San Juan County" means San Juan County, a political subdivision of the State of Utah.

(3) The term "Secretary" means the Secretary of Health and Human Services.

TITLE VIII—REVISION AND EXTENSION OF PROGRAMS OF HEALTH CARE FOR THE HOMELESS

Subtitle A—Categorical Grants for Primary Health Services and Substance Abuse Services

SEC. 801. INCREASE IN REQUIRED AMOUNT OF MATCHING FUNDS AND MODIFICATION IN ELIGIBILITY FOR WAIVER WITH RESPECT TO MATCHING FUNDS.

(a) INCREASE IN REQUIRED AMOUNT.—Section 340(e)(1)(A) of the Public Health Service Act (42 U.S.C. 256(e)(1)(A)) is amended—

(1) in clause (i), by striking "under the grant; and" and inserting the following: "for the first fiscal year of payments under the grant and 66⅔ percent of the costs of providing such services for any subsequent fiscal year of payments under the grant; and"; and

(2) in clause (ii), by striking "Federal funds" and all that follows and inserting the following: "Federal funds provided for the first fiscal year of payments under the grant and not less than $1 (in cash or in kind under such subparagraph) for each $2 of Federal funds provided for any subsequent fiscal year of payments under the grant.".

(b) EFFECTIVE DATE FOR INCREASE.—The amendments made by subsection (a) shall take effect October 1, 1989.

(c) MODIFICATION IN ELIGIBILITY FOR WAIVER.—Section 340(e)(2) of the Public Health Service Act (42 U.S.C. 256(e)(2)) is amended to read as follows:

"(2) The Secretary may waive the requirement established in paragraph (1)(A) if the applicant involved is a nonprofit private entity and the Secretary determines that it is not feasible for the applicant to comply with such requirement.".

SEC. 802. ESTABLISHMENT OF AUTHORITY FOR TEMPORARY CONTINUED PROVISION OF SERVICES TO CERTAIN FORMER HOMELESS INDIVIDUALS.

(a) IN GENERAL.—Section 340 of the Public Health Service Act (42 U.S.C. 256) is amended—

(1) by redesignating subsections (h) through (q) as subsections (i) through (r), respectively; and

(2) by adding after subsection (g) the following new subsection:

"(h) TEMPORARY CONTINUED PROVISION OF SERVICES TO CERTAIN FORMER HOMELESS INDIVIDUALS.—If any grantee under subsection

(a) has provided services described in subsection (f) or (g) to a homeless individual, any such grantee may, notwithstanding that the individual is no longer homeless as a result of becoming a resident in permanent housing, expend the grant to continue to provide such services to the individual for not more than 12 months.".

(b) CONFORMING AMENDMENTS.—

(1) Section 340(d)(1) of the Public Health Service Act (42 U.S.C. 256(d)(1)) is amended—

(A) in subparagraph (C), by striking "(h)" and inserting "(i)";

(B) in subparagraph (D), by striking "(i)" and inserting "(j)";

(C) in subparagraph (E), by striking "(j)" and inserting "(k)"; and

(D) in subparagraph (F), by striking "(k)" and inserting "(l)".

(2) Section 332(a)(3) of the Public Health Service Act (42 U.S.C. 254e(a)(3)) is amended by striking "340(q)(2)" and inserting "340(r)".

(3) Section 536(1) of the Public Health Service Act (42 U.S.C. 290cc-36(1)) is amended by striking "340(q)(2)" and inserting "340(r)".

SEC. 803. CLARIFICATION WITH RESPECT TO CERTAIN PROVISIONS.

(a) DEFINITION OF HOMELESS INDIVIDUAL.—Section 340(r)(2) of the Public Health Service Act (as redesignated in section 902(a)(1) of this title) is amended by striking "living accommodations." and inserting "living accommodations and an individual who is a resident in transitional housing.".

(b) PROVISION OF TECHNICAL ASSISTANCE.—Section 340(o)(2) of the Public Health Service Act (as redesignated in section 902(a)(1) of this title) is amended by striking "(p)(1)," and inserting "(q)(1) for a fiscal year,".

SEC. 804. AUTHORIZATION OF APPROPRIATIONS.

Section 340(q)(1) of the Public Health Service Act (as redesignated in section 902(a)(1) of this title) is amended by striking "There are authorized" and all that follows and inserting the following: "There are authorized to be appropriated to carry out this section $61,200,000 for fiscal year 1989, $63,600,000 for fiscal year 1990, and $66,200,000 for fiscal year 1991.".

Subtitle B—Block Grant for Community Mental Health Services

SEC. 811. AUTHORIZATION OF APPROPRIATIONS AND CONTINGENT CONVERSIONS TO CATEGORICAL PROGRAM.

(a) IN GENERAL.—Section 535 of the Public Health Service Act (42 U.S.C. 290cc-35) is amended to read as follows:

"FUNDING

"SEC. 535. (a) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this part, there are authorized to be appropriated $35,000,000 for each of the fiscal years 1989 and 1990 and such sums as may be necessary for fiscal year 1991.

"(b) EFFECT OF INSUFFICIENT APPROPRIATIONS FOR MINIMUM ALLOTMENTS.—

"(1) If the amounts made available pursuant to subsection (a) are insufficient for providing each State with an allotment under section 521(a) of not less than $150,000, the Secretary shall, from such amounts as are made available pursuant to such subsection, make grants to the States for providing to homeless individuals the mental health services described in section 524.

"(2) Paragraph (1) may not be construed to require the Secretary to make a grant under such paragraph to each State.".

(b) FAILURE OF STATE WITH RESPECT TO EXPENDING ALLOTMENT.—Section 529 of the Public Health Service Act (42 U.S.C. 290cc-29) is amended to read as follow:

"CONVERSION TO STATE CATEGORICAL PROGRAM IN EVENT OF FAILURE OF STATE WITH RESPECT TO EXPENDING ALLOTMENT

"SEC. 529. (a) IN GENERAL.—Subject to subsection (c), the Secretary shall, from amounts described in subsection (b), make grants to public and nonprofit private entities for the purpose of providing to homeless individuals the mental health services described in section 524.

"(b) DESCRIPTION OF FUNDS.—The amounts referred to in subsection (a) are any amounts made available in appropriations Acts for allotments under section 521(a) that are not allotted under such section to a State as a result of—

"(1) the failure of the State to submit an application under section 522;

"(2) the failure, in the determination of the Secretary, of any State to prepare within a reasonable period of time such application in compliance with such section; or

"(3) the State informing the Secretary that the State does not intend to expend the full amount of the allotment made to the State.

"(c) REQUIREMENT OF PROVISION OF SERVICES IN CERTAIN STATES.—With respect to grants under subsection (a), amounts made available pursuant to subsection (b) as a result of the State involved shall be available only for grants to provide services in such State.".

SEC. 812. ELIGIBILITY OF TERRITORIES.

(a) DEFINITION OF STATE.—Section 536(3) of the Public Health Service Act (42 U.S.C. 290cc-36(3)) is amended by striking "Columbia," and all that follows and inserting the following: "Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands.".

(b) MINIMUM ALLOTMENT.—Section 528(a)(1) of the Public Health Service Act (42 U.S.C. 290cc-28(a)(1)) is amended to read as follows:

"(1) $275,000 for each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico and $50,000 for each of Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands; and".

SEC. 813. TECHNICAL AND CONFORMING AMENDMENTS.

Title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended—

(1) in section 521(a), by amending the first sentence to read as follows: "The Secretary shall for each of the fiscal years 1989 through 1991 make an allotment for each State in an amount determined in accordance with section 528.";

(2) in section 541(a)(4), by striking "522" and inserting "543";

(3) in section 545(d), by striking "526" and inserting "547"; and

(4) in section 546(a)(4), by striking "521" and inserting "542".

Subtitle C—Authorization of Appropriations for Community Demonstration Projects

SEC. 821. MENTAL HEALTH SERVICES FOR HOMELESS INDIVIDUALS WITH CHRONIC MENTAL ILLNESS.

The first sentence of section 612(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 290aa-3 note) is amended to read as follows: "For payments pursuant to section 504(f) of the Public Health Service Act, there are authorized to be appropriated $11,000,000 for fiscal year 1989, $11,500,000 for fiscal year 1990, and such sums as may be necessary for fiscal year 1991, in addition to any other amounts authorized to be appropriated for such payments for each of such fiscal years.".

SEC. 822. ALCOHOL AND DRUG ABUSE TREATMENT OF HOMELESS INDIVIDUALS.

Section 513(b) of the Public Health Service Act (42 U.S.C. 290bb-2(b)) is amended to read as follows:

"(b) There are authorized to be appropriated to carry out section 512(c) $14,000,000 for fiscal year 1989, $17,000,000 for fiscal year 1990, and such sums as may be necessary for fiscal year 1991.".

Subtitle D—General Provisions

SEC. 831. EFFECTIVE DATES.

The amendments made by subsection (a) of section 901 shall take effect in accordance with subsection (b) of such section. The amendments otherwise made by this title shall take effect October 1, 1988, or upon the date of the enactment of this Act, whichever occurs later.

TITLE IX—TESTING OF CONVICTED FELONS

SEC. 901. SHORT TITLE.

This title may be cited as the "Prison Testing Act of 1988".

SEC. 902. TESTING OF STATE PRISONERS.

(a) IN GENERAL.—To be eligible to receive funds under this section, the chief law enforcement officer of each State shall establish a State program to provide for the confidential testing of any individual convicted under State law, of an intravenous drug or sex offense on or after the date of enactment of this title.

(b) CONFIDENTIALITY.—

(1) IN GENERAL.—Except as otherwise provided, no person receiving identifying information regarding an individual tested pursuant to this section shall disclose or redisclose such information to any person.

(2) WAIVER.—The confidentiality of the testing required under subsection (a) shall be waived only so that—

(A) correctional personnel, as considered necessary under laws of the State or policies established by the State department of health, may have access to the information; and

(B) victims of rape may be informed of the result of the test, if the person convicted of the rape tests positive for exposure to the human immunodeficiency virus.

(c) MEDICAL TREATMENT OF DRUG AND SEX OFFENDERS.—The chief law enforcement officer of each State receiving funds under this section shall provide education and counseling through existing prison medical facilities to any individual tested for exposure to the human immunodeficiency virus established under subsection (a).

(d) FUNDING.—

(1) IN GENERAL.—The program established under subsection (a) shall be conducted in part using funds made available under this section.

(2) REQUIREMENT.—A State shall not receive funds under this section unless an application for such has been submitted to, and approved by, the Attorney General.

(3) CONTENTS.—An application submitted under paragraph (1) shall—

(A) be in such form and be submitted in such manner as the Attorney General may by regulation require; and

(B) contain—

(i) assurances by the chief executive officer of the State will provide, through existing medical facilities in State penal institutions, education and pre- and post-test counseling to any individual tested for exposure to the human immunodeficiency virus under this section;

(ii) a 50 percent cost share under subsection (a) by the State; and

(iii) such other information as the Attorney General may by regulation specify.

(e) Definitions.—As used in this section, the term "intravenous drug or sex offense" means—

(1) an offense that is punishable, under a State law relating to intravenous use of a controlled substance (other than a law relating to simple possession of a controlled substance), by imprisonment for a term exceeding one year;

(2) a State offense of the same type described under chapter 99 of title 18, United States Code, relating to rape; or

(3) a State criminal offense involving prostitution.

(f) Regulations.—The Attorney General shall promulgate regulations to carry out this section, including regulations that determine the amount of funds that each State is entitled to receive under this section.

(g) Authorization of Appropriations.—To carry out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1988 through 1990.

SEC. 903. STUDY BY ATTORNEY GENERAL.

Not later than 1 year after the date of enactment of this title, the Attorney General of the United States shall complete a study and submit a report to the appropriate Committees of Congress concerning the appropriateness or unappropriateness of mandated prison sentences for any individual convicted of an intravenous drug or sex offense who thereafter knowingly places others at risk of becoming infected with the human immunodeficiency virus.

SEC. 904. EFFECTIVE DATE.

This title shall become effective 180 days after the date of enactment of this Act.

□ 1630

The SPEAKER pro tempore (Mr. Gonzalez). Is a second demanded?

Mr. MADIGAN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. Waxman] will be recognized for 20 minutes and the gentleman from Illinois [Mr. Madigan] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. Waxman].

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to present to the House a very important bill. The legislation provides for the reauthorization of a number of vital public health programs and establishes new programs to help in the fight against AIDS.

I want to note that the provisions contained in S. 2889 have in general already been approved by the House. They have been packaged as part of an omnibus bill at the request of the Senate and are intended to facilitate Senate passage. Mr. Speaker, I would have preferred that the bills be considered individually as originally passed by the House but our Senate counterparts have urged us to pursue this alternative legislative route.

At this time allow me to briefly summarize the major provisions of this legislation.

Title I provides for a 2-year extension of expiring authorities of the National Institute of Health. In addition, title I extends for 2 years to current moratorium on fetal research and provides for a study of this issue by the Congressional Ethics Board.

Title II provides for establishment of new AIDS research and training programs and establishes a State block grant program to provide home health services for AIDS patients. It also provides for AIDS education programs particularly those for currently underserved populations such as minority groups, and intravenous drug abusers.

Title III provides for extension of expiring prevention programs including the Preventive Health Services Block Grant, health promotion and disease prevention programs, and programs to control and prevent sexually transmitted diseases.

Title IV provides for, extends, and improves the National Organ Transplant Act by providing for establishment of a National Bone Marrow Registry and a State program of assistance for immunosuppressive drugs.

Title V provides for Presidential appointment and Senate confirmation of the Commissioner of the Food and Drug Administration. These provisions are similar to those contained in H.R. 1226 which passed the House last month.

Title VI provides for extension of health manpower programs authorized by the Public Health Service Act. The legislation is similar to H.R. 4983 which passed the House earlier this month.

Title VII provides initiatives to reduce the nursing shortage and extends for 3 fiscal years nurse education programs authorized by the Public Health Service Act. The legislation is similar to H.R. 4833 which passed the House last month.

Title XIII extends for 3 fiscal years the authorization of appropriations for primary care, substance abuse and mental health programs for the homeless. These provisions are similar to provisions that passed the House earlier this year.

Title IX is a program for prison testing for AIDS.

Mr. Speaker, that is a brief description of the various parts of this omnibus health bill. I reserve the balance of my time.

Mr. MADIGAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am going to use part of my time for a colloquy with the gentleman from California [Mr. Waxman]. I feel that both he and I are having a procedure visited upon us that is not particularly to either of our liking, but it is apparently necessary if some of these existing programs are going to be properly reauthorized.

So, I would ask the gentleman from California [Mr. Waxman] if I can take a look at this bill in total. There are several parts of this bill that were freestanding bills that previously passed the House by a voice vote.

Is that correct?

Mr. WAXMAN. Mr. Speaker, will the gentleman yield?

Mr. MADIGAN. I yield to the gentleman from California.

Mr. WAXMAN. Mr. Speaker, I think that every single title in this legislation represents a single bill that passed the House in some different form, but by and large it is very similar to what is before us today.

Mr. MADIGAN. Mr. Speaker, the differences are, as I understand it, two in number, one being the inclusion of home health care provisions for AIDS patients sponsored by the gentleman from Utah in the other body, our distinguished colleague, Senator Hatch, and I wonder, because that has not passed the House, if the gentleman from California [Mr. Waxman] could briefly describe that program.

Mr. WAXMAN. Mr. Speaker, if the gentleman will yield to me further?

Mr. MADIGAN. I yield to the gentleman from California.

Mr. WAXMAN. Mr. Speaker, Senator Hatch has proposed a block grant of funds that would be available to the States to provide home health services in order to avoid institutionalization in the hospital or nursing home for patients suffering from AIDS. The program is geared to those who cannot otherwise afford to pay for their own care, a priority especially to those who are indigent, and it is a time-limited program because we hope to learn from this services block grant how well home health services are going to be working to avoid the institutionalization and to meet the needs of AIDS patients.

Mr. Speaker, I am convinced that we have not addressed the issue of how we are going to provide services to those people who have AIDS. It is a serious problem that we are going to have to come to terms with.

The House of Representatives adopted at the end of the fiscal year, the last day of the fiscal year, an extension for 6 months of the appropriations, authorization for appropriations, of the drug AZT, which is the only drug now that allows the AIDS patients to survive for a longer period of time. It is a very much needed drug. It keeps them alive. It is not a cure, but it keeps patients alive, but for those who have already started using AZT, to be taken off would be certain death.

Mr. Speaker, we have on a compassionate basis, as the gentleman from Illinois [Mr. MADIGAN] well knows, adopted the extension of that authorization for 6 months. In 6 months that Federal program will be ended. We will have this block grant for a 2-year period, and we will monitor it and see what we can learn about it. But by and large the care for AIDS patients is going to fall on the Medicaid Program. It is the health care program for not just the poor, but for the very poor in our society.

Mr. Speaker, to be eligible for Medicaid, AIDS patients, as well as all other sufferers of illnesses, will have to become eligible after they have exhausted their resources paying for their own health care services to the point where they have no further funds left.

Mr. Speaker, I am giving a very long answer to this, and I thank the gentleman from Illinois [Mr. MADIGAN] for tolerating such an extensive description of the services problem.

This block grant is a temporary measure, as I see it, for dealing with an immediate problem for AIDS patients by using the States to have these funds for this 2-year period, and we will come back and review it, and the next Congress will have to deal with that issue.

Mr. MADIGAN. Mr. Speaker, I thank the gentleman from California [Mr. WAXMAN] for that explanation.

The other main difference in the bill before us today relates to the AIDS legislation which passed the House, as I recall, by an overwhelming vote. In the bill now before us, the House passed provisions have been modified. But that has been scaled back considerably in the other body as a result of an agreement between the gentleman from Massachusetts, Senator KENNEDY; the gentleman from North Carolina, Senator HELMS, and the gentleman from Utah, Senator HATCH.

Mr. Speaker, I wonder if the gentleman from California [Mr. WAXMAN] would be willing to describe what we now have before us in terms of that scaled-back bill.

Mr. WAXMAN. Mr. Speaker, will the gentleman yield?

Mr. MADIGAN. I yield to the gentleman from California.

Mr. WAXMAN. Mr. Speaker, I thank the gentleman from Illinois [Mr. MADIGAN] for yielding to me on that point.

I must express my own personal disappointment that the Congress did not adopt the legislation that was passed by the House by such an overwhelming measure that would have provided funding for testing, and counseling and protections for the confidentiality of those people who either have a positive or a negative test. It would not make any difference, protections of the confidentiality of that information. We worked extensively on that matter, and we decided that it was important to protect confidentiality of especially those that had a positive test because of the clear discrimination that may likely follow that individual should others know, the public and others know, that they have the antibody for AIDS.

Mr. Speaker, we thought, just as we do for any other medical procedure, that it is no one else's business what a person's health status is except we also concluded it does become someone else's business if they are at risk of being exposed to this deadly virus. So, in our legislation we provided for protections of confidentiality with exceptions for spouses and other sexual partners, for public health people within the State, for health care workers. We provided for morticians, who are sometimes exposed to bodily fluids, and under the guidelines of the Centers for Disease Control we would give them that information about the antibody status of a deceased individual brought to a mortuary.

Mr. Speaker, we looked at these points, and, as they were raised, we addressed them, and, where it was ligitimate for confidentiality to be breached, we provided that confidentiality appropriately to be breached. But except for those circumstances we did not think in the House that it was wise to allow confidentiality to be thrown out or it would be varied from State to State depending on what the State laws were at any particular point because the essential point that was at stake was that we wanted to encourage people to come in to be tested and counseled.

Mr. Speaker, the reality is that we do not have a cure for AIDS. We can use education, and we are making strides in trying to educate people about how AIDS is spread and how it is not spread, but for those who are high risk expecially to have the virus and be a carrier and transmitter of this virus to others, we would hope they would come in to be tested and that they would be counseled because only through changing their behavior to avoid transmitting the disease to others do we have a chance to contain the pool of people who are infected by this virus. All we can do is contain that pool of people because we have no cure, we have no immunization to prevent other people being exposed.

The unfortunate fact is that the full focus has been prevented from even considering the need for confidentiality. We could not even get it considered because of the bizarre rules of the U.S. Senate that allow one, two, or a few individual Members to keep the Congress of the United States from even considering and deciding that issue. I think that this is a shortsighted mistake.

Mr. Speaker, we are going to come back next year, and we are going to consider the confidentiality, and we are going to consider provisions on nondiscrimination.

By the way, those are recommendations of Surgeon General Koop, the Centers for Disease Control, the Secretary of Health and Human Services, and, when President Reagan was not sure enough about their recommendations, he appointed a commission to look at it, at the whole question of confidentiality, and testing and nondiscrimination, and the President's own commission recommended that for a testing and counseling program to succeed we had to assure confidentiality to the extent it makes sense, and we had to assure against discrimination.

We were unable in the House to pass a nondiscrimination bill. Many people thought it should be part of a larger bill that would protect against discrimination in other areas, and we dropped that in the House bill.

But I regret deeply that we are not considering this confidentiality within the context of testing and counseling as passed by the House overwhelmingly, and we will pursue that next year, and I feel confident the House will renwew its legislative request for those provisions.

Mr. Speaker, I thank the gentleman from Illinois [Mr. MADIGAN].

□ 1645

Mr. MADIGAN. Mr. Speaker, would the gentleman briefly describe the testing provisions in the bill? I understand that these have been scaled back to a $100 million program. Can the gentleman describe this program?

Mr. WAXMAN. Mr. Speaker, if the gentleman will yield, yes, that is a program for 2 years. Again, it is a short-term way of dealing with some testing by saying to those States that choose to, and they need not choose to if they want to, but if they choose to have anonymous testing which will allow some people who will not otherwise come forward because of the lack of confidentiality protections, it will allow them to come in to be tested anonymously. Of course, they will be counseled and urged to change their behavior and all of that, appropriately so. So that is a 2-year authorization and during these next 2 years we expect to revisit the whole issue of confidentiality and nondiscrimination and adopt the legislation in that area.

Mr. MADIGAN. Mr. Speaker, I thank the gentleman for that explanation.

Mr. Speaker, I rise in support of this bill. This legislation includes a number of bills that have already passed the

House. In addition, the bill includes the agreement on AIDS legislation that has been worked out with the Senate.

Title I extends authorities for the National Institutes of Health. This title also extends for a 2-year period the moratorium on fetal research at the National Institutes of Health.

Title II reflects the agreement the House reached with the Senate on AIDS legislation. The main features of this agreement provide authorities for AIDS research similar to many of the provisions in the House passed bill.

In addition, these provisions include similar provisions in the House-passed bill establishing a National Commission on AIDS. These provisions also include a variety of public information provisions on AIDS that will be largely administered by the States. Finally, while the House passed confidentiality provisions were deleted from the final agreement, the bill does include a 2-year grant program to the States for AIDS testing and counseling. This program will be authorized at $100 million a year.

Title III includes provisions of the conference report on S. 1579, legislation to revise and extend the preventive health services State block grant and the grant program for sexually transmitted diseases.

Title IV includes the identical text of a bill, the Organ Transplant Amendments Act of 1988, that passed the House yesterday.

Title V requires that the Commissioner of the Food and Drug Administration be appointed by the President with the advice and consent of the Senate. This is very similar to legislation that passed the House earlier this year.

Title VI addresses the health manpower programs currently authorized under the Public Health Service Act. This bill would extend these authorities with several new initiatives designed to address the shortage of various health professionals in rural areas.

Title VII contains the identical text of a bill, the Nursing Shortage Reduction and Education and Extension Act of 1988 that recently passed the House on nursing training and education programs.

Title VIII includes those provisions addressing health care programs for the homeless that have been agreed to as part of the conference report on the Omnibus McKinney Homeless Assistance Act of 1988.

As I have said at the outset, Mr. Speaker, the procedure to bring this bill before us is not to my liking and also not to the liking of the gentleman from California, the chairman of the Health Subcommittee. However, our counterparts in the other body have indicated that if we want these programs reauthorized and extended, this is the only avenue available to us at this point.

We have been in conference with Members of the other body for some 9 days on this process. I am confident that what we have before us is the bill we have described to the House Chamber. It has been reviewed by the staff on both the majority and the minority sides.

I urge my colleagues to join me in supporting this bill. However, I must still express my reservations about the process that is being forced upon us.

I would certainly hope that we do not have to repeat this process in the future.

Mr. WAXMAN. Mr. Speaker, before I yield back the balance of my time, I want to thank everyone involved in this legislation, especially the staffs, both on the majority side and the minority side.

I want to thank my colleague, the gentleman from Illinois, for his cooperation. At the end of a Congress, the demands and meetings are frequent and trying, and I want to thank the gentleman for his patience and cooperation.

Mr. DINGELL. Mr. Speaker, this omnibus bill contains a number of important pieces of health legislation that will affect the lives of all Americans. These reauthorized and expanded research and health delivery programs will benefit biomedical scientists, those in need of organ transplants, the animal drug industry, the homeless, and people with AIDS.

But there is an important element missing from this package. Despite the best efforts of House Members—with particular credit due to my colleagues Chairman HENRY WAXMAN and Congressman ED MADIGAN—the Senate has not been able to accept the House provisions relating to AIDS testing and counseling. This is a serious lapse of judgement on the part of the other body, and one which does not well serve America, and especially people at risk for AIDS.

Nevertheless, I am proud of the role that the Committee on Energy and Commerce has played in developing this important package of health care legislation, and I urge my colleagues to support it.

Mr. PEPPER. Mr. Speaker, it is with great pride and pleasure that I rise in support of the omnibus health bill. This important health care bill contains a provision which is of great importance to me. Included in this package is legislation I had the privilege to author, H.R. 393, which would establish a National Center on Biotechnology Information within the National Library of Medicine, an arm of the National Institutes of Health.

Mr. Speaker, this measure looks to the future. It aims to make life better, healthier, and happier for Americans today and for generations and generations to come. It holds great promise for advances in the area of health care research and treatment.

Research on the human gene is one of the most exciting frontiers in medicine at this time, but the rapidly growing body of information is scattered and unwieldy. This center will link existing biotechnology data bases and make information available for worldwide dissemination. It will prevent duplication of research and therefore bring more frequent and faster breakthroughs in this critical area. The National Center for Biotechnology Information, therefore, holds out new hope for the millions of Americans who suffer from Alzheimer's disease, cancer, arthritis, mental illness, and other illnesses for which we currently have no cure.

I want to express my gratitude to the Appropriations Committee for its $8 million allotment to this greatly needed project. With the establishment of the National Center on Biotechnology Information, we begin an ambitious venture, to fit together the pieces of the genetic puzzle and to make a meaningful investment in our lifetime, and for the lives of Americans for generations to come.

Mr. Speaker, I am deeply indebted to my great colleague from California, the Honorable HENRY WAXMAN, chairman of the Subcommittee on Health and the Environment of the Committee on Energy and Commerce. Without his great skill and leadership, this bill would not be before us today. In addition, I want to commend the tremendous efforts of Senator LAWTON CHILES, my friend and colleague from the State of Florida. As the Senate sponsor of this bill, he has continued his longstanding outstanding efforts to make life better for all the people of America. He has done a remarkable job in seeing this bill on through to enactment.

So it is with great pleasure that I urge my colleagues to support this landmark measure. It will do much good for the health and welfare of the American people now and long into the future.

Mr. WEISS. Mr. Speaker, I rise in support of S. 2889, a bill that, in part, authorizes programs and policies related to AIDS. This is a bill that will be remembered as much for what was eliminated as for what it contains. As a cosponsor of the original legislation as introduced by Chairman WAXMAN, I wish to express my frustration at the loss of two of the most important provisions of the bill—confidentiality of HIV test results and antidiscrimination language. However, I am hopeful that both the confidentiality provisions and the antidiscrimination protections will be adopted early in the 101st Congress, the latter as part of the Americans with Disabilities Act.

In spite of millions of dollars and countless hours spent searching for one, there still is no cure for AIDS. Nor is there a vaccine to prevent HIV from taking hold in the human body. The only effective method for halting or even slowing the spread of this deadly virus that causes AIDS and related conditions is the education of all persons who might come in contact with it.

This bill provides for such education through the counseling of persons who are tested for HIV to inform them of sexual and drug use practices that carry with them the risk of transmission of the virus and ways in which they can protect themselves and others. The bill also authorizes extensive national and local educational programs.

The bill contains language that requires that no educational materials, curricula or counseling services that are developed with funds authorized in this bill may be "designed to promote or encourage, directly, homosexual or heterosexual sexual activity, or intravenous drug use."

It is important to understand the intent with which this language was drafted and voted into law by the House and Senate. It assures that educational materials and counseling services are designed and developed to effectively inform persons of the risk of transmission of HIV through certain activities. It provides that such materials and counseling should not be designed for the purpose of promoting human sexual activity of any form—either heterosexual, or homosexual, but rather should be designed for the purpose of preventing transmission of HIV.

Federal funds should not be used to promote either sexuality or drug use. However, it is essential that the educational materials and counseling services in question be designed to encourage behavior change both in the general population and especially among those persons who practice high-risk activities so that they stop their risky behavior and thus, reduce the spread of HIV.

Therefore, while the provision provides that materials and counseling should not be designed to promote or encourage sexual activities or drug use, the language also makes clear that the provision should not be interpreted in such a manner as to obstruct the development of effectual and appropriate materials and services that are designed to achieve behavior change.

The fiscal year 1988 Labor-HHS-Education Appropriations bill also contained language that restricted the content of AIDS educational materials. However, there have been many reports from public health educators that those restrictions, which were worded differently, have been interpreted to prohibit recipients from developing effective materials to prevent HIV transmission. Thus the House and Senate leaders on S. 2889 changed the language to clarify congressional intent. Now that fiscal year 1988 has expired, the chilling effect brought by the fiscal year 1988 appropriations bill no longer exists, allowing educational materials and counseling services developed under this statute to be effective in reaching and achieving behavior change in the persons who practice high-risk activities. I look forward to the Center for Disease Control issuing new guidelines to reflect the clarified intent of Congress regarding this important area.

Mr. AuCOIN. Mr. Speaker, I rise in support of S. 2889, an omnibus health bill. Among the provisions in this bill are several relating to AIDS, including provisions authorizing AIDS reserach programs, AIDS educational programs, home health care services and anonymous testing and counseling. Although I am disappointed that the final bill does not include all of the provisions originally incorporated in the House-passed bill, H.R. 5142, particularly the provisions relating to confidentiality, I am pleased that the House has now officially authorized a number of programs critical in addressing the AIDS epidemic.

I would like to specifically address the area of AIDS education. All public health experts agree that the main tool we currently have to fight AIDS is effective and targeted education. This is a disease which can be stopped—if we can simply educate individuals as to how to protect themselves from transmission of HIV, the virus that causes AIDS.

In light of the importance of effective, targeted education, I am particularly pleased to see the final language that was adopted by the House and Senate with regard to restrictions on the development of such educational materials, and on related counseling. Over a year ago, a severe restriction was placed on the fiscal year 1988 Appropriations bill with regard to AIDS educational materials, providing that such materials could not promote or encourage homosexual sexual activity. Public Health officials and community health educators from across the country expressed concern that this provision could have a "chilling" effect on the development of effective AIDS educational materials, partly as a result of community groups self-censoring the materials they would produce.

In response to these concerns, Senator ALAN CRANSTON (D-CA) and Senator TED KENNEDY (D-MA) offered an alternative provision which was adopted as part of the fiscal year 1989 appropriations bill. That formulation added a few crucial terms to the provision. The fiscal year 1989 appropriations provision stated that Federal funds could not be used for AIDS educational programs which were designed to promote or encourage any form of sexual activity, homosexual or heterosexual. Thus, while that provision appropriately stated that it is not the role of the Federal Government to fund materials intended simply to increase sexual activity (of whatever kind), the provision made the concomitant statement that AIDS educational materials which are designed to bring about effective behavior change are indeed intended by Congress to be funded. This ensures that effective AIDS materials will be developed and hopefully will eliminate any chilling effect that may have been felt as a result of the previous fiscal year 1988 provision.

I am particularly pleased, therefore, to see that the provision ultimately adopted in S. 2889, with regard to both educational materials and counseling, tracks the provision added to the fiscal year 1989 appropriations bill. This provision states that funds may not be used to provide educational programs or counseling that are "designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous substance abuse." Thus, it is Congress' intent that materials that are designed and intended simply to increase sexual activity, of whatever kind, should not be receiving Federal funds under this bill. At the same time, we intend that materials that are designed to prevent the further transmission of HIV through targeted messages should be funded. Indeed, the provision includes an additional subsection explicitly stating that the language in the provision is not intended to prohibit providing accurate and effective information that will encourage the behavior change necessary to stop transmission of HIV.

Education, research, and care are our critical weapons in the fight against AIDS. I am pleased to support this bill which includes these provisions. I also look forward to the 101st Congress, where I will continue to work toward passage of confidentiality provisions originally included in H.R. 5142, the House AIDS bill, and the non-discrimination protection embodied in the Americans with Disabilities Act.

Mr. JEFFORDS. Mr. Speaker, I want to commend the Members who worked to produce the Omnibus Health Amendments Act of 1988, which we passed on October 13. This bill includes authorization for a number of important Federal health programs, including several AIDS programs for which authorizing legislation had been passed by this or the other body. It includes some of the provisions of H.R. 5142, which I was privileged to cosponsor, and other provisions from S. 1220, which the Senate passed earlier this year. I was happy to see these provisions included in this omnibus bill so that they could be enacted in this Congress. AIDS is too important a matter for us to delay any longer in enacting the best advice of health professionals for a comprehensive national policy to address it.

For the same reason, I was disappointed that the omnibus bill we enacted did not contain most of the provisions passed by the House in September with regard to counseling and testing. I will do what I can to ensure that those programs are at the top of the agenda in both houses at the beginning of the new year.

I want to comment briefly on two very important provisions of the omnibus bill concerning a matter that has been the subject of too much unfortunate controversy in the Congress—that is, legislative guidance on the content of federally funded AIDS education and counseling programs. S. 2889, the Omnibus Health Amendments Act, authorizes a series of important Federal initiatives in education and counseling for the prevention of AIDS. The bill also contains guidance on the content of those programs.

Last year, in the 1988 appropriation for the Departments of Labor, Health and Human Services, and Education, we included a restriction on the content of AIDS education that had unfortunate and unintended consequences for those critical efforts. The language we enacted created much confusion about the permissible scope of those efforts, and had a chilling effect on some of the best efforts of State and local health departments, and of private organizations.

We have now sought to correct this situation by changing the language on content of prevention programs, both in this year's appropriation and in S. 2889. S. 2889—specifically, sections 2432(e), 2500, and 2506(6)—provides that Federal funds should not be used to develop programs and activities that are designed solely to promote or encourage sexual activity, whether it be homosexual or heterosexual. These sections assure, however, that AIDS prevention programs must be designed to encourage behavior change, both in the general population and among those at the highest risk for infection, in order to reduce the risk of HIV transmission. Thus, the limitation that the materials should not be designed to promote or encourage sexuality should not be construed in a manner that would inhibit the development of appropriate and effective materials that are designed for the purpose of encouraging necessary behavior change.

I am especially concerned that Federal funds be available to the many State, local, and private groups that have taken the lead in AIDS prevention education and counseling activities. An example I am proud to cite is that of Vermont CARES—Committee for AIDS Resources, Education, and Services—which provides these services in my State, mainly through private funds and the selfless work of unpaid volunteers. Through their direct experience with all facets of this terrible epidemic, Vermont CARES and other groups like it around the country have developed considerable expertise in the design of effective prevention programs. It is absolutely essential that we make use of that expertise, and help these groups put it to good use, rather than attempting to reinvent the wheel, or to design these programs from our distant perspective in Washington.

I am pleased to see that S. 2889 will not interfere in their critically important work. Indeed, this act, with the provisions I mentioned, will make more Federal funds available to them. As I mentioned, many grant applicants have been confused about these requirements, and therefore it is important that the Centers for Disease Control, which will be administering most of these funds, act promptly to reassure them and to dissipate the chilling effect of the 1988 appropriation language. I urge the CDC to promulgate new regulations or guidelines based on the new congressional enactment as soon as possible.

Mr. MADIGAN. Mr. Speaker, I yield back the balance of my time.

Mr. WAXMAN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GONZALEZ). The question is on the motion offered by the gentleman from California [Mr. WAXMAN] that the House suspend the rules and pass the Senate bill, S. 2889.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 2889, the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

GENERIC ANIMAL DRUGS AND PATENT TERM RESTORATION ACT

Mr. WAXMAN. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2843) to amend the Federal Food, Drug, and Cosmetic Act to authorize abbreviated new animal drug applications and to amend title 35, United States Code, to authorize the extension of the patents for animal drug products.

The Clerk read as follows:

S. 2843

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

GENERIC ANIMAL DRUG AND PATENT TERM RESTORATION ACT

SEC. 600. SHORT TITLE AND REFERENCE TO ACT.

(a) SHORT TITLE.—This title may be cited as the "Generic Animal Drug and Patent Term Restoration Act".

(b) REFERENCE.—

(1) Whenever in subtitle A (other than in section 607(b)) an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act.

(2) Whenever in subtitle B an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 35 of the United States Code.

Subtitle A—New Animal Drug Applications

SEC. 601. ABBREVIATED NEW ANIMAL DRUG APPLICATIONS.

(a) GENERAL RULE.—Section 512(b) (21 U.S.C. 360b) is amended—

(1) by inserting "(1)" after "(b)",

(2) by redesignating clauses (1) through (8) as clauses (A) through (H), respectively, and

(3) by adding at the end the following:

"(2) Any person may file with the Secretary an abbreviated application for the approval of a new animal drug. An abbreviated application shall contain the information required by subsection (n).".

(b) APPLICATION REQUIREMENTS.—Section 512 is amended by striking out subsection (n) and inserting in lieu thereof the following:

"(n)(1) An abbreviated application for a new animal drug shall contain—

"(A)(i) except as provided in clause (ii), information to show that the conditions of use or similar limitations (whether in the labeling or published pursuant to subsection (i)) prescribed, recommended, or suggested in the labeling proposed for the new animal drug have been previously approved for a new animal drug listed under paragraph (4) (hereinafter in this subsection referred to as an 'approved new animal drug'), and

"(ii) information to show that the withdrawal period at which residues of the new animal drug will be consistent with the tolerances established for the approved new animal drug is the same as the withdrawal period previously established for the approved new animal drug or, if the withdrawal period is proposed to be different, information showing that the residues of the new animal drug at the proposed different withdrawal period will be consistent with the tolerances established for the approved new animal drug;

"(B)(i) information to show that the active ingredients of the new animal drug are the same a those of the approved new animal drug, and

"(ii) of the approved new animal drug has more than one active ingredient, and if one of the active ingredients of the animal drug is diffferent from one of the active ingredients of the approved new animal drug and the application is filed pursuant to the approval of a petition filed under paragraph (3)—

"(I) information to show that the other active ingredients of the new animal drug are the same as the active ingredients of the approved new animal drug,

"(II) information to show either that the different active ingredient is an active ingredient of another approved new animal drug or of an animal drug which does not meet the requirements of section 201(w), and

"(III) such other information respecting the different active ingredients as the Secretary may require;

"(C)(i) if the approvad new animal drug is permitted to be used with one or more animal drugs in animal feed, information to show that the proposed uses of the new animal drug with other animal drugs in animal feed are the same as those of the approved new animal drug, and

"(ii) if the approved new animal drug has more than one active ingredient, and if one of the active ingredients of the new animal drug is different from one of the active ingredients of the approved new animal drug and the application is filed pursuant to the approval of a petition filed under paragraph (3)—

"(I) information to show that the other active ingredients of the new animal drug are the same as the active ingredients of the approved new animal drug,

"(II) information to show either that the different active ingredient is an active ingredient of another approved new animal drug or of an animal drug which does not meet the requirements of section 201(w), and

"(III) such other information respecting the different active ingredients as the Secretary may require;

"(C)(i) if the approved new animal drug is permitted to be used with one or more animal drugs in animal feed, information to show that the proposed uses of the new animal drug with other animal drugs in animal feed are the same as of the approved new animal drug, and

"(ii) if the approved new animal drug is permitted to be used with one or more other animal drugs in animal feed, and one of the other animal drugs proposed for use with the new animal drug in animal feed is different from one of the other animal drugs permitted to be used in animal feed with the approved new animal drug, and the application is filed pursuant to the approval of a petition filed under paragraph (3)—

"(I) information to show either that the different animal drug proposed for use with the approved new animal drug in animal feed is an approved new animal drug permitted to be used in animal feed or does not meet the requirements of section 201(w) when used with another animal drug in animal feed,

"(II) information to show that other animal drugs proposed for use with the new animal drug in animal feed are the same as the other animal drugs permitted to be used with the approved new animal drug, and

"(III) such other information respecting the different animal drug or combination with respect to which the petition was filed as the Secretary may require,

"(D) information to show that the route of administration, the dosage form, and the strength of the new animal drug are the same as those of the approved new animal drug or, if the route of administration, the dosage form, or the strength of the new animal drug is different and the application is filed pursuant to the approval of a petition filed under paragraph (3), such information respecting the route of administration, dosage form, or strength with respect to which the petition was filed as the Secretary may require;

"(E) information to show that the new animal drug is bioequivalent to the approved new animal drug, except that if the application is filed pursuant to the approval of a petition filed under paragraph (3) for the purposes described in subparagraph (B) or (C), information to show that the active ingredients of the new animal drug are of the same pharmacological or therapeutic class as the pharmacological or therapeutic class of the approved new animal drug and that the new animal drug can be expected to have the same therapeutic effect as the approved new animal drug when used in accordance with the labeling;

"(F) information to show that the labeling proposed for the new animal drug is the same as the labeling approved for the approved new animal drug except for changes required because of differences approved under a petition filed under paragraph (3), because of a different withdrawal period, or because the new animal drug and the approved new animal drug are produced or distributed by different manufacturers;

"(G) the items specified in clauses (B) through (F) of subsection (b)(1);

"(H) a certification, in the opinion of the applicant and to the best of his knowledge, with respect to each patent which claims the approved new animal drug or which claims a use for such approved new animal drug for which the applicant is seeking approval under this subsection and for which information is required to be filed under subsection (b)(1) or (c)(3)—

"(i) that such patent information has not been filed,

"(ii) that such patent has expired,

"(iii) of the date on which such patent will expire, or

"(iv) that such patent is invalid or will not be infringed by the manufacture, use, or sale of the new animal drug for which the application is filed; and

"(I) if with respect to the approved new animal drug information was filed under subsection (b)(1) or (c)(3) for a method of use patent which does not claim a use for which the applicant is seeking approval of an application under subsection (c)(2), a statement that the method of use patent does not claim such a use.

The Secretary may not require that an abbreviated application contain information in addition to that required by subparagraphs (A) through (H).

"(2)(A) An applicant who makes a certification described in paragraph (1)(G)(iv) shall include in the application a statement that the applicant will give the notice required by subparagraph (B) to—

"(i) each owner of the patent which is the subject of the certification or the representative of such owner designated to receive such notice, and

"(ii) the holder of the approved application under subsection (c)(1) for the drug which is claimed by the patent or a use of which is claimed by the patent or the representative of such holder designated to receive such notice.

"(B) The notice referred to in subparagraph (A) shall state that an application, which contains data from bioequivalence studies, has been filed under this subsection for the drug with respect to which the certification is made to obtain approval to engage in the commercial manufacture, use, or sale of such drug before the expiration of the patent referred to in the certification. Such notice shall include a detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid or will not be infringed.

"(C) If an application is amended to include a certification described in paragraph (1)(G)(iv), the notice required by subparagraph (B) shall be given when the amended application is filed.

"(3) If a person wants to submit an abbreviated application for a new animal drug—

"(A) whose active ingredients, route of administration, dosage form, or strength differ from that of an approved new animal drug, or

"(B) whose use with other animal drugs in animal feed differs from that of an approved new animal drug,

such person shall submit a petition to the Secretary seeking permission to file such an application. The Secretary shall approve a petition for a new animal drug unless the Secretary finds that—

"(A) investigations must be conducted to show the safety and effectiveness, in animals to be treated with the drug, of the active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed which differ from the approved new animal drug, or

"(B) investigations must be conducted to show the safety for human consumption of any residues in food resulting from the proposed active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed for the new animal drug which is different from the active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed of the approved new animal drug.

The Secretary shall approve or disapprove a petition submitted under this paragraph within 90 days of the date the petition is submitted.

"(4)(A)(i) Within 60 days of the date of the enactment of this subsection, the Secretary shall publish and make available to the public a list in alphabetical order of the official and proprietary name of each new animal drug which has been approved for safety and effectiveness before the date of the enactment of this subsection.

"(ii) Every 30 days after the publication of the first list under clause (i) the Secretary shall revise the list to include each new animal drug which has been approved for safety and effectiveness under subsection (c) during the 30 day period.

"(iii) When patent information submitted under subsection (b)(1) or (c)(3) respecting a new animal drug included on the list is to be published by the Secretary, the Secretary shall, in revisions made under clause (ii), include such information for such drug.

"(B) A new animal drug approved for safety and effectiveness before the date of the enactment of this subsection or approved for safety and effectiveness under subsection (c) shall, for purposes of this subsection, be considered to have been published under subparagraph (A) on the date of its approval or the date of enactment, whichever is later.

"(C) If the approval of a new animal drug was withdrawn or suspended under subsection (c)(2)(G) or for grounds described in subsection (e) or if the Secretary determines that a drug has been withdrawn from sale for safety or effectiveness reasons, it may not be published in the list under subparagraph (A) or, if the withdrawal or suspension occurred after its publication in such list, it shall be immediately removed from such list—

"(i) for the same period as the withdrawal or suspension under subsection (c)(2)(G) or (e), or

"(ii) if the listed drug has been withdrawn from sale, for the period of withdrawal from sale or, if earlier, the period ending on the date the Secretary determines that the withdrawal from sale is not for safety or effectiveness reasons.

A notice of the removal shall be published in the Federal Register.

"(5) If an application contains the information required by clauses (A), (G), and (H) of subsection (b)(1) and such information—

"(A) is relied on by the applicant for the approval of the application, and

"(B) is not information derived either from investigations, studies, or tests conducted by or for the applicant or for which the applicant had obtained a right of reference or use from the person by or for whom the investigations, studies, or tests were conducted,

such application shall be considered to be an application filed under subsection (b)(2).

"(6) For purposes of this section, the term 'patent' means a patent issued by the Patent and Trademark Office of the Department of Commerce.".

(c) APPLICATION APPROVAL.—Section 512(c) is amended (1) by inserting "(1)" after "(c)", by redesignating clauses (1) and (2) as clauses (A) and (B), and by adding at the end the following:

"(2)(A) Subject to subparagraph (C), the Secretary shall approve an abbreviated application for a drug unless the Secretary finds—

"(i) the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of the drug are inadequate to assure and preserve its identity, strength, quality, and purity;

"(ii) the conditions of use prescribed, recommended, or suggested in the proposed labeling are not reasonably certain to be followed in practice or, except as provided in subparagraph (B), information submitted with the application is insufficient to show that each of the proposed conditions of use or similar limitations (whether in the labeling or published pursuant to subsection (i)) have been previously approved for the approved new animal drug referred to in the application;

"(iii) information submitted with the application is insufficient to show that the active ingredients are the same as those of the approved new animal drug referred to in the application;

"(iv)(I) if the application is for a drug whose active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed is the same as the active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed of the approved new animal drug referred to in the application, information submitted in the application is insufficient to show that the active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed is the same as that of the approved new animal drug, or

"(II) if the application is for a drug whose active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed is different from that of the approved new animal drug referred to in the application, no petition to file an application for the drug with the different active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed was approved under subsection (n)(3);

"(v) if the application was filed pursuant to the approval of a petition under subsection (n)(3), the application did not contain the information required by the Secretary respecting the active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed which is not the same;

"(vi) information submitted in the application is insufficient to show that the drug is bioequivalent to the approved new animal drug referred to in the application, or if the application is filed under a petition approved pursuant to subsection (n)(3), information submitted in the application is insufficient to show that the active ingredients of the new animal drug are of the same pharmacological or therapeutic class as the pharmacological or therapeutic class of the approved new animal drug and that the new animal drug can be expected to have the same therapeutic effect as the approved new animal drug when used in accordance with the labeling;

"(vii) information submitted in the application is insufficient to show that the labeling proposed for the drug is the same as the labeling approved for the approved new animal drug referred to in the application except for changes required because of differences approved under a petition filed under subsection (n)(3), because of a different withdrawal period, or because the drug and the approved new animal drug are produced or distributed by different manufacturers;

"(viii) information submitted in the application or any other information available to the Secretary shows that (I) the inactive ingredients of the drug are unsafe for use under the conditions prescribed, recommended, or suggested in the labeling proposed for the drug, (II) the composition of the drug is unsafe under such conditions because of the type or quantity of inactive ingredients included or the manner in which the inactive ingredients are included, or (III) in the case of a drug for food producing animals, the inactive ingredients of the drug or its composition may be unsafe with respect to human food safety;

"(ix) the approval under subsection (b)(1) of the approved new animal drug referred to in the application filed under subsection (b)(2) has been withdrawn or suspended for grounds described in paragraph (1) of subsection (e), the Secretary has published a notice of a hearing to withdraw approval of the approved new animal drug for such grounds, the approval under this paragraph of the new animal drug for which the application under subsection (b)(2) was filed has been withdrawn or suspended under subparagraph (G) for such grounds, or the Secretary has determined that the approved new animal drug has been withdrawn from sale for safety or effectiveness reasons;

"(x) the application does not meet any other requirement of subsection (n); or

"(xi) the application contains an untrue statement of material fact.

"(B) If the Secretary finds that a new animal drug for which an application is submitted under subsection (b)(2) is bioequivalent to the approved new animal drug referred to in such application and that residues of the new animal drug are consistent with the tolerances established for such approved new animal drug but at a withdrawal period which is different than the withdrawal period approved for such approved new animal drug, the Secretary may establish, on the basis of information submitted, such different withdrawal period as the withdrawal period for the new animal drug for purposes of the approval of such application for such drug.

"(C) Within 180 days of the initial receipt of an application under subsection (b)(2) or within such additional period as may be agreed upon by the Secretary and the applicant, the Secretary shall approve or disapprove the application.

"(D) The approval of an application filed under subsection (b)(2) shall be made effective on the last applicable date determined under the following:

"(i) If the applicant only made a certification described in clause (i) or (ii) of subsection (n)(1)(G) or in both such clauses, the approval may be made effective immediately.

"(ii) If the applicant made a certification described in clause (iii) of subsection (n)(1)(G), the approval may be made effective on the date certified under clause (iii).

"(iii) If the applicant made a certification described in clause (iv) of subsection (n)(1)(G), the approval shall be made effective immediately unless an action is brought for infringement of a patent which is the subject of the certification before the expiration of 45 days from the date the notice provided under subsection (n)(2)(B)(i) is received. If such an action is brought before the expiration of such days, the approval shall be made effective upon the expiration of the 30 month period beginning on the date of the receipt of the notice provided under subsection (n)(2)(B) or such shorter or longer period as the court may order because either party to the action failed to reasonably cooperate in expediting the action, except that if before the expiration of such period—

"(I) the court decides that such patent is invalid or not infringed, the approval shall be made effective on the date of the court decision,

"(II) the court decides that such patent has been infringed, the approval shall be made effective on such date as the court orders under section 271(e)(4)(A) of title 35, United States Code, or

"(III) the court grants a preliminary injunction prohibiting the applicant from engaging in the commercial manufacture or sale of the drug until the court decides the issues of patent validity and infringement and if the court decides that such patent is invalid or not infringed, the approval shall be made effective on the date of such court decision.

In such an action, each of the parties shall reasonably cooperate in expediting the action. Until the expiration of 45 days from the date the notice made under subsection (n)(2)(B) is received, no action may be brought under section 2201 of title 28, United States Code, for a declaratory judgment with respect to the patent. Any action brought under section 2201 shall be brought in the judicial district where the defendant has its principal place of business or a regular and established place of business.

"(iv) If the application contains a certification described in clause (iv) of subsection (n)(1)(G) and is for a drug for which a previous application has been filed under this subsection containing such a certification, the application shall be made effective not earlier than 180 days after—

"(I) the date the Secretary receives notice from the applicant under the previous application of the first commercial marketing of the drug under the previous application, or

"(II) the date of a decision of a court in an action described in subclause (III) holding the patent which is the subject of the certification to be invalid or not infringed,

whichever is earlier.

"(E) If the Secretary decides to disapprove an application, the Secretary shall give the applicant notice of an opportunity for a hearing before the Secretary on the question of whether such application is approvable. If the applicant elects to accept the opportunity for hearing by written request within 30 days after such notice, such hearing shall commence not more than 90 days after the expiration of such 30 days unless the Secretary and the applicant otherwise agree. Any such hearing shall thereafter be conducted on an expedited basis and the Secretary's order thereon shall be issued within 90 days after the date fixed by the Secretary for filing final briefs.

"(F)(i) If an application submitted under subsection (b)(1) for a drug, no active ingredient (including any ester or salt of the active ingredient) of which has been approved in any other application under subsection (b)(1), is approved after the date of the enactment of this paragraph, no application may be submitted under subsection (b)(2) which refers to the drug for which the subsection (b)(1) application was submitted before the expiration of 5 years from the date of the approval of the application under subsection (b)(1), except that such an application may be submitted under subsection (b)(2) after the expiration of 4 years from the date of the approval of the subsection (b)(1) application if it contains a certification of patent invalidity or noninfringement described in clause (iv) of subsection (n)(1)(G). The approval of such an application shall be made effective in accordance with subparagraph (B) except that, if an action for patent infringement is commenced during the one-year period beginning forty-eight months after the date of the approval of the subsection (b) application, the 30 month period referred to in subparagraph (C)(iii) shall be extended by such amount of time (if any) which is required for seven and one-half years to have elapsed from the date of approval of the subsection (b) application.

"(ii) If an application submitted under subsection (b)(1) for a drug, which includes an active ingredient (including any ester or salt of the active ingredient) that has been approved in another application approved under such subsection, is approved after the date of enactment of this paragraph and if such application contains reports of new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food producing animals, human food safety studies (other than bioequivalence or residue studies) essential to the approval of the application and conducted or sponsored by the applicant, the Secretary may not make the approval of an application submitted under subsection (b)(2) for the conditions of approval of such drug in the subsection (b)(1) application effective before the expiration of 3 years from the date of the approval of the application under subsection (b)(1) for such drug.

"(iii) If a supplement to an application approved under subsection (b)(1) is approved after the date of enactment of this paragraph and the supplement contains reports of new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food producing animals, human food safety studies (other than bioequivalence or residue studies) essential to the approval of the supplement and conducted or sponsored by the person submitting the supplement, the Secretary may not make the approval of an application submitted under subsection (b)(2) for a change approved in the supplement effective before the expiration of 3 years from the date of the approval of the supplement.

"(iv) An applicant under subsection (b)(1) who comes within the provisions of clause (i) of this subparagraph as a result of an application which seeks approval for a use solely in non-food producing animals, may elect, within 10 days of receiving such approval, to waive clause (i) of this subparagraph, in which event the limitation on approval of applications submitted under subsection (b)(2) set forth in clause (ii) of this subparagraph shall be applicable to the subsection (b)(1) application.

"(v) If an application (including any supplement to a new animal drug application) submitted under subsection (b)(1) for a new animal drug for a food-producing animal use, which includes an active ingredient (including any ester or salt of the active ingredient) which has been the subject of a waiver under subparagraph (B)(iv) is approved after the date of enactment of this paragraph, and if the application contains reports of clinical or field investigations or human food safety studies (other than bioequivalence or residue studies) essential to the new approval of the application and conducted or sponsored by the applicant, the Secretary may not make the approval of an application (including any supplement to such application) submitted under subsection (b)(2) for the new conditions of approval of such drug in the subsection (b)(1) application effective before the expiration of five years from the date of approval of the application under subsection (b)(1) for such drug. The provisions of this paragraph shall apply only to the first approval for a food-producing animal use for the same applicant after the waiver under subparagraph (B)(iv).

"(G) If an approved application submitted under subsection (b)(2) for a new animal drug refers to a drug the approval of which was withdrawn or suspended for grounds described in paragraph (1) or (2) of subsection (e) or was withdrawn or suspended under this subparagraph or which, as determined by the Secretary, has been withdrawn from sale for safety or effectiveness reasons, the approval of the drug under this paragraph shall be withdrawn or suspended—

"(i) for the same period as the withdrawal or suspension under subsection (e) or this subparagraph, or

"(ii) if the approved new animal drug has been withdrawn from sale, for the period of withdrawal from sale or, if earlier, the period ending on the date the Secretary determines that the withdrawal from sale is not for safety or effectiveness reasons.

"(H) For purposes of this paragraph:

"(i) The term 'bioequivalence' means the rate and extent to which the active ingredient or therapeutic ingredient is absorbed from a new animal drug and becomes available at the site of drug action.

"(ii) A new animal drug shall be considered to be bioequivalent to the approved new animal drug referred to in its application under subsection (n) if—

"(I) the rate and extent of absorption of the drug do not show a significant difference from the rate and extent of absorption of the approved new animal drug referred to in the application when administered at the same dose of the active ingredient under similar experimental conditions in either a single dose or multiple doses;

"(II) the extent of absorption of the drug does not show a significant difference from the extent of absorption of the approved new animal drug referred to in the application when administered at the same dose of the active ingredient under similar experimental conditions in either a single dose or multiple doses and the difference from the approved new animal drug in the rate of absorption of the drug is intentional, is reflected in its proposed labeling, is not essential to the attainment of effective drug concentrations in use, and is considered scientifically insignificant for the drug in attaining the intended purposes of its use and preserving human food safety; or

"(III) in any case in which the Secretary determines that the measurement of the rate and extent of absorption or excretion of the new animal drug in biological fluids is inappropriate or impractical, an appropriate acute pharmacological effects test or other test of the new animal drug and, when deemed scientifically necessary, of the approved new animal drug referred to in the application in the species to be tested or in an appropriate animal model does not show a significant difference between the new animal drug and such approved new animal drug when administered at the same dose under similar experimental conditions.

If the approved new animal drug referred to in the application for a new animal drug under subsection (n) is approved for use in more than one animal species, the bioequivalency information described in subclauses (I), (II), and (III) shall be obtained for one species, or if the Secretary deems appropriate based on scientific principles, shall be obtained for more than one species. The Secretary may prescribe the dose to be used in determining bioequivalency under subclause (I), (II), or (III). To assure that the residues of the new animal drug will be consistent with the established tolerances for the approved new animal drug referred to in the application under subsection (b)(2) upon the expiration of the withdrawal period contained in the application for the new animal drug, the Secretary shall require bioequivalency data or residue depletion studies of the new animal drug or such other data or studies as the Secretary considers appropriate based on scientific principles. If the Secretary requires one or more residue studies under the preceding sentence, the Secretary may not require that the assay methodology used to determine the withdrawal period of the new animal drug be more rigorous than the methodology used to determine the withdrawal period for the approved new animal drug referred to in the application. If such studies are required and if the approved new animal drug, referred to in the application for the new animal drug for which such studies are required, is approved for use in more than one animal species, such studies shall be conducted for one species, or if the Secretary deems appropriate based on scientific principles, shall be conducted for more than one species.".

SEC. 602. PATENT INFORMATION.

(a) SECTION 512(b).— Section 512(b)(1) of such Act is amended by adding at the end the following: "The applicant shall file with the application the patent number and the expiration date of any patent which claims the new animal drug for which the applicant filed the application or which claims a method of using such drug and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug. If an application is filed under this subsection for a drug and a patent which claims such drug or a method of using such drug is issued after the filing date but before approval of the application, the applicant shall amend the application to include the information required by the preceding sentence. Upon approval of the application, the Secretary shall publish information submitted under the two preceding sentences.".

(b) OTHER SECTIONS.—

(1) Section 512(c) is amended by adding at the end the following:

"(3) If the patent information described in subsection (b)(1) could not be filed with the submission of an application under subsection (b)(1) because the application was filed before the patent information was required under subsection (b)(1) or a patent was issued after the application was approved under such subsection, the holder of an approved application shall file with the Secretary the patent number and the expiration date of any patent which claims the new animal drug for which the application was filed or which claims a method of using such drug and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug. If the holder of an approved application could not file patent information under subsection (b)(1) because it was not required at the time the application was approved, the holder shall file such information under this subsection not later than 30 days after the date of the enactment of this sentence, and if the holder of an approved application could not file patent information under subsection (b)(1) because no patent had been issued when an application was filed or approved, the holder shall file such information under this subsection not later than 30 days after the date the patent involved is issued. Upon the submission of patent information under this subsection, the Secretary shall publish it.".

(2) The first sentence of section 512(d)(1) is amended by redesignating subparagraphs (G) and (H) as subparagraphs (H) and (I), respectively and by inserting after subparagraph (F) the following:

"(G) the application failed to contain the patent information prescribed by subsection (b)(1);".

(3) The second sentence of section 512(d)(1) is amended by striking out "(H)" and inserting in lieu thereof "(G)".

(4) The first sentence of section 512(e)(1) is amended by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively, and by inserting after subparagraph (C) the following:

"(D) the patent information prescribed by subsection (c)(3) was not filed within 30 days after the receipt of written notice from the Secretary specifying the failure to file such information;".

SEC. 603. REGULATIONS.

(a) GENERAL RULE.—The Secretary of Health and Human Services shall promulgate, in accordance with the notice and comment requirements of section 553 of title 5, United States Code, such regulations as may be necessary for the administration of section 512 of the Federal Food, Drug, and Cosmetic Act, as amended by sections 601 through 603 of this title, within one year of the date of enactment of this Act.

(b) TRANSITION.—During the period beginning 60 days after the date of enactment of this Act and ending on the date regulations promulgated under subsection (a) take effect, abbreviated new animal drug applications may be submitted in accordance with the provisions of section 314.55 and part 320 of title 21 of the Code of Federal Regulations and shall be considered as suitable for any drug which has been approved for safety and effectiveness under section 512(c) of the Federal Food, Drug, and Cosmetic Act before the date of enactment of this Act. If any such provision of section 314.55 or part 320 is inconsistent with the requirements of section 512 of the Federal Food, Drug, and Cosmetic Act (as amended by this title), the Secretary shall consider the application under the applicable requirements of section 512 (as so amended).

SEC. 604. SAFETY AND EFFECTIVENESS DATA.

Section 512 (as amended by section 601(b) of this title) is amended by adding at the end the following:

"(p)(1) Safety and effectiveness data and information which has been submitted in an application filed under subsection (b)(1) for a drug and which has not previously been disclosed to the public shall be made available to the public, upon request, unless extraordinary circumstances are shown—

"(A) if no work is being or will be undertaken to have the application approved,

"(B) if the Secretary has determined that the application is not approvable and all legal appeals have been exhausted,

"(C) if approval of the application under subsection (c) is withdrawn and all legal appeals have been exhausted,

"(D) if the Secretary has determined that such drug is not a new drug, or

"(E) upon the effective date of the approval of the first application filed under subsection (b)(2) which refers to such drug or upon the date upon which the approval of an application filed under subsection (b)(2) which refers to such drug could be made effective if such an application had been filed.

"(2) Any request for data and information pursuant to paragraph (1) shall include a verified statement by the person making the request that any data or information received under such paragraph shall not be disclosed by such person to any other person—

"(A) for the purpose of, or as part of a plan, scheme, or device for, obtaining the right to make, use, or market, or making, using, or marketing, outside the United States, the drug identified in the application filed under subsection (b)(1), and

"(B) without obtaining from any person to whom the data and information are disclosed an identical verified statement, a copy of which is to be provided by such person to the Secretary, which meets the requirements of this paragraph.".

SEC. 605. VETERINARY PRESCRIPTION DRUGS.

Section 503 (21 U.S.C. 353) is amended by adding at the end thereof the following new subsection:

"(c)(1)(A) A drug intended for use by animals other than man which—

"(i) because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary for its use, is not safe for animal use except under the professional supervision of a licensed veterinarian, or

"(ii) is limited by an approved application under subsection (b) of section 512 to use under the professional supervision of a licensed veterinarian,

shall be dispensed only by or upon the lawful written or oral order of a licensed veterinarian in the course of the veterinarian's professional practice.

"(B) For purposes of subparagraph (A), an order is lawful if the order—

"(i) is a prescription or other order authorized by law,

"(ii) is, if an oral order, promptly reduced to writing by the person lawfully filling the order, and filed by that person, and

"(iii) is refilled only if authorized in the original order or in a subsequent oral order promptly reduced to writing by the person lawfully filling the order, and filed by that person.

"(C) The act of dispensing a drug contrary to the provisions of this paragraph shall be deemed to be an act which results in the drug being misbranded while held for sale.

"(2) Any drug when dispensed in accordance with paragraph (1) of this subsection—

"(A) shall be exempt from the requirements of section 502, except subsections (a), (g), (h), (i)(2), (i)(3), and (p) of such section, and

"(B) shall be exempt from the packaging requirements of subsections (g), (h), and (p) of such section, if—

"(i) when dispensed by a licensed veterinarian, the drug bears a label containing the name and address of the practitioner and any directions for use and cautionary statements specified by the practitioner, or

"(ii) when dispensed by filling the lawful order of a licensed veterinarian, the drug bears a label containing the name and address of the dispenser, the serial number and date of the order or of its filling, the name of the licensed veterinarian, and the directions for use and cautionary statements, if any, contained in such order.

The preceding sentence shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail.

"(3) The Secretary may by regulation exempt drugs for animals other than man subject to section 512 from the requirements of paragraph (1) when such requirements are not necessary for the protection of the public health.

"(4) A drug which is subject to paragraph (1) shall be deemed to be misbranded if at any time prior to dispensing its label fails to bear the statement 'Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian.'. A drug to which paragraph (1) does not apply shall be deemed to be misbranded if at any time prior to dispensing its label bears the statement specified in the preceding sentence.".

SEC. 606. DRUGS PRIMARILY MANUFACTURED USING BIOTECHNOLOGY.

Notwithstanding section 512(b)(2) of the Federal Food, Drug, and Cosmetic Act, the Secretary of Health and Human Services may not approve an abbreviated application submitted under such section for a new animal drug which is primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes involving site specific genetic manipulation techniques.

SEC. 607. CONFORMING AMENDMENTS.

(a) BATCH CERTIFICATION.—

(1) Section 201(w) (21 U.S.C. 321(w)) is amended by striking out "; or" at the end of paragraph (2) and inserting in lieu thereof a period and by striking out paragraph (3).

(2) Section 512(a)(1) (21 U.S.C. 360b(a)(1)) is amended by inserting "and" at the end of subparagraph (A), by striking out ", and" at the end of subparagraph (B) and inserting in lieu thereof a period, and by striking out subparagraph (C).

(b) TITLE 28.—Section 2201(b) of title 28, United States Code, is amended by inserting "or 512" after "505".

SEC. 608. EFFECTIVE DATE.

The Secretary of Health and Human Services may not make an approval of an application submitted under section 512(b)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(b)(2)) effective before January 1, 1991.

Subtitle B—Patent Terms

SEC. 611. EXTENSION OF PATENT TERM.

(a) SECTION 156(a)(5).—Section 156(a)(5) is amended—

(1) by inserting "or (C)" after "subparagraph (B)" in subparagraph (A),

(2) by striking out "or" at the end of subparagraph (A), and

(3) by striking out the period at the end of subparagraph (B) and inserting "; or" and the following:

"(C) for purposes of subparagraph (A), in the case of a patent which—

"(i) claims a new animal drug or a veterinary biological product which (I) is not covered by the claims in any other patent which has been extended, and (II) has received permission for the commercial marketing or use in non-food-producing animals and in food-producing animals, and

"(ii) was not extended on the basis of the regulatory review period for use in non-food-producing animals,

the permission for the commercial marketing or use of the drug or product after the regulatory review period for use in food-producing animals is the first permitted commercial marketing or use of the drug or product for administration to a food-producing animal.".

(b) SECTION 156(b).—Section 156(b) is amended to read as follows:

"(b) The rights derived from any patent the term of which is extended under this section shall during the period during which the term of the patent is extended—

"(1) in the case of a patent which claims a product, be limited to any use approved for the product—

"(A) before the expiration of the term of the patent—

"(i) under the provision of law under which the applicable regulatory review occurred, or

"(ii) under the provision of law under which any regulatory review described in paragraph (1), (4), or (5) of subsection (g) occurred, and

"(B) on or after the expiration of the regulatory review period upon which the extension of the patent was based;

"(2) in the case of a patent which claims a method of using a product, be limited to any use claimed by the patent and approved for the product—

"(A) before the expiration of the term of the patent—

"(i) under any provision of law under which an applicable regulatory review occurred, and

"(ii) under the provision of law under which any regulatory review described in paragraph (1), (4), or (5) of subsection (g) occurred, and

"(B) on or after the expiration of the regulatory review period upon which the extension of the patent was based; and

"(3) in the case of a patent which claims a method of manufacturing a product, be limited to the method of manufacturing as used to make—

"(A) the approved product, or

"(B) the product if it has been subject to a regulatory review period described in paragraphs (1), (4), or (5) of subsection (g).

As used in this subsection, the term 'product' includes an approved product.".

(c) SECTION 156(c)(2).—Section 156(c)(2) is amended by striking out "and (3)(B)(i)" and inserting in lieu thereof "(3)(B)(i), (4)(B)(i), and (5)(B)(i)".

(d) SECTION 156(d)(1)(C).—Section 156(d)(1)(C) is amended by inserting "or the Secretary of Agriculture" after "Services".

(e) SECTION 156(d)(2)(A).—Section 156(d)(2)(A) is amended to read as follows:

"(2)(A) Within 60 days of the submittal of an application for extension of the term of a patent under paragraph (1), the Commissioner shall notify—

"(i) the Secretary of Agriculture if the patent claims a drug product or a method of using or manufacturing a drug product and the drug product is subject to the Virus-Serum-Toxin Act, and

"(ii) the Secretary of Health and Human Services if the patent claims any other drug product, a medical device, or a food additive or color additive or a method of using or manufacturing such a product, device, or additive and if the product, device, and additive are subject to the Federal Food, Drug, and Cosmetic Act,

of the extension application and shall submit to the Secretary who is so notified a copy of the application. Not later than 30 days after the receipt of an application from the Commissioner, the Secretary receiving the application shall review the dates contained in the application pursuant to paragraph (1)(C) and determine the applicable regulatory review period, shall notify the Commissioner of the determination, and shall publish in the Federal Register a notice of such determination.".

(f) SECTION 156(d)(2)(B).—Section 156(d)(2)(B) is amended to read as follows:

"(B)(i) If a petition is submitted to the Secretary making the determination under subparagraph (A), not later than 180 days after the publication of the determination under subparagraph (A), upon which it may reasonably be determined that the applicant did not act with due diligence during the applicable regulatory review period, the Secretary making the determination shall, in accordance with regulations promulgated by such Secretary, determine if the applicant acted with due diligence during the applicable regulatory review period. The Secretary making the determination shall make such determination not later than 90 days after the receipt of such a petition. For a drug product, device, or additive subject to the Federal Food, Drug, and Cosmetic Act or the Public Health Service Act, the Secretary may not delegate the authority to make the determination prescribed by this clause to an office below the Office of the Commissioner of Food and Drugs. For a product subject to the Virus-Serum-Toxin Act, the Secretary of Agriculture may not delegate the authority to make the determination prescribed by this clause to an office below the office of the Assistant Secretary for Marketing and Inspection Services.

"(ii) The Secretary making a determination under clause (i) shall notify the Commissioner of the determination and shall publish in the Federal Register a notice of such determination together with the factual and legal basis for such determination. Any interested person may request, within the 60-day period beginning on the publication of a determination, the Secretary making the determination to hold an informal hearing on the determination. If such a request is made within such period, such Secretary shall hold such hearing not later than 30 days after the date of the request, or at the request of the person making the request, not later than 60 days after such date. The Secretary who is holding the hearing shall provide notice of the hearing to the owner of the patent involved and to any interested person and provide the owner and any interested person an opportunity to participate in the hearing. Within 30 days after the completion of the hearing, such Secretary shall affirm or revise the determination which was the subject of the hearing and shall notify the Commissioner of any revision of the determination and shall publish any such revision in the Federal Register.".

(g) SECTION 156(f).—Section 156(f) is amended—

(1) by striking out "human" in paragraph (1)(A) and by amending paragraph (2) to read as follows:

"(2) The term 'drug product' means the active ingredient of—

"(A) a new drug, antibiotic drug, or human biological product (as those terms are used in the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act), or

"(B) a new animal drug or veterinary biological product (as those terms are used in the Federal Food, Drug, and Cosmetic Act and the Virus-Serum-Toxin Act) which is not primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes involving site specific genetic manipulation techniques,

including any salt or ester of the active ingredient, as a single entity or in combination with another active ingredient.",

(2) by amending subparagraphs (B) and (C) of paragraph (4) to read as follows:

"(B) Any reference to section 503, 505, 507, 512, or 515 is a reference to section 503, 505, 507, 512, or 515 of the Federal Food, Drug, and Cosmetic Act.

"(C) Any reference to the Virus-Serum-Toxin Act is a reference to the Act of March 4, 1913 (21 U.S.C. 151-158).", and

(3) by adding at the end the following:

"(7) The term 'date of enactment' as used in this section means September 24, 1984, for a human drug product, a medical device, food additive, or color additive.

"(8) The term 'date of enactment' as used in this section means the date of enactment of the Generic Animal Drug and Patent Term Restoration Act for an animal drug or a veterinary biological product.".

(h) SECTION 156(g).—

(1) Paragraph (1) of section 156(g) is amended—

(A) in subparagraph (A), by striking out "human drug product" and inserting in lieu thereof "new drug, antibiotic drug, or human biological product",

(B) in subparagraph (B)—

(i) by striking out "human drug product" in the matter before clause (i) and inserting in lieu thereof "new drug, antibiotic drug, or human biological product", and

(ii) by striking out "human drug product" in clauses (i) and (ii) and inserting in lieu thereof "product".

(2) Paragraph (1)(A) of section 156(g) is amended by striking out "paragraph (4)" and inserting in lieu thereof "paragraph (6)".

(3) Paragraphs (2)(A) and (3)(A) are each amended by striking out "paragraph (4)" and inserting in lieu thereof "paragraph (6)".

(4) Section 156(g) is amended by redesignating paragraph (4) as paragraph (6) and by inserting after paragraph (3) the following:

"(4)(A) In the case of a product which is a new animal drug, the term means the period described in subparagraph (B) to which the limitation described in paragraph (6) applies.

"(B) The regulatory review period for a new animal drug product is the sum of—

"(i) the period beginning on the earlier of the date a major health or environmental effects test on the drug was initiated or the date an exemption under subsection (j) of section 512 became effective for the approved new animal drug product and ending on the date an application was initially submitted for such animal drug product under section 512, and

"(ii) the period beginning on the date the application was initially submitted for the approved animal drug product under subsection (b) of section 512 and ending on the date such application was approved under such section.

"(5)(A) In the case of a product which is a veterinary biological product, the term means the period described in subparagraph (B) to which the limitation described in paragraph (6) applies.

"(B) The regulatory period for a veterinary biological product is the sum of—

"(i) the period beginning on the date the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act became effective and ending on the date an application for a license was submitted under the Virus-Serum-Toxin Act, and

"(ii) the period beginning on the date an application for a license was initially submitted for approval under the Virus-Serum-Toxin Act and ending on the date such license was issued.".

(5) Paragraph (6) (as so redesignated) of section 156(g) is amended—

(A) by striking out "paragraph (1)(B) was submitted" in subparagraph (B)(i) and inserting in lieu thereof "paragraph (1)(B) or (4)(B) was submitted and no request for the authority described in paragraph (5)(B) was submitted",

(B) by striking out "paragraph (2)" in subparagraph (B)(ii) and inserting in lieu thereof "paragraph (2)(B) or (4)(B)", and

(C) in subparagraph (C), by inserting before the period the following: "or in the case of an approved product which is a new animal drug or veterinary biological product (as those terms are used in the Federal Food, Drug, and Cosmetic Act or the Virus-Serum-Toxin Act), three years".

(i) SECTION 271(e).—

(1) Section 271(e)(1) is amended—

(A) by inserting before the last close parenthesis the following: "which is primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes involving site specific genetic manipulation techniques", and

(B) by inserting before the period the following: "or veterinary biological products".

(2) Section 271(e)(2) is amended to read as follows:

"(2) It shall be an act of infringement to submit—

"(A) an application under section 505(j) of the Federal Food, Drug, and Cosmetic Act or described in section 505(b)(2) of such Act for a drug claimed in a patent or the use of which is claimed in a patent, or

"(B) an application under section 512 of such Act or under the Act of March 4, 1913 (21 U.S.C. 151-158) for a drug or veterinary biological product which is not primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes involving site specific genetic manipulation techniques and which is claimed in a patent or the use of which is claimed in a patent,

if the purpose of such submission is to obtain approval under such Act to engage in the commercial manufacture, use, or sale of a drug or veterinary biological product claimed in a patent or the use of which is claimed in a patent before the expiration of such patent.".

(3) Section 271(e)(4) is amended by inserting "or veterinary biological product" after "drug" each place it occurs.

The SPEAKER pro tempore. Is a second demanded?

Mr. MADIGAN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. Waxman] will be recognized for 20 minutes and the gentleman from Illinois [Mr. Madigan] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. Waxman].

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 2843, the Senate bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill before us, S. 2843, the Generic Animal, Drug, and Patent Restoration Act, is identical to H.R. 4982, which passed the House last week on the Suspension Calendar by voice vote.

The bill is supported by all the major interest groups that have worked on the bill, brand and generic animal drug companies, biotechnology companies, farmers, veterinarians, and a wide variety of companion animal organizations.

In 1984, when Congress considered and passed the generic human drug bill, the Drug Price Competition and Patent Term Restoration Act, we discussed whether a similar provision was appropriate in the animal drug area. The Food and Drug Administration told us that it was. Unfortunately, due to the complexities of the human drug bill, we did not include animal drugs. S. 2843 picks up where the 98th Congress left off.

S. 2843 has two major provisions. First, the bill creates an expedited approval system for generic copies of post-1962 brand name animal drugs. Second, the bill provides for the extension of the 17-year patents covering animal drugs. Up to 5 years of the time lost due to Government review could be added back to the patent, so that brand name animal drug companies would be assured of additional market time to recoup their investments.

S. 2843 has one rather unusual provision. The bill excludes biotechnology-derived animal drugs from all parts of the bill. These animal drugs would not be eligible for copying by generic animal drug companies under title I and their patents would not be eligible for extension under title II.

This exclusion was requested by the biotechnology industry so that they could present their concerns about the inadequacy of their patents to the Judiciary Committees. They believe that the patents available to biotechnology-derived drugs do not provide the same kind of market protection as is available to traditional, chemically derived drugs.

The biotechnology industry has assured me that their sole reason in seeking this exemption is to have a period of time to make their concerns known to the Congress. I believe this is an appropriate way to proceed.

I want to pay special tribute to the gentleman from Iowa [Mr. Tauke]. Not only was he the lead author of this legislation, but he also was responsible for working out the compromises that made this important bill possible. He understood the need in the farm community for this legislation and made sure that the bill balances the need for cheaper animal drugs with the need for greater incentives to produce new and better animal drugs. All interested parties—from drug companies to veterinarians to farmers to pet owners—owe Mr. Tauke their appreciation for his outstanding work.

I would urge adoption of this legislation. I think it is a worthwhile piece of legislation, following very closely the way we treat human drugs in terms of extending the patents for time lost at the Food and Drug Administration and making sure that generics, which are a lot cheaper, are available to the consumer.

Mr. MADIGAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of this bill. This legislation is designed to hasten the FDA approval process for generic animal drugs while at the same time providing incentives for pioneer manufacturers to continue new drug research and development.

This bill reflects the very fine work of a very important and competent Member, Mr. Tauke, of the Energy and Commerce Committee who sponsored this legislation in the House. And the Senator from Utah, Mr. Hatch, who sponsored the bill in the Senate.

I urge my colleagues to join me in supporting this bill.

Mr. WAXMAN. Mr. Speaker, I am pleased to yield such time as he may consume to the gentleman from Wisconsin [Mr. Kastenmeier], the chairman of the Subcommittee of the Committee on the Judiciary that has jurisdiction over patents.

Mr. KASTENMEIER. Mr. Speaker, I thank the gentleman from California for yielding this time to me.

I understand that the bill as we are considering here this afternoon, as the gentleman from Illinois has suggested, is identical virtually with the bill that the House just passed a few days ago and which at least in that respect the other body, I think, has done a good job in terms of ratifying the House work on the bill.

I echo the comments of the gentleman from Illinois to the extent that the gentleman from Iowa [Mr. Tauke] was the lead sponsor.

Both the gentleman from California [Mr. Waxman] and I were also original sponsors of the bill.

The bill did go before my committee. We did make certain amendments in the bill designed to meet certain objections, which when presented on the floor I think successfully met whatever objections may have remained.

The public does benefit from the bill in two particular ways; first, the availability of generic animal drugs for farmers, pet owners and very substantial other community consumers.

Second, research and development and the resulting innovation for animal drugs will be facilitated by the patent term extension portions of the bill, and the reality of the balance of these interests is demonstrated by the broad support the bill has generated.

I am pleased the bill has come back. I join the gentleman from Illinois in rueing the fact that the gentleman from Iowa and the work of the House is not reflected in the bill number, but nonetheless, I think in terms of what we achieve here for the public, it is a price that we ought to be willing to pay.

Mr. MADIGAN. Mr. Speaker, I yield back the balance of my time.

Mr. WAXMAN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. Waxman] that the House suspend the rules and pass the Senate bill, S. 2843.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

AUTHORIZING THE CLERK TO MAKE A CORRECTION IN ENGROSSMENT OF H.R. 5462, UNITED STATES-MEXICO BORDER REGION HOUSING AND COMMUNITY DEVELOPMENT ACT

Mr. GONZALEZ. Mr. Speaker, I ask unanimous consent that in the enrollment of the bill, H.R. 5462, the United States-Mexico Border Region Housing and Community Development Act, the Clerk be authorized to correct a drafting error in the bill which was approved by the House this morning. Section 2(c) of the bill should be corrected to read as follows:

> (c) Distribution of Assistance.—Assistance shall be made available pursuant to this section in accordance with a distribution plan that gives priority to colonias having the greatest need for assistance.

The SPEAKER pro tempore (Mr. Kastenmeier). Is there objection to the request of the gentleman from Texas?

There was no objection.

RECOGNITION OF MEMBER FOR SPECIAL ORDER

Mr. BEREUTER. Mr. Speaker, I ask unanimous consent that I might be recognized at this time for the 60-minute special order I had previously reserved.

The SPEAKER pro tempore (Mr. Gonzalez). Is there objection to the request of the gentleman from Nebraska?

There was no objection.

GENERAL LEAVE

Mr. BEREUTER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of my special order this afternoon in tribute to the Honorable Harold J. Daub, Jr.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nebraska?

There was no objection.

A TRIBUTE TO HON. HAROLD J. DAUB, JR.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Nebraska [Mr. Bereuter] is recognized for 60 minutes.

Mr. BEREUTER. Mr. Speaker, it is my pleasure to schedule this special order today to honor my very good friend and distinguished colleague from the 2d District of Nebraska, Harold J. Daub, Jr., better known to all of us as Hal Daub.

Calling for a special order for a departing colleague from one's home State delegation has become perhaps de rigueur in this Chamber, but I have asked for time this evening to recognize the accomplishments of my Cornhusker State congressional neighbor not so much from a sense of tradition as from a long-time acquaintanceship and friendship for Hal and out of great respect for his work in the House and in representing his constitutents.

There are many reasons why we as representatives choose to run or to serve in Congress. For Hal, it was a long-time and unflagging desire to serve the constituents of the Second District of Nebraska. Not only have Hal's constituents been extraordinarily and energetically well served, all Nebraskans and a great number of Americans everywhere have benefitted from Hal's service in Washington.

REPRESENTATIVE DAUB AND NEBRASKANS

Of the hundreds of Nebraskans who visit Washington each year, there was never an individual who Hal was too busy to see, nor apparently was there an issue in which Hal was uninterested. The concerns of someone from the panhandle of Nebraska always appeared to be just as important to Hal as those of his own constituents from Omaha and the Second District.

Be they farmers, ranchers, small businessmen, the elderly, high school students, whatever the group or the cause, they were welcomed by Hal to visit with him. And once Hal was persuaded about their issue or cause, they had a loyal, vocal, and tenacious ally in Congress in the person of our distinguished colleague from Nebraska, Representative Hal Daub.

While my friendship and working relationship with Hal extends over the 8 years we have served together in Congress, my wife Louise knew Hal and she went to grade school, junior and senior school with him. They graduated together from Omaha's Benson High School in 1959 and they were friends who lived about two city blocks apart.

After graduating valedictorian from his high school class, Hal went on to distinguish himself as a student at Washington University in St. Louis where he also graduated with honors. Later, he graduated from the University of Nebraska Law School in Lincoln.

After completing his college education, Hal enrolled in the army where he rose to the rank of captain in the U.S. Infantry.

During his tour of duty in Korea, our colleague met his lovely wife Cindy who has been an eager, energetic and politically knowledgeable and able partner for over 20 years. Side-by-side, they have worked together in raising three terrific children, Natalie, John, and Tammy building their careers, and serving Nebraskans in Washington.

After completing his active duty service in the U.S. Army, Hal and Cindy returned to Omaha where he joined a prestigious law firm. Later he became the general counsel to the Standard Chemical Manufacturing Co. in Omaha where he pursued a business career until his election to Congress.

REPRESENTATIVE DAUB'S PUBLIC SERVICE

While Hal and Cindy Daub worked hard to build a career and raise their family, they were also contributing hours of work to civic, charitable and political causes. Hal's sense of public duty has guided not only his career, but also his life and his principles.

Although Hal Daub was elected to Congress in 1980, that was certainly not the beginning of his public service career. Back home in Nebraska, Hal was an activist in political, charitable, and civic organizations.

His neighbors in Omaha could readily find him at the local VFW or American Legion Post or at the optimist Club or at the Reserve Officers Association. If they couldn't find him at any of those places, they could check at the Nebraska Heart Association or at the United Way headquarters or at his Masonic lodge.

If that didn't work, sooner or later they could always find Hal at Republican Party headquarters. Hal began his career in politics as a precinct worker, rose to the chairmanship of the Douglas County Republican Party in Omaha, and served on the State Central Committee as well as the National Congressional Advisory Council.

REPRESENATATIVE DAUB GOES TO WASHINGTON

In 1980, Hal Daub won election to the House. On his arrival in Washington, Hal quickly applied his unlimited energy and dynamic leadership skills to the legislative process. In 1981, he was reported to be the first member of his freshman class to see a bill he authored passed into law.

During his first two terms in the 97th and the 98th Congresses, Hal served on a number of key committees including Public Works and Transportation, Government Operations, Small Business, and the Select Committee on Aging.

Hal's goal, however, was to serve on the Ways and Means Committee, and it is a tribute to his legislative work and his political skills in the House among his colleagues that he was named to a seat on that very influential committee.

A biography of Hal that is contained in "Politics in America for the 100th Congress" states that "Daub pursues his goals with the persistence and aggressiveness of a salesman who has completed a course in positive thinking." It was his record, recognized expertise in tax matters, persistence, and organizational skills that landed him a seat on the Ways and Means Committee.

I believe it is no exaggeration to say that all of HAL's colleagues who know him recognize HAL for his thorough preparation, his honesty and straightforwardness. I think it is a compliment to my colleague from Nebraska, and certainly fair to say, that he effectively, intensely, and passionately pursued objectives he felt were vitally important to his constitutents, to Nebraska and to America.

One of the many reasons that I take pride in representing Nebraska is the concern that Nebraskans have for one another. In Congress, and on the Ways and Means Committee, HAL has provided an invaluable service to many of my constituents, including those involved in farming, ranching, and small businesses in the First and Third Congressional Districts as well.

LEGISLATIVE ACCOMPLISHMENTS

While HAL has an impressive list of legislative accomplishments, I will mention just a few examples of efforts that have been important to the constituents in my district and certainly to taxpayers throughout the country.

For instance, when it was discovered that a provision in the 1984 Deficit Reduction Act would require farmers and ranchers to keep itemized records of where they drove their cars and trucks for tax purposes, HAL worked hard to move legislation that repealed the contemporaneous recordkeeping provisions. This saved farmers hundreds of hours of paperwork.

In his first term, HAL was successful in getting a provision included in the Economic Recovery Act of 1981 that allowed an individual to deduct charitable contributions from his gross income even though the deductions may not have been itemized.

I especially want to recognize HAL DAUB's work on a number of agricultural provisions which were also included in the 1986 Tax Bill. HAL is one of the few tax specialists in the House who recognize that too often the tax code has encouraged nonfarmers to engage in farming only to shelter nonfarm income.

HAL was absolutely correct and totally candid in observing that the involvement of nonfarmers in agriculture for tax loss purposes contributed to surplus production and lower commodity prices making it more difficult for family farmers to make a living from their farms.

During the 1986 Tax Reform Bill, HAL worked to eliminate agricultural tax breaks that were primarily benefiting nonfarm investors, and he fought to maintain other deductions which strengthened and preserved family-owned and operated farm operations.

For instance, HAL fought to preserve the deduction for various soil and water conservation expenditures and eliminating deductions for tearing up and cultivating marginally productive land.

HAL also offered an amendment to the tax bill to allow self-employed individuals, and spouses and dependents to deduct up to 25 percent of the amounts paid for health insurance for a taxable year.

A particular problem facing many farmers in recent years was the discharge of indebtedness. HAL spearheaded an effort to include in the 1986 tax bill a provision that allowed certain farmers to exclude the discharge of indebtedness from the calculation of taxable income.

And, my Nebraska colleague, HAL DAUB, has fought to preserve various provisions relating to business energy credits.

These are only a few of HAL DAUB's achievements in the House, but they are indicative of HAL's understanding of the nuts and bolts of the tax code, and his recognition of the role he could play within the Ways and Means Committee, and the legislative process generally to solve people's problems.

CONSTITUENT SERVICE

HAL's work on behalf of Nebraskans was not confined to Washington. His District Office in Omaha is well known for its excellent and tenaciously effective constituent service in solving the problems which people had with the Federal Government. In that respect his staff accurately reflected HAL DAUB's personal priorities and commitments.

Be they problems relating to social security, the IRS, the Veterans' Administration, the INS, the Small Business Administration, the USDA, or other Federal agencies, no constituent problem was too small or large to be addressed.

Organizationally, HAL DAUB runs a tight ship in both Washington and Omaha, and his many loyal and dedicated staffers are to be commended for their years of work and service. They have been helpful to me and my staff and we have enjoyed working with them.

HAL'S CAMPAIGNS

HAL's hard work on behalf of his constituents has earned him an extraordinary number of friends and supporters and the respect of the people of his Congressional District. His constituents demonstrated that by returning him to Congress by record margins in his district, a district with a registration majority in the Democratic Party. In 1984, HAL received the highest reelection percentage that any candidate had received in that district in over 20 years. HAL has always had extremely well run and well organized campaigns, and since 1982 he has always won by comfortable margins.

One of the hallmarks of every HAL DAUB campaign was his inclusion of literally hundreds of people, young and old, in his campaign. HAL DAUB's "marching army of volunteers" earns the respect and envy of anyone who has ever been in a political campaign. HAL's first principle of campaigning was that they should be fun for the volunteers.

HAL's many friends and supporters all attest to the loyalty and the esprit de corps among the volunteers in any of HAL's congressional campaigns. They were always willing to go the extra mile and give every effort to ensure a victory. The loyal support of volunteers who work freely and give their time and effort is perhaps one of the higher compliments that any Congressman can receive.

HAL DAUB was also a matchmaker with his many volunteers. I am told that dozens of former staff and campaign volunteers met their spouses while working for HAL during campaigns.

CONCLUSION

As HAL leaves the House, he can certainly take pride in his solid record of legislative achievement; in the fact that he has ably served his district, his party, and his country; and in the fact that he and Cindy have won the appreciation and affection of Nebraska and its people.

More importantly, however, HAL leaves the House with his ideals, principles and integrity intact and his reputation as a solid contributing American citizen even further enhanced.

While HAL may be leaving this Congress, I am absolutely certain that he is not leaving public service behind him. HAL's commitment to this country and the people of Nebraska will continue to be a guiding light for our colleague in setting his future course.

In Congress, HAL DAUB has fought many legislative battles with a high degree of success. In politics, as in life in general, you win some and you lose some. Defeat, however, has never set HAL back, nor dimmed his resolve or commitment in Congress or the legislative process. With his indomitable nature, I'm sure he will always see any setbacks as being only temporary.

In every election night speech, HAL DAUB has quoted a statement once made by Teddy Roosevelt. It not only sums up HAL's spirit and his purpose for being involved in politics, it is also a compliment and a tribute to those who have opposed HAL in election campaigns. To quote Roosevelt, and HAL DAUB invariably did:

> Far better it is to dare mighty things, to win glorious triumphs, even though checkered by failure, than to take rank with those poor spirits who neither enjoy much nor suffer much, because they live in the gray twilight that knows not victory nor defeat.

HAL DAUB has known both victory and defeat and they have made him a stronger, more seasoned Member of Congress.

HAL, you have bestowed honor, credibility, and integrity upon this Congress and we will miss your presence in the House of Representatives. All of us in the House who have served with you, wish you and your wonderful wife and helpmate Cindy a prosperous, productive, and very pleasant future.

On a more personal note, as a member of a low-population State with the resultant small-State delegation in the House, the contacts and consultations between HAL DAUB and this Member were very numerous indeed. Delegations from low-population States with great geographic, social, and economic diversity, like the Cornhusker State, must work with an especial degree of cooperation and energy. In my personal and legislative relationships with my distinguished colleague from Omaha, I have always found that special level of cooperation, friendly candor, forthrightness, honesty, and personal concern. For those very special actions by and characteristics of my colleague, I am especially appreciative. Thank you, friend and colleague, U.S. Representative HAL DAUB, for being the kind of special person and friend that you are—and for making an extraordinarily important contribution to your State and Nation. This Member will miss you in the House, but I look forward to your continuing important contributions and to extending our friendship.

Mrs. SMITH of Nebraska. Mr. Speaker, today we commemorate the nearly 8 years of service in the House of Representatives of my coworker and colleague, Congressman HAROLD (HAL) JOHN DAUB, JR., of the Second Congressional District of Nebraska. He is leaving the House at the end of the present term.

Together with our other Member from Nebraska, Mr. DOUG BEREUTER, the three of us have worked effectively together on many issues for the benefit of the people of Nebraska.

Despite the disparity in voter registration in his district, HAL DAUB won bipartisan support in all four of the elections that sent him to Congress.

After election in 1980, Congressman HAL DAUB served on the Small Business Committee, Government Operations Committee, Public Works Committee, the Select Committee on Aging, and most recently on the Ways and Means Committee.

He was responsive to his constituents in representing the people of Omaha and the adjacent areas.

His persistence, hard work, and singleness of purpose served him well in his journey from birth in North Carolina, through years of growth and education in Nebraska, service as a captain in the Army, practice as a lawyer, as a business executive, and currently as a Member of the U.S. House of Representatives.

We will long remember his family, including his wife, Cindy, and three children, Natalie Ann, John Clifford, and Tammy Renee. Their love and devotion for HAL demonstrate his success as husband and father as well as public servant.

I know that I join thousands of others in expressing to HAL DAUB our best wishes and hopes for good fortune wherever circumstances may lead him.

Mr. CRANE. Mr. Speaker, it is with regret that we bid farewell to our friend and colleague, HAL DAUB, who is retiring from Congress in January.

In the span of but four terms in the U.S. House of Representatives, HAL DAUB proved he was an outstanding legislator. As a fellow member of the House Ways and Means Committee, I saw him in action. He quickly grasped a detailed knowledge of tax policy. Only recently, we observed him playing an important role on the Health Subcommittee in the debate over long-term medical care. He faithfully fought for the interests of his Nebraska constituents, striving for fairness in the Tax Code for farmers, as well as the middle class and those involved in small business.

The American farmer, as well as his Nebraska farm constituents, are indebted to HAL for the monumental efforts he put into the writing of the agricultural provisions included in the Tax Reform Act of 1986.

He has been continually cited for his record of holding down Federal spending. He has also received awards for his efforts on behalf of small business and minority business.

His service as an infantry officer in the Army is reflected in his stand for a strong defense. HAL DAUB knew from personal experience that a nation must be strong to protect the freedoms of its citizens.

It was an enlightening pleasure to have worked alongside HAL DAUB. It was good luck to have him as a friend. We wish him and his lovely wife, Cindy, all of the best as he leaves this House of Representatives.

Mr. WOLF. Mr. Speaker, I want to join with my colleagues today as we salute the gentleman from Nebraska, HAL DAUB, who is leaving at the end of the 100th Congress after serving the Second District of Nebraska since 1981.

HAL DAUB and I came to the House 8 years ago and as members of the same freshman class, we worked together during those first months in office at the start of the Reagan administration in support of programs to turn the Nation's economy around and get the country moving again.

I've always been impressed with HAL DAUB's persistence and hard work which have led to his legislative successes over the years and his gaining a seat in the 99th Congress on the Ways and Means Committee. He has been an advocate for the farm community in tax and trade legislation and an advocate for older Americans in long-term health care proposals.

His expertise as an attorney who has practiced immigration law was also evident during the debate in the 98th and 99th Congresses on reform of the Nation's immigration laws.

HAL DAUB is a talented legislator and has been an effective Member of Congress for 8 years and an able representative of the people of Nebraska's Second District. We wish him well as he pursues life outside of Congress and hope he will continue his public service work in some capacity in the future.

Mr. DONNELLY. Mr. Speaker, I want to thank the gentleman from Nebraska [Mr. BEREUTER] for taking time to schedule a special order for my good friend, HAL DAUB, who is leaving Congress at the end of this year.

I wanted to participate in today's special order, because HAL and I have worked very closely together on the Ways and Means Committee since 1985. As members of the Health Subcommittee, we've worked jointly on important issues like long-term care for the elderly; the Daub-Donnelly long-term care measure is the product of those efforts. HAL and I were the first members of the House to come out with a serious, budget neutral long-term care proposal last year.

On other issues within the jurisdiction of our committee. HAL and I have worked closely. One example is the tax treatment of life insurance company investments; another is the mortgage revenue bond program which help low- and middle-income individuals afford their first homes. HAL was an original sponsor, with me, of legislation to extend the mortgage revenue bond program—legislation which is now in conference with the Senate.

I would think that the people of Nebraska are going to miss HAL DAUB's dedication on senior citizen issues, housing issues, and so many other areas where he has committed himself on our committee. I know that I am going to miss his forceful voice on so many issues of importance.

Mr. Speaker, the one thing that I have always noticed about the Committee on Ways and Means is the bipartisan spirit in which we operate. As one Democrat who has worked closely with one of the respected Republican members of our committee, Mr. DAUD, let me say to HAL: I've enjoyed our years of service together, and I wish you well in the years ahead.

Mr. SCHULZE. Mr. Speaker, I rise to offer tribute to my colleague, HAL DAUB of Nebraska, who is leaving the Congress after 8 years. HAL has been a tremendous asset to this body. We are surely losing a key player in the work we do.

The persistence and tenacity of HAL DAUB to succeed started early on in his life. Since then, he has put together one achievement after another. For one, HAL is an Eagle Scout. In high school, he was senior class valedictorian, president of the student council and the drum major of his marching band. In law school at the University of Nebraska, HAL was voted most outstanding law student in the Nation in 1966. Admirably serving his country in the U.S. Army from 1966 to 1988, his natural leadership ability brought him to the rank of captain.

Back home in Nebraska after his military service, HAL quickly became a respected attorney and an exemplary member of his community, belonging to, among several other organizations, the American Legion, the VFW, the Sons of the American Revolution, and the

Urban League of Nebraska. He also served on the boards of Nebraska Heart Association, the United Way and the Combined Health Agency.

In local politics, Hal moved his way up from a precinct worker to the chairman of the Douglas County Republican Party, a member of the Nebraska Republican Party's State Central Committee and the National Congressional Advisory Council.

He accomplished all these things while starting a fine family with his lovely wife Cindy.

In Congress, it has been my privilege to serve with Hal in the House Ways and Means Committee. He has been an active, articulate and distinguished Member counted on to contribute thoughtful ideas and suggestions as to how the Ways and Means Committee can continue to improve the United States Tax Code. His special insights and expertise will certainly be missed.

Hal has accumulated a full plate of accomplishments during his life and during his time serving the U.S. Congress. I am certain he will continue to excell in private and public service. It has been a pleasure to work with Hal Daub and I wish Hal continued success in the future.

Mr. THOMAS of California. Mr. Speaker, as this Congress prepares to adjourn, I want to join many of our colleagues in offering our best wishes to a department Member, Nebraska's Hal Daub.

Hal's dedication and effort are going to be missed by many in the House, especially those who represent farm districts. His dedication to the farmers of Nebraska and his willingness to work with others produced some outstanding results. The Tax Reform Act of 1986 and the Miscellaneous Revenue Act of 1988 contain examples of his work on tax issues farmers wanted to resolve. Hal's intense, dedicated approach to legislation made him a force to be reckoned with on trade, health and the other complex issues that confront the Committee on Ways and Means.

Hal Daub's contributions as a Member of Congress have made his service here notable. Everyone talks about the ideal of representing the public with vigour and thoroughness throughout one's Congressional service. Hal Daub can honestly say he lived up to that ideal, and those of us who have worked with and relied upon him are going to miss his counsel.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 2840. An act to provide for the designation and conservation of certain lands in the States of Arizona and Idaho, and for other purposes.

CONFERENCE REPORT ON H.R. 4352

Mr. ST GERMAIN submitted the following conference report and statement on the bill (H.R. 4352) to amend the Stewart B. McKinney Homeless Assistance Act to extend programs providing urgently needed assistance for the homeless, and for other purposes:

Conference Report (H. Rept. 100-1089)

To committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4352) to amend the Stewart B. McKinney Homeless Assistance Act to extend programs providing urgently needed assistance for the homeless, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the "Stewart B. McKinney Homeless Assistance Amendments Act of 1988".

(b) Table of Contents.—

Sec. 1. Short title and table of contents.

TITLE I—GENERAL PROVISIONS

Sec. 101. Budget compliance.
Sec. 102. Annual program summary by Comptroller General.

TITLE II—INTERAGENCY COUNCIL ON THE HOMELESS

Sec. 201. Preparation of bimonthly bulletin.
Sec. 202. Provision of professional and technical assistance.
Sec. 203. Establishment of program timetables.
Sec. 204. Authorization of appropriations.
Sec. 205. Extension of Interagency Council.
Sec. 206. Encouragement of State involvement.

TITLE III—FEDERAL EMERGENCY MANAGEMENT FOOD AND SHELTER PROGRAM

Sec. 301. Report on emergency food and shelter grant program.
Sec. 302. Authorization of appropriations.

TITLE IV—HOUSING ASSISTANCE

Subtitle A—Comprehensive Homeless Assistance Plan

Sec. 401. Submission of comprehensive plan.
Sec. 402. Contents of comprehensive plan.
Sec. 403. Performance reviews.
Sec. 404. Coordination.

Subtitle B—Emergency Shelter Grants

Sec. 421. Distribution of assistance by States to private nonprofit organizations.
Sec. 422. Essential services.
Sec. 423. Homelessness prevention as an eligible activity.
Sec. 424. Required use of building as shelter.
Sec. 425. Authorization of appropriations.

Subtitle C—Supportive Housing

Sec. 441. Availability of operating and technical assistance for new structures.
Sec. 442. Project sponsor.
Sec. 443. Maximum period of residence in transitional housing.
Sec. 444. Definition of permanent housing.
Sec. 445. Use of advances to repay debt.
Sec. 446. Limit on grants.
Sec. 447. Eligible activities.
Sec. 448. Employment assistance.
Sec. 449. Limits on advances and grants.
Sec. 450. Site control.
Sec. 451. Flood plain restrictions.
Sec. 452. Matching requirement.
Sec. 453. Reports to Congress.
Sec. 454. Authorization of appropriations.
Sec. 455. Reallocations.

Subtitle D—Supplemental Assistance for Facilities To Assist the Homeless

Sec. 461. Use of assistance.
Sec. 462. Reservation of funds.
Sec. 463. Site control.
Sec. 464. Authorization of appropriations.

Subtitle E—Miscellaneous Provisions

Sec. 481. Section 8 assistance for single room occupancy dwellings.
Sec. 482. Administrative provisions.
Sec. 483. Report on effect of rent control on homelessness.
Sec. 484. Report on allocation formulas.
Sec. 485. Regulations.

TITLE V—IDENTIFICATION AND USE OF SURPLUS FEDERAL PROPERTY

Sec. 501. Identification and use of unutilized and underutilized public buildings and property.

TITLE VI—REVISION AND EXTENSION OF PROGRAMS OF HEALTH CARE FOR THE HOMELESS

Subtitle A—Categorical Grants for Primary Health Services and Substance Abuse Services

Sec. 601. Increase in required amount of matching funds and modification in eligibility for waiver with respect to matching funds.
Sec. 602. Establishment of authority for temporary continued provision of services to certain former homeless individuals.
Sec. 603. Clarification with respect to certain provisions.
Sec. 604. Authorization of appropriations.

Subtitle B—Block Grant for Community Mental Health Services

Sec. 611. Authorization of appropriations and contingent conversions to categorical program.
Sec. 612. Eligibility of territories.
Sec. 613. Technical and conforming amendments.

Subtitle C—Authorization of Appropriations for Community Demonstration Projects

Sec. 621. Mental health services for homeless individuals with chronic mental illness.
Sec. 622. Alcohol and drug abuse treatment of homeless individuals.

Subtitle D—General Provisions

Sec. 631. Effective dates.

TITLE VII—EDUCATION, TRAINING, AND COMMUNITY SERVICES PROGRAMS

Subtitle A—Homeless Assistance Programs

Sec. 701. Adult education for the homeless.
Sec. 702. Education for homeless children and youth.
Sec. 703. Job training for the homeless.
Sec. 704. Emergency community services homeless grant program.
Sec. 705. Technical amendments to Older Americans Act of 1965.

Subtitle B—Job Training and Partnership Act

Sec. 711. Short title.
Sec. 712. Incentive bonus entitlement for employable dependent individuals.
Sec. 713. Provisions for improving assistance to hard-to-serve individuals and welfare recipients.

Sec. 714. Conforming and miscellaneous amendments.

TITLE VIII—VETERANS PROGRAMS

Sec. 801. Medical programs.

TITLE IX—AID TO FAMILIES WITH DEPENDENT CHILDREN; UNEMPLOYMENT COMPENSATION

Sec. 901. Extension of prohibition against implementation of certain proposed regulations.
Sec. 902. Review of policy governing use of AFDC funds to meet emergency needs of families eligible for AFDC through emergency assistance or special needs payments; report to Congress.
Sec. 903. Demonstration projects to reduce number of homeless AFDC families in welfare hotels.
Sec. 904. Preventing fraud and abuse in housing and urban development programs.

TITLE X—HOUSING AND COMMUNITY DEVELOPMENT TECHNICAL AMENDMENTS

Subtitle A—Housing Assistance

Sec. 1001. Income eligibility for assisted housing.
Sec. 1002. Public housing child care grants.
Sec. 1003. Public housing resident management.
Sec. 1004. Prohibition of reduction of section 8 contract rents.
Sec. 1005. Project-based section 8 assistance.
Sec. 1006. Section 8 assistance for residents of rental rehabilitation projects.
Sec. 1007. Rental rehabilitation program.
Sec. 1008. Tweemill House.
Sec. 1009. Housing counseling.
Sec. 1010. Multifamily housing management and preservation.
Sec. 1011. Multifamily housing capital improvements assistance.
Sec. 1012. Use of funds recaptured from refinancing State finance projects.
Sec. 1013. Public housing lease and grievance procedures.
Sec. 1014. Exceptions to tenant preference provisions.

Subtitle B—Preservation of Low Income Housing

Sec. 1021. Notice of intent.
Sec. 1022. Plan of action.
Sec. 1023. Incentives to extend low income use.
Sec. 1024. Criteria for approval of plan of action.
Sec. 1025. Modification of existing regulatory agreements.
Sec. 1026. Report on notice to tenants and incentives.
Sec. 1027. Definition of eligible low income housing.
Sec. 1028. Rural rental housing displacement prevention.
Sec. 1029. Section 8 loan management program.

Subtitle C—Rural Housing

Sec. 1041. Implementation of guaranteed loan demonstration.
Sec. 1042. Section 515 rents.
Sec. 1043. Availability of domestic farm labor housing for other families.
Sec. 1044. Rural rental rehabilitation demonstration.
Sec. 1045. Legal representation in litigation involving collection of claims and obligations arising out of rural housing programs.

Subtitle D—Mortgage Insurance and Secondary Mortgage Market Programs

Sec. 1061. Change in definition of veteran.
Sec. 1062. Limitation on use of single family mortgage insurance by investors.
Sec. 1063. Procedures applicable to assumption of insured mortgages.
Sec. 1064. Payment of claims on losses from preforeclosure sales.
Sec. 1065. Mortgage insurance on Hawaiian home lands.
Sec. 1066. Home equity conversion mortgage insurance demonstration.
Sec. 1067. Reciprocity in approval of housing subdivisions among Federal agencies.
Sec. 1068. Permanent authority to purchase second mortgages on multifamily properties.

Subtitle E—Community Development and Miscellaneous Programs

Sec. 1081. City and county classifications.
Sec. 1082. Corrections to cross-references.
Sec. 1083. Conserving neighborhoods and housing by prohibiting displacement.
Sec. 1084. Urban development action grants.
Sec. 1085. Neighborhood reinvestment corporation.
Sec. 1086. National flood insurance program.
Sec. 1087. Home mortgage disclosure.
Sec. 1088. Lead-based paint poisoning prevention.
Sec. 1089. Interstate land sales full disclosure.
Sec. 1090. Designation of enterprise zones.
Sec. 1091. Report on recommended policy for dealing with radon in assisted housing.

TITLE I—GENERAL PROVISIONS

SEC. 101. BUDGET COMPLIANCE.

(a) IN GENERAL.—This Act and the amendments made by this Act may not be construed to provide for new budget authority, budget outlays, or new entitlement authority, for fiscal year 1989 or 1990 in excess of the appropriate aggregate levels established by the concurrent resolution on the budget for such fiscal year for the programs authorized by this Act and the amendments made by this Act.

(b) DEFINITIONS.—For purposes of this section, the terms "budget authority", "budget outlays", "concurrent resolution on the budget", and "entitlement authority" have the meanings given such terms in section 3 of the Congressional Budget Act of 1974 (2 U.S.C. 622).

SEC. 102. ANNUAL PROGRAM SUMMARY BY COMPTROLLER GENERAL.

(a) IN GENERAL.—Section 105 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11304) is amended—

(1) by inserting "annually" after "shall"; and

(2) by striking "a report" and all that follows and inserting the following: "to the Congress an annual summary of the status of each program authorized under this Act.".

(b) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading for section 105 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11304) is amended by striking "AUDITS" and inserting "ANNUAL PROGRAM SUMMARY".

(2) TABLE OF CONTENTS.—The item relating to section 105 in the table of contents in section 101(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 prec.) is amended to read as follows:

"Sec. 105. Annual program summary by Comptroller General.".

TITLE II—INTERAGENCY COUNCIL ON THE HOMELESS

SEC. 201. PREPARATION OF BIMONTHLY BULLETIN.

Section 203(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11313(a)) is amended—

(1) by striking "and" at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(7) prepare and distribute to States (including State contact persons), local governments, and other public and private nonprofit organizations, a bimonthly bulletin that describes the Federal resources available to them to assist the homeless, including current information regarding application deadlines and appropriate persons to contact in each Federal agency providing the resources.".

SEC. 202. PROVISION OF PROFESSIONAL AND TECHNICAL ASSISTANCE.

Section 203(a)(4) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11313(a)(4)) is amended—

(1) by striking ", through personnel employed by the Council in each of the 10 standard Federal regions," and inserting the following: "(by at least 2, but in no case more than 5, regional coordinators employed by the Council, each having responsibility for interaction and coordination of the activities of the Council within the 10 standard Federal regions)"; and

(2) by striking subparagraphs (A) and (B) and inserting the following:

"(A) interpret regulations and assist in the application process for Federal assistance, including grants;

"(B) provide assistance on the ways in which Federal programs, other than those authorized under this Act, may best be coordinated to complement the objectives of this Act;

"(C) develop recommendations and program ideas based on regional specific issues in serving the homeless population; and

"(D) establish a schedule for biennial regional workshops to be held by the Council in each of the 10 standard Federal regions to further carry out and provide the assistance described in subparagraphs (A), (B), and (C) and other appropriate assistance as necessary, of which—

"(i) not less than 5 such workshops shall be held by September 30, 1989; and

"(ii) at least 1 such workshop shall be held in each of the 10 Federal regions every 2 years, beginning on September 30, 1988;".

SEC. 203. ESTABLISHMENT OF PROGRAM TIMETABLES.

Section 203 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11313) is amended by adding at the end the following new subsection:

"(e) PROGRAM TIMETABLES.—Not later than 90 days after the date of the enactment of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, the head of each Federal agency that is a member of the Council and responsible for administering a program under this Act shall provide to the Council a timetable regarding program funding availability and application deadlines. The Council shall furnish such information to each State (including the State contact person).".

SEC. 204. AUTHORIZATION OF APPROPRIATIONS.

Section 208 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11318) is amended to read as follows:

"SEC. 208. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this title $1,100,000 for fiscal year 1989 and $1,200,000 for fiscal year 1990.".

SEC. 205. EXTENSION OF INTERAGENCY COUNCIL.

Section 209 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11319) is amended by striking "upon the expiration of the 3-year period beginning on the date of the enactment of this Act" and inserting "on October 1, 1990".

SEC. 206. ENCOURAGEMENT OF STATE INVOLVEMENT.

(a) In General.—Title II of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11311 et seq.) is amended by adding at the end the following new section:

"SEC. 210. ENCOURAGEMENT OF STATE INVOLVEMENT.

"(a) State Contact Persons.—Each State shall designate an individual to serve as a State contact person for the purpose of receiving and disseminating information and communications received from the Council, including the bimonthly bulletin described in section 203(a)(7).

"(b) State Interagency Councils and Lead Agencies.—Each State is encouraged to establish a State interagency council on the homeless or designate a lead agency for the State for the purpose of assuming primary responsibility for coordinating and interacting with the Council and State and local agencies as necessary.".

(b) Conforming Amendment.—The table of contents in section 101(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 prec.) is amended by inserting after the item relating to section 209 the following new item:

"Sec. 210. Encouragement of State involvement.".

TITLE III—FEDERAL EMERGENCY MANAGEMENT FOOD AND SHELTER PROGRAM

SEC. 301. REPORT ON EMERGENCY FOOD AND SHELTER GRANT PROGRAM.

Not later than 6 months after the date of the enactment of this Act, the Director of the Federal Emergency Management Agency shall submit a report to the appropriate committees of the Congress on the emergency food and shelter grant program administered under subtitle B of title III of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11341 et seq.). The report shall include—

(1) proposed legislation for a minimum of 2 alternative statutory formulas incorporating the criteria on which the distribution and disbursement of such grants is based, including utilization of data that reflect the number of long-term unemployed workers in the States involved (including those whose unemployment benefits have run out and those who have been out of work so long they are no longer actively seeking employment); and

(2) supporting evidence for each alternative formula and criteria that explains how each formula would be effective in targeting such grants to the areas in the Nation that have the greatest need.

SEC. 302. AUTHORIZATION OF APPROPRIATIONS.

Section 322 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11352) is amended to read as follows:

"SEC. 322. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this title $129,000,000 for fiscal year 1989 and $134,000,000 for fiscal year 1990.".

TITLE IV—HOUSING ASSISTANCE

Subtitle A—Comprehensive Homeless Assistance Plan

SEC. 401. SUBMISSION OF COMPREHENSIVE PLAN.

(a) Annual Submission.—Section 401(a)(1) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11361(a)(1)) is amended by inserting "annually" after "submits".

(b) Submission to Other Jurisdictions.—Section 401(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11361(a)) is amended—

(1) by striking "and" at the end of paragraph (1);

(2) by redesignating paragraph (2) as paragraph (3); and

(3) by inserting after paragraph (1) the following new paragraph:

"(2) at the time of submission of the comprehensive plan to the Secretary—

"(A) in the case of a State, it also submits a copy of the comprehensive plan to each metropolitan city or urban county that is located in the State and is subject to the requirements of this subsection; and

"(B) in the case of a metropolitan city or urban county, it also submits a copy of the comprehensive plan to the State in which it is located; and".

SEC. 402. CONTENTS OF COMPREHENSIVE PLAN.

Section 401(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11361(b)) is amended—

(1) in paragraph (3)—

(A) by inserting "facilities and" before "services"; and

(B) by striking "and" at the end;

(2) in paragraph (4)—

(A) by inserting "facilities and" before "services"; and

(B) by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

"(5) an identification of the appropriate person or agency to contact in the State, metropolitan city, or urban county regarding information relating to the contents of the comprehensive plan; and

"(6) an assurance that each recipient and project sponsor shall administer, in good faith, a policy designed to ensure that the homeless facility is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries.".

SEC. 403. PERFORMANCE REVIEWS.

Section 401(d)(3) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11361(d)(3)) is amended by inserting before the period the following: "or to respond to recommendations made in accordance with paragraph (2) that are received at least 60 days prior to the beginning of the fiscal year".

SEC. 404. COORDINATION.

Section 401 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11361) is amended by adding at the end the following new subsection:

"(g) Coordination.—If the comprehensive plan submitted by a State contains a designation of a State agency or a State contact person to coordinate homeless assistance efforts in the State, each Federal agency that provides assistance under this Act shall provide to the designated State agency or contact person such information as may be appropriate to facilitate such coordination.".

Subtitle B—Emergency Shelter Grants

SEC. 421. DISTRIBUTION OF ASSISTANCE BY STATES TO PRIVATE NONPROFIT ORGANIZATIONS.

(a) In General.—Section 413(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11373(a)) is amended by inserting "and private nonprofit organizations" after "local governments".

(b) Distributions to Nonprofits.—Section 413(c) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11373(c)) is amended by adding at the end the following new sentence: "Any State receiving assistance under this subtitle may distribute all or a portion of such assistance to private nonprofit organizations providing assistance to homeless individuals, if the local government for the locality in which the project is located certifies that it approves of the project.".

SEC. 422. ESSENTIAL SERVICES.

(a) Amount Permitted.—Section 414 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374) is amended—

(1) in subsection (a)(2)(B) and in subsection (b), by striking "15" and inserting "20"; and

(2) in subsection (a)(2)(B), by striking "the amount of any assistance to a" and inserting "the aggregate amount of all assistance to a State or".

(b) Supplemental Use of Assistance.—Section 414(a)(2)(A) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)(2)(A)) is amended by inserting before the semicolon the following: ", or the use of assistance under this subtitle would complement those services".

SEC. 423. HOMELESSNESS PREVENTION AS AN ELIGIBLE ACTIVITY.

(a) In General.—Section 414(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)) is amended by adding at the end the following:

"(4) Efforts to prevent homelessness such as financial assistance to families who have received eviction notices or notices of termination of utility services if—

"(A) the inability of the family to make the required payments is due to a sudden reduction in income;

"(B) the assistance is necessary to avoid the eviction or termination of services;

"(C) there is a reasonable prospect that the family will be able to resume payments within a reasonable period of time; and

"(D) the assistance will not supplant funding for preexisting homelessness prevention activities from other sources.

Activities under this paragraph shall be treated as 'essential services' for the purpose of paragraph (2)(B).".

(b) Reporting Requirement.—The Comptroller General of the United States shall conduct a study and report to the Congress not later than 1 year after the date of the enactment of this Act on various programs to prevent homelessness implemented by grantees, with particular focus on the different methods employed by grantees to determine eligibility for homelessness prevention assistance and restrictions or limitations, if any, imposed under such programs. Such report shall include—

(1) an examination of other homelessness prevention programs, including other Federal programs and State and local programs; and

(2) recommendations for such legislation as the Comptroller General determines appropriate, including recommendations on

how to prevent homelessness as a result of mortgage foreclosures.

SEC. 424. REQUIRED USE OF BUILDING AS SHELTER.

Section 415(c)(1) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11375(c)(1)) is amended to read as follows:

"(1) it will—

"(A) in the case of assistance involving major rehabilitation or conversion, maintain any building for which assistance is used under this subtitle as a shelter for homeless individuals and families for not less than a 10-year period;

"(B) in the case of assistance involving rehabilitation (other than major rehabilitation or conversion), maintain any building for which assistance is used under this subtitle as a shelter for homeless individuals and families for not less than a 3-year period; or

"(C) in the case of assistance involving solely activities described in paragraphs (2) and (3) of section 414(a), provide services or shelter to homeless individuals and families for the period during which such assistance is provided, without regard to a particular site or structure as long as the same general population is served.".

SEC. 425. AUTHORIZATION OF APPROPRIATIONS.

Section 417 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11377) is amended to read as follows:

"SEC. 417. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this subtitle $120,000,000 for fiscal year 1989 and $125,000,000 for fiscal year 1990.".

Subtitle C—Supportive Housing

SEC. 441. AVAILABILITY OF OPERATING AND TECHNICAL ASSISTANCE FOR NEW STRUCTURES.

(a) Definition of Project.—Section 422(7) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11382(7)) is amended by inserting before the period at the end the following: "or with respect to which the Secretary provides technical assistance or annual payments for operating costs under this subtitle".

(b) Operating Assistance.—Section 423(a)(3) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11383(a)(3)) is amended by inserting after "transitional housing" the following: "(without regard to whether the housing is an existing structure)".

(c) Technical Assistance.—Section 423(a)(4) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11383(a)(4)) is amended to read as follows:

"(4) Technical assistance in—

"(A) establishing supportive housing in an existing structure;

"(B) operating supportive housing (without regard to whether the housing is an existing structure); and

"(C) providing supportive services to the residents of supportive housing (without regard to whether the housing is an existing structure).".

SEC. 442. PROJECT SPONSOR.

(a) In General.—Section 422(8) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11382(8)) is amended by inserting before the period at the end the following: "or a public housing agency".

(b) State Approvals of Permanent Housing for Handicapped Homeless Persons.—

(1) Project sponsor.—Section 422(8) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11382(8)) is amended by striking "the Governor or other chief executive official of a State" and inserting "a State".

(2) Letters of participation.—Section 424(a)(2)(F)(i) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11384(a)(2)(F)(i)) is amended by striking "the Governor or other chief executive official of the State" and inserting "the State".

SEC. 443. MAXIMUM PERIOD OF RESIDENCE IN TRANSITIONAL HOUSING.

Section 422(12)(A) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11382(12)(A)) is amended in the first sentence by striking "within a reasonable amount of time, as determined by the Secretary" and inserting "within 24 months (or such longer period as the Secretary determines is necessary to facilitate the transition of homeless individuals to independent living)".

SEC. 444. DEFINITION OF PERMANENT HOUSING.

Section 422(12)(B) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11382(12)(B)) is amended by inserting after the first sentence the following: "The Secretary may waive the limitation contained in the preceding sentence if the applicant demonstrates that—

"(i) local market conditions dictate the development of a larger project; and

"(ii) such development will achieve the neighborhood integration objectives of the program within the context of the affected community.".

SEC. 445. USE OF ADVANCES TO REPAY DEBT.

(a) In General.—Section 423(a)(1) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11383(a)(1)) is amended by adding at the end the following new sentence: "The repayment of any outstanding debt owed on a loan made to purchase an existing structure shall be considered to be a cost of acquisition eligible for an advance under this paragraph if the structure was not used as supportive housing prior to the receipt of assistance.".

(b) Effective Date.—The amendment made by subsection (a) applies to notifications of awards for grants made under subtitle C of title IV of the Stewart B. McKinney Homeless Assistance Act on or after November 1, 1987.

SEC. 446. LIMIT ON GRANTS.

Section 423(a)(2) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11383(a)(2)) is amended by inserting ", in an amount not to exceed $200,000," after "A grant".

SEC. 447. ELIGIBLE ACTIVITIES.

Section 423(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11383(a)) is amended—

(1) in paragraph (3), by inserting before the period at the end the following: ", and for operating costs for permanent housing for handicapped homeless persons, not to exceed 50 percent of the annual operating costs of such housing for the first year of operation, and not to exceed 25 percent of such costs for the second year of operation"; and

(2) by adding at the end the following:

"A recipient may receive assistance under both paragraphs (1) and (2).".

SEC. 448. EMPLOYMENT ASSISTANCE.

(a) Authority To Provide Grants.—Section 423(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11383(a)) is amended by inserting after paragraph (4) the following new paragraph:

"(5) A grant for establishing and operating an employment assistance program for the residents of transitional housing, which shall include—

"(A) employment of residents in the operation and maintenance of the housing; and

"(B) the payment of the transportation costs of residents to places of employment.".

(b) Priority.—Section 424(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11384(b)) is amended—

(1) by striking "and" at the end of paragraph (6);

(2) by redesignating paragraph (7) as paragraph (8); and

(3) by inserting after paragraph (6) the following new paragraph:

"(7) in the case of transitional housing, the extent to which the project contains an employment assistance program which meets the program criteria described in section 423(a)(5); and".

SEC. 449. LIMITS ON ADVANCES AND GRANTS.

(a) In General.—Section 423(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11383(a)) is amended by adding at the end the following:

"The Secretary may increase the limit contained in paragraphs (1) and (2) to $400,000 in areas which the Secretary finds have high acquisition and rehabilitation costs.".

(b) Limited New Construction Authority.—Section 423 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11383) is amended by adding at the end the following:0

"(d) Limited New Construction Authority.—In addition to the purposes described in subsection (a)(1), an advance under such subsection may be used for new construction only if the Secretary finds that the project—

"(1) involves the cooperation of a city and a State university;

"(2) has the land donated by a State university;

"(3) proposes a supportive housing structure of at least 10,000 square feet; and

"(4) proposes a model supportive housing project with a comprehensive support system, including health services, job counseling, mental health services, and housing assistance and advocacy.".

SEC. 450. SITE CONTROL.

(a) Requirement.—

(1) In general.—Section 424(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11384(a)) is amended by adding at the end the following:

"(3) The Secretary shall require that an application furnish reasonable assurances that the applicant will own or have control of a site for the proposed project not later than 6 months after notification of an award for grant assistance. An applicant may obtain ownership or control of a suitable site different from the site specified in the application. If an applicant fails to obtain ownership or control of the site within 1 year after notification of an award for grant assistance, the grant shall be recaptured and reallocated.".

(2) Effective date.—The amendment made by paragraph (1) applies to notifications of awards for grants made under subtitle C of title IV of the Stewart B. McKinney Homeless Assistance Act on or after November 1, 1987.

(b) Priority.—Section 424(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11384(b)) (as amended by section 448 of this subtitle) is further amended—

(1) by striking "and" at the end of paragraph (7);

(2) by redesignating paragraph (8) as paragraph (9); and

(3) by inserting after paragraph (7) the following new paragraph:

"(8) the extent to which the applicant or project sponsor has control of the site of the proposed project; and".

SEC. 451. FLOOD PLAIN RESTRICTIONS.

Section 424 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11384) is amended by adding at the end the following:

"(e) FLOOD PROTECTION STANDARDS.—Flood protection standards applicable to housing acquired, rehabilitated, or assisted under this subtitle shall be no more restrictive than the standards applicable under Executive Order No. 11988 (May 24, 1977) to the other programs under this title.".

SEC. 452. MATCHING REQUIREMENT.

Section 425 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11385) is amended to read as follows:

"SEC. 425. MATCHING FUNDS REQUIREMENTS.

"(a) IN GENERAL.—Each recipient shall be required to supplement the amount of assistance provided under paragraphs (1) and (2) of section 423(a) with an equal amount of funds from non-Federal sources. Each State submitting an application for permanent housing for handicapped homeless persons shall certify that it will supplement the amount of assistance provided under paragraphs (1) and (2) of section 423(a) with an equal amount of funds from non-Federal sources.

"(b) NON-FEDERAL FUNDS.—For the purpose of this section, the term 'funds from non-Federal sources' includes State or local agency funds, any salary paid to staff to carry out the program of the recipient, any salary paid to residents of transitional housing under an employment assistance program described in section 423(a)(5), the value of the time and services contributed by volunteers to carry out the program of the recipient at a rate determined by the Secretary, and the value of any donated material or building and the value of any lease on a building.".

SEC. 453. REPORTS TO CONGRESS.

Section 427 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11387) is amended to read as follows:

"SEC. 427. REPORTS TO CONGRESS.

"The Secretary shall submit annually to the Congress a report summarizing the activities carried out under this subtitle and setting forth the findings, conclusions, and recommendations of the Secretary as a result of the activities. The report shall be submitted not later than 3 months after the end of each fiscal year (6 months in the case of fiscal year 1988).".

SEC. 454. AUTHORIZATION OF APPROPRIATIONS.

Section 428(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11388(a)) is amended to read as follows:

"(a) IN GENERAL.—There are authorized to be appropriated to carry out this subtitle $100,000,000 for fiscal year 1989 and $105,000,000 for fiscal year 1990.".

SEC. 455. REALLOCATIONS.

Section 428 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11388) is amended by adding at the end the following new subsection:

"(d) REALLOCATIONS.—If, following the receipt of applications for the final funding round under this subtitle for any fiscal year, any amount set aside for assistance pursuant to subsection (b)(1), (b)(2), or (c) will not be required to fund the approvable applications submitted for such assistance, the Secretary shall reallocate such amount for other assistance pursuant to this subtitle.".

Subtitle D—Supplemental Assistance for Facilities To Assist the Homeless

SEC. 461. USE OF ASSISTANCE.

Section 432(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11392(a)) is amended—

(1) in paragraph (1)—

(A) by striking "or" at the end of subparagraph (A); and

(B) by adding at the end the following new subparagraph:

"(C) to provide supportive services for the homeless; or"; and

(2) in paragraph (2)—

(A) in subparagraph (A), by inserting "operation," after "renovation,"; and

(B) in subparagraph (B), by striking "homeless individuals" and inserting "the homeless".

SEC. 462. RESERVATION OF FUNDS.

The second sentence of section 432(d) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11392(d)) is amended—

(1) by inserting "and services" after "facilities" each place it appears; and

(2) by striking "individuals and" and inserting "individuals or".

SEC. 463. SITE CONTROL.

(a) REQUIREMENT.—Section 432 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11392) is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(2) by inserting after subsection (d) the following:

"(e) SITE CONTROL.—The Secretary shall require that an application furnish reasonable assurances that the applicant will own or have control of a site for the proposed project not later than 6 months after notification of an award for grant assistance. An applicant may obtain ownership or control of a suitable site different from the site specified in the application. If an applicant fails to obtain ownership or control of the site within 1 year after notification of an award for grant assistance, the grant shall be recaptured and reallocated.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to notifications of awards for grants made under subtitle D of title IV of the Stewart B. McKinney Homeless Assistance Act on or after November 1, 1987.

SEC. 464. AUTHORIZATION OF APPROPRIATIONS.

The first sentence of section 434 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11394) is amended to read as follows: "There are authorized to be appropriated to carry out this subtitle $10,000,000 for fiscal year 1989 and $11,000,000 for fiscal year 1990.".

Subtitle E—Miscellaneous Provisions

SEC. 481. SECTION 8 ASSISTANCE FOR SINGLE ROOM OCCUPANCY DWELLINGS.

(a) INCREASE IN BUDGET AUTHORITY.—Section 441(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11401(a)) is amended to read as follows:

"(a) INCREASE IN BUDGET AUTHORITY.—The budget authority available under section 5(c) of the United States Housing Act of 1937 for assistance under section 8(e)(2) of such Act is authorized to be increased by $50,000,000 on or after October 1, 1988, and by $50,000,000 on or after October 1, 1989.".

(b) REHABILITATION OF EFFICIENCY UNITS.—Section 441(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11401(b)) is amended by inserting before the period at the end the following: ", except that amounts made available under this section may be used in connection with the moderate rehabilitation of efficiency units if the building owner agrees to pay the additional cost of rehabilitating and operating such units.".

(c) FIRE AND SAFETY IMPROVEMENTS.—Section 441(d) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11401(d)) is amended by adding at the end the following new sentence: "For purposes of this subsection, the term 'major spaces' means hallways, large common areas, and other areas specified in local fire, building, or safety codes.".

(d) ANNUAL ADJUSTMENT OF COST LIMITATION.—

(1) ADJUSTMENT REQUIRED.—Section 441(e) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11401(e)) is amended by adding at the end the following new paragraph:

"(3) The Secretary of Housing and Urban Development shall increase the limitation in paragraph (1) on October 1 of each year by an amount necessary to take into account increases in construction costs during the previous 12-month period.".

(2) EFFECTIVE DATE.—The first increase under the amendment made by paragraph (1) shall be effective with respect to assistance provided on or after October 1, 1988.

SEC. 482. ADMINISTRATIVE PROVISIONS.

(a) IN GENERAL.—Subtitle E of title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11401 et seq.) is amended by adding at the end the following new section:

"SEC. 443. ADMINISTRATIVE PROVISIONS.

"The provisions of, and regulations and procedures applicable under, section 104(g) of the Housing and Community Development Act of 1974 shall apply to assistance and projects under this title.".

(b) CONFORMING AMENDMENT.—The table of contents in section 101(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 prec.) is amended by inserting after the item relating to section 442 the following new item:

"Sec. 443. Administrative provisions.".

SEC. 483. REPORT ON EFFECT OF RENT CONTROL ON HOMELESSNESS.

(a) IN GENERAL.—The Secretary of Housing and Urban Development shall submit to the Congress a report evaluating the impact of local housing rent controls and regulations on the rate of homelessness, and on the development, supply, availability, and affordability of housing, in major cities in the United States.

(b) SPECIFIC REQUIREMENTS.—The report required in this section shall include—

(1) a listing of localities that have housing rent controls or regulations, the nature and extent of such controls or regulations, and an assessment of the variance of such controls or regulations among localities;

(2) an evaluation of the impact of such controls or regulations on the development, supply, and growth of affordable rental housing for lower income families, including an accounting of any increase or decrease in the supply of rental units that has occurred during the period of such controls or regulations;

(3) an evaluation of the benefits and effectiveness of such controls or regulations in ensuring affordable rents for lower income families;

(4) an evaluation of the relationship between the existence of such controls or regulations and Federal subsidized housing assistance in the locality, including whether

such controls or regulations necessitate more or less Federal housing aid;

(5) an evaluation of the impact on the resident population of removing such controls or regulations, including an assessment of potential rent increases on lower income residents, the options available to localities to mitigate any such increases, the potential increased demand for Federal subsidized housing assistance, and the impact on fair market rents in the locality;

(6) an evaluation of the effect of such controls or regulations on commercial and nonrental housing development in the locality;

(7) a demographic review of the income levels of the population in controlled or regulated units;

(8) an evaluation of the effect of such controls or regulations on the quality of controlled or regulated units;

(9) an evaluation of compliance with such controls or regulations by owners, management, and residents of controlled or regulated units;

(10) an evaluation of the administration and enforcement of such controls or regulations by local officials;

(11) an evaluation of the impact of factors other than rent controls or regulations that affect the development of affordable housing in the locality;

(12) a comparison to other localities that have not instituted such controls or regulations on the supply, development, availability, and affordability of rental housing; and

(13) any other related issue the Secretary of Housing and Urban Development determines to be of interest or significance.

(c) Deadline.—The Secretary of Housing and Urban Development shall submit the report required in this section within 12 months after the date of the enactment of this Act.

SEC. 484. REPORT ON ALLOCATION FORMULAS.

The Secretary of Housing and Urban Development shall—

(1) examine whether an alternative system of distributing funds under title IV of the Stewart B. McKinney Homeless Assistance Act would be feasible to ensure that the funds are provided to the jurisdictions with the greatest need of assistance for the homeless; and

(2) not later than March 1, 1989, transmit to the Congress a report on such examination.

SEC. 485. REGULATIONS.

Not later than 60 days after the date of the enactment of this Act, the Secretary of Housing and Urban Development or other Federal entity involved shall by notice establish such requirements as may be necessary to carry out the amendments made by titles I through IV and by section 501(2)(B). The Secretary or other Federal entity involved shall issue regulations based on the notice not later than 12 months after the date of the enactment of this Act.

TITLE V—IDENTIFICATION AND USE OF SURPLUS FEDERAL PROPERTY

SEC. 501. IDENTIFICATION AND USE OF UNUTILIZED AND UNDERUTILIZED PUBLIC BUILDINGS AND PROPERTY.

Section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411) is amended—

(1) by inserting "UNUTILIZED AND" before "UNDERUTILIZED" in the heading of such section;

(2) in subsection (a)—

(A) by inserting "unutilized or" before "underutilized";

(B) by inserting inserting before "shall identify" a comma and "within 2 months after collecting such information,"; and

(3) in subsection (b)—

(A) in paragraph (1), by inserting after "agency's need" the following: "or to make the property available, on an interim basis, for use as facilities to assist the homeless"; and

(B) in paragraph (2), by inserting after "be declared excess" the following: "or made available on an interim basis for use as facilities to assist the homeless"; and

(4) in subsection (d)—

(A) by striking out "By Lease" from the heading of such subsection;

(B) by striking out paragraph (1) and inserting the following:

"(1) The ownership of buildings and property made available under this section shall not be transferred from the Federal Government. Property identified pursuant to subsection (a)—

"(A) which has been designated as surplus property, may be made available under this section only through the use of leases for at least 1 year; or

"(B) which has not been so designated, may be made available for interim use by lease for at least 1 year or by permit."; and

(C) in paragraph (2), by striking out "To permit leases of surplus Federal buildings and other real property under this section," and inserting in lieu thereof the following: "With respect to property identified under subsection (a) which has been designated as surplus property,".

TITLE VI—REVISION AND EXTENSION OF PROGRAMS OF HEALTH CARE FOR THE HOMELESS

Subtitle A—Categorical Grants for Primary Health Services and Substance Abuse Services

SEC. 601. INCREASE IN REQUIRED AMOUNT OF MATCHING FUNDS AND MODIFICATION IN ELIGIBILITY FOR WAIVER WITH RESPECT TO MATCHING FUNDS.

(a) Increase in Required Amount.—Section 340(e)(1)(A) of the Public Health Service Act (42 U.S.C. 256(e)(1)(A)) is amended—

(1) in clause (i), by striking "under the grant; and" and inserting the following: "for the first fiscal year of payments under the grant and 66 2/3 percent of the costs of providing such services for any subsequent fiscal year of payments under the grant; and"; and

(2) in clause (ii), by striking "Federal funds" and all that follows and inserting the following: "Federal funds provided for the first fiscal year of payments under the grant and not less than $1 (in cash or in kind under such subparagraph) for each $2 of Federal funds provided for any subsequent fiscal year of payments under the grant.".

(b) Effective Date for Increase.—The amendment made by subsection (a) shall take effect October 1, 1989.

(c) Modification in Eligibility for Waiver.—Section 340(e)(2) of the Public Health Service Act (42 U.S.C. 256(e)(2)) is amended to read as follows:

"(2) The Secretary may waive the requirement established in paragraph (1)(A) if the applicant involved is a nonprofit private entity and the Secretary determines that it is not feasible for the applicant to comply with such requirement.".

SEC. 602. ESTABLISHMENT OF AUTHORITY FOR TEMPORARY CONTINUED PROVISION OF SERVICES TO CERTAIN FORMER HOMELESS INDIVIDUALS.

(a) In General.—Section 340 of the Public Health Service Act (42 U.S.C. 256) is amended—

(1) by redesignating subsections (h) through (q) as subsections (i) through (r), respectively; and

(2) by adding after subsection (g) the following new subsection:

"(h) Temporary Continued Provision of Services to Certain Former Homeless Individuals.—If any grantee under subsection (a) has provided services described in subsection (f) or (g) to a homeless individual, any such grantee may, notwithstanding that the individual is no longer homeless as a result of becoming a resident in permanent housing, expend the grant to continue to provide such services to the individual for not more than 12 months.".

(b) Conforming Amendments.—

(1) Section 340(d)(1) of the Public Health Service Act (42 U.S.C. 256(d)(1)) is amended—

(A) in subparagraph (C), by striking "(h)" and inserting "(i)";

(B) in subparagraph (D), by striking "(i)" and inserting "(j)";

(C) in subparagraph (E), by striking "(j)" and inserting "(k)"; and

(D) in subparagraph (F), by striking "(k)" and inserting "(l)".

(2) Section 332(a)(3) of the Public Health Service Act (42 U.S.C. 254e(a)(3)) is amended by striking "340(q)(2)" and inserting "340(r)".

(3) Section 536(1) of the Public Health Service Act (42 U.S.C. 290cc-36(1)) is amended by striking "340(q)(2)" and inserting "340(r)".

SEC. 603. CLARIFICATION WITH RESPECT TO CERTAIN PROVISIONS.

(a) Definition of Homeless Individual.—Section 340(r)(2) of the Public Health Service Act (as redesignated in section 602(a)(1) of this title) is amended by striking "living accommodations." and inserting "living accommodations and an individual who is a resident in transitional housing.".

(b) Provision of Technical Assistance.—Section 340(o)(2) of the Public Health Service Act (as redesignated in section 602(a)(1) of this title) is amended by striking "(p)(1)," and inserting "(q)(1) for a fiscal year,".

SEC. 604. AUTHORIZATION OF APPROPRIATIONS.

Section 340(q)(1) of the Public Health Service Act (as redesignated in section 602(a)(1) of this title) is amended by striking "There are authorized" and all that follows and inserting the following: "There are authorized to be appropriated to carry out this section $61,200,000 for fiscal year 1989, $63,600,000 for fiscal year 1990, and $66,200,000 for fiscal year 1991.".

Subtitle B—Block Grant for Community Mental Health Services

SEC. 611. AUTHORIZATION OF APPROPRIATIONS AND CONTINGENT CONVERSIONS TO CATEGORICAL PROGRAM.

(a) In General.—Section 535 of the Public Health Service Act (42 U.S.C. 290cc-35) is amended to read as follows:

"FUNDING

"Sec. 535. (a) Authorization of Appropriations.—For the purpose of carrying out this part, there are authorized to be appropriated $35,000,000 for each of the fiscal years 1989 and 1990 and such sums as may be necessary for fiscal year 1991.

"(b) Effect of Insufficient Appropriations for Minimum Allotments.—

"(1) If the amounts made available pursuant to subsection (a) are insufficient for providing each State with an allotment under section 521(a) of not less than $150,000, the Secretary shall, from such amounts as are made available pursuant to such subsection, make grants to the States for providing to homeless individuals the

mental health services described in section 524.

"(2) Paragraph (1) may not be construed to require the Secretary to make a grant under such paragraph to each State.".

(b) FAILURE OF STATE WITH RESPECT TO EXPENDING ALLOTMENT.—Section 529 of the Public Health Service Act (42 U.S.C. 290cc-29) is amended to read as follows:

"CONVERSION TO STATE CATEGORICAL PROGRAM IN EVENT OF FAILURE OF STATE WITH RESPECT TO EXPENDING ALLOTMENT

"SEC. 529. (a) IN GENERAL.—Subject to subsection (c), the Secretary shall, from amounts described in subsection (b), make grants to public and nonprofit private entities for the purpose of providing to homeless individuals the mental health services described in section 524.

"(b) DESCRIPTION OF FUNDS.—The amounts referred to in subsection (a) are any amounts made available in appropriations Acts for allotments under section 521(a) that are not allotted under such section to a State as a result of—

"(1) the failure of the State to submit an application under section 522;

"(2) the failure, in the determination of the Secretary, of any State to prepare within a reasonable period of time such application in compliance with such section; or

"(3) the State informing the Secretary that the State does not intend to expend the full amount of the allotment made to the State.

"(c) REQUIREMENT OF PROVISION OF SERVICES IN CERTAIN STATES.—With respect to grants under subsection (a), amounts made available pursuant to subsection (b) as a result of the State involved shall be available only for grants to provide services in such State.".

SEC. 612. ELIGIBILITY OF TERRITORIES.

(a) DEFINITION OF STATE.—Section 536(3) of the Public Health Service Act (42 U.S.C. 290cc-36(3)) is amended by striking "Columbia," and all that follows and inserting the following: "Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands.".

(b) MINIMUM ALLOTMENT.—Section 528(a)(1) of the Public Health Service Act (42 U.S.C. 290cc-28(a)(1)) is amended to read as follows:

"(1) $275,000 for each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico and $50,000 for each of Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands; and".

SEC. 613. TECHNICAL AND CONFORMING AMENDMENTS.

Title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended—

(1) in section 521(a), by amending the first sentence to read as follows: "The Secretary shall for each of the fiscal years 1989 through 1991 make an allotment for each State in an amount determined in accordance with section 528.";

(2) in section 541(a)(4), by striking "522" and inserting "543";

(3) in section 545(d), by striking "526" and inserting "547"; and

(4) in section 546(a)(4), by striking "521" and inserting "542".

Subtitle C—Authorization of Appropriations for Community Demonstration Projects

SEC. 621. MENTAL HEALTH SERVICES FOR HOMELESS INDIVIDUALS WITH CHRONIC MENTAL ILLNESS.

The first sentence of section 612(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 290aa-3 note) is amended to read as follows: "For payments pursuant to section 504(f) of the Public Health Service Act, there are authorized to be appropriated $11,000,000 for fiscal year 1989, $11,500,000 for fiscal year 1990, and such sums as may be necessary for fiscal year 1991, in addition to any other amounts authorized to be appropriated for such payments for each of such fiscal years.".

SEC. 622. ALCOHOL AND DRUG ABUSE TREATMENT OF HOMELESS INDIVIDUALS.

Section 513(b) of the Public Health Service Act (42 U.S.C. 290bb-2(b)) is amended to read as follows:

"(b) There are authorized to be appropriated to carry out section 512(c) $14,000,000 for fiscal year 1989, $17,000,000 for fiscal year 1990, and such sums as may be necessary for fiscal year 1991.".

Subtitle D—General Provisions

SEC. 631. EFFECTIVE DATES.

The amendments made by subsection (a) of section 601 shall take effect in accordance with subsection (b) of such section. The amendments otherwise made by this title shall take effect October 1, 1988, or upon the date of the enactment of this Act, whichever occurs later.

TITLE VII—EDUCATION, TRAINING, AND COMMUNITY SERVICES PROGRAMS

Subtitle A—Homeless Assistance Programs

SEC. 701. ADULT EDUCATION FOR THE HOMELESS.

(a) GENERAL AUTHORITY.—

(1) IMPLEMENTATION.—Section 702(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11421(a)) is amended by striking "to develop a plan and implement a program" and inserting the following: "to implement, either directly or through contracts and grants, a program".

(2) CONFORMING AMENDMENTS.—

(A) SECTION HEADING.—The heading of section 702 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11421) is amended by striking "STATEWIDE" and inserting "STATE".

(B) TABLE OF CONTENTS.—The item relating to section 702 in the table of contents in section 101(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 prec.) is amended to read as follows:

"Sec. 702. State literacy initiatives.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 702(c)(1) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11421(c)(1)) is amended to read as follows:

"(1) There is authorized to be appropriated $10,000,000 for each of the fiscal years 1989 and 1990 for the adult literacy and basic skills remediation programs authorized by this section.".

(c) DEFINITION OF STATE.—Section 702(d) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11421(d)) is amended—

(1) by striking "and"; and

(2) by inserting before the period at the end the following: ", the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands".

SEC. 702. EDUCATION FOR HOMELESS CHILDREN AND YOUTH.

(a) GRANTS FOR STATE ACTIVITIES.—

(1) ALLOCATION.—Section 722(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11432(b)) is amended by inserting before the period at the end the following: "and 0.1 percent of the amount appropriated for each fiscal year shall be allocated by the Secretary among the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands".

(2) TECHNICAL AMENDMENT.—Section 722(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11432(b)) is amended by striking "section 111" and all that follows through "of 1981)" and inserting "section 1005 of the Elementary and Secondary Education Act of 1965".

(3) DATA GATHERING.—Section 722(d)(1) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11432(d)(1)) is amended by inserting "annually" before "gather".

(4) REPORTS.—Section 722(d)(3) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11432(d)(3)) is amended to read as follows:

"(3) prepare and submit to the Secretary not later than December 31 of each year a report on the data gathered pursuant to paragraph (1).".

(5) AUTHORIZATION OF APPROPRIATIONS.—Section 722(g)(1) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11432(g)(1)) is amended to read as follows:

"(1) There is authorized to be appropriated to carry out this section $5,000,000 for each of the fiscal years 1989 and 1990.".

(b) EXEMPLARY GRANTS AND DISSEMINATION OF INFORMATION.—Section 723(f) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11433(f)) is amended to read as follows:

"(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $2,500,000 for each of the fiscal years 1989 and 1990.".

(c) DEFINITION OF STATE.—Section 725(2) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11435(2)) is amended—

(1) by striking "and"; and

(2) by inserting before the period at the end the following: ", the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands".

SEC. 703. JOB TRAINING FOR THE HOMELESS.

(a) DEFINITION OF STATE.—Section 737(5) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11447(5)) is amended—

(1) by striking "and" and inserting a comma; and

(2) by inserting before the period at the end the following: ", the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 739(a)(1) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11449(a)(1)) is amended to read as follows:

"(1) There is authorized to be appropriated to carry out this subtitle $13,000,000 for each of the fiscal years 1989 and 1990, of which amount $2,200,000 for each fiscal year shall be available only to carry out section 738.".

(c) RATABLE REDUCTIONS.—Section 739(a)(2) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11449(a)(2)) is amended—

(1) by striking "in fiscal year 1988" and inserting "for any fiscal year"; and

(2) by striking "$12,000,000" and inserting "the amount authorized in paragraph (1)".

SEC. 704. EMERGENCY COMMUNITY SERVICES HOMELESS GRANT PROGRAM.

(a) ALLOCATION OF GRANTS.—The second sentence of section 752(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11462(a)) is amended to read as follows: "Such grants shall be allocated to the States (as defined in section 673 of such Act) in accordance with the formulas set forth in subsections (a) and (b) of section 674 of such Act.".

(b) PROGRAM REQUIREMENTS.—

(1) ADDITIONAL ELIGIBLE USE OF FUNDS.—Section 753(c) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11463(c)) is amended by adding at the end the following new paragraph:

"(4) Provision of assistance to any individual who has received a notice of foreclosure, eviction, or termination of utility services, if—

"(A) the inability of the individual to make mortgage, rental, or utility payments is due to a sudden reduction in income;

"(B) the assistance is necessary to avoid the foreclosure, eviction, or termination of utility services; and

"(C) there is a reasonable prospect that the individual will be able to resume the payments within a reasonable period of time.".

(2) MAXIMUM AMOUNT AVAILABLE FOR ADDITIONAL ELIGIBLE USE.—Section 753(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11463(b)) is amended—

(A) by striking "and" at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3) and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(4) not more than 25 percent of the amounts received will be used for the purpose described in subsection (c)(4).".

(c) TIMELY AWARDING OF FUNDS.—

(1) 60-DAY REQUIREMENT FOR AWARDING FUNDS.—Section 753(b)(1)(A) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11463(b)(1)(A)) is amended in the matter preceding clause (i) by inserting after "receives" the following: ", by not later than 60 days after such receipt,".

(2) COMPLIANCE WITH 60-DAY REQUIREMENT.—Section 753 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11463) is amended by adding at the end the following new subsection:

"(d) COMPLIANCE WITH 60-DAY REQUIREMENT.—It shall be left solely to the discretion of the Secretary to enforce the 60-day requirement specified in subsection (b)(1)(A).".

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 754 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11464) is amended to read as follows:

"SEC. 754. AUTHORIZATION OF APPROPRIATIONS.

"There is authorized to be appropriated to carry out this subtitle $42,000,000 for each of the fiscal years 1989 and 1990.".

SEC. 705. TECHNICAL AMENDMENTS TO OLDER AMERICANS ACT OF 1965.

The Older Americans Act of 1965 (42 U.S.C. 3001 et seq.) is amended—

(1) in section 102—

(A) by redesignating paragraphs (8) and (9), as added by section 146(a) of the Older Americans Act Amendments of 1987 (Public Law 100-175; 101 Stat. 950), as paragraphs (10) and (11), respectively; and

(B) by redesignating paragraph (8), as added by section 182(b)(1)(B) of the Older Americans Act Amendments of 1987 (Public Law 100-175; 101 Stat. 964), as paragraph (12);

(2) in section 204(a)(1), by inserting a comma after "minorities";

(3) in section 301(a), by striking "Hawaiian organizations,," and insert "Hawaiian organizations,";

(4) in section 305—

(A) in subsection (a)(1)(E), by striking "such areas,," and inserting "such areas,"; and

(B) in subsection (d), by redesignating subparagraphs (A), (B), (C), and (D) as paragraphs (1), (2), (3), and (4), respectively;

(5) in section 306(a)(1), by striking "such area,," and inserting "such area,";

(6) in section 307(a)(3)(A), by striking "; and" and inserting a period;

(7) in section 411(c), by striking "disease and and" and inserting "disease and";

(8) in section 422(b)—

(A) in paragraph (1), by striking "Alzheimers' disease and other neurological and organic disorders of the Alzheimers' type" and inserting "Alzheimer's disease and related disorders with neurological and organic brain dysfunction"; and

(B) in paragraph (9)(B), by striking "ACTION" and inserting "the ACTION Agency"; and

(9) in section 507(3), by adding "; and" at the end.

Subtitle B—Job Training Partnership Act

SEC. 711. SHORT TITLE.

This subtitle may be cited as the "Jobs for Employable Dependent Individuals Act".

SEC. 712. INCENTIVE BONUS ENTITLEMENT FOR EMPLOYABLE DEPENDENT INDIVIDUALS.

(a) AMENDMENTS TO JTPA.—The Job Training Partnership Act (29 U.S.C. 1501 et seq.) (hereinafter in this title referred to as the "Act") is amended—

(1) by redesignating title V and all references thereto as title VI,

(2) by redesignating sections 501, 502, 503, and 504 as sections 601, 602, 603, and 604, respectively, and

(3) by inserting after title IV the following new title:

"TITLE V—JOBS FOR EMPLOYABLE DEPENDENT INDIVIDUALS INCENTIVE BONUS PROGRAM

"SEC. 501. STATEMENT OF PURPOSE.

"It is the purpose of this title to entitle each State to the payment of a bonus for the successful job placement of certain employable dependent individuals.

"SEC. 502. DEFINITIONS.

"For the purpose of this title—

"(1) the term 'welfare assistance' means—

"(A) cash payments made pursuant to part A of title IV of the Social Security Act (relating to the aid to families with dependent children program);

"(B) general welfare assistance to Indians, as provided pursuant to the Act of November 2, 1921 (25 U.S.C. (13)), commonly referred to as the Snyder Act; or

"(C) cash assistance and medical assistance for refugees made available pursuant to section 412(e) of the Immigration and Nationality Act;

"(2) the term 'disability assistance' means benefits offered pursuant to title XVI of the Social Security Act (relating to the supplemental security income program);

"(3) the term 'long-term recipient' means an individual who has received the benefits described in paragraphs (1) and (2) for 24 months during the 28-month period immediately preceding application for programs offered under this title;

"(4) the term 'continuous employment' means gainful employment under which wages or salaries are reportable for unemployment insurance purposes, and such wages or salaries are earned during a total of 4 out of 5 consecutive calendar quarters;

"(5) the term 'supported employment' has the meaning given such term by section 7(18) of the Rehabilitation Act of 1973; and

"(6) the term 'Federal contribution' means the amount of the Federal component of cash payments to individuals within the participating State under the programs described in this section, including part A of title IV of the Social Security Act.

"SEC. 503. ELIGIBILITY FOR INCENTIVE BONUSES.

"(a) IN GENERAL.—An individual shall be eligible to be counted for the purpose of this title if—

"(1) the individual is—

"(A) an eligible long-term recipient described in subsection (b);

"(B) an eligible young recipient described in subsection (c);

"(C) an eligible blind or disabled recipient described in subsection (d); or

"(D) an eligible young blind or disabled recipient described in subsection (e); and

"(2) the individual has met the requirements of section 504.

"(b) LONG-TERM RECIPIENT.—An eligible long-term recipient is an individual who—

"(1) is a long-term recipient of welfare assistance;

"(2) is the head of a household; and

"(3) had no marketable or significant work experience during the year preceding determination of eligibility for programs under this Act.

"(c) YOUNG RECIPIENT.—An eligible young recipient is an individual who—

"(1) is receiving welfare assistance at the time determination of eligibility is made for programs under this Act;

"(2) is the head of a household;

"(3) has not attained 22 years of age;

"(4) has not completed secondary school or its equivalent; and

"(5) had no marketable or significant work experience during the year preceding determination of eligibility for programs under this Act.

"(d) BLIND OR DISABLED RECIPIENT.—An eligible blind or disabled recipient is an individual who—

"(1) is blind or disabled;

"(2) is a long-term recipient of disability assistance; and

"(3) had no marketable or significant work experience during the year preceding determination of eligibility for programs offered under this Act.

"(e) YOUNG BLIND OR DISABLED RECIPIENT.—An eligible young blind or disabled recipient is an individual who—

"(1) is blind or disabled;

"(2) is receiving disability assistance at the time determination of eligibility is made for programs under this Act;

"(3) has not attained 22 years of age; and

"(4) has no marketable or significant work experience during the year preceding such determination of eligibility.

"SEC. 504. ADDITIONAL ELIGIBILITY REQUIREMENTS.

"(a) IN GENERAL.—An individual described in section 503 may not be considered eligible to be counted for the purpose of payment of an incentive bonus under this title unless such individual—

"(1) has successfully participated in education, training, or other activities offered under this Act;

"(2) has been placed in (A) unsubsidized, continuous employment or (B) supported employment following such participation;

"(3) receives from such employment a wage or income which is greater than or equal to such individual's placement bonus base; and

"(4) no longer receives cash benefits provided under the assistance programs described in paragraphs (1) and (2) of section 502, unless receipt of such benefits—

"(A) is limited to 1 calendar quarter (or an equivalent period) during the 5 calendar quarters used to determine continuous employment; and

"(B) is caused by a termination of employment due to—

"(i) a layoff or permanent closure of a plant or facility;

"(ii) a relocation of Federal facilities; or

"(iii) a natural disaster.

"(b) Qualified Earnings.—An individual shall be considered to be earning a wage or income which meets the requirements of subsection (a)(3) if, during a period of continuous employment, the individual earns an income reportable for unemployment insurance purposes and does not receive cash benefits under the programs described in section 502.

"(c) Educational Requirements.—An individual described in section 503(c) or (e) shall be considered to have met the requirements of subsection (a)(1) if the individual no longer receives welfare assistance and—

"(1) reenrolls in secondary school or its equivalent and matriculates to the next grade level or its equivalent within 1 year of enrollment;

"(2) enrolls in an accredited vocational or technical school not less than full time and is making satisfactory progress in a course of study which can reasonably be expected to lead to employment; or

"(3) obtains the equivalent of a secondary school diploma within 12 months following the individual's determination of eligibility for programs offered under this title.

"SEC. 505. AMOUNT OF INCENTIVE BONUS.

"(a) In General.—The amount of the incentive bonus paid to each State shall be equal to the sum of—

"(1) 75 percent of the placement bonus base for each successful placement in employment of an individual described in section 503;

"(2) 75 percent of the placement bonus base for the second continuous year of such employment; and

"(3) 75 percent of the placement bonus base for the third continuous year of such employment,

in excess of the number of such placements made in program year 1987 or such other base period as provided by agreement between the Governor and the Secretary.

"(b) Placement Bonus Base for Purposes of Section 503(b) and (c).—For the purpose of this section, the placement bonus base—

"(1) for an individual who qualifies under section 503(b) is equal to the sum of the Federal contribution to amounts received by the individual and the family of such individual under a State plan approved under part A of title IV of the Social Security Act, relating to aid to families with dependent children, or under section 412(e) of the Immigration and Nationality Act, relating to cash assistance and medical assistance to refugees, or both, for the 2 fiscal years prior to the determination made under section 503 divided by 2; and

"(2) for an individual who qualifies under section 503(c) shall be the annual amount to which such individual would have been entitled for 1 year at the time of the determination of eligibility of the individual, if such individual has not received the benefits described in section 502(1)(A) for the prior year, under part A of title IV of the Social Security Act, relating to the aid to families with dependent children program, or section 412(e) of the Immigration and Nationality Act relating to cash assistance and medical assistance to refugees.

"(c) Placement Bonus Base for Purposes of Section 503(d) and (e).—For the purpose of this section, the placement bonus base—

"(1) for an individual who qualifies under section 503(d) is equal to the sum of the Federal contribution to amounts received by the individual under title XVI of the Social Security Act relating to supplemental security income for the 2 fiscal years prior to the determination made under section 503 divided by 2; and

"(2) for an individual who qualifies under section 503(e) shall be the annual amount to which such individual would have been entitled for 1 year at the time of the determination of eligibility of the individual, if such individual has not received the benefits described in section 502(2) for the prior year under title XVI of the Social Security Act, relating to supplemental security income.

"SEC. 506. APPLICATIONS AND VERIFICATION REQUIRED.

"(a) Notice of Intent to Participate.—Any State seeking to participate in the incentive bonus program established under this title shall notify the Secretary of its intent to do so not later than 30 days before the beginning of its first program year of participation.

"(b) Application.—(1) Any State seeking to receive an incentive bonus under this title shall submit an application to the Secretary. Such application shall contain or be accompanied by such information and assurances as the Secretary may reasonably require in order to ensure compliance with this title. Each application shall contain, at a minimum—

"(A) the placement bonus base for eligible individuals who serve to qualify the State for an incentive bonus; and

"(B)(i) a brief description of the unsubsidized employment or supported employment of such individuals; or

"(ii) a description of participation in educational activities, as permitted under section 504, by such individuals.

"(2) The application to participate in the incentive bonus program shall be submitted to the Secretary according to a schedule established by the Secretary in order to facilitate and expedite the processing, verification, and prompt payment of incentive bonuses.

"(c) Notice of Approval or Denial.—The Secretary shall inform a State within 60 days after receipt of the application as to whether or not its application has been approved. The Secretary may not approve an application for payment of an incentive bonus without adequately verifying the accuracy of the information contained in the application. There shall be a rebuttable presumption that an individual is eligible to be counted for the purpose of payment of an incentive bonus under this title. When appropriate, the Secretary may use a sampling methodology for such verifications in a manner approved by the Comptroller General of the United States.

"(d) Service Delivery Area Participation.—Participation by a State in the incentive bonus program established under this title shall not prevent any service delivery area within the State from refusing to participate in such program.

"SEC. 507. PAYMENTS.

"(a) In General.—For each program year for which funds are appropriated to carry out this title, the Secretary shall pay to each participating State the amount that State is eligible to receive under this section.

"(b) Ratable Reductions.—If the amount so appropriated is not sufficient to pay to each State the amount each State is eligible to receive, the Secretary shall ratably reduce the amount paid to each State.

"(c) Ratable Increases.—If any additional amount is made available for carrying out this title for any program year after the application of the preceding sentence, such additional amount shall be allocated among the States by increasing such payments in the same manner as they were reduced, except that no such State shall be paid an amount which exceeds the amount which it is eligible to receive under this section.

"SEC. 508. USE OF INCENTIVE BONUS FUNDS.

"(a) Use of Incentive Bonus Funds.—After submission and approval of an application for an incentive bonus payment and before receipt of such payment, the Governor of such State may reserve from State funds an amount equal to the amount of a bonus incentive requested in the application for the purpose of making expenditures in accordance with this title. Bonus payments received thereafter may be used for reimbursement of such expenditures.

"(b) Limitations.—(1)(A) During any program year, the Governor may use an amount not to exceed 15 percent of the State's total bonus payments or amounts reserved under subsection (a) for administrative costs incurred under this title, including data and information collection and compilation, recordkeeping, or the preparation of applications for incentive bonuses.

"(B) The amount of incentive bonus payments or the amounts reserved under subsection (a) which remain after the deduction of administrative expenses under paragraph (1) shall be distributed to service delivery areas within the State in accordance with an agreement between the Governor and representatives of such areas. Such agreement shall reflect an equitable method of distribution which is based on the degree to which the efforts of such area contributed to the State's qualification for an incentive bonus payment under this title.

"(2)(A) Subject to subparagraph (B), a maximum of 10 percent of the amounts received under this title in any program year by each service delivery area may be used for the administrative costs of establishing and maintaining systems necessary for operation of programs under this title, including incentive payments described in subsection (c), technical assistance, data and information collection and compilation, management information systems, post-program followup activities, and research and evaluation activities. The balance of funds not so expended shall be used for activities similar to activities described in section 204.

"(B) If a service delivery area determines that administrative costs under this title will exceed the 10 percent administrative allocation, such area may use an additional 5 percent allocation of bonus payments or amounts reserved under subsection (a) for such activities if such area demonstrates to the Governor that the administering agency in the area needs additional funds to continue administrative activities under this title.

"(c) Incentive Payments to Service Providers.—Each service delivery area may make incentive payments to service providers within its service delivery area, including participating State and local agencies, and community-based organizations, that demonstrate effectiveness in delivering employment and training services to individuals such as those described in section 503.

"(d) Application of Section Relating To Administrative Adjudications.—Section 166 of this Act, relating to administrative adjudication, shall apply to the distribution of incentive bonus payments under this section.

"SEC. 509. INFORMATION AND DATA COLLECTION.

"(a) TECHNICAL ASSISTANCE.—In order to facilitate the collection, exchange, and compilation of data and information required by this title, the Secretary shall, within 90 days after the date of enactment of this title, begin providing, on an ongoing basis, technical assistance to the States. Such assistance shall include, at a minimum, cost-effective methods for using State and Federal records to which the Secretary has lawful access.

"(b) REGULATIONS.—The Secretary, the Secretary of Health and Human Services, and the Secretary of the Interior jointly shall issue regulations regarding the sharing, among States participating in the programs under this title, of the data and information necessary to fulfill the requirements of this title. Such regulations shall provide for—

"(1) the maintenance of confidentiality of the information so shared, in accordance with Federal and State privacy laws, and

"(2) penalties for any violation of such regulations.

"(c) ANNUAL SURVEY.—The Secretary shall conduct an annual survey of States participating in programs under this title and shall report to the Congress concerning—

"(1) the success of such States in gathering the data and information required under this title; and

"(2) methods for improving and refining the ability of such States to gather the data and information required under this title.

"SEC. 510. START-UP COSTS.

"(a) APPLICATION.—Before notifying the Secretary of an intent to participate in the incentive bonus program established under this title, a State may apply to the Secretary for financial assistance in accordance with this section. Such application shall be submitted to the Secretary not later than 120 days before the beginning of the program year.

"(b) CONTENTS.—Applications submitted under this section shall contain such information as the Secretary may reasonably require.

"(c) DETERMINATIONS OF AWARDS.—(1) The Secretary shall determine the amounts to be awarded based on the need demonstrated in the application submitted by the State.

"(2) The Secretary shall notify the State of the determination made under this section no later than 60 days after receiving such State's application.

"(3)(A) Funds received by a State under this section shall be available for expenditure for the first 2 program years of such State's participation under this title, beginning with the program year following the program year in which a determination under this section is made. Expenditure of such funds (or any portion thereof) shall be considered an agreement by the State to participate in accordance with this title for a period of not less than 2 consecutive program years, beginning with the first program year in which such funds become available for expenditure.

"(B) Funds awarded to the State which remain unexpended at the end of such 2 program years shall be reallocated by the Secretary to other participating States.

"(C) Funds received under this section by the State shall be used for activities such as those described in section 508(b) and for higher costs incurred in overcoming the substantial barriers to employment experienced by individuals eligible under this title.

"(d) ALLOCATION.—Funds received under this section may be allocated to State agencies or service delivery areas within the State for expenditure in accordance with this title.

"(e) NOTICE OF PROPOSED RULEMAKING.—Not later than 3 months after the date of the enactment of this title, the Secretary shall issue a notice of proposed rulemaking with respect to this title and shall allow not less than 60 days for public comment. Final regulations shall be issued not later than 7 months following such date of enactment.

"SEC. 511. EVALUATION AND PERFORMANCE STANDARDS.

"(a) EVALUATION.—The Secretary shall conduct or provide for an evaluation of the incentive bonus program authorized under this title. The Secretary shall consider—

"(1) whether the program results in increased service under this Act to long-term welfare recipients and other hard-to-serve individuals;

"(2) whether the program results in sustained employment of such welfare recipients and individuals, with resultant welfare and other cost savings to the Federal Government;

"(3) whether the program is administratively feasible and cost effective;

"(4) whether the services provided to other eligible participants under part A of title II are affected by the implementation and operation of the incentive bonus program; and

"(5) such other factors as the Secretary deems appropriate.

"(b) REPORT TO CONGRESS.—Not later than January 1, 1996, the Secretary shall report to the Congress on the effectiveness of the incentive bonus program authorized under this title. Such report shall include an analysis of the costs of such program and the results of such activities.

"(c) PERFORMANCE STANDARD.— The Secretary shall establish a performance standard which weights performance outcomes under this title to reflect the higher costs incurred in overcoming the substantial barriers to employment experienced by individuals eligible under this title. Not later than 2 years after the first program year, the Secretary shall prepare and submit to the Congress a report on the effect of such standard.".

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents of the Act is amended by inserting after the items relating to title IV the following new items:

"TITLE V—JOBS FOR EMPLOYABLE DEPENDENT INDIVIDUALS INCENTIVE BONUS PROGRAM

"Sec. 501. Statement of purpose.
"Sec. 502. Definitions.
"Sec. 503. Eligibility for incentive bonuses.
"Sec. 504. Additional eligibility requirements.
"Sec. 505. Amount of incentive bonus.
"Sec. 506. Applications and verification required.
"Sec. 507. Payments.
"Sec. 508. Use of incentive bonus funds.
"Sec. 509. Information and data collection.
"Sec. 510. Start-up costs.
"Sec. 511. Evaluation and performance standards.".

SEC. 713. PROVISIONS FOR IMPROVING ASSISTANCE TO HARD-TO-SERVE INDIVIDUALS AND WELFARE RECIPIENTS.

(a) GOVERNORS' INCENTIVE GRANTS.—The first sentence of section 202(b)(3)(B) of the Act (29 U.S.C. 1602(b)(3)(B)) is amended by striking out ", including incentives for serving hard-to-serve individuals" and inserting in lieu thereof "and incentives for serving increased numbers of hard-to-serve individuals, particularly long-term welfare recipients, including title IV of the Social Security Act, relating to aid to families with dependent children, and title XVI of such Act, relating to supplemental security income".

(b) PERFORMANCE STANDARDS.—Section 106(e) of the Act (29 U.S.C. 1516) is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph:

"(2) The Secretary shall—

"(A) provide improved information and technical assistance on performance standards adjustments;

"(B) collect data that better specifies hard-to-serve individuals and long-term welfare dependency; and

"(C) provide guidance on setting performance goals at the service provider level that encourages increased service to the hard-to-serve, particularly long-term welfare recipients, including title IV of the Social Security Act, relating to aid to families with dependent children, and title XVI of such Act, relating to supplemental security income.

The Secretary shall also reexamine performance standards to ensure that such standards provide maximum flexibility in serving the hard-to-serve, particularly long-term welfare recipients, including title IV of the Social Security Act, relating to aid to families with dependent children, and title XVI of such Act, relating to supplemental security income.".

SEC. 714. CONFORMING AND MISCELLANEOUS AMENDMENTS.

(a) CONTENTS OF JOB TRAINING PLAN.—Section 104(b) of the Act (29 U.S.C. 1514(b)) (as amended by subsection (b)) is further amended—

(1) by redesignating paragraphs (7), (8), (9), (10), and (11) as paragraphs (8), (9), (10), (11), and (12), respectively; and

(2) by adding after paragraph (6) the following new paragraph:

"(7) a description of the procedures and methods of carrying out title V, relating to incentive bonus payments for the placement of individuals eligible under such title;".

(b) PERFORMANCE STANDARDS.—Section 106(b) of the Act (29 U.S.C. 1516(b)) is amended by adding at the end thereof the following new paragraph:

"(5) The Secretary shall prescribe performance standards under this section for programs authorized by title V, relating to the placement of individuals eligible under such title, in accordance with the criteria specified in section 511(c).".

(c) PLAN COORDINATION.—Section 121(b) of the Act (29 U.S.C. 1531(b)) is amended—

(1) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(2) by adding after paragraph (2) the following new paragraph:

"(3) The State plan shall include a description of the manner in which the State will encourage the successful carrying out of—

"(A) training activities for eligible individuals whose placement is the basis for the payment to the State of the incentive bonus authorized by title V; and

"(B) the training services, outreach activities, and preemployment supportive services furnished to such individuals.".

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 3 of the Act (29 U.S.C. 1502) is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following new subsection:

"(e)(1) Subject to paragraph (2), there are authorized to be appropriated for each of fiscal years 1990 through 1994 such sums as may be necessary to carry out title V.

"(2) No funds appropriated pursuant to this Act may be used to carry out such title for any fiscal year unless funds appropriated to carry out part A of title II exceed any change in the consumer price index from the amounts appropriated for the previous fiscal year to carry out such part.

"(3) From amounts authorized to be appropriated for title V pursuant to paragraph (1), not more than $5,000,000 may be used for purposes of section 510 of such title.".

(e) Construction.—(1) Part D of title I of the Act (29 U.S.C. 1571 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 172. CONSTRUCTION.

"(a) Eligibility.—Nothing in this Act shall be construed to limit the right of persons to remain eligible for assistance under title XIX of the Social Security Act, relating to Medicaid pursuant to section 1619(b) of such Act.

"(b) Use of Funds.—Nothing in this Act shall be construed to authorize the use of funds under this Act for the ongoing support services provided to handicapped individuals placed in supported employment, as such term is defined in section 7(18) of the Rehabilitation Act of 1973.".

(2) The table of contents of the Act is amended by inserting after item relating to section 171 the following new item:

"Sec. 172. Construction.".

TITLE VIII—VETERANS PROGRAMS

SEC. 801. MEDICAL PROGRAMS.

(a) Authorization of Appropriations.—There is hereby authorized to be appropriated to the Veterans' Administration for each of fiscal years 1989 and 1990, in addition to any funds appropriated pursuant to any other authorization (whether definite or indefinite) of appropriations for those fiscal years, the sum of $30,000,000 for the medical care of veterans by the Veterans' Administration.

(b) Domiciliary Care.—Of the amount appropriated pursuant to subsection (a), 50 percent shall be available for—

(1) converting to use for domiciliary care beds the underused space located in facilities under the jurisdiction of the Administrator of Veterans' Affairs in urban areas in which there are significant numbers of homeless veterans; and

(2) furnishing domiciliary care in such beds to eligible veterans (primarily homeless veterans) who are in need of such care.

(c) Chronically Mentally Ill Homeless Veterans.—Of the amount appropriated pursuant to subsection (a), 50 percent shall be available for furnishing care and treatment and rehabilitative services under section 115 of the Veterans Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 501) to homeless veterans who have a chronic mental illness disability. Not more than $500,000 of the amount available under the preceding sentence shall be used for the purpose of monitoring the furnishing of such care and services and, in furtherance of such purpose, maintaining in the Veterans' Administration the equivalent of 10 full-time employees.

(d) Limitation.—Nothing in this section shall result in the diminution of the conversion of hospital-care beds to nursing-home-care beds by the Veterans' Administration.

TITLE IX—AID TO FAMILIES WITH DEPENDENT CHILDREN; UNEMPLOYMENT COMPENSATION

SEC. 901. EXTENSION OF PROHIBITION AGAINST IMPLEMENTATION OF CERTAIN PROPOSED REGULATIONS.

Section 9118 of the Omnibus Budget Reconciliation Act of 1987 (42 U.S.C. 1383c) is amended by striking "October 1, 1988" and inserting "September 30, 1989".

SEC. 902. REVIEW OF POLICY GOVERNING USE OF AFDC FUNDS TO MEET EMERGENCY NEEDS OF FAMILIES ELIGIBLE FOR AFDC THROUGH EMERGENCY ASSISTANCE OR SPECIAL NEEDS PAYMENTS; REPORT TO CONGRESS.

(a) Review of Policy.—The Secretary of Health and Human Services shall review the policies in effect, as of the date of the enactment of this section, with respect to the use by States of amounts paid to such States under the program of aid to families with dependent children under part A of title IV of the Social Security Act, in the form of payments of aid to meet special needs or emergency assistance under section 406(e) of such Act to meet emergency needs of families who are eligible for such aid.

(b) Report to Congress.—Not later than July 1, 1989, the Secretary of Health and Human Services shall submit to the Congress a report containing recommendations for legislative and regulatory changes designed to—

(1) improve the ability of the program of aid to families with dependent children under part A of title IV of the Social Security Act to respond to emergency needs of families who are eligible for such aid; and

(2) eliminate the use of funds provided to States under such program to pay for the provision of shelter in commercial or similar transient facilities.

SEC. 903. DEMONSTRATION PROJECTS TO REDUCE NUMBER OF HOMELESS AFDC FAMILIES IN WELFARE HOTELS.

(a) In General.—In order to enable States to provide housing for homeless families who are recipients of aid to families with dependent children under a State plan approved under part A of title IV of the Social Security Act in transitional facilities instead of in commercial or similar transient facilities, at least 2 but not more than 3 States may undertake and carry out demonstration projects in accordance with this section. States may use public or private nonprofit agencies in carrying out demonstration projects in accordance with this section. Demonstration projects under this section shall meet such conditions and requirements as the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall prescribe.

(b) Duties of Secretary of Health and Human Services.—The Secretary shall—

(1) consider all applications received from States desiring to conduct demonstration projects under this section;

(2) transmit to the Comptroller General for review under subsection (e) a copy of each such application received;

(3) approve at least 2 but not more than 3 applications involving projects which appear likely to contribute significantly to the achievement of the purpose of this section; and

(4) make grants from funds appropriated to carry out this section to each State whose application is so approved to carry out the project that is the subject of the application.

(c) Project Requirements.—The Secretary shall not approve an application received from a State for a demonstration project under this section unless the State agency that administers the program of aid to families with dependent children in the State under a State plan approved under part A of title IV of the Social Security Act demonstrates that the project will—

(1) provide housing in transitional facilities only to homeless families who are recipients of aid to families with dependent children under the State plan and who reside in commercial or similar transient facilities;

(2) permanently reduce the number of rooms used to house homeless families who are recipients of such aid in commercial or similar transient facilities by the number of units made available in transitional facilities in accordance with paragraph (1); and

(3) provide that the Federal share of the total amount of cash assistance provided under the project to families residing in transitional facilities plus the total amount of grants made to the State under this section must be less than or equal to the Federal share of the cost of housing such families in commercial or similar transient facilities (including payments made to cover basic needs and services of such families).

(d) Use of Funds.—Each State that receives funds under this section shall use such funds to—

(1) rehabilitate or construct transitional facilities which are easily convertible to permanent housing when such facilities are no longer needed as transitional facilities; and

(2) provide on-site social services at such facilities.

(e) GAO Review of Applications.—Within 90 days after the Comptroller General receives from the Secretary a copy of an application submitted under this section, the Comptroller General shall review such application and report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on whether the Federal share of the total amount of cash assistance to be provided under the project which is the subject of the application to families residing in transitional facilities plus the total amount of grants to be made to the State under this section is less than or equal to the Federal share of the cost of housing such families in commercial or similar transient facilities (including payments made to cover basic needs and services of such families).

(f) Authorization of Appropriations.—For grants under this section, there is authorized to be appropriated to the Secretary for the fiscal year 1990 not to exceed $20,000,000, which shall remain available until expended.

(g) Definitions.—As used in section 902 and this section:

(1) Homeless family.—The term "homeless family" means a dependent child or children and the relatives with whom such child or children are living, who—

(A) lack a fixed and regular nighttime address;

(B) have a primary residence that is a shelter designed for temporary accommodation, a hotel, or a motel; or

(C) are living in a place not designed for, or ordinarily used as, a regular sleeping accommodation.

(2) Commercial or similar transient facilities.—The term "commercial or similar transient facilities" means transient accommodations in—

(A) a commercial hotel or motel operated by a privately owned for-profit entity; or

(B) a similar establishment which is not a transitional facility (whether or not directly operated or contracted for by the State or a

political subdivision or by a not-for-profit organization authorized by the State or political subdivision to provide such accommodations).

(3) TRANSITIONAL FACILITY.—The term "transitional facility" means any facility operated by a State or local government or a nonprofit organization which, at a minimum—

(A) provides temporary and private sleeping accommodations, and temporary eating and cooking accommodations; and

(B) provides services to help families locate and retain permanent housing.

SEC. 904. PREVENTING FRAUD AND ABUSE IN HOUSING AND URBAN DEVELOPMENT PROGRAMS.

(a) DEFINITIONS.—As used in this section:

(1) SECRETARY.—The term "Secretary" means the Secretary of Housing and Urban Development.

(2) APPLICANT; PARTICIPANT.—The terms "applicant" and "participant" shall have such meanings as the Secretary by regulation shall prescribe, except that such terms shall include members of an applicant's or participant's household, and such terms shall not include persons whose involvement is only in their official capacity, such as State or local government officials and officers of lending institutions.

(3) PUBLIC HOUSING AGENCY.—The term "public housing agency" means any agency described in section 3(b)(6) of the United States Housing Act of 1937.

(b) APPLICANT AND PARTICIPANT CONSENT.—As a condition of initial or continuing eligibility for participation in any program of the Department of Housing and Urban Development involving initial and periodic review of an applicant's or participant's income, and to assure that the level of benefits provided under the program is correct, the Secretary may require that an applicant or participant—

(1) sign a consent form approved by the Secretary authorizing the Secretary, the public housing agency, or the owner responsible for determining eligibility for or level of benefits to request current or previous employers to verify salary and wage information pertinent to the applicant's or participant's eligibility or level of benefits; and

(2) sign a consent form approved by the Secretary authorizing the Secretary or the public housing agency responsible for determining eligibility or level of benefits to request a State agency charged with the administration of the State unemployment law to release wage information with respect to such applicant or participant or information regarding whether such applicant or participant is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received (or to be received) by such applicant or participant.

This consent form shall not be used to request taxpayer return information protected by section 6103 of the Internal Revenue Code of 1986.

(c) ACCESS TO STATE EMPLOYMENT RECORDS.—

(1) AMENDMENTS TO SOCIAL SECURITY ACT.—(A) Section 303 of the Social Security Act (42 U.S.C. 503) is amended by adding at the end the following new subsection:

"(i)(1) The State agency charged with the administration of the State law—

"(A) shall disclose, upon request and on a reimbursable basis, only to officers and employees of the Department of Housing and Urban Development and to representatives of a public housing agency, any of the following information contained in the records of such State agency with respect to individuals applying for or participating in any housing assistance program administered by the Department who have signed an appropriate consent form approved by the Secretary of Housing and Urban Development—

"(i) wage information, and

"(ii) whether an individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received (or to be received) by such individual, and

"(B) shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to ensure that information disclosed under subparagraph (A) is used only for purposes of determining an individual's eligibility for benefits, or the amount of benefits, under a housing assistance program of the Department of Housing and Urban Development.

"(2) The Secretary of Labor shall prescribe regulations governing how often and in what form information may be disclosed under paragraph (1)(A).

"(3) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he or she is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he or she shall make no future certification to the Secretary of the Treasury with respect to such State.

"(4) For purposes of this subsection, the term 'public housing agency' means any agency described in section 3(b)(6) of the United States Housing Act of 1937.

"(5) The provisions of this subsection shall cease to be effective beginning on October 1, 1994.".

(B) Section 304(a)(2) of the Social Security Act (42 U.S.C. 504(a)(2)) is amended by striking "(e), or (h)" and inserting "(e), (h), or (i)".

(2) APPLICANT AND PARTICIPANT PROTECTIONS.—(A) In order to protect applicants for, and recipients of, benefits under the programs of the Department of Housing and Urban Development from the improper use of information obtained pursuant to the requirements of section 303(i) of the Social Security Act from the State agency charged with the administration of the State unemployment compensation law, officers and employees of the Department of Housing and Urban Development and representatives of public housing agencies may only use such information—

(i) to verify an applicant's or participant's eligibility for or level of benefits; or

(ii) in the case of an owner responsible for determining eligibility for or level of benefits, to inform such owner that an applicant's or participant's eligibility for or level of benefits is uncertain and to request such owner to verify such applicant's or participant's income information.

(B) No Federal, State, or local agency, or public housing agency, or owner responsible for determining eligibility for or level of benefits receiving such information may terminate, deny, suspend, or reduce any benefits of an applicant or participant until such agency or owner has taken appropriate steps to independently verify information relating to—

(i) the amount of the wages or unemployment compensation involved,

(ii) whether such applicant or participant actually has (or had) access to such wages or benefits for his or her own use, and

(iii) the period or periods when, or with respect to which, the applicant or participant actually received such wages or benefits.

(C) Such applicant or participant shall be informed by the agency or owner of the findings made by the agency or owner on the basis of such verified information, and shall be given an opportunity to contest such findings, in the same manner as applies to other information and findings relating to eligibility factors under the program.

(3) PENALTY.—(A) Any person who knowingly and willfully requests or obtains any information concerning an applicant or participant pursuant to the authority contained in section 303(i) of the Social Security Act under false pretenses, or any person who knowingly and willfully discloses any such information in any manner to any individual not entitled under any law to receive it, shall be guilty of a misdemeanor and fined not more than $5,000. The term "person" as used in this paragraph shall include an officer or employee of the Department of Housing and Urban Development, an officer or employee of any public housing agency, and any owner responsible for determining eligibility for or level of benefits (or employee thereof).

(B) Any applicant or participant affected by (i) a negligent or knowing disclosure of information referred to in this section or in section 303(i) of the Social Security Act about such person by an officer or employee of any public housing agency or owner (or employee thereof), which disclosure is not authorized by this section, such section 303(i), or any regulation implementing this section or such section 303(i), or (ii) any other negligent or knowing action that is inconsistent with this section, such section 303(i), or any such implementing regulation may bring a civil action for damages and such other relief as may be appropriate against any officer or employee of any public housing agency or owner (or employee thereof) responsible for any such unauthorized action. The district court of the United States in the district in which the affected applicant or participant resides, in which such unauthorized action occurred, or in which the applicant or participant alleged to be responsible for any such unauthorized action resides, shall have jurisdiction in such matters. Appropriate relief that may be ordered by such district courts shall include reasonable attorney's fees and other litigation costs.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the provisions of this section shall take effect on September 30, 1989.

(2) OPTIONAL EARLY IMPLEMENTATION.—At the initiative of a State or an agency of the State, and with the approval of the Secretary of Labor, the amendments made by subsection (c)(1) may be made effective in such State on any date before September 30, 1989, which is more than 90 days after the date of the enactment of this section.

(3) REQUIREMENTS FOR STATE AGENCIES.—In the case of any State the legislature of which has not been in session for at least 30 calendar days (whether or not consecutive) between the date of the enactment of this Act and September 30, 1989, the amendments made by subsection (c)(1) shall take effect 30 calendar days after the first day on which

such legislature is in session on or after September 30, 1989.

TITLE X—HOUSING AND COMMUNITY DEVELOPMENT TECHNICAL AMENDMENTS

Subtitle A—Housing Assistance

SEC. 1001. INCOME ELIGIBILITY FOR ASSISTED HOUSING.

(a) In General.—Section 16(c) of the United States Housing Act of 1937 (42 U.S.C. 1437n(c)) is amended in the first sentence—

(1) by striking ", and" and inserting a comma;

(2) by striking ", as appropriate" and all that follows through "programs" and inserting the following: "an appropriate specific percentage of lower income families other than very-low income families that may be assisted in each assisted housing program"; and

(3) by inserting before the period at the end the following: ", and shall prohibit project owners from selecting families for residence in an order different from the order on the waiting list for the purpose of selecting relatively higher income families for residence".

(b) Clarification.—Section 6(c)(4)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437d(c)(4)(A)) is amended by inserting before the semicolon at the end the following: "and shall not permit public housing agencies to select families for residence in an order different from the order on the waiting list for the purpose of selecting relatively higher income families for residence".

SEC. 1002. PUBLIC HOUSING CHILD CARE GRANTS.

(a) Availability of Child Care Services in Facilities Near Public Housing.—Subsections (a), (b), (c), and (e) of section 222 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701z-6 note) are amended by inserting "or near" after "child care services in" each place it appears.

(b) Conforming Amendments.—

(1) Eligiblity for assistance.—Section 222(b) of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701z-6 note) is amended—

(A) by striking "in the project" each place it appears and inserting "for the project"; and

(B) in paragraph (2), by inserting "in or near the project" after "facilities".

(2) Allocation of assistance.—Section 222(c)(3) of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701z-6 note) is amended by striking "established in" and inserting "established for".

SEC. 1003. PUBLIC HOUSING RESIDENT MANAGEMENT.

Section 20 of the United States Housing Act of 1937 (42 U.S.C. 1437r) is amended by adding at the end the following new subsection:

"(h) Applicability.—Any management contract between a public housing agency and a resident management corporation that is entered into after the date of the enactment of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 shall be subject to this section and the regulations issued to carry out this section.".

SEC. 1004. PROHIBITION OF REDUCTION OF SECTION 8 CONTRACT RENTS.

(a) In General.—Section 8(c)(2)(C) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(C)) is amended—

(1) in the first sentence, by striking "as hereinbefore provided" and inserting the following: "under subparagraphs (A) and (B)"; and

(2) by adding at the end the following new sentences: "Any maximum monthly rent that has been reduced by the Secretary after April 14, 1987, and prior to the enactment of this sentence shall be restored to the maximum monthly rent in effect on April 15, 1987. For any project which has had its maximum monthly rents reduced after April 14, 1987, the Secretary shall make assistance payments (from amounts reserved for the original contract) to the owner of such project in an amount equal to the difference between the maximum monthly rents in effect on April 15, 1987, and the reduced maximum monthly rents, multiplied by the number of months that the reduced maximum monthly rents were in effect.".

(b) Budget Compliance.—During fiscal year 1989, the amendment made by subsection (a)(2) shall be effective only to such extent or in such amounts as are provided in appropriation Acts. For purposes of section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Pub. L. 100-119), to the extent that this section has the effect of transferring an outlay of the United States from one fiscal year to an adjacent fiscal year, the transfer is a necessary (but secondary) result of a significant policy change.

SEC. 1005. PROJECT-BASED SECTION 8 ASSISTANCE.

(a) Implementation of Program.—To implement the amendment made by section 148 of the Housing and Community Development Act of 1987, the Secretary of Housing and Urban Development shall issue regulations that take effect not later than 30 days after the date of the enactment of this Act. Until the effective date of the regulations, the Secretary of Housing and Urban Development shall consider each application from a public housing agency to attach a contract for assistance payments to a structure, in accordance with the amendment made by such section 148 to section 8(d)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)(2)), and shall promptly approve such application if it meets the requirements of such section 8(d)(2).

(b) Availability in New Construction Projects.—

(1) In general.—Section 8(d)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)(2)) is amended—

(A) by inserting "(A)" after the paragraph designation;

(B) by striking "(A)" and "(B)" each place it appears and inserting "(i)" and "(ii)", respectively; and

(C) by adding at the end the following new subparagraph:

"(B) The Secretary shall permit any public housing agency to approve the attachment of assistance under subsection (b)(1) with respect to any newly constructed structure if—

"(i) the owner or prospective owner agrees to construct the structure other than with assistance under this Act and otherwise complies with the requirements of this section; and

"(ii) the aggregate assistance provided by the public housing agency pursuant to this subparagraph and the last sentence of subparagraph (A) does not exceed 15 percent of the assistance provided by the public housing agency.".

(2) Regulations.—To implement the amendments made by this subsection, the Secretary of Housing and Urban Development shall issue regulations that take effect not later than 90 days after the date of the enactment of this Act.

(c) Renewal of Contracts.—Section 8(d)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)(2)) (as amended by subsection (b) of this section) is further amended by adding at the end the following new subparagraph:

"(C) Any contract for assistance payments that is attached to a structure under this paragraph shall (at the option of the public housing agency but subject to available funds) be renewable for 2 additional 5-year terms, except that the aggregate term of the initial contract and renewals shall not exceed 15 years.".

(d) Exception to 15 Percent Limitation.—

(1) Altoona, Pennsylvania.—The Secretary of Housing and Urban Development, in accordance with paragraph (2) of section 8(d) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)) but without regard to the 15 percent limitation set forth in such paragraph, shall permit the attachment of contracts for assistance payments to the facility located in Altoona, Pennsylvania, that is the Penn Alto Hotel and will include not less than 140 units of housing for the elderly.

(2) Minneapolis, Minnesota.—Any tenant who is on the waiting list for dwellings in the Cedar Square West Project in Minneapolis, Minnesota, or is living in an overcrowded dwelling in the project, shall be given preference for the 250 project-based certificates under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) that, before the date of the enactment of this Act, were offered in settlement for a lawsuit, notwithstanding section 8(d)(1)(A) of such Act. The Secretary of Housing and Urban Development, in accordance with paragraph (2) of section 8(d) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)) but without regard to the 15 percent limitation set forth in such paragraph, shall permit the attachment of contracts for assistance payments to structures to the extent necessary to provide the assistance for such 250 certificates.

SEC. 1006. SECTION 8 ASSISTANCE FOR RESIDENTS OF RENTAL REHABILITATION PROJECTS.

Section 8(u) of the United States Housing Act of 1937 (42 U.S.C. 1437f(u)) is amended—

(1) by striking "and" at the end of paragraph (1);

(2) by striking the period at the end of paragraph (2) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(3) the Secretary shall allocate assistance for certificates or vouchers under this section to ensure that sufficient resources are available to address the physical or economic displacement, or potential economic displacement, of existing tenants pursuant to paragraphs (1) and (2).".

SEC. 1007. RENTAL REHABILITATION PROGRAM.

(a) Administrative Expenses.—Section 17(h) of the United States Housing Act of 1937 (42 U.S.C. 1437o(h)) is amended to read as follows:

"(h) Administrative Expenses.—(1) Except as provided in paragraph (2), grantees receiving assistance under this section may not deduct therefrom any amounts to cover administrative expenses in carrying out their responsibilities under this section.

"(2) A grantee may use not more than 10 percent of its initial rental rehabilitation grant under subsection (c) for each year to cover administrative expenses in carrying out its responsibilities under this section. Any State shall share the amount provided pursuant to the preceding sentence with units of general local government administering the program with the State.".

(b) Correction of Cross-Reference.—Section 17(i)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437o(i)(2)) is amended by striking "section 104(f)" and inserting "section 104(g)".

SEC. 1008. TWEEMILL HOUSE.

The Secretary of Housing and Urban Development shall process the application under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) for project 012-EH347 (Tweemill House) without regard to the cost limits that would otherwise be imposed pursuant to 24 C.F.R. 885.410(a)(1), and the assistance to such project under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) may exceed the fair market rents established under section 8(c)(1) of such Act.

SEC. 1009. HOUSING COUNSELING.

Section 106(a)(2) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(a)(2)) is amended by inserting before the period at the end of the first sentence the following: "or guaranteed or insured under chapter 37 of title 38, United States Code".

SEC. 1010. MULTIFAMILY HOUSING MANAGEMENT AND PRESERVATION.

(a) Unsubsidized Projects.—Section 203(a)(1)(C) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11(a)(1)(C)) is amended by striking ", on the date of assignment, occupied by low- and moderate-income persons" and inserting the following: "occupied by low- and moderate-income persons on the date of assignment or foreclosure (whichever is greater)".

(b) Section 8 Assistance.—The third sentence of section 203(d)(1) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11(d)(1)) is amended to read as follows: "Such contracts shall be sufficient to assist (A) all units in multifamily housing projects that are subsidized projects or formerly subsidized projects; (B) in other multifamily housing projects owned by the Secretary, the units that, on the date title to the projects is acquired by the Secretary, are occupied by lower income families eligible for assistance under such section 8 or are vacant (which units shall be made available for such families as soon as possible); and (C) in all other multifamily housing projects, the units that are occupied by lower income families eligible for assistance under such section 8 on the date of assignment or foreclosure (whichever is greater).".

(c) Right of First Refusal.—Section 203(e) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11(e)) is amended to read as follows:

"(e)(1) Prior to the sale of a multifamily housing project that is owned by the Secretary, the Secretary shall develop a disposition plan for the project that specifies the minimum terms and conditions of the Secretary for disposition of the project, including the initial sales price that is acceptable to the Secretary and the assistance that the Secretary plans to make available to a prospective purchaser in accordance with subsections (a) and (d). The initial sales price shall reflect the value of the project as housing affordable to low- and moderate-income persons for the period required in subsection (d).

"(2) Upon approval of a disposition plan for a project, the Secretary shall notify the local government and the State housing finance agency (or other agency or agencies designated by the Governor) of the terms and conditions of the disposition plan. The local government and the designated State agency shall have 90 days to make an offer to purchase the project.

"(3) The Secretary shall accept an offer that complies with the terms and conditions of the disposition plan. The Secretary may accept an offer that does not comply with the terms and conditions of the disposition plan if the Secretary determines that the offer will further the preservation objectives of subsection (a) by actions that include extension of the duration of low- and moderate-income affordability restrictions or otherwise restructuring the transaction in a manner that enhances the long-term affordability for low- and moderate-income persons. The Secretary shall, in particular, have discretion to reduce the initial sales price in exchange for the extension of low- and moderate-income affordability restrictions beyond the 15-year period contemplated by the attachment of assistance pursuant to subsection (d)(1). If the Secretary and the local government or designated State agency cannot reach agreement within 90 days, the Secretary may offer the project for sale to the general public.

"(4) The Secretary shall prohibit any local government or designated State agency from transferring projects acquired under a right of first refusal under this subsection to a private entity, unless the local government or designated State agency solicits proposals from such entities through a public process. The solicitation of proposals shall be based on prescribed criteria, which shall include the extension of low- and moderate-income affordability restrictions beyond the 15-year period contemplated by the attachment of assistance pursuant to subsection (d)(1).

"(5) Notwithstanding any other provision of law to the contrary, a local government (including a public housing agency) or designated State agency may purchase a subsidized or formerly subsidized project in accordance with this subsection.".

(d) Definition of Subsidized Project.—Section 203(i)(2)(E) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11(i)(2)(E)) is amended by striking "(other" and all that follows and inserting "(excluding payments made for certificates under subsection (b)(1) or vouchers under subsection (o)), if (except for purposes of paragraphs (1) and (2) of subsection (h) and section 183(c) of the Housing and Community Development Act of 1987) such housing assistance payments are made to more than 50 percent of the units in the project.".

(e) Date of Assignment.—Section 203(i) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11(i)) is amended by adding at the end the following new paragraph:

"(4) For purposes of subsection (a)(1)(C) and subsection (d)—

"(A) the term 'date of assignment' means the date of assignment, without regard to whether such date occurs before, on, or after February 5, 1988; and

"(B) in the case of a multifamily housing project assigned before the date of the enactment of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 and for which there are no records identifying the number of low- and moderate-income persons occupying units in the project on the date of assignment, the number of low- and moderate-income persons occupying units in the project within 120 days of such date of enactment shall be used instead.".

(f) Annual Report on Right of First Refusal.—Section 203 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11) is amended by adding at the end the following new subsection:

"(k) The Secretary shall annually submit to the Congress a report describing the activities carried out under subsection (e) during the preceding year.".

SEC. 1011. MULTIFAMILY HOUSING CAPITAL IMPROVEMENTS ASSISTANCE.

(a) Amounts Available.—Section 201(j)(4) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z-1a(j)(4)) is amended—

(1) by striking "may use not more than $50,000,000" and inserting the following: "shall, to the extent of approvable applications and subject to paragraph (1), use not less than $30,000,000 or 40 percent (whichever is less) of the amounts available"; and

(2) by adding at the end the following new sentence: "Any amount reserved under this paragraph for assistance for capital improvements that is not used before the last 60 days of a fiscal year shall become available for other assistance under this section.".

(b) Implementation of Program.—To implement the amendments made by section 185 of the Housing and Community Development Act of 1987, the Secretary of Housing and Urban Development shall issue regulations that become effective not later than February 5, 1989.

SEC. 1012. USE OF FUNDS RECAPTURED FROM REFINANCING STATE FINANCE PROJECTS.

(a) In General.—In the case of any State financed project that was provided a financial adjustment factor under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) and is being refinanced, 50 percent of the amounts that are recaptured from the project shall be made available to the State housing finance agency in the State where the project is located for use in providing decent, safe, and sanitary housing affordable to very low-income families or persons.

(b) Budget Compliance.—Subsection (a) shall be effective only to such extent or in such amounts as are provided in appropriation Acts.

SEC. 1013. PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURES.

The Secretary of Housing and Urban Development shall publish a notice providing that the final rule of the Department of Housing and Urban Development entitled "Public Housing—Tenancy and Administrative Grievance Procedure" and published in the Federal Register of August 30, 1988 (53 Fed. Reg. 33216 et seq.) shall be interim for effect. The Secretary shall afford interested persons an opportunity to comment on the rule in accordance with section 553(c) of title 5, United States Code, and such comment period shall continue for not less than 60 days, or until March 1, 1989, whichever occurs later.

SEC. 1014. EXCEPTIONS TO TENANT PREFERENCE PROVISIONS.

(a) Public Housing.—

(1) In general.—Section 6(c)(4)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437d(c)(4)(A)) (as amended by section 1001(b) of this Act) is further amended—

(A) by inserting "(i)" after ", but"; and

(B) by inserting before the semicolon at the end the following: "; and (ii) the public housing agency may provide for circumstances in which families who do not qualify for any preference established in this subparagraph are provided assistance before families who do qualify for such preference, except that not more than 10 percent of the families who initially receive assistance in

any 1-year period (or such shorter period selected by the public housing agency before the beginning of its first full year subject to this clause) may be families who do not qualify for such preference".

(2) INDIAN HOUSING.—In accordance with section 201(b)(2) of the United States Housing Act of 1937, the amendments made by paragraph (1) shall also apply to public housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority.

(b) SECTION 8 ASSISTANCE.—Section 8(d)(1)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)(1)(A)) is amended—

(1) by inserting "(i)" after "except that"; and

(2) by inserting before the semicolon at the end the following: "; and (ii) the public housing agency may provide for circumstances in which families who do not qualify for any preference established in clause (i) are provided assistance before families who do qualify for such preference, except that not more than 10 percent (or such higher percentage determined by the Secretary to be necessary to ensure that public housing agencies can assist families in accordance with subsection (u)(2) or determined by the Secretary to be appropriate for other good cause) of the families who initially receive assistance in any 1-year period (or such shorter period selected by the public housing agency before the beginning of its first full year subject to this clause) may be families who do not qualify for such preference".

(c) HOUSING VOUCHERS.—Section 8(o)(3) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(3)) is amended by adding at the end the following new sentence: "A public housing agency may provide for circumstances in which families who do not qualify for any preference established in the preceding sentence are provided assistance under this subsection before families who do qualify for such preference, except that not more than 10 percent (or such higher percentage determined by the Secretary to be necessary to ensure that public housing agencies can assist families in accordance with subsection (u)(2) or determined by the Secretary to be appropriate for other good cause) of the families who initially receive assistance in any 1-year period (or such shorter period selected by the public housing agency before the beginning of its first full year subject to this sentence) may be families who do not qualify for such preference.".

Subtitle B—Preservation of Low Income Housing

SEC. 1021. NOTICE OF INTENT.

Section 222 of the Housing and Community Development Act of 1987 (12 U.S.C. 1715l note) is amended in the last sentence by striking "notice or intent" and inserting "notice of intent".

SEC. 1022. PLAN OF ACTION.

(a) PROVISION OF INFORMATION.—Section 223(a) of the Housing and Community Development Act of 1987 (12 U.S.C. 1715l note) is amended by inserting before the period at the end of the first sentence the following: ", and any relevant market area and demographic information that the Secretary has custody of and that the owner may use in preparing the plan".

(b) CONTENTS OF PLAN.—Section 223 of the Housing and Community Development Act of 1987 (12 U.S.C. 1715l note) is amended by adding at the end the following new subsection:

"(d) AUTHORITY TO LIMIT CONTENTS OF PLAN.—The Secretary shall limit the amount of appraisal, market area, and demographic information required under this section in the case of a plan of action requesting incentives.".

SEC. 1023. INCENTIVES TO EXTEND LOW INCOME USE.

Section 224(b) of the Housing and Community Development Act of 1987 (12 U.S.C. 1715l note) is amended in the matter preceding paragraph (1) by striking "Such agreements" and inserting the following: "Agreements entered into under subsection (a) that by modifications to the existing regulatory agreement or mortgage extend the low income affordability restrictions through the term of the mortgage or, in the case of the prepayment of a mortgage, by a recorded instrument impose low income affordability restrictions (including the obligations specified in the regulatory agreement) through a period equivalent to the term of the original mortgage".

SEC. 1024. CRITERIA FOR APPROVAL OF PLAN OF ACTION.

Section 225(a)(1) of the Housing and Community Development Act of 1987 (12 U.S.C. 1715l note) is amended—

(1) by inserting after "economic hardship for current tenants" the following: "(and will not in any event result in (A) a monthly rental payment by a current tenant that exceeds 30 percent of the monthly adjusted income of the tenant or an increase in the monthly rental payment in any year that exceeds 10 percent (whichever is lower), or (B) in the case of a current tenant who already pays more than such percentage, an increase in the monthly rental payment in any year that exceeds the increase in the Consumer Price Index or 10 percent (whichever is lower)"; and

(2) by inserting before the semicolon at the end the following: ", determined without regard to the availability of Federal housing assistance that would address any such hardship or involuntary displacement".

SEC. 1025. MODIFICATION OF EXISTING REGULATORY AGREEMENTS.

(a) CORRECTION OF CROSS-REFERENCE.—Section 228(a)(5) of the Housing and Community Development Act of 1987 (12 U.S.C. 1715l note) is amended by striking "section 225(b)(6)" and inserting "section 225(b)(3)(F)".

(b) CORRECTION OF TYPOGRAPHICAL ERROR.—Section 228(a) of the Housing and Community Development Act of 1987 (12 U.S.C. 1715l note) is amended by inserting a period at the end.

SEC. 1026. REPORT ON NOTICE TO TENANTS AND INCENTIVES.

Section 232 of the Housing and Community Development Act of 1987 (12 U.S.C. 1715l note) is amended by adding at the end the following new sentence: "The report shall also include a detailed description of (1) the actions taken by the Secretary to ensure meaningful participation by affected tenants; and (2) the incentives developed by the Secretary under section 224 to ensure compliance with this subtitle.".

SEC. 1027. DEFINITION OF ELIGIBLE LOW INCOME HOUSING.

Section 233(1)(A)(iii) of the Housing and Community Development Act of 1987 (12 U.S.C. 1715l note) is amended by inserting "or a State or State agency" after "Secretary".

SEC. 1028. RURAL RENTAL HOUSING DISPLACEMENT PREVENTION.

(a) ASSISTANCE AVAILABLE TO BORROWER.—Section 502(c)(4)(B)(iv) of the Housing Act of 1949 (42 U.S.C. 1472(c)(4)(B)(iv)) is amended by striking "paragraphs (7) and (8) of section 515(b)" and inserting "paragraphs (1) and (2) of section 515(c)".

(b) SELECTION OF PURCHASERS.—Section 502(c)(5)(B) of the Housing Act of 1949 (42 U.S.C. 1472(c)(5)(B)) is amended by adding at the end the following new clause:

"(iii) SELECTION OF QUALIFIED PURCHASER.—The Secretary shall promulgate regulations that establish criteria for selecting a qualified nonprofit organization or public agency to purchase housing and related facilities when more than 1 such organization or agency has made a bona fide offer. Such regulations shall give a priority to those organizations or agencies with the greatest experience in developing or managing low income housing or community development projects and with the longest record of service to the community.".

(c) DEFINITIONS OF NONPROFIT ORGANIZATIONS.—Section 502(c)(5)(I) of the Housing Act of 1949 (42 U.S.C. 1472(c)(5)(I)) is amended to read as follows:

"(I) DEFINITIONS.—For purposes of this paragraph:

"(i) LOCAL NONPROFIT ORGANIZATION.—The term 'local nonprofit organization' means a nonprofit organization that—

"(I) has a broad based board reflecting various interests in the community or trade area; and

"(II) is a not-for-profit charitable organization whose principal purposes include developing or managing low income housing or community development projects.

"(ii) NONPROFIT ORGANIZATION.—The term 'nonprofit organization' means any private organization—

"(I) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

"(II) that is approved by the Secretary as to financial responsibility; and

"(III) that does not have among its officers or directorate persons or parties with a material interest (or persons or parties related to any person or party with such an interest) in loans financed under section 515 that have been prepaid.".

SEC. 1029. SECTION 8 LOAN MANAGEMENT PROGRAM.

(a) REPEAL OF 15-YEAR TERM REQUIREMENT.—Section 8(v) of the United States Housing Act of 1937 (42 U.S.C. 1437f(v)) is amended—

(1) by striking paragraph (1); and

(2) by redesignating paragraph (2) as paragraph (1).

(b) EXECUTION OF NEW CONTRACTS.—Section 8(v)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437f(v)(1)) (as so redesignated by subsection (a) of this section) is amended by inserting "for project-based loan management assistance" after "new contract".

(c) AVAILABILITY OF ASSISTANCE FOR UNSUBSIDIZED PROJECTS.—Section 8(v) of the United States Housing Act of 1937 (42 U.S.C. 1437f(v)) (as amended by subsetion (a) of this section) is further amended by adding at the end the following new paragraph:

"(2)(A) The eligiblity of a multifamily residential project for loan management assistance under this section shall be determined without regard to whether the project is subsidized or unsubsidized.

"(B) In allocating loan management assistance under this section, the Secretary may give a priority to any project only on the basis that the project has serious financial problems that are likely to result in a claim on the insurance fund in the near future or the project is eligible to receive in-

centives under subtitle B of the Emergency Low Income Housing Preservation Act of 1987.".

Subtitle C—Rural Housing

SEC. 1041. IMPLEMENTATION OF GUARANTEED LOAN DEMONSTRATION.

(a) In General.—Section 304(a) of the Housing and Community Development Act of 1987 (42 U.S.C. 1472 note) is amended by adding at the end the following: "To implement this section, the Secretary shall issue regulations that take effect not later than 120 days after the date of the enactment of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988.".

(b) Clarification.—Section 304 of the Housing and Community Development Act of 1987 (42 U.S.C. 1472 note) is amended by adding at the end the following new subsection:

"(f) Relation to Other Law.—Section 502(d), and the second sentence of section 517(e), of the Housing Act of 1949 shall not apply to this section.".

(c) Applicability.—The amendments made by this section shall apply to fiscal year 1989 and each succeeding fiscal year.

SEC. 1042. SECTION 515 RENTS.

Section 515 of the Housing Act of 1949 (42 U.S.C. 1485) is amended by striking subsection (h).

SEC. 1043. AVAILABILITY OF DOMESTIC FARM LABOR HOUSING FOR OTHER FAMILIES.

(a) Insured Loan Program.—Section 514 of the Housing Act of 1949 (42 U.S.C. 1484) is amended by adding at the end the following new subsection:

"(i) Housing and related facilities constructed with loans under this section may be used for tenants eligible for occupancy under section 515 if the Secretary determines that—

"(1) there is no longer a need in the area for farm labor housing; or

"(2) the need for such housing in the area has diminished to the extent that the purpose of the loan, providing housing for domestic farm labor, can no longer be met.".

(b) Grant Program.—Section 516 of the Housing Act of 1949 (42 U.S.C. 1486) is amended by adding at the end the following new subsection:

"(j) Housing and related facilities constructed with grants under this section may be used for tenants eligible for occupancy under section 515 if the Secretary determines that—

"(1) there is no longer a need in the area for farm labor housing; or

"(2) the need for such housing in the area has diminished to the extent that the purpose of the grant, providing housing for domestic farm labor, can no longer be met.".

SEC. 1044. RURAL RENTAL REHABILITATION DEMONSTRATION.

Section 311(b) of the Housing and Community Development Act of 1987 (42 U.S.C. 1490m note) is amended—

(1) by striking "provided to" and inserting "provided in"; and

(2) by inserting before the period at the end the following: ", including areas located in States where the Secretary administers the rental rehabilitation grant program".

SEC. 1045. LEGAL REPRESENTATION IN LITIGATION INVOLVING COLLECTION OF CLAIMS AND OBLIGATIONS ARISING OUT OF RURAL HOUSING PROGRAMS.

Section 510(d) of the Housing Act of 1949 (42 U.S.C. 1480(d)) is amended by inserting before the semicolon at the end the following: "; except that—

"(1) prosecution and defense of any litigation under section 502 shall be conducted, at the discretion of the Secretary, by—

"(A) the United States attorneys for the districts in which the litigation arises and any other attorney that the Attorney General may designate under law, under the supervision of the Attorney General;

"(B) the General Counsel of the Department of Agriculture; or

"(C) any other attorney with whom the Secretary enters into a contract after a determination by the Secretary that—

"(i) the attorney will provide competent and cost-effective representation for the Farmers Home Administration; and

"(ii) representation by the attorney will either (I) accelerate the process by which a family or person eligible for assistance under section 502 will be able to purchase and occupy the housing involved; or (II) preserve the quality of the housing involved; and

"(2) the Secretary shall annually submit to the Congress a report describing activities carried out under paragraph (1)(C), including the cost of entering into contracts with such attorneys and the savings resulting from expedited foreclosure proceedings".

Subtitle D—Mortgage Insurance and Secondary Mortgage Market Programs

SEC. 1061. CHANGE IN DEFINITION OF VETERAN.

Section 203(b) of the National Housing Act (12 U.S.C. 1709(b)) is amended to read as if the amendment made by section 405(1) of the Housing and Community Development Act of 1987 (101 Stat. 1899) to section 203(b)(3)(2) of the National Housing Act had been made instead to section 203(b)(2) of the National Housing Act.

SEC. 1062. LIMITATION ON USE OF SINGLE FAMILY MORTGAGE INSURANCE BY INVESTORS.

(a) Exemption From Occupancy Requirement.—Section 203(g)(3) of the National Housing Act (12 U.S.C. 1709(g)(3)) is amended—

(1) by striking "or" at the end of subparagraph (D);

(2) by striking the period at the end of subparagraph (E) and inserting "; or"; and

(3) by adding at the end the following new subparagraph:

"(F) a mortgagor that, pursuant to section 223(a)(7), is refinancing an existing mortgage insured under this Act for not more than the outstanding balance of the existing mortgage, if the amount of the monthly payment due under the refinancing mortgage is less than the amount due under the existing mortgage for the month in which the refinancing mortgage is executed.".

(b) Correction of Conforming Amendment.—Section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) is amended to read as if the amendment made by section 406(b)(1)(B) of the Housing and Community Development Act of 1987 (101 Stat. 1900) had deleted instead the following: "to be occupied as the principal residence of the owner".

SEC. 1063. PROCEDURES APPLICABLE TO ASSUMPTION OF INSURED MORTGAGES.

(a) Credit Reviews.—Section 203(r)(2) of the National Housing Act (12 U.S.C. 1709(r)(2)) is amended by striking "date on which the mortgage is endorsed for insurance" each place it appears and inserting "date on which the mortgage is executed".

(b) Effective Date.—Section 407(a)(2) of the Housing and Community Development Act of 1987 is amended to read as follows:

"(2) Effective date.—The amendment made by paragraph (1) shall apply to each mortgage originated pursuant to an application for commitment for insurance signed by the applicant on or after December 1, 1986.".

SEC. 1064. PAYMENT OF CLAIMS ON LOSSES FROM PREFORECLOSURE SALES.

(a) In General.—The second sentence of section 204(a) of the National Housing Act (12 U.S.C. 1710(a)) is amended—

(1) by inserting "(A)" after "(1)"; and

(2) by striking ", and (2)" and inserting the following: ", or (B) upon the sale of the insured property by the mortgagor after default, if (i) the sale has been approved by the Secretary, (ii) the mortgagee receives an amount at least equal to the fair market value of the property (with appropriate adjustments), as determined by the Secretary, and (iii) the mortgagor has received appropriate homeownership counseling, as determined by the Secretary; and (2)".

(b) Conforming Amendments.—

(1) Applicability.—Section 204(a) of the National Housing Act (12 U.S.C. 1710(a)) is amended in the third sentence by striking "the effective date of this sentence" and inserting the following: "November 30, 1983 (on or after the date of the enactment of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, with respect to the payment of benefits under clause (1)(B) of the preceding sentence),".

(2) Cross-references.—

(A) Section 204(a) of the National Housing Act (12 U.S.C. 1710(a)) is amended immediately before the first proviso in the fifth sentence by striking "foreclosure".

(B) Section 204(j) of the National Housing Act (12 U.S.C. 1710(j)) is amended by inserting "clause (1)(A) of" before "the second sentence".

(c) Regulations.—In developing regulations to carry out the amendments made by this section, the Secretary of Housing and Urban Development may delegate to mortgagees the authority to make determinations on behalf of the Secretary, and the Secretary shall rely on certifications and post audit reviews to the greatest extent possible.

SEC. 1065. MORTGAGE INSURANCE ON HAWAIIAN HOME LANDS.

Section 247 of the National Housing Act (12 U.S.C. 1715z-12), as similarly amended first by the Department of Housing and Urban Development-Independent Agencies Act, 1988 (101 Stat. 1329-191) and later by subsections (a) and (b) of section 413 of the Housing and Community Development Act of 1987 (101 Stat. 1906), is amended to read as if the later amendment had not been enacted.

SEC. 1066. HOME EQUITY CONVERSION MORTGAGE INSURANCE DEMONSTRATION.

(a) Definitions.—Section 255(b)(3) of the National Housing Act (12 U.S.C. 1715z-20(b)(3)) is amended by inserting "Depository" before "Institutions".

(b) Eligibility Requirements.—Section 255(d)(3) of the National Housing Act (12 U.S.C. 1715z-20(d)(3)) is amended by striking "and that" and all that follows through "residence".

SEC. 1067. RECIPROCITY IN APPROVAL OF HOUSING SUBDIVISIONS AMONG FEDERAL AGENCIES.

Section 535 of the Housing Act of 1949 (42 U.S.C. 1490o) is amended—

(1) by inserting "(a)" after the section designation; and

(2) by adding at the end the following new subsections:

"(b) For purposes of complying with subsection (a), the Secretary of Housing and Urban Development shall consider the issuance by the Administrator of Veterans' Affairs of a certificate of reasonable value for 1 or more properties in a subdivision to be

an administrative approval for the entire subdivision. This subsection shall not apply after the expiration of the 1-year period beginning on the date of the enactment of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988.

"(c) Before the expiration of the period referred to in subsection (b), the Secretary of Housing and Urban Development shall report to the Congress on housing subdivision approval policies and practices, if any, of the Departments of Housing and Urban Development and Agriculture and the Veterans' Administration. The report shall focus on the administration of environmental laws in connection with any such policies and practices, and shall recommend any statutory, regulatory, and administrative changes needed to achieve total reciprocity for such housing subdivision approvals. The Secretary of Housing and Urban Development shall consult with the foregoing agencies, and such other agencies as the Secretary selects, in preparing the report.".

SEC. 1068. PERMANENT AUTHORITY TO PURCHASE SECOND MORTGAGES ON MULTIFAMILY PROPERTIES.

(a) FEDERAL NATIONAL MORTGAGE ASSOCIATION.—Section 302(b)(5)(A)(ii) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(5)(A)(ii)) is amended by striking "until October 1, 1985,".

(b) FEDERAL HOME LOAN MORTGAGE CORPORATION.—Section 305(a)(4)(A)(ii) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(4)(A)(ii)) is amended by striking "until October 1, 1985,".

Subtitle E—Community Development and Miscellaneous Programs

SEC. 1081. CITY AND COUNTY CLASSIFICATIONS.

(a) METROPOLITAN CITY.—

(1) RETENTION OF CLASSIFICATION.—Section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)) is amended in the second sentence—

(A) by striking "the population data of the 1980 decennial census" and inserting "a decrease in population"; and

(B) by inserting "or any subsequent fiscal year" after "1983".

(2) DEFERRAL OF CLASSIFICATION.—Section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)), as similarly amended first by the Department of Housing and Urban Development-Independent Agencies Act, 1988 (101 Stat. 1329-193) and later by section 503(a)(2) of the Housing and Community Development Act of 1987 (101 Stat. 1923), is amended to read as if the later amendment had not been enacted.

(b) URBAN COUNTY.—Section 102(a)(6)(A) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(6)(A)) is amended by striking the last comma in clauses (i) and (ii)(I) and inserting a semicolon.

SEC. 1082. CORRECTIONS TO CROSS-REFERENCES.

(a) DEFINITIONS.—

(1) INCLUSION OF POPULATION IN URBAN COUNTY.—Section 102(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(d)) is amended by striking "subsection (a)(6)(B)" and inserting "subparagraph (A)(ii) or (D) of subsection (a)(6)".

(2) EXCLUSION OF POPULATION FROM URBAN COUNTY.—The first sentence of section 102(e) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(e)) is amended by striking "subsection (a)(6)(B)(i)" and inserting "subsection (a)(6)(A)(ii)(I)(a)".

(b) REALLOCATION OF AMOUNTS.—Section 106(c)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5306(c)(1)) is amended—

(1) in the first sentence, by striking "section 104 (a), (b), or (c)" and inserting "subsection (a), (b), (c), or (d) of section 104";

(2) in the first sentence by striking "section 104(d)" and inserting "section 104(e)"; and

(3) in subparagraph (B), by striking "section 104(d)" and inserting "section 104(e)".

(c) ALLOCATIONS TO STATES.—Section 106(d)(3) of the Housing and Community Development Act of 1974 (42 U.S.C. 5306(d)(3)) is amended—

(1) in subparagraph (C), by striking "subsection (a) or (b)" and inserting "subsection (a), (b), or (d)"; and

(2) in subparagraphs (C) and (D), by striking "section 104(d)" each place it appears and inserting "section 104(e)".

SEC. 1083. CONSERVING NEIGHBORHOODS AND HOUSING BY PROHIBITING DISPLACEMENT.

(a) CERTIFICATIONS.—The third sentence of section 104(d)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 4304(d)(1)) is amended to read as follows: "A unit of general local government receiving amounts from a State under section 106(d) shall so certify to the State, and a unit of general local government receiving amounts from the Secretary under section 106(d) shall so certify to the Secretary.".

(b) PLAN REQUIREMENTS.—Section 104(d)(2)(A)(iii)(II) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(d)(2)(A)(iii)(II)) is amended by adding "and" at the end.

SEC. 1084. URBAN DEVELOPMENT ACTION GRANTS.

(a) USE OF REPAID GRANT FUNDS.—Section 119(f) of the Housing and Community Development Act of 1974 (42 U.S.C. 5318(f)) is amended in the penultimate sentence by striking "section 104" and inserting "section 105".

(b) CONSIDERATION OF CERTAIN COUNTIES AS CITIES.—Section 119(n)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5318(n)(1)), as similarly amended first by the provisions made effective by section 101(g) of Public Law 99-500 and Public Law 99-591 (100 Stat. 1783-242 and 3341-242) and later by section 515(i) of the Housing and Community Development Act of 1987 (101 Stat. 1934), is amended to read as if the later amendment had not been enacted.

SEC. 1085. NEIGHBORHOOD REINVESTMENT CORPORATION.

Section 604(a)(6) of the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8103(a)(6)) is amended by striking the second of the two periods at the end.

SEC. 1086. NATIONAL FLOOD INSURANCE PROGRAM.

(a) CORRECTION OF TYPOGRAPHICAL ERROR.—Section 1306(c)(1)(A) of the National Flood Insurance Act of 1968 (42 U.S.C. 4013(c)(1)(A)) is amended by striking "Following" each place it appears in clauses (i) and (ii) and inserting "following".

(b) CORRECTION OF CROSS-REFERENCE.—Subsections (b) and (c) of section 1370 of the National Flood Insurance Act of 1968 (42 U.S.C. 4121) are each amended by striking "paragraph (1)" and inserting "subsection (a)(1)".

(c) SACRAMENTO, CALIFORNIA.—

(1) FINDINGS.—The Congress finds that—

(A) the Sacramento, California, area has had in place a flood control system that has been classified as protecting against floods with recurrence intervals of up to 125 years;

(B) local governmental entities in the Sacramento metropolitan area have been working diligently with the State of California, the Army Corps of Engineers, and the Bureau of Reclamation since the occurrence of a heavy storm in 1986 to formulate and implement a comprehensive plan to provide high level, efficient flood protection to the region;

(C) the Federal Emergency Management Agency, in response to studies by the Army Corps of Engineers indicating increased flood vulnerability attributable to increased estimates of the frequency of large storms in the region, has begun a process of re-analyzing the flood risks in the Sacramento area, and this analysis is likely to result in substantially increased flood elevation requirements under the National Flood Insurance Program;

(D) changed flood elevation requirements attributable to a change in flood elevation determinations by the Director of the Federal Emergency Management Agency will cause severe disruption in the Sacramento region and could precipitate the break-up of the political, institutional, and economic relationships sustaining the high level, comprehensive, flood protection effort;

(E) failure to implement a comprehensive plan would leave substantial portions of the Sacramento area without necessary flood protection, and, further, could impose on the Federal Government various, substantial costs related to emergency responses and damage claims in the event of a major flood;

(F) the Federal purposes embodied in the National Flood Insurance Program to minimize development in flood plains, to minimize damages caused by floods, and to reduce requirements for costly flood protection projects remain valid for the Sacramento metropolitan area, and impose upon its local governmental jurisdictions an obligation to exercise their authorities to avoid undue exposure to the dangers of floods and to voluntarily comply to the maximum extent practicable, consistent with other purposes of this subsection, with the National Flood Insurance Program standards that are anticipated to be applicable to the Sacramento area following expiration of the period set by paragraph (2);

(G) the City and County of Sacramento have each provided assurances to the Congress that they will not designate any increases in urbanization beyond lands already so designated in their general plans during the period set forth in paragraph (2), and, in addition, that in the exercise of their discretion to approve new development they will give careful consideration to—

(i) an evacuation-emergency response plan;

(ii) mechanisms by which to attempt to provide notice to all buyers of new structures;

(iii) retention of natural floodways; and

(iv) recommendations to all buyers of new structures to purchase flood insurance;

(H) the City and County of Sacramento, in their discretion, reserve the authority to impose elevation or other requirements for new construction based upon best available flood data if facts indicate the necessity of doing so; and

(I) maintenance of the Federal flood elevation requirements now in effect for the Sacramento area for the limited period set forth in paragraph (2) will facilitate implementation of the high level, comprehensive plan for flood protection in the Sacramento area, and is therefore in the interest of Sacramento, the public safety, and the United States.

(2) FLOOD ELEVATIONS.—Prior to the expiration of 2 years after the date on which the Secretary of the Army submits to the Congress the report on the feasibility study on Northern California Streams, American River Watershed, but not later than 4 years after the date of the enactment of this Act, the provisions of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973 shall apply on the basis of flood map elevation determinations made by the Director of the Federal Emergency Management Agency in effect as of the date of the enactment of this Act to the following areas:

(A) the floodplain areas within Sutter and Sacramento Counties, California (collectively known as the "Natomas area"), which are bounded by the Sacramento River, the American River, the Natomas Cross Canal, and the floodplain of the Natomas East Main Drainage Canal;

(B) the floodplains within Sacramento County of Dry Creek, Arcade Creek, and Morrison Creek, to the extent these creeks are affected by the American and Sacramento Rivers, the American River, and the Sacramento River upstream of the City of Freeport, California; and

(C) the City of West Sacramento in Yolo County, California.

(3) BUDGET SUBMISSION.—The President, in submitting his budget for fiscal year 1990, shall include a schedule for completing the study referred to in paragraph (2) as expeditiously as practicable and an estimate of the resources required to meet such schedule.

(d) PLANADA, CALIFORNIA.—The Director of the Federal Emergency Management Agency shall prepare, or cause to be prepared, a hydrological study of Miles Creek, California, to use as the basis for the establishment of revised base flood elevations in and near the community of Planada, California. Until such time as the revised base flood elevations are established, the flood insurance rate map (Community Panel No. 0601880315A) in effect on September 1, 1988, for the area in and near such community shall remain in effect.

SEC. 1087. HOME MORTGAGE DISCLOSURE.

(a) APPLICABILITY OF 1987 AMENDMENTS.—Section 565(a)(4) of the Housing and Community Development Act of 1987 (12 U.S.C. 2802 note) is amended by striking "calendar years beginning after December 31, 1986" and inserting "the portion of calendar year 1988 that begins August 19, 1988, and to each calendar year beginning after December 31, 1988".

(b) CORRECTION OF TYPOGRAPHICAL ERROR.—Paragraphs (1) and (2) of section 306(b) of the Home Mortgage Disclosure Act (12 U.S.C. 2805) are each amended by striking "Section" and inserting "section".

(c) CORRECTION OF REFERENCES TO COMMITTEES.—Section 307(b) of the Home Mortgage Disclosure Act (12 U.S.C. 2806) is amended—

(1) by striking "Committee on Banking, Currency and Housing" and inserting "Committee on Banking, Finance and Urban Affairs"; and

(2) by inserting a comma after "Housing".

SEC. 1088. LEAD-BASED PAINT POISONING PREVENTION.

(a) INSPECTION.—Section 302(d)(1) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822(d)(1)) is amended—

(1) by striking the paragraph caption and inserting the following: "TRANSITIONAL TESTING AND ABATEMENT IN PUBLIC HOUSING RECEIVING CIAP ASSISTANCE.—";

(2) by striking "section 9" in the first sentence and inserting "section 14";

(3) by striking subparagraphs (A), (B), and (C) in the first sentence and inserting the following:

"(A) a random sample of dwellings and common areas in all public housing projects assisted under such section; and

"(B) each dwelling in any public housing project in which there is a dwelling determined under subparagraph (A) to have lead-based paint hazards, except that the Secretary shall not require the inspection of each dwelling if the Secretary requires the abatement of the lead-based paint hazards for the surfaces of each dwelling in the public housing project that correspond to the surfaces in the sample determined to have such hazards under subparagraph (A).";

(4) by striking the second and third sentences and inserting the following: "The Secretary shall require the inspection of all housing subject to this paragraph in accordance with the modernization schedule. A public housing agency may elect to test for lead based-paint using atomic absorption spectroscopy and may elect to abate lead-based paint and dust containing lead under standards more stringent than that in subsection (c), including the abatement of lead-based paint and dust which exceeds the standard of lead permitted in paints by the Consumer Product Safety Commission under this Act, and such abatement shall qualify for assistance under section 14 of the United States Housing Act of 1937."; and

(5) by inserting before the period at the end of the last sentence the following: ", industrial hygienist, or local public health official".

(b) ABATEMENT DEMONSTRATION.—Section 302(d)(2) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822(d)(2)) is amended—

(1) by striking the paragraph caption and inserting the following: "ABATEMENT DEMONSTRATION PROGRAM.—";

(2) in subparagraph (A)—

(A) by inserting after "Urban Development" the following: "and public housing"; and

(B) by adding at the end the following new sentence: "For purposes of the demonstration, a public housing agency may elect to test for lead based-paint using atomic absorption spectroscopy and may elect to abate lead-based paint and dust containing lead under standards more stringent than that in subsection (c), including the abatement of lead-based paint and dust which exceeds the standard of lead permitted in paints by the Consumer Product Safety Commission under this Act, and such abatement shall qualify for assistance under section 14 of the United States Housing Act of 1937."; and

(3) in subparagraph (B), by inserting after the first sentence the following new sentence: "Based on the demonstration, the Secretary shall prepare and include in the report a comprehensive and workable plan for the cost-effective inspection and abatement of public housing in accordance with paragraph (3), including an estimate of the total cost of abatement in accordance with paragraph (3)(B).".

(c) REPORTS.—Section 302(d)(2)(B) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822(d)(2)(B)) is amended—

(1) in clause (i), by inserting ", including X-ray fluorescence and atomic absorption spectroscopy" before the semicolon;

(2) in clause (ii), by inserting ", including removal, containment, or encapsulation of the contaminated components, procedures which minimize the generation of dust (including the high efficiency vacuum removal of leaded dust), and procedures that provide for offsite disposal of the removed components, in compliance with all applicable regulatory standards and procedures" before the semicolon;

(3) in clause (iii), by inserting ", abatement, and worker protection" before the semicolon;

(4) by striking "and" at the end of clause (v);

(5) by striking the period at the end of clause (vi) and inserting "; and"; and

(6) by adding at the end the following new clause:

"(vii) the merits of an interim containment protocol for public housing dwellings that are determined to have lead-based paint hazards but for which comprehensive improvement assistance under section 14 of the United States Housing Act of 1937 is not available.".

(d) PUBLIC HOUSING INSPECTION.—Section 302(d) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822(d)) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following:

"(3) TESTING AND ABATEMENT OF OTHER PUBLIC HOUSING.—

"(A) REQUIRED INSPECTION.—The Secretary shall require the inspection described in subsection (c) for—

"(i) a random sample of dwellings and common areas in all public housing that is not subject to paragraph (1); and

"(ii) each dwelling in any public housing project in which there is a dwelling determined under clause (i) to have lead-based paint hazards, except that the Secretary shall not require the inspection of each dwelling if the Secretary requires the abatement of the lead-based paint hazards for the surfaces of each dwelling in the public housing project that correspond to the surfaces in the sample determined to have such hazards under clause (i).

"(B) SCHEDULE.—The Secretary shall require the inspection of all housing subject to this paragraph prior to the expiration of 5 years after the report is required to be transmitted under paragraph (2)(B). The Secretary may prioritize, within such 5-year period, inspections on the basis of vacancy, age of housing, or projected modernization or rehabilitation. The Secretary shall require abatement and final inspection and certification of such housing in accordance with the last two sentences of paragraph (1).".

(e) FUNDING.—Section 302(f) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822(f)) is amended by adding at the end the following new sentence: "The Secretary shall submit annually to the Congress an estimate of the funds required to carry out the provisions of this section with the reports required by paragraphs (2)(B) and (4).".

(f) DETECTION TECHNIQUE.—Section 302(c) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822(c)) is amended—

(1) in the first sentence, by inserting after "fluorescence analyzer" the following: ", atomic absorption spectroscopy,"; and

(2) in the second sentence, by inserting after "A qualified inspector" the following: "or laboratory".

(g) CONSULTATION.—Section 566(b) of the Housing and Community Development Act of 1987 is amended—

(1) in the caption, by inserting "AND CONSULTATION" after "REGULATIONS"; and

(2) in paragraph (3)—

(A) by striking "under this subsection" and inserting "and in preparing reports under this section"; and

(B) in subparagraph (A), by inserting after "Building Sciences" the following: ", the Environmental Protection Agency, the National Institute of Environmental Health Sciences, the Centers for Disease Control, the Consumer Product Safety Commission, major public housing organizations, other major housing organizations,".

(h) Interpretation of Section.—Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822) is amended by adding at the end the following new subsection:

"(g) Interpretation of Section.—This section may not be construed to affect the responsibilities of the Environmental Protection Agency with respect to the protection of the public health from hazards posed by lead-based paint.".

SEC. 1089. INTERSTATE LAND SALES FULL DISCLOSURE.

(a) Correction of Typographical Error.—Section 1402(10) the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701(10)) is amended by inserting "and" after the semicolon.

(b) Correction of Numbering.—Section 1420 the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1719)) is amended by striking "(a)" after the section designation.

SEC. 1090. DESIGNATION OF ENTERPRISE ZONES.

(a) Criteria for Ranking Nominated Areas.—The first sentence of section 701(a)(3)(A) of the Housing and Community Development Act of 1987 (42 U.S.C. 11501(a)(3)(A)) is amended to read as follows: "Except as provided in subparagraph (B), the Secretary shall designate (i) the nominated areas with the highest average ranking with respect to the criteria set forth in subparagraphs (C) and (D) of subsection (c)(3), and the 1 criterion set forth in subparagraph (E)(i) or (E)(ii) of subsection (c)(3) that gives an area a higher ranking; and (ii) for areas described in paragraph (2)(B), the nominated areas with the highest ranking with respect to the 1 criterion set forth in subparagraph (C), (D), (E)(i), or (E)(ii) of subsection (c)(3) that gives an area a higher ranking.".

(b) Correction of Cross-Reference.—Section 701(a)(2)(B) of the Housing and Community Development Act of 1987 (42 U.S.C. 11501(a)(2)(B)) is amended by striking "under clause (i)" and inserting "under subparagraph (A)".

(c) Regulations.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Housing and Urban Development shall revise the regulations issued by the Secretary to carry out title VII of the Housing and Community Development Act of 1987 (42 U.S.C. 11501 et seq.) by issuing a final regulation, effective upon the date of publication, that carries out the amendments made by this section.

SEC. 1091. REPORT ON RECOMMENDED POLICY FOR DEALING WITH RADON IN ASSISTED HOUSING.

(a) Purposes.—The purposes of this section are—

(1) to require the Department of Housing and Urban Development to develop an effective departmental policy for dealing with radon contamination that utilizes any Environmental Protection Agency guidelines and standards to ensure that occupants of housing covered by this section are not exposed to hazardous levels of radon; and

(2) to require the Department of Housing and Urban Development to assist the Environmental Protection Agency in reducing radon contamination.

(b) Program.—

(1) Applicability.—The housing covered by this section is—

(A) multifamily housing owned by the Department of Housing and Urban Development;

(B) public housing and Indian housing assisted under the United States Housing Act of 1937;

(C) housing receiving project-based assistance under section 8 of the United States Housing Act of 1937;

(D) housing assisted under section 236 of the National Housing Act; and

(E) housing assisted under section 221(d)(3) of the National Housing Act.

(2) In General.—The Secretary of Housing and Urban Development shall develop and recommend to the Congress a policy for dealing with radon contamination that specifies programs for education, research, testing, and mitigation of radon hazards in housing covered by this section.

(3) Standards.—In developing the policy, the Secretary shall utilize any guidelines, information, or standards established by the Environmental Protection Agency for—

(A) testing residential and nonresidential structures for radon;

(B) identifying elevated radon levels;

(C) identifying when remedial actions should be taken; and

(D) identifying geographical areas that are likely to have elevated levels of radon.

(4) Coordination.—In developing the policy, the Secretary shall coordinate the efforts of the Department of Housing and Urban Development with the Environmental Protection Agency, and other appropriate Federal agencies, and shall consult with State and local governments, the housing industry, consumer groups, health organizations, appropriate professional organizations, and other appropriate experts.

(5) Report.—The Secretary shall submit a report to the Congress within 1 year after the date of the enactment of this Act that describes the Secretary's recommended policy for dealing with radon contamination and the Secretary's reasons for recommending such policy. The report shall include an estimate of the housing covered by this section that is likely to have hazardous levels of radon.

(c) Cooperation With Environmental Protection Agency.—Within 6 months after the date of the enactment of this Act, the Secretary and the Administrator of the Environmental Protection Agency shall enter into a memorandum of understanding describing the Secretary's plan to assist the Administrator in carrying out the Environmental Protection Agency's authority to assess the extent of radon contamination in the United States and assist in the development of measures to avoid and reduce radon contamination.

(d) Definitions.—For purposes of this section:

(1) Administrator.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) Secretary.—The term "Secretary" means the Secretary of Housing and Urban Development.

(e) Authorization.—Funds available for housing covered by this section shall be available to carry out this section with respect to such housing.

And the Senate agree to the same.

From the Committee on Banking, Finance and Urban Affairs for consideration of titles I through IV, X, and section 1 of the House bill, and titles I (except section 107) and II (except section 262) and sections 1 and 2 of the Senate amendment, and modifications committed to conference:

Fernand J. St Germain,
Henry B. Gonzalez,
Walter E. Fauntroy,
Mary Rose Oakar,
Bruce F. Vento,
Robert Garcia,
Barney Frank,
Chalmers P. Wylie,
Marge Roukema,
Tom Ridge,
Steve Bartlett,

From the Committee on Education and Labor for consideration of title VII of the House bill, and subtitles B through F of title III of the Senate amendment, and modifications committed to conference:

Gus Hawkins,
Pat Williams,
Matthew G. Martinez,
Jim Jeffords,
Steve Gunderson,

From the Committee on Energy and Commerce for consideration of title VI of the House bill, and subtitle A of title III of the Senate amendment, and modifications committed to conference:

John D. Dingell,
Henry A. Waxman,
Mickey Leland,
Norman F. Lent,
Ed Madigan,

From the Committee on Government Operations for consideration of title V of the House bill, and section 107 of the Senate amendment, and modifications committed to conference:

Jack Brooks,
Cardiss Collins,
Frank Horton,

From the Committee on Veterans' Affairs for consideration of title VIII of the House bill, and title IV of the Senate amendment, and modifications committed to conference:

G.V. Montgomery,
Timothy J. Penny,
John Paul Hammerschmidt,

From the Committee on Ways and Means for consideration of title IX of the House bill, and sections 262 and 308 of the Senate amendment, and modifications committed to conference:

Dan Rostenkowski,
Thomas J. Downey,
Managers on the Part of the House.

From the Committee on Banking, Housing, and Urban Affairs:

Alan Cranston,
Don Riegle,
Paul Sarbanes,
Alfonse D'Amato,
John Heinz,

From the Committee on Governmental Affairs:

John Glenn,
Lawton Chiles,
Jim Sasser,
Ted Stevens,
John Heinz,

From the Committee on Veterans' Affairs:

Alan Cranston,
Spark M. Matsunaga,
Frank H. Murkowski,

From the Committee on Labor and Human Resources:

Edward M. Kennedy,
Tom Harkin,
Brock Adams,

ORRIN G. HATCH,
ROBERT T. STAFFORD,
From the Committee on Finance:
LLOYD BENTSEN,
SPARK M. MATSUNAGA,
DANIEL PATRICK MOYNIHAN,
BOB PACKWOOD,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4352) to amend the Stewart B. McKinney Homeless Assistance Act to extend programs providing urgently needed assistance for the homeless, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

SHORT TITLE

The House bill was entitled the Omnibus McKinney Homeless Assistance Act of 1988. The Senate amendment was entitled the Stewart B. McKinney Homeless Assistance Amendments of 1988. The conference report contains the Senate title with an amendment to include "Act" within the title, the Stewart B. McKinney Homeless Assistance Amendments Act of 1988.

TITLE I—GENERAL PROVISIONS

BUDGET COMPLIANCE

The House bill contained a provision that was not included in the Senate amendment to require that funding for Fiscal Years 1989 and 1990 not exceed the appropriate aggregate levels established in the respective Concurrent Budget Resolution. The conference report contain the House provision.

ANNUAL PROGRAM SUMMARY BY COMPTROLLER GENERAL

The House bill contained a provision which required the Comptroller General (GAO) to annually submit a report to Congress on its findings on disbursement and use of funds under the Emergency Food and Shelter (FEMA) program and the HUD homeless assistance programs. The Senate amendment contained a provision which required GAO to submit an annual summary of each program authorized under the McKinney Act. The conference report contains the Senate provision.

TITLE II—INTERAGENCY COUNCIL ON THE HOMELESS

PREPARATION OF BIMONTHLY BULLETIN

The House bill contained a provision which required the Interagency Council on the Homeless to distribute a bimonthly bulletin to states, local governments and public and private nonprofit organizations on federal resources available under the McKinney Act, including application deadlines and federal agency contact persons. The Senate amendment contained a similar provision except that it additionally required the bimonthly bulletin to include the appropriate person on the Federal Council and changed the entities which received bimonthly bulletins to State Interagency Councils, state coordinators and designated state agencies. The conference report contains the House provision with an amendment to require that each State, including State contact persons, also receive the bimonthly bulletin.

PROVISION OF PROFESSIONAL AND TECHNICAL ASSISTANCE

The Senate amendments contained a provision that was not included in the House bill which required the Federal Interagency Council to employ at least two Regional Coordinators, but no more than five, to coordinate the Council's activities within the ten standard federal regions. The Senate amendment required these coordinators to interpret federal regulations, assist in the federal application process, including grants, coordinate McKinney programs with other federal programs, and develop recommendations for regional solutions to homeless issues. The Senate amendment required the coordinators to schedule biennial regional workshops in each of the 10 federal regions, with at least one workshop in each region every two years, and to hold at least five regional workshops by September 30, 1989. The conference report contains the Senate provision.

ESTABLISHMENT OF PROGRAM TIMETABLES

The Senate amendment contained a provision that was not included in the House bill which required each federal agency, which is an Interagency Council Member and administers a McKinney program, to provide the Council, within 90 days of the enactment date, with a timetable regarding program funding availability and application deadlines, and required the Council to furnish this information to each State Interagency Council, State agency and State Coordinator. The conference report contains the Senate provision with an amendment to require the Interagency Council to furnish the program timetables to each State, including State contact persons.

AUTHORIZATION OF APPROPRIATIONS

The House bill authorized the appropriation of $800,000 for the Interagency Council on the Homeless for Fiscal Year 1989 and such sums as may be necessary for Fiscal Year 1990. The Senate amendment authorized the appropriation of $1.2 million for each Fiscal Year 1989 and 1990. The Conference report authorizes to be appropriated $1.1 million for Fiscal Year 1989 and $1.2 million for Fiscal Year 1990 for the Interagency Homeless Council.

ENCOURAGEMENT OF STATE INVOLVEMENT

The Senate amendment contained provisions that were not included in the House bill which (1) encouraged each State to establish their own State Interagency Council on the Homeless; (2) provided requirements for membership meetings and functions for the State Interagency Councils; (3) encouraged States to designate State Homeless Coordinators and gave States incentives for establishing State Coordinators by allowing the Federal Interagency Council to award grants to supplement the State Coordinators compensation; and (4) required States to designate a lead agency to coordinate homeless assistance if either a State did not establish a State Interagency Homeless Council or a State Coordinator. The conference report contains the Senate provision with an amendment that deletes most of the original Senate provisions except that (1) each State is required to designate a State Contact Person who is to receive and disseminate information and communications from the Federal Interagency Council on the Homeless, including the Federal Council's bimonthly bulletin, and (2) each State is encouraged to establish a State Interagency Council on the Homeless or designate a lead State agency to coordinate homeless assistance and interact with the Federal Interagency Council on the Homeless and other State and local agencies as necessary. The conferees believe that this State Homeless Contact Person will assist in promoting communication and the familiarity among governmental entities and nonprofit groups within each State about the McKinney Homeless Assistance programs. The conferees do not intend these contact persons, any State Interagency Homeless Council, or a State lead agency to receive funding provided for the Federal Interagency Council for the Homeless. The conferees also hope to encourage the establishment of State Interagency Councils or the designation of State lead agencies to effectively disseminate and utilize information on McKinney Homeless Assistance programs, and believe that States can develop their own structure and provisions for a State Interagency Council, taking into account the provisions included in the Senate amendment.

TITLE III—FEDERAL EMERGENCY MANAGEMENT FOOD AND SHELTER PROGRAM

REPORT ON EMERGENCY FOOD AND SHELTER GRANT PROGRAM

The House bill contained a provision which required the Emergency Food and Shelter National Board to utilize data in establishing program guidelines that reflect the number of long-term unemployed workers in the localities involved, including those whose unemployment benefits have run out and those who have been out of work so long that they are no longer actively seeking employment. The Senate amendment contained a provision which required the FEMA Director to submit a report to the appropriate Congressional committees, within 6 months of the enactment date, on the Emergency Food and Shelter Program which includes proposed legislation for a minimum of 2 alternative statutory formulas incorporating the criteria on which the distribution and disbursement of program grants is based and the supporting evidence on the effectiveness of each formula in targeting grants to areas that have the greatest need. The conference report contains the Senate provison with an amendment that incorporates the House provision as a criterion to be considered in each alternative statutory formula for distributing Emergency Food and Shelter program assistance, except that the National Board shall utilize data that reflects the number of long-term unemployed workers in each State. The conferees understand that the Bureau of Labor Standards has such data on a statewide basis.

AUTHORIZATION OF APPROPRIATIONS

The House bill authorized the appropriation of such sums as may be necessary for FY 1990. The Senate amendment authorized the appropriation of $134 million for FY 1990. The conference report authorizes to be appropriated $129 million for Fiscal

Year 1989 and $134 million for Fiscal Year 1990.

SUNSHINE PROVISION

The Senate amendment contained a provision that was not provided in the House bill which required that the books, documents, papers, and records of FEMA Food and Shelter program recipients be made available for public inspection and copying. The conference report does not contain the Senate provision.

TITLE IV—HOUSING ASSISTANCE

SUBTITLE A—COMPREHENSIVE HOMELESS ASSISTANCE PLAN [CHAP]

CONTENTS OF COMPREHENSIVE PLAN

Description.—The House bill contained a provision that was not included in the Senate amendment that required a CHAP to describe how facilities and services will be used to meet homeless needs. The conference report contains the House provision.

Contact Person—The House bill contained a provision that was not included in the Senate amendment that required each entity submitting a CHAP to identify the appropriate contact person or agency which coordinates homeless assistance. The conference report contains the House provision with an amendment to clarify that contact person's role is to serve as a source of information concerning the contents of the CHAP.

Drug/Alcohol Assurances.—The House bill contained a provision that required an assurance that each recipient and project sponsor shall administer, in good faith, a policy designed to ensure that the homeless facility is free from the illegal use, possession, or distribution of drugs or alcohol. The Senate amendment contained a similar provision except that it required certification that each recipient and project sponsor shall take all necessary actions to ensure that the facilities receiving McKinney housing assistance are free of illegal drug use and alcohol abuse, and that beneficiaries shall have the right to be served in a drug-free and alcohol-free environment. The conference report contains the House provision.

The conferees emphasize that this requirement is not to be used to deny McKinney homeless assistance to any recipient, project sponsor or governmental entity acting in good faith nor does it allow shelter operators to deny assistance to individuals suspected of drug or alcohol abuse. Rather, the intent of this provision is to ensure actions are undertaken in good faith to provide a safe environment within homeless shelters.

APPLICATIONS

The House bill contained a provision that was not included in the Senate bill which required certification by each public official responsible for submitting CHAPs for any jurisdiction which will be served that federally funded homeless activities are consistent with the CHAP. The conference report does not contain the House provision.

PERFORMANCE REVIEWS

The Senate amendment contained a provision that was not included in the House bill that required entities submitting a CHAP to include in their annual submissions, their response to the HUD recommendations which are made available to them at least two months before the beginning of the fiscal year. The conference report contains the Senate provision. The conferees emphasize that States and entitlement communities would be required to respond only to HUD recommendations received in a timely manner.

COORDINATION

The Senate amendment contained a provision that was not included in the House bill that, in a case where a State has designated a lead agency to coordinate assistance to the homeless, required each federal agency that administers McKinney homeless assistance to provide appropriate program information to the State lead agency on the homeless in order to facilitate State coordination. The conference report contains the Senate provision with an amendment to require such federal agencies to provide appropriate program information to State contact persons.

SUBTITLE B—EMERGENCY SHELTER GRANT [ESG] PROGRAM

DISTRIBUTION OF ASSISTANCE BY STATES TO PRIVATE NONPROFIT ORGANIZATIONS

The House bill contained a provision which allowed States to distribute ESG assistance to private nonprofit organizations and required local governments to certify their approval of nonprofit sponsored projects. The Senate amendment contained a similar provision except it required local governments to certify their support of the nonprofit organizations' project. The conference report contains the House provision.

ESSENTIAL SERVICES

The Senate amendment contained a provision that was not included in the House bill which (1) increased the existing limitation on the use of Emergency Shelter Grants program funds for essential services from 15 percent to 25 percent, (2) allowed States and local governments receiving ESG assistance to comply with the percentage limitation on an aggregate basis (existing law only allows local governments to do so) (3) additionally allowed Emergency Shelter Grants funds to be used to complement eligible services.

The conference report contains the Senate provision with an amendment to increase the essential services limitation from 15 percent to 20 percent.

HOMELESSNESS PREVENTION AS AN ELIGIBLE ACTIVITY

The Senate amendment contained several provisions not included in the House bill on the use of Emergency Shelter Grants Program funds for homelessness prevention activities. The Senate amendment permitted program assistance to be provided for efforts to prevent homelessness such as financial assistance to families who have received eviction notices or notices of termination of services if (1) the family cannot make the required payments because of a sudden income reduction, (2) the program assistance is necessary to avoid eviction or termination of services, and (3) there is a reasonable prospect that the family will be able to resume payments within a reasonable time period. The Senate amendment required recipients to certify to the Secretary that their homelessness prevention efforts (1) have a demonstrable link to the prevention of imminent homelessness, (2) constitute the most effective use of all or part of their ESG funds, and (3) do not supplant any fundng for existing homeless prevention activities. The Senate amendment also required the HUD Secretary to report to Congress within one year of the enactment date on the vartious programs to prevent homelessness implemented by grantees with particular focus on the different methods employed by grantees to determine eligibility for homelessness prevention assistance.

The conference report contains the Senate provision with an amendment to (a) include homeless prevention activities within the 20 percent essential services cap and (b) delete the certification requirements included in the Senate provision except that an additional requirement is provided to ensure that program funds can be used if they do not supplant any funding for existing homeless prevention activities. The conference report also contains the requirement for the Congressional report on various programs to prevent homelessness except that the Comptroller General (GAO), instead of HUD, is required to conduct a study and report to Congress. The GAO report shall examine the homeless prevention programs administered under the Federal Emergency Management Food and Shelter Program, the Department of Health and Human Services Emergency Assistance program and the State of New Jersey's Homelessness Prevention Programs and any other Federal, State or local homelessness prevention programs. The GAO report shall include such recommendations for legislation as the Comptroller General determines appropriate including recommendations on how to prevent homelessness resulting from mortgage foreclosures.

REQUIRED USE OF A BUILDING AS A SHELTER

The House bill contained a provision which provided that for projects which receive funding for essential services or maintenance and operation, a building must be used as a shelter for the full period during which the assistance is provided and deleted the existing requirement that a building remain a shelter for 3 years in such cases. The Senate amendment contained several provisions which (1) required a shelter to be available for the period specified in the contract or grant agreement and (2) required that for projects involving major rehabilitation or conversion, a building must be used for not less than 5 years or for a longer period if HUD determines that the value of the rehabilitation justified a longer term and deleted the existing 10-year requirement in such cases. The conference report contains the House provision with an amendment permitting a shelter site to be changed if the assistance includes only operating funds or essential services and the new site would continue to serve essentially the same general population. The conference report also amends existing law to clarify that, in the case of rehabilitation that is less than major the structure should remain a shelter for a period of time not less than three years (and not more than 10 years) that is commensurate with the value of federal assistance provided to the project.

AUTHORIZATION OF APPROPRIATIONS

The House bill authorized the appropriation of $125 million for the Emergency Shelter Grants program for Fiscal Year 1989 and such sums as may be necessary for Fiscal Year 1990. The Senate amendment authorized the appropriation of $120 million for each Fiscal Year 1989 and 1990. The conference report authorizes $120 million for the Emergency Shelter Grants program for Fiscal Year 1989 and $125 million for Fiscal Year 1990.

SUBTITLE C—SUPPORTIVE HOUSING DEMONSTRATION PROGRAM

AVAILABALITY OF OPERATING AND TECHNICAL ASSISTANCE FOR NEW STRUCTURES

The House bill contained a provision not included in the Senate amendment which authorized program funds to be used for operating and technical assistance without regard to whether the proposed project involved a new or existing structure, and expanded the definition of "project" to include a structure or portion of a structure which only receives operating or technical assistance. The conference report contains the House provision.

PROJECT SPONSOR

The Senate amendment contained a provision that was not included in the House bill which authorized public housing authorities to become project sponsors under the Permanent Homeless Handicapped Program. The conference report contains the Senate provision.

MAXIMUM PERIOD OF RESIDENCE IN TRANSITIONAL HOUSING

The House bill contained a provision that was not included in the Senate amendment which allowed project sponsors, instead of HUD, to determine the length of stay of homeless persons in transitional housing projects. The conference report contains the House provision with an amendment to require that the maximum length of stay in a transitional housing project shall be 24 months or for such longer period as the Secretary determines is necessary to facilitate the transition of homeless individuals and families to independent living. The conferees believe that project sponsors may need more time than the 18-month period now allowed by the Department through regulation, in order for homeless persons to become self-sustaining and make the transition to more permanent living arrangements.

DEFINITION OF PERMANENT HOUSING

The House bill contained a provision that increased the 8 person limit contained in the existing definition of permanent housing for handicapped persons to a 12 person limit. The Senate amendment contained a provision which permitted the Secretary to waive the existing 8-person limitation if the applicant demonstrates that (1) local market conditions and economies of scale dictate the development of a larger project and (2) such development will achieve the neighborhood integration objectives of the program within the context of the affected community. The conference report contains the Senate provision with an amendment which deletes the test on economies of scale.

The Senate amendment contained a provision that was not included in the House bill which provided that where units are to be added to an existing facility, the units will not be counted for purposes of the program limit if the facility meets the program's neighborhood integration objectives. The conference report does not contain the Senate provision.

USE OF ADVANCES TO REPAY DEBT

The House bill contained a provision that was not included in the Senate amendment which allowed supportive housing program advances to repay outstanding debt owed on a loan for an existing structure which will be used for the homeless. The conference report contains the House provision with an amendment to make debt service of an existing mortgage eligible for program advances for those projects which were not being used as supportive housing prior to receipt of federal funds, and requires this provision to apply to those projects which received program rewards for fund reservations on or after November 1, 1987.

ELIGIBLE ACTIVITIES

The Senate amendment contained a provision that was not included in the House bill which authorized the use of Supportive Housing Program funds for annual payments for operating costs of permanent handicapped homeless projects, except the percentage of assistance was limited to not than 50 percent in the first year of operation and 25 percent in the second year. The Senate amendment also allowed program recipients to receive both program advances and moderate rehabilitation grants. The conference report contains the Senate provisions.

EMPLOYMENT ASSISTANCE

The House bill contained a provision that was not included in the Senate amendment that allowed Supportive Housing Demonstration Program assistance to be used for grants to establish and operate an employment assistance program for transitional housing residents which shall include employment of residents in the operation and maintenance of housing and payment of the resident's transportation costs to their place of employment and gives funding priority to those transitional housing projects which contain an employment assistance program. The conference report contains the House provision with an amendment to clarify that employment assistance programs qualifying for such a priority may be assisted with Mckinney Act of other non-McKinney Act funds.

REPAYMENT OF ADVANCES

The House bill contained a provision that we not included in the Senate amendment that required project sponsors to assure HUD that they will operate projects for 5 years, instead of 10 years. For every year in excess of 5 years that the project continued to be operated as supportive housing or as housing for lower income persons, 20 percent of the program advance would be forgiven and would not have to be repaid. The conference report does not contain the House provision.

LIMIT ON ADVANCES AND GRANTS

The Senate amendment contained a provision that was not included in the House bill that authorized the Secretary to increase the limit in program advances from $200,000 to $400,000 for projects in areas which the Secretary finds have high acquisition and rehabilitation costs. The conference report contains the Senate provision with an amendment that includes moderate rehabilitation within this limitation.

The conference report also contains a provision which authorizes the use of Supportive Housing advances for new construction under limited circumstances. The provision is intended to give the Secretary the authority to help fund the construction of a model supportive housing project on land donated by the University of California at Berkeley. The conferees fully expect that the City of Berkeley will apply for Supportive Housing funds during fiscal year 1989.

SITE CONTROL

The House bill contained a provision that required program applicants to document that they have site control for their projects within 12 months of receiving federal funds and gives priority in the selection of projects to those which have site control. The Senate amendment contained a provision that prohibits the Secretary from requiring that supportive housing applicants demonstrate that the applicant owns or has control of the site for the proposed project. The conference report contains the House provision with an amendment to require project sponsors to give reasonable assurances of site control not later than 6 months after notification of an award for great assistance. The conference report also requires sponsors to obtain site control within 12 months after notification of an award for grant assistance or else funds will be recaptured and reallocated. Finally, the conference report allows a final site to be different from the original site if the proposed project is within the same jurisdiction, and requires this provision to apply to those projects which received program awards or funds reservation on or after November 1, 1987.

FLOOD PLAIN RESTRICTIONS

The conference report contains a provision ensuring that flood plain standards applicable to housing acquired, rehabilitated or assisted with Supportive Housing funds shall be no more restrictive than the standard applicable under Presidential Executive Order 11988 (May 24, 1977) to the other housing programs authorized under Title IV of the McKinney Act. This provision has become necessary because regulations governing the Supportive Housing Demonstration program have required more restrictive flood plain standards than those imposed on other homeless housing programs. While it is not preferable to place projects for the homeless in flood prone areas, current federal law would allow such placement provided that there is no practicable alternative and the property is insured under the National Flood Insurance Act. To ensure safety, existing law provides special requirements for projects that will be used for the handicapped and others with limited mobility. These and other guidelines will provide safeguards against placement of supportive housing projects in unsafe areas. The Conferees believe that this provision is consistent with the Department's regulatory requirements for other HUD housing programs.

MATCHING FUNDS REQUIREMENTS

The House bill contained a provision which allowed salaries paid to staff, salaries paid to transitional housing residents under an employment assistance program, and the value of volunteer time and services to be considered matching funds for the Supportive Housing Demonstration Program. The Senate amendment contained a provision which (1) required all supportive housing recipients, including States which must certify in the case of the Permanent Handicapped Homeless Programs, to supplement any program advances or moderate rehabilitation grants with equal amounts of funds from non-federal sources, and (2) defined non-federal funds as including (a) State or local agency funds, (b) the non-federal share of funds under other federal programs, (c) the value of any donated material or building, and (d) the value of any lease on a building.

The conference report contains the House provision with an amendment to include the Senate defintion of non-federal funds, with the exception of the "non-federal share of funds under other federal programs", and to required States, in the case of permanent handicapped homeless projects, to certify that program advances on moderate rehabilitation grants will be supplemented with an equal amount of non-federal funds.

REPORT TO CONGRESS

The House bill contained a provision that was not included in the Senate amendment which required the Secretary to annually submit to Congress a report on the Supportive Housing Demonstration Program which includes findings, conclusions and program recommendations, and required the report to be submitted by the Secretary within 3 months after each fiscal year and within 6 months for FY 1988. The conference report contains the House provision.

AUTHORIZATION OF APPROPRIATIONS

The House bill authorized the appropriation for the Supportive Housing Demonstration program of $105 million for Fiscal Year 1989 and such sums as may be necessary for Fiscal Year 1990. The Senate amendment authorized the appropriation of $100 million for each Fiscal Year 1989 and 1990. The conference report contains the Senate provision with an amendment to authorize $100 million for Fiscal Year 1989 and $105 million for Fiscal Year 1990 for the Supportive Housing Demonstration program.

REALLOCATIONS

The House bill contained a provision which allowed HUD to reallocate any funds remaining after the final rounds of each category under the Supportive Housing program to fund eligible program activities. The Senate amendment contained a similar provision except that it allowed unobligated funds to be reallocated for general use for the Supportive Housing program or the Sec. 8 Single Room Occupancy for the Homeless program. The conference report contains the House provision.

SUBTITLE D—SUPPLEMENTAL ASSISTANCE FOR FACILITIES TO ASSIST THE HOMELESS PROGRAM [SAFAH]

USE OF ASSISTANCE AND RESERVATION OF FUNDS

The House bill contained provisions that were not included in the Senate amendment that clarified that Supplemental Assistance program funds can be used for both supportive services and operating expenses. The conference report contains the House provisions.

SITE CONTROL

The conference report contains a provision which requires project sponsors to give reasonable assurances of site control not later than 6 months after notification of an award for grant assistance. The conference report also requires sponsors to obtain site control within 12 months after notification of an award for grant assistance or else funds will be recaptured and reallocated. Finally, the conference report allows a final site to be different from the original site if the proposed project is within the same jurisdiction, and requires this provision to apply to those projects which received program awards or fund reservations on or after November 1, 1987. The conferees fully expect the Secretary of HUD to allow the city of Newark to change the site for the SAFAH project for which it was awarded $881,329 in December 1987 in accordance with this provision.

AUTHORIZATION OF APPROPRIATIONS

The House bill authorized the appropriation of $27 million for fiscal year 1989 and such sums as may be necessary for fiscal year 1990. The Senate amendment authorized the appropriation of $10 million for each fiscal year 1989 and 1990. The conference report contains the Senate provision with an amendment to authorize the appropriation of $10 million for fiscal year 1989 and $11 million for fiscal year 1990 for the Supplemental Assistance for Facilities to Assist the Homeless program.

SUBTITLE E—MISCELLANEOUS PROVISIONS

SECTION 8 ASSISTANCE FOR SINGLE ROOM OCCUPANCY DWELLINGS

INCREASE IN BUDGET AUTHORITY

The House bill authorized an increase in budget authority of $40 million for fiscal year 1989 and such sums as may be necessary for fiscal year 1990 for the Section 8 Single Room Occupancy Dwelling for the homeless. The Senate amendment authorized an increase in budget authority of $50 million for each fiscal year 1989 and 1990. The conference report contains the Senate provision.

REHABILITATION OF EFFICIENCY UNITS

The Senate amendment contains a provision that was not included in the House bill which allowed Single Room Occupancy assistance to be used by public housing authorities (PHAs) to rehabilitate efficiency units if PHAs agree to pay the additional cost of rehabilitating and operating units. The conference report contains the Senate provision with an amendment to require owners, instead of public housing authorities, to agree to pay the additional costs.

FIRE AND SAFETY IMPROVEMENTS

The Senate amendment contained a provision not included in the House bill that defined the term 'major spaces' as hallways, large common areas, and other areas specified in local fire, building, or safety codes. The conference report contains the Senate provision.

ANNUAL ADJUSTMENT OF COST LIMITATION

The House bill contained a provision that was not included in the Senate amendment that repealed the existing $14,000 per unit cost limitation on Single Room Occupancy (SRO) Dwellings. The conference report contains a provision that requires the SRO per unit cost limit to be increased annually based on increases in construction costs.

ADMINISTRATIVE PROVISIONS

APPLICABILITY

The House bill contained a provision that was not included in the Senate amendment that applied the amendments made in Titles I-V of the bill to funds received before, on or after the enactment date. The conference report does not contain the House provision.

ENVIRONMENTAL IMPACT AND HISTORIC PRESERVATION

The House bill contained a provision which applied the expedited process for compliance with Environmental Policy requirements of the 1974 Housing Act which is applicable to the Community Development Block Grant program to all McKinney Housing Assistance programs. The Senate amendment contained a similar provision except that it applied the expedited process for compliance with the Historic Preservation Requirements of the 1974 Housing Act, which is applicable to the UDAG program, to the Emergency Shelter Grants program only. The conference report contains the House provision. The Administration has informed the conferees that historic preservation is also included within the expedited process under Sec. 104(g) of the 1974 Housing Act, and thus the Senate reference to historic preservation is unnecessary.

REPORT ON EFFECT OF RENT CONTROL ON HOMELESSNESS

The House bill contained a provision which required the Secretary to report to Congress, within 12 months of the enactment date, on the impact of local housing rent controls and regulations on the rate of homelessness in major cities in the United States and sets forth various factors to be evaluated within the report. The Senate amendment contained a similar provision except that it did not reference the impact of rent controls on homelessness and required the Secretary to report within 6 months of the enactment date. The conference report contains the House provision with an amendment to also include within the study the effect of rent control on the development, supply, availability, and affordability on housing in localities which have rent controls.

REPORT ON ALLOCATION FORMULAE

The Senate amendment contained a provision that was not included in the House bill that required the Secretary to report to Congress, not later than March 1, 1989, on the examination of whether an alternative system of distributing McKinney Housing Assistance can be developed based on homeless population data. The conference report contains the Senate provision with an amendment that deletes the homeless population data requirement and instead requires that the alternative system be developed based on allocating funds to communities that have the greatest need for assistance to the homeless.

REGULATIONS

The House bill contained a provision that was not included in the Senate amendment to require the Secretary, or other Federal entities involved, to issue program requirements by notice within 60 days of the enactment date and regulations within 12 months of the enactment date for Titles I-V of the House bill. The conference report contains the House provision except that this provision does not apply to that portion of Title V that deals with Federal Surplus Property.

TITLE V—IDENTIFICATION AND USE OF SURPLUS FEDERAL PROPERTY

Section 501. Identification and Use of Unutilized and Underutilized Public Buildings and Property

The Senate version (section 107) amends section 501 of the McKinney Act in several particulars. The House bill makes only one amendment, namely, to section 501(a).

Both the House bill and the Senate version amend section 501(a) by requiring the Secretary of Housing and Urban Development to make his identifications of underutilized properties as suitable for assisting the homeless in a timely fashion. He must do so within 2 months following the surveys of need that section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) requires executive agencies continuously to make of property under their control. The conference agreement retains this amendment language. The amendment thus emphasizes that implementation of the Secretary's responsibility is to be prompt as well as active and continuous.

The conference agreement inserts in the existing section 501(a) the words "unutilized or" before the word "underutilized". This makes clear that the latter term was not intended to exclude unutilized property, and corrects an apparent GSA administrative misinterpretation of the existing language's intent.

The Senate version amends section 501(b)(1) by deleting the words "declare the property excess to the agency's need" following "intentions to" and inserting in lieu thereof "make the property available, on an interim basis, for use by the homeless".

The conference agreement keeps the existing requirement that an agency head report his intention of determining identified property excess or provide reasons for his not so determining. It is advantageous to keep this requirement, since otherwise the Senate amendment's language might be construed as excluding property declared excess from further consideration as facilities for the homeless. After Federal utilization screening, excess property may be considered for interim use by permit or for determination as surplus, thus making it eligible for disposal (for use as facilities for the homeless) under section 203(k) of the Federal Property Act. The conference amendment adds (rather than substitutes) a requirement that an agency head must state an intention to make the identified property (that is not declared excess) "available, on an interim use basis," for use to assist the homeless or provide reasons for not doing so. This requirement recognizes that identified nonexcess property should also be considered for interim use under other authority of law to assist the homeless. The general principle that the controlling agency may provide for interim use of its property by permit is well established under Justice Department opinions and GSA regulations (cf. 41 CFR 101-47.203-9).

The Senate amendment conforms section 501(b)(2) by deleting the words "declared excess." The conference agreement both retains this phrase and conforms it to the language that was added to subsection (b)(1) to provide for interim use availability.

The conference agreement revises section 501(d)(1) to reflect the changes made in section 501(b). It retains the existing requirement that ownership of buildings and property not be transferred from the Federal Government. It also retains the requirement that property which has been determined surplus pursuant to the Federal Property Act may be made available under section 501 only through the use of leases for at least one year. The conference agreement adds a requirement that property not determined to be surplus may nevertheless be made available for interim use by lease (longer than 1 year) or by permit. The conference agreement recognizes that other law established for some controlling agencies the authority to lease and (as the agreement did in section 501(b)) that there is a general authority for all executive agencies to provide interim-use permits.

The Senate amendment revises section 501(d)(2) by deleting the words "surplus Federal buildings" and substituting "underutilized Federal buildings." The conference agreement modifies section 501(d)(2) to clarify that the furnishing of property for facilities to assist the homeless is a permissible use in promoting the public health under section 484(k) of title 40, U.S. Code (section 203(k) of the Federal Property Act) with respect to property identified under subsection (a) that has been determined surplus. Also, since section 501(d)(1) requires leases as a method of disposing of surplus property, the conference agreement deletes (as unnecessary) a reference to leases in the introductory portion of the language used by the conference agreement, which reads: "With respect to property identified under subsection (a) which has been designated as surplus property, . . ." This provision should not be construed to preclude treatment of surplus property use to assist the homeless as a public health purpose generally under section 203(k).

The conferees wish to emphasize their expectation that the Secretary of Health and Human Services and the Administrator of General Services will recognize fully the special urgency of the need for such properties for use to assist the homeless and give priority of consideration to necessary lease/hold interest disposals. (See H. Report 100-174, p. 86.) The conferees urge on all executive branch agencies a similar emphasis in the application of other authority that may enable such properties to be made available for interim use.

Section 501, as amended, does not, of course, provide that every property identified as suitable under subsection (a) must be made available but only provides that such properties to be made available in accordance with other applicable Federal law. To give priority of consideration to the use of property to assist the homeless does not require disregarding consideration of other uses that may serve important Federal and national needs for which other law provides.

TITLE VI—REVISION AND EXTENSION OF PROGRAMS OF HEALTH CARE FOR THE HOMELESS

SUBTITLE A—CATEGORICAL GRANTS FOR PRIMARY HEALTH SERVICES AND SUBSTANCE ABUSE SERVICES

Current Law

Under section 340 of the Public Health Service (PHS) Act, the Secretary of Health and Human Services is authorized to make grants directly to public and private nonprofit entities to deliver health care, including primary care and substance abuse services, to the homeless. Grantees must match at least 25 percent of the cost of the program from non-Federal funds, in cash or in kind; the Secretary may waive this requirement in the case of nonprofit private grantees under the section 330 Community Health Center program. The FY 1988 authorization is $30 million.

House Bill (Sections 601-604)

The House bill would extend the Section 340 program for an additional 3 years at authorization levels of $61.2 million in FY 1989, $63.6 million in FY 1990, and $66.2 million in FY 1991. In addition, the bill would, effective October 1, 1989, raise the local matching requirement from 25% to 33⅓% for grantees in their second or subsequent year of funding. The bill would extend the Secretary's authority to waive this matching requirement in exceptional circumstances with respect to all nonprofit private entities, not just those receiving section 340 funds. The House bill further clarifies that homeless individuals eligible for services under the 340 grant program include residents of transitional housing, and makes clear that 340 grantees may continue to provide health services to an individual for up to a year after the individual has become a resident in permanent housing and is no longer homeless.

Senate Amendment (Sections 301-305)

The Senate amendment parallels the House bill but does not increase the percentage of matching funds required of grantees.

Conference Agreement

The conference agreement follows the House bill. The conferees intend that grantees may, at their option, use section 340 funds to provide dental, vision, or podiatry services to the homeless where medically necessary.

SUBTITLE B—BLOCK GRANT FOR COMMUNITY MENTAL HEALTH SERVICES

Current Law

Under Part C of Title V of the PHS Act, the Secretary of HHS is authorized to make allotments to the States for the provision of community mental health services, outreach, case management, and related services to homeless individuals who are chronically mentally ill. States are required to provide 25% of the costs of delivering these services from non-Federal funds, in cash or in kind. The FY 1988 authorization is "such funds as may be necessary." The appropriation for FY 1988 was $11.4 million.

House bill (Sections 611-613)

The House bill would extend the authorization for this Block Grant for an additional 3 years at the level of $35 million in FY 1989, $36 million in FY 1990, and $38 million in FY 1991. The bill would direct the Secretary to make grants to the States on a competitive basis if the amounts appropriated in any given year are insufficient to fund the minimum allotment of $275,000 to each State. The bill also provides that if a State fails to submit an application for its allotment, fails to prepare an application that complies with the Block Grant requirements, or informs the Secretary that it does not intend to spend its full allotment, the Secretary must use unallotted funds to make grants to public and nonprofit private entities in that State to provide mental health services to the homeless. In addition, the bill would establish a minimum allotment of $50,000 for Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands.

Senate Amendment (Section 307)

The Senate amendment would extend the current Block Grant authority for an additional 3 years at an authorization level of "such funds as may be necessary."

Conference Agreement

The conference agreement follows the House bill with the following modifications. The authorization levels would be $35 million in fiscal years 1989 through 1990 and "such funds as may be necessary in 1991." If the amounts appropriated in any fiscal year are insufficient to provide each State with an allotment of $150,000, the Secretary would be required to make grants to the States on a competitive basis for the purpose of providing mental health services to the homeless.

SUBTITLE C—AUTHORIZATION OF APPROPRIATIONS FOR COMMUNITY DEMONSTRATION PROJECTS

Current Law

Section 504(f) of the PHS Act authorizes the Community Mental Health Services Demonstration Projects under which the Secretary, acting through the National Institute of Mental Health, makes grants to States, localities, and private nonprofit entities for demonstration projects and research relating to the delivery of community services to homeless chronically mentally ill individuals, among others. Section 512(c) of the PHS Act authorizes the Community Demonstration Projects for Alcohol and Drug Abuse Treatment under which the Secretary, acting through the National Institute on Alcohol Abuse and Alcoholism, makes grants to community-based public and private nonprofit entities to develop and expand alcohol and drug abuse treatment services for homeless individuals.

House Bill (Sections 621–622)

The House bill would extend both the authorization for the Community Mental Health Services Demonstration Projects and the authorization for the Community Demonstration Projects for Alcohol and Drug Abuse Treatment at the level of $10 million in FY 1989, $11 million in FY 1990, and $12 million in FY 1991, respectively.

Senate Amendment (Sections 306–307)

The Senate amendment would extend the authorization for the Community Mental Health Services Demonstration Projects at the level of $11 million in FY 1989, $11.5 million in FY 1990, and such sums as are necessary in FY 1991. The amendment would extend the authorization for the Community Demonstration Projects for Alcohol and Drug Abuse Treatment at the level of $20 million in FY 1989, $25 million in FY 1990, and such sums as are necessary in FY 1991.

Conference Agreement

With respect to the Community Mental Health Services Demonstration Projects, the conference agreement follows the Senate amendment. With respect to the Community Demonstration Projects for Alcohol and Drug Abuse Treatment, the conference agreement would authorize $14 million in FY 1989, $17 million in FY 1990, and such sums as necessary in FY 1991.

TITLE VII. EDUCATION TRAINING AND COMMUNITY SERVICES PROGRAMS

SUBTITLE A. HOMELESS ASSISTANCE PROGRAMS

Section 701. Adult Education for the Homeless

House bill authorized $11 million. Senate amendment authorized $10 million. House recedes to the Senate with an amendment providing for the implementation of a program either directly or through grants and contracts.

Section 702. Education for Homeless Children and Youth

House bill authorized $6 million. Senate amendment authorized $5 million House recedes. Section also includes a technical amendment to section 722(b) of the Act.

Section 703. Job Training for the Homeless

House bill authorized $13 million with $2.2 million for sec. 738. Senate amendment authorized $12 million with $2.0 million for sec. 738. Senate recedes.

Section 704. Emergency Community Services Homeless Grant Programs

House bill authorized $42 million. Senate amendment authorized $40 million. Senate recedes to the House with an amendment providing that it shall be left to the discretion of the Secretary to enforce the 60-day requirement.

The conferees are aware that many states have not released funds received for homeless activities under section 704 to community action agencies in a timely manner and that some states have yet to release FY-1988 funds. Therefore, the conference agreement retains the House provision requiring that states release funds received for homeless activities under Section 704 to community action agencies within 60 days of receipt of such funds. This provision is not intended to provide community action agencies with a right of action against states that do not comply with the disbursement requirement.

The conferees intend that the provision included in both the House bill and the Senate amendment, regarding the use of funds for homelessness prevention, shall govern the expenditure of funds appropriated pursuant to this part for fiscal years 1988, 1989 as well as for upcoming fiscal years.

Section also includes a technical amendment correcting mathematical errors in the House bill relating to the treatment of the Territories.

Section 705. Older Americans Act Technical Amendment

Senate recedes.

SUBTITLE B. JOB TRAINING PARTNERSHIP ACT

The Senate amendment, but not the House bill, included a provision to provide incentive bonuses to service providers which successfully train and place long-term welfare recipients. The House recedes with amendments. These amendments include:

DEFINITIONS

(a) The conference agreement defines "long-term recipient" as having received welfare assistance for 24 of the 28 months preceding participation in the JEDI program. This allows for people who went off welfare for a brief period of time. Senate bill requires 24 continuous months.

(b) The conference agreement defines "continuous employment" as 4 out of 5 quarters. This allows a State to collect a bonus if a JEDI graduate becomes briefly unemployed. Senate bill required 4 continuous quarters.

Categorical eligibility: The conference agreement makes clarifying changes in the Senate version.

Additional eligibility requirements: The conference agreement is the same as the Senate except that it allows States to collect bonus if participant was unemployed for one quarter because of plant closure or natural disaster, or is off welfare and enrolls in school and makes measureable progress.

Bonus amounts: Senate bill sets the first year bonus at 75% of the cash welfare benefit the Federal government paid the JEDI participant prior to his employment. After the second year, the bonus is 50%, after the third year, the bonus is 25%. The conference agreeement changes the bonuses to 75% for each of the years.

Applications and verifications: The Conference Report is the same as the Senate amendment except that:

(a) it requires States to give the Department of Labor 30 days notice before beginning participation, and

(b) it requires Department of Labor to approve or deny State applications for bonuses within 60 days of receipt.

Ratable reductions: The conference agreement provides that, if Congress appropriates insufficient money to pay all the bonus claims, then the amount paid to each State shall be reduced ratably. If an excess is appropriated, then it shall be distributed ratably.

JEDI administrative funds: The conference agreement stipulates that from bonus monies awarded to states, 15 percent will be reserved for the Governor's use for administrative costs in implementing the program. The remaining bonus monies will be passed through ratably to the Service Delivery Areas that contributed to the attainment of the bonus monies. Of that pass-through money, SDA's may keep 10 percent for their administrative costs, with another 5 percent available for administration if a need is demonstrated to the Governor for additional costs. Incentive payments may be made to serve organizations that have been effective in demonstrating JEDI services. Senate version provided a flat 15% to States.

Assisting States with data collection: The conference agreement:

(a) Requires Department of Labor to provide continual technical assistance to States on how to collect the data they will need to collect the bonuses.

(b) Requires Department of Labor to annually report to Congress how data collection could be improved.

Start-up money: The conference agreement stipulates that States may apply to the Department of Labor for financial assistance based on need. The Senate amendment has no similar provision.

Authorization of start-up money: Authorizes the use of up to $5 million for "start-up" costs.

Performance standard: The conference agreement:

(a) Creates an additional performance standard for the JEDI program. The performance standard in no way changes existing performance standards.

(b) Requires Department of Labor to report to Congress on the effect of the new standard.

Carryover funds: The conference agreement strikes the Senate provision restricting the amount of funds that states may carry over from one fiscal year to the next.

Summer youth: The Conference agreement strikes the provision of the Senate amendment which would provide for a full year AFDC youth training program.

Evaluation: The Conference agreement provides for a more specific and thorough evaluation of the JEDI program. The conferees intend that the Secretary also report on the various types and duration of training provided to long term welfare recipients, and on the relative effectiveness of such training methods.

Authorization: The Conference agreement and the Senate amendment provide for an authorization of such sums to fund the JEDI program. No funds shall be appropriated under this part unless funding in any fiscal year for title II-A exceeds any change in the consumer price index from the amounts appropriated for the previous fiscal year.

House and Senate conferees agreed to drop a provision relating to the Women's Infants and Children's program (WIC) because it has been enacted into law as part of the Hunger Relief Act.

TITLE VIII—VETERANS PROGRAMS

AUTHORIZATION OF APPROPRIATIONS

House Bill

The House bill (section 801) would authorize appropriations of $25 million for the purposes described below for each of fiscal years 1989 and 1990.

Senate Bill

The Senate bill (section 401) would authorize appropriations of $30 million for the purposes described below for each of fiscal years 1989 and 1990.

Conference Agreement

The Conference agreement contains authorization for appropriations of $30 million for each of fiscal year 1989 and 1990.

DOMICILIARY BED PROGRAM

House Bill

The House bill (section 801) would authorize 60 percent of the total annual appropriation each year to be used by the VA for converting underutilized space to domiciliary-care beds, primarily for homeless veterans, and for operating such beds.

Senate Bill

The Senate bill (section 401) would authorize 40 percent of the total annual appropriation each year to be used by the VA for such conversion and operation of domiciliary-care beds.

Conference Agreement

The conference agreement would authorize the use of 50 percent of the total annual appropriation for each year for such conversion and operation of domiciliary-care beds.

CHRONICALLY MENTALLY ILL PROGRAMS

House Bill

The House bill (section 801) would authorize 40 percent of the total annual appropriation each year to be used by the VA to furnish care to chronically mentally ill homeless veterans.

Senate Bill

The Senate bill (section 401) would authorize 60 percent of the total annual appropriation each year to be used by the VA to furnish care to such chronically mentally ill homeless veterans.

Conference Agreement

The conference agreement would authorize the use of 50 percent of the total annual appropriation each year to furnish care to such chronically mentally ill homeless veterans.

NURSING-HOME-CARE BEDS

House Bill

The House bill (section 801) would authorize that nothing in section 801 of the bill would result in the diminution of the conversion of hospital-care beds to nursing-home-care beds by the VA.

Senate Bill

The Senate bill (section 401) contain substantively the same provision which would authorize that nothing in section 401 of the bill would result in the diminution of the conversion of hospital-care beds to nursing-home-care beds by the VA.

Conference Agreement

The conference agreement contains this provision.

TITLE IX—AID TO FAMILIES WITH DEPENDENT CHILDREN

1. AFDC EMERGENCY ASSISTANCE (TITLE IX OF THE HOUSE BILL)

Present Law

The Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203), prohibits the Secretary of Health and Human Services, prior to October 1, 1988, from taking any action that would have the effect of implementing, in whole or in part, the proposed regulations published in the Federal Register on December 14, 1987. These regulations would have restricted the use of AFDC emergency assistance funds for homeless families and would have limited States' authority to use AFDC funds for shelter in temporary quarters, whether as a basic or special need.

Under present law, States may operate an emergency assistance program for needy families with children, if the assistance is necessary to avoid the destitution of the child, or to provide living arrangements in a home for the child. The statute authorizes 50 percent Federal matching funds for emergency assistance furnished for a period not in excess of 30 days in any 12-month period. Current regulations state that Federal matching is available for emergency assistance authorized by the State during one period of 30 consecutive days in any 12 consecutive months, including payments which are to meet needs which arose before the 30-day period, or are for such needs as rent which extend beyond the 30-day period.

AFDC regulations also allow States to include, in their State standards of need, provision for meeting "special needs" of AFDC applicants and recipients. The State plan must specify the circumstances under which payments will be made for special needs. Some States use AFDC emergency assistance and/or special needs funds to provide assistance to homeless families, including shelter in so-called "welfare hotels."

House Bill

(a) Extends, through September 30, 1989, the prohibition on implentation of the regulations proposed by the Secretary of Health and Human Services on December 14, 1987.

(b) Requires the Secretary of Health and Human Services to review current policy with respect to the use of AFDC funds in the form of emergency assistance or special needs payments to meet emergency needs of AFDC eligible families.

(c) Requires the Secretary of Health and Human Services to submit a report to Congress by April 1, 1989. The report would include recommendations for statutory and regulatory changes designed to: (1) improve the ability of the AFDC program to respond to emergency needs of AFDC eligible families; and (2) eliminate the use of AFDC funds for shelter costs in so-called "welfare hotels."

(d) Authorizes 5 State or local demonstration projects designed to reduce the number of families in welfare hotels and expand the availability of transitional housing.

Under the demonstration, a State or locality would be permitted to use AFDC funds to pay the operating costs (including debt service) of transitional facilities for homeless AFDC families. The normal AFDC match would apply. In order to participate in the demonstration, the State or locality must demonstrate to the Secretary of Health and Human Services that:

—for each transitional facility that is made available, the State or locality will permanently discontinue using an equal number of welfare hotel rooms currently used to house homeless AFDC families.

—the transitional facility can provide shelter and services to a homeless AFDC family at the same or less cost than a welfare hotel and that there will be no net cost to the Federal government in fiscal year 1989 or any subsequent fiscal year.

The term welfare hotel would be defined as a commercial or similar transient facility offering accommodations in a commercial hotel or motel operated by a privately owned for profit entity, or any similar establishment that does not meet the definition of transitional facility. The term transitional facility would be defined as a facility operated by a State, locality or non-profit organization which at least provides temporary and private sleeping accommodations, temporary eating and cooking accommodations, and services to help families locate and retain permanent housing.

The demonstration would extend for five years, beginning in fiscal year 1989.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill with respect to the moratorium on regulations and the study, modified to require that the report of the study be issued by July 1, 1989. It does not include the demonstration authority proposed in the House bill. It also includes the following demonstration authority.

In order to enable States to provide housing for homeless families who are recipients of aid to families with dependant children under a State plan approved under part A of title IV of the Social Security Act in transitional facilities instead of in commercial or similar transient facilities, at least 2 but not more than 3 States may undertake and carry out demonstration projects. States may use either public or private nonprofit agencies in carrying out the demonstration. Demonstration projects shall meet such conditions and requirements as the Secretary shall prescribe.

Funds may be used for rehabilitation or construction of transitional housing facilities, and to provide on-site social services at the facilities. The facilities must be easily convertible to permanent housing when they are no longer needed for transitional housing.

To be approved, a State AFDC agency must demonstrate that the project will:

(a) provide transitional facilities only for homeless families who are recipients of aid to families with dependent children who are residing in commercial or similar transient facilities;

(b) permanently reduce the number of rooms used to house homeless families who are recipients of such aid in commercial or similar transient facilities by the number of units made available in transitional facilities; and

(c) provide that the total cost of cash assistance provided to families residing in these facilities plus the cost of grants under this provision must result in a total Federal cost that is no greater than the cost of housing (including payments to cover basic needs and services) homeless families in commercial or similar transient facilities. The GAO will be required to review each application for grants under this provision and report to the Finance and Ways and Means Committees its analysis of whether or not the application meets this criterion.

Authorize an appropriation of $20 million to be available until expended.

2. PREVENTING FRAUD AND ABUSE IN HOUSING AND URBAN DEVELOPMENT PROGRAMS (SECTIONS 262 OF THE SENATE AMENDMENT)

Present Law

No provision.

House Bill

No provision.

Senate Amendment

The Senate amendment would permit the Secretary of Housing and Urban Development to require that an applicant or participant (including members of an applicant's or participant's household) disclose his or her social security number or employer identification number. This authority is limited to programs involving loans, grants, interest or rental assistance of any kind, or mortgage or loan insurance, and to assure that the level of benefits provided under these programs is correct.

The Senate amendment also requires, as a condition of eligibility for HUD programs involving initial and periodic review of income, that applicants sign a consent form authorizing the Secretary, or the public housing agency or owner responsible for determining eligibility or benefits to request that current or previous employers verify salary and wage information. The Social Security Act is also amended to require State unemployment insurance agencies to release wage and unemployment compensation information.

Conference Agreement

The conference agreement follows the Senate amendment modified to restrict the release of wage and unemployment compensation data only to officers and employees of the Department of Housing and Urban Development and public housing authorities. The wage and UI information may not be released to private owners. In addition, the authorization is limited to 5 years.

The requirement in the Senate amendment to permit the Secretary of Housing and Urban Development to require an individual to disclose his social security number is deleted. This provision has been enacted into law (P.L. 100-242).

3. STUDY OF ELIGIBILITY PROCESSES UNDER AFDC, MEDICAID AND FOOD STAMP PROGRAMS (SECTION 308 OF THE SENATE AMENDMENT)

Present Law

No provision.

House Bill

No provision.

Senate Amendment

The Senate amendment requires that the Department of Health and Human Services contract with the University of South Carolina College of Social Work to conduct a study of the reasons for denials and withdrawals of applications made under the AFDC, Medicaid and Food Stamp programs in South Carolina.

Conference Agreement

The conference agreement follows the House bill (i.e., no provision).

TITLE X—HOUSING AND COMMUNITY DEVELOPMENT TECHNICAL AMENDMENTS

SUBTITLE A—HOUSING ASSISTANCE

INCOME ELIGIBILITY FOR ASSISTED HOUSING

The House bill contained a provision not included in the Senate amendment directing HUD to establish a self-executing percentage for each HUD program for the eligibility of families whose income is between 50 and 80 percent of median income and to prohibit owners from skipping over lower income families on the waiting list in order to house higher income families. The Senate recedes with an amendment adding anti-skipping language to section 6(c)(4)(A) of the Housing Act of 1937, the provision establishing income-mix requirements for public housing. While the conferees affirm the principle of income mix in assisted housing projects, this amendment (which is necessary in light of the decision in *Paris vs. HUD* 843 F 2d 561) makes it clear that lower income families on a waiting list may not be skipped over in order to help a higher income family first. However, once a family reaches the top of the waiting list, their assignment to a particular project should be made taking into account the requirement to assure a range of incomes of families living in that particular project. In any case where separate lists have been maintained for families based on their income, the families should be offered housing in the chronological order in which they applied.

PUBLIC HOUSING CHILD CARE GRANTS

The House bill contained an amendment not included in the Senate amendment permitting child care grants to be provided in facilities near public housing projects. The conference report contains the House provision.

PUBLIC HOUSING RESIDENT MANAGEMENT

The Senate amendment contained a provision not included in the House bill that applies the requirements of the 1987 Housing Act governing the tenant management of public housing projects to contracts entered into after the date of enactment of the 1987 Act. The conference report contains the Senate amendment.

PUBLIC HOUSING COMPREHENSIVE TRANSITION DEMONSTRATION

The Senate amendment contained a provision not included in the House bill which would limit certain income disregard provisions of the demonstration to the Charlotte, NC, housing authority. The conference report does not contain this provision.

PROHIBITION OF REDUCTION OF SECTION 8 CONTRACT RENTS

The House bill contains a provision not included in the Senate amendment which requires HUD to follow the requirements of the 1987 Housing Act and to restore certain Section 8 rents that were reduced after April 15, 1987. The conference report contains this provision amended to require, only in the case of implementing the requirement in FY 1989, Appropriation Act approval.

PROJECT-BASED SECTION 8 ASSISTANCE

The Senate amendment contained a provision not included in the House bill which would require HUD to issue regulations governing Section 8 existing project based assistance within 30 days of enactment. The conference agreement contains the Senate provision with a number of amendments designed to ensure that project-based assistance can be used effectively at the local level. The conference report requires that any assistance attached to units in accordance with Section 148 of the 1987 Act maybe renewed by local public housing agencies for two additional five year terms, up to a maximum total of 15 years subject to the availability of funds. The conferees believe these changes are necessary to reconcile the five year term of existing certificates with the realities of lending and underwriting practices. Project-based assistance could also be used in limited circumstances in a newly constructed building as long as non-federal funds are used to construct the building, the unit rents do not exceed the Section 8 existing fair market rents and the use of this authority is within the 15 percent limitation governing PHA discretion. The conferees expect that, in the case of use in a newly constructed project, no exceptions will be given to approve rents in excess of the basic Section 8 existing fair market rent for the area. While HUD is given authority to approve applications for the use of project-based assistance until regulations are issued within one month of enactment, after that date the decision to use 15 percent of all of its Section 8 certificates as project-based lies within the discretion of the housing authority. The conference report directs the HUD Secretary to waive the 15 percent limitation only in two tightly circumscribed cases: the rehabilitation of the Penn Alto Hotel in Altoona, Pennsylvania for use as elderly housing and the settlement of the litigation involving the Cedar Square West project in Minneapolis, Minnesota.

SECTION 8 ASSISTANCE FOR RENTAL REHABILITATION PROJECTS

The Senate amendment contained two provisions not included in the House bill which direct HUD to allocate sufficient Section 8 certificates and vouchers to address physical, and economic displacement of tenants living in projects receiving rental rehabilitation assistance and establishes requirements governing the 10 percent administrative expense limit. The conference report contains the Senate provisions amended to (a) authorize a ten percent exception to the preference rules governing tenant selection under the public housing, Indian housing, voucher and Section 8 certificate programs and (b) provide the HUD Secretary with the authority to establish a higher percentage exception if the Secretary determines it is appropriate for good cause or when the Secretary determines it is necessary to ensure that public housing agencies may assist tenants who would have to pay more than 30 percent of their income for rent after a project received rental rehabilitation assistance, whether the tenant stays in the project or moves. The conference report addresses two critical issues concerning HUD's administration of the rental rehabilitation program. First, the conferees are concerned that some localities do not receive a sufficient number of certificates and vouchers under HUD's current method of allocation to carry out the statutory responsibilities established in section 149 of the 1987 Act. Section 149 mandated that the certificates or vouchers by used to assist tenants who are physically displaced from rental rehabilitation projects. Section 149 also gave local administering agencies the discretion to use certificates or vouchers to assist economically displaced tenants—that is, tenants "who would have to pay more than 30 percent of their adjusted income for rent after rehabilitation whether they choose to remain in, or move from, the project." The conference report directs the Secretary to make such allocation of certificates and vouchers as is necessary to ensure that sufficient resources are available to address the physical or economic displacement of tenants of rental rehabilitation projects. The conferees intend that the Secretary shall estimate the need for Section 8 assistance for tenants in rental rehabilitation buildings annually by survey or other reasonable method. The Secretary shall then ensure that the annual allocation of new certificate and voucher funding for each jurisdiction shall be sufficient to meet the identified needs.

Second, the conference report authorizes a 10 percent exception to the preference rules governing tenant selection under public housing, Indian housing, the voucher, Section 8 moderate rehabilitation and Section certificate programs. The ten percent exception is intended to codify the exception contained in HUD's final rule published on January 15, 1988 implementing the statutory preference requirements for various federal housing programs. The amendment is made necessary by a recent federal district court decision *(Drake* v. *Pierce)* invalidating the administratively-created ten percent exception as contrary to Congressional intent. Congress never intended the tenant preference system to be interpreted so rigidly. The conferees believe that the ten percent exception is a valid device for giving public housing agencies the flexibility to tailor the Federal preference to locally defined needs and objectives, including selecting eligible families from the waiting list in the order they have applied. The conferees expect that the good cause exception will be implemented on a PHA by PHA basis after regulations defining the good cause criteria are published for notice and comment. Examples of good cause could be furthering fair housing goals, selecting families from the waiting list in the order they applied or settling litigation.

The conferees note that one of HUD's stated rationales for the exception was to give public housing agencies the discretion to adopt local selection preferences to assist economically displaced tenants residing in rental rehabilitation projects. The conferees are not convinced that the ten percent exception will be sufficient to address such economic displacement. Therefore the conference report authorizes the HUD Secretary to establish a higher than ten percent exception when necessary to avoid the economic harm to or displacement of tenants living in projects about to be modernized with rental rehabilitation assistance. For similar reasons, the conferees endorse the policy established by the Secretary according to the discretion authorized under Section 8(e)(2) which provides that any income eligible tenant living in a project undergoing rehabilitation which is assisted under the Section 8 moderate rehabilitation program could benefit from the Section 8 assistance without regard to the limitations of the preference rule. However any tenant moving into a completed Section 8 moderate rehabilitation project who did not meet the statutory preference requirements could only qualify for assistance if the local government provided eligibility under their ten percent exception or the Secretary raised the percentage for other good cause.

TWEEMILL HOUSE

The Senate amendment contained a provision not included in the House bill which requires HUD to process a certain 202 loan. The conference report contains the Senate provision.

PREVENTING FRAUD AND ABUSE

The Senate amendment contained a provision not included in the House bill which requires assisted housing applicants to authorize income verification and permits HUD to access State employment records for purposes of income verification. Title IX of the conference report contains the Senate provision with an amendment.

HOUSING COUNSELING

The House bill contained a provision not included in the Senate amendment which permitted HUD funded housing counseling for owners of VA guaranteed homes. The conference report contains the House provision.

MULTIFAMILY HOUSING MANAGEMENT AND PRESERVATION

Unsubsidized Projects.—The House bill contained a provision not included in the Senate amendment that required HUD, for projects with unsubsidized HUD-held mortgages, to preserve units that are occupied by low and moderate income tenants on the date of assignment, foreclosure or sale. The conference report contains the House provision amended to cure the discrepancies between the language of subsections 203(a)(1) and 203(d) of the 1978 Amendments. First, the conference report amends subsection 203(a)(1)(C) to require HUD to preserve those units in HUD-held unsubsidized projects that are occupied by low and moderate income tenants on either the date of assignment or the date of foreclosure (whichever date has the greater number of low and moderate income tenants). Second, the conference report amends subsection 203(d) to require HUD, upon sale of HUD-owned formerly unsubsidized projects, to provide Section 8 assistance for those units in such projects that are, on the date title to the project is acquired by HUD, either vacant or occupied by low and moderate income tenants. Finally, the conference report amends subsection 203(d) to require HUD, when HUD-held unsubsidized projects are acquired at foreclosure by owners other than HUD, to provide Section 8 assistance for those units in such projects that are occupied by low and moderate income tenants on either the date of assignment or foreclosure (whichever date has the greater number of low and moderate income tenants).

Right of First Refusal.—The House bill contained a provision not included in the Senate amendment which gave a local government and a designated state agency the right to match the terms and conditions of HUD's disposition plan for a HUD-owned multifamily project. Existing law gives local governments and designated state agencies the right to match an offer made for the purchase of such projects. The conference report contains the House provision amended to outline in greater detail the procedures and requirements that will govern the revised right of first refusal. The conference report requires the Secretary to develop a disposition plan for each HUD-owned project prior to sale. The disposition plan shall specify the Department's minimum terms and conditions for disposition of the project including, most significantly, (1) the initial sales price that is acceptable to the Secretary and (2) the assistance the Secretary plans to make available to a buyer in accordance with the preservation requirements of the 1978 Amendments. The initial sales price shall reflect the value of the project as housing affordable to low and moderate income households for the minimum 15-year period required by subsection 203(d) of the 1987 Amendments. Upon the approval of a disposition plan, the Secretary must notify the local government and the appropriate State agency of the terms and conditions of the disposition plan. These entities then have 90 days in which to make an offer to purchase the project. The Secretary is directed to accept an offer that matches the terms and conditions of the disposition plan. The Secretary is also given the discretion to accept offers that do not match the precise terms and conditions of the disposition plan if the Secretary determines that such offers would further the preservation objectives of Section 203 of the 1978 Amendments. The Secretary, in particular, shall adjust the initial sales price in exchange for an agreement to extend the duration of low income affordability restrictions beyond the 15-year period required by subsection 203(d). If agreement between HUD and the appropriate local and State agencies cannot be reached within 90 days, HUD shall be free to offer the project to the general public. The conferees fully expect that the Secretary will use his discretion to negotiate the terms and conditions of the disposition plan. In evaluating offers made by local governments and State agencies, the Secretary shall give serious consideration to offers that envision the imposition of long term or perpetual low income restrictions.

The conference report also prohibits any local government or designated State agency from transferring projects acquired under a right of first refusal to a private entity unless such transfer is accomplished by a public solicitation process. The Secretary shall establish criteria for the solicitation process. Those criteria shall include a requirement that prospective owners agree to extend the low income affordability restrictions beyond the 15 year period required by subsection 203(d). The conference report makes these amendments to ensure that the right of first refusal not be used to enable localities and States to act as conduits for private developers and other entities which would otherwise be required to participate in a competitive bidding process. The underlying rationale for the right of first refusal is to achieve long-term low-income use of these projects through the development of creative financing and ownership arrangements that include governmental entities. Throughout the nation, localities and States are experimenting with a variety of effective, new contractual arrangements. Some enable government entities to impose perpetual use restrictions in return for incentives such as subsidized mortgages or reduced property taxes. Others link increased density for one project in return for long term low income affordability restrictions in another project. The conferees intend to encourage these innovative techniques as a partial solution to the problems of inventory loss associated with previous federal housing programs. The conference report directs the Secretary to provide Congress, within one year of the enactment of this Act, with a report detailing cases in which local and state governments have exercised their right of first refusal.

The conferees are also aware of property sales made to local governments that subsequently demolish the project and reduce the housing available for low and moderate income families. The conferees expect HUD to avoid such demolition unless the project is unfit for rehabilitation or the rehabilitation would cost substantially more than constructing new housing.

Definition of Subsidized Project.—The House bill contained a provision not included in the Senate amendment which tightened the definition of a "subsidized project" for purposes of the multifamily preservation requirements. The conference report contains the House provision and reaffirms the explanation contained in the House report.

Transfer of Legal Title.—The House bill contained a provision not included in the Senate amendment which would apply the preservation requirements of the 1987 Act to all HUD owned property where legal title had not transferred prior to February 5, 1988. The conference report does not contain the House provision. The conferees understand that no legal title has yet to transfer in the sale involving the Thornwood Apartment project in Chicago Heights, Illinois, and that the City of Chicago Heights has filed a lawsuit against the Department in an effort to exercise the right of first refusal. The conferees believe that HUD, as a fair settlement of the litigation, should (1) reevaluate the disposition plan governing Thornwood and (2) provide to the City of Chicago Heights the opportunity to exercise a right of first refusal in accordance with the amendments made by this Act. The conferees reemphasize that the conference report prohibits any local government or designated State agency from transferring projects acquired under a right of first refusal to a private entity unless such transfer is accomplished by a public solicitation process.

Assignment.—The House bill contained a provision not included in the Senate amendment which clarified that the management and preservation requirements apply to projects assigned to HUD before or after February 5, 1988. The conference report contains the House provision with an amendment to provide that where HUD does not possess any records identifying low income occupancy on the date of assignment, occupancy data should be provided based on a date within 120 days of enactment of this Act.

Exemption from Preservation Requirements.—The House bill contained a provision not included in the Senate amendment which exempted the disposition of the Cedar Square West project in Minneapolis, Minnesota, from the preservation requirements of Section 203 of the 1987 Amendments. The conference report contains the House provision amended to provide that for those 250 project-based certificates offered by the Secretary in settlement of litigation involving Cedar Square West, the Secretary, notwithstanding the statutory preference rules, shall give preference for this Section 8 assistance to those tenants either on the waiting list for Cedar Square West or living in the project in over-crowded conditions.

MULTIFAMILY CAPITAL IMPROVEMENTS

The House bill contained a provision not included in the Senate amendment requiring $50 million of the funds appropriated for the flexible subsidy program to be used for capital improvement loans. The conference report contains the House provision amended to require the lesser of $30 million or 40 percent of flexible subsidy funds to be used for this purpose and to require HUD to issue regulations for the Capital Improvement Loan Program by February 5, 1989, one year after the program was authorized by Congress. The conference report also permits the Secretary to use funds earmarked for capital improvement loans for other purposes of the Flexible Subsidy Fund if the earmarked funds are not used before the last 60 days of a fiscal year.

REFINANCING STATE FINANCED SECTION 8 PROJECTS

The House bill contained a provision not included in the Senate amendment providing that when State financed Section 8 projects that received a financial adjustment factor are refinanced, 50 percent of the recaptured Section 8 funds shall be available for use by State financed agencies to provide affordable housing to very low income persons. The conference report contains the House provision, amended to require approval of this use of funds in an Appropriations Act.

SUBTITLE B—PRESERVATION OF LOW INCOME HOUSING

Notice to Tenants.—The House bill contained a provision not included in the Senate amendment which (a) required owners of FHA insured and subsidized projects that plan to prepay the mortgage to submit to the project tenants copies of the intent to prepay and the plan of action and (b) gave tenants the opportunity to comment on the plan. The conference report contains a substitute for the House provision since it was clear in the conference report on the 1987 Act that the conferees expected the HUD Secretary to issue regulations requiring procedures for meaningful consultation with affected tenants. In order to play a useful role in this process tenants must have access to relevant information such as the plan of action. The conference report, therefore, amends Section 232 of the Housing and Community Development Act of 1987 to require that the Secretary's Report to Congress (due February 5, 1989) describe in detail the steps taken to assure meaningful participation by affected tenants. This information will be critical to Congress when it considers a longer term solution to the crisis addressed for a 2-year period in the 1987 Act.

Plan of Action.—The Senate amendment contained a number of provisions not included in the House bill which amended the requirements of the plan of action required of owners planning to prepay certain FHA insured mortgages. These provisions require HUD (a) to provide owners any relevant market area and demographic information the Secretary has than the owner can use in preparing the plan of action; and (b) to limit the amount of appraisal, market area and demographic information required when an owner is requesting incentives in order to extend low income use of the property. The conference report contains the Senate provisions.

Incentives to Extend Low Income Use.—The House bill contained a provision not included in the Senate amendment which clarified that financial incentives can be provided only when low income restrictions are extended through the original term of the mortgage. The conference agreement contains the House provision amended to clarify that incentives may be provided when the low income affordability restrictions are extended (a) through the term of the original mortgage by modification of the existing mortgage or regulatory agreement or (b) in the case of a prepayment, through a period of time equivalent to the remaining term of the original mortgage by a recorded instrument. The recorded instrument must also ensure that additional restrictions contained in the original regulatory agreement are applied to projects which "prepay with incentives".

Rent Increase Criteria for Approval of Plan of Action.—The Senate amendment contained a provision not inlcuded in the House bill clarifying that the Secretary may not use the availability of vouchers or certificates as a reason for finding that a plan of action does not materially increase the economic hardship of low-income tenants or involuntarily displace current tenants where comparable and affordable housing is not available. The House bill contained a provision not included in the Senate amendment to clarify the limit on the amount of rent increases that can be established in an approved plan of action. The conference report contains the Senate provision and the House provision amended to insure the annual rent increase for tenants will not exceed 10 percent.

Eligible Low Income Housing.—The House bill contained a provision not included in the Senate amendment which applied the prepayment limitations to State insured federally assisted 236 projects. The conference agreement contains this provision.

Rural Housing Prepayment.—The Senate bill contained a provision that was not contained in the House bill requiring the Secretary of Agriculture to promulgate regulations establishing criteria for selecting a purchaser of a project subject to the prepayment provisions in existing law when more than one prospective qualified purchaser has made a bona fide offer to purchase; and to provide in such regulations a priority to those organizations or agencies having the most experience in managing or developing low income housing or community development projects and having the longest record of community service. This provision also (1) clarified the definition of a nonprofit organization to prevent such an organization from purchasing prepaid projects if it has among its officers or directorate persons with a material interest in Section 515 loans that have been prepaid; and (2) clarified the definition of a local nonprofit organization to mean one which (a) has a broad, varied interest board of directors, and (b) is a charitable organization having a principal purpose of developing or managing low income housing or community development projects. The conference report contains the Senate provision.

It has come to the conferees attention that the Farmers Home Administration is accepting the prepayment of Section 515 loans whenever Section 515 owners who are receiving assistance from HUD under the Section 8 program agree to renew their Section 8 contracts for the remaining term of the original Housing Assistance Payment contract. It is the conferees understanding that in so doing, FmHA is assuming that the continuation of the Section 8 contract automatically satisfies the prepayment conditions set out in Section 241(G)(ii) of the Housing and Community Development Act of 1987, namely, that the prepayment will not materially affect the housing opportunities of minorities and that no displacement of current tenants will occur as a result of the prepayment. The conferees wish to make clear that the practice of automatically accepting the prepayment of loans of projects receiving Section 8 assistance is contrary to Section 241(G)(ii) and that the FmHA must make its determination on the prepayment or refinancing of the loan notwithstanding the existence of a Section 8 contract.

Section 8 Loan Management Program.—The House bill contained a provision not included in the Senate amendment requiring that when a Section 8 loan management contract expires, HUD must offer to extend the contract or offer new project-based loan management assistance not vouchers or certificates. The conference report contains the House provision with a series of amendments. First, the conference report requires that the eligibility of a multifamily residential project for loan management assistance be determined without regard to whether the project is subsidized or unsubsidized under under the National Housing Act. Second, the conference report allows the Secretary, in allocating loan management assistance, to give priority to a project only if the project has serious financial problems that are likely to result in a claim on the insurance fund in the near future or is eligible for incentives under Subtitle B of the Emergency Low Income Housing Preservation Act of 1987. Finally, the conference report strikes Section 8(v)(1) of the Housing Act of 1937, the provision requiring that each contract for LMSA assistance be for a term of 180 months.

The first two amendments are made necessary by the adoption of a recent HUD/OMB policy that gives first priority for LMSA use to "subsidized" projects. The policy has had the effect of excluding otherwise eligible unsubsidized projects from consideration for LMSA assistance. The conferees intend to reaffirm the policy defined in existing regulations concerning the establishment of priorities for LMSA assistance and to assure that such assistance can be provided in accordance with the Emergency Low Income Presentation Act of 1987.

Section 262 of the 1987 Housing contained a number of provisions designed to induce owners to extend or renew their participation in the Section 8 program. It has come to the attention of the Conference Committee that HUD is interpreting those provisions in ways that defeat the purpose of extending assistance and in some cases result in the cancellation of contracts and the loss of scarce housing subsidies that are critical to facilitating the preservation of low-income housing.

However, in recognition that some owners of Section 8 projects might still elect not to extend their contracts at end of a term, the Act requires in such instances that tenants be provided a one-year notice by the owner. This long lead time is designed not only to give the tenants time to find other quarters if it should become necessary for them to move, but also to give HUD time within which to assure that the proposed termination of the Section 8 assistance is lawful and to attempt to work out with the owner a means of preserving the housing for low-income use. In some cases HUD has refused to consider contract extensions or Section 8 LMSA adjustments until after the one-year notice has been given. This policy is detrimental because it could cause unnecessary alarm to tenants in the case of owners willing to negotiate a renewal. HUD should encourage owners to work with HUD *prior* to the one-year deadline and HUD should reach agreements *prior* to that date so that termination notices may be avoided.

In addition until recently, HUD has premitted Section 8 contracts to be extended at the end of a term for a period shorter than five years, with the option for the owner to renew for subsequent terms up to the maximum total term originally contemplated by the contract. These shorter renewals have enabled owners, who might otherwise be reluctant to renew their contracts for a five-year term, to keep their housing for continued low-income use.

HUD has now stopped permitting renewals for less than five-year terms, on the basis that to do so would be a violation of the low-income housing preservation principles of the 1987 Act. Unfortunately, this policy may have the opposite effect, by driving some owners to terminate sooner than they might have otherwise. The conferees want to make it absolutely clear that nothing contained in the Emergency Low Income Housing Preservation Act of 1987 was intended to be interpreted by HUD as barring the renewal of Section 8 contracts for periods of less than five years, and the Department is directed to permit shorter than five-year extensions of Section 8 contracts with the option for the owner to renew for subsequent terms up to the maximum total term originally contemplated by the contract. Where a project owner refuses to agree to an extension or new LMSA contract, the conferees expect HUD to continue the practice of providing vouchers or certificates to eligible tenants.

Finally, the conferees are aware that HUD has refused to implement the provisions of Section 8(c)(10) regarding increases in permissible Section 8 LMSA rents resulting in the cancellation of LMSA contracts and the provision of vouchers to tenants. This provision was created to *avoid* this very scenario. The conferees direct HUD to implement all of the provisions of Section 262 of the 1987 Act in ways that assure the preservation of assisted housing through the continuation of project-based Section 8 assistance, not in ways that defeat that purpose.

LEASE AND GRIEVANCE

On August 30, 1988, the Department of Housing and Urban Development (HUD) issued regulations that made changes in the lease and grievance procedures governing federally assisted public housing.

While Congress changed the law in 1983 to permit the grievance procedure to exclude evictions where a local jurisdiction provides a hearing in court which meets the basic elements of due process, the purpose was to simplify procedures for eviction, particularly when it was clear that a tenant was a threat to the health and safety of other tenants, was conducting illegal activities or had repeatedly violated provisions of his lease such as the requirement to pay rent.

However, Congress is seriously concerned that the recent regulations would weaken principles of fairness and due process that have been painstakingly developed over 20 years as a result of legislative and judicial actions. The regulations eliminated requirements for procedures to assure that tenants could grieve unfair agency actions and tenants that made repairable mistakes, if given time and a fair hearing, could correct those errors.

The Committee is particularly dismayed that HUD has "respectfully demurred" to Congress' intent as stated in the conference report on the Housing and Community Development Act of 1987 regarding the right of a tenant to file a grievance against a PHA for its failure to act. That report clearly specified that "Congress has always intended that the mandatory public housing grievance procedure apply to failures to act, such as failure to maintain housing in decent condition, failure to provide timely subsidy increases when incomes drop, or failure to provide appropriate utility allowances." The report directed HUD to revise their regulations to be consistent with the ruling in *Samuels* v. *District of Columbia*, in which the court specifically held that disputes regarding a PHA's refusal to act, as well as its affirmative actions, must be grievable. Concerns have been raised that the changes included in the August 30th regulations would deny tenants the opportunity to be heard when they: ask for a transfer for medical or other reasons, but the public housing authority (PHA) refuses; request repairs or heat in the winter but the PHA refuses. In addition, elderly tenants would be denied the right to appeal an agency decision to deny their request to have a live-in aide stay with them when they need one to continue to live independently. If the head of a household leaves or dies, the remaining members of the family would no longer have a right to remain in their homes a right explicitly defined in the case of *Arsenault* v. *Chicopee Housing Authority* (44NE2nd968). The regulations would not require a 30-day notice for rent increases and eliminate an opportunity for tenants to comment on proposed changes in the lease or grievance procedures.

The regulations also provide that where a grievance procedure is followed a tenant would be bound by decision in the PHA's favor but the PHA will not be bound by decision in the tenant's favor where the grievance is not required by the regulations. The 14-day actual notice requirement is short circuited when the notice is mailed, since HUD eliminated the 5-day allowance for mailing time. Other basic principles of due process that were eliminated in the new regulations were permitting the grievance hearing officer to make factual determinations on the basis of general knowledge and hearsay instead of on evidence presented at the hearing which the tenant has notice and an opportunity to challenge. Finally the principles in the regulations HUD proposes to use to determine whether State laws conform to due process are inadequate since among other principles they do not require judges trained in the law, do not allow tenants discovery prior to the hearing and do not recognize a warranty of habitability.

Since the regulations were published in late August, these issues concerning the HUD lease and grievance regulation were brought forward late in the consideration of this bill. The conferees are unable to evaluate the validity of these concerns. However, in the interest of fairness and equity the conferees believe that there should be further opportunity for an airing of these concerns, and consideration of these issues by HUD in the HUD rulemaking for this rule. For this purpose, the conference report provides that the HUD Lease and Grievance Rule published on August 30, 1988 (53 Federal Register 33216) shall be made effective as an Interim Rule with an extended period of time for public comment, which should extend for not less than 60 days or until March 1, 1989 whichever occurs later. Following the opportunity for public comment, the conferees expect HUD to give a fair and full consideration and evaluation of the concerns raised in the comment period and in this report, including amending the regulations to accommodate the principles enunciated in the *Samuels* case.

SUBTITLE C—RURAL HOUSING

Section 502 Guaranteed Loan Demonstration.—The House bill contained a provision not contained in the Senate bill requiring the Secretary of Agriculture to carry out the rural housing guaranteed loan demonstration authorized in the Housing and Community Development Act of 1987 using funds made available for Section 502 loans in Appropriations Acts of the Congress for Fiscal year 1989 and, as may be necessary for each succeeding fiscal year. The conference report contains the House provision with an amendment that directs the Secretary of Agriculture to implement regulations within 4 months after the date of enactment providing for the Farmers Home Guaranteed Loan program. The conferees are concerned that the Farmers Home Administration has been reluctant to carry out the rural housing guaranteed program without further congressional directive. This demonstration would go far toward testing a concept that the Administration and others have been pressing for some time. This concept would substitute guarantees for direct lending and thus reduce outlays as well as budget authority from the Rural Housing Insurance Fund. While the conferees still believe that the concept has to be tested and do not necessarily endorse a wide-scale guarantee program in lieu of direct loans the conferees believe it would be worthwhile to try this limited demonstration. To that end the conferees have directed the Secretary to issue regulations so that the demonstration may be implemented not more than 120 days from the date of enactment.

Section 515 Rents.—The House bill contained a provision not included in the Senate bill deleting the requirement that called for the use of comparables in determining rent adjustments in the Section 515 Rural Rental Housing program. The conference report contains the House provision.

Section 514/516 Farm Labor Housing.—The House bill contained a provision not included in the Senate bill to permit domestic farm labor housing to be utilized by Section 515 eligible tenants if such housing is no longer needed for farm labor housing in the area or the need has so diminished that the purpose of providing farm labor housing can no longer be met. The conference report contains the House provision.

Legal Representation—The House bill contained a provision not included in the Senate bill to allow the Secretary of Agriculture the discretion to select the United States District Attorney, the General Counsel for the Department of Agriculture, or any other attorney to handle Section 502 foreclosure cases. The conference report contains the House provision with an amendment which clarifies that the use of private attorneys is permitted where it is cost-effective and where it either expedites foreclosure proceedings or contributes to the preservation of the affected housing. The amendment also requires the Secretary to submit to Congress an annual report on the use of private attorneys.

The Committee took this action upon learning of a growing backlog of foreclosure cases in some Farmers Home Administration State offices. The result of this backlog of foreclosure cases delayed the expeditious disposition of Farmers Home Administration-held single-family housing units. Within the constraints that the Committee has included in the legislation, the Committee urges the Secretary to act expeditiously to reduce any such foreclosure backlogs where they exist. However, it is not the intention of the Committee to encourage generally the use of non-government attorneys, but to do so only where legitimate backlogs require such action in order to facilitate timely disposition.

Rural Rental Rehabilitation Program.—The Senate bill contained a provision not included in the House bill which authorizes areas located in States where the Secretary of HUD administers the Section 17 Rental Rehabilitation Grant program to be eligible to receive funding and to participate in the Rural Rental Rehabilitation Demonstration program pursuant to Section 311 of the Housing and Community Development Act of 1987. The conference report contains the Senate provision.

SUBTITLE D—MORTGAGE INSURANCE AND SECONDARY MORTGAGE MARKET PROGRAMS

Use of Single Family Mortgage Insurance by Investors—The House bill contained a provision not contained in the Senate amendment that permits investors to refinance an FHA-insured single family mortgage and does not limit the new mortgage to 75 percent of the value of the property if the monthly mortgage payments are reduced. The conference report contains the House provision.

Clarification of FHA Assumption Policy—The House bill contained two provisions not contained in the Senate amendment that clarify procedures applicable to the assumption of FHA-insured mortgages. The conference report contains the House provisions.

Home Equity Mortgage Demonstration Program—The House bill contained a provision not contained in the Senate amendment that deletes the provision under the Home Equity Conversion Demonstration that a mortgage be secured by a dwelling whose value is not greater than the FHA single family mortgage limits while retaining the provision that the actual home equity conversion mortgage cannot be greater than the maximum permitted under the FHA single family program. The conference report contains the House provision.

Reciprocity in Approval of Housing Subdivisions—The House bill contained a provision not contained in the Senate bill to permit the Secretary of Housing and Urban Development to consider the issuance of a certificate of reasonable value on the part of the Administration of the Veterans Affairs to be an administrative approval for subdivisions under the Federal Housing Administration Sec. 203 mortgage insurance program for the purpose of complying with the reciprocity of subdivision regulations in existing law for a one-year period from the date of enactment of this Act. Also, this provision calls for a report by the HUD Secretary on subdivision approval policies and practices of HUD, VA and the Farmers Home Administration, focussing on the administration of environmental laws in connection with such policies and practices, as well as recommendations to achieve complete reciprocity of subdivision approval. The conferees are concerned, however, that during this one-year period, the Secretary take steps to assure that HUD approvals under current practice will not result in insuring housing in obvious questionable locations and circumstances when there would be adverse environmental and underwriting impacts. The conferees wish to make clear that the notion of reciprocity is based on minimum environmental and underwriting standards that safeguard the interest of the federal government. The VA elimination of subdivision regulations and reliance on applicable local regulations that are less strict than the FHA standards significantly changes the situation that existed in prior years.

This practice is reported to be occurring in instances where only three of four homes in a large subdivision will be VA-guaranteed, whereas the remainder are FHA-insured. This is not what Congress intended when it approved reciprocity. Congress intends that environmental and related laws be adhered to and sound underwriting practices be employed in the several Federal guarantee, insurance and loan programs. The conferees expect the Secretary of HUD to move expeditiously to undertake the subject study and report and in doing so to work with the VA and FmHA, as well as the industry, so that a workable policy regarding subdivision regulation that safeguard the public interest may be developed and enacted into law as soon as possible.

Regulation of Rents in Insured Projects—The House bill contained a provision not contained in the Senate amendment that clarifies that owners of certain FHA-insured multifamily projects must have executed agreements by December 1, 1987, to implement changes permitted by the April 1983 or June 1986 regulations. The conference report does not contain the House provision.

Multifamily Second Mortgages.—The House bill contains a provision not in the Senate amendment that makes permanent the authority of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation to purchase multifamily second mortgages. The conference report contains the House provision.

Payment on FHA Preforeclosure Sales.-The House bill contained a provision not included in the Senate amendment that permits the Secretary to pay claims on losses from single family preforeclosure sales under the FHA mortgage insurance program. The conference report contains the House provision.

While the conferees recognize that there are circumstances where the sale of a property prior to actual foreclosure would be in the best interest of the mortgagor, as well as result in reductions of HUD property disposition costs, there are several safeguards that the conferees believe should be followed by the Department.

Before pursuing the preforeclosure sale, the mortgagor should be at least 3 months delinquent. The mortgagor should be advised of the HUD assignment program, and has either decided not to apply for the program or HUD has determined that the mortgagor would not be eligible to participate. And finally, HUD should not permit a preforeclosure sale for less than 75 percent of the outstanding balance so as not to create a fire-sale atmosphere.

The conferees urge HUD to utilize these safeguards when developing the regulations in carrying out this provision.

SUBTITLE E—COMMUNITY DEVELOPMENT AND MISCELLANEOUS PROGRAMS

City and County Classifications—The House bill contained a provision requiring HUD to use current data (not 1980 census data) when determining the loss of entitlement status for metropolitan cities and urban counties for the Community Development Block Grant (CDBG) program. The Senate contained no similar provision. The conference report contains the House provision.

The conferees, in accepting the provision that became Section 522 of the Housing and Community Development Act of 1987, intended that the same city-recognized area that was made eligible for the use of Section 8 funds under Section 522 would be the applicable area for determining the eligibility of activities to be funded from the allocation of community development funds under Section 522.

Anti-Displacement Provision—The House bill contained a provision that clarifies the certification requirements for non-entitlement communities. The Senate contained no similar provision. The conference report contains the House provision. As part of the final package in the 1987 Act, House and Senate conferees agreed to insert the following language in order to clarify the intent of the anti-displacement provision.

The intent of the anti-displacement provision is that a locality would be required to replace lost low-income housing units with decent, safe and sanitary units that are affordable to low and moderate tenants for 10 years, unless the Secretary finds that there is available in the area an adequate supply of habitable affordable housing for low and moderate income persons. The Secretary shall base his determination upon objective information, which shall include (1) the supply of vacant existing housing meeting the Section 8 quality standards with rents that are affordable to low and moderate income persons; and (2) the number of eligible families on the waiting lists for public housing or housing assisted under Section 8. In making this determination, the Secretary should provide an opportunity for interested parties, including organizations representing tenants, non-profit organizations and others, to provide information which the Secretary should consider in making this determination.

The term "area" in this section would mean the area within the political boundaries of the grantee unless the Secretary finds that such boundaries are inappropriate in the case of a project located near the boundary of a community, in which case, the Secretary would have the discretion to define the boundaries of the area to be considered which may extend into nearby communities.

CDBG Funds for Assessments—The House bill contained a provision that permits the use of CDBG funds to pay the assessments required of low and moderate income homeowners to recover the capital cost of public improvements. The Senate amendment contained no similar provision. The conference report does not contain this provision since it would be redundant. This change has been made permanent in law through the recently passed Appropriations Act.

FLOOD INSURANCE

The Senate amendment contained a provision not included in the House bill requiring provisions of the Federal Flood Insurance Program to apply to the Sacramento, California, metropolitan area based on flood elevation determinations made by the Federal Emergency Management Agency (FEMA), which are in effect on the date of enactment. This provision would be effective prior to 1 year after the date that the Secretary of Army submits to the Congress the report on the feasibility study on Northern California streams and the American River Watershed but not later than 3 years after the date of enactment of this Act.

The conference report contains the Senate provision with the following amendments: the FEMA flood elevation requirements would remain in effect in the Sacramento area prior to the expiration of 2 years after the date on which the Secretary of the Army reports on the feasibility study but no later than 4 years after the date of enactment of this act; and FEMA would be directed to prepare a hydrological study of Miles Creek, California, to use as a basis for the establishment of revised flood elevations in and near Planada, California. The Flood Insurance rate map in effect on September 1, 1988, for the area in or near such community shall remain in effect until such study is completed.

HOME MORTGAGE DISCLOSURE

The House bill contained a provision that clarified the date for the implementation of the Home Mortgage Disclosure Act provisions in the 1987 Act. The Senate amendment contained no similar provision. The conference report contains a further clarification that implements the new reporting requirements beginning on August 19, 1988, the date on which the regulations pertaining to the 1987 Act were published in the Federal Register. Thereafter, the reporting requirements are yearly.

LEAD-BASED PAINT POISONING PREVENTION

The Senate amendment contained a number of changes to the 1987 amendments to the Lead-Based Paint Poisoning Prevention Act of 1971. The House bill contained no similar provisions. The conference report contains Senate provisions with a series of amendments as described below.

The conference report seeks to ensure that the testing and abatement of lead-based paint in public housing proceed in accordance with the most reliable, safe and effective techniques currently available. The conference report provisions attempt to clarify the legal requirements of the 1987 Act (especially in light of the confusion and misunderstanding caused by the promulgation of HUD regulations on June 6, 1988) and incorporate more sophisticated information about the relative safety and efficacy of testing, abatement and disposal methods than was available to the Congress when it developed the 1987 legislation.

Transitional Testing and Abatement in Public Housing Receiving CIAP Assistance.—The Senate amendment contained a provision not included in the House bill circumscribing the inventory for which testing and abatement will be required in the period preceding completion of the abatement demonstration program. The Senate provision amended the 1987 Act in five significant ways. First, it required only public housing agencies receiving CIAP funding under Section 14 of the 1937 Act to proceed with testing and abatement in those public housing units undergoing comprehensive modernization. Second, it restricted the number of units and other areas which need to be inspected to (a) a random sample of typical leaded surfaces of dwellings and common areas in CIAP-assisted projects and (b) each dwelling in a project determined under a random sample to have lead-based paint hazards, except that the Secretary is authorized, in lieu of the inspection of each unit, to abate the surfaces of all units in the project that correspond to the surfaces in the random sample determined to have such hazards. Third, it required that the inspection of public housing undergoing comprehensive modernization be completed in accordance with the modernization schedule of the particular project. Fourth, it allowed public housing agencies to elect to abate lead-based paint and dust containing lead under standards more stringent (including the Consumer Product Safety Commission standard) than that established by the 1987 Act and made such abatement activities eligible for CIAP assistance. Finally, it authorized industrial hygienists or local public health officials, as well as a qualified inspector, to conduct the final inspection and certification required by law.

The conference report contains the Senate amendment amended to (a) delete the reference to "typical leaded surfaces" in defining what units need to be inspected and (b) clarify that a public housing agency may elect to test for lead-based paint using the atomic absorption spectroscopy (AAS) method. The conferees intend that public housing agencies have the legal authority to use the AAS method and the Consumer Product Safety Commission standard for their abatement activities, regardless of whether the State, city or county has established a parts per million (ppm) or by weight standard for measuring lead-in-paint content. The conferees expect that the Department will amend its notice of September 21, 1988, accordingly.

Abatement Demonstration Program.—The Senate amendment contained a provision not included in the House bill amending the abatement demonstration program established by the 1987 Act. The Senate provision expanded the scope of the demonstration program by requiring the Secretary to (a) include public housing in the demonstration and (b) prepare and include in the report to Congress (due upon completion of the abatement demonstration program) a comprehensive and workable plan for the cost-effective inspection and abatement of all public housing. The Senate provision also specified in greater detail the issues to be examined in the report to Congress. The conference report contains the Senate provision amended to require the Secretary to (a) examine the merits of an interim containment policy for public housing dwellings that are determined to have lead-based paint hazards but for which CIAP funding is not available and (b) include in the report to Congress an estimate of the total costs associated with testing and abating lead-based paint in public housing in accordance with the time-table set by the Act. The conferees believe that the containment option could be a temporary back-up for lead paint problems to be implemented between the time the hazard is discovered and the time funding for total abatement may be made available.

The conferees are aware that the Department of Housing and Urban Development has expressed some concern that adding public housing to the demonstration will delay implementation and completion of the demonstration program. The conferees do not expect a delay due to this expansion and recommend that HUD simply issue another request for a proposal that deals solely with the public housing property. The conferees expect this portion of the demonstration to use funds from the CIAP program as the conferees understand that funds from the FHA insurance fund could not be used for this purpose.

Public Housing Inspection.—The Senate amendment contained a provision not included in the House bill requiring the testing and abatement of all public housing not presently receiving CIAP assistance within 5 years of the date the report on the abatement demonstration is due. The provision restricted the number of units and other areas which need to be inspected to (a) a random sample of typical leaded surfaces of dwellings and common areas in all projects not presently assisted with CIAP and (b) each dwelling in a project determined under a random sample to have lead-based paint hazards, except that the Secretary is authorized, in lieu of the inspection of each unit, to abate the surfaces of all units in the project that correspond to the surfaces in the random sample determined to have such hazards. The provision also allowed the Secretary to prioritize inspections, within the five-year period, on the basis of vacancy, age of housing or projected modernization or rehabilitation. Finally, the provision incorporated certain requirements in existing law (as amended by this Act) governing abatement and final inspection and certification. The conference report contains the Senate provision amended to delete the reference to "typical leaded surfaces" in the definition of what units need to be inspected.

Funding—The Senate amendment contained a provision not included in the House bill requiring the Secretary to submit annually to Congress an estimate of the funds required to carry out the lead-based paint provisions. The conference report contains the Senate provision.

Interim Guidelines.—The Senate amendment contained a provision not included in the House bill requiring the Secretary to issue temporary procedures for the safe and effective detection, abatement and disposal of lead-based paint hazards in CIAP-assisted public housing. The conference report does not contain the Senate provision since (a) the HUD-Independent Agencies Appropriations FY 1989 Act already directs HUD to establish appropriate protocols for testing, abatement and disposal of leaded materials in public housing and (b) the HUD Notice of September 21, 1988, establishes interim guidelines for such activity. The conferees particularly applaud the Notice's "advice" that abatement be confined to the removal or encapsulation of contaminated surfaces and the high efficiency vaccuum removal of leaded dust until safer guidelines and techniques are identified through further study. The conferees expect that the National Institute of Building Sciences (NIBS) will be able to develop guidelines and standards for the testing and abatement of lead-based paint by February, 1989, in accordance with the timetable set by the Appropriations Act. The conferees urge NIBS to be as precise and clear as possible in recommending such guidelines and standards. The conferees note that the NIBs process does not relieve HUD of its obligations under the abatement demonstration program and expect that the NIBS guidelines and standards will most likely be amended in response to the findings of the abatement demonstration program. And finally, the conferees recommend that the National Institute of Building Sciences seriously consider utilizing the testing and abatement standards mandated by the State of Maryland and presently being used successfully in the City of Baltimore as long as these standards are consistent with the statutory language.

Detection Technique.—The Senate amendment contained a provision not included in the House bill adding atomic absorption spectroscopy as a detection method and authorizing laboratories to certify the inspection results. The conference report contains the Senate provision.

Consultation.—The Senate amendment contained a provision not included in the House bill requiring HUD, in preparing reports and regulations, to consult additionally with the Environmental Protection Agency, the National Institute of Environmental Health Sciences, the Centers for Disease Control, the Consumer Product Safety Commission, major public housing organizations and other major housing organizations. The conference report contains the Senate provision.

Interpretation of Section.—The conference report contains a provision clarifying that Section 302 of the Lead-based Paint Poisoning Prevention Act may not be construed to affect the responsibilities of the Environmental Protection Agency with respect to the protection of the public health from hazards posed by lead-based paint.

The conferees expect the Environmental Protection Agency to play a stronger role in dealing with the national problem of lead-based paint. EPA has extensive technical expertise in all aspects of dealing with toxics in the environment: detection, sources of contamination, exposure routes, health effects, toxicity, control strategies, persistence in the environment and cleanup and disposal standards. With respect to lead in particular EPA has done extensive research which is directly applicable to lead-based paint and which should be used in the development of Federal policies and procedures to deal with that problem.

While HUD has been given direct responsibility for funding the 18 month demonstration it is clear that EPA also must take an active role in assisting HUD in the development of a regulatory strategy and standards to address the serious environmental health problem nationwide. To the extent practical, HUD should consult EPA in the design and execution of the demonstration in order to produce the most meaningful and comprehensive results and EPA should consider conducting research as well as developing studies in conjunction with the HUD demonstration.

DEWILDE POOL

In 1973, HUD and a number of State and local housing agencies reached agreement on how to utilize unexpended balances that have built-up in the Section 236 program. These so-called "DeWilde" pool agreements outlined what specific projects in the recipient States could be funded with the unexpended balances of Section 236 funds. Over the years HUD and the agencies have disagreed over which projects could receive the DeWilde pool funds.

Section 430 of the Housing and Community Development Act of 1987 resolved this issue. Section 430 clearly states that the DeWilde funds—when released—would be utilized for any existing 236 project within a recipient State.

It is the understanding of the conferees that the DeWilde pool funds have been previously obligated and that instructions for their release are clearly stated in Section 430 of the Housing and Community Development Act of 1987. Section 430 requires HUD to release the DeWilde pool funds once "approved in Appropriation Acts." The conferees fully expect the Secretary to comply with the clear intent of Section 430.

REPORT ON RADON IN HUD MULTIFAMILY HOUSING

The conferees are concerned that radon contamination poses a significant health hazard. EPA and the Surgeon General have recommended the testing of most housing for radon but multifamily housing was not included in the EPA sample.

The conferees are also aware that HUD had stated that their lack of response to the radon problem was due to their not having a direct statutory mandate. Therefore the conference report contains a provision necessary to enable HUD develop a radon policy for multifamily housing.

The provision requires the Department of Housing and Urban Development to develop a Departmental policy for dealing with radon contamination in multifamily housing and to utilize the Environmental Protection Agency guidelines and standards in developing this policy. It specifies that the housing to be covered in developing the policy is multifamily housing owned by the Department of Housing and Urban Development, receiving assistance through the public or Indian housing programs, project-based Section 8 housing or housing assisted under Section 236 or Section 221(d)(3).

The policy to be developed to deal with radon contamination should specify programs for education, research testing, as well as the mitigation of radon hazards in federally-owned or assisted multifamily housing.

In developing the report which is due one year after enactment, the Department of HUD should coordinate their efforts with EPA and other appropriate federal agencies, as well as State and local governments and other appropriate groups and experts.

Funds for the development of this policy are to come from within the Department resources but not any one fund should be required to fund the majority of the policy study.

From the Committee on Banking, Finance and Urban Affairs for consideration of titles I through IV, X, and section 1 of the House bill, and titles I (except section 107) and II (except section 262) and sections 1 and 2 of the Senate amendment, and modifications committed to conference:

Fernand J. St Germain,
Henry B. Gonzalez,
Walter E. Fauntroy,
Mary Rose Oakar,
Bruce F. Vento,
Robert Garcia,
Barney Frank,
Chalmers P. Wylie,
Marge Roukema,
Tom Ridge,
Steve Bartlett,

From the Committee on Education and Labor for consideration of title VII of the House bill, and subtitles B through F of title III of the Senate amendment, and modifications committed to conference:

Gus Hawkins,
Pat Williams,
Matthew G. Martinez,
Jim Jeffords,
Steve Gunderson,

From the Committee on Energy and Commerce for consideration of title VI of the House bill, and subtitle A of title III of the Senate amendment, and modifications committed to conference:

John D. Dingell,
Henry A. Waxman,
Mickey Leland,
Norman F. Lent,
Ed Madigan,

From the Committee on Government Operations for consideration of title V of the House bill, and section 107 of the Senate amendment, and modifications committed to conference:

Jack Brooks,
Cardiss Collins,
Frank Horton,

From the Committee on Veterans' Affairs for consideration of title VIII of the House bill, and title IV of the Senate amendment, and modifications committed to conference:

G.V. Montgomery,
Timothy J. Penny,
John Paul
Hammerschmidt,

From the Committee on Ways and Means for consideration of title IX of the House bill, and sections 262 and 308 of the Senate amendment, and modifications committed to conference:

Dan Rostenkowski,
Thomas J. Downey,
Managers on the Part of the House.

From the Committee on Banking, Housing, and Urban Affairs:

Alan Cranston,
Don Riegle,
Paul Sarbanes,
Alfonse D'Amato,
John Heinz,

From the Committee on Governmental Affairs:

John Glenn,
Lawton Chiles,
Jim Sasser,
Ted Stevens,
John Heinz,

From the Committee on Veterans' Affairs:

Alan Cranston,
Spark M. Matsunaga,
Frank H. Murkowski,

From the Committee on Labor and Human Resources:

Edward M. Kennedy,
Tom Harkin,
Brock Adams,
Orrin G. Hatch,
Robert T. Stafford,

From the Committee on Finance:

Lloyd Bentsen,
Spark M. Matsunaga,

DANIEL PATRICK
MOYNIHAN,
BOB PACKWOOD,
Managers on the Part of the Senate.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. ALEXANDER (at the request of Mr. FOLEY), for today, on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. WEBER) to revise and extend their remarks and include extraneous material:)

Mr. JEFFORDS, for 60 minutes, on October 18 and 19.

Mr. BURTON of Indiana, for 60 minutes, today.

Mr. MILLER of Ohio, for 60 minutes, on October 19 and 20.

Mrs. BENTLEY, for 60 minutes, on October 18, 19, 20, and 21 and today.

Mr. LEWIS of California, for 60 minutes, on October 18, 19, 20, and 21.

Mr. CRANE, for 5 minutes, today.

(The following Members (at the request of Mr. WAXMAN) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. STENHOLM, for 30 minutes, on October 18.

Mr. HUTTO, for 5 minutes, on October 19.

(The following Member (at the request of Mr. BEREUTER) to revise and extend his remarks and include extraneous material:)

Mr. DREIER of California, for 60 minutes, on October 18, 19, and 20.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. WEBER) and to include extraneous matter:)

Mr. CONTE.

Mr. PORTER in two instances.

Mr. FAWELL in two instances.

Mr. SHAYS.

Mr. EMERSON.

Mr. MILLER of Ohio in three instances.

Mrs. BENTLEY.

Mr. STUMP.

Mr. RINALDO.

(The following Members (at the request of Mr. WAXMAN) and to include extraneous matter:)

Mr. TRAFICANT in three instances.

Mr. RANGEL.

Mr. FAUNTROY.

Mr. ROE.

Mr. DORGAN of North Dakota in two instances.

Mr. SKELTON in four instances.

Mr. HAYES of Illinois.

Mr. LELAND.

Mr. EDWARDS of California.

Mr. ACKERMAN.

Mr. MAZZOLI.

Mr. CLEMENT.

Mr. AKAKA.

SENATE BILLS REFERRED

Bills of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 575. An act to convey public land to the Catholic Diocese of Reno/Las Vegas, NV; to the Committee on Interior and Insular Affairs.

S. 1991. An act entitled "Uranium Mill Tailings Remedial Action Amendments Act of 1988"; to the Committee on Interior and Insular Affairs and Energy and Commerce.

ENROLLED BILLS SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 1864. An act for the relief of Helen Lannier;

H.R. 2772. An act to authorize the Lyman-Jones, West River, and Oglala Sioux rural water development projects;

H.R. 2985. An act to designate the facility of the U.S. Postal Service located at 850 Newark Turnpike in Kearny, NJ, as the "Dominick V. Daniels Postal Facility"; and

H.R. 5059. An act to quit title and possession with respect to a certain private land claim in Sumter County, AL.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 508. An act to amend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited practices, and for other purposes;

S. 659. An act to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes;

S. 836. An act to amend the Department of Energy Organization Act to authorize protective force personnel who guard the strategic petroleum reserve or its storage and related facilities to carry firearms while discharging their official duties and in certain instances to make arrests without warrant; to establish the offense of trespass on property of the strategic petroleum reserve, and for other purposes;

S. 1911. An act to amend title 5, United States Code, to allow all forest firefighting employees to be paid overtime without limitation while serving on forest fire emergencies;

S. 2018. An act to expand the boundaries of the Congaree Swamp National Monument, to designate wilderness therein, and for other purposes; and

S. 2479. An act to amend the Immigration and Nationality Act to make technical corrections in immigration-related laws.

BILLS PRESENTED TO THE PRESIDENT

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee did on the following dates present to the President, for his approval, bills of the House of the following titles:

On October 11:

H.R. 2032. An act to authorize the conveyance of the vessel, *Lane Victory;*

H.R. 2596. An act to improve Federal management of lands on Admiralty Island, AK;

H.R. 2835. An act to direct the Secretary of Agriculture to release certain restrictions on a parcel of land located in Henderson, TN;

H.R. 4102. An act to provide for the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community in Maricopa County, AZ, and for other purposes;

H.R. 4188. An act to designate the U.S. courthouse located at 445 Broadway in Albany, NY, as the "James T. Foley United States Courthouse";

H.R. 4354. An act to designate certain National Forest System lands in the State of Oklahoma for inclusion in the National Wilderness Preservation System, create the Winding Stair Mountain National Recreation and Wilderness Area, and for other purposes;

H.R. 4365. An act to designate the Sunderland National Salmon Station located in Sunderland, MA, as the "Richard Cronin National Salmon Station";

H.R. 4529. An act to extend permission for the President's Commission on White House Fellows to accept certain donations; and

H.R. 5291. An act to provide the Secretary of the Air Force with authority to convey certain land.

On October 13:

H.R. 1720. An act to revise the AFDC program to emphasize work, child support, and family benefits, to amend title IV of the Social Security Act to encourage and assist needy children and parents under the new program to obtain the education, training, and employment needed to avoid long-term welfare dependence, and to make other necessary improvements to assure that the new program will be more effective in achieving its objectives;

H.R. 3235. An act to amend the Public Health Service Act to revise the program of assistance for health maintenance organizations;

H.R. 4417. An act to authorize appropriations to the Secretary of Commerce for the programs of the National Bureau of Standards for fiscal year 1989, and for other purposes;

H.R. 4724. An act to direct the Secretary of Agriculture to release a reversionary interest in the United States in certain land located in Oktibbeha County, MS; and

H.R. 5186. An act to designate the Federal building and U.S. courthouse at 109 South Highland, Jackson, TN, as the "Ed Jones Federal Building and United States Courthouse."

ADJOURNMENT

Mr. BEREUTER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 19 minutes p.m.) the House adjourned until tomorrow, Friday, October 14, 1988, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred to as follows:

4453. A letter from the Deputy Assistant Secretary for Shipbuilding and Logistics, Department of the Navy, transmitting notification of the plan to study the conversion to contractor performance the various functions at Marine Corps installations in Arizona, California, Georgia, North Carolina, South Carolina and Virginia, pursuant to 10 U.S.C. 2304 nt.; to the Committee on Armed Services.

4454. A letter from the Administrator, Health Care Financing Administration, transmitting notification of a proposed new Federal records system, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

4455. A letter from the Secretary of Agriculture, transmitting notification of a revised Federal records system, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

4456. A letter from the Secretary of Transportation, transmitting a report on the impact of the Airline Deregulation Act of 1978 on air safety during commercial aviation operations in 1987, pursuant to 49 U.S.C. app. 1307(b); to the Committee on Public Works and Transportation.

4457. A letter from the Secretary of Defense, transmitting notification of the transfer of funds in support of the Nicaraguan Democratic Resistance, pursuant to 10 U.S.C. 114nt.; jointly, to the Committees on Appropriations and Armed Services.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. DE LA GARZA: Committee on Agriculture. S. 1966. A bill to amend the Public Health Service Act to improve information and research on biotechnology and the human genome, and for other purposes; with an amendment (Rep. No. 100-992, Pt. 2). Ordered to be printed.

Mr. DELLUMS: Committee on the District of Columbia. H.R. 4700. A bill, to authorize the conveyance to the Columbia Hospital for Women of certain parcels of land in the District of Columbia, and for other purposes; (Rept. 100-1085, Pt. 1). Ordered to be printed.

Mr. BROOKS: Committee on Government Operations. Report on FDA's deficient regulation of the new drug Versed (Rept. 100-1086). Referred to the Committee of the Whole House on the State of the Union.

Mr. MOAKLEY: Committee on Rules. House Resolution 588. Resolution providing for the consideration of H.R. 5521, a bill to require the Federal Savings and Loan Insurance Corporation to revoke the charter of the Federal Asset Disposition Association and reform the process for liquidating assets of failed thrift institutions, and for other purposes (Rept. 100-1087). Referred to the House Calendar.

Mr. BROOKS. Committee on Government Operations. Report on combating fraud, abuse, and misconduct in the Nation's financial institutions: current Federal efforts are inadequate (Rept. 100-1088). Referred to the Committee of the Whole House on the State of the Union.

Mr. ST GERMAIN: Committee of conference. Conference report on H.R. 4352 (Rept. 100-1089). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ST GERMAIN (for himself, Mr. KANJORSKI, and Mr. MCMILLEN of Maryland):

H.R. 5521. A bill to require the Federal Savings and Loan Insurance Corporation to revoke the charter of the Federal Asset Disposition Association and reform the process for liquidating assets of failed thrift institutions, and for other purposes; to the Committee on Banking, Finance and Urban Affairs.

By Mr. ANDREWS:

H.R. 5522. A bill to amend the Internal Revenue Code of 1986 to provide incentives for oil and natural gas exploration, and for other purposes; to the Committee on Ways and Means.

H.R. 5523. A bill to amend the Internal Revenue Code of 1986 to allow an investment tax credit for vehicles fueled by clean-burning substances, for converting vehicles to be so fueled, and for other purposes; to the Committee on Ways and Means.

By Mr. BLAZ:

H.R. 5524. A bill to provide for the issuance of wage certificates to producers in the insular possessions of the United States of watches and watch movements; to the Committee on Ways and Means.

By Mrs. Johnson of Connecticut:

H.R. 5525. A bill to provide for agreements to transfer the home mortgage interest deduction of first-time home buyers to lending institutions in exchange for credit for mortgage interest owed and to amend the Internal Revenue Code of 1986 to allow lending institutions to claim home mortgage interest deductions pursuant to such agreements; jointly, to the Committees on Ways and Means and Banking, Finance and Urban Affairs.

By Mr. LAGOMARSINO (for himself and Mrs. JOHNSON of Connecticut):

H.R. 5526. A bill to establish a demonstration block grant program to increase the quality and availability of child care; to the Committee on Education and Labor.

By Mr. OBERSTAR:

H.R. 5527. A bill to amend the Indian Gaming Regulatory Act to classify electronic or electromechanical facsimiles of certain games of chance as class II gaming; to the Committee on Interior and Insular Affairs.

By Mr. SHAW:

H.R. 5528. A bill to amend the Fair Credit Reporting Act to require prompt disclosure by any consumer reporting agency to any consumer of adverse information relating to such consumer which is received by such agency; to the Committee on Banking, Finance and Urban Affairs.

By Mr. SLATTERY:

H.R. 5529. A bill to amend title XVIII of the Social Security Act to provide that payments for inpatient hospital discharges under part A of such title shall be based upon the diagnosis-related group applicable at the time of admission or a diagnosis-related group determined subsequent to admission, whichever would result in the greater payment; to the Committee on Ways and Means.

By Ms. SNOWE:

H.J. Res. 674. Joint resolution to designate June 15, 1989, as "American Victims of Terrorism Day"; to the Committee on Post Office and Civil Service.

MEMORIALS

Under clause 4 of rule XXII,

477. The SPEAKER presented a memorial of The Congress of the Federated States of Micronesia, relative to the Pell Grants, the Supplemental Education Opportunity Grants, and the College Work-Study Program, which was referred to the Committee on Education and Labor.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 310: Mr. MOLLOHAN.

H.R. 633: Mr. DREIER of California.

H.R. 1028: Mr. DIOGUARDI and Mr. BONKER.

H.R. 1103: Mr. MOLLOHAN.

H.R. 1635: Mr. GRANT.

H.R. 1636: Mr. AUCOIN, Mr. DEFAZIO, Mr. LANCASTER, Mr. LEVIN of Michigan, Mr. LIPINSKI, Ms. PELOSI, Mr. RANGEL, and Mr. WILSON.

H.R. 1638: Mr. JONES of Tennessee.

H.R. 1794: Mr. SCHUETTE.

H.R. 2091: Mr. HERGER and Mr. DOWDY of Mississippi.

H.R. 2546: Mr. CRAIG, Mr. MCEWEN, and Mr. ENGLISH.

H.R. 3620: Mr. DREIER of California.

H.R. 4277: Mr. STOKES.

H.R. 4335: Mrs. MORELLA and Mr. SCHUETTE.

H.R. 4463: Mr. OWENS of Utah.

H.R. 4468: Mr. SMITH of New Hampshire.

H.R. 4576: Mr. INHOFE.

H.R. 4680: Ms. OAKAR.

H.R. 4852: Mr. HERGER, Mr. GALLEGLY, Ms. KAPTUR, and Mr. DONALD E. LUKENS.

H.R. 4990: Mr. BORSKI.

H.R. 4987: Mr. KOSTMAYER.

H.R. 4900: Miss SCHNEIDER.

H.R. 5002: Mr. DORNAN of California, Mr. LAGOMARSINO, Mr. WORTLEY, Mr. SUNDQUIST, Mr. DAVIS of Illinois, Mr. MARLENEE, and Mr. EMERSON.

H.R. 5041: Mr. KILDEE, Mr. DEFAZIO, Mr. WYDEN, Mr. BRENNAN, Mr. OWENS of Utah, Mr. HEFNER, Mr. GRAY of Illinois, Mr. MORRISON of Connecticut, Mr. SWIFT, Mr. STAGGERS, Mr. TALLON, Mr. NOWAK, Mr. TAYLOR, Mr. STRATTON, Mr. HERGER, Mr. FASCELL, Mr. MAVROULES, Mr. SAVAGE, Mr. BUNNING, Mrs. COLLINS, Mr. COELHO, Mr. SKAGGS, Mr. ALEXANDER, Mr. APPLEGATE, Mr. KANJORSKI, Mr. TAUZIN, and Mr. STARK.

H.R. 5048: Mr. EVANS, Mr. RODINO, Mr. FEIGHAN, Mr. JONTZ, and Mr. LEVINE of California.

H.R. 5113: Mr. Atkins.

H.R. 5148: Mrs. Bentley.

H.R. 5329: Mr. Dwyer of New Jersey, Mr. Levin of Michigan, Mr. Bonker, and Mr. Young of Alaska.

H.R. 5341: Mr. Nelson of Florida, Mrs. Bentley, Mr. McEwen, Mr. Inhofe, and Mrs. Vucanovich.

H.R. 5349: Mr. Murphy, Mr. Frank, Mr. Stokes, Mr. Dellums, Mr. Lewis of Georgia, and Mr. Leland.

H.R. 5351: Mr. Bunning, Mrs. Bentley, Mr. Buechner, and Mr. Smith of New Hampshire.

H.R. 5352: Mr. Bunning, Mrs. Bentley, Mr. Buechner, and Mr. Smith of New Hampshire.

H.R. 5553: Mr. Bunning, Mrs. Bentley, Mr. Buechner, and Mr. Smith of New Hampshire.

H.R. 5354: Mr. Bunning, Mrs. Bentley, Mr. Buechner, and Mr. Smith of New Hampshire.

H.R. 5355: Mr. Bunning, Mrs. Bentley, Mr. Buechner, and Mr. Smith of New Hampshire.

H.R. 5356: Mr. Bunning, Mrs. Bentley, Mr. Buechner, and Mr. Smith of New Hampshire.

H.R. 5357: Mr. Bunning, Mrs. Bentley, Mr. Buechner, and Mr. Smith of New Hampshire.

H.R. 5358: Mr. Bunning, Mrs. Bentley, Mr. Buechner, and Mr. Smith of New Hampshire.

H.R. 5359: Mr. Bunning, Mrs. Bentley, Mr. Buechner, and Mr. Smith of New Hampshire.

H.R. 5360: Mr. Bunning, Mrs. Bentley, Mr. Buechner, and Mr. Smith of New Hampshire.

H.R. 5361: Mr. Bunning, Mrs. Bentley, Mr. Buechner, and Mr. Smith of New Hampshire.

H.R. 5362: Mr. Bunning, Mrs. Bentley, Mr. Buechner, and Mr. Smith of New Hampshire.

H.R. 5363: Mr. Bunning, Mrs. Bentley, Mr. Buechner, and Mr. Smith of New Hampshire.

H.R. 5364: Mr. Bunning, Mrs. Bentley, Mr. Buechner, and Mr. Smith of New Hampshire.

H.R. 5365: Mr. Bunning, Mrs. Bentley, Mr. Buechner, and Mr. Smith of New Hampshire.

H.R. 5366: Mr. Bunning, Mrs. Bentley, Mr. Buechner, and Mr. Smith of New Hampshire.

H.R. 5371: Mr. Clement.

H.R. 5376: Mr. Coelho, Mr. McEwen, and Mr. Tallon.

H.R. 5396: Mr. Stangeland, Mr. Stratton, Mr. Conte, Mr. Pursell, Mr. Coble, Mr. Grandy, Mr. Martin of New York, Miss Schneider, Mr. Porter, Mr. Crane, Mrs. Bentley, and Mr. Young of Florida.

H.R. 5409: Mr. Hutto, Mr. Kildee, Mr. Glickman, Mr. Scheuer, and Mrs. Boxer.

H.R. 5426: Mrs. Vucanovich.

H.J. Res. 260: Mr. Cardin, Mr. Davis of Michigan, Mr. Frank, Mr. Hyde, Mr. Kasich, Mr. Fauntroy, Mr. Neal, Mr. Evans, Mr. Wortley, Mr. Quillen, Mr. Brown of Colorado, Mr. Roe, Ms. Kaptur, Mr. Lent, Mr. Feighan, Mr. Foglietta, Mr. Kastenmeier, Mr. AuCoin, Mr. Dyson, Mrs. Johnson of Connecticut, Mr. Jones of California, Ms. Pelosi, Mr. Walgren, Mr. Florio, Mr. Applegate, Mr. Moorhead, Mr. Morrison of Washington, Ms. Slaughter of New York, Mr. Miller of Washington, Mr. Vander Jagt, Mr. Vento, Mr. Gradison, Mr. Valentine, Mr. Rowland of Georgia, Mr. Green, Mr. Studds, Mr. Callahan, Mr. Coelho, and Mr. Robinson.

H.J. Res. 454: Mr. Sabo, Mr. Price of North Carolina, Mr. Robert F. Smith, and Mr. St Germain.

H.J. Res. 526: Mr. Hatcher, Mr. Weiss, Mr. Smith of Florida, and Mr. Waxman.

H.J. Res. 571: Mr. Horton, Mr. Coleman of Texas, and Mr. Goodling.

H.J. Res. 573: Mr. Hubbard, Mr. McMillen of Maryland, Mr. Mineta, and Mr. Lowry of Washington.

H.J. Res. 647: Mr. Robert F. Smith, Mr. Henry, Mrs. Saiki, Mr. Archer, Mr. AuCoin, Mr. Flippo, Mr. Jones of Tennessee, Mr. Nielson of Utah, Mrs. Bentley, Mr. Vander Jagt, Mr. McMillan of North Carolina, Mr. Craig, Mr. Barnard, Mr. Robinson, Mr. Hughes, Mr. Anthony, Mr. Smith of New Hampshire, Mr. Coleman of Texas, Mr. Ray, Ms. Pelosi, Mr. Lungren, Mr. Fascell, Mr. Martin of New York, Mr. Denny Smith, Mr. Dyson, Mr. Matsui, Mr. Ravenel, Mr. Derrick, Mrs. Patterson, Mr. Spence, Mr. Tallon, Mr. Darden, Mr. Bryant, Mr. St Germain, Mr. Davis of Michigan, Mr. Stenholm, Mr. Jenkins, and Mr. Wyden.

H.J. Res. 660: Mr. Whittaker, Mr. Hastert, Mr. DioGuardi, Mr. de la Garza, Mr. Bilbray, Mr. Vander Jagt, Mr. Bonior of Michigan, Mr. Coats, Mr. Lowry of Washington, Mr. Clement, Mrs. Meyers of Kansas, Mr. Lightfoot, Mr. Payne, Mrs. Vucanovich, Mr. Roybal, Mr. McCrery, Mr. Livingston, Mr. Matsui, Mr. Shumway, Mr. DeFazio, and Mr. Lantos.

H.J. Res. 669: Mr. Lehman of Florida, Mr. Flake, Mr. Bunning, Mr. Nielson of Utah, Mr. McEwen, Mr. Hatcher, Mr. Mfume, and Mr. Wylie.

H.J. Res. 670: Mr. Packard, Mr. Stokes, Mr. Owens of New York, Mr. Manton, Mr. Valentine, Mr. Matsui, Mr. Conyers, Mr. Lancaster, Mrs. Collins, Mr. Thomas of Georgia, Mr. Lipinski, Mr. Wortley, Mr. Berman, Mr. Kleczka, Mr. Hayes of Illinois, Mr. Hatcher, Mr. Lungren, Mr. Emerson, Mr. Sisisky, Mr. Horton, Mr. Leland, Mr. Frost, Mr. McGrath, Mr. Spratt, and Mr. Lagomarsino.

H. Con. Res. 328: Mr. Markey.

H. Con. Res. 342: Mr. Hughes, Mr. Wyden, Mr. DioGuardi, Mr. Gordon, Mr. Hefley, Mr. Rinaldo, Mr. Porter, Mr. Hubbard, Mr. Burton of Indiana, Mr. Gunderson, Mrs. Vucanovich, Mr. Pepper, Mr. Kasich, Mr. Feighan, Mr. McDade, Mr. Wheat, Mr. Lantos, Mr. Mrazek, and Mr. Lancaster.

H. Con. Res. 380: Mr. Davis of Michigan, Mr. Lewis of California, Mr. Gordon, Mr. Emerson, Mr. Manton, and Mr. Olin.

H. Res. 571: Mr. Stratton, Mr. Dornan of California, Mr. Chappell, Mr. Parris, Mr. Hiler, Mr. Donald E. Lukens, Mr. Emerson, Mr. Crane, Mr. Swindall, Mr. Herger, Mr. Ballenger, Mr. Barton of Texas, and Mr. Lagomarsino.

PETITIONS, ETC.

Under clause 1 of rule XXII,

239. The SPEAKER presented a petition of The Parliament of Australia, relative to the new Parliament House, which was referred to the Committee on Foreign Affairs.

EXTENSIONS OF REMARKS

TRIBUTE TO J. DONALD REILLY

HON. NORMAN Y. MINETA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. MINETA. Mr. Speaker, I rise today to recognize an individual who is retiring after a long and distinguished career of service to the world's airports. J. Donald Reilly has served as the executive director/secretary general of the Airport Operators Council International since 1967. Through his leadership and dedication, he has effectively represented the local and State governmental bodies which operate airports in the United States and throughout the world. In that capacity, he has led industry initiatives to address and solve many of the toughest challenges facing aviation. He is known throughout the aviation community as a consensus builder who can bring together disparate interests on common problems.

In 1982 he was called upon by then-FAA Administrator Lynn Helms to chair the Industry Task Force on Airport Capacity Improvement and Delay Reduction. Under his leadership and direction, the industry task force group has brought the growing airport capacity problem to the forefront of attention and has recommended actions to the Federal Aviation Administration and the Congress to help reduce congestion and delays. He was also selected to chair a working group of airport and airline representatives to seek a consensus solution to the problem of aircraft noise which plagues so many of our communities.

Mr. Reilly has testified before the Congress on many occasions on the many important issues facing aviation and has been a valued source of guidance to this body.

Mr. Speaker, I am sure the Members of this body join me in expressing our appreciation to J. Donald Reilly and in wishing him the best of success in his future endeavors.

A BILL TO PROTECT THE USED OIL RECYCLING SYSTEM

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. SKELTON. Mr. Speaker, as Members are aware, I have long been concerned about the adverse effects of overregulating used oil in this country. It was because of my concern that I, along with my distinguished colleague, Mr. STENHOLM of Texas, sponsored legislation in 1985—now part of the 1986 Superfund Amendments—which limits liability for generators of recycled oil who take precautions to assure that their used oil is properly recycled. This is a common sense approach which encourages environmentally sound management of this unique and commercially valuable commodity.

Hearings in May 1986 on the used oil liability held by Mr. STENHOLM's Small Business Subcommittee also established that the potential to severely undermine this country's oil recycling system would be realized if recycled oil is listed as a hazardous waste under the Resource Conservation and Recovery Act. Fortunately, in 1987 the Environmental Protection Agency decided not to list recycled oil as hazardous. One reason for EPA's decision was a comprehensive study indicating that if used oil were to be listed as a hazardous waste, up to 120 million gallons of used oil, every year, would be improperly disposed of—down sewers, into the trash and in backyards. Despite EPA's sound judgement on this policy issue, the U.S. Court of Appeals for the D.C. circuit handed down a ruling last week holding that the EPA's decision not to list recycled used oil is contrary to law. It is now unclear what EPA will do with this matter on remand from the court.

I for one, Mr. Speaker, am very disturbed about the Federal court's holding. I am concerned that this decision—which in my view, ignored key portions of the legislative history—may force the EPA in the wrong direction. Congress intended to encourage used oil to be recycled in a reasonable regulatory environment. Regardless of the court's basis for its decision, I think it is incumbent upon us to set the record straight.

For this reason, Mr. Speaker, I have today, along with my colleague Mr. STENHOLM, introduced a bill, "The Used Oil Recycling Act of 1988" to eliminate any uncertainty about where we stand on the need to recycle used oil. The threat to the environment caused by liability and overregulation of recycled oil is an extremely serious problem and unless we act promptly, I fear that we may lose the oil recycling system as an important component in our efforts to protect the environment. In the process, generators of used oil, including the Department of Defense and other Government entities, will experience a dramatic shift in their handling of used oil. Instead of being able to sell used oil to appropriate recyclers, generators will be forced to pay others to haul that oil away as waste. The costs to the Federal Government, including DOD, for managing waste oil under that stigma could easily exceed $1 billion each year—costs which are unnecessary and unacceptable.

This bill will direct the EPA not to list recycled used oil as a hazardous waste under RCRA, but at the same time, it mandates that the Agency must propose management standards governing the storage, transportation and processing of recycled used oil within 180 days. I urge my colleagues to endorse this solution to the Nation's used oil dilemma.

THE 100TH CONGRESS SHOWS ITS RESPECT FOR OUR NATION'S VETERANS

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. MAZZOLI. Mr. Speaker, as this historic 100th Congress draws to a close, I take this opportunity to highlight several of the measures which my colleagues and I adopted in this Congress to provide appropriate compensation and recognition to the brave men and women who are veterans of the our Nation's Armed Forces.

The prisoners-of-war and missing-in-action [POW/MIA's] question continues to be a top priority. We in Congress have consistently supported legislation to obtain the fullest accounting of Americans captured or missing-in-action in the Vietnam war.

In this connection, the former Chairman of the Joint Chiefs of Staff, Army General John Vessey, was appointed to head a special U.S. delegation which traveled to Southeast Asia in August 1987 to discuss—with Vietnamese and Laotian officials—steps which can be taken to locate and secure the return of any of our service people who might still be alive or whose remains can be recovered for proper burial back home in the United States.

As a result of these discussions, Vietnamese and Laotian officials have turned over additional remains, some of whom have been identified as U.S. service people. In addition, these officials have agreed to allow closer investigations by American authorities of reported sightings of MIA/POWs or of crashes which would lead to the location of more remains.

In an effort to further increase public awareness of the POW/MIA issue, I proudly supported legislation which recognized September 16, 1988, as "National POW/MIA Day". I was proud to support in this Congress another measure, Senate Concurrent Resolution 9, which provides for the display of the National League of Families POW/MIA flag in the Capitol Rotunda.

There has been strong support for legislation to add a new statue to the Vietnam Veterans Memorial in Washington. The statue would honor women who served in the Vietnam conflict.

While I believe the existing Vietnam Memorial is a monument to all—men and women—who served our country during this conflict, I am favorably disposed to the addition of the statue of a female as a representative, specifically, of all women Vietnam veterans.

Just this month, the House of Representatives—with my support—overwhelmingly passed H.R. 5288, legislation which would provide a judicial review for all veterans' dis-

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

ability claims which are denied by the Veterans' Administration [VA]. Since the Senate has passed a separate judicial review bill (S. 11), a House-Senate Conference Committee will iron out the differences between the two versions so the President can sign this needed measure into law before year's end. Veterans are entitled to a court review of their denied disability claims.

There also have been many concerns expressed about the shortage of health care services and medical personnel in VA hospitals. Because Congress shares these concerns, the House increased the overall Fiscal Year 1989 budget for the VA, and, specifically, increased the budget for medical care by $428 million. (This bill has sinced been signed into law, Public Law 100-404.)

Finally, I am pleased that the House and Senate have agreed upon legislation to elevate the Veterans' Administration [VA] to a Cabinet-level position. I expect that the President will soon sign this worthy measure into law.

As a veteran of the U.S. Army—1954 to 1956—I have always been supportive of action to adequately compensate the brave men and women—and their families—who have sacrificed so much for our country and its principles, and I am proud that the 100th Congress has shown its gratitude by actively addressing so many issues of importance of our Nation's veterans.

TRIBUTE TO HON. DELBERT L. LATTA

HON. NEAL SMITH

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 5, 1988

Mr. SMITH of Iowa. Mr. Speaker, the gentleman from Ohio, DEL LATTA and I came to Congress the same year, 1959. In the 30 years we have served together in the House, we have sometimes been in adversarial positions on the issues but this has not prevented us from being good friends and joining on other issues. When we think of DEL's career in Congress, we think of his service on the Rules Committee and as ranking minority member of the Budget Committee since its creation in 1975. DEL was an important member of the Budget Committee when I served on it and was the ranking member and principal spokesman for the minority when the Gramm-Latta substitute passed the House in 1981. He has sustained his leadership role to the present day.

Last year, he was one of the key negotiators in the agreement reached between the administration and Congress on the budget. As an important and senior member of the Rules Committee for many years, and other capacities in which he has served in his 30 years in the House, he has displayed a passionate commitment to causes he believes in including being against higher taxes and for reducing Government spending.

Throughout his years in Congress, DEL has been an effective leader of his party, both in the Ohio congressional delegation and in the House. For example, he fulfilled an important leadership role when he was appointed to the Judiciary Committee in 1974 and took an active part in the impeachment hearings. Although his customary demeanor is serious and businesslike, the warmth of his personality comes through, once one becomes acquainted with him. DEL will be greatly missed on both sides of the aisle. We all wish his devoted wife, Rose Mary, and their attractive family the best and hope that DEL's retirement years will prove to be the best years of their lives. I thank the gentleman from Ohio [Mr. WYLIE] for arranging this special to honor the distinguished dean of the Ohio delegation.

TRIBUTE TO JUDGE SFEKAS

HON. HELEN DELICH BENTLEY

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mrs. BENTLEY. Mr. Speaker, it is with great honor and respect that I salute Judge James Stephen Sfekas of the circuit court of Baltimore County upon the occasion of his retirement after 32 years of service to the citizens of Maryland. I have known Judge Sfekas during his entire service in the circuit court, and he has always shown himself to be a man of rare character and experience. He is a gentleman's gentleman, one whose many past accomplishments are quite reflective of all the goodness and civic virtue he possesses. I am proud to salute him here.

A graduate of Baltimore City College, the Johns Hopkins University, and the University of Maryland Law School, Jim Sfekas initially postponed his legal career. Instead he served 5 years in the U.S. Army during World War II, commanding an airborne battery in France. When he returned he became active in a variety of civic, Greek Orthodox church, and community affairs. His knowledge of Greek landed him the responsibility of official interpreter of that language in Maryland and U.S. district courts, a position he held for some 30 years.

He began his public service in 1956 in the Baltimore City Solicitor's Office; 3 years later he became special attorney for the State Roads Commission. In 1971 he became administrative special attorney for the Department of Transportation of the State of Maryland. He held this post until 1977, when he was wisely appointed judge of the district court of Maryland of Baltimore County. His impressive display of jurisprudence led to his circuit court appointment 3 years later.

Jim Sfekas is perhaps one of the most popular Judges ever to sit on the bench in Maryland, for his activities extended far outside the courtroom as well. He has been extremely active in the area of legal education and has taught classes at the University of Baltimore. He also was very involved in the celebration of the Bicentennial of the U.S. Constitution. The Judge has planned for himself a very active retirement. That's a good thing, for we need men with his great experience.

Mr. Speaker, Baltimore County and the State of Maryland is most certainly a better place today as a resut of Jim Sfekas' contributions. He will certainly be missed by all with whom he has worked over the years. I hope that whoever takes his place will take heed of his fine example and profit by it, for his are indeed very big shoes to fill.

To his wife Litsa and their children Stephen, Constantine, and Carole, I send my very best wishes and warmest regards during this special time for them. To the judge himself I have one special message: God Bless you and congratulations for a job well done.

SPACE—THE FINAL FRONTIER—WHAT DOES THE FUTURE HOLD FOR AMERICA?

HON. THOMAS J. DOWNEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. DOWNEY of New York. Mr. Speaker, Thursday, September 29, 1988 was an important day for our Nation's space program. The launch of the space shuttle *Discovery* marked the end fo a 32-month hiatus of American manned space missions and proved to the world that America is still a leader in space exploration. Its spectacular mission and successful return, while cause for a much deserved celebration, also warrants reflection—we must begin to examine other efforts to increase our knowledge and expand our capabilities in space. It is appropriate that our return to space coincided with the end of the historic 100th Congress. Both events represent a turning point, a need to look ahead and focus our attention on the future while building on what we have learned in the past.

America is not one to rest on her laurels. The United States has enjoyed a preeminence in space for many years. Our great achievements have enhanced our technology, promoted research and development, and had given our Nation a competitive edge in space. But the tide is turning; there are now more players in the space game than ever before. The Soviet Union has had a permanently manned space station in operation for 2 years. But a well-thought out and rational American space policy will help to assure the tide does not turn against us. As we all know, NASA's space station is one way we can bring America back to an undisputed position of leadership in space. But America's ambitions cannot end with the station.

My colleagues also realize that this is a time when America needs to make some tough decisions, decisions that will affect the future of our Nation. The homeless need to be housed, the hungry need to be fed, and the poor need to be helped out of desperation. We are making progress, but there is a long road to travel. The same is true of America's policy in space. We must consider the impact our debate on America's space program will have on the future of our Nation, and how our decisions will affect our children. A strong and coherent space program for the peaceful exploration of space helps us all. The technological gains will help America's industries compete in world markets, and in return help consumers. The scientific gains could change modern medicine. The knowledge we can acquire could help find cures for diseases like AIDS. In short, space offers an excellent opportunity for the nations of the world to work together peacefully to benefit all mankind. We must support these efforts.

If we commit ourselves to the future of space programs we must also commit ourselves to our Nation's greatest resource, her greatest hope—her children. We will need to inspire our children by heightening their curiosity and desires to learn about the heavens. The future and success of America's efforts depend on new engineers, new astronauts, new technicians, and as always is the case, the talented educators and educational institutions that will teach them. This is the rationale behind the Challenger Center Program, an educational program born in the wake of the *Challenger* accident, born to keep America dreaming of new challenges in space. And because international Challenger Centers can play a role in fostering international cooperation when exploring space, they are an unprecedented way to unite the children of the world, allowing them to dream together and work together when pioneering the final frontier.

Our plan for the peaceful exploration of space must be comprehensive in scope, simple in vision. Our agenda must stress excellence in education, technological advancement, scientific achievement, and an unending effort at international cooperation.

Earlier I spoke of choices. We must help those who need it, however we also need to continue our journey in space. It is difficult to do both: difficult but not impossible. If we are smart we can do both, not sacrifice one for the other. To do this, we must work hard and work together. The rewards of doing so will be great. I have a vision for this country and my children that I am sure my colleagues share—a vision of an America dedicated to excellence in all that it does, an America that offers everyone help to succeed, an America that meets every challenge, and an America that works peacefully with her neighbors.

A CONGRESSIONAL SALUTE TO GRACE HEYNE WOMAN OF ACHIEVEMENT FOR 1988

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. ANDERSON. Mr. Speaker, it gives me great pleasure to rise today and pay tribute to an outstanding professional woman of my district, Grace Heyne. She holds the honor and the distinction of being named Woman of Achievement for 1988, by the Business and Professional Women of Wilmington, CA.

Mrs. Heyne is the president of the Grace Heyne Financial Group. The great achievement of heading your own business carries many responsibilities and a substantial work load. She has not, however, let this prevent her from persuing numerous personal, professional and community activities.

As the mother of eight children, Mrs. Heyne certainly had a great deal of competition for her time. Despite these family demands, she found it within herself to participate in numerous organizations, including the Pilots of the Los Angeles Maritime Museum, the Welcome Wagon Club, Parents Without Partners, and the National Speakers' Association.

In these organizations, Mrs. Heyne was an active participant, as evidenced by her ascent to various committee chairmanships and other offices in several of these organizations. And this has been but a list of her past accomplishments, as Mrs. Heyne is involved in quite a number of other activities today.

Mrs. Heyne is currently a member of the American Association of University Women. For the past 3 years, she has had the responsibility of leading the Money Talks interest group. As a member of the Exchange Club, Mrs. Heyne currently holds the position of recording secretary. And in the Los Angelenas, she has served as membership chairman for the harbor chapter.

The San Pedro Bay Historical Society also benefits from Mrs. Heyne's contributions. She currently holds the title of recording secretary, after having previously served on the board of directors. And in her faith, Mrs. Heyne also contributes. As a member of the Trinity Lutheran Church of San Pedro, Mrs. Heyne is a coleader of the Faith and Finances Bible study class, and also serves as Biblical Counsel on Personal Finances.

Numerous other groups and organizations benefit from Mrs. Heyne's membership and active participation. The Sigma Kappa Sorority, the Delta Kappa Gamma Society International, and Pi Lambda Theta have all heard Mrs. Heyne speak on issues affecting their members. Each has also received the benefit of her guidance through her holding various leadership positions in each organization.

In her profession, Mrs. Heyne is also very active. She has held membership in the International Association for Financial Planning, and the Institute of Certified Financial Planners. She is currently a member in the International Association of Registered Financial Planners.

Of course, Grace Heyne also holds membership as well as leadership duties in one other organization, the one honoring her now. Mrs. Heyne has been a member of the Business and Professional Women of Wilmington since 1982. And just last year, she has achieved the rank of recording secretary. With this entire list of accomplishments to her credit, it is readily apparent why they have chosen to honor her as Woman of Achievement for 1988.

At this time I too, along with my wife Lee, would like to extend our hearty congratulations and best wishes to Grace Heyne, an outstanding woman of achievement. She has seen a world of challenge and opportunity, and met it head on. And her successes of the past, and her endeavours for the future, have and will make our community and our Nation all the richer. For this, we salute you.

TRIBUTE TO VIOLET CAMPANA WHITMAN

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. TRAFICANT. Mr. Speaker, today I rise in order to pay tribute to Violet Campana Whitman of my 17th Congressional District of Ohio. This outstanding woman, who is retiring as the Trumbull County Clerk of Courts, holds the distinction of being the longest serving public official in the State of Ohio. She will be honored at a testimonial on October 23, 1988, for her devotion to the people of Trumbull County and the State of Ohio.

Forty years ago, Violet Campana Whitman was a young widow with two children who had just lost her husband. Peter Campana had been elected Trumbull's clerk of courts, but died leaving his wife to care for the children and to carry on his public service. She was named to fill his position and 2 years later, in 1949, began elective office on her own.

In those four decades of service—a record for a Trumbull officeholder and one of the longest public service records in Ohio—Mrs. Whitman has offered steady, quiet, capable leadership. She has not sought the limelight, made headlines or had to resort to any campaign gimmicks to win voter support. She has been reelected over the years based on her record of service, unblemished operation of the clerk's office and steady leadership. She consistently has been the top votegetter in the county.

As a daughter of immigrants from Italy, Mrs. Whitman has shown special concern for those citizens going through the naturalization process. For nearly 35 years, her office handled each new citizen's papers and held special ceremonies to make the day they took their oath one they would always remember. Handing them small U.S. flags, voter information and their citizenship papers, the clerk became the first public official many of the new citizens would deal with and come to respect. Mrs. Whitman extended her concern for other people outside of her official duties as she helped widows, those with mental health disorders and others less fortunate to enjoy a better life. A small note, a gift of money or a phone call have all become quiet ways in which Mrs. Whitman has shown her compassion for others.

As a leader of the American Committee on Italian Migration, she has helped to honor those Italians who have been leaders in their community and support scholarship programs for youth. She also has been active in her church, St. Joseph Hospital Auxiliary, League of Women Voters, and various women's groups. Special focus has been on women because Mrs. Whitman, who has been one of Ohio's longest-serving female public officials, has realized the model she has become for others. Her support of LWV programs has encouraged other women to seek elective office and offer their ideas to the policymaking process.

The idea of self-government, as established by the Northwest Ordinance and the Constitution, allows for the residents of any given community to select their leaders and then live under the policies they establish or service provided. Violet C. Whitman's ability to maintain her political position for 40 years attests to the respect she has earned from the community. Her service also is a tribute to the system, which has allowed a young widow to serve others for such a period of time.

Mr. Speaker, it is both a privilege and an honor to represent such a devoted, caring human being as Violet Whitman. I wish her all the best of luck in the future.

TRIBUTE TO LT. ALBERT PHILLIP SAMUELS

HON. ROY DYSON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. DYSON. Mr. Speaker, I rise with sadness in my heart to pay my respects to Lt. Albert Phillip Samuels, who passed away October 9. I join with his family and friends in paying tribute to this fine man.

Lieutenant Samuels was a veteran of the U.S. Capitol Police, serving from 1958–84. He earned the respect of his colleagues, and as a result was appointed supervisor of the firearms branch. In this position he was in charge of the instruction and supervision of all police personnel for qualification and familiarization with firearms. Lieutenant Samuels also commanded all special operations units.

Mr. Speaker, I am especially saddened because Lieutenant Samuels was a constituent of mine from Waldorf, MD. He was a great help to me when I came to Capitol Hill, giving me the value of his extensive Hill experience. He was always very friendly and supportive. His death has deprived me of a friend.

Lieutenant Samuels was a fine officer and a fine man, and we will all miss him. I join all my colleagues in extending my deepest sympathy to his widow Mary, and his daughters Snowie, Donna, and Jan.

STATEMENT ON HUMAN RIGHTS IN THE PUNJAB OF INDIA

HON. BEN BLAZ

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. BLAZ. Mr. Speaker, it has come to my attention over the past several weeks that the human rights situation in the Punjab of India continues to deteriorate at an alarming pace. Most Members of the House are already aware of the Indian repression of the Sikhs, which has been addressed in the record and by House Concurrent Resolution 343, as well as in numerous articles that have appeared in the news media.

However, I particularly want to emphasize my personal concern. India is the world's most populous democracy and a friend of the United States. Its foreign policies have not always been as the United States might wish, but then again, they probably shouldn't be. Nevertheless, India shares with us democratic ideals and we have more in common than not.

Therefore, I'm sadden by India's escalation of suppression over the past 4 years inflicted upon the Sikhs. In particular, the dismissal of the elected state government in the Punjab and the increase of large numbers of police and paramilitary units which, according to reports, have caused more violence and deaths than they have prevented. It has recently been reported outside India that the bodies of 60 Sikh students at Guru Nanak Engineering College in the city of Bider (western India) have been uncovered. One hundred and twenty more are still missing in a continued spiral of genocide estimated in the high thousands of Sikhs killed since the attack on the Golden Temple in 1984.

Perhaps more important, these actions may constitute the gravest threat to India's democratic institutions. Government condoned, if not government perpetrated violence and terrorist tactics upon one segment of the society risks the same solution on all segments. Democracies are best known for their internal differences than for their sameness. Already India's longstanding freedom of the press has just barely escaped a defamation bill that would have effectively stopped all investigative reporting and media exposes of official wrongdoing. As a friend of India then, I add my voice for India to take new initiatives to solve democratically a decades-old problem between the Sikhs and the Central Government and to preserve for all of India the fundalmental rights guaranteed under its constitution.

ON THE VERGE OF PEACE IN THE WESTERN SAHARA: CONGRATULATIONS TO KING HASSAN II OF MOROCCO

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. SOLOMON. Mr. Speaker, I would like to take this opportunity to draw my colleagues' attention to encouraging signs that the 13-year war in the Western Sahara may be nearing an end. I would venture to say that among the most important factors contributing to this latest diplomatic breakthrough have been the flexible, cooperative attitude of King Hassan II of Morocco, the valiant efforts of U.N. General Secretary Javier Pérez de Cuéllar to bring peace to some of the most intractable conflicts around the world, as well as United States' steady support for our longstanding reliable friend King Hassan.

It should be well known that Morocco has been a friend of the United States for the past 200 years. Throughout the 1980's, King Hassan has been willing to negotiate increased cooperation across the full range of its military activities with the United States. In 1982, Morocco signed an access-transit agreement granting the United States forces rights of transit for training exercises and during emergencies. Since the formation of a Joint United States-Moroccan Military Commission [JMC] that same year, the Moroccan military has conducted extensive joint exercises with the United States Army, Navy, and Air Force on Moroccan soil. Unlike many of our other friends and allies around the world, Morocco has never charged the United States for any of these privileges. Moreover, although he has had to endure sharp criticism from most of the Arab world, King Hassan II has remained steadfast in his commitment to peace and friendship.

Likewise, the United States has honored Morocco with special support and consideration. The United States has provided the kingdom with military assistance in recognition of our shared concerns, among which is the maintenance of Morocco's integrity and independence against outside aggression. Clearly the Polisario guerrillas, armed and sustained by Algeria with Soviet-made weapons, and bent on destabilizing the kingdom and undermining its economy, have been outside aggressors.

In enduring this long and costly war, King Hassan has done the whole world a favor: he has struggled to prevent the creation of yet another African mini-state which would inevitably become economically and politically dependent upon others for its survival. Integrated with Morocco, the Western Sahara has the benefit of a stable government and is blessed with a variety of resources, from agricultural to mineral and industrial. Independent, it would be a weak, disorganized Marxist-oriented regime, open to outside manipulation with an economy based on unneeded phosphates, fish, sand—and totally dependent on foreign aid.

With the support of the United States among other countries, Morocco has managed to withstand the pressures of the Polisario and to establish control over most of the disputed territory. I would argue that the recent moves toward peace negotiations have been made possible by the strength of Morocco's position. Morocco is confident enough to continue its pursuit of peace—even in the face of the recent stepped-up aggression by the Polisario. When the Polisario Front recently used Soviet-made missiles against the Moroccan forces along the Berm, rather than escalate hostilities further, Morocco responded by pledging to keep the United Nations peace initiative on track.

Mr. Speaker, I would like to applaud the courage of King Hassan II. I would also like to encourage my colleagues to take note of the peace plan, and to express my support for an outcome that establishes a stronger, unified Morocco, which can focus its energies and resources on realizing its full potential for economic development and the maintenance of stability at the vital Straits of Gibraltar.

DANGEROUS PESTICIDES ON CALIFORNIA TABLE GRAPES

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. BERMAN. Mr. Speaker, I rise today to pay tribute to the United Farm Workers [UFW], and their president, Cesar Chavez, as they call our attention to the terrible toll taken by the rampant use of pesticides on California table grapes.

The UFW, led by Cesar Chavez, began a "Fast for Life" to dramatize the danger these toxic pose to the health and welfare of America's farmworkers and consumers. Their demands are both simple and reasonable—they want grape growers to stop the use of dangerous pesticides. Today, I am proud to announce that I, along with a number of my colleagues, will be taking part in the continuation of that fast.

The impact of pesticides on farmworkers and their families is a well-documented fact. Each year, more than 300,000 farmworkers in the United States are poisoned by agricultural chemicals.

We know that pesticides can pass through the soil into our ground water supply. We know that the cancer rate has increased dramatically among California farmworkers, and that birth defects among the children of farmworkers are alarmingly high, likely due to the water which has been contaminated with pesticides from nearby fields. What is more, there is new evidence that pesticides permeate the grapes themselves, creating a serious health hazard for consumers.

Since 1985, Cesar Chavez has encouraged political, labor and religious leaders to respond to this serious health threat by boycotting grapes. I urge my colleagues to join me, other elected officials, the AFL-CIO, and thousands of others to support the "Fast for Life" and boycott of California table grapes.

A TRIBUTE TO JOSEPH A. REED

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. FLORIO. Mr. Speaker, it is with great pleasure that I bring to the attention of my colleagues one of my constituents, Joseph A. Reed of Westville, NJ, who on November 5, 1988, will be honored with a testimonial dinner signifying his lifelong commitment to Local Union 322 of the United Association of Plumbers and Steamfitters and the entire community.

Initiated into the local on March 6, 1940, Joe began a career of service to the union and its members that would span nearly half a century. Indeed, during his tenure as business manager, beginning in 1959, the local grew to meet the new and unique challenges facing its members by maintaining and improving the health and welfare, pension, and education funds. It is through the steady, thoughtful direction of Joe Reed that Local No. 322 has continually responded to the needs of its members and succeeded in building a respected presence within the community. In addition, Joe has served as member of the executive board of the New Jersey AFL-CIO and secretary of the United Building and Construction Trades Council of Camden County.

Born the oldest of five sons on August 25, 1920, and graduating from Gloucester Catholic High School—then known as St. Mary's—Joe married the lovely Catherine and together they have been blessed with five children and nine grandchildren throughout their 46 years of marriage. It is apparent, Mr. Speaker, that Joe has not limited himself to success in his career and has always recognized the importance of his family.

Joe Reed retired as the business manager of Local No. 322 on August 1, 1988, leaving behind a tradition of respect, admiration, and integrity. From his work with the local, to his community service and dedication to family values, Joe has proven to all of us that he is truly a great American. I take great pride in calling Joe a friend and wish him every success and continued good health in the many years to come.

END OF AN ERA IN MONTGOMERY COUNTY

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mrs. MORELLA. Mr. Speaker, the recent sale of the Record Publishing and Record Printing Cos. by Pauline and Ray Mahaffey marks the end of an era in Montgomery County, MD.

The Mahaffeys, long-time civic activists in Montgomery County in my Eighth Congressional District, have owned and operated the Record Companies in Silver Spring since 1963. The Record Publishing Company is the publisher of the Record, a 45-year-old weekly that is widely known in the County. The Record Printing Company prints more than 600 community, school, and organization newspapers, as well as other newsprint publications.

The Mahaffeys have built an enviable record, both in their 35-year association with the Record newspaper and in their many civic pursuits as well. Pauline Mahaffey's work with the Record goes back more than three decades under previous owners. She was publisher of the Record and president of the Record Printing Co. In 1985, she was honored as "Employer of the Year" by the Silver Spring-Wheaton Business and Professional Women's Club for her pioneer work in providing highly flexible work schedules for women and students to allow them to work and still meet other obligations as well.

After retiring from the State Department in 1970, Ray Mahaffey became president of the Record Publishing Co. He also has been active in a variety of civic endeavors, serving as president of the Silver Spring Chamber of Commerce, the Montgomery County and Maryland-Delaware-D.C. Press Associations, and the board of trustees of Holy Cross Hospital.

Last year, the Mahaffeys received the Silver Spring Chamber's E. Brooke Lee Award for her service to the business community and the community at large.

The energy and creativity that the Mahaffeys brought to the Record Cos. will be missed by Montgomery County residents. I join my colleagues in extending best wishes for continued success in their future endeavors.

IN MEMORY OF GENE WEISS

HON. BENJAMIN L. CARDIN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. CARDIN. Mr. Speaker, I rise today to honor the memory of an outstanding citizen of Baltimore, Gene Weiss, who died on Saturday, October 8, 1988.

Gene was active in politics for many years, serving most recently as administrative assistant to Howard County Executive Elizabeth Bobo. Gene was one of the founders and a past president of the Columbia Democratic Club, one of the most active political clubs in my district. He also contributed to the political process by registering untold numbers of new voters during voter registration drives in Howard County. In recognition of Gene's contributions, he was named Howard County Democrat of the Year in 1986.

Gene's public service was not limited to the political arena. Gene served in the U.S. Air Force for 20 years, and held the rank of master sergeant when he retired.

My deepest sympathies go out to Gene's wife, Mary, his daughter, Margaret Ashley, his three grandchildren and two brothers. Their loss is great, but they can be proud of Gene, his work and devotion to making his country and community a better place. He will be missed.

ILLEGAL SOVIET RADAR AT KARSNOYARSK

HON. DAN BURTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. BURTON of Indiana. Mr. Speaker, last week I introduced a resolution that expresses the sense of Congress in support of the President's policy on the illegal Soviet radar at Karsnoyarsk. Yesterday I checked the record and discovered that a similar resolution passed the House last year by 418 to Zero. Now, I am well aware that we are very late into the session, but I think this is one resolution that deserves action. Nobody wants to stay here any longer than necessary, but this resolution addresses an issue of major importance to our national security.

Never before has it been as important as it is now to assert the integrity of our negotiating position vis-a-vis the Soviets. If we don't make it clear to Moscow that we take our agreements seriously, any future treaties are of dubious value. Curiously enough, there are some people who think it is bad for détente and bad for glastnost to raise the issue of Soviet treaty violations. Helping the men in the Kremlin, however, is not one of our prime responsibilities, last time I checked. One serious violation of any treaty is one violation too many. Lest we forget, that Western European acquiescence and passivity in the face of Nazi violations led up to the horror that was World War II. Surely, we can at least learn that one small lesson from history, for the sake of our children, if not ourselves.

THE RECOMMISSIONING OF THE BATTLESHIP U.S.S. "WISCONSIN"

HON. TOBY ROTH

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. ROTH. Mr. Speaker, On October 22, in Pascagoula, MI, the battleship U.S.S. *Wisconsin* will once again enter the active service of our country. The U.S.S. *Wisconsin* will be recommissioned after 30 years and is the last of the four existing World War II battleships to undergo modernization. October 22 will be a proud day for Wisconsinites and I commend the U.S. Navy for its prudent decision to refurbish this battleship.

I encourage my colleagues to read the article below which highlights the U.S.S. *Wisconsin's* honored service in World War II operations and the plans for the recommissioning. The article orginally appeared in the August issue of Veterans Affairs in Wisconsin.

BATTLESHIP U.S.S. "WISCONSIN"

(By Richard H. Zeitlin, Ph.D.)

WARTIME SERVICE

The battleship U.S.S. *Wisconsin* earned five stars for its World War II operations. It earned a sixth star and Presidential Unit Citation for its Korean War experiences. During these two wars, *Wisconsin* suffered only three casualties and minimal battle damage.

After its first commissioning in Philadelphia in April 1944, *Wisconsin* was sent to the Pacific where it joined Admiral William F. Halsey's Third Fleet. *Wisconsin* escorted the Third Fleet's fast carriers when they attacked Manila in preparation for the amphibious landings on Mindoro in late 1944. *Wisconsin* rode out a destructive typhoon which struck the fleet and sank three U.S. destroyers.

In early 1945, *Wisconsin* escorted carriers on raids against Formosa, Saigon, Canton, Hong Kong and Okinawa while other Allied forces invaded Luzon in the Philippines. In February *Wisconsin* became part of the Fifth Fleet and began a series of actions designed to cover the long-planned amphibious assault against Iwo Jima. *Wisconsin* crewmen spent over two months at sea without touching land during the operation.

Wisconsin joined the task force supporting the invasion of Okinawa between March and June of 1945. Japanese resistance was ferocious during this campaign. Waves of suicide planes—kamikazes—hurled themselves upon U.S. shipping and large scale air-sea battles developed. *Wisconsin* antiaircraft gunners shot down three kamikazes on March 18 and were credited with four assists. The carrier *Franklin* was seriously damaged along with 116 American planes, but the Japanese lost 528 aircraft and 16 ships that month.

Kamikaze attacks increased during April and May. While being escorted by *Wisconsin* and other ships, U.S. carriers *Hancock, Intrepid, Bunker Hill,* and *Enterprise* were hit and seriously damaged by kamikazes. The battleship's 100 anti-aircraft guns, however, contributed to the American total of 490 Japanese planes shot down during the period.

Wisconsin became part of the Third Fleet in July and began operating off the Japanese Coast. The ship's giant 16 inch guns shelled steel mills and oil facilities at Muroran, Hokkaido and, several days later *Wisconsin* shelled the Hitachi plant on the main island of Honshu, northeast of Tokyo.

Wisconsin joined the U.S. fleet at anchor in Tokyo Bay three days after the formal surrender of Japan concluded World War II. The ship had steamed 105.831 miles in nine months, had participated in every major U.S. naval operation since arriving in the Pacific and had weathered three typhoons all while suffering neither casualties nor battle damage.

Wisconsin arrived at San Francisco to a hero's welcome in October 1945.

During the Korean War *Wisconsin* again saw action. American battleships and cruisers provided naval gunfire support to U.S. Marines and South Korea infantrymen on the east coast of Korea. The battleships steamed far northward, almost to the border of North Korea and Soviet Russia, bombarding coastal targets such as railroad facilities and supply depots. Communist supply routes, while never completely severed either by American bombs or by gunfire, were seriously hampered and occasionally brought to a halt. *Wisconsin,* for instance, after subjecting Sonjin Chaho to a prolonged bombardment with its guns, stopped the main rail supply line from Russia for five days by bringing down a hillside upon a track and tunnel system. North Korean bridges, likewise, were toppled by *Wisconsin* gunners.

On March 15, 1952, *Wisconsin,* patrolling very close to shore, was fired upon by Communist heavy artillery. One 152mm shell hit *Wisconsin,* wounding three men. Damage was minimal. The shore battery—its position now unmasked—was demolished within minutes. The direct hit was *Wisconsin's* only battle damage.

Wisconsin served as a training ship after the Korean War. It was home ported out of Norfolk except when operating in the Pacific with the Seventh Fleet. In 1956 *Wisconsin* collided with destroyer *Eaton* and had to be fitted with a new bow, which was accomplished in record time. *Wisconsin* joined *Iowa, New Jersey* and *Missouri* in "mothballs" during 1958, the last battleship in the U.S. Navy to become deactivated.

THE RECOMMISSIONING

"Mothballed" in Philadelphia since 1958, the battleship USS *Wisconsin* (BB-64) will be underway this year for the first time in 30 years. In early 1987, *Wisconsin* was dispatched to the Ingalls Shipbuilding Yard in Pascagoula, Mississippi for upgrading and a complete overhaul. The ship will be recommissioned on October 22, 1988, becoming the last of the Navy's four existing World War II battleships to undergo modernization and recommissioning. *Wisconsin* will join *Iowa, New Jersey* and *Missouri* (upon whose broad deck Japan formally surrendered in 1945) as an active member of the U.S. fleet.

Governor Tommy Thompson signed an executive order creating the Battleship *Wisconsin* Commission to help coordinate activities celebrating the ship's recommissioning. "I have never received more requests to serve on a commission," Governor Thompson explained. James McVey, president of Oscar Mayer Foods, heads the commission and Veterans Affairs Secretary John Maurer is also a member.

Supported by the commission, the State Historical Society will undertake a series of educational exhibits: Three USS *Wisconsin* traveling displays will be available for loan to civic groups throughout the state beginning in June. The first USS *Wisconsin* exhibit opened on May 16, 1988 at Milwaukee's War Memorial building on Lake Michigan in recognition of Armed Forces Day.

The major USS *Wisconsin* historical exhibit will open in mid-August at the new state museum on the Capitol Square in downtown Madison. The exhibit will feature artifacts removed from the battleship at the time of its modernization, and items from museums in Wisconsin and from around the nation. The display will illustrate the development of U.S. battleships by using both ships named *Wisconsin* as examples. The first USS *Wisconsin* served the navy between 1901 and 1922. It was one of a group of battleships which toured the world during the voyage of the Great White Fleet, thereby announcing the coming of age of American naval power in the early 20th century.

A commemorative historical publication will be available at all exhibit sites and through the Department of Veterans Affairs. The publication will contain numerous photographs and historical information regarding both battleships *Wisconsin.*

To assist in the gathering of historical information, the USS *Wisconsin* veterans organization—headed by David Patrykus of Wisconsin Rapids—provided names of battleship sailors. A questionnaire was sent to 500 USS *Wisconsin* veterans on the organization's computerized list. USS *Wisconsin* veterans who have not received the questionnaire may contact Dr. Richard Zeitlin, Wisconsin Veterans Museums, State Capitol, Room 419 North, Madison, WI 53702, Tel. (608) 266-1009.

Wisconsin's ship of state, the mighty battleship *Wisconsin,* will again play an important part in America's military readiness. Sleek, fast and impressive, the modernized *Wisconsin* retains its formidable defensive armor, measuring seventeen inches thick in some places. *Wisconsin, New Jersey* and *Missouri* constitute the most heavily protected class of ships in the world. Battleship offensive power will include not only the World War II sixteen inch guns (the largest sea-borne artillery in existence), but also the latest Tomahawk cruise missiles, Harpoon anti-ship rockets, and a battery of close-in anti-missile weapons. Crew size will be reduced from its World War II complement of 2,700 to 1,500. *Wisconsin* will most likely be home ported in Corpus Christi, Texas.

Captain Jerry M. Blesch will command the battleship *Wisconsin.* Born in Fort Thomas, Kentucky, Blesch has logged many years of experience with surface warships. Blesch served aboard destroyers and frigates, resign to command Destroyer Squadron Twenty-Five by 1985. Captain Blesch plans to maintain relations between the USS *Wisconsin* and the people of the state for which it is named.

CELEBRATING STEINWAY AND SONS' 500,000TH PIANO

HON. THOMAS J. MANTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. MANTON. Mr. Speaker, for more than a century, the Steinway piano has been recognized as the greatest, most distinctive piano ever made. The world's most renowned pianists have composed and performed their major works on a Steinway.

Earlier this year, Steinway and Sons completed work on its 500,000th piano. This historic special edition piano is nearing the end of a nine-city U.S. tour commemorating Steinway and Sons' 135th anniversary.

Mr. Speaker, Steinway and Sons is located in New York's Ninth Congressional District, which I represent. For more than 100 years, Steinway and Sons has been a major employer in Astoria, NY. The Steinway family has long been recognized a major driving force in the Queens business community. The many thriving businesses that line Steinway Street in Astoria owe the Steinway family a special debt of gratitude.

Mr. Speaker, I commend to my colleagues the following article on Steinway's 500,000th piano which appeared in the October 10, 1988, edition of the Washington Post:

THE GRANDEST OF THEM ALL—STEINWAY'S 500,000TH PIANO STRIKES AN INSPIRATIONAL CHORD

(By Kara Swisher)

Like a gaggle of girls dressed to the nines all lined up at a cotillion, the dozens of pianos—uprights, baby grands, grands and concert grands—did their best to look sleek and inviting. Harp-shaped lids elegantly propped open, ebony and ivory keys spanking new, strings shiny, and mahogany, walnut and maple cases without a speck of dust . . . it was a pianist's dream.

But not one of them got even a tickle on Saturday afternoon, as all fingers, eyes and ears were riveted on the piano in the center of Jordan Kitt's Music store in College Park. "The piano to end all pianos," said 17-year-old Susan Lee, an awed honors music student at Washington's Levine School of Music.

Even that was an understatement for the object of her affection: Steinway & Sons' 500,000th piano, the grandest of the grands. Premiering last June at Carnegie Hall, the one-of-a-kind instrument is visiting the Washington area though today, on its nine-city U.S. tour commemorating New York-based Steinway's 135th anniversary.

From here the 500,000th, as everyone called it casually yesterday, will go to Los Angeles before heading to Europe and Asia in a specially designed spruce box. Steinway & Sons then plans to auction it off in mid-1990, donating the money to a fund for young musicians. There have been only two other special-edition pianos—the 100,000th which is at the Smithsonian, and the 300,000th, which is used in the East Room of the White House.

The presence of the massive nine-foot-long Model D concert grand overwhelmed the small room in both style and sound. Consider the piano facts: Worth $500,000, it's the most expensive piano ever made—10 times more expensive than the regular model (the first Steinway sold in 1853 for $500). Made of rare East Indian ebony and dyed Swiss pear, trimmed in bubinga wood with brass and gaboon ebony inlays, the special "art-case" was created by furniture designer Wendell Castle, and took two years to make—twice as long as usual.

The craftsmen then engraved and inlaid the signatures of 900 living Steinway artists all over the distinctive piano like upscale graffiti. This promotional tactic prompted curious visitors to weave and bob around the instrument, seaching for their musical favorites.

"Look, here's James Levine and Seymour Lipkin," said one woman, clearly pleased with her discoveries. "And Peter Nero, Artur Rubinstein, Eugene Istomin," said another man, joining in the game. For the record, the most prestigious spots—the sides of the keyboard—sported the big names like Van Cliburn, Rudolf Serkin, Vladimir Horowitz and, surprisingly, Elton John.

"Of course, he's a Steinway artist," said John Steinway, 72-year-old former chairman of the board and great-grandson of founder Henry Englehard Steinway. "But we don't pay any of them a thing to do it—they must like our pianos," He added quickly.

Though the company is now owned by a Massachusetts family, Steinway remains a consultant and makes appearances along with the pianos. Urbane and adept at dropping the right musical names, and even wearing piano-key suspenders, he did a bang-up job at Saturday's event, where Lee and other Levine students tried their hand at the 500,000th. "I have gotten inspiration for at least the next decade," he complimented Susan Lee after she finished a Debussy piece. "Marvelously done," he said of 15-year-old Vivian Qwoke's performance of Chopin.

But Steinway demurred when asked if he had played on the magnificent piano. "I have tried it out, noodling around the way piano makers do. But not in public," he said. "No, I am no good at playing. You know the saying, 'shoemakers' children never wear shoes.' "

In addition to the College Park appearance and others around the area this past weekend, Steinway was able to attend a premiere screening at the American Film Institute of "Madame Sousatzka," a movie about an imperious piano teacher played by Shirley MacLaine. The film featured Steinway pianos exclusively, right down to the sensual concert grand photographed as the star of the movie's promotional posters.

"I have great pride," he said, running his hand over the 500,000th. "Well, you know, my name is on it."

ALABAMA WILDERNESS

HON. CLAUDE HARRIS

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. HARRIS. Mr. Speaker, I rise today in support of H.R. 5395, the Sipsey Wild and Scenic River and Alabama Wilderness Addition Act. This bill passed on the House floor the 6th of October, and passed in the Senate the 11th of October, and now awaits the President's signature before it can become law.

This legislation will help protect and preserve one of Alabama's most valuable resources—its wilderness. Within the borders of our State lie some of the most beautiful natural areas in the country, and even to this day, many remain unspoiled. However, it is obvious that it is time to plan now for Alabama's environmental future.

It is for the benefit of us all that we act to prevent the unnecessary development of our wilderness areas. Much of the land protected by this bill is in the Bankhead National Forest, well north of the Seventh District, but these newly protected areas will provide excellent recreational and educational opportunities for my constituents.

Well-thought-out wilderness preservation enhances economic development by providing a better quality of life for local residents and making the region more attractive to relocating businesses and homeowners. The availability of such wilderness areas also draws valuable tourism dollars to the surrounding communities. The designation of the Sipsey Fork as a wild and scenic river will also ensure better drinking water quality in the region. By passing this legislation, we are helping Alabama to further strengthen its economic base.

As a member of the House Committee on Agriculture, I want to thank Chairman DE LA GARZA, and the chairman of the Subcommittee on Forests, Family Farms and Energy, Mr. VOLKMER, for giving this issue fair and timely consideration. The Department of Agriculture will be instrumental in carrying out the directives established in this legislation, so the insights and input of this committee were necessary before this bill could be passed. Even with many other items to be considered this session, the committee leadership moved swiftly and effectively, preventing unnecessary delay of this important measure.

I wish to commend the sponsors of this bill, Mr. HEFLIN and Mr. FLIPPO, for their hard work and leadership on this issue. I also want to thank Mr. VENTO and Mr. ERDREICH for their support. This initiative will further protect parts of the Bankhead and Cheaha National Forests, and the Sipsey River, for the enjoyment of our citizens and their children. This bill ensures that for generations to come, Alabamians will be able to experience a vital part of their natural heritage.

H.R. 1262—A BILL TO PROVIDE FOR A DE MINIMUS IMPORT DUTY ON KIWIFRUIT IMPORTS

HON. TONY COELHO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. COELHO. Mr. Speaker, my colleague from California, Mr. BOB MATSUI, has introduced H.R. 1262 to provide for a de minimus import duty on kiwifruit imports. The administration has objected to the bill saying that it is not necessary since New Zealand is in the process of phasing out its Government subsidies.

We now have been informed that the New Zealand Government is seriously considering providing a $90 million subsidy for its kiwifruit industry. If New Zealand proceeds with this massive capital investment for its kiwifruit industry, our California industry will be severely disadvantaged at a time when it is just beginning to get on its feet.

H.R. 1262 would at least allow our Government to investigate such subsidiaries and if verified, would give our industry tariff relief. The U.S. Trade Representative [USTR] has opposed H.R. 1262, indicating that New Zealand was in the process of phasing out all of its Government subsidies. We now know that instead of phasing out its subsidies, New Zealand may embark on a massive new subsidy program. In light of this development, USTR should now rethink its position on H.R. 1262 and express this country's objection to the establishment of additional subsidy programs by the New Zealand Government.

NAMING THE OAK TREE OUR NATIONAL TREE

HON. DAN SCHAEFER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. SCHAEFER. Mr. Speaker, since the cornerstone of government in the United States of America is participatory democracy, I would like to take this opportunity to acknowledge and commend the efforts of a group of students from the Sixth District of Colorado who have taken participation to heart.

A short time ago, I met with Megan Gunter, Stacey Ekstrom, Bergan Wolfe, Susan Gunter, Sara Heinz, Angie Petrucci, and Shawn Roberts who, with their teacher, Bill Cathey and fellow students Emily Steiner, Shauna Trenda, Allison Atkinson, and Will Ballantine have initiated the project of naming the oak tree our national tree.

These young people have completed comprehensive research that indicated that the oak tree in its many varieties lives in practically all States and is indigenous to this great land and prepared an excellent report supporting their cause. They then exercised their constitutional rights to meet, gather support, and petition their Government. Should we, as a body, consider naming a national tree, I know that heavy consideration will be given to the proposal of these students of Powell Middle School.

At this time, I would ask that you join me in commending these students, our future leaders, for taking part in the governmental process, and their teacher, for his guidance of them.

CONGRATULATIONS TO MAJOR GENERAL KIEFNER

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. SKELTON. Mr. Speaker, I rise today to offer congratulations and best wishes to a man whose continued service to Missouri and to our country has earned him accolades from his colleagues. Gen. Charles M. Kiefner, Missouri adjutant general, was recently elected president of the National Guard Association of the United States.

General Kiefner was selected to the Guard Association's highest office during the group's 110th General Conference held recently in San Antonio, TX. Having served previously as secretary and vice president-Army, Kiefner will serve a 2-year term as president.

The association has approximately 55,000 Army and Air National Guard officers in its membership, which hail from National Guard units in all 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

General Kiefner is one of the longest-serving adjutant generals in the United States. He first served as Missouri Adjutant General from 1973 until 1977. In 1981, he was named to the post again and has continued to serve in that office since that time. As Missouri Adjutant General, he commands approximately 13,000 Army and Air Guard members.

Having known General Kiefner for a number of years, I again offer congratulations on his selection as president for the National Guard Association. The recognition is well-deserved.

THE WASTE END TAX ACT OF 1988

HON. THOMAS J. DOWNEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. DOWNEY of New York. Mr. Speaker, I am introducing legislation to impose a tax on the disposal of harzardous waste. This legislation, which is identical to the waste end tax passed in 1985 as part of the reauthorization of the Superfund Program, will be the basis of a comprehensive economic approach to the waste disposal problem facing our Nation.

Since the mid-1970's, Federal waste policy has been focused mostly on hazardous waste. However, evidence is mounting that the Federal Government may soon have to expand this role to tackle problems created by the disposal of solid waste. Americans are running out of space to bury the 230 million tons of garbage they produce every year. Thousands of landfills are closing, and in many areas new sites cannot be found because of environmental concerns and local opposition. In 1987 the town of Islip, located in my congressional district, achieved notoriety by launching the Mobro garbage barge on an international expedition for a port receptive to its stinking cargo. Islip placed its garbage in the hands of the Mobro's skipper because the town landfill had reached its capacity.

Today, the Environmental Protection Agency and many State and local officials view incinerators as the principal alternative to landfills. In fact, we are spending more than $17 billion on incineration as a solution to our garbage problem. However, the rush to burn may turn out to be just another environmental shellgame as we trade one irresponsible method of disposal for another. Incinerators emit dioxins, furans, and other air pollutants that may cause a significant threat to air quality and human health. While these emissions can be controlled to some extent by technology, they are not the only cause for concern. Incinerator ash produced as a byproduct of burning trash can also contain toxic materials. Moreover, disposal methods for ash raise many of the questions currently posed by the disposal of solid waste.

One alternative that municipalities and States are not using to the degree they should is recycling. Although recycling is limited by the nature of the waste Americans produce, it can significantly ease our current disposal problem in a safe and responsible manner.

Recycling is not a new approach to solid waste disposal. According to the Environmental Defense Fund, it was integrated into every American's life before World War II. We reused and composted frequently. Before 1920, 70 percent of our cities operated source separation recycling programs. During World War II the rationing required for production led industry to recycle and reuse up to 25 percent of the total solid waste stream.

Today, a maximum of 10 percent of America's garbage is recycled. Local and State governments have shown a general lack of interest in making recycling a major component of their solid waste disposal plans. This is borne out by the fact that State governments have spent less than $8 million on recycling but more than $305 million on promoting garbage incinerators. Part of the problem is public apathy and another is that the economy has been slow to adjust to the prospect of reusing massive amounts of household trash.

I am introducing legislation today that will form the basis of a comprehensive, market-based approach to our current garbage problem. The legislation I am introducing today, the Waste End Tax Act of 1988, will provide revenue for a package of recycling incentives that I hope to develop with the advice of experts, environmentalists, State and local government officials, and industry. The Waste End Tax Act is identical to the waste end tax passed by the House of Representatives in December 1985, except that the tax rates are somewhat lower.

By taxing the disposal of hazardous waste, the waste end tax provides an incentive to reduce the actual output of hazardous waste and promote the development and use of alternative disposal technologies such as recycling and reuse. It represents the philosophy that those who minimize risks and costs to society should be rewarded and those who do not should bear the financial burden of the risks and costs they create. This is an approach that is embodied in our Federal hazardous waste policy and one that I believe holds great promise as a means of dealing with our solid waste problem.

GROUNDBREAKING CEREMONY FOR NATIVITY OF THE THEOTOKOS ORTHODOX CHURCH

HON. HELEN DELICH BENTLEY

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mrs. BENTLEY. Mr. Speaker, in the past I have had the great pleasure to salute the anniversaries of many churches. Last week I honored one which turns 250 years old this year. Now I have the opportunity to commemorate the groundbreaking ceremony for the Nativity of the Theotokos Orthodox Church. It's not an old church; nor is it as well known as some other churches. Yet it is very special nonetheless.

Mr. Speaker, this is a church with a congregation very rich in spirit, so October 2 was truly a special day for us all. In addition, His Grace Bishop Antoun, auxilliary bishop of the Antiochian Orthodox Christian Association of North America, was our honored guest. The fact that such an important man was willing to attend a groundbreaking ceremony for such a small church truly demonstrates the importance of this day. It is only right that I tell the story of this wonderful little church here.

The Nativity of the Theotokos was founded in 1968 as St. Mary's Orthodox Church. At first it only had 13 members; now 50 families make up its congregation. This still may seem like a small number, yet for a church with no permanent house of worship this isn't too bad. For 20 years the congregation has met in a series of temporary locations. St. Joseph's Catholic Church was especially helpful during this time. This is also a testament to the devotion of its members. One common mission—not stained-glass windows and a beautiful altar—has kept these people united in worship.

The church has also managed to engage in a number of charitable activities. Last Christmas 300 pounds of food were collected for the poor—45 people were treated to a full course holiday meal. It has also served its community through such programs as the Men's Fellowship Club, the Ladies' Society, and the Youth Group. Under Rev. Fr. George Romley's leadership over the past 8 years these activities have steadily increased. In fact, this church has done more over the past 2 decades than many organizations have done in 10.

Mr. Speaker, it's been a long time coming, but now this orthodox group is finally going to get its own building. To Pastor Romley, as well as all the parishioners of the Nativity of the Theotokos Orthodox Church, I send my most sincere congratulations and best wishes for a job well done.

TRIBUTE TO SHELLY L. BROWN, MICHELLE MARTIN, STACEY MILES, KIM PEACHOCK, JONI THEISLER, AND CAROLYN TOMORY

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. TRAFICANT. Mr. Speaker, It is with great pride that I stand before you today to pay tribute to six special young ladies from my 17th Congressional District of Ohio who have recently completed all of the requirements for their Girl Scout Gold Awards,

Shelly L. Brown of Youngstown, OH, Michelle Martin, Stacy Miles, Kim Peachock, Joni Theisler and Carolyn Tomory all of Boardman, OH, will receive the Girl Scout Gold Award on December 8, 1988. This recognition takes 18 months to complete and includes work in each girl's own interest area, career development, leadership development, and a community service project.

These girls are a credit to Girl Scouting and to their community. I am proud to serve as their Congressman. Mr. Speaker, I ask that the House join with me today in wishing these girls all the best in their continued efforts, both in Scouting and as they prepare to assume roles of leadership in the future.

THE CAMP DAVID CHAPEL: A GIFT TO THE UNITED STATES FROM THE PEOPLE

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mrs. MORELLA. Mr. Speaker, I rise today to bring to our Nation's attention the wonderful work of the Camp David Chapel Fund. During the past several years, this organization has worked diligently to erect a nondenominational place of worship on the grounds of Camp David, the weekend retreat home of our Presidents.

The idea for a chapel at Camp David came from Kenneth H. Plummer, who was staying at Camp David on November 22, 1963, the day John F. Kennedy was assassinated. Mr. Plummer recalls that, upon hearing of the tragedy, there was no place he could go and pray for the fate of President Kennedy. Many years later, he learned that President Carter had to use the movie theater at Camp David as a makeshift chapel for himself and his family. As a "nation under God," Mr. Plummer felt that a chapel at Camp David would be a wonderful and fitting addition to this American landmark. On July 2 of this year, Mr. Plummer's dream became reality as President Reagan turned the first shovel of earth on the site of the future Camp David Chapel.

Today, under the direction of Kenneth Plummer, Mr. Wayne H. Smithey, Mrs. Evelyn Murray, and many other dedicated individuals, the fund has been obtaining private, tax-deductible contributions for the construction of the 150-seat, beautiful wooden chapel. The Camp David Chapel will be open to use by the President, his family and guests, foreign dignitaries visiting Camp David, and the camp's personnel. It is a beautiful tribute to the values that guide our Nation, and is a needed addition to the grounds of our Presidential retreat home. I commend those individuals who have worked so hard to make the dream of a chapel at Camp David a reality, and all those people who have contributed financially or otherwise to its construction. The Camp David Chapel truly is a gift to the United States from the People!

THE SUCCESSFUL VOYAGE OF THE SPACE SHUTTLE DISCOVERY

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. MAZZOLI. Mr. Speaker, the successful mission of the space shuttle *Discovery* marks the beginning of a new era in space exploration for America. I would like to congratulate the National Aeronautics and Space Administration and the crew of the shuttle *Discovery* for their undaunted efforts to achieve this monumental return to space.

The Space Program is vital to the United States and to the world community in general. Not only does space exploration provide pure scientific knowledge for human edification and enlightenment, but it also allows for practical benefits and advancements in everyday activities from agriculture and map making to environmental protection and medicine.

The *Challenger* tragedy reminds us that space travel will always involve risk, and that safety is of the utmost importance. However, successful missions such as *Discovery* point to the fact that Americans can overcome mistakes and send astronauts and scientists into space and return them home successfully.

If the United States is to remain a leader among the nations of the world, it must forge into the 21st century with a strong, safe, and technologically advanced Space Program. Only in this way can America deal effectively with the ever-increasing technological problems and demands of the future.

The success of *Discovery* should serve as a model of hope and inspiration for all Americans. It marks a significant milestone in our space exploration program and is a beginning step for future successful missions.

Our Nation's Space Program is back on track. It is a moment of pride for me and for all the citizens of the United States.

MONEY LAUNDERING INDICTMENTS

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. GILMAN. Mr. Speaker, I rise to commend our Customs Service and Commissioner Von Raab for Customs' successful money laundering operation, announced yesterday, which led to the indictment of the Bank of Credit and Commerce International S.A. and its holding company, BCCI Holdings. According to Customs officials, $14 million in drug assets were laundered by the BCCI and 85 individuals were indicted.

I find it reprehensible that some Americans are helping to launder dirty drug money headed for the bloody hands of drug kingpins. This war against drugs is not just about cracking down on foreign drug production and drug trafficking. It is also about eliminating their greedy partners in our Nation.

Those who collaborate with drug dealers are accomplices to murder. The U.S. Government must make certain that these criminals find no loopholes large enough to crawl through. Those guilty of such treason should stop counting their money and take notice: They will be investigated, they will be indicted, they will be convicted, their assets will be seized and forfeited, and they will be thrown in jail for their heinous crimes.

Our frontline law enforcement officials are seizing large quantities of illegal drugs. I have been informed that the Customs Service, working with other Federal, State, and local agencies, has already seized over 100,000 pounds of cocaine this year. Each ounce of drugs off the streets save lives and those DEA, Customs, FBI and State and local police officials deserve our deep appreciation for their good work.

However, even those hardworking agents know that this war against drugs is far from over. This generation of American youth must receive education about the dangers of drugs. There are thousands of addicts desperately in need of treatment and rehabilitation. Our cities and suburbs are under siege.

And what is this Congress doing? This body has passed a strong drug bill, H.R. 5210, the omnibus drug initiative of 1988. The other body is moving slowly in that direction, but we are yet to come forward with the means to finance desperately needed antidrug programs.

Our constituents are demanding a strong drug program and have said again and again in national polls that they are willing to pay for it. The House is supposed to reflect the will of the people, that is why we are here. This Congress must pass a strong drug bill and find a way to sufficiently fund it. Anything less is a disservice to this institution.

IMPROVING NURSING HOME CARE

HON. DOUG WALGREN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. WALGREN. Mr. Speaker, today I am pleased to introduce a bill to help strengthen nursing care given to residents of nursing homes. The bill would require Medicaid to pay wages and benefits comparable to other nursing personnel in a locality to nursing home staff who provide or supervise direct patient care.

Nursing home patients are old—their average age is 83—many are very ill. They are frail and dependent; many have multiple, chronic illnesses and disabilities. They need nursing care. That is why they are in nursing homes.

While there are very good nursing homes, many studies have documented the poor quality of care in many. There are a number of reasons for poor quality of care, but the single most important reason for poor care is that nursing homes cannot attract and retain nursing staff because the pay is low. The Department of Health and Human Services has found that on average, RN's in nursing homes earn 35-percent less than their hospital counterparts. RN's working as nursing home administrators earn 49-percent less. Similar salary differentials are found in comparing LPNs, nurse aides and other nursing personnel in nursing homes and hospitals.

Because nursing staff is so hard to attract, those who do work in nursing homes are overloaded. Charlene Harrington, a nurse who worked on the Institute of Medicine's nursing home study, has said, "It is not uncommon for one nursing attendant to have 15 patients for whom to provide full care. In the evenings, the attendants may have 15 to 25 patients and, at night, there may be 40 to 50 patients per attendant." Today, the average nursing home patient receives only 12 minutes of direct care by an RN each day. The ratio of RN's to patients in nursing homes is 1 to 100.

Vacancies are widespread. One survey found that 58 percent of nursing homes have vacancies for RN's. One-third indicated a need for RN's just to meet current minimum standards for staffing. Eight out of ten long-term care facilities indicate a shortage of LPN's.

According to the Institute of Medicine's report, over 70 percent of nursing personnel in long-term care facilities are nurse's aides and 90 percent of the care is given by them. The turnover rate of nurse's aides in many homes approaches 100 percent a year, says IOM.

Under current law, State Medicaid programs must pay "reasonable and adequate" rates to meet the costs incurred by "efficiently and economically operated facilities in order to provide care and services * * *." This requirement clearly has not kept wages in nursing homes competitive with the nursing profession.

My bill would require each State Medicaid plan to provide to all nursing personnel—nurses, nurses aides, nurse assistants, licensed practical nurses—who provide direct care, wages and benefits that are comparable to nursing personnel in other heath care settings in each locality. In addition, it would require States to recover any funds not spent by the nursing homes for these purposes. For the purpose of determining comparable nursing wage rates in a locality, the bill would require States to conduct a survey through a statistically representative sample of health facilities.

This bill is not a panacea for addressing nursing salaries in nursing homes and we are now late in the session of the 100th Congress. But, I hope that the bill will generate a vigorous discussion of nursing home wages and the need for good nursing home care. I look forward to working with many groups interested in this issue in an effort to improve Federal policy and most importantly, in the interest of providing the kind of nursing care to nursing home residents that we expect for ourselves and our family.

The text of the bill follows:

H.R. —

A bill to amend title XIX of the Social Security Act to require nursing facilities participating in the medicaid program to pay nursing personnel at a rate at least equal to the mean rate paid nursing personnel employed outside nursing facilities

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MINIMUM WAGE RATE FOR NURSING PERSONNEL IN NURSING FACILITIES.

Section 1902(a)(13) of the Social Security Act (42 U.S.C. 1396a(a)(13)) is amended—

(1) by striking "and" at the end of subparagraph (D);

(2) by inserting "and" at the end of subparagraph (E); and

(3) by adding at the end the following new subparagraph:

"(F)(i) in making payment for nursing facility services, under subparagraph (A), provide for payment in full of the costs, attributable to individuals receiving medical assistance under the State plan, of wages and benefits of the facility's nursing personnel (including nurses' aides) who provide or supervise direct care of residents at a rate that is at least equal to the mean rate of wages and benefits reported under clause (iii)(II) for nursing personnel in the same locality;

"(ii) for recovery by the State from a nursing facility of such amounts as are paid to the facility pursuant to clause (i) but are not expended by the facility for wages and benefits of nursing personnel described in such clause; and

"(iii) that the State shall—

"(I) conduct annually a survey, through a statistically representative sample, to determine the mean rate of wages and benefits paid in each locality in the State to nursing personnel (including nurses' aides) who provide, outside nursing facilities, nursing services comparable to those described in clause (i),

"(II) report annually to each nursing facility in a locality in the State on the mean rate of wages and benefits determined under subclause (I) for that locality, and

"(III) report annually to the Secretary on the mean rates of wages and benefits determined under subclause (I);".

SEC. 2. INCORPORATING REQUIREMENT INTO STATE PLAN.

(a) EFFECTIVE DATE.—The amendment made by section 1(3) applies to payments under title XIX of the Social Security Act for calendar quarters beginning on or after the first day of the first calendar quarter that begins more than 180 days after the date of the enactment of this Act, without regard to whether regulations to implement such amendment are promulgated by such date.

(b) STATE PLAN AMENDMENTS.—If an amendment to a State plan for medical assistance under title XIX of the Social Security Act is necessary for compliance with the requirement of section 1902(a)(13)(F) of such Act (as added by section 1(3) of this Act), then the State shall submit such amendment to the Secretary of Health and Human Services, not later than 90 days after the date of the enactment of this Act. The Secretary shall, not later than 180 days after the date of the enactment of this Act, review each such plan amendment for compliance with such requirement and by such date shall approve or disapprove each such amendment. If the Secretary disapproves such amendment, the State shall immediately submit a revised amendment which meets such requirement. The absence of approval of such a plan amendment does not relieve the State or any nursing facility of any obligation or requirement under title XIX of the Social Security Act.

CELEBRATING THE 75TH BIRTHDAY OF WARREN SCHAFER

HON. HELEN DELICH BENTLEY

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mrs. BENTLEY. Mr. Speaker, I rise today to pay tribute and wish a very happy 75th birthday to a fellow Marylander and Baltimore Countian, Warren Schafer.

Mr. Schafer proudly served his country for 30 years as a band leader in the U.S. Army. His assignments took him to various spots overseas such as Korea, Italy, and Germany, as well as numerous stops throughout the United States.

Following his retirement from the Army, Mr. Schafer returned to his roots and with the blessings of his father, the late Clyde W. Schafer, assumed control of the family's retail meat business at Hollins Market in Baltimore.

Mr. Schafer currently resides in the home of his youth, Catonsville, MD, with his wife of 53 years, Mary Jane Owings Schafer. He is the proud father of four children and has nine grandchildren and three great grandchildren. In addition, Mr. Schafer is surrounded by numerous relatives from the Schafer, Owings, Grim and Blair clans, all longtime residents of Baltimore County.

Mr. Schafer, known for his green thumb, now spends his time caring for his flower and vegetable gardens. He also remains very active in community affairs through his longtime affiliation with the Catonsville Lions Club.

Today, Mr. Speaker, I ask the House to join me in wishing Mr. Schafer congratulations on his 75th birthday, with wishes for many, many happy years to come.

STRIVING FOR EXCELLENCE—A TRIBUTE TO SAN MATEO COUNTY'S OLYMPIC ATHLETES

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. LANTOS. Mr. Speaker, the 1988 Seoul Olympic games are now history. They have become a part of the lore and legacy of Olympics. The 24th Olympics have now joined the previous games with a share of broken records and a group of new heroes and heroines that will inspire the next generation of young people.

As we welcome home the young men and women who have represented our country so well in this competition, Mr. Speaker, I wish to pay tribute to these outstanding young people. Simply to be selected as a member of the U.S. Olympic Team is a great honor that they have earned through their sweat, hard work, dedication, commitment, and consistent performance over a long period of time.

The Greek philosopher Hesiod in the seventh century B.C. observed, "Badness you can get easily, in quantity; the road is smooth, and it lies close by. But in front of excellence the immortal gods have put sweat, and long and steep is the way to it." These young women and men on the U.S. Olympic Team know the truth of Hesiod's words.

Mr. Speaker, as we honor the members of the U.S. Olympic Team, I wish to pay special tribute to the members of that team from San Mateo County, CA. The peninsula was particularly well represented among the members of the U.S. team, and that is a tribute to these young men and women, and to their parents, their teachers, and their athletic coaches.

I invite my colleagues in the Congress to join me today in honoring these outstanding athletes from San Mateo County who contributed to the success of the United States in the Seoul Olympics as members of the U.S. Olympic Team: Dana Hee of Redwood City, gold medal in Taekwando; Andre Phillips of Foster City, gold medal in the 400 meter hurdles; Robert Billingham of Menlo Park, silver medal in yachting; Nancy Dietz of Woodside, marathon; Diana Gee of San Carlos, table tennis; Trish King of Redwood City, high jump; Mario Martinez of South San Francisco, weightlifting; Leslie Maxie of Woodside, 400 meter hurdles; and Greg Tafralis of San Bruno, shot put.

Mr. Speaker, these young women and men have pursued the "long and steep way" to excellence. They have excelled as they represented our Nation so well in Seoul. I invite my colleagues in the Congress to join me in paying tribute to them.

TRIBUTE TO ART KOVACS

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. TRAFICANT. Mr. Speaker, I rise today to pay tribute to a special resident of my 17th Congressional District of Ohio, Art Kovacs.

Art Kovacs has recently retired after 19 years as head coach of Youngstown South High School's boys basketball team. During those 19 years, Art Kovacs brought a great deal of pride and glory to his high school and to his city. His basketball teams had a record of 228-178, including 11 city series titles, 12 class AAA sectional championships, and districts titles in 1974 and 1988.

I commend Art Kovacs for his dedication to the youth of my district, and graciously recognize the fine job he has done in molding not only fine basketball players, but fine young men as well.

Mr. Speaker, it is with great pride that I stand before you as Art Kovacs' representative, please join me in wishing him all of the best for the future.

GOVERNOR DUKAKIS DOES NOT UNDERSTAND THE U.S. TRADE POLICY

HON. WM. S. BROOMFIELD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. BROOMFIELD. Mr. Speaker, last Friday, directly on the heels of the House passing the Bryant amendment, Michael Dukakis demonstrated that not only his campaign's foreign policy, but his trade policy as well is being assembled on the floor of the House of Representatives. This does not bode well for the American people.

Governor Dukakis' campaign stop at a highly competitive and productive factory outside St. Louis turned sour when he explained his theory on getting foreign investors out of the U.S. economy. It turned out that the plant he was visiting was Italian owned.

Upon learning that the highly satisfied, well payed and competitive workers who he had addressed were indeed part of a foreign conglomerate, Governor Dukakis feebly mumbled something along the lines of some foreign investment is all right.

Well Governor Dukakis, at least you almost have something right. If you were to change that mumbled response to foreign investment is all right, with existing registration, disclosure and national security oversight, you would be in agreement with the chairman and ranking member of the Ways and Means Committee, the chairman and ranking member of the Subcommittee on Trade, the Chairman and ranking member of the Foreign Affairs Committee and the chairman of the Subcommittee on International Economic Policy and Trade.

If Governor Dukakis does not have an understanding of U.S. trade policy, and if he does insist on picking it up from the House floor, then I suggest that he do his research a little better on both his message and his audience.

RETIREMENT OF PAT CHAMBERLAIN—OUTSTANDING CITIZEN

HON. LEON E. PANETTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. PANETTA. Mr. Speaker, on October 16, the people of Big Sur and all of Monterey County will hold a retirement party for Pat Chamberlain, the California Highway Patrol's resident officer in that area. Pat Chamberlain personifies the unique nature of Big Sur and its inhabitants, and he will be greatly missed. I would like to take this opportunity to say just a few words about Pat's career and his life to this point, because he deserves special recognition.

Pat Chamberlain was born in 1939 at Pacific Grove Hospital, on the Monterey Peninsula. His parents were Louise and Charles Chamberlain. He graduated from Pacific Grove High School and attended Monterey Peninsula College.

In 1960, Pat became a police officer in the city of Carmel. It was here that he developed a personal style and "hometown" approach that would characterize his career and community commitment.

In 1964, Pat joined the California Highway Patrol. After serving in the Los Angeles area, he transferred to the Salinas office, where he began working on the highways throughout Monterey County as a patrol officer. Through the years, he performed a number of special duties, including providing protection and escort for then-First Lady, Lady Bird Johnson, during her visit to the central California coast.

But Pat worked mostly at Big Sur, and his specialty was participating in, coordinating, and directing relief efforts, including the crash of a Navy plane in 1971; the Molera fire in 1972; the Lafler Canyon destruction in 1973; the mud flows of Pheneger, Juan Higuara and Pfeiffer Redwood Creeks of 1972 to 1974; the Marble-Cone fire of 1977; flood preparation and watch during the winters of 1977 and 1978; the Rat Creek fire of 1985; and, most significantly, the major closures of Highway One in 1982, 1983, 1984, and 1985.

Pat has been indispensable to me and to virtually every Federal, State, and local official—both elected and unelected—who has worked on problems relating to Big Sur. Big Sur is a unique place with a diverse and unique population. Pat's work as a patrol officer has not only made Big Sur a better place to live but also enabled him to help others who wish to protect Big Sur and its way of life.

Pat has served in a number of organizations dedicated to protecting Big Sur and is an active participant in the community life of Big Sur. And day to day, he has provided as much personal assistance to the people of Big Sur—the children, the families—as any other individual.

Pat has three children, Virginia, Charles, and Michael by a former marriage. His present wife Barbara happens to be a descendant of Big Sur's pioneer family, the Pfeiffers.

Mr. Speaker, Pat Chamberlain, in many ways, personifies Big Sur. His boots are going to be awfully hard to fill. Sylvia and I want to join the people of Big Sur in congratulating Pat Chamberlain on his retirement and thanking him for all his hard work and his commitment over the years. And I am sure my colleagues want to join me in wishing him the best of luck in the years to come.

THE REAGAN FOREIGN POLICY

HON. MICHAEL DeWINE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. DEWINE. Mr. Speaker, during the debate over the Presidential campaign, it has been said that the strategic realignment and increasing U.S. strength over the past few years is due to Gorbachev's new thinking. However, this is an overt political omission—a denial for political purposes of the successes of the Reagan foreign policy.

Through the Reagan doctrine, there has been great movement toward peace and the withdrawal of Communist forces in Afghanistan, Angola, and Vietnam. The Iran-Iraq war is drawing to a close because the President deployed the Navy to demonstrate that the United States would no longer accept a continuing war on international oil tankers. Democratically elected presidents now govern in four out of five Central American countries, and no new Communist governments have come into being. The zero option, once maligned as a cynical gesture, has become the basis for a historic arms treaty, which eliminates an entire class of nuclear weapons.

The American people realize that this strategic realignment toward American strength has not taken place because of the Soviets' good will, as Governor Dukakis would have us believe. One need only look at Nicaragua where the Congress has refused to adopt the President's strong stance, and where the Soviets continue to send unprecedented quantities of weaponry, to understand that to achieve peace and combat Communist aggression, the United States needs to demonstrate strength. It is the thinking not of Gorbachev but the Reagan administration which is responsible for these promising new developments. Gorbachev did not decide for himself that the Soviets could no longer get away with murder, Ronald Reagan had to convince him.

GEMS OF THE OCEAN

HON. C. THOMAS McMILLEN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. MCMILLEN of Maryland. Mr. Speaker, I rise today to pay tribute to a group of men who served bravely in defense of their country during World War II. From July 29, 1942, the day of her commission, until October 31, 1945, the U.S.S. *Columbia* and her crew had one of the greatest records of any ship in the U.S. fleet. It is my privilege to share their accomplishments as they reunite November 3 to remember the service they proudly gave for their country.

The U.S.S. *Columbia,* of "Gem of the Ocean" as she was referred to by her crew, was officially credited with the destruction of 27 Japanese planes, participation in 9 shore bombardments, as well as assisting in the sinking of 2 battleships, 2 cruisers, and 2 destroyers. At the Battle of Suriago Straight on October 25, 1944, the "Gem" fought in the longest and perhaps most successful night-sea battle in naval history.

The *Columbia* also received two Navy unit commendations, a citation granted a unit only if it has "distinguished itself by outstanding heroism in action against the enemy." The first N.U.C. was awarded for *Columbia's* role as a member of Cruiser Division 12 and its action at Empress Augusta Bay on November 2, 1943. During the conflict, the Gem fired the largest amount of ammunition of any cruiser in the American group. The *Columbia,* under the command of Capt. Frank E. Beatty, was also credited with assisting in the destruction of one enemy cruiser and one destroyer during this engagement.

The second Navy unit commendation was awarded for the *Columbia's* action during the battle of Lingayen Gulf, from January 5 to 9, 1945. While engaged in bombardment of hostile shore defenses and in coverage of minesweepers, the Gem was attacked by three suicide dive bombers. Although crippled by repeated suicide missions, the *Columbia,* under the command of Capt. Maurice E. Curts, continued its bombardment until her mission was fulfilled.

Among its other accomplishments during the war, the U.S.S. *Columbia* was the last ship in the U.S. fleet to be involved in ship-to-ship combat. The Gem set forth for Philadelphia on October 31, 1945, only after completing inspections of several islands that had been Japanese strongholds.

I know many of my colleagues join me in saluting the brave men who served aboard the U.S.S. *Columbia.* These men and their ship were truly "Gems of the Ocean."

TRIBUTE TO HIGHWAY 113 SUPPORTERS

HON. VIC FAZIO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. FAZIO. Mr. Speaker, I rise today to pay tribute to the citizens of Yolo County for their commitment to improving our Nation's highway system. In particular, Joe Falvey, John Ferns, Dick Klenhard, Skip Quinlan, Jean Sisson, and the late Stu Waite worked for over 20 years to obtain support and funding for the expansion of Highway 113 in Woodland, CA.

Studies for the upgrading of Highway 113 have been underway since 1956. Highway 113 is a dangerous 10-mile stretch of road between Davis and Woodland connecting I-5 and I-80 west of Sacramento. Over 22,000 vehicles a day use the highway. The four-lane highway narrows to two extremely congested lanes for 4 miles. It is so hazardous that all vehicles are required to put their headlights on during this narrow stretch, known locally as blood alley.

These six men were leaders in obtaining $23.7 million from various sources for the project: $22 million from Congress, $142,000 from Southern Pacific Railroad, $535,100 from the city of Woodland and $91,000 from the California Department of Transportation. By creating the Coalition for Completion of State Route 113, these individuals focused the community's attention on the need for the project.

The plans call for a four-lane expressway with an interchange at Gibson Road, for an overcrossing at Gum Avenue and a railroad overhead at Mullen Crossing. The project will result in an at-grade intersection at County Road 27. At the south end of the project, an additional at-grade intersection at County Road 25A will be added. When finished, it will complete a major link in the Sacramento-Davis-Woodland area. This type of far-reaching development program could not have been undertaken without the cooperation and participation of officials at the local, State, and Federal level.

In 1 week, the official groundbreaking ceremony for the Highway 113 improvement project will occur. The turning of the earth will not only represent a beginning, but also an end: October 20, 1988, represents the culmination of 20 years of dedication, support, and unending resolve by Joe Falvey, John Ferns, Dick Klenhard, Skip Quinlan, Jean Sisson, and the late Stu Waite. I know my colleagues join me today in extending to them and their families our deepest thanks and appreciation.

APRIL DAWN SMITH A CHAMPION

HON. JOHN P. MURTHA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. MURTHA. Mr. Speaker, as we celebrate the successes of our Olympic athletes, I would like to draw my colleagues' attention to a young woman who very well may be representing the United States in a future Olympics.

April Dawn Smith of Acme, PA recently received the title of Grand Champion at the national summer dance festival in Buffalo, NY. April competed in the gymnastics solo division at the championships, and was awarded additional honors for receiving the highest score in her age division.

April went on to the world competiton, held in Niagara Falls, NY, where she represented the United States. April captured the silver medal at this competition in the gymnastics dance division for competitors 8 years old or younger.

I know April's parents and her second grade classmates at Saltlick Elementary School are very proud of her achievements. It takes a great deal of dedication and practice to reach the level of competition that April has achieved. I would like to extend my congratulations to April, and wish her the best of luck in future competitions.

TRIBUTE TO DAN CHERRY

HON. MARTIN OLAV SABO

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. SABO. Mr. Speaker, it is my privilege today to pay special tribute to Brig. Gen. E. Daniel Cherry, who will retire from the U.S. Air Force on January 1, 1989 after almost 30 years of outstanding service to our country. Since the House will not be in session on that date, I would like to take a moment now to thank Dan Cherry for his superlative service and unselfish devotion.

Dan Cherry's service record reads like a novel. He was graduated first in his class from pilot training. For 6 years, he flew the hottest fighter in its day, the F-105 Thunderchief, including 100 missions over North Vietnam. He also flew 185 combat missions in the F-4D Phantom and shot down a North Vietnamese Mig-21. Because of his flying skill and leadership, he was selected as the commander and lead pilot of the Air Force Demonstration Squadron, the Thunderbirds.

General Cherry led the Thunderbirds for 2 years. He wanted to stay in the air, but the Air Force needed his skills elsewhere. After graduating from the National War College, Dan served as base commander of Moody Air Force Base in Georgia. He then became the inspector general for our Pacific Air Forces. He finally got back into the air in 1984 as the commander of the 8th Tactical Fighter Wing at Kunsan Air Base in the Republic of Korea. This time Dan again flew our newest fighter, the F-16 Fighting Falcon. After being promoted to brigadier general, Dan served as the chief of all Air Force planning in the Pacific. Today, Dan is the commander of the Air Force Recruiting Service.

In each of these jobs, Dan brought one abiding motto: Leave the job in far better shape than he found it. The fact that Dan succeeded every time is a measure of the man. Our country is indebted to him. We wish Dan and his lovely wife, Syl, the best in the future. They served our Nation well.

GLYNN MEMORIAL HOME

HON. NICHOLAS MAVROULES

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. MAVROULES. Mr. Speaker, today, October 12, there is a groundbreaking ceremony at the Glynn Memorial Home in Haverhill, MA to formally begin the construction of a 41-bed unit for the exclusive use by patients suffering from Alzheimer's disease. I rise today, in part, to draw my colleagues' attention to this much-needed facility, and in part to recognize the outstanding leadership provided by several of the people who conceived this project, mobilized support for it and whose dedication and perseverance, often against seemingly very tough odds, made this facility a reality.

The Glynn Memorial Home was the first institution selected by the Commonwealth of Massachusetts to participate in a 3-year pilot program designed to assess various methods of treating patients with Alzheimer's disease. This disease, which causes progressive declines in the ability to think, learn, and perform routine tasks, may affect 2.5 million adults. Of these, it is estimated that 40,000 live in Massachusetts.

Although recent medical advances have helped physicians and families better identify and care for those afflicted with this disease, we face a desperate situation where there are many more victims than facilities and professionals suited to their care.

Mr. Speaker, several people are particularly deserving of recognition for their efforts on behalf of this project: our Governor, Michael S. Dukakis and his Secretary of Human Services Phil Johnston have provided vision and leadership from the outset; Haverhill Mayor Ted Pelosi has been a consistently strong and vital partner; and State Senator Nick Costello and the chairman of the Glynn's Board of Trustees Ernie DiBurro, who have made this project both a professional and personal priority. It is clearly not an overstatement to say that without the support that each of these individuals has given this project, this dream would never have become a reality.

I take great pride in recognizing the invaluable contributions of these outstanding people on the floor of the U.S. House of Representatives.

A TRIBUTE TO LYNNE JEWELL

HON. GERRY E. STUDDS

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. STUDDS. Mr. Speaker, I would like to take this opportunity to congratulate Lynne Jewell of Plymouth, MA, winner of the gold medal in the women's 470 sailing event at the XXIV Summer Olympics in Seoul, Korea.

A dedicated sailor since age 7, Lynne has combined hard work with high hopes to achieve Olympic stature. Her victory epitomizes the realization of a dream made possible through perseverance and courage—as well as the ongoing support of loving family and friends.

Lynne's success is an inspiration to everyone who ever longed to reach for the stars, but held back for fear they were too distant. We thank her for reminding us that they are not—and wish her a future in which the sky is the limit.

A TRIBUTE TO THE VERY REVEREND BERNARD PANCZUK

HON. DENNIS M. HERTEL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. HERTEL. Mr. Speaker, I rise today with great pride and admiration to honor the Reverend Bernard Panczuk, OSBM, who on November 4, 1988 will be honored on his silver anniversary as a priest and his promotion to Provinical Superior.

Reverend Panczuk was ordained on September 8, 1963. He has been the pastor at Immaculate Conception Ukrainian Catholic Church in Hamtramck, MI for 18 years.

Reverend Panczuk received his Ph.B from the University of Ottawa in Ottawa, Ontario in 1959. In 1961 he received his S.T.B. from the Pontifical Gregorian University in Rome, Italy.

Reverend Panczuk first served at St. Josaphat Monastery in Glen Cove, Long Island, NY from 1964–69 and was the director of St. Josaphat Retreat House from 1965–70. Reverend Panczuk served his country from 1969–81 as a U.S. Navy chaplain. Reverend Panczuk received his assignment to Immaculate Conception Ukrainian Catholic Church in 1970. His moving sermons are given in both English and Ukrainian languages.

Reverend Panczuk has demonstrated his deep commitment and love for his parishioners by helping the children of the Detroit area grow in many ways. Since 1980, he has served on my academy selection committee, and in doing so, played an important role in helping our high school students realize their dream of serving our country, and furthering their education.

Reverend Panczuk will continue to further and strengthen the hopes and dreams of the Ukrainian community worldwide with his appointment as the sixth Provincial-Superior of the Order of St. Basil the Great in Queens, NY.

Reverend Panczuk and his contributions will be greatly missed throughout the area. My dear colleagues, I ask you to join me, and the many friends of Very Rev. Bernard Panczuk, in extending sincere congratulations and warmest wishes to a person so very much appreciated throughout the Detroit community, and throughout the State of Michigan for giving so much to so many.

DR. ELIZABETH L. DOLES, RECIPIENT OF THE 1988 "LIVING LEGACY" AWARD

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. CONYERS. Mr. Speaker, I rise today to recognize the accomplishments of a great citizen from the State of Michigan: Dr. Elizabeth L. Doles. Dr. Doles has been selected by the National Caucus and Center on Black Aged, Inc. as 1 of 6 recipients to be honored for lifelong contributions to society.

Dr. Doles was born in Montgomery, AL in 1911. She received her doctorate of divinity from the International Institute in Orlando, FL, and is now the pastor of the Martin Chapel AME Zion Church in Mt. Clemens, MI. She has distinguished herself through her undying dedication to civic and charitable causes such as the NAACP, the Salvation Army, and the United Negro Council of Women.

For the past 14 years, Dr. Doles has devoted her efforts to a project that will always be remembered as an example of an individual's betterment of community: funding and development of a 99-unit senior citizen housing project, in Mt. Clemens, known appropriately as the "The Elizabeth Lee Doles Manor".

The Nation should take pause to note the special achievements and example set by this pioneer. Hearty congratulations are in order.

TRIBUTE TO LEON BOCK

HON. HAMILTON FISH, JR.

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. FISH. Mr. Speaker, I rise today to recognize an outstanding educator and a good friend, Leon Bock. After 4 decades as a public educator, Leon has decided to retire.

I first met Leon in 1972 at the dedication of the athletic complex for the Walter Panas High School, where he was serving as principal. In addition to serving in the New York City School system as a teacher, Leon's impressive credentials include a doctorate from Columbia University and a professorship at SUNY New Paltz.

The key to being a successful Representative in Washington is staying in touch with your constituency, especially youngsters. Leon has afforded me that opportunity at events such as Constitution Day. I am grateful to Leon for allowing me to participate over the years because it brought me in contact with students to discuss a wide array of issues. Clearly, it is critical at an early age to instill the civic responsibilities upon which this country was founded. Leon can be proud of the job he has done.

Leon has also been an active force at the State level to secure equitable funding for aid to education. In the 7 years he has served as superintendent of schools, every budget he crafted was passed. That is a remarkable achievement for the fourth largest school system in Westchester County. Maybe he could let the Congress in on his secret.

Education has benefited because of Leon Bock. James Madison once said, "a popular government, without information, or the means of acquiring it, is but a prolog to a farce or a tragedy—or, perhaps both. Knowledge will forever govern ignorance and a people who mean to be their own governors, must arm themselves with the power which knowledge gives."

Leon Bock has answered that call to arms. He has helped to meet the educational challenges of this community and has provided our children with this country's greatest asset—an American education.

Mr. Speaker, I congratulate Leon Bock on his achievements and send out my warmest best wishes for the future.

PERSONAL EXPLANATION

HON. HAROLD ROGERS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. ROGERS. Mr. Speaker, I was unavoidably absent during rollcall 442, on the motion to suspend the rules and pass H.R. 4646, the Federal Asset Disposition Association Dissolution Act. Had I been present, I would have voted "nay."

H.R. 4992: A HOPEFUL BEGINNING—BECOMES A NEW BEGINNING

HON. STEVE GUNDERSON

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. GUNDERSON. Mr. Speaker, today in the closing days of the 100th session of Congress, I am very proud that we have the opportunity to take a significant step with the passage of H.R. 4992, and in the words of Dr. I. King Jordan, president of Gallaudet University, offer "a hopeful beginning to finally achieving equal telephone access" for all Americans.

H.R. 4992, the Telecommunications Accessibility Enhancement Act, requires the General Services Administration [GSA], by regulation, to assure that the Federal Government's telecommunications system is fully accessible for the more than 24 million hearing and 2.8 million speech impaired Americans.

Passage of H.R. 4992 allows the Federal Government to fulfill its telecommunication commitment to all Americans. By enacting the Communications Act of 1934 Congress provided for the right of all Americans to have equal access to our Nation's telecommunications network. Thirty-nine years after the enactment of the Communications Act, sections 501 and 504 of the Rehabilitation Act of 1973 were enacted requiring the Federal Government to be accessible to job applicants and beneficiaries, and prohibiting discrimination on the basis of handicap in activities and programs conducted by our Federal Government. With the adoption of H.R. 4992, the Federal Government can fulfill its promise by significantly improving our Federal Government's telecommunications system for persons with hearing or speech impairments.

Cosponsored by 94 House Members, this bipartisan legislation before us today responds to our immediate telecommunication needs for full access to the Federal Government. It also provides us with a blueprint for the future. Full telecommunications access to our Federal Government will be achieved by eight provisions outlined in H.R. 4992:

One, continuing the existing Federal relay system for TTY/TTD users and employ appropriate staff.

Two, initiating an analysis and proposed regulations for modifying our Federal telecommunications system to achieve full access for hearing and speech impaired individuals, and report the findings to Congress.

Three, publishing and maintaining a directory of TTY's/TDD's and other devices used by Federal departments and agencies, including access numbers.

Four, adopting a standard logo signifying the presence of a TTY/TDD of other similar devices in Federal buildings.

Five, promoting research by both public and private entities to reduce the cost and improve the capabilities of communications devices and systems that provide access to hearing and speech impaired individuals.

Six, planning future changes to Federal telecommunications system to include technological improvements to telecommunications devices and systems for hearing and speech impaired persons.

Seven, directing the FCC to complete its existing inquiry regarding an interstate relay system for TTY/TDD users within 9 months of enactment.

And, finally, requiring Congress to establish policies under which Members may obtain TTY's/TDD's for use in communicating with hearing and speech impaired individuals outside Congress, and for use by hearing and speech impaired employees.

Realizing that H.R. 4992 has been on the fast track since I introduced it in the House of Representatives on July 7, 1988, I want to specifically extend my appreciation to my colleagues and their staff on the Telecommunications and Finance Subcommittee and the Government Operations Committee for their energy and time spent on perfecting this legislation.

To our former House colleague Senator JOHN MCCAIN, I congratulate him for his foresight in initiating this legislation in the other body and his strong commitment and leadership to improve access for all Americans to their Federal Government. It was a pleasure to work with Senator MCCAIN on this initiative.

I would be sorely remiss if I did not salute the real champions of this legislation, the-countless number of individuals throughout the country who actively campaigned in support of H.R. 4992. I especially want to comment the tireless efforts of the Gallaudet University community, the National Association of the Deaf, the National Technical Institute for the Deaf, the Alexander Graham Bell Association for the Deaf, Inc., and Telecommunications for the Deaf, Inc. The commitment and unwaivering support by individuals and organizations alike for this legislation made it possible for us to act on it today.

To conclude, I thank my colleagues for the sensitivity and support they have demonstrated toward this legislation throughout this process, and ask them to join me once more in supporting passage of H.R. 4992. Let us make Dr. Jordan's hopeful beginning into a new beginning for all Americans.

EMERGENCY NURSE SHORTAGE RELIEF ACT OF 1988

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. ACKERMAN. Mr. Speaker, the demand for registered nurses [R.N.'s] in the health care delivery system has never been greater than it is today, and the recent decline in enrollment in nursing programs suggests that the future supply of registered nurses will become even smaller. This is not a new revelation. A survey conducted in 1985 showed that 78.7 percent of all nurses were employed in the profession. The rest included older women who hadn't worked for years and were unlikely to return to the profession, and younger women taking time off to start families. Likewise, a 1986 survey found that while two-thirds of the Nation's 1.5 million R.N.'s who are employed in the nursing profession work in hospitals, about 83 percent of the hospitals in the United States had vacancies for R.N.'s. It doesn't take a genius to figure out that if most of all nurses are practicing their profession, and if fewer students are electing to pursue nursing training while the demand for nursing services is increasing, and if hospitals are unable to fill nursing positions, then our Nation is facing a critical shortage of registered nurses that must be addressed.

Available data suggests that two main factors have contributed to the decline in enrollment in undergraduate nursing programs. First, new, more rewarding and more lucrative job opportunitites have opened up for women, who still fill 97 percent of nursing positions. In addition, still unresolved are many chronic problems associated with the nursing profession, including low pay, compressed salary ranges, poor professional image, and low job satisfaction.

Currently, the Federal Government, through the Public Health Service Act, provides limited assistance for the education and training of nurses through institutional support to nursing schools in the form of grants and contracts, and through loans to students who demonstrate exceptional financial need. Remarkably, recent Reagan administration budget proposals for nurse training programs have ignored the potential crisis in health care delivery posed by the nurse shortage. Instead, they have reflected an expectation of future national surpluses of nurses and their improving geographic distribution, and the mistaken assumption that continued Federal aid for the training of such personnel is no longer required. The administration has even rejected the conclusions of its own Commission on Nursing, which recently issued an interim report calling the U.S. nursing shortage widespread. Congress has wisely rejected the administration's view and has consistently supported nurse training programs. However, much more remains to be done to provide a solution to the nursing crisis.

In response to the need to increase the supply of registered nurses, today I am introducing the Emergency Nurse Shortage Relief Act of 1988. This legislation addresses the issues surrounding three distinct aspects of the nursing shortage: retaining practicing nurses in the profession, providing incentives to encourage inactive nurses to return to practice, and promoting nursing as a professional career choice among the general population.

Recognizing the value of loans and scholarships to finance higher education, the measure includes a Nursing Scholarship/Loan Cancellation Program. Unlike current law, the program would not be strictly tied to financial need. Students who elect to work in areas where a critical shortage of nurses exists would be eligible to cancel all or a portion of the loan through service in a designated nurse shortage area.

Other key provisions provide grants for programs designed to increase the attractiveness of the nursing profession through innovative methods of providing for career advancement in the nursing profession, restructuring the role of nurses in health care facilities, and flexible employment options and benefits. This program could be an important vehicle for determining ways to increase the supply of nurses since these factors have been identified as contributing to the poor job image and resultant low job satisfaction reported by nurses.

In addition, the legislation authorizes the Secretary of Health and Human Services to make grants to and enter into contracts with public and nonprofit private entities to promote nursing as a career choice and to encourage efforts to educate the public about the value of nursing practice. In particular, the bill calls for efforts to promote the nursing profession in public secondary schools and to recruit nursing students from groups not traditionally well represented in the profession, including men, minorities, and individuals who are pursuing a second career.

In many nursing shortage areas, where hospitals struggling to care for patients with AIDS and other severe illnesses need to rely on foreign help, visa problems can be devastating to efforts to provide needed health care services. That is why the bill would allow for the extension of H-1 visas for registered nurses working in a nursing crisis area if their continuing employment will not adversely affect the wages and working conditions of registered nurses in the United States.

Finally, the measure includes a grant program to establish or assist programs designed to encourage nurses who are not currently practicing to reenter the profession. This would include providing seed money to schools to aid in underwriting refresher courses to help R.N.'s who have been away from nursing for several years to catch up on changes and advancements in the profession. It would also provide tuition assistance to students enrolled in educational programs designed to facilitate the reentry into the nursing profession.

Mr. Speaker, I wish to extend my deep appreciation to Claire Shulman, president of the New York Borough of Queens and a former nurse, who for many years has spoken out about the need to fully recognize and acknowledge the vital role nurses play in our health care and hospital operations. As an elected official from New York City, the Nation's largest urban area with hospitals reporting some of the highest levels of nursing vacancies in the country, Borough President Shulman has long advocated the adoption of programs to encourage more people to make nursing their career. Her assistance has been invaluable in formulating the measure I am offering today.

I urge my colleagues to join me in supporting this important measure to increase the supply of registered nurses.

FEDERAL GOVERNMENT SHOULD PAY ITS FAIR SHARE TO COUNTIES

HON. BYRON L. DORGAN

OF NORTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. DORGAN of North Dakota. Mr. Speaker, I am introducing today a bill to increase Federal payments-in-lieu-of-taxes to counties and other units of local government. This legislation is badly needed to make sure that local governments do not suffer when the Federal Government acquires local property and takes it off the tax rolls.

My bill addresses two different payment-in-lieu-of-taxes (PILT) programs. The first is administered by the Bureau of Land Management (BLM) and makes payments for land held by a wide variety of Federal agencies, including the Bureau of Reclamation, the Department of Defense, and the Army Corps of Engineers. This program has been almost fully funded in recent years, but the payment formulas are too low to begin with, leaving local governments short.

The second program is the Refuge Revenue Sharing Program run by the U.S. Fish and Wildlife Service. This program has adequate payment formulas, but unfortunately has been funded at only about 60 percent of the full obligations in recent years. As a result, counties and other jurisdictions which have private land acquired by the Federal Government find that the payments are substantially less than would have been paid in local taxes had the land stayed in private hands.

These problems have caused substantial hardship for counties and their residents, including school boards. When the Federal Government acquires property, local governments must increase the tax burden on everyone else to make up for what the Federal Government is not paying. Consequently, there is growing public resistance to government acquisition of land in many parts of my State, and probably in other parts of the country, as well.

My bill addresses this problem from several angles. First, the bill amends the BLM's payment formula to provide a payment of three-fourths of 1 percent of appraised value, if that is greater than the existing payments options. This formula is currently provided in the Refuge Program, so my bill simply puts the two formulas on a par. However, to address a concern voiced by some, the bill also limits the payment under this formula to no more than would have been received had the land been subject to local property taxes.

Second, the bill indexes for inflation the payment formula options based on a flat rate. For example, both the BLM and the Refuge programs provide a payment option equal to 75 cents per acre. Over time, however, the value of this option will erode with inflation, so the bill would require an annual adjustment of this payment rate to reflect inflation as measured by the Producer Price Index for Finished Goods.

Finally, the bill would solve the problem of inadequate funding for the Refuge Program by simply requiring that the necessary funds be spent.

Mr. Speaker, this is an issue of increasing importance to local governments and jurisdictions, especially in rural areas. North Dakota has the greatest number of National Wildlife Refuges in the country, as well as vast areas in National Grasslands. Most North Dakotans do not mind preserving these natural areas for the benefit of the country, but it should not be to the detriment of the ability of the local government to function.

A key to rural development is to see that county governments, local school boards, and others have the revenues they need and deserve to build and maintain roads, educate their children, offer social services, and so forth. In other words, we need to maintain and improve the quality of life and the business climate so that new businesses will locate in rural areas and present businesses will stay.

I urge my colleagues to support this legislation to give county and other local government jurisdictions their fair share for lands acquired by the federal government.

JOHN ENGLER

HON. CARL D. PURSELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. PURSELL Mr. Speaker, tonight a very special birthday celebration will be held in Lansing, MI to honor the majority leader of the Michigan State Senate, John Engler, who is turning 40.

A special song has been written by his friends to pay him tribute. I would like to extend greetings to Senator Engler and share this song with you.

JOHNNY ENGLER

(To the tune of Johnny Angel)

Johnny Engler
Johnny Engler
Johnny Engler
Johnny Engler—He's turning forty this year
John Engler's turning forty
And he's starting to show signs of wear
He's putting on some weight and losing some of his hair
Johnny Engler, on your birthday
Our respects we'll have to pay
So on October 12 at Kellogg Center we'll play
It's a party that we all must attend
We're going to spend some cash, so it will be a bash
There'll be music and dancing and food
So don't you dare be late
And try to find a date for
Johnny Engler, Senate leader,
I pray that some day we may see
How great a statewide leader Johnny Engler will be
Jimmy Blanchard had a party you know
They all ate shish ke-babs, just to save their jobs
But when Johnny turns the big four and 0
We'll show the Democrats exactly where it's at
With Johnny Engler
It's his birthday
We know you're going to want to go
So put on your dancing shoes
And send us some of your dough
Johnny Engler . . .
He's turning forty this year.

DISTRIBUTING NEEDLES IN NEW YORK CITY

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. RANGEL. Mr. Speaker, I want to take this opportunity to again express my deep opposition to the current plan by the city of New York to distribute free needles and syringes to narcotics addicts. While I commend the city of New York for continuing to seek creative ways to address the drug problem in general, and the spread of AIDS is particular among its citizens, this approach is one that, in my opinion, needs to be halted before it is implemented. Following through with such a plan will do nothing more than ease any concern drug addicts may have on becoming infected with AIDS. Such a program, if indeed implemented, will represent one of convenience for the users of illegal substances, rather than prevention, in the city of New York's assult on illegal drug usage.

As the chairman of the House Select Committee on Narcotics Abuse and Control, I remain convinced that the city of New York, and indeed the Nation, should concentrate all of its manpower and financial resources toward preventing our citizens from even having a desire to try any illegal drugs by educating them about the effects that such drugs can have on their personal and professional development, and cutting off the supply of such substances coming into the United States. An approach, such as the distribution program that has been proposed by the city of New York, represents not only a waste of manpower and financial resources, but also concedes defeat in what has not been a real "War on Drugs," but instead nothing more than a verbal assault, lacking both direction and substance, by too few key administration officials on too few occasions.

At this time, I would like to insert into the RECORD an editorial which recently appeared in one of my hometown newspapers, the Daily News, titled, "Halt Needle Madness Before It Kills." Well written and researched, I believe that it sheds light on a bad program that should be kept in the dark.

HALT NEEDLE MADNESS BEFORE IT KILLS

An insanity is about to be turned loose on the streets of New York unless reasonable men and women unite to smash it. That lunacy is a program to give narcotics addicts free needles and syringes, together with a license to escape prohibitions of possession of dope paraphernalia.

This proposal has been pressed by Dr. Stephen Joseph, the city health commissioner, and his staff. They say it's a modest, experimental program to try to fight the spread of AIDS among needle-users. Or to try to learn how to fight it. The program would also include some counseling and dispensing of condoms. It would be limited in scope. It would be knocked off it it didn't work.

What's wrong with all that?

The people who would get the needles and syringes are human beings—or once were. But they are overwhelmingly incapable of human discretion. They are insane with yearning for their junk. They are zombies or raging hulks or full-time professional criminals—in many cases all three, sequentially. They are going to use needles and heroin and cocaine and speed and every other poison and madness imaginable—anything they think might possibly relieve the unbearable hell of their yearning.

Anybody who has the faintest lingering doubt about that should have walked with Bob Herbert through his vivid, terrifying columns on the insanity of this scheme.

By providing needles on even a limited basis, the state—the government, society—would be saying "yes." Would be saying, in an unmistakable sense, that these killer substances are okay. That shooting up is at least understandable, acceptable. Government would be cooperating in narcotics use, by providing the means.

That would be an act of surrender in the War on Drugs. A confession of law enforcement's, of society's, impotence.

That would be a first step toward the decriminalization of hard drugs. Why should cops and courts crack down on something the government is condoning? Why, then, should an addict seek the painful relief of a rehab program?

Why should a kid say no?

How has this scheme gotten so far? It has some professional medical support, far from unanimous. It is patterned on a program in Holland, which already had legalized marijuana and started a free-needle arrangement before AIDS was known. Holland also has a legal heroin addicts' union, a lobbying force.

Local proponents argue that the program would collect useful data on AIDS transmission. But the Health Department's own 43-page study makes it clear that there can be no effective identification of users and no assurances of accuracy of data beyond the addicts' word. The card exempting an addict from arrest for paraphernalia possession could be passed to other addicts with no way of checking.

To Whom It May Concern: The last two paragraphs of this editorial read as follows:

"They must include Gov. Cuomo. They must include the prosecutors: U.S. Attorneys Rudy Giuliani and Andrew Maloney, District Attorneys Robert Morgenthau, Elizabeth Holtzman, John Santucci, William Murphy and Paul Gentile. They must include borough presidents—David Dinkins, Howard Goldin, Claire Shulman, Fernando Ferrer and Ralph Lamberti. Ant top feds: Local DEA boss Robert Stutman, Sens. Daniel Patrick Moynihan and Alfonse D'Amato, and Congress, led by Rep. Charles Rangel.

"And what about the people responsible for New York's children, everyone of whom is targeted for addiction by the narcotics industry? At the top: Schools Chancellor Richard Green, School Board President Robert Wagner, Jr., and United Federation of Teachers President Sandra Feldman.

"But finally it's up to Ed Koch."

I thoughout you might find this helpful. If you have any questions, please do not hesitate to contract me at 225-4365.

Thanks,

AUSTIN R. COOPER II,
Legislative Assistant.

Very serious questions are left unanswered:

How could any judge convict someone—anyone—of possession of narcotics if the state itself had provided, and legalized, the means to use them?

How, under the principles of equal protection and simple fairness, would tens of thousands of addicts—equally needful, equally at risk—be denied needles if other addicts were freely given them?

Why should the city and state not be held civily liable for damage or death from drugs if government provided the means for abusing them?

Mayor Kock expressed prudent skepticism about the idea long ago. He then deferred to Joseph. Koch alone could now stop it. He could—and must—simply order Joseph to desist Halt Cease. Others must cry out before it begins—or be held accountable.

UNITED WE STAND

HON. JOHN G. ROWLAND

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. ROWLAND of Connecticut. Mr. Speaker, I would like to bring to the attention of my colleagues a piece entitled "United We Stand" which appeared in the New York Times on October 11. This is the initiative of a group of leading private citizens in the Federal Republic of Germany who have organized themselves under the title of "Friendship in Freedom."

This initiative is designed to remind both Americans and Europeans of the common values of liberty and democracy which link our people together. In a time in which many changes in both the East and the West are occurring, this initiative is both highly important and highly welcome.

I insert the text of "United We Stand" in full:

UNITED WE STAND

[The founders of this campaign are leading citizens in the Federal Republic of Germany: Günter Diehl, Dr. Gernot Ernst, Alphons Horten, Thomas Kielinger, Marie-Elisabeth Klee, Dieter Kronzucker, Dr. Tyll Necker, Dipl. rer. pol. Wolfgang Oehme, State Secretary Friedhelm Ost, Ambassador Dr. Jürgen Ruhfus, General (Ret.) Johannes Steinhoff, Wolfgang Stresemann, Prof. Dr. Werner Weidenfeld, Admiral Dieter Wellershoff.]

Unity creates strength. And security. Forty years of cooperation in the Atlantic Alliance have achieved the longest peace in this century. And great prosperity. And the best chance for a truly peaceful future.

This outcome is no accident. It succeeded only because men and women on both sides of the Atlantic found the same values in freedom and democracy, and because they had the courage and the will to defend these values whenever they were endangered—either by threats from abroad or by complacency from within.

The German initiative "Friendship in Freedom" will make the upcoming generation aware of the meaning and value of European-American cooperation in our lives today.

The initiative was founded by citizens who, after suffering dictatorship and war, have experienced the value of friendship and freedom in their own lives and who therefore feel a special obligation to uphold these values for coming generations.

Freedom can't be taken granted. If we begin to take freedom for granted, freedom is in danger—whether from international terrorism or from a wall that divides the people of one nation from one another.

The value of the Atlantic Alliance is not only its success in the past; it is above all its possibility to shape the future. For the foreseeable future, America and Europe will remain the two largest and most innovative economic regions of the world—embodying both cultural and intellectual leadership and providing a model for a society which meets the needs of its citizens in the best possible way.

Americans and Europeans will reach their common goals if they remember what binds them together: the same idea of individual freedom.

"Friendship in Freedom". A German Initiative for European-American Relations, 1016 Sixteenth Street, Northwest, Suite 700, Washington, D.C. 20036.

HONORING EDUCATOR CHARLES THIER

HON. WILLIAM O. LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. LIPINSKI. Mr. Speaker, I rise today to recognize and honor an outstanding educator, Mr. Charles Thier, principal of Wilkins Junior High School and director of instruction of Indian Springs School District No. 109. Since joining the Indian Springs schools in 1961, Mr. Thier has truly distinguished himself as a model educator, being named Phi Delta Kappa Educator of the Year.

Mr. Thier's teaching and management style has been innovative and nontraditional, emphasizing the use of computers in the offices and classrooms and always encouraging excellence in his fellow teachers as well as his students. The results have been remarkable. Though many of this students are disadvantaged, all eighth grade graduates have scored a minimum of 1 year above grade level in all subjects on nationally normed achievement tests. These students have also won various academic, athletic, and musical awards and honors in local, State, and regional contests. Mr. Thier's faculty has also received various awards for their contributions, including three Governor's Master Teacher awards and Outstanding Science Teacher of Illinois for 1985, 1986, and 1987. Involvement of teachers and students in these programs has increased school spirit and morale as well as brought honor and prestige to the school districts involved.

Mr. Speaker, I am sure that my colleagues join me in thanking Mr. Thier for his contributions to the Indian Springs community, his obvious dedication to the education profession, and his concern for the children who will one day shape America's future.

SUNSET LAKE ELEMENTARY SCHOOL—NATIONAL AWARD OF EXCELLENCE

HON. HOWARD WOLPE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. WOLPE. Mr. Speaker, today I want to pay tribute to an elementary school serving my district—the Sunset Lake Elementary School of Vicksburg, MI. On October 1, 1988, the Vicksburg community will join in celebration to honor the school for having received the prestigious National Award of Excellence.

The Sunset Lake Elementary School is an example of how dedication and hard work can transform limited resources into excellence. Sunset Lake is a rural school that receives less than half the statewide average in funding, yet its students are provided with a nationally recognized curriculum.

As a former teacher myself, I understand that schools like Sunset Lake are not the result of just good teachers or bright students. Exemplary schools like Sunset Lake are built through a collective effort—one that is the result of parents, teachers, administrators, and the community all working together. It is the people of Vicksburg that have produced a school worthy of national recognition. I am honored to represent a constituency that demonstrates such dedication to the education of its young.

TRIBUTE TO JEROME BERENSON

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. LAGOMARSINO. Mr. Speaker, I rise today on behalf of Congressman GALLEGLY and myself to bring to the attention of my colleagues the honor being accorded to retired

Judge Jerome Berenson. The Ben Nordman Public Service Award was established in perpetuity by the late Ben Nordman who was recognized as a leader in his profession and the community. The annual award honors an individual who epitomizes the best in the legal profession and services to our community.

Judge Berenson served 20 years on the superior court bench, 15 of which he was presiding judge. He assumed a role beyond his obligation as a jurist and took the leadership responsibility in creating new programs for juvenile offenders in this county. Additionally he worked with others to develop a local facility to care for juvenile offenders where before they were sent out of Ventura County.

Judge Berenson is proud of his personal involvement in criminal and civil probono work and his leadership in the Ventura County Bar Association during the late forties and fifties. He encourage other lawyers toward the same goal. The need was greater then because there was no public defender's office or public interest groups to handle both the criminal and civil matters of a portion of the community.

He served as a member as well as president on the county board of education for a number of years. While a member of the board of trustees of Thatcher School, he was instrumental in developing grants and scholarships so that children of academic quality regardless of economic status might attend this highly regarded private institution.

Over the years, Judge Berenson has been closely allied with the interests of the city of Oxnard. He was a member and one-time chair of the committee that assessed the community needs and developed proposals which ultimately led to the creation of the Oxnard Community Center complex. In addition, he has served on a number of citizen advisory committees.

For 3 years he served as one of three lay members on the ethics committee at St. John's Hospital working with others to develop the rules of responsibility and policies for dealing with the difficult issues of treatment of the terminally ill and related concerns.

While city attorney for Port Hueneme, it was his inspiration to annex the SeaBee base, which has forever changed the financial fortunes of this community.

In recognition of Judge Berenson's leadership he was selected by the judicial council of the State of California to a committee to develop juvenile court rules for the State. This committee with his participation formulated the rules for the conduct of juvenile proceedings and sentencing which continues today as the basis for governing juvenile proceedings.

He has always been available without fee to service and civic organizations as a speaker and resource person on various topics including the intricacies of the county judicial system.

Please join us in congratulations to Judge Berenson on receiving this prestigious honor. It is richly deserved.

THE AGE DISCRIMINATION IN EMPLOYMENT WAIVER PROTECTION ACT

HON. AUGUSTUS F. HAWKINS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. HAWKINS. Mr. Speaker, I am introducing today and offering for the immediate consideration of the House, H.R. 5500, the Age Discrimination in Employment Waiver Protection Act of 1988. This critical legislation clarifies a somewhat technical, but nevertheless important civil rights law enforcement issue by defining the circumstances under which an individual may waive their rights under the Age Discrimination in Employment Act [ADEA] without the supervision of a court or of the Equal Employment Opportunity Commission [EEOC]. It is our hope, that in so doing, we will prevent the uniformed relinquishment, by millions of older Americans, of the important protections against employment related discrimination which we provide in the ADEA.

This action is made necessary by recent regulatory actions of the EEOC. The Commission has been responsible for administering and enforcing the ADEA since 1978, when Congress transferred that authority from the Department of Labor in the Reorganization Plan No. 1 of 1978. In July 1987, the EEOC issued a rule permitting older workers to waive their rights under the ADEA without either EEOC or court supervision, so long as the waivers were "knowing and voluntary." In support of its policy, the EEOC cited procedures used under title VII of the Civil Rights Act of 1964. Several Federal court of Appeals have held, with reference to the Commission's rule, that unsupervised waivers of ADEA rights are valid under certain circumstances.

When Congress passed the ADEA in 1967, it specifically incorporated the enforcement procedures from the Fair Labor Standards Act [FLSA]. Although Congress in its 1967 statute protecting older workers borrowed many substantive provisions from title VII of the 1964 Civil Rights Act, it expressly declined to adopt the enforcement procedures used in title VII. In 1978, the Supreme Court recognized the importance of Congress' decision in the case of *Lorillard* v. *Pons,* when it held that the enforcement procedures of the ADEA follow the FLSA and not title VII. As the Supreme Court recognized, "the selectivity that Congress exhibited in incorporating provisions and in modifying certain practices strongly suggest that but for those changes Congress expressly made, it intended to incorporate fully the remedies and procedures of the FLSA". This, of course, includes section 16(c) of the FLSA, which requires Federal supervision of the waiver of any rights.

There is ample policy justification for the differential approach to waivers adopted by Congress, Under title VII, which prohibits employment-related discrimination on the basis of race, sex, religion, and national origin, the prospect of a waiver almost never arises until after there is an actual controversy between an employer and a protected group member. Typically, one or more individuals who have experienced an adverse employment action file a charge or advise the employer that they believe they are victims of discrimination. At that point, a lump-sum settlement in exchange for waiver of rights is likely to involve informed participation by both sides. By contrast, ADEA claims often arise from a group termination, layoff, or early retirement where the employer offers unilaterally to make a lump-sum payment. The affected employees have not filed a charge and are not involved in any dispute with their employer. Indeed, at the time the offer is made, the employees—who are unaware of who else is being terminated and who is going to replace the terminees—may be totally unaware of any potential ADEA claim. Because these employees have no reason to be on guard to protect their rights, an unsupervised waiver threatens to undermine their basic statutory protections.

Following the issuance of EEOC's final rule, Congress immediately expressed grave concern that the rule was without legal foundation and contrary to public policy. In October 1987, the Senate unanimously adopted an amendment to the fiscal year 1988 EEOC appropriations bill, suspending the rule for a year. Following House and Senate hearings on the issue early in 1988, the Senate Appropriations Committee acted in June of this year to extend the suspension of the rule for another year as part of the EEOC's fiscal year 1989 appropriations bill. The continued suspension then received strong bipartisan support and was agreed to by the House.

Although Congress has acted to prohibit the EEOC rule from taking effect from October 1988 through September 1989, there is general agreement that a long-term legislative solution is necessary. The bill which I introduce today achieves that objective.

Briefly, the bill provides that an individual may not waive his or her rights under the ADEA without EEOC supervision except in settlement of a "bona fide claim" defined in the legislation as a discrimination charge filed with the Commission or a written allegation of age discrimination submitted to the employer. This procedure is consistent with current charge resolution practices under title VII of the Civil Rights Act of 1964. The bill also sets forth minimum conditions for an unsupervised waiver under the ADEA to be valid.

The bill stresses that, as a general rule, unsupervised waivers are not valid in the context of early retirement incentive or other employment termination programs which provide enhanced benefits to a group or class of employees. Indeed, the abuse, and potential for abuse of older workers in such circumstances is the principal basis for our concerns regarding unsupervised waivers. Employees offered such benefits, will not have filed a charge with the EEOC or have any dispute with their employer and, as a consequence, will have no reason to be on guard to protect their rights. These employees need and should have the protection of the ADEA. This bill reaffirms Congress' earlier statutory requirement that the waiver of rights under the ADEA cannot occur without the supervision of the appropriate Federal agency.

This legislation provides a narrow, but effective solution to a difficult, complex, but extremely important problem. It maintains existing levels of protection for older workers while permitting employer appropriate flexibility in dealing with its workers. I urge your acceptance of and support for this important legislation.

SALUTE TO BOB AND JUDY CARBONELLI OF NORTH HALEDON, NJ

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. ROE. Mr. Speaker, back in my home State of New Jersey we are indeed fortunate to have countless numbers of people who express their concern for their community by giving of their time and effort to make that community a better place to live. In my area of northern New Jersey, two such people who have given outstanding service to their community will be honored for their efforts.

I am speaking of Bob and Judy Carbonelli of North Haledon, who will be honored by the Mother Cabrini Society of Paterson, NJ, with a dinner dance on Sunday, October 23, at the Tides of North Haledon, for their endless efforts on behalf of their community.

Mr. Speaker, I know this event will be a source of great pride for the Carbonelli family. Bob's mother, Grace, was a founder of the Mother Cabrini Society and Bob's brother, Matthew Carbonelli, was the society's "Man of the Year" in 1983. I know that Bob and Judy's daughters, Robin and Melissa, and their grandson, Ronnie, are extremely proud of Bob and Judy for receiving this honor.

The list of activities in which Bob and Judy Carbonelli have been involved is a long one and demonstrates the multitude of ways in which they have enriched their community. Bob has been a member of North Haledon Unico for the last 16 years and served as vice president for 6 years. He was an integral part of such Unico activities such as the local Columbus Day program, children's Christmas parties, blanket drive funds, and children's carnivals. Because of his great ability to get things done, he was chosen as chairman of the North Haledon ambulance drive, the National Scholarship Program, National Cooley's Anemia Program, National Mental Health Program, and two "Fifties Dance" fundraisers. For his many tireless efforts, he was chosen as Unico's "Man of the Year" in 1978 and 1984, and was given the North Haledon Unico Humanitarian Award.

Mr. Speaker, among his many community and professional endeavors, Bob Carbonelli has been a Passaic County constable for 12 years and vice president of the Passaic County Constable Association for the last 4 years. In his duties as Passaic County constable, Bob Carbonelli has become well known for his dedication, diligence, and his foresight in bringing about many positive changes that have directly benefited the Passaic County Constables' Association. In addition, along with his multitude of community and professional pursuits, Bob Carbonelli is also a charter member of the Italian Heritage Association of North Jersey.

Mr. Speaker, I appreciate this opportunity to present a brief profile of Bob and Judy Carbonelli of North Haldedon and the Carbonelli family. It is peple such as these who truly make a difference in their community, and who make their State and our Nation a better place to live. Mr. Speaker, I invite you and our colleagues to join me in saluting two such fine Americans, Bob and Judy Carbonelli of North Haledon, NJ.

THE CHILD CARE SERVICES IMPROVEMENT ACT OF 1988

HON. JAMES M. JEFFORDS

OF VERMONT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. JEFFORDS. Mr. Speaker, I am pleased to introduce the Child Care Services Improvement Act of 1988.

This bill incorporates a number of policy changes which I believe must be made if we are to develop a comprehensive, balanced, and adequate response to meeting this Nation's child care needs.

Titles I and II of this bill embrace, for the most part, the Act for Better Child Care, as ordered reported from the Education and Labor Committee. The "ABC" bill authorizes a new program of matching grants to the States to assist them in meeting the child care needs of low- and moderate-income families and for additional activities all of which are designed to ensure the availability of affordable, quality child care.

My bill makes several important changes in the committee-reported ABC bill. These changes prohibit any child care provider who is receiving Federal funding under the terms of the Act for Better Child Care from discriminating on the basis of religion against any child in the provision of child care services or any individual in employment providing such services. I believe that strong nondiscrimination language is necessary in any new initiative in which Federal assistance is provided. Moreover, I believe that the nondiscrimination language included in title I is totally consistent with the policy reflected in the recently enacted Civil Rights Restoration Act and will reduce the likelihood of successful constitutional challenges in the years ahead.

Title II establishes a National Advisory Commission on Public and Private Cooperative Child Care Efforts. The purpose of this Commission is to develop public policy recommendations that will encourage a much greater employer involvement in providing child care services as an integral workplace benefit to employees. Clearly, the private sector must assume a major role in meeting our current and projected child care needs.

Title III incorporates the "Small Business Cooperative Child Care Act of 1988." Under this act, the Small Business Administration is authorized to award a services of pilot program grants to assist groups of small businesses in providing child care services for their employees. Prospective grant applicants must be willing to match the Federal grant. Awards may not exceed $250,000. The carry out the small business child care grant pilot program, $1,600,000 is authorized to be appropriated annually for fiscal years 1989 and 1990.

In addition to the pilot grant initiative, title III would provide additional tax incentives for qualified small businesses to operate child care centers. Eligible small businesses would be afforded a 10-percent investment tax credit for property used to provide child care as well as a 10-percent investment tax credit for operating costs incurred in providing child care services.

While many larger companies are moving ahead in providing child care services for children of their employees, very few small businesses have found it economically feasible to offer comparable services to their employees. In view of the fact that a majority of those in the workplace are employed by small businesses, we must do more by way of providing these employees with the same services as are enjoyed by many of their counterparts who are employed by larger employers.

Title IV of the Child Care Services Improvement Act of 1988 makes major changes in several provisions of the current Internal Revenue Code that are designed to provide greater tax relief to those who must incur dependent care expenses if they are to be gainfully employed.

At present, an individual who incurs child care expenses as necessary in order to work is entitled to a nonrefundable tax credit against any taxes owed. A taxpayer with an adjusted gross income of $10,000 or less may claim 30 percent of child care expenses incurred, with the maximum dollar amount of the credit capped at $720 for one child. If the taxpayer has two or more dependents, then both the percentage of expenses that qualify for the tax credit and the ceiling on the actual dollar amount that may be claimed are doubled. Since this is a nonrefundable tax credit, individuals with no tax liability or a very limited tax liability do not benefit from this credit. Both the percentage of expenses that qualify for dependent care tax credits and the maximum dollar amounts of credit are reduced as the individual taxpayer's adjusted gross income increases. When a taxpayer's adjusted gross income exceeds $28,000 annually, the percentage of expenses qualifying for the credit is capped at 20 percent of expenses incurred and the maximum dollar amount of the credit is limited to $480 for one child. Again, if the taxpayer in the higher income brackets has two or more children for whom he or she incurs child care expenses as necessary for gainful employment, the ceilings on both the level of expenses and the dollar amounts of the credit are doubled.

Under the terms of the legislation that I am introducing today, the child care tax credit would be fully refundable. This would benefit individuals with lower earnings regardless of their tax liability. Equally important, my bill would increase the percentage of child care expenses that would qualify for this refundable tax credit from the current 30 to 50 percent for individuals earning $15,000 or less annually. Currently, the maximum benefit extends to individuals with earnings of $10,000 or less. As an individual's adjusted gross income increases, the 50 percent would be reduced by

1 percent for each full $1,000 by which adjusted gross income exceeds $15,000. In no event would the percentage drop below 20 percent. The maximum dollar amount of credit allowable would increase from $720 to $1,200; the minimum dollar amount of credit allowable would remain at $480. In the case of an individual with two or more dependents, the ceilings on both the percentage of expenses qualifying for the credit and the dollar amount of the credit would double.

A new category of respite care expenses would be added to those qualifying for a refundable tax credit. These expenses could be claimed for tax credit purposes whether or not they were necessary for the taxpayer to be gainfully employed. Respite care expenses include expenses for the care of a dependent who is under the age of 15 for whom the taxpayer may be entitled to a deduction for personal exemptions for dependents, a dependent who is physically or mentally incapable of caring for himself, or the spouse of the taxpayer, if he is physically or mentally incapable of caring for himself. Respite care expenses would apply, on a limited basis, to costs incurred for qualifying individuals for dependent care services outside of the taxpayer's home. The maximum amount of respite care services for which credit could be received is $1,200 with respect to one qualifying individual in a taxable year and $2,400 in the case of two more qualifying individuals.

Many of us are troubled by continuing reports of the difficulties which child care providers are encountering in their efforts to obtain comprehensive liability coverage at reasonable premium costs. In my judgment, the lack of affordable, comprehensive liability coverage remains a major barrier in the expansion of reasonably priced child care services.

Title V of this legislation authorizes the formation of child care liability risk retention groups within each of the States. Administered at the Federal level by the Department of Health and Human Services, States desiring to receive child care liability risk retention assistance would apply to the Secretary and submit a State plan identifying the State's "lead" agency and assurance that all participants in the State's risk retention group are child care providers who are licensed or accredited under State or local law or standards. States must also indicate how they will ensure maximum participation by family based child care providers. The purpose of this title is to provide Federal seed money to the States so that they have sufficient resources to initiate and, further develop from their own resources, readily affordable liability insurance coverage to child care providers.

An authorization of appropriations in the amount of $100,000,000 is provided for in fiscal year 1989; carry over authority for use of these funds by the States through fiscal year 1991 is provided for.

Title VI would eliminate the excess earnings test for earnings derived from providing child care services for most Social Security beneficiaries. Presently, Social Security beneficiaries between the ages of 65 and 69 may earn up to $8,400 annually and still receive their full Social Security benefits. Similarly, beneficiaries under age 65 may earn up to $6,120 annually and continue to receive full benefits. However, if retirees' earnings are in excess of these limits, they lose $1 in Social Security benefits for every $2 in earnings that exceed the earnings limitations.

By eliminating the earnings test for most Social Security retirees, we will enable a number of our senior citizens to become involved in providing child care services to family members and others in the community. In so doing, they will be assisting in meeting our overall child care needs, while supplementing their retirement resources without suffering any reductions in well-deserved Social Security benefits.

Finally, title VII of this measure requires the Secretary of the Treasury to include, along with the Federal income tax forms that are sent to each taxpayer, a publication that explains fully all of the Federal income tax benefits that are available not only to individuals who have dependent care costs but also to employers who provide dependent care benefits to their workers. In view of the fact that dependent care is an area of very real interest to millions of American families, I firmly believe that we have an obligation to make sure that this information is readily available to and presented in a format that will be most useful to the public.

Finally, title VIII requires the General Accounting Office to conduct a study of the extent to which very low-income families utilize the benefits provided under the ABC initiative as well as new Tax Code benefits authorized under title IV of this bill. In addition, the GAO would be required to identify any factors that contribute to underutilization of these new benefits by low-income families in meeting their child care needs and make recommendations to the Congress for modifications in the delivery system of these benefits to those in greatest need of child care assistance.

Mr. Speaker, I believe that now is the time for the Congress to come to grips with a comprehensive, well-balanced legislative initiative that will adequately address our immediate and long-term child care needs. The bill that I am introducing at this time includes a number of policy issues that I believe must be considered and acted upon, if we are to successfully meet the needs of American families for affordable, accessible and quality child and dependent care services.

A BILL TO AUTHORIZE TRANSFER OF TITLE TO SAND HILLS STATE FOREST TO THE STATE OF SOUTH CAROLINA

HON. JOHN M. SPRATT, JR.

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. SPRATT. Mr. Speaker, today I am introducing legislation authorizing the transfer of title to the Sand Hills State Forest, located in Chesterfield County, SC, from the U.S. Department of Interior to the State of South Carolina. Senator THURMOND is introducing identical legislation in the Senate. This transfer has been approved by the Department of the Interior, and the terms of transfer embodied in the bill also meet with the Department's approval.

The bill is being introduced late in this session because the State of South Carolina and the Department of the Interior have only reached final agreement within the last few days on the terms of transfer. While there are only a few days remaining before adjournment, this legislation is important to South Carolina, and if it is at all possible, I urge its approval before this session ends.

The Sand Hills State Forest was purchased by the Federal Government under the Bankhead-Jones Act in the early 1930's, but in 1939 it was leased to the South Carolina Forestry Commission [SCFC], which has been responsible ever since for reclaiming and managing the land. When the 46,000-acre tract was purchased, the land was desolate and barren. The property, which had virtually no merchantable timber, was largely comprised of abandoned fields, rutted hills, and tracts of scrub oaks and pine. The South Carolina Forestry Commission began an intensive program of forest management and also improved the area as animal habitat. Abandoned fields were reforested and game food patches were interspersed throughout the area. Today, the once-baren lands have become pine forests and animal habitat for various species of wildlife including turkey, duck, and deer. They are home also to one endangered species, the red cockaded woodpecker.

I support transfer of title to the State for two important reasons. It makes de jure what is already de facto: for the past 50 years, South Carolina has had virtually exclusive control over the forest's management and operation. The transfer will merely acknowledge the State's role in running the forest. Second, the State has earned the right to acquire title because of its record for 50 years of reclaiming these lands and managing the forest.

While the State has earned the right to hold title, the State has also agreed to provide compensation to the Federal Government in return for the transfer. This compensation package is the product of long negotiations between the SCFS and the Interior Department which insisted on reasonable consideration. Under this bill, the State agrees to provide free fire protection for 50 years to a 46,000-acre wildlife refuge still owned by the Federal Government and adjacent to the forest. The State has also agreed to conduct prescribed burning and to provide reforestation services for up to 25,000 acres of the wildlife refuge. The total value of these services has been estimated at $2,637,000.

The South Carolina Forestry Commission has proven its commitment to sound forest management and environmental protection. It pledges to maintain those same practices once it takes title. But we do not need to rely on the State's promises. The legislation itself mandates that the State can continue to operate the forest only for public purposes and it requires the forestry commission to follow those Federal policies designed to protect endangered species on the land. The penalty for the State's failure to follow these policies is strong but effective: the land will revert to the Federal Government.

This bill is fair and reasonable. By granting South Carolina legal title, it rewards the State for a job well done and recognizes that South

Carolina has virtually owned and controlled the forest for 50 years. It also contains strong environmental protection by ensuring that the State will continue to follow the same policies in operating these forest lands that it has pursued in the past.

I urge my colleagues to support the bill and earnestly hope that it will be enacted before our adjournment.

CASPAR WEINBERGER CALLS FOR THE WITHDRAWAL OF THE ABM TREATY

HON. JIM COURTER

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. COURTER. Mr. Speaker, I would like to insert into the RECORD an article written by Caspar Weinberger that appeared today in the Wall Street Journal. Mr. Weinberger strongly recommends withdrawing from the ABM Treaty, an issue which is not, unfortunately being adequately addressed in the Presidential campaign.

The article follows:

IT'S HIGH TIME TO WITHDRAW FROM ABM TREATY

(By Caspar W. Weinberger)

In spite of all the progress, the Strategic Defense Initiative is in danger of slow strangulation by a combination of inadequate congressional funding and blind submission to a treaty, the ABM Treaty, that has never served the national interest of the U.S. but has become a kind of totem to which all are supposed to offer continued support.

Now is the time to continue full speed ahead to develop, test and deploy strategic defenses. The presidential election should be a national referendum on the necessity to deploy strategic defenses. The critical question is whether the U.S. will be able to defend itself and is allies against Soviet offensive missiles, or whether it will give up and let the Soviets win the race for defenses against missiles while maintaining their lead in building modern and accurate offensive weapons.

The 1972 ABM Treaty is a prime example of a flawed strategic concept that its supporters hopes would enhance nuclear stability between the U.S. and the Soviet Union. But the treaty was based on two assumptions that were not borne out: that there would soon be deep reductions in offensive weapons, and that both parties would give up defenses (except for one not very effective system).

The Soviets upset both assumptions. They never stopped their buildup and modernization of offensive arms, and they never abandoned defensive strategies. In fact, immediately after signing the ABM Treaty they began to develop the same strategic defenses they so violently object to when pursued by the U.S. They also deployed, and then modernized, all of the defensive systems permitted under the ABM Treaty, and they violated that treaty by constructing the huge radar at Krasnoyarsk. These developments undermine and make obsolete the ABM Treaty, and it is time that the U.S. acknowledges this by withdrawing from the treaty.

There has been continuing debate-arcane and largely irrelevant—about what the ABM Treaty allows and does not allow with respect to testing and development of defensive systems. We know it does not permit deployment. The primary purpose of most Americans who urge "strict construction" of the treaty is to kill SDI. The real ABM debate should be on whether it is in the national interest of the U.S. to exercise the withdrawal clause and pull out of the treaty.

The U.S. does not have to violate the treaty to deploy SDI; under the provisions of Article XV, it has a right to withdraw by giving six months' notice. The U.S. would not violate the treaty by exercising its rights under that treaty; that is why withdrawal clauses exist.

But the value of SDI must be viewed in phases. Deterrence, strategic stability, and arms reductions all would benefit from a first phase that is an integral part of the full system. SDI would offer an important element of protection for all the West, and would reduce the possibility that the Soviets would launch an attack in the first place. By deploying SDI, the U.S. would greatly complicate the calculations of Soviet planners.

Above all, SDI opens the way to deep reductions in offensive nuclear weapons with a margin of safety. If the U.S. and the Soviet Union agreed to destroy a portion of their ballistic missiles as they deployed defensive systems, they would be sending each other signals that neither side was seeking a strategic advantage. That opportunity could be lost if the U.S. continues to adhere to a treaty that bans deployment of SDI while the Soviet Union continues to violate it by pursuing its own strategic defense program.

If the U.S. withdraws from the ABM Treaty and if Congress funds SDI adequately, the U.S. could begin deployment in the mid-1990s. The U.S. already has made enormous progress on strategic defense:

In an industry, university and Strategic Defense Initiative Office experiment, a rocket payload was launched last December into the upper atmosphere, proving that electrical conductors can operate in space without insulation. This break-through means that it is possible to reduce the design weight of SDI space platforms by one-quarter or more. Such a weight-saving measure means in turn that SDI platforms can be placed into orbit more cheaply and efficiently than previously imagined.

The U.S. also has had substantial success in developing a capability to find, track and precisely point a high-energy laser beam at a target hundreds of miles away. Work on the control and stabilization of the laser beam continues, while the prototype target sensor and computer have successfully tracked a thrusting missile.

Perhaps most exciting of all are the results of a study, sponsored by the SDI Office, of ways to improve the space-based interceptor missile. The foremost goal of any space-based defensive system is, of course, military effectiveness, and in the past, cost models of space-based interceptors have shown that system to be expensive. Thus, the SDI Office needed to slash costs, while retaining real military capability.

Efforts to cut costs have succeeded. Lt. Gen. James Abrahamson, director of the SDI Office, believes the cost of space-based interceptors can be reduced dramatically, to $20 billion from a previous estimate of $75 billion. This could be accomplished by redesigning the craft that houses the interceptor missiles, applying new, lightweight technologies, and adopting innovative production and manufacturing techniques.

In the end, the only question is whether the U.S. has the will and clarity of vision necessary to provide the security that SDI brings. If it does, the next steps are for Congress to fund the program adequately and for the U.S. to withdraw from the ABM Treaty.

RADON

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, October 12, 1988, into the CONGRESSIONAL RECORD:

RADON

When a construction engineer in Pennsylvania started work at a local power plant in 1984, he had no idea that he would set in motion a chain of events resulting, four years later, in a general health advisory from the Public Health Service and the Environmental Protection Agency (EPA). The engineer repeatedly triggered the radiation alarm when he entered the nuclear power plant. Since the plant was still under construction and no radioactive materials were yet present, EPA investigators went to the worker's home, where they found radon levels 650 times the average.

What is radon? Radon is an invisible, odorless, radioactive gas formed when natural uranium in rocks and soil decays. It occurs naturally all over the earth, but is a problem only when it accumulates inside mines or buildings.

What is the health threat? The danger posed by radon was discovered years ago when uranium miners were found to have high rates of lung cancer. The cancer was traced to excessive levels of radon gas present in uranium mines. Radon gas particles can be inhaled into the lungs. When these particles decay, they release radiation that damages lung tissue and can cause cancer.

The EPA believes that excessive levels of radon in homes may be responsible for as many as 20,000 lung cancer deaths in the U.S. annually. The combined effects of smoking and radon exposure are especially dangerous. The EPA recommends that remedial measures be taken to reduce exposure when radon levels exceed the "action" level of 4 picocuries (a scientific measurement of gases) per liter of air. A year of exposure to that much radon is comparable to the radiation received from 200 chest X-rays. The EPA estimates that one in three homes in the U.S. has radon above the action level.

Is the threat being exaggerated? Some scientists believe that the EPA is exaggerating both the health threat and the number of homes likely to be affected. Some researchers estimate that only 6–10% of American homes have a radon problem. Critics point out that little research has yet been done on the effects of radon in the home. Although the EPA assumes the risk to be equal to that posed by radon in mines, other researchers say that assumption fails to take into accoumt differences in air quality between mines and homes. Other countries advise remedial action only when radon levels are more than five times greater than the EPA action level.

Who needs to test? Although the EPA has recommended that all homes be tested, others believe this is unnecessary. Only 17 states have been tested by the EPA so far. Some states had elevated radon levels in only 1% of their homes, but other areas were more susceptible. North Dakota, for example, found high levels in 63% of its homes. Indiana was found to have one of the higher rates of elevated radon levels, with an estimated 26% of homes affected.

Homes with basements or sump pumps, energy-efficient (airtight) homes, and those built on granite, limestone, or black shale have a greater likelihood of elevated radon. Levels can vary greatly within small distances, so neighbors' readings can be much different.

How is a home tested for radon? Available tests range from $10 for a do-it-yourself kit to $150 for testing by an outside company. The most common, and least expensive, tests are the charcoal canister and alpha track detector. The annual average of radon present in a home is the important measure in determining the potential health risk. Since more radon is present in winter when windows are closed than in summer, test results from a measurement taken during winter can be two to three times higher than the annual average. However, EPA recommends that the test be done during winter and the annual average estimated from that result.

What should be done if randon levels are high? If high levels of radon are found in a home, the EPA advises that the homeowner perform a second test before investing in corrective repairs. Corrective measures range in cost from a few hundred dollars to as much as $2,000. Such measures include: sealing cracks in concrete walls and floors, covering sump pumps, using plugs in floor drains, covering sump pumps, using plugs in floor drains, covering exposed earth in crawl spaces, increasing house ventilation, and funneling gas away from the foundation before it enters the home. Preventive measures can also be taken during construction of a new home.

Homeowners should beware of dishonest companies offering to help them test for, or correct, radon problems. Several Indiana residents last year alerted the State Attorney General's office to workers performing false radon tests and offering "repairs" at inflated prices. Obtaining the results from an EPA-approved test takes at least several days. Homeowners should be suspicious of anyone offering "instant" results. Regional EPA offices and state health departments have lists of firms that have passed EPA proficiency exams for testing.

What is the Federal Government doing to help? The EPA is conducting research and demonstration programs to study further the health threat of radon and to test methods of removing the gas from buildings. The Department of Energy also conducts radon research. Bills are pending in the Congress that would authorize the EPA to provide grants and technical assistance to states to help deal with radon; require the development of model construction standards to control radon levels in new buildings; and conduct a survey of schools to determine the level of radon contamination and demonstrate ways to lower high concentrations.

The EPA has several booklets available explaining in more detail the health hazards posed by radon, how to test for it, and how to correct any problems that are found. The EPA can be contacted at: EPA Region 5, 230 South Dearborn, Chicago IL 60604. The phone is 312-353-2205.

THE JOINT MANUFACTURING OPPORTUNITIES ACT OF 1988

HON. RON WYDEN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. WYDEN. Mr. Speaker, today I and several of my colleagues from the Small Business Committee are introducing a bill which could give small U.S. manufacturing firms new strength to compete on a global basis.

I am joined in sponsoring this legislation by Mr. LAFALCE, chairman of the Small Business Committee, Mr. MCDADE, the committee's ranking minority member. My cosponsors include Mr. MAZZOLI, who is a senior member of both the Small Business and the Judiciary committees, and my fellow Small Business subcommittee chairmen, Mr. SKELTON, Mr. ECKART, and Mr. HATCHER.

Mr. Speaker, this bill addresses a very fundamental question facing our Nation: How do we stop the current hemorrhage of U.S. manufacturing jobs?

During the last 7½ years, the United States has suffered a net loss of approximately 700,000 manufacturing jobs; and unless we act to amend underlying problems, analysts expect that over the next couple of years another 100,000 to 150,000 jobs in basic industries will disappear.

This is an economic tragedy with staggering implications for our national competitiveness. The United States remains a great wellspring of new technology and innovation, but our inventions and ideas too often are being applied in overseas manufacturing plants where operating costs are lower.

The smaller the manufacturer, the more difficult are these problems. To fight off foreign competition in U.S. markets, even the smallest companies must undertake significant investment for plant modernization, worker retraining, and the development of new products and customers.

I believe that through partnerships our small manufacturers can make themselves more competitive, at a lower cost, by spreading investment and risk. One such avenue is the flexible manufacturing network. This European industrial model emphasizing sharing between companies of manufacturing equipment, product development and research, and marketing was investigated by the Subcommittee on Regulation and Business Opportunities, which I chair, in a September 13 hearing.

Flex networks in Europe have allowed small companies to form consortia to pursue real business opportunities, and have led to an industrial renaissance in some regions. Witnesses representing a number of U.S. industries expressed interest in this kind of informal joint venturing.

But uniformly they also expressed concern that they would be prosecuted under the Clayton Act for antitrust violations, even though the combinations suggested by small-scale, joint manufacturing and market development networks would not necessarily be anticompetitive.

Mr. Speaker, this bill provides no one with a safe haven from antitrust enforcement. It does, however, direct the courts to use a rule of reason in determining if a given flexibile manufacturing network of firms is anticompetitive, rather than assume that any combination violates the Clayton Act.

The legislation limits entry into such networks. No network combination could absorb more than 20 percent of its relative market. Individual partners in these combinations could not employ more than 500 workers, each.

And there is nothing, in this bill that hinders the Government's crucial ability to combat price-fixing.

In short, this is a limited adjustment of antitrust laws. But I believe the payoff for the Nation's manufacturers, their workers, and our general economy, could be terrific. I urge my colleagues to support this effort.

H.R. 5094 THE DEPOSITORY INSTITUTIONS ACT

HON. CARROLL HUBBARD, JR.

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. HUBBARD. Mr. Speaker, I want to share a letter I have recently received from my longtime friend William L. Hale, III, president of the Exchange Bank in my hometown of Mayfield, KY, which I feel will be of interest to my colleagues in the House of Representatives.

Bill Hale expresses a number of important reasons why he opposes H.R. 5094, the Depository Institutions Act. H.R. 5094 may be considered by the full House before adjournment of the 100th Congress.

I hope my colleagues will take the time to read and consider Bill Hale's excellent and timely remarks. A copy of his August 17, 1988, letter is as follows:

THE EXCHANGE BANK,
Mayfield, KY, August 17, 1988.

Congressman CARROLL HUBBARD,
Rayburn House Office Building,
Washington, DC.

CONGRESSMAN CARROLL HUBBARD: I am writing to strongly oppose the Depository Institutions Act of 1988, H.R. 5094, which passed the House Banking Committee 30-20 on July 28th. I feel this proposal is anticompetitive, anti-consumer and threatens the dual-banking system.

There are a number of reasons I oppose this legislation, but the four most critical reasons are:

First, under Title I, Securities Provisions, the marketing restrictions and capital requirements are structured in such a way to prevent most banks from offering these services. The Firewall provisions of Title II would further diminish the banks' ability to serve their customers.

Second, the insurance and real estate provisions in Title III and Title V respectively, contain provisions which would negatively impact the dual-banking system. If the federal government is going to decide who can and who can not sell insurance and how they can do it, they should first start with the insurance industry. This provision would deny the consumer a competitive market for insurance coverage which would ultimately lower their premium cost.

In Kentucky, our state legislature in 1986 gave state banks the right to have real estate subsidiaries for the purpose of ownership and managment. This bill would eliminate that right if the state chartered bank is purchased or owned by a bank holding company. This again threatens the dual-banking system.

Third, the so-called "consumer provisions" in Title IV pose a threat of uncontrollable fraud through check cashing to the banking industry. It would also increase the cost to the consumer and put the Federal Reserve in the credit allocation business through Community Re-investment Act examinations. This is a major step toward turning banks into public utilities.

Fourth, the postponement of the 7 percent cap on non-bank banks for two (2) years again, puts banks at a major disadvantage.

Kentucky currently has one of the best banking industries in the country based on performance. This bill, however, poses a major threat to that status. While increasing our cost of doing business (which will ultimately be borne by the customer) and placing overly burdensome restrictions and regulations on our industry, Congress continues to "turn our competitors loose." The insurance real estate, securities and retail industries are all involved in the banking business yet none of this bill applies to them.

I urge you to oppose this bill. Thank you for giving this matter your serious consideration.

Respectfully,

William L. Hale, III,
President, The Exchange Bank.

LEE CARLE: RADIO NEWSMAN PAR EXCELLENCE

HON. RON de LUGO

OF THE VIRGIN ISLANDS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. DE LUGO. Mr. Speaker, the U.S. Virgin Islands is fortunate to have one of the finest radio newsmen anywhere, Lee Carle. When news is breaking in the Virgin Islands, our people tune in to Lee Carle.

Lee is a veteran broadcaster who came to St. Thomas in 1954, and has built a reputation for his ability to get the news first and get it out on the air for his listeners to keep up with events. In fact, I worked side by side with him throughout the 1950's when I was also in the radio business in my home islands, and have many fond memories of our work together.

Lee was profiled in a recent issue of the People's Choice, an excellent new weekly newspaper for the Virgin Islands. Lee has fully earned the praise that he is getting in our local media, and he deserves even wider attention. For that reason, I am submitting this profile from the People's Choice so that others around the country will know of Lee's accomplishments.

Text of the profile follows:

SPOTLIGHT ON: LEE CARLE

(By Karl H. Callwood)

When it comes to radio journalism, one name pops up regularly in Virgin Islander's minds . . . that of Lee Carle.

Lee Carle first arrived on St. Thomas in 1954 after responding to a newspaper ad that read "How would you like to live and work in paradise?" Having an irrepressible urge to travel, he sent an audition tape and was accepted from a field of a hundred applicants.

At that time Mr. Carle was 23 years old and didn't even know where the V.I. was. Previous to that point in his life he'd done a stint in the Navy in Norfolk Virginia as a control tower operator. He had always wanted to go into broadcasting and did so upon his honorable discharge and returned home to Albany, New York. His job there was as entertainer D.J. At one point he was a dancer and singer and had decided "I would be the next Fred Astarie."

Lee Carle's talent for entertainment can be most recognized when talking to him on a one-to-one basis. He's easy going, relaxed and quite confident in his competence. A friendly conversation can often lead to a snap trivia question or two or a masterfully done voice impersonation. He always has several jokes ready in the form of a true story verbalized in his own unique manner. He often reminds you of Higgins on Magnum P.I., but where the drawling Higgins would put one to sleep, Lee Carle's resonating broadcaster's voice rivets your attention to his every humorous remark.

And there's no doubt that Lee Carle commands attention. While some critics would argue that he's a news monger or may dislike his ad lib style of reporting, none can doubt his mass appeal to the V.I. audience.

Once established on the island, Lee Carle found that his services were desired in many places. He worked part-time as M.C. and social director at the V.I. Hotel and also at WIVI (now WSTX) after a good friend, Ron De Lugo, left WSTA for that St. Croix station. A conflict of interest caused him to leave WSTA and join the WIVI staff full time. Rather than travel to St. Croix, he operated a transmitter he'd set up in Grand Hotel on St. Thomas. While at that site he trained 3 or 4 Virgin Islanders, including his current boss and now owner of WSTA, Addie Ottley.

Through a long series of events he once again ended up at WSTA, but later left for the states to be with his wife, the former Jewel Jeppesen, who gave birth to their daughter, Athena.

While stateside, Lee Carle worked several jobs, including hosting "Monitor" an NBC weekend program. But he had a longing to return to the islands and fianlly did so in 1966 when he returned to WSTA.

The road was still to be rough, however, and he left for WBNB radio, now WVWI, where he and Rick Ricardo for 18 years combined to form an unstoppable news team.

Recently, WSTA made him an offer he couldn't refuse and he returned home to be news director and chief engineer.

"Interestingly enough, Lee Carle said, "The first thing I did on the island was the first newscast I'd ever done."

He likes to look back to the day he first set foot on the Island. After a six and a half hour flight by propeller plane he was met at the airport by a man with a holstered gun at his waist and a badge on his chest. Lee Carle's first thought in a strange land was "Now what did I do.?"

That gun-toting man turned out to be William M. Greer, his new boss, a top Federal Communications Corporation radio engineer and founder of WSTA.

Lee Carle was then led to a bush—covered shack in Frenchtown where he met a bare-chested Ron DeLugo sitting with feet up on a monitor board in the control room.

"He was tracking a record," Lee Carle said, "And through the open window you could hear chickens and dogs."

His first task at the station was to read the news, but he was stumped by the lack of a teletype machine. Upon inquiry he was handed a two-day-old New York Times and was instructed to broadcast from that.

The radio industry has changed since those days and news, with partial credit going to Lee Carle, is now up to the minute and fresh from all around the world.

In his long career, he's been cited many times by governors and senators for his continuous efforts to keep the public informed. His crowning achievement, he thinks, was the coverage of the Angelina Laura cruise ship fire in Charlotte Amalie harbor. Most recently, he was chosen by C-Span to be written up in a book listing 104 people nation-wide who commonly use or have had an impact on C-Span's growth as a major network.

IN TRIBUTE TO THADDEUS J. DULSKI

HON. HENRY J. NOWAK

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. NOWAK. Mr. Speaker, I deeply regret to inform my colleagues of the death of Thaddeus J. Dulski, a former chairman of the House Committee on Post Office and Civil Service, who served for 16 years as a Representative from western New York.

The following article that appeared today in the Buffalo News provides a detailed account of Thad Dulski's distinguished career of public service on behalf of the Buffalo, NY, area and the Nation.

[From the Boston News, Oct. 12, 1988]

Thaddeus J. Dulski, Ex-Congressman, Dies

(By Mike Vogel)

Thaddeus J. Dulski, an eight-term congressman who kept the common touch and became a living legend in Buffalo's Polish-American community, died Tuesday evening (Oct. 11, 1988) in Roswell Park Memorial Institute after a lengthy illness. He was 73.

A highly respected member of the House of Representatives during a period that spanned the national traumas of the Kennedy assassination, Vietnam and Watergate, Dulski was a veteran and powerful chairman of the House Post Office and Civil Service Committee when he unexpectedly announced his retirement in 1974.

The congressman who had once made cancer research a pet cause had suffered in recent years from leukemia.

In his 16 years in Congress, he earned the respect of colleagues and of the national organizations that dealt with his committee. In overseeing both the nation's postal service and the government employment structure that set pay scales and benefits for every federal employee, he wielded an enormous amount of power—and wielded it fairly.

He was not a man who gloried in the trappings of power. His ranking House position in Washington merited him a limousine and chauffeur—but in the considerable amount of time he devoted to his home district, he preferred to drive his own somewhat-battered car.

He was a man of the people—and an unintentional master of the malaprop and the occasional legend-spawning mishap.

Once, at a memorial service, Ted Dulski is said to have expressed the sorrow of the multitude: "as we stand here with heavy hearts and borrowed heads." He also once shared a lighter moment with "this vast anarchy of friends," and praised a doctor for all the times he labored late into the night touring neighborhoods "on his mercenary rounds."

Perhaps the best summation of his career was given by the congressman himself, after a silver-tongued opponent had dominated a television debate during one of his election campaigns. Dulski stunned supporters by praising the man at length and declaring that his opponent was the kind of man who would be valuable to have in public office—but then paused and added simply, "Just remember—Dulski delivers."

The next day, and for the rest of that successful campaign, "Dulski Delivers" was the phrase the people remembered.

Dulski was born Sept. 27, 1914, into a Polish immigrant family that already was well-known on Buffalo's Polish East Side. His father, Jozef, was one of the founders of the Chopin Singing Society and worked as a man's clothing salesman—the man to whom almost all of Polonia's families came to outfit their sons in First Communion suits.

Dulski attended Canisius College and the University of Buffalo, then became an accountant and tax consultant. In 1940, he became an agent for the Internal Revenue Service—a seven year career that was interrupted for World War II service.

In 1947 he resigned his IRS post to return to private practice as an accountant, but in 1951 he was called back to public life to serve as a special agent for the Federal Price Stabilization Administration. In 1953, aided by his father's door-to-door efforts and his own intensive canvassing of his neighborhoods, he won election to Buffalo's Common Council as the Walden District councilman, representing an area now known as the Filmore District.

After two terms as the district councilman, he won election as Councilman-at-large in 1957 and served as a member of the Finance Committee and chairman of the Taxation Committee.

In 1958, he entered the 37th U.S. Congressional District race as a Democrat and won a narrow victory over Republican James O. Moore, Jr., who later became a State Supreme Court Justice.

His election to the 86th Congress started a 16-year career that took the Democrat-Liberal lawmaker through some of the most dramatic times of national goverment—the 1963 assassination of President Kennedy, the increasing American involvement in Vietnam and the bombing of Cambodia, and the trauma of the Watergate investigations and Nixon's resignation.

Against that backdrop, Dulski served on the Veterans Affairs Committee and moved quickly to a senior post as chairman of the Post Office and Civil Service Committee. He also became one of the best vote-getters in Buffalo political history.

"He was one of the people," said Daniel J. Kij, president of the Polish Union of America and a man who ran unsuccessfully against Dulski in 1962.

The campaign, he recalled, brought ample evidence of Dulski's populist touch, as well as a measure of the congressman's Washington clout; Kij found himself watching from the reviewing stand as Dulski rode the route of the Pulaski Day Parade in an open convertible with a friend he'd brought to town—President Kennedy.

"We never spent more than $5,000 on a congressional campaign, and we won them all," long-time Dulski administrative assistant James McCabe once said.

Dulski was serving as a member of the Post Office Committee when he was rocketed into the prestigious chairmanship in 1967; two more senior Southern conservative Democrats who had voted with liberal Democrats on the Civil Rights Bill lost reelection primaries, clearing the road.

"I called him at home and said, 'Congratulations, ranking member,'' recalled Stanley Franczyk, a longtime Dulski friend and former radio newsman who read the first wire reports on the primary results. "He was flabbergasted. Then, a few weeks later, I called him again and said, "Congratulations, Mr. Chairman.' "

As a congressman, Dulski was influential in a number of bills on a wide range of interests.

He was a co-sponsor of the National Cancer Act in 1971 and campaigned even after retirement for increased cancer research funding; it was his legislation that turned the U.S. Postal Department into the semi-independent Postal Service; he prepared annual federal pay bills, including one that provided a substantial pay raise for the presidency during Nixon's administration; he helped lead efforts to gain funding as well as national landmark status and protection for the Wilcox Mansion and later served it on the board of the Theodore Roosevelt Inaugural Site Foundation; he supported veterans' bills and improvements in the conditions and pay of air traffic controllers, and backed development of Route 219 into a major north-south highway link in this area.

He also co-sponsored and helped pass the first Captive Nations Bill in 1959, and last year his long devotion to that cause was again evidenced as he took over the chairmanship of the local Captive Nations Committee.

He was awarded Poland's Order of Merit, one of that nation's highest civilian awards, for his work in promoting Polish culture and gaining recognition for the 500th anniversary of the birth of Polish astronomer Nicolaus Copernicus; he won the Taras Shevchenko Freedom Award of the National Captive Nations Committee, and was honored by the Polish Arts Club of Buffalo, the Polish-American Congress, the Am-Pol Eagle and the Anti-Defamation League of B'nai B'rith.

He also won honors from the Manhattan-Bronx Postal Union, the UAW-AFL-CIO Association, the Polish Professional Businessmen's Association, the UAW Retired Workers Council, the National Star Route Carriers, the American Legion, the Buffalo Joint Council of Longshoremen, the Buffalo Southside Men's Club, the American Veterans of World War II, the Disabled American Veterans and many other organizations. This February, he was named "Man of the Year" by the Adam Mickiewicz Library and Dramatic Circle.

Franczyk, however, has stronger memories of Dulski's common touch.

"He was great at poking around in his basement kitchen," he said, "And he'd go out in the backyard with his brother-in-law, and smoke Polish sausage. One time, I think the neighbors called the Fire Department."

Dulski also occasionally took some czarnina, a traditional Polish duck's blood soup, back to Washington with him. On one flight back to Congress, he tucked a container in the pocket of a light-colored suit; "It sprang a leak," Franczyk recalled, "and the flight attendant said, 'you're bleeding!' "

The smaller incidents endeared him to friends, but it was the larger accomplishments in legislation that have earned him lasting honors.

In 1987, more than a dozen years after the Peace Street resident's retirement from Congress on Jan. 3, 1975, the government office building at 111 W. Huron St. was named the Thaddeus J. Dulski Federal Building—the first federal building named for a Polish-American, and a tribute to the congressman who had pushed hard for funding of its construction years ago.

The Thaddeus J. Dulski Community Center at 129 Lewis St. was named in his honor in 1975, shortly after his retirement. He had remained active in politics, following up his 1974 work as Western New York campaign coordinator for Hugh L. Carey with a stint as Gov. Carey's local liaison representative. More recently, he had been a vocal supporter of Mayor Griffin.

When he announced his retirement, congressional colleagues from both parties responded with a lengthy and heartfelt round of accolades. Dulski himself was more succinct; "I've done my job," he said.

He was an amiable, hard-working lawmaker. When he retired, another congressman observed, "He has no enemy among us."

He took pride in his folksy mannerisms, and delighted in being known as a "people's congressman."

"I know a lot of people, businessmen, politicians, just plain working people," he once told a reporter. "I like them and I think they like me. I have sympathy for their problems. And I've tried to help them."

Dulski is survived by his wife, Elizabeth; three daughters, Suzanne Dulski, Christine Dulski and Diane Tyler, and two sons, Anthony and Leon, all of the Buffalo area.

A Mass of Christian Burial will be offered Saturday at Queen of Peace Catholic Church, 1955 Genesee St. The time has yet to be determined. Burial will be in Mount Calvary Cemetery, Cheektowaga.

The family will be present from 7 to 9 p.m. today and 2 to 4 p.m. and 7 to 9 p.m. Thursday and Friday at Pacer Funeral Home Inc., 2275 George Urban Blvd., Depew.

The facts, the legislative record, are impressive. Thad Dulski was a leading proponent of the postal reform effort, a persistent advocate of adequate and sustained Federal funding for cancer research and an effective spokesman for our Nation's veterans and Federal employees, and in the forefront of domestic and international issues of particular interest and concern to Polish-Americans.

Legislative accomplishments aside, Thad Dulski will be remembered most fondly because of his qualities as a human being. The Buffalo News article offers a portrait of those qualities that endeared this man to so many.

Dulski "kept a common touch * * * not a man who glorified in the trappings of power * * * a man of the people * * * amiable, hard-working."

You could select a broad range of positive adjectives to describe Thad Dulski and what he meant to his many friends and the community.

Most simply, he was a gentle gentleman, a man of his word, a loyal friend.

I offer my sincere condolences to his wife, Betty, and their children and the consolidation that many of their fellow citizens share their grief and their deep sense of loss.

INFANT MORTALITY

HON. BEN ERDREICH

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. ERDREICH. Mr. Speaker, Our Nation's unacceptably high rate of infant mortality is a national tragedy, one that we can ill afford and well avoid. I would like to tell my colleagues in the House about a field hearing held in my district in Birmingham, AL on Monday, October 10, 1988 that addressed the high human and financial cost of inadequate prenatal care, and the steps that can be taken to significantly lower the infant mortality rate in the State of Alabama and the Nation.

The field hearing was held at the Jefferson County, Alabama Health Department, which is surrounded by the University of Alabama at Birmingham's Medical Center, one of the greatest medical facilities in the world.

Alabama Representative Claude Harris and I invited the House Select Committee on Hunger to hold the hearing in Birmingham, and we were joined on the congressional panel by our colleague, Mississippi Representative Mike Espy, who is a member of the select committee.

We heard from a distinguished panel of witnesses who presented their expert opinions and offered their suggestions on what can be done to improve infant survival rates in Alabama and the Nation.

It is shocking to learn that a child born in Japan, Finland, Hong Kong, Ireland, Australia, Canada, Singapore, or any of 12 other industrialized nations has a better chance of surviving his or her first year than does a child born in the United States. Worse yet, I am sorry to say, figures for 1987 indicate that the State of Alabama is among the top five States in the Nation with an infant death rate that is higher than the national average.

Of the 59,397 births in Alabama in 1986, 11 percent, or about 5,765, received inadequate prenatal care, and of that number 1,078 births were to women who did not receive any prenatal care.

Alabama's high infant mortality rate is directly linked to the high percentage of women who receive inadequate or no prenatal care.

Every day millions of dollars are spent in Alabama and across the Nation to save babies born too early, too small, or too sick to have the healthy start they deserve in life. Thousands of infants die at birth, and those who do survive often suffer permanent disabilities.

America currently spends over $2 billion a year on health care for low birthweight babies during their first year of life. And the lifetime costs of caring for a low birthweight infant can reach some $400,000 per child. This cost, by the way, does not include the ongoing costs that must be shouldered by every community due to unemployment, underemployment or long-term care for the permanently disabled.

Preventive steps, it is estimated, can save $3 for every $1 spent. Certainly, Ben Franklin's adage, "an ounce of prevention is worth a pound of cure," should be followed here.

We in Alabama are making great strides in reducing the number of low birthweight babies, and Governor Hunt and the State legislature have targeted infant mortality as a top priority for the State.

Jefferson County, AL is the home of a world-class medical center at the University of Alabama at Birmingham. We have the State's most sophisticated and accessible health care services. Our county health department has seven health centers that provide information and referral services to women needing prenatal care.

The department also provides pediatric care for infants and children in the community, and works closely with Cooper Green Hospital and U.A.B.'s medical facility. And due to a recent Medicaid waiver, the Department is now offering expanded social support and case management to those most in need.

Yet, surprisingly, with all these services available, Jefferson County's infant mortality rate is still 13.5 deaths per 1,000 live births, higher than the State's 12.2 deaths per 1,000 live births.

That is why I asked the Select Committee on Hunger to come to Birmingham to hear firsthand from our panel of maternal and child health experts on what can be done to assure that adequate prenatal care is affordable and available to all pregnant women. It is my hope that this hearing will help us make meaningful headway in developing new strategies to improve infant survival rates across the Nation, and I urge my colleagues in the House to continue the steps being taken by Congress to assure that our Nation's youngest and most vulnerable citizens get off to a healthy start.

INTRODUCTION OF H.R. 5510, THE LOCAL TELEVISION SERVICE ACT OF 1988

HON. NORMAN F. LENT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. LENT. Mr. Speaker, along with my distinguished colleague, Thomas J. Downey, I am pleased to introduce today the Local Television Service Act of 1988. Introduction of the bill will mark the first step in correcting a longstanding problem relating to local television service to the citizens of Long Island and other similarly situated areas.

According to the 1980 Census, Nassau and Suffolk Counties included a population of 2.6 million people, which exceeded the population of Dallas, Miami, Cleveland, Pittsburgh, Seattle, and many other major cities. And like those major cities, Nassau and Suffolk Counties have been designated by the Census Bureau as a primary metropolitan statistical area ("PMSA"), a designation which reflects the Census Bureau's determination that Long Island has its own distinct social, economic, and political needs and interests.

However, unlike major cities, the Nassau/Suffolk County PMSA does not have any very high frequency ("VHF") television station assigned to it. This is a significant omission. The VHF television channels, 2 through 13, generally have much stronger signals than ultra high frequency ("UHF") stations located on channels 14 through 69. As a result, VHF television stations generally can serve larger population centers and, given the economic dynamics of television, generate the level of advertising revenue that can support expansive programming.

There are other PMSA's throughout the country which have become major population centers and, like the Nassau/Suffolk County PMSA, do not have a locally assigned VHF television station. Four of these PMSA's have populations in excess of 1 million: the Bergen-Passaic County PMSA in New Jersey; the Anaheim-Santa Ana PMSA in California; the Riverside-San Bernadino PMSA in California; and the Fort Lauderdale-Hollywood-Pompano Beach PMSA in Florida.

This situation seems to be at odds with the command of section 307(b) of the Communications Act of 1934 that the distribution of broadcast licenses throughout the country be "fair, efficient and equitable." However, the discrepancy is easily explained as historic happenstance.

The Federal Communications Commission assigned television channels to communities throughout the country in 1952. Not surprisingly, the FCC generally assigned the VHF stations to large cities. Since it was sparsely populated and deemed to be an adjunct of New York City, Long Island received none of the available VHF assignments. Instead, they were given to New York City.

Times have changed, however, and what may have been fair in 1952 may no longer be appropriate. The Nassau/Suffolk County area, like many suburbs of major cities, has grown in size and become a distinct socioeconomic political unit in its own right. Consequently, if television allocations were made today, there is no doubt that a VHF television station would be assigned to the Nassau/Suffolk County PMSA as well as to other PMSA's of more than 1 million persons.

Unfortunately, there are technical and financial limitations to making that kind of assignment today. On the one hand, it would be impossible to establish a new VHF television station for these areas without causing impermissible interference to existing television stations. On the other hand, it would be unfair to require an existing licensee to relocate its station in a different community simply because the FCC did not anticipate population shifts when it first assigned television licenses in 1952.

The Local Television Service Act of 1988 is designed to address this longstanding problem in a fair and equitable manner. The bills does not require any existing television broadcaster to move its station. Rather, the bill offers an incentive to the broadcaster to make such a move on a voluntary basis. More specifically, if an existing television licensee in a major city is prepared to reallocate its channel or hyphenate it with a community in an underserved PMSA, the broadcaster would be insulated from any competing challenge—which is not permitted as a matter of course under the Communications Act—for one 5-year term. This provision thus mirrors the approach which Congress took in 1982 when it added a new section 331 to the Communications Act to provide New Jersey with its first VHF television service.

In addition to providing this mechanism for a voluntary shift by an existing broadcaster, the Local Television Service Act would direct the FCC to conduct a study and propose other ways in which underserved PMSA's might receive improved service from VHF television stations. The bill further directs the FCC to report its findings to the Congress within 12 months after the law is enacted.

The importance of this proposed legislation cannot be overestimated. Community assignments have paramount significance in defining the program service obligations of television stations. A broadcaster owes its primary service obligation to its community of license. Areas outside the community of license receive only secondary consideration. This observation is confirmed by television monitoring studies of the Long Island Coalition for Fair Broadcasting, a broad-based civic organization which has invested considerable time, energy and money to improving television service on Long Island in the last 9 years. Those monitoring studies demonstrate that New York City-based television stations understandably provide far greater coverage to the issues and events involving New York City than to the outlying areas in Long Island.

We should not limit the television service available to citizens living in areas like Nassau and Suffolk Counties, as well as in other similarly situated areas, simply because the FCC could not have anticipated in 1952 the dramatic population shifts that would ensue in later years. For this reason, I hope that this measure will receive favorable and expeditious consideration by the Congress.

MOVIE MOBSTERS: ASSASSINS OF TRUTH

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. DORNAN of California. Mr. Speaker, I would like my colleagues to share with you the following article, by Father Vincent Miceli concerning the disastrous movie, "The Last Temptation of Christ." Father Miceli's eloquence speaks for itself. In an age which has lost the respect for the sacred, Father's article is quite appropriately titled:

"MOVIE MOBSTERS: ASSASSINS OF TRUTH"

"The Last Temptation of Christ" is a movie that portrays a Christ who never existed. It is a depraved caricature of a fictitious Christ that has poisoned the fevered imagination of Martin Scorsese for years. Hence the movie should really be entitled "The Fall of Martin Scorsese and Universal Pictures into the Sin of Sexual Blasphemy."

Publilius warns man that: "One man's wickedness may easily become all men's curse." A movie that assassinates the divine, holy character of the God-Man, Jesus Christ, as he has been accurately depicted in history, in the Gospels and the living tradition of thousands of years of the Catholic Church, is a scandal that can lead millions into the slavery of falsity and moral corruption. That is one solid reason for protesting this maliciously distorted portrayal of the Savior of mankind who is loved and worshiped by hundreds of millions all over the world. After all, Christianity teaches us that "we are our brothers' keepers," not in the sense of forcing upon them our beliefs, but in the sense of warning them, out of fraternal charity, of the deadly poison that threatens the salvation of their souls which is contained in this morally rotton film.

The silly argument is made by gullible defenders (clergy and laity) of the movie that the producers hoped to make Christ more human, more like the rest of us, by showing him having sexual intercourse in a dream with Mary Magdalene. This fantasy is supposed to happen in the subconsciousness of Christ as he hangs dying on the cross. More about this psychological stupidity later. Was the misdirected naive goodness really in the minds of the producers?

Dear Reader, don't you believe it for a moment. The desire to degrade Christ, to shock and offend viewers is proven by the hasty, fearful, last-minute cut of some sexually sick lines. In one of them Jesus says to Mary Magdalene; "God sleeps between your legs." In another he says of John the Baptist: "His tongue felt like a burning coal in my mouth." This obsession with immoral sexual activity indicates that the makers of this abominable film are incapable of raising their mental fixations to any reality higher than the biological cravings for carnal pleasure to be obtained in any manner whatsoever.

One of those who has surrendered to this obscene fascination with sex is Fr. Andrew Greeley. In his article in the New York Times for Sunday, August 14, entitled "Blasphemy or Artistry," he depicits a sexual fantasy for Christ that rivals that of the Movie. One wonders if he was a consultant in making "The Last Temptation." Contemplate for a moment this coarse fantasy of this priest-writer of pornographic novels.

Could Jesus desire a woman? Desire, for example, Mary, the sister of Lazarus, who sat at his feet and looked up to him in mute adoration? Might Jesus have imagined kissing and caressing her, taking off her clothes and fondling her breasts, and finally taking her with firm and gentle love to his bed? . . . The proper question is rather how he could not have desired her if he had a male human nature. If such feelings were sinful, Jesus would not have experienced them; but is desire itself sinful or the behavior that might result?

There are several observations needed here which will reveal the vast theological ignorance of Fr. Greeley concerning the human nature and the divine mission of Jesus. The Son of God, the Second Divine Person of the family of the Holy Trinity from all eternity, with His Father's and Holy Spirit's concurrence, having the joy and blessedness of the Divine Trinity always before Him, nevertheless, in the words of St. Paul, "having joy set before Him, chose the cross" in order to fulfill God's plan to save mankind from sin, Satan and eternal death. Divine Love for man does such mind-boggling achievements. But, unlike the rest of the human race, His Virgin Mother excepted, Christ who "emptied himself of His divine glory and blessedness" in order to take on the nature of a slave, did not take on fallen human nature. His Mother too possessed perfect human nature, never having been under the yoke of sin or Satan. Now in perfect human nature there is no concupiscence, no possibility for fantasizing over immoral sexual impurities. Mary had absolutely no orientation toward nor desire for sexual pleasure. In fact she told Gabriel: "How can this be? I do not know man." She consented to become Christ's mother only if her virginity was preserved.

Mary is unique among all women; she was conceived and born full of grace, as the Angel testified. Hence her whole mental and affective concentration was on pleasing God with total dedication of her whole being eager to perform God's will in a life of virginity. Hence the distractions of concupiscence which are the effects of fallen human nature never entered her consciousness. Moreover, she had a unique and sublime mission, to become the Mother of the Son of God who chose to assume human nature from her. As for her Son, the God-Man, Jesus Christ, St. John the Evangelist tells us that Jesus gave to those who believed in His name, a gift he possessed in His Incarnation and Birth. Those who believe in His name are born again in Baptism the way He Himself miraculously conceived and born from Holy Mary. He was born "not of blood, nor of the will of the flesh, nor of the will of man, but of the will of God." Jesus is conceived by the power of the Holy Spirit, hence he possessed perfect, all holy human nature. There was no sexual activity in his incarnation or birth. Then too Jesus the Incarnate Son of God had the most holy and sublime of all imaginable human missions. "My meat is to do the will of Him who sent me." Thus Christ was totally dedicated in his human consciousness of being the Suffering Servant of the Lord, the Lamb of God destined not for pleasure of any kind, least of all sexual, but for a life of total self-sacrifice, even unto the horrible death on the cross in order to multiply the family of God among the children of Adam in the life of grace known as the communion of saints. Hence there was not the slightest sexual desire or orientation in Christ, the God-Man. He came to redeem men, to establish the kingdom of God on earth in preparation for the glorification of that kingdom in heaven. He did not come to multiply natural life through sexual activity. The majority of men and women in this world are called to the noble vocation of marriage and of being honorable parents. Like his Holy Mother, His total consecration of his body, soul, mind and will was to fulfill perfectly His Father's plan for the divinization of mankind. That he did this, allowing no distractions from the pale pleasures of the body, he testified to with his last words on the cross before he yielded up his human soul to His heavenly Father: "It is consummated!" That is I have perfectly fulfilled your Holy Will, O Father!

Christ assumed human nature, which was infinitely beneath his divinity so as to eradicate the sentence of eternal death hanging over the head of mankind. To do this he had to assume a human nature which was capable of suffering and of dying. In his divine nature the Son of God cannot suffer or offer sacrifice. St. Peter reminded the first Christians of this redemptive vocation of Christ when he wrote:

> Unto this you have been called, because Christ also has suffered for you, leaving you an example that you may follow in his steps: who did no sin neither was deceit found in his mouth . . . who himself bore

our sins in his body upon the tree that we, having died to sin, might live to justice: for by his stripes you were healed. For you were as sheep going astray, but now you have returned to the shepherd and the guardian of your souls.

The heresy in the perverted fantasizing of Fr. Greeley and the Moguls at Universal Pictures is that both create a Christ who has assumed a fallen, sinful human nature. Hence both wrongly presuppose that to be perfectly human one must have sexual desires, fantasies and indeed, engage in sexual activity. I am reminded of the Holy Spirit sending Philip the Deacon to convert the Ethiopian eunuch who was struggling with a prophecy of Isaias about the Suffering Servant of God and bringing him into the kingdom of God. Having human faculties capable of performing certain actions does not demand that to be human one must activate those faculties. There is a reasonable freedom allowed by God in the decision to activate or refuse to activate in a perfectly just decision some perfectly good faculties of human nature. They are accidental perfections, not essential properties of naturally good human nature. Many saintly celebites have vowed virginity in order to serve God and their fellowmen more generously. Rather than becoming less than human, they have become divinely human for grace builds on mere nature and exalts it.

The question Fr. Greely and Universal Pictures should have asked themselves is this: "How could the Second Person of the Holy Trinity, after putting aside the infinite glory, joy and blessedness he enjoyed from all eternity in the Family of the Holy Trinity in order to serve man as a slave, to suffer and die a most ignominious death in order to make men, in the words of St. Peter, "a chosen race, a royal priesthood, a holy nation, a purchased people . . . calling them out of darkness into this marvelous light," how could this all-holy, divine person be distracted from his sublime mission by the concupiscible allurments of human sexuality? This is the same divine Christ who exhorted humans "to be holy as your heavenly Father is holy." The same God-Man who told men that "the flesh is weak; the flesh profits nothing." The same Incarnate God who proclaimed that "I have come that they may have life and may have it more abundantly," supernatural life, of course, that wells up into enternity. This is the same Divine-human legislator who warned that "anyone looking after a woman to lust after her has already committed adultery in his heart." Here Christ is condemning the type of sexual fantasy that Hollywood would make him desire. This is the same Jesus who said to the Sadducees concerning those who attain heaven: "The children of this world marry and are given in marriage. But those who shall be accounted worthy of that (higher) world and of the resurrection from the dead, neither marry nor take wives . . . for they are equal to the angels and are sons of God, being sons of the resurrection." Now Jesus is the King of that heavenly paradise; he is of that world, not of this world, though he entered this world to help man conquer the world, the flesh and the devil. Do the makers and devotees of this sick movie consider the saints in heaven to be less human because they will never be sexually active, but will be forever like the glorified angels there? It would seem that these ribald persons would perfer to dwell in hell in the next life where sex crimes are still very much in vogue. St. Athanasius, defender of the divinity of Christ, writes in his Discourse "On the Incarnation of the Word," "The reason why the Word took flesh himself was that he might make of himself a Victim for other men. The children of all men are flesh and blood, he became one of them in order to destroy by his death the lord of death, that is, the devil and to free those whom fear of death had everywhere made slaves."

So much for the depraved, twisted doctrine that sanctions sexual vice as a means of making the God-Man, or any man or woman, more human. It is clear that the makers of this movie love a spice of sexual wickedness. In their obsession with this wickedness they use man's weakness and attraction toward sex to reduce all men and women to being slaves to a common fascination and a common craving for sexual acts of immorality.

There is another whopping stupidity that these Mobsters of the Media have foisted upon their unsuspecting audiences. And be assured that the title "Mobsters of the Media" is an accurate designation of this crooked-thinking breed. For their filthy film will be shown in movie churches all over the world; it will rake in millions of dollars as it leads millions in its audiences to the death of their souls, the second death that Christ warns ends up for eternity in hell. We know that Mobsters of the Rackets kill bodies, usually limited to members of their warring factions. But Mobsters of the Media have universal influence; they lead to the second death untold millions of souls at the same time as they become superrich from their victims' exorbitent payments. Mobsters of the Media, especially the movie media, are creating a global Sodom and Gomorrah situation.

But to return to that other stupidity indicated above. The movie has Christ, while dying in a tortured state, fantasizing about a sexual affair with Mary Magdalene. This situation is impossible, unnatural, bizarre. It contradicts all the existential experiences of man. When tortured, suffering intensely and facing imminent death, no man can foster a sexual fantasy of pleasure. The dying person is fighting for his or her life; fear and trepidation, pain and sorrow, the desperate hope for release, concern about the realities of the next life dominate the consciousness. Indeed we have eye-witnesses' evidence about the consciousness of the three crucified on Calvary that testifies to this truth. One robber taunts Christ thus: "If you are the Christ, save thyself and us." But the other robber rebukes his dying fellow-thief thus: "Do you not even fear God, seeing that you are under the same sentence? And we indeed justly, for we are receiving what our deeds deserved; but this man has done nothing wrong." And he said to Jesus: "Lord, remember me when you come into your Kingdom." There are no sexual fantasies in the consciousness or dreams of the two theives. Salvation is there desperate preoccupation, one from the death of the body, the other from the death of the soul.

But here we consider a reasonable objection which calls for a reasonable answer. Was not Christ subject to three temptations by the evil spirit who approached him at the end of a forty day-and-night fast in the desert? Why could he not be tempted again, this time by the evil spirit of the flesh? The reason is that the three temptations presented to Christ by the evil spirit were really three external attempts by Satan to find out who Christ really was. Was he the promised Messiah? For Satan knew he had no sinful control over this holy man. Hence the three attempts to draw him out, to see if he was vulnerable to sin. Thus all three temptations were really three external trials, three tests that never aroused any interior attraction in the consciousness of Christ. Against the challenge to change stones into bread to provid he was the Son of God, Christ rebuts the devil sharply by quoting Holy Scripture about man's absolute necessity to survive on the bread of God's holy word: "It is written, not by bread alone does man live, but by every word that comes forth from the mouth of God." Against the invitation to descend from the pinnacle of the temple and with the help of angels prove he is the Son of God with notoriety and specutacularly to the masses, Christ dismisses this fantasy of the devil thus: "Thou shalt not tempt the Lord thy God." Christ chooses to live out his Father's plan that the Son should become the Suffering Servant of the Lord, live a life of humilitation, be rejected and die on the cross to save mankind. He will not accept the devil's spectacular, glitz approach to revealing his divinity. Finally, against the invitation to bargain with Satan in a deal that would give Christ the riches and glory of all the kingdoms of the world if he would join Satan's forces, Christ firmly and contemptuously drives out the father of lies thus: "Begone, Satan! The Lord thy God shalt thou adore and him only shalt thou serve." Throughout his public life the Pharisees, agents of Satan, would continue these attempts to catch Christ in his speech. But Christ always gives the "perfect squelch" in divinely wise rejoinders that leave his enemies unveiled as hypocrites. All these attempts are not temptations coming from the interior concupiscence of weakness or pride. They are evil tests of Christ coming from evil forces. The three exterior trials from Satan that Christ willingly underwent are meant to teach men and women how to deal with the forces of evil, attacking either from within man's rebellious concupiscence or from outside demons and evil men. The divine tactic guaranteeing success over Satan is simple: No spiritual threatrics, no sterile discussions, no spectulars, no entertainment of deals, just abrupt, determined rejections: "Begone, Satan!" Holy Scripture gives the same exhortation on how to conquer Satan whether he comes at you from concupiscence or from hell: "Stay sober and alert. Your opponent, the devil, is prowling like a roaring lion looking for someone to devour. Resist him, solid in your faith. Resist the devil and he will flee."

The extent to which the indecent movie, The Last Temptation . . . falsifies history is realized when we enter into the consciousness of the dying Christ. We have eye-witnesses testimony of his seven last words that reveal the infinite love he expressed on the cross for all men. He willingly, silently accepted contumely, ridicule, torture, thirst, pain and death for them. He prays for his enemies: "Father, forgive them for they do not know what they are doing." He rescues a thief for heaven: "Amen I say to you; this day you shall be with me in paradise." He gives his mother to the Church in the person of John the Evangelist: "Woman, behold thy son." He gives the Church in the person of same apostle to his mother: "Son, behold your mother." He expresses his excruciating thirst for souls: "I thirst." He cries out from the depths of his soul that has been "made sin" to save sinners: "My God, My God, why have you forsaken me?" He commends his soul in complete and loving obedience to his Father: "Father, into your hands I commend my spirit." Finally, he proclaims to his Father the fulfillment of his divine-human mission: "It is consummated." And he dies with a loud cry, proving the truth of his prediction: "I lay down my life that I may take it up again. No one takes it from me. I lay it down of myself. I have the power to lay it down, and I have the power to take it up again. Such is the command I have received from my Father."

This is the all-holy divine-human consciousness into which the modern Pharisees of filmdom, driven on by greed for riches and hatred for Christ, dared to insert the lusts of the lecher. And they cannot cloak their lewdness by hiding their lusts for the flesh under the symbol of a dream. St. John Chrysostom teaches God-fearing men that "as individuals they may tolerate evils committed against themselves, but they may not, on the danger of denying Him, tolerate evils committed against God." We have examples of this appropriate response to the evils inflicted on Christ during his life on earth. The Pharisees insulted Christ often: "Behold a man who is a glutton and a winedrinker, a friend of publicans and sinners." Christ calmly responded: "I have come to call not the just but sinners to repentence." They called Christ a rebel, a political conniver, a malefactor, a blasphemer. But Christ bore all these insults patiently, even going to his death "as a lamb to its slaughter."

How differently he responded when his Holy Spirit or his Father were insulted. When he was accused of casting out devils as an agent of Beelzebub, the Prince of devils, Christ responded in justified anger against this insult to his Holy Spirit who guided his every action: "Everyone who speaks a word against the Son of Man, it shall be forgiven him; but to him who blasphemes against the Holy Spirit, it will not be forgiven either in this life or the next." Then there is Chirst's forceful action in cleansing his Father's temple. With a whip of cords he drove all who were buying and selling; he overturned the tables of the money-changers and the seats of those who sold doves, saying: "It is written. My Father's house is a house of prayer, but you have made it a den of theives." Christ put his life in danger by this "zeal for his Father's house." "For the Chief Priests and the Scribes heard of it and they sought a way to destroy him."

So much for the milk-toast advice of those Catholics (clergy and laity) who would remain in the closet of silence and exhort their Christian brethren to behave like ostriches, head in the sand pretending that nothing was happening against the honor of God and the holiness of his divine Son. The zeal of St. Paul should be an inspiration to all followers of Christ. "I believed, there I spoke out," said the Apostle to the Gentiles who was persecuted and driven out of every city where he taught about Christ crucified and resurrected. Out battle cry against the blasphemies of Hollywood should be: "I believe; I love and therefore I must speak out, demonstrate, write, get on TV and shout from the housetops condemning this degrading film. I have heard ad nauseam the cop-out argument that "protests will only give this wicked film more publicity and stir up many to see it." Did not Christ's cleansing of the temple give glaring publicity to a custom of desacralization of his Father's house of prayer, an activity of profanation approved by his enemies? We must defend the honor of God and of the God-Man by vigorously opposing the blasphemers, if we are to confess truthfully that we are following in the footsteps of our crucified Savior. "Let your light (the fire of zeal) shine before men so that they may see your good works and glorify your Father in heaven," Christ exhorted his followers.

Then there is the accusation by the blasphemers against all men and women of good will who protest the filthy film without ever having seen it. I am reminded of an excellent statement by Nikolay Valentinov, a former aid to Lenin who defected to the West and wrote a book "Encounters With Lenin." Addressing this same accusation, Valentinov wrote: "When you see a stinking heap on the road, you don't have to poke around in it to see what it is. Your nose tells you . . . and you give it a wide birth." Men and women of good will can read; their intellectual vision is more profound than their sight of eyes; they can reflect on the accurate and false reports concerning this film, sifting out truth from propaganda. The evidence of the wickedness of this film is in; it is glaringly known from the media expositions—TV, radio, newspapers, magazines. Why should conscientious objectors spend exorbitant fees to see a film that blasphemes their God and Savior, offends their beliefs, sensibilities and ideals? Juries are not usually present at the scene of the crime, yet, after seriously reflecting on the evidence presented, they usually make objectively just judgments. The conclusion must be that men and women of good wll are acting reasonably and courageously in loudly protesting and stubbornly refusing to poke around in the sexual swill of The Last Temptation. . . .

HARRY S. TRUMAN NATIONAL HISTORIC SITE

HON. ALAN WHEAT

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. WHEAT. Mr. Speaker, last Friday, October 7, Representative IKE SKELTON and I introduced H.R. 5494, legislation to expand and preserve the Harry S. Truman National Historic Site.

The legislation would add three historically significant buildings to the site, which now consists solely of the home where our 33d President lived for most of his adult life. The bill authorizes the National Park Service to buy or accept as donations three homes adjacent to Truman's residence.

The Truman home site and the Truman Library are two of the most popular attractions in Independence—indeed, in the entire Kansas City metropolitan area. Last month the Kansas City Business Journal listed both the Harry S. Truman Library and the Truman home in the top 25 attractions in the Kansas City area, with a combined attendance of nearly 265,000 visitors in 1987. Enactment of this bill would expand and preserve these symbols of the Truman legacy for tourists and historians alike.

Congress created the Truman Historic Site in 1983. This year, however, the Truman Historic Site was identified by the National Park Service as one of several historic landmarks nationwide threatened by serious damage if further steps are not taken to preserve its surroundings. This legislation will help to preserve the historical integrity of the Truman home.

H.R. 5494 would include three historically significant homes adjacent to the Truman home in the site. Two of the homes involved belonged to Frank and George Wallace, the brothers of Harry's wife, Bess. Harry Truman's aunt, Margaret Noland, and her family lived in the third home.

As a young man, Harry Truman was fond of visiting his Aunt Margaret and lived with her and her family during weekends while he was courting Bess Wallace. Bess lived in the house across the street that ultimately became the Trumans' home.

Bess' brothers, Frank and George, built their own houses next to the present Truman home, and George's wife May still resides in one of these houses. The Trumans and the Wallaces remained close in the ensuing years and the three houses are an integral part of what Harry Truman called "home."

Mr. Speaker, I urge my colleagues to join me and Representative SKELTON in preserving this important part of our Nation's historical heritage. This modest addition to the Harry S. Truman Historical Site is essential to preserving the memory of the contributions made to our country by this great American President.

STATUS OF THE TRIDENT D-5 MISSILE

HON. LES ASPIN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. ASPIN. Mr. Speaker, I wish to report to my colleagues on the Trident II D-5 missile. The Armed Services Committee has been monitoring the programs of our strategic modernization effort. Earlier this year I issued a series of "report cards" on those systems based on committee reviews. At that time, the D-5 missile was the only straight A program in the bunch. In the last 3 months, the 13th, 14th, and 15th Trident land-based missile tests have been conducted. Two of the missiles were destroyed in flight. Only one of the last three tests was a success. This record indicated a reexamination was in order.

This review found that the 13th flight test, on July 7, 1988, was a failure which cause remains under review. The next test, on August 20, was success. In the most recent test, on September 19, a properly performing missile was destroyed by the Air Force test range safety officer through what amounted to a misunderstanding, according to the Department of Defense. It was declared a "no test" in official parlance. Here's the full story.

The Navy's Strategic Systems Program Office [SSPO] is responsible for planning, coordinating, and conducting all testing, trials, and evaluation of the missiles, as well as producing them. The D-5 test program includes 19 land-based shots that focus on the missile and guidance subsystems followed by 9 at-sea submarine launches that test the total Trident II Strategic Weapons System [SWS].

The 19 land-based launches began in January 1987 and are planned to be completed in January 1989. In this program, heavily instrumented missiles are flown at different trajectories and ranges to test the missile's ability to deliver warheads reliably and accurately within a predetermined target area. Fifteen flight tests have been conducted so far. Eleven shots have been rated successes. In addition to the failure on No. 13 and the "no test" result of No. 15, the program experienced another failure in January when flight control electronics malfunctioned on the 9th test. There was only a partial success in flight seven because of a failure in the postboost control system.

A success indicates that the missile flew without incident, delivered simulated warheads in a predetermined target area, and met minimum test objectives. The partially successful rating is given if the missile experienced problems but still was able to transit and deliver reentry bodies to the predetermined target area and meet test objectives. A failure means the missile did not accomplish minimum test objectives, such as failing to hit the target area or failing to collect adequate data. A "no-test" is a failure that is not attributed to the D-5 program.

In the seventh flight, one of the valves controlling the flow of hot gases through the system stuck in the closed position, limiting the system's steering capability. Engineering analysis for redesign of the Post Boost Control System is continuing. A redesigned unit will be incorporated in the 1989 testing program.

During the ninth flight test last January, the missile went out of control about 14 seconds into third-stage flight and self-destructed. Examination of the failure indicated that it was caused by a short in one of two 5-volt power supplies. The problem was solved through minor software and wiring changes beginning with the 10th flight, and no further corrective actions have been necessary.

During the 13th flight, the missile encountered a problem with the thrust vector control on its first stage, causing it to veer off course about 55 seconds into flight. The missile was destroyed by the range safety officer for safety reasons. The problem is still under investigation by SSPO and the contractor.

During the 15th test flight, the missile was inadvertently destroyed by the Eastern Space and Missile Center [ESMC] range safety officer early in second stage powered flight. According to Department of Defense officials, investigation has revealed that the missile was performing as designed and consistent with previous experience. It is believed that a combination of events including the specific trajectory selected for the test and the missile dynamics along the flight path presented the appearance to the range safety officer that the missile would cross the boundary of the Range Safety Corridor. The officer destroyed the missile. This flight has been designated a "no-test." The Air Force, which operates the ESMC, and Navy are acting to minimize the possibility of recurrence. Neither the ESMC nor the range safety officer are under the control of the Navy SSPO.

In summary, it is still too early to fully evaluate the Trident II system. No evidence has been found, however, to suggest requirements will not be met. Each test failure involved different problems and occurred at different stages of the flight. All changes to the SWS have or will be tested before deployment by the current test program. Overall, test results indicate the missile is still meeting its objectives.

A TRIBUTE TO HUMAN RIGHTS ACTIVIST VIRGINIA JAMES BYERLY

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. HOYER. Mr. Speaker, since its creation in 1976, the Commission on Security and Cooperation in Europe, known as the Helsinki Commission, has been championing the cause for human rights among the signatories to the Helsinki Final Act.

However, long before human rights was embedded in international discourse and in our consciousness as an integral aspect of security between nations, activist both inside and outside of Government waged the fight for the reunification of divided families; freedom from religious persecution and the right to emigrate.

One of those pioneer human rights activists was Virginia James Byerly, who worked at the State Department in the Office of Soviet Affairs from 1932 until her retirement in 1965. Virginia James Byerly is one of those committed individuals who devoted her life to recording, categorizing, and filing the names of thousands of individuals so that they were not forgotten. Virginia James Byerly, now 88, lives in Frederick, MD, where her family has lived for generations.

Ambassador Robert Barry, head of the United States delegation to the CSCE Stockholm Conference on Disarmament in Europe, has recently written of the work of this remarkable woman. I would like to share excerpts of his manuscript with my colleagues and join him in saluting Virginia James Byerly for her diligence and commitment in remembering.

VIRGINIA JAMES BYERLY

(By Robert L. Barry)

One of the more striking aspects of the Gorbachev-Reagan dialogue is the insistent—and successful—US effort to keep the focus on human rights as a central element of the US-Soviet relationship. Listening to Gorbachev and other Soviet leaders attempting a public defense of the Soviet human rights record on US television, I thought of my introduction to Soviet affairs 25 years ago as the junior officer on the Soviet Desk. Even though most of the "old hands" then had little use for the totalitarian Soviet regime, they looked on human rights as a nuisance issue, not a subject to be raised at the government-to-government level. To the degree that the State Department had to respond to public pressures to raise questions such as religion and emigration, they preferred to "let someone else do it".

That "someone else" was Virginia James, then nearing retirement after nearly 50 years with the Federal government. Virginia first became involved in Soviet affairs in 1932, before US recognition of the USSR: and by 1965 she was the custodian of serried ranks of file drawers representing the entire history of US involvement in Soviet human rights issues over more than three decades. When I served with her, she was deeply involved with the case of Newcomb Mott, a young American who had accidentally wandered across the Norwegian-Soviet border and later died under still unexplained circumstances on a prison train en route to serve a sentence in a labor camp. At the same time she was advising American rabbis on tactics for preserving Jewish cemeteries in the Soviet Union, advising Baptist, Jewish and Church of the Brethren clergy and lay people on how they might advance the interests of their co-religionists in the USSR and trying to persuade a recalcitrant Soviet government to permit increased emigration.

Virginia's files were crammed with records of hundreds of US citizens who wanted to leave the USSR and Soviet citizens, many of them Jewish or Armenian, wanting to emigrate. When Vice President Nixon first visited the USSR to open the US national exhibit in Moscow (and held the "kitchen debate" with Nikita Khrushchev) he handed over lists of those wishing to emigrate to top level Soviet officials. Since then the turnover of lists of those who want to leave the USSR became a regular fixture of all summits and high-level meetings, and Virginia was responsible for preparing these lists. She also maintained contact with those who had succeeded in getting out, and with the families of those seeking exit permission. She was a one-person Bureau of Human Rights and Humanitarian Affairs.

Virginia wanted to work at the State Department because she had fallen for the lofty ceilings and austere offices of the old State-War Navy building (now the Old Executive Office Building). She succeeded in landing a $1,440 a year clerical post—not without difficulty, despite her 14 years experience, a college degree, and a previous salary of $2,600. The head of the Bureau of Prisons, who had offered her a better job, scoffed; "This little girl thinks she can get ahead at State by working hard." The fact that she did get ahead in the all-male club that was pre-war State Department was in fact a tribute to hard work, but it was also because she had her heart in what she was doing.

By 1947, Virginia James got her first opportunity to visit the country she had been involved with for 15 years. She was on Secretary of State George Marshall's delegation to the Moscow Foreign Ministers Conference—a lengthy and futile effort to lay the groundwork for a German peace settlement and halt the deterioration of East-West relations. However frustrating for Marshall, the opportunity to spend several weeks in Moscow, living in the Moskva Hotel across from the Kremlin, working in Spaso House, the US Embassy residence, and seeing Ulyanova dance at the Bolshoi Ballet was a real opportunity for Virginia. In a November 1947 article in the Foreign Service Journal entitled "Hands Across the Caviar," she wrote to thank the Embassy staff for their support of the Marshall delegation during the dark days in post-war Moscow . . . "We ate their caviar, bothered them with all our troubles and left them behind in Moscow". Five years later former Moscow hand Charlie Thayer came out with a book by the same title, a successor to his best selling "Bears in the Caviar". Virginia teased him about stealing her title. Contemporary accounts suggest that "hands across the caviar" was also a reference to diplomats who were taken in by Moscow's vodka diplomacy.

This was never Virginia's problem. True to her image she pursued her human rights agenda with a persistence that her male colleagues genuinely admired. FSO Charlie Stefan, whose first tour at Embassy Moscow was in 1948-49, recalls that she was a "pillar of strength for young officers coming into the Soviet field." Stefan's assignment in the Moscow consular section was to look after the welfare of American citizens—including the thousands being held in prison or otherwise being denied permission to leave the USSR.

Stefan goes on to recall that "by mid-1949, notes to the Foreign Office on individual cases were being ignored, and an increasing number of letters to persons wishing to establish their American citizenship were being returned stamped with the chilling assertion that the addressees had departed, address unknown. This was particularly true of persons in the Baltic states."

Using the material collected by Virginia in Washington and by the Embassy consular section, Stefan prepared two documents for transmission to the Soviet government. A note transmitted on October 4, 1949 to Acting Foreign Minister Andrei Gromyko listed 31 American citizens "most of them women, who were transported under duress to the Soviet Union by the Soviet military forces during or shortly after the conclusion of active hostilities in Eastern Europe" believed to be confined in the Soviet GULAG. A longer aide-memoire of December 12, 1949 listed American citizens unable to get Soviet permission to leave the country for the US.

Virginia was determined to prod the Soviets into taking some action on the US demarche, and the Department "reminded" the Soviet Ambassador in Washington of the issue on January 18, 1950. Finally the Soviet Foreign Ministry deigned to reply in a dismissive note to the Embassy of February 28, 1950. Charlie Stefan's recollection is that Virginia played an important role in the decision to publicize the entire exchange, which was done in a State Department press release of March 3, 1950—still a valued part of Virginia's person archive.

Among the American citizens held in Soviet prison camps at that time were a number of individuals who survived their ordeals and were finally released after Stalin's death to tell the tales of their captivity.

Virginia got little credit from those whom she had tried so hard for. In part because of the standard Soviet interrogration technique of telling prisoners that they had been abandoned by their government and in part because State Department bashing was an especially popular sport during the McCarthy era, outsiders consistently downplayed the efforts that had been made over the years and gave credit instead to prominent political figures who raised some of the celebrated cases publicly. One critic went so far as to accuse Virginia of intentionally suppressing information on prisoners in the USSR. Nothing could be further from the truth; it was persistence that caused the Soviets to reverse themselves and let Americans leave after years of trying, and persistence was the element that Virginia personified.

Human rights and concern for the individual is now firmly established as a central theme of American foreign policy, and it is institutionalized in the State Department and in Congress. Pursuit of these issues no longer depends on having the right person in the right place. But from 1932 until 1965 it was Virginia James Byerly who provided the human face of our Soviet policy and helped countless individuals, Soviet and American citizens, to pursue the cause of freedom. It was an honor to have worked with her.

ABINGTON SCHOOL DISTRICT CELEBRATES 100 YEARS

HON. LAWRENCE COUGHLIN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. COUGHLIN. Mr. Speaker, I rise to congratulate the administrators, faculty, staff, parents, and students of the Abington School District in Montgomery County, PA, as they celebrate the 100th anniversary of the school district.

The week of October 22-29 has been designated centennial week in Abington Township. During those 5 days, a host of activities will be conducted to recall the history of the school district, the progress it has made in the past century, and the quality it has strived to maintain in educating the children of the community.

This milestone celebration will involve all associated with the school district and, importantly, the community which supports it.

Mr. Speaker, I would like to include in the RECORD a brief history of the Abington School District, located within my 13th Congressional District, to mark centennial week in the community:

ABINGTON SCHOOLS 1888-1988

Abington Township was established in 1704 a few miles north of the borders of the city of Philadelphia. Throughout the colonial era and early 1800's there were no public schools, only private facilities.

During the fifty years after the passage of the state Public School Act of 1834, several tax supported grammar schools were built in Abington Township. These were very popular and helped generate an interest in an organized school system for all of Abington Township. In 1887 two pupils of the Saw Mill Hill School received a special one year course beyond the ordinary grammar school by Mr. Ambrose Custer. To Jennie McMahon and Annie Tomlinson, belongs the honor of being the first graduates of the township high school. In 1888 the school district built a high school on Susquehanna Road on land purchased from Abington Presbyterian Church.

Both the curriculum and length of study were expanded in the early years of the high school. In 1890 a two year course of study was inaugurated; the subjects being reading, writing, drawing, algebra, spelling, etymology, physiology, geography, and U.S. History. The year 1900 saw the beginning of the three year course of study and in 1911 a four year requirement was adopted. The alumni association was founded in 1894.

In 1896 a four room structure was built in North Hills and was used continuously until 1978. In the same year, the first McKinley School was built. From that time to 1908, the Willow Grove Heights (or Park) School and Glenside Weldon Elementary were constructed.

When Jenkintown became a borough, a court decision required Jenkintown to refund to Abington Township a portion of the cost of the school on West Avenue. Soon after this settlement, the Rockledge Borough School District was organized. A common school dated from 1893 in the new borough of Rockledge, and its independent school district survived until 1966, when state legislation reorganized school districts. The Rockledge School became part of the Abington School District until its closing in 1976. The building is now leased to the borough government for one dollar a year by action of the Abington School Board.

By 1908, the high school outgrew its facilities and the district decided to build a separate building on adjacent grounds. The Abington school system grew slowly but steadily. The years following World War I brought boom growth in population. By 1923, new schools had to be built to accommodate the township's children. Highland, Overlook, Roslyn, Cedar Road, and Ardsley Schools were all built before the height of the depression.

The expansion of the twenties introduced a new idea—the junior high school for students in seventh, eighth, and ninth grades. Abington built Glenside-Weldon Junior High, adjacent to the elementary school of the same name, and Abington Junior High School on Highland Avenue.

The 1950's brought a second boom in growth for the school district. New schools were built on Hamilton Avenue and in Rydal. Land was purchased for a future McKinley School on Cedar Road and for a future Willow Hill School, both of which opened in the 1960's. The district acquired over 100 acres of land in the heart of the township and in 1956 opened a large modern school. The former high school building became Huntingdon Junior High. Nine years later, a second campus for grades nine and ten also opened. In 1967, the district purchased an additional twenty acres, known as the Morrison tract, to complete the site. Maximum enrollment came in September 1969 with 12,687 students. At the same time there were more than 6,000 township residents in private schools, bringing the total school population to more than 18,000. The student population has steadily declined from its 1969 peak. In the 1987-88 school year there were but 5,492 students enrolled in the public schools and 2,522 in the private schools.

Concern for all types of students lead to the establishment of the Abington Training Center for the trainable mentally retarded. The facility found a permanent home in 1979 with the building of the Rydalbrook School. Prior to that, it has been housed in various locations—the Park School, the Bachman Estate and the old McKinley School.

During the expansion of the fifties, Abington was frequently spoken of as a "lighthouse" school, attracting national attention for its programs. Abington has become an academically oriented school system that prepares over three-quarters of its graduates for further education. The Abington School District at its one-hundredth year has a diverse student population, both along socioeconomic lines and in ethnic origins. The school district offers diversified programs to meet the needs of all its students.

SALUTE TO CAPT. MICHAEL WATSON

HON. HELEN DELICH BENTLEY

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mrs. BENTLEY. Mr. Speaker, it is with great honor, respect, and pleasure that I salute Capt. Michael Watson, president of the Association of Maryland Pilots, on the occasion of his being named 1988's Port Leader of the Year by the Baltimore Junior Association of Commerce.

This is a wonderful honor—one which has in the past gone only to those individuals whose leadership and tireless efforts have served to strengthen our great port. Nobody deserved this award more than Mike Watson.

Mr. Speaker, I have been involved with the Port of Baltimore for over 40 years. Never before have I seen someone so young do so much to insure Baltimore's future as a major port city. My efforts in the Congress on behalf of the port would have meant little without Mike's assistance and leadership. It is a sincere privilege for me to bestow recognition upon him. He sure deserves it—and so much more.

Mike Watson graduated from the U.S. Merchant Marine Academy in 1965 with a degree in marine transportation and navigation. At the same time he completed Naval Reserve training, eventually attaining the rank of lieutenant.

Yet it is as a maritime pilot that Mike made his greatest impression. He had held a series of five Federal maritime licenses, ranging from third mate to first-class pilot of steam and motor vessels of any gross tons. He also holds a first-class pilot's license with the State of Maryland. Mike has used his talents well; in 1965 he worked 1 year with the U.S. Government Military Sea Transport Service. Some of these trips took him into Vietnam.

One year later he joined Farrell Lines, Inc., in New York. Soon he became a chief officer for the company. In 1969 Mike was accepted as an apprentice with the Association of Maryland Pilots. In 1983 he became the association's president, a position he still holds. In addition to these duties Mike serves as a member of the Board of Examiners of Maryland Pilots, the Private Sector Port Commission, the Port Development Committee, as well as a number of other port-related organizations. He is also a recipient of the Army's "Commander Award for Public Service."

Mr. Speaker, this is indeed a man who has had a lot of jobs and held a lot of titles. More importantly, however, Mike is a doer—a man who has established an impressive record of accomplishment over his two decades of service to the maritime industry. No one can attest to this fact better than I.

When I first entered Congress I pushed hard to have the main ship channel leader all the way through the Chesapeake Bay into the Port of Baltimore dredged from 42 to 50 feet. A 50-foot channel, we argued, would lure bigger ships to Baltimore and create 1,500 new jobs. Eventually we won this battle, but we could not have done it without the help of the Association of Maryland Pilots. Through their efforts it was determined that is was necessary to deepen only three-fifths of the 1,000-foot-wide channel, a change which reduced the cost of the project by a $100 million. Without Mike's guidance it simply wouldn't have been possible.

The same can be said about the Brewerton Channel project. We wanted to have the channel deepened from 27 to 35 feet and to have the Federal Government pay the full cost since Brewerton was somehow forgotten when the C&D Canal was taken from 27 to 35 feet. The Army Corps of Engineers decided it was cheaper to deepen the channel to 32 feet with a 600-foot width—changes which would have slowed completion of the projects.

I gathered the principal players together, but it was Mike Watson who argued our case. He explained to the Corps of Engineers why the 35-foot depth was needed only for 450 of the 600-foot width. He told them how important it was that the channel have the additional 3 feet some of the way. The logic and eloquence of his arguments made the difference. Soon the project became a reality—the Chesapeake and Delaware Canal is connected to the port directly through the Brewerton Channel, an important point in this age of competitive costs.

And it wouldn't have happened without Mike Watson.

Mr. Speaker, all my colleagues should join with me in saluting Mike Watson and those like him—people who fight for fiscal responsibility and cost-cutting on the part of the Federal Government. His is a proven record of tireless leadership and consistent public service, and the people of Baltimore and the State of Maryland are a lot better off as a result of his contributions.

Congratulations to you, Mike, and thanks for a job well done. Never forget that, for all we've accomplished since 1985—we couldn't have done it without you!

TRIBUTE TO THE MARCH OF DIMES

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 12, 1988

Mr. TRAFICANT. Mr. Speaker, I rise today to pay tribute to one of America's truly great institutions, the March of Dimes. This charitable organization is celebrating its golden anniversary this month, and I would like to encourage my colleagues to join me in saluting their outstanding work.

For 50 years the March of Dimes has performed miracles in the world of health, constantly striving to see that birth defects become a thing of the past. It is difficult for me to imagine a more worthy cause than that of ensuring expectant parents that their newborn child has an excellent chance of being born strong and healthy, without defects.

Congratulations, March of Dimes, for all of the outstanding work which you have done. You have my most sincere wishes for continued success in the next 50 years. Mr. Speaker, it fills me with a great sense of pride to commend the March of Dimes for their efforts in making this country a healthier one right from the start.

ADDRESS TO MISSOURI SOCIETY OF PROFESSIONAL ENGINEERS

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. SKELTON. Mr. Speaker, on September 24, 1988, Missouri University at Columbia dedicated its new law school building, an outstanding facility that will serve thousands of students and faculty at the school for years to come. During the dedication ceremony, Missouri Supreme Court Judge Robert T. Donnelly addressed several hundred people who were present. I wish to share his remarks with the Members of his body:

REMARKS ON DEDICATION OF LAW SCHOOL BUILDING AT COLUMBIA, SEPTEMBER 24, 1988

I bring you greetings and congratulations from my colleagues who serve with me on the Supreme Court of Missouri on the day of dedication of the new law school building. This magnificent structure is dramatic evidence of a desire for excellence on the part of those who made it possible.

Each of us has a vision of its mission. Mine is to continue the practice of sending from this law school lawyers who are dedicated to the public good and to public service, who will be leaders in the communities of Missouri and who will love and care for its peopole.

Again and again we attribute to Plato the questions: Can virtue then be taught? Can education make a man good?

The following from the Great Cardozo would seem appropriate here:

"Well, education means many things and a building like this is one of our modern answers to Plato's deathless query. There is education in books, but education in life also; education in solitude, but education also in the crowd; education in study, but education even greater in the Contagion of Example. Ask any youth who has gone through a university what part of his training has counted most in later life. Almost invariably, I am sure, the first place will be given, not to shreds of information, the book-learning of the schools, but to the transfigured sense of values that is born of companionship with lofty minds, the living and the dead. * * *." Cardozo, "Law and Literature."

And so this building is but the beginning of a great adventure. To borrow again from Cardozo:

"We praise and celebrate today the symmetry of walls. Within those walls, in days now faraway, when all our voices shall be hushed, an unnumbered multitude of our brethren will be busy with the endless quest for a symmetry still greater, the symmetry that men call justice, the adaptation of the rule of life to the symmetry they call divine."

I must not conclude without expressing the affection Susie and I feel for this law school and our gratitude to Dean McCleary and the others for their patience and understanding of some of us whose task it was to build a bridge back from the Traumas of War.

Thank you and God bless you.

LT. DAVID D. BAKER OF NORTHAMPTON, MA

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. CONTE. Mr. Speaker, I rise today to pay tribute to Massachusetts State Policeman, Lt. David D. Baker, who, after serving 26 years as executive officer of the Troop B police force in Northampton, MA, has retired.

Dave's dedication to law enforcement is demonstrated by his lengthy career as a police officer. During the first few years of his career he was stationed at the office of Governor Peabody and at substations throughout Massachusetts. As he was promoted, Dave saw duty at troop headquarters in Northampton, the Hampshire-Franklin district attorney's office and also as the commander of the Shelburne Barracks in 1981. Lieutenant Baker ended his career as executive officer of Troop B in Northampton.

Dave's bravery is unquestionable. In 1965, Commissioner Laughlin presented Baker with the Medal of Merit for an incident in the town of Carlisle. A mentally deranged and heavily armed fugitive had barricaded himself inside a house while holding a woman and two children captive. Dave and two other officers rushed into the house, arrested the fugitive and successfully rescued the captives. What a way to begin one's career.

Dave is a remarkable man who will be greatly missed. Not only has he given a great deal of his time and energy to the safety of our communities, but he has also been very involved in the community itself, particularly when it comes to the welfare of our children.

As a police officer, Dave protects our children and as a parent, he supports them. As the father of three sons, Dave understands the value of the youth in our society. Through the years, he worked diligently raising funds for his sons' schools and also found the time to work with and help support the Boston Children's Hospital. It is with great pleasure that I have this opportunity, Mr. Speaker, to honor such a caring and thoughtful man.

With retirement upon him, Dave will have more time to spend working in his garden. Although I imagine most of Dave's free hours will be spent with his wife, Linda, and his family, I hope this new freedom will give him the much needed opportunity to hit the links and improve his golf game. There is no doubt that Dave is a much better police officer than he is a golfer but his eagerness to perform to the best of his ability has always been one of Dave's strongest qualities both personally and professionally.

I salute Lieutenant Baker. His accomplishments, spurred by his love and dedication to the safety of our citizens, are impressive. His absence will be a loss to all who have learned from him and benefited from his hard work and abundant energy. I wish him a long and happy retirement.

REAGAN DESERVES THE NOBEL PEACE PRIZE

HON. HARRIS W. FAWELL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. FAWELL. Mr. Speaker, I rise today to express my deep disappointment that the Nobel Prize Selection Committee chose not to award the 1988 Nobel Peace Prize to President Ronald Reagan and General Secretary Mikhail Gorbachev. Surely these two men deserve world acclaim for their successful completion of the INF Treaty.

The INF Treaty is the most significant contribution to world peace in our time. This treaty marks the first time that the superpowers have agreed to eliminate an entire class of nuclear weapons. It is, in fact, the first time that the superpowers have negotiated any cuts in their nuclear arsenals, instead of merely capping their deployment. This treaty will serve as a landmark as we continue to negotiate further cuts in our strategic forces.

There is no question that President Reagan deserves the Nobel Peace Prize. President Reagan recognized early on that the only way to convince the Soviets to withdraw their nuclear missiles from Europe was to deploy a credible deterrent force. Despite tremendous pressure at home and abroad, President Reagan deployed U.S. missiles in Europe, then used them successfully as a bargaining chip in negotiations that resulted in the INF Treaty. Without President Reagan's resolve, we would be struck in the same dangerous position we were 10 years ago, staring at thousands of Soviet warheads in Europe with no credible NATO deterrent.

I am at a loss to understand why the decision was made to ignore the historic INF accomplishment. President Oscar Arias of Costa Rica received the Nobel Peace Prize for a peace plan to try to end the conflict in Central America. Anwar el-Sadat and Menachem Begin received the Peace Prize for a peace plan to end the conflict between Israel and Egypt. Former Secretary Henry Kissinger received the Peace Prize for a peace plan to end the conflict in Vietnam. Yet now they reject the most significant peace plan in our time? A peace plan to guarantee the security and safety of an entire continent, if not the entire world? It does not make any sense.

Some people speculate that the Nobel Committee did not want to lend any support to Vice President GEORGE BUSH'S Presidential campaign by awarding the Peace Prize to President Reagan. If this is true, it is simply outrageous. We cannot pretend that progress toward world peace stands still just because it is an election year. And I would remind my colleagues that earlier this century the Nobel Committee did award the Peace Prize to a sitting U.S. President, Theodore Roosevelt, for his mediation to bring to an end the Russo-Japanese war of 1905. Other foreign leaders, including those I have mentioned above, have also received the award while in office.

Mr. Speaker, I do not want my comments to be interpreted to mean that I am disparaging the work of U.N. peace-keeping forces, which are risking their lives around the world to monitor peace agreements. I am merely saying that 1988 will be best remembered for one historic accomplishment, the signing of the INF Treaty, and that it is most unfortunate that the Nobel Prize Selection Committee chose to ignore this unprecedented achievement for world peace.

BRAZIL ACTS TO PROTECT TROPICAL FORESTS

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. PORTER. Mr. Speaker, every second of every day, tropical forests the size of a football field are destroyed. Fires in the Amazon are a major addition to the carbon dioxide that affects global climate change. This toll of destruction is now recognized as contributing to the global warming which has made our last four summers the hottest in this century.

Hearing the international outcry over the rapid destruction of Amazon rainforests, the President of Brazil, José Sarney, announced two regulations to help halt rainforest destruction.

The first restricts subsidies for agriculture that encouraged migrant farmers to burn Amazon forests and the second is a ban on the export of logs from Brazil. Sarney also stated that all agricultural and industrial projects would be subjected to rigorous environmental controls.

Mr. Speaker, I commend President Sarney for recognizing that the Amazon needs strong protection. Last year, I introduced the Tropical Forest Protection Act to offer Third World countries "debt for nature swaps" to help stop the destruction of world rainforests. Brazil's action shows that perhaps we are approaching a common understanding of just how important that mission is.

WORLD FOOD DAY TELECONFERENCE: FOCUS ON AFRICA

HON. MICKEY LELAND

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. LELAND. Mr. Speaker, on Monday, October 17, an extraordinary indepth study of Africa's food problems will be aired on the World Food Day teleconference. Officially World Food Day is October 16 but the 3-hour satellite teleconference/telecast was scheduled on Monday in order to link more than 400 campus-based closed circuit sites in the United States and Canada. It will also reach millions of individual homes through participating networks and stations. The broadcast is expected to be the largest "development education" program ever organized in the United States.

For the first time since it began in 1984, the teleconference will explore a specifically regional rather than global situation. Two considerations led to the Africa focus: first, recurring drought and famine over wide areas of the continent in the past two decades which have highlighted the environmental fragility of the food resource base; second, sub-Saharan Africa is the only major region of the world in which, even apart from disaster years, population has been growing faster than food production.

Three Africans will appear on an expert panel with one senior U.S. Government official. African guests will be Adebayo Adedeji of Nigeria, Executive Secretary of the U.N. Economic Commission for Africa; Mazide N'Diaye of Senegal, president of the Africa-wide Council of Non-Governmental Organizations for Development [CONGA]; and Ellen Johnson Sirleaf of Liberia, former Minister of Finance. The American panelist will be Duane Acker, Assistant AID Administrator for Food and Agriculture. Rene Poussaint, ABC Washington news anchorwoman, will be moderator and actor Eddie Albert will be the host.

The program is sponsored by the National Committee for World Food Day, a coalition of more than 400 private voluntary organizations. It is the fifth in an annual series of teleconferences organized as part of American participation in World Food Day, an event observed in 140 countries around the world and marking the founding of the U.N. Food and Agriculture Organization in Canada in 1945.

As a participant in the first teleconference, I am impressed by the vast expansion of its audience and the new, more specific focus of its discussion. A special "study/action packet" has been prepared by the Center for Advanced Study of International Development at Michigan State University and continuing education credits are offered by several associations and through the Catholic University of America.

The U.N. and Agriculture Organization [FAO], after years of detailed mapping of land and water resources, estimates that the 46 countries of sub-Saharan Africa could provide food for many times their present population. There is a consensus among Africans and nations supporting development that agriculture, and especially the food production of small farmers, holds the key to Africa's future.

The teleconference will draw on this positive approach and the experience of African nations themselves during the past several years. It will take up the need for development financing and its importance to continued reform, the debt problem, the role of the United States, and the rising influence of African nongovernmental organizations in monitoring reforms and interpreting the needs and aspirations of the rural African community.

Panelists will consider human factors such as the need to improve health and education systems even while reducing public deficits, the balance between governmental support for export agriculture and enhanced food security, steps to ensure that structural adjustment programs don't weight too heavily on the poor.

World Food Day is a grassroots movement with growing global impact. I commend the teleconference and other World Food Day activities that may be taking place in the districts of my colleagues. World Food Day is substantially increasing public understanding of the causes of hunger and related policy matters. It generates a multiplicity of activities and personal commitments. Much credit is due to Pat Young, national World Food Day coordinator, who produces the teleconference and maintains contact with more than 14,000 local organizers in all 50 States.

WOMEN'S DAY AT THE FIRST BAPTIST CHURCH OF DEANWOOD

HON. WALTER E. FAUNTROY

OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. FAUNTROY. Mr. Speaker, on October 16, 1988, the community of neighbors, friends, and members of the First Baptist Church of Deanwood will gather to honor 12 women from the church for their outstanding leadership in community outreach and participation.

In these days of an impersonal, computerized world, the cry has often been heard of a lack of human concern and involvement. At a time when our Nation's social needs have never been greater and more challenging, when the underemployed, the undereducated, and the homeless are everywhere in our midst, it is heartwarming to salute these 12 wonderful women for their caring commitment to those around them.

I want to list them for special mention by name and, as clue to their own accomplishments in addition to their gifts of service to those less fortunate, their professional roles:

Eura Turner, payroll technician; Willa M. Hudgen, retired, insurance agent; Arena Leppard, retired, statistical clerk; Karen D. Hamilton, confidential assistant; Gertrude Williams, retired, postal employee; Barbara Botts, analyst; Dorothy Carter, retired, registered nurse; Elizabeth Ross, retired, child care; Kim Evans, systems engineer; Mary Edmunds, retired, practical nurse; Beulah K. Nell, retired, insurance agent; and Barbara J. Moore, chairperson, 1988 Women's Day and church clerk.

The congregation of the First Baptist Church of Deanwood, together with the accomplishments of these 12 distinguished women, serve as a model for the Nation. We all extend our deepest appreciation to you on Women's Day, 1988.

TRIBUTE TO THE NORTHEAST OHIO NURSE PRACTITIONER GROUP

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. TRAFICANT. Mr. Speaker, today I rise in order to pay tribute to the Northeast Ohio Nurse Practitioner Group in honor of Nurse Practitioner Week, which will be held from November 1-7. I believe Nurse Practitioner Week is a wonderful idea, because nurse practitioners continue to make numerous contributions to the health care needs of people everywhere.

Nurse practitioners are health care professionals committed to cost effective, safe health care promotion and maintenance. They not only guide and counsel individuals and families who cope with acute and chronic health problems, but they also work with institutions, clinics, physicians and independently to resolve the health care needs of their patients. The clients of nurse practitioners may be pregnant families, children, or adults in any stage of their life.

Nurse practitioners practice in rural and urban areas, schools, businesses, public, and industrial areas where they provide health promotion and maintenance, illness and disability prevention, and health care management. Nurse practitioners are also certified by such important groups as the American Nurses Association, the National Association of Pediatric Nurse Associates and Practitioners, and the American College of Obstetrics and Gynecology. Research has shown that nurse practitioners provide cost-effective care, expand the availability of primary care, and, above all, specialize in quality health care.

The motto of the nurse practitioner is "Nurse Practitioners Practice with Care." Mr. Speaker, I have no doubt in my mind that they hold true to their credo. I consider it an honor to salute all nurse practitioners for the fine work and service which they continue to provide.

BASIC NEEDS GOALS FOR CENTRAL AMERICA

HON. BYRON L. DORGAN

OF NORTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. DORGAN of North Dakota. Mr. Speaker, today, along with my colleagues, MICKEY LELAND, TIM PENNY, and TONY HALL, I am introducing legislation urging the President to establish specific improvements in the health, nutrition, and education levels of children, women, and others most in need living in the poorest countries of Central America and the Caribbean as a fundamental goal of U.S. policy. Our intention is to make these proposals major building blocks of our Central American policy in the next Congress.

Exreme poverty remains the lot of too many men, women, and children living in Central America and the Caribbean. The mortality rates of children under age 5 and mothers remain unacceptably high in countries such as El Salvador, Guatemala, Haiti, and Honduras. We must join in a partnership with our neighbors to promptly tackle these problems.

Improvements in the health, nutrition levels, education, and general well-being of people in Central America and the Caribbean are essential to the growth and strengthening of democratic societies there, and in the best interest of the United States. International organizations, such as UNICEF and the Pan American Health Organization [PAHO], are striving to improve the health of the disadvantaged, through initiatives such as "Health: A Bridge for Peace in Central America," and our own Agency for International Development is required to focus its development assistance on the poor majority. This resolution seeks to reinforce those activities.

The Congress has consistently supported efforts to improve the health and well-being of children, women, and others most in need. It has done so in particular through funds voted for the Child Survival Fund to support, immunization, oral rehydration therapy, improved nutrition, and other essential interventions, and other funds provided by the Congress and used by the Agency for International Development for child survival and education activities.

A FUNDAMENTAL POLICY GOAL

This resolution urges the President to establish specific and measurable improvements in the health, nutrition, and educaton levels of children, women, and others most in need living in the poorest countries of Central America and the Caribbean as a fundamental goal of U.S. policy to be attained by the year 1992, and to take all appropriate steps to ensure that the established targets are attained.

Some of the targets mentioned in this legislation are 50 percent reductions in child mortality due to diarrheal disease and in maternal mortality rates as target levels—to be achieved by 1922; rates of immunization against the most common immuno-preventable diseases of or above 80 percent as a target—to be attained by 1992; and strategies to provide universal literacy and numeracy attainment within the next decade for students in primary schools.

I firmly believe that we need to start shaping some new initiatives. So, for the benefit of my colleagues, the full text of the resolution follows:

H. CON. RES. —

Whereas extreme poverty remains the lot of millions of people in Central America and the Caribbean;

Whereas the mortality rates of children under age 5 and mothers remain unacceptably high throughout this region, including in countries such as El Salvador, Guatemala, Haiti, and Honduras;

Whereas improvements in the health, nutrition levels, education, and general well-being of people in Central America and the Caribbean are essential to the growth and strengthening of democratic societies there, as well as the long-term political and economic stability of the region;

Whereas efforts to lessen the plight of refugees and displaced people in Central America are in the best interest of the United States;

Whereas Ministers of Health and the Ministers for Social Security of 6 Central American nations have stated their "resolve to provide priority care to groups hitherto disadvantaged with respect to access to health services and to those at greatest risk: children, women, workers in the countryside and marginal areas, refugees, displaced persons, and all who are socially and economically depressed";

Whereas international organizations, such as the United Nations Children's Fund and the Pan American Health Organization, are striving to improve the health of the disadvantaged, through initiatives such as "Health: A Bridge for Peace in Central America";

Whereas the Agency for International Development is required to focus on the poor majority in providing development assistance; and

Whereas the Congress has consistently supported efforts to improve the health and well-being of children, women, and others most in need, in particular through funds voted for the Child Survival Fund to support immunization, oral rehydration therapy, improved nutrition, and other essential interventions, and through other funds provided by the Congress to the Agency for International Development for child survival and education activities: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That the Congress—

(1) urges the President to establish, as a fundamental goal of United States policy, specific and measurable improvements to be attained by the year 1992 in the health, nutrition, and education levels of children, women, and others most in need in the poorest countries of Central America and the Caribbean;

(2) urges the President to take all appropriate steps to ensure that those targets are attained;

(3) urges the President to seek full funding for United States contributions to the Pan American Health Organization, including payment of all arrearages;

(4) in furtherance of the goal referred to in paragraph (1), urges the President to undertake additional efforts on behalf of refugees and displaced people; and

(5) in furtherance of the goal referred to in paragraph (1), urges the Administrator of the Agency for International Development—

(A) to strengthen programs to address the needs of the victims of war, including amputees and others most severely affected;

(B) to establish, as target levels to be attained by 1992, 50 percent reductions in child mortality due to diarrheal disease and in maternal mortality rates;

(C) to intensify programs to increase immunization coverage, including efforts to eradicate polio and increase immunizations against tetanus for pregnant women;

(D) in particular, to establish, as a target to be attained by 1992, rates of at least 80 percent for immunization against the most common immunopreventable diseases;

(E) to develop strategies to achieve universal literacy and numeracy attainment within the next decade for students in primary schools; and

(F) to develop a program to provide supplies of safe water in rural areas.

THE QUALITY CHILD CARE DEMONSTRATION ACT OF 1988

HON. NANCY L. JOHNSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mrs. JOHNSON of Connecticut. Mr. Speaker, over the past 2 years, we have focused on the new demographics of the work force and the necessity of providing child care for millions of children whose mothers are now working outside the home. We have talked about the dearth in supply and the increasing demand for child care services. And we have argued about the role of Government in creating and assuring quality.

As child care is debated in the 101st Congress, we must seek new ways to create the best environments for children while their parents are away at work. The Quality Child Care Demonstration Act is one such strategy, and I am delighted to join our colleague, Representative BOB LAGOMARSINO, in introducing this bill today.

The Quality Child Care Demonstration Act's aim is to develop high-quality child-care services in communities across the Nation, bring underground providers into the child-care system and improve the quality of child-care services communitywide.

The bill would designate 25 child development centers in urban and rural areas to serve as mentors to area family day care homes. Centers would establish and assure quality in all satellite programs, offer training and technical assistance to both licensed and unlicensed family day care homes, and provide ongoing support and monitoring of services. In addition, each child development center is required to establish a resource library and make materials available to all child care providers in the community. Funds would be available to centers run by private corporations, public agencies, community colleges, and others to develop a model program and information center for child care providers and parents.

Good public policy is not simply a matter of expanding the supply of child care to meet the increasing public demand, and should not simply seek to create more of what exists today. We need to address the quality of the facilities we are establishing, and stimulate the development of new associations that create and sustain quality more effectively than Government regulation. Quality in child care is not simply a matter of regulation—it is much more than that—and in fact cannot be guaranteed by Government regulation. This legislation will enable communities to develop the kinds of services that will assure the healthy development of the next generation.

HONORING JOHN K. EVANS

HON. CHARLES E. BENNETT

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. BENNETT. Mr. Speaker, I have been delighted to be informed by a mutual friend that John K. Evans has been chosen by the National Welsh-American Foundation as its man of the year. His birthplace is Wales, and he has brought to the United States the cultural background of that beautiful country. America has been richly improved through the centuries by those who have come to our shares and become American citizens while still retaining a love for and respect for their roots and cultures which may improve our own. Such a man is John Evans and this new honor to him is richly deserved.

Jack, as his friends generally call him, came to the United States, became a citizen, fought for our country in World War II, and in the years following prospered in several businesses, which allowed him to give back to his chosen new country the things which the country had made possible for him. He is a generous man and has done much to help children prepare themselves for the future—in children's hospitals, educational opportunities, and in other ways.

Some of my ancestry is Welsh, and I have visited that beautiful and sumptuous and sometimes wild western bank of the United Kingdom. Jack Evans is a treasure sent to us from that area, and again, I express my delight and pride that he has been chosen for this new honor as the man of the year of the National Welsh-American Foundation. It promotes the culture of America and the culture of Wales in a union of spirit I think we all would find good for our beloved United States of America.

CONGRESSIONAL TRIBUTE TO THE HONORABLE ROBERT WILLIAM PARKIN

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. ANDERSON. Mr. Speaker, I rise today to acknowledge and pay tribute to a distinguished citizen in my district, the Honorable Robert William Parkin, Long Beach Superior Court Judge. Robert will be inducted into the St. Anthony's High School Hall of Fame. This award is given to citizens who graduated from St. Anthony's High School of Long Beach, to recognize their outstanding contribution to the community.

Robert moved to Long Beach from Rhode Island in 1945. He enrolled in St. Anthony's High School and participated in ROTC, the Letterman's Club, Glee Club, and Drama Club.

Following graduation from St. Anthony, Robert entered the University of California-Berkeley. After graduation, he served 2 years in the Army during the Korean conflict. After the war, Robert studied law at Pacific Coast University School of Law. In 1961, after being admitted to practice law, he was appointed as deputy city prosecutor in Long Beach and eventually was named city attorney.

Today, Judge Parkin presides in department H of the Long Beach branch of the Los Angeles County Superior Court. Robert has been active in the legal profession through memberships in both the State and Long Beach Bar Associations. He served three terms as a member of the board of governors of the Long Beach Bar Association. His affiliations with legal organizations include his representation as a member of the review department of the State bar court of the California State Bar Association.

An active community member and humanitarian, Robert has dedicated a great deal of his time to the Long Beach YMCA, St. Mary's Hospital Foundation and St. Anthony's High School Foundation. He also has served as an instructor at Long Beach City College, Pacific Coast University Law School and the Long Beach Police Department Training Academy.

My wife, Lee, joins me in extending our congratulations to Judge Parkin. Robert is a truly remarkable individual. He is a man who has devoted his talents and energies to enriching the lives of other people. On behalf of the entire community, we wish Robert, his wife Donna, and his children: Greg, David, Kathleen, and Amy, all the best in the years to come.

CONGRESSMAN MICKEY LELAND RECEIVES TREE OF LIFE AWARD

HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. LEVINE of California. Mr. Speaker, recently one of our colleagues, MICKEY LELAND, was honored by the Jewish National Fund with its Tree of Life Award. Recipients of the award are honored for extraordinary service to their community. The award committee could not have chosen a more deserving recipient than MICKEY LELAND. MICKEY LELAND is an outstanding public servant, a meticulous Congressman, and a superb example of conscience and dedication to making this a better world. He has been a visionary in his efforts to improve black-Jewish relations.

I include in the CONGRESSIONAL RECORD the text of the remarks of Alan Rudy, who presented the award to MICKEY LELAND, and ask my colleagues to join with me in recognizing MICKEY'S accomplishments.

Congressman Mickey Leland joins Mayor Henry Cisneros, Lieutenant Governor Bill Hobby, Congressman Jim Wright, Senator Al Gore, and President Gerald Ford as a recipient of the Jewish National Fund's Tree of Life Award.

One should not conclude from my list, that all of the honorees have been politicians. Others honored include Admiral Bobby Inman, former Assistant Director of the CIA and first president of the Austin-based computer research firm MCC; Hans Mark, Chancellor of the University of Texas system; Roy Joe Saunders, a banker; and, occasionally, Jews such as our own Gil Gertner and Toby and Rabbi Jack Segal.

Nor should one conclude that Mickey was chosen because he is a politician. More than a politician, Mickey Leland is a role model for those who would aspire to leadership.

During his years at Phyllis Wheatly High School, Mickey learned that his ability to effect change had a direct relationship to his ability to shape public opinion. And, during his years at TSU, where he was a prototypical 60's Black activist, he learned that a southern ghetto Black could not exercise power by commanding minions or by redirecting the flow of funds.

He also intuitively knew what all great leaders know: that power emanates from the people.

His people could give him the strength to work toward the creation of an environment where he could facilitate their entry into the central channel of American economic, social, and political life.

Mickey Leland's example of leadership has spawned a generation of Black leaders in Houston. County Commissioner El Franco Lee, Harris County's first Black commissioner, and Council member Rodney Ellis represent Black leaders who passionately credit Mickey as their mentor.

I know of few people who are so generic to their community that they are truly part of each family in the area. Early one Sunday morning a few weeks ago, Mickey and I biked through his "growing up" neighborhood, the Fifth Ward. A bus, traveling in the opposite direction, stopped in the middle of the block so its driver could call out "Hi, Mickey" as we passed. Church goers paused to reminisce with Mickey over his childhood and their youth. To all—to all—he was Mickey.

Power, however, is but one component of leadership. Others are vision, steadfastness, loyalty and courage.

Mickey Leland is a visionary. He recognized, early on, that for Blacks to have greater opportunity, greater opportunity would have to be created for all Americans. And, that by doing for those outside of the Black community, he could build relationships that would serve as his reinforcements in the struggle to even the playing field for his people.

Thus, Mickey has worked diligently on behalf of the Texas oil industry—sponsoring pro-oil legislation and working to educate congressmen from all consuming states. He toured the Far East selling Texas goods and services, participated in the successful effort to protect funding for Houston's Moved Space Craft Center, and was instrumental in securing more than $142 million for our Metropolitan Transit Authority.

Mickey was a visionary about Black/Jewish bonds, too, recognizing their value to both communities, and thus, the Mickey Leland Kibbutz program was created.

Mickey Leland is a steadfast friend of our Jewish community and has, through the years, responded to our needs. No—more than responded—he has anticipated our needs. On numerous occasions, Mickey has called, in reaction to signs of trouble, and has volunteered advice and action to help his Jewish friends.

Loyalty is often the more difficult of attributes to maintain because loyalty is only tested when the challenges are great. Mickey's most recent test occurred at this year's state and national Democratic conventions. As I'm sure many of you know, Mickey was chairman of Reverend Jackson's Texas Campaign. Despite his enthusiastic support of Reverend Jackson, Mickey played a major role in the successful efforts to block the imposition of what he perceived to be a divisive plank in the Democratic platform which supported a homeland for Palestinians on the West Bank and in Gaza.

Mickey's little known and courageous efforts to free Ethiopian Jews are actions representative of his deep commitment to the most basic of Jewish sensibilities. Only Mickey, with his unique network of sometimes esoteric contacts, was positioned to assist world Jewry in its quest to free yet another covey of captured Jews. Few but Mickey would have made the arduous trips to that brutal land to help someone else's people.

Mickey Leland is receiving the Tree of Life award this evening because he is a powerful leader who has, over the years, demonstrated his vision, his steadfastness, his loyalty, and his bravery in behalf of the Jewish people.

I am deeply honored to be his friend, and to be able to present this award on behalf of Jews everywhere.

AMERICA'S HERITAGE AND FREEDOM AWARD

HON. CHARLES A. HAYES

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. HAYES of Illinois. Mr. Speaker on February 4, 1979, a group of distinguished black women were honored in Chicago with the 36th annual America's Heritage and Freedom Award. It resulted in the State of Illinois' declaration of February 4 as Black Women's Day in America, a novel and important concept.

Among the outstanding American women who received this award were Congresswoman Cardiss Collins of Illinois, Dr. Geraldine P. Woods, Margaret Bush Wilson, attorney, Dr. Dorothy I. Height, Dr. Dorothy L. Brown, the first black woman surgeon in the South, Mrs. Coretta Scott King, Mrs. C. Delores Tucker, Mrs. Vivian Carter Mason, Mrs. Alberta King, Frances Hooks, attorney, Ms. Lu Willard, then the only black woman diamond cutter and jeweler of New York City, and Dr. Ruth Love, former superintendent of schools, Oakland, CA, and Chicago, IL.

Throughout the history of the United States of America, blacks have led the country in stamina, strength, and dedication, especially black women. This country can never forget the Harriet Tubmans, the Sojourner Truths, the Barbara Jordans; the contributions of black women, in general, who have formed a strong coalition to push black Americans to excellence.

The long list of recipients of the Dorie Miller and America's Heritage and Freedom Awards have included distinguished Members of both the U.S. House of Representatives and the U.S. Senate; namely from the Senate, the honorable late Everett Dirksen, Senator Charles Percy, Senator Ernest Hollings, and the late Senator Paul Douglas. From the House of Representatives were the honorable Barrett O'Hare, Ralph Metcalf, Margaret Stitt Church, Thomas J. O'Brien, and Charles A. Hayes.

Other noteworthy Americans who have received this award included Dr. Mary McCleod Bethune, honored as mother of the century on her golden anniversary as founder of the Bethune-Cookman College, October 4, 1954, Eleanor Roosevelt, Jackie Robinson, Charles Brockett, Leo K. Bishop, James F. Forrestall, U.S. Department of Defense, Dr. William M. Walker, international surgeon, Jesse Owens, Dr. J.B. Martin, owner of the Black American Baseball League, Medgar Evers, Irv Kupcinet, Chicago Sun-Times columnist, Dr. Benjamin E. Mays, Aretha Franklin, Adm. Elmo Zumwalt, Natalie Cole, Dick Gregory, Jewel LaFontant, attorney, Rosa Parks, and the list continues.

Mr. Speaker, it is an exciting thing that Dr. Marjorie Stewart-Joyner will be honored with the America's Heritage and Freedom Award on Sunday, October 23, 1988, during a dinner at the Heritage Plaza and a concert at the Third Baptist Church, in Chicago. Dr. Joyner is being honored for her untiring labor working with Dr. Bethune and the Bethune-Cookman College, the National Council of Negro Women, as well as her contributions in furthering the work of Madam C.J. Walker in the area of beauty culture. At 93, Dr. Joyner works daily at the Chicago Defender Newspaper where she is director of the Chicago Defender Charities and directs the annual Bud Biliken Parade, the largest parade of black people in the country. Dr. Joyner spends 2 to 3 days a week in her church office. She is truly a remarkable American citizen. Commissioner Mattie Thompson, of Chicago, will make the presentation of the award to Dr. Joyner.

Mr. Speaker, the oldest tree in Chicago, 150 years old, was cut down this summer and a portion of the tree will be memoralized on the grounds of Heritage Plaza in Chicago; and in obtaining the services of the great chain saw sculpturer from Minnesota, the portions from the tree will be cut into full statues of the late honorable Mayor Richard J. Daley and Mayor Harold Washington, former great mayors of the city of Chicago. The Garden of Peace will be dedicated to the memory of the late Mayor Harold Washington,

Mr. Speaker, I know that each Member of the U.S. House of Representatives will join me today in acknowledging this timely tribute to these outstanding Americans.

HOUSE OF REPRESENTATIVES—*Friday, October 14, 1988*

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

We are aware, O God, that people serve You by serving each other, by making of their positions occasions where good works can be known. We remember with gratitude those, even in this assembly, whose commitment, whose hours of labor and dedication to their tasks, enable justice to be more fully known. Bless all people, O God, whose diligence and faithfulness mark their labors and may Your blessing ever be upon them. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Mississippi [Mr. MONTGOMERY] come forward, please, and lead us in our Pledge of Allegiance.

Mr. MONTGOMERY. Thank you, Mr. Speaker.

I would like to ask all those in the Chamber to face the flag and join with me in the Pledge of Allegiance.

Mr. MONTGOMERY led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

TRIBUTE TO E.W. "RED" LIGGETT, JR.

(Mr. HUBBARD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HUBBARD. Mr. Speaker, among the 24 counties in western Kentucky which I am privileged to represent here in Congress is Webster County.

One of the alltime popular individuals who has ever lived in Webster County is E.W. "Red" Liggett, Jr., a 62-year-old native of that county who died on September 6 in Lexington, KY.

Many of the 15,000 people of Webster County, KY, who knew and loved Red Liggett are proud that a tribute is being given in his behalf today here in Washington.

For many years I have admired Red Liggett. He was a dedicated State employee in the Kentucky Department of Transportation. Red Liggett served as magistrate in the Sebree District for 4 years and was active in Democratic Party politics in western Kentucky. For many years he operated the Monsanto Farm Supply plant at Slaughters, KY, and later he was associated with Miles Farm Supply. Red Liggett was a member of the First Baptist Church of Sebree and the Sebree-Onton Masonic Lodge.

My wife Carol and I extend our heartfelt sympathy to his lovely wife Inez Liggett; and to his sons Ricky, Kenny, and Jeff Liggett; his daughters Susie Davis, Donna Liggett, and Leesa Liggett; his father Edd Liggett, Sr.; nine grandchildren; and two sisters, Betty Zane Rider and Anna Hernandez.

NATIONAL LONG-TERM HEALTH CARE POLICY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Vermont [Mr. JEFFORDS] is recognized for 5 minutes.

Mr. JEFFORDS. Mr. Speaker, although only about 5 percent of the elderly reside in a nursing home at any given time, it is estimated that the chances of a person needing nursing home care at some point in his or her lifetime is between 25 and 45 percent. The cost of this care now runs between $20,000 and $30,000 per year, depending on such factors as severity of illness and area wages.

Many older Americans, living on relatively small, fixed incomes, are understandably daunted by the prospect of having to pay for long-term care. This problem is compounded by many people's mistaken assumption that the Medicare Program already covers these costs. Medicare will not pay for long-term nursing home costs and offers only limited home health care benefits.

Even for those who are aware of the need to plan for future long-term care costs, there are a number of stumbling blocks. Long-term care insurance has only recently become available. The terms of long-term care insurance policies can be confusing and restrictive. Because of the small pool of people who are currently seeking these policies, they are also relatively expensive.

There is a clear need for a national policy to address these problems. The enactment of Medicare catastrophic illness protection legislation earlier this year made some strides toward protecting seniors from the fear of ruinous medical bills. However, the task is far from finished.

The time has come to enact a comprehensive, national policy that will provide for meeting people's need to be protected from the high cost of long-term health care, including both nursing home and home health care.

Of course such a program carries a large price tag. Not only is nursing home and home health care expensive, but the aging of our population means that there will be more and more people in need of these services. Furthermore, demographic studies show that the number of older people in need of long-term care is increasing in proportion to the number of workers.

Currently, we rely heavily on the large working-age "baby boom" generation to pay the tab for many of our vital human service programs. Soon, the "baby boomers" will become consumers, rather than providers, of human services. If we do not plan ahead, we will simply overwhelm the generations that follow the baby boomers. We have already heaped over $2.5 trillion in public debt on to today's workers and those who will follow. We cannot compound that staggering burden.

Thus, as much as possible the financing for a national long-term care policy should seek to have each generation pay for its own long-term care needs. While spreading total costs over a number of funding sources, both public and private, much of the financing for my proposal would come from each generation's purchase of private long-term care insurance for itself. Essentially, each generation would also help pay for itself through changes in the estate and inheritance taxes on the wealthy.

SUMMARY OF BENEFIT

Under my proposal, Medicare would pay for a variety of long-term care services, including both home health and nursing home care. Eligibility for the benefits would be determined through an assessment process that would consider a number of pertinent criteria. The assessment would be designed to ensure access to the most appropriate form of care.

After an initial 2-year exclusionary period, Medicare would pay for 70 percent of all nursing home costs. It is expected that individuals would purchase private insurance policies to cover the 2-year exclusionary period and the 30 percent copayment for the benefit, or pay the expenses out of pocket. The current Medicare skilled-nursing benefit for hospital discharges would not be subject to the exclusionary period.

My proposal would also expand Medicare's home health benefit. Persons judged in need of chronic services would be eligible for expanded home health services, including for the first time, cleaning and custodial assistance. This type of assistance would be particularly helpful for people with functional or cognitive disabilities, such as those who suffer from Alzheimer's disease. There would be an annual $500 deductible and a 20-percent copayment for home health services.

Many chronically ill people are cared for by relatives with whom they live. We cannot

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☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

afford to ignore the contributions of these informal but vitally important caregivers. My proposal would provide these people with a temporary break between periods of care. The benefit would cover up to $2,000 of respite each year including temporary home health or day care assistance, subject to a 50-percent copayment.

TAX INCENTIVES FOR PRIVATE INSURANCE

This proposal includes several tax incentives designed to encourage expanded availability of affordable private long-term care insurance policies. The proposal would clarify existing law to ensure the tax deductability of insurance company funds intended to satisfy obligations to long-term care policyholders. For a temporary 5-year period, subject to renewal by Congress, long-term care policyholders would be allowed to deduct the cost of long-term care insurance premiums from their taxable income, regardless of the amount of their annual medical expenses. Finally, workers would be allowed tax free withdrawals from IRA's and life insurance policies for the purpose of purchasing long-term care insurance.

PROPOSAL BY U.S. REPRESENTATIVE JAMES M. JEFFORDS FOR NATIONAL LONG-TERM HEALTH CARE POLICY

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PROHIBITING DOCTORS WHO ABUSE NEW DRUG TEST PROCEDURES FROM PARTICIPATING IN MEDICARE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. STARK] is recognized for 5 minutes.

Mr. STARK. Mr. Speaker, I am today introducing a bill to prohibit Medicare from allowing payments to doctors who have abused the Food and Drug Administration's rules governing how new drugs are tested on humans.

Medicare, as the major bill-payor for seniors, has the duty to ensure that only well-qualified professionals are allowed to practice under the program.

For over a year, I have been working with a constituent who was experimented on by a physician who was investigating the properties of a new drug. According to an agreement signed by the doctor and the U.S. Food and Drug Administration, the doctor made massive errors in the use of the drug and in his conduct of the investigation. He increased the strength of the investigational drug enormously despite being denied authority to do so by the FDA. He failed to obtain consent forms from many of his patients, failed to maintain adequate and accurate case histories, and generally exhibited abysmal scientific methods of research. The drug involved has a long history of causing severe problems—like death—in laboratory animals, and may well be the cause of serious nerve damage to my constituent. Whether other people have been adversely impacted, we still do not know.

What was the penalty for this really careless use of a notoriously dangerous drug? Well, the FDA decided that he could only do investigational new drug work on 20 patients at a time in the future, and that he would have to be closely supervised by another physician.

For someone who was practicing Jekyll and Hyde medicine—the medicine was supposed to be applied to only small areas of the body, but my constituent reports that he was told to apply it massively over most of his body—on a number of people, I think the level of penalty imposed by the FDA is shockingly low.

If the FDA will not take stronger action to discipline such poor medical practices, I believe we should amend the Medicare law to remove a major source of business from such doctors. Denial of participation in Medicare will, at least, affect the pocketbook—which is a lot more than the FDA does.

I hope this bill will be enacted early in 1989.

I would like to include in the RECORD at this point a copy of the agreement between the physician and the FDA as an example of why FDA corrective action in cases such as this is woefully inadequate.

AGREEMENT WITH RESPECT TO USE OF INVESTIGATIONAL NEW DRUGS

The Center for Drug Evaluation and Research (Center) of the United States Food and Drug Administration and Herschel Zackheim, M.D., hereby agree as follows:

1. Between January 15 and February 12, 1988 the Division of Scientific Investigations of the Center (Division) conducted an inspection of a clinical study done by Dr. Zackheim.

2. By letter dated March 30, 1988 the Division alleged that Dr. Zackheim violated FDA regulations pertaining to the proper conduct of investigational drug study. In brief, these allegations are:

a. Failure to follow plan of investigation in that * * * was used as a solvent in spite of the fact that permission to use * * * was denied by the FDA. In addition, Dr. Zackheim shipped * * * cream containing * * * to other investigators.

b. Failure to maintain adequate and accurate case histories.

c. Failure to notify and obtain IRB approval of protocol changes including the use of * * *.

d. Failure to obtain adequate informed consent.

e. Failure to maintain complete records of drug accountability.

3. By letter of April 18, 1988 Dr. Zackheim submitted certain explanations and, while some of those explanations are acceptable to the Center, others are not.

4. On the basis of the foregoing and in consideration of the termination of the administrative process Dr. Zackheim agrees to the following:

a. Dr. Zackheim's involvement in clinical research of investigational drugs will be limited to 20 patients at any given time.

b. Dr. Zackheim will abide by all regulations pertinent to the study of investigational drugs.

c. A physician with training and experience relevant to the type of studies performed by Dr. Zackheim will undertake to closely and rigorously monitor Dr. Zackheim's clinical investigations.

This physician whose letter of agreement to this oversight function will be provided to the Division prior to initiation of each study will have access to all study material and pertinent documents, will examine these data and information at appropriate intervals and will determine if Dr. Zackheim is in compliance with this agreement and commonly accepted drug investigation practices.

5. Should the FDA determine that Dr. Zackheim has in any substantive way violated the terms of this agreement Dr. Zackheim will be, without recourse, ineligible to receive investigational drugs.

Agreed to:

HERSCHEL ZACKHEIM, M.D.
August 11, 1988.

FRANCES O. KELSEY, Ph.D., M.D.,
Director, Division of Scientific Investigations, Office of Compliance, Center for Drug Evaluation and Research.
August 23, 1988.

MY ADVICE TO THE PRIVILEGED ORDERS

The SPEAKER. Under a previous order of the House, the gentleman from Texas [Mr. GONZALEZ] is recognized for 60 minutes.

Mr. GONZALEZ. Mr. Speaker, I want to make it clear that even though I have been granted this privilege of addressing the House for 60 minutes, it is not my intention to take more than just a fraction of that time. The reason I am impelled to rise at this time is because two of the basic subject matters I have been importuning my colleagues not only this year, this session, but for several many more Congresses, are now reaching a point where at the end of the 100th Congress, we ought to be advised that the handwriting is on the wall as far as some very disturbing, troubling foreboding events and possibility of events confronting us.

In yesterday's newspaper, one particularly, the Dallas Morning News, Thursday, October 13, on page 13-A, the international section, is a byline article by Jim Drinkard entitled "Reagan Considers Session on Contra Aid."

I am going to quote: "President Reagan will consider calling Congress back to Washington for a special session later in the year if he judges that Nicaragua's Sandinista government is seeking to mop up the remnants of the antigovernment rebels," the White House confirmed Wednesday. "Reagan plans to announce his intent in a statement later this week," said well-placed sources, who spoke only on condition of anonymity. "If the President decides to do so, he would ask Congress for quick action to release $16.5 million in military aid for the Contras. The aid is now stockpiled in Honduras warehouses." White House spokesman Marlin Fitzwater said Wednesday night, "that a plan to seek new military aid for the Contras was being discussed."

Then it goes on and mentioned that some Members of Congress "were briefed on a statement that could be issued by the President as early as Thursday," said an official accompanying the President on a speaking political trip to New Jersey. Then it goes on and describes what the President has indicated will cause him to call a special session of the Congress. It is obvious at this point that the Congress will adjourn sine die, and as far as it is now at all established, there is no real possibility of a lameduck session, so that this ominous threat from the President to call back the Congress with respect to a situation that has ended catastrophically, as far as our American national interests are concerned, for it has solidified nations that never had been arrayed solidly against the actions that our Government and President Reagan, in our name, has been conducting.

It has been a sorry and sordid tale of statutory violations, the laws the Congress has passed and Presidents have signed into law; he has violated international agreements. He has violated every single basic principle that America has stood for, from ordering caps on our Armed Forces to assassinating unliked and unpopular foreign leaders, to such things as the acts of terrorism, detailed in the proceedings of the World Court of Justice in which Nicaragua as the offender plaintiff, so to speak, or complainant, filed charges and documented those charges, proved that we in the name of our Government and, without any kind of congressional approval, directed a sustained course of violence, such as the blowing up of docks, seaport facilities, attempted assassinations against the then leaders of the so-called junta, the then government of Nicaragua, immediately after the rebellion triumphed.

The other attempts to blow up public buildings and the capital of Managua and other focal points throughout the country of Nicaragua were proved beyond peradventure of doubt, the Court ruled against us and found us guilty as charged and fined and even levied damages for those harms that we perpetrated.

Now we cannot take refuge, those of us serving in the Congress, as so many have during the past 10 years, by saying that this is something that is part of the covert activities.

Since when have we in this open, so-called open society, developed such a Frankenstein monster created by the Congress and the National Security Act of 1947 with definite circumscribed jurisdiction; since when have we tolerated as we know and publicly established that since 1972, has this runaway agency been turned against a statutory enactment of the 1947 National Security Act, and conducted a course of action of spying on American citizens in the United States? The sordid attempt where 12 agents of the CIA were diverted in 1972 and conducted 3 months round the clock surveillance of the columnist, Jack Anderson, where they had actual assassination plots, germinating in the Executive Offices of the branch across from the White House, and some of them even discussing attempts to assassinate Jack Anderson.

□ 1015

Since when are we in America going to accept this? It defies every single one of our constitutional framework of references. And this sorry, sordid misrule violation of law, both domestic as well as international, has gone unperceived by the general public, undirected its attention on the part of the Congress and at this moment only temporarily binding, only because of the confusion in the executive branch. But not once has the American public been given a chance through debate in the forums of our Congress, both on this side or the other side, other than through some very evanescent committee hearings, most of those hearings on the Senate side, many of them under closed door environments, revealing clearly that in defiance of the Constitution, we have officials in the executive branch that have for years defied the Constitution, breached their oaths of office and what is more awesome is the example of what has been the result, what has been the poison fruit of all of this, that is the abysmal record of failure in our dealings with the countries south of the border where we have no support anyplace, whether it is the European countries from England to West Germany or the Asiatic countries, Japan, and the others, and whether it is any nation in the Western Hemisphere from Canada to the tip of South America, not one is in agreement with what this administration has been doing or attempting to do for 8 years.

Now under those circumstances, clearly it must be obvious that somebody must be wrong. Certainly the whole world must not be out of step and only we in step.

But all of this has been undebated, unaddressed. The laws passed by the Congress such as the 1973 War Powers Limitation Act have been more honored in the breach than they have in their observance. Not once has the Congress acted pursuant to the very laws that we passed here in 1973. The President has been conducting war and the Congress has never declared war and it has never had the courage or the unity to call on the Executive for an accounting.

What is going to be the result of this? Mr. Reagan will not feel it. We in our generation will not. But our children, our grandchildren and our great grandchildren, as assuredly as I am here speaking this morning, will. We will have converted the new world into a Balkanized old European nest of conflicts and hatreds and poison wells of neighbors.

This is what has been going on for 8 years, all in the name of this mythology of anticommunism; this is what has led us to the great shedding of blood and the loss of treasury in Southeast Asia.

What has been the result to that incursion that was done in the name of stemming the tide of communism, but completely revealing that our leadership was wholly ignoring the reality of the external world. Had we been properly perceiving the dimensions, without knowledge of the history and culture and developments in those parts of the world, we could not properly have the proper perception. But what is more tragic, we are compelling ourselves to continue to face that.

We have 500,000 plus of our military scattered throughout the world; 45,000 in South Korea where a militant anti-Americanism that is now virulent is demanding that we get out and demanding the reunification with North Korea, it is a sentiment we have got to face.

In Europe, even in Germany where we have over 300,000 of our military, we have failed to reexamine. But what I cannot understand for the life of me and what has filled me with grave apprehension since 1981, and something that I never would have in my worst nightmare have ever figured out 15, much less 20 years ago, would be that we would get a President who would retrogress to Calvin Coolidge's gunboat and Marine invasions of Central American countries. And even now we hear amongst some of our colleagues their apprehension that maybe, even in our next door neighbor, where very serious crises are developing and have already, in which they have impacted us; but there is no awareness generally of it.

I have had colleagues say on this floor no later than a week ago that if necessary maybe we would have to invade Mexico.

What kind of irrationality? Has anybody stopped to figure out, much less the President, what if he gave all the help to the Contras, everybody including our professional military will now tell him, as they have, "Mr. President, the Contras can't take over unless we march in with them, our soldiers, our sailors, our marines, our airmen and some of them are going to get killed and we don't think the price is worthwhile."

But I stand in this well this morning filled with apprehension because I took this well for 14 months and the occasion—since 1982 to 1983, on the occasion of the President deploying that substantial number of marines to Beirut, and I kept asking for 14 months, "Mr. President, what is the military mission of the Marines?" And, of course, this is the first President of six with whom I have had the honor to work as a Member of the Congress who does not reply to a Congressman's letter.

So finally he did have a press conference. But also in the interim I discovered something.

In that press conference he said the reason he was sending the Marines was twofold: First, to sure up the Gemayel regime and, the other, peacekeepers. Well, I could not believe it. Marines are not diplomats, marines are not politicians, marines are warriors and they had battle gear but they were placed in an untenable military position.

Then I happened to find out, because of the privilege of friendship with someone on that level, that the Joint Chiefs of Staff unanimously had advised against that. But the Commander in Chief, President Ronald Reagan, did not abide by the advice of the chief professional military minds.

Yet he was calling on the military.

This has been catastrophic. We went through such scenes as Vietnam where we alone, again, did not have the cooperation of any of our so-called allies, none. And then we had great divisions, as assuredly as any society would have under those circumstances.

And it resulted in a catastrophic loss, one that had led, like they used to call about the domino effect, if we had not had the disastrous results in what is now Ho Chi Minh City, we would not have had the hostages in Iran, and I can assure my colleagues of that. We would not have the other bad, bad factors confronting us.

But I speak because if the President were to call a special session, he would do so only after he had taken some action and there would be nothing for the Members of Congress to do but to rubber stamp; because I have been here when Lyndon Johnson presented the resolution, later known as the Gulf of Tonkin, after the headlines spoke out to the effect that our national interest was imperiled because one of our boats had been fired upon.

The President requested the moral support of the Congress. But a careful reading of the resolution indicated that it went beyond that and there was not any one of us here who would have denied the President the moral support for him, as our leader at that moment, to use his judgment.

And the same thing will happen here. It is easy to predict that by the time we are called to a special session, the President will have taken special actions that are irrevocable and that we cannot help but say "Well, once our boys are there, once they are faced with enemy fire, we can't do anything but support him." But is that foreseeable and avoidable? Of course it is, certainly it is. Anybody that had any minimal knowledge of the culture and the history would have said in 1981, not more than a week after the assumption of power by the Reagan administration, when the then Secretary of State General Haig announced that he was drawing the line in El Salvador and that, if necessary, he would go to the source, and identified the Salvadoran revolution as one not only inspired, but carried out by external influence, Cuban and Russian, which anybody knowledgeable with the Salvadoran history would have said, as even today, that is not true, that simply is not true.

So if you have a misconception, if you have a problem now but you are not willing to admit the cause or the sources or the reasons, how in the world can you ever ascertain the proper solution? We saw what happened in the case of Cuba when the same approach was followed. Instead of reducing the danger, we have solidified. I can guarantee my colleagues that had none of these so-called covert violent actions been taken, and all the whole world outside of the United States trembling in fear of the CIA—we have got to remember that like we think of the KGB, most of the world thinks of us in terms of the CIA, in the same fashion. One of the most popular novels in Mexico is a novel depicting the CIA as attempting to knock off a President of Mexico.

□ 1030

What we have got to understand is that the world changes. The world changes every day. The world south of the border is not the same world that it was 5 years ago, much less 15 years ago.

What we have got to identify and ask ourselves is: What is our national interest, in true perspective? To what extent can we do without the necessity of suffering the loss of lives, the lives of young kids, precious lives, the wealth and substance of any society? What can we do without the necessity of that, or without the loss of treasure, which we do not have?

Instead of thinking that way, we have been acting very much like the Kaiser of World War I and the Hitlerian regimes of World War II. They felt they were invincible. Right after the fate of the Kaiser and his exile, all of the Wehrmacht leaders said, "We did not lose in the field. We never lost in the field. We are invincible. We were betrayed back home."

That is what they said again. They repeated it. So eventually somebody had to be the scapegoat, because if they were betrayed at home, then they had to ask, "By whom?" Well, it ended up to be the Jews. They always had to find a scapegoat when they had that kind of a situation.

In our case, of course, we were never defeated in the field in Vietnam, but we lost. We did not get out of there voluntarily. We had complete control of the air space. At no time were we challenged in the air. But that will not happen in Central America and Latin America.

Let us not forget that, and let us not forget that Southeast Asia 8,000 miles away is not the same as those neighbors we have south of the border, even though some are almost as far away as that. We must never forget that we in Washington are closer to London than we are to Buenos Aires.

But I am thinking this way because I have relatives who were involved and we were all involved in World War II, and many of those I grew up with died in that war. By fate, I was fortunate. But never once have I remitted in my thinking or in my efforts to safeguard those who will be asked to do their duty, because I believe that it is a treason to call upon our men in an obviously futile purposeless venture merely because somebody is trying to flex his muscles. That is not America.

That is not our tradition. That is not what we stand for.

So when these new stories are leaked out or when we have it written about how Reagan is threatening, let us ask ourselves this: Let us assume that Mr. Reagan and the Congress gives all the help they can give to the so-called Contras; they are not in Nicaragua. The Sandinistas came out of Nicaragua. They did not fight Somoza from Honduras or from Costa Rica; they fought him right there. Obviously they must have had the people's support.

The so-called Contras are hiding out in Honduras. If we were to bring them back in, with their leaders being the ex-Somocistas, the hated Somocistas, all we would have done is solidify the so-called Sandinistas who, if left alone, would face the people and the people themselves would have restrained any excesses that we so much decry.

But the reason is that we basically do not have any respect for or any trust in those huddled, impoverished, Purtitanized masses, and we have not for 300 years. We are not on their side. We could care less. We look upon them like we do upon the Southeast Asians, as a subspecies, somebody who is inferior. But let me assure my colleagues of this: Sure, they may be impoverished, they may be ignorant, but they are human beings with a human soul, and they can distinguish. If a dog can tell the diffference between being stumbled over and being kicked, certainly a human being can.

Unless we get on the side of the people, we are dooming our children, our grandchildren, and our great grandchildren to an era of hatred and despisement. Why? The average citizen, as poor as he may be, relates favorably to America. As an American, it is safer to walk in the center of Managua than it is as an outsider in some parts of New York, because there is still that residue, that feeling that many Americans, missionaries, priests, ministers, and others have gone down there and identified as Americans, and so they are associated as Americans in a very favorable way. Why would teeming thousands be anxious to cross the border and come to America if they did not like it, if they did not think it was the America that we associate ourselves with in our minds?

When a President such as Mr. Reagan has acted the way he has, he has clearly and beyond peradventure of doubt revealed to me that not only has he been on an inexorable course of error resulting in eventual catastrophic events for our future well-being but that he prides himself in that ignorance and in that headstrong, mistaken course. No kind of threat like this should obscure the facts, and for 8 years I have been speaking the facts. The facts are that even if we should secure the overturn of the regime, the elected regime in Nicaragua—and Nicaragua is a sovereign nation—it is not our colony. We may think it is like Honduras. We are in occupation of Honduras, but Nicaragua is not our colony, any more than Costa Rica is.

But the Contras will never be able to govern Nicaragua. And unless we go in and we occupy it, we will never govern Nicaragua, and if we do, then in that case the whole region will be in flames and all of South America will be fearfully against us, knowing full well that they may be next to be invaded, and we will have an era of guerrilla fighting and sniping and picking off of our soldiers for untold years.

Why should we wait for that? Why should we allow ourselves to be intimidated by a foolish and mistaken President? I rise in protest of that.

The other topic is also a front page story, and this was on the business page of the Dallas Morning News. This is also yesterday's edition, October 13, and these two subject matters, believe it or not, are interlinked. The other subject matter is tied in with this economic report. The headline is "Tide of U.S. Bank Mergers Foreseen."

We have heard about the terrible crisis in our savings and loan industry. This says that we are going to have a big crisis in the whole banking structure, that we are going to have hundreds that will go under or be merged. I have been speaking out on that subject for years. I have addressed the possibility of such things since 1966 as a member of the Banking Committee. I have been doing now for 27 years, and I should think that I would have some basis for speaking on that topic.

These stories are interrelated. Our financial situation is tied in with all of those things. I have spoken ad nauseam about the international external forces that now dictate to us. No matter what we do with our budget here, there are forces over which we no longer have control and that are going to make the decisions for us.

I tied these things in in this way: We in the United States turned our back on Latin America. Our business ventures there just 12 years—to be exact, it was 15 years ago—were about 37 percent. Today they are less than 15 percent. So these are many of the interests that are influencing Reagan's regime, because President Reagan himself is an actor; he is an actor that has to have a script. The people elected an actor, so he is now President and they got him. But he is an actor that unfortunately does not have much depth, and he has to depend upon the script. But what I worry about, as I said in 1980, is the script writers, and I know who those have been. Some of them have their idea of communism or what have you, of socialism in Latin America, and that is their business ledger.

But the unfortunate thing is that it is not Russia or Cuba, it is our Western European allies that we are in competition with and losing out to in this trade. They have enough sense to know better than to associate with this regime, the Reagan regime in the course of conduct they have chosen to follow in Central America and Latin America, because they are competing in business.

Before World War II the Japanese controlled the economies of Peru and almost every one of those Pacific coast countries in South America. but with Franklin Roosevelt's wise Good Neighbor Policy, he turned around the hostility that existed from Mexico to Panama, and they were allies. They even gave us their youth to fight along side our soldiers during World War II.

Do we think that would happen today? Of course not. But Franklin Roosevelt had turned around the mistaken and foolish and outworn Coolidge policies. He had to resist the powerful oil and gas lobbyists who wanted him to invade Mexico when the President of Mexico had expropriated the oil companies.

But this regime is the first one that is completely beholden to those corporate interests. It is to be lamented, but it is true, that here in Washington, for instance, we have one of those whose name has not been in the forefront until lately. His name has been coming out now, and he is one of those in the junta of the so-called Contras. His name is a very distinct one in Spanish—Matamoros. But who is he? Well, he used to be the head of the Banco Ambrosiano. That is the Vatican's bank in Nicaragua.

That is his ambition, and he could care less about civil rights or democracy for that matter, or what have you, in Nicaragua. Where was he when Somoza had thousands in jail cells and was pulling out their nails? They had half room fulls of human nails pulled out.

Where were all these freedom-loving champions of the Contras then? They were nowhere around. They were supporting Somoza, the dictator. And this man whose interests are the Vatican's bank, the Banco Ambrosiano in Panama, is in Washington telling us that we ought to fight to the last marine to bring him back to his bank in Nicaragua.

And incidentally, with regard to the others, this administration in 1984 enabled some of these foreign aliens to meddle in our domestic elections. In Texas alone three of my colleagues faced money that was supposed to go to the Contras that was used in campaigns against them. They had such guys as Calero and others coming down and campaigning there. These were aliens campaigning in our elections, with the National Republican

Campaign Committee subsidizing them and even getting them their speaking appointments.

Mr. Speaker, I rise in protest on that. Under my unanimous-consent request, I am placing in the Record these two articles that I spoke about. I hope my colleagues will read both of them, particularly the one concerning the prediction of the bank failures. The text of the articles is as follows:

[From the Dallas Morning News, Oct. 13, 1988]

Reagan Considers Session on Contra Aid

(By Jim Drinkard)

Washington.—President Reagan will consider calling Congress back to Washington for a special session later this year if he judges that Nicaragua's Sandinista government is seeking to mop up the remnants of the anti-government rebels, the White House confirmed Wednesday.

Reagan plans to announce his intent in a statement later this week, said well-placed sources, who spoke only on condition of anonymity. If the president decides to do so, he would ask Congress for quick action to release $16.5 million in military aid for the contras. The aid is now stockpiled in Honduran warehouses.

White House spokesman Marlin Fitzwater said Wednesday night that a plan to seek new military aid for the contras also was being discussed.

Members of Congress were briefed Wednesday on a statement that could be issued by the president as early as Thursday, said an official accompanying the president on a speaking tip to New Jersey.

"It indicates that the humanitarian aid in the Defense Department bill is fine, but if the Sandinistas make 'X' moves, he (Reagan) would call Congress back to consider military aid," said the official, who asked not to be quoted by name.

Fitzwater said that White House officials, including National Security Adviser Colin Powell, had gone to Capitol Hill to consult with congressional leaders about a contra aid measure that provides a process by which the president could seek to gain the release of the stockpiled weapons.

"The consensus of the leadership was that we were better off to wait until the next session of Congress to consider the military release," Fitzwater said, "and the reason was that we have not had a new attack by the Sandinistas."

The contras lost their U.S. military support in February, when it was ended in deference to efforts aimed at forging a long-term ceasefire between the two sides. The rebels now are receiving $27 million in humanitarian aid under the Pentagon appropriations measure.

Reagan could trigger an expedited vote on the stockpiled weaponry if he certifies to Congress that two of three conditions are met: that the Soviet Union continues to funnel unacceptable levels of military hardware to the Sandinistas; that the leftist Sandinista government is violating terms of a regional peace accord; and that they launch an unprovoked attack on the rebels.

Administration officials maintain that the first two of those conditions already exist.

The contras' support, however, remains at a low ebb in Congress, and even their strongest supporters question whether the rebels will be able to regroup as an effective fighting force.

From a peak of nearly 18,000 rebel soldiers inside Nicaragua early this year, the number has dwindled to fewer than 2,000, according to intelligence estimates.

[From the Dallas Morning News, Oct. 13, 1988]

Tide of U.S. Bank Mergers Foreseen

(By David LaGesse)

Honolulu.—When the next recession hits the United States, banks nationwide will get a taste of the rapid, sometimes crisis-driven mergers that have hit Texas institutions, analysts say.

"The stage is set nationwide for dramatic change," said James McDermott, a bank analyst at Keefe, Bruyette & Woods Inc. in New York.

He spoke to the American Bankers Association as part of a panel of analysts who agreed that the experience of Texas—where nine of the 10 largest companies have sought new backing from private or public sources—is a prelude of what will strike the rest of the country.

For the good news, the bankers heard that a recession remains at least a year or two away, according to another panel made up of economists.

The Federal Reserve Board will cause the next recession when inflation begins to heat up again, said James Annable, chief economist for the First National Bank of Chicago.

"I expect inflation won't get high enough in 1989, even in 1990, to cause a recession," he said.

But the analysts predicted a recession would come sometime soon after that.

And many banks have made themselves vulnerable as bad loans have mounted around the country.

Loan losses at large banks, those with more than $500 million in assets, have grown from 0.63 percent of loans in 1983 to 0.96 in 1988, according to Sheshunoff Information Service Inc., an Austin consulting firm.

More loans have soured nationwide, even if you subtract the problems in Texas and bad overseas credits, said Charles Williams, a Harvard University banking professor.

That's true even though the economy outside the Southwest has continued to grow. With a national recession, even more loans will sour.

"Growth has covered up a lot of problem loans," said J. Richard Fredericks, a bank analyst at Montgomery Securities Inc. in San Francisco.

Bankers have loosened their credit rules because they need to replace stronger borrowers, many of whom now can borrow directly from securities markets.

"Bankers have been fulfilling their social responsibility by making sure everybody qualifies for a loan," said Alex Sheshunoff, president of the Austin bank consulting firm, speaking only a little facetiously.

Texas banks learned their lesson from the easy lending of the boom periods of high oil prices in the late 1970s and early 1980s. When angry prices fell and an economic recession set in, loan portfolios bared their weaknesses.

Indeed, Texas proved that the biggest threat to banks can come from deflation. "Bankers, in particular, should prefer a little inflation," Sheshunoff said. Not that other regions will suffer the economic disruption that befell Texas.

For example, McDermott cited the fast-growing real estate portfolios of banks and thrifts in the Northeast as a potential Achilles' heel.

But the Northeast economy does not depend so much on one industry, as the Southwest rides on the energy business.

So an economic downslide would force more loans into trouble. But the impact will lower bank profits, not necessarily cause outright losses, McDermott said.

Reduced profits could prompt a wave of healthier banks preying on the struggling brethren, said Edward Huffman, chairman of First National Bank of Shelbyville, Tenn.

His region already has seen a number of larger holding companies buying smaller banks. In fact, his institution spurned a buyout offer.

If weakened by a tough economy, takeovers will become tougher to resist. "The stockholders will be even more likley to want to sell," he said.

Nevada doesn't suffer much from national recessions, with its economy cushioned by gambling and tourism, said James Stathos, executive vice president of Pioneer Citizens Bank in Reno.

If newer gambling centers draw away tourists, Nevada banks could become vulnerable, he agreed.

"There's two ideal times for consolidation: Either when you're doing really well, or when you're doing really poorly," Stathos. said.

In recent good times, banks have partly hid from takeovers behind the shield of bans on multistate institutions. Since the mid-1980s, 45 states have adopted some sort of interstate banking law.

Texas, for example, allowed full interstate banking starting in 1987. Other states passed more limited rules that only allowed banking across adjacent state lines, with the idea of later allowing nationwide access to their state.

Those times for nationwide banking already have started to arrive. Trigger dates are coming for many states with large deposits, and could come just in time for a national recession, McDermott said.

Perhaps that's why bankers nearly filled the large room where the economic panel spoke. They undoubtedly took some comfort in the predictions of continued growth in the U.S. economy.

But bankers should remember the analysts were looking ahead three years, said Kathleen Cooper, chief economist at Security Pacific National Bank in Los Angeles.

"We economists are not looking that far out," she warned.

In the meanwhile, bankers need to clean up their portfolios if they want to survive the inevitable recession, McDermott said.

"There's race against the clock here."

Maybe the country's bankers will hear the ticking, McDermott said; they've seen what happened in Texas.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. Montgomery) to revise and extend their remarks and include extraneous material:)

Mr. Stark, for 5 minutes, today.

Mr. Annunzio, for 5 minutes, today.

Mr. Gonzalez, for 60 minutes, each day on today, October 18 and 19.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. Montgomery) and to include extraneous matter:)

Mr. Lantos.

Mr. Fauntroy.

(The following Member (at the request of Mr. Montgomery) and to include extraneous matter:)

Mr. Kemp in two instances.

ENROLLED BILLS SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 525. An act for the relief of John M. Gill;

H.R. 3559. An act to authorize and direct the acquisition of lands for Canaveral National Seashore, and for other purposes;

H.R. 4375. An act to improve the management of certain public lands in the State of Michigan;

H.R. 4554. An act to remove certain restrictions on land acquisitions for Antietam National Battlefield; and

H.R. 4557. An act to amend title 46, United States Code, to require alerting and locating equipment on manned uninspected vessels, to provide for exemption of uninspected vessels from certain requirements of that title, and to increase penalties for violations of certain uninspected vessel requirements.

ADJOURNMENT

Mr. GONZALEZ. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 10 o'clock and 45 minutes a.m.), under its previous order, the House adjourned until Tuesday, October 18, 1988, at 12 noon.

EXECUTIVE COMMUNICATIONS ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4458. A letter from the Director, Office of Management and Budget, transmitting an interim report on legislative and regulatory changes and threats to the fiscal year 1989 Gramm-Rudman-Hollings deficit; to the Committee on Appropriations.

4459. A letter from the Director, Office of Management and Budget, transmitting the cumulative report on rescissions and deferrals of budget authority as of October 1, 1988, pursuant to 2 U.S.C. 685(e) (H. Doc. No. 100-239); to the Committee on Appropriations and ordered to be printed.

4460. A letter from the Assistant Secretary of State for Legislative Affairs, transmitting notification of intent to continue assistance for El Salvador under the Anti-Terrorism Assistance Program, pursuant to 22 U.S.C. 2349 aa-3(a)(1); to the Committee on Foreign Affairs.

4461. A letter from the Assistant Secretary of State for Legislative Affairs, transmitting notification of a proposed license for the export of defense articles or defense services sold commercially, to the Government of Switzerland (Transmittal No. MC-41-88), pursuant to 22 U.S.C. 2776(c); to the Committee on Foreign Affairs.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. STARK:

H.R. 5530. A bill to amend title XI of the Social Security Act to exclude, from participation in the Medicare Program and State health care programs, physicians who have been found to have violated regulations governing the investigational use of new drugs; jointly, to the Committees on Ways and Means and Energy and Commerce.

By Mr. EDWARDS of Oklahoma:

H. Res. 589. Resolution condemning the continued suppression of human rights and blatant violations of the Esquipulas II accord by the Sandinista regime; to the Committee on Foreign Affairs.

By Mr. LANTOS:

H. Res. 590. Resolution expressing the sense of the House of Representatives concerning the issuance and renewal of certain student visas; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 2499: Mr. Studds.

H.R. 5187: Mr. DioGuardi.

H.J. Res. 626: Mr. Conte, Mr. Evans, Mr. Gregg, Mr. Ray, Mr. Skaggs, and Mr. Wolfe.

H.J. Res. 667: Mrs. Meyers of Kansas.

H. Con. Res. 362: Mr. Owens of Utah.

SENATE—*Friday, October 14, 1988*

(*Legislative day of Wednesday, October 12, 1988*)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the Honorable HARRY REID, a Senator from the State of Nevada.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

God of Abraham, Isaac, and Israel, you make it clear to us in so many ways your infinite adequacy.

Hast thou not known, hast thou not heard, that the everlasting God, the Lord, the Creator of the ends of the earth, fainteth not, neither is weary? There is no searching of his understanding. He giveth power to the faint; and to them that have no might he increaseth strength. Even the youths shall faint and be weary, and the young men shall utterly fall: But they that wait upon the Lord shall renew their strength; they shall mount up with wings as eagles; they shall run, and not be weary; and they shall walk, and not faint.—Isaiah 40:28-31.

Mighty God, infinite in wisdom and power, caring always more for us than we seem able to comprehend, grant that these strong words of Isaiah the Prophet may be heard, believed, and obeyed. Infuse this place with the reality of Your presence, Your love, Your inexhaustible resources for those who bear the heavy burden of public life.

In the name of the Prince of Peace, we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. STENNIS].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 14, 1988.

To the Senate:

Under the provisions of Rule I, Section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HARRY REID, a Senator from the State of Nevada, to perform the duties of the Chair.

JOHN C. STENNIS,
President pro tempore.

Mr. REID thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the majority leader is now recognized.

THE CHAPLAIN'S PRAYER

Mr. BYRD. Mr. President, the Chaplain's prayer is much to be appreciated. It comes at a time when we are tired from a long session. It gives us strength, succor, and the kind of reviving energy that we need, particularly at this moment, as we near the end of a very productive session of Congress.

I thank the Chaplain for quoting from Isaiah.

RESERVATION OF LEADER'S TIME

Mr. BYRD. Mr. President, I reserve my time, and I ask unanimous consent that the Republican leader's time may be reserved.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for morning business, not to extend beyond 10 a.m., with Senators permitted to speak therein for up to 5 minutes each.

HOW TO EASE OUR MILITARY BURDEN AND STRENGTHEN OUR SECURITY

Mr. PROXMIRE. Mr. President, it is time that this country acts on the fact that the United States and the Soviet Union must not, should not, and almost certainly will not go to war with each other. Our President knows that such a war would destroy both countries. Secretary Gorbachev also fully understands that.

In the Intermediate Nuclear Forces Treaty [INF], we have taken a small mutual step in the direction of recognizing this. Both sides are moving toward a much bigger step—that is, the Strategic Arms Reduction Talks [START] that would cut the nuclear arsenal on both sides from 10,000 strategic nuclear warheads down to 5,000. Both sides would certainly retain the power to demolish, and I mean utterly demolish, the other in the event of a superpower war. Any further agreement to reduce offensive nuclear arsenals beyond the START proposals would certainly require an asymmetrical agreement to reduce conventional arms in Europe that are now under the command of the Warsaw Pact and NATO. Second, it would require that the pact sharply modify its present offensive deployment of forces to the kind of defensive deployment that already characterizes NATO.

What real prospect is there that the Soviet Union would agree to both of these two critical changes in their present conventional policies in Europe? Both would appear to diminish clear pact military advantages. Would the Soviets voluntarily agree to such action? Yes. Here are the reasons why they are likely to do just this.

Robert Legvold is the director of the Harriam Institute for Advanced Study of the Soviet Union at Columbia University. Legvold has recently written a superlative analysis entitled "Gorbachev's New Approach to Conventional Arms Control." Legvold points out that Secretary Gorbachev has written in his book, "Perestroika":

> It is time the two military alliances amended their strategic concepts to gear them more to the aims of defense.

And Gorbachev goes farther in calling for "a change in the entire pattern of armed forces with a view to imparting an exclusively defensive character to them." Indeed, Gorbachev was even more specific: He argues that "at each crucial level of the military balance including Europe * * * the two sides should have armed forces only adequate for defending against possible aggression, not forces permitting either side to carry out offensive operations against the other." Two of the Soviet leading military commentators have made this Gorbachev position even more specific. They declare:

> Operational doctrine should be genuinely defensive which in turn requires adjustments in the numbers, structures, armaments, and deployments of forces in troop training and in military exercises and in military planning.

Mr. President, our negotiators should waste no time in going straight to a meeting with the Soviets to tell them to put their money where their mouth is. Let us challenge Gorbachev to withdraw his motorized divisions from the north German plain. Let us propose that the pact withdraw from the very border of East and West Germany and from their other advanced positions that separate the pact from NATO. Let the pact agree in writing

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● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

with verification meticuously monitored from satellite and on-the-spot short notice inspection of the position of all pact forces. If the Gorbachev word means anything it should also mean that the Soviets will reduce their forces to a level of parity with NATO.

In July of 1986, during French President Mitterand's visit to Moscow, Gorbachev said:

> For those types of weapons in which the West has more, let it make the corresponding reductions, and for those in which we have more, we will unhesitatingly eliminate this "surprise." In other words, let us look for balance at a lower level.

And at an international forum in February of 1987, Gorbachev said,

> There are no weapons of ours that are not subject to negotiations * * * it is important to lessen, or better still, exclude the possibility of surprise attack. * * * The most dangerous weapon must be removed from the zone of contact.

Are these honeyed words? Are they designed to lull NATO to sleep? Are they attempts to win the complacency of Western Europe and stir up the "peace forces?" Or does Gorbachev mean it? Mr. President, there's only one way to tell. Let's call him on it. If Gorbachev means what he says, why not propose an agreement to reduce weapons and military personnel on both sides to a precise parity? Let us also propose that both sides must remove troops from the borders of the pact countries and the NATO countries. Let us agree on no maneuvers that bring troops anywhere near borders. And let us insist on the most intrusive and thorough kind of verification procedures on both sides.

Why would the Soviets agree to this? Why would they give up their present conventional military advantages? Two answers. Gorbachev and the Politburo now, at long last, fully understand that a war, any war—I repeat, any war—between the superpowers would almost certainly become a nuclear war. Such a war would totally destroy both sides. Second, the economic burden of the huge conventional armaments of the Soviet Union is punishing the Soviet economy and diminishing its ability to continue as a major force in the world.

Mr. President, I ask unanimous consent that the article to which I have referred, by Robert Legvold, from the January 1988 Harriman Institute Forum, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Harriman Institute Forum, January 1988]

GORBACHEV'S NEW APPROACH TO CONVENTIONAL ARMS CONTROL

(By Robert Legvold)

Suddenly everyone's attention has turned toward the heart of the matter: The state of the conventional military balance in Central Europe. For nearly forty years Western Europe's anxieties have centered on the armies of the East amassed across the divide. For all this time Soviet leaders have let West Europeans stew in their fears. Now Mikhail Gorbachev says his country is ready to do something about the problem.

Gorbachev, in fact, has been saying interesting things about a whole range of military and defense issues. Sometimes what he urges seems farfetched and maybe even propagandistic, such as his insistence that all nuclear weapons can and should be eliminated within a matter of years. So, too, his startling proposition that deterrence as such is a pernicious concept, because it rationalizes the accumulation of nuclear weapons. Not only is it folly, he contends, to think that any general war, least of all a nuclear war, can be won. It is equally foolhardy to assume, as Western leaders do, that nuclear weapons can help to keep the peace by deterring aggression. Nuclear weapons, he insists, beget nuclear weapons.

At other times, his innovations are more compelling, such as the fresh way that he discusses national security. According to Gorbachev, a nation's security cannot rest only on military might, because so many threats to a country's well-being are economic and political, against which arms offer no protection. It is time to stop conceiving national security in preeminently military terms and placing excessive faith in military power. Moreover, unlike any of his predecessors, he has introduced the new theme that no nation's security should be achieved at the expense of another's; national security presupposes mutual security. "To think otherwise," he told Soviet television viewers in August, 1986, "is to live in a world of illusions, in a world of self-deception."[1]

From here, he has gone on to other less abstract new ideas, such as "reasonable sufficiency" as a guideline to military spending. The notion appears for the first time in his report to the Twenty-Seventh Party Congress, February, 1986, and has come to suggest a more modest alternative basis for designing Soviet defenses. Rather than keeping up with the Joneses in every sphere of military competition, Gorbachev seems to be saying, the Soviet Union should stop when it is confident that it can ensure the performance of essential defense tasks. To do more is to play into the hands of an adversary who counts on sapping Soviet economic strength by sucking the Soviet Union into an open-ended arms competition.[2]

There are other straws in the wind: Talk of strategic stability as a new goal for which the superpowers should strive, complemented by efforts on the part of Gorbachev's academic allies to spell out what that might entail; attempts to generalize to other areas of military competition the wisdom of the Soviet interim decision to cope with the American Strategic Defense Initiative by offsetting rather than imitating it; and the new approach to old Soviet rigidities, such as the acceptance of on-site verification for nuclear arms control and the scrapping of whole categories of Soviet missile systems. But the development that over-shadows all of these new hope-giving trends is Gorbachev's hint of a Soviet readiness to reconsider the conventional arms balance in Central Europe.

If Gorbachev has concluded that Soviet interests can be better served by rethinking his country's approach to war in Europe, he is stepping up to the core problem of postwar Eight-West military competition. Were the Soviet Union to engage in coming years in a good-faith effort to refashion the conventional balance in Europe, particularly in Central Europe, the contest between East and West would be fundamentally altered.

THE ROOTS OF THE PROBLEM

To understand why this is so, one must return to the essence of the problem. Originally the Western alliance, faced with large numbers of Soviet troops across the Elbe, resolved to deal with the problem in kind. In Lisbon in 1952, the North Atlantic Treaty Organization committed itself to raising a massive conventional force of seventy divisions as a counterpoise to the eighty to ninety divisions the Soviet Union had in Eastern Europe and the Western USSR. NATO never came close to achieving this goal, and soon settled for a nuclear shortcut. Early in the Eisenhower administration, defense planners seized on tactical nuclear weapons as a suitable substitute for the missing men in arms. A few years later they would add plans to emplace longer-range nuclear systems in Europe, both as a direct deterrent to conventional attack and as a link to America's nuclear arsenal.

In effect, the Western Alliance in the 1950s ceded conventional superiority to the Soviet Union and its Warsaw Pact allies, accepting a second-best response. NATO's nuclear deterrent, meaning primarily the nuclear weapons of the United States, was made to bear a heavy burden. Not only was it assigned the task of deterring the Soviet Union from resorting to the use of nuclear weapons and, failing that, of compelling the Soviet leadership to desist as quickly as possible, it was also expected to ensure that Moscow would never dare to attack with conventional arms in the first place.

Not surprisingly, whenever developments promised to dampen the willingness of U.S. leaders to follow through, the Europeans would invariably begin agonizing over their vulnerability to Soviet conventional might. It happened initially in the late 1950s, when the Soviets tested their first intercontinental ballistic missile, eliminating America's relative safety from nuclear annihilation and raising the specter that a U.S. president would refuse to see his land devastated even if Soviet armies were moving against Western Europe. A surge of the same uneasiness occurred in the late 1970s, when Americans and Europeans persuaded themselves that the Soviet Union would soon be in a position, should war come, to gut the most important element in the U.S. retaliatory force, land-based ballistic missiles. More recently the agreement to eliminate short- and intermediate-range nuclear missiles from Europe—weapons seen as bolstering a weakening U.S. nuclear guarantee—has, again, stirred concern over Soviet conventional superiority.

Superiority, however, is a vague notion. To understand where the roots of the problem are, one must be clear about the kind of superiority that counts. That which matters most is not the Soviet Union's raw quantitative superiority, although naturally people worry when Warsaw Pact personnel exceed NATO's by 1.7 times, its main battle tanks by 2.5 times, its artillery by 2.7 times, and its attack helicopters by 3.3 times.

Were a war to be fought, its course would depend on a great many factors missing from even the most complete weapons inventory, such as the morale of troops, the quality of weaponry, geographical advantage, and the underlying economic strength and social cohesion of society. No one has yet devised a matrix permitting all the determinants of war's outcome to be measured, but there are indexes that tell more than crude weapons counts—for example, the aggregate firepower of the two alliances' armies. Because this index reflects the capacity of one side to deliver munitions against targets of the other, it presumably would be a decisive element in war. By this standard the Warsaw Pact is usually thought to have at least a 1.2:1 advantage at the outset of hostilities, an advantage that increases as each side moves to reinforce its forces.[3]

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[1] *Izvestiya*, August 19, 1986, p. 1.

[2] See, for example, his speech to the 18th Conference of Trade Unions, *Pravda*, February 26, 1987, p. 3.

But comparisons based on so-called force-to-space ratios are also likely to be crucial predictors of success and failure. The term refers to the advantage required by attacking forces in order to prevail along a given sector of the front. Because there is only so much force that can be usefully concentrated in a finite space and the defending side does not have to match this force to withstand the blow, evaluations featuring this criterion ordinarily suggest that NATO's situation is better than often assumed.

In the end, however, the problems posed for the West by all of these comparisons derive from a single central reality, namely, the offensive posture of the East. Many interlaced elements create this reality. It starts with the determination of the Soviet leadership to fight the next war on the soil of the other side; a goal that places a premium on a blitzkrieg-style military strategy that would have Warsaw Pact forces smash through NATO's forward defenses and pour into the interior, swiftly enveloping and destroying NATO's nuclear forces, air bases, and the infrastructure for reinforcing the men and materiel on the front lines. This strategy in turn leads the Soviets to concentrate on weapons necessary to succeed, such as armor and artillery, and to deploy these weapons in a comparatively large number of combat divisions. For the world to change, it is this reality that Soviet leaders must be prepared to amend.

GORBACHEV'S NEW RHETORIC

Until spring 1986, precious little indicated any such possibility. For thirteen years, going back to early 1973, East and West had negotiated without much effect in the so-called Mutual and Balanced Force Reduction (MBFR) talks in Vienna. Throughout this time the Soviets showed no sign of a willingness to redesign the basic structure of the military balance in Central Europe, insisting all along that any reductions would have to preserve the existing balance.

Then sometime in the early months of 1986, Gorbachev appears to have begun entertaining a different approach. As late as January, 1986, in his visionary speech on disarmament, Gorbachev had nothing new to say about conventional arms control. But in April, at the 11th East German party congress, he spoke of the "confrontation on the [European] continent of mighty armed forces outfitted with conventional arms," arms whose "modern combat characteristics are drawing closer to systems of mass annihilation." He proposed that something be done to break out of the sterile and deadlocked MBFR framework by extending the geographic zone of reduction to all of Europe, "from the Atlantic to the Urals."[4] In June, 1986, the Budapest proposal of the Warsaw Pact urged the elimination of weapons particularly useful in surprise attack. A month later, during Francois Mitterrand's visit to Moscow, Gorbachev referred to West European fears of the Soviet Union's conventional superiority and said; "Let us look at all of this in a new way. For those types of weapons in which the West has more, let it make the corresponding reductions, and for those in which we have more, we will unhesitatingly eliminate this 'surplus.' In other words, let us look for balance at a lower level."[5]

At the International Forum in February 1987, he tied all these elements together and went one step beyond. "Take all our proposals," he began. "There are no weapons of ours that are not subject to negotiations."[6] "Our principle is simple: All armaments should be limited and reduced . . . If there is any imbalance, we must restore the balance not be letting the one short of some elements build them up, but by having the one with more of them scale them down." Then he went on, 'It is important, in our view, while lowering the level of military confrontation, to carry through such measures as would make it possible to lessen, or better still, altogether excluded the possibility of surprise attack." And he added, introducing a new phrase: "The most dangerous *kinds of offensive weapons* must be removed from the zone of contact." (My emphasis)

In early May, General Wojciech Jaruzelski presented Poland's plan for European arms control, and, in addition to many of the elements earlier introduced by Gorbachev, he included a proposal to render militay doctrine less menacing, that is, less offensively oriented. The Warsaw Pact Political Consultatve Committee then accepted the same notion at a meeting in June. Subsequently, spokesmen for Jaruzelski have made it plan that he has in mind revising operational doctrine (that is, the strategy by which a war would be fought), not the foggier and more hortatory concept of political-military doctrine (that is, the guidelines determining when and why a war would be fought), which by Soviet definition has always been defensive in the Warsaw Pact's case. Gorbachev, too, has acknowledged the need to reconsider military strategy as part of the arms control process in Europe. In his book Perestroika, he writes that "it is time the two military alliances amended their strategic concepts to gear them more to the aims of defense."[7] And, he adds, there must be "a change in the entire pattern of armed forces with a view to imparting an excluding defensive character to them."

By summer, 1987, Gorbachev had distilled from all of this a single central proposition. At each crucial level of the military balance, including Europe, he began saying, the two sides should have armed forces only adequate for defending against possible aggression, not forces permitting either side to carry out offensive operations against the other.

Meanwhile, Gorbachev's rhetorical departures have stirred an interest among a variety of civilian analysts and policymakers. A number of them have eagerly seized on his remarks to advocate a whole new approach to conventional defense in Central Europe. Many of these people come from the ranks of specialists on strategic nuclear issues, and have previously cared little about the character and evolution of the conventional military competition.[8] Two of them, for example, in a now famous August, 1987 article, take few pains to conceal the revolution they seek.[9] As they say, "Conventional military forces must be lowered to a level of reasonable sufficiency, that is to a level essential for solving only defensive tasks.' Operational doctrine, they say, should be genuinely defensive, which in turn requires adjustments in the "numbers, structures, armaments, and deployments of forces, in troop training and military exercises, and in military planning." To move in this direction, they bluntly note, "certain changes will have to occur in the way military professinals think."[10] They will have to "reconsider a number a widely held postulates of military theory and practice," including above all else the notion that "only 'an all-out offensive leads to victory.'"

Journals, like *New Times*, have gone out of their way to publish thought-provoking items. Sometimes it is a round-table with civilian military experts making the most of Gorbachev's themes. At other times it is an interview with a Western advocate of "non-provocative defense," such as retired British military officer Michael Harbottle, who then lays out in some detail the kind of changes that would be required of the Soviet Union.[11]

Even Soviet officials have seemed eager to give Gorbachev's formulas a push forward. In September, 1987, before the U.N. General Assembly, Foreign Minister Eduard Shevardnadze strongly endorsed the need to move toward military doctrines of an "exclusively defensive character," and added the notion that all sides should "adopt the principles of non-offensive defense."[12] A month later, the head of the foreign Ministry'a arms control department, Viktor Karpov, repeated Gorbachev's exhortation to reduce military force on both sides to a level where neither could move offensively against the other. He then went on to suggest that this might be accomplished by"scrapping nuclear weapons and by reducing the most dangerous types of arms, which could include tanks, tactical aircraft, and strike helicopters."[13]

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[3] For a convenient summary of this and the next comparison, see Jack Snyder, "The Gorbachev Revolution: Limiting Offensive Conventional Forces in Europe," International Security (forthcoming Spring 1988).

[4] See his speech in *Pravda*, April 19, 1986, p. 2.

[5] *Pravda*, July 8, 1986, p. 2.

[6] *Pravda*, February 17, 1987, p. 3.

[7] Mikhail Gorbachev, Perestroika: New thinking for Our Country and the World (New York: Harper & Row, 1987), p. 208.

[8] See, for example, A.G. Arbatov. A.A. Vasilev, A.A. Kokoshin, "Yadernoe oruzhie i strategicheskaya stabilnost," *SSHA*, no. 10 (October 1987), pp. 17-24; Vitaly Zhurkin, Sergei Karaganov, Andrei Kortunov, "Reasonable Sufficiency," *New Times*, no. 40 (October 12, 1987), pp. 13-15; Roald Sagdeev and Andrei Koskoshin, eds., "Strategic Stability under Conditions of Radical Nuclear Arms Reduction," (Moscow, forthcoming); V. Petrovskii, "Sovetskaya kontseptsiya vseobshchei bezopasnosti," *Mirovaya ekonomika i mezhdunarodnye otnosheniya (MEMO)*, no. 6 (June, 1986), pp. 3-13, and by the same author, "Doverie i vyzhivanie chelovechestva," *MEMO*, no. 11 (November, 1987) pp. 15-26.

[9] A. Kokoshin and V. Larionov, "Kurskaya bitva v svete sovremennoi oboronitelnoi doktriny," *MEMO*, no. 8 (August, 1987), p. 32. Dr. Kokoshin, one of the deputy directors of the Institute of the USA and Canada, is also a deputy chairman of the Velikhov Commission. General Larionov had a substantial role in drafting the Sokolovsky volumes on military strategy in the 1960s.

[10] *Ibid.*, p. 33.

[11] For an illustration of the first, see "Of Reasonable Sufficiency, Precarious Parity, and International Security," *New Times*, no. 27 (July 13, 1987), pp. 18-21, and for the second *New Times*, no. 18 (May 11, 1987), pp. 20-21.

[12] See *Pravda*, September 25, 1987, p. 4.

At last month's summit meeting in Washington, Gorbachev raised the issue to a new level of priority. At his closing press conference, he dwelled on the issue as never before. Not only did he give it only a fraction less attention than the centerpiece of the summit—strategic arms control—he drew direct parallels between the two areas.[14] He suggested that the kind of dramatic breakthrough sought at Reykjavik a year ago might be profitably imitated in the conventional field. He urged that one not wait for a fully sketched scheme of reductions to begin, but that the two sides proceed in phases, doing as much as one could as soon as one could. And he assured his listeners that the Soviet Union was ready to make the most far-reaching adjustments in its forces.

COMPLICATIONS

Two very major qualifications, however, need to be introduced, which together make the consummation of the new trends anything but sure. First, there is the condition of Gorbachev's own thinking. Neither he nor any other part of the Soviet establishment has yet begun to give content to his sweeping new language. Almost certainly neither he nor they have more than the most inchoate notion of how the Soviet Union would go about translating its current military posture into a demonstrably defensive one. Nor have they begun turning the rhetoric of the past year into a practical arms control negotiating program. Gorbachev's few forays into the realm of the specific have been off-handed and fragmentary.

In September, for instance, he referred to the removal of nuclear and other offensive arms from the borders where the Warsaw Pact confronts NATO and the creation of demilitarized zones.[15] Apart from its imprecision, the idea evokes schemes floated by Soviet representatives within the Palme Commission and in the dialogue with various parties of the European left, suggestions that have not stirred much enthusiasm elsewhere in Europe. He returned to the same notion in his press conference after the Washington summit, but then hinted that a more productive arrangement might be a tradeoff between the Warsaw Pact's larger number of main battle tanks and NATO's advantage in deep-interdiction aircraft, and then a few minutes later he implied that it would make sense to address the asymmetrics in geographical terms—NATO's superiority on Europe's southern flank weighed against the Warsaw Pact's upper hand farther north. Similarly, other Soviet commentators have left a trail of scattered, inconsistent, and not altogether encouraging specifics. All manner of tradeoffs are hinted at, but often the combination of weapons to be reduced makes no sense. Either the result would weaken defense on both sides more than offense or would leave NATO, in particular, in an even more precarious position.

The second qualification gives still greater reason for pause. Whatever may be the half-formed character of Gorbachev's ideas, it appears that the Soviet military have as yet hardly begun to move in the same direction. If Gorbachev and many of his foreign policy advisors in principle now accept the need to reshape the conventional balance in Europe, what is coming from the military looks quite different. From all appearances, they continue to believe in past policy and to harbor a notion of threat that, if anything, requires a greater national effort. What they write seems at odds with Gorbachev's formulas, even at times a deliberate refashioning of his meaning.

Gorbachev portrays a Europe ripe for arms control; Soviet military leaders, starting with Marshall Akhromeev, harp on a different reality—on a NATO adversary "preparing for an extended conventional war using new systems of armaments," ready to launch a "surprise attack" and "massive military operations," swiftly "extended throughout the depth of Soviet territory and that of its allies."[16] This is hardly an anniversary on the defensive, intimidated, and in need of reassurance through arms control. On the contrary, it is a superbly well-armed foe, increasingly committed to offensive doctrines of its own, such as Air-Land Battle.

Where Gorbachev and the civilians stress the notion of "reasonable sufficiency," the Soviet military substitutes "defense sufficiency," a concept that sets a considerably higher defense requirement.[17] Defense sufficiency, writes Akhromeev, is not something that should be interpreted "one-sidely, or without regard for the prevailing correlation of forces."[18] Even less should it allow for "unilateral disarmament or a unilateral reduction of our defense forces." On the contrary, sufficiency is having forces, both in quantity and quality, that are fully commensurate with "the level of military threat." As another senior military figure puts it, "The bounds of sufficiency for defense and for repelling aggression are defined not by us but by the actions of the United States and NATO."[19] When Akhromeev makes the same point, he specifically cites the West's striving for superiority as the source of the difficulty.

Where Gorbachev and the others concede the importance of moving to defensive operational doctrine, the Soviet military claims already to have it. General Gribkov, for example, speaks of Warsaw Pact forces readied for "retaliation," possessing arms sufficient only for "defense and for rebuffing potential aggression." Akhromeev flatly asserts that the "defensive character of the Warsaw Pact's doctrine extends in equal measure not only to its political but to its military-technical side."[20] And then both men go on to stress that the Soviet Union's defensive posture "scarcely signifies that the Warsaw Pact only intends to repulse passively the blows of the enemy." On the contrary, if aggression is committed, it will invite "crushing retaliatory blows," delivered with "maximum decisiveness and activity."[21]

Do these striking differences represent open discord between the Soviet military and political leadership? And, if so, what effect is the disagreement likely to have on the Soviet willingness to engage NATO in a serious effort to restructure the conventional balance in Central Europe? It would be a mistake to jump to conclusions. Rather than inferring conflict from these discrepancies, the outsider would be wiser to assume that nothing yet exists over which to quarrel. Because Gorbachev and his allies have not given content to their ideas, the military remains unchallenged. Indeed, they are left to make of the new language whatever they choose. Neither part of the leadership has begun to engage the other.

Sooner or later, if the political leadership moves to give content to its ideas—tries to reshape doctrine, deployments, and hardware in Central Europe—and the military remains wedded to the old concepts and posture, then a conflict looms. But this struggle may never materialize. For there is already nuance in the military leadership's position. While the accent in Akhromeev and the others' interviews and articles contrasts with Gorbachev's, somewhere in everything issued by the military appear traces of the General Secretary's new thinking. Akhromeev, for example, embraces the notion that both East and West should have only the capacity to defend, not the means to launch a surprise attack or to carry out large-scale offensive operations. And he comes back to the notion a second time in an arms control context endorsing it as the aim of Warsaw Pact policy.[22] He also repeats another Gorbachev formula, according to which the persistent upward thrust of the arms race threatens to reach a point where strategic parity no longer reinforces deterrence.

More importantly, the military, for their own reasons, are beginning to question many aspects of prevailing doctrine. The changing character of the modern battlefield, the emergence of new technologies calling into question the primacy of the tank, and NATO's own evolution toward more offensive strategies are forcing the General Staff's shrewdest strategists to think long and hard about the war of tomorrow. How they eventually choose to respond to the military challenge may not be utterly at loggerheads with the kind of posture Gorbachev and his supporters may begin insisting on for political reasons. At the moment, the tendency appears to be to seek ways of retaining the initiative by exploiting new technologies, and conducting as much offense as possible.[23] But there are those on the Soviet side who believe that these trends will eventually lead to a greater emphasis on strategic (conventional) defense, not as a momentary consolidation before going over to the offensive, but as an alternative defense posture. If so, Gorbachev and his sympathizers will have less trouble selling the Soviet General Staff on the merit of depriving both alliances of their most potent offensive capabilities.

Andrei Kokoshin and General Larionov use the World War II Battle of Kursk to argue that defense has in the past not only proved itself more economical but, through the concentration of fire and the use of artificial obstacles, such as anti-tank mines, has demonstrated the "possibility of achieving maximum advantage" and withstanding

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[13] Viktor Karpov, TASS, October 12, 1987; Foreign Broadcast Information Service, Daily Report, Soviet Union, October 13, 1987, pp. 4–5.

[14] See *Pravda*, December 11, 1987.

[15] This is contained in his much-noted article on revitalizing the UN System. See *Pravda*, September 17, 1987, p. 2.

[16] See Marshal Sergei Akhromeev, "Doktrina predotvrashcheniya voiny, zashchity mira i sotsializma," *Problemy mira i sotsializma, no. 12 (December 1987)*, p. 24.

[17] Akhromeev, for example, throughout the previously cited article uses only the phrase "oboronnaya dostatochnost" (defense sufficiency), never the phrase "razumnaya dostatochnost" (reasonable sufficiency).

[18] *Ibid.*, p. 26.

[19] Interview with the Chief of the Warsaw Pact, General A.I. Gribkov, *Krasnaya zvezda*, September 25, 1987, p. 3.

[20] Akhromeev, "Doktrina," p. 26.

[21] The quote is from *ibid.*, pp. 26–27, but the same point appears in Gribkov's interview as well.

[22] *Ibid.*, pp. 27 and 28.

[23] See Snyder, "The Gorbachev Revolution."

"the mightiest armored thrusts."[24] Larionov fought, as a young commander, in the Battle of Kursk and has given a great deal of thought to understanding its meaning. Kokoshin and Larionov are not only recasting the history of the battle that has most shaped postwar Soviet thinking. They are using history to justify a fundamental shift in the Soviet approach to conventional arms. Many officers of Larionov's generation are likely to resist, convinced that they know first hand how wars are fought. But already there are younger officers who sense the decrepitude in Soviet military thinking, and who eagerly seek venues for exploring a more modern vision of warfare.[25]

They will be helped by a variety of civilian analysts, some of who work closely with parts of the Soviet military establishment. These analysts are just beginning to develop frameworks by which the hard issues of conventional forces restructuring can be judged. In the Velikhov Commission, the assemblage of scientists and analysts that has done much to shap the Soviet response to the Strategic Defense Initiative, work has started on alternative conventional arms regimes. Karpov's arms control department in the Foreign Ministry is beginning to address the problem. Even the small arms control sectors within the Central Committee's International and Propaganda Departments, both of them under the direction of senior military officers, are likely to weigh in. Sections within the Institute of World Economy and International Politics and the Institute of the USA and Canada, which enjoy close working relations with Karpov's department and parts of the defense establishment, are also gearing up to shape the discussion. Many—indeed, most—of these people accept the need to adjust the Soviet Union's traditional approach to the conventional balance in Europe and the wisdom of a more unambiguously defensive Warsaw Pact posture.

GORBACHEV'S MOTIVES

It is, of course, Gorbachev and policymakers at his level who will determine whether anything comes of the new talk. They, if they choose, will be the ones to bring matters to a head, to give the new concepts real currency, to decide how and when to translate theory into something concrete. Thus, it is important to understand what lies behind their interest in sounding the new themes. Why is Gorbachev at last talking about a redefinition of the conventional military balance in Europe?

There are several possible answers to the question. First, Gorbachev may be cynical. He may be raising the topic only to sow confusion within the Western alliance, hoping to stimulate complacency among the European and American publics and to help lower their guard at a time when the removal of nuclear weapons from Europe is enhancing the weight of Soviet conventional military power. Explained in this fashion, Gorbachev's words are a subterfuge intended to complement the steps already taken toward a denuclearized Europe, in which Soviet conventional power will stand still more starkly supreme.

Second, Gorbachev may be sincere about conventional arms control and the restructuring of the balance but for cynical ends. In fact, he may plan to stress tradeoffs enhancing the Soviet Union's existing advantage. The right kind of constraints on new technologies or on weapons favoring NATO, such as tactical aircraft, could add to Soviet superiority. By this reasoning, Gorbachev seeks not so much to improve the Central European balance as to aggrandize Soviet military power.

But other explanations also are possible. Some observers would argue that Gorbachev's motives are sincere but extrinsic to arms control; that he genuinely desires a reduction of the military confrontation in Central Europe in order to draw down Soviet commitments in East Germany and to transfer scarce resources to urgent domestic economic needs. Given the deep-seated economic difficulties facing him at home, the thought that Gorbachev seeks relief wherever he can find it does not seem farfetched. Were he able to demobilize a large fraction of the twenty divisions currently deployed in East Germany, the gains to his modernization program would be sizable.

A fourth and final explanation seems to me the most compelling. Accordingly, what has finally brought Gorbachev around to the problem of the conventional force balance is a recognition that, unless he faces up to it, he cannot have the nuclear arms control regime that he wants. At a minimum, he cannot hope to rid Europe of nuclear weapons, which he has set as a goal, without at least making some gesture to reassure the West Europeans. Possibly the impulse is grander still. Gorbachev may be the first Soviet leader to comprehend the integral link between the state of the conventional balance in Europe and the larger nuclear competition between the United States and the Soviet Union. Controlling the next surge in nuclear technology, including the array of weapons systems likely to benefit from the American SDI program, will obviously depend on the progress the two sides achieve in constraining long-range offensive (nuclear) forces. Henceforth, however, any such constraints are increasingly caught up with the question of conventional arms control. More and more voices in both Europe and the United States express unease over the prospect of cutting deeply into the American nuclear deterrent, while nothing has been done to ease the threat from the conventional military balance.

"Lowering the level of military confrontation and reinforcing stability in the sphere of conventional military forces, particularly in Europe," Kokoshin and Larionov write," are essential conditions for deep cuts in nuclear arms" and for achieving a stable "military-strategic equilibrium" at a lower level.[26] Gorbachev, at the summit, spoke even more to the point.[27] Success in eliminating INF and progress on strategic arms control had brought East and West inevitably to the question of conventional armaments. The more nuclear arms control advanced, he suggested, the more important became the other matter. He even referred to conventional arms control as assuming "pride of place."

THE CHALLENGE FOR THE UNITED STATES

Conventional arms control is upon us, no matter how ill-prepared both East and West are to deal with it. In the coming decade, the issue is likely to dominate the arms control agenda as much as limiting nuclear weapons. Unhappily, it is also likely to be a considerably more complex and unwieldy task. The numbers of participants, weapons systems, spatial dimensions, apples and oranges vastly exceed those grappled with in either INF or START. The politics of the issue within and between alliances make those of the other two negotiations seem easy.

Add to that several further disadvantages. First, there exists almost no advanced thinking on which the two sides can lean in launching the process. Little of the intellectual capital accumulated before strategic arms control got underway in 1969 has any parallel in the sphere of conventional arms control. Fourteen years of MBFR negotiations have deadened the mind to the possibilities of a major restructuring of the military balance, and, until recently, no part of the university or research world in either country had stepped in to fill the breach.

Second, the complexity of the issue means that even like-minded negotiators of great good will would have a devilishly difficult time designing a regime with enhanced security all around. As Jack Snyder and others have argued, any number of tradeoffs would lead to a less favorable ex ante situation. Or, as he notes, arrangements meeting one set of criteria would do damage according to another. "For example, trading ten [Warsaw] Pact Armored-Division Equivalents for five NATO ADEs would improve the firepower balance, but it would be ruinous from the standpoint of NATO's force-to-space ratio. Similarly, banning long-range fighter bombers would reduce incentives to preempt in the air war, but it would throw away a NATO advantage without receiving adequate compensation."[28]

Third, great potential discord exists within the Western Alliance over the future of conventional arms control. The French, both inside and outside government, mistrust further arms control focused on Europe, for fear that it will only add pressure to denuclearize the continent completely. Conventional arms control, because it will doubtless evoke the problem of battlefield nuclear weapons, seems to them a perilous enterprise, all the more because by definition it does not affect the vast arsenal of strategic nuclear weapons retained by the Soviet Union.

The Germans are likely to welcome the chance to do away with battlefield nuclear weapons, since their country is to be the battlefield, but they are divided even within their government over how boldly to pursue the conventional arms-control option. And the Americans are likely to argue among themselves and with their allies over how much to make future strategic arms accords hostage to a lumbering, intractable conventional arms control process.

Finally, the Soviet side is not yet in any position to negotiate seriously, since it has only begun to think through the issue. Over the next year or two, Soviet initiatives are likely to be tactical holding operations, masking the absence of a well-thought-out set of objectives and a strategy to go with. Even seemingly bold steps—say, were the Soviets to withdraw unilaterally an impressive number of tanks from Eastern Europe—would not substitute for the hard rethinking that must still be done in Moscow before the process can advance.

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[24] Kokoshin and Larionov, "Kurskaya bitva," p. 32.

[25] This comment and those with follow in the next paragraph are based on a series of conventions in New York, Washington and Moscow, with a number of Soviets who are participants in or close observers of the process underway.

[26] Kokoshin and Larionov, "Kurskaya bitva," p. 32.

[27] *Pravda*, December 11, 1987.

[28] Snyder, "The Gorbachev Revolution."

Nonetheless, for all the difficulty that lies ahead, a historic opportunity may now be taking shape. If, as mounting evidence suggests, Gorborchev has accepted in principle the need to do something about conventional forces in Europe, creative leadership in the United States and West Germany may find him willing to begin the long, arduous process of reconceiving the Soviet approach to war in Europe. It will not happen tomorrow. But for the first time in forty years, a serious effort to engage the Soviet leadership in transforming the military confrontation in Central Europe has a chance of succeeding.

Mr. COHEN. Mr. President, I commend my colleague from Wisconsin for his comments. I have not had occasion to read Professor Legvold's article, but I did travel to the Soviet Union with him. I must say that he is one of the more impressive scholars we have on the Soviet Union.

I also point out that we should not simply allow our ears to be stuffed with the cotton of rhetoric. There is a great deal of rhetoric coming out of the Soviet Union about the need to have conventional disarmament.

I see nothing in my experience on the Armed Services Committee or the Intelligence Committee that would warrant drawing any conclusion that the Soviets have taken any concrete steps to reduce the threat they pose either with nuclear capability or conventional capability.

I do commend the Senator from Wisconsin for his comments.

Mr. PROXMIRE. Let me point out that the Senator is absolutely correct on this. I say that we should negotiate with the Soviet Union and have them show that they mean what they are saying; give them an opportunity to do it.

Mr. COHEN. I thank the Senator.

FLOOR STATEMENT—PHILIPPINES BASES

Mr. COHEN. Mr. President, the Philippines has provided one of the happiest chapters for U.S. foreign policy in recent years. Against a backdrop of historically close ties, the United States has played a crucial role in supporting the reemergence of democracy under President Aquino.

The popular movement that brought Mrs. Aquino to power captured the imagination of America. We cheered as this unassuming, but fearless, housewife was swept into the Presidency by the undeniable will of the Philippine people.

Since Mrs. Quino took office the U.S. administration and Congress have worked together to provide all possible support to her government—politically, militarily and, most important, economically.

U.S. assistance has been within the framework of a military bases agreement, signed with former President Marcos, governing American access to Subic Naval Base and Clark Air Force from 1984 to 1989. Under the agreement the United States committed its "best effort" to provide a total of $900 million in economic and military assistance over the 5 years.

In fact, we have done much better than that. Our best effort has amounted to about $1.2 billion or a third more than our original pledge. And this does not include Public Law 480 food aid and other "soft" categories of assistance. This increment was achieved in the teeth of severe budget pressures and at the cost of reducing other high priority programs. But we did it gladly because we share with the Philippines a commitment to democracy and a common security interest in preventing the further spread of Communist influence in Southeast Asia.

Unfortunately, the ongoing United States-Philippines negotiations to review the military bases agreement has become a source of some discord between our two countries.

U.S. bases in the Philippines have been the linchpin of Western military power in South and Southeast Asia. Clark Air Base is the only major U.S. Tactical Air Force installation in the Western Pacific outside Korea and Japan. It is also the air logistics hub for all U.S. forces in the Western Pacific. Subic Bay Naval Base can support combat operations of several carrier battle groups and provide logistics backup for naval operations throughout the Western Pacific and Indian Oceans. These bases are valuable and would be difficult, but not impossible, to replace.

Given the history of close ties between our two countries, I have been greatly disappointed by the position taken by the Philippines throughout most of the base review negotiations. The United States has offered to increase its "best efforts" pledge from the current $180 million per year to $481 million annually. By any measure, this is a generous offer. But the Chief Philippine negotiator, Foreign Secretary Raul Menglapus, has demanded an annual payment of $1.2 billion in addition to a series of concessions regarding access to, and ownership over, certain base facilities.

In pressing these demands, Mr. Menglapus has asserted that the bases serve no purpose in defending the Philippines or combating the Communist insurgency that has taken control over much of the Philippines countryside. He sees the bases as a manifestation of an outworn American paternalism toward his country—an unwelcome burden the Philippines has borne for United States benefit.

Mr. Menglapus has chosen to ignore the stake the Philippines shares with the United States in a secure, peaceful Southeast Asia. In recent years the Soviet Union has built a huge military presence in the Far East; its Pacific fleet which operates in part out of the former U.S. base at Cam Ranh Bay is now the Soviet's largest.

If American forces are compelled to withdraw from Southeast Asia, a dangerous power vacuum will result. Neither China nor Japan will be content to leave the Soviet Union as the dominant military presence in the South China Sea astride the international sea lanes to the Indian Ocean and the Middle East. Already, the Chinese Navy has moved aggressively to establish a presence in the Spratley Islands between Vietnam and the Philippines. Japan, with the third largest navy in the world in the 1990's, may well decide that its national interests require a strong air and naval presence in Southeast Asia to protect the flow of oil from the Persian Gulf as well as Japan's massive economic investments in insular Southeast Asia. This prospect has raised concerns of others in the region. South Korea opposition leader Kim Dae Jung has been quoted as saying, "We don't want to see a revival of the little giant of Japan." Hopefully the Philippine people share his concern.

Mr. Menglapus has also chosen to ignore the crucial role the United States bases play in the Philippines economy. In addition to direct military and economic assistance under the military bases agreement, the bases provided an estimated $500 million in other economic benefits to the Philippines last year alone. This included local procurement, salaries for the 70,000 Filipino employees, allotments to retired Filipino workers, and so on. All together the bases account for nearly 4 percent of the entire gross national product of the Philippines.

The United States has no desire to leave the Philippines and every opinion poll shows that most Filipinos have no desire to see us leave. Nevertheless, if we are asked to meet impossible demands, we must prepare to do just that.

Over the past few months the Pentagon has conducted a detailed study of alternative basing options for United States forces presently stationed in the Philippines. At this moment, the completed study is in the hands of the Joint Chiefs of Staff for their review.

While the study has not yet been released, it is clear that the United States has a number of basing options.

First, and most promising, are territories in Micronesia that the United States owns or for which we have special rights and responsibilities. This option would require enlarging our existing naval and air bases on Guam while constructing new port and airfield facilities on the islands of Tinian and Palau. In addition, bases in Hawaii and Alaska offer possible support facilities.

Second, United States bases in Japan could host additional forces. This might involve moving a naval cruiser to Yokosuka and a tactical fighter wing to Kadena. Yokosuka might also handle the fleet maintenance activity presently located at Subic Bay.

Third, there are potential sites elsewhere in Southeast Asia for both naval and air units. These include former British military facilities in Singapore, former United States air bases in Thailand, and other possible sites in Australia and Malaysia.

All of those options would entail some losses in terms of military efficiency. Several of them would require the consent of host governments. The present capabilities of U.S. forces and Clark and Subic cannot be duplicated at any single alternative site in the region. But they can be replicated using a combination of sites.

This will cost money, but the Pentagon study concludes that the costs of moving U.S. forces and constructing new facilities will be less than half the $8 to $10 billion frequently cited in public discussion of this issue over the last few years. Even with increased annual operating expenses due to higher wages for a local work force, the total 5-year cost of relocating to new bases will be less than the comparable payment demanded by Mr. Menglapus. Moreover, if the new bases are entirely or primarily located in U.S. possessions, they will no longer be subject to the uncertainties of local politics. There will also be big dividends in terms of the physical security of the bases and their personnel.

Let me be very clear. I believe it is in the interest of both the United States and the Philippines to retain the American presence at Clark and Subic. That is what we want, and I believe that is what the vast majority of Filipinos want. But if the price is little short of extortion, then we must leave. Moving will entail major costs and serious inconvenience, but it can be done and we can afford it.

Mr. President, just this week news stories have suggested this message is being heard. There are hints and indications that United States and Philippine negotiators may be closer to an agreement than seemed likely even a few days ago.

These are hopeful signs. It is time for realism and accommodation to replace political grandstanding. It is in our shared interest to resolve the bases issue and move forward together to meet the challenges of rebuilding the Philippine economy and countering the Communist insurgency.

The ACTING PRESIDENT pro tempore. The Senator from Colorado.

Mr. WIRTH. Mr. President, I come over this morning to address the issue of the importance of peer review in university research as opposed to pork-barrel science.

Before proceeding on that topic, I want to comment concerning the distinguished senior Senator from Wisconsin, Senator PROXMIRE.

GOODBYE TO SENATOR PROXMIRE

Mr. WIRTH. Mr. President, I rise today to join in honoring our distinguished and accomplished colleague, Senator WILLIAM PROXMIRE of Wisconsin. When we return to Washington next year, the Senate will, for the first time in over 31 years, be conducting its business without the benefit of BILL PROXMIRE's skill and wisdom. He will be sorely missed.

Senator PROXMIRE has an admirable record of achievement. His uncommon persistence and dedication is demonstrated by his feat of not missing a rollcall vote from 1966 to the present. These same talents were evident in his 19-year battle on behalf of the Genocide Treaty. I was not a Member of this body during all of his 19 years of daily speeches on this topic, but I am pleased that the treaty's ratification did not stop his daily habit of speaking every morning on the Senate floor. I've enjoyed hearing and reading his thoughts on a wide variety of topics.

We cannot praise Senator PROXMIRE without mentioning his legendary frugalness with the taxpayers' money. His efforts as a member of the Senate Appropriations Committee, his campaign against funding of the supersonic transport [SST], and the hearings he held in 1968 to investigate military procurement, which first brought this issue to widespread attention, all reflect his determination to save Federal and taxpayer funds whenever possible. And, of course, his Golden Fleece Awards, a monthly recognition of particularly absurd uses of Government funds, have attacked the problem of Government waste with unbridled and disarming precision.

Senator PROXMIRE has many other achievements for which he will be remembered. Among these are the Community Reinvestment Act [CRA] and the Foreign Corrupt Practices Act [FCPA]. The Community Reinvestment Act requires lenders to make loans to individuals, organizations, and businesses in the community in which they're based. This law seeks to prevent "redlining" of poor or minority neighborhoods, and helps to preserve an important function of small community banks that is in danger of being lost as banks consolidate and grow larger. The CRA helped turn what has been heated debates over redlining into a more constructive dialog over legitimate community needs and strategies. The pressure of the CRA had led to many productive partnerships between lending institutions and communities in which they operate.

The Foreign Corrupt Practices Act is one of Senator PROXMIRE's most significant accomplishments. This legislation was a response to the revelations in the 1970's when more than 450 corporations disclosed millions of dollars in illegal or questionable payments to foreign agents. By making bribery of foreign officials illegal, Senator PROXMIRE has helped improve the image and conduct of American businesses both here and abroad. His action also increases the importance of sound economic factors in foreign business decisions. I hope that the loss of BILL PROXMIRE's vigilance on this matter will not lead to efforts to weaken his important achievement. FCPA and CRA are both cornerstones of important ethics-related pieces of legislation that have served our country well and Congress must strive to continue its strong enforcement.

Before we finish our work, I hope we will be able to pass the Proxmire Financial Modernization Act which will permit increased competition in our financial marketplace while providing the necessary regulatory oversight. BILL PROXMIRE has worked hard as chairman of the Banking Committee on this banking bill and many of us want to work with him to make this bill his last major accomplishment as a Senator. But even if this legislation does not pass, it will not diminish his impressive record.

Finally, BILL PROXMIRE had the enviable ability to win reelection while spending almost no money on his campaigns. Legend has it he spent only $177.75—all of it his own money—on his 1976 campaign and, no doubt alarmed by the expense, brought that down to $145.10 in 1982. But I was even more amazed to hear that the $145 was spent not for campaigning but simply on postage to return unsolicited campaign contributions. This freed him from the need to devote an enormous amount of time to fundraising and gave him more time to think and write. More importantly, the fact that he can do this, and win handily, shows that the people of Wisconsin appreciate what an excellent bargain they got when they sent BILL PROXMIRE to the Senate 31 years ago.

BILL began his political career after he was fired as a reporter in a dispute with his editor. Even back then, Senator PROXMIRE did not hesitate to say what he thought and fortunately that trait has continued. As he leaves this institution, he has indicated that he intends to return to that earlier vocation and do more writing in retirement. I look forward to reading his work and continuing to have the benefit of his sound judgments and advice. Thank you, BILL.

UNIVERSITY RESEARCH FUNDING IN THE FISCAL YEAR 1989 DEFENSE BILLS

Mr. WIRTH. Mr. President, turning very briefly to the other subject that I wish to comment on, university research funding in the 1989 Defense legislation.

Mr. President, America's colleges and universities are vital to the future prosperity, quality of life, and security of our great Nation. In the area of national defense, our colleges and universities provide the technology base upon which we increasingly depend to maintain our security. Congress this year has passed legislation affecting the relationship between the Department of Defense and our colleges and universities. Today I would like to comment briefly on the controversy surrounding the way in which we provide defense funding for university and college research.

Let me first address a provision in the fiscal year 1989 Defense Authorization Act—a short provision with a rather lengthy title: "Requirements of Competition for Award of Grants and Contracts to Colleges and Universities for Certain Purposes." The provision is relatively straightforward, stating:

> The Secretary of Defense may not make a grant or award a contract to a college or university for the performance of research and development, or for the construction of any research or other facility, unless the grant or contract is made or awarded using competitive procedures.

Recognizing that it is relatively easy to circumvent such language, the provision goes on to state that a subsequent law may not modify or supersede the above provision unless it specifically refers to this section and specifically states that the law modifies or supersedes this section. Because of its potential far-reaching effects, this law is to become effective on October 1, 1989. This should allow time to plan for and effect a smooth implementation of this provision.

Why was this provision included in the Defense authorization bill? Very simply, it was intended to halt the growing practice of earmarking, or setting aside, funds for specific colleges and universities in legislation, or through reports that accompany legislation in defense-related bills. Some give this practice a rather unflattering title, "Pork Barrel Science." The practice is condemned by such prestigious groups as the American Association of Universities and the National Association of State Universities and Land Grant Colleges. These groups, and virtually every other significant participant in higher education policy issues, support Federal funding awards to colleges and universities that are based on a merit-review process, which means a competitive process.

Let me now address a related provision in the fiscal year 1989 Defense Appropriations Act—a provision introduced by Senators NUNN and DANFORTH, and of which I am proud to be a cosponsor. The provision, you may recall, was the subject of a lively debate when the Senate took up the Defense appropriations bill on September 30.

That provision did two things. First, it preempted an attempt to incorporate unauthorized, noncompetitive university earmarks in the fiscal year 1989 DOD appropriations bill in amendment 89. As a result of striking these earmarks, the sum of $46 million remains in the appropriations bill under the heading "Research Projects," about which I will say more later. The second thing the Nunn-Danforth provision did was to require the Secretary of Defense to identify and report to the Appropriations and Armed Services Committees of the Senate and House, any programs, projects, or activities for which funds were not requested in the fiscal year 1989 budget submission, but are made available for a single university or college by the fiscal year 1989 Defense Appropriations Act. The provision also includes any organization affiliated with an educational institution. This is intended to mean organizations that are specifically associated with a single higher education institution and are, for the lack of a better term, a captive of that educational institution. The report to be submitted by the Secretary of Defense is also to include the name of the institution, the program, project, or activity; and the associated funds appropriated by the Appropriations Act.

The provision is intended to be a sunshine law, a good-government law. For this reason, the provision asks the Secretary to identify those funds that are earmarked either directly, or indirectly. By doing this, we will hopefully shed some light on the magnitude of the problem of allocating scarce resources for higher education research based on politics rather than merit. Finally, this provision says funds may not be obligated or expended until February 1, 1989, and until 90 days after the Secretary submits his report.

What does this provision mean? First, it means we are going to gain an understanding of the extent to which earmarking has occurred in the fiscal year 1989 Defense Appropriations Act. Second, it means funding for the earmarked projects will be delayed until at least February 1, 1989. It does not necessarily mean the earmarked projects will not be funded in fiscal year 1989. The funds are still appropriated. Specific action by Congress will be required after the Secretary submits his report if projects are to be specifically stopped. On October 1, 1989, however, because of the provision in the Authorization Act, noncompetitive awards will be prohibited by law. We should think of fiscal year 1989 as a transition year that will, hopefully, return DOD funding for universities to a merit-review process.

I would finally like to address the related issues of the University Research Initiative, or URI, and geographic broadening. The fiscal year 1989 Defense authorization includes $120 million for the URI Program. Of this, $95 million was intended for the ongoing URI multidisciplinary effort. The remaining $25 million was authorized to initiate a new program to improve the overall nationwide science and engineering graduate infrastructure. Awards under this project are to be made using competitive procedures, but the underlying purpose of the provision is to provide an opportunity for these schools which typically do not participate in DOD programs to do so.

Unfortunately, the Appropriations Act did not provide the needed $25 million for this project, and instead directed the Department of Defense to use a portion of the $95 million to broaden the geographic distribution of URI funds. I understand DOD will propose to use $5 million for this purpose. At the same time, the Appropriations Act directs that at least $5 million of the URI funds be used for a graduate fellowship program.

The graduate fellowship program and geographic broadening of the distribution of available funds are both meritorious; however, they reduce the funding for the ongoing URI projects and provide limited resources for broadening the geographic base and the fellowship program. I suggest a better solution.

As a result of the Nunn-Danforth amendment, $46 million remains in an appropriation line item entitled "Research Projects" under defense agencies RDT&E. This appropriation is not directed to a specific project or projects. Instead of reducing the $95 million in the URI Program, we should instead use the $46 million for geographically broadening the URI Program and for the fellowship program. These worthy projects are based on a merit-review process, and so universities would receive funds only after a competition. Let us use $25 million as authorized for broadening graduate education infrastructure for the "have-not" schools, and use another $15 million for the fellowship program. In this way we will have preserved the competitive process, met the requirement for geographic broadening, and fully funded the fellowship program.

Mr. President, our institutions of higher learning are critical to this country's future. Through the provisions in the Defense authorization and appropriation acts, we have established principles we can be proud of. We will have demonstrated how Congress and the Defense Department can work together in the future to strengthen our universities and colleges. I plan to work to continue the process we have started this year, and I will also work with my colleagues to see that the funding in fiscal year 1989 Defense Appropriation Act is effectively applied.

Finally, I want to offer my congratulations to Senator NUNN, the chairman of the Senate Armed Services Committee, for his leadership this year in pressing to strengthen our colleges and universities as we worked to pass the Defense authorization and appropriation bills. I urge my colleagues to join in keeping this effort moving forward.

One of the concerns that many of us have had is to assure that the process of peer review continues. Unfortunately, we have been moving slowly and I hope not inexorably toward a process of porkbarrel science in which individual institutions and individual political processes are interfering with the well-known, well-respected and very workable process of peer review.

Fortunately, during the battles on the 1989 Defense bill, the Nunn-Danforth amendment was passed which once again reaffirms the process of peer review and reaffirms the integrity of that process in granting research awards.

We should not allow basic research at our universities to become victim of bad politics and a political process and I wanted to take the time this morning to commend Senators NUNN and DANFORTH for their excellent work on this front and to say that I was very proud to be part of that process to encourage that process and I hope that all of our colleagues will once again strengthen our universities and strengthen the basic research by maintaining peer review and avoiding the porkbarrel science that unfortunately has begun to creep into the process.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina.

TRIBUTE TO SENATE MAJORITY LEADER ROBERT C. BYRD

Mr. THURMOND. Mr. President, I would like to take this opportunity to pay tribute to Senator ROBERT C. BYRD, who will be leaving his current post as Senate majority leader at the close of this 100th session of Congress. I have had the honor of participating in and witnessing the career of my distinguished colleague in the Senate for 30 of my 34 years as a U.S. Senator. During that time, Senator BYRD has garnered the reputation as an eloquent and respected leader of his party in the Senate. It has certainly been a privilege to know and to work with such an impressive individual.

The inspiring life story of Senator BYRD began in the coal fields of West Virginia and continues, at present, in the U.S. Senate. Senator BYRD was named valedictorian of his high school class, graduating during the time of America's Great Depression. ROBERT BYRD worked hard at whatever employment was available to him—as a gas station attendant, a grocer, a butcher, and a welder. As a welder, he worked to build the Liberty and the Victory battleships in the shipyards of Maryland during World War II. Following the war, Mr. BYRD returned to West Virginia and made his decision to enter into public service. ROBERT BYRD was elected to the West Virginia House of Delegates in 1946, and thus began a successful political career.

Mr. President, ROBERT BYRD has accomplished many great things in his career and I would like to briefly discuss some of his many achievements. In 1958, ROBERT BYRD was first elected to the U.S. Senate. He has risen to national prominence by consistently winning the confidence of West Virginia voters. In fact, Mr. BYRD became the longest serving U.S. Senator in West Virginia history in 1985.

Senator BYRD was elected majority leader of the U.S. Senate for the first time in January of 1977. In his role as majority leader, Senator BYRD has worked to develop bipartisan legislation that he felt was beneficial to the United States. Mr. BYRD successfully cosponsored the accelerated Public Works Act, the Economic Development Act, the Area Redevelopment Act, and the Appalachian Regional Development Act, all of which promote economic and industrial growth in West Virginia and across the Nation. Senator BYRD has also led efforts to protect our domestic steel industry from unfair foreign trade practices. He has supported bills to cut Government redtape for American small business. Senator BYRD moves efficiently to bring valuable and important legislation to the Senate floor.

In general, the life of Senator BYRD represents the American ideals of equal opportunity and hard work, and that which can be achieved through dedication to these values. The Senator's expertise in the rules and traditions of the Senate reflects a worthy respect for the American legislative system. Senator BYRD is an expert on parliamentary procedure in the Senate and bears the reputation of being one of the most outstanding parliamentarians of all time. Most importantly, he has served the constituents of West Virginia ably and honorably, while also fulfilling the heavy demands placed upon him as majority leader.

Though Senator BYRD and I may sometimes take differing views, we concur on the fact that we both labor for a common goal—the best interest of the American people. I have always found him to be fair, just, and reasonable. Although we are in different parties, I value the close working relationship we have had over the years, and he is a friend of whom I am justly proud.

I am confident that Senator BYRD will continue to build on his fine record in the Senate, and I wish him the best as he moves on to his new position on the Appropriations Committee. The Senate and our Members thank the Senator from West Virginia for the contributions he has made to our country during his time as both Senate majority and minority leader, and for his years of noble service in the U.S. Senate.

SENATOR DAN QUAYLE

Mr. HATCH. Mr. President, I want to take a few minutes today on a subject that I think is quite important. I very seldom take morning business time. But I have been very alarmed at the trashing of DAN QUAYLE. Trashing DAN QUAYLE seems to me to be a favorite fall sport of Washington political pundits.

But those of us who know DAN will not be surprised when he has the last laugh. In their effort, it seems to me, to portray DAN, the press has searched through his garbage, interviewed every one of his professors, and they have tried to lampoon his personal record. But it is amazing how, it seems to me, how few seem interested in taking an honest look at DAN's real track record in the Senate, which normally would be the best way to judge the abilities of a political figure.

As one who has worked very closely with DAN since he came to the Senate, I know how effective he can be. The Job Training Partnership Act was a bipartisan initiative and several of us on the Labor Committee played a role during its progress through the 97th Congress. Many of us can take credit for this landmark legislation, but it was DAN QUAYLE's idea and it would never have become law without him. He deserves tremendous credit for the work he has done on the Job Training Partnership Act.

DAN is not just a one-horse Senator. In 1982, he offered an amendment which became law that restored educational and other benefits to widows and children of service members killed in Vietnam. In 1984 and 1987, he introduced legislation to reauthorize the Adult Education Act. This act provides basic skills, training, and literacy programs for adults. Both bills were signed into law.

DAN authored legislation to provide more equitable treatment of rural hospitals. This legislation was passed as part of the Deficit Reduction Act.

DAN QUAYLE has also been involved in reforming the defense procurement system. He authored legislation which enhances competition by requiring dual sources for major weapons systems and legislation which establishes strict standards for Federal officials who oversee the procurement of key systems. Both were enacted into law. And he played a critical roll in the Senate's passage of the INF Treaty.

Dan has a well-deserved reputation for being a relentless fighter for his own ideas and beliefs. Freshmen Senators do not enact major legislation without being indefatigable and thick-skinned, qualities that have served him well during this campaign's trial by innuendo.

It is true that Dan Quayle is younger than the other three candidates. But, so what? Age is not always a synonym for experience, nor a guarantee of wisdom. Instead of categorizing Dan on the basis of his birth date or his good looks, maybe it is time for his critics to pass judgment based upon his record in Congress, which I am just laying out, and I am only laying out part of it.

If you know Dan, you know he is going to be an effective and active conservative member of the Bush administration. But, if hell would freeze over and Dan does return to the Senate, he will have survived a Presidential ordeal with his principles intact, and that is a claim very few can make, either in this body or out of it.

I, for one, am getting very tired of the way he is being treated. I, for one, dislike some of the treatment he got during the debate, because there were some things that were said that were absolutely false, inaccurate, and I think unfair.

But, be that as it may, I wanted to lay out just some aspects of his record today to make it clear that here is a very fine person, who basically has been trashed and basically trashed by this town. And, I might say, the media has not been very fair. When Vice President Bush said last night that they have been bashing him and doing things to him that are really beyond the pale, I agree 100 percent and I think any fair-minded person would.

Mr. THURMOND. Will the distinguished Senator yield?

Mr. HATCH. I am happy to yield to the distinguished Senator from South Carolina.

Mr. THURMOND. Mr. President, I wish to make a few remarks in response to what the able Senator said.

Mr. President, I wish to be associated with the remarks made by the able Senator from Utah concerning Senator Dan Quayle. I happen to serve on two committees with Senator Quayle. I am on the Labor, Education, and Human Welfare Committee, of which the distinguished Senator from Utah is the ranking member. He was formerly the chairman of that committee. I know of Senator Quayle's good work there. I know how he has worked with the distinguished ranking member and former chairman of that committee. His authorship of that Job Training Act has meant much to thousands and thousands of people in this Nation getting jobs.

I also have served with Dan Quayle on the Armed Services Committee. He is smart, he is articulate, and he is dedicated. On that committee, he has proved to be an expert on various subjects; for instance, procurement, arms control, and other matters on that committee.

In my opinion, he will make an excellent Vice President. His family and my family have been close. Our sons played soccer together. Our wives are friends.

I think he is a man of character. I think he is a man of ability. I am looking forward to his becoming Vice President of the United States.

ORDER OF PROCEDURE

The ACTING PRESIDENT pro tempore. The time for morning business has now expired.

Mr. RIEGLE. Mr. President, the majority leader is not on the floor, but we have a number of speakers that wish to make remarks, some in tribute to Senator Proxmire's retirement.

I ask unanimous consent that the period for routine morning business be extended for 10 minutes.

Mr. SARBANES. Mr. President, reserving the right to object, would it be possible to allocate that time, 2 minutes to each of the five Senators seeking recognition that I see on the floor?

EXTENSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there objection? Hearing none, the period for morning business will be extended for 10 minutes, with each Senator being allowed to speak for 2 minutes.

The Senator from Michigan.

TRIBUTE TO WILLIAM PROXMIRE

Mr. RIEGLE. I thank the Chair. I rise, as several of my colleagues have today to pay tribute to Bill Proxmire, who is retiring this year after a most distinguished career in the U.S. Senate. I do not think anybody who has come through this Chamber works harder than Bill Proxmire. In terms of his accomplishments over the years, he has done as much, and has left his mark in as many important areas as, probably, anyone in the history of the Senate. He is certainly among a small handful.

I also think we ought to take account of the tremendous integrity of Bill Proxmire. I admire both his independence of mind and his willingness to stand alone, if necessary, on issues of conscience. We have seen it in his tenacious fight for the Genocide Treaty over a period of years. We have seen it in his willingness to take an objecter's role on certain issues that have come down the track, in his leadership on the Golden Fleece Awards, and in many other areas. We have also seen it with respect to his approach to campaigning, and his approach to dealing with issues around which there is great pressure. He has set a path that is quite different—unorthodox—but I think one guided by the highest principles and of the hardest work.

He has also, over the years, attracted around him a very highly competent staff. We have certainly seen that on the Senate Banking Committee. His leadership there on key issues has been outstanding—on the Foreign Corrupt Practices Act, the Truth in Lending Act, Competitive Equality Banking Act, the FHA Redlining Act, Home Mortgage Disclosure Act, Fair Credit Reporting Act, Equal Credit Opportunity Act, and so forth. These are legislative milestones, one after the other, where his leadership has made a real difference for this country.

He has been a great spokesman for his State of Wisconsin. They can be very proud of the job he has done in standing for them and representing them here.

We will miss him very much. He is truly an outstanding person.

The PRESIDING OFFICER. The time of the Senator has expired. The Senator from Missouri.

ROBERT C. BYRD

Mr. BOND. Mr. President, as we approach what we hope will be the end of the session, I rise to express my respect and appreciation to our distinguished majority leader.

Although I have served in the Senate for only the past 2 years, I have come to appreciate not only the depth of understanding the majority leader has of the Senate, but also his deep affection and dedication to the institution itself.

His knowledge of the rules and precedents were legendary before I ever had the chance to see him in action, and now after 2 years of first-hand observation I can certainly see how deserving his reputation is.

Mr. President, the majority leader has always been most helpful to me, and I want to take this opportunity to thank him for all the courtesies he has shown and to commend him for all his fine work as the majority leader. I know he will continue to serve his people of West Virginia well in the future in a new role. We wish him the best of luck in that role and I look forward to working with him in that capacity.

TRIBUTE TO SENATOR PROXMIRE

Mr. SARBANES. Mr. President, I am pleased to join with my colleagues on the Banking Committee in this tribute to the chairman of our committee, Senator WILLIAM PROXMIRE.

Although he sits today as chairman and senior member of the Banking Committee, Senator PROXMIRE is also the most senior member of the Joint Economic Committee, having served on both committees since entering the Senate in 1957. It has been my great privilege to serve with Senator PROXMIRE on those committees and to benefit from his leadership and experience.

As chairman of the Senate Banking Committee from 1975-80, and again in this Congress, Senator PROXMIRE was responsible for passage of several landmark pieces of legislation. In this Congress alone, he guided the Competitive Equality Banking Act of 1987 into law, and shepherded the Financial Modernization Act of 1988 through the Senate. He led the fight against bribery of foreign officials in international business dealings, resulting in the passage of the Foreign Corrupt Practices Act of 1977. He also made a major contribution toward increasing the availability of credit to our country's urban neighborhoods through the passage of the Home Mortgage Disclosure Act of 1975 and the Community Reinvestment Act of 1976. As chairman of the Banking Committee, Senator PROXMIRE was always guided by a dedicated concern for the stability of the banking system and the integrity of our capital markets.

Senator PROXMIRE has always been one of the most conscientious and effective members of the Joint Economic Committee, which he chaired in the early 1970's and which I have had the privilege to chair in this Congress. As chairman of the JEC in 1971, he took the important step of establishing the precedent of a monthly JEC hearing on the unemployment rate. There is a story behind this step that I think worth telling because it illustrates both Senator PROXMIRE's independent nature and his extraordinary dedication.

Prior to 1971 the Bureau of Labor Statistics held a monthly press conference to announce the prior month's unemployment rate and to answer questions from the press about the current employment situation in the country. When in 1971 as unemployment was on the rise the BLS was ordered by the Nixon administration to cancel the monthly press conference. Senator PROXMIRE responded at once by convening a hearing of the Joint Economic Committee to review the latest unemployment figures. Shortly thereafter he established the monthly unemployment hearing as a regular feature of the JEC's agenda to ensure full and continuous public discussion of the issue. Since its establishment, Senator PROXMIRE has attended every monthly JEC unemployment rate hearing that has been held.

Let me conclude by saying that it has been a great privilege for me to serve in the Senate with BILL PROXMIRE. He is a man of intelligence, common sense, good humor, deep integrity, and fierce dedication to the public interest and to public service. His strong leadership will be greatly missed and I join with my colleagues in wishing him the very best in the years to come.

The PRESIDING OFFICER (Mr. FOWLER). The Senator from Utah.

SENATOR PROXMIRE

Mr. GARN. Mr. President, as everyone knows, Senator PROXMIRE is leaving the Senate at the end of this Congress after more than 30 years of outstanding service. Nothing that I or anybody else can say today will do justice to his record, or to the high esteem that we all hold for him. But I still want to express my own appreciation for his tremendous help and friendship over the years.

Above all, BILL PROXMIRE has been an unexcelled defender of the American taxpayer. By fighting wasteful spending wherever he could find it, Senator PROXMIRE has helped to hold the line against higher taxes while, at the same time, guaranteeing taxpayers more value for each dollar of taxes they do pay.

I have had the distinct pleasure of serving as BILL PROXMIRE's counterpart on both the Banking Committee and the Appropriations Subcommittee on HUD and Independent Agencies—we have switched places several times now as chairman and ranking member, and we have had to work closely together on the same basic issues many times over the years.

We have certainly had our disagreements, but I am both happy and proud to say that we have seen eye to eye on issues more often than not. I thank him sincerely for his many, many contributions. From all these dealings with the Senator I have come away with several lasting impressions that I would like to share with this body.

First, Senator PROXMIRE is a man of absolute honesty and integrity. His word is sacred, and I do not say that lightly. He studies issues, forms his own opinions, and sticks by them even if they are not popular. That is a standard that every Senator should strive to satisfy.

I would also like to say that no one has worked harder in this body than the senior Senator from Wisconsin. His energy is legendary. He's here every day, never misses a vote, and conducts an extremely active Banking Committee. He aggressively pursues other committee assignments, delivers daily morning statements, and passes out golden fleece awards. And he still finds time to exercise regularly.

Those of us who have been around for awhile know that he has never been afraid to convene the Banking Committee on important business even if the rest of Congress has gone home—even if it is Christmas. And mere snow or sleet has never kept the Senator from his appointed rounds. Just ask his staff, who have had to get to the office to meet him no matter what.

But the mark that BILL PROXMIRE will really leave on this body is his legislative accomplishments, particularly with banking legislation. I could go on at length, but let me only mention a few of the bills on which he has played a major role. I am thinking of the Depository Institutions Deregulation and Monetary Control Act, the Financial Institutions Act, the Truth-in-Lending Act, the Home Mortgage Disclosure Act, and many others. During my tenure as committee chairman, he was also a key supporter of the Garn-St Germain Act and the 1984 bank powers bill, which passed the Senate overwhelmingly but died in the House.

This year, Mr. President, we worked hand in hand once again to pass a landmark bill in the Senate to repeal the Glass-Steagall Act. After intense negotiations, the Banking Committee reported out a bill by an 18-2 vote; the Senate passed it by the overwhelming margin of 94-2; and we unanimously named it the Proxmire Financial Modernization Act in honor of my good friend. I hoped the President would be able to sign that bill into law before the Congress adjourned, but once again, the House has irresponsibly failed to act. It would have been a fitting sendoff to a fine legislator, but even without the bill I think he can look back with pride on the distance we traveled this year.

Now, with all these legislative accomplishments, and all his accomplishments in his many other endeavors, you would think that Senator PROXMIRE's resume would be longer than a country mile. You would think that the Congressional Directory would devote the pages to his story that it does to so many of my accomplished colleagues. But let me quote exactly what the directory says, without leaving out a word: "WILLIAM PROXMIRE, Wisconsin." That's it. For a man who has had so much to say every day about so many things, he sure does not mince words about himself.

In fact, you will notice that the biography does not even say when he was born. He kept that as secret as the Manhattan Project for many years until former Senator BROOKE had a surprise birthday celebration for him during a Banking Committee hearing. I now know his secret, but of course, my lips are sealed.

All kidding aside, we will greatly miss my friend from Wisconsin. He has become a fixture on this floor and in the committee rooms. And he has always kept a sense of humor about the many quirks of this institution.

I have one final observation. Senator PROXMIRE, while a man of conviction who has often voted against the grain, has never sought to thwart the will of the Senate. He has formed his views, argued his positions, and voted his conscience. But he has never tried to twist the rules to bend this body to his will. I respect him for that. I wish we all would abide by that code of conduct. If we did, we would certainly do better work and produce more responsible results. And I guarantee you that we would have all been out of here and back home in our States a long time ago.

I thank the chair.

The PRESIDING OFFICER. The Senator from Louisiana.

(The remarks of Mr. BREAUX pertaining to the introduction of legislation are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. DOLE. First, I want to share the thought just expressed by the distinguished Senator from Louisiana. I agree with him. I do not think we ought to leave all the communications policy in the hands of a judge. I said so 2 or 3 years ago. I think Judge Greene has done a good job in many areas.

This Congress ought to establish policy. We have the FCC that has the expertise. I do not believe all the expertise can be garnered by one judge with a small staff. I have not seen the legislation introduced by the distinguished Senator from Louisiana, but I would be very pleased to look at it.

It seems to me Congress must assert itself. We do make foreign policy; we make lots of policies. We certainly should not abdicate our role in communications policy.

RETIREMENT OF SENATOR BOB STAFFORD

Mr. DOLE. Mr. President, yesterday afternoon, the majority leader and this Senator had a reception for our retiring colleagues, three Republicans and three Democrats. One of those is Senator BOB STAFFORD. As I have said in the past, BOB STAFFORD has been a long-time friend of mine. We started in Congress together. We began our service in the House of Representatives at the same time in 1961.

BOB STAFFORD is living proof that you can be a successful politician, and be low-keyed, thoughtful, and patient—qualities a few of us might emulate.

While he has done yeoman's service for the people of Vermont, has been a key player on education issues—especially vocational and higher education—BOB STAFFORD is probably best known as a champion of the environment. Both as the chairman and ranking member of the Senate Environment Committee, Senator STAFFORD has been in the thick of every major fight to save, protect, and restore America's environment.

Whether it was the Clean Air Act, or Superfund, or endangered species, of the clean water bill, BOB has been front and center, working with proponents, opponents, to fashion reasonable, workable, legislation.

Senator STAFFORD is literally a treasure trove of knowledge on environmental issues—the kind of resource the Senate is truly going to miss.

But, I, and I know all his colleagues, wish BOB STAFFORD the very best as he leaves Washington. There are not many places as nice as Vermont to retire. And I trust that he and his wife Helen will have many enjoyable, productive years ahead of them.

BICENTENNIAL MINUTE

AUGUST 4, 1908: WILLIAM B. ALLISON; LONGEST-SERVING COMMITTEE CHAIRMAN

Mr. DOLE. Mr. President, when Senator William Boyd Allison of Iowa died in office 80 years ago, on August 4, 1908, he established a Senate record as the longest-serving committee chairman. For 25 years, from 1881 to 1893 and from 1895 to 1908, Allison chaired the Committee on Appropriations, quietly shaping its character during those turbulent years of national growth.

As a young lawyer in the 1850's, Allison cast his lot with the newly established Republican Party. After four terms in the House, Allison won election to the Senate in 1872, Given his choice of committee assignments, he selected finance and appropriations. Considered a "political politician,'" Allison rose quickly within the Senate's Republican hierarchy. After only 8 years on the Appropriations Committee, he became its chairman. At the turn of the 20th century, when the Republican Party enjoyed overwhelming majorities in this body, Allison served for 6 years as chairman of the Senate Republican Conference.

William Allison established several other Senate records. In 1905, he became the first Member of the Senate to serve more than 32 years. His overall tenure of 35 years and 5 months stood until 1928 as the longest service of any Senator.

Senator Allison's 25 year record as a committee chairman is not likely to be broken soon. The late Senator James Eastland of Mississippi, who chaired the Judiciary Committee from 1956 to 1978, holds the record as second-longest serving committee chairman. His 22½ year tenure is also the longest unbroken term for a committee chairman in the Senate's history. Only two other Senators have chaired a Senate committee for more than two decades. They are Commerce Committee Warren Magnuson of Washington, who retired in 1977, and William Frye of Maine, who died in 1911.

VICE PRESIDENT BUSH THE CLEAR WINNER

Mr. DOLE. Mr. President, I said last evening I wanted to be home in time to see BUSH win the debate, and I made it, and he won the debate. I thought both Governor Dukakis and the Vice President were much sharper in this debate than they were in the first debate. I thought they both discussed the issues quite well. They got into more specifics on economic policy and defense policy, but no doubt in my mind that the clear winner, and I think every poll has indicated that since the debate, is the Vice President.

His presence, his attitude, his confidence—and it is always easier to be confident when you are ahead. I think he is ahead. I think he is headed for an electoral college landslide.

So, I want to encourage the Vice President to continue doing what he is doing. It is working, and maybe it will spill over to some of the Senate races. We need some help in some of our Senate races.

It seems to me one thing GEORGE BUSH ought to have when he saddles up next year in the White House is a Republican Senate to give him the leadership that he will need to put forward the Bush agenda.

I would say to Michael Dukakis, "You did not score any punches. You had the gloves on, but you did not hit anyone last night." I expected a very aggressive Dukakis, and I did not find it. I do not criticize that. I am not the best debater in the world either, as I have already demonstrated.

But it seems to me GEORGE BUSH is going to win this election, and he is going to win it by, I think, a big margin, particularly in the electoral college. I hope he will continue to gain momentum as he is in 32 States now in which I think he has electoral college leads and maybe have more by November 8th.

I commend both debaters, but I really believe, and I try to be totally objective in these areas, that the Vice President is a clear winner.

Mr. BYRD. Mr. President, the distinguished Republican leader, as I say, is an excellent leader and represents his party always, as a good leader should. I have listened to his saying that the Vice President won the debate last night. I would say he won the debate if it was a debate for a race for high school cheerleader. I would say he came off No. 1.

I think the debate was not in the class of the Lincoln-Douglas debates. I am not sure these debates really amount to much, after all, other than joint news conferences.

I thought Dukakis had substance to his responses. I think he made some good points with respect to the deficits. He pointed out that the interest on the national debt is $150 billion a year. What he did not say was that is the most indivious tax of all on the American people, both Republicans and Democrats. It does not buy national defense, it does not buy any health services; it does not buy any research; it does not buy any education; it does not build any bridges; it does not build any highways; it brings no relief to the farmers, and much of that, of course, goes to foreigners.

I guess we all look at the debates and feel that here or there one or the other of the antagonists missed a chance to score points, but I believe that the American people, those who have not made up their minds, as they come down to the wire are going to seriously ask themselves which of these two candidates for President would stand up to Mikhail Gorbachev. The résumés are fine and there are no question that the Vice President has had many jobs, but I have not seen, frankly, much that he has had to show for the jobs that he has had. He will have to make some decisions, and if he ever sits down with Gorbachev it will not be who appears to be the down-home boy, who can appear to be the most likable, and perhaps overdo it in the effort, but who can really stand up to this articulate, well-informed, formidable leader of the Soviet Union, Mr. Gorbachev.

So, we will all have opportunities during the next 3 weeks to talk about Presidential politics, but let me say again that I admire the Republican leader. I have the feeling that had he been in the debate last night, or in the debate with Senator Bentsen, I would have felt a little more uneasy after the debate and I would have felt more uneasy going into the debate. But I congratulate the Republican leader. He is always looking for a silver lining behind every cloud and does not do too badly in making the rest of us believe that he has found it.

Mr. President, I yield the floor.

Mr. DOLE. Mr. President, I thank the distinguished majority leader. It is going to be up to the voters. They are going to decide. That is the good thing about America. It will not be decided on one debate or two debates or three debates, but the American people will make that judgment.

RETIREMENT OF SENATOR WILLIAM PROXMIRE

Mr. DOLE. Mr. President, I often say that the Senate is one of the world's unique institutions. Well, I do not think anyone would dispute that one of the most unique Members in this unique institution is Bill Proxmire, who is have every morning and has been here every morning for years.

When I first came to the Senate, Bill started every day with a speech arguing for ratification of the Genocide Convention. We finally accomplished that because he never gave up. I am proud to say that happened while I was majority leader. Some on this side did not want to do it but as the majority leader knows sometimes you have to be a leader. But it was the persistence of Bill Proxmire which brought about ratification of that treaty after it had been in the Senate for 37 years. I would hope maybe today or maybe Monday or maybe Tuesday we will pass the implementing legislation which will be a capstone as far as Senator Proxmire is concerned because without the implementing legislation the treaty itself is not as meaningful.

Bill is still a daily fixture on the Senate floor. His speeches at the opening of each session have continued—each one focusing on different issue of national importance. And as one of the most senior Members of this body, his expertise on a range of issues—from the intricacies of the banking industry to major weapons systems—to the dairy program—is widely acknowledged.

The views he voices are all his, because Bill Proxmire marches to the tune of his very own drummer. Only Bill Proxmire could have dreamed up the "Golden Fleece" Award—a phrase that became household words for "waste, fraud and abuse" in Government spending.

After 31 years in the Senate, the legislative legacy he leaves behind is long and reflects his special interests, his populist views: The Genocide Treaty; truth-in-lending legislation; the defeat of the SST supersonic transport; and the competitive Equality Banking Act of 1987.

But, whatever it has been that the Senate was voting on, whether he supported or opposed it, minor amendment or major legislation, Bill Proxmire was here voting on it. Since 1966, Senator Proxmire has never missed a recorded vote. In his 31 years, he has cast more than 12,000 recorded votes—more than any Senator in history. As the majority leader said at our reception yesterday, this record is going to stand maybe for a century.

Mr. President, the Senate thrives because it respects the individual, and we respect, admire, and will certainly miss Senator Bill Proxmire.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. I thank the Chair.

THE DEBATE

Mr. SPECTER. Mr. President, I have further comments about the Presidential debate last night and wanted to make a brief comment.

For a moment I thought the distinguished majority leader had endorsed Vice President Bush for the Presidency when the comment was made that he was looking for someone who was a well-informed, formidable leader, someone who could stand up to Gorbachev. I tried to write those words down. It seemed to me that the distinguished majority leader was describing Vice President Bush. I did agree with the majority leader's compliments about the Republican leader, Senator Dole.

After last night's debate, it seems to me that the Vice President emerged strong, powerful, and Presidential. If we are looking for someone to stand up to Mr. Gorbachev, we know who that man is this morning.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

OMNIBUS ANTI-SUBSTANCE ABUSE ACT

Mr. ROTH. Mr. President, I rise today as an original cosponsor of the Omnibus Anti-Substance Abuse Act of 1988. We are all aware that the American people have expressed their deep concern about the drug problem. I know from personal contact with citizens in my home State of Delaware that they are counting on us to take decisive action against drugs. We owe them our best efforts in Washington.

This bill represents an important compromise; it would respond to the concerns of the American people in several ways: it would increase the Federal commitment to drug enforcement as well as to education, rehabilitation and treatment; it would enhance criminal penalties against drug traffickers; and it would require consideration of a number of sanctions for drug users, designed to drive home the message that illegal drug use is unacceptable. Mr. President, this is a necessary bill, a bipartisan bill, and it deserves our support.

There should be no illusions that this bill will end the drug problem. Mr. President, drug abuse is one of the greatest problems facing this Nation today. There are no easy answers, no cure-alls on the Federal level. Progress will depend upon continued commitment and involvement from families, churches and communities. The media must do their part as well. In the Senate, Members on both sides of the aisle came together because we knew that a united front against drugs was too important to sacrifice to narrow political interests. We must continue to cooperate as we now consider this bill.

I am particularly pleased with the section of the bill known as the National Narcotics Leadership Act of 1988, the so-called drug czar provision. I have worked closely on this provision with the junior Senator from Delaware, my distinguished colleague and friend JOE BIDEN. Senator BIDEN has been, for several years now, a leader in the push to coordinate drug control policy on the federal level. I salute him for his tireless efforts in this area. Senator BIDEN has laid the groundwork for this provision, and he has been most cooperative in accepting my suggestions to refine the measure.

The legislation should eliminate the concerns expressed about previous drug czar proposals. First, it makes clear that the drug czar is a policy coordinator, rather than an operations manager—a head up, but not a hands on official. Second, it recognizes the work that has already been undertaken to coordinate drug policy.

Mr. President, when over 30 Federal agencies are involved in some aspect of drug control, it is critical to coordinate their efforts. As the former chairman and current ranking minority member of the Permanent Subcommittee on Investigations, I have learned that too often those agencies duplicate their efforts or engage in petty turf wars. We cannot tolerate duplication or destructive competition where fighting drugs is involved; there is simply too much at stake.

I cannot overstate the importance of coordination. Last June, I attended a conference of the Delaware Law Enforcement Coordinating Committee. I was pleased to see that Delaware was doing its part to coordinate between Federal, State, and local law enforcement agencies. The Federal agencies would do well to steal a page from Delaware's book.

At present, Federal drug policy coordination is the responsibility of the National Drug Policy Board. Since its creation, the Board has provided a regular forum for leaders from the agencies with drug-related responsibilities to develop and coordinate strategies, exchange information and work at reconciling differences. After an admittedly slow start, the Board has been making real progress toward coordinating drug policy. Lead agencies have been designated in nine separate areas, and a comprehensive, updated drug strategy has been developed. Scores of interagency disputes have been quietly settled through discussions between Board members. Indeed, a study published by the General Accounting Office in February determined that "the Board has facilitated coordination among federal enforcement agencies." These findings were echoed in the final report of the White House Conference for a Drug Free America, which stated that the Board "* * * has notably improved coordination and information sharing."

On the other hand, the Board is not without flaws. The same GAO study found that the Board has not developed budgetary priorities among various Federal drug programs. The Board has also been criticized for failing to make difficult decisions. It is apparent that efforts to coordinate drug policy have suffered without a clearly defined leadership position backed by sufficient statutory powers. Mr. President, the troops are willing and able to fight the war on drugs, but they need a general to lead them.

The National Narcotics Leadership Act would address this need by establishing a Director of National Drug Control Policy at the Cabinet level. The Director would take charge of Federal drug control efforts. He or she would be assisted by a Deputy Director for Demand Reduction and a Deputy Director for Supply Reduction. In addition, the act would establish an Associate Director for National Drug Control Policy to coordinate Federal antidrug efforts with those on the State and local levels.

The Director of National Drug Control Policy, as the title suggests, would serve as the principal Director and coordinator of drug policy in this country, both on the supply and demand sides. For the first time, an official with this responsibility would be unencumbered by the constraints of leading another Federal agency, and would therefore concentrate fully on drug control policy. The Director's stature among agencies with drug-related responsibilities would be enhanced by his or her role as the primary advisor to the President on all matters related to illegal drugs.

The Director would work closely with all of the Federal agencies involved in drug control to develop a national drug control budget and strategy. To ensure coordination and cooperation among the agencies, the Director would have the authority to review and approve the budgets of drug-related programs and agencies. In addition, agencies would be required to adhere to the policies developed in the national drug control strategy. At the same time, the legislation requires that the Director consult with the agencies when exercising his or her authority, and outlines a procedure under which agencies can make their objections known. Moreover, the legislation does not call for the Director to get involved in the day-to-day operations of the agencies; as I have pointed out, the Director would be a policy coordinator, rather than an operations manager.

As a result of a bipartisan compromise, the drug czar provision would repeal on March 1, 1989 the statute that Congress passed establishing the National Drug Enforcement Policy Board. This does not mean that efforts to coordinate Federal drug policy must start from scratch. On the contrary, the act ensures that the work of the National Drug Policy Board—all of the strategies, implementation plans, memoranda of understanding and directives—will continue in effect until deliberately changed or superseded. And there is no question that the new President and the new Director would be wise to continue a formal structure for regular consultation among the many Federal agencies with drug control responsibilities.

Mr. President, the Drug Control Director is an idea whose time has come. This past June, the White House Conference for a Drug Free America called in its final report for the creation of a Cabinet-level Director of drug policy. This concept has also been endorsed by, among other groups, the National Legislative Committee of the Fraternal Order of Police and the International Association of Chiefs of Police.

The National Narcotics Leadership Act of 1988 will help ensure that the involvement of so many Federal agencies in drug control is a strength rather than a weakness. It is an important part of the Omnibus Anti-Substance Abuse Act of 1988. I call on my colleagues to support this provision and the bill as a whole.

This bill is the logical next step in a process we started some time ago. The administration, and the Vice President in particular, made the war on drugs a priority. In 1982, the Vice President established the South Florida Task Force to coordinate efforts against drug trafficking in that region. I saw that task force in action, and I couldn't help but be impressed. Now the Vice President oversees all Federal interdiction efforts as head of the National Narcotics Border Interdiction System, and I commend him for a job well done. Drug interdiction is at an all-time high. In 1982, Federal agencies interdicted 11 tons of cocaine. By 1987, that total had jumped to 45 tons. And this year, Federal agencies have so far interdicted over 60 tons of cocaine, more than a fivefold increase over the 1982 figure. The Vice President has reason to take pride in those results, and I am grateful for the commitment he has demonstrated to eliminating drug abuse.

Mr. President, we have before us a comprehensive, bipartisan plan to attack the drug problem on all fronts.

Now is the time to act. The battle against drugs is one we simply cannot afford to lose. We must continue to work together.

SENATOR PROXMIRE'S RETIREMENT

Mr. GRAHAM. Mr. President, it has been my privilege and my pleasure to serve with Senator WILLIAM PROXMIRE, our extremely capable chairman of the Banking Committee.

It has been an invaluable learning experience for me to observe firsthand, Senator PROXMIRE leading the committee through complex times and legislation on banking issues these last 2 years, through the savings and loan crisis and the October stock market crisis in 1987.

Senator PROXMIRE has been a tireless champion of consumer interests and the author of the Community Reinvestment Act. He pushed S. 1886, the Proxmire Financial Modernization Act, which is historic in modernizing the financial laws in our country, through the Senate this year.

All these achievements are testament to the fact that Senator PROXMIRE has always worked with the members of his committee in a fair and equitable manner. He is a man of principle and dedication and the respect his peers have for him is evidenced in the success of his efforts to modernize our financial systems.

Major changes in financial law and consumer law have occurred under his chairmanship—changes such as:

The 1977 Financial Institutions Regulatory Act,

The 1978 International Banking Act Amendments,

The 1980 Monetary Control Act, and

The 1987 Competitive Equality Banking Act.

Senator PROXMIRE has worked productively with many administrations and chairmen of regulatory agencies—men such as Arthur Burns and Paul Volcker.

We, the members of the Banking Committee and indeed, the members of this U.S. Senate are fortunate in having had him work so closely and with so much enthusiasm with us. We will miss his energy and his wisdom.

(At the request of Mr. BYRD, the following statement was ordered to be printed in the RECORD at this point:)

TRIBUTE TO SENATOR WILLIAM PROXMIRE

● Mr. SANFORD. Mr. Chairman, I rise this morning to pay tribute to my fine colleague and friend, BILL PROXMIRE. The distinguished Senator from Wisconsin has served as an example and an inspiration to the Members of Congress and to the people of this Nation as a whole.

Indeed, I consider it a privilege to have had the good fortune to serve on the Banking committee for the last 2 years under BILL PROXMIRE's chairmanship. It has been a tremendous learning experience to watch the Senator from Wisconsin draft legislation on everything from corporate takeovers, to banking reform, to the recapitalization of the FSLIC, to packages for better coordination of our securities options and futures markets. He has led both with his convictions on what ought to be done and his tremendous knowledge of our banking, securities and financial laws and regulations. He has repeatedly sounded the cry of alarm regarding the amount of personal and corporate debt our consumers and corporations have taken on, and I have been pleased to join him in efforts to try to slow the number of highly leveraged buyouts or mergers we've seen in recent years.

BILL PROXMIRE merits a "perfect attendance award" for not missing a rollcall vote since April 20, 1966—that's over 10,000 consecutive votes, Mr. Chairman. My esteemed colleague also deserves an award for constituent attention. An unrivaled, grassroots legislator, Bill spends three out of four weekends in his home State of Wisconsin, listening to the needs of the people and shaking, by his estimate, over 100,000 hands a year.

No matter how many awards he deserves, BILL will always be remembered for the awards he has presented. As a tireless opponent of Government spending, Senator PROXMIRE has given monthly "Golden Fleece Awards" to wasteful Government institutions. Examples include a $27,000 research grant by the Law Enforcement Assistance Administration to determine why inmates want to escape from prison. Then there was a $1.8 million bill to pay for military escorts and chauffeurs during the 1980 inaugural period. Let that be a warning to the next administration.

BILL has not just publicized the wasteful spending of the Federal Government, he has also attacked it on a personal and professional level. In this age of multimillion dollar campaigns, my colleague from Wisconsin spent a mere $145 on his 1982 election effort. He has continually worked to expose Pentagon waste, most notably in publicizing a $2 billion cosst overrun for the C-5A jumbo cargo plane. And BILL has tirelessly worked for a balanced budget and the reduction of the Federal deficit.

Aside from his great personal character and his continual war against Government spending, BILL PROXMIRE should be remembered for his many legislative accomplishments. Bill sponsored the Truth-in-Lending Act and the Foreign Corrupt Practice Act and spent 19 years working for the genocide treaty. As chairman of the Banking Committee he has provided expert monetary policy advice while pushing through the Senate the Competitive Equality Banking Act and the Financial Modernization Act. I just hope the House can follow Chairman PROXMIRE's example and pass a counterpart bill to S. 1886.

To a degree approached by no one else, BILL PROXMIRE has spoken to the broad array of issues the Nation faces, large and small. Every morning, the first Senator to seek recognition is the Senator from Wisconsin, with a thoughtful essay clearly delivered. His topics have ranged from personal physical conditioning to the reduction of the nuclear threat to civilization, and his observations have benefited us all.

BILL PROXMIRE has served the Seante well. As an outspoken hardworking, independent legislator, he has established a standard of excellence for which I strive. The people of Wisconsin and the citizens of this Nation should be proud to have been represented by such a remarkable public servant. As a friend and colleague, I thank him.●

ARTICLE IN AIR FORCE TIMES REGARDING GEN. DRAZA MIHAILOVITCH

Mr. THURMOND. I wish to call the attention of my colleagues to a 2-year article which appeared in the August 29 issue of Air Force Times. The article dealt with the rescue and evacuation to Italy of some 500 United States airmen who had been forced down in Yugoslavia during World War II. The airmen were rescued by the forces of Gen. Draza Mihailovitch, the leaders of the Nationalist resistance movement. General Mihailovitch had been supported by both Great Britain and the United States until the late fall of 1943, when he was mysteriously abandoned. According to this article, his abandonment was primarily the work of Great Britain because we had agreed that Britain would have the primary input in Allied Balkan policy.

In abandoning Mihailovitch, the British Government charged that his forces were inactive against the Axis and that many of his commanders had been collaborating with the Axis against the resistance forces of Marshal Tito. There is a wealth of evidence now available indicating that these charges were false and that Winston Churchill had been hoodwinked by a Communist disinformation campaign. A key role in this campaign was played by James Klugmann, who had been a leader of the Cambridge Communist group which produced such well known spies as Kim Philby, Guy Burges, Donald Maclean, and Anthony Blunt. Klugmann ultimately rose to the rank of Deputy Director of the

Yugoslav desk of Special Operations Executive [SOE]. That is a big story in itself.

As the article in the Air Force Times points out, the rescued American airmen sought to testify on behalf of Mihailovitch at the time of his trial. Since 1976, the National Committee of American Airmen Rescued by General Mihailovitch have sought the permission of Congress to erect, on public land, a monument to General Mihailovitch memorializing his rescue of some 500 American airmen. Legislation has been introduced in the House and Senate in every session of Congress since that time. Twice, the legislation has been approved by the Senate Rules Committee, and twice, it has been approved by voice vote of the Senate as a whole. It has been my privilege to serve as a principal sponsor of the legislation. The airmen say that they owe a debt of honor to General Mihailovitch. I believe that the U.S. Government also owes him a debt of honor.

The Department of State has thus far opposed the gift of public land on which to build the monument to General Mihailovitch because it feels that the Government of Yugoslavia might not like it. The article in Air Force Times quotes Maj. Richard L. Felman, president of the Rescued Airmen's Committee, as saying:

> Our group * * * was confronted with the opposition of a foreign totalitarian Government and a handful of old world political leaders who insist on carrying on the Yugoslav civil war in this country and at our expense. What is even more bizarre is that our own State Department chose to take sides against us.

Mr. President, I can understand the motivation which has inspired this remarkable group of American airmen to continue their fight for justice for General Mihailovitch, even though more than 44 years have passed since they were rescued from Yugoslavia. Let me quote here a paragraph from a previous statement made by Major Felman:

> A few days after the Germans had seen us bail out and counted the 10 parachutes, they sent an ultimatum to the Chetnik commander in the hills to either turn over my crew of 10 to them or they would wipe out an entire village of 200 women and children. As strangers in their land, I expected we would turn ourselves over to the Germans and be put in a prison camp. But General Mihailovitch would hear none of it. . . . He said one American flyer returning to his base and dropping one bomb on our common enemy could do more for their cause of freedom than 200 of their women and children. The next day I watched as the Germans burned down that village.

Mr. President, I ask unanimous consent that this article to which I referred be inserted into the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

A MEMORIAL FOR DRAZA—WWII AIRMEN SEEK RECOGNITION FOR DISHONORED RESISTANCE FIGURE

(By John Ginovsky)

WASHINGTON.—On July 9, 1944, then-1st Lt. Richard L. Felman was the navigator of a B-24 Liberator bomber flying back from a raid on the Ploesti oil fields in Romania when German Me-109 fighters attacked.

The bomber was severely damaged, forcing Felman and the rest of the crew to bail out over Yugoslavia. He was soon to learn that he had dropped directly into the middle of a complicated, tragic and bitter war within a war, in which Yugoslavian anti-communists battled Yugoslavian communists while both groups resisted Hitler's invading German army.

Forty-four years later, Felman, now a retired Air Force major, is fighting his own war to win approval from the United States to build a statue honoring the leader of the people who saved his life and those of 500 other American airmen over the course of the war.

At the same time, he is trying to rewrite the history books, which dismiss this leader as a brave but compromised man convicted of collaborating with the Nazis.

The leader was Gen. Draza Mihailovitch, a Serbian who led the group known as the Chetniks. He was opposed by Josip Broz (Tito), who led the group known as the Partisans and who eventually gained Allied support. Tito went on to become president of Yugoslavia and was instrumental in bringing Mihailovitch to a controversial trial. Found guilty of collaboration, Mihailovitch was shot by a firing squad July 17, 1946.

Felman is president of a group called the National Committee of American Airmen Rescued by General Mihailovitch, Inc.

"We have banded together to repay our debt of honor to him and to clear his name of the treacherous lies fabricated against him by his political enemies," Felman told *Air Force Times*. As a result of their efforts, since 1976, bills have been introduced repeatedly in Congress to build a statue in honor of Mihailovitch, but they never have been passed by the full Congress. In 1976 and 1977, the Senate passed these bills, but each time they died before reaching a House vote.

Currently, two bills are pending in Congress (Senate Joint Resolution 182 and House Joint Resolution 433), but they are not expected to go anywhere, said a spokesman for Rep. Philip Crane, R-Ill., who introduced the House bill.

"The Yugoslavian government feels (Mihailovitch) was a traitor, so they've put the screws on the State Department, and the State Department has put the screws on us," Crane's spokesman said.

Felman said, in a statement read into the *Congressional Record* of Nov. 19, 1987: "Our group * * * was confronted with the opposition of a foreign totalitarian government and a handful of old world political leaders who insist on carrying on the Yugoslav civil war in this country and at our expense. What is even more bizarre is that our own State Department chose to take sides against us."

In a prepared statement, a spokesman explained the State Department's position in this issue: "The U.S. government understands and sympathizes with the desire of American airmen rescued by Gen. Draza Mihailovitch during the war to construct a monument in his memory.

"However, as in several previous administrations, we have informed the Congress that we are opposed to construction of such a monument on federal land, which would force the U.S. government to take sides in what remains a bitter historical dispute. This period in Yugoslav history and General Mihailovitch's role are controversial.

"The U.S. government does not take a position on the merits of this issue. We recognize that American airmen were rescued during the war both by Mihailovitch's and by Tito's Partisans. We do not oppose appropriate recognition of the role of the Yugoslav resistance, merely a form of recognition that implies our endorsement of one party to the exclusion of another."

(In a historical footnote, Sen. Lloyd Bentsen, the Democratic vice presidential nominee, also was shot down in a B-24 in 1944, and was rescued by a group of Tito's Partisans on the island of Viz, off the coast of Yugoslavia.)

A spokesman for the Yugoslavian embassy here told *Air Force Times* that Mihailovitch is regarded by modern Yugoslavians as "a traitor of his own people." The Yugoslavian government would "strongly protest to the State Department" should official approval be given to building a statue in honor of Mihailovitch.

"History should define the real role for Mihailovitch," the embassy spokesman said.

It's history that Felman and his group hope to rewrite, and they already have had some success. The *Encyclopaedia Britannica*, which before 1984 described Mihailovitch as a traitor and collaborator, now credits him with resisting the occupying German forces, along with Tito's Partisans.

The general historical view of Mihailovitch, however, is that although he may have been well-loved by his forces, he was too cautious in resisting the German invaders, said an Air Force Academy, Colo., history professor, who asked not to be named. By spending too much effort marshaling his admittedly sparse resources and wasting too much time waiting to strike at a crucial moment that never came, Mihailovitch lost the support of the British and Americans, the professor said.

President Truman awarded Mihailovitch the Legion of Merit, but it was kept secret for decades because of pressure from the State Department.

In a 1967 book by the editors of *Army Times* titled "Heroes of the Resistance," British Brig. Gen. Fitzroy Maclean, adviser to Winston Churchill, is quoted: "Though a brave man and a well-trained, experienced soldier, Mihailovitch lacked the ruthless determination, the unwavering singleness of purpose of his rival. Though personally popular, he was unable to control his subordinates or to preserve order in his forces."

Through personal inaction and outright help given to the Nazis by some of his commanders, Mihailovitch in effect collaborated with the Germans, Maclean charged. (In the acknowledgments section of the book, the editors said that the Yugoslavian embassy research staff provided some of the information they used.)

To counter this view, Felman and his group advance four main arguments:

A U.S. commission of inquiry fully exonerated Mihailovitch of Nazi collaboration;

Declassified documents from the Office of Strategic Services show that it was the Partisans, not the Chetniks, who helped the Nazis;

President Harry S. Truman bestowed the Legion of Merit on Mihailovitch posthumously in a secret ceremony;

Eyewitness stories from the rescued American airmen attest to Mihailovitch's heroism.

"Mihailovitch was completely overwhelmed by the most successful deception campaign that the Soviets ran. Miahilovitch never knew what hit him" said David Martin, who has written two books on the subject—"Ally Betrayed" and "Patriot or Traitor. The Case of Gen. Mihailovitch."

The Virginia-based author, a wartime correspondent for the British Broadcasting Corp., is working on a third book related to this issue. One of his main claims is that the Soviets planted a high-ranking officer in the British intelligence office at Cairo, Egypt, who altered numerous reports to enhance Tito's accomplishments while denigrating Mihailovitch.

Mihailovitch's trial was followed closely in the United States, and protests were made because Tito's government refused to allow testimony from the rescued American airmen.

In May 1946, a commission was formed to look into the matter, chaired by historian George Creel and containing about 50 prominent Americans of the time, including five state governors, six senators and eight representatives. The commission conducted extensive hearings and interviews with eyewitnesses.

Its report, reprinted in the *Congressional Record* of Nov. 19, 1987, concluded:

No evidence of collaboration was found;

American officers observed Tito's forces fabricating evidence against Mihailovitch;

There was no evidence that the Chetniks surrendered any Allied airmen to the Germans.

An important piece of evidence considered by the commission was a statement by Army Col. Robert McDowell, who, on a mission for the OSS, observed Mihailovitch and his forces for three months in 1944. McDowell told the commission he had "seen and heard of absolutely no evidence serving to connect General Mihailovitch personally or officers under his direct command with any form of collaboration with the Germans."

McDowell is mentioned in a declassified file of OSS documents, which Felman said is the "smoking gun in this colossal deception." In a statement read into the *Congressional Record* describing the documents, Felman said. Here was the on-the-scene American intelligence reports to the president of the United States exposing all the propaganda lies that have stood in our way since 1944."

One of the documents is from William J. Donovan, the OSS director, to President Roosevelt, dated Nov. 9, 1944. It briefly describes an assessment of the Yugoslavian civil war and the various factions involved, including a group of "Nationalists" composed of Serbians and Bosnians.

"The OSS intelligence unit at Mihailovitch headquarters personally observed Partisans attacking Nationalist troops engaged in fighting the Germans," the report said. "The unit also has 'concrete evidence' of Partisan massacre of Nationalist civilians, including women, and of Partisan failure to launch serious attacks against retreating Germans."%

The commission's report and the then-secret intelligence file persuaded Truman to award Mihailovitch the Legion of Merit, Felman said. On March 29, 1948, Truman awarded the medal with the notation: "Through the undaunted efforts of his troops, many United States airmen were rescued and returned safely to friendly control. Gen. Mihailovitch and his forces, although lacking adequate supplies, and fighting under extreme hardships, contributed materially to the Allied cause and were instrumental in obtaining a final Allied victory."

However, this was not made public until decades later because of advice from the State Department, Crane said on the House floor. "The official United States policy position after World War II was to accept the fiction that Yugoslavia was a non-aligned communist state and thus acting wholly independent of the Soviet Union," Crane said. "To nurture this fiction, any information that confirmed the 'Yugoslavian communists' betrayal of our war objectives had to be suppressed."

Finally, the surviving American airmen who were saved by the Chetniks have their own compelling stories to help change history's perception of Mihailovitch, Felman said.

In his own case, as read into the *Congressional Record*, he told this story: "A few days after the Germans had seen us bail out and counted 10 parachutes, they sent an ultimatum to the Chetnik commander in the hills to either turn over my crew of 10 to them or they would wipe out an entire village of 200 women and children. As strangers in their land, I expected we would turn ourselves over to the Germans and be put in a prison camp. * * * But Gen. Mihailovitch would hear none of it. * * * He said one American flyer returning to his base and dropping one bomb on our common enemy could do more for their cause of freedom than 200 of their women and children. * * * The next day I watched as the Germans burned down the village."

AF HISTORY IGNORES MIHAILOVITCH

The official seven-volume Air Force historic account, *the Army Air Forces in World War II*, edited by Wesley Frank Craven and James Lea Cate, does not mention Draza Mihailovitch at all. In volume III, there is a brief account of Chetnik actions to rescue downed American airmen, which reads in part:

"Chetniks and Partisans both aided aircrews who escaped capture, fed them and tended to their wounds as well as possible, and frequently gave them assistance in reaching the Adriatic coast."

In the book *The Chetnik Movement and the Yugoslav Resistance*, by Matteo J. Milazzo, copyright 1975 by The Johns Hopkins University Press, the author describes Mihailovitch's situation in September 1944. While waiting in vain for Allied support—in particular, American support—Mihailovitch faced dwindling resources and mounting pressures from the Partisans, Milazzo said. In these conditions, Mihailovitch decided to fight the communists first and the Germans later.

TRIBUTE FOR SENATOR DAN EVANS

Mr. PACKWOOD. Mr. President, this year the U.S. Senate loses a very important and temperate voice from its chamber.

I have known Dan Evans as a friend and public servant for many years. When he was Governor of the State of Washington, I had occasion to meet with him several times on issues of mutual interest and concern to both Oregon and Washington. When he was called upon and elected by the people of Washington in 1983 to step in and fill the late Senator Scoop Jackson's large shoes, Dan did so immediately and rose to the occasion. During that difficult and emotional time, few could have made the transition as smoothly and as exceptionally. He has made his State proud.

If one looks at Dan's past employment history, you can't help but notice that one word stands out again and again in almost every job description; that word is serve. Whether it was serving the American public in wartime, or in Washington's State legislature as a representative, or as its Governor three times, or as president of Evergreen State College or as a U.S. Senator, Dan Evans has carried out his responsibilities and duties with distinction, honor and excellence. It is these attributes which have motivated the people of Washington State to return him to public office again and again.

As the senior Senator from Washington and as a U.S. Senator, in a relatively short time period, Dan can point to and take credit for significant legislative accomplishments for his State and great progress on other major bills which perennially appear before Congress. Time after time, he has successfully looked out for Washington's interests on energy policies, trade, and the environment to name just a few. When it comes to a national issue he takes a particular interest in, he goes after it with the same tenacity, energy, and knowledge.

On various occasions, Dan and I worked together on legislation impacting both of our States. Common and shared goals included protecting and preserving our natural resources, and promoting Northwest products and services to foreign markets. We have fought and won several battles in these areas important to both States. One fight, in particular, was long and at times appeared hopeless. Along with other Members of Oregon's and Washington's delegations, we put in countless hours over days, months and years to enact the Columbia River Gorge National Scenic Area Act in 1986; a historic and landmark piece of legislation. As anyone connected to the many and sometimes heated Columbia Gorge field hearings and meetings could attest, Dan played a vital role in negotiating compromises between interested parties which successfully eliminated potential obstacles to the bill's passage.

In other areas, I would like to thank Dan for his tireless efforts and unwavering support to promote pay equity for women and minorities. On this and other legislative initiatives advocating equity for women, he has been a staunch supporter and strong debater in Congress.

Although I will greatly miss my Washington friend and colleague, I know he will be but a phone call away. And, I am quite confident Senator DAN EVANS will continue to offer his experience and wisdom off the Senate floor as he did on it. I wish him well.

TRIBUTE TO NEW TECHNOLOGY, INCORPORATED

Mr. HEFLIN. Mr. President, it is my great honor to rise today to inform my colleagues that New Technology, Incorporated [NTI] from Huntsville, AL, has ben named by NASA as the Minority Contractor of the Year. In the 17 years since NTI was begun, it has grown in size and reputation and is now widely recognized for its excellent engineering and technical services. Like many companies of its type, NTI's success can be attributed to the strong leadership and skillful management of its president, Dr. C.S. Chang.

Dr. Chang's background prepared him well to lead this company. He earned a B.S. degree in civil engineering from the University of Illinois before pursuing graduate degrees. He attended the University of Minnesota, earning both an M.S. and a Ph.D. in Mechanics and Materials. Dr. Chang worked 5 years for Bendix Research Laboratories as an engineer and a senior engineer. Next he worked 6 years as a senior research specialist for Lockheed Huntsville Engineering Center before quitting to begin his own company.

When Dr. Chang began New Technology, Incorporated, in 1971 with only two employees, he foresaw the incredible oppportunities in Huntsville available to military and aerospace contractors. His foresight allowed NTI to capitalize on the increased market from both the U.S. Army Missile Command [MICOM] and NASDA's Marshall Space Flight Center [MSFC]. With Dr. Chang's guidance, NTI has grown along with Huntsville and currently employs 250 engineers, scientists, analysts, programmers, technicians, operators, and administrative personnel.

Since 1977, NTI has concentrated its efforts on supporting the Marshall Space Flight Center. Dr. Chang led the effort to develop and integrate the hardware and software systems in the Huntsville Operations Support Center which offered real-time support for the first and subsequent space shuttle launches. Later, NTI established the team which smoothly handled the operations of the MSFC Data Reduction Facility and helped transform the flight data processing from postmission to real-time.

With their continued excellent work and support, Dr. Chang and New Technology, Incorporated, have received additional NASA contracts. They were assigned the maintenance and support for the shuttle data processing and management system in 1983 and mission operations support in 1985. The most recent projects awarded to NTI include the development, integration, and operations support for the MSFC Payloasd Crew Training Complex in 1986 and the maintenance of copying, photographic, reproduction, and miscellaneous equipment for MSFC in 1988.

This year, NASA chose to honor New Technology, Incorporated, by naming the company as the Minority Contractor of the Year. Dr. Chang and all NTI employees should be congratulated for their superior effort and for their consistently outstanding performance. They are indeed deserving of NASA's Minority Contractor of the Year Award and I look forward to their continued success.

TRIBUTE TO REV. CHARLES HENRY PETERSON

Mr. HEFLIN. Mr. President, I rise today to pay tribute to Rev. Charles Henry Peterson who has served for 50 years as the pastor of the Greater Morning Star Baptist Church in Mobile, AL.

Reverend Peterson was born in Orrville, AL, and devoted most of his life to the church and to the service of others. He has spent 65 years of his life as a pastor, fostering Christian fellowship and spreading God's blessings among his congregation and the community. His steady hand and skillful leadership have enabled each of his churches to flourish and grow.

Under his skillful guidance, the Greater Morning Star Baptist Church has grown from just 15 members to over 1,000 members. From its humble beginnings in a one-room house, this church has expanded to fill its present glorious worship complex worth over half a million dollars.

I often find that men of Reverend Peterson's stature and devotion are all too few in this hustle and bustle world. He has seen the world change around him, often shuffling values and convictions which once stood tall. He has not been defeated by this ever changing world, but has adapted to it constantly working for what is right.

Reverend Peterson's journey to this point can be traced to his days at Selma University where he earned a bachelor of arts degree and a doctorate in divinity. He continued his religious education at Alabama Interdenominational where he earned a doctorate in divinity and theological seminary. These endeavors, together with his compassionate spirit, prepared him well to lead the Greater Morning Star Baptist Church.

In addition to his own church, Reverend Peterson has offered his leadership to numerous other churches in the Mobile area. He has served as the moderator over 86 Mobile Sunlight District Churches leading them to new heights. One of these advances includes the construction of a multimillion dollar convention center for the churches.

Mr. President, Reverend Peterson's efforts are not confined merely to his church activities. He continues to endeavor to improve his community. He served on the committee to improve race relations in Prichard and also acted as chairman of Bishop Tollen's antipoverty committee.

He endeavors to meet each of his congregation's needs and provide for his community's demands. Mobile and the Greater Morning Star Baptist Church are indeed fortunate to have been graced with the perpetual good work and compassion displayed by Reverend Peterson during the last half century. I am hopeful that his preaching and the shining example he sets in his own life will continue to inspire Mobilians for years to come. Again I congratulate Reverend Peterson for his 50 years of service to the Greater Morning Star Baptist Church.

TRIBUTE TO LT. GEN. JAMES A. ABRAHAMSON

Mr. HEFLIN. Mr. President, recently, a great American announced his retirement from Government service. On September 22, Air Force Lt. Gen. James A. Abrahamson announced that he would step down from his position as the Director of the Strategic Defense Initiative [SDI] Program and retire from the Air Force effective in January. The Department of Defense will be losing a great serviceman and the United States will be losing an outstanding public servant.

General Abrahamson has given a lifetime, more than 32 years, of outstanding public service to his country and it is for this reason that I come before the Senate today to offer my congratulations and sincere thanks to him for his service to our Nation. I am sure that in civilian life, General Abrahamson will continue to make significant contributions to society and continue his advocacy of the SDI Program.

As I have said, General Abrahamson has been an outstanding, distinguished and decorated military officer who has served his country well. His achievements and honors are well known to many of my colleagues. However, I would like to mention a few of his major accomplishments.

General Abrahamson is a 1955 graduate of the Massachusetts Institute of Technology in Cambridge. That same year, he was commissioned as a second lieutenant in the U.S. Air Force. Later, in 1961, he earned a master of science degree in aeronautical engineering through the Air Force Institute of

Technology Program at the University of Oklahoma.

In August 1961, he was assigned as spacecraft project officer on the VELA Nuclear Detection Satellite Program at Los Angeles Air Force Station, and in March 1964, began F-100 upgrade training at Luke Air Force Base, AZ. From October 1964, to August 1965, while assigned to Cannon Air Force Base in New Mexico, the general served two temporary tours of duty in Southeast Asia where he flew 49 combat missions. In July 1966, General Abrahamson graduated from the Air Command and Staff College as a distinguished graduate. He later attended the Aerospace Research Pilot School at Edwards Air Force Base. After graduation, in 1967, he was selected as an astronaut with the Air Force's Manned Orbiting Laboratory Program and served in that capacity until that program was canceled, robbing him of one of his lifelong dreams—that of space travel.

General Abrahamson was then selected to serve on the staff of the National Aeronautics and Space Council in the White House. In March 1971, he became director of the TV-guided, air-to-ground Maverick Missile Program. In March 1974, he was named inspector general for the Air Force Systems Command and was later assigned as the director of the F-16 Air Combat Fighter Program of Aeronautical Systems Division located at Wright-Patterson Air Force Base. I might add that the F-16 had been, and still is, one of the Air Force's most successful programs. When the general directed the program, it came in under budget and ahead of schedule—a feat almost unheard of today.

After a short tour of duty as the Deputy Chief of Staff for Systems at Air Force Systems Command Headquarters, he became the Associate Administrator for Space Transportation Systems at NASA. In that position, he was responsible for the Space Shuttle Program and saw the shuttle through some of its most successful missions to date. General Abrahamson served in that capacity until 1984.

Among many other awards, the general has received the Distinguished Service Medal, the Legion of Merit with Oak Leaf Cluster, three meritorious service medals, the Air Force Outstanding Unit Award Ribbon, the Air Force Organizational Excellence Award Ribbon, the NASA Commendation Medal, and the National Defense Medal.

As my colleagues know very well, General Abrahamson is currently the director of the President's Strategic Defense Initiative Program. I must say that he has done an outstanding job in that capacity and will be greatly missed.

Mr. President, this is a program of awesome scope and one on which, many times here on the Senate floor, I have expressed my support. While I will not go into the merits of the SDI Program at this time, I will say that it is one of the most highly advanced and comprehensive programs that the United States has ever conceived or attempted. As a soft-spoken but tenacious and tireless advocate of the program, General Abrahamson has provided the leadership and managerial direction that has made the SDI Program one of the most successful in the history of the Defense Department.

While we may have a national debate here in Congress and around the world over the scope and direction of the SDI Program, no one can argue about the exemplary leadership that General Abrahamson has brought to this program.

Mr. President, while we will lose General Abrahamson as a public servant, I am sure that in some way we will have the benefit of his wisdom outside of the Government. I certainly hope this is so.

Again, Mr. President, I would like to congratulate General Abrahamson on his outstanding service to his country and salute him as he approaches the day of his retirement from the Air Force.

THE CIVILIAN SPACE PROGRAM

Mr. HEFLIN. Mr. President, I would like to take just a moment of the Senate's time to call to the attention of my colleagues an extremely interesting article on the civilian space program which appeared in the October 3 issue of Defense News, a highly reputable publication covering defense and aerospace issues. While I do not believe that it was intentional on the part of Defense News, the article was buried so far back in the publication, page 34 to be exact, I thought I should make sure that it did not go unnoticed by the Senate.

The headline reads: "Space Program Enjoys Strong Support, Survey Shows." The article says, and I will only quote the first sentence, that, "There is growing public support for the U.S. Civilian Space Program and a strong sentiment for sharpening the Nation's competitive stance in the international space arena, a survey shows." The article goes on to say that 80 percent of those surveyed, and they came from some "1,200 registered voter households across the Nation," approve of the space program.

Mr. President, let me repeat that. Eighty percent of the American public approve of the space program, according to the survey taken from registered voter households.

Other findings show that 65 percent would like to see the program expanded and 67 percent support a budget increase for NASA of at least $2 billion per year.

Mr. President, in my judgment, these are incredible findings and simply document what many suspected. The American public supports America's space program.

Recently, this became evident before our eyes as we watched America's return to space with the mission of the space shuttle *Discovery*. All one had to do to know that these findings are realistic was to watch the evening news programs the night of *Discovery's* launch. We saw Americans across the Nation, literally from sea to shining sea, glued to TV sets in malls, shops, homes, and offices, or wherever there was a television set, watching the launch, hoping and praying, as America returned to space. We heard their cheers and saw their tears as the space shuttle *Discovery* blasted off from the launch pad at Cape Canaveral and we heard the voice from mission control announcing that America had returned to space.

Now Mr. President, I am not insinuating that Congress does not support the space program or the space station, in particular. Congress provided a significant increase to NASA for fiscal year 1988 and nearly fully funded the fiscal year 1989 request for the space station—a decision which, in my judgment, was in the best interest of this country.

However, Mr. President, as Congress considers future funding requests in this time of massive deficits and shrinking Federal budgets, and as Congress decides on how much should be spent to solve the problems of the day and how much should be invested in the future of our Nation, our children's Nation and our grandchildren's Nation, I hope all of my colleagues will keep the findings of this survey foremost in their minds.

The space program is America's greatest adventure. It represents America's future and enjoys America's support.

Mr. President, I ask unanimous consent to have a copy of the article inserted in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Defense News, Oct. 3, 1988]

SPACE PROGRAM ENJOYS STRONG PUBLIC SUPPORT, SURVEY SHOWS

(By Trish Gilmartin)

WASHINGTON.—There is growing public support for the U.S. civilian space program and a strong sentiment for sharpening the nation's competitive stance in the internationl space arena, a survey shows.

Approximately 80 percent of those surveyed during a telephone poll of 1,200 registered voter households across the nation by Market Opinion Research, located here, approved of the space program.

The goals of the study, commissioned by Rockwell International, El Segundo, Calif., were to assess the level of public support for civilian space endeavors and to gauge opinions toward such things as current spending levels. Rockwell builds the fleet of shuttle orbiters.

Evidence of growing support for civilian space activities comes as the United States presses to renew its presence in space with the launch of the 26th space shuttle mission. The shuttle Discovery was launched from NASA's Kennedy Space Center, Fla., last Thursday.

A successful launch would end the hiatus in space shuttle operations that ensued in the wake of the ill-fated Challenger mission in January 1986. That shuttle exploded 73 seconds after liftoff from Kennedy Space Center, Fla., killing all seven crew members.

The survey, conducted by telephone between July 15 and July 21, also sought to assess public reaction to such aspects as the shuttle and space station and international competition. Results show that 87 percent agreed with the statement that the space shuttle is source of pride for the nation.

An emerging trend appears to favor international cooperation in space. At the same time, more than three-fourths of those polled think it is important for the United States to stay ahead in the space arena.

Other findings are that nearly 65 percent of those polled would like to see the space program expanded. Additionally, 67 percent of the respondents said they would agree to a NASA budget increase of $2 billion per year in order to maintain U.S. leadership in space. The Reagan administration asked for $11.5 billion to fund NASA activities in 1989.

Other findings showed:

There is a low level of awareness among the public on the topic of manned space station facilities. For instance, 63 percent of those polled were unaware of any U.S. efforts to establish a permanently manned facility in space. NASA's planned space station is to become operational in the mid- to late 1990s.

Support for the space shuttle is high in spite of the publicity surrounding the Challenger accident.

POLITICIANS SHOULD TONE DOWN THEIR POLITICAL VENDETTA AGAINST TOBACCO FARMERS

Mr. HELMS. Mr. President, comments were made on the floor last night that were an undeserved, uncalled-for slap at tobacco farmers. There are more than 180,000 tobacco farmers in 23 States and I believe if you asked each farmer how he feels about youth smoking he would, with emphasis, respond that he is dead-set against it.

There is a proposal being floated by one Senator to place tobacco products in the same category as cocaine, crack and marijuana and that is the worst thing we could do. The anti-smoking campaign in our schools has been going on for years—and guess who has been footing the bill: The tobacco companies. I mention that to emphasize that nobody—nobody—is advocating youth smoking. Any suggestion to the contrary is a cheap shot.

During the past 5 years the Tobacco Institute, in fact, has spent well over $10 million through grants to the National Association of State Boards of Education. So the fundamental question is this: Should Congress reduce the already-scarce funds available for drug education, and demand that the money be used for tobacco "education." Everybody knows that cocaine and crack are killing an increasing number of young people every day. That is where these scarce Federal dollars should go.

Mr. President, for a long, long time it has been the very clear position of the tobacco industry that smoking should be confined to adults. Whether to smoke is only one of many important choices facing young people today. They must first learn to make responsible decisions—with whom to spend their time, whom to avoid, what career they should choose, whether to smoke or drink, and whether they are content to "go along with the crowd" without thought.

Sometime back, the Tobacco Institute, representing the major cigarette manufacturers, underwrote the costs of a significant youth-oriented project by the National Association of State Boards of Education [NASBE]. The tobacco farmers, manufacturers and tobacco-State Senators are unanimous that youth should not smoke.

Mr. President, the political vendetta against tobacco farmers, employees and management of tobacco companies, and others in the tobacco industry, is outrageous. It is being waged by politicians who have nothing to lose—they have no tobacco farmers in their States. So, on a dull publicity day, they drag out their innuendo and piously posture themselves as being concerned about young people. They don't worry about gambling casinos—certainly they never mention them—or other "industries" in their States that corrupt people of all ages.

And in case these politicians are interested, not one of my children smokes, nor do their spouses or children. I take a little credit for that, for I have always made clear to them that young people should not smoke, drink liquor, use drugs, gamble in casinos, and a lot of other things. Maybe the distinguished politicians leading the vendetta ought to consider helping with a program to persuade parents to be more interested and more involved in passing along a spirit of responsibility.

Maybe then we would have much fewer youngsters dying of drug overdoses. Maybe there would emerge a more responsible society, with no more of this business of condoning pornography, and fewer teenage pregnancies and less pressure for these same politicians to vote for the deliberate destruction of innocent, helpless unborn children—which is what is going on as a result of the abortion-on-demand syndrome of which these politicians are a part.

Yes, Mr. President, I am talking about the mote and the beam, which should be examined before this vendetta proceeds further in attacking decent, honorable, patriotic tobacco farmers.

Mr. President, as I conclude, I ask unanimous consent that the following be printed in the RECORD at the conclusion of my remarks: First, a September 24, 1984, letter signed by six Senators from tobacco-producing States, second, a September 21, 1984, letter by the then president of the National Association of State Boards of Education applauding "the social responsibility The Tobacco Institute has demonstrated," and third, the text of a booklet, "Helping Youth Decide" which describes a program described by the National Association of State Boards of Education.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, D.C., September 24, 1984.

DEAR COLLEAGUE: Enclosed for your personal information is a kit which previews a significant youth-oriented project to be announced Tuesday, September 25 by the National Association of State Boards of Education [NASBE] and underwritten by the Tobacco Institute.

To aid parents in improving and maintaining open lines of communication with their children about important decisions, NASBE has developed the enclosed booklet, "Helping Youth Decide". This booklet addresses a need expressed by parents for concrete advice and assistance in helping their children make informed decisions about career plans, lifestyles, and whether or not to engage in adult customs such as smoking and drinking.

One of the many decisions faced by youngsters is whether or not to smoke—or to postpone that decision. Whatever our views on tobacco controversies, we would all surely agree that smoking should be a custom limited to adults. This ongoing project is sponsored by the Tobacco Institute in an effort to contribute to youngsters' abilities to wait and make decisions about smoking and other activities as informed adults.

Both NASBE and the Tobacco Institute are very proud of this project and would welcome your comments or questions as well as requests for additional advance copies of this booklet.

Sincerely,

WALTER D. HUDDLESTON,
WENDELL H. FORD,
DAN QUAYLE,
JESSE HELMS,
JOHN P. EAST,
PAUL S. TRIBLE, JR.

NATIONAL ASSOCIATION OF
STATE BOARDS OF EDUCATION,
Alexandria, VA, September 21, 1984.

Parents of young teenagers in Iowa, where I live, are no different from those in Maine, New Mexico or Hawaii. They all have expressed the need for concrete advice and assistance in two critical areas of childraising. One is establishing and maintaining open communication with their adolescents. The other is using this closeness to guide their youngsters in developing sound decision-making skills.

Learning to make good decisions comes most easily when practiced at the side of someone more expreienced. With the help of caring, patient parents, youngsters are more likely to make responsible choices about such activities as choosing a field of study, taking or quitting an after-school job, driving a car, and whether to smoke, drink or follow the crowd in some other behavior.

We at the National Association of State Boards of Education hope that our new booklet, "Helping Youth Decide," will be of great value to parents of the nation. Since its founding in 1958, NASBE had been dedicated to providing leadership to assure quality public education in the States and territories. We applaud the social responsibility The Tobacco Institute has demonstrated in joining us in this public service program. It is the students in the Nation's public schools that will be the ultimate beneficiaries of the joint program.

On behalf of NASBE's members, I applaud as well the efforts of the staffs of our two organizations in researching and producing this new booklet, as an example of how the education and business communities can and should work together in public service.

JOLLY ANN DAVIDSON,
President.

INTRODUCTION

HELPING YOUTH DECIDE

Child raising has been a subject of debate among adults as long as there have been children. Almost every parent has opinions, or has heard theories about one of the most tenuous and difficult of family relationships: that between parent and adolescent.

You've probably said it yourself a hundred times. And you're right. Raising an adolescent is hard on the parent. But adolescence can be even more difficult for the youngser, who is trying to make the transition to young adulthood and is not quite sure how to handle it.

This is the time when your young teenager will be faced with many new decisions. Some decisions will be small, others important. Consider the following examples: how to dress . . . whom to choose as friends . . . whether to quit school . . . go to college . . . when to begin dating . . . whether to take a job.

Making responsible decisions is a skill that is best learned with the help of someone more experienced. With adult help, youngsters are more likely to make good choices.

Shared decision making begins with good communication between parent and child. Good communication skills help to strengthen the mutual respect and trust in the family. It is the objective of this booklet to help family members better understand each other, talk more easily and effectively to each other, and make more responsible decisions that are more agreeable to both parent and child.

This booklet is divided into three parts. Part I discusses what's involved for you and your child during the adolescent years. Part II suggests ways to develop more open lines of communication with your teenagers and to guide them in decision making. Part III includes materials designed to help you implement the ideas presented in the preceding sections—some "homework" for parent and child.

PART 1—GROWING PAINS

Mark Twain wrote that at age 17 he thought his father the most ignorant man who ever lived, but at age 21 he was amazed at how much the old man had learned in four short years.

What we call the generation gap isn't anything new. Throughout history, teenagers—no longer children, but not yet adults—have questioned the rules laid down by their parents and by society.

Questioning authority, testing the rules and experimenting with adult behaviors are all a natural part of adolescent growth. Youngsters want freedom, yet freedom is frightening. There are new feelings to contend with. Biological and emotional changes are taking place within that young teens do not fully understand.

Most importantly, they wonder who they are, what they believe and where they belong. Adolescence is the time when children are trying to discover their identity. There are many "task" involved in undertaking this search.

For the first time, young persons are beginning to look toward the future and to try to fit it with the past and present. They often have great dreams and become very idealistic. This hopefulness is one way they begin to feel some control over their destiny.

Young teenagers are trying to arrive at a clear sense of their own feelings and beliefs. While they want to be unique and independent, they are self-conscious and afraid of being "different." As a result, young teens often dress and act like their friends, the sense of security thus attained allowing them to search for and test new and different beliefs and behaviors.

Adolescence is a time of experimenting and testing. Young people try out different behaviors and take risks and learn from reactions of family and friends. Thus they find out what their abilities, interests and responsibilities are.

Teenagers are also facing the eventuality of leaving home and joining a working society. They must mesh their interests, skills, and talents with the duties, jobs and roles available to them. They often feel a sense of inadequacy and may underestimate themselves. They need to experiment and compete in work and play to discover where they fit in.

As young people become more sure of who they are and more confident of themselves, they can begin to share more of their hopes and fears with others, especially their peers. It is normal for adolescents to begin shifting some of their emotional dependency from their parents to their friends.

They will also begin to define more clearly their relationships with others. Whom they will follow and whom they will lead become important decisions. By beginning to develop a responsibility toward younger friends and neighbors they are preparing for the adult role of guiding and teaching others.

Finally, adolescents are beginning to narrow and deepen their interests. Instead of a passing interest in many things, they begin to develop a deeper interest in a few ideas and activities.

Young people are undertaking a search for their identity within a confusing array of choices and challenges. Their world is no longer the gradeschooler's simple and secure environment, protected by parents and teachers.

In junior and senior high school, teachers are more challenging and the subjects more difficult. There's more competition for the attention and approval of classmates . . . increased expectations of parents and teachers . . . new extracurricular activities.

In earlier times, the institutions of family, neighborhood and community provided stability that could help young people safely through the "growing up" process. Now society is increasingly fragmented and television has introduced children to all aspects of adult life.

Thus, communication between parents and their children has become more crucial. Young people need support and advice on how successfully to manage the "work" of the adolescent years.

Experiencing growing pains as they verge on maturity, adolescents also need gradual, reasonable preparation for making their own decisions. This includes opportunities to discuss with parents, as well as their peers, what their choices are and the possible consequences of their actions. In the following section we will discuss the various aspects of communications skills and responsible decision making.

PART 2—HOW TO HELP

Good communication within the family is the foundation for the mutual trust that encourages responsibility. When parents and children are able to communicate well, they find it's much easier to resolve conflicts and to arrive at mutually agreeable decisions.

To communicate effectively, parents need to express accurately to their children their own ideas and feelings as well as to listen to and understand the youngster's thoughts and emotions. Adolescents, even more than younger children, need someone who will listen. They need a sounding board off which to bounce developing ideas, and they need someone with whom to talk out their problems.

How not to communicate

Good communication is particularly difficult when one person has a problem or is in a bad mood. Frequently, instead of listening, parents react with responses that block communication. For instance:

Typical Response: Threatening "If you don't, then. . . ." "You'd better, or. . . ."

Possible Reaction: Invites testing of threatened consequences, anger, rebellion.

Typical Response: Preaching "You should have. * * *" "It is your responsibility. * * *" "You ought to. * * *"

Possible Reaction: Communicates lack of trust in child's sense of responsibility.

Typical Response: Blaming "You are lazy." "You are not thinking maturely."

Possible Reaction: Cuts off communication from child over fear of being criticized.

Typical Response: Analyzing "What's wrong with you is. * * *" "You're just tired." "You don't really mean that."

Possible Reaction: Stops communication as child fears being misunderstood or exposed.

Typical Response: Pacifying "Oh, cheer up." "It's not so bad!"

Possible Reaction: Makes child feel misunderstood, angry, confused.

Typical Response: Probing "Why did you do that?" "Who was there with you?" "Exactly what did you say?"

Possible Reaction: Provokes anxiety, withdrawal, half truths to avoid criticism.

Typical Response: Avoiding "Let's talk about pleasant things." Remaining silent, turning away.

Possible Reaction: Implies child's problems are unimportant, discouraging openness.

One of the best ways parents can avoid these typical responses is to concentrate more on listening. When parents listen with interest, children feel their ideas are valued, that they are respected. Such respect gives the child a sense of self-esteem and confidence as the child reasons, "If my parents believe I'm worth listening to, I must be a person of value and importance."

Listen—So they'll talk

Listening is an art that requires practice. Here are some ideas to help you become a better listener, for your child's sake.

Be attentive: Stop what you're doing as soon as you can and give full attention. Focus fully on your child's words, using eyes as well as ears. A youngster may say nothing is wrong when dejected looks tell you differently. So be sensitive to tone of voice and expression. Ask yourself what your child is trying to tell you.

Encourage talk: Eye contact, a smile, a nod and one-word responses indicate understanding if not agreement. Keep questions brief, open and friendly, but try to avoid "why" questions. Children don't always know all the reasons behind their actions and feelings and open-ended questions won't help.

Often, repeating an important idea your young teen has expressed, but in a tentative way, draws the child out. "It sounds like your feelings were hurt when she said that." "You must feel very proud to have done that. Am I right?"

Try to empathize: Understanding others begins with empathy, putting oneself into their shoes, as we will see in an exercise in Part III. Empathizing with the adolescent takes imagination and patience. But try to focus on underlying feelings your youngster may be finding difficult to express. Demonstrating empathy helps you both understand the youngster's actions and reactions better.

Listen with respect: React to your child as you would to an adult friend. Grownups tend to do most of the talking when conversing with young people. Listen as much as you talk. After speaking for half a minute or so, stop and let your youngster have a chance. And accept the fact adolescents are complainers. Let them get their grievances off their chests. Try not to interrupt or push a topic they don't want to discuss.

Listening is certainly one of the most important skills of parenthood. It builds closeness. It also helps young people release pent-up emotions and strengthens their ability to make decisions and solve their own problems.

Talk—So they'll listen

Take time to have relaxed conversations alone with each of your children on a regular basis, five or 10 minutes each day. Frequent talks will help you spot difficulties before they become real problems.

So often when parents talk to their youngsters, they correct, criticize or command. Though we may occasionally need to direct behavior, the conversation should be enjoyable for both parent and child. We should also have talks about world events and reading, sports and movies, science and religion, thoughts and feelings. In open discussions, various points of view are expressed and everyone both talks and listens. It is often helpful to be doing something together when you talk—and preferably when others are not around.

Here are some specific guidelines for talking with adolescents.

Show respect: As you did in listening, so in talking. Show your young teenager the same courtesy and interest you would show your adult friends.

Be brief: The time to stop talking is before your youngster stops listening. If you must get across a message, feed a little information—remember the half-minute rule for good listening?—then ask for comment before adding a little more. Try not to lecture.

Be aware of your tone of voice: Often it's not what you say but how you say it that conveys your message—how loudly, softly, fast or slowly you speak. You also communicate with eye contact and facial expression.

Be specific: Strive consciously to communicate in simple and specific terms. For instance, instead of "I wish you didn't look so sloppy," say "I'll treat you to a haircut Saturday." Instead of "We'll go to the pool together soon," specify "Let's go swimming this weekend."

And, lastly, help your youngster empathize with you by expressing your feelings. Reveal some of your inner self. Let your youngster know you also are an individual and can be hurt by others, even confused in your thinking and fearful of certain situations.

Emphasize your feelings, not their behavior.

Don't say: "You should be helping me with dinner and the dishes. You're so lazy and inconsiderate sometimes." ("You" message)

Do say: "I get so angry when I get stuck doing all this work by myself." ("I" message)

Don't say: "Your room is such a mess. How can you live like that?" ("You" message)

Do say: "When I see clothes spread all over the floor, I am furious. I feel like throwing the whole mess into the trash." ("I" message)

"You" messages tend to cast blame, lower self-esteem, harm the relationship and fail to change behavior in the long run. "I" messages tell others how we feel, state the problem and how it affects us, do not threaten, and tend both to help the relationship and change behavior.

By adopting better ways of talking and listening, parents accomplish a lot toward educating their children for responsibility. Young teens are in transition, preparing for a time when they will have to be more independent. Good communication builds good relationships and is the best foundation for helping our young teenagers learn to make more of their own decisions.

Responsible decision making

Children and adolescents need the opportunity to practice making decisions in order to become self-directed, critical thinkers. They need the opportunity to learn that sometimes postponing a decision is a decision in itself.

When parents make all decisions, children tend to see their lives as controlled by others. Then they are not likely to attempt decision making when they reach adolescence. Adults who suggest and help, rather than direct and decide, are more likely to instill the confidence adolescents need to make more and more independent decisions.

Young people need opportunities to examine the potential consequences of choices, to choose and to accept the responsibility for the choices they make.

Here are steps you can follow to reach responsible decision making.

1. Acknowledge the facts: Adolescents are faced with choices that can affect their lives. Tell them you know they have important decisions to make, that some are very difficult and that the consequences are not always easy to accept.

2. Clarify the issue: Make sure you are both talking about the same thing, that you have the same concerns.

3. Gather and examine current information: Many of our beliefs, our opinions, are based on bits and pieces of information. It is important that we gather the facts relevant to a given issue. With information at hand, we can more appropriately filter out conflicting messages, separate fact from fiction and make constructive choices.

4. Look at alternative courses of action: Make a list together of all the possible choices presented by the situation at hand. Write down everything either of you think of, even if it seems silly or unacceptable. The process of elimination will follow. At this stage, however, it is important to include every idea.

5. Examine the likely consequences: Ask the question, "What are the expected consequences of a given decision?" Then compile a list of the pros and cons. The pros, for example, might include friends' approval, having fun, feeling grown-up or appearing independent. It is important to acknowledge what a young person might enjoy about the behavior, even though some of the supposed pros may not be desirable—or acceptable—by others' standards at any age.

6. Discuss feelings, beliefs and moral considerations: After you have looked at the pros and cons of a decision, encourage an examination of feelings, values, beliefs. This might be done by sharing your own feelings and beliefs, along with your thoughts when you made a somewhat similar decision. What have been your feelings when you faced such choices—and why? Discuss them.

Your honesty can be powerful. Perhaps you regret a decison you once made, ignoring your own beliefs or instincts in order to feel more accepted, to go along with the crowd. How did you end up feeling—and why?

Discuss family values and moral considerations. What experiences have you had or heard about, what values do you believe this violates or promotes—and why?

Remember that this technique may backfire if you preach. This approach is designed to help youth explore and develop their own values and morals, to be honest with themselves about how they really feel. Respect their feelings by encouraging open and honest examination. Try not to condemn them or their feelings. To do so encourages resistance to you and your values.

7. Discuss what our society considers acceptable behavior: Young teens are well acquainted with their own peer group standards. They may not be so familiar with those of society as a whole and are likely to dismiss what they perceive as society's principles as arbitrary or old-fashioned.

As a representative of adult society, you can outline what is expected of its members, for example, responsibility for debts and other financial obligations, consideration of others, responsibility for one's own actions. At this point, you might discuss legal restrictions, to show that society holds some beliefs so strongly it is willing to use various sanctions to enforce them.

8. Decide on the best possible course of action: Having discussed all of the relevant facts, the various alternatives, the consequences of each of the possible choices and everyone's feelings and beliefs, you and your youngster are now ready to make a decision. And keep in mind this may involve compromise.

A voice and a choice.

These suggestions are designed to guide you in helping your adolescent develop sound decision-making skills. They are not meant to be used in their entirety in all situations. Their application is up to you.

The responsible decision-making goal is to give youngsters a voice and—when appropriate—a choice, in matters that affect them. The primary purpose of this booklet is to help you in directing the participation of your children in those matters which affect their lives.

PART 3—HOMEWORK FOR YOU BOTH

The preceding sections have offered some insights into the adolescent world and have provided concrete guildelines for (1) improving communications between parents and adolescents and (2) helping parents help their children develop decision-making skills. This third and final section contains parents and youth questionnaires and some exercises to help you establish more open communication with your young teenagers to guide them toward responsible decision making.

Parents and youth questionnaires

In the back of this booklet are two questionnaires. These—and some of the exercises that follow—may seem a bit unusual. However, trying something out of the ordinary can often help to see a situation in a new and different light.

The questionnaires should be separated and answered independently by each of you. It is important that you neither discuss the questions nor compare your answers until both are through.

Please do not read further until both have answered all the questions.

Scorecard for Parent and Youth Questionnaires

("+" means parent and child *agree* and are *satisfied.* "-" means they *agree* but are not *satisfied. "0" means they disagree.*

Now you are ready to compare answers. Place the completed questionnaires side by side. With the chart above, look for three things:

1. When your answers agree and you are both happy with the situation, mark a plus sign (+) in the code column on the chart. Example: If you both agree, on question 3, that permission is usually granted because of parental trust, write "+" in the code column.

2. Some of your answers may agree but *neither* of you is happy about the situation. Enter a minus sign (-) in the code column. Example: You both agree, on question 3, that the parent usually questions the child. The parent would rather be trusted, the teenager would rather be trusted. So you enter "-" in the code column.

3. Your answers do not agree. Mark these questions with a zero (0).

What does the completed chart mean? The question you labeled "+" point to areas of your relationship that are strong. *Build from these strengths.*

The questions labeled "-" indicate problems you are both aware of but would like to improve. That you are aware of a need for change is an advantage. *You can concentrate on possible solutions.*

The questions labeled "0" may be the toughest to resolve, because the two of you do not agree on the problem. Depending on the question and on your answers, *try to decide how important each is* and discuss some compromise solutions. If differences are significant or if you have difficulties, consider seeking the advice of someone you both trust.

Ready, set, go!

It has been said a journey of a thousand miles begins with a single step. And that first step is often the hardest. The questionnaires were your first step. You have taken a close look at how you are communicating now. And you have given some thought to how you want your communications to improve. The following exercises—a sort of "homework" for parent and child—will help you to continue the journey toward improving your relationship.

Option 1: Structured Discussions

Good communication begins with looking each other in the eye and saying what is on your minds. Perhaps you and your youngster have no trouble with that. But you may have found it hard staying on the subject. Your discussions sometimes ramble, which can lead to confusion and frustration.

If so, try using the questions below for structured discussions, keeping some special "rules" in mind:

1. Be direct and honest. Try not to dwell on past mistakes. Be respectful of each other.

2. Listen. If the parent is talking, the young person should be trying to follow the parent's argument and weighing the points made, and vice versa. This exercise may seem to encourage talking. But actually it requires listening.

3. Try not to interrupt. Don't think of your next comments while the other is talking. Ask questions of one another to clarify the points made. Work with each other to get to the bottom of each situation you've chosen.

Now read through these questions and together select three for discussion. Spend just five minutes talking about each. Confine yourself to answering these questions. If you have followed the "rules" you shouldn't stray from the subject.

1. What is the most important thing in the life of each of us now?

2. What is one of the dreams of each of us for 10 years from now?

3. When we were last upset with each other, how did we resolve our differences? Would we like to do it the same way the next time we disagree? If not, what would we like to change?

4. When we do things as a family—visit grandparents, worships, go on vacations—how do we make the decisions about when to go, where to go, who is going?

5. How do we make decisions about things like clothing and hair styles, smoking and drinking—individually or together? Whose opinions are important?

6. How can we assure the personal privacy each family member needs?

7. Do we farily frequently give each other the benefit of the doubt? Can we think of an example when one of us did not and how the situation might have been improved?

Option 2: Role Reversal

Perhaps you have no trouble looking each other in the eye. And you have no trouble sticking to the subject. But, still, you can't seem to resolve your problems.

This option works well for some. It is called "role reversal" because the parent takes the part of the adolescent and vice versa. This exercise helps both to empathize and to listen more effectively to one another.

Below are the beginnings of several stories. Each sets the stage for you to finish acting out the situation.

Remember: You are to play the part of the child. Your teenager is to play the part of the parent. Play your parts not as a comedy but as a drama. Stick to the same basic gudelines described in Option I:

1. Be direct and honest.
2. Do not dwell on past mistakes.
3. Be respectful of each other.

The first story: As soon as Bob gets home, after a difficult day at work, his 14-year-old daughter Susan asks if she can spend the weekend with her best friend, Judy, at the beach. . . .

The second story: Janet notices that her dresser drawer is open and that someone has apparently been reading her diary. Later, Janet's mother mentions something she could have learned only from reading the diary. . . .

The third story: Tom has been told to stop spending time with his friend Jack. Jack was recently suspended from school for fighting, the first time he ever had been in trouble. This weekend, Tom had planned to attend a concert with Jack. He still wants to. . .

The fourth story: Jim's mother works and is not at home during the day. Jim called her at work, but she said she was unable to talk at the moment, and then forgot to call him back. When she gets home, Jim doesn't want to talk about it. . . .

Option 3: Letters

Some people understandably have difficulty expressing themselves face to face. It's not always easy to look someone straight in the eye and say what you really think—that you love him, for example, or that you wish she would leave you alone, or that you are sorry about something you said.

Try writing letters to each other. Write as if you haven't seen each other for several months. Make the letters as long as you wish. This approach can help you learn to express your feelings to one another.

If it helps, you could (1) write as if your are talking about someone else, or (2) pretend you are writing to a best friend.

If you have a hard time getting started, go back to the questionnaire and select a question that you marked "+" or "−". A "0" would be too complex to start with.

In any case, follow the rules that we have used before:

1. Be honoest and direct. Don't beat around the bush or you're likely to cause confusion.

2. Don't dredge up a lot of ancient history. You may need to point to past problems. But dont' dwell on them. No one likes to be reminded of mistakes.

3. Be respectful. Both of you are people. The biggest differences is that one of you is older.

Practice makes perfect!

Adolescence is a time of growth and development, a time to sort out and begin to deal with the complexities of adult life. Young people must adjust to radical changes in their bodies, outgrow childhood emotions and begin to take on adult responsibilities. Moreover, it is a time when most young people make decisions about the direction their lives will take; when they examine for the first time the religious, ethical and political values of their families and society; when they choose vocational goals and undertake the educational and training necessary to achieve these goals.

The ability to make choices rationally and responsibly is neither inborn nor easily acquired. Young people need help and practice in learning to make the decisions that affect their lives. We hope that this booklet has provided you with some guidelines for helping your young teenager lay the groundwork for responsible adulthood.

SENATOR ROBERT T. STAFFORD

Mr. COCHRAN. Mr. President, one of the most respected and best liked Members of the Senate, ROBERT T. STAFFORD, is retiring this year.

I first met Senator STAFFORD when I was serving in the other body and was invited to join a House Republican group known simply as SOS. That was in 1975, the first year of my second term in the House.

Our group met, and still does, every Tuesday afternoon at 5 p.m. to talk about legislative issues and politics.

Senator STAFFORD was selected for membership when he was a Member of the House, and he attended meetings occasionally after he moved to the Senate.

I was impressed from the beginning with his genuine and friendly manner. You knew right away that he was someone you could trust.

His ability to tell good stories is well known in the Senate. He knows many jokes and funny stories, most of which are set in the State of Vermont.

He has enjoyed a distinguished career in public service. He served in almost every high office there is in the State government of Vermont. After serving as Governor of Vermont, he was sent to Washington to represent his State in the U.S. House of Representatives. His excellent service was rewarded by his election to the Senate where he has served with distinction since September 16, 1971.

I have observed from close range his work on the Labor and Human Resources Committee during the last 2 years. He cares very deeply about education and the issues involving those who are handicapped.

He has pushed successfully for Federal assistance to States and localities for education programs. This year President Reagan signed the elementary and secondary education bill that bears Senator STAFFORD's name. It was named for him to illustrate his preeminence in this area of legislative interest.

This year we also changed the name of the Guarantee Student Loan Program to the Stafford Student Loan Program. These acts of Congress confirm the impact that Senator STAFFORD has made during his service in the Senate on the programs that make the education experience available to so many Americans.

Another area of concern that has been high on Senator STAFFORD's list of priorities is the environment. The Senate recognized the importance of his influence when it approved the printing of his speeches on this subject as a Senate document. As chairman of the Committee on Environment and Public Works for 6 years, he has been the leading authority in the Senate on issues affecting the environment.

Mr. President, the Senate, and this Senator in particular, is going to miss Senator STAFFORD very much. He is an esteemed friend and colleague. Everyone who knows him and who has served with him has the greatest respect for him.

I wish for him many years of good health and happiness.

FRED C. BRAMLAGE

Mr. DOLE. Mr. President, a great Kansan and humanitarian will be honored next Monday when Fred C. Bramlage of Junction City is awarded the Gen. Creighton W. Abrams Medal by the Association of the United States Army. He has set an example for Americans across the Nation.

Kansas has honored his more than 60 years dedicated to helping others. I commend the AUSA for giving this man with a big heart and a kind word the national honor he deserves.

AMERICAN BATTLE MONUMENTS COMMISSIONER

As a member of the American Battle Monuments Commission under three Presidents, Fred and and his colleagues were responsible for the design, construction, and maintenance of memorials at home and military cemeteries abroad. Thanks to this dedicated group, relatives have help and guidance in visiting the gravesites of loved ones at cemeteries throughout the world. In fact, he has continued to give his time and efforts to the Commission well beyond his term of service.

CIVILIAN AIDE TO THE SECRETARY OF THE ARMY

In Kansas, Fred is the Army's man—an advocate for Fort Riley, for the First Infantry Division, and for nationwide programs that impact officers and enlisted men. In 1981, Fred was appointed to a post he held unofficially long before—civilian aide to Secretary of the Army. He serves as liaison between the Army and the citizens of Kansas, responsible for seeing to the needs of the Army and keeping strong ties with the State and nearby communities.

There is no more meaningful spokesman for the U.S. Army than Fred Bramlage. In 1965, Fort Riley's First Infantry Division was dispatched to Vietnam. As the soldiers returned from overseas, there was talk of assigning the division elsewhere. However, Fred insisted that Fort Riley continue to be the home of the First Division. As a junior Senator, I clearly remember standing beside Secretary of Defense Melvin Laird on that bright summer day in 1970 during the ceremony celebrating the return of the colors of the First Division.

HONORARY VICE PRESIDENT, SOCIETY OF THE FIRST DIVISION

Standing here in Washington adjacent to the White House is the First Division Memorial marked by a statue of a golden eagle which honors soldiers in World War I and World War II. Fred Bramlage insisted on expanding that monument to include those who served in Vietnam. His efforts prevailed. The Society of the First Division recognized his dedication by naming him honorary vice president.

INTERPRENEUR AND MAN OF IDEAS

Fred Bramlage is a man of ideas and a man of action. To know him is to understand the drive behind all that he has done for the Army which is reflected in his long, successful business career and personal life.

As a young man studying at Kansas State University in nearby Manhattan, KS, he owned and operated a service station in his hometown of Junction City. After time out for a stint in the U.S. Navy, he spent the next 60 years parlaying that venture into businesses as vast as distributorships, real estate investment and development, manufacturing, and banking.

To know Fred is to find that he is quiet but forceful, realistic but perseverant. Above all, he has been described correctly by his friends and associates as selfless. Fred watches carefully over the soldier's family with a crisis, over the community that needs a new facility, and over the candidate for office that needs a boost. He cares and he responds. He has set an example for us.

1988, A YEAR OF HONORS

Fred Bramlage was named 1988 Kansan of the Year by the Native Sons and Daughters in January. In February, honors were bestowed during a special ceremonial at Fort Riley by the National Guard, the Reserves, and active duty military. Two weeks ago, Kansas State University dedicated the Fred Bramlage Coliseum after naming him recipient of the Alumni Medallion Award, last year.

The senior Senator from Kansas salutes Fred Bramlage as he is awarded the Gen. Creighton W. Abrams Medal by the Association of the United States Army on Monday, October 17, 1988. On behalf of the State of Kansas and the Nation, I extend warm congratulations to our friend and comrade. He has our thanks, our respect, and our admiration.

TRIBUTE TO MARY CONKLIN

Mr. RIEGLE. Mr. President, I rise today to pay tribute to a very valuable member of my staff. Mary Conklin will be leaving my office at the end of this session to become director of government affairs for the Family Resource Coalition and their new organization, Parent Action.

Mary began work for me 8 years ago as a legislative correspondent, after working for my colleague, Senator LEVIN, in his Warren, MI, office. She became my first press assistant in 1981—we called her cubby for her determination. Since then, she has headed up my entire correspondence operation which is no small task. Many of the 9 million people living in Michigan write, and write frequently, to let us know about the problems they face and their ideas about how the Government should be run.

Originally from Tecumseh, MI, Mary comes from a large family with a long history of involvement in Michigan Democratic politics. She knows our State well and understands the mainstream of thought in our State like very few others. She cares very deeply about the people of Michigan, and that care has always come through in her work.

Mary became deeply involved in child care issues in 1982 while waiting for the birth of what would be the first of two daughters. She recognized that she and her husband Jim Callow, who worked for Senator LEVIN at the time, were not the only parents struggling to find good, safe care for their children. Due in large part to her determined efforts, the Senate Employee Child Care Center, a completely self-sustaining facility, was established in 1983. Mary has worked hard to keep the model center going, and served as a director and president. Her work has paid off. Today, over 55 children are enrolled in the center, and more than 80 children are on the waiting list—a testament to vision of what was needed and her ability to get the job done.

I might relay one anecdote that reveals how Mary always gives 100 percent to whatever project she undertakes. One fall, she actually cracked her ribs playing in a friendly touch football game between my staff and Senator LEVIN's staff.

Mary's service in my office has truly been invaluable to me. She has been a tireless worker, able to accomplish a great deal under pressure at short notice. I know she will do well in her new endeavor. People like Mary Conklin do not come along every day. She will be missed.

STATEMENT OF APPRECIATION FOR STAFF WORK ON CHILDREN AND FAMILY LEGISLATION

Mr. DODD. Mr. President, last Friday the Senate completed 9 days of debate on a children and families package which included the Parental and Medical Leave Act and the Act for Better Child Care Services. While proponents of these measures were unable to prevail on the floor of the Senate this year, I would like to recognize and pay tribute to the many staff members and organizations who gave their all to make this Nation a better place for working men and women and their families. Thanks to the hard work of this dedicated group of individuals, we were able to bring to the floor legislation which many had given up for dead just a few short months ago. And with their continued work and commitment, I have no doubt that by the end of the 101st Congress, we will put in place child care and parental leave statutes which will benefit millions of American families throughout the Nation.

For too many months, Mr. President, the accepted widsom in this town on the parental leave and child care bills was that they were good ideas whose time had not yet come. We could make speeches about the needs of families, and maybe we could hold a few hearings and introduce some bills, but we really weren't ready to move ahead on legislation. I think we proved that notion wrong last week. We were ready: With literally an army of supporters in civic, religious, professional, labor, and advocacy groups across the country; with volumes of data buttressing the arguments for both measures; with extensive hearing testimony, and comparative studies on leave and child care situations in other countries, and fact sheets and charts and summaries; with scores of briefings and discussions with my colleagues and their staffs on every facet of these bills over the course of several months.

Marshaling these forces and these arguments was a monumental task. And the central responsibility for carrying us to the point we reached last week—the very threshold of landmark congressional action on issues critical to America's children and working parents—was borne by the dedicated staff of the Subcommittee on Children, Families, Drugs and Alcoholism, which I am honored to chair. This body and this particular Senator have been well served by the subcommittee staff, a uniquely talented group. I want to commend and express my gratitude to the tireless yet always thoughtful and diplomatic staff director Rich Tarplin, dedicated professional staff members Jackie Ruff and Ruth Gordner, and staff assistant Angela Manuel. I also must commend the very able Marsha Renwanz, my former staff director. They have made a difference here. I hope their energy and their ideas will continue to be of service to our Nation.

I would also like to extend a special note of thanks to Tom Rollins, the staff director of the Senate Labor Committee, whose political acumen and never-say-die attitude helped to guide this legislation through committee and onto the Senate floor. Sarah Von Der Lippe and Shirley Sagawa, also members of the Labor Committee staff, worked closely with my staff and were of tremendous help in readying these measures for floor debate. Finally, Mike Epstein, the committee's parliamentary specialist, gave us much needed advice and counsel on the Senate's complex rules and procedures once these measures were brought before this body 2 weeks ago.

Mr. President, all of us know that whatever the bill or resolution, none of the Senate's business would get done without the hard work and dedication of the Democratic floor staff and the staff of the Democratic Policy Committee. I would like to thank in particular Charles Kinney, Marty Paone, and Bill Norton, the Democratic floor staff, for their guidance and good humor during the long hours of debate on this children and families package. Tom Sliter and Sally Mernissi of the Democratic Policy Committee, were also extremely helpful to me and my staff on scheduling matters and coordination with other Democratic offices.

Over the last several months, as we worked to craft a bipartisan child care bill to bring before the Senate, I also had the chance to work with other staff of other Senators; Senators who should be proud to have these people representing them to other offices and to the outside world. In particular, I would like to thank the fine staff of Senator HATCH—Kris Iverson, Abby Kuzma, and Wendy Higginbotham—for their tireless efforts in negotiating a truely bipartisan child care initiative of which Senator HATCH and I are very proud. Trudy Vincent of Senator MIKULSKI's staff was also a key player in the discussions which ultimately produced this bill. Finally, I would like to thank Susanne Martinez from Senator CRANSTON's office and Michelle Dally of Senator CHAFEE's staff for 2 years of hard work on the ABC child care bill which formed the basis for these bipartisan discussions.

Mr. President, this children and families package would never have been before the Senate were it not for the 200-odd groups and organizations supporting both the parental leave and child care legislation. These are the people who work in the trenches—the people who are up here on Capitol Hill everyday, in meetings, on the telephone, and right here off the Senate floor. And Mr. President, they are not here for the money, for the power, or the personal recognition. They are here because they believe in what they are doing—helping to make life better for American families and their children. These organizations are too numerous to mention. To name a few would only serve to minimize the contribution of the others. But they know who they are; I know who they are. And they have my deepest gratitude and appreciation for all of the work they have done over the past 2 years.

URGING THE REPEAL OF THE UNITED NATIONS RESOLUTION EQUATING ZIONISM AND RACISM

Mr. MOYNIHAN. Mr. President, I rise today to note a column in yesterday's New York Post by Editorial Editor Eric Breindel. In the column, Breindel argues the United Nations must act now to repeal its infamous resolution declaring Zionism to be a form of racism and racial discrimination.

That resolution's passage on November 10, 1975, was an epiphany as to the true nature of the totalitarian assault on democratic institutions. The event was the culmination of a campaign that had begun 4 years earlier in a two-part article in Pravda. The article equated Zionists with the Nazis. As big a lie as could be told was told; and as Goebbels had forecast, if a lie is big enough, some will believe it. Indeed, on that day, a majority—not large, but a sufficient majority—of members of the United Nations did in fact vote to endorse that calumny.

I was the U.S. Permanent Representative to the United Nations when that resolution was passed. At that time, I rose and said:

> The terrible lie that has been told here today will have terrible consequences * * *. People [will] begin to say, indeed they have already begun to say, that the United Nations is a place where lies are told.

Passage of that resolution almost killed the United Nations. Luckily, it was not a death blow. But it was close.

Now, the United Nations is gaining respect in the world. It is ascendant. But as Breindel notes, that ascent cannot be complete while the Resolution 3379 (XXX), equating Zionism with racism, is on the books.

Two years ago this month, President Chaim Herzog of Israel paid a state visit to Australia. On the occasion of that visit, the Australian House and Senate unanimously adopted a resolution calling on the Australian Government to work for the repeal of Resolution 3379 (XXX).

Doing so was most appropriate. President Herzog had been the Israeli Permanent Representative to the United Nations when the original resolution had been passed. He stood up and spoke with the utmost brilliance in denunciation of the act, calling attention to the fact that that date, November 10, was the very same day of Kristallnacht in Nazi Germany; the occasion when anti-Semitism broke out into the streets in the form of sanctioned public violence. On that day 50 years ago, the horrors of the Holocaust commenced their movement toward the death camps.

A year ago, President Herzog visited the United States. In preparation for that visit, I introduced a resolution identical to the one passed by the Australians a year before.

That resolution, Senate Joint Resolution 205, read as follows:

> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,*
>
> That the Congress hereby—
>
> (1) declares that United Nations General Assembly Resolution 3379 (XXX), which equates Zionism with racism—
>
> (A) has been unhelpful in the context of the search for a settlement in the Middle East;
>
> (B) is inconsistent with the Charter of the United Nations;
>
> (C) remains unacceptable as a misrepresentation of Zionism; and
>
> (D) has served to escalate religious animosity and incite anti-Semitism; and
>
> (2) recommends that the United States Government should lend support to efforts to overturn Resolution 3379 (XXX) in the United Nations.

The Senate unanimously passed the "Australian Resolution" on October 23, 1987—a year to the day after the Austrialian action. The House passed it November 9.

On November 10, resident President Herzog addressed a joint meeting of Congress. He then noted that during consideration of Resolution 3379 (XXX), "The world had divided itself into good and bad, decent and vile, human and debased." He was, and is, right.

Breindel is right, too. The resolution equating Zionism and racism represents a great obstacle to the United Nations' ascent in the world. It hurt the organization far more than it hurt its intended target, Israel. It should and must be repealed.

Mr. President, I ask unanimous consent that the column by Mr. Breindel, as well as the full text of President Herzog's speech, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Post, Oct. 13, 1988]

UN SHOULD CLEANSE ZIONISM BLOT

(By Eric Breindel)

It's plain we are in a season of good feeling with regard to the UN. On the eve of President Reagan's final visit to the General Assembly, the White House authorized the immediate release of $44 million in outstanding dues for fiscal 1988, and signaled its willingness to release an additional $144 million in dues for the coming fiscal year.

There remains a good deal of money outstanding—the U.S. still owes hundreds of millions to the UN itself and to its specialized agencies—but the President last month, for the first time since he took office, formally acknowledged the debt.

His statement that the "UN has reformed its operations" to a point where the U.S. can release funds that were withheld, and his "I believe in the UN" declaration to the General Assembly, make it clear administration policy on the UN has, essentially, been reversed.

The award of the Nobel Peace Prize to the UN Peacekeeping Forces has added to the rebirth of enthusiasm for the UN, here in America, and in the West generally.

And the UN itself, by taking on tough issues regardless of the potential political consequences—Iraq's use of poison gas against its Kurdish minority, for example—has persuaded even diehard skeptics that the UN has a positive role to play in world affairs.

But nothing changes overnight. There remains considerable ill-feeling toward the UN, a consequence of years of anti-Western, anti-democratic rhetoric.

And if the world body really wants to break down barriers of mistrust and hostility, if it really means to wipe the slate clean, there is something quite specific it can do toward this end in this very General Assembly session—repeal the resolution declaring Zionism a form of racism.

Next month will mark the 13th anniversary of that "infamous act" (to use the words of then-UN Ambassador Daniel Patrick Moynihan).

The resolution, repeated many times in many international forums since it was first passed, has had a pernicious impact in many parts of the world. General Assembly resolutions aren't just empty gestures.

Schoolchildren in Africa, using UN educational materials, have been taught that apartheid in South Africa and Zionism in Israel are the leading contemporary manifestations of the phenomenon of racism.

In Great Britain, Zionist—and even Jewish—student groups have been barred from using campus facilities at universities under the terms of anti-racism resolutions, modeled on the 1975 General Assembly resolution, adopted by the left-dominated British National Union of Students.

High-ranking UN officials, including members of the Secretariat, acknowledge privately that the 1975 resolution was a mistake. They are aware of the degree to which it has engendered ill-feeling toward the world body.

They insist, however, that repeal is a virtual impossibility, that no UN General Assembly resolution has ever been repealed. And they also insist that the wisest course is simply to ignore the issue and go forward.

Recognizing the fact that the resolution was used as a club with which to beat Israel in every imaginable international forum in the first years after it was adopted, these officials point out that this is no longer the case.

The resolution, they maintain, hasn't even been referred to at a UN-sponsored event since 1983.

This, of course, is good news. But so long as the resolution remains on the books, it will be impossible for many people fully to embrace the work of the UN.

If ever there were a propitious moment for repeal, moreover, that moment is now.

The Soviet Union, which played a prominent and ugly role in promoting the Zionism-is-racism campaign in 1975, may well be inclined to support a repeal effort.

Mikhail Gorbachev has signaled an interest resuming diplomatic relations with Israel, and—with Moscow's consent, needless to say—Israeli links with the Soviet Bloc nations are steadily expanding.

If Washington, together with senior UN officials, were to approach Moscow on the question of the Zionism resolution—proposing a joint effort to seek its repeal, for the sake of the UN itself—the Soviets might just prove receptive. Certainly, it's worth a try.

And if the USSR and its satellites were to back a repeal effort, there's no reason to think non-Arab Third World nations wouldn't join in.

The 1975 resolution was an odious lie. It injured those who passed it as much as it harmed the cause of truth. The time to repeal it is now.

ADDRESS BY HIS EXCELLENCY, CHAIM HERZOG, PRESIDENT OF ISRAEL BEFORE THE JOINT MEETING OF THE UNITED STATES CONGRESS

President Herzog. Mr. Speaker, Mr. President, how pregnant with significance is this occasion, as I the head of the State of an old people, and yet a young democracy, which was reborn following centuries of prayer and struggle, have the privilege to address this August assembly, an assembly representing the leadership of the free world. This Congress is after all a shining beacon of hope to the hundreds of millions in a dark world who suffer bondage, inhumanity, poverty, are deprived of freedom of speech, of expression of movement, who live in societies in which hundreds of millions have never known and do not experience the gifts of human freedom.

I stand here proudly before this great assembly and think back to the years of struggle and sacrifice which have led to this occasion which will be a milestone in the age-old history of our people—that of a first State visit of the President of Israel to its closest ally and friend—the United States of America, and that of the honor accorded my people by these two Houses with all that they signify in terms of human hope and dreams.

I come to you in the year of the 40th anniversary of Israel's independence. When I recall the enormous sacrifice that we made for our independence—when I recall how the flower of our youth gave its life so that we should live—when I recall how as we struggled for our existence we opened our gates and absorbed five times our original population including those refugees who had emerged from the ashes of the holocaust, I can but feel satisfaction and pride at the enormous advances that we have made in creating a free society with all its inherent strength and despite the numerous challenges it faces.

We have achieved peace with the largest Arab State, namely, Egypt, and are advancing slowly but inexorably along the road of the ultimate goal of comprehensive peace in the Middle East. We have become in our area a major center of technology, agricultural, scientific and medical advance. Like you, so did we make very painful sacrifices in order to achieve the celebration of our 40th birthday with all the accomplishments of which we are so proud and with all the problems which we have to face. This appearance of mine here today bears eloquent testimony to the historic significance of my visit to Washington.

Indeed, my visit here at this time recalls milestones in our history which occurred in this 1 month—November:

Seventy years ago this month, world Jewry was electrified by the Balfour Declaration in which the British Government acknowledged the Jewish people's right to a homeland in Palestine. This was at a vital stage in World War I. The content of the letter sent by Lord Balfour to Lord Rothschild was incidentally approved by President Wilson. This document gave rise to the mandate which was granted to the British Government by the League of Nations to implement the purpose of the Balfour Declaration.

Forty-nine years ago today, as I pointed out on the White House lawn on my arrival, Nazi Germany's major onslaught against Jews and Jewish culture, assumed its most brutal expression in the terrifying Kristalnacht—the Night of the Crystals, when Jewish synagogues, homes and schools, were set ablaze throughout Germany, and our Hebrew Bible and our holy books were burnt in bonfires across the land.

Forty years ago this month, the United Nations with the support of the United States Government and the Soviet Union, voted for a resolution which determined, inter alia, the establishment of a Jewish State in Palestine. We were thereupon attacked by seven Arab armies bent on our destruction. We fought literally for our lives, sacrificing 1 percent of our population in bloody battle, and achieved our independence.

Twelve years ago today I had the privilege of defending Israel and the Jewish people against the scurrilous attack on Zionism launched at the United Nations General Assembly by a sordid assortment of totalitarian dictatorships. In that memorable struggle which split the United Nations and in which, as I pointed out in the debate, the world had divided itself into good and bad, decent and vile, human and debased, the United States and other Western governments stood by us staunchly. We shall never forget the proud and impressive stand taken at our side on that memorable occasion by the U.S. delegation led by a distinguished Member of this Senate—Senator Daniel Patrick Moynihan, senior Senator of New York. He represented in his remarks and in his proud stand the greatness of this country, its courage in standing up to an alliance of dictatorships and its unequivocal stand by our side in what was one of the memorable and historic debates in the United Nations. Senator Moynihan's words on that dramatic occasion will long be remembered by our people.

I thank both these Houses for having adopted the so-called Australian resolution, which was passed unanimously by both Houses of the Australian Parliament on the eve of my State visit there last year, rejecting the infamous U.N. Resolution 3379. I trust that other democratic parliaments will follow suit.

Again in November 10 years ago, President Sadat made his historic trip to Jerusalem and addressed the Knesset. This visit marked an historic watershed in our region which was to lead to the first peace treaty between Israel and an Arab State—indeed, the leading Arab State. That peace treaty was signed here in Washington on the White House lawn by the late President Sadat, by Mr. Menachem Begin, the former Prime Minister of Israel and was witnessed by President Jimmy Carter. This peace would never have been achieved but for the intense involvement of the President and the administration of the United States of America in the entire process leading up to it.

I stand here representing a democracy aged 40 years, in the heart of the greatest democracy in the world, celebrating the 200th anniversary of its Constitution. I represent an ancient people and a young state, but what binds us is not our age but our values. Israel represents the belief in man and in his right to the basic freedoms and to peace. We believe that the democratic system of government is the only one valid for mankind. In the great trials of our times of struggles between totalitarianism and democracy, democracy has invariably emerged triumphant. We believe that man must help his fellow man. We believe that prosperity comes only to those who share it with other fellow men. We are a society that has made enormous strides and advances in agriculture, in industry, in science, and as such see ourselves as a bridge between the developed world and the developing world. Our great ally, the United States, unselfishly supports other nations in the world. So do we, as a matter of national policy, aid, support and share our experience and our progress with developing countries who require it.

We live in a world in which a minority of the members of the United Nations are democracies. We live in a world in which hundreds of millions of people wake up every morning hungry. We live in a world in which the scope of ignorance exceeds that of education, in which helplessness exceeds ability. We live in a world in which insensitivity is greater than enlightenment. We live in a world a great part of which believes in violence and the solution of problems by force. We live in a world of holy wars, racism, and prejudice, a world which experienced two world wars and has been incapable of putting an end to war. A world which believed in the League of Nations and has been frustrated and disillusioned by the United Nations. It is a world which is in dire need of hope and of aid and which instinctively turns to this country, the powerful keeper of the seal of democracy in the world, a fortress that no upheaval, political or economic, can move from the basis which was created by its Constitution 200 years ago.

I represent a country which is proud of the fact that despite five wars, despite the defense and economic burden which it has borne since its inception, has never hesitated on the issue of its basic values. Like you, we have never known 1 minute without democracy. Our democracy faces the most involved challenges—a constant state of readiness, long military and reserve service, and the complex problems arising out of the refusal of our neighbors to enter into negotiations for peace with us.

We absorbed several times our own population, many of the immigrants coming from countries that have never known democracy. We have overcome the desert and the wilderness, we have created new forms of society. We have constructed a most sophisticated agricultural system, and an industry based on high technology and have created important centers of scientific research. Truly, we are entitled to look back with no small measure of pride and to say that we have created something that perhaps those who dreamt of the future never believed would come to pass.

Mr. Speaker, Mr. President, as I stand here there flash upon my inward eye the images of great leaders of the world who stood here in times of challenge and tragedy to the world and expressed their gratitude to the American people and its leaders for its generosity and support. Never in the history of man has there been such an unselfish approach to the less fortunate countries of the world than that of this great nation. For in the spirit of the prophet Isaiah, "Each one helps his neighbor and every one said to his brother be of good courage."

We note that the aid provided to Israel is extended as a function of the vital interests of the United States. Today in the Near

East the longest war in this century is being waged—a brutal bloody war motivated by fanatic religious fundamentalism on the one hand, and the ambitions of a megalomaniac dictatorship on the other hand. An unconventional weapon, poison gas, has been introduced, and the world has stood by in mute helplessness. The figure of those killed has gone well beyond the million mark. A war which threatens one of the vital arteries of the Western World, with all that this implies for the freedom of the world, a lifeline which you are so valiantly defending today.

How blind were the so-called experts in analysing the developments in our area. The obsessive fixation with every stone-throwing incident in the West Bank led to a situation whereby the real ominous developments in the Middle East were overlooked by most observers. Thus again and again the Western World was taken by surprise when the real focus of danger erupted. How can we forget how the free world was taken by surprise by the Soviet invasion of Afghanistan, by the Khomeini revolution in Iran, by the outbreak of the Iran-Iraq war?

Let me emphasise to the distinguished members of these two Houses that the world has in many ways been misled into viewing the Israel Arab conflict as being the main issue in the Middle East. Today you know as well as I do that if the Israel-Arab conflict were to be resolved and to disappear, as I certainly hope and pray that it will, all the centers of bloodshed, war, instability and fundamentalistic religious fanaticism from the Atlantic Ocean to the Persian Gulf, would persist. It is against this background that we must view the sole bastion of democracy in our region—Israel. A glance at the map of the Middle East must surely emphasise the vital significance for the security of the United States and the free world of this solid island of stability, loyalty, and friendship to the United States. We are proud of our alliance and of the joint mutual base of common values and traditions on which it stands.

A few weeks ago we welcomed to Israel a number of prominent Jews from the Soviet Union. It was not coincidental that the first people to speak on the phone with Ida Nudel, after she arrived to freedom, were the President of the United States and the Secretary of State. The act reflected the gratitude of an entire nation and of countless numbers of our brethren and sisters in the Soviet Union who pray for freedom and who know of the great efforts of the leadership of this country and the members of these Houses to bring them to freedom. The winds of change may be blowing in the Soviet Union, but for us there is one litmus test—that is the granting of full rights for Jews in the Soviet Union to learn their language, to adhere to their traditions and to be free to practice their religion as they wish. This, together with their exercise of their intrinsic right to be free to move and to rejoin their people in Israel, if they so wish. For us, this is the crucial test and we will judge the behavior of the Soviet Union by its attitude toward its Jewish population.

In expressing our gratitude to the Members of Congress, we would urge you to maintain your deep interest in favor of the reunion of Soviet Jewry with their brothers and sisters in Israel.

I would urge you, too, to help us in our efforts to reunite with us the Jews from other repressive countries, such as Syria.

We see as our major challenge the achievement of peace between us and our Arab neighbors, including the Palestinian people. In our Declaration of Independence we held out our hand in peace to our neighbors. After the Six Day War in 1967, a week after the sounds of battle receded, the Government of Israel—at that time a National Unity Government, called on the Arab States to open negotiations for peace. The reply given us by the Arab world at that time was the three "No's" of the Khartoum Conference—no peace, no recognition, no negotiations.

A great man arose in the Middle East—President Anwar Sadat. His dramatic offer was matched by the no less dramatic response of Prime Minister Menachem Begin and the warm and enthusiastic welcome accorded him by the Knesset of Israel and by the people of Israel. The President came, spoke, and negotiated, and thanks to the active involvement of the President of the United States at that time and the U.S. administration, we achieved a peace treaty.

We have never achieved any advance without negotiations. We have never negotiated with our Arab neighbors without achieving an advance. This is our message, and hence the unanimous desire of our people for negotiations. There may be differences of opinion as to procedures and modalities, but not as to the vital necessity of achieving peace through direct negotiations. On this our people are united.

Since President Sadat's visit to Jerusalem, not a single Israeli or Egyptian soldier has fallen along our border. What greater recompense can both of our countries ask for? A bus departs from Jerusalem and Tel-Aviv every morning for Cairo—and vice versa. We pray for the day when similar buses will depart daily from Israel to all the other capitals of our neighboring Arab countries.

We are irrevocably committed to the inexorable process moving toward peace in the Middle East. I am convinced that we will achieve it. For I only have to look back to 10 years ago today when most of Israel's borders were hermetically sealed and there was no passage of people or trade across them. Who would have dreamt then 10 years ago today that today the Israeli flag would fly over an Israeli Embassy in Cairo and an Egyptian flag over an Egyptian Embassy in Israel? Who would have dreamt that over a million people would be crossing annually over the bridges of the River Jordan in both directions, and that daily hundreds of trucks would be carrying produce and exports in both directions? And who would have dreamt that thousands of Israeli Moslems would be making their way to and fro in performance of the holy pilgrimage to Mecca? Who would have dreamt that a Jordanian Bank would be operating in Nablus and reporting to both the Bank of Israel and the Jordanian Treasury? Who would have dreamt that tens of thousands of Israeli tourists would be thronging Egyptian resorts and tourist sites, that joint Israel-Egypt agricultural projects would be taking place in the Nile Delta, that Israeli stands would be exhibiting along side stands of the Arab countries at industrial fairs in Cairo? That an Arab book fair displaying books and literature from all over the Middle East would be opened by the President of Israel in Haifa.

Yes, my friends, we are moving inexorably toward peace and that is the major goal of our people reflecting as it does the prayers of millions who cannot express themselves freely in our area, torn by fundamentalistic religious fanaticism. That peace will be achieved because we want it and because the people of the Middle East want it and because we know that we will be supported in this endeavor by the President, the administration and the Congress of the United States.

Mr. Speaker, Mr. President, since World War II you have borne the burden of Western civilization and guaranteed the forces of democracy. You have experienced a difficult period and may be facing further trying problems. This nation produced the greatest and most powerful economy on earth. Your achievements in science and technology, your advances in arts and culture have opened up new vistas for mankind and for the world. You are a strong, great and dynamic people which has given the world a constitutional system which has weathered the storms of 200 years and has maintained your freedom as a nation. It is particularly at times such as these when clouds hover in the skies that the ordinary individual, wherever he may be, realises in his heart what the United States means to the world.

You know that, as you face challenges, countless myriads in the teeming masses of the world depend on you. They look to you and draw courage and inspiration from your moral fabric. It is at times such as these that the little man, wherever he may be, in freedom or in bondage realises what the United States and the American dream means to the world.

Thanks to your aid my small country is capable of defending all that you stand for in terms of human freedom and dignity in an area buffeted by the winds of extremism and fanaticism. It is proper and just that on this occasion we utter a reminder of what free people owe to this great nation and of what hopes this mighty country keeps alive in the hearts of people in bondage wherever they may be.

Never in history has a nation given to mankind in so unselfish a manner what the American people have made available to the world. Mindful of the unique roll that Providence has bestowed upon you, I stand before this great assembly today, in the year of our 40th anniversary, and extend to you the greetings of a grateful nation and a staunch ally. God bless America.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

OMNIBUS DRUG INITIATIVE ACT OF 1988

The PRESIDING OFFICER. The Senate will resume consideration of the pending business, which the clerk will report.

The bill clerk read as follows:

A bill (H.R. 5210) to prevent the manufacturing, distribution, and use of illegal drugs, and for other purposes.

The Senate resumed consideration of the bill.

RECOGNITION OF SENATOR GRAMM

The PRESIDING OFFICER. Under the previous order, the Senator from Texas [Mr. GRAMM] is recognized.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, while the Republican leader is on the floor, I wonder, with the indulgence of Mr. GRAMM, if we could proceed with a little morning business.

Very well.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that prior to the recognition of Mr. GRAMM under the order of yesterday, there be a period for morning business for not to exceed 10 minutes, and that Senators may speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CALENDAR

Mr. BYRD. Mr. President, I ask the Republican leader if calendar orders numbered 1030 and 1132 on the Calendar of Business have been cleared on his side.

Mr. DOLE. They have been cleared on this side.

Mr. BYRD. Mr. President, I thank the leader.

I ask unanimous consent that the Senate proceed to the two measures en bloc, that they be agreed to en bloc with amendments where shown having been agreed to, and if Senators wish to have statements inserted in the RECORD, they may be appropriately stated, and that the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

ARCHAEOLOGICAL RESOURCES PROTECTION ACT AMENDMENTS

The Senate proceeded to consider the bill (H.R. 4068) to amend the Archaeological Protection Act of 1979 to strengthen the enforcement provisions of that Act, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italics.)

H.R. 4068

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENTS TO ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979.

[(a) Section 3(1) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa and following) is amended by striking out "which are of archaeological interest".**]**

[(b)**]** *(a)* Section 3(3) of such Act is amended by striking out the semicolon at the end thereof and substituting a period.

[(c)**]** *(b)* Section 6(a) of such Act is amended by inserting after "deface" the following: ", or attempt to excavate, remove, damage, or otherwise alter or deface".

[(d)**]** *(c)* Section 6(d) of such Act is amended by striking "$5,000" and inserting in lieu thereof "$500".

[(e)**]** *(d)* Section 10 of such Act is amended by adding the following new subsection at the end thereof:

"(c) Each Federal land manager shall establish a program to increase public awareness of the significance of the archaeological resources located on public lands and Indian lands and the need to protect such resources. Each such land manager shall submit an annual report to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate regarding the actions taken under such program.".

The amendments were agreed to.

The amendments were ordered to be engrossed, the bill was read the third time, and passed.

DELAWARE WATER GAP NATIONAL RECREATION AREA CITIZEN ADVISORY COMMISSION

The bill (H.R. 5001) to establish the Delaware Water Gap National Recreation Area Citizen Advisory Commission, was considered, ordered to a third reading, read the third time, and passed.

MODIFICATION OF THE BOUNDARY OF THE GUADALUPE MOUNTAINS NATIONAL PARK

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be discharged from further consideration of H.R. 4777, to modify the boundary of the Guadalupe Mountains National Park, and that the Senate proceed to its immediate consideration; that it advance to third reading; that the bill be passed; and that the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 4777) was passed.

CELEBRATION FOR 200TH ANNIVERSARIES

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Concurrent Resolution 115.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 115), providing for participation by delegations of members of both Houses of Congress in ceremonies to be held in April 1989 in New York City marking the 200th anniversaries of the implementation of the Constitution as the form of government of the United States, the inauguration of President George Washington, and the proposal of the Bill of Rights as the first ten amendments to the Constitution.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

AMENDMENT NO. 3686

Mr. BYRD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposes an amendment numbered 3686.

Mr. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the resolving clause and insert the following:

That (a) the Speaker of the House of Representatives and the President pro tempore of the Senate, in consultation with the Minority Leaders and the Bicentennial Committee Chairman of their respective Houses, are authorized and directed to appoint members of their respective Houses to serve on a delegation of members of the Congress which will take part in ceremonies to be held in New York City in April 1989 commemorating the 200th anniversaries of the implementation of the Constitution as the form of government of the United States, the convening of the first Congress, the inauguration of George Washington as the first President of the United States, and the proposal of the Bill of Rights as the first ten amendments to the Constitution, and shall invite the President to join this delegation in participating in these ceremonies.

(b) The specific planning of the ceremonies described in subsection (a) shall be coordinated directly with the Historian of the Senate, under the jurisdiction of the Secretary of the Senate, and the Historian of the House of Representatives, under the jurisdiction of the Speaker of the House of Representatives.

The third whereas clause in the preamble is amended by striking "April" and inserting "March".

Mr. BYRD. Mr. President, I ask unanimous consent that an amendment which I sent to the desk on behalf of myself be considered, agreed to, that the concurrent resolution be agreed to, and that the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So, House Concurrent Resolution 115, as amended, was agreed to.

REINSTATEMENT OF THE CANCELED ENTRY OF WILLIAM A. WRIGHT TO CERTAIN LANDS IN LAMAR COUNTY, AL

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be discharged from further consideration of H.R. 4642, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4642) to provide for the reinstatement of the canceled entry of William A. Wright to certain lands in Lamar County, Alabama.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill.

There being no objection, the Senate proceeded to consider the bill.

Mr. BYRD. Mr. President, I ask unanimous consent that the bill be read the third time, passed, and that the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 4642) was passed.

INDIAN HEALTH CARE AMENDMENTS—CONFERENCE REPORT

Mr. BYRD. Mr. President, I submit a report of the committee of conference on H.R. 5261 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5261) to reauthorize and amend the Indian Health Care Improvement Act, and for other purposes having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the Record of October 12, 1988.)

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. CRANSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TO AMEND TITLE 31, UNITED STATES CODE

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3685, that it be considered as having reached third reading, that it be read the third time, passed, and that the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 3685) was passed.

REAUTHORIZATION AND AMENDMENT OF CERTAIN WILDLIFE LAWS

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1024.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4030) to reauthorize and amend certain wildlife laws, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Environment and Public Works with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italics.)

H.R. 4030

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—LACEY ACT AMENDMENTS

SEC. 101. PROHIBITED ACTS.

Section 3 of the Lacey Acts Amendments of 1981 (16 U.S.C. 3372) is amended—

(1) in subsection (a)(1) (16 U.S.C. 3372(a)(1)) by striking "taken or possessed" and inserting in lieu thereof "taken, possessed, transported, or sold";

(2) by striking subsection (a)(4) (16 U.S.C. 3372(a)(4)) and redesignating subsection (a)(5) as subsection (a)(4); and

(3) by adding at the end thereof the following:

"(c) Sale and Purchase of Guiding and Outfitting Services and Invalid Licenses and Permits.—

"(1) Sale.—It is deemed to be a sale of fish or wildlife in violation of this Act for a person for money or other consideration to offer or provide—

"(A) guiding, outfitting, or other services; or

"(B) a hunting or fishing license or permit;

for the illegal taking, acquiring, receiving, transporting, or possessing of fish or wildlife.

"(2) Purchase.—It is deemed to be a purchase of fish or wildlife in violation of this Act for a person to obtain for money or other consideration—

"(A) guiding, outfitting, or other services; or

"(B) a hunting or fishing license or permit;

for the illegal taking, acquiring, receiving, transporting, or possessing of fish or wildlife.

"(d) False Labeling Offenses.—It is unlawful for any person to make or submit any false record, account, or label for, or any false identification of, any fish, wildlife, or plant which has been, or is intended to be—

"(1) imported, exported, transported, sold, purchased, or received from any foreign country; or

"(2) transported in interstate or foreign commerce."

SEC. 102. PENALTY.

(a) Civil Penalty.—Paragraph (1) of section 4(a) of the Lacey Act Amendments of 1981 (16 U.S.C. 3373(a)(1)) is amended by inserting "and any person who knowingly violates section 3(d)," after "any underlying law, treaty, or regulation,".

(b) Criminal Penalty.—Subsection (d) of section 4 of the Lacey Act Amendments of 1981 (16 U.S.C. 3373(d)) is amended by adding at the end the following:

"(3) Any person who knowingly violates section 3(d)—

"(A) shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both, if the offense involves—

"(i) the importation or exportation of fish or wildlife or plants; or

"(ii) the sale or purchase, offer of sale or purchase, or commission of an act with intent to sell or purchase fish or wildlife or plants with a market value greater than $350; and

"(B) shall be fined under title 18, United States Code, or imprisoned for not more than 1 year, or both, if the offense does not involve conduct described in subparagraph (A).".

(c) Conforming Amendments.—Section 4 is amended in subsections (a)(1), (d)(1)(A), (d)(1)(B), and (d)(2) by striking "(other than section 3(b))" each place those words appear and inserting in lieu thereof "(other than subsections (b) and (d) of section 3)".

SEC. 103. REVIEW OF CIVIL PENALTY.

The first sentence of subsection (c) of section 4 of the Lacey Act Amendments of 1981 (16 U.S.C. 3373(c)) is amended to read as follows:

"(c) Review of Civil Penalty.—Any person against whom a civil penalty is assessed under this section may obtain review thereof in the appropriate District Court of the United States by filing a complaint in such court within 30 days after the date of such order and by simultaneously serving a copy of the complaint by certified mail on the Secretary, the Attorney General, and the appropriate United States attorney.".

SEC. 104. ENFORCEMENT POWERS.

Subsection (b) of section 6 of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(b)) is amended in the first sentence by striking all after the first clause and before the proviso and inserting the following: "may, when enforcing this Act, make an arrest without a warrant, in accordance with any guidelines which may be issued by the Attorney General, for any offense under the laws of the United States committed in the person's presence, or for the commission of any felony under the laws of the United States, if the person has reasonable grounds to believe that the person to be arrested has committed or is committing a felony; may search and seize, with or without a warrant, in accordance with any guidelines which may be issued by the Attorney General;".

TITLE II—SIKES ACT AMENDMENTS AND AUTHORIZATION

SEC. 201. STATE USE OF AMOUNTS FROM STAMP FEES.

Section 203(b)(3) of Public Law 86-797 (commonly known as the Sikes Act; 16 U.S.C. 670i(b)(3)) is amended to read as follows:

"(3) Except for expenses incurred in the printing, issuing, or selling of such stamps, the fees collected for such stamps by the State agency shall be utilized in carrying out conservation and rehabilitation programs implemented under this title in the State concerned. Such fees may be used by the State agency to provide public access to program lands that have no existing public access for enhancement of outdoor recreation and wildlife conservation.".

SEC. 202. AUTHORIZATION OF APPROPRIATIONS.

(a) Authorization of Appropriations for Conservation Programs on Military Reservations.—Subsections (b) and (c) of section 106 of Public Law 86-797 (16 U.S.C. 670f(b) and (c)) are each amended by striking "and 1988," and inserting in lieu thereof "1988, 1989, 1990, 1991, 1992, and 1993,".

(b) Authorization of Appropriations for Conservation Programs on Public Lands.—Subsections (a) and (b) of section 209 of Public Law 86-797 (16 U.S.C. 670o(a) and (b)) are each amended by striking "and 1988," and inserting in lieu thereof "1988, 1989, 1990, 1991, 1992, and 1993,".

TITLE III—WETLANDS LOAN FUND EXTENSION; MIGRATORY BIRD HUNTING STAMP ACT AMENDMENT

SEC. 301. WETLANDS LOAN FUND EXTENSION.

The first section of the Act entitled "An Act to promote the conservation of migratory waterfowl by the acquisition of wetlands, and for other essential waterfowl habitat, and for other purposes, approved October 4, 1961 (16 U.S.C. 715k-3), is amended by striking "at the close of September 30, 1988," and inserting in lieu thereof "when all amounts authorized to be appropriated have been expended,".

SEC. 302. MIGRATORY BIRD HUNTING STAMP ACT AMENDMENT.

Section 5 of the Act of March 16, 1934 (commonly known as the Migratory Bird Hunting Stamp Act; 16 U.S.C. 718e(c)) is amended in the second sentence by inserting after "paid" the following; ", after deducting expenses for marketing,".

TITLE IV—CONVEYANCE AND NAMING OF FISH HATCHERIES

SEC. 401. CONVEYANCE.

Subject to section 403, the Secretary of the Interior shall convey, without consideration, to the University of Georgia all right, title, and interest of the United States in and to the property described in section 402, for use by the University of Georgia in its fishery research and extension program.

SEC. 402. DESCRIPTION OF PROPERTY.

The property referred to in section 401 is a tract of land comprising approximately 63 acres, and improvements thereto, located in lots 25 and 48 of the 11th District, 3rd Section, Whitfield County, Georgia, as generally depicted in the legal description of the Cohutta Fish Hatchery contained in Appendix A of the Memorandum of Agreement between the United States Fish and Wildlife Service and the University of Georgia, Agreement No. 14-16-0004-83-926, dated September 29, 1983.

SEC. 403. REVERSIONARY INTEREST OF THE UNITED STATES.

The property conveyed under *section 401 of* this title shall continue to be reserved, maintained, and utilized by the University of Georgia in its fishery research and extension program. If any of the property is used for any other purpose, the title to such property shall revert to the United States.

SEC. 404. NAMING OF BO GINN NATIONAL FISH HATCHERY AND AQUARIUM.

The fish hatchery and aquarium known as the Millen National Fish Hatchery, located on Georgia State Highway 25 north of Millen, Georgia, shall be known as the "Bo Ginn National Fish Hatchery and Aquarium". Any reference in any law, map, regulation, document, record, or other paper of the United States to such hatchery and aquarium is deemed to be a reference to the "Bo Ginn National Fish Hatchery and Aquarium".

SEC. 405. CONVEYANCE OF FISH HATCHERY TO THE COMMONWEALTH OF KENTUCKY.

Notwithstanding any other provision of law and within 180 days of the date of enactment of this Act, the Secretary of the Interior shall convey, without reimbursement, to the Commonwealth of Kentucky, all of the right, title, and interest, including the water rights, of the United States in and to the fish hatchery property located approximately 14 miles due north of the city of Frankfort in Franklin County, Kentucky and known as the Frankfort National Fish Hatchery, consisting of 114.2 acres, more or less, of land together with any improvements and related personal property thereon. The property conveyed by this Act shall be used by the Kentucky Department of Fish and Wildlife Resources as a part of the Kentucky fishery resources management program and if it is used for any other purpose, title to such property shall revert to the United States.

SEC. 406. CONVEYANCE OF FISH HATCHERY TO THE STATE OF NEW HAMPSHIRE.

Notwithstanding any other provision of law, the Secretary of the Interior shall convey, without reimbursement, to the State of New Hampshire no later than December 31, 1988, all of the right, title, and interest of the United States in and to those improvements and related personal property under the Secretary's jurisdiction, including buildings, structures and equipment, associated with the United States' facility known as the Berlin National Fish Hatchery and located in the northwest corner of Berlin township, Coos County, New Hampshire. The improvements and related personal property conveyed shall be used by the New Hampshire Fish and Game Department as a part of the New Hampshire fishery resources management program and if they are used for any other purpose, title to such property shall revert to the United States.

SEC. 407. CONVEYANCE OF FISH HATCHERY TO THE STATE OF WISCONSIN.

Notwithstanding any other provision of law and within 180 days of the date of enactment of this Act, the Secretary of the Interior shall convey, without reimbursement, to the State of Wisconsin, all of the right, title, and interest, including the easements and water rights, of the United States in and to the fish hatchery property located in the Town of Lake Mills, Wisconsin, and known as the Lake Mills National Fish Hatchery, consisting of the land together with any improvements and related personal property thereon. The property conveyed by this Act shall be used by the Wisconsin Department of Natural Resources as a part of the Wisconsin fishery resources management program and if it is used for any other purpose, title to such property shall revert to the United States.

TITLE V—ACQUISITION OF LANDS ADJACENT TO KILAUEA POINT NATIONAL WILDLIFE REFUGE

SEC. 501. ADDITIONAL LANDS.

(a) Authorization.—The Secretary of the Interior is authorized to acquire certain additional lands adjacent to the Kilauea Point National Wildlife Refuge on Kauai, Hawaii, which shall become part of the Kilauea Point National Wildlife Refuge upon acquisition by the Secretary.

(b) Description of Lands.—The lands to be acquired pursuant to subsection (a) are—

(1) Crater Hill, comprising approximately 101.1 acres; and

(2) Mokolea Point, comprising 37.6 acres.

SEC. 502. CONSTRUCTION AND ENHANCEMENT PROJECTS.

(a) In General.—Within the Kilauea Point National Wildlife Refuge (upon acquisition of the lands described in section 501), the Secretary of the Interior may—

(1) construct and maintain access foot trails, including pedestrian viewing trails, to provide for public access;

(2) construct an access road for these lands to facilitate law enforcement and ensure public safety;

(3) acquire, or construct, and maintain a fence to provide for wildlife protection;

(4) conduct native plant restoration and wildlife enhancement activities; and

(5) establish a recreation area in the vicinity of Kahili Bay.

(b) Construction Requirement.—Trails and access roads constructed under this section shall be constructed in a manner consistent with preserving the wild and scenic beauty of the wildlife refuge.

SEC. 503. AUTHORIZATION OF FUNDING.

There is hereby authorized to be appropriated $2,600,000 to carry out the provisions of this title.

TITLE VI—AMENDMENTS TO ACT PROVIDING FOR RESTORATION OF KLAMATH RIVER BASIN FISHERY RESOURCES

SEC. 601. TRAVEL EXPENSES FOR TASK FORCE MEMBERS.

Section 4(i) of the Act entitled "An Act to provide for the restoration of the fishery resources of the Klamath River Basin, and for other purposes" (approved October 27, 1986; 16 U.S.C. 460ss-3(i)) is amended to read as follows:

"(i) Expenses.—

"(1) Travel expenses.—While away from their homes or regular places of business in the performance of services for the Task Force, Task Force members shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed travel expenses under section 5703 of title 5 of the United States Code. Any Task Force member who is an employee of an agency or governmental unit and is eligible for travel expenses from that agency or unit for performing services for the Task Force is not eligible for travel expenses under this paragraph.

"(2) Limitation on spending authority.—No money authorized to be appropriated under section 6 may be used to reimburse any agency or governmental unit (whose employees are Task Force members) for time spent by any such employee performing Task Force duties.".

SEC. 602. PROCEDURES OF COUNCIL AND TASK FORCE.

(a) COUNCIL PROCEDURES.—Section 3(g)(1) of such Act of October 27, 1986 (16 U.S.C. 460ss-2(g)(1)) is amended to read as follows:

"(1) PROCEDURES.—The Council shall establish practices and procedures for the carrying out of its functions under subsection (b). The procedures shall include requirements that—

"(A) a quorum of the Council must be present before business may be transacted; and

"(B) no comprehensive plan or recommendation referred to in subsection (b)(1)(A) or (B) may be adopted by the Council except by the unanimous vote of all members present and voting.".

(b) TASK FORCE PROCEDURES.—Section 4(f)(1) of such Act of October 27, 1986 (16 U.S.C. 460ss-3(f)(1)) is amended to read as follows:

"(1) PROCEDURES.—The Task Force shall establish practices and procedures for the carrying out of its functions under subsection (b). The procedures shall include the requirement that a quorum of the Task Force must be present before business may be transacted.".

SEC. 603. CONFORMING AND TECHNICAL AMENDMENTS.

Such Act of October 27, 1986, is further amended as follows:

(1) Sections 3(i) and 4(h) are each amended by striking out "or the State of California" and inserting ", the State of California, or the State of Oregon".

(2) Section 3(j)(1) is amended by adding at the end thereof the following new sentence: "Any Council member who is an employee of an agency or governmental unit and is eligible for travel expenses from that agency or unit for performing services for the Council is not eligible for travel expenses under this paragraph."

(3) The first sentence of section 6(a) is amended by inserting before the period the following: "and for the payment of travel expenses under sections 3(j) and 4(i)".

(4) Section 6(b)(3) is amended by striking out "volunteers" and all that follows thereafter and inserting "volunteers.".

SEC. 604. SHORT TITLE.

Such Act of October 27, 1986, is further amended by adding at the end thereof the following new section:

"SEC. 8. SHORT TITLE.

"This Act may be cited as the 'Klamath River Basin Fishery Resources Restoration Act'.".

TITLE VII—RUSSIAN RIVER STUDY

SEC. 701. JOINT FEDERAL-STATE STUDY AND RECOMMENDATIONS.

(a) IN GENERAL.—

(1) STUDY.—Subject to section 703, the Director of United States Fish and Wildlife Service (hereinafter in this title referred to as the "Director") and the Secretary of the Army (hereinafter in this title referred to as the "Secretary") shall—

(A) jointly undertake a comprehensive study of the fishery resources and fishery habitats of the Russian River (California) basin (hereinafter in this Act referred to as the "basin") and, on the basis of such study, develop goals and short-term and long-term recommended actions for maximizing the restoration and conservation of such resources and habitats;

(B) invite the Director of the Department of Fish and Game of the State of California to participate in undertaking the study and developing recommended actions; and

(C) submit the study and recommended goals and actions to Congress before October 1, 1991.

(2) PARTICIPATION OF DIRECTOR OF CALIFORNIA DEPARTMENT OF FISH AND GAME.—If there is an affirmative response to the invitation extended under paragraph (1)(B), the Director of the Department of Fish and Game of the State of California is authorized to participate jointly with the Director and the Secretary in undertaking the study and developing recommended goals and actions.

(b) MEMORANDUM OF UNDERSTANDING.—The Director, the Secretary, and the Director of the Department of Fish and Game of the State of California, if a joint participant, shall enter into a memorandum of understanding which shall set forth the respective responsibilities of each of the agencies in carrying out the study under this title. The United States Fish and Wildlife Service shall be the lead agency for purposes of carrying out this title.

(c) CONSULTATION.—In carrying out this title, the Director and the Secretary shall, to the maximum extent practicable, consult with the National Marine Fisheries Service, appropriate commercial and recreational fishing interests, affected local governments, and (if the joint participation referred to in subsection (a)(2) is not effected) the Director of the Department of Fish and Game of the State of California.

SEC. 702. STUDY CONTENTS.

The study referred to in section 701 shall include, but is not limited to, the following:

(1) DESCRIPTION OF FISHERY RESOURCES AND HABITATS.—A description of the fishery resources and fishery habitats of the basin that is based, to the maximum extent practicable, on new stream surveys and other field data collected expressly for the study. The description shall include, but not be limited to—

(A) an identification, and an estimate of the extent of utilization, of the existing spawning and rearing areas in the mainstem and tributaries;

(B) an evaluation of the quality and quantity of gravels in the spawning areas in the mainstem and tributaries;

(C) estimates of the instream flow needs for steelhead and chinook salmon in the mainstem and tributaries;

(D) population estimates of all fish species in the basin that are of sport or commercial value;

(E) an evaluation of the effectiveness of screens on water diversions along the mainstem and tributaries; and

(F) an identification of alternative bank stabilization methods which would allow for growth of shade producing riparian vegetation.

(2) DESCRIPTION OF BASIN AND ANALYSIS.—A description of the basin and an analysis of how its characteristics, and current and planned land and water use practices within the basin, have affected, and can be expected to affect, the fishery resources and fishery habitats of the basin.

(3) HISTORICAL ACCOUNT OF FISHERY RESOURCES AND HABITATS AND ANALYSIS.—A historical account of the fishery resources and fishery habitats of the basin and an analysis of the current status and the trends of such resources and habitats, including an analysis of the existing and projected problems facing such resources and habitats.

(4) EVALUATION OF INFORMATION.—An evaluation of the adequacy of the information that is currently available, and specification of the additional kinds and quantity of information that must be obtained, for purposes of carrying out the conservation and restoration of the fishery resources and the fishery habitats of the basin.

(5) FEDERAL, STATE, AND LOCAL GOVERNMENT ROLES.—A discussion of the respective roles of the Federal, State, and local government authorities that pertain to the conservation and restoration of the fishery resources and fishery habitats of the basin, with particular attention being given to the fishery management plans and responsibilities of such authorities and the relationship of such plans with applicable private fishery management plans.

SEC. 703. COST SHARING.

(a) REQUIREMENT FOR SHARING.—The State of California may not jointly participate in undertaking the study referred to in section 701 or in developing goals and recommended actions unless the Director is satisfied that the State of California will pay, on a basis considered timely and appropriate by the Director and from non-Federal sources, one-third of the cost of the study.

(b) IN-KIND CONTRIBUTIONS.—In addition to cash outlays, the Director shall consider as payment by the State of California under subsection (a) the value of in-kind contributions and personal property provided by, or on behalf of, the State for purposes of carrying out the study. Valuations made by the Director under this subsection are final and not subject to judicial review.

(c) IN-KIND CONTRIBUTIONS.—For purposes of subsection (b), in-kind contributions may be in the form of personal services rendered by volunteers.

(d) REGULATIONS.—The Director shall by regulation establish—

(1) the training, experience, and other qualifications which such volunteers must have in order for their services to be considered as in-kind contributions; and

(2) the standards under which the Director will determine the value of in-kind contributions and real and personal property for purposes of subsection (b).

(e) LIMITATION.—The Director may not consider the expenditure, either directly or indirectly, with respect to the study of Federal moneys received by the State of California or any local government of such State to be a financial contribution from a non-Federal source to carry out the study.

SEC. 704. AUTHORIZATION OF APPROPRIATIONS.

For carrying out this Act there are authorized to be appropriated to the Director and to the Secretary a total of not more than $2,000,000 for fiscal years 1990 and 1991.

TITLE VIII—AMENDMENTS TO THE FISH AND WILDLIFE CONSERVATION ACT OF 1980

SEC. 801. AUTHORIZATION OF APPROPRIATIONS.

Section 11 of the Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2910) is amended by striking "and 1988." and inserting in lieu thereof "1988, 1989, and 1990.".

SEC. 802. FEDERAL CONSERVATION OF MIGRATORY NONGAME BIRDS.

After section 12 of the Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2910), add the following new section:

"SEC. 13. FEDERAL CONSERVATION OF MIGRATORY NONGAME BIRDS.

"(a) CONSERVATION ACTIVITIES.—The Secretary shall undertake the following research and conservation activities, in coordination with other Federal, State, international and private organizations, to assist in fulfilling his responsibilities to conserve migratory nongame birds under existing authorities provided by the Migratory Bird Treaty Act

and Migratory Bird Conservation Act (16 U.S.C. 701-715) and section 8A(e) of the Endangered Species Act (16 U.S.C. 1537A(e)) implementing the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere:

"(1) monitor and assess population trends and status of species, subspecies, and populations of all migratory nongame birds;

"(2) identify the effects of environmental changes and human activities on species, subspecies, and populations of all migratory nongame birds;

"(3) identify species, subspecies, and populations of all migratory nongame birds that, without additional conservation actions, are likely to become candidates for listing under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543); and

"(4) identify conservation actions to assure that species, subspecies, and populations of migratory nongame birds identified under paragraph (3) do not reach the point at which the measures provided pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543) become necessary.

"(b) REPORTS.—Within one year after the date of enactment of this Act, and at five-year intervals thereafter, the Secretary shall prepare a report that presents the results of the activities taken pursuant to subsection (a) of this section and that describes any efforts to carry out those conservation actions identified pursuant to paragraph (4) of subsection (a) of this section. Such reports shall be submitted to the Committee on Environment and Public Works of the United States Senate and to the Committee on Merchant Marine and Fisheries of the United States House of Representatives.".

TITLE IX—MISCELLANEOUS AMENDMENTS

SEC. 901. RELINQUISHMENT OF EXCLUSIVE LEGISLATIVE JURISDICTION.

Notwithstanding any other provision of law, the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, may relinquish to a State, or to a Commonwealth, territory, or possession of the United States, the exclusive legislative jurisdiction of the United States over all or part of any United States Fish and Wildlife Service lands or interests therein, including but not limited to National Wildlife Refuge System and National Fish Hatchery System lands, in that State, Commonwealth, territory, or possession. Relinquishment of exclusive legislative jurisdiction under this subsection may be accomplished (1) by filing with the Governor (or, if none, the chief executive officer) of the State, Commonwealth, territory, or possession concerned, a notice of relinquishment to take effect upon acceptance thereof, or (2) as the laws of the State, Commonwealth, territory, or possession may otherwise provide.

SEC. 902. REMOVAL OF THE A. REGINA.

Section 1115 of the Water Resources Development Act of 1986, Public Law 99-662 (1986), 100 Stat. 4235, shall be amended by striking the final period thereof and by adding thereafter the following: ": Provided, That, in furtherance of the work authorized by paragraph (3) hereof, and conditioned on successful removal of the A. Regina, the Secretary of the Army is hereby authorized to transfer upon such conditions as he shall deem fit the title to a Delong Pier Jack-Up Barge Type A, serial number BPA6814, directly to any entity, including any private corporation to be used to assist in the removal of the wreck of the said A. Regina. Procedures otherwise governing the disposal of government property, shall not apply to the above authorized transfer of title. The foregoing actions shall be at no cost to the United States, and shall constitute full compliance by the Secretary of the Army with the requirement of paragraph (3) hereof.".

TITLE X—PROTECTION OF MASSACHUSETTS BAY

SEC. 1001. SHORT TITLE.

This title may be cited as the "Massachusetts Bay Protection Act of 1988".

SEC. 1002. DEFINITION.

For purposes of this title, the term "Massachusetts Bay" includes Massachusetts Bay, Cape Cod Bay, and Boston Harbor, consisting of an area extending from Cape Ann, Massachusetts south to the northern reach of Cape Cod, Massachusetts.

SEC. 1003. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds and declares that—

(1) Massachusetts Bay comprises a single major estuarine and oceanographic system extending from Cape Ann, Massachusetts south to the northern reaches of Cape Cod, encompassing Boston Harbor, Massachusetts Bay, and Cape Cod Bay;

(2) several major riverine systems, including the Charles, Neponset, and Mystic Rivers, drain the watersheds of eastern Massachusetts into the Bay;

(3) the shorelines of Massachusetts Bay, first occupied in the middle 1600's, are home to over 4 million people and support a thriving industrial and recreational economy;

(4) Massachusetts Bay supports important commercial fisheries, including lobsters, finfish, and shellfisheries, and is home to or frequented by several endangered species and marine mammals;

(5) Massachusetts Bay also constitutes an important recreational resource, providing fishing, swimming, and boating opportunities to the region;

(6) rapidly expanding coastal populations and pollution pose increasing threats to the long-term health and integrity of Massachusetts Bay;

(7) while the cleanup of Boston Harbor will contribute significantly to improving the overall environmental quality of Massachusetts Bay, expanded efforts encompassing the entire ecosystem will be necessary to ensure its long-term health;

(8) the concerted efforts of all levels of government, the private sector, and the public at large will be necessary to protect and enhance the environmental integrity of Massachusetts Bay; and

(9) the designation of Massachusetts Bay as an Estuary of National Significance and the development of a comprehensive plan for protecting and restoring the Bay may contribute significantly to its long-term health and environmental integrity.

(b) PURPOSE.—The purpose of this title is to protect and enhance the environmental quality of Massachusetts Bay by providing for its designation as an Estuary of National Significance and by providing for the preparation of a comprehensive restoration plan for the Bay.

SEC. 1004. DESIGNATION AS ESTUARY OF NATIONAL SIGNIFICANCE.

Section 320(a)(2)(B) of the Federal Water Pollution Control Act (33 U.S.C. 1330(a)(2)(B)) is amended by inserting "Massachusetts Bay, Massachusetts (including Cape Cod Bay and Boston Harbor);" after "Buzzards Bay, Massachusetts;".

SEC. 1005. FUNDING SOURCES.

Within one year of enactment, the Administrator of the United States Environmental Protection Agency and the Governor of Massachusetts shall undertake to identify and make available sources of funding to support activities pertaining to Massachusetts Bay undertaken pursuant to or authorized by section 320 of the Clean Water Act, and shall make every effort to coordinate existing research, monitoring or control efforts with such activities.

Mr. MITCHELL. Mr. President, this legislation, as reported, is to enhance the ability of the Federal Government and the States to conserve fish and wildlife resources.

Title I of the bill makes a series of amendments to the Lacey Act Amendments of 1981 which are intended to clarify the original intent of that legislation and to address enforcement problems that have been encountered since its enactment. The 1981 statute provides Federal protection for the thousands of fish, wildlife, and plant species subject to State, other Federal, or foreign laws. It imposes Federal penalties for engaging in interstate or foreign commerce in fish, wildlife, or plants that have been taken, possessed, transported, or sold in violation of any State, Federal, or foreign law.

The second title of the bill reauthorizes and amends the Sikes Act. Title I of the Sikes Act authorizes the U.S. Fish and Wildlife Service to assist the Department of Defense in planning, developing, maintaining, and coordinating fish and wildlife restoration, rehabilitation and public recreation programs on military reservations. Such programs must be carried out in accordance with a cooperative plan agreed upon by the defense installation commander, the appropriate State wildlife agency, and the Service. Title II of the Sikes Act authorizes development of conservation programs on lands administered by the Department of Energy, the NASA, the U.S. Forest Service and the BLM. The bill amends this latter title to encourage greater participation by the States in enhancing fish and wildlife conservation and outdoor recreation on Federal lands.

Title III of H.R. 4030 amends the Wetlands Loan Act to authorize, until expended, appropriations of the $2.65 million remaining out of the $200 million authorized through fiscal year 1988. This title also would assist the U.S. Fish and Wildlife Service in its efforts to raise wetlands acquisition money for the migratory bird conservation fund through sale of duck stamp reproductions.

Title IV addresses the conveyance of national fish hatcheries from the U.S. Fish and Wildlife Service to States and a State university. These hatcheries are ones that the Service has determined do not contribute primarily to high priority Federal fisheries responsibilities and that the Service has no present or forseeable need for this hatchery. The hatcheries to be conveyed currently are being operated and maintained by the States and the State university under long-term agreements with the Service.

Title V of H.R. 4030 is identical with one exception to S. 1193, a bill reported by the committee and passed by the Senate to add lands to Kilauea Point National Wildlife Refuge in Hawaii. The change made by this legislation is that the authorization level is decreased from $4 million to $2.6 million. On March 8, 1988, the U.S. Fish and Wildlife Service used $1.7 million that had been appropriated to acquire the lands identified by this legislation. It is estimated that approximately $900,000 is needed to construct and maintain a fence and access foot trail for the new lands. The authorization provided by title V of this bill will allow the necessary appropriations for these purposes.

Title VI makes two technical changes to Public Law 99-552, the act providing for restoration of Klamath River Basin fishery resources, concerning the operations of the Klamath Fishery Management Council and Klamath River Basin Fisheries Task Force.

Title VII authorizes a cooperative study of fishery resources and fishery habitats within northern California's Russian River Basin by the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, and if the State of California chooses to participate, its Department of Fish and Game.

Title VIII reauthorizes and amends the Fish and Wildlife Conservation Act of 1980. Historically, funding of State fish and wildlife programs has been provided by hunters and fishermen, primarily through their purchase of licenses. In addition, the key cooperative State/Federal fish and wildlife programs established by the Pittman-Robertson, Dingell-Johnson and Wallop-Breaux Acts are funded by Federal excise taxes on arms, ammunition, fishing equipment, and motorboat fuels. Most management by the States consequently has focused on those species that traditionally have been subject to fishing and hunting.

In 1980, with the passage of the Fish and Wildlife Conservation Act, the Congress sought to encourage the conservation of fish and wildlife species that are not ordinarily subject to hunting and fishing—over 89 percent of all species in the United States. The act authorized annual appropriations of $5 million for development by the States of comprehensive management plans to benefit these so-called nongame species.

The act also required the U.S. Fish and Wildlife Service to "conduct a comprehensive study to determine the most equitable and effective mechanism for funding—the implementation of—State conservation plans." The Fish and Wildlife Service completed this study in 1984 but did not recommend any initiative for funding the act. No money for development of the State comprehensive plans has ever been requested by the administration or appropriated by the Congress. The authorization to appropriate funds for development of State plans expired at the end of fiscal year 1988.

The Fish and Wildlife Conservation Act of 1980 is amended by this legislation to improve conservation of migratory nongame birds. Nearly all of the migratory birds for which the U.S. Fish and Wildlife Service is responsible are neither hunted nor protected under the Endangered Species Act. Under the Migratory Bird Treaty Act, the Service is responsible for the conservation of 832 species of North American birds. More than 90 percent of these are so-called nongame species.

The principal action taken to conserve these species has been to protect them from harvesting. Most of the attention is going toward hunted or endangered species. Although $500,000 was appropriated for nongame migratory bird research by the U.S. Fish and Wildlife Service in fiscal year 1988, the proportion of the Service's resources allocated to nongame migratory bird species has declined significantly over the last decade.

Many nongame migratory bird species are declining. In 1987, the Service identified 30 such bird species that showed evidence of decline. Moreover, another 407 species were considered for inclusion on the list of those declining.

This bill would provide additional statutory direction to the Fish and Wildlife Service to improve the Service's conservation of migratory nongame birds. Currently, the Fish and Wildlife Conservation Act of 1980 merely encourages the Service to use its authorities to conserve these species to the maximum extent practicable.

Title IX of H.R. 4030 authorizes the Secretary of the Interior to relinquish exclusive legislative jurisdiction over national wildlife refuge and national fish hatchery lands.

Currently many U.S. Fish and Wildlife Service lands are subject to exclusive legislative jurisdiction. This means that States and local governments cannot enforce their laws in these areas. Exclusive legislative jurisdiction has caused law enforcement problems because the U.S. Fish and Wildlife Service does not have adequate enforcement resources and needs local law enforcement assistance to prevent, control or investigate crimes on its lands. Under this bill, the United States would retain legislative jurisdiction to enforce laws on Service lands but would be able to share this authority with States and local governments.

Title IX also authorizes the Secretary of the Army to transfer ownership of a barge to a private entity to assist in the removal of a shipwreck. The wreck in question has lain for 3½ years on a sensitive coral reef off Mona Island, PR which is the most important breeding and feeding habitat under U.S. jurisdiction for endangered hawksbill and green sea turtles. The wreck site is exposed to constant heavy seas and high winds from frequent storms; the wreck moves continuously under these forces, causing extensive damage and making it hazardous and difficult to remove.

The DeLong pier barge offers the best opportunity for prompt and environmentally, nondamaging removal. Customary removal methods would use floating equipment moored by multiple cables, chains and anchors streamed outside the already damaged area and would cause extensive further coral damage. The DeLong pier barge, in contrast, would stand alongside the wreck on legs that would impact only those portions of the reef that already have been damaged by the wreck.

Timely action is important because the best weather for removal of the wreck occurs during late October, November, and early December. The deteriorating condition of the wreck makes it unlikely that it will survive another storm season.

Normal contract, and certainly routine disposition, procedures could not be expected to be completed before this December. All attempts at expedited disposition have been exhausted without success. Outright grant of the barge by the corps to the removing entity under this amendment provides the best assurance of timely action.

Moreover, the removal of the wreck and protection of endangered species of sea turtles would be accomplished without cost to the United States. The barge has little value, is of no use and a continuing expense to the Corps of Engineers, and will soon be disposed of in any event, if the amendment is not adopted.

Because the jack-up method would be faster, less environmentally damaging and about one-third as costly as other methods, ($3 million versus $8 million to $12 million, the insurers of the *A. Regina's* owners have agreed to pay the full cost of removal and other environmental damages. Accordingly, under the amendment the United States would pay no removal costs. In contrast, if the United States were to remove the wreck and sue the insurers for reimbursement of the removal costs, the United States would run the risk of obtaining inadequate recovery of its costs. It also is likely that the cost of such litigation would considerably exceed the value of the barge.

Title X of the bill amends the Clean Water Act to include Massachusetts Bay in the National Estuary Program.

This estuarine system serves more the 4 million people, supports an important commercial fishery for lobster, finfish, and shellfish, and provide important recreational opportunities for fishing, swimming, and boating.

The major sources of pollution include discharges from municipal treatment plants of several cities, including Boston, which contain wastes from thousands of industrial facilities. Other sources of pollution include untreated wastes from combined sewer overflow pipes, surface runoff, and the dumping of a range of materials at sites designated by the Corps of Engineers.

Including Massachusetts Bay into the Estuaries Program would enhance current efforts to improve the water quality of the bay by first, convening an integrated governmental effort to develop a long-term restoration plan for the bay to maximize the numerous separate cleanup efforts currently underway along the coastline; and second increasing the efficient use of current sources of funding for ongoing monitoring and research efforts.

AMENDMENT NO. 3687

Mr. BYRD. Mr. President, I call up an amendment in behalf of Mr. MITCHELL, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. MITCHELL, proposes an amendment numbered 3687.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Title IX of H.R. 4030 is amended by inserting the following new sections:

SEC. 903. AMENDMENT TO THE NATIONAL FISH AND WILDLIFE FOUNDATION ESTABLISHMENT ACT.

Section 5 of the Act of March 26, 1984, (16 U.S.C. 3704), otherwise known as the 'National Fish and Wildlife Foundation Establishment Act', is amended by inserting the following at the end of section 5: "Notwithstanding any other provision of this section, the Secretary of the Interior is authorized to continue to provide facilities, and necessary support services for such facilities, to the National Fish and Wildlife Foundation after March 26, 1989, on a space available, reimbursable cost basis.".

SEC. 904. AMENDMENT TO THE NATIONAL WILDLIFE REFUGE SYSTEM ADMINISTRATION ACT OF 1966.

Subsection (e) of section 4 of the Act of October 15, 1966, (16 U.S.C. 668dd(e)), otherwise known as the 'National Wildlife Refuge System Administration Act of 1966', is amended by striking "thereunder" and all that follows through the end of the sentence and inserting in lieu thereof "thereunder shall be fined under title 18, United States Code, or imprisoned for not more than 1 year, or both.".

SEC. 905. TECHNICAL CORRECTION.

Section 9(d)(1)(A) of the Endangered Species Act of 1973 (16 U.S.C. 1538(d)(1)(A)), as amended by the African Elephant Conservation Act, is amended further by striking "recreational purposes); or" and inserting in lieu thereof "recreational purposes) or plants; or".

Mr. MITCHELL. Mr. President, this legislation adds three noncontroversial provisions to H.R. 4030.

First, the National Fish and Wildlife Foundation Establishment Act is amended to allow the Foundation to continue to rent space within the Department of the Interior beyond March 26, 1989, at rates determined by the GSA. The provision also would allow the Foundation to receive from the Interior Department necessary support services associated with the rental space, such as cleaning or mail delivery, on a reimbursable cost basis.

Second, the National Wildlife Refuge Administration Act of 1966 is amended to provide a long overdue upgrading of the criminal penalties available for violations of the statute. The current $500 maximum fine makes our refuge system vulnerable to those who would disobey this important Federal wildlife law. This amendment signals Congress' commitment to significant criminal fines for serious violations of the Refuge Administration Act.

Third, this legislation corrects a technical error made in section 9(d) of the Endangered Species Act made by the conference report on H.R. 1467 amending that act.

The PRESIDING OFFICER. Is there further debate on the amendment of the Senator from Maine? If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 3687) was agreed to.

AMENDMENT NO. 3688

(Purpose: To ensure that Sikes Act funds may not be used to purchase lands through condemnation and to clarify that it is the responsibility of the Secretaries of Agriculture and Interior to maintain access roads constructed with Sikes Act funds)

Mr. DOLE. Mr. President, I send an amendment to the desk on behalf of Mr. DOMENICI, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legisltive clerk read as follows:

The Senator from Kansas [Mr. DOLE], for Mr. DOMENICI, proposes an amendment numbered 3688.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Section 201 is amended to read as follows:

"SEC. 201. STATE USE OF AMOUNTS FROM STAMP FEES."

Section 203(b)(3) of Public Law 86-797 (commonly known as the Sikes Act; 16 U.S.C. 670i(b)(3)) is amended to read as follows:

"(3) Except for expenses incurred in the printing, issuing, or selling of such stamps, the fees collected for such stamps by the State agency shall be utilized in carrying out conservation and rehabilitation programs implemented under this title in the State concerned. Such fees may be used by the State agency to acquire lands or interests therein from willing sellers or donors to provide public access to program lands that have no existing public access for enhancement of outdoor recreation and wildlife conservation: *Provided*, That the Secretary of Agriculture and the Secretary of the Interior maintain such access, or ensure that maintenance is provided for such access, through or to lands within their respective jurisdiction.".

Mr. DOMENICI. Mr. President, today I am offering an amendment to H.R. 4030 to clarify for what purposes Sikes Act funds may be used.

H.R. 4030 provides new authority to the States to expend Sikes Act funds to construct roads and trails to Federal lands for the purpose of outdoor recreation and wildlife conservation.

Two issues have been raised about this new authority that require clarification.

First, a concern has been expressed regarding condemnation. The language in the bill as presently drafted does not make it clear that new access to Federal lands when traversing private lands can only be obtained from willing sellers or donors, thereby ensuring that there will not be condemnation of private land. We need to make it clear that condemnation may not be used.

Second, the bill does not mention how these new roads and trails are to be maintained. This matter also must be addressed.

Consequently, I am offering an amendment to make these two clarifications. The provision has been cleared by the Environment and Public Works Committee.

The amendment is quite simple. First, it makes it clear that public access can only be secured from willing sellers or donors. Second, it provides that the Secretary of Agriculture and the Secretary of the Interior must maintain or ensure maintenance for these new access ways.

As I stated, Mr. President, the Environment and Public Works Committee has cleared this amendment, and I want to thank Senator MITCHELL and his able staff for their cooperation in addressing these two concerns.

Mr. DOLE. Mr. President, I ask unanimous consent that the amendment be agreed to.

The PRESIDING OFFICER. Without objection, it is or ordered.

The amendment No. 3688 was agreed to.

Mr. BYRD. Mr. President, I ask unanimous consent that the bill be read the third time, passed, and that the motion to reconsider be laid on the table.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

So, the bill (H.R. 4030), as amended, was passed.

NATIONAL SCIENCE FOUNDATION AUTHORIZATION ACT

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 4418.

The **PRESIDING OFFICER** laid before the Senate the following message from the House of Representatives:

Resolved, That, the House agree to the amendment of the Senate to the title of the bill (H.R. 4418), entitled "An Act to authorize appropriations for the National Science Foundation for fiscal years 1989 and 1990, and for other purposes.".

Resolved, That, the House agree to the amendment of the Senate to the text of the aforesaid bill with an amendment as follows:

In lieu of the matter inserted by said amendment, insert:

SHORT TITLE

SECTION 1. This Act may be cited as the "National Science Foundation Authorization Act of 1988".

TITLE I—NATIONAL SCIENCE FOUNDATION AUTHORIZATION

AUTHORIZATION OF APPROPRIATIONS

SEC. 101. (a) Congress finds that to strengthen basic research and human resources in science and engineering the programs of the National Science Foundation (hereinafter referred to as the "Foundaton") should be adequately funded.

(b) There is authorized to be appropriated to the Foundation $2,050,000,000 for fiscal year 1989, which shall be available for the following categories:

(1) Research and Related Activities, $1,653,500,000, which shall be available for the following subcategories:

(A) Mathematical and Physical Sciences, $507,800,000.

(B) Engineering, $198,000,000.

(C) Biological, Behavioral, and Social Sciences, $288,700,000.

(D) Geosciences, $320,900,000.

(E) Computer and Information Science and Engineering, $162,100,000.

(F) Science and Technology Research Centers, $25,000,000.

(G) Scientific, Technological, and International Affairs, $56,000,000.

(H) Program Development and Management, $95,000,000.

(2) Science and Engineering Education, $175,500,000, of which $17,500,000 shall be available for College Science Instrumentation.

(3) United States Antarctic Program, $141,000,000.

(4) Academic Research Facilities Modernization, $80,000,000.

(c) There is authorized to be appropriated to the Foundation $2,388,000,000 for fiscal year 1990, which shall be available for the following categories:

(1) Research and Related Activities, $1,910,700,000, which shall be available for the following subcategories:

(A) Mathematical and Physical Sciences, $588,500,000.

(B) Engineering, $229,500,000.

(C) Biological, Behavioral, and Social Sciences, $334,600,000.

(D) Geosciences, $372,000,000.

(E) Computer and Information Science and Engineering, $188,000,000.

(F) Science and Technology Research Centers, $30,000,000.

(G) Scientific, Technological, and International Affairs, $65,000,000.

(H) Program Development and Management, $103,100,000.

(2) Science and Engineering Education, $205,300,000.

(3) United States Antarctic Program, $147,000,000.

(4) Academic Research Facilities Modernization, $125,000,000.

(d) There is authorized to be appropriated to the Foundation $2,782,000,000 for fiscal year 1991, which shall be available for the following categories:

(1) Research and Related Activities, $2,200,200,000, which shall be available for the following subcategories:

(A) Mathematical and Physical Sciences, $681,500,000.

(B) Engineering, $265,800,000.

(C) Biological, Behavioral, and Social Sciences, $387,400,000.

(D) Geosciences, $430,800,000.

(E) Computer and Information Science and Engineering, $217,600,000.

(F) Science and Technology Research Centers, $30,000,000.

(G) Scientific, Technological, and International Affairs, $75,200,000.

(H) Program Development and Management, $111,900,000.

(2) Science and Engineering Education, $240,200,000.

(3) United States Antarctic Program, $154,100,000.

(4) Academic Research Facilities Modernization, $187,500,000.

(e) There is authorized to be appropriated to the Foundation $3,245,000,000 for fiscal year 1992, which shall be available for the following categories:

(1) Research and Related Activities, $2,552,000,000.

(2) Science and Engineering Education, $281,000,000.

(3) United States Antarctic Program, $162,000,000.

(4) Academic Research Facilities Modernization, $250,000,000.

(f) There is authorized to be appropriated to the Foundation $3,505,000,000 for fiscal year 1993, which shall be available for the following categories:

(1) Research and Related Activities, $2,772,000,000.

(2) Science and Engineering Education, $308,000,000.

(3) United States Antarctic Program, $175,000,000.

(4) Academic Research Facilities Modernization, $250,000,000.

(g) Notwithstanding any other provision of this Act—

(1) not less than $5,000,000 of the amount authorized in subsection (b)(2) is authorized only for purposes of teacher training and enhancement and for development of model curriculum tailored for science and mathematics instruction, and instruction in technician training programs, in two-year and community colleges; and

(2) in allocating funds authorized under this section for planning grants for Science and Technology Centers, the Director of the Foundation (hereinafter referred to as the "Director") shall give due consideration to the need to establish centers in geographic areas of the United States in which there is no nationally recognized research university.

(h)(1) If the total amount appropriated for a program category specified in subsections (b) through (f) of this section is less than the total amount authorized to be appropriated for such category under this section, the portion of such appropriated amount that shall be available for spending for each subcategory of such category, and for each program of such category or subcategory for which a funding floor is specified, shall be determined as follows:

(A) For each subcategory, the amount available for spending shall be equal to the amount specified in subsections (b) through (f) for that subcategory, as multiplied by the funding availability percentage.

(B) For each program of any category or subcategory for which a funding floor is specified, the amount available for spending shall be equal to the amount specified in this section as the floor for that program, as multiplied by the funding availability percentage.

(2) For the purposes of this subsection, the term "funding availability percentage" means the percentage determined by dividing—

(A) the total amount appropriated for a program category specified in subsection (b), (c), (d), (e), or (f) of this section by

(B) the total amount authorized under subsection (b), (c), (d), (e), or (f) for that category.

AVAILABILITY OF APPROPRIATIONS

SEC. 102. Appropriations made under authority provided in section 101 of this Act shall remain available for obligation for periods specified in the Acts making the appropriations.

CONSULTATION AND REPRESENTATION EXPENSES

SEC. 103. From appropriations made under authorizations provided in this Act, not more than $7,500 may be used in each fiscal year for official consultation, representation, or other extraordinary expenses at the discretion of the Director. The determination of the Director will be final and conclusive upon the accounting officers of the Government.

TRANSFER OF FUNDS

SEC. 104. (a) In any given fiscal year, funds may be transferred among the categories listed in section 101, and among subcategories listed in section 101, so long as the net funds transferred to or from any category, or to or from any subcategory, do not exceed 10 percent of the amount authorized for that category or subcategory.

(b) In addition, the Director may propose transfers to or from any category exceeding 10 percent of the amount authorized for that category in section 101, and to or from any subcategory in which the net funds transferred exceed 10 percent of the amount authorized for that subcategory. An explanation of any such proposed transfer must be transmitted in writing to the Committee on Science, Space, and Technology of the House of Representatives, and the Committees on Labor and Human Resources and Commerce, Science, and Transportation of the Senate. The proposed transfer may be made only when 30 calendar days have passed after transmission of such written explanation.

ADMINISTRATIVE AMENDMENTS

SEC. 105. (a) Section 4 of the National Science Foundation Act of 1950 (42 U.S.C. 1863) is amended by adding at the end thereof the following:

"(k) Portions of Board meetings in which the Board considers proposed Foundation budgets for a particular fiscal year may be closed to the public until the President's budget for that fiscal year has been submitted to the Congress.".

(b) Subsection (c) of section 15 of the National Science Foundation Act of 1950 (42 U.S.C. 1874) is repealed.

(c) Section 36(f) of the Science and Technology Equal Opportunities Act (42 U.S.C. 1885c(f)) is amended to read as follows:

"(f) Every two years, the Committee shall prepare and transmit to the Director a report on its activities during the previous two years and proposed activities for the next two years. The Director shall transmit to Congress the report, unaltered, together with such comments as the Director deems appropriate.".

TEMPORARY PERSONNEL

SEC. 106. Section 14(a) of the National Science Foundation Act of 1950 (42 U.S.C. 1873(a)) is amended by inserting "(1)" immediately after "(a)", and by adding at the end the following new paragraphs:

"(2) The Director may, under the authority provided by paragraph (1) of this subsection and in accordance with such policies as the Board chooses to prescribe, appoint for a limited term, or on a temporary basis, scientists, engineers, and other technical and professional personnel on leave of absence from academic, industrial, or research institutions to work for the Foundation.

"(3) The Foundation may pay, to the extent authorized for certain other Federal employees by section 5723 of title 5, United States Code, travel expenses for any individual appointed for a limited term or on a temporary basis and transportation expenses of his or her immediate family and his or her household goods and personal effects from that individual's residence at the time of selection or assignment to his or her duty station. The Foundation may pay such travel expenses and transportation expenses to the same extent for such an individual's return to the former place of residence from his or her duty station, upon separation from the Federal service following an agreed period of service. The Foundation may also pay a per diem allowance at a rate not to exceed the daily amounts prescribed under section 5702 of title 5, United States Code, to such an individual, in lieu of and when less than transportation expenses of the immediate family and household goods and personal effects, for the period of his or her employment with the Foundation. Notwithstanding any other provision of law, the employer's contribution to any retirement, life insurance, or health benefit plan for an individual appointed for a term of one year or less, which could be extended for no more than one additional year, may be made or reimbursed from appropriations available to the Foundation.".

BUDGET ESTIMATES

SEC. 107. Section 14 of the National Science Foundation Act of 1950 (42 U.S.C. 1873) is amended by adding at the end the following new subsection:

"(j) Starting with fiscal year 1990, the Foundation shall submit to the Congress in each fiscal year, at the time of the release of the President's budget, a three-year budget estimate for the Foundation. The three-year budget shall include funding estimates for each major activity, including each scientific directorate, the United States Antarctic Program, the Science and Engineering Education Directorate, and the Program Development and Management activity.".

FINANCIAL DISCLOSURE REPORT FOR BOARD MEMBERS

SEC. 108. Section 4 of the National Science Foundation Act of 1950 (42 U.S.C. 1863) is amended by adding at the end the following new subsection:

"(k) Members of the Board shall be required to file a financial disclosure report under title II of the Ethics in Government Act of 1978 (5 U.S.C. App; 92 Stat. 1836), except that such reports shall be held confidential and exempt from any law otherwise requiring their public disclosure.".

EVALUATIONS OF RESEARCH CENTERS

SEC. 109. In carrying out performance reviews of research centers by the Foundation, the Director shall take such action as may be necessary, consistent with the merit review process of the Foundation, to ensure that—

(1) members of review panels are free from any conflict of interest; and

(2) the conditions of each award to such centers have been fulfilled.

RESEARCH CENTER CONSORTIA

SEC. 110. In Foundation programs making grants to research centers, the Director shall encourage the formation of consortia that include research universities, two-year and four-year colleges, and the private sector.

BUY-AMERICAN REQUIREMENTS

SEC. 111. (a) The Director shall, to the maximum extent practicable and consistent with current law, award to domestic firms any contracts for the purchase of goods and services intended for direct use by the Foundation.

(b) The Director shall, as soon as possible after the date of enactment of this Act, prepare a report on—

(1) the number of Foundation contracts entered into with foreign firms in fiscal year 1988;

(2) the number of such contracts entered into with domestic firms in that fiscal year;

(3) the number of contracts entered into with foreign firms where the Foundation also received a technically acceptable bid from a domestic firm; and

(4) any steps the Foundation will take to increase the number of contracts awarded to domestic firms.

Such report shall be submitted to the Committee on Science, Space, and Technology of the House of Representatives and the Committees on Labor and Human Resources and Commerce, Science, and Transportation of the Senate.

(c) For the purposes of this section—

(1) the term "domestic firm" means a business entity which is organized under the laws of the United States or the laws of a State, district, commonwealth, territory, or possession of the United States, and which conducts business operations in the United States; and

(2) the term "foreign firm" means a business entity not described in paragraph (1).

UNDERGRADUATE SCIENCE IMPROVEMENT

SEC. 112. (a) The Congress finds that the support of undergraduate science and engineering education is a critical component in a comprehensive national policy intended to ensure the Nation's future supply of scientists and engineers.

(b) In accordance with the provisions of this Act, the Foundation shall support undergraduate science and engineering activities in instrumentation and laboratory improvement, undergraduate faculty enhancement, undergraduate research opportunities, undergraduate curriculum development, and efforts to encourage the participation of women, minorities, and the disabled in such fields.

(c) In carrying out the provisions of this section, the Foundation shall take into account the special needs of two-year and four-year colleges and universities.

EXPERIMENTAL PROGRAM TO STIMULATE COMPETITIVE RESEARCH

SEC. 113. (a) The Director shall operate an Experimental Program to Stimulate Competitive Research, the purpose of which is to assist those States that—

(1) historically have received relatively little Federal research and development funding; and

(2) have demonstrated a commitment to develop their research bases and improve science and engineering research and education programs at their universities and colleges.

(b) A State which has received an initial award under such Program, whether or not the award was received before or after the date of enactment of this Act, shall be eligible for up to 5 years of additional support under the program if that State provides assurances of new matching funds and submits an acceptable new plan for using Program funds and matching funds to build the research capabilities of the State.

COLLEGE AND UNIVERSITY INNOVATION RESEARCH

SEC. 114. The Director shall prepare and submit, not later than March 1, 1989, a report to the Committee on Labor and Human Resources and Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Science, Space, and Technology of the House of Representatives on assisting academic researchers at a wide range of colleges and universities, including smaller institutions and institutions which do not traditionally receive Federal research funds, to pursue high-quality research of economic potential. The report shall—

(1) describe the procedures, terms, and conditions necessary for the establishment of a program patterned after the Small Business Innovation Research program to assist college and university faculty to pursue research of economic potential;

(2) analyze the feasibility of establishing funding recoupment mechanisms to offset the cost of such assistance; and

(3) state whether such a program is appropriate and feasible and, if so, the steps the Director shall take to establish and carry out such a program.

EARTHQUAKE ENGINEERING RESEARCH

SEC. 115. (a) The National Academy of Sciences shall conduct a study of earthquake engineering activities being carried out by the Foundation and other Federal agencies under the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.). Such study shall include—

(1) an assessment of the adequacy of each agency's current Federal earthquake engineering efforts, including those designed to increase the implementation of new techniques; the need for specialized research facilities, including large-scale facilities; the division of responsibilities among the various Federal agencies; and recommended levels of funding that the Foundation and other agencies should provide, in the form of grants to individuals, groups, and centers, to non-Federal researchers principally en-

gaged in earthquake engineering research; and

(2) recommendations, if any, of the National Academy of Sciences for improvements in the current Federal efforts in the area of earthquake engineering research.

(b) The results of the study required by subsection (a) of this section shall be reported to the Congress on or before the expiration of the 12-month period following the date of enactment of this Act.

(c) In carrying out such study, the National Academy of Sciences is authorized to call upon any agency, department, or other instrumentality or entity of the United States for cooperation, and such agency, department, instrumentality, or entity shall provide such cooperation.

DESALINATION REPORT

SEC. 116. The Office of Science and Technology Policy shall prepare and submit a report to the Congress not later than December 1, 1988, on desalination research and technology. The report shall—

(1) describe the state of desalination research and technology being conducted by agencies of the Federal Government;

(2) recommend an agency of the Federal Government to be the lead agency on desalination research and technology;

(3) recommend ways to spur research and technology to decrease the cost of desalination; and

(4) recommend how desalination research and technology can be used as a component of the foreign assistance program of the United States.

PRESIDENTIAL AWARDS FOR TEACHING EXCELLENCE

SEC. 117. (a)(1)(A) The President is authorized to make Presidential Awards for Excellence in Mathematics and Science Teaching to kindergarten through grade 12 school teachers of mathematics and science who have demonstrated outstanding teaching ability in the field of teaching mathematics or science.

(B) Each year the President is authorized to make no fewer than 108 awards under subparagraph (A). In selecting teachers for an award authorized by this subsection, the President shall select at least two teachers—

(i) from each of the several States;

(ii) from the District of Columbia;

(iii) from the Commonwealth of Puerto Rico;

(iv) from among the Trust Territory of the Pacific islands, the Commonwealth of the Northern Mariana Islands, and other commonwealths, territories, and possessions of the United States; and

(v) from the United States Department of Defense Dependents' School.

(2) The President shall carry out this subsection, including the establishment of the selection procedures, after consultation with the Director and other appropriate officials of Federal agencies.

(3)(A) Funds to carry out this subsection for any fiscal year shall be made available from amounts appropriated pursuant to annual authorization of appropriations for the Foundation for Science and Engineering Education.

(B) Amounts made available pursuant to subparagraph (A) shall be available for making awards under this subsection, for administrative expenses, for necessary travel by teachers selected under this subsection, and for special activities related to carrying out this subsection.

(b)(1) Part C of title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701 et seq.), as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, is amended to read as follows:

"PART C—PRESIDENTIAL AWARDS FOR TEACHING EXCELLENCE IN FOREIGN LANGUAGES

"SEC. 2201. PRESIDENTIAL AWARDS.

"(a) GENERAL AUTHORITY.—The President is authorized to make Presidential Awards for Teaching Excellence in Foreign Languages to elementary and secondary school teachers of foreign languages who have demonstrated outstanding teaching ability in the field of teaching foreign languages.

"(b) LIMITATIONS.—Each year the President is authorized to make 108 awards under subsection (a). In selecting elementary and secondary school teachers for an award authorized by this section, the President shall select at least one elementary school teacher and one secondary school teacher—

"(1) from each of the several States;

"(2) from the District of Columbia;

"(3) from the Commonwealth of Puerto Rico;

"(4) from among the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and other commonwealths, territories, and possessions of the United States; and

"(5) from the United States Department of Defense Dependents' School.

"SEC. 2202. ADMINISTRATIVE PROVISIONS.

"(a) IN GENERAL.—There are authorized to be appropriated $1,000,000 for each fiscal year to carry out this part.

"(b) AVAILABILITY.—Amounts appropriated pursuant to subsection (a) shall be available for making awards under this part, for administrative expenses, for necessary travel by teachers selected under this part, and for special activities related to carrying out this part.".

(2) The items in the table of contents of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701 et seq.) relating to part C of title II are amended to read as follows:

"PART C—PRESIDENTIAL AWARDS FOR TEACHING EXCELLENCE IN FOREIGN LANGUAGES

"Sec. 2201. Presidential awards.

"Sec. 2202. Administrative provisions.".

DRUG-FREE WORKPLACE

SEC. 118. (a) No funds authorized to be appropriated under this Act, or under any other Act authorizing appropriations for fiscal year 1989 through 1993 for the Foundation, shall be obligated or expended unless the Foundation has in place, and will continue to administer in good faith, a written policy designed to ensure that all of its workplaces are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act) by the officers and employees of the Foundation.

(b) No funds authorized to be appropriated to the Foundation for fiscal years 1989 through 1993 shall be available for payment in connection with any grant, contract, or other agreement, unless the recipient of such grant, contractor, or party to such agreement, as the case may be, has in place and will continue to administer in good faith a written policy, adopted by the board of directors or other governing authority of such recipient, contractor, or party, satisfactory to the Director of the Foundation, designed to ensure that all of the workplaces of such recipient, contractor, or party are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act) by the officers and employees of such recipient, contractor, or party.

TITLE II—ACADEMIC RESEARCH FACILITIES MODERNIZATION

SHORT TITLE

SEC. 201. This title may be cited as the "Academic Research Facilities Modernization Act of 1988".

FINDINGS AND PURPOSE

SEC. 202. (a) The Congress finds that—

(1) the fundamental research and related education programs supported by the Federal Government and conducted by the Nation's universities and colleges are essential to our national security, and to our health, economic welfare, and general well-being;

(2) many national research and related education programs conducted by universities and colleges are now hindered by obsolete research buildings and equipment, and many institutions lack sufficient resources to repair, renovate, or replace their laboratories;

(3) the Nation's capacity to conduct high quality research and education programs and to maintain its competitive position at the forefront of modern science, engineering, and technology is threatened by this research capital deficit, which poses serious and adverse consequences to our future national security, health, welfare, and ability to compete in the international marketplace;

(4) a national effort to spur reinvestment in research facilities is needed, and national, State, and local policies and cooperative programs are required that will yield maximum return on the investment of scarce national resources and sustain a commitment to excellence in research and education; and

(5) the Foundation, as part of its responsibility for maintaining the vitality of the Nation's academic research, and in partnership with the States, industry, and universities and colleges, must assist in enhancing the historic linkages between Federal investment in academic research and training and investment in the research capital base by reinvesting in the capital facilities which modern research and education programs require.

(b) It is the purpose of this title to assist in modernizing and revitalizing the Nation's research facilities at institutions of higher education, independent non-profit research institutions and research museums, and consortia thereof, through capital investment.

ESTABLISHMENT OF PROGRAM

SEC. 203. (a)(1) To carry out this title, the Director shall establish and carry out a new Academic Research Facilities Modernization Program (hereafter in this title referred to as the "Program"), under which awards are made to institutions of higher education, independent nonprofit research institutions, and research museums, and consortia thereof, for the repair, renovation, or, in exceptional cases, replacement of obsolete science and engineering facilities primarily devoted to research.

(2) Such awards shall, consistent with the functions of the Foundation set forth in section 3 of the National Science Foundation Act of 1950 (42 U.S.C. 1862) and through established Foundation selection procedures, serve to—

(A) promote the modernization of graduate academic science and engineering research laboratories and related facilities so

as to facilitate and support research in the scientific and engineering disciplines;

(B) assist those academic institutions that historically have received relatively little Federal research and development funds to improve their academic science and engineering infrastructures and broaden and strengthen the Nation's science and engineering base; and

(C) promote the modernization of undergraduate academic science and engineering research laboratories and related facilities so as to facilitate and support research in the scientific and engineering disciplines.

(b)(1) The Program shall be carried out through projects which involve the repair, renovation, or, in exceptional cases, replacement of specific science and engineering facilities devoted primarily to research at eligible institutions, or consortia thereof, and for which funds are awarded in response to specific proposals submitted by such eligible institutions or consortia in accordance with procedures prescribed by the Director pursuant to section 204 of this Act.

(2) Awards made under the Program shall not exceed $7,000,000 to any institution or consortium over any period of 5 years for the repair, renovation, or, in exceptional cases, replacement of academic research facilities.

(3) The Director shall, in making awards under the Program, consider the extent to which that institution or consortium has received funds for the repair, renovation, construction, or replacement of academic facilities from any other Federal funding source within the 5-year period immediately preceding the application. The Director shall give priority to institutions or consortia that have not received such funds in the preceding 5 years.

(4) The Director shall, in awarding funds under this title, consider the distribution of funds among institutions of different sizes and geographical locations.

(c) Criteria for the award of funds to any institution for a project under the Program shall include—

(1) the quality of the research and training to be carried out in the facility or facilities involved;

(2) the need for the proposed repair, renovaton, or, in exceptional cases, replacement based on an analysis of the age and condition of existing research facilities and equipment;

(3) the congruence of the institution's research and training activities with the future research needs of the Nation and the research mission of the Foundation;

(4) the contribution that the project will make toward meeting national, regional, and institutional research and related training needs;

(5) in the case of an institution that historically has received relatively little Federal research and development funding, the contribution the proposed project will make to improving the institution's academic scientific and engineering infrastructure and broadening the Nation's science and engineering base; and

(6) the impact of the award on the overall geographic distribution of awards made under the Program, with the objective of avoiding undue concentration of awards.

PROCEDURES, GUIDELINES, AND PLANNING ACTIVITIES

SEC. 204. (a)(1) The Director shall, consistent with the objectives of the Program and the criteria set forth in section 203(c) of this Act, shall set forth procedures for the Program.

(2) The procedures so prescribed shall contain such terms, conditions, and guidelines as may be necessary in the light of Program objectives, but shall in any event provide that—

(A) funds to carry out the Program will be awarded only on the basis of merit after a comprehensive review using established Foundation procedures;

(B) the membership of merit review panels that assess proposals will be broadly representative of eligible institutions, including research universities and predominantly undergraduate and minority institutions;

(C) the institution receiving an award shall provide at least 50 percent of the cost, in cash or in kind, fairly evaluated, of the repair, renovation, or replacement involved and shall provide this contribution from private or non-Federal public sources, except that the Director may accept a match of less than 50 percent, but at least 30 percent, for institutions which are not ranked among the top 100 of the institutions receiving Federal research and development funding, as documented in the latest annual report of the Foundation entitled "Federal Support to Universities, Colleges, and Selected Nonprofit Institutions"; and

(D) to the extent practicable, eligible institutions of a given type will compete against similar institutions for Program awards.

(b) The Director shall conduct comprehensive planning activities, including surveys of research facility needs and other information-gathering activities, necessary to implement the Program and to develop the procedures called for under subsection (a) of this section.

(c) Prior to the issuance of the comprehensive plan required by subsection (d) of this section, and consistent with the Program criteria set forth in section 203(c) of this Act, the Director shall publish in the Federal Register proposed Program guidelines for public review for a comment period of 30 days. Such guidelines shall provide detailed information on eligibility, criteria, terms, and conditions and shall include, but not be limited to—

(1) definitions for the terms "institutions of higher education", "private non-profit research organizations", "research museums", "consortia", "facilities", "facilities primarily devoted to research", "instrumentation", "equipment", "repair", "renovation", and "replacement";

(2) selection criteria to be used by the Foundation in evaluating proposals from institutions and consortia thereof, including criteria for evaluating scientific merit and for evaluating the age and condition of existing research facilities; and

(3) requirements for matching a Program award with contributions from non-Federal sources.

(d) The Director, after gathering appropriate information and after considering comments on the proposed Program guidelines published in the Federal Register pursuant to subsection (c) of this section, shall develop a comprehensive plan for the Program that—

(1) defines the appropriate roles and responsibilities of the Federal Government, institutions of higher education, States governments, private foundations, and other appropriate organizations;

(2) states what procedures will be used to ensure that predominantly undergraduate institutions and colleges and universities that historically have received little Federal research and development funding will receive substantial percentages of the funds awarded under this title;

(3) states the estimated percentage of Program funds available for each category of eligible institutions, including predominantly undergraduate institutions and colleges and universities that historically have received little Federal research and development funding as well as research universities; and

(4) evaluates and addresses, to the maximum extent possible, a variety of factors which include—

(A) the unique circumstances and research facilities needs of research universities, undergraduate institutions, and other institutions whose enrollment includes substantial percentages of minorities underrepresented in science and engineering research;

(B) innovative approaches in the management of the Program that address both short-term and long-term aspects of the renovation, repair, and replacement of academic research facilities;

(C) programmatic approaches that recognize and support excellence, strengthen scientific and engineering research potential and, to the maximum extent possible and consistent with the purposes of this Act, assure an equitable distribution of resources with respect to institutions and geographical areas; and

(D) any recommendations necessary to improve the Program and further meet the purposes of this title.

(e) The Director shall prepare and submit, not later than June 15, 1989, a report containing the comprehensive plan required by subsection (d) of this section to the Committee on Labor and Human Resources and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives.

(f) Final guidelines shall be published in the Federal Register not later than 45 days after the submission of the report required under subsection (e).

(g) The Director shall, from amounts available to the Foundation under section 101(b) of this Act for fiscal year 1989, make available an amount, not to exceed $1,000,000, to carry out the provisions of this section. None of the funds authorized to be appropriated in section 101 of this Act may be used for grant or contract awards under the Program prior to completion and submission to Congress of the comprehensive plan required by subsection (d) of this section.

(h) In conducting the activities under the Program, the Director shall consult with the Secretary of Education and the heads of other related agencies.

SET-ASIDE FOR CERTAIN INSTITUTIONS

SEC. 205. Of the amounts appropriated to the Foundation for the Program, as authorized under section 101 of this Act, in each fiscal year, at least 12 percent shall be reserved for historically Black colleges or universities defined as "part B institutions" by section 322(2) of the Higher Education Act of 1965 (20 U.S.C. 1061(2)) and other institutions of higher education whose enrollment includes a substantial percentage of students who are Black Americans, Hispanic Americans, or Native Americans.

CONFORMING AMENDMENT

SEC. 206. Subtitle E of title IV (sections 6401-6403) of the Omnibus Trade and Competitiveness Act of 1988 is repealed.

Mr. KENNEDY. Mr. President, today we will consider the National Science Foundation Authorization Act of 1988. In June, both the Senate and

House passed bills that reauthorized the National Science Foundation. In the months since then we have ironed out our differences and the bill that we will consider today is truly a consensus proposal. I hope my colleagues will join with me in voting to approve it.

I believe that we have before us a landmark bill that will help improve the quality and quantity of scientific and engineering research in the United States. Basic research is critical to our Nation's economic well being and we must ensure that our commitment to it is second to none.

The National Science Foundation [NSF] is one of America's most important institutions in the quest for scientific and technological excellence. The NSF, which was established in 1950 (Pub. L. 81-507), has the responsibility for the overall health of science and engineering in the United States.

This bill reauthorizes NSF for 5 years. This is important because it is the first time that a multiyear authorization has been approved for this Agency. In the past, NSF has been reauthorized annually. I believe that the longer authorization period will allow NSF to take a longer perspective in planning its research agenda and will enable Congress to take a broader perspective in overseeing NSF's activities.

In addition to a 5-year authorization, the bill provides for a doubling of the Foundation's budget by fiscal year 1992. Doubling the NSF budget was first proposed in the administration's fiscal year 1988 budget request. In the current fiscal year, NSF is authorized to spend $1.7 billion. Under this bill, in fiscal year 1993, NSF will have an authorization level of $3.5 billion.

I believe that this increase is desirable. At the present time, America spends roughly two-tenths of 1 percent of our GNP on basic research, a level that has not changed in the last 15 years. Given the increasing importance of research to our economic health, I believe it is imperative that we do better than we have done in the past.

Mr. President, this bill also establishes a new program designed to help improve the scientific and engineering research facilities at America's colleges and universities. Outstanding research requires both superb scientists and high-quality research facilities. Twenty years ago the Federal Government was spending roughly $600 million a year to help build and repair scientific and academic facilities. Today we are spending next to nothing. Meanwhile, the condition of our research facilities has deteriorated considerably.

The Academic Research Facilities Modernization Program was developed after extensive discussion between the Labor and Commerce Committees and reflects the suggestions and proposals we received from the NSF and the higher education community. This program is designed to help colleges and universities meet the cost of repairing, renovating and, in exceptional cases, replacing academic facilities primarily devoted to research. The initiative is to benefit major research universities, 4-year colleges, institutions—such as historically black colleges and universities—that have traditionally not received a large amount of Federal research and development funds, nonprofit research institutions, and research museums.

This bill establishes a framework for the facilities program and sets a number of conditions that are to govern its operation. However, the committees recognize that it is neither desirable or possible to write in statute the details of a program as complicated as this one. As a result, the committees require that NSF, in consultation with the science and engineering communities, develop a complete set of guidelines for implementing this program. It is anticipated that the NSF will consult with a wide range of organizations in developing these plans. By June 15, 1989, the Director must submit to the appropriate congressional committees a report describing how the Foundation will administer this program. Final guidelines on the program are to be published in the Federal Register no later than August 1, 1989.

The importance the committees attach to this program is underscored by the high authorization levels established: $80 million are authorized for the program in fiscal year 1989, $125 million for fiscal year 1990, $187.5 million for 1991, and $250 million in fiscal years 1992 and 1993.

Mr. President, this bill is the product of considerable work on the part of both the Committee on Labor and Human Resources and the Committee on Commerce, Science, and Transportation. I would like to thank Senator HATCH, the ranking minority member of the Labor Committee, for his help in this effort I would also like to thank Senators HOLLINGS and DANFORTH of the Commerce Committee for their hard work on this landmark legislation.

Many staff members worked on this bill. From my own staff, I would like to recognize Terry Hartle and Steve Keith for their contributions. I would also like to thank Kris Iverson from Senator HATCH's staff, Pat Windham from Senator HOLLINGS staff, Mark Farrel from Senator DANFORTH's office, Sarah Flanagan from Senator PELL's staff, Phil Sharpe from Senator ADAMS's office and Ellin Nolan and Becky Rodgers from Senator STAFFORD's office. Finally, I would like to thank Senator DODD and Rich Tarplin from his office for their efforts on behalf of the Facilities Modernization Program.

I urge my colleagues to jon me in voting to enact this legislation.

Mr. HATCH. Mr. President, today we have an opportunity to support the continuation of the outstanding programs of the National Science Foundation. Such programs play an essential role in promoting science and engineering research, an endeavor of critical importance to our Nation's growth, defense, and quality of life. This 5-year authorization will enhance the National Science Foundation's ability to allocate resources among conventional, independent research projects and other new research initiatives.

There are several provisions of this authorization that I believe will be particularly beneficial to the goal of maintaining the position of the United States at the forefront of technological advancement. The research facilities provision, for example, which addresses the problem of obsolete facilities in our colleges and universities, will upgrade the quality of basic research, which is the foundation of scientific progress.

I am especially pleased to support this bill because it will promote science and engineering education. We are all aware of the importance of providing young Americans with the skills to continue the scientific and technological advancement that we have enjoyed for so many years. Perhaps even more important is the enthusiasm and encouragement that we can offer our future scientists, mathematicians, and engineers, and the support we can offer our teachers. The National Science Foundation has, for example, provided funding for Utah State University to develop and sponsor workshops in science and mathematics for public school faculty. Such programs have been proven to be very beneficial.

Everyone knows what an important part scientific and technological discoveries play in our lives and in our future. If not for the knowledge and ingenuity of scientists and engineers, the growth of this great Nation would be compromised. The progress that has been made in industrial technology, health care technology, and aerospace technology—to name just a few key areas—is awe inspiring. The National Science Foundation is helping us to continue this progress. Again, this is an opportunity for all of us in Congress to support scientific and engineering research, and I urge my colleagues to support this bill.

Mr. HOLLINGS. Mr. President, I am very pleased to join the distinguished chairman of the Labor Committee, and the esteemed ranking members of our two committees, in urging our colleagues to support this legislation to reauthorize the programs of the National Science Foundation [NSF]. The bill before us today is the result of nearly 2 years of work by our Senate committees and our House colleagues.

It is important legislation. Recognizing the vital contribution that scientific research and training make to our Nation's competitiveness and security, this bill reauthorizes NSF programs for 5 years and proposes doubling the Agency's budget during that period.

In addition, H.R. 4418 contains an important new program to help colleges and universities modernize their research facilities. Obsolete laboratories and related facilities increasingly threaten both research performance and academic training. The Federal Government clearly cannot and should not pay all of the huge costs of modernizing these research facilities, but a well-targeted Federal program which requires cost-sharing and focuses on our most urgent needs can be enormously valuable. Our congressional committees, other congressional leaders, higher education groups, and NSF itself have all worked hard to fashion what I think is very good facilities legislation. I am particularly pleased that the legislation before us today is designed to benefit a wide range of schools, including emerging universities, undergraduate colleges, and minority institutions.

This bill also contains selected increases and studies in a number of important scientific and engineering areas. Under the leadership of several Senators, increases have been included to strengthen programs in a number of key areas—minority research programs, which are a major interest of mine and others; research in superconductivity, where Senator BENTSEN has been our committee's leader; ocean engineering research, which Senator INOUYE and I agree is highly important now that the United States has declared a Exclusive Economic Zone out to 200 miles from our shores; and Senator ROCKEFELLER's proposal to expand the Experimental Program to Stimulate Competitive Research [EPSCOR], the program which helps improve research in States which historically have received little Federal funding. The bill also directs NSF to study and report back on the feasibility of a possible new College and University Innovation Research Program, Senator EXON's imaginative proposal to fund economically important research at a wide range of schools.

In closing, Mr. President, I would like to make a few additional points. One is that this bill is a tribute to the Nation's scientists, engineers, and universities. We have the finest research establishment in the world; it is one of our Nation's great competitive strengths. This bill states Congress' support for this vital work and restates our intention to strengthen our science base and to give our fine researchers the resources they need to help keep the country strong.

The bill is also a tribute to the leadership of Erich Bloch, NSF's Director. In his competent, effective way, he has worked to preserve the strengths and independence of our research universities while also making academic research more useful to American industry. He and his able staff deserve great credit and the Nation's thanks.

Finally, Mr. President, I think I speak for Senator DANFORTH as well as myself when I say again that the Commerce Committee very much appreciates the cooperation and many courtesies shown us during these deliberations by Senator KENNEDY, Senator HATCH, other members of the Labor Committee, and that committee's fine staff. Our two committees worked together very well during the preparation of this legislation. Together we have crafted a very good bill, one that I hope our colleagues will support.

I ask unanimous consent that an explanation of the House amendment appear in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXPLANATION OF AN AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 4418, THE NATIONAL SCIENCE FOUNDATION AUTHORIZATION

AUTHORIZATION LEVELS

H.R. 4418 as amended provides a five year authorization for the National Science Foundation (NSF) and doubles the Foundation's budget by fiscal year 1992. Doubling the budget by fiscal 1992 was first proposed in the Administration's budget request for fiscal year 1988. The authorization levels for the various NSF program activities for fiscal years 1989 through 1993 are shown in figure 1. The Committees' view of the importance of the NSF programs in science education is reflected in the growth of the Science and Engineering Education Directorate authorization, which exceeds $300 million in the fifth year. The magnitude of the problem of outdated and deteriorating academic research facilities is addressed by ramping up the authorization level for the new Academic Research Facilities Modernization Program to $250 million by the fourth year. In fiscal years 1992 and 1993, only an aggregate authorization is provided for Research and Related Activities. The Committees intend to provide authorization levels for each major program within the Research and Related Activities subtotal as more specific budget estimates and research priorities become known.

In moving to multiyear authorizations for NSF, the Congress will require more complete information on planned reductions in existing programs and on anticipated new research initiatives in outyears. It is imperative that the multiyear budget estimates reflect science and engineering research and education funding strategies and priorities. Consequently, the amendment requires NSF to submit three-year budget estimates to Congress annually.

The authority of the NSF Director to transfer funds among authorized categories and subcategories, up to a maximum of 10 percent of any authorized amount, is retained in the amendment. For proposed transfers to or from any category or subcategory exceeding 10 percent, the Director is required to first notify in writing the appropriate authorizing committees of Congress and to allow 30 calendar days to pass.

Fiscal Year 1989. The authorization levels in the amendment for fiscal year 1989 are compared with the Administration's requested budget in figure 2. In the Research and Related Activities programs, augmentations to the Administration's request were provided for the following four programs. Funding for Computer and Information Science and Engineering was increased for the purpose of ensuring that the National Supercomputer Centers program has resources necessary to provide hardware upgrades at the Centers and other appropriate supplementary support for maintaining services to Center users. Further discussion of the concerns leading to this authorization increase are provided in House Report 100-649. Funding for Engineering was increased in order to ensure adequate support for NSF programs in ocean engineering systems. Funding for Mathematical and Physical Sciences was increased for the purpose of augmenting materials research and, in particular, research on high-temperature superconductivity. Finally, funding for Scientific, Technological and International Affairs was increased for the purpose of augmenting NSF Research Initiation programs for underrepresented groups in science and engineering and for possible expansion of the Experimental Program to Stimulate Competitive Research.

The Science and Technology Centers programs is authorized at approximately the level requested by NSF for the first year of the initiative. However, in considering the NSF budget request, the Committees do not endorse the creation of a special fund to provide upfront funding for up to five years for 15 to 20 Centers. In principle, the Science and Technology Centers should not receive greater funding stability than other important NSF programs. The actual resources allotted to new Centers should be consistent with the need to sustain other centers programs and national facilities and to maintain the vigor of the individual investigator grants program.

In Science and Engineering Education, $19.5 million was added above the Administration's request. The College Science Instrumentation Program is authorized at $17.5 million, $6 million above the request, in order to address more adequately the serious shortcomings in instrumentation for instruction in science and engineering available in 2-year and 4-year colleges. Strengthening the instructional capabilities of these institutions is critical for maintaining the pipeline of scientists and engineers needed to meet our societal goals. Also, $5 million is authorized only for purposes of enhancing the instructional capabilities of two-year and community colleges by means of both teacher training and enhancement and also development of model curricula tailored for science and mathematics instruction, and instruction in technician training programs. It is intended that curricula be developed on the basis of appropriate needs assessments and in consultation with two-year and community college faculty and education leaders.

The new Academic Research Facilities Modernization Program, authorized at a level of $80 million, is a high priority of the Committees. As noted previously, the authorization increases in each of the first three years, reaching a level of $250 million by fiscal year 1992.

PLANNING GRANTS FOR SCIENCE AND TECHNOLOGY CENTERS

The Committees realize that the Science and Technology (S&T) Centers program selection process is already underway. The provision in the amendment regarding S&T planning grants does not in any way require that the selection process be started anew.

Also, the Committees in no way intend to circumvent the merit review process. Rather, by acknowledging the unique circumstances of urban areas where there are no nationally recognized research universities and where special efforts have been made to overcome such circumstances, the Committees are simply highlighting the continuing need for the NSF to carry out its mission to "strengthen research and education . . . throughout the United States, and to avoid undue concentration of such research and education." (Organic Act, Sec. 3(e))

Furthermore, by giving due consideration to these areas for planning grants, the areas should be able to compete more fully in the final selection process for Science and Technology Centers.

DETERMINATION OF AUTHORIZATION LEVELS RELATIVE TO ACTUAL APPROPRIATIONS

If the total amount appropriated in a given fiscal year for a given program category—Research and Related Activities, United States Antarctic Program, Science and Engineering Education, or Academic Research Facilities Modernization—is less than the amount authorized, then the amounts to be spent within each subcategory or floor within that category shall be reduced by an equivalent percentage. For example, if in a given fiscal year Research and Related Activities receives an appropriation equal to 90 percent of its authorization, then each subcategory and floor mentioned in the authorization bill for that year (such as Mathematical and Physical Sciences or Engineering) shall be funded at 90 percent of its authorized level.

AMENDMENTS TO THE NATIONAL SCIENCE FOUNDATION ACT OF 1950

The amendment contains six amendments to the National Science Foundation Act of 1950 (including the three-year budget estimate requirement previously discussed) and one change to a related law. All of the changes would serve a broad long-term purpose.

Board Meetings: The provision exempts discussions by the National Science Board of proposed NSF budgets from disclosure under the Government in the Sunshine Act until the President submits a budget and legislative program for the specific fiscal year(s) under discussion. The provision is intended to restore and enhance the participation of the National Science Board in the budget and related policy planning process of the Executive Branch.

Repeal: Section 15 is repealed to delete an obsolete provision having no current effect and to delete the requirement, which has no counterpart in student aid programs in other federal agencies, for an oath and for reporting past criminal records in NSF fellowship applications.

Committee on Equal Opportunities in Science and Engineering: The reporting requirement of the Committee is changed from annual to biennial. However, interim activities that merit the attention of Congress should not be delayed until the next report is due to Congress.

Temporary Personnel: NSF may pay certain expenses and benefits for participants in the NSF Rotator Program directly, rather than as part of salary. The benefits and expenses allowed are to be patterned on provisions in the Intergovernmental Personnel Act of 1970.

Financial Disclosure Report for Board Members: Members of the National Science Board are required to file a financial disclosure report under title II of the Ethics in Government Act of 1978 and such reports may be held confidential and exempt from any other law otherwise requiring their public disclosure. Thus, the members of the National Science Board are subject to formal conflict of interest standards consistent with the practice of other federal agencies.

INSPECTOR GENERAL

A provision in the House bill which required NSF to establish an independent office of Inspector General patterned on the Inspector General Act of 1978 is not included in the amendment. S. 908, a bill to establish Inspectors General for smaller federal agencies, is now in conference between the House and Senate. As a result of staff discussions between the Committee on Science, Space, and Technology and the Committee on Government Operations, language changes have been made to S. 908 which identify the National Science Board as the "head of the designated federal entity" for purposes of appointing the Inspector General for NSF. In addition, language will be added to the conference report on S. 908 to make clear that the Inspector General for NSF is not intended to review the scientific merit of specific grant or contract proposals. Both the Government Operations Committee and the Senate Governmental Affairs Committee have agreed to these changes to S. 908 and to the conference report. The principal goals of the Inspector General provision in the House bill are now met by S. 908.

EVALUATIONS OF RESEARCH CENTERS

NSF is creating a growing number of centers. Engineering Research Centers, Supercomputer Centers, the Earthquake Engineering Center, Materials Research Centers and Biology Centers are among the examples. The Committees want these centers evaluated fully and fairly so that only those that merit continued funding are sustained beyond the initial commitment. Therefore, the bill requires NSF to ensure that evaluation panels are free of conflict-of-interest and that the panels thoroughly review the centers. The Committees intend that such reviews include an assessment of whether the center's performance is consistent with all contractual goals and obligations, including matching grant requirements, made at the time of the center grant award. The Committees are not contemplating any change in standard NSF procedures in this provision of the amendment.

RESEARCH CENTER CONSORTIA

The Committees intend that NSF continue its efforts to reach out to all types of institutions in establishing centers. Therefore, NSF is directed to encourage participation by centers that include all types of institutions. The Committees do not intend to create a preference for such consortia in the award selection process.

BUY-AMERICA REQUIREMENTS

Within the restrictions of current international agreements to which the U.S. is a party, the Committees urge NSF to obtain goods and services for direct support of Foundation activities from domestic firms. This provision is not intended to apply to research contract awards but rather to in-house Foundation activities. Further, NSF is required to prepare and submit a report to Congress documenting the number of foreign and domestic awards in fiscal year 1988, including the number of foreign awards for which technically acceptable domestic bids were received. The report also calls for documentation of any plans by NSF to increase the number of awards to domestic firms.

RESEARCH ICEBREAKER

The House bill, but not the Senate bill, contained a provision to give preference to U.S. shipyards in the acquisition of an icebreaker to support research activities in the Antarctic. The Committees note the provisions of Public Law 100-404, the FY 89 HUD appropriations bill pertaining to acquiring and/or leasing a research vessel with icebreaking capability. Under those provisions no funds shall be used to acquire such a vessel built by a shipyard located in a foreign country if such a vessel of U.S. origin can be obtained at a cost of no more than 50 percent above the least expensive technically acceptable foreign vessel bid. Furthermore, the cost of any foreign vessel shall be increased by the amount of any subsidies of financing provided by a foreign government to such vessel's construction. Public Law 100-404 requires that a new competitive solicitation occur and permits temporary leasing arrangements, not to exceed 120 days for any one austral summer Antarctic season, to allow research activities to continue uninterrupted until such time as the solicitation and selection process is completed. The Committee on Science, Space, and Technology agreed to delete the icebreaking provision in H.R. 4418, as passed by the House, because Public Law 100-104 expresses the intent of the Committee with regard to this issue.

SPECIAL EMPHASIS PROGRAMS

In an effort to streamline the amendment, Title III, IV, and V of the Senate bill were dropped as separate titles, and special language was included to highlight these programs in Title I. This effort at economy in legislative drafting should not be seen, however, as a diminution of support for these programs. The Committees agree that these NSF initiatives are key elements for U.S. success in scientific research.

The Experimental Program to Stimulate Competitive Research (EPSCoR) was initated in 1978 to address the need of some states to improve their scientific research capabilities. Eight states received five-year awards in FY 1986. The amendment increases the authorization for the EPSCor program in order to allow the expansion of this program and to permit the Foundation to renew EPSCoR grants for up to an additional five years.

The joint bill also highlights the role of the NSF in supporting undergraduate research and education. Testimony presented to all three Congressional Committees involved in this reauthorization bill has emphasized the importance of the undergraduate line in the educational pipeline which supplies our nation's future scientists and engineers. Undergraduate programs, particularly two and four year colleges and universities, must have adequate, up-to-date instrumentation and equipment, as well as appropriate curricula and knowledgeable faculty. In recognition of these goals, the amendment increases the authorization above the Administration's request for college Science Instrumentation Program and directs the Foundation's continued attention to the needs of undergraduate science and engineering education.

Finally, the amendment requires the Foundation to report on the feasibility of establishing a new college/industry partnership program similar to the highly successful Small Business Innovation Research Program (SBIR). Such a program would not only provide greater opportunity for college students to participate directly in research related to industry, but would also result in innovations of benefit to business and our economy as a whole. The Committees are interested in pursuing such a program, but refrain from including specific mandates in this bill until the Foundation has made its recommendations.

EARTHQUAKE ENGINEERING RESEARCH

A number of concerns have been raised about the earthquake engineering programs under the National Earthquake Hazards Reduction Act (P.L. 95-124), which authorizes programs in the National Science Foundation, the National Bureau of Standards, U.S. Geological Survey and the Federal Emergency Management Agency. Concerns include whether funding has been adequate, responsibilities are divided properly among the four agencies, large scale facilities (such as shake tables) are available as needed, and information is successfully being transferred from researchers to practitioners. The National Academy of Sciences has issued a number of studies on the earthquake research program, and the Committees direct the Academy to review issues described above and in the amendment. All four agencies should work together to fund the study and provide information to the Academy as necessary.

DESALINATION REPORT

The amendment directs the White House Office of Science and Technology Policy to prepare a report on desalination research and technology. Currently, several government agencies are performing research on desalination technology, but their efforts are often uncoordinated and lack a common goal. The report shall describe current federal research efforts, suggest methods for improving coordination, highlight new research opportunities, and recommend a lead federal agency for desalination research and technology. The report shall also discuss how the United States can work with other countries, especially Middle East countries, in developing desalination technology.

PRESIDENTIAL AWARDS FOR TEACHING EXCELLENCE

A provision in the amendment makes a technical correction to Title II of the Elementary and Secondary Education Act of 1965. The provision establishes the program for Presidential Awards for Excellence in Mathematics and Science Teaching in NSF while retaining the Presidential Awards for Teaching Excellence in Foreign Languages in the Department of Education. Each program will make at least 108 awards for teaching excellence to selected teachers from the States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territories, and the Department of Defense-Dependents Schools.

Each awardees' school is given a grant to improve instruction in science and mathematics or foreign languages. In general, awardees use their grants for professional development activities, new equipment, materials for student research, and other teaching materials.

The Committees expect the National Science Foundation and the Department of Education to coordinate their plans for the awards ceremonies.

DRUG FREE WORKPLACE

The Committees are concerned that the illegal use of controlled substances is undermining American society. To ensure that federal dollars are being expended in drug free environments, the Committees have adopted a more comprehensive amendment than was contained in H.R. 4418, as passed by the House. Furthermore, adoption of this amendment ensures that the provision in this bill conforms with and is complementary with other legislation.

The amendment states that no funds authorized to be appropriated to NSF for fiscal years 1989 through 1993 shall be expended by NSF or by the recipient of a grant, contract or party to any other agreement that NSF enters into for the expenditure of funds authorized to be appropriated by NSF for fiscal year 1989 through 1993, unless all such parties have in place and will continue to administer in good faith a written policy designed to ensure that all of its workplaces are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act).

ACADEMIC RESEARCH FACILITIES MODERNIZATION

The Academic Research Facilities Modernization Program authorized in this amendment supersedes the facilities program included in the Trade Bill (P.L. 100-418).

The program is designed to help fund repair, renovation and, in exceptional cases, replacement of facilities primarily devoted to research. The Committees intend that only those facilities whose primary purpose is for science and engineering research (federally funded or otherwise) be eligible for funding, although such facilities may also be used for undergraduate instruction. In the case of multipurpose buildings, only those portions of the building primarily devoted to research are eligible for awards.

The Committees accepted Senate language clarifying that all types of academic institutions are to be assisted under this program. Specifically, the program is to aid major research universities, four-year colleges, universities that traditionally have not been recipients of a large amount of federal research and development (R&D) funds, nonprofit research institutions and research museums. The committees expect that similar types of institutions will compete against each other to ensure that all types of institutions receive assistance.

To ensure that as many institutions as possible are assisted, the amendment imposes a cap of $7 million on the amount of aid any single institution can receive under the program in any five-year period. In addition, NSF is instructed to give priority to institutions that have not received funds for facilities from any other federal sources during the five years prior to the grant application.

Awardees under the grant program are required to contribute to the cost of their facilities projects. The Committees understand that the financial condition of applicants will differ widely. Therefore, only the top 100 recipients of federal R&D funds are required to provide a match of at least 50 percent. NSF should prescribe matching requirements for other classes of institutions; however, all awardees are required to contribute at least 30 percent of the project cost in-cash or in-kind. NSF may consider the size of an institution's financial commitment to a project when reviewing grants, as long as that does not lead to awards being made to only the wealthiest institutions. The amendment requires NSF to publish in the Federal Register the specifics of how the grant program will be implemented. The Federal Register notice must make clear the classes of institutions and kinds of projects which are eligible, as well as selection criteria and matching requirements.

The Director is required to publish proposed guidelines and accept comments for 30 days. After evaluating those comments, but no later than June 15, 1989, the Director shall submit to the Committees a report describing how the program will achieve the Committees' intention of helping all types of institutions in all sections of the nation. The report must include estimated percentages of facilities program funds that will be provided to each class of institutions. The Committees understand that these figures will be goals that may require alteration after applications are received, since the demand for funds from any class of institution is not yet known. The Committees expect, however, that the aggregate percentage goal for other than major research universities be substantial. NSF should be prepared to explain to the Committees how it arrived at those goals and any later deviation from them. Funds expended in the preparation of the guidelines and the plan shall not be considered expenditures on facilities under this or any other Act.

Final guidelines should be published in the Federal Register 45 days after the program plan is submitted to Congress. The final guidelines should take into account any comments the Committees might provide on the program plan.

The Committees continue to be concerned about the need to bring more minorities into science and engineering. Therefore, the bill provides a 12 percent set-aside for minority institutions, including Historically Black Colleges and Universities and other institutions with substantial enrollments of Black, Hispanic and Native American students as determined by traditional NSF criteria. The Committees intend that minority institutions applying for grants demonstrate how the grant will help increase the numbers of minority students preparing for careers in science and engineering.

NATIONAL SCIENCE FOUNDATION FISCAL YEAR 1989–93 AUTHORIZATION

[In millions of dollars] [1]

Activities	Fiscal year—				
	1989	1990	1991	1992	1993
Research and Related Activities:					
Biological, Behavioral and Social Sciences	288.7	334.6	387.4		
Computer and Information Science and Engineering	162.1	188.0	217.6		
Engineering	198.0	229.5	265.8		
Geosciences	320.9	372.0	430.8		
Mathematical and Physical Sciences	507.8	588.5	681.5		
Science and Technology Centers	25.0	30.0	30.0		
Scientific, Technological and International Affairs	56.0	65.0	75.2		
Program Development and Management	95.0	103.1	111.9		

NATIONAL SCIENCE FOUNDATION FISCAL YEAR 1989–93 AUTHORIZATION—Continued

[In millions of dollars] [1]

Activities	Fiscal year— 1989	1990	1991	1992	1993
Subtotal, Research adn Related Activities	1,653.5	1,910.7	2,200.2	2,552.0	2,772.0
Science and Engineering Education	175.5	205.3	240.2	281.0	308.0
U.S. Antarctic Program	141.0	147.0	154.1	162.0	175.0
Academic Research Facilities Modernization Program	80.0	125.0	187.5	250.0	250.0
Total	2,050.0	2,388.0	2,782.0	3,245.0	3,505.0

[1] Dollar amounts have been rounded.

NATIONAL SCIENCE FOUNDATION BUDGET COMPARISONS

[In millions of dollars] [1]

Activities	Current fiscal year 1988	Fiscal year 1989		
		Administration request	H.R. 4418 as amended	Changes from administration request
Research and Related Activities:				
Biological, Behavioral and Social Sciences	266	288.7	288.7	0
Computer and Information Science and Engineering	124	149.1	162.1	+13
Engineering	171	195.0	198.0	+3
Geosciences	291	320.9	320.9	0
Mathematical and Physical Sciences	473	502.8	507.8	+5
Science and Technology Centers	0	150.0	25.0	−125
Scientific, Technological and International Affairs	44	51.0	56.0	+5
Program Development and Management	84	95.5	95.0	−0.5
Subtotal, Research adn Related Activities	1,453	1,753.0	1,653.5	−99.5
Science and Engineering Education	139	156.0	175.5	+19.5
U.S. Antarctic Program	125	141.0	141.0	0
Academic Research Facilities Modernization Program	0	0	80	+80
Total	1,717	2,050.0	2,050.0	0

[1] Dollar amounts have been rounded.

Mr. ROCKEFELLER. Mr. President, I am pleased that the Senate today is considering the conference report on the National Science Foundation authorization bill. The National Science Foundation [NSF] is the sole Federal agency dedicated to accomplishing basic science and engineering research. If this Nation is to remain pre-eminent in science and technology, then we must nurture and support the work of the National Science Foundation.

I am particularly gratified to see that the conference committee has included my amendment, that was originally adopted by the Senate Commerce Committee, to continue a little known, but very worthwhile program called the Experimental Program to Stimulate Competitive Research [EPSCOR]. I consider the inclusion of my amendment to be a major victory for those States that routinely fail to come out winners when it comes to Federal research and development awards.

The EPSCOR Program was started at NSF in 1980 in order to bolster the research capabilities of those States that historically have failed to receive their fair share of Federal research and development funding. It was based on a legislative proposal by my colleague, Senator HATCH, that was commonly called the "fair shake for all States" measure. The program provided a one-time infusion of funds so that these States could improve their research efforts. For example, the State of Alabama received a $3 million EPSCOR research grant which it used, in part, to fund a researcher who was instrumental in the major superconductivity breakthrough last year. In a recent visit to my own State of West Virginia, several engineering professors told me how the State's 1980 EPSCOR grant marked a giant step in the progress of their research and their careers.

To date, 16 States and Puerto Rico have been—or will be this year—beneficiaries of EPSCOR. Those 16 EPSCOR States are: Alabama, Arkansas, Idaho, Kentucky, Louisiana, Maine, Mississippi, Montana, Nevada, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, and Wyoming. And these States have greatly benefited from the EPSCOR Program.

South Carolina, for example, has moved from 46th in the Nation to 29th in NSF funding—and at least part of that success can be attributed to participation in EPSCOR. Another good example is Oklahoma. That State leveraged its EPSCOR dollars so that the State's original EPSCOR contribution grew from an original $4.9 million to a commitment of more than $19 million from the State legislature. Montana used its EPSCOR support to foster its research as the center of the largest dinosaur nesting locale in the world.

It is true that EPSCOR was originally designed to be a one-shot infusion of funds to boost a State's research capabilities. It has become clear, however, that a one-time surge of funds is not sufficient for States to fully develop their research potential and be able to compete against the research Goliaths.

It is unrealistic to believe that once-only funding of this kind will allow States to fully develop their research potential. We must bolster those States which have research programs that are good, but not yet excellent. Hopefully, those States will later be equipped to successfully compete for Federal funding in the regular process.

Furthermore, over the past few years, there has been increased recognition of the importance of science and technology research to our Nation's economic future. State legislatures across the country have been committing more funds to research and development based on the recognition that North Carolina's research triangle and Boston's Route 128 are products of those States' strong research bases.

Mr. President, for a small amount of money—about $4 million the first year—my EPSCOR provision would give some States a chance to make good research programs excellent. Those States which received first round EPSCOR grants would be eligible to compete, through the peer review process, for up to 5 years of additional support. The States, through a matching fund requirement, must show their commitment to improving their institutions' research and development infrastructures.

Again, I appreciate your favorable consideration of my EPSCOR provision and of the entire National Science Foundation authorization bill. I urge the passage of this measure.

Mr. EXON. Mr. President, I rise to voice my support for the National Science Foundation Reauthorization Act.

I am pleased that the final version of the National Science Foundation Reauthorization Act includes a study of proposals I made in the Senate Commerce Committee. I thank the managers for their support and encouragement.

The conference report includes a requirement that the National Science Foundation report to the Congress on the feasibility of assisting a "wide range of colleges and universities including smaller institutions which do not traditionally receive Federal research funds" with a program patterned after the successful Small Business Innovative Research Program. The study will also investigate the feasibility of establishing a recoupment mechanism to eventually make this program self-supporting.

I would have preferred that the Congress mandate the establishment of such a program, however, I am prepared to accept a good faith investigation of the proposal by those with expertise in scientific research programs. I want to make it clear that this study will be regarded seriously and that the Congress will not tolerate delay.

A serious program with Federal scientific research and development programs is that Federal dollars traditionally march down familiar avenues. In many cases, those who already have resources continue to get more and those who have needs in scientific research, are often ignored.

Mr. President, I submit that high quality research in America's smaller schools must be encouraged. There is a wealth of genius throughout our great Nation. I am hopeful that the study contained in this legislation will be a first step toward opening the door for important new scientific research in States such as Nebraska, South

Dakota, South Carolina as well as those which have traditionally received Federal funds.

Another problem which faces America is that in an era of austerity, our Nation lacks a long-term plan to fund growing research needs for science and technology. Earlier in this Congress, I proposed that the United States establish a self-supporting technology trust fund. Under this proposal, when the U.S. Government makes an investment in science and technology, the recipient would agree that should the research be financially successful, a small portion of the profits directly resulting from the Federal investment would be returned to the trust fund. That money would then be available to fund new research. Success would build on success. Science would fund science.

Mr. President, I also look forward to the National Science Foundation's analysis of the feasibility of establishing such a system.

Spending on science is an investment in the future. If our future is to remain bright, the Nation must harness the brilliance which exists in the Nation's smaller schools and smaller States, and find fiscally responsible ways to fund our increasing scientific and technological needs.

Thank you Mr. President.

Mr. BINGAMAN. Mr. President, I rise in support of the National Science Foundation Authorization Act of 1988.

In 1986, the Senate Democratic Working Group on Economic Competitiveness, which I chaired, spent almost a year studying this Nation's economic competitiveness problems. One of the conclusions of the working group was the importance of technological excellence in maintaining our ability to compete in world markets. This conclusion is even more true today.

A recent report by the Council on Competitiveness entitled "Picking up the Pace: The Commercial Challenge to American Innovation" documents the problem:

> A variety of warning signals point to problems in the U.S. ability to commercialize technology rapidly. The signals of the commercialization problem are diverse. America registered its first high-tech deficit in 1986. The U.S. share of consumer electronics market has dipped from about 100 percent in 1970 to less than 5 percent today. Other core industries—from semiconductors to pharmaceuticals—are being strongly challenged by foreign competitors. Foreign inventors captured 46.6 percent of U.S. patents in 1987 (up from 35 percent in 1975); and the Japanese hold key patents in an increasing number of fields.

Part of the problem is the deterioration of our academic research infrastructure. In a 1986 survey of college and university administrators, 58 percent of deans of engineering ranked their research facilities as poor to fair. Only 7 percent ranked their facilities as excellent. And 93 percent of engineering deans say they have less than an adequate amount of research space.

The same story holds in other key disciplines as well. Sixty-one percent of deans of physical sciences ranked their facilities as poor to fair and none ranked their facilities as excellent. In the mathematical sciences, 54 percent of the deans ranked their facilities as poor to fair, and none ranked them as excellent.

To combat this problem, the working group recommended the creation of a facilities fund within NSF to halt the deterioration of our academic research infrastructure. Thus, I am especially pleased that the NSF authorization bill under consideration today establishes an Academic Research Facilities Modernization Program within NSF to help maintain this essential scientific infrastructure.

The modernization program authorizes funds for repair, renovation and replacement of obsolete science and engineering facilities. To ensure excellence, all proposals would be selected by merit review following the establishment of a comprehensive program plan. Especially important to New Mexico, the legislation provides for a 12-percent set-aside for institutions with substantial percentages of blacks, Hispanics and native Americans. Historically, these minority groups have been underrepresented in the scientific and engineering work force. It is my hope that this set-aside program will help us rectify this situation by providing the necessary academic research facilities.

Establishment of this program is, I believe, a major step forward in rectifying a serious problem in our scientific and technological community. I thank the members of the working group, the Labor and Human Resources Committee and the Commerce, Science, and Transportation Committee for their support and diligent work on this issue. I look forward to seeing this legislation enacted into law.

"BUY AMERICA" PROVISIONS CONCERNING THE ICEBREAKER PROCUREMENT CONTAINED IN THE HUD-INDEPENDENT AGENCIES APPROPRIATIONS ACT, FY89

Mr. KENNEDY. I would like to engage in a colloquy with the chairman and ranking minority member of the HUD-Independent Agencies Appropriations Subcommittee. As the Senate considers the National Science Foundation Authorization Act, it is appropriate to focus on a provision in the NSF section of the recently signed fiscal year 1989 HUD Appropriations Act. The section contains a provision that directs NSF to procure a research vessel that is built in the United States unless the cost of that U.S.-built vessel exceeds by 50 percent the total cost—including subsidies and/or financing—of the least expensive, technically comparable foreign-built vessel.

As we know, the issue of subsidies is one that receives attention in international trade negotiations. So I ask, how would the Foundation go about determining if any subsidies or financing are associated with this procurement?

Mr. PROXMIRE. The Trade Act of 1930 as amended provides an adequate definition of subsidies. I would expect the Foundation, in verifying any statements or certifications by bidders that they were not receiving subsidies or financing, to consult with the Commerce Department, which is responsible for making subsidy determinations under the countervailing duty statute and would determine whether any subsidies or financing are associated with this procurement.

I ask the distinguished Senator from Utah, the ranking minority member of the subcommittee, if he would agree with that statement?

Mr. GARN. Yes, I agree with that interpretation.

Mr. KENNEDY. That seems to be an interpretation that makes sense, and I thank both Senators for that explanation.

Mr. HOLLINGS. Mr. President, I wish to ask a question of the Senator from Massachusetts.

Is it the Senator's understanding that American institutions which are located outside of the United States will be eligible to apply for matching grants from the National Science Foundation to help repair, renovate, or in exceptional circumstances, replace facilities whose primary purpose is for science and engineering research under ths program established by this legislation?

Mr. KENNEDY. That is correct. Where American research institutions abroad have the capability to perform unique research which can advance the frontiers of science, we believe that they should be eligible to apply for matching funds under this program like other American research institutions.

Mr. DANFORTH. Mr. President, I am pleased to join my colleagues Senators HOLLINGS, KENNEDY, and HATCH in recommending Senate passage of the National Science Foundation authorization bill, as amended by the House of Representatives.

This bill authorizes the doubling of NSF's budget over the next 5 years. Increased NSF funding will support more research in fields such as advanced materials, biotechnology, computers, mathematics, and superconductivity. Increased funding will also support education programs to interest more students at an earlier age in science and engineering careers. It will also increase funds for graduate science and engineering fellowships.

The bill also establishes a facilities fund to assist graduate and undergraduate universities and colleges in the renovation and repair of research laboratories. As early as 1983, when I introduced the University Research Capacity Restoration Act, it was clear that many of our schools needed better facilities if they were to perform first class research. At that time I proposed a fund to upgrade, modernize, and replace academic research laboratories.

Today, the need for modern facilities is even greater. NSF's 1986 survey of 165 schools, entitled "Science and Engineering Facilities at Doctorate Granting Institutions," found that, in eight of nine science fields surveyed, more than half the facilities were in less than adequate condition. Over half the facilities surveyed were 16 or more years old, with one quarter built or renovated before 1960. Obsolete facilities discourage talented students from pursuing scientific research careers and limit university research. Our Nation cannot develop its extraordinary intellectual and technological resources if this decline continues. The facilities program created by this bill will help to maintain American scientific and technological leadership.

Mr. WILSON. Mr. President, the road to progress is paved by innovation and technology. One of the leaders in innovative thought and technological advances is the National Science Foundation [NSF]. Today, we will pass legislation to reauthorize the Foundation and its research programs, and the Nation will be better for it.

As a member of the Senate Committee on Commerce, Science, and Transportation, I have lent my full support to the reauthorization process, but with a critical eye cast upon one specific NSF research program, the Earthquake Engineering Research Program.

Mr. President, consider the following. It is a spring day in the year 2018, and millions of Californians residing in the southern portion of the State have set out, like any other day, for work. School buses whisk children to their classrooms. Horns toot as impatient drivers approach their exit off the freeway. The engines of industry begin to roar. Then suddenly, the Earth splits—buildings crumble, cars plummet from the overpass onto the road below, the children never reach the school yard.

The Associated Press wire reports: Not since the turn of the century has a major earthquake of the magnitude of 7.5 rocked southern California. Between 3,000 and 23,000 people have died while nearly $60 billion of property has been destroyed. This event will certainly be remembered with the great earthquakes of 1857 and 1906.

Mr. President, this scenario may seem overly dramatic to some. But, it is not a drama, it is a reality. It is a scenario which has been documented in a report issued by the U.S. geological survey this year.

So, I would hope my colleagues would understand my keen interest in ensuring that one of our Nation's major earthquake engineering research arms, the National Science Foundation, is allocating limited Federal research dollars in a proper manner.

Accordingly, I sought and won approval of two provisions during the Senate NSF reauthorization process providing for an evaluation of NSF's current earthquake research efforts. Although modified to some extent, it is my understanding that both provisions have been included within the conference report despite efforts to exclude them.

Mr. President, since 1978, NSF's research and related activities budget has steadily increased while earthquake research funding has remained constant, and in some years, has been reduced. Specifically, the Foundation's total budget has increased by 17.8 percent, including a 24.8-percent increase in the research and related activities budget, but the total dollars directed toward earthquake engineering research has decreased in real terms by 33.9 percent. At a time when millions of Americans are living under the threat of a natural disaster of staggering proportions, I believe NSF's spending priorities deserve careful examination.

Therefore, I am encouraged, although not fully satisfied, by the conference committee's inclusion of an amendment to require the National Academy of Science to conduct a review of all earthquake engineering research programs at the Federal level. My concern about this amendment is one of content not purpose. It is my belief that the study, as presently constructed, may be so broad in scope as not to properly determine whether NSF is devoting sufficient resources to earthquake engineering research. Clearly, the language contained in the Senate-passed bill was specifically focused upon this question and therefore, more preferable.

I also note that the conference committee has adopted a provision to ensure that NSF performance reviews of research centers follow established merit review procedures to ensure that reviewers are free from conflict of interest and that conditions of awards to centers have been fulfilled. It would appear after reviewing the conference report that the committee has broadened the Senate provision which had originally focused upon the review of one particular research center, the National Center for Earthquake Engineering Research in Buffalo, NY.

I am hopeful that the committee amendment will ensure that the third-year review of the center's activities, already scheduled by NSF, will be both independent and thorough, and will demonstrate that all contractual obligations have been met.

Thank you, Mr. President. I yield the floor.

Mr. BYRD. Mr. President, I move that the Senate concur on the House amendments to the Senate amendments.

The motion was agreed to.

Mr. BYRD. Mr. President, I ask unanimous consent that the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

APPROPRIATIONS FOR PATENT AND TRADEMARK OFFICE IN THE DEPARTMENT OF COMMERCE

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of H.R. 4972 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4972) to authorize appropriations for the Patent and Trademark Office in the Department of Commerce, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3689

(Purpose: To eliminate presumptions in defining markets, and for other purposes)

Mr. BYRD. Mr. President, I send to the desk an amendment on behalf of Mr. LEAHY.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. BYRD), for Mr. LEAHY, proposes an amendment numbered 3689.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

TITLE I—INTELLECTUAL PROPERTY

SEC. 101. This title may be cited as the "Intellectual Property Antitrust Protection Act of 1988".

PROHIBITION OF MARKET POWER PRESUMPTION

SEC. 102. In any action in which the conduct of an owner, licensor, licensee, or other holder of an intellectual property right is alleged to be in violation of the antitrust laws in connection with the marketing or distribution of a product or service protected by such a right, such right shall not be presumed to define a market or to establish market power, including economic power and product uniqueness or distinctiveness, or monopoly power.

SEC. 103. For purposes of this title—

(1) the term "antitrust laws" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)); and

(2) the term "intellectual property right" means a right, title, or interest—

(A) in subject matter patented under title 35 of the United States Code, or

(B) in a work, including a mask work, protected under title 17 of the United States Code.

TITLE II—PATENT MISUSE DOCTRINE REFORM

SEC. 201. Section 271 of title 35, United States Code, is amended—

(1) by redesignating subsection (c) as paragraph (1) of subsection (c);

(2) by redesignating subsection (d) as paragraph (2) of such subsection (c); and

(3) by inserting after subsection (c) the following new subsection:

"(d) No patent owner otherwise entitled to relief for infringement or contributory infringement of a patent shall be denied relief or deemed guilty of misuse or illegal extension of the patent right by reason of his or her licensing practices or actions or inactions relating to his or her patent, unless such practices or actions or inactions, in view of the circumstances in which such practices or actions or inactions are employed, violate the antitrust laws.".

Mr. DECONCINI. Mr. President, I rise today in support of H.R. 4972, the bill to reauthorize the Patent and Trademark Office [PTO] for the years of 1989, 1990, and 1991. The Subcommittee on Patents, Copyrights and Trademarks, which I chair, recognizes that the PTO is a very important bureau of the Federal Government. H.R. 4972 will help improve the effectiveness of PTO operations. Through these improvements, we can strengthen individual and corporate incentives to invent and invest in new products in the United States.

In brief, H.R. 4972 authorizes PTO appropriations for the next 3 years. The bill also continues with the reporting requirements and most of the user fee restrictions that Congress imposed on the PTO in the last authorization. However, the bill relaxes the prohibitions of Public Law 99-607 against charging any user fees for the public patent and trademark search rooms and libraries at the PTO. Although the Commissioner still may not charge for use of paper documents or microfilm, the Commissioner may establish reasonable fees for public access to the automated search system, subject to certain limitations.

This has become a matter of some concern as public dissemination of patent and trademark information is an important mission of the PTO. The question of how the Office can best make its information available to the public raises a number of policy issues.

For the last several years, the PTO has been undertaking a massive and expensive automation project. This project has run into a number of difficulties and has been criticized by the General Accounting Office for mismanagement and cost overruns. The Senate Subcommittee on Patents, Copyrights and Trademarks plans to hold oversight hearings on this subject next year and to investigate these issues further, but we believe H.R. 4972 proposes reasonable guidelines for user fees based on the information currently available to us.

I believe the PTO must concentrate on making all of the automated information as well as paper or microfilm collections of patents and trademarks available to the public at the earliest possible date. The H.R. 4972 provisions requiring the PTO to keep user fees reasonable, requiring a limited amount of free automated system access training time, and authorizing fee waivers in cases of need or hardship should help promote the public interest in the wide dissemination of PTO information.

The subcommittee hopes to obtain more information next year on the anticipated level of fees for the automated system. My understanding is that the fees will be based on the marginal cost of providing the information to the public and will not include the costs of designing and installing the automated system for use by PTO examiners.

H.R. 4972 also addresses issues that have arisen relating to money spent for automation. For example, the bill prohibits the use of fee revenues to defray more than 30 percent of the cost of automation and requires the Commissioner of Patents and Trademarks to notify the House and Senate Judiciary Committees of any proposals which would increase or decrease the amount of appropriations expended for automation.

In addition, the bill continues to prohibit the Commissioner from entering into any agreements to exchange items or services relating to automatic data processing resources. However, the subcommittee has received recommendations that this restriction be further tightened. We will also be looking into this issue in the coming year to see if any such changes are needed.

H.R. 4972 omits a provision of Public Law 99-607 that required the Commissioner to notify the Judiciary Committees 90 days before deploying automated systems. This does not in any way indicate a congressional lack of interest in the automated system. We assume that the Department of Commerce and the PTO will consult with Congress before making any major decisions on patent and trademark search files automation.

H.R. 4972 is a good bill, and I support its passage. However, we should not assume that all of its provisions will remain unchanged for the full 3-year authorization. After our oversight hearings next year, we may determine that further legislation is needed. We will pay particularly close attention to the user fee provision to ensure that it is not abused, thereby discouraging public access to this information. We are hopeful that the recent changes in PTO management and planning will bring about improvements in the automation project that will be evident by the time we hold our hearings next year.

The Patent and Trademark Office has a very important role in our effort to improve America's industrial competitiveness. I would like to thank all those who have taken such an interest in this issue and have worked so closely with me and my staff. And I would especially like to thank Mary Cabanski of my staff for all her hard work on this and other legislation during the 100th Congress.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3689) was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NURSING SHORTAGE REDUCTION AND EDUCATION EXTENSION ACT

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 4833.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 4833) entitled "An Act to amend the Public Health Service Act to revise and extend the programs of nurse education established in title VIII of such Act, and for other purposes", with the following amendment.

In lieu of the matter inserted by said amendment, insert:

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the "Nursing Shortage Reduction and Education Extension Act of 1988".

(b) REFERENCE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

TITLE I—SPECIAL PROJECTS

SEC. 101. SPECIAL PROJECT GRANTS AND CONTRACTS.

(a) TRANSFER OF PROGRAM FOR INDIVIDUALS FROM DISADVANTAGED BACKGROUNDS.—Part A of title VIII (42 U.S.C. 296k et seq.) is amended—

(1) by inserting after the heading for such part the following new heading:

"Subpart I—Special projects in General",

(2) by striking section 820(a)(1), and

(3) by adding at the end the following new subpart:

"Subpart II—Nursing Education Opportunities for Individuals From Disadvantaged Backgrounds

"SPECIAL PROJECTS

"SEC. 827. (a) The Secretary may make grants to public and nonprofit private schools of nursing and other public or nonprofit private entities, and enter into contracts with any public or private entity, to meet the costs of special projects to increase nursing education opportunities for individuals from disadvantaged backgrounds, as determined in accordance with criteria prescribed by the Secretary—

"(1) by identifying, recruiting, and selecting such individuals,

"(2) by facilitating the entry of such individuals into schools of nursing,

"(3) by providing counseling or other services designed to assist such individuals to complete successfully their nursing education,

"(4) by providing, for a period prior to the entry of such individuals into the regular course of education at a school of nursing, preliminary education designed to assist them to complete successfully such regular course of education,

"(5) by paying such stipends (including allowances for travel and dependents) as the Secretary may determine for such individuals for any period of nursing education,

"(6) by publicizing, especially to licensed vocational or practical nurses, existing sources of financial aid available to persons enrolled in schools of nursing or who are undertaking training necessary to qualify them to enroll in such schools, and

"(7) by providing training, information, or advice to the faculty of such schools with respect to encouraging such individuals to complete the programs of nursing education in which the individuals are enrolled.

"(b) No grant or contract may be made under this section unless an application therefor has been submitted to and approved by the Secretary. The Secretary may not approve or disapprove such an application except after consultation with the National Advisory Council on Nurse Education. Such an application shall provide for such fiscal control and accounting procedures and reports, and access to the records of the applicant, as the Secretary may require to assure proper disbursement of and accounting for Federal funds paid to the applicant under this section.

"(c) For payments under grants and contracts under subsection (a), there are authorized to be appropriated $3,000,000 for fiscal year 1989, $4,000,000 for fiscal year 1990, and $5,000,000 for fiscal year 1991.".

(b) STRIKING OF CERTAIN PROGRAMS.—Section 820(a) (42 U.S.C. 296k(a)) as amended—

(1) by striking paragraphs (3), (7), and (9), and

(2) by redesignating paragraphs (2), (4), (5), (6), and (8) as paragraphs (1) through (5), respectively.

(c) GERIATRIC TRAINING.—Section 820(a)(2) (as redesignated by subsection (b)(2) of this section) is amended to read as follows—

"(2) demonstrate, through geriatric health education centers and other entities, improved geriatric training in preventive care, acute care, and long-term care (including home health care and institutional care);".

(d) UPGRADING SKILLS.—Section 820(a) (42 U.S.C. 296k(a)) is amended—

(1) by amending paragraph (3) (as redesignated by subsection (b)(2) of this section) to read as follows:

"(3)(A) increase the supply of adequately trained nursing personnel (including bilingual nursing personnel) to meet the health needs of rural areas; and

"(B) provide nursing education via satellite;", and

(2) by amending paragraph (4) (as so redesignated) to read as follows:

"(4) provide training and education—

"(A) to upgrade the skills of licensed vocational or practical nurses, nursing assistants, and other paraprofessional nursing personnel with priority given to rapid transition programs towards achievement of professional nursing degrees; and

"(B) to develop curricula for the achievement of baccalaureate degrees in nursing by registered nurses and by individuals with baccalaureate degrees in other fields;".

(e) COORDINATION PROJECTS WITH RESPECT TO LOAN REPAYMENTS FOR SERVICE IN HEALTH FACILITIES.—Section 820(a) (42 U.S.C. 296k(a)) is amended by adding after paragraph (5) (as redesignated by subsection (b)(2) of this section) the following new paragraph:

"(6)(A) collect the names and addresses of health facilities willing to enter into agreements with nursing students and nursing personnel under which such individuals agree to serve as nurses in the health facilities in consideration of the health facilities agreeing to repay the principal and interest of the educational loans of such individuals;

"(B) collect data on the specific terms of such agreements offered by health facilities;

"(C) collect the names and addresses of nursing students identified pursuant to section 827(a), of other nursing students, and of nursing personnel, willing to enter into such agreements; and

"(D) coordinate and facilitate communications between health facilities and such individuals with respect to such agreements.".

(f) GERIATRIC HEALTH EDUCATION CENTERS.—Section 820 (42 U.S.C. 296k) is amended—

(1) by redesignating subsections (b) through (d) as subsections (e) through (g), respectively, and

(2) by adding after subsection (a) the following new subsection:

"(b)(1) The Secretary may make grants to, and enter into contracts with, accredited schools of nursing to assist in meeting the costs of such schools in providing projects—

"(A) to improve the training of nurses in geriatrics;

"(B) to develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;

"(C) to expand and strengthen instruction in methods of such treatment;

"(D) to support the training and retraining of faculty to provide such instruction;

"(E) to support continuing education of nurses who provide such treatment; and

"(F) to establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric health care.

"(2)(A) Any application for a grant or contract under this subsection shall be subject to appropriate peer review by peer review groups composed principally of non-Federal experts.

"(B) The Secretary may not approve or disapprove an application for a grant or contract under this subsection unless the Secretary has received recommendations with respect to such application from the appropriate peer review group required under paragraph (1) and has consulted with the Advisory Council on Nurses Education with respect to such application.

"(C) For the purpose of carrying out this subsection, the Secretary may obligate each fiscal year not more than $2,000,000 of the amounts made available for such purpose pursuant to subsection (g)(2).".

(g) INNOVATIVE HOSPITAL NURSING PRACTICE MODELS.—Section 820 (42 U.S.C. 296k), as amended by subsection (f) of this section, is further amended by inserting after subsection (b) the following new subsection:

(c)(1) The Secretary may make grants to public and nonprofit private entities for the purpose of demonstrating innovative hospital nursing practice models designed to reduce vacancies in professional nursing positions and to make such positions a more attractive career choice.

"(2) The Secretary may not make a grant under paragraph (1) unless the applicant for the grant agrees that hospital nursing practice models demonstrated pursuant to such subsection will include initiatives—

"(A) to restructure the role of the professional nurse, through changes in the composition of hospital staffs and through innovative approaches for interaction between hospital administration and nursing personnel, in order to ensure that the particular expertise of such nurses is efficiently utilized and that such nurses are engaged in direct patient care during a larger proportion of their work time;

"(B) to test innovative wage structure for professional nurses in order to—

"(i) reduce vacancies in work shifts during unpopular work hours; and

"(ii) provide financial recognition based upon experience and education; and

"(C) to evaluate the effectiveness of providing benefits for professional nurses, such as pensions, sabbaticals, and payment of educational expenses, as a means of developing increased loyalty of such nurses to health care institutions and reducing turnover in nursing positions.".

(h) LONG-TERM CARE NURSING PRACTICE DEMONSTRATIONS.—Section 820 (42 U.S.C. 296k), as amended by subsection (g) of this section, is further amended by inserting after subsection (c) the following new subsection:

"(d)(1) The Secretary may make grants to public and nonprofit private entities accredited for the training of nurses for the purpose of—

"(A) demonstrating innovative nursing practice models for—

"(i) the provision of case-managed health care services (including adult day care) and health care services in the home; or

"(ii) the provision of health care services in long-term care facilities; or

"(B) developing projects to increase the exposure of nursing students to clinical pratice in nursing home, home health, and gerontologic settings through collaboration between such accredited entities and entities that provide health care in such settings.

"(2) The Secretary may not make a grant under paragraph (1) unless the applicant for the grant agrees that models demonstrated pursuant to such paragraph will be designed—

"(A) to increase the recruitment and retention of nurses to provide nursing care for individuals needing long-term care; and

"(B) to improve nursing care in home health care settings and nursing homes.".

(i) AUTHORIZATION OF APPROPRIATIONS.—Section 820(g) (as redesignated by subsection (b)(2) of this section) is amended to read as follows:

"(g)(1) For payments under grants and contracts under this section, there are authorized to be appropriated $13,000,000 for fiscal year 1989, $16,000,000 for fiscal year 1990, and $20,000,000 for fiscal year 1991.

"(2) Of the amounts appropriated pursuant to paragraph (1), the Secretary shall obligate not less than 20 percent to carry out subsection (a)(2) and subsection (b) (subject to subsection (b)(2)(C)), not less than 20 percent to carry out paragraph (3) of subsection (a), and not less than 10 percent to carry out paragraph (4) of such subsection. Of the amounts appropriated pursuant to paragraph (1) for fiscal year 1989, the Secretary shall obligate not less than 20 percent to carry out section 827.

SEC. 102. ADVANCED NURSE EDUCATION.

Section 821(b) (42 U.S.C. 296l(b)) is amended to read as follows:

"(b) For payments under grants and contracts under this section, there are authorized to be appropriated $13,000,000 for fiscal year 1989, $13,000,000 for fiscal year 1990, and $20,000,000 for fiscal year 1991.".

SEC. 103. NURSE PRACTITIONER AND NURSE MIDWIFE PROGRAMS.

(a) REQUIRED NUMBER OF STUDENTS IN TRAINING PROGRAMS.—Section 822(a)(2)(B)(ii) (42 U.S.C. 296m(a)(2)(B)(ii)) is amended by striking "not less than eight students" and inserting "not less than six full-time equivalent students".

(b) COMMITMENT UNDER TRAINEESHIP PROGRAM TO SERVE IN CERTAIN AREAS OR FACILITIES.—Section 822(b)(3) (42 U.S.C. 296m(b)(3)) is amended by striking "332)" and all that follows and inserting the following: "332), in an Indian Health Service health center, in a Native Hawaiian health center, in a public health care facility, in a migrant health center (as defined in section 329(a)(1)), in a rural health clinic (as defined in section 1861(aa)(2) of the Social Security Act), or in a community health center (as defined in section 330(a))".

(c) ASSURANCES OF COMPLIANCE WITH GUIDELINES.—Section 822(c) (42 U.S.C. 296m(c)) is amended—

(1) by inserting "under subsection (a) or (b)" after "operate a program"; and

(2) by striking "midwives unless this application" and inserting "midwives unless the application".

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 822(d) (42) U.S.C. 296m(d)) is amended to read as follows:

"(d) For payments under grants and contracts under subsections (a) and (b), there are authorized to be appropriated $12,000,000 for fiscal year 1989, $17,000,000 for fiscal year 1990, and $21,000,000 for fiscal year 1991.".

SEC. 104. ENHANCEMENT OF QUALITY CARE.

(a) IN GENERAL.—Of the amounts appropriated for each of the fiscal years 1989 through 1991 to carry out titles VII and VIII of the Public Health Service Act, the Secretary of Health and Human Services shall, for each of such fiscal years, make available $650,000 for the purpose of enhancing the ability of a qualified hospital to provide high-quality inpatient services. For purposes of this subsection, the term "qualified hospital" means a hospital that, as of the date of the enactment of this Act, is the only general short-term acute care hospital located in a rural county that is adjacent to 7 counties, of which 1 such adjacent county is a county described in paragraph (8)(B) of section 1886(d) of the Act referred to in section 371(b)(1)(C) of the Public Health Service Act and, of the remaining 6 such adjacent counties, 5 such counties are (or are treated as) urban counties for purposes of such section 1886(d) and 1 such county is not (or is not treated as) an urban county for purposes of such section.

(b) PRO RATA DETERMINATION.—In making available amounts for a fiscal year for purposes of section (a), the Secretary of Health and Human Services may not reduce the amounts available for each program of titles VII and VIII of the Public Health Service Act by more than an amount equal to the product of—

(1) the amounts appropriated, after the date of the enactment of this Act, for carrying out the program involved for the fiscal year; and

(2) a percentage equal to the quotient of—

(A) $650,000; divided by

(B) the amounts appropriated, after the date of the enactment of this Act, for carrying out such titles VII and VIII.

SEC. 105. IMPROVING HEALTH CARE SERVICES.

(a) IN GENERAL.—Of the amounts appropriated for each of the fiscal years 1989 through 1991 to carry out titles VII and VIII of the Public Health Service Act, the Secretary of Health and Human Services shall, for each of such fiscal years, make available $210,000 for the purpose of improving the health care services furnished by a qualified hospital. For purposes of this subsection, the term "qualified hospital" means a hospital located in a rural county—

(1) that is adjacent to 6 counties, of which 3 adjacent counties are urban (2 of the urban counties being located in another State), and of which 2 of the adjacent rural counties are without hospital facilities,

(2) that is located within 7 miles of another urban county in a separate Metropolitan Statistical Area from the Metropolitan Statistical Area in which the urban counties adjacent to the rural counties are located,

(3) that has more than 17,500 residents but less than 17,550 residents according to the 1980 census,

(4) that has a workforce of which more than 39.5 percent of those reporting workplace commute to the adjacent urban counties to the 1980 census, and

(5) that has a health-related labor pool which is competitively impacted by, in addition to the normal competitive pressures of an urban labor market, the location in 1 of the adjacent urban counties (in another State) of several large health-related facilities, including that State's sole State-owned medical school/hospital complex with more than 5,500 employees, a large Veterans Administration Hospital with more than 1,000 beds, and a United States Army hospital with more than 350 beds.

(b) PRO RATA DETERMINATION.—In making available amounts for a fiscal year for purposes of subsection (a), the Secretary of Health and Human Services may not reduce the amounts available for each program of titles VII and VIII of the Public Health Service Act by more than an amount equal to the product of—

(1) the amounts appropriated, after the date of the enactment of this Act, for carrying out the program involved for the fiscal year; and

(2) a percentage equal to the quotient of—

(A) $210,000; divided by

(B) the amounts appropriated, after the date of the enactment of this Act, for carrying out such titles VII and VIII.

SEC. 106. INCENTIVE SPECIAL PAY FOR PUBLIC HEALTH SERVICE NURSES.

Subsection (a) of section 208 (42 U.S.C. 210(a)) is amended by adding at the end the following new paragraph:

"(3) Commissioned nurse officers in the Regular and Reserve Corps shall, while in active duty, be paid incentive special pay in the same amounts as, and under the same terms and conditions which apply to, the incentive special pay now or hereafter paid to commissioned nurse officers of the Armed Forces under chapter 5 of title 37, United States Code.".

SEC. 107. EXTENSION OF PERIOD FOR INSURANCE OF NEW LOANS.

Section 728(a) (42 U.S.C. 294a(a)) is amended—

(1) by inserting before the period at the end of the second silence the following: ", and if in any fiscal year no ceiling has been established, any difference carried over shall constitute the ceiling for making new loans and paying installments for such fiscal year."; and

(2) in the third sentence by striking "1991," and inserting "1994,".

TITLE II—ASSISTANCE TO NURSING STUDENTS

SEC. 201. TRAINEESHIPS FOR ADVANCED EDUCATION OF PROFESSIONAL NURSES.

(a) TRAINEESHIPS FOR CERTAIN PART-TIME STUDENTS IN ADVANCED NURSING PROGRAMS.—Section 830 (42 U.S.C. 297) is amended by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following new subsection:

"(c)(1) The Secretary may make grants to public and nonprofit private schools of nursing to cover the costs of traineeships for students—

"(A) who are enrolled at least half-time in programs offering a masters degree in nursing; and

"(B) who agree to complete the requirements for degrees from such programs not later than the end of the academic year during which the student is to receive the traineeship.

"(2) In making grants under paragraph (1), the Secretary shall give special consideration to applications for traineeship programs that educate nursing students to serve in and prepare for practice as nurse practitioners, clinical specialists, or nurse midwives.".

"(b) AUTHORIZATION OF APPROPRIATIONS FOR TRAINEESHIP PROGRAMS.—Section 830 (42 U.S.C. 297) is amended by amending subsection (d) (as redesignated by subsection (a) of this section) to read as follows:

"(d)(1)(A) For the purposes of subsections (a) and (c), there are authorized to be appropriated $13,000,000 for fiscal year 1989, $15,000,000 for fiscal year 1990, and $16,000,000 for fiscal year 1991.

"(B) Of the amounts made available pursuant to subparagraph (A), the Secretary shall make available not less than 25 percent to carry out subsection (c).

"(2) For the purposes of subsection (b), there is authorized to be appropriated $1,100,000 for each of the fiscal years 1989 through 1991.".

SEC. 202. NURSE ANESTHETISTS.

"(a) Traineeships and Other Programs.—

(1) Section 831(a)(1) (42 U.S.C. 297-1(a)(1)) is amended to read as follows:

"(1) The Secretary may make grants to public or private nonprofit institutions to cover the costs of traineeships for licensed registered nurses to become nurse anesthetists and to cover the costs of projects to develop and operate programs for the education of nurse anesthetists. In order to be eligible for such a grant, the program of an institution must be accredited by an entity or entities designated by the Secretary of Education and must meet such requirements as the Secretary shall by regulation prescribe.".

(2) Section 831(a)(2) (42 U.S.C. 29701(a)(2)) is amended by amending the second sentence to read as follows: "Payments for traineeships shall be limited to such amounts as the Secretary determines to be necessary to cover the costs of tuition and fees and a stipend and allowances (including travel and subsistence expenses) for trainees.".

(b) Authorization of Appropriations.—The first sentence of section 831(c) (42 U.S.C. 297-1(c)) is amended to read as follows: "For the purpose of making grants under this section, there is authorized to be appropriated $1,800,000 for each of the fiscal years 1989 through 1991.".

SEC. 203. LOAN PROVISIONS.

(a) Rule of Construction With Respect to Certain Uncollectable Loans.—Section 835(c)(1) (42 U.S.C. 297a(c)(1)) is amended by adding at the end the following new sentence: "With respect to the student loan fund established pursuant to such agreements, this subsection may not be construed to require such schools to reimburse such loan fund for loans that became uncollectable prior to 1983.".

(b) Increases With Respect to Annual and Aggregate Loan Totals.—Section 836(a) (42 U.S.C.297b(a)) is amended—

(1) in the first sentence, by inserting before the period the following: ", except that for the final two academic years of the program involved, such total may not exceed $4,000"; and

(2) in the second sentence, by striking "$10,000" and inserting "$13,000".

(c) Preference Category of Exceptional Financial Need.—Section 836(a) (42 U.S.C. 297b(a)) is amended in the third sentence by striking "practical nurses and" and inserting "practical nurses, to persons with exceptional financial need, and".

(d) Reduction of Eligibility Standard of Need.—Section 836(b)(1)(C) (42 U.S.C. 297b(b)(1)(C)) is amended to read as follows:

"(C) with respect to any student enrolling in the school after June 30, 1986, is of financial need (as defined in regulations issued by the Secretary).".

(e) Deferral Period for Half-Time Professional Training.—Section 836(b)(2)(B) (42 U.S.C. 297b(b)(2)(B)) is amended—

(1) by striking "(up to five years)" and inserting "(up to ten years)"; and

(2) by inserting after "full-time" the following: "or half-time".

(f) Reduction in Interest Rate.—Section 836(b)(5) (42 U.S.C. 297b(b)(5)) is amended by striking "6 per centum" and inserting "5 percent".

(g) Striking of Low-Income Provisions With Respect to Loan Repayment.—Section 836(j) (42 U.S.C. 297b(j)) is amended by adding "and" at the end of paragraph (2), by striking paragraph (3), and by redesignating paragraph (4) as paragraph (3).

(h) Use of Certain Unexpended Funds for Allotments.—

(1) Section 838(a)(3) (42 U.S.C. 297d(a)(3)) is amended—

(A) by inserting "(A)" after the paragraph designation; and

(B) by adding at the end the following new subparagraph:

"(B) With respect to funds available pursuant to subparagraph (A), any such funds returned to the Secretary and not alloted by the Secretary, during the period of availability specified in such subparagraph, shall be available to carry out section 843 and, for such purposes, shall remain available until expended.".

(2) Except as provided in Public Law 100-436, the amendment made by paragraph (1) shall take effect as if such amendment had been effective on September 30, 1988, and as if section 843 of the Public Health Service Act, as added by section 205 of this Act, had been effective on such date.

(i) Extension of Date Certain for Capital Distribution.—Section 839 (42 U.S.C. 297e) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking "1991" and inserting "1994"; and

(B) in paragraph (1), by striking "1991" and inserting "1994"; and

(2) in subsection (b), by striking "1991" each place it appears and inserting "1994".

SEC. 204. LOAN REPAYMENTS FOR SERVICE IN CERTAIN HEALTH FACILITIES.

(a) Agreements for Loan Repayments.—Section 836(h)(1)(C) (42 U.S.C. 297b(h)(1)(C) is amended to read as follows:

"(C) who enters into an agreement with the Secretary to serve as nurse for a period of not less than two years in an Indian Health Service health center, in a Native Hawaiian health center, in a public hospital, in a migrant health center, in a community health center, in a nursing facility, in a rural health clinic, or in a health facility determined by the Secretary to have a critical shortage of nurses;".

(b) Priorities With Respect to Agreements.—Section 836(h) (42 U.S.C. 297b(h)) is amended at the end the following new paragraph:

"(5) In entering into agreements under paragraph (1), the Secretary shall give priority—

"(A) to applicants with the greatest financial need; and

"(B) to applicants that, with respect to health facilities described in such paragraph, agree to serve in such health facilities located in geographic areas with a shortage of and need for nurses, as determined by the Secretary.".

(c) Definitions.—Section 836(h) (42 U.S.C. 297b(h)), as amended by subsection (b) of this section, is further amended by adding at the end of the following new paragraph:

"(6) For purposes of this subsection:

"(A) The term 'community health center' has the meaning given such term in section 330(a).

"(B) The term 'migrant health center' has the meaning given such term in section 329(a)(1).

"(C) The term 'nursing facility' has the meaning given such term in section 1919(a) of the Social Security Act (as such section is in effect during fiscal year 1991 and subsequent fiscal years), except that for fiscal years 1989 and 1990, such term means an intermediate care facility and a skilled nursing facility, as such terms are defined in subsections (c) and (i), respectively, of section 1905 of the Social Security Act.

"(D) The term 'rural health clinic' has the meaning given such term in section 1861(aa)(2) of the Social Security Act.".

(d) Authorization of Appropriations for Loan Repayments.—Subpart II of part B of title VIII (42 U.S.C. 297a et seq.) is amended by inserting after section 837 the following new section:

"AUTHORIZATION OF APPROPRIATIONS FOR LOAN REPAYMENTS FOR SERVICE IN CERTAIN HEALTH FACILITIES

Sec. 837A. For the purpose of payments under agreements entered into under section 836(h), there is authorized to be appropriated $5,000,000 for each of the fiscal years 1989 through 1991.".

SEC. 205. NURSING SCHOLARSHIPS.

Part B of title VIII (42 U.S.C. 297 et seq.) is amended by adding at the end the following new subpart:

"Subpart III—Scholarships

"UNDERGRADUATE EDUCATION OF PROFESSIONAL NURSES

"Sec. 843. (a) The Secretary may make grants to public and nonprofit private schools accredited for the training of professional nurses for the purpose of providing scholarships to individuals who are enrolled (or accepted for enrollment) as nursing students of such schools and who are in financial need with respect to attending such schools.

"(b) The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that, in providing scholarships pursuant to the grant, the applicant will give preference to individuals from disadvantaged backgrounds (as determined in accordance with criteria prescribed by the Secretary under section 844(a)).

"(c) The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that, in providing scholarships pursuant to the grant, the applicant will provide a scholarship to an individual only if the individual agrees that, upon graduating from the program of nursing education offered by the applicant, the individual will serve as nurse for a period of not less than two years in an Indian Health Service health center, in a Native Hawaiian health center, in a public hospital, in a migrant health center, in a community health center, in a nursing facility, in a rural health clinic, or in a health facility determined by the Secretary to have a critical shortage of nurses.

"(d) The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that a scholarship provided pursuant to such subsection for attendance at a school described in such subsection may not, for any year of such attendance for which the scholarship is made, provide an amount exceeding an amount equal to the amount of the tuition and any fees for the year involved.

"(e) For purposes of this section:

"(1) The term 'community health center' has the meaning given such term in section 330(a).

"(2) The term 'migrant health center' has the meaning given such term in section 329(a)(1).

"(3) The term 'nursing facility' has the meaning given such term in section 1919(a) of the Social Security Act (as such section is in effect during fiscal year 1991 and subsequent fiscal years), except that for fiscal years 1989 and 1990, such term means an intermediate care facility and a skilled nursing facility, as such terms are defined in subsections (c) and (i), respectively, of section 1905 of the Social Security Act.

"(4) The term 'rural health clinic' has the meaning given such term in section 1861(aa)(2) of the Social Security Act.

"(f) For the purpose of making grants under this section, there are authorized to be appropriated $15,000,000 for fiscal year 1989 and $30,000,000 for each of the fiscal years 1990 and 1991.".

SEC. 206. ESTABLISHMENT OF DEMONSTRATION PROGRAM FOR STUDENT LOANS WITH RESPECT TO SERVICE IN CERTAIN HEALTH CARE FACILITIES IN UNDERSERVED AREAS.

Part B of title VIII (42 U.S.C. 297 et seq.), as amended by section 205 of this Act, is further amended by adding at the end the following new subpart:

"Subpart IV—Demonstration Program For Student Loans With Respect to Service in Certain Health Care Facilities in Underserved Areas

SEC. 847. ESTABLISHMENT OF PROGRAM.

"(a) In General.—The Secretary may, subject to subsections (c) and (d), make loans to individuals to assist the individuals in attending schools of nursing if the individuals enter into contracts with health facilities to engage, in consideration of the agreements made pursuant to subsection (d) (relating to loan repayments), in full-time employment as nurses for a period of time equal to not more than the period of time during which the individuals receive loan assistance under this section.

"(b) Preferences in Making Loans.—In making loans under subsection (a), the Secretary shall give preference to disadvantaged and minority individuals underrepresented in the nursing profession, as determined in accordance with criteria established by the Secretary.

"(c) Certain Requirements With Respect to Students.—The Secretary may not make a loan under subsection (a) unless—

"(1) the applicant for the loan is enrolled (or accepted for enrollment) as a full-time student in a public or nonprofit school accredited for the training of professional nurses;

"(2) the applicant agrees to expend the loan only for the payment of the costs of tuition, reasonable living expenses, books, fees, and necessary transportation; and

"(3) the applicant agrees that, if the applicant is dismissed from the school for academic reasons, voluntarily terminates academic training as a nurse, or violates the contract entered into pursuant to subsection (a), the applicant will be liable to the United States in an amount equal to 100 percent of the principal and interest due on the loan.

"(c) Certain Requirements With Respect to Health Care Facilities.—The Secretary may not make a loan under subsection (a) unless, with respect to contracts referred to in such subsection—

"(1) the applicant for the loan has entered into such a contract with a health care facility that is a nonprofit hospital or a long-term care facility certified under title XVIII or XIX of the Social Security Act;

"(2) such health care facility is located in a geographic area that is underserved with respect to the services of nurses, as designated pursuant to subsection (e);

"(3) the contract provides that the health care facility will repay 100 percent of the principal and interest of the loan made to the applicant under subsection (a);

"(4) the contract provides that, in serving as a nurse at the health care facility, the payments made by the facility on behalf of the applicant in repayment of the loan will be in addition to the pay that the applicant would otherwise receive for such service; and

"(5) the contract provides that, in the event the health care facility violates the contract, the facility will be liable to the United States in an amount equal to 100 percent of the principal and interest due on such loan.

"(e) Designation of Underserved Geographic Areas.—For purposes of subsection (d)(2), the Secretary shall through regulation establish criteria for the designation of such areas. The Secretary may, as appropriate, designate geographic areas using criteria in section 330(b)(4).

"(f) Maximum Amount of Loan.—The Secretary may not provide a loan under subsection (a) in an amount exceeding 100 percent of the costs described in subsection (c)(2).

"(g) Interest.—Loans awarded under this section shall bear interest on the unpaid balance of the loan at a rate of 5 percent per annum. Such interest shall accrue from the date the individual involved is no longer enrolled in the nursing program.

"(h) Waiver or Suspension of Student Obligations.—The Secretary shall by regulation provide for the waiver or suspension of any obligation of any individual receiving a loan under subsection (a) whenever compliance by the individual is impossible or would involve extreme hardship to the individual.

"(i) Requirement of Application.—The Secretary may not make a loan under subsection (a) unless—

"(1) an application for the loan is submitted to the Secretary;

"(2) with respect to carrying out the purpose for which the loan is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"(j) Set-Aside With Respect to Rural Areas.—Of the amounts appropriated for fiscal year pursuant to subsection (1), the Secretary shall make available not less than 35 percent for loans under subsection (a) to individuals who will, pursuant to such loan, serve as nurses in rural areas designated under subsection (e) as geographic areas that are underserved with respect to the services of nurses.

"(k) Authorization of Appropriations.—For the purpose of making loans under subsection (a), there is authorized to be appropriated $5,000,000 for the fiscal years 1989 through 1991.

"(1) Sunset.—The authority to make loans under subsection (a) terminates September 30, 1991.".

TITLE III—GENERAL PROVISIONS OF TITLE VIII

SEC. 301. NATIONAL ADVISORY COUNCIL ON NURSE TRAINING.

(a) In General.—Section 851 (42 U.S.C. 298) is amended—

(1) in the section heading, by striking "NATIONAL ADVISORY COUNCIL ON NURSE TRAINING" and inserting in lieu thereof "ADVISORY COUNCIL ON NURSES EDUCATION"; and

(2) in subsection (a)—

(A) in the first sentence—

(i) by striking "National Advisory Council on Nurse Training" and inserting in lieu thereof "Advisory Council on Nurses Education"; and

(ii) by striking "nineteen" and inserting "twenty-one"; and

(B) in the second sentence, by striking "general public" and inserting the following: "general public, one of the appointed members shall be selected from practicing professional nurses, one of the appointed members shall be selected from among representatives of associate degree schools of nursing,".

(b) Conforming Amendments.—

(1) Section 820 (42 U.S.C. 296k) is amended—

(A) in subsection (e) (as redesignated by section 101(b)(2)), by striking "National Advisory Council on Nurse Training" and inserting "Advisory Council on Nurses Education"; and

(B) in subsection (f) (as so redesignated), in the second sentence, by striking "National Advisory Council on Nurse Training" and inserting "Advisory Council on Nurses Education".

(2) Section 856(l) (42 U.S.C. 298b-3(1)) is amended by striking "National Advisory Council on Nurse Training" and inserting "Advisory Council on Nurses Education".

SEC. 302. EVALUATIONS AND REPORTS.

Part C of title VIII (42 U.S.C. 298 et seq.) is amended by adding at the end the following new section:

"EVALUATIONS

"Sec. 859. (a) The Secretary shall, directly or through contracts with public and private entities, provide for evaluations of projects carried out pursuant to this title and for the dissemination of information developed as result of such projects. Such evaluations shall include an evaluation of the effectiveness of such projects in increasing the recruitment and retention of nurses.

"(b)(1) The Secretary shall, not later than January 10, 1989, submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the manner in which the Secretary intends to carry out subsection (a).

"(2) The Secretary shall, not later than January 10, 1991, and biannually thereafter, submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report summarizing evaluations carried out pursuant to subsection (a) during the preceding two fiscal years.

"(c) Of the amounts appropriated each fiscal year to carry out this title, the Secretary shall make available one percent to carry out this section.".

TITLE IV—WAIVER OF LIABILITY FOR CERTAIN SALE OF FACILITY UNDER PROGRAM OF CONSTRUCTION AND MODERNIZATION OF MEDICAL FACILITIES

SEC. 401. ESTABLISHMENT OF WAIVER AUTHORITY.

(a) In General.—If, pursuant to subsection (b) of section 402, the Secretary of Health and Human Services makes a certification of compliance with the conditions described in subsection (a) of such section, section 609 of the Public Health Service Act (42 U.S.C. 291i) shall not, with respect to the transferor and transferee described in subsection (b), apply to the sale on November 26, 1986, of the medical facility—

(1) located in Blanding, in the State of Utah;

(2) known, prior to such date, as San Juan County Nursing Home; and

(3) with respect to which funds were received during the years 1967 through 1970 pursuant to title VI of the Public Health Service Act (42 U.S.C. 291 et seq.).

(b) DESCRIPTION OF PARTIES TO SALE.—In the sale described in subsection (a), the transferor is San Juan County, a political subdivision of the State of Utah, and the transferee is Auburn Manor Holding Corporation, a corporation under the laws of the State of California.

SEC. 402. CONDITIONS OF WAIVER.

(a) IN GENERAL.—The conditions referred to in section 401(a) are that, not later than the expiration of the 12-month period beginning on the date of the enactment of this Act—

(1)(A) San Juan County establish an irrevocable trust with a res of $321,057 for the sole purpose of satisfying, with respect to the medical facility described in section 401(a), the obligation of San Juan County under regulations issued under clause (2) of section 603(e) of the Public Health Service Act (42 U.S.C. 291c(e));

(B) except to the extent inconsistent with this Act, San Juan establish such trust in accordance with regulations issued under section 609(d)(1)(A) of such Act for trusts established pursuant to such section; and

(C) San Juan County agree—

(i) except to the extent inconsistent with this Act, to administer such trust in accordance with regulations issued under such section 609(d)(1)(A); and

(ii) with respect to the obligation described in subparagraph (A)—

(I) to carry out such obligation at the medical facility known as San Juan County Hospital and located in Monticello, in the State of Utah;

(II) to ensure that uncompensated services provided at any location other than such medical facility will not be reimbursed from the trust established pursuant to subparagraph (A); and

(III) not to seek contribution from Auburn Corporation towards the satisfaction of such obligation; and

(2) Auburn Corporation agree—

(A) to satisfy, with respect to the medical facility described in section 410(a), the obligation of San Juan County under regulations issued under clause (1) of section 603(e) of the Public Health Service Act;

(B) to satisfy such obligation at the medical facility described in section 401(a); and

(C) not to seek contribution from San Juan County towards the satisfaction of such obligation.

(b) DETERMINATION AND CERTIFICATION OF SATISFACTION OF CONDITIONS.—The Secretary shall make a determination of whether the conditions described in subsection (a) are satisfied by San Juan County and Auburn Corporation within the period described in such subsection. If the Secretary makes a determination that the conditions have been satisfied, the Secretary shall certify to the Congress the fact of such determination.

SEC. 403. MONITORING OF COMPLIANCE WITH AGREEMENTS AND EFFECT OF FAILURE TO COMPLY.

(a) MONITORING.—The Secretary shall determine the extent to which San Juan County and Auburn Corporation are carrying out their respective duties under the agreements made pursuant to the conditions described in section 402(a).

(b) FAILURE TO COMPLY.—

(1) If the conditions described in section 402(a) are not satisfied by San Juan County and Auburn Corporation within the period described in such section, the Secretary shall ensure that proceedings under section 609 of the Public Health Service Act (42 U.S.C. 291i) with respect to the sale described in section 401(a) are commenced or continued against San Juan County or Auburn Corporation, or both, as determined by the Secretary.

(2) If San Juan County or Auburn Corporation fails to carry out its duties under the agreements made pursuant to the conditions described in section 402(a), the Secretary shall ensure that proceedings described in paragraph (1) are commenced or continued against San Juan County or Auburn Corporation, respectively.

SEC. 404. DEFINITIONS.

For purposes of this Act:

(1) The term "Auburn Corporation" means Auburn Manor Holding Corporation, a corporation under the laws of the State of California.

(2) The term "San Juan County" means San Juan County, a political subdivision of the State of Utah.

(3) The term "Secretary" means the Secretary of Health and Human Services.

TITLE V—EFFECTIVE DATE

SEC. 501. EFFECTIVE DATE.

The amendments made by this Act shall take effect October 1, 1988, or upon the date of the enactment of this Act, whichever occurs later.

Mr. HATCH. Mr. President, today we are considering H.R. 4833, legislation that addresses a critical problem in our country—the nursing shortage. I was pleased to have worked with Senator KENNEDY and the other members of the Labor and Human Resources Committee who share my concern that the quality of health care in our Nation rests, in large part, with the quality and accessibility of trained health-care professionals—particularly nurses.

We have long recognized the vital role that nurses play in the health care of our Nation. The programs in this legislation, designed to support new students of nursing, are attempts to assist individuals desiring to be nurses.

The scholarship programs and loan repayment programs will provide new students of nursing with the opportunity to fund their nursing education, and will provide an incentive for nurses to practice in health care settings that are in critical need of professional nurses. Therefore, I recommend that the Secretary of the Department of Health and Human Services pursue rapid implementation of the scholarship and loan repayment initiatives and develop regulations for the implementation of these programs within 120 days of passage of this legislation.

I am particularly happy that a provision is included in the bill that will provide assistance to a small town nursing home in Blanding, UT, that has been hit hard by the increasingly complex and volatile medical industry. In 1968, the owners of the nursing home at that time entered into a 20-year Hill-Burton grant. The present owners of the nursing home, after paying for several years, would like to free themselves of this obligation. Not because they would like to get the best of the Government, but because the ratio of Medicare-paid residents to privately paid residents has increased and caused financial hardship for the owners. Perhaps it is the Federal Government who is getting the best of the nursing home. This provision will relieve the present owners of the financial burden from the past owners and allow them to offer the quality health care that their residents deserve.

I urge my colleagues to support this important bipartisan legislation.

Mr. CHILES. I would like to discuss with the chairman of the Committee on Labor and Human Resources, the senior Senator from Massachusetts, an issue concerning appropriations on an authorization bill.

Mr. KENNEDY. I would be happy to yield to my friend, the senior Senator from Florida.

Mr. CHILES. The last time the Senate passed H.R. 4833, on September 8, it did not include paragraph h of section 203, entitled "Use of Certain Unexpended Funds for Allotments."

This provision reappropriates lapsing funds from the Nurse Student Loan Program, in the amount of approximately $1.6 million, and makes these funds available for a new Undergraduate Nurse Scholarship Program, authorized for the first time in this very same legislation.

As the Senator knows, the traditional process would permit the Appropriations Committee to hold hearings and consider funding on an appropriations bill.

Mr. KENNEDY. The chairman is correct. The normal procedure would be to fund this program on an appropriations bill.

Mr. CHILES. The senior Senator from Florida, as well as the senior Senator from Connecticut, are both very strong advocates for the several nurse training and education programs. And we understand that this program would pledge nurse scholarship recipients to a 2-year service commitment in nursing shortage areas.

However, funding for this new initiative falls under the jurisdiction of the Appropriations Committee.

I have discussed this matter with Senator WEICKER, the ranking member of our subcommittee, and our strong preference would be to fund this through the traditional process on an appropriations bill.

Mr. WEICKER. Let me just say that both Senator CHILES and I have long advocated and worked for nurse training and education programs through our appropriations bills. And, I do believe that this new Undergraduate Nurse Scholarship Program is a commendable initiative to address the nurse shortage problem. However, I do agree with Senator CHILES, in taking issue with appropriations language on an authorization bill.

Mr. KENNEDY. I appreciate the remarks of both of my colleagues. The language with which both of you are concerned was added by the House. It was not our intention to overlook the interests of our appropriators. We are unfortunately caught in a situation where, if we do not adopt this legislation, as passed by the House, time does not remain to get this important nurse education authorization bill through the Congress.

Mr. CHILES. Based on this confirmation of the legislative situation, I will withdraw my objection.

Mr. WEICKER. I will also withdraw my objection.

Mr. THURMOND. Mr. President, I wish to associate myself with the remarks of Senator HATCH concerning H.R. 4833, the Nursing Shortage Reduction and Education Extension Act of 1988. It is most important that Congress address the crisis that exists in the field of nursing today.

Mr. President, recent statistics released by the Department of Health and Human Services project that approximately 1,743,000 more nurses will be needed in the health-care professions by the year 2000. However, our Nation is faced with a situation in which there are not enough nurses to meet the demand in 1988. This measure would increase funding and expand the scope of programs operating under title VIII of the Public Service Act.

Under this act, provisions are included for special project grants and contracts, which are designed to encourage faculty development in schools of nursing, as well as to promote preventive and occupational health care. It also allows for skills upgrading for "licensed vocational or practical nurse, nursing assistants, and other paraprofessional nursing personnel." Priority will be given to rapid transition programs which enable the attainment of undergraduate degrees.

Additionally, provisions allow for the development of curricula for the achievement of baccalaureate degrees by registered nurses who are graduates of nondegree granting institutions, as well as enabling those individuals with baccalaureate degrees in other disciplines to increase their knowledge in this area. This aid will serve to advance the training of those in the nursing profession and provide the opportunity to enter more specialized fields of the health care sector.

H.R. 4833 emphasizes training through nurse practitioner and nurse midwife programs, along with nursing shortage relief programs. Grants would be authorized for a long-term care nursing practice demonstration program and for nurse recruitment centers. Also, financial assistance is proposed to be made available for traineeships for the advanced education of professional nurses, and traineeships and scholarships for the undergraduate education of professional nurses, in addition to grants for nurse anesthetists.

Mr. President, the serious shortage of nurses and decreasing enrollments in the nursing schools of our Nation demand immediate attention. I am pleased that the Congress is addressing this important issue, and I urge my colleagues to support this measure.

Mr. BYRD. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion of the majority leader.

The motion was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RESOLUTION COMMENDING CORNELL H. PETRASSEVICH

Mr. BYRD. Mr. President, I call up a resolution on behalf of Mr. STENNIS, and I ask unanimous consent that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 498) commending Cornel H. Petrassevich for his service to the United States of America.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. STENNIS. Mr. President, I am proud to submit this resolution commending Cornel H. Petrassevich for his service to the United States.

Dr. Petrassevich was born in 1916 in the part of Austro-Hungary which is now Romania. He received a doctor of medicine degree in Bucharest and served in the Romanian Army from 1941 to 1945. After separation from the Romanian Army, he became a medical officer with the Young Men's Christian Association [YMCA] in Bucharest.

From 1944 to 1948, through his contacts with the YMCA, Dr. Petrassevich became acquainted with the American Office of Strategic Services [OSS]. According to former OSS officers, Dr. Petrassevich organized an information gathering operation essential for the conduct of OSS activities in Romania. During this time, Dr. Petrassevich refused all remuneration from the OSS.

In 1948, Dr. Petrassevich, his brother and his father were arrested by the Romanian officials and later sentenced to prison on charges of spying for the United States Government. His brother and father both died within a few years of their imprisonment, but Dr. Petrassevich survived 15 years of torture and hard labor in Romanian prisons. Upon release, Dr. Petrassevich petitioned for emigration to the United States, but it was not until 1969 that he was allowed to leave Romania. He subsequently became a U.S. citizen and utilized his medical talents as a Public Health Service physician. In 1982, he retired from the Public Health Service in Philadelphia, MS.

I am happy that the U.S. Senate will take this opportunity to express its gratitude and the gratitude of our country for his lifetime of skillful, dedicated, and sacrificial service to his homeland and his adopted country.

The PRESIDING OFFICER. The question is on agreeing to the resolution

The resolution was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 498

Whereas, Cornel H. Petrassevich, a medical doctor born in Bucharest, Romania provided valuable information gathering services to the United States Office of Strategic Services in Bucharest from 1944 to 1948 without remuneration; and

Whereas, Cornel H. Petrassevich was arrested in 1948 by Romanian officials and later sentenced by a military court for spying for United States officials and served 15 years subject to torture and hard labor in Romanian prisons; and

Whereas, Cornel H. Petrassevich emigrated to the United States, became a United States citizen, and utilized his medical skills as a Public Health Service Physician, retiring in 1982 in Philadelphia, Mississippi; and

Whereas, during his lifetime of service to his native homeland and his adopted country, Cornel H. Petrassevich has performed his duties with skill, dedication, and self-sacrifice: Now, therefore, be it

Resolved, That the Senate of the United States extends it appreciation and gratitude to Cornel H. Petrassevich for his long and faithful service to the United States and to mankind.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to Cornel H. Petrassevich.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SOUTHERN CALIFORNIA INDIAN LAND TRANSFER ACT—CONFERENCE REPORT

Mr. BYRD. Mr. President, I submit a report of the committee of conference on H.R. 3621 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The asssistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3621) to declare that certain lands located in California and held by the Secretary of the Interior are lands held in trust for the benefit of certain bands of Indians and to declare such lands to be part of the reservation with which they are contiguous, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 12, 1988.)

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the conference report was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

STAR PRINT OF REPORT—H.R. 4399, COMMERCIAL SPACE LAUNCH ACT AMENDMENTS

Mr. BYRD. Mr. President, I ask unanimous consent that the report accompanying H.R. 4399, the Commercial Space Launch Act amendments, be star printed to reflect the changes, which I send to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

DELAWARE AND LEHIGH NAVIGATION CANAL NATIONAL HERITAGE CORRIDOR

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 1115, H.R. 3957.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3957) to establish the Delaware and Lehigh Navigation Canal National Heritage Corridor in the Commonwealth of Pennsylvania.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3690

Mr. DOLE. Mr. President, I send to the desk an amendment by Senator MCCLURE.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Kansas [Mr. DOLE], for Mr. MCCLURE, proposes an amendment numbered 3690.

Mr. DOLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 4, lines 20 and 21 strike the words "nominated by the Governor of the Commonwealth and appointed by the Secretary," and insert "appointed by the Secretary, after receiving recommendations from the Governor,".

On page 5, lines 4 and 5 strike the words "nominated by the Governor of the Commonwealth and appointed by the Secretary," and insert "appointed by the Secretary, after receiving recommendations from the Governor,".

On page 5, lines 10 through 12 strike the words "nominated by the Governor of the Commonwealth and appointed by the Secretary," and insert "appointed by the Secretary, after receiving recommendations from the Governor,".

On page 13, strike lines 21 and 22 and insert the following: "(3) the Secretary approves such extension.".

Explanation: These amendments address concerns raised by the Department of Justice.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3690) was agreed to.

AMENDMENT NOS. 3691 AND 3692

Mr. BYRD. Mr. President, I submit two amendments, one on behalf of Senator BAUCUS and one on behalf of Senator SIMPSON.

The PRESIDING OFFICER. The amendments will be stated.

The bill clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. BAUCUS, proposes an amendment numbered 3691, and for Mr. SIMPSON, proposes an amendment numbered 3692.

Mr. BYRD Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT No. 3691

At the appropriate place in the bill, insert the following new title:

TITLE —COMMEMORATION OF STATEHOOD ANNIVERSARIES

SEC. . SHORT TITLE.

This title may be cited as the "Statehood Centennial Commemorative Coin Act of 1989".

SEC. . SPECIFICATIONS OF COINS.

(a) AUTHORIZATION.—Subject to subsection (b), the Secretary of the Treasury (hereinafter referred to as the "Secretary") shall mint and issue five-dollar coins in commemoration of the 100th anniversary of the statehood of Idaho, Montana, North Dakota, South Dakota, Washington, and Wyoming.

(b) ISSUANCE.—The Secretary shall mint and issue not more than 350,000 five-dollar coins each of which shall—

(1) weigh 31.103 grams;

(2) have a diameter of 1.500 inches; and

(3) be composed of 90 percent palladium and 10 percent alloy.

(c) DESIGN.—The design of the five-dollar coin, in accordance with this section, shall contain an engraving of the Centennial States' regional logo on one side; and on the other side, busts of Thomas Jefferson, and Lewis and Clark overlooking the Missouri River. Each coin shall bear a designation of the value of the coin, the year 1989, and inscriptions of the words "Liberty", "In God We Trust", "United States of America", and "E Pluribus Unum". The reverse may also contain the words "Northwest Centennial" and "Statehood 1889-1890". Modifications to these designs may be made, if necessary, by the Secretary upon consultation with a duly authorized representative of the 6 States' Centennial Commissions.

(d) NUMISMATIC ITEMS.—For purposes of section 5132(a)(1) of title 31, United States Code, all coins minted under this title shall be considered to be numismatic items.

(e) LEGAL TENDER.—The coins referred to in subsection (a) shall be legal tender as provided in section 5103 of title 31, United States Code.

SEC. . SOURCES OF BULLION.

The Secretary shall obtain palladium for the coins referred to in this title by purchase of palladium mined from natural deposits in the United States within one year after the month in which the ore from which it is derived was mined and by purchase of palladium refined in the United States. The Secretary shall pay not more than the average world price for the palladium. In the absence of available supplies of such palladium at the average world price, the Secretary shall purchase supplies of palldium pursuant to the authority of the Secretary under existing law. The Secretary shall issue such regulations as may be necessary to carry out this provision.

SEC. . MINTING AND ISSUANCE OF COINS.

(a) UNCIRCULATED AND PROOF QUALITIES.—The coins minted under this title may be issued in uncirculated and proof qualities, except that not more than 1 facility of the United States Mint may be used to strike each quality.

(b) COMMENCEMENT OF ISSUANCE.—The Secretary may issue the coins minted under this title beginning January 1, 1989.

(c) TERMINATION OF AUTHORITY.—Coins may not be minted under this title after December 31, 1990.

SEC. —. SALE OF COINS.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall sell the coins minted under this title at a price equal to the face value, plus the cost of designing and issuing the coins (including labor, materials, dies, use of machinery, and overhead expenses).

(b) BULK SALES.—The Secretary shall make any bulk sales for the coins minted under this title at a reasonable discount to reflect the lower costs of such sales.

(c) PREPAID ORDERS.—The Secretary shall accept prepaid orders for the coins minted under this title prior to the issuance of such coins. Sale prices with respect to such prepaid orders shall be at a reasonable discount.

(d) SURCHARGES.—All sales of coins minted under this title shall include a surcharge of $20 per coin.

SEC. —. FINANCIAL ASSURANCES.

(a) NO NET COST TO THE GOVERNMENT.—The Secretary shall take such actions as may be necessary to ensure that minting and issuing coins under this — will not result in any net cost to the United States Government.

(b) PAYMENT FOR COINS.—A coin shall not be issued under this title unless the Secretary has received—

(1) full payment for the coin;

(2) security satisfactory to the Secretary to indemnify the United States for full payment; or

(3) a guarantee of full payment satisfactory to the Secretary from a depository institution whose deposits are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration Board.

SEC. —. REDUCTION OF NATIONAL DEBT.

An amount equal to $1,500,000 of all surcharges received by the Secretary from the sale of coins minted under this title shall be provided to the "Documents West" exhibition program and administered by the Idaho Centennial Foundation. These funds shall be used for the sole purpose of promoting the exhibition of historical and educational artifacts pertaining to the six Centennial States. The remaining amount of surcharges that are received by the Secretary from the sale of coins minted under this title shall be deposited in the general fund of the Treasury and shall be used for the sole purpose of reducing the national debt.

SEC. —. AUDITS.

The Comptroller General shall have the right to examine such books, records, documents, and other data of the Idaho Centennial Foundation as may be related to the expenditure of amounts paid under section —.

SEC. —. GENERAL WAIVER OF PROCUREMENT REGULATIONS.

(a) IN GENERAL.—Except as provided in subsection (b), no provision of law governing procurement or public contracts shall be applicable to the procurement of goods and services necessary for carrying out the provisions of this title.

(b) EQUAL EMPLOYMENT OPPORTUNITY.—Subsection (a) shall not relieve any person entering into a contract under the authority of this title from complying with any law relating to equal employment opportunity. No firm shall be considered a Federal contractor for purposes of 41 C.F.R. part 60 et seq. as a result of participating as a United States Mint coin consignee.

AMENDMENT NO. 3692

SECTION 1. DENOMINATIONS, SPECIFICATIONS, AND DESIGN OF COINS.

Subsection (d)(1) of section 5112 of title 31, United States Code, is amended by striking the fourth sentence.

SEC. 2. DESIGN CHANGES REQUIRED FOR CERTAIN COINS.

Subsection (d) of section 5112 of title 31, United States Code, is amended by adding at the end the following new paragraph:

"(3) The design on the reverse side of the half dollar, quarter dollar, dime coin, 5-cent coin and one-cent coin shall be selected for redesigning. One or more coins may be selected for redesign at the same time, but the first redesigned coin shall have a design commemorating the 200th anniversary of the United States Constitution for a period of two years after issuance. After that 2-year period, the bicentennial coin shall have its design changed in accordance with the provisions of this subsection. Such selection, and the minting and issuance of the first selected coin shall be made not later than 1 year after the date of the enactment of this paragraph. All such redesigned coins shall conform with the inscription requirements set forth in paragraph (1) of this subsection.".

SEC. 3. DESIGN ON OBVERSE SIDE OF COINS.

Subsection (d) of section 5112 of title 31, United States Code, is amended by adding at the end the following new paragraph:

"(4) Subject to paragraph (2), the design on the obverse side of the half dollar, quarter dollar, dime coin, 5-cent coin, and one cent coin shall contain the likenesses of those currently displayed and shall be considered for redesign. All such coin obverse redesigns shall conform with the inscription requirements set forth in paragraph (1) of this subsection.".

SEC. 4. SELECTION OF DESIGNS.

The design changes for each coin authorized by the amendments made by this Act shall take place at the discretion of the Secretary and shall be done at the rate of one or more coins per year, to be phased in over six years after the date of the enactment of this Act. In selecting new designs, the Secretary shall consider, among other factors, thematic representations of the following constitutional concepts: freedom of speech and assembly; freedom of the press; right to due process of law; right to a trial by jury; right to equal protection under the law; right to vote; themes from the Bill of Rights; and separation of powers, including the independence of the judiciary. The designs shall be selected by the Secretary upon consultation with the United States Commission of Fine Arts.

SEC. 5. REDUCTION OF THE NATIONAL DEBT.

Subsection (a)(1) of section 5132 of title 31, United States Code, is amended by inserting after the third sentence the following: "Any profits received from the sale of uncirculated and proof sets of coins shall be deposited by the Secretary in the general fund of the Treasury and shall be used for the sole purpose of reducing the national debt.".

The PRESIDING OFFICER. The question is on agreeing to the amendments.

The amendments (Nos. 3691 and 3692) were agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT AMENDMENTS

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 732, H.R. 1801, a bill to reauthorize juvenile justice programs.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 1801) to amend the Juvenile Justice and Delinquency Prevention Act of 1974 to authorize appropriations for fiscal years 1989 through 1992.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3693

Mr. BYRD. Mr. President, I send a substitute amendment to the desk on behalf of Senators BIDEN and THURMOND and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] for Mr. BIDEN (for himself and Mr. THURMOND), proposes an amendment numbered 3693.

Mr. BYRD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed later in today's RECORD under "Amendments Submitted.")

Mr. BIDEN. Mr. President, I am pleased that today the Senate will take action on the Criminal and Juvenile Justice Partnership Act of 1988. I am particularly pleased that the ranking member of the Judiciary Committee, Senator THURMOND, is a cosponsor of this bill. This legislation—authorizing almost $600 million for State/local police, prosecutors and juvenile justice agencies—is based largely on a bill (S. 1250) that I introduced in May 1987.

Crime, drug trafficking, and juvenile delinquency are among the most pressing problems confronting this Nation—and they are on the increase. The violent crime rate has increased more than 22 percent in the past decade. Every 21 seconds, someone is the victim of a violent crime in America. A person—most likely a woman—is raped every 6 minutes. And someone is murdered every 26 minutes—almost 50 people every day in every week in every year. And crime cost our society billions of dollars. Crime is a tax on Americans—and it is probably the single most regressive tax, exacting an enormous cost from poor and low-income Americans. But it is the human costs of crime that trouble me the most. Economists can't measure the loss of personal freedom that the fear of crime causes. They can't measure the heartbreak of families whose communities have been taken over—literally—by drug traffickers. They can't measure the hurt of parents who watch as their children destroy their lives with drugs.

The Criminal and Juvenile Justice Partnership Act of 1988 takes a step in addressing these problems. My colleagues and I have drafted this legislation recognizing that law enforcement is primarily a State and local responsibility. Ninety-four percent of all violent crime occurs within the jurisdiction of State and local agencies. And the operation of the juvenile justice system is almost solely a State and local responsibility.

There is, however, an important role that the Federal Government can—and should—play. Criminals don't respect jurisdictional boundaries. And the increasingly national and international scope of drug trafficking and organized crime makes it more important than ever that Federal, State, and local governments work together—as partners—in the struggle against crime and drugs in America.

As I stated when I introduced S. 1250, this legislation represents the Federal Government's downpayment on the distribution of funds at the Federal and State levels to ensure that Federal moneys are distributed efficiently and effectively to police and juvenile justice officials on the streets.

We increase the existing level of benefits that the families of public safety officers who are killed in the line of duty receive from $50,000 to $100,000, and index the benefits to inflation. We also provide $150,000 for national programs to assist the families cope with the psychological trauma associated with the loss of a family member.

We create a new $15 million antidrug and antigang program in the Justice Department's Office of Juvenile Justice. These funds would be used for innovative programs to deal with the rising problems of drug trafficking by juveniles, particularly in schools; and juvenile involvement in gang activities. The program would also provide funds for drug abuse education and treatment programs and to improve the juvenile court system.

We authorize the Attorney General to allow certified college and railroad police agencies access to Federal criminal justice data banks, and we create a new $5 million program to improve the accuracy and quality of criminal justice data.

Mr. President, the problems of crime, drug trafficking, and juvenile delinquency cannot be solved by any one unit of government. Rather, Federal, State, and local agencies must work together to combat crime and drug abuse in America. Passage of the Criminal and Juvenile Justice Partnership Act of 1988 would demonstrate the Federal Government's commitment to such a partnership—a partnership aimed at reducing the enormous problems of crime, drug trafficking and juvenile delinquency in America.

Mr. President, once again, I would like to thank Senator THURMOND, the ranking member of the Judiciary Committee, for his support of this legislation. Senator THURMOND has been a strong and effective advocate for the law enforcement community throughout my tenure on the committee.

On behalf of Senator THURMOND and myself, I ask unanimous consent that a section-by-section analysis of the Criminal and Juvenile Justice Partnership Act of 1988 be printed in the RECORD.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title.

TITLE I—STATE AND LOCAL NARCOTICS CONTROL AND JUSTICE ASSISTANCE IMPROVEMENTS

Section 101. Bureau of Justice Assistance and Unified Grant Programs.

The new section 401 establishes the Bureau of Justice Assistance (BJA) within the Department of Justice. This bureau is to be headed by a Director, who will be appointed by the President and confirmed by the Senate. Making the Director a presidential appointee elevates the status of BJA equal to that of other agencies within the Office of Justice Programs including the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, the National Institute of Justice, and the Office for Victims of Crime. In addition, it increases the priority of BJA programs and initiatives as well as BJA accountability to Congress.

This bill retains the existing structure with respect to the Bureau of Justice Assistance (BJA), Bureau of Justice Statistics (BJS), National Institute of Justice (NIJ) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP) (the Justice Assistance agencies) except for the provision making the Director of BJA a presidential appointee. Each of the Justice Assistance agencies remains an independent agency, headed by a Presidential appointee with final grant making authority who reports to the Attorney General through the Assistant Attorney General for the Office of Justice Programs (the "Office"). This Office continues to be charged with providing staff support to coordinate the justice assistance agencies. As such, the Office's coordination and reporting-through functions are limited. The Justice Assistance agencies are not a part of the Office.

The new section 402 describes the duties of the Director which represent the combined functions of administering a drug law enforcement program and a related criminal justice improvement program. The Director is authorized to enter into contracts with or make grants to any public or private agency, organization, institution or individual pursuant to the need for broad latitude in program development. The for-profit amendment provides flexibility in entering into contractual agreements and promotes consistency among OJP agencies.

In addition, this section outlines the Director's responsibilities regarding the preparation of recommendations for the national drug control strategy. Recommendations will be based on the review of statewide strategies and input from state and local drug enforcement officials.

The new section 501 enables State and local governments to address their drug control and related criminal justice system problems while simultaneously contributing to and supporting national drug control priorities and objectives. This section defines the range and types of programs that are eligible for funding, with special emphasis on coordination and integration of efforts at all levels of government. The Senate believes that the general direction of the Bureau's funding priorities under the Justice Assistance Act and the Anti-Drug Abuse Act of 1986 has been consistent with these statutes and should be continued. In particular, the Senate believes that the merger of these two programs should not, in any way, diminish the funding priority devoted to community-based crime prevention programs, career criminal and serious offender programs and operational information system programs.

Trends in drug trafficking and abuse patterns demand a concerted, coordinated response—one that is the product of a nationwide strategy that is not limited by jurisdictional boundaries and single constituency interests. The consolidation of the purposes of the Justice Assistance Act of 1984 and the Anti-Drug Abuse Act of 1986 provides the mechanism to address drug control problems and related system-specific problems such as crowded courts and correctional facilities, which in many instances result from the overburdening of the system by drug control imperatives. The merger of drug and justice assistance grant programs is not intended to decrease the priority of the drug issue; on the contrary, it will increase the effectiveness of State strategies in response to this problem. The effect of the merger will be to streamline criminal justice grants to the States whereby States will submit one application for Federal funds relating to drugs and crime.

This section also provides for evaluation of drug control and system improvement programs. States and local government are authorized to use formula grant funds for evaluation. Guidelines for program evaluation will be established by the National Institute of Justice, in consultation with the Bureau of Justice Assistance. It is the intent of Congress not to evaluate each and every project funded under this title, but to assess the effectiveness of broad programs that indicate a potential for having a significant impact on drug demand and supply reduction strategies.

The new section 503 requires participating States to submit a need-based statewide strategies for drug control and criminal justice programs with emphasis on violent crime and serious offenders to the Department within 45 days after the appropriations for this part are enacted. These strategies will continue to enhance the strategic planning for drug control efforts and improve the ability of the States to address critical system problems that impact on the broader issue of the administration of justice. In developing such need-based strategy, the States shall use specific criteria outlined in section. In addition, the Department is charged with reviewing such strategy to ensure consistency with criteria under section 505.

This integrated and comprehensive strategic planning process will enhance the availability and utility of the data needed by State and local governments to make informed decisions relative to the priorities and programs from both the supply and demand perspectives. The statewide strategies will, therefore, provide a consistent and uniform data reporting system and establish a mechanism to effect the integration of State and local drug control and system improvement priorities with the priorities and objectives of Federal drug control efforts.

Each State strategy shall contain an evaluation plan which establishes the mechanisms which will be employed to assess the impact and effectiveness of programs funded with formula grant funds. The National Institute of Justice, in cooperation with the Bureau of Justice Assistance, will design and distribute evaluation guidelines to assist the States.

The new section 504 establishes the Federal support levels for projects funded in FY 1989 through 1992. Projects funded from FY 1989 and 1990 appropriations may receive federal support of up to 75% of an approved project's costs. Projects funded from FY 1991 and 1992 appropriations may receive up to 50% of an approved project's costs. This formula requires that matching requirements be based on fiscal year appropriation, as opposed to when a project is initiated. The graduated matching fund approach reflects the purpose of this grant program to use Federal resources to promote innovation and information-sharing among the states, thereby enabling the states to assume the funding of those activities most effective within that state.

Up to 10% of the State formula grant may be used, at the State's discretion, for administrative costs. The non-Federal portion of the grant shall be in cash.

The new section 505 defines the Bureau's role and responsibility in the review of State applications. It specifies 45 days as the time allotted for BJA to review and approve a complete application in whole or in part, unless BJA provides written notice to the State applicant within 15 days outlining specific reasons for disapproval. The State shall then have 15 days to resubmit an application and the Bureau shall have 15 days to review the revised strategy. If the State applicaton is subsequently disapproved, the Director shall award such funds directly to local units of government by means of a formula for local units of government with populations greater than 500,000 and another basis of need for all other units of local governments.

Grant funds shall not be used for land acquisition. Construction projects, other than those for penal or correctional institutions housing drug offenders, are also prohibited. Construction for such penal or correctional institutions may be funded under this section only in proportion to which it is used to house drug offenders.

The new section 506 provides that the base formula grant amount for each participating State shall be $750,000 and that the remaining funds be distributed according to population. This section reinforces the importance of maintaining state strategies and multi-jurisdictional efforts between State and local governments, as well as the role of the State in transferring funds to local governments in a coordinated, efficient manner. Under this provision, all participating States receive a base allocation of $750,000.

In addition, each State is required to allocate up to 10% of its available funds to street sales enforcement programs. The Director may waive this requirement, in whole or in part, upon finding that the requirement is inappropriate in view of the State's documented needs as outlined in their statewide strategy.

The new section 507 requires the governor to appoint a State office which will be responsible for administering funds available under this program, preparing applications, monitoring and auditing, and coordinating efforts with State and local governments.

Section 508 imposes certain time limits on States in distributing federal moneys to local units of government. Section 508(a) requires States to approve applications by local units of government and make awards to such units within 45 days unless the State informs the applicant in writing of specific reasons for disapproval. The State is also required to distribute funds to local units of government within 30 days after the local application has been submitted to, approved and awarded by, the State. This section also explicitly preempts State laws requiring State legislative review or approval of the distribution of Federal funds under this part. Finally, section 508(b) provides that if the State does not meet the deadlines specified in this subsection, the State shall return such funds to the Bureau, which shall provide such funds as quickly as possible directly to the local unit of government.

The purpose of the new section 510 is to advance state-of-the-art drug control and system improvements through national scope programs that demonstrate new and innovative approaches designed to assist the States and local governments. In addition, training and technical assistance will be provided through the discretionary grant program to affect the transfer of technology and enhance the capabilities of personnel involved in drug control and system improvement efforts at the State and local levels.

In carrying out the requirements of this section, the Director is authorized to enter into grants or contracts with any public or private agency, organization, institution, or individual.

The new section 511 allows for 20 percent of available funds to be used for demonstration and national scope programs. Up to 100 percent of the grant may be awarded with Federal funds.

The new section 513 specifies the requirements to be met by any applicant for discretionary funds. These requirements were designed to ensure that all applications are consistent with the purposes of this Part, methodologically sound and comply with relevant provisions of this Part and other applicable Federal laws.

Section 514 establishes a four year limit on funding for individual discretionary grant projects, with the exception that up to two additional years of funding may be provided for selected programs: (1) which have been evaluated and found to be effective or offer the potential for enhancing the criminal justice system and (2) where the grant recipient organization provides at least 50% of the cost of the continued project activities. Such grant recipient provided funds may be from any source of funds, including other Federal grant funds available to the organization.

The purpose of the new section 520 is to provide for an objective evaluation of programs funded under this title and to support continued research and development of drug and drug related crime control programs.

Objective evaluation and research and development can contribute significantly to the nation's drug control efforts by informing the criminal justice community of the most promising and effective strategies and programs. The intent of this section is to provide guidance to States and local governments on the types of information required to determine whether programs are meeting their intended objectives and to conduct more thorough and comprehensive evaluations of programs which are clearly innovative in nature, involve a large expenditure of funds, show a high potential for replication or demonstrate substantial community involvement or awareness.

In addition, evaluation and research are important to ensure that Federal funds are spent in the most effective manner. Evaluations do not have to be conducted for every project, but should be done for all major new programs. For example, if ten street level enforcement programs are funded, three should be evaluated. Research should be practical in order for it to be of assistance to criminal justice professionals in the field.

The National Institute of Justice, in consultation with the Bureau of Justice Assistance, will conduct evaluations of selected State and local formula grants and selected demonstration projects supported through the discretionary grant program of the Bureau. Candidate formula grant programs or projects will be selected based on their potential as demonstration efforts supported by the Bureau. Candidate discretionary grant programs will be selected based on their potential for replication by the States and local governments to enhance their drug control and system improvement efforts.

This section also provides for the National Institute of Justice to conduct research and development on drug and drug-related crime control programs. In conducting such research, the primary focus should be on practical strategies to assist state and local law enforcement agencies in responding to drug and drug-related research needs and priorities as specified in the State strategies.

The Bureau of Justice Assistance will conduct independent, selected evaluations under the authority of Section 801. In addition, the Bureau may conduct evaluations related to program monitoring, financial and compliance auditing and internal program assessments. The Bureau may also evaluate the implementation and impact of State drug control and system improvement strategies. These activities will be designed to ensure the enhancement of State and local drug control efforts, that Federal, State and local governments are fully coordinated and that such efforts are designed to maximize the effectiveness of the National Drug Control Strategy.

TITLE II—JUVENILE JUSTICE AND DELINQUENCY PREVENTION PROGRAMS

Section 201. Prevention and Treatment Programs Relating to Juvenile Gangs and Juvenile Drug Abuse and Drug Trafficking.

This section creates a new part D in title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (hereinafter referred to in this chapter as "the Act") to address the serious and growing problem of children involved in gangs and drug trafficking. This new problem would authorize the Administrator of the Office of Juvenile Justice and Delinquency Prevention (hereinafter referred to in this chapter as "the Office") to make discretionary grants to public and private non-profit agencies for the following general purposes: to strengthen the juvenile justice system's ability to deal with serious juvenile offenders involved in drug trafficking, particularly in gangs; to improve prevention and treatment programs for drug abusing juveniles, particularly for juveniles involved in gang activities; to reduce drug trafficking and drug-related crime in elementary and secondary schools; and to improve the adjudicative and corrections components of the juvenile justice system, including juvenile and family courts. The paragraph authorizing funds for juvenile corrections improvements should not be construed as to mark any significant change away from the Act's emphasis on the deinstitutionalization of juvenile offenders. There are, however, a small number of hard-core juvenile offenders for which certain types of institutional settings are appropriate, and funds should be available to provide training to such corrections personnel.

The juvenile gang and drug trafficking and abuse programs for which funds are made available under this new part D are balanced between treatment and prevention and law enforcement programs. It is intended that funding provided to programs under this section should reflect such a balance.

The authorization for this section provides $15 million for discretionary grants by the Administrator. When coupled with the changes in allocations for formula and discretionary funds in section 203, the total amount of funds flowing directly to the states through formula grants will increase by approximately $6 million while discretionary funding will increase by $9 million.

Section 202. Authority to Make Grants.

This section requires the Administrator of the Office (hereinafter in this chapter referred to as "the Administrator) to use up to two percent of the funds available for formula grants, to provide technical assistance to the states, units of government, and private agencies to improve compliance with section 223, including implementation of the state plans.

Section 203. Allocation.

This section increases the minimum formula grant allocations to the states from $225,000 to $325,000. The allocations for the territories also is increased from $56,500 to $75,000. The minimum state allocations would increase to $400,000 and $100,000 for the states and territories, respectively, in the event that appropriations for parts A, B and C of title II exceeds $75 million. The minimum allocations for the states and territories have not been increased since the 1977 amendments to the Act.

The increased minima are also necessary to ensure that all states benefit from the increased funding for part B formula grants provided in this chapter. This section also ensures that no state will receive a disproportionate reduction in funding as a result of the minimum allocation increase.

Section 204. Technical Assistance and Training Functions.

This section amends section 244 of the Act to consolidate certain provisions relating to technical assistance and training. The movement of technical assistance and training functions to part C, however, should not be construed in any way as diminishing the priority of the Office's technical assistance and training functions (including programs to improve the effectiveness of juvenile court systems) which shall receive, at the least, the same priority and funding that they currently receive.

Section 205. Technical and Conforming Amendments to Parts B and C of title II.

This section amends the Act by transferring the special emphasis prevention and treatment programs, currently located in subpart II of part B to part C as a new subpart II. Changes made to the special emphasis programs include: expansion of the provision regarding youth advocacy to include services which improve legal representation of youth; and minor changes clarifying the law-related education provisions to clarify that these proven-effective programs be made available in a variety of community settings.

Section 206. Authorization of Appropriations.

Subsection (a) reauthorizes all titles of the Act for four additional years at the existing authorization level of "such sums as may be necessary."

Subsection (b) changes the percentage allocation that each part (other than the new part D) receives from the total annual appropriation for title II to reflect the transferring of functions among parts A, B and C. Since the technical assistance and training function has been moved from part A to part C, the allocation for part A has been reduced from 7.5 percent to 5 percent. The new part B, which includes only the formula grant program, will now receive an allocation of 70 percent, a significant increase above the 61 percent that has been historically allocated to formula grants. Finally, the allocation for the new part C, which now includes the special emphasis prevention and treatment programs, technical assistance and training and the National Institute of Juvenile Justice and Delinquency Prevention, will be increased from 11 percent to 25 percent.

Section 207. Technical Amendments to Part D of Title II.

This section simply consolidates the general and administrative provisions of title II in a new part E.

TITLE III—RUNAWAY AND HOMELESS YOUTH

Section 301. Runaway and Homeless Youth Act Reauthorization.

This section reauthorizes the runaway and homeless youth provisions (title III) of the Juvenile Justice and Delinquency Prevention Act (hereinafter referred to in this chapter as "the Act") through 1992 at the current "such sums as may be necessary" level.

Section 302. Authorization of Transitional Living Projects.

This section amends title III of the Act (hereinafter referred to in this chapter as the "Runaway and Homeless Youth Act") to authorize a new grant program for public and private non-profit entities to establish and operate transitional living projects for homeless youth. This section defines homeless youth as any individual between the ages of 16 and 21 for whom it is not possible to live in a safe environment with a relative and who has no other safe alternative living arrangement. A "transitional living youth project" is defined as a project that provides shelter and services designed to promote a transition to self-sufficient living and to prevent long-term dependency on social services.

To be eligible for a grant, an applicant must submit to the Secretary a plan in which the applicant agrees among other things: to provide shelter and services to homeless youth for a continuous period not to exceed 540 days; to accommodate not more than 20 individuals (excluding staff) in a shelter facility and to provide within that shelter enough staff to ensure that all homeless youth participating in such projects receive adequate supervision and services; to provide services such as counseling in interpersonal skill building and educational advancement, job attainment and basic life skills; to provide a written transitional living plan to each youth designed to facilitate the transition from supervised participation in such a project to independent living or another appropriate living arrangement; to provide outreach; and to submit to the Secretary an annual report that includes information regarding the activities carried out with the funds, the achievements of the program and statistical summaries describing the number and characteristics of the homeless youth who participate in such a project. In making grants, the Secretary is directed to give priority to entities that have experience in providing services to homeless youth. The Secretary shall annually report to Congress on the status and accomplishment of this project.

The bill authorized $5 million for FY 89 and such sums as may be necessary of FYs 1990, 1991, and 1992; however, the bill does require that the appropriation for part A of the Act must first reach the FY 88 funding level of $26.1 million This requirement ensures that funding is not taken from other essential programs under the Runaway and Homeless Youth Act, while simultaneously recognizing the urgency of the homeless youth problem.

The Runaway and Homeless Youth Act was amended in 1977 to include homeless youth. As a result of this amendment, homeless youth are eligible to receive certain services and have availed themselves of this opportunity. The Act, however, does not provide for long-term services to this population. While short-term emergency services with a focus on family reunification meet the needs of runaway youth, homeless youth, who by definition have no alternative safe living environment, require long-term shelter and services to aid in the transition to independent living.

The purpose of the new transition living program is to move beyond the first step of crisis intervention and address the unique problem of homeless youth by providing them the long-term shelter, counseling, and other critical services that they need. Although there are limited resourses now available which have been used to set up independent living programs for homeless youth, the funding is scarce and a greater federal response is necessary. This new authorization will begin to fill a significant void by providing limited federal funds specifically to meet the special needs of the homeless youth.

Programs funded under this section will help homeless youth make the transition to self-sufficient adulthood. The Committee recognizes that education and employment preparation are key to self-sufficiency, and hopes that the transitional living programs will pay special attention to those services.

Section 303. Grants for Runaway and Homeless Youth Centers.

Section 303 amends section 311 of the Runaway and homeless Youth Act to direct the Secretary of Health and Human Services (hereinafter referred to in this chapter as "the Secretary") to make grants to public and private entities to establish and support local runaway and homeless youth centers.

This section merely establishes what the Secretary is authorized to do under existing law. While the language of this section is drafted in generic terms, these grants are frequently referred to by the Department of Health and Human Services as :basic center grants." This section establishes a minimum allocation of $75,00 for the states and $30,000 for the territories and requires that not less than 90 percent of the funds appropriated under title III of the Act be distributed for "basic center grants." This section also protects against any state receiving a reduction in funding as a result of the minimum allocations.

TITLE IV—MISSING CHILDREN'S ASSISTANCE ACT

Section 401. Missing Children's Assistance Act.

Subsection (a) extends the current authorization of funding for the Missing Children's Assistance Act (title IV of the Juvenile Justice and Delinquency Prevention Act of 1974) for four additional years through 1992.

This section also makes several minor and technical amendments, including: authorizing the national resource center and clearinghouse on missing children to provide training to law enforcement personnel on the prevention, investigation, prosecution and treatment of cases involving missing and exploited children; and requiring certain grants to be awarded through a competitive process.

TITLE V—FAMILY VIOLENCE PREVENTION ACT OF 1988

Section 501. SHORT TITLE.—This section states that this part may be cited as the "Family Violence Prevention Act of 1988."

Section 502. Data Collection and Reporting.

This section requires the Attorney General (and, by delegation, the Federal Bureau of Investigation) to include incidents of domestic and family violence in the uniform crime reports compiled by the Department of Justice. Collecting such statistics is consistent with the federal government's responsibility to compile and distribute national crime statistics. This is particularly important in the area of domestic violence, where a dearth of statistics at the federal, state and local levels had hindered the ability of law enforcement officials to develop and implement domestic violence programs. This section also authorizes "such sums as may be necessary" to collect and publish these statistics.

This section should complement the new provision in the Drug Control and Criminal Justice System Improvement Grant Program which adds domestic and family violence programs to the list of programs that can be funded under chapter I of this subtitle. As a result, state and local law enforcement agencies shall be eligible to receive limited federal funding to improve their response to incidents of domestic and family violence, including spouse abuse, child abuse and abuse of the elderly. These targeted resources should assist the states in developing innovative programs to deal with increasing incidents of domestic violence.

TITLE VI—REGIONAL INFORMATION SHARING SYSTEM GRANTS

Section 601. Regional Information Sharing System Grants.

This section creates a specific authorization for the Regional Information Sharing System. This program, funded by the Department of Justice since the 1970s, provides grants to seven multi-state information sharing systems that link law enforcement agencies to a common data base. This allows police departments to share criminal intelligence information across jurisdictional boundaries that have previously blocked regional and interstate cooperation. In addition, funds provided in this section will be available to provide technical assistance and training and to establish an analytical component in each system to assist state and local agencies in analyzing, interpreting and distributing criminal intelligence to participating agencies. The guidelines established in this section are consistent with existing Department of Justice regulations for the RISS program. The Senate believes that a specific authorization for these programs will make these programs a higher priority within the Department of Justice and provide a more secure basis for future funding for the RISS programs.

TITLE VII—PUBLIC SAFETY OFFICERS' DEATH BENEFITS IMPROVEMENT

Section 701. Public Safety Officers' Death Benefits Improvements.

This section increases from $50,000 to $100,000 the basic death benefit level payable to the families of public safety officers who are killed in the line of duty. This adjustment is needed to correct for the impact of inflation, which has eroded the benefit since the $50,000 level was established in 1976. In addition, this section provides for an annual adjustment in the benefit based on the Consumer Price Index. Finally, this section deletes the requirement that a parent be a dependent in order to qualify as a beneficiary. These changes are necessary not only to assist the families of public safety officers who are killed in the line of duty, but also to symbolize this country's support for the women and men who daily risk their lives to protect our families, our communities and our property.

Section 702. National Programs for Families of Public Safety Officers Who Have Died in the Line of Duty.

This section authorizes and directs the Bureau of Justice Assistance to use up to $150,000 of the funds appropriated for this part to establish national programs to assist the families of public safety officers who have died in the line of duty. Such programs should help the families address the pyschological trauma associated with the sudden loss of a family member. In addition, the Bureau of Justice Assistance should develop model programs that could be replicated at the state and local level to assist such families.

TITLE VIII—CRIMINAL HISTORY RECORD, ARREST WARRANTS AND STOLEN VEHICLE RECORD INFORMATION IMPROVEMENT.

Sections 801-804 authorize $5 million per year, for 5 years, for grants to improve the accuracy, inclusiveness or completeness of criminal history record information, arrest warrant information and stolen vehicle record information. Grants are to be made on a discretionary, fifty-fifty, federal-state/local matching basis for up to 80 percent of funds appropraited for this program, and on a discretionary, 100 percent basis for the remaining 20 percent of funds appropriated for this program.

Accurate, timely, inclusive and complete criminal history record information and arrest warrant and stolen vehicle record information are of critical importance, both within and outside the criminal justice system. High quality data promotes effective law enforcement; protects personal privacy; assists research efforts. Unfortunately, numerous studies indicate that criminal history record information, arrest warrant and stolen vehicle record information is often of poor quality. A 1982 report published by the Office of Technology Assessment, ("OTA'), *An Assessment of Alternatives of a National Computerized Criminal History System*, found that the average nationwide disposition of reporting rate for arrest entries was about 66 percent. Over a dozen states reported disposition reporting rates of less than 50 percent. Eight states reported disposition of reporting rates of less than 25 percent. In addition, OTA found that approximately one-fifth of criminal history records contained material errors. A 1986 update of OTA found "significant continuing record quality problems." In addition, studies by a number of states and by SEARCH Group, Inc., in conjunction with the Bureau of Justice Statistics, have found that significant data quality problems for criminal history data persist among both State and local criminal justice agencies.

Studies by the Federal Bureau of Investigation with respect to arrest warrant and stolen vehicle information (the so-called "hot files") also reveal numerous problems due to errors, and incomplete or out-of-date information. FBI audits indicate that invalid warrant information in some states constitutes almost 15 percent of the data base. These problems persist despite a 15 year federal committment to improving the quality of criminal history record and "hot file" information. *See* Section 524(b) of the Crime Control Act of 1973, 42 U.S.C. Sec. 3789g, the implementing regulations and 28 CFR Part 20. Accordingly, the Senate has determined that a national grant program targeted upon improving the quality of criminal history and "hot file" data is necessary. Although the amount of money contemplated by this bill ($5 million a year for 5 years) is not large, the monies are to be awarded on a discretionary basis so funds can be targeted in areas and on programs that are most likely to have a significant impact. In addition, the bill requires that agencies receiving grants set and meet numeric goals for the improvement of data quality. Agencies are also required to provide audit data, both before and after the grant period, to permit BJS and the grantee to monitor the extent and nature of their progress.

Section 305(a) identifies twelve types of programs that have proven to be effective in improving data quality. These programs involve both automated and manual systems. In addition, Section 305(a)(13) gives the Director discretion to award grants for other programs that can reasonably be expected to assist in improving data quality. This flexibility, along with 100 percent funding with respect to 20 percent of the appropriation, assures that sufficient coordination, training, technical assistance and research takes place to support the program on a national basis and to permit the effective identification, communication and propagation of successful strategies and policy initiatives for improving data quality.

Of course, criminal history record information (defined as information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, information or other formal criminal charges and any disposition arising therefrom, sentencing, correctional supervision and release); arrest warrant information (defined as identification record information on an individual against whom there is an outstanding arrest warrant, including the charge for which the warrant was issued, and information relevant to the individual's danger to the community and any other information that would facilitate the apprehension of the individual); and stolen vehicle record information (defined as information identifying a specific vehicle and related indentification record information where there has been an initial determination that the vehicle has been stolen and any other information relevant to the location and repossession of the vehicle) represent only components of criminal justice record information. Criminal justice record information is defined as information collected by any component of the criminal justice system on individuals consisting of identifiable descriptions and notations describing the individual's contract with the criminal justice system. Criminal justice record information includes not only criminal history record information and arrest warrant information, but also intelligence and investigative records, information about charges and indictments and other information used for prosecutorial purposes, diposition and other information held by courts and used for adjudicatory purposes and correctional and release information.

The quality of criminal justice record information is important. Criminal justice records play a signficant role in criminal justice and noncriminal justice decisions. In addition, the criminal justice system is increasingly an integrated system, and the quality of information in one record system affects the quality of information in other records systems. Accordingly, the section authorizes the Bureau to conduct or make grants to support research to determine the extent and nature of date quality problems in criminal justice record systems. At present, relatively little is known about the extent or the nature of such problems. This research effort will permit the Congress and the executive branch to make an appropriate response to the data quality problems identified by this research.

TITLE IX—COLLEGE AND RAILROAD POLICE INFORMATION

Section 901. College and Railroad Police Information.

This section permits the Attorney General to provide access to police agencies associated with private colleges and railroads, access to federal criminal justice data banks. Under existing law, the Attorney General has the authority to determine the criteria by which state and local police agencies are allowed access to federal criminal justice data banks. By adding college and railroad policy agencies to the list of agencies authorized to have such access, the Attorney General would have authority to establish criteria by which such agencies may gain access to federal criminal justice data.

CHAPTER X—ASSISTANCE TO STATE AND LOCAL COURTS

Section 1001. State Justice Institute Reauthorization.

Subsection (a) provides a four-year reauthorization for the Institute; $15 million is authorized for fiscal 1989, and such sums as may be necessary are authorized in fiscal 1990, 1991, and 1992.

Subsection (b) makes a variety of minor and technical amendments as follows:

Paragraph (1) amends section 203(f) of the State Justice Institute Act (hereinafter in this chapter referred to as "the Act") relating to rulemaking to conform with the provision of the Administrative Procedures Act, title 5, United States Code, section 553(d).

Paragraph (2) amends section 203(d)(2) of Act to make Institute employees eligible for coverage under the Federal Employees' Retirement System established under chapter 84 of title 5, United States Code.

Paragraph (3) amends the Act to clarify that the Institute may support alternative dispute resolution projects that involve judicial and non-judicial personnel; and deletes section 206(c)(4) of the Act which authorizes the Institute to expend certain funds.

Paragraph (4) amends section 206(d) of the Act to make the 50 percent match requirement for state judicial systems applicable to local governments as well.

Paragraph (5) amends section 207(a) of the Act to eliminate the requirement that the Institute continue interim funding, until after the conclusion of a formal administrative hearing, to a recipient whose application for refunding has been denied by the Board of Directors.

Subsection (c) of this section amends section 209 of the Act by deleting section 209(2), which establishes special hearing procedures for recipients whose applications for refunding had been denied, and adding a new section 209(b) to protect the confidentiality of information made available to persons conducting research under a grant from the Institute.

CHAPTER XI—VICTIM COMPENSATION AND ASSISTANCE

Section 1101. Victims of Crime Act of 1984 Reauthorization.

This section reauthorizes the Crime Victims Fund (hereinafter in this chapter referred to as "the Fund") established by the Victims of Crime Act of 1984 (hereafter in this chapter referred to as "the Act") and extends the time deposits may be made to the Fund from September 30, 1988 to September 30, 1992.

Section 1102. Victims Assistance Amendments.

This section amends the Victims of Crime Act to require that states make funds available for programs that serve previously underserved victims populations. In keeping with the Department's guidelines implementing the priority language of section 1404(a) of the Act, the Committee directs the Attorney General to issue guidelines that ensure that at least ten percent of a state's victims assistance funds shall be used to provide grants to programs serving previously underserved victims populations, including, for example, survivors of homicide victims, victims of drunk and drugged driving incidents. This section also directs the Department to issue guidelines, after consultation with state and local officials and interested private parties, that provide flexibility to the states in determining the victims populations that may be underserved in ther respective states.

It is important to note that the Department of Justice anticipates that revenues into the Fund will increase significantly in the next four years, due to increased criminal fines and improved procedures for fine collection. The Senate believes that these increases should provide an opportunity to fund new programs serving underserved populations without decreasing the level of commitment to existing programs, including priority programs. This section also requires the Director to issue guidelines, after consultation with state and local officials and interested private parties, that provide flexibility to the states in determining the types of victims that are underserved in each state. The Senate also believes that the intent of the priority language under section 1404(a) of the Act should be clarified in that it is not the intent of a Congress that specialized victim assistance programs serving only one or more of the priority victim populations be required to provide generic victim services in order to remain eligible for crime victim assistance grants.

Section 1404(a)(2)(A) requires that the chief executive certify that three types of crime victim assistance programs—rape crisis centers, domestic violence shelters, and child abuse programs—will receive priority in the distribution of grant money within the State. This requirement will remain in effect until expiration of the Victims of Crime Act on September 30, 1992. The requirement ensures that an adequate portion of each State's grant under section 1404(a) will be used to sustain and maintain a variety of vitally important crisis intervention services provided on a 24-hour per day basis to the targeted crime victim populations.

Finally, state victim assistance administrators are directed to work more closely with victim advocacy and victim service providers to help them to understand the eligibility and application procedures for grants, review and processing of grants, the priority language and eligibility criteria applicants must meet. State victim assistance administrators are further directed to develop a needs assessment to evaluate underserved victim populations, and develop specific outreach plans to increase the availability of victim assistance grants.

Section 1111. Establishment of Office.

This section amends the Act to establish the Office for Victims of Crime (hereafter referred to in this section as "the Office") as a bureau within the Department of Justice. While it is anticipated that the current structure of the Office will largely be maintained, the Senate believes that establishing the Office as a bureau highlights the importance of the Office and ensures future continuity in the Office's work. The Director of the Office shall be appointed by the Attorney General. The Senate believes that the Director should be a recognized expert in the law enforcement or social services fields (and preferably both), with some experience assisting victims of crime. This section further provides that the Director shall have the authority to make grants under the Act and shall have final authority for all grants, cooperative agreements and contracts awarded by the Office. Finally, section 1102 requires the Director to report through the Assistant Attorney General for the Office of Justice Programs to ensure coordination with other Office of Justice Program agencies.

Section 1112. Technical Amendments to Victims of Crime Act.

This section makes minor and technical amendments to effect the establishment of the Office.

Section 1113. Children's Justice Act Amendments.

This section amends the Child Abuse Prevention and Treatment Act (Public Law 100-294) to transfer responsibility for administration of the Children's Justice Act programs from the Department of Health and Human Services to the Office for Victims of Crime in the Department of Justice. The Children's Justice Act of 1986 amended the Victims of Crime Act by transferring 4.5 percent of the moneys in the Fund to the Department of Health and Human Services for grants to states to improve the investigation and prosecution of child abuse cases.

In two years, the Department of Health and Human Services has not made any grants from funds made available through the Children's Justice Act. The Senate believes that at this time the program should be transferred to the Office for Victims of Crime in the Department of Justice, particularly given the programs objective of improving the investigation and prosecution of child abuse cases through multidisciplinary approaches. The language of this section requires the Director to work with representatives from the Department of Health and Human Services in preparing an annual Program Brief that will specify the priority for programs funded under this section and the criteria to be used for selecting such programs.

This section also includes an important addition to the Children's Justice Act by making funds available for improving the investigation and prosecution of child abuse cases on Indian reservations.

Section 1121. Other Amendments to the Victims of Crime Act of 1984.

Subsection (a) amends section 1403(b)(1) of the Act to add victims of and survivors of victims of drunk driving (including driving while under the influence of other intoxicants) and domestic violence to the eligibility criteria for state compensation programs by December 30, 1991.

Subsection (b) creates a new section 1403(b)(4) of the Act to make explicit that state compensation programs cannot deny compensation to any victim of domestic violence on the basis of a familial relationship with the offender or because the victim lived with the offender at the time of the crime. The Department of Justice is authorized and directed to establish reasonable guidelines to prevent the unjust enrichment of the offender.

The remaining subsections make minor and technical amendments to the Victims of Crime Act.

The **PRESIDING OFFICER.** The question is on agreeing to the amendment.

The amendment (No. 3693) was agreed to.

Mr. **BYRD.** Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. **DOLE.** I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. **SIMON.** Mr. President, today I commend the Senate on its passage of H.R. 1801 with an amendment in the nature of a substitute. The bill, among other things, reauthorizes the Juvenile Justice and Delinquency Prevention Act, the Runaway and Homeless Youth Act, and the Missing Children's Assistance Act. The programs established under these acts address many pressing concerns about our Nation's youth. I have been working hard to ensure that these important programs are continued because I view them as an investment in our future. If we can help our troubled and endangered youth today, they are less likely to appear in the juvenile and criminal justice systems later. This legislation is an expression of our Federal Government's deep commitment to our Nation's youth.

I would like to thank all those who worked very hard to help secure passage of this reauthorization legislation. Included among these are the Children's Defense Fund, the National Network of Runaway and Homeless Youth and the Constitutional Rights Foundation, which has successfully promoted a number of law-related education programs in Illinois, and along with the help of many volunteers has created training programs for teachers and very worthwhile direct education programs for children. Many other groups, too numerous to name, have also contributed to this important reauthorization effort and deserve our thanks.

I am particularly pleased that two new provisions which I authored are part of the legislation passed today—the homeless youth transitional living provision and the antigang violence provision. I extend particular thanks to the chairman of the Judiciary Committee for helping ensure that both these important provisions were included in the reauthorization bill.

The transitional living provision is aimed at America's growing population of homeless youth. Seven percent of our Nation's youth run away and never return home. Homeless youth are adolescents thrown out or forced to leave home with no place to go except the street. Unlike runaways, these teenagers cannot realistically return home. The tragedy of this situation is illustrated by the comments published in Newsweek of a San Francisco youth counselor who indicated that 68 percent of the parents he contacted to let them know that their child wished to go home replied, "You keep the kid."

The children leave for a variety of reasons for which there is no immediate solution: economic hardship, extreme neglect or desertion, physical and sexual abuse—including rape and incest—parental drug or alcohol addiction, and serious mental health problems.

Although there is no national data base, the Department of Justice Office of Juvenile Justice and Delinquency Prevention estimates that there are 1.4 to 2.4 million homeless youth across the country. This is not a problem that affects just one segment of society. Homeless youth come from wealthy suburbs, urban ghettos, and rural communities. According to the Chicago Coalition for the Homeless, there are an estimated 17,500 homeless youth in Chicago. Testimony before the House Select Committee on Children, Youth and Families indicates that there are an estimated 20,000 homeless youth in New York and 3,500 in Boston. In Houston one-third of the homeless population are youths. Cleveland, Los Angeles, Minneapolis, New Orleans, Portsmouth, Providence, Salt Lake City, and Seattle all reported increases in homeless youth according to the December 1987 U.S. Conference of Mayors Report.

Once the children are on the street they are often forced to turn to stealing, selling drugs, and prostitution to survive. One in three children turns to prostitution within 48 hours of leaving home, and an extremely high percentage of homeless youth contract AIDS. They are beaten by pimps, suffer from malnutrition and exposure, and resort to drugs and alcohol to escape, if only briefly, from their grim world.

Homeless youth between the ages of 16 and 21 face special problems. They are in a legal no-man's land. They are not old enough to live independently, and lack education or vocational skills which would enable them to get off the street. They are too young for adult shelters, but too old for the foster-care system.

The goal of the homeless youth transitional living provision is to fill this void and create a safety net for homeless youth between the ages of 16 and 21. The provision allocates $5 million in grants for community based programs which have previously been successful in providing services and training to enable homeless youth to become independent adults. The goal of the program is to provide shelter and a variety of services such as education and vocational counseling and training in basic life skills such as balancing a checkbook and holding down a job. Programs funded under the provision will give homeless youth an alternative to the street by teaching them the basic skills they need to survive on their own.

Without successful intervention, youth who do not get help may become mentally ill, part of the adult criminal network, dependents of our public welfare systems or may become involved in drugs. The programs provided by this legislation will help homeless youth make the transition to self-sufficient adulthood so that they can live productive lives, and I am most pleased that it has been included in the Senate reauthorization bill.

I am also pleased to note that the reauthorization bill includes language authored by Senator **Bradley** and I to fight gang violence.

Recent reports indicate that 46 States have problems with gang violence and gangs which trade in illegal drugs. The studies also confirm that gangs are not confined to large urban areas, but are invading rural communities as well. Although no nationwide figures exist on street gang crimes, the rate of violent juvenile crimes increased 9 percent from 1984 to 1986. Even more disturbing is that younger and younger children are being arrested for selling drugs and carrying weapons.

The peer pressures that once attracted young people to beer drinking and joy riding, now are turning many toward drugs, violence, and gang life. This March the House Select Committee on Children, Youth and Families heard from several young adults who told of their lives in gangs. Ismael Huerta, an 18-year-old gang member from Los Angeles, described a life of selling drugs to buy weapons, "being shot at many times" and watching girls barely in their teens offer sex in exchange for drugs. Shawn Grant, an 18-year-old gang member from Philadelphia, reported that "when we're high, we'll do anything, we'll jump people for nothing at all." Shawn told the committee about his fear that the gang would hunt him down and possibly kill him if he defected.

The reasons that children join gangs are multifaceted. The weakening family structure evidenced by the rise in teenage pregnancy and single parent households, the increase in the number of children who never learn many basic skills because of truancy which in turn leads to youth unemployment, and the growing problem of homeless youth all contribute to this situation. For many of these children the gang serves as an alternate family, offering both emotional and economic support.

All across the Nation communities are searching for solutions to the gang problem. Unfortunately there is no simple answer. First, we must stem the flow of drugs across our borders and prosecute those who deal in drugs. We must also improve the job market for our young people so that they have real opportunities to succeed. Our schools must provide the environment where many of our children can overcome their initial economic disadvantage. We must all work together to develop a comprehensive strategy against gangs and the violence they breed.

The reauthorization bill passed by the Senate today includes an important new grant program which Senator BRADLEY and I originally had proposed, directed at the gang problems of our Nation's youth. The reauthorization provision, which provides grants for community based intervention and prevention programs relating to juvenile gangs and juvenile drug abuse and drug trafficking, recognizes that the battle against gangs and the battle against drugs are part of the same war. Specifically, the provision permits the Administrator of the Office of Juvenile Justice and Delinquency Prevention to make grants and enter into contracts with public and private nonprofit agencies, organization, institutions, and individuals to establish and support programs that are designed to prevent and reduce juvenile participation in gangs and drug-related activities. The resources can be used both to counsel children already involved in drug and gang activities and to help prevent other youngsters from becoming involved in these activities.

This new grant program sends a message from the Federal Government to our communities that they are not alone in fighting the war on gangs and drugs. Together we can work to ensure that our children's future is one of hopes and dreams, not death and drugs.

In closing, I again wish to thank all involved in the effort to reauthorize these important programs and to make sure that special consideration was given to the gang problem and homeless youth.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill, having been read the third time, the question is, Shall it pass?

So the bill (H.R. 1801), as amended, was passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LEASE OF A NAVAL REPAIR VESSEL TO PAKISTAN

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1122, H.R. 5420, a bill to authorize the lease of a specified naval repair ship to the Government of Pakistan and the transfer of a specified floating drydock and a medium yard tug to the Republic of the Philippines.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5420) to authorize the lease of a specified naval repair ship to the Government of Pakistan and the transfer of a specified floating drydock and a medium yard tug to the Republic of the Philippines.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3694

Mr. HUMPHREY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from New Hampshire [Mr. HUMPHREY] proposes an amendment numbered 3694.

At the appropriate place in the bill, add the following new section:

SEC. . Notwithstanding any other provision of law for fiscal year 1989, such sums as may be necessary of United States-owned excess foreign currencies (in excess of amounts necessary for satisfaction of preexisting commitments to use such currencies for other purposes specified by law) may be made available to the Administrator of the Agency for International Development for the same purposes for which assistance under Chapter 1 of Part I of the Foreign Assistance Act of 1961 is available, and for the support of any institution providing education for a significant number of United States nationals, in the country where such currencies are held or in other foreign countries, provided that nothing in this provision shall provide for any assistance in any communist bloc country.

Mr. HUMPHREY. Mr. President, this amendment provides discretionary authority to the Administrator of the Agency for International Development to use excess U.S.-owned foreign currencies for development assistance programs and to provide assistance to overseas institutions that provide education for a significant number of American citizens.

This provision is similar to one that was adopted by the Senate by voice vote on August 10, as an amendment to the Department of Defense Appropriations Act. In order to address the concerns of several Members, the language has been modified to narrow the scope of the original provision.

Mr. President, currently the United States holds certain foreign currencies that are in excess of amounts necessary for satisfaction of preexisting commitments to use such currencies. An excess currency country is defined by the Department of Treasury as a country where the "supply of a nonrestricted currency is great enough to more than meet U.S. requirements for more than 2 years." So this amendment does not apply broadly to all U.S.-owned foreign currencies. It only authorizes a use for a fraction of U.S.-owned currencies, namely, those that are designated as being excess to current or anticipated needs of the U.S. Government. As of March 1988, there were only two countries in which excess foreign currencies existed. There is $13.3 million in United States equivalents held in Pakistan and $62.8 million likewise held in Poland.

Specifically, this amendment permits AID to identify a use for these excess currencies—either for development assistance programs, or to assist education facilities that are attended predominately by American students. This provision would also authorize AID to seek a means to use these excess currencies in countries other than those where they are held, through commodity exchanges, for example. Where AID determines a need, and if excess currencies are available, they would have the authority under this provision to provide assistance.

There have been some questions about the intent of this provision. The intent is very simple: To put to good use and for the benefit of American citizens certain assets which are now sitting idle, which historically sat idle, unused and wasted. The United States possesses excess foreign currencies that could be used to assist overseas schools attended by a significant number of American students, or for other development assistance programs.

The original impetus for the amendment was to find a way to assist several schools in Israel which are predominately attended by American children. Some of these children, for example, find themselves in a worrisome situation with regards to personal security. We all know the incidence of terrorism within Israel. The funds, for example, could be applied to improve the security for such American children. But in discussing the proposal with officials of the Agency for International Development, I discovered that such a proposal could be applied to benefit American children elsewhere in other countries as well. So much the better.

The point is this: Historically, under various transactions, the United States accepts payments in local currencies. The Treasury Department, in its fiscal year 1987 report, "Foreign Currencies Held by the U.S. Government," explains how we come by these currencies:

> First, in exchange for agricultural commodities financed by the Department of Agriculture (including repayment of loans of these funds);
>
> Second, in repayment of loans financed by dollar expenditure under the Foreign Assistance Act of 1961, and prior acts as amended;
>
> Third, as payment of interest on deposits of foreign currency in foreign banks; and
>
> Fourth, from various other programs.

The report goes on to make the very important point:

> These nonpurchases foreign currencies are separate and distinct from the budget expenditure accounts and do not affect the budget surplus or deficit of the U.S. Government except to the extent that the currencies are sold for dollars.

Often such foreign currencies are soft currencies. They are not convertible into hard currencies. As the Treasury Department report states:

> The foreign currencies reported herein in large part are neither freely convertible to other currencies nor freely spendable by the U.S. Government for the general support of its overseas operations.

And so, over the years, the United States has held hundreds of millions of dollars in such foreign currencies. These are currencies that are difficult to employ to our Nations advantage.

To put it plainly, it is hard to spend this money, because no one wants to accept payment in soft currencies. That is why such currencies accumulate until they are declared excess by the Treasury. When a foreign currency accumulates to the point of exceeding the 2 year needs of the U.S. Government to spend such a currency, then that currency, by Treasury Department definition, becomes an excess foreign currency. And so these assets sit there. They are wasted assets and have been until now.

Let me underscore, Mr. President, that any determinations as to who will receive assistance under this provision, must be made by AID. The amendment does not earmark funds in anyway, it does not specify which institutions, if any will receive the assistance. It merely grants AID the authority to use these excess currencies to help educational institutions overseas attended by significant numbers of American children of American citizens.

And let me emphasize also, the assistance is made available to the institution, not to the individual student, or person, though of course, the aim clearly and unequivocally, is to improve the situation of American citizens.

My staff have discussed this provision extensively with the Agency for International Development.

AID officials believe the proposal offers the potential for beneficial uses for excess currencies now sitting idle. They believe the proposal provides potential resources to assist development assistance programs and education institutions attended by dependents of American Foreign Service officers and dependents of other Federal civil servants living abroad as well as American citizens in the private sector with children studying abroad.

Finally, let me emphasize the amendment is not intended to assist foreign students, though it is possible some such students will benefit indirectly. Should we forbear to act in such circumstances? Should we refuse to help American citizens, because in some circumstances foreign students might coincidentally benefit? In this case I think not. Because, if Senators will remember, these excess foreign currencies are sitting idle. They are wasted assets. The proposal before the Senate will enable us at long last to use those assets to good advantage. And let me point out further, that we have a program, American hospitals and schools abroad, ASHA, for which Congress appropriates funds each year, whose beneficiaries are predominately foreign nationals. For example, in fiscal year 1988, Congress appropriated $35 million for ASHA, which primarily benefits foreign nationals. Is there any reason, then, for Congress to decline to use excess foreign currencies in a way that will help American students abroad? I suggest there is none. And that is the proposal now before the Senate.

I conclude, Mr. President, by stating that the amendment has been cleared with the chairman and ranking member of the Foreign Relations Committee.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 3694) was agreed to.

Mr. HUMPHREY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GRAMM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 5420) was passed.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

OMNIBUS DRUG INITIATIVE ACT OF 1988

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. Under the previous order, the Senator from Texas, Mr. GRAMM, is recognized to offer an amendment.

AMENDMENT NO. 3695

(Purpose: To deny Federal benefits to drug traffickers and users)

Mr. GRAMM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

> The Senator from Texas [Mr. GRAMM] for himself and Mr. DOMENICI proposes an amendment numbered 3695.

Mr. GRAMM. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER (Mr. GRAHAM). Without objection, it is so ordered.

The amendment is as follows:

> At the appropriate place in the , insert the following new section:

SEC. . DENIAL OF FEDERAL BENEFITS TO DRUG TRAFFICKERS AND USERS.

(a) DRUG TRAFFICKERS.—(1) Subject to the provisions of paragraph (3), any individual who is convicted of any Federal or State offense consisting of the distribution of controlled substances (as such terms are defined for purposes of the Controlled Substances Act) shall—

(A) at the discretion of the court, upon the first conviction for such an offense be ineligible for any or all unearned Federal benefits for up to 5 years after such conviction;

(B) at the discretion of the court, upon a second conviction for such an offense be ineligible for any or all unearned Federal benefits for up to 10 years after such conviction; and

(C) upon a third or subsequent conviction for such an offense be permanently ineligible for all unearned Federal benefits.

(2) The benefits which are denied under this subsection shall not include benefits relating to long-term drug treatment programs for addiction for any person who, if there is a reasonable body of evidence to substantiate such declaration, declares himself to be an addict and submits himself to such a long-term treatment program for addiction.

(b) DRUG USERS.—(1) Subject to the provisions of paragraph (2), any individual who is convicted of any Federal or State offense involving the use of a controlled substance (as such term is defined for purposes of the Controlled Substances Act) shall—

(A) upon the first conviction for such an offense and at the discretion of the court—

(i) be ineligible for any or all Federal benefits, other than earned Federal benefits and means-tested Federal benefits, for up to one year;

(ii) be required to successfully complete an approved drug treatment program which includes periodic testing to insure that the individual remains drug free;

(iii) be required to perform appropriate community service; or

(iv) any combination of clauses (i), (ii), or (iii); and

(B) upon a second or subsequent conviction for such an offense be ineligible for all Federal benefits, other than earned Federal benefits and means-tested Federal benefits, for up to 5 years after such conviction as determined by the court.

In imposing penalties and conditions under subparagraph (A), the court may require that the completion of the conditions imposed by clauses (ii) or (iii) be a requirement for the reinstatement of benefits under clause (i).

(2) For purposes of this section—

(A) the term "Federal benefits" includes the issuance of Federal mortgage guarantees, all Government loans, grants, benefits, contracts with, and licenses or permits issued by, the Government; and

(B) the term "means-tested Federal benefits" includes programs where eligibility is determined, in part, on the basis of income and assets.

(C) the term "earned Federal benefits" means Social Security, Medicare, Railroad Retirement benefits, all benefits provided to veterans, their families, or survivors, or any other benefits for which payments or services are required for eligibility.

(3) The penalties and conditions which may be imposed under this subsection shall be waived in the case of a person who, if there is a reasonable body of evidence to substantiate such declaration, declares himself to be an addict and submits himself to a long-term treatment program for addiction, or is deemed to be rehabilitated pursuant to rules established by the Secretary of Health and Human Services.

(c) INAPPLICABILITY OF THIS SECTION TO GOVERNMENT WITNESSES.—The penalties provided by this section shall not apply to any individual who cooperates or testifies for the Government in the prosecution of a Federal or State offense or who is in the Government Witness Protection Program.

Mr. GRAMM. Mr. President, there are a lot of things that are new about this bill as we try to deal with the drug problem. But I think one of the most important new elements in the war on drugs is an effort to try to provide deterrence to the use of drugs in the first place.

We have had little success in dealing with the drug problem by treating the person selling the drugs as a criminal and the person buying the drugs as a victim. Both parties to the transaction are violating the law and are criminals.

We know that the value of a commodity like cocaine rises 200 times from harvest to sale on the streets of Washington, DC. We recognize that if we could seize 90 percent of the cocaine being smuggled into the country by committing the entire Armed Forces of the United States, we would do little more than double the price of cocaine on the streets.

So if in fact we are going to win this war on drugs, if we are going to rid our Nation of a terrible scourge, we have to do it by attacking the problem at its source. That source is the market which consists of 23 million people who use drugs on a more or less regular basis.

There is, in the minds of many, a desire to act as if those using drugs in America are addicts who cannot help themselves, as if they were victims. Many have the same view of criminals.

But the reality, as shown by those who study and understand this problem, is that most people buying and using drugs in America are not addicted. Most people that are buying and using drugs in America are people who are using it on a casual basis, with many of them holding jobs and in some cases appearing to be living rather ordinary lives.

But, by buying drugs, these users have created profits that have put a drug thug at the door of every high school in America. They have created the profits that have brought together the drug gangs around the world that kill our drug agents.

So, if we are to win this war, we must not only interdict drugs, we must also get tough on people that are drug pushers for instance, I am happy that this bill includes an amendment on which I have insisted. It has a 10-year mandatory sentence in prison for a thug selling drugs to children, 20 years mandatory sentence for using a minor in the distribution or sale of drugs, and a mandatory life sentence for a second offense in either of these crimes.

Now, some think that is too harsh. Quite frankly, though, I think the American people are ready to grab by the throat those who profiteer off the health, happiness and lives of our children. That is the purpose of that provision and that is, of course, what the purpose of the death penalty, which is also a part of this bill.

Mr. President, yesterday we took an important step in dealing with the whole user accountability question through an amendment that was offered by Senator DOMENICI and by me. That amendment allowed civil fines of up to $10,000 for drug use or drug possession.

The idea behind that amendment is to say to the 23 million people in this country that are using drugs, "We are not going to tolerate that use. If you are addicted, you need to get help. We want to help you and we want to get you off drugs. But if you are not addicted, if you are simply using drugs because you choose to do it, we want you to know that you are going to pay for it."

The amendment that I have sent to the desk is really part 2 of the user accountability section. It has to do with the denial of Federal benefits to people who traffic in drugs and to people who use drugs.

This amendment is a vast improvement from the amendment that we started with about 2 months ago. A lot of people have had input into it. The distinguished Senator from Georgia, Senator NUNN, as well as Senator CRANSTON, Senator KENNEDY and a dozen or so other Members of the Senate have worked with me on the amendment to try to see that we achieve what we wanted to achieve and that we did it in a way that would not produce unintended results.

I am proud of the amendment. I think that it does what we want to do. Let me outline to my colleagues what that is. First, the amendment talks about drug traffickers. It says that any individual who is convicted of any Federal or State offense consisting of the distribution of a controlled substance—in other words a pusher—at the discretion of the court will be ineligible for any or all unearned Federal benefits for up to 5 years. On a second offense, they will be subject to a penalty of being denied any or all unearned Federal benefits for up to 10 years. On a third offense, they will be permanently denied all unearned Federal benefits.

Mr. President, I want to make it clear what I mean by "earned" Federal benefits. Earned benefits are benefits that somebody earns by paying into a program, such as Social Security, Federal retirement, railroad retirement, and Medicare, or those for which someone provides a service, such as veterans' benefits, payments going to a veterans' family or payments going to a veteran's survivors.

Mr. President, in its user accountability provisions, the House takes away veterans' benefits. This amendment would not do that. So, if somebody who has served this country and helped to defend its freedom does a terrible wrong, and if he is hanged, he is still going to be buried with the American flag on his casket for the service that he has provided this Nation in defending its freedom and its vital interests around the world. This amendment makes it clear that all earned benefits will be unaffected. If you paid into Social Security, Medicare, railroad retirement, Federal retirement, or you earned any benefits such as veterans' benefits by service, those benefits will not be affected.

The amendment also has a provision dealing with the addict. Let us say that an addict is arrested for selling drugs and he turns out to be addicted. We do not want to produce a situation where, by denying Federal benefits, we deny that person the ability to go into a rehabilitation program. To do that would be to deny the very program that is trying to deal with the problem. So the amendment makes it clear that if a person declares himself to be an addict, if there is a body of information to substantiate that claim, and if he submits himself to treatment, he will not be denied access to services that are related to rehabilitation.

The second part of this accountability and benefit denial amendment has to do with the user. If a person is convicted of drug use, that person is subject to the following penalties: that person can be denied any or all unearned and non-means-tested benefits for up to a year. That person may be required to complete an approved drug treatment program. That person may be required to perform community services. That person may be required to have some combination of all three. That person may be required to undergo a rehabilitation program in order to have the benefit reinstated.

If a person is convicted subsequent to the first conviction, then those benefits that are unearned and non-means-tested can be denied for up to 5 years. Again, if a person declares himself to be an addict, if there is a body of information to substantiate that claim, and if that person submits himself to a rehabilitation program or is deemed to have been rehabilitated, then benefits can be reinstated.

The term "means tested" means benefits where eligibility is determined at least in part on the basis of income or assets. I believe that this is a reasoned approach that says to the 23 million people that are using drugs in this country that we are not going to tolerate their behavior. If you are using drugs, you will be subject to a penalty, and that penalty can be in the form of losing access to a FHA mortgage on your home, to a license to operate an airplane, or to a license to operate a television station. In fact, we do not want people who are consuming or pushing drugs in this country to benefit from privileges that are provided by the Federal Government.

There are safeguards and protections written into the amendment to assure that innocent parties are protected, to assure the courts flexibility, and to assure the ability of a person to submit to long-term treatment and rehabilitation if they are addicted. But make no mistake about it. This amendment says to the people who are using drugs in this country, "It is illegal to use drugs. Do not think, because we do not have enough room to put you in prison, that you are going to go off scot free."

The amendment that Senator DOMENICI and I offered yesterday provides up to a $10,000 fine for drug use. The amendment that I have offered today with Senator DOMENICI provides for the denial of Federal benefits.

This is a tough policy, but it is a reasoned and balanced and reasonable policy, and I think it is critical, if we really mean to do something about this war on drugs.

I think we have resisted the temptation in this bill to simply do things that only make us feel good. Most people are serious about getting hold of the guy that is profiteering on drugs, but most of us know that that alone will not win the war. The amendment adopted yesterday and, if adopted, this amendment today will say: "We are not just doing things that make us feel good. We are doing things that are actually going to attack the drug problem."

I commend this amendment to my colleagues, and I thank all of those who have worked with me to make it a program that can work and a program that is reasonable.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. Mr. President, as chairman of the Veterans' Affairs Committee I note that the Senator from Texas [Mr. GRAMM] included in his amendment provisions designed to exempt benefits for veterans and their survivors and dependents from any benefits terminations under his amendment. I thank the Senator for that, and I thank him for his excellent cooperation with me in developing the language of his amendment providing for this exemption and the modifications he made to make clear that the defined terms apply to both subsections (a) and (b); that there are two excluded types of Federal benefits, "earned Federal benefits" and "means-tested Federal benefits"; and, also, that, as to a second conviction of a drug use offense, the sentencing court would have discretion as to the length of time of the suspension of Federal benefits for a period of up to 5 years.

Mr. President, earlier this week I circulated a "Dear Colleague" letter expressing my strong opposition to the House provision, section 6201 of H.R. 5210, as passed by the House of Representatives on September 22, 1988, providing for the termination of certain veterans' and dependents' and survivors' benefits. I believe the modifications that I have worked out with the Senator from Texas make clear, if this amendment is adopted, the Senate's rejection of the House position in this respect.

Thus, I would urge that in negotiations with the House, the Senate would hold firm on its position that benefits for veterans and their dependents and survivors not be subject to any terminations under this legislation.

Would the Senator from Texas agree with me regarding the Senate position and in negotiating with the House on this matter?

Mr. GRAMM. If the distinguished Senator would yield, let me say I have enjoyed working with the distinguished Senator. I think we have a good provision here. We share a total commitment to the fact that, if someone has served this Nation, and by that service has earned benefits, then no matter what they may subsequently do those benefits have been earned by that service. I am committed to seeing that the final bill contains language at least compatible with the language we are adopting today. As I said earlier, it is possible someone could serve the Republic and come home and do something so terrible that we would hang them for it, but if they have served the Republic, when we bury them they are going to be buried with the flag on their casket. By their services, they have earned that and other benefits for themselves, for their survivors, for their families.

Mr. CRANSTON. We obviously are speaking, not only of the benefits to veterans but to their dependents and survivors. And I do have the Senator's assurance he will do his best in conference to see to it that we stick to this provision.

Also, Mr. President, I wish to note that if it had been necessary, I had intended to propose with my friend from Arizona, Mr. DECONCINI, an amendment specifically to make veterans and dependents and survivors benefits exempt from any benefits terminations. That amendment clearly is not necessary because the pending amendment reflects the same policy as the amendment that we would have proposed with respect to these benefits.

Mr. President, I ask unanimous consent that there be printed in the RECORD at this point a copy of the amendment that Senator DECONCINI and I would have proposed if necessary, and a copy of my "Dear Colleague" letter of October 7.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

At the end of the amendment of Mr. GRAMM, add the following new subsection:

(d) Nothing in this section shall have the effect of depriving a veteran (as defined in section 101(2) of title 38, United States Code), or a spouse or other dependent or a survivor of a veteran, of any benefit for which eligibility is based in whole or in part upon the veteran's service in the Armed Forces (as defined in section 101(10) of such title).

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC, October 7, 1988.

DEAR COLLEAGUE: When the Senate considers the drug bill, it is expected that an amendment will be offered to provide for the termination of federal benefits for persons who are convicted of certain drug offenses.

Assuming that any such amendment in the Senate is similar to the House provisions, it would result in the *termination of a wide range of entitlements that veterans have earned for themselves and their families through substantial sacrifice for our Nation.* As Chairman of the Veterans' Affairs Committee, I urge you to oppose such an amendment.

This kind of amendment would unfairly penalize innocent persons to whom this Nation is greatly indebted, would cause the United States to break the solemn promises it has made to those who incurred great personal sacrifice in its defense, and would withdraw from those seeking to rehabilitate themselves the kinds of assistance that would make resumption of a productive life possible. Also, although the purpose of terminating benefits eligibility would be to provide a disincentive penalty intended to reduce the demand for, or the distribution of, illegal substances, I do not believe that it would be likely to further that goal. The bill as introduced would require a study of the matter—before any penalties are imposed—to determine whether this approach would be effective.

The veterans' benefits in question would include certain benefits for the veteran and his or her family members that are provided based on injuries and diseases suffered in service in the military or death form service-connected causes. Examples are:

Dependency and indemnity compensation for the survivors of those who die as the result of service-connected causes.

Educational assistance for the spouse and children of those who have died from service-connected causes and of veterans who have permanent and total service-connected disabilities.

The Nation seeks through these benefits to replace the financial support that the deceased or totally disabled veteran would have provided his or her family. When the Nation made the promise to stand in the veteran's place in this regard, it laid down no conditions and, when the servicemember died in service, he or she had no reason to believe that conditions would later be imposed.

Certain other benefits are contractual in nature:

Veterans' life insurance policies and proceeds.

Educational assistance programs that are earned through a combination of service and financial contributions (payroll deductions for those who entered the service during the period January 1977 through June 1985 or reductions in pay for those entering the service after June 1985).

These contractual benefits cannot fairly—or probably constitutionally—be terminated unilaterally after the veteran has served and made payment. Moreover, the cancellation of an insurance policy can mean added hardship for totally innocent survivors, and the education benefits could be extremely valuable for the veteran seeking to resume a productive life after getting into trouble with drugs following having earned these benefits through honorable service to the Nation.

Other benefits, such as veterans' employment services and assistance available to unemployed Korean-conflict and Vietnam-era veterans under the Veterans Job Training Act, would also help veterans seeking to start back on a productive course.

With respect to the VA home loan program, the impact of lost eligibility will fall directly and largely on innocent victims—the *families* of those who are convicted and will be unable to buy a home if their VA guaranty entitlement is withdrawn. (The same disproportionate impact on innocent family members would result from the loss of FHA insurance benefits if their forfeiture is included in such an amendment.)

Perhaps most illustrative of the pointless grief that such an amendment could cause innocent victims would be the termination of burial and funeral allowances. The loss of the $1,500 burial benefit for one who has died from service-connected causes would be a significant penalty for *innocent family members* who would have already suffered greatly. And, consider the case of a veteran buried in a national cemetery with space reserved for his widow. Why require the VA to refuse to bury the widow next to her husband? Imagine the added sorrow and shame that this denial of a deceased couple's wishes would cause their relatives. How would such a cruel act help win the war against drugs?

To win the war against drugs, we need effective drug education and treatment programs, strong enforcement capabilities, and the firm administration of our criminal justice system. What we do *not* need is for the Nation to break its commitments to those who answered its call, to repudiate its promises and contracts, and to impose pointless penalties on totally innocent individuals.

I urge all of my colleagues to reject any efforts to distort federal benefit programs by making their denial a form of sanction.

Sincerely,

ALAN CRANSTON,
Chairman.

Mr. MURKOWSKI. Mr. President, I support the amendment of the Senator from Texas which would deprive drug offenders of unearned Federal benefits.

Our Government, and the society we represent, must speak with one voice and deliver a clear, unmixed message when we speak to, or about, drug offenders. The strength of our message would be unacceptably diluted if, at the same time we condemn drugs and drug offenders, we provide drug offenders with unearned Federal benefits. Senator GRAMM's amendment will ensure this does not happen.

Some have raised a concern that the amendment would deprive veterans, or their survivors, of the benefits earned in service or sacrifice for our Nation. The amendment responds to these concerns by specifically excluding from forfeiture benefits provided to veterans or their families based on the veterans' service.

Mr. President, the veterans question is a nonissue. Veterans benefits are not affected by the amendment. This is an amendment which can, and should be, supported on its merits.

I salute the Senator from Texas for his initiative and the concern he demonstrated in responding to concerns raised about veterans' benefits.

TALKING POINTS—VETERANS' BENEFITS AND THE GRAMM AMENDMENT

It has always been clear that the Senator from Texas had no intention of depriving veterans, or their families, of benefits provided as a result of military service.

Some believed early drafts of the amendment may not have been clear on this point.

Senator GRAMM willingly modified his amendment to resolve these ambiguities after his staff consulted with the Republican staff of the Veterans' Affairs Committee.

I am informed that the VA agrees that the amendment, as offered, will not affect veterans' benefits.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I have heard descriptions of the amendment by the Senator from Texas. I have substantial concerns about the amendment.

I am concerned about the multiplicity of penalties which are going to be attached to users. Although I do agree that it is important that users be on notice that use of drugs will not be tolerated and that there should be penalties attached to the use of drugs, we have adopted yesterday a very strong amendment which provides for civil proceedings with $10,000 fines. That provision has some overtones that are punitive in nature, but constitutional rights are guaranteed by a de novo trial with a burden of proof beyond a reasonable doubt and other criminal sanctions.

I am concerned, Mr. President, about the burden that enforcement in the Federal courts of this kind of a provision will put upon the U.S. district court where there are very heavy dockets at the present time; a factor which was taken into account in the amendment of Senator DOMENICI yesterday in providing for administrative proceedings. And I am further concerned, Mr. President, about a regimen of handling of drug users where we have to be very concerned about reintegration into a society and rehabilitation because they are not going to be in jail forever. And, also, about drug traffickers as well. Because they, too, come out. And what we do not have in our society, Mr. President, is an integrated approach to dealing with people in the rehabilitation process and the transition when they come back out into society.

We have an enormously high rate of recidivism; that is, people who commit more crimes. Why do they commit more crimes? Well, first of all, many are functional illiterates. They cannot read or write.

Second, they do not have a trade or skill so they cannot get a job.

Many of them are still dependent on drugs and the reintegration into society is very difficult. It is no surprise that a functional illiterate without a trade or a skill returns to a life of crime.

The transition period back into society is a tough one. If the person is going to be denied his unearned Federal benefit, be denied welfare payments or AFDC or a variety of other benefits, then the reintegration into society is all the more difficult. While there may not be much concern for that individual, that person becomes a potential robber and a burglar to support himself, to sustain his drug habit, or all the other reasons that a person may engage in criminal conduct.

When the Senator from Texas says that we treat sellers as criminals and users as victims, that is not exactly correct. The laws of this country provide that use and possession of drugs is a criminal offense. Since the Senator from Texas started to talk, I sent for the Federal Code to see what precisely was the penalty under Federal law for use and possession of drugs. But, as a State court prosecutor, I prosecuted many cases.

Perhaps, if I could have the attention of the Senator from Texas, perhaps he can answer the question before my research assistant brings me the answer as to what provisions there are, at the present time, under Federal law, for penalties for use and possession of drugs.

Mr. GRAMM. Well, Mr. President, the last thing I want to do is put a research assistant out of work. But let me say we have lots of penalties. The law books are full of them.

The problem is, as the distinguished Senator from Pennsylvania has pointed out, we have jails so filled with people imprisoned for selling drugs that we have crime without punishment for people who are using drugs.

Mr. SPECTER. Mr. President, I did not yield for a speech. I yielded for a question.

Mr. GRAMM. Then I answered the question.

Mr. SPECTER. I must have faulty hearing. I did not hear the answer to the question as to what the penalty was for use and possession of drugs. I do not call upon the Senator from Texas to be my research assistant. Whatever his answer may be, contrary to his suggestion, he will not put my research assistant out of work. But I would think if a proponent of an amendment, an additional penalty, is going to bring it to the floor, there would be some knowledge as to what the existing penalties are.

It is true that the jails are overcrowded at the present time, and there is all the greater concern that if we are going to be prosecuting users, they really ought to be put in jail if we are talking about calculated users who are wanton in their disrespect for the law and are repeat offenders. That option ought to be open.

This Senator has been very active in seeking to expand Federal prison space. It may be that a preferable course is not to put users in jail, at least many users. That is the thrust of the legislation which was passed yesterday to provide for the civil penalties.

But if we are talking about probation and we are talking about having a user who is not put in jail and talking then about cutting off Federal benefits, then it seems to me that is unrealistic in terms of what we may be seeking here to have that person come back to society and rehabilitate themself and make a go of it as a self-supporting citizen. These unearned Federal benefits are not granted lightly. They are granted in cases of real need.

Mr. President, when we are structuring a new law, and there are provisions of this statute which call for studies to make the determination as to what penalties are effective and what is going to happen as a result of the civil penalties imposed, it seems to me that we ought to be very concerned about what the impact is going to be on the Federal courts.

Yesterday's amendment authorizing civil penalties was very carefully structured so that it would not take up the time of the Federal courts, unless there was an appeal from the civil penalty. The courts today need to spend their time on the prosecution of organized crime when they are drug sellers. They need to spend their time on the handling of cases where jail sentences ought to be imposed. That is why we should be very careful about adding cases, adding prosecutions, adding circumstances to bring cases into Federal court where the courts are already burdened and are handling more important matters.

Mr. President, when you talk about drug offenders and you talk about suspending their unearned Federal benefits for a period of substantial time, I believe—well, it is the drug sellers who can have the suspension permanently or up to 10 years—that we ought to be very careful as to how this impacts on what is going to happen to these people when they return to society.

This Senator has been very concerned about multiple offenders. In 1984, I introduced the career criminal bill which is Federal law which provides a mandatory sentence of 15 years to life for career criminals found with a firearm. There you are talking about dangerous criminals.

If you are talking about drug traffickers, I agree with the Senator from Texas that we ought to be very tough. If you talk about a penalty for a drug trafficker who involves a schoolchild in the sale of drugs, I agree with the Senator from Texas, 10 years as a mandatory sentence is not too long. But if it is a second offense, mandatory sentence of life imprisonment is not too long. We have to bear in mind even there a life sentence means 15 years. We know all too well those sentenced to long terms ultimately are released, and we have to be concerned about what happens on that release.

We are far from having any structured system which provides realistically for reintegration of somebody released from jail back into society. I am very much concerned about the kind of measure which is suggested here, although I believe it is well-intentioned. We ought to come down hard on drug users, and I think we already have—and I will have another comment or two when my other research assistant finishes the job—however we ought to be concerned that we do not come down with a proposal which is going to make it harder to reintegrate people back into society after their release from jail because notwithstanding what term is provided that is a fact of life.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I would like to make a couple of comments, some in response to others and some in addition to what I have already said. First of all, Mr. President, it is true that we have, especially at the State level, a lot of penalties for drug use. The problem is those penalties are traditional-type penalties that put people in jail, and those penalties are not imposed for a couple of reasons.

First, until recently, many people in our society have viewed the use of drugs to be a bad thing but something about which we sort of look the other way. We are never going to do that again.

Second, because the prisons are so full of people profiteering off of the health, happiness, and lives of our children, simply having penalties that put people in jail is ineffective. Even though those penalties are there and can be implemented, in reality they are not and drug law violators are not being put in jail.

What Senator DOMENICI and I have tried to do in these two amendments is to come up with alternative penalties that deter people from using drugs, penalties that say to people, "Look, it is not worth it to violate the law."

I heard my colleague talk about this amendment having overtones of a punitive nature. They are not overtones. This is punitive. Our objective is to say to somebody using drugs or selling drugs,

We are not going to put up with it. You are not going to be treated like a respected member of our society if you are out here selling people dope. We are not going to provide food stamps and Federal housing and guaranteed student loans to people who are profiteering off the health and happiness of our children.

For those who claim we must take pity on these poor criminals who are illiterate and unskilled, I flatly reject that logic. There are a lot of people in this country who are illiterate and unskilled who are not criminals. To be unskilled and to be illiterate is not a license to prey on the law-abiding citizens of this society.

I grew up in a family where we had relatives who were illiterate and who were unskilled, but they were not criminals. And being unskilled or illiterate is not a license to be a criminal.

Finally, I want to remind my colleagues that this amendment provides flexibility in sentencing up to 5 years on the first pusher offense, up to 10 years on the second. But on the third offense for selling drugs, I am ready to shut the door. I want to make it clear: I do not want a third offender drug pusher being fed by a factory worker making $18,000 a year, someone whose money we are taking to provide food for a thug who is selling drugs to his child. Enough is enough, and that is what this amendment is about.

But this is not a meat cleaver type amendment. This amendment is well structured, it has lots of protections, and it is a serious amendment.

The point of the amendment is this: It is a serious offense to sell drugs to somebody. It is a serious offense to buy drugs and create profits that finance organized crime. If you are going to do those things, you are going to be subject to stiff fines, and you are going to be subject to being asked to get out of the wagon that 110 million Americans are straining and grunting to pull. If you are going to use drugs, you do not deserve to be riding in that wagon, and certainly if you are selling drugs to the very children of the people who are paying your benefits, you are not deserving. That is what this amendment is about.

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, I rise in support of the amendment of the Senator from Texas. I believe it is a good amendment. There may still be a few hitches in it. It may not be perfect, but I am working on a few questions for the Senator that I hope will clarify a couple of provisions about innocent third parties who may be involved in a grant program. We want to make sure as to how that affects innocent third parties.

Let me just say this amendment is considerably different than it was when we first saw it. The Senator from Texas has been willing to work on it and has been willing to modify it. I made several constructive suggestions. I think he summarized it pretty well.

The judge has discretion to begin cutting off benefits when someone uses drugs, but that is a discretionary matter. It is an additional tool for the court. It is not mandatory on first use. The same thing on second and subsequent use.

So as far as users are concerned, this basically gives the Federal judiciary an opportunity to use that discretion and to have more options; instead of putting someone in jail necessarily, to have more options for sanctions or punishment.

So I think it is an amendment that heads in the right direction. I think it gives more flexibility for our judiciary. I think it makes it clear that not only are we after the dealers and the pushers, but we also want the people who are putting money in their pockets who may not be addicts but who are nevertheless feeding the crime machine, feeding the international drug cartel, providing money that eventually comes in and creates addicts, even if the people buying drugs in this case are not addicts.

So I think we have to have some punishment for users. We have to put a stamp of disapproval on this kind of behavior as a society. We have to do something to try to cut off the flow of American dollars which are basically supporting the drug trafficking in this country and in many parts of the world. It is not some Soviet rubles or Chinese money or Japanese money that is primarily supporting the cartel. It is American dollars. We have to do something about it. When a young professional person, even if they can handle cocaine, even if it never bothers them, even if they never go to the hospital, when they keep buying it, paying for it, they are contributing to this drug problem that is afflicting our Nation. We have to do something about it.

What have we done in this amendment? The Senator from Texas has been willing to modify it so the judge has discretion in all cases. He has been willing to modify it so veterans' benefits and other earned benefits are not covered. He has been willing to modify it so people who have means test—welfare benefits, for instance, housing or something of that nature that is based on means test—if they are convicted of use, they are not affected.

The mandatory provision comes in on the third conviction, as I understand it, on people who are convicted of selling; third conviction on people who are selling, then you do have mandatory cutoffs.

Again, I think the Senator from Texas is correct, even the mandatory cutoff for pushers would not include veterans' benefits.

I think it is a good proposal. In just a moment I will yield the floor and listen, of course, to other Senators as they present their views on this amendment. I would like to start the Senator from Texas thinking a little about some questions I will ask him. I talked to the Senator from Florida, who is concerned about this innocent third party.

Let me ask the questions in just a few minutes because I want to consult with the Senator from Florida. I want to make sure we establish what will happen, for instance, on a small business loan, if an individual is convicted and has two partners, what happens to the other partners? Are they, too, ineligible, or do they continue to be eligible even though the judge punishes the convicted user? Those are the kind of questions I will ask.

In general, I support this amendment, and I think it is moving in the right direction to give more flexibility and to make sure our courts have a full realm of tools we can make available to not only go after pushers, which is all important, but also to try to help stem the flow of American dollars by having some punishment for people who are using and feeding the dollars they earn into the drug machine.

Mr. President, I yield the floor.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I want to commend our colleague from Texas as well, but I also must agree that our colleague from Pennsylvania has raised some very important questions about the application of this amendment.

Mr. President, in a moment I am going to ask our colleague from Texas a couple questions about this.

I had intended earlier, Mr. President, to propose a second-degree amendment to this amendment. Senator MCCAIN of Arizona and I were going to offer an amendment dealing with Federal benefits to States wherein you had a significant degree of official corruption related to drug abuse or significant production of drugs in those States and little effort to curtail that production. But frankly it is a little complicated and while it may not be a bad idea, I think it needs a little more thought and work and rather than try to propose it at this particular time, we will wait for another day.

It relates to the motion we cut off aid and potential trade to nations where we find official corruption and a failure to deal effectively with the production of banned substances. The fact is in this country the single largest cash crop in the State of California is not soybeans. It is marijuana. You can look from one State to the next, in cities, and we find official corruption of one kind or another. It seems to me if we are going to cut off aid to foreign nations, we may do well to consider doing it at home as well. I think it is a little awkward to try to deal with it at this time. So I am not going to offer that amendment, Mr. President, or anything like it. Senator McCain and I have addressed this issue in earlier debates this year but feel at this particular point it probably would only add confusion to this particular case.

But if I can, let me raise a couple of questions about this amendment because while I think the direction of the amendment is clearly on the right track, and I do express my gratitude to the Senator from Texas for including language involving issues such as drug treatment and the like, as a practical matter—and I do not know if my colleague from Texas has had a similar experience but I suppose like all of us over the last year or so he has. I went out and spent an evening with my police officers in Connecticut on drug efforts. It was intriguing to me; Their information was when you go out to make a buy outside of a store or some other place other than just on the street corner, you never see the middle level management or the kingpins. The trafficker, who is usually the one that local police apprehend, is usually a juvenile or some addict who is given supplies in order to expose themselves to arrest so that the traffickers do not place themselves in the position of actually making the sale or trafficking. And since resources are so limited at the State level, usually State officials only have $50 or $100 per buy. They do not get allocated to them the sums that Federal officials do in terms of invading the cartels and the larger drug trafficking circles.

So what you have as a practical matter in many instances is the trafficker is a juvenile or the trafficker is also an addict. What I am curious about in the first instance is whether or not our colleague's amendment takes into consideration the juvenile. I do not mean the juvenile of 17. In many cases the juvenile, who is of a minor age, preteenager, is actually doing the running. I wonder if my colleague from Texas might comment on whether or not we take into consideration in this amendment the juvenile who is being used by the cartel as the trafficker, the juvenile who has become an addict in some cases, and whether or not in that situation those juveniles would be placed under the same situation, or placed under the same circumstances under which we are trying to get at the adult trafficker who is moving the product. Do we treat them the same under the amendment of the Senator from Texas?

Mr. GRAMM. First of all, one of the things we have done in another amendment that is already part of this bill is to provide a 20 year mandatory prison sentence for using a juvenile in drug trafficking and life imprisonment for a second offense. I think that addresses the Senator's concern.

Second, in terms of all of the penalties that are imposed up until a third offense, the amendment provides for discretion by the court, and the court can obviously take into account such things as whether the defendant is a juvenile.

Finally, in both the user and pusher section, there is the provision whereby an adult or juvenile can say, "I'm addicted to drugs and I need help." If there is evidence that can be provided or gleaned to substantiate that claim and if the defendant is willing to commit to a treatment program to be rehabilitated, then he or she can be exempt from these penalties.

I therefore feel that, to the extent possible, the amendment provides the flexibility and the alternatives available to deal with a number of concerns.

Mr. DODD. Let me take the question to my colleague from Texas a bit further. Again, as I mentioned a moment ago, I appreciate the inclusion of language on the declaration of a person and substantial evidence that that person is an addict. Then the penalties under this provision could be waived.

On the list of banned substances—and I do not know what 99 percent of these are, as they list their formal names here but, for instance, marijuana, it is conceivable a person could be addicted psychologically—I suppose, some evidence would indicate it—but the likelihood that a person is addicted to marijuana in the same sense that a person would be addicted to heroin is not likely and yet a person obviously, as marijuana is listed under banned substances, could be arrested for the use of marijuana but in order to have the provisions waived, the person would have to declare that they were an addict. It is not likely he is going to be able to prove he is a marijuana addict and so the ability to have the provisions waived would in a sense necessitate that individual lying or creating false evidence to substantiate addiction in order to waive these provisions. It is conceivable, in the case of cocaine, I presume, that a person could use cocaine, have been caught using it, without becoming an addict. Is there any other way that a person might be able to prove this without actually having to declare addiction and submit themselves to long-term drug treatment programs which in a sense creates an illusion of addiction when in fact that is not the case?

Mr. GRAMM. If the distinguished Senator will yield, I do not know enough about the chemical properties of cocaine or marijuana to know what could become addictive and what could not. The burden of proof would be on the person who claimed to be addicted. But clearly the intent of the user accountability effort is to say that if you are riding around in your Volvo smoking marijuana and you are arrested, you are subject to a $10,000 civil fine through the amendment we had yesterday and you are subject to losing unearned. nonmeans-tested Federal benefits through the amendment today. So if you have a license to operate a radio station and you are smoking marijuana, you are subject to losing that license. Clearly, our intent yesterday and today is to say that we are not going to tolerate the use of drugs and that there will be very tough penalties involved if you do use them.

Mr. DODD. I understand that. Here is the situation——

Mr. GRAMM. The issue must ultimately be left up to experts and to the courts. But if the supposition is right that you do not become addicted to cocaine or marijuana then a person would have a hard time making that argument. My guess is that the guy who owns a radio station and smokes marijuana would be arguing a long time trying to convince the courts to put him in a rehabilitation program and to not take his radio station.

Mr. DODD. The Senator has made my point in a sense. What you have is this potential fact situation. Two college students attend a university here in town. One gets caught with a marijuana cigarette in the car and faces the penalty as the user. The second person is a cocaine addict or a heroin addict caught in the same evening, been involved in it much longer, maybe involved in a lot more criminal conduct than the person who gets caught with some marijuana or, say, hashish, which is—again, I do not know that it is listed, but let us say something that is not considered as—and I understand experts may contradict me—not addictive in the sense we consider these other banned substances addictive. My point is the person who is caught the same night as the heroin addict can make their case as an addict and have all these penalties waived. The person caught with a marijuana cigarette is not going to be in the same position legally to make the case of addiction in order to get the waiver. So the penalty on the person caught with one marijuana cigarette is going to be a lot more substantial in a sense than the person who is argued to be a heroin addict and been involved in a lot more criminal activity.

Mr. GRAMM. Will the distinguished Senator yield?

Mr. DODD. Yes.

Mr. GRAMM. I am not saying we have a perfect solution. You always have the problem of finding the best way of getting at the people you want and not getting at the people you do not want. But let me make several points that I think are relevant to the point the Senator is raising. First of all, the amendment preserves the flexibility of the judge to look at individual circumstances before setting penalties. That is the case even with the repeat offender, where there is still flexibility on the penalty. For example, if a college student were arrested, the judge could require that he or she go through a drug rehabilitation program rather than lose educational benefits.

Second, in terms of the addiction plea, the amendment is written with the clear objective of not making it easy for defendants to claim they are addicts. To claim you are an addict, you have to have a reasonable body of evidence, you have to declare yourself to be an addict and you have to submit yourself to a long-term treatment program for addiction.

Mr. DODD. Let me make a suggestion.

Mr. GRAMM. So my guess is that the burden of showing addiction is going to be more substantial for the casual user. And, finally, the person would potentially have to go through drug tests during this period to be declared rehabilitated. There is no such thing as a perfect provision, but I think we have provisions that have a good chance of working.

Mr. DODD. Let me suggest to my colleague one possible modification of his amendment which may alleviate the fact situation I have described. On page 4 of the amendment, line 13 reads: "declares himself to be an addict," and line 14, "and submits himself to a long-term drug treatment program." Would my colleague consider saying "declares himself to be an addict 'or' submits himself to a drug treatment program"? That way you have the possibility of one or the other. But I think my colleague recognizes the potential difficulty of having someone stand up and declare themselves an addict.

Mr. GRAMM. I am sorry, I do not see that. If the Senator will yield, what I am saying is that, first of all, there has to be a reasonable body of evidence to substantiate the claim.

Mr. DODD. Right.

Mr. GRAMM. Second, the defendant has to declare himself to be an addict and has to submit himself to a long-term treatment program. So you do not just say, "I'm an addict," and forget it. You say, "I am an addict," you provide evidence of your addiction and carry the burden of proof, and you have to submit yourself to a long-term treatment program or you have to enter into some program whereby, pursuant to guidelines from the Secretary of Health and Human Services, you can be deemed to be rehabilitated.

Mr. DODD. I say to my colleague—and I am not saying this to be a nitpicker—I see a quagmire developing. The Senator is right; you have discretion of the courts, but unequal application of this law could create some serious hardships. The person caught with one marijuana cigarette in the discretion of the court could receive a significant penalty, whereas the person who is an addict actually has the ability to have these provisions waived, and that is an unequal application of justice in this case which I think is dangerous.

Mr. GRAMM. If the distinguished Senator will yield, what I am trying to do is recognize the cold reality in our society: that we have people who are addicted to hard drugs. They are sick. If a guy is addicted to some drug, these provisions are not going to deter him. So what I am trying to do here is to say that if that person is arrested and comes in and says, "Look, I need help; I'm addicted to this drug, and here's my proof that I am addicted, and I am willing to go into this long-term rehabilitation," that person is treated as being sick, but in a way that requires that they try to help heal themselves.

If someone is using marijuana, they are violating the law, and they would be subject to, at the court's discretion, the loss of unearned and nonmeans-tested benefits for up to a year. In addition to or in place of that requirement, they go through a rehabilitation or education program or through some period of community service in lieu of a penalty.

I say to the Senator, then, that if you look at a person using cocaine versus one using marijuana, the guy using cocaine, if he is addicted, will be put into a long-term rehabilitation program. If he is not addicted, he is probably going to have a far more severe sentence than the person that has been using marijuana.

Also, I am willing to recognize that if a guy is truly addicted, just by the reality of the situation, his predicament is different from that of the casual user of marijuana who, by a choice over which he has control, is creating profits for the industry.

I think there is enough flexibility here. Any tightening, making it harder for someone to say they are an addict, is something I am willing to do. I am not willing to lighten the penalty for casual drug users such as those using marijuana.

Mr. DODD. I thank the Senator for his response.

Let me ask one additional question. Under Federal benefits, the Senator has the issuance of guaranteed student loans, Pell grants, the issuance of Federal mortgage guarantees, Government loans, grants, benefits, contracts, and licenses or permits issued by the Government.

Does that include, for example, the son of a farmer who is receiving subsidies?

Mr. GRAMM. It would not include the son, but it would include the farmer.

On a contract with the Soil Conservation Service, that farmer would be subject, if convicted and if the sentence were imposed, to losing the ability to participate in that program.

Mr. DODD. But the son who works on the farm and who benefits from that family farm—

Mr. GRAMM. That is like saying we cannot or should not impose the penalty on a person for the actions of their child. If they do not have the contract with the Government, then they would not be affected. You could argue that punishing the parent would have some deterrence, but I would be afraid to get into that.

Mr. DODD. I think the Senator is on the right track. My concern is that it may create more problems than we are trying to solve. He is on the right track in trying to solve the problem.

As I expressed in my questions, I am concerned that in doing this, to arrive at this result, we may be raising more problems than not.

I thank the Senator for taking the suggestions I made regarding drug treatment as part of the amendment.

Mr. EVANS. Mr. President, let me speak briefly on the amendment before us.

I revert to what we did last night. Very frankly, this Senator had some real qualms about the concept of administrative penalties, as opposed to our normal way of doing things in our court system. I think the proposal was improved considerably over this original concept and now allows the kind of alternative, in a civil sense, for trial by jury, if a person so chooses.

Mr. President, I think that in this amendment we have gone too far. I understand what we are trying to do in this election year, and that is to prove that we are tougher than we have ever been on drugs, and we ought to be. But we ought to be putting it in context with our whole criminal justice system. Let us think a little about what we are doing.

With this amendment, we are saying for drug use—at least one half of it—no matter how small, certainly it is illegal. Under our regular court system, it would require conviction, because that is the way this proposal starts. But then, in an unrelated way, we are saying that you may be denied Federal benefits for drug use.

If this is a good idea, then it ought to be applicable in a much broader sense. We ought not be putting in a whole array of new criminal penalties aimed at just one element of our society. All we will end up with, if we adopt this amendment, is simply a situation where possession, even of a small amount, which might lead to conviction—and we have 50 different States. I am not sure whether the Senator from Texas has examined each one carefully to understand their array and their differences in the potential for conviction. But, Mr. President, there are State laws and State crimes and set convictions for a lot of other things. If it is good for drug use, why not apply it to rape, why not apply it to murder, why not apply it to arson, and all the other State offenses that are possible?

The Senator from Texas suggests that this is for deterrence. Of course, all penalties for all crimes, at least partially, are utilized for deterrence, although, at least in a technical sense, penalties are to relate to the crime committed, and they are penalties set up for a particular crime.

If we want to talk about a penalty that really creates deterrence, and if the Senator from Texas has no qualms about it and really wants to stop drug use, and especially drug pushing, why not adopt the Moslem way of doing things—cut off a hand for a first conviction, cut off the other one for a second conviction? That would be a deterrent. But he would not seriously consider that, and neither would this Senator.

No, I think we are to have punishments which do fit the crime, which are directly related, which are aimed precisely, and which are based on the whole framework of our criminal justice system.

If this is such a great idea, this broad loss of Federal benefits, and if it is a tool, especially a tool for deterrence, as the Senator suggests it is, then there are a lot of other things that need to be deterred as well. I suggest that some of those crimes are even more difficult, even more costly to society than the common use of illegal drugs.

So I am really surprised that this is so narrow in its scope and coverage. It would be much broader and much more consistent on page 3 in dealing with the use instead of saying "any individual who is convicted of any Federal or State offense involving the use of a controlled substance—as such term is defined for purposes of the controlled substances," just simply cross out most of that sentence and say instead "any individual who is convicted of any Federal or State offense shall upon the first conviction for such an offense and at the discretion of the courts be ineligible for any Federal benefit."

Then you would really get at deterrence. At least you would be consistent and at least it would bear some relationship to other crimes, many of which are at least as difficult in this Senator's mind as the use of illegal drugs or the smoking of one marijuana cigarette.

Mr. President, I hope that in our rush to a drug bill, we do not end up going so far overboard that we will look back 1 year, 2, or 5 years from now and instead of being proud of what we have done be ashamed of what we have done.

The PRESIDING OFFICER (Mr. ADAMS). The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I am really troubled by this amendment, as are the Senator from Washington, the Senator from Pennsylvania, and the Senator from Connecticut.

No Senator wants a 30-second spot run against him the next time he runs for reelection if that spot charges he is soft on drugs or that he believes drug users ought to be eligible for student loans, or public housing, or other Federal benefits. These are charges that a sophisticated media consultant to a challenger could base on this amendment.

Unhappily, that is the way we legislate around here sometimes. Everybody envisions the television spot that a vote could provoke.

I recognize that a vote against this amendment could be easily misunderstood, but I must express my grave reservations about the amendment.

We have a strong drug bill that says to users "we will not tolerate your drug use" and that says to traffickers "we will treat your crimes seriously." I was on the advisory committee on the Democratic side that drafted the bill. And it is a tough bill. The penalties are tough for users; the penalties are tough for traffickers.

The proponents of this amendment claim they are establishing a strong deterrent to drug abuse by allowing the courts to declare a drug user ineligible for many Federal benefits if he is convicted of a drug offense. I cannot imagine an addict who had been convicted of a second offense giving up cocaine, for example, because he is going to lose Federal benefits. If strong criminal penalties do not provide a deterrent, I am not convinced the loss of Federal benefits will.

Talk to the people who deal with the addicts and ask them if they think somebody who is hooked on cocaine will think about Federal benefits. Tell an addict he is not going to get job training, or a Pell grant to go to a trade school, or any other Federal programs that would otherwise be available to him. When you say "You've got to give up cocaine because if you don't, we are not going to give you a Pell grant," not many drug abusers are going to be influenced by this so-called stick.

With the utmost respect for the author of this amendment, I also consider it to be sloppily crafted. It has provisions in it that really trouble me.

For example, in the case of drug traffickers, the court, under paragraphs (A) and (B), may use its discretion regarding eligiblity for Federal benefits. It says, first, at the discretion of the court, the court can find, upon the first conviction, that the defendant will be ineligible for any or all unearned Federal benefits for up to 5 years; second, at the discretion of the court, upon a second conviction for such an offense then the defendant will be ineligible for any or all unearned Federal benefits for up to 10 years; third, no discretion on the court. It just says that upon a third or subsequent conviction for such a offense that the defendant is permanently ineligible for Federal benefits.

We have all read the stories about how the drug traffickers take teenagers, as they did in my State, young children living in poverty in Arkansas, and take them to Detroit and make drug traffickers out of them.

It is hard for a mother and her children to say no when a woman is living on $360 a month SSI and all of a sudden her 18-year-old son starts bringing in $15,000 a week. It is hard to say no.

So the question here is why not give the court discretion.

Why not leave the right to revoke eligibility for Federal benefits to the discretion of the court for those unusual cases where a 15- or 16-year-old child may have been convicted for a third time?

Nobody wants to be mean spirited. We want to be tough and we want to be dramatic and, God knows, every Member of this body wants to do something about drugs. We all agree that drugs are eroding the moral fabric of the Nation.

But just to grow hair on your chest here on the Senate floor so you can send out press releases back home and tell everybody how tough you are on drugs is no solution. It is a multifaceted problem and the solutions are multifaceted.

I fought like a saber-toothed tiger to keep the spending priorities straight in this bill. I am very pleased that 60 percent of the funds authorized in the bill will support education, prevention, and treatment programs. It is time we put the majority of our money and effort in reducing the demand for drugs.

There is some langauge in this amendment that says if a person says "I am an addict and I need help right now," he won't lose eligibility for Federal benefits. I can tell you if a person says "I am an addict and I need help" and that person lives in New York, he just might have a 2½-year wait.

These things are not easy.

The majority leader put me on the Drug Abuse Advisory Committee. I had never been involved in this issue very much. I knew it was a problem and I worried about it when my children were very young. As soon as the majority leader appointed me, the only thing I could think of to do was to call into my office everybody that I thought had any judgment and sense about this drug problem. I brought them in and I talked to them hour on end—I talked to those who were charged with interdiction, those who were charged with treatment, those who were charged with education. And I listened to them and listened to them carefully.

You know what the enforcement people told me? They said:

> Senator, every year we will hold a press conference talking about how much more cocaine we interdicted this year as compared to last year. What we will not tell you in that press conference is that the supplies doubled or quadrupled last year.

The price of cocaine has gone from about $66,000 a kilo in the last 8 years to $12,000 a kilo. What does that mean? That means it is available in great quantities.

One of the enforcement officers told me about how they had just uncovered cocaine built into the hollowed tops of desks coming into our country from a South American country. Who would think about talking this Senate desk and hollowing out the top of it and then filling it up with cocaine and covering it over. Even the dogs could not sniff it.

But my main point is this: I was fighting for education, treatment, rehabilitation because I gleaned from all the people that I respect on this issue and who deal with the problem on a daily basis that education and treatment are the only ways to solve the drug problem. When all the experts said, "Senator, you will never interdict all the cocaine coming into this country," I decided the lion's share of money had to be used to reduce the demand for cocaine, heroin, and after drugs.

That does not mean we should not try. It does not mean we ought not to let people know that the penalties for drug use and trafficking are going to be severe if we catch them.

But the truth of the matter is ultimately the solution to the drug proble is going to be in taking children when they are very young and teaching them in a very meaning way that they must not use drugs. It is a long-term problem. There is no instant solution.

One of the things that troubles me about this amendment is the point the Senator from Connecticut brought up about juveniles. This amendment makes no distinction between a 14-year-old user or a 14-year-old trafficker and a 40-year-old user or a 40-year-old trafficker.

I used to practice law. I was a trial lawyer before I found out that this indoor work with no heavy lifting was a better job. My experiences as a trial lawyer were wonderful. I would not have been worth very much as Governor or a Senator, if I had not been in business and practiced law for 15 or 20 years before I came here.

Some of the people in my hometown wanted everybody else's kids sent to jail if they used drugs, but when their children got in trouble—you know the rest of that story. Boy, it was a different ballgame.

When I was Governor, people who had been my friends before I became Governor, wrote me heartrending letters:

> Governor, my son is in big trouble. He is a good boy. He got mixed up with the wrong folks. Unless you intervene and help me, he is going to prison, and you know how terrible those prisons are down there.

Sometimes those letters came from people who considered themselves very tough on crime. I am tough on crime, too.

If I had been Michael Dukakis last night, I would have answered the first question of the debate, "I love my wife so much you have given me an unspeakable, unthinkable situation."

I am not criticizing his answer, I am simply saying the hypothetical situation described in the question was unspeakable. I have always had trouble with the death penalty. I have voted for it, and I signed the death penalty bill when I was Governor. But I want you to know that I did not do those things without losing a lot of sleep.

My mother and father were killed by a drunk driver. And if I could have gotten in that guy's hospital room, I would not have had any problem throttling him. He destroyed one of the great families of this country. I suppose if he had been on drugs instead of whiskey, maybe I would feel more kindly disposed towards this amendment. Who knows? We are all products of our own experiences, are we not?

But, on the other hand, as a father of three children, who watched them grow up and said a little prayer every night, "God, please don't let my children get involved with drugs," I am very disturbed by this amendment. Even as I prayed they'd not use drugs, I knew that if they did, I would use everything in my power, to keep them from going to prison and to get them all the help I could.

So I am troubled that there is no age limit in this amendment. Twelve-year-olds will be treated precisely the same way that 40-year-olds will be. I doubt there is a person in this body who believes—I do not know how they will vote—that ought to be the law.

Another provision that bothers me is the provision that says they must have long-term care. Now, maybe that is something I did not learn in visiting with all these drug experts. I have been told that if you are an addict—and the Senator has that word in here two or three times—if you are an addict, long-term care is the only solution. Maybe that is what the Senator intended, but at least "long-term" ought to be defined. Is that 6 months? Is that 2 months? Is that 2 weeks? What is long-term treatment?

Another provision requires successful completion of an approved drug treatment program. What is successful completion?

As I say, you know, with lawyers, every word means something. "Long-term" has to have some meaning. What is the meaning? "Successful completed" has to have a meaning. What is the meaning? You will not find it in this amendment.

So, unless the Senator is willing to correct or amend in a way that will deal with the concerns that some of us have, I am going to be very hard pressed to vote for the amendment.

What happens when somebody who has been in prison 5 years for a second cocaine-trafficking offense is released from prison but is ineligible for unearned Federal benefits for another 5 years. He cannot get job training. He cannot qualify for public housing. He cannot qualify for a Pell grant to go to a trade school.

Now, you can take the position, "Well, he brought it on himself," and that is all well and good. But I can tell you one other thing. If we insist on that position, it is not he who will suffer, it is we who will suffer. Because he has no choice but to go back doing the only thing he knows how to do, and that is to traffic in drugs. Who then will think the amount of money we have spent to keep him incarcerated for 5 years was money well spent? Who then will think that an amendment that denies him any opportunity to better himself and to develop skills other than the skills of crime.

Now, I say to the Senator from Texas that I am finished with my preaching and I would like to engage him in a couple of questions.

Would the Senator consider, for example, cutting his amendment to apply to youngsters 17 years of age and older?

Mr. GRAMM. Will the Senator yield?

Mr. BUMPERS. I yield for that purpose.

Mr. GRAMM. I would like at some point to get my own time to respond.

But, as I understand it—and, of course, the Senator is a great lawyer and not me—but, as I understand it, there is no body of Federal law that pertains directly to minors; that to be prosecuted in the Federal system as a minor there has to be a finding that the minor should be treated as an adult in some crimes, such as a violent crime or smuggling drugs into the country.

Second, there is no mandatory provision here until the third offense. The judge is not required, not required, to take action up until the third offense. So I think those two factors completely eliminate the concern that the Senator is talking about.

Mr. BUMPERS. Mr. President, let me just pursue that for a moment. You take discretion away from the court on a third conviction. My point is, you will find probably some cases where juveniles have been convicted for a third time. If we are really for families, if we are really for children, if we are really for rehabilitating people, why would you not give the court discretion in that case, just in those few cases where discretion would be warranted. If the judge looks at a youngster's home life and he looks at his lack of education and he looks at the neighborhood he lives in and all of those things and thinks that there is some hope for the child, why would you not want to give the court discretion in the case of a 15-year-old child? Would you be willing to do that?

Mr. GRAMM. Mr. President, I am too wise, I think, from having watched our great debater here, to debate the amendment on his time, where he controls the time. I will be glad to respond to that and other points that he raised when I might be recognized on my own time.

Mr. BUMPERS. Would the Senator not have any feelings about that, one way or another? That is a simple question.

Mr. GRAMM. As I said, I would be happy to respond on my own time.

Mr. BUMPERS. What is wrong with responding to it now? We all would like to know the answer. I may not be here when the Senator gets the floor.

Mr. GRAMM. If you would yield the floor, I would be happy to respond on my own time.

Mr. BUMPERS. That makes me even more suspicious about this amendment.

Are we under controlled time, Mr. President?

The PRESIDING OFFICER. No, there is no control on time, the Chair will state to the Senator from Arkansas.

Mr. BUMPERS. Mr. President, I yield the floor, then, and I will wait for the Senator's answer.

Mr. GRAMM. Mr. President, I will try to be brief. I think most Members of the body have looked at the amendment and made up their minds.

Let me first say, without any intent of being confrontational or unkind, that I was on the working group. I am not sure I understood the Senator correctly in terms of his involvement, but we met over a 4-month period in talking about this and I have never seen the Senator at one of those meetings, nor have I heard these concerns raised.

Now, Mr. President, let me address some of the points made earlier.

First, we are not trying to prove we have hair on our chests. I have hair on my chest. I do not want any more hair on my chest.

Second, I do not need a press release. The press release I want to see put out is a press release by the Surgeon General showing that we have done something about this problem.

Third, the Senator talks about drug users losing food stamps. If the Senator would read the amendment, he would see that, in the case of users, means-tested programs are exempt. Users will not lose food stamps. Though there are many in this country who would like to see that done, this amendment does not do it.

This amendment is not aimed at the addict. We are not trying to deter the addict by taking unearned Government benefits away from them. We are trying to deter people who are using cocaine and who have a license to operate a radio station; people who are using marijuana who have a license to fly an airplane. That is who we are trying to deter.

Mr. BUMPERS. Will the Senator yield?

Mr. GRAMM. I do not yield. I will be glad for the Senator to get the floor again.

But in two different places in the bill we have two different provisions relating to the addict. Their basic objective is to recognize the precise point the Senator made: That there are people who are addicted. But it is not true to say that the bulk of the demand for drugs in America comes from addicts. It comes from casual users who make a free-will decision. And those are the people that I am trying to reach.

As for a three-time loser who has been through the court system and convicted a third time for selling drugs, which means he was profiteering off the health and happiness and sometimes the lives of our people, denying that person unearned Government benefits is not cruel and inhumane punishment. Nor do I believe the Supreme Court will find it to be so.

In terms of drug pushers, I wrote the amendment in this bill that requires 10 years in prison for selling drugs to a minor, 20 years in prison without parole for using a minor in a drug offense, and a life sentence for a second offense. So I am concerned about children.

In terms of children in this bill, I remind my colleagues that the court has complete discretion in setting punishment on the first two offenses for selling drugs—not for using drugs, but for selling drugs. Only on the third offense, when a person has been through the system three times and convicted, is the suspension of benefits mandatory. One would have to almost start from his mother's womb to be convicted three times as a juvenile on drug-pushing charges, given the time it takes to go through the whole court system.

Finally, and I am not going to get into a legal debate with one of our great legal scholars of the Senate whose courtroom abilities are well known—I might debate him about economics, but I am not going to debate him about law—but our technical staff makes it very clear that in order for a Federal court to prosecute a juvenile, the court has to make an affirmative finding that the juvenile must remain in the Federal system for prosecution. That would occur only when the court was dealing with a violent crime or a crime where the juvenile clearly had acted and deserved to be treated as an adult.

There are always concerns that can be raised. For instance, the Senator raises concerns about definitions. A dozen Senators have worked on the definitions in this amendment. I doubt if even 10 percent of the amendments we have debated this year have had anything like the attention this amendment has had in terms of trying to define exactly what it means.

I therefore think the point the Senator raises is not relevant to this particular amendment. If I thought otherwise, I would make a modification in the amendment. But, as I look at the procedure in current law to protect juveniles, requiring an affirmative finding to even try a juvenile under a Federal statute, and when since this amendment requires three convictions before a mandatory denial of benefits occurs, I think the Senator's concerns are addressed. It is not as if we are locking somebody away. We are just saying that if you have been selling drugs to the children of this country and you have been convicted three times, we are tired of you riding in the wagon and benefiting from the sweat and work of people that are out working in the mills and factories and restaurants of this country. It is time for you to get out of that wagon if you are going to sell drugs, and will not be allowed to sustain yourself at the expense of the people upon whose health and happiness you are profiteering. That is my only point. I yield.

Mr. NUNN. Would the Senator yield for a question? I pose this to all colleagues interested in this question. We have been debating it now for an hour and a half, hour and 15 or 20 minutes. We have a lot of other amendments to do. I would like very much to see if we can get a time agreement to vote on this amendment. I do not know whether there are going to be second-degree amendments to it.

Is there an objection to voting in 15 minutes on this amendment? I am not asking the unanimous consent. I am just trying to get a feel from my colleagues.

Mr. GRAMM. No objection.

Mr. SPECTER. In response, Senator, I would need about 5 more minutes.

Mr. HEFLIN. All I want to do is ask a question. It will not take me 30 seconds.

Mr. NUNN. The Senator from Arkansas? The Senator from Connecticut?

Mr. President, I ask unanimous consent that we vote on the Gramm amendment, either on the amendment or motion to table, depending on whether the motion to table is made at no later than quarter of 1.

The PRESIDING OFFICER. Is there objection? Hearing no objection, it is so ordered.

Mr. HEFLIN. Would the Senator yield for a question?

Mr. GRAMM. I will be happy to yield.

Mr. HEFLIN. I want to inquire of the Senator whether or not involved in these benefits that would be taken away under the provision of this amendment, would farm benefits that are given to a farmer on this be taken away?

Mr. GRAMM. If the farmer wants to enter into a contract with the Federal Government—for instance, through the Soil Conservation Service—and if that farmer is convicted of drug use, then the judge could deny him that benefit for up to a year, and/or require him to go through a rehabilitation program in order to not be denied the benefit and/or require him to provide public service in order to not be denied the benefit.

If the farmer were convicted of being a drug pusher, then on the first offense the judge could deny him the ability to enter into a contract with the Government for up to 5 years. The judge would have that discretion.

Mr. HEFLIN. As the Senator knows, a great number of farms in America are family farms. The title of it may be held by a certain, specific person. Would this mean any members of that family farm, other than the offender, would be deprived of the benefits that might come from soil conservation, Forest Incentive Program, even target prices, deficiency payments, other things that would in effect keep that family farm going? Would they be in jeopardy?

Mr. GRAMM. If I might say, the Senator from Georgia and I have discussed this. We entered into a colloquy. Let me relate it to the farm program and in general to contracting with the Federal Government.

If you had several people who were under contract with the Federal Government to do something, and one of them convicted of being a drug pusher and is thus denied the ability to enter into a contract with the Federal Government, it would require that that individual be excluded from the contract with the Federal Government. But it would not invalidate the ability of the other parties involved to be engaged in a contract with the Federal Government.

If a farmer wants a contract with the Soil Conservation Service, that farmer would be eligible to enter into that contract, if the judge so ruled, up until the third trafficking offense, in which case the judge has to deny all Federal benefits. If the judge deemed it appropriate to deny that farmer's participation in the SCS Program, that would not prevent any other eligible person in the family to apply for that program.

Mr. NUNN. Would the Senator further yield along that line, if the Senator from Alabama would permit me to pursue it? Because I think this is a very important point.

It is my understanding that the amendment provides the term "Federal benefits" and quoting from the amendment, page 4, "includes the issuance of Guaranteed Student Loans, Pell Grants, issuance of Federal mortgages, guarantees, all Government loans."

But the word "issuance" is used in here 2 or 3 times. I think that word was chosen with meaning and carefully, meaning that if there already is an outstanding grant or contract the judge is not going to come in and terminate it in midstream. It is the issuance of new money.

Mr. GRAMM. The point of using "issuance" is basically this: Let us say you have a Federal Government mortgage guarantee on your home.

To revoke that existing mortgage guarantee would put the burden on the bank, not on the person who is guilty of the drug offense. What the amendment does say, however, is that if you are a drug pusher and are denied access to these unearned benefits for up to 5 years, you could not go out and get another guaranteed loan. The amendment would not, however, invalidate the one that already exists.

Mr. NUNN. I thank the Senator. Will the Senator further yield? If there is a first offender or second offender under the use part where the discretion is there with the judge, would the Senator agree the Federal judge making the determination would have the discretion to take into account not only the circumstances of the individual being before the bar for a drug offense, but also the effect on other individuals, innocent parties, from any of the benefits he might cut off in his discretion?

Mr. GRAMM. He certainly would have that discretion. The discretion is intended to give him flexibility, to look at the overall picture.

Let me go back to the case of the farmer. Let us say a farmer operating under Government farm programs is convicted of cocaine use. The judge would look at the impact of denying him access to the farm program for 1 year and say, "Farmer Brown, I don't want you coming back in here using cocaine. You ought not to be doing it anyway. I am going to let you go through a drug rehabilitation program and I am not going to deny you this benefit. But let me tell you, if you come back in here again for using or possessing cocaine, I am likely to take you off the Government farm program."

Mr. NUNN. Will the Senator yield further? Let us take the case of the head of research and development who normally would apply for a grant with the Federal Government, there are a lot of people under that department and that particular individual gets sentenced under the user provisions of this to not be able to get a grant.

Would it be the Senator's view that would disqualify the whole department, or would it just disqualify that individual?

Mr. GRAMM. It would be my view that it would disqualify that individual. Let us say the Department of the Army had a contract where an individual was the principal investigator and where it was really that individual's expertise that the Army sought to obtain. If there was a clause in the contract that said the Army had a right to terminate it, it would not be my intent to take that flexibility away from the Department of the Army, but it would not be my intent either, or the intent of this amendment, to say that because one person is denied access to a contract that that denies everybody else.

Mr. NUNN. I thank the Senator.

Mr. HEFLIN. Will the Senator yield?

Mr. GRAMM. I will be happy to yield.

Mr. HEFLIN. I am still a little concerned about the family farm issue. Under the various agriculture bills, there are definitions of persons and there are limitations relative to it. There are a lot of regulations that come up pertaining to it. In many instances, it concerns title.

I just would hope that in conference that some form of language might be added which would clearly show that the family farm is not to be hurt on the mandatory aspects. I think the judge can take care of this under the discretionary aspects of it. I think I could buy report language coming back from conference that might well take care of and looked at this because I do not think we want to see a family farm taken out of production and destroyed where there are other members of the family who are engaged in it and are not guilty of any such activities. I want to make that suggestion.

Mr. GRAMM. If I might respond, let me make clear the extent to which I agree with the Senator and the extent to which I do not.

If a farmer is convicted a third time of drug trafficking, I do not want that farmer to have access to a farm program. To take the taxpayers' money and to subsidize that farmer's production when he have been convicted a third time on a felony for drug trafficking is fundamentally wrong.

I do not object to the guy saying, "I give or sell my farm to somebody else," but I am not willing to say that because somebody is a farmer and follows, like Thomas Jefferson, the ancient tradition of the plowsman I am going to treat him differently than everybody else. I am willing to protect the farm, but I am not willing to protect the individual. If somebody is running a radio station and that is the source of his family's income and he is convicted for a third time for felony drug use, I would not be swayed if the fellow showed up and said, "Well, now, look, my family depends on this radio station and you have given me this license; don't take it away." My response would be, "Well, you should have thought about that three convictions ago. You should have thought about that when you were selling drugs to people."

So I am willing, again, to work with the Senator in conference to try to protect the farm, but I am not willing to try to protect the individual farmer who is convicted for a third time of felony trafficking.

Mr. HEFLIN. I see we may have some differences on this because it may be a misunderstanding as to what "family farm" is. I do not disagree with you in regards to the individual who is convicted. In many instances, the family farm has several members who are innocent bystanders and should not be held responsible for the culpability of the titleholder to the farm. That is why the distinction comes in, the difference in regard to this. It may well be in the same instances that certain children might be involved in suffering on a nonfarm basis.

Mr. NUNN. Will the Senator yield for a brief question?

When we got the unanimous consent agreement, we were to vote at quarter till. The Senator from Pennsylvania wanted 5 minutes. We are not on controlled time. I cannot control it. The Senator from Arkansas wanted 3; the Senator from Connecticut wanted 2. That is a total of 10 minutes, and we have 6 minutes left. I thought the Senator from Alabama wanted 30 seconds.

Mr. HEFLIN. That was due to the answers of the questions. That was the first initial question.

Mr. NUNN. The Senator asks hard questions.

Mr. GRAMM. If the distinguished Senator will yield, I would like to have 2 minutes at the end.

Mr. NUNN. Mr. President, I ask unanimous consent that the vote occur on or about 10 minutes to 1?

The PRESIDING OFFICER. Is there objection?

Hearing no objection, it is so ordered.

The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I will be brief. I am not going to vote for this amendment. As I said awhile ago, there are a lot of ambiquities in it. For example, you say to a 16-year-old child who twice was caught with a marijuana joint in his possession, once when he was 14 and once when he was 16, that the court has the right to deny him all Federal benefits for as long as 5 years. That means a student loan or Pell grant that he might want desperately so he can get an education will be denied him. He goes in to apply and they say, "I'm sorry, the court has denied you this benefit," and right in behind him walks a paroled rapist or a paroled murdered who is eligible for all those benefits.

I use that as an egregious example of just how poorly crafted this amendment is. The genesis of it is not bad. Maybe the thrust of it is not bad. But there are just so many things in there like that. The Federal benefits are not well defined. Means testing is not well defined. So I am not going to vote for it but I hope it will be corrected in conference.

I yield the floor.

Mr. DODD. Mr. President, I again thank my colleague from Texas. He did listen at great length to my concerns about this amendment. But I, too, am still concerned. We are on the right track, but I suspect we are not hitting the target exactly. I thought about offering a second-degree amendment to this amendment involving drunk driving, quite honestly. Here we have some 50,000 lives that are lost a year, a substantial number of them as a result of drunk drivers. One could make a strong case there that while a person may not be an alcoholic, engaging in substance abuse not only endangers the life of the person who is taking the substance but also those innocent victims who are affected by the abuse of that substance. Obviously, the banned substances do not include alcohol, so we are not going to be able to amend legislation that would involve drunk driving.

But I think the point is that we are bringing up here a whole new approach to penalties. This bill is a tough bill. Senator NUNN, Senator RUDMAN, Senator MOYNIHAN, the majority leader, and others have worked over many months to craft a very tough piece of legislation. The amendment of Senator DOMENICI, which for the first time applies civil penalties, is an indication of just how tough this legislation is. What the Senator from Arkansas and the Senator from Washington have pointed out is that while we have created a tough bill, we do not want a bill that creates more problems than it attempts to solve.

I think there is concern among many of us that what we may have with this amendment, despite its intent, despite the motivations of its author, with whom I am in great sympathy and as I said earlier modified this amendment substantially to deal with drug treatment problems, is an unequal application of justice. The drunk driver, the person who is convicted of a far more serious crime, could still go to college, could still receive benefits, whereas the person again in the unequal application of justice—who is not even an addict but has been a casual user of a substance that is illegal, albeit, would be treated in a sense to a far more severe penalty in some cases given the fact that he could lose benefits that would affect long-term education or the well being of that individual.

So my hope would be that we might come back to this amendment, craft it a bit more tightly to maybe deal with some of the other substance-related areas that I have discussed briefly, Mr. President. That would be, in my view, a better way to approach this problem rather than leaving open the concerns and the doubts that many of us have that we may just be missing the target and affecting, as the Senator from Arkansas has pointed out, some of the individuals or constituencies that I think we want to educate, we want to inform, we want to let them know what the penalties will be. In fact, if you are a trafficker under this legislation, in the absence of this amendment, there are severe and significant penalties if you get caught trafficking, and I support that. If this amendment only affected the trafficker, I would support it. In getting into the user area, it seems to me we get into a whole different agenda that I am fearful will be more harmful than beneficial in the overall effort to deal with the plague of drugs in our society.

Mr. President, I yield the floor.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, when the comments have been made that this amendment has merit, I think that may well be true, but as more Senators have taken the floor to analyze this amendment we find more and more problems. Senator Evans, Senator Bumpers, Senator Dodd, and Senator Heflin analyzing various provisions see problem after problem.

One aspect which has not been commented upon is a surprise to this Senator. It is the provision as contained in the amendment, anyone convinced of any Federal or State offense consisting of the distribution of controlled substances shall have these penalties at the discretion of the court. I have never heard of a Federal act which authorizes a State court to impose sentence in a State court. That simply is not done. The Federal Government, simply stated, does not have the authority to pass a Federal law which will authorize the State court to impose a penalty in a given set of facts. If that were to be true, what happens to Federalism in this country? Every State has its own laws and every State passes its own laws, defines what is illegal and specifies what the penalty is. When Senator Bumpers has made a comment about its being poorly crafted, I think it is not customary for Senator Bumpers to make an understatement, but he may have on this particular occasion. When the Senator from Texas says that he is prepared to debate with Senator Bumpers economics but not law, I think we really may have an indication as to the fundamental flaws contained in this amendment.

Since I had earlier asked the Senator from Texas what the penalty was for possession of drugs, I have since received the Federal Code. Senator Evans raised the issue as to what were the laws of the 50 States. Well, they may not be so important as the law of the United States. But there are already, Mr. President, penalties for possession of drugs: on the first occasion, $5,000 fine, a year in jail; on subsequent conviction, $10,000 fine and 2 years in jail. And we already added, yesterday, a very important provision relating to a civil penalty.

When I made the comments, Mr. President, that the sounding is punitive, I was referring to the civil penalty, and I said it only sounded punitive because if there is legislative intent to make it punitive, then it is unconstitutional. You can only have a civil fine, Mr. President, if you have a regulatory measure and not a punishment measure. If it is designed as a matter of congressional intent to be a punishment, then it is unconstitutional to have a civil fine.

Yesterday, after Senator Domenici spoke, I commented to him off the floor that what we are really looking for in the civil fine is not prosecutorial discretion as he had commented but the exercise by the Attorney General of his authority as a civil lawyer. But when you take a look at this entire bill, it seems to me that it is defective in many ways. There is currently a provision in subtitle (f) at page 573 of this bill which really covers the issues which the Senator from Texas has raised, and that provision says that "the Director of National Drug Control Policy shall, in not later than 12 months, conduct a study to make a determination as to whether the withholding of Federal privileges, benefits, grants or loans will significantly deter the use of illegal drugs in the United States."

This bill already accommodates what the Senator from Texas really wants, and if there is a determination made after such a study that there would be a deterrent effect, then it is a matter which the Congress can take up.

Mr. President, I agree totally with the thrust of deterring possession and use of drugs. I think that is very important, but I think the Federal law already does that. If there is any expectation by the Senator from Texas as to impose this remedy in State courts, I think he is just totally wrong. It cannot be done under our system of Federalism and our system of laws. We already have adequate laws on the books, and if we seek to bring the 23 million, as the Senator from Texas points out, users into the Federal courts, it is entirely unworkable, which is why, yesterday, we had the administrative proceeding.

It is very difficult in the course of our debates, Mr. President, for all the Senators to understand what the issues are because we are all busy, going in many directions. There are a few on the Senate floor and there are others who are listening to their televisions or squawk boxes, but I urge our colleagues to take a close look at what is being done and to take a close look at what Senator Bumpers has said and Senator Evans, Senator Heflin, and Senator Dodd. When you take a hard look, it goes much too far. It is piling on. Senator Bumpers has said it may be difficult to explain some other time why someone voted against being a little tougher on users or on sellers, but we can already put sellers in jail for life.

When the Senator from Texas responded to my comment that we have poor criminals who are illiterates and unskilled, that this does not give them a license to prey upon society, I totally agree. I did not say they had a license to prey upon society.

What I said was that they all get out of jail eventually even if they have life sentences, and if we do not accommodate a reentry system so that they do not find a motivation to go back to a life of crime, we are only creating and compounding the problem.

When the Senator from Texas talks about having third-time offenders, and he does not want to see them living off the sweat of other people riding in the wagon, I agree with him. But when he leaves the wagon, he is still on the Earth.

I ask for 1 additional minute.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. Reserving the right to object, at the end of that 1 minute, I would like 1 minute.

Mr. SYMMS. Reserving the right to object, how soon will it be before we vote?

Mr. GRAMM. Three minutes.

Mr. SPECTER. Mr. President, I ask for no more time. I conclude.

I yield the floor.

The PRESIDING OFFICER. All time has expired.

Mr. GRAMM addressed the Chair.

THE PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, at the end of this discussion—we have had 15 minutes—it was clear, at least I understood, that I was going to get 2 minutes to respond.

Mr. BUMPERS. Mr. President, it was sort of my understanding that the Senator from Texas would have 2 minutes.

MR. NUNN. Mr. President, I ask for 2 additional minutes before the rollcall vote occurs.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Texas.

Mr. GRAMM. Mr. President, I will be brief. I know people are in a hurry. I want to respond to several things.

First of all, there are a lot of penalties on the books that involve putting people—including the 16-year-old that the distinguished Senator from Arkansas talked about—in jail for using drugs. The problem is those sentences are not being imposed and, as a result, we have crime without punishment.

The whole objective of this amendment, and the one we adopted yesterday, is to provide an effective deterrence that does not involve going to jail because we do not have enough room in our jails for people who are selling drugs.

Second, I do not view it as "piling on" to deny unearned Federal benefits to a person who has been convicted of drug trafficking not one, not two, but three times. It is piling on to the working men and women of America to ask them to continue to feed, clothe, and house the people who are preying off their families.

Finally, this idea that because we have rapists and murderers walking the streets we ought not to punish anybody, is ludicrous. I do not think we ought to be paroling rapists. I do not think we ought to be paroling murderers. I think they ought to be in jail where they belong. By that logic, with Michael Dukakis' policy, we could not punish anybody for anythng because first-degree murderers are out on the weekends. So do not blame an effort to try to deal with drugs for not dealing with the problem of paroling rapists and murderers. I do not want to parole them. I want to put them in jail, where they belong.

I want some effective deterrence to deal with this terrible problem that the country faces. That is what this amendment is about. I think its intent is clear.

I yield the floor.

Mr. PELL. Mr. President, I strongly oppose the amendment of my colleague from Texas. I am particularly concerned about how this amendment would affect eligibility for student aid. While I believe that we must wage a vigorous battle against student drug use, I believe this is best achieved by increasing our drug education programs, and by increasing our treatment and rehabilitation programs.

I am very concerned that this amendment is discriminatory. It could unfairly punish poor students who could not attend a postsecondary institution without Federal financial aid. It would not affect those who have the means to attend college without Federal aid.

In addition, it ignores the fact that education is perhaps the most powerful tool we have to fight chronic drug use. This amendment would deny students who have used drugs in their youth from having a chance to obtain a college degree. In denying students the opportunity to obtain a college degree—the credential that increases their chances for gainful employment—we permanently condemn them to low-paying jobs, if not unemployment and welfare—the very conditions that are conducive to drug use.

It is for these reasons that I oppose this amendment, and I urge my colleagues to join me in voting against it.

Mrs. KASSEBAUM. Mr. President I rise in opposition to the amendment of the Senator from Texas. Although I have no problem with the concept that drug users should not enjoy unearned Federal benefits, we have seen no evidence that a substantial number of drugs pushers are receiving student loans or Federal home loan guarantees. My concern is that this will be another example of a well-intentioned policy whose costs far outweight its benefits.

The amendment for example would prohibit student loans to drugs users. The problem is that each institution would assumably have to check all applicants for prior drug convictions. Such a background check, would be expensive and the cost would be ultimately borne by all students seeking student loans. Since I question how many drug users will actually be identified through the expensive background check, I think it is clear that the paperwork, delay, and cost to the institutions and needy students simply do not justify the potential benefits.

The same point is equally true for homeowners seeking Federal Home Administration loans. The policy will increase the cost of home loans to all applicants at a time when all agree that affordable housing should be a national priority. In short, I think this is a bill that creates more problems than it solves, and I intend to vote against it.

The PRESIDING OFFICER. All time has expired. The question is on the amendment of the Senator from Texas.

Mr. GRAMM. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Texas. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Oklahoma [Mr. BOREN], the Senator from West Virginia [Mr. ROCKEFELLER], and the Senator from North Carolina [Mr. SANFORD] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from New Mexico [Mr. DOMENICI], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Pennsylvania [Mr. HEINZ], the Senator from Indiana [Mr. QUAYLE], the Senator from Vermont [Mr. STAFFORD], the Senator from Alaska [Mr. STEVENS], and the Senator from Wyoming [Mr. WALLOP] are necessarily absent.

I further announce that if present and voting, the Senator from Pennsylvania [Mr. HEINZ] and the Senator from Wyoming [Mr. WALLOP] would each vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 78, nays 11, as follows:

[Rollcall Vote No. 372 Leg.]

YEAS—78

Adams
Armstrong
Baucus
Biden
Bingaman
Bond
Boschwitz
Bradley
Breaux
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Conrad
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dole
Exon
Ford
Fowler
Garn
Glenn
Gore
Graham
Gramm
Grassley
Harkin
Hatch
Hecht
Helms
Hollings
Humphrey
Inouye
Johnston
Karnes
Kasten
Kerry
Lautenberg
Leahy
Lugar
Matsunaga
McCain
McClure
McConnell
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pressler
Pryor
Reid
Riegle
Roth
Rudman
Sarbanes
Sasser
Shelby
Simon
Simpson
Stennis
Symms
Thurmond
Trible
Warner
Weicker
Wilson
Wirth

NAYS—11

Bumpers
Dodd
Evans
Hatfield
Heflin
Kassebaum
Kennedy
Levin
Pell
Proxmire
Specter

NOT VOTING—11

Bentsen
Boren
Domenici
Durenberger
Heinz
Quayle
Rockefeller
Sanford
Stafford
Stevens
Wallop

So the amendment (No. 3695) was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the amendment was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEVIN. Mr. President, I support the idea of holding drug users accountable for their illegal actions. Use and possession of a controlled substance is a crime under State and Federal laws, and those who violate these laws should be punished. As Senator SPECTER has pointed out, there are already punishments provided for this crime under current law, in the form of fines and prison sentences.

It was suggested during the debate on this amendment that the current laws against use and possession of controlled substances do not provide a sufficient deterrent because very few people are acutally sent to prison. It was also suggested that if we are really going to get tough on drug users, we ought to have alternatives to the current criminal penalties because we simply don't have room in our prison systems for a massive influx of convicted drug users. That makes sense to me. We should look at alternative forms of punishment to deter drug use.

But is the denial of Federal benefits a good deterrent? Subtitle F of title V of this bill raises this question and provides that the Director of National Drug Control Policy—the so-called Drug Czar—will submit to Congress within 12 months of the time we pass this legislation a list of any Federal privileges, benefits, grants, and loans, which, if withheld from drug offenders, would significantly deter the use of illegal drugs. The Drug Czar will be studying precisely the issue this amendment attempts to address. It is better that Congress make a considered judgment about the pluses and minuses of denying Federal benefits following the study we have mandated. This amendment is contrary to the bipartisan drug bill before us today and is a perfect example of "putting the cart before the horse."

Senator BUMPERS, Senator SPECTER, Senator DODD, and Senator HEFLIN also made excellent points about the poor drafting of the amendment. The Senator from Pennsylvania, for example, pointed out that the bill covers both Federal and State offenses, which means that we are inserting ourselves into the operations of the State courts. This would seem to violate the principle of federalism. The inclusion of this language indicates to me that this amendment is being considered too hastily.

There was also discussion of the portion of the amendment—subsection (b)(3)—which exempts from the penalties an individual "who declares himself to be an addict and submits himself to a long-term treatment program for his addiction, or is deemed to be rehabilitated pursuant to rules established by the Secretary of Health and Human Services." I am troubled by the ambiguity of this provision: for example, what exactly is meant by "long-term treatment program?" How long is "long-term?"

When the Senator from Arkansas raised concerns about the drafting of this provision, the Senator from Texas responded that he would not engage in a discussion about such legalistic matters. What are we about in the U.S. Senate if we do not give attention to legalistic matters? After all, we are making the law here. We cannot abdicate our task of writing good law and leave it up to the regulatory agencies and the courts to clean up our sloppy work.

I support the idea of user accountability and believe that denial of some Federal benefits may well be a useful deterrent. But this amendment seems to me too ill-considered and too poorly drafted.

Mr. HEFLIN. Mr. President, this legislation provides for many worthy programs and facilities. One program reauthorized by this legislation is the State Justice Institute. The institute is a nonprofit organization operating outside the three branches of government. The institute is governed by a board of directors, appointed by the President, who oversees a wide variety of programs designed to improve the American judicial system. The institute is authorized to award grants, cooperative agreements, and contracts for the purpose of improving the administration and quality of justice in the State courts, assuring the public ready access to a fair and effective system of justice, fostering coordination and cooperation between State and Federal courts, and encouraging education for State court judges and court personnel. The scope of its programs covers civil as well as criminal jurisdiction, and both trial and appellate courts.

The institute has played, and due to this legislation, will continue to play, an important role in shaping the future of the American legal system. The purpose for which the institute was established was to both improve the quality of justice in State courts and the public's confidence in the ability of those courts to dispense justice, and to find better ways of allocating caseload burdens among the diverse Federal and State courts. The institute has a brief but outstanding history of sponsoring thoughtful studies and programs designed to address their congressionally mandated goals.

The drug problem in our Nation is enormous, and this bill makes sweeping changes which will have a broad impact. One of those impacts is the increased burden which will be placed on the Federal and State courts. By passage of this bill we are not only recognizing the short-term changes that the American people demand and deserve, but by reauthorizing the institute we are looking into the future with realistic eyes and perceiving the magnitude of the problem which will face the American courts. The fact that the State Justice Institute is included in this legislation underscores the need to strengthen our court system, and to make certain they are in fact well equipped to meet the demands placed upon them.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, as Senators will note on the Calendar of Business, the unanimous-consent agreements listed thereon, under H.R. 5210 they will find the long list of amendments that are included in the leadership package. They will find under those amendments that are in order, if they are germane or relevant to the underlying amendment, there are three listed. One has just been disposed of. Two remain, amendments of Mr. KERRY and Mr. WILSON. Mr. KERRY is about ready to call up his amendment. Once the Kerry amendment is disposed of that will leave only one in that category at the moment.

There is the list of amendments that are to go to the exchequer court or the court of common pleas headed by two of the five barons that were selected by King Henry II. That is two of the five barons. King Henry II selected five. In this case there are only two.

No Senators are coming to Mr. DOLE and myself. We are not going to be itinerant justices and go out and visit the various shire courts.

But what I am saying to my colleagues is it looks like we ought to be able to finish this bill by 2 o'clock today if we work at it.

We have two more amendments and then we are down to the package, and maybe we can pass the package in one vote, or if there is some difficulty with an amendment on that, which I do not know yet, it may be that the amendment that was discussed on yesterday which a Senator is interested in having a subsequent vote on, perhaps that matter can be resolved one way or the other. It would mean then we would be ready for final passage of this bill.

The bipartisan staffs are working very hard to get the amendments all in shape for the package.

I think the situation looks good at the moment. So we will just plow right ahead, and Mr. KERRY is on the premises nearby.

I suggest the absence of a quorum, unless the distinguished Republican leader has any comments at the time.

Mr. DOLE. No.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CONRAD). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HECHT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HECHT. Mr. President, I am pleased today to join this discussion on the omnibus anti-drug bill. As a cosponsor of this legislation, I am pleased the Senate is finally acting on what I believe to be the most comprehensive and effective antidrug measure ever considered by this body. It will place strong and meaningful laws on the books and enable our law enforcement agencies to carry out America's "War on Drugs."

This bill is imperative to fight that war—tough new criminal and civil penalties for drug users and abusers; increased funds to help local police and sheriff departments; new and effective education programs to make it clear how dangerous drugs can be; stepped up drug interdiction policies and money to destroy drug crops in foreign countries; and, most important of all, this bill will send criminals to the electric chair for drug related crimes, something drug king-pins and pushers have never had to contemplate in the past. With this, we will finally make it clear to these people to get out of the drug business or face the toughest of consequences. Even if we do nothing else, we must enact the death penalty for drug criminals.

America has a drug problem, but until the drug lords and pushers are stopped, until we make it impossible to sell drugs, until we stand up and say "you will pay dearly for drug dealing and drug use," we simply will not be successful in stopping this plague.

Each and every Senator in this body receives letters daily from worried parents pleading for their leaders to join the war against drugs. We must answer their pleas. Too often, it is our children, yours and mine, who are the innocent victims of drugs and the drug trade. When our children are involved, and their lives are ruined, we must act. When adults find it so easy to purchase drugs and use drugs in what they consider to be a "recreational manner," we must act to stop this pattern of thought and say, "how can you destroy yourself or your family?" I am committed to changing this thinking and to changing this pattern of destruction in America. This antidrug bill is a step in the right direction.

Mr. President, the Senate has worked long and hard on this legislation and I am pleased we are on the verge of passing the drug bill. It is a sound and positive approach in this war and I wholeheartedly support its passage and implementation as soon as possible.

The **PRESIDING OFFICER.** The Senator from New York.

Mr. **MOYNIHAN.** Mr. President, the distinguished Senator from Alabama wishes to speak, and I am happy to yield him some time.

The **PRESIDING OFFICER.** The Senator from Alabama.

Mr. **HEFLIN.** Mr. President, for several years now we have seen the unabated proliferation of illegal drugs in our country. This menace has now invaded almost every segment of our society, from the skyscraper canyons of our cities into the most remote villages throughout our vast countryside. A problem that was once confined to only certain segments of our society has now become a major problem for society as a whole. This problem can no longer be ignored. Very few of us have escaped being affected in some way by this terrible plague that has invaded our lives.

If one doubts for a minute the extent of this devastation then a look at the days news stories will reveal an endless tale of death and destruction reaching from the ghettos of our cities as well as into the homes of our wealthy.

The devastation brought about by the use of illegal drugs knows no class distinction. It is equally as fatal to the highly paid professional athlete as it is to the children of the ghetto who fall within its deadly grasp.

We in America have been somewhat slow in marshaling our forces to repel this invasion of illegal drugs. For a while there was a debate raging among members of the medical establishment as to whether or not cocaine was actually addictive. The long term effects of marijuana use was also being debated. There was also less than a whole hearted response from the Congress, the executive branch, as well as from the American people. The voices of alarm crying in the wilderness of this illegal drug invasion were largely ignored.

I think that perhaps we hoped that one day we would awake and find that the problem had disappeared. I regret to inform you that this did not happen, not only did the problem not go away, it became worse. It has now reached critical proportions. Even the doubters in the medical establishment now have their answer as to the addictive nature of cocaine. We now know cocaine to be one of the most insidious drugs known to man. We have paid an exceedingly high price to learn these answers.

I do not for 1 minute want to give the impression that we in the Congress have set idly by as illegal drugs permeated our society. We have reacted to this menace. We have passed antidrug legislation. The administration has reacted. They have put forth a variety of programs and strategies to combat the flow of illegal drugs. Most of these programs have been a step in the right direction, however, they were a piecemeal approach to the problem. There has been no centralized direction and control of our national drug strategy. This bill before us seeks to correct this serious deficiency.

GAO reports that at least 10 Cabinet departments, 29 agencies, and various multiagency organizations are involved in carrying out the Federal drug strategy. Is it no wonder then that the history of our antidrug effort is filled with stories of interagency rivalries, conflicts, and jurisdictional disputes.

There is no question that we need a "Drug Czar".

Congress attempted to correct the lack of centralized oversight by the passage of the National Narcotics Act of 1984 which called for the creation of the National Drug Enforcement Policy Board. In view of the current condition of our antidrug program, this Board would have to be considered less than a success.

The establishment in the Executive Office of the President with the Office of National Drug Control Policy as called for in the legislation before us will at long last give this Nation's antidrug effort the much needed centralized direction that has been lacking in the past.

This is a very comprehensive piece of legislation. Perhaps more comprehensive than any previous antidrug legislation that we have considered. It provides funding in a more balanced way between supply reduction and demand reduction. It also recognizes alcoholism and drug dependency as treatable diseases while attempting to fund the treatment programs at a level which will make treatment available to any one who wishes to break free of the dreadful condition of addiction.

The omnibus drug bill of 1988 is a good piece of legislation. As with most bills introduced in this body it is not perfect. We do not have time to wait for perfect legislation, lives are being ruined, our children are being murdered, lives are being put at risk by the greed soaked mutants who deal in illegal drugs. We must act now. We have called our fight a war on drugs. If we are to truly wage a war then we must resolve to commit whatever resources are necessary to ensure a victory. The future of our country hangs in the balance, we must not lose this fight.

In this election year partisan politics come to bear on most issues debated on this floor. My friends, the fight against illegal drugs is not a partisan issue. All Americans are adversely affected by this plague that has befallen our country. Let us not allow partisanship to weaken or destroy this piece of legislation.

I ask all of my Senate colleagues to join me in supporting this bill. Even while we debate its merits lives are being lost, families are being destroyed, and the very fiber of our Nation is being ripped asunder.

The **PRESIDING OFFICER.** Who yields time?

Mr. **MOYNIHAN.** Mr. President, the distinguished Senator from Massachusetts, Mr. KERRY will be on the floor momentarily. I do not see any other Senator seeking recognition at this time. I suggest the absence of a quorum.

The **PRESIDING OFFICER.** The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. **MOYNIHAN.** Mr. President, I ask unanimous consent that the order for the quorum call will be rescinded.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

Mr. **MOYNIHAN.** Mr. President, in the past several days, the Senate has been deeply and productively engaged in amending and constructing this legislation, having special regard to the law-enforcement aspects, the penal aspects, the adjudicatory judgmental aspects which necessarily involve activities which are illegal and which are made so by our laws.

At the same time, Mr. President, it has been remarkable, and importantly so, that we have been able to get to this point, with such extraordinary unanimity, agreement, consensus on the subject of treatment, a subject which our Secretary of Health and Human Services, Dr. Bowen, this morning addressed in an important op-ed article in the Washington Post entitled, "The Quiet Side of the War on Drugs."

We have set forth the principle of treatment on request. We have set forth the principle that when you are in an epidemic you do not close your hospitals. We have set forth the principle that the medical and science professions must really now address this issue.

They have done so, somewhat, with heroin. It began as a medicine to cure morphine addiction. It was produced, synthesized, in German laboratories by professors in the 19th century. It was a trade name of the Bayer aspirin people, but they were Bayer heroin people in 1910 when they advertised this product openly. Then it was thought to be a cure for morphine addiction, it soon evolved into an addiction itself.

Cocaine, too, was for so long regarded as a medicine. Sigmund Freud wrote on it as a wonder drug. The current Merck Manual—that thick book that young doctors carry around wards with them—treats cocaine with a very benevolent attitude. It does not suggest that it is addictive. To the contrary, it says there is no evidence of increasing tolerance, nor of withdrawal symptoms; those being the two aspects which define an addictive substance. But we have seen that cocaine can be made into a more potent drug—crack—whose addictive force is well established.

We have found a blocking agent for heroin: methadone. Now, the medical profession, to this day, probably does not have 10 scientists working on a blocking agent for cocaine. At a time when, as Dr. Bowen discussed this morning, some 70 million Americans have been involved with illicit drugs, 1 American in 10 in the last month, and children well below the age of judgment about such matters are getting themselves involved with crack, our laboratories are still not seeking a treatment.

Indeed, crack is very new, first appearing in the Bahamas in 1983.

I can remember police detectives in New York City in 1985 telling me about something called crack and that the people selling it would go around and snap their wrists as if they were snapping a whip. Then we had it in New York; by 1986, it was in Kansas City; by 1987, here in the District of Columbia. And the result has been homicides among children beyond our wildest imagination.

No civilized society on Earth has the homicide rate we do, much less homicide among children—children killing children themselves saying: They take one of us, we take one of them. To stop this, we have to prevent it and we have to treat it.

The health care profession right now, has established that crack, after a very brief period, ceases to be in any way an enjoyable experience, yet remains a necessary one. It is addictive, the Merck Manual to the contrary notwithstanding.

People will seek to get relief from it, but there is no relief to be had. They are turned away. Persons obviously living criminal lives to maintain drug addictions are turned away from hospitals in my cities, I cannot doubt in cities in your own State, in cities this Nation over.

Now we have an epidemic. The heroin epidemic of the 1960's produced a single-parent family in our slums. This epidemic will produce the no-parent family.

In the city of New York, the number of children born with crack in their urine is growing at geometric rates. It is 5,000 a year at the present rate. I would not be surprised if by next spring it were 10,000 a year.

Again, there are no parents—because there is no pharmacological treatment. That is absolutely senseless. There is nothing. This is a chemical assault on the body. We have no chemical response, no chemical blockage, no chemical—oh, mild effects that tranquilizers and such can have during withdrawal periods, but basically nothing more than sedatives, nothing changing the system.

You do not deal in epidemics by nibbling at the edges. You hit hard. You open your hospitals. You open your laboratories. Indeed, you open your jails to put people into them, as you can do.

No sympathy for drug dealers; no sympathy for nations whose economies increasingly are dependent on drug production; no sympathy for the kinds of men that murdered Police Officer Byrne in New York City not 3 months ago.

This legislation will not be retroactive. But with the death penalty included, young men committing the same horrible deed could find themselves in the death house for that kind of activity. And they should. There is no compunction about it on the part of this Senator.

In the end, the overwhelming challenge is that of medical care, treatment, and discovery. As Dr. Bowen said this morning, we have 70 million Americans who have used illicit drugs, and a good 7 million for whom it is an immediate, pressing problem today, as it was yesterday and it will be tomorrow.

Obviously we cannot put 7 million Americans in prison, or if we did we would not be the country we are. And they do not need to be in prison. They need to be set free from their addiction which they have acquired in the manner that epidemic diseases are acquired: in their environment.

Be it yellow fever or AIDS or malaria, the environment will find its hosts and the disease can become rampant. This is an epidemic, not a low-level, continuing problem as was malaria, typhoid fever, or tuberculosis. It is something with a peak and we are still rising. That epidemic curve has not crashed.

We are a body of legislators, we make the laws. Laws in this regard tend to be thought of in terms of law enforcement. We are not scientists. There is not a single person in this body who has an advanced degree in the physical sciences. There is not a doctor in the house—the Senate—as you might say.

So we have turned to scientists to learn. We worked all summer. Our staffs worked with one another, and they got help from the National Institutes of Health. When we called out there, we got answers. We got written replies in a day or 2 days' time; careful work from scientists trying to help, trying to explain the limits of knowledge. They tried to explain they were limited to probabilities, but they were doing all they could for us.

Our staff did an extraordinary amount of studying and of pondering. And for that I thank them. We brought people in from around the country who have been involved in treatment centers and prevention programs. There are some successes. Not a great many, Mr. President. Not a great many. And those that are successes are formidable in their cost.

We have learned in my city of New York, for example, from Phoenix House, a drug treatment and rehabilitation center, the concept of a therapeutic community. Persons who have been caught up with a particular addiction live together, exchange their experiences, exchange their troubles, and their anxieties. The origins of this are very clear. They are in the Alcoholics Anonymous experience.

It is a tremendously impressive kind of effort but hugely expensive. It is labor intensive. It is expensive in the therapeutic period—a year might get you started. Two years might get you out. And thereafter the prospect of relapse is always present.

I cannot imagine we can deal with this problem in that mode. We must find new ways of dealing with this epidemic. Aside from a few dedicated individuals at NIH, we have had little help from the executive branch on this issue. As one of the persons who was appointed by the majority leader to work on this legislation last May, if I had one thing I would wish to say, and be heard, in the executive branch and in the science community around the Nation, it is that you have not made the resources available to this subject. It is a life-threatening issue for American cities.

It is not cities alone, but cities are where it can be concentrated to the extent that the rattle of automatic machinegun fire is heard in northeast Washington today as you might hear it in West or South or East Beirut. I will repeat this—children are killing children. This is a crisis and in a crisis you devote your best people, your best minds.

If this were more of a middle-class disease, there would be more response. Right now in its epidemic mode as crack addiction, it is a disease of the slums. But diseases do not stay in the slums, Mr. President. They break out. They have through history. And this one will also, partly because it is so easy as a disease to contract.

If you use the disease model, one mosquito bite can give you malaria; $4 worth of crack can give you this particular condition. It is a health condition and I would hope that in the executive branch, as in the Nation, we could get some response to this as a public health issue.

We are now well into the fall. We began our deliberations in the spring and in all our deliberations through this summer we had the minimum of participation from the executive branch. When we sought out help from the National Institutes of Health, we got in willingly. They were hugely cooperative. But as a policy of the executive branch, no. There was not. There was no sense of urgency, as evidenced by the statement in the President's State of the Union Message last January.

We all went over to the House to hear that. We heard the President characterize the war on drugs as "an untold American success story."

The President is not responsible for that. He took it as something that his advisers had judged was the case. If it was the case, he had every right to think he should say it. Of course it was not the case. But nobody knew it was not the case. I am not going to say nobody cared. Nobody knew.

That is why we are talking about a drug czar. I wish we did not have to use that terminology. The term "czar" is not exactly to be associated with great effectiveness in governing. But we are putting in the Cabinet someone responsible for this epidemic. Let us hope it is a temporary assignment. Let us hope the czar is not there 30 years from now. But had there been such a person in the Cabinet at the Cabinet meetings in the Executive Office, seeing to the drafting of the President's message last autumn when they began putting it together, we would not have been told that the war on drugs was an untold success story.

That is the most glaring description of the need for the establishment of a Cabinet-level officer to deal with this issue at this time. I am more than pleased that we all have such complete agreement that this needs to be done, and will be done.

Mr. President, I saw the distinguished Senator from Massachusetts on the floor just a moment ago. He went by briefly and then disappeared. I wonder if I could ask the distinguished Senator if he is ready to offer his amendment?

Mr. **KERRY**. Mr. President, we just had a meeting and we are working out what may amount to a compromise. We have been in communication with the Secretary of the Treasury, and it may be we have an agreement, if we can ask the distinguished Senator's indulgence for a while.

Mr. **MOYNIHAN**. May I say that compromise has been our motto over the past 48 hours. Five days ago you would have thought this legislation would be finished in December. Here it is Friday afternoon because we have been reaching agreement. We have common goals. Go, I say to my colleague, and power to you. We will await your return.

Mr. President, in closing, I would just like to note that there has been an extraordinary degree of reasoning together. To use the term Lyndon Johnson used to quote, "Come, let us reason together,"—Isaiah, chapter I, verse 18, and that we have done.

We began this process by saying, "Let us talk about what we would like to do," and if at any given point one of the Senators involved said, "Well, I can't have that," or, "I know of a Senator who can't have that," we said, "Let's put that aside." That is how we constructed a 600-page or more bill.

In the last few days, as we have come to those matters we put aside, increasingly we have found compromise and agreement such as I believe the Senator from Massachusetts is seeking at this very moment with the Secretary of the Treasury about money laundering.

On that spirit, we may take an extra hour to conclude our work, but it is concluding in the spirit of high cooperation and, I do not want to say great expectation, but certainly great hope.

Mr. President, I suggest the absence of a quorum.

The **PRESIDING OFFICER**. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. **HATCH**. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

Mr. **HATCH**. Mr. President, I am pleased that the Senate is finally acting on this drug bill. Even as we speak, drug deals are going down, teenagers are getting high on crack, 10-year olds are getting drunk and unborn children are becoming addicted. We must do whatever we can to stop this societal suicide.

Some people have argued that drug and alcohol abuse is a victimless crime and that it is no business of the Federal Government to try and stop it. Mr. President, that point of view disturbs me a great deal.

First, I do not think we can tolerate indiscriminate use of drugs and alcohol for the obvious safety reasons. Even if an individual was willing to throw away his or her own health does not mean an individual should jeopardize the health or safety of others. It does not even take much imagination to come up with examples of how this could happen. Would you want the pilot of your airline flight to be dependent on cocaine? Your doctor? Your child's teacher? In fact, railroad accidents which have been caused by the engineer's use of drugs are recent history. Traffic fatalities caused by drunk driving are becoming everyday news.

Then there is substance abuse by pregnant women, women whose children will begin life with an addiction. Babies whose chances of being born with a birth defect are greatly increased. How can we say that substance abuse only affects the user? Clearly, it does not.

Second, I am disturbed by the whole idea that our society would sanction drug use. What happens to our culture, Mr. President, when people cannot survive more than a few hours without a cocaine hit? What happens when people start to live their lives looking forward to the next drink? What happens when normally honest people have to steal to support their habits? What happens when their children start doing poorly in school? What happens when people cannot function at work? Drug and alcohol abuse, quite simply, impairs the human ability to think. It affects a person's whole value system.

As a people, we are better than this. We have a national heritage of hard work, ingenuity, and high standards of integrity. I, for one, do not want to sacrifice this heritage. It is just too much to lose.

I am disappointed that it has taken us so long to get to this bill; but, I am glad that we are finally here. I commend my colleagues for their efforts on this legislation. I hope it will pass everwhelmingly, and that it will help every State, community, school, church, club, business, police department, and family to deal out the drug dealers with strict law enforcement, eliminate the demand for drugs through education, and help those who have fallen into this trap through treatment programs.

Mr. President, it has been 2 years since we last debated and passed an omnibus drug bill. During that time we have started seeing some success in our campaign to warn the American people about the dangers of illicit drug use, the abuse of prescription drugs, and the abuse of alcohol.

We are beginning to see a turnaround in the use of illicit drugs by our Nation's teenagers. This encouraging trend was reported in the Annual Survey of High School Seniors as well as in anecdotal reports from around the Nation. Much of the credit for this turnaround must go to community groups like the Utah Federation for Drug Free Youth and to dedicated school personnel. They have really gotten the message out that drug use is no longer acceptable and have effectively used funds provided by the 1986 act to develop appropriate educational materials.

The Department of Education has recognized a number of exemplary schools. One of those recently feted was the J.A. Taylor Elementary School in Centerville, UT. The program at J.A. Taylor Elementary is the result of the combined efforts of staff, students, and parents—which, in my opinion, is really how it should be. The drug problem cannot be solved by one segment of citizens, one level of government, or one agency of government. It clearly requires a comprehensive, team approach.

Also joining the team is the entertainment industry. Since the passage of the 1986 legislation we have seen less glorification of the drug culture in the mass media, in the movies, and in music. Hollywood producers, writers, and performers have realized the impact they have on the public—young people especially—and have taken steps to change the message about drugs and alcohol. Public service announcements, such as the "Stop the Madness" campaign featuring numerous popular actors and actresses, can reassure impressionable young people that drug use is not macho or chic. Organizations like that led by the wife of our colleague from Tennessee, Mrs. Tipper Gore, have raised our awareness of the drug message sometimes found in rock music.

American athletes have joined the crusade. The pros, the colleges, and the national sports federations are practicing what they preach. They are enforcing their antidrug policies even if it means suspension of a key player. They have instituted rehabilitation programs in order to provide compassionate help, but at the same time they have made it clear that drug use carries a heavy cost. It was a sad thing to see an Olympic athlete stripped of the gold medal won during the games in Seoul. All the years of physical pain and sweat to reach the pinnacle of sports achievement were sacrificed to drug use.

We have started to reduce the number of people waiting for treatment, and we are beginning to better understand the mechanism of addiction and discover more efficacious ways to intervene.

But, Mr. President, the lines are still too long at treatment centers, many children and young adults still have not been reached, and another dangerous drug has hit our cities and towns. Crack is a drug that was not even known as a problem when we passed the 1986 bill. Today, we have an epidemic of crack use as well as a continuing battle with cocaine, heroin, marijuana, alcohol, and other addictive drugs. While we have made good progress, we need to renew our commitment to treatment, prevention, and education.

This bill proposes to extend the very valuable programs of the Alcohol, Drug Abuse, and Mental Health Administration, ADAMHA. ADAMHA is the focus for our treatment and prevention program and is responsible for research into the causes, treatment, and mechanisms of addiction. It also assists States to develop their own programs to fight alcohol and drug abuse.

In addition to reauthorizing ongoing activities, the bill proposes several new initiatives. These are provisions for evaluation of the existing alcohol abuse and drug abuse education programs, as well as for the collection of data. We need to assure Americans that we are spending our valuable resources in an effective way.

The collection of data is dependent on a close working relationship between the Federal agencies and State government. The bill directs that the type of data to be collected be decided in conjunction with the States and be published in the Federal Register for comment before it becomes final. The data set must be developed with State involvement.

The bill also provides for a new program called the Community Prevention Program. This provision will allow the Department of Health and Human Services to continue its support of programs with national significance. For example, HHS has, for some time, funded a program sponsored by the National Collegiate Athletic Association. Although the State of Utah does not have one of its programs, I am impressed with the reports I have received about them. Basically, it is a program to provide young children and teens who are at risk of abusing drugs out of boredom and lack of supervision with a more structured, constructive use of time during their summer vacations. The demonstrated effectiveness of the NCAA program shows that such alternative programs are needed.

Additionally, the bill contains language to allow for the efficient accreditation of laboratories that test for drug abuse. At present, the National Institute of Drug Abuse sends Federal inspectors into laboratories to evaluate laboratory performance and to grant certification if certain standards are met. This process is costly, time consuming, and inefficient. Due to the shortage of Federal inspectors, only a limited number of laboratories can be certified during the year. Delays in accrediting laboratories will impair implementation of drug testing programs and create uncertainty and inconvenience for both employees and employers.

The bill will relieve the Federal Government's burden in this area, expand the universe of laboratories allowed to participate in drug testing programs, and expedite the laboratory certification process. It contains provisions allowing laboratories to test Federal employees for drugs of abuse if the laboratory is determined by the Secretary of the Department of Health and Human Services to meet Federal standards published by ADAMHA; is inspected and certified by a national accrediting body approved by the Secretary of Health and Human Services for such a purpose; or, is a State clinical laboratory certified under a State certification program that enforces standards at least as stringent as the Federal guidelines.

I believe ADAMHA guidelines for laboratory certification are excellent and serve as an approppriate measure for the quality of laboratory performance in drug abuse testing. However, certain private accreditation organizations have laboratory certification programs which should be utilized if the Secretary determines their standards to be equivalent to or more stringent than the ADAMHA guidelines. Provided the Secretary makes this finding, I would strongly encourage involvement of such private resources in the certification process.

The treatment, prevention, and education part of this bill is very important. We should strive to stop drug use before it begins. Yet, we must be realistic in also dealing with the problems that we face now. We need to help those who have already become addicted get a new start, and we need to stop those who are destroying our families and our country by dealing drugs. We must support a comprehensive approach that addresses each aspect of the drug problem.

Drug trafficking, drug abuse, and drug-related crimes are the greatest social threat facing the United States today. The repercussions of these activities extend into nearly every aspect of our lives. These criminal enterprises are in large part responsible for many of the social and economic ills that we in Congress must address. It is, therefore, not surprising that the sections dealing with crimes, penalties, and law enforcement make up over two-thirds of the bill. Given the shear bulk of these sections—over 400 pages—it would be impossible to outline every section, so I would like to highlight some of the crimes and penalties sections that I feel are important to mention.

One of the most alarming aspects of drug abuse is the increasing influence that it is having on the lives of this Nation's children. Local and national news reports continuously remind us that drug-related activities are routinely conducted by junior high and grade school aged children, who are easily swayed by the lure of large sums of money but who do not comprehend the often deadly results.

For these reasons, subtitle D of chapter 11 deals specifically with schools and minors. In this subtitle, we have enhanced the penalties for offenses involving children and made it a crime to possess controlled substances with the intent to distribute within 1,000 feet of a schoolyard. Furthermore, it would expand the penalties for distribution near schools to include the areas within 100 feet of playgrounds, public or private youth centers, public swimming pools, and video arcade facilities. And finally, it creates a mandatory minimum penalty for the crime of receiving a controlled substance from a minor.

This bill also makes some important improvements in the administration and oversight of the accounts which consist of funds derived from the laws dealing with the forfeiture of assets used in the commission of drug-related crimes.

Mr. President, another important addition to this bill is the inclusion of the death penalty for drug-related killings. This is virtually the same bill that we passed, by a substantial majority, last June. Mr. President, nearly every evening on the local news we hear of another drug-related killing taking place here in the District. That scenario is repeated several times over across the country. This portion of the drug bill address that problem.

Common sense tells us that capital punishment deters some kinds of crimes effectively. In this case we single out murders committed during a continuing criminal enterprise and the murders of law enforcement officers during a drug-related crime. This section of the bill is strongly favored by the American public. In 1965 a Gallup poll showed that only 45 percent of the public supported capital punishment. In 1985, however, that number had risen to 72 percent. Furthermore, 38 of the States now have statutes permitting the use of the death penalty. Finally, this bill uses every conceivable safeguard to avoid error. If it stops even one murder it is worth it.

There are a few other provisions which have been included in this measure that are of particular importance to me. One of those involves an amendment to the Assimilative Crimes Act. Under a current loophole in this law, Federal judges are prevented from imposing license suspensions, alcohol education programs, and other nonjail-term sanctions on persons convicted of drunk or drugged driving on Federal enclaves within a State's borders.

The Assimilative Crimes Act authorized Federal judges to apply State criminal statutes for acts or omissions taking place within that State but on Federal property. However, only crime-defining statutes are assimilated and only sanctions defined as punishments may be imposed. In cases interpreting this statue, drunk and drugged driving have been found to be crime-defining statutes, but license suspensions and other nonjail sanctions have not been found to be punishments and therefore may not be imposed.

The language in this section of the drug bill amends the Assimilative Crimes Act to define various State enacted sanctions as punishments in drunk and drugged driving cases. It does not make sense to impose only a jail sentence or a fine when a State has found additional methods of getting these drivers off the road.

The bill also makes some needed changes to ensure the smooth and effective operation of the sentencing guidelines and related provisions of the law. For example, one of the important changes involves a modification to appellate procedures allowing appellate courts to exercise due deference in their review of lower court findings. This eliminates the need for appellate review where an incorrect application of the guidelines is harmless because it does not produce an inappropriate sentencing guideline range.

Another important section of this bill deals with the production of controlled substances on National Forest System lands. Several of my constituents have written to express their concern with recent reports regarding the widespread occurrence of individuals and organizations turning to Federal lands to cultivate marijuana and produce other dangerous drugs. This section of the bill provides a mechanism to combat this problem and provides stiff penalties both for production of controlled substances and the use of "booby traps" and other devices which have posed serious threats to the lives and safety of forest rangers and citizens using the parks.

Mr. President, as one final note regarding the crimes and penalties section of this bill, I would like to point out that there is also a subtitle which deals with firearms. As originally proposed, that subtitle included sections dealing with the concepts of prohibiting guns in schoolyards and dangerous weapons in Federal facilities. These were concepts with which I agreed and with the help of the National Rifle Association, I suggested language changes to ensure that the intent behind these statutes was clearly spelled out. I would like to thank those Senators in the crimes and penalties subgroup who incorporated those recommendations. Unfortunately, the schoolyard section has now been dropped, and I understand that some of my colleagues still have problems with the language of the Federal facilities section. I hope that these differences can be worked out.

I would like to encourage my colleagues to support the bill. This bill, although not perfect, is a good bill that represents a strong effort on the part of all Members—Members from both sides of the aisle—in taking a larger step toward meeting the Nation's commitment to treatment, education, and prevention.

Mr. President, I ask unanimous consent that an article entitled "The Quiet Side of the War on Drugs" be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Oct. 14, 1988]

THE QUIET SIDE OF THE WAR ON DRUGS

(By Otis R. Bowen)

As we plan and implement new strategies on ending illicit drug use, a central concern must be access to successful treatment. Simply put, any effort to end illicit drug use must ensure that treatment facilities are available, adequately funded and capable of having reasonable success rates.

Often the importance of treatment is ignored in public policy debates. Therefore, let me highlight a few salient facts.

First, availability of treatment is a problem. Over 70 million Americans have used illicit drugs, and about 6.5 million are severely dependent on cocaine, amphetamines, heroin and other opiates. But the available space in many cities is not enough. Treatment may be needed for as many as 10 times the number of those currently receiving help for an addiction. Some institutions have waiting lists as long as two years.

Yet, despite the obvious need, many people oppose the establishment of treatment facilities in their neighborhoods. The battle cry has become "Not in my backyard, you don't!" In addition, some city or county zoning regulations even make the creation of such facilities impossible. Where zoning regulations do allow them, procedural delays are common and may de facto equal a prohibition.

Prohibitions and delays are unfortunate. No neighborhood is exempt from the spreading web of users, dealers, and kingpins. The more dangerous setting is the terrorism cause by illicit drugs in the homes, in the schoolyards and on the job site.

Second, even if treatment facilities could be established, the money to run the facilities would have to be forthcoming. We must remember that treatment is expensive. The cost of treating a single addict may easily range into the tens of thousands of dollars, with no assurance that a drug-free life will be sustained after treatment.

Of course, the federal government has a role, and the Reagan administration has made a substantial commitment. Since 1986, the administration has worked hard to put more treatment money in the hands of the states. In addition, the president's fiscal year 1989 budget proposes $402 million in grant money for states to allocate for treatment.

This is a burden that reasonably must be shared. The federal government already supplies one in every five dollars spent. The constitutional and fiscal responsibility, primarily lies on the state and local levels. Because of deficit considerations and the fact that several states are running surpluses, fiscal prudence also dictates more non-federal money be allocated to treatment. Let me also suggest that, whenever possible, the person undergoing treatment should pay for it.

Third, treatment is not a panacea. Drug use is a chronic, relapsing disease. The fact that people may relapse after treatment underlines the fact that our goal should be to keep people drug-free for as long as possible. That means some people may be drug-free for life after treatment. Others may require readmission.

This gets to the heart of the matter. Because there are no easy solutions, we face enormous difficulties in sustaining fiscal and political support for treatment. However, as a nation, we must not allow the difficulties to deter us from making treatment a full partner in the effort to end illicit drug use.

As a beginning, state and local governments must become more aggressive in their determination to establish treatment facilities and provide slots for drug users. Americans must become more accepting of initiatives to place treatment facilities in areas of need. Local zoning restrictions and unnecessary delays that inhibit the establishment of treatment facilities must be removed. Congress may wish to consider further incentives to help remove these restrictions.

As well, Congress should approve the president's request for treatment funding. Other sources of funding must be further tapped, including state and local budgets, nonprofit sources and individuals in treatment.

Fiscal responsibility requires that Americans receive some assurance that any public money devoted to treatment is well spent. This places the oversight burden squarely on the shoulders of Congress and the administration. Treatment techniques and facilities must be scrutinized as never before. Fiscal priority should be given to those facilities that make a difference for their patients.

We also must address the root problems which may lead to relapse during treatment or after. Further federal and private research is absolutely vital. We need to know more about what works and what doesn't. The more than 3,000 treatment facilities in this country have widely varying methods to help patients remain drug free. Some facilities appear to have better methods for helping patients than do others. We need to know why, and we need to know what more can be done for patients.

We also need more innovative thinking and more insight from all of those involved—treatment personnel, local and state officials, nonprofit and corporate financiers, Congress and the administration.

Obviously, it would be better if Americans were persuaded to ignore the temptation of drugs or deterred from illicit drug use. But treatment is *the* only answer for the millions of Americans who, for one reason or another, want to say no, but can't.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER (Mr. Wirth). The Senator from New York.

Mr. MOYNIHAN. I thank the distinguished Senator from Utah for his thoughtful remarks. He is a person who is known in this body for his concern about the problem of drugs. I just read to him the remarks of Secretary Bowen of Health and Human Services from this morning, an article called: The Quiet Side Of The War On Drugs. He said:

> Obviously, it would be better if Americans were persuaded to ignore the temptation of drugs or deterred from illicit drug use. But treatment is the only answer for the millions of Americans who, for one reason or another, want to say no, but can't.

That is what we are doing here at long last.

Mr. HATCH. I thank my distinguished colleague for his remarks and comments. I appreciate his leadership in this area. This bill will go a long way toward making inroads against these problems. I do think the treatment and education part of this bill is very important. Of course, we have worked very hard to put it in, as well as the other aspects of the bill including the criminal law aspects.

I thank the distinguished Senator from New York for his kindness and for his leadership on so many of these issues through certainly the years but mostly this last session of this Congress. It means a lot to me, and I have great respect for him. When this bill passes, I think both he and I and a whole raft of others will feel very good that we have worked so hard on this bill.

I thank the Senator.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. The distinguished Senator from Kentucky would like to speak on this matter and we are happy to provide him such time as he requires.

Mr. McCONNELL. I thank the Senator from New York.

Mr. President, when the Senate passes the omnibus drug bill, hopefully this afternoon, it will be passing as part of the current leadership package three hard-hitting measures against election fraud and corruption in our society. This amendment is essentially the Biden-McConnell Anti-Corruption Act, cosponsored by Senators Thurmond, Metzenbaum, Simon, and DeConcini. It has been approved by the Senate Judiciary Committee and was prepared with the assistance and full support of the Justice Department.

This amendment takes aim against election fraud and corruption by expanding Federal jurisdiction to investigate and punish fraud at the polls, the Government, and industry.

KENTUCKY'S EXPERIENCE WITH ELECTION FRAUD

Kentucky has had, of course, a unique experience with election fraud, unique in a sense that we seem to have more problems with election day shenanigans than a lot of States. In Kentucky, this past year our general assembly enacted an array of election law reforms. This was in response to a sting report on election fraud by the Louisville Courier-Journal, uncovering rampant vote buying, intimidation at the polls, and open graft.

The ink had barely dried on these laws, when election fraud reared its ugly head once again, Mr. President, in the very next election. So, you can see what kind of impact a State law had on this problem. There is enormous cynicism out there in our State about whether anybody is going to do anything about election cheating.

STATE-LEVEL EFFORTS NOT ENOUGH

In most cases the main culprits are the local public officials themselves. That is why State-level efforts ultimately are not enough to weed out these abuses. There is too much power at stake for the State to clean up its own house.

PARALLEL TO VOTING RIGHTS ACT

In a similar area, Congress recognized this kind of problem back when it passed the Voting Rights Act of 1965. That made the Federal Government guarantee the franchise for every race in every election. A lot of people opposed that legislation. They said the Federal Government had no business looking over the States' shoulders to enforce voting rights, but people were being denied their right to vote. That States simply could not do anything to stop it.

Ironically, very few prosecutions under the Voting Rights Act were actually needed. The mere threat of Federal supervision and enforcement was enough to bring most vote discrimination to a quick end.

Once again people in some areas of our country are being denied their voting rights—not through actual discrimination but by the massive distortion of election results through vote buying and other types of election day shenanigans.

Mr. President, the Biden-McConnell amendment guarantees the integrity of the ballot box by making the Federal Government end the denial of voting rights through election fraud.

CORRUPTION PROVISIONS; MC NALLY DECISION

This amendment also would address what is known to most Federal prosecutors as the "McNally Program", referring to a Supreme Court decision, McNally versus United States. A case originating in Kentucky which effectively disarmed Federal investigators in their ongoing war against public and private corruption.

That decision may end up unlocking the prison cells of 185 convicts who are doing time for public corruption, and it has shut down over 100 pending investigations.

Our amendment would restore Federal law enforcement authority to eradicate public and private corruption by creating new carefully drawn felony offenses for public corruption and certain kinds of white-collar crime, and by expanding Federal power to investigate and punish acts of election fraud.

CONCLUSION

Mr. President, the Biden-McConnell amendment is the result of a concerted effort by Senator BIDEN in moving this bill through committee, Senator THURMOND in introducing the first anticorruption bill with me earlier this year, Senator METZENBAUM, on the private corruption provisions, Senators SIMON and DECONCINI, who also worked on the bill, and the Justice Department, which played a major role in the development of this landmark bill.

Because of the growing ripple effects of McNally on the Federal Government's entire anticorruption effort we need action on this measure right away, and in this election year, we need to send a strong signal to the States that we will not tolerate the desecration of democracy through election fraud and corruption any more.

I am very pleased the Senate is moving on this needed measure this year, and will work for its acceptance in the House.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, it is my understanding that the distinguished Senator from California would now like to offer an amendment. Before he does, I would like to take just a moment to express this Senator's extraordinary appreciation for the diligence, the passion, and conviction which Senator WILSON has brought to our deliberations. He has been a member of our core group from the beginning. And he has added indispensable elements to the legislation before us.

I have the honor of cosponsoring the amendment he is now about to present.

The PRESIDING OFFICER. The Senator from California.

AMENDMENT NO. 3696

(Purpose: To authorize States to receive Federal highway funds to conduct a 1-year pilot program for drug testing of drivers license applicants, and for the Secretary of Transportation to report on the results of the program)

Mr. WILSON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mr. WILSON] for himself, Mr. DIXON, Mr. CHAFEE, Mr. HEFLIN, Mr. GRAMM, Mr. DECONCINI, Mr. RUDMAN, Mr. D'AMATO, Mr. MCCONNELL, and Mr. MOYNIHAN, proposes an amendment numbered 3696.

Mr. WILSON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Tha amendment is as follows:

At the end of the bill, add the following:

SEC. . PROVISION OF FEDERAL HIGHWAY FUNDS TO A STATE THAT HAS A PROGRAM OF RANDOM TESTING FOR DRUG ABUSE OF APPLICANTS FOR DRIVERS LICENSES.

(a) Chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new section: "S. 159. Random testing for illegal drug abuse.

"(1) The Secretary shall design, within nine months after the date of enactment of this section, and implement, within fifteen months after the date of enactment of this section, a pilot test program for the purpose of testing certain individuals, as defined in subsection (5)(A) of this section, to determine whether such individual has used, without lawful authorization, a controlled substance.

(2) The Secretary shall solicit the participation of States which are interested in participating in such a program and shall select four States to participate in the program.

(3) The Secretary shall ensure that the selection made pursuant to this section is representative of varying geographical and population characteristics of the Nation, and takes into consideration the historical geographical incidence of motor vehicle accidents involving loss of human life. In selecting the four States, the Secretary shall attempt to solicit States that meet the following criteria:

(A) One of the States shall be a Western State that is one of the three most populous States, with numerous large cities, with at least one city exceeding seven million people. The State should have a diverse demographic population with larger than average drug use according to reliable surveys.

(B) One of the remaining States shall be a Southern State, one a Northeastern State, and one a Central State.

(C) One of the remaining States shall be mainly rural and among the least populous States.

(D) One of the remaining States shall have less than average drug use according to reliable surveys.

(4) The pilot program authorized by this section shall continue for a period of 1 year. The Secretary shall consider alternative methodologies for implementing a system or random testing of such individuals.

(5)(A) Each State participating in the test program shall test for controlled substances in accordance with subparagraph (B) individuals who—

(i) are applicants seeking the privilege to drive, and

(ii) have never been issued a driver's license by any State.

(B) To deter drug use and promote highway safety, each individual described in subparagraph (A) shall be subject to random testing—

(i) prior to the granting of the privilege to drive, and/or

(ii) during the first year following such grant.

(C) Each State participating in the test program shall deny an individual driving privileges if drug testing required by subparagraph (A) indicates that such individual has used illicit drugs, with such denial lasting for a period of at least one year following such test or subsequent confirmatory test.

(D) The program described in subparagraph (C) of paragraph (5) may allow for reinstitution of driving privileges after a period of three months if such reinstitution is accompanied by a requirement that the individual be available for a period of nine months for drug testing on a regular basis. If any such test indicates that the individual has used illicit drugs, then driving privileges must be denied for one year following such test or confirmatory test.

* * * * *

(6) The Secretary may issue regulations to assist States in implementing the programs described in paragraph (5) and to grant temporary exceptions in appropriate circumstances.

(7) Not later than 30 months after the date of enactment of this section, the Secretary shall prepare and submit to the Congress a comprehensive report setting forth the results of the pilot program conducted under this section. Such report shall include any recommendations of the Secretary concerning the desirability and implementation of a system for random testing of such operators of motor vehicles.

(8) For purposes of carrying out this test program, there is authorized to be appropriated out of safety-related funds of the Highway Trust Fund (other than the Mass Transit Account) $5,000,000 for fiscal year 1990.

(9) For purposes of this subsection, the term—

(A) "controlled substance" means any substance under section 102(6) of the Controlled Substance Act (21 USC 802(6)) whose use the Secretary has determined poses a risk to transportation safety, and

(B) "Secretary" means the Secretary of Transportation.

(b) The table of contents for chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new item:

"159. Random testing for illegal drugs use.".

(C) For purposes of implementing this test program, any drug testing conducted under this section shall conform with the requirements of section 3065 of this Act.

Mr. WILSON. Mr. President, first let me thank my friend and colleague from New York for his very generous and gracious comment. It is particularly valued by me considering the leadership that he has given to this project, and I must say with the unfailing good humor as well as good sense with which he has sought to move along this very difficult and comprehensive drug legislation. I am honored that he has agreed to be a cosponsor of the amendment that I am offering now, as have Senators DECONCINI, DIXON, HELFIN, MCCONNELL, GRAMM, RUDMAN, D'AMATO, CHAFEE, and MOYNIHAN.

Mr. President, as you will note, many of those who have agreed to be cosponsors have been in the core group working on developing the core legislation. What we have determined I think, not just those in that core group but all of us as we have been devoting more time this year than in any previous session of the Congress to the problem of drug abuse and in all of its complexities, is that there is a need not only to try to interdict, to try to apprehend and convict, but more, far more to the point, there is a need for us to deal with the demand side of this problem.

The demand side really means that we are going to try to do something about preventing tragedy rather than simply punishing those who either sell or use drugs.

Prevention is necessarily the focus of this effort as is the drug education that we will authorize in this legislation. Education will suffice for a number of the young people in particular whom we are seeking to protect against the temptation of drug use; some at fourth, fifth, and sixth grade levels will receive the kind of instruction that will teach them not only about the ills of drug use, but more important, to value themselves so greatly that they are armed morally, and spiritually against the temptation of drug use that unhappily comes to them even in their school yards at that age.

But not all will be educable in the sense that they will be prepared to resist temptation. So in addition, we have as a part of dealing with demand insisted that certain provisions focus upon what we have termed "user accountability." What that means very simply is that we are saying to young people you are going to be compelled to make a choice, and with whatever help we can give you still it will be your choice, and you need to understand very clearly there will be consequences of the choice you make.

Specifically, in this amendment we are focusing on the choice that young people will have, either to enjoy the privilege of a driver's license, a legal driving privilege or, if they choose illegal drug use, they risk losing that privilege with all of the accompanying inconvenience.

Inconvenience, Mr. President, is an interesting word. Oftentimes quite rightly on this floor we are concerned with inconvenience to others. We do not seek to inconvenience our constituents. We seek by the laws that we enact to provide workable processes to do things that we think to be necessary in the public's welfare.

But inconvenience, if you think of it, is really a rather minimal burden compared with death. And this is not said to exaggerate or to overdramatize the facts, the tragic facts, as we all know and as we have heard many times for many hours on this floor. But the reason we are concerned with the problem of drug use is because of death by drug overdose, death of young police officers blown away by mindless acts, sometimes by deliberate acts, and also death in terms of the mounting slaughter on our highways.

Mr. President, the National Highway Transportation Safety Administration has determined that as many as 22 percent of all of the annual auto fatalities on America's streets and highways can be attributed in some measure to drug-stoned drivers. That is a tragedy that we may not ignore.

So it is for that reason that this legislation is offered to those who have studied this bill who have looked at the provision offered by Senators LAUTENBERG and DANFORTH. This will look quite familiar, as indeed it is because we have used that as a model for what will be a pilot program also conducted by the Department of Transportation. The Secretary will be directed to design within 9 months after the day of enactment of this section and to implement within 15 months thereafter a pilot test program for the purpose of testing certain individuals who are first-time driver's license applicants to determine whether or not they test positive for controlled substances as defined under the Controlled Substances Act.

The purpose, obviously, is first and foremost to rid the highways, to rid our streets of those who have incapacitated themselves just as many incapacitate themselves by becoming intoxicated with alcohol. It is of little difference to their victims whether they are intoxicated by alcohol or intoxicated because they have consumed controlled substances or, as we popularly refer to them, illegal drugs.

The Secretary shall solicit the participation of States interested in participating in the program, and then shall select four States to participate in the program. They will be selected according to the criteria that will provide the Department with the maximum of experience in different situations. There will be a large State, and there will be a small rural State. There will be four such States in the four regions of the country.

Mr. President, at this point, I yield for the propounding of a unanimous-consent request. I think 30 minutes equally divided, from this point, will be fine.

Mr. NUNN. Mr. President, I ask unanimous consent that the vote on this amendment occur at or before 2:40 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NUNN. I ask unanimous consent that the time be equally divided between the Senator from California and me. I will be glad to yield to anyone who is against the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WILSON. Mr. President, the program that would be authorized by this section, when implemented, would continue for a period of 1 year, and the Secretary would be directed to consider alternative methodologies for implementing random testing of first-time driver's license applicants.

Why do we say first-time driver's license applicants? First, because they are the target constituency, the population jeopardized by the drug traffic. I have never met a 16-year old who was not hungering for a driver's license, and I doubt that any of us on this floor have met many. Whether it be considered some rite of passage or simply a way to get around and enjoy mobility, there is, understandably, a tremendous eagerness on the part of young people to get their driver's license. But it is these very youngsters, teenagers, in high school, who have been targeted by the drug pushers.

Overall drug use in high schools, while decreasing, is still alarming. It is an incredibly alarming figure. According to the attorney general of California, 42.4 percent of the State's 11th graders reported trying one or more illegal drugs. Of ninth graders, 23.4 percent reported trying one or more illegal drugs, and 9 percent of seventh graders reported trying one or more illegal drugs.

With regard to cocaine, 9.3 percent of the State's 11th graders said they had tried crack, 4.7 percent in the 9th grade, and 2.3 percent in the 7th grade. By the 11th grade, more students had tried marijuana than cigarettes.

Mr. President, those who are trying drugs, be they engaged only in a simple experiment when they get behind the wheel of an automobile, are clearly a menace not only to themselves but also to everyone else on the road with them.

A Member of this body has been the victim of an intoxicated driver. He lost his parents to an intoxicated driver. The fact is that virtually all of us know someone who has been a victim of such tragedy.

The time has come for us no longer to be tolerant. We cannot simply ignore it, look the other way.

We recently passed labeling legislation that notes that alcohol can contribute to the incapacitation of a driver, urging people not to drive when drunk, when they have been drinking. Even those in the business of providing alcoholic beverages have eagerly engaged in that crusade.

So, what this amendment does is what the Lautenberg-Danforth amendment already contained in the bill does: It provides a pilot test, a pilot program, in which we will be able to ascertain the results in four States of giving to first-time driver's license applicants a random test, under a procedure whereby within 1 year from having been granted their licenses, they may be required to submit to the testing, in according with the HHS certified procedures.

If they are found to test positive, they may be required to lose a license for 3 months while it is suspended, and then for the remainder of the total year period of suspension, they would be required to agree to undergo testing on a regular basis, as devised by the State's department of motor vehicles.

Mr. President, let me reemphasize: The purpose is prevention. It will be noted that I have said nothing in here about any criminal penalty, because there is none. It is not our purpose to punish. It is our purpose to keep kids clean and keep them alive and keep alive those who share the highways with them.

Just as in the Lautenberg-Danforth legislation, where a similar pilot program seeks to implement the same kind of testing on a much more ambitious scale, to deal with alcohol-intoxicated drivers, here we are dealing with what is a relatively simple problem, simpler in the sense that those who have used controlled substances will find that they test positive for far longer than those who consume alcohol.

We are trying to do two things: We are trying to reduce the carnage on our highways. Second, because it has been so rare in anyone's experience who has met a 16 year old who did not want that driver's license desperately, we do have, admittedly, a point of great leverage; so that those who have not been educated by our best efforts to educate them as to their own self-worth and the danger of drugs, will be held accountable for their actions, for the consequences of the choices they make; and if they choose illegal drug use, they can expect to lose their legal driving privilege.

Mr. President, whatever inconvenience may be involved for 16 year olds in coming at some point within that year to be tested on a random basis, I submit that it is far less than the inconvenience to them, to their parents, to those who love them, if, instead of being inconvenienced, they drive into a light pole or drive head-on into another car and kill not only themselves but also the passenger in the other vehicle who is totally innocent of any wrongdoing.

Compare that inconvenience to the burden now experienced by the parents of Len Bias: at one moment entertaining the prospects of a brilliant career as a professional athlete, with the world in the palm of his hand, and the next moment, as a result of celebrating with crack, dead, on a slab in the morgue.

Mr. President, we have two important goals here—highway safety and providing the kind of incentive to young people that will give them the absolute assurance that if they make the wrong choice, it will cost them. Again, it will not be a criminal penalty they experience. It will simply be the loss of a very important privilege. But it is a privilege, and it is one that is abused by those who intoxicate themselves either with alcohol or controlled substances.

Just as we now test vision, knowledge of the motor vehicle code, and actual driving skills, it has become necessary, because of the widespread use of controlled substances by young people, to add a test to determine whether or not they have incapacitated themselves to drive an automobile, posing a risk not only to themselves but also to others.

Mr. President, how much of my time remains?

The PRESIDING OFFICER (Mr. PELL). There is remaining 6 minutes and 23 seconds.

Mr. WILSON. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. NUNN. Mr. President, I note that the Senator from South Carolina mentioned he is concerned with this amendment. I hope that he could be notified that the time is running. I will be glad to yield to him such time as he may desire since I am controlling half the time.

I do not know anyone else who wants to be heard on the amendment.

I can say briefly that I think the amendment is not in a form that I can support. I believe that the original amendment was biting off too much without knowing fully what the problems might be with this kind of test. This amendment gives States the right to choose whether they would like to be in the test and the Federal Highway Administrator would have the discretion—correct me if I misinterpret this in any way—dealing with certain States and certain geographical criteria.

Mr. WILSON. The Senator is correct. The Secretary is directed to devise the program and in implementation of it solicit participation in the States and from those interested make a selection.

Mr. NUNN. Mr. President, there is no doubt about the fact that the drug problem is serious as described by the Senator from California. There is no doubt about the fact that young people are increasingly involved in abuse of controlled substances and also no doubt about the historical fact that all of us know that young people want drivers' licenses.

The way you connect these things is going to have to be very carefully worked out. It is not going to be easy to administer this by any highway department or State government that goes into this program. The Bureau of Public Safety is going to have to look carefully at how you administer the test, at what point in time, and who goes out and conducts the test, whether it is done at the home of the individual or whether they are done at a central location.

There are a lot of administrative challenges here, but I think the amendment is in a form where it is worth an effort. It may or may not prove out, but that is why we have a pilot project, to see whether it does or not.

So even though there are a number of people who continue to have concerns about this approach my view of it is let us see what happens in a pilot project. We do not have all the answers in this drug business. We are going to have some experiments in a lot of respects, and this amendment now is in a position where we can indeed find out if this program will work, if it is practical, if it can be properly administered, how much it costs and whether indeed it does deter.

So tests are open questions, but that is the nature of the amendment now. It is a pilot project, and I urge its approval.

Mr. President, I suggest the absence of a quorum and I ask unanimous consent the time to be charged against both sides equally.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WILSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is is so ordered.

Mr. WILSON. Mr. President, I yield 5 minutes to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KARNES. Mr. President, I am pleased to speak on behalf of the Omnibus Anti-substance Abuse Act of 1988 and pleased to be a cosponsor of that act.

This bipartisan anti-drug bill represents months of hard work and compromise on both sides of the aisle to fashion a workable, strong comprehensive approach to the problem of illegal drugs that threatens our society.

That this legislation is long overdue is not in question. Despite the billions that have been spent on interdiction, eradication, rehabilitation, and education, the scourge of drug abuse remains pervasive in every sector of society, in every region of the country. One in 10 Americans use drugs at least monthly and spend $110 billion annually to buy illegal substances, drug use in the workplace costs at least $100 billion annually in lost productivity from on-the-job accidents, illnesses and absenteeism.

The problem is especially serious among our Nation's youth. Half of all high school seniors have used drugs at least once, and over 25 percent use drugs at least once a month. The average age for first time users has dropped to below 13—entry level junkies in the seventh grade. The toll among our young is heavy. Drugs are linked to 80 percent of all high school dropouts, 90 percent of all teenage pregnancies, and 60 percent of all teen suicides and homicides.

America is now engaged in a war on drugs. Many of my constituents in Nebraska have told me they feel it is no longer a war confined to the urban areas of the country, but has now reached rural areas as well. It is a war we cannot afford to lose. But we cannot win unless we halt both the demand as well as the supply of illegal drugs.

The omnibus drug bill now before the Senate attacks this problem head on. This legislation is strong and tough; it is also humane. It demonstrates the determination of Congress to win the war against drug use in our country. It sends a clear signal that we mean business. We will no longer tolerate either the use or the trafficking of drugs. At the same time we offer hope and compassion so that drug users can find the treatment they need to lead healthy lives.

We realize that drug users are ordinary Americans, who have homes and jobs, raise families and pay taxes—not hardened criminals. We make it clear that users must be held accountable for their own actions, that those who do not change their habits but persist in doing or dealing in drugs will pay a heavy price.

We call for stringent, no-nonsense measures to secure drug-free neighborhoods, workplaces, schools, public housing, transportation systems, and prisons. We propose to increase existing penalties for drug dealing and other drug-related penalties; to increase funding for stepped-up law enforcement and interdiction; and to strengthen the overburdened criminal justice system. We also propose to increase funding for rehabilitation and treatment so that drug offenders can be made clean and will be able to return to their jobs, homes and families.

Among other things this legislation will:

Increase penalties for persons who commit drug offenses involving children;

Increase penalties for drug-related offenses involving firearms;

Authorize the Federal death penalty for drug-related murder, including the killing of law enforcement officers;

Increase funding for the drug-free schools act and require teacher training in drug education and prevention as one of the uses of State funds.

Establish a national commission in drug-free schools to recommend criteria for schools to meet in order to be drug free and to withhold funding from schools that do not meet those criteria;

Prohibit Federal grants and contracts to those organizations that do not provide drug-free workplaces;

Mandate drug testing every 60 days for persons on probation and provide penalties for those who test positive more than once;

Require chemical companies to keep records on sales and purchases of regulated chemicals so that the Drug Enforcement Administration can trace chemicals used to manufacture drugs and combat chemical diversion for illegal purposes;

Confirm the authority of public housing authorities to evict tenants who engage in drug-related activities;

Require drug testing of employees in safety sensitive positions in transportation, such as airline pilots, bus drivers and rail engineers; and

Authorize $1.5 billion in new funding for drug treatment and education programs.

In addition, we have added, by amendment, important provisions which would:

Deny Federal benefits to convicted drug offenders, excluding safety net benefits;

Impose a civil penalty of up to $10,000 for possession of small amounts of certain illicit controlled substances;

Encourage the States to require random drug testing of driver's license applicants and to suspend licenses for 1 year after a conviction for a drug offense or for drunk driving.

Mr. President, we send a strong signal today that drugs in our society are completely, totally, utterly unacceptable, and we are willing to do everything it takes to attack this in every way possible. It is a scourge to family life and family values, and destroys the future of our children. It is up to us to set an example for our young people and to society as a whole that our goal must be drug-free society. I commend my colleagues for their swift action, and urge final passage of the bill.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. NUNN. Mr. President, I yield such time as the Senator from South Carolina may desire. I believe we have 11 minutes remaining. We may need to extend the unanimous-consent request. I hope not. But the Senator from Virginia also wants to speak.

At this time, I yield whatever time the Senator from South Carolina desires.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. HOLLINGS. I thank the distinguished manager of the bill and my friend from Georgia.

Mr. President, with respect to this particular amendment, I think the intent is good but the result is unconstitutional under the equal protection for the lack of a proper finding by the Congress or otherwise so bureaucratically and financially burdensome that we should not even be going down the road on a test basis.

As I view this amendment, the chairman of our committee asked several times what do I think about this. Necessarily I think about it from time to time in that I authored the testing with respect to recruits going into the armed services because they have all the other tests with respect to diabetes, heart trouble, lung, eyes and sight, flat feet, and everything else, and we are spending literally up to $420 million to correct drug abuse in the Armed Forces. It was just going up, up and away. We were not testing them. We were assuming the responsibility, and it was a ridiculous kind of approach that we now have it.

So I like this initial kind of testing where the national security is involved.

Similarly with respect to the highest degree of care when you are in public transport. I am also the cosponsor with respect to the random drug testing in the airlines, in the rail travel, and in the motor car business, the truckers, and we passed those bills over here in the Senate.

But when you come now with the hope of trying to deter but not the actual funding, there have been no hearings on this, and a spurious kind of thing saying, "Well, those who come for drivers' licenses"—and they are between 14 and 16; we do not say that in the bill—but we say those who come for the first time—and that is what they really want; as my distinguished colleague from California says, he knows nothing they want more than a driver's license come 16 years of age—that this would deter. Perhaps.

But I cannot help but follow this through to its natural conclusion. What it says, if it ever worked, is that we would have to start testing everyone, everyone, for driving. Any driving American would then submit to a drug test.

I do not know about the bureaucracy there, the testing labs, the legal cases, but if we have a drug problem, we would have an even greater sort of what you call a governmental problem, or however you wish to characterize it. The logic would follow that if this worked, we have mental illness in this country. We certainly do not want, in the crude parlance of the language, crazy people out on the highways. So we ought to, before you get a driver's license, we ought to have two psychiatrists to declare everybody sane before you get your driver's license. Now, you know that is ludicrous and I know that is ludicrous.

I think this is ludicrous, because this is one of these good intent things that flares up on the floor of the National Congress. Everybody thinks, since we cut it down, it is only 5 million—we only think in terms of billions—and we only have four States—I do not know which States are going to volunteer. If I were the highway commissioner in my State, I would say, "Leave that thing alone. I have many more problems." And there is a drug problem. It is an educational problem and everything else. But with the hope of catching teenagers, what about everybody else in society? That gets me to the constitutional point of due process.

I do not see, under the equal protection clause of the Constitution, that the Congress has made a sufficient hearing or finding or anything else about this class. We do with respect to the pilot of an airplane. We do, on national security provisions, with respect to an individual coming into the armed services.

There is no finding, constitutionally here, whatever by the Congress, just a good idea, perhaps, in some Senator's mind. What we do is we go pell-mell down the road and give ourselves a good government award because we cut it to four States and only 5 million and let us keep our good friend from California happy and get rid of this one so we can move on and pass the drug bill. This is the kind of legislation that really comes around to haunt us and, frankly, bog us down. It ruins the credibility of the drug bill itself.

You have to ask yourself categorically whether it is a good policy to require drug testing for all drivers in America. I just do not think that is sound policy. I think it is desirable to catch them where we can and different other things. But we cannot assume that or we cannot assume youngsters or first-time drivers or all those in between the ages of 14 and 16 are subject to drugs and those other things any more than any other group.

I would think that if you wanted to find the group—I know it has gotten into the elementary school—but if you really wanted to target the group, it is the college crowd; let us get into the 18-to-22-year-olds. The insurance records would show reckless driving there. It is that college group that finally tries that first beer or that first drink at the fraternity house or the college campus or away from home or whatever. That group would be the more dangerous group if we had to apply it. But it does not apply there because there has been no finding there, even though I have cited some certain statistical notes by insurance rates. And certainly there is no finding for this group.

I commend the Senator from California for his hope and his intent, but this is just bad legislation. It is taking money, which everybody says, "Well, there is a highway trust fund, and we are using it to balance the budget. Maybe that is a good way to get the money to use." That is another frustration we have in the airport and airways trust fund and the highway trust fund and everything else of that kind. We have a dickens of a time holding the highway trust fund for highway.

Well, of course, this is very logical and understandable—those who use the highways. But if we are going to do that and deplete the fund this way—I do not want to really make that argument, although that is a consideration.

I make the argument that the darn blooming pilot program might work. I do not see, if you have four States that were silly enough to come in on this particular score, then they would try to make it work and then they would give you a bunch of statistics and then we would be all balled up around here trying to pass a multibillion dollar bill to test every driver. Then, if you tested them coming in, then there ought to be random, periodic tests and we would be not only clogging up the highways, but we would have clogging up the sidewalks of America with everbody walking back and forth to get the drug test. I mean, what we are doing?

Let us get serious about this measure and pass something that we can all defend and not just go off on a wish and a hope and pass this kind of legislation which I think is very damaging to the entire drug control cause.

I thank my distinguished friend from Georgia.

I yield the floor.

The PRESIDING OFFICER (Mr. Wirth). Who yields time?

Mr. NUNN. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Georgia has remaining 3 minutes; the Senator from California, 1½ minutes.

Mr. NUNN. Mr. President, how much time would the Senator from Virginia like?

Mr. TRIBLE. Five minutes.

Mr. NUNN. Mr. President, I will be glad to yield him 2 minutes of my time, I better reserve 1 minute.

Mr. President, let me go ahead and ask unanimous consent that this vote occur at 2:45 and that the additional time be equally divided.

The PRESIDING OFFICER. Is there objection? The Chair hears none and it is so ordered.

Mr. NUNN. I yield the Senator 2½ minutes.

Mr. WILSON. I yield the Senator 2½ minutes.

Mr. TRIBLE. I thank my colleagues.

The PRESIDING OFFICER. The Senator from Virginia is recognized for 5 minutes.

(By unanimous consent, the remarks of Mr. Trible will appear later in today's Record.)

The PRESIDING OFFICER. Who yields time? The Senator from California.

Mr. WILSON. Mr. President, my friend from South Carolina was off the floor when I recited some statistics that make clear the very painful relationship between highway safety and the use of controlled substances by intoxicated drivers who have contributed disasterously to the slaughter on our freeways, on our highways and streets. Some 22 percent of annual auto fatalities, it is estimated by the National Highway Traffic Safety Administration.

Mr. President, this is a pilot program. It is almost identical in terms of the process employed to that of the Lautenberg-Danforth amendment which has already been incorporated into the core package. It requires that the Secretary solicit participation by the States. The States then voluntarily indicate their desire to participate, and he is required to select four as participants in the pilot program.

It will not be funded by withholding highway funds. To the contrary, it will make use quite properly of funds that have been appropriated for the purpose of innovative highway safety programs within the Department of Transportation's budget.

Finally, this is not a program that proposes, at any time, the testing of all applicants or even of all first-time applicants. It is, rather, a program that proposes random testing of what will probably be something in the neighborhood of 10 percent of first-time applicants. I think it is significant that those who have given, literally hours, days, and now weeks to constructing this core program, are cosponsors of this legislation: Mr. DeConcini and Mr. Dixon and Mr. Heflin and Mr. McConnell, Mr. Gramm, Mr. Rudman, Mr. D'Amato, Mr. Moynihan, and in addition Senator Nunn and Senator Chafee have indicated their support.

Before yielding 1 minute or so to my friend from Alabama, the senior Senator from Alabama, as I listened to my friend from South Carolina say that he approves the testing for those entering the armed services because national security is involved, I would have to simply observe that there is a far greater and more immediate danger to the American people posed by the kind of slaughter that has been occurring on our highways because of the drug-stoned drivers than any national security threat that occurs to me. And he and I share concern and a great deal of time working together on that front.

Mr. President, how much time remains?

The **PRESIDING OFFICER.** The time of the Senator from California has expired.

Mr. **WILSON.** Mr. President, I ask unanimous consent that the time be extended by 2 minutes to allow the senior Senator from Alabama to make a comment.

Mr. **HOLLINGS.** Mr. President, I will not object. Do we have a similar amount of time remaining to apply?

The **PRESIDING OFFICER.** There are 3 minutes remaining to the Senator from Georgia. The Senator from California is recognized for 2 minutes.

Mr. **WILSON.** I yield to my friend from Alabama.

Mr. **HEFLIN.** Mr. President, I support this amendment. I think it has some far-reaching effects among young people. It has the effect of making them take a choice on what I might call wheels or joints. And if they are fearful that they are going to lose their wheels, then I think that there is a strong possibility that it will deter them from the use of narcotics, or from joints of marijuana or any other types of narcotics that might be had.

It is a pilot program, a program in which four States are involved in the study. The fact that the time when the test might be given is unknown, it goes over for a period of a year, can cause them to have great concern that they may not be able to drive. I think it has a great effect in deterring the initial use or the trying, to say, well, we are going to try it, that sort of thing, at an age at which it is likely that they might try to be experimenting with drugs.

To me it makes some sense in that regard. The pilot program can show what the expense will be. A pilot program can show a lot of different things. To me, I think it is a program that we ought to undertake.

The **PRESIDING OFFICER.** Who yields time?

Mr. **NUNN.** How much time do we have?

The **PRESIDING OFFICER.** Three minutes remaining.

Mr. **NUNN.** I yield 2 minutes to the Senator from South Carolina.

Mr. **HOLLINGS.** I agree with my distinguished colleague from Alabama about the choice of wheels and joints. There is hardly a 14- or 16-year-old that has his own wheels and his own joints. If that is the test, let us go to the 20-year-old, off at school or work if he cannot afford school. The greater likelihood of owning the wheels, having his wheels and having his own joint, would be in that class or that category.

As the former Chief Justice would know, it does not respond to a congressional finding. Otherwise, it says "controlled substance," and he, from Alabama, and I, from South Carolina, would say there is a far greater danger from liquor, not the controlled substance here, and we ought to do that first.

And, third, since my distinguished friend from California said I had not heard all the statistics, I had read enough when I read that the bill described the State of California. He singled out, as the author, his own home State for a pilot program.

You know and I know what is going on on this floor. Everybody likes to help a fellow. There is no greater member of our Commerce Committee than the distinguished Senator from California. I told him I would like to oblige him. But I do not see sending the Congress down this primrose path of bureaucracy, confusion, inordinate expense for the desired result. There will be total chaos resulting, in my opinion, if we drug test every driver in America. Because that is its logic. That is its logic and it would have to be its logic if it were upheld.

The **PRESIDING OFFICER.** Who yields time? The Senator from Georgia has remaining 1 minute. The Senator from California has remaining 30 seconds.

Mr. **NUNN.** Mr. President, I am prepared to yield back the remainder of my time.

Mr. **WILSON.** Mr. President, I yield back the remainder of my time.

The **PRESIDING OFFICER.** All time is yielded back. All time has expired.

Mr. **WILSON.** Mr. President, I ask for the yeas and nays.

The **PRESIDING OFFICER.** Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The **PRESIDING OFFICER.** Is there further debate?

There being no further debate, the question is on agreeing to the amendment of the Senator from California, numbered 3696. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. **CRANSTON.** I announce that the Senator from Texas [Mr. Bentsen], the Senator from Oklahoma [Mr. Boren], the Senator from Louisiana [Mr. Johnston], the Senator from Massachusetts [Mr. Kennedy], the Senator from North Carolina [Mr. Sanford], the Senator from Illinois [Mr. Simon], and the Senator from Mississippi [Mr. Stennis] are necessarily absent.

Mr. **SIMPSON.** I announce that the Senator from New Mexico [Mr. Domenici], the Senator from Minnesota [Mr. Durenberger], the Senator from Pennsylvania [Mr. Heinz], the Senator from Indiana [Mr. Quayle], the Senator from Vermont [Mr. Stafford], and the Senator from Wyoming [Mr. Wallop] are necessarily absent.

I further announce that, if present and voting, the Senator from Pennsylvania [Mr. Heinz] would vote "yea."

The **PRESIDING OFFICER.** Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 77, nays 10, as follows:

[Rollcall Vote No. 373 Leg.]

YEAS—77

Armstrong
Baucus
Bingaman
Bond
Boschwitz
Bradley
Breaux
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Conrad
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dole
Exon
Ford
Fowler
Garn
Glenn
Gore
Graham
Gramm
Grassley
Harkin
Hatch
Hatfield
Hecht
Heflin
Helms
Humphrey
Karnes
Kassebaum
Kasten
Kerry
Lautenberg
Levin
Matsunaga
McCain
McClure
McConnell
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Proxmire
Pryor
Reid
Riegle
Rockefeller
Roth
Rudman
Sarbanes
Sasser
Shelby
Simpson
Specter
Stevens
Symms
Thurmond
Trible
Warner
Wilson
Wirth

NAYS—10

Adams
Biden
Cranston
Dodd
Evans
Hollings
Inouye
Leahy
Lugar
Weicker

NOT VOTING—13

Bentsen
Boren
Domenici
Durenberger
Heinz
Johnston
Kennedy
Quayle
Sanford
Simon
Stafford
Stennis
Wallop

So the amendment (No. 3696) was agreed to.

Mr. **BYRD.** Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. **GRAMM.** I move to lay that motion on the table.

The motion to lay on the table was agreed to.

(The following remarks of Mr. TRIBLE appear at this point in the RECORD by unanimous consent:)

Mr. TRIBLE. Mr. President, I wish to speak briefly to the merits of this legislation. It is the product of a thoughtful, bipartisan process. I am pleased to have been a partner in that enterprise.

Mr. President, I am pleased that the Senate will adopt a bipartisan drug bill before we adjourn.

In all likelihood, this is the last major piece of legislation that the Senate will enact during the 100th Congress. It is also the last major bill which I will have helped to fashion. I am pleased that's the case, because this is good legislation.

When I first came to the Senate 6 years ago, the narcotics trade was not yet the preeminent concern of most Americans. It was troubling, to be sure, and Americans knew that the drug trade was a force to be reckoned with. But drugs did not dominate our news, nor drive so much of our public policy. All that has changed, Mr. President.

Over the past several years, the drug trade has become pervasive. Today, the narcotics industry is public enemy No. 1. It dominates our news and affects all of our lives. It consistently ranks as the principal concern for most Americans. Those Americans have demanded that Congress act, and act we have.

The 1984 Crime Control Act increased criminal penalties for drug-related offenses. It made important revisions in our criminal laws—revisions like bail reform and stronger forfeiture laws—that have been instrumental to our drug enforcement efforts.

Two years later, the Congress acted again. The Anti-Drug Abuse Act of 1986 created new drug offenses, and further enhanced the criminal penalties for other drug crimes, especially those involving large-scale drug transactions. It also launched a more significant Federal effort to assist States, and to bolster cooperation among all levels of government on antidrug enforcement.

Now, 2 years later, we are poised to approve yet another bill that substantially enhances the Federal commitment to fighting drugs.

Mr. President, there are those who see in this sequence of events nothing but futility. There are those who say these bills are a meaningless political exercise and claim that we've already lost the war on drugs. There are those who argue that it's time to give up and legalize drugs.

I disagree, Mr. President, for in this sequence of events I see something quite different. Over the past 6 years, I have seen a Congress realize that legalization is the language of a quitter. I have seen an often fragmented Congress join together to devise legislation that has improved eradication and interdiction efforts, that has increased apprehensions and prosecutions, that has enhanced our education and prevention programs. I have seen a Congress improve older laws and programs, and devise new ones, to better combat the drug trade. And I have seen us do this in a bipartisan fashion.

We are realistic enough to admit that the drug war will not be won overnight. But I am encouraged because these ongoing efforts mean we're in this fight for the long haul. But we're also concerned enough and able enough to keep trying.

This bill is an important part of that effort. It is the product of a thoughtful, bipartisan effort. It imposes tougher demands on foreign governments that are significant sources of drugs, and that fail to combat drug-related corruption and money laundering. It provides greater resources for interdiction programs to seize drugs before they reach our shores. It increases the penalties for drug-related crime, especially where the victims are children, and it substantially increases the Federal commitment to drug abuse prevention and treatment programs.

Overall, the bill is tougher on traffickers and more compassionate toward those who are tempted to abuse drugs, or who are drug-dependent but seeking help.

But just as important as the specific provisions of the bill is what this legislation represents.

There is no doubt that the war on drugs has been a difficult one. The growth and staying power of the drug trade have frustrated us all. But with this bill, Congress will make clear that we have substantial staying power of our own.

Mr. President, let the word go out: In the Federal, State and local governments of this land, the drug lords have found a permanent enemy—one who will not quit, one who will not yield. This bill is the latest evidence of that. It represents our contribution to a war that is raging throughout the land. We have to recognize the reality of the great problem before us.

The United States will not triumph over drugs solely because of this legislation. For this war—like all wars—is made up of countless smaller battles being fought in schools and homes and churches across the country.

Each time our drug enforcement agents seize a drug shipment or wipe out a drug crop, America will have won a small victory. Each time our police and prosecutors capture and convict a drug kingpin, America will have won a small victory. And each time a child says no to drugs, America will have won again.

From those small victories will emerge our success in the war on drugs. This bill is important, but it is but one step in the long and difficult road toward the drug-free America that each of us wants for our children, for our grandchildren, for our fellow citizens.

I urge my colleages to adopt this legislation decisively and let us continue to build on this legislation in each day that passes, with each Congress, and in the communities of this land.

ASSISTANCE FOR U.S. ATTORNEYS IN DRUG PROSECUTIONS

Mr. COCHRAN. Mr. President, the bill before us builds on efforts previously made by Congress to attack the abuse of illegal drugs. It is clear to us all that illegal drugs are doing great damage in our Nation. The 1986 drug bill focused on efforts to reduce the supply of illegal drugs through increased interdiction. In this bill, we are attempting to balance enhanced interdiction efforts with the need to reduce the demand for illegal drugs.

I am pleased that this bill would authorize additional positions for U.S. attorneys. If we are going to narrow the gap between drug arrests and drug prosecutions, it is essential that Federal prosecutors are provided with additional resources.

I had considered offering an amendment to ensure that at least one Drug Task Force attorney be assigned to each U.S. attorney in the Nation. The 13 Regional Organized Crime Drug Enforcement Task Forces have done a good job, with limited funds, to ensure that prosecutors are made available where they are needed to prosecute drug cases. However, there are currently at least 12 Federal judicial districts which are not assigned drug task force personnel.

I trust the Department will address this important need without the interference of the Congress in its management decisions.

In its budget request for fiscal year 1989, the Justice Department included $4,273,000 for an additional 33 attorneys, 42 paralegals and 27 support positions to meet the increased number of cases being brought to the Organized Crime Drug Enforcement Task Forces. With this increase, it would have been possible to assign at least one task force attorney to the remaining Federal judicial districts which lack such resources, and to increase the number of attorneys available to each of the 13 regional task forces.

Unfortunately, the recently enacted appropriation for U.S. attorney salaries and expenses in fiscal year 1989 falls short of the budget request by $33 million.

In fact, the fiscal year 1989 appropriation falls about $11 million short of the U.S. attorneys' current services requirement. The $391.2 million appropriated will not support approximately 207 of the assistant U.S. attorney positions already allocated. A total hiring freeze will be required in fiscal year 1989, unless assistant U.S. attorneys are denied pay adjustments.

Furthermore, the $391.2 million provided for U.S. attorneys in 1989 will mean that U.S. attorneys will not be able to prosecute very many new narcotics cases. They will be forced to plea bargain rather than risk becoming involved in lengthy trials. Prosecutions of only the top level drug traffickers will be possible.

The current ratio of assistant U.S. attorneys doing criminal work to law enforcement agents bringing cases exceeds 1 to 19. An independent study recommended a ratio of one assistant U.S. attorney for every 5 drug task force cases. Our U.S. attorney offices are now at the "choke point" in criminal prosecutions, especially those involving controlled substances.

The additional $36 million authorized in this bill for additional U.S. attorney personnel will have to go first toward maintaining existing attorney and staff positions. Once the current services level is reached, then additional resources will become available for attorneys.

Although the bill proposes to provide an additional 757 positions, it will provide only a fraction of the additional support needed for U.S. attorneys.

It is natural to concentrate resources in the areas where drug caseloads are the heaviest. However, in doing so, we overlook the fact that drug problems exist everywhere. Drug traffickers don't just focus on the big cities, and neither should our prosecution efforts focus only on the big cities. To do so is to ignore the size and breadth of the drug problem in our Nation.

The criminal caseload in the northern district of Mississippi has increased from 240 cases in 1985 to over 400 in 1988, but no additional assistant attorneys have been assigned to help with the caseload in that district during this period. In drug cases alone, the shortage of prosecutors is a serious problem, as described in a recent letter to me from Robert Whitwell, U.S. attorney for the northern district of Mississippi:

> Drugs are an ever-increasing problem in our district; we have had major drug busts or cocaine sales around the district. In Greenwood, eight defendants have been convicted so far in a twelve-year cocaine and marijuana conspiracy. Greenville's largest cocaine dealer, Fred Dotson, was convicted with eleven others and is now serving 20 years. We also have a major cocaine conspiracy ready for trial in Columbus. We have also convicted over six major cocaine dealers in Tupelo, including police officers. We have had about ten other major cocaine cases and recently had two additional "Reverse Sting" cases where large amounts of cash were seized by the Mississippi Bureau of Narcotics and Tupelo Lee Metro Unit. I mention this unit because there is only one DEA agent in our 37 counties, and without the help of the state narcotics bureau we simply could not prosecute drug cases.
>
> There are no personnel assigned to the OCDETF drug task force in our district as there are in every other district in the Southeast region. We have been promised one attorney position, but to date have still been denied it after three years of requesting. Of course Congress has supported Operation Alliance and approved new positions, but we do feel each district should be represented by a Task Force Attorney to properly attack this very serious matter.

Mr. President, to win the war on drugs there must be additional staff available to our U.S. attorneys to prosecute drug cases. This bill attempts to provide them with additional resources, but we need to insist that these resources are allocated fairly around the country.

Mr. WEICKER. Mr. President, I rise in support of S. 2852, the Omnibus Anti-Substance Abuse Act of 1988.

Mr. President, in June of this year the Senate Labor and Human Resources Committee heard expert testimony on the devastation of drugs. Among the witnesses was the Reverend Jesse Jackson. He began by recalling a recent visit to a childrens' hospital and spoke of the "small, frail bodies of newborn infants shaking uncontrollably because they were born drug addicts. These babies," he pointed out, "had made no decision, they had been given no choice. Yet they began their lives living in the agony that grips so many—the agony of an unprevented, untreated, and still profoundly unaddressed drug crisis."

Mr. President, it is for us, the Congress of the United States to make the choices and decisions for the part of our world that cannot be heard or understood. For babies born addicts, and for their mothers. For young people whose lives hold no future other than a slow death. For 6.5 million Americans, young and old, who are hooked on drugs, and millions of others of drug consumers who are playing with fire. And for neighborhoods and communities where drugs are dealt and which today are governed by violence and fear rather than the rule of law.

The decisions made in this bill will go a long way toward addressing the drug crisis and preventing its further escalation. Recognizing that you can't buy enough barbed wire, Coast Guard cruisers or helicopters to completely dry up the supply of drugs, it targets the demand. It calls for more education about what drugs do to your body—and to your future—at an early age. Saying no is a lot easier if you know why. The bill increases funding for the Drug Free Schools Program from $250 to $445 million for fiscal year 1989, with a 10-percent annual increase thereafter. And it establishes a new $20 million program of teacher training grants.

Ridding the workplace of drugs through counseling and treatment is another goal of this legislation. It establishes a Department of Labor grant program to help set up employee assistance plans for drug and alcohol treatment and it requires the Department of Health and Human Services to develop a model insurance plan for Federal workers to cover drug and alcohol abuse treatment.

Two years ago, when we were debating a drug bill, I asked where the funds were going to come from for the proposed programs. The administration's answer then was that we were going to cut the budgets for mental health and alcohol and drug addiction research programs in ADAMHA. In this bill, the crucial, antiaddiction work of that agency is being recognized—with a name change, such that it will now be known as the National Institutes of Alcohol, Drug Abuse and Mental Health; with demonstration projects for high risk youth and the homeless; and, most importantly, with a burgeoning block grant that will nearly double in size from fiscal year 1988 to fiscal year 1991.

On top of the block grant, this bill establishes a new State grant program for drug treatment assistance, with close to $1 billion in authorized funds in fiscal year 1989, tripling to $3 billion in fiscal year 1991. In my State of Connecticut, too many addicts have had to wait too long to get help, even after acknowledging they need it. The same is true all across the Nation. This new commitment to treatment is a step in the right direction, a direction well detailed in today's Washington Post by HHS Secretary Bowen. As the Secretary concludes: "treatment is the only answer for the millions of Americans who, for one reason or another, want to say no, but can't."

Drug education, counseling and treatment—these comprise the nonsensational side of this bill, but they promise much in the way of results. They are what many of us on the Labor-HHS Appropriations Subcommittee have been pushing for year after year. I am glad they are getting their fair share of the authorizing attention in this bill today.

On the law enforcement side, the Omnibus Anti-Substance Abuse Act stiffens civil and criminal penalties for drug-related crimes. With the exception of the death penalty—a form of punishment I support only in the case of the killing of a police officer—I applaud the thrust of these measures as well. They make the laws clear with regard to possession, trafficking, money laundering and other of the seamy sideshows of the drug economy. And, unlike the bill approved by the House, they do so without overstepping important constitutional protections, such as those concerning the rules of evidence and habeas corpus.

"Users will pay" was the message the Senate sent yesterday by unanimously approving civil penalties of up to $10,000 for possession—no matter how small the amount. To the front-office dealers, we are saying this: Sending teenagers into the streets to do your dirty work will no longer work. They too will be punished, even as we try our hardest to help young people at risk of falling into your snare. And to those pushers who have armed themselves with an artillery rivaling—and in some cases, superior to—the best-equipped police forces, we are making it clear: Mixing drugs and weapons will land you in jail sooner and longer.

Mr. President, there is much more which could be said for this bill in terms of what it contains. However, I will confine myself to making one last comment on the crucial component which is still missing; the money. Yes, we hear talk of some special supplemental appropriation of $500 million or so for fiscal year 1989. But that surely won't get us very far, when you consider that the bill authorizes almost $1 billion for drug treatment grants to the States in fiscal year 1989. I repeat, $1 billion for treatment—not to mention education or law enforcement. It's one thing to write a master plan for attacking the drug crisis and another to put the dollars in the till to pay for it.

We had a chance to do just that last week in a vote to raise the excise taxes on alcohol and cigarettes. But in this election year, as in the last, the courage was lacking. The leadership was lacking.

Mr. President, the quality and the comprehensiveness of this bill attest to the Senate's grasp of the problem and what it takes to solve it. It must be solved if we are to salvage the future of countless American communities and countless American citizens. Now let us be about the business of paying for what we are authorizing.

Mr. RIEGLE. Mr. President, I rise today along with many of my colleagues to voice my support for S. 2852, the Omnibus Anti-Substance Abuse Act of 1988.

As a former chairman of the Senate Subcommittee on Alcoholism and Drug Abuse, I am alarmed by the growing incidence of drug abuse and drug related crimes in Michigan and in the United States, and I believe we must enlist all the resources of our great Nation to an all out war on drugs. In stopping drug abuse, our Nation faces one of its greatest single challenges in our history.

Drugs are eroding the very foundations of our society that have made us a great Nation. Drugs rob our children of their opportunity to achieve their potential. Drugs steal from our Nation the contributions of individuals whose lives are cut short through their drug dependency. Drugs threaten our economic stability and our ability to compete in international markets. Drugs promote crime and encourage disregard for the law by well intentioned citizens who are frustrated and desperate to stop the flow of drugs into their neighborhoods.

How well we meet this challenge in the next few months and in the coming years will have a lasting effect on our Nation well into the next century. We must wage war against drugs, and we must act now.

Statistics on drug abuse show the epidemic size of the problem. Experts tell us that nearly 10 percent of all Americans or 26 million people use illegal drugs. The number of cocaine related emergencies reported by hospitals jumped by 167 percent between 1983 and 1986 and that the number of cocaine related deaths rose by 124 percent during the same period.

It is estimated that during 1987 alone Americans spent some $140 billion to purchase 178 tons of cocaine, 12 tons of heroin, and over 60,000 tons of marijuana. The use of illegal drugs further costs our Nation about $60 billion a year in lost employment, for prison and other criminal justice expenses, and for drug treatment programs.

To its credit, the administration, largely through the efforts of Mrs. Reagan, has conducted the energetic "Just Say No to Drugs" campaign, and I commend Mrs. Reagan for her efforts in this area. But if we are to fight an effective and meaningful battle against drugs, I believe we need to say yes to a range of action steps that actually cuts down on drug supply and drug use.

We need stronger programs that educate our children about the horrors of drug addiction. We need more drug rehabilitation programs that help people rid themselves of their drug dependency. We need new initiatives that give Federal, State, and local law enforcement the tools they need to get tough with the drugpushers on the street and drug suppliers wherever they are.

I think the first thing we can do is to say yes to the Omnibus Anti-Substance Abuse Act of 1988, S. 2852. This legislation is a comprehensive, commonsense approach that addresses all areas in the war against drugs—drug education and treatment, Federal, State, and local law enforcement, interdiction, and eradication.

S. 2852 provides additional assistance to State and local law enforcement efforts and for drug treatment and rehabilitation programs. The bill increases funding for drug education while providing reporting and accountability requirements to insure that only the best programs are in our schools. Lastly, the bill provides additional appropriations for Federal drug enforcement agencies to help shut off at the border the flow of drugs into the United States.

Mr. President, we can and must win the war against drugs, but to be successful, we must have the commitment of every man, woman, and child in the United States. If our Federal Government will mount a new and much stronger effort to fight the drug war, I believe our citizens will come forward to do everything they can to help us meet this national challenge.

DRUNK DRIVING AMENDMENT TO THE OMNIBUS DRUG BILL

Mr. DANFORTH. Mr. President, I am pleased to join Senator LAUTENBERG in sponsoring this amendment. Its goal is an important one—stopping drunk drivers from killing and injuring innocent citizens.

We have made some progress in the fight against drunk driving. According to the National Highway Traffic Safety Administration, in 1982, 25,170 Americans were killed in alcohol-related crashes. In 1987, there were an estimated 2,500 alcohol-related fatalities, a decrease of 7 percent.

How did we make this progress? One way we made progress was by encouraging States to pass tough laws to combat drunk driving. In 1982, I authored, with Senator PELL, legislation to provide States incentive grants if they passed a law with each of the following provisions: First, a provision requiring prompt license suspension for a minimum period of 90 days on the first offense and for 1 year on the second offense; second, a provision establishing a 0.10-percent blood alcohol content [BAC] per se intoxication standard; and third, a provision requiring a jail sentence of 48 hours or at least 10 days of community service on the second drunk driving offense within 5 years. To date, 16 States have qualified for these grants by passing laws with the required provisions.

In 1984, we took further steps to fight drunk driving. We passed the National Minimum Drinking Age Act. Since that legislation's enactment, all 50 States have adopted a minimum drinking age of 21. The States' adoption of the minimum drinking age has eliminated "blood borders"; areas where young people would drive across State lines to buy alcohol. The 1984 legislation also included provisions I authorized expanding the 1982 incentive grant program to include States using grants to prevent drugged driving and to provide grants to States who update and computerize their traffic recordkeeping systems.

Even with these stronger laws, alcohol is involved in the deaths of over 50 percent of those killed in highway crashes. We have made some progress, but we are far from satisfied. We must take further steps to combat drunk driving.

The need to do more to fight this problem motivated Senator LAUTENBERG and me to introduce the Drunk

Driving Prevention Act of 1988. This bill is the source from which today's amendment is derived. We introduced this bill twice because the first time it was introduced it was erroneously referred to the Environment and Public Works Committee. The second time Senator LAUTENBERG and I introduced the bill it was correctly referred to the Commerce Committee. Both committees have reported the bill favorably. Today's amendment reflects the reported versions of the bill.

Mr. President, our amendment would authorize Federal seed money for States that enact and enforce laws shown to be effective weapons in the fight against drunk driving. There would be two requirements for receiving a basic grant under this legislation.

First, a State would have to establish a self-supporting drunk driving prevention program under which an amount equivalent to all fines collected from convicted drunk drivers would be returned to communities for enforcement.

Second, a State would have to adopt an administrative per se law under which a police officer could immediately confiscate a drunk driver's license at the point of arrest. Such a law removes a demonstrated hazard from the highways. An Insurance Institute for Highway Safety study found that such laws reduce drunk driving fatalities by 9 percent in those States that adopt them.

The amendment would enable States to receive supplemental funds for meeting either or both of the following requirements: First, making the drivers' licenses of those under the legal drinking age readily distinguishable from the licenses of drivers of legal drinking age; and second, requiring blood alcohol content testing of drivers involved in fatal or serious accidents.

In addition, our amendment would require the Secretary of Transportation to commission a study by the National Academy of Sciences on the BAC level at which a driver should be deemed to be under the influence of alcohol.

Mr. President, this drunk driving prevention measure has the support of Mothers Against Drunk Driving and the National Safety Council. With their support and with the support of our colleagues, we can help to stop the unnecessary slaughter of innocent people on our highways.

Mr. BYRD. Mr. President, the next amendment and the only one remaining among those that were to be called up and possibly amended by germane and relevant amendments is the amendment by Mr. KERRY.

Mr. KERRY is prepared to call up his amendment. Now, there have been no reversals by the appellate court of the cases that went before the lower tribunal, so this would leave the leadership package. As far as I know, the only thing that will be left will be the leadership package. Hopefully, we will have one vote on that and we would vote on the substitute to the House bill.

There may be votes yet this afternoon on other matters. I have not been able to ascertain whether or not there are conference reports at the desk or matters that would require votes. I should know after the next rollcall vote, certainly prior to the last vote on this bill.

Does the distinguished Republican leader have any comments?

Mr. DOLE. If I could make an inquiry of the majority leader—maybe he would rather not do it now—about next week.

Does that Senator want me to wait until after the next vote?

Mr. BYRD. Yes. I hope to be able to reach a Member of the leadership on the other side. I do not know now whether I will be able to do that or not, but in the meantime I will try and we will discuss it.

Is 45 minutes equally divided agreeable on this amendment?

Mr. KERRY. Mr. President, this is agreeable. I am not sure, Mr. President, if I may say, we will even need that much time. We may be able to dispense with it very quickly at this point.

Mr. BYRD. Let us get the 45 minutes and dispense with it rather quickly.

And no second-degree amendments.

Mr. RUDMAN. Right.

Mr. BYRD. I ask unanimous consent that no second-degree amendments be in order.

The PRESIDING OFFICER. Without objections, it is so ordered.

Mr. BYRD. And that would include the 45 minutes, equally divided?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. I thank the Chair, and I thank all Senators.

AMENDMENT NO. 3697

(Purpose: To restrict international laundering of United States currency)

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I send an amendment to the desk; I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Massachusetts [Mr. KERRY], for himself, Mr. MCCONNELL, Mr. MITCHELL, Mr. MURKOWSKI, Mr. BINGAMAN, Mr. ADAMS, Mr. TRIBLE, and Mr. KENNEDY, proposes an amendment numbered 3697.

Mr. KERRY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following:

SEC. . RESTRICTIONS ON LAUNDERING OF UNITED STATES CURRENCY.

(a) FINDINGS.—The Congress finds that international currency transactions, especially in United States currency, that involve the proceeds of narcotics trafficking fuels trade in narcotics in the United States and worldwide and consequently is a threat to the national security of the United States.

(b) PURPOSE.—The purpose of this section is to provide for international negotiations that would expand access to information on transactions involving large amount of United States currency, wherever those transactions occur worldwide.

(c) NEGOTIATIONS.—(1) The Secretary of the Treasury (hereinafter referred to as the "Secretary") shall enter into negotiations with the appropriate financial supervisory agencies and other officials of all foreign countries the banks and other financial institutions of which do business in United States currency. Highest priority shall be attached to countries whose financial institutions the Secretary determines, in consultation with the Attorney General and the National Director of Drug Policy, may be engaging in currency transactions involving the proceeds of international narcotics trafficking, particularly United States currency derived from drug sales in the United States.

(2) The purposes of negotiations under this subsection are—

(A) to reach one or more international agreements to ensure that foreign banks and other financial institutions maintain adequate records of large United States currency transactions, and

(B) to establish a mechanism whereby such records may be made available to United State law enforcement officials.

In carrying out such negotiations, the Secretary should seek to enter into and further cooperative efforts, voluntary information exchanges, the use of letters rogatory, and mutual legal assistance treaties.

(d) REPORTS.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit an interim report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on progress in the negotiations under subsection (c). Not later than 2 years after such enactment, the Secretary shall submit a final report to such Committees and the President on the outcome of those negotiations and shall identify countries, the financial institutions of which the Secretary has cause to believe are in consultation with the Attorney General and the National Director of Drug Policy, are engaging in currency transactions involving the proceeds of international narcotics trafficking and which have not reached agreement with United States authorities on a mechanism for exchanging adequate records on international currency transactions in connection with narcotics investigations and proceedings.

(e) AUTHORITY.—If after receiving the advice of the Secretary and in any case at the time of receipt of the Secretary's report the Secretary determines that a foreign country—

(1) has jurisdiction over financial institutions that are substantially engaging in currency transactions that effect the United

States involving the proceeds of international narcotics trafficking,

(2) such country has not reached agreement on a mechanism for exchanging adequate records on international currency transactions in connection with narcotics investigations and proceedings, and

(3) such country is not negotiating in good faith to reach such an agreement,

the President shall impose appropriate penalties and sanctions, including temporarily or permanently—

(1) prohibiting such persons, institutions or other entities in such countries from participating in any United States dollar clearing or wire transfer system; and

(2) prohibiting such persons, institutions or entities in such countries from maintaining an account with any bank or other financial institution chartered under the laws of the United States or any State,

unless the President certifies to Congress that it is in the national interest that these penalties should be delayed or waived. Financial institutions in such countries that maintain adequate records shall be exempt from such penalties and sanctions.

(f) DEFINITIONS.—For the purposes of this section—

(1) the term "United States Currency" means Federal Reserve Notes and United States coins.

(2) The term "adequate records" means records of U.S. currency transactions in excess of $10,000 including written documentation by the person initiating the transaction of the source of the currency being deposited or transferred, or other records of comparable effect.

(e) The authority given the President in paragraph (d) shall expire on June 30, 1994.

Mr. KERRY. The amendment which I submit for consideration aims at the heart of the international drug cartel's huge drug trafficking, money laundering operations which are conducted through offshore banks and are tied to the United States banking system through sophisticated wire transfer systems. I think that every Senator has heard of the enormous profits that are being made through drug trafficking. There are estimates of more than $100 billion each year being laundered through banks. I think our drug enforcement officials have been frustrated because their ability to be able to trace the transactions which control the flow of this money is extremely limited.

The extent of the drug cartel's ability to channel money secretly without a paper trail through these international banks have been explored by a number of different committees, the permanent Committee on Investigations, as well as the Subcommittee on Narcotics.

Mr. President, this is not a new kind of criminal enterprise. Our law enforcement authorities have been aware for years of the ways in which criminal enterprises use sophisticated financial means to avoid the law. In fact, the prosecution of Al Capone was a prosecution that was made possible not because they caught him in a criminal activity in terms of a bank robbery or something, but because they were able to charge him with tax evasion.

Mr. President, what I am suggesting through this amendment, along with Senator MCCONNELL and my other colleagues, is that the time has come to shut the door on the greatest loophole in our own banking structure, which has permitted offshore banks to be able to launder this money.

I have a chart here which shows the flow of money, Mr. President. What happens is the drug profits are collected in dollars in the United States, they are taken to safe houses in the United States, and then smuggled by boat or by airplane, private or commercial, and shipped to an offshore bank in the Cayman Islands, Panama, or in another place. The money is deposited in an offshore bank without any record whatsoever.

The money is then wire transferred back to New York, and passed through to other accounts as clean money. It may go through one, two, or three transactions, what they call rinsing it two or three times to clean it even more.

So our law enforcement authorities do not have the means to trace where that money came from or who deposited it.

The anomaly here is that every single bank in the United States, is required to keep records of such transactions. Our bankers have spent billions of dollars since the 1970's to adhere to these recordkeeping standards. Anyone who deposits more than $10,000 in a U.S. bank in the United States has to record their name, the source of the money, and other information. That information is actually reported to Government authorities.

Currently we have some 600,000 transactions per month that are recorded through this system. And through a sophisticated computer model we trace those transactions and then we begin investigations when we see patterns that are suspicious. We have 270 some investigations, and the notorious so-called "pizza connection case" in New York was prosecuted by virtue of this very mechanism.

If however you are a bank with an offshore branch, the offshore branch does not have to report cash transactions. If you are an offshore bank dealing in U.S. dollars seeking the benefits of our transfer system in New York, or the benefits of the Federal Reserve, then you still do not have to report offshore cash transactions, You can merely transfer those dollars back.

Mr. President, this amendment sets up a structure which requires the Secretary of the Treasury to take a 2-year period to negotiate with those countries that have the greatest prospect of being money laundering countries, and through those negotiations to set up a mechanism for cooperation with those governments that will require their banks to record, not to report—very important distinction—simply to record cash transactions above $10,000, and to agree that, where the Attorney General of the United States requests their cooperation in a drug investigation, they will cooperate.

That is not asking too much in a world where the cash money transactions have grown beyond what anybody ever imagined, and in a world where money is at the center of the ability of the drug cartel to buy planes, ships, radar and communications equipment and all the tools of their trade to live their rich lifestyles, and even to corrupt United States institutions and, indeed, whole countries.

If we do not begin to take the steps now to provide that we are willing to reach out to these other countries and ask for the highest standards of behavior, we are not going to have a prayer of stopping the flow because the money is simply too significant and too large.

This measure, in and of itself, will not solve all of the problems because sophisticated financial managers will set up cardboard corporations, and there will be ficticious filings and so on. But at least you will have the mechanism by which you can begin to trace them, to establish the documentary trial that allows you to bring a successful prosecution to court, and to try to hold people accountable.

I think, Mr. President, given the record in this country of our banks adhering to this standard, it is not too much to ask of nations that profess their alliance to us and that profess their interest in preventing their countries from being swept over by this same drug problem.

It is interesting to note that in Europe now they are beginning to feel more and more of the same problem that we feel in the United States with respect to drugs. The Basel Convention, which is a group of banks that meet in Switzerland to talk about banking standards has reached a similar standard—they have not yet voted on it, but they have talked about it and embraced it as a voluntary code of ethics by which they will behave.

There is a legend among banks which describes the attitude of some toward the huge profits of criminal enterprise. What they say is the "blood washes off" the money. Indeed, Mr. President, the blood will continue to wash off the money, and it will wash through the streets of this country until we begin to say to other people, "If you want to use U.S. dollars, if you want the benefits of our Federal Reserve and our banking system, then you must live up to those standards of record keeping and cooperation and of trying to adhere to a standard of law."

This amendment does not require them to do this for their own money in their own country. It does not say they have to do it with respect to yen, francs, marks, or any other currency.

It only says if you want to pass money through an account in the United States which belongs to you, and you want to use U.S. dollars and our banking system to do it, you are going to live up to the standards of trying to help us fight this drug war.

We have given discretion to the President of the United States in the event of countervailing national interests to waive any sanctions. And we have included a section reporting requiring the Treasury Secretary, to report to Congress so that there is a system of accountability.

I hope my colleagues will join in making this first step in the international field to try to curtail this problem.

Mr. President, I would like to thank the distinguished ranking member of the subcommittee, whose help on this has been instrumental. We have worked well together and I would like to thank the chairman of the Banking Committee, and the ranking member of the Banking Committee for their staff efforts.

I think we have worked together to try to mold as much of a compromise as was possible. I think we now have a fairly strong consensus piece of legislation.

I yield to my distinguished colleague from Kentucky and retain whatever time we have.

Mr. McCONNELL. I thank my friend from Massachusetts.

The PRESIDING OFFICER (Mr. DIXON). The Senator from Kentucky.

Mr. McCONNELL. Mr. President, it has indeed been a pleasure working with him on this most important amendment. This is a culmination of many months of hearings before our subcommittee on the whole problem of international narcotics trafficking. It is pretty clear after listening to these hearings over the months that this is one of the most important ways to get at this problem.

Mr. President, I would like to ask unanimous consent that Senator PAUL TRIBLE be added as a cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCONNELL. Also, as Senator KERRY mentioned, we appreciate the cooperation of Senator PROXMIRE and Senator GARN in working out this amendment in a form in which it could pass muster. Those two Senators understand the banking industry quite well.

Mr. President, the Treasury Department estimates upward of $100 billion in illegal drug profits are laundered each year. That is $100 billion. This money finances other criminal enterprises, undermines legitimate governments, corrupts officials, and subsidizes insurgencies. Stopping the flow of drugs will have an important impact on the entire drug network.

Just this week, a Customs Agency sting operation against BCCI involved 80 people in connection with money laundering; $4.5 million in cash and $2.5 million in property were seized. Over a 2-year period, Customs estimates that $14 million may have been laundered by BCCI. This is just the kind of activity our amendment is trying to stop.

Right now, dealers can smuggle their profits out of the United States, into offshore banks, with no requirements to report transactions exceeding $10,000. Those banks, in turn, transfer them back into the United States. Our amendment strikes at the heart of this by curbing the dealers' ability to transfer cash so easily.

We want the Secretary of the Treasury to negotiate agreements requiring offshore banks to maintain records of cash transactions in excess of $10,000. We would only request these records in connection with a drug investigation.

Mr. President, we only ask in banks with U.S. accounts, affiliates, or subsidiaries to help with U.S. drug enforcement efforts. It only seems reasonable that if you use the American financial network, you would be willing to help with a major American problem. We must protect the integrity of the U.S. dollar as we curb the drug cartel's ability to operate.

In the year and a half since I assumed the ranking minority position on the Subcommittee on Narcotics, Terrorism, and International Operations, we have focused almost exclusively on the problem that international drug trafficking organizations have outspent, outmanned and often outgunned sovereign foreign governments. An essential ingredient encouraging the success of the drug dealers' activities has been the ease with which they can launder hundreds of billions of dollars. The amendment we are introducing today cuts to the heart of this problem. It will give the law enforcement community the tools needed to trace and seize illegal assets and prosecute traffickers. Disrupting the flow of narco-dollars is essential to winning the war on drugs.

According to the State Department's International Narcotics Control Strategy Report, drug profits finance other criminal activity, undermine legitimate businesses and governments and support insurgencies. United States national security interests are directly affected in several countries such as Colombia where the drug cartels have become, for all intents and purposes, the shadow government. U.S. education, eradication, and interdiction efforts must be complemented by efforts to stop the flow of cash financing cartel activities.

The only leverage we have is the fact that drug dealers derive most of their profits in dollars from the United States which they must convert into clear, usable resources. Our amendment will give the Secretary of the Treasury the authority to negotiate agreements with other nations so that offshore banks will be required to maintain records on any U.S. cash transaction in excess of $10,000. I think it is important to emphasize that these records can only be requested in connection with a narcotics investigation. If countries are unwilling to reach agreement on this important issue the amendment gives the President the authority to impose certain penalties including denial of access to the U.S. financial wire transfer system or denial of a U.S. charter.

I firmly believe that most banks are honest and would willingly turn over any information they had on narcotics traffickers. They would not risk losing access to the U.S. banking market in order to protect drug dealing clientele. I think it is also important to keep in mind that we are asking no more of foreign financial institutions than we ask of our American banks to record. And, we are only asking for reports on dollar transactions, not foreign currency. Banks which do not have U.S. affiliates, subsidiaries, or accounts are not affected by our legislation.

Estimates of $100 billion U.S. are laundered each year by drug traffickers in offshore secret sanctuaries. We must protect the integrity of the U.S. dollar as we curb the cartel's ability to operate. Destabilizing the drug dealers' criminal network depends on denying them secret sanctuary and cutting off their supply and flow of American cash. Our amendment provides this vital weapon to help win the war on drugs.

Mr. President, I say to my friend from Massachusetts that it has been a pleasure to cooperate in the drafting of this amendment. We believe it will be accepted by the Senate shortly.

Mr. KERRY. Mr. President, I yield 5 minutes to the Senator from Washington.

Mr. ADAMS. I thank the Senator from Massachusetts. Mr. President, I am pleased to be a cosponsor of the Kerry amendment and want to take a few minutes to articulate why, in my view, this is an important amendment in the fight against drugs.

I have been very pleased to work with Senator McCONNELL and Senator KERRY on the subcommittee that has been dealing with terrorism and narcotics, as a subcommittee of the Foreign Relations Committee. I want to pay tribute to the Senator of Massachusetts for the leadership he has provided as chairman of the terrorism and Narcotics Subcommittee of the Foreign Relations Committee in the fight against drugs. I am proud to have served as a member of that subcommittee in the 100th Congress and to have worked with Senator KERRY in that capacity. He has been aggressive in his pursuit of the truth surrounding international trade in drugs and along the way has uncovered some very distressing facts. We have today a better understanding of the depth and scope of our international drug problems because of the efforts of this subcommittee, and as a result are beginning to be able to fashion policies and tools for addressing the far reaching nature of this evil menace.

The amendment before us is an important tool which must be added to our arsenal in the fight against drug trafficking. Its purpose is to put an end to the illegal laundering of billions of dollars in drug money through banks around the world. In order to achieve this objective, we must expand and standardize our access to information on transactions involving money which comes from the sale of drugs in the United States.

We do not have to go much beyond the news of the last few days regarding the operations of the Luxembourg-based Bank of Credit and Commerce International [BCCI] to recognize that we must be aggressive in our efforts to stop money laundering of drug profits. BCCI is the seventh largest private bank in the world. It has assets of over $20 billion. It operates in 73 countries. It has 15 offices in the United States. The BCCI case involves at least $32 million in drug profits. Last February, BCCI was identified in hearings before the Kerry subcommittee as one of several banks involved in money laundering activities. According to the testimony we received, this is only the tip of the iceberg.

We can make progress against drugs if we can choke off the flow of money which is earned from the sale of drugs by making the laundering of such money through our financial institutions impossible.

This amendment is aimed at that purpose. It is straightforward and important. It will require negotiation of international agreements with foreign countries aimed at insuring that foreign banks and affiliates of U.S. banks keep adequate records on financial transactions in U.S. dollars. If we are to win the war on drugs, foreign countries and banks must be willing to share those records and information about the source of those involved in those financial transactions in prosecutions where drugs are involved.

This amendment is aimed at securing three fundamental and critical elements that can help us stop laundering of drug money.

First, it seeks to have foreign banks keep records on transactions in U.S. currency in excess of $10,000.

Second, it seeks agreements to insure waivers of contractural secrecy or privacy rights regarding such records.

Third, it seeks a requirement that any person initiating a transaction of over $10,000 in U.S. currency identify in writing the source of that currency.

These are reasonable provisions. They will not adversely affect countries and banks who are serious about stopping narcotics money laundering. The amendment does not violate the sovereignty of other nations any more than the continued illegal flow of drugs into the United States violates our sovereignty. This is an international problem and it cannot be solved without the cooperation of other nations.

It is true that this amendment contains the possibility of sanctions if foreign countries or banks refuse to cooperate. Countries and banks that refuse to cooperate will risk being prohibited from access U.S. dollar clearing or transfer facilities and from maintaining accounts with U.S. banks or financial institutions chartered under U.S. law. It is important to have authority in law to deny BCCI and others involved in the international laundering of drug money access to the U.S. financial market. That is what this amendment establishes.

Earlier this year, we passed a trade bill. Provisions of that trade bill will result in making trade a higher national priority in our international economic relations. That bill contains some new tools for our trade negotiators to use to obtain our objectives of an open and international trading system. We know that that objective will not be easy to achieve in this increasingly competitive and interdependent international economy. In some cases, we will have to get tough with our international trading partners to make them understand that we mean business.

The amendment before us says the exact same thing regarding drug money laundering. Up until now, in spite of all the rhetoric, defeating this drug cartel has not been a high priority for our Nation. If it is to become so, we need to get tough. We need not only to get tough with those here in the United States that violate our laws, but we also have to make countries of the world understand that this is a high priority for the United States. We will not tolerate your turning your head the other way while billions of drug dollars are being laundered through your banks. It is a high priority for us and if you will not cooperate will us, we will not just roll over and die.

In summary, this amendment, I believe, is one of the key aspects of this bill. Without an ability to break the drug money laundering links around the globe, we cannot win the war on drugs. In the final analysis, drugs is about money. Billions and billions of dollars. We better not delude ourselves into thinking that we can stop a billion dollar industry with nickels and dimes. Rather, we have to get tough and concentrate on removing the ability of this international drug cartel from using drug profits to their benefit.

Mr. President, this is a very important amendment in that it goes directly to the system by which U.S. dollars and the U.S. banking system, the Federal Reserve System and our wire system are used to move illegal drug profits from the United States back to the United States, through a laundering system.

This amendment is a very important tool for us to use as a Nation. As was well stated by Senator KERRY, this is not trying to regulate some other nation's currency. What occurs in this transaction with illegal drugs is that U.S. currency is obtained from the streets of our cities, is moved into clean houses—or dirty houses, in our opinion—in the United States, then moved offshore and, as was stated, washed and washed again. These transactions are not reported abroad.

I have had some experience in this matter as a U.S. attorney. Later, in private practice, I represented clients in the Cayman Islands—thank goodness, none of these bank people.

There is a whole institution that has grown up around the transfer of international money into offshore banks that have no reporting requirements. What is being asked and what is being put forth in this amendment is that we have agreements with these countries that, in effect, begin to control U.S. currency transfers by reporting them, so that we can follow them.

The recent BCCI—Bank Credit and Commerce International—story is a terrifying tale, of how a Luxembourg bank was involved in money laundering, and very successfully so. It operates in 73 countries and has 15 offices in the United States. The case involves a $32 million laundering operation.

Mr. President, I have supported this drug bill. I think this core bill is a good bill. There are some amendments to it that I think all of us share some doubts about. The basic bill is very solid. This amendment, offered by Senator KERRY and a number of others of us, is a key part to helping the interdiction and the direct attack on the institution itself.

There are three basic parts.

First, it seeks to have foreign banks keep records on transactions, just keep records.

Second, it seeks agreements to assure waivers of contractual security, for privacy rights.

Third, it seeks a requirement that any person initiating a transaction of over $10,000 in U.S. currency identify in writing the source of that currency. This is a very important amendment. In summary, I believe it is one of the key aspects of this bill.

Without the ability to break money laundering around the globe, we cannot win the war on drugs. In the final analysis, drugs is about money, and billions and billions of dollars of money. We should not delude ourselves by thinking we can stop a billion dollar industry with nickels and dimes.

The **PRESIDING OFFICER.** The Senator from Massachusetts has 8 minutes and 20 seconds remaining.

Mr. **KERRY.** Mr. President, I thank the Senator from Washington. His help during the course of these hearings has been vital, and he has been extraordinarily patient and diligent in his commitment to this effort.

I yield 4 minutes to the distinguished Senator from Virginia.

Mr. **TRIBLE.** I thank my colleague from Massachusetts.

Mr. President, I support this amendment. During the past several years, I have become convinced that we will not succeed in the war on drugs until we break the vital economic link in the international drug chain—the laundering of profits from the production and sale of narcotics.

The international drug trade is built on the twin pillars of greed and graft. And what keeps that trade running is the narco-traffickers' ability to launder billions of dollars in U.S. currency.

This Congress has long recognized the importance of attacking drug money launderers. The original antilaundering law passed this body 98-0. Two years ago, the Congress also adopted legislation of mine that made cooperation with U.S. antilaundering efforts a condition of foreign assistance. I would hope that we can sustain that consensus today.

The Kerry amendment embodies one simple principle: That banks which exercise the privilege to operate in American markets should be willing to comply with America's antilaundering efforts. I do not believe that is too much to ask.

The Kerry proposal gives the Secretary of the Treasury 2 years in which to negotiate agreements with foreign governments that will enable their banks to cooperate more fully with America's anti-money-laundering efforts. The Secretary himself may extend that deadline merely by certifying that good-faith negotiations are underway with the government in question.

This is a modest approach to a critical problem. We are asking no more of foreign governments than we have asked of ourselves. And their cooperation is essential if we are going to succeed in controlling drug money laundering.

As long as large amounts of cash abound in the drug trade, then our efforts to eradicate drug crops, or seize drug shipments, or teach our children about the dangers of drug abuse will not fully succeed. I urge that we adopt the Kerry amendment decisively.

Mr. **KERRY.** Mr. President, I yield 4 minutes to the Senator from Wisconsin.

Mr. **PROXMIRE.** Mr. President, as chairman of the Senate Banking Committee, I rise to salute Senator KERRY for the excellent amendment he initiated to deal with the international aspects of the money-laundering problem.

We have conversed at length with Treasury Department officials about Senator KERRY's proposal. They raised some objections to the legislation as originally drafted and have helped us improve the legislation. Treasury still opposes it, but I think most of its concerns about the extraterritorial application of U.S. law have been remedied. Because this legislation is needed to deal with an important problem, I support its adoption.

Senator KERRY has labored long and hard and intelligently on the amendment. Senator MCCONNELL has also worked diligently to advance the legislation.

Mr. President, the Kerry amendment will help obtain the kind of international cooperation we need to stop drug money laundering and help stem the traffic in illegal drugs, which is a very serious problem for our country. Unless we get such cooperation we cannot effectively stop drug money laundering.

The amendment gives a negotiating directive to the Treasury Secretary. It provides that he must make two reports to Congress on the progress he is making on getting other countries to require their banks to keep records of large transactions in U.S. currency and their agreement to make them available to our law-enforcement officials.

The amendment further provides that if a foreign country's banks are engaging in substantial money laundering of drug money that hits and hurts our country and will not negotiate to help stop that activity, then the President must take appropriate action to prevent that country's banks from money laundering by using facilities in our country. If he fails to take any action he must certify to the Congress why it is in our national interest that he not do so.

There is a directive in this amendment requiring the Treasury Secretary to negotiate agreements with our allies and I expect our allies will help us deal with this drug problem so threatening our Nation and the international community. The amendment also gives the President authority to prevent banks in drug haven countries from having access to our financial system. I fully expect this authority will convince drug haven countries they should cooperate to stop money launderings. Under international law a country has a right to take action against activity taken abroad that seriously hurts the country. This amendment is fully consistent with that legal principle.

Mr. President, I yield the floor.

The **PRESIDING OFFICER.** The Senator from Massachusetts.

Mr. **KERRY.** Mr. President, I ask for the yeas and nays.

The **PRESIDING OFFICER.** Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. **KERRY.** Mr. President, I do not have a request for anyone else to speak.

The **PRESIDING OFFICER.** Who yields time?

Mr. **CHAFEE.** Mr. President, I would like to ask the distinguished Senator from Massachusetts a couple questions if I might.

The **PRESIDING OFFICER.** Does the Senator yield?

Mr. **KERRY.** I yield.

Mr. **CHAFEE.** As I understood what the distinguished Senator, the chairman of the Banking Committee, said, the President has the opportunity, should the national interest be affected, to do what? What was that? Was it to waive certain provisions of this?

Mr. **KERRY.** The President has the option to delay. He will certify to Congress at such time as to why he has chosen to do so.

Mr. **CHAFEE.** I know that the Senator from Massachusetts has been more deeply into this than certainly I have. I was just wondering. There were some concerns expressed by our Canadian friends over this, and it is my understanding that the Senator has been talking with the Secretary of the Treasury. I assume that those concerns have been met or at least considered as the Senator has proceeded here.

Mr. **KERRY.** It may well be that the answer to that depends on who is giving me the answer.

From my perspective, this Senator believes that those concerns have been answered to the best of our ability to answer them without negating the goals of this particular piece of legislation.

There has been concern expressed by some parties that this is an extraterritorial action, but I think all of us are agreed that to the degree that may be true it is de minimis and it is no different from other actions we have taken as a country to protect ourselves in the past.

I believe, however, that the discretion that has been granted to the President in terms of national interest goes to the heart of the fundamental objection the people have had and also we put a waiver in for those banking institutions in countries that do report but where the country may not be willing to come to an agreement and, therefore, those banks would not be restricted in their ability to continue to do business.

So I think we have answered the principal concerns.

Mr. CHAFEE. Does the Secretary of the Treasury, with whom I know the Senator has had conversations with, indicate satisfaction with this measure?

Mr. KERRY. No. As the distinguished Senator from Wisconsin just said, they have indicated they oppose it but they helped improve it, and I think fundamentally we are at a point where they understand we are going to pass it and they accept that.

Mr. PROXMIRE. Mr. President, I might add the Secretary of Treasury was concerned because the amendment had provided that the President must realize noncooperating foreign countries unless he certified it was not in our "national security" to do so. He asked us to substitute the term "national interest."

We did exactly that. He had some other objections, but I think certainly his most substantial objections were met.

Mr. CHAFEE. I first of all commend the gentlemen involved with this and I believe as we proceed and enact it and the problems arise that affect in an adverse way our relationship we can come back and look at it again in the future.

So I commend Senator McCONNELL, Senator KERRY, Senator PROXMIRE, and all those involved.

Mr. KERRY. I thank the distinguished Senator from Rhode Island. I assure him that the effort here is to create a lever that works for all of us and clearly Senator McCONNELL and others will only be too happy to be revisited and adjust for something that is unseen, and obviously we will try to do that.

Mr. MITCHELL. Mr. President, the proponents of drug legalization are wrong in their analysis, but they are right about one thing: Drug dealers are in the business for the money.

The purpose of the Kerry amendment is to make drug profits harder to launder and more difficult to return to the United States to finance the drug business. It is one of the most effective steps available to us to take the huge profits out of drug dealing.

Our costs of drug law enforcement have risen from $1.4 billion in 1981 to almost $4 billion today. Yet the price of cocaine landed in Miami has fallen from about $60,000 a kilo to less than $20,000 a kilo today. A kilo of pure cocaine, cut and retailed in gram packages, provides a return of $250,000.

With a profit margin of that magnitude, we will never interdict enough drugs to have any appreciable effect on their price or availability.

That is why we must focus on the causes of drug use and drug dealing. The cause of drug dealing is the existence of a market and the opportunity for immense profits.

We know that the long-term solution to the other half of the equation is education and prevention. But that is a long-term solution. In the meantime, we should also focus on the incentives for the supply: the profits.

Profits made on the U.S. drug trade are made in U.S. dollars. The major difficulty big dealers face is providing their enormous cash hoards with an alibi. It is for that reason we enacted the Money Laundering Act of 1986, to make it harder to turn illegal gains into clean money.

Among the steps we took is to require all American banks to report cash transactions of $10,000 or more to the IRS. But no such requirement exists for overseas branches of U.S. banks or for foreign banks clearing dollars through our system.

It should come as no surprise, then, that General Noriega among others, can find a profitable sideline in facilitating the laundering and repatriation of drug dollars through Panamanian banks.

This amendment is a modest step toward ending that sideline for General Noriega and others.

It does not, contrary to some claims, constitute an unwarranted extraterritorial intrusion on the sovereignty of other nations.

In fact, all it does is direct the Treasury Department to negotiate agreements with foreign governments so that their banks which use the New York dollar clearing facility keep records of U.S. currency transactions of over $10,000.

United States access to those records would not be automatic. It would be obtained, as now, on a case by case basis.

Opponents claim that this constitutes an unacceptable threat to national sovereignty, that it is an anticompetitive burden on American banks' overseas branches, that it may force foreign banks to choose between obeying their own laws and ours, and that it will invite retaliation.

These are precisely the same kinds of arguments we heard when we sought to end the practice of U.S. companies paying bribes overseas. Indeed, it sometimes appears that any goal our Nation seeks internationally, whether it is fair trade or an end to terrorism, may upset our allies or our trading partners.

But we are not now talking about trade advantages or policy goals. We are talking about a massive criminal enterprise that is devouring our inner cities and people.

We are talking about a problem that costs us billions of tax dollars each and every year, with no end in sight.

Yet, in the face of what virtually everyone recognizes to be an unprecedented scourge on our Nation, we are told we cannot risk disturbing the status quo. But when it is the status quo which is allowing these drug dealers to prey on our people, it is time for the status quo to be disturbed.

Let me deal briefly with each of the claims brought against this amendment.

First, it is said we are imposing extraterritorial demands that impinge on the sovereignty of other nations. But the amendment requires negotiations, not demands. And there are few more clear sovereign responsibilities for any nation than control over its own currency.

Those who want to do business physically in the United States must obey our laws and standards. Those who want to use American trademarks must be licensed by the holders of those trademarks. Those who wish to fly into American airports must abide by American safety standards.

It is no infringement of sovereignty that we refuse to import autos that do not meet our emissions standards, even if those autos are wholly manufactured overseas.

Likewise, those who wish to use our currency must maintain dollar-denominated accounts with U.S. banks. Ours is an international currency because of our economic power, but U.S. intervention in currency markets to stabilize the dollar is not an infringement on the rights of currency speculators.

The requirement that cash transactions of U.S. dollars be recorded—not reported, simply recorded—no more infringes any nation's sovereign rights than the multiplicity of agreements that already apply to every element of international commerce.

Second, it is claimed that this will make U.S. bank branches uncompetitive overseas. The estimate of the total drug dollars laundered each year ranges from $10 to $30 billion.

In a world financial market where billions are exchanged daily, it is hard to believe that this comparatively minor yearly amount would play a significant role in any reputable bank's calculations.

It may drive drug dollars into smaller banks without international reputations. And if that turns out to be the case, it will be significantly easier to cut such banks off from U.S. transactions.

If the net effect of this is to make U.S. bank branches uncompetitive for the dollars of the world's drug cartels, that is not an outcome I would regard as a problem.

We have heard repeatedly that it is the respectable user who helps keep the drug traffickers in business, and it is true. But it is no less true that financial institutions which provide an alibi for drug cash are also contributors to the trade.

Third, we are told that this will force institutions to choose between obeying the laws of their own nations and ours. But international agreements become part of each nation's domestic laws. That is true for the United States and it is equally true for other countries.

Fourth, we are solemnly warned that others will retaliate if we seek to end the laundering of drug dollars. But this assumes that the governments of our allies are not interested in curbing the drug trade. It is an assumption I do not share.

Fifth, we are told it will require onerous recordkeeping by financial institutions. I suggest that bank computers which routinely maintain and report interest earned on savings accounts and handle millions of transactions daily will not be overburdened by having to mark cash dollar transactions for what they are.

Finally, we are assured that in December, a Code of Conduct will be signed in Basle, Switzerland, which will ensure that the legitimate financial markets do not become havens for laundered money.

But this code of conduct will be voluntary, as such codes are. And the world's financial system is a linked network which is only as strong as its weakest link.

The problem is not that the large, reputable international banks knowingly engage in laundering drug money. The problem is that as soon as an anonymous deposit enters the system, it is impossible to trace back to its origins. The source of most anonymous transactions is cash.

It is no detraction from the good intentions of those working on the Basle Code of Conduct to conclude that a voluntary code of conduct is simply not enforceable enough to make a dent in the international laundering of money.

In the meantime, our Nation's people are spending billions in tax dollars on a losing war against drugs crossing our borders. Our court systems and personnel are overloaded. Our prisons are bulging. And the tidal wave or narcotics continues unstopped.

The convenience of the status quo does not come before the need of our Nation. This amendment gives every one of our allies and trading partners the opportunity to negotiate with our Government to reach a mutual goal.

It does not infringe on any sovereign rights. Indeed, it seeks to preserve our Nation's sovereign rights to control our borders and our currency against international criminals.

The comfort of business-as-usual is the only counter argument, and it is not a valid one. This amendment deserves our support.

Mr. D'AMATO. Mr. President, though I rise to speak in support of Mr. KERRY's program to make it more difficult for drug traffickers to launder their profits through foreign financial institutions, I have deep concerns about the possibility that Mr. KERRY's approach to this problem may be counterproductive to ongoing efforts of the Treasury Department to obtain cooperation of foreign governments through the use of mutual law enforcement assistance treaties. I have also indicated my belief that the measures proposed today by my colleague from Massachusetts will prompt the movement of dollar clearance business to foreign venues.

It is my understanding that this bill is crafted to focus the effort of the Department of Treasury toward identifying those few truly recalcitrant countries which provide safe haven for the illicit dollars of drug traffickers. Furthermore, I am given to believe that thorough and vigorous pursuit of the goals of this legislation, through the mechanism established therein will have no effect on the current efficient dollar clearance operations in the United States.

I must point out, too, that the Treasury does not support this amendment for the reasons I have described and for other important reasons. However, I commend to the Secretary the task of implementing this program. I commend to the Secretary full use of his discretion in carrying on his negotiations and in making his report, bearing in mind the potential for good that can be accomplished and also the problems that he can avoid through wise use of the discretion vested in him.

I want to be clear that it is not our intent to override or seek unilateral modifications of existing international agreements which have been negotiated in good faith over a number of years.

If that were to be the impact of this amendment, I believe we would send the wrong message to the international community. We would risk sending a message that countries which voluntary consumate cooperative agreements with the United States may expect to have those agreements unilaterally changed by the United States.

That, I believe would create a disincentive to good faith negotiation and seriously undermine the objective of my distinguished colleague from Massachusetts.60

In other words, I hope the primary objective of this language is to encourage progress vis-a-vis the scores of countries who refuse to cooperate with the United States—and not to rewrite the half dozen bilateral agreements which have been negotiated in good faith.

In particular, I urge the Secretary to avoid alienation of the countries which currently have MLAT's with the United States and to avoid dislocation of the current domestic dollar clearance operations.

Mr. GARN. Mr. President, I have worked very hard with my colleagues to craft a drug money laundering provision that takes a tough line on international enforcement, without doing violence to the rules and norms of our banking system and thereby derailing ongoing cooperative efforts with our allies on money laundering. Through the efforts of Senators PROXMIRE, KERRY, McCONNELL, and others and the cooperation of the Treasury Department, I believe we have developed a proposal that meets those basic objectives.

Crafting a proposal that was deserving of Senate support was no simple task. It required substantial revision of the original form of the Kerry amendment and difficult negotiations. The Kerry language sounded tough, and the Banking Committee supports a tough policy against money laundering. But I would have been derelict in my duties if I had accepted an amendment that rewrote U.S. regulatory policy and thereby undercut ongoing cooperative efforts with our G-7 allies and the Basle Committee on Banking Regulation, even in a worthy cause.

The original amendment would have imposed unilateral regulatory requirements on institutions beyond the reach of U.S. law and threatened sanctions for nonperformance. This might have been an appropriate threat against a recognized money laundering haven in some banana republic, but such measures would simply chill the climate of goodwill that now exists between the United States and her major allies. Furthermore, it is almost certain that such a provision would be unworkable and unenforceable.

I could not accept such an approach or such risks with the clear knowledge that physical laundering of cash abroad is only a limited part of the overall money laundering problem. A money laundering haven like Panama reportedly handles about $500 million a year in cash. Total worldwide drug trade is estimated at $100 billion each year. Massive amounts of funds are moving by wire transfer or through domestic money laundering not touched by this amendment. It would make no sense to risk better cooperation on these other key elements of the war against drugs, and a range of other cooperative regulatory efforts we are pursuing with out allies, just for the sake of looking tough in an unnecessarily aggressive piece of legislation.

The risks are not inconsequential. In Wednesday's paper, a landmark money laundering bust was announced involving cooperation among United States, British, and French authorities. This had been underway for 2 years. Working groups of the economic summit governments and the Basle Committee for Bank Regulations and Supervisory Practices are both developing money laundering codes of conduct. On other fronts, we have developed risk-based capital standards in cooperation with the Basle countries and are working to ensure equality of treatment for U.S. financial institutions in an expanded European market. All these efforts could have been threatened by the original Kerry language.

What the revised amendment does is to encourage negotiations to reach agreement on a code of conduct with cooperating countries, to identify those countries that are harboring money launderers and are unwilling to cooperate, and to direct the President to take the steps he considers appropriate to deal with them. We also granted the President broad discretion not to act if such action would be contrary to the national interest.

I believe this language will encourage expanded cooperation with those countries with which we are already cooperating. At the same time, it will clearly indicate to the drug money laundering havens that they face real and substantial risks for their actions. We went to great lengths to make clear that any retaliatory action contemplated under this amendment would be aimed exclusively at countries that are harboring banks engaging in substantial drug money laundering and totally unwilling to address the problem through good faith efforts. It in no way represents a threat to cooperating countries with which we are negotiating.

For this same reason, I believe that fears that this provision will threaten the status and reliability of the U.S. capital market are unfounded. The rules of the system are unchanged. Free access is assured, except in the limited situation in which a government makes its own country a pariah by harboring money launderers, rejecting efforts to deal with the problem, and making itself a threat to U.S. national security. This seems an appropriate exception to the general rule.

In closing, let me express a final concern with the rush to legislate at the end of the session. There is great danger in rewriting banking or other complex laws without due consideration by the committees of jurisdiction, without hearings or any of the other niceties of the legislative process. We do not do our constituents or our country a service by operating in this manner. While we have developed a workable provision in this case, it was a near thing. With more time, we could have worked out final differences with the Treasury that leave this provision in a form unacceptable to the administration. We can and should do better.

Mr. KERRY. All time has been yielded back.

Mr. McCONNELL. Yes.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Massachusetts. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Oklahoma [Mr. BOREN], the Senator from Louisiana [Mr. JOHNSTON], the Senator from North Carolina [Mr. SANFORD], the Senator from Illinois [Mr. SIMON], and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from New Mexico [Mr. DOMENICI], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Pennsylvania [Mr. HEINZ], the Senator from Indiana [Mr. QUAYLE], the Senator from Vermont [Mr. STAFFORD], and the Senator from Wyoming [Mr. WALLOP] are necessarily absent.

I further announce that, if present and voting, the Senator from Pennsylvania [Mr. HEINZ] and the Senator from Wyoming [Mr. WALLOP] would each vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 85, nays 3, as follows:

[Rollcall Vote No. 374 Leg.]

YEAS—85

Adams
Armstrong
Baucus
Biden
Bingaman
Bond
Boschwitz
Bradley
Breaux
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Conrad
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dodd
Dole
Exon
Ford
Fowler
Garn
Glenn
Gore
Graham
Gramm
Grassley
Harkin
Hatch
Hatfield
Hecht
Heflin
Helms
Hollings
Humphrey
Inouye
Karnes
Kassebaum
Kasten
Kennedy
Kerry
Lautenberg
Leahy
Levin
Matsunaga
McCain
McClure
McConnell
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Proxmire
Pryor
Reid
Riegle
Rockefeller
Roth
Rudman
Sarbanes
Sasser
Shelby
Simpson
Specter
Stevens
Thurmond
Trible
Warner
Weicker
Wilson
Wirth

NAYS—3

Evans
Lugar
Symms

NOT VOTING—12

Bentsen
Boren
Domenici
Durenberger
Heinz
Johnston
Quayle
Sanford
Simon
Stafford
Stennis
Wallop

So, the amendment (No. 3697) was agreed to.

Mr. KERRY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Will the Senate come to order? May the majority leader have the attention of the Senate? Will Senators accommodate the majority leader?

The majority leader is recognized.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD. Mr. President, I thank the Chair.

Mr. President, for the information of Senators, the Senate has now completed action on the last of the amendments that were to be offered and we are down, now, to the leadership package.

I ask unanimous consent that the following amendments, technical and substantive, which have been cleared by all parties, be included in the leadership package: the Gramm-Graham amendment, a Rudman-Moynihan amendment, a Hollings-Moynihan amendment, a Biden-Thurmond, and Rudman-Nunn-Stevens amendment; and that the Metzenbaum-Kassebaum amendment be voted on separately from the package.

The PRESIDING OFFICER. You have heard the request of majority leader, is there objection? The minority leader is recognized.

Mr. DOLE. Reserving the right to object.

Mr. BYRD. Mr. President, let me separate those and just go with the first one, including the technical and substantive amendments in the package.

The PRESIDING OFFICER. Is there objection to the request of the majority leader?

Mr. METZENBAUM. Reserving the right to object, I just heard it off the floor and I do not intend to object.

Mr. BYRD. That is what I was afraid of. Not really.

Mr. METZENBAUM. Do I understand that——

Mr. FORD. Will the Senator from Ohio take a microphone.

Mr. METZENBAUM [continuing]. The last I heard the majority leader had asked unanimous consent for the package and a separate vote.

Mr. BYRD. That is not in this request, the separate vote.

Mr. METZENBAUM. I am sorry, I apologize.

The PRESIDING OFFICER. Without objection, the request of the majority leader is agreed to.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. I believe there is a desire to save the time of the Senate this afternoon. Many Senators probably have reservations to leave town for the weekend. Therefore, I would suggest we voice vote on the package amendment, the leadership amendment, and then have a rollcall vote, as some Senators are requesting, on the Metzenbaum-Kassebaum amendment.

AMENDMENT NO. 3698

Mr. METZENBAUM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM], for himself, Mrs. KASSEBAUM, Mr. THURMOND, and Mr. EXON, proposes an amendment numbered 3968.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place add the following new section:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Undetectable Firearms Act of 1988".

SEC. 2. UNDETECTABLE FIREARMS.

(a) Section 922 of title 18, United States Code, is amended by adding at the end thereof a new subsection (p) as follows:

"(p)(1) It shall be unlawful for any person to manufacture, assemble, import, sell, ship, or deliver, or knowingly possess, transfer, or receive any firearm that—

"(A) is not as detectable as the Minimum Security Standard Exemplar, after removal of grips, stocks, and magazines, by walk-through metal detectors calibrated and operated to detect the minimum security standard exemplar; or

"(B) is not detectable by use of cabinet x-ray systems, as defined in regulations prescribed by the Federal Aviation Administration (14 CFR 108.17) designated for inspection of carry-on baggage. Nothing in this section shall be construed as requiring that the Federal Aviation Administration utilize the Minimum Security Standard Exemplar as a Federal Aviation Administration detection standard.

"(2) For purposes of the section—

"(A) the term 'firearm' does not include a firearm described in subsection 921(a)(3)(B) of this title; and

"(B) the term 'Minimum Security Standard Exemplar' means a firearm substitute used for testing that resembles a revolver, is made of material type 17-4 PH stainless steel and weighs 3.7 ounces: Provided, That nothing in this bill should be construed to require that a firearm be made of any particular material or be of any particular weight so long as the detectability standard is met.

(b) Section 925 of title 18, United States Code, is amended by adding at the end thereof a new subsection (f) as follows:

"(f) The Secretary shall not authorize, under subsection (d) of this section, the importation or bringing in of any firearm that is unlawful under subsection 922(p) of title 18, United States Code.".

(c) The first sentence of section 925(d) of title 18, United States Code, is amended by striking out "The Secretary" and inserting in lieu thereof "Except as provided in subsection (f) of this section, the Secretary".

(d) The Administrator of the Federal Aviation Administration shall conduct such research and development as may be necessary to improve the effectiveness of airport security metal detectors and airport security x-ray systems with respect to detection of firearms prohibited by subsection 922(p) of title 18, United States Code.

(e) When improved detection technology becomes available, the Secretary of the Treasury shall promulgate regulations to amend the definition of the term "Minimum Security Standard Exemplar" contained in the amendments made by this Act if the effect of the existing regulations would be to render the provisions of subsections 922(p) and 925(f) of title 18, United States Code, or any previous regulations issued under this subsection pertaining to those subsections, inapplicable to one or more types of firearms, but in no case shall the Secretary of the Treasury amend the definition of the Minimum Standard Security Exemplar so as to increase to weight of the Exemplar set forth in this Act.

(f) This subsection shall not apply to the manufacture, possession, transfer, receipt, shipment, or delivery of a firearm, under such rules and regulations as the Secretary shall prescribe, by a licensed manufacturer or anyone acting pursuant to a contractual arrangement with a licensed manufacturer, for the purpose of examining and testing such a firearm in connection with the making of a determination of whether the provisions of paragraph (1) of subsection 922(p) apply to such firearm. The Secretary shall ensure that rules and regulations adopted pursuant to this paragraph do not impair the manufacture of prototype firearms or the development of new technology.

(g) The Secretary shall permit the conditional importation or bringing in of a firearm by a licensed importer or licensed manufacturer, for examination and testing in connection with the making of a determination as to whether the importation or bringing in of such firearm will be allowed under this subsection if the importation or bringing in of such firearm is not prohibited under subsection 925(d) of title 18, United States Code.

(h) The Attorney General, the Secretary of the Treasury, and the Secretary of Transportation, shall conduct such studies as required to identify available state-of-the-art equipment capable of detecting the Minimum Security Standard Exemplar while distinguishing innocuous metal objects likely to be carried on one's person sufficient for reasonable passage of the public. Such studies shall be completed within six months of the date of enactment of this Act and each study shall include a schedule providing for the introduction of such equipment at the earliest practicable time at security checkpoints maintained or regulated by the agency conducting the study. Such equipment shall be introduced in accordance with each schedule. In addition, such studies may include recommendations, where appropriate, concerning use of secondary security equipment and procedures to enhance detection capability at security checkpoints.

(i) Section 922 of title 18, United States Code, is further amended by adding at the end of subsection (p) as added by this Act, a new subsection (q) as follows:

"(q) Whoever, during and in relation to the commission of a crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which he may be prosecuted in a court of the United States, uses or carries a firearm the manufacture or importation of which is prohibited by the provisions of subsection 922(p) as added by this Act, shall, in addition to the punishment provided for the commission of such crime of violence or drug trafficking crime, be sentenced to a term of imprisonment for not less than five years. For purposes of this subsection, the term 'drug trafficking crime' has the meaning set forth in subsection 924(c) of this title.

(j) This Act and the amendments made by this Act shall become effective thirty days after the date of enactment of this Act but it shall be a bar to prosecution under this Act that the firearm was manufactured on or before March 1, 1988.

Mr. McCLURE. Will the Senator yield?

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. I thank the Senator for yielding.

The Metzenbaum-Kassebaum amendment is the plastic gun amendment; is it not?

Mr. BYRD. Yes.

Mr. McCLURE. The plastic gun amendment. I have no objection to accepting a vote on it. I do not want to get into any kind of clash with the House of Representatives over that particular issue by kind of singling it out for separate action. I understand why the Senator from Nebraska wants that separate vote, although I think we are running some risk.

I take the time of the Senate to explain that because, as many of you may remember the background of that particular amendment, the Senator from Idaho had introduced that measure. It was later adopted. Senator METZENBAUM offered it to another package. And it has been approved by the Senate in identically this same form at an earlier time. All we are doing is taking the same action again that the Senate did take earlier by voice vote and not by record vote.

I have no real objection to a separate vote on it but, again, I do not want our friends in the House of Representatives to take any kind of offense at the fact that we are singling this one measure out for a separate rollcall vote.

That is the only concern that I have at all. I fully support it. It was my amendment originally. Of course, I obviously fully support this, as do others who are interested in this issue.

Mr. BYRD. Mr. President, if nobody objects to the procedure, I suggest that the Senate vote now on the leadership package.

The PRESIDING OFFICER. Is there objection to the request of the majority leader for a vote by voice vote on the amendment package? Is there objection? The Senator from North Carolina.

Mr. THURMOND. Mr. President, I do not object to it going in as a package. I want to say Senator METZENBAUM and I have worked for a long time on this amendment. I think it is a very important amendment. When people go to an airport and take guns through and have them not detected, you can see the dangers to the public. So I think it ought to pass unless we are convinced that the House will not take it. Of course if they do not they can strike it out of this bill.

I do think it is an important amendment and I worked with Senator METZENBAUM.

The PRESIDING OFFICER. Is there objection to the request of the majority leader? He is simply asking we have a voice vote on the amendment package and have a separate vote on the Metzenbaum amendment.

Mr. THURMOND. Mr. President, I am not through talking yet.

The PRESIDING OFFICER. I apologize to the Senator from South Carolina. I thought he had concluded.

Mr. THURMOND. Senator MCCLURE has worked with us on this matter. At one time some different groups were opposed to it and we worked with them. As far as I know now there is nobody opposed to it. I do think it is a good amendment and I commend Senator MCCLURE for the good work he has done on it and also Senator METZENBAUM for his interest and work on it.

Mr. STEVENS. Reserving the right to object, Mr. President.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I just want to inquire what the procedure will be after we have adopted by voice vote the package that has been reviewed? And I congratulate those who have been the managers. I think it is an excellent job that has been done. I just want to know what is the procedure we will follow after this.

I thought this was going to be kept until the last and we were going to keep adding things to it that we had approved. Does this imply that there is nothing else now that us going to be added to this package?

Mr. BYRD. May I say to the distinguished Senator, I just got unanimous consent adding the last six items, I think, that will have to be added. They are both technical and substantive. They have been agreed upon on all sides.

Mr. STEVENS. There will be no more additions to this package is what I am inquiring, really.

Mr. BYRD. I know of no other additions.

The PRESIDING OFFICER. Is there objection? The Senator from Connecticut.

Mr. DODD. Reserving the right to object. I have no intention to object. I would say to the majority leader, the distinguished colleague from North Carolina—I agreed last evening in the presence of our appellate court not to raise the amendment that I proposed regarding expedited procedures.

The distinguished Senator from North Carolina and I agreed next year, understanding one Congress cannot bind the actions of another, but agreed to sit down in good faith next year and try to negotiate out what is essentially a housekeeping question that must be resolved.

I thank my colleague from North Carolina for making that commitment. I want to be sure we entered that into the record prior to arriving at a conclusion.

Mr. HELMS. Will the Senator yield to me?

Mr. BYRD. I will be happy to yield.

Mr. HELMS. The Senator stated it correctly that he understands he gives up expedited procedure. With that understanding, certainly we will talk in good faith after the first of the year.

The PRESIDING OFFICER. Is there any objection to the request of the majority leader?

Mr. LAUTENBERG. Reserving the right to object.

Mr. LEVIN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Will the majority leader respond to a query? And that is, how do I register my support for this package unless we have a recorded vote? Frankly, I do not want to take up the time of this body, but I want to make sure there is no doubt about this Senator's support of this bill.

Mr. BYRD. The Senator has just accomplished that.

Mr. LAUTENBERG. I just wanted to be certain.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I would like to thank members on both sides of the aisle, particularly Senators NUNN, MOYNIHAN, KENNEDY, D'AMATO and RUDMAN, for their cooperation in shaping and in obtaining agreement on the amendments that I offered as part of the leadership package with respect to the death penalty provision of the drug bill.

As I indicated during the debate on the Hatfield-Evans-Levin amendment, I oppose the death penalty provision of this bill because it is too weak, since it allows for a minimum sentence of 20 years for some of the most terrible of crimes, and at the same time because it is too broad, since it uses a possible maximum penalty of the death penalty when the record shows over and over again that people have been erroneously sentenced to death. Our system of justice is not perfect. We cannot correct mistakes after people are executed. But, the Senate has spoken on this death penalty provision, and it remains in the bill.

That being the case, I though it was important to have this provision as fair and coherent as is possible. The 19 amendments which I offered and which are part of the leadership package help to accomplish this goal in a number of important respects.

These amendments fall into five categories:

First, the bill as it was introduced only required that a jury justify that a sentence of death shall be imposed. It was then required to be imposed by the court. The use of the word justify in the original bill language could have led a jury to sentence a defendant to death even though it might have thought that both a sentence of death or some lesser sentence were both justified. From our own common experiences, we can see that there is a difference between justify and recommend. Take, for example, someone takes their pet to a veterinarian and is told that the animal is very sick. The vet might say that it would be justified to put the animal to sleep. But the vet might also say that it would be justified to utilize some medical intervention to keep the animal alive for another 6 months. Many pet owners would then ask, "But doctor, what do you recommend?" Justify is a much broader concept than recommend and legislation which imposes a penalty as severe as the death penalty should recognize that important distinction. That is why two amendments in the package change this to require the jury to recommend that a sentence of death shall be imposed rather than a sentence of life imprisonment without a possibility of release or some other lesser sentence.

Second, four amendments make clear that notice must be provided to the defendant of what aggravating factors will be cited by the prosecution if it seeks to impose the death penalty. The bill as introduced was unclear in several instances as to this requirement. It is a matter of fundamental fairness that the defendant have adequate notice as to the allegations which will be made against him, especially when his life hangs in the balance. That notice should come before trial since trial strategy could be affected by it.

Third, four amendments clarify what demographic factors relating to the defendant and to the victim cannot be taken into account when the jury decides whether or not to recommend a sentence of death. The bill as originally introduced contained three different formulations in the same paragraph of which demographic factors cannot be considered. These amendments provide consistency. They state that "race, color, religious beliefs, national origin or sex" are factors that cannot be considered by the jury in making its recommendation.

Fourth, three amendments make clear that when the jury considers the mitigating factors of duress, diminished capacity, and minor participation, those factors can be considered regardless of whether those factors are present to the degree which would have constituted a defense. As originally drafted, the language implied that the jury could consider a lesser amount of duress to be a mitigating factor, but that a greater amount of duress could not be considered a mitigating factor. Clearly, the original draft was contrary to common sense.

Finally, the remaining amendments improve the original draft by prohibiting the execution of anyone who is mentally retarted, by providing for adequate representation for the defendant on appeal, by clarifying which information may be presented during the sentencing hearing, by clarifying that transcripts and exhibits may be available to the jury within the trial judge's discretion, and by clarifying that more than one aggravating factor must be present for a sentence of death to be imposed.

To focus on that last point, for moment, it is clear after the process of going through this bill line-by-line that only aggravating factors which are listed in section (n) can be utilized in meeting the requirement that at least two aggravating factors, including one from section (n)(1), must be found by a unanimous vote of the jury in order for the jury, to recommend that a sentence of death be imposed rather than a sentence of life imprisonment without a possibility of parole or some other lesser sentence. The bill is clear that a jury's finding that a nonstautory, that is, a nonsection (n), aggravating factor exists cannot be used to meet the requirement for the second aggravating factor. That is as it should and must be.

Again, I want to thank my colleagues for their help in including these modifications to the death penalty in the leadership package.

Mr. BYRD. There will be a rollcall vote on the final passage.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I likewise would like to congratulate the leadership.

The PRESIDING OFFICER. The Republican leader.

Mr. DOLE. Mr. President, as I understand, the leadership amendment is not perhaps quite ready. Perhaps we can have the votes first. We will agree to that if there is no debate. If there is going to be debate, we will not have the vote.

The PRESIDING OFFICER. Is there any objection to the request of the majority leader? The Senator from Alaska.

Mr. STEVENS. Have we adopted the leadership amendment?

The PRESIDING OFFICER. We are on the request of the majority leader, a unanimous-consent request to consider a package of amendments on a voice vote and then go to the Metzenbaum-Kassebaum amendment for a separate vote? Is that the majority leader's request?

Mr. BYRD. Due to the fact the leadership package has not been quite completed by the staff, but shortly expected to be, I suggest we proceed with the vote on the Metzenbaum-Kassebaum amendment and that there be a rollcall vote.

Mr. DOLE. Without debate.

Mr. BYRD. Without debate.

The PRESIDING OFFICER. Is there objection to that request? Without objection, it is so ordered.

Mr. BYRD. I ask unanimous consent to proceed for 1 minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. I yield to the Senator from Georgia.

Mr. NUNN. Will a 10-minute rollcall be appropriate at this stage?

Mr. BYRD. It might not inasmuch as Senators have not been notified.

The PRESIDING OFFICER. Is there a sufficient second for the request for the yeas and nays?

There is a sufficient second.

The yeas and nays were ordered.

● Mr. METZENBAUM. Mr. President, in February 1987, I first introduced legislation to protect the American public from the threat posed by firearms that cannot be detected by security equipment used to protect our airplanes, our courthouses and our public buildings. How many of us would be anxious to board an airplane if we knew that the metal detectors we walked through were incapable of detecting powerful firearms? What would happen to our system of open government if citizens had to submit themselves to hand searches before they could enter a Senate office building or the Capitol or the White House?

Today we are facing a potentially disasterous "technology gap." Experts have estimated that plastic firearms capable of eluding current detection equipment could be on the market very soon. However, the FAA has testified that equipment to detect plastic firearms is at least 2 to 10 years away.

Fortunately, we have an opportunity to prevent this terrorist nightmare before it becomes a reality.

This spring the Senate unanimously passed S. 2180, which would ban firearms that are not detectable by current detection technology. Similar legislation, H.R. 4445, has been passed by the House of Representatives, for the last few months we have been working with Members of the House to resolve the differences in the two bills but no compromise legislation has yet been sent back by the House.

For that reason it is imperative that the Senate not miss the opportunity in the closing days of the Congress to protect our airports, our courthouses, and our public buildings while we still have the opportunity to do so.

The amendment I am offering today is identical to the provision the Senate passed unanimously on May 25, 1988, banning undetectable firearms. Briefly, it requires that all firearms manufactured, imported, or possessed in this country be as detectable as a handgun "exemplar" weighing 3.7 ounces and constructed of stainless steel. In addition, it requires that all firearms be detectable by the cabinet x-ray systems used at the Nation's airports. Finally, the bill would require that improved state-of-the-art detection equipment be installed at all federally regulated or maintained security checkpoints. This amendment would not ban any gun currently manufactured or possessed in the United States. Instead, it seeks to foreclose the introduction of firearms which cannot be detected by current security equipment.

This legislation has been endorsed by the Fraternal Order of Police, the Federal Law Enforcement Officers Association, the International Brotherhood of Police Officers, the International Association of Chiefs of Police, the Major Cities Chief Administrators, the National Association of Police Organizations, the National Organization of Black Law Enforcement Executives, the National Troopers Coalition, the Police Executive Research Forum, the Police Foundation, and the Police Management Association.

The contribution of the men and women of the law enforcement community to this legislation cannot be overstated, and I wish to thank them once again for all of their considerable efforts. I would also like to thank Senator THURMOND and Senator KASSEBAUM for the important roles they played in helping to move this legislation.

I urge my colleagues to join me in supporting this important public safety legislation.●

● Mr. THURMOND. Mr. President, I rise today in support of this amendment to address the problem of undetectable firearms of which I am cosponsor and one of the original authors.

Last May, the Senate passed legislation which I was pleased to cosponsor to prohibit the importation and manufacture of undetectable firearms. The House has passed a similar version and we have been working out the differences in the legislation passed by both Houses.

The objective of this legislation has not been compromised. In fact, this amendment is identical to the bill we passed earlier this year in the Senate. By passing this proposal today, the Congress will take responsible action to address serious questions about the safety of airports and other Federal checkpoints around the country.

Mr. President, as I have stated before, there is no doubt that in the hands of terrorists and other criminals, undetectable weapons are a clear threat to Americans on board aircraft. American citizens deserve no less than the freedom to travel on our Nation's airlines without concern that terrorists or other criminals may be sitting across the aisle with an undetectable weapon.

This proposal has been the subject of much debate from the Judiciary Committee, the Department of Justice, and the Bureau of Alcohol, Tobacco, and Firearms.

Additionally, the bill as now before us has the support of a number of groups, including:

The National Rifle Association of America;

The International Association of Chiefs of Police;

The Fraternal Order of Police;

The International Brotherhood of Police Officers;

The National Association of Police Organizations;

National Organization of Black Law Enforcement Executives;

National Sheriffs' Association;

National Troopers Coalition;

Police Management Association;

The Police Executive Research Forum;

The Police Foundation;

The Airline Pilots Association;

American Association of Airport Executives;

The Association of Flight Attendants; and

The Airport Operations Council International.

Mr. President, this bill is the product of long months of negotiation. This proposal provides for a minimum exemplar standard tied to the detectability of 3.7 ounces of stainless steel. This is a standard which ensures detection based on our current technology. Also, stiff penalties are imposed under this legislation for the manufacture, importation, selling, or possession of an undetectable weapon.

Additionally, this bill calls for continued studies for identification and installation of state-of-the-art equipment capable of detecting small firearms while distinguishing them from harmless metal objects likely to be carried on one's person.

We have before us a proposal that is a responsible and balanced approach to the problem of undetectable firearms. I urge my colleagues to join us in support of this important legislation.●

Mr. EXON. Mr. President, last December an amendment offered by Senator THURMOND and Senator METZENBAUM, although it failed by a few votes in the Senate, triggered the first public discussion of the menace of undetectable plastic gun issue. I salute those Senators, senior members of the Judiciary Committee, for their leadership on this issue. I was proud to vote for that amendment even though we did not prevail. This Senator and others caught a lot of flack from some for that vote.

Although we lost that by a narrow margin, primarily as a result of these efforts, there has emerged a measure that I believe is supported by all or nearly all Members of this body, including this Senator.

The measure provides for as fool proof a method as can be currently devised to detect plastic weapons while not trampling on the rights of legitimate gun ownership which I have always sought to protect.

This measure has the support of the public at large, many organizations that have been associated with restricting gun ownership in one form or another and the National Rifle Association [NRA]. Indeed the NRA has requested a rollcall vote on the amendment if for no other reason than to emphasize that individuals and organizations with sometimes different goals can come together for the common good. I salute all of these differing entities for their candor and coming together.

As long ago as June 7, 1988, I wrote to the majority leader requesting a rollcall vote, since I thought it important that the Senate be on record by voting on this important matter.

During the last few days we have had endless debate and rollcall votes on many amendments to this bill. It seems ironic to me that we had to fight to have a rollcall vote on the important amendment I have referred to, but that's the way the bill bounces sometimes in the Senate.

I am pleased that the leadership has now agreed to a rollcall vote and that the principles and procedure of the Senate have been upheld. We can now reaffirm the consensus which has been reached on undetectable weapons and I appreciate the efforts expended to reach this goal.

Mr. SIMON. Mr. President, I am pleased today to rise in support of the undetectable firearms amendment. As chairman of the Constitution Subcommittee which has jurisdiction over this legislation, I have closely monitored its progress and am most supportive of its enactment. I commend the efforts of all those who have worked so hard to ensure its passage, particularly Senator METZENBAUM whose leadership was instrumental to the bill's success.

While metal detectors have been very successful in helping prevent criminals from bringing weapons into airports and other areas, the Office of Technology Assessment reports that new firearms are being developed from nonmetallic materials which could easily pass through these detectors. These new undetectable weapons obviously pose a major security risk to the American public as terrorists may well try to sneak these sophisticated firearms through metal detectors.

The purpose of the undetectable firearms amendment is to protect the American people from the threat of undetectable weapons. The bill prohibits the sale, manufacture, or possession of any firearm that does not meet minimum detectability standards. Currently there is no Federal law that prohibits the manufacture or possession of plastic weapons or that sets standards for detecting them. Recognizing that technology is constantly improving, the bill is careful to ensure that as technology for metal detectors improves, the Secretary of the Treasury must update the minimum detectability standards and present his recommendation to Congress.

In closing, I again wish to thank all who crafted this important security measure. It is a well crafted bill which protects the use of lawful firearms by sportsmen and law-abiding citizens, while at the same time helping to protect the American people from terrorist attack. Congress cannot, and should not sit idly by while the security of Americans is at risk. The undetectable firearms amendment will let terrorists know that Congress will do all it can to keep the public safe.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment of the Senator from Ohio. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Oklahoma [Mr. BOREN], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Massachusetts [Mr. KENNEDY], and the Senator from North Carolina [Mr. SANFORD] are necessarily absent.

Mr. SIMPSON. I announce that the the Senator from New Mexico [Mr.

DOMENICI], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Pennsylvania [Mr. HEINZ], the Senator from Indiana [Mr. QUAYLE], the Senator from Vermont [Mr. STAFFORD], and the Senator from Wyoming [Mr. WALLOP] are necessarily absent.

I further announce that, if present and voting, the the Senator from Pennsylvania [Mr. HEINZ] and the Senator from Wyoming [Mr. WALLOP] would each vote "yea."

The PRESIDING OFFICER (Mr. BREAUX). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 89, nays 0 as follows:

[Rollcall Vote No. 375 Leg.]

YEAS—89

Adams
Armstrong
Baucus
Biden
Bingaman
Bond
Boschwitz
Bradley
Breaux
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Conrad
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dodd
Dole
Evans
Exon
Ford
Fowler
Garn
Glenn
Gore
Graham
Gramm
Grassley
Harkin
Hatch
Hatfield
Hecht
Heflin
Helms
Hollings
Humphrey
Inouye
Karnes
Kassebaum
Kasten
Kerry
Lautenberg
Leahy
Levin
Lugar
Matsunaga
McCain
McClure
McConnell
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Proxmire
Pryor
Reid
Riegle
Rockefeller
Roth
Rudman
Sarbanes
Sasser
Shelby
Simon
Simpson
Specter
Stennis
Stevens
Symms
Thurmond
Trible
Warner
Weicker
Wilson
Wirth

NAYS—0

NOT VOTING—11

Bentsen
Boren
Domenici
Durenberger
Heinz
Johnston
Kennedy
Quayle
Sanford
Stafford
Wallop

So the amendment (No. 3698) was agreed to.

Mr. McCLURE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senate will be in order so the majority leader may be heard.

Mr. BYRD. Mr. President, I ask unanimous consent to proceed for 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I yield to the Senator from Georgia.

AMENDMENTS EN BLOC NUMBERED 3699

Mr. NUNN. Mr. President, I am about to turn over to the leadership the product of several days—I would say several weeks and maybe several months work. This is the group of amendments which we have called sheet No. 1. These are amendments that will go in as a package. The amendments are numbered 1 through 47. They are in separate files. They have been carefully arranged.

They are the product of a great deal of work, and negotiation on both sides of the aisle.

Amendment No. 25 has just been passed. So this is a package numbered 1 through 47 with the omission of amendment No. 25, which was the amendment we just passed on a rollcall vote.

So we have a total of 46 amendments here.

I suggest to the leadership that, as they send them to the desk, they ask they be weighed and reported.

Mr. BYRD. Mr. President, if the Republican leader will help me.

Mr. DOLE. I am glad to. It is the only appeal we have.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I ask unanimous consent that all Senators may be permitted to submit statements for the RECORD as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, if we could have a voice vote now on the package, to be followed by a rollcall on final passage.

The PRESIDING OFFICER. The clerk will report the first leadership package.

The assistant legislative clerk read as follows:

The Senator from Georgia [Mr. NUNN] proposes amendments en bloc numbered 3699.

The PRESIDING OFFICER. Without objection, reading of the amendments will be dispensed with.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

CHILD PORNOGRAPHY, ITEM

Mr. DECONCINI. I would like to ask a question of the distinguished ranking minority member of the Senate Judiciary Committee about the effect of his amendment. Section 101 of the amendment amends the current law relating to the sexual exploitation of children and the distribution of materials involving such exploitation. The amendments in section 101 prohibit the distribution "by any means including by computer" of video depictions, or notices or advertisements concerning video depictions, of pornography involving minors. The amendments are in response to the growth of an industry which distributes child pornography through computers, and advertises the availability of such materials through a computer on electronic bulletin boards. I would like to know whether or not these amendments are intended to apply against telephone companies, whose network facilities may be used to transmit the prohibited materials?

Mr. THURMOND. It is the purpose of the amendment that the prohibition in these amendments, and the applicable sanctions, are to apply to those persons who are knowingly involved in the distribution of video depictions, or advertisements of video depictions, of child pornography. It is not, however, the purpose of the amendment that the prohibition and sanctions should apply to telephone companies over whose facilities the prohibited materials are transmitted without their knowledge.

Telephone companies have begun to transmit information services over their facilities. While some telephone companies are not presently allowed to control or determine the content of these services, all telephone companies may function as the conduit, or gateway, for the transmission by other persons of such services over their networks. By creating the conduit for transmission of information services, telephone companies may unwittingly provide the opportunity for vendors to distribute pornographic material over the network.

It is not the purpose of the amendment to change, in any respect, the telephone companies statutory responsibility. The intent is that telephone companies whose facilities are used by other persons for the transmission of the prohibited video depictions, or advertisements of such depictions, shall not be liable under sections 2251(c) and 2252(a), as amended by section 101 of this bill, for the video depiction or advertisement of video depiction by computer of the prohibited materials referred to in these sections.

Mr. DECONCINI. I thank the Senator. I would also like to know whether the intent of the amendment with respect to the amendment's prohibition against transporting and distributing obscene matters is also not to apply against telephone companies, for the same reasons stated above?

Mr. THURMOND. Similarly, section 201 amends the current law relating to the prohibition on the transportation of obscene matters for sale or distribution to extend the prohibition to a person who "knowingly uses a facility or means of commerce for the purpose of interstate or foreign distribution of" the prohibited materials. This amendment is intended to contemplate distribution of obscene materials through a computer. Again, it is not the intention of the committee that this prohibition, and the applicable sanctions, should apply against a telephone company whose facilities are used to transmit the prohibited materials without their knowledge.

EXCLUSIONARY RULE AMENDMENT TO S. 2852 CODIFYING UNITED STATES VERSUS LEON, ITEM 2

Mr. BIDEN. Mr. President, the intent of this exclusionary rule amendment is to codify the Supreme Court's decision in United States versus Leon. It does no more and no less.

The amendment allows use of evidence seized by an officer in reasonable reliance on a warrant issued by a detached and neutral magistrate ultimately found to be invalid unless one of the the following conditions applies:

First, the good faith exception would not apply if the magistrate or judge issuing the warrant was materially misled by information that the police officer knew, or should have known, was false.

Second, the exception would not apply if the judge or magistrate acted merely as a "rubber stamp"; that is, if he or she approved the warrant without undertaking a neutral and detached review.

Third, the exception would not apply if the affidavit supporting the warrant was so lacking in the elements of probable cause that no reasonable person would have believed it existed.

And fourth, the exception would not apply to a warrant so facially deficient—such as one that failed to identify the place to be searched or the things to be seized—that no police officer could reasonably have presumed it was valid.

Mr. THURMOND. Mr. President, I join in the statement of the Senator from Delaware. The purpose of this amendment is to codify the Leon case—no more, no less.

ALTERNATIVE TO THE EXCLUSIONARY RULE, ITEM 2

Mr. HATCH. Mr. President, recent legislative efforts such as the Anti-Drug Abuse Act of 1986 and the Comprehensive Crime Control Act of 1984 have done much to place new and valuable tools in the hands of Federal law enforcement officers as they carry on the battle against crime. However, one of the chief items of unfinished criminal justice reforms in terms of detecting crime and apprehending criminals is finding a suitable alternative to the exclusionary rule. The House passed Omnibus Drug Initiative Act, H.R. 5210, contains an important section providing for reform of the exclusionary rule. Accordingly, we are now debating an amendment to replace the exclusionary rule in Federal criminal proceeding with alternatives more likely to ensure enforcement of the fourth amendment.

The exclusionary rule, or the suppression doctrine, is a judicial policy mandating the inadmissibility of evidence obtained unreasonably according to current fourth amendment standards. Thus, the rule has the potential, as Chief Justice Burger has noted, of "excluding from evidence the traditional corpus delicti in a murder or kidnaping case." *Stone* v. *Powell*, 428 U.S. at 502 (1976). In other words, credible and probative evidence often critical to conviction, seized in the heat of apprehending a suspected felon is excluded from court consideration solely because a court deliberating months later feels it was obtained in an unreasonable fashion. As the rule now operates, a criminal, who in fact committed a dreadful violent crime and may have been caught in the act, is set free not because he is innocent, but because the evidence necessary to establish his guilt is deemed to have been unreasonably seized.

The fourth amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath and affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (U.S. Constitution, Amendment IV).

Although the fourth amendment triggers its judicial application, the exclusionary rule is not a part of the Constitution, but a court-made rule of evidence that was not adopted for Federal courts until 1914, in *Weeks* v. *U.S.*, 232 U.S. 383 (1914), and state criminal trials until 1961, in *Mapp* v. *Ohio*, 367 U.S. 643 (1961).

A number of Supreme Court Justices have questioned the wisdom of the exclusionary rule. Mr. Justice Black, in a concurring opinion in *Wolf* v. *Colorado*, 388 U.S. 25 (1949), stated:

> The federal exclusionary rule is not a command of the fourth amendment but is a judicially created rule of evidence which Congress might negate.

Again in *Linkletter* v. *Walker*, 381 U.S. 618, 648 (1965), Mr. Justice Black said:

> The inference I gather from these repeated statements is that the rule is not a right of privilege accorded to defendants charged with crime but is a sort of punishment against officers in order to keep them from depriving people of their Constitutional rights. In passing I would say that if that is the sole purpose, reason, object and effect of the rule, the court's action in adopting it sounds more like law-making than construing the Constitution.

More recently, Chief Justice Burger stated:

> It creates a damage remedy not provided for by the Constitution and not enacted by Congress.

Clearly indicating his view regarding the deleterious effect the exclusionary rule has on justice, in *Bivens* v. *Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), Chief Justice Burger recommended this course of action:

> Reasonable and effective substitutes can be formulated if Congress would take the lead, as it did for example in 1946 in the Federal Tort Claims Act. I see no insurmountable obstacle to the elimination of the Suppression Doctrine if Congress would provide some meaningful and effective remedy against unlawful conduct by government officials.

It seems then that the Supreme Court has thrown down the gauntlet. Now Congress must answer the challenge.

The protection of the citizenry is the foremost responsibility of the law enforcement officer; his first priority is to remove nefarious persons such as rapists, murderers, and kidnappers from the streets. In the performance of his duties, the policeman may sometimes err. The exclusionary rule does not distinguish between flagrant violations and accidental errors.

For example, it does not distinguish between clearly unreasonable searches of one's home and simple misstatements of information on a search warrant. Regardless of the magnitude of the error of the policeman, the rule mandates the suppression of evidence obtained in violation of the fourth amendment. The release of a convicted murderer due to an error in a search warrant may be necessitated by the exclusionary rule.

Under the rule, evidence considered to have been obtained illegally is not permitted into trial, and if casual connection is determined, even the most credible kinds of evidence may be deemed "tainted" and also excluded from the trial. Casual connection refers to the judicial decision that where additional evidence is believed to have been gathered as a result of illegally seized evidence, it shall be subject to the exclusionary rule. For example, the body of a victim is inadmissible evidence at trial if the body was found as a result of a confession of a pickpocket being held illegally by law enforcement officers.

The primary reason for the institution of the exclusionary rule was to deter abusive law enforcement practice. However, there is little substantive proof that the exclusionary rule is an effective deterrent. Mr. Justice White, in his dissenting opinion in Stone versus Powell, stated:

> As time went on after coming to the bench I became convinced that *Weeks* v. *United States* (citations omitted), and *Mapp* v. *Ohio* had overshot their mark insofar as they aimed to deter lawless action by law enforcement personnel and that in many of its applications the exclusionary rule was not advancing that aim in the slightest and that in this respect it was a senseless obstacle to aiming at the truth in many criminals trials, 428 U.S. 465, 537 (1967).

In the Janis case, Justice Blackmun, speaking for the Court, cited a long list of empirical studies into the effectiveness of the suppression doctrine as a deterrent of fourth amendment violations and concluded: "No empirical observer has yet been able to establish with any assurance whether the rule has a deterrent effect even in the situations in which it is now applied," (428

U.S. at 449 n. 22). The burden of proof should be upon advocates of the exclusionary rule to demonstrate that it accomplishes its purpose. After decades, that burden of proof has still not been satisfied. It is time to try something with a greater chance of success.

It has even been suggested that the exclusionary rule promotes illicit conduct by law enforcement officers. Since the rule is conviction-oriented, it is only brought to play at the trial stage of criminal proceedings when law enforcement officials are seeking a conviction, it permits harassment of seizure of contraband by officers who have no intention of a conviction while providing no direct punishment to the officer who may have violated fourth amendment rights. In some instances, the rule diminishes abidance of the law and compels officers to turn to illegal means of law enforcement; that is, false testimony. Where, then, lies the protection for the innocent victim of illegal searches and seizures required by the fourth amendment? Assuming an illegal search and seizure is committed upon a law-abiding citizen, the rule offers him little help, remedy, or protection—certainly no compensation.

A report from the American Bar Association's Division of Judicial Administration notes that not only has the exclusionary rule failed to achieve its stated purpose, but it has imposed substantial costs on society in the process. First, the exclusionary rule affords no protection or remedy to innocent persons whose fourth amendment rights have been infringed. Justice Frankfurter noted that the exclusion of evidence is a remedy which directly serves only to protect those upon whose person or persons something incriminating has been found. The exclusionary rule imposes a single, inflexible, and drastic sanction without regard to the nature, circumstances or degree of police misconduct.

Moreover, a study administered by the U.S. Department of Justice and the University of Chicago Law School indicated the ineffectiveness of the rule as a deterrent to abusive law enforcement practices and illustrated the lopsided protections the rule gives for violations of the fourth amendment rights. Instead of protecting the innocent law-abiding citizen, the rule releases the criminal as well as the offending law enforcement official from answering for his misconduct.

In recent Supreme Court decisions concerning the exclusionary rule, Justices have continued to echo the fact, which was first introduced in *Wolf* v. *Colorado,* 338 U.S. 25 (1949), that the rule is "judicially created and one which Congress might negate." The amendment before us today is in response both to the cries of these Justices of the Supreme Court and to our fellow Americans, who are increasingly becoming victims of violent criminal acts.

This amendment would codify the Supreme Court holding in *United States* v. *Leon,* 468 U.S. 897 (1948). In that case, the Court held that the fourth amendment exclusionary rule should not be applied to prohibit the use of evidence obtained by an officer who acted in reasonable reliance on a search warrant that is later found to be invalid. In other words, we are writing into statute the current law, as determined by the Supreme Court.

While this amendment is a positive step in addressing some of the problems I have previously mentioned, it is by no means a final solution. A better proposal would have been the complete elimination of the exlusionary rule and the creation of a civil tort remedy for individuals whose fourth amendment rights have been violated by law enforcement officials. This approach is reflected in S. 326 which I introduced in the 100th Congress.

Mr. President, I understand that such a proposal would require extended debate on the floor, so in the interest of passing a drug bill and winding up this session of Congress, I will support, for the time being, this inadequate compromise.

In conclusion, the exclusionary rule has not lived up to its expectations. The court which created the rule has itself found many exceptions to its application and has hinted at the need to rectify its shortcomings by legislation. This amendment would permit the Federal courts to pursue truth by allowing admission of probative evidence.

Mr. McCONNELL. Mr. President, after months of long negotiations and hard work, the administration, a number of Senators, and the Senate Judiciary Committee have completed work on a landmark bill to end election fraud and public corruption in this country. Its key supporters in the Senate, Senators BIDEN, THURMOND, METZENBAUM, SIMON, DECONCINI, and myself, worked together in true bipartisan fashion to assemble legislation on a critical national issue.

This bill, the Biden-McConnell Anti-Corruption Act of 1988, represents a three-pronged offensive against corruption at every level of society, by expanding the Federal Government's power to investigate and prosecute fraud at the polls, in Government, and in private industry.

Almost exactly 1 year ago, the Louisville Courier-Journal ran a week-long exposé on election fraud in Kentucky. Although vote-buying, intimidation at the polls, and contributions-for-contracts deals hardly are new in our State, most Kentuckians expressed outrage at the abuses revealed in this report, and the Kentucky General Assembly responded quickly by enacting an array of needed election law reforms.

However, even at that time I believed that election fraud in Kentucky and other States would not be cured until the Federal Government stepped in and supervised local elections—and had the power to prosecute election abuses. That is why, on election day in 1987, I introduced the Election Fraud Prevention Act to make all election fraud offenses into Federal crimes, and authorize Federal officials to supervise State and local elections in areas where election fraud is a persistent or widely suspected problem.

Just as I had feared, vote fraud reared its ugly head again right after the general assembly passed its election fraud laws, indicating the cynicism there is about State enforcement efforts in this area. In all these cases, the key culprits were election officials—and that is why State-level efforts ultimately are not enough to weed out these abuses, despite the best of intentions. There is simply too much power at stake, and too many carefully guarded, insulated interests for the State to succeed on its own.

Congress recognized this when it passed the Voting Rights Act of 1965, making the Federal Government the ultimate guarantor of the franchise for every American, regardless of race, in every election. A lot of people opposed that legislation, saying that the Federal Government had no business looking over the States' shoulder to enforce voting rights. But the fact was that people were being denied their right to vote, and the State would not—and realistically could not—do anything to stop it.

Ironically, the Federal Government had very few occasions to prosecute discrimination under the act, because the mere threat of Federal intervention—announced loud and clear by the passage of the Voting Right Act—was enough to bring most discriminatory activity to an abrupt end.

Today, people in some areas of our country are again being denied their voting rights, not by discriminatory requirements or selective harassment—although that is known to go on as well—but by massive distortion of election results through vote-buying and other forms of fraud, which we in Kentucky often refer to as "Election Day Shenanigans."

Mr. President, we have before us today a bill to make the Federal Government the ultimate guarantor of the integrity of the ballot box, to end wholesale denial of voting rights through election fraud.

However, the Biden-McConnell bill goes further than stopping fraud and corruption at the polls. It also would rearm Federal prosecutors in their ongoing war against corruption at all levels of government and in the private sector. Their work was dealt a crippling blow last year by the Supreme Court's decision in McNally against United States, a public corruption case originating in Kentucky.

That decision, which denied Federal prosecutors the ability to use the mail fraud statutes to investigate and punish corrupt officials, may end up unlocking the prison cells of up to 185 convicts who are doing time for public corruption, and it has shutdown over 100 pending investigations.

To address this crisis, Senator THURMOND and I began working with the Department of Justice to restore Federal law enforcement authority in the area of public corruption, and expand its role in election fraud cases. We introduced a bill, S. 2531, and then, approached key members of the Senate Judiciary Committee about a possible coalition bill, that would restore Federal authority in white-collar crime as well as public corruption and vote fraud.

The result of this long process, the Biden-McConnell bill, is one of my proudest achievements as a legislator. It has the solid support of the administration and the Judiciary Committee and I believe it is on its way to becoming law.

Election fraud and corruption have been traditions for too long in many areas of our country, including my own State, I am sorry to say. But if this Congress exercises the courage of its convictions and writes the Anti-Corruption Act into law, then the days of the vote-buyers, corrupt local officals and white-collar criminals soon will come to an end.

Mr. President, I yield the floor.

Mr. THURMOND. Mr. President, I rise in strong support of S. 2793, the Anti-Corruption Act of 1988 which I joined Senator BIDEN and Senator McCONNELL in introducing.

Corruption, especially corruption involving public officials, is a problem which affects the entire Nation and is an issue which is cause for grave concern.

This bill directly addresses the gap in current law which was a result of the Supreme Court's decision in McNally versus United States. Until this decision, corruption schemes involving public officials were prosecuted under the mail fraud statute. However, in McNally, the Court ruled that the mail fraud statute could only be used to prosecute corruption schemes in which economic loss can be shown. As a result of this decision, a public official can be prosecuted if he steals $10,000 from the county treasury. However, that same public official could not be prosecuted if he acts to have a contract awarded as a favor to a personal friend. In the first case, economic loss can be easily shown. In the second case, it is not always possible to show economic loss. However, what has occurred in both cases is a serious breach of the public trust. There is no reason why both actions are not deserving of equal prosecution. It is clear that the McNally decision severely limits the ability of prosecutors to effectively attack public corruption cases in which there is no economic loss.

The bill being considered today creates a public corruption statute under which corrupt schemes involving the loss of the honest services of a State or Federal public official could be criminally prosecuted. This legislation also allows prosecution of certain corrupt schemes to influence the election process. Further, this bill expands the scope of the mail fraud statute to cover schemes involving the loss of the honest services of an employee by a private organization.

Mr. President, I am pleased that we are considering the important legislation today. On June 17, 1988, I joined with Senator McCONNELL in introducing S. 2531, the Anti-Public Corruption Act of 1988 which was developed in close consultation with the Department of Justice. The measure before us today was the result of bipartisan negotiations that occurred after introduction of that bill. I would like to commend Senator McCONNELL for his long standing interest in this issue as well as his persistence in urging for consideration of this measure before we adjourn.

In closing, breach of the public trust is a serious offense that should not go unprosecuted. I am confident that the citizens of this country demand that public corruption be zealously investigated and prosecuted. This measure is strongly supported by the Department of Justice and is urgently needed by the U.S. attorneys. I urge my colleagues to support this bill which will serve to ensure that public officials are held fully accountable for all of their actions.

REFORMING PROCEDURES FOR COLLATERAL REVIEW OF CRIMINAL JUDGMENTS, ITEM 3

Mr. HATCH. Mr. President, I rise today with respect to the compromise amendment to modify existing habeas corpus procedures. For most of this decade we have been trying to relieve the crushing burden on the Federal courts with respect to habeas corpus applications. Since 1981 Senator THURMOND has sponsored legislation to achieve these goals, only to have it delayed in committee or on the floor unitl time has run out at the end of each Congress. We are again faced with that predicament as this Congress winds to a close and S. 1970, the current verson of this bill, is doomed to inaction in the Judiciary Committee. I commend Senator THURMOND for his leadership on this issue.

Mr. President, the abuse of the habeas corpus process is making a mockery of the principles of of finality and certainty in the American judicial system. During the past quarter century, habeas corpus filings have increased by 800 percent. The recent numbers invloved are almost dumbfounding. In 1941, there were 127 petitions by State petitioners. By 1961, that number had increased to 1,020. From 1977 to 1986 the numbers increased from 6,866 to 9,045. And the total from 1987 was 9,542. This balloon in the activity in the last two decades is almost unbelievable.

A Department of Justice study has revealed that 98.6 percent of habeas corpus cases which were appealed at the Federal level had previously undergone State appellate review. Over 30 percent of the Federal habeas corpus petitioners had filed one or more State habeas corpus petitions. Over 44 percent of the State petitioners to Federal court had previously filed a habeas corpus petition in State court. Over 20 percent of Federal habeas corpus peititioners had filed more than 2—up to 13—previous State petitions. And that same report revealed that out of nearly 2,000 habeas corpus petitions filed in just six Federal district courts, only 1.8 percent resulted in the prisoner's release. Clearly, Mr. President, the use of the criminal justice system by these petitioners has turned into an abuse of the system.

In addition to the problem of the shear numbers of these cases, we should also consider the resultant delays in justice that occur. In a 1988 Report to the Attorney General by the Department of Justice Office of Legal Policy, it is noted that:

> [T]he problem of delay has been particularly acute in capital cases. . . . The federal habeas corpus jurisdiction provides an avenue for obstruction and delay in these cases which the states are powerless to address:

That report then goes on to quote Attorney General William French Smith as follows:

> [T]he inefficiency of current court procedures has resulted in a de facto nullification of the decisions of most State legislatures to impose capital punishment for some crimes. The "public interest" organizations that routinely involve themelves in the litigation carried on in capital cases have fully exploited the system's potential for obstruction. Delay is maximized by deferring collateral attack until the five of execution. Once a stay of execution has been obtained, the possibility of carrying out the sentence is foreclosed for additional years as the case works its way through the multiple layers of appeal and review in the state and federal courts.

It is important to note that it is the continued stream of habeas corpus petitions which draw out capital punishment from the time of sentence to the time of punishment for a general period of 5 to 7 years.

The right to habeas corpus is far from clearly defined in the U.S. Constitution. It is mentioned only in article 1, section 9, clause 2, which states that:

> [T]he Privilege or the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Chief Justice John Marshall, in Ex Parte Bollman, 8 U.S. 75 (1807), determined that a statute was necessary before the Federal courts could issue writs of habeas corpus. In John Marshall's view, it was section 14 of the Judiciary Act of 1789 which provided the necessary authority for the granting of such writs. Thus, this is a question of statutory, not constitutional rights. The essential point to be made is that Congress can—and should—limit the application of habeas corpus under the provisions found in this amendment.

With respect to statute, in 1867 the Congress provided that persons who were incarcerated in violation of the Constitution and it guarantees could obtain a writ of habeas corpus from the Federal courts. Then in 1914, the majority of the Supreme Court held in the case of *Frank* v. *Magnum*, 237 U.S. 309 (1914), that a full and adequate hearing in State courts on a criminal conviction precluded collateral relief in Federal court. Full and adequate was defined in terms of due process—notice, opportunity to be heard, and an established procedure not repugnant to the Constitution.

The late and great judge, Henry J. Friendly, writing in the University of Chicago Law Review (1970), pointedly observed that:

> Nothing in the Constitution requires a State to allow collateral attack simply because Congress has authorized Federal habeas corpus to challenge the State conviction.

In that context, it is valuable to hear what some of the Nation's chief jurists think of the current statutory habeas corpus policies:

Former Chief Justice Burger:

> The administration of justice in this country is bogged down with lack of reasonable finality of judgments in criminal cases.

Judge Henry Friendly:

> A matter that has rankled relations between State and Federal courts for some years now is the collateral attack on final State criminal convictions * * * since the same claim of Federal law can be and often is made in the trail and appellate courts of the State, with certiorari review available in the Supreme Court, the State judges understandably have some difficulty in seeing why their work should be reexamined.

Justice Stevens:

> In recent years Federal judges at times have lost sight of the true office of the great writ of habeas corpus.

Former Justice Powell:

> The present scope of habeas corpus tends to undermine the values inherent in our Federal system of government * * * we render the actions of State courts a serious disrespect in derogation of the constitutional balance between the two systems.

Justice O'Connor:

> State judges in assuming office take an oath to support the federal as well as the State constitution. * * * It is a step in the right direction to defer to the State courts and give finality to their judgments of Federal constitutional question where a full and fair adjudication has been given in state court.

It is clear, Mr. President, that something has to be done soon if we are to have a manageable and meaningful criminal justice system. This amendment has been offered as a solution. Unfortunately, I am afraid that it will be ineffective. This amendment will require that both Houses of Congress act to some degree within 90 days after a commission, already appointed by Chief Justice Rehnquist to study this issue, recommends changes to the system. The problem with this approach is that there is no effective way to enforce our requirement. It is well known that any future Congress will be free to override or simply ignore what we have mandated.

I do wish to congratulate my colleagues for at least attempting to address the issue, and I will join with my colleagues to ensure passage of meaningful Habeas reform after the commission completes its recommendations.

ALCOHOL WARNING LABEL AMENDMENT, ITEM 4

Mr. THURMOND. Mr. President, it is certainly a constructive use of time for Congress to debate and to draft a comprehensive drug bill. Our Nation must actively and aggressively commit its resources to the war on drugs. However, in the course of this war, as policymakers we must not ignore the No. 1 drug of abuse in this Nation. I am speaking of alcohol.

The Department of Health and Human Services [HHS] says that alcohol costs the American economy nearly $117 billion per year in increased medical expenses and decreased productivity. Alcohol-related deaths claim the lives of over 100,000 Americans each year, compared to 5,000 annual deaths attributed to illegal drugs. Alcohol is the most widely used drug among American youths. Nearly 5 million teenagers between the ages of 14 and 17 experienced negative consequences of alcohol use, such as poor school performance or trouble with the law. Nearly half of the convicted jail inmates were under the influence of alcohol when they committed the crime. Alcohol-related highway deaths are the No. 1 killer of 15- to 24-year-old persons. One out of every three adults, 56 million people, say that alcohol abuse has brought trouble to their families. Since 1981, the Surgeon General has advised pregnant women to abstain from alcohol, concluding there is no consumption level free of risk to the fetus. Despite this warning, fetal alcohol syndrome [FAS] is among the three leading causes of birth defects. It is the only entirely preventable birth defect among the top three. At least 5,000 babies each year suffer the effects of FAS. As many as 50,000 babies each year suffer a milder form of alcohol-related birth defects, known as fetal alcohol effects.

We have all agreed that a necessary component to the war on drugs is education. Accordingly, I am pleased that legislation I have authorized, S. 2047, will be included in the omnibus antidrug package. This measure will assist in educating American consumers as to the negative health and safety consequences of alcohol consumption. This is the same piece of legislation which was unanimously approved by the Senate Commerce, Science, and Transportation Committee on September 20, 1988.

In a 1987 study requested by Congress, HHS concluded that health warning labels on alcoholic beverages can affect consumer behavior, particularly in combination with other educational efforts. In a letter from Dr. Otis Bowen, Secretary of HHS, which accomplished the study, he said that the magnitude and severity of [the health effects of alcohol beverage consumption] argue for sustained and highly visible public health efforts.

The HHS study confirms my longheld belief in the need for health warning labels on alcoholic beverages. A recent Gallup poll found that an overwhelming majority of Americans, nearly 80 percent, favor Federal legislation to mandate health and safety warning labels on alcoholic beverage containers. This year nearly 100 organizations endorsed legislation which I sponsored to require rotating health warning labels. They include the American Academy of Pediatrics, the American Cancer Society, the American Heart Association, the American Liver Foundation, the American Medical Association, the March of Dimes, Mothers Against Drunk Driving, National Council on Alcoholism, National PTA, United Methodist Church, Church of Jesus Christ of Latter Day Saints, and the American Association of Mental Retardation. Well known individuals like Secretary of Health and Human Services Dr. Bowen, Rev. Jesse Jackson, and former First Lady Mrs. Betty Ford have endorsed my bill.

My preference is for legislation requiring five rotating warning labels. However, in any successful legislative effort, good faith compromise is a necessary ingredient. This measure requires only one warning label. This label incorporates two indisputable health and safety messages. The label would read:

> Government warning: (1) According to the Surgeon General, women should not drink

alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a care or operate machinery, and may cause health problems.

No other statement relating to safety and health could be required by the States on containers of alcoholic beverages. I want to emphasize that the purpose of the preemption language in this legislation is to allow the alcohol beverage industry to have uniform requirements for labeling on alcoholic beverage containers. This is a narrow preemption relating to statements on containers, or boxes, cartons and packages which contain such containers. It does not in any way prevent the alcohol beverage industry from voluntarily providing further consumer information. Moreover, the preemption should not be construed to indicate that the States do not have the authority in other areas—such as industry advertisement, warning posters, and other educational campaigns—to protect the health and safety of their citizens.

Mr. President, this year 99 Senators urged Surgeon General Koop to declare drunk driving a national crisis. If we were willing to make that request, the language in this label should certainly be acceptable to my colleagues. For many years, the clearest evidence on fetal alcohol syndrome has been available. It is characterized by growth deficiencies, facial abnormalities (including a small head circumference, flattened face and sunken nasal bridge) malformed organs and mental retardation. It costs approximately $15 million each year to treat FAS babies. It costs $670 million each year to treat the nearly 70,000 FAS children under the age of 18. It costs over $760 million each year to treat the 160,000 FAS adults.

Last month the Senate Consumer Subcommittee held a hearing on my health warning label legislation. I commend the subcommittee chairman, Senator Gore, and the full committee chairman, Senator Hollings, for scheduling the hearing. At the hearing, medical experts gave a slide presentation on FAS. I wish more of my colleagues could have observed the physical devastation which FAS causes innocent children. The saddest thing about the huge treatment costs and the resulting human misery associated with FAS is that it is entirely preventable.

Earlier this Spring, the FDA reported 62 cases of birth defects in children whose mothers took the acne drug, Accutane, while pregnant. Last June, the FDA ordered all packages of this prescription drug to carry a picture of a deformed infant on the label. There are approximately 10 times as many FAS cases reported per year as there are total reports of accutane-related birth defects. When comparing the incidence of these two causes of birth defects, I think it is extremely reasonable to require this FAS warning on alcoholic beverages.

I have often been asked the questions, "Why are such labels necessary? What good will they do?" These labels are intended to be a useful component in an educational process. They are not a complete answer to the problem of providing information to the consumer concerning alcohol consumption. However, they can help ensure that the education message is consistently before the public. Studies have determined that in order for health messages to be effective in promoting increased awareness, they must be repeated frequently and be consistent in content. They will re-enforce the validity of similar health messages portrayed in other public education campaigns. They will encourage doctors and other health care providers to present re-enforcing messages to their patients. I believe the FAS warning will be particularly beneficial to low-income women, many of whom lack access to medical and prenatal care, as to the hazards of drinking during pregnancy. They will increase knowledge among young people that alcohol is a drug, which has health and safety risks associated with its use and misuse. They will provide some educational balance to the $2 billion spent each year by the alcohol beverage industry in its product advertising. Finally, there is an information gap in this country regarding the negative consequences of alcohol consumption. For example, the National Center for Health Statistics recently determined that only 57 percent of adults over 45 had ever heard of FAS. A recent Weekly Reader Survey of elementary and high school students determined that 76 percent of those surveyed did not believe that wine coolers were drugs. By age 12, 40 percent of American children will have tried wine coolers. Two-thirds of those surveyed had used beer, wine, or distilled spirits in the past year. When alcohol-related traffic accidents is the No. 1 killer of American teenagers, this data is frightening.

At the recent hearing on health warning labels, the Bureau of Alcohol, Tobacco and Firearms suggested certain technical improvements to the bill which have been incorporated in this measure.

I am especially pleased that Senator Ford has joined me as a cosponsor of this legislation. Senator Ford has worked diligently to forge a compromise measure, and without his leadership this legislation might not be as far along as it is now.

The time for this legislation has come. We cannot fight a war on drugs by ignoring the negative consequences of alcohol consumption. This measure is a critically needed component in a comprehensive educational effort to increase awareness. It should be a part of this comprehensive drug bill.

I once again wish to thank Senator Hollings and Senator Gore for holding hearings on health warning labels this year. I have modified my original legislation based on the testimony and questions raised in that hearing. In order for the House to have the opportunity to consider the important legislation prior to adjournment, I found it necessary to introduce it as a germane floor amendment to the drug bill.

In combination with other constructive educational efforts, this legislation could prevent alcohol-related traffic deaths and birth defects. It is vital to our Nation, and I urge its adoption.

Mr. HOLLINGS. Mr. President, I support that part of the amendment that is now before the Senate requiring a health warning label on containers of alcoholic beverages. The Commerce Committee just recently considered identical language and approved it unanimously. During the hearing of the Consumer Subcommittee on this legislation, I heard testimony that demonstrated that we can't wait any longer to take some forceful action against alcohol misuse. I indicated at that time that I would support some kind of brief, intelligent and right-to-the-point labelling initiative, and I believe that the label in the amendment before us now is just that kind of approach.

No one denies that alcohol can have potentially farmful effects on the development of the fetus, or that alcohol consumption detracts from a person's ability to drive a car. The label required by this amendment identifies those two problems, and should help to alert people to these dangers.

In South Carolina, about 57 percent of all traffic fatalities last year were alcohol-related, with an even higher number among young people aged 15 to 24. In 1987, approximately 200 children were born in South Carolina with symptoms of fetal alcohol syndrome. The warnings in this legislation should help to alert people to the fact that they need to be careful about alcohol consumption.

I should point out that I view this provision with an eye toward the traditional interests of the States in the health and safety of their citizens. It should not be read to express any negative opinions regarding State activities or legislation affecting alcoholic beverage distribution. The labeling provisions affect the States in a narrow way: no State can require that there be a statement relating to alcoholic beverages and health on containers other than the label specified in the legislation. Other State prerogatives are not, however, covered by this preemption. I have been a strong supporter of the rights of the States to make these determinations with regard to their citizens, and my support for this labeling initiative is consistent with those objectives.

The Commerce Committee has considered this matter carefully. The committee has had jurisdiction and familiarity with labeling issues in the past, and brought that experience to bear in determining that it was desirable to report out a bill to help curb the harmful effects that may come from alcohol.

I join my senior colleague from South Carolina in this effort, and I urge the other Members of the Senate to support this element of the amendment.

Mr. GORE. Mr. President, the provision relating to alcohol labeling in the amendment that is before us now is a good compromise, and I endorse it. This is the same provision that was recently approved unanimously by the Commerce Committee. In the past, I have strongly supported product labeling because labels are a proven, effective means for consumers to become informed about a product and any unique characteristics associated with that product.

At the Consumer Subcommittee hearing that I chaired in August, testimony was absolutely clear about the fact that alcohol can cause birth defects. The leading expert in the United States on fetal alcohol syndrome, Dr. Kenneth Jones, testified about FAS and described this syndrome, which is characterized by growth deficiencies, facial malformations, central nervous system dysfunctions, and varying degrees of major organ system malformations. Many FAS children are born without a vertical groove in their upper lips; others are unable to completely extend and flex their joints, and many have cardiac or heart defects.

How common is FAS? Each year 5,000 innocent babies are born with FAS—1 to 3 children per 1,000 live births, and the percentage is even higher in areas where maternal and paternal alcoholism is high, such as in some American Indian populations.

These figures indicate that FAS is not just some rarely encountered disease. Instead, Mr. (Madam) President, FAS is the No. 1 preventable cause of birth defects in the United States. We cannot prevent the two other major causes of birth defects—Down's syndrome and defects in neural tube closure. But we surely can prevent FAS by ensuring that pregnant women are aware of the risks from alcohol consumption.

Some people feel that a few drinks during pregnancy won't hurt. Dr. Jones testified that there is no proven "safe dose" of alcohol during pregnancy. This information is particularly important, since FAS does not occur only in alcoholic women. In fact, the testimony indicated that FAS appears in an alarming percentage of women who consume alcohol in moderation. We learned an astounding fact at that hearing: women in the moderate drinking category stand an 11 percent chance of bearing children born with FAS.

But it's not just the human tragedies we need to consider. The economic implications of this condition are staggering. America spends $15 million to treat FAS babies, $670 million to treat the nearly 70,000 FAS children under the age of 18, and more than $760 million to treat the 160,000 FAS adults among us. We should not have to expend these resources on a condition that is preventable.

The label that would be required by this provision is clear: it alerts women that the Surgeon General has advised that alcohol consumption during pregnancy can cause birth defects. The Surgeon General's warning has existed since 1981, and it is high time that we spread this message. We need to communicate this warning, since we know that there is an information gap about FAS. Statistics show that 34 percent of pregnant women do not receive any prenatal care in the first trimester of pregnancy. These women may not be receiving any information about the harmful effects of alcohol on the fetus, as the most critical time for the fetus' development. For the 1.3 million women who are receiving insufficient prenatal care, the label required by this amendment may be the most consistent—if not the only—warning they get on alcohol consumption.

This label also addresses another very serious problem, that of drunk driving. We are too well aware that drunk driving affects many of our young people. Motor vehicle accidents are the single greatest cause of death for those between the ages of 5 and 34; in 1985, 51 percent of automobile deaths in the United States were alcohol-related. In 1986, there were 572 fatal automobile crashes involving alcohol in my own State of Tennessee. These numbers clearly demonstrate that alcohol and driving do not mix.

During the hearing in August, we explored the relationship between alcohol consumption and the operation of automobiles and other machinery. There was unanimity among the medical witnesses that alcohol impairs one's ability to operate cars and other machinery. Dr. John Morris, a trauma physician from Vanderbilt University, testified that operating a car requires a driver to rely on feedback from the environment and adjust driving accordingly. However, alcohol distorts the driver's perception, and makes it impossible for the driver's brain to assimilate the varied information necessary to make these adjustments. To make matters worse, alcohol affects the treatment of traumatized patients because it interferes with cardiovascular function, leads to neurological disorders, and makes the patient aggressive and combative. The label in the amendment before us today refers to the negative effects of alcohol consumption on the operation of cars and other machinery, and I strongly support that element of the label as well.

Finally, the label that is required by this amendment would state that alcohol can cause other health problems. Liver disease, cancer, and hypertension are just some of the diseases that can be alcohol-related. I am pleased that the label also alerts people to other health effects that may result from alcohol consumption.

This labeling requirement is a good step in the educational effort about the potentially damaging effects from alcohol, and I am strongly behind it. But I don't want anyone to be misled—labels are just a part of an overall educational process, just one piece of the puzzle. By adopting these provisions, we shouldn't think that all of the problems will go away, because they won't. We need to continue to address this problem through education and other efforts to ensure that alcohol misuse—America's number one drug problem—does not continue to exact such a devastating price from American society.

ALCOHOL LABELING, ITEM 4

Mr. DANFORTH. Mr. President, I congratulate my colleague from South Carolina on his firm and persistent commitment to educating the public about the responsible consumption of alcohol products.

I would like to inquire of the Senator from South Carolina, whether it is his understanding that the amendment he is offering does not require the placement of a warning label on beverage containers such as cups, glasses, carafes, and pitchers, even when such containers are used in the sale or sampling of alcoholic beverages in restaurants, ball parks, or other business establishments.

Mr. THURMOND. Mr. President, in response to my colleague from Missouri, my amendment is not intended to apply to glasses, cups, pitchers, or similar items, which, because they are not sealed, are not "containers," as that term is defined in the amendment. Thus, under this amendment, there is no requirement for the placement of a warning label on such items.

CASE MANAGEMENT FOR SUBSTANCE ABUSER TREATMENT, ITEM 12

Mr. DURENBERGER. Mr. President, today I am proposing the substance abuse case management amendment of 1988, an amendment that will establish inter-disciplinary case management demonstration projects for individual substance abusers. This idea is patterned after legislation I included in the catastrophic health care bill and intended to offer the Nation a program modeled after one used in Hennepin County, MN. Case management has proven to provide significant efficiency and positive results in the treatment and rehabilitation for substance abusers. I urge my colleagues to consider this amendment and include it in S. 2852, the Omnibus Anti-Substance Abuse Act of 1988.

It is society's responsibility to treat those who are unfortunate enough to abuse addictive substances and assist them to become productive, contributing citizens. The root cause of an individual's substance abuse is very complicated. It has been traced to mental, physical, and environmental causes with each individual being different. Yet the results are all too common: an addict trapped in a vicious cycle of crime, poverty, and ill-health.

The complex causes and the resulting vicious cycle dramatically complicate rehabilitation almost ensuring recidivism, even for those individuals who want to cure their dependency. An all to common scenario is a poor, malnurished, homeless drug addict who has just been paroled from prison for a drug-related crime. Generally, he is still addicted, uneducated, without a job, and perhaps mentally handicapped. In short, he needs help that most governments are able to adequately provide. This paints an intractable problem: how is society and the individual best served. Currently, there is no adequate answer, there are only expedient, short-run alternatives. Further complicating an already difficult situation are the countless and uncoordinated substance abuse-related programs within governments judicial, health, and social services systems.

Currently, governments try to rehabilitate substance users on a piecemeal basis. Each element or symptom of substance abuse is treated, if it is treated at all, in isolation, separate from the other symptoms. Crimes are treated through jail terms and probation; health care programs treat drug-related illnesses; and the social services programs address homelessness and poverty. These are essential services, yet because there is no coordination only symptoms, not the root, of the problem are treated.

We must humanize the system. We must address all the causes of substance abuse simultaneously, that is the only way we can break the debilitating cycle of crime, poverty, and illness. An interdisciplinary case management system will do this. It will assist the individual through the labyrinth of bureaucracies, serve as an ombudsman and advocate for the substance abuser who must overcome significant human and societal odds.

Case management is a vital link between substance abusers and the complex rehabilitation systems. An effective and efficient interdisciplinary management system should keep the substance abuser's or patient's needs paramount and select and monitor services that assist patients to maximize rehabilitation. It must be able to assess a patient's strengths, limitations, problems, and needs. It then encompasses goal setting, planning, and implementation of rehabilitative services. Lastly, the case management system monitors and evaluates each patient and his or her recovery.

Within the case management system, case managers work with patients and their families in the development of treatment and services plans. The manager will also serve as a link to the service systems and their providers, act as an advocate representing the patient's interests, and select services that will meeting the patient's needs effectively.

Thus, when the patient is referred to the case manager from either the judicial or social welfare system, the case manager will do a personalized chemical health assessment of the patient. This assessment should consider the patient's background, exploring the underlying reasons for his or her abuse, and well as other complicating factors, like pregnancy. Once the assessment is completed the manager, using his or her expertise and contacts with professional rehabilitation programs, will guide the patient through the substance abuse treatment and other programs appropriate to assist the patient to become a productive member of society. Such programs may include supplemental education, job-training, and child care.

To conclude, I believe this amendment is a modest but necessary step in this direction, we must begin coordinating the programs that are currently only addressing the symptoms. The demonstration projects in case management I propose in these amendments are the first step. They will explore options, ways to treat the individual as an individual with all his human complexities, rather than as a number or statistic, in a cost effective and realistic manner.

This amendment will lay the groundwork to provide the needed alternative mechanism and will so in a more effective and cost efficient way than is done now. Accordingly, I thank my colleagues for including it in the omnibus anti-drug abuse bill.

LINKS BETWEEN MENTAL ILLNESS AND SUBSTANCE ABUSE, ITEM 12

Mr. DOMENICI. Mr. President, if we cannot treat substance abusers successfully, our war against drugs will fail. The record of treatment is not as strong as we would like.

There is some evidence rising that shows links between mental illness and substance abuse. I have offered an amendment, which has been incorporated into the leadership package, that is designed to explore those links more fully.

As introduced, the Omnibus Anti-Substance Abuse Act of 1988, provides for a study on mental illness by the Institute of Medicine of the National Academy of Sciences. This study will focus on the "effective and appropriate treatment, rehabilitation, and continuing care of persons suffering from severe and disabling mental illnesses."

My amendment requires a separate study to provide us with a much needed report on the substance abuser who is also mentally ill. This report will be due 18 months after the signing of the contract between HHS and the Institute of Medicine.

My amendment adds an important dimension to the study of mental illness and substance abuse. It provides that special emphasis be placed on the "psychological, physiological, and sociocultural aspects of mental illnesses that lead to substance abuse or a preference for illegal substances."

Like the thrusts of the Institute of Medicine study for mental illness, my amendment is aimed at improving the "treatment, rehabilitation, and continuing care" of substance abusers who are also suffering from serious mental illnesses.

The "cross-fertilization" of mental illness and substance abuse is a known phenomenon. Some say that drug or alcohol abuse brings on mental illness; some say the mental illness brings on substance abuse. It is a chicken-and-egg puzzle. Whatever the causal relationship, substance abuse is detrimental regardless of the mental state of the abuser.

My amendment is intended to shed more light on the relationship between the mental health of the abuser and the use of illegal drugs and alcohol. Does depression lead to cocaine use? Does schizophrenia encourage crack abuse?

It is a common understanding among drug and alcohol treatment professionals that the mentally ill are more susceptible to drug and alcohol abuse. My amendment will lead to a further elucidation of these relationships and their implications for treatment.

I want to find out if treating the related mental illness will help keep the abuser off drugs and/or alcohol.

If we are going to succesfully treat mental illnesses that result in substance abuse, we have to understand more about impact of self-medication. This is the practice of many who suffer clear symptoms of mental illness to relieve those symptoms by taking one or several illegal substances. Alcohol is also used by these sufferers to relieve the symptoms.

For example, there is an established link between the use of PCP and psychosis. There seems to be little doubt that PCP use brings on psychosis whether or not he or she continues the use of PCP.

Do similar relationships exist for marijuana, cocaine, designer drugs, street drugs, or hallucinogens?

SOCIAL BEHAVIOR AND SUBSTANCE ABUSE

Besides the psychological and physiological aspects of drug and alcohol abuse, I am also very interested in the so-called sociocultural aspects of abuse. To what extent and under what circumstances is drug abuse accepted in social circles? What kinds of socializing in America depend on the availability and sharing of cocaine, marijuana, or other illegal drug? Is there some underlying psychological basis for this social result?

The sociocultural aspects of mental illness are seriously studied as a major contributing factor for treatment and rehabilitation of the mentally ill. I think we need to know more about social factors in our search for improving treatment of substance abusers who are also mentally ill.

In professional circles, the mentally ill who abuse drugs or alcohol are known as the dually diagnosed. If one aspect of the dual diagnosis is missing, treatment will suffer. There are many cases of alcoholics, for example, who were not treated for an underlying mental illness—manic depression, psychosis, or schizophrenia. In these cases, treatment failed.

Unless we recognize the mental illness and treat it, we will lose an important battle in our war on drugs. For those with mental illness, the recognition and treatment of their mental disorder must be an integral part of our national treatment programs.

EXISTING CLUES

A study by the National Institute of Mental Health in Baltimore explores some of the key aspects of the "dually diagnosed"—substance abusers who are mentally ill.

This study found a higher degree of substance abuse among the younger seriously mentally ill who are less than 24 years of age. As many as 50 percent of these mentally ill people are also substance abusers.

Other research in many cities around the country has established strong links between substance abuse and mental illness. I was especially impressed with some work at Cambridge Hospital by Catherine Treece Ph.D. and Edward J. Khantzian, M.D. Some of their major findings are:

> There is no question that many drug-dependent individuals report their drug use as self-medication for relief of specific symptoms or psychopathological conditions.
>
> There is a "need to subdue rage and humiliation expressed consciously or unconsciously by heavy amphetamine and marijuana users."
>
> In narcotic-using populations. * * * compulsive and chronic drug users have more anxiety and a sense of helplessness "than more casual and controlled users of various substances."
>
> There is a "pandemic nature of vulnerability to depression among narcotic and multiple drug users."
>
> Some drug abusers actually prefer the "sense of control and mastery" over their symptoms that comes from an illegal substance. This control is perferred over the feeling of helplessness and unpredictability experienced without drugs.
>
> Symptoms of mental illness appear to be another important kind of precipitating crisis. Although, in a certain sense, most drug use leading to dependency can be understood as "self-medication," the use of drugs in some cases is explicitly an attempt to treat severe anxiety, depression, or the sense of disintegration experienced as psychotic symptoms appear. The relationship between formal mental illness and drug use is still a long way from being fully understood.

HOPES FOR THE NEW STUDY

In closing, Mr. President, I would simply like to note that estimated number of drug users in America is some 23 million individuals. We also know that about 30 million to 40 million Americans suffer some form of clearly diagnosable mental disorder each year.

I believe there is a larger degree of overlap than many would expect. Rather than making guesses, my amendment would require the Institute of Medicine to look closely at this problem and give us a better understanding of this link between mental illness and substance abuse. As we design treatment programs, I believe we will gain some significant insights about improving treatment and reducing the demand for illegal drugs.

We are already hearing about successes in the treatment of cocaine abuse with antidepressants. Desipramine, imipramine, protriptyline, trazodone, lithium, and tyrosine are some of the antidepressants being used in treating cocaine addiction.

My hope is that we will be able to find similar and better treatment for crack, heroine, opiates, designer drugs, hallucinogenics, and even marijuana. The root of the cocaine success seems to lie in the identification of a form of depression in the addict. When the depression is treated, the desire for cocaine often fades away.

I hope my colleagues will agree that we need to improve our treatment programs for substance abusers. My amendment should help to provide some of the evidence we need for further research and treatment improvement.

I urge my colleagues to support this amendment.

AUTHORIZE INNOVATIVE ALCOHOL ABUSE EDUCATION PROGRAMS FOR CHILDREN OF ALCOHOLICS, ITEM 12

Mr. DODD. Mr. President, I am pleased that the Senate leadership package of amendments to the drug bill includes my amendment to authorize innovative alcohol abuse programs for children of alcoholics. Too often in our deliberations we overlook the devastation suffered by children and families as a result of alcohol abuse.

Mr. President, this amendment would amend the Elementary and Secondary Education Act of 1965 to authorize innovative alcohol abuse education programs for children of alcoholics. The Secretary of Education would be authorized to develop materials for programs that focus on the effect of the disease of alcoholism on families, particularly the children. In addition, the Secretary would be authorized to fund training programs for educators to increase their awareness of children's problems that can be caused by living with an alcoholic parent and to enhance their ability to identify such children and refer them to appropriate professional help.

The risks faced by children of alcoholics were well documented in hearings held by the Subcommittee on Children, Family, Drugs and Alcoholism in May 1987. There are 28 million children of alcoholics in this country, 7 million of whom are under the age of 18. Although scientists have yet to discover a biological marker or specific DNA that can predict familial alcoholism, there is substantial evidence that children can inherit a predisposition for the disease. In fact, children of alcoholics are three to four times more likely to become alcoholics than other children. Children of alcoholics are also at greater risk for a wide range of other physical, emotional and mental health problems—including alcohol and drug abuse—which can directly affect their performance in school.

This amendment would allow the Secretary of Education, through the Secretary's Fund for Innovation in Education (Title IV, Part F of ESEA), to develop programs to meet those children's need and help them reduce their risk of alcohol and drug abuse and other problems as children and adults. In addition, teachers and other educators could be trained to recognize the signs of family alcoholism and see that children from such families get the help they need.

The amendment would add a new purpose for the expenditure of funds already authorized under title IV(F) of ESEA. It provides for no new authorization of funds. The omnibus drug bill passed by the House (H.R. 5210) contains language identical to this amendment.

Mr. President, with one of every eight Americans being the child of an alcoholic, it is very likely that there are children of alcoholics in every classroom in every school in this country. This amendment would spark badly needed innovation in alcohol and drug abuse education programs that could help literally millions of these vulnerable youngsers. I am pleased to be joined in cosponsoring this amendment by Senator THURMOND, the ranking minority member of the Subcommittee on Children, Family, Drugs and Alcoholism.

Mr. LAUTENBERG. Mr. President, I am pleased to note that the leadership package contains my amendment to encourage States to adopt tough drunk driving laws.

On average, an American dies every 22 minutes due to drunk driving. It's a national tragedy, and a national disgrace. It's a problem that we must deal with. My amendment would help us in that fight.

We know what laws work best to curb drunk driving. This amendment would encourage States to adopt those laws, and spare thousands of families the senseless loss of life from a drunk driving accident.

The other day, I met with a man in New Jersey. Earlier this year, he lost his wife and his 6-week-old baby to a drunk driver. He has suffered one of the greatest tragedies any of us can imagine. His young family, just beginning their lives together, has been destroyed.

He and his young son go on. He without his wife and baby son. His surviving son will never again see his mother or brother. All because the crime of drunk driving goes on. Mr. President, this is the type of tragedy we simply can't allow to go on. We've got to do all we can to stop more families from suffering similar tragic losses.

This amendment, which has strong bipartisan support, can help us in that fight. It'll help us get drunk drivers off the road. It'll help States get programs in place to make serious, lasting reductions in drunk driving fatalities.

This bill would set up a program of basic and supplemental grants, to help the States put these laws into place. A basic requirement is that the State adopt administrative revocation procedures, under which a drunk driver's license is taken away, and taken quickly. This swift and sure action is a proven means of reducing drunk driving. It alone has been found to reduce alcohol-related fatal accidents by 9 percent.

Mr. President, this amendment offers the Senate a sound, practical way to deal with the serious problems of drunk driving. It is based on legislation that has been considered and reported unanimously by two Senate committees. I would also note that 20 of my colleagues have joined me in cosponsoring these bills.

This legislation is supported by Mothers Against Drunk Driving, the National Safety Council, the Insurance Institute for Highway Safety, the National Beer Wholesalers Association, and the National Association of Governors Highway Safety Representatives.

Mr. President, I ask unanimous consent that the balance of my remarks be included in the RECORD as if read.

I ask unanimous consent that statements by Senators BURDICK, HOLLINGS, REID, and GORE be included in the RECORD.

Mr. President, I urge my colleagues to support his amendment.

Mr. President, this amendment is based on two pieces of legislation I introduced earlier this year. S. 2367, the Drunk Driving Prevention Act of 1988, was the considered and reported by the Committee on Environment and Public Works. S. 2549, with the same title, was considered and reported by the Committee on Commerce, Science, and Transportation.

The goal of this amendment is a simple one. Its aim is to save lives.

It would accomplish this goal by providing incentives to states to adopt tough drunk driving laws, that have proven to be effective.

As I noted earlier, an American is killed every 22 minutes in a drunk driving tragedy. Not all cases are as well-publicized, or evoke such widespread emotion, as the tragic crash earlier this year in Kentucky.

But whether it's 27 innocent victims on a schoolbus in Kentucky, vacationers in Hawaii, a college football player in New Jersey, or a little girl waiting for a bus in Virginia, a drunk driving death means a family somewhere loses a loved one. It's a senseless loss. It's a loss we can—and must—do something about.

While saving lives clearly is our priority, let me also point out that there are tremendous economic impacts associated with drunk driving. It is estimated that drunk driving costs this country $26 billion annually. Like the death toll, this, too, is a cost we can't continue to bear.

Mr. President, let me briefly summarize this amendment. It would establish a new, limited incentive grant program to encourage States to crack down on drunk driving. Like the section 408 program now in place, it would provide grants to State under two categories—basic and supplemental.

There are two requirements for a basic grant. First, a State must adopt an administrative revocation law. Administrative revocation gets the drunk driver off the road. The punishment is both sure and swift. That certainty of punishment is essential in combatting drunk driving. In those States were administrative revocation is in place, it has been found to reduce drunk driving accidents by 9 percent.

Second, a State must provide a means of providing continuing funding for its drunk driving programs. The seed money provided by Federal grants would help the States get comprehensive programs up and running. The self-supporting mechanism would help keep them going.

Once a State qualifies for a basic grant, it will be eligible to receive supplemental funds. This measure contains four supplemental grant criteria.

The first supplemental criterion requires that a State issue special driver's licenses to those under the legal minimum drinking age. Four years ago, we passed the law encouraging States to adopt a minimum drinking age of 21. I'm proud to say that the "21" law is saving 1,000 lives a year. By using special licenses for younger drivers, we can expect better enforcement of the law, and can look forward to even more lives saved, and more families spared the tragic loss of a loved one.

The next supplemental requirement is for mandatory blood alcohol concentration testing of drivers involved in fatal accidents, or accidents resulting in serious injury. This provision will result in more consistent, reliable information on the problem of drunk driving.

The third requirement calls for the adoption of open container laws banning drinking and driving in the most literal sense. The fourth encourages States to confiscate the license plates and vehicle registration of drivers who are repeat offenders, or who continue to drive while under license suspension.

Mr. President, in order to provide a full explanation of this important legislation to my colleagues, I ask unanimous consent that the text of Senate Report 100-441, the report of the Environment and Public Works Committee on S. 2367, be included in the RECORD.

Mr. President, I thank the managers of the bill for their cooperation in bringing this amendment to the Senate floor. I would like to particularly note the assistance provided by Senator MOYNIHAN and Paul Stockton of his staff.

Mr. President, I urge my colleagues to support this important provision.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

DRUNK DRIVING PREVENTION ACT OF 1988

(S. REPT. 100-441)

The Committee on Environment and Public Works, to which was referred the bill (S. 2367) to promote highway traffic safety by encouraging the States to establish measures for more effective enforcement of laws to prevent drunk driving, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE

S. 2367, as reported, establishes a new incentive grant program to encourage the States to adopt tough, effective laws to reduce the incidence of drunk driving. The new grants are intended to assist States in providing for an expedited driver's license suspension or revocation system and self-sustaining drunk driving prevention programs.

This legislation also requires the Secretary of Transportation to enter into an agreement with the National Academy of Sciences to conduct a study to determine the appropriate blood alcohol concentration at which the driver of a motor vehicle should be deemed to be under the influence of alcohol. In addition, the legislation directs the Secretary of Transportation to conduct a study on a process for providing nationwide information to law enforcement officials on prior arrests and convictions of drivers for drunk driving.

Funding for the Drunk Driving Prevention Act of 1988 is provided with contract authority from the Highway Account of the Highway Trust Fund in the amount of $125 million over the next three years. The sums authorized are not subject to any obligation limitation for State and community highway safety programs and are not subject to any other obligation ceiling.

BACKGROUND

The Committee on Environment and Public Works, which has jurisdiction over the Federal-aid highway program, is responsible for the safe design, construction, and operation of the Federal-aid highway system. The Committee is concerned with the threat drunk drivers present to highway safety and supports incentive grants funded out of the Highway Trust Fund to assist States in their efforts to enact tougher drunk driving laws.

Among the recent drunk driving measures referred to the Committee have been the minimum drinking age act; legislation making that law permanent; and a bill to address the problem of intoxicated drivers operating commercial motor vehicles. These cashes measures have all been enacted.

S. 2367 was introduced on May 11, 1988 by Senator Lautenberg with Senators Danforth, Bentsen, Pell, Gore, Weicker, and Chafee cosponsoring. On June 16, Senator Reid, joined by Senator Lautenberg, introduced S. 2523 which was also referred to the Committee. S. 2523, in contrast to S. 2367, requires States to enact stronger penalties for drunk driving, or face the loss of Federal-aid highway funds. A hearing on both S. 2367 and S. 2523 was held on June 29 at the full Committee level. On July 14, the Committee ordered S. 2367 favorably reported, as amended.

Funding for the new proposals in S. 2367 is provided with contract authority from the Highway Account of the Highway Trust Fund in the amount of $25 million for fiscal year 1989 and $50 million per year for fiscal years 1990 and 1991. These sums are outside all obligation limitations. For budgetary purposes, they represent new spending.

GENERAL STATEMENT

Over the past decade, a quarter of a million people have been killed as a result of the actions of drunk drivers. More than 50 percent of all highway deaths are alcohol related. Each year about 660,000 highway crashes are alcohol related. These crashes result in over 23,000 fatalities and 560,000 injuries each year. In 1987, close to 24,000 lives were lost in alcohol-related crashes. The total cost to society of drunk driving is estimated at $26 billion annually.

While nearly 58,000 Americans were killed in the Vietnam War, over five times that number died during the same period in alcohol-related crashes on U.S. highways. Every 22 minutes there is an alcohol-related fatality. One-third of all these fatalities are innocent victims. Further, the problem is so widespread that two out of every five Americans will be casualties of an alcohol-related crash at some point in their lives.

In Kentucky this past May, the driver of a pick-up truck collided with a bus carrying 67 people home from a church outing. Two adults and 25 teenagers were killed in the fiery crash—the worst collision involving a drunk driver in U.S. history. The truck driver has been charged with 27 counts of murder, following a test that measured his blood alcohol content at 0.24 percent, more than twice the 0.10 level of legal intoxication in Kentucky and in most other States.

A month later in northern Virginia, a 10-year-old girl, waiting hand-in-hand with her mother for a school bus, was struck by a car and killed. The driver was charged with driving while intoxicated and manslaughter.

These cases have received considerable attention, but the problem of drunk driving is constant. Based on 1987 figures, there were an average of three deaths an hour, 65 deaths a day, and almost 500 deaths every week in alcohol-related crashes. At present, the problem of drug abuse is a major national concern, but in fact alcohol is the most widely abused drug. In short, drunk driving is among the most serious public health and safety concerns in the United States.

Starting in 1970, the Federal Government began to take a sustained interest in alcohol traffic safety programs. Congress passed drunk driving laws to provide incentive grants to States, to update the National Driver Register, and to set the national minimum drinking age at 21 years. States have been active too, passing over 500 new laws to tighten enforcement. A heightened public awareness and the diligent work of citizens' groups have also helped reduce the incidence of drunk driving during the 1980's.

State governments have the primary responsibility for enforcing drunk driving laws. The first major Federal initiative took place 18 years ago with the establishment of the Alcohol Safety Action Program, an effort to develop a systematic approach to a serious national problem. A total of $78 million in grants was provided to 35 localities under this 3-year program.

At present, the primary Federal programs to counter drunk driving are the section 402 program—State and Community Grants—and the section 403 program—Highway Safety Research and Development Grants. On an annual basis, $40 million in 402 funds and close to $3 million in 403 funds are being spent for alcohol programs.

Also important is the section 408, Alcohol Incentive Grant Program, which was enacted in 1982 to further promote alcohol traffic safety. There is a total of $125 million in authorized funding, and approximately $23 million has been obligated to the 17 States that have qualified to date (Alabama, Alaska, Arizona, Delaware, Indiana, Louisiana, Maine, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Rhode Island, Utah, and Washington). Among the criteria for basic grants are a prompt, mandatory license suspension; mandatory sentences; and establishment of a maximum blood alcohol content of 0.10 percent.

The funding for 402, 403, and 408 programs is all provided from the Highway Account of the Highway Trust Fund.

SUMMARY OF MAJOR PROVISIONS

The bill, as reported, amends chapter 4 of title 23, United States Code, by adding a new section 410. The following provisions are included in this new section:

1. The bill authorizes a new incentive grant program, to be funded out of the Highway Trust Fund, to encourage the States to adopt tough, effective laws to reduce drunk driving. The program is authorized for 3 years, at a level of $25 million in the first year, and $50 million in each of the following 2 years. Two levels of grants are authorized—basic and supplemental. States qualifying for the basic grant will be eligible to qualify for supplemental funds. The amount of funding a State can receive will be limited to:

(a) for the basic grant provisions, 30 percent of funds apportioned under the section 402 highway safety program; and

(b) for the supplemental provisions, 20 percent of funds apportioned under the section 402 highway safety program.

2. The bill directs the Secretary of Transportation to enter into an agreement with the National Academy of Sciences to conduct a study to determine the appropriate blood alcohol concentration at which the driver of a motor vehicle should be deemed to be under the influence of alcohol.

3. The bill further directs the Secretary of Transportation to conduct a study of a system for providing nationwide information, similar to that contained in the National Driver Register, to law enforcement officials on prior arrests and convictions of drivers for drunk driving.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

This section provides that this legislation may be cited as the "Drunk Driving Prevention Act of 1988."

SECTION 2. DRUNK DRIVING PREVENTION PROGRAMS

This section adds a new section 410 to title 23, United States Code, authorizing a new incentive grant program to encourage States to adopt laws that have proven to be effective in reducing drunk driving fatalities and injuries. It authorizes the Secretary of Transportation to make basic and supplemental grants to the States, in accordance with the criteria outlined in the bill. In receiving such grant funds, a State may not reduce the amount of funds already allocated for drunk driving programs.

The grant program is authorized for 3 years, and is intended to provide seed money to the States to develop enhanced, comprehensive drunk driving programs. Accordingly, the percentage of total costs of a State program borne by the grant funds will decrease from 75 percent of program costs in the first year of participation to 25 percent of costs in the third year of participation subject to an annual cap of 30 percent of section 402 apportionments for basic grants and an annual cap of 20 percent of section 402 apportionments for supplemental grants.

The amount of funding a State can receive is linked not only to the matching share requirements described above but also to the apportionments that State receives under section 402 of title 23, United States Code. A State meeting the basic criteria will receive a grant equaling 30 percent of apportionments under section 402 in fiscal year 1989. A State meeting the basic requirements is then eligible for supplemental funding, at an aggregate level of 20 percent of section 402 apportionments.

Participation in the new section 410 program will not affect, in any way, a State's eligibility for, or participation in, the 402, 403, or 408 programs.

There are two eligibility criteria for basic grants. First, a State must adopt a program for the administrative revocation or suspension of the driver's license of an individual found to be driving while under the influence, as determined by one or more chemical tests, or an individual who refuses to submit to such a test.

Administrative revocation or suspension requires that, upon making the determination that the driver in question is under the influence, the law enforcement official involved must take possession of the driver's license, and provide the driver with a notice of suspension or revocation. The actual suspension or revocation is to take effect within 30 days of the date on which the notice is served. While a judicial hearing may not take place within the 30 day timeframe, it is expected that an opportunity for an administrative review will be provided within that time. Although the bill allows a State 30 days, the Committee hopes that States will proceed as quickly as possible.

The Committee expects that the Secretary, in promulgating regulations to implement this legislation, will require the States to provide for periods of "hard" suspension, during which time an offender is not allowed conditional driving privileges.

The Secretary is charged with ensuring that any administrative procedure adopted by a State in accordance with the criteria of this bill affords due process.

The Insurance Institute for Highway Safety recently released a study, *Fatal Crash Involvement and Laws Against Alcohol-Impaired Driving.* The study concluded that administrative revocation/suspension laws, where they are now in place, have been extremely effective in reducing drunk driving fatilities; it found a reduction of driver involvement in fatal crashes of 9 percent in States having such laws.

As a second criterion for a basic grant, a State must adopt a self-sustaining, comprehensive drunk driving program. This is to ensure that State and local law enforcement groups and other agencies will have adequate resources to sustain their drunk driving prevention activities. The Committee expects that such a program will include, but not be limited to, the following: enforcement; prosecution; treatment, such as rehabilitation and education; adjudication; administrative costs; public defense; and special licensing. These areas should be emphasized in such a program, and a significant portion of the costs of operating these program areas must be covered.

A number of States have programs that return fines, penalties, and fees to the agencies responsible for drunk driving prevention and enforcement programs. The State of New York, for example, has a model program. While it may not be feasible to cover completely the costs of an aggressive, comprehensive drunk driving program, it is the intent of the Committee that the revenues generated by such a program, or an amount equivalent thereto, must be available for the program's continued operation in order to satisfy the criteria of this legislation.

It is the understanding of the Committee that a number of States have Constitutional provisions requiring the deposit of all fines and penalties into an educational fund. The Committee adopted an amendment that allows such States to be considered eligible under this criterion, if they return an amount of non-Federal funds equivalent to the amount of fines and penalties generated for the continuation of their programs.

The bill outlines four additional criteria for supplemental grants. These grants can only be awarded to States after they have met the two criteria for basic grants. By meeting one or more of the supplemental criteria, States can receive incentive grants equal to 20 percent of their section 402 funds. The Committee believes that each of these supplemental criteria is an important step in working toward the goal of reducing drunk driving deaths and injuries, and that incremental funding should be provided to the States upon adoption of each criterion.

The first criterion, is adoption of a law calling for mandatory blood alcohol concentration testing, with probable cause, of drivers involved in collisions resulting in a fatality or serious injury. Currently, the States perform such tests on only about 40 percent of drivers in fatal crashes. In implementing the legislation, it is expected that at least 75 percent of fatally injured drivers and at least 50 percent of drivers involved in accidents resulting in serious injury will have their blood alcohol concentration tested. This broadened testing requirement will provide more uniform, reliable data on drunk driving.

Second, the bill encourages States to adopt a system under which drivers below the age of 21 are issued driver's licenses that are readily distinguishable from those of drivers over the age of 21. In accordance with P.L. 98-363 and P.L. 99-272, all 50 States have now adopted a minimum age of 21 for the legal purchase or public possession of alcoholic beverages. The use of specialized licenses will assist in the enforcement of the minimum age requirement. Therefore, these licenses, in addition to being readily distinguishable from other licenses, should be tamper-resistant. Several States currently have licenses for under-21 drivers that are either color-coded or contain a different type of photograph (e.g., a profile view instead of a frontal view) for those drivers. It is the intent of the Committee to encourage more widespread use of this practice. It is hoped that States will adopt this system as part of a comprehensive effort to enforce the minimum drinking age law and further reduce the disproportionate drunk driving fatalities and injuries among 16-20 year olds.

The third supplemental grant criterion encourages the States to adopt laws restricting the consumption of alcoholic beverages and possession of open containers of alcoholic beverages in the passenger areas of motor vehicles. The provision allows the States, with the approval of the Secretary, to make exceptions, such as to allow the consumption of alcoholic beverages, or the possession of open containers of alcoholic beverages, by passengers in charter buses or other similar vehicles.

The final supplemental criterion encourages the States to adopt programs providing for the confiscation of vehicle registrations and license plates of vehicles owned by repeat offenders of drunk driving laws, or individuals found to be operationg a motor vehicle inspite of a current license suspension or revocation resulting from a drunk driving conviction. It is expected that the State agency responsible for taking this action will be allowed the flexibility to address such issues as multiple ownership of a vehicle.

In 1983, the National Transportation Safety Board published a report entitled *Deficiencies in Enforcement, Judicial, and Treatment Programs Related to Repeat Offender Drunk Drivers.* The report contained a finding that two thirds of those who have had their licenses suspended or revoked admitted to driving during the period of suspension or revocation. Other studies have estimated that as many as 80 percent of people with suspended or revoked licenses continue to drive. If license suspensions are to be an affective penalty, an effort must be made to ensure that those who have suspended licenses do not drive.

A number of States have addressed this problem by providing for the impoundment or forfeiture of the vehicle registration and license plates. Obviously, such a penalty makes it much more difficult to drive with a suspended license. As of January 1, 1988, 11 States (Alaska, Arizona, Delaware, Indiana, New York, North Carolina, North Dakota, Ohio, South Dakota, Virginia, and Wyoming) permit judges to impose such a penalty. On August 1, 1988, a law will go into effect in Minnesota that will require judges to revoke the vehicle registration and impound license plates of persons with three drunk driving offenses within five years. The Committee believes that the Minnesota law, tailored to the individual needs of the States, can be an effective measure in the fight against drunk driving.

In determining the eligibility of a State for basic and supplemental grant funds under this legislation, the Secretary is expected to accept any laws meeting the above-referenced criteria already adopted by the States.

SECTION 3. REGULATIONS

This section requires the Secretary of Transportation to promulgate regulations implementing the incentive grant program authorized in this bill. The Secretary shall issue proposed regulations not later than December 1, 1988. In accordance with normal procedure, the Secretary will allow for an appropriate comment period, and take any comments into consideration in issuing a final rule. The bill requires that the Secretary issue final regulations not later than March 1, 1989, and that those regulations be published at that time in the Federal Register.

SECTION 4. BLOOD ALCOHOL CONCENTRATION STUDY

This section directs the Secretary to enter into an agreement with the National Academy of Sciences to conduct a study to determine the blood alcohol concentration [BAC] at which a driver is under the influence of alcohol. Most of the States have adopted a standard of 0.10 percent BAC as the level at which a driver is under the influence. Two States, as well as a number of other countries, have adopted lower BAC levels, and some highway safety experts believe a more stringent standard is warranted throughout the United States. To better assess the appropriateness of a lower level, the Committee believes a study is needed.

The Transportation Research Board [TRB] of the National Academy of Sciences recently completed a similar study,' *Zero Alcohol and Other Options: Limits for Truck and Bus Drivers.* TRB has considerable knowledge of transportation issues in general and of the problem of drunk driving. The data collected for the earlier TRB study will be of value and help lay the groundwork for conducting the new BAC study. The Committee asks that the National Academy of

Sciences submit its findings to the Secretary within one year of the date of enactment.

SECTION 5. NATIONAL DATA BANK STUDY

This section directs the Secretary of Transportation to conduct a study of a system for providing nationwide information to law enforcement officials on the prior arrests and convictions of drivers for drunk driving.

The Committee believes that the Federal Government should establish a national data bank to provide information concerning previous arrests for drunk driving related offenses to all State law enforcement officials. The problem of drunk driving recidivism is astounding. State law enforcement officials and prosecutors must have access to complete records in order to address the issue of repeat offenders.

The Department of Transportation currently operates the National Driver Register [NDR] and is implementing the modernized version of that system, as directed by the National Driver Register Act of 1982. The existing NDR provides records of previous license suspensions to State agencies charged with the responsibility of issuing driver's licenses; the new NDR will also indicate convictions for alcohol-related motor vehicle offenses. Currently, the new NDR capability is being tested through a pilot program. The new NDR appears well on its way to providing this essential service. With some revision, the new NDR may be capable of providing State law enforcement officials and prosecutors with complete information concerning previous arrests. The Committee directs the Secretary of Transportation to study this possibility.

In addition, the Department of Justice, through the Bureau of Justice Statistics, compiles data on a wide range of common law crimes including drunk driving. This data source may be helpful in creating a national data bank on drunk driving arrests.

The study should analyze Federal and State record-keeping methods, and identify problems in compiling the necessary information for the national data bank. The study should also outline a comprehensive program for creating and maintaining a system that will provide State law enforcement officials with all information concerning previous drunk driving offenses committed in any of the United States.

HEARINGS

A full Committee hearing was held on June 29, 1988, on the subject of drunk driving and on S. 2367 and S. 2523 in particualr. Testimony was received from representatives of the National Highway Traffic Safety Administration and the Federal Highway Administration within the U.S. Department of Transportation, the American Association of State Highway and Transportation Officials, the North Dakota State Highway Department, the Las Vegas Metropolitan Police Department, the New Castle County (Delaware) Police Department, the Mothers Against Drunk Driving, the National Safety Council, and the Insurance Institute for Highway Safety.

Witnesses discussed the status of efforts at Federal, State and local levels to reduce the problem of drunk driving; the effectiveness of incentives versus sanctions; accomplishments and new initiatives in enforcement and education; the role of government and citizens' groups; administrative systems for license suspensions and the appropriate time period for administrative action; self-sustaining enforcement programs; blood alcohol content levels and the establishment of a specified threshold as an offense per se; color-coded licenses for drivers under the age of 21; and other drunk driving countermeasures.

ROLLCALL VOTES DURING COMMITTEE CONSIDERATION

There were no rollcall votes taken during consideration of this bill.

Senator Lautenberg offered three amendments to S. 2367 including: (1) a supplemental grant provision for a ban on open containers of alcohol in motor vehicles; (2) a time extension from 15 to 30 days for administrative revocation; and (3) assurances that the fines collected, or an equivalent amount, are returned to local communities for self-sustaining drunk driving programs.

Next, on behalf of Senator Reid, Senator Lautenberg offered two amendments including: (1) eligibility for a supplemental grant if a State provides for the suspension of motor vehicle registration and forfeiture of license plates; and (2) a study of how to develop a data bank to provide information on previous drunk driving offenses.

Senator Lautenberg then moved adoption of S. 2367, incorporating the above amendments. Senator Stafford seconded the motion. The Committee adopted the motion by a unanimous voice vote on July 14.

EVALUATION OF REGULATORY IMPACT

Section 11(b) of rule XXVI of the Standing Rules of the Senate requires the Committee to evaluate the regulatory impact of the reported bill. It is not anticipated that this bill will impose any significant new regulatory burden.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires each report to contain a statement of the cost of the reported bill prepared by the Congressional Budget Office. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 21, 1988.

Hon. QUENTIN N. BURDICK,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 2367, the Drunk Driving Prevention Act of 1988.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,
Acting Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2367.

2. Bill title: Drunk Driving Prevention Act of 1988.

3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, July 14, 1988.

4. Bill purpose: S. 2367 would establish new grants for States that adopt and implement drunk driving enforcement programs and would provide contract authority from the Highway Trust Fund of $25 million in fiscal year 1989 and $50 million in each of fiscal years 1990 and 1991. This contract authority would be exempt from the obligation ceiling for State and community highway safety programs. States could receive these grants only if they adopt drunk driving enforcement programs conforming to standards set by the bill and could use the funds only to implement such programs.

5. Estimated cost to the Federal Government: S. 2367 provides direct spending authority from the Highway Trust Fund, as shown in the following table.

[By fiscal years, in millions of dollars]

	1989	1990	1991	1992	1993
Budget authority	25	50	50		
Estimated outlays	10	26	39	28	17

The costs of this bill fall within budget function 400.

Basis of Estimate: For the purpose of this estimate, CBO assumes that H.R. 2367 will be enacted by October, 1988. The budget authority amounts are specified in the bill, and outlay estimates are based on historical spending patterns.

The bill also directs the Department of Transportation to make arrangements with the National Academy of Sciences to conduct a study of blood alcohol levels and to conduct another study of systems which could provide State law enforcement officials with information on previous drunk driving arrests. Based on information provided by the Department of Transportation, CBO expects that these studies would cost about $500,000. The bill would not authorize any additional funds for this purpose.

6. Estimated cost to State and local governments: The bill would fund additional grants to States that establish conforming drunk driving programs. The Federal share of the costs of these programs would be 75 percent in the first year, then decline to 25 percent in the third.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Marjorie Miller.

10 Estimated approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of the rule XXVI of the Standing Rules of the Senate, the Committee reports that the bill makes no changes in existing law.

Mr. BURDICK. Mr. President, I am pleased to cosponsor this measure which is intended to help address the serious problem of drunk driving. Alcohol is one of the most available and potentially dangerous of all drugs. Drunk driving leads to more than half of all highway fatalities in this country, or over 20,000 deaths per year.

The Environment and Public Works Committee has a long-standing concern with the problem of drunk driving. Among the measures referred to the committee have been the Minimum Drinking Age Act, which I was also pleased to cosponsor; legislation making that law permanant; and a bill to improve the safe operation of commercial motor vehicles by cracking down on intoxicated truck and bus drivers. All that legislation has been enacted in one form or another.

Early this summer a hearing was held on the two drunk driving bills referred to the committee—one introduced by Senator LAUTENBERG and the other by Senator REID. They are valuable committee members, and I commend them both for their dedicated efforts. On July 14, the committee voted unanimously to report an amended bill. The bill and report were filed on August 2.

For 5 years North Dakota has had the administrative suspension process in place where any driver who is tested and found to be intoxicated loses his or her license on the spot. North Dakota was also the first of 17 States to qualify for existing section 408 Alcohol Incentive Grant Program funds. My home State has an extensive and effective record in the area of alcohol traffic safety so I would like to underscore the importance North Dakota gives to permitting States at least 25 days in which to process license suspensions. While a shorter period of time may be desirable, it may also be unrealistic if States are to follow the steps necessary to satisfactorily complete the suspension process.

I am pleased to support this legislation. I believe it provides some important tools to assist States in their fight agains drunk driving.

Mr. HOLLINGS. Today we have before us, as an amendment to the drug bill, the latest congressional effort in the battle against the dangers of drunk driving. Back in 1982 I cosponsored a bill that became law and was one of the first efforts at the Federal level to deal with the problem of drunk drivers on our highways. That law encouraged, through incentive grants to the States, such things as mandatory minimum sentences for people who drive while intoxicated. While there is good evidence that our 1982 bill helped to advance highway safety, I do not delude myself that the problem of drunk driving is even close to being resolved.

Department of Transportation data shows that between 1982 and 1986 the number of drivers involved in fatal accidents who were legally intoxicated at the time of the crash decreased by 13 percent. This is encouraging, but cannot be cause for decreased vigilance. In 1986, there were over 41,000 fatal accidents in this country, and more than half of all fatalities were alcohol-related. We must continue to work to prevent these needless deaths.

The Commerce Committee, which I chair, has jurisdiction over highway safety issues under paragraph (4) of section 1(f)(1) of rule XXV of the Standing Rules of the Senate. In this capacity the committee has considered several measures related to drunk driving in recent years, including S. 2158, 97th Congress and S. 1108, 98th Congress. Given the continuing need for Federal efforts in this area, I am pleased that the Commerce Committee could facilitate consideration by this Congress of a new incentive grant measure.

The committee held hearings in its Consumer Subcommittee on S. 2549, and learned that there is general agreement that prompt administrative suspension of drivers' licenses reduces fatalities. The committee subsequently voted unanimously to report an amended version of S. 2549. Since that time, the committee has been working with other interested parties to craft a consensus version of the measure which would be acceptable to the Senate and the House while continuing to advance the important goals that have been identified. We have that measure before us today, and I am proud of the work of the committee and others such as Senator LAUTENBERG.

While we need continued Federal efforts in this area, we must also be mindful of the costs of those efforts, and allocate our finite resources with care. For that reason, I am pleased that the measure being considered today provides for funding through the general fund, subject to the appropriations process, rather than through the highway trust fund. This will help to insure that we only spend what is absolutely necessary to accomplish the goals of this program in each fiscal year.

Again, I commend the work of the sponsors of this bill and of the members of the Commerce Committee. Drunk driving remains a serious threat to the national welfare, and the Congress must continue its efforts to reduce its tragic toll.

Mr. GORE. I am pleased that this legislation, to reduce the incidence of drunk driving, is moving closer to enactment into law. The bill the Senate will consider has been a high priority for me, and is the result of the efforts of many concerned Senators to arrive at a consensus as to the best means of addressing this serious problem. I was glad to be an active participant in the effort to reach this consensus. Over 20,000 Americans are killed each year as a result of drunk driving. This is an issue that deserves our undivided attention and continuing hard work.

Since 1981, when I was in the House of Representatives, I have sponsored legislation to address the dangers of drunk driving through Federal involvement in the issue. This year, as chairman of the Consumer Subcommittee of the Commerce Committee, I chaired hearings on S. 2549, a bill with the same goals as that which we consider today. Testimony at that hearing was virtually unanimous in favor of these goals.

The Commerce Committee now has voted unanimously to favorably report S. 2549. Since today's legislation contains many of the same provisions, I ask unanimous consent that the committee's report on S. 2549 be printed in the RECORD so that it may be easily accessible to those interpreting the new consensus legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

[See exhibit 1.]

Mr. GORE. Today's bill, like S. 2549, encourages the States to pass a law that many experts believe is the most effective measure for reducing the number of deaths caused by drunk driving. The law would permit law enforcement officers to confiscate an individual driver's license on the spot if he or she fails a chemical blood alcohol test or refuses to take one. Expedited administrative procedures would then be available to insure that due process is protected before any license suspension takes place.

Additionally, I have insured that this bill addresses concerns raised by Commerce Committee members about the grant available to States based on the revocation of license plates and car registrations for repeat drunk driving offenders. That grant is still available. However, the legislation now clearly establishes that the States may make hardship exceptions to that penalty to protect innocent family members and coowners of the vehicle involved from undue burdens in getting to work or accomplishing the other necessities of life.

We have achieved a workable, effective piece of legislation that will continue the Federal Government's partnership with the States to reduce the nationwide incidence of drunk driving. I am proud to have been a part of that effort. I thank Senator LAUTENBERG, who has been a leader in this area, for his diligence in pursuing this matter. I also thank Senator DANFORTH, my colleague on the Commerce Committee, for his longtime commitment to this cause. I look forward to enactment of the measure into law, and to a resulting reduction in alcohol-related highway tragedy.

EXHIBIT 1

DRUNK DRIVING PREVENTION ACT OF 1988

(S. REPT. 100-594)

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2549) to promote highway traffic safety by encouraging the States to establish measures for more effective enforcement of laws to prevent drunk driving, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill do pass.

PURPOSE OF THE BILL

S. 2549, as reported, establishes a new incentive grant program to encourage the States to adopt tough, effective laws to reduce the incidence of drunk driving. The new grants are intended to assist States that provide expedited driver's license suspension or revocation systems, self-sustaining drunk driving prevention programs, better enforcement of the national minimum drinking age, comprehensive blood alcohol content (BAC) testing in accidents involving fatalities or serious injuries, and suspension of the registration and return of the license plates of vehicles owned by repeat drunk driving offenders.

In order to assure that these grants supplement the States' current expenditures on drunk driving, the recipient States would be required to enter into agreements to maintain aggregate expenditures on drunk driving from all other sources at previously established levels. This legislation also requires the Secretary of Transportation (Secretary) to undertake arrangements for a study by the National Academy of Sciences (NAS) to determine the appropriate blood alcohol concentration at which the driver of a motor vehicle should be deemed to be under the influence of alcohol.

BACKGROUND AND NEEDS

Over the past decade, a quarter of a million people have been killed as a result of the action of drunk drivers. More than 50 percent of all highway deaths are alcohol related. Over 23,000 people are killed and 560,000 injured each year in traffic accidents involving alcohol. The total cost to society of drunk driving is estimated at $26 billion annually. The problem is so widespread that an estimated 2 out of every 5 Americans will be involved in an alcohol-related crash at some point in their lives.

With an increased national and legislative focus on the problem, including enactment of Federal laws similar to S. 2549, some progress has been made. According to the National Highway Traffic Safety Administration (NHTSA), 25,170 Americans were killed in alcohol-related crashes in 1982. In 1987, the number was down to 23,500, a decrease of 7 percent. However, these numbers also demonstrate that the problem is far from solved. Additionally, in May 1988 a bus accident in Kentucky was another dramatic reminder that much more remains to be done. In that accident a driver alleged to have a blood alcohol level over twice the legal limit collided with a bus filled with children, and 27 lives were lost in one accident.

The Committee has jurisdiction over highway safety under Paragraph 4 of Section 1(f)(1) of Senate Rule XXV, and has acted in the area of drunk driving prevention numerous times in the past. For example, in both the 97th Congress (S. 2158) and the 98th Congress (S. 1108), bills on drunk driving prevention were referred to and reported by the Committee. These bills led to the current Alcohol Incentive Grant Program codified at 23 U.S.C. 408. The section 408 program authorizes incentive grants to States that enact and enforce certain tough drunk driving laws. It is administered by NHTSA and the grant amounts are based on a percentage of the State's highway safety grant under 23 U.S.C. 402, a program also authorized by the Committee. The section 402 program provides funds to assist States in carrying out required highway safety programs which must be approved by the Secretary. The funding is apportioned based on a State's population and its public road mileage.

The Committee believes that its prior efforts have been beneficial in addressing the problem of drunk driving, and that those efforts should be reinforced. Accordingly, S. 2549 would establish a similar incentive grant program to encourage enactment of measures that have been found to be highly effective in preventing drunk driving. Like earlier bills reported by the Committee, the grant amounts would be calculated as a percentage of a State's section 402 grants.

LEGISLATIVE HISTORY

On June 21, 1988, Senator Lautenberg introduced S. 2459. The bill was referred to the Committee, and on August 2, 1988, the Consumer Subcommittee conducted a hearing. On September 20, 1988, the Committee met in open executive session to consider S. 2549, and, by a voice vote, ordered the bill reported with two amendments. The amendments, offered by Senator Danforth, (1) added a supplemental grant for States that require return of license plates and car registration of vehicles owned by repeat drunk driving offenders; and (2) made a technical change regarding the means by which States may fund their self-sustaining drunk driving programs.

SUMMARY OF MAJOR PROVISIONS

The bill as reported amends chapter 4 of title 23, U.S. Code, by adding a new section 410. The major provisions of this new section are:

1. The bill authorizes a new incentive grant program, to be funded out of the Highway Trust Fund, to encourage the States to adopt tough, effective laws to reduce drunk driving. The program is authorized for 3 years, at a level of $25 million in the first year, and $50 million in each of the following 2 years. Two levels of grants are authorized—basic and supplemental. States qualifying for the basic grant will be eligible to qualify for supplemental funds.

For the basic grant, a State may receive an amount equal to 30 percent of the funds apportioned to the State under the section 402 highway safety program. The basic grant is available to States that return funds in the amount of drunk driving fines to drunk driving prevention programs, and pass a law providing for administrative suspension of drivers' licenses within 15 days.

Supplemental grants are available in amounts equal to 20 percent of the funds apportioned to the State under the section 402 program. A State may receive a supplemental grant for any of the following 3 actions:

(1) passage of a law requiring BAC testing of the driver in accidents involving death or serious bodily injury;

(2) enactment of a program to prevent underage drivers from getting alcohol, including utilization of a distinctive drivers' license for anyone under 21 years of age; and

(3) enactment of a law providing for suspension of the car registration and return of the license plates of any vehicle owned by a driver convicted of more than one alcohol-related offense or of driving with a license suspended or revoked because of an alcohol-related offense.

2. The bill directs the Secretary to enter into an agreement with NAS to conduct a study to determine the appropriate blood alcohol concentration at which the driver of a motor vehicle should be deemed to be under the influence of alcohol.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 26, 1988.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 2549, the Drunk Driving Prevention Act of 1988.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,
JAMES L. BLUM, *Acting Director.*

CONGRESSIONAL BUDGET OFFICE, COST ESTIMATE

1. Bill number: S. 2549.

2. Bill title: Drunk Driving Prevention Act of 1988.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation, September 20, 1988.

4. Bill purpose: S. 2549 would establish new grants for states that adopt and implement drunk driving enforcement programs and would provide contract authority from the Highway Trust Fund of $25 million in fiscal year 1989 and $50 million in each of fiscal years 1990 and 1991. This contract authority would be exempt from the obligation ceiling for state and community highway safety programs. States could receive these grants only if they adopt drunk driving enforcement programs conforming to standards set by the bill and could use the funds only to implement such programs.

5. Estimated cost to the Federal Government: S. 2549 provides direct spending authority from the Highway Trust Fund, as shown in the following table.

[By fiscal years, in millions of dollars]

	1989	1990	1991	1992	1993
Budget authority	25	50	50		
Estimated outlays	10	26	39	28	17

The costs of this bill fall within budget function 400.

Basis of estimate: For the purpose of this estimate, CBO assumes that S. 2549 will be enacted early in fiscal year 1989. The budget authority amounts are specified in the bill, and outlay estimates are based on historical spending patterns.

The bill also directs the Department of Transportation to make arrangements with the National Academy of Sciences to conduct a study of blood alcohol levels. Based on information provided by the Department of Transportation, CBO expects that this study would cost about $400,000. The bill would not authorize any additional funds for this purpose.

6. Estimated cost to State and local governments: The bill would fund additional grants to states that establish conforming drunk driving programs. The federal share of the costs of these programs would be 75 percent in the first year, then decline to 25 percent in the third.

7. Estimate comparison: None.

8. Previous CBO estimate: On July 21, 1988, CBO prepared an estimate for a similar bill, S. 2367, as ordered reported by the Senate Committee on Environment and Public Works on July 14, 1988. The budget authority and estimated outlays provided by the two bills are identical.

9. Estimate prepared by: Marjorie Miller.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

NUMBER OF PERSONS COVERED

The bill would establish a new category of incentive grants similar to those now administered by NHTSA. Administration of these grants will require promulgation of a rule by NHTSA regarding the means by which the States may qualify for these new grants. However, particularly because of the administrative similarity between these new grants and current section 408 grants, it is not anticipated that this bill will impose any significant new regulatory burden.

ECONOMIC IMPACT

The Committee does not envision that any significant economic impact would be imposed as a result of enactment of this bill. Funds used for incentive grants to the States will come from the Highway Trust Fund and will not require any new appropriation from the U.S. Treasury. In any event, it is not certain that States will qualify for grants in the full amount authorized. Past experience with similarly structured grant programs indicates that the amount expended will be considerably less than that authorized.

PRIVACY

The bill as reported would have no effect on the personal privacy of individuals affected.

PAPERWORK

The bill as reported may result in limited additional paperwork for State highway departments as well as the Department of Transportation (DOT). States that wish to receive grants will be required to submit materials demonstrating their qualifications for those grants. DOT will have to promulgate new regulations describing the grant requirements and the necessary documentation from the States regarding those requirements.

SECTION-BY-SECTION ANALYSIS

SECTION 1.—SHORT TITLE

This section states the short title of the bill, the "Drunk Driving Prevention Act of 1988".

SECTION 2.—DRUNK DRIVING PREVENTION PROGRAMS

This section adds a new section 410 to title 23, U.S. Code, authorizing a new incentive grant program to encourage States to adopt laws that have proven effective in reducing drunk driving fatalities. It authorizes the Secretary to make basic and supplemental grants to the States, in accordance with the criteria outlined in the bill. In receiving such grant funds, a State may not reduce the amount of funds already allocated for drunk driving programs.

Funding

The grant program is authorized for 3 years, and is intended to provide seed money to the States to develop enhanced, comprehensive drunk driving programs. Accordingly, the percentage of total costs of a State program which may be covered by the grant funds will decrease from 75 percent of program costs in the first year of participation to 25 percent of costs in the third year of participation, subject to an annual maximum of an amount equal to 30 percent of a State's apportionment under section 402 for basic grants and an annual maximum of 20 percent of section 402 apportionments for supplemental grants.

Thus, the amount of funding a State may receive is limited not only by the matching share requirements discussed above, but also by the amount of the State's section 402 apportionment for fiscal year (FY) 1989. A State meeting the basic grant criteria may receive a maximum grant equaling 30 percent of its apportionment under section 402 for FY 1989. A State meeting these basic elements may then be eligible for supplemental funding, if additional criteria are met. A State would be eligible for a supplemental grant not to exceed 20 percent of its FY 1989 section 402 apportionments for each supplemental grant criterion it fulfilled.

The section 402 apportionment amount is relevant to this section only in setting the maximum amount for grants. Participation in the new section 410 program will not affect in any way a State's eligibility for, or receipt of, funds under section 402, or any other highway safety grant programs. Receipt of section 410 grants set at amounts related to section 402 apportionments will not reduce the amount the State receives under section 402.

Basic grant eligibility criteria

There are two eligibility criteria for basic grants. First, a State must adopt a program for the expedited administrative revocation or suspension of the driver's license of an individual found to be driving while under the influence of alcohol, as determined by one or more chemcial tests, or an individual who refuses to submit to such a test.

This section requires that, upon making the determination that the driver in question is under the influence of alcohol as indicated above, the law enforcement official involved must take possession of the driver's license, and provide the driver with a notice of suspension or revocation including a statement of the driver's rights in connection with such procedures. The actual suspension or revocation must take effect within 15 days of the date on which the notice is served. The suspension is required to be a minimum of 90 days for a first offender and a minimum of 1 year for a repeat offender. A judicial proceeding within the 15 day time frame is not required. However, an administrative proceeding providing the individual with the requisite due process must be available within 15 days.

The Secretary is required by this section to issue regulations providing guidelines for the States on the procedures necessary to insure due process of law. Additionally, in promulgating regulations implementing the requirements regarding minimum periods of license suspension, the Committee expects that the Secretary will require the States to provide for periods of "hard" suspension, during which the driver may not receive conditional driving privileges.

The administrative suspension law required for the basic grant has been demonstrated to be of most effective measures for reducing the incidence of drunk driving fatalities. The Insurance Institute for Highway Safety recently completed a study on this point, "Fatal Crash Involvement and Laws Against Alcohol-Impaired Driving." The study found administrative suspension laws currently in force to be the most effective of all the laws studied in reducing alcohol-related driving fatalities, and found a 9 percent reduction in alcohol-related fatalities attributable to such laws.

The second criterion for a basic grant requires the States to adopt a self-sustaining comprehensive drunk driving program. This means that the States must return funds in an amount equal to the fines and other fees collected from drunk driving offenders to the communities for use in drunk driving enforcement programs. This is to insure that adequate resources are made available to fund these programs. While the bill as introduced required that the fines themselves be put to use in drunk driving programs, the Committee subsequently became aware that certain States constitutionally prohibit the use of such fines for anything other then education. Accordingly, the Committee adopted a technical amendment to permit the self-sustaining drunk driving prevention program to be funded by the use of an amount of non-Federal revenues equivalent to the fines collected from drunk drivers, rather than by the fines themselves.

Supplemental grant eligibility criteria

The bill establishes three separate bases on which supplemental grants will be made available. These grants can be awarded only to States that have met the two criteria for a basic grant in addition to the supplemental criteria. A State can receive additional funds up to an amount equal to 20 percent of its section 402 apportionments for each supplemental grant criteria it meets.

The first supplemental criterion requires enactment of a law providing for mandatory testing of the driver's blood alcohol level in accidents in which a law enforcement officer has probable cause to believe that a driver in an accident involving death or serious injury has committed an alcohol-related offense. Currently, such testing is often omitted, particularly if the driver is unconscious. Increased testing in such accidents will vastly improve the data available on the incidence of drunk driving, and also will insure the availability of evidence in any criminal or civil litigation arising out of the accident.

A second supplemental grant is available to States that establish an effective system for preventing drivers under the age of 21 from obtaining alcohol. This system may involve the use of readily distinguishable drivers' licenses for drivers under 21. All States currently establish 21 as the minimum drinking age. The intent of this provision is to enhance enforcement of that law, and the Committee believes that use of the driver's license is one of the most effective methods of doing so. Several States currently issue licenses for under-21 drivers that are either color-coded or contain a different type of photograph (e.g. side view instead of front view) from the licenses of other drivers. The Committee endorses these methods, and believes that, in order to be effective, the licenses also should be tamper-resistant.

The final supplemental criterion was adopted by the Committee as an amendment to the bill as introduced. It encourages States to enact laws providing for the confiscation of license plates and return to the State of the car registration of any vehicle owned by an individual (1) convicted of multiple alcohol-related traffic offenses or (2) convicted of driving while the driver's license has been suspended or revoked for an alcohol-related offense.

This supplemental grant criterion was adopted because of the Committee's concern over the number of violators who continue to drive after the drivers' licenses have been suspended. In 1983, the National Transportation Safety Board published a report entitled "Deficiencies in Enforcement, Judicial, and Treatment Programs Related to Repeat Offender Drunk Drivers." The report found that two-thirds of those who have had their licenses suspended or revoked admitted to driving during the period of suspension or revocation. Other studies estimate that between 50 and 80 percent of people with suspended or revoked licenses continue to drive. Effective enforcement of drunk driving laws requires that those whose licenses are suspended or revoked actually stop driving. This supplemental grant is believed to be an effective measure toward that end.

In adoption this provision, however, Committee members expressed concern that this provision, if strictly construed, could work an intolerable hardship on family members of the convicted individual. Particularly in rural or other areas that lack public transportation, use of an automobile can be indispensible to holding a job, obtaining necessary food and clothing items, or meeting other family obligations. Thus, it is the intent of the Committee that the Secretary, in issuing implementing regulations, should take a flexible approach to this criterion. The States should be permitted to strike a balance between the need to prevent the drunk driver from driving and the needs of the family for transportation. States should be approved for grants if the provisions they enact allow for hardship exceptions on a case-by-case basis, although these exceptions should not result in unrestricted return of the license plates and registration. In the Committee's view, the basis for a hardship exception would exist if withdrawal of the license and registration would unduly burden a family member or co-owner of the vehicle.

For example, a law recently became effective in Minnesota requiring impoundment of license plates for repeat driving while intoxicated offenders. However, the law provides for a special and distinctive license plate which can be issued in particular circumstances to avoid certain hardships. The Committee believes that this provision is one way, although not the only way, in which States may structure these laws to avoid unreasonable burdens on innocent family members or co-owners. While these laws establish an important sanction against the drunk driver, the Committee hopes that States, in enacting these laws, will give due consideration to the needs of other users of the vehicles involved.

In determining the eligibility of a State for basic and supplemental grants under this bill, the Committee expects that the Secretary will accept any laws enacted by the States prior to this legislation which meet the stated grant requirements.

SECTION 3.—BLOOD ALCOHOL CONCENTRATION STUDY

This section directs the Secretary to undertake to enter into arrangements with NAS for a study to determine the BAC level at which an individual should be deemed to be driving under the influence of alcohol. Most States have adopted the level of 0.10 percent BAC. The Committee believes that a study is necessary to assess whether, and in what if any circumstances, a lower level would be appropriate.

The Transportation Research Board of NAS recently completed a study in this area, "Zero Alcohol and Other Options: Limits for Trucks and Bus Drivers," as required by the Commercial Motor Vehicle Safety Act of 1986, P.L. 99-570, based on legislation that was reported by the Committee. The Committee believes that the data collected for this earlier study will be of value in conducting the new BAC study, and expects that such data will be utilized.

This section requires that the Secretary's arrangements for the BAC study include a request for submission of a report by NAS no later than 1 year after enactment of this legislation.

SECTION 4.—REGULATIONS

This section requires the Secretary to issue proposed implementing regulations no later than December 1, 1988, and final implementing regulations no later than March 1, 1989. The regulations are to be promulgated in accordance with the requirements of Chapter 5 of title 5, U.S. Code (which codifies the Administrative Procedure Act), including requirements for public notice and comment. The Secretary is to transmit the final rule, when published, to the Congress.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman).

TITLE 23, UNITED STATES CODE

Chapter 4 of that Title

Sec.
401. Authority of the Secretary.

* * * * *

409. Admission as evidence of certain reports and surveys.
410. Drunk driving enforcement programs.

SECTION 409 OF THAT TITLE

§ 409. Admission as evidence of certain reports and surveys

* * * * *

§ 410. Drunk driving enforcement programs

(a) Subject to the provisions of this section, the Secretary shall make basic and supplemental grants to those States which adopt and implement drunk driving enforcement programs which include measures, described in this section, to improve the effectiveness of the enforcement of laws to prevent drunk driving. Such grants may only be used by recipient States to implement and enforce such measures.

(b) No grant may be made to a State under this section in any fiscal year unless such State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate expenditures from all other sources for drunk driving enforcement programs at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this section.

(c) No State may receive grants under this section in more than three fiscal years. The Federal share payable for any grant under this section shall not exceed—

(1) in the first fiscal year a State receives a grant under this section, 75 percent of the cost of implementing and enforcing in such fiscal year the drunk driving enforcement program adopted by the State pursuant to subsection (a) of this section;

(2) in the second fiscal year the State receives a grant under this section, 50 percent of the cost of implementing and enforcing in such fiscal year such program; and

(3) in the third fiscal year the State receives a grant under this section, 25 percent of the cost of implementing and enforcing in such fiscal year such program.

(d)(1) Subject to subsection (c) of this section, the amount of a basic grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e)(1) of this section shall equal 30 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title.

(2) Subject to subsection (c) of this section, the amount of a supplemental grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (f) of this section shall not exceed 20 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title. Such supplemental grant shall be in addition to any basic grant received by such State.

(e) For purposes of this section, a State is eligible for a basic grant if such State provides for—

(1) an expedited driver's license suspension or revocation system which requires that—

(A) when a law enforcement officer has probable cause under State law to believe an individual has committed an alcohol-related traffic offense, and such individual is determined, on the basis of one or more chemical tests, to have been under the influence of alcohol while operating the motor vehicle concerned or refuses to sumit to such a test as proposed by the officer, such officer shall serve such individual with a notice of suspension or revocation, which shall provide information on the administrative procedures by which a State may suspend or revoke a license for drunk driving and specify any rights of the driver in connection with such procedures, and shall take possession of the driver's license of such individual;

(B) after serving such notice and taking possession of such driver's license, the law enforcement officer shall immediately report to the State entity responsible for administering driver's licenses all information relevant to the enforcement action involved;

(C) upon receipt of the report of the law enforcement officer, the State entity responsible for administering driver's licenses shall, where an individual is determined on the basis of one or more chemical tests to have been intoxicated while operating a motor vehicle or is determined to have refused to submit to such a test as proposed by the officer, (i) suspend the driver's license of such individual for a period of not less than 90 days if such individual is a first offender and (ii) suspend the driver's license of such individual for a period of not less than 1 year, or revoke such license, if such individual is a repeat offender;

(D) such suspension or revocation shall take effect at the end of a period of not more than 15 days immediately after the day on which the driver first received notice of the suspension or revocation; and

(E) the determination as required by subparagraph (C) of this paragraph shall be in accordance with a process established by the State, under guidelines established by the Secretary to ensure due process of law, (i) for such administrative determinations and (ii) for reviewing such determinations, upon request by the affected individual within the period specified in subparagraph (D) of this paragraph; and

(2) a self-sustaining drunk driving enforcement program under which the fines or surcharges collected from individuals convicted of driving a motor vehicle while under the influence of alcohol are returned, or an equivalent amount of non-Federal reve-

nues is provided, to those communities which have comprehensive programs for the prevention of drunk driving.

(f) For purposes of this section, a State is eligible for a supplemental grant if such State is eligible for a basic grant and in addition such State provides for—

(1) mandatory blood alcohol content testing whereever a law enforcement officer has probable cause under State law to believe that a driver of a motor vehicle involved in a collision resulting in the loss of human life or, as determined by the Secretary, serious bodily injury, has committed an alcohol-related traffic offense;

(2) an effective system for preventing drivers under age 21 from obtaining alcoholic beverages, which may include the issuance of driver's licenses to individuals under age 21 that are easily distinguishable in appearance from diver's licenses issued to individuals 21 years of age or older; and

(3) the suspension of the registration of, and the return to the State of the license plates for, any motor vehicle owned by an individual who—

(A) has been convicted of more than one alcohol-related traffic offense; or

(B) has been convicted of driving while the driver's license of such individual is suspended or revoked by reason of a conviction for an alcohol-related traffic offense.

(g) There are authorized to be appropriated to carry out this section, out of the Highway Trust Fund, $25,000,000 for the fiscal year ending September 30, 1989, and $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1990, and September 30, 1991. All provisions of chapter 1 of this title that are applicable to Federal-aid primary highway funds, other than provisions relating to the apportionment formula and provisions limiting the expenditures of such funds to Federal-aid systems, shall apply to the funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section. Sums authorized by this subsection shall not be subject to any obligation limitation for State and community highway safety programs.

Mr. REID. Mr. President, I am very proud to be a sponsor of this legislation. This legislation will establish a mechanism to encourage States to enact some of the most effective drunk driving prevention programs available. These are programs that work. Programs that save lives.

The legislation we offer today will encourage States to set up administrative per se systems for the prompt suspension or revocation of the licenses of drunken drivers. This is probably the single most effective drunken driving program. The Insurance Institute for Highway Safety estimates that the enactment of these programs in all the States would save nearly 2,000 lives a year.

The legislation also induces the States to enact effective measures to address the alarming problem of drunken driving repeat offenders. In 1983, the National Transportation Safety Board published a report entitled "Deficiencies in Judicial, and Treatment Programs Related to Repeat Offender Drunk Drivers." The report contained a finding that two-thirds of those who have had their licenses suspended or revoked admitted to driving during the period of suspension or revocation. Other studies have estimated that as many as 80 percent of people with suspended licenses continue to drive. Mr. President, if license suspensions are to be an effective deterrent, an effort must be made to ensure that those who have suspended licenses do not drive.

A number of States have addressed this problem by providing for the impoundment or forfeiture of vehicle license registration and license plates. Obviously, such a penalty makes it much more difficult to drive with a suspended license. This legislation provides for supplemental grants to encourage other States to enact similar provisions.

In addition, the legislation directs the Department of Transportation to conduct a study to determine a method to provide State law enforcement officials with information concerning previous drunken driving offenses in other States. The problem of drunken driving recidivism is astounding. State law enforcement officers and prosecutors must have access to complete records in order to address the serious problems created by repeat offenders.

Mr. President, 2 months ago I directed the Senate's attention to a tragedy in the life of Bill Cramer of Glendale, CA. Returning from work, Mr. Cramer learned that his young wife and 9-year-old daughter had been killed by a suspected drunken driver. The words Mr. Cramer spoke to his 11-year-old son are powerful and compelling. The young boy asked, "Daddy have you called to see how mom is?" to which Cramer replied, "Billy, you have to be real quiet. You have to listen to daddy real carefully, Breezy and mommy have gone to heaven." The elder Cramer then related that it was at that moment—a moment in which he had to explain the tragedy to his surviving child—that Cramer himself understood they were gone forever.

Every year, the families of 24,000 other victims have to come to the realization that their loved ones will never return. These people are calling for help. Bill Cramer himself said, "If nothing else comes out of what happened, I hope the lawmakers or somebody responsible will do something to make it ugly for people who drink and drive."

Mr. President, I urge my colleagues to hear this cry for help. Lets send a message to drunken drivers. Lets make it ugly for those who drink and drive.

Mr. HOLLINGS. Mr. President, today we have before us, as part of an amendment to the drug bill, the latest congressional effort in the battle against the dangers of drunk driving. Back in 1982, I cosponsored a bill that became law and was one of the first efforts at the Federal level to deal with the problem of drunk drivers on our highways. That law encouraged, through incentive grants to the States, such things as mandatory minimum sentences for people who drive while intoxicated. While there is good evidence that our 1982 bill helped to advance highway safety, I do not delude myself that the problem of drunk driving is even close to being resolved.

Department of Transportation data shows that between 1982 and 1986 the number of drivers involved in fatal accidents who were legally intoxicated at the time of the crash decreased by 13 percent. This is encouraging, but cannot be cause for decreased vigilance. In 1986, there were over 41,000 fatal accidents in this country, and more than half of all fatalities were alcohol-related. We must continue to work to prevent these needless deaths.

The Commerce Committee, which I chair, has jurisdiction over highway safety issues under paragraph (4) of section 1(f)(1) of rule XXV of the standing rules of the Senate. In this capacity the committee has considered several measures related to drunk driving in recent years, including S. 2158—97th Congress—and S. 1108—98th Congress. Given the continuing need for Federal efforts in this area, I am pleased that the Commerce Committee could facilitate consideration by this Congress of a new incentive grant measure.

The committee held hearings in its Consumer Subcommittee on S. 2549, and learned that there is general agreement that prompt administrative suspension of drivers' licenses reduces fatalities. The committee subsequently voted unanimously to report an amended version of S. 2549. Since that time, the committee has been working with other interested parties to craft a consensus version of the measure which would be acceptable to the Senate and the House while continuing to advance the important goals that have been identified. We have that measure before us today, and I am proud of the work of the committee and others such as Senator LAUTENBERG.

While we need continued Federal efforts in this area, we must also be mindful of the costs of those efforts, and allocate our finite resources with care. For that reason, I am pleased that the measure being considered today provides for funding through the general fund, subject to the appropriations process, rather than through the highway trust fund. This will help to insure that we only spend what is absolutely necessary to accomplish the goals of this program in each fiscal year.

Again, I commend the work of the sponsors of this bill and of the members of the Commerce Committee. Drunk driving remains a serious threat to the national welfare, and the Congress must continue its efforts to reduce its tragic toll.

ANTI-CORRUPTION ACT, ITEM 16

Mr. BIDEN. Mr. President, I am very pleased that today the Senate will have a chance to vote on the Anti-Corruption Act of 1988. This legislation is the product of many months of work by a bipartisan group of Senators and the Department of Justice. It will give Federal prosecutors the tools, once again, to prosecute corrupt public officials and other white collar criminals who victimize labor unions, corporations, and other organizations.

For 15 years, Federal prosecutors brought cases of public and private corruption and election fraud into Federal court under the Federal mail and wire fraud statutes. But in 1987, the Supreme Court ruled that those statutes were not intended to protect such intangible rights as the right of the poeple to honest government. That decision, in McNally versus United States, was at odds with prior decisions issued by every one of the 12 Federal circuit courts. It resulted in the reversal of the convictions of a number of corrupt judges and office holders; and it halted or jeopardized hundreds of investigations throughout the United States.

Mr. President, I believe that the people of this country have a right to honest Government. The Constitution guarantees a republican form of government, which means that Congress can enact statutes that make it possible to punish those who violate the public trust at any level of government. The bill we have before us today would reverse the McNally decision and allow Federal prosecutors to bring the kinds of public corruption charges that they were able to bring before 1987.

The importance of this legislation cannot be overemphasized. It is supported by virtually all of the U.S. attorneys and by the Attorney General, Richard Thornburg, whose letter to me in support of this bill I will insert into the RECORD at the end of my statement.

At this point, Mr. President, I would like to refer to several specific provisions of the bill to make sure that the legislative intent is clear. First, as I said at the time the bill was introduced, the committee intends, in general, that the bill be read in the context of pre-McNally case law. Thus, the terms "deprive" and "defraud" in the new public corruption statute should be read in conjunction with pre-McNally case law interpreting the phrase "scheme or artifice to defraud" in the mail and wire fraud statutes in public corruption cases. See, for example, *United States* v. *Isaacs,* 493 F.2d 1124 (7th Cir. 1974); *United States* v. *Mandel,* 591 F.2d 1347 (4th Cir. 1979); *United States* v. *Bush,* 522 F.2d 641, 647-48 (7th Cir. 1975); *United States* v. *Keane,* 522 F.2d 534, 545-46 (7th Cir. 1975); *United States* v. *Brown,* 540 F.2d 364, 374-75 (8th Cir. 1976); *United States* v. *States,* 488 F.2d 761, 765 (8th Cir. 1973).

A second point concerns the part of the new public corruption statute that addresses election fraud. Section 225(b) of the bill makes it a criminal violation to deprive or defraud, or attempt to deprive or defraud, by any scheme or artifice, the inhabitants of a State or political subdivision of a State of a fair and impartially conducted election process. One of the ways in which the violation may occur is through the filing of a false, fictitious or fraudulent report required to be filed under State law. The committee intends that only materially false, fictitious, or fradulent reports be covered under this section of the bill.

Finally, the bill creates a new section 1346 of title 18 that codifies the pre-McNally intangible rights doctrine. The section makes it a criminal violation to deprive an organization of the intangible right of honest services if, for example, the defendant "intended or contemplated loss or harm to the organization." The word "contemplated" means "foreseen" as opposed to "hoped for" or "imagined." This is in keeping with those cases that held a criminal offense involving an intangible right was committed only if some harm was forseeable. See *United States* v. *Ballard,* 663 F.2d 534, 541-42 (5th Cir. 1981), modified on reh'g 680 F.2d 352 (5th Cir. 1982); *United States* v. *Siegel,* 717 F.2d 9, 14 (end Cir. 1983); *United States* v. Lemire, 720 F.2d 1327, 1335-37 (D.C. Cir. 1983); *United States* v. *Feldman,* 711 F.2d 758, 763-65 (7th Cir. 1983).

Similarly, the codification of the intangible rights doctrine is intended to allow the Government to prosecute persons who violate the trust placed in them by their employers or some other organization and do so in order to get a bribe or kickback or some other thing of value. This is intended to permit prosecution of the kinds of cases that approved by the appellate courts before McNally. See *United States* v. *George,* 477 F.2d 508 (7th Cir. 1973); *United States* v. *Boffa,* 688 F.2d 919 (3rd Cir. 1982); *United States* v. *Newman,* 664 F.2d 12 (2nd Cir. 1981); *United States* v. *Weiss,* 752 F.2d 777 (2nd Cir. 1985); *United States* v. *Ventura,* 724 F.2d 305 (2nd Cir. 1983). It is not intended to criminalize mere breaches of fiduciary duty, or private confidence, or violations of ordinary rules of the workplace. Indeed, although the committee is aware of no such cases having been prosecuted before McNally under the intangible rights doctrine, in response to academic comment that such a result might someday occur, the codification of pre-McNally law in the bill is specifically limited to situations where the defendant is acting to obtain a thing of value, or to harm the organization. This provision will foreclose the abuse of the statute to prosecute trivial, noncriminal matters.

Mr. President, this is a bipartisan bill that has the unanimous support of the members of the Judiciary Committee. I hope my colleagues will support it.

Mr. THURMOND. Mr. President, I rise in strong support of the provision in the drug bill dealing with public corruption. Previously, I joined Senator BIDEN and Senator MCCONNELL in introducing S. 2793, a bill similar to their provision.

Corruption, especially corruption involving public officials, is a problem which affects the entire Nation and is an issue which is caused for grave concern.

This provision directly addresses the gap in current law which was a result of the Supreme Court's decision in McNally versus United States. Until this decision, corruption schemes involving public officials were prosecuted under the mail fraud statute. However, in McNally, the Court rules that the mail fraud statute could only be used to prosecute corruption schemes in which economic loss can be shown. As a result of this decision, a public official can be prosecuted if he steals $10,000 from the county treasury. However, that same public official could not be prosecuted if he acts to have a contract awarded as a favor to a personal friend. In the first case, economic loss can be easily shown. In the second case, it is not always possible to show economic loss. However, what has occurred in both cases is a serious breach of the public trust. There is no reason why both actions are not deserving of equal prosecution. It is clear that the McNally decision severely limits the ability of prosecutors to effectively attack public corruption cases in which there is no economic loss.

The provision being considered today creates a public corruption statute under which corrupt schemes involving the loss of the honest services of a State or Federal public official could be criminally prosecuted. This legislation also allows prosecution of certain corrupt schemes to influence the election process. Further, this provision expands the scope of the mail fraud statute to cover schemes involving the loss of the honest services of an employee by a private organization.

Mr. President, I am pleased that this provision is included in the legislation before us today. On June 17, 1988, I joined with Senator MCCONNELL in introducing S. 2531, the Anti-Public Corruption Act of 1988 which was developed in close consultation with the Department of Justice. The provision before us today was the result of bipartisan negotiations that occurred after introduction of that bill and is identical to S 2793, previously reported out of the Judiciary Committee. I would like to commend Senator McCONNELL for his long standing interest in this issue as well as his persistence in urging for consideration of this measure before we adjourn.

In closing, breach of the public trust is a serious offense that should not go unprosecuted. I am confident that the citizens of this country demand that public corruption be zealously investigated and prosecuted. This measure is strongly supported by the Department of Justice and is urgently needed by the U.S. Attorneys. I urge my colleagues to support this provision which will serve to ensure that public officials are held fully accountable for all of their actions.

Mr. McCONNELL. Mr. President, after months of long negotiations and hard work, the administration, a number of Senators, and the Senate Judiciary Committee have completed work on a landmark bill to end election fraud and public corruption in this country. Its key supporters in the Senate, Senators BIDEN, THURMOND, METZENBAUM, SIMON, DECONCINI, and myself, worked together in true bipartisan fashion to assemble legislation on a critical national issue.

This bill, the Biden-McConnell Anti-Corruption Act of 1988, represents a three-pronged offensive against corruption at every level of society, by expanding the Federal Government's power to investigate and prosecute fraud at the polls, in government, and in private industry.

Almost exactly 1 year ago, the Louisville Courier-Journal ran a week-long expose on election fraud in Kentucky. Although vote buying, intimidation at the polls, and contributions for contracts deals hardly are new in our State, most Kentuckians expressed outrage at the abuses revealed in this report, and the Kentucky General Assembly responded quickly by enacting an array of needed election law reforms.

However, even at that time I believed that election fraud in Kentucky and other States would not be cured until the Federal Government stepped in and supervised local elections—and had the power to prosecute election abuses. That is why, on election day in 1987, I introduced the "Election Fraud Prevention Act" to make all election fraud offenses into Federal crimes, and authorize Federal officials to supervise State and local elections in areas where election fraud is a persistent or widely suspected problem.

Just as I had feared, vote fraud reared its ugly head again right after the general assembly passed its election fraud laws, indicating the cynicism there is about State Enforcement efforts in this area. In all these cases, the key culprits were election officials—and that is why State-level efforts ultimately are not enough to weed out these abuses, despite the best of intentions. There is simply too much power at stake, and too many carefully guarded, insulated interests for the State to succeed on its own.

Congress recognized this when it passed the Voting Rights Act of 1965, making the Federal Government the ultimate guarantor of the franchise for every American, regardless of race, in every election. A lot of people opposed that legislation, saying that the Federal Government had no business looking over the States' shoulder to enforce voting rights. But the fact was that people were being denied their right to vote, and the State would not—and realistically could not—do anything to stop it.

Ironically, the Federal Government had very few occasions to prosecute discrimination under the act, because the mere threat of Federal intervention—announced loud and clear by the passage of the Voting Rights Act—was enough to bring most discriminatory activity to an abrupt end.

Today, people in some areas of our country are again being denied their voting rights, not by discriminatory requirements or selective harassment—although that is known to go on as well—but by massive distortion of election results through vote buying and other forms of fraud, which we in Kentucky often refer to as election day shenanigans.

Mr. President, we have before us today a bill to make the Federal Government the ultimate guarantor of the integrity of the ballot box, to end the wholesale denial of voting rights through election fraud.

However, the Biden-McConnell bill goes further than stopping fraud and corruption at the polls. It also would rearm Federal prosecutors in their ongoing war against corruption at all levels of government and in the private sector. Their work was dealt a crippling blow last year by the Supreme Court's decision in McNally versus United States, a public corruption case originating in Kentucky.

That decision, which denied Federal prosecutors the ability to use the mail fraud statutes to investigate and punish corrupt officials, may end up unlocking the prison cells of up to 185 convicts who are doing time for public corruption, and it has shut down over 100 pending investigations.

To address this crisis, Senator THURMOND and I began working with the Department of Justice to restore Federal law enforcement authority in the area of public corruption, and expand its role in election fraud cases. We introduced a bill, S. 2531, and then approached key members of the Senate Judiciary Committee about a possible coalition bill, that would restore Federal authority in white-collar crime as well as public corruption and vote fraud.

The result of this long process, the Biden-McConnell bill, is one of my proudest achievements as a legislator. It has the solid support of the administration and the Judiciary Committee and I believe it is on its way to becoming law.

Election fraud and corruption have been traditions for too long in many areas of our country, including my own State, I am sorry to say. But if this Congress exercises the courage of its convictions and writes the Anti-Corruption Act into law, then the days of the vote buyers, corrupt local officials, and white-collar criminals soon will come to an end.

Mr. President, I yield the floor.

Mr. DECONCINI. Mr. President, I rise today in support of S. 2793, a measure that amends title 18 of the United States Code to punish certain forms of corruption. The Anti-Corruption Act of 1988 is a crucial step in combating Government corruption and protecting the public's right to honest, efficient Government.

S. 2793 was necessitated by the U.S. Supreme Court's ruling in McNally versus United States. This ruling rejected the so-called intangible rights doctrine, which had allowed the mail fraud statute, 18 U.S.C. 1341, to be used to prosecute public corruption. The Court held that the statute only operated to prevent tangible fraud, that is, fraud involving money or property.

This had led to confusion over whether certain corruption schemes can be prosecuted, and made it difficult to bring public corruption cases to justice. Because of the confusion surrounding the fraud statutes, prosecutors now hesitate to bring fraud charges.

S. 2793 corrects this problem by amending 18 U.S.C. to allow prosecution for the corruption of public officials. This rejection of the McNally decision will allow prosecutors to regain a valuable tool in combating corruption in Government. It is important to note that this measure is Federal in character. Due to the sophistication involved in much of the corruption activity, and the interstate nature of many of these crimes, State laws are frequently insufficient to combat corruption. The Anti-Corruption Act will allow prosecutors to keep pace with those who attempt to violate the public's right to honest and fair Government.

Mr. President, we live in a time where the public's perception of public servants may be at an all time low. Many people in this Nation believe that public officials do not serve the public, but instead seek public office for private gain. This measure is a step toward restoring public confidence in public officials. We must give our citizens and those who would corrupt public officials a clear message that we will not tolerate dishonesty in Government. The Anti-Corruption Act of 1988 sends this message.

The need for this measure is demonstrated by its bipartisan support. Senators BIDEN, SIMON, METZENBAUM, MCCONNELL, and THURMOND have all contributed to this bill. Members from both sides of the aisle recognize the need to fight corruption. I support S. 2793; I urge my colleagues to do the same.

Mr. SIMON. Mr. President, I am pleased to join with my colleagues in supporting the passage of the Anti-Public Corruption Act of 1988. This strong bipartisan measure introduced by my colleagues Senators BIDEN, METZENBAUM, MCCONNELL, DECONCINI, THURMOND and I, will help prosecutors fight both private and public corruption. Specifically the Anti-Public Corruption Act responds to a recent U.S. Supreme Court case, McNally v. United States 107 S.Ct.2878 (1987), in which the Court held that most cases of public or private corruption could not be prosecuted under the Federal mail or wire fraud statutes because the statutes covered only cases in which there was a loss of State or Federal property or money. Prior to the McNally decision, prosecutors routinely relied on these statutes to prosecute public officials for depriving the citizens of the honest services of the Government, known as intangible rights even if there was no economic harm to the State. Under the intangible rights doctrine, if a public official accepted a bribe or otherwise acted corruptly, but did not take any property or money from the State or Federal Government, he was subject to prosecution for mail or wire fraud.

The mail and wire fraud statutes pre-McNally were particularly useful to the Illinois U.S. attorneys in prosecuting individuals involved in the Greylord investigations. Since the McNally decision, it is far more difficult to prosecute those who have acted dishonestly in carrying out the work of the State, like those in Greylord. In addition, many public officials who have already been convicted have been successful in overturning their convictions. For example, Judge Holzer of Illinois, who was convicted of extracting a series of bribes from lawyers with cases pending before him, had his conviction of the mail fraud count overturned after the McNally decision.

In addition to making it more difficult to prosecute corrupt public officials, the McNally case also makes it more difficult to prosecute private individuals who accept bribes or otherwise act corruptly while carrying out their employment or organizational responsibilities.

The Anti-Public Corruption Act of 1988 restores the law to much the way it was prior to McNally and gives the prosecutors the tools they need to prosecute corruption. Specifically, the legislation creates a new section in the criminal code for the prosecution of public officials who deprive their citizens of their honest services or who participate in some form of election fraud. The bill also modifies the mail and wire fraud statutes so that it will once again be a crime to deprive a corporation or organization of the loyal services of its employees. The purpose of this provision is to attack white collar crimes and to ensure that those employees who take bribes or kickbacks will not go unpunished. Finally, the act includes a provision which penalizes a defendant who dismisses, intimidates, or coerces any public employee in order to advance or conceal a corrupt scheme, and it provides a civil remedy for those who are dismissed or discriminated against for reporting fraud or assisting prosecutors.

In closing, I wish to thank my colleagues for working together to craft a much needed bipartisan resolution to the pressing problem of public and private corruption. While no single piece of legislation can eliminate acts of corruption or dishonesty, certainly restoring the threat of a criminal conviction should help in this fight. Corrupt officials and private individuals alike must know that Congress will not tolerate dishonest behavior. I am pleased that the Senate was able to take swift action on this measure so that the U.S. attorneys will now have the tools they need once again to prosecute corruption cases. I urge Members of the other body to act promptly as well to ensure the passage of this act.

Mr. METZENBAUM. Mr. President, I am pleased to be an original cosponsor of this important legislation and urge its immediate passage. S. 2793 would clear up confusion caused by recent Supreme Court decisions interpreting the Federal mail and wire fraud statutes.

The Federal Criminal Code prohibits the use of the mails or the telephone to execute any scheme or artifice to defraud. Until recently, the courts have interpreted these statutes rather broadly, giving prosecutors potent weapons to use against criminal fraud schemes and public and private corruption.

These criminal corruption statutes have also played a role in the fight against illegal drugs. For example, Federal prosecutors convicted a county deputy sheriff assigned to the "metro narcotics unit" for taking and extorting money from drug dealers during drug raids. In Miami, the U.S. attorney prosecuted and convicted drug traffickers under, among other laws, the mail fraud statute for purchasing and using a Miami bank to launder money from illegal drug deals.

Use of these fraud statutes against public corruption and white collar crime was dealt a severe blow in June 1987, however, by the Supreme Court's decision in McNally versus United States. In that case, the Court concluded:

> The mail fraud statute clearly protects property rights, but does not refer to the intangible right of the citizenry to good government.

Many convictions for criminal fraud were invalidated by this decision. While a subsequent Supreme Court case, Carpenter versus United States, did lessen the adverse impact of McNally, these cases have left the law confused and greatly impeded Federal prosecutors in their daily work. In the words of Attorney General Richard Thornburgh:

> Prosecution of public corruption cases has been one of the Department's highest priorities since the mid-1970's and if anything has increased in recent years, in part because of the proven link between public corruption and large scale drug trafficking. As a result of the Supreme Court's unexpected McNally interpretation last year, a sizable gap currently exists in the Federal statutory arsenal that can be employed against corrupt public officials in all States throughout this Nation.

Our Federal prosecutors cannot live with current law, and Congress cannot sit idly by when our law enforcement officers don't have the tools they need to fight crime. The need to clarify the scope of these Federal fraud statutes could not be more urgent.

I applaud the hard work of my colleagues on both sides of the aisle in reaching a resolution of this critical issue in this Congress.

DEFENSE DRUG INTERDICTION AMENDMENT, ITEM 19

Mr. STEVENS. Mr. President, I support the amendment of the Senator from Arizona to amend the Defense Appropriations Act to clarify the role of the National Guard in the drug enforcement and interdiction effort.

This is a technical clarification to assure the effective use the funds appropriated for National Guard activities. The Appropriations Act provides $300 million for Defense Department drug interdiction operations and personnel expenses. Of the amount appropriated, $40 million is reserved specifically for National Guard operating costs.

The statutory language in the Appropriations Act pertains to maritime and aerial surveillance activities. The intent of the conferees on the appropriations bill was not to limit the National Guard's role to these areas. To the contrary, the objective was expand the potential use of our National Guard forces in this critical mission area.

Since the enactment of the Appropriations Act, the Department has incorrectly interpreted the intent of the language. As a means to clarify the situation, this amendment is intended to broaden the role of the National Guard to all activities pertaining to drug enforcement and interdiction as deemed appropriate.

INNOCENT OWNER/FISHING VESSELS, ITEM 26

Mr. STEVENS. Mr. President, I submitted an amendment to section 2946 of the Senate drug bill to address a very thorny and difficult issue for Alaska fishermen. The problem arises when fishing vessels, fish processing vessels, or fish tender vessels are boarded by Coast Guard or Customs Service officials for routine inspections and personal use quantities of drugs are found hidden in one of the crewman's gear.

Under existing law, the vessel may be seized, brought into port, and detained for an indefinite period until a determination can be made whether to forfeit the vessel. In the meantime the captain and crew may miss the entire fishing season while they wait to get their boat back. This has caused untold hardship for the coastal communities in Alaska which depend on fishing for their livings. The problem is particularly severe for those who participate in fisheries such as salmon or halibut where the opening may be limited to a few weeks or even just a few days a year.

Under section (d) of my substitute, if a commercial fishing industry vessel is boarded by Federal agency officers and personal use quantities of drugs are found on board, the person in possession of the drugs may be arrested, but the vessel cannot immediately be taken into custody. Instead a summons will be issued to the vessel to appear before the agency as soon as the fishing season is over. The summons process applies to all commercial fishing industry vessels which are defined in the amendment to include fishing vessels, fish processing vessels, and fish tender vessels.

At the end of the fishing season, the vessel will proceed to port and it will be taken into custody. Under subsection (b)(2) the Government will have 21 days to make a final determination on whether it will seek forfeiture. If it cannot process the case within that period, it must release the vessel pending a final determination of the matter.

If the owner proves that he did not know of or consent to the drug violation which occurred on his vessel, and that he took reasonable steps to prevent the illegal use of the property, the vessel must be returned to him immediately. This two-part test which we have adopted is based on the Supreme Court decision in *Calero-Toledo* v. *Pearson Yacht Leasing Co.,* 94 S. Ct. 2080 (1974).

The term "reasonable steps" in my amendment is intended to encompass the same reasonable steps contemplated by the Supreme Court in Calero-Toledo and the courts of appeals decisions decided under that case. In Calero-Toledo, the Supreme Court stated that it would be difficult to justify a forfeiture in a case in which the owner of the property was uninvolved or unaware of the wrongful activity and also had done all that could be reasonably expected to prevent the proscribed use of that property.

As examples of reasonable steps, the Supreme Court cited cases of mitigations and remissions of forfeitures in situations where violations are incurred without willful negligence or an intent to commit an offense. The Supreme Court also cited as examples existing statutory authority under 18 U.S.C. 3617(b) and existing Federal regulations issued under 19 U.S.C. 1618.

The steps contemplated by the Supreme Court in Calero-Toledo and subsequent courts of appeals decisions under that case, are indeed reasonable. For exmple, they require that if a person other than the owner was in possession when the violation occurred, the owner must explain the manner in which the person acquired possession of the property. Similarly, the owner may be required to show that he did not know or have reasonable cause to believe that the property would be used by the other person in violation of the law or that the other person had a criminal record or a reputation for crime.

Subsequent courts of appeals decision under Calero-Toledo have disallowed the innocent owner defense in a case in which the owner did not inquire concerning the destination of a conveyance—in that case a plane—or the purpose for which it was to be used. It was also disallowed in cases in which the owner had notice to his property being used in illegal activities or had demonstrated willful blindness.

The Calero-Toledo case and the cases decided under it, require property owners to be reasonably informed concerning the purpose for which another person may use their property. This provision in the bill before us is intended to give the Attorney General and the Secretary of the Treasury the authority to require that innocent owners take the type of reasonable steps set forth in the Calero-Toledo series of cases. It is not intended to give these officials the authority to require any other type of step or precaution before an owner can obtain release of seized property. Nor is it intended to burden commercial operators or ordinary law-abiding citizens with requirements that are more appropriately left to law enforcement officials such as searching crewmen or their gear for drugs.

Would it be the distinguished floor manager's intent that the term "reasonable steps" in the amendment be interpreted in a manner consistent with the case law as developed under Calero-Toledo?

Mr. DeCONCINI. Yes; in developing the original language in the Senate bill which also provided this two-pronged test, it was our intent that the term "reasonable steps" would be interpreted in a manner consistent with already existing caselaw under Calero-Toledo. Your substitute amendment, which mirrors the original language included in the bill as introduced, should be interpreted in a like manner.

Mr. STEVENS. I would also like to clarify a point about the notice provision included in my amendment. It should explain to fishermen their rights once a summons is issued or their vessel is seized. It should outline for them in simple language how the expedited administrative procedure will work. Specifically, it should detail how they may seek immediate return of their property under subsection (b)(1-2). Is that the floor manager's understanding.

Mr. RUDMAN. Yes; owners of conveyances including fishermen should be made aware what their rights and responsibilities are under the innocent owner provisions.

Mr. STEVENS. Under subsection (d), the summons procedure shall be used when a commercial fishing industry vessel is "proceeding to or from a fishing area or intermediate port of call, or is actively engaged in fishing operations." That means the summons procedure shall be used when a vessel is proceeding to a fishing area even though the fishing season has not yet begun. It shall also be used when a vessel is making its way to a fishing area, but makes intermediate stops along the way for fuel, provisions, or to pick up crew.

For example, if a commercial fishing industry vessel which has been in drydock in Seattle, WA, for repairs, steams from Seattle up through the inside passage in southeastern Alaska, the vessel may stop in towns such as Ketchikan, Sitka, Petersburg, Wrangell, Craig, Juneau, or Yakutat before it heads out to the Gulf of Alaska or the Bering Sea to begin fishing. The summons procedure would apply during transit between those points, so long as the vessel is ultimately bound for a fishing area.

Similarly, a vessel which is actively fishing may leave the fishing ground to deliver fish to onshore processors such as the ones located in Cordova or Dutch Harbor, AK, and continue to be covered by the summons procedure so long as the vessel returns to the fishing ground to return fishing operations. Anytime a vessel is actively engaged in fishing activities whether or not nets are put out, the summons procedure shall be used. Is that the distinguished floor manager's intent as well.

Mr. DeCONCINI. Yes; application of the procedure set out in subsection (d) should be broadly and liberally interpreted so that the fishing season is not interrupted by seizure of the vessel.

Mr. STEVENS. Subsection (d) further provides that existing authority to arrest an individual for drug-related offenses or to release that individual into the custody of the vessel's master shall go unchanged. That section was designed to retain intact the authority of officials boarding a vessel to arrest anyone and everyone found on board in possession of illegal controlled substances. The boarding officers would have the option of physically taking the offender into custody or leasing him to the custody of the master of the vessel. The master would then have the responsibility of delivering the offender to law enforcement officials at the conclusion of the fishing season.

Mr. RUDMAN. That is my understanding as well.

Mr. STEVENS. At the request of the Department of Treasury, Justice, and Transportation, language has been added at the end of subsection (d) to clarify that it is not intended to affect existing law concerning the jurisdiction of the appropriate district court in forfeiture proceedings. Subsection (d) does not alter existing law on forfeitures incurred for violations of Federal law. Does the floor manager agree with that interpretation of the last sentence in subsection (d)?

Mr. DeCONCINI. Yes; I do. That language is intended to prevent owners who are issued a summons from disposing of their property before returning to port for a forfeiture proceeding.

Mr. STEVENS. Is it correct that section 2951 of the bill has no effect on the ability of a vessel owner to go into Federal court to defend a forfeiture action?

Mr. RUDMAN. That is correct.

Mr. STEVENS. I thank the distinguished floor managers for helping me clarify these matters.

Mr. LEVIN. Mr. President, I would like to thank Members on both sides of the aisle, particularly Senators Nunn, Moynihan, Kennedy, D'Amato, and Rudman, for their cooperation in shaping and in obtaining agreement on the amendments that I offered as part of the leadership package with respect to the death penalty provision of the drug bill.

As I indicated during the debate on the Hatfield-Evans-Levin amendment, I oppose the death penalty provision of this bill because it is too weak, since it allows for a minimum sentence of 20 years for some of the most terrible of crimes, and at the same time because it is too broad, since it uses a possible maximum penalty of the death penalty when the record shows over and over again that people have been erroneously sentenced to death. The system of justice is not perfect. We cannot correct mistakes after people are executed. But, the Senate has spoken on this death penalty provision, and it remains in the bill.

That being the case, I thought it was important to have this provision as fair and coherent as is possible. The 19 amendments which I offered and which are part of the leadership package help to accomplish this goal in a number of important respects.

These amendments fall into five categories.

First, the bill as it was introduced only required that a jury justify that a sentence of death shall be imposed. It was then required to be imposed by the court. The use of the word justify in the original bill language could have led a jury to sentence a defendant to death even though it might have thought that both a sentence of death or some lesser sentence were both justified. From our own common experiences, we can see that there is a difference between justify and recommend. Take, for example, someone takes their pet to a vet and is told that the animal is very sick. The vet might say that it would be justified to put the animal to sleep. But the vet might also say that it would be justified to utilize some medical intervention to keep the animal alive for another 6 months. Many pet owners would then ask, "But doctor, what do you recommend?" Justify is a much broader concept than recommend and legislation which imposes a penalty as severe as the death penalty should recognize that important distinction. That is why two amendments in the package change this to require the jury to recommend that a sentence of death shall be imposed rather than a sentence of life imprisonment without a possibility of release or some other lesser sentence.

Second, four amendments make clear that notice must be provided to the defendant of what aggravating factors will be cited by the prosecution if it seeks to impose the death penalty. The bill as introduced was unclear in several instances as to this requirement. It is a matter of fundamental fairness that the defendant have adequate notice as to the allegations which will be made against him, especialy when his life hangs in the balance. That notice should come before trial since trial strategy could be affected by it.

Third, four amendments clarify what demographic factors relating to the defendant and to the victim cannot be taken into account when the jury decides whether or not to recommend a sentence of death. The bill as originally introduced contained three different formulations in the same paragraph of which demographic factors cannot be considered. These amendments provide consistency. They state that race, color, religious beliefs, national origin or sex are factors that cannot be considered by the jury in making its recommendation.

Fourth, three amendments make clear that when the jury considers the mitigating factors of duress, diminished capacity, and minor participation, those factors can be considered regardless of whether those factors are present to the degree which would have constituted a defense. As originally drafted, the language implied that the jury could consider a lesser amount of duress to be a mitigating factor, but that a greater amount of duress could not be considered a mitigating factor. Clearly, the original draft was contrary to common sense.

Finally, the remaining amendments improve the original draft by prohibiting the execution of anyone who is mentally retarded, by providing for adequate representation for the defendant on appeal, by clarifying which information may be presented during the sentencing hearing, by clarifying that transcripts and exhibits may be available to the jury within the trial judge's discretion, and by clarifying that more than one aggravating factor must be present for a sentence of death to be imposed.

To focus on that last point, for a moment, it is clear after the process of going through this bill line-by-line that only aggravating factors which are listed in section (n) can be utilized in meeting the requirement that at least two aggravating factors, including one from section (n)(1), must be found by a unanimous vote of the jury, in order for the jury to recommend that a sentence of death be imposed rather than a sentence of life imprisonment without a possibility of parole or some other lesser sentence. The bill is clear that a jury's finding that a nonstatutory, that is, a nonsection (n), aggravating factor exists cannot be used to meet the requirement for the second aggravating factor. That is as it should and must be.

Again, I want to thank my colleagues for their help in including these modifications to the death penalty in the leadership package.

IRS MONEY LAUNDERING, ITEM 29

● Mr. HEINZ. Mr. President, drugs are often referred to as a cash crop for good reason—where there is drugs there is money. Drugs turn into money just as surely as day turns into night. We cannot begin to stem the flow of drugs until we stem the flow of money.

Unlike drugs that travel across our borders in boats and planes in the dark of night, money travels from country to country through electronic wire transfers during banker's hours. We know that finding drugs cleverly disguised by international smugglers is hard, but finding drug money—illegal profits that look no different than hard earned bucks—is much harder. It cannot be done without the cooperation of those who control the international money highways—the banks in our world community.

The amendment currently before us calls for international cooperation among the world's financial institutions to develop effective means to detect and report the flow of drug money. It requires the Secretary of the Treasury to begin negotiations with all foreign countries to reach agreements on the exchange of information relating to the flow of drug money. By improving our ability to follow the flow of money, we will ultimately be able to trace the flow of drugs.

Mr. President, I urge my colleagues to support this important measure. Money laundering permits drug smugglers to erase their tracks. If drug traffickers can no longer wash their money, it will not be long before they are all washed up.●

HATS OFF TO THE U.S. CUSTOMS SERVICE AND COMMISSIONER VON RAAB, ITEM 33

Mr. HELMS. Mr. President, this past Monday, William von Raab, Commissioner of the U.S. Customs Service, announced the indictment of the Luxembourg-based Bank of Credit and Commerce International [BCCI], of two of its subsidiaries, and of 80 bank officials in several countries. So far, there have been 39 arrests and more will follow.

Mr. President, late yesterday afternoon the leadership agreed to include in the leadership package a resolution I had offered commending Mr. von Raab and his associates for their outstanding work. The BCCI operation stands as a model to all agencies in the Federal Government concerned with the enforcement of our narcotics laws, and it is appropriate to take note of this fine work while we are considering the drug bill. I am deeply grateful to the leadership on both sides, and all my colleagues for their assistance in working out this agreement.

Mr. President, this resolution commends the U.S. Customs Service and those involved in this difficult and dangerous investigation for their hard work and dedication in the fight against drugs.

The resolution expresses gratitude to the undercover agents involved in the investigation who risked their lives for the sake of combating the international drug trade.

And finally, Mr. President, this resolution expresses the appreciation of the Senate to special agent in charge, Bonni Tischler, for her efforts in coordinating this operation.

The indictment of the bank is significant because it is the first time that an international financial institution has been indicted for laundering illegal narcotics proceeds. At the same time it is significant because of its broad-ranging scope, the courage and daring of the agents involved, and the brilliant imagination which conceived and brought it off.

This indictment was the result of a two-year undercover investigation code-named "Operation C-Chase." The illegal cash laundered through the BCCI during this investigation resulted from cocaine sales in major U.S. cities—including Chicago, Detroit, Houston, Los Angeles, Miami, New York, and Philadelphia—by three Colombian criminal organizations headed by Gonzalo Mora, Jr., Roberto Alcaino, and Don Chepe. Together, these organizations make up one of the world's largest money laundering syndicates.

To be effective in the war against drugs, a critical target is closing down international money laundering operations. If the criminals cannot hide their ill-gotten gains, if they cannot move their money around the world, then their ability to undertake criminal activities is severely impaired. The fight against money laundering of illicit narcotics proceeds is at the center of the war on drugs.

Operation C-Chase has paved the way for operations against international financial institutions which work with criminal organizations and facilitate their criminal activities.

Mr. President, William von Raab deserves special recognition for outstanding leadership during his tenure as Commissioner of the U.S. Customs Service since 1981. His dedication, skill and efficiency have been virtually unmatched in this administration. His tireless efforts and devotion to our country are unsurpassed. Indeed, Mr. President, the Customs Service, under the direction of Mr. von Raab, has set an extraordinary standard in our Government for law enforcement efforts in the international war against drugs.

Mr. President, I ask unanimous consent that information released by the U.S. Customs Service on October 11, 1988, concerning the investigation and the indictments be printed in the RECORD. I also ask unanimous consent that various newspaper articles on Operation C-Chase be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DOCUMENTS RELEASED BY U.S. CUSTOMS SERVICE

SUMMARY OF OPERATION C-CHASE

Operation C-Chase began in Tampa, Florida, in July 1988 after the introduction of an undercover officer into an international money laundering organization.

Undercover officers assisted in directing drug related currency collections to Colombia through Panama. As the organization's confidence in the undercover officer increased, collections became higher in value and from additional U.S. locations.

In December 1987, officials at the Bank of Credit and Commerce International (BCCI) in Panama, the bank used to pass funds to Colombia, contacted the undercover officer and arranged a meeting to suggest alternative banking methods which the undercover officer could use to avoid detection by law enforcement. The methods suggested by bank officials involved the utilization of BCCI Branches world-wide.

In establishing the money laundering operation, the undercover officer held several recorded meetings with high level BCCI officials in Miami, Paris, and London. The recorded conversations establish that bank officials knew that the money they would be laundering was drug related.

Gonzalo Mora, Jr., the conspiracy's principal money launderer, laundered narcotics proceeds from Florida, California, New York, Houston, Chicago, Detroit, and Philadelphia.

Roberto Alcaino, a principal source of the narcotics proceeds, was arrested in New York, on September 14, 1988, as he accepted a delivery of 1,125 kilos of cocaine which had been secreted in cans of anchovies.

Don Chepe, another source of drug proceeds, and an alleged direct associate of Pablo Escobar—the reputed Colombian cocaine kingpin, has also funnelled millions in drug proceeds through the BCCI money laundering mechanisms.

It is anticipated that a total of 82 individuals will be arrested for their participation in money laundering, drug related activity, and tax violation.

It is anticipated that seizures of currency, vehicles, real property and BCCI Assets will exceed $28 million.

ASSETS TO BE SEIZED

New York Office—Assets to be seized:

1. Real property—residence at Dix Hills, Long Island valued at approximately $300,000.

2. Six vehicles—valued at approximately $10,000.

Philadelphia Office—Assets to be seized:

1. Real property—a three-story row house valued at approximately $20,000.

Houston Office—Assets to be seized:

1. Three vehicles—valued at approximately $15,000.

Los Angeles Office—Assets to be seized:

1. Real property—ALCAINO's residence in Pasadena valued at approximately $1 million and furnishings also valued at approximately $1 million.

2. Real property—rental house in Pomona valued at approximately $200,000.

3. Real property—apartment complex in L.A. which is under construction valued at approximately $1 million.

4. B & C Construction Company in L.A. valued at approximately $100,000.

Tampa Office—Assets to be seized:

1. Real property—AWAN's residence in Coral Gables valued at approximately $800,000.

2. Autelles Promotions—a boxing promotion company in Miami valued at approximately $400,000.

3. Numerous luxury vehicles valued in excess of $250,000.

MONEY LAUNDERING METHODS

Several different money laundering methods have been used during the course of this investigation:

1. The cash generated from narcotics activities is picked up by UCAs in various United States cities from drug traffickers or money launderers. The cash is then either deposited to a bank in that city or is physically transported to Tampa. If the cash is deposited to a bank in the pickup city, it is then wire transferred to the u/c bank account in Tampa. When the cash is transported back to Tampa, it is then directly deposited to the u/c account at the Tampa bank. In the initial states of the operation, MORA was given blank checks which had been signed by the UCAs. After a cash pickup occurred, MORA would fill in the amount on the check and either give the check to the owner of the funds or sell the check on the currency "black market". About 75% of the funds laundered in this case were ultimately negotiated in the form of checks drawn on the u/c accounts. The remaining 25% of the funds were wire transferred from the u/c accounts to the accounts of targets at MORA's direction.

2. Beginning in October 1987, there were occasions when the funds on deposit in the Tampa u/c bank account were wire transferred to a u/c account located at BCCI in Panama. This account was owned by a u/c Panamanian corporation. Once the funds were deposited to this Panamanian account, MORA would fill in the amount on blank signed checks drawn on this account which he had received from the UCAs. MORA would then either give the check to the owner of the funds or sell the check on the "black market".

3. Starting in December 1987, a new method was initiated at the suggestion of BCCI. After the funds were on deposit in the Tampa u/c bank account, they were wire transferred via a New York bank to a foreign bank. The UCAs would meet with a BCCI officer in Miami and sign documents which reflected a loan being made by BCCI, Panama, guaranteed by the funds which had been wired to the foreign bank and placed in a 90 day Certificate of Deposit. The bankers have agreed to conceal these documents to the extent possible. The loan proceeds from BCCI, Panama, were transferred to a u/c Panamanian bank account at BCCI. MORA would then negotiate the signed checks for that account which he had received from the UCAs.

4. Subsequent to the May 1988 trip made by the UCAs for meetings with European officials of BCCI, a different method is being put into place. The new method involves various combinations of nine corporations which have been established in four different haven countries. In the most recent transaction, after the funds were on deposit in the u/c bank account in Tampa, they were wire transferred through New York to BCCI in Luxembourg, from there to BCCI in London and placed in a Certificate of Deposit. The CD was used to generate a loan from BCCI in Nassau. The proceeds of this loan were wire transferred back to the u/c bank account in Tampa. These loan proceeds, at the direction of MORA, were then wire transferred to an account in Uruguay. The account in Uruguay belonged to the owner of the funds. At the direction of the targets in this investigation, laundered transactions will pass through various combinations of the corporations and bank accounts which have been established. Funds will be placed in various branches of BCCI and loans will be generated out of various other branches in other countries. The targets have directed that the transactions be handled in different combinations so that a pattern does not develop.

5. The principal money launderer in this case, MORA, the key suppliers of drug proceeds, ALCAINO and Don CHEPE, and the officials of BCCI have been told that the UCAs represent numerous legitimate businesses in the United States. These businesses include hotels, restaurants, fish markets, and similar cash generating operations. The UCAs have claimed that they have a system where they can absorb up to $20 million per month in drug proceeds by depositing the cash into bank accounts associated with these legitimate businesses.

BANK OF CREDIT AND COMMERCE INTERNATIONAL SA (BCCI)

BCCI is a major international financial institution. It is a wholly owned subsidiary of BCCI Holdings (Luxembourg) SA. The bank provides commercial banking and related services in 72 foreign countries and nine United States cities. The corporate headquarters and Board of the bank are based in Luxembourg. The Operations Center of the bank is based in London. The bank was founded and is owned principally by individuals from Saudi Arabia. The holding company is closely associated with a number of other entities and owns an interest in banks throughout the world.

To date, nine high level officers of the bank have been documented in criminal conspiracies which involved the bank and six of those officers have documented knowledge of the narcotics source of the funds that the bank is laundering. These officers include Branch Managers, Country Managers, Corporate Managers and Directors of Continental Divisions. They are located in the United States, Panama, London, and Paris.

A total of more than $4.5 million has been laundered via a certificate of deposit/loan mechanism established by the bank since December 1987. In excess of $2 million has been laundered through the bank since October 1987. The transactions have been conducted for the clear purpose of increasing the bank's assets and profits. No direct remuneration has been paid to any of the bank officers related to their criminal acts. The bank earns at least 1.5% on all funds laundered.

Bank officers have knowingly received drug proceeds and agreed to conceal transactions to further a criminal enterprise. To that end, the overt acts committed by the officers include establishing accounts, wire transfers, creation of loan documents, failure to create certain documents and records normally required. Several of the bank officers have emphasized to the UCAs, with full knowledge of the narcotics source of their client's funds, that the UCAs maximize the deposit of these funds as of June 30, 1988. Bank officers have stated that the purpose for this is to enhance the bank's financial statements and it's position in the financial market. To that end, the UCAs caused $5 million of fully recoverable government funds to be deposited in the bank by that date.

PRINCIPAL DEFENDANTS OF BCCI

(1) BCCI Holdings (Luxembourg) S.A.—This is a Luxembourg based holding company which owns all or part of numerous banking and financial service corporations throughout the world. There are related offices in 72 countries.

(2) Bank of Credit and Commerce International S.A.—This Luxembourg based corporation owns banking offices in the United Kingdom, the United States other than Florida, and many other countries.

(3) Bank of Credit and Commerce International (Overseas) Limited—This Grand Cayman based corporation owns banking offices in Tampa, Boca Raton, Miami, Panama, Bahamas, Colombia, France, and elsewhere.

(4) Amjad Awan—Awan was until mid September 1988, the Assistant Director of the Latin American Regional office of the bank and resides in Miami. This office covers the offices in Florida, Panama, Bahamas, and Colombia.

(5) Syed Aftab Hussain—Hussain is the Assitant Country Manager of the Republic of Panama offices of the bank.

(6) Akbar A. Bilgrami—He was until mid September 1988, the Director of the Latin American Regional office of the bank. Bilgami resides in Miami.

(7) Nazir Chinoy—Chinoy is the Director of the Regional office of the bank which covers France and parts of Africa. He is based in Paris.

(8) Sibte Hassan—Hassan is the Assistant Director of the same office as Chinoy.

(9) Ian Howard—He is the Country Manager of France for the bank. Howard is based in Paris, France.

(10) Asif Baaka—Baaka is the Director of the Corporate Unit for the bank in the London office.

(11) Saad Shafi—Shafi is the Country Manager for the Bahamian branches of the bank. He is based in Nassau.

(12) Iqbal Ashraf—Ashraf is the Branch Manager of the Los Angeles office of the bank.

(13) CAPCOM Financial Services Limited—This corporation is based in London with affiliated offices in Chicago and Miami and allegedly manages an investment portfolio in excess of $450 million.

(14) S. Z. A. Akbar—Akbar is the director of CAPCOM and is based in London.

ENFORCEMENT ACTIONS TO BE TAKEN AGAINST BCCI

Application has been made for a search warrant to search the Miami Branch of BCCI for records reflecting transactions conducted by the subjects of this investigation.

Application is being made for a search warrant to search the Los Angeles Branch of BCCI for records reflecting transactions conducted by the subjects of this investigation.

Restraining orders will be placed on the assets of all nine domestic locations of BCCI. The U.S. Attorney's Office Tampa will issue those restraining orders to prevent removal of any BCCI domestic assets.

British authorities will search the London Corporate Headquarters of BCCI.

French authorities will search the Paris Regional Office of BCCI. The Paris Office is known to the undercover agent as an operational control center of BCCI.

Several accounts in the Panamanian Branch of BCCI still hold substantial amounts of laundered funds. Due to the political climate between the U.S. and Panama, we are unable to effect seizure of those funds.

Approximately 60 domestic bank accounts will be seized for violations of 21 USC 881 at various locations throughout the U.S.

On Tuesday, October 11, 1988, approximately 40 domestic banks will be served with subpoenas for records relating to this investigation.

THE GONZALO MORA ORGANIZATION

Gonzalo Mora, Jr.

In May 1986, Gonzalo Mora, Jr. requested that a cooperating individual open two bank accounts through which drug proceeds could be laundered.

Intelligence gathered at the initiation of the investigation indicated that the Mora organization was involved in smurfing, i.e. utilizing individuals throughout the United States to purchase cashier's checks under $10,000 and open bank accounts to which cash in increments under $10,000 was deposited.

The cashier's checks and/or bank checks were ultimately physically transported from the United States to Colombia or Panama where they were negotiated.

In the instant case, an individual was directed by Mora, Jr. to mail signed blank checks from two accounts to Mora, Jr. in Colombia. Subsequently, cash was provided to undercover agents, initially by Gonzalo Mora, Sr. and later by couriers. The UCA was directed to structure his deposits of the currency to the bank accounts in amounts under $10,000. Checks drawn against those funds were deposited to accounts throughout the world, but generally in Panama. To date, approximately 129 bank accounts, 65 foreign and 64 domestic, have been identified as having received the proceeds of narcotics trafficking in the United States. It should be noted that four of the accounts to which C-Chase funds were initially deposited were seized in Panama as a result of Operation Pisces.

In December 1986, Gonzalo Mora, Jr. traveled from Medellin, Colombia to Tampa, Florida at the invitation of UCAs. At meetings in Tampa which were recorded by both video and audio means, Mora, Jr. explained very frankly that the source of funds retrieved thus far by the UCAs was cocaine trafficking in the United States. Agreements were reached that Mora, Jr. and the UCAs would become partners, equally sharing a percentage of all moneys laundered. Mora, Jr. would provide the clients and the UCAs would provide the retrieval of the cash and the means through which it would be available to the Colombian owners of the funds.

This process continued with Mora, Jr. obtaining new clients through his own initiative and the reputation being built by the reliability of the UCAs in the United States.

In April 1987, Mora Jr. introduced the UCAs to one of the clients he had acquired, Roberto Alcaino. Between January and April 1987, the UCAs had collected $1.5 million attributable to Alcaino's organization. A relationship quickly developed between Alcaino and the UCAs which resulted in Alcaino openly discussing his involvement in trafficking in cocaine. The UCAs assisted Alcaino in the acquisition of assets in the United States i.e., a $750,000 apartment building and a $500,000 home improvement.

In October 1987, Mora, Jr. became associated with Javier Ospina, who according to Mora, Jr., had close ties to the hierarchy of the Medellin cartel. The agents soon began receiving large sums of cash in Detroit and Houston which was a direct result of Ospina's association with an individual known as "Chu-Cho" (later determined to be a member of the "Don Chepe" organization which purportedly launders funds on behalf of the Escobars).

In May 1988, a repesentative of the Don Chepe organization, Rudolf Armbrecht, met with UCAs in Europe to solidify plans to handle a larger amount of this organization's money and invest a portion of it in assets controlled, at least in part, by the UCAs.

Gabriel Jaime Mora Aka "Jaime"

In May 1986, Gonzalo Mora, Jr. directed a cooperating individual to receive guidance from his brother, Jaime, as to the establishment of bank accounts to receive drug proceeds. In July 1986, during consensually monitored meetings with Jaime and UCAs in Miami, he spoke openly about his and his family's activities with major drug sources and his knowledge of the Bank Secrecy Act. He stated that he was responsible for the Los Angeles cocaine movement and specifically referred to a 450 kilo cocaine seizure in Miami that affected his associates.

In April 1987, Jaime was recruited to become an integral member of the UCAs money laundering organization with the caveat that he cease his activities involving cocaine distribution. Jaime then replaced Mora, Sr. as the intermediary between the UCAs and the couriers and on several occasions delivered currency himself. Subsequently, Jaime was named as an unindicted co-conspirator in the Operation Pisces indictments while he was in Colombia. He then returned for a short period of time to the United States, ultimately removing himself from the money laundering scheme and returning to Colombia where he is believed to be currently residing. It was recently learned through Gonzalo Mora, Jr. that Jaime is acting as the courier in Colombia between "Don Chepe" and Gonzalo Mora, Jr.

Gonzalo Mora, Sr.

Mora, Sr. is the father of Gonzalo and Gabriel Mora and currently resides in Medellin, Colombia. Mora, Sr. was the original United States coordinator of the collections of currency for the Mora organization initially based in Miami and then Los Angeles. Mora, Sr., on eleven (11) separate occasions delivered a total of $1.1 million dollars to UCAs in Miami and Los Angeles. During direct conversations with the UCAs, Mora, Sr. has shown that he has direct independent knowledge that the currency he has delivered is the proceeds of cocaine distribution. Mora, Sr. was directly responsible for the recruitment of clients for the Mora organization, including Roberto Alcaino. It is believed that Mora, Sr. is not currently playing an active role in the Mora organization.

THE ALCAINO ORGANIZATION

Roberto Alcaino

During April 1987, the UCAs, via Mora, Jr.'s introduction, met Roberto Alcaino in Los Angeles, California. Alcaino, who maintains a jewelry business, Taffari Jewelers, in Los Angeles has significant property holdings in Los Angeles and New York. Alcaino has been responsible for cocaine proceeds received by UCAs in New York, Chicago, and Los Angeles. Probable cause to search and seize numerous houses/locations in New York, Chicago, and Los Angeles have been developed. Through Alcaino's statements and actions, evidence supports the seizure of:

Alcaino's Los Angeles home and furnishings (worth over $2 million)

Alcaino's office furnishings and inventory in Los Angeles (worth over $400,000)

Alcaino's two Rolls Royce automobiles in Los Angeles

Alcaino's two Mercedes sports coupes in Los Angeles

Alcaino's apartment building in Los Angeles (worth approximately $750,000)

Alcaino's fight promotion business and bank accounts in Miami (value unknown)

Alcaino's automobile in New York

Alcaino's worker's car and property in New York (Joaquin Casals)

The construction business of Alcaino's Los Angeles associate, Bob Popesco (value unknown)

A business that controls several hundred pay telephones in the Los Angeles area.

According to Alcaino he is involved in shipping cocaine to the United States via two methods, one which causes it to be received in California and a second method (newly designed) to smuggle cocaine into New York and Europe. The system involving Los Angeles is scheduled to be discontinued in the near future. The New York smuggling method was uncovered and disrupted by the arrest of Alcaino on September 14, 1988.

Joaquin Casals

Casals is identified as working directly for Alcaino. He directs the courier operations in Chicago and New York and on nine (9) occasions has delivered a total of $2 million to UCAs in those cities. Casals has openly shown through direct conversation with the UCAs his independent knowledge of the source of the funds. Casals and Alcaino have both depicted to UCAs Casals' role as Alcaino's lieutenant and enforcer. Casals has directly stated to the UCAs how, through violent acts, he keeps the couriers in line if they are suspected of stealing from the currency that they are to deliver.

Felix Zabala

Felix Zabala Aka Tuto, is a nationally well-known professional fight promoter. During recorded conversation, Zabala has outlined his involvement in the distribution of cocaine and the collection of proceeds thereof, on behalf of Alcaino. The UCAs have laundered $50,000 in drug proceeds for Alcaino through Alcaino and Zabala's joint fight promotion business, Antillas promotions.

Juan Tobon

During March 1988, Alcaino introduced the UCAs to a major drug smuggler, Juan Tobon. Toban has independently informed the UCAs during recorded conversations about his involvement in the illegal transportation of millions of dollars of drug proceeds. Furthermore, he has informed the UCAs of his direct association and involvement with Pablo Escobar, Jorge Ochoa and John Nasser, Tobon has offered to put the UCAs to work with the aforementioned drug czars using Tobon as an intermediary. Tobon claims to have grown up with Escobar and Ochoa and has offered to ultimately put the UCAs in direct contact with Escobar, Ochoa and Nasser. The substantial intelligence retrieved concerning Tobon indicates that he has the connections and capabilities he has attested to.

Robert Popesco

Alcaino has identified a Los Angeles contractor/restaurant owner (Bob Popesco) as a member of his drug group. Alcaino claims to have previously laundered drug proceeds through Popesco and Popesco's businesses. Popesco owns B & C Construction as well as Catalinas Seafood Grill in Hollywood, California. Alcaino has asked the UCAs to launder $750,000 in drug proceeds with Popesco in connection with the construction of a Los Angeles apartment building which Popesco is building for Alcaino. Popesco allegedly holds title, as a nominee, to several pieces of Los Angeles property for Alcaino. To date, Alcaino has directed the UCAs to transfer $33,000 in drug proceeds to Popesco's construction company. Alcaino admits to independently sending $250,000 in drug money to B & C Construction.

Gloria Alcaino

Gloria Alcaino is identified as the wife of Roberto Alcaino and is considered to manage the business affairs of Tiffari Jewelers, which is alleged to be a front controlled by Roberto Alcaino. Gloria Alcaino, has delivered in excess of $255,000 to UCAs. It has been circumstantially shown through conversations of Roberto Alcaino's with the UCAs and activities of Gloria Alcaino that she knows the source of the funds to be the proceeds of cocaine distribution. Since Roberto Alcaino's arrest on September 15, 1988, Gloria Alcaino has been directing the collection of drug proceeds on behalf of her husband.

THE DON CHEPE ORGANIZATION

Don Chepe

The undercover agents (UCAs) have received almost $18 million in drug proceeds from members of the Don Chepe organization in Detroit, Houston and New York. Of the funds handled on behalf of Don Chepe's group by the UCAs, $1 million was held in a fiduciary account independently controlled by both the UCAs and a Don Chepe group member. In addition, roughly $3.5 million was laundered by BCCI via their counterbalancing loan system and is also potentially seizable.

In May, the UCAs traveled to Europe where they established a variety of corporations and bank accounts to facilitate the laundering of drug proceeds. In addition, Rudolph Armbrecht and Santiago Uribe, representatives of the Don Chepe organization met with the UCAs and were informed that Don Chepe works directly for Pablo Escobar and that their group would agree to initiate a test in mid June with the UCAs. During the test period, the UCAs are receiving from $5-9 million a month, with the understanding that they will also receive a portion of these funds to be placed in Certificates of Deposit. After the test period, a total of approximately $100 million will be placed through the u/c corporations in Certificates of Deposit. The accumulation of these CD's will occur at the same time that additional large amounts of drug proceeds are laundered via the BCCI counterbalancing loan system—thus adding to the total seizable assets.

As a result of the UCAs successfully forming corporate bank accounts to hold drug profits for Don Chepe, other drug/money laundering groups are and have become aware of the UCAs capability in this area. Within three weeks of forming the account for Don Chepe, another major smuggler approached the UCAs through Gonzalo Mora, Jr. to form a corporation and bank account for a separate organization. Although unexpected by the UCAs, Don Chepe's representative (Armbrecht) predicted that the UCAs would be highly sought after by Colombian groups to perform corporate/bank work when word got out within the Colombian smuggling groups concerning the UCAs capabilities in this area. According to Armbrecht, the UCAs are considered to have the strongest capabilities in Europe within the money laundering community.

The $100 million intended for placement by Don Chepe is identified by Rudolph Armbrecht as "insurance money" needed in a liquid state. Armbrecht claims the $100 million to be an insignificant amount. Statements by other Don Chepe associates, including Javier Ospina (as well as pick ups to date) support Armbrecht's contention that the $100 million is relatively insignificant. By Ospina's and Armbrecht's statements, Don Chepe coordinates a collection of approximately $50 million in drug proceeds per month throughout the United States. Don Chepe's money is collected in several cities in addition to those from which the UCAs have received funds. These additional cities include at least Chicago, Philadelphia, and Los Angeles.

Rudolf Armbrecht

Armbrecht is a trusted advisor to Don Chepe, and assists in the importation of large quantities of cocaine from Colombia to the United States. He has an uncle who is the manager of the Commerce Bank in Hanover, West Germany, through whom Armbrecht has deposited at least $14 million in drug proceeds for associates of Don Chepe.

Santiago Uribe

Uribe is an attorney who is an advisor to and works with Don Chepe and associates. He is claimed to be an extremely high ranking member of the group by Mora, Jr. During the course of the May 1988 trip to Europe, the UCAs met Santiago Uribe as well as Rudolf Armbrecht. Uribe stated that he was to advise Armbrecht relative to the UCAs' proposal to launder large amounts of Don Chepe's money. To that end, Uribe, is conjunction with Armbrecht, attended several meetings in Paris wherein the UCAs proposal was reviewed.

Uribe and Armbrecht gave specific instructions to the UCAs relative to the record keeping and operation of a company set up by the UCAs on behalf of Armbrecht that was to be and has been used relative to the laundering of Don Chepe's funds through BCCI. Uribe and Armbrecht met with BCCI banker Chinoy who, based on specific conversations with the UCAs, knew that these individuals were involved with the cocaine trade. Pursuant to their request, Chinoy reviewed with them the financial stability of BCCI and agreed to follow their instructions in the event that a conflict arose with instructions received from the UCAs.

Moreover, Uribe told the UCAs that after leaving Paris he and Armbrecht would be depositing $4 million of cocaine proceeds in the Commerce Bank in Hanover, West Germany and that this bank was managed by Armbrecht's uncle. Armbrecht, in Uribe's presence, told the UCAs that in addition to meeting them, Uribe and he were in Paris to open bank accounts on behalf of three (3) other Colombians who were associated with Don Chepe.

Furthermore, Armbrecht and Uribe requested that UCAs murder Ospina who, in Uribe and Armbrecht's opinion, was a liability because he was recently found out by them to be an alcoholic and a homosexual. Armbrecht and Uribe considered these two characteristics to be weaknesses that could lead to compromise. They also were upset with Ospina because he had kept the existence of Mora and the UCAs from Don Chepe, Armbrecht and himself thereby leading them to believe that Ospina, as opposed to Mora and the UCAs, were responsible for the laundering of Don Chepe's funds.

Javier Ospina

Javier Ospina is an associate of Don Chepe. According to Mora Jr., Ospina made arrangements for Mora, Jr. to launder funds for an individual identified as Chu-Cho. In approximately December 1987, Mora, Jr. negotiated with the UCAs a four-way split of the laundering fees earned as a result of Ospina's contacts: 2.8% each to Mora, Jr. and the UCAs; 2% to Ospina; 0.4% allegedly paid to BCCI.

During the March 1988, undercover trip to Costa Rica, the UCAs met with Mora, Jr. and Ospina. Ospina told the UCAs that he was a representative of Chu-Cho.

Summary of funds laundered by operation C-chase

total collected (102 transactions)	$32,700,000
Fees earned by UCAs	945,000
Total laundered through BCCI	14,300,000
Total invested in United States	464,000
Total invested in CDs with BCCI	4,500,000
Total laundered	31,700,000

LOCATIONS OF CURRENCY PICKED UP FOR LAUNDERING

City	Number of currency pickups	Total amount
New York	34	$12,140,152
Chicago	21	2,320,136
Detroit	10	8,004,115
Houston	5	5,966,490
Miami	10	1,317,980
Los Angeles	18	2,925,791
Philadelphia	1	93,000

INDIVIDUALS TO BE ARRESTED

Tampa—34

Gonzalo Mora, Jr., Head of International Money Laundering Organization.

Gabriel Jaime Mora, Supervisor of Collections/Couriers Cocaine Distributor.

Gonzalo Mora, Sr., Supervisor of Collections/Recruiter/Importation Supervisor.

Santiago Suarez, Assistant to Mora.

John Doe a.k.a. "Don Chepe", Major Cocaine Trafficker/Supplier—Owner of Funds.

John Doe a.k.a. "Chu-Cho", Coordinator of Collections of Money.

Rudolph Armbrecht, Confidant of Don Chepe.

Javier Ospina, Broker Between Mora and Chu-Cho.

Santiago Uribe, Attorney for Don Chepe.

Argemiro Salazar, Money Broker.

Luis Llanos, Money Broker.

Juan Guillermo Vargas, Money Broker.

Roberto Baez-Alcaino, Cocaine Trafficker/Collector.

Joaquin Casals, Collections Supervisor/Cocaine Distributor.

Felix Zabala, Cocaine Distributor/Collector.

Juan Tobon, Financier.

Carlos Alberto Diaz-Gomez, Coordinator/Importations.

Gloria Alcaino, Assistant.

Hector Morales, Courier/Distributor.

Amjad Awan, Assistant Director, Latin American Region, BCCI.

Syed Aftab Hussain, Assistant Country Manager, Panama.

Akbar A. Bilgrami, Director, Latin American Region.

Nazir Chinoy, Regional Director (France & Part of Africa).

Sibte Hassan, Assistant Director (Same Region as Chinoy).

Ian Howard, Country Manager, France.

Asif Baakza, Director, Corporate Unit London.

Saad Shafi, Country Manager, Bahamas.
Iqbal Ashraf, Branch Manager, Los Angeles.
S.Z.A. Akbar, Founder/Director CAPCOM, London.

CORPORATIONS

BCCI Holdings (Luxembourg).
BCCI International S.A.
BCCI International (Overseas) LTD.
CAPCOM Financial Services LTD.

Chicago—16

Juan Castillo, Counter—Surveillance.
Islan Durade, Distributor/Mule.
Marco Granada, Distributor/Mule.
Fresnedy Grizales, Mule/Interpreter.
Janeth Grizales, Mule/Interpreter.
John Grizales, Mule/Interpreter.
Ingrid Lampkin, Assistant.
Leana, Mule.
Luis, Mule.
Pete, Mule.
Jorge Suarez, Chicago Boss.
Salvador Tafolla, Courier.
Luis Alberto Gonzales, Courier.
Ramiro Grizales-Fajardo, Courier.
Silvana Yunez, Courier.
John Doe Aka Picaso, Courier.

Detroit—12

Rene Arias, Distributor.
Aurora Arroyo, Assistant.
Alberto Castro—arrested, Truck Driver.
Ignacio Forte—arrested, Truck Driver.
Norberto Giraldo, Distributor/Courier.
Gloria Gomez—arrested, Distributor.
Basan Jarges, Distributor.
Eduardo Jimenez—arrested, Distributor.
Jaime Giraldo—arrested, Supervisory Distributor/Collectors Supervisor.
Orlando Jimenez, Distributor/Courier.
Robert Golden, Distributor/Courier.
Basil Mezy, Distributor/Courier.

Houston—4

Victor Alzate, Distributor/Courier.
Rafael Forero, Distributor.
Cenelia O'Campo-Perez, Courier.
Bibion Osorio, Supervisor Distributor/Courier.

New York—16

Antonio Nunez, Courier.
Pedro Charria, Courier.
Freddy, Courier.
Pancho, Courier.
James, Courier.
Luis Garcia, Courier.
Gladys Dejesus, Mid-level Manager/Courier.
Altagracia Burgos—Michael, Courier.
Juan Perez, Courier.
Abel Riveria, Courier.
Luis Raimez, Courier.
Gustavo Usuga, Courier.
John Doe Aka, German Aka Astley Dixon, Courier.
Jane Doe Aka Beatrice, Courier.
Alicia Valencia, Courier.
John Doe Aka Arturo, Courier.

Philadelphia—3

John Jairo, Supervisory Distributor/Courier.
Roberto Alcaino, Cocaine Importer.
Hector Torres, Courier.

New York Office

Assets to be seized:
1. Real property—residence at Dix Hills, Long Island valued at approximately $300,000.
2. Six vehicles—valued at approximately $10,000.

Philadelphia Office

Assets to be seized:
1. Real property—a three-story row house valued at approximately $20,000.

Houston Office

Assets to be seized:
1. Three vehicles—valued at approximately $15,000.

Los Angeles Office

Assets to be seized:
1. Real property—Alcaino's residence in Pasadena valued at approximately $1 million and furnishings also valued at approximately $1 milion.
2. Real property—rental house in Pomona valued at approximately $200,000.
3. Real property—apartment complex in L.A. which is under construction valued at approximately $1 million.
4. B & C Construction Company in L.A. valued at approximately $100.00

Tampa Office

Assets to be seized:
1. Real property—Awan's residence in Coral Gables valued at approximately $800,000.
2. Autelles Promotions—a boxing promotion company in Miami valued at approximately $400,000.
3. Numerous luxury vehicles valued in excess of $250,000.

[From the New York Times, Oct. 12, 1988]

BANK IS CHARGED BY U.S. WITH MONEY-LAUNDERING

(By Jeffrey Schmalz)

TAMPA, FLA., Oct. 11.—The Federal Government charged today that an international bank holding company has conspired with cocaine dealers to launder millions of dollars in illegal drug money in a network that reached from the United States to Europe to the Medellin drug cartel in Colombia.

Federal officials said 85 people in seven United States cities had been named in indictments in the case, nine of them executives of the bank, the Bank of Credit and Commerce International S.A. and its holding company, BCCI Holdings.

The officials said that BCCI, a Luxembourg-based concern with assets of more than $20 billion and offices in more than 70 countries, was the first financial institution to be indicted for laundering money. Previous cases have involved officials of banks but not the banks themselves.

The indictments came after a two-year undercover operation in which Customs Service agents posed as expert on money laundering, acting as intermediaries to transfer $14 million between drug dealers and the bank. Eleven of those indicted were arrested Saturday might after coming to Tampa for what they thought was going to be the wedding of two friends. They had even received engraved invitations.

"We invite you to be with us as we begin our new life together," the invitations had read. But the friends had, in fact, been among the undercover agents involved in the case for two years. The 11 were seized as they entered what they had expected to be a bachelor party before the wedding.

A Miami-based lawyer for BCCI, David Patrick Roe, said the bank wanted to study the indictment a day or so before commenting. He added, however, that "the bank has at all times attempted to conduct itself in a manner consistent with United States laws, rules and regulations."

Asked if that amounted to a denial of the charges. Mr. Roe said: "I'm not saying we admit or deny. Please don't put denial or anything like that in our statement."

DETERRENT EFFECT HOPED FOR

Although only BCCI was named in the case, Customs officials said they did not believe it was uncommon for banks to launder money for drug dealers—that is, to find ways to disguise the flow of cash to make it more difficult to link to criminal activities. The officials clearly hope the indictment of an entire institution will be a strong deterrent.

The Commissioner of the United States Customs Service, William Von Raab, used strong terms in speaking of banks and drug trafficking, saying at one point, "For some international banks, their sleaze factor is higher than their interest rates."

In an hour long news conference here that included representatives of the Custom Service, the Federal Bureau of Investigation, the United States Attorney's office and the Internal Revenue Service, officials painted a portrait of a drug cartel based in the third world—in Medellin, Colombia—but drawing on the ingenuity of the banking capitals of the United States and Europe and transmitting millions of dollars between continents by wire, computer and facsimile machine.

Custom officials said they began their undercover plan—called Operation C-Chase, for "currency chase"—in July 1986, when they portrayed themselves as professional money launderers after hearing on the street that BCCI would launder money. The indictments say they worked primarily with representatives of the Medellin cartel, finding ways to camouflage the proceeds of cocaine sales in New York City, Chicago, Detroit, Houston, Los Angeles, Miami, and Philadelphia. Many of the 85 indicted, not all of whom were Americans, were seized in some of those area on drug trafficking, not money laundering charges.

CERTIFICATES OF DEPOSIT BOUGHT

According to the indictments, after receiving the money from the undercover agents, BCCI shifted it by wire to branches in France, Panama, Uruguay, the Bahamas, Luxembourg and Britain, where it was used to purchase certificates of deposit.

Bank officials, the indictments allege, then created loans at other branches and permitted the drug traffickers to withdraw the funds. Officials said the bank repaid the loans with the funds in the certificates of deposit.

The point of the maneuvering, the court papers charge, was to keep the money shifting from country to country and account to account to make it difficult to trace. About $14 million was laundered by BCCI during the undercover operation. Customs officials said.

The officials said a total of $32 million had been laundered but they did not account for the remaining $18 million. They said further charges against other individuals might be brought. Asked if they thought the bank had been involved in laundering much more money than that involved in the undercover operaton. Federal officials refused to comment.

SUGGESTING A BETTER WAY

At first, the undercover agents were supposed to be the only experts on money laundering, Mr. Von Raab said, with the banks merely serving as the agent. But by the end of the undercover operation, he added. "The bankers were even suggesting a better way."

After making the route through certificates of deposit and loans according to the indictments, most of the laundered money was deposited in the bank accounts here in Tampa, where BCCI had checks already presigned by members of the Medellin cartel. That is why most of the indictments were issued here.

The bank officials said, then moved the checks through banks in various countries—including the United States, Panama, and Colombia—to get the money ultimately back to the Colombian drug chieftains.

Several times, Federal officials emphasized that some of the money had traveled through banks in Panama.

NORIEGA DEALINGS CITED

During Congressional hearings on Gen. Manuel Antonio Noriega, the Panamanian leader indicted but never tried in the United States on drug-smuggling charges, it was disclosed that there were Noriega dealings with the Bank of Credit and Commerce branch in Panama. Asked if there was a Noriega link in any way to the latest case here, Mr. Van Rabb said: "This is not a one-day story. We're going to be looking at many elements."

Money laundering is punishable by a maximum term of 20 years in prison and a fine of $500,000 or twice the value of the property laundered, whichever is greater. BCCI, as an institution, officials said, would face a maximum fine of $28 million.

SECRETIVE DEALINGS IN 1986

Today's charges do not mark the first time the bank has been accused of secretive dealings, in 1986, in the middle of the Iran-contra affair, Adnan M. Khashoggi, the Saudi businessman and the arms dealer, used the Monte Carolo office of the Bank of Credit and Commerce to transfer $12 million to an arms dealer for the purchase of weapons for Iran.

The bank, which maintains close ties to the former Saudi officials, is ranked by American Bankers, an industry journal as the 327th largest in the world, with deposits in 1987 of $7.25 billion. The bank, which primarily serves corporations and big investors, has offices in the United States in New York, Los Angeles, Washington, Miami, Tampa, and Boca Raton.

The holding company was formed under the laws of Luxembourg, whose regulation and supervision of banks are less restrictive than in other European countries.

[From the Los Angeles Times, Oct. 12, 1988]

DRUG MONEY STING NETS GLOBAL BANK—OFFICERS, 75 OTHERS INDICTED IN SCHEME TO LAUNDER FUNDS

(By Paul Houston)

WASHINGTON.—An international bank, nine of its officers and 75 others have been indicted on charges of laundering more than $32 million in cocaine proceeds for the infamous drug cartel based in Medellin, Colombia, federal authorities announced Tuesday.

The government also said that it had subpoenaed records from about 40 U.S. banks in what could become a broad expansion of the investigation.

"This is the most important money laundering case in U.S. Customs history,' Customs Commissioner William von Raab said. The indictments culminated a two-year sting operation that included the arrest Saturday night of nine key suspects lured to a fake wedding in Tampa, Fla.

OFFICES IN 72 COUNTRIES

The Bank of Credit and Commerce International, headquartered in Luxembourg with offices in 72 countries, was indicted on charges that it had helped launder about $14 million through an elaborate system of money transfers involving branches in the United States, France, England, Panama, Uruguay, the Bahamas, and Luxembourg.

"It is the first time an entire international financial institution and its top managers have been indicted," Von Raab said at a news conference with Justice Department officials in Tampa.

David Rowe, an attorney for the bank in Miami, said that "we haven't had a chance to absorb the contents of the indictments. But the bank has indicated to us that it has always attempted to abide by the laws, rules and regulations of the United States."

SAUDI ARABIAN OWNERS

The bank, owned principally by Saudi Arabians, is the world's seventh-largest privately held financial institution, according to the trade journal American Banker. Most major banks are publicly held. The institution ranks No. 326 in deposits and No. 378 in assets among all the world's banks, according to American Banker.

Indictments returned by a federal grand jury in Tampa named high-level managers of the bank in Los Angeles, Miami, London, Paris, Nassau and Panama City.

Also indicted were 75 alleged drug traffickers and money launderers who the government said had worked unwittingly with undercover agents to funnel cocaine proceeds to Medellin drug lords through the Bank of Credit and Commerce and other entities. Forty of the 84 indicted have been arrested.

Roberto Baez-Alcaino, 51, a Los Angeles jewelry store owner, was accussed of heading a Medellin-affiliated group that smuggled cocaine into California, New York and Europe. He was arrested in Philadelphia last month on charges of secreting 2,500 pounds of the drug in anchovy cans. His wife also has been indicted.

On Tuesday, the government seized Alcaino's Pasadena home and furnishings worth more than $2 million, his jewelry business inventory worth more than $400,000, two Rolls Royce and two Mercedes cars, a $750,000 apartment building, a pay phone business and a fight promotion business and bank accounts in Miami.

If Alcaino is convicted, the government will seek forfeiture of those assets.

Gonzalo Mora Jr., 33, of Colombia, was charged with running a Medellin-based organization that laundered narcotics proceeds from California, Florida, New York, Houston, Chicago, Detroit and Philadelphia.

Mora, three Alcaino associates and five officers of the Bank of Credit and Commerce were invited to Tampa for the "wedding" of two undercover Customs agents last weekend and wound up being arrested on the way to a preliminary "bachelor party" for the "groom".

TAKEN TO FAKE PARTY

Customs spokerman Michael Sheehan said that the suspects were put up at a resort hotel, taken to the fake party in limousines and then nabbed as they stepped off elevators.

According to Sheehan, one of the startled suspects exclaimed: "This is like something out of a movie. I didn't think you guys did this sort of stuff."

According to the indictment, the sting began in July, 1986, when undercover agents represented themselves as professional money launderers and penetrated the Mora organization.

In December, 1987, officials at the Bank of Credit and Commerce in Panama allegedly proposed using the bank's branches for a worldwide laundering operation. Undercover agents taped meetings in Miami, Paris and London, establishing that "bank officials knew that the money they would be laundering was drug-related", the government charged.

Under the alleged principal scheme, bank officials placed drug money in a certificate of deposit at one of several branches abroad; next they created a loan at another branch and permitted the drug traffickers to withdraw the funds; then the bank repaid the loan with money in the certificate of deposit.

REPORTS ON LANCE, CARTER

The government froze all the bank's domestic assets while federal and foreign agents searched bank offices in the United States, Paris and London.

Georgia banker Bert Lance, who served as budget director under former president Jimmy Carter, confirmed a published report that he and Carter were close to the bank's Pakistan president, Agha Hasan Abedi. But Lance said that he knew none of the indicted officers and had no knowledge of money laundering. He also denied a June 13 Forbes magazine report that he was a compromise candidate of the bank's feuding Saudi and Pakistani shareholders to manage the bank.

[From the Washington Times, Oct. 12, 1988]

FLORIDA STING NETS NORIEGA'S U.S. BANKER

(By Mary Belcher and David Braaten)

Federal agents in Florida have arrested a man who may be Panamanian strongman Gen. Manuel Antonio Noriega's personal banker in a massive sting operation aimed at drug-money laundering.

Amjad Awan, 41, assistant director of the Latin American division of the Bank of Credit and Commerce International in Miami, was described by congressional and law enforcement sources as one of Mr. Noriega's closest money men.

Mr. Awan was one of 34 defendants charged with drug-related money laundering in three federal indictments unsealed yesterday in Tampa, Fla. In all, more than 80 persons were indicted in six U.S. cities—Tampa, New York, Chicago, Detroit, Philadelphia and Houston. Additionally, five other warrants were issued in Miami, Los Angeles, London and Paris, with two in London.

Also named in the federal indictments are the Luxembourg-based BCCI, a bank holding company with branches in 72 countries, and two of its subsidiaries—Bank of Credit and Commerce Inernational S.A., which has operations in the United States and England, and Bank of Credit and Commerce International (Overseas) Limited, organized in the Cayman Islands and operating in France, the Republic of Panama, Colombia, the Bahamas and the United States.

None of BCCI's officers are among the defendants.

In addition to the indictments, the government filed civil complaints seeking forfeiture of individuals' property and funds as allegedly representing drug profits, and it also seeks forfeiture of BCCI assets.

"It is the first time an entire international financial institution and its important members have been indicted," said William Von Raab, head of the U.S. Customs Service, who appeared at a news conference in Tampa with high-ranking customs representatives from England and France. Drug agents from England and France participated in busting the ring.

Mr. Von Raab said the money-laundering ring was based in Tampa.

The two-year Customs sting operation was dubbed "C-Chase" for the $100 bills (C-notes in underworld parlance) that were used in the scheme. Customs agents were able to infiltrate powerful Colombian money-laundering syndicates and help launder an estimated $32 million from cocaine sales in Chicago, Detroit, Houston, Los Angeles, Miami, New York and Philadelphia, federal authorities said.

The money was intended principally for Colombian drug traffickers, including the Medellin Cartel, Customs said. Undercover agents posing as professional money-launderers received cash from drug dealers, charging a commission for their services.

About $14 million was allegedly laundered through BCCI and its subsidiaries—the seventh largest privately held financial institution in the world.

Bank officials who received the drug money from the fake money-launderers most frequently placed it in certificates of deposit in bank branches around the world. The officials then created phony loans that allowed the drug traffickers to withdraw the funds from the branches. The loans were repaid with the certificates of deposit.

David Rowe, a lawyer representing BCCI, said the bank is "extremely distressed" about the criminal charges and will defend itself vigorously. He said BCCI is "a $20 billion institution" that conducts business in many countries. The bank's policy is always to abide by the law, he said.

In a statement issued in London, the bank said it "wishes to state categorically that at no time whatsoever has it knowingly been involved in drug traffic-related money laundering."

BCCI said it was a victim of "a malicious campaign" to discredit it but had faith it would be vindicated in the U.S. courts.

A federal judge late yesterday lifted a restraining order that had been issued against BCCI and allowed the bank to resume normal business after it put into escrow $14 million, the amount the government alleged the bank had laundered. Before the escrow deposit was made, the bank had been restrained from conducting all but routine business without clearance from U.S. marshals.

Mr. Awan and another bank official linked to Mr. Noriega—Akbar Bilgrami, 35, BCCI's Panama manager and director of its Latin American division—were among seven men arrested as they arrived for a fake bachelor party Saturday night to celebrate the upcoming "wedding" of two U.S. Customs agents involved in the sting operation.

Engraved invitations were sent out to targets who considered themselves friends of the undercover agents, according to Bonni Tischler, Customs Service agent-in-charge for northern Florida. Those who RSVP'd were invited to the bachelor party at a downtown Tampa building, she said.

The Customs Service wasted no money on booze, strippers or other accoutrements of traditional bachelor parties, Ms. Tischler said. The "guests" were met in the basement parking garage, escorted to the elevator and arrested as they stepped off at the seventh floor, the supposed site of the party.

One source described Mr. Awan as Mr. Noriega's "personal banker." Other sources confirmed his close ties to the Panamanian military leader, who is under indictment on federal racketeering and drug charges in Florida.

Assistant U.S. Attorney Joseph Magri in Tampa would not comment yesterday on whether Mr. Awan or Mr. Bilgrami was linked to Gen. Noriega in the course of the investigation. Gen. Noriega is not named in any of the indictments.

Richard Gregorie, the assistant U.S. attorney in Miami who is handling the Noriega racketeering case there, also said he could not comment on the matter.

But Mr. Gregorie said the money-laundering case could help bring "legitimate pressure" on Gen. Noriega to stand trial in the United States.

"If they could locate Noriega's accounts and seize substantial portions of his money, that would certainly put some pressure on him," Mr. Gregorie said, describing Gen. Noriega as a "drug fugitive."

In addition to the bachelor party arrests, at least 31 other defendants have been taken into custody in the United States, Argentina and England.

In addition to the Customs Service and the British and French customs service, the elaborate operation was conducted by agents from the Internal Revenue Service, Drug Enforcement Administration and Federal Bureau of Investigation.

[From the Washington Times, Oct. 13, 1988]

INDICATED BANK HAD LINKS TO CARTER, CLIFFORD, LANCE

(By Michael Hedges and Mary Belcher)

The international bank indicated in a vast money laundering fraud case Tuesday had links to powerful Washington politicians, including former President Jimmy Carter and past Democratic Cabinet members Clark Clifford and Bert Lance, it was learned by the Washington Times.

The institution, Bank of Credit and Commerce International (BCCI), has donated millions of dollars to the Carter-founded World Hunger Project, and executives of the bank have traveled with the former president to the Middle East, according to sources.

Mr. Carter recently praised BCCI in public statements but declined yesterday to comment, NBC News reported last night.

Mr. Clifford, who was secretary of defense in the Lyndon Johnson administration, and now chairman and chief counsel for First American Bankshares, Inc., of the District, met with Sen. John Kerry, Massachusetts Democrat and head of a Senate subcommittee on terrorism and narcotics on behalf of a defendant in the case who was a BCCI officer, according to three committee sources.

The committee sources said Mr. Clifford and Mr. Kerry met to discuss Amjad Awan, 41, before Mr. Awan gave a deposition to the subcommittee.

Mr. Awan was arrested in Florida this week in connection with a massive Customs Service investigation of illicit money laundering. More than 80 persons have been indicted in the case by a federal grand jury in Tampa and four other cities.

The committee sources said Mr. Clifford lobbied Mr. Kerry to soften the subcommittee's investigation of the alleged money laundering by Bank of Credit and Commerce International for Panamanian strongman Manuel Noriega.

"He asked Kerry to back off, and Kerry told him the committee was going to let the chips fall where they may," said one source.

One law enforcement source close to the Customs investigation said Mr. Clifford then told Mr. Awan to leave the country without testifying before the subcommittee.

But Mr. Awan was interviewed in a secret session of the subcommittee Sept. 30.

Mr. Clifford declined to return a reporter's calls yesterday.

Mr. Awan admitted in that deposition that he was the country manager for BCCI in Panama, and helped Mr. Noreiga set up bank accounts of '$40 million to $50 million."

The relationship between BCCI and First American Bankshares may be that of parent and subsidiary, according to subcommittee sources who said that BCCI had bought the D.C. bank through nominees, or third parties.

Both banks are reportedly controlled by Middle Eastern investors, with the ruling family of Abu Dhabi owning at least part of both concerns.

Through another bank, National Bank of Georgia, Mr. Clifford and Mr. Lance are connected. Mr. Lance, a former director of the Georgia Bank, introduced Mr. Clifford to the wealthy Middle Eastern investors who bought First American, according to published accounts.

But Mr. Lance also had contact with BCCI. He was indicted by a federal grand jury in May 1979, in part because he, "caused the transfer of $3,563,999.13 from the Bank of Credit and Commerce International, Luxembourg, to the First National Bank of Chicago to repay loans by Lance . . ." according to the indictment.

And Mr. Lance, who was forced to resign as director of the Office of Management and Budget in 1977, sold his shares in National Bank of Georgia to a group of Arab investors connected to BCCI, according to reports.

Mr. Lance was acquitted on some of the bank fraud charges and others were dropped after the jury was unable to reach a verdict.

Mr. Awan said in the deposition of Sept. 30 that he set up a bank account for Mr. Noriega sometime in 1982. "He [Noriega] was head of intelligence at the time and told me this was a secret account, a secret service account," Mr. Awan said.

Mr. Kerry said yesterday only the "tip of the iceberg" has been exposed by the Customs investigation that led to the indictments Tuesday of Mr. Awan and a farreaching network of money launderers.

Mr. Kerry said the BCCI has been involved in money-laundering efforts "beyond those mentioned in the sting operation. Most importantly, we have had direct testimony about the involvement of this bank with Gen. Noriega."

"Mr. Awan himself became Gen. Noriega's personal banker in many respects," Mr. Kerry said. "Gen Noriega sent money launderers to this bank and . . . the bank was doing open business in various underworld activities beyond those mentioned in the sting operation."

Mr. Kerry alleged that the bank had been involved in arms deals in the Middle East as well as multibillion-dollar transactions with Columbian drug dealers.

"Not only do we now have an indictment of Noriega," said Sen. Mitch McConnell, Kentucky Republican and senior Republican member of Mr. Kerry's subcommittee, "we now have an indictment of Noriega's banker."

According to one of the indictments unsealed in Tampa, Mr. Awan last month discussed with an undercover agent the destruction of bank records before he was to testify before the Senate.

Mr. Awan, who became Gen. Noriega's personal banker when he worked at the BCCI office in Panama in the early 1980s, told the Senate subcommittee that his office did not handle any accounts from drug smugglers.

He said bank officers deliberately avoided customers who approached them with large currency deposits.

"We would avoid those unless we knew exactly what the business was and who was bringing the account in," he said.

But Mr. Kerry said yesterday he believed Mr. Awan lied in his testimony before the subcommittee.

Mr. Awan said customers who were allowed to invest large amounts of currency were generally trying to create "a hedge against inflation and political instability."

He characterized his relationship with Gen. Noriega as "friendly." He said the Panamanian military leader is "flamboyant to the extent that he liked to eat well and drink well, and that's about it."

He said he was asked by Gen. Noriega to close his BCCI account shortly after the general was indicted on federal racketeering and drug-smuggling charges in Florida late last year.

He said Gen. Noriega also asked him to keep details of the account secret from the Senate subcommittee, once he learned it was investigating BCCI.

The Luxembourg-based BCCI—a bank holding company with branches in 72 countries—and two of its subsidiaries were named in the three indictments unsealed in Tampa.

A total of nine bank officers also were indicted as a result of a two-year sting operation conducted by federal agents.

[From the Washington Post, Oct. 12, 1988]

U.S. LINKS BANK TO DRUG CARTEL—TAMPA INDICTMENTS ALLEGE $32 MILLION IN PROFITS LAUNDERED

(By Michael Isikoff)

In what federal officials called the most significant money-laundering case brought by the government, the Luxembourg-based Bank of Credit and Commerce International (BCCI) yesterday was charged with conspiring with members of Colombia's Medellin cocaine cartel to launder more than $32 million in illicit drug profits through the world banking system.

Three indictments unsealed in Tampa, Fla., and related indictments in five other cities named 84 participants in the conspiracy, including several top associates of the Medellin cartel and nine senior officials of BCCI, which federal officials said is the world's seventh largest privately owned bank. Federal officials said the case illuminates the well-hidden but critical relationship between the international narcotics trade and major financial institutions.

Federal prosecutors allege that Colombian drug traffickers worked in concert with BCCI officials to disguise their profits by moving millions of dollars in cash through a labyrinth of BCCI accounts, using the money to buy certificates of deposit and receive "sham loans" from BCCI. Much of the proceeds went to cartel-controlled bank accounts in Colombia, Uruguay and Panama, prosecutors said.

"This is the first time that a significant international financial institution is not just the vehicle but is complicit in money laundering," Customs Commissioner William Von Raab said of the Tampa indictments. "What you've got here is an institution that was prostituting itself to money laundering," he said.

BCCI was identified in Senate hearings last February as one of the principal vehicles used by Panamanian leader Gen. Manuel Antonio Noriega to launder drug payoffs. There is no mention of Noriega in the indictments. But the Senate narcotics subcommittee headed by Sen. John F. Kerry (D-Mass.) has been conducting an inquiry into the bank and last week subpoenaed Amjad Awan, assistant director of BCCI's Latin American division in Miami, one of the bank officers named in the indictments. The subcommittee questioned Awan in closed session about services BCCI performed for Noriega, according to informed sources.

The indictments follow a two-year undercover sting operation, dubbed Operation C-Chase because the principal currency was the $100 bill, or C-note, conducted by Customs, the Internal Revenue Service, the Drug Enforcement Administration and other agencies.

Customs officials invited 11 of the C-Chase targets, including several senior BCCI officials, to a phony wedding of two of its undercover agents over the weekend. On Saturday night, nine of the targets were driven in limousines to a pre-wedding bachelor party at a private club. As they emerged from their limos, they were arrested by Customs agents, officials said yesterday.

Forty of those indicted were arrested in Tampa, London, Paris and other cities in the past few days. Among those arrested were the director and assistant director of the bank's Latin American division, its European regional manager, its country managers for France and the Bahamas and its chief officer and others in Panama.

BCCI spokesman John Hillbery in London yesterday denounced what he called a "malicious campaign" against the bank and called the bank officials arrested the "innocent victims of circumstances."

"The bank wishes to state categorically that at no time whatsoever has it knowingly been involved in drug-traffic-related money laundering," Hillbery said.

BCCI has assets in excess of $20 billion, operates in 73 countries and has 15 offices in the United States, including one in the District. Founded in 1972, it is operated by Pakistanis and principally owned by Middle Eastern commercial interests that include the royal family of Abu Dhabi, Saudi Arabian Sheik Kamal Adham, former head of Saudi intelligence, and the Bin Mahfouz family, which controls Saudi Arabia's principal bank, the National Commercial Bank.

Federal officials recently have emphasized the role of money laundering in facilitating the narcotics trade. Because illicit drugs are sold for cash, federal officials said one of the biggest problems drug traffickers now face is how to "launder" or transfer millions of dollars into secure overseas bank accounts without being detected by the government.

In Operation C-Chase, Gonzalo Mora Jr., whom federal officials identified as a Columbian trafficker affiliated with the Ochoa family, one of the principals in the Medellin cartel, first approached an undercover Customs agent in May 1986 about setting up two bank accounts in Tampa to receive his organization's drug profits, officials said. In the following months, traffickers handed over large sums of cash to Customs undercover agents posing as heads of phony restaurants, hotels and other businesses useful to launder large amounts of cash, according to the officials. The drug profits were deposited in seven Customs-controlled bank accounts around the country and then were transferred to a Master Customs-controlled account in Tampa.

Officials said undercover Customs agents made 102 money pickups in New York, Chicago, Los Angeles, Miami, Detroit, Houston and Philadelphia totaling $32.7 million, laundered $14.3 million through BCCI and invested another $4.5 million in BCCI certificates of deposit.

From there, the officials said, the money was transferred into BCCI accounts in Tampa and Panama, where BCCI officials offered Mora and his associates blank checks to withdraw their funds. This allowed the bank to bypass the federal rules requiring banks to report cash withdrawals over $10,000, officials said.

Officials said that in December BCCI officials, who are alleged to have known the source of the cash, suggested the traffickers improve their laundering techniques by transferring their money to other overseas accounts in Europe and the Bahamas and buying certificates of deposit from the bank. Bank officials then issued what officials described as "sham loans" to the traffickers, backed by the certificates of deposit.

"What was happening here," Von Raab said, "is that the bankers were going to the traffickers and telling them, 'We've got a better way.' "

[From the Miami Herald, Oct. 12, 1988]

BANK CHARGED IN DRUG SCHEME

(By Arnold Markowitz)

One of the world's largest privately owned commercial banking firms and 85 people—including managers of major bank divisions in the United States, Bahamas, Latin America, the Caribbean and Europe—have been charged with disguising narcotics money by shuffling it through the global banking system of Colombian criminals.

U.S. Customs agents found a novel way to bring the investigation to an end: Two undercover agents announced their engagement and invited the principal suspects to the wedding, scheduled last Sunday at a fancy Tampa area resort.

Nine couples returned the RSVP cards sent with their engraved invitations. They started arriving Thursday.

While the ladies partied with the bride Saturday night, the gents were driven in limousines to a bachelor party at a private club in a Tampa office building.

It was a cruel trick. Party poopers, pointing pistols, greeted the guests at the elevator door, put them back in the limos and took them to the local Customs headquarters. Then it was off to jail. The ladies found out much later.

Those were among the first of 40 arrests made during the weekend, and Monday, agents said as Federal grand jury indictments were made public Tuesday in Tampa.

The accused banking organization, indicted with three subsidiaries on charges of running the cash laundry from Tampa, is the Bank of Credit and Commerce International, better known as BCCI. Its assets were reported in London six months ago as $19.64 billion.

Customs officers and federal prosecutors said it is the seventh largest privately held financial institution on Earth. BCCI's 424 offices in 72 countries are controlled by wealthy Middle Easterners through a holding company in Luxembourg. Its U.S. offices are in Miami, Tampa, Boca Raton, Chicago, Los Angeles and New York.

The U.S. Attorney's Office in Tampa obtained a court order preventing the export of assets held by BCCI. The order requires approval by federal marshals before any transactions can be completed. Customs said it intends to seize about 60 customer accounts.

David Rowe, a lawyer at Holland and Knight, a Miami law firm that represents BCCI, said late Tuesday afternoon that he had not had time to examine the long and complicated indictment, and could not comment on the charges.

"The bank has always attempted to conduct itself in a manner respecting United States' laws, rules and regulations," he said. "The bank operates in 72 countries and respects the laws of every country . . . This is a very tragic and shocking episode."

Statements issued by BCCI in Tampa and London said it never was knowingly involved in laundering dope money.

Smaller banks and their executives have been indicted and punished before for laundering dirty money, but this is the first time an entire international banking organization has been accused with its top managers, and U.S. Customs Commissioner William Von Raab, who went to Tampa for the occasion.

In disclosing Operation C-Chase, so-called because the principal currency of money laundering is the $100 bill or C-note, Von Raab issued a prepared statement aiming strong language at the banking industry:

"For some international banks, their sleaze factor is higher than their interest rates . . . These people will have to learn that civilized governments will no longer put up with the notion that business is just business . . . The bottom line is that whatever kind of financial institution you are, if you have crooks for customers then you are a crook."

Customs said undercover agents, who began infiltrating money-laundering operations in July 1986, made 102 money pickups totaling $32,767,664 and laundered all but $1 million of it, including $14.3 million directly through BCCI and $4.5 million invested in BCCI deposit certificates. The agents earned $945,000 in fees for their work.

New York City was the primary location for cash pickups; $12,140,152 in 34 separate transactions. Miami was the source of only 10 pickups totaling $1,317,980—second smallest to Philadelphia, where a single pickup of $93,000 was recorded.

In addition to 34 defendants named in the Tampa indictment, federal agents Tuesday were after—or already had captured—16 indicted in Chicago, 12 in Detroit, four in Houston, 16 in New York City and three in Philadelphia. Other arrests were made in Great Britain and France.

Most of the charges concerned money laundering; some were for drug-related activities and tax violations.

One of the suspects, prominent in professional boxing, is Felix "Tuto" Zabala, 50, who has managed world bantamweight champion Miguel Lora, super flyweight champion Sugar Baby Rojas and other Latin American and Caribbean boxers. Customs agents say Zabala's promotion company, Antillas Promotions, was used by undercover agents to launder $50,000 in drug proceeds.

The party guests arrested Saturday night include Amjad Awan, 41, of Coral Gables, identified as assistant director of BCCI's Latin America division until mid-September and its former manager in Panama, and Akbar Ali Bilgrami, 35, of Miami, head of the Latin American division until mid-September.

Gonzalo Mora Jr., 33, a Colombian described as the chief laundryman, was caught with them. So were Sibte Hassan, 31, second in command of the banking firm's Paris regional office for Europe and Africa; Syed Aftab Hussain, 30, its operations officer in Panama; Ian K. Howard, 39, its manager in France; and Joaquin Casals, 30, allegedly director of courier operations for a cocaine smuggling gang.

Customs released a summary of operation C-Chase highlights, describing its progress beginning in July 1986:

The first of 20 undercover agents infiltrated an international money laundry operated by Gonzalo Mora Jr. and Gonzalo Mora Sr. of Medellin, Colombia.

Agents helped to direct narcotics money collections to Colombia through Panama. As the undercover agents gained the Moras' confidence, their participation expanded.

In December 1986, undercover agents invited Mora Jr. to Tampa, where they agreed to become partners and share a percentage fee for their laundering work. The meeting was recorded on video and audio tape.

The agent recorded several meetings with high-ranking BCCI officers in Miami, Paris and London. Customs says those conversations prove bankers knew the money being discussed was drug-related.

TO CREATE A JOINT FEDERAL TASK FORCE ON ILLEGAL DRUG LABORATORIES, ITEM 34

Mr. HATFIELD. Mr. President, today, I am offering an amendment to the Senate drug bill that marks the beginning of a coordinated Federal-State effort to combat the menacing problem of illegal drug laboratories in this country.

Mr. President, it's no secret that one of the most troubling aspects of our drug problem, and one that has largely gone ignored, is the unprecedented growth in the number of illegal, clandestine drug labs. These illegal laboratories manufacture methamphetamine and other controlled substances for distribution in our States and cities. Oregon, in particular, has been hard-hit by this phenomenon. Clandestine drug lab growth in my State has skyrocketed in the last 5 years. Oregon is now second only to California in the total number of drug lab seizures, now at approximately 150 per year. The problem which naturally arises from this increase in drug lab seizures is cleaning up and decontaminating the premises and safely disposing of the toxic waste.

I have met with many State and local government officials from Oregon to discuss the magnitude of the problem facing our State and our Nation. Based on those meetings, I am convinced that the time has long since passed to develop a national response to this menace. Let me share with my colleagues how a drug lab operates and the hazards that are involved.

As I have stated, Oregon is now second in the Nation in the illegal manufacture of street drugs, particularly methamphetamine. There is a strong indication that operators of illicit drug laboratories in Oregon will shortly be expanding their production line to produce other types of drugs in quantities which will be exported to other States, as the methamphetamine is now.

Not only do the illegal drugs produced by these labs directly contribute to the drug crisis in this country, but the operators' methods of manufacture create equally serious problems for our communities due to the hazardous and toxic chemicals which are used in the manufacturing process. Clearly, this problem demands an immediate, concerted and coordinated response. Some of the individual chemicals used in these laboratories are hazardous in themselves upon long-term or repeated contact. Many of these chemicals are known carcinogens, harmful to the liver, kidneys, lungs, or the reproductive system and can be fatal. As an example of the number of toxic ingredients that are involved in this process, I ask unanimous consent that a list of chemicals associated with illicit methamphetamine manufacture be printed in the RECORD at the conclusion of my remarks.

Mr. President, the amateur chemist, the drug lab operator, or "meth cook," as he is known on the street, mixes these toxic chemicals in approximate quantities with little awareness of their toxicity, typically following a hand-written formula purchased on the street or from a penitentiary inmate. The "cooking" and distilling of these chemicals take place at imprecise temperatures and with no regard for escaping gases or vapors, spillage or disposal of hazardous byproducts. The residues, or "sludge," are compounds which may be more hazardous than their toxic components. The manufacturing process is so sloppy that the extent of the toxic hazard cannot be fully known without costly professional laboratory analysis.

The end product is a salable drug with no guarantee against unexpected side effects to the drug user. During the manufacturing process, the gasses, vapors, residual powders, sludge, and spillage permeate the premises, which may be a single-family home, an apartment, a motel room, a mobile home, or any temporary dwelling. The cost of short-term rental is cheap when compared to the huge profit potential of dealing in methamphetamine. Once the "cooking" process is completed, the premises are vacated as quickly as possible, usually without cleanup or regard for hazards to future innocent tenants.

If there is a cleanup attempt, the hazardous materials are thrown onto the ground, or sometimes into trash barrels. When operating drug labs have been discovered, law enforcement officers entering the premises without protective equipment have suffered nausea, dizziness, diarrhea, and other debilitating symptoms for up to 1 week after the incident. No comprehensive medical evaluation system is presently available to determine longer term effects. And the drug lab operators themselves, some with families including small children, are too transient to monitor for the effects of living in such a toxic environment.

Because of these hazardous conditions, law enforcement and fire personnel must be adequately protected with suits and breathing apparatus to prevent contact with, or breathing of, the chemical agents. At the same time, the protective gear must allow freedom of movement, unobstructed vision, and a communications capability in order to defend against potential violent acts on the part of the drug lab operators, who invariably have firearms on hand.

Naturally, all enforcement personnel must be appropriately trained, not only in equipment use, but also in all pertinent aspects of handling hazardous, toxic materials. The environmental and health problems associated with these clandestine drug labs are severe and the time for concerted action is now.

THE JOINT TASK FORCE

The amendment I am offering establishes a joint Federal task force on illegal drug laboratories, which will be comprised of emergency response technicians from the Environmental Protection Agency and special agents from the Drug Enforcement Administration. The task force shall consist of at least 6 but not more than 20 members. Appointed by the Administrators of the EPA and DEA, these task force members will have the responsibility of establishing and implementing a program for the clean up and disposal of the hazardous, toxic waste produced by these clandestine drug labs.

As part of that responsibility, the task force is to recommend to the Administrators of the EPA and DEA certain guidelines for the cleanup of these illegal drug laboratories. Under the amendment, the Administrators of the EPA and DEA are to formulate and publish such guidelines within 180 days of enactment.

In addition to providing Federal expertise in studying this problem and recommending guidelines for an effective response, the amendment will also assist State and local governments in implementing those guidelines. The amendment provides funding to the Attorney General to make grants to State and local governments for demonstration projects to clean up and safely dispose of substances associated with illegal drug labs and which pose a danger to the public health and the environment.

Finally, the amendment requires the Administrators, after consultation with the task force, to transmit to the President and both Houses of Congress, within 270 days after enactment, a report describing the program established by the task force.

Mr. President, let me make a brief comment about how this amendment is funded and what my expectation is about its implementation. As the effective date subsection makes clear, it is the intention of this Senator that the provisions of this amendment take effect immediately upon enactment. $10 million is authorized to be appropriated for the purposes of carrying out this amendment, specifically the funding for State and local demonstration projects, and I expect that the Senate will appropriate the necessary funds in an expeditious manner. Regardless of the time the amendment is funded, however, it should be clearly understood that creation of the task force, publication of the guidelines, and generation of reports to Congress should be commenced immediately, and the specific tasks completed within the time periods provided.

I thank the managers of the bill for accepting the amendment.

Chemicals associated with illicit methamphetamine manufacture are as follows:

Metal/salt reagents: Aluminum foil, magnesium, palladium, mercuric chloride, sodium cyanide, red phosphorous, thionyl chloride, lead acetate, iodine, lithium aluminum hydride, and sodium.

Precursors: Phenylacetic acid, phenyl-2-propanone, methylamine, ephedrine, benzyl chloride, and acetaldehyde.

Solvents: Freon, chloroform, methanol, isopropanol, ethyl ether, acetone, pyridine, hexane, and benzene.

Acid-base reagents: Hydrochloric acid, acetic anhydride, sodium hydroxide, hydroiodic acid, acetic acid, hydrogen peroxide, sulfuric acid, and ammonia.

FOREST SERVICE LAW ENFORCEMENT, ITEM 35

Mr. LUGAR. Mr. President, I rise to support this amendment. It represents a portion of a larger bill introduced earlier this year by Senator HARKIN and me.

The original bill gave the Forest Service the tools to combat drug production and other crimes on Forest Service land. A part of our bill has already been included in the drug bill. This amendment contains another portion of the original bill to bolster the authority of the Forest Service for firefighting and other law enforcement activities.

This amendment clarifies that the U.S. Forest Service can accept and grant law enforcement designation from other law enforcement agencies. The need for this amendment became clear during the Western forest fires of the last 2 years. The need for additional firefighters during these times is well understood. What is often less apparent is the demand for additional law enforcement personnel to police the fire camps and to provide other support during these crises. Earlier this year, William Penn Mott, Jr., the Director of the National Park Service, wrote to the U.S. Forest Service, that the Park Service would be unable to provide law enforcement personnel to supplement Forest Service officers when fires occur on Forest Service land.

Mr. President, a few quotes from Mr. Mott's letter will underscore the problem:

> Despite many requests, we were unable to fill resource orders for supplemental law enforcement assistance on Forest Service fires. Our inability to provide this assistance was not due to unwillingness or to a lack of available personnel. * * * Without specific statutory authority or a clear delegation of authority from the Forest Service, NPS law enforcement personnel lack the authority to enforce Federal law or Forest Service regulations * * *

Mr. Mott continued by stating that.

> No clear statutory authorization was found to delegate Forest Service authority to NPS personnel. As a result, we have found ourselves in the position of having to refuse requests for assistance from an agency with which we enjoy an otherwise outstanding tradition of mutual aid and cooperation.

Mr. President, our amendment corrects this problem by granting the Secretary of Agriculture the explicit authority to designate law enforcement officers or any other Federal agency to exercise the powers and authorities of the Forest Service. Also, the amendment would allow the Forest Service to accept law enforcement designation from any other political entity upon the establishment of a memorandum of understanding with that entity.

Mr. President, this amendment is strongly supported by the U.S. Forest Service and the U.S. Department of Agriculture. I urge my colleagues to support its enactment.

MARIJUANA IN THE NATIONAL FORESTS, ITEM 35

Mr. HARKIN. Mr. President, on May 12, 1988, the Agriculture Committee's Subcommittee on Nutrition and Investigations held a hearing into public safety problems associated with the production of marijuana and other narcotics in the national forests. This hearing capped a year-long investigation by my subcommittee into various public safety issues associated with the National Forest System.

This investigation is the result of a bipartisan effort and has consumed the time and attention of two Agriculture Subcommittees, their staffs, and many members of the full committee and its staff. I want to recognize those that have worked with and supported this investigation and/or cosponsored this legislation. They include Chairman LEAHY and Senator LUGAR, who have been involved in this investigation from the beginning, Senators MELCHER, PRYOR, HELMS, and BOSCHWITZ from the Investigations Subcommittee, Senators FOWLER and BOND of the Forestry Subcommittee as well as Senators DECONCINI, BUMPERS, MCCLURE, QUAYLE, and COCHRAN. I would also like to recognize the efforts of my subcommittee staff, Mark Halverson and Bob Andros; Bob Redding of the Forestry Subcommittee; Fran Hunt, Jim Cubie, Chris Sarcone, and Cynthia Molina of the full committee; and Dave Johnson of the minority staff.

The problem of marijuana production in the national forests is widespread. For the last 4 years, the Forest Service has had to restrict public access to almost 1 million acres annually because of the threat to public safety associated with armed guards, attack dogs, and various and assorted booby traps. These deterrents are used by growers to protect the drugs from other growers, the public and law enforcement officers; however they pose a serious threat to the public safety. I might mention as an aside that this restricted acreage amounts to approximately half the size of Yellowstone Park, or about the same amount of acreage that was recently burned by forest fires in Yellowstone.

The public and Forest Service employees literally take their lives in their hands when entering these areas of the national forest. The public has heard very little about this problem until recently, but the danger is real. It jeopardizes the environment due to toxic chemicals, the wildlife due to traps, poisons and poachers, and innocent visitors to the forests due to armed sentries and booby traps. Hunters in Arkansas and California have been permanently maimed or scarred as a result of land mines, pipebombs, or other booby traps in and around the national forests. Forest Service employees have been shot at while in performance of their nonlaw enforcement duties. Visitors have been intimidated and harassed and whole communities and their economies have been affected by this illicit activity. Whole forest fires have been started by growers trying to stop competing growers from marketing their marijuana crops.

Nor is this problem restricted to the so-called Emerald Triangle in California, Oregon, or Washington State. Virtually every national forest in this Country has had cultivated marijuana growing in it. For example, 120,000 plants have been removed from the Daniel Boone National Forest in Kentucky this year alone. This illegal use of the national forests is due, in large part, to the successful crackdown on narcotics production on private property through asset seizure and forfeiture laws. There are little or no assets to seize when the drugs are produced in the national forests.

The profits from this trade are amazing. In a room the size of this Senate Chamber, with sufficient light and water, a crop of high-grade marijuana worth $3.5 million could be grown. With wholesale values of $3,000 or more per pound, U.S. grown marijuana is the most potent in the world. As recent newspaper articles have pointed out, it is exported in violation of international drug treaty and organized crime is now beginning to reap inordinate profits from the production of marijuana. Twenty percent of U.S. produced commercial grade marijuana is grown on the national forest. That is what this legislation is designed to prevent. It represents a bipartisan effort by many members of the Senate Agriculture Committee.

Mr. President, in the course of my subcommittee's investigation we learned of another set of problems associated with Forest Service law enforcement. We learned that there is a terrible inefficiency taking place because the Forest Service is unable to work jointly on law enforcement problems with other land management agencies such as the Park Service or the Bureau of Land Management. A little over 1 year ago the Park Service, based on an opinion by the Solicitor of the Department of Interior, notified the Forest Service that there is no legal authority for the Forest Service to deputize Park Service law enforcement officers who would otherwise be called on to provide law enforcement for fire camps in the national forests. This opinon reversed the longstanding practice of law enforcement cooperation among land management agencies. Such joint activity could extend beyond narcotics control to arson and Antiquities Act violations. The latter seeks to protect ancient native American artifacts on public lands from looters and grave robbers.

I am therefore proposing an amendment to section 2760 of S. 2825, the Omnibus Anti-Substance Abuse Act of 1988, which will give the Forest Service law enforcement personnel the ability to delegate their authorities to other land management agencies as well as BIA and Fish and Wildlife Service. It also allows the Forest Service the ability to receive cross designation in return. I wish to point out that this does not expand or alter existing authorities for these agencies. It does allow them to work together in a more economical and efficient manner where a joint effort or task force approach is warranted, the most recent example of which is the tragic fires which destroyed much of Yellowstone Park. I urge my colleagues to support this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendments en bloc.

The amendments en bloc (No. 3699) were agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the amendments were agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I ask that the committee substitute be voice voted, and that the yeas and nays be ordered. I ask for the yeas and nays on final passage of the House bill, as amended.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. RUDMAN. Mr. President, the Omnibus Anti-Substance Abuse Act of 1988 is landmark legislation and launches a major new effort against the drug problem threatening our Nation. The bill we are about to pass represents the culmination of many months of work by Members on both sides of the aisle. It is truly a bipartisan package, which for the first time comprehensively addresses both supply and demand reduction.

On the supply side, the bill authorizes major new resources for law enforcement and its addresses the critical balance in the criminal justice system by authorizing resources for both the front end of the pipeline—the FBI, DEA, Immigration and Naturalization Service, Customs Service, Bureau of Alcohol, Tobacco, and Firearms, and the Coast Guard—while addressing the often neglected post-arrest areas—U.S. Attorneys, Prisons, the Marshals Service, and the Federal Judiciary. In addition, the bill renews our commitment to State and local governments on the front lines of the drug war through law enforcement grants and ensuring the continued viability of equitable sharing payments which are made to local law enforcement agencies throughout the Nation under the Assets Forfeiture Program.

In the demand reduction area, we recognize the need to provide for drug education in our schools, teacher training, health research, and most significantly substance abuse grants to ensure that those individuals who seek treatment for drug abuse will receive that treatment.

While we all recognize the critical need for new resources, this bill does much more than simply authorize new moneys to fight the war on drugs. It provides many new tools to attack both the supply and demand sides of the problem.

In the area of assets forfeiture, we have streamlined our law enforcement agencies' ability to seize and forfeit assets of major drug traffickers, while protecting the rights of innocent individuals and businesses. On the international side, we provide incentives to our allies in the war on drugs by permitting the sharing of proceeds of forfeitures with foreign governments.

We have set the stage for an important review of criminal justice procedures in the area of habeas corpus and exclusionary rule, while recognizing the constitutional protections afforded our citizens. Through the death penalty provision we have sent a signal to drug kingpins that we will no longer tolerate the drug-related killings which are taking place in record numbers on our cities' streets.

Through the inclusion of major new penalties, like the three-time loser provision, we have provided a means to once and for all remove traffickers from our streets.

And, through provisions such as the Drug-Free Workplace, civil penalties and user sanctions, we have let the American public know that we will no longer tolerate casual drug use.

Finally, Mr. President, although we have not fully identified the means by which we will fund this bill, we have committed ourselves to finding a way to do so, whether it be through new revenues or cuts in existing programs.

The so-called core bill which was brought before the Senate by the drug task force was a good bill. Our efforts here on the floor over the past 2 days have made this a great bill. I appreciate the cooperation of all of my colleagues in this monumental effort and particularly appreciate the leadership provided by the majority and minority leader and the Republican and Democratic leaders of the task force—my good friends, SAM NUNN, PAT MOYNIHAN, AL D'AMATO, PETE WILSON, and PHIL GRAMM.

Mr. President, I ask unanimous consent to have printed in the RECORD material pertaining to this bill.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DRUG BILL FUNDING BENEFITS

The Omnibus Substance Abuse Bill of 1988 authorizes an additional $2.6 billion in budget authority and $1.4 billion in outlays to enhance law enforcement and demand reduction efforts during fiscal year 1989.

LAW ENFORCEMENT ENHANCEMENTS

Highlights—Justice Department

Prisons—$205 million for new medium security prisons to house an increasing federal prison population and $11 million for conversion and operation of military facilities as prison facilities.

U.S. Attorneys—Provide additional $40 million to increase Attorneys and support staff by no less than 757 positions for federal criminal prosecutions, assets forfeiture activities.

DEA—$57 million to add over 400 new DEA agents, continue upgrading our drug intelligence network at the El Paso Intelligence Center, implement a new program to address the problem of diversion of legal chemicals into illegal drug production, enhance the Bahamas Task Force and provide needed funding to address the increasing problem of organized drug gangs.

FBI—$20 million for an additional 522 positions—approximately 350 new FBI agents to enhance drug law enforcement efforts.

Interpol—$1 million to enable Interpol to maintain 24-hour/day operations and to purchase telecommunications equipment.

Immigration and Naturalization Service—$36 million to increase the number of Border Patrol Agents and provide vital detection equipment along our nation's borders; increase inspectors at ports of entry; begin the upgrade of the San Clemente Border Patrol Station, a key entry point for illegal drugs; provides for enhancement of the INS canine corps used for interdiction of drugs at the border and as an educational program in the schools.

State and Local Drug Grants—$250 million to provide much needed funding increases for the State and Local Drug Grant program and other drug-related justice assistance programs.

Marshals Service—$16 million for additional deputy marshals in the areas of judicial security, witness security and to enhance assets seizure and forfeiture activities.

Support of U.S. Prisoners—$16 million to continue funding for contract care needed to house criminals in jails prior to trial.

Highlights—Federal Judiciary

Federal Courts—$85 million to provide for the operation of the courts and to insure speedy disposition of criminal cases resulting from the enhanced enforcement and penalties contained in the bill.

Highlights—Other Law Enforcement

Office of National Drug Control Policy—$7 million to fund the office of the newly created Drug Czar.

Coast Guard—$84 million to enhance Coast Guard Drug Interdiction Asset Procurement and additional positions for drug interdiction activities.

Federal Law Enforcement Training Center—$6 million to meet additional training needs of agencies hiring additional law enforcement officers.

Customs Service—$91 million for Customs Service Drug Enforcement Programs, including cargo container drug detection research, additional pilots, agents, and inspectors, as well as asset enhancements to the air interdiction program.

Bureau of Alcohol, Tobacco and Firearms—$11 million for additional special agents to enforce statutes governing firearms including the Armed Career Criminal Program.

International Highlights

International Enhancements—Provides an additional $29 million in new funding to address international narcotics control, including $5 million for the U.N. Fund for Drug Control; $23 million to develop machine readable passport technology for the State Department, INS and Customs; and an additional $1 million to combat terrorism.

DEMAND REDUCTION ENHANCEMENTS

Education, Treatment and Prevention Highlights

Drug Free Schools and Teacher Training—$172 million.

Veterans Administration, VISTA, and Employee Assistance Programs—$9 million.

Alcohol, Drug Abuse and Mental Health Administration—$1.286 billion for Substance Abuse Block Grants to the States, the ADAMHA Block Grant to the States; Health Research and Education and Training.

Mr. GRASSLEY. Mr. President, I rise in support of the Omnibus Anti-Substance Abuse Act of 1988.

I want to commend my colleagues who have persevered diligently and in a bipartisan fashion to bring this vital measure to the Senate floor. This work-product compliments many of the recent efforts of the Congress to address what is considered by many to be one of our country's top national security threats.

While the majority of the over 23 million Americans affected by drugs are so-called casual users and cannot be classified as adicts in the clinical meaning of that term. There is no question that a large portion of our population still engages in some form of debilitating drug use. While statistics indicate that overall drug use trends are down, drug use among the general population has stabilized at extremely high levels. Of equal concern, the number of criminals testing positive for drugs continues to rise.

Drug use and abuse is responsible for many of our Nation's problems: low work productivity, impaired military preparedness, decreased motivation for educational excellence, increased violent crime, unsafe public thoroughfares, and public and private corruption.

If our goal is a drug-free society—and I believe it should be—how shall it be achieved?

We must build upon the momentum of the Nation's awareness that we are in the middle of a war—a war that may rival any that have confronted the very security of this Nation. In fact, I believe very strongly that our survival as a civilized people depends upon reducing the corrosive influence of drug-related substance abuse on our society.

I believe that our war on drugs must be fought on two fronts—the demand side front, as well as the supply side front.

Now admittedly, our efforts to stem the tide of illegal substances coming into the country have been increasingly successful in recent years. Through the enhancement of Federal law enforcement mechanisms, we have seized and eradicated more drugs coming into the country; we have obtained more drug-related convictions; and we have imposed more severe penalties on those convicted of drug offenses.

However, interdiction of the supply of illegal drugs into our country has not been able to raise the price of drugs sufficiently—both in terms of economics and personal liberty—in order to substantially reduce drug use and abuse in the United States.

Therefore, I believe in order to seriously wage a war on drugs, we must attack the demand side front in this war—as well as continuing to refine and develop our interdiction efforts.

I would like to recount some of the provisions in this bill that will strengthen the effort to curb the demand for drugs.

First, a telling example of the need to control the demand side of our drug problem is the situation in our Federal prisons. We can no longer tolerate the fast and loose availability of drugs in our prisons.

If we do not make a successful stand to win the drug battle in our prisons, then we surely will lose the drug war. It's as simple as that.

Our bill provides that a conviction for providing or possessing narcotics, controlled substances, or alcoholic beverages in a prison facility will result in a maximum 20-year prison term—as opposed to the present sentence of up to 5 years—to run consecutively with the sentence being served.

The bill also requires periodic drug testing as a condition of probation and supervised release.

We must make it clear to the criminal who uses drugs while incarcerated in a Federal prison, that the continued use of illegal substances will no longer swept under the rug.

In carcarated criminals can expect to pay a very high price for using drugs in prison: That price is a substantial loss of personal liberty in addition to their original prison sentence.

And, that once a criminal is released from prison, either for probation or supervised release, that criminal can expect to have his or her conduct monitored to insure that they stay away from illegal substances—or he or she risks a ticket straight back to prison.

Second, it is the preeminent responsibility of the Federal Government to protect the American citizen. As long as there is a substantial reason for believing that capital punishment serves the deterrent function, then it should be retained. It is my belief, after much thoughful reflection, that certain offenses, such as drug-related killings, are so abominable that the only just punishment is death. To attach any lesser penalty is to mock our system of justice.

I believe that title 7 of this bill is a responsible, measured response—consistent with the Supreme Court's guidance—to the threat posed by drug kingpins and other thugs involved in such crimes against individuals and society. Title 7 is also in keeping with the mandate of the Supreme Court, because it provides necessary due process safeguards before there can be any imposition of the death penalty.

The public understands that it has a right, specifically provided for in the constitution and affirmed by the Supreme Court, to exact a just punishment in limited cases. For some offense the death sentence is the only just punishment. A civilized society has a right, if not a duty, to rid itself of those who have committed certain carefully described—but especially heinous—offenses in an especially egregious manner.

While the death penalty is hardly the sole solution to our country's drug problem, it is appropriate that it be available as a toll in the war on drugs.

Third, our bill addresses the need to stem the demand for drug use by individuals. While we must continue our efforts at educating and rehabilitating drug users, traditional efforts in this area—while valuable—are not enough—alone—to reduce an individual's demand for drugs.

Unfortunately, there remains a need to provide an effective deterrence for the use of drugs.

Our bill provides that anyone who is convicted of a drug-trafficking or drug-use offense, may have his or her eligibility for certain unearned Federal benefits such as student grants, student loans, and Federal Housing Administration loans, suspended.

Benefits can be restored if the person successfully completes a rehabilitation program—which will be strongly encouraged—and then reapplies for the denied-benefit.

However, this provision does not touch "safety net" means-tested benefits such as welfare, health, disability, or similar benefits. Nor does it affect Social Security, Medicare, and veterans' benefits.

These sanctions let drug traffickers and users know that if they continue to use and traffic in drugs, they are going to have to pay a price for it; they can no longer deal in and use drugs with impunity. It is the individual's choice to deal in or use drugs; and it is our responsibility to see to it that the choice to use and deal in drugs has a price.

The taxpayers of this country, who pay for these programs, are no longer going to stand for letting-off drug users and pushers who apply for certain Federal benefits, with a slap-on-the-rist. The taxpayer will no longer stand for subsidizing drug users and drug traffickers.

Drug users will now be held accountable because of the enactment of this provision.

Finally, I am very pleased that the following provisions have also been included in our drug bill:

Reform of the exclusionary rule in criminal proceedings;

A study to look into reforms in Federal habeas corpus proceedings;

A civil penalty of up to $10,000 for certain users of certain amounts of controlled substances;

Procedures for ensuring that international drug kingpins who want to clean the taint of illegal activity from their drug profits, can no longer avail themselves of the U.S. electronic funds transfer systems; and,

A Department of Transportation Pilot Program involving random drug testing of first-time applicants for a driver's license.

In order to achieve a drug-free society throughout the land, we must build upon the rights and principles that Americans hold in common; the rights and principles that bind us together as a people.

Americans are guaranteed rights by the Constitution and its amendments.

In addition, Americans have come to accept a reasonable expectation of: Working in a safe environment; having our children educated in a setting conducive to learning; and, traveling safely on our public thoroughfares and in our air corridors.

However, because of the use and abuse of drugs in our so-called modern lives, we do not have safe places to work, we do not have environments that are conducive for learning, and we do not have safe public thoroughfares and air corridors.

We must build upon our accepted rights and principles, and upon the long-standing notion of punishment for those who do not respect the rights of others—in other words, we must make sure that drugs—to the extent that they interfere with the right of Americans to work in safe places, learn in healthy environments, and travel in safety—are eliminated by imposing realistic and adequate sanctions upon those who use these substances.

Ultimately, the drug addict should certainly have an opportunity to reform. However, we also need to have as much compassion for the actual and potential victims of drug-related crime and other antisocial behavior—and for future potential users of drugs who will ultimately be made to suffer if our fight is not successful.

Although this bill is not perfect, I urge my colleagues to vote for it. I believe that it will help keep the pressure on those who are engaged in drug-related enterprises because of greed, and on those who would destroy our society by destroying themselves.

Mr. HOLLINGS. Mr. President, I rise in support of S. 2852, the Omnibus Anti-Substance Abuse Act of 1988. This is a major initiative in the continuing "War on Drugs," the product of an extended and extensive bipartisan effort. I am proud to say that I was on the task force from the Democratic side of the aisle that put it all together. Through the summer and into October, we labored on this bill. We did so out of fear. Why? It is imperative to all of us, in each community and in every State, that something be done to fight this insidious and crippling disease that is destroying the foundations of our Republic.

That the problem is of incredible dimensions is a fact that cannot be doubted. Look at even a few of the statistics that define the landscape and show the contours of the enormity of this crisis. Over 30 million people use marijuana; 500,000 Americans are addicted to heroin. Another 3 million use cocaine on a regular basis. Worse, more than 12 million have tried cocaine within the last 3 years alone. Not surprisingly, cocaine arrests are up 926 percent since 1980 in South Carolina alone. And the number of patients in my State who receive treatment for cocaine addiction is up 3,000 percent since the beginning of this decade. Perhaps even more frightening is the evidence that our young people—the very future of this country—are using drugs at a higher ratio than young people in any other industrialized country. Last year, 57 percent of our high school seniors tried an illegal drug. More than 33 percent of them sampled an illicit drug other than marijuana. In South Carolina, 17 percent of our students use marijuana regularly, and 2.9 percent use cocaine on the same basis. Alcohol is also a frequently used commodity—in South Carolina 61 percent of the the high school seniors use it on a regular, casual basis.

Mr. President, if the damage to individuals is costly, the collective costs to our society is even greater. What does the use of drugs, the traffic in such activity and the participation by our people in this underground world do to the Nation? Organized crime reaps $40 to $60 billion a year from dealing in this pernicious enterprise. Americans spend between $80 and $150 billion a year on contraband drugs. In 1986, it has been estimated that 150 tons of cocaine, 12 tons of heroin, 20 tons of hashish and 60,000 tons of marijuana entered the country. Almost all of these substances went into people's bodies, causing irreparable harm—to them, their families, their victims and their communities. For instance, it is estimated that 10 to 15 percent of all highway deaths are caused by drug use. Further, in 1987, 37,000 people died because of drugs. And, drug users are three times as likely to be involved in an on-the-job accident. More deadly is the fact that over 58 percent of those people arrested for committing a crime are believed to be under the influence of drugs.

Mr. President, there are other costs involved as well. Lost productivity, destruction of property, fear on the streets and insecurity in the home are also things which result because of this continuing crisis. And there are direct expenses borne by the States and by the Federal Government—the money spent on prevention, treatment and law enforcement. Mr. President, I do not know how experts calculate this, but the estimate is placed at about $100 billion a year. In South Carolina, the annual cost of alcohol and drug abuse is figured to be $2.8 billion. That means $1,100 from each adult resident, every year. That is an awful lot of money. And those are a lot of ruined lives.

We have attempted to do battle against the evil in the past several years. As the chairman of the Commerce, Justice and the Judiciary Appropriations Subcommittee, I oversee most of the programs that have Federal drug enforcement responsibilities. In fact, these programs have seen their funding increased by some 150 percent during the time that I have been chairman. The past, however, is but the prologue to our future needs. Our fight must continue, and we must give more resources to this effort.

Mr. President, we cannot give up this fight. But we must be realistic. This is a war that will—and has—cost much of our Treasury. It is a war that has continued for some time. It is a war that seems to have no light at the end of the black tunnel. And it is a war which has many fronts. But, Mr. President, we must be resolved as a Nation to fight on all of the fronts, for as long as it takes to win. To fight by half measures or with partial efforts would be to invite defeat.

Education is the most important of the fronts that we will fight on. As we know all too well, so long as the incredible demand for drugs exists, the Government's ability to cut off the supply is limited. Of course, as long as there is this demand, then supplies will be available and smuggling will continue. It is simply an economic fact of life. So we have to educate for the long run, in order to insure that future generations will not suffer this addiction and desire. No doubt, it will take time. But we have the will and the resources and the commitment. With this bill, we also have the ability. In fact, 60 percent—or, 1.716 of $2.6 billion—of the cost of this legislation will be devoted to demand-reduction programs. This includes funding for the training of health professionals and educational specialists. It provides for comprehensive community education, prevention and treatment initiatives. It contains money for projects to target high-risk youths. It establishes State regional substance abuse education and prevention centers to better provide assistance in the training of school and community workers. In fact, this act does much more in this area than can be related in this space of time. Suffice it to say that it is indeed an omnibus bill.

Directly related to this goal of providing long-term solutions to reduce demand is a series of provisions to assist those who no longer wish to be enslaved to provisions to assist those who no longer wish to be enslaved to the addictive forces of drugs. Thus, the legislation establishes the goal and provides funding to offer treatment opportunities for substance abusers who seek to cure. This makes sense. Those who want help ought to have some place to go to get treatment over the long haul, with follow up rehabilitation programs. Otherwise, they will continue to be a great part of the problem. People in treatment do not break the law to feed their habit, and when cured can participate in and contribute to society.

Mr. President, there is another front. It is being fought by the cops in uniform and undercover. These are the people who try to stem the avalanche of drugs pouring into our country, and onto our streets. This effort to attack the supply of contraband must be fueled by a greater effort, and by more people. Right now, the whole of our system is clogged and is in grave danger of breaking down. There are too few prosecutors to try the great numbers of people being arrested. There are not enough cops to catch the criminals who are creating this crisis. Our prisons are 50-percent overcrowded as it is, and operating at 150 percent of their capacity. There is an insufficient number of judges to try these cases. Clearly, the whole of our criminal justice system needs help. This legislation is an effort to accomplish that goal. It enables the Government to hire more agents for the FBI, the DEA and the Border Patrol. It provides more personnel for the U.S. Customs Service, the U.S. Marshal's staff and the Coast Guard. It bolsters the Organized Crime Drug Enforcement Task Forces, provides for more judges and allows the Attorney General to hire more U.S. attorneys.

On the local level, the bill authorizes $275 million to State and local law enforcement agencies, and requires that 10 percent of the money be set aside for street-level drug enforcement activities.

This bill also increases penalties for drug offenders and drug-related criminal actions. It imposes the death penalty in certain cases, and harshly punishes those people who would traffic in drugs with our children or around our schools. It creates authority for prosecutors to impose civil penalties on those who are found in possession of certain drugs, and better enables them to seize the assets held by offenders.

Testing for drugs is also allowed in those areas where employees are in safety-sensitive positions within the airline, railroad, bus and trucking industries, as well as for the FAA and urban mass transit agencies.

This act does not ignore the issue of international cooperation to eradicate the drug plague. It also increases funding for interdiction efforts.

Mr. President, this is a good bill, and it is greatly needed. I am proud to have helped in drafting it, and I am pleased to be a cosponsor.

Mr. CHILES. Mr. President, I would like to clarify a point pertaining to a provision in S. 2852, the Omnibus Anti-Substance Abuse Act of 1988. This particular provision, subchapter H, section 2994, establishes an Air Carrier Smuggling Prevention Program. Among other things, this program requires the U.S. Customs Service to prescribe air carrier-controlled substance interdiction regulations. These regulations will govern the security and inspection practices used by certain air carriers prior to departure at foreign airports and on arrival at domestic airports. The intent of this program is to ensure that commercial air carriers adopt sufficient inspection standards to safeguard against the importation of controlled substances into the United States.

Mr. DOLE. The Senator is correct. The Customs Service is required to prescribe regulations within 6 months of enactment of this section seting out the guidelines for air carriers participating in this 2-year demonstration project. It is my understanding that these guidelines shall supplement any other guidelines promulgated by the Customs Service defining the "highest degree of care" standard articulated in the Anti-Drug Abuse Act of 1986, Public Law 99-570.

Mr. CHILES. Yes; that is my understanding as well. I particularly wanted to clarify our intent with respect to the Customs Service regulations pertaining to predeparture inspections at foreign airports. These regulations shall reflect the degree to which that country is considered a drug-producing or drug-transit country or the nature and level of the controlled substance threat present.

Mr. DOLE. I agree with the Senator from Florida's comments with respect to congressional intent.

Mr. WARNER. Mr. President, I rise in support of S. 2852, the Omnibus Anti-Drug Abuse Act of 1988. I want to take this opportunity to compliment the leadership and the members of the task force who have worked long and hard to bring this bill to this point. I also wish to compliment all of my colleagues who have worked together to achieve consensus on controversial issues. I think the fact that this body has been able to move so quickly once this bill came to the floor indicates how important comprehensive drug legislation is to this Nation.

I believe this legislation is well balanced in its approach to this Nation's problem with drugs. First, I applaud the creation of an Office of National Drug Policy. Current drug efforts are spread over a number of agencies at the Federal, State, and local levels. It is time for a coordinated national program to bring together these efforts and get all the horses pulling in the same direction. I regret that the bill does not provide for a Senate Select Committee on Narcotics Abuse and Control to coordinate the efforts of the Senate. I believe that the work of the task force over the last few weeks shows how profitable the comprehensive approach may be.

I applaud the fact that the bill strengthens our efforts on education and rehabilitation. The first line of defense against drug abuse is the education of our citizens, particularly our children, to the dangers of drug use and to provide help for those with drug problems to break their addictions and return to productive lives.

I am pleased that our efforts at drug interdiction have been beefed up to help stem the flow of this poison over the borders of this country.

Most of all, Mr. President, I am pleased that we have taken steps to address the real problem—this Nation's insatiable demand for an illegal and harmful substance. Only when we reduce the demand for drugs and the profits that feed this illicit and harmful trade will we start to turn the tide of the war with drugs—and the drug dealers are waging a war on the people of this country. With this measure, we take the first steps toward eliminating the social acceptability of illegal drug use. I know that there are some controversial provisions in this bill—those providing civil penalties for use of drugs and providing loss of Federal benefits. I realize that these provisions are tough—and they ought to be. But I will also point out that they are fair, compassionate, and balanced. These provisions discourage use by imposing a penalty, but also give the opportunity to redeem one's name and benefits—if one keeps clear of drugs. Mr. President, it is my hope that this new approach will bear results by using both a carrot and a stick—showing that drug use will not be condoned, but providing an opportunity for rehabilitation.

Mr. President, I want to mention one amendment that was included in the leadership package of amendments accepted earlier today.

Mr. President, our Nation's nuclear programs are essential both for military and civilian purposes. However, they are areas of potential danger as well as potential benefit and we must take all reasonable measures to assure that employees who work in these facilities are not impaired because of drug abuse. My amendment will require drug testing for employees responsible for safety-sensitive functions in nuclear facilities. These include both commercial powerplants run by Nuclear Regulatory Commission licensees and Department of Energy owned or leased facilities carrying out DOE nuclear programs.

The Commission and the Secretary of Energy will determine which employees within their respective facilities fall within the categories to be tested. Any drug testing programs must include preemployment, periodic recurring, random, and postincident testing and testing upon reasonable suspicion that a person has used, without lawful authorization, a controlled substance. The amendment further requires protections for tested employees to ensure that the testing is fair, nondiscriminatory, and conducted in a reliable manner. My amendment also calls for the requirement to establish and maintain a rehabilitation program for employees covered by the legislation who need assistance in resolving problems with use of controlled substances.

Mr. President, I believe this amendment is in keeping with the spirit of the omnibus bill. There is nothing radical about the concept or language of this amendment. The language tracks the provisions in the core Senate bill requiring drug testing for transportation workers in the aviation and rail industries. With regard to NRC licensees, this amendment, with the omission of alcohol, is virtually identical to the language of the fitness-for-duty provisions proposed in S. 2443, the Nuclear Regulation Reorganization and Reform Act of 1988, which was passed by the Senate earlier this Congress.

This bill will reduce both the demand for and supply of illicit drugs. It will also help those whose lives have been ravaged by drugs to return to law-abiding, productive lives. I hope the House of Representatives will act quickly and decisively so we can send the President a bill to sign.

Thank you, Mr. President. I yield the floor.

NATIONAL DRUG CONTROL POLICY DIRECTOR

Mr. BIDEN. Mr. President, despite the partisan pressures of a Presidential election year, Senators from both sides of the aisle have drafted a craftsman like, bipartisan drug-control bill that we could adopt with a minimum of controversy and a maximum of cooperation—not necessarily the best of all possible antidrug bills but a bill that Republicans and Democrats alike can support in the main, even if they have reservations about some of its provisions.

So, I hope, Mr. President, that we can focus our support on the core bill that was introduced by our Democratic and Republican leaders. It is clear that there is little time remaining for the long list of amendments that have been proposed, and it is equally clear that adoption of some of the most controversial amendments may cause many Members to vote against the bill.

We are at a point, I believe, where we must set aside our personal agendas in favor of passing legislation the American people want and need.

In my judgment, Mr. President, one provision has assured the bill of my support as it stands now. This provision, I believe, is by far the most important in the bill—the creation of the Office of National Drug Policy Director—a national, Cabinet-level officer nominated by the President and confirmed by the Senate, and charged with the sole responsibility for planning a national antidrug strategy, for developing a unified budget to support that strategy, for coordinating the efforts of Federal departments and agencies responsible for translating that strategy into effective action, and for ensuring close Federal cooperation with State and local antidrug agencies.

We have been struggling for nearly 30 years to save our society—to save our children and their future from the scourge of illegal drugs and from the crime they inevitably spawn. We have spent billions of dollars. We have developed one antidrug program after another. We have established task forces.

We have attempted to eliminate sources in other countries, to staunch the flow of drugs across our borders, to jail the drug-traffickers and confiscate their profits, to treat our drug abusers and to educate our youth to prevent further abuse. We have won some battles and made some headlines.

We have no doubt saved some lives and made life more difficult for the traffickers. But the fact remains that we are still losing the battle to guarantee our children a future free from the devastation of illegal drugs.

In Miami, the police are in an arms race, struggling to match the automatic weapon firepower of the drug traffickers. In Los Angeles, authorities have attempted to reduce street shootings by sponsoring formal negotiations between rival street gangs, while a young child who rides his bike up and down those same streets as a lookout for the drug pushers can earn more than $100 a day.

In Philadelphia, three times in the past 3 months, street shoot-outs in otherwise quiet residential neighborhoods have caught babies and young children in a murderous crossfire and left them dead or seriously wounded.

A Philadelphia woman who resisted illegal drugs in her neighborhood was burned out of her house by the traffickers, and in New York City a police officer guarding the home of another citizen who tried to fight back was himself assassinated.

What makes this tragic litany so hard to bear, Mr. President, is the years we have lost—and the lives that have been wasted—while the administration has resisted meeting an obvious need. A little more than 8 years ago—in a report to the Senate Foreign Relations and Judiciary Committees, in September, 1980—I recommended the creation of a national Director for the Federal Government's antidrug efforts.

But there wasn't much enthusiasm for that idea over in the executive branch. In 1981 the Senate Democratic Task Force on Crime, which I chaired introduced legislation that for the first time incorporated that recommendation into legislation. In 1982, we joined the House in including a national drug director in a revision of the Federal Criminal Code.

But after a lot of pulling and hauling among the bureaucrats, the President surrendered—to veto the Drug Director, he vetoed a much-needed revision of the criminal code his own administration had strongly supported. The Justice Department justified the veto by saying a so-called Cabinet Council on Legal Policy was already coordinating antidrug policy, a council that was abolished in the Cabinet reorganization about 1 year later.

That veto was imposed more than 5 years ago, Mr. President—five long, wasted years during which more and more drugs have flowed across our borders, through our streets and into the veins of a growing number of young Americans.

In 1984, we compromised on the creation of the National Drug Enforcement Policy Board, and in 1985 the President finally appointed then-Attorney General Meese to chair that Board.

But its members were the heads of the very departments and agencies who had been fighting among themselves for years, and the result was what we might have expected—lots of fanfare, lots of feuding, and no significant progress.

So, in 1986, we called upon the President to present recommendations for more effectively combating drug-trafficking and abuse. The only response was a page-and-a-half letter from Attorney General Meese last year claiming that the Drug Policy Board and other administration offices were already doing enough.

In view of this long bureaucratic delaying action, Mr. President, it's no surprise that the Federal Government has fallen far short of meeting its responsibility for fighting illegal drugs. The 35 Federal agencies with antidrug responsibilities have persistently refused to develop a unified strategy or coordinate their activities.

The so-called "Drug war" may be languishing, but the real turf wars are being fought as vigorously as ever by our Federal empire-builders. Last year, for example, in the midst of a long-running squabble between the Customs Service and the Coast Guard, the Coast Guard used its computer to surreptitiously withdraw $8 million from a Customs Service account.

I use the word "withdraw," Mr. President, although we would apply a stronger term if one private citizen dipped into another citizen's bank account in the same way. And that's just one example. In the 1986 Anti-Drug Abuse Act, Congress directed the Customs Service to coordinate the efforts of five Federal agencies to head off illegal drugs being shipped into the country, but a recent General Accounting Office report tells us that the turf wars continue among those agencies.

Last year, the DEA resisted a Customs Service proposal to fly hot pursuit aircraft against drug smugglers in the Bahamas, while the Bahamian Government, which favored such flights, hired an American public-relations firm to wage a public campaign against the DEA position. This long catalog of contention and lack of coordination goes on and on, Mr. President, but it is only one aspect of the failure of the Federal Government to meet its antidrug responsibilities.

There has also been a strong disinclination on the part of the administration to give antidrug efforts the priority the American people believe they should have. The willingness to deal with General Noriega and his cronies is one example that has offended many Americans, but there are others. No sooner had the President signed a bill authorizing $1.7 in new money for 1987 antidrug programs than the White House turned around and proposed cutting back funds for treatment, education, and local law enforcement in 1988.

Now addicts in some cities are still waiting as much as a year to get into those programs, and treatment providers tell us that Federal cutbacks and regulations are hampering efforts to contain the spread of the AIDS virus among addicts. A former associate director of the Office of Management and Budget has called these contradictions the result of "an Administration without adult supervision." She said she was responsible for setting the funding levels for drug education and treatment, but that she got little guidance on how to do that. "The people on my level * * * were left on our own," she said.

In this administration, Mr. President, the accountants have been setting our antidrug priorities, and they have been getting them wrong.

This is straightforward, unambiguous legislation, Mr. President, well-honed by years of negotiation and debate. It locates the National Drug Control Policy Office within the Executive Office of the President, much like the Office of Management and Budget. In that office, close to and directly accountable to the President, there will be a Cabinet-level Director of National Drug Control Policy, two Deputy Directors—one for drug enforcement and one for demand reduction, and an Associate Director for State and local affairs—all four to be appointed by the President with the consent of the Senate.

The next President, whoever he is, should welcome the creation of this office and the greater impact it can lend to Federal antidrug efforts, but he should realize that this new capability also presents him with a major challenge—to appoint a person whose proven leadership and unquestioned statute will assure the new office of the credibility it must have from the outset if it is to have its intended effect.

The new Director must be someone who will come to office assured of the full faith and support of both the President and the American people. It is also important to note, Mr. President, that this legislation specifically forbids the Director from holding any other position in Government. We have learned the hard way that it is too easy for an Attorney General to put drug control on the back burner and forget about it.

Mr. President, planning and coordinating an effective national drug control policy is not—and can not be—a part-time responsibility for someone whose mind is really on something else. And there can be no question, I believe, that the drug coordinator must have Cabinet rank if that office is to have any chance of success. It would be folly to believe that an officer of sub-Cabinet rank could hope to rein in 16 Cabinet-level departments with antidrug responsibilities. Furthermore, that Cabinet-ranked coordinator must be given authority over the entire spectrum of drug-control programs, both supply and demand.

If we have learned anything from our failures, it is that law enforcement alone—no matter how well it does its job—can not stem the tide of illegal drugs. We must enforce antidrug law vigorously, but we can do so effectively only under a national strategy that pursues education and treatment programs with equal vigor.

Finally, the Director has to have real authority for developing a single, consolidated national drug-control program budget, and for submitting that unified budget to the President and Congress. That means starting on the ground floor, when the agencies are working with the Office of Management and Budget. Rather than merely consult with the agencies on their own, independent requests, the Director would work with them to develop a budget that reflects and implements the national drug-control strategy. That does not mean the director could simply run roughshod over the agencies—any agency could appeal a budget decision directly to the President.

This kind of authority to develop a unified budget for the intelligence community has worked well for the Director of Central Intelligence, and it should work for the National Drug Control Policy Director. It's also important, Mr. President, to clarify several misperceptions about what this legislation does and does not do. First, the Director would not be a czar with dictatorial powers.

For example, he could reassign personnel only with the concurrence of the agency employing the personnel. Second, the director's authority extends only to policy, not to operations, and the language of the bill is explicit on that point. Once the Director has overseen the development of a national strategy and a unified budget, the individual agencies would still be responsible for day-to-day antidrug operations. The new Cabinet officer would be a policy Director, not a micromanager.

This bill also specifically terminates the National Drug Enforcement Policy Board, the National Narcotics Border Interdiction System and the White House Office of Drug Abuse Policy. We have to get rid of the deadwood that has piled up around our effort to get control of drugs and defeat the drug traffickers.

Finally, this bill "sunsets" the office at the end of 1992, unless it is specifically reauthorized by Congress. As long and as hard as I have strived to bring this day about, Mr. President, we can't risk any more bureaucratic inertia—if this office gets the support it must have from the next President, I believe it will work; but if it doesn't get that support, if it doesn't work, I'll be the first Senator to stand up here and ask the Senate to terminate it.

I believe this program will work, Mr. President, and I am convinced that we must support it as vigorously as possible. But despite my support for the bill and my enthusiasm for its drug-Director provision, I am still troubled by the fact that the Senate has not provided a means for funding the bill. The bill authorizes $1.4 billion in actual spending in fiscal year 1989, but it provides for, at most, only about $500 million in revenues—a shortfall of nearly $1 billion. That means that DEA, Customs, and other antidrug agencies will be prohibited by law from spending money that is authorized in this bill.

Senator RUDMAN and I offered an amendment that would have fully funded the bill by raising excise taxes on alcohol and cigarettes. The Senate did not accept our amendment. And that's too bad, Mr. President, because failing to fully fund this bill will make it in many ways a hollow exercise—a failure to fully seize the opportunity it gives us, at last, to make a unified, effective attack on the most critical domestic problem the Nation faces.

And that is the opportunity that lies before us today, Mr. President—the opportunity, so long denied us, to take back from the dirty and destructive hands of the drug traffickers: The integrity of our borders, the civility of our communities, the safety of our streets, the security of our homes, and the future of our children.

Mr. D'AMATO. Mr. President, there is a reason why drugs are cited as the No. 1 issue concerning the American people and it is not because this is an election year. Drugs are the No. 1 issue because they have become the No. 1 problem facing every family in our country.

Parents fear for their children. They fear the peer pressures that drag so many of our youngsters down. They fear the ready availability of almost any type of drug imaginable. They fear the drug dealers who lurk outside the school yards.

They fear what their children will turn into should they succumb to the temptations of drugs and alcohol. They fear for the future of their children and what may happen to this country if something is not done to stop the drug epidemic.

Mr. President, this bill will not solve the drug problem. But it is a beginning and a step in the right direction. This bill authorizes many important antidrug initiatives, including:

The death penalty for drug kingpins and drug-related killings of law enforcement officers.

A new system that helps the DEA trace the chemicals used to make heroin, cocaine, and other drugs and that enables law enforcement officers to combat the spread of dangerous illegal drug labs.

Better laws against money laundering, including the authorization of sting operations against money launderers and $10,000 daily fines against the banks that violate antimoney laundering recordkeeping and reporting rules.

Expedited deportation of criminal aliens convicted of drug crimes, murder, kidnapping, rape, and firearms trafficking. It sets a minimum mandatory penalty of at least 15 years imprisonment for the deported criminal alien who reenters the country illegally.

The bill authorizes increased budget authority for treatment, prevention, and law enforcement, including:

First, drug treatment and drug education: $1.50 billion in new authorizations.

Second, drug enforcement: $1.06 billion in new authorizations. This includes:

Coast Guard: $84 million for operations and acquisition of new resources.

Customs Service: $91 million for operations and air interdiction.

DEA: $57 million.

U.S. attorneys: $36 million.

FBI: $25 million.

Federal prison construction: $205 million.

State and local assistance: $250 million.

It sounds great. Yes, it's a $2.6 billion authorization bill. But, authorization bills mean nothing unless Congress puts the money into it.

In the area of fundings, this bill is like the fabled emperor who had no clothes. This bill doesn't have the money to back it up.

So far, only two real funding sources totaling $290.4 million are identified: $206.4 million from increased IRS tax collections; and $84.0 million from increased drug forfeitures—with $36 million of that going to U.S. attorneys, and $22 million of that $36 million earmarked for forfeitures.

There may be approximately $160 million we can spend before we run up against the danger of across-the-board cuts under Gramm-Rudman. So we may be able to appropriate $450 million of the $2.6 billion we authorize.

Mr. President, we either fight a drug war or we don't. There's no middle ground. It's like being pregnant—you either are or you aren't. We either commit the resources or we don't. There are those who say we cannot afford to pay for this bill. I think we can't afford not to pay for it.

We will pass this bill, and we may target $450 million in new funding to fighting drugs. But this is a $2.6 billion bill. The first order of business for the new Congress and incoming administration must be to find ways to fully fund this effort.

This bill contains provisions that many of us have been fighting for for a long time. It is not perfect, but it represents a coming together of both parties and a commitment to move forward on combatting both the supply and demand for drugs.

DEATH PENALTY

One of the most important provisions in this bill is the death penalty language, which originated in S. 2455, which passed the Senate overwhelmingly on June 10 by a vote of 65 to 29.

In negotiations with the staff of Senator Levin, and with the assistance of the Justice Department, I agreed to accept a number of Senator Levin's clarifying amendments, which have been incorporated into the leadership package of amendments. In the view of Justice Department attorneys, with which I concur, these amendments do not change the essence of the capital punishment provisions of the bill.

It is my understanding that the jury, in a sentencing hearing, will recommend a sentence of death or some other sentence. It is further my understanding that if the jury recommends the death penalty the court must impose the death penalty and is not free to ignore the recommendation and impose some other punishment.

The capital punishment provisions of this drug bill still provide for the death penalty in very specific instances:

For a drug kingpin engaged in a continuing criminal drug enterprise who kills or participates substantially in the killing of someone, such as by ordering that someone be killed;

For any person—such as a hired killer—who kills someone in connection with a continuing criminal drug enterprise; and

For anyone who kills a law enforcement officer in a drug-related killing.

The death penalty would apply in any of these instances, regardless of whether the victim was killed intentionally, or as the result of the reckless indifference to human life. That phrase "reckless indifference to human life" is very important. It covers the case—all too common in our cities—of the drug gang that sprays an apartment building or a street with automatic weapons fire, killing innocent men, women, and yes, infant children.

This bill is very specific as to when and how the death penalty could be used. An elaborate procedure is set up to ensure that those convicted receive an adequate hearing that considers any aggravating or mitigating factors. The constitutional rights of due process and appeal are fully protected by this bill.

Mr. President, society has the right to execute the cold blooded killers who deal in death and destruction. The drug dealers know what they are doing when they kill. Their murders are deliberate and calculated. The time has come for us to act in our own self defense. The first step is to give juries and judges the ability to decide that these people deserve the sentence of death so they will never kill again.

MONEY LAUNDERING AND THE IRS

Mr. President, included in the leadership package of amendments is language I introduced amending the Internal Revenue Code, which addresses two serious weaknesses in our law enforcement and antimoney laundering enforcement efforts.

I want to thank the majority and minority leader, the chairman and ranking member of the Finance Committee, as well as Senator Moynihan, for their assistance in having this language included in the leadership package.

This amendment is strongly supported by the Treasury Department. I ask unanimous consent that a letter from Assistant Secretary of the Treasury for Enforcement, Sal Martoche, be printed in the Record in its entirety at the conclusion of my remarks.

The amendment permits the IRS to finance a money exchange or other business that it runs as part of an undercover operation with the income generated by that business. FBI, DEA, and Customs all have this power now. But the IRS has to pay back immediately to the Treasury any funds it takes in as part of its undercover operations. The IRS must use money from its appropriations to finance the operation.

Under the law today, if IRS sets up a money exchange on the United States-Mexican border, to investigate money laundering, the dollars it pays out must come from its annual appropriations. But the funds that come in must immediately go back to the General Treasury.

The amendment also permits the Customs Service, DEA and other law enforcement agencies to obtain from the IRS the reports the IRS receives when a person pays more than $10,000 in cash for a car, house, plane or other item.

The Justice Department and Customs Service are seeking access to the IRS Form 8300 that nonfinancial businesses—car dealers, real estate companies, and so forth—file when customers make purchases with more than $10,000 cash.

The amendment would give a DEA agent and assistant U.S. attorney investigating a suspected drug dealer access to the IRS forms filed when he buys his Porsches and Mercedes, airplanes and large homes, with cash. This is precisely the information they need to determine whether to go forward with an investigation and to complete the suspect's criminal profile.

The amendment allows IRS to put its form 8300 into the Treasury data base, which law enforcement agencies use to help them trace how drug dealers are spending their money, and to make fuller use of modern artificial intelligence capabilities to identify drug dealers and money launderers. There is no reason to treat retail purchases any different from bank deposits of more than $10,000. The rule prohibiting IRS from sharing information on cash purchases over $10,000 serves no real purpose other than to enable drug dealers to launder money without much risk of exposure. It is time we removed this drug dealer's advantage from the law.

DEMAND REDUCTION IS KEY

Mr. President, the key to winning a war against drugs lies in eliminating the demand. This process must begin in every home and school as we instill in our children a sense of self-worth and achievement that make an active life more attractive than drugs.

Unless we do this, the drug dealers will always have a market. This bill authorizes an additional $172 million for drug free schools and teacher training programs. It is essential that this authorization be backed up with real dollars.

This bill also authorizes $1.1 billion for drug treatment block grants and, for the first time, allows Federal funds to be used to construct and renovate drug rehabilitation centers.

Those who have fallen prey to drug addiction and who have mustered the strength needed to enter a treatment program must not have to wait months to get help.

Unfortunately it often takes up to 6 months to get into a rehabilitation program. Addicts, desperate for help, have no choice but to return to a life of drugs. This must not be allowed to happen. When someone is ready to get off drugs, we must be able to get that person into a program.

Mr. President, there are no easy answers to America's drug problem. Preventing drug and alcohol abuse lies in the values we instill in our children. Prevention begins at home and is reinforced in school.

Keeping our children from getting involved with drugs is not a responsibility that can be surrendered to the Federal Government.

Washington can help—by funding preventive education programs and by helping build rehabilitation centers. We can help by giving law enforcement agencies the resources to do the job and by strengthening the criminal justice system's ability to keep dangerous criminals off our streets.

We must attack the source of the drugs coming into our country by making fighting drugs a major foreign policy priority. America's Defense Department should be fully utilized in detecting and helping apprehend the drug traffickers.

One thing is certain, unless there is a total commitment by every level of Government and by every family in America, a war against drugs will not succeed.

This bill represents a good beginning, but the job is far from done. Congress has failed to provide the funding needed to fulfill the promise we make by passing this bill.

Each and every one of us in the U.S. Senate should go home this evening and look at our children and think of America's children—for they are the future of our Nation. We owe it to them to find a way to fund a war on drugs.

I ask each and every one of us to make a personal commitment to find a way to finance a war on drugs and to make it our top legislative priority for the coming Congress. Then, we can argue and debate about how to do it, but we will do it.

By passing this bill we make a promise—a promise that we can keep only by funding the bill and following through on subsequent antidrug bills with a realization that we are at war—at war with the drug lords. If we commit ourselves as if we were really at war—as we did during World War II—we can win. If we don't, we won't. It is as simple as that. The people demand it and it is up to us to lead.

Mr. SPECTER. Mr. President, I seek the opinion of the distinguished chairman of the Armed Services Committee concerning an experience I had during my recent trip to Colombia, Peru, and Bolivia to review United States drug interdiction efforts.

A sensitive issue was raised concerning the provision of U.S. law which prohibits Department of Defense [DOD] personnel from assisting foreign police efforts. The policy reasons for this limitation generally are sound. In a situation where Drug Enforcement Administration [DEA] agents are permitted by U.S. law to assist in foreign drug raids and are invited by host countries to do so, a question is raised as to whether DOD Special Forces personnel would be more appropriate for that task than DEA agents.

It is my sense that as a matter of U.S. policy, it would be worthwhile to consider an exception for Special Forces personnel to assist on drug raids when DEA agents would otherwise be lawfully assigned, providing the host country agreed. It would be possible to make personnel substitutions by former military personnel and DEA hirings. It could be done in a variety of ways, and some efforts are currently undertaken to comply with U.S. law by restructuring. However, I suggest that it is obviously cumbersome to restructure U.S. law. It would be preferable to face this policy situation head on and examine a policy which might permit limited use of Special Forces personnel, for example, in dealing with the drug dealers, where otherwise DEA personnel are now used, providing—and this is critical—that the host country agrees.

I recognize that even if permitted by U.S. law, there are very weighty and sensitive issues for the South American countries to have U.S. personnel, even if civilian, accompany host country police actions. However, this might be worked out in specific situations depending on the seriousness of the action involved and the host country's decision. It may be sensible to revise U.S. law to provide flexibility to use DOD personnel in limited and well-defined circumstances. I would appreciate the Senator's comments on this issue.

Mr. NUNN. The Senator from Pennsylvania has raised a number of interesting points. The Armed Services Committee had a series of hearings this summer on the role of the military in drug interdiction. While we concluded that there were substantial opportunities for increased assistance by the military in the areas of intelligence, aerial surveillance, and other forms of indirect support, we also concluded that it would not be appropriate to involve the military directly in arrest, search, and seizure. Nevertheless, the Senator has raised an issue that should receive further consideration, and the committee will explore this proposal at a hearing during the next Congress.

Mr. SPECTER. I thank the distinguished Senator for his remarks on this very important issue.

Mr. President, I seek the opinion of the distinguished chairman of the Committee on Banking, Housing, and Urban Affairs concerning an experience I had during my recent trip to Colombia, Peru, and Bolivia to review United States drug interdiction efforts.

In our war on drugs, it appears prudent to make a maximum effort to assist in training local police forces and to make available equipment, such as helicopters, to local police efforts. While in Colombia I was informed that the country has sought to purchase $60 million in United States military equipment, but can not do so because of provisions in United States law which prohibit financing certain military equipment through the Export-Import Bank.

Consideration should be given, I suggest, to modifying that provision. While it is appropriate to exclude such assistance generally on the purchase of military equipment, Congress should consider an exception which might be made that where equipment is used exclusively and verifiably against drug traffickers. In this case it is realistically an internal police action, there may well be public policy justification, for an exception to exclude the Export-Import Bank financial assistance.

Mr. PROXMIRE. The Senator from Pennsylvania raises a relevant issue which merits further review. I believe that the present prohibition on Export Import Bank participation in the financing of defense articles by lesser developed countries generally is sound. I do, however, agree that the exception the Senator from Pennsylvania has raised would provide important assistance to those countries in their fight against indigenous drug traffickers. I would say to the distinguished Senator from Pennsylvania that if I was not serving in my last session of Congress I could commit to holding hearings on this issue next year. However, I believed this to be an appropriate Export Import Bank exception be considered by the committee during the next Congress.

Mr. SPECTER. I thank the distinguished Senator for his remarks on this very important issue.

VICTIMS OF CRIME ACT

Mr. President, the Victims of Crime Act authorizes the Attorney General to make crime victim assistance grants to States for the purpose of supporting the work of local public and private nonprofit crime victim assistance programs. In 1984, I sponsored an amendment which requires States to give priority to certain classes of victims in the awarding of grants. This amendment requires the chief executive of each State to "certify that priority shall be given to eligible crime victim assistance programs providing assistance to victims of sexual assault, spouse abuse, or child abuse."

I am informed by domestic violence groups that problems have arisen in the implementation of this provision through interpretation of the statute. Thus, I would like to reiterate for the record the congressional intent in adopting this language.

Victims of sexual assault, domestic violence and child abuse have unique needs. These victims often face twisted social attitudes that shift blame to the victims of these women and children. In many States, for example, domestic violence and marital rape are treated as "private matters" rather than criminal offenses. The credibility of children victimized by incest or molestation may be questioned by adult authorities; and, the victims of rape and domestic violence may encounter a criminal justice system described by victim advocates as "placing the victim on trial."

Programs established to assist victims of sexual assault, domestic violence and child abuse have traditionally specialized in care and treatment of these victim populations. In short, the victims of these crimes are different from victims of other violent crimes due to the nature of the crimes. The priority language acknowledges that difference and seeks to ensure that the States consider the unique needs of these victims in their funding decisions.

The priority requirement is not intended nor does it prevent States from exercising their autonomy in deciding how they will award crime victim assistance grants. As I stated in 1984, States are free to fund eligible organizations of their choice at amounts of their choice. Congress simply expects States to make funding decisions based on basic factors as victimization rates, the costs of serving individual victim populations and the number of eligible victim assistance programs applying for the grants.

I am concerned that in an attempt to provide direct services to all crime victims, a number of State administrators are first denying grant support to specialized victim assistance organizations; and/or second requiring specialized programs to provide generic victim assistance to retain eligibility for future grants. While I commend the efforts of States concerns with expanding victim assistance services available to an admittedly large and diverse crime victim population, their response may be contrary to the legislative intent of the Victims of Crime Act.

The ultimate goal of this Federal program is to enhance and expand the availability of the direct services to all the victims of crime. Through the priority language, Congress envisioned the States promoting a balance between maintaining victim services now provided by well-established victim assistance programs and expanding the amount and types of assistance available.

Mr. LEVIN. Mr. President, we are not going to win the "war on drugs" if we use the wrong ammunition or aim at the wrong targets. We are also in danger of running out of ammunition in the form of funding for the antidrug efforts.

This bill generally moves us in the right direction in the antidrug war. There are several provisions in it that I do not support. But the good in the bill outweighs the bad. And it is enough of an advance over our current antidrug effort that I have decided to vote for the bill.

This bill improves the current war on drugs in two especially significant ways. First, it puts in place a mechanism for developing a coordinated national strategy against illegal drugs. By creating an Office of National Drug Control Policy headed by a drug czar with broad power, the legislation will allow us to have an overall strategy instead of a dozen different Federal agencies following a dozen different agendas. Second, the bill shifts some emphasis of our antidrug policy from supply to demand. It still provides plenty of resources for law enforcement and interdiction—the supply-side efforts—but it strikes what I think is an appropriate balance by tilting somewhat more in the direction of treatment, education, and prevention.

Mr. President, before coming to the Senate, I served on the city council in Detroit for 8 years. Now, Detroit is a good town—it has a drug problem, but the situation there is no worse than that found in most major cities and perhaps a little better than the situation which exists in some. But it has a serious problem and I saw that problem first hand.

I saw individual lives wasted, families devastated, neighborhoods destroyed by drugs.

I've got no sympathy for the drug pushers who prey on the misery of others. I have supported efforts to toughen the sentencing of drug offenders. In fact, I got enacted into law an amendment to the 1986 drug bill to provide a mandatory minimum prison sentence for those who sell drugs to children or around schools. But let us be clear about this: as long as there is a demand for drugs, someone will be willing to take the risks—any risks—to meet the demand and make the money that can be made.

This war on drugs is not going to be won easily or quickly. It will not be won if we simply take a supply-side approach and ignore the social forces which create the demand for drugs. And it will not be won if we are not willing to pay for it.

I support the effort by the authors of this bill to shift some of the emphasis of our antidrug policy from the supply side to the demand side. Traditionally, we have spent far more on eradication, interdiction, and law enforcement than we have on treatment and education. The balance is now skewed to supply-side efforts: over 70 percent of overall antidrug funding is for supply programs and less than 30 percent is spent on reducing demand.

The current tilt toward a supply-side solution simply isn't working. Despite a record number of drug seizures, illegal drugs sold on the street are actually getting cheaper. Between 1984 and 1987, the amount we spent on interdiction almost doubled, rising from just over $700 million to just under $1.4 billion. The amount of cocaine seized by Federal agencies like the Customs Service and the Border Patrol doubled in this period as well. But for all our money and effort, twice as much cocaine got through our interdiction system and hit the streets of American cities. Consequently, the street price of cocaine has decreased from as high as $125 per gram in 1983 to as low as $80 a gram in 1987.

It's time to try a different approach. It's time that we go to work on drying up the demand for these dangerous and addictive substances that destroy so many lives.

This bill recognizes that we need to change the emphasis of our antidrug policy, and authorizes funding accordingly. Sixty percent of the money in this bill would go to treatment and education, and 40 percent to interdiction and law enforcement. When added to already appropriated funding for antidrug programs, the funding in this bill brings the overall balance in Federal antidrug spending from the current 30 percent for demand and 70 percent for supply to a mix of 40 percent for demand and 60 percent for supply. If in future years we appropriate the funds authorized by this bill, the balance will get even closer to 50/50.

The sad fact, Mr. President, is that while we pour money into some supply-side efforts that don't seem to be working, people who need and want a chance to end their addiction to drugs are going without treatment. All over this country, there are thousands of people waiting to get into treatment programs, some for weeks, others for months. In my home State of Michigan there are almost 3,000 people waiting for admission to treatment programs. In one county alone, there are 200 people waiting to be screened to be put on a waiting list which already has over 200 people on it.

The treatment shortage isn't unique to Michigan. In California there are well over 4,000 people waiting for treatment. In the State of New York there are over 2,700. And right here in the District of Columbia there are about 1,500 people currently on drug treatment waiting lists with minimum wait of 6 to 8 weeks. Those figures don't take into account the many thousands of people too discouraged by these long waiting lists to apply in the first place. And it is reported that once a name does come up on the list for admission, it is often difficult if not impossible to find the person who had requested treatment.

It's simply wrong that so many people who want treatment can't get it. We must do better. And this bill gets us started in the right direction.

The bill establishes a national goal of providing treatment on demand for substance abusers, and authorizes sufficient funding to move us toward that goal. The bill allows the use of drug treatment grants for construction and rehabilitation of treatment facilities, which too often are inadequate to meet the needs of the various State and local substance abuse programs. The bill also creates several new and potentially useful grant programs, including one aimed at encouraging drug abuse treatment training at medical and nursing schools, and another aimed at helping employers to establish or improve employee assistance programs.

The legislation also expands and refines national data collection and research relative to drug abuse treatment. We need to know more about who needs help, whether they are currently getting it, how we can get it to them, and what kinds of treatment work. Without this information, all the funding in the world for treatment won't reduce demand because it won't be spent effectively.

This bill also strengthens and expands supply-side efforts by, for example, adding more personnel to the Drug Enforcement Agency and the Immigration and Naturalization Service. I support our efforts on the supply side. But I also recognize that we do not have unlimited resources, even for a problem as important to the American people as the drug problem. We need to make choices and concentrate on doing the things that work.

Our lack of resources is starkly illustrated by the fact that we only have enough money left under this fiscal year's Gramm-Rudman ceiling to pay for 15 to 30 percent of the amounts authorized in this bill, depending on whose estimates we use.

We had a chance to do something about the lack of funding last week when Senator RUDMAN offered an amendment to the tax technical corrections bill which would have paid for the drug bill by small increases in the Federal excise tax on liquor, beer, wine, and cigarettes. Although I am concerned about the regressive impact of excise taxes, I supported this proposal as a fiscally responsible approach to paying for the vitally important programs in this bill. If we want to have these vitally important programs—and everyone in this body believes that the scourge of drug abuse is a vitally important problem—then we ought to be willing to pay for them. The Rudman amendment got about 30 votes.

I am certain that next year and the year after we will be forced to revisit the question of how we pay for this massive effort. I hope that in the future we will be able to put our money where our mouth is, and support reasonable ways to pay for important antidrug programs.

Despite my disappointment over our failure to fund this bill, and despite my problems with some individual provisions of the bill, I plan to vote for it. It moves our antidrug effort in an overall positive direction, and makes it more likely that we will succeed in removing the scourge of illegal drug use from our society.

DIPLOMATIC IMMUNITY

Mr. HELMS. Mr. President, I am grateful to the leadership for including in the leadership package provisions designed to correct the worst abuses of diplomatic immunity that have allowed the family and support staff of foreign diplomats to commit crimes that would warrant serious punishment if committed by U.S. citizens.

The Senate has approved similar legislation twice before—as a part of the State Department authorization bill last year and recently as an amendment in the foreign operations appropriations bill. This version has been modified to address some of the concerns expressed by representatives of the administration.

The House, and specifically the House Judiciary Committee, has neglected to approve this important legislation. I am optimistic that upon closer reflection, the House may not approve these modest, but important, improvements in the treatment of crimes committed by diplomatic guests in this country.

The provisions of subtitle F of title IV are very much related to the underlying issues of the drug bill. The subtitle imposes restrictions with regard to serious criminal offenses, which includes drug-related crimes. Such drug-related crimes are an increasing problem. According to statistics of the U.S. State Department, drug-related crimes constitute one of the frequent charges lodged against diplomatic personnel and their families—committed by families of diplomats assigned to Washington or to U.N. missions in New York.

Mr. President, the State Department acknowledges 156 incidents involving charges lodged against diplomatic personnel in the 5-year period between August 1, 1982, and August 5, 1987. This may well be only a partial list, since the Department does not automatically keep track of all possible charges; one of the provisions of the subtitle would require better record keeping with such information to be provided annually to Congress.

The escalation in the number of so-called diplomatic personnel in our country to the present level of 37,000 has exacerbated the problems associated with diplomatic immunity. In practice, these 37,000 foreigners are free, under current law, to commit any crime—no matter how serious, how violent, or how heinous—and remain free from prosecution.

The problems faced by our citizens are greater than in other countries because of the large foreign delegations to the country as well as the delegations, which also enjoy diplomatic immunity at the United Nations, and other international organizations physically located in the United States.

The amendment emphasizes a change in the treatment of diplomatic immunity for family and support staff of foreign diplomats when the families or staff traffick in drugs, drive while intoxicated or commit other reckless driving offenses, or commit violent crimes against the U.S. citizens.

Mr. President, let me be clear. This amendment does not do as much as some of us would like. It has been modified in an attempt to meet concerns of the administration on several points. However, it is a first step in the direction of curtailing the abuses of diplomatic immunity that have been tolerated by the Department of State. Many of these abuses could have been addressed administratively, but the Department did not do so. This amendment will require the Department to act properly in this area.

The State Department's negligence has contributed, in part, to the need for such action.

The thrust of the proposal is that foreign diplomats charged with serious crimes will continue to be eligible to have diplomatic immunity invoked on their behalf. However, this immunity will only be available if invoked by the foreign minister of the sending country.

The Secretary of State is required, under the amendment, to request of the sending country that diplomatic immunity be waived in the case of serious crimes in order to permit the prosecution of the individual. If that immunity is waived by the foreign minister, the individual will be subject to normal prosecution procedures in the various jurisdictions where such crimes are committed.

If, however, the sending country does not waive the immunity, the Secretary of State is required to declare the person "non grata" and require that individual to leave the United States. What could be wrong with that?

Individuals who are required to leave under such circumstances will be permanently excluded from the United States under the immigration revisions also included in the amendment.

The ability of diplomatic representatives or members of their families to remain in the United States despite the commission of serious crimes is an outrage. Perhaps the most striking example presented to the Committee on Foreign Relations in the Senate, Mr. President, was the case of "Holly," a young girl who lives in the Metropolitan Washington area. Holly's mother presented the committee with written testimony of the rape of this young girl by two young men who taunted her with the fact of their immunity during the assault.

One of the important aspects of the amendment is the requirement that the Office of Foreign Missions establish liability insurance requirements which can reasonable be expected to afford adequate compensation for injury to person or property resulting from or arising out of the activities of the mission. This provision should set in motion safeguards to ensure that future victims of diplomatic crimes will be compensated, at least to some extent, for their injuries.

The amendment also addresses the abuses of the diplomatic pouches—pouches intended primarily to carry messages to and from the sending country. The amendment requires the President to take such steps as may be necessary to prevent the use of diplomatic pouches for the transportation of illicit narcotics, explosives, and weapons or any material used to foster terrorism into the United States.

There is no legislation, Mr. President, that can remove the pain and suffering of Americans who have suffered violence at the hands of foreign diplomats or their families. However, this amendment sets up parameters to improve the treatment of U.S. citizens and provide incentives for improved behavior by those guests in our country who serve as diplomatic representatives of their governments.

Mr. Ken Skeen, summarized the current frustration of many Americans during his testimony before the Senate Foreign Relations Committee on August 5, 1987. Mr. Skeen was shot several times by the son of the Brazilian Ambassador. As it turned out, the Ambassador's son—who had diplomatic immunity—had previously been involved in at least one other serious crime. Yet nothing had been done to him. Mr. Skeen summarized the frustration:

> I am an American. He is over here in my country, on my property. He shoots me. I am working. And I look like I am the bad guy, and he walks away scot free.
>
> * * * I was just wondering if anybody here can explain how anybody can get away with attempted murder, running over people, raping women in this country. We have a very civilized country. We are not a country where we do not have laws. We protect our people.
>
> I just cannot understand it up till this day how somebody can walk away from a serious crime.

Mr. President, from the date this provision is enacted, these diplomatic personnel and their families no longer will be able to walk away from a serious crime. Either the foreign minister of the sending country will waive diplomatic immunity and permit prosecution, or the individual will be expelled from the United States and never be permitted to return. Additionally, those who suffer injury will be assured of some compensation through the insurance system that is required to be established.

Today's package includes several modifications suggested by representatives of the administration in order to clarify several aspects of the provisions. I thank the chairman of the committee, Mr. PELL, for his consistent support and assistance in developing this legislation.

Mr. President, I ask unanimous consent that a section-by-section summary of the legislation be included at the conclusion of my remarks.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS

DIPLOMATIC IMMUNITY ABUSE PREVENTION ACT

Section 4601—Short Title

Section 4601 provides a short title of "Diplomatic Immunity Abuse Prevention Act."

Section 4602—Crimes Committed by Diplomats

Section 4602(a) amends the Foreign Mission Act, Title II of the State Department Basic Authorities Act of 1956, to require the Director of the Office of Foreign Missions to keep records on each incident in which an individual entitled to immunity is believed to have committed a serious crime.

Section 4602(b) amends Section 5 of the Diplomatic Relations Act by adding a new subsection (b) to require the Secretary of State (1) to make an annual report to Congress on the incidents involving serious crimes believed to have been committed by individuals entitled to immunity, and on any undisputed debt owed by individuals entitled to immunity and (2) to work with law enforcement agencies to educate their officials on the extent of immunity from criminal jurisdiction to which members of the diplomatic community are entitled under international law. In addition, this subsection prohibits any State Department employee from discouraging the investigation, charging, or prosecution of an alien, who is a member of a mission or any member of his family or any other alien not entitled to immunity. The Secretary may waive the prohibition with respect to a specific individual if the Secretary determines that significant foreign policy considerations or the national security so requires. Finally, this subsection requires that the Secretary notify each diplomatic mission in the United States of U.S. policy with respect to serious crimes committed by its members.

Section 4603—Registration and Departure Procedures for Individuals With Diplomatic Immunity

Section 4603 amends Section 3 of the Diplomatic Relations Act to require the Secretary to develop and implement registration and departure procedures for members of diplomatic missions and their families. Section 4603 further states that no individual may be accredited as a diplomat if there is pending against such individual charges of a serious criminal offense in any jurisdiction of the United States, except that the Secretary may waive this requirement if he determines that accreditation is required by significant foreign policy considerations or the national security and so reports to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate within 30 days after such accreditation.

Section 4604—Waiver of Diplomatic Immunity or Removal When Charged With a Serious Crime

Section 4604(a) amends the Foreign Missions Act to set up new procedures for requesting a waiver of diplomatic immunity for any individual entitled to immunity believed to have committed serious crimes. Under these procedures, the Secretary must (1) immediately expel from the United States or request the foreign ministry in the offender's country to waive immunity from criminal jurisdiction; (2) inform the foreign ministry in the offender's country that the United States intends to pursue compensation for damages resulting from the crime; and (3) if a waiver of immunity is denied, declare the individual non grata or ensure the individual's removal from the United States. The Secretary of State is directed to notify the Attorney General of each individual who leaves the United States because of that individual's alleged involvement in a serious crime to assure that such individual is permanently barred reentry into the United States.

Section 4604(b) amends Section 212(a) of the Immigration and Nationality Act to conform it to the amendments to the Foreign Missions Act in subsection (a), adding a new category of aliens excluded from admission to the United States: any alien who left the United States because of that alien's alleged involvement in a serious crime. An exception to exclusion is authorized to allow entry into the United States for the purpose of any proceeding regarding the crime or if the Attorney General, in consultation with the Secretary of State, determines that allowing entry into the United States is in the national interest.

Section 4605—Authority to Institute and Maintain Criminal Prosecutions

Section 4605 further amends Section 5 of the Diplomatic Relations Act to authorize an exception to current law's requirement that any action or proceeding brought against an individual entitled to immunity be dismissed. That exception states that, in the case of a criminal proceeding, prosecution may be instituted and maintained so long as no action is taken to violate any immunities to which such individual is entitled.

Section 4606—Review of United States Policy on Diplomatic Immunity

Section 4606 requires the Secretary of State to review U.S. policy on diplomatic immunity and report to the Congress within 180 days of enactment on recommendations for necessary changes in U.S. policy.

Section 4607—Review of Procedures for Issuing Visas to Diplomats to the United States and the United Nations

Section 4607 requires the Secretary of State, in consultation with the Attorney General, to review U.S. procedures for issuing visas to diplomats and report to Congress within one year on the results of this review.

Section 4608—Liability Insurance to be Carried by Diplomatic Missions

Section 4608 amends Section 6 of the Diplomatic Relations Act by adding a new subsection requiring the Director of the Office of Foreign Missions to establish a victims compensation insurance plan.

Section 4609—Diplomatic Pouches

Section 4609 directs the President to take "necessary steps" to assure that diplomatic pouches are not used for illicit transportation of narcotics, explosives, and weapons and any materials used to foster terrorism.

Section 4610—Definitions

Sections 4610(a) and 4610(b) amend the Foreign Missions Act and the Diplomatic Relations Act to include definitions of the terms "serious criminal offense" and "individual entitled to immunity from the criminal jurisdiction of the United States". Section 4610(c) further amends Section 2 of the Diplomatic Relations Act to conform the definition of "family" of individuals entitled to immunity to the definition promulgated by the Department of State in its regulations.

Mr. **BRADLEY**. Mr. President, the Senate is again turning its attention to a scourge which has infected virtually every community in our country. In 1986, the Congress enacted the Anti-Drug Abuse Act to increase the ante in the war against drugs. The bill now before us again increases the ante.

Drug and alcohol use is a serious national problem. Surveys among high school seniors indicate that about 30 percent had recently used marijuana and 70 percent used alcohol. Worse still, drug and alcohol abuse is increasingly found among younger children. For example, 31 percent of today's high school seniors report first using marijuana prior to high school. Roughly one-third of America's youth have used alcohol by the time they are 13.

New Jersey's youth are no exception: 61 percent report using marijuana at some time—53 percent report using it in the last year, 35 percent in the last month. Of these same students, 91 percent report alcohol use at some time, and 70 percent report use in the past month.

While drug and alcohol abuse has been slightly declining, it remains an issue of grave national concern. This reduction can be credited to local efforts to educate youth, to heightened public awareness, and to the expansion of rehabilitation programs. However, if these efforts are to continue, they will need more support.

Mr. President, the Omnibus Anti-Substance Abuse Act of 1988 provides such support in our war against drugs. This bill authorizes expanded drug education and treatment programs in schools and clinics, intensified interdiction efforts at the borders and in our communities and tougher penalties for drug use and drug pushing.

I am pleased that the legislation addresses the problem on two fronts—almost half of new funding is for enhanced interdiction and enforcement efforts to reduce the supply of drugs available in this country. The other half of the funds is for expanded education and rehabilitation programs to reduce the demand for drugs in this country. For any effort to be successful, both the supply and demand of drugs must be reduced.

If fully funded, the bill will add an additional 3,000 law enforcement personnel at Department of Justice, Treasury, Transportation, and other agencies with drug enforcement responsibility. The bill will enable an additional 600,000 substance abusers to receive treatment each year, bringing the number of people in treatment each year to between 1 million and 1.2 million annually. It will also double the number of federally supported drug and alcohol education programs.

The bill also makes drug users more accountable for their actions. It establishes cruel penalties for drug users and allows the Federal Government to remove public housing tenants from public housing if they violate drug laws. It allows withholding Federal benefits from drug users and drug pushers. Employees in safety-sensitive positions in the airline, railroad, bus, and trucking industries, in the Federal Aviation Administration, and in Urban Mass Transit Agencies would have to submit to random, preemployment, and postaccident drug testing. The bill also requires the revocation of passports of individuals convicted of drug trafficking or money laundering offenses and prohibits the awarding of any Federal grant or contract to businesses that do not maintain a drug-free workplace by establishing drug education programs for employees and by imposing sanctions on employees convicted of drug offenses.

Although this legislation takes some important steps to combat drugs, Americans should not expect miracles. The use and abuse of drugs and alcohol is, unfortunately, a pervasive problem and it will take time to change behavior of many people. The steps included in this legislation will clearly help, but there are no cure-alls. Changes in Federal law will help, but attitudes must change if we are ever to see a sizable and dramatic reduction in drug use. I should point out, Mr. President, that I am heartened that Americans are becoming increasingly less tolerant of alcohol and drug abuse; this is reflected in the higher drinking age, tougher drunk driving penalties, and harsher treatment of drug pushers. I believe these changes in values will lead to improvements in the future. But these changes take time and effort from all of us.

Mr. President, I also want to speak in support of that portion of the antidrug bill which incorporates my legislation, S. 2569, to amend the Juvenile Justice and Delinquency Prevention Act of 1974, to confront a growing problem for many cities throughout the country—youth gangs. Specifically, this aspect of the Senate's antidrug legislation helps communities establish prevention and treatment programs for young street gang members to provide viable alternatives to life on the streets and involvement in illegal drug trade.

Membership in one of today's street gangs is a passport to a life of drugs, crime, and violence. More and more, gang violence is not just inflicted on rural gangs, but on innocent citizens.

Last November, Stacey Childress buried his 16-year-old brother, Edmond. Edmond was shot in the head and chest as he stood on a sidewalk in Los Angeles. Word on the street was he was killed by members of a south Los Angeles street gang because he had erased some of their graffiti.

In February, Stacey helped bury his uncle, Walter, who had been shot by two men who were stealing his car.

One Friday in April, Stacey went to visit some friends. He stood on the sidewalk, talking with them when a car drove up. Suddenly, without warning, the occupants opened fire. Bullets ripped through Stacey's 19-year-old body, killing him and wounding 10 others. The gang members had just come from shooting a rival gang member and an innocent pedestrian.

At 4:30 in the morning on May 8, seven youths were cut down in a hail of gunfire in another drive-by. This time the shooting was right here in Washington, DC, at the corner of 13th Place and Congress Street SE., just a short drive from the Capitol.

Clearly such violence is only part of the problem assaulting the urban ghettos of our country. We have to find solutions to deteriorating schools, a plodding welfare bureaucracy, miserly health care coverage, the lack of adequate and affordable housing. But we cannot begin to crack through the pervasive hopelessness such conditions breed unless we can keep intact the most basic of all social contracts a government must make with its citizens: The promise to provide secure, safe communities in which our children may grow, learn, and prosper.

To this end, we must provide legitimate alternatives to the seductive life of drugs and street gangs. For many poor urban youth, the street gang seems to offer the only available road to personal security and a sense of self-esteem and success. We cannot let that continue.

My legislation will provide funds to support community-based treatment and prevention programs designed to reduce the number of juveniles involved in gang crime, to expand drug-related treatment programs relevant to the gangs, to help teachers confront gang activities in and out of school, and to help coordinate work of local juvenile justice, employment, and social service agencies to better work with gangs.

Mr. President, today's violent, drug-dealing street gangs have become a threat to the security and safety of our communities. And that threat is growing.

The provisions of my legislation relating to gangs which have been included in the antidrug bill of 1988 give us an opportunity to reduce the number of children lost to drugs and gangs.

In conclusion, Mr. President, what is perhaps most disturbing to me is substance abuse—whether drugs, alcohol, or even smoking—by our young people. Substance abuse can destroy their lives. We need to challenge our children to value themselves and their futures. We as individuals need to set examples for our children. And we as a nation must speak with one voice on drugs, and that voice should say "drugs will harm you." You will never be the very best you can be if you are high on drugs.

Mr. BINGAMAN. Mr. President, I rise today as a strong supporter of H.R. 5210, the Omnibus Anti-Substance Abuse Act of 1988. I am pleased that the Senate is finally on the verge of passing overwhelmingly this important piece of legislation. And I commend my colleagues who have labored extensively on this measure. The distinguished cochairmen of the Senate's Democratic Substance Abuse Working Group, Senator MOYNIHAN and Senator NUNN, along with their counterparts on the Republican Substance Abuse Working Group, Senator RUDMAN, Senator GRAMM, Senator D'AMATO, Senator WILSON, and all of the other Members who have contributed to this bill deserve our thanks. They have crafted legislation that addresses in-depth a critical problem facing our Nation.

NEED FOR LEGISLATION: SUPPLY AND DEMAND

The new initiatives established under this bill and the many expansions and improvements to existing programs are critically needed to help us win the fight against drug abuse. Drug abuse and illicit drug trafficking are two of the most serious problems we face. Indeed, "problem" becomes too light a word when we look at the facts. Our country is the world's largest consumer of illicit drugs. Some experts estimate that a full 60 percent of all illicit drugs produced in the world today are used in the United States. That is a sobering statistic, and one with the potential to devastate individual lives and families, community structure, and the national economy. Drug abuse truly is a danger of near epidemic proportion.

Residents of my home State of New Mexico and our neighboring States are acutely aware of the many dangers drugs pose. Drug smuggling along our sparsely populated borders is pervasive. Drug traffickers have developed complex and extensive networks to penetrate our borders and distribute their merchandise. Yet despite this acute danger and the recent flurry of rhetoric about it, we in the Federal Government have yet to make a serious, long-term commitment to drug interdiction. So far, we have yet to equip our law enforcement authorities with the tools they need to deal with the drug problem effectively.

We must do more, and we must do better. With passage of this legislation, we will. The Omnibus Anti-Substance Abuse Act makes additional funds available for law enforcement and drug interdiction and imposes stringent new penalties against drug traffickers. It creates a Cabinet-level Director of National Drug Control Policy, who will guide and coordinate the entire Federal drug control effort. And to ease overcrowding and ensure swift punishment, the act authorizes $36 million to hire additional prosecutors and $240 million to build new prisons.

But reducing the supply of drugs is only one facet of the problem. To truly decrease the amount of substance abuse in our Nation, we need to attack not only the supply, but also the demand for drugs. In recent years, drug use among our youth has risen dramatically. And we all know that substance abuse is not limited to the young. The simple fact is that far too many people, young and old, use and abuse drugs. Clearly, our children and youth need to better understand the dangers of substance use, and drug abusers need the opportunity to break their addictions.

Through passage of this vital act, we will strengthen programs to educate our children about the dangers of drug abuse and we will expand our efforts to rehabilitate drug abusers. Sixty percent of the $2.5 billion authorized by the bill would be devoted to drug education and drug treatment programs.

Drug abuse will not moderate, much less disappear, until we comprehensively address this problem and commit ourselves and our resources to a sustained and steady fight against it. This is not a problem that will go away by pouring huge sums of money into new, short-term programs or by creating new, high-level Federal positions that have visibility and stature but lack resources and vision.

We must remember that we are talking about lives; we are talking about health; we are talking about the vitality of our population when we talk about drug abuse. And just as every other comprehensive program or strategy aimed at making lasting improvements in the quality of life requires long-term commitments and steady funding, so too does our fight against drug abuse.

UNIFORM CRIME REPORTING PROGRAM

Mr. President, I would briefly like to comment on two provisions that the Senate will adopt with passage of this important legislation. The first provision, which I am pleased to have authored, will help complete a critically needed picture of the true extent of crime in America.

This is a modest provision, but one of tremendous importance. It will require all Federal agencies involved in law enforcement to report certain crime-related data to an existing, centralized data-base: the Federal Bureau of Investigation's Uniform Crime Reporting Program. Once the reporting begins, the Bureau will compile uniform, statistical information on some of the major problems that plague our Nation and threaten our security and our future.

The overriding need for this program became apparent to me when I met this summer with several Federal, State, and local law enforcement officials who deal daily with the drug problem in my home State of New Mexico. During our meeting, and again at a recent field hearing held in Albuquerque under the auspices of the Senate Appropriation Subcommittee of Treasury, Postal Service, and General Government, I was told that the Federal Government has never collected uniform, statistical information on major Federal crimes.

Never have all the Federal agencies worked together to coordinate data collection efforts. Consequently, never has the Congress truly been able to assess the degree to which the crime-related laws it enacts and the crime-stopping programs it funds, are successful. And never has the need for such information been as great as it is now, as we approve a multibillion-dollar antidrug abuse bill.

Last month, the House overwhelmingly passed its tough, $2 billion antidrug abuse bill. We will not do the same. But without this provision, we would have obligated these billions—and grant vast amounts of new agency authority—without any assurance that the billions will be usefully spent or the authority will be effectively directed and coordinated.

Today, critical information about drug smuggling—a serious problem in my home State of New Mexico—is collected by the Central Intelligence Agency, the Defense Intelligence Agency, the FBI, and several other agencies. But this information generally is not shared by the agencies, and it is shared with State and local law enforcement personnel, and it is not shared with the Members of Congress who fund these efforts.

When I asked Federal officials about this during my recent meeting, I was told by a U.S. Customs agent that although Federal, State, and local agencies cooperate in antidrug trafficking programs in New Mexico, each agency keeps its own set of statistics on seizures and arrests. The result, he said, was that we are not sure we really know the size of the problem.

And if we do not know that fundamental fact, then how can we possibly know what resources are needed and whether our money is being wisely spent?

Fortunately, the mechanism for collecting this important data already exists. For more than half a century, the FBI has compiled data in an efficient, uniform manner for State and local crimes. Through its Uniform Crime Reporting Program, approximately 16,000 city, county, and State law enforcement agencies voluntarily report data on eight major crimes—the Crime Index—to the Bureau. These crimes currently include murder and nonnegligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson.

This provision would give the Bureau the authority to add another category to the Crime Index: Drug-related crimes, to be defined by the Attorney General, or, in his discretion, by an advisory board of law enforcement officials.

The foundation for the Uniform Crime Reporting Program was laid in the 1920's by the International Association of Chiefs of Police when it recognized the need for uniform, accessible, national crime statistics. Since that time, the program has generated a reliable set of criminal statistics for use by the Congress, and Federal, State, and local law enforcement officials. But an important element has always been missing: Federal criminal statistics.

It is time to rectify this deficiency and to require Federal agencies—agencies which already collect crime statistics in some form—to collect the data in a uniform manner so that the Congress, coordinating Federal agencies, and State and local law enforcement officials can use the information to better service the American people and better deal with the serious problems we face.

Without a doubt, we need a new antidrug strategy. The drug problem is far beyond the point where rhetoric and promises are enough. We need legislation to ensure that Federal and State law enforcement officials have the manpower and tools they desperately need to gain sustained success in their battle against drugs. We need legislation that will ensure our children of quality, comprehensive education on the dangers of drug abuse, because without reducing the demand, the problems will always remain.

But we also desperately need legislation that will enable us to gain a reliable understanding of the true extent of serious drug and crime problems. We need legislation that will provide a means for determining whether our manpower, tools, and money are properly channeled. This provision will help accomplish that.

OFFICE OF COMPREHENSIVE SCHOOL HEALTH EDUCATION

Mr. President, I would like to comment on another important provision of this bill, which will ensure that the Department of Education's Office of Comprehensive School Health Education will be included in the development and implementation of the education and prevention components of our national drug control strategy.

I believe we must clearly state that the Office should participate in these efforts. This is easily accomplished through this provision, which includes the Office in the list of Federal agencies that may be designated as "National Drug Control Program agencies" with responsibilities under the national drug control strategy. As the bill states, these agencies are to work closely with the Cabinet-level Director of National Drug Control Policy, who will guide and coordinate the entire Federal drug control effort.

It makes sense that the Office of School Health work closely with the Director. Under current law, the Office is charged with the task of assisting States and other Federal agencies in developing comprehensive programs that will help reduce substance use and abuse among our Nation's schoolchildren and improve their overall personal health and fitness. Given this responsibility, efforts to develop policy, implement programs, and coordinate activities could become duplicative and confusing if the Department of Education or the Director chose to designate another agency or office within the Department as the "lead agency" in drug education policy and strategy implementation.

The Office of Comprehensive School Health Education was reestablished by legislation I introduced last year to coordinate and carry out comprehensive health education programs throughout the Nation's schools. In the authorizing statute, the Office is directed to support programs that stress physical health and wellbeing, and disease and substance abuse prevention as a part of regular school education programs. Also, and importantly, it is directed to work with other Federal agencies to coordinate school health and physical education programs and to provide these programs with up-to-date Federal information.

I believe we all agree that drug abuse education and prevention programs are essential components of any comprehensive strategy to reduce the demand for illicit drugs throughout this country. Indeed, we will never truly decrease the amount of substance abuse in our Nation if we do not first commit ourselves to attacking the demand for drugs with at least as much fervor as we commit to attacking the supply of drugs. And we have reached a point where that commitment becomes critical. In recent years, drug use among our youth has risen dramatically. In my home State of New Mexico, a 1987 survey of one of New Mexico's largest school districts revealed that:

Five percent of the district's fourth, fifth, and sixth graders had tried smoking marijuana.

Twenty-six percent of junior high students had tried marijuana, 9 percent were smoking weekly, and 4 percent were smoking daily.

Fifty-two percent of the high schoolers had smoked marijuana at least once, 14 percent were smoking weekly, and 5 percent daily.

Use of hard drug was alarming also:

Five percent of the junior high students had tried cocaine, and 2 percent were using the drug regularly.

Eleven percent of high schoolers had tried cocaine, and 5 percent were regular users. Heroin and hallucinogen use was at similar levels.

Unfortunately, these are not isolated statistics. The simple fact is that far too many children and teens in New Mexico and across this Nation use and abuse drugs.

These children are our future. They are our future workforce, educators, leaders. We cannot let them continue to plunge head-first into drug use and abuse simply because it is the "in" thing to do. They deserve better. We must do more to help them understand the dangers of drug use so that they will at least have the opportunity to say "no" to drugs and "yes" to good health and fitness.

By passing the Omnibus Anti-Substance Abuse Act we will do more. We wil make a firm commitment to providing better drug education to our children and we will help ensure productive spending of Federal and State funds. We will ensure that the office within the Department of Education already charged with the duty of developing and coordinating national substance abuse programs actively participates in the development and implementation of our Federal drug strategy.

The fight against substance abuse will be long and difficult. We must recognize that and be willing to work together and to allocate the necessary resources over the course of the battle. This legislation is an essential weapon in our fight, and I applaud its passage.

Mr. CONRAD. Mr. President, I rise today in support of the Omnibus Anti-Substance Abuse Act of 1988. I am a cosponsor of this important bill, and I applaud my colleagues who worked together, in a bipartisan fashion, to craft this legislation.

As we all know, Mr. President, this legislation is designed to combat an escalating and alarming national drug problem. Studies now indicate that 37 million Americans have used an illegal drug at least once in their lives. Close to 25 million individuals reported the use of cocaine during the past year. Twenty million individuals use marijuana on a daily basis. Recent surveys demonstrate that 15 million Americans are habitual heroin users.

The problem plaguing young people as well as adults. At least 41 percent of current high school seniors in America have admitted to using marijuana in the past year. Another 17 percent have acknowledged using cocaine. Over 80 percent of those using illegal drugs purchase them while in school. According to a report issued by the office of the attorney general in North Dakota:

> What this amounts to is that for today's youth, at least two thirds will try an illicit drug before graduating high school. Of those experimenting, approximately one-half will continue using.

Mr. President, North Dakota has not escaped the drug problem. Young people in North Dakota are sampling drugs at younger and younger ages. According to a strategy report issued by the attorney general's office of North Dakota, in 1982, 4.4 percent of those under the age of 9 had sampled marijuana; in 1986, the percentage had risen to 7 percent. The use of other illicit drugs, including LSD, PCP, and opiates rose in the same period for the same age group from 3.1 to 8.2 percent. Mr. President, we are talking about children who are only 9 years of age.

It is for these children, and millions of Americans, that I have cosponsored this legislation, Mr. President. This legislation authorizes $2.6 billion for a variety of programs to combat drug abuse in this country. The bill includes funds for interdiction, law enforcement, treatment, rehabilitation, education, and international cooperation to combat drug trafficking. The bill also establishes a new, Cabinet-level office, with a Director of National Drug Control Policy. This bill comes to the floor after months of hard work by a bipartisan group of Senators.

I encourage my colleagues to vote for this bill. The bill commits half of its money to efforts to reduce the demand for drugs—education, rehabilitation, treatment, and prevention. After the first year, fully 60 percent of the funds are authorized for these efforts. Mr. President, while funds for interdiction and international narcotics trafficking are important, we must pay much more attention to educating people about the dangers of drugs, and to treating and rehabilitating those who are addicted. Experts on this problem agree that demand-related initiatives are important, and often overlooked, parts of combating the drug problem. Unless this demand for drugs can be reduced, even our most strenous efforts to cut off sources of supply will be futile.

This bill encourages the development of concrete plans and programs for drug abuse education and offers assistance to State boards of education and local school districts in the implementation of these plans. It supports a coordinated education effort with direct input from local schools. It provides for Federal assistance to those private and public agencies operating in our local communities that can have the greatest impact on young people. This substantial Federal effort in education will help stimulate interest at a level where we can most effectively reach the potential drug user. I fully support this shift in emphasis and I urge my colleagues to do the same.

The drug bill includes $156 million for grants to promote drug-free schools, $40 million for comprehensive community prevention initiatives, $31 million for high risk youth demonstration projects, $6 million in grants to schools for health profession personnel training and $16 million in teacher training programs. In total, the bill earmarks over $273 million in fiscal year 1989 for drug education and prevention programs.

The bill does not neglect law enforcement, however. I am pleased to see the reauthorization of the Justice Assistance Act, which was eliminated in the 1986 Antidrug Abuse Act. These grants to local police departments are critical to the antidrug effort in my own State of North Dakota. The funds can be used for 18 purposes, and give States broad discretion. The attorney general of my State has expressed his support for this legislation, and I hope the Senate provisions remain intact in final deliberations with the House.

Mr. President, the bill also adds a much-needed organizational tool to the antidrug effort: The creation of the Office of the Director of National Drug Control Policy. Through this office, we can coordinate, plan, and execute sensible and comprehensive antidrug efforts, something that is currently beyond our reach because of the endless list of Federal agencies now involved in the drug effort.

Finally, Mr. President, let me thank the leadership of the body. With their support, a technical amendment has been made to this legislation. The amendment concerns the provision for combating crimes in public housing. I was very concerned that Indian public housing authorities were not specifically included among the housing agencies authorized to apply for the grants provided for the elimination of drug-related crime in public housing projects.

The Public Housing Drug Elimination Act finds that public housing projects are plagued by drug-related crime and that local law enforcement authorities often lack the resources to deal with the drug problem. Indian housing suffers from the same problems. Drug and alcohol abuse are rampant on Indian reservations and have contributed to the growing health and social problems of Indian tribes. Law enforcement authorities on reservations are not equipped to handle the increases in drug- and alcohol-related crime.

Thanks to the consideration of the managers of this bill, the Secretary of Housing and Urban Development is authorized to make grants to Indian public housing authorities to combat these increases in drug-related crime.

Mr. President, the legislation before us today will not solve this Nation's drug problem, but it will begin to combat the devastating effects of drug abuse. The bill works against both the flow of drugs and crime and destruction that drug abuse leaves in its wake. I urge its quick passage by this body.

Mr. LAUTENBERG. Mr. President, I rise in favor of the Omnibus Anti-Substance Abuse Act of 1988. As a member of the Democratic antisubstance abuse task force, I am pleased to have been involved in drafting this bill and to be a cosponsor.

Two years ago, during the debate on the 1986 drug bill, I spoke about the scourge of drugs in our society. My thoughts at that time are equally applicable today. Drugs are ruining the lives of too many of our young people. Drugs distort people's values, sap their energies, and steal their futures. The ready availability of drugs on the streets of our cities is a shocking disgrace. The blatant selling and use of illegal drugs in the open is a slap in the face to law-abiding citizens and an open expression of contempt for the majority of our society. And drugs increase the wave of urban crime that plagues residents of all our States.

I repeat these words today because they are still true. We have made progress. But the problem is so persistent that an even greater effort is needed. The bill before us today builds on the major legislation of 1986 and strengthens it. A Cabinet-level drug czar will be created. Many additional Federal law enforcement officials will be authorized. Penalties for violations of the drug laws are greatly increased and new offenses are defined. Drug treatment will be made more widely available. More funds will be provided for drug prevention education and teacher training. Provisions are included to improve international cooperation in controlling drug trafficking. Steps are authorized to fight the use of illegal drugs in public housing and transportation and prohibits awarding of grants or contracts to businesses that do not take certain steps to block the use of drugs on the job.

Mr. President, I would like to note in particular a few provisions that are of particular interest to me and to citizens of New Jersey. The legislation includes provisions of a bill that I have introduced to eliminate drug-related crime from public housing. Public housing authorities [PHA's] would be able to apply for funds for projects to address the devastating crime problems in their facilities. The funds could be used to employ security personnel in public housing projects; reimburse local law enforcement agencies for additional security; provide physical improvements designed to enhance security; support innovative programs designed to reduce use of illegal drugs in and around public housing projects; and allow PHA's to provide funds to tenant management corporations.

Drug-related crime in public housing projects is a disgrace. It is important to provide as much assistance as possible to the managers of these projects and their tenants to root out drugs and those who deal in them. My proposal, now part of the Senate drug bill, will give the PHA's some of the tools they need to address this problem.

Another issue of interest to New Jersey citizens is the reauthorization of the Victims of Crime Act. The provisions in this bill require States to make funds available for programs that serve categories of victims who were not previously helped by the victims assistance funds. The new categories include victims of drunk and drugged driving incidents and survivors of homicide victims. I have taken a special interest in the issue of drunk driving and have sponsored legislation to reduce the incidence of accidents resulting from drunk driving. The innocent victims of these horrible accidents deserve the same assistance as victims of other crimes. I am pleased that the bill gives appropriate recognition to drunk driving victims.

Under the Victims of Crime Act, national discretionary program funds have been used to train victim assistance practitioners and programs, including those working in drug enforcement efforts. It is important that the work of the National Organization for Victim Assistance in this field be continued and that funding for its training and technical assistance program be sustained at its current level.

The bill establishes the goal of providing treatment opportunities to all substance abusers wishing to cure their addiction. Of particular importance to New Jersey is the authorization of a new AIDS drug treatment block grant. Unfortunately, New Jersey has a high proportion of drug-related AIDS cases. There is a great need for drug treatment to help stop the spread of the deadly AIDS virus. The comprehensive drug treatment assistance program and the AIDS drug treatment block grant program will provide much needed additional resources for helping to reduce the demand for drugs.

Funds are also included for a program of State and local narcotics control and justice assistance improvements. These additional resources will help local governments enhance their drug law enforcement efforts. This section of the bill also requires evaluation of the drug control and system improvement programs to find out what works and what does not.

Interdiction is another essential element of the fight against drugs. The bill increases the resources available to the Federal interdiction agencies. I have taken a special interest in the Coast Guard and note that over $30 million in additional resources and 435 additional personnel are authorized for that important agency. The Customs Service and the Border Patrol will also be enhanced. These resources should make it possible to stop more of the illegal importation of drugs crossing our borders.

Mr. President, I am also pleased that my provisions concerning strengthening drunk driving laws have been included in the package of amendments which will be added to this bill. Crimes involving alcohol abuse are as troubling as crimes relating to drug abuse. My drunk driving amendment demonstrates seriousness about combating these alcohol-related crimes.

The drug problem is a serious one. It will not go away overnight. But Congress must say again and again that it will not tolerate the devastation caused by drug abuse and drug-related crimes. This bill puts us firmly on record as saying we will use all tools at our disposal to fight this problem. I am proud to have been involved in drafting this bill and to support it. I urge its swift passage.

Mr. PELL. Mr. President, I am here to add my support to the Omnibus Anti-Substance Abuse Act of 1988. As a member of the Democratic substance abuse working group, I participated in the initial drafting of a Democratic drug bill and in subsequent negotiations with my Republican colleagues.

As the cochairman of the international cooperation and eradication working group, I was deeply involved in composing the international narcotics control portions of this legislation. Working in this capacity increased my conviction that the foreign policy aspects of the drug issue cannot be separated from the domestic reality. Demand and supply are inextricably linked.

Sadly, Mr. President, I have also become convinced that the current war on drugs has been a losing battle both here and abroad.

Overseas we have been routed in our efforts to stem the flow of drugs coming into our country. This year's International Narcotics Control Strategy Report, prepared by the Department of State, documents the sad fact that despite the record seizures and arrests last year worldwide production of opium is up 18 percent; coca leaf, from which cocaine is processed, increased by 10 percent; and marijuana jumped by 26 percent.

We have also been routed here at home. On the streets of our cities, and even in our small towns and rural areas, the price of drugs is down and supply is up. Perhaps 20 million of our fellow citizens have tried cocaine. Five million are regular cocaine users, up to 1 million of whom are addicts. An additional 500,000 Americans are addicted to heroin. It is estimated that the economic costs associated with drug use and abuse in the United States could be as high as $100 billion a year in lost productivity, associated health care costs, and the need for increased law enforcement. Equally alarming is the relationship between drugs and crime. The National Institute of Justice found that of 2,000 persons arrested for serious crimes in 12 major American cities from June through November of last year, 70 percent tested positive for drug use. More than half of the criminal cases pending before the courts in this country involve drug-related crimes.

The plain truth, Mr. President, is that in the face of the awesome power and influence of international and domestic drug traffickers, "just saying no" is not enough. That is why we need the very concrete and real improvements offered by the Omnibus Anti-Substance Abuse Act.

We need a drug czar. Currently the Federal Government spends roughly $3.9 billion a year to combat drug use, with responsibility divided among a dozen agencies. We need to centralize command and control of this war by appointing one, high-level individual who will take charge of the often difficult policy decisions that will be necessary in this fight.

We need better international narcotics control programs. The entire budget for the State Department's worldwide fight against drugs, for example, is $90 million. That's $90 million spread among three dozen or so countries to fight a $100 billion a year criminal enterprise.

We need to increase education funding. The Drug Free Schools and Communities Act currently provides only $250 million per year for educational programs devoted to educating our young people about the dangers of drug abuse. This just is not enough funding for programs meant to teach our children what they must know.

We need treatment on demand. In 1986, $1.6 billion was spent on drug abuse treatment programs. The Federal share of these costs was less than 20 percent. We need to increase this commitment if we ever hope to break the vicious cycle of dependency that exists within the lives of so many Americans.

The Omnibus Anti-Substance Abuse Act addresses these needs, Mr. President and I plan to vote in favor of this legislation when the Senate moves for final passage.

I support the Omnibus Anti-Substance Abuse Act because taken as a whole it is a bill that will benefit the American people. However, I object to the recent addition of a death penalty to this legislation. I realize that no one has a monopoly on good intentions in the war on drugs, but the use of a death penalty for drug-related crimes crosses the line of reasonable action.

Yes, we must get tough on drugs and yes, we must punish those accused of drug-related capital crimes, but we must also preserve our capacity to act without undue malice or the exercise of judicial homicide.

I am not suggesting that we treat murderers and drug dealers with kid gloves. I am only voicing my opposition to the death penalty, and expressing my sadness at its imposition as a part of this much-needed legislation.

Mr. President, there are other provisions of this legislation I do not wholeheartedly support. But, on balance, the Omnibus Anti-Substance Abuse Act is the product of much careful thought and deliberation. I commend my cochair of the international cooperation and eradication portions of the bill, Senator **Kerry**, and the chairmen of the Democratic substance abuse working group, Senator **Nunn** and Senator **Moynihan**, for their long-standing and efficient direction in crafting this legislation.

Mr. CRANSTON. Mr. President, I rise in support of the proposed Omnibus Anti-Substance Abuse Act of 1988. As a member of the working group that developed the core legislation for this measure, I believe this bill represents a balanced and realistic approach to dealing with the substance abuse problem which is devastating our Nation and our communities. Reasonable compromises have been reached on numerous controversial issues. The Senate bill, unlike the House-passed bill, does not trample the Constitution as part of the effort to curb the drug abuse problem. There are some provisions of the bill that I do have reservations about, but overall it is a balanced response to a very serious and widespread problem.

Mr. President, there is one provision in the bill—the death penalty provision—which I cannot support.

I am opposed to the death penalty. The evidence I have studied does not convince me that it is an effective deterrent to crime and violence.

Moreover, numerous studies have indicated a widespread pattern of racial discrimination in the imposition of capital punishment. The studies indicate that a defendant is far more likely to receive the death penalty in a capital murder case if the victim is white than if the victim is black. The president of the American Bar Association, in a letter dated October 12 regarding this issue, observed that these "statistics are so overwhelming that they make it clear that the death penalty is inappropriately applied in many cases" based upon the race of the individuals involved.

Mr. President, if capital punishment is to be imposed, it must not be done on a racially discriminatory basis. An amendment which would have protected against racial discrimination in the imposition of the death penalty was rejected. The failure to adopt that amendment compounds the flaws in this provision.

Despite my opposition to this particular provision, I will vote for the overall bill because it is, on balance, an important and constructive step in the direction we need to take in fighting the drug problem. I would like to take a few moments to highlight some of the aspects of the bill which are particularly important.

DRUG TREATMENT AND REHABILITATION

Mr. President, I am very pleased that the omnibus drug bill places a great emphasis on expanding the availability of drug treatment. The 1986 law established an emergency drug and alcohol abuse program with the goal of eliminating waiting lists at treatment programs. Tragically, however, not much has changed. As is the case in the majority of other major cities in the United States, Los Angeles and San Francisco still have waiting lists ranging from 1 to 5 months in duration.

Mr. President, earlier this year the General Accounting Office [GAO] issued a report entitled "Controlling Drug Abuse: A Status Report." That report looked at the state of drug usage in a number of cities across the country—including two in California, Los Angeles and San Francisco. In Los Angeles, the GAO wrote, local health officials are concerned with the increasing number of babies born drug-addicted. They estimated that up to 45 or 50 such babies are born in the country each month. One local health official expressed concern that budgetary restrictions in the 1980's have reduced drug treatment services despite increased demand for drug treatment. Likewise, in San Francisco, the GAO reported that drug addiction, overdoses, and deaths have all increased recently.

Moreover, most drug treatment programs have historically been targeted to adult males. Thus, California has very little treatment or outreach for youth and women, and, in particular, women with children. In addition, California has a great need to ensure that intravenous drug users, who are at high risk for AIDS, have every opportunity to obtain treatment.

Mr. President, I believe that the Comprehensive Substance Abuse Treatment Assistance Program that would be established under this legislation would greatly assist communities in helping drug addicts and alcoholics break those deadly addictions.

I would like to highlight some of the provisions that I believe are particularly important.

VA PROGRAMS

First, I am very pleased that the legislation includes the provision I proposed as chairman of the Veterans' Affairs Committee—based on a provision I authored in the 1986 law—to transfer 4.5 percent of the treatment funds to the Veterans' Administration for outpatient substance abuse treatment. If full funding is provided, this would result in a transfer of more than $40 million to the VA. The VA runs a very extensive substance abuse program, including inpatient and outpatient care, and contracts with community-based halfway houses for aftercare for veterans with the most serious addictions. In fiscal year 1987, the VA is spending overall about $270 million to provide substance abuse treatment to nearly a quarter of a million veterans. Yet, there are still waiting lists—many a month long.

Funding transferred to the VA under this provision would enable the VA to expand substantially its outpatient and contract programs in order to treat thousands of additional veterans. I would urge the VA to give priority to treatment of drug addicts, and in particular, those addicts at high risk for AIDS.

Mr. President, I would also note that this legislation includes, at my request, an authorization of appropriations of $1 million for the VA to conduct an evaluation of inpatient and outpatient drug and alcohol treatment programs. Information gathered through this evaluation would be very helpful in determining what are the most effective methods of treatment for both veterans and the general public.

AIDS FOCUS

Mr. President, at my request, this bill also includes a special block grant to target drug treatment services to intravenous drug users and others at risk of AIDS. The proportion of AIDS cases resulting from intravenous drug abuse is rising at an alarming rate. The majority of babies born with AIDS had drug-abusing mothers or fathers. Intravenous drug users who are infected with the AIDS virus or who are at risk of becoming infected must be able to receive treatment immediately. They cannot afford to wait 6 months, 1 month, or even 1 week for treatment. Every day of delay is another day of risk. This special program would allow communities to intensify efforts against AIDS, without diverting resources to fight crack, cocaine, PCP, and other deadly drugs.

SPECIALLY TARGETED DEMONSTRATION PROJECTS

Finally, I am pleased that $24 million would be set aside for at least five comprehensive drug abuse demonstration projects for areas that have a high prevalence of drug abuse and in which a demand for drug treatment exists. At least three such projects would be required to focus on adolescents, minorities, women, and especially pregnant women, or residents of public housing projects, which was added at my request. As chairman of the Subcommittee on Housing and Urban Development, I am deeply concerned about the extent of drug use in public housing projects and believe that providing residents with immediate and timely access to drug treatment could help reduce drug use and trafficking in those projects.

PREVENTION

Mr. President, this legislation also places a great emphasis on education and prevention. Although the 1986 law dramatically increased funding for these kinds of programs, we do not yet have information as to their success. Nevertheless, we must not retreat from this effort. We must be willing to make a long-term commitment to forming positive attitudes among our young people about being drug-free.

SCHOOL- AND COMMUNITY-BASED PROGRAMS

Although there is relatively little known about what types of education and prevention programs work and for what age groups, there is a clear consensus that efforts must begin early and must involve communities and parents as much as possible. Thus, it is particularly noteworthy that this legislation proposes to increase the funding levels for the Drug Free Schools and Communities Act, which provides funding for school-based and community-based programs, and would expand the authority and responsibilities of the Office of Substance Abuse Prevention, established by the 1986 law.

COMMUNITY PREVENTION INITIATIVE

Mr. President, I am especially pleased that legislation I recommended to establish a comprehensive community prevention initiative has been included in this measure. In order to deter young people from using drugs, they must have real alternatives. Too often—and this is particularly true in the inner city—teenagers turn to drugs and to gangs which then traffic in drugs because they believe that they have no other options.

This provision would authorize the appropriation of nearly $50 million for projects aimed at dropouts or youth who are at risk of dropping out of school and would seek to reinvolve them in community education, training, and recreational activities. It would encourage the formation of partnerships between governmental agencies, community-based organizations, and businesses in order to develop projects. I believe it is particularly important—and I have heard this repeatedly in my visits to California—that local businesses become involved in ridding their communities of drugs. Without the active participation of the private sector, it will be nearly impossible to win the war on drugs.

Priority under this program would also be given to projects targeted to communities with the most serious drug problems so as to enable them to coordinate Federal, State, and local efforts to develop comprehensive, long-term and community-wide education and prevention strategies.

EARLY CHILDHOOD EDUCATION AND PREVENTION EFFORTS

Mr. President, this bill also includes a provision I proposed to provide for the development of age-appropriate drug abuse education and prevention curricula, programs, and training materials for use in early child development programs. This provision responds to the existing lack of information about what might constitute effective prevention efforts for young children.

However, we must approach this area cautiously. As an October 1987 Rand report, entitled "Toward More Effective Drug Prevention Programs," noted,

> [O]ur most important guideline should be to avoid harm—to ask ourselves if a particular curriculum is too sophisticated or scary for young children, if it glamorizes drugs, if it asks them to cope with concepts that they are neither cognitively nor emotionally equipped to understand.

This provision will help ensure that model curriculums that take these concerns into consideration are developed and then disseminated to early child development programs, including Head Start, and preschool programs funded under chapter 1 of the Education Consolidation and Improvement Act.

Finally, I wish to note that, at my request, the Drug Free Schools and Communities Act would be amended to authorize counseling programs for families of drug addicts. Drug abuse by an individual affects his or her entire family. Counseling is often needed to help the addict's parents, brothers, and sisters cope with the emotional and other problems that they face—as well as help them to participate constructively in the recovery process of the addicted person.

CALIFORNIA PROBLEMS

Mr. President, the drug problem is a national crisis, but it is clear that my own State of California is experiencing particularly acute problems in this area. California has become a major base for drug trafficking operations throughout the Nation. These California-based drug trafficking operations have a death-like grip on many California communities and are beginning to spread their reach beyond the State's borders. The U.S. Customs Service indicates that the west coast is a transshipment point for cocaine destined for the East and northern United States. Customs officials estimate that California is the entry point for half the heroin coming into the United States. Additionally, it is the primary financing point for the cocaine trade. In the first half of 1986, $30 million in drug money was seized nationwide, $15 million at Los Angeles International Airport destined for Colombia.

California law enforcement agencies are spending vast amounts of their resources on trying to control the problem, but their efforts are not enough. The communities where drug trafficking commonly occurs are losing their youth to drugs or gangs which are profiting enormously from the drug trafficking operations. The situation continues to get worse. A recent report by the Los Angeles Police Department indicated that gang slayings have risen 20 percent this year.

Because of the unique situation in California relating to the drug problem nationwide, I have urged President Reagan to establish a special Federal task force similar to that established in Florida in 1982 to fight the problem in California. On June 17, 1988, I introduced legislation, S. 2538, to mandate the formation of such an entity. On August 3, 1988, the Drug Enforcement Administration [DEA] announced that it would be sending 8 additional agents to the Los Angeles area to serve on a task force along with 20 investigators from other agencies, including the Federal Bureau of Alcohol, Tobacco and Firearms, the Los Angeles police, the sheriff's department, smaller police departments, and local probation and corrections personnel. While this new Federal initiative is a step in the right direction, it is clear that much greater Federal support is warranted in Los Angeles.

Mr. President, the flow of drugs into and out of California is a national, as well as State and local, problem that demands special Federal attention. The resources to be made available under this legislation should prove of great assistance in our critical struggle in California to combat this pernicious problem.

CONCLUSION

Mr. President, drug abuse is a devastating national problem. It destroys the lives and futures of untold numbers of Americans. It infects our communities with drug-related crime, gang activities, and violence. Drug abuse is not a problem limited to heroin addicts in urban settings. Men and women of all classes, all races, and all ages, are becoming addicted to drugs such as cocaine. Young people, in particular, are the victims of this blight on our society. Tragically, children at younger and younger ages are experimenting with drugs and becoming addicted to them. The core bill developed by the bipartisan working group which I participated in over a number of months produced a number of important provisions that will help strengthen law enforcement and community efforts to reduce drug abuse in our society.

Mr. LEAHY. Mr. President, illegal drugs damage every level of our society by infecting the home, the school, and the workplace.

College, high school, and even grade school students are being ravaged by illegal drugs. More and more of our neighbors and coworkers—contemporaries and peers—are giving in to dope.

Drugs are no longer some other person's problems. It does not matter if you live in the city, or the suburbs, or in a rural State like Vermont. No American and no American family is free from the scourge infiltrating our borders.

The American people count on their elected representatives to provide leadership in combating this problem. They expect us to consult the country's foremost experts on drug counseling, interdiction, prevention, eradication, and education. They implore us to spend the time and resources to do the job right.

The Senate drug bill contains important provisions that will contribute to our war on drug dealers and smugglers. Others will foster education, prevention, and treatment. The task force—led by Senators MOYNIHAN, NUNN, and RUDMAN—did a fine job putting together this legislation, and I congratulate them.

I was prepared to cosponsor this legislation until I learned that it would include a death penalty provision. No death penalty is going to do anything to help win the war on drugs. In fact, there is a great irony here. Those who want to impose the ultimate penalty on drug smugglers may provide drug lords the means to escape the grasp of America's criminal justice system. You see, most drug lords live overseas and hardly any foreign country will allow its citizens to be extradited in cases that may lead to the death penalty.

Mr. President, I also am concerned about the way we will fund the programs authorized in the bill. If we are going to get tough on drugs, we are going to have to find ways to fund all these programs.

The American people believe we are giving them a $2.5 billion blockbuster program to combat drugs, make our streets safe, and protect our kids from the ravages of drugs. This drug bill authorizes more than $2.5 billion in new drug programs, but only provides approximately $300 million to pay the bills. The truth, Mr. President, is that this bill is full of good intentions, but may fall short of our expectations unless we fully fund this effort to combat drugs.

The drug bill does contain provisions which will raise some revenue. Assets seized in drug cases would help pay for the bill, as would funds raised by enhanced Internal Revenue Service enforcement in drug-related cases. But it is unclear whether these collection efforts will bring in even $300 million.

That is why I voted for Senator RUDMAN's amendment to the tax technical corrections bill to raise more than $2 billion to fund the drug bill. The Rudman amendment would have funded the drug bill by making minor increases in the excise taxes on cigarettes, hard liquor, and beer. For a mere 2 cents per pack of cigarettes or 1 cent per mixed drink, the Rudman amendment would have provided funds to hire more prosecutors, more drug enforcement officers, and more FBI agents.

The Rudman amendment would have ensured that the drug bill was fully funded. Unfortunately, only 33 Senators—18 Republicans and 15 Democrats—voted for the Rudman amendment.

Even though I oppose the death penalty and seriously question the funding provisions, I believe that there are valuable proposals set out in this bill which would supplement the initiatives enacted in 1986 when Congress passed the Comprehensive Narcotics Act. I served on the task force that drafted the 1986 package. Together these pieces of legislation will serve as the battle plan in our fight against the plague attacking our country.

Mr. President, the original Senate bill and the package of amendments agreed to by the task force goes far on drugs. The bill—and I deeply regret the inclusion of the death penalty provision—will help the law enforcement officers who are in the front lines of that war. We have been able to avoid the excesses in the House drug bill, and I hope the Senate will stand firm in rejecting any attempt by the House to add to our bill provisions of little value and questionable constitutionality.

I will say, Mr. President, that when the Senate debate on this bill began days ago, I was deeply concerned that the same mood of panicked stampede and election-year politicking would take over here as it did in the House. However, thanks to some very hard work by many Senators, a spirit of bipartisan cooperation, and a sense that we simply had to produce a workable drug bill, we have managed to prevent action on the drug war from undermining constitutional protections of basic American rights.

For example, in a very frank and thoughtful discussion in the majority leader's office the other day, a group of Senators agreed with me not to consider a very broad proposal to revise the rules governing habeas corpus. Let me first remind everyone what habeas is. A habeas corpus petition enables a person in prison—usually a State prisoner—to ask a Federal court to determine whether he is jailed in violation of the rights provided by the U.S. Constitution or Federal law.

As a former prosecutor, I know that our rules of habeas corpus are in need of reform. I have seen firsthand what happens when the Federal courts are swamped by habeas petitions. These claims are often responsible for lengthy, unnecessary delays in criminal cases. Many petitions are filed and refiled years after a State prisoner has made every possible appeal to the State courts. Only about 3 percent of all Federal habeas petitions filed by State prisoners are granted.

Members of the task force and the Judiciary Committee agreed to wait until a commission studying ways to revise the procedures governing Federal habeas corpus proceedings—a commission set up by Chief Justice Rehnquist and headed by former Justice Powell—completes its study. In my view, we will be in a much better position to legislate after the Powell Commission completes its work. Next Congress, we will be able to modify the rules governing Federal habeas corpus review in a prudent and sensible manner.

In another vital compromise, on Wednesday night, in a meeting with the majority and minority leaders, a group of Senators from both sides of the aisle, including this Senator, insisted that the Senate reject one horrible House proposal. The House was ready to authorize substantial civil penalties for possession of illegal drugs. The House proponents were ready to drop the basic American right to a trial before a citizen can be deprived of liberty or property. If this proposal went through, Americans possessing drugs could—without trial—be given the equivalent of a traffic ticket, only the fine might be $10,000.

I am all for punishing those convicted of using illegal drugs. But that does not include throwing out the criminal justice system and the constitutional rights guaranteed all Americans. The Senate did a great job of reworking the civil penalties proposal to ensure it includes all the necessary constitutional safeguards. The civil penalties provision went from a candidate for filibuster to a measure adopted 88 to 0.

Mr. President, from the start of this debate I strongly hoped the Senate would be able to pass a bill of which we can be proud. I cannot say that I like or support every provision in this bill, in particular, the death penalty provision which the Senate insisted on including over my strong opposition. But, the American people are demanding serious action to stop the drug nightmare that is corrupting our children and making a jungle of our streets.

I will vote for this bill, despite these concerns, because I am convinced it can make a valuable contribution to our war on drugs. I can do so because, unlike the bill that emerged from the House, it does not abandon the constitutional safeguards that are at the heart of our system of justice.

Before I conclude, Mr. President, I want to emphasize that this bill only provides some valuable programs and tools to fight drugs. As I pointed out earlier, It falls well short in finding the money necessary to make all these programs and tools fully effective.

The first task of the next President, whether Republican or Democrat, must be to sit down with Congress and work out how to raise the money to pay for the war on drugs. Otherwise, this bill will fall far short of providing the means to fight the drug war.

Mr. BOND. Mr. President, I rise today in support of S. 2852, the long-awaited bipartisan Senate drug bill. Many of my colleagues have already expressed good reasons for supporting the bill, citing the magnitude of the problem and our attempt to address nearly every aspect of it through this legislation. As the success of this legislation is thoroughly dependent on the ability of Federal, State, and local governments to cooperate in the coordination of a nationwide drug strategy, as a former Governor I hope to bring a different, though important perspective to some of the areas in which this bill legislates.

If I may, I would like to take a few minutes to describe why the legislation before us is essential for the States and cities of this Nation to continue the war on drugs; I would also like to take a few minutes to examine some of the funding provisions to which we in the Senate should pay close attention during any House/Senate conference that might result from passage of this bill; I am afraid our colleagues in the other body have adopted some provisions which could undermine the efforts of our State and local law enforcement agencies to implement a drug strategy.

The symptoms of America's drug problem are well-publicized and well-known: crime and violence perpetrated by drug traffickers, loss of educational and career prospects of young drug users, billions of dollars in lost productivity at work combined with increased accident potential in the workplace, and numerous demands on an already overburdened health care system. The social and economic cost of drug use and abuse to our society is tremendous.

An aspect of the problem not mentioned nearly enough is that of drug abuse threatening our ability as a nation to compete. Americans can snicker on hearing statistics that sluggish productivity in the Soviet Union is due in part to the alcoholism which permeates their society—yet we should be sobered by estimates of lost productivity within our own society. A yearly study by the Research Triangle Institute estimated that drug abuse cost American business $52.2 billion in lost productivity, medical expenses, and crime in 1981. In 1983, the last year for which figures are available on such a large scale, RTI put the total at $59.7 billion.

Accustomed as the American people are to their Senators and Congressmen throwing around figures in the billions of dollars, this figure too seems meaningless—until measured against the amount of Government spending on various domestic programs. Indeed the $59.7 billion in lost productivity due to drug abuse alone comes perilously close to the $60 billion we spent this year on scientific and technological research, the Space Program, energy, environment, natural resources, transportation, and community and regional development programs combined. This represents a tremendous drain on our economy and a tremendous waste of resources.

From a purely economic perspective, the drug problem is our number one domestic problem, second only to the budget deficit. In terms of its cost to human life and dignity, and the quality of life in our communities, drug abuse is a far worse problem than even our budget deficit. Yet, I dare say that the subject of the budget deficit and of our spending in the areas mentioned above has enjoyed far more time on the floor of this body than our drug problem. That is why it is vitally important that we get this bill passed this year. We must continue and renew our commitment to the American people to solve this problem by every means.

First, we must stop the flow of illegal drugs into the United States and crack down on those who sell drugs; second, we must teach people, especially our children, about the dangers of drugs. From Los Angeles to Jefferson City to New York, Americans recognize drug abuse as crippling and potentially devastating to our society. And they are calling for a lasting solution. Despite this mandate for legislation from the American people, Congress may adjourn without taking final action on a drug bill. The Senate, unable to agree on how to pay for the programs authorized in a new bill, procrastinated until a week ago in introduction of this all-important drug legislation.

However, this bipartisan bill, of which I am an original cosponsor, is an important first step in stepping up our ongoing war on drugs. The core bill includes many provisions which will assist States in ongoing law enforcement attempts to combat the drug problem. It sets up stricter mandatory minimum penalties for drug-trafficking offenses, particularly when children are involved. It directs the Attorney General to study the feasibility of requiring Federal prisoners to pay for their incarceration, and would require drug testing as a condition of release for inmates. This bill also contains provisions aimed at cracking down on marijuana growers in our national forests and at cracking down on clandestine laboratories, both of which my home State of Missouri finds particularly important. In addition, an authorization for State alcohol, drug abuse, and mental health block grants is included as part of the bill's attack on demand. Perhaps most important, additional funding is authorized for preventative education programs in our schools, to reach our young people before they are confronted with the temptation of drugs. And statistics show that such education programs actually work. Drug use among high school seniors declined measurably between 1986 and 1987, after implementation of the drug education programs authorized by the 1986 bill. The number of seniors describing themselves as current users of cocaine dropped one-third, from 6.2 percent in

1986 to 4.3 percent in 1987. The number of seniors claiming to have used cocaine within the past year declined 20 percent, from 12.7 percent in 1986 to 10.3 percent in 1987.

In addition, this bill authorized $36 million for additional U.S. attorneys to prosecute drug offenses. I believe the current ratio of U.S. attorneys to special agents is too low. In some cases in Missouri, special agents are putting together cases but they simply do not have enough legal staff to bring the case to court. That being the case, fewer drug offenders are actually brought to trial than would be possible if the number of U.S. attorneys was commensurate with the number of DEA and FBI agents.

The legislation before us is an important attempt to improve upon and expand the goals of the 1986 omnibus drug bill. Title I of the bill reorganizes the National Drug Enforcement Policy Board and creates a drug czar within the President's Executive Office. A Bureau of State and Local Affairs would be set up within the Office of National Drug Control Policy. One Associate Director would be responsible exclusively for State and local implementation. This bill addresses the fundamental difficulties various Federal, State, and local law enforcement officials have had implementing their drug strategies. It should result in better coordination, communication, accountability, and ultimately, better results.

This bill as amended contains a law enforcement funding formula similar to current law which allows States to set up a statewide strategy to combat drug trafficking before allocating money to localities.

In my own State of Missouri, moneys are given to localities based on population, the severity of the drug problem in a particular community, and the ability of a local law enforcement agency to do something meaningful with the funds it is given.

The House-passed version will not permit the States this flexibility. It contains a direct passthrough provision, which means the States have virtually no input into or control over what the localities do with the money. For some large communities with an existing narcotics-fighting infrastructure of crime labs, undercover experts and a computerized network, the passthrough formula might work. But direct passthrough means a city does not have to coordinate its efforts with neighboring towns and cities with small populations and no infrastructure of undercover experts, computers, or crime labs, will be left with a small amount of money which by itself is of little utility.

Under this formula, some cities will be eligible for, say, $18,000. What in the world is a town going to do with $18,000? It certainly isn't enough to set up a crime lab; it isn't enough to hire a narcotics expert; and it will not make the slightest dent in the war on drugs unless it is combined with money from other localities.

To those who wished to eliminate the turf battles between State and local jurisdictions through the House formula, let me say this: You are simply creating a larger and ultimately more intractable problem. You are perpetuating turf battles between smaller adjoining towns, and by setting up everyone with just a few meaningless dollars, you are setting everyone up for failure in fighting the war on drugs.

I understand the House version of this provision was the brainchild of a few big city mayors and lobbyists who felt they had been denied adequate resources, or, in some cases, had to wait months and months for their money. The Senate version addresses the problem of the months-long wait, by mandating a 90-day passthrough timeframe between the time that a statewide strategy has been approved and the time the State makes funds available to localities. Let's not destroy the positive impact of 500 multijurisdictional task forces across this country just because a handful of cities have complained.

I urge my colleagues to prevail upon the conferees and urge retention of current Senate language. This is a very, very important issue, and one that I feel lies at the heart of the effectiveness of our renewed war on drugs.

However, Mr. President, there is another very important point I would like to bring up pertaining to the renewed war on drugs this legislation represents. It has been said that governments cannot and should not legislate morality. Americans learn to define what a good and just society is through discussions at the family dinner table, through lessons in the classroom, and through teachings in churches and synagogues. That is the way it should be. Yet, we in Congress do have the responsibility to define the parameters between which individuals must behave. It is through the definition of these parameters, through the passage of laws prohibiting and/or encouraging and rewarding certain types of behavior that we in Congress do in fact legislate morality.

There is one very short provision in this particular piece of legislation which is in my view crucially important to continuing an atmosphere which says no to drugs. That is section 510 in title V, which expresses the sense of the Congress that legalization of drugs is unconscionable. There are those in our community who are frustrated that the programs we have implemented in the last few years to fight the war on drugs have not resulted in eradication of drugs, and who have given up hope that any program or strategy can work. Their answer to the drug problem: legalization.

This solution is not advocated by the police, FBI, or DEA departments where drug traffickers are apprehended; this solution is not advocated in the clinics where drug addicts are treated; this solution is rarely advocated in the schools where the first efforts at preventing our young people from beginning an addictive habit begin. Who then is pushing this solution? Well, it usually is discussed in more sterile environments—in college faculty lounges, or in talk show studios, by those with scant regard for the addictiveness of drugs and for the tremendous social and economic cost that drug addiction brings about.

No, few would go as far as the ACLU, which in a 1986 publication of its "Policy Guides" claims that "drugs should not be prohibited by law." In a recent Wall Street Journal op-ed, L. Gordon Crovitz describes the ACLU position as follows:

> Without mentioning the world "deterrent", the ACLU voted to legalize everything from heroin to marijuana. "Gambling, attempted suicide, sexual relations or the introduction of substances into one's own body' should not be crimes."

Mr. President, this is not the attitude of the parents, teachers, students, law enforcement professionals, or health care professionals throughout this country. In fact, a national poll released this summer by the Daniel Yankelovich Group showed that 89 percent of all Americans believed that cocaine should not be legalized. Only 7 percent believed it should be legalized. And, surprisingly, the variations between age groups, sex, and education level were not significant. So I am pleased that the ACLU's position is rejected by this bill.

Mr. President, the core bill we are now considering is the result of a great deal of hard work and negotiation between Members on both sides of the aisle over the last 4 months. It represents a good, solid compromise on many of the controversial aspects of setting a national drug policy. However, by itself, this 600-page bill is not enough to wage the war on drugs successfully. Throughout the summer I have discussed the drug issue with Missourians back home and here in Washington. The one very clear message that I heard time and time again during these meetings was this: You've gotta put some teeth in the bill.

Mr. President, Missourians—and I suspect Texans, Floridians, Virginians, and Californians—are tired of marijuana being grown in our national forests; we're tired of drug pushers trying to sell to our kids in schools, we're tired of Jamaican gangs taking over our streets; we're tired of those caught selling drugs serving an amount of time nowhere near commensurate with the harm they have inflicted on our society; we're tired of hearing of alcohol and drug-related crashes killing innocent victims; we're tired of those perpetrating such crashes again being allowed behind the wheel of a car; and we're tired of users and pushers going unpunished simply because there aren't enough prosecutors to prepare cases.

Mr. President, Missourians are tired of drugs. But they don't want to lie down in this war on drugs; they don't want legalization—they want to hold users accountable for their actions. I have read in several different opinion polls that Americans believe that foreigners in Colombia and Panama and Peru are responsible for our drug problem. Certainly governments in those countries can be held responsible for permitting the growth and export to this country of many tons of cocaine, heroin, et cetera. The Customs Service has seized over 50 tons of cocaine this year alone. But ultimately, Mr. President, we are the consumers. We do not need economists to tell us that without the demand created by users in this country, those large shipments would not be coming into this country, because foreign businessmen would not attempt to sell where there are no buyers.

It is time to hold users accountable for their actions: not only are they putting their families at risk, but they are contributing to the high demand which makes selling drugs profitable, which makes traffickers from Colombia and Peru willing to risk their lives flying cocaine over the Florida, Texas, and California borders. The amendments adopted with regard to user accountability together comprise the strong point of this legislation.

We have adopted an amendment which would establish a pilot program for conducting random testing on new applicants for licenses; those testing positive would be denied driving privileges for 1 year following the test. I believe States should also consider denying an individual driving privileges for 1 year following a conviction for DWI or drugs. This approach would be an important tool in deterring drug use among 15–16 year olds, to whom a driver's license is the top priority.

Another tool which will send a clear message of zero tolerance to users is the addition of civil penalties to the list of possible punishments for drug offenses. We have voted overwhelmingly to establish civil penalties of up to $10,000 for personal use possession offenses. The Attorney General would define what amount of each drug constitutes a personal use quantity of possession, as opposed to a trafficking offense. Income and net assets would be taken into account when determining a penalty. The advantage of this from a law enforcement standpoint is that a civil charge brings with it a much lower standard of proof. To those who opposed this amendment with the charge that it will decriminalize minor drug offenses, let me say that there has been a de facto decriminalization of minor offenses already. As I mentioned earlier, Federal officials cannot press charges against everyone due to overburdened prosecutors, overcrowded jails, et cetera.

Opponents to this amendment pointed out during debate that a body of court rulings forbid the punitive use of civil penalties. Penalties in a civil case must be related to the harm caused the United States. I maintain that a good case can be made for making casual users pay for the harm of contributing to high illegal drug demand in the United States.

Yet another amendment that will send a strong message to users would deny unearned Federal benefits to those convicted of drug-related crimes. Earned veterans' benefits, as well as means-tested safety net benefits such as welfare, would not be affected. Those successfully completing a rehabilitation program would again be eligible for benefits and loans. Mr. President, Federal housing loans and education loans are privileges, not rights. In my opinion, if someone has put the public safety at risk by using or selling drugs, he has forfeited his privilege to rely on the Federal Government for his own betterment.

Mr. President, in conclusion let me simply say no one bill will eradicate drugs from our schools, homes, and workplaces. To expect that would be far too optimistic. However, one bill can send a strong sign that we're serious, and to warn those who traffic and exploit that we are willing to stand up and fight.

Mr. TRIBLE. Mr. President, before we cast our final vote, I want to talk about the international title to the bipartisan drug bill which recognizes that efforts to control the production, manufacture, and trafficking of drugs abroad are essential to our success in fighting drugs at home. Eradication and interdiction remain essential components of the Federal Government's antidrug war.

To achieve those goals, this bill authorizes $101 million for fiscal 1989 activities of the Department of State's Bureau of International Narcotics Matters. That figure is identical to the President's budget request earlier this year.

Those funds will support eradication efforts in roughly 15 countries to help reduce the supply of cocaine, opium, and marijuana. They will help numerous nations to upgrade their law enforcement capabilities and strengthen their judicial systems. They will support drug prevention activities abroad, especially in countries that have not yet emerged as major trafficking nations. And they will enhance America's cooperation with multilateral programs to curb drug abuse and drug production.

The bill calls for increased cooperation with foreign governments that also suffer the effects of drug trafficking and drug money laundering. It calls upon the President to convene an antidrug summit of Western Hemisphere nations, and it urges negotiations with our Latin American neighbors on creating an antidrug strike force.

In short, this bill will sustain America's role as the leader of the international drug war. That role is more vital now than ever, for the narcotics trade is an integrated web of criminal activity from which no nation is immune. The United States must continue to lead this fight, and this bill will help ensure that we do.

But the United States must also insist that other governments do their part to curb the supply of illicit drugs. To that end, this bill toughens the standard that countries receiving U.S. aid must meet before they can be certified as cooperating fully in the war on drugs. Crop eradication will no longer be the primary test of a government's willingness to cooperate. Instead, we will insist on full cooperation on a broad range of activities.

We will insist that foreign governments comply more fully with U.S. requests for extradition of traffickers, or for hot pursuit of drug smuggling aircraft. We will require that they aggressively investigate hostile actions against American law enforcement personnel. And perhaps most importantly, we will insist that they take decisive action against drug-related corruption.

Mr. President, this title takes a comprehensive approach to the international drug trade. It sustains America's leadership role in combatting drugs, and offers substantial help to foreign governments who also suffer from the drug trade. At the same time, it insists that those governments give a fuller measure of cooperation to our antidrug efforts.

Mr. SASSER. Mr. President, I am pleased at the action of the Senate today in passing this comprehensive drug abuse legislation.

This bill is the result of hours and hours of hard work on the part of many Senators. It represents a consensus by those who have been working on this issue of what we need in a comprehensive bill. And it is a bipartisan agreement with our colleagues on the other side of the aisle.

First of all, we recognize that there are no simple answers to the drug problem.

Drug trafficking remains at record levels. Exact figures for smuggled drugs are not available as law enforcement officials concede that they are intercepting only a small percentage of smuggled drugs. Almost daily, it seems we hear of drug busts involving incredible amounts of illegal drugs.

The statistics we do have, however, are freightening enough. Last year Americans consumed approximately 70 metric tons of cocaine. The wholesale price of cocaine was at a record low and purity remained at extremely high levels. these factors are indicative of widespread availability.

Likewise, the supply of marijuana in the United States increased last year—to somewhere in the range of 6,500 to 12,000 metric tons. Much of this marijuana is, of course, domestically grown.

Just as at the national level, the combination of lower prices and higher purity make cocaine much more available and much more in demand in my State of Tennessee than it was, say, 5 years ago. In 1983, that same kilo cost only $20,000.

Because of the increase in cocaine distribution and use in Tennessee, cocaine arrests are now everyday occurrences, whereas they used to be isolated, rare events. Five years ago, large cocaine busts—that is, 1 kilo or more—were infrequent occurrences. Today, 1,- 2-, or 3-kilo seizures occur almost every day from one end of the State to the other. Also significantly, 5 years ago cocaine used to be limited to the cities of Tennessee. Today it is seen by law enforcement officers in every county in Tennessee.

Law enforcement officials in my State are spending $1 million a year on marijuana investigation, eradication, and prosecution. Yet, they tell me that they are barely holding their own. Tennessee is one of the States where significant amounts of marijuana are grown. In 1987, 486,000 marijuana plants were discovered and destroyed in Tennessee. So far in 1988, 240,000 plants have already been discovered and destroyed.

The results of the easy availability of drugs is evident. Experts estimate that over 25 million Americans have tried cocaine. Six million use it at least once a month. Two to three million Americans are believed to have a serious cocaine dependence.

Marijuana use continues at high levels. One particularly troubling statistic is that marijuana-related admissions to emergency rooms increased by 40 percent between 1986 and 1987. It is believed that many, if not most, of these admissions are due to the use of marijuana in combination with other drugs.

Each of us knows that these trends are reflected in our own States and I am particularly concerned about the impact drugs are having on our young people.

Surveys in Tennessee show that 10 to 15 percent of high school students—approximately 50,000—abuse alcohol and drugs. Sixteen percent have tried cocaine. Fifty-seven percent have tried marijuana. These young people are the future of our country. We simply have to teach them that alcohol and drugs are not the solution to life's problems.

These hard, cold facts make it clear that we are not going to win the war on drugs with glib slogans.

The bill we are presenting avoids simple answers and a piecemeal approach and instead looks at each area of drug abuse in terms of what the need is and what concrete steps we can take now to address it.

The bill includes tough new criminal laws to punish drug smugglers and dealers. There are increased resources for our Federal, State, and local law enforcement agencies. And there is increased funding for education and treatment.

In the 1986 drug law, which I also helped draft, we established tough penalties for those who would poison our society with illegal drugs. This year, we have reviewed that law and we offer some new provisions—particularly in three areas.

First of all, we establish a sentence of life without parole for people convicted of a third serious drug crime. These individuals are hardened, cold-blooded criminals. They are not going to be reformed or rehabilitated.

Second, we increase the penalties for drug offenses involving children. This builds on the work we began in the 1986 drug law.

Third, we have reviewed the effect that the sentencing reforms in the 1984 Criminal Code revision have had on the penalties we enacted in the 1986 drug law. We were concerned that the sentencing reforms, which went into effect after the drug law was passed, would undercut the stiff penalties in the drug law. So, we have made some changes there.

Our legislation also provides increased resources for interdiction—for those agencies that are our first line of defense in stopping illegal drugs. Their most pressing need is for operations and maintenance. We provide such money for agencies such as DEA, Customs, and the Coast Guard to apprehend drug smugglers.

In the 1986 drug law we provided additional equipment to our agencies which are in charge of drug interdiction. That equipment is now coming into service. In this bill, we are providing the manpower, the maintenance services, and the fuel for the agencies to put this equipment to use.

We also provide new resources to our State and local law enforcement officials. They are the ones who have to deal with the vicious thugs and the street crime that results from the drug trade.

The bill includes the reauthorization of State and local law enforcement grants, of the criminal justice block grants, and of the National Institute of Justice. These are programs that put money and equipment into the hands of our police.

In addition, we have made changes in our forfeiture laws. I am proud to be the author of the law that directs Federal agencies to share the proceeds of drug arrests with State and local law enforcement agencies which participate in Federal drug enforcement operations. This law is extremely important to local law enforcement agencies. It allows them to recover part of the costs of joint Federal, State, and local antidrug efforts.

Since the program was begun in 1985, my State of Tennessee has received over $1 million in cash and five vehicles. Applications for another $3 million and three vehicles are pending. Law enforcement officials in my State continually stress to me the value of this law.

This bill will make additional resources available to State and local officials. First, we provide for a larger share of the forfeited assets to be distributed to State and local law enforcement agencies. These agencies will thus be able to devote even more resources to Federal, State, and local joint antidrug operations.

Second, we have included provisions to increase the efficiency of forfeiture collection and auditing. Hearings before the Permanent Investigations Subcommittee, on which I serve, have shown incredible inefficiency in the administration of these assets. We have heard of records and hundreds of thousands of dollars of seized cash kept in shoeboxes. In many cases, the Government simply lost track of assets.

I am particularly pleased to be cochairman of the Education and Treatment Subgroup of the Democratic Working Group. I think we all realize that the only real solution to the drug problem is to teach our citizens to avoid drugs. We must also provide treatment opportunities for those who wish to rid themselves of alcohol and drug dependencies.

Our bill contains important new funds for alcohol and drug education and treatment. It also provides specific funding to address a number of areas which we believe need special attention, such as high-risk youth, and families of substance abusers. We have also provided grants for community-based organizations, and for programs which involve the private sector.

This year, my State received $3.7 million for drug and alcohol education. That sounds like a lot of money—it is a lot of money. But it is only $2.50 per child. The additional education money we are including will allow us to give each school system enough money to develop a realistic education program.

By the same token, our unmet needs in alcohol and drug treatment are staggering. In my State, for every person in a treatment program, there are six people waiting. The average waiting period for treatment is 10 to 12 weeks. The funds we are providing will enable my State to significantly increase the number of treatment slots available.

I want to take a moment to commend the work of the Members and staff on both sides of the aisle who have worked so long and diligently on this bill. Particularly, I want to recognize the cochairmen on our side, Senators NUNN and MOYNIHAN, and the chairman on the other side, Senator RUDMAN.

In our Education and Treatment Subgroup, Senator KENNEDY, Senator HATCH, and I have worked together in a spirit of bipartisanship and I believe we have produced a product which effectively addresses the needs of education and treatment.

The entire bill, in fact, is a realistic approach to the problem and a realistic package of what we can achieve. So, this is important legislation and I hope we will be able to reach an agreement with the House in the next few days and enact this measure.

Mr. CHAFEE. Mr. President, I am proud to join in sponsoring the 1988 omnibus antidrug bill. This legislation, developed by a bipartisan task force, tackles our Nation's drug epidemic with force and intelligence.

Marijuana, cocaine, PCP, heroin, and a host of other illegal substances have permeated every core of American society. Our Nation's drug problem affects every citizen, either directly or indirectly. It threatens to cripple our economic system and culture.

Despite the valiant efforts of many law enforcement officials, medical professionals, and social service agencies, the drug epidemic is still growing in America. In order to stop this epidemic we must reduce both the supply of and demand for drugs.

We know that in spite of our work in the past few years, the supply of drugs in this country has continued to increase. It is clear that much more must be done. There is a web of drug supply lines that form America's drug economy. Drugs are cultivated abroad and brought into the country by drug warlords and their organizations. These organizations manufacture and distribute the drugs that eventually filter down to smalltime suppliers and street pushers who sell to the American people, including children. We must intensify our efforts to put them out of business.

State, local, and Federal law enforcement officials fight to cut off the supply line of drugs from various points. The Coast Guard and Customs Service monitor our borders. Their interdiction efforts, on the high seas and in the air, help seize illegal substances worth millions of dollars on the American street market. The Drug Enforcement Agency works to arrest high-level drug traffickers and immobilize their organizations.

This legislation increases funding and personnel for drug interdiction efforts at the State, local, and Federal levels. More will be available for the Internal Revenue Service, Drug Enforcement Agency, Coast Guard, National Guard, Defense Department, Federal Bureau of Investigation, and other State and Federal agencies working to stop the inflow of drugs to our country.

While it is important to reduce the supply of illegal drugs, it is even more important to concentrate on reducing the demand. Our bill recognizes this and devotes 60 percent of the overall funding available toward demand reduction. In addressing demand reduction we look at both ends of the spectrum: the casual user and the addict.

It is estimated that 97 percent of drug users have families and jobs. They are our friends and colleagues. Many of them are casual users who see little harm in their drug consumption. It doesn't occur to them that their use substantially contributes to the crime, death, and destruction that is an integral part of the drug economy. It doesn't occur to them that casual drug use can and often does lead to serious drug addiction. They don't realize that their families suffer from their use of drugs, that they are less productive in their jobs, and that they are on a path which frequently leads to death.

This drug bill introduces the concept of "user accountability" and significantly increases criminal sanctions for violation of Federal narcotics control laws. With the passage of this legislation, we will be sending a message to casual users and those considering whether to experiment with drugs: this activity will come at a much higher price than ever before.

Drug dependency stems from casual use. Most people don't become addicts overnight, but once they do, they become a drain on their families, communities, and society as a whole. They are unlikely to successfully maintain a job. They may steal from their families and friends to get the money to buy drugs. They may do all these things and many more without even realizing they have a problem. The only help for them is treatment.

Unfortunately, it is difficult to get treatment if you don't have the money to pay for it. Waiting lists for rehabilitation can run as long as 9 months. That time can mean the difference between life or death for an addict. Individuals seeking treatment have often hit rock bottom. Before they can get help, many of these people will kill themselves, either through a tragic accident or overdose, or suicide.

The treatment centers are doing all they can, but their resources are extremely limited and they simply cannot handle the number of drug addicts seeking help. The drug bill addresses this problem in part by increasing funding for the Alcohol, Drug Abuse, and Mental Health Administration [ADAMHA] block grant.

Several weeks ago I introduced a bill, S. 2772, addressing the special treatment needs of drug-addicted pregnant women. Many treatment centers put pregnant women on the bottom of those lists. This helps contribute to the 375,000 babies born annually with drug-related health problems. Thousands of these babies wouldn't have these problems if their mothers had received treatment during their pregnancy. The premise and goals of my legislation are embodied in several of our omnibus drug bill's provisions. I was able to ensure that the bill require federally funded treatment centers to give priority attention to pregnant women.

Beyond treatment, our efforts to prevent drug abuse are critical, particularly for adolescents. More and more of our children use illegal substances every day at a much younger age than we might ever have imagined. The percentage of students using drugs by the sixth grade is three times what it was in 1975. According to the Department of Education, one out of every six 13-year-olds have used marijuana and one out of every six high school seniors have used cocaine.

Once a young person experiments for the first time, he or she often ends up spiraling deeper and deeper into a morass of problems as if caught in quicksand. In one study, students taking marijuana were twice as likely to average D's and F's than a nonusing student. The Department of Education estimates that high school seniors who are heavy drug users are more than three times as likely to drop out of school than nondrug users.

We have to get to our children before drugs take over their lives. We must provide them with alternatives to drug abuse that will motivate and excite them to excel in their endeavors. Senator STAFFORD and I introduced S. 2769 earlier this year, establishing a comprehensive community prevention initiative program which has been included in the omnibus drug bill.

This demonstration project encourages the establishment of programs aimed at high-risk children, such as those who are likely to drop out of school or who have already dropped out. The programs will involve youth in community-based after school or weekend activities such as sports, theater, or volunteer work. They may also offer training or employment opportunities. These programs will provide children with the opportunity to live a drug-free life from the start by giving them the self-esteem and sense of purpose they need to be successful.

Educating potential drug users and rehabilitating drug dependents will help more and more Americans lead healthy and productive lives. Reformed drug users are contributing to our society and enjoying a confidence in their sobriety and in themselves. Approving this bill will put many more potential drug users or drug dependents back on the right track.

This comprehensive package intelligently and forcefully attacks both the supply and demand for drugs bringing us one step closer to that goal. Passage of our bill will send a strong message to both drug users and drug traffickers; the price of their activities is a price the American people will no longer shoulder. I urge my colleagues to join us in sending this message.

● Mr. BENTSEN. Mr. President, the border between the United States and Mexico is unique. It is the only place in the world where an industrialized power shares a border with a third world country. It is a place of deep cultural tradition. And it has become one of the favorite areas of drug smugglers.

The additional resources that the Federal Government has committed to the drug interdiction effort in south Florida in recent years has caused drug smugglers to rethink their smuggling strategies. And they have shifted a huge proportion of this illicit activity to the United States-Mexico border.

Mr. President, this puts the police chiefs of south Texas cities in the front line of America's war on drugs. Seizures of narcotics occurs daily in south Texas, with narcotics with street value in the millions being seized monthly. Although Federal law enforcement agencies have increased their presence in this area, we all know that local cooperation is essential if we are to have a truly successful drug enforcement program.

To improve the enforcement capabilities of these local law enforcement agencies, it is imperative that we take steps to provide voice privacy radio equipment to them. With just a $79 radio scanner that can be purchased at any electronic retail store, drug smugglers are currently able to monitor tips called in by concerned citizens as well as communications between local police officers and Federal agents participating in drug interdiction task forces. Too often, the drug smugglers are able to escape after picking up on these communications. And the drugs make their way into the hands of our children.

We can and must do something about this enforcement problem. We can help provide voice secure privacy radio systems to local law enforcement agencies along the border. Federal assistance is justified on two grounds. First, as I said earlier, these local agencies are in the front line of our national war on drugs. And it is a national war, not a regional one limited to south Texas. The drugs that come into the country through south Texas make their way to places far removed from the area—Chicago, St. Louis, Dallas, and other cities around the country.

Also, I think all my colleagues are aware of the economic conditions in south Texas. This is one of the poorest and most economically depressed areas in the entire country. The municipal governments in this area are simply unable to finance the purchase of voice privacy radio systems. It is simply good national policy to provide them with assistance for these radios. The drug enforcement effort along the border will be enhanced, and the amount of drugs flowing into many different parts of the country will be cut. It just makes good sense.

Mr. President, we must find a way to provide voice privacy radios to the police departments along the border if we are to have a truly effective enforcement program. A relatively small investment, $800,000, will generate a tremendous increase in seizures and enforcement and will prove to be a wise use of Federal resources.

I want to acknowledge the concern about this situation expressed by my colleagues Senator BIDEN and DECONCINI, and further acknowledge their cooperation. I pledge to work with them in the coming days and months to provide funding in fiscal year 1989 for the purchase of voice privacy radios for local law enforcement agencies along the United States-Mexico border. I am convinced that it is one of the best investments we can make in our war on drugs.●

Mr. DECONCINI. Mr. President, this is a day that many of us have been looking forward to for a long, long time. I am delighted that we are about to pass the most comprehensive legislative assault on the insidious drug abuse problem in recent history. I urge my colleagues on both sides of the aisle to give this drug bill their overwhelming support.

Mr. President, I am particularly proud of this bill for several reasons.

First, I would like to think that my introduction of S. 2205, the Omnibus Anti-Drug Abuse Act of 1988, back in March, has played a role in bringing this drug bill to the brink of enactment at the end of the 100th Congress. In March, I introduced the first major drug bill with over half of the Senate as cosponsors. With the able assistance of my good friend and colleague, Senator AL D'AMATO, we were able to build the number of sponsors of our drug bill to a total of 75—three-quarters of the Senate, with broad bipartisan representation, including the entire Republican leadership team. On the same day in March, my good friend, Congressman GLENN ENGLISH of Oklahoma, introduced virtually the identicall bill in the House and the race to pass a comprehensive antidrug abuse bill was started.

Second, I was pleased to play an active role on our distinguished majority leader's Substance Abuse Working Group that crafted and negotiated the bipartisan "core bill" that is pending before the Senate. As cochairman of the Drug Interdiction and Law Enforcement Working Group on the leader's task force, Senator GRAHAM and I along with Senators KENNEDY, WILSON, D'AMATO, HATCH, and others, put together what I believe is a solid, tough, fiscally responsible law enforcement package that will go a long way toward providing the teeth and the tools to our law enforcement officers, prosecutors, judges, and other elements of the judiciary. There were many long and often heated debates among Senators with very different perspectives on how to crack down on drug users, drug traffickers, and others involved in the drug trade. And there were just as many different views on how best to allocate scarce resources among the various elements of the drug interdiction and law enforcement agencies. But in the spirit of bipartisanship and compromise, the bill before us represents a good cross-section of views and approaches to attacking the drug trafficker and the infrastructure that feeds his evil enterprise.

And, finally, Mr. President, I am proud of the fact that many of the programs, concepts, and funding recommendations contained in the so-called DeConcini-D'Amato bill have been included in the drug bill that we are about to pass. Let me highlight just a few of those that are of particular significance:

S. 2205 called for $2.448 billion in new spending for antidrug programs, and a three-part plan for paying for the new drug measure.

This bill calls for $2.6 billion in new spending and adopts at least one of the elements of our original plan to help pay for the bill (IRS initiative).

S. 2205 and its funding levels were the basis for an amendment I offered with Senator DOMENICI to the budget resolution to pave the way for a new drug bill in fiscal year 1989.

This bill fits within the budget resolution ceiling established by the DeConcini-Domenici amendment.

S. 2205 made certain changes to the Justice and Treasury forfeiture funds that would allow those funds to be more easily provided to State and local law enforcement agencies.

The bill contains similar provisions to achieve those objectives.

S. 2205 provided a major reauthorization of the important State and local law enforcement grant program and required a comprehensive, coordinated "master plan" or statewide strategy to fight drugs. It also streamlined the process of getting these funds down to the level where they are needed the most.

This bill embraces this same concept.

S. 2205 contained provisions to improve our international programs aimed at controlling drugs at the source, including a Latin American Strike Force and new incentive programs for source and transshipment countries to take unilateral actions to eradicate drugs at the source.

This bill builds on these concepts, including new procedures for certifying or decertifying those countries that do not cooperate with our antidrug efforts.

S. 2205 provided a major increase in our national commitment to drug treatment, drug education, and drug rehabilitation programs, and authorized a total of $3.6 billion over 3 years for alcohol and drug treatment, rehabilitation and mental health programs plus another $1 billion over 3 years for drug education.

This bill provides even more funds for these important programs than those in the DeConcini bill.

S. 2205 provided, for the first time, the concept of using our existing research and development facilities in the Pentagon and elsewhere to provide assistance and share technology with our civilian drug enforcement agencies.

This bill retains virtually all of those provisions.

S. 2205 contained funds for Customs to accelerate technology to allow x ray of cargo containers to locate narcotics.

This bill contains the same provision.

S. 2205 contained language creating a National Commission on Law Enforcement to examine compensation and other benefits provided to our law enforcement officers and to try to find new ways to make their difficult jobs more rewarding. The bill also increased the death benefit for law enforcement officers to $100,000.

This bill retains these provisions.

S. 2205 contained provisions to revoke passports of those convicted of drug offenses.

This bill retains those provisions.

S. 2205 contained language prohibiting weapons in Federal courthouses.

This bill retains those provisions.

S. 2205 contained language requiring better accountability and evaluation of how our drug education money is being put to use in the States.

This bill retains those provisions.

S. 2205 contained language establishing a Latin American Strike Force to allow South American source drug countries to use our equipment to eradicate drugs and go after the drug traffickers in their own countries.

This bill retains those provisions.

S. 2205 called for establishment of a program to use computer technology to read passports and VISAs at ports of entry.

This bill retains those provisions.

S. 2205 authorized a total of $303.9 million for additional law enforcement personnel and another $523 million for drug interdiction and drug enforcement asset enhancements.

This bill includes $291.5 million for additional law enforcement personnel and related expenses of the Federal judiciary, and another $163 million for drug interdiction and related law enforcement asset enhancement. About 55 percent of total amount provided for these two activities in S. 2205; but remember this overall bill is now 60-40 percent demand/supply.

S. 2205 contained the administration-backed Chemical Diversion and Trafficking Act of 1988—a bill that I introduced as a freestanding bill in 1987.

This bill contains a compromise version of this same chemical diversion bill.

S. 2205 contained $200 million for new Federal prison construction.

This bill contains $205 million for new Federal prison construction.

Mr. President, before I close, I once again want to urge my colleagues here and in the House not only to pass this drug bill but to provide the actual appropriations for the programs authorized in H.R. 5210 as amended by the Senate drug bill. It is important to show the American people that we are willing to complete both prongs of the drug bill—the authorization and the appropriations. If we do not do that, we will once again be subject to the criticism of the public for making hollow promises and providing only the skeleton of our new effort to combat drugs. I urge the House and Senate Appropriations Committees to quickly work toward appropriating the full amount authorized in this drug bill.

Mr. President, in closing I want to pay tribute to those on the drug working group who have really done the lion's share of the work on this bill. Senators MOYNIHAN and NUNN have shown tremendous skill, expertise, and patience in putting this bipartisan drug bill together. And I commend Senators D'AMATO, RUDMAN, WILSON, and DOMENICI for their efforts to weave this bipartisan package together. I also want to commend both of our leaders, Senator BYRD and Senator DOLE, for being the glue that was needed to keep this huge undertaking together through some very tough and often tumultuous times. I tip my hat to both of them.

Finally, I want to associate myself with the remarks earlier today by Senator MOYNIHAN regarding the effort by the staff on this bill. I know that my own staff has been working on a drug bill since last July, along with the staff of Senator D'AMATO. I am sure that I will miss a number of the key people who worked on this bill, but I want to pay special tribute to Eleanor Hill and John Sopko of Senator NUNN's staff; Paul Stockton of Senator MOYNIHAN's staff; Sally Mernissi of Senator BYRD's staff; Jim Whittinghill of Senator DOLE's leadership staff; Goody Marshall of Senator KENNEDY's staff; Cindi Blackburn of Senator THURMOND's staff; Dave Williams and Bill Hughes of the Senate Budget Committee staff; Rena Coughlin of Senator GRAHAM's staff; Jerry Connolly of the Foreign Relations staff; Steve Ryan of the Senate Governmental Affairs staff; Ira Goldman of Senator WILSON's staff; Sheila Burk of Senator DOLE's leadership staff; Luis Luna of Senator GRAMM's office staff; and Scott Green and John Bentavolio of Senator BIDEN's staff.

These are just a few of the dozens of staff who have spent the past 5 months working on the core bill that is the foundation of the bill we will pass today and I thank them for their work.

Mr. President, this bill should pass this body by a vote of 100 to 0. It gets tough on drugs and gets us on the right foot toward finally putting together a comprehensive, coordinated assault on the drug problem in this country. I hope that the momentum that we have started over the past year will not fade away next year. Beating the drug problem is a full-time job and I intend to continue to devote a large part of my time next year keeping the drug issue on the front burner in the Senate. I hope that my colleagues in the House and Senate will do likewise.

Mr. MITCHELL. Mr. President, I will vote for the passage of the Anti-Substance Abuse Act, but I do so with one very major reservation.

Title VII of the bill before us creates a death penalty for certain kinds of felony homicides. I believe this is an unnecessary addition to the bill. It will not deter homicides and it will have no impact whatever on the amount of drugs imported into this country, the amount of drugs consumed by our people, or the enormous costs that we pay in law enforcement and social damage from the drug trade.

I oppose the death penalty and voted against this very provision earlier this year and again earlier in this debate. In the parliamentary circumstances that now confront the Senate, however, I have only the choice of voting for the bill with this objectionable provision in it or of voting against the entire bill. I will vote for the bill.

This measure seeks to modify our approach to the drug problem by giving, for the first time, an equal priority to the goals of treatment, education, and prevention as we have historically expended on the goals of law enforcement and interdiction.

Slightly under $4 billion a year is now spent on drug law enforcement and interdiction efforts, up from $1.2 billion in 1981. Yet, at the same time, the volume of drugs entering the country has skyrocketed.

Interdiction has been spectacularly successful when measured by quantities seized. In 1981, Federal seizures of cocaine totaled 1.7 tons. In 1986, Federal seizures of this narcotic were 27 tons, more than 16 times as much.

But seizures are only a small part of the total entering. And the fact is that despite the immensely increased funds devoted to interdiction, despite the heightened State and local efforts to cooperate with Federal drug strike forces, the seizures of drugs entering our country tonight are still a drop in the bucket.

The Office of Technology Assessment has estimated that over 130 tons of cocaine alone entered the United States undetected last year. The impact of that increase is easy to see in drug prices.

In 1981, a kilogram of pure cocaine landed in Miami was worth $60,000. Today, that same kilo is available for as little as $14,000. When we understand that the same kilo, cut and retailed in 1-gram bags can bring $250,000 on the street, it is evident that the magnitude of the profit margin alone means there is enormous room for prices to rise before the price of drugs can significantly affect purchasers.

An approach exclusively targeted to stopping the supply of drugs entering the country is a limited approach. The United States has 7,458 miles of land borders, 88,633 miles of coastline. Over 300 million persons cross our borders each and every year—more than the total population of our country. Almost 100 million automobiles, 650,000 airplane flights, and more than 7 million cargo containers cross our borders each year.

We cannot seal our borders. We cannot do so as a physical matter and we cannot police each and every item brought into the country without bringing business and life to a standstill.

A huge drug bust in one city is easily compensated for by a relatively slight increase in smuggling in another. Experts have estimated that the cost of replacing the 27 tons of cocaine seized last year was probably about half a million dollars—but the street value was over $20 million.

Moreover, there is every indication that shutting off the supply of narcotics produced outside our borders—even if it were possible—would mean only that they would be produced locally.

Domestic marijuana production already accounts for 25 percent of U.S. consumption. Clandestine laboratories producing PCP and the illicit methamphetamines and amphetamines exist within our borders today and would continue to do so in the future.

The appropriate thing to do is what this legislation seeks to do, and that is to target an equal amount of resources to prevention, education, and rehabilitation.

At present, three-quarters of the resources devoted to drug abuse control are focused on interdiction and law enforcement. Barely a quarter of our resources are directed at prevention, rehabilitation, and education.

Yet in the long term, the only thing that will get the drug dealers out of business is to dry up the source of their profits. And the only way to do that is to eliminate the demand for drugs.

This bill shifts the focus of our efforts by devoting 60 percent of its resources to the demand side of the drug equation and 40 percent to the law-enforcement/interdiction side.

It is a long-overdue redressing of an imbalance in our Nation's policy. Although the bill is not now fully funded, I hope its passage will constitute a strong commitment to the next Congress to ensure that those elements for which funds are not immediately available are properly financed next year.

In 1986, we enacted a major drug abuse control bill in October. But after the election, in the following January, we received a budget from the administration that cut funds for drug abuse control rather than financing the bill.

Indeed in his State of the Union address this year, President Reagan claimed that the "war on drugs was an untold American success story."

The fight against drug abuse demands more than rhetorical claims and unfunded legislation. We have to commit resources and time. We have to recognize that it will cost money. And that we will not succeed overnight.

Our budgetary problems are serious, but the drain on our resources through the drug trade is as great a cost—albeit not itemized in the budget—as the costs of interdiction and law enforcement. If we can slow the spread of drugs in our cities and neighborhoods, we will save funds in the long term and, what is more important, we will save lives.

This bill allocates $156 million to promote drug-free schools, $40 million for comprehensive community prevention programs, and lesser sums targeted to high-risk groups. In total, the bill devotes $273 million for fiscal year 1989 for drug education and prevention efforts.

Since 1980, drug rehabilitation programs have lost 40 percent of their funding, taking into account inflation. This bill seeks to make a start in correcting that neglect. It allocates $950 million for matching State grants for agencies that provide treatment and rehabilitation.

The professionals in the treatment community have consistently pointed out that without resources, they have to turn away individuals who want to be helped. Unless we fulfill the commitment this bill begins, of making treatment available on demand, we can expect no progress in our efforts.

Perhaps the single most important element of this legislation is the so-called drug czar provision. This is a simple, commonsense approach which the Congress endorsed 5 years ago, only to have it vetoed by President Reagan.

It simply provides that the antidrug abuse effort—both in interdiction and prevention—be the primary responsibility of one individual, with the resources and authority to direct other efforts to the goal.

In place of a single, coherent management, we have seen an interagency board, which could act only by consensus.

We have also had a high-publicity level task force for interdiction in Florida headed by the Vice President. During its existence, the volume of drugs entering the country is estimated to have doubled.

It is time to move away from business-as-usual, from interagency boards with their own turf to protect, away from high-visibility single-focus task forces, toward a coherent, directed and managed effort.

We would not leave the military defense of our Nation in the hands of an ill-defined board whose authority was limited. Yet the scourge of drugs coming into the county is at least as great a threat to our Nation's future.

This legislation for the first time seeks to focus our efforts coherently and effectively, and it seeks to do so on both the market and the suppliers. Although every one of us can find elements in the bill that could be improved or should not be there, the overall measure is a responsible and reasoned approach to a serious national problem.

I hope it will be swiftly enacted and put into force.

Mr. NUNN. Mr. President, today, we will vote final passage on the Omnibus Anti-Substance Abuse Act of 1988—a bill that will help to redirect Federal strategy for combating drug addiction for years to come.

For many reasons, the proposal before us marks a dramatic departure from prior efforts against our Nation's drug problem. Briefly, I would like to take a few moments to encapsulize a few of the most significant portions of this bill. It would be a disservice to all of us if we can't tell the "forest" of accomplishments in the core bill from the recently sprouted "trees" of amendments that add substance to the legislation at the margin.

One significant departure from current Federal efforts is the establishment of a Cabinet-level position responsible for coordination of all Federal antidrug efforts. This bill recognizes the long-standing need for better coordination and cooperation of our Government's multiple efforts by creating a drug czar to oversee them. Let us not lose sight of this improvement over the turf battles and infighting that have for too long characterized Federal antidrug efforts.

The need for a drug czar was recognized by Congress when it passed Senator BIDEN's provision as part of the Comprehensive Crime Control Act of 1982. Although President Reagan vetoed that legislation because of the drug czar provision, the need for such a position remained. Just this June, the Comptroller General testified that the continued fragmentation of Federal antidrug efforts necessitated the assignment of authority for planning and coordination to a single individual who will work full-time at that task. The Comptroller's recommendations are now borne out with the passage of S. 2852.

Another key provision that we should not lose sight of is the important shift in funding established by this bill. For the first time—since 1977—we are proposing to shift Federal antidrug emphasis from supply to demand reduction efforts. Of the total authorization, 60 percent of it is provided for drug prevention, treatment, and education programs and 40 percent for law enforcement and interdiction programs. This contrasts with current spending patterns whereby the Federal Government spends three times as much trying to stop the supply of drugs from reaching the user as it does on reducing the demand for those same drugs.

Our Nation has repeatedly poured resources into stopping the supply while largely ignoring the need for resources to address demand. We must as a nation realize that it is the demand for drugs in this country that drives the supply. During this administration that trend has been even further exaggerated, resulting in the Federal Government spending three times more on supply reduction—interdiction and law enforcement efforts—than on demand reduction—treatment and education—$3 billion and $1 billion, respectively.

All of this has occurred, despite expert agreement that the administration's reliance on supply efforts, particularly interdiction, is about as successful as looking for "needles in a haystack." Adm. Frank Kelso, Commander of the U.S. Atlantic Fleet, told a joint session of the Armed Services Committees that I chaired this June that "in military terms, it is like attempting to shoot down a missile after it is fired rather than hitting the shooter."

Estimates for the amount of incoming drugs that are being interdicted is abysmally low. The Office of Technology Assessment estimates that only from 1.8 to 4.8 percent of the drugs for 1985 were interdicted. In light of this, it appears we don't seem to have won even a skirmish, let alone a war, against the drug traffickers.

Contrary to what some may argue, this bill's increased emphasis on reducing the demand for drugs is what almost every credible law enforcement officer has been telling us for years, namely, that law enforcement alone will never win the war. Thomas Cash, the special agent in charge of DEA's Miami Field Division, was recently quoted in the Miami Herald as stating that "law enforcement is not the solution." In the same article, the former U.S. attorney for Miami, Leon Kellner, concluded that "if we begin with the proposition that the reason all the people are shipping the drugs in here is the demand, we deal with the demand."

These opinions are born out of pragmatism, not defeatism. These law enforcement officials have dealt with this problem on a daily basis. They know that to be "tough" on drugs, you start with being "smart" about drugs. They are smart enough to realize that all the eradication and interdiction efforts in the world will not be effective if we do not address the demand for those drugs.

Current drug education and treatment programs in this country are woefully inadequate. Waiting lists for treatment programs are routinely long and, even when openings are available, they are hopelessly unaffordable for most drug addicts. For example, it is estimated that at best some form of treatment reaches only 10 percent of intravenous drug abusers in the United States, a group potentially much smaller than cocaine abusers. Federal support for programs to prevent and treat drug and alcohol abuse declined 40 percent under this administration.

In 1984, the National Association of State Alcohol and Drug Abuse Directors [NASADAD] conducted a survey of State alcohol and drug abuse agencies on the level of demand for prevention and treatment services. Of the 30 States responding, 27 cited increases in demand for prevention and treatment services related to alcohol and drug abuse. Seventeen States had to institute waiting lists for services and seven States had to end State funding support for local programs or completely close programs. Most of the States responding to the NASADAD survey indicated the need for additional funding to supplement the Federal block grants. These grants were not enough to sufficiently meet the demand for services.

For example, in New York, the average waiting list for treatment is 26 weeks. According to an article in the May 2, 1988, New York Times, there are only 150 spaces in public financed residential treatment programs in New York for addicts under 16. In 1985, there were at least 97,000 drug addicts under 16 in New York.

The waiting list in Los Angeles is 16 to 25 weeks. In San Diego, the waiting list for treatment ranges from 4 to 12 weeks.

In the District of Columbia, the waiting list is 2 to 3 months.

In Illinois, an adult will wait 4 to 8 weeks for treatment while teenagers must wait 6 to 8 weeks.

In Indiana, only 65 percent of the treatment requests are served.

In Iowa, the waiting list for enrollment in outpatient treatment programs is 4 weeks, and an addict must wait 3 weeks before being admitted to a residential treatment program.

Louisiana has 988 persons on its waiting list, and only 40 public beds are available for treatment.

At any given time, Massachusetts has a waiting list of approximately 1,200 persons.

Missouri serves 34 percent of its target population.

New Jersey turns away 500 clients each month.

Pennsylvania estimates that it needs 5,000 new treatment slots to meet the need.

The State of Utah can treat only 1,398 addicts and has estimated that there are 13,000 youths in need of treatment.

Virginia estimates that 233,000 people will require treatment beyond current capacity through 1994.

In Milwaukee, WI, the waiting list for treatment is 8 to 13 weeks.

My own State is no exception to these alarming statistics. Georgia continues to experience a dramatic increase in the demand for treatment. The Georgia Department of Human Resources has indicated that there is a lack of treatment facilities and money to provide effective treatment programs and counseling services, particularly to children who need them. From July 1983 to June 1988, there was a 1,065 percent increase in the number of clients admitted to Georgia's community-based public treatment programs for cocaine addiction. Cocaine admissions increased by 1,943 percent in the central region of the State and by 1,241 percent in the metro region programs during the same 5-year period. Emergency room admissions associated with amphetamine use continued to increase during the fourth quarter of 1987 and during the first quarter of 1988.

This legislation will attempt to reverse this record of ignoring the addict who wants to break his or her habit. This bill will offer education to the young student who may now be ignorant of the ramifications of drug use. To the parent who has nowhere to turn when their child develops a problem, this bill offers some hope.

My colleagues should not forget that the core bill establishes for the first time in our Nation's history the Federal goal of providing substance abuse treatment on request. Treatment experts have advised the staff that with the passage of this bill, we will make treatment available for as many as 20 percent of our current addict population. This is a truly remarkable start in the long road of providing treatment to the thousands of our fellow citizens who are currently hooked and desperately want to go straight. Again, I ask my colleagues not to lose sight of this enviable goal as we debate the possible amendments that could lessen the chances that this provision, as well as the many other important parts of the bill, ever becomes law.

Any successful antidrug effort must recognize not only the importance of treatment to the drug addict but also the importance of education to those of our young people who have not yet been victimized by illegal drugs. This bill focuses on education as the key to convincing our young people that their future, and the future of this country, are far too important to waste on drugs.

In drafting this bill, we were under no illusions that drug education programs will be a "quick fix" to the drug problem. We must accept the fact that today there are millions of Americans who use drugs and who are willing to pay large amounts of money to do so, despite all the possible adverse consequences. Changing their attitudes, and the attitudes of the young people whom they influence, is going to be a long and uphill battle. But it is a battle that we can no longer afford to delay. This bill commits us to that battle, on perhaps its most important front: the classroom.

The bill addresses the need for drug education in a number of ways. It targets funds for a drug abuse education and prevention program for populations at particular risk of drug abuse. It provides programs for improving the skills of those involved in conducting drug education and prevention programs, including $16 million for training our teachers in substance abuse education. Finally, it insures greater evaluation efforts and improves the coordination of education and prevention efforts.

Funding for the Drug-Free Schools and Communities Act is increased in this bill to better assist local school systems in developing effective drug education programs. The bill gives priority to the establishment of regional substance abuse education and prevention centers within the States. These centers will offer increased assistance and consultation to State and local agencies and community-based programs on drug abuse prevention.

The bill also authorizes $40 million for the establishment of new comprehensive community prevention initiatives. This money will help establish substance abuse education centers and partnerships between community organizations, businesses, health departments, and law enforcement agencies in order to provide technical assistance, outreach, referral, training, and consultation services at the community level. These types of programs, along with others included in the bill, will help insure that America's youth will first learn about drugs from their parents and their teachers and not from the drug traffickers and drug addicts.

Another one of those other parts of the bipartisan bill concerns the current needs of the law enforcement community. In developing the legislation, the drafters identified significant areas for improvement of our law enforcement efforts. The bill gives special emphasis to our overburdened courts, $79 million; prosecutors, $36 million; and prisons, $205 million.

Those segments of the criminal justice system—the courts, the prosecutors and the prisons—have not always been emphasized to the same degree as our criminal investigative agencies. As a result, in the past we have faced logjams in our courts and our prisons as strained resources attempted to handle steady increases in caseloads and inmate populations. Unless we specifically address those problems, as this bill does, the entire antidrug effort will be seriously undercut by a revolving-door syndrome in our courts and our prisons.

The bill also continues our full support for those Federal law enforcement agencies who have worked long and hard in the dangerous and too often frustrating war against drugs. The bill authorizes $49.2 million for the Drug Enforcement Agency; $24.6 million for the FBI; $16.4 million for the Border Patrol; $12.3 million for the Immigration and Naturalization Service; $10.66 million for the Bureau of Alcohol, Tobacco and Firearms; and $16.4 million for the U.S. Marshals Service.

Moreover, the bill gives added support to our drug interdiction program, by authorizing additional funds for the procurement of assets and personel by the Coast Guard and the Customs Service. The bill provides not only for added resources to the Customs Service air interdiction program, but also specifically addresses the pressing need for more Customs inspectors in the drug cargo interdiction program.

The bill's support for our law enforcement agencies is not, however, limited to the Federal level. We have designed this legislation to specifically recognize and address the needs of our State and local law enforcement agencies in fighting the drug trafficker at the street level. We have specifically provided $210 million in new funds for fiscal year 1989 to give much needed reinforcement to our overburdened State and municipal law enforcement agencies. Of that amount, $15 million is directed to be used for juvenile justice assistance. In addition, we have specifically set aside 10 percent of the overall grant for street level enforcement.

I doubt that any Senator would disagree that this new funding as well as the heightened penalties, including capital punishment for drug related killings and increased potential for the forefeiture of drug-related assets, will greatly enhance the tools of our law enforcement agencies. Since these provisions are in the bipartisan drug bill, the passage of this bill is a very important milestone in the fight against drugs real litmus test for being tough on drugs is not political rhetoric, but rather the passage of a core bill such as this one which offers a realistic, responsible and focused bipartisan strategy for success in the war on drugs.

In closing, I urge my colleagues to join with me in voting for passage of the Ombibus Anti-Substance Abuse Act of 1988. In doing so, I caution you as well as the American people to beware the "quick fix" to this complex problem. We must adopt a long term strategy of curbing supply with our law enforcement efforts while reducing demand with greatly expanded education and treatment efforts.

Mr. McCLURE. Mr. President, I rise to discuss the bipartisan drug package that is the pending business before the Senate, and to discuss one aspect of the bill that I believe moves us ahead in an important law enforcement area—the use of our public lands for the cultivation of illicit drugs.

There are currently about 1 million acres of national forest lands where visitors enter at their own risk. Why? Because those who use the public lands to ply an illicit trade have gone to elaborate—and deadly—lengths to protect their crops.

They boobytrap trails formerly used by the public on a regular basis. Such boobytraps consist of everything from trip wires connected to shotguns and hand grenades to the use of Claymore antipersonnel mines. We are not dealing with unsophisticated technology meant to "warn" people to stay away from an area; these traps have been set with every intention to kill somebody. The bipartisan package before us today goes a long way to ensure that once caught, those individuals who resort to such tactics will face stiff Federal punishment.

But there is another group of people, who I refer to as ecoterrorists, who have an altogether different agenda but their methods of achieving it are just as dangerous and deadly as the drug producers.

This group has not been able to convince either the Congress or a majority of the American people to support their goals. In response, they have decided to ignore our system of government and justice and to take matters into their own hands. While they are not as sophisticated as the marijuana growers, their little surprises along the trail and in the forest can be just as deadly.

Earlier this year, I addressed my colleagues in this Chamber about a loose-knit group of ecoterrorists who had recently caused a millworker in northern California to be badly injured. That man will carry the scars of their attack for the rest of his life. In fact, it is nothing short of a miracle that he was not killed by the cowardly act directed at him in the name of ecological protection.

Among the groups that condone this activity is Earth First, an organization inspired and led by a few social misfits who get their kicks by hurting people and destroying property. They are not the only group involved in such activities but they have made little effort to conceal their contempt for law and order. Let me show a few tools of the ecoterrorist's trade and explain how they are used.

This wicked looking object consists of a steel bar to which a number of deliberately sharpened nails have been welded. The bar is placed just beneath the surface of the trail where it cannot be seen by an unexpected visitor. Think what would have happened if an unsuspecting hiker, stepped on this steel "punji stick."

But hikers are not the only trail users at risk. The sharp points would easily penetrate the tires of a trail bike or the hoof of a horse. This type of boobytrap is not intended to discriminate between victims. Men, women, children, and even wildlife are vulnerable to the horrendous wound inflicted when stepped on.

Another favorite toy of the ecoterrorist is the tree spike. These large spikes are driven into standing trees in areas where timber has been sold. The idea is to drive the spikes deep enough into the tree that they are not visible to the eye. Then, when either a power saw chain or a band saw blade in a sawmill hit the spike, it shatters into a hundred pieces of hot shrapnel.

This is the kind of spike that had been driven into the tree harvested by Louisiana-Pacific Corp. that caused serious injury to the young man in California. He received numerous lacerations as pieces of the shattered steel blade hit his body. His face was a mass of cuts, he lost his upper and lower teeth, his jaw was broken, and his jugular veins were nearly severed because some radical environmentalist wanted to make a "statement" to the world.

I refuse to tolerate those kinds of "statements," and I hope we are eventually successful in apprehending some of these individuals soon after the bill is passed. When that happens, I hope the judge involved will consider imposing the maximum penalty provided under this legislation so that our statement on these despicable tactics cannot be mistaken.

It is time to take back the turf we have lost to these terrorist thugs. We cannot allow them to continue thumbing their noses at our law enforcement authorities and driving citizens off the public lands. This bill provides the teeth necessary to retake the public lands and I am anxious to see it passed.

Earth First! recently convened a 6-day training session for their disciples. The encampment for the tribe, as they preferred to be called, was held on the Colville National Forest located in northeastern Washington. A series of articles about the session and those who attended were printed in the Spokane, WA, Spokesman-Review. Mr. President, I ask unanimous consent that an article from that paper dated July 4 be entered into the RECORD.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

[See exhibit 1.]

Mr. **McCLURE**. Views expressed about Earth First! in an editorial in the same newspaper on July 7 do a good job of categorizing Earth First! members and leaders.

As the author points out:

> Earth First! features the ultimate political self-indulgence. Its members are the 2-year-olds of the environmental movement. When they do not get what they want, they kick up a violent fuss, heedless of the misery they are inflicting on those who might be inclined to support their goals.

The editorial goes on to say:

> They are self-indulgent vandals. They help the environmental movement the way rot helps an old-growth tree. People in the logging industry see them, accurately, as terrorists.

Classes at this terrorist encampment on public lands dealt with subjects such as how to pound spikes into trees and how to sabotage and destroy equipment such as bulldozers and helicopters.

And when they had completed their training exercises, they held a practice session at the offices of the Okanogan National Forest where these model citizens smeared excrement on air-conditioning equipment.

Mr. President, I ask unanimous consent that the entire text of the Spokesman-Review editorial be placed in the RECORD and that my colleagues will take the time to read it.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

[See exhibit 2.]

Mr. **McCLURE**. I am pleased that the legislation we are considering today moves toward punishing these kinds of misfits, whether they are pot growers or ecoterrorists, so that we can make our public lands a safer place for everyone.

EXHIBIT 1

[From the Spokesman-Review (Spokane, WA), July 4, 1988]

EARTH FIRST! COMES OUT OF THE SHADOWS—ENVIRONMENTAL COMMANDOS TEACH MONKEY-WRENCHING

(By Ann Japenga)

MALO, WA—In years past, an environmental saboteur who wanted to learn how to disable a Caterpillar tractor might have arranged a late-night meeting with a contact known as Diesel Duke.

But at the national Earth First! gathering in the Colville National Forest, anyone who desires lessons in subversive mechanics can simply ask to see Ron Frazier.

Gone, for the most part, are the aliases that once characterized Earth First!, the most radical arm of the environmental movement. Gone, too, is the element of secrecy.

Five years ago, Earth First! leaders were telling reporters they didn't sanction tree-spiking and other forms of "monkey-wrenching" such as tampering with bulldozers, helicopters, oil exploration rigs, surveying projects and logging operations. At previous Earth First! gatherings, those things were discussed, but clandestinely—after the campfires were out.

Today, Earth First's unofficial leader, Dave Foreman, not only advocates monkey-wrenching, he doesn't believe anyone within the "tribe" (the word he prefers to describe his group's structure) should criticize the practice.

At the six-day Eastern Washington gathering, which ends today, instructors are teaching the latest techniques for spiking trees to foil loggers. Others demonstrate ways to hoist a person and his or her gear up a tree and onto a platform. Earth First! members have used tree-sitting to protect trees, on the theory a tree won't be cut down with a person camped in it.

About 600 people from all over the country and Canada are attending the gathering, camping deep in the Colville forest about 20 miles from the Canadian border.

Foreman said the Earth First! ranks have grown so much that "It's impossible to keep track of all the issues and actions going on around the country."

The increasing force and visibility of what was once a tiny, esoteric movement is a source of irritation for the logging industry, a prime target of Earth First's direct action.

"We have spiking incidents all over the Pacific Northwest," said Northwest Forestry

Association spokesman Mike Sullivan, interviewed by phone from Portland. He said his organization is offering rewards leading to the arrest of anyone engaging in Earth First! type tactics, which he called "unlawful and unhealthy."

Unlawful, yes. Among those attending the Round River Rendezvous—as they call the get-together—are men and women who have been arrested at some point for monkey-wrenching.

As for "unhealthy," Sullivan was referring to an incident in Northern California last year in which a sawmill worker was seriously injured when a blade exploded after striking a metal spike, presumably planted by an environmental activist.

Earth First! followers maintain the accident wouldn't have happened if the tree-spikers had been following the rule book.

"They warn people ahead of time, always," said Lisa Phillipps of Republic. "They don't want to hurt anyone."

"If spiking is done correctly, no one is going to get hurt," said Northern California resident Greg King.

Some theorize that the sawmill injury resulted from a tree-spiking that wasn't the work of an Earth First! follower at all, but someone trying to discredit the group.

Foreman maintains that it isn't Earth First's intent to endanger lives. But, he added, if someone gets hurt in the heat of the battle to defend the planet—well, so be it.

"My loyalty is to the grizzly, the snail darter, the plankton," he once said. "It's to the rocks and streams."

King pointed out that while monkey-wrenching has made Earth First! famous, that's not the only thing its members do. Many Earth First! members work through traditional channels to effect change, alongside organizations such as the Sierra Club.

As Frazier, the diesel mechanic, said, tactics such as dismantling equipment are "the last resort. They are a way of preventing or delaying some major damage being done after you've tried everything else."

Washington state has seen its share of the splashy, controversial tactics. In fact, local Earth First! members were lauded at the gathering as being perhaps the country's most cantankerous contingent, "pushing the limits of disdain for land despoilers."

"They (Earth First!) have quite a following here in the Republic district," said Cindy Reichelt, public affairs officer for the Colville National Forest.

She said the local Earth First! crew has cooperated with the Forest Service, lending input to proposed forest plans and working through established channels, most of the time.

Reichelt said she doesn't appreciate the fact that Earth First! seems to regard all Forest Service employees with scorn. She has seen herself and fellow workers portrayed in the Earth First! Journal as chainsaw maniacs of the wilderness.

Despite the name-calling, Reichelt said she doesn't believe that she and her colleagues are so different from Earth First! members at heart. "They have a true love of nature and wilderness, and so do we."

Wayne Vaagen, of Vaagen Brothers Lumber Inc., is less tolerant.

"I don't think they're environmentalists. I think they're terorists,' said Vaagen. "I'd refuse to sit in a room with them just as I'd refuse to sit in a room with any other criminal."

Vaagen said his company has had trees spiked and equipment destroyed by environmental activists. His outfit operates in three locations, one in Colville, another in Ione, and one In Republic, not far from where Earth First! is meeting.

Of the gathering, Vaagen said, "I think this is an excellent chance for the FBI to get a line on them." (A notice posted at the gathering read: FBI Welcome.)

Earth First! appeals to some because of its philosophy. It appeals to others because members seem always to be having a good time. And, increasingly, it attracts people because it smacks of radical chic.

For instance, there is the often outrageous Earth First! Journal, increasingly quoted in trendy publications for its extreme views. Then there is the dash of the Earth First! logo: A tomahawk criss-crossed with a monkey wrench.

Throughout the clear-cut hills and deep woods of the Mount Leona area of the Colville forest this weekend could be seen the camouflage garb popular with Earth First! types. Also much in evidence were Earh First! T-shirts, caps and bumper stickers with slogans like "Muir Power To You" and "American Wilderness; Love it or Leave it Alone."

Represented in great numbers, as Foreman noted, were "middle class rednecks—like me." They are the lifeblood of Earth First!, boisterous enough to offend some potential followers, but brash enough to live up to their motto: "No Compromise in the Defense of Mother Earth!"

At night, these unlikely environmenalists collected by a communal fire to drink beer, beat on drums, and howl songs, like this one to the tune of Tom Dooley: "Put down your axe, Paul Bunyan . . ."

But Earth First! is not only "a bunch of loud males," Foreman said, even if it sometimes seems that way.

An example of a very different sort of member was Virginia Petersen, 66, who attended the gathering with her husband, daughter and two granddaughters. "Three generations," she said, " and we all feel the same way."

Although she also belongs to the Sierra Club, the Republic resident said she likes Earth First's "no compromise" stance.

"We compromise too much, too easily," she said, "and the Earth isn't going to be here long enough for us to keep compromising."

EXHIBIT 2

[From the Spokesman-Review (Spokane, WA), July 7, 1988]

THEY'RE TERRORISTS—NOT ENVIRONMENTALISTS

As organizational monikers go, "Earth First!" sounds almost noble.

"Me First!" is more like it.

Earth First! features the ultimate in political self-indulgence. Its members are the 2-year-olds of the environmental movement. When they don't get their way, they kick up a violent fuss, heedless of the misery they are inflicting on those who otherwise might be inclined to support their goals.

Earth First? activists gathered for a six-day training session in the Colville National Forest recently and sought to paint themselves in romantic hues—as heroic defenders of the environment.

More accurately, however, they are self-indulgent vandals. They help the environmental movement the way rot helps an old-growth tree. People in the logging industry see them, accurately, as terrorists.

At their camp-out in the northeastern Washington woods, Earth First! leaders taught classes on how to pound spikes into trees that await the logger's saw and how to sabotage bulldozers, helicopters and other equipment used by logging and oil-drilling firms.

And when it was all over, they descended on offices of the Okanogan National Forest, where 25 of them managed to get arrested for blocking workers' cars, smearing excrement on air conditioners and engaging in other similarly eloquent forms of political dialogue.

A cutesy sign at the forest gathering said, "FBI welcome"—and indeed, FBI investigation of this bunch would be welcome.

Damaging heavy equipment is, at best, vandalism. At worst, it endangers the lives of the laborers whose families have food on the table because daddy has a job with the logging company.

And there is no question that spiking trees endangers lives.

This despicable practice—an increasing problem in Pacific Northwest forests—is akin to leaving a grenade in a schoolyard and then strolling home so none of the blood spatters your shirt. This is terrorism, yuppie style—no muss, no fuss.

Chain saws "kick" violently when they hit a spike, jeopardizing their operators; sawmill blades explode when they hit spikes, sending shrapnel flying through the mill. It is only a matter of time before these spikes, pounded into trees in controversial timber-sale areas, kill someone. Injuries already have occurred.

Earth First! activists pretend they don't want to hurt anyone; after all, they often warn logging companies or the U.S. Forest Service when an area has been spiked. Well, goody for them. Terrorists sometimes warn people when they have planted a bomb, too—mostly so they can take credit and make their political "statement."

But Middle East terrorists win no sympathy with their "statements," and Earth First! members should win no sympathy with theirs either. Obviously, the group caters to the spectrum of public opinion that disdains the big corporations and agencies that Earth First! views as villains. But the victims of Earth First! tactics are most likely to be flesh-and-blood blue-collar wage-earners—not big, abstract institutions.

None of this vandalism has prevented logging. Logging companies simply repair their damaged equipment, spend time trying to remove spikes before tree harvesting proceeds and hope none of their employees will be maimed or killed.

Meanwhile, the members of Earth First! have a gay old time traipsing around the woods in jungle fatigues, indulging their egos with weekend radicalism, imagining themselves to be the only true friends of trees and bunny rabbits.

But they're no friend at all to their fellow humans. And they aren't helping the environment either.

To be sure, there are people who succeed at preserving wilderness. Some of them work for the Forest Service. Others work in responsible environmental groups that testify before Congress and file lawsuits, laboring within the system to effect change.

But that takes patience. It takes hard work. And it takes the maturity to respect people who disagree with you.

● Mr. DURENBERGER. Mr. President, as the U.S. Senate has before it the Omnibus Anti-Substance Abuse Act of 1988 I rise to address the insidious plague and national tragedy of

substance abuse. There is not a community or a family in the Nation that has not been affected by substance abuse. It cripples individuals, destroys families, torments communities, and undermines nations. I know from personal experience the trauma drugs inflict upon our young people and have watched a nation commit an increasing amount of its resources to combat this plague. But besides my own experiences as a father, I've voted dozens of times over the last 10 years to support the Federal war on drugs.

In addition, just several weeks ago I toured the State of Minnesota with Surgeon General C. Everett Koop holding informal hearing on substance abuse. At these hearings the Surgeon General and I were repeatedly told of the need to address not only illegal drugs, but also the problem of alcohol abuse and cigarette smoking. In Rochester, MN, Jane Hendricks, who coordinates drug awareness programs, said that while illegal drugs are a problem, alcohol abuse is much more pervasive and damaging. At the same hearing, Bill Walker made the profound statement that, "we need to treat the person not the amount of dollars a person has." I agree, completely. Similarly, Anna Griesbach, a teacher at Red Lake Falls, stressed the importance of aftercare for substance abusers if the individual is to be truly rehabilitated. This view was echoed by Betsy Inger Diver at the Duluth hearing.

The substance abuse numbers are very scary. Approximately 37 million people in the United States used illegal drugs in 1987. This works out to 1 in every 10 people. According to a recent National Household Survey on Drug Abuse, 29 million Americans used marijuana at least once in 1985, and 18 million had used it within a month of answering the survey question. The same survey found that nearly 6 million Americans use illegal amphetamines, barbituates, and hallucinogens. Although recent studies indicate that drug abuse has stabilized as their evils are made known and the population gets older, the use of cocaine, particularly in its most dangerous "crack," form is rising. It is estimated that 12 million Americans used cocaine in 1985, and over 3 million used it more than 12 times that year. And most disturbing, is that these figures do not include those who abuse alcohol or prescription drugs.

The effects of substance abuse are severe and many. It contributes to early death, social dependence, frequent unemployment, deep poverty, incapacity to meet responsibilities, and crime. Drug abuse affects our youth and future generations in ways that not only are destructive to themselves, but also to society. Nationally, substance abuses are a factor in: 67 percent of all street crime, 56 percent of all traffic accidents, 65 percent of all drownings, 80 percent of all high school dropouts, 90 percent of all teen age pregnancies, 60 percent of all teen suicides and homicides and 90 percent of all incest cases.

Thus, substance abuse takes a physical, emotional, and economic toll on everyone. The user risks everything, job, reputation, health and life. Loved ones and others are emotionally seared, they fear for the user's wellbeing and for themselves due to the resulting crime. Ultimately, society must bear the costs of law enforcement, lost productivity, and health care. This cost was estimated as being $60 million in 1983 by the Research Triangle Institute while the June 1988 final report of the White House Conference for a Drug-Free America estimates the total cost of drug abuse, indirect and direct, is $100 billion.

Without the death penalty, I would vote for this bill. It is very different from the politically motivated House bill. The best aspect of the Senate bill is that it authorizes nearly $1.5 billion for substance abuse treatment, education, and research. It is this approach that must be pursued if we are ever to conquer the plague of drugs. A drug czar is created within the Executive Office to manage the Nation's war on drugs. It toughens penalties and closes loopholes, for example life in prison is the penalty for three-time drug-related criminals, money-laundering loopholes are closed, and drug testing will be a condition for parole. Greater certification requirements are placed on the President before drug-producing nations can receive U.S. aid. Finally, the Senate bill contains miscellaneous user accountability provisions, the loss of some Federal benefits for continued drug use, drug testing for transportation personnel, and requirements for a drug-free workplace.

It also contains several amendments that I sponsored or cosponsored. My amendment is designed to end the cycle of substance abuse, poverty, illhealth, and crime, by treating all the problems a substance abuser may have simultaneously. This is to be done through a comprehensive or case management approach curjently used by Hennepin County and similar to an amendment I attached to the catastrophic health bill. Case management will provide aftercare that was recommended by numerous Minnesotans at my field hearings with the Surgeon General. Aftercare is essential to effective rehabilitation.

Also included in the bill are amendments that I cosponsored. One provides block grants to States for community youth activity centers to focus on those young people who are most susceptible to substance abuse. Another amendment provides money for treatment of babies born to women with substance abuse while a companion amendment will improve drug treatment programs for pregnant women.

In conclusion, this bill addresses the long neglected side of the substance abuse problem, that of demand. It offers hope for a better drug-free society and the means of achieving it. Yet it contains a dark side, a side that I cannot condone nor vote for: the death penalty. It is for that reason, and that reason alone that I would vote against the 1988 Senate drug bill.

I believe in the sanctity of human life. Human life is sacred, whether at the miracle of conception or the most heinous criminal. This belief is the foundation of the human society. Consistent with this view, I believe government has the obligation to protect all life, whether it is in the mother's womb or in a Federal penitentiary. Thus, for us to take even the limited and emotionally attractive step proposed here, undermines the foundation of our society. I cannot and will not abide by this. The appropriate penalty should be life in prison, not death.

It is unfortunate that a single vote has to encompass my views on two subjects as diametrically opposed as restoring life's dignity through drug treatment and taking it away by capital punishment. I deeply regret, Mr. President, that this measure came down to such a choice.●

Mr. BUMPERS. Mr. President, I am pleased to have this opportunity to express my strong support for the omnibus drug bill of 1989. When the majority leader appointed me to the Democratic Working Group on Drug Abuse about 4 months ago, I was glad to join my colleagues in an effort to refine and expand the strong antidrug abuse programs authorized in the 1986 drug bill. When I was appointed, I had a strong sense of the drug problem in the United States, but during the last 4 months I have developed a much broader and deeper knowledge of the drug abuse problem.

In a May 1988 Washington Post/ABC News poll, 26 percent of respondents ranked drugs as "the most important problem facing this country today." It's clear why Americans consider drugs such a pressing problem. There are as many as 1.3 to 1.5 million intravenous drug users in the United States; as many as 6.5 million people are now using drugs in a manner which significantlly impairs their health and ability to function; a majority of high school students continue to use marijuana, alcohol, or cigarettes; and cocaine has become a drug that appeals to the young and affluent. As a matter of fact, the number of 18- to 25-year-olds who had tried cocaine rose from 13 percent in 1976 to 27 percent in 1982. And a great deal of violent crime in this country is related to drug abuse.

A new and terribly disturbing problem is the relationship between intravenous drug abuse and AIDS. The virus that causes AIDS is passed easily when IV drug users share needles. IV drug users who are positive for the AIDS virus can also infect their sexual partners, and women who are IV drug users can pass the AIDS virus to their innocent newborns. This method of AIDS transmission hits the youngest and most vulnerable. Currently only about 10 percent of IV drug users are in treatment; we must make treatment available to more IV drug abusers if we are to stop the transmission of AIDS through IV drug use.

When I was appointed a member of the Drug Abuse Working Group, I invited experts on the drug problem to provide me briefings in their areas of expertise. I visited with treatment specialists, drug abuse educators, those responsible for interdiction of drugs entering the United States from foreign countries, and those responsible for law enforcement. In other words, I visited with those responsible for reducing the supply of drugs and those responsible for reducing the demand for drugs. Without exception, they told me that the U.S. Government should dramatically increase its efforts to reduce the demand for drugs because supply reduction alone would never work. Even customs officials and Drug Enforcement Administration officials told me we should increase our efforts to reduce demand. The case they presented was so compelling that I tenaciously followed their advice in the negotiations on the drug bill.

During several of the last 8 years, we have spent three times as much on supply reduction as on demand reduction. That appproach is not working, so I supported increasing funds for demand reduction. I am very pleased that this bill will, over a 2-year period, direct 60 percent of funding to demand reduction efforts. That means 60 percent of funds will go to treatment programs, education programs for grades K-12, and prevention programs for youths who are at high-risk of drug use. The bill also substantially beefs up law enforcement. The bill reauthorizes a justice assistance program for State and local drug law enforcement treatment and education programs; it provides funds for new prison construction; and it provides funds for improved interdiction efforts. I believe however, that we are moving in the right direction by recognizing that in the long run our efforts must be directed at young people who are at risk of durg use. They must be educated at the youngest possible age that drugs are a dead end.

In all the programs authorized in the bill, evaluation efforts are dramatically expanded. Drug prevention and education programs are sometimes criticized because their effectiveness is unknown. Under the evalution program and standards established in this bill, we will soon know what works in drug prevention and treatment and will be able to discontinue ineffective programs and replicate successful ones.

I am pleased to note that all phases of the criminal justice system have received, for once, proper acknowledgment in the bill. In the past, Congress has unfairly focused on the interdiction and law enforcement side of the criminal justice system by providing increased funding for the various drug enforcement agencies while little or no additional funding has been provided for the U.S. marshals, the courts, the U.S. attorneys and the federal prison system, which is currently 60 percent overcrowded. Under this bill, all phases of the criminal justice system are recognized as equally vital to the fight against drug abuse, hence increased funding authorizations are provided not only for drug enforcement, but also for Federal courts, for additional Federal judges and U.S. attorneys, and for badly needed prison construction, allowing for the arrest, prosecution, sentencing, and imprisonment of drug felons that the overworked criminal justice system has previously been unable to bring to justice.

The bill also provides for increased minimum manadatory sentences for drug traffickers, increased penalties for drug crimes involving children and tough, mandatory penalties for repeat offenders. The message Congress intends to send with this bill is that drug pushers and traffickers will find a life free of drugs much more desirable than the tough penalties and mandatory prison terms that face them if they remain in the drug trade.

The 1988 omnibus drug bill is a strong and tough bill which recognizes that the drug problem is multifaceted problem which will require a multifaceted solution. The bill is a step in the right direction, and I am pleased to vote for it.

Mr. ADAMS. Mr. President, drug abuse is unquestionably one of the greatest dangers threatening the security and health of our families and our nation. We are in danger of losing an entire generation of our youth to drugs. And it is not only the young who are in jeopardy. Drug abuse has filtered into every strata of our society and affects citizens of every age, income level, and ethnic background.

The statistics tell a frightening story. It is estimated that 6.2 million Americans use illegal drugs on a frequent basis, including 1.2 million IV drug users and 500,000 heroin addicts nationwide. The volume of drugs coming into this country is staggering, and increasing every day. Between 1982 and 1986, cocaine trafficking increased from 50 to 137 tons and it keeps climbing. Approximately two-thirds to three-quarters of the individuals arrested on non-drug-related charges are under the influence of illegal drugs. These statistics indicate the degree of crime and human suffering directly associated with drug use. Behind every one of these statistics is a tragic human story.

Some people have advocated focusing our drug control efforts on the "demand" side, while others have stressed the "supply" side. There is no question, however, that we need a coordinated approach that addresses the problem on both fronts. The Omnibus Anti-Drug Act of 1988 represents just such an effort.

I know the importance of dealing effectively with the supply side of the drug equation because I have served with Senator KERRY on the Terrorism and Narcotics Subcommittee of the Foreign Relations Committee. Through our investigations we have uncovered some very distressing facts about the depth and breadth of the international trade in drugs and the power of the international drug cartels to subvert governments, law enforcement efforts, and financial institutions.

On the demand side, I have taken an active role as a member of the Labor and Human Resources Committee to enhance our drug education efforts and expand drug treatment facilities. I am very pleased that the bill we are considering today increases the resources available for these important programs. When drug addicts who want to shake their habit and turn their life around have to wait 2 years just to get into a rehabilitation program, we know something is wrong.

Many other Senators have spoken on this bill and have described in detail some of its major components. It is a large bill, with many parts. It creates a drug "czar" responsible for overseeing all of the Government's efforts in the war on drugs. It increases penalties for drug offenses, particularly those involving sales to minors, and provides additional resources for our Nation's law enforcement agencies, both local and Federal.

It also authorizes appropriations for interdiction assets, such as Coast Guard ships and helicopters, and for Coast Guard, DEA, Customs, and Border Control personnel. And, as I mentioned above, it expands treatment, research and education programs such as alcohol, drug abuse, and mental health block grants, National Institute of Health programs and the Drug-free Schools Act.

Rather than explaining these basic measures, I would like to highlight a few of the provisions that may not have gotten much attention.

First, this bill has extremely important provisions tightening the prohibition against money laundering. In the final analysis, the drug trade thrives on money—billions and billions of dollars. Without an ability to break the drug money laundering links around the globe, we cannot win the war on drugs. A nickle-and-dime approach won't stop a billion dollar industry. We can no longer tolerate a situation where we turn our heads while billions of drug dollars are laundered through international banks. The provisions in this bill will aid us in choking off the flow of money by giving us more access to the records of our financial institutions, by allowing law enforcement authorities to seize laundered money, and by bringing international banks under the same reporting regime we have for our own banks.

Second, the bill includes provisions that Senator STEVENS and I supported to modify the administration's "zero tolerance" policy. Innocent owners of commercial fishing vessels, for example, should not have their boats seized and forfeited if they did not know or consent to violations of law.

Third, this bill will outlaw plastic guns and guns that cannot be detected by airport security devices, to ensure that dangerous weapons are not smuggled onto airplanes or into Federal buildings.

Fourth, we have included the Drunk Driving Prevention Act as part of this legislation, which will provide grants to States that enact stiff drunk driving laws.

There is one other measure that I would like to mention. I am very gratified that the bill I authored and introduced, the Mail Order Lock Pick Prohibition Act, was included in this package. This measure prohibits the mail order sale of burglary tools. It is all too easy to order lockpicking tools through the mail; more often than not, these devices fall into the wrong hands. I believe that this law is a small but forward step in protecting our citizens from unlawful entry to their homes, cars, and businesses.

Mr. President, there is no doubt that this is a good bill. There are some provisions included, however, that do give me much concern. In our zeal to fight the war on drugs, we may have edged a little too far. While we want to create a drug-free America, we must also preserve a free America—one in which the rights of all our citizens are protected. Widespread random drug testing is not a policy that I believe we should foster in this country. Denying Federal grants and benefits to anyone convicted of drug offenses also gives me great pause. While the provisions we have adopted on habeas corpus and the exclusionary rule have not infringed on our constitutional principles, there is no reason why even the watered-down versions of these provisions should have been included in this bill.

In the final analysis, I think this is a responsible bill. We cannot expect that the benefits of any legislation will be felt immediately, nor can we expect this bill to be a panacea for our problems. This Omnibus Anti-Drug Abuse Act is, however, a solid approach to a national crisis that we must face head on. With the Congress and the administration working together, with cooperation and coordination on every level, international down to our neighborhoods and local communities, we can make measured progress in our efforts to combat the drug trade.

Mr. DANFORTH. Mr. President, at long last, the Senate is about to begin consideration of bipartisan legislation to fight drug abuse. Let us act quickly on this important initiative.

The terrible, deadly black market engaged in the production and distribution of narcotics has become a large, costly part of our Nation's economy. In 1983, the last year for which figures are available, the IRS estimated that the retail value of cocaine consumed in the United States was anywhere from $3.2 billion to over $8 billion per year. The retail value of all narcotics consumed in 1983 may have been as high as $33 billion.

This spring, Fortune magazine stated that, worldwide, the trade in narcotics may be $500 billion per year—a figure which is twice the value of all United States currency in circulation.

There can be no doubt that many hundreds of millions of these dollars left the United States for other countries. Likewise, there can be no doubt that every dollar spent in this deadly drug trade was a dollar not spent or invested in legal commerce.

The resources drained from legal trade and investment by narcotics consumption is not the only impact upon our economy. An even greater toll is exacted from our society in terms of death, injury, disease, property loss, and lost productivity.

A 1984 study released by the Research Triangle Institute estimated that the direct cost of illegal drug use to our country exceeds $60 billion per year. The cost of crimes directly related to drug consumption made up one-third of this total. Lost productivity, injuries, and damage to property accounted for a $33 billion loss to our economy. Hidden costs, including increased welfare costs, were responsible for the remainder.

Sixty billion dollars is an enormous sum of money. It is more than the 1987 gross sales of IBM. Sixty billion dollars is almost twice the 1987 gross sales of DuPont. Moreover, this staggering figure reflects 1983, not 1987 or 1988 sales of illegal narcotics. The Justice Department estimated the 1987 U.S. narcotics trade value as closer to $100 billion—almost equal to gross sales of General Motors, the No. 1 company on the Fortune 500.

There are other burdensome costs related to illegal narcotics use. Drug abuse in our country adds at least $50 billion annually to the cost of life insurance, workmen's compensation insurance, health insurance, auto insurance, and other types of insurance coverage. Every American is affected by the increasingly high cost of insurance. It is just one price we pay for illegal drug use.

I am committed to ending this drain on our legal economy. The first step is to require mandatory random drug and alcohol testing in those portions of the workplace directly affecting our health and safety. Of critical importance is public transportation, where our health, safety, and property are always at stake.

The Senate's omnibus anti-drug initiative contains a Hollings-Danforth provision calling for random testing of safety sensitive aviation and rail workers, and truck and bus drivers.

Another provision of the bill requires a review of our reliance on supplies of licit gum opium from foreign sources. This provision is of great importance to certain American companies that manufacture bulk narcotic drugs for such uses as treatment of severe pain in terminally ill cancer patients, treatment of narcotic addiction, and reversal of the life-threatening effects of acute narcotic overdose. There is some concern in the industry that a radical change of policy could disrupt the tightly regulated and integrated raw material supply system and could adversely affect the American pharmaceutical industry. In light of these concerns, it is my hope that extensive consultations will be undertaken with the full range of concerned domestic and international narcotics control agencies as well as members of the domestic narcotic bulk manufacturing industry when this review is conducted.

I urge my colleagues' support of this important bill. Let us rid ourselves of the insidious burden illegal drug use places on us all.

Mr. DIXON. Mr. President, in 1986, this country declared a war on drugs. Congress passed and the President signed, a $1.7 billion program to provide for interdiction, State and local law enforcement, education, treatment and prevention to fight narcotics. Tough new laws directed at drug dealers and users were passed. Foreign countries were alerted that if they did not address their domestic drug production problems, their foreign aid would be in jeopardy. The simple truth is that almost 2 years later, we are losing the war.

The State Department reports that between 1986 and 1987 the production of coca, used to make cocaine, increased by 10 percent in the traditional growing countries of Bolivia, Colombia, and Peru. The worldwide marijuana crop increased by 26 percent and the opium crop grew by 18 percent.

In 1987, record amounts of drugs were seized; 35,970 kilos of cocaine were seized, which is a staggering 1,822 percent increase over 1981. Meanwhile, on the streets of our cities, illicit drugs are cheaper and more available than ever. The price of cocaine has dropped to a quarter of its 1982 level, while the purity has soared to over 50 percent.

This problem has reached epidemic proportions, is rotting our society and destroying the lives of our young people. Since 1980, there has been almost a tenfold increase in the number of cocaine-related hospital emergencies reported nationwide. Cocaine deaths have tripled since 1981 to nearly 2,000 a year. In Illinois, an estimated 100,000 adults are drug abusers. Moreover, half of the high school seniors in the class of 1986 report that they have used marijuana, 17 percent report having used cocaine, and 23 percent report having used stimulants.

There is no question that drugs go hand-in-hand with crime. Seventy-three percent of Chicago men arrested for serious crimes use illicit drugs. Street gangs are growing by leaps and bounds, financed by drug profits. They are terrorizing and murdering police officers and innocent people on our streets.

Our country is losing billions of dollars each and every year because of drug abuse. The Illinois economy loses an estimated $7 billion annually through drug-related crime, health care costs, and lost worker productivity.

This antidrug bill fights back. While I do not believe that it, alone, will eliminate the drug problem, I do believe it will turn the tide and allow us to gain the upper hand in the battle against drug abuse in this country.

Mr. President, I would like to take a few minutes to look at the reasons for the failure of our current antidrug efforts. As a member of the Senate International Narcotics Control Caucus, and the Senate Armed Services Committee, I have attended a number of hearings over the last 2 years addressing this question.

I cannot help but conclude that much of the blame rests with the administration. In 1986, as President, Reagan was signing that year's antidrug bill, he declared, "Drug use is too costly for us not to do everything in our power, not just to fight it, but to subdue it and conquer it."

Ninety days later, he submitted a budget that chopped $1 billion out of the fiscal 1988 antidrug budget. He tried to eliminate the $225 million program for assisting State and local law enforcement. He proposed slashing drug education money from $500 million to $100 million. Drug treatment funding was cut in half. With this budget, the administration pulled the rug out from under the antidrug efforts that were just beginning to gear up.

Although Congress was able to restore a great deal of the funding to these programs, the administration budget devastated the morale of those individuals setting up law enforcement, education and treatment programs. It became painfully clear that continued support for these programs could not be counted on. Being uncertain whether funding would continue, professional administrators avoided long-term projects such as expanding program capacity or hiring additional staff. It did not make sense to make long-term commitments if the funding could not be counted on. Therefore, many of the potential benefits from the 1986 antidrug bill were never realized.

Not only has the administration failed to provide consistent funding for the antidrug effort, it has also failed to provide desperately needed leadership. In 1986, the administration and a Republican-led effort in the Senate blocked the creation of a Cabinet-level position to oversee the effective corrdination of our antidrug programs. This followed a history of opposition to the creation of a drug czar. In 1983, the President actually vetoed the omnibus crime bill because it contained a drug czar provision.

Instead, the National Drug Policy Board, which is chaired by the Attorney General, was created after the 1986 antidrug bill to coordinate the work of the Federal agencies. The Board has proven incapable of making tough decisions and unable to provide strong leadership for our antidrug efforts. A total of 11 Cabinet Departments and at least 3 dozen Federal agencies are engaged in the war on drugs. Each has its own interests, agenda and priorities that result in endless turf battles and interagency disputes. The failure of the Drug Policy Board was underscored by the Comptroller General when he testified in hearings before a joint session of the Senate and House Armed Services Committees this June. He told us that since the Policy Board operates by consensus, it has been "unable to make the hard choices affecting agency budgets and programs necessary to create cohesion in Federal drug control efforts."

I believe that one of the most pervasive problems since 1986 has been the lack of cooperation between the agencies. For example, in 1987, an interagency squabble between the Justice Department's Drug Enforcement Agency and the Health and Human Services Department's National Institute on Drug Abuse delayed the publication of the official Government report on the supply of illicit drugs to the United States by nearly a year. When the report finally did come out, it was filled with disparities and conveyed the sense that the administration has no clear view of the size or the nature of the drug problem. For example, it reported that marijuana use had dropped by 4,000 tons a year, while at a different point the same report claimed that the amount of marijuana available for consumption had risen dramatically. No explanation is given for the huge disparity between the supply and demand figures. How is the Drug Policy Board going to define an effective, comprehensive drug policy and evaluate its success, if it cannot even agree on the nature of the problem it is trying to solve?

Another monumental failure of leadership by this administration has been the National Narcotics Border Interdiction System. The Vice President is the Director of this program to coordinate Federal drug interdiction activities. Yet, since 1982, the amount of cocaine pouring through our borders has at least doubled. A year after the formation of this program, the head of the Drug Enforcement Agency called for its abolition because "it had made no material contribution" to the war on drugs.

I am happy that the total failure of the Vice President's National Narcotics Border Interdiction System and the Drug Policy Board has finally been recognized by the other side of the aisle. This bill replaces those misguided approaches with a much needed drug czar. Finally, a Cabinet-level position will be established so that a single individual will have all of the authority for planning and coordinating Federal antidrug efforts. This alone will be a significant step forward.

The fractured leadership provided by the administration has launched too many bankrupt initiatives to enumerate, but one of its biggest failures was led by the Vice President. The Vice President was chairman of the South Florida Task Force, which gratefully had only a brief existence from 1982-83. The task force mission was to stop the flow of drugs into south Florida. By most accounts, it was a complete failure. The House Government Operations Committee found that "there was more drug running detection capability in the Florida areas before the Vice President's task force." Moreover, the task force's Coast Guard chief of operations said, "there was noboby in charge, and not much was achieved."

These programs for which the Vice President has been responsible are typical of the haphazard approach this administration has taken in the war on drugs. These botched efforts to reduce the supply of drugs have been compounded by the administration, which has ignored the importance of education, treatment, and prevention.

Spending priorities in the current Federal antidrug expenditures devote about 75 percent of our funds on supply reduction programs and 25 percent on demand reduction. This skew in funding reveals a fundamental error in our antidrug policy. The administration has the unrealistic expectation that law enforcement, interdiction and other supply oriented efforts can, on their own, solve the drug problem.

As a matter of fact, a Customs Service study, released in October 1987, shows that drug treatment and prevention services are some of the most cost-effective antidrug programs. The study found that dollar for dollar, money spent on treatment and education is almost seven times more effective in reducing cocaine consumption than money spent on Federal law enforcement. Yet, Federal spending for treatment and prevention has declined from $200 million in 1982 to $126 million in 1986. In this time of tight budgetary constraints, we must spend every tax dollar as wisely as we can.

I am pleased that the Senate bill before us does not shortchange the demand side of the problem. Instead, it redresses the current imbalance by doubling the Federal funding for prevention and treatment activities.

In summary, the situation is not very encouraging. Further, the administration deserves much of the responsibility for failure of our antidrug program. The lack of effective leadership; interagency squabbles; slashed budgets for vital programs; haphazard and poorly executed interdiction efforts; overreliance on supply oriented programs; and lack of commitment to education and preventon programs have been among the most important reasons for the dismal failure of this Nation's war on drugs.

The reason we are now considering this bipartisan omnibus antidrug bill is because most of us in the Senate agree that the administration has bungled the war on drugs. Once again, Congress must take the lead to put our antidrug policy back on track.

I believe that the bill before us is an excellent one. For literally months, a bipartisan working group has labored to develop this solid program. It is a tough bill, which launches a needed offensive against the epidemic destroying our society. Although I do not believe that this bill, alone, will eliminate the drug problem, it gives us the vital tools we need to turn the tide. It provides a well coordinated assault on every front of the drug problem. I would like to congratulate my colleagues who have worked so hard on this carefully drafted bill.

There are a number of features of this bill which correct the mistakes of this administration and set a tough program for the future. First, it authorizes $1 billion over 3 years for the existing program of State and Local Narcotics Control Grant Program. Millions of dollars will come to Illinois for law enforcement agencies making arrests and State's attorneys prosecuting drug related cases. Federal resources will be used where the war on drugs is being fought, in the cities and communities of our States. Ten percent of these grants are set aside specifically for street-level law enforcement. This is how you win the war on drugs, you get resources into the hands of police officers and prosecutors.

The bill will strengthen Federal law enforcement efforts with $675 million and 3,287 Federal enforcement personnel for the Department of Justice, Department of the Treasury, Department of Transportation, and other agencies with drug enforcement responsibilities.

To assist the criminal justice system in handling the dramatic increase in drug-related cases, $79 million is authorized for increased court security, juror expenses and public defenders.

The administration's tendency has been to greatly assist the police agencies, while ignoring the courts, prosecutors and prisons. As a result, more arrests are made, but the courts and prisons are not able to accommodate the increased demands. The result is that drug criminals are not removed from our neighborhoods. The bipartisan bill takes a more balanced approach. It provides the entire criminal justice system the kind of help that will ensure that drug dealers will be arrested, will be tried, and will promptly go to jail, instead of back out on the streets.

Moreover, this bill institutes tough penalties against drug kingpins, pushers, and users. The death penalty will be available as punishment for a drug kingpin who commits or orders a drug-related murder, and for anyone who kills a law enforcement officer while committing a drug-related crime.

Not only does this bill provide strong measures to dry up the supplies of drugs on the streets, it attacks the demand side, as well. This is fundamentally important. As long as there is a demand for illicit drugs, there will be a supply to meet it, a fact this administration has not understood. Therefore, reducing demand must be a primary focus on our antidrug efforts. I am pleased this bill doubles the current Federal funding for prevention and treatment activities. The bill establishes a goal of providing treatment opportunities to all substance abusers wanting to break their addiction.

This spring I visited drug treatment facilities in Chicago. I talked to addicts who had to wait 4 to 6 months to begin treatment. Programs are overburdened and underfunded. The problem is that our current programs can only treat about 8 percent of the drug addicts in this country. From 1980 to 1986, Federal support for treatment programs has been cut by 40 percent.

The bipartisan bill recognizes the failure of this neglect and creates a new Comprehensive Drug Treatment Assistance Program for our States. The initial level of funding would create additional treatment opportunities for 600,000 substance abusers. In addition, this bipartisan program is authorized for 5 years to provide treatment administrators with an assurance of stability. I do not believe a person can overstate the importance of this effort. We must do all that we can to give people the opportunity to get off drugs.

The Senate bipartisan bill also recognizes the administration's lack of commitment to important drug education programs. The bill lays out a coordinated strategy to educate the public about the dangers of drugs.

The bill encourages the development of programs for drug abuse education and offers assistance to State boards of education and local school districts in the implementation of those plans. It provides $156 million for grants to promote drug-free schools, $40 million for comprehensive community prevention initiatives, $31 million for high risk youth demonstration projects, $6 million in grants to schools for health profession personnel training and $16 million in teacher training programs. The section of the bill earmarks a total of over $273 million in fiscal year 1989 for drug education and prevention programs.

Finally, this bill establishes a much needed Cabinet level position to devise a coordinated national strategy to direct our antidrug efforts, and then oversee the implementation. As I have already said, this is one of the most important features of the bill.

Mr. President, we cannot afford to let drug pushers operate near our homes, or in our schools, or in our factories and businesses. We need to put them in jail. We need more police to arrest them, more judges and prosecutors to try them, and more prisons to hold them. We need to keep drugs out of the hands of drug dealers, by stopping drugs before they get into this country. We need to take away the drug pushers' markets, by creating strong educational efforts that will keep Americans away from drugs, and help those who are addicted to recover. We need a coordinated antidrug effort, so that everyone involved is fighting a drug war rather than a bureaucratic turf battle.

This bipartisan drug bill, so laboriously arrived at, will help us achieve all these objectives. No single bill can solve the drug problem overnight, but this legislation will give us the tools we need to run the drug runners out of town, and out of our country.

CLARIFY APPLICATION OF DRUG AND ALCOHOL TESTING PROVISIONS TO FOREIGN CARRIERS

Mr. DANFORTH. Mr. President, the aviation section of the Hollings-Danforth drug and alcohol testing provisions in the omnibus drug bill would affect both domestic and foreign air carriers. In order to clarify the applicability of such requirements to foreign citizens, language has been included to ensure that the Department of Transportation [DOT] would have the flexibility to issue the new testing requirements in a manner consistent with the international obligations of the United States.

The Hollings-Danforth drug and alcohol testing provisions do not specify whether the new requirements also would apply to foreign motor carriers and railroads operating in the United States. Clarification of the committee's intent has been requested on this issue.

It is my understanding that the committee's intent was to address the problem of substance abuse by foreign transportation workers operating in the United States. At the same time, I believe the committee did not intend to impose requirements without regard for existing international agreements, arrangements and understandings between the United States and foreign countries.

May I ask the chairman to confirm the committee's intent with regard to the applicability of drug and alcohol testing requirements to foreign motor carriers and railroads?

Mr. HOLLINGS. Mr. President, I appreciate the request for clarification from the Senator from Missouri. I have been advised that foreign governments do not object to having their airlines, railroads, and motor carriers conform to U.S. policies and laws when operating in this country. On the other hand, foreign governments would object to legislation seeking to impose American requirements on foreign persons operating on foreign soil. It was not the intent of the committee to attempt to impose such requirements.

To clarify this point, an amendment is being added to the omnibus drug bill requiring that the new drug and alcohol testing mandate be applied to foreign motor carriers and railroads in a manner "consistent with the international obligations of the United States," and directing that DOT "shall take into consideration any applicable laws and regulations of foreign countries."

As a result of this amendment, bilateral discussions with concerned governments will be required to ensure mutually acceptable means of achieving the transportation safety goals of this bill. Similar discussions already are underway between Canadian and United States transportation officials. In addition, at the Transportation Secretary's discretion, interim provisions for foreign rail and commercial motor carriers may be required to allow sufficient time to reach such agreement.

Mr. DANFORTH. Mr. President, I thank the Senator from South Carolina for this clarification.

Mr. SIMON. Mr. President, today I commend the Senate on its legislative action, taken as part of the omnibus antidrug bill, reauthorizing the Juvenile Justice and Delinquency Prevention Act, the Runaway and Homeless Youth Act, and the Missing Children's Assistance Act. The programs established under these acts address many pressing concerns about our Nation's youth. I have been working hard to ensure that these important programs are continued because I view them as an investment in our future. If we can help our troubled and endangered youth today, they are less likely to appear in the juvenile and criminal justice systems later. This legislation is an expression of our Federal Government's deep commitment to our Nation's youth.

I would like to thank all those who worked very hard to help secure passage of this reauthorization legislation. Included among these are the Children's Defense Fund, the National Network of Runaway and Homeless Youth and the Constitutional Rights Foundation, which has successfully promoted a number of law-related education programs in Illinois, and along with the help of many volunteers has created training programs for teachers and very worthwhile direct education programs for children. Many other groups, too numerous to name, have also contributed to this important reauthorization effort and deserve our thanks.

I am particularly pleased that two new provisions which I authored are part of the legislation passed today—the homeless youth transitional living provision and the anti-gang-violence provision. I extend particular thanks to the chairman of the Judiciary Committee for helping ensure that both these important provisions were included in the reauthorization bill.

The transitional living provision is aimed at America's growing population of homeless youth. Seven percent of our Nation's youth run away and never return home. Homeless youth are adolescents thrown out or forced to leave home with no place to go except the street. Unlike runaways, these teenagers cannot realistically return home. The tragedy of this situation is illustrated by the comments published in Newsweek of a San Francisco youth counselor who indicated that 68 percent of the parents he contacted to let them know that their child wished to go home replied, "You keep the kid."

The children leave for a variety of reasons for which there is no immediate solution: economic hardship, extreme neglect or desertion, physical and sexual abuse (including rape and incest), parental drug or alcohol addiction, and serious mental health problems.

Although there is no national data base, the Department of Justice Office of Juvenile Justice and Delinquency Prevention estimates that there are 1.4 to 2.4 million homeless youth across the country. This is not a problem that affects just one segment of society. Homeless youth come from wealthy suburbs, urban ghettos and rural communities. According to the Chicago Coalition for the Homeless, there are an estimated 17,500 homeless youth in Chicago. Testimony before the House Select Committee on Children, Youth and Families indicates that there are an estimated 20,000 homeless youth in New York and 3,500 in Boston. In Houston one-third of the homeless population are youths. Cleveland, Los Angeles, Minneapolis, New Orleans, Portsmouth, Providence, Salt Lake City and Seattle all reported increases in homeless youth according to the December 1987 U.S. Conference of Mayors report.

Once the children are on the street they are often forced to turn to stealing, selling drugs, and prostitution to survive. One in three children turns to prostitution within 48 hours of leaving home, and an extremely high percentage of homeless youth contract AIDS. They are beaten by pimps, suffer from malnutrition and exposure, and resort to drugs and alcohol to escape, if only briefly, from their grim world.

Homeless youth between the ages of 16 and 21 face special problems. They are in a legal no-man's land. They are not old enough to live independently, and lack education or vocational skills which would enable them to get off the street. They are too young for adult shelters, but too old for the foster care system.

The goal of the homeless youth transitional living provision is to fill this void and create a safety net for homeless youth between the ages of 16 and 21. The provision allocates $5 million in grants for community based programs which have previously been successful in providing services and training to enable homeless youth to become independent adults. The goal of the program is to provide shelter and a variety of services such as education and vocational counseling and training in basic life skills such as balancing a checkbook and holding down a job. Programs funded under the provision will give homeless youth an alternative to the street by teaching them the basic skills they need to survive on their own.

Without successful intervention, youth who do not get help may become mentally ill, part of the adult criminal network, dependents of our public welfare systems, or may become involved in drugs. The programs provided by this legislation will help homeless youth make the transition to self-sufficient adulthood so that they can live productive lives, and I am most pleased that it has been included in the Senate reauthorization bill.

I am also pleased to note that the reauthorization bill and the drug bill, which it is a part of, includes language authored by Senator BRADLEY and I to fight gang violence.

Recent reports indicate that 46 States have problems with gang violence and gangs which trade in illegal drugs. The studies also confirm that gangs are not confined to large urban areas, but are invading rural communities as well. Although no nationwide figures exist on street gang crimes, the rate of violent juvenile crimes increased 9 percent from 1984 to 1986. Even more disturbing is that younger and younger children are being arrested for selling drugs and carrying weapons.

The peer pressures that once attracted young people to beer drinking and joy riding, now are turning many toward drugs, violence and gang life. This March the House Select Committee on Children, Youth and Families heard from several young adults who told of their lives in gangs. Ismael Huerta, an 18-year-old gang member from Los Angeles, described a life of selling drugs to buy weapons, "being shot at many times" and watching girls in their teens offer sex in exchange for drugs. Shawn Grant, an 18-year-old gang member from Philadelphia, reported that "when we're high, we'll do anything, we'll jump people for nothing at all". Shawn told the committee about his fear that the gang would hunt him down and possibly kill him if he defected.

The reasons that children join gangs are multifaceted. The weakening family structure evidenced by the rise in teenage pregnancy and single parent households, the increase in the number of children who never learn many basic skills because of truancy which in turn leads to youth unemployment, and the growing problem of homeless youth all contribute to this situation. For many of these children the gang serves as an alternate family, offering both emotional and economic support.

All across the Nation communities are searching for solutions to the gang problem. Unfortunately there is no simple answer. First, we must stem the flow of drugs across our borders and presecute those who deal in drugs. We must also improve the job market for our young people so that they have real opportunities to succeed. Our schools must provide the environment where many of our children can overcome their initial economic disadvantage. We must all work together to develop a comprehensive strategy against gangs and the violence they breed.

Both the reauthorization bill and the omnibus anti-drug bill passed by the Senate today include measures which Senator BRADLEY and I originally had proposed, directed at the gang problems of our Nation's youth. The reauthorization provision which provides grants for community based intervention and prevention programs relating to juvenile gangs and juvenile drug abuse and drug trafficking, recognizes that the battle against gangs and the battle against drugs are part of the same war. Specifically, the provision permits the Administrator of the Office of Juvenile Justice and Delinquency Prevention to make grants and enter into contracts with public and private nonprofit agencies, organizations, institutions, and individuals to establish and support programs that are designed to prevent and reduce juvenile participation in gangs and drug-related activities. The resources can be used both to counsel children already involved in drug and gang activities and to help prevent other youngsters from becoming involved in these activities.

Additionally Senator BRADLEY and I were successful in ensuring that part of the funding for the Office of Substance Abuse Prevention within HHS would be used to fund community-based programs to help youth find alternatives to gangs. Specifically, the Office of Substance Abuse Prevention shall use some of their moneys to fund projects that seek to involve youth who are members of gangs or who may join a gang, in educational programs, community-based activities, training or employment opportunities or other alternatives to gang involvement.

These provisions send a message from the Federal Government to our communities that they are not alone in fighting the war on gangs and drugs. Together we can work to ensure that our children's future is one of hopes and dreams, not death and drugs.

In closing, I again wish to thank all involved in the effort to reauthorize these important programs and to make sure that special consideration was given to the gang problem and homeless youth.

DRUGS AND PUBLIC HOUSING

Mr. President, it is my understanding that a provision authored by my friend and colleague, FRANK LAUTENBERG, entitled the "Public Housing Drug Elimination Act of 1988" is included in the omnibus drug bill to provide $8.2 million for a competitive grant program for public housing authorities to combat drugs. In my home State of Illinois, the Chicago Housing Authority has had an unfortunate reputation. Drug-related crimes have increased to crisis proportions in public housing developments across the Nation and Chicago is no exception.

I am pleased to say that under the bold and courageous leadership of its new executive director, Vincent Lane, the Chicago Housing Authority is making strides. I believe the New York Times said it best in its recent article about Vince and his program: "Less than 4 months into his new job, Vincent Lane, the head of the Chicago Housing Authority has set an audacious course for himself: he wants to turn a giant public housing system that is overwhelmed by gangs, crime and corruption into a laboratory for innovation."

I believe that Vince and the Chicago Housing Authority should be given as much support as possible. I, therefore, would urge that the Secretary of Housing and Urban Development, in making grant awards to the public housing authorities, give the Chicago Housing Authority full consideration. It is time that the Chicago Housing Authority and Vince Lane be given an adequate chance to turn things around.

I ask that the New York Times article be printed in full.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

BOLD PLANS FOR CURING SICK HOUSING

(By William E. Schmidt)

CHICAGO. October 8.—Less than four months into his new job, Vincent Lane, the head of the Chicago Housing Authority, has set an audacious course for himself he wants to turn a giant public housing system that is overwhelmed by gangs, crime and corruption into a laboratory for innovation.

Until now the Chicago Housing Authority, a city within a city made up of 150,000 residents, has largely proven immune to change. Many here see the nation's second largest housing authority, after New York City's, as a symbol of wasteful management, patronage politics and a callous indifference to the poor and powerless people in its charge.

Since taking over as executive director and chairman of the board in June, Mr. Lane, a 46-year-old businessman, has turned to consultants to rebuild the authority's management and to help reduce an $11 million operating deficit. He has enlisted the assistance of the police and Federal agents to clear buildings of gangs and illegal squatters.

Moreover, he has asked Congress for money to train residents in home remodeling skills, brought in as a consultant a former assistant United States Attorney to turn Federal racketeering statutes against his own corrupt employees and begun to organize tenants to take over leasing and eviction procedures in their buildings.

SEEKS CHANGE IN HOUSING LAW

And to assure more economic diversity in the housing complexes, he has begun soliciting support in Congress for key changes in Federal housing law, including a proposal to rewrite the Brooke Amendment, a basic building block of Federal public housing policy that fixes a tenant's rent at 30 percent of their income.

Mr. Lane wants Congress to impose a cap on the maximum dollar amount of rent a tenant is required to pay, so that those with jobs will not be priced out of public housing by rents that climb with their incomes.

Federal housing officials, local political leaders and urban affairs experts believe that he is on the right track to making the projects safer, cleaning up corruption in the agency and giving tenants a greater voice.

Aides to Senator Paul Simon said the Illinois Democrat was so impressed with Mr. Lane that he arranged to have him brief the state Congressional delegation on public housing.

"He is willing to talk about change inside the C.H.A., and this is completely new" said Robert S. Slayton a professor of history at Chapman College in Orange Calif., who until last month was director of research and planning for the Chicago Urban League.

Unlike most of his predecessors in recent years, Mr. Lane was not closely tied to the city's political power structure. A private developer who runs 5,000 units of federally subsidized low-income housing here, he was appointed by Acting Mayor Eugene Sawyer at the urging of civic and business leaders, who felt the system was on the brink of collapse.

In the face of cutbacks in Federal housing subsidies and the depth of the agency's own fiscal problems, however, Mr. Lane has embarked on a task of near Sisyphean proportion, and there is no assurance he will succeed.

REMEMBERS HOUSING YEARS AGO

At the heart of Mr. Lane's strategy is a remembrance of what public housing was like when he was growing up on the city's South Side. He was envious of those who lived in Wentworth Gardens, a public housing project with neat walks and clean apartments and a strong sense of community.

"What I want to do is dispel the idea that public housing tenants, because they are poor, are lazy, slovenly and want to live with gangs and drug dealers," said Mr. Lane, a 6-foot-3-inch man who earned a graduate degree in business from the University of Chicago.

His tenure coincides with a period of intense public discussion about the failure of public housing in Chicago and, more specifically, about the relationship between life in the projects and a wide range of social pathologies such as poverty, welfare dependency, drugs, crime and gangs.

Over the summer, both the Chicago Urban League and the Mayor's Advisory Council on the housing authority produced reports sharply critical of the agency. The Urban League report said that as a result of Federal cutbacks and management turnover, the Chicago Housing Authority was facing the worst crime in its history.

Nearly two-thirds of the city's 40,000 public housing units are clustered inside 166 high-rise buildings. Most of their residents are poor and black; two-thirds are children, most of whom live with single mothers.

The largest complexes were built in the 1950's and early 1960's, commissioned by Chicago politicians who, historians now argue, were more interested in containing the city's poor blacks, a strategy that helped earn Chicago its place as perhaps the nation's most segregated large city.

The buildings are spare and forboding, smeared with graffiti and garbage and surrounded by desolate expanses of concrete. The hallways and elevators are on the exterior of the buildings, open and exposed to the city's mean winters. There are no lobbies, no front doors and no security.

Gangs control several of the buildings, terrorizing tenants with gun battles and bombings. Despite a waiting list of some 100,000, one in every six apartments is vacant, many rendered uninhabitable by vandals. Tenants are two-thirds more likely to be the victim of violent crime, and the elevators have been described by one urban studies expert as the city's most dangerous public transportation system.

Mr. Lane's most dramatic move so far has been an effort to wrest control of the worst of the projects from gangs, by having the police evict squatters and gang members and then locking them out by sealing the building entrances and elevators—once open to anyone who wanted to enter—with steel mesh, armed guards, and a sophisticated security system.

He estimates there are 50,000 to 100,000 tenants living illegally in the authority's 40,000 units, although his first sweep on a building on the city's West Side two weeks ago turned up only three people. He blamed tipsters who leaked plans of the raid for the poor results.

Those security measures have provoked some criticism. Timothy C. Evans, a South Side Alderman who is expected to run for Mayor, for instance, said some public housing residents have complained that in securing the buildings with guards and iron gates, friends are unable to visit.

"It's good he is getting the criminal element out of those buildings, but he shouldn't trample on people's rights along the way," said Mr. Evans. For his part, Mr. Lane says he hopes the measures are temporary. "We are dealing with an emergency," he said.

REJECTS RAZING BUILDINGS

So far he has rejected a suggestion, raised by both the Urban League and the Mayor's Advisory Council, that he consider tearing down the worst of the high-rise buildings and replace them with low-rise buildings scattered about the city.

"When you have got a waiting list of 100,000 people and a growing problem with homelessness, you cannot lose any of your housing stock," he said.

Instead, Mr. Lane this month will seek bids from contractors on a $2.5 million contract to install new security systems and enclose elevators in three 16-story buildings at the Robert Taylor Homes on the South Side, the nation's largest public housing development.

In the past, just as today, there were hopes of improving the housing authority. For instance, when Harold Washington was elected the city's first black mayor in 1983 the agency hired Zirl Smith, a public housing director in Delaware, as its new manager.

But Mr. Smith clashed with the agency's chairman, and both men were forced out in a dispute with Federal housing officials.

For his efforts so far, Mr. Lane has won the applause of tenant groups, and aides to Senator Simon say he intends to support legislation on behalf of Mr. Lane, proposing the change in the Brooke Amendment to fix rents.

"The bottom line is to have a healthier mix of people, with a variety of incomes," said Kim Tilley, a Simon aide.

And unlike his predecessors, he is receiving plaudits from Federal housing officials. "We are very pleased with the directions that Mr. Lane is taking," said Adolph J. Slaughter, a public affairs spokesman for the Department of Housing and Urban Development, which two years ago withheld millions of dollars in Federal subsidies and threatened to take over management of the housing authority if it did not adopt tougher cost control policies.

Although The Chicago Tribune criticized Mr. Lane for giving lucrative jobs to three close associates of Acting Mayor Sawyer, the newspaper has applauded recent efforts to clear the gangs from buildings. Those hiring problems, the newspaper said, "will be minor blips in comparison to the major contribution to public safety he will make if he follows through with his campaign to kick the terrorists out of public housing."

CATEGORICAL GRANT PROGRAM FOR SUBSTANCE ABUSE AMONG PREGNANT WOMEN

Mr. SIMON. Drug abuse is a serious problem in America. In today's society, drugs affect not only the drug abusing individuals and their families but innocent victims as well. Experts state that 375,000 newborns a year nationwide face the possibility of health damage from their mothers' drug abuse.

Mr. KENNEDY. I agree with my colleague from Illinois and his sense of urgency on the growing problem of substance abusing mothers. Effects of using illegal drugs such as cocaine, crack, marijuana and heroin include miscarriages, premature birth, low birth weight, malformation of the digestive system and urinary organs, developmental disabilities and crib death.

Mr. SIMON. Mr. President, at this time there are few if any existing Federal programs to help substance abusing pregnant women. According to a New York Times article dated August 20, 1988, Dr. Janet Chandler, coordinator of Chemical Dependency Services at Northwestern's Perinatal Center for Chemical Dependence, pregnant women are often discriminated against by addiction treatment programs.

> Most centers worry about the liability, so as soon as they discover a woman is pregnant, they refuse her or throw her out of the program. Even emergency detoxification programs don't want pregnant women.

We cannot turn our backs on the future of America by not providing treatment and education for substance abusing pregnant women and their drug addicted children. I think the articles that I am inserting in the RECORD today make it clear that we have been doing just that.

I have been working to include in this drug bill, a provision that would target education, prevention and treatment resources to this high risk group. Similar language is contained in the House bill as a result of the leadership and efforts of Representative VENTO. The amendment provides funding of demonstration projects for treatment programs for pregnant women, encourages new approaches for treatment of such women and targets those from all age, race, and socioeconomic groups across the country who need help but cannot get it. The amendment also provides a source for grants to create model treatment and prevention programs. Also, there is encouragement for further research to be done by the National Institute on Drug Abuse. The Office of Substance Abuse makes the grants available and my amendment would therefore not add to the cost of the measure before us. Innovative approaches must be developed to address the unique needs of pregnant women, who do not fit into traditional treatment models. Strong Federal leadership and direction is needed to meet this challenge and I believe that the Vento-Simon amendment rises to this need.

Mr. KENNEDY. I commend my colleague for his work in this area. He has accurately pointed out that this is not the sole problem of the poor and inner-city areas. The drug problem is everywhere in America. Drug use during pregnancy cuts across racial and socioeconomic lines and maternal age groups, especially since cocaine has become so popular. Studies show that substance abuse can vary from 1 percent to 27 percent among pregnant women in various hospitals across the country. Experts have stated that even just one "hit" during pregnancy can cause lasting fetal damage.

The current bill contains a number of provisions to provide assistance to this group. They are a priority population that must be served by the States under the new treatment block grant, and they are one of the groups that may benefit from the new treatment demonstration program. But we need to do more and, whether or not the House amendment is incorporated to the final bill, I intend to work with Senator SIMON to assure that the Department of Health and Human Services pays special attention to this population in all its programs.

Mr. SIMON. I thank my distinguished colleague for his support and hope that lacking Senate action on the Simon amendment, the Senate can recede to the House on this issue. We cannot afford to produce a new generation of innocent addicts. I thank my colleague.

Mr. President, I ask unanimous consent that a group of articles pertaining to this subject be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[The American College of Obstetricians and Gynecologists News Release]

COCAINE LINKED TO PREMATURE BIRTH AND LOW BIRTH WEIGHT

WASHINGTON, DC.—Pregnant women who used cocaine shortly before the birth of their children were more likely to have premature and low birth weight babies than other women according to a study reported in the September issue of "Obstetrics and Gynecology."

The study of 343 women was conducted at St. Luke's/Roosevelt Hospital Center in New York City in 1986. The women, none of whom had any prenatal care, were tested for cocaine use as they came to the clinics to deliver their babies.

"Positive cocaine testing at the time of delivery was associated with two important negative birth outcomes," stated Dr. Michelle Chouteau, principal author of the study. "Because cocaine abuse is increasingly prevalent among adults, and its freebase form, "crack," is readily available and relatively inexpensive, obstetricians may be treating more cocaine-abusing women during pregnancy. They need to be aware that the drug is associated with low birth weight and preterm births," she added.

Forty-three percent of the women who used cocaine within 48 hours of birth had babies that weighed less than 2,500 grams (5½ pounds). Among the women who did not use cocaine prior to delivery, 23 percent had infants weighing less than 2,500 grams.

Fewer than 20 percent of women who did not use cocaine gave birth before 34 weeks of pregnancy, but the study showed that 38 percent of infants whose mothers used cocaine were born before 34 weeks of gestation.

Although the women studied were at risk for low birth weight and preterm birth because they lacked prenatal care and were of lower socioeconomic status, the effect of cocaine use increased the risk. "Despite this high risk, cocaine abuse was associated with an even greater risk for these poor outcomes," Dr. Chouteau added.

No associations were found between cocaine use and other pregnancy complications including maternal hypertension and abruptio placentae.

The study evaluated only recent use of cocaine near the time of labor. It did not examine the effects of chronic and low-frequency abuse throughout pregnancy, although the association between use of the drug and low birth weight and preterm birth was established, the authors noted.

Authors of the study were Michelle Chouteau, M.D., Pearila Brickner Namerow, Ph.D., and Phyllis Leppert, M.D., Ph.D. from St. Luke's/Roosevelt Hospital Center, and the Center for Population Health, New York City.

Obstetrics and Gynecology is the official journal of The American College of Obstetricians and Gynecologists (ACOG), the leading professional organization of more than 27,000 physicians who specialize in the health care of women.

THE EFFECT OF COCAINE ABUSE ON BIRTH WEIGHT AND GESTATIONAL AGE

(By Michelle Chouteau, MD, Pearila Brickner Namerow, PhD, and Phyllis Leppert, MD, PhD)

A retrospective study of 343 women who lacked prenatal care was conducted to ascertain the effect of recent cocaine abuse on birth weight and gestational age. All pregnant women admitted in labor to a large urban teaching hospital between January 1 and December 31, 1986 who had not received prenatal care were included. The charts of these women were evaluated to obtain information about medical and obstetric complications of pregnancy, labor and delivery, and birth weight and gestational age of the infant. Information about drug use was obtained by urine toxicology at the time of admission. Results of ordinary least-squares multiple regression analyses indicated cocaine abuse to be a significant predictor of low birth weight and early gestational age. No correlation was found between cocaine abuse and abruptio placentae or maternal hypertension. (Obstet Gynecol 73:351, 1988)

Cocaine abuse is becoming increasingly prevalent among urban adults.[1-5] Case reports and results from a small group of cocaine-abusing women have begun to address the relationship between cocaine use and pregnancy outcome,[6,7] and have yielded findings suggesting that cocaine use may have an adverse effect on both birth weight and gestational age at the time of delivery

The purpose of this study was to explore the relationship between cocaine use and birth weight and gestational age. One of the difficulties in understanding these relationships is that many cocaine users are urban women of low socioeconomic and minority ethnic status who are already at increased risk for low birth weight and preterm infants,[8] often because they receive little or no prenatal care. This study addresses this difficulty by focusing on a group of women who delivered infants at a large urban teaching hospital without having received any prenatal care.

MATERIALS AND METHODS

The data for this study were collected at the St. Luke's/Roosevelt Hospital Center, which has northern and southern sites located 50 blocks apart. All pregnant women admitted to the Hospital Center in labor between January 1 and December 31, 1986 who had not received prenatal care were included in the study sample. Information about drug use at the time of admission was obtained from all women in the sample, and their urines were tested for the presence of cocaine, heroin, barbiturates, methadone, and amphetamines using a homogeneous enzyme immunoassay.[9] The cocaine metabolite, benzoylecgonine, can be detected in urine up to 48 hours after use. We carefully evaluated the charts of these women to obtain additional information about drug use, as well as data regarding medical and obstetric complications of pregnancy, labor and delivery, and birth weight and gestational age of the infant. The drug use information showed that among women in this study, cocaine was most commonly smoked in freebase form as crack. Gestational age was assessed based upon Dubowitz and pediatric physical examinations.

The study sample included 225 women from the north site and 118 women from the south site, for a total study sample of 343 women. During 1986, there was a total of 2,735 births at the north site and 1,471 at the south site. Of these, 2,084 and 411, respectively, were clinic patients, whereas this study comprised the unregistered clinic patients who had heretofore received no prenatal care. At the north site, the study sample patients constituted 8.2 percent of all deliveries and 10.8 percent of all clinic deliveries; the corresponding figures for the south site were 8.0 and 28.7 percent, respectively.

Table 1 compares the characteristics of women who delivered at the two sites. Age, race/ethnicity, and number of past pregnancies were not significantly different between the two groups. More than half of the pa-

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Footnotes at end of article.

tients were black and approximately a third were of Hispanic background.

TABLE 1.—CHARACTERISTICS OF UNREGISTERED PATIENTS WHO DELIVERED AT EACH SITE

	North site		South side	
	Number	Percent	Number	Percent
Age:				
14 to 21	58	25.8	43	36.4
22 to 29	121	53.8	50	42.4
30 to 40	46	20.4	25	21.2
Total	225	100.0	118	100.0
Mean	25.4		24.4	
Race/ethnicity:				
Black	132	58.7	64	54.2
Hispanic	74	32.9	36	30.5
White or other	19	8.4	18	15.3
Total	225	100.0	118	100.0
Gravidity (mean)	2.9		3.0	

The proportion of women who tested positive for the cocaine metabolite benzoylecgonine did differ significantly between the two sites. At the north site, 41% had positive tests, compared with 27% at the south site.

Because patients from the two sites of the Hospital Center did not differ substantially with respect to their background characteristics, we combined the two groups for the remainder of the analyses.

RESULTS

The two pregnancy outcomes of interest in this study were birth and gestational age. Because there is a certain amount of subjectivity involved in assessing gestational age, the reader should interpret findings related to this dependent variable with a certain degree of caution. On the other hand, because birth weight can easily be measured objectively and accurately, findings related to this outcome may be viewed with more certainty. Because of these measurement issues, findings related to birth weight are discussed first in each of the following sections.

Among all patients in this study, birth weight ranged from a low of 625 g to a high of 5188 g. Nearly one-third of the patients in this study gave birth to infants weighing less than 2500 g, and the mean birth weight was 2786 g. Gestational age ranged from a low of 24 to a high of 43 weeks. About one-quarter of the infants in this study had gestational ages of 34 weeks or less, and the mean was 37 weeks.

We collected data regarding the occurrence of various complications of pregnancy. The incidence of virtually all of the complications considered, which included premature rupture of membranes, preeclampsia, abruptio placentae, fever, urinary tract infection, placenta previa, and others such as history of preterm delivery, twins, ovarian cancer, appendicitis, psychiatric illness, and sexually transmitted disease, was rather low. Moreover, patients who had and had not used cocaine did not differ in the incidence of any of these complications. Among women who arrived at the hospital in premature labor, 3.3 percent of those using cocaine received tocolytic treatment, compared with 11.9 percent of those not using cocaine. This too was not a statistically significant difference.

As shown in Table 2, women who had tested positive for cocaine use were significantly more likely than women with negative tests to give birth to infants weighing less than 2500 g and to have infants of early gestational age. About two-fifths of cocaine-abusing women, compared with only about one-fifth of women who did not use cocaine, had preterm and low birth weight infants.

Because it is important to control for other factors that might be related to early gestational age and low birth weight, we used ordinary least-squares multiple regression analysis. In addition to cocaine use, we considered the variables of age, race (operationalized as a dummy variable including blacks and non-blacks), gravidity, and site of delivery.

TABLE 2.—BIRTH WEIGHT AND GESTATIONAL AGE BY COCAINE USE

Pregnancy outcome	Used cocaine (N = 124)	Did not use cocaine (N = 213)
Birth weight (g): [1]		
<2500	43	23
>2500	57	77
Total	100	100
Gestational age (wk): [1]		
$\overline{<}$34	38	19
35+	62	31
Total	100	100

[1] $P<.001$, x^2 test.

Note.—Data are presented as percentages.

Table 3 presents the results of a regression of birth weight on the above variables. In model 1, the first four variable of age, race, gravidity, and site were entered into the equation. Of these, both gravidity and site were significantly related to birth weight, and together these four variables explained 8.3 percent of the variance in birth weight. Gravidity had a negative effect upon birth weight; thus, the more previous pregnancies a women had, the lower the birth weight of her infant. The relationship between site and birth weight indicates that infants born at the north site were more likely to be of low birth weight than those born at the south site. Neither age nor race (being black) was significantly related to birth weight.

In model 2, we added cocaine use to the equation predicting birth weight. First, it is important to note that cocaine use is a significant predictor of birth weight, even when the other variables in the model are controlled. After adding the cocaine variable to the model, we noted a significant increase in the proportion of variance explained, from 8.3 percent in the first model to 13.7 percent in the second. Along with cocaine use, site continued to be a strong factor in relation to birth weight, but the previously observed effect of gravidity was no longer significant in model 2. This may be because gravidity is related to cocaine use, with users of cocaine having a history of more pregnancies than nonusers.

TABLE 3.—REGRESSION OF BIRTH WEIGHT ON AGE, RACE/ETHNICITY, GRAVIDITY, SITE, AND COCAINE USE (STANDARDIZED PARTIAL REGRESSION COEFFICIENTS)

	Model 1	Model 2
Age	.09345	.08039
Race (black)	.07063	.03688
Gravidity	−.13668	−.07077
Site	.26064	.22521
Cocaine		−.24423
R	.083	.137
R change		.054
N	333	333

Table 4 presents the results of a regression of estimated gestational age on this same group of independent variables. In model 1, the first four variables were entered into the equation; both site and gravidity were significant predictors of gestational age. Each of these relationships paralleled those observed in the equation predicting estimated gestational age. Women with a greater number of previous pregnancies were more likely to have early births than women with fewer pregnancies.

In model 2, in which cocaine was introduced into the equation, cocaine use had a significant effect on gestational age. Those who used cocaine had earlier births than those who did not. The amount of explained variance in gestational age increased significantly, from 7.1% in the model without cocaine to 10.9% in the model with cocaine use included.

The results of these regression analyses indicate that positive cocaine testing at the time of delivery was associated with two important negative birth outcomes, low birth weight and early gestational age. The effect of cocaine use was independent of age, race, socioeconomic status, and prenatal care, as each of these variables was controlled in the above regression analyses.

TABLE 4.—REGRESSION OF GESTATIONAL AGE ON AGE, RACE/ETHNICITY, GRAVIDITY, SITE, AND COCAINE USE (STANDARDIZED PARTIAL REGRESSION COEFFICIENTS)

	Model 1	Model 2
Age	.10756	.09251
Race (black)	.04824	.02677
Gravidity	−.14581	−.08719
Site	.23223	.20773
Cocaine		−.20439
R	.071	.109
R change		.038
N	330	330

DISCUSSION

The purpose of this study was to investigate the relationship between cocaine abuse and two obstetric outcomes, birth weight and gestational age. Because of the difficulties in measuring gestational age in a sample of women who received no prenatal care, the findings related to this outcome must be interpreted more cautiously than those pertaining to birth weight.

We found a significant effect of cocaine abuse on birth weight and preterm birth when age, race, and gravidity were controlled. The design of the study controlled for socioeconomic status by evaluating those women without prenatal care, who, in New York City, are overwhelmingly of lower socioeconomic status. Thus, all of the women in this study had a lower socioeconomic status, and because they lacked prenatal care, they were at high risk for low birth weight infants and preterm infants. Despite this high risk, cocaine abuse was associated with an even greater risk for these poor outcomes. It should be noted that it was not possible in this study to collect data regarding the women's patterns of alcohol consumption and cigarette smoking. This is a limitation because both alcohol and cigarette use affect pregnancy outcome. However, recent data suggest that the effect of smoking on birth weight is more heavily related to intrauterine growth retardation than to preterm birth.[10]

Because "crack" is relatively inexpensive and fairly pure form of cocaine[5] that is readily available in many urban areas, obstetricians may be treating more cocaine-abusing women during pregnancy and parturition, and therefore may need to be aware that the drug is associated with low birth weight and preterm births. Since this study was initiated, St. Luke's/Roosevelt routinely screens all unregistered patients and patients in preterm labor upon admission to the labor floor for evidence of cocaine and cocaine metabolites in the urine.

This study has evaluated recent cocaine abuse, but did not ascertain the effects of chronic and low-frequency abuse throughout pregnancy. Many women without evidence of recent cocaine use at the time of delivery could have been abusing cocaine previously. Further research must be conducted to elucidate the effect of chronic cocaine abuse on pregnancy outcome. Nevertheless, it is clear that cocaine abuse is associated with low birth weight and early gestational age infants. The mechanism of initiation of labor in these patients is speculative at present, but we found no evidence that abruptio placentae could be a causative factor.

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[From the New York Times, Aug. 30, 1988]

Widespread Abuse of Drugs By Pregnant Women Is Found

(By Jane E. Brody)

A frighteningly high number of babies are being exposed to cocaine or other illegal drugs in the womb, according to data from 36 hospitals around the country. The findings, described yesterday at a news conference, were gathered from hospitals in both urban and suburban areas, serving patients from all socioeconomic groups.

The survey found that at least 11 percent of women in the hospitals studied had used illegal drugs in pregnancy. Experts said the data suggested that 375,000 newborns a year nationwide faced the possibility of health damage from their mothers' drug abuse.

GENERATION OF ADDICTS

The survey did not deal with alcohol use in pregnancy, although experts describe it as a serious problem.

While the findings do not necessarily represent drug abuse rates in all hospitals throughout the country, experts said they indicated that the problem was much more widespread than had previously been thought.

Dr. Elaine M. Johnson, director of the Federal Office of Substance Abuse Prevention, said drug use in pregnancy "cuts across racial and socioeconomic lines and maternal age groups, especially since cocaine has become so popular."

"It's not just a minority problem, and it's not just an inner-city problem," Dr. Johnson told a conference on drugs and pregnancy in New York on Sunday. "Currently, most cases of drug abuse among pregnant women go undetected and untreated." Of the affected babies, she said, "We are producing a new generation of innocent addicts."

Yet, according to Dr. Janet Chandler, coordinator of Chemical Dependency Services at Northwestern's Perinatal Center for Chemical Dependence, pregnant women are often discriminated against by addiction treatment programs. "Most centers worry about the liability, so as soon as they discover a woman is pregnant, they refuse her or throw her out of the program," she said. "Even emergency detoxification programs don't want pregnant women."

HOSPITAL SELECTION CRITERIA

The survey was compiled by the National Association for Perinatal Addiction Research and Education. The findings were released at the news conference yesterday after being presented to the association's national training conference on drugs, alcohol, pregnancy and parenting at the Waldorf-Astoria Hotel.

Dr. Ira J. Chasnoff, president of the fledging association and director of the new survey, said in an interview that he believed the findings significantly underestimated the extent of the problem, since physicians rarely questioned private obstetrical patients about drug use of tested their urine for drugs.

To conduct the survey, Dr. Chasnoff selected 40 hospitals around the country that he said represented institutions of varying sizes serving patients from varied socioeconomic levels. Thirty-six had gathered data on pregnant women or newborns that permitted anaylsis of drug-abuse rates.

Dr. Chasnoff is an associate professor of pediatrics and psychiatry at Northwestern University Medical School and director of the Perinatal Center for Chemical Dependence at Northwestern Memorial Hospital in Chicago. The study was financed by grants from the Office of Substance Abuse Prevention and the March of Dimes Birth Defects Foundation.

The substances included in the survey were cocaine, marijuana, heroin and methadone, amphetamines and PCP. The study showed a range of substance abuse in pregnancy of four-tenths of 1 percent to 27 percent from one hospital to another."

Dr. Chasnoff said the differences were mainly a result of how carefully the hospitals looked for the problem. Hospitals with an established protocol for determining drug abuse among pregnant patients found three to five times as much as hospitals with little or no systematic monitoring.

Furthermore, when hospitals were categorized and grouped together by percentage of patients receiving public aid, a similar incidence of substance abuse in pregnancy was found in all categories. Thus, when drug abuse rates from the three hospitals with fewer than one-quarter indigent patients were averaged together, 11 percent of the pregnant women were reported as being involved with drugs. Likewise, when rates from the 24 hospitals with more than 50 percent indigent patients were averaged, 11.3 percent had drug involvement.

At Boston City Hospital, for example, the records of 1,600 women showed staff members asked the women whether they had taken drugs and tested their urine. The hospital reported that 17 percent of the women had used cocaine and 27 had smoked marijuana in pregnancy. At the University of California's Davis Hospital in Sacramento, 25 percent of 800 women whose urine was tested during labor and delivery had evidence of cocaine, amphetamines or heroin use. At Harlem Hospital in New York, urine tests on 3,000 newborn babies showed that 15 percent had been exposed to cocaine prenatally. And at Christiana Hospital in Newark, Del., evidence of drug abuse was found in 24 percent of pregnant women whose urine was tested at the first prenatal visit.

SIMILARITIES IN RATES

Dr. Chasnoff concluded: "The high rate of pregnancies or births in which drugs are present is not confined to the largest urban areas. The rate is similar in hospitals across the country."

As for the health consequences of prenatal cocaine exposure, Dr. Chasnoff told the conference that damage to the baby could include prenatal strokes and lasting brain damage, seizures after birth, premature birth, retarded fetal growth, breathing lapses, absence of part of the gut and structural abnormalities in genital and urinary organs. Even when the woman stops using cocaine in the first three months of pregnancy, the baby is at risk of malformations, strokes and behavioral abnormalities, Dr. Chasnoff's studies have shown.

Marijuana, too, can have untoward effects on the fetus. Dr. Barry Zuckerman, a professor of pediatrics at Boston University's School of Medicine and director of developmental and behavioral pediatrics at Boston City Hospital, reported that babies exposed to marijuana were likely to be born smaller than normal and to show such neurological difficulties as an abnormal startle reflex, an increase in tremors and an inability to shut out disturbing stimuli.

Although it was not included in the new survey, experts consider alcohol use by pregnant women to be an even greater problem than the abuse of illegal drugs. At high levels of use, alcohol can cause serious malformation. Even at moderate levels, alcohol use is associated with an increased risk of mental or physical damage to the newborn.

[From the New York Times, Sept. 6, 1988]

Cocaine: Litany of Fetal Risks Grows

RESEARCHERS FIND THAT A MAJORITY OF EXPOSED NEWBORNS SUFFER DAMAGE

(By Jane E. Brody)

The first detailed studies of babies exposed to cocaine before birth suggest that this widely used drug is causing an epidemic of damaged infants, some of whom may be impaired for life because their mothers used cocaine even briefly during pregnancy.

The new evidence of fetal hazards is the latest edition to the growing medical indictment of cocaine, which until this decade was thought by many to be a relatively innocent drug. In recent years, cocaine has been shown to be addictive and dangerous, even potentially fatal for adult users.

The new research has found a wide spectrum of ill effects that can result from fetal exposure to cocaine. These include retarded growth in the womb and subtle neurological abnormalities, which may afflict a majority of exposed newborns. In more extreme cases, cocaine can cause loss of the small intestine and brain-damaging strokes.

The researchers offer one hopeful note: Doctors and therapists who work with babies of cocaine users have discovered that a variety of parenting techniques can help minimize the behavioral and movement difficulties that afflict many of the babies. These experts hope that with such techniques, the effects of cocaine on many infants can be largely or entirely countered.

The litany of threats to newborns is long and growing. Cocaine-exposed babies are more likely to die before birth or to be born prematurely. They tend to be abnormally small for their age at birth and have smaller-than-normal heads and brains. They face an increased risk of deformities of the genital and urinary organs, including kidney malformations that can lead to life-threatening infections.

Cocaine-exposed babies also face a tenfold increase in the risk of crib death. These sudden, unexplained deaths usually follow several episodes in which the babies stop breathing for abnormally long periods.

More serious cocaine-induced handicaps such as strokes are believed to be relatively rare. But researchers said that other problems, like inhibited prenatal growth and subtle neurological abnormalities, may affect the majority of babies exposed to cocaine.

The emerging medical findings are especically ominous in view of new indications of widespread use of cocaine, either snorted or smoked in its potent form of crack, by pregnant women. A survey released last week of women having babies at 36 hospitals around the country found that, on average, 11 percent were exposing their unborn babies to illegal drugs, with cocaine the most common. The rates varied among hospitals from less than 1 percent to 27 percent; the hospitals included some in urban and some in rural areas, some serving the poor and some serving higher income groups.

Studies conducted among 115 pregnant women at Northwestern Memorial Hospital in Chicago have shown that some of the worst effects on unborn children occur when cocaine is used during the first three months of pregnancy, when a baby's organs are forming, and often before the woman realizes she is pregnant.

Even if a woman stops the drug once pregnancy is diagnosed or uses it only intermittently, her baby can suffer physical or behavioral problems, the studies revealed.

Single "Hit" Is Dangerous

In fact, the research suggests that a single cocaine "hit" during pregnancy can cause lasting fetal damage. While a single dose of cocaine and its metabolites clear out of an adult body within 48 hours, an unborn baby is exposed for four or five days, according to Dr. Ira J. Chasnoff, who directed the survey of 36 hospitals.

Cocaine, which is soluble in fact, readily crosses the placenta, where the baby's body converts a significant portion of it to norcocaine, a watersoluble substance that does not leave the womb and that is even more potent than cocaine. Norcocaine is excreted into the amniotic fluid, which the fetus swallows, re-exposing itself to the drug. As a result, the researchers believe, almost no cocaine-exposed baby fully escapes its damaging effects.

The new findings on cocaine hazards to infants, as well as the survey on drug abuse by pregnant women, were discussed last week at a meeting in New York sponsored by the National Association for Perinatal Addiction Research and Education. Dr. Chasnoff is director of the group, which is based in Chicago.

At the meeting, Dr. Chasnoff described the tragic results of "recreational" cocaine use by a suburban couple. Although the couple had snorted cocaine from time to time for years, the woman stopped using it in the second month of pregnancy and she remained drug-free until she was nearly ready to give birth. Then her husband gave her 5 grams of cocaine as an anniversary gift, prompting her to break her abstinence.

The drug precipitated labor and the baby, a boy, was born with limited use of his right arm and leg. He had suffered a cocaine-induced stroke that damaged a large segment of his brain just before he was born.

Dr. Chasnoff, director of the Perinatal Center for Chemical Dependence at Northwestern Memorial Hospital and founder of the national association, explained that strokes occur because cocaine causes a sudden increase in fetal blood pressure. The baby's heart rate rises dramatically and remains elevated for hours. A stroke that cuts off circulation to the small intestine can cause the gut to atrophy, making it impossible for the baby to digest food after birth.

"It takes only one hit of cocaine to cause a stroke in the baby before or just after birth," Dr. Chasnoff said in an interview. The physician will also present his findings later this week at a meeting on prenatal drug abuse. The meeting will be at the Hyatt Regency in Bethesda, Md., under the sponsorship of the New York Academy of Sciences.

Among the more worrisome effects of fetal exposure to cocaine are often-subtle impairments in the development of the nervous system. These can interfere with a child's ability to learn and interact normally with people and the environment. Such problems can result in a poor relationship with parents and lead ultimately to failure in school and society.

But these are also the problems that may diminish with time and that the researchers said could be minimized if parents were shown how best to handle their drug-damaged child.

Dr. Dan R. Griffith, developmental psychologist at Northwestern University, said parents could be taught to recognize when their babies are becoming unduly agitated and to take simple steps to calm them, such as swaddling them in a blanket.

EASILY OVERLOADED

He explained that cocaine-exposed babies are often born with "a very fragile, easily overloaded nervous system." They tend to be hypersensitive and irritable, screaming inconsolably at the slightest provocation. A sudden noise or change in position, even talking to and looking at the baby, can trigger prolonged crying.

Other cocaine-exposed babies escape into a deep sleep for 90 percent of the time to shut themselves off from outside stimulation. They will not wake up even if undressed, talked to, rocked or physically manipulated, Dr. Griffith said.

The neurological problems can persist for months, interfering with a wholesome attachment between mother and baby, Dr. Griffith said. In some cases, he said, frustrated mothers have abused their children.

"The baby tends to shut the mother out and become very irritable when she tries to attend to his needs," he said "The mother becomes withdrawn from the infant and resents him for not returning her attentions."

LEARNING DISABILITIES POSSIBLE

Moreover, Dr. Griffith's preliminary finding on older cocaine-exposed children suggest that the neurological problems may later show up as learning disabilities, hyperactivity and difficulty focusing.

Jane Schneider, a physical therapist at Children's Memorial Hospital in Chicago, said that cocaine-exposed babies also often have motor difficulties that can prevent them from exploring their bodies and nearby objects and that may interfere with their ability to crawl and walk. Her studies indicate that cocaine babies are 40 times as likely to suffer delays in motor development as infants not exposed to drugs before birth.

Dr. Griffith, who is studying the development of 400 cocaine-exposed babies, has found that parents can be taught to "read" their babies' signals of distress and to help keep the baby calm and responsive. Ms. Schneider, the therapist, said parents can also learn how to hold and move their babies to counter the motor abnormalities caused by cocaine.

"We teach the mothers how to stimulate their babies without over-stimulating them," Dr. Griffith said, "Many mothers hold the baby too close. If the baby tries to ignore the mother, the mother becomes more intrusive and the baby becomes more agitated or rejecting. They both end up frustrated and unhappy."

Early signs that the baby's nervous system is being overloaded include hiccoughs, yawns, sneezes, grimaces, jerky movements, flushed skin, averted or closed eyes and crying. A baby showing such signs of distress will often lose control if pushed further. When this happens, removing all stimuli and swaddling the baby in a blanket can help calm the infant.

SIMPLE STIMULUS RECOMMENDED

Dr. Griffith has shown that cocaine-exposed infants do better when presented with one simple stimulus at a time. The mother, for example, might talk to the baby without moving, or move without talking. The human face is often too complicated a stimulus for these babies to handle and thus they remain calmer if held close but facing away from the mother. Looking at a ball and trying to follow its movements is easier for these babies than watching a face, he said.

Sucking on a pacifier, the psychologist has found, is often critical to the baby's ability to remain calm. If the baby starts to get agitated, he will usually calm down if held vertically with support under the thighs and rocked gently up and down.

"These babies need a lot of help from caretakers to maintain control of their hyperexcitable nervous systems," Dr. Griffith said, adding that it is also important not to let the baby cry. "Mothers should not worry about spoiling the babies by picking them up when they cry. They should not let the babies scream but rather do what they can to calm the babies down."

Ms. Schneider's studies have shown that by four months of age, cocaine-exposed babies tend to be very stiff, even rigid. They have difficulty rounding their hips and raising their legs to explore their feet.

BABIES REMAIN STANDING

They also have problems bringing their hands together and relaxing their fists. They seem to enjoy standing up and will remain standing on their toes for very long periods, apparently unable to relax their bodies enough to sit back down.

Parents can help, she said, by holding the babies in a relaxed posture, upright against the parent's hip with a hand under the thighs to keep the legs flexed and the baby's shoulders rounded to permit the hands to come together.

"These babies should be discouraged from standing until they are ready to lift themselves up to a standing position," Ms. Schneider said. "And they should not be left lying on their backs for long periods; they're too stiff in that position."

"Infant walkers and jumpers are also very bad—for all babies, but especially for stiff babies," she added. "Rather than training the baby to walk, the walker may impede progress by keeping the infant from crawling around. It is far better to put the baby in a playpen or on a blanket on the floor."

Mr. EVANS. Mr. President, today the Senate adopted S. 2852 by an overwhelming margin. As originally introduced, the core bill was a remarkably good proposal overall. It was the product of diligent bipartisan efforts aimed at eradicating illicit drugs in our society. Yet, the core legislation was flawed in one fundamental respect—it called for the death penalty in a specified class of drug-related convictions. The death penalty, along with a battery of controversial amendments we faced are, in my view, detrimental to fundamental constitutional protections. In particular, imposition of the death penalty would not outweigh the harm we would do to ourselves as people and to our society.

My opposition to S. 2852, therefore, was rooted in my longstanding and deep moral conviction that the death penalty is wrong. As a deterrent, it does not work. There is no credible evidence supporting that contention. As a matter of retribution, it would require society to operate with "an eye for an eye" mentality. I am reminded of Mahatma Gandhi's observation that if we all operated under this notion, eventually the whole world would be blind.

The death penalty has no effect unique from that of any other available punishment. Society has the responsibility to express its moral outrage at the heinous conduct of criminals. Society has the responsibility of expressing its concerns for the victims of capital crimes—especially those which involve narcotics and drug trafficking. But society does not, and should never have the right to take the life of another human being.

Mr. President, I do believe that the core bill is a solid and good approach. Unfortunately, the good provisions of this bill were outweighted by the death penalty as well as by the controversial amendments which were adopted during the floor debate.

Mr. HATCH. Mr. President, on August 10th, I introduced S. 2727, the Computer Software Amendments Act of 1988. Today, I am offering that bill as an amendment to S. 2361, the video privacy bill. The purpose of this legislation is to amend the Copyright Law to address the problem of unauthorized computer software duplication.

A copyright has been defined as "a legal monopoly, of limited scope and duration, under whose terms authors are permitted to control the exploitation of their creations." Under the Constitution, Congress is empowered to create this monopoly and to set the parameters of its exclusivity. In determining where the proper limitations should be drawn, Congress must carefully weigh the copyright owner's rights against the progress of science and the useful arts.

In the past, Congress has created general, and in some cases specific, limitations on exclusivity which promote a balance between these policy interests. In fact, the operation of these limitations on exclusivity has, in some part, contributed to the rise in United States technology.

As that technology changes, and as society changes, there is a need to maintain flexibility in our copyright laws. I believe this flexibility is essential to ensure a constant balance between an author's exclusive rights and the constitutional interest in promoting societal needs. This amendment is necessary to restore that balance.

In 1984, the record industry made its case that new marketing techniques would undermine the economic and authorial incentives for a viable recording industry. At that time, it was apparent that technological advances were leading to the birth of the new business of renting sound recordings for the primary purpose of copying original works without compensation to the copyright owner. Congress responded to this threat to the copyright law by enacting the Record Rental Amendments of 1984.

Because Congress acted before the rental of records became a widespread business practice, the United States record industry was able to continue in its position of world leadership. The industry reinvested substantial sums in a new generation of sound recordings—compact discs—without fear of losing the market to unauthorized copying. The interests of the creative community, the American public, and the United States economy all were advanced by Congress' decision to act before reliance on the previous inadequate law produced an economic dislocation which would have been very difficult to eliminate.

Today, the computer software industry, a dynamic and blossoming source of growth for our Nation's economy, is confronted by a nearly identical situation.

As in the case of sound recordings, the overwhelming rationale for renting a computer program is to make an unauthorized copy. Computer software cannot be enjoyed for an evening's entertainment and then returned. To have meaning to a user, the software packages require mastery of complex user manuals, often running hundreds of pages in length. Even after a user has mastered the use of a program, it has little value until he or she adds his or her own data base to the program. The functions of learning how to use a program and utilizing it is connection with one's own data base cannot be accomplished in the few hours or days available under a rental arrangement without copying the program and displacing a legitimate sale of the program.

In the recording industry, a typical compact disc sells for $16.95 and costs hundreds of thousands of dollars in developmental costs to bring to the marketplace. A typical mass market computer software package costs several hundred dollars at retail and requires millions of dollars to develop. Were computer programs to be rented for a few dollars a day, the multi-million-dollar investments necessary to bring new software to the market could no longer be amortized, and one of the brightest stars of the modern United States economy would be extinguished in its infancy.

As with the record industry, there is now in existence the embryo of a business of rental of software for the purpose of copying. Unless Congress acts quickly, this rental industry could soon grow out of conrol, becoming a cancer which would kill off the legitimate software development industry by which it was created. This is particularly true in view of the fact that technological methods of limiting unauthorized copying, commonly called "copy protection," are proving impractical in an industry in which there is often a need for legitimate use of backup copies by purchasers of authorized copies of computer programs.

The need for this legislation was further supported by testimony received during a hearing held last August by the Parents, Copyrights and Trademarks Subcommittee. For example, in his statement, Dr. Alan C. Ashton, president of the WordPerfect Corp., reported that one WordPerfect program, which retails at $495, has been available through a rental outlet for only $35. The most obvious rationale for such a practice is to facilitate the unauthorized copying of this program. The potential for lost sales and the subsequent collapse of these software companies is a serious problem that must be addressed.

This amendment would provide software protection by requiring the authorization of the copyright owner before a computer program could be rented or leased for the purposes of direct or indirect commercial advantage. This means that a copyright owner could authorize the rental of any computer program should market conditions require it.

The threat of unlimited computer software rental poses just as grave a concern to the computer software industry today as did the threat of unlimited record rental to the recording industry in 1984. I urge my colleagues to support the adoption of this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment in the nature of a substitute, as amended.

The amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time. The bill was read a third time.

SCHEDULE

Mr. DOLE. Mr. President, if I could just take a minute to ask the majority leader to give me some idea of what might happen tomorrow, Monday, Tuesday, and Wednesday of next week.

Mr. BYRD. Mr. President, the Senate will not be in session tomorrow. The Senate will be in Monday.

Mr. STENNIS. Mr. President, may we have quiet so the speakers may be heard?

The PRESIDING OFFICER. The Senate is not in order. The Senate will come to order.

The majority leader.

Mr. BYRD. Mr. President, I thank the Chair. I thank our distinguished President pro tempore also.

Mr. President, there will be no more rollcall votes today. The Senate will not be in session tomorrow. The Senate will be in session on Monday. There will be no rollcall votes on Monday but there is work to be done.

There may be rollcall votes ordered on some matters, conference reports, or a House message or some bills which I am pressured to try to get up. But I do not intend to have any rollcall votes on Monday.

I say "I do not intend." I would have to be forced to have a rollcall vote for some parliamentary reason, and that would be the usual type that would require such.

Then on Tuesday, the Senate will be in. The House will be in. The House is out in pro forma session today and will be back on Tuesday. In the meantime, the conference work has been going forward on the tax technical corrections amendments bill, I think, and on other matters.

We will not know until the House is back on Tuesday what action the House will take on the omnibus drug bill. In the meantime, the staffs of both Houses will be working in order to do some of the preconference work.

So when the House is back pending its decision on what to do on the drug bill, the Senate will be in session. The Senate will be here.

What can the House do? The House might accept the Senate bill and it would go to the President. Or the House might send the bill to conference, whereupon there would have to be conference action between the two Houses. The House might exercise the option of amending the Senate bill in one more instance, and send the bill back to the Senate. It will be up to the Senate to decide whether to accept the House amendments, concur in them, or whether to recede or whether to amend the House amendments.

So these are actions that we cannot predict at this point but in the meantime the House leadership has been alerted, and as I was told by the Speaker yesterday preconference work can be going on over the weekend. The House and Senate staffs will be meeting in the Republican leader's conference room at 5:30 today.

So we are moving.

I would anticipate rollcall votes on Tuesday. There may be rollcall votes on other matters. We still have a Veterans Department conference report. There are some judges, and there are other matters.

So there will be rollcall votes, I say, on Tuesday. If it is necessary to be in on Wednesday, which I would anticipate at this point that it would be, there will be rollcall votes probably then.

I certainly hope we will not have to stay beyond next Wednesday. As I say, nobody can predict that because we have to wait to see what the House does.

Mr. DOLE. Mr. President, I thank the leader.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Oklahoma [Mr. BOREN], the Senator from Louisiana [Mr. JOHNSTON], and the Senator from North Carolina [Mr. SANFORD] are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina [Mr. SANFORD] would vote "yea."

Mr. SIMPSON. I announce that the Senator from New Mexico [Mr. DOMENICI], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Pennsylvania [Mr. HEINZ], the Senator from Indiana [Mr. QUAYLE], the Senator from Vermont [Mr. STAFFORD], and the Senator from Wyoming [Mr. WALLOP] are necessarily absent.

I further announce that, if present and voting, the Senator from Pennsylvania [Mr. HEINZ], the Senator from Vermont [Mr. STAFFORD], and the Senator from Wyoming [Mr. WALLOP] would each vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 87, nays 3, as follows:

[Rollcall Vote No. 376 Leg.]

YEAS—87

Adams
Armstrong
Baucus
Biden
Bingaman
Bond
Boschwitz
Bradley
Breaux
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Conrad
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dodd
Dole
Exon
Ford
Fowler
Garn
Glenn
Gore
Graham
Gramm
Grassley
Harkin
Hatch
Hecht
Heflin
Helms
Hollings
Humphrey
Inouye
Karnes
Kassebaum
Kasten
Kennedy
Kerry
Lautenberg
Leahy
Levin
Lugar
Matsunaga
McCain
McClure
McConnell
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Pryor
Reid
Riegle
Rockefeller
Roth
Rudman
Sarbanes
Sasser
Shelby
Simon
Simpson
Specter
Stennis
Stevens
Symms
Thurmond
Trible
Warner
Weicker
Wilson
Wirth

NAYS—3

Evans
Hatfield
Proxmire

NOT VOTING—10

Bentsen
Boren
Domenici
Durenberger
Heinz
Johnston
Quayle
Sanford
Stafford
Wallop

So the bill (H.R. 5210), as amended, was passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. CHILES. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. NUNN. Mr. President, I congratulate all the Senators involved here on both sides of the aisle. I would say three-fourths of this body had been directly involved in helping get this bill put together. Particularly Senator RUDMAN has done an outstanding job.

I congratulate my colleagues, Senator MOYNIHAN, Senator WILSON, Senator D'AMATO, Senator GRAMM, Senator CHILES, Senator GRAHAM, and many, many others.

Mr. President, I also thank the staff. I shall take a moment to call the names of a few staff people who have been key in this effort. I must say this list should be three or four times as long because so many staff people have been of so much help.

Senator BYRD's staff have done a magnificent job. Sally Mernissi of Senator BYRD's staff, Sheila Burke of Senator DOLE's staff, James Whittinghill of Senator DOLE's staff.

On my staff, I have had my investigative subcommittee group almost stop the investigations for several months now and concentrate on the legislative effort headed by Eleanore Hill, John Sopko, Hal Lippman, Mary Robertson, Harriet McFaul.

Also, we worked very closely with Paul Stockton on Senator MOYNIHAN's staff, and Tom Polgar of Senator RUDMAN's staff. They have done an outstanding job. And there were many, many others.

I know Senator RUDMAN will add some to this group.

All of them have done a magnificent job, and, of course, the job is not over. We still have a bill to get passed through the House and the bill to get signed at the White House.

I thank my colleagues.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. RUDMAN. Mr. President, I will be brief.

Let me first start by saying that obviously what is here is the culmination of about 4 months' work by many Members and staff. It could not have been accomplished without the strong backing of the majority leader, Senator BYRD, and the Republican leader, Senator DOLE. Without their strong backing and staff, this could not have been accomplished.

I pay special tribute to Senator NUNN and Senator MOYNIHAN, on the Democratic side of the aisle; on our side of the aisle, Senator WILSON, Senator D'AMATO, Senator GRAMM, Senator DOMENICI, and Senator THURMOND, who were of incredible help to all of us; and on our staffs, Santal Manos, Jim Whittinghill, Luis Luna, Cindy Blackburn, Terry Wooten, Nancy Taylor, Morgan Hardiman, Helen Albert, Ira Goldman, and Bill Hughes, as well as Eleanore Hill and all the excellent members of Senator NUNN's and Senator MOYNIHAN's staffs as well as those of the majority staff of various committees.

Senator MOYNIHAN made a comment 4 months ago when we first sat down. He said, "You know we have looked at two drafts and there is more that unites us than divides us."

I was not sure he was right, but as usual PAT MOYNIHAN was right.

I thank him very much.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, I yield to Mr. BIDEN.

Mr. BIDEN. Mr. President, I will be very, very brief.

Having been involved in a small way earlier, I realize what was done here.

I express my congratulations and compliments to the incredible job that SAM NUNN and WARREN RUDMAN did along with PAT MOYNIHAN and others, but SAM NUNN and WARREN RUDMAN did a phenomenal job. It is an awesome task to undertake and, as I said, in a much smaller scale I have been involved in similar efforts, but this warrants our congratulations, and I hope that they will be willing after having gone through it to undertake similar herculean tasks in the future.

My compliments to both of them and to the staff.

Mr. STEVENS. Mr. President, will the Senator yield to me for a short statement?

Mr. BYRD. I am happy to yield.

Mr. STEVENS. Mr. President, I took the floor to ask what hapens to an amendment not even in purgatory, and that led to a series of discussions with the managers of the bill and competent staff working.

This bill now contains an innocent-owner provision and a series of provisions that protect commercial fishing operations throughout this country. It means a great deal to my State that has half the coastline of the United States, and I know the current occupant of the chair worked on this. It is very important to the Senators from Louisiana, too. It could not have been that we are treated as fairly as we have, had it not been for the cooperation of the two leaders.

I express my deep thanks to them for the procedure set up to give us a chance to explain our problems with regard to this very enormous bill. It is of great consequence to the country, but there were people who would have been severely harmed if some of these exceptions and conditions had not been worked out as they have been in these last 2 days.

They have been cleared through the Department of Defense and the Department of Transportation. I just visited with the Commandant of the Coast Guard. He is happy with this provision included in the bill.

I am delighted to be able to say that I never went to heaven so fast. I got off that purgatory list very well.

I thank you very much.

Mr. THURMOND. Mr. President, will the majority leader yield?

Mr. BYRD. Yes; I yield.

Mr. THURMOND. Mr. President, I take this opportunity to commend the able majority leader and the able minority leader for their combined leadership on this bill. It never could have happened unless they had worked together as they did. They worked long hours. They conferred with all the Senators who were interested and did a magnificent job. I just want them to know the Senate appreciates their leadership.

I also commend the managers of the bill, Senator RUDMAN, of New Hampshire, who is a fine advocate on all matters, and Senator NUNN, of Georgia, who is chairman of the Armed Services Committee and a very able man.

Finally, I would like to commend Cindi Blackburn of my staff who worked many long hours on this bill. She did outstanding work on this legislation. Also, I would like to thank Terry Wooten and Manus Cooney who worked hard to produce this drug package.

They gave fine leadership to the Senate and should be commended.

There are many Senators who worked on it. It would be impossible to name all these people and the staff who worked on it.

But I have never seen a piece of legislation come before this Senate that had as much joint leadership and as much hard work and as much give and take as this piece of legislation. I just want to commend all of them.

Mr. BYRD. Mr. President, I thank all Senators for their gracious statements on behalf of the joint leadership and the joint task force that put together the package and worked so well and worked so hard. They are certainly deserving of the plaudits of our colleagues.

Senator CHILES has a matter which has been cleared on both sides.

Mr. WARNER. Mr. President, I would like to take this opportunity to address one aspect of S. 2582, the Omnibus Anti-Substance Abuse Act of 1988.

Section 2645 of title II amends the asset forfeiture provisions of the Controlled Substances Act. Specifically, section 2645 amends section 511(e) of the Controlled Substances Act (21 U.S.C. 881(e)) by redesignating paragraph (2) as paragraph (3) and inserting a new paragraph (2) as follows:

> The Attorney General shall ensure the equitable transfer pursuant to paragraph (1)(A) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General pursuant to paragraph (1)(A) shall not be subject to review.

As I understand it, this provision restores language that was inadvertently deleted by the Anti-Drug Abuse Act of 1986. The restored language will have no impact on current Department of Justice practice as the Department is authorized under 21 U.S.C. 881(e)(1)(A) to share forfeited proceeds with State and local agencies and has continued to do so notwithstanding the 1986 elimination of the mandatory language here proposed for reinstatement.

I am quite satisfied with the Senate language on this matter. I am concerned, however, about similar language in the House-passed version of this legislation. The House version contains similar language, but adds an additional paragraph which would require that no assets be transferred in a matter to circumvent any requirement of State law that prohibits forfeiture or limits use or disposition of property forfeited to State or local agencies.

Under current Virginia law, this language in the House-passed measure would foreclose Federal assets sharing with Virginia local law enforcement agencies. Article VII, section 8 of the Virginia Constitution requires all fines and forfeitures under State law to go to the State literary fund. This restriction does not apply, however, to forfeitures carried out under Federal law.

In the past, asset sharing from Federal law prosecutions directly benefited the Virginia local and State law enforcement agencies participating in the seizure. If the house language is adopted, neither Virginia law enforcement agencies of the Virginia literary fund will share in the forfeited assets.

I am in no way advocating that Virginia's or any other States' laws be circumvented by the forfeit-asset-sharing provisions of Federal law. I am concerned, however, that if the House language is adopted, States like Virginia would not be allowed to share in forfeiture assets during the period that would be necessary to change the State forfeiture laws.

I have been advised that legislation has been introduced in the General Assembly of Virginia to amend the constitution so that local law enforcement officials will be able to share in forfeited assets and that this legislation has a very good chance of passing in the 1989 session of the general assembly. However, to amend the constitution in Virginia, there must be passage by the general assembly in two different sessions with an intervening election and the amendment must be ratified by the voters. The Virginia constitutional amendment process allows such ratification by the voters at the earliest in November 1990.

Therefore, should this legislation be sent to conference to resolve any differences between House and Senate language, I hope the Senate conferees will insist that the House language be deleted or, at the least, amended to delay implementation for a reasonable period of time necessary for States like Virginia to respond to the change and amend their own forfeiture laws.

Mr. KENNEDY. Mr. President, the omnibus bill just passed by the Senate caps an unusually productive bipartisan effort to eliminate the scourge of drug abuse in America. No law, standing alone, can solve the drug problem, but this bill will help to free millions of American families from the blight of drug addiction.

The bill recognizes that anyone seriously committed to fighting drug abuse must take three approaches: law enforcement, prevention, and treatment. Each of these approaches is critical; success requires major commitments in each of these areas.

As one of the Chairs of the task force subgroup on prevention and treatment, I am especially proud of the provisions that will improve our national effort to educate young people on the dangers of drug abuse and provide treatment for Americans who have become addicted but wish to break their habit.

The crisis of drug addiction requires tough interdiction and law enforcement, but that alone is not enough. No army is large enough to catch every drug smuggler crossing our borders and no police force can catch every pusher and supplier. We must use all the constitutional enforcement tools available to make drug dealers pay the price for their crimes. But the war on drugs cannot be won unless the American people, especially the young, refuse to start taking drugs, and unless those already addicted are able to receive treatment if and when they want it.

Until now, the Federal effort to fight drugs has ignored this fundamental reality. Only 25 percent of current Federal antidrug funds are spent on prevention, research, and treatment; the vast majority of resources go for law enforcement and interdiction. This bill establishes a more appropriate balance. The members of the task force made an explicit decision to put 60 percent of the new money that this bill will provide into prevention, research, and treatment programs—a total of $1.5 billion. The other 40 percent of the new funds will go for enhancing law enforcement. In effect, we have gone from a 75-25 split to a 40-60 split the other way. In my view, this reversal of priorities is the most significant achievement in this bill—and it may well make all the difference in the success or failure of the war on drugs.

The legislation provides for dramatically expanded Federal drug prevention efforts, including anti-drug education. It increases the current drug-free schools program by 80 percent, to $405 million. An additional $16 million will be added to this program and specifically targeted toward training teachers to run effective programs and recognize and refer for treatment students exhibiting symptoms of drug abuse.

The high risk youth demonstration program is more than doubled, to $52 million, and funds are provided to VISTA, the DEA, and Border Patrol to carry out drug education and prevention programs. Finally, a new demonstration block grant is established to encourage States to undertake targeted, comprehensive prevention programs in areas with the most severe drug problems.

Prevention is the most cost-effective means of attacking drug abuse. It is much easier to prevent citizens from starting on drugs than it is to cure them once they have become addicted. The evidence is clear that prevention programs work. Studies by the University of Michigan show that the key decision by high school seniors about cocaine is whether they think the drug is harmful. Where the number of students understanding the harm has grown, cocaine use has declined. Massachusetts, under Governor Dukakis' leadership, has established an exemplary, targeted drug education program. As a result, cocaine use among high school seniors has dropped twice as fast as the national average. This bill will help all States develop comparable programs, and help us consolidate and extend across the Nation the progress we have made.

Treatment, too, is cost effective. It is an obligation of our society to make treatment available to all those who want to rid themselves of drug addiction. Long-term studies by the National Institute on Drug Abuse show that drug use and criminal involvement drop dramatically by the end of a year of treatment. Employment is up significantly. Most important, these gains are maintained for at least 12 years after treatment. Another study, by the Justice Department, shows that treatment saves as much as $4 in crime costs alone for every $1 spent.

Despite the obvious benefits of treatment, there are too few treatment opportunities available. States across the country report long waiting lists at public treatment clinics. Current resources permit treatment of only 8 to 10 percent annually of the estimated 6.5 million drug abusers who could benefit from treatment.

The Senate bill is a major step in the direction of providing treatment for all who need it. It establishes an objective of treatment for every addict requesting help. It provides an additional $960 million to States for treatment programs—enough to double the amount of treatment now available.

In addition to funds provided under the new substance abuse block grant, the bill will provide $95 million for treatment and education programs for drug abusers with AIDS or at high risk of AIDS. Drug abuse is a primary means of transmission of this deadly virus in the heterosexual population. This program will thus address one of the highest priority health needs of our society.

In addition, the bill establishes a series of comprehensive treatment demonstrations to test the effectiveness of a major increase in treatment resources in areas with a high incidence of drug abuse.

With respect to research, the knowledge on which current antidrug abuse efforts are based is far too limited. This legislation makes an essential investment in the research that can help us improve our ability to cope with the drug epidemic. No matter how much money we spend, the problem will be with us for many years. We need to begin the process now of developing the knowledge that will be most useful in this struggle. This bill will assure that our future efforts are as effective as possible.

The legislation establishes comprehensive data collection programs; it significantly increases funding for the National Institute on Drug Abuse and requires the Agency to investigate the effectiveness of alternative treatment methods; and it provides enhanced funding for training of drug abuse researchers.

Taken as a whole, the programs of prevention, treatment, and research contained in this bill make major new contributions to our struggle against drug addition. This bill alone cannot win the war, but it will allow us to make important progress on a problem of vital concern to millions of our fellow citizens.

Our task force subgroup on law enforcement, which I also cochaired, developed a bipartisan package to attack drug abuse through law enforcement efforts that will make a genuine difference.

These provisions represent a successful effort to toughen existing criminal penalties and add new ones for drug-related crimes. There are new and enhanced penalties for career criminals, for repeat offenders who committed violent offenses as juveniles, for narcotics-related corruption, for critical crewmembers who smuggle narcotics, for drug offenses involving a minor, and for drug offenses in prisons.

The law enforcement title of this bill will strengthen the immigration laws to facilitate deportation of dangerous aliens. Authority will be enhanced to provide additional recordkeeping to track money laundering and chemical diversion offenders. For those convicted of drug offenses, the law enforcement provisions will impose enhanced forfeiture sanctions and streamlined court procedures.

The law enforcement title also funds Federal drug enforcement programs with responsibilities ranging from enforcement and investigation to interdiction. The drug czar will have emergency authority to ensure that high intensity drug areas receive appropriate law enforcement funding and resources.

Most important, the law enforcement title includes substantial funding for State and local drug enforcement agencies. The real drug war is being fought every day in our streets and neighborhoods across the Nation. Illegal drugs are too easily available and drug sellers have too little fear of apprehension. This is where a more effective battle must be waged, with adequate Federal assistance to State and local officials. Despite the fact that State and local law enforcement officers are the ones battling on the frontlines of the drug war, their funding is a budget items which the Reagan administration has consistently sought to cut or eliminate.

We know that talking tough on drugs is not enough. The war on crime has been declared again and again—and it has been lost over and over. We will never succeed in defeating crime if we try to do it on the cheap. We can support our State and local police without turning any community into a police State, and without destroying the fundamental civil liberties and constitutional guarantees that make this Nation free.

If we are serious about the drug crisis in America, we must begin a full-scale assault on retail distribution. To meet this goal requires a major commitment of Federal resources to State and local officials, who will make a crackdown on retail drug distributors their highest priority. A strong Federal-State partnership offers our best hope of success in the war against illegal drugs.

We need local law enforcement programs that work. It is increasingly clear that stronger domestic law enforcement efforts at the local level can be successful when coupled with enhanced drug treatment and education opportunities. One of the most important tools in the war against drugs is Federal assistance to increase the number of these successful local law enforcement programs.

Intense local crackdowns have proved to be successful in many regions around the country, ranging from Lynn, MA, to Los Angeles, Houston, and Manhattan's Lower East Side. Recreational drug users lose interest as crackdowns make drugs harder to obtain and heavy users and addicts are more included to seek drug treatment to eliminate their dependency. Add to this successful drug education programs being launches in schools around the country, and it is clear that we have made a good start.

But make no mistake, we are still in danger of losing the war on drugs. Recent studies indicate that we are getting no return on the dollars we are pouring into interdiction efforts. For the most part, despite the glitzy headlines about blitzkrieg attacks on ships at sea and massive drug seizures on shore, the flow of dangerous drugs continues unabated. We have reached the point where increased interdiction funding will yield only scant improvements in the drug war.

We must be wary of putting too much emphasis in flashy approaches that grab big headlines but do nothing to change the small print that follows. We need instead to start worrying about the bottom line—there are over 6 million drug abusers in the United States and we have to do something about that.

We can devote more money to hardware at the borders, but not to the point where we sacrifice our ability to deal with the staggering quantities of drugs and accompanying violence that will evade our interdiction efforts. The estimated 7 tons of heroin and 90 tons of cocaine ingested annually in the United States is not likely to change without stronger local law enforcement, education, and treatment.

The law enforcement provisions in this bill are the result of intense and hotly debated compromises. The provisions send a strong message about the importance of drug enforcement policy. The message will be reinforced with funding, so that law enforcement officials at the Federal, State, and local level can carry on the fight against drug abuse.

I am pleased that the Senate was able to resist many of the constitutionally offensive provisions included in the House bill.

The Senate blocked the effort to expand the current good faith exception to the exclusionary rule to searchers without warrants.

The Senate declined to make wholesale changes in habeas corpus, agreeing instead to consider the issue next year, after we have the benefit of the recommendations of a commission chaired by retired Supreme Court Justice Lewis Powell.

The Senate civil-penalty provision is much fairer and more reasonable than the version passed by the House. The Senate created an innovation alternative to criminal prosecution for first offenders; defendants in the civil process will have all the constitutional protections to which they would be entitled if they were treated as criminals; and the civil penalty can be expunged if they have stay drug free for 3 years. It is here that the differences between the two bills is most startle—the House raided the Constitution and the Senate respected it.

Finally, I continue to oppose the death penalty. It is wrong in principle, discrimination in practice, and it has no deterrent effect on cop killers, drug kingpins, or any other criminals. The Senate provision does, however, include several items added to the original D'Amato bill at my insistence to reduce its unfairness and mitigate its potential for racial application. Nevertheless, I continue to believe that the death penalty is dirty business and we have no business using it in a civilized society.

Except for that provision, I regard this omnibus bill as excellent legislation. Faced with a serious challenge of the magnitude of drug abuse, the Senate has rarely done a better job. I commend the leadership and the many Senators on both sides of the aisle who worked so hard so long to make this day a reality.

I also commend, in particular, the tireless unsung work of the many Senate aids who did the backbreaking detailed work that made this bill possible—especially, on my staff. Carolyn Osolinik, Jeff Blattner, Goody Marshall, David Nexon, and Mike Epstein. In many ways, they are their counterparts on other staffs deserve the real credit for this achievement. We could not have done it without them.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there be a period for morning business not to extend beyond 30 minutes, and that Senators may speak therein for 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATOR WILLIAM PROXMIRE

Mr. KENNEDY. Mr. President, one morning in the next few days, our friend BILL PROXMIRE will take the Senate floor and deliver the last in an extraordinary series of morning hour speeches that have spanned many years. And as always, BILL's remarks will be notable for their brevity, their eloquence, and their emphasis on an issue that is timely and important, and that he has thought deeply about.

These characteristics—serious thoughts, eloquently stated, on serious issues facing our country—are the hallmarks of BILL PROXMIRE's career. He has never been one to waste his time—or taxpayers' money—on the frivolous or the unimportant. Instead, he has devoted his considerable talents and limitless energy to the fundamental challenges that confront us.

Because of BILL PROXMIRE, the Senate, after an unconscionable delay, finally ratified the Genocide Convention. Because of BILL PROXMIRE, we have done a better job of bringing our financial system into the modern world. We extended the rule of law to foreign practices of American corporations. We shelved the wasteful boondoggle called the supersonic transport.

And those are only a few of the headlines from our distinguished colleague's distinguished career. Because of BILL PROXMIRE's dedication and ability, Congress has enacted literally hundreds of measures which protect consumers and taxpayers. His Golden Fleece Awards have shaped up a generation of civil servants in bureaucracies prone to run aground. And he has been tireless in the fight for civil rights at home and human rights around the world.

We regret especially that he is leaving the Senate at the prime of his ability and the peak of his career. It is almost impossible to imagine the Senate Chamber without him. He has served longer than only two other Members of the present Senate. Yet through all the years, he has always been there each morning—first in line with the speech of the day and a new approach to an issue for us to consider.

He is also leaving us in the prime of physical condition. He is legendary for his jogging ability. Indeed, if any Senator has discovered the fountain of youth, it is BILL PROXMIRE.

In fact, it will be hard for us to have a rollcall vote without him. He has been the Lou Gehrig of the Senate. As of yesterday, he had cast 10,249 consecutive votes, beginning in 1966—23 successive years without missing a vote, a record that will probably never be exceeded.

For all of these reasons, we are sorry to see BILL PROXMIRE go, but we can be sure that he will not be forgotten. He has set a standard of excellence in public service that all of us who serve here will honor for decades to come. He will be remembered for his decency, his diligence, his intellect, his achievements, and most of all his friendship.

Now, as BILL moves on to new challenges, I join in wishing him and his wife Ellen "Godspeed." We are grateful for his service to Wisconsin, to the Senate, and to the country—and America is grateful too.

NATIONAL JOB SKILLS WEEK

Mr. GORE. Mr. President, this week we are once again observing National Job Skills Week. As in years past, this week has been designated as a time to call attention to the challenges we face in the work place and to emphasize the need for developing a higher skilled work force that can continue to compete in the world economy.

We are all aware that our Nation is in the midst of a technological revolution. Hardly a day goes by without news of some technological development or breakthrough that can help us live better, work better, and compete better in the global environment. Our big challenge now is to train the skilled workers we need to put our high-technology innovations to work.

By the year 2000, 75 percent of all workers currently employed will need retraining because of changes in existing jobs or the creation of jobs which will require new and higher levels of skills. While advances in technology should create more jobs than they eliminate, there will be fewer opportunities for those who do not have the right skills. According to the Bureau of Labor Statistics, more than 2.7 million blue collar workers have permanently lost their traditional jobs since January 1981. Those jobs will not come back. For those workers and others in declining industries, training is the only hope.

American companies currently spend far more on new plants and equipment than on training the people who will work in those plants and operate that equipment. The American Society for Training and Development has pointed out that corporations now spend about $3,300 per worker on physical assets and approximately $300 per worker on training. The American worker is worth more than that. We cannot compete effectively unless we train enough.

Mr. President, our people have always been our greatest asset. Our citizens are the ones who make this country work. Our human capital represented by our combined knowledge, skills, and motivations will restore America to greatness again.

We have to place greater importance on the training and retraining of our workers. We must invest in our people if we are to be a forceful competitor in the world economy. As we have been observing National Job Skills Week, Mr. President, this is the message that I have heard. I hope that in the months and years ahead that our Nation will act on this message. Our future depends on it.

MARC KAHRE

Mr. HECHT. Mr. President, I rise today to pay homage to Marc Kahre, one of the Las Vegas Metro Police Department's finest, who was tragically killed in the line of duty this past week.

Officer Kahre, a 34-year-old veteran police officer, responded to a routine request for assistance from a fellow officer. Marc was called in as a backup to pursue a suspect being sought for firing a gun into his ex-girfriend's front door. Both officers spotted the suspect's automobile and proceeded to pursue the vehicle in order to question the suspect. Suddenly, and sadly, without warning, the suspect stopped, jumped from his vehicle and began shooting. In an attempt to defend themselves, the officers shot back. Officer Kahre was struck in the head and killed by a bullet from a .38 caliber revolver.

This horrible incident ended the life of a fine police officer. Mr. President, Officer Kahre devoted his life to serve and protect the people of Las Vegas, a devotion exemplified by a career spanning 13 years of service to a community which he deeply cared about.

Mr. President, we must not allow the memory of this brave and dedicated public servant to fade. We must forever remember Officer Kahre for his love of community and his pride and dedication toward duty. Officer Kahre will not be forgotten, his spirit of commitment to law enforcement will always shine brightly in the memories of those he chose to serve. I am sure that all Nevadans join me in assuring Marc's family that our condolences and prayers are with them in this dark hour.

SENATOR BILL PROXMIRE

Mr. REID. Mr. President, there is little doubt in my mind that Senator WILLIAM PROXMIRE will go down in history as one of this body's greatest Members. He will be remembered as a Senator of unquestioned integrity, persistent advocacy and firm commitment to his beliefs regardless of the prevailing wisdom.

Senator PROXMIRE has come down to the floor nearly every day of his 31-year career and spoken on such subjects as the need to ratify the genocide treaty, reduce our nuclear arsenal, cut back on star wars funding and be wary of bank deregulation. His vigils are at first often very lonely; he will be referred to as a maverick or a gadfly. But slowly, through his persistence and determination, a majority of this body came around to his point of view.

I can think of no finer example of this quality than his work as chairman of the Banking Committee. Last year he moved the Comprehensive Equality Banking Act through Congress. For almost 6 years, no major banking legislation moved through Congress. In less than a year, he moved a controversial and technical bill through a political minefield and on to the President's desk.

Senator PROXMIRE is one of those rare individuals who has become a legend in his own time. He has never missed a rollcall vote and holds the record for consecutive rollcalls answered. During his last campaign he spent less than $500, with most of that amount used for postage to return campaign contributions. And his "Golden Fleece Award" has focused the attention of this body and the public on the need to carefully scrutinize the activities of the executive branch and to establish definitive budget priorities. I only hope my "Globe Rotters Award," an environmental version of the Golden Fleece, gains the same notoriety.

Mr. President, I am indeed fortunate to have served in this body with Senator PROXMIRE. In the past 2 years, we have sat through many meetings of the Appropriations Committee together. BILL PROXMIRE rarely spoke during those meetings, but when he did, the entire committee listened carefully to his every word. And when he assumed the gavel, hearings progressed quickly and smoothly.

There will always be room in the Senate for a BILL PROXMIRE. Rarely is a Senator with his qualities of independence, intelligence, and humor identified as an effective leader. Yet he has a been a great leader during his years in the Senate and an important teacher to this Senator. I know that I speak for my colleagues and the American people when I say his contributions are lasting and his place in this body's lore reserved forever.

IN MEMORY OF NORMAN C. BARRY

Mr. DIXON. Mr. President, I would like to take a moment to pay respect to a great man who died this week, Judge Norman C. Barry.

I knew Norm for many years, and he was an outstanding public servant, athlete, coach, and friend. I, as do so many others, share in his family's loss.

Norm played football at the University of Notre Dame right alongside "the Gipper." He went on to play professional ball with the then Chicago Cardinals, and later with the Green Bay Packers.

His football career did not stop there. Norm moved into coaching, where he continued to excel. In fact, in 1925, Coach Barry led the Chicago Cardinals to the National Football League Championship and was named the NFL "Coach of the Year." Norm was a lover of sports—at all levels—and that same year he coached the de LaSalle High School to the Chicago City Football Championship.

Norm Barry eventually moved from the football arena to the legal and public service arena. After practicing law for several years, he was elected to the Illinois State Senate.

I am proud to say, Mr. President, that I had the distinct pleasure of serving with this fellow Democrat in the Illinois General Assembly before he was elected to serve as a circuit judge in Cook County.

The dedication and hard work that Judge Barry gave to everything he did was recognized by his family and peers.

Norm's daughter, Margaret Mary O'Neill, is a close family friend and I know firsthand the respect and love she felt for her father. His son, Jack Barry, also greatly admired his father and funded the dedication of the "Norman Barry Courtroom" at Notre Dame's Law School just last month.

Norm was a member of the Chicago Sports Hall of Fame and the Chicago Catholic League Hall of Fame. In addition, earlier this year Judge Norman Barry received the distinguished American award from the National Football Foundation.

Mr. President, Norman Barry—husband, father, grandfather, judge, lawyer, coach, athlete—will, indeed, be missed by his family and many friends in Illinois and around the country.

TRIBUTE TO SENATOR WILLIAM PROXMIRE

Mr. NUNN. Mr. President, the Senate is about to lose a unique and valued Member, Senator WILLIAM PROXMIRE, who is known to all Americans for his unswervable commitment and creativity in advocating causes to which he is dedicated, and for his iron personal integrity.

Armed with degrees from both Harvard and Yale, he went to Wisconsin to take up a career as a newspaperman, but within a year he had been elected to the State legislature. Not that everything came easily to WILLIAM PROXMIRE—he suffered three political defeats before becoming the first Democrat to win a Senate seat from Wisconsin in 25 years.

In that race, the soon-to-be Senator PROXMIRE urged all those who have ever lost in business, love, sports, or politics to vote for him, and those lucky voters who have never lost anything to back his opponent. He never lost again.

This body has known many who vigorously proclaimed their belief in fiscal conservatism, but few who practiced it as assiduously both with the public purse and in their own political campaigns and conduct as a Senator. He has returned over $1 million to the Treasury since 1977 by cutting his personal and committee staffs.

WILLIAM PROXMIRE's campaigning style was typified by his 1976 race, when he spent $697—to pay for gas to drive around the State. That was impressive, but I believe his $145 campaign chest in 1982 may have been a modern record.

Certainly the fact that he has not missed a rollcall vote since 1966—nearly 10,000 votes in a row—is.

Like his famous "Golden Fleece" awards to highlight what he declares the "biggest, most ridiculous or most ironic waste of the taxpayer's money," these records hint at the concerns and the character of the man. So does his habit of running 5 miles to work every morning.

But the true measure of his tenacity, self-discipline, independence, and dedication to duty as he saw it was demonstrated clearly as WILLIAM PROXMIRE rose at the beginning of every Senate session for nearly 20 years to urge the ratification of the International Genocide Treaty. That long and lonely battle lasted for more than 3,000 speeches before the Senate approved the treaty in 1986.

This bulldog of the public purse and defender of the duty of every Member of Congress to be independent and speak up for his convictions never hesitated to take on power, whether Presidents of his own or the other party, or his own party's most powerful majority leader in modern times. If he did not invent the one-man filibuster, he certainly perfected the art, and applied it whenever his convictions ran contrary to the will of the majority—which was fairly often.

WILLIAM PROXMIRE understood how to get attention for his views, but he also had the courage to pay whatever price was necessary for his independence when he spoke out against the crowd. Just as he abided by his belief in strict economy in his personal Senate business, he had the strength of character to vote against proposals he personally liked when he felt the Nation could not afford them.

Through one partial term and six full terms in the Senate, however, WILLIAM PROXMIRE never forgot the needs and interests of the people of Wisconsin—and rarely failed to get back to be with them on a weekend over the past 31 years.

For all his lonely fights, he skillfully managed to gain a quick and overwhelming majority for his banking and housing bills in this Congress.

I have never had the privilege of serving with Senator PROXMIRE on a committee, but I have observed his efforts on a wide variety of subjects over the years, and admired his courage and dedication, even when I could not always agree with his causes.

Senator PROXMIRE heard a different drummer, and kept in step with its beat. He is an uncommon man, an uncommon Senator, and this body will not see his like soon again.

TRIBUTE TO SENATOR JOHN STENNIS

Mr. NUNN. Mr. President, it has been said that great men are like eagles. They do not flock. You find them one at a time, soaring alone, using their skill and strength to reach new heights and seek new horizons.

Such a man is JOHN STENNIS. His courage was bred of character. He is a man gentle and courteous in conduct, but tough and strong in conviction. He is a man of singular purpose and broad vision, yet sensitive and understanding of the needs of others—fitting attributes for a wise and valued counsellor of eight Presidents.

Senator STENNIS has often said that Senator Richard Russell was his hero. As was said of Russell, JOHN STENNIS is "a gentleman who made no enemies, only adversaries—and they were counted among his friends."

Thomas Jefferson warned that eternal vigilance is the price of liberty. JOHN STENNIS took that vigilance to be part of his job description as a Senator. As a young Senator, he listened to George Marshall explain the NATO alliance and one of his first votes was to put that key element of our national security in place. JOHN STENNIS was schooled in the bipartisan defense and foreign policy of that postwar era, but he was called to be a major architect of our national security policy in a far more divisive era.

He warned President Eisenhower against sending American troops to Vietnam, but once American forces were engaged, he supported an unrestricted effort to win a quick and decisive victory. Throughout those difficult years, he never lost a major floor fight on defense. That record was testimony to his mastery of complex issues, his prodigious energy and long hours on the floor, but even more to his legislative skills in carving out a middle ground and crafting a compromise that would result in accord.

Senator STENNIS always stood for strong national security, but his Presbyterian conscience taught him that "waste is sin." Throughout his years as chairman of the Armed Services Committee and of the Appropriations Committee, JOHN STENNIS sought to prevent that kind of sin.

For the last 40 years, JOHN STENNIS has personified the highest ideals of honor and integrity within the U.S. Senate. Those of us who serve with him treasure: his steadfast leadership; his fearless courage; his kindness toward others; his unselfish devotion to public service; and his unshakeable faith in God and in government of, by and for the people.

Long ago, Senator STENNIS said of another Senator who had performed his duties well under great pressure:

> He had the moral fiber, the legal training, and the sense of devotion to duty * * * more than that, he had a great spiritual reservoir that came to his rescue and served as a solid, strong foundation for him all the way through.

That statement would apply even more to JOHN STENNIS himself. He has plowed his furrow straight—across six decades of public life—unswerving despite physical pain and even the loss of Miss Coy, who sustained him and strengthened him through 54 years of marriage.

JOHN STENNIS' career in the Senate, and particularly his leadership of the Armed Services Committee, were an inspiration to me in my original decision to run for the Senate. From my first days in the Senate, he has been a patient mentor, a strong and valuable ally, and a cherished friend. As chairman of the Armed Services Committee, he set a standard that all of his successors strive to match. No higher honor has come my way than serving in the Senate with this soaring eagle.

When JOHN STENNIS returned to the Senate after recovering from a gunshot wound, Scoop Jackson said, "The Senate is whole again."

We have been privileged to serve while JOHN STENNIS was here and the Senate was whole. It is hard to imagine the U.S. Senate next January without JOHN STENNIS at his desk. The Senate—and the Nation—will miss him, but his legacy of integrity, of devoted service to the Senate and to the country he loved, will inspire generations to come.

SENATOR LAWTON CHILES

Mr. REID. Mr. President, one of the pleasures of working in this body, is the opportunity it affords one to work with some of the great leaders of today. I believe there are modern day heroes right here in the Senate, and I would like to spend just a moment today to pay tribute to one of those heroes. Senator LAWTON CHILES is a role model to all of us. Since his election to the Senate in 1970, LAWTON has established himself as one of the Nation's most able legislators. We will feel a great loss when Senator CHILES leaves this body at the end of this session. We have all sought his counsel, and we have all admired his dedication to public service. As chariman of the Budget Committee, Senator CHILES has faced the herculean task of dealing with our Nation's budget deficit. He has taken on this thankless job with characteristic enthusiasm. LAWTON is a patient man who knows when to compromise and accommodate. But he also knows when to lay down the law. LAWTON has forced us all to make tough choices, and we have learned that it is wise to take his advise.

Mr. President, the people of Florida have reason to be proud of LAWTON CHILES. I am honored to have known him, and we in the Senate are all enriched for having served with him.

FAREWELL TO BILL PROXMIRE

Mr. WEICKER. Mr. President, I cannot let this Congress come to a close without saying a word of farewell to BILL PROXMIRE, who is retiring after 30 years in the Senate. Thirty years is a long time, long enough to say with authority that "the more things change the more they stay the same." BILL was trying to keep a lid on appropriations in the sixties when Congress thought it could lift people out of poverty simply by throwing money at a grab-bag of programs. And he has been minding the till in the eighties, when it has been argued that we can buy national security by throwing money at defense.

Through it all, BILL PROXMIRE has been a voice of reason. Money alone, he has argued, does not buy good government. Only sustained and thoughtful commitment does that. And he has never forgotten that the dollars being thrown around come from hard-working taxpayers.

BILL combined acerbic wit and good investigations reporting to come up with his famous "Golden Fleece" award. Over the years, the recipients have ranged all across the Federal budget. Knowing BILL PROXMIRE was there may well have kept many a government official—not to mention Members of Congress—honest.

On the Appropriations Committee, Bill and I have not always seen eye-to-eye. From time-to-time I have taken issue with his penny-pinching, when I earnestly believed that the program in question was one that worked. But more often than not, we have been allies—in the fight for substance over show, for problem-solving ideology. He has been a leader in that respect, and a long-distance runner in more ways than one.

This body has benefited from Bill Proxmire's constant attention to the arms control issue, whether it was in fashion or out. Just today he was calling on Congress and the President, not to set back on their INF Treaty laurels and get on with the rest of the disarmament agency, including conventional weapons.

And while we often hear it said that we must "never forget" the Holocaust, it was Bill who came to the floor day-in, day-out, week-in, week-out, year-in, year-out to push the point home. He gave a total of 3,000 speeches on behalf of U.S. ratification of the International Convention on the Prevention and Punishment of Genocide. In 1986, they paid off. The treaty was ratified after an unconscionable delay of almost 40 years.

Mr. HARKIN. Mr. President, I rise today on behalf of the Iowa Delegation and particularly Congressmen Neal Smith. Jim Leach, Fred Grandy, and Senator Charles Grassley, to pay tribute to the enormous contribution Henry A. Wallace has made to American agriculture and to bring to the Senate's attention several activities commemorating the 100th anniversary of his birth in recognition of his remarkable public service to the Nation.

Henry A. Wallace is the best known member of an Iowa family which has been recognized as the first family of American agriculture. Wallace's grandfather, known as Uncle Henry was a leading rural advocate. Wallace's father, Henry C. Wallace, served as Secretary of Agriculture under Presidents Harding and Coolidge.

Henry A. Wallace edited the family's successful magazine, Wallace's Farmer and founded Pioneer Seed Corn Co. He was responsible for developing and promoting hybrid seed corn which revolutionized food production worldwide. In 1933 he was appointed Secretary of Agriculture by President Franklin D. Roosevelt and served 8 years in that capacity before being elected Vice President of the United States with President Roosevelt during World War II. He later also served as Secretary of Commerce. Wallace was a man of extraordinary diverse talent and vision.

Last month, Congress proposed that the USDA establish an honor role of American scientists who have advanced the human race through agricultural research. USDA was directed to place Henry A. Wallace's name at the head of that list in acknowledgement of his work with hybrid corn.

The mayor of Des Moines and the Governor of Iowa designated Thursday, October 7, the date of his birth in 1988, as Henry A. Wallace Day in tribute to his service to the State and Nation. On that day, a special program was held in Des Moines. As part of the celebration, friends, colleagues, and relatives gathered to reflect on Wallace's achievements. The program included remarks by one of our most distinguished former colleagues, Senator John C. Culver of Iowa, as well as a special viewing of a new film documentary, produced by Hodding Carter entitled "Henry A. Wallace: Uncommon Champion of the Common Man." Senator Culver is also currently writing a biography of Wallace in collaboration with John Hyde, a reporter for the Des Moines Register.

Mr. President, I ask unanimous consent that the following materials and articles highlighting the career of Henry A. Wallace on the occasion of his centennial year, be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From the conference report on fiscal year 1989 Agriculture appropriations, House Report 100-990]

DEVELOP A BELTSVILLE HONOR ROLE

Develop a Beltsville Honor Roll. The conferees agree it would be well for the Beltsville Agricultural Research Center to establish and display an honor roll of those American scientists who have contributed so much to the human race through their research efforts on food and fiber plants such as corn, wheat, cotton and others.

On such a list, the name of Henry A. Wallace ranks high.

Henry Wallace will be long remembered as a great scientist for his contribution to the people of the world in his development and promotion of hybrid corn—which he made available to the world. This act will rank along with the greatest achievements of history. His works bring to mind what was best set forth by Jonathan Swift:

"And he gave it as his opinion that whoever could make two ears of corn or two blades of grass to grow upon a spot of ground where only one grew before, would deserve better of mankind and do more essential service to his country than the whole race of politicians put together."

And by John L. Blake who felt much the same as Swift on this scare:

"It is not known where he who invented the plough was born or where he died, yet he has affected more the happiness of the world than the whole race of heroes and conquerors who have drenched it with tears and manured it with blood."

This year, which marks the 100th anniversary of the birth of Henry A. Wallace of Iowa, would be a fitting time to begin such an honor roll by honoring this great researcher and promoter of use of his discovery.

REMARKS BY JOHN C. CULVER ON HENRY A. WALLACE

It is indeed a privilege for me to be here this evening to remember and honor Henry A. Wallace.

I wish to confess at the outset, however, that I'm a bit envious of many people here tonight. You knew Henry Wallace—as a father, a grandfather, a brother, an uncle, a business associate, or a political leader. I did not.

Winston Churchill was once asked what he would do differently if he had his life to do over. He replied: "I would have played the red instead of the black at Monte Carlo." My answer to the same question would be: "I would like to have known Henry Wallace."

My own consuming interest in Henry Wallace began literally at the time of his death in November 1965. As a young, first-term member of the Iowa congressional delegation, I was asked to comment on the passing of this unique man who played such an extraordinary role in the history of our state and nation. I found myself reviewing and thinking about the meaning of his career as a public servant—his uncommon courage, his remarkable vision and idealism, and the price he paid for his unyielding devotion to principle above political expediency.

I began to reflect on the price we as citizens of a democracy pay for refusing to respect and listen to the sound of a different drummer.

In the short run, it might be argued that Henry Wallace's faith in democracy was not well served. As we know, he was dropped from the ticket in 1944, and he was crushed in his own bid for the presidency in 1948. Even today, four decades after his retirement from public life, he remains in some quarters a figure of controversy.

One is reminded of Plutarch, who said, "If all the world were just, there would be no need of valor."

In the long run, however, Henry Wallace has been amply vindicated. His belief that the United States and the Soviet Union could—indeed, must—coexist peacefully finds expression today in the walk President Reagan and General Secretary Gorbachev took together across Red Square.

His commitment to the essentiality of international cooperation and the valuable role of the U.N. is dramatically affirmed today in a half-dozen world trouble spots and was acknowledged last week by the Nobel Prize committee.

Henry Wallace's belief in the possibility of "60 million jobs" was more than realized in the booming economy of the post-war era. His call for a "century of the common man" has been answered in dozens of ways around the globe—from civil rights to equal rights to human rights.

In less happy ways, too, Henry Wallace's vision has come true. He warned that continued tension with the Soviet Union would lead to a spiral of irrationality that would cost mankind dearly in lives, dollars, and danger. And we have paid that price: billions spend on weapons rather than on eradicating poverty, ignorance, hunger and disease in cooperative undertakings.

He foresaw a world of continual strife unless the United States, as the most powerful nation on earth, were prepared to curb its impulses and let others realize their own national ambitions. We have on the National Mall in Washington tragic confirmation that Henry Wallace was right—a monument to the 57,000 men and women who died in Vietnam.

He believed the prospect of stability and democracy in Latin America and other developing areas rested not on military might but a decent standard of living. And he was right.

He predicted our nation's confrontational stance towards the Soviet Union would lead to anti-communist hysteria and the retrenchment of civil liberties at home. In this, too, Henry Wallace was right.

Henry Wallace's prescience, I believe, did not come entirely from intelligence—although he was clearly an uncommonly gifted man.

Rather, his vision had its roots in the fundamental values he learned as a child in Iowa, in his appreciation and love of nature, in his family's dedication to the brotherhood of man, in his deep religious convictions.

Those were the keys to his understanding of the world and the reason he was so often right. They had given him a fundamental, perhaps mystical, insight into the purpose of life on earth.

In the concluding moments of the long oral history Henry Wallace gave to Columbia University in 1951, he talked about that insight.

He said: "From one point of view I am a mystic, because I believe that life is enormously worthwhile, and that it has purpose no matter what the current troubles may be an no matter how strongly evil may seem to be entrenched as a result of the rule of ignorant man. Everyone who seriously asks the question, 'What is the chief end of man?' must be a mystic.

"The real question is, 'Can your dreams for the welfare of man be brought into action here on earth?' Many of the dreams of the prophets are still to be realized. But they are nevertheless powerful. Many of my dreams have been made action, and some of them cannot be realized until mankind passes through many troubles."

But in the end, Wallace believed, good would prevail if man accepts the challenge before him.

Last week, in recognition of his 100th birthday year, the U.S. Congress recognized and honored Henry Wallace's invaluable contribution to agriculture. Because of his work, they proposed the establishment of an honor roll at the Beltsville U.S. Department of Agriculture Research Center near Washington, D.C., to be made up of those American scientists who have contributed so much to the human race through their research efforts on food and fiber plants, such as corn, wheat, cotton and others.

On such a list, the name of Henry A. Wallace would be first

"Henry Wallace," Congress noted, "will be long remembered as a great scientist for his contribution to the people of the world in his development and promotion of hybrid corn, which he made available to the world. This act," they said, "will rank along with the greatest achievements of history. His works bring to mind what was best set forth by Jonathan Swift:

"'And he gave it as his opinion that whoever could make two ears of corn or two blades of grass to grow upon a spot of ground where only one grew before, would deserve better of mankind and do more essential service to his country than the whole race of politicians put together.'"

(I believe that Henry Wallace would have particularly liked this association, because he respected the strength, value and, indeed, the company of grass far more than he did that of most politicians.)

And by John L. Blake, the Congress quoted, who felt much the same as Swift on this score:

"'It is not known where he who invented the plough was born or where he died, yet he has affected more the happiness of the world than the whole race of heroes and conquerors who have drenched it with tears and manured it with blood.'"

One such person for whom Henry Wallace clearly affected more happiness was a man in Costa Rica who wrote on September 3 his Iowa friend Mr. Raymond Baker, who had introduced him to Henry Wallace, the following note:

"I read in an American encyclopedia that Mr. Henry A. Wallace was born on October 7, 1888 near Orient, Iowa and died on November 18, 1965 (buried at Des Moines). He was a great man from many different points of view. . . . I wrote to him several times, especially after he retired from public life and [he] always wrote me back a short, kind note. I wish to be present, at least in spirit, at his centennial birthday, that is, next October 7. Please have some flowers sent to his grave in my behalf; enclosing a small check with this purpose."

He sent $50.

Henry Wallace once said that "the highest joy in life is complete dedication to something outside ourselves." This occasion tonight affords all of us not only the opportunity to honor this exceptional American, but also to be challenged anew by his inspiring life and his legacy of service.

The Centennial of Henry A. Wallace, October 7, 1988

A MORE ABUNDANT LIFE

What's looks to a hog?—Wallaces' Farmer (1907)

Every living thing, whether it be plant, animal, or human being, has an individuality of its own. Some are pleasing, some repulsive, but all are intereting to whosoever tries to understand them. For fifteen years I have tried to understand corn plants until now the individuality of corn plants is almost as interesting to me as the personality of animals or human beings.—Wallaces' Farmer (1921)

I have always had a great affection for grass. It seems to stand for quietness and strength.—Radio Remarks (1940)

Some have spoken of the 'American Century.' I say that the century on which we are entering—the century which will come out of this war—can and must be the century of the common man. Everywhere the common man must learn to increase his productivity so that he and his children can eventually pay to the world community all that they have received. No nation will have the God-given right to exploit other nations. Older nations will have the privilege to help younger nations get started on the path to industrialization, but there must be neither military nor economic imperialism.—The Price of Free World Victory (1942)

Hatred breeds hatred. The doctrine of racial superiority produces a desire to get even on the part of its victim. If we are to work for peace in the rest of the world, we here in the United States must eliminate racism from our unions, our business organizations, our educational institutions, and our employment practices. Merit alone must be the measure of man.—The Way to Peace (1946)

My fundamental faith is that when the bulk of mankind looks over the atomic abyss and confronts suicide face to face, we shall finally pull back and reach for the firm ground of international righteousness. There is nothing that will save us but belief in the unity of all mankind.—Toward World Peace (1948)

If I were to draw conclusions from my life so far, I would say that the purpose of existence here on earth is to improve the quality and increase the abundance of joyous living. Jesus took on himself the highest of all missions when he said that he came to give a more abundant life to humanity.—Oral History (1951)

PROGRAM

Master of Ceremonies: William G. Murray.

Tributes: The Honorable John Pat Dorrian, Mayor of Des Moines. The Honorable Terry Branstad, Governor of Iowa.

Recollections: William L. Brown, Chairman and President (ret.), Pioneer Hi-Bred International, Inc.; Simon Casady, Chairman (ret.), First Interstate Bank of Iowa; Carl Hamilton, Vice President Emeritus, Iowa State University of Science & Technology; Lauren Soth, Columnist, Des Moines Register; Wayne Rasmussen, Historian, U.S. Department of Agriculture; Arthur Thompson, Editor 1955-1957, Wallaces' Farmer; Richard Kirkendall, Bullitt Professor of American History, University of Washington; Neil Harl, Professor of Economics; Charles F. Curtiss, Distinguished Professor of Agriculture, Iowa State University of Science & Technology; Kevin Ebler, Recipient, Henry A. Wallace Endowed Scholarship.

The Honorable John Culver, Remarks on the Life of Henry A. Wallace

Premiere of Henry Agard Wallace: Uncommon Champion of the Common Man.

CLOSING

Jean Wallace Douglas.

The Henry A. Wallace Centennial Project

Jean Wallace Douglas, Henry Browne Wallace, Robert Browne Wallace.

The Honorable Neal Smith, U.S. Representative (D-IA).

The Honorable James Leach, U.S. Representative (R-IA).

Marlin C. (Mike) Augustine.

John M. Blum, Sterling Professor of History, Yale University.

William L. Brown, Chairman and President (ret.), Pioneer Hi-Bred International, Inc.

Norman E. Borlaug, Nobel Laureate.

Simon Casady, Chairman (ret.), First Interstate Bank of Iowa.

The Honorable John Culver, Arent, Fox, Kintner, Plotkin & Kahn.

Neil E. Harl, Professor of Economics, Iowa State University of Science & Technology.

John B. Henry, President, Crop Genetics International.

William G. Murray, Living History Farms.

Lauren Soth, Columnist, Des Moines Register.

Thomas N. Urban, Chairman and President, Pioneer Hi-Bred International, Inc.

Jacqueline J. Blumenthal, Director, Washington, DC.

[From the Des Moines Register, Oct. 7, 1988]

THE POLITICAL ANNIHILATION OF HENRY WALLACE

(By John Culver and John Hyde)

"We in the United States," Thomas Jefferson wrote to a French friend in 1816, "are constitutionally and conscientiously democrats."

One wonders what Jefferson would think of his democracy now, with its elections dominated by pollsters and media consultants, its dialogue conducted in 30-second sound bites and elaborately planned "visuals."

One candidate surrounds himself with flags and vows eternal fealty to the Pledge of Allegiance. Another dons combat gear and waves to the television cameras as he roars by in a tank.

Voters claim to dislike the manipulation, the equivocation, the negativity of these campaigns. They dream of a candidate free from guile, a man of principle who respects them enough to speak the truth regardless of political consequences.

But when such a man appears in the flesh, a man willing to challenge the conventional wisdom of his day, voters have a habit of looking the other way. Perhaps Americans are not always as conscientious as Jefferson hoped.

The political annihilation of Henry Agard Wallace, an American idealist and visionary, stands as a case in point.

Henry Wallace, born 100 years ago today on an Adair County farm, was the third generation of a distinguished Iowa family that preached and lived the "social gospel" of service to their fellow man.

They were unquestionably the first family of American agriculture. Wallace's grandfather, known to all as "Uncle Henry," was a journalist and widely respected rural voice. Wallace's father, Henry Cantwell Wallace, was a teacher and writer who became secretary of agriculture in the Harding and Coolidge cabinets.

The Wallaces were progressively Republicans, but they viewed the political arena with suspicion. They believed politics should be a tool for the betterment of mankind, never a means of personal aggrandizement.

"The highest joy of life," Henry A. Wallace once remarked, "is complete dedication to something outside yourself."

Eventually this ideal drew Wallace away from the fields of science, journalism, agriculture, and statistics, where he excelled, and into politics. In 1928, Wallace broke with the Republicans over farm and trade policies and in 1933 became a charter member of Franklin D. Roosevelt's cabinet.

Reticent, abstemious, cerebral, Wallace was uncomfortable in the back-slapping world of professional politicians.

Nevertheless, the skill and idealism Wallace displayed in a series of high government positions—secretary of agriculture from 1933 to 1941, vice president from 1941 to 1945, secretary of commerce from 1945 to September 1946—gained him a wide following among farmers, laborers, blacks and intellectuals.

WALLACE HAD ENEMIES WITHIN THE PARTY

His constant enemies within the Democratic Party, the Southern mossbacks and big-city bosses, saw Wallace for exactly what he was: A man prepared to put principle over party.

In 1944 his foes began maneuvering to take Wallace off the ticket. With some back-handed assistance from Roosevelt, whose position seemed ambiguous, they narrowly succeeded in replacing Wallace with a machine-bred pol named Harry Truman who could be trusted to uphold the interests of the party.

Three months after taking the oath of office for the fourth time, Roosevelt died.

The progressive values Wallace personified soon were under attack on all fronts. At home there was retrenchment of the New Deal's social policies and programs.

Abroad, Wallace feared the administration's "bipartisan foreign policy" was plunging the country into a deadly struggle with the Soviet Union.

Wallace viewed the cold war as costly, dangerous and avoidable. And he said so, repeatedly and with increasing fervor.

"We should close our ears to those among us who would have us believe that Russian communism and our free enterprise system cannot live, one with another, in profitable and productive peace," he said in a speech at Madison Square Garden on Sept. 12, 1946.

One week later, Truman fired Wallace from the cabinet.

Wallace vowed to fight on. "Winning the peace is more important than high public office," he said the night he was fired. "It is more important than any consideration of party politics. The success or failure of our foreign policy will mean the difference between life and death for our children and grandchildren. It will mean the difference between the life and death of our civilization."

The stage was set for Wallace's disastrous bid for the presidency in 1948.

Running as the candidate of the newly formed Progressive Party—a collection of old leftists, young idealists, radical farmers, disenchanted blacks and elements of organized labor—Wallace boldly set out to offer Americans a clear alternative to what he saw as the reactionary policies offered by Democrats and Republicans.

His post-war goal was a "century of the common man," an era of peace and abundance for the people of all nations.

It was, he believed, an aspiration truer to America's heritage (and its real national-security interests) than Henry Luce's call for an "American century," a renewed version of manifest destiny backed with the power of atomic weapons.

The key to the century of the common man was in the relationship between the superpowers, Wallace asserted. The United States and the Soviet Union could and should find ways of co-existing peacefully, he said.

"There is no misunderstanding or difficulty between the U.S.A. and U.S.S.R. which can be settled by fear or force," he said, "and there is no difference which cannot be settled by peaceful, hopeful negotiation."

He prophetically warned Americans where the nation's existing policies, left unchecked, would lead: to a divided Europe, a costly and permanent U.S. arms industry, colonial war abroad and anti-communist hysteria at home.

He argued that the United States should provide foreign assistance through the United Nations without political conditions, curb its imperialistic impulses in Latin America, support the fledgling nation of Israel, be realistic about the revolutionary changes sweeping China and seek an international agreement to destroy stockpiles of atomic bombs.

Domestically, Wallace proposed a remarkable progressive agenda, which has proved over time to include virtually all of the public policy questions that have concerned America from the end of World War II to the present day.

Wallace called for desegration of the schools and an end to Jim Crow laws in the South.

He demanded open housing laws, a national health insurance program, the minimum wage for farm workers, universal Social Security coverage. He urged equal pay for equal work, passage of an Equal Rights Amendment, child care for working mothers and maternity leave protection.

He argued for free trade, immigration reform, an end to loyalty oaths, the direct election of presidents, voting age of 18, indemnity for Japanese-Americans, new soil-conservation programs, full taxation of capital gains, nationalization of large banks and parts of the defense industry, creation of a federal department of education and admission of Alaska and Hawaii to the union.

Wallace not only offered bold programs, he did so with uncommon courage. More than once he was pelted with tomatoes and rotten eggs. Angry mobs surrounded his car and threatened him with violence.

FBI agents harassed people attending his rallies by ominously taking their pictures. Authorities, even in his native state, denied Wallace permission to speak on campuses.

He defied the political realities of his day, which he felt were in violation of fundamental American principles. He would not campaign before segregated audiences or sleep in segregated hotels.

And he refused, in the midst of a red-baiting climate of fear and intimidation, to renounce the support of communists or ban their participation in his campaign.

Wallace was certainly no Marxist. He was a deeply religious man and a successful capitalist who built from scratch one of the world's largest agribusinesses.

He was, in fact, the very opposite of a communist—a small-d democrat who didn't see why someone who held unpopular beliefs should be denied the right to speak or participate in public life.

"If you accept the idea that communists have no right to express their opinions, then you don't believe in democracy," Wallace remarked. ". . . I do believe in democracy."

His unyielding devotion to the Bill of Rights cost Wallace dearly. He received just over 1.1 million votes, slightly less than the number won by avowed segregationist Strom Thurmond, candidate of the State's Rights Party.

In Iowa, Wallace received a mere 12,125 votes.

Wallace returned to his farm (called, ironically enough, Farvue) in Westchester County, New York, and spent his remaining years in a kind of exile producing strawberries, gladiolas and chickens.

In 1951, he split with the Progressive Party over its opposition to the United Nations action in Korea. Thereafter, Wallace claimed no party, had no political allies, made no political appearances.

He became, in defeat, a political pariah, seldom mentioned except in obloquy.

"My grandfather knew better than to get directly into political life," Wallace mused in the oral history he gave to Columbia University in 1951. "He chose the course of educating by writing and speaking. As a result, he was universally beloved. If he had been in politics, he would have been hated by many people.

"Against the background of his time, he preached the same doctrine I have preached, but he resolutely stayed out of politics because he thought it would destroy his usefulness. He was a wise man."

But Wallace offered no apology for the path he took.

"I strove to make certain ideas a reality by using political means, and I am not sorry I did not follow my grandfather's example with regard to politics," he said.

"I did try to apply his ideas in politics with results he would have anticipated. The experience has been worthwhile, and I do not regret anything except the great trouble which is coming to the United States in the troublous years ahead."

Wallace was the quintessential Iowan.

The salient qualities of his character—strength, tolerance, honesty, thriftiness, intelligence—reflect values the world has come to associate with his state.

Certainly if the purpose of man on Earth, as Wallace believed, is "to improve the quality and increase the abundance of joyous living," he must rank among the state's greatest sons.

The genetic experiments he began as a boy in Des Moines led to the first viable commercial use of hybrid corn, a development that dramatically increased yields and revolutionized agriculture worldwide.

The poultry he bred provided genetic stock for what some say are the majority of the chickens in the world today. The business he founded in 1926, Pioneer Hi-Bred International, is the largest seed corn firm in the world.

The landmark book he published in 1920, "Agricultural Prices," was the precursor of modern econometrics, and his 1925 work, "Correlation and Machine Calculation," was a harbinger of computer science. In all he published a dozen books and scores of speeches, pamphlets and articles.

As editor of Wallaces' Farmer, and later of the New Republic magazine, he became one of the nation's most influential journalists.

He was insatably curious, fascinated by all manner of natural and supernatural phenomena. He was a student of the weather, diet, religion, health and languages.

Virtually all historians agree that he was the most innovative and influential agriculture secretary in the nation's history. The farm program he designed and administered, amid a terrible economic crisis, remains the basis for much of federal agricultural policy today.

He was the father of the USDA's programs for soil conservation, rural electrification, weather forecasting and economic statistics. His concept of an "ever-normal granary" gave rise to today's farmer-held grain reserves.

The international experiment stations he helped to establish resulted in the great "green revolution," which has improved the diet and life expectancy of millions of people in developing nations.

He was the first vice president to be given serious responsibilities. He headed the Bureau of Economic Warfare, charged with securing essential war materials, and secretly served as FDR's liaison to scientists developing the atom bomb.

And, then, 1948.

The Progressive campaign caused history to forget everything it knew about Wallace. He was stigmatized ever after as an "innocent dupe" who was used by communists in furtherance of their own agenda. A "political bubblehead," Clare Booth Luce called him.

1948 CAMPAIGN PUZZLED HIS FRIENDS

The 1948 campaign was an episode that puzzled Wallace's friends and admirers in Iowa, discomforted even members of his own family. Many who knew him thought it was an aberration, a temporary embarrassment in an otherwise extraordinary career.

The Progressive campaign was indeed an ill-starred affair, often amateurish and sometimes excessive. But viewed in the context of Wallace's life and thought, it does not seem either an aberration or an embarrassment.

It was an expression of all he stood for: peace, abundance, justice, democracy.

One need only contemplate the general vacuousness of modern campaigns to understand what an honorable moment Wallace's campaign was.

For, in Jefferson's democratic ideal, it is the dissenter, even the prophet scorned, who may well be the true patriot.

[From the Washington Post, Oct. 9, 1988]

The Cursed Prophet of 1948—Henry Wallace's Vision and Principles Earned Him Only Scorn

(By John C. Culver and John Hyde)

The 1988 presidential campaign, everyone agrees, has been a dismal exercise in democracy so far. The candidates, under full control of their pollsters and media advisers, offer little substance and still less challenge. Where, the nation asks, is the man of vision? Where is the leader willing to risk all for his principles?

He's buried in Des Moines, that's where.

Henry A. Wallace, a genuine American visionary and idealist born on an Iowa farm 100 years ago last Friday, was just such a politician. Wallace sacrificed his political career for his principles in the presidential campaign 40 years ago.

For this he was annihilated at the polls and dispatched to his farm (named, appropriately, Farvue) in Westchester County, N.Y., where he spent his remaining years producing strawberries, gladioli and chickens.

Wallace committed two great political sins. First, he put principle over party. Democrats who tolerated, even cherished, Wallace's forthright liberalism when he was Franklin Roosevelt's secretary of agriculture and vice president rejected the positions Wallace advanced as the Progressive Party candidate for president in 1948.

Wallace's views had not changed; the Democratic Party had. By 1948, the Truman administration was retreating from the New Deal at home and plunged headlong into a cold war with the Soviet Union that Wallace thought expensive, dangerous and avoidable. So he left the Democrats, founded his own party and became its candidate.

It was neither the first time nor the last that Wallace put principle over party loyalty. The son and grandson of prominent Teddy Roosevelt Bull Moosers, Wallace grew up in Iowa as a Republican but split with the GOP in 1988 over trade and farm policies. And in 1950, he would leave his new Progressive Party because it repudiated his support of the United Nations "police action" in Korea—an endorsement in keeping with his belief in international law and institutions.

Wallace ended up with his principles intact but with no party or political allies to call his own. Until his death in 1965, he was a pariah, the object of almost universal scorn.

Second, Wallace flatly refused to offer the usual rhetorical curtsies to nationalism—the America-first, don't-tread-on-me, my-country-right-or-wrong blandishments—expected of those who seek high office in the United States. The quintessential democrat, he had revulsion for the efforts of professional politicans to win election through munipulation and equivocation.

Wallace simply told voters the truth as he saw it. His goal was a "century of the common man," which Wallace believed was an aspiration more faithful to the nation's true heritage than publisher Henry Luce's alternative call for an "American century."

Wallace said the United States and Soviet Union must coexist peacefully. "There is no misunderstanding or difficulty between the U.S.A. and U.S.S.R. which can be settled by force or fear and there is no difference which cannot be settled by peaceful negotiation," he stated.

International law was the only remedy for nationalist wars, Wallace maintained. He said the U.S. should curb its imperialist impulses in Latin America, support Israel, recognize the reality of revolutionary changes in China, seek an international agreement to destroy stockpiles of atomic bombs.

He prophetically warned that America's bipartisan postwar foreign policy, if left unchecked, would lead to a divided Europe, a costly and powerful arms industry in the United States, colonial wars abroad and retrenchment of civil liberties at home.

Domestically, Wallace was for reform of just about everything. He called for desegration of public schools and an end to discriminatory Jim Crow laws and championed open housing, national health insurance, equal rights for women, day-care centers, the minimum wage for farm workers, free trade, immigration reform, an end to loyalty oaths, the direct election of presidents, indemnity for Japanese-Americans, collective bargaining for federal employees, new soil-conservation programs, the vote for 18-year-olds, full taxation of capital gains, creation of a federal department of education and the admission of Alaska and Hawaii to the Union.

Wallace declined to make even symbolic concessions to the political demands of his time. He would not campaign before segregated audiences or sleep in segregated hotels. He refused, despite a red-baiting climate of fear and intimidation, to ban communists from participating in the Progressive campaign.

Wallace, deeply religious and a highly successful agricultural businessman, was certainly no Marxist. Nor was he naive about the political cost of communist involvement in his campaign. He saw it as a matter of principle, and on that he would not compromise.

"If you accept the idea that communists have no right to express their opinions, then you don't believe in democracy," Wallace remarked. ". . . I do believe in democracy."

Wallace's display of uncommon candor and courage was rewarded at the polls with about 1.1 million votes, a fraction of Truman's 24 million and Thomas E. Dewey's 22 million and even slightly less than the number won by Strom Thurmond, the avowed segregationist running on the States' Rights ticket. It was not a happy object lesson for the politician contemplating an act of bravery.

City of Des Moines Proclamation

Whereas, Henry A. Wallace was an eloquent spokesman for the common man, for the cause of international peace and justice, and for the right of men and women everywhere to live in health and decency; and,

Whereas, Henry A. Wallace was a model public servant, who unflinchingly placed principle over his own popularity or partisan concerns; and,

Whereas, Henry A. Wallace was a gifted scientist, writer, farmer, and businessman, who used his formidable skills to enrich the life of his fellow man; and

Whereas, Henry A. Wallace was born October 7, 1888, attended public schools and conducted corn-breeding experiments as a young man in Des Moines, remained a lifelong friend of the City and its residents, and is buried in Des Moines.

Now, therefore, I, John P. Dorrian, Mayor of the City of Des Moines, Iowa, declare October 7, 1988, to be: "Henry A. Wallace Centennial Day" in the city of Des Moines, Iowa.

State of Iowa Proclamation

Whereas, October 7, 1988 is the one hundredth anniversary of Henry Agard Wallace's birth on a farm in Adair County, Iowa; and

Whereas, Henry A. Wallace, a recipient of the Iowa Award—the highest honor this state can bestow, contributed greatly to the agricultural abundance enjoyed by the world today, as a geneticist and plant breeder, as a statistician and economist, as editor of Wallace's Farmer, as founder of Pioneer Hi-Bred International, as a public official and as a lifelong advocate and friend of the family farmer; and

Whereas, Henry A. Wallace was an innovative and dedicated public servant, as Secretary of the U.S. Department of Agriculture from 1933 to 1941, as Vice President of the United States from 1941 to 1945, and as Secretary of the Department of Commerce from 1945 to 1946; and

Whereas, Henry A. Wallace was a scientist, author, editor, businessman, statesman and humanitarian who served his state, his nation and the world with distinction:

Now, therefore, I, Terry E. Branstad, Governor of the State of Iowa, do hereby proclaim October 7, 1988, as "Henry A. Wallace Centennial Day" in Iowa.

SENATOR JOHN STENNIS

Mr. KENNEDY. Mr. President, it is a privilege to pay this tribute to our President pro tem and friend, the senior Senator from Mississippi. After 41 years of service in the U.S. Senate, John Stennis is retiring at the end of this session of Congress. Through all those years, he has enjoyed the respect, admiration, and friendship of Senators on both sides of the aisle.

I have had the pleasure of serving with Senator Stennis for the 26 years I have been in the Senate, and for the past 6 years, I have served with him on the Armed Services Committee. For 12 years, he had been the brilliant chairman of that committee, and he has continued to serve the committee well. He is a wise patriot who understands that strength goes hand in hand with restraint, and he has played a landmark role in ensuring the true strength of our national defenses in the past four decades of a changing and dangerous world.

John Stennis is at his best whenever the Senate faces a difficult, demanding, or controversial task. It was John Stennis to whom the Senate turned when the need arose for a Senator of unquestioned ability and integrity to review the sensitive Watergate tapes. It was John Stennis to whom the Senate turned to be the first chairman of the Ethics Committee and draft the first code of ethics for the Senate. And it was John Stennis as chairman of the Appropriations Committee to whom the Senate turned this year to complete all the appropriations bills before the start of the new fiscal year, an achievement that many of us thought was beyond either the realm of possibility or the pressure of the President.

Today, at the age of 87, Senator Stennis continues to symbolize the values and character held in highest respect by the Senate and the American people. He is a man of enormous personal courage and fortitude, as we learned when our indestructible friend survived the criminal assault that nearly took his life on the streets of Washington, and again when he returned to the thick of Senate action after the illness that took his leg.

He is as formidable in debate as he is courteous, and he is a determined advocate for the causes and issues in which he believes. History may well record that he stands with Jefferson Davis as the greatest leaders that the State of Mississippi has ever sent to the Senate. It is fortunate for the Union that those two giants were born in different centuries, or the South might well have won the Civil War. In any event, the people of Mississippi are fortunate indeed to have had John Stennis as their Senator these past 41 years.

Senator Stennis will be missed in this Chamber as a colleague, friend, and leader. We can strive to follow his example, but we can never replace him.

I wish him well in his retirement. And I would add one personal comment. I told my mother the other day that I would be making these remarks in tribute to a great Mississippi Senator who was now retiring. My mother turned 98 this summer, and she said, "Be sure and tell that nice young John Stennis not to worry about retiring—he won't begin to slow down for another 10 years or so."

TRIBUTE TO SENATOR WILLIAM PROXMIRE

Mr. SHELBY. Mr. President, I am pleased to rise with my colleagues in honor of the distinguished Senator from Wisconsin.

There are few Senators that I respect as much as Senator Proxmire. He is a leader and a statesman and I consider it a privilege to have served on the Banking Committee during his tenure. The Senator from Wisconsin enjoys a reputation that is larger than life; to see the man behind that reputation has been quite a treat. I believe he deserves all the respect and admiration that is paid him.

The Senator from Wisconsin is not a politician; he is a public servant. He came to this body to serve the people, to look out for the interests and improve the prospects of the little guy in the cities and towns and communities of Wisconsin. He seeks to ensure that government works for the people, not the special interest groups. Over the past 32 years, long after his seat has been safely assured, he still has not forgotten who sent him to Washington.

The Senator from Wisconsin identifies the issues over which we should be concerned and he addresses them daily on the floor of this body. He does not speak only on his pet issues and he does not appear only when it's convenient or politically expedient but every day, with unfailing energy and sincerity. The distinguished Senator possesses a cutting wisdom that goes straight to the point. His comments will indeed be missed.

The Senator from Wisconsin and I have not been on the same side of every issue. Although we may start out with similar concerns, he and I have chosen to solve the same problem with different solutions. It has not been easy to go against the opinion of the respected chairman. Yet, throughout, the chairman has been courteous and equitable and every inch the leader. I am grateful for that Senator; your courtesy has not gone unappreciated.

I consider myself fortunate to have served under the distinguished Senator from Wisconsin for the last 2 years. The people of Wisconsin have been lucky to have William Proxmire to look out for them here in Washington. This body has been fortunate to count among its Members, for the last 32 years, the Senator from Wisconsin.

Mr. President, the Senator may be leaving this body but I trust we haven't heard the last from him. I wish Senator Proxmire many, many fruitful years ahead.

TRIBUTE TO SENATOR PAUL TRIBLE

Mr. BINGAMAN. Mr. President, I came to the Senate in 1983 with Paul Trible. We were part of a very small class of new Senators that year. And Paul is the first of that class to depart.

During our 6 years together here, I have come to respect Paul's integrity and contributions to the work of this body. One battle we fought together was an amendment to provide medical benefits for former spouses of military service members. That was one of the very few amendments in 1984, which carried despite the opposition of the then chairman of the Armed Services Committee. The tenacity PAUL showed on that issue has been characteristic of his work in the Senate.

PAUL has also tried to be a bridge builder between the two sides of the aisle in the Senate and between the administration and the Congress. I remember Ed Rowny, the President's Special Assistant on Arms Control Matters, coming to see me to discuss the INF and START talks and telling me that PAUL TRIBLE had told him to seek me out. PAUL recognizes the need to search for bipartisan approaches to the critical national security issues facing the Nation. In that spirit he also served ably on the Iran-Contra Investigating Committee and made a real contribution to that effort.

I wish PAUL and his family all the best in whatever the future may hold for them.

We will miss him here.

SENATOR DAN EVANS

Mr. KENNEDY. Mr. President, I want to take this opportunity to pay tribute to our distinguished colleague from the State of Washington, who will be completing a brief but illustrious career in the Senate at the end of this session.

I have been honored to serve with Senator EVANS these past 5 years. Many of us had known and respected him during the many years he had served as Governor of Washington. But we have come to know him far better here among us, and he has won enormous additional respect and affection for his deep commitment to public service and the Nation, and for his equally remarkable capacities for both friendship and leadership.

It would have been a formidable task for any person to fill the Senate seat vacated by Senator Henry M. Jackson. But it seems that more than one giant walks the Earth in the State of Washington, and Senator EVANS has filled Scoop's shoes with a talent that is all the more effective because of the extraordinary grace and understanding with which he exercises it.

Partly, the brilliance of Senator EVANS' career is attributable to the fact that he is a man whose strength of conviction is matched by breadth of compassion and capacity for leadership. When he came to the Senate, he was already renowned as the only Governor of the State of Washington elected to three consecutive terms.

He also came to us with another distinction—the only engineer serving in the Senate. That may well be the reason why he was able to engineer so many bills and amendments so easily through the difficulties of the legislative process. In particular, America's environment is better today because of DAN EVANS' service on the Energy and Natural Resources Committee. And America's foreign policy is better because of DAN EVANS' service on the Foreign Relations Committee.

Throughout his career, Senator EVANS has been respected as a thoughtful and progressive leader. There is perhaps no Senator today who brings less partisanship and more principle to the consideration of the issues. He is a leader in the proud tradition of Abraham Lincoln and Theodore Roosevelt, and he leaves us with an outstanding record of accomplishment for Washington, the Senate, and the Nation.

President Kennedy was especially fond of the words of John Buchan from "Pilgrim's Way"—

> Public service is regarded as the crown of a career, and to young men, it is the worthiest ambition. Politics is still the greatest and most honorable adventure.

When I think of those words, I think of people like DAN EVANS, and I commend him for being the example that he is of the best in public service. I wish him well in the years ahead, and I am confident that the country will continue to benefit from his leadership in the future.

TRIBUTE TO LAWTON CHILES

Mr. LAUTENBERG. Mr. President, I rise to pay tribute to a friend and colleague, Senator LAWTON CHILES, who will retire from the Senate at the close of the 100th Congress.

The senior Senator from Florida has dedicated much of his life to public service. Prior to being elected to the U.S. Senate in 1970, LAWTON CHILES served in both the Florida House of Representatives and the Florida Senate.

I have had the privilege to serve on both the Budget and Appropriations Committees with LAWTON CHILES. As chairman of the Budget Committee, the Senator has had a most difficult job—in the face of a great many competing demands and pressures, to preserve the budget process, to restrain and reduce the Federal budget deficit produced by the misguided policies of the administration, and to set the fiscal policy of the Nation.

The Senator has sought to reduce the deficit, but not in a way that shortchanges investments in education and science. He has spoken powerfully about how essential these investments are to assuring our Nation's economic competitiveness in the future. He has spoken powerfully about how a budget is not simply a way of computing total spending and total revenues; it represents the Nation's priorities.

In his final year in the Senate, he has also made a special effort to highlight to the Congress and to the Nation the rising surpluses in the Social Security trust funds, and to challenge us to reduce the deficit created by the mismatch of current spending and current revenues—a deficit whose true size is hidden when the Social Security surpluses are factored in. Surpluses which are dedicated to future retiree's benefits.

As chairman of the Appropriations Subcommittee on Labor, Health, and Human Services, Education, and Related Agencies, LAWTON worked to improve the welfare of U.S. citizens. He has labored hard, in times of fiscal restraint to provide the resources to battle AIDS, to prepare our children for a changing world, and to care for those in need.

As chairman of the Transporation Appropriations Subcommittee, I have welcomed the support and advice of my colleague, who has served with me and shared a commitment to a strong and well-funded Coast Guard and to a safe and modern transportation system.

LAWTON CHILES has accomplished a great deal for our Nation, as well as for the State he represents. He will be missed by his friends and colleagues in the Senate. I salute my friend LAWTON CHILES, and wish him all the best in the future.

TRIBUTE TO SENATOR ROBERT STAFFORD

Mr. LAUTENBERG. Mr. President, I rise in tribute to a great statesman and friend, Senator ROBERT STAFFORD. He will retire from office at the end of this Congress.

BOB began his service in the Congress in 1961, as a Member of the House of Representatives. On September 16, 1971, he was appointed to the U.S. Senate and elected by special election on January 7, 1972, to complete the unexpired term of the late Winston L. Prouty. Senator STAFFORD has been reelected to two consecutive terms of office in the Senate.

Senator STAFFORD has served this body admirably as chairman and then ranking member of the Committee on Environment and Public Works, as chairman and then ranking member of the Education Subcommittee of the Committee on Labor and Human Resources, and a member of the Committee on Veterans' Affairs.

On a personal basis, I know of no one here who has been fairer in his chairmanship of a major committee. He was true to his party, but more important, he was true to a commitment to the State of Vermont, and the American people. BOB STAFFORD's concern about the mountains, the trees, the streams, and the sea, overshadowed any partisanship. On issues affecting our environment, BOB STAFFORD led the way. His balanced approach to his Environment Committee responsibilities set an outstanding example of leadership that stands for those who follow. I was proud to serve under his chairmanship and prouder yet to have his friendship.

Mr. President, it was under his leadership as chairman of the Committee on Environment and Public Works, that we were able to renew, expand, and improve the Superfund law to clean up toxic waste dumps that mar our countryside and threaten our health. This Senator was honored to work with the Senator from Vermont in that effort. He leaves a legacy of other significant laws, to protect our environment.

Mr. President, there is one major environmental challenge which remains for us to address after Bob Stafford leaves—the problems of global warming. While there was not time for the Senator from Vermont to help guide a comprehensive solution through to enactment, he has left us with a clear agenda for action. In several significant speeches on the floor, and in legislation he has proposed this year, Senator Stafford has laid out a helpful analysis of the problem and proposed responses. As we grapple with this problem in the future, the inspiration and the wisdom of our colleague will continue to guide us.

In addition to his contributions to the protection of environment, Senator Stafford has left his imprint on the Nation's education policy. As chairman and then ranking member of the Education Subcommittee, he has maintained and strengthened the Federal Government's commitment to the goals of assuring equal access to education and promoting excellence. The Hawkins-Stafford Act stands as a continuing reminder of his contribution to the education of young Americans.

Bob Stafford has enriched this body with his wisdom, his knowledge, his humor, and his respect for its traditions and institutions. I pay tribute to my friend Bob and wish him well upon his return to the Green Mountain State.

TRIBUTE TO CHAIRMAN STENNIS

Mr. LAUTENBERG. Mr. President, I rise to pay tribute to someone who has dedicated his life to public service and has served this body for 41 years. Chairman John C. Stennis, will retire from office at the end of this session of Congress.

John C. Stennis has served his State of Mississippi with distinction since 1928 when he was elected to the Mississippi House of Representatives where he served until 1932. In 1931 and 1935 he was elected district prosecuting attorney for the 16th District of Mississippi. His political career continued when he was appointed circuit judge in 1937 and elected 1938, 1942, and 1946.

Elected to the U.S. Senate in 1947, he has been reelected ever since. Now in his sixth consecutive term, he is a Senate institution. He served as chairman of the Senate Armed Services Committee from 1969 to 1980, as President pro tempore of the Senate in 1987, and as chairman of the Appropriations Committee since that same year. This remarkable man now enjoys the distinction of first ranking Democrat.

I have served with Chairman Stennis of the Senate Appropriations Committee and have seen firsthand the wisdom and knowledge that he brings as chairman of the committee. Completion of all 13 appropriation bills this year is indicative of his strong leadership. The last time all bills passed and were sent to the President was over 10 years ago.

During the years he has served in the Senate, political tides have changed. Presidents have changed, and control of the Senate as changed, but in the face of these changes, Chairman Stennis has stood firm in his convictions. He has remained strong in his commitment to a strong national defense and to a Government compassionate and responsive to those in need. The Senate and the Nation have been enriched by his contribution.

I know that for me, he has been a source of valuable advice and guidance. It is with regret that the Senate bids and I bid farewell to a living legend, a great leader, and great American, John C. Stennis. I wish him all the best.

TRIBUTE TO BILL PROXMIRE

Mr. LAUTENBERG. Mr. President, I rise today to pay tribute to a friend and colleague, Senator William Proxmire. After a lifetime devoted to public service, Bill will retire from the Senate at the end of this session of Congress. He will be sorely missed.

Bill's distinguished career in the Senate began in 1957. He has served with honor for 31 years. he serves as chairman of the Committee on Banking, Housing, and Urban Affairs, and the Committee on Appropriation's Subcommittee on HUD-Independent Agencies. He is also a member of the Joint Economic Committee.

I had the pleasure of serving with Bill on the Banking Committee during the 98th Congress from 1983 to 1984. So I have seen firsthand the leadership he has exercised in matters related to financial affairs. In this Congress, he has been a forceful advocate for reform of laws related to corporate takeovers. He also has taken the lead on major ranking legislation, the aptly named Proxmire Financial Modernization Act of 1988. I am hopeful that this bill will be enacted into law soon—it would be a fitting legacy to his outstanding leadership in the banking area.

I have also been privileged to serve with Bill on the Appropriations Committee. We have worked especially closely on the Subcommittee on HUD-Independent Agencies, where he has worked hard to juggle the needs of a wide variety of agencies. It has not been easy, but Bill Proxmire, as always, has more than met the challenge.

Bill Proxmire has made unique and significant contributions to the work of the Senate and to the welfare of our Nation during his years in office. In his own indefatigable fashion, he raised our consciousness by originating the "Golden Fleece Award." By bringing outrageous waste to the American people's attention, he unmasked those who abused the public trust.

He served as a conscience of this body in persistently calling for the Senate's ratification of the Genocide Treaty, which was finally achieved in 1986.

It doesn't take long to realize that Bill is a man who stands by his principles. While some may disagree with him at times, nobody who knows him' doubts his integrity, his leadership ability, and his commitment to public service.

Bill has made a difference in his service to the Senate and will be missed by his many friends and colleagues. I salute my friend Bill Proxmire and hope this is not goodbye and that we will see and hear from him in the coming years. I wish him all the best.

COMMEMORATING THE 50TH ANNIVERSARY OF NOTRE DAME HIGH SCHOOL

Mr. SIMON. Mr. President, today it is my privilege to have the opportunity to pay tribute to the Notre Dame High School for Girls, by honoring it on its 50th anniversary, November 11, 1988. In 1938, the Sisters of Notre Dame de Namur of the Ohio Province opened the doors to this school in the great city of Chicago. Fifty years later, Notre Dame High School can claim over 10,000 alumnae who have received the benefits of this fine institution.

Notre Dame High has provided quality Catholic education to young women from all walks of life. Its reputation for academic excellence has attracted students from a wide variety of religious, ethnic, and cultural backgrounds. The concern Notre Dame has shown over the years for the healthy intellectual, emotional, and spiritual growth of its student body serves as a shining example for both public and private secondary schools nationwide.

Among the numerous accomplishments of the school, perhaps none shines so brightly as their recently being named as an "Exemplary Private School" by the U.S. Department of Education. This honor was bestowed to only a handful of private institutions across the country, and it stands as testament to the outstanding success of the school.

The 880 young women who attend Notre Dame High School at the present time, continue to build on the school's outstanding reputation, through their ongoing efforts and achievements. Under the leadership of Notre Dame's principal, Sister Mary Bridget Murphy, and an array of highly qualified and dedicated administrators and faculty members, Notre Dame High School is sure to continue their impressive legacy of excellence for another 50 years and beyond.

All of us benefit when a school of this caliber continues to enrich the lives of hundreds of young women each year. Mr. President, I hope my colleagues will join me in congratulating and commemorating Notre Dame High School for Girls on its 50th anniversary, and its commitment to a higher standard of education.

FOUR FINE ITALIAN-AMERICANS

Mr. LAUTENBERG. Mr. President, I rise to pay tribute to four fine Italian-Americans who by maintaining traditional Italian values and hard work have been able to achieve and prosper in America. On October 23, Ann Galante, Louise Consalo, Frank Guaracini and Frank LoBiondo, Sr., will receive Italian Heritage Spirit of Achievement Awards for their dedication to preserving Italian heritage in America. The awards will be presented by the Sicilian-American Club during the Italian Heritage Gala Ball at the Vineland Motor Inn.

Each of these four Italian-Americans has contributed to preserving their Italian heritage by serving as an example of respect for traditional Italian values. They have pursued various business interests while upholding ideals of devotion to religion, love of family, support for community, consideration for the worth of the individual and pride in our country and heritage.

Louise Consalo and her husband William toiled the land, making a living by farming and selling produce. After 25 years of hard work, they established William Consalo and Sons Farms, Inc. Alongside her husband, Louise has worked hard for the family and for the business. She has been described as the "matriarch of the Consalo family."

Frank Guaracini who owns and operates the Shop Rite Supermarket in Vineland, utilized his talents to develop and expand his parents' retail business. His combined respect for the family and community has helped his family business prosper.

Frank LoBiondo, Sr., helped his father and brothers found LoBiondo Brothers Motor Express, a company which has prospered and flourished over the years. Although he must work hard to maintain the family business, Frank LoBiondo, Sr., devotes much of his time to church and community activities.

Ann Galante founded the Sicilian-American Club in 1983 to celebrate Sicilian traditions and to keep Italian customs alive. Her enthusiasm, pride and devotion to her Italian roots pervade all her activities. She attributes the success of her interior decorating store and millinery shop to her belief in the strong Italian values her family taught her.

These four spirit award recipients represent many Italian immigrants who have achieved greatness from humble beginning. Their contributions to the richness of the mosaic of American life are numerous and well known. Italian immigrants helped build our industries, universities, manned our businesses and our professions. They helped build churches and made our Government work. But more than anything else, their love of country and community has made the most difference in American life. I applaud the four Italian heritage Spirit of Achievement Award winners who never lost sight of their traditional Italian ideals and roots while pursuing the "American dream."

FIRST PRESBYTERIAN CHURCH

Mr. D'AMATO. Mr. President, I rise today to honor the First Presbyterian Church of East Williamsburgh, NY, on the occasion of its 125th anniversary. I had hoped to attend a celebration planned for later this month, but unfortunately a prior commitment prevents this.

Over the past 125 years the First Presbyterian Church has been an important part of the Ridgewood community. It serves the needs of not just its own parishioners, but of the entire community as well. The church has especially been active in supporting the needs of senior citizens. The First Presbyterian Church is indeed a landmark in the Ridgewood community.

In today's complicated world, places of worship become increasingly more important part as a place of comfort. They help members with such problems as drug abuse, family conflicts. I salute the First Presbyterian Church and its members for its greatly appreciated service to Ridgewood and wish them another successful 125 years of worship.

TOM LYKOS

Mr. D'AMATO. Mr. President, as the Senate passes legislation on insider trading, I would like to pay tribute to a person who has devoted much of the last 4 years to this legislation and who has few peers, in my view, in his expertise in this particular area of securities law. Unfortunately, he will not be on hand at the final resolution of this legislation. I speak of Tom Lykos, recently appointed deputy director of the Southwest Plan at the FSLIC. Tom's skills as a securities lawyer were honed in private practice and in a variety of Government posts. After 2 years with the SEC Enforcement Division's task force on tender offers, he served in the other body as counsel to the Energy and Commerce Committee. He subsequently served in the Senate, first as Chief Counsel and Staff Director of the Securities Subcommittee and then as counsel to the Banking Committee, playing a key role in every piece of securities and banking legislation considered by the Congress in the past 4 years.

Those who know Tom have always been impressed by his judgment, his consistent humor, his dedication and stamina, and his quick intelligence and instant grasp of the most complex problems. Those qualities were never more apparent than during the legislative process that preceded the debate on the takeover legislation.

My colleagues and I will miss his expertise; if I may be permitted a personal note, my loss will be particularly keen as, in addition to serving as counsel to the committee, he was—and I hope remains—my good friend and trusted counsel.

Tom deemed it a privilege to work in the Senate, agonizing some weeks over the decision of whether to accept the position of responsibility and trust offered him at the Federal Home Loan Bank. We congratulate him for being selected to handle the implementation of the Southwest Plan. I cannot help but notice the fact that, soon after his arrival, on May 13, 1988, implementation of the plan began in a meaningful way.

We wish him great success in his new endeavors. That success would be particularly sweet for Tom; it would mean that he has made a constructive contribution to the revitalization of the economy of the Southwest in general, and to his hometown, Houston, TX, in particular.

OAKLAND ATHLETICS AND THE LOS ANGELES DODGERS

Mr. WILSON. Mr. President, I rise today to pay tribute to the two best teams in baseball, the Oakland Athletics and the Los Angeles Dodgers. Wednesday night the Los Angeles Dodgers defeated the New York Mets in the seventh game of the National League Championship Series. They will now meet the A's in the World Series which begins tomorrow.

I am proud of the way these two California teams have played throughout the year. The Dodgers have defied the critics—first by winning their division and then by making it to the World Series. I want to pay special tribute to Orel Hershiser, the ace of the Dodger pitching staff, for his incredible performance at the end of the regular season. He pitched 59 innings without allowing a run to score breaking Don Drysdale's old record. Because Hershiser ended the season with his streak intact, he will be able to add to this record at the beginning of next season.

In the American League, the Oakland A's have simply been overpowering. They moved into first place in the West on April 29 and were never seriously challenged. Before the season started, the manager of the A's, Tony Larussa, told the press his goal was to win 100 games. Many did not believe the A's could do this, but they went on to win 104 games during the regular season. Most of my colleagues have probably heard that Jose Canseco, the A's right fielder, did something no player in history had done before—he hit 40 home runs and stole 40 bases in a single season.

Once again I want to congratulate the Los Angeles Dodgers and the Oakland A's for being the two best teams in baseball this year. I encourage my colleagues to watch the all-California World Series, because I am certain the Dodgers and A's will provide the entire Nation with some very exciting baseball.

DEPARTURE OF OMB DIRECTOR JIM MILLER

Mr. GRAMM. Mr. President, Jim Miller leaves the President's Cabinet today after 8 years of dedicated service in the Reagan administration. Most of us know Jim as the formidable Director of the Office of Management and Budget [OMB], a position which he has held since October 8, 1985. Jim brought order and a strong dose of candor, grace, and credibility to OMB. He has been a leader in reducing the deficit and the Nation is in Jim Miller's debt.

Jim played a key role in the Gramm-Rudman-Hollings Deficit Reduction Act and the bipartisan budget agreement, which last week produced the first fully completed appropriations process in a decade.

Jim also leaves a legacy of reduced Federal regulation as a result of his efforts while serving as the first administrator of the Office of Regulatory Affairs at OMB and as Executive Director of Vice President BUSH's Presidential Task Force on Regulatory Relief.

He also served as the Chairman of the Federal Trade Commission from October 1981 until he took over the reins as Director of the OMB. As President Reagan said, Jim served in each of his posts with "great distinction."

We all wish him luck in his future endeavors as a distinguished fellow at the center for study of public choice at George Mason University, distinguished fellow of citizens for a sound economy and chairman of an advisory board to Washington Economic Research Consultants, where he will continue to make a contribution in the interest of the Nation's economy.

In his own inimitable way, Jim Miller will continue his efforts in making America a better place to live. His contributions in public service over the years, and now in the private sector, are deeply appreciated and will not be forgotten.

ADDITIONAL COSPONSOR—S. 2501

Mr. WILSON. Mr. President, the Senator from Maine [Mr. COHEN] asked to be added as a cosponsor of S. 2501 on September 23. This bill will allow periods of out-of-residence care to qualify for the principal residence use requirements of the one-time capital gain exclusion for taxpayers who have attained the age of 55.

Unfortunately, due to an administrative error the Senator's name was not added until yesterday. I wish to apologize to the Senator because I know he is a strong supporter of this bill and his support helped ensure that this legislation was added to the technical corrections bill.

VERTICAL PRICE FIXING LEGISLATION

Mr. CRANSTON. Mr. President, I rise to make a few remarks regarding the vertical price fixing legislation, S. 430, which was briefly considered by the Senate this session. I believe this is important legislation which is necessary to assure that consumers receive the full benefit of competitive pricing, and I regret that we did not have the opportunity to vote on the merits of this legislation before sine die adjournment.

This legislation is significant because it addresses the illegality of conspiracies between manufacturers and retailers which are intended to curtail competition. Discount dealers are most often the target of these conspiracies, and the result is that consumers lose the option of shopping at discount stores and are forced to pay full retail prices wherever they shop.

The Sherman Act has traditionally protected discount retailers from vertical price fixing agreements between manufacturers and full price retailers, however those protections have been significantly eroded by recent Supreme Court decisions which have made it more difficult for terminated retailers to prove that their termination was the result of illegal price fixing.

As one editorial, printed in the Los Angles Times on May 5, 1988, summed it up: "For discounters now worried about survival and consumers fearful that the Court's decision will boost prices, there is one comfort. Whatever the Court had done can be undone by Congress. The Nation's lawmakers ought to take a hard look at where antitrust law is going."

Mr. President, I'd like to reiterate that we lawmakers indeed ought to take a hard look at where antitrust law is going. If we take a hard look at the Court's 1984 ruling in Monsanto Co. versus Spray-Rite Service Corp., and its 1988 ruling in Business Electronics Corp. versus Sharp Electronics Corp.—as well as the fact that the Deaprtment of Justice filed an amicus curiae brief with the Supreme Court in the Monsanto case urging abandonment of the rule which states that vertical price fixing is per se illegal—then I think the need for this legislation is clear.

S. 430 is a reasonable response to address the issues which have been raised by the recent Supreme Court decisions. The version of S. 430 which was finally brought before the Senate was a product of much discussion and compromise. I believe, Mr. President, that the bill which we briefly considered was clearly fair to manufacturers while at the same time providing needed protections for retailers.

For these reasons, Mr. President, I was particularly disappointed that we did not have the opportunity to vote on the merits of this legislation. The result is that for the next months—until the 101st Congress convenes and we can once again consider price-fixing legislation—discount retailers will not have the same legal recourse which they had before the recent Supreme Court decisions. I would like to point out that price-fixing activities are not always blatant, and that sometimes the policies which manufacturers force upon their retailers are merely subterfuges for agreements to eliminate price discounting. For example, these policies could include the use of "physical presence" requirements which would prohibit retailers from taking orders by telephone or the mail or from selling to persons not physically present in their showroom. We need to assure that discounters have access to the courts to press their valid vertical price fixing claims, and that's exactly what S. 430 would have accomplished.

Mr. President, I make these remarks to draw attention to the need for legislation to address the issues which have been raised by the Monsanto and Sharp decisions, and to urge my colleagues to support legislation which will be introduced in the next session to reinstate the legal protection that price competition once had and arrest the antidiscounter and anticonsumer trend that has been unleashed.

EUROPEAN STEEL: NEW INNOVATIONS IN MARKET DISTORTION

Mr. HEINZ. Mr. President, for years many of us have been pointing angrily at subsidies and dumping by the European steel industry that have put the burden of their uncompetitive policies onto our workers by exporting their unemployment over here.

The President's Voluntary Restraint Program, while it has contained some of the damage those GATT-illegal practices have caused, has not made much progress in eliminating the practices themselves. A recent book by Tom Howell, Bill Noellert, Jesse Kreier, and former Deputy Special Trade Representative Alan Wolff, "Steel and the State," calculates that the European Community authorized over $37 billion in steel subsidies from 1980 through 1985. Several months ago I pointed out to Senators that, if that wasn't enough, the Italian Government was proposing a new 7 trillion lire subsidy program for its industry, notwithstanding the fact that the European Community is trying to phase out these programs. As the saying goes, the song may be over, but the malady lingers on.

Today, however, I want to bring to Senators' attention an innovative new approach to avoiding economic reality in the European steel industry—price fixing. According to recent press reports, the European Commission has warned British Steel and other European Community stainless steel producers that they may be fined for having formed an illicit cartel and fixed prices.

All I can conclude from this, Mr. President, is that European steel producers continue to find it impossible to make their money the old-fashioned way—by earning it. Their first approach was to get their governments to cover their losses. Now that that is becoming more difficult, except in Italy, they apparently are trying to pass the bill onto consumers in a last-ditch attempt to avoid the inevitable consequences of market forces.

Well, Mr. President, I can say with growing certainty that it won't work. Even the European Community is slowly beginning to understand that the market produces the most efficient allocation of resources—although they apparently have not yet figured that out in agriculture—and I have no doubt that sooner or later even the steel industry will have to accept reality. The tragedy is the cost of that delayed realization, which has fallen to too great an extent on workers in the United States. At the same time, I think it has to be said that it has been the President's VRA Program that has helped force the European Community to come to terms with competitive realities. Its extension, along with a vigorous program of fighting the unfair trade practices that led to its creation, are necessary to finally bring an end to the subsidies and dumping that have so plagued this industry.

Mr. President, I ask unanimous consent that the articles I referred to be printed at this point in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Financial Times, Oct. 8, 1988]

BRITISH STEEL SELL-OFF CLOUDED BY ALLEGATIONS OF PRICE FIXING IN EC

(By William Dawkins)

The European Commission yesterday warned British Steel and eight other EC stainless steel producers that they risk heavy fines unless they can disprove allegations that they formed an illicit cartel.

The Brussels executive's competition directorate posted letters of objection yesterday morning, outlining its allegations, to seven of the EC's biggest companies together with two in Sweden and Finland. These two companies could also face fines if found guilty of fixing prices in the Community against EC competition rules.

The companies have six weeks to respond.

The move casts a very unwelcome shadow over the privatisation of the UK state-owned producer, due towards the end of next month. It comes only days after the start of British Steel's pre-flotation marketing campaign.

Unlike other areas of competition law, the Commission is not obliged to consult member states before levying fines for abuses in steel. Its powers are set out in Article 65 of the EC coal and steel treaty, which allows fines of up to 10 per cent of annual turnover, rising to 20 per cent of daily turnover if companies subsequently refuse to pay.

British Steel had sales of £4.1bn last year. EC officials said it was unlikely than it would actually be charged the full £400m that would apply if it got the maximum penalty. If fined, the sum would probably be a percentage of the company's stainless steel sales rather than calculated on overall turnover.

Initial calculations last night indicated that stainless steel sales were about 10 per cent of British Steel's total turnover. This indicates that any fine could be closer to £40m and it could be less because the Commission has tended to shy away from levying maximum fines against steel companies caught infringing EC rules. British steel made a profit last year of £401m.

This is an embarrassing event for a company which has forcefully argued for a free EC steel market in public and which is the first privatisation by the British Government since last year's difficult BP flotation. British Steel declined to comment yesterday on the development.

The investigation followed complaints by consumers. According to Meps, a UK steel consultancy, British stainless steel prices have risen by 50 per cent during the past two years and 35 per cent over the past 12 months.

Other companies due to receive the Commission's letter are Thyssen and Krupp of West Germany, Acerinox of Spain, Terni Speciali of Italy, Belgium's ALZ, Ugine of France, Outokumpu of Finland and Avesta of Sweden.

The letter from the competition directorate is the outcome of a Commission inquiry which began with surprise raids in May on the headquarters of the seven EC companies involved.

It says that Brussels believes they formed an illegal cartel and plans to impose unspecified fines unless the companies can prove themselves innocent.

A thick annexe is attached, which provides what Commission officials claimed yesterday was clear evidence of the workings of the cartel, believed to have started in mid-1986. They claimed it had been a big influence on the recovery of stainless steel prices since then.

The next stage is for the companies to reply in writing to the Brussels allegations, after which they will be offered an oral hearing. It will then be some months before the Commission issues its judgment.

Commission officials warned that they took a serious view of this case and wanted to use it to drive home Brussels's determination to keep anticompetitive behaviour out of the steel industry in the wake of the EC's June decision to abolish official production quotas. Stainless steel was never covered by the quota system.

[From the Financial Times, Oct. 10, 1988]

BRITISH STEEL INQUIRY IS SHARP REMINDER OF EC POLICING POWERS

(By William Dawkins)

The UK Government cannot be delighted that British Steel will go public next month complete with European Commission allegations of illicit price-fixing.

The Brussels authorities named the state-owned steelmaker last Friday as a suspected member of a stainless steel price and production fixing cartel believed to involve Europe's eight other leading stainless producers.

They have been given six weeks to respond, following which Commission competition experts will take another few months to decide whether their suspicions are justified.

Luckily for British Steel and the others, EC officials confirmed yesterday that it is extremely unlikely that Brussels would use the full extent of its draconian powers to set huge fines, should the occasion arise.

Nobody expects the Commission's conclusions, due early next year, to inflict serious financial damage. Even so, the inquiry is a sharp and—by chance—timely reminder to investors that British Steel inhabits a market where Brussels has tougher policing powers than in other industries.

EC steel rules only allow cartels when the market is in crisis and when the Commission and EC Governments give their consent, none of which was the case when these companies were suspected of colluding. Neither does the inquiry help the image of a company which has argued hard in the past for a free EC steel market.

In theory, EC coal and steel rules give Brussels the power to fine British Steel 10 per cent of its £4.1bn turnover, or £400m. It could do so without consulting national officials, as is the case in other industries. In practice, the Commission might probably go for a token, but still substantial fine, in line with its stance on past infringements of other steel rules.

Of course, the inquiry has a long way to go before Brussels decides whether to set penalties, let alone of what size. However, unofficial indications yesterday were that £40m—roughly equivalent to 10 per cent of British Steel's own stainless sales—would be the right scale for a contemplated fine for the entire alleged cartel. Even so, that would be well in line with the Ecu58m (£38m) record penalty imposed two years ago on 15 top EC petrochemical producers for fixing the prices of polypropylene.

Brussels became alert to the stainless steel issue when customers complained that prices had started to climb fast early last year, at a time when the rest of the steel industry was still in a recession. Some alleged that producers in other EC countries refused to supply them.

By late last May, the Commission believed it had enough evidence to launch surprise raids simultaneously at the offices of the EC members of the suspected cartel. Apart from British Steel, they are Thyssen and Krupp of West Germany, Acerinox of Spain, Terni Speciali of Italy, ALZ in Belgium and Ugine of France.

Officials did not have the legal power to raid the non-EC producers being investigated, Outokumpu of Finland and Avesta of Sweden, but those companies could nevertheless be fined.

The demand for explanation that went out to the steel companies last week was the end-result of what Commission officials say they found in the documents seized in that raid. They claim to have clear proof of a cartel at work in cold rolled flat products, raw materials for the chemical, brewing, food processing and building industries.

One of the members of the suspected ring, ALZ of Genk, Belgium, subsequently claimed that the companies involved met every few months as the so-called "Sendzimir club" named after a stainless steel production method. ALZ firmly denied the existence of a cartel, but said prices and statistics were discussed.

The Commission timed its raid well. It showed, just ahead of the decision on the official quota system, the seriousness of Brussels' plans to dismantle steel market restrictions. The fact that the next stage of the inquiry should surface with British Steel's flotation is genuinely poor luck.

THE WORLD BANK CAPITAL INCREASE PROPOSAL

Mr. SYMMS. Mr. President, the recent debate in both Houses of Congress over the merits of a $14 billion general capital increase for the World Bank has served a valuable purpose. Many of my House and Senate colleagues have demonstrated the need to hold the World Bank accountable for its use of U.S. taxpayer funds to provide loans which could harm U.S. agricultural producers, subsidize ruthless dictatorships, and displace private investment. In fact, U.S. opposition to particularly offensive lending abuses is routinely ignored, in accordance with U.S. statutory directives.

The American people should be aware of the U.S. policy regarding multilateral lending institutions and the policy failures and lending excesses of the World Bank. I would like to commend the Heritage Foundation and citizens' groups like Free the Eagle for helping with this effort.

GRAY MARKET LEGISLATION

Mr. HATCH. Mr. President, last fall I introduced a measure, S. 1671, the Trademark Protection Act, to protect trademark owners against gray market goods. That bill was introduced in response to what many consider to be the incorrect interpretation of the law by the U.S. Customs Service, which through regulation has permitted the importation and sale of gray market goods. This situation has resulted in the serious undermining of our intellectual property laws and the infringement of the rights of American trademark owners.

Since the introduction of S. 1671 last year, the U.S. Supreme Court has addressed this issue, in the case of K Mart Corp. versus Cartier, Inc. In that case, the Supreme Court decided to restrict some gray market importation, but permit other such imports to continue. Unfortunately, the case was decided on narrow technical grounds. The court did not address the intellectual property or consumer issues surrounding the gray market and left the gray market situation just as unclear as it had been before its decision.

This problem now involves billions of dollars per year and results not only in serious harm to the American consumer and laborer but also to the American intellectual property system. Clarification of the trademark laws, through legislation, is necessary. We must resolve this situation with respect to both trademark owners and consumers.

In simple terms, resolution for the trademark owners means greater trademark protection, and for the consumers means greater disclosure. Therefore, Senators DECONCINI, BRADLEY, MIKULSKI, and I are introducing the Trademark Protection Act of 1988, to take into account the recent Supreme Court decision and to finally resolve these important issues.

In addressing this issue, it is important that my colleagues have a clear understanding of what is meant by the gray market and the dangers that it poses to our intellectual property system.

TRADEMARK LAW

The use of trademarks has long been an important part of our system of intellectual property. They serve several useful purposes that are vital to free market enterprise. In his testimony before the Subcommittee on Patents, Copyrights and Trademarks, Guy Blynn, chairman and president of the U.S. Trademark Association, stated that a trademark's purpose is, among other things, to:

> (a) Foster competition by enabling particular business entities to identify their goods or services and to distinguish them from those sold by others;
>
> (b) facilitate distribution by indicating that particular products or services emanate from a reliable though often anonymous source;
>
> (c) aid consumers in the selection process by denoting a level of quality relating to particular goods or services;
>
> (d) symbolize the reputation and good will of the owner, thereby motivating consumers to purchase or avoid certain trademarked products or services; and
>
> (e) protect the public from confusion or deception by enabling purchasers to identify and obtain desired goods or services. (Statement before Senate Subcommittee on Patents, Copyrights and Trademarks. February 17, 1987).

In 1946, after nearly 5 years of work, Congress passed the Lanham Trademark Act, to organize and simplify our trademark laws. The purpose of the act, as stated in the Senate report, was "to place all matters relating to trademarks in one statute and to eliminate judicial obscurity, to simplify registration and to make it stronger and more liberal, to dispense with mere technical prohibitions and arbitrary provisions, [and] to make procedure simple."

For over 40 years, the Lanham Act has been surprisingly resilient to changes in the United States and world business practices. The growth and interdependence of the world economy since World War II has resulted in part from the tremendous growth of international trade. While this growth has produced many benefits, it has also produced some unfavorable side effects. One such side effect is growing infringement of the rights of American trademark owners.

In response to this growing problem, the measure that we are introducing today would eliminate the frustration and uncertainty common to this country's trademark owners by addressing the problems surrounding gray market products.

DEFINITION OF GRAY MARKET GOODS

In an opinion in which it was asked to consider the issue, the United States Court of Appeals for the District of Columbia defined gray market goods as follows:

> These are goods manufactured abroad bearing legitimate foreign trademarks that are identical to American trademarks. This situation typically arises when a foreign producer creates an American subsidiary that then registers the American trademark. Both the foreign producer and its American subsidiary often wish to be exclusively controlled by the American subsidiary. If, however, the price at which the American subsidiary sells the goods exceeds the price at which the goods are sold

abroad, other importers have an obvious incentive to purchase the goods abroad (typically from a third-party who has legitimately purchased directly from the foreign producer) and resell them in the United States—perhaps without certain associated services or warranties—at a price below that charged by the American subsidiary. The same result can occur, however, if the American trademark owner is the parent and the good are manufactured abroad by a foreign subsidiary. *Copiat* v. *United States*, 790 F.2d 903, 904 (D.C. Cir. 1986).

THE GRAY MARKET PROBLEM

The gray market problem arises with the importation into the United States of goods bearing a trademark, familiar to the American consumer, but which are made for sale abroad and are brought into this country without the authorization of the U.S. trademark owner. Because gray market goods are not produced for sale in the United States, they often fail to meet the same high quality standards imposed upon merchandise manufactured for sale here. Moreover, gray market goods often are not subject to the same care in shipment and do not carry the usual warranties entitling the consumer to service at an authorized service center. In short, gray market goods present serious problems for American consumers. As the National Consumers' League, one of America's oldest and most respected consumer organizations, has stated:

> Gray market products often differ from the American trademarked products manufactured for sale in this country. Gray market imported foods, pharmaceuticals, and cosmetics can pose serious safety hazards * * *.
>
> Gray market products do not carry U.S. manufacturers' or authorized distributors' warranties and frequently do not have English language instructions. Gray market manufacturers frequently conceal this fact from consumers or mislead them by offering a warranty which appears to be the manufacturer's but is not * * *.
>
> Gray market goods are not necessarily cheaper. Gray marketeers argue that discount houses and discounted sales will disappear if the gray market is restricted. Frequently, gray market and domestic health care products are found together in a store and are offered at the same price.

The American consumer is not the only segment of our society that is harmed by the gray market. At a time when we are concerned about a record trade deficit and a sufficiency of meaningful manufacturing jobs for American workers, the gray market substitutes imports for U.S. goods and exports jobs. As a consequence, the gray market phenomenon has been strongly opposed by the great preponderance, if not all, of organized labor.

This is not to say that all the legitimate goods that gray market sales displace are U.S. products. The point is not that gray market goods are bad because they are imports. Rather, the point is that gray market goods are unfair competition in violation of the spirit, if not the letter, of our intellectual property laws.

This brings me to my third and perhaps most important point. Gray market goods undermine our intellectual property system. Specifically with respect to trademarks, which are most affected, gray market imports contravene the two basic purposes of the law. First, trademarks serve to prevent consumer deception and confusion. However, gray market goods are inherently confusing. Most often, as noted above, gray market goods are different products from their legitimate counterparts. Even where gray market and authorized goods are essentially identical physically, gray market goods often lack the quality and warranties that the consumer expects to receive in conjunction with the trademarked item. Again, as the National Consumers League has stated:

> Consumers assume that an American trademark represents strict and uniform standards for the production of trademarked goods. The current gray market confuses consumers about the reliability of trademarks. There is also clear and mounting evidence that the importation of gray market goods facilitates the manufacture and sale of counterfeit goods in the United States.

The gray market undercuts another important pillar of our trademark laws by depriving the U.S. trademark owner of a fair return on his investment. That is, the gray marketeer is able to sell the gray market good only because of the substantial investment made by the trademark owner that creates consumer acceptance of the brand. Although the gray marketeer profits, often handsomely, from the gray market sale, he does not contribute to help the U.S. trademark owner recoup on his investment.

The gray marketeer misleads the consumer by not telling the consumer that he or she is buying a gray market good rather than an authorized good. And when there is resulting consumer dissatisfaction, this dissatisfaction causes substantial harm to the reputation and goodwill associated with the trademark of the U.S. registered trademark owner, thereby diminishing and infringing the trademark in question.

This free ride that the gray marketeer takes on the back of the U.S. trademark owner is not mitigated by the fact that the trademarked good was initially purchased from the foreign manufacturer even if that foreign entity is related to the U.S. trademark owner. Our trademark laws are territorial in nature. Our laws recognize that the goodwill created in a trademark in one country through the time, effort and money spent in that country may be very different from the goodwill created in another country.

In addition, this recognition by our laws of separate goodwills in the same mark makes sense because the same symbols or words that make up a trademark not only have a separate legal basis but also a different factual significance in each country where the local trademark owner has created independent goodwill in the mark. Put simply, our laws recognize that in a complex world with different legal systems governing goods manufactured and sold in different countries, a brand "X" widget authorized for sale in the U.S. may be materially different from a brand "X" widget intended for sale in another country, and thus it is necessary to protect U.S. trademarks and U.S. trademark owners from their foreign counterparts.

As a consequence, our laws, most importantly section 526 of the Tariff Act, do in fact contain provisions to protect U.S. trademark owners against the importation and sale in the United States of gray market goods. These laws provide for both a private right of action and government enforcement. For years these laws were fully enforced by the U.S. Customs Service. Unfortunately, as a result of misplaced and outmoded views about the antitrust laws, the U.S. Customs Service has in recent years failed to enforce these laws as they are written.

Unfortunately too, the Supreme Court decisions earlier this year did not go the whole way in requiring Customs to enforce section 526 to stop all gray market imports. As a consequence, Congress should and must act to effect this result. For this reason, we are introducing this bill to require customs agents to reject gray market goods at our borders.

Finally, it bears emphasis that while we are convinced that gray market goods are bad for America, and that gray market importation should be stopped, the gray market controversy is fundamentally an intellectual property dispute and not an attempt to embargo merchandise. The law does not, and should not, prevent any person from importing goods that otherwise meet our health and safety standards just because the goods were manufactured abroad and may be quite similar, though not identical, to goods sold in the United States by a U.S. trademark owner, provided that these imports do not bear the U.S. trademark owner's trademark. That is, our intellectual property laws do not prevent a person from importing into the United States noncounterfeit goods even when they bear a trademark identical to a U.S. trademark, provided that before importation the trademark is removed or obliterated. And, it should be further emphasized that this right is not illusory. Many companies, for example, Sears & Roebuck, sell goods made by a U.S. trademark owner or an affiliate of a U.S. trademark owner under their own brand name or as a generic.

Thus in the end, enforcement of the laws to prevent gray market imports will markedly reduce consumer deception, enhance U.S. employment, and ensure that entrepreneurs earn a sufficient return on their investment so as to continue to bring the maximum number of products and services to the U.S. market. This fully reflects what has been and should continue to be the essence of our intellectual property system.

PROPOSED LEGISLATION

The legislation that we are introducing today meets precisely that goal. Under its provisions, the Lanham Trademark Act is amended to provide that no person may import into or sell within the United States any goods that is manufactured outside the United States if that goods bears a trademark that is identical to a trademark owner and properly registered by a person, corporation, or other entity, unless the U.S. trademark owner consents to such sales or importation.

This prohibition would apply regardless of whether the foreign manufacturer of the goods or foreign trademark owner whose trademark appears on the goods is related in any way to the owner of the U.S. trademark. The prohibition would also apply regardless of whether the owner of the U.S. trademark owns or has registered the trademark abroad. And, finally, the prohibition would apply regardless of whether the owner of the U.S. trademark has authorized the use of the trademark abroad.

This legislation would empower the Secretary of the Treasury to exclude gray market goods if the United States trademark owner has registered that trademark with the Patent and Trademark Office and then files a copy of the certificate of registration with the Secretary of the Treasury. The U.S. trademark owner would also be allowed to bring an action against an importer or seller or gray market goods to enjoin the importation or sale and to obtain monetary damages and lost profits because of any such importation or sale.

By enacting this legislation, we will reduce unjust inroads upon trademark owners' rights, such as disincentives to investments resulting from free riding gray market goods; consumer concerns based on unserviceable and inferior products; and litigation expenses incurred by trademark owners to protect their trademarks against gray market goods.

This simple piece of legislation to the Lanham Trademark Act is one important way we can help our beleaguered American industries to once again perform on the cutting edge of competition.

DICK MARKS

Mr. McCAIN. Mr. President, I would like to take just a few minutes of the Senate's time to do what is done too little, I believe. I would like to recognize a career civil servant for turning in an exceptional performance.

I am speaking of Dick Marks, currently superintendent of Grand Canyon National Park and soon to be Deputy Director for the National Park Service's Southwest region. I have had the pleasure of Dick Marks' acquaintance and friendship for 6 years. In that time, I have observed firsthand his commitment and dedication to the ideals for which the National Park Service was founded. I must admit that he has influenced my thinking, perhaps more appropriately put, increased by sensitivity to the concerns surrounding our environment and the responsibilities we carry as stewards of our children's natural heritage.

Few people realize what goes into running an operation like Grand Canyon National Park. Although one must possess an appreciation for nature's beauty and a desire to assist her, that alone is not enough. Grand Canyon National Park has a budget of $8 million and as many as 350 employees at peak times. The administrative skills required to run this type of operation are, in my opinion, commensurate with those of a chief executive officer at many medium size corporation. Unfortunately, I would wager the compensation is not. I believe that we as a nation should feel fortunate that there are individuals, such as Dick Marks, who are willing to make the sacrifices required of those who serve the public's interest.

As I am sure most of my colleagues realize, the Grand Canyon is one of the most unique natural wonders in the world. Understandably, it has come under increasingly heavy pressure from those wishing to partake of its beauty and wonder. With hundreds of thousands of visitors of one kind or another, it takes unusual foresight to prevent the regrettable but unavoidable human impact from diminishing the canyon experience. Whether it be striking a balance between those wishing to experience the canyon on the ground or from the air, whether it be balancing the needs of water and power users in the region with the canyon's consistent water flow requirements, Dick Marks has demonstrated the capacity to grasp and resolve these, as well as other concerns.

Mr. President, I am sorry that Grand Canyon National Park will lose a leader like Dick Marks. However, I am pleased that he will be lending his talents to the national parks in the entire Southwest. The entire Southwest region, like my home State of Arizona, is currently experiencing unparalleled growth. This growth will increase the pressure on the parks in this area, creating new problems as well as exacerbating old ones. In my judgment, Dick Marks is the sort of individual ideally suited for this endeavor.

LAWTON CHILES

Mr. SIMPSON. Mr. President, I would like to take this opportunity to say a few words about my friend, my retiring colleague, LAWTON CHILES.

Here is a man who nearly literally gave his life for the United States. He and PETE DOMENICI worked so doggedly on budget matters and we came to highly respect their work product and rely on the data which they were presenting to us. He is a remarkable friend and it was a great honor to serve with him. And Rhea, his wife, is a very special lady of great courage and inspiration to us all. God bless her. I particularly have enjoyed my times with him at Senate prayer breakfast.

He has been a true leader in that remarkable organization and he will be deeply missed.

It is not easy to fill the void of the loss of such a man in the Senate. Indeed, that is impossible. It is my great pleasure to have come to know LAWTON CHILES, to enjoy him, to admire him so and to enjoy his friendship. I wish them both well. God speed.

PAUL TRIBLE

Mr. SIMPSON. Mr. President, it is my sincere pleasure to take a brief amount of the Senate's time to say a few words about my retiring Republican colleague, Senator PAUL TRIBLE of Virginia.

PAUL is a very fine man who will now go on to other things and also enjoy the company of his dear wife, Rosemary, and dear children. I have a hunch the people of Virginia won't let him retire for very long, but we understand his reasons and we wish him well. It has been my pleasure to come to know him and that delightful and vivacious Rosemary at his side. She is a special lady. We also enjoyed a trip to the Soviet Union with them and we have come to know them well. They are special indeed. Again, through my activities with the Senate Prayer Breakfast Group I see clearly he has so much to give his State and his country. He will give it. He is a man who believes deeply in public service and it is my rich privilege to serve with him in the Senate and watch him work so marvelously in our party as the chairman of the committee on committees. He did that with great fairness and ultimate good sense. It has been great to come to know him and to legislate with him and to enjoy his company. I wish he and Rosemary well.

WILLIAM PROXMIRE

Mr. SIMPSON. Mr. President, let me briefly speak about my retiring friend and Senate colleague, BILL PROXMIRE.

Here is a remarkable man. Persistence and perseverance alone are omnipotent. In fact, he reminds me so clearly of a marvelous credo entitled "Press On," which I have on the wall of my office. It says:

> Nothing in the world can take the place of persistence.
> Talent will not; nothing is more common than unsuccessful men with talent.
> Genius will not; unrewarded genius is almost a proverb.
> Education will not; the world is full of educated derelicts.
> Persistence and determination alone are omnipotent.

That is BILL PROXMIRE. I've watched him do that with regard to the Genocide Treaty—which will crown his legislative efforts as he leaves us, with his support of the dairy system, and his work regarding the banking system of the United States. I remember so well in my first months in the Senate I saw BILL PROXMIRE on one of his evening runs and I said, "May I take you home?" He said, "Well, I need this exercise, but I'd love to have a good visit with you, too." I then remember driving him to his home here in the city and I remember the marvelous visit and how he shared with me his views of the Senate and gave me good counsel and advice and support. A marvelous man. He will be deeply missed. I would read his material when I was practicing law in Cody, WY, and then I came here to assist him with the Genocide Treaty. It is something I deeply believe in.

The Senate is a richer place because of him. It is my great good fortune to serve with him. He also served with my dear father in this body. He is an irreplaceable man in a very remarkable legislative body. I wish he and Ellen well as they go forward to new things in their lives. I will miss him and miss his presence on the floor. When I was serving as acting Republican leader, I knew that BILL PROXMIRE was the "first item of business" each and every morning of my tenure. We shall miss his thoughtful good common sense and good judgment.

ROBERT STAFFORD

Mr. SIMPSON. Mr. President, I would like to take this opportunity to add my best wishes to the many others that have been expressed for retiring Senator ROBERT STAFFORD.

Seldom do you see a Senator who is more representative of his State than ROBERT STAFFORD. When you look at his personal strengths and feature his intellect and physical stature, you think immediately of his State and the rock of granite in Vermont that BOB STAFFORD is. He had the most remarkable way of dealing with fractious and sometimes irritated fellow Members—like me—as we dealt with issues in the Environment and Public Works Committee. I learned to listen closely to him and to take his good counsel and advice. We often dealt with highly contentious, dramatic and emotional issues, such as Superfund, pollution, acid rain, public buildings, and nuclear waste. With a steady and remarkable hand he would lead us through. I would not always agree with his position, but I never saw him disagreeable in disagreement. That is a remarkable trait in this place.

And so, it is my great good fortune to work with ROBERT STAFFORD. I shall personally miss him. I shall miss his gentle humor and also his remarkable "Vermont stories," which no matter how dark the day or how distressing the issue would raise up in me a great belly laugh as BOB would tell one. They are the stories about the dear and beloved people that he represents in that remarkable State. Bedrock people. Of the myriad of tales that brought such joy and pleasure to my life, the most remarkable one was of the tourist going down the highway who suddenly came to a fork in the road. One sign said Burlington, and the other also said Burlington. He saw this old Vermonter on the porch and the tourist said, "Say sir, excuse me? Make any difference which road I take to get to Burlington?" The guy looked up with wide eye and long face and with rich pronounciation said, "Not to me it don't!" Ah there are many more. All of them are rich and fine and pure and gentle and genuine and authentic. Just like BOB STAFFORD. He is all of that.

So, I wish him well. As we take up our work again in January in the cold of winter, I hope that BOB and Helen are on their boat somewhere in southern climes—enjoying themselves and enjoying the boat and enjoying life after the Senate. They will. He will and he should and he deserves it richly. He is just a splendid friend. I will greatly miss him. I mean that. It was my personal priviledge to serve on two committees with him. That is where you get to know one of your colleagues. I send my love and God speed to he and Helen.

DAN EVANS

Mr. SIMPSON. Mr. President, it is my rich pleasure to pass along my best wishes to my fine colleague, Senator DAN EVANS, as he retires from the Senate.

Here is a man we will deeply miss. He became a lovely friend of mine. He and Nancy made a great contribution to this city. He replaced the irreplaceable Senator Scoop Jackson. He came here with a determination and spirit and willingness to work—and work hard. He is a superb legislator. I've watched him practice his craft. He learned the issues, did his homework, stood steadfast and strong for the things he believed in and does that with great good skill and good judgment. He is a very special person.

We have shared many fine experiences together. We shared a marvelous trip to the Soviet Union where we were able to learn and to grow. I greatly enjoyed the time I served with him on the Environment and Public Works Committee. He moved on from that committee into his areas of foreign relations where he has done such a steady and thoughtful and creative job. He has performed superbly as vice chairman of the Select Committee on Indian Affairs which affects my State and so many others. He always does that with ultimate fairness. In my job as Republican whip where I check the scoreboard, I would often check with DAN as to his vote and whether "yes" or "no" he always stuck by his guns and was forceful and firm and fair. He lives that way and expects that of others. We will miss him greatly. Our best wishes to he and to Nancy.

TRAGEDY AT WURTSMITH

Mr. RIEGLE. Mr. President, I rise today to pay special tribute to a group of young men whose lives ended tragically at Wurtsmith Air Force Base in Michigan this week. The tragedy occured during a routine Air Force training exercise when their Boeing KC-135 tanker plane crashed, killing 6 crew members and injuring 10 others. The loss of these men shocks us into remembering that there are risks even in peacetime military service. This tragedy is deeply felt not only by the families of the victims, but by all of us.

The six men who were killed were Capt. Jeffery Giles, of Bunker Hill, WV; Capt. David Greene, of Lakewood, CA; 2d Lt. Scott Szuter, of Kirtland, OH; A1c. Robert Parham, of Fayetteville, NC; Capt. Gerald Earhart, of Montague, MI; and Capt. William Russell, of Panama City, FL. Though they were not killed in the midst of a battle their death was no less noble nor valiant. They were killed while serving their country and for this we owe them a debt of gratitude.

We all join Wurtsmith Air Force Base in grieving for these men. Wurtsmith is a small base and has a small-town quality to it. This tightly woven community is feeling the sorrow and it is my hope that they are also feeling our warmth and sympathy during this difficult time.

It is important to remember not the tragedy of death, but the accomplishments of life. These men served their country well and their lives have not ended in vain. It is only with the dauntless courage and the dedicated patriotism of men such as these that our country can remain a strong and secure nation.

TRIBUTE TO SENATOR JOHN C. STENNIS

Mr. CONRAD. Mr. President, I rise today to convey my strong appreciation to my friend and colleague, Senator JOHN C. STENNIS, for the dedicated and distinguished service he has given the Senate as chairman of the Armed Services Committee, as chairman of the Appropriations Committee, and as President pro tempore.

Although I have had the privilege of serving with Senator STENNIS for only 2 years, I quickly learned why he has earned the respect and admiration of all his colleagues. Senator STENNIS said, when he first ran for the Senate in 1947, "I want to plow a straight furrow right down to the end of the row."

Mr. President, when he retires at the end of this Congress, Senator STENNIS will have done just that for nearly 41 years—longer than anyone else in our history except Senator Carl Hayden. In that time Senator STENNIS has risen above partisanship to embody the traditions of fairness, integrity, and thoughtfulness that are so important to the Senate.

Senator STENNIS brought his experience as a circuit judge in Mississippi to his careful deliberations over senatorial conduct. In the 1950's he was among the first Democrats to denounce Senator McCarthy for his invidious tactics, which threatened to bring the institution of the Senate into disrespect. He continued to uphold the Senate's position of respect when leading the investigation into alleged Pentagon "muzzling" of officers by refusing to let the probe degenerate into a repeat of McCarthyite tactics. Finally, as the first chairman of the Select Committee on Standards and Conduct, Senator STENNIS produced the Senate's first Code of Ethics, and then sought to enforce it in a forceful and impartial manner.

As chairman of the Armed Services Committee from 1969 to 1981, Senator STENNIS was a vigorous proponent of a strong national defense. Yet at the same time, he carefully scrutinized Pentagon spending and rooted out weapons systems which he thought wasteful. And this commitment to marshaling our national resources in the most effective way was extended to the many other foreign and domestic policy issues in which Senator STENNIS took an active interest.

Senator STENNIS has been a strong chairman of the Appropriations Committee. He has vigorously defended projects that brought benefits to his constituents, but he has also been sympathetic to the needs of other Senators. And he has balanced the need to fund important projects with the need to reduce the deficit.

Throughout his seven terms in the Senate, Senator STENNIS has personified the qualities this body esteems: a strong sense of duty, hard work, orderly progress, careful deliberation, courtesy, decency, honesty, and respect for the Senate as an institution. Senator STENNIS has indeed plowed a straight furrow, and I am proud to have served with him.

OPERATING ENGINEERS

Mr. HATCH. Mr. President, I rise to direct the Senate's attention to a defect in our Federal labor laws that permits a union to coerce small- and medium-sized construction contractors into renewing union contracts against their will.

Some union officials are selectively using an obscure trust fund contribution provision, coupled with section 302 of the Labor Management Relations Act, to force small construction companies to sign collective-bargaining agreements. The shakedown scheme works as follows:

A small construction company is hired as a subcontractor on a building site. Let's say the employees of this small company belong to the Laborers Union. While on the job, they perform maybe 1 or 2 hours a week of work that is within the jurisdiction of the Operating Engineers Union. The Operating Engineers go to the general contractor and complain. Worried about losing the work, the small subcontractor agrees to sign a bargaining agreement with the Operating Engineers to cover its employees for the 1 or 2 hours work within that union's jurisdiction.

Now, here's the kicker. The small contractor is told that he will have to pay into the Operating Engineers pension or benefit plan, but only for the hours its employees work as operating engineers. This is a relief because the contractor is already paying into the Laborers Union trust fund for the hours worked by its employees.

A year or two later, Operating Engineers approach the small contractor and demand a new collective-bargaining agreement. The contractor says "no" and suddenly finds himself sued by the Operating Engineers trust fund for all hours worked by the small contractor's employees, both as Laborers and Operating Engineers. "What about the promise you made me 2 years ago?" asks the small contractor. "It doesn't count," says the union now, "because it wasn't in writing. Sure, we misled you, but if we go to court, we will win." And, Mr. President, I fear that the union may be right.

Of half a dozen such cases that have come to my attention in recent months, the most glaring is *Operating Engineers Pension Trust* v. *Giorgi*, 788 F 2d 620 (9th Circuit, 1986). In my opinion, this case clearly demonstrates the manner in which union and pension fund representatives are using the "all hours worked" requirement to cover up common coercion of small employers.

Luigi Giorgi and his wife operated a small subcontractor business in the construction industry. Mr. Giorgi ran the business, Mrs. Giorgi kept the books, and Aaron F. Flores was their employee. On April 12, 1979, the Giorgi's company was working at a building site. The general contractor at the site had signed a collective-bargaining agreement with Local 12 of the Operating Engineers Union. Union officials discovered that Mr. Flores was at the work site operating a skip loader, a task within the technical jurisdiction of the Operating Engineers.

The union notified the general contractor that Giorgi's company could not stay on the job site unless Mr. Giorgi signed a collective-bargaining agreement with the Operating Engineers. Given the choice of signing a short form agreement or being thrown off the work site, Mr. Giorgi signed. Before doing so, however, Mr. Giorgi asked the union's business agent whether he would be required to contribute to the Operating Engineers trust fund for hours Mr. Flores worked as a laborer and was assured by that same business agent that he would be liable only for the hours Mr. Flores operated a skip loader.

The short form signed by Mr. Giorgi incorporated the master labor agreement between the Operating Engineers and the Southern California General Contractors. The master agreement authorizes the Labor Management Adjustment Board to interpret and enforce the master agreement.

In 1972, 7 years before Mr. Giorgi signed the agreement, the adjustment board adopted a resolution which provided:

> When an employee has been dispatched by the union to a contractor and the employee performs any work whatsoever covered by the agreement, the contractor shall be obligated to pay fringe benefit contributions to the trust at the required rate for each and every hour worked by the employee or paid for by the contractor.

The adjustment board noted that an employee sometimes is a member of more than one union and may be dispatched by more than one union to the same job. The adjustment board stated that this practice conflicts with the intent of the collective bargaining agreement and that therefore:

> Any employee dispatched by the union under this agreement shall perform only work covered by this agreement, and fringe benefit contributions shall be payable on all hours worked by such employee or paid for by the contractor.

For almost 2 years after signing the agreement, Mr. Giorgi paid some $9,500 to the Laborers' Union trust fund, relying upon the representation of the Operating Engineers' business agent. The master labor agreement and the resolution of the adjustment board, documents that would have advised Mr. Giorgi that he was required to pay the Operating Engineers even for the time Mr. Flores worked as a laborer—language agreed to 7 years before he signed the contract—were never presented to him. The union and the trust funds allowed Mr. Giorgi to rely on the representations of the local 12 agent. He thought the business agent's word was good.

On May 6, 1983, the Operating Engineers trusts filed an action to require Mr. Giorgi to contribute to the trusts for all of the hours Mr. Flores worked, not just as a skip loader, but also for work performed as a laborer—even though Mr. Giorgi had already contributed to a pension plan for the hours Mr. Flores worked as a laborer.

The case went to trial. The U.S. district court held that the oral agreement between Mr. Giorgi and the business agent was not enforceable. But the court, sensing the glaring inequities of this situation, attempted to fashion relief for Mr. Giorgi. It held that since Mr. Giorgi was not made aware of the adjustment board's 1972 resolutions, he was not bound by its requirements.

The Ninth U.S. Circuit Court of Appeals reversed the lower court. It held that Mr. Giorgi would be required to pay benefits to the Operating Engineers trusts for all the hours that Mr. Flores had worked, regardless of the misrepresentations of the union representative. The court followed its earlier decisions in *Waggoner* v. *Dallaire,* 649 F.2d 1392 (9th Cir. 1981), and *Maxwell* v. *Lucky Construction Company, Incorporated,* 710 F.2d 1395 (9th Cir. 1983), holding that the requirement of a written agreement found in section 302 (29 U.S.C. section 186) prohibited the consideration of oral agreements between an employer and a union representative when interpreting a collective bargaining agreement.

Justice Alex Kozinski, in a concurring opinion, expressed grave misgivings about the logic of the court's opinion. He examined the court's ruling in light of the inequities presented by the facts of the case:

> The writing requirement of section 302(c) is in the nature of a statute of frauds and appears to have been intended to avoid corrupt practices in the administration of employee welfare funds. [citation omitted] It is quite a leap, however, from a provision requiring that agreements be in writing, to one that abroqates basic principals of contract law: mutual assent, estoppel, and fraud in the inducement.
>
> While protecting trust funds from fraud is important, I cannot believe that the Congressional purpose is served by holding a tiny subcontractor to a massive contract, the contents of which he has never seen and as to which the union's representative has lied." 788 F.2d at 624.

Regarding the intentional nature of the fraud by the union and its representatives, Justice Kozinski stated:

> Once put on notice that its agents were misleading some employers, and many more employers were signing the short form agreement without fully appreciating its terms, what did Local 12 of the Operating Engineers do? Did it clarify the short form agreement? Did it provide copies of the master labor agreement and relevant orders of the Adjustment Board to signatory employers? Did it prepare a simple, concise summary of the key terms of the full contract and attach it to the short form agreement? Did it modify the short form agreement to disclaim any oral representations made by the union's business agent? As far as this record reflects the union has done none of these things. And why should it? After all, it can be confident that employers caught in the web of misstatement or misunderstandings spun by its agents will be without legal recourse, and that any employers foolish enough to resort to the court will have to bear the trust fund attorney's fees for defending the suit.

Kozinski concluded:

> To reach this result requires, in my view, a very broad reading of a statutory provision that calls for nothing more than a written trust agreement, a provision intended to avoid fraud on the trust fund. I think the drafters of the legislation would be surprised to learn that it has been interpreted to sanction fraud by the trust fund.

A more recent case in which the all hours worked clause has been used to extort a contractor is the case of Operating Engineers Pension Trust, et. al. versus Steve L. Gilbert, et. al., which was settled out of court in September 1988, after a brief trial in the U.S. District Court for the District of Nevada.

Steve Gilbert is president of a small construction company, Gilbert Development Corp., which has offices in Utah and Nevada. Between 1978 and mid-1983, Mr. Gilbert maintained a contract with Local 12 of the Operating Engineers Union on a construction job in Las Vegas. Occasionally Mr. Gilbert or his son Dale would move a piece of equipment in order to expedite the job. In 1979 both received written exemptions from making Operating Engineers trust fund contributions in their own behalf from the Operating Engineers. Three other employees had their benefits paid exclusively to the Operating Engineers. Eight others had their benefits paid to either the Teamsters or Laborers Union. Seven other employees were nonunion. Another employee had his benefits paid to both the Laborers Union and the Operating Engineers.

Trouble began after Mr. Gilbert refused to renew the contract with local 12 after its expiration June 30, 1983. In December of that year, Mr. Gilbert was billed $6,500 for trust fund contributions for 1981 and 1982 for an employee who had occasionally moved construction equipment in 1981 but never in 1982. Although Mr. Gilbert stated in an affidavit filed in the law suit that he did not believe he owed the Operating Engineers any of this money, he decided to pay it rather than endure any more harassment from the union. Mr. Gilbert added a notation on the back of the check stating that its deposit would constitute full settlement of all claims made against him by the union for trust fund contributions earned to date. The union cashed the check. A short time later, however, the union began pressuring Mr. Gilbert to sign a new contract and, when he refused, the trustees of four Operating Engineers trust funds sued Mr. Gilbert for more than $1 million, including unpaid trust fund contributions, interest, audits, and attorney's fees.

A breakdown of the damages claimed by the trust funds showed them to be related to the same job activities that the union previously stated would be covered by the claim of $6,500. The claim included more than $100,000 in unpaid trust fund contributions and interest relating to Steve and Dale Gilbert, even though both had been specifically exempted from trust fund coverage in a local 12 memorandum dated August 3, 1979. The remainder of the $1 million claim covered work performed by the eight employees who had their benefits paid to either the Teamsters or Laborers trust funds, the nonunion employees, one operating engineer, the employees who had benefits paid to both the Laborers and Operating Engineers Unions, and an unknown employee who, according to company records, had never worked on the job site at all.

Steve Gilbert, after an unsuccessful attempt to obtain assistance from the Federal Bureau of Investigation and the U.S. Department of Labor, settled the case in early September 1988 for an undisclosed amount believed to be in the range of $175,000 to $200,000. Mr. Gilbert's attorney told my staff that Mr. Gilbert still felt that he did not owe any of the money but had settled because he thought he would lose the case in view of the recent Ninth Circuit Court decisions in Giorgi and similar cases.

Gilbert Development was billed an arbitrary 40 hours a week for each employee, even though some had worked much less than that. Few, if any, of these employees had ever performed any operating engineers work and those who had—except for the one operating engineer—were said to have done little more than occasionally roll a piece of equipment out of the way.

Mr. President, I think it is sad when the Nation's labor laws have been perverted in this manner, and it is a sorry commentary that the primary perpetrator of this abuse is the Operating Engineers Union. This union was cited as having a history of racketeering by the 1986 report of the President's Commission on Organized Crime. It came in for further criticism for sleazy work practices in the Interim Report on Corruption and Racketeering in the New York City Construction Industry, released in June 1987 by the New York State Organized Crime Task Force. And, it is the same union whose operations in the States of Louisiana and Ohio were the subject of extensive hearings by the Committee on Labor and Human Resources in 1984. As a result of information uncovered at those hearings, the Justice Department obtained criminal convictions of six officials of local 406 of the Operating Engineers Union in Lake Charles, LA. I do not think the union will stop this abusive practice on its own.

To prevent further abuses of this sort, I intend to introduce legislation in the next session of Congress aimed at eliminating incidents of fraud perpetrated by unions when soliciting employers to enter into collective bargaining agreements. Our Federal labor laws allow construction unions many advantages compared to union members in other industries. We have been repeatedly told that this special status is necessary because of the unusual nature of construction work. Yet, I cannot believe that this favored status should permit what would normally be called a shakedown. And, we certainly should not tolerate victims of this coercion to be forced to pay the union's legal fees just because they sought simple justice. Federal labor law should not sanction fraud, deception, and coercion.

MID-DAKOTA RURAL WATER SYSTEM

Mr. PRESSLER. Mr. President, today I want to focus the attention of our colleagues on a serious water problem in my home State of South Dakota. The lack of good quality water in central South Dakota continues to be a major problem. Poor water causes human health problems and reduces livestock production.

Many South Dakotans are forced to haul water many miles for household and livestock use. Some farmers have been forced to sell their livestock because no water was available after wells went bad or dried up. There are two examples of what residents in the east-central region of South Dakota must live with every day as a result of the extremely poor quality of water supplies.

I have been working for over 10 years to surmount these problems. I have introduced successful legislation directing the Corps of Engineers to study the need for and feasibility of a rural water system for the mid-Dakota area of South Dakota.

This study has demonstrated the need for a rural water system in that area. I will continue my efforts to solve this serious problem by introducing legislation to authorize the project early next year.

To remedy the water quality problems in east-central South Dakota, the Mid-Dakota Rural Water System has developed a project which would provide good quality Missouri River water to rural and municipal residents. The water would be pumped from an intake on the Oahe Reservoir or on Lake Sharpe.

The Mid-Dakota Rural Water System would provide domestic water to 23 communities and rural residents in a 10-county area in east-central South Dakota. Over 29,000 people and 500,000 head of livestock would be served by the project.

Ground water in the area does not meet Federal or State safe drinking water standards. The water utilized from shallow aquifers tests from marginal to poor with extremely high levels of dissolved solids, iron, sodium, sulfates, and hardness. Also, the capacity of shallow aquifers to maintain adequate yields is questionable.

Other problems include the shortened lifespan of pipes, water heaters, plumbing fixtures, clothes, cooking utensils, and water-using appliances. Loss of production in dairy cattle and other livestock occurs as well.

The Mid-Dakota Water Development District, current sponsor of the project, has completed a reconnaissance level study. Organizational meetings have been held in each of the participating counties and "good intention" signup fees have been collected. The project is included in the South Dakota Governor's Water Initiative. Legislation has been introduced in the South Dakota State Legislature to appropriate $100,000 for a detailed feasibility study of the project.

Total cost of the project is estimated anywhere from $86 million to $101 million. The average monthly water bill per connection is calculated to be roughly $50, which covers operating and maintenance expenses and debt service on the loan portion of the project.

Residents of the project area are depending upon congressional action for their future health, safety, and well-being. Good quality water also would benefit economic development efforts.

Mr. President, I want to bring this water problem to the attention of my colleagues now in order to inform them of my intention to introduce legislation authorizing the Mid-Dakota Rural Water System early next year. Good quality water is desperately needed in this area.

BLAIR CROWNOVER

Mr. HATCH. Mr. President, I am pleased to cosponsor Senator STENNIS' resolution commending Blair Crownover, who has been a fixture in the office of Legislative Counsel for 26 years. He has certainly been a tremendous help to me throughout my 12-year tenure in the Senate, especially during the 6 years I was chairman of the Labor and Human Resources Committee. We will all miss him when he retires from this environment of constant confusion and takes up residence in Lewiston, DE.

I have always appreciated Blair's competence as an attorney, and I and my staff have depended on him for expert legislative drafting and counsel. But, I have also appreciated the fact that he always retained his sense of humor. I remember the House-Senate conference on a major piece of Labor Committee legislation a few years ago. There were numerous meetings of the conferees usually followed by numerous meetings of staff. Frequently, after Senators and Congressmen had agreed on the policy, it was left to staff to work out the details. Blair and his House counterpart devoted countless hours turning these agreements into legislative language that was debated and redebated by the House-Senate staff to ensure that our Members' agreements were accurately reflected. Under those conditions, I suppose I should not have been surprised to see the cover page of the official conference report. It said simply "that the committee of conference having met, have agreed to and do recommend to their respective houses as follows: that the conferees do agree to let the staff work it out." Needless to say, I was relieved to find the real cover page underneath, properly prepared as usual.

Mr. President, I wish to commend the Senator from Mississippi, the President pro tempore, for suggesting this tribute to Blair Crownover. He has certainly earned it. I want to offer my warm thanks and best wishes to Blair as he goes on to new places and new endeavors.

CONGRESSIONAL PAY ACCOUNTABILITY ACT

Mr. PRESSLER. Mr. President, earlier this year I introduced the Congressional Pay Accountability Act, S. 2682. This bill would prohibit back door pay rises. Specifically, it would require Congress to pass a joint resolution of approval before a pay increase for Members of Congress could be effective. The joint resolution shall relate only to the issue of a congessional pay raise.

I had planned to offer the Congressional Pay Accountability Act as an amendment to the minimum wage and the parental and medical leave bills. Unfortunatley, because of a series of parliamentary procedures, I was shut out. Eventually, these bills were pulled off the floor and the Senate never had a chance to consider my amendment. As my colleagues know, I have been preempted from offering this amendment to other bills as well.

I am prepared to debate and vote on this matter. When the 101st Congress convenes, I will reintroduce the Congressional Pay Accountability Act. Frankly, I am tired of explaining to my constituents the shenanigans that have occurred when Members of Congress receive back door pay increases. It is difficult for me to explain to them that I did not want a pay raise and even voted against a pay raise, but somehow Congress managed to receive a raise. We should be ashamed of the manner in which we've allowed congressional pay raises to be passed. We need reform. The public deserves accountability. If we don't have the guts to vote for a raise, then we should receive no raise. No vote, no raise, period. It is as simple as that.

A prime example of the convoluted procedures used to increase congressional salaries in the past was last year's $12,100 pay increase for Members of Congress. The Senate voted twice to reject the pay increase. First, by a vote of 86 to 6 it passed a Senate joint resolution to disapprove the pay increase. That same day, by voice vote, the Senate adopted the same language as an amendment to the Emergency Food and Shelter Program appropriations bill. Unfortunately, the House failed to disapprove the pay increase before the 30-day deadline expired. Several attempts were made to rescind this pay raise. Not surprisingly, none prevailed. Thus, Congress received a 15.6 percent pay increase.

Next January, we could be faced with the same situation. The Commission on Executive, Legislative, and Judicial Salaries is scheduled to meet this fall. Recommendations on salary increases will be made to the President by December 15, 1988. It is likely that the Commission and the President may recommend pay increases. If that is the case, on the first day of the 101st Congress, I will offer a resolution to disapprove the pay raise. With a national debt of more than $2.6 trillion and continuing annual deficits exceeding $140 billion, I strongly believe that Members of Congress should not receive a pay increase. Until we balance the budget, our salaries should not increase.

Mr. President, we need reform. No vote, no raise, period. It is as simple as that.

TRIBUTE TO SENATOR ROBERT STAFFORD

Mr. BINGAMAN. Mr. President, with the adjournment of the 100th Congress upon us, I would like to take a moment to express my regret that very soon the Senate will lose one of its truly distinguished members, Senator Robert Stafford, of Vermont.

The entire Nation is indebted to Senator Stafford for his excellent work on the Environment and Public Works Committee. Through his dogged persistence, the Superfund Program was significantly expanded to help clean away the toxic wastes choking our cities, rivers, and streams, and the Clean Water Act was improved to ensure safe drinking water and to create many vital water projects.

Senator Stafford also has been a vigilant guardian of our education system. As chairman of the Education Subcommittee for the Committee on Labor and Human Resources, he worked to preserve and enhance many essential educational programs. His sponsorship of the Higher Education Act has enabled thousands of disadvantaged young people to secure better educations.

With a simple elegance that commands our respect, he displays many of the qualities we in the Congress value most. He is patient, judicious in both word and act, and possessed of unflinching integrity. Tempered by three decades of politics, the distinguished Senator from Vermont is never strident or overhasty. We all will miss the evenhanded manner with which he treats his colleagues—without regard to which side of the aisle they sit.

For 16 years, Senator Stafford has been a mainspring in the Congress. During his tenure, he has served this body, his State of Vermont, and the Nation with dedication and distinction. As he leaves the Senate, I wish him the very best in whatever he chooses to do.

REAUTHORIZATION OF THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT

Mr. INOUYE. Mr. President, the Office of Juvenile Justice and Delinquency Prevention has, since 1978, administered an exceptional delinquency prevention program known as Law-Related Education, LRE. This program reflects the efforts over these years of five prominent not-for-profit national organizations—the American Bar Association; Phi Alpha Delta Law Fraternity, international; Center for Civic Education/Law in a Free Society; Constitutional Rights Foundation; and the National Institute for Citizen Education in Law.

The LRE program conducted by these organizations promotes the building of strong moral foundations and respect for the law that is desperately needed among our young people, through educational programs in elementary and secondary school and other settings, training of teachers, curriculum development, and widespread use of community resource persons active in the local justice systems. This program is designed to instill respect for the law in juveniles and thereby contribute to the reduction of juvenile delinquency. Today, this outstanding LRE program operates in over 40 States thoughout the Nation.

Mr. President, in my own State of Hawaii, I am gratified to see the law-related education program at work, helping to provide the leadership, training, and education necessary to help our youngsters become productive and law-abiding citizens.

I note with satisfaction that in reauthorizing OJJDP, we continue to provide our young Americans with a uniquely qualified LRE program of training and coordination to help combat the growing problems of delinquency, drug addiction, gangs, and juvenile violence. It is my hope that the national programs will be strengthened so the Federal Government can fulfill its leadership role for effective delinquency prevention and treatment programs, and provide statewide implementation of successful program models and training.

Mr. President, Law-Related Education deserves our continued support.

Mr. President, I ask unanimous consent that an excerpt on Law-Related Education from the July/August 1988 issue of the National Institute of Justice, NIJ Reports, be printed in the Record.

There being no objection, the excerpt was ordered to be printed in the Record, as follows:

[From the National Institute of Justice, NIJ Reports, July/August 1988]

LAW RELATED EDUCATION

Law Related Education (LRE) is a national program that teaches elementary and secondary students about law and the legal system and their rights and responsibilities as citizens. More than just an addition to social studies, Law Related Education fits into the general curriculum at any grade level.

LRE is conducted for OJJDP by five national organizations: the American Bar Association Special Committee on Youth Education for Citizenship, the Center for Civic Education, the Constitutional Rights Foundation, the National Institute for Citizen Education in the Law, and Phi Alpha Delta Public Service Center.

These organizations develop partnership programs, write classroom curriculums, train educators and resource persons, and mobilize community support for LRE.

In Law Related Education classrooms, volunteers, including judges, lawyers, police officers, legislators, and other law-related professionals, work with young people to help them increase their understanding about the law and legal system.

In elementary schools, LRE offers students the opportunity to learn about the underlying principles of law, the legal system, and government. In secondary schools, LRE teaches not only about the law but also about decisionmaking in a democracy, about individual accountability for events in government, and about responsibility for being good citizens. Much of the course material comes from newspaper articles and court decisions or is developed through learning experiences.

To stress to young people that they will be held accountable for using illegal drugs, the national LRE organizations are developing new drug-focused programs. For example, the law students in the Phi Alpha Delta law fraternity at Texas Tech University have developed a manual explaining the legal consequences of an arrest and conviction for drug or alcohol offenses in Texas. The law students present the material to high school students in the Lubbock school system.

In St. Paul, Minnesota, students at Hamline University School of Law have developed a program that takes students through all phases of a drunk driving case. The program can be adapted for presentation in 1-, 2-, or 3-day segments as part of a regular high school civics class.

The LRE drug-focused programs will be tested in 21 States during the 1988-1989 school year and will be available in all States during the 1989-1990 school year.

According to evaluation results, properly implemented LRE programs can reduce student tendencies to resolve issues by violence, reduce dependence on delinquent peers, enhance understanding of the legal system, and develop healthier attitudes toward the legal system.

Last year, more than 15,000 teachers were trained in the Law Related Education curriculum, representing 400 school districts in 34 States.

MAJOR FRAUD ACT OF 1988

Mr. THURMOND. Mr. President, I rise today to support H.R. 3911, the Major Fraud Act of 1988. Generally, this bill establishes criminal penalties for those who defraud the Government in the procurement process. Over the last few years, Government probes of major contractors, particularly in the defense area, have exposed massive fraud. Such waste of money is inexcusable. While the Government suffers the immediate loss, the real loser in such cases is the American taxpayer.

In the last Congress, we passed the False Claims Amendments Act and the Program Civil Remedies Fraud Act, which are aimed at attacking fraud against the Government. This bill would add another weapon to the prosecutor's arsenal by establishing a specific offense for major procurement fraud. I recognize that some contractors have realized the importance of stopping fraud and have set up self-policing programs. I commend those companies who have developed and are diligently enforcing such programs. However, the fact remains that fraud is still widespread in this industry.

Additionally, when the Judiciary Committee considered this bill, an amendment was adopted to provide additional resources in the Department of Justice to be primarily dedicated to the investigation and prosecution of Government fraud.

This bill is an important step toward the prosecution of major fraud. I strongly urge my colleagues to support this measure.

INTELLECTUAL PROPERTY ANTITRUST PROTECTION ACT

Mr. LEAHY. Mr. President, I am adding to this legislation the provisions of S. 438, a bill that previously passed the Senate unanimously. S. 438, which is cosponsored by Senators HATCH, THURMOND, HUMPHREY, BAUCUS, DECONCINI, METZENBAUM, and KENNEDY would provide important benefits to America's research and development community and encourage continued innovation in high technology.

The relevant legislative history on this legislation can be found in the Judiciary Committee Report on S. 438, Senate Report 100-492, and in the October 4, 1988 CONGRESSIONAL RECORD beginning at S14434. We are still working on this legislation with interested House Members, and I look forward to working on the language and the legislative history with my friends, Congressmen RODINO, KASTENMEIER, and EDWARDS of California.

I encourage each of my colleagues to support this amendment. By doing so, we will promote America's competitiveness and encourage innovation by rewarding inventors and creators.

THE LEAD CONTAMINATION CONTROL ACT OF 1988

Mr. CHAFEE. Mr. President, as the author of S. 2610, the Lead Contamination Control Act of 1988, I am extremely pleased that the Senate has acted favorably on H.R. 4939, the House companion bill to S. 2610. Our action here today will help protect our children from the adverse health effects of lead poisoning.

There is no doubt the fact that lead is a dangerous and toxic metal. If it is absorbed into the body by ingestion or inhalation or even by skin contact, it can be a fatal poison. It can also affect human development. Studies done by experts in the field show that high lead levels in children are associated with reduced IQ scores, lower academic achievement, reduced language skills, and reduced attention spans. Expectant mothers with above average levels of lead in their systems may suffer miscarriage, or bear low birth weight babies. We recognize this risk when we deal with lead paint, or leaded gasoline. But we have not paid enough attention to the dangers of lead in our water.

Lead contamination of our drinking water can occur when the water runs through lead pipes, or when it sits in water coolers with lead parts. But today, after we have known since the time of the Romans that lead is a dangerous poison, we are still finding water coolers that not only contain lead parts, but are actually lined with lead. There are close to 1 million coolers in use today that contain lead components. I was shocked to learn that 8 out of 12 of the Halsey Taylor water coolers tested by the Environmental Protection Agency contained lead-lined tanks. One of these tanks contained lead levels 400 times greater than the EPA standard of 5 micrograms per liter.

Lead-lined water coolers pose an even greater threat because of the water use patterns. Not only are there multiple users of a single water cooler, but the contained water often sits in the cooler overnight, or even over weekends and vacations. This allows time for the lead to seep into the water at alarmingly high concentrations.

Where are these water coolers? It is truly frightening to think that they are in daily use in our children's schools. This is unacceptable. Lead, even in small amounts, is harmful to children. A child's small physical size increases the potential toxicity of lead in his or her system. Children also commonly have nutrient deficiencies that cause them to absorb and retain more lead. Thus, they literally are being poisoned whenever they get water after playing at recess, or as they drink water with their lunches or snacks.

The EPA estimates that over 160,000 children today are at risk of growth impairment or deformed blood cell formation from exposure to high lead levels in drinking water. Each year, over 240,000 children under age 6 are exposed to lead in drinking water at levels high enough to impair their intellectual development. All of these risks are unnecessary.

The legislation that we have just passed sends out the strong message that exposure to high levels of lead must stop. It directs the Consumer Product Safety Commission to issue an order requiring manufacturers or importers of water coolers with lead or lead-lined water reservoir tanks to repair, replace, or recall and provide a refund for, such coolers within 1 year after enactment. It also requires the EPA to publish a list of drinking water coolers—specifying the brand and model of cooler—which are not lead-free within 100 days of enactment. Those coolers which contain parts that may corrode and allow lead contact with the water are included.

The measure also helps schools identify coolers which are not lead-free. The EPA will distribute a list of those coolers which are not lead-free, as well as a guidance document and testing protocol. All of the information will be available to the public, and in particular to local education agencies, private schools, and day care centers. State programs, aided by a new Federal grant program with $30 million available for annual funding, will assist local efforts to eliminate lead contamination of drinking water.

Finally, this legislation establishes a program of technical and grant assistance for projects to detect and prevent lead poisoning from any source in children and infants. These projects must involve screening, referral, and public education services for families and communities. This program will stimulate research and prevention projects which might not otherwise exist.

We cannot take risks with the health of our children. We cannot let the normal pattern of their growth be altered. And we cannot allow any impairment of their intellectual development to occur. Our children are our future, and we must guarantee them the safe, healthy environment for development that they deserve.

Mr. President, I applaud the Members of the Senate for their action today, and the message that this action sends.

COMMENDING RICHARD BRANDON FOR HIS SERVICE TO THE SENATE AND THE NATION

Mr. CHILES. Mr. President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 499)

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. CHILES. Mr. President, at the close of this session of Congress, Rick Brandon, the staff director of the Senate Budget Committee will be leaving his position. Rick has served the Senate and me for 15 years and has served as staff director or minority staff director of the Budget Committee since the beginning of 1983.

To his responsibilities Rick has brought an enormous degree of talent and dedication. As staff director of the Budget Committee, Rick needed to be completely conversant in the policy issues related to virtually all areas of Federal spending and taxation. And, in fact, his grasp of all of these areas was phenomenal. Rick needed to be in complete command of all the intricacies of the Budget Act, the budget process, and Senate procedures. And he was. Rick needed to be in command of the complexities of macroeconomics and fiscal policy. And he was.

The 1980's have been a period of great difficulty for fiscal policy. Deficits have become extraordinarily high and the challenges and the tensions facing the Budget Committee and the budget process have been enormous. During this period, the Senate was fortunate to have had Rick Brandon's talents working to meet those challenges responsibly. Rick has worked hard at the task of deficit reduction. He has helped to maintain and guide the budget process in the face of tremendous pressures from all directions. He has helped to build and maintain a foundation for responsible action on the budget that will continue next year and in the years ahead.

The budget process has been exceptionally contentious during these last few years. The strains which that has placed on the staff director of the Budget Committee have been enormous. He has had to labor hours upon hours through negotiations over the budget resolution in committee, on the floor, and in conference. He has had to trudge wearily through hours of negotiations over writing Gramm-Rudman-Hollings, reconciliation bills and the budget summit. Yet whatever the crisis or the situation demanded, Rick was always there, rising to the occasion, fully on top of the situation, looking for that one last compromise that would break the logjam.

Rick has also been a valuable source of information about the budget to many Members of this body. He was responsible for overseeing the numerous documents which the Budget Committee has provided to Senators and their staffs, displaying details on the many proposals and events of the budget process each year. And he has always been available to answer questions from Senators as we deliberated on budget matters in committee and on the floor and in conference.

Now Rick is leaving the Senate to move on to new opportunities and we want to wish him well. He leaves behind a record of excellence and of mastery of his job that will be difficult to follow. In these difficult times, the U.S. Senate and indeed the country owe him a debt of gratitude. I especially want to offer him my personal thank you for his help to me and for the superb job that he has done during the last 15 years.

Mr. President, in conclusion, I wish to say that I think Rick Brandon is an extraordinarily talented young man. He has served the Senate very well in this capacity. I urge the adoption of the resolution.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the resolution.

The resolution (S. Res. 499) was agreed to.

The preamble was agreed to the resolution, with its preamble, reads as follows:

S. RES. 499

Whereas Richard Brandon has ably and faithfully served the Senate of the United States as Staff Director and as Minority Staff Director of the Committee on the Budget and the Senate wishes to express its appreciation for his fifteen years of outstanding service to the Senate and to the Nation;

Whereas Richard Brandon has dedicated his efforts to the management of the Federal budget and the achievement of effective fiscal public policy;

Whereas Richard Brandon brought to these tasks remarkable diligence, perserverance, and intelligence; and

Whereas Richard Brandon has helped provide direction and guidance to the Committee on the Budget as it faced difficult challenges in the area of fiscal policy: Now, therefore, be it

Resolved, That the Senate of the United States commends Richard Brandon for his exemplary service to the Senate and the Nation.

SEC.2. The Secretary of the Senate shall transmit a copy of the resolution to Richard Brandon.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. CHILES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THE DRUG BILL

Mr. DOLE. Mr. President, let me just take one moment to congratulate all those who were participants on the drug legislation just passed. We made a good start in 1986, but this is the first live shot in the war against drugs. It seems to me we have finally moved past the mere speechmaking—and I do not say that in the Senate—but I mean moved past mere speechmaking all over the area, all over the country, and we have done something about a national tragedy.

We have passed a tough new law that will hit hard at the pushers, murderers, and, at long last, the users. This is a bipartisan package.

I also commend all those who participated, not only in the core group, but those who participated in the amendment process, particularly Senator RUDMAN, Senator GRAMM, Senator THURMOND, Senator DOMENICI, Senator D'AMATO, and Senator WILSON on this side, and on that side, Senator NUNN, Senator DECONCINI, Senator GRAHAM, Senator KENNEDY, and others.

We had a good effort. It seems to me that we have reached the right result. I hope the House would take a good, hard look at this Senate-passed bill, passed by a vote of 88 to 2. There was a lot of support for the bill. Perhaps they could take our bill. It is a good, tough bill. It contains a death penalty, it contains tough penalties for users, and it does address the issues of habeas corpus and the exclusionary rule. There are a number of other provisions in this bill, in my view, in addition to the money—we are not going to have enough money in the first year—but at least we recognize the need for treatment and recognize the need for enforcement.

I believe, over all, it is an outstanding package. So I hope we could have action.

Finally, I thank the distinguished majority leader, because without the leader's determination, we would not have passed the bill. He made it very clear at the outset, at our first meeting, that he intended to pass this bill. Once the Members understood that, once Members on each side understood that, then it was much easier to bring the package together.

In the final analysis, all Members are to be congratulated. Nobody held it up in the last days, when they had an opportunity, to try to leverage anything. It worked very well. I congratulate my colleagues on both sides of the aisle.

I thank the majority leader.

SENATE BIPARTISAN DRUG BILL

Mr. BYRD. Mr. President, I thank the distinguished Republican leader, without whose support, cooperation, and leadership this omnibus drug bill would not have passed the Senate.

I wish to thank all of the Members on both sides of the aisle who so laboriously and for so long worked on this legislation.

I thank also the staffs on both sides of the aisle. Particularly I thank my own staff person, Sally Mernissi, and the staff person supporting Senator DOLE, Sheila Burke, his chief of staff; and those staff persons who worked from Senator NUNN's office, Eleanor Hill and John Sopko; from Senator MOYNIHAN's office, Paul Stockton; on behalf of Senator CHILES, Dave Williams; also on behalf of Senator DOLE, Jim Whittinghill; and staff persons working for others on the working group on both sides, Democrat and Republican.

I do not have all the names, but their names have been mentioned heretofore, many of their names, and I just wanted to repeat my compliments and thanks to them.

I thank especially Senators NUNN, MOYNIHAN, RUDMAN, D'AMATO, WILSON, and DOMENICI. These were the cochairs. I will list all of the names on both sides who served on that task force for the RECORD.

Mr. President, it was a remarkable display of cooperation. I think it would fall in the category of being an incredible piece of work. It could only have been done as it was done, the process that was used.

This bill was painstakingly developed through many hours of work. It attacks one of the most serious crises that confronts us today.

Although my own State of West Virginia is a rural State with one of the lowest crime rates in the Nation, the drug crisis has not left our boundaries untouched. West Virginia and other rural States, like the urban States, need to educate young people on the dangers of substance abuse, and we need to offer help to those who have become addicts and are trying to recover.

West Virginia has seen drug dealers take up residence in its towns and cities. Some of these dealers are being supplied by couriers shuttling between Washington, Miami, and New York.

What is happening in small towns in West Virginia can and is happening in other small towns throughout this country. The police forces that serve these towns are being overwhelmed. No matter how dedicated local law enforcement is, they do not have the manpower nor the resources to fight organized drug trafficking that, like an octopus, has tentacles that reach into every region of this country and beyond our borders. We not only need to seek the seller on the street, we must also seek the kingpin. We need to be tough on those who would lay waste to the future by enslaving our children to a habit that can only mean self-destruction.

We are doing that today, Mr. President, with this bill.

Our bill, the Omnibus Anti-Substance Abuse Act of 1988, is the strongest most comprehensive antidrug bill ever to be considered in this Chamber.

It addresses the organizational concerns we have right now at the Federal level in our efforts to coordinate an effective antidrug campaign.

It addresses our law enforcement programs—Federal and State, and local. It provides needed moneys and increased statutory authority in these areas.

It addresses our international interdiction efforts.

It addresses education, prevention, and treatment programs.

One whole title of the bill is devoted to what we call user accountability provisions which zero in on drug users.

We provide for civil penalties up to $10,000 for the possession of illegal drugs. We also provide for the denial of certain Federal benefits for convicted drug traffickers and users.

These provisions are tough. They provide strong incentives, indeed, for drug users, even those who may consider themselves to be casual, recreational drug users, to stop their activities or suffer the consequences.

Furthermore, this bill allows the death penalty to be imposed for murders committed or ordered by drug kingpins, and for the drug-related murders of law enforcement officers.

Let there be no mistake about it, Mr. President, this bill is very tough indeed on those who would commit drug-related murders, who would traffic in drugs and, also, for those in safety-sensitive positions in the airline, railroad, trucking, bus, and transit field who would attempt to use drugs.

This is a good, strong bill. We should pass it and send it swiftly to the House, so that we might work out any differences and get a bill to the President's desk in short order.

In closing, Mr. President, I want to thank, once again, all those who labored so long and hard to develop this bill.

APPOINTMENT BY MAJORITY LEADER

This past May, I appointed our Democratic Working Group on Substance Abuse, chaired by Senators MOYNIHAN and NUNN, and comprised of Senators DECONCINI, CRANSTON, GLENN, CHILES, KENNEDY, PELL, GRAHAM, KERRY, LAUTENBERG, SASSER, BUMPERS, and HOLLINGS.

I want to thank Senators MOYNIHAN and NUNN and the members of the Democratic Working Group for their hard work these past few months. I know the degree of commitment they all brought to their work on this bill, and I believe they are owed the thanks and approbation of every Member on our side of the aisle for their efforts.

In June, our working group proposed a comprehensive antisubstance abuse package, and it became the basis for the negotiations with the Republicans on the bipartisan package we have before us today. I thank the Republican leader and those he appointed, especially Senators RUDMAN, GRAMM, D'AMATO, and WILSON, for working with us on this vitally important package.

And, I thank all those Senators who, in these last few days, have worked in a strong spirit of cooperation to clear the many fine amendments which we have included in the leadership amendment package to this bill. I believe all of us have indeed kept our eyes on the goal—that of passing the strongest possible Anti-Substance Abuse Act possible.

It is high time that this Nation begins to take the serious steps needed to purge the insidious effects of drug abuse from American life. This bill attacks the evils of drug abuse from both the supply and demand sides. That is the only way to turn the epidemic of substance abuse around in this country.

We cannot allow this cancer to continue to undermine our national moral fiber and sabotage the future of our young people. We can do no more important service for our country in this Congress than to pass legislation aimed at ridding our society of the scurge of drugs.

This entire Congress has fought for the future by working for fairness for families, a more competitive America, a strong national defense and greater opportunity for our children, but a failure to deal with our drug problem will cast a cloud over all those efforts and over the fate of an entire generation.

Mr. COHEN. Mr. President, on behalf of Mr. Dole, under the provisions of Public Law 100-458 of October 1, 1988, I hereby appoint Senator Mark Hatfield of Oregon to a 4-year term on the board of trustees of the John C. Stennis Center for Public Service, Training and Development.

Mr. President, I ask unanimous consent that I be permitted to speak for 1 minute as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROBERT STAFFORD

Mr. COHEN. When Bob Stafford retires from the U.S. Senate at the conclusion of this session, the Senate will lose one of its most effective and revered Members. As a fellow New Englander and Republican, and a man whose patient approach to lawmaking has resulted in a solid record of legislative achievements, he has always commanded my respect and admiration.

Senator Stafford's soft-spoken manner and thoughtful pragmatism have served Vermont and the Nation well throughout a public career that now spans almost four decades. His service in the Senate has been marked by a long list of significant accomplishments—a legacy that any of us would be proud to leave behind.

Under his watch as chairman of the Committee on Environment and Public Works, Congress reauthorized and strengthened the Superfund Act so that the Nation could effectively clean up its hazardous waste sites. He led the successful effort to reauthorize and strengthen the Resource Conservation and Recovery Act to improve the management and disposal of solid and hazardous waste.

Thanks to Senator Stafford's untiring efforts, we continue to make considerable progress in cleaning up and protecting our Nation's rivers, lakes, and streams. In the last Congress, he was a leader in the effort to enact long overdue reforms in our Nation's water resources policy, and he has been a steadfast supporter of efforts to fight one of the most serious environment threats we now fact—the degradation of our water resources by acid rain.

It is because of the work of Senator Stafford in shaping Federal highway legislation that smaller States such as Maine are allocated a fair share of interstate highway funds. In addition, his commitment to ensuring educational equity for the youth of American has been clear and consistent throughout his long career. The Guaranteed Student Loan Program that now bears his name is yet another enduring legacy to Bob Stafford's commitment to a better America.

A December 4, 1987, Washington Post editorial commenting on Senator Stafford's impending retirement captures the essence of the man. It states:

> He has not lost sight of what the term ["public service"] means . . . He is substantive, unassuming, patient and effective . . . When quiet men like Robert Stafford go, they are missed.

Bob Stafford will be missed for more than his stature, which is that of an oak tree, and for more than his strength and courage, which is that of a lion. We will miss his humor, which is that of a Will Rogers. Time after time Bob regaled us with stories of life in the slow lane of country living. Sometimes his wit would be as subtle as a Mona Lisa's smile and other times as sharp as a stiletto. We never knew whether to laugh or seek tourniquets—just that he was going to reward us with his special brand of light-hearted fun.

I will miss Bob Stafford's presence in the Senate and I sincerely wish him and his wife well as they sail off into the sunrise of all their tomorrows.

JOHN STENNIS

Mr. COHEN. It will truly be the end of an era when our esteemed colleague, John Stennis, leaves the Senate at the close of this session. For over four decades the people of Mississippi, eight U.S. Presidents, countless Senators, and the Nation as a whole, have all benefited from the extraordinary wisdom and integrity of this one man. Few would disagree that Senator Stennis' departure from Capitol Hill will mark the end of one of the most distinguished careers in the history of this institution.

John Stennis is a legislative giant by anyone's definition. As chairman and ranking minority member on the Senate Armed Services Committee from 1969 to 1986, he was actively involved in shaping the Nation's defense policy during an extremely crucial period. The Nation's security interests have never had a more eloquent defender.

I was assigned to the Armed Services Committee when I came to the Senate in 1979. I knew Chairman Stennis to be the elder statesman of the Senate, a man of enormous influence and stature. However, I soon found out that he was also a very approachable Senator, willing to both advise and listen to a junior Member. As a freshman in this body, I found his guidance invaluable. Having worked with him closely over the last decade, I continue to be inspired by his presence in this Chamber.

Tenacious. Fair. Dignified. Righteous. Strong. These are the words that come to mind when I think of the senior Senator from Mississippi. His commitment to public service is legendary. His uncommon courage and endurance have been models for us all. His reputation as an affable, courtly sage is universal in the Nation's Capital and throughout his home State.

Clearly the Senate will not be the same without John C. Stennis. He has made a mark on this body like few Senators ever have. It is with the deepest appreciation and respect that I thank Senator Stennis for his contributions to the Senate and this Nation and that I wish him a rewarding retirement in the years ahead.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER (Mr. Proxmire). The Senator from Florida is recognized.

THE VOTE IN CHILE

Mr. GRAHAM. Mr. President, after 15 years of dictatorship the people of Chile last week finally had an opportunity to go to the polls and express themselves. They left no doubt as to how they feel about Gen. Augusto Pinochet.

A resounding 55 percent of those casting ballots voted to rid themselves of Pinochet's heavy-handed military government.

As the Miami Herald pointed out, by voting "no" to General Pinochet, Chileans said "yes" to human rights, to political freedom, to themselves. In the process, they demonstrated courage and faith in their national destiny.

The Herald's comments reflect the feelings I believe we all share at this historic moment in Chile's history.

Mr. President, I ask unanimous consent that editorials from the Miami Herald and the St. Petersburg Times be printed in the Record following my comments.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit 1.)

Mr. GRAHAM. Mr. President, Chileans have reminded us through their courageous tenacity that people the world-over are determined to be free, determined to make choices about how they will live their lives, and how they will be governed. This is a basic yearning common to all humankind. Ultimately, it cannot be denied by dictators like Pinochet.

Through 15 very difficult and trying years, Chileans have clung to their goal of restoring democracy in their country. They now have taken the very important first step toward achieving that goal.

It is a goal that people throughout Latin America are striving to attain. Many have begun to taste success. Democracies, such as Costa Rica, were the exception at the end of the 1970's, but today 91 percent of the hemisphere's people live under regimes that can claim some measure of electoral legitimacy.

Totalitarian government is being swept away on the tide of change that is altering the political face of Latin America. Costa Rica is no longer the exception. Chile will soon no longer be an exception.

The exceptions will be totalitarian governments. Dictators like Fidel Castro, who has clung to power for almost 30 years, justifying his doing so by claiming to know what's best for the people of Cuba.

Fidel Castro would do well to pay attention to what happened in Chile last week. To finally acknowledge that perhaps, just perhaps, he is not the only one who knows what is best for Cubans. That perhaps the too long enchained people of Cuba can make up their own minds. That perhaps they might even know what is in their best interests and do not need dictators like Castro telling them. That possibility, of course, scares people like Castro. Indeed, it terrifies them.

Mr. President, Fidel Castro is becoming an anachronism. He is even falling out of step with his benefactor, the Soviet Union, which has embarked on a policy of reform that is beginning to recognize the value of individual freedom and initiative.

Meanwhile, Cuba continues to fall further out of step, further behind. The results are depressingly clear to see. The economy is in a shambles. Foreign military adventures thousands of miles from home continue to exact a high cost that is being paid with the blood of young Cuban men. And the families they leave behind increasingly chafe under dictatorial rule that leaves them little or no say in how they live their lives.

Mr. President, I hope that the courage and determination of the voters in Chile will be viewed by the Cuban people as a challenge and a call to action.

If it is, then there will be reason to hope that almost 30 years of isolation and dictatorship will soon be relegated to the dustbin of history and that Cuba finally will take its rightful place as a member of the family of democratic nations. That the people of Cuba will regain their liberty, their freedom, their home.

I thank the Chair.

EXHIBIT 1

[From the Miami Herald, Oct. 8, 1988]

"YES" TO DEMOCRACY

Chile's "no" vote this week contains valuable lessons for the world about the irrepressibility of the human spirit. It teaches that democratic traditions die hard, that, for many, democracy has a price but can never bear a price tag, and that other peoples are still willing to gamble big stakes for something that Americans so often take for granted: self-government.

A decade and a half after a bloody coup crushed Chile's 150-year-old democracy, Chileans have voted resoundingly to end Gen. Augusto Pinochet's military government. Never mind that under General Pinochet this long and narrow Andean nation on South America's southwestern coast has achieved economic health second to none in the continent. In a region of the world where most countries' foreign debt has become the stuff of science fiction, Chile's debt is under control. Inflation and unemployment are in check, and Chile's large middle class is thriving.

Yet, given an opportunity to choose between maintaining the status quo, with its accompanying wealth and political repression, or an uncertain democratic future, Chileans chose the latter. They chose despite a massive government-promoted propaganda campaign aimed at scaring them into believing that such a vote would likely return Chile to the trauma of Salvador Allende's ill-advised Marxist experiment.

By voting "no" to General Pinochet on Wednesday, Chileans said "yes" to cherished values and institutions that have survived the test of time. They said "yes" to human rights, to political freedom, to themselves. In the process, they demonstrated courage and faith in their national destiny.

The vote also represents a challenge to General Pinochet, who will continue to govern until 1990. If he respects his people's sovereign decision and turns over power then, as the constitution calls for, coming generations of Chileans may yet pardon his past excesses. They conceivably could end up remembering him as a patriot who saved Chile from communism and voluntarily restored the rule of law.

But if he fails to live up to this challenge, he will have condemned himself to the wastebasket of history, where all despots eventually end up.

[From the St. Petersburg Times, Oct. 7, 1988]

PINOCHET GETS THE BOOT

It's hard to imagine that any dictator, even Chile's Gen. Augusto Pinochet, is stupid or arrogant enough to believe that he could win an honest referendum on his future in power. When you've been beating someone's head against a wall for a while—even 15 years—there's no real need to stop and ask your victim if he has finally started to enjoy the experience.

So Wednesday's presidential plebiscite was evidence of Pinochet's weakness, not his stupidity. Pinochet hardly could have failed to realize that a clear majority of Chileans were prepared to reject the prospect of eight more years of his repressive rule, and he almost certainly would have tried to call off or rig the vote if he had thought he had the power to do so without casting his country into chaos.

Aside from the 57,000-man army that remains loyal to him, Pinochet had lost crucial support among the important groups that might have helped him, fairly or otherwise, to survive this test of his 15-year rule. Powerful elements within Chile's air force and navy were ready to see the country begin the transition to democratic, civilian governemnt. Many business leaders ignored Pinochet's warnings that a no vote on Wednesday would provoke a resurgence of the political turmoil of the early 1970s. Fifteen years ago, Chileans were confronted with a choice between Marxism and military dictatorship. Now there is a strong democratic center that seems likely to dominate the national elections that are scheduled for next year.

In the final days before Wednesday's vote, even the U.S. government finally made plain its willingness to rid itself of its long, embarrassing association with Pinochet. The U.S. ambassador to Chile, Harry G. Barnes Jr., openly favored an opposition victory, and State department officials warned Pinochet not to attempt to disrupt or nullify the vote.

Wednesday's plebiscite was only the first step in a long—perhaps unnecessarily long—process intended to bring an elected president to power in March of 1990. In the meantime, the 1980 constitution that Pinochet forced on his people allows him to retain his positions as a member of the Chilean Senate and commander of the army. Fifteen years of autocratic power can become a hard habit to break, and Pinochet may well make further attempts to undercut the transition to democracy over the course of the next year and a half.

The United States can assist the people of Chile by maintaining it vigilance, and by reasserting its official support for the goals of Chile's democrats, as the process goes forward.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I yield to the distinguished Senator from Oregon.

VOTE CHANGE ON DRUG BILL

Mr. HATFIELD. Mr. President, I thank the Senator for yielding.

Mr. President, I have cleared this on both sides of the aisle with the leadership. I ask unanimous consent, because I mistakenly cast my vote and voted yea on the drug bill, I would like to be recorded as no, and it will not change the outcome of the vote.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. HATFIELD. I thank the Chair and I thank the Senator from North Carolina.

(The foregoing tally has been changed to reflect the above order.)

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

EVADING SCRUTINY IN TIBET

Mr. HELMS. Mr. President, on August 4 the Communist Chinese Ambassador to the United States sent a form letter to Congress complaining about United States concerns over gross violations of basic human rights in Tibet. The letter specifically complained about Senate Concurrent Resolution 129 which I was honored to cosponsor with the distinguished chairman of the Senate Foreign Relations Committee, Senator PELL, as well as the distinguished chairman and ranking member of the Committee's East Asia Subcommittee, Senators CRANSTON and MURKOWSKI, respectively.

The August 4 letter from the Communist Chinese vigorously denied the many well-researched reports on the flagrant abuses of human rights in Tibet and ends with this offer: "You are welcome to visit Tibet in person to take a first hand look at how things are in Tibet today."

Mr. President, the Chinese Government has reneged. Yesterday the Chinese Embassy officially notified the Senate Foreign Relations Committee that visas would not be granted for a long planned trip to Tibet by senior Republican and Democratic staff members of the committee. There was no effort to cover the denial. The official word from Beijing was, "No visits will be permitted to observe human rights in Tibet."

Now, it is absolutely clear, it is obvious, Mr. President, that something disgraceful is happening in Tibet and has been happening. The Chinese Communists do not want the world to find out about what is occurring. They do not want bipartisan, experienced, Chinese-speaking specialists to go to Tibet and ask questions about the political killings, the torture, the forced sterilization and suppression of religious freedom.

As far as I am concerned, and I believe I speak for other Senators on this, Mr. President, they are not going to get by with it.

Word of the horrors in Tibet is already leaking out around the world, and I commend to my colleagues a July 1988 report by Asia Watch, a fine publication. The article is entitled "Evading Scrutiny, Violations of Human Rights After the Closing of Tibet." It describes the escalating human rights abuses now being visited upon the long-suffering people of Tibet.

Mr. President, what the Communist Chinese have done is exceedingly serious and the Senate ought to take note of it. So far as the United States State Department can determine, this is Communist China's first visa denial for United States officials since 1972. It is yet another setback for United States-Chinese relations along with the Saudi missiles and the silkworm sales to Iran. Moreover, Mr. President, this is a challenge to the U.S. Senate. I think we ought to face up to it.

Now, we regularly send specialists abroad to assist the Senate on important matters relating to legislation. Just recently the Senate Foreign Relations Committee staff produced a shocking report on the use of poison gas by Iraq against its own Kurdish citizens. If the Chinese Communists can successfuly close the doors to our bipartisan team in this instance, it will operate as a demonstration effect for other totalitarian countries that wish to evade outside scrutiny of their human rights records.

Now, I have today formally requested of Chairman PELL that the Foreign Relations Committee as a matter of high priority in the next Congress hold a series of hearings on human rights in Communist China. My intent is to seek a legislative solution, if necessary, to the problem of political warfare by the Chinese Communists aimed at the people of Tibet.

Mr. President, I thank the Chair and I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. LEVIN). Without objection, it is so ordered.

GENOCIDE CONVENTION IMPLEMENTATION ACT

Mr. PROXMIRE. Mr. President, it is my understanding that in a few minutes the chairman of the Judiciary Committee and the ranking Republican member will take up the implementation of the Genocide Convention.

I would like to speak briefly on that subject.

The Genocide Convention Implementation Act of 1988 clears the way at long last for the United States to finally approve the Genocide Convention. Let me just take a minute to say what genocide is. It is the most vicious, the most cruel, the most terrible crime imaginable. It is the planned, premeditated destruction of an entire ethnic, racial, or religious group. Of course, the preeminent example was the deliberate murder of 6 million Jews by Hitler's Nazis in Europe before and during World War II.

Now, mind you, Mr. President, these were women, men, children who had committed no crime. They represented no threat to anyone. But they were gassed, lined up, and shot, they were starved, and worked to death. Why? For no reason except that they worshipped God in their own way.

Mr. President, it is hard for us to envision 6 million people being put to death; not 6,000 but 6 million. And the figures are so great that they do not mean very much to us. I suppose the 1 death of those 6 million that has meant more to the people in the world who have followed the terrible genocide in Europe was the death of Anne Frank. Here was a sensitive, lovely young girl of 13 years. She left a diary. The last few years of her life were haunted because she was hunted by the Nazis. She was finally arrested by the Nazis in the Netherlands, and she was put in a concentration camp. She wept with the people that she knew who were being killed. She comforted them in every way she could. And finally, of course, she died.

Mr. President, although the Senate gave its formal advice and consent to ratification more than 2 years ago by an overwhelming 83-to-11 vote, the United States is precluded from ratification until domestic law is enacted, making genocide a crime. The bill before us is a companion piece to the convention, Mr. President. It classifies genocide as a Federal offense and establishes penalties consistent with our Constitution. And with its passage we will end a 40-year congressional stalemate.

The United States, I am proud to say it, conceived of the Genocide Convention. We pushed it in the United Nations. We had it adopted unanimously in the United Nations.

Mr. President, this is the last major country in the world that has not implemented the convention by ratifying it and then passing implementation legislation.

During that period, Presidents from both parties sought congressional action on this vital human rights document not only for substantive reasons but because of the important international statement that approval by the leader of the free world will make. Enactment will allow the United States to take its rightful place among the 97 other nations which have already ratified the convention and end one of the most useful propaganda clubs the Soviet Union has ever had.

Mr. President, I want to express my gratitude to Chairmen BIDEN and METZENBAUM—two of the initial cosponsors of this implementation bill—for their invaluable efforts every step of the way. Thanks should also go to Eddie Correia of the Judiciary Committee for his hard work and perseverance. Finally, I want to commend BOB BYRD and BOB DOLE—our two great Senate leaders—for making the real difference.

I also want to commend STROM THURMOND. Senator THURMOND was opposed to our action on this but he was opposed for reasons of his own conscience, and he has made it possible now for us to finally act on the final act of the Genocide Convention to this great credit.

Mr. President, before yielding the floor, I want to call my colleagues' attention to statements made by both Presidential candidates in support of the legislation.

I want to also point out that President Reagan has made this a possibility because, of course, President Reagan was known as a very conservative President. Other Presidents were unsuccessful in getting Congress to act. President Reagan succeeded. Once

President Reagan made his position clear on the Genocide Convention, it was only a matter of time before we acted on it.

I ask unanimus consent that the information relating to both Presidential candidates in support of the legislation along with other materials be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF MICHAEL S. DUKAKIS IN SUPPORT OF S. 1851, A BILL TO IMPLEMENT THE INTERNATIONAL CONVENTION OF THE PREVENTION AND PUNISHMENT OF GENOCIDE

Forty years ago, the United Nations General Assembly unanimously adopted the Genocide Convention. Forty years ago, the United States signed the Convention. Nearly one hundred countries have ratified this important convention, but the United States has yet to deposit the instruments of ratification at the United Nations.

Two years ago, the United States Senate consented to ratification of the Convention. We should delay no longer in passing the implementing legislation which is the final step in making the United States a full party to this Convention.

S. 1851, a bill to implement the International Convention on the Prevention and Punishment of Genocide makes genocide a crime in the United States and sets appropriate punishment for anyone guilty of that heinous crime. I strongly support this legislation and do hope the Senate will pass it without further delay or unnecessary amendments.

The failure of the United States to implement the Genocide Convention has damaged our moral standing in the world and our efforts to press the cause of human rights and the rule of law among other nations. The time has long since passed for the United States to assume its rightful leadership in the efforts of international bodies to promote the values upon which this nation is founded.

With the adoption of this important legislation, we as a nation will affirm our commitment to ensure that the crime of the Holocaust will happen "never again."

JUNE 30, 1988.

Hon. BENJAMIN A. GILMAN,
U.S. House of Representatives, Rayburn House Office Building, Washigton, DC.

DEAR BEN: I am pleased to learn of your interest in the Genocide Convention Implementation Act and want you to know that I fully support a prompt favorable vote in congress their year on legislation to put the Genocide Convention into effect.

As you know, on April 25, 1988, the House by voice vote passed the Genocide Convention Implementation Act of 1988, H.R. 4243. In the Senate, the Judiciary Committee on May 9, 1988, reported the Proxmire Act, S. 1851, with a Senate floor vote to be scheduled soon.

It has been almost 40 years since the United States signed the Genocide Convention, on December 11, 1948, signifying its agreement with the Convention and its intention of ratifying it. In 1984 Ronald Reagan and I supported the Senate's approval of the Treaty. It is now appropriate to pass the necessary implementing legislation.

This country should go on record in saying "Never Again" to the dehumanizing crime of Genocide. More than that, we must actively oppose any attempt by any government at any place to destroy a people because of their racial, religious, or ethnic group. Our society and our government are founded on the moral values that this Convention seeks to protect: the dignity of every individual person and the sanctity of human life. Moreover, we should not allow the Soviets or others to excuse their own conduct by reference to the lack of our name on this convention.

Finally, we must consciously and conscientiously recognize the genocides of the past—the enormous tragedies that have darkened this century and that haunt us still. We must not only commemorate the courage of the victims and of their survivors, but we must also remind ourselves that civilization cannot be taken for granted. It was a great American philosopher, George Santayana, who taught us that those who forget the past are condemned to relive it.

We must all be vigilant against this most heinous crime against humanity.

Sincerely,

GEORGE BUSH.

PHILADELPHIA BAR ASSOCIATION REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

Be it resolved that the American Bar Association urges the Senate of the United States to pass forthwith S. 1851 and complete all necessary action, in cooperation with the House of Representatives, to provide for the implementation of the said Convention.

REPORT

The Convention and Prevention and Punishment of the Crime of Genocide was approved by Resolution of the General Assembly of the United Nations on December 9, 1948 (attached hereto as an exhibit is a copy of said Convention).

The United States signed said Convention on December 11, 1948 and the said Convention had been pending for confirmation in the Senate Foreign Relations Committee since June 16, 1949. On February 19, 1986, the Senate of the United States ratified the Convention, but provided in such ratification that the instruments of ratification would not be deposited until the United States Congress enacted legislation to implement the Convention. The Senate Committee on the Judiciary, on May 11, 1988, reported out favorably from the Committee S. 1851, with amendments, to implement the Convention. The House of Representatives has passed enabling legislation, in a companion bill to S. 1851, to provide for implementation of said Convention.

The Philadelphia Bar Association supports the establishment and extension of the Rule of Law in the conduct of international affairs and believes that the enactment of enabling legislation by the Congress of the United States for the Convention on the Prevention and Punishment of the Crime of Genocide would further establish and extend the Rule of Law in the conduct of affairs among nations.

The Philadelphia Bar Association Board of Governors passed a resolution on July 28, 1988 which urges that the American Bar Association continue, with renewed vigor, its support for the expeditious adoption and implementation of said Convention.

Respectfully Submitted.

LAURANCE E. BACCINI,
Chancellor,
Philadelphia Bar Association.

[From the Washington Post, Sept. 30, 1988]

GENOCIDE TREATY: ONE MORE STEP

It going to take some real political skill to unravel a set of related legislative stalemates in the Senate, but that task will occupy more than one high-ranking member of the Senate Judiciary Committee over the next couple of days. The underlying problem is judges. Republicans say that the Democrats on the committee have been stalling on the confirmation of Reagan judges and some newly appointed officials of the Justice Department. Some nominations sent up as early as last April have not been moved. Democrats deny they are out to delay votes on nominees who deserve confirmation, but everyone knows that action on lifetime appointments becomes more difficult as the election nears. The statemate has led to countermeasures by Republicans that include holding up some measures that Democrats would like to move—copyright revisions, RICO amendments and a defense fraud bill, for example.

In the middle of this mix is a bill to implement the Genocide Treaty. The treaty was adopted by the General Assembly of the United Nations in 1948 and was signed by the United States immediately. But it took the Senate 38 years to consent to ratification. Now Congress is considering the final step to complete the ratification process, the passage of implementing legislation. Last April, the House passed a bill that was the result of much debate and a good compromise. There is agreement on a definition of the crime and all the tough questions about trials and the rights of Americans who might be charged with violations. The last hitch is deciding on a penalty. The House bill—and the one reported last spring by the Senate Judiciary Committee—provides for a maximum of $1 million and life in prison. Conservatives want a death penalty, but if they insist on a vote, it may very well kill the bill.

Supporters of the treaty hope that conservatives will concede on the death penalty, and on a few of the other measure being held hostage for judgeships, in exchange for an agreement to move on some of the confirmations. It would be a good bargain. Failure to complete action on the genocide bill would be a national embarrassment, especially since it took this country so long to get even this far on the human rights matter.

Next week the foundation will be laid for the Holocaust Museum in this city. It will be a continuing reminder of the Nazi-era horror and the need for nations to work together to prevent a recurrence. But effective and moving as any memorial may be, it will never have to force of concrete actions demonstrating a nation's commitment. Passing the implementing legislation to complete action on the Genocide Treaty would be such an act and it must, finally, be done.

[From the Christian Science Monitor, June 20, 1988]

FACING THE GENOCIDE ISSUE

Genocide, the attempted destruction of any national, racial, ethnic, or religious group, sounds like something every reasonable person should be foursquare against. Yet for more than four decades the US Congress has delayed the ratification and final wrap-up action that would put the United States clearly on record in support of a United Nations-drafted international convention against genocide. Such action at last looks likely. Better late than never.

The US was one of the first to sign the document, an outgrowth of the massive extermination of Jews during World War II. Ninety-seven other nations have ratified it. Every US presdient except Dwight Eisenhower has urged the US to sign on. Wisconsin Sen. William Proxmire sounded the clarion call for the treaty's approval over a period of 20 years in more than 3,300 Senate addresses. When Washington takes the high ground in criticizing the Soviets on human rights, Moscow often points to the US failure to ratify the genocide treaty.

The Senate finally agreed to ratify the 1948 document two years ago; it said then that consent would not be final, however, until the US passed implementing legislation making genocide a federal crime, with appropriate penalties. The House agreed to that change in April, and the Senate appears ready to concur.

The treaty, which defines genocide and commits signers to try to prevent it and punish it, is more symbolic than practical. The US, for instance, specifically retains the right to try any American so charged; no international tribunal would have jurisdiction unless a new treaty were signed.

Early congressional foot-dragging was due largely to conservative concern that the treaty might somehow infringe on US sovereignty. The concern was that some protect, such as segregation laws, US involvement in Vietnam, or even attempts to modernize, such as requiring American Indians to attend mainstream US schools, could be construed as culturally destructive, leaving the US vulnerable to charges of genocide.

Some, including the American Bar Association for a time, argued that making genocide a federal crime could upset the delicate balance between state and federal rights. The ABA shifted its position in the mid-'70s after the passage of civil rights legislation and the designation of certain murders as federal crimes weakened the argument.

Time and new laws have taken care of most of these American concerns. The early reluctance to subscribe to international standards of behavior, on grounds that a nation's domestic business is its own affair, has gradually dissolved as global human rights treaties have become more common. Additional US legislation tightens the definition of genocide and sharply limits US liability.

Recent Senate discussion has centered on whether or not to add the death penalty to the punishment list for anyone found guilty of genocide; it is an option better dropped. The sooner the US formally gets itself on record in opposition to the inhumanity of genocide, the better; it is clearly the right side to be on.

[From the New York Times, Apr. 2, 1988]

SEAL AND DELIVER THE GENOCIDE PACT

(By William Korey)

Finally, after nearly 40 years the Congress appears to be moving toward the crucial action required for ratification of the historic genocide treaty—the enactment of implementing legislation. With hearings in both houses recently completed, the target date set by Congressional proponents of the pact is April 14, Holocaust Day. Still, the endless delays for nearly 40 years generate a little uncertainty about the outcome.

Further delay would emphasize the extraordinary anomaly of a nation committed by law and spirit to commemorating the trauma of the Holocaust and not yet being a contracting party to the one international treaty whose aim is the prevention of its repetition.

While the treaty is largely symbolic, it nonetheless "can play some role," in the words of the United States Holocaust Commission, in stopping genocidal "acts in the future."

In recent testimony to Congressional bodies, William Proxmire, Democrat of Wisconsin, the principal advocate of ratification (he has delivered 3,300 Senate addresses on the subject), properly invoked the memory of the late Raphael Lemkin.

It was this Polish Jewish immigrant who coined the term "genocide" (joining the Greek word for "species" to the Latin word for the infinitive "to kill"). What Winston Churchill had called "a crime without a name" was forever given an apppropriate one.

Using 11 languages, Mr. Lemkin had lobbied several dozen United Nations delegations between 1946 and 1948 in order to win a unanimous General Assembly vote for the treaty on Dec. 9, 1948. To the media's United Nations correspondents, he was a remarkable figure who had somehow prevailed over formal diplomatic niceties and the initial indifference of sovereign countries.

A brilliant international legal scholar, Mr. Lemkin had survived the Holocaust by fleeing first to Sweden and then to the United States, where he served on the law faculties of Duke University and Yale University. He remained painfully conscious of what the Nazi extermination policy involved, for it embraced some 50 members of his own family. The genocide treaty marked for him "an epitaph on my mother's grave."

It was to his adopted country that he looked for early ratification. This would serve, Mr. Lenkin said, as "an inspiration to the world." Indeed, the United States was the first to sign the treaty and President Harry S. Truman soon afterward transmitted it to the Senate for its early "advice and consent." But there the treaty became caught up in interminable ideological conflicts, the logic of which makes little sense today.

The delay in ratification stunned the treaty's architect. He feared, as very well he might, that people would forget the Holocaust. Already, he noted, many "believe that Dachau, Auschwitz, Buchenwald are manufactured war propaganda." He died in 1959, disappointed but still hoping that America would provide the required leadership to champion human rights and international law.

Failure to ratify the treaty has, in fact, proved costly to the American image in the international community, and this inevitably has been exploited by the Soviet Union. Last Dec. 10, Human Rights Day, the press agency Tass, not surprisingly, trumpeted both at home and abroad the United States' nonratification of the treaty.

But our national embarrassment may soon be at an end. Implementing legislation making genocide a Federal crime with appropriate penalties seems to have won broad support in the Congress. Only the ultra-right has testified in opposition.

Enactment of the legislation in both houses by April 14 would enable the United States to deposit with the United Nations Secretary General its formal instrument of ratification, which the Senate approved two years ago, together with the essential enabling statute.

"We have waited long enough," said Senator Bob Dole in calling for the advice and consent vote on Feb. 19, 1986. That cry is even more valid today, as Holocaust Day draws near. Raphael Lemkin would have welcomed such a moment as offering an epitaph for all genocide victims.

AMERICAN BAR ASSOCIATION,
GOVERNMENTAL AFFAIRS OFFICE,
Washington, DC, October 5, 1988.

Hon. WILLIAM PROXMIRE,
U.S. Senate, Washington, DC.

DEAR SENATOR PROXMIRE: It now appears that all of your efforts of U.S. ratification of the United States Genocide Convention are nearing fruition. I am hopeful that as we approach the fortieth anniversary of the signing of that historic treaty, on December 9, the Senate will, in the coming days, approve the legislation to implement the Genocide Convention—and thus permit President Reagan to ratify it—in as much of an overwhelming manner as the House approved the legislation earlier this summer by voice vote. Enactment of this legislation, to be known as the "Proxmire Act," will be a fitting tribute to your magnificent career of public service, and particularly your nearly 22 years of often lonely advocacy of this most fundamental statement of international revulsion against the crime of genocide. I can only hope that the continuing bi-partisan support for the treaty—reflected in the 83-11 Senate vote to advise and consent to ratification—will assure that this critical legislation is passed this week.

I had the honor this morning of observing the laying of the cornerstone for the U.S. Holocaust Memorial Museum. I can think of no more fitting tribute to this event by the Senate than to approve S. 1851.

As a reflection to the broad base of support for this bill, I am pleased to enclose a resolution proposed by the Philadelphia Bar Association at the ABA's Annual Meeting this past August and unanimously approved by our policy-making House of Delegates, reiterating the Association's longstanding support for ratification of this treaty. I also enclose a copy of the excellent editorial which appeared in last week's Washington Post as well as an earlier editorial in the Christian Science Monitor, and Prof. Korev's op-ed piece in the New York Times. I also enclose a statement by Governor Dukakis, and Vice President Bush's letter to Rep. Gilman, both in strong support of S. 1851. If any of the enclosed raise any questions, I would be pleased to provide whatever additional information you or your colleagues might wish.

Again, many thanks for your continuing leadership.

Most cordially,

CRAIG H. BAAB.

Mr. President, I yield to my good friend from Pennsylvania.

Mr. SPECTER. Mr. President, it is a privilege to have been on the floor to hear the remarks by the distinguished Senator from Wisconsin on the legislation implementing the Genocide Convention, because Senator PROXMIRE has been unique in his perseverance and his dedication for this very significant day in the U.S. Senate.

Day after day, week after week, month after month, Senator PROXMIRE has taken the floor to speak on this tremendously important issue. He has articulated it in a way that cannot be excelled, when he talks about the terrible crime of genocide and about the murder of 6 million Jews and about the long wait for the advice and consent to the treaty by the U.S. Senate some 2 years ago and then, until today, when this implementing legislation is finally about to be passed by this body.

It is noteworthy that this final, important act by the U.S. Senate comes at a time nearly coterminus with the conclusion of the Senate career of Senator PROXMIRE. We are not yet ready for the final act of the U.S. Senate in the 100th Congress, but we are very close. It will probably occur in the course of the next week, although a prediction on that subject is risky, even with the projected Senate schedule.

However, for all practical purposes, this monumental achievement comes at the same time that Senator PROXMIRE will be concluding an illustrious career in the U.S. Senate, and I think there could be no greater tribute to Senator PROXMIRE than to be the chief architect at this time of this monumental matter.

I yield the floor.

Mr. PROXMIRE. Mr. President, I thank my good friend from Pennsylvania for his very gracious and generous remarks. I deeply appreciate them.

Mr. BIDEN. Mr. President, I join my colleague from Pennsylvania, Senator SPECTER, in complimenting the Senator from Wisconsin.

I would put it in a slightly different way. I would suggest that this monumental achievement that is about to occur as a consequence of the implementing legislation being passed, God willing, in a few minutes, would never have occurred were it not for the Senator from Wisconsin.

It is coincidental that this event is in fact occurring as the Senator from Wisconsin is ending, by his own decision, his career in the U.S. Senate. For many years, the lone voice—there are others of us here, and I have been here 16 of the years that have coincided with the much longer tenure of the Senator from Wisconsin—but for many years, the lone voice in pursuit of justice on this issue, by way of passing and implementing this treaty, was the Senator from Wisconsin.

I do not have a single doubt in my mind that there would be no treaty without you, Senator PROXMIRE—there just would not be one. It is as simple as that. The way in which you pursued the issue about which you felt so deeply is the hallmark of your entire career. You have been a man not only of principle but also a man of phenomenal tenacity. You have never let go of any issue in which you believed. When I served under you in the Banking Committee, it did not matter whether you were the single vote or you had all the votes in the committee. If you believed it was right, you never let go.

So it seems to me that the passage of this treaty stands not only as a monument to justice, finally; stands not only as a monument to your singlehanded efforts and singleminded efforts, but also a reflection of your entire career in the U.S. Senate, one built on justice and tenacity.

You will be sorely missed here, as few members ever are missed when they decide to leave this Chamber.

I would like to add one small note: There is another man, one of the few men who I believe have served longer than you in the U.S. Senate, who made the final moment possible, and that is the Senator from South Carolina.

He is a man who has had serious questions, not about whether or not the crimes you have pointed out day after day, month after month, year after year, were the reasons for the genesis of this treaty—he feels strongly about what happened—but a man who had genuine disagreement about whether or not it should pass in the form it is.

He is a man who feels equally strongly about the death penalty for crimes of the nature that you discussed. He was fully within his rights; fully capable of and probably would have been able to have adopted an amendment to this implementing legislation requiring the death penalty, which everyone knows would have caused great concern, discussion, and debate in this body, thereby preventing one of the many monuments to your capability from ever becoming the law of the land—in this case, our joining the international law of the land, if you will. He withheld it; he withheld that amendment.

So I want to personally thank not only the Senator from Wisconsin, without whose efforts, as I have said, we would have no treaty, in terms of its passage, but also I want to thank the Senator from South Carolina, who is the quintessential gentleman, a man who is as honorable as he is senior in this body, and a man with whom it is a pleasure to deal. So, my compliments to you both.

I say once again, for the RECORD, Senator PROXMIRE, that there would be no treaty and passage were it not for you.

Mr. PROXMIRE. Mr. President, I thank my good friend from Delaware for his very kind and generous remarks.

I can say that there would be no action on this if it were not for JOE BIDEN. He played a big part and a critical part in this. He is the chairman of the committee, and he, along with STROM THURMOND, are responsible for this. Not only is this Senator grateful, but also there are millions in this country who are grateful.

Mr. BIDEN. I just showed up for the christening. I had nothing to do with the conception, the nurturing, and the birth of this, although I am proud to have played a little part.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. WIRTH). The Senator from Alabama.

Mr. HEFLIN. Mr. President, I concur in the remarks of Senator SPECTER and Senator BIDEN relative to Senator PROXMIRE's leadership over the years.

We all paid tribute to Senator PROXMIRE when the Genocide Treaty was ratified. I would like to add to it Senator BIDEN's name, for his leadership in bringing this legislation to this point, where it soon will be passed.

It took a great deal of legislative skills and legislative negotiations to get this bill with the provisions that are in it and also the bill for certain other provisions that could have been put in it were not put into it.

I say that Senator BIDEN is also due great compliments for his leadership in seeing this bill reach the stage of where it is today.

But as has already been said by many of us, the real father, the real one who over the years every day spoke on the floor of the Senate on the need for the genocide treaty to be ratified, we certainly in no way wish to take from him by mentioning other people's names, but he, Senator PROXMIRE, has been in the foreground and is the primary mover relative to this bill reaching the stage of where it is today.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, briefly I add my voice to the others relative to Senator PROXMIRE.

It is not often that legislation comes along as the Genocide Convention did, finally, which we can say would not have been here truly but for the work of one person. Almost all legislation has the hands of many on it. Indeed, this legislation does, too. But this is probably unique in that the stamp of one person is on the Genocide Convention. It is the stamp of Senator PROXMIRE who day after day, literally, delivered I do not know how many thousands of speeches, but I know that it numbers in the thousands; I do not know how many thousands of speeches he gave relative to the Genocide Convention and the long overdue ratification of it by this body.

I know of no such example of tenacity or perseverance, dogged perseverance in congressional history. It does not perhaps quite match his 10,000-plus straight rollcall votes, but in terms of speeches on the subject, I think it is without equal.

It not only is a monument to him, it is also a memorial to the victims of genocide that we finally through implementation of legislation will implement that treaty.

I know that is the way Senator PROXMIRE would have it. It is fine that the monument be to him legislatively but it is the memory of the victims of genocide that we are memorializing in this legislation.

We are all very grateful to Senator PROXMIRE, Senator BIDEN, Senator THURMOND, the leadership, and others who have made this day possible.

Mr. President, last week I attended the cornerstone laying ceremony for the Holocaust Memorial Museum in Washington, DC. As the memories of this egregious crime fade with the passing of a generation, the Holocaust Memorial Museum will stand as a living monument to the millions who perished, a reminder of the destruction and suffering of so many.

Today, Mr. President, we have the opportunity to complete another living monument to this tragedy. Today, we have the opportunity to make genocide a crime in our Nation's body of law.

Adopted by the General Assembly of the United Nations in 1948, and signed by the United States soon afterward, the Genocide Convention embodies the most basic of human values, respect for human life. When the Senate finally ratified the convention on February 19, 1986, we made an important statement about our commitment to human rights. The vote of 83 to 11 was the culmination of many years of hard work by Senator PROXMIRE and others, including at least a dozen hearings in the Senate with testimony from more than 200 witnesses. Yet, more than 2 years later, this important human rights convention is still unenforceable in the United States.

The Genocide Convention is not self-executing. Congress must enact implementing legislation to amend the criminal code. Until both Houses pass such a law, genocide is not a crime under U.S. law.

The Genocide Convention Implementation Act of 1988, or the Proxmire Act, defines the basic offense of genocide and the punishment for that offense. Similar legislation has passed in the House. This bill awaits our approval.

The massacre of 1.5 million Armenians from 1915 to 1923 was the 20th century's first act of genocide. As a result, Prof. Raphael Lemkin, who first coined the word "genocide," waged an unsuccessful battle to declare genocide an international crime in 1933. Even Hitler noticed the world's reticence in denouncing this genocide. "Who remembers the Armenians?" he asked, "Who will remember the Jews?"

And the annihilation of 6 million Jews and millions more of other ethnic groups by the Nazis soon followed. The sheer enormity of this atrocity shocked and horrified the world.

Enactment of the Genocide Convention may not have prevented these genocidal acts and these were not the last victims of genocide in our time. The deaths of millions of Cambodians and the persecution of the Bahais are just a few examples and reminders that remembering is not enough. Implementation of the Genocide Convention affirms our commitment to try to prevent such crimes from happening again.

Ninety seven other nations have formally ratified the treaty, including every major power and almost every democracy. Our affirmation of the Genocide Convention affirms our commitment to the rule of law. We have waited far too long to finish this work. As a cosponsor of S. 1851, I hope we will unanimously support this important legislation.

The PRESIDING OFFICER. The Chair will remind the Senate that we are debating the motion to proceed on S. 2449.

The Senator from South Carolina.

Mr. THURMOND. Mr. President, I just want to say a word or two at this time. I have already paid Senator PROXMIRE a tribute in the Senate so I shall not take more time of the Senate.

It has been a pleasure to work on this measure. It is a very important measure.

Today, we are considering S. 1851, which provides the legislation necessary to implement the International Convention on the Prevention and Punishment of Genocide.

Two years ago, the Senate gave its advice and consent to the ratification of the Genocide Treaty. A declaration to the treaty specifically provided that the President could not deposit the treaty until after domestic genocide legislation was passed. Therefore, enactment of this bill, which would create criminal penalties for genocide, would be the final step necessary in order for the United States to become a party to this treaty.

As I previously stated at the Judiciary Committee hearing on this legislation and when the Judiciary Committee considered this bill, I vigorously oppose genocide in any form whatsoever. However, I voted against ratification of this treaty in 1986 because I had the following two concerns: First, I was concerned that the treaty, while covering national, ethnic, racial, and religious genocide, does not cover political genocide. Second, I was concerned that a person accused of genocide may be extradited to a foreign country and tried there without the constitutional protections afforded citizens of the United States.

The focus is now on the implementing legislation that we have before us today. For the most part, the bill before the Senate reflects the principles of the convention. However, I am concerned that this substitute does not provide for the death penalty for persons convicted of genocide. Genocide is one of the most heinous crimes that would certainly be deserving of the death penalty if it were perpetrated by a citizen of the United States. Currently, the death penalty is authorized for several Federal crimes—murder, treason, espionage, to name a few. Is it therefore logical that a person who murders one individual is deserving of the death penalty while a person who undertakes the mass execution of a whole or substantial part of a specific group is only punished by life imprisonment? I do not believe that this is either logical or reasonable. I offered an amendment in committee to establish the death penalty for genocide as well as other crimes and to provide the constitutional procedures necessary to implement the death penalty. This amendment was not approved by a tie vote of 6 to 6.

Whether the death penalty should be a punishment for genocide is a matter of great importance which the full Senate should have the opportunity to consider. However, in order to allow consideration of this legislation, confirmation of Federal judges, and agreement to pass other vital legislation before adjournment, I will not offer a death penalty amendment at this time. I believe that this issue must be addressed and in future death penalty legislation I will include the death penalty for genocide.

IMPLEMENTING THE GENOCIDE TREATY

Mr. DOLE. Mr. President, adoption of this legislation is the culmination of what has been a long, arduous process. The Genocide Treaty had languished in the Senate for more than 37 years, until February 1986, when we finally ratified it. And I must say, that ratification of the treaty on one of my proudest accomplishments as majority leader.

But ratification of the treaty got us only half way down the road. In order for that treaty to have any teeth, we needed to approve implementing legislation. And I am very pleased, that although it has taken more than 2 years, we are finally about the reach our goal.

I cannot believe there is any American who does not agree with the purpose of this treaty: To outlaw the deliberate, systematic extermination of a national or racial group. Many of my generation saw firsthand, the horrors of the Holocaust. And like those who lived through the nightmare of Nazism, and those Armenians, Cambodians, and others, who have witnessed mass killings of family, friends, and neighbors, we are morally obligated to never forget, and say never again.

By implementing the Genocide Treaty, the United States has said unequivocally, that we will not allow such atrocities to occur. We have stated unequivocally, that we put human rights, above all rights.

Mr. President, there have been many individuals involved in bringing this legislation to fruition. But, no Senator deserves more credit than Senator BILL PROXMIRE. Senator PROXMIRE had delivered more than 3,000 speeches on the issue, once a day for many, many years before we ratified the treaty. And his commitment and resolve to see it implemented has been equally strong. Senator PROXMIRE deserves our respect and gratitude for the role he has played in the successful implementation of the Genocide Treaty.

Mr. BIDEN. Mr. President, today the U.S. Senate will take an important step toward reaffirming one of the most basic moral principles upon which this Nation is founded—respect for the dignity of human life.

More than 40 years ago, when the atrocities of the Nazi Holocaust were still fresh in the mind of the civilized Nations, U.S. negotiators led an effort to draft an international treaty that sought to prevent future holocausts, and to punish those who violated its provisions. On December 9, 1948, the U.N. General Assembly approved such a treaty—the U.N. Convention on the Prevention and Punishment of the Crime of Genocide—without dissent. The United States signed the convention 2 days later.

It was entirely appropriate that the United States played such an important role in drafting the Genocide Convention.

Then—as now—the United States had a responsibility to condemn human rights violations, to protect those who were vulnerable, and to punish any violators.

Then—as now—the United States had the power—legal, economic, and political—to secure basic liberties for individuals throughout the world.

Then—as now—the community of nations looked to the United States as a moral leader in the struggle to advance human rights throughout the world.

Despite our moral and legal obligation to implement the Genocide Convention, the United States has not yet ratified the treaty. The Senate took 36 years to give its approval to the convention, and even then, the Senate prohibited the President from formally ratifying the treaty until implementing legislation has been signed into law. It is unfinished business that brings us to the Senate floor today.

On November 5, 1987, I—along with Senators PROXMIRE and METZENBAUM—introduced S. 1851, the Genocide Convention Implementation Act of 1987. This legislation provides protection to members of any national, ethnic, racial, or religious group by creating a new Federal crime of genocide for any person who attempts to destroy such a group, in whole or in part, through murder, serious bodily injury, mental or physical torture, prevention of members of the group from having children or forcible removal of children from the group. And S. 1851 provides penalties that appropriately reflect the heinous and inhuman nature of genocide. For offenses involving the death of a member of a protected group, the punishment is a mandatory term of life imprisonment. For any other genocide offense that does not result in death, the punishment is imprisonment for not more than 20 years.

Mr. President, for too long the United States has not been a party to one of the most important human rights treaties ever drafted. This treaty—for the first time—recognizes that human rights are a matter of international—not simply domestic—concern, and that states have an international responsibility to prevent and punish such crimes within their borders. And this treaty—for only the second time, along with the U.N. Slavery Treaty—determined that certain human rights abuses—the attempted or actual destruction of an entire people—are so reprehensible as to demand universal condemnation as a crime under international law.

The fact that the Genocide Convention has not yet been ratified is an embarrassment for the United States. As Elie Wiesel stated in his testimony before the Judiciary Committee: "What is at stake is our moral credibility in the world." Further inaction would be an affront to the millions who have already lost their lives and a profound injustice to those who continue to suffer human rights abuses today.

Mr. President, I would be remiss if I did not add that the Judiciary Committee unanimously approved an amendment to rename this legislation "the Proxmire Act." The committee approved this amendment in recognition of Senator PROXMIRE's tireless advocacy for human rights issues. On January 11, 1967, Senator PROXMIRE declared that he would speak on the floor every day this body was in session to remind us of our obligation to ratify the Genocide Convention. True to his word, Senator PROXMIRE delivered more than 3,000 floor speeches from January 1967, until the treaty was finally approved by the Senate on Feburary 19, 1986. This legislation—and the ratification of this historic treaty—is a direct result of Senator PROXMIRE's commitment and dedication to the human rights issue.

Mr. President, the time has come to take final action on the Genocide Convention. The time has come to make genocide a crime under Federal law and to provide for its punishment. The time has come for the United States to reassert its role as the leader in the struggle to advance human rights and expand human liberties throughout the world.

GENOCIDE IMPLEMENTATION ACT AND THE ARMENIAN GENOCIDE

Mr. PRESSLER. Mr. President, I have reviewed Senate Report 100-333 which accompanies S. 1851, the Genocide Convention Implementation Act of 1988, also known as the Proxmire Act.

I support Senate adoption of this legislation, although I believe the penalties for being found guilty of genocide should include the death penalty.

Mr. President, my reading of the committee report indicates no recognition of the Armenian genocide. The report speaks of the Nazi Holocaust, but it does not mention the crime committed by the Ottoman Empire rulers against the Christian Armenians of Turkey. I have spoken several times on the Senate floor about that genocide. The committee report should have recognized that historical fact as well.

That is why I am raising this matter at this time, prior to Senate adoption of the Genocide Convention implementation legislation. As we prepare to pass this bill, and bring into effect the provisions of the Genocide Convention which we consented to ratify more than 2½ years ago, we should keep in mind that the term "genocide" is applicable to several historical situations. Certainly the Nazis' monstrous crime in killing millions of Jews stands out as the most heinous example of genocide. We must never let ourselves and those who succeed us on this Earth forget that Holocaust.

But neither should we let the world forget the Khmer Rouge genocide against their fellow Cambodians. And we should not forget the genocide of the Ottoman rulers against the Armenians—millions of whom were slaughtered or forced to flee to other nations. Just as there are some who might like us to forget the Nazi Holocaust, so there are people who try to distort the historical record of what happened in the Ottoman Empire earlier in this century.

It is clear to this Senator that the terms of the Genocide Convention and the Genocide Convention Implementation Act would apply to situations like the Armenian genocide.

Mr. President, I ask unanimous consent that a chapter on the Armenian genocide from Ambassador Henry

Morgenthau's book, "Secrets of the Bosphorus" be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Chapter XXIV

THE MURDER OF A NATION

The destruction of the Armenian race in 1915 involved certain difficulties that had not impeded the operations of the Turks in the massacres of 1895 and other years. In these earlier periods the Armenian men had possessed little power or means of resistance. In those days Armenians had not been permitted to have military training, to serve in the Turkish Army, or to possess arms. As I have already said, these discriminations were withdrawn when the revolutionists obtained the upper hand in 1908. Not only were the Christians now permitted to bear arms, but the authorities, in the full flush of their enthusiasm for freedom and equality, encouraged them to do so. In the early part of 1915, therefore, every Turkish city contained thousands of Armenians who had been trained as soldiers and who were supplied with rifles, pistols, and other weapons of defence.

The operations at Van disclosed that these men, could use their munitions to good advantage. A similar "rebellion" at Zeitoun also proved that these despised merchants and traders of the Empire possessed energetic fighting power. It was thus apparent that an Armenian massacre this time would generally assume more the character of warfare than those wholesale butcheries of defenceless men and women which the Turks had always found so congenial. If this plan of murdering a race was to succeed, two preliminary steps would therefore have to be taken: it would be necessary to render all Armenian soldiers powerless and to deprive of their arms the Armenians in every city and town. Before Armenia could be slaughtered, Armenia must be made defenceless.

In the early part of 1915 the Armenian soldiers in the Turkish Army were reduced to a new status. Up to that time most of them had been combatants, but now they were all stripped of their arms and transformed into workmen. Instead of serving their countrymen as artillerymen and cavalrymen, these former soldiers now discovered that they had been transformed into road labourers and pack animals. Army supplies of all kinds were loaded on their backs, and stumbling under the burdens, and driven by the whips and bayonets of the Turks, they were forced to drag their weary bodies into the mountains of the Caucasus. Sometimes they would have to plough their way, burdened in this fashion, almost waist-high through snow. They had to spend practically all their time in the open, sleeping on the bare ground—whenever the ceaseless prodding of their taskmasters gave them an occasional opportunity to sleep. They were given only scraps of food; if they fell sick they were left where they had dropped, their Turkish oppressors perhaps stopping long enough to rob them of all their possessions—even of their clothes. If any stragglers succeeded in reaching their destinations they were not infrequently massacred. In many instances Armenian soldiers were disposed of in even more summary fashion, for it now became almost the general practice to shoot them in cold blood. In almost all cases the procedure was the same. Here and there squads of fifty or a hundred men would be taken, bound together in groups of four, and then marched out to a secluded spot a short distance from the village. Suddenly the sound of rifle-shots would fill the air, and the Turkish soldiers who had acted as the escort would sullenly return to camp. Those sent to bury the bodies would find them almost invariably stark naked, for, as usual, the Turks had stolen all their clothes. In cases that came to my attention, the murderers had added a refinement to their victims' sufferings by compelling them to dig their graves before being shot.

Let me relate a single episode which is contained in one of the reports of our Consuls and which now forms part of the records of the American State Department. Early in July 2,000 Armenian "amélés"—such is the Turkish word for soldiers who have been reduced to workmen—were sent from Harpoot to build roads. The Armenians in that town understood what this meant and pleaded with the Governor for mercy. But this official insisted that the men were not to be harmed, and he even called upon the German missionary, Mr. Ehemann, to quiet the panic, giving the gentleman his word of honour that the ex-soldiers would be protected. Mr. Ehemann believed the Governor and assuaged the popular fear. Yet practically every man of these 2,000 was massacred, and his body thrown into a cave. A few escaped, and it was from these that news of the massacre reached the world. A few days afterward another 2,000 soldiers were sent to Diarbekir. The only purpose of sending these men out in the open country was that they might be massacred.

In order that they might have no strength to resist and to escape by flight, these poor creatures were systematically starved. Government agents went ahead on the road, notifying the Kurds that the caravan was approaching and ordering them to do their congenial duty. Not only did the Kurdish tribesmen pour down from the mountains upon this starved and weakened regiment, but the Kurdish women came with butchers' knives in order that they might gain that merit in Allah's eyes that comes from killing a Christian. These massacres were not isolated happenings; I could detail many more episodes just as horrible as the one related above. Throughout the Turkish Empire a systematic attempt was made to kill all able-bodied men, not only for the purpose of removing all males who might propagate a new generation of Armenians, but for the purpose of rendering the weaker part of the population an easy prey.

Dreadful as were these massacres of unarmed soldiers, they were mercy and justice themselves when compared with the treatment which was now visited upon those Armenians who were suspected of concealing arms. Naturally, the Christians became alarmed when placards were posted in the villages and cities ordering them to bring all their arms to headquarters. Since this order applied only to Christians, the Armenians well understood what the result would be should they be left defenceless while their Moslem neighbours were permitted to retain their arms. In many cases, however, the persecuted people patiently obeyed the command, and then the Turkish officials almost joyfully seized their rifles as evidence that a "revolution" was being planned, and threw their victims into prison on a charge of treason. Thousands failed to deliver arms simply because they had none to deliver, while an even greater number tenaciously refused to give them up, not because they were plotting an uprising, but because they proposed to defend their own lives and their women's honour against the outrages which they knew were being planned.

The punishment inflicted upon these recalcitrants form one of the most hideous chapters of modern history. Most of us believe that torture has long ceased to be an administrative and judicial measure, yet I do not believe that the darkest ages ever presented scenes more horrible than those which now took place all over Turkey. Nothing was sacred to the Turkish gendarmes; under the plea of searcing for hidden arms they ransacked churches, treated the altars and sacred utensils with the utmost indignities, and even held mock ceremonies in imitation of the Christian sacraments. They would beat the priests into insensibility, under the pretence that they were the centres of sedition. When they could discover no munitions in the churches, they would sometimes arm the bishops and priests with guns, pistols, and swords, then try them before court-martials for possessing weapons against the law, and march them in this condition through the streets, merely to arouse the fanatical wrath of the mobs. The gendarmes treated women with the same cruelty and indecency as their husbands. There are cases on record in which women accused of concealing weapons were stripped naked and whipped with branches freshly cut from trees, and these beatings were even inflicted on women who were with child. Violations so commonly accompanied these searches that Armenian woman and girls, on the approach of the gendarmes, would flee to the woods, the hills, or to mountain caves.

As a preliminary to the searches everywhere, the strong men of the villages and towns were arrested and taken to prison. Their tormentors here would exercise the most diabolical ingenuity in their attempt to make their victims declare themselves to be "revolutionists" and to tell the hiding-places of their arms. A common practice was to place the prisoner in a room, with two Turks stationed at each end and each side. The examination would then begin with the bastinado. This is a form of torture not uncommon in the Orient; it consists of beating the soles of the feet with a thin rod. At first the pain is not marked, but as the process goes slowly on it develops into the most terrible agony, the feet swell and burst, and not infrequently, after being submitted to this treatment, they have to be amputated. The gendarmes would bastinado their Armenian victim until he fainted; they would then revive him by sprinkling water on his face and begin again. If this did not succeed in bringing their victim to terms, they had numerous other methods of persuasion. They would pull out his eyebrows and beard almost hair by hair; they would extract his fingernails and toe-nails; they would apply red-hot irons to his breast; tear off his flesh with red-hot pincers, and then pour boiled butter into the wounds. In some cases the gendarmes would nail hands and feet to pieces of wood—evidently in imitation of the crucifixtion, and then, while the sufferer writhed in his agony, they would cry: "Now let your Christ come and help you!"

These cruelties—and many others which I forbear to describe were usually inflicted in the night time. Turks would be stationed around the prison, beating drums and blowing whistles, so that screams of the sufferers would not reach the villages.

In thousands of cases the Armenians who endured these agonies had refused to surrender their arms simply because they had none to surrender. However, they could not persuade their tormentors that this was the case. It therefore became customary, when news was received that the searchers were approaching, for Armenians to purchase arms from their Turkish neighbours so that they might be able to give them up and escape these frightful punishments.

One day I was discussing these proceedings with Bedri Bey, the Constantinople Prefect of Police. With a disgusting relish Bedri described the tortures inflicted. He made no secret of the fact that the Government had instigated them, and, like all Turks of the official classes, he enthusiastically approved this treatment of the detested race. Bedri told me that all these details were matters of nightly discussion at the headquarters of the Union and Progress Committee. Each new method of inflicting pain was hailed as a splendid discovery, and the regular attendants were constantly ransacking their brains in the effort to devise some new torment. Bedri told me that they even delved into the records of the Spanish Inquisition and other historic institutions of torture, and adopted all the suggestions found there. Bedri did not tell me who carried off the prize in this gruesome competition, but common reputation throughout Armenia gave a pre-eminent infamy to Djevdet Bey, the Vali of Van, whose activities in that section I have already described. All through this country Djevdet now became known as the "marshall blacksmith of Bashkale," for this connoisseur in torture had invented what was perhaps the masterpiece of all—that of nailing horseshoes to the feet of his Armenian victims.

Yet these happenings did not constitute what the newspapers of the time commonly referred to as the Armenian atrocities; they were merely the preparatory steps in the destruction of a race. The Young Turks displayed greater ingenuity than their predecessor, Abdul Hamid. The injunction of the deposed Sultan was merely "to kill, kill," whereas the Turkish democracy hit upon an entirely new plan. Instead of massacring outright the Armenian race, they now decided to deport it. In the south and south-eastern section of the Ottoman Empire lies the Syrian desert and the Mesopotamian valley. Though part of this area was once the scene of a flourishing civilisation, for the last five centuries it has suffered the plight that becomes the lot of any country that is subjected to Turkish rule; and it is now a dreary, desolate waste, without cities and towns or life of any kind, populated only by a few wild and fanatical Bedouin tribes. Only the most industrious labour, expended through many years, could transform this desert into the abiding-place of any considerable population. The Central Government now announced its intention of gathering the 2,000,000 or more Armenians living in the several sections of the Empire and transporting them to this desolate and inhospitable region. Had they undertaken such a deportation in good faith it would have represented the height of cruelty and injustice. For a large part the Armenians are not agriculturists; their talents are chiefly for business and commercial life; though many of them do cultivate farms and engage in sheep-herding, many lived in cities and large towns, and, as I have already said, they represent the economic force of the country. To seize such peoples by the million and send them into one of the most barren parts of Asia would have been an act of the most inhuman spoliation. As a matter of fact, the Turks never had the slightest idea of re-establishing the Armenians in this new country. They knew that the great majority would never reach their destination and that those who did would either die of thirst and starvation, or be murdered by the wild Mohammedan desert tribes. The real purpose of the deportation was robbery and destruction; it really represented a new method of massacre. When Talaat, as Minister of the Interior, gave the orders for these deportations, he was merely giving the death-warrant to a whole race; he understood this well, and in his conversations with me he made no particular attempt to conceal the fact.

All through the spring and summer of 1915 the deportations took place. Of the larger cities, only Constantinople, Smyrna, and Kutahia were spared; practically all other places where a single Armenian family lived now became the scenes of these unspeakable tragedies. Scarcely a single Armenian, whatever his education or wealth, or whatever the social class to which he belonged, was exempted from the order. In some villages placards were posted ordering the whole Armenian population to present itself in a public place at an appointed time—usually a day or two ahead, and in other places the town-crier would go through the streets delivering the order vocally. In still others not the slightest warning was given. The gendarmes would appear before an Armenian house and order all the immates to follow them. They would take women engaged in their domestic tasks without giving them the chance to change their clothes. The police fell upon them first as the eruption of Vesuvius fell upon Pompeii; women were taken from the wash-tubs, children were snatched out of bed, the bread would be left half-baked in the oven, the family meal would be abandoned partly eaten, the children would be taken from the schoolroom, leaving their books open at the daily task, the men would be forced to abandon their plough in the fields and their cattle on the mountain-side. Even women who had just given birth to children would be forced to leave their beds and join the panic-stricken throng, their sleeping babies in their arms. Such things as they hurriedly snatched up—a shawl, a blanket, perhaps a few scraps of food—was all that they could take of their household belongings. To their frantic question. "Where are we going?" the gendarmes would vouchsafe only one reply: "To the interior."

In some cases the refugees were given a few hours, in exceptional instances a few days, to dispose of their property and household effects. but the proceeding, of course, amounted simply to robbery. They could sell only to Turks, and since both buyers and sellers knew that they had only a day or two to market the accumulations of a lifetime, the prices obtained represented a small fraction of their value. Sewing-machines would bring one or two dollars—a cow would go for a dollar, a houseful of furniture would be sold for a pittance. In many cases Armenians were prohibited from selling or Turks from buying even at these ridiculous prices; under pretence that the Government intended to sell their effects to pay the creditors whom they would inevitably leave behind, their household furniture would be placed in stores or heaped up on public places, where it was usually pillaged by Turkish men and women. The Government officials would also inform the Armenians that, since their deportation was only temporary, the intention being to bring them back after the war was over, they would not be permitted to sell their houses. Scarcely had the former possessors left the village, when Mohammedan Mohadjirs—immigrants from other parts of Turkey—would be moved into the Armenian quarters. Similarly all their valuables, money, rings, watches, and jewellery, would be taken to the police-stations for "safe keeping" pending their return, and then parcelled out among the Turks. Yet these robberies gave the rufugees little anguish, for far more terrible and agonising scenes were taking place under their eyes. The systematic extermination of the men continued; such males as the persecutions which I have already described had left, were now violently dealt with. Before the caravans were started, it became the regular practice to separate the young men from the families, tie them together in groups of four, lead them to the outskirts, and shoot them. Public hangings without trial—the only offence being that the victims were Armenians—were taking place constantly. The gendarms showed a particular desire to annihilate the educated and the influencial. From American Consuls and missionaries I was constantly receiving reports of such executions, and many of the events which they described will never fade from my memory. At Angora all Armenian men from fifteen to seventy were arrested, bound together in groups of four, and sent on the road in the direction of Casaria. When they had travelled five or six hours and had reached a secluded valley, a mob of Turkish peasants fell upon them with clubs, hammers, axes, scythes, spades, and saws. Such instruments not only caused more agonising deaths than guns and pistols, but, as the Turks themselves boasted, they were more ecomomical, since they did not involve the waste of powder and shell. In this way they exterminated the whole male population of Angola, including all its men of wealth and breeding, and their bodies, horribly mutilated, were left in the valley, where they were devoured by wild beasts. After completing this destruction, the peasants and gendarmes gathered in the local tavern, comparing notes and boasting of the number of "giaours" that each had slain. In Trebizond the men were placed in boats and sent out of the Black Sea; gendarmes would then come up in boats, shoot them down, and throw their bodies into the water.

When the signal was given for the caravans to move, therefore, they almost invariably consisted of women, children, and old men. Anyone who could possibly have protected them from the fate that awaited them had been destroyed. Not infrequently the prefect of the city, as the mass started on its way, would wish them a derisive "pleasant journey." Before the caravan moved the women were sometimes offered the alternative of becoming Mohammedans. Even though they accepted the new faith, which few of them did, their earthly troubles did not end. The converts were compelled to surrender their children to a so-called "Moslem Orphanage," with the agreement that they should be trained as devout followers of the Prophet. They themselves must then show the sincerity of their conversion by abandoning their Christian husbands and marrying Moslems. If no good Mohammedan offered himself as a husband, then the new convert was deported, however, strongly she might protest her devotion to Islam.

At first the Government showed some inclinations to protect these deporting throngs. The officers usually divided them into convoys, in some cases numbering several hundred, in others several thousand. The civil authorities occasionally furnished ox-carts which carried such household furniture as the exiles had succeeded in scrambling together. A guard of gendarmerie accompanied each convoy, ostensibly to guide and protect it. Women, scantily clad, carrying babies in their arms or on their backs, marched side by side with old men hobbling along with canes. Children would run along, evidently regarding the procedure, in the early stages, as some new lark. A more prosperous member would perhaps have a horse or a donkey, occasionally a farmer had rescued a cow or a sheep, which would trudge along at his side, and the usual assortment of family pets, dogs, cats, and birds, became parts of the variegated procession. From thousands of Armenian cities and villages these despairing caravans now set forth; they filled all the roads leading south; everywhere, as they moved on, they raised a huge dust, and abandoned debris, chairs, blankets, bedclothes, household utensils, and other impediments, marked the course of the processions. When the caravans first started, the individuals bore some resemblance to human beings; in a few hours, however, the dust of the road plastered their faces and clothes, the mud caked their lower members, and the slowly-advancing mobs, frequently bent with fatigue and crazed by the brutality of their "protectors," resembled some new and strange animal species. Yet for the better part of six months, from April to October, 1915, practically all the highways in Asia Minor were crowded with these unearthly bands of exiles. They could be seen winding in and out of every valley and climbing up the sides of nearly every mountain—moving on and on, they scarcely knew whither, except that every road led to death. Village after village and town after town was evacuated of its Armenian population, under the distressing circumstances already detailed. In these six months, as far as can be ascertained, about 1,200,000 people started on this journey to the Syrian desert.

"Pray for us," they would say as they left their homes—the homes in which their ancestors had lived for 2,500 years. "We shall not see you in this world again, but sometime we shall meet. Pray for us!"

The Armenians had hardly left their native villages when the persecutions began. The roads over which they travelled were little more than donkey-paths; and what had started a few hours before as an orderly procession soon became a dishevelled and scrambling mob. Women were separated from their children and husbands from their wives. The old people soon lost contact with their families and became exhausted and footsore. The Turkish drivers of the ox-carts, after extorting the last penny from their charges, would suddenly dump them and their belongings into the road, turn around and return to the village for other victims. Thus in a short time practically everbody, young and old was compelled to travel on foot. The gendarmes whom the Government had sent supposedly to protect the exiles, in a very few hours became their tormentors. They followed their charges with fixed bayonets, prodding anyone who showed any tendency to slacken their pace. Those who attempted to stop and rest, or who fell exhausted on the road, were compelled, with the utmost brutality, to rejoin the moving throng. They even prodded pregnant women with bayonets; if one, as frequently happened, gave birth along the road, she was immediately forced to get up and rejoin the marchers. The whole course of the journey became a perpetual struggle with the Moslem inhabitants. Detachments of gendarmes would go ahead notifying the Kurdish tribes that their victims were approaching, and Turkish peasants were also informed that their long-awaited opportunity had arrived. The Government even opened the prisons and set free the convicts, on the understanding they they should behave like good Moslems to the approaching Armenians. Thus every caravan had a continuous battle for existence with several classes of enemies—their accompanying gendarmes, the Turkish peasants and villagers, the Kurdish tribes and bands of *Chètès* or brigands. And we must always keep in mind that the men who might have defended these wayfarers had nearly all been killed or forced into the army as workmen, and that the exiles themselves had been systematically deprived of all weapons before the journey began.

When they had travelled a few hours from their starting-place, the Kurds would sweep down from their mountain homes. Rushing up to the young girls, they would lift their veils and carry the pretty ones off to the hills. They would steal such children as pleased their fancy and mercilessly rob all the rest of the throng. If the exiles had started with any money or food, their assailants would appropriate it, thus leaving them a hopeless prey to starvation. They would steal their clothing, and sometimes even leave both men and women in a state of complete nudity. All the time that they were committing these depradations the Kurds would freely massacre, and the screams of old men and women would add to the general horror. Such as escaped these attacks in the open would find new terrors awaiting them in the Moslem villages. Here the Turkish roughs would fall upon the women, leaving them sometimes dead from their experiences or sometimes ravingly insane. After spending a night in a hideous encampment of this kind, the exiles, or such as had survived, would start again the next morning. The ferocity of the gendarmes apparently increased as the journey lengthened for they seemed almost to resent the fact that part of their charges continued to live. Anyone who dropped on the road was frequently bayoneted on the spot. The Armenians began to die by hundreds from hunger and thirst. Even when they came to rivers, the gendarmes, merely to torment them, would sometimes not let them drink. The hot sun of the desert burned their scantily-clothed bodies, and the bare feet, treading the hot sand of the desert, became so sore that thousands fell and died or were killed where they lay. Thus, in a few days, what had been a procession of normal human beings became a stumbling horde of dust-covered skeletons, ravenously looking for scraps of food, eating any offal that came their way, crazed by the hideous sights that filled every hour of their existence, sick with all the diseases that accompany such hardships and deprivations, but still prodded on and on by the whips and clubs and bayonets of their executioners.

And thus, as the exiles moved they left behind them another caravan—that of dead and unburied bodies, of old men and women in the last stages of typhus, dysentery, and cholera, of little children lying on their back and setting up their last piteous wails for food and water. There were women who held up their babies to strangers, begging them to take them and save them from their tormentors, and failing this, they would throw them into wells or leave them behind bushes, that at least they might die undisturbed. Behind was left a small army of girls who had been sold as slaves—frequently for a medjidie, or about eighty cents—and who, after serving the brutal purposes of their purchasers, were forced to lead lives of prostitution. A string of encampments filled by the sick and the dying, mingled with the unburied or half-buried bodies of the dead, marked the course of the advancing throngs. Flocks of vultures followed them in the air, and ravenous dogs, fighting one another for the bodies of the dead, constantly pursued them. The most terrible scenes took place at the rivers, especially the Euphrates. Some times, when crossing this stream, the gendarmes would push the women into the water, shooting all who attempted to save themselves by swimming. Frequently the women themselves would save their honour by jumping in the river, their children in their arms. "In the last week in June," I quote from an authentic report, "several parties of Erzeroum Armenians were deported on successive days and most of them massacred on the way, either by shooting or drowning. One, Madame Zarouhi, an elderly lady of means, who was thrown into the Euphrates, saved herself by clinging to a boulder in the river. She succeeded in approaching the bank and returned to Erzeroum to hide herself in a Turkish friend's house. She told Prince Argoutinsky, the representative of the 'All-Russian Urban Union' in Erzeroum, that she shuddered to recall how hundreds of children were bayoneted by the Turks and thrown into the Euphrates, and how men and women were stripped naked, tied together in hundreds, shot, and then hurled into the river. In a loop of the river near Erzinghan, she said, the thousands of dead bodies created such a barrage that the Euphrates changed its course for about a hundred yards."

It is absurd for the Turkish Government to assert that it ever seriously intended to "deport the Armenians to new homes"; the treatment which was given the convoys clearly shows that extermination was the real purpose of Enver and Talaat. How many exiled to the South under these revolting conditions ever reached their destinations? The experiences of a single caravan shows how completely this plan of deportation developed into one of annihilation. The details in question were furnished me directly by the American Consul at Aleppo, and are now on file in the State Department at Washington. On the first of June a convoy of 3,000 Armenians, mostly women, girls, and children, left Harpoot. Following the usual custom the Government provided them an escort of seventy gendarmes, under the command of a Turkish leader—Bey. In accordance with the common experience these gendarmes proved to be not their protectors, but their tormentors and their executioners. Hardly had they got well started on the road when . . . Bey took 400 liras from the caravan, on the plea that he was keeping it safely until their arrival at Malatia; no sooner had he robbed them of the only thing that might have provided them with food than he ran away, leaving them all to the tender mercies of the gendarmes.

All the way to Ras-ul-Ain, the first station on the Bagdad line, the existence of those wretched travellers was one prolonged horror. The gendarmes went ahead, informing the half-savage tribes of the mountains that several thousand Armenian women and girls were approaching. The Arabs and Kurds began to carry off the girls, the mountaineers fell upon them repeatedly, killing and violating the women, and the gendarmes themselves joined in the orgy. One by one the few men that accompanied the convoy were killed. The women had succeeded in secreting money from their persecutors, keeping it in their mouths and hair; with this they would buy horses, only to have them repeatedly stolen by the Kurdish tribesmen. Finally the gendarmes, having robbed and beaten and killed and violated their charges for thirteen days, abandoned them altogether. Two days afterward the Kurds went through the party and rounded up all the males who still remained alive. They found about 150, their ages varying from fifteen to ninety years, and these they promptly took away and butchered to the last man. But that same day another convoy from Sivas joined this one from Harpoot, increasing the numbers of the whole caravan to 18,000 people.

Another Kurdish Bey now took cammand, and to him, as to all men placed in the same position, the opportunity was regarded merely as one for pillage, outrage, and murder. This chieftain summoned all his followers from the mountains and invited these to work their complete will upon this great mass of Armenians. Day after day and night afer night the prettiest girls were carried away; sometimes they returned in a pitiable condition that told the full story of their sufferings. Any stragglers, those who were so old and infirm and sick that they could not keep up with the marches, were promptly killed. Whenever they reached a Turkish village all the local vagabonds were permitted to prey upon the Armenian girls. When the diminishing band reached the Euphrates they saw the bodies of 200 men floating upon the surface. By this time they had all been so repeatedly robbed that they had practically nothing left except a few ragged clothes, and even these the Kurds now took, the consequence being that the whole convoy marched for five days completely naked under the scorching desert sun. For another five days they did not have a morsel of bread or a drop of water. "Hundreds fell dead on the way," the report reads; "their tongues were turned to charcoal, and when, at the end of five days, they reached a fountain, the whole convoy naturally rushed toward it. But here the policemen barred the way and forebade them to take a single drop of water. Their purpose was to sell it at from one to three liras a cup, and sometimes they actually withheld the water after getting the money. At another place, where there were wells, some women threw themselves into them, as there was no rope or pail to draw up the water. These women were drowned and, in spite of that, the rest of the people drank from that well, the dead bodies still remaining there and polluting the water. Sometimes when the wells were shallow and the women could go down into them and come out again, the other people would rush to lick or suck their wet, dirty clothes, in the effort to quench their thirst. When they passed an Arab village in their naked condition the Arabs pitied them and gave them old pieces of cloth to cover themselves with. Some of the exiles who still had money bought some clothes; but some still remained who travelled thus naked all the way to the city of Aleppo. The poor women could hardly walk for shame; they all walked bent double."

On the seventieth day a few creatures reached Aleppo. Out of the combined convoy of 18,000 souls just 150 women and children reached their destination. A few of the rest, the most attractive, were still living as captives of the Kurds and Turks; all the rest were dead.

My only reason for relating such dreadful things as this is that, without the details, the English-speaking public cannot understand precisely what this nation is which we call Turkey. I have by no means told the most terrible details, for a complete narration of the sadistic orgies of which the Armenian men and women were the victims can never be printed in an American publication. Whatever crimes the most perverted instincts of the human mind can devise, and whatever refinements of persecution and injustice the most debased imagination can conceive, became the daily misfortunes of this devoted people. I am confident that the whole history of the human race contains no such horrible episode as this. The great massacres and persecutions of the past seem almost insignificant when compared to the sufferings of the Armenian race in 1915. The slaughter of the Albigenses in the early part of the thirteenth century has always been regarded as one of the most pitiful events in history. In these outbursts of fanaticism about 60,000 people were killed. In the massacre of St. Bartholomew about 30,000 human beings lost their lives. The Sicilian Vespers, which has always figured as one of the most fiendish outbursts of this kind, caused the destruction of 8,000. Volumes have been written about the Spanish Inquisition under Torquemada, yet in the eighteen years of his administration only a little more than 8,000 heretics were done to death. Perhaps the one event in history that most resembles the Armenian deportations was the expulsion of the Jews from Spain by Ferdinand and Isabella. According to Prescott 160,000 were uprooted from their homes and scattered broadcast over Africa and Europe. Yet all these previous persecutions seem almost trivial when we compare them with the sufferings of the Armenians, in which at least 600,000 people were destroyed and perhaps as many as 1,000,000. And these earlier massacres when we compare them with the spirit that directed the Armenian atrocities, have one feature that we can almost describe as an excuse: they were the product of religious fanaticism, and most of the men and women who instigated them sincerely believed that they were devoutly serving their Maker. Undoubtedly religious fanaticism was an impelling motive with the Turkish and Kurdish rabble who slew Armenians as a service to Allah, but the men who really conceived the crime had no such motive. Practically all of them were atheists, with no more respect for Mohammedanism than for Christianity, and with them the one motive was a cold-blooded, calculating state policy.

The Armenians are not the only subject people in Turkey who have suffered from this policy of making Turkey exclusively the country of the Turks. The story which I have told about the Armenians I could also tell with certain modifications about the Greeks and the Syrians. Indeed, the Greeks were the first victims of this nationalising idea. I have already described how, in the few months preceding the European war, the Ottoman Government began deporting its Greek subjects along the coast of Asia Minor. These outrages aroused little interest in Europe or the United States, yet in the space of three or four months about 400,000 Greeks were taken from their age-long homes in the Mediterranean littoral and removed to the Greek Islands in the Aegean Sea. For the larger part these were bona fide deportations; that is, the Greek inhabitants were actually removed to new places and were not subjected to wholesale massacre. It was probably for the reason that the civilised world did not protest against these deportations that the Turks afterward decided to apply the same methods on a larger scale not only to the Greeks but to the Armenians, Syrians, Nestorians, and others of its subject peoples. In fact, Bedri Bey, the Prefect of Police at Constantinople, himself told one of my secretaries that the Turks had expelled the Greeks so successfully that they had decided to adopt the same method to all the other races in the empire.

The martyrdom of the Greeks therefore comprised two periods, that antedating the war, and that which began in the early part of 1915. The first affected the Greeks living on the sea-coast of Asia Minor. The second affected those living in Thrace and in the territories surrounding the Sea of Marmora, the Dardanelles, the Bosphorus, and the coast of the Black Sea. These latter, to the extent of several hundred thousand, were sent to the interior of Asia Minor. The Turks adopted almost identically the same procedure against the Greeks as that which they had adopted against the Armenians. They began by incorporating the Greeks into the Ottoman Army and then transforming them into labour battalions, using them to build roads in the Caucasus and other scenes of action. These Greek soldiers, just like the Armenians, died by thousands from cold, hunger, and other privations. The same house-to-house searches for hidden weapons took place in the Greek villages, and Greek men and women were beaten and tortured just as were their fellow Armenians. The Greeks had to submit to the same forced requisitions, which amounted in their case, as in the case of the Armenians, merely to plundering on a wholesale scale. The Turks attempted to force the Greek subjects to become Mohammedans; Greek girls, just like Armenian girls, were kidnapped and placed in Moslem households. The Greeks, just like the Armenians, were accused of disloyalty to the Ottoman Government; the Turks accused them of furnishing supplies to the English submarines in the Marmora and also of acting as spies. The Turks also declared that the Greeks were not loyal to the Ottoman Government, but that they also looked forward to the day when the Greeks outside of Turkey would become part of Greece.

These latter charges were unquestionably true; that the Greeks, after suffering for five centuries the most unspeakable outrages at the hands of the Turks, should look longingly to the day when their territory should be part of the Fatherland, was to be expected. The Turks, as in the case of the Armenians, seize upon this as an excuse for a violent onslaught on the whole race. Everywhere the Greeks were gathered in groups and, under the so-called protection of Turkish gendarmes, they were transported, the larger part on foot, into the interior. Just how many were scattered in this fashion is not definitely known, the estimates varying anywhere from 200,000 up 1,000,000. These caravans suffered great privations, but they were not submitted to general massacre as were the Armenians, and this is probably the reason why the outside world has not heard so much about them. The

Turks showed them this greater consideration not from any motive of pity. The Greeks, unlike the Armenians, had a Government which was vitally interested in their welfare. At this time there was a general apprehension among the Teutonic Allies that Greece would enter the war on the side of the Entente, and a wholesale massacre of Greeks in Asia Minor would unquestionably have produced such a state of mind in Greece that its pro-German king would have been unable longer to have kept his country out of the war. It was only a matter of state policy, therefore, that saved these Greek subjects of Turkey from all the horrors that befell the Armenians. But their sufferings are still terrible, and constitute another chapter in the long story of crimes for which civilization will hold the Turk responsible.

Mr. ARMSTRONG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. LEVIN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Kalbaugh, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting a nomination, which was referred to the Committee on Labor and Human Resources.

(The nominations received today are printed at the end of the Senate proceedings.)

NATIONAL EMERGENCY WITH RESPECT TO PANAMA

MESSAGE FROM THE PRESIDENT—PM 165

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

1. On April 8, 1988, in Executive Order No. 12635, I declared a national emergency to deal with the threat to the national security and foreign policy of the United States posed by the policies and actions of the Noriega/Solis regime of Panama (53 Fed. Reg. 12134, April 12, 1988). In that Order, I ordered the immediate blocking of all property and interests in property of the Government of Panama (including the Banco Nacional de Panama and the Caja de Ahorros) then or thereafter located in the United States or coming within the possession or control of persons located within the United States. I also prohibited the payment or transfer of any funds or other financial or investment assets or credits to the Noriega/Solis regime from the United States and by U.S. persons and U.S.-controlled Panamanian entities located in the territory of Panama. All transfers, or payments owed, that are not authorized by rules, regulations, or licenses, to the Government of Panama are required to be made into a blocked account of the Government of Panama at the Federal Reserve Bank of New York, to be held for the benefit of the Panamanian people.

2. The declaration of a national emergency was made pursuant to the authority vested in me as President by the Constitution and laws of the United States, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3 of the United States Code. I reported the declaration to the Congress on April 8, 1988, pursuant to section 1703(b) of the International Emergency Economic Powers Act. The present report is submitted pursuant to 50 U.S.C. 1641(c) and 1703(c).

3. The Office of Foreign Assets Control of the Department of the Treasury, after consultation with other Federal agencies, issued the Panamanian Transactions Regulations, 31 C.F.R. Part 565, to implement the prohibitions in Executive Order No. 12635 (53 Fed. Reg. 20566, June 3, 1988). The Panamanian Transactions Regulations contain a number of general licenses, authorizing payment to the Noriega/Solis regime of utilities; indirect taxes; fees and taxes paid in connection with basic business activity; fees (other than income taxes) directly owed by individuals; payments for travel-related, telecommunications, and mail transactions; fees related to the purchase and sale of publications; and payments of obligations of the Noriega/Solis regime to persons within the United States.

Two amendments to the Panamanian Transactions Regulations have been issued to date. The first, effective June 15, 1988, authorizes payment of social security taxes to the Noriega/Solis regime by U.S. persons and U.S.-controlled Panamanian entities (53 Fed. Reg. 23620, June 23, 1988). This amendment permits the payment of taxes and fees for health, maternity, and retirement benefits for Panamanian nationals employed by U.S. companies and U.S.-controlled Panamanian companies. The second amendment, effective August 24, 1988, authorizes payment to the Noriega/Solis regime of import duties, other import-related expenses, and port fees (53 Fed. Reg. 32221, August 24, 1988). This amendment facilitates U.S. exports to Panama by permitting U.S. exporters and U.S.-controlled Panamanian importers to pay expenses related to importations.

With this report, I am enclosing a copy of the Treasury Department's Panamanian Transactions Regulations, as amended to date.

4. The objective of Administration policy remains support for a return to civilian constitutional rule and the development of an apolitical military establishment in Panama. In furtherance of our policy, the Administration has imposed economic sanctions against the Noriega/Solis regime. In our judgment, the root cause of the current crisis is the fact that the Panamanian people have lost confidence in a political system widely perceived as corrupt, repressive, and inept. A genuine Panamanian resolution of the political crisis is necessary to restore confidence in the Panamanian economy, a precondition to the return of economic stability and growth in Panama. Accordingly, our efforts have been directed at supporting Panamanian efforts to resolve the underlying political crisis as rapidly as possible.

5. The expenses incurred by the Federal Government in the 6-month period from April 8 through October 8, 1988, that are directly attributable to the exercise of powers and authorities conferred by the declaration of the Panamanian national emergency are estimated at $701,000, most of which represents wage and salary costs for Federal personnel. Personnel costs were largely centered in the Department of the Treasury (particularly in the Office of Foreign Assets Control, the Office of the Assistant Secretary for Enforcement, the Office of the Assistant Secretary for International Affairs, and the Office of the General Counsel), the Department of State, the Federal Reserve Board, the National Security Council staff, and the Department of Defense.

6. The policies and actions of the Noriega/Solis regime in Panama continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. I shall continue to exercise the powers at my disposal to apply economic sanctions against Panama as long as these measures are appropriate and will continue to report periodically to the Congress on significant developments, pursuant to 50 U.S.C. 1703(c).

RONALD REAGAN.

THE WHITE HOUSE, *October 14, 1988.*

MESSAGES FROM THE HOUSE

ENROLLED BILLS SIGNED

At 11:03 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 525. An act for the relief of John M. Gill;

H.R. 3559. An act to authorize and direct the acquisition of lands for Canaveral National Seashore, and for other purposes;

H.R. 4375. An act to improve the management of certain public lands in the State of Michigan;

H.R. 4554. An act to remove restrictions on land acquisitions for Antietam National Battlefield; and

H.R. 4557. An act to amend title 46, United States Code, to require alerting and locating equipment on manned uninspected vessels, to provide for exemption of uninspected vessels from certain requirements of that title, and to increase penalties for violations of certain uninspected vessel requirements.

The enrolled bills were subsequently signed by the Acting President pro tempore [Mr. Reid].

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, October 14, 1988, he had presented to the President of the United States the following enrolled bills:

S. 508. An act to amend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited practices;

S. 659. An act to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes;

S. 836. An act to amend the Department of Energy Organization Act to authorize protective force personnel who guard the strategic petroleum reserve or its storage and related facilities to carry firearms while discharging their official duties and in certain instances to make arrests without warrant; to establish the offense of trespass on property of the strategic petroleum reserve, and for other purposes;

S. 1911. An act to amend title 5, United States Code, to allow all forest fire fighting employees to be paid overtime without limitation while serving on forest fire emergencies;

S. 2018. An act to expand the boundaries of the Congaree Swamp National Monument, to designate wilderness therein, and for other purposes; and

S. 2479. An act to amend the Immigration and Nationality Act to make technical corrections in immigration related laws;

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. BYRD (for Mr. Bentsen), from the Committee on Finance:

Mary T. Goedde, of Ohio, to be an Assistant Secretary of Health and Human Services;

Malcolm M. B. Sterrett, of Maryland, to be General Counsel of the Department of Health and Human Services;

Charles H. Dallara, of Virginia, to be an Assistant Secretary of the Treasury; and

Edith E. Holiday, of Georgia, to be an Assistant Secretary of the Treasury.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. SYMMS (for himself and Mr. McClure):

S. 2894. A bill to authorize the Secretary of the Interior to convey certain lands in Idaho to Mr. and Mrs. Kenneth Blevins of Kuna, Idaho; to the Committee on Energy and Natural Resources.

By Mr. THURMOND (for himself and Mr. Hollings):

S. 2895. A bill to transfer certain lands of the South Carolina Commission of Forestry, an agency of the State of South Carolina; to the Committee on Environment and Public Works.

By Mr. FOWLER:

S. 2896. A bill to establish national water use performance standards for certain plumbing products in order to conserve and protect the Nation's water resources, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. KENNEDY (for himself and Mr. Kasten):

S. 2897. A bill to provide financial assistance to the Simon Wiesenthal Center in Los Angeles, California, for the education programs of the Museum of Tolerance; to the Committee on Labor and Human Resources.

By Mr. FOWLER:

S. 2898. A bill to promote low-input and sustainable agricultural production, to maintain farm profitability, to encourage land, resource and wildlife stewardship in connection with Federal farm programs, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. THURMOND:

S. 2899. A bill to require the Administrator of Veterans' Affairs to construct a medical research center for the Veteran's Administration and the Medical University of South Carolina in Charleston, South Carolina; to the Committee on Veterans' Affairs.

By Mr. BINGAMAN (for himself and Mr. Gramm):

S. 2900. A bill to amend title 10, United States Code, to require the Under Secretary of Defense for Acquisition to provide for the systematic review and revision of acquisition regulations, to designate the Under Secretary as the principal advisor to the Secretary of Defense on major defense acquisition programs, and to require the Secretary of Defense to prescribe regulations to strengthen the prevention of contract fraud in Department of Defense procurements; to the Committee on Armed Services.

By Mr. ARMSTRONG (for himself, Mr. Nickles, Mr. Helms, Mr. Hatch, Mr. Symms, Mr. Cochran, Mr. Cohen, and Mr. Dole):

S. 2901. A bill to amend the Fair Labor Standards Act of 1938 to permit industrial homework except with respect to an individual employer to be in violation of such Act, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. DURENBERGER:

S. 2902. A bill to amend title XVIII of the Social Security Act to allow payment for ambulance service where other methods of transportation are either unavailable or such other methods are medically inappropriate, and for other purposes; to the Committee on Finance.

By Mr. HATCH (for himself, Mr. DeConcini, Mr. Bradley, and Ms. Mikulski):

S. 2903. A bill to amend the Lanham Trademark Act regarding gray market goods; to the Committee on the Judiciary.

By Mr. FOWLER:

S. 2904. A bill to provide for the improves management of the Nation's water resources; to the Committee on Governmental Affairs.

By Mr. HECHT:

S. 2905. A bill to authorize the exchange of certain public lands in California and Nevada; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BYRD (for Mr. Stennis):

S. Res. 498. A resolution commending Cornel H. Petrassevich for his service to the United States of America; considered and agreed to.

By Mr. CHILES (for himself, Mr. Domenici, Mr. Johnston, Mr. Armstrong, Mr. Sasser, Mrs. Kassebaum, Mr. Riegle, Mr. Boschwitz, Mr. Exon, Mr. Symms, Mr. Lautenberg, Mr. Grassley, Mr. Simon, Mr. Kasten, Mr. Sanford, Mr. Quayle, Mr. Wirth, Mr. Danforth, Mr. Fowler, Mr. Nickles, Mr. Conrad, Mr. Rudman, and Mr. Dodd):

S. Res. 499. A resolution commending Richard Brandon for his faithful and outstanding service to the United States and the Nation; considered and agreed to.

By Mr. BREAUX (for himself and Mr. Stevens):

S. Con. Res. 161. A concurrent resolution calling for the full participation of American industry in the provision of telecommunications equipment and services; to the Committee on Commerce, Science, and Transportation.

By Mr. WIRTH (for Mr. Bradley):

S. Con. Res. 162. A concurrent resolution to correct the enrollment of H.R. 2642; considered and agreed to.

By Mr. BYRD (for Mr. Bumpers):

S. Con. Res. 163. A concurrent resolution to make a change in the enrollment of the bill H.R. 4174; considered and agreed to.

By Mr. BYRD (for Mr. Heflin):

S. Con Res. 164. A concurrent resolution to correct errors in the enrollment of the bill H.R. 4612; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. THURMOND (for himself and Mr. Hollings):

S. 2895. A bill to transfer certain lands to the South Carolina Commission of Forestry, an agency of the

State of South Carolina; to the Committee on Environment and Public Works.

TRANSFER OF CERTAIN LAND TO SOUTH CAROLINA COMMISSION OF FORESTRY

Mr. THURMOND. Mr. President It gives me great pleasure to rise today, along with my distinguished colleague Senator Hollings, to introduce legislation authorizing the transfer of certain Federal lands known as the Carolina Sandhills Wildlife Management Area to the South Carolina Commission of Forestry. For the past few years, the Department of Interior and the State of South Carolina have been working on various proposals to improve the management and administration of the Carolina Sandhills Wildlife Management Area, known as the Sand Hills State Forest. The Interior Department and the State of South Carolina have concluded that the transfer of the property to the State is the Government's best interest. Although all the details have not been completely finalized, the respective Federal and State entities—the U.S. Fish and Wildlife Service and the South Carolina State Commission of Forestry—have reached a tentative agreement for such a transfer.

Located in Chesterfield and Darlington counties, the land proposed to be transferred is owned by the United States, and under the control of the U.S. Fish and Wildlife Service. However, it is presently managed under a cooperative agreement by the South Carolina Forestry Commission.

By way of background, in the early 1930's, the U.S. Department of Agriculture acquired some 92,000 acres largely in Chesterfield County as a land utilization project known as LA-SC-4.

In April 1939, this land was leased to the South Carolina State Commission of Forestry for use as a demonstration conservation area for planned multiple land use for forestry, wildlife, and recreation. Under the terms of this lease, the State Commission of Forestry became responsible for administration of one-half of the area, approximately 44,550 acres, as the Sand Hills State Forest. The other half of the area is administered by the Department of Agriculture (now the Department of Interior) as a National Wildlife Refuge, and as a game management demonstration and research area.

Later, in August 1940, President Franklin D. Roosevelt signed Executive Order No. 8510, which provided that lands within the Carolina Sandhills Wildlife Management Area were to remain available to the State, but would remain under the custody of the Fish and Wildlife Service and would remain a part of the National Wildlife Refuge System. This arrangement has continued for over 48 years, with both the State of South Carolina and the U.S. Fish and Wildlife Service providing technical services and assistance on lands of the other.

This present setup has provided for somewhat cumbersome management of the Sandhills area. Accordingly, the legislation I am introducing today would rectify this situation by removing the 44,550 acre Carolina Sandhills Wildlife Management Area, also known as the Sand Hills State Forest, from the National Wildlife Refuge System. Title to this land would be transferred to the State of South Carolina. The State of South Carolina would, in turn, become the owner of this land and would be solely responsible for the management and administration of this specific acreage.

Mr. President, this legislation also contains certain conditions governing the transfer which include the protection of certain endangered species, the provision of forest fire protection services, and the provision of certain reforestation services.

In closing, Mr. President, I would like to include, for the Record, copies of letters of support from the Secretary of the Interior, and the Governor of South Carolina.

I ask unanimous consent that these letters, as well as the text of this legislation, appear immediately following my remarks.

There being no objection, the material was ordered to be printed in the Record, as follows:

S. 2895

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TRANSFER OF LANDS.

(a) Removal From National Wildlife Refuge System.—Pursuant to the requirements of section 4(a)(3) of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd(a)(3)), the approximately 44,550 acres of land designated the Carolina Sandhills Wildlife Management Area and known as the Sand Hills State Forest, as described in Executive Order No. 8510, dated August 8, 1940, are hereby removed from the National Wildlife Refuge System.

(b) Transfer of Lands.—Subject to the terms and conditions set forth in section 2, the Secretary of the Interior is authorized and directed to transfer the title, rights, and interest to the lands identified in subsection (a) to the South Carolina Commission of Forestry, an agency of the State of South Carolina, for use for public purposes as a multiple use State forest providing sustained yield production of forest products, public recreation, wildlife benefits, and demonstration and education projects by the South Carolina Commission of Forestry.

(c) Right of Reversion.—If—

(1) the Secretary determines that the South Carolina Commission of Forestry is not in compliance with any of such terms and conditions of transfer;

(2) at any time the land ceases to be used for public purposes (except as provided in subsection (d) of this section); or

(3) the South Carolina Commission of Forestry no longer desires to own or operate the Sand Hills State Forest,

the land transferred pursuant to subsection (b) shall revert to the United States, to be managed as part of the National Wildlife Refuge System.

(d) Acquisition of Additional Lands.—Subject to the provisions of paragraph (2), the South Carolina Commission of Forestry may acquire tracts of land within or adjacent to the boundaries of the transferred land by exchange or sale of parcels of transferred land, with the proceeds of any such sale being designated for such acquisition.

(2) The acquisition authorized by paragraph (1) shall be subject to the following conditions:

(A) The South Carolina Commission of Forestry shall provide notification to the United States Fish and Wildlife Service prior to any such acquisition.

(B) The South Carolina Commission of Forestry has determined prior to such acquisition that such acquisition is in the best interest of the public purposes of the State of South Carolina and is necessary in order to facilitate efficient management and administration of the Sand Hills State Forest area.

(e) Repeal of Executive Order.—Executive Order No. 8510, dated August 8, 1940, is appealed as of the date the lands identified in subsection (a) are transferred to the South Carolina Commission of Forestry.

SEC. 2. TERMS AND CONDITIONS.

The transfer of lands authorized in section 1 shall be conditioned upon the South Carolina Commission of Forestry—

(1) managing the transferred lands for the benefit of such endangered and threatened species of plants or animals which may be present there, and particularly in accordance with the objectives of the Recovery Plan for the Red Cockaded Woodpecker, and any amendments to such plan;

(2) consulting with the United States Fish and Wildlife Service regarding the impacts of its management practices upon endangered and threatened species in the transferred lands;

(3) entering into and abiding by an agreement with the United States Fish and Wildlife Service to provide to the Carolina Sandhills National Wildlife Refuge at no cost—

(A) basic forest fire protection services (including presuppression, detection, and initial attack of wildfires) for a period of 50 years from the date of transfer subject to the condition that the United States shall pay the South Carolina Commission of Forestry the actual costs of any wildfire suppression activities after a 12-hour period from the initial attack on the fire;

(B) prescribed burning services as requested, up to a maximum of 5,000 acres annually, for a period of 5 years from the date of transfer, subject to smoke management and other related regulations in effect at the time of the request, and contingent upon the South Carolina Commission of Forestry retaining the legal and physical capability to perform the service; and

(C) reforestation services for converting approximately 2,300 acres of slash pine plantation to more desirable species, as determined by the Refuge, in approximately equal installments over a period not to exceed 10 years from the date of transfer.

STATE OF SOUTH CAROLINA,
OFFICE OF THE GOVERNOR,
Columbia, September 16, 1988.
Hon. J. STROM THURMOND,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR STROM: It is my understanding negotiations have concluded between the South Carolina Forestry Commission and the Fish and Wildlife Service over the transfer of the Sandhills State Forest to the State of South Carolina.

The South Carolina Forestry Commission has agreed to endangered species protection and compensation in the form of forest fire protection, reforestation, and prescribed burning on the adjacent refuge. With this agreement legislation can now be drafted to implement the transfer of the property.

I appreciate your efforts on the transfer of Sandhills to the State of South Carolina and look forward to working with you and other Members of the Congressional Delegation to achieve this goal.

With best personal regards, I am

Sincerely,

CARROLL A. CAMPBELL, Jr.,
Governor.

THE SECRETARY OF THE INTERIOR,
Washington, August 31, 1987.
Hon. STROM THURMOND,
U.S. Senate,
Washington, D.C.

DEAR SENATOR THURMOND: I appreciate receiving your letter of June 9, 1987, concerning the possible transfer to the State of South Carolina of approximately 46,000 acres of land located in Chesterfield and Darlington Counties. The land in question is owned by the United States, under the control of the Fish and Wildlife Service (Service), and is managed under a cooperative agreement by the South Carolina Forestry Commission.

The Service advised me that it has been aware of South Carolina's interest in such a transfer for the last 3 years. Several meetings and discussions have been held concerning this matter. State Forester Leonard A. Kilian, Jr., South Carolina Forestry Commission, is aware that the land currently managed through a cooperative agreement is a part of the National Wildlife Refuge System (System).

The National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd, was amended in 1976 to prohibit the transfer or disposal of lands in the System except under limited conditions. In this case, the Service could not complete such a transfer unless specified by act of Congress.

The agreement governing the use and operation of this area is site specific and unique to the System. I am asking Service personnel at the appropriate levels to thoroughly explore the situation and make a recommendation to me. After this work is completed, I will be in a position to determine whether to support such a transfer.

Thank you for bringing this matter to my attention. I expect to contact you again in the near future regarding this proposal.

Sincerely,

DONALD PAUL HODEL.

THE SECRETARY OF THE INTERIOR,
Washington, February 10, 1988.
Hon. STROM THURMOND,
U.S. Senate,
Washington, D.C.

DEAR SENATOR THURMOND: This further responds to your letter of June 9, 1987, concerning the possibility of transferring to the State of South Carolina approximately 46,000 acres located in Chesterfield and Darlington counties.

The Carolina Sandhills Project was established in 1939, under the authority of the National Industrial Recovery Act and the Emergency Relief Appropriation Act. Part of the area became the Carolina Sandhills National Wildlife Refuge and the remainder the Carolina Sandhills Wildlife Management Area (Management Area). A more detailed explanation of the legislative history is enclosed.

The Fish and Wildlife Service (Service) and the State agree the management of the Sandhills area is cumbersome. The Management Area, for all practical purposes, is administered by the State. Provided Service wildlife responsibilities are protected (e.g., proper endangered species protection), and some compensation is provided, possibly in the form of continued fire protection on the adjacent refuge, the Service is in favor of the transfer.

I agree with the position of the Service and will have someone from their staff contact your office to explore transfer by Federal legislation. I look forward to bringing this matter to a successful conclusion.

Sincerely,

DONALD PAUL HODEL.

LEGISLATIVE HISTORY OF THE CAROLINA SANDHILLS PROJECT

On April 20, 1939, the United States entered into a Cooperative and License Agreement with the State on the remaining lands in the Sandhills Project, now known as the Carolina Sandhills Wildlife Management Area (Management Area). Under the agreement, the lands made available to the State were to be used as a demonstration multiple land use conservation area providing supplementary work to aid in the stabilization of the agricultural community.

On April 29, 1939, the United States and the State entered into a Cooperative Agreement covering the entire Sandhills Project. The lands under license agreement would be managed as a State forest, public shooting ground, and research area, and the remainder as a Federal wildlife refuge and as a game management demonstration and research area.

On August 8, 1940, President Franklin D. Roosevelt signed Executive Order No. 8510, which states that lands within the Management Area are to remain available to the State, under the custody of the Fish and Wildlife Service (Service), as long as the agreement for such use and management is in effect. The cooperative program between the State and Service has been in existence for over 48 years. Each provides technical services and assistance on lands of the other.

By Mr. FOWLER:

S. 2896. A bill to establish national water use performance standards for certain plumbing products in order to conserve and protect the Nation's water resources, and for other purposes; to the Committee on Commerce, Science, and Transportation.

NATIONAL PLUMBING FIXTURES EFFICIENCY ACT

Mr. FOWLER. Mr. President, I rise today to introduce the Farm Conservation and Water Protection Act of 1988.

The purpose of this bill is to provide Government leadership in adopting sounder agricultural methods—to reverse the trends that have harmed our environment and endangered the public health. At the same time this legislation will help farmers introduce better practices that can minimize these risks and increase their earnings.

Study after study has shown that heavy chemical inputs introduced into farming after World War II threaten the health of our people as well as the long-term economic well-being of the agricultural community itself.

Pesticide contamination threatens farm families who are exposed directly to the toxic chemicals. It threatens consumers who unknowingly purchase tainted products in our grocery stores. Every American is vulnerable to dangerous chemicals that wash from our fields into our water supply.

According to the Environmental Protection Agency, ground water contamination has been reported in 41 States. The problem is most acute in the Nation's croplands—which receive 22.3 billion pounds of nitrogen fertilizers and 850 million pounds of agricultural pesticides each year.

The EPA also reports that chemical residues on food pose the third greatest cancer risk to Americans today. A study by the National Academy of Sciences estimated that common pesticides—such as linuron, zineb and captan—on the most common American foods are responsible for 20,000 cancers a year. Think about that for a second—one of the greatest health risks our children confront comes from eating the food we buy for them at the store.

A National Cancer Institute study found that Kansas farmers exposed to herbicides for more than 20 days each year had six times the risk of developing non-Hodgkins lymphoma as nonfarmers. Further NCI studies indicate that the risk of cancer from exposure to agricultural chemicals is increasing, and can be traced to the vogue of pesticides that grew out of chemical warfare experiments during World War II. In Wisconsin, the risk to farmers of contracting non-Hodgkins lymphoma doubled in a 9-year study period from 1968 to 1976. According to reports, children in the high-input, heavily agricultural San Joaquin Valley have a cancer rate eight times the norm. These figures confirm who common sense would suggest when at least 25 percent of the approximately 50,000 pesticide products registered for use in the United States—and on which our farmers have become dependent to keep up their yields—have shown cancer-causing potential.

Now for the good news. Other studies are showing that improved conservation and low-input practices—which reduce reliance on dangerous chemicals—can actually increase yields for our farmers. Soil that is managed organically is richer and less erodible than land farmed with chemical fertilizers. Research in Nebraska has shown an 18-percent increase in yield for soybeans, 20 percent for corn and 22 percent for wheat in fields protected by windbreaks and shelterbelts—with no increase in chemcial use. We can contrast that with the example of India, which has increased production to meet its food needs through chemical intensive farming, but has degraded 90 percent of the country's topsoil in the process. In the long run, farmers do not have to suffer economic loss to protect our health—and their own.

I want to make it clear at the outset that I am not talking about closing down the chemical industry, either. I am not talking about no-input agriculture. I am talking about gradually redirecting the efforts of the entire agricultural sector to use the knowledge we have gained through experience—and improve on it—to protect ourselves, to save our environment and to help our farmers. In fact, I think there are great opportunities for the developing biotechnology industry—to find ways to increase production using naturally occurring, environmentally safe raw materials.

This legislation directs agencies of the Federal Government to help farmers develop and plan low-input systems that work for them. But this is no solution imposed from above. The interest in returning to natural balances already exists among farmers. They are concerned about their ground water. They do not want the wells their families drink from poisoned. They want to know how they can address these problems without sacrificing their profits.

In a recent nationwide survey, 97 percent of farmers agreed that fertilizers, manure and agricultural chemicals in ground water are a problem. More than two-thirds of farmers interviewed said they would adopt economical ways to reduce their use of fertilizers and chemicals if those alternatives were available. In Minnesota, 80 percent responded that farmers did not have sufficient information on the choices available to them.

Appropriate Technology Transfer for Rural Areas, a USDA Extension Service national clearinghouse of information on alternative agriculture for farmers, provides more tangible evidence of the interest that already exists. Of 2,780 calls received in its first year of operation, 19 percent requested information on low-input systems. Eleven percent asked about forms of biological pest control, and 39 percent sought guidance on crop diversification and livestock alternatives.

This interest is reflected in last year's $3.9 million appropriation by Congress to fund USDA support of research on low-input and sustainable agriculture—which was raised to $4.4 million this year. I believe our farmers are telling us to reinforce that commitment.

The success of the Sodbuster, Swampbuster and the Conservation Reserve Program shows what our farmers themselves can do to protect the environment, including our farmland, when Government works with them to develop a comprehensive and intelligent strategy. We need to build on this record of success.

Let me expand on that by saying why I believe these problems call for coordination at a Federal level. Pesticide contamination, and its health and environmental consequences, is national in scope. Leaching chemicals and fouled aquifers have no regard for political subdivisions. We need better cooperation to fight ecological degradation and the loss of economic resources that transcend State boundaries.

The best example is only a few miles away from where we sit, the Chesapeake Bay. The strength of the conservation provisions incorporated into the 1985 farm bill lie in our ability to identify sensitive areas and target conservation programs to the places that need the most attention. That should enable us to protect such environmentally sensitive and valuable lands as the Chesapeake Bay watershed. Unfortunately, the States surrounding the Chesapeake have not taken advantage of this potential.

While Minnesota, Kansas, and Nebraska have enrolled 74, 34, and 23 percent of their eligible acreage into the CRP, respectively, Maryland has enrolled 2 percent, Pennsylvania 4 percent and Virginia about 7 percent of their eligible land.

In the meantime, forests—which protect adjacent bodies of water by intercepting eroded soil from cultivated fields and absorbing excess nutrients such as nitrogen and phosphorous—are being cleared at the rapid pace of development on the Eastern Shore.

This shortsightedness ends up costing all the surrounding States as damage to the fragile bay—and all the resources it provides—continues.

So what can the Government do to help the farmers, to help the States, to help agribusiness do what is absolutely necessary?

We have to encourage sounder farming practices with incentives: certification that will tell the consumers they are getting a safer product, credit breaks that will motivate farmers to invest in more natural methods, crop insurance and base protection that will ease the transition to practices that deter erosion and bar harmful chemicals from our water supply. These incentives toward these goals are provided under my legislation.

We will also have to put a huge amount of energy into education—on how to define and implement low-input systems. We can do that through demonstration programs to show farmers they can produce a safer crop without losing their competitive advantage—that they can achieve this by means of rotation, tillage, diversification, soil testing, natural week control, and pest management plans.

We can improve on these methods by directing the research efforts of the Extension Service to sustainable farming. My bill also calls for Extension to establish a branch to work exclusively with farmers on making the conversion to less intensive methods of maintaining America's high output.

Extension already possesses much of the required knowledge from its early days. Farmers can be re-educated in many of the practices that worked before the advent of chemical overkill.

My legislation seeks to complement these efforts to reduce the levels of contaminants with other means of protecting our soil and water resources. These include wetlands restoration, disincentives to drain natural wetlands or to clear forestland, expansion of the CRP and systematic testing of drinking water, with the adoption of pesticide use plans on farms found to contribute to ground or surface water contamination.

These measures are important to farmers, important to consumers, important to the survival of the chemical industry—but they go far beyond even such broad single interests. The measures I am proposing are essential to all Americans. Whatever our differences, we all eat the food here and drink the water.

We can pay the costs now by transforming agriculture in a rational and measured fashion—or we can pay catastrophic costs down the road in contaminated water and food supplies, increased death and disability. We will pay massive medical bills. And eventually we will have to pay for the massive, if not impossible, emergency cleanup. Now is the time to make the choice, because we cannot afford those consequences later.

The combined evidence gives me grave doubts whether American agriculture is on the right course for the future. It also suggests that farmers are ready to change, both because of their concern about water quality and because of the economic constraints they currently face in the high costs of production.

We can develop the techniques, and the economic incentives, to lead this change. We are not helpless to maintain this country's most priceless resources: its fertile soil and pure water. The Farm Conservation and Protection Act will commence this process, as we look ahead to the 1990 farm bill—and I ask my colleagues for their support.

Mr. President, I ask unanimous consent that the bill and a section-by-section analysis be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2896

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Plumbing Fixtures Efficiency Act of 1988".

SEC. 2. FINDINGS.

The Congress finds that—

(1) an adequate supply of clean drinking water is a precious and essential resource upon which all life and human affairs depend,

(2) demand for clean water supplies continues to increase despite the limitations of availability and affordability of such supplies,

(3) substantial Federal financial investment has been made in water supply and waste water treatment,

(4) development of new water supplies may carry substantial economic and environmental costs,

(5) new technology is commercially available to improve the water efficiency of plumbing fixtures,

(6) some local jurisdictions have exercised regulatory authority to improve water use efficiency standards for some plumbing fixtures, but there are no uniform national standards to ensure the development of efficient and consistent plumbing fixtures which will facilitate standardized and permanent water demand reductions nationwide, and

(7) there exists a need for improved data on water use in the residential, commercial, industrial, and recreational sectors.

SEC. 3. COVERAGE.

(a) IN GENERAL.—The following plumbing products are subject to this Act:

(1) Water closets, including tank-type toilets, flushometer-tank toilets, flushometer-valve toilets, electromechanical hydraulic toilets, and all other types of toilets that use water.

(2) Urinals.

(3) Showerheads.

(4) Faucets (bathroom, lavatory, and kitchen).

(5) Drinking fountains.

(6) Clothes washers (commercial and residential).

(7) Dishwashers (commercial and residential).

(8) Lawn sprinklers (residential, commercial, and recreational).

(9) Water cooled air conditioning systems, and associated cooling equipment.

(11) Decorative fountains.

(12) Any other type of plumbing product which the Secretary classifies as a covered product under subsection (b).

(b) SPECIAL CLASSIFICATION OF COVERED PRODUCTS.—The Secretary may classify other plumbing products as covered products if the Secretary determines such classification is necessary or appropriate.

SEC. 4. WATER USE PERFORMANCE STANDARDS FOR COVERED PRODUCTS.

(a) IN GENERAL.—The Secretary shall, subject to the maximum rates of water use established for certain plumbing products under subsection (b) and in accordance with subsection (c), prescribe water use standards for each product classified as a covered product. Such standards shall be designed to achieve the maximum water efficiency which the Secretary determines is technologically feasible and economically justified.

(b) MAXIMUM WATER USE OF CERTAIN PLUMBING PRODUCTS.—

(1) STANDARDS FOR WATER CLOSETS.—The maximum water use allowed in gallons per flush (gpf) for any of the following water-closets, manufactured and sold on or after January 1, 1991, is the following:

Tank-type toilets	1.6 gpf.
Flushometer-valve toilets	1.6 gpf.
Flushometer-tank toilets	1.6 gpf.
Electromechanical hydraulic toilets	1.6 gpf.

(2) STANDARD FOR URINALS.—The maximum water use allowed for any urinal, manufactured and sold on or after January 1, 1991, is 1.0 gallons per flush.

(3) STANDARD FOR SHOWERHEADS.—The maximum water use allowed for any showerhead, manufactured and sold on or after January 1, 1991, is 2.5 gallons per minute.

(4) STANDARD FOR FAUCETS.—The maximum water use allowed in gallons per minute (gpm) for any of the following faucets and replacement aerators, manufactured and sold on or after January 1, 1991, is the following:

Bathroom faucets	2.5 gpm.
Lavatory faucets	2.5 gpm.
Kitchen faucets	2.5 gpm.
Replacement aerators	2.5 gpm.

(c) WATER USE STANDARDS FOR OTHER COVERED PRODUCTS.—

(1) DRINKING FOUNTAINS.—The Secretary shall prescribe the maximum water use allowed in gallons per minute for drinking fountains manufactured and sold on or after January 1, 1992.

(2) LAWN SPRINKLERS.—The Secretary shall prescribe the maximum water use allowed in gallons per minute per square foot of coverage for lawn sprinklers manufactured and sold on or after January 1, 1992.

(3) CLOTHES WASHERS.—The Secretary shall prescribe the maximum water use allowed in gallons per wash for commercial and residential clothes washers manufactured on or after January 1, 1992.

(4) DISHWASHERS.—The Secretary shall prescribe the maximum water use allowed in gallons per wash for residential and commercial dishwashers manufactured and sold on or after January 1, 1992.

(5) WATER COOLED AIR CONDITIONING SYSTEMS AND ASSOCIATED COOLING EQUIPMENT.—The Secretary shall prescribe the maximum water use allowed for water cooled air conditioning systems and associated cooling equipment manufactured and sold on or after January 1, 1992.

(6) DECORATIVE WATER FOUNTAINS.—The Secretary shall prescribe water use standards for decorative water fountains manufactured and sold on or after January 1, 1992.

(7) PLUMBING PRODUCTS RECEIVING SPECIAL CLASSIFICATION.—The Secretary shall prescribe water use standards for any product that is classified as a covered product under section 3(b) and is manufactured and sold on or after the date that is 3 years after such product receives such classification.

(d) PROCEDURE FOR PRESCRIBING WATER USE STANDARDS.—Before prescribing any final water use standard, the Secretary shall—

(1) publish a proposed water use standard in the Federal Register, and

(2) afford interested persons an opportunity (of not less than 45 days duration) to present oral and written data, views, and arguments on the proposed water use standard.

(e) REEVALUATION OF WATER USE STANDARDS.—

(1) The Secretary shall, not later than 30 days after the expiration of each 5-year period after the date of the enactment of this Act, conduct a reevaluation of the water use standards prescribed under subsection (a) and, on the basis of such reevaluation and subject to paragraph (2), determine if any such standard should be amended. In conducting such reevaluation, the Secretary shall take into account such information as the Secretary considers relevant, including technological developments relating to the water use or water efficiency of the covered products involved.

(2) The Secretary may not prescribe any amended standard which increases the maximum allowable water use of a covered product.

(3) If the Secretary determines under paragraph (1) that a water use standard should be amended, the Secretary shall promptly publish in the Federal Register a water use standard incorporating such amendment and afford interested persons an opportunity to present oral and written data, views, and arguments. Such comment period shall not be less than 45 days or more than 90 days duration.

(f) EXEMPTIONS.—The Secretary may exempt covered products from the standards prescribed under subsection (a) when the Secretary determines that standards for certain special uses of such products cannot be accommodated by existing technology. In such cases, the Secretary shall establish a review date for such an exemption in order to determine the necessity for a continued exemption based on existing technology.

SEC. 5. TEST PROCEDURES.

(a) IN GENERAL.—

(1) The Secretary shall prescribe a test procedure for each product classified as a covered product.

(2) A test procedure prescribed under paragraph (1) shall be designed to produce test results which measure water efficiency, water use, and the estimated annual operating cost of a covered product during a representative average use cycle or period of use.

(3) A test procedure for determining the estimated annual operating cost of a covered product shall provide that such costs shall be calculated from measurements of the water use of such product on an average per cycle basis or on an average annual use basis (as determined by the Secretary) and from representative average unit costs of the water needed to operate such product during such cycle or annual use. The Secretary shall provide information to manufacturers with respect to representative average unit costs of water and sewer services.

(4) Before prescribing any final test procedure under paragraph (1), the Secretary shall—

(A) publish a proposed test procedure in the Federal Register, and

(B) afford interested persons an opportunity (of not less than 45 days or more than 90 days duration) to present oral and written data, views, and arguments on the proposed test procedure.

(b) REEVALUATION OF TEST PROCEDURES.—

(1) The Secretary shall, not later than 3 years after the date of prescribing a test procedure under subsection (a) (and from time to time thereafter), conduct a reevaluation of such procedure and, on the basis of

such reevaluation, determine if such test procedure should be amended. In conducting such reevaluation, the Secretary shall take into account such information as the Secretary considers relevant, including technological developments relating to the water use or water efficiency of the covered products involved.

(2) If the Secretary determines under paragraph (1) that a test procedure should be amended, the Secretary shall promptly publish in the Federal Register a proposed test procedure incorporating such amendments and afford interested persons an opportunity to present oral and written data, views, and arguments. Such comment period shall not be less than 45 days or more than 90 days.

(c) CASE IN WHICH TEST PROCEDURE NOT REQUIRED.—The Secretary is not required to publish and prescribe a test procedure for a covered product, if the Secretary determines, by rule, that a test procedure cannot be developed which produces results of the type described in subsection (a)(2) and publishes such determination in the Federal Register, together with the reasons therefor.

(d) RESTRICTION ON CERTAIN REPRESENTATIONS.—

(1) Effective 180 days after a test procedure applicable to a covered product is prescribed under subsection (a), no manufacturer, distributor, retailer, or private labeler may make any representation—

(A) in writing (including a representation on a label), or

(B) in any broadcast advertisement, with respect to the water use or efficiency of a covered product to which a test procedure under subsection (a) or the cost of water consumed by such product, unless such product has been tested in accordance with such test procedure and such representation fairly discloses the result of such testing.

(2) On the petition of any manufacturer, distributor, retailer, or private labeler, filed not later than 60 days before the expiration of the period involved, the 180-day period referred to in paragraph (1) may be extended by the Secretary with respect to the petitioner (but in no event for more than an additional 180 days) if the Secretary finds that the requirements of paragraph (1) would impose on such petitioner undue hardship (as determined by the Secretary).

SEC. 6. LABELING AND MARKING REQUIREMENTS.

(a) IN GENERAL.—The Commission shall prescribe labeling and marking rules for each product classified as a covered product, except to the extent that, with respect to such product, the Commission determines under subsection (b)(4) that labeling and marking is not technologically or economically feasible.

(b) PROCEDURE FOR PRESCRIBING RULES.—

(1) Except as provided in paragraph (4), not later than 30 days after the date on which a proposed test procedure applicable to a covered product is published under section 5(a) the Commission shall publish a proposed labeling and marking rule applicable to such product.

(2) The Commission shall afford interested persons an opportunity to present oral and written data, views, and arguments with respect to proposed labeling and marking rules. Such comment period shall not be less than 45 days or more than 90 days.

(3) A labeling and marking rule published in accordance with paragraph (1) shall take effect not later than 90 days after the date of such publication, except that such rules may take effect not later than 180 days after the date of such publication if the Commission determines that such extension is necessary to allow persons subject to such rules adequate time to come into compliance with such rules.

(4) The Commission may delay the publication of a proposed labeling and marking rule, or the prescription of a labeling and marking rule, if it determines that it cannot publish proposed labeling and marking rules or prescribe labeling and marking rules which meet the requirements of subsections (c) and (d) on or before the dates specified in paragraphs (1) and (3) and publishes such determination in the Federal Register, together with the reasons therefor. In any such case, it shall publish proposed labeling and marking rules or prescribe labeling and marking rules for covered products as soon as practicable unless it determines:

(A) that labeling and marking in accordance with subsections (c) and (d) is not economically or technically feasible, or

(B) labeling and marking in accordance with subsections (c) and (d) is not likely to assist consumers in purchasing decisions.

Any such determination shall be published in the Federal Register, together with the reasons therefor.

(c) CONTENT OF LABEL—

(1) A rule prescribed under subsection (a) shall require that a covered product bear a label which discloses the following:

(A) The estimated annual operating cost of such product (determined in accordance with test procedures prescribed under section 5), except that if the Commission determines that—

(i) disclosure is not technologically feasible, or

(ii) such disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible,

the Commission shall require disclosure of a different useful measure of water consumption (determined in accordance with test procedures prescribed under section 5).

(B) Information respecting the range of estimated annual operating costs for a covered product, except that if the Commission requires disclosure under subparagraph (A) of a measure of water consumption different from estimated annual operating cost, then the label shall disclose the range of such measure of water consumption of such covered product to which such rule applies.

(2) A rule under subsection (a) shall include the following:

(A) A description of the covered product to which the rule applies.

(B) Subject to paragraph (6), information respecting the range of estimated annual operating costs or other useful measure of water consumption (determined in such manner as the rule may prescribe) for such covered product.

(C) A description of the test procedures under section 5 used in determining the estimated annual operating costs or other measure of water consumption of such covered product.

(D) A prototype label and directions for displaying such label.

(3) A rule under subsection (a) shall require that the label be displayed in a manner that the Commission determines is likely to assist consumers in making purchasing decisions. The Commission may permit a tag to be used in lieu of a label in any case in which the Commission finds that a tag will carry out the purposes for which the label was intended.

(4) A rule under subsection (a) applicable to a covered product may require disclosure, in any printed matter displayed or distributed at the point of sale of such product, of any information which may be required under this subsection to be disclosed on the label of such product. Requirements under this paragraph shall not apply to any broadcast advertisement or any advertisement in any newspaper, magazine, or other periodical.

(5) The Commission may require that the manufacture of a covered product to which a rule subsection (a) applies (A) include on the label, (B) separately attach to the product, or (C) ship with the product additional information relating to water use, including instruction for the maintenance, use, or repair of the covered product, if the Commission determines that such additional information would assist consumers in making purchasing decisions or in using such product, and that such requirement would not be unduly burdensome to manufacturers.

(6) The Secretary may delay the effective date of the requirement specified in paragraph (1)(B) applicable to a covered product, insofar as it requires the disclosure on the label of information respecting the range of a measure of water consumption, for not more than 12 months after the date on which the rule under subsection (a) is first applicable to such type or class, if the Commission determines that such information will not be available within an adequate period of time before such date.

(d) MARKING.—A rule prescribed under subsection (a) shall further require that each component of a covered product bear a permanent marking which—

(1) can be easily located and read by consumers, and

(2) provides consumers with the following information:

(A) The manufacturer's name or registered trademark.

(B) The water use of the product as determined under section 5(a)(2).

(e) PRODUCTS COMPLETED BEFORE EFFECTIVE DATE OF RULES.—A rule under subsection (a) shall not apply to any covered product the manufacture of which was completed before the effective date of such rule.

(f) STUDY TO DETERMINE COVERAGE FOR ADDITIONAL CONSUMER PRODUCTS.—The Secretary, in consultation with the Commission, shall study plumbing products for which labeling and marking rules under subsection (a) have not been proposed in order to determine—

(1) the aggregate water consumption of such products, and

(2) whether the imposition of labeling and marking requirements would be feasible and useful to consumers in making purchasing decisions. The Secretary shall include the results of such study in the annual report under section 15.

SEC. 7. REQUIRED TESTING AND TEST DATA.

(a) TEST DATA RECORDS.—

(1) Test data shall be kept on file by the manufacturer for each model of a covered product for a period beginning 15 days after the prescription of a test procedure for such product under section 5 and ending 2 years after the production of that model has been terminated.

(2) Upon notification by the Secretary, a manufacturer or a private labeler shall provide, not later than 30 days after the date of such request, a report on the underlying test data from which the labeling and marking content as required by subsections (b)

and (c) of section 6 for each basic model was derived.

(b) Required Testing by Designated Laboratory.—Upon notification by the Secretary, a manufacturer of a covered product shall supply at the manufacturer's expense, no more than 2 of each model of each product to the Secretary for the purpose of verifying the labeling and marking content as required by subsections (b) and (c) of section 6. Such a procedure may be required after the Secretary has examined the underlying test data provided by the manufacturer and after the manufacturer has been afforded the opportunity to reverify test results from which the estimated annual water cost or water efficiency rating for each basic model was derived. A representative designated by the Secretary shall be permitted to observe any reverification procedures required by this subsection, and to inspect the results of such reverification. Charges for testing by designated laboratories will be paid by the manufacturer.

SEC. 8. ASSISTANCE FROM NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

The Secretary shall direct the National Institute of Standards and Technology—

(1) to provide such assistance as the Secretary considers necessary to carry out the Secretary's responsibilities under this Act, including the development of water use standards under section 4 and test procedures under section 5, and

(2) in coordination with the United States Geological Survey, to establish and maintain a water use database for the collection and dissemination of data and information relating to water use and water consumption for plumbing products in the United States.

SEC. 9. IMPORTS.

Any covered product offered for importation in violation of section 10 shall be refused admission into the customs territory of the United States under rules issued by the Secretary of the Treasury, except that the Secretary of the Treasury may, by such rules, authorize the importation of such covered product upon such terms and conditions (including the furnishing of a bond) as may appear to him appropriate to ensure that such covered product will not violate section 10 or will be exported or abandoned to the United States. The Secretary of the Treasury shall prescribe rules under this section not later than 180 days after the date of the enactment of this Act.

SEC. 10. PROHIBITED ACTS.

(a) In General.—It shall be unlawful—

(1) for any manufacturer or private labeler to distribute in commerce any new covered product which is not in conformity with an applicable water use standard prescribed under section 4,

(2) for any person to fail to comply with an applicable requirement of section 5,

(3) for any manufacturer or private labeler to distribute in commerce any new covered product to which a rule under section 6 applies, unless such covered product is labeled and marked in accordance with such rule,

(4) for any manufacturer, distributor, retailer, or private labeler to remove from any new covered product or render illegible any label or marking required to be provided with such product under a rule under section 6, or

(5) for any manufacturer to fail to permit access to, or the copying of, records required to be supplied under section 7, or fail to make reports or provide other information required to be supplied under such section.

(b) Definition.—For the purposes of subsection (a), the term "new covered product" means a covered product the title of which has not passed to a purchaser who buys such product for purposes other than (1) reselling such product, or (2) leasing such product for a period in excess of one year.

SEC. 11. ENFORCEMENT.

(a) In General.—Except as provided in subsection (c), any person who knowingly violates any provision of section 10(a) shall be subject to a civil penalty of not more than $100 for each violation. Such penalties shall be assessed by the Secretary. Civil penalties assessed under this subsection may be compromised by the Secretary, taking into account the nature and degree of the violation and the impact of the penalty upon a particular respondent. Each violation of section 10(a) shall constitute a separate violation with respect to each covered product, and each day of violation of section 4 shall constitute a separate violation.

(b) Definition.—As used in subsection (a), the term "knowingly" means—

(1) the having of actual knowledge, or

(2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care.

(c) Special Rule.—It shall be an unfair or deceptive act or practice in or affecting commerce (within the meaning of section 5(a)(1) of the Federal Trade Commission Act) for any person to violate section 5(d), except to the extent that such violation is prohibited under section 10(a)(3), in which case such provisions shall apply.

(d) Procedure for Assessing Penalty.—

(1) Before issuing an order assessing a civil penalty against any person under subsection (a), the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his or her opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within 30 calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code, before an administrative law judge appointed under section 3105 of such title. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(5)(A) Notwithstanding the provisions of title 28, United States Code, the Secretary shall be represented by the general counsel of the Department of Commerce (or any attorney or attorneys within the Department of Commerce designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which paragraph (3) of this subsection applies (including any related collection action under paragraph (4)) in a court of the United States or in any other court, except the Supreme Court. However, the Secretary or the general counsel shall consult with the Attorney General concerning such litigation, and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(B) The Secretary shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this subsection, except to the extent provided in subparagraph (A) of this paragraph.

SEC. 12. CITIZEN SUITS.

(a) In General.—Except as otherwise provided in subsection (b), any person may commence a civil action against—

(1) any manufacturer or private labeler who is alleged to be in violation of any provision of this Act or any rule under this Act,

(2) any Federal agency which has a responsibility under this Act where there is an alleged failure of such agency to perform any act or duty under this Act which is not discretionary, or

(3) the Secretary in any case in which there is an alleged failure of the Secretary to comply with any nondiscretionary duty to issue a proposed or final rule.

The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such provision or rule, or order such Federal agency to perform such act or duty, as the case may be. The courts shall advance on the docket, and expedite the disposition of, all cases filed therein pursuant to paragraph (3). If the court finds that the Secretary has failed to comply with a deadline established in section 4, the court shall have jurisdiction to order appropriate relief, including relief that will ensure the

Secretary's compliance with future deadlines for the same covered product.

(b) Limitation.—No action may be commenced—

(1) under subsection (a)(1)—

(A) prior to 60 days after the date on which the plaintiff has given notice of the violation (i) to the Secretary, (ii) to the Commission, and (iii) to any alleged violator of such provision or rule, or

(B) if the Commission has commenced and is diligently prosecuting a civil action to require compliance with such provision or rule, but, in any such action, any person may intervene as a matter of right;

(2) under section (a)(2) prior to 60 days after the date on which the plaintiff has given notice of such action to the Secretary.

(c) Right to Intervene.—In such action under subsection (a), the Secretary or the Commission (or both), if not a party, may intervene as a matter of right.

(d) Award of Costs of Litigation.—The court, in issuing any final order in any action brought pursuant to subsection (a), may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(e) Preservation of Other Relief.—Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of this Act or any rule thereunder, or to seek any other relief (including relief against the Secretary or the Commission).

(f) Compliance in Good Faith.—For the purposes of this section, if a manufacturer or private labeler complied in good faith with a rule under this Act, then he shall not be deemed to have violated any provision of this Act by reason of the alleged invalidity of such rule.

SEC. 13. EFFECT ON STATE LAW.

(a) Preemption.—A standard, procedure, or rule under this Act shall supersede any State regulation insofar as such State regulation provides for—

(1) any water use standard or other requirement with respect to the water use of a covered product if—

(A) there is a standard in effect under section 4 applicable to such product and such State regulation is not identical to such standard, or

(B) there is a rule in effect under section 5 applicable to such product and such State regulation requires testing in accordance with test procedures which are not identical to the test procedures specified in such rule; or

(2) the disclosure of information with respect to any measure of water use of any covered product if—

(A) there is a rule in effect under section 5 applicable to such product, and such State regulation requires testing in any manner other than that prescribed in such rule under section 5, or

(B) there is a rule in effect under section 6 applicable to such product, and such State regulation requires disclosure of information other than information disclosed in accordance with such rule under section 6.

(b) Definition.—For the purposes of this section, the term "State regulation" means a law or regulation of a State or political subdivision thereof.

SEC. 14. ADVISORY COMMITTEE.

The Secretary shall establish an advisory committee which shall report annually to Congress on the implementation of this Act by the Secretary and the Commission. The members of such advisory committee shall include representatives of engineering, plumbing, public health, trade, industry, consumer protection, environmental, and conservation organizations and societies and shall be appointed to such terms as the Secretary considers appropriate. Such advisory committee shall be subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App.).

SEC. 15. ANNUAL REPORT.

The Secretary shall report to Congress and the President either (1) as part of his annual report, or (2) in a separate report submitted annually, on the progress of the program undertaken pursuant to this Act and on the water use impact of this Act. Each such report shall specify the actions undertaken by the Secretary in carrying out this Act during the period covered by such report, and those actions which the Secretary was required to take under this Act during such period but which were not taken, together with the reasons thereof.

SEC. 16. DEFINITIONS.

For the purposes of this Act:

(1) The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation between a place in a State and any place outside thereof.

(2) The term "Commission" means the Federal Trade Commission.

(3) The term "covered product" means a product which under section 3(a) is subject to this Act.

(4) The term "Department" means the Department of Commerce.

(5) The term "distributor" means a person (other than a manufacturer or retailer) to whom a consumer product is delivered or sold for purposes of distribution in commerce.

(6) The terms "to distribute in commerce" and "distribution in commerce" mean to sell in commerce, to import, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.

(7) The term "estimated annual operating cost" means the national average aggregate retail cost of the water which is likely to be consumed annually in the representative use of a plumbing product, determined in accordance with section 5.

(8) The terms "import" and "importation" means to import into the customs territory of the United States.

(9) The term "manufacture" means to manufacture, produce, assemble, or import.

(10) The term "person" includes (A) any individual, (B) any corporation, company, association, firm, partnership, society, trust, joint venture, or joint stock company, and (C) the government and any agency of the United States or any State or political subdivision thereof.

(11)(A) The term "private labeler" means an owner of a brand or trademark on the label of a plumbing product which bears a private label, and

(B) A plumbing product bears a private label if—

(i) such product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of such product.

(ii) the person with whose brand or trademark or a manufacturer of such product does not appear on such label.

(12) The term "plumbing product" means any product of a type—

(A) which in operation consumes, transports, or uses water, and

(B) which, to any significant effect, is distributed in commerce for personal use or consumption by individuals, without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual.

(13) The term "retailer" means a person to whom a plumbing product is delivered or sold, if such delivery or sale is for purposes of sale or distribution in commerce to purchasers who buy such product for purposes other than resale.

(14) The term "Secretary" means the Secretary of the Department of Commerce.

(15) The term "State" means a State, the District of Columbia, Puerto Rico, or any territory or possession of the United States.

(16) The term "water" means drinking water or potable water.

(17) The term "water efficiency" means the ratio of the maximum efficiency consumption capacity or flow rate standard from a plumbing product to the water use of such product, determined in accordance with test procedures under section 5.

(18) The term "water use standard" means a performance standard which prescribes a minimum level of water efficiency or a maximum quantity of water use for a covered product, determined in accordance with test procedures prescribed under section 5.

(19) The term "water use" means the quantity of water used or consumed by a plumbing product at point of use, determined in accordance with test procedures under section 5.

SEC. 17. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act:

(1) $1,000,000 for fiscal year 1989.
(2) $1,500,000 for fiscal year 1990.
(3) $1,500,000 for fiscal year 1991.
(4) $2,000,000 for fiscal year 1992.
(5) $2,000,000 for fiscal year 1993.

National Water Conservation Plumbing Fixtures Efficiency Act of 1988

SECTION-BY-SECTION ANALYSIS

(Senator Wyche Fowler, Jr.)

Sections 1 and 2 give the bill's title and findings.

Section 3 lists the plumbing fixtures for which this bill sets standards. The Secretary of Commerce can add to this list.

Section 4 establishes water use standards for plumbing fixtures. For most fixtures, these are to be enforced starting in 1991. For appliances and outdoor watering devices, these are to be established by the Secretary and enforced starting in 1992. The Secretary is provided with flexibility in setting standards and allowing exemptions. A review of the standards is required every 5 years in order to ensure that the standards keep up with the technology.

Section 5 requires the prescription by rulemaking of test procedures for each covered product in order to determine its water efficiency, water use, and estimated operating cost. These test procedures will be reviewed and may be amended by rulemaking. No one may make claims as to water efficiency, use, or operating cost unless the advertised product has been tested in accordance with these procedures.

Section 6 requires that all covered products be labeled with their estimated annual operating cost, unless this is not feasible. The Federal Trade Commission shall enforce this requirement.

Section 7 sets requirements for testing of products and the retention of data related to these tests.

Section 8 requires the involvement of the National Institute of Standards and Technology in developing water use standards and test procedures. A database on water consumption will be established in conjunction with the U.S. Geological Survey.

Section 9 disallows the importation into the United States of covered products that do not comply with our water use standards.

Sections 10 and 11 list prohibited acts, penalties for noncompliance, and procedures for assessing fines of up to $100 per violation.

Section 12 allows for citizens to file suit against noncomplying manufacturers or Federal agencies who fail to implement the bill.

Section 13 preempts State and local regulations that are in conflict with regulations under this bill.

Sections 14 and 15 establish an advisory committee to monitor the bill's implementation and require an annual report from the Secretary.

Sections 16 and 17 list definitions and authorize $8 million over 5 years for carrying out this bill.

By Mr. KENNEDY (for himself and Mr. Kasten):

S. 2897. A bill to provide financial assistance to the Simon Wiesenthal Center in Los Angeles, CA, for the education programs of the Museum of Tolerance; to the Committee on Labor and Human Resources.

AUTHORIZATION OF FUNDS FOR THE MUSEUM OF TOLERANCE

Mr. KENNEDY. Mr. President, I rise today—for myself and on behalf of Senator Kasten—to introduce a bill that would authorize $5 million in support for educational outreach programs of the new Museum of Tolerance being constructed at the Simon Wiesenthal Center in Los Angeles. The purpose of this legislation is to provide assistance to the Simon Wiesenthal Center's effort to prepare and provide educational materials about the Holocaust to schools who might want to include such instruction in their curriculum.

The Simon Wiesenthal Center is well known throughout America and throughout the world. The purpose of the center is to keep the memory of the Holocaust alive so that the words "Never again" become a historical reality and not just a fond wish or a failed dream. The center has an extensive international membership that includes hundreds of thousands of Americans.

We all know what the historical significance of the Holocaust is—not just to Jews throughout the globe but to all humankind throughout history. It is a singularly horrible example of man's capacity for inhumanity. It is a chapter in human history that must never be forgotten so that it will never be repeated.

The engine behind this proposed legislation is our desire to encourage our teachers to teach and our students to learn about the Holocaust so that they can better understand the lessons to be drawn from that dreadful chapter in human history. We do not seek to impose or to require schools to include instruction about the Holocaust in their curriculum. But we do believe that such instruction should be an option for those schools that want to have it available for their students. And we do believe, for that reason, that educational materials about the Holocaust should be readily available to any schools—public or private—anywhere in the United States that want and choose to teach their children about the Holocaust.

It is our hope and understanding that the Museum of Tolerance, soon to be constructed at the Simon Wiesenthal Center in Los Angeles, plans to develop such materials, and the purpose of this legislation is to provide moral as well as material support for that effort.

We are introducing this legislation today with no plan or intention of enacting it this year. We want simply to notify our fellow Senators of the proposed educational activities of the Museum of Tolerance, to tell them of our support for those activities and to inform them of our intention, during the 101st Congress, to hold early hearings on this legislation and to enact it into law.

Mr. President, I ask unanimous consent that the proposed legislation be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 2897

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. GENERAL AUTHORITY.

The Secretary of Education is authorized to provide financial assistance, in accordance with the provisions of this Act, to the Simon Wiesenthal Center located in Los Angeles, California, for the operation of education programs concerning the holocaust at the Museum of Tolerance of the Simon Wiesenthal Center.

SEC. 2. APPLICATION REQUIRED.

No financial assistance may be provided under this Act unless an application is submitted to the Secretary of Education at such time, in such manner, and containing or accompanied by such information as the Secretary of Education may reasonably require.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $5,000,000, to carry out the provisions of this Act. Funds appropriated pursuant to this Act shall remain available until expended.

Mr. KASTEN. Mr. President, I am delighted today to introduce with Senator Kennedy legislation that would provide Federal support for the education programs of the Museum of Tolerance, a project of the Simon Wiesenthal Center in Los Angeles.

The Simon Wiesenthal Center, since its establishment 11 years ago, has become the largest institution of its kind in North America dedicated to the study of the Holocaust, the Holocaust's contemporary implications and related human rights issues. The center has an international membership, with a national membership of over 370,000 families. While the center is headquartered in Los Angeles, it also maintains offices here in Washington and in New York, Chicago, Toronto, Miami, and in Jerusalem.

The Wiesenthal Center is dedicated to the preservation of the memory of the Holocaust through education and awareness, with the goal that no people shall ever again fall victim to an atrocity of such magnitude. As part of this effort the center has developed programs in the areas of Holocaust studies and research, educational outreach to schools and various organizations, international social action, and programs aimed at the media.

The Museum of Tolerance will add innovative museums and public exhibits to the center with state-of-the-art participatory electronic and computerized installations. This new complex will not only help disseminate information, but will add to the educational and research ability of the center.

The State of California has provided a $5 million matching grant toward the construction of this new facility, and the legislation Senator Kennedy and I are introducing today is designed to help with the educational aspects of the new center. We anticipate the session of the 101st Congress. Hopefully, it will be enacted into law early in that session.

Senator Kennedy and I hope that our colleagues will join with us in this endeavor.

By Mr. FOWLER:

S. 2898. A bill to promote low-input and sustainable agricultural production, to maintain farm profitability, to encourage land, resource, and wildlife stewardship in connection with Federal farm programs, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

FARM CONSERVATION AND WATER PROTECTION ACT

● Mr. FOWLER. Mr. President, I rise today to introduce the Farm Conservation and Water Protection Act of 1988.

The purpose of this bill is to provide Government leadership in adopting sound agricultural methods—to reverse the trends that have harmed our environment and endangered the public health. At the same time this legislation will help farmers introduce better practices that can minimize these risks and increase their earnings.

Study after study has shown that heavy chemical inputs introduced into farming after World War II threaten the health of our people as well as the long-term economic well-being of the agricultural community itself.

Pesticide contamination threatens farm families who are exposed directly to the toxic chemicals. It threatens consumers who unknowingly purchase tainted products in our grocery stores. Every American is vulnerable to dangerous chemicals that wash from our fields into our water supply.

According to the Environmental Protection Agency, ground water contamination has been reported in 41 States. The problem is most acute in the Nation's croplands—which receive 22.3 billion pounds of nitrogen fertilizers and 850 million pounds of agricultural pesticides each year.

The EPA also reports that chemical residues on food pose the third greatest cancer risk to Americans today. A study by the National Academy of Sciences estimated that common pesticides—such as linuron, zineb, and captan—on the most common American foods are responsible for 20,000 cancers a year. Think about that for a second—one of the greatest health risks our children confront comes from eating the food we buy for them at the store.

A National Cancer Institute study found that Kansas farmers exposed to herbicides for more than 20 days each year had six times the risk of developing non-Hodgkins lymphoma as nonfarmers. Further NCI studies indicate that the risk of cancer from exposure to agricultural chemicals is increasing, and can be traced to the vogue of pesticides that grew out of chemical warfare experiments during World War II. In Wisconsin, the risk of farmers of contracting non-Hodgkins lymphoma doubled in a 9-year study period from 1968 to 1976. According to reports, children in the high-input, heavily agricultural San Joaquin Valley have a cancer rate eight times the norm. These figures confirm what common sense woud suggest when at least 25 percent of the approximately 50,000 pesticide products registered for use in the United States—and on which our farmers have become dependent to keep up their yields—have shown cancer-causing potential.

Now for the good news. Other studies are showing that improved conservation and low-input practices—which reduce reliance on dangerous chemicals—can actually increase yields for our farmers. Soil that is managed organically is richer and less erodible than land farmed with chemical fertilizers. Research in Nebraska has shown an 18 percent increase in yield for soybeans, 20 percent for corn, and 22 percent for wheat in fields protected by windbreaks and shelterbelts—with no increase in chemical use. We can contrast that with the example of India, which has increased production to meet its food needs through chemical intensive farming, but has degraded 90 percent of the country's topsoil in the process. In the long run, farmers do not have to suffer economic loss to protect our health—and their own.

I want to make it clear at the outset that I am not talking about closing down the chemical industry, either. I am not talking about no-input agriculture. I am talking about gradually redirecting the efforts of the entire agricultural sector to use the knowledge we have gained through experience—and improve on it—to protect ourselves, to save our environment and to help our farmers. In fact, I think there are great opportunities for the developing biotechnology industry—to find ways to increase production using naturally occurring, environmentally safe raw materials.

This legislation directs agencies of the Federal Government to help farmers develop and plan low-input systems that work for them. But this is no solution imposed from above. The interest in returning to natural balances already exists among farmers. They are concerned about their groundwater. They do not want the wells their families drink from poisoned. They want to know how they can address these problems without sacrificing their profits.

In a recent nationwide survey, 97 percent of farmers agreed that fertilizers, manure, and agricultural chemicals in groundwater are a problem. More than two-thirds of farmers interviewed said they would adopt economical ways to reduce their use of fertilizers and chemicals if those alternatives were available. In Minnesota, 80 percent responded that farmers did not have sufficient information on the choices available to them.

Appropriate technology transfer for rural areas, a USDA Extension Service national clearinghouse of information on alternative agriculture for farmers, provides more tangible evidence of the interest that already exists. Of 2,780 calls received in its first year of operation, 19 percent requested information on low-input systems. Eleven percent asked about forms of biological pest control, and 39 percent sought guidance on crop diversification and livestock alternatives.

This interest is reflected in last year's $3.9 million appropriation by Congress to fund USDA support of research on low-input and sustainable agriculture—which was raised to $4.4 million this year. I believe our farmers are telling us to reinforce that commitment.

The success of the Sodbuster, Swampbuster, and the Conservation Reserve Program shows what our farmers themselves can do to protect the environment, including our farmland, when Government works with them to develop a comprehensive and intelligent strategy. We need to build on this record of success.

Let me expand on that by saying why I believe these problems call for coordination at a federal level. Pesticide contamination, and its health and environmental consequences, is national in scope. Leaching chemicals and fouled aquifers have no regard for political subdivisions. We need better cooperation to fight ecological degradation and the loss of economic resources that transcend State boundaries.

The best example is only a few miles away from where we sit, the Chesapeake Bay. The strength of the Conservation Provisions incorporated into the 1985 farm bill lie in our ability to identify sensitive areas and target conservation programs to the places that need the most attention. That should enable us to protect such environmentally sensitive and valuable lands as the Chesapeake Bay watershed. Unfortunately, the States surrounding the Chesapeake have not taken advantage of this potential.

While Minnesota, Kansas, and Nebraska have enrolled 74, 34, and 23 percent of the eligible acreage into the CRP, respectively, Maryland has enrolled 2 percent, Pennsylvania 4 percent, and Virginia about 7 percent of their eligible land.

In the meantime, forests—which protect adjacent bodies of water by intercepting eroded soil from cultivated fields and absorbing excess nutrients such as nitrogen and phosphorous—are being cleared at the rapid pace of development on the Eastern Shore.

This shortsightedness ends up costing all the surrounding States as damage to the fragile bay—and all the resources it provides—continues.

So what can the Government do to help the farmers, to help the States, to help agribusiness do what is absolutely necessary?

We have to encourage sounder farming practices with incentives: certification that will tell the consumers they are getting a safer product, credit breaks that will motivate farmers to invest in more natural methods, crop insurance and base protection that will ease the transition to practices that deter erosion and bar harmful chemicals from our water supply. These incentives toward these goals are provided under my legislation.

We will also have to put a huge amount of energy into education—on how to define and implement low-input systems. We can do that through demonstration programs to show farmers they can produce a safer crop without losing their competitive advantage—that they can achieve this by means of rotation, tillage, diversification, soil testing, natural weed control, and pest management plans.

We can improve on these methods by directing the research efforts of the Extension Service to sustainable farming. My bill also calls for Extension to establish a branch to work exclusively with farmers on making the conversion to less intensive methods of maintaining America's high output.

Extension already possesses much of the required knowledge from its early days. Farmers can be reeducated in many of the practices that worked before the advent of chemical overkill.

My legislation seeks to complement these efforts to reduce the levels of contaminants with other means of protecting our soil and water resources. These include wetlands restoration, disincentives to drain natural wetlands or to clear forestland, expansion of the CRP and systematic testing of drinking water, with the adoption of pesticide use plans on farms found to contribute to ground or surface water contamination.

These measures are important to farmers, important to consumers, important to the survival of the chemical industry—but they go far beyond even such broad single interests. The measures I am proposing are essential to all Americans. Whatever our differences, we all eat the food here and drink the water.

We can pay the costs now by transforming agriculture in a rational and measured fashion—or we can pay catastrophic costs down the road in contaminated water and food supplies, increased death and disability. We will pay massive medical bills. And eventually we will have to pay for the massive, if not impossible, emergency clean-up. Now is the time to make the choice, because we cannot afford those consequences later.

The combined evidence gives me grave doubts whether American agriculture is on the right course for the future. It also suggests that farmers are ready to change, both because of their concern about water quality and because of the economic constraints they currently face in the high costs of production.

We can develop the techniques, and the economic incentives, to lead this change. We are not helpless to maintain this country's most priceless resources: its fertile soil and pure water. The Farm Conservation and Protection Act will commence this process, as we look ahead to the 1990 farm bill—and I ask my colleagues for their support.

Mr President, I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2898

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Farm Conservation and Water Protection Act of 1988".

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TITLE I—LOW-INPUT AGRICULTURE

Subtitle A—General Provisions

SEC. 101. STATEMENT OF POLICY.

(a) FEDERAL AGRICULTURAL PROGRAMS.—The Congress finds that with respect to the present federal agricultural programs and practices—

(1) Farmers who want to implement alternative practices face an uncertain transition period because of the lack of information, and the prospect of reduced production during the transition period;

(2) that alternative cropping practices do exist which would increase farm profitability and reduce environmental impacts of agriculture. These alternatives employ reduced or alternative chemical inputs, thereby reducing costs. Although yield per acre can decrease, crop pests can be controlled to economic thresholds by non-chemical means and overall farm profitability can be obtained or increased. Such alternative cropping practices are embodied in the term low-input sustainable agriculture.

(3) that farmers concerned about farm profitability, the high costs of inputs, and the impacts of agricultural chemicals on their environment desire alternatives to the intensive cropping practice they currently employ; and

(4) that a growing number of consumers seek agricultural products which are produced with reduced or no synthetic chemcial inputs. National coordination, however, is nonexistent, leaving consumers in many regions without reliable options to purchase food produced without chemical inputs.

(b) RESOURCE CONSERVATION.—The Congress finds that with respect to resource conservation—

(1) farmers are intimately concerned about resource conservation and land stewardship. They work the land, live on the land, and rely on the land for their sustenance. Farmers know they must be good land stewards and conserve natural resources and our natural heritage for their own good as well as for others;

(2) agricultural production has resulted in the loss and destruction of precious natural resources, such as wetlands which maintain water quality, recharge ground water, provide flood control and are natural habitat for a wide variety of wildlife, and forestlands which hold soil, provide wildlife habitat, and help regulate climate change and moderate global warming trends. Other marginal and fragile lands have also been brought into intensive cropping, resulting in accelerated soil loss, undermining the sustainability of United States agriculture. Contamination of ground and surface water by agricultural chemicals threatens rural and urban drinking water supplies, as well as the environmental quality of wetlands, rivers, lakes, estuaries and other wildlife habitat;

(3) the Conservation Reserve Program has been highly successful in halting soil loss on highly erodible lands and has contributed to maintaining and stabilizing farm income; and

(4) resource conservation and land stewardship are vital aspects of sound agricultural economy and benefit farmers, other rural residents, and the country as a whole.

(c) POLICY.—It is the policy of the United States—

(1) that farmers should be provided with a range of incentives for less intense crop production practices that will reduce the likelihood of occupational hazards, environmental degradation, contamination of ground and surface water by agricultural chemicals; and

(2) to promote the protection of human health and the environment by—

(A) providing technical and financial assistance to agricultural producers seeking to adopt low-input sustainable agricultural practices;

(B) establishing a national program to standardize and provide reliable certification that an agricultural product was produced without synthetic chemical inputs;

(C) conserving and reestablishing forest land to provide wildlife habitat, hold soil, and above all, help mitigate the global warming effects of carbon dioxide build up in the atmosphere;

(D) conserving and restoring natural wetlands; and

(E) providing well testing and technical information to abate the impact of agricultural chemicals on ground water.

SEC. 102. DEFINITIONS.

For the purposes of this Act—

(a) the term "Agricultural Stabilization and Conservation Service" shall mean the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture;

(b) the term "Extension Service" shall mean the Extension Service of the United States Department of Agriculture;

(c) the term "low-input agriculture" shall mean a combination and sequence of agricultural production practices designed to improve farm profitability and minimize off-farm environmental and health risks by reducing the need for production inputs with known or potentially adverse impacts on human health and the environment;

(d) the term "Secretary" shall mean the Secretary of the United States Department of Agriculture; and

(e) the term "Soil Conservation Service" shall mean the Soil Conservation Service of the United States Department of Agriculture.

Subtitle B—Low-Input Farm Program

SEC. 111. LOW-INPUT FARM PROGRAM.

(a) In General.—The Secretary shall carry out a Low-input Farm program whereby producers of commodities are encouraged through low-interest loans, crop insurance premium reductions, and deficiency payment adjustments to use low-input farming methods in the production of commodities on the producers' farm.

(b) Farm Management Plans—

(1) Development of plans.—Under the program established by this subtitle, the Soil Conservation Service, shall develop individual farm management plans for producers who participate in this program. Such individual farm management plans shall be based on the local Soil Conservation Service low-input agriculture technical guide and approved by the local soil conservation district, in consultation with the local committees established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)), the Extension Service, the Agricultural Stablization and Conservation Service, and the Secretary, or by the Secretary.

(2) Purpose of plans.—The individual farm management plan shall consist of a schedule of farming operations and practices designed to improve farm profitability and minimize the risk of damage to human health and the environment through the adoption of agricultural production practices that minimize the need for production inputs with known or potentially adverse impacts on human health and the environment or through the adoption of agricultural practices that reduce the use of agricultural chemical inputs.

(3) Administration and certification.—The program established by this subtitle shall be administered by the Secretary, through the Agricultural Stabilization and Conservation Service in consultation with the Soil Conservation Service. The Soil Conservation Service shall be responsible for certifying compliance by individual producers with the terms and conditions of the individual farm management plans.

SEC. 112. TERMS AND CONDITIONS FOR PARTICIPATION.

(a) Eligibility.—In order to be eligible to participate in the program established by this subtitle, a person must—

(1) have produced agricultural commodities during 3 of the 5 previous years prior to a request to participate;

(2) receive over 50 percent of gross income from the production of agricultural commodities (including livestock); and

(3) not have been declared to be ineligible for farm program benefits in accordance with Title XII of the Food Security Act of 1985.

(b) Agreement.—In order to be eligible to receive the benefits set forth in this subtitle, eligible producers must agree—

(1) to implement a low-input farm management plan developed for the producers' farm;

(2) to implement such plan within the time limits specified by the plan;

(3) to allow representatives of the Secretary to enter the farm for the purposes of certifying the producers' compliance with the plan;

(4) to the extent determined appropriate by the Secretary, to refund any benefits made available under this subtitle if the producers fail to fully implement the plan;

(5) not to carry out any practices on the farm subject to the plan specified by the Secretary as being contrary to the purposes of this title; and

(6) to comply with such additional provisions as the Secretary determines are desirable and are included in the contract to carry out this subtitle or to facilitate the practical administration thereof.

SEC. 113. LOW INTEREST LOANS.

Section 312 of the Consolidated Farm and Rural Development Act is amended by adding the following new subsection at the end thereof:

"(f) Notwithstanding any other provision of law—

"(1) the Secretary shall make loans available under this subtitle for the purposes set forth in subsection (a) of this section to farmers and ranchers who are participating in the low-input farm program under subtitle B of title I of the Farm Conservation and Water Protection Act of 1988; and

"(2) such loans shall bear interest at a rate not to exceed a rate not less than 2, nor more than 5, percentage points below a rate determined by the Secretary based on the average of the bond equivalent of the weekly 90-day Treasury bill auction rates.".

SEC. 114. FEDERAL CROP INSURANCE PREMIUM REDUCTIONS.

Paragraph (3) of section 508(b) of the Federal Crop Insurance Act (7 U.S.C. 1508(b)) is amended by designating the current text as subparagraph (A) and inserting the following new subparagraph at the end of newly designated subparagraph (A)—

"(B) For the purposes of encouraging participation in the low-input agricultural program under subtitle B of title I of the Farm Conservation and Water Protection Act of 1988, an additional 15 per centum of the premium (reduced, where applicable, for hail and fire exclusion, or State or State agency subsidy), as calculated by the Corporation on any coverage under the Corporation's policy of insurance up to a maximum of 65 per centum of the recorded or appraised average yield, as adjusted, of producers participating in such low-input agricultural program shall be paid by the Corporation.".

SEC. 115. BASE PROTECTION.

(a) In General.—The Secretary shall make available additional established price payments and a base acreage expansion option, as provided for in this section, for producers participating in the program established by this subtitle.

(b) Land Devoted to Special Conservation Uses.—

(1) Additional established price payments.—If, as part of a low-input farm management plan, producers devote a portion of the producers' base (including any land not planted to the program crop as the result of an acreage limitation requirement) to a legume or small grain/legume mixture as part of a resource-conserving rotation, such portion of the producers' base shall be considered as part of the individual farm program acreage for the program commodity for the purpose of calculating the producers' established price payments in accordance with sections 101A(c)(1)(A), 103A(c)(1)(A), 105C(c)(1)(A), and 107D(c)(1)(A) of the Agricultural Act of 1949.

(2) The legume or small grain/legume mixture must—

(A) tend to reduce erosion; and

(B) Fix nitrogen in the soil.

(3) No more than one-third of the base acreage on a farm may be placed in such rotation for the purpose of receiving payments under this section in any crop year.

(4) Acreage planted to a legume or small grain/legume mixture in accordance with this section shall be considered as planted acreage for the purpose of calculating the farm's crop acreage base under section 504 of the Agricultural Act of 1949.

(b) Amendments to the Agricultural Act of 1949.—

(1) Wheat.—The second sentence of section 107D(f)(2)(E) is amended by striking "subsection (c)(1)(C)" and inserting in lieu thereof "subsection (c)(1)(C) and section 115 of the Farm Conservation and Water Protection Act of 1988".

(2) Feed grains.—The second sentence of section 105C(f)(2)(F) is amended by striking "subsection (c)(1)(B)" and inserting in lieu thereof "subsection (c)(1)(B) and section 115 of the Farm Conservation and Water Protection Act of 1988".

(3) Cotton.—The second sentence of section 103A(f)(2)(E) is amended by striking "subsection (c)(1)(B)" and inserting in lieu thereof "subsection (c)(1)(B) and section 115 of the Farm Conservation and Water Protection Act of 1988".

(4) Rice.—The second sentence of section 101A(f)(2)(E) is amended by striking "subsection (c)(1)(B)" and inserting in lieu thereof "subsection (c)(1)(B) and section 115 of the Farm Conservation and Water Protection Act of 1988".

(5) Base acreage calculation.—Subsection (c) of section 504 of the Agricultural Act of 1949 is revised to read as follows:

"(c)(1) The Secretary may make adjustments to reflect crop rotation practices and to reflect such other factors as the Secretary determines should be considered in determining a fair and equitable crop acreage base.

"(2) The Secretary, only for the purpose of establishing a base acreage calculation figure under section 115 of the Farm Conservation and Water Protection Act of 1988, shall make upward adjustments in the crop acreage base of producers who have small crop acreage bases relative to their total potential acreage base because of the historical use of drop rotation practices designed to enhance soil fertility and reduce dependence on agricultural chemicals.".

SEC. 116. TECHNICAL GUIDE FOR LOW-INPUT AGRICULTURE.

The Soil Conservation Service shall, within 180 days after the enactment of this Act, develop a national low-input agriculture technical guide describing farming systems and practices that minimize the need for production inputs with known or potentially adverse impacts on human health and the environment, reduce the use of agricultural chemical inputs, and increase the profitability of agricultural production by reducing input costs.

Subtitle C—Low input Transition Demonstration Program

SEC. 121. LOW-INPUT TRANSITION DEMONSTRATION PROGRAM.

(a) GENERAL.—The Secretary shall establish a low-input transition demonstration program designed to assist producers of the 1989 through 1992 crops of commodities in adopting low-input agricultural production systems for their farms.

(b) ACRES.—To the extent practicable, no less than 2 million acres shall be enrolled in the program for the 1990 crop year, and no less than 10 million acres shall be enrolled in the program for the 1991 crop year.

(c) PURPOSES.—The purpose of the program established by this subtitle is to encourage producers to adopt farming practices that decrease economic and environmental risks, enhance profitability, improve soil and water conservation, increase soil fertility, reduce the use of chemicals, reduce input costs, improve water quality, and achieve acceptable production levels.

SEC. 122. TERMS AND CONDITIONS FOR PARTICIPATION.

(a) ELIGIBILITY.—In order to be eligible to participate in the demonstration program established by this subtitle, a person must—

(1) have produced agricultural commodities during 3 of the 5 previous years prior to a request to participate;

(2) receive over 50 percent of gross income from the production of agricultural commodities (including livestock); and

(3) not have been declared to be ineligible for farm program benefits in accordance with Textile XII of the Food Security Act of 1985.

(b) OBLIGATIONS OF PRODUCER.—In order to participate in the demonstration program, producers on a farm must agree—

(1) to implement a five-year low-input transition plan developed for the producers' farm;

(2) to implement such plan within the time limits specified by in the plan;

(3) to allow representatives of the Secretary to enter the farm for the purposes of certifying the producers' compliance with the plan;

(4) to refund any benefits made available under this subtitle, to the extent determined appropriate by the Secretary, if the producers fail to fully implement the plan;

(5) not to carry out practices on the farm subject to the plan specified by the Secretary as being contrary to the purposes of this subtitle; and

(6) to comply with such additional provisions as the Secretary determines are desirable and are included in the contract to carry out this subtitle or to facilitate the practical administration thereof.

SEC. 123. OBLIGATIONS OF THE SECRETARY.

(a) SPECIAL TRANSITION LOANS.—

(1) TERMS AND CONDITIONS.—The Secretary shall make special transition loans available to producers participating in the demonstration program established by this subtitle. Such loans shall—

(A) have a term of 5 years and shall bear interest at a rate not to exceed a rate not less than 2, nor more than 5, percentage points below a rate determined by the Secretary based on the average of the bond equivalent of the weekly 90-day Treasury bill auction rates;

(B) be used to help defray up front capital costs necessary to implement the transition plan, including the erection of structures necessary to achieve the conservation and reduced input goals, equipment purchases, and equipment adaptions (but no more than $10,000 of such loan may be used for equipment); and

(C) be for no more than $50,000 per person.

(2) USE OF COMMODITY CREDIT CORPORATION.—In carrying out the provisions of this subsection, the Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation.

(b) HIGHER ESTABLISHED PRICE PAYMENTS.—Notwithstanding any other provision of law, only with respect to producers who are participating in both the demonstration program established by this subtitle and the production adjustment programs established under the Agricultural Act of 1949, for purposes of calculating deficiency payments under sections 101A(c), 103A(c), 105C(c), and 107D(c) of the Agricultural Act of 1949 to be made to demonstration program participants, the established price used in the deficiency payment calculation shall be the specified established price for the applicable crop multiplied by 110 percent.

(c) AJUSTMENTS IN PRODUCTION ADJUSTMENT REQUIREMENTS.—

(1) WHEAT.—Subsection (f) of section 107D of the Agricultural Act of 1949 is amended by adding the following new paragraph at the end thereof:

"(9) Notwithstanding any other provision of law, to give due consideration to producers participating in the low-input transition demonstration program established by subtitle C of title I of the Farm Conservation and Water Protection Act of 1988 who use crop rotation, soil conservation, and other conserving practices, the Secretary may make appropriate downward adjustments in acreage limitation or set-aside requirements applicable to such producers.".

(2) FEED GRAINS.—Subsection (f) of section 105C of the Agricultural Act of 1949 is amended by adding the following new paragraph at the end thereof:

"(9) Notwithstanding any other provision of law, to give due consideration to producers participating in the low-input transition demonstration program established by subtitle C of title I of the Farm Conservation and Water Protection Act of 1988 who use crop rotation, soil conservation, and other conserving practices, the Secretary may make appropriate downward adjustments in acreage limitation or set-aside requirements applicable to such producers.".

(3) COTTON.—Subsection (f) of section 103A of the Agricultural Act of 1949 is amended by adding the following new paragraph at the end thereof:

"(8) Notwithstanding any other provision of law, to give due consideration to producers participating in the low-input transition demonstration program established by subtitle C of title I of the Farm Conservation and Water Protection Act of 1988 who use crop rotation, soil conservation, and other conserving practices, the Secretary may make appropriate downward adjustments in acreage limitation or set-aside requirements applicable to such producers.".

(4) RICE.—Subsection (f) of section 101A of the Agricultural Act of 1949 is amended by adding the following new paragraph at the end thereof:

"(8) Notwithstanding any other provision of law, to give due consideration to producers participating in the low-input transition demonstration program established by subtitle C of title I of the Farm Conservation and Water Protection Act of 1988 who use crop rotation, soil conservation, and other conserving practices, the Secretary may make appropriate downward adjustments in acreage limitation or set-aside requirements applicable to such producers.".

SEC. 124. LOW-INPUT FARM TRANSITION PLAN.

(a) IN GENERAL.—Under the program established by this subtitle, the Soil Conservation Service, shall develop individual farm low-input transition plans for producers who participate in the demonstration program established under this subtitle. Such individual low-input transition plans shall be based on the local Soil Conservation Service low-input agriculture technical guide and approved by the local soil conservation district, in consultation with the local committees established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)), the Extension Service, the Agricultural Stabilization and Conservation Service, and the Secretary, or by the Secretary.

(b) REQUIREMENTS OF TRANSITION PLAN.—The low-input transition plan shall—

(1) set forth a five year schedule of farming operations and practices designed to improve farm profitability and minimize the risk of damage to human health and the environment through the adoption of agricultural production practices that minimize the need for production inputs with known or potentially adverse impacts on human health and the environment or through the adoption of agricultural practices that reduce the use of agricultural chemical inputs, including special tillage systems, crop rotation practices, and pest management plans;

(2) ensure that at the end of the five year period chemical use on the farm shall be no greater than 60 percent of the regional average chemical use for each crop, as determined by the Secretary; and

(3) shall contain such other terms as the Secretary determines are necessary or appropriate to carry out the purposes of this subtitle.

SEC. 125. ADMINISTRATION AND CERTIFICATION.

The program established by this subtitle shall be administered by the Secretary, through the Agricultural Stabilization and Conservation Service in consultation with the Soil Conservation Service. The Soil Conservation Service shall be responsible for certifying compliance by individual producers with the terms and conditions of the individual farm low-input transition plans.

TITLE II—CONSERVATION

Subtitle A.—Wetland Restoration Program.

Sec. 201. AMENDMENTS TO TITLE XII OF THE FOOD SECURITY ACT OF 1985.

Title XII of the Food Security Act of 1985 is amended by adding immediately following subtitle F a new Subtitle G to read as follows:

"Subtitle G—Wetland Restoration

"PURPOSE AND POLICY

"SEC. 1261. (a) It is the purpose of this subtitle to encourage the restoration of converted wetlands and to help ensure the maintenance of such wetlands to protect soil and water quality and to support fish and wildlife habitat.

"(b) It is the policy of the United States to encourage the retirement from agricultural production of marginal lands and the re-establishment of wetlands that have been drained for agricultural production.

"PURCHASE OF EASEMENTS

"SEC. 1262. The Secretary of Agriculture shall establish a wetland restoration program under which the Secretary may purchase permanent easements (as described in section 1264) on eligible lands and place such lands in a wetland reserve and may share the cost with the landowner of restoring the eligible lands to wetlands.

"ELIGIBLE LANDS

"SEC. 1263. Land shall be eligible for placement into the wetland reserve if—

"(1) such land is a drained wetland or is land adjacent to the drained wetland;

"(2) such land was in cropland, as determined by the Secretary, during at least 2 of the years between 1981 and 1989;

"(3) was—

"(A) owned by the landowner on January 1, 1988; or

"(B) owned by the landowner (or a parent, blood relative, or decedent) at least 3 years before the date of application;

"(4) is at least 5 acres in size; and

"(5) is not set-aside, enrolled, or diverted under another federal program.

"NATURE OF EASEMENT

"Sec. 1264. Easements on eligible land that are purchased by the Secretary under this subtitle shall—

"(a) prohibit—

"(1) alteration of wildlife habitat and other natural features, unless specifically approved by the Secretary;

"(2) agricultural crop production, unless specifically approved by the Secretary for wildlife management purposes;

"(3) grazing of livestock;

"(4) spraying with chemicals or mowing, except as necessary to comply with noxious weed control laws or emergency control of pests necessary to protect public health;

"(b) allow—

"(1) repairs, improvements, and inspections necessary to maintain public drainage systems provided the easement area is restored to the condition required by the terms of the conservation easement; and

"(2) wildlife uses, including hunting, fishing, and other uses;

"(c) be in a recordable form; and

"(d) be for a permanent duration.

"RESPONSIBILITIES OF THE SECRETARY OF AGRICULTURE

"SEC. 1265. (a) In return for obtaining an easement as provided in section 1264, the Secretary shall compensate the owner of eligible land placed in the wetland reserve in an amount determined in accordance with subsection (b) and shall share the cost with the owner of re-establishing the wetland.

"(b) The purchase price for easements may be established by the Secretary (based on local rental values) or through the submission of bids.

"(c) Cost share assistance provided under this subtitle may not exceed the cost of restoring the wetland and complying with the conservation plan developed by the Soil Conservation Service concerning the restoration of such converted wetland.

"RESPONSIBILITIES OF OWNERS

"SEC. 1266. (a) Owners of eligible land placed in the wetland reserve must agree to—

"(1) restore any converted wetland in accordance with a conservation plan developed by the Soil Conservation Service in consultation with the Fish and Wildlife Service;

"(2) convey to the Secretary a permanent easement for such eligible land;

"(3) the enforcement of the terms of the easement and agreements in this subdivision by an action for specific performance, a mandatory injunction, or for damages in an amount not to exceed the total amount paid by the Secretary to the landowner for the purchase of the easement and for cost-share assistance, plus interest, from the date of each default under the agreement;

"(4) adopt no practices that would defeat the purposes of the program established by this subtitle, as determined by the Secretary; and

"(5) comply with such additional requirements as may be established by the Secretary, consistent with the purposes of this subtitle.

"(b) Conservation plans developed by the Soil Conservation Service in accordance with this subtitle shall—

"(1) be based on the local Soil Conservation Service technical guide and approved by the local soil conservation district, in consultation with the local committees established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) and the Secretary, or by the Secretary; and

"(2) set forth the conservation systems and practices necessary for the restoration of eligible lands as wetlands and the maintenance of such restored wetlands.

"COOPERATION

"SEC. 1267. In carrying out this subtitle, the Secretary of Agriculture shall consult with the Fish and Wildlife Service and the Environmental Protection Agency.

"ADMINISTRATION

"SEC. 1268. Not later than 180 days after the date of enactment of this subtitle, the Secretary shall issue such regulations as the Secretary determines are necessary to carry out the program established by this subtitle.

"FUNDING

"SEC. 1269. (a) The Secretary may use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out the provisions of this subtitle, except that the Secretary may not use funds of the Corporation for such purpose unless the Corporation has received funds to cover such expenditures from appropriations made to carry out subtitle G.

"(b) There are hereby authorized to be appropriated without fiscal year limitation such sums as may be necessary to carry out subtitle G.".

SEC. 202. DEFINITIONS.

SEC. 1201 of the Food Security Act of 1985 is amended by striking "A though E" and inserting in lieu thereof "A through E and G through I".

Subtitle B.—Amendments to Title XII of the Food Security Act of 1985 and to the Water Bank Program

SEC. 211. DRAINAGE OF WETLANDS.

(a) CONVERTED WETLAND.—Section 1201(a)(4)(A) of the Food Security Act of 1985 (16 U.S.C. 3801) is amended by striking "for the purpose or to have the effect of" and inserting in lieu thereof "to the extent that the natural characteristics of the wetland are destroyed or to have the effect of".

(b) DRAINAGE OF WETLAND FOR ANY PURPOSE.—Section 1221 of the Food Security Act of 1985 (16 U.S.C. 3821) is amended by striking "produces an agricultural commodity on converted wetland" and inserting in lieu thereof "drains, dredges, fills, levels, or otherwise converts wetland".

SEC. 212. AMENDMENTS TO THE CONSERVATION RESERVE PROGRAM.

(a) ENLARGEMENT OF RESERVE.—Section 1231 of the Food Security Act of 1985 is amended—

(1) in subsection (a), by striking "1990" and inserting in lieu thereof "1992";

(2) in paragraph (4) of subsection (b), by striking "45, million acres; and" and inserting in lieu thereof "70, million acres;";

(3) in paragraph (5) of subsection (b), by striking "40, nor more than 45, million acres." and inserting in lieu thereof "45, nor more than 70, million acres;"; and

(4) by adding at the end of subsection (b) the following new paragraphs:

"(6) during the 1986 through 1991 crop years, a total of not less than 55, nor more than 70, million acres; and

"(7) during the 1986 through 1992 crop years, a total of not less than 6, nor more than 70 million acres.".

(b) ESTABLISHMENT OF TREES.—Section 1232 of the Food Security Act of 1985 is amended by—

(1) revising subsection (c) to read as follows:

"(c) To the extent practicable—

"(1) not less than one-eighth of the number of acres of land that is placed in the conservation reserve under this subtitle in each of the 1986 through 1988 crop years shall be devoted to trees; and

"(2) not less than one-half of the number of acres of land that is placed in the conservation reserve under this subtitle in each of the 1989 through 1992 crop years shall be devoted to trees."; and

(2) by adding immediately after subsection (c) the following new subsection:

"(d) Contracts entered into under this subtitle shall be for a period of 15 years if the owner or operator of the land subject to such contract establishes hardwood trees as the vegetative cover required by the conservation plan for such land.".

(c) ESTABLISHMENT OF SHELTERBELTS, WILDLIFE CORRIDORS, AND OTHER SPECIAL USE CONSERVATION PRACTICES.—Section 1234(c) of the Food Security Act of 1985 (16 U.S.C. 3834(c)) is amended by—

(1) in paragraph (3), by striking "may";

(2) in subparagraph (A) of paragraph (3), by adding the word "may" immediately following "(A)" and immediately preceding "take into consideration";

(3) by revising subparagraph (B) of paragraph (3) to read as follows:

"(B) shall, where appropriate, except contract offers that provide for the establishment of—

"(i) shelterbelts, windbreaks, and living snowfences;

"(ii) permanently vegetated stream borders, filter strips of permanent grass, forbs, shrubs, and trees that will reduce sedimentation substantially; and

"(iii) wildlife corridors;"

(4) in subparagraph (C) of paragraph (3), by adding the word "may" immediately following "(C)" and immediately preceding "establish different"; and

(5) in subparagraph (D) of paragraph (3), by adding the word "may" immedaitely following "(D)" and immediately preceding "give priority to".

(d) Haying and Grazing of Conservation Reserve Acres.—Paragraph (7) of section 1232(a) of the Food Security Act of 1985 (16 U.S.C. 3832(a) is revised to read as follows:

"(7) not to conduct any harvesting or grazing, nor otherwise made commercial use of the forage, on land that is subject to the contract, nor adopt any similar practice specified in the contract by the Secretary as a practice that would tend to defeat the purposes of the contract;".

(e) Economic Use Option.—Secion 1235(c) of the Food Security Act of 1985 (16 U.S.C. 3835(c)) is amended by adding at the end thereof the following new paragraph:

"(3)(A) The Secretary may modify or waive a term or condition of a contract entered into under this subtitle in order to permit unlimited use of the land by the owner or operator during the last 3 years of the contract period if the owner or operator agrees—

"(i) to give the Secretary of Agriculture a permanent conservation easement on such land, in accordance with terms and conditions established by the Secretary, under which the land cannot be used for agricultural purposes; or

"(ii) to retire permanently the cropland base and allotment history applicable to the land subject to the conservation reserve contract.

"(B) The Secretary of Agriculture may provide additional compensation to owners or operators who agree to either grant the Secretary a permanent conservation easement or to retire permanently cropland base and allotment history under subparagraph (A) in such amount as is determined by the Secretary to be fair and reasonable.

"(C) Permanent conservation easements obtained in accordance with this paragraph shall contain terms and conditions designed to ensure that such land is devoted to approved conservation practices, as determined by the Secretary.".

SEC. 213. PROGRAM INELIGIBILITY FOR THE HARVEST OF TREES.

Title XII of the Food Security Act of 1985 is amended by adding at the end thereof a new Subtitle H, as follows:

"SUBTITLE H—FOREST CONSERVATION

"PROGRAM INELIGIBILITY

"Sec. 1271. Except as provided in section 1272, and notwithstanding any other provision of law, following the date of enactment of this Act, any person who in any crop year produces an agricultural commodity on a field that was cleared of trees shall be ineligible for—

"(1) as to any commodity produced during that crop year by such person—

"(A) any type of price support or payment made available under the Agricultural Act of 1949 (7 U.S.C. 1421, et seq.), the Commodity Credit Corporation Charter Act (15 U.S.C. 714, et seq.), or any other Act;

"(B) a farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h));

"(C) crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501, et seq.);

"(D) a disaster payment made under the Agricultural Act of 1949 (7 U.S.C. 1421, et seq.); or

"(E) a loan made, insured, or guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, et seq.) or any other provision of law administered by the Farmers Home Administration, if the Secretary determines that the proceeds of such loan will be used for a purpose that will contribute to the deforestation of the land; or

"(2) a payment made under section 4 or 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b or 714c) during such crop year for the storage of an agricultural commodity acquired by the Commodity Credit Corporation.

"EXEMPTIONS

"Sec. 1272. (a) No person shall become ineligible under section 1271 for program loans, payments, and benefits as the result of the production of a crop of an agricultural commodity on—

"(1) land that has been cleared of trees if such clearing commenced prior to the date of enactment of this Act; and

"(2) land on which the tree cover was severely damaged by a natural disaster and with respect to which the Secretary determines that the clearing of the remaining trees is appropriate.

"(b) Section 1271 shall not apply to a loan described in section 1271 made before the date of enactment of this Act.

"(c) The Secretary may exempt a person from the application of section 1271 for any incremental clearing of trees from land if the effect of such clearing, individually and in connection with all other similar actions authorized by the Secretary in the area, on the local environment is minimal."

"REGULATIONS

"Sec. 1273. The Secretary shall issue regulations implementing the provisions of this subtitle no later than 180 days after the date of enactment of this Act.".

SEC. 214. PROVISION FOR PERMANENT EASEMENTS IN WATER BANK PROGRAM.

The Water Bank Act (16 U.S.C. 1301 et seq.) is amended by adding at the end thereof the following new section:

"Sec. 13. Notwithstanding any other provisions of this Act, the Secretary may enter into contracts under this Act or may extend and modify contracts entered into under this Act for the purpose of acquiring a permanent conservation easement on property that otherwise meets the eligibility requirements under this Act. The Secretary of Agriculture may provide compensation other than annual payments to owners or operators who agree to grant the Secretary a permanent conservation easement in such amount as is determined by the Secretary to be fair and reasonable. Permanent conservation easements obtained in accordance with this section shall contain terms and conditions consistent with this Act that are designed to ensure that such land is devoted to approved conservation practices, as determined by the Secretary.".

SUBTITLE C.—AMENDMENTS TO AGRICULTURAL ACT OF 1949

SEC. 221. BONUS PAYMENTS FOR VEGETATIVE COVER.

(a) Wheat.—Section 107D(f)(4) is amended by adding the following new subparagraph at the end thereof:

"(E)(1) The Secretary shall make payments available to producers who devote acreage required to be devoted to conservation uses to vegetative cover by a date no later than the frost date for the area, as determined by the Secretary.

"(ii) Producers electing to receive payments under this subparagraph may not harvest such vegetative cover.

"(iii) Such payments shall be—

"(I) with respect to producers who plant vegetative cover, at a rate determined by the Secretary to reflect the cost of planting and maintaining the vegetative cover; and

"(II) with respect to producers who plant a legume as a cover crop and are actively applying a crop rotation system approved by the Soil Conservation Service, at a rate determined by the Secretary to reflect the cost of planting and maintaining the cover plus 10 percent.".

(b) Feed Grains.—Section 105C(F)(4) is amended by adding the following new subparagraph at the end thereof:

"(E)(i) The Secretary shall make payment available to producers who devote acreage required to be devoted to conservation uses to vegetative cover by a date no later than the frost date for the area, as determined by the Secretary.

"(ii) Producers electing to receive payments under this subparagraph may not harvest such vegetative cover.

"(iii) Such payments shall be—

"(I) with respect to producers who plant vegetative cover, at a rate determined by the Secretary to reflect the cost of planting and maintaining the vegetative cover; and

"(II) with respect to producers who plant a legume as a cover crop and are actively applying a crop rotation system approved by the Soil Conservation Service, at a rate detemined by the Secretary to reflect the cost of planting and maintaining the cover plus 10 percent.".

(c) Cotton.—Section 103A(f)(3) is amended by adding the following new subparagraph at the end thereof:

"(D)(i) The Secretary shall make payments available to producers who devote acreage required to be devoted to conservation uses to vegetative cover by a date no later than the frost date for the area, as determined by the Secretary.

"(ii) Producers electing to receive payments under this subparagraph may not harvest such vegetative cover.

"(iii) Such payments shall be—

"(I) with respect to producers who plant vegetative cover, at a rate determined by the Secretary to reflect the cost of planting and maintaining the vegetative cover; and

"(II) with respect to producers who plant a legume as cover crop and are actively applying a crop rotation system approved by the Soil Conservation Service, at a rate determined by the Secretary to reflect the cost of planting and maintaining the cover plus 10 percent.".

(d) Rice.—Section 101A(f)(3) is amended by adding the following new subparagraph at the end thereof:

"(D)(i) The Secretary shall make payments available to producers who devote acreage required to be devoted to conservation uses to vegetative cover by a date no later than the frost date for the area, as detemined by the Secretary.

"(ii) Producers electing to receive payments under this subparagraph may not harvest such vegetative cover.

"(iii) Such payments shall be—

"(I) with respect to producers who plant vegetative cover, at a rate determined by the Secretary to reflect the cost of planting and maintaining the vegetative cover; and

"(II) with respect to producers who plant a legume as a cover crop and are actively applying a crop rotation system approved by the Soil Conservation Service, at a rate determined by the Secretary to reflect the cost of planting and maintaining the cover plus 10 percent.".

SEC. 222. MULTI-YEAR SETASIDE PROGRAM.

Notwithstanding any other provision of law—

(a) Contracts.—The Secretary of Agriculture may enter into multiyear set-aside contracts for a period not to extend beyond the 1992 crops. Such contracts may be entered into only as a part of the production adjustment programs in effect for the 1989 through 1992 crops of wheat, feed grains, upland cotton, and rice, and only producers participating in one or more of such programs shall be eligible to contract with the Secretary under this section.

(b) Obligations of Producers.—Producers agreeing to a multiyear set-aside agreement shall—

(1) devote the set-aside acreage to vegetative cover capable of maintaining itself through such period to provide soil protection, water quality enhancement, wildlife production, and natural beauty;

(2) not allow grazing of livestock under this section except in areas of a major disaster, as determined by the President, if the Secretary finds there is a need for such grazing as a result of such disaster;

(3) comply with all applicable State and local laws and regulations governing noxious weed control; and

(4) comply with such other terms and conditions as may be established by the Secretary.

(c) Cost-Share Assistance.—The Secretary shall provide cost-share assistance to producers for the establishment of vegetative cover, whenever a multiyear set-aside contract is entered into under this section.

(d) Compensation.—The Secretary may provide payments to producers who enter into multiyear set-aside contracts under this section to compensate such producers for taking lands out of production under this section. The amount of such payments may be determined through the submission of bids or through such other means as the Secretary determines appropriate.

(e) Regulations.—The Secretary may issue such regulations as the Secretary determines necessary to carry out this section.

(f) Commodity Credit Corporation.—The Secretary shall carry out the program authorized by this section through the Commodity Credit Corporation.

TITLE III—GROUNDWATER

Subtitle A—Contaminated Well Water

SEC. 301. INELIGIBILITY FOR PROGRAM BENEFITS.

Title XII of the Food Security Act of 1985 is amended by adding immediately following subtitle H (as added by this Act) the following new subtitle I:

"Subtitle I—Water Conservation

"PROGRAM INELIGIBILITY

"Sec. 1281. Except as provided in section 1282, and notwithstanding any other provision of law, following the date of enactment of this Act, any person who has a farm well or has surface water on the farm that has been determined to be contaminated by pesticides and any person whose farm is located in an area designated by the Secretary as a likely source area of the contamination shall be ineligible for—

"(1) as to any commodity produced by such person during any crop year that such contamination is determined to exist—

"(A) any type of price support or payment made available under the Agricultural Act of 1949 (7 U.S.C. 1421, et seq.), the Commodity Credit Corporation Charter Act (15 U.S.C. 714, et seq.), or any other Act;

"(B) a farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h));

"(C) crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501, et seq.);

"(D) a disaster payment made under the Agricultural Act of 1949 (7 U.S.C. 1421, et seq.); or

"(E) a loan made, insured, or guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, et seq.) or any other provision of law administered by the Farmers Home Administration, if the Secretary determines that the proceeds of such loan will be used for a purpose that will contribute to the contamination of groundwater or surface water; or

"(2) a payment made under section 4 or 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b or 714c) during such crop year for the storage of an agricultural commodity acquired by the Commodity Credit Corporation.

"EXEMPTIONS

"Sec. 1282. (a) No person shall become ineligible under section 1281 for program loans, payments, and benefits as the result of the contamination of water if such person is implementing a pesticide use plan developed by the Secretary based upon standards established by the Environmental Protection Agency.

"(b) Section 1281 shall not apply to a loan described in section 1281 made before the date of enactment of this Act.

"TESTING OF WELLS

"Sec. 1283. As a condition precedent to receiving loans or payments described in section 1281 of this Act, producers must allow the Secretary, or the Secretary's designee, to enter the producers' farm for the purpose of testing wells on such farm for pesticide contamination or for the purpose of locating the source of pesticide contamination of nearby wells.

"REGULATIONS

"Sec. 1284. The Secretary shall issue regulations implementing the provisions of this subtitle no later than 180 days after the date of enactment of this Act.".

SEC. 302. EFFECTIVE DATE.

The provisions of this subtitle shall become effective 30 days after the date of enactment of this Act.

Subtitle B—Sinkholes

SEC. 311. SINKHOLE PILOT PROGRAM.

Subtitle D of title XII of the Food Security Act of 1985 is amended by adding after section 1236 (16 U.S.C. 3836) the following new section:

"SINKHOLE PILOT PROGRAM

"Sec. 1237. (a) Not later than January 1, 1989, the Secretary shall formulate and carry out, through the 1990 crop year, a sinkhole pilot program, in conjunction with the conservation reserve program established under this subtitle, through contracts to assist owners and operators of land described in subsection (b) in conserving and improving the soil and water resources of their farms or ranches.

"(b) Cropland is eligible to be placed in the pilot program established by this section if the cropland contains naturally occurring sinkholes.

"(c) Under the terms of a contract entered into under this section, an owner or operator, in addition to fulfilling the obligations described in section 1232, must agree—

"(1) to retire permanently, from the base and allotment history applicable to acreage placed in the pilot program, a number of acres equal to the number of acres placed in the reserve; and

"(2) not to use the land placed into the pilot program for any agricultural purposes for the term of the contract.

"(d) Except where determined inappropriate by the Secretary, the Secretary shall contract with owners or operators of land described in subsection (b) in accordance with the terms and conditions provided in this subtitle.

"(e) For the purposes of this section, the term 'highly erodible land' as used in this subtitle shall be considered to include land described in this section.".

TITLE IV—EXTENSION SERVICE

SEC. 401. SENSE OF CONGRESS.

(a) Findings.—Congress finds that—

(1) the environment is threatened by contamination from the burning of fossil fuels, industrial waste, agricultural chemicals and other pollutants;

(2) the agricultural industry, with its special reliance on the environment, is more susceptible than other industries to economic collapse if our fragile ecosystems and natural biological systems break down;

(3) poor farm management and improper use of agricultural chemicals can cause substantial harm to our environment through excessive erosion, chemical runoff, and contaminated groundwater; and

(4) research and education are needed to both discover new, safer means of agricultural production and to disseminate these means to farmers.

(b) Sense of Congress.—It is the sense of Congress that the Extension Service—

(1) must make low-input agricultural research a major institutional and budgetary priority;

(2) increase specific research in such areas as—

(A) nutrient cycling;

(B) safe ways to return sludge to farms;

(C) long-term impacts on P&K with reduced fertilizer;

(D) soil tests for nutrients under organic management;

(E) phosphorous accumlating plants;

(F) soil microbial activity under reduced inputs;

(G) soil physical properties (compaction in ridge till);

(H) overseeding for weed control;

(I) the effects of rotation practices;

(J) conservation tillage with reduced chemicals; and

(K) plant variety research for sustainable agricultural systems.

(3) should give special emphasis on the levels of pesticide and natural residue in food and water, their causes, and the impact of agricultural pesticide use on wildlife;

(4) should gather and analyze data concerning the economics of low-input agricultural production, including the economic impact of increased use of legumes and forage crops, the effect of increased legume production on groundwater quality, and the profitability of various low-input farm management systems;

(3) should increase funding for sustainable agricultural technology transfers; and

(6) should increase marketing research, particularly with respect to commodities produced using low-input agricultural methods.

SEC. 402. FARMERS CONSERVATION SERVICE.

(a) Establishment of Branch.—There is hereby established within the extension Service a branch named the "Farmers Conservation Service."

(b) HEAD OF BRANCH.—The Farmers Conservation Service shall report to the head of the Extension Service.

(c) PURPOSES OF BRANCH.—The Farmers Conservation Service shall provide research, analysis, and assistance to farmers attempting to implement low-input agricultural practices.

(d) SPECIFIC DUTIES.—Among its other duties, the Farmers Conservation Service shall—

(1) research and re-issue old bulletins of the Extension Service concerning sustainable agricultural methods of production;

(2) coordinate funding for sustainable agricultural technology transfers; and

(3) develop standards for, and teach—

(B) on farm research;

(C) chemical application by customs applicators (including education concerning groundwater and surface water contamination by pesticides);

TITLE V—MISCELLANEOUS

SEC. 501. ORGANICALLY GROWN CERTIFICATION PROGRAM.

(a) CERTIFICATION PROGRAM.—The Secretary of Agriculture shall establish and carry out a program to provide for the official certification and labeling of agricultural commodities and products that were produced using organic practices.

(b) VOLUNTARY BASIS.—Participation in the program established by this section shall be on a voluntary basis.

(c) LEVEL.—The Secretary shall cause a label to be affixed to commodities that are determined to have been produced using organic farming practices. The label shall state that the product is certified by the United States Department of Agricultural as being organically grown.

(d) REGULATIONS.—The Secretary shall issue regulations to carry out the provisions of this section, including regulations defining the term "organically grown" as including commodities produced using agricultural practices and systems that reduce inputs and conserve the soil and water and produced without the use of artificial irradiation, synthetic pesticides, synthetic plant or soil amendments, or fertilizer materials except natural organic fertilizers or as specifically allowed by the Secretary.

(e) APPROPRIATIONS.—There are hereby authorized to be appropriated without fiscal year limitation such sums as may be necessary to carry out the provisions of this section.

SEC. 502. ISSUANCE OF REGULATIONS.

To the extent not specifically provided for elsewhere in this Act, the Secretary of Agriculture is authorized to issue regulations as determines necessary to carry out the provisions of this Act.

SEC. 503. AUTHORIZATIONS OF APPROPRIATIONS.

There are hereby authorized to be appropriated, without fiscal year limitation, such sums as may be necessary to carry out the provisions of this Act.

SEC. 504. EFFECTIVE DATE.

Unless otherwise specifically provided for, the provisions of this Act shall become effective upon the date of enactment.

By Mr. THURMOND:

S. 2899. A bill to require the Administrator of Veterans' Affairs to construct a medical research center for the Veterans' Administration and the Medical University of South Carolina in Charleston, SC; to the Committee on Veterans' Affairs.

VETERANS MEDICAL RESEARCH CENTER IN CHARLESTON, SC

Mr. THURMOND. Mr. President, I am pleased to introduce legislation authorizing the construction of a joint Veterans' Administration—Medical University of South Carolina Research Center in Charleston, SC.

Our country places a high priority on the well-being of our veterans—and rightly so. After all, veterans have kept our country free. Since 1930, the Veterans' Administration has provided numerous benefits and health care services to the men and women who have worn the uniform. The bill I am introducing today will further VA health care by authorizing a partnership providing for the joint construction, ownership, management, and use of a medical research center by the Veterans' Administration and the Medical University of South Carolina. This joint research center will provide state-of-the-art medical research into the causes and treatment of diseases that claim the lives of thousands of veterans annually, including, but not limited to, hypertension, chronic heart disease, Alzheimers' disease, diabetes, and crippling arthritis. The combined talent and resources of the existing Charleston VA Medical Center and the Medical University of South Carolina will provide the momentum to make great strides forward in medical research, not only for the veterans of this country, but for all Americans.

Under this legislation, the Medical University of South Carolina will be an equal partner with the VA in this project. They will provide one half of the costs of constructing and equipping the center, and one half of the operations and maintenance expenses. In addition, the medical university will provide the land for construction of this facility.

This new medical research center will maximize the strengths of the medical university and the existing VA medical center by combining the basic science labs of the university with the disease-oriented research expertise of the VA. The medical research center will consist of laboratories for VA research in geriatrics, diabetes, heart disease, arthritis, and connective tissue disorders; laboratories for molecular and cellular biology; laboratories for epidemiology, neurosciences, neonatal, prenatal, and childhood development programs; and shared meeting room facilities.

This facility will free up space in the already crowded VA medical center facility. Accordingly, it will increase by approximately 10 percent the number of critical care beds available for the use of South Carolina veterans.

Mr. President, both the medical university and the Veterans' Administration bring demonstrated records of achievement into the partnership. The medical university was founded in 1824 as the College of Medicine, and is the oldest medical school in the South. For over 160 years, it has been educating and training doctors, nurses, and other health care professionals. It is comprised of six colleges, and a major teaching hospital. The university also maintains numerous clinical affiliations throughout South Carolina. Similarly, the VA medical center in Charleston has developed a rapidly expanding disease research program, with a specific focus on heart disease, neurological disorders, diabetes, and arthritis. With the addition of the center, research can be expanded into the area of geriatrics as well.

Finally, Mr. President, the State of South Carolina strongly supports the development of this joint research center. The Governor of South Carolina, Carroll Campbell, endorses this legislation, and the State of South Carolina, in conjunction with the medical university, is committed to providing up to $12 million for construction and equipment. In addition, I have received a letter of support from Dr. Thomas Rowland, Jr., the president of the South Carolina Medical Association. Mr. President, this project provides an excellent opportunity for the Federal and State government to work hand-in-hand on a very, very worthwhile endeavor. I commend this joint partnership to my colleagues.

Mr. President, I ask unanimous consent that copies of the aforementioned letters, as well as the text of this legislation, appear in the RECORD immediately following my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2899

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONSTRUCTION OF MEDICAL RESEARCH CENTER FOR THE VETERANS' ADMINISTRATION AND THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, CHARLESTON, SOUTH CAROLINA.

(a) CONSTRUCTION REQUIRED.—Subject to subsection (b), the Administrator of Veterans' Affairs shall construct, at the Veterans' Administration Medical Center and the Medical University of South Carolina in Charleston, South Carolina, a building to be used as a medical research center and shall appropriately equip such building for such use. The Administrator shall construct such building only on land provided by the Medical University of South Carolina.

(b) COST-SHARING ARRANGEMENT.—(1) The construction and equipping of a medical research center pursuant to subsection (a) may be carried out only if the Administrator of Veterans' Affairs, the President of the Medical University of South Carolina, and the Governor of South Carolina enter into a funding agreement described in paragraph (2).

(2) Any funding agreement referred to in paragraph (1) shall provide for—

(A) the Administrator to pay one-half of the cost of constructing and equipping the medical research center authorized by subsection (a); and

(B) the State of South Carolina and the Medical University of South Carolina to pay one-half of such cost.

(3) The Administrator may include in any such funding agreement such terms and conditions as the Administrator considers necessary to protect the interests of the United States.

(4) The Administrator may accept payments from the State of South Carolina and the Medical University of South Carolina pursuant to the funding agreement and apply the amounts so paid to defray the cost of constructing and equipping the medical research center pursuant to subsection (a).

SEC. 2. PURPOSE OF THE MEDICAL RESEARCH CENTER.

Any medical research center constructed pursuant to section 1 shall be used for medical research activities, including medical research regarding geriatrics, diabetes, heart disease, arthritis, and connective tissue disorders.

SEC. 3. JOINT OWNERSHIP, MANAGEMENT, AND USE OF MEDICAL RESEARCH CENTER.

The Administrator may enter an agreement with the President of the Medical University of South Carolina that provides for joint ownership, management, and use of the medical research center by the Veterans' Administration and the Medical University of South Carolina. The Administrator may include in any such agreement such terms and conditions as the Administrator considers necessary to protect the interests of the United States.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

(a) AMOUNT AUTHORIZED.—There is hereby authorized to be appropriated $12,000,000 for the Veterans' Administration share of the cost of carrying out section 1.

(b) AVAILABILITY.—Funds appropriated pursuant to subsection (a) shall remain available until expended.

STATE OF SOUTH CAROLINA,
OFFICE OF THE GOVERNOR,
Columbia, SC, October 11, 1988.

Hon. STROM THURMOND,
U.S. Senate, Washington, DC.

DEAR SENATOR THURMOND: I have recently reviewed your proposed bill to construct a medical research center for the Veterans' Administration and the Medical University of South Carolina in Charleston. I enthusiastically support this legislation.

As you are aware, my top priority for South Carolina is economic development. Without this development we cannot expect our per capita income to rise and to approach the national average. The Universities of our State have been assisting in our economic strategies by working to increase their research base and encourage economic activity related to specified research areas of strength in their respective institution.

Senator, no one knows better than you the needs of the Veterans and of the need for improving the health of our citizens. The Veterans' Administration Medical Center in Charleston is conducting excellent research and they have requested and demonstrated a need for additional space for at least a decade. In addition, the Medical University has as its first priority a research facility, and in our state's recent Bond Bill we approved funding for the Medical University to begin architectural planning. External research at the University has grown dramatically the past several years and they now have grants of over $18 million annually. By constructing a joint facility, the Veterans and South Carolinians receive more "bang for the buck". I fully support the legislation for the following reasons:

The Veterans Administration Medical Center in Charleston and the Medical University of South Carolina can demonstrate the need for valuable research space.

The Veterans Administration Medical Center and the Medical University of South Carolina have excellent investigators and are conducting medical research of importance to our state and nation.

The Veterans Administration Medical Center and the Medical University of South Carolina have a long relationship of cooperation which strengthens the services provided by both organizations.

South Carolina and our nation need to continue to diversify the economic mix and basic research in an area with high pay off potential to keep us competitive and productive.

South Carolina has a large veteran and retirement population and much of the research to be conducted at this facility will relate directly to the health of these groups.

It makes "good sense" to share and utilize expensive research equipment and space when possible and this facility will provide for this partnership.

Senator, again you have my full support in this endeavor and please do not hesitate to call if I can be of assistance.

Sincerely,

CARROLL A. CAMPBELL, Jr.,
Governor.

MEDICAL UNIVERSITY OF
SOUTH CAROLINA,
Charleston, SC, October 7, 1988.

Hon. STROM THURMOND,
Senate Office Building, Washington DC.

DEAR SENATOR: It is my pleasure to serve as Vice Chairman of the Medical University of South Carolina's Board of Trustees, as well as this year's President of the South Carolina Medical Association. On behalf of these two organizations, I wish to thank you for the many efforts you and other members of the South Carolina Delegation do to assist us in improving the health care of South Carolinians.

I have had the opportunity to review the legislation that will authorize the construction of a research facility to be utilized by the Charleston Veteran's Hospital and the Medical University of South Carolina. I fully support the legislation.

Through cooperation of this nature, the Federal Government and State Government can maximize their investment and encourage scientific collaboration and discovery while better serving the veterans and other citizens of our State and Nation. Senator, I do not need to remind you of the need for medical research in our State and Nation and the need to provide better health care to the veterans of this nation. As the veteran population grows in South Carolina, as the clinic in Savannah, Georgia refers a larger number of veterans to the Charleston facilities, demand for clinical space will rise. By constructing a joint research facility, valuable space in the present hospital which is occupied with research laboratories, will be freed for clinical service. The present V.A. research will also be enhanced by a closer working relationship with Medical University physicians and scientists.

Again, thank you for your interest in improving the health care of all our citizens and for initiating this joint program. This joint facility should prove to be an asset for our State and Nation.

Sincerely,

THOMAS C. ROWLAND, Jr., M.D.

By Mr. BINGAMAN (for himself and Mr. GRAMM):

S. 2900. A bill to amend title 10, United States Code, to require the Under Secretary of Defense for Acquisition to provide for the systematic review and revision of acquisition regulations, to designate the Under Secretary as the principal adviser to the Secretary of Defense on major defense acquisition programs, and to require the Secretary of Defense to prescribe regulations to strengthen the prevention of contract fraud in Department of Defense procurements; referred to the Committee on Armed Services.

DEFENSE ACQUISITION IMPROVEMENT AMENDMENTS

● Mr. BINGAMAN. Mr. President, today I am introducing the Defense Acquisition Improvement Amendments of 1988. This legislation is based on our recent hearings on the acquisition process before the Armed Services Committee and the Subcommittee on Defense Industry and Technology, which I chair. I am pleased that Senator GRAMM, the ranking minority member of the subcommittee, has joined me in introducing this legislation.

Our hearings represented a bipartisan attempt to review the allegations of fraud in order to identify weaknesses in the procurement system. Because the Justice Department investigations were at a very early stage, we wanted to ensure that the hearings were conducted in a manner that did not interfere with the investigations or any subsequent prosecutions or administrative actions.

We received testimony from the Comptroller General, the Secretary of Defense, and a variety of outside experts, including David Packard, Jim Woosley, J. Ronald Fox, Richard Stubbing, and Lawrence Korb. In our subcommittee, Eleanor Spector, the Deputy Assistant Secretary of Defense for Procurement, provided us with a very detailed and informative review of the interim steps undertaken by DOD in response to the investigation. Our subcommittee also received a comprehensive briefing on acquisition issues from the DOD inspector general, which revealed major defects in the Department's management of the acquisition process.

The hearings demonstrated that there is an urgent need for the senior leadership of the Department to undertake a more aggressive role in achieving meaningful procurement reform on a variety of issues, including management of source selection information, conduct of the selection process, guidance on use of consultants, identification and evaluation of conflicts of interest, and improvements in the recruitment, retention, and training of acquisition personnel. There was also general agreement among the witnesses, including those most critical of the Department, that major legislative changes should not be undertaken until the details of the investigation are made public and the implications for the acquisition system are reviewed in a comprehensive fashion.

It is appropriate, however, to identify those issues which should receive immediate consideration by the Department, and which may require legislation if the Department does not take timely and effective action. The bill I am introducing today sets forth a number of these issues. It is my intent, by introducing a bill at this time, to ensure that there is an ample opportunity for consideration of these issues by the Department and the public prior to the next session of Congress.

The testimony we received from the inspector general last month indicated that there are significant deficiencies in the Department's ability to accomplish procurement reform in a timely fashion. To improve management of the process, the proposed legislation would require the Under Secretary, on an annual basis, to establish goals and objectives for procurement reform, to identify those regulations requiring review or implementation, and to establish specific dates for accomplishment of regulatory actions.

The legislation would also require the Under Secretary to complete action on nine specific items by June 1, 1989. Eight of these items have been identified as problem areas by the inspector general. I ask unanimous consent that a copy of her testimony be included at the end of my statement. The other matter pertains to the management of the Defense Acquisition Regulatory Council, and is designed to ensure that the Council is managed by, and responsive to, the needs of the Under Secretary of Defense for Acquisition. Although it is important that the Council take into account the needs of the Military Departments and the Defense Agencies, the Under Secretary should not be dependent on individuals who are responsible to officials outside the Under Secretary's chain of command. The issues are similar to those that we addressed in the Goldwater-Nichols Act with respect to the Joint Chiefs of Staff and the organization and management of the Joint Staff. It is essential for the Under Secretary to have an organization that brings him the best advice on acquisition policy, rather than advice that is the product of logrolling and organizational politics among subordinate organizations.

The proposed legislation also makes a change in the statutory charter of the Under Secretary of Acquisition to make it clear that he is the principal adviser to the Secretary of Defense on the resource allocation implications of all acquisition programs. At the present time, there is concern that the Department may have largely replicated the congressional process of authorization and appropriation by making the Under Secretary dominant in approving programs but providing others with the primary responsibility for addressing the funding of those programs.

In the Congress, while there is still room for improvement, we have made significant strides in minimizing the differences between the Armed Services and Appropriations Committee. The Department—which has much greater flexibility to remove artificial distinctions between program approval and funding—should now act decisively to ensure that the Under Secretary is the primary adviser to the Secretary on the resource allocation implications of all acquisition matters.

It is essential that decisions of the Defense Acquisition Board be closely integrated with the resource allocation procedures reflected in matters such as deliberations of the Defense Resources Board, the budget process, and the development and revision of the 5-year defense program. Likewise, when cost or schedule variances are identified in the Selected Acquisition Reports or other analytical procedures required by chapter 144 of title 10, United States Code, it is imperative that the Secretary have timely and effective input from the Under Secretary on current and future resource allocation implications.

The legislation also addresses specific procurement fraud problems by requiring application of the Department's competitive information certificate and the profit reduction clause to all competitive contracts with a value greater than $100,000. At the present time, these requirements are placed only on a handful of companies who have been identified as a result of the current fraud investigation.

I would again like to emphasize that I am making these proposals to stimulate discussion and debate well in advance of any likely legislative action. Both the certificate and the profit reduction clause reflect recent initiatives, and there is a need for comprehensive consideration of these concepts.

The competitive information certificate requires a bidder to certify that the company has not obtained any sensitive source selection information—for example, internal Government information that would give that bidder an unfair advantage over other competitors—and has not engaged in any collusive bidding practices with other firms. This appears to be a useful deterrent to fraud, although it does not address the issue of what types of information should be restricted and the procedures that should be used for disclosing internal Government information to all bidders. The utility and consequences of applying this requirement to all competitive contracts is an issue worth exploring in the next Congress.

The profit reduction clause permits the Government to reduce the profit component of the contract price if the contractor is convicted of fraud or a similar offense or has filed a false or materially incomplete or inaccurate competitive information certificate. The profit reduction clause is intended to respond to a perceived gap in the Government's menu of remedies when termination for default or suspension or debarment is deemed to be impractical because the contract is well underway and there is a critical need for the item. Major issues remain to be addressed, however, including the criteria that should be applied in determining whether and by how much the profit should be reduced and what procedures should be used in making the determination. Again, by setting forth the proposal at this time, I am hopeful that we can receive useful comments prior to the next Congress.

In addition to the items contained in this bill, there are a number of other initiatives we pursued this year which should receive prompt consideration in the next Congress. These include:

The alternative personnel system experiments contained in S. 2530, which was approved by the Senate but which has not yet received attention in the House. If it appears necessary to move away from Governmentwide approach, we will consider a version of this bill that applies only to the Department of Defense in order to provide the Department with the flexibility that it needs to manage a high quality civilian work force.

Granting authority to the Department to attract and retain a specified number of critical scientists, engineers, and acquisition personnel in the Government's civilian work force without requiring them to forfeit their military retired pay—a proposal endorsed by the DOD inspector general.

Revision of the rules governing the allowability of legal fees incurred by Government contractors. I have worked closely with Senators GRASSLEY and LEVIN on a revision which may well be included as an amendment to the Major Fraud Act. If that legislation is not taken up this year, then we shall consider it in the next Congress.

Streamlining small business procedures regarding negotiation of subcontract plans and issuance of certificates of competency, as set forth in the Senate-passed version of the National Defense Authorization Act for fiscal year 1989. These items were deleted in conference in the expectation that they would be considered by the Small

Business Committees. Whether we act on those measures in the Armed Services Committee next year will depend on actions taken by the Small Business Committees.

In addition to these items, we have directed the Under Secretary of Defense, in section 809 of the fiscal year 1989 National Defense Authorization Act, to provide the Congress with proposed acquisition reform legislation not later than December 1, 1988. I look forward to receiving significant proposals that will provide the basis for hearings and action on streamlining the acquisition process in the next Congress.

Mr. President. I ask unanimous consent that the text of our bill be included in the Record, at the end of my statement.

There being no objection, the testimony and the bill was ordered to be printed in the Record, as follows:

S. 2900

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE

This Act may be cited as the "Defense Acquisition Improvement Amendments of 1988".

SEC. 2. PLANNING AND EXECUTION OF ACQUISITION REFORM

(a) Annual Program for Review and Revision of Acquisition Regulations.—Section 133 of title 10, United States Code, is amended by adding at the end the following:

"(f)(1) Not later than February 1 of each year, the Under Secretary of Defense for Acquisition shall establish a program for review, revision, and implementation of regulations affecting the acquisition process of the Department of Defense.

"(2) In establishing a program under paragraph (1), the Under Secretary shall—

"(A) specify the policy goals and objectives of the Under Secretary;

"(B) identify the regulations and any proposed regulations to be reviewed, revised, or implemented in furtherance of such policy goals and objectives; and

"(C) prescribe a schedule for the drafting, coordination, and issuance of regulations in accordance with the program.".

(b) First Annual Program.—(1) The first program under section 133(f) of title 10, United States Code (as added by subsection (a)), shall be established and commenced not later than February 1, 1989.

(2) The Under Secretary of Defense for Acquisition, in conducting such program, shall ensure that final regulations on the following matters are prescribed not later than June 1, 1989:

(A) Controls over advisory and assistance services acquired or to be acquired by contract, including—

(i) procedures for improved tracking and reporting of costs;

(ii) procedures that ensure compliance with statutory limitations on use of such services.

(B) Standards and procedures to ensure that any audit of a Department of Defense contractor's internal operations initiated by such contractor is complete, is conducted by auditors independent of such contractor, and is structured to promote integrity in the acqusition process.

(C) Procedures that provide for the identification and elimination of duplicative oversight actions and requirements, including procedures for improved coordination and elimination of duplicative actions by Department of Defense insurance review specialists and auditors.

(D) Revised Defense Acquisition Regulation Council procedures that ensure that—

(i) the primary responsibility for each action of the Council is assigned to an officer or employee of the Office of the Under Secretary of Defense for Acquisition;

(ii) any officer or employee of a military department or a Defense Agency assigned or detailed to serve on the Council or any component of the Council is subject only to the authority, direction, and control of the Under Secretary of Defense for Acquisition with respect to the service of that person on the Council or such component;

(iii) a completion date is specified for each action to be taken by the Council; and

(iv) whenever it becomes apparent that completion of such an action will be delayed beyond the specified date, the Under Secretary is promptly informed of the delay, the reasons for the delay, and the date on which completion of such action is expected.

(E) Appropriate coverage of subcontractors under suspension and debarment procedures.

(F) With respect to exemptions from the requirement to submit certified cost or pricing data—

(i) a requirement for verification of the validity of any contractor assertion of the catalog pricing exemption in the case of a contract in excess of $1,000,000; and

(ii) authority for adjustment of the price of a contract in the event that a contractor's assertion of the commerciality exemption is invalid.

(G) Implementation of revised work measurement standards that promote improvements in the productivity and efficiency of contractor operations.

(H) Implementation of revised cost estimating systems.

(I) Guidance to ensure that, in the case of each split-source procurement in which price competition is not the primary factor in awarding contracts under the procurement—

(i) the Department of Defense obtains cost or pricing data in connection with such contracts; and

(ii) a defective pricing recovery clause is included in such contracts.

(3) Standards and procedures prescribed under paragraph (2)(B) shall be those standards and procedures determined appropriate by the Under Secretary after consultation with the Chairman of the Securities and Exchange Commission.

(4) In this subsection, the terms "military department" and "Defense Agency" have the meanings given such terms in paragraphs (7) and (44), respectively, of section 101 of title 10, United States Code.

SEC. 3. MAJOR DEFENSE ACQUISITION PROGRAMS

Section 133(c) of title 10, United States Code, is amended—

(1) by striking out "and" at the end of clause (2);

(2) by striking out the period at the end of clause (3) and inserting in lieu thereof "; and"; and

(3) by adding at the end the following:

"(4) is the principal advisor to the Secretary of Defense on the resource allocation implications of all acquisition programs."

SEC. 4. CONTRACT FRAUD MATTERS

(a) Competitive Information Certification.—The Secretary of Defense shall prescribe regulations which require each person submitting a bid or proposal for a covered contract to certify the following:

(1) That, with the exception of any information described in an attachment to such certification and any information the person reasonably believes was made generally available to prospective offerors, the person has not knowingly obtained, directly or indirectly, from an officer or employee of the Federal Government any information, in writing or otherwise, relating to such bid or proposal (including any extract or account of any such information) which—

(A) was submitted to the Department of Defense by an offeror or potential offeror in response to a solicitation for bids or proposals for such covered contract;

(B) is marked with an assertion by the offeror or potential offeror submitting such information that the information is subject to a privilege against disclosure;

(C) is marked or otherwise identified by the Department of Defense, pursuant to law, as classified source selection sensitive or for official use only; or

(D) is information the disclosure of which to such person by an officer or employee of the Federal Government would, under the circumstances, violate any law.

(2) That the person—

(A) determined the prices in the bid or proposal independently and without engaging, for the purpose of restricting competition, in any consultation, communication, or agreement, directly or indirectly, with any other offeror or competitor on any matter relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate those prices;

(B) has not knowingly disclosed, directly or indirectly, to any other offeror or competitor the prices in the bid or proposal before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) except as required in accordance with law; and

(C) has not attempted to induce any other person to submit or not to submit an offer for the purpose of restricting competition.

(3) That the person making the certification has attached to such certification an accurate description of the internal review forming the basis for the certification.

(b) Profit Reduction for Illegal or Improper Activity.—(1) The Secretary of Defense shall require in regulations that each covered contract contain a clause described in paragraph (2).

(2) A contract clause referred to in paragraph (1) shall permit the Secretary of Defense to reduce the contract price by the amount of any anticipated profit determined as provided in paragraph (4) if—

(A) a person or business entity is convicted of violating any of the following provisions of title 18, United States Code, for any act committed in connection with or relation to the obtaining of the contract: sections 201-224 (relating to bribery, graft, and conflicts of interest), section 371 (relating to conspiracy), section 641 (relating to theft of public money, property, or records), section 1001 (relating to false statements), section 1341 (relating to fraud), or section 1343 (relating to fraud by wire); or

(B) the Secretary of Defense determines that—

(i) the competitive information certification submitted in connection with award of the contract was materially false at the time the certification was submitted; and

(ii) without regard to the knowledge and belief (at the time of the submission of such certification) of the person submitting such certification, the certification was materially incomplete or inaccurate.

(3) Before making a determination to reduce a contract price in accordance with a contract clause described in paragraph (2), the Secretary shall transmit to the contractor a written notification that a reduction of the contract price is being considered. The notification shall contain a statement of the basis for the proposed reduction. The Secretary shall give the contractor at least 30 days (following the date on which the notification is transmitted to the contractor) in which to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The Secretary may, upon good cause shown, determined to reduce the contract price by less than the amount of anticipated profit determined under paragraph (4).

(4) The amount of anticipated profit referred to in paragraphs (2) and (3) shall be—

(A) in the case of a cost-plus-fixed-fee contract, the amount of the fee specified in the contract at the time of the award;

(B) in the case of a fixed-price-incentive-profit or cost-plus-incentive-free contract, the amount of the target profit or fee specified in the contract at the time of the award; or

(C) in the case of a firm-fixed-price contract, the amount of the anticipated profit determined by the contracting officer responsible for such contract—

(i) after notice to the contractor and opportunity for the contractor to comment; and

(ii) on the basis of records or documents in existence before the date of the award of the contract.

(4) The rights and remedies of the United States provided in a contract clause in accordance with this subsection shall not be exclusive and shall be in addition to any other rights and remedies provided by law.

(c) DEFINITION.—In this section:

(1) The term "covered contract" means a competitive contract awarded or to be awarded by the Department of Defense if the price of such contract—

(A) in the case of an awarded contract, is $100,000 or more; or

(B) in the case of a proposed contract, is estimated to be $100,000 or more.

(2) The term "competitive information certification" means a certification submitted to the Department of Defense under regulations prescribed pursuant to subsection (a).

STATEMENT BY HON. JUNE GIBBS BROWN, INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

Mr. Chairman and Members of the Subcommittee, I am pleased to participate in today's hearing on DOD acquisition issues. My Deputy, Mr. Derek J. Vander Schaaf, is accompanying me this morning to lend his expertise to the discussions as well.

ACTIONS TAKEN AFTER ILL WIND

The disclosures earlier this year of investigations into the apparent misuse of contractor propriety data and the alleged bribery of government officials have deeply alarmed the Congress and the public. I can assure you, from first hand observation, that the Department of Defense is equally concerned and has strongly supported the thorough investigations of the Department of Justice, the Naval Investigative Service, and my office. Like you, I await the conclusion of the investigations and of the grand jury proceedings so that the full facts surrounding these cases can become public knowledge.

In the meantime, the Secretary of Defense has moved decisively with a series of actions to safeguard DOD from further criminal activity. The other DOD officials who are testifying here today will elaborate on the rationale for each of those actions; however, your invitation to me included a request that I also comment on certain of those measures.

At the outset, I want to make it clear that Secretary Carlucci has ensured my full awareness of the alternative actions being considered in response to the disclosures. In my statutory role as his chief advisor on fraud matters, I have met with him frequently—initially on almost a daily basis—to discuss the progress of the investigations and what information was becoming available on their results. The heads of the special task force which he established to formulate corrective actions—Dr. Costello and Ms. Buck—also attended. I have been able to offer my insights, based on my experience as the IG at three Federal agencies, as the decision making process progressed. Given the facts available to the DOD and to me when each of the corrective measures were decided upon, I had no objection to them or to the recent adjustments. I continue to support the Secretary's actions as reasonable interim measures.

Clearly, both the Executive Branch and the Congress will wish to explore issues resulting from the investigations in great depth. It will be some months before enough information is on hand to do that in a definitive way. Several of the issue areas are both complex and controversial and will not lend themselves to quick resolution.

I applaud the Subcommittee's initiative earlier this year to foster a productive dialogue between industry, the DOD and Congress regarding a wide range of acquisition issues. Without doubt, the Government cannot unilaterally solve problems such as the misuse of competitors' propriety data and conflicts of interest among consultants. As the initial disclosures occurred it was necessary for the DOD to act immediately. While detailed discussions with industry were impractical at that point, I believe it is now incumbent upon both the Government and industry to work together toward effective longterm solutions.

DOD ABILITY TO PROTECT ITSELF

Some critics have alleged that the DOD is incapable of fighting procurement fraud and waste successfully. Reasons given range from a perceived lack of "independence" for the DOD acquisition personnel or for my office to an alleged inability to take action against major weapons suppliers. I disagree completely. The "independence" issues are totally groundless. I am not impeded in any way by the Secretary of Defense in the performance of my duties. The record of the IG, DOD, over the past six years speaks for itself in terms of illustrating our objectivity and aggressiveness. Similarly, I see no need for more "independence" for acquisition officials, except perhaps that the DOD could do more to protect contracting officers from undue pressures from program offices.

Because certain contractors have such a dominant position in their particular market; indeed, because they may be the only available domestic source for specific defense technologies, they may appear to have immunity from punishment for wrongdoing. I disagree.

There are numerous actions which the Government can take in response to fraud, irrespective of the importance of the accused contractor in building a strong national defense. We can and do take a full range of administrative, contractual, criminal, and civil actions against suppliers who cheat, including suspension and debarment. Suspension and debarment actions can be "surgical," affecting only specific plants, divisions, or personnel of the company.

Historically, the problem has been convincing Government contracting personnel with the responsiblity to initiate those actions that such flexibility exists and is appropriate. However, with continued emphasis by my office on running an effective remedies program in the DOD, we are taking aggressive, successful action against a number of "critical" DOD contractors, many of whom are on the "Top 100" list of contractors.

CONSULTANT SERVICES

I would like to turn now to some of the specific problems confronting the DOD acquisition process, starting with the use of consultants.

The Deputy Inspector General testified on the use of contracted advisory and assistance services (CAAS) within the DOD in July 1988 before Senator Pryor's Subcommittee on Federal Services, Post Office and Civil Service. That hearing was useful in clarifying several issues related to the various types of consultants employed either by the Government or by industry. Those issues involve:

Defining who and what "consultants" are;

Misreporting of amounts for consultants to the Congress;

The use of contract consultants to perform personal services as mere substitutes for Government employees performing governmental functions;

The black market for contractor proprietary data, in which certain consultants appear to be active;

Frequent lack of competition in awarding both basic and following consulting contracts;

Government reimbursement of contractors for questionable consultant expenses; and

The lack of controls over consultants, including means of identifying conflict of interest.

Mr. Chairman, the fact that certain individuals may have resorted to illegal behavior, including bribery of Government officials, is not grounds for smearing either the entire CAAS activity of the Government acquisition workforce. Nevertheless, the Ill Wind revelations have focused renewed attention on the issues listed above—most of which are far from new. Some of them, such as the reporting problem, should not be terribly hard to deal with, but in the past there has not been the will to do so. In the first of what will be a series of three reports by the Audit Committee of the President's Council on Integrity and Efficiency, other participating inspectors general and I recommend that the Office of Management and Budget take the following actions:

Improve the tracking and reporting of costs by using an accounting system set up with CAAS codes;

Develop definitions for Federal Procurement Data System supply codes, and link appropriate codes to OMB Circular A-120 CAAS definitions; and

Establish a uniform training course and guide for all agencies to follow.

To address other aspects of the problem, we recommend that OMB:

Initiate a management oversight program within agencies to ensure compliance with agency and OMB directives on CAAS;

Develop and implement procedures to ensure that CAAS contracts are necessary and that in-house capability is not available; and

Remind program offices and contracting personnel of the need for competitive purchase of CAAS support.

The next two stages of the PCIE review will comply with U.S.C. Title 31 on a government-wide basis and will cover the management of CAAS, respectively.

The DOD also needs to tighten enforcement of the revolving door legislation. The General Accounting Office and my office have reported generally poor compliance in the past with post-government employment disclosure requirements and with DOD enforcement. We believe that the conflict of interest legislation over the past few years has moved in the right direction; however, our recent followup efforts indicate that the DOD still has not fully implemented its new standards of conduct regulations. One of the DOD actions being taken as a result of Ill Wind is, in fact, a review of what more needs to be done in that area, and the GAO has already started a followon audit on post-employment disclosure.

I support the general concept that consultants should have to disclose other clients before performing DOD work.

Regardless of whether the Government can get control over its own use of CAAS, the problems related to consultants hired by industry still remain. The first step—one which I recommended to Secretary Carlucci—is the ongoing special audit by the Defense Contract Audit Agency of consultant costs being charged to DOD contracts at a representative number of large contractors. The DCAA has selected 12 corporations with 60 divisions for review, and intends to provide a summary report to the Under Secretary of Defense for Acquisition by the end of October 1988.

The Government currently has no conflict of interest disclosure requirements for individuals or firms hired by other contractors as, say marketing consultants. To the best of my knowledge, neither does industry. It may be that the control of consultants hired in the private sector could be accomplished best through a combination of corporate internal controls (audits, disclosure rules, etc.,) in coordination with or supplemented by selective Government oversight. A sustained, serious, industry-wide commitment would be needed, however. One way to create an incentive—albeit negative—for such a commitment would be to expand the Competitive Information Certificate to all prime contractors. No in-depth studies of such alternatives have been done as yet. Until there has been such a review, I do not think it would be appropriate to attempt to spell out the pros and cons of such potential actions.

OTHER PROBLEM AREAS

All of us are deeply offended by such crass crimes as bribery of public officials, and surely more needs to be done to control the use of consultants by both the Government and industry, especially when personal or marketing services are involved. Hopefully the lessons learned from the Ill Wind revelations will ultimately result in constructive, lasting management improvements. I hope that the Ill Wind cases do not distract the DOD and the Congress from the wide spectrum of other DOD acquistion issues confronting us. The activities disclosed by Ill Wind—as distasteful as they are—need to be kept in perspective. The DOD has never been more effective than it is today in detecting and aggressively investigating procurement fraud. Fears that the DOD is an easy mark for criminals is simply not true—ironically, Ill Wind proves exactly that. Although some of the alleged wrongdoers were high ranking officials, who would be able to use their positions to circumvent many internal controls, they were found out. The catalyst in one key portion of the case was an ex-DOD employee who was given a fraud awareness briefing. Such training is, in fact, one of the many tools brought into much wider use by DOD in recent years to combat fraud and waste.

I doubt that any serious observer believes there are more than a handful of criminally inclined individuals in the tens of thousands of DOD acquisition personnel. That there are any is, of course, intolerable and we will spare no effort to expose them. Nevertheless, the chief causes of waste in the acquisition process are human error and indifference, not crime.

QUALITY OF ACQUISITION WORK FORCE

The basic causes for error are inadequate training, excessive turnover, poor morale, and the increasing difficulty in attracting top quality people to public service. I commend you, Mr. Chairman, for your Bill—S. 2530, the Federal Personnel Improvements Act—to help Federal managers to cope with these problems. I support that Bill and the various measures already being taken by DOD to improve the professionalism and effectiveness of procurement personnel. I would like to see even more done along the lines of providing additional waiver authority to allow DOD to hire military retirees without penalty. It is penny wise and pound foolish to lose many very skilled people, who are often virtually impossible to replace quickly with equally skilled personnel and who are frequently hired back under contract at much greater cost.

As Mr. Vander Schaaf testified before this Subcommittee last spring, we do not see tough revolving door legislation as a real cause of problems in recruiting top quality officials. With the proper degree of personal awareness, Government officials can function effectively while carefully recusing themselves from matters where conflict of interest considerations could arise. Most Government officials do not deal with more than a few companies on substantive contracting matters.

CONTRACTOR OVERSIGHT

Unresolved issues still remain with respect to how the Government can protect itself in the acquisition process.

Needless duplication and resulting inefficiency in the oversight of contractors by the DOD is one of those fundamental problems. My office pointed out the issue to the Packard Commission in early 1985. Contractors and the Commission's own review team provided additional examples, and the Commission recommended a drastic streamlining effort. The DOD established a task force to develop specific recommendations concerning 13 areas where apparent duplication exists. My office has a representative on the task force and we have strongly supported its goals. To be perfectly candid, however, there has been virtually no further progress since Mr. Vander Schaaf described the task force's very limited accomplishments to you last spring. That is very disappointing and I am pessimistic about how much progress the DOD will be able to report to the Congress by December 1988, when such a report is required by law.

Industry tends to call all DOD reviewers "auditors." However, the duplication problem appears to arise chiefly from non-audit organizations. In fact, the DCAA is actually underresourced to carry out several key aspects of its mission, even though the agency's strenght grew substantially in the mid-1980's. Reductions were made to DCAA in fiscal year 1988 and the agency could lose another 900 workyears in fiscal year 1989. I oppose further reductions of DCAA—whether they be arbitrary cuts made just because DCAA is a defense agency or cuts made to reduce the contract audit effort intentionally. Further cuts would seriously impair our ability to guard against overcharging and waste. It is vitually important that we maintain a strong contract audit effort. At the present time, there is already a $150 billion backlog of unaudited incurred costs, and it is growing. Similarly, the DCAA is hard pressed to maintain a sufficient defective pricing audit effort, and currently audits no more than 3 percent of DOD contracts to which the Truth in Negotiations Act applies. We recently calculated that the Government recovers $19 for every dollar spent on defective pricing audits. It is interesting to note that the return for every audit dollar spent detecting defective pricing remained relatively constant at 19:1 between fiscal year 1983 and fiscal year 1988, even when we more than doubled the audit time devoted to this area. That rate of payoff clearly indicates the merit of a vigorous audit effort against defective pricing.

Since 1982, DCAA reports have resulted in savings or cost avoidance of $44 billion and benefited every DOD procurement program. Recognizing that it would be hard to finance all of the additional audit positions needed to accomplish the mission—even if there were some offsetting reduction based on the duplication of oversight review—we welcome the interest expressed by some segments of the defense industry in contractor self-governance. We would view the development of strong, effective internal controls by contractors as a tremendous benefit to both government and industry. Government would not have to try to prevent or detect every problem through direct oversight and could concentrate our scarce oversight resources where they were most needed. Industry could improve its public image, prevent problems which affect its overall operations as well as its government contracts, and could enjoy less direct government oversight in those areas where good controls have been demonstrated. The word "demonstrated" is crucial—we need enough access to contractor internal control systems and records to meet professional auditing standards before classifying internal management systems as effective.

I am pleased to report that the Contractor Risk Assessment Guide, which incorporates these concepts, has been finalized through a joint DOD/industry effort. The Guide will be forwarded to the Secretary of Defense for formal initiation of the program within the next few days.

Before leaving the topic of contractor self-governance, I would like to say a few words about the Voluntary Disclosure Program, which may not be fully understood by the Congress and the public.

I want to make it clear that this is no amnesty program, and never has been represented as such. The purpose of the DOD Voluntary Disclosure Program is to afford contractors the means to report wrongdoing identified through self policing activities. The Voluntary Disclosure Program provides a framework for the Government's evaluation of criminal, civil, and administative actions appropriate to the situation. In return for disclosing potential fraud and fully cooperating in any Government audit and investigation of the matter, the Government generally allows the contractor the oportunity to conduct an internal investigation which we will then attempt to verify in an expeditious manner, although we reserve the right to commence our investigation at any time. The DOD further agrees generally not to initiate administrative actions until the verification process is completed.

Coordination of information is essential to the expeditious and effective resolution of the matter. By keeping all responsible Government parties informed as to the status of the matter, problems identified may be more quickly resolved. Government representatives are thus better equipped to determine what, if any, criminal, civil, and administrative remedies are appropriate.

Our policies in implementing this program have been described in letters from the Deputy Secretary of Defense directly to defense contractors. The Assistant Inspector General for Criminal Investigations Policy and Oversight is the designated point of contact for voluntary disclosures of potential criminal or civil fraud issues. Matters not involving fraud are to be presented to the appropriate contracting officer or DCAA auditor.

As of August 31, 1988, 109 matters have been disclosed to my office and accepted, at least preliminarily, into the program. Total funds recovered to date are over $53 million.

DOD NOT USING EXISTING AUTHORITY

Mr. Chairman, another broad theme I want to address is that, by and large, the DOD already has ample authority to address nearly all of the most persistent acquisition problems. There are several areas in which I do not think the Department has used its existing authority aggressively enough.

In some cases, organizational or procedural obstacles are allowed to exist even though they limit the effective use of authority by senior officials.

I have mentioned a couple examples such as the failure to enforce existing post-employment disclosure requirements. I want to give you some others.

DEFENSE ACQUISITION REGULATION CHANGES

The Defense Acquisition Regulation Supplement (DFARS), which implements the Federal Acquisition Regulation (FAR), is the pivotal document for acquisition policy and guidance in the DOD. Changes are controlled by the DAR Council, in which each major procurement component is represented. The strengths of the arrangement, historically, have been that individuals assigned to the Council have been extremely knowledgeable and that the system allows all views to be aired. The weaknesses are that the Council can be interminably slow to act and that it is allowed to thwart top DOD management initiatives. A few specific examples illustrate the point:

Suspension and debarment procedures for subcontractors

My office has been pressing since 1984 for actions to close various loopholes in the suspension and debarment process, which is one of the primary tools for protecting the Government's interests. In May 1986, the Assistant Secretary of Defense (Acquisition and Logistics) advised the Secretary of Defense that action would be taken to deal with various problems, including the fact that subcontracting opportunities remain open for suspended or debarred contractors. In 1987, the GAO reported that this loophole had not yet been closed, and the DOD responded that it would be. In March 1988, the DAR Council adopted language to deal with various other suspension and debarment concerns, but declined to extend suspension and debarment regulations to subcontractors. The Under Secretary of Defense for Acquisition supported the Council. I advised the Under Secretary that I strongly disagreed with the reversal of the DOD position, and we have been trying to work out mutually acceptable language. The matter remains unresolved.

Inappropriate cost or pricing data exemptions

Contractors may obtain exemptions from the requirement to submit certified cost or pricing data if their proposed prices are based on established catalog or market prices of commercial items sold in substantial quantities sold to the general public. Our 1987 audit (Report No. 87-210, "Catalog and Market Priced Contracts") found that one out of every three exemptions approved did not meet commerciality criteria on the basis of sales data submitted. Contracting officers routinely accepted contractor claims for exemption from submitting cost or pricing data without adequate verification of the reported commercial sales data and catalog and market prices. Furthermore, once the commerciality exemption was granted, the FAR did not provide the contracting officers with remedies to adjust prices and recoup the amount of any resultant overpricing.

We recommend a revision to the acquisition regulations to require verification of contractor catalog pricing exemption claims for contracts exceeding $1 million. We also recommended revisions to permit contract price adjustments when a contractor's representation of commerciality is invalid.

Although the Assistant Secretary of Defense (Acquisition and Logistics) agreed with our recommendations on January 14, 1987, the revisions have not been made by the DAR Council.

Work measurement

In 1986 my office conducted one of the more comprehensive studies ever done on the use of work measurement standards and engineered labor hours in the defense industry. We concluded that there is vast potential for improving productivity and efficiency in contractor operations through more vigorous application of these modern management tools. Expanded use of work measurement holds exciting possibilities for driving down overall costs—a far more significant target than is mere profit control, which unfortunately has tended to attract the most attention in the Congress and GAO. The final report recommended that DOD establish a policy requiring work measurement systems based on engineered labor standards for certain prime and subcontracts. The recommendations contained specific contracting officer and contractor responsibilities, accuracy criteria for the engineered labor standards, and requirements for revisions to MIL-STD-1567A and specialized training programs.

In May 1987, Secretary Weinberger advised Senator Grassley that "most if not all" of our recommendations would be adopted. In November 1987, the GAO issued a report endorsing our conclusions and recommendations. The DOD again responded our conclusions and recommendations. The DOD again responded that implementing DAR Council action was under way. Unfortunately, proposed DFARS language was not published until August 1988, and we find the proposed language to be seriously inadequate and not in accordance with the previous DOD commitments on the subject.

Pension and insurance reviews

Contractor pension and insurance systems comprise one area in which Government oversight is duplicative and therefore inefficient. The GAO noted a lack of coordination among insurance DOD review specialists and auditors during a 1983 review. As a result, a DAR Council case was initiated in March 1984 to change the regulations to prescribe better coordination. The case remains incomplete and the lack of coordination persists.

At times the problem is at least partially at the Government-wide level, not solely within the DAR Council. Examples are as follows:

Estimating systems

In May 1986 my office recommended a number of changes in the regulations to address the longstanding problem of inadequate contractor cost estimating systems. The GAO and senior DOD managers supported those recommendations. Nevertheless, it still took two years for the DAR Council to issue revised DFARS coverage. Unfortunately, the Office of Federal Procurement Policy then declared an important portion of the new guidance—a description of what constitutes an adequate estimating system—to be excessively prescriptive and not in accordance with the Paperwork Reduction Act. The OFPP made this decision without contacting my office and in spite of the fact that there were no objections raised when the cost estimating system guidelines were published in the Federal Register. I strongly support the recent appeal by the DOD to OMB on the matter.

Tax information returns

In 1986 my office and the President's Council on Integrity and Efficiency pointed out widespread Executive Agency noncompliance with Internal Revenue Code requirements for filing Forms 1099, Information Returns, to report certain nonwage payments made to individuals, partnerships and medical corporations. A major factor contributing to the noncompliance was an inability to identify recipients of the payments that qualify for 1099 reporting. Failure to file forms 1099 increases risks that taxpayers will not report such taxable income. Studies by the IRS have shown that taxpayers report about 97.4 percent of income when Forms 1099 are issued, compared to about 83.2 percent when they are not. Based on IRS projections, the proper filing of Forms 1099 by Executive Agencies could result in additional tax revenues of $500 to $600 million. The reports recommended that the Federal Acquisition Regulation be revised to permit the collection of data—Taxpayer Identification Numbers and legal taxpayer status of contractors/venders receiving reportable payments—essential for proper filing of Forms 1099.

Although the FAR revision was initiated in 1985, it is still not complete. For the past several months, further delays in completing the revision have been caused by legal concerns over the application of the Privacy Act to the collection of Taxpayer Identification Numbers. The DOD and other Federal agencies will continue to be in noncompliance until the issue is resolved.

We have urged DOD acquisition officials to issue interim guidelines for DOD implementation—albeit without success. Most recently, the DOD Comptroller has prepared a request to OMB for intervention to get the FAR change issued by the Civilian Agency Acquisition Council. This would be the preferred solution because of the Government-wide applicability of the FAR. If that approach does not bring prompt results, however, unilateral action by the DOD FAR Council should be pursued through an appropriate change to the DOD Federal Acquisition Regulation Supplement.

WEAPONS SYSTEM ACQUISITION DECISIONS

I believe that the Under Secretary of Defense for Acquisition and the Defense Acquisition Board have sufficient authority to manage the major weapons system acquisition process in a rigorous and effective manner. Although improvements have been made, our reviews indicate that certain problems persist. A summary report (No. 87-193) on the "Audit of the Effectiveness of the Defense Systems Acquisition Review Council (DSARC) Process" was issued on July 17, 1987 to recap three previous audits covering 29 systems. Our current audit of the Defense Acquisition Board process has resulted in one final report and two draft reports thus far. We are finding a continued need for more rigorous enforcement of existing acquisition policy and better implementation of the specific audit recommendations made previously to improve the effectiveness of the decisionmaking process.

Previous audit recommendations which have not been effectively implemented for all systems include the following:

Enforce the DOD 5000 series instructions for timely submission of complete and accurate documentation to the Defense Acquistion Board.

Ensure that the Services are adequately funding approved programs.

Require the Services to implement DOD Directive 5000.1 and DOD Instruction 5000.2 for fully documenting the Justification for Major System New Start.

Clearly distinguished between operation and technical thresholds.

Clarify the types of Milestone II documentation required for operational characteristics to facilitate the assessment of operational testing results.

Develop examples of required operational performance thresholds for milestone decisions.

Ensure the Development Concept Paper is complete, to include operational performance measures as well as technical performance measures, and is updated.

Ensure that Test and Evaluation Master Plan are complete, and prescribe specific operational test requirements.

Recently there is also an indication that the Services are attempting to circumvent the intent of the regulations in trying to represent a production decision as being for low rate, when in reality, it is a full production decision—one that requires substantially more documentation and testing than is being provided.

AMRAAM

I understand that Committee Staff has taken particular note of our final audit report on the Advanced Medium Range Air-to-Air Missile (AMRAAM) Program. In that report, we observed that the Air Force scheduled an AMRAAM Program Review to ask for Defense Acquisition Board approval to procure long leadtime items valued at $400 million for the first lot of full-rate production (Lot III is 1,270 missiles, estimated to cost $835 million). We believe that approval of this procurement would, in effect, authorize full-rate production since it represents about 50 percent of the estimated cost of Lot III.

The Defense Acquisition Board will not have the test and cost data required to assess system readiness for full-rate production. Operational testing is far from complete and an independent cost estimate has not been prepared. Operational tests were conducted on missiles that were not productive-representative, since they were not built using production line techniques. Those results are not legally sufficient to support a full-rate production decision. We believe the Air Force should limit acquisition of long leadtime until they demonstrate favorable operational performance and provide an independent cost estimate.

We recommend that the Under Secretary of Defense for Acquisition withhold full-rate production approval until the Air Force provides favorable operational test results and an independent cost estimate. The Under Secretary nonconcurred, saying that Lot III was already, in effect, a low-rate production lot because it had been reduced from 2,000 missiles in 1985 to 1,270 missiles in 1988. We replied that the Director, Operational Test and Evaluation, who determines what is low-rate versus full-rate production, has determined that Lot III is the beginning of full rate production.

It is our understanding that the Department will adopt our recommendation and will also inform the appropriate Congressional Committees.

COMPONENT BREAKOUT

I believe that better definition is needed in the DFARS of when an analysis of system component breakout for competition is appropriate and what the parameters of such analysis should be. In reviewing 21 audit and 4 survey reports issued by my office on major application program within the past two days, it is significant that inadequate component breakout analysis is the most freqent finding (11 of the 25 reports). I have recommended to the Under Secretary for Acquisition that the need for better policy guidance in this area be addressed. Increasing competition at the system component level can often result in very significant savings.

DEFECTIVE PRICING

The last pervasive system deficiency I want to address is the inability or unwillingness of the DOD to use the protections to the Government in the Truth in Negotiations Act to the full extent intended by the Congress. We have testified at length on this subject before various Committees of the Congress, so I will merely note that we believe a series of actions are needed, as follows:

The DOD needs to keep pressing contractors to avoid inadvertent defective pricing by improving their cost estimating systems. (I previously addressed the problem with OFPP concerning the new DFARS coverage.)

The Under Secretary for Acquisition should advise all DOD contracting officers, through a policy letter, of the variety of actions they can take to reduce the risk of defective pricing. To date, the Under Secretary nonconcurs, on the basis that defective pricing is not a serious problem and enough emphasis has been placed on the matter. I cannot agree. A recent joint audit by my office and DCAA found defective pricing in half of the 774 contracts reviewed. We also have found that training for contracting officers on the subject is still insufficient.

Audit coverage should be increased.

More emphasis should be placed on resolving and closing overage defective pricing audit reports. As of March 31, 1988, the DOD had 348 unresolved defective pricing audit reports over six months old, involving potential defective pricing of $837 million.

Increasingly liberal interpretations of what constitutes "adequate price competition" should be avoided, for they are merely resulting in more and more contracts not being covered by the Truth in Negotiations Act. Recent Navy actions to restrict the contracting officer's ability to get cost and pricing data are especially ill-advised.

I want to expand on the last point. My staff recently completed an audit of 38 dual-source acquisitions that had been exempted from the requirements of the Truth in Negotiations Act based on supposedly adequate price competition. Our review of the 38 acquisitions revealed that adequate price competition did not exist for 30 acquisitions, valued at $8.8 billion. As a result, the contracts were improperly exempted from the provisions of the Truth in Negotiations Act.

We recommend that the Assistant Secretary of Defense (Production and Logistics), instruct the Services to obtain certified cost or pricing data and include the defective pricing recovery clause in all pricing actions where the award may be split between offerors. The Assistant Secretary nonconcurred with the recommendation, stating that the requirement for certified cost or pricing data should be determined on a case-by-case basis. Our report provided convincing evidence that contracting officers had not been able to determine whether adequate price competition exists in dual-sourcing. If determinations continue to be made on a case-by-case basis, contracting officers will continue to accept contractor prices as fair and reasonable without sufficient insight into the basis of the proposed prices, and the Government will not be able to recover any overpricing reported later as the result of postaward audits of dual-sourced contracts. We are using the DOD audit resolution process to pursue our disputed recommendations.

SUMMARY

Mr. Chairman, I have attempted to cover a lot of ground in this statement in order to respond to the issues raised in your invitation letter. I want to emphasize that my staff and I are available to help the Congress further explore each of these issues, in any way possible.

That concludes my statement.●

By Mr. ARMSTRONG (for himself, Mr. NICKLES, Mr. HELMS, Mr. HATCH, Mr. SYMMS, Mr. COCHRAN, Mr. COHEN, and Mr. DOLE):

S. 2901. A bill to amend the Fair Labor Standards Act of 1938 to permit industrial homework except with respect to an individual employer found to be in violation of such act, and for other purposes; referred to the Committee on Labor and Human Resources.

LEGISLATION TO LIFT THE BAN ON INDUSTRIAL HOMEWORK

Mr. ARMSTRONG. Mr. President, for several weeks, I have attempted to bring legislation to the floor which would provide employment opportunities for hundereds of Americans by correcting an inequity in Federal labor law. Unfortunately, I have not had the opportunity to even discuss the merits of this legislation—merits which I believe would have clearly shown that the change is needed. So, today I am introducing, along with Senators NICKLES, HATCH, HELMS, DOLE, COCHRAN, COHEN, and SYMMS, a bill which will lift the current ban on "industrial homework" by updating an archiac provision of the Fair Labor Standards Act. I am aware that this Congress will adjourn before taking any action on this legislation. But this issue needs to be dealt with so that hundreds of Americans can find gainful employment.

I first became aware of the homework issue when I was contacted by Chipita Accessories, a small company in southern Colorado which employs about 200 people to create beautiful jewelry. The owner of this company has reached a Federal roadblock. If it is not removed he may be forced to close his business—leaving his employees with little choice but to join the roles of unemployed. What is blocking this employment opportunity is a provision of the Fair Labor Standards Act. This company is not violating wage and hour laws, the employees are paid well above the minimum wage. The company is not violating child labor laws, or minimum health and safety requirements. Chipita is in violation of industrial homework laws. Most of Chipita's employees work in their homes They are not forced to work in their homes, they chose to do so. They do so because the nearest city is miles away, and many care for small children. Their work allows them to supplement their family's income. For these hardworking and talented families homework is a answer to some of their financial and child care needs. Making jewelry is perfectly legal except when it is made in the home. Unfortunately, industrial homework is banned in the jewelry manufacturing industry.

The Fair Labor Standards Act currently gives the Administrator of the Wage and Hour Division of the Department of Labor the authority to regulate, restrict, or prohibit work done in the home. Regulations were first issued in 1942 and homework is currently prohibited in six industries: women's apparel, gloves and mittens, buttons and buckles, handkerchiefs, embroideries, and jewelry manufacturing. Homework is legal in every other industry but those six. You can make a man's shirt in your home, but you cannot make a women's. You can make a golf glove, but not an evening glove. You can make beaded Christmas ornaments, but not beaded earrings.

Sound unfair? It is. The current law wrongly assumes that every single employer in those six specific industries does or will violate labor laws. And it further assumes that employers in other industries will not violate labor laws. My amendment addresses this fundamental inequity. Employers who violate labor laws should be punished. Employers who provide safe, sound employment opportunities should not. This legislation would lift the current ban on homework, and give the Secretary of Labor the authority to prohibit unscrupulous employers from employing homeworkers. The legislation further requires the Department of Labor to report to Congress the economic impact of homework on industries and employers.

It is important to realize that this legislation will not force people to work in their home against their will or force employers to employ homeworkers. This legislation will simply provide the opportunity for employers to employ homeworkers if both parties find it a beneficial relationship. It is time for the Federal Government to allow those businesses who comply with the Fair Labor Standards Act to operate and compete for business, regardless of the industry.

Homework is supported by the Department of Labor, the Office of Management and Budget, the American Farm Bureau, the National Alliance of Senior Citizens, the Ohio, Virginia, and Iowa Farm Bureaus, Concerned Women of America, the National Federation of Independent Business, and the nearly 25 million Americans who work at home, full or part time. This legislation would provide job opportunities for many Americans. By legalizing this creative alternative form of employment, more workers will be able to meet today's financial and familial challenges.

In fact, in every other industry homework is legal. Accountants, bookkeepers, journalists—even makers of men's apparel all have the right to work in their homes. The Washington Post recently ran a story about homeworkers in Montgomery County. One of those homeworkers in Dr. Susan Lazar a phychiatrist who works out of her home, she tells me "I feel very strongly that the right to work out of one's home...is a crucial issue that particularly affects families and parents involved in the care of young children." A mother of two, Dr. Lazar has found a way to lessen the pressures she faces as a working mother. She chooses to work in her home so that she can be with her family. I would like to share with my colleagues some of her testimony at a Montgomery County hearing:

> Being at home has been essential for my family. Like many women I feel kennly the need to be available for chose supervision of children, one of whom was born prematurely and who, for a long time required close attention that I could only provide because I work at home. I was there at home in my office when my daughter fell and broke her arm. I was there at home when her chubby friend go stuck between some bars on our swingset. I am there at home for all the big and little emergencies as well as for providing a mother's watchful eagle eye over diet, dress and homework.

I here from many people who choose to work in their homes for a variety of different reasons. The Travelers Insurance Co reports the establishment of a formal telecommuting program for some of the full- and part-time workers. The employees work in their homes, except for a half day a week spent at the office in training or meeting with managers. Travelers reports that productivity is higher, and the demand for the program is increasing. Many employee want to take advantage of the flexible schedules, and savings on transportation and clothing.

I also hear from many people who would like to work in their homes, but are not allowed to do so. People who are searching for creative employment and are not getting it because of the homework ban. In Seattle WA a woman owns a business which handles insurance policy footwork for large insurance companies by processing claims. She employs 100 homeworkers as private contractors. They are paid both by the hour and for peace work and make upwards of $15 per hour. Her workers enjoy the family flexibility of working at home, and she reports they are happy and productive employees. The owner of this business asked that I not mention her name, because the last time she was featured in a news article concerning homework, she received hundreds and hundreds of calls for people who wanted to work for her, or wanted to find out more information about opporunities to work in their homes.

Like any job, homework is not for everyone. Not all employees can handle non-supervised work, and not all employers are set up to provide such alternatives. Some employees would rather work in the social environment of an office or plant, while others thrive at home with their families, taking care of their children or elderly parents. The Fair Labor Standards Act was enacted to protect workers and should encourage the creation of a variety of work opportunities. The current provisions concerning homework do not encourage employment and they need to be changed.

Ms. Carroll Proctor who employs homeworkers in Indiana, Iowa who recently stated: "We desperately need to create all the off-farm income possible in order to survive. Our small business has none of the sweatshops conditions that might once have been used to exploit immigrant workers. Indeed, it is only the owner of this small business that puts in long hours, works during the hot summer months under sweatshop temperatures, and needs all the support, rather than continued interference, from State and Federal Government in order to pay taxes and the heating bill." Mr. President, we can no longer let an outdated law prevent Carroll Proctor and the people she employs from working.

Ben Eagle, the owner of Chipita Accessories said "there are no negative factors that I can see to this work situation—homework. People are paying taxes, taking care of themselves, providing for their families, and they are a productive part of society. Nobody loses. But if these out-dated regulations are allowed to remain, many people will be hurt."

What Ben doesn't know is that people have already been hurt. My colleague from North Carolina, Mr. HELMS, recently told me of a company in his homestate that was shut down because of these outdated regulations. He reports that 85 women lost their jobs when the Tom Thumb Glove Factory of Wilkesboro shut its doors and moved overseas. Mr. President, we should not support Federal labor policy that forces companies to shut down, and forces people into unemployment. I ask unanimous consent that a letter from Senator HELMS be included in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

UNITED STATES SENATE,
Washington, DC, September 13, 1988.

DEAR COLLEAGUE: When the Senate considers S. 837, the Minimum Wage bill, I intend to co-sponsor an amendment with Senators Armstrong and Nickles to lift the current ban on work done in the home.

This amendment would remove an anachronistic provision in the Fair Labor Standards Act (FLSA) that still bans "homework" in six industries (women's apparel, gloves and mittens, buttons and buckles, handkerchiefs, embroideries, and jewelry manufacturing). In all other industries homework is allowed.

In my state, 85 women lost their jobs because of this absurd provision. These women, employed by the Tom Thumb Glove Company in Wilkesboro, North Carolina, were making gloves. They were being paid two and three times the minimum wages for working in their homes. However, because of the FLSA provision, this company was forced to shut down. Not only did 85 women lose their jobs, but now the company is making gloves overseas. Our nation should be encouraging employment, not causing unemployment!

The ban on homework was passed years ago when there were very few labor laws. But now there are a host of government regulations and laws that protect the worker, including minimum wage and health laws. This ban on homework is inconsistent with modern labor laws and is no longer necessary, if indeed it ever was. In fact, in 1984, the ban on homework in the knitted outerwear industry was removed. The absurdity of this ban is that golf gloves can be made in the home, but work gloves cannot.

In short, this FLSA provision denies Americans the right to work in their home, ignoring the fact that some people may not be able to leave their home to seek employment because of physical limitations or age.

Others forego employment in order to take care of their children. Homework allows families to avoid expensive child care costs and yet add to the family income. Lifting the ban on homework in the six remaining industries would enable parents to care for their children while they are engaged in gainful employment.

Many families are located in rural areas too far to travel to a factory. This is precisely the situation in the western part of my state. The Tom Thumb Glove Company was in this area. Homework gives those in rural areas an option to work, not previously open to them.

Finally, those who choose to engage in homework would be protected by current labor laws. The Department of Labor would allow homework only if the employer abides by minimum wage and other labor laws. Employers would be subject to prosecution if they did not conform to these labor laws.

The Department of Labor has proposed regulations to lift the ban on homework. This amendment would be consistent with the Department's efforts.

I do hope you will support this amendment.

Many thanks, and best wishes.

Sincerely,

JESSE HELMS,
U.S. Senator.

Mr. ARMSTRONG. There may not be much that we can do to save the jobs of those women employed by the Tom Thumb Glove Co., but we can help people like Susan Aguirre, a 23-year-old who makes her living in her home in Gardner, CO. She makes earrings for Chipita. This is the sole source of income for her and her father, who she has been taking care of since her mother died in 1986. She stated in the Pueblo Chieftan "I like the idea that I can stay home and take care of him while making money . . . If not for my job with Chipita, I wouldn't be here."

The Wall Street Journal in an article in July of 1986 stated: "Federal and State laws already protect workers from exploitative employers. By striking down this anachronistic prohibition on industrial homework, we would be ending government sanctioned restraint on competition, . . . and removing an impediment to progress in the labor market."

At the end of the Carter administration, the Department of Labor began taking steps to correct this disemployment policy. In 1984 the ban on homework in the knitted outerware industry was successfully lifted, and the Department of Labor is currently promulgating regulations to lift the ban on several other industries. The Department's proposal will give individuals the freedom to work at home, while providing new mechanism to ensure workers receive proper benefits and protection.

I want to make clear that this legislation does not remove any responsibility from the Department of Labor to enforce every aspect of the Fair Labor Standards Act. Instead it compliments the Department of Labor's development of strict enforcement provisions, ensuring that Americans are not deprived of employment jobs.

Current homework restrictions are outdated. Simply put they deprive people of the opportunity to work. It is a travesty that American citizens, many of whom are women and the heads of households, are prohibited from working out of their homes. Nicholas Calio, on behalf of the 45,000 companies represented by the National Association of Wholesaler-Distributors believes "it is clear that the time is long overdue to remove the federal ban applicable to only 6 specific industries. Considering the 5 million Americans are projected to be working in their homes in the next decade, it seems inconceivable that the Labor Department regulations instituted over 45 years ago are still in force, limiting employment opportunities."

John Sloan, the president of the National Federation of Independent Business believes that "the need for—the current ban on homework—has long passed. Radical changes have dramatically altered this Nation's economic, social, political and technological structures. The American labor force is the best paid, most highly educated, healthiest and most widely informed in the world."

James Miller, of the Office of Management and Budget recently wrote endorsing this legislation saying "it is time for the restrictions on homework in these six industries to be lifted." He further states that this legislation "will help thousands of people who want to engage in production work, but need or choose to work at home, to find gainful employment."

Homework gives employment opportunities to vast numbers of people who might otherwise be unable to contribute to the work force. Secretary McLaughlin recently stated "lifting the ban on homework has a positive impact on job creation and the elimination of barriers to job entry." In some rural areas, where towns are few and far between, homework is the only employment opportunity. Many farmers and their families have turned to homework for additional income. In fact the American Farm Bureau reports that "in recent years part-time nonfarm employment has become a necessity for a great many farmers and members of their families. The agricultural recession, the farm credit situation and the current drought situation have made such employment essential to many families trying to hold on to their farms."

Elderly and retired persons have found that homework provides activity as well as an extra income boost. The National Alliance of Senior Citizens feels that lifting the ban on homework "will strengthen the ability of many on fixed incomes from their own work and provide new areas of gainful earnings for those whose regular employment years have passed."

Where child care is not readily available, homework allows parents to take care of their children at home and still bring in needed income. The elimination of commuting and child care expenses are strong financial incentives for homework. Dottie Lamm, a social worker, writer, mother and wife of Colorado's ex-Governor Dick Lamm, "never thought the day would come when she would line up on an issue with President Reagan, Senator ORRIN HATCH, the 1980 and 1984 Republican Party platforms, and a conglomeration of "conservative legal groups". The issue that she supports is homework. This pro-family issue receives her endorsement for several reasons but the most important benefit is that as a homeworker "you don't have to hunt for a full-time baby sitter, sign up your preschooler at a day care center with a 2 year waiting list, hire a surrogate to make oatmeal cookies and drive your kids to skating and soccer." What big labor may view as unregulated hours Dottie Lamm sees as flexibility. In the October 1988 edition of Reader's Digest, an interesting article appeared concerning day care, which encouraged homework. It states "rather than further subsidizing parenting, with its many risks, we ought to endeavor to create options for the large number of Americans who would like to care for their children when they are very young. There is much we can do in this area, including—encouraging more home-based work." In our dynamic and fast changing society we must encourage all forms of employment, especially ones that help alleviate the many pressures the American family now faces.

Attempts to legalize homework in the jewelry and other banned industries—women's apparel, gloves and mittens, buttons and buckles, handkerchiefs, and embroideries—have organized labor predicting the return of the industrial dark ages. Stating that "people need to be protected from themselves", opponents would like to see the ban expanded to cover clerical and computer work done in the home. Considering that projections show that 5 million Americans will be working in their home in the next decade and 10 percent of the entire labor force by the turn of the century, a ban on this type of work will clearly have a devastating impact.

Some have suggested that this legislation does not even merit serious discussion. They must not be talking to the hundreds of men and women who work in their homes, who enjoy their jobs, make fair wages and are treated well by their employers. They must not fear from innovative companies who provide employment opportunities in depressed rural counties, or from companies that provide economic stability for many families, and contribute to the local tax base.

Homework in the knitting industry was banned until 1984. In many New England States, knitting is not just a hobby, its a way of life. For many, knitting means employment—a way to support the family. But for over 40 years knitting hats in the home was a crime. In 1984 knitters received the news they have waited to hear. Over the cries of organized labor, the Department of Labor lifted the homework ban in the knitted outerwear industry. The action by the Department has been successful, and knitters are now free to break out those needles and work their craft in the safety and comfort of their own homes. Opponents said that factories would shut down, they have not. Opponents said that wage violations would regularly occur, they have not. Opponents said that children would be exploited, not one such complaint has been filed with the Department of Labor.

In Colorado, and other States, people make jewelry. For them it is also a way of life. In the rural part of the State jewelry making is an attractive job opportunity. But homework in the jewelry industry is still banned. If people use a needle and thread to string beads into earrings in their homes, they are still in violation of the homework law. Clearly a change needs to be made.

The goal of the Fair Labor Standards Act is to prevent labor abuses, not prevent labor. It is time to lift the homework ban so that more Americans can contribute to the Nation's work force. The Farm Bureau News hit it on the head "* * * the current regulatory prohibition on home employment is outmoded, unnecessary and downright wrong."

Mr. President, this body recently had a chance to act on this legislation and failed to do so. Opponents would not even let this issue come to the floor for debate. I think this body is ready to face this issue with substantial educational debate, not emotionalized rhetoric. I think we owe it to those responsible employers and those hard working employees. I hope we will have that opportunity in the 101st Congress. I would encourage my colleagues to take a long hard look at what is at stake here—creative employment opportunities for many Americans.

I ask unanimous consent that several letters endorsing this amendment, as well as several informative articles be inserted in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, September 20, 1988.

Hon. WILLIAM L. ARMSTRONG,
U.S. Senate,
Washington, DC.

DEAR SENATOR ARMSTRONG: I am pleased to respond to your request for the views of the Administration on your proposed amendment to the Fair Labor Standards Act (FLSA) to lift the current Federal ban on work done in the home.

The effect of your proposed amendment would be to remove the current ban on the employment of homeworkers in the following six industries: women's apparel, gloves and mittens, buttons and buckles, handkerchiefs, embroideries, and jewelry manufacturing. Under the amendment, employers in these six industries would be permitted to employ homeworkers, provided they comply with all FLSA requirements, such as paying their homeworkers the proper minimum wage and overtime pay, and keeping all records required under the Act and Department of Labor regulations.

The proposed amendment is in line with a series of actions taken by this Administration since 1980 aimed at the elimination of unnecessary regulatory restrictions. The amendment is also consistent with the Secretary of Labor's responsibilities under the FLSA to protect workers from minimum wage and overtime abuses. Specifically, the amendment authorizes the Secretary to prohibit employers found to have violated the FLSA from hiring homeworkers. In 1984, as you point out, the Department of Labor successfully lifted the ban on homework for the knitted outerwear industry. Homework bans in the remaining six industries should be lifted for many of the reasons you cite and because other industries have never been restricted. We agree it is time for the restrictions on homework in these six industries to be lifted.

Since taking office, the Administration has pursued changes to regulatory restrictions which will remove barriers to job entry, mobility, or efficiency and will increase flexibility in the workplace. These changes, along with broader deregulatory actions, have substantially contributed to the current economic expansion that has created over 17 million jobs. Your amendment will help thousands of people who want to engage in productive work, but who need or choose to work at home, to find gainful employment.

For all these reasons, I join the Secretary of Labor in urging prompt adoption of your amendment to appropriate legislation.

Sincerely yours,
JAMES C. MILLER III,
Director.

U.S. DEPARTMENT OF LABOR,
SECRETARY OF LABOR,
Washington, DC, September 20, 1988.

DEAR BILL: I write in support of your efforts to lift the current Federal ban on homework. The ability to work at home provides flexibility and economic freedom for American workers. At a time when flexibility is an operational imperative to our competitive advantage, government should enhance not impede workers' choices. Homework provides options for families. It addresses child care, elder care, and parental leave without added costs. It allows people to work who live in rural areas, or who must care for young children or aged parents or an ill family member.

Homework is here. And it's here to stay. Witness the 24 million persons who work at home today. This number is expected to increase significantly, particularly in the area of workers operating personal computers out of their homes. Currently, it is estimated that 10 million Americans are "telecommuting."

Finally, and most importantly, lifting the ban on homework has a positive impact on job creation and the elimination of barriers to job entry. For example, in North Carolina, 85 women lost their jobs to workers in a foreign country because the company which employed them was in violation of this obsolete ban. It's likely that the gloves and mittens that were being made in American homes now say "Made in Taiwan" and not "Made in the USA." I wonder how many jobs we are losing because of this government ban.

I am prepared to go forward with lifting the ban and have allocated additional resources to continue the Department's increased enforcement effort. In addition, the regulations now under review contain stricter enforcement mechanisms, such as civil money penalties, revocation of certificates, simplified recordkeeping for more accurate records, coordination with states and prompt investigations.

I commend you on your efforts to lift this government ban.

Sincerely,

ANN MCLAUGHLIN.

OHIO FARM BUREAU,
Columbus, Ohio, September 15, 1988.
Hon. WILLIAM L. ARMSTRONG,
U.S. Senate, Washington, DC.

DEAR SENATOR ARMSTRONG: We support the amendment to S. 837 (minimum wage bill) that you, Senator Nickles and others plan to introduce to repeal the authority of the Secretary of Labor to prohibit employment in a residence.

Home employment is nothing new to farm families. In recent years, part-time nonfarm employment has become a necessity for a great many farmers and members of their families. The agricultural recession and the current drought have made such employment essential to many farm families trying to hold on to their farms.

We believe the Secretary has proven in recent years that a total ban of such employment for any given commodity or industry is not required or justified and that the FLSA can be adequately enforced through reasonable regulation.

Your amendment would not only be a step forward in removing authority to ban employment in the seven industries that have been affected in the past, but also in removing that threat from new forms of home employment, such as the use of computers. The policy of Congress should be to encourage such employment in the public interest, rather than maintaining such an outmoded provision in the law.

Even with your amendment to S. 837, we believe that S. 837 would eliminate up to a half-million jobs, have an inflationary impact on the economy, and accomplish very little in the alleviation of poverty. Any increase in the minimum wage should be far less than provided in S. 837 and should include a training wage at a reduced rate so as to minimize the impact on untrained and inexperienced workers.

Sincerely,

DEAN W. SIMERAL,
Vice President,
Public Affairs.

NATIONAL ASSOCIATION
OF WHOLESALER-DISTRIBUTORS,
Washington, DC, September 13, 1988.
Hon. WILLIAM L. ARMSTRONG,
U.S. Senate, Washington, DC.

DEAR SENATOR ARMSTRONG: On behalf of the 45,000 companies represented by the National Association of Wholesaler-Distributors (NAW), I would like to offer our support for your proposal to remove all restrictions on work done in the home.

It is clear that the time is long overdue to remove the Federal ban applicable to only 6 specific industries. Considering that 5 million Americans are projected to be working in their homes in the next decade, it seems inconceivable that Labor Department regulations instituted over 45 years ago are still in force, limiting employment opportunities in women's apparel and related fields.

Your proposal makes it clear that employers of home-based workers abide by all conditions of the Fair Labor Standards Act. These protections to employees at home will put them on equal footing with all workers while creating new job opportunities.

NAW commends your efforts in this area and urges the Senate to accept your amendment.

Sincerely,

NICHOLAS E. CALIO,
Senior Vice President,
Government Relations.

NATIONAL FEDERATION OF
INDEPENDENT BUSINESS,
Washington, DC, September 14, 1988.
Hon. WILLIAM L. ARMSTRONG,
U.S. Senate, Washington, DC.

DEAR SENATOR ARMSTRONG: I wish to commend you and Senator Nickles for your intention to remove the remaining regulatory restrictions on home-based work. Those that remain are a holdover from a time before our current array of worker protection laws was in place. As such, they are not only out-moded in a regulatory sense, they are economically dated as well.

The opportunity to work and be self supporting are part of the fundamental genius of America. Home-based work is the Jeffersonian archetype of that genius, and it should not be discouraged by the federal government. As the principle advocate in this country for small businesses and the enterprenuerial spirit, NFIB hopes your efforts are successful and urges all your colleagues to join with you in removing the remaining bans on homework.

Sincerely,

JOHN J. MOTLEY III,
Director,
Federal Governmental Relations.

U.S. CHAMBER OF COMMERCE,
Washington, DC, September 19, 1988.
Hon. WILLIAM L. ARMSTRONG,
U.S. Senate, Washington, DC.

DEAR BILL: The U.S. Chamber of Commerce, on behalf of its more than 180,000 business, chamber of commerce and association members, strongly supports your amendment to S. 837, the Minimum Wage Restoration Act, that would lift the current federal ban on work done in the home regarding women's apparel and accessories. The Chamber fully endorses your effort.

The singling out of women's apparel and accessories for a ban on home-based work is arbitrary, inappropriate and outdated. Forty-six years have passed since this ban was put into place. In that time, major transformations have taken place in society, in the economy, and in the work force—changes that have rendered the prohibitions and their basis obsolete and unnecessary. Work in the home is the employment trend of the future and a practice that benefits employees and employers alike. It is also a matter of basic personal freedom.

Work in the home benefits everyone concerned. For employees, home-based work means reduced clothing, meal, and commuting and child care costs and increased flexibility, productivity and opportunity. For employers, it means reduced overhead and increased productivity. For society, it means more jobs, privacy, time with family and personal freedom.

Furthermore, work in the home benefits important segments of society for whom employment might otherwise be available—working mothers, the handicapped, caretakers, retirees and people with restricted mobility.

The Chamber fully supports your home-based work amendment to S. 857 and respectfully urges Congress to enact this appropriate legislation.

Sincerely,

ALBERT D. BOURLAND.

AMERICAN FARM BUREAU FEDERATION,
Washington, DC, September 14, 1988.
Hon. WILLIAM L. ARMSTRONG,
U.S. Senate, Washington, DC.

DEAR SENATOR ARMSTRONG: We understand you and several other members of the Senate will offer an amendment to S. 837 the minimum wage bill. We support your effort to amend the language in the Fair Labor Standards Act (FLSA) which gives the Secretary of Labor authority to ban employment in residences, if it is determined that the Act cannot be adequately enforced in such places of employment.

If S. 837 is going to be moved on the floor of the Senate, we would favor an amendment to repeal the authority of the Secretary of Labor to prohibit employment in a residence.

Home employment is nothing new to farm and ranch families, since they all work at their place of residence. However, in recent years, part-time nonfarm employment has become a necessity for a great many farmers and members of their families. The agricultural recession, the farm credit situation and the current drought situation have made such employment essential to many farm families trying to hold on to their farms.

We believe the Secretary has proven in recent years that a total ban of such employment for any given commodity or industry is not required or justified and that the FLSA can be adequately enforced through reasonable regulation.

Your amendment would not only be step forward in removing authority to ban employment in the seven industries that have been affected in the past, but also in removing that threat from new forms of home employment, such as in the use of computers. The policy of Congress should be to encourage such employment in the public interest, rather than maintaining such an outmoded provision in the law.

Farm Bureau is opposed to any increase in the minimum wage, as we have already indicated. We believe the S. 837 would eliminate up to a half-million jobs, have an inflationary impact on the economy, and accomplish very little in the alleviation of poverty. Any increase in the minimum wage should be far less than provided in S. 837 and should include a training wage at a reduced rate so as to minimize the impact on untrained and inexperienced workers.

Sincerely,

JOHN C. DATT,

Executive Director.

[From the Washington Times, Sept. 20, 1988]

WILL HOME WORK BAN END WITH WAGE DEAL?

(By Warren Brookes)

Vice President George Bush has been justifiably savaged by conservatives for appearing to cave in on raising the minimum wage at the very moment when the Democrats had apparently lost the issue in both the House and the Senate for this year. As a result, this week that issue will have new life in the Senate.

The Labor Department, in particular, was taken by surprise, not only by Mr. Bush's expressed willingness to accept some rise to as much as $4 an hour in return for a youth minimum at the current $3.35 an hour, but by President Reagan's endorsement of that position in an exclusive interview with us Sept. 12.

This compromise may not be as unattractive to organized labor as it sounds, but there could still be a chance to convert this political boo-boo into an opportunity for progress in another vital area—home work.

Together with key Republican members in both the House and the Senate, Labor Secretary Ann McLaughlin is trying to use this debate to leverage not only the youth training wage, but specific legislation to roll back the nation's 55-year restrictions against working in the home.

"We are looking at this as an opportunity for some genuinely progressive labor legislation," Mrs. McLaughlin told us in an interview. "We have always wanted a training wage minimum to allow young people entering the work force to gain experience without being priced out of the market.

"We are also very committed to expanding the opportunity for both men and women to work in the home, so long as we can ensure they are protected from wage and hour violations and exploitation."

With telecommunications making more and more home work feasible and economic, the Reagan Labor Department has been trying for seven years to end all such bans—and organized labor, especially the International Ladies Garment Workers Union, has been fighting equally hard to keep them. They have been in force in seven garment industries since 1943.

Over great opposition, Labor Secretary Raymond Donovan got the home knitting industry ban ended by 1984, but the other six garment-related industries are still restricted.

What is more troubling is that the AFL-CIO not only wants to keep these bans but in their 1986 and 1987 annual meeting minutes they are on record as favoring extending them to home work on personal computers, and some states and localities already have.

It is estimated that up to 10 million Americans may now be "telecommuting," doing everything from accounting and processing of insurance claims to travel management and journalism.

In 1986, then Labor Secretary William Brock was pressed by Vice President Bush into lifting the last six restrictions by executive fiat—but he allowed the public comment process to drag on until the issue nearly died just before his departure in 1987.

Now, Secretary Ann McLaughlin seems determined to finish the job. Her formal ruling ending the ban in four industries and in half of a fifth has been at the Office of Management and Budget since July 19, waiting for approval. As soon as those rules are promulgated, she will go after the last 1½.

But since an ILGWU court challenge is expected, she has decided to endorse an effort to be made this week by Republican Sen. William Armstrong of Colorado to attach a home work amendment to the minimum wage bill: "We have sent a letter to Sen. Armstrong indicating our endorsement of this proposal," Mrs. McLaughlin told us. The Armstrong amendment backs up the McLaughlin ruling which calls for:

Biennial certification of all home work operations and the listing of names and addresses of employees involved, with regular inspection, plus reinspection of violators.

The issuance of new home worker handbooks to keep accurate records of hours and wages to allow Wage and Hours Division Inspectors to ensure minimum wage or higher is paid.

The requirement that employers with questionable histories post a bond to ensure compensation in the event of a violation.

Beefing up compliance staff at Labor to ensure adequate enforcement of both wage and hours and health and safety standards.

Under both Secretaries Brock and McLaughlin, the Labor Department has stepped up such compliance actions in the last four years from the 70,131 of the last Carter year (1981) to 84,000 a year since fiscal 1986, even though the Wage and Hours Compliance Officer staffing has been cut by about 10 to 15 percent from the Carter years.

Mrs. McLaughlin anticipated sharp criticism on this issue by asking for and securing a substantial increase in funding for the Wage and Hours Division, from $79 million in fiscal 1987 to more than $90 million in fiscal 1989—and they project that Fair Labor Standards compliance actions completed will hit an all-time high of 75,700 in fiscal 1989.

At the same time, the unions are citing a new General Accounting Office report that suggests that sweatshop activity has been rising rapidly, and that Labor lacks enough enforcement capacity to deal with it.

"In the first place," Mrs. McLaughlin said, "the GAO study is not about home work. There is no doubt that our strong economy is attracting more immigrants and they are subject to such exploitation. We are vigorously attacking sweatshop activity.

"But we are also very much in favor of expanding people's work options. In this age of technology and communications those options are growing and we don't think they should be foreclosed by legislation. Restrictions on home work which may have made sense back in the 1940s no longer make any sense today. We simply have to find new ways to enforce Fair Labor Standards without hemming in people's legitimate choices."

Congress is badly divided on this issue. Nearly everyone agrees that any minimum-wage rise will kill some jobs. Even Democratic Sen. Edward M. Kennedy of Massachusetts is offering an amendment that would exempt Puerto Rico from the minimum wage rise, because it would do so much damage there. Republican Sen. Steven Symms of Idaho will offer a deliberate test-ploy when he files a bill to raise the minimum to the median wage level (about $9 an hour), forcing the Democrats to admit (by voting against it) that raising the wage is an economic liability.

With such games-playing afoot, it remains to be seen whether Congress is prepared to deal with this very sensitive union issue in an election year, but if the Republicans can manage to tie the minimum wage rise to an opening up on home work, they can turn the Bush boo-boo from a sow's ear back into a silk purse.

[From the Chicago Tribune, Aug. 29, 1988]

COTTAGE INDUSTRIES BATTLE TO STAY IN HOUSE

(By Carol Kleiman)

Coralee Smith Kern, executive director of the 8,000-member National Association for the Cottage Industry, says she believes she is getting closer to being "legal."

For the last seven years in which she has battled federal regulations banning industrial home work. Kern has worn embroidered nightgowns and skirts made illegally in contract workers' homes.

"Lifting the ban on embroidery, one of the proposals of the U.S. Department of Labor, would at least make the embroidery legal, even though wearing apparel such as dresses, skirts or blouses would still be banned," said Kern, owner of Maid-to-Order Inc., a Chicago home-based maid service.

"It's important that we have the right to choose our workplace. It's not just young mothers who would benefit, but all people of all ages who, for different reasons, are working from home."

Kern smiles when she says that the embroidery on her illegal skirts says "Free the Cottage Workers."

Kern is smiling a lot these days: The U.S. Department of Labor has published proposals to allow employers to hire people to work for them from home producing gloves and mittens, embroidery, buttons and buckles, handkerchiefs and some jewelry.

In its third attempt to end restrictions under the Fair Labor Standards Act of 1941, the Reagan administration this time is not asking to deregulate women's apparel.

But Kern said the newest proposals are "another step forward" to change the rules of industrial home work. The only change that the administration has implemented is removing the ban on home knitting.

Independent contractors can work wherever they want, according to federal law, but the cottage-industry ban still applies to those who do apparel work as employees of manufacturers. The protective legislation was an outgrowth of public outcry in the 1940s against exploiting home workers, mostly foreign and female.

"We hope the Labor Department's proposals go through," said Kern. "They are far more comprehensive than in the past because they include stricter rules in terms of penalties 'assessed against employers of home workers and better means of enforcement.'"

According to a survey published in Working Woman magazine, approximately one-third of the total labor force, or 34 million people, do at least some of their work at home.

No one knows how many people work exclusively from home. "The figures are all over the ballpark," said Kern. "The one used most is from an AT&T study that says 23 million."

The World of Work Report, an employment publication, sets the figure lower, based on a survey by Electronic Services Unlimited. It says about 13 million to 14 million Americans work at home as employees and operators of businesses.

The survey projects that by the year 2000, home workers will make up 12 to 13 percent of the work force; by 2025, home workers will outnumber those who commute.

"Technology is here for us to apply," said Kern. "The old laws are outdated."

Not everyone agrees.

". . . Industrial home work is a proven method of exploitation of low-income workers that must not be tolerated," said Thomas F. Hartnett, New York State labor commissioner.

Jay Mazur, president of the International Ladies' Garment Workers' Union, accused the Reagan administration of "lending its support to sweatshop conditions . . . and attempting to nullify the minimum wage by legalizing home work in five areas of manufacturing."

Mazur, who heads a 200,000-member union, said he will continue to fight deregulation in the courts. He added that a system of licensing employers has proved to be "a dismal failure."

"Home work is but one of a number of trends leading to the replacement of full-time office positions with jobs characterized by reduced wages and benefits and eroded working conditions," said Jackie Ruff, executive director of District 925 of the Service Employees International Union.

In defense of the new proposals, Ann Dore McLaughlin, U.S. Secretary of Labor, said they "represent a common-sense approach to maximizing flexibility and economic freedom for workers in a way that ensures worker protection in a home environment."

Kern is encouraged by government proposals requiring Department of Labor certification of home work employers and the posting of a $2,500 bond for each home worker by employers with questionable compliance records.

Though insiders predict home work laws will not be changed by the lame duck administration, Kern is optimistic about the future.

"I believe that eventually all the bans will be lifted," she said. "There's very little work that can't be done from home. The technology is here for us to apply."

[From the New York Post, Aug. 22, 1988]

HOMEWORK RULE IS LABOR INSANITY

(By Ray Kerrison)

Did you know that it is perfectly legal to make golf gloves on a sewing machine in your home but it is illegal to make work gloves on the same machine in the same home? Sounds crazy, but it is true.

Were you aware that if you want to set up a little business in your home making men's underwear no one will bother you, but if you make women's panties you can go to the slammer?

If you think that doesn't make sense, try this:

You are free to knit at home a cardigan that buttons from right to left (for a man). But if you knit exactly the same cardigan and place the buttons left to right (for a woman), you can be prosecuted as a lawbreaker.

I first became aware of these ludicrous laws a couple of months ago when I wrote about the International Ladies Garment Workers Union's war against the SoHo Manufacturing Co. in the garment district.

I stumbled across them again last week in the most unlikely place—at the Republican Party's convention in New Orleans.

The history of this labor insanity dates back to World War II when the nation, anxious to get women out of the homes and into the factories to produce war material, enacted what is called the Homework Rule.

It banned working at home in women's apparel, gloves and mittens, belts and buckles, handkerchiefs, jewelry and embroidery manufacturing.

It has been on the books for 46 years. Two more wars—Korea and Vietnam—have come and gone, but it's still on the books.

It is being kept there by big labor, chiefly the ILGWU, because they say it is protection against sweatshops and the exploitation of "undocumented workers," (a fancy name for illegal aliens).

This law strikes primarily at women, and especially wives who stay at home and care for children.

There are thousands of wives in rural areas who have no factories in the neighborhood. Why should they not be permitted in these hard farm times, to earn extra cash at home?

There are hundreds of thousands of mothers who have pre-school age children. They are unable to join the work force.

The law is clearly discriminatory. One woman may make a man's shirt at home, but another woman may not make a woman's blouse.

Then there is the hypocrisy of it all. If unions are genuinely concerned about sweatshops, why not seek a Homework Rule against all work at home?

Are we to assume that the unions frown on sweatshops in jewelry, but don't give a hoot if you run a sweatshop at home in, say, sandals or sox?

Or are the unions really protecting themselves and using the sweatshop argument as a smokescreen?

Virginia Deal, a 40-year-old mother and farmwife in North Carolina, who made gloves at home to eke out the family income, was stunned to discover she was breaking the law.

She protested, "I'm an American and my own home is not a sweatshop. We're not taking jobs away from anyone and, if they don't let us work at home, it will be done by cheap labor outside the country."

Agitation to revise the Homework Rule began during the Carter administration, continued through the Reagan years, and will go on if George Bush is elected.

Reading the Republican Party's 30,000 word platform last week, I found the following pledge.

"We insist upon the right of Americans to work at home. The Homework Rule, banning sale of certain items made at home must go. It idles willing workers, prevents mothers from working and caring for their children in their own homes, limits the country's output, and penalizes innocent persons to please special interests."

Jay Mazur, president of the ILGWU, was once asked why he opposed housewives working at home.

He replied, "Society has an obligation to protect people from themselves."

Beautiful Mazur must think millions of housewives, working at home, are so dumb they need to be protected from their own folly.

Big Brother knows best.

[From the Rocky Mountain News, Oct. 3, 1988]

OUTDATED RULES ON WORKING AT HOME NEED GOOD SHOVE

Last spring we hailed U.S. Labor Secretary Ann McLaughlin for pledging to revise the rule that bans in-home work for a variety of garment-related industries. But a number of months have passed, and the department has yet to make good on that pledge. We hope that labor union officials who are fighting to preserve the regulatory status quo won't be able to intimidate McLaughlin.

As we have noted in the past, the jobs at stake include some in economically depressed Huerfano County in Southern Colorado. At least a few of the 200 or so people who work out of their homes for Chipita Accessories, a Huerfano County jewelry-accessories firm, would be in a bad way if the rule isn't revised. Most of them are women and most would have difficulty working any place but at home, because they either care for young children or live far from Walsenburg, where Chipita is based.

The 50-year-old home-work regulation forbids in-home work in the manufacture of mittens, gloves, embroideries, handkerchiefs, buttons, buckles and jewelry. It was implemented with a noble purpose—to guard women, children and immigrants from exploitation by ruthless employers. But times have changed radically. Workers enjoy broad protections and benefits that didn't exist in the 1930s. In-home workers at Chipita earn at least $5 per hour, well above the minimum wage.

By all means, federal safety and wage protections should remain intact. But it simply makes no sense to impose a blanket ban on in-home employment in garment industries, one that treats a model employer like Chipita as if it operated a Dickensian sweat shop.

The injustice in the current arrangement is even more striking when you consider that the home-work prohibition doesn't extend to data processing, telemarketing, computer industries and a variety of other fields with a high-tech emphasis. Industries unburdened by the outmoded rule are increasingly making use of such workers. In fact, home workers may make up as much as 10 percent of the entire labor force by the end of the century.

What's the sense of denying garment-related businesses the right to participate in this revolution?

Although we still hope the Labor Department will address the issue with a revised regulation, the most effective, lasting remedy would be through legislation. Colorado Sen. Bill Armstrong is pushing just such a measure, one that would end unreasonable home-work restrictions while leaving basic labor protections in place. Armstrong's plan may be considered by the Senate within the next few days. We hope the vote favors the logic and fairness that are on his side.

Mr. NICKLES. Mr. President, it is hard to believe that in 1988 it is illegal for Americans in every State to make certain clothing apparel and crafts in their own homes and then to sell those items. But this is the law today, and I intend to do my best to see that we lift this ban which infringes on the rights and freedoms of every American.

The present situation goes back to 1943 when the Labor Department issued regulations under the Fair Labor Standards Act of 1938 to forbid work at home in seven industries: knitted outerwear, women's garments, embroidery, handkerchief manufacturing, jewelry making, button and buckle manufacturing, and gloves and mittens. Fortunately, since that time, the ban on knitted outerwear has been lifted.

The only exceptions are for individuals unable to leave the home because of physical or mental impairment, those caring for an invalid at home, and those established as an independent contractor.

One of the reasons these regulations were established was to crack down on the "sweatshops." I do not know of any Member of Congress who would support or even condone sweatshops. But these regulations are more than 40 years old and times have changed dramatically.

The regulations date from a period when the makeup of the work force was markedly different than it is today. As a percentage, far fewer women were in the labor force and high technology for home use was still a dream of the future.

Today, the home is becoming a new center of productivity. Home computers are providing new opportunities for thousands of Americans seeking more income. Yet, persons with an equally valuable skill, such as the making of ladies' clothes, are denied by law the right to earn an income at home.

Single parents comprise a greater percentage of our population than ever before and many are unable to afford full-time help to care for their children. Why should they be forced to work away from the home if their skills would allow them to earn an income at home?

I would like to close by saying that I support legislation which would allow Americans to do their homework in any industry they choose. We must plan with an eye on the future, and encourage productivity when technology and the times dictate.

By Mr. DURENBERGER:

S. 2902. A bill to amend title XVIII of the Social Security Act to allow payment for ambulance service where other methods of transportation are either unavailable or such other methods are medically inappropriate, and for other purposes; referred to the Committee on Finance.

MEDICARE AMBULANCE SERVICE IMPROVEMENT ACT

● Mr. DURENBERGER. Mr. President, I rise today to introduce the Medicare Ambulance Service Improvement Act of 1988. This bill will address the serious deficiencies and problems in current Medicare payment for ambulance services on both a short-term and a long-term basis.

As I have traveled throughout the State of Minnesota over the past 3 years and visited with emergency room doctors and nurses, emergency medical technicians, providers of ambulance and emergency medical services, and Medicare beneficiaries, one thing has become increasingly clear. Serious difficulties and inequities exist in Medicare payment for ambulance services, and these problems are adversely affecting the vital emergency care needed by our senior citizens and the disabled.

These problems fall into two broad categories. First, current laws and regulations regarding ambulance coverage are extremely complex and often inappropriately restrictive. As a result, ambulance providers are often unable to determine whether or not ambulance service will be covered until after the service has been provided. This places an unfair hardship on the ambulance service, and, ultimately, on the Medicare beneficiary.

As one emergency medical technician in Minnesota told me, "Our seniors are proud people. They believe in paying their bills, and they often won't call an ambulance when they should for fear that they will not be able to pay." He told me about one farmer from rural Minnesota who was experiencing all the symptoms of a heart attack. Clearly, this gentleman should have called an ambulance. However, because he was afraid that Medicare might not pay for it, he instead asked an elderly neighbor for help. He arrived at the hospital, in dangerous condition, in the back of an old farm pickup truck.

Mr. President, this legislation will clarify the law in this area so that our elderly do not have to choose between their dignity and their lives.

However, restrictive regulation is not the only problem facing providers of ambulance services. Even when the service is covered, the amount paid is often inappropriate. There are many unique variables affecting the ambulance industry which are not considered in payment for these services. These include a large volunteer component, widely varying levels of care, State and local subsidy of some companies and not of others, and differing methods of providing emergency medical technician services.

Payment for ambulance services is an extremely complex subject, and very little research has been done in this area. This bill will require the Office of Technology Assessment to conduct a study of ambulance service costs and charges based on the work of the Physician Payment Review Commission. From this study, the Office of Technology Assessment will develop a recommended fee schedule based on a relative value scale.

Given the importance and the urgency of this subject, I am pleased that the American Ambulance Association has endorsed this legislation, and I look forward to working closely with them as this bill moves through the legislative process. I urge my colleagues to join me in working toward enactment of this much needed legislation. I ask unanimous consent that this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2902

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Medicare Ambulance Service Improvement Act of 1988".

SEC. 2. PAYMENT FOR AMBULANCE SERVICE ALLOWED WHERE OTHER METHODS OF TRANSPORTATION ARE EITHER UNAVAILABLE OR SUCH OTHER METHODS ARE MEDICALLY INAPPROPRIATE.

(a) IN GENERAL.—Section 1861(s)(7) of the Social Security (42 U.S.C. 1395x(s)(7)) is amended to read as follows:

"(7) ambulance service where the use of other methods of transportation are either unavailable or such other methods are certified by a physician as medically inappropriate given the nature of the individual's condition, but only to the extent provided in regulations;".

(b) EFFECTIVE DATE.—The amendment made in subsection (a) shall become effective upon the date of enactment of this Act.

SEC. 3. STUDY AND REPORT TO EXAMINE AMBULANCE SERVICE COSTS.

(a) STUDY.—(1) The Office of Technology Assessment shall conduct a study of ambulance service costs and charges utilizing as a data base information developed by the Physician Payment Review Commission. Such study shall—

(A) assess and determine the relative value of emergency medical technician care and services;

(B) assess and determine whether there exists any differences in the quality or relative efficiency of emergency medical technician services provided by ambulance companies versus emergency medical technician services provided by independent emergency medical technician providers;

(C) describe any rationale for establishing payment differentials between emergency medical technician services provided by ambulance companies versus independent emergency medical technician providers;

(D) investigate and make suggestions regarding whether or not payments for ambulance services should vary geographically; and

(E) address whether there should be different payment schedules utilized by public and private ambulance service providers.

(2) Based on the study provided for in paragraph (1) the Office of Technology Assessment shall develop a recommended fee schedule where the relative value scale is based primarily on resource costs, taking into account the level of certification of the ambulance service, the time and distance required by the patient, and the type of medical care rendered to the patient at the scene and while en route.

(b) REPORT.—The Office of Technology Assessment shall issue a report to Congress describing the findings of the study provided for in subsection (a) of this section no later than 6 months after the date of enactment of this Act.

(c) EFFECTIVE DATE.—The provisions of this section shall become effective upon the date of enactment of this Act.●

By Mr. FOWLER:

S. 2904. A bill to provide for the improved management of the Nation's water resources; referred to the Committee on Governmental Affairs.

THE NEED FOR A NATIONAL WATER CONSERVATION POLICY

● Mr. FOWLER. Mr. President, three times in the past 8 years the United States has experienced a drought of major proportions. Three times, Americans in almost every region of the country have had to abide by stringent regulations on the use of water. Three times, our farmers have seen their crops wither, worsening an already down-trodden rural economy.

Scientists are beginning to call the 1980's the decade of drought. In my State of Georgia, these three droughts of 1980-81, of 1986, and of 1988, are barely distinguishable as separate events. In this period, we have seen the levels of our lakes fall without recovering, and with them the recreational activity and tourism that depend on the lakes. We have seen our water tables fall so low that it barely seems worth the trouble for a farmer to drop the well another 10 feet when he will have to go to 20 next month.

In parts of north Georgia once considered among the most lush in the country, where rhododendrons have towered over mountain brooks for generations, this summer we have seen dry streambeds and empty springs. And this reduced flow to our rivers and reservoirs has forced us to cut hydropower production, adding $17 million to Georgians' electric bills.

In my home town of Atlanta, as in hundreds of cities across the country, we have more than once in the 1980's been forced to rearrange our schedules around watering the lawn. We have had to be concerned about our water usage, and we have responded with public spirit and a positive attitude to meet the temporary challenge of conserving water.

But is this only a temporary problem?

This summer's severe drought is off the front pages, and the arrival of cool weather and rain in most parts of the country has seemingly pushed our memories of the drought out to sea. But the test of true leadership and vision, the test of man's superior intelligence, is the ability to plan ahead.

We need a long-term approach to our water supply challenges. We in the relatively lush East, like our compatriots in the arid West, are going to have to understand that our water supply is not unlimited, that our supplies cannot be increased indefinitely, that there are high costs to finding and trapping more water, and that we simply must do better with what we already have.

We have met a similar challenge—and we are continuing to meet it—in managing our energy usage more wisely. Today we use no more energy as a nation than we used in 1970, and yet our economy has grown by over a third. We have managed to conserve energy—and we will continue to conserve energy—without dire consequences for our economy. In fact, conserving energy has made us more competitive in the world market, where the energy costs included in foreign products are often fractions of our own.

We can likewise meet this challenge to conserve one of our country's most important natural resources—$H^{2}O$. I am today introducing legislation that provides the leadership of the Federal Government in cooperation with the States, with municipalities, with private homeowners and businesses and farmers to meet this challenge head on. Because I think it is time for our Nation to plan for efficient, long-term use of our water resources.

When I began to investigate this issue, I asked the simple question over and over again of leaders in the environmental community, in science, in business, in agriculture—what should we be doing to address the growing scarcity of water? And I have been hard pressed to find a dozen people who have given this issue the thought it deserves. Working with them—and with my colleague CHET ATKINS in the House—I have drafted two bills: the National Water Conservation Act and the National Water Conservation Plumbing Fixtures Efficiency Act.

My National Water Conservation Act outlines a role for the Federal Government in encouraging the wise and efficient use of water. It requires a comprehensive review of Federal policies in order to pinpoint those that discourage good water management practices and revise them in accordance with the national goal of sustaining our water resources.

This bill also requires that water conservation activities and programs be considered whenever the Federal Government is involved in water supply studies. The increasing cost of building more reservoirs or diverting rivers—and the fact that the Federal Government will pay for less and less of these projects—dictates that we first take steps to properly manage our water before we go out looking for more. Federal agencies already have this authority; this provision clarifies and reaffirms it.

Likewise, the Federal Government needs to be a better water consumer, in order to help reduce Federal and local taxes. If our office buildings and military installations can use less water, the Federal Government's water bill will be less. And, particularly in areas where Federal Government activities use a significant percentage of the area's water, conservation can help reduce the need for local expenditures for new water supplies.

My National Water Conservation Act places a high priority on the development of crops and agricultural techniques that require less water. With the cost of water rising as water tables are falling, and with few economically feasible damsites remaining, it is crucial that the Federal Government play a role in safeguarding the productivity and profitability of American agriculture.

As evidenced by the small number of experts in the field of water conservation, and the lack of any established forum for the discussion of these issues, there is a need for better dissemination of information to those whose practices can lead to widespread water efficiency. This bill creates a National Clearinghouse on Water Conservation to collect and analyze this information and to put it in the hands of water utilities and water consumers nationwide.

Finally, this bill addresses our Nation's ground water, one of the most important resources in rural areas. Much attention has been focused in recent Congresses on the problems of ground water contamination, but we have not adequately considered the problems of ground water depletion. By some estimates, 20 percent of the water we pump from underground aquifers will never be replenished, leading to sinkholes, falling land, saltwater intrusion, and increased ground water quality problems. There is a general lack of information on the causes, locations, and effects of this depletion of our aquifers, and my bill commissions a report from the U.S. Geological Survey that we can use to address these issues.

The second initiative I am introducing today deals primarily with municipal water supply issues. The General Accounting Office estimates that in the next decade, 170 of America's 756 large urban water systems will need additional supplies. For decades, we have been able to meet our water needs by finding and transporting new supplies; we have built dams and aqueducts and pumping stations and wells. But the expense of these activities is increasing, and new supplies are running out.

Just as the history of our Nation's energy use was one of locating more supplies until it became worthwhile to conserve, we have now reached the point in our water use where we must begin to manage our demand for water and not just our supply. In the energy area, we have been successful, working with industry and consumers, in increasing the energy efficiency of our automobiles and appliances. The savings to consumers and the benefits to the economy from decreased reliance on foreign oil and decreased costs of production have indicated that this is good public policy.

In many parts of the country, State and local governments are beginning to require that their plumbing fixtures be more water efficient. While California and Massachusetts are implementing regulations in this area, my own State of Georgia passed its own law—affectionately known as the potty bill—a decade ago, requiring that newly installed water closets use no more than three gallons per flush.

The benefits of such efficiency improvements are manifest. The average American uses about 65 gallons of water per day in the home. With more efficient plumbing fixtures, these figures could be decreased to about 44 gallons per day. For a major, growing city like Atlanta or Phoenix, this could make the difference between building new, expensive, and environmentally costly water projects and funneling these funds to other urgent needs. And at the other end of water cycle—the treatment of wastewater—we will also see benefits that accrue to municipalities. The less wastewater you have to treat, the less it costs, and the less likelihood that more treatment plants will have to be built.

Taxpayers will reap these benefits in lower taxes for water projects or treatment plants, but as consumers they will also see lower costs. Those who use less water will pay less on their water bills, and they will also see decreased energy bills. Much of the water used in the home is heated, and using less hot water will decrease energy costs.

The States have taken the lead, but their standards are difficult to enforce. California estimates that as many as 40 percent of the new plumbing fixtures installed there do not meet the regulations. Manufacturers complain that they cannot produce 50 different types of toilets or showerheads to comply with 50 different State laws. It is clearly time to establish Federal standards, with effective enforcement at our borders, for improved water efficient devices.

The National Water Conservation Plumbing Fixtures Efficiency Act will set such standards over a period of years, ensure a national market for plumbing fixtures, and reduce water use in new homes across the country. It will not address the retrofitting of existing plumbing fixtures, but given that some of the most urgent needs for water are in the nation's fastest growing cities of the South and Southwest, like my booming hometown, this legislation will do much to stave off more stringent water conservation regulations.

These two measures are not cure-alls, and their provisions have not been subject to the type of intensive review we would prefer before introducing them. But it is my intention, in running this legislation up the flagpole before we adjourn for the holidays, to see who salutes and who shoots, and to raise these issues high enough to attract the attention of those leaders—in and out of government—who are willing to work with me to craft a wise and far-sighted Federal water conservation policy.

I look forward to this process of defining and refining our goals for a Federal water conservation policy over the next few months. I invite my colleagues in the Senate and the House, our policy-makers and policy-implementers in the executive branch, my friends in the environmental, agricultural, and business communities, researchers, scientists, and private citizens—I invite anyone with an interest in this issue to contact me and work with me so that I can reintroduce in the 101st Congress legislation that has been tempered and improved in this process.

Mr. President, the decade of the 1980's, the decade of the drought, has provided us with a lesson in the need for better, longer term management of our water resources. I think that we are wise enough to study this lesson and to act.

Mr. President, I ask unanimous consent that copies of these two bills, together with section-by-section analyses, be inserted in the RECORD immediately following my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2904

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "National Water Conservation Act of 1988".

FINDINGS

SEC. 2. The Congress finds that—

(1) the recurring droughts of the 1980s in all parts of the country have pointed out the need for wiser management of the entire water cycle, including water supply, water usage, and wastewater treatment;

(2) much of the Nation's water is wasted because of policies that discourage its efficient use;

(3) of the Nation's 756 large urban water systems, an estimated 170 will need additional supplies in the 1990s;

(4) increased water efficiency can help Federal, State, and local interests delay or eliminate the need for increasingly costly water supply and wastewater treatment projects;

(5) increased water efficiency can substantially reduce energy costs associated with heating, pumping, and treating water;

(6) increased water efficiency can be achieved without negative impacts on Americans' standard of living;

(7) increased water efficiency can decrease industrial costs of production, increase the profitability of business ventures, and improve the competitiveness of American goods abroad;

(8) while groundwater is an invaluable resource whose withdrawals supply more than one-third of the Nation's drinking and irrigation water, an estimated 20 percent of these withdrawals will never be replenished;

(9) depletion of aquifiers has resulted in saltwater intrusion into groundwater, greater contamination of groundwater with man-made pollutants, and permanent destruction of aquifier capacity; and

(10) excessive use of surface water sources, particularly during times of drought, stresses freshwater ecosystems, often beyond repair.

PURPOSE

SEC. 3. The purposes of this Act are—

(1) to examine and revise the policies of the Federal Government in order to ensure their consistency with the national policy of water conservation for sustainable use;

(2) to ensure that water conservation alternatives are considered in all Federal studies and funding of water supply and wastewater treatment projects and in the management of economically significant recreational reservoirs;

(3) to initiate and support Federal research into agricultural technologies that will lessen the impact of extended dry weather and depleted aquifers on the rural economy and safeguard America's ability to feed and clothe itself;

(4) to establish a national clearinghouse through which States, local governments, utilities, and private citizens may obtain information on water conservation and water conservation practices; and

(5) to provide, as a necessary step in the formation of a policy of water sustainability, for the collection of data on aquifier depletion and the major practices contributing to this depletion.

DECLARATION OF POLICY

SEC. 4. It is the policy of the United States to manage, protect, and conserve national, regional, and local water resources for sustainable use into the indefinite future.

DEFINITIONS

SEC. 5. As used in this Act—

(1) the term "water conservation" means any beneficial reduction in water use or water losses; and

(2) the term "water conservation activities" includes the following:

(A) promotional and educational campaigns to encourage consumers to use less water;

(B) financial or other incentives for residential, agricultural, or commercial users of water to conserve;

(C) detection and correction of leaks in water distribution systems;

(D) requirement, promotion, or distribution of water-saving technologies for residential, agricultural, or commercial users of water;

(E) reclamation, recycling, and reuse of municipal or industrial wastewater; and

(F) any other methods of achieving beneficial reductions in water use or water losses.

TITLE I—FEDERAL WATER CONSERVATION POLICIES

SEC. 101. (a) For the purposes of this Act, the policies of the following agencies of the Federal Government shall be considered to substantially affect the supply, management, or use of water resources:

(1) the Department of Agriculture, primarily the Farmers Home Administration and the Soil Conservation Service;

(2) the Department of the Army, primarily the Army Corps of Engineers;

(3) the Department of Commerce, primarily the National Institute of Standards and Technology and the National Oceanic and Atmospheric Administration;

(4) the Environmental Protection Agency;

(5) the Department of Housing and Urban Development;

(6) the Department of the Interior, primarily the Bureau of Land Management, the Bureau of Reclamation, and the U.S. Geological Survey; and

(7) the Tennessee Valley Authority.

(b) For the purposes of this Act, the President is authorized to specify other agencies of the Federal Government whose policies are to be considered to substantially affect the supply, management, or use of water resources.

STUDIES

SEC. 102. (a) The top official of each Federal agency whose policies under section 101 of this Act are considered to substantially affect the supply, management, or use of water resources shall undertake a comprehensive study of that agency's policies with respect to water conservation, including the interactions of such policies with those of other Federal or State agencies. Such studies shall specifically examine the mechanisms by which these policies promote or discourage the economically and environmentally efficient and sustainable use of water.

(b) By January 1, 1990, the top official of each Federal agency whose policies under section 101 of this Act are considered to substantially affect the supply, management, or use of water resources shall submit to Congress a written report detailing and summarizing the conclusions of the study undertaken in accordance with section 102 of this Act. Each agency's report to Congress shall include:

(1) a comprehensive listing of the agency's policies that were considered during the study to substantially affect water supply, management, or use;

(2) a detailed analysis of the impacts of the agency's policies on water supply, water management, and water use (agricultural, industrial, and residential);

(3) a listing of other Federal or State agencies' activities and policies which impact on the agency's policies that substantially affect water supply, management, or use;

(4) a plan of action, complete with timetables and expected results, for administratively bringing the agency's policies into conformance with the national policy of water conservation for sustainable use;

(5) suggested actions to be taken by other Federal or State agencies in order to better coordinate all activities and policies that substantially affect water supply, management, or use;

(6) specific recommendations for further legislative actions necessary to bring the agency's policies and activities into conformance with the national policy of water conservation; and

(7) specific proposals for additional programs or policy changes to promote water conservation in the agency's areas of responsibility.

IMPLEMENTATION

SEC. 103. By July 1, 1990, in the absence of directions to the contrary from the President of the United States, the top official of each agency considered under section 101 of this Act shall take such steps as are necessary to implement the plan of action submitted to Congress under section 102(b)(4) of this Act.

TITLE II—FEDERAL CONSIDERATION OF WATER CONSERVATION

SEC. 201. The Secretary of the Army, the Secretary of the Interior, and the Secretary of Agriculture, jointly and separately—

(1) in all on-going and future national, regional, or local studies of water resources needs which include or may reasonably be expected at some future date to include water supplies for municipal, agricultural, or industrial purposes, shall assess the impact, feasibility, costs and benefits of water conservation activities on current and projected water resources needs;

(2) in considering actions for meeting water resources needs either as a result of or independent of such studies, shall recommend and is authorized to require as a condition of Federal involvement, including technical, financial or other support, any and all water conservation activities that will increase the net economic and environmental benefits of such actions; and

(3) shall promulgate such regulations as may be necessary to carry out this title.

RESERVOIR LEVELS STUDIES

SEC. 202. (a) The Secretary of the Army, acting through the Army Corps of Engineers, shall undertake a study of the management of water levels in those federally managed reservoirs experiencing more than 1,000,000 estimated visitor-days of recreational use in any of the last 5 years. In conducting this study, the Secretary of the Army shall consult with the Secretary of the Interior, the Chairman of the Tennessee Valley Authority, and such other Federal agencies as the Secretary of the Army deems appropriate.

(b) By January 1, 1990, the Secretary of the Army shall report to Congress the results of this study, including:

(1) historical information on the levels of each reservoir since January 1, 1980;

(2) estimates of the economic benefits of recreation on each reservoir, including tax benefits to nearby communities;

(3) analyses of the relationship between lake levels and recreational economic benefits for each reservoir, with cumulative accounts of the effects of major dry spells since 1980;

(4) estimates of the possible contributions that both short-term and permanent water conservation practices (using currently available technology) could have made and in the future can make to the maintenance of water levels on each reservoir.

INSTITUTE FOR WATER RESOURCES

SEC. 203. Within 90 days of enactment of this Act, the Secretary of the Army shall, by memorandum of understanding or other suitable interagency agreement, make available to the Secretary of the Interior and the Secretary of Agriculture the personnel, information, procedures manuals, handbooks, reports and such other resources of the Army Corps of Engineers Institute for Water Resources as may be deemed useful to the agencies of the Department of the Interior and the Department of Agriculture for carrying out the purposes of this Act.

ENVIRONMENTAL IMPACT STUDIES

SEC. 204. The President's Council on Environmental Quality, no later than 1 year after enactment of this Act, shall by rulemaking require the consideration of water conservation and water conservation activities in all relevant environmental impact studies conducted in accordance with section 102 of the National Environmental Policy Act of 1969.

STUDY OF WATER USAGE IN FEDERAL FACILITIES

SEC. 205. (a) The General Accounting Office of the United States shall undertake a comprehensive study of water usage in all Federal facilities within the borders of the United States.

(b) By January 1, 1990, the General Accounting Office shall report to Congress the results of this study, including but not limited to the following:

(1) a listing and description of current water usage practices and policies;

(2) an account of estimated water usage in Federal facilities, disaggregated to the maximum extent feasible but at least by region and agency;

(3) recommended changes in procurement, use, internal accounting or other policies and procedures that will result in decreased use of water in Federal facilities; and

(4) an analysis of the feasibility of retrofitting plumbing fixtures and water-consuming appliances in Federal facilities with devices that conserve water, including projected costs and benefits of such actions disaggregated to the maximum extent feasible but at least by region and agency.

STUDY OF WASTEWATER RECLAMATION AND REUSE

SEC. 206. The Administrator of the Environmental Protection Agency shall submit copies of the report required under section 517(b) of the Water Quality Act of 1987 to the Committee on Energy and Natural Resources of the Senate and to the Committees on Energy and Commerce and Interior and Insular Affairs of the House of Representatives.

TITLE III—AGRICULTURAL WATER CONSERVATION RESEARCH

DROUGHT-RESISTANT CROPS

SEC. 301. (a) The Secretary of Agriculture is directed to give highest priority to research on and development of strains of crops that are resistant to drought or regularly require less water than currently available strains. In determining priorities within this area of research, the Secretary of Agriculture shall pay particular attention to those crops for which a likely achievable decrease in water requirements would result in substantial reductions in regional agricultural water use or improve the profitability of agriculture through reduced water use. The Secretary of Agriculture shall, by January 1, 1990, and annually thereafter, report to Congress on the progress of activities in this area.

(b) For carrying out the purposes of this title, there are authorized to be appropriated such sums as may be necessary.

AGRICULTURAL WATER USE

SEC. 302. (a) The Secretary of Agriculture shall conduct research on, development of, and demonstration of technologies, methods, and practices which show promise of providing substantial and feasible water conservation benefits in irrigation, livestock watering, and other agricultural uses of water.

(b) In determining priorities within this area of research, the Secretary of Agriculture shall pay particular attention to those technologies, methods, and practices whose widespread implementation is feasible and would result in substantial reductions in regional agricultural water use or improve the profitability of agriculture through reduced water use.

(c) In carrying out this program, the Secretary of Agriculture shall cooperate with and provide technical assistance to the States, local governmental entities, other appropriate public agencies and authorities, nonprofit institutions and organizations, and others primarily interested in the public benefits offered by these technologies, methods, and practices.

(d) Technologies, methods, and practices to be explored under this program shall be limited to those that show promise of reducing total regional water use. Such technologies, methods, and practices may include—

(1) precision leveling of land;

(2) low energy precision application (LEPA);

(3) conservation tillage;

(4) furrow-diking and other micro-catchment techniques;

(5) soil-testing and other irrigation-scheduling techniques;

(6) drip and other micro-irrigation techniques; and

(7) surging of water applications.

(e) The Secretary of Agriculture shall, by January 1, 1990, and annually thereafter, report to Congress on the progress of activities in this area.

(f) For carrying out the purposes of this title, there is authorized to be appropriated such sums as may be necessary.

PROMOTION OF AGRICULTURAL WATER CONSERVATION

SEC. 303. (a) The Secretary of Agriculture, acting through the Cooperative Extension Service, the Soil Conservation Service, and other agencies, shall provide technical assistance to agricultural producers and otherwise promote and encourage the use of technologies, methods, and practices that provide regional water conservation benefits.

(b) The Secretary of Agriculture shall, by January 1, 1990, report to Congress on existing financial, technical, and regulatory incentives, disincentives, and other factors in the decisions of individual agricultural producers to utilize technologies, methods, and practices that provide regional water conservation benefits. Such report shall include recommendations of Federal actions, whether executive or legislative, to increase the use of water-conserving technologies, methods and practices by agricultural producers.

TITLE IV—NATIONAL CLEARINGHOUSE ON WATER CONSERVATION

ESTABLISHMENT AND PURPOSES

SEC. 401. (a) The Administrator of the Environmental Protection Agency, in consultation with each Federal agency whose policies under section 101 of this Act are considered to substantially affect the supply, management, and use of water resources, shall establish and oversee a National Clearinghouse on Water Conservation to collect, analyze, and disseminate information on water conservation technologies and practices and to promote their widespread adoption by public and private water utilities, and agricultural, commercial, industrial, and residential consumers.

(b) Such information shall include but not be limited to—

(1) leak detection;

(2) consumer education;

(3) water-efficient vegetative cover and landscaping;

(4) metering of water usage;

(5) pricing of water;

(6) water-efficient irrigation devices and practices;

(7) water-efficient residential devices, fixtures, appliances, and practices;

(8) water-efficient commercial and industrial devices, fixtures, appliances, and practices (including reclamation, recycling, and reuse of wastewater);

(9) drought-resistant crops; and

(10) studies, reports, and other information compiled under this Act.

(c) The Clearinghouse shall collect reliable water conservation information from and provide it to Federal agencies, the States, local governmental entities, other appropriate public agencies and authorities, nonprofit institutions and organizations, researchers, and others in a position to derive or increase the public benefits offered by these technologies, methods, and practices.

(d) In addition to collecting and providing information on water conservation, the Clearinghouse shall undertake such activities as the Administrator deems necessary to effectively package and disseminate such information, including but not limited to—

(1) publishing a periodic newsletter;

(2) developing and distributing generic kits and manuals to provide guidance to municipalities on retrofitting, public education, and other programs; and

(3) developing and distributing, in cooperation with other appropriate Federal agencies, generic kits and manuals to provide guidance to industrial, agricultural, or residential users on reducing water use.

AUTHORIZATION

SEC. 402. For carrying out the purposes of this title, there are authorized to be appropriated such sums as may be necessary.

TITLE V—STUDY OF AQUIFER DEPLETION

GENERAL

SEC. 501. (a) The Director of the United States Geological Survey shall conduct a study of the Nation's major aquifers in order to ascertain those that have been or will be depleted and to determine the causes and effects of this depletion.

(b) By January 1, 1990, the Director of the United States Geological Survey shall report to Congress on the following:

(1) the historic water volume and geographic range of each aquifer;

(2) the current water volume and geographic range of each aquifer;

(3) the projected water volume and geographic range of each aquifer based on current and anticipated future withdrawals of water;

(4) for each aquifer with currently reduced or projected reduced water volume or geographic range, the major types and quantities of withdrawals contributing to this reduction;

(5) for each aquifer with currently reduced or projected reduced water volume or geographic range, assessments of the major environmental impacts observed or anticipated due to the reduction, including but not limited to sink-holes, subsidence, water quality changes, saltwater intrusion, wildlife habitat changes, and potential for future natural or artificial replenishment or sustainability; and

(6) for each aquifer with currently reduced or projected reduced water volume or geographic range, recommendations of local, State, or Federal policies that show significant potential for the replenishment or long-term sustainability of the aquifer.

AUTHORIZATION

SEC. 502. For carrying out the purposes of this title, there are authorized to be appropriated such sums as may be necessary.

SECTION-BY-SECTION ANALYSIS

(Senator Wyche Fowler, Jr.)

Sections 1 through 5 give the bill's title, findings, purposes, declaration of policy, and definitions.

TITLE I—FEDERAL WATER CONSERVATION POLICIES

Section 101 lists seven Federal agencies whose policies substantially affect the supply, management, and use of water resources. It allows the President to add to this list.

Section 102 requires all Federal agencies listed in section 101 to study their policies and report to Congress by 1990 on how they promote or discourage water conservation. These reports will include plans of action for the agency to bring its policies into line with the national policy of water conservation.

Section 103 provides that, absent Presidential direction to the contrary, each such agency will implement its plan of action in mid-1990.

TITLE II—FEDERAL CONSIDERATION OF WATER CONSERVATION

Section 201 requires the Corps of Engineers, the Bureau of Reclamation, and the Soil Conservation Service to consider water conservation activities as part of their ongoing water resources studies. These agencies are authorized to require water conservation activities as a condition of federal involvement.

Section 202 directs the Army Corps of Engineers to study the management of water levels in federally managed reservoirs that provide significant recreational benefits. Their report is due to Congress by 1990 and will include estimates of the potential contributions that water conservation activities can make to maintaining water levels on each reservoir.

Section 203 directs the Army Corps of Engineers' Institute for Water Resources to provide technical assistance and otherwise cooperate with the Bureau of Reclamation and the Soil Conservation Service in carrying out the provisions of this act.

Section 204 requires the consideration of water conservation in all relevant environmental impact studies conducted under the National Environmental Policy Act.

Section 205 directs the General Accounting Office to study water use in domestic Federal facilities and report to Congress by 1990 on amounts used, policies in place, and recommended changes, including retrofitting plumbing devices with water conservation devices, in order to more wisely manage the Federal Government's water use.

Section 206 asserts the interest of the Senate Energy and House Energy and Interior Committees in the EPA's report on wastewater reclamation and reuse.

TITLE III—AGRICULTURAL WATER CONSERVATION RESEARCH

Section 301 directs the U.S. Department of Agriculture to give priority to research and development of drought-resistant or water-conserving crops. Annual reports to Congress on activities in this area are expected, and funds are authorized.

Section 302 establishes a USDA research program on technologies, methods, and practices to reduce agricultural water use. Annual reports to Congress on activities in this area are expected, and funds are authorized.

Section 303 directs USDA's Cooperative Extension Service and Soil Conservation Service to promote the use of technologies, methods, and practices that reduce agricultural water use. USDA will report to Congress by 1990 on difficulties with promotion of these technologies, including recommended Federal actions to improve their widespread adoption. Funds are authorized for these activities.

TITLE IV—NATIONAL CLEARINGHOUSE ON WATER CONSERVATION

Section 401 establishes a National Clearinghouse on Water Conservation to collect, analyze, and disseminate information on water conservation activities and to promote their widespread adoption.

Section 402 authorizes funds for this clearinghouse.

TITLE V—STUDY OF AQUIFER DEPLETION

Section 501 requires a U.S. Geological Survey study of the depletion of the nation's acquifers. By 1990, USGS shall report to Congress on the extent and causes of this depletion, its environmental impacts, future expected depletion, and recommendations for policy changes to replenish or stabilize aquifers.

Section 502 authorizes funds for this study.●

By Mr. HECHT:

S. 2905. A bill to authorize the exchange of certain public lands in California and Nevada; referred to the Committee on Energy and Natural Resources.

CALIFORNIA-NEVADA LAND EXCHANGE

● Mr. HECHT. Mr. President, today I am introducing a bill that will provide significant economic benefits to the States of Nevada and California, and significant environmental benefits to both States.

The bill involves an interstate land exchange whereby the city of Los Angeles and the Federal Government trade land in California and Nevada, and reserve a right-of-way, in order to facilitate the construction and operation of the White Pine Power Project in White Pine County, NV. The city of Los Angeles will be the ultimate beneficiary of much of the electric power from this large coal-fired facility.

The bill will result in an addition to the heavily used Lake Mead National Recreation Area in Nevada. It will also stimulate the long overdue proposal for a bridge over the Black Canyon south of Hoover Dam. The Hoover Dam roadway is very dangerous, and the Black Canyon Bridge is needed to provide a safer transportation route between Nevada and Arizona. I have secured authorization for the bridge in previous legislation now enacted into law; all we need now is a formula for funding construction of the bridge.

Perhaps most exciting, from my perspective, Mr. President, is the fact that the bill sets up a $5 million environmental mitigation fund in Nevada, to be established by the city of Los Angeles through the issuance of bonds sold by the White Pine Power Project. The money will be used to acquire environmentally sensitive lands, from willing sellers, in order to enhance, preserve, restore, and manage those lands.

There are many worthwhile projects that this money might eventually be spent on, such as further expansion of Red Rock Recreation Area in southern Nevada, or water right acquisition for Stillwater National Wildlife Refuge in northern Nevada.

While I do not expect passage of this legislation during the remaining hours of this Congress, I plan to reintroduce this bill next year, expect it will receive bistate and bipartisan support, and hope for its prompt consideration by the 101st Congress.●

ADDITIONAL COSPONSORS

S. 2724

At the request of Mr. Riegle, the name of the Senator from Nebraska [Mr. Exon] was added as a cosponsor of S. 2724, a bill to amend the Export Administration Act of 1979.

S. 2765

At the request of Mr. Glenn, the name of the Senator from Pennsylvania [Mr. Heinz] was added as a cosponsor of S. 2765, a bill to protect the rights of persons to due process of law and equal protection of the laws in guardianship proceedings.

SENATE JOINT RESOLUTION 340

At the request of Mr. Packwood, the name of the Senator from Alaska [Mr. Murkowski] was added as a cosponsor of Senate Joint Resolution 340, designating November 27 through December 3, 1988, as "National Sir Winston Churchill Recognition Week".

SENATE JOINT RESOLUTION 381

At the request of Mr. Bond, the names of the Senator from North Carolina [Mr. Helms], the Senator from Vermont [Mr. Stafford], the Senator from South Carolina [Mr. Thurmond], the Senator from Arkansas [Mr. Pryor], the Senator from California [Mr. Wilson], the Senator from Iowa [Mr. Grassley], and the Senator from Minnesota [Mr. Boschwitz] were added as cosponsors of Senate Joint Resolution 381, a joint resolution to designate October 30, 1988 as "Fire Safety at Home Day—Change Your Clock, Change Your Battery".

SENATE JOINT RESOLUTION 338

At the request of Mr. Gore, the names of the Senator from Louisiana [Mr. Breaux], the Senator from Nebraska [Mr. Exon], the Senator from South Carolina [Mr. Hollings], and the Senator from Hawaii [Mr. Inouye] were added as cosponsors of Senate Joint Resolution 388, a joint resolution designating October 15, 1988, as "National Fire Fighters Day".

SENATE CONCURRENT RESOLUTION 127

At the request of Mr. Wilson, the names of the Senator from Utah [Mr. Hatch], the Senator from Kansas [Mrs. Kassebaum], and the Senator from North Carolina [Mr. Helms] were added as cosponsors of Senate Concurrent Resolution 127, a concurrent resolution expressing the sense of the Congress concerning support for amateur radio and amateur radio frequency allocations vital for public safety purposes.

SENATE CONCURRENT RESOLUTION 161—RELATING TO THE PROVISION OF TELECOMMUNICATIONS SERVICES

Mr. BREAUX (for himself and Mr. Stevens) submitted the following concurrent resolution; which was referred to the Committee on Commerce, Science, and Transportation:

S. Con. Res. 161

Whereas universally telephone service at affordable rates has long been an accepted national policy;

Whereas advancement in technology have brought the society to the threshold of the information age;

Whereas the national welfare will be greatly enhanced by the universal availability to the Americn people of the innovative technologies of the information age;

Whereas the provision of information services, including the provision of content, by the Bell operating companies may stimulate and encourage the use of information age technology by the American people;

Whereas permitting the Bell operating companies to conduct research, to design, develop, and market software, and to manufacture and market telecommunications equipment and customer premises equipment may promote the development of a state-of-the-art public telecommunications network for the people of the United States; and

Whereas the revision of the current line of business restrictions on the Bell operating companies may serve national policy by enhancing the capacity of the United States to better compete in the global information and high technology marketplace; Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That—

(1) Congress should determine whether or not the Bell operating companies should be permitted to provide information services (including the provisions of content), to conduct research, to design, develop, and market software, and to design, develop,

manufacture, and market telecommunications equipment and customer premises equipment; and

(2) statutory safeguards should be in place to implement policies enacted by Congress to prevent cross subsidies between regulated and unregulated services offerings and to ensure that the provision of any such services by the Bell operating companies does not harm customers of telephone service or harm competition in the information services (including those that offer content) or manufacturing industries.

Mr. BREAUX. Mr. President, the United States has the best telecommunication system in the world. Universal telephone service for all Americans is now a fact of which we can be justifiably proud. Government policies to implement our national goal of universal phone service, combined with aggressive research and development by industry, have brought about this modern achievement.

Today, however, I and many others are growing increasingly concerned with the future of America's telecommunications system. Is it going to continue to be first in the world? Are we going to continue to be the world's technology leader in this field? How do we tailor our laws to keep up with our technology?

My concern is that today key decisions about the market makeup of this vast communication network and the public policies that guide it are being made not by our duly elected public officials, but by a district judge in Washington, DC. Judge Harold Greene's decisions in this field have been made primarily on the basis of the antitrust laws of the United States rather than communications laws and policies set by Congress.

I do not fault the efforts of Judge Greene, because in many of these telecommunication areas Congress has failed to act decisively. When conflicts arise, when disputes cannot be settled, then our courts must act. But Congress can no longer remain silent. The future of America in the upcoming information age cannot be left to piecemeal decisions.

Mr. President, it is the role of Congress to create public policy and the role of the courts to interpret and apply the laws we pass. Too frequently, this has not been the case in the communications arena. Now is the time for Congress to reaffirm its role in establishing communications law and policy.

I am today introducing legislation which expresses the view that Congress should exercise its legitimate and necessary role in determining telecommunications policy. I am hopeful that this measure will raise key issues that Congress needs to decide in the next Congress. No longer can we ignore the fact that major decisions regarding telecommunication policy are being made without the involvement of Congress.

The question of whether over one-half of the telecommunication industry in America will continue to be prohibited from competing in the research, development, and manufacturing of telecommunications equipment because of a judge's decision, must be addressed by Congress. We must maximize the opportunity of all American workers to produce the equipment and engage in the services of the future.

Foreign countries look with envy on the opportunities of manufacturing equipment and providing services for the American market. They will gladly do the research, development, and manufacturing of that equipment in foreign countries, with foreign workers and then sell it to us at a profit. That's not good public policy for America.

Mr. President, it is time for Congress to examine the need to unshackle the chains that limit research, development, and the manufacture and distribution of innovative goods and services in the telecommunications field. With appropriate statutory safeguards to assure that the marketplace can and will operate fairly, American workers, American industries, and the American public can be the winners in a new age of telecommunications technology.

The next session of Congress will face many challenges, one of which must be a major effort to formulate a telecommunications policy for the next several decades. I'm hopeful that my resolution can lend momentum to the reassertion of Congress' legitimate role in determining America's future in this dynamic field.

Mr. STEVENS. Mr. President, I am pleased to join my good friend, Senator BREAUX of Louisiana, as a cosponsor of his concurrent resolution calling for Congress to reassert its jurisdiction over the regulation of the regional Bell operating companies [RBOC's], which were spun off from AT&T in a court-ordered divestiture several years ago.

Judge Greene, who presided over the divestiture, has retained broad regulatory authority over the RBOC's. In my opinion, the role he is playing is inappropriate. Under our Constitution, judges are intended to decide cases and controversies, not assume long-term regulatory powers reserved to Congress or agencies created by Congress.

Some will argue that the judicial system in this case has merely stepped in a vacuum created by Congress' reluctance to deal with complex telecommunications issues. If so, it is time for Congress to reassert its jurisdiction, make the hard policy choices, and establish a regulatory regime. To do otherwise would let stand a very dangerous precedent.

Mr. President, this concurrent resolution does not prejudge any of the complex policy questions involved in setting up a regulatory regime for the RBOC's. It does, however, frame the debate for the next Congress. I commend my colleague from Louisiana for his willingness to take a leadership role on this important issue, and I look forward to working with him in the 101st Congress.

SENATE CONCURRENT RESOLUTION 162—CORRECTING THE ENROLLMENT OF H.R. 2642

Mr. WIRTH (for Mr. BRADLEY) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 162

Resolved by the Senate (the House of Representatives concurring), That, in the enrollment of the Act (H.R. 2642) to facilitate and implement the settlement of Colorado Ute Indian reserved water rights claims in southwest Colorado, and for other purposes, the Clerk of the House of Representatives shall make the following corrections:

Strike out paragraph (1) of section 5(c) and insert in lieu thereof the following:

(1) The use of the rights referred to in subsection (a) within the State of Colorado shall be governed solely as provided in the Agreement as modified pursuant to section 11 of this Act and this subsection. The Agreement is hereby modified to provide that a Tribe may voluntarily elect to sell, exchange, lease, use, or otherwise dispose of any portion of a water right confirmed in the Agreement and final consent decree off its reservation. If either the Southern Ute Indian Tribe or the Ute Mountain Ute Indian Tribe so elects, and as a condition precedent to such sale, exchange, lease, use, or other disposition, that portion of the Tribe's water right shall be changed to a Colorado State water right, but be such a State water right only during the use of that right off the reservation, and shall be fully subject to State laws, Federal laws, interstate compacts, and international treaties applicable to the Colorado River and its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.

At the end of subsection (b) of section 11, add the following: "This Act is the result of a voluntary compromise agreement between the Southern Ute Indian Tribe, the Ute Mountain Ute Indian Tribe, the State of Colorado, local water districts and municipalities, and the United States. Accordingly, no provision of this Act, the Agreement, or the final consent decree shall be construed as altering or affecting the determination of any questions relating to the reserved water rights belonging to other Indian tribes.

SENATE CONCURRENT RESOLUTION 163—CORRECTIONS IN THE ENROLLMENT OF H.R. 4174

Mr. BYRD (for Mr. BUMPERS) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 163

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (H.R. 4174) to amend the Small Business Act and the Small Business Investment Act of 1958, and for other purposes, the Clerk of the House of Representatives shall make the following changes:

(1) Strike all after section 123 up to section 125.

(2) renumber sections 125 through 138 as sections 124 through 137, respectively.

SENATE CONCURRENT RESOLUTION 164—CORRECTIONS IN THE ENROLLMENT OF H.R. 4612

Mr. BYRD (for Mr. HEFLIN) proposed an amendment to the submitted concurrent resolution; which was considered and agreed to:

S. CON. RES. 164

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (H.R. 4612), the Clerk of the House of Representatives shall make the following correction:

(1) In section 9(c) of the bill, strike the words "Section 2674 of title 28, United States Code, is amended by adding at the end thereof the following new paragraph:"; and

(2) In section 9(c) of the bill, as corrected, strike the quotation marks and the words "under this chapter".

SENATE RESOLUTION 498—COMMENDING CORNEL H. PETRASSEVICH

Mr. BYRD (for Mr. STENNIS) submitted the following resolution; which was considered and agreed to:

S. RES. 498

Whereas, Cornel H. Petrassevich, a medical doctor born in Bucharest, Romania, provided valuable information gathering services to the United States Office of Strategic Services in Bucharest from 1944 to 1948 without renumeration; and

Whereas, Cornel H. Petrassevich was arrested in 1948 by Romanian officials and later sentenced by a military court for spying for United States officials and served 15 years subject to torture and hard labor in Romanian prisons; and

Whereas, Cornel H. Petrassevich emigrated to the United States, became a United States citizen, and utilized his medical skills as a Public Health Service Physician, retiring in 1982 in Philadelphia, Mississippi; and

Whereas, during his lifetime of service to his native homeland and his adopted country, Cornel H. Petrassevich has performed his duties with skill, dedication, and self-sacrifice: Now, therefore, be it

Resolved, That the Senate of the United States extends its appreciation and gratitude to Cornel H. Petrassevich for his long and faithful service to the United States and to mankind.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to Cornel H. Petrassevich.

SENATE RESOLUTION 499—COMMENDING RICHARD BRANDON FOR HIS SERVICE TO THE SENATE

Mr. CHILES (for himself, Mr. DOMENICI, Mr. JOHNSTON, Mr. ARMSTRONG, Mr. SASSER, Mrs. KASSEBAUM, Mr. RIEGLE, Mr. BOSCHWITZ, Mr. EXON, Mr. SYMMS, Mr. LAUTENBERG, Mr. GRASSLEY, Mr. SIMON, Mr. KASTEN, Mr. SANFORD, Mr. QUAYLE, Mr. WIRTH, Mr. DANFORTH, Mr. FOWLER, Mr. NICKLES, Mr. CONRAD, Mr. RUDMAN, and Mr. DODD) submitted the following resolution; which was considered and agreed to:

S. RES. 499

Whereas Richard Brandon has ably and faithfully served the Senate of the United States as Staff Director and as Minority Staff Director of the Committee on the Budget and the Senate wishes to express its appreciation for his fifteen years of outstanding service to the Senate and to the Nation;

Whereas Richard Brandon has dedicated his efforts to the management of the Federal budget and the achievement of effective fiscal public policy;

Whereas Richard Brandon brought to these tasks remarkable diligence, perseverance, and intelligence; and

Whereas Richard Brandon has helped provide direction and guidance to the Committee on the Budget as it faced difficult challenges in the area of fiscal policy: Now, therefore, be it

Resolved, That the Senate of the United States commends Richard Brandon for his exemplary service to the Senate and the Nation.

SEC. 2. The Secretary of the Senate shall transmit a copy of the resolution to Richard Brandon.

AMENDMENTS SUBMITTED

PARTICIPATION BY DELEGATIONS OF MEMBERS OF CONGRESS IN CERTAIN CEREMONIES

BYRD AMENDMENT NO. 3686

Mr. BYRD submitted an amendment to the concurrent resolution (H. Con. Res. 115) to provide for participation by delegations of Members of both Houses of Congress in ceremonies to be held in April 1989 in New York City marking the 200th anniversaries of the implementation of the Constitution as the form of government of the United States, the inauguration of President George Washington, and the proposal of the Bill of Rights as the first 10 amendments to the Constitution; as follows:

Strike all after the resolving clause and insert the following:

That (a) the Speaker of the House of Representatives and the President pro tempore of the Senate, in consultation with the Minority Leaders and the Bicentennial Committee Chairmen of their respective Houses, are authorized and directed to appoint members of their respective Houses to serve on a delegation of members of the Congress which will take part in ceremonies to be held in New York City in April 1989 commemorating the 200th anniversaries of the implementation of the Constitution as the form of government of the United States, the convening of the first Congress, the inauguration of George Washington as the first President of the United States, and the proposal of the Bill of Rights as the first ten amendments to the Constitution, and shall invite the President to join this delegation in participating in these ceremonies.

(b) The specific planning of the ceremonies described in subsection (a) shall be coordinated directly with the Historian of the Senate, under the jurisdiction of the Secretary of the Senate, and the Historian of the House of Representatives, under the jurisdiction of the Speaker of the House of Representatives.

The third whereas clause in the preamble is amended by striking "April" and inserting "March".

AMENDMENTS TO CERTAIN WILDLIFE LAWS

MITCHELL AMENDMENT NO. 3687

Mr. BYRD (for Mr. MITCHELL) proposed an amendment to the bill (H.R. 4030) to reauthorize and amend certain wildlife laws, and for other purposes; as follows:

Title IX of H.R. 4030 is amended by inserting the following new sections:

SEC. 903. AMENDMENT TO THE NATIONAL FISH AND WILDLIFE FOUNDATION ESTABLISHMENT ACT.

Section 5 of the Act of March 26, 1984 (16 U.S.C. 3704), otherwise known as the "National Fish and Wildlife Foundation Establishment Act", is amended by inserting the following at the end of section 5: "Notwithstanding any other provision of this section, the Secretary of the Interior is authorized to continue to provide facilities, and necessary support services for such facilities, to the National Fish and Wildlife Foundation after March 26, 1989, on a space available, reimbursable cost basis.".

SEC. 904. AMENDMENT TO THE NATIONAL WILDLIFE REFUGE SYSTEM ADMINISTRATION ACT OF 1966.

Subsection (e) of section 4 of the Act of October 15, 1966 (16 U.S.C. 668dd(e)), otherwise known as the "National Wildlife Refuge System Administration Act of 1966", is amended by striking "thereunder" and all that follows through the end of the sentence and inserting in lieu thereof "thereunder shall be fined under title 18, United States Code, or imprisoned for not more than 1 year, or both.".

SEC. 905. TECHNICAL CORRECTION.

Section 9(d)(1)(A) of the Endangered Species Act of 1973 (16 U.S.C. 1538(d)(1)(A)), as amended by the African Elephant Conservation Act, is amended further by striking "recreational purposes); or" and inserting in lieu thereof "recreational purposes) or plants; or".

DOMENICI AMENDMENT NO. 3688

Mr. DOLE (for Mr. DOMENICI) proposed an amendment to the bill H.R. 4030, supra; as follows:

Section 201 is amended to read as follows:

SEC. 201. STATE USE OF AMOUNTS FROM STAMP FEES.

Section 203(b)(3) of Public Law 86-797 (commonly known as the Sikes Act; 16 U.S.C. 670i(b)(3)) is amended to read as follows:

"(3) Except for expenses incurred in the printing, issuing, or selling of such stamps, the fees collected for such stamps by the

State agency shall be utilized in carrying out conservation and rehabilitation programs implemented under this title in the State concerned. Such fees may be used by the State agency to acquire lands or interests therein from willing sellers or donors to provide public access to program lands that have no existing public access for enhancement of outdoor recreation and wildlife conservation; provided that the Secretary of Agriculture and the Secretary of the Interior or maintain such access, or ensure that maintenance is provided for such access, through or to lands within their respective jurisdiction.".

PATENT AND TRADEMARK OFFICE AUTHORIZATION

LEAHY (AND OTHERS) AMENDMENT NO. 3689

Mr. BYRD (for Mr. Leahy, for himself, Mr. Hatch, Mr. Thurmond, Mr. DeConcini, and Mr. Kennedy) proposed an amendment to the bill (H.R. 4972) to authorize appropriations for the Patent and Trademark Office in the Department of Commerce, and for other purposes; as follows:

At an appropriate place, insert the following:

TITLE I—INTELLECTUAL PROPERTY

Sec. 101. This title may be cited as the "Intellectual Property Antitrust Protection Act of 1988".

PROHIBITION OF MARKET POWER PRESUMPTION

Sec. 102. In any action in which the conduct of an owner, licensor, licensee, or other holder of an intellectual property right is alleged to be in violation of the antitrust laws in connection with the marketing or distribution of a product or service protected by such a right, such right shall not be presumed to define market or to establish market power, including economic power and product uniqueness or distinctiveness, or monopoly power.

Sec. 103. For purposes of this title—

(1) the term "antitrust laws" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)); and

(2) the term "intellectual property right" means a right, title, or interest—

(A) in subject matter patented under title 35 of the United States Code, or

(B) in a work, including a mask work, protected under title 17 of the United States Code.

TITLE II—PATENT MISUSE DOCTRINE REFORM

Sec. 201. Section 217 of title 35, United States Code, is amended—

(1) by redesignating subsection (c) as paragraph (1) of subsection (c);

(2) by redesignating subsection (d) as paragraph (2) of such subsection (c); and

(3) by inserting after subsection (c) the following new subsection:

"(d) No patent owner otherwise entitled to relief for infringement or contributory infringement of a patent shall be denied relief or deemed guilty of misuse or illegal extension of the patent right by reason of his or her licensing practices or actions or inactions relating to his or her patent, unless such practices or actions or inactions, in view of the circumstances in which such practices or actions or inactions are employed, violate the antitrust laws."

DELAWARE AND LEHIGH NAVIGATION CANAL NATIONAL HERITAGE CORRIDOR

McCLURE AMENDMENT NO. 3690

Mr. DOLE (for Mr. McClure) proposed an amendment to the bill (H.R. 3957) to establish the Delaware and Lehigh Navigation Canal National Heritage Corridor in the Commonwealth of Pennsylvania; as follows:

On page 4, lines 20-21 strike the words "nominated by the Governor of the Commonwealth and appointed by the Secretary," and insert "appointed by the Secretary, after receiving recommendations from the Governor,".

On page 5, lines 4-5 strike the words "nominated by the Governor of the Commonwealth and appointed by the Secretary," and insert "appointed by the Secretary, after receiving recommendations from the Governor,".

On page 5, lines 10-12 strike the words "nominated by the Governor of the Commonwealth and appointed by the Secretary," and insert "appointed by the Secretary, after receiving recommendations from the Governor,".

On page 13, strike lines 21-22 and insert the following: "(3) the Secretary approves such extension.".

BAUCUS AMENDMENT NO. 3691

Mr. BYRD (for Mr. Baucus) proposed an amendment to the bill H.R. 3957, supra; as follows:

At the appropriate place in the bill, insert the following new title:

TITLE .—COMMEMORATION OF STATEHOOD ANNIVERSARIES

SEC. . SHORT TITLE.

This title may be cited as the "Statehood Centennial Commemorative Coin Act of 1989".

SEC. . SPECIFICATIONS OF COINS.

(a) Authorization.—Subject to subsection (b), the Secretary of the Treasury (hereinafter referred to as the "Secretary") shall mint and issue five-dollar coins in commemoration of the 100th anniversary of the statehood of Idaho, Montana, North Dakota, South Dakota, Washington, and Wyoming.

(b) Issuance.—The Secretary shall mint and issue not more than 350,000 five-dollar coins each of which shall—

(1) weigh 31.103 grams;

(2) have a diameter of 1.500 inches; and

(3) be composed of 90 percent palladium and 10 percent alloy.

(c) Design.—The design of the five-dollar coin, in accordance with this section, shall contain an engraving of the Centennial States' regional logo on one side; and on the other side, busts of Thomas Jefferson, and Lewis and Clark overlooking the Missouri River. Each coin shall bear a designation of the value of the coin, the year 1989, and inscriptions of the words "Liberty", "In God We Trust", "United States of America", and "E Pluribus Unum". The reverse may also contain the words "Northwest Centennial" and "Statehood 1889-1890". Modifications to these designs may be made, if necessary, by the Secretary upon consultation with a duly authorized representative of the 6 States' Centennial Commissions.

(d) Numismatic Items.—For purposes of section 5132(a)(1) of title 31, United States Code, all coins minted under this title shall be considered to be numismatic items.

(e) Legal Tender.—The coins referred to in subsection (a) shall be legal tender as provided in section 5103 of title 31, United States Code.

SEC. . SOURCES OF BULLION.

The Secretary shall obtain palladium for the coins referred to in this title by purchase of palladium mined from natural deposits in the United States within one year after the month in which the ore from which it is derived was mined and by purchase of palladium refined in the United States. The Secretary shall pay not more than the average world price for the palladium. In the absence of available supplies of such palladium at the average world price, the Secretary shall purchase supplies of palladium pursuant to the authority of the Secretary under existing law. The Secretary shall issue such regulations as may be necessary to carry out this provision.

SEC. . MINTING AND ISSUANCE OF COINS.

(a) Uncirculated and Proof Qualities.—The coins minted under this title may be issued in uncirculated and proof qualities, except that not more than 1 facility of the United States Mint may be used to strike each quality.

(b) Commencement of Issuance.—The Secretary may issue the coins minted under this title beginning January 1, 1989.

(c) Termination of Authority.—Coins may not be minted under this title after December 31, 1990.

SEC. . SALE OF COINS.

(a) In General.—Notwithstanding any other provision of law, the Secretary shall sell the coins minted under this title at a price equal to the face value, plus the cost of designing and issuing the coins (including labor, materials, dies, use of machinery, and overhead expenses).

(b) Bulk Sales.—The Secretary shall make any bulk sales of the coins minted under this title at a reasonable discount to reflect the lower costs of such sales.

(c) Prepaid Orders.—The Secretary shall accept prepaid orders for the coins minted under this title prior to the issuance of such coins. Sale prices with respect to such prepaid orders shall be at a reasonable discount.

(d) Surcharges.—All sales of coins minted under this title shall include a surcharge of $20 per coin.

SEC. . FINANCIAL ASSURANCES.

(a) No Net Cost to the Government.—The Secretary shall take such actions as may be necessary to ensure that minting and issuing coins under this —— will not result in any net cost to the United States Government.

(b) Payment for Coins.—A coin shall not be issued under this title unless the Secretary has received—

(1) full payment for the coin;

(2) security satisfactory to the Secretary to indemnify the United States for full payment; or

(3) a guarantee of full payment satisfactory to the Secretary from a depository institution whose deposits are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration Board.

SEC. . REDUCTION OF NATIONAL DEBT.

An amount equal to $1,500,000 of all surcharges received by the Secretary from the sale of coins minted under this title shall be provided to the "Documents West" exhibition program and administered by the Idaho Centennial Foundation. These funds shall be used for the sole purpose of promoting the exhibition of historical and educational artifacts pertaining to the six Centennial States. The remaining amount of surcharges that are received by the Secretary from the sale of coins minted under this title shall be deposited in the general fund of the Treasury and shall be used for the sole purpose of reducing the national debt.

SEC. . AUDITS.

The Comptroller General shall have the right to examine such books, records, documents, and other data of the Idaho Centennial Foundation as may be related to the expenditure of amounts paid under section—.

SEC. . GENERAL WAIVER OF PROCUREMENT REGULATIONS.

(a) In General.—Except as provided in subsection (b), no provision of law governing procurement or public contracts shall be applicable to the procurement of goods and services necessary for carrying out the provisions of this title.

(b) Equal Employment Opportunity. Subsection (a) shall not relieve any person entering into a contract under the authority of this title complying with any law relating to equal employment opportunity. No firm shall be considered a Federal contractor for purposes of 41 C.F.R. part 60 et seq. as a result of participating as a United States Mint coin consignee.

SIMPSON AMENDMENT NO. 3692

Mr. BYRD (for Mr. Simpson) proposed an amendment to the bill H.R. 3957, supra; as follows:

SECTION 1. DENOMINATIONS, SPECIFICATIONS, AND DESIGN OF COINS.

Subsection (d)(1) of section 5112 of title 31, United States Code, is amended by striking the fourth sentence.

SEC. 2. DESIGN CHANGES REQUIRED FOR CERTAIN COINS.

Subsection (d) of section 5112 of title 31, United States Code, is amended by adding at the end the following new paragraph:

"(3) The design on the reverse side of the half dollar, quarter dollar, dime coin, 5-cent coin and one-cent coin shall be selected for redesigning. One or more coins may be selected for redesign at the same time, but the first redesigned coin shall have a design commemorating the 200th anniversary of the United States Constitution for a period of two years after issuance. After that 2-year period, the bicentennial coin shall have its design changed in accordance with the provisions of this subsection. Such selection, and the minting and issuance of the first selected coin shall be made not later than 1 year after the date of the enactment of this paragraph. All such redesigned coins shall conform with the inscription requirements set forth in paragraph (1) of this subsection.".

SEC. 3. DESIGN ON OBVERSE SIDE OF COINS.

Subsection (d) of section 5112 of title 31, United States Code, is amended by adding at the end the following new paragraph:

"(4) Subject to paragraph (2), the design on the obverse side of the half dollar, quarter dollar, dime coin, 5-cent coin, and one-cent coin shall contain the likeness of those currently displayed and shall be considered for redesign. All such coin obverse redesigns shall conform with the inscription requirements set forth in paragraph (1) of this subsection.".

SEC. 4. SELECTION OF DESIGNS.

The design changes for each coin authorized by the amendments made by this Act shall take place at the discretion of the Secretary and shall be done at the rate of one or more coins per year, to be phased in over six years after the date of the enactment of this Act. In selecting new designs, the Secretary shall consider, among other factors, thematic representations of the following constitutional concepts: freedom of speech and assembly; freedom of the press; right to due process of law; right to a trial by jury; right to equal protection under the law; right to vote; themes from the Bill of Rights; and separation of powers, including the independence of the judiciary. The designs shall be selected by the Secretary upon consultation with the United States Commission of Fine Arts.

SEC. 5. REDUCTION OF THE NATIONAL DEBT.

Subsection (a)(1) of section 5132 of title 31, United States Code, is amended by inserting after the third sentence the following: "Any profits received from the sale of uncirculated and proof sets of coins shall be deposited by the Secretary in the general fund of the Treasury and shall be used for the sole purpose of reducing the national debt.".

JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT AUTHORIZATION

BIDEN (AND THURMOND) AMENDMENT NO. 3693

Mr. BYRD (for Mr. Biden, for himself, and Mr. Thurmond) proposed an amendment to the bill (H.R. 1801) to amend the Juvenile Justice and Delinquency Prevention Act of 1974 to authorize appropriations for fiscal years 1989 through 1992; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Criminal and Juvenile Justice Partnership Act of 1988."

TITLE I—STATE AND LOCAL NARCOTICS CONTROL AND JUSTICE ASSISTANCE IMPROVEMENTS

SEC. 101. BUREAU OF JUSTICE ASSISTANCE AND UNIFIED GRANT PROGRAMS.

(a) In General.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by—

(1) striking part M; and

(2) striking parts D and E (42 U.S.C. 3741-3766) and inserting the following:

"PART D—ESTABLISHMENT OF BUREAU OF JUSTICE ASSISTANCE

"SEC. 401. ESTABLISHMENT OF BUREAU OF JUSTICE ASSISTANCE.

"(a) There is established within the Department of Justice, under the general authority of the Attorney General, a Bureau of Justice Assistance (hereafter in this part referred to as the 'Bureau').

"(b) The Bureau shall be headed by a Director (hereafter in this part referred to as the 'Director') who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall report to the Attorney General through the Assistant Attorney General. The Director shall have final authority for all grants, cooperative agreements, and contracts awarded by the Bureau. The Director shall not engage in any employment other than that of serving as the Director, nor shall the Director hold any office in, or act in any capacity for, any organization, agency, or institution with which the Bureau makes any contract or other arrangement under this title.

"SEC. 402. DUTIES AND FUNCTIONS OF THE DIRECTOR.

"The Director shall have the following duties:

"(1) Providing funds to eligible States, units of local government, for-profit organizations, and private, nonprofit organizations pursuant to part D.

"(2) Establishing programs in accordance with subpart 2 of part E and, following public announcement of such programs, awarding and allocating funds and technical assistance in accordance with the criteria of subpart 2, and on terms and conditions determined by the Director to be consistent with subpart 2.

"(3) Cooperating with and providing technical assistance to States, units of local government, and other public and private organizations or international agencies involved in criminal justice activities.

"(4) Providing for the development of technical assistance and training programs for State and local criminal justice agencies and fostering local participation in such activities.

"(5) Encouraging the targeting of State and local resources on efforts to reduce the incidence of drug abuse and crime and on programs relating to the apprehension and prosecution of drug offenders.

"(6) Establishing and carrying on a specific and continuing program of cooperation with the States and units of local government designed to encourage and promote consultation and coordination concerning decisions made by the Bureau affecting State and local drug control and criminal justice priorities.

"(7) Preparing recommendations on the State and local drug enforcement component of the National Drug Control Strategy which shall be submitted to the Associate Director of the Office on National Drug Control Policy. In making such recommendations, the Director shall review the statewide strategies submitted by such States under part E, and shall obtain input from State and local drug enforcement officials. The recommendations made under this paragraph shall be provided at such time and in such form as the Director of National Drug Control Policy shall require.

"(8) Exercising such other powers and functions as may be vested in the Director pursuant to this title or by delegation of the Attorney General or Assistant Attorney General.

"PART E—BUREAU OF JUSTICE ASSISTANCE GRANT PROGRAMS

"Subpart 1—Drug Control and System Improvement Grant Program

"SEC. 501. DESCRIPTION OF THE DRUG CONTROL AND SYSTEM IMPROVEMENT GRANT PROGRAM.

"(a) It is the purpose of this subpart to assist States and units of local government in carrying out specific programs which offer a high probability of improving the functioning of the criminal justice system, with special emphasis on a nationwide and multilevel drug control strategy by developing programs and projects to assist multijurisdictional and multi-State organizations in the drug control problem and to support national drug control priorities.

"(b) The Director of the Bureau of Justice Assistance (hereafter in this part referred to as the 'Director') is authorized to make grants to States, for the use by States and units of local government in the States, for the purpose of enforcing State and local laws that establish offenses similar to offenses established in the Controlled Substances Act (21 U.S.C. 801 et seq.) and to improve the functioning of the criminal justice system with emphasis on violent crime and serious offenders. Such grants shall provide additional personnel, equipment, training, technical assistance, and information systems for the more widespread apprehension, prosecution, adjudication, and detention and rehabilitation of persons who violate these laws, and to assist the victims of such crimes (other than compensation), including—

"(1) demand reduction education programs in which law enforcement officers participate;

"(2) multijurisdictional task force programs that integrate Federal, State, and local drug law enforcement agencies and prosecutors for the purpose of enhancing interagency coordination, intelligence, and facilitating multijurisdictional investigations;

"(3) programs designed to target the domestic sources of controlled and illegal substances, such as precursor chemicals, diverted pharmaceuticals, clandestine laboratories, and cannabis cultivations;

"(4) providing programs that assist citizens in preventing and controlling crime to include special programs that address the problems of crimes committed against the elderly and rural jurisdictions;

"(5) disrupting illicit commerce in stolen goods and property;

"(6) improving the investigation and prosecution of white-collar crime, organized crime, public corruption crimes, and fraud against the government with priority attention to cases involving drug-related official corruption;

"(7) improving the operational effectiveness of law enforcement through the use of crime analysis techniques, street sales enforcement, schoolyard violator programs, gang-related and low-income housing drug control programs;

"(8) career criminal prosecution programs including the enactment of model drug control legislation;

"(9) financial investigative programs that target the identification of money laundering operations and assets obtained through illegal drug trafficking, including the enactment of model legislation, financial investigative training, and financial information sharing systems;

"(10) improving the operational effectiveness of the court process through programs such as court delay reduction programs and enhancement programs;

"(11) programs designed to provide additional public correctional resources and improve the corrections system, including treatment in prisons and jails, intensive supervision programs, and long-range corrections and sentencing strategies;

"(12) providing prison industry projects designed to place inmates in a realistic working and training environment which will enable them to acquire marketable skills and to make financial payments for restitution to their victims, for support of their own families, and for support of themselves in the institution;

"(13) providing programs which identify and meet the treatment needs of adult and juvenile drug-dependent offenders;

"(14) developing and implementing programs which provide assistance to jurors and witnesses, and assistance (other than compensation) to victims of crimes;

"(15)(A) developing programs to improve drug control technology, such as pretrial drug testing programs, programs which provide for the identification, assessment, referral to treatment, case management and monitoring of drug dependent offenders, enhancement of State and local forensic laboratories, and (B) criminal and justice information systems to assist law enforcement, prosecution, courts, and corrections organization;

"(16) innovative programs that demonstrate new and different approaches to enforcement, prosecution, and adjudication of drug control activities;

"(17) improving the criminal and juvenile justice system's response to domestic and family violence, including spouse abuse, child abuse, and abuse of the elderly; and

"(18) drug control evaluation programs which the State and local units of government may utilize to evaluate programs and projects directed at State drug control activities.

"(c) Each program funded under this section shall contain an evaluation component, developed pursuant to guidelines established by the National Institute of Justice, in consultation with the Bureau of Justice Assistance. The Director of the Bureau of Justice Assistance may waive this requirement when, in the opinion of the Director—

"(1) the program is not of sufficient size to justify a full evaluation report; or

"(2) the program is designed primarily to provide material resources and supplies, such as laboratory equipment, that would not justify a full evaluation report.

"SEC. 502. ELIGIBILITY.

"The Bureau is authorized to make financial assistance under this subpart available to a State to enable it to carry out all or a substantial part of a program or project submitted and approved in accordance with the provisions of this subpart.

"SEC. 503. STATE APPLICATIONS.

"To request a grant under this subpart, the chief executive officer of a State shall submit an application within 45 days after the date of enactment of this section, and for each subsequent year, within 45 days after the date that appropriations for this part are enacted, in such form as the Director may require. Such application shall include the following:

"(1) A statewide need-based strategy for drug control and programs which improve the functioning of the criminal justice system with emphasis on drug trafficking, violent crime and serious offenders. The combined strategy shall be prepared after consultation with State and local officials with emphasis on those whose duty it is to enforce drug laws and direct the administration of justice and shall contain—

"(A) an assessment of drug trafficking and violent crime within the State as determined by criteria including, but not limited to—

"(1) the number of arrests for drug violations and other violent offenses within the State;

"(2) the manufacturing, importation and distribution patterns within State;

"(3) the number of drug-related hospital emergency-room visits within the State;

"(4) the number of drug-related and violent criminal cases processed by the ajudicative components of the criminal justice system;

"(5) such other criteria as the Director may prescribe."

"(B) an assessment of the efforts existing as of the time of the application to address the drug control problems at the State and local level;

"(C) coordination requirements;

"(D) resource needs;

"(E) the establishment of statewide priorities for drug control activities and programs;

"(F) an analysis of the relationship of the proposed State efforts to the national drug control strategy; and

"(G) a plan for coordinating the programs to be funded under this subpart with federally funded State and local drug abuse education, prevention, research, and treatment programs.

"(2) A certification that Federal funds made available under the formula grant of this subpart will not be used to supplant State or local funds, but will be used to increase the amounts of such funds that would, in the absence of Federal funds, be made available for law enforcement activities.

"(3) A certification that funds required to pay the non-Federal portion of the cost of each program and project for which such grant is made shall be in addition to funds that would otherwise be made available for law enforcement by the recipients of grant funds.

"(4) An assurance that the State application described in this section, and any amendment to such application, has been submitted for review to the State legislature or its designated body (for purposes of this section, such application or amendment shall be deemed to be reviewed if the State legislature or such body does not review such application or amendment within the 30-day period beginning on the date such application or amendment is so submitted).

"(5) An assurance that the State application and any amendment thereto was made public before submission to the Bureau and, to the extent provided under State law or established procedure, an opportunity to comment thereon was provided to citizens and to neighborhood and community groups.

"(6) An assurance that following the first fiscal year covered by an application and for each fiscal year thereafter, a performance evaluation and assessment report concerning the activities carried out pursuant to this section will be submitted to the Bureau.

"(7) A provision for fund accounting, auditing, monitoring, and such evaluation procedures as may be necessary to keep such records that the Bureau shall prescribe to assure fiscal control, proper management, and efficient disbursement of funds reviewed under this section.

"(8) An assurance that the applicant shall maintain such data and information and submit such reports in such form, at such times, and containing such data and information as the Bureau may reasonably require to administer other provisions of this subpart.

"(9) A certification that its programs meet all the requirements of this section, that all the information contained in the application is correct, that there has been appropriate coordination with affected agencies, and that the applicant will comply with all provisions of this subpart and all other applicable Federal laws. Such certification shall be made in a form acceptable to the Bureau and shall be executed by the chief executive or such other officer of the applicant qualified under regulations promulgated by the Office.

"SEC. 504. GRANT LIMITATIONS.

"(a) A grant made under this subpart may not—

"(1) for fiscal years 1989 and 1990 appropriations be expended for more than 75 percent; and

"(2) for fiscal years 1991 and 1992 appropriations be expended for more than 50 percent,

of the cost of the identified uses for which such grant is received to carry out any purpose specified in section 502, except that in the case of funds distributed to an Indian tribe which performs law enforcement functions (as determined by the Secretary of the Interior) for any such program or project, the amount of such grant shall be equal to 100 percent of such cost. The non-Federal portion of the expenditures for such uses shall be paid in cash.

"(b) Not more than 10 percent of a grant made to an eligible State under section 506 may be used for costs incurred to administer such grant.

"(c) States and units of local government or combinations thereof are authorized to use a grant made under section 506 for the expenses associated with participation in the State and Local Task Force Program established by the Drug Enforcement Administration.

"(d) States and local units of government are authorized to use a grant made under section 506 for the expenses associated with conducting the evaluations required under section 501(c) of this part.

"(e) The non-Federal portion of the cost of such program or project shall be in cash. State and local units of government may use cash received under the equitable sharing program to cover the non-Federal portion of the costs of programs funded under section 506.

"(f) No funds may be awarded under this subpart to a grant recipient for a program or project for which funds have been awarded under this title for 4 years (in the aggregate), including any period occurring before the effective date of this subsection.

"SEC. 505. REVIEW OF STATE APPLICATIONS.

"(a) The Bureau shall provide financial assistance to each State applicant under this subpart to carry out the programs or projects submitted by such applicant upon determining that—

"(1) the application or amendment is consistent with the need-based criteria established in section 503 and the other requirements of this subpart; and

"(2) before the approval of the application and any amendment thereto the Bureau has made an affirmative finding in writing that the program or project has been reviewed in accordance with this subpart.

"(b) Each application or amendment made and submitted for approval to the Bureau pursuant to section 503 shall be deemed approved, in whole or in part, by the Bureau not later than 45 days after first received unless the Bureau determines that the application does not meet the requirements of this subpart, including whether the strategy is consistent with the need-based criteria in section 503. If the Bureau does not approve such application, the Bureau shall notify the applicant in writing within 15 days of the reasons for such disapproval. The State shall then have 15 days after modification by the Bureau to resubmit such application and the Bureau shall have 15 days after receipt of such revised application to review such application.

"(c) Grant funds awarded under this subpart shall not be used for land acquisition or construction projects, other than penal and correctional institutions.

"SEC. 506. ALLOCATION AND DISTRIBUTION OF FUNDS UNDER FORMULA GRANTS.

"(a) Of the total amount appropriated for this part in any fiscal year, less amounts set aside for evaluation pursuant to section 520 and section 1001(a)(6), 80 percent shall be set aside for section 502 and allocated to States as follows:

"(1) $750,000 shall be allocated to each of the participating States; and

"(2) of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State bears to the population of all the States.

"(b) Of the amounts set aside for this section, not less than 10 percent shall be used to fund street sales enforcement programs of which the primary goal is to strengthen urban enforcement and prosecution efforts targeted at street level narcotics activity in areas of high-intensity drug trafficking. The Director may, in his discretion, waive this requirement at the request of a State, where the imposition of this requirement is clearly inappropriate given the States documented needs as specified in their statewide strategy. Such projects may include—

"(1) the early involvement of prosecution and court functions in order to ensure that both citizen rights and system impact issues are addressed;

"(2) the training and utilization of uniformed personnel and the certification of uniformed officers as narcotics experts for testifying in court;

"(3) the deployment of street teams for on-going investigations and arrests of street narcotics dealers and buyers, and the involvement of law enforcement personnel to ensure that citizen concerns regarding narcotics conditions are addressed;

"(4) the enhancement of prosecution, adjudication, and corrections resources to accommodate the increased case loads generated through intensive, street-level enforcement programs;

"(5) the organization and deployment of mobile task forces to target those areas of the city where street sales of drugs have become blatant;

"(6) the development and implementation of innovative law enforcement programs, such as undercover buy programs aimed at the street retailer and the enforcement of asset seizure and forfeiture laws; and

"(7) the coordination of such projects with forensic laboratory services.

"(c)(1) Each State which received funds under subsection (a) of this section in a fiscal year shall distribute among units of local government, or combinations of units of local government, in such State for the purposes specified in section 501(b) that portion of such funds which bears the same ratio to the aggregate amount of such funds as the amount of funds expended by all units of local government for criminal justice in the preceding fiscal year bears to the aggregate amount of funds expended by the State and all units of local government in such State for criminal justice in such preceding fiscal year.

"(2) Any funds not distributed to units of local government under paragraph (1) shall be available for expenditure by the State involved.

"(3) For purposes of determining the distribution of funds under paragraph (1), the most accurate and complete data available for the fiscal year involved shall be used. If data for such fiscal year are not available, then the most accurate and complete data available for the most recent fiscal year preceding such fiscal year shall be used.

"(d) No funds allocated to a State under subsection (a) or received by a State for distribution under subsections (b) and (c) may be distributed by the Director or by the State involved for any program other than a program contained in an approved application.

"(e) If the Director determines, on the basis of information available during any fiscal year, that a portion of the funds allocated to a State for that fiscal year will not be required or that a State chooses not to participate in the program established under such section, then such portion shall be awarded by the Director to urban, rural, and suburban units of local government or combinations thereof within such State giving priority to those jurisdictions with greatest need.

"(f) Any funds allocated under subsection (a) or (e) that are not distributed under this section shall be available for obligation under subpart 2.

"SEC. 507. STATE OFFICE.

"(a) The chief executive of each participating State shall designate a State office for purposes of—

"(1) preparing an application to obtain funds under section 503;

"(2) administering funds received under such section from the Director, including receipt, review, processing, monitoring, progress and financial report review, technical assistance, grant adjustments, accounting, auditing and fund disbursements; and

"(3) coordinating the distribution of funds provided under this part with State agencies receiving Federal funds for drug abuse education, prevention, treatment, and research activities and programs.

"(b) An office or agency performing other functions within the executive branch of a State may be designated to carry out the functions specified in subsection (a).

"SEC. 508. DISTRIBUTION OF GRANTS TO LOCAL GOVERNMENT.

"(a) Each application made by a local unit of government, or a combination of units of local government, to a State for funds under this subchapter shall be deemed approved, in whole or in part, by the State not later than 45 days after first received unless the State informs the applicant in writing of specific reasons for disapproval. The State shall not finally disapprove any application submitted to the State without first affording the applicant reasonable notice and opportunity for reconsideration.

"(b) Each State which receives funds under section 506 in a fiscal year shall make such funds available to local units of government, or combinations thereof, whose application has been submitted to, approved and awarded by the State, within 30 days after the Bureau has approved the State application and has made funds available to such State. If the State does not distribute such funds to any local unit of government, or combination thereof, within that time, the State shall return such funds to the Director who shall directly award such funds to the local unit of government, or combination thereof. Grants shall be made by the chief executive officer of the State without regard to State legislative distribution regarding the distribution of such funds.

"(c) If the Bureau, after review pursuant to section 505 of this part, disapproves an application by a State, the Bureau shall distribute an amount of funds to local units of government within such State, equal to the amount that such State would have received under section 506 (relating to allocation and distribution of funds under formula grants) as follows:

"(1) To units of local government or combinations thereof with a minimum population of 500,000, or if the largest such unit or combination has less than 500,000, to the largest such unit or combination thereof in the State, a percentage of such funds which is not less than a portion of such funds which bears the same ratio to the amount of funds expended by such local government or combination thereof to the aggregate amount of funds expended by all units of local government for criminal justice in the preceding fiscal year; and

"(2) To all other rural, urban and suburban units of local government such portion, as the Director determines, to those jurisdictions with greatest need, as determined using the criteria contained in section 503 of this part.

"Subpart 2—Discretionary Grants

"SEC. 510. PURPOSE.

"(a) The purpose of this subpart is to provide additional Federal financial assistance to public or private agencies and private nonprofit organizations for purposes of—

"(1) undertaking educational and training programs for criminal justice personnel;

"(2) providing technical assistance to States and local units of governments;

"(3) undertaking projects which are national or multijurisdictional in scope and which address the purposes specified in section 502; and

"(4) providing financial assistance to public agencies and private nonprofit organizations for demonstration programs which, in view of previous research or experience, are likely to be a success in more than one jurisdiction.

"(b) In carrying out this subpart, the Director is authorized to make grants to, or enter into contracts with public or private agencies, institutions, or organizations or individuals to carry out any purpose specified in section 501(b). The Director shall have final authority over all funds awarded under this subpart.

"SEC. 511. ALLOCATION OF FUNDS FOR DISCRETIONARY GRANTS.

"Of the total amount appropriated for this part in any fiscal year less amounts set aside for evaluation and research pursuant to section 520 and section 1001(a)(6), 20 percent shall be reserved and set aside for this section in a special discretionary fund for use by the Director in carrying out the purposes specified in section 503. Grants under this section may be made for amounts up to 100 percent of the costs of the programs or projects contained in the approved application.

"SEC. 512. LIMITATION ON USE OF DISCRETIONARY GRANT FUNDS.

"Grant funds awarded under section 511 shall not be used for land acquisition or construction projects.

"SEC. 513. APPLICATION REQUIREMENTS.

"(a) No grant may be made under this subpart unless an application has been submitted to the Director in which the applicant—

"(1) sets forth a program or project which is eligible for funding pursuant to section 511;

"(2) describes the services to be provided, performance goals, and the manner in which the program is to be carried out;

"(3) describes the method to be used to evaluate the program or project in order to determine its impact and effectiveness in achieving the stated goals; and

"(4) agrees to conduct such evaluation according to the procedures and terms established by the Bureau.

"(b) Each applicant for funds under this subpart shall certify that its program or project meets all the requirements of this section, that all the information contained in the application is correct, and that the applicant will comply with all the provisions of this subpart and all other applicable Federal laws. Such certification shall be made in a form acceptable to the Director.

"SEC. 514. PERIOD OF AWARD.

"The Bureau may provide financial aid and assistance to programs or projects under this subpart for a period of not to exceed 4 years. Grants made pursuant to this subpart may be extended or renewed by the Bureau for an additional period of up to 2 years if—

"(1) an evaluation of the program or project indicates that it has been effective in achieving the stated goals or offers the potential for improving the functioning of the criminal justice system; and

"(2) the public agency or private nonprofit organization within which the program or project has been conducted agrees to provide at least one-half of the total cost of such program or project from any source of funds, including Federal grants, available to the eligible jurisdiction.

"Subpart 3—Administrative Provisions

"SEC. 520. PROGRAM AND PROJECT EVALUATION; RESEARCH.

"(a) Of the total amounts appropriated for this part in any fiscal year, 4 percent or $10,000,000, whichever is less, shall be transferred to the National Institute of Justice as follows:

"(1) Fifty percent of the funds transferred to the National Institute of Justice under this section shall be used for program and project evaluation—

"(A) to develop guidelines, in cooperation with the Bureau of Justice Assistance, to assist State and local units of government to conduct the program evaluations as required by section 501(c) of this part; and

"(B) to conduct a reasonable number of comprehensive evaluations of programs funded under section 506 (formula grants) and section 511 (discretionary grants) of this part.

In selecting programs for review, the Director of the National Institute of Justice should consider—

"(i) whether the program establishes or demonstrates a new and innovative approach to drug or crime control;

"(ii) the cost of the program to be evaluated and the number of similar programs funded under section 506 (formula grants) and section 511 (discretionary grants);

"(iii) whether the program has a high potential to be replicated in other jurisdictions; and

"(iv) whether there is substantial public awareness and community involvement in the program. Routine auditing, monitoring, and internal assessment of a State and local drug control program's progress shall be the sole responsibility of the Bureau of Justice Assistance.

"(2) Fifty percent of the funds transferred to the National Institute of Justice under this section shall be used to conduct research and development programs on drug and drug-related crime control programs. The primary focus of such research should be on practical approaches to drug and drug-related crime control to assist State and local law enforcement agencies in their response to these problems.

"(b) The Director of the National Institute of Justice shall annually report to the President, the Attorney General and the Congress on the nature and findings of the evaluation and research and development activities funded under this section.

"SEC. 521. GENERAL PROVISIONS.

"(a) The Bureau shall prepare both a 'Program Brief' and 'Implementation Guide' document for proven programs and projects to be funded under this part.

"(b) The functions, powers, and duties specified in this part to be carried out by the Bureau shall not be transferred elsewhere in the Department of Justice unless specifically hereafter authorized by the Congress by law.

"SEC. 522. REPORTS.

"(a) Each State which receives a grant under section 506 shall submit to the Director, for each year in which any part of such grant is expended by a State or unit of local government, a report which contains—

"(1) a summary of the activities carried out with such grant and an assessment of the impact of such activities on meeting the needs identified in the State strategy submitted under section 503;

"(2) a summary of the activities carried out in such year with any grant received under subpart 2 by such State;

"(3) the evaluation result of programs and projects;

"(4) an explanation of how the Federal funds provided under this part were coordinated with State agencies receiving Federal funds for drug abuse education, prevention, treatment, and research activities; and

"(5) such other information as the Director may require by rule.

Such report shall be submitted in such form and by such time as the Director may require by rule.

"(b) Not later than 180 days after the end of each fiscal year for which grants are made under this part, the Director shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report that includes with respect to each State—

"(1) the aggregate amount of grants made under subpart 1 and subpart 2 to such State for such fiscal year;

"(2) the amount of such grants awarded for each of the purposes specified in subpart 1;

"(3) a summary of the information provided in compliance with paragraphs (1) and (2) of subsection (a);

"(4) an explanation of how Federal funds provided under this part have been coordinated with Federal funds provided to States for drug abuse education, prevention, treatment, and research activities; and

"(5) evaluation results of programs and projects and State strategy implementation.".

(b) AMENDMENT TO TABLE OF CONTENTS.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by striking the items relating to parts D and E and inserting the following:

TABLE OF CONTENTS

"PART D—ESTABLISHMENT OF BUREAU OF JUSTICE ASSISTANCE

"Sec. 401. Establishment of Bureau of Justice Assistance.
"Sec. 402. Duties and functions of the Director.

"PART E—BUREAU OF JUSTICE ASSISTANCE GRANT PROGRAMS

"SUBPART 1—DRUG CONTROL AND SYSTEM IMPROVEMENT GRANT PROGRAM

"Sec. 501. Description of the Drug Control and System Improvement Grant program.
"Sec. 502. Eligibility.
"Sec. 503. State applications.
"Sec. 504. Grant limitations.
"Sec. 505. Review of State applications.
"Sec. 506. Allocation and distribution of funds under formula grants.
"Sec. 507. State office.
"Sec. 508. Distribution of grants to local government.

"SUBPART 2—DISCRETIONARY GRANTS

"Sec. 510. Purpose.
"Sec. 511. Allocation of funds for discretionary grants.
"Sec. 512. Limitation on use of discretionary grant funds.
"Sec. 513. Application requirements.
"Sec. 514. Period of award.

"SUBPART 3—ADMINISTRATIVE PROVISIONS

"Sec. 520. Program and project evaluation; research.
"Sec. 521. General provisions.
"Sec. 522. Reports.".

SEC. 102. DUTIES AND FUNCTIONS OF THE DIRECTOR OF THE BUREAU OF JUSTICE STATISTICS.

(a) IN GENERAL.—Section 302 of part C of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. section 3732) is amended in subsection (c) by redesignating paragraphs (16), (17), (18) and (19) as paragraphs (19), (20), (21) and (22), respectively, and inserting the following new paragraphs:

"(16) provide for the collection, compilation, analysis, publication and dissemination of information and statistics about the prevalence, incidence, rates, extent, distribution and attributes of drug offenses, drug related offenses and drug dependent offenders and further provide for the establishment of a national clearinghouse to maintain and update a comprehensive and timely data base on all criminal justice aspects of the drug crisis and to disseminate such information.

"(17) provide for the collection, analysis, dissemination and publication of statistics on the condition and progress of drug control activities at the Federal, State and local levels with particular attention to programs and intervention efforts demonstrated to be of value in the overall national anti-drug strategy and to provide for the establishment of a national clearinghouse for the gathering of data generated by Federal, State, and local criminal justice agencies on their drug enforcement activities.

"(18) provide for the development and enhancement of State and local criminal justice information systems, and the standardization of data reporting relating to the collection, analysis or dissemination of data and statistics about drug offenses, drug related offenses, or drug dependent offenders.".

(b) TECHNICAL AMENDMENT.—Section 901(a)(2) of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by striking "407(a)" and inserting "506(a)".

SEC. 103. JUSTICE ASSISTANCE ACT REAUTHORIZATION.

Section 1001 of part J of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1001. (a)(1) There are authorized to be appropriated $21,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, and 1992 to carry out the functions (other than the functions described in section 305 of part C) of the Bureau of Justice Statistics.

"(2) There are authorized to be appropriated $24,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, and 1992 to carry out the functions of the National Institute of Justice.

"(3) There are authorized to be appropriated $25,500,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, and 1992 to carry out the remaining functions of the Office of Justice Programs and the Bureau of Justice Assistance, other than functions under parts D, E, F, G, L, and M.

"(4) There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out part L of this title.

"(5) There is authorized to be appropriated $275,000,000 for fiscal year 1989; $350,000,000 for fiscal year 1990; $400,000,000 for fiscal year 1991; and such sums as may be necessary for fiscal year 1992 to carry out the programs under parts D and E of this title.

"(6) There is authorized to be appropriated $5,000,000 for each of the fiscal years 1989, 1990, 1991, and 1992 to carry out section 305 of part C of this title: *Provided*, That 1 percent of the amount appropriated for paragraph (5) of this subsection shall be used to carry out the functions specified in subparagraphs (16), (17), and (18) of section 302(c) of part C of this title.

"(7) There are authorized to be appropriated $15,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, and 1992 to carry out the programs under part M of this title.

"(b) Funds appropriated for any fiscal year may remain available for obligation until expended.

"(c) Notwithstanding any other provision of law, no funds appropriated under this section for part E of this title may be transferred or reprogrammed for carrying out any activity which is not authorized under such parts.".

SEC. 104. TECHNICAL AMENDMENT.

Section 403(a)(12) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3743(a)(12)) is amended by inserting "(including automated fingerprint identification systems)" after "systems" the first place it appears.

TITLE II—JUVENILE JUSTICE AND DELINQUENCY PREVENTION PROGRAMS

SEC. 201. PREVENTION AND TREATMENT PROGRAMS RELATING TO JUVENILE GANGS AND JUVENILE DRUG ABUSE AND DRUG TRAFFICKING.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) FUNDS AUTHORIZED FOR FISCAL YEARS.—Section 261(a) of part D of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671(a)) is amended—

(A) by inserting "(1)" after "(a)";

(B) by inserting "(other than part D)" after "this title"; and

(C) by adding at the end the following:

"(2) subject to subparagraph (B), to carry out part D, there are authorized to be appropriated $15,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, and 1992.".

(2) ALLOCATIONS.—Section 261(b) of part D of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671(b)) is amended by inserting "(other than part D)" after "this title".

(b) TECHNICAL AMENDMENTS TO PART D OF TITLE II.—Part D of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671-5672 note) is amended—

(1) by amending the heading of such part to read as follows:

"PART E—GENERAL AND ADMINISTRATIVE PROVISIONS";

and

(2) by redesignating sections 261 and 262 as sections 291 and 292, respectively.

(c) PREVENTION AND TREATMENT PROGRAMS RELATING TO JUVENILE GANGS AND JUVENILE DRUG ABUSE AND DRUG TRAFFICKING.—Title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671-5672 note) is amended by inserting after part C the following:

"PART D—PREVENTION AND TREATMENT PROGRAMS RELATING TO JUVENILE GANGS AND DRUG ABUSE AND DRUG TRAFFICKING

"AUTHORITY TO MAKE GRANTS AND CONTRACTS

"SEC. 281. The Administrator shall, by making grants to and entering into contracts with public and private non-profit agencies, organizations, institutions, and individuals, establish and support programs and activities that involve families and communities and that are designed to carry out any of the following purposes:

"(1) To strengthen the juvenile justice system's ability to deal with juveniles involved in drug trafficking, either individually or as part of distribution networks.

"(2) To develop new and innovative sanctions within the juvenile justice system against juveniles convicted of serious drug trafficking offenses.

"(3) To reduce juvenile involvement in gang-related activity, particularly activities that involve the distribution of drugs by or to juveniles.

"(4) To promote the involvement of juveniles in lawful activities in geographical areas in which gangs commit crimes.

"(5) To provide treatment to juveniles who are members of such gangs, including members who are accused of committing a serious crime and members who have been adjudicated as being delinquent.

"(6) To facilitate Federal and State cooperation with local school officials to identify and assist juveniles who are likely to participate in the activities of gangs that commit crimes and to establish and support programs that facilitate coordination and cooperation among local education, juvenile justice, employment, and social service agencies, for the purpose of preventing or reducing the participation of juveniles in activities of gangs that commit crimes.

"(7) To reduce the incidence of drug-related crime and drug trafficking in elementary and secondary schools.

"(8) To provide pre- and post-trial drug abuse treatment to juveniles in the juvenile justice system.

"(9) To provide drug abuse education, prevention and treatment involving police and juvenile justice officials in demand reduction programs.

"(10) To provide additional personnel, equipment, personnel training, and supplies to assist in improving the adjudicative and corrections components of the juvenile justice system.

In making grants and entering into contracts under this section, the Administrator shall give a preference to entities that have been successful in helping juvenile gangs and preventing juvenile drug abuse and drug trafficking.

"APPROVAL OF APPLICATIONS.

"SEC. 282. (a) Any agency, institution, or individual desiring to receive a grant, or to enter into a contract, under this part shall submit an application at such time, in such manner, and containing or accompanied by such information as the Administrator may prescribe.

"(b) In accordance with guidelines established by the Administrator, each application for assistance under this part shall—

"(1) set forth a program or activity for carrying out one or more of the purposes specified in section 281 and specifically identify each such purpose, such program or activity is designed to carry out;

"(2) provide that such program or activity shall be administered by or under the supervision of the applicant;

"(3) provide for the proper and efficient administration of such program or activity;

"(4) provide for regular evaluation of such program or activity;

"(5) certify that the applicant has requested the State planning agency and local agency designated in section 223, if any, to review and comment on such application and indicate the responses of such State planning agency and local agency to such request;

"(6) attach a copy of the responses of such State planning agency and local agency to such request;

"(7) provide that regular reports on such program or activity shall be sent to the Administrator and to such State planning agency and local agency; and

"(8) provide for such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this title.

"(c) In reviewing applications for grants and contracts under this part, the Administrator shall give priority to applications—

"(1) based on the incidence and severity of crimes committed by gangs whose membership is composed primarily of juveniles or the incidence of juvenile drug abuse and drug trafficking, in the geographical area in which the applicants propose to carry out the programs and activities for which such grants and contracts are requested; and

"(2) for assistance for programs and activities that have the broad support of organizations operating in such geographical areas, as demonstrated by the applicants.

"REPORT TO CONGRESS

"SEC. 283. The Administrator shall annually report to Congress on the status and accomplishments of the programs and activities funded under this part. Such report shall include a detailed evaluation of each program or activity.".

SEC. 202. AUTHORITY TO MAKE GRANTS.

Section 221 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5631) is amended—

(1) by amending the heading to read as follows:

"AUTHORITY TO MAKE GRANTS AND CONTRACTS",

(2) by inserting "(a)" after "SEC. 221.", and

(3) by adding at the end the following:

"(b)(1) With not to exceed 2 percent of the funds available in a fiscal year to carry out this part, the Administrator shall make grants to and enter into contracts with public and private agencies, organizations, and individuals to provide technical assistance to States, units of general local governments (and combinations thereof), and local private agencies to facilitate compliance with section 223 and implementation of the State plan approved under section 223(c).

"(2) Grants and contracts may be made under paragraph (1) only to public and private agencies, organizations, and individuals that have experience in providing such technical assistance. In providing such technical assistance, the recipient of a grant or contract under this subsection shall coordinate its activities with the State agency described in section 291(c)(1).".

SEC. 203. ALLOCATION.

(a) MINIMUM ALLOCATION.—Section 222(a) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5632(a)) is amended—

(1) by striking "In" and inserting "(1) Subject to paragraph (2) and in",

(2) by striking the last sentence, and

(3) by adding at the end the following:

"(2)(A) Subject to paragraph (3), if the aggregate amount appropriated for a fiscal year to carry out this title (other than part D) is less than $75,000,000, then the amount allotted to each State for such fiscal year shall be not less than $325,000, except that the amount allotted to the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands shall be not less than $75,000 each.

"(B) Subject to paragraph (3), if the aggregate amount appropriated for a fiscal year to carry out this title (other than part D) equals or exceeds $75,000,000, then the amount allotted to each State for such fiscal year shall be not less than $400,000, except that the amount allotted to the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands shall be not less than $100,000 each.

"(3) If, as a result of paragraph (2), the amount allotted to a State for a fiscal year would be less than the amount allotted to such State for fiscal year 1988, then the amounts allotted to satisfy the requirements of such paragraph shall be reduced pro rata to the extent necessary to allot to such State for the fiscal year the amount allotted to such State for fiscal year 1988.".

(b) TECHNICAL AMENDMENTS.—Section 222(b) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5632(b)) is amended—

(1) in the first sentence by striking "Except for funds appropriated for fiscal year 1975, if" and inserting "If", and

(2) by striking the second sentence.

SEC. 204. TECHNICAL ASSISTANCE AND TRAINING FUNCTIONS.

Section 244 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5654) is amended—

(1) by amending the heading to read as follows: "TECHNICAL ASSISTANCE AND TRAINING FUNCTIONS",

(2) by striking "National Institute for Juvenile Justice and Delinquency Prevention" and inserting "Administrator, acting through the National Institute for Juvenile Justice and Delinquency Prevention",

(3) by striking paragraph (3),

(4) in paragraph (2) by adding "and" at the end,

(5) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively, and

(6) by inserting before paragraph (2), as so redesignated, the following:

"(1) provide technical assistance and training assistance to Federal, State, and local governments and to courts, public and private agencies, institutions, and individuals in the planning, establishment, funding, operation, and evaluation of juvenile delinquency programs;".

SEC. 205. TECHNICAL AND CONFORMING AMENDMENTS TO PARTS B AND C OF TITLE II.

(a) TECHNICAL AMENDMENTS.—Title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) is amended—

(1) in part B—

(A) by striking the heading for subpart I, and

(B) by striking subpart II, and

(2) in part C—

(A) by striking the heading for such part and inserting the following:

"PART C—NATIONAL PROGRAMS",

(B) by inserting after the heading for part C the following:

"Subpart I—National Institute for Juvenile Justice and Delinquency Prevention",

(C) by striking sections 245 and 246,

(D) in section 249—

(i) in subsection (a) by striking "section 248" and inserting "section 245",

(ii) in subsection (b) by striking "section 248(b)" and inserting "section 245(b)", and

(iii) in subsection (c) by striking "section 246" and inserting "section 245",

(E) by redesignating sections 247, 248, and 249 as sections 245, 246, and 247, respectively, and

(F) by adding at the end the following:

"Subpart II—Special Emphasis Prevention and Treatment Programs

"AUTHORITY TO MAKE GRANTS AND CONTRACTS

"SEC. 261. (a) The Administrator shall, by making grants to and entering into contracts with public and private nonprofit agencies, organizations, institutions, and individuals provide for each of the following during each fiscal year:

"(1) Establishing or maintaining community-based alternatives to traditional forms of institutionalization of juvenile offenders.

"(2) Establishing or implementing effective means of diverting juveniles from the traditional juvenile justice and correctional system, including restitution and reconciliation projects which test and validate selected arbitration models, such as neighborhood courts or panels, and increase victim satisfaction while providing alternatives to incarceration for detained or adjudicated delinquents.

"(3) Establishing or supporting programs stressing advocacy activities aimed at improving services to juveniles impacted by the juvenile justice system, including services which encourage the improvement of due process available to juveniles in the juvenile justice system, which improve the quality of legal representation of such juveniles, and which provide for the appointment of special advocates by courts for such juveniles.

"(4) Developing or supporting model programs to strengthen and maintain the family unit in order to prevent or treat juvenile delinquency.

"(5) Establishing or implementing special emphasis prevention and treatment programs relating to juveniles who commit serious crimes (including such crimes committed in schools), including programs designed to deter involvement in illegal activities or to promote involvement in lawful activities on the part of gangs whose membership is substantially composed of juveniles.

"(6) Developing or implementing further a coordinated, national law-related education program of—

"(A) delinquency prevention in elementary and secondary schools, and other local sites;

"(B) training for persons responsible for the implementation of law-related education programs; and

"(C) disseminating information regarding model, innovative, law-related education programs to juvenile delinquency programs, including those that are community based, and to law enforcement and criminal justice agencies for activities related to juveniles.

"(7) Addressing efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population.

—'(b) The Administrator is authorized, by making grants to and entering into contracts with public and private nonprofit agencies, organizations, institutions, and individuals, to develop and implement new approaches, techniques, and methods designed to—

"(1) improve the capability of public and private agencies and organizations to provide services for delinquents and other juveniles to help prevent juvenile delinquency;

"(2) develop and implement, in coordination with the Secretary of Education, model programs and methods to keep students in elementary and secondary schools, to prevent unwarranted and arbitrary suspensions and expulsions, and to encourage new approaches and techniques with respect to the prevention of school violence and vandalism;

"(3) develop, implement, and support, in conjunction with the Secretary of Labor, other public and private agencies, organizations, business, and industry, programs for the employment of juveniles;

"(4) develop and support programs designed to encourage and assist State legislatures to consider and establish policies consistent with this title, both by amending State laws, if necessary, and devoting greater resources to effectuate such policies;

"(5) develop and implement programs relating to juvenile delinquency and learning disabilities, including on-the-job training programs to assist law enforcement personnel and juvenile justice personnel to more effectively recognize and provide for learning-disabled and other handicapped juveniles;

"(6) develop statewide programs through the use of subsidies or other financial incentives designed to—

"(A) remove juveniles from jails and lockups for adults;

"(B) replicate juvenile programs designated as exemplary by the National Institute of Justice; or

"(C) establish and adopt, based upon the recommendations of the National Advisory Committee for Juvenile Justice and Delinquency Prevention made before the date of the enactment of the Juvenile Justice, Runaway Youth, and Missing Children's Act Amendments of 1984, standards for the improvement of juvenile justice within each State involved; and

"(7) develop and implement model programs, relating to the special education needs of delinquent and other juveniles, which develop locally coordinated policies and programs among education, juvenile justice, and social service agencies.

"(c) Not less than 30 percent of the funds available for grants and contracts under this section shall be available for grants to and contracts with private nonprofit agencies, organizations, and institutions which have experience in dealing with juveniles.

"(d) Assistance provided under this section shall be available on an equitable basis to deal with female, minority, and disadvantaged juveniles, including juveniles who are mentally, emotionally, or physically handicapped.

"(e) Not less than 5 percent of the funds available for grants and contracts under this section shall be available for grants and contracts designed to address the special needs and problems of juvenile delinquency in the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

"CONSIDERATIONS FOR APPROVAL OF APPLICATIONS

"SEC. 262. (a) Any agency, institution, or individual desiring to receive a grant, or enter into a contract, under this part shall submit an application at such time, in such manner, and containing or accompanied by such information as the Administrator may prescribe.

"(b) In accordance with guidelines established by the Administrator, each application for assistance under this part shall—

"(1) set forth a program for carrying out one or more of the purposes set forth in this part and specifically identify each such purpose such program is designed to carry out;

"(2) provide that such program shall be administered by or under the supervision of the applicant;

"(3) provide for the proper and efficient administration of such program;

"(4) provide for regular evaluation of such program;

"(5) certify that the applicant has requested the State planning agency and local agency designated in section 223, if any, to review and comment on such application and indicate the responses of such State planning agency and local agency to such request;

"(6) attach a copy of the responses of such State planning agency and local agency to such request;

"(7) provide that regular reports on such program shall be sent to the Administrator and to such State planning agency and local agency; and

"(8) provide for such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this title.

"(c) In determining whether or not to approve applications for grants and for contracts under this part, the Administrator shall consider—

"(1) the relative cost and effectiveness of the proposed program in carrying out this part;

"(2) the extent to which such program will incorporate new or innovative techniques;

"(3) if a State plan has been approved by the Administrator under section 223(c), the extent to which such program meets the objectives and priorities of the State plan, taking into consideration the location and scope of such program;

"(4) the increase in capacity of the public and private agency, institution, or individual involved to provide services to address juvenile delinquency and juvenile delinquency prevention;

"(5) the extent to which such program serves communities which have high rates of juvenile unemployment, school dropout, and delinquency; and

"(6) the adverse impact that may result from the restriction of eligibility, based upon population, for cities with a population greater than 40,000 located within States which have no city with a population over 250,000.

"(d)(1)(A) Programs selected for assistance through grants or contracts under this part (other than section 241(f)) shall be selected through a competitive process to be established by rule by the Administrator. As part of such a process, the Administrator shall announce in the Federal Register—

"(i) the availability of funds for such assistance;

"(ii) the general criteria applicable to the selection of applicants to receive such assistance; and

"(iii) a description of the procedures applicable to submitting and reviewing applications for such assistance.

"(B) The competitive process described in subparagraph (A) shall not be required if the Administrator makes a written determination that—

"(i)(I) the proposed program is not within the scope of any announcement issued, or expected to be issued, by the Administrator regarding the availability of funds to carry out programs under this part, but can be supported by a grant or contract in accordance with this part; and

"(II) such program is of such outstanding merit, as determined through peer review conducted under paragraph (2), that the award of a grant or contract without competition is justified; or

"(ii) the applicant is uniquely qualified to provide proposed training services as provided in section 244 and other qualified sources are not capable of providing such services, and includes in such determination the factual and other bases thereof.

"(C) If a program is selected for assistance without competition pursuant to the exception provided in subparagraph (B), the Administrator shall promptly so notify the chairman of the Committee on Education and Labor of the House of Representatives and the chairman of the Committee on the Judiciary of the Senate. Such notification shall include copies of the Administrator's determination made under such subparagraph and the peer review determination required by paragraph (2).

"(2)(A) Programs selected for assistance through grants or contracts under this part (other than section 241(f)) shall be reviewed before selection, and thereafter as appropriate, through a formal peer review process utilizing experts (other than officers and employees of the Department of Justice) in fields related to the subject matter of the proposed program.

"(B) Such process shall be established by the Administrator in consultation with the Directors and other appropriate officials of the National Science Foundation and the National Institute of Mental Health. Before implementation of such process, the Administrator shall submit such process to such Directors, each of whom shall prepare and furnish to the chairman of the Committee on Education and Labor of the House of Representatives and the chairman of the Committee on the Judiciary of the Senate a final report containing their comments on such process as proposed to be established.

"(3) The Administrator, in establishing the processes required under paragraphs (1) and (2), shall provide for emergency expedited consideration of the proposed programs if necessary to avoid any delay which would preclude carrying out such programs.

"(e) A city shall not be denied assistance under this part solely on the basis of its population.

"(f) Notification of grants and contracts made under this part (and the applications submitted for such grants and contracts) shall, upon being made, be transmitted by the Administrator, to the chairman of the Committee on Education and Labor of the House of Representatives and the chairman of the Committee on the Judiciary of the Senate.".

(b) CONFORMING AMENDMENTS.—(1) Section 223(a)(1) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5633(a)(1)) is amended by striking "section 261(c)(1)" and inserting "section 291(c)(1)".

(2) Section 246 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 3639), as so redesignated by section (a)(2)(E), is amended by striking "section 248" and inserting "section 245".

SEC. 206. AUTHORIZATION OF APPROPRIATIONS.

(a) FUNDS AUTHORIZED FOR FISCAL YEARS.—Section 261(a) of part D of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671(a)) is amended—

(1) by inserting "(1)" after "(a)",

(2) by inserting "(other than part D)" after "this title",

(3) by striking "1985, 1986, 1987, and",

(4) by inserting ", 1989, 1990, 1991, and 1992" after "1988", and

(5) by adding at the end the following:

"(2) No funds may be appropriated to carry out part D of this title for a fiscal year unless the aggregate amount appropriated to carry out this title (other than part D) for such fiscal year is not less than the aggregate amount appropriated to carry out this title (other than part D) for the preceding fiscal year.".

(b) ALLOCATIONS.—Section 261(b) of part D of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671(b)) is amended—

(1) by inserting "(other than part D)" after "this title",

(2) in paragraph (1) by striking "7.5 percent" and inserting "5 percent",

(3) in paragraph (2) by striking "81.5 percent" and inserting "70 percent", and

(4) in paragraph (3) by striking "11 percent" and inserting "25 percent".

SEC. 207. TECHNICAL AMENDMENTS TO PART D OF TITLE II.

Part D of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671-5672 note) is amended—

(1) by amending the heading of such part to read as follows:

"PART E—GENERAL AND ADMINISTRATIVE PROVISIONS"

(2) by striking section 263,

(3) by redesignating sections 261 and 262 as sections 291 and 292, respectively, and

(4) by adding at the end the following:

"WITHHOLDING

"SEC. 293. Whenever the Administrator, after giving reasonable notice and opportunity for hearing to a recipient of financial assistance under this title, finds that—

"(1) the program or activity for which the grant or contract involved was made has been so changed that it no longer complies with this title; or

"(2) in the operation of such program or activity there is failure to comply substantially with any provision of this title;

the Administrator shall initiate such proceedings as are appropriate.

"USE OF FUNDS

"SEC. 294. (a) Funds paid pursuant to this title to any public or private agency, organization, or institution, or to any individual (either directly or through a State planning agency) may be used for—

"(1) planning, developing, or operating the program designed to carry out this title; and

"(2) not more than 50 percent of the cost of the construction of any innovative community-based facility for fewer than 20 persons which, in the judgment of the Administrator, is necessary to carry out this title.

"(b) Except as provided in subsection (a), no funds paid to any public or private agency, or institution or to any individual under this title (either directly or through a State agency or local agency) may be used for construction.

"(c)(1) Funds paid pursuant to section 223(a)(10)(D) and section 261(a)(3) to any public or private agency, organization, or institution or to any individual shall not be used to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device intended or designed to influence a Member of Congress or any other Federal, State, or local elected official to favor or oppose any Acts, bills, resolutions, or similar legislation, or any referendum, initiative, constitutional amendment, or any similar procedure of the Congress, any State legislature, any local council, or any similar governing body, except that this paragraph shall not preclude such funds from being used in connection with communications to Federal, State, or local elected officials, upon the request of such officials through proper official channels, pertaining to authorization, appropriation, or oversight measures directly affecting the operation of the program involved.

"(2) The Administrator shall take such action as may be necessary to ensure that no funds paid under section 223(a)(10)(D) or section 261(a)(3) are used either directly or indirectly in any manner prohibited in this paragraph.

"PAYMENTS

"SEC. 295. (a) Payments under this title, pursuant to a grant or contract, may be made (after necessary adjustment, in the case of grants, on account of previously made overpayments or underpayments) in advance or by way of reimbursement, in such installments and on such conditions as the Administrator may determine.

"(b) Except as provided in the second sentence of section 222(c), financial assistance extended under this title shall be 100 percent of the approved costs of the program or activity involved.

"(c)(1) In the case of a grant under this title to an Indian tribe, if the Administrator determines that the tribe does not have sufficient funds available to meet the local share of the cost of any program or activity to to be funded under the grant, the Administrator may increase the Federal share of the cost thereof to the extent the Administrator deems necessary.

"(2) If a State does not have an adequate forum to enforce grant provisions imposing any liability on Indian tribes, the Administrator may waive State liability attributable to the liability of such tribes and may pursue such legal remedies as are necessary.

"(d) If the Administrator determines, on the basis of information available to the Administrator during any fiscal year, that a portion of the funds granted to an applicant under part C for such fiscal year will not be required by the applicant or will become available by virtue of the application of the provisions of section 802 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended from time to time, that portion shall be available for reallocation in an equitable manner to States which comply with the requirements in paragraphs (12)(A) and (13) of section 223(a), under section 261(b)(6).

"CONFIDENTIALITY OF PROGRAM RECORDS

"SEC. 296. Except as authorized by law, program records containing the identity of individual juveniles gathered for purposes pursuant to this title may not be disclosed without the consent of the service recipient or legally authorized representative, or as may be necessary to carry out this title. Under no circumstances may program reports or findings available for public dissemination contain the actual names of individual service recipients.".

TITLE III—RUNAWAY AND HOMELESS YOUTH

SEC. 301. RUNAWAY AND HOMELESS YOUTH ACT REAUTHORIZATION.

Section 336(a) of the Runaway and Homeless Youth Act (42 U.S.C. 5751(a)), as redesignated by section 2836(a)(2) of this Act, is amended by striking out "1985, 1986, 1987, and 1988" and inserting in lieu thereof "1989, 1990, 1991, and 1992".

SEC. 302. AUTHORIZATION OF TRANSITIONAL LIVING PROJECTS.

(a) ASSISTANCE TO POTENTIAL GRANTEES.—Section 315 of the Runaway and Homeless Youth Act (42 U.S.C. 5714a) is amended—

(1) by inserting "and transitional living youth projects" after "homeless youth centers",

(2) in paragraph (1) by inserting "or transitional living youth project" after "homeless youth center",

(3) by inserting "or such project" after "such center" each place it appears, and

(4) in paragraph (3) by inserting "and homeless" after "runaway".

(b) LEASE OF SURPLUS FEDERAL FACILITIES.—Section 316 of the Runaway and Homeless Youth Act (42 U.S.C. 5714b) is amended—

(1) in the heading of such section by inserting "OR AS TRANSITIONAL LIVING YOUTH SHELTER FACILITIES" after "HOMELESS YOUTH CENTERS", and

(2) in subsection (a)—

(A) by inserting "or as transitional living youth shelter facilities" after "homeless youth centers", and

(B) in paragraph (1) by inserting "or transitional living youth project, as the case may be, under this title" after "homeless youth center".

(c) REPORTS.—Section 317 of the Runaway and Homeless Youth Act (42 U.S.C. 5715) is amended—

(1) by inserting "(a)" after "SEC. 317.",

(2) by striking "this part" and inserting "part A", and

(3) by adding at the end thereof the following:

"(b) The Secretary shall annually report to the Congress on the status and accomplishments of the transitional living youth projects which are funded under part B, with particular attention to—

"(1) the number and characteristics of homeless youth served by such projects;

"(2) describing the types of activities carried out under such projects;

"(3) the effectiveness of such projects in alleviating the immediate problems of homeless youth;

"(4) the effectiveness of such projects in preparing homeless youth for self sufficiency;

"(5) the effectiveness of such projects in helping youth decide upon future education, employment, and independent living; and

"(6) the ability of such projects to strengthen family relationships, and encourage the resolution of intra-family problems through counseling and the development of self-sufficient living skills.".

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 331 of the Runaway and Homeless Youth Act (42 U.S.C. 5751) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and

(2) by inserting after subsection (a) the following:

"(b)(1) Subject to paragraph (2), to carry out the purposes of part B of this title, there are authorized to be appropriated $5,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, and 1992.

"(2) No funds may be appropriated to carry out part B of this title for a fiscal year unless the aggregate amount appropriated for such fiscal year to carry out part A of this title exceeds $26,100,000.".

(e) TECHNICAL AMENDMENTS.—The Runaway and Homeless Youth Act (42 U.S.C. 5701-5751) is amended—

(1) by inserting before the heading for section 315 the following:

"PART C—GENERAL PROVISIONS"

and

(2) by redesignating sections 315, 316, 317, 318, 321, and 331, and all references to such sections, as sections 341, 342, 361, 362, 363, and 366, respectively.

(f) GRANTS FOR TRANSITIONAL LIVING YOUTH PROJECTS.—The Runaway and Homeless Youth Act (42 U.S.C. 5701-5751) is amended by inserting between section 314 and section 341, as redesignated herein, the following:

"PART B—TRANSITIONAL LIVING GRANT PROGRAM

"PURPOSE AND AUTHORITY FOR PROGRAM

"SEC. 321. (a) The Secretary is authorized to make grants and to provide technical assistance to public and nonprofit private entities to establish and operate transitional living youth projects for homeless youth.

"(b) For purposes of this part—

"(1) the term 'homeless youth' means any individual—

"(A) who is not less than 16 years of age and not more than 21 years of age;

"(B) for whom it is not possible to live in a safe environment with a relative; and

"(C) who has no other safe alternative living arrangement; and

"(2) the term 'transitional living youth project' means a project that provides shelter and services designed to promote a transition to self-sufficient living and to prevent long-term dependency on social services.

"ELIGIBILITY

"SEC. 322. (a) To be eligible for assistance under this part, an applicant shall propose to establish, strengthen, or fund a transitional living youth project for homeless youth and shall submit to the Secretary a plan in which such applicant agrees, as part of such project—

"(1) to provide, directly or indirectly, shelter (such as group homes, host family homes, and supervised apartments) and services (including information and counseling services in basic life skills, interpersonal skill building, educational advancement, job attainment skills, and mental and physical health care) to homeless youth;

"(2) to provide such shelter and such services to individual homeless youth throughout a continuous period not to exceed 540 days;

"(3) to provide, directly or indirectly, on-site supervision at each shelter facility that is not a family home;

"(4) that such shelter facility used to carry out such project shall have the capacity to accommodate not more than 20 individuals (excluding staff);

"(5) to provide a number of staff sufficient to ensure that all homeless youth participating in such project receive adequate supervision and services;

"(6) to provide a written transitional living plan to each youth based on an assessment of such youth's needs, designed to help the transition from supervised participation in such project to independent living or another appropriate living arrangement;

"(7) to develop an adequate plan to ensure proper referral of homeless youth to social service, law enforcement, educational, vocational, training, welfare, legal service, and health care programs and to help integrate and coordinate such services for youths;

"(8) to provide for the establishment of outreach programs designed to attract individuals who are eligible to participate in the project;

"(9) to submit to the Secretary an annual report that includes information regarding the activities carried out with funds under this part, the achievements of the project under this part carried out by the applicant and statistical summaries describing the number and the characteristics of the homeless youth who participate in such project in the year for which the report is submitted;

"(10) to implement such accounting procedures and fiscal control devices as the Secretary may require;

"(11) to submit to the Secretary an annual budget that estimates the itemized costs to be incurred in the year for which the applicant requests a grant under this part;

"(12) to keep adequate statistical records profiling homeless youth which it serves and not to disclose the identity of individual homeless youth in reports or other documents based on such statistical records;

"(13) not to disclose records maintained on individual homeless youth without the consent of the individual youth and parent or legal guardian to anyone other than an agency compiling statistical records or a government agency involved in the disposition of criminal charges against youth; and

"(14) to provide to the Secretary such other information as the Secretary may reasonably require.

"(b) In selecting eligible applicants to receive grants under this part, the Secretary shall give priority to entities that have experience in providing to homeless youth shelter and services of the types described in subsection (a)(1).".

SEC. 303. GRANTS FOR RUNAWAY AND HOMELESS YOUTH CENTERS.

(a) TECHNICAL AMENDMENT.—The heading for section 311 of the Runaway and Homeless Youth Act (42 U.S.C. 5711) is amended to read as follows:

"AUTHORITY TO MAKE GRANTS".

(b) GRANT PROGRAM.—Subsections (a) and (b) of section 311 of the Runaway and Homeless Youth Act (42 U.S.C. 5711) are amended to read as follows:

"(a) The Secretary shall make grants to public and private entities (and combinations of such entities) to establish and operate (including renovation) local runaway and homeless youth centers to provide services to deal primarily with the immediate needs of runaway or otherwise homeless youth, and their families, in a manner which is outside the law enforcement structure and the juvenile justice system.

"(b)(1) Subject to paragraph (2) and in accordance with regulations promulgated under this title, funds for grants under subsection (a) shall be allotted annually with respect to the States on the basis of their relative population of individuals who are less than 18 years of age.

"(2) Subject to paragraph (3), the amount allotted under paragraph (1) with respect to each State for a fiscal year shall be not less than $75,000, except that the amount allotted to the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands shall be not less than $30,000 each.

"(3) If, as a result of paragraph (2), the amount allotted under paragraph (1) with respect to a State for a fiscal year would be less than the aggregate amount of grants made under this part to recipients in such State for fiscal year 1988, then the amounts allotted to satisfy the requirements of such paragraph shall be reduced pro rata to the extent necessary to allot under paragraph (1) with respect to such State for the fiscal year an amount equal to the aggregate amount of grants made under this part to recipients in such State for fiscal year 1988.

"(4) In selecting among applicants for grants under subsection (a), the Secretary shall give priority to private entities that have experience in providing the services described in such subsection.

"(5) Not less than 90 percent of the funds appropriated under paragraph (1) for a fiscal year shall be available to carry out section 311(a) in such fiscal year.".

(c) CONFORMING AMENDMENTS.—(1) Sections 312 and 313 of the Runaway and Homeless Youth Act (42 U.S.C. 5712, 5713) are each amended by striking "this part" each place it appears and inserting "section 311(a)".

(2) Section 312(a) of the Runaway and Homeless Youth Act (42 U.S.C. 5712(a)) is amended by inserting "and homeless youth" after "proposed runaway".

(3) Section 312(b) of the Runaway and Homeless Youth Act (42 U.S.C. 5712(b)) is amended—

(A) in the matter preceding paragraph (1) by striking "meeting" and all that follows through "center—", and inserting "including assurances that the applicant—",

(B) in paragraph (1)—

(i) by striking "shall be" and inserting "shall operate a runaway and homeless youth center", and

(ii) by inserting "and homeless" after "by runaway", and

(C) in paragraphs (3) and (5) by striking "runaway center" each place it appears and inserting "runaway and homeless youth center",

(D) in paragraphs (4) and (6) by striking "runaway youths" each place it appears and inserting "runaway and homeless youth", and

(E) in paragraphs (5) and (6) by striking "runaway youth" each place it appears and inserting "runaway and homeless youth".

(4) Section 314 of the Runaway and Homeless Youth Act (42 U.S.C. 5714) is amended by striking "runaway center" and inserting "runaway and homeless youth center".

(5) Section 317 of the Runaway and Homeless Youth Act (42 U.S.C. 5715) is amended—

(A) by striking "runaway centers" and inserting "runaway and homeless youth centers", and

(B) by striking "runaway youth" and inserting "runaway and homeless youth".

(6) Section 318(a) of the Runaway and Homeless Youth Act (42 U.S.C. 5716(a)) is amended by striking "acquisition and".

TITLE IV—MISSING CHILDREN'S ASSISTANCE ACT

SEC. 401. MISSING CHILDREN'S ASSISTANCE ACT.

(a) Reauthorization.—Section 408 of the Missing Children's Assistance Act (42 U.S.C. 5777) is amended by—

(1) striking out "$10,000,000 for fiscal year 1985, and"; and

(2) striking out "1986, 1987, and 1988" and inserting "1989, 1990, 1991, and 1992".

(b) National Clearinghouse.—Section 404(b)(2)(D) of the Juvenile Justice and Delinquency Prevention Act is amended by inserting "and training" after "technical assistance".

(c) Competition Amendment.—Section 407 of the Juvenile Justice and Delinquency Prevention Act of 1974 is amended to read as follows:

"Sec. 407. (a) In carrying out the programs by this title (42 U.S.C. 3701, et seq.), the Administrator shall establish—

"(1) annual research, demonstration, and service program priorities for making grants and contracts pursuant to section 406; and

"(2) criteria based on merit for making such grants and contracts.

Not less than 60 days before establishing such priorities and criteria, the Administrator shall publish in the Federal Register for public comment a statement of such proposed priorities and criteria.

"(b) No grant or contract exceeding $50,000 shall be made under this title unless the grantee or contractor has been selected by a competitive process which includes public announcement of the availability of funds for such grant or contract, general criteria for the selection of recipients or contractors, and a description of the application process and application review process.

"(c) Multiple grants or contracts to the same grantee or contractor within any 1 year to support activities having the same general purpose shall be deemed to be a single grant for the purpose of this subsection, but multiple grants or contracts to the same grantee or contractor to support clearly distinct activities shall be considered separate grants or contractors.".

TITLE V—FAMILY VIOLENCE PREVENTION ACT OF 1988

SEC. 501. SHORT TITLE.

This chapter may be cited as the "Family Violence Prevention Act of 1988".

SEC. 502. DATA COLLECTION AND REPORTING.

(a) Family Violence Reporting.—Under the authority of section 534 of title 28, United States Code, the Attorney General shall require, and include in uniform crime reports, data that indicate—

(1) the age of the victim; and

(2) the relationship of the victim to the offender, for crimes of murder, aggravated assault, simple assault, rape, sexual offenses, and offenses against children.

(b) National Crime Survey.—The Director of the Bureau of Justice Statistics, through the annual National Crime Survey, shall collect and publish data that more accurately measures the extent of domestic violence in America, especially the physical and sexual abuse of children and the elderly.

(c) Authorization of Appropriations.—There are authorized to be

TITLE VI—REGIONAL INFORMATION SHARING SYSTEMS GRANTS

SEC. 601. REGIONAL INFORMATION SHARING SYSTEMS GRANTS.

(a) Grant Authorized.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by this subtitle, is amended by inserting after part L the following new part:

"PART M—REGIONAL INFORMATION SHARING SYSTEMS GRANTS

"SEC. 1301. REGIONAL INFORMATION SHARING SYSTEMS GRANTS.

"(a) The Director of the Bureau of Justice Assistance is authorized to make grants and enter into contracts with State and local criminal justice agencies and nonprofit organizations for the purposes of identifying, targeting, and removing criminal conspiracies and activities spanning jurisdictional boundaries.

"(b) Grants and contracts awarded under this part shall be made for—

"(1) maintaining and operating information sharing systems that are responsive to the needs of participating enforcement agencies in addressing multijurisdictional offenses and conspiracies, and that are capable of providing controlling input, dissemination, rapid retrieval, and systematized updating of information to authorized agencies;

"(2) establishing and operating an analytical component to assist participating agencies and projects in the compilation, interpretation, and presentation of information provided to a project;

"(3) establishing and maintaining a telecommunication of the information sharing and analytical programs in clauses (1) and (2); and

"(4) other programs designated by the Director that are designed to further the purposes of this part.

"(c) The Director is authorized to promulgate such rules and regulations as are necessary to carry out the purposes of this section, including rules and regulations for submitting and reviewing applications."

(b) Technical Amendments.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by striking out the items relating to part N and section 1401, and inserting in lieu thereof the following new items:

"Part M—Regional Information Sharing Systems Grants

"Sec. 1301. Regional information sharing systems grants.

"Part N—Transition; Effective Date; Repealer

"Sec. 1401. Continuation of rules, authorities, and proceedings."

TITLE VII—PUBLIC SAFETY OFFICERS' DEATH BENEFITS IMPROVEMENT

SEC. 701. PUBLIC SAFETY OFFICERS' DEATH BENEFITS IMPROVEMENT.

(a) Basic Level of Death Benefit Payable.—Section 1201(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796) is amended by striking out "$50,000" and inserting in lieu thereof "$100,000, adjusted in accordance with subsection (g)".

(b) Annual Adjustment of Benefit Level.—Section 1201 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796) is amended by adding at the end thereof the following new subsections:

"(g) On October 1 of each fiscal year beginning after the effective date of this subsection, the Bureau shall adjust the level of the benefit payable immediately before such October 1 under subsection (a), to reflect the annual percentage change in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, occurring in the 1-year period ending on June 1 immediately preceding such October 1.

"(h) The amount payable under subsection (a) with respect to the death of a public safety officer shall be the amount payable under subsection (a) as of the date of death of such officer.".

(c) Parents as Beneficiaries.—Section 1201(a)(4) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796(a)(4)) is amended by striking out "dependent".

(d) Technical Amendment.—Section 1203 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b) is amended by striking out paragraph (2) and redesignating paragraphs (3), (4), (5), (6), and (7), as paragraphs (2), (3), (4), (5), and (6), respectively.

SEC. 702. NATIONAL PROGRAMS FOR FAMILIES OF PUBLIC SAFETY OFFICERS WHO HAVE DIED IN THE LINE OF DUTY.

(a) Program Authorization.—Part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796a) is amended by—

(1) redesignating sections 1203 and 1204 as sections 1204 and 1205, respectively; and

(2) adding after section 1202 the following new section:

"NATIONAL PROGRAMS FOR FAMILIES OF PUBLIC SAFETY OFFICERS WHO HAVE DIED IN THE LINE OF DUTY

"Sec. 1203. The Director is authorized and directed to use up to $150,000 of the funds appropriated for this part to establish national programs to assist the families of public safety officers who have died in the line of duty.".

(b) Technical Amendment.—The table of contents for title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by—

(1) redesignating the items for section 1203 and 1204 as sections 1204 and 1205, respectively; and

(2) inserting after section 1203 the following:

"Sec. 1203. National and regional program for families of public safety officers who have died in the line of duty.".

TITLE VIII—CRIMINAL HISTORY RECORD, ARREST WARRANT, AND STOLEN VEHICLE RECORD INFORMATION IMPROVEMENT

SEC. 801. SHORT TITLE.

This part may be cited as the "Criminal History Record Information Improvement Act of 1987".

SEC. 802. CRIMINAL HISTORY RECORD, ARREST WARRANT AND STOLEN VEHICLE RECORD INFORMATION.

(a) Grant Authorized.—Part C of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3731-3735) is amended by adding at the end thereof the following new section:

"GRANTS TO IMPROVE CRIMINAL HISTORY RECORD, ARREST WARRANT AND STOLEN VEHICLE RECORD INFORMATION

"Sec. 305. (a) With funds appropriated under section 1001(a)(6) of this title, the Director shall establish and carry out a program to make grants to improve criminal history record information, arrest warrant information and stolen vehicle record information compiled and maintained by State and local criminal justice agencies. Under such program, grants may be made in order to improve the accuracy, inclusiveness, or completeness of criminal history record, arrest record, and stolen vehicle record information, including grants, to develop, establish, or enhance—

"(1) uniform documents, forms, and procedures for reporting, integrating and maintaining such information;

"(2) an editing and verification system in order to identify errors;

"(3) a tracking system to match arrest and charge entries with dispositions;

"(4) a delinquent disposition monitoring system to identify aged entries;

"(5) a capability to audit information systems for the accuracy, or completeness or otherwise to measure the quality of such information;

"(6) an error notification system to facilitate the exchange of updated or corrected information among criminal justice agencies;

"(7) a capability to query the appropriate State central repository or source agency;

"(8) a transaction log system to record and describe the instances of dissemination;

"(9) automated criminal justice information systems, especially integrated systems, that assist in accomplishing information quality objectives or provide the means to measure the accomplishment of such objectives;

"(10) communications with the courts and other parts of the criminal justice system in order to assist in accomplishing information quality objectives;

"(11) initiatives to enhance the use of positive identification techniques;

"(12) programs for verification, validation, and purging of information that is not accurate; or

"(13) such other programs that, as determined by the Director, can reasonably be expected to assist in accomplishing information quality objectives.

"(b) No grant may be made under subsection (a) to an applicant unless the application for such grant—

"(1) contains a detailed summary of the results of an audit of the component or aspect of the criminal justice information system for which the grant is being sought;

"(2) identifies each of the activities specified in subsection (a) for which such grant will be expended and describes in detail how such activities will be carried out;

"(3) specifies with respect to the component or aspect of the criminal justice information system for which the grant is being sought, numeric goals of accuracy, inclusiveness, or completeness that will be achieved as a result of carrying out such activities and the period of time, but not more than 2 years, within which such goals will be achieved;

"(4) provides an assurance that such applicant will conduct an audit, at the applicant's expense, to determine whether the goals established pursuant to paragraph (3) have been achieved; and

"(5) identifies the State or local agency, as the case may be, that will be responsible for administering such grant.

"(c) Any State or unit of local government that—

"(1) receives a grant under subsection (a); and

"(2) fails to achieve each goal of accuracy, inclusiveness, or completeness specified in the application for such grant, as required by subsection (b)(3) within the period to which such goal applies;

is ineligible to receive any other grant under subsection (a) unless the Director determines that the failure to achieve such goal was caused by circumstances beyond the control of the State or unit of local government involved.".

(b) Technical Amendments.—Section 303 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3733) is amended—

(1) by striking out "A grant" and inserting in lieu thereof "(a) Except as provided in subsection (b), a grant", and by inserting after the words "for which such grant is made." the following new language: "The Director, in his discretion, may waive the requirements in subsection 305(b) with respect to 100 percent grants awarded under section 305.", and

(2) by adding at the end the following:

"(b) From 80 percent of the funds appropriated for a fiscal year to carry out section 305, each grant may be up to 50 percent of the total cost of the project for which such grant is made. The amount expended by the grant applicant to conduct the audit required by section 305(b)(1) shall be treated as a part of the cost of such project paid by such applicant.".

SEC. 803. CRIMINAL JUSTICE RECORD INFORMATION DATA QUALITY RESEARCH.

With funds appropriated under section 1001(a)(6) of this title, the Bureau is authorized to conduct or make grants to support research to determine the accuracy, inclusiveness, or completeness of criminal justice record information held by State or local law enforcement agencies, prosecutors, the courts or correctional agencies.

SEC. 804. TECHNICAL AMENDMENTS.

The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by inserting after the item relating to section 304 the following new item:

"Sec. 305. Grants to improve criminal history record, arrest warrant and stolen vehicle information.".

TITLE IX—COLLEGE AND RAILROAD POLICE INFORMATION

SEC. 901. COLLEGE AND RAILROAD POLICE INFORMATION.

Section 534 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) For purposes of this section, the term 'other institutions' includes—

"(1) railroad police departments which perform the administration of criminal justice pursuant to a State statute and which allocate a substantial part of their annual budget to the administration of criminal justice; and

"(2) police departments of private colleges or universities which perform the administration of criminal justice pursuant to a State statute and which allocate a substantial part of their annual budget to the administration of criminal justice.".

TITLE X—ASSISTANCE TO STATE AND LOCAL COURTS

SEC. 1001. STATE JUSTICE INSTITUTE REAUTHORIZATION.

(a) Authorization.—Section 215 of the State Justice Institute Act of 1984 (Public Law 98-620; 42 U.S.C. 10713) is amended to read as follows:

"Sec. 215. There are authorized to be appropriated $15,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, and 1992 to carry out the purposes of this chapter.".

(b) Technical Amendments.—(1) Section 203(f) of the State Justice Institute Act of 1984 is amended by striking ", at least thirty days prior to their effective date," and by adding to the end thereof: "The publication of a substantive rule shall not be made less than thirty days before the effective date of such rule, except as otherwise provided by the Institute, for good cause found and published with the rule.".

(2) Section 205(d)(2) of the State Justice Institute Act of 1984 is amended by striking "chapter 83" and inserting in lieu thereof "chapters 83 and 84".

(3) Section 206(c) of the State Justice Institute Act of 1984 is amended by—

(A) inserting "judicial and" before "nonjudicial" in paragraph (3);

(B) repealing paragraph (4); and

(C) redesignating paragraphs (5) through (15) as paragraphs (4) through (14), respectively.

(4) Section 206(d) of the State Justice Institute Act of 1984 is amended by striking out "judicial system" and inserting in lieu thereof "court (or other unit of State or local government)".

(5) Section 207(a) of the State Justice Institute Act of 1984 is amended by—

(A) inserting "and" at the end of paragraph (1)(B);

(B) striking "; and" at the end of paragraph (2) and inserting in lieu thereof a period; and

(C) repealing paragraph (3).

(c) Administrative Provisions.—Section 209 of the State Justice Institute Act of 1984 is amended to read as follows:

"ADMINISTRATIVE PROVISIONS

"Sec. 209. (a) The Institute shall prescribe procedures to ensure that financial assistance under this title shall not be suspended unless the grantee, contractor, person, or entity receiving financial assistance under this title has been given reasonable notice and opportunity to show cause why such actions should not be taken.

"(b) Except as provided by Federal law other than this title, no officer or employee of the Institute, and no recipient of assistance under the provisions of this title shall use or reveal any research or statistical information furnished under this title by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained in accordance with this title. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.".

TITLE XI—VICTIM COMPENSATION AND ASSISTANCE

Chapter 1—Victims of Crime Act of 1984 Reauthorization

SEC. 1101. VICTIMS OF CRIME ACT OF 1984 REAUTHORIZATION.

Paragraph (2) of subsection (c) of section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601) is amended by striking out "September 30, 1988" and inserting in lieu thereof "September 30, 1992.".

SEC. 1102. VICTIMS ASSISTANCE AMENDMENT.

Section 1404(a)(2) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(a)(2)) is amended by adding a new subparagraph (B) and redesignating the other subparagraphs as appropriate:

"(B) certify that funds shall be made available for grants to programs designed to serve previously underserved populations victims. The Director shall issue guidelines to implement this section, after consultation with State and local officials and representatives from private organizations, that provide flexibility to the States in determining the victims populations that may be underserved in their respective States;".

Chapter 2—Establishment of Office for Victims of Crime

SEC. 1111. ESTABLISHMENT OF OFFICE.

The Victims of Crime Act of 1984 is amended by inserting after section 1401, the following new section:

"SEC. 1401A. ESTABLISHMENT OF OFFICE FOR VICTIMS OF CRIME.

"(a) There is established within the Department of Justice, under the general authority of the Attorney General, an Office for Victims of Crime (hereafter in this part referred to as the 'Office').

"(b) The Office shall be headed by a Director (hereafter in this part referred to as the 'Director') who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall report to the Attorney General through the Assistant Attorney General for the Office of Justice Programs. The Director shall have final authority for all grants, cooperative agreements, and contracts awarded by the Office. The Director shall not engage in any employment other than that of serving as the Director, nor shall the Director hold any office in, or act in any capacity for, any organization, agency, or institution with which the Office makes any contract or other agreement under this part.

"(c) The Director shall have the following duties:

"(1) Administering funds made available by section 1402.

"(2) Providing funds to eligible States pursuant to sections 1403 and 1404.

"(3) Establishing programs in accordance with section 1404(c) on terms and conditions determined by the Director to be consistent with that subsection.

"(4) Cooperating with and providing technical assistance to States, units of local government, and other public and private organizations or international agencies involved in activities related to crime victims.

"(5) Such other functions as the Attorney General may delegate.".

SEC. 1112. TECHNICAL AMENDMENTS TO VICTIMS OF CRIME ACT.

(a) Section 1403(a)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10602) is amended by striking "Attorney General" and inserting "Director".

(b) Section 1403(a)(2) of the Victims of Crime Act of 1984 (42 U.S.C. 10602) is amended by striking "Attorney General" and inserting "Director".

(c) Section 1403(b)(6) of the Victims of Crime Act of 1984 (42 U.S.C. 10602) is amended by striking "Attorney General" and inserting "Director".

(d) Section 1404(a)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10603) is amended by striking "Attorney General" and inserting "Director".

(e) Section 1404(a)(2)(C) of the Victims of Crime Act of 1984 (42 U.S.C. 10603) is amended by striking "Attorney General" and inserting "Director".

(f) Section 1404(c)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10603) is amended by striking "Attorney General, acting through the Assistant Attorney General for the Office of Justice Programs" and inserting "Director".

(g) Section 1404(c)(3) of the Victims of Crime Act of 1984 (42 U.S.C. 10603) is amended by striking "Assistant Attorney General for the Office of Justice Programs" and inserting "Director".

(h) Section 1404(c)(3)(D) of the Victims of Crime Act of 1984 (42 U.S.C. 10603) is amended by striking "Attorney General may assign" and inserting "Director deems appropriate".

(i) Section 1404(c)(4) of the Victims of Crime Act of 1984 (42 U.S.C. 10603) is amended by striking "Attorney General" and inserting "Director".

(j) Section 1407(a) of the Victims of Crime Act of 1984 (42 U.S.C. 10604) is amended by—

(1) striking "Attorney General" and inserting "Director";

(2) striking "Attorney General" and inserting "Director"; and

(3) striking "and may delegate to any officer or employee of the Department of Justice any such function as the Attorney General deems appropriate".

(k) Section 1407(b) of the Victims of Crime Act of 1984 (42 U.S.C. 10604) is amended by striking "Attorney General" and inserting "Director".

(l) Section 1407(c) of the Victims of Crime Act of 1984 (42 U.S.C. 10604) is amended by striking "Attorney General or any duly authorized representative of the Attorney General" and inserting "Director".

(m) Section 1407(f) of the Victims of Crime Act of 1984 (42 U.S.C. 10604) is amended by—

(1) striking "Attorney General" the first place it appears and inserting "Director"; and

(2) striking "Attorney General" and inserting "Director" in paragraph (3).

(n) Section 1407(g) of the Victims of Crime Act of 1984 (42 U.S.C. 10604) is amended by—

(1) striking "Attorney General" the first place it appears and inserting "Director"; and

(2) striking "no later than December 31, 1987" and inserting "on December 31, 1990, and on December 31 every 2 years thereafter".

SEC. 1113. CHILDREN'S JUSTICE ACT AMENDMENTS.

(a) Section 10 of the Child Abuse Prevention and Treatment Act (Public Law 100-294) is stricken and sections 11, 12, 13, 14, and 15 are redesignated as sections 10, 11, 12, 13, and 14, respectively.

(b) Section 1404A (42 U.S.C. 10603A) of the Victims of Crime Act of 1984 is amended to read as follows:

"SEC. 1404A. (a) GRANT AUTHORITY.—(1) Amounts made available by section 1402(d)(2) for the purposes of this section shall be obligated and expended by the Attorney General, acting through the Director, to make grants to the States for the purpose of assisting States in developing, establishing, and operating programs designed to improve—

"(A) the handling of child abuse cases, particularly cases of child sexual abuse, in a manner which limits additional trauma to the child victim; and

"(B) the investigation and prosecution of cases of child abuse, particularly child sexual abuse.

"(2) To ensure that programs funded under this section involve a multidisciplinary approach, representatives from a variety of disciplines, the Director shall, in consultation with the representatives from the Department of Health and Human Services and other Federal agencies, develop for each fiscal year, before December 31 of each year, a proposed plan describing the criteria that shall be used in selecting programs for grants under this section. Such report shall also be provided to the appropriate committees of Congress.".

"(b) ELIGIBILITY REQUIREMENTS FOR STATES.—In order for a State to qualify for assistance under this section, such State shall—

"(1) fulfill the eligibility requirements for victim assistance funds under section 1404(a) of the Victims of Crime Act (42 U.S.C. 10603);

"(2) establish a task force as provided in subsection (c);

"(3) fulfill the requirements of subsection (d); and

"(4) submit an application to the Attorney General at such time and containing such information and assurances as the Attorney General considers necessary, including an assurance that the State will—

"(A) make such reports to the Attorney General as may reasonably be required; and

"(B) maintain and provide access to records relating to activities under subsections (a) and (b).

"(c) STATE TASK FORCES.—

"(1) GENERAL RULE.—Except as provided in paragraph (2), a State requesting assistance under this section shall establish or designate a State multidisciplinary task force on children's justice (hereinafter referred to as 'State task force') composed of professionals with knowledge and experience relating to the criminal justice system and issues of child abuse. The State task force shall include—

"(A) individuals representing the law enforcement community;

"(B) judicial and legal officers (including individuals involved with the defense as well as the prosecution of such cases);

"(C) child advocates;

"(D) health and mental health professionals;

"(E) individuals representing child protective service agencies;

"(F) individuals experienced in working with children with handicaps;

"(G) parents; and

"(H) representatives of parents' groups.

"(2) EXISTING TASK FORCE.—As determined by the Attorney General, a State commission or task force established after January 1, 1983, with substantially comparable membership and functions, may be considered the State task force for purposes of this subsection.

"(d) STATE TASK FORCE STUDY.—Before a State receives assistance under this section, the State task force shall—

"(1) review and evaluate State investigative, administrative, and judicial handling of cases of child abuse, particularly child sexual abuse; and

"(2) make recommendations in each of the categories described in subsection (e).

The task force may make such other comments and recommendations as are considered relevant and useful.

"(e) ADOPTION OF STATE TASK FORCE RECOMMENDATIONS.—

"(1) GENERAL RULE.—Subject to the provisions of paragraph (2), before a State receives assistance under this section, a State shall adopt recommendations of the State task force in each of the following categories:

"(A) investigative, administrative, and judicial handling of cases of child abuse, particularly child sexual abuse cases, in a manner which reduces the additional trauma to the child victim and which also ensures procedural fairness to the accused;

"(B) experimental, model, and demonstration programs for testing innovative approaches and techniques which may improve the rate of successful prosecution or enhance the effectiveness of judicial and administrative action in child abuse cases, particularly child sexual abuse cases, and which also ensure procedural fairness to the accused; and

"(C) reform of State laws, ordinances, regulations, and procedures to provide comprehensive protection for children from abuse, particularly child sexual abuse, while ensuring fairness to all affected persons.

"(2) EXEMPTION.—As determined by the Attorney General, a State shall be considered to be in fulfillment of the requirements of this subsection if—

"(A) the State adopts an alternative to the recommendations of the State task force, which carries out the purpose of this section, in each of the categories under paragraph (1) for which the State task force's recommendations are not adopted; or

"(B) the State is making substantial progress toward adopting recommendations of the State task force or a comparable alternative to such recommendations.

"(f) GRANTS FOR INDIAN COUNTRY.—The Attorney General, acting through the Director, is authorized to use not more than 15 percent of the funds available for this section to make grants for the purpose of assisting Native American Indian tribes in developing, establishing, and operating programs designed to improve—

"(1) the handling of child abuse cases, particularly cases of child sexual abuse, in a manner which limits additional trauma to the child victim; and

"(2) the investigation and prosecution of cases of child abuse, particularly child sexual abuse.

"(g) REPORT.—The Director shall include a summary of States funded under this section and the programmatic results when reporting to the President and Congress as required under section 1407(g) of the Victims of Crime Act (42 U.S.C. 10604).".

(c) The amendments made by this section shall not affect the administration of grants made on or before September 30, 1988.

Chapter 3—Other Amendments to Victims of Crime Act of 1984

SEC. 1121. OTHER AMENDMENTS TO VICTIMS OF CRIME ACT OF 1984.

(a) ADDING VICTIMS OF DRUNK DRIVING AND DOMESTIC VIOLENCE.—Section 1403(b)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(b)(1)) is amended to read as follows:

"(1) such program is operated by a State and offers compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence by December 30, 1991, for—".

(b) DENIAL OF COMPENSATION.—Section 1403(b) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(b)) is amended by—

(1) redesignating paragraph (6) as paragraph (7); and

(2) adding the following new paragraph (6):

"(6) such program does not deny compensation to any victim because of a familial relationship with the offender or because the victim lived with the offender at the time of the crime, except that the program may establish reasonable regulations, pursuant to Department of Justice guidelines, to prevent the unjust enrichment of the offender;".

(c) CHANGE IN VICTIM COMPENSATION CRITERIA.—Section 1403(b)(5) (42 U.S.C. 10602(b)(5)) of the Victims of Crime Act of 1984 is amended to read as follows:

"(5) such program provides compensation to victims of Federal crimes occurring within the State on the same basis that such program provides compensation to victims of State crimes.".

(d) REMOVAL OF "GRANDFATHER" CLAUSE.—Section 1403 of the Victims of Crime Act of 1984 (42 U.S.C. 10602) is amended by striking subsection (c) and redesignating subsection (d) as subsection (c).

(e) EYEGLASSES.—(1) Section 1403(d)(1) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(d)(1)) is amended by adding after "does not include damage to" the following: "eyeglasses and other corrective lenses or".

(2) Section 1403(d)(2) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(d)(2)) is amended by adding after "crime victim compensation program, expenses for" the following: "eyeglasses and other corrective lenses, and for".

LEASE OF NAVAL REPAIR EQUIPMENT

HUMPHREY AMENDMENT NO. 3694

Mr. HUMPHREY proposed an amendment to the bill (H.R. 5420) to authorize the lease of a specified naval repair ship to the Government of Pakistan and the transfer of a specified floating drydock and a medium yard tug to the Republic of the Philippines; as follows:

At the appropriate place in the bill, add the following new section:

SEC. . Notwithstanding any other provision of law for fiscal year 1989, such sums as may be necessary of United States-owned excess foreign currencies (in excess of amounts necessary for satisfaction of preexisting commitments to use such currencies for other purposes specified by law) may be made available to the Administrator of the Agency for International Development for the same purposes for which assistance under Chapter 1 of Part I of the Foreign Assistance Act of 1961 is available, and for the support of any institution providing education for a significant number of United States nationals, in the country where such currencies are held or in other foreign countries, provided that nothing in this provision shall provide for any assistance in any communist bloc country.

OMNIBUS ANTI-SUBSTANCE ABUSE ACT

GRAMM (AND OTHERS) AMENDMENT NO. 3695

Mr. GRAMM (for himself, Mr. DOMENICI Mr. KARNES, and Mr. THURMOND) proposed an amendment to the bill (H.R. 5210) to prevent the manufacturing, distribution, and use of illegal drugs, and for other purposes; as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . DENIAL OF FEDERAL BENEFITS TO DRUG TRAFFICKERS AND USERS.

(a) DRUG TRAFFICKERS.—(1) Subject to the provisions of paragraph (3), any individual who is convicted of any Federal or State offense consisting of the distribution of controlled substances (as such terms are defined for purposes of the Controlled Substances Act) shall—

(A) at the discretion of the court, upon the first conviction for such an offense be ineligible for any or all unearned Federal benefits for up to 5 years after such conviction;

(B) at the discretion of the court, upon a second conviction for such an offense be ineligible for any or all unearned Federal benefits for up to 10 years after such conviction; and

(C) upon a third or subsequent conviction for such an offense be permanently ineligible for all unearned Federal benefits.

(2) The benefits which are denied under this subsection shall not include benefits relating to long-term drug treatment programs for addiction for any person who, if there is a reasonable body of evidence to substantiate such declaration, declares himself to be an addict and submits himself to such a long-term treatment program for addiction.

(b) DRUG USERS.—(1) Subject to the provisions of paragraph (2), any individual who is convicted of any Federal or State offense involving the use of a controlled substance (as such term is defined for purposes of the Controlled Substances Act) shall—

(A) upon the first conviction for such an offense and at the discretion of the court—

(i) be ineligible for any or all Federal benefits, other than earned Federal benefits and means-tested Federal benefits, for up to one year;

(ii) be required to successfully complete an approved drug treatment program which includes periodic testing to insure that the individual remains drug free;

(iii) be required to perform appropriate community service; or

(iv) any combination of clause (i), (ii), or (iii); and

(B) upon a second or subsequent conviction for such an offense be ineligible for all Federal benefits, other than earned Federal benefits and means-tested Federal benefits, for up to 5 years after such conviction as determined by the court.

In imposing penalties and conditions under subparagraph (A), the court may require that the completion of the conditions imposed by clause (ii) or (iii) be a requirement for the reinstatement of benefits under clause (i).

(2) For purposes of this section—

(A) the term "Federal benefits" includes the issuance of Guaranteed Student Loans, Pell Grants, the issuance of Federal mortgage guarantees, all Government loans, grants, benefits, contracts with, and licenses or permits issued by, the Government; and

(B) the term "means-tested Federal benefits" includes programs where eligibility is determined, in part, on the basis of income and assets.

(C) the term "earned Federal benefits" means Social Security, Medicare, Railroad Retirement benefits, all benefits provided to veterans, their families, or survivors, or any other benefits for which payments or services are required for eligibility.

(3) The penalties and conditions which may be imposed under this subsection shall be waived in the case of a person who, if there is a reasonable body of evidence to substantiate such declaration, declares himself to be an addict and submits himself to a long-term treatment program for addiction, or is deemed to be rehabilitated pursuant to rules established by the Secretary of Health and Human Services.

(C) INAPPLICABILITY OF THIS SECTION TO GOVERNMENT WITNESSES.—The penalties provided by this section shall not apply to any individual who cooperates or testifies with the Government in the prosecution of a Federal or State offense or who is in the Government Witness Protection Program.

WILSON (AND OTHERS) AMENDMENT NO. 3696

Mr. WILSON (for himself, Mr. DIXON, Mr. CHAFEE, Mr. HEFLIN, Mr. GRAMM, Mr. DECONCINI, Mr. RUDMAN, Mr. D'AMATO, Mr. MCCONNELL, and Mr. MOYNIHAN) proposed an amendment to the bill H.R. 5210, supra, as follows:

At the end of the bill, add the following:

SEC. . PROVISION OF FEDERAL HIGHWAY FUNDS TO A STATE THAT HAS A PROGRAM OF RANDOM TESTING FOR DRUG ABUSE OF APPLICANTS FOR DRIVERS LICENSES.

(a) Chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new section: "S. 159. Random testing for illegal drug abuse.

"(1) The Secretary shall design, within nine months after the date of enactment of this section, and implement, within fifteen months after the date of enactment of this section, a pilot test program for the purpose of testing certain individuals, as defined in subsection (5)(A) of this section, to determine whether such individual has used, without lawful authorization, a controlled substance.

(2) The Secretary shall solicit the participation of States which are interested in participating in such a program and shall select four States to participate in the program.

(3) The Secretary shall ensure that the selection made pursuant to this section is representative of varying geographical and population characteristics of the Nation, and takes into consideration the historical geographical incidence of motor vehicle accidents involving loss of human life. In selecting the four States, the Secretary shall attempt to solicit States that meet the following criteria:

(A) One of the States shall be a Western State that is one of the three most populous States, with numerous large cities, with at least one city exceeding seven million people. The State should have a diverse demographic population with larger than average drug use according to reliable surveys.

(B) One of the remaining States shall be a Southern State, one a Northeastern State, and one a Central State.

(C) One of the remaining States shall be mainly rural and among the least populous States.

(D) One of the remaining States shall have less than average drug use according to reliable surveys.

(4) The pilot program authorized by this section shall continue for a period of 1 year. The Secretary shall consider alternative methodologies for implementing a system or random testing of such individuals.

(5)(A) Each State participating in the test program shall test for controlled substances in accordance with subparagraph (B) individuals who—

(i) are applicants seeking the privilege to drive, and

(ii) have never been issued a driver's license by any State.

(B) To deter drug use and promote highway safety, each individual described in subparagraph (A) shall be subject to random testing—

(i) prior to the granting of the privilege to drive, and/or

(ii) during the first year following such grant.

(C) Each State participating in the test program shall deny an individual driving privileges if drug testing required by subparagraph (A) indicates that such individual has used illicit drugs, with such denial lasting for a period of at least one year following such test or subsequent confirmatory test.

(D) The program described in subparagraph (C) of paragraph (5) may allow for reinstitution of driving privileges after a period of three months if such reinstitution is accompanied by a requirement that the individual be for a period of nine months for drug testing on a regular basis. If any such test indicates that the individual has used illicit drugs, then driving privileges must be denied for one year following such test or confirmatory test.

* * * * *

(6) The Secretary may issue regulations to assist States in implementing the programs described in paragraph (5) and to grant temporary exceptions in appropriate circumstances.

(7) Not later than 30 months after the date of enactment of this section, the Secretary shall prepare and submit to the Congress a comprehensive report setting forth the results of the pilot program conducted under this section. Such report shall include any recommendations of the Secretary concerning the desirability and implementation of a system for random testing of such operators of motor vehicles.

(8) For purposes of carrying out this test program, there is authorized to be appropriated out of safety-related funds of the Highway Trust Fund (other than the Mass Transit Account) $5,000,000 for fiscal year 1990.

(9) For purposes of this subsection, the term—

(A) "controlled substance" means any substance under section 102(6) of the Controlled Substance Act (21 USC 802(6)) whose use the Secretary has determined poses a risk to transportation safety, and

(B) "Secretary" means the Secretary of Transportation.

(b) The table of contents for chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new item:

"159. Random testing for illegal drugs use.".

(C) For purposes of implementing this test program, any drug testing conducted under this section shall conform with the requirements of section 3065 of this Act.

KERRY (AND OTHERS) AMENDMENT NO. 3697

Mr. KERRY (for himself, Mr. MCCONNELL, Mr. MITCHELL, Mr. MURKOWSKI, Mr. ADAMS, Mr. TRIBLE, Mr. BINGAMAN, and Mr. KENNEDY) proposed an amendment to the bill H.R. 5210, supra; as follows:

At the appropriate place, insert the following:

SEC. . RESTRICTIONS ON LAUNDERING OF UNITED STATES CURRENCY.

(a) FINDINGS.—The Congress finds that international currency transactions, especially in United States currency, that involve the proceeds of narcotics trafficking fuels trade in narcotics in the United States and worldwide and consequently is a threat to the national security of the United States.

(b) PURPOSE.—The purpose of this section is to provide for international negotiations that would expand access to information on transactions involving large amounts of United States currency wherever those transactions occur worldwide.

(c) NEGOTIATIONS.—(1) the Secretary of the Treasury (hereinafter referred to as the "Secretary") shall enter into negotiations with the appropriate financial supervisory agencies and other officials of all foreign countries the banks and other financial institutions of which do business in United States currency. Highest priority shall be attached to countries whose financial institutions the Secretary determines, in consultation with the Attorney General and the National Director of Drug Policy, may be engaging in currency transactions involving the proceeds of international narcotics trafficking, particularly United States currency derived from drug sales in the United States.

(2) The purposes of negotiations under this subsection are—

(A) to reach one or more international agreements to ensure that foreign banks and other financial institutions maintain adequate records of large United States currency transactions, and

(B) to establish a mechanism whereby such records may be made available to United States law enforcement officials.

In carrying out such negotiations, the Secretary should seek to enter into and further cooperative efforts, voluntary information exchanges, the use of letters rogatory, and mutual legal assistance treaties.

(d) Reports.—Not later than 1 year after the date of enactment of this act, the Secretary shall submit an interim report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on progress in the negotiations under subsection (c). Not later than 2 years after such enactment, the Secretary shall submit a final report to such Committees and the President on the outcome of those negotiations and shall identify countries, the financial institutions of which the Secretary has cause to believe are in consultation with the Attorney General and the National Director of Drug Policy, are engaging in currency transactions involving the proceeds of international narcotics trafficking and which have not reached agreement with United States authorities on a mechanism for exchanging adequate records on international currency transactions in connection with narcotics investigations and proceedings.

(e) Authority. If after receiving the advice of the Secretary and in any case at the time of receipt of the Secretary's report the Secretary determines that a foreign country—

(1) has jurisdiction over financial institutions that are substantially engaging in currency transactions that effect the United States involving the proceeds of international narcotics trafficking,

(2) such country has not reached agreement on a mechanism for exchanging adequate records on international currency transactions in connection with narcotics investigations and proceedings, and

(3) such country is not negotiating in good faith to reach such an agreement,

the president shall impose appropriate penalties and sanctions, including temporarily or permanently—

(1) prohibiting such persons, institutions or other entities in such countries from participating in any United States dollar clearing or wire transfer system; and

(2) prohibiting such person, institutions or entities in such countries from maintaining an account with any bank or other finanical institution chartered under the laws of the United States or any State,

unless the President certifies to Congress that it is in the national interest that these penalties should be delayed or waived. Financial institutions in such countries that maintain adequate records shall be exempt from such penalties and sanctions.

(f) Definitions.—For the purposes of this section—

(1) the term "United States Currency" means Federal Reserve Notes and United States coins.

(2) The term "adequate records" means records of U.S. currency transactions in excess of $10,000 including written documentation by the person initiating the transaction of the source of the currency being deposited or transferred, or other records of comparable effect.

(g) The authority given the President in paragraph (d) shall expire on June 30, 1994.

METZENBAUM (AND OTHERS) AMENDMENT NO. 3698

Mr METZENBAUM (for himself, Mrs. Kassebaum, Mr. Thurmond, and Mr. Exon) proposed an amendment to the bill H.R 5210, supra; as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Undetectable Firearms Act of 1988".

SEC. 2. UNDETECTABLE FIREARMS.

(a) Section 922 of title 18, United States Code, is amended by adding at the end thereof a new subsection (p) as follows:

"(p)(1) It shall be unlawful for any person to manufacture, assemble, import, sell, ship, or deliver, or knowingly possess, transfer, or receive any firearm that—

"(A) is not as detectable as the Minimum Security Standard Exemplar, after removal of grips, stocks, and magazines, by walk-through metal detectors calibrated and operated to detect the minimum security standard exemplar; or

"(B) is not detectable by use of cabinet x-ray systems, as defined in regulations prescribed by the Federal Aviation Administration (14 CFR 108.17) designated for inspection of carry-on baggage. Nothing in this section shall be construed as requiring that the Federal Aviation Administration utilize the Minimum Security Standard Exemplar as a Federal Aviation Administration detection standard.

"(2) For purposes of the section—

"(A) the term 'firearm' does not include a firearm described in subsection 921(a)(3)(B) of this title; and

"(B) the term 'Minimum Security Standard Exemplar' means a firearm substitute used for testing that resembles a revolver, is made of material type 17-4 PH stainless steel and weighs 3.7 ounces: Provided, That nothing in this bill should be construed to require that a firearm be made of any particular material or be of any particular weight so long as the detectability standard is met.

(b) Section 925 of title 18, United States Code, is amended by adding at the end thereof a new subsection (f) as follows:

"(f) The Secretary shall not authorize, under subsection (d) of this section, the importation or bringing in of any firearm that is unlawful under subsection 922(p) of title 18, United States Code.".

(c) The first sentence of section 925(d) of title 18, United States Code, is amended by striking out "The Secretary" and inserting in lieu thereof "Except as provided in subsection (f) of this section, the Secretary".

(d) The Administrator of the Federal Aviation Administration shall conduct such research and development as may be necessary to improve the effectiveness of airport security metal detectors and airport security x-ray systems with respect to detection of firearms prohibited by subsection 922(p) of title 18, United States Code.

(e) When improved detection technology becomes available, the Secretary of the Treasury shall promulgate regulations to amend the definition of the term "Minimum Security Standard Exemplar" contained in the amendments made by this Act if the effect of the existing regulations would be to render the provisions of subsections 922(p) and 925(f) of title 18, United States Code, or any previous regulations issued under this subsection pertaining to those subsections, inapplicable to one or more types of firearms, but in no case shall the Secretary of Treasury amend the definition of the Minimum Standard Security Exemplar so as to increase to weight of the Exemplar set forth in this Act.

(f) This subsection shall not apply to the manufacture, possession, transfer, receipt, shipment, or delivery of a firearm, under such rules and regulations as the Secretary shall prescribe, by a licensed manufacturer or anyone acting pursuant to a contractual arrangement with a licensed manufacturer, for the purpose of examining and testing such a firearm in connection with the making of a determination of whether the provisions of paragraph (1) of subsection 922(p) apply to such firearm. The Secretary shall ensure that rules and regulations adopted pursuant to this paragraph do not impair the manufacture of prototype firearms or the development of new technology.

(g) The Secretary shall permit the conditional importation or bringing in of a firearm by a licensed importer or licensed manufacturer, for examination and testing in connection with the making of a determination as to whether the importation or bringing in of such firearm will be allowed under this subsection if the importation or bringing in of such firearm is not prohibited under subsection 925(d) of title 18, United States Code.

(h) The Attorney General, the Secretary of the Treasury, and the Secretary of Transportation, shall conduct such studies as required to identify available state-of-the-art equipment capable of detecting the Minimum Security Standard Exemplar while distinguishing innocuous metal objects likely to be carried on one's person sufficient for reasonable passage of the public. Such studies shall be completed within six months of the date of enactment of this Act and each study shall include a schedule providing for the introduction of such equipment at the earliest practicable time at security checkpoints maintained or regulated by the agency conducting the study. Such equipment shall be introduced in accordance with each schedule. In addition, such studies may include recommendations, where appropriate, concerning use of secondary security equipment and procedures to enhance detection capability at security checkpoints.

(i) Section 922 of title 18, United States Code, is further amended by adding at the end of subsection (p) as added by this Act, a new subsection (q) as follows:

"(q) Whoever, during and in relation to the commission of a crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which he may be prosecuted in a court of the United States, uses or carries a firearm the manufacture or importation of which is prohibited by the provisions of subsection 922(p) as added by this Act, shall, in addition to the punishment provided for the commission of such crime of violence or drug trafficking crime, be sentenced to a term of imprisonment for not less than five years. For purposes of this subsection, the term 'drug trafficking crime' has the meaning set forth in subsection 924(c) of this title.

(j) This Act and the amendments made by this Act shall become effective thirty days after the date of enactment of this Act but it shall be a bar to prosecution under this Act that the firearm was manufactured on or before March 1, 1988.

NUNN AMENDMENT NO. 3699

Mr. NUNN submitted an amendment to the bill H.R. 5210, supra; as follows:

TITLE V—CHILD PORNOGRAPHY AND OBSCENITY

SEC. 501. SHORT TITLE.

This title may be cited as the "Child Protection and Obscenity Enforcement Act of 1988".

Subtitle A—Child Pornography

SEC. 511. AMENDMENTS TO EXISTING OFFENSES.

(a) SEXUAL EXPLOITATION OF CHILDREN.—Paragraph (2) of subsection 2251(c) of title 18, United States Code, is amended by inserting "by any means including by computer" after "interstate or foreign commerce" both places it appears.

(b) MATERIAL INVOLVING SEXUAL EXPLOITATION OF CHILDREN.—Subsection 2252(a) of title 18, United States Code, is amended by inserting "by any means including by computer" after "interstate or foreign commerce" each place it appears.

(c) DEFINITION.—Section 2256 of title 18, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (4);

(2) by striking out the period at the end of paragraph (5) and inserting in lieu thereof: "; and"; and

(3) by adding at the end the following:

"(6) 'computer' has the meaning given that term in section 1030 of this title.".

SEC. 512. SELLING OR BUYING OF CHILDREN.

(a) IN GENERAL.—Chapter 110 of title 18, United States Code, is amended by inserting after section 2251 the following:

"§ 2251A. Selling or buying of children

"(a) Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor either—

"(1) with knowledge that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or

"(2) with intent to promote either—

"(A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

"(B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be punished by imprisonment for not less than 20 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

"(b) Whoever purchases or otherwise obtains custody or control of a minor, or offers to purchase or otherwise obtain custody or control of a minor either—

"(1) with knowledge that, as a consequence of the purchase or obtaining of custody, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or

"(2) with intent to promote either—

"(A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

"(B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be punished by imprisonment for not less than 20 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

"(c) The circumstances referred to in subsections (a) and (b) are that—

"(1) in the course of the conduct described in such subsections the minor or the actor traveled in or was transported in interstate or foreign commerce;

"(2) any offer described in such subsections was communicated or transported in interstate or foreign commerce by any means including by computer or mail; or

"(3) the conduct described in such subsections took place in any territory or possession of the United States.".

(b) DEFINITION.—Section 2256 of title 18, United States Code, as amended by section 201 of this Act, is further amended—

(1) by striking out "and" at the end of paragraph (5);

(2) by striking out the period at the end of paragraph (6) and inserting "; and" in lieu thereof; and

(3) by adding at the end the following:

"(7) 'custody or control' includes temporary supervision over or responsibility for a minor whether legally or illegally obtained.".

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 110 of title 18, United States Code, is amended by inserting after the item relating to section 2251 the following:

"2251A. Selling or buying of children.".

SEC. 513. RECORD KEEPING REQUIREMENTS.

(a) IN GENERAL.—Chapter 110 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 2257. Record keeping requirements

"(a) Whoever produces any book, magazine, periodical, film, videotape, or other matter which—

"(1) contains one or more visual depictions made after February 6, 1978 of actual sexually explicit conduct; and

"(2) is produced in whole or in part with materials which have been shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce;

shall create and maintain individually identifiable records pertaining to every performer portrayed in such a visual depiction.

"(b) Any person to whom subsection (a) applies shall, with respect to every performer portrayed in a visual depiction of actual sexually explicit conduct—

"(1) ascertain, by examination of an identification document containing such information, the performer's name and date of birth, and require the performer to provide such other indicia of his or her identity as may be prescribed by regulations;

"(2) ascertain any name, other than the performer's present and correct name, ever used by the performer including maiden name, alias, nickname, stage, or professional name; and

"(3) record in the records required by subsection (a) the information required by paragraphs (1) and (2) of this subsection and such other identifying information as may be prescribed by regulation.

"(c) Any person to whom subsection (a) applies shall maintain the records required by this section at his business premises, or at such other place as the Attorney General may by regulation prescribe and shall make such records available to the Attorney General for inspection at all reasonable times.

"(d)(1) No information or evidence obtained from records required to be created or maintained by this section shall, except as provided in paragraphs (2) and (3), be used, directly or indirectly, as evidence against any person with respect to any violation of law.

"(2) Paragraph (1) of this subsection shall not preclude the use of such information or evidence in a prosecution or other action for a violation of any applicable provision of law with respect to the furnishing of false information.

"(3) In a prosecution of any person to whom subsection (a) applies for an offense in violation of subsection 2251(a) of this title which has as an element the production of a visual depiction of a minor engaging in or assisting another person to engage in sexually explicit conduct and in which that element is sought to be established by showing that a performer within the meaning of this section is a minor—

"(A) proof that the person failed to comply with the provisions of subsection (a) or (b) of this section concerning the creation and maintenance of records, or a regulation issued pursuant thereto, shall raise a rebuttable presumption that such performer was a minor; and

"(B) proof that the person failed to comply with the provisions of subsection (e) of this section concerning the statement required by that subsection shall raise the rebuttable presumption that every performer in the matter was a minor.

"(e)(1) Any person to whom subsection (a) applies shall cause to be affixed to every copy of any matter described in paragraph (1) of subsection (a) of this section, in such manner and in such form as the Attorney General shall by regulations prescribe, a statement describing where the records required by this section with respect to all performers depicted in that copy of the matter may be located.

"(2) If the person to whom subsection (a) of this section applies is an organization the statement required by this subsection shall include the name, title, and business address of the individual employed by such organization responsible for maintaining the records required by this section.

"(3) In any prosecution of a person for an offense in violation of section 2252 of this title which has as an element the transporting, mailing, or distribution of a visual depiction involving the use of a minor engaging in sexually explicit conduct, and in which that element is sought to be established by a showing that a performer within the meaning of this section is a minor, proof that the matter in which the visual depiction is contained did not contain the statement required by this section shall raise a rebuttable presumption that such performer was a minor.

"(f) The Attorney General shall issue appropriate regulations to carry out this section.

"(g) As used in this section—

"(1) the term 'actual sexually explicit conduct' means actual but not simulated conduct as defined in subparagraphs (A) through (E) of paragraph (2) of section 2256 of this title;

"(2) 'identification document' has the meaning given that term in subsection 1028(d) of this title;

"(3) the term 'produces' means to produce, manufacture, or publish and includes the duplication, reproduction, or reissuing of any material; and

"(4) the term 'performer' includes any person portrayed in a visual depiction engaging in, or assisting another person to engage in, actual sexually explicit conduct.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 110 of title 18, United States Code, is amended by adding after the item relating to section 2256 the following:

"2257. Record keeping requirements.".

(c) EFFECTIVE DATE.—Section 2257 of title 18, United States Code, as added by this section shall take effect 180 days after the date of the enactment of this Act except—

(1) the Attorney General shall prepare the initial set of regulations required or authorized by section 2257 within 90 days of the date of the enactment of this Act; and

(2) subsection (e) of section 2257 of this title and of any regulation issued pursuant thereto shall take effect 270 days after the date of the enactment of this Act.

SEC. 514. R.I.C.O. AMENDMENT.

Subsection 1961(1)(B) of title 18, United States Code, is amended by inserting after "section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity)" the following: "sections 2251 through 2252 (relating to sexual exploitation of children),".

Subtitle B—Obscenity

SEC. 521. RECEIPT OR POSSESSION FOR SALE; PRESUMPTIONS FOR CHAPTER 71.

(a) RECEIPT OR POSSESSION FOR SALE.—Chapter 71 of title 18, United States Code, is amended by inserting after section 1465 the following:

"§ 1466. Receipt or possession of obscene matter for sale or distribution

"(a) Whoever is engaged in the business of selling or transferring books, magazines, pictures, papers, films, videotapes, or phonograph or other audio recordings, and knowingly receives or possesses with intent to distribute any obscene book, magazine, picture, paper, film, videotape, or phonograph or other audio recording, which has been shipped or transported in interstate or foreign commerce, shall be punished by imprisonment for not more than 5 years or by a fine under this title, or both.

"(b) As used in this subsection, the term 'engaged in the business' means that the person who sells or transfers or offers to sell or transfer books, magazines, pictures, papers, films, videotapes, or phonograph or other audio recordings, devotes time, attention, or labor to such activities, as a regular course of trade or business, with the objective of earning a profit, although it is not necessary that the person make a profit or that the selling or transferring or offering to sell or transfer such material be the person's sole or principal business or source of income. The offering for sale of or to transfer, at one time, two or more copies of any obscene publication, or two or more of any obscene article, or a combined total of five or more such publications and articles, shall create a rebuttable presumption that the person so offering them is 'engaged in the business' as defined in subsection (b).

"(c) In a prosecution for a violation of this section, it shall be an affirmative defense, on which the defendant has the burden of persuasion by a preponderance of the evidence, that the person—

"(1) ordered or received the obscene matter without examining the matter in advance;

"(2) did not in fact offer the matter for sale, or transfer or offer to transfer it to another person other than the sender; and

"(3) possessed the material less than 21 days.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 71 of title 18, United States Code, is amended by adding after the item relating to section 1465 the following:

"1466. Receipt or possession of obscene matter for sale or distribution.
"1467. Criminal forfeiture.".

(c) USE OF FACILITY OF COMMERCE.—The first paragraph of section 1465 of title 18, United States Code, is amended by inserting after the word distribution: ", or knowingly travels in interstate commerce, or uses a facility or means of commerce for the purpose of interstate or foreign sale or distribution of,".

(d) DISTRIBUTION OF PROCEEDS.—Section 1465 of title 18, United States Code, is amended by inserting "or the proceeds from the sale thereof" after "character,".

(e) PRESUMPTIONS.—Chapter 71 of title 18, United States Code, as amended by subsection (a) of this section and by section 302, is further amended by adding at the end the following:

"§ 1469. Presumptions

"(a) In any prosecution under this chapter in which an element of the offense is that the matter in question was transported, shipped, or carried in interstate commerce, proof, by either circumstantial or direct evidence, that such matter was produced or manufactured in one State and is subsequently located in another State shall raise a rebuttable presumption that such matter was transported, shipped, or carried in interstate commerce.

"(b) In any prosecution under this chapter in which an element of the offense is that the matter in question was transported, shipped, or carried in foreign commerce, proof, by either circumstantial or direct evidence, that such matter was produced or manufactured outside of the United States and is subsequently located in the United States shall raise a rebuttable presumption that such matter was transported, shipped, or carried in foreign commerce.".

(f) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 71 of title 18, United States Code, is amended by adding after the item relating to section 1468 the following:

"1469. Presumptions.".

SEC. 522. FORFEITURE IN OBSCENITY CASES.

(a) IN GENERAL.—Chapter 71 of title 18, United States Code, is amended by adding at the end the following:

"§ 1467. Criminal forfeiture

"(a) PROPERTY SUBJECT TO CRIMINAL FORFEITURE.—A person who is convicted of an offense involving obscene material under this chapter shall forfeit to the United States such person's interest in—

"(1) any obscene material produced, transported, mailed, shipped or received in violation of this chapter;

"(2) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and

"(3) any property, real or personal, used or intended to be used to commit or to promote the commission of such offense. A forfeiture under this subparagraph shall be authorized only by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or the Assistant Attorney General or the Acting Assistant Attorney General in the Criminal Division.

"(b) THIRD PARTY TRANSFERS.—All right, title, and interest in property described in subsection (a) of this section vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (m) of this section that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

"(c) PROTECTIVE ORDERS.—(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) of this section for forfeiture under this section—

"(A) upon the filing of an indictment or information charging a violation of this chapter for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

"(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

"(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

"(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered;

except that an order entered under subparagraph (B) shall be effective for not more than 90 days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

"(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 10 days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

"(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

"(d) WARRANT OF SEIZURE.—The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (c) of this section may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

"(e) Order of Forfeiture.—The court shall order forfeiture of property referred to in subsection (a) if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.

"(f) Execution.—Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

"(g) Disposition of Property.—Following the seizure of property ordered forfeited under this section, the Attorney General shall destroy or retain for official use any property described in paragraph (1) of subsection (a) and shall direct the disposition of any property described in paragraph (2) of subsection (a) by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

"(h) Authority of Attorney General.—With respect to property ordered forfeited under this section, the Attorney General is authorized to—

"(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

"(2) comprise claims arising under this section;

"(3) award compensation to persons providing information resulting in a forfeiture under this section;

"(4) direct the disposition by the United States, in accordance with the provisions of section 1616, title 19, United States Code, of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

"(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

"(i) Applicability of Civil Forfeiture Provisions.—Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 1468(d) of this title (18 U.S.C. 1468(d)) shall apply to a criminal forfeiture under this section.

"(j) Bar on Intervention.—Except as provided in subsection (m) of this section, no party claiming an interest in property subject to forfeiture under this section may—

"(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

"(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

"(k) Jurisdiction To Enter Orders.—The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

"(l) Depositions.—In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

"(m) Third Party Interests.—(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

"(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within 30 days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

"(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

"(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within 30 days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

"(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

—'(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

"(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

"(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

"(n) Construction.—The provisions of this section shall be liberally construed to effectuate its remedial purposes.

"(o) Substitute Assets.—If any of the property described in subsection (a), as a result of any act or omission of the defendant—

"(1) cannot be located upon the exercise of due diligence;

"(2) has been transferred or sold to, or deposited with, a third party;

"(3) has been placed beyond the jurisdiction of the court;

"(4) has been substantially diminished in value; or

"(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).".

(b) Repeal.—The last paragraph of section 1465 of title 18, United States Code, is repealed.

(c) Sexual Abuse of Children.—Sections 2253 through 2254 of title 18, United States Code, are amended to read as follows:

"§ 2253. Criminal forfeiture

"(a) Property Subject to Criminal Forfeiture.—A person who is convicted of an offense under this chapter involving a visual depiction described in sections 2251, 2251A, or 2252 of this chapter shall forfeit to the United States such person's interest in—

"(1) any visual depiction described in sections 2251, 2251A, or 2252 of this chapter, or any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped or received in violation of this chapter;

"(2) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and

"(3) any property, real or personal, used or intended to be used to commit or to promote the commission of such offense.

"(b) Third Party Transfers.—All right, title, and interest in property described in subsection (a) of this section vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (m) of this section that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

"(c) Protective Orders.—(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) of this section for forfeiture under this section—

"(A) upon the filing of an indictment or information charging a violation of this chapter for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

"(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered;

except that an order entered pursuant to subparagraph (B) shall be effective for not more than 90 days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

"(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 10 days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

"(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

"(d) Warrant of Seizure.—The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (c) of this section may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

"(e) Order of Forfeiture.—The court shall order forfeiture of property referred to in subsection (a) if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.

"(f) Execution.—Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

"(g) Disposition of Property.—Following the seizure of property ordered forfeited under this section, the Attorney General shall destroy or retain for official use any article described in paragraph (1) of subsection (a), and shall retain for official use or direct the disposition of any property described in paragraph (2) or (3) of subsection (a) by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

"(h) Authority of Attorney General.—With respect to property ordered forfeited under this section, the Attorney General is authorized to—

"(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

"(2) compromise claims arising under this section;

"(3) award compensation to persons providing information resulting in a forfeiture under this section;

"(4) direct the disposition by the United States, in accordance with the provisions of section 1616, title 19, United States Code, of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

"(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

"(i) Applicability of Civil Forfeiture Provisions.—Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 2254(d) of this title (18 U.S.C. 2254(d)) shall apply to a criminal forfeiture under this section.

"(j) Bar on Intervention.—Except as provided in subsection (m) of this section, no party claiming an interest in property subject to forfeiture under this section may—

"(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

"(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

"(k) Jurisdiction to Enter Orders.—The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

"(l) Depositions.—In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under rule 15 of the Federal Rules of Criminal Procedure.

"(m) Third Party Interests.—(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those person so notified.

"(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within 30 days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

"(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

"(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within 30 days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

"(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

"(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

"(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

"(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

"(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

"(n) CONSTRUCTION.—The provisions of this section shall be liberally construed to effectuate its remedial purposes.

"(o) SUBSTITUTE ASSETS.—If any of the property described in subsection (a), as a result of any act or omission of the defendant—

"(1) cannot be located upon the exercise of due diligence;

"(2) has been transferred or sold to, or deposited with, a third party;

"(3) has been placed beyond the jurisdiction of the court;

"(4) has been substantially diminished in value; or

"(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

"§ 2254. Civil forfeiture

"(a) PROPERTY SUBJECT TO CIVIL FORFEITURE.—The following property shall be subject to forfeiture by the United States:

"(1) Any visual depiction described in sections 2251, 2251A, or 2252 of this chapter, or any book, magazine, periodical, film, videotape or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped, or received in violation of this chapter.

"(2) Any property, real or personal, used or intended to be used to commit or to promote the commission of an offense under this chapter involving a visual depiction described in sections 2251, 2251A, or 2252 of this chapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

"(3) Any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from a violation of this chapter involving a visual depiction described in sections 2251, 2251A, or 2252 of this chapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

"(b) SEIZURE PURSUANT TO SUPPLEMENTAL RULES FOR CERTAIN ADMIRALTY AND MARITIME CLAIMS.—Any property subject to forfeiture to the United States under this section may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when the seizure is pursuant to a search under a search warrant. The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.

"(c) CUSTODY OF ATTORNEY GENERAL.—Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under any of the provisions of this subchapter, the Attorney General may—

"(1) place the property under seal;

"(2) remove the property to a place designated by him; or

"(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

"(d) OTHER LAWS AND PROCEEDINGS APPLICABLE.—All provisions of the customs laws relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, insofar as applicable and not inconsistent with the provisions of this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General or the Postal Service, except to the extent that such duties arise from seizures and forfeitures affected by any customs officer.

"(e) Sections 1606, 1607, 1608, 1609, 1613, 1614, 1617, and 1618 of title 19, United States Code, shall not apply with respect to any visual depiction or any matter containing a visual depiction subject to forfeiture under subsection (a)(1) of this section.

"(f) DISPOSITION OF FORFEITED PROPERTY.—Whenever property is forfeited under this section the Attorney General shall destroy or retain for official use any property described in paragraph (1) of subsection (a) and, with respect to property described in paragraph (2) or (3) of subsection (a), may—

"(1) retain the property for official use or transfer the custody or ownership of any forfeited property to a Federal, State, or local agency pursuant to section 1616 of title 19;

"(2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public; or

"(3) require that the General Services Administration take custody of the property and dispose of it in accordance with law.

The Attorney General shall ensure the equitable transfer pursuant to paragraph (1) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General pursuant to paragraph (1) shall not be subject to judicial review. The Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of title 28 the proceeds from any sale under paragraph (2) and any moneys forfeited under this subchapter.

"(g) TITLE TO PROPERTY.—All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

"(h) STAY OF PROCEEDINGS.—The filing of an indictment or information alleging a violation of this chapter which is also related to a civil forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding.

"(i) VENUE.—In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.".

(e) TARIFF ACT AMENDMENT.—Section 305 of the Tariff Act of 1930 (19 U.S.C. 1305), is amended by adding at the end the following:

"(b) Coordination of Forfeiture Proceedings with Criminal Proceedings.—(1) Notwithstanding subsection (a), whenever the Customs Service is of the opinion that criminal prosecution would be appropriate or that further criminal investigation is warranted in connection with allegedly obscene material seized at the time of entry, the appropriate customs officer shall immediately transmit information concerning such seizure to the United States Attorney of the district of the addressee's residence. No notice to the addressee or consignee concerning the seizure is required at the time of such transmittal.

"(2) Upon receipt of such information, such United States attorney shall promptly determine whether in such attorney's opinion the referral of the matter for forfeiture under this section would materially affect the Government's ability to conduct a criminal investigation with respect to such seizure.

"(3) If the United States attorney is of the opinion that no prejudice to such investigation will result from such referral, such attorney shall immediately so notify the Customs Service in writing. The appropriate customs officer shall immediately notify in writing the addressee or consignee of the seizure and shall transmit information concerning such seizure to the United States attorney of the district in which is situated the office at which such seizure has taken place. The actions described in paragraphs (1) through (3) of this subsection shall take place within sufficient time to allow for the filing of a forfeiture complaint within 14 days of the seizure unless the United States attorney of the district of the addressee's residence certifies in writing and includes specific, articulable facts demonstrating that the determination required in paragraph (2) of this subsection could not be made in sufficient time to comply with this deadline. In such cases, the actions described in paragraphs (1) through (3) of this subsection shall take place within sufficient time to allow for the filing of a forfeiture complaint within 21 days of seizure.

"(4) If the United States attorney for the district of the addressee's residence concludes that material prejudice to such investigation will result from such referral, such United States attorney shall place on file, within 14 days of the date of seizure, a dated certification stating that it is the United States attorney's judgment that referral of the matter for forfeiture under this section would materially affect the Government's ability to conduct a criminal investigation with respect to the seizure. The certification shall set forth specific, articulable facts demonstrating that withholding referral for forfeiture is necessary.

"(5)(A) As soon as the circumstances change so that withholding of referral for forfeiture is no longer necessary for purposes of the criminal investigation, the United States attorney shall immediately so notify the Customs Service in writing and shall furnish a copy of the certification described in paragraph (4) above to the Customs Service.

"(B) In any matter referred to a United States attorney for possible criminal prosecution wherein subparagraph (5)(A) does not apply, the United States attorney shall immediately notify the Customs Service in writing concerning the disposition of the matter, whether by institution of a prosecution or a letter of declination, and shall also furnish a copy of the certification described in paragraph (4) of this subsection to the Customs Service.

"(C) Upon receipt of the notification described in subparagraph (A) or (B) of this paragraph, the appropriate customs officer shall immediately notify the addressee or consignee of the seizure and shall transmit information concerning the seizure, including a copy of the certification described in paragraph (4) above and a copy of the notification described in subparagraph (A) or (B) of this paragraph, to the United States attorney of the district in which is situated the office at which such seizure has taken place, who shall institute forfeiture proceedings in accordance with subsection (a) hereof within 14 days of the date of the notification described in subparagraph (A) or (B) above. A copy of the certification described in paragraph (4) above and a copy of the notification described in subparagraph (A) or (B) of this paragraph shall be affixed to the complaint for forfeiture.

"(c) Stay on Motion.—Upon motion of the United States, a court, for good cause shown, shall stay civil forfeiture proceedings commenced under this section pending the completion of any related criminal matter whether in the same or in a different district.".

SEC. 523. CABLE TELEVISION OBSCENITY.

(a) New Offense.—Chapter 71 of title 18, United States Code, is amended by inserting at the end, the following new section:

"§ 1468. Distributing obscene material by cable or subscription television

"(a) Whoever knowingly utters any obscene language or distributes any obscene matter by means of cable television or subscription services on television, shall be punished by imprisonment for not more than 2 years or by a fine in accordance with this title, or both.

"(b) As used in this section, the term 'distribute' means to send, transmit, retransmit, telecast, broadcast, or cablecast, including by wire, microwave, or satellite, or to produce or provide material for such distribution.

"(c) Nothing in this chapter, or the Cable Communications Policy Act of 1984, or any other provision of Federal law, is intended to interfere with or preempt the power of the States, including political subdivisions thereof, to regulate the uttering of language that is obscene or otherwise unprotected by the Constitution or the distribution of matter that is obscene or otherwise unprotected by the Constitution, of any sort, by means of cable television or subscription services on television.".

(b) Clerical Amendment.—The table of sections at the beginning of chapter 71 of title 18, United States Code, is amended by adding at the end the following:

"1468. Distributing obscene material by cable or subscription television.".

SEC. 524. COMMUNICATIONS ACT AMENDMENT.

Section 223(b) of the Communications Act of 1934 (47 U.S.C. 223(b)) is amended to read as follows:

"(b)(1)(A) Whoever knowingly—

"(i) in the District of Columbia or in interstate or foreign communication, by means of telephone, makes (directly or by recording device) any obscene communication for commercial purposes to any person, regardless of whether the maker of such communication placed the call; or

"(ii) permits any telephone facility under such person's control to be used for an activity prohibited by clause (i);

shall be fined in accordance with title 18 of the United States Code, or imprisoned not more than two years, or both.

"(2)(A) Whoever knowingly—

"(i) in the District of Columbia or in interstate or foreign communication, by means of telephone, makes (directly or by recording device) any indecent communication for commercial purposes to any person, regardless of whether the maker of such communication placed the call; or

"(ii) permits any telephone facility under such person's control to be used for an activity prohibited by clause (i),

shall be fined not more than $50,000 or imprisoned not more than six months, or both.".

SEC. 525. ELECTRONIC SURVEILLANCE.

Subsection (1) of section 2516 of title 18, United States Code, is amended by redesignating paragraphs (i) and (j) as (j) and (k), respectively, and by adding a new paragraph (i) as follows:

"(i) any felony violation of chapter 71 (relating to obscenity) of this title;".

SEC. 526. POSSESSION AND SALE OF OBSCENE MATTERS IN FEDERAL JURISDICTION OR ON FEDERAL PROPERTY.

(a) In General.—Chapter 71 of title 18, United States Code, is amended by inserting before section 1461 the following:

"§ 1460. Possession and sale of obscene matter on Federal property

"(a) Whoever, either—

"(1) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States; or

"(2) in the Indian country as defined in section 1151 of this title,

knowingly sells or possesses with intent to sell an obscene visual depiction or a visual depiction of a minor engaging in or assisting another person to engage in sexually explicit conduct, shall be punished by a fine in accordance with the provisions of this title or imprisoned for not more than 2 years, or both.

"(b) Except as provided in subsection (c), whoever, in an area described in subparagraph (1) or (2) of subsection (a) knowingly possesses an obscene visual depiction or a visual depiction of a minor engaging in or assisting another person to engage in sexually explicit conduct shall be punished by imprisonment for not more than 6 months or a fine of not more than $5,000 for an individual or $10,000 for a person other than an individual, or both.

"(c) Subsection (b) shall not apply in the case of a person who possesses an obscene visual depiction in any place where such person lives or resides.

"(d) For the purposes of this section—

"(1) the term 'visual depiction' includes undeveloped film and videotape but does not include mere words; and

"(2) the terms 'minor' and 'sexually explicit conduct' have the meaning given those terms in chapter 110 of this title.

"(e) In a prosecution for a violation of this section involving an obscene visual depiction, it shall be an affirmative defense, on which the defendant has the burden of persuasion by a preponderance of the evidence, that the person—

"(1) ordered or received the obscene matter without examining the matter in advance;

"(2) did not in fact offer the matter for sale, or transfer or offer to transfer it to another person other than the sender; and

"(3) possessed the material less than 21 days.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 71 of title 18, United States Code, is amended by adding before the item relating to section 1461 the following:

"1460. Possession and sale of obscene matter on Federal property.".

SEC. 527. CIVIL FORFEITURE.

(a) IN GENERAL.—Chapter 71 of title 18, United States Code, is amended by adding the following new section at the end thereof:

"§ 1470. Civil forfeiture

"(a) PROPERTY SUBJECT TO CIVIL FORFEITURE.—The following property shall be subject to forfeiture by the United States:

"(1) Any material that has been adjudged obscene in any criminal case, Federal or State, that is produced, transported, mailed, shipped, or received in violation of this chapter.

"(2) Any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from a violation of this chapter involving material that has been adjudged obscene in any criminal case, State or Federal, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

"(b) SEIZURE PURSUANT TO SUPPLEMENTAL RULES FOR CERTAIN ADMIRALTY AND MARITIME CLAIMS.—Any property subject to forfeiture to the United States under this section may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when the seizure is pursuant to a search under a search warrant. The government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.

"(c) CUSTODY OF ATTORNEY GENERAL.—Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under any of the provisions of this subchapter, the Attorney General may—

"(1) place the property under seal;

"(2) remove the property to a place designated by him; or

"(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

"(d) OTHER LAWS AND PROCEEDINGS APPLICABLE.—All provisions of the customs laws relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, insofar as applicable and not inconsistent with the provisions of this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General or the Postal Service, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

"(e) APPLICABILITY OF CERTAIN SECTIONS.—Sections 1606, 1607, 1608, 1609, 1613, 1614, 1617, and 1618 of title 19 shall not apply with respect to obscene material subject to forfeiture under subsection (a)(1) of this section.

"(f) DISPOSITION OF FORFEITED PROPERTY.—Whenever property is forfeited under this section the Attorney General shall destroy or retain for official use any article described in paragraph (1) of subsection (a), and with respect to property described in paragraphs (2) and (3) of subsection (a) may—

"(1) retain the property for official use or transfer the custody or ownership of any forfeited property to a Federal, State, or local agency pursuant to section 1616 of title 19;

"(2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public; or

"(3) require that the General Services Administration take custody of the property and dispose of it in accordance with law.

The Attorney General shall ensure the equitable transfer pursuant to paragraph (1) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General pursuant to paragraph (1) shall not be subject to judicial review. The Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of title 28 the proceeds from any sale under paragraph (2) and any moneys forfeited under this subchapter.

"(g) TITLE TO PROPERTY.—All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

"(h) STAY OF PROCEEDINGS.—The filing of an indictment or information alleging a violation of this chapter which is also related to a civil forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding.

"(i) VENUE.—In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.".

(b) CLERICAL AMENDMENTS.—The table of sections at the beginning of chapter 71 of title 18, United States Code, is amended by inserting after the item relating to section 1469 the following:

"1470. Civil forfeiture.".

(c) REPEAL.—The last paragraph of section 1465 of title 18, United States Code, is repealed.

SEC. 528. CIVIL FINES.

Chapter 71 of title 18, United States Code, is amended by inserting at the end the following new section:

"Section 1471. Civil fines.

"(a) Whoever produces, transports, mails, ships or receives any article that has been adjudged obscene in any state or federal criminal case shall be subject to a civil penalty of—

"(1) for a first violation, not more than $10,000;

"(2) for a second violation, not more than $50,000; and

"(3) for a third or subsequent violation, not more than $250,000 in the case of an individual, or $500,000 in the case of an organization.

"(b) An action to recover a fine imposable under subsection (a) shall be brought in the name of the United States. The Attorney General may commence such a civil action in the district court in any district where the violation occurs. Such an action must be commenced within 5 years of the violation. The Attorney General may compromise, modify, or remit with or without condition any civil penalty imposed under this section.

"(c) In any civil action under this section, the defendant shall have a right to a trial by jury, and the government shall have the burden of proof, by a preponderance of the evidence, that the article is obscene under the standards of the community in which the trial takes place."

SEC. 529. SEVERABILITY.

If any of the provisions of this Act are found invalid, such finding shall not affect the validity or effect of the remaining provisions thereof.

At the appropriate place in the bill, insert the following:

SEC. . SEARCHES AND SEIZURES PURSUANT TO AN INVALID WARRANT.

(a) IN GENERAL.—Chapter 109 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 2237. Evidence obtained by invalid warrant

"(a) Evidence which is obtained as a result of search or seizure shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the Fourth Amendment to the Constitution of the United States, if the search or seizure was carried out in reasonable reliance on a warrant issued by a detached and neutral magistrate ultimately found to be invalid, unless—

"(1) the judicial officer in issuing the warrant was materially misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth;

"(2) the judicial officer provided approval of the warrant without exercising a neutral and detached review of the application for the warrant;

"(3) the warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; or

"(4) the warrant is so facially deficient that the executing officers could not reasonably presume it to be valid."

(b) AMENDMENT TO CHAPTER ANALYSIS.—The chapter analysis for chapter 109 of title 18, United States Code, is amended by adding at the end thereof the following:

"2237. Evidence obtained by invalid warrant."

At the appropriate place in the bill, insert the following new section:

SEC. . HABEAS CORPUS REFORM.

(a) INTRODUCTION OF LEGISLATION BY THE JUDICIARY COMMITTEES.—Beginning on the date the Chief Justice of the United States forwards to the Senate and the House Judiciary Committees the report and recommendation of the Special Committee on Habeas Corpus Review of Capital Sentences, appointed by the Chief Justice of the United States and chaired by Justice Lewis Powell, (hereafter in this section referred to as the "Special Committee"), the chairmen of the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives shall each have 15 days of session thereafter to introduce a bill to modify Federal habeas corpus procedure after having faithfully considered the report and recommendations of the Special Committee. If no such bill is introduced by each chairman within the 15-day period, such bill may be introduced by the ranking minority Member of the respective committee within an additional 10 days of session.

(b) REPORTING OF LEGISLATION BY THE JUDICIARY COMMITTEES.—(1) The bill introduced pursuant to subsection (a) shall be reported with or without recommendation by the Judiciary Committee of the respective House by the end of the 60th day of session after the submission of the report by the Chief Justice or the bill shall be discharged automatically from such committee and such bill shall be placed on the appropriate calendar of the House involved.

(2)(A) It is in order at any time after the 30th day of session after the bill has been placed on the calendar pursuant to paragraph (1), notwithstanding any rule or precedent of the Senate, including Rule 22, for any Member of the respective House to move to proceed to the consideration of the bill. The motion is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. Only one motion in each House shall be in order pursuant to this paragraph and such motion shall be decided by a roll call vote.

(3) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a bill described in paragraph (1), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(c) REPORT OF THE COMMISSION.—The Commission is urged to expedite the filing of its report and to include options for legislative action among its findings.

At the end of the bill, add the following:

SEC. . (a) The Federal Alcohol Administration Act (27 U.S.C. 201 et seq.) is amended—

(1) by inserting immediately after the enacting clause the following centered heading:

"TITLE I—FEDERAL ALCOHOL ADMINISTRATION";

(2) by redesignating the first section and section 2 through 17 as sections 101 through 117, respectively; and

(3) by adding at the end the following new title:

"TITLE II—ALCOHOLIC BEVERAGE LABELING

"SHORT TITLE

"SEC. 201. This title may be cited as the "Alcoholic Beverage Labeling Act of 1988".

"DECLARATION OF POLICY AND PURPOSE

"SEC. 202. The Congress finds that the American public should be informed about the health hazards that may result from the consumption or abuse of alcoholic beverages, and has determined that it would be beneficial to provide a clear, nonconfusing reminder of such hazards, and that there is a need for national uniformity in such reminders in order to avoid the promulgation of incorrect or misleading information and to minimize burdens on interstate commerce. The Congress finds that requiring such reminders on all containers of alcoholic beverages is appropriate and necessary in view of the substantial role of the Federal Government in promoting the health and safety of the Nation's population. It is therefore the policy of the Congress, and the purpose of this title, to exercise the full reach of the Federal Government's constitutional powers in order to establish a comprehensive Federal program, in connection with the manufacture and sale of alcoholic beverages in or affecting interstate commerce, to deal with the provision of warning or other information with respect to any relationship between the consumption or abuse of alcoholic beverages and health, so that—

"(1) the public may be adequately reminded about any health hazards that may be associated with the consumption or abuse of alcoholic beverages through a nationally uniform, nonconfusing warning notice on each container of such beverages; and

"(2) commerce and the national economy may be—

"(A) protected to the maximum extent consistent with this declared policy,

"(B) not impeded by diverse, nonuniform, and confusing requirements for warnings or other information on alcoholic beverage containers with respect to any relationship between the consumption or abuse of alcoholic beverages and health, and

"(C) protected from the adverse effects that would result from a noncomprehensive program covering alcoholic beverage containers sold in interstate commerce, but not alcoholic beverage containers manufactured and sold within a single State.

"DEFINITIONS

"SEC. 203. As used in this title—

"(1) The term 'alcoholic beverage' includes any beverage in liquid form which contains not less than one-half of one percent of alcohol by volume and is intended for human consumption.

"(2) The term 'bottle' means to fill a container with an alcoholic beverage and to seal such container.

"(3) The term 'bottler' means a person who bottles an alcoholic beverage.

"(4) The term 'commerce' means—

"(A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, or Johnston Island and any place outside thereof;

"(B) commerce between points in any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, or Johnston Island, but through any place outside thereof; or

"(C) commerce wholly within the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, or Johnston Island.

"(5) The term 'container' means the innermost sealed container irrespective of the material from which made, in which an alcoholic beverage is placed by the bottler and in which such beverage is offered for sale to members of the general public.

"(6) The term 'health' includes, but is not limited to, the prevention of accidents.

"(7) The term 'person' means an individual, partnership, joint stock company, business trust, association, corporation, or any other business or legal entity, including a receiver, trustee, or liquidating agent, and also includes any State, and State agency, or any officer or employee thereof.

"(8) The term 'sale' and 'distribution' include sampling or any other distribution not for sale.

"(9) The term 'Secretary' means the Secretary of the Treasury.

"(10) The term 'State' includes any political subdivision of any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, or Johnston Island.

"(11) The term 'State law' includes State statutes, regulations, and principles and rules having the force of law.

"(12) The term 'United States', when used in geographical sense, includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, and Johnston Island.

"LABELING REQUIREMENT; CONSPICUOUS STATEMENT

"Sec. 204. (a) On and after the expiration of the 12-month period following the date of enactment of this title, it shall be unlawful for any person to manufacture, import, or bottle for sale or distribution in the United States any alcoholic beverage unless the container of such beverage bears the following statement:

'GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.'.

"(b) The statement required by subsection (a) of this section shall be located in a conspicuous and prominent place on the container of such beverage, as determined by the Secretary, shall be in type of a size determined by the Secretary, and shall appear on a contrasting background. The Secretary shall make such determinations within 90 days after the date of enactment of this title.

"(c) Subsection (a) of this section shall not apply with respect to alcoholic beverages that are manufactured, imported, bottled, or labeled for export from the United States, or for delivery to a vessel or aircraft, as supplies, for consumption beyond the jurisdiction of the internal revenue laws of the United States: *Provided,* That this exemption shall not apply with respect to alcoholic beverages that are manufactured, imported, bottled, or labeled for sale, distribution, or shipment to members or units of the Armed Forces of the United States, including those located outside the United States.

"(d) The Secretary shall—

"(1) have the power to—

"(A) ensure the enforcement of the provisions of this title, and

"(B) issue regulations to carry out this title, and

"(2) consult and coordinate the health awareness efforts of the labeling requirements of this title with the Surgeon General of the United States.

"PREEMPTION

"SEC. 205. No statement relating to alcoholic beverages and health, other than the statement required by section 204 of this title, shall be required under State law to be placed on any container of an alcoholic beverage, or on any box, carton, or other package, irrespective of the material from which made, that contains such a container.

"REPORT TO CONGRESS

"SEC. 206. If, after appropriate investigation and consultation with the Surgeon General carried out after the expiration of the 24-month period following the date of enactment of this title, the Secretary finds that available scientific information would justify a change in, addition to, or deletion of the statement, or any part thereof, set forth in section 204(a) of this title, the Secretary shall promptly report such information to the Congress together with specific recommendations for such amendments to this title as the Secretary determines to be appropriate and in the public interest.

"CIVIL PENALTIES

"SEC. 207. Any person who violates the provisions of this title shall be subject to a civil penalty of not more than $10,000, and each day shall constitute a separate offense.

"INJUNCTION PROCEEDINGS; COMPROMISES OF LIABILITY

"SEC. 208. (a) The several district courts of the United States are vested with jurisdiction, for cause shown, to prevent and restrain violations of this title upon the application of the Attorney General of the United States acting through the several United States attorneys in their several districts.

"(b) The Secretary is authorized, with respect to any violation of this title, to compromise the liability arising with respect to such violation upon payment of a sum for each offense, to be collected by the Secretary and to be paid into the Treasury as miscellaneous receipts.

SEVERABILITY

"SEC. 209. If any provision of this title or the application thereof to any person or circumstance is held invalid, the validity of the remainder of this title and the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

"EFFECTIVE DATE

"SEC. 210. Except as provided in section 204(a), this title shall take effect on the date of its enactment into law.".

(b) The Federal Alcohol Administration Act, as amended by this Act, is further amended—

(1) by amending section 101, as redesignated under subsection (a)(2) of this Act, to read as follows:

"SHORT TITLE

"SEC. 101. This title may be cited as the 'Federal Alcohol Administration Act'.";

(2) in sections 103, 104, 105, 107, 108, and 117, as so redesignated, by striking "this Act" each place it appears and inserting in lieu thereof "this title";

(3) in section 104(d), as so redesignated, by striking "section 5" and inserting in lieu thereof "section 105" and by striking "section 6" and inserting in lieu thereof "section 106"; and

(4) in section 107 as so redesignated, by striking "section 3 or 5" and inserting in lieu thereof "section 103 or 105".

At the appropriate place in the bill, insert the following:

SEC. . PROTECTION OF FORMER FEDERAL OFFICIALS AND MEMBERS OF THE FAMILY OF FORMER FEDERAL OFFICIALS.

(a) FORMER FEDERAL OFFICIALS.—Section 111 of title 18, United States Code, is amended to read as follows:

"§ 111. Assaulting, resisting, or impeding certain officers or employees

"(a) IN GENERAL.—Whoever—

"(1) forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of his official duties; or

"(2) forcibly assaults or intimidates any person who formerly served as a person designated in section 1114 on account of the performance of his official duties during his term of service,

shall be fined under this title or imprisoned not more than three years, or both.

"(b) ENHANCED PENALTY.—Whoever, in the commission of any acts described in subsection (a), uses a deadly or dangerous weapon, shall be fined under this title or imprisoned not more than ten years, or both."

(b) FAMILY MEMBERS OF FORMER FEDERAL OFFICIALS.—Section 115(a) of title 18, United States Code, is amended to read as follows:

"(a)(1) Whoever—

"(A) assaults, kidnaps, or murders, or attempts to kidnap or murder, or threatens to assault, kidnap or murder a member of the immediate family of a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under section 1114 of this title; or

"(B) threatens to assault, kidnap, or murder, a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under such section,

with intent to impede, intimidate, interfere with, or retaliate against such official, judge, or law enforcement officer while engaged in or on account of the performance of official duties, shall be punished as provided in subsection (b).

"(2) Whoever assaults, kidnaps, or murders, or attempts to kidnap or murder a member of the immediate family of any person who formerly served as a person designated in paragraph (1), with intent to intimidate or retaliate against such person on account of the performance of official duties during the term of service of such person, shall be punished as provided in subsection (b).".

At the appropriate place in the bill, insert the following:

SEC. . NATIONAL COMMISSION AND CONFERENCE ON MEASURED RESPONSES TO ACHIEVE A DRUG-FREE AMERICA BY 1995 AUTHORIZATION ACT.

(a) SHORT TITLE.—This section may be cited as the "National Commission and Conference on Measured Responses to Achieve a Drug-Free America by 1995 Authorization Act".

(b) COMMISSION.—There is hereby established a Commission to be chaired by the Director of the Office of Drug Control and consisting of 24 members appointed by the President within 30 days of the date of enactment of this section. Not more than one-half of the members of the Commission may be members of one political party. The members of the Commission shall be—

(1) State and local law enforcement officers;

(2) Attorneys General and District Attorneys;

(3) State and local elected officials;

(4) experts in the fields of drug abuse prevention, education, and law enforcement; and

(5) other appropriate individuals as determined by the President.

(c) DUTIES OF THE COMMISSION.—The Commission is established to develop a proposed uniform code of State laws that represent measures to achieve a Drug-Free America by 1995. Among the types of measured responses that the Commission should consider are—

(1) appropriate penalties for drug offenses, including minimum mandatory sentences and enhanced penalties for certain offenses, as well as innovative penalties, including revocation of certain privileges, such as drivers licenses, and alternatives to imprisonment, such as fines or community service;

(2) mandatory participation in rehabilitation and treatment programs;

(3) appropriate use of drug testing;

(4) the effectiveness of efforts to educate the public on the dangers of drug abuse as a means of reducing demand;

(5) the need to enhance efforts to find and seize the ill-gotten assets of drug traffickers, so that these assets may be forfeited to the government and used to further the fight against illegal drug trafficking and abuse;

(6) ways to increase cooperation between agencies at the federal, state, and local levels;

(7) increased efforts to interdict illegal drugs at our borders, to eradicate crops of illegal drugs, and to stop the illicit manufacture of drugs; and

(8) other means of preventing drug abuse.

(d) REPORT OF COMMISSION.—Within 6 months, the Commission shall submit its proposed uniform code to the Governors of the 50 States and the Mayor of the District of Columbia.

(e) VACANCIES.—A vacancy in the Commission shall be filled in the same manner as the original appointment was made. A vacancy in the Commission shall not affect the powers of the Commission.

(f) Quorum.—Fourteen members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(g) Compensation.—Each member of the Commission who is not an officer or employee of the United States shall be compensated at a rate established by the Commission not to exceed the daily equivalent of the annual rate of basic pay prescribed for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the actual performance of duties as a member of the Commission. Each member of the Commission who is an officer or employee of the United States shall receive no additional compensation for service on the Commission.

(2) While away from their homes or regular places of business in the performance of duties for the Commission, all members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at a rate established by the Commission not to exceed the rates authorized for employees of agencies under sections 5702 and 5703 of title 5, United States Code.

(h) Administrative Provisions.—(1) The Commission shall appoint an Executive Director who shall be compensated at a rate established by the Commission not to exceed the rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) With the approval of the Commission, the Executive Director may appoint and fix the compensation of such additional personnel as the Executive Director considers necessary to carry out the duties of the Commission.

(3) Subject to such rules as may be issued by the Commission, the cochairmen may procure temporary and intermittent services of experts and consultants.

(4) Upon request of the cochairman of the Commission, the head of any Federal department, agency, or instrumentality shall make any of the facilities and services of such department, agency, or instrumentality available to the Commission and detail any of the personnel of such department, agency, or instrumentality to the Commission, on a nonreimbursable basis, to assist the Commission in carrying out its duties under this section.

(5) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(6) Service of an individual as a member of the Commission, or employment of an individual by the Commission as an attorney or expert in any business or professional field, on a part-time or full-time basis, with or without compensation, shall not be considered as service or employment bringing such individual within the provisions of any Federal law relating to conflicts of interest or otherwise imposing restrictions, requirements, or penalties in relation to the employment of persons, the performance of services, or the payment of receipt of compensation in connection with claims, proceedings, or matters involving the United States. Service as a member of the Commission, or as an employee of the Commission, shall not be considered service in an appointive or elective position in the Government for purposes of section 8344 of title 5, United States Code, or comparable provisions of Federal law.

(i) Powers of Commission.—(1) For the purpose of carrying out this section, the Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(2) Any member or employee of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this subsection.

(3) The Commission may secure directly from any Federal agency such information as may be necessary to enable the Commission to carry out this section. Upon request of the chairman of the Commission, the head of such agency shall furnish such information to the Commission.

(j) State Conferences.—The Governors of the 50 States and the Mayor of the District of Columbia shall convene State conferences for a Drug-Free America by 1995. These conferences should include attorneys general, district attorneys, mayors, other elected officials, law enforcement officials, educators, and other interested parties. The State conferences shall consider the proposed uniform code described in subsection (c) and make recommendations thereon.

(k) Authorization of Conference.—(1) The President shall call and conduct a National Conference on Measured Responses to Achieve a Drug-Free America by 1995 (hereafter in this subsection referred to as the "Conference") to consider the proposed uniform code described in subsection (c) and the recommendations of the State conferences for a Drug-Free America by 1995. The Conference shall consist of the President and the Governors of the 50 States and the Mayor of the District of Columbia.

(2) Not later than 6 months from the date on which the Conference is convened, a final report of the Conference shall be submitted to the President and the Congress. The report shall include the findings and recommendations of the Conference as well as proposals for any legislative action necessary to implement the recommendations of the Conference. The final report of the Conference shall be available to the public.

(l) Planning and Administration of Conference.—(1) All Federal departments, agencies, and instrumentalities shall provide such support and assistance as may be necessary to facilitate the planning and administration of the Conference.

(2) Each participant in the Conference shall be responsible for his or her expenses related to attending the Conference and shall not be reimbursed from funds appropriated pursuant to this section.

(3)(A) The President is authorized to appoint and compensate an executive director and such other directors and personnel for the Conference as he may deem advisable, without regard to the provisions of title 5, United States Code, governing the appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(B) Upon request by the executive director, the heads of the executive and military departments are authorized to detail employees to work with the executive director in planning and administering the Conference without regard to the provisions of section 3341 of title 5, United States Code.

(m) Availability Funds.—There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section, and they shall remain available until expended. New spending authority or authority to enter contracts as provided in this section shall be effective only to such extent and in such amounts as are provided in advance in appropriation Acts.

At the appropriate place in the bill, insert the following:

SEC. . DRUG-FREE AMERICA BY 1995.

(a) Findings.—The Congress finds that—

(1) approximately 37 million Americans used an illegal drug in the past year and more than 23 million Americans use illicit drugs at least monthly, including more than 6 million who use cocaine;

(2) half of all high school seniors have used illegal drugs at least once, and over 25 percent use drugs at least monthly.

(3) illicit drug use adds enormously to the national cost of health care and rehabilitation services;

(4) illegal drug use can result in a wide spectrum of extremely serious health problems, including disruption of normal heart rhythm and small lesions of the heart, high blood pressure, leaks of blood vessels in the brain, bleeding and destruction of brain cells and permanent memory loss, infertility, impotency, immune system impairment, kidney failure, and pulmonary damage, and in the most serious instances, heart attack, stroke, and sudden death;

(5) approximately 25 percent of all victims of AIDS acquired the disease through intravenous drug use;

(6) over 30,000 people were admitted to emergency rooms in 1986 with drug-related health problems, including nearly 10,000 for cocaine alone;

(7) there is a strong link between teenage suicide and use of illegal drugs;

(8) 10 to 15 percent of all highway fatalities involve drug use;

(9) illegal drug use is prevalent in the workplace and endangers fellow workers, national security, public safety, company morale, and production;

(10) it is estimated that 1 of every 10 American workers have their productivity impaired by substance abuse;

(11) it is estimated that drug users are three times as likely to be involved in on-the-job accidents, are absent from work twice as often, and incur three times the average level of sickness costs as non-users;

(12) the total cost to the economy of drug use is estimated to be over $100 billion annually;

(13) the connection between drugs and crime is also well-proven;

(14) the use of illicit drugs affects moods and emotions, chemically alters the brain, and causes loss of control, paranoia, reduction of inhibition, and unprovoked anger;

(15) drug-related homicides are increasing dramatically across the Nation;

(16) 8 of 10 men arrested for serious crimes in New York City test positive for cocaine use;

(17) illicit drug use is responsible for a substantially higher tax rate to pay for local law enforcement protection, interdiction, border control, and the cost of investigation, prosecution, confinement, and treatment;

(18) substantial increases in funding and resources have been made available in recent years to combat the drug problem, with spending for interdiction, law enforcement, and prevention programs up by 100 to 400 percent and these programs are producing results—

(A) seizures of cocaine are up from 1.7 tons in 1981 to 70 tons in 1987;

(B) seizures of heroin are up from 460 pounds in 1981 to 1,400 pounds in 1987;

(C) Drug Enforcement Administration drug convictions doubled between 1982 and 1986; and

(D) the average sentence for Federal cocaine convictions rose by 35 percent during this same period;

(19) despite the rise in law enforcement efforts, the supply of illegal drugs has increased in recent years;

(20) the demand for drugs creates and sustains the illegal drug trade; and

(21) winning the drug war not only requires that we do more to limit supply, but that we focus our efforts to reduce demand.

(b) Declaration.—It is the declared policy of the United States Government to create a Drug-Free America by 1995.

On page 11, strike out lines 9-16 and insert in lieu thereof the following:

(4) Section 101 of the National Security Act of 1947 is amended by redesignating subsection (f) as subsection (g) and inserting after subsection (e) the following:

"(f) The Director of the Office of Drug Control may, in his role as principal adviser to the National Security Council on national drug control policy and subject to the direction of the President, attend and participate in meetings of the National Security Council.".

At the appropriate place in the , insert the following new section:

SEC. . UNIFORM FEDERAL CRIME REPORTING ACT OF 1988.

(a) Short Title.—This section may be cited as the "Uniform Federal Crime Reporting Act of 1988".

(b) Definitions.—For purposes of this section, the term "Uniform Crime Reports" means the reports authorized under section 534 of title 28, United States Code, and administered by the Federal Bureau of Investigation which compiles nationwide criminal statistics for use in law enforcement administration, operation, and management and to assess the nature and type of crime in the United States.

(c) Establishment of System.—

(1) In general.—The Attorney General shall acquire, collect, classify, and preserve national data on Federal criminal offenses as part of the Uniform Crime Reports.

(2) Reporting by federal agencies.—All departments and agencies within the Federal government (including the Department of Defense) which routinely investigate complaints of criminal activity, shall report details about crime within their respective jurisdiction to the Attorney General in a uniform manner and on a form prescribed by the Attorney General. The reporting required by this subsection shall be limited to the reporting of those crimes comprising the Uniform Crime Reports.

(3) Distribution of data.—The Attorney General shall distribute data received pursuant to paragraph (2), in the form of annual Uniform Crime Reports for the United States, to the President, Members of the Congress, State governments, and officials of localities and penal and other institutions participating in the Uniform Crime Reports program.

(d) Role of Federal Bureau of Investigation.—The Attorney General may designate the Federal Bureau of Investigation as the lead agency for purposes of performing the functions authorized by this section and may appoint or establish such advisory and oversight boards as may be necessary to assist the Bureau in ensuring uniformity, quality, and maximum use of the data collected.

(e) Inclusion of Offenses Involving Illegal Drugs.—The Director of the Federal Bureau of Investigation is authorized to classify offenses involving illegal drugs and drug trafficking as a part I crime in the Uniform Crime Reports.

(f) Authorization of Appropriations.—There are authorized to be appropriated $350,000 for fiscal year 1989 and such sums as may be necessary to carry out the provisions of this section after fiscal year 1989.

(g) Effective Date.—The provisions of this section shall be effective on January 1, 1989.

At the appropriate place in the bill, insert the following:

SEC. . COMPTROLLER GENERAL STUDY.

(a) The Comptroller General shall conduct a study—

(1) to determine the impact of additional resources to certain components of the Federal criminal justice system on other components and of enhanced or new Federal criminal penalties or laws on the agencies and offices of the Department of Justice and other components of the Federal criminal justice system; and

(2) use the data derived from the impact analysis to develop a model that can be applied by Congress and Federal agencies and departments to help determine appropriate staff and budget responses in order to maintain balance in the Federal criminal justice system and effectively implement changes in resources or penalties.

(b) Report to Congress.—The Comptroller General shall report the results and recommendations derived from the study required by subsection (a) no later than 1 year after the date of enactment of this Act.

On page 316, after line 24, add the following:

"(d)(1) Notwithstanding any other provision of law, an alien convicted and sentenced for an aggravated felony if otherwise eligible for discretionary relief for the underlying felony under section 212(c) of the Immigration and Nationality Act, may, within 30 days of the receipt of an order of deportation pursuant to subsection (c), petition a special inquiry officer to be granted the same discretionary relief under this section, to stay deportation, and to initiate a deportation or exclusion hearing before the Executive Office of Immigration Review by establishing prima facie eligibility for such relief. Upon receipt of such petition the special inquiry officer shall within 90 days stay deportation and the district director (for the district in which the alien is found) shall issue an order to show cause and initiate a deportation hearing pursuant to section 242 or an exclusion hearing pursuant to section 236 unless the alien failed to establish a prima facie case.

"(2) The decision whether to approve a petition filed under this subsection shall be made while the alien is in custody, if he is, or is required to be, in custody under any other provision of law.".

On page 317, line 1, strike out "(d)(1)" and insert in lieu thereof "(e)(1)".

On page 319, line 6, strike out "(e)" and insert in lieu thereof "(f)".

On page 319, line 15, strike out "(f)" and insert in lieu thereof "(g)".

On page 409, line 23, add after the period the following: "A State may request a waiver from the Secretary reducing the new service requirement to not less than 35 percent by 1991 phased up to 55 percent by 1994, according to a schedule approved by the Secretary, if the following conditions are

"(A) a public hearing is held in the State on the advisability of proceeding with a waiver prior to the submission of a waiver;

"(B) the mental health planning council in the State approves such waiver request; and

"(C)(i) the State is judged by the Secretary to be in a financial crisis, based on objective standards established in regulations promulgated by the Secretary (such standards may include a large drop in State revenues as a result of changes in economic conditions);

"(ii) more than 15 percent of the State's total community mental health budget is derived from Federal grants under title XIX and the Secretary determines that it is not feasible for the State to meet the 55 percent standard without substantial and damaging reductions in existing, high priority services; or

"(E) the Secretary determines that a State has demonstrated substantial ongoing development of new, innovative services for priority populations and that any shift in funding percentages will only disrupt this process and will substantially disrupt services in place. In considering the relative priority of populations for services, the Secretary shall consider the list of priority populations established in section 1916(e)(7).".

On page 415, line 11, insert "UNIFORM" before "DATA".

On page 415, line 14, insert "UNIFORM" before "DATA".

On page 419, line 10, strike out the end quotation marks and the second period.

On page 419, between lines 10 and 11, insert the following new subsection:

"(e) Uniform Drug, Alcohol, Alcoholism and Mental Health Data Collection and Reporting System.—The National Institutes of Alcohol, Drug Abuse and Mental Health shall use currently available technology to assist States in the collection and reporting of compatible and comparable interstate data to carry out this section.".

On page 420, line 12, strike out "$959,000,000" and insert in lieu thereof "$929,000,000".

On page 420, between lines 22 and 23, insert the following new paragraph:

"(3) Hawaiian natives.—

"(A) In general.—The Secretary shall reserve 0.2 percent of the amounts appropriated under paragraph (1) in each of the fiscal years 1989 through 1993 for payments to support programs for Hawaiian natives under this part.

"(B) Use of funds.—From the amounts reserved under subparagraph (A), the Secretary shall enter into contracts with public and private organizations that primarily serve and represent Hawaiian natives (including the Salvation Army) that are recognized by the chief executive officer of the State of Hawaii to enable such organizations to research, plan, conduct, and administer programs, or portions thereof, that are authorized by and consistent with the provisions of this subpart for the benefit of Hawaiian natives.

"(C) Definition.—As used in this paragraph, the term 'Hawaiian native' means any individual who—

"(i) is a citizen of the United States;

"(ii) is a resident of the State of Hawaii; and

"(iii) is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii, as evidenced by—

"(I) genealogical records;

"(II) verification by Kupuna (elders) of Kama'aina (long-term community residents); or

"(III) birth records of the State of Hawaii.".

On page 449, line 24, insert "(that may include case management)" after "comprehensive approach".

On page 450, line 4, insert after the period the following new sentences: "For purposes of this section, the 'case management approach' means a comprehensive and systematic process of assessment, planning, monitoring, and service coordination and referral, through which the multiple service needs of individual substance abusers are met to rid them of their drug dependency. A case manager should be knowledgeable and experienced in assessing and managing substance abuse-related judicial, medical, and social problems as well as private and public treatment options and be able to arrange access for patients to the appropriate services.".

On page 458, strike out lines 9 through 25, and insert in lieu thereof the following new section:

SEC. 3031. STUDIES BY THE INSTITUTE OF MEDICINE.

(a) Studies.—The Secretary of Health and Human Services shall contract with the Institute of Medicine of the National Academy of Sciences to conduct studies concerning—

(1) the effective and appropriate treatment, rehabilitation, and continuing care of persons suffering from severe and disabling mental illnesses; and

(2) the psychological, physiological, and sociocultural aspects of mental illness that lead to substance abuse or a preference for illegal substances. The primary aim of this study is to ensure that drug and alcohol treatment programs have a better scientific basis for determining the relationships between mental illness and substance abuse. The treatment implications of this study will be given special consideration.

(b) Report.—Not later than 18 months after the date of the signing of the contract with the Institute of Medicine, the Secretary of Health and Human Services shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report of the results of the studies conducted under subsection (a).

(c) Authorization of Appropriations.—There is authorized to be appropriated $1,000,000 in fiscal year 1989 to carry out this subsection (a)(1) and such sums as are necessary to carry out subsection (a)(2).

On page 474, strike out line 3, and insert in lieu thereof the following:

"(a) In General.—For the purpose of testing Federal employees, not later than 6 months after the".

On page 476, line 13, strike out "on which" and all that follows through the first period on line 16, and insert in lieu thereof "of which $500,000 may be used in each fiscal year for program support.".

SEC. 3093. INNOVATIVE ALCOHOL ABUSE EDUCATION PROGRAMS.

Part F of title IV of the Elementary and Secondary Education Act of 1965 is amended—

(1) by redesignating section 4607 as section 4608, and

(2) by inserting affer section 4606 the following new section:

"SEC. 4607. INNOVATIVE ALCOHOL ABUSE EDUCATION PROGRAMS.

"(a) Programs for Children of Alcoholics.—The Secretary is authorized to develop materials for innovative programs of alcohol abuse education, especially programs that focus on the effect of the disease of alcoholism on families of alcoholics, particularly with respect to children of alcoholics. Programs for which materials are developed under the preceding sentence should be programs designed to benefit young children, particularly children in grades 5 through 8.

"(b) Training Programs for Educators.—The Secretary may make grants to programs for educators that are designed to—

"(1) increase awareness of children's problems that may be caused by an alcoholic parent;

"(2) enhance the ability of such educators to identify children at risk for alcohol abuse;

"(3) inform such educators concerning referral of children of alcoholics for appropriate professional treatment; and

"(4) train such educators to inform the public about the special problems of children who have an alcoholic parent.".

On page 489, line 2, strike "sec. 3092." and insert in lieu thereof "sec. 3094.".

On page 489, between lines 5 and 6, insert the following new subtitle:

Subtitle I—Indian Provisions

SEC. 3101. SHORT TITLE.

This subtitle may be cited as the "Indian Anti-Drug Abuse Amendments of 1988".

SEC. 3102. REAUTHORIZATION OF APPROPRIATIONS.

(a) In General.—Sections 4206(d)(2), 4212(a), 4213(e), 4218(b), and 4220(b), and subsections (a)(2) and (b)(2) of section 4216, of the Anti-Drug Abuse Act of 1986 are each amended by striking out "1987, 1988, and 1989" each place it appears and inserting in lieu thereof "1989, 1990, 1991, and 1992".

(b) Youth Regional Treatment Centers.—Subsection (b) of section 4227 of the Anti-Drug Abuse Act of 1986 (25 U.S.C. 2474(b)) is amended—

(1) by striking out "$3,000,000" and inserting in lieu thereof "$11,000,000",

(2) by striking out "$6,000,000" and inserting in lieu thereof "$3,000,000", and

(3) by striking out "1987, 1988, and 1989" and inserting in lieu thereof "1989, 1990, 1991, and 1992".

(c) Rehabilitation and Follow-Up Services.—Paragraph (3) of section 4227(d) of the Anti-Drug Abuse Act of 1986 is amended—

(1) by striking out "$9,000,000" and inserting in lieu thereof "$11,000,000", and

(2) by striking out "1987, 1988, and 1989" and inserting in lieu thereof "1989, 1990, 1991, and 1992".

(d) Training and Community Education.—

(1) Section 4228 of the Anti-Drug Abuse Act of 1986 (25 U.S.C. 2475) is amended—

(A) by striking out "of this paragraph" in paragraphs (5) and (6) of subsection (c) and inserting in lieu thereof "of this subsection",

(B) by striking out paragraph (7) of subsection (c), and

(C) by striking out the provision at the end thereof,

(D) by redesignating subsection (d) as subsection (e), and

(E) by inserting after subsection (c) the following new subsection:

"(d) The Secretary of Health and Human Services shall incorporate into the education and training programs required under subsections (a) and (b) the demonstration project for children of alcoholics that was funded by the Office of Minority Health of the Department of Health and Human Services.".

(2) Subsection (e) of section 4228 of the Anti-Drug Abuse Act of 1986 (25 U.S.C. 2475), as redesignated by paragraph (1)(D) is amended to read as follows:

"(e) Authorization of Appropriations.—There are authorized to be appropriated for each of the fiscal years 1989, 1990, 1991, and 1992—

"(1) $2,000,000 to carry out the provisions of subsections (a) and (b),

"(2) $1,000,000 to carry out the provisions of subsection (c), and

"(3) $1,000,000 to carry out the provisions of subsection (d).".

(e) Navajo Alcohol Rehabilitation Program.—Subsection (c) of section 4229 of the Anti-Drug Abuse Act of 1986 (25 U.S.C. 2476) is amended—

(1) by striking out "$300,000" and inserting in lieu thereof "$200,000", and

(2) by striking out "1988, 1989, and 1990" and inserting in lieu thereof "1989, 1990, 1991, and 1992".

SEC. 3103. OFFICE OF ALCOHOL AND SUBSTANCE ABUSE.

Section 4207 of the Anti-Drug Abuse Act of 1986 (25 U.S.C. 2413) is amended—

(1) by striking out "Assistant Secretary of" in subseciton (b)(1) and inserting in lieu thereof "Assistant Secretary of the Interior for",

(2) by striking out "Assistant Secretary on" in subsection (b)(1) and inserting in lieu thereof "Assistant Secretary of the Interior for Indian Affairs",

(3) by adding at the end of subsection (b) the following new paragraph:

"(3) The Assistant Secretary of the Interior for Indian Affairs shall appoint such employees to work in the Office of Alcohol and Substance Abuse, and shall provide such services and equipment, as may be necessary to enable the Office of Alcohol and Substance Abuse to carry out its responsibilities.", and

(4) by adding at the end of paragraph (1) of subsection (c) the following new sentence: "The Assistant Secretary of the Interior for Indian Affairs shall appoint the Indian Youth Programs Officer.".

SEC. 3104. URBAN INDIAN PROGRAM.

(a) In General.—Section 4226 of the Anti-Drug Abuse Act of 1986 (25 U.S.C. 2473) is amended—

(1) by striking out "The Secretary of Health and Human Services" and inserting in lieu thereof "(a) In General.—The Secretary of Health and Human Services", and

(2) by adding at the end thereof the following new subsection:

"(b) Urban Indians.—

"(1) The Secretary of Health and Human Services shall enter into contracts, subject to availability of appropriations, with urban Indian organizations for the purpose of providing comprehensive alcohol and substance abuse prevention and treatment programs described in subsection (a) to urban Indians.

"(2) There are authorized to be appropriated for each of the fiscal years 1990, 1991, and 1992, $3,500,000 for the purpose of carrying out the provisions of this subsection.".

(b) Definitions.—Section 4204 of the Anti-Drug Abuse Act of 1986 (25 U.S.C. 2403) is amended by adding at the end thereof the following new paragraphs:

"(6) The term 'urban Indian' has the meaning given to such term by section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).

"(7) The term 'urban Indian organization' means a nonprofit corporate body which—

"(A) is situated in an urban center,

"(B) is governed by an urban Indian controlled board of directors,

"(C) provides for the maximum participation of all interested Indian groups and individuals, and

"(D) is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in section 503(a) of the Indian Health Care Improvement Act (25 U.S.C. 1653(a)).".

(c) Purposes.—Section 4203 of the Anti-Drug Abuse Act of 1986 (25 U.S.C. 2402) is amended—

(1) by striking out "and" at end of paragraph (3),

(2) by striking out the period at the end of paragraph (4) and inserting in lieu thereof ", and", and

(3) by adding at the end thereof the following new paragraph:

"(5) provide authority and opportunities for urban Indian organizations to develop and implement a coordinated program for the prevention and treatment of alcohol and substance abuse at the local level.".

SEC. 3105. INCLUSION OF FAMILY IN YOUTH TREATMENT PROGRAM.

Section 4227 of the Anti-Drug Abuse Act of 1986 (25 U.S.C. 2474) is amended—

(1) by inserting "and their families" after "abusers" in subsection (a) and (d)(1),

(2) by inserting ", and for families," after "both sexes" in subsection (a),

(3) by striking out "The Secretary" in subsections (a), (b), and (d)((1) and inserting in lieu thereof "The Secretary of Health and Human Services",

(4) by striking out "Federally Owned" in the heading of subsection (c) and inserting in lieu thereof "Federally owned and Tribally Owned or leased",

(5) by striking out "federally owned" each place it appears in subsection (c) and inserting in lieu thereof "federally owned or tribally owned or leased",

(6) by inserting "and their families" after "Indian youth" each place it appears in subsections (c) and (d)(2),

(7) by inserting "Or Indian tribe" after "agency" in subsection (c)(2), and

(8) by inserting "and their families' after "support the Indian youth" in subsection (d)(1).

SEC. 3106. FETAL ALCOHOL SYNDROME.

Part VI of subtitle C of title IV of the Anti-Drug Abuse Act of 1986 is amended by adding at the end thereof the following new section:

"SEC. 4231. FETAL ALCOHOL SYNDROME

"(a) In General.—By no later than January 1, 1989, the Secretary shall develop and begin implementation of a plan to achieve, by January 1, 1993, a reduction of the rate of fetal alcohol syndrome and fetal alcohol effect associated with maternal consumption of alcohol to the lower of—

"(1) one per one thousand live births, or

"(2) the rate of fetal alcohol syndrome and such fetal alcohol effect applicable to the United States population as a whole.

"(b) Budget Requests.—The President shall include with a budget submitted under section 1105 of title 31, United States Code, for each fiscal year a separate statement which specifies the total amount obligated or expended in the most recently completed fiscal year to achieve the objective described in subsection (a).".

SEC 3107. CONTRACT HEALTH SERVICES.

Section 4226 of the Anti-Drug Abuse Act of 1986 (25 U.S.C. 2473), as amended by section 104 of this Act, is further amended by adding at the end thereof the following new subsection:

"(c) Contract Health Services.—

"(1) The Secretary of Health and Human Services may enter into contracts with public or private providers of alcohol and substance abuse treatment services for the purpose of assisting the Indian Health service in carrying out the program required under subsection (a).

"(2) Contracts entered into under paragraph (1) may include the provision of services on an in-patient basis.

"(3) There are authorized to be appropriated for each of the fiscal years 1989, 1990, 1991, and 1992, $10,000,000 for the purpose of carrying out the provisions of this subsection.".

SEC. 3108. NEWSLETTER.

Section 4210 of the Anti-Drug Abuse Act of 1986 (25 U.S.C. 3416) is amended by—

(1) by striking out ", not later than 120 days after the date of enactment of this subtitle,",

(2) by striking out "The Secretary" and inserting in lieu thereof "(a) In General.—The Secretary", and

(3) by adding at the end thereof the following new subsection:

"(b) Authorization of Appropriations.—There are authorized to be appropriated for each of the fiscal years 1989, 1990, 1991, and 1992, $300,000 to carry out the provisions of this section.".

SEC. 3109. REPORT OF JUVENILE DETENTION CENTERS.

By not later than January 1, 1989, the Secretary of the Interior shall submit to the Congress a report which specifies—

(1) the identity of those applicants for the juvenile detention centers authorized under section 4220 of the Anti-Drug Abuse Act of 1986 (25 U.S.C. 2453) that have been approved, and

(2) the manner in which the $27,500,000 that has been appropriated for such centers, but has not been expended, is to be allocated.

On page 538, strike beginning with line 1 through line 15 on page 549, and insert the following:

Subtitle D—Drug-Free Workplace Act of 1988

SEC. 5201. SHORT TITLE.

This subtitle may be cited as the "Drug-Free Workplace Act of 1988".

SEC. 5202. DRUG-FREE WORKPLACE REQUIREMENTS FOR FEDERAL CONTRACTORS.

(a) Drug-Free Workplace Requirement.—No person, other than an individual, shall be considered a responsible source, under the meaning of such term as defined in section 4(8) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(8)), for the purposes of being awarded a contract for the procurement of any property or services of a value of $25,000 or more from any Federal agency unless such person has certified to the contracting agency that it will provide a drug-free workplace by—

(1) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) establishing a drug-free awareness program to inform employees about—

(A) the dangers of drug abuse in the workplace;

(B) the person's policy of maintaining a drug-free workplace;

(C) any available drug counseling, rehabilitation, and employee assistance programs; and

(D) the penalties that may be imposed upon employees for drug abuse violations;

(3) making it a requirement that each employee to be engaged in the performance of such contract be given a copy of the statement required by paragraph (1);

(4) notifying the employee in the statement required by paragraph (1), that as a condition of employment on such contract, the employee will—

(A) abide by the terms of the statement; and

(B) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;

(5) notifying the contracting agency within 10 days after receiving notice under paragraph (4)(B) from an employee or otherwise receiving actual notice of such conviction;

(6) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 5204; and

(7) making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6).

(b) Suspension, Termination, or Debarment of the Contractor.—

(1) Grounds for suspension, termination, or debarment.—Each contract awarded by a Federal agency shall be subject to suspension of payments under the contract or termination of the contract, or both, and the contractor thereunder shall be subject to suspension or debarment, in accordance with the requirements of this section if the head of the agency detrmines that—

(A) the contractor has made a false certification under subsection (a);

(B) the contractor violates such certification by failing to carry out the requirements of paragraph (1), (2), (3), (4), (5), or (6) of subsection (a); or

(C) such a number of employees of such contractor has been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a).

(2) Conduct of suspension, termination, and debarment proceedings.—If a contracting officer determines, in writing, that cause for suspension of payments, termination, or suspension of debarment exists, an appropriate action shall be initiated by a contracting officer of the agency, be conducted by the agency concerned in accordance with the Federal Acquisition Regulation and applicable agency procedures.

(3) Effect of debarment.—Upon issuance of any final decision under this subsection requiring suspension or debarment of a contractor, such contractor shall be ineligible for award of any contract by any Federal agency and for participation in any future procurement by any Federal agency for a period specified in the decision, not to exceed 5 years.

SEC. 5203. DRUG-FREE WORKPLACE REQUIREMENTS FOR FEDERAL GRANT RECIPIENTS.

(a) DRUG-FREE WORKPLACE REQUIREMENT.—No person, other than an individual, shall receive a grant from any Federal agency unless such person has certified to the granting agency that it will provide a drug-free workplace by—

(1) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) establishing a drug-free awareness program to inform employees about—

(A) the dangers of drug abuse in the workplace;

(B) the grantee's policy of maintaining a drug-free workplace;

(C) any available drug counseling, rehabilitation, and employee assistance programs; and

(D) the penalties that may be imposed upon employees for drug abuse violations;

(3) making it a requirement that each employee to be engaged in the performance of such grant be given a copy of the statement required by paragraph (1).

(4) notifying the employee in the statement required by paragraph (1), that as a condition of employment on such grant, the employee will—

(A) abide by the terms of the statement; and

(B) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;

(5) notifying the granting agency within 10 days after receiving notice of a conviction under paragraph (4)(B) from an employee or otherwise receiving actual notice of such conviction;

(6) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 5204; and

(7) making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6).

(b) SUSPENSION, TERMINATION, OR DEBARMENT OF THE GRANTEE.—

(1) GROUNDS FOR SUSPENSION, TERMINATION, OR DEBARMENT.—Each grant awarded by a Federal agency shall be subject to suspension of payments under the grant or termination of the grant, or both, and the grantee thereunder shall be subject to suspension or debarment, in accordance with the requirements of this section if the agency head of the granting agency or his official designee determines, in writing, that—

(A) the grantee has made a false certification under subsection (a);

(B) the grantee violates such certification by failing to carry out the requirements of paragraph (1), (2), (3), (4), (5), or (6) of subsection (a); or

(C) such a number of employees of such grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a).

(2) Conduct of suspension, termination, and debarment proceedings.—A suspension of payments, termination, or suspension or debarment proceeding subject to this subsection shall be conducted in accordance with applicable law, including Executive Order 12549 or any superseding Executive order and any regulations promulgated to implement such law or Executive order.

(3) Effect of debarment.—Upon issuance of any final decision under this subsection requiring debarment of a grantee, such grantee shall be ineligible for award of any grant from any Federal agency and for participation in any future grant from any Federal agency for a period specified in the decision, not to exceed 5 years.

SEC. 5204. EMPLOYEE SANCTIONS AND REMEDIES.

A grantee or contractor shall, within 30 days after recieving notice from an employee of a conviction pursuant to section 5202(a)(4)(B) or 5203(a)(4)(B)—

(1) take appropriate personnel action against such employee up to and including termination; or

(2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

SEC. 5205. WAIVER.

(a) IN GENERAL.—A termination, suspension of payments, or suspension or debarment under this Act may be waived by the head of an agency with respect to a particular contract or grant if—

(1) in the case of a waiver with respect to a contract, the head of the agency determines under section 5202(b)(2) that suspension of payments, or termination of the contract, or suspension or debarment of the contractor, or refusal to permit a person to be treated as a responsible source for a contract, as the case may be, would severely disrupt the operation of such agency to the detriment of the Federal Government or the general public; or

(2) in the case of a waiver with respect to a grant, the head of the agency determines that suspension of payments, termination of the grant, or suspension or debarment of the grantee would not be in the public interest.

(b) EXCLUSIVE AUTHORITY.—The authority of the head of an agency under this section to waive a termination, suspension, or debarment shall not be delegated.

SEC. 5206. REGULATIONS.

Not later than 90 days after the date of enactment of this subtitle, the government wide regulations governing actions under this subtitle shall be issued pursuant to section (4)(4)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(4)(A)).

SEC. 5207. DEFINITIONS.

For purposes of this subtitle—

(1) the term "drug-free workplace" means a site for the performance of work done in connection with a specific grants or contract described in section 5202 or 5203 of an entity at which employees of such entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of this Act;

(2) the term "employee" means the employeee of a grantee or contractor directly engaged in the performance of work pursuant to the provisions of the grant or contract described in section 5202 or 5203;

(3) the term "controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812);

(4) the term "conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(5) the term "criminal drug statute" means a criminal statute involving manufacture, distribution, dispensation, use or possession of any controlled substance;

(6) the term "grantee" means the department, division, or other unit of a person responsible for the performance under the grant;

(7) the term "contractor" means the department, division, or other unit of a person responsible for the performance under the contract; and

(8) the term "Federal agency" means an agency as that term is defined in section 552(f) of title 5, United States Code.

SEC. 5208. CONSTRUCTION OF SUBTITLE.

Nothing in this subtitle shall be construed to require law enforcement agencies, if the head of the agency determines it would be inappropriate in connection with the agency's undercover operations, to comply with the provisions of this subtitle.

SEC. 5209. EFFECTIVE DATE.

Sections 5202 and 5203 shall be effective 120 days after the date of the enactment of this subtitle.

At the appropriate place in the bill, add the following:

SEC. . (a) Chapter 4 of title 23, United States Code, is amended by adding at the end the following new section:

§ 410. Drunk driving prevention programs

"(a) Subject to the provisions of this section and to the extent provided in advance in appropriations acts, the Secretary shall make basic and supplemental grants to those States which adopt and implement drunk driving prevention programs which include measures described in this section to improve the effectiveness of the enforcement of laws to prevent drunk driving. Such grants may only be used by recipient States to implement and enforce such measures.

"(b) No grant may be made to a State under this section in any fiscal year unless such State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate expenditures from all other sources for drunk driving prevention programs at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this section.

"(c) No State may receive grants under this section in more than three fiscal years. The Federal share payable for any grant under this section shall not exceed—

"(1) in the first fiscal year a State receives a grant under this section, 75 percent of the cost of implementing and enforcing in such fiscal year the drunk driving prevention program adopted by the State pursuant to subsection (a) of this section;

"(2) in the second fiscal year the State receives a grant under this section, 50 percent of the cost of implementing and enforcing in such fiscal year such program; and

"(3) in the third fiscal year the State receives a grant under this section, 25 percent of the cost of implementing and enforcing in such fiscal year such program.

"(d)(1) Subject to subsection (c), the amount of a basic grant made under this section for any fiscal year by any State which is eligible for such a grant under subsection (e)(1) of this section shall equal 30 percent of the amount apportioned to such State for fiscal year 1989 under section 402.

"(2) Subject to subsection (c), the amount of a supplemental grant made under this section for any fiscal year by any State which is eligible for such a grant under subsection (f) of this section shall not exceed 20 percent of the amount apportioned to such State for fiscal year 1989 under section 402. Such supplemental grant shall be in addition to any basic grant received by such State.

"(e) For purposes of this section, a State is eligible for a basic grant if such State provides for—

"(1) an expedited driver's license suspension or revocation system which requires that—

"(A) when a law enforcement officer has probable cause under State law to believe an individual has committed an alcohol-related traffic offense, and such individual is determined, on the basis of one or more chemical tests, to have been under the influence of alcohol while operating the motor vehicle concerned or refuses to submit to such a test as proposed by the officer, such officer shall serve such individual with a notice of suspension or revocation, which shall provide information on the administrative procedures by which a State may suspend or revoke a license for drunk driving and specify any rights of the driver in connection with such procedures, and shall take possession of the driver's license of such individual;

"(B) after serving such notice and taking possession of such driver's license, the law enforcement officer shall immediately report to the State entity responsible for administering driver's licenses all information relevant to the enforcement action involved;

"(C) upon receipt of the report of the law enforcement officer, the State entity responsible for administering driver's licenses shall, where an individual is determined on the basis of one or more chemical tests to have been intoxicated while operating a motor vehicle or is determined to have refused to submit to such a test as proposed by the officer—

"(i) suspend the driver's license of such individual for a period of not less than 90 days if such individual is a first offender, and

"(ii) suspend the driver's license of such individual for a period of not less than 1 year, or revoke such license, if such individual is a repeat offender;

"(D) such suspension or revocation shall take effect at the end of a period of not more than—

"(i) 15 days immediately after the day on which the driver first received notice of the suspension or revocation, or

"(ii) 30 days immediately after the date on which the driver first received notice of the suspension or revocation, if the Secretary determines that the requirements of clause (i) would impose hardship upon the State; and

"(E) the determination as required by subparagraph (C) of this paragraph shall be in accordance with a process established by the State, under guidelines established by the Secretary to ensure due process of law—

"(i) for such administrative determinations, and

"(ii) for reviewing such determinations, upon request by the affected individual within the period specified in subparagraph (D); and

"(2) a self-sustaining drunk driving prevention program under which the fines or surcharges collected from individuals convicted of driving a motor vehicle while under the influence of alcohol are returned, or an equivalent amount of non-Federal revenue is provided, to those communities which have comprehensive programs for the prevention of drunk driving.

"(f) For purposes of this section, a State is eligible for a supplemental grant if such State is eligible for a basic grant and in addition such State provides for one or more of the following:

"(1) Mandatory blood alcohol content testing whenever a law enforcement officer has probable cause under State law to believe that a driver of a motor vehicle involved in a collision resulting in the loss of human life or, as determined by the Secretary, serious bodily injury, has committed an alcohol-related traffic offense.

"(2) An effective system for preventing drivers under age 21 from obtaining alcoholic beverages, which may include the issuance of driver's licenses to individuals under age 21 that are easily distinguishable in appearance from driver's licenses issued to individuals 21 years of age or older.

"(3) The unlawfulness of possession of any open alcoholic beverage container, and the unlawfulness of consumption of any alcoholic beverage, in the passenger area of any motor vehicle operated on a public highway, or on the right of way of a public highway, except as allowed in the passenger area (and not by the driver) of any motor vehicle designed to transport more than 10 passengers, including the driver, while being used to provide charter transportation of passengers, or as otherwise specifically allowed by the State, with the approval of the Secretary, but in no event may the driver of any motor vehicle be allowed such possession or consumption.

"(4) The suspension of the registration of, and the return to the State of the license plates for, any motor vehicle owned by an individual who—

"(A) has been convicted of more than one alcohol related traffic offense; or

"(B) has been convicted of driving while the driver's license of such individual is suspended or revoked by reason of a conviction for an alcohol related traffic offense.

Any State may provide limited exceptions to such suspension of registration or return of license plates, on an individual basis, to avoid undue hardship to any individual, including family members of such convicted individual and co-owners of the motor vehicle, who are completely dependent on the motor vehicle for the necessities of life. Such exceptions may not result in unrestricted reinstatement of the registration or return of the license plates of such motor vehicles.

"(g) There are authorized to be appropriated, from any funds in the Treasury not otherwise appropriated, to carry out this section, $25,000,000 for the fiscal year 1989, and $50,000,000 for each of the fiscal years 1990 and 1991.".

(b) The analysis of chapter 4 of title 23, United States Code, is amended by adding at the end thereof the following:

"410. Drunk driving prevention programs.".

(c) The Secretary of Transportation shall issue, and publish in the Federal Register, proposed regulations to implement section 410 of title 23, United States Code, by no later than December 31, 1988. The final regulations for such implementation shall be issued, and published in the Federal Register, by no later than March 1, 1989.

(d)(1) By no later than the date that is 30 days after the date of enactment of this Act, the Secretary of Transportation shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a study to determine the blood alcohol concentration level at or above which an individual when operating a motor vehicle is deemed to be driving while under the influence of alcohol.

(2) In entering into any arrangement with the National Academy of Sciences for conducting the study under this subsection, the Secretary of Transportation shall request the National Academy of Sciences to submit, by not later than 15 months after the date of enactment of this Act, to the Secretary a report on the results of such study. Upon its receipt, the Secretary shall immediately transmit the report to the Congress.

(e) The Secretary of Transportation shall conduct a study regarding the exchange of information between the Federal government and State law enforcement officials on all arrests for drunk driving offenses in all States. This study should include consideration of the usefulness of such information to law enforcement officials as well as any legal restraints on the exchange or use of such information. The study also should include consideration of an effective method for the exchange of such information. By no later than 1 year after the date of enactment of this Act, the Secretary shall submit a final report on such study to the Congress.

At the appropriate place in the ——, insert the following new section:

SEC. —. ENCOURAGEMENT FOR UNITED NATIONS' EFFORTS TO ESTABLISH AN INTERNATIONAL FORCE AIMED AT STOPPING THE TRAFFICKING OF ILLEGAL DRUGS.

(a) FINDINGS.—The Congress finds that—

(1) the Department of State estimates that in 1987 the worldwide production of opium was between 1,902 and 3,107 metric tons, cocaine hydrochloride was between 324 and 422 metric tons, and marijuana was between 10,930 and 17,625 metric tons;

(2) it is estimated that the value of the illegal drug trade worldwide is as high as $500,000,000,000 a year;

(3) drug traffickers appear to be intensifying their efforts to distribute drugs to Western industrialized nations, as a source of stable currencies;

(4) drug traffickers also appear to be intensifying their efforts to distribute drugs to developing nations, as a means to increase their market;

(5) it is estimated that there are between 25,000,000 and 30,000,000 drug addicts worldwide;

(6) the American illegal drug market alone, comprised primarily of marijuana, cocaine, and heroin, annually produces between $50,000,000,000 and $100,000,000,000 at the retail level;

(7) approximately 35 percent of the inmates of State prisons were under the influence of illegal drugs at the time they committed the crime for which they were incarcerated;

(8) it is estimated that there are 26,000,000 regular users of illegal drugs in the Nation, slightly more than 10 percent of the Nation's population; and

(9) over 50 percent of the high school seniors in the Nation have used marijuana or hashish.

(b) ENCOURAGEMENT FOR ESTABLISHMENT OF INTERNATIONAL FORCE.—The Congress encourages the United Nations to explore ways and means to establish an international force or mechanism aimed at stopping the trafficking of illegal drugs.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Anti-Corruption Act of 1988".

SEC. 2. OFFENSE.

Chapter 11 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 225. Public Corruption

"(a) Whoever, in a circumstance described in subsection (c), deprives or defrauds, or attempts to deprive or to defraud, by any scheme or artifice, the inhabitants of a State or political subdivision of a State of the honest services of an official or employee of such State or subdivision, shall be fined under this title, or imprisoned for not more than 10 years (or, if the defendant intended that the scheme or artifice promote conduct constituting an offense under the laws of the United States or a State for which the maximum term of imprisonment is greater than ten years, shall be imprisoned as required or authorized by the law punishing such offense or for not more than twenty years, whichever is less), or both.

"(b) Whoever, in a circumstance described in subsection (c), deprives or defrauds, or attempts to deprive or to defraud, by any scheme or artifice, the inhabitants of a State or political subdivision of a State of a fair and impartially conducted election process in any primary, run-off, special, or general election, through the procurement, casting, or tabulation of ballots or voter registration forms which are false, fictitious, fraudulent, or illegal under the laws of the State in which the election is held, or through the filing of any false, fictitious or fraudulent report required to be filed under State law regarding an election campaign, shall be fined under this title or imprisoned for not more than ten years, or both.

"(c) The circumstances referred to in subsections (a) and (b) are that—

"(1) for the purpose of executing or concealing such scheme or artifice or attempting to do so, the actor—

"(A) places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing;

"(B) transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce any writings, signs, signals, pictures, or sounds;

"(C) transports or causes to be transported any person or thing, or induces any person to travel in or to be transported in, interstate or foreign commerce; or

"(D) uses any facility of interstate or foreign commerce; or

"(2) the scheme or artifice affects in any manner or degree, or would if executed or concealed so affect, interstate or foreign commerce.

"(d) Whoever deprives or defrauds, or attempts to deprive or defraud, by any scheme or artifice, the inhabitants of the United States of the honest services of a public official or person who has been selected to be a public official shall be fined under this title or imprisoned for not more than ten years (or, if the defendant intended that the scheme or artifice promote conduct constituting an offense under the laws of the United States or a State for which the maximum term of imprisonment is greater than ten years, shall be imprisoned as required or authorized by the law punishing such offense, or for not more than twenty years, whichever is less), or both.

"(e) Whoever being an official, or public official, or person who has been selected to be a public official, directly or indirectly, discharges, demotes, suspends, threatens, harasses, or, in any manner, discriminates against any employee or official of the United States or any State or political subdivision of such State, or attempts to do so, in order to carry out or to conceal any scheme or artifice described in this section, shall be fined under this title or subject to imprisonment of up to five years or both.

"(f)(1) Any employee or official of the United States or any State or political subdivision of such State who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against because of lawful acts done by the employee as a result of a violation of subsection (e) or because of actions by the employee on behalf of himself or others in furtherance of a prosecution under this section (including investigation for, initiation for, testimony for, or assistance in such a prosecution) may in a civil action, obtain all relief necessary to make such individual whole. Such relief shall include reinstatement with the same seniority status such individual would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.

"(2) An individual is not eligible for such relief if that individual participated in the violation of this section with respect to which such relief would be awarded.

"(g) For purposes of this section—

"(1) the term 'State' means a State of the United States, the District of Columbia, Puerto Rico, and any other territory or possession of the United States;

"(2) the term 'agency' means a subdivision of the executive, legislative, judicial, or other branch of government, including a department, independent establishment, commission, administration, authority, board, and bureau, and a corporation or other legal entity established and subject to control by a government or governments for the execution of a governmental or intergovernmental program;

"(3) the terms 'public official' and 'person who has been selected to be a public official' have the meaning set forth in section 201 of this title; the terms 'official', 'public official', and 'person who has been selected to be a public official' shall also include any person acting under color of official authority;

"(4) the term 'official' includes a person who has been nominated or appointed to be an official or who has been officially informed that he or she will be so nominated or [appointed, and includes any official of an Indian tribal government."] *appointed.".*

SEC. 3. WHITE COLLAR CRIME.

Chapter 63 of title 18 of the United States Code is amended by adding a new section as follows:

"§ 1346. Scheme or artifice to defraud

"For the purposes of this chapter, the term 'scheme or artifice to defraud' includes a scheme or artifice to deprive an organization of the intangible right of honest services in which the defendant received or attempted to receive, for the defendant or another person, anything of value or in which the defendant intended or contemplated loss or harm to the organization.".

SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Table of Sections.—The table of sections for chapter 11 of title 18, United States Code, is amended by adding at the end thereof the following item:

"225. Public Corruption.".

(b) Table of Sections.—The table of sections for chapter 63 of title 18, United States Code, is amended by adding at the end thereof the following item:

"1346. Scheme Or Artifice To Defraud.".

(c) RICO.—Section 1961(1) of title 18, United States Code, is amended by inserting "section 225 (relating to public corporation)," after "section 224 (relating to sports bribery),".

(d) Interruption of Communications.—Section 2516(1)(c) of title 18, United States Code, is amended by inserting "section 225 (relating to public corruption)," after "section 224 (bribery in sporting contests),".

SEC. 5. INTERSTATE COMMERCE.

(a) In General.—Section 1343 of title 18, United States Code, is amended by striking "transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds" and inserting "uses or causes to be used any facility of interstate or foreign commerce".

(b) Conforming Amendments.—(1) The heading of section 1343 of title 18, United States Code, is amended by striking "Fraud by wire, radio, or television" and inserting "Fraud by use of facility of interstate commerce".

(2) The chapter analysis for chapter 63 of title 18, United States Code, is amended by striking the analysis for section 1343 and inserting the following:

"1343. Fraud by use of facility of interstate commerce".

Strike out sections 2984 and 2985 and insert in lieu thereof the following:

SEC. 2984. AUTHORIZATION OF APPROPRIATIONS FOR THE UNITED STATES CUSTOMS SERVICE.

(a) In General.—

(1) Paragraph (1) of section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)) is amended to read as follows:

"(1) For noncommercial operations.—There are authorized to be appropriated for fiscal year 1989 not to exceed $440,504,000 for the salaries and expenses of the United States Customs Service that are incurred in noncommercial operations, of which at least $26,240,000 shall be used to increase the number of customs inspectors for contraband enforcement teams and other drug interdiction personnel of the United States Customs Service to a number which exceeds the total number of such inspectors and personnel employed by the United States Customs Service on September 30, 1988, by the equivalent of at least 435 full-time employees, and for related equipment.".

(2) Subsection (b) of section 301 of the Customs Procedural Reform and Simplification Act is amended—

(A) by striking out "1988" in paragraphs (2) and (3) and inserting in lieu thereof "1989",

(B) by striking out "$615,000,000" in paragraph (2) and inserting in lieu thereof "$615,247,000",

(C) by striking out "$118,309,000" in paragraph (3) and inserting in lieu thereof "$142,262,000", and

(D) by adding at the end thereof the following new paragraph:

"(4) Customs cooperation council.—There are authorized to be appropriated to the Secretary of the Treasury for fiscal year 1989, $1,600,000 for payment to the Customs Cooperation Council.".

(b) Increase in Number of Employees.—Subsection (g) of section 301 of the Customs Procedural Reform and Simplification Act (19 U.S.C. 2075(g)) is amended by adding at the end thereof the following new paragraph:

"(3) The total number of employees of the United States Customs Service shall be equivalent to at least 17,174 full-time employees.".

(c) Inconsistent Decisions of Customs Officers.—

(1)(A) Section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) is amended—

(i) by inserting "or (e)" after "provided in subsection (b)" in subsection (a), and

(ii) by adding at the end thereof the following new subsection:

"(e) Inconsistent Decisions.—

"(1) Notwithstanding any other provision of this section, or of section 515, the following decisions shall be immediately reviewed and reconciled by the Secretary:

"(A) Any decision described in subsection (a) that is inconsistent with any other decision made by a customs officer in any district or port of entry with respect to the same, or substantially similar, merchandise.

"(B) Any decision made by the Commissioner of Customs, or a subordinate customs official, to conduct an intensified inspection or examination of merchandise in a port of entry which is not being conducted in other ports of entry, unless the Commissioner of Customs certifies to the Secretary, in writing, that the decision to conduct an intensified inspection or examination furthers a specific responsibility of the Secretary under the laws enforced by the Secretary through the United States Customs Service.

"(2) Any party designated in subsection (c)(1) may submit a written petition to the Secretary requesting immediate review of any inconsistent decision under paragraph (1), setting forth distinctly and specifically each decision, each category of merchandise affected by each decision, the nature of each objection and the reasons for each objection, and the relief sought.

"(3) Any port authority may submit a written petition to the Secretary requesting immediate review of any inconsistent decision under paragraph (1), setting forth distinctly and specifically each decision, each category of merchandise affected by each decision, the nature of each objection and the reasons for each objection, and the relief sought. A petition filed by a port authority under this paragraph may not, without the written consent of the importer, identify specific entry transactions. Any determination of the Secretary resolving the inconsistency in favor of the port authority shall only have prospective effect.

"(4) The Secretary shall—

"(A) publish in the Federal Register each petition submitted under paragraph (2) by no later than the date that is 5 days after the date on which the petition is submitted to the Secretary, and

"(B) accept and consider comments regarding such petition during the 15-day period (excluding Saturdays, Sundays, and legal holidays) beginning on the date on which the petition is published in the Federal Register.

"(5)(A) Within the 10-day period (excluding Saturdays, Sundays, and legal holidays) beginning at the close of the 15-day period described in paragraph (3), the Secretary shall—

"(i) make, and publish in the Federal Register, a determination which reconciles the inconsistency between the inconsistent decisions of customs officers that are the subject of the petition submitted under paragraph (2), and

"(ii) provide written notice of such determination to the regional commissioners of customs, the district and area directors of each customs region, and to the petitioner. Any entries subject to a suspension of liquidation shall be liquidated in accordance with the determination of the Secretary.

"(B) The Secretary may extend either the 15-day comment period described in paragraph (4)(B) or the 10-day decisional period described in subparagraph (A) for good and sufficient reason, including but not limited to the need for complex laboratory analysis or additional information, upon the written request of the petitioner, or in cases involving complex legal or technical issues. Notice of any such extension shall be provided to the petitioner and shall be published in the Federal Register.

"(C) If the Secretary fails to make a determination with respect to a petition filed under paragraph (2) within the 10-day period described in subparagraph (A), or fails to extend such period pursuant to subparagraph (B), each regional commissioner of customs and each district and area director shall apply the decision requested by the petitioner until such time as the Secretary issues a final determination.

"(6) Determinations made by the Secretary under this subsection shall be final and conclusive upon all persons unless a civil action contesting such determination is commenced in the United States Court of International Trade in accordance with chapter 169 of title 28, United States Code, within the time prescribed by section 2636 of such title.

"(7) The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subsection.".

(B) The amendments made by this paragraph shall take effect on March 1, 1990.

(2)(A) The Secretary of the Treasury shall prescribe regulations that—

(i) effect uniformity in decisions described in section 514(a) that are made by customs officers with respect to the same, or substantially similar, merchandise, and

(ii) establish procedures that allow individuals described in section 514(c)(1) of the Tariff Act of 1980 (19 U.S.C. 1514(c)(1)), any port authority, and any other interested party (within the meaning of section 516(a)(2) of the Tariff Act of 1930 (19 U.S.C. 1516(a)(2))) to petition the Secretary to obtain such uniformity.

(B) The Secretary of the Treasury shall publish in the Federal Register the proposed and final form of the regulations prescribed under subparagraph (A) and shall receive and consider comments from the public regarding the proposed form of such regulations during the 60-day period beginning on the date the proposed form of such regulations are published in the Federal Register.

(C) The regulations prescribed under subparagraph (A) shall take effect by no later than February 1, 1989.

(D) By no later than August 1, 1989, the Secretary of the Treasury shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on the effectiveness of the regulations prescribed under subparagraph (A).

SEC. 2985. UNITED STATES CUSTOMS SERVICE DRUG INTERDICTION ASSET ENHANCEMENT.

In addition to any other amounts authorized to be appropriated for fiscal year 1989, there are authorized to be appropriated for Operation and Maintenance, Air Interdiction Program for fiscal year 1989, $57,400,000: *Provided*, That such additional appropriation shall be available for the procurement of helicopters; tracking, and interceptor aircraft; and operation and maintenance expenses for these and other assets of the United States Customs Service's air interdiction program.

In section 2990, strike out subsection (a) and insert in lieu thereof the following:

(a) In addition to any other amounts authorized to be appropriated for fiscal year 1989, there are authorized to be appropriated to the United States Customs Service for the fiscal year 1989, $4,100,000: *Provided*, That such additional appropriation shall be used only for accelerating the development and availability of X-ray detection, nitrate detection, or other technologies to be utilized for the detection of illegal narcotics in cargo containers entering the United States at seaports, airports, and land borders.

In section 4103, strike out subsection (a) and insert in lieu thereof the following:

(a) In addition to any other amounts authorized to be appropriated for fiscal year 1989, there are authorized to be appropriated for the development, procurement, and implementation of a machine-readable travel and identity document border security program for fiscal year 1989, $23,000,000, of which amount $7,000,000 shall be available only for the United States Customs Service, $7,000,000 shall be available only for the Immigration and Naturalization Service in the Department of Justice, and $9,000,000 shall be available only for the Department of State to carry out the provisions of this section.

SECTION 1. ANABOLIC STEROIDS.

(a) Prohibited Distribution of Anabolic Steroids.—Section 303 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 333) is amended by adding at the end thereof the following new subsection:

"(e)(1) Except as provided in paragraph (2), a person who distributes or possesses with the intent to distribute any anabolic steroid for any use in humans other than the treatment of disease pursuant to the order of a physician shall be imprisoned for not more than 3 years, or fined, under title 18, United States Code, or both.

"(2) Any person who distributes or possesses with the intent to distribute to an individual under the age of 18, any anabolic steroid for any use in humans other than the treatment of disease pursuant to the order of a physician shall be imprisoned for not more than 6 years, or fined, under title 18, United States Code, or both."

(b) Forfeiture and Illegal Trafficking in Steroids.—Any conviction of a person for a violation of section 303(e) of the Federal Food, Drug, and Cosmetic Act, or any other provision of such Act, involving anabolic steroids that is punishable by imprisonment for more than 1 year shall, for purposes of section 413 of the Controlled Substances

Act (21 U.S.C. 853), be considered to be a conviction for a violation of titles III or IV of the Controlled Substances Act.

(c) General Accounting Office Report on Steroid Use.—The Comptroller General shall conduct a study on the extent of anabolic steroid use among high school students, college students and other adults. Such study shall include—

(1) the best available estimates for licit and illicit use of anabolic steroids;

(2) the amount and type of legal production of such steroids both domestically and internationally; and

(3) a full and complete summary of the best available medical analyses that explore the health consequences resulting from steroid use.

The Food and Drug Administration shall cooperate with the Comptroller General in conducting such study. The study shall be completed by June 1, 1989.

DEFENSE DRUG INTERDICTION AMENDMENT

Title VII of "An Act Making Appropriations For The Department of Defense For The Fiscal Year Ending September 30, 1989" is amended under the heading "Drug Interdiction, Defense" by inserting at the end of the first sentence after the word "United States" the following: "and drug enforcement and interdiction activities of the Army National Guard and Air National Guard", and by inserting in the second sentence "enforcement and" after the word "drug".

At the end of Title IV, Subtitle A, add the following new section:

SEC. 4109. PROTECTION FROM NARCO-TERRORISTS ATTACKS

(a) Earmark of Funds.—Of the funds made available for fiscal year 1989 to carry out chapter 4 of part II of the Foreign Assistance Act of 1961 (relating to the economic support fund), not less than $5,000,000 shall be used to provide to the Government of Colombia such assistance as it may request to provide protection against narcoterrorist attacks on judges, other government officials, and members of the press.

(b) Waiver of Prohibition on Assistance to Police Forces.—The assistance provided for in paragraph (1) may be provided without regard to section 660 of the Foreign Assistance Act of 1961.

(c) Notification to Congress.—Funds made available pursuant to paragraph (1) may not be obligated until at least 15 days after the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate are notified of the proposed obligation in accordance with the reprogramming procedures applicable under section 634A of the Foreign Assistance Act of 1961.

On page 310, delete lines 3 and 4 and insert in lieu thereof: "any drug trafficking crime as defined in section 924(c)(2) of title 18, the United States Code."

On page 354, line 2, strike all after "Report." up to and including "appropriation" on line 10 and insert in lieu thereof the following "That of such additional appropriations authorized in this section, $8,200,000".

Subtitle O—Chemical Diversion and Trafficking Act of 1988

Sec. 2903.—On page 298, line 2, delete the word "customer" and replace with "supplier".

apply to a transaction between a regulated person and a regular supplier customer of the regulated person.

"(3) The importer may not import any listed chemical tableting machine or encapsulating machine in any case following notification by the Attorney General that such import may not occur. Such notification shall be communicated in an expeditious manner consistent with the circumstances; and a written statement setting forth the reason that such shipment may not be made shall be provided to the importer at the earliest practicable opportunity.

"(4) Following the receipt of a notice not to import listed chemicals, tableting machines, or encapsulating machines pursuant to paragraph (1), the importer may file a request for a hearing with the Attorney General. Such hearings will be conducted in conformance with subchapter II of chapter 5 of title 5, United States Code, and will be conducted on an expedited basis no later than 45 days following receipt of a request for a hearing, unless a delay is requested by the importer.".

(2) The provisions of the amendments made by paragraph (1) of this subsection shall take effect in the same manner and on the same date as provided in subsection (a)(3).

SEC. 2904. DEFINITIONS.

Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

On page 124, lines 21 and 22, strike "expiration of the applicable statute of limitations" and insert in lieu thereof "dismissal of the indictment or information".

( ) Transfer by Government Agency of Records to the Department of Justice for Criminal Investigation.—Section 1112 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3412) is amended by adding at the end thereof the following new subsection:

"(f) Nothing in this title shall apply when financial records obtained by an agency or department of the United States are disclosed or transferred to the Attorney General upon the certification by a supervisory level official of the transferring agency or department that there is reason to believe that the records may be relevant to a violation of federal criminal law and that the records were obtained in the exercise of the agency's supervisory or regulatory functions. Records so transferred shall be used only for criminal investigative or prosecutive purposes by the Department of Justice and shall, upon completion of the investigation or prosecution (including any appeal), be returned only to the transferring agency or department.

Explanation

This amendment would waive the "notice" requirement to the subject of a criminal investigation, if his financial records are transferred from one federal agency to the Attorney General. As a protection to legitimate privacy rights, the amendment requires the transferring agency to certify that the information was obtained in the exercise of its supervisory or regulatory functions and that there is reason to believe that the records may be relevant to a violation of federal criminal law. Currently, a federal agency can obtain relevant data on a suspected drug dealer from a financial institution without the need for notification to the suspect. However, if those records are transferred to the Attorney General, the suspect must then be notified. This gives the suspect unwarranted notification to obstruct the investigation and/or flee.

At the appropriate place in the ______, insert the following new section:

SEC. . STRENGTHENED PENALTIES FOR OFFENSES INVOLVING MINORS.

Any individual who is convicted of a Federal offense involving the sale of drugs to minors shall be sentenced to a mandatory term of 10 years of imprisonment without release and if such person commits such an offense after one or more convictions for such an offense, such person shall be sentenced to a mandatory term of life imprisonment without release. Any individual who is convicted of a Federal offense involving the use of minors to sell or transport drugs shall be sentenced to a mandatory term of 20 years of imprisonment without release and if such individual is convicted of such an offense after one or more convictions for such an offense, such person shall be sentenced to a mandatory term of life imprisonment without release.

Page 583, lines 1 and 2, strike "any matter relevant to the sentence and shall include".

Page 583, line 4, insert after "factor" the following: "or any other aggravating factor for which notice has been provided under section (h)(1)(B)".

Page 583, line 7, insert after "factor" the following: "for which notice has been provided under section (h)(1)(B)".

Page 583, line 9, insert after "trial" and before "." the following: "or at the trial judge's discretion".

Page 584, line 13, insert after "factor" the following: "for which notice has been provided under section (h)(1)(B)".

Page 585, line 4, strike "factor or".

Page 585, lines 9 and 10, strike "return a finding as to whether a sentence of death is justified" and insert the following: "recommend that a sentence of death shall be imposed rather than a sentence of life imprisonment without a possiblity of release or some other lesser sentence."

Page 585, line 12, strike "Upon a finding that a sentence of death is justified" and insert the following "Upon the recommendation that the sentence of death shall be imposed".

Page 586, lines 4 and 5, strike, "but not so impaired as to constitute a defense to the charge" and insert in lieu thereof the following: "regardless of whether the capacity was so impaired as to constitute a defense to the charge".

Page 586, lines 7 and 8, strike "although not such duress as to constitute a defense to the charge" and insert in lieu thereof the following: "regardless of whether the duress was of such a degree as to constitute a defense to the charge".

Page 586, lines 13 and 14, strike "although not so minor as to constitute a defense to the charge" and insert in lieu thereof the following: "regardless of whether the participation was so minor as to constitute a defense to the charge".

Page 586, line 24, strike "shall be considered but are not exclusive" and insert the following "are the only aggravating factors that shall be considered, unless notice of additional aggravating factors is provided under section (h)(1)(B)."

Page 589, line 4, strike "was engaged" and insert in lieu thereof the following: "had been previously convicted of engaging".

Page 589, line 17, insert after "color" and before "national origin" the following: "religious beliefs".

Page 589, line 21, insert after "race" the following: "color, religious beliefs, national origin, or sex".

Page 589, line 23, strike "national origin, creed" and insert the following: "religious beliefs, national origin".

Page 590, line 2, after "race" insert the following: "color, religious beliefs, national origin or sex".

On page 592, strike lines 15 through 19, and insert in lieu thereof the following:

"COUNSEL FOR FINANCIALLY UNABLE DEFENDANTS

"(4) Notwithstanding any other provision of law to the contrary, in every criminal action in which a defendant is charged with a crime which may be punishable by death, a defendant who is or becomes financially unable to obtain adequate representation or investigative, expert or other reasonably necessary services at any time either—

"(A) before judgment; or

"(B) after the entry of a judgment imposing a sentence of death but before the execution of that judgment;

shall be entitled to the appointment of one or more attorneys and the furnishing of such other services in accordance with paragraphs (5), (6), (7), (8), and (9).

"(5) If the appointment is made before judgment, at least one attorney so appointed must have been admitted to practice in the court in which the prosecution is to be tried for not less than 5 years, and must have had not less than 3 years experience in the actual trial of felony prosecution in that court.

"(6) If the appointment is made after judgment, at least one attorney so appointed must have been admitted to practice in the court of appeals for not less than 5 years, and must have had not less than 3 years experience in the handling of appeals in that court in felony cases.

"(7) With respect to paragraphs (5) and (6), the Court, for good cause, may appoint another attorney whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.

"(8) Unless replaced by similarly qualified counsel upon the attorney's own motion or upon motion of the defendant, each attorney so appointed shall represent the defendant throughout every subsequent stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications, for writ of certiorari to the Supreme Court of the United States, and all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures, and shall also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant.

"(9) Upon a finding in ex parte proceedings that investigative, expert or other services are reasonably necessary with issues relating to guilt or sentence, the court shall authorize the defendant's attorneys to obtain such services on behalf of the defendant and shall order the payment of fees and expenses therefore, under paragraph (10). Upon a finding that timely procurement of such services could not practicably await prior authorization, the court may authorize the provision of and payment for such services nunc pro tunc.

"(10) Notwithstanding the rates and maximum limits generally applicable to criminal cases and any other provision of law to the contrary, the court shall fix the compensation to be paid to attorneys appointed under this subsection and the fees and expenses to be paid for investigative, expert, and other reasonably necessary services authorized under paragraph (9), at such rates or amounts as the court determines to be measurably necessary to carry out the requirements of paragraphs (4)-(9).

On page 585, line 20, after the period, add the following: "A sentence of death shall not be carried out upon a person who is mentally retarded.".

Delete section 2946 and insert in lieu thereof a new section as follows:

SEC. 2946. INNOCENT OWNER PROVISIONS.

(a) IN GENERAL—Not later than 90 days after the date of enactment of this Act, the Attorney General and the Secretary of the Treasury shall consult, and after providing a 30-day public comment period, shall prescribe regulations for expedited administrative procedures for seizures under section 511(a) (4), (6), and (7) of the Controlled Substances Act (21 U.S.C. 881(a) (4), (6), and (7)); section 595 of the Tariff Act of 1930 (19 U.S.C. 1595a(a)); and section 2 of the Act of August 9, 1939 (53 Stat. 1291; 49 U.S.C. app. 782) for violations involving the possession of personal use quantities of a controlled substance.

(b) SPECIFICATIONS.—The regulations prescribed pursuant to subsection (a) shall—

(1) minimize the adverse impact caused by prolonged detention, and

(2) provide for a final administrative determination of the care within 21 days of seizure, or provide a procedure by which the defendant can obtain release of the property pending a final determination of the case. Such regulations shall provide that the appropriate agency official rendering a final determination shall immediately return the property if the following conditions are established:

(A) the owner or interested party did not know of or consent to the violation; and

(B) reasonable steps were taken by the owner or interested party to prevent the illegal use of the property.

(c) NOTICE.—At the time of seizure or upon issuance of a summons to appear under subsection (d), the officer making the seizure shall furnish to any person in possession of the conveyance written notice specifying the procedures under this section. At the earliest parcticable opportunity after determining ownership of the seized conveyance, the head of the department or agency that seizes the conveyance shall furnish a written notice to the owner and other interested parties (including lienholders) of the legal and factual basis of the seizure.

(d) SUMMONS IN LIEU OF SEIZURE OF COMMERCIAL FISHING INDUSTRY VESSELS.—Not later than 90 days after the enactment of this Act, the Attorney General, the Secretary of the Treasury, and the Secretary of Transportation shall prescribe joint regulations, after a public comment period of at least 30 days, providing for issuance of a summons to appear in lieu of seizure of a commercial fishing industry vessel as defined in section 2101 (11a), (11b), and (11c) of title 46, United States Code, for violations involving the possession of personal use quantities of a controlled substance. These regulations shall apply when the violation is committed on a commercial fishing industry vessel that is proceeding to or from a fishing area or intermediate port of call, or is actively engaged in fishing operations. The authority provided under this section shall not affect existing authority to arrest an individual for drug-related offenses or to release that individual into the custody of the vessel's master. Upon anwering a summons to appear, the procedures set forth in subsections (a), (b), and (c) of this section shall apply. The jurisdiction of the district court for any forfeiture incurred shall not be affected by the use of a summons under this section.

(e) PERSONAL USE QUANTITIES OF A CONTROLLED SUBSTANCE.—For the purposes of this section, personal use quantities of a controlled substance shall not include sweepings or other evidence of non-personal use amounts.

On page 380 beginning on line 14, strike "which set forth criteria for use by the owner, master, pilot, operator, or officer of, or other employee in charge of, any conveyance in".

Beginning on line 18, strike "for the exercise of the highest degree of care and diligence to know whether controlled substances imported into the United States are onboard the conveyance.".

On page 18, strike out lines 13 through 17 and insert in lieu thereof the following:

"(2) In exercising authorities under this title, the Director shall give due regard to the statutory authorities of the Director of Central Intelligence under the National Security Act of 1947, as amended.

(3) The Director of Central Intelligence shall prescribe such regulations as may be necessary to protect information regarding intelligence sources and methods furnished under this Act.".

At the appropriate place in the bill, insert the following:

Section . Application and Criteria.

"SEC. 503. STATE APPLICATIONS.

"(a) To request a grant under this subpart, the chief executive officer of a State shall submit an application within 60 days after the Bureau has promulgated regulations under this section, and for each subsequent year, within 60 days after the date that appropriations for this part are enacted, in such form as the Director may require. Such application shall include the following:

"(1) A statewide need-based strategy for drug control and programs which improve the functioning of the criminal justice system with emphasis on drug trafficking, violent crime and serious offenders. The combined strategy shall be prepared after consultation with State and local officials with emphasis on those whose duty it is to enforce drug laws and direct the administration of justice and shall contain—

"(A) an assessment of drug trafficking and violent crime within the State as determined by criteria including, but not limited to—

"(1) the number of arrests for drug violations and other violent offenses within the State;

"(2) the manufacturing, importation and distribution patterns within the State;

"(3) the number of drug-related hospital emergency-room visits within the State;

"(4) the number of drug-related and violent criminal cases processed by the adjudicative components of the criminal justice system;

"(5) such other criteria as the District may prescribe."

Section . Regulations.

Add a new section 503(b) as follows:

"(b) Within 30 days after the date of enactment of this part, the Director shall promulgate regulations to implement this section (including the information that must be included and the requirements that the States must meet) in submitting the applications required under this section.".

Section . Department of Justice Review.

Subsection (a). In the proposed new section 505 (review of state applications), in subsection (a), strike paragraph (1) and insert the following new paragraph (1):

"(1) the application or amendment thereto is consistent with the need-based criteria established in section 503 and the other requirements of this subpart, and"

Subsection (b). In the new section 505 (Review of State Applications) strike subsection (b) and insert the following new paragraph (b):

"(b) Each application or amendment made and submitted for approval to the Bureau pursuant to section 503 shall be deemed approved, in whole or in part, by the Bureau not later than 45 days after first received unless the Bureau determines that the application does not meet the requirements of this subpart, including whether the strategy is consistent with the need-based criteria in section 503. If the Bureau does not approve such application, the Bureau shall notify the applicant in writing within 15 days of the reasons for such disapproval. The State shall then have 15 days after notification by the Bureau to resubmit such application and the Bureau shall have 15 days after receipt of such revised application to review such application.".

Subsection (c). In new section 505 (Review of State Applications) strike subsection (d).

Section . State Implementation; Distribution of Funds.

Subsection (a). In the newly proposed section 508, strike subsection (b) and insert the following new subsection (b)

"(b) Each State which receives funds under section 506 in a fiscal year shall make such funds available to local units of government, or combinations thereof, whose applications has been submitted to, approved and awarded by the State, within 45 days after the Bureau has approved the State application and has made funds available to such State. If the State does not distribute such funds to any local unit of government, or combination thereof, within that time, the State shall return such funds to the Director who shall directly award such funds to the local unit of government, or combination thereof. Grants shall be made by the chief executive officer of the State or his designee without regard to state legislative requirements regarding distribution of such funds.".

Subsection (b). In the newly proposed section 508 (Distribution of Grants to Local Government) add the following new subsection (c):

"(c) If the Bureau, after review by the Bureau pursuant to section 505 of this part, disapproves an application by a State, the Bureau shall distribute an amount of funds to local units of government within such State, equal to the amount that such State would have received under section 506 (relating to allocation and distribution of funds under formula grants) as follows:

"(1) To units of local government or combinations thereof with a minimum population of 500,000, or if the largest such unit or combination has less than 500,000, to the largest such unit or combination thereof in the State, of the pass through formula, a percentage of such funds which is not less than a portion of such funds which bears the same ratio to the amount of funds expended by such local government or combination thereof to the aggregate amount of funds expended by all units of local government for criminal justice in the preceding fiscal year; and

"(2) To all other rural, urban and suburban units of local government such portion, as the Director determines, to those jurisdictions with greatest need, as determined using the criteria contained in section 503 of this part.".

Subsection (c). In the proposed section 506 (relating to allocation and distribution of funds under formula grants) in subsection (c) strike the "(1)" appearing directly after the "(c)" in the first sentence; strike paragraph (2) of subsection (c); and redesignate paragraphs (3) and (4), as (2) and (3) respectively.

Subsection (d). In the proposed subsection 506 (relating to allocation and distribution of funds under formula grants) in subsection (e) strike the following: "or that a State will be unable to qualify or receive funds under section 502,".

At the appropriate place, insert the following new section:

SEC. . DISCLOSURE OF INFORMATION ON CASH TRANSACTIONS: UNDERCOVER ACTIVITIES OF INTERNAL REVENUE SERVICE.

(a) Disclosure Provision.—

(1) Disclosure of reports under section 6050I.—Section 6050I of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new subsections:

"(f) Disclosure.—Notwithstanding section 6103 or any other provision of this title, a return described in subsection (b) may be disclosed to the same extent as reports filed with the Secretary under section 5313 of title 31, United States Code, and used and disseminated in accordance with regulations and safeguards applicable to disclosure of reports filed under section 5313. A return described in subsection (b) and a record of a return are exempt from disclosure under section 552 of title 5, United States Code."

"(g) Actions by Payors.—

"(1) In general.—No person shall for the purpose of evading the return requirements of this section—

"(A) cause or attempt to cause a trade or business to fail to file a return required under this section,

"(B) cause or attempt to cause a trade or business to file a return required under this section that contains a material omission or misstatement of fact, or

"(C) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more trades or businesses.

"(2) Penalties.—A person violating paragraph (1) of this subsection shall be subject to the same civil and criminal sanctions applicable to a person which fails to file or completes a false or incorrect return under this section."

(2) Penalty.—

(A) Section 6721(b)(1)(A) of the Internal Revenue Code of 1986 is amended by inserting "(or if greater in the case of a return filed under section 6050I, 10 percent of the profits of the trade or business derived from the transaction)" after "reported".

(B) Section 7203 of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following sentence: "Any person willfully violating a provision of section 6050I shall be fined not more than $10,000, or imprisoned not more than 5 years, or both."

(b) Enhancement of Undercover Capabilities of the Internal Revenue Service.—

(1) In general.—Section 7608(b)(1) of the Internal Revenue Code of 1986 is amended—

(A) by striking out "or" before "any other" and inserting a comma, and

(B) by inserting ", or any other law for which the Secretary has delegated investigatory authority to the Internal Revenue Service," before "is".

(2) Undercover operations.—Section 7608 of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new subsection:

"(c) Rules Relating to Undercover Operations.—

"(1) Certification required for exemption of undercover operations from certain laws.—With respect to any undercover investigative operation of the Internal Revenue Service (hereinafter in this subsection referred to as the 'Service') which is necessary for the detection and prosecution of offenses under the internal revenue laws, any other criminal provisions of law relating to internal revenue, or any other law for which the Secretary has delegated investigatory authority to the Internal Revenue Service—

"(A) sums authorized to be appropriated for the Service may be used—

"(i) to purchase property, buildings, and other facilities, and to lease space, within the United States, the District of Columbia, and the territories and possessions of the United States without regard to—

"(I) sections 1341 and 3324 of title 31,

"(II) sections 11(a) and 22 of title 41,

"(III) section 255 of title 41,

"(IV) section 34 of title 40, and

"(V) section 254 (a) and (c) of title 41, and

"(ii) to establish or to acquire proprietary corporations or business entities as part of the undercover operation, and to operate such corporations or business entities on a commercial basis, without regard to sections 9102 and 9103 of title 31;

"(B) sums authorized to be appropriated for the Service and the proceeds from the undercover operations, may be deposited in banks or other financial institutions without regard to the provisions of section 648 of title 18, and section 3302 of title 31, and

"(C) the proceeds from the undercover operation may be used to offset necessary and reasonable expenses incurred in such operation without regard to the provisions of section 3302 of title 31.

This paragraph shall apply only upon the written certification of the Commissioner of Internal Revenue (or, if designated by the Commissioner, the Deputy Commissioner or an Assistant Commissioner of Internal Revenue) that any action authorized by subparagraph (A), (B), or (C) is necessary for the conduct of such undercover operation.

"(2) Liquidation of corporations and business entities.—If a corporation or business entity established or acquired as part of an undercover operation under subparagraph (B) of paragraph (1) with a net value over $50,000 is to be liquidated, sold, or otherwise disposed of, the Service, as much in advance as the Commissioner or his delegate determines is practicable, shall report the circumstances to the Secretary and the Comptroller General of the United States. The proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

"(3) Deposit of proceeds.—As soon as the proceeds from an undercover investigative operation with respect to which an action is authorized and carried out under subparagraphs (B) and (C) of paragraph (1) are no longer necessary for the conduct of such operation, such proceeds or the balance of such proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

"(4) AUDITS.—

"(A) The Service shall conduct a detailed financial audit of each undercover investigative operation which is closed in each fiscal year, and

"(i) submit the results of the audit in writing to the Secretary; and

"(ii) not later than 180 days after such undercover operation is closed, submit a report to the Congress concerning such audit.

"(B) The Service shall also submit a report annually to the Congress specifying as to its undercover investigative operations—

"(i) the number, by programs, of undercover investigative operations pending as of the end of the 1-year period for which such report is submitted;

"(ii) the number, by programs, of undercover investigative operations commenced in the 1-year period preceding the period for which such report is submitted; and

"(iii) the number, by programs, of undercover investigative operations closed in the 1-year period preceding the period for which such report is submitted and, with respect to each such closed undercover operation, the results obtained and any civil claims made with respect thereto.

"(5) DEFINITIONS.—For purposes of paragraph (4)—

"(A) CLOSED.—The term 'closed' means the date on which the later of the following occurs:

"(i) all criminal proceedings (other than appeals) are concluded, or

"(ii) covert activities are concluded, whichever occurs later.

"(B) EMPLOYEES.—The term 'employees' has the meaning given such term by section 2105 of title 5, United States Code.

"(C) UNDERCOVER INVESTIGATIVE OPERATION.—The terms 'undercover investigative operation' and 'undercover operation' mean any undercover investigative operation of the Service—

"(i) in which—

"(I) the gross receipts (excluding interest earned) exceed $50,000, or

"(II) expenditures, both recoverable and nonrecoverable (other than expenditures for salaries of employees), exceed $150,000; and

"(ii) which is exempt from section 3302 or 9102 of title 3.

Clauses (i) and (ii) shall not apply with respect to the report required under subparagraph (B) of paragraph (4)."

On page 25, line 4, redesignate subsection (b) as subsection (c) and insert the following after line 3:

(b) CRITERIA.—When considering the designation of an area as a high intensity drug area, the Director shall apply the following criteria, as well as others which he may deem appropriate—

(1) The extent to which the area is a center of illegal drug production, manufacturing, importation, or distribution;

(2) The extent to which state and local law enforcement agencies have committed resources to respond to the drug problem in the area, thereby indicating a determination to respond aggressively to the problem;

(3) The extent to which drug-related activities in the area are having a harmful impact in other areas of the country; and

(4) The extent to which a significant increase in allocation of federal resources is necessary to respond adequately to drug-related activities in the area.

Prior to March 1, 1991, the Director shall submit a report to the House of Representatives and the Senate concerning the effectiveness and need for the designation of such areas along with any comments or recommendations for legislation.

Whereas, the drug problem is one of the most pressing problems confronting this nation, threatening the security of our nation, the safety of our communities and the future of our children;

Whereas, the Omnibus Anti-Substance Abuse Act of 1988, which attacks the drug problem on both sides of the supply and demand reduction equation, authorizes $2.6 billion in budget authority and $1.4 billion in outlays in fiscal 1989 to enhance the Nation's anti-drug efforts;

Whereas, this legislation does not include sufficient resources to fully obligate all funds authorized in the legislation in fiscal 1989; Now, therefore, be it

Resolved, it is the sense of the Congress of the United States of America,

(1) That the Congress intends to provide full funding for all of the anti-drug programs contained in the Omnibus Anti-Substance Abuse Act of 1988;

(2) That by May 1st, 1989, the 101st Congress should provide sufficient monies to pay for this legislation through program reductions, revenue increase or a combination thereof; and

(3) That by May 1st, 1989, Congress should appropriate sufficient funds to fully fund the Omnibus Anti-Substance Abuse Act of 1988.

The Omnibus Anti-Drug Abuse Act of 1988 is amended by adding at the end the following new title:

TITLE VII—FITNESS FOR DUTY REQUIREMENT FOR NUCLEAR REGULATORY COMMISSION LICENSEES

SEC. 1 (a) The Commission, within nine months after the date of enactment of this section, shall prescribe regulations which require licensees holding a license for a production or utilization facility under section 103 or 104 of the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2133, 2134) to establish a program, consistent with the provisions of subsections (b) and (c) of this section, for the testing of those persons employed by such licensee who are responsible for safety-sensitive functions (as determined by the Commission) for the use, without lawful authorization, of controlled substances.

(b) The Commission shall require that any program established by a licensee pursuant to the provisions of this section shall include preemployment, periodic, recurring, random, and post-incident testing and testing upon reasonable suspicion that such person has used, without lawful authorization, a controlled substance.

(c) In establishing the program required under subsection (a) of this section, the Commission shall develop requirements which shall—

(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

(2) with respect to laboratories and testing procedures, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

(A) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out this section, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

(B) specify the drugs for which individuals may be tested; and

(C) establish appropriate standards and procedures for periodic reviews of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out this section;

(3) provide that all tests which indicate the use, without lawful authorization, of alcohol or a controlled substance by an individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding a controlled substance;

(4) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

(5) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions or rehabilitation; and

(6) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

(d) Each licensee required to establish and maintain a program for the testing of employees pursuant to the provisions of this section shall also establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of employees subject to the provisions of this section in need of assistance in resolving problems with the use, without lawful authorization, of controlled substances. Each such licensee is encouraged to make such program available to all of its employees other than the employees subject to the provisions of this section. Nothing in this subsection shall preclude any licensee from establishing a program under this subjection in cooperation with any other licensee.

(e) No State or local government shall adopt or put into effect any law, rule, regulation, ordinance, standard or order that is inconsistent with the regulations promulgated under this section, except that the regulations promulgated under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury or damage to property, whether the provisions apply specifically to employees of a licensee or to the general public.

(f) If any provision of this section, or the application of such provision to any person or circumstance, is held invalid, the remainder of this section, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(g) For the purpose of this section the term "Commission" means the Nuclear Regulatory Commission or any successor agency.

The Omnibus Anti-Drug Abuse Act of 1988 is amended by adding at the end the following new title;

TITLE VII—FITNESS FOR DUTY REQUIREMENT FOR DEPARTMENT OF ENERGY NUCLEAR PROGRAMS

SEC. 1. (a) The Secretary of Energy (Secretary), within nine months after the date of enactment of this section, shall establish a policy, consistent with the provisions of (c) and (d) of this section, for the testing of Department of Energy employees employed in nuclear energy programs conducted by or under the authority of the Secretary who are responsible for safety-sensitive functions (as determined by the Secretary) for the use, without lawful authorization, of controlled substances.

(b) The Secretary, within nine months after the date of enactment of this section, shall prescribe regulations which require any management and operating contractor which operates a Department of Energy owned or leased facility for carrying out the nuclear energy programs conducted by or under the authority of the Secretary, to establish a program, consistent with the provisions of subsections (c) and (d) of this section, for the testing of employees (including subcontractors and their employees) who are responsible for safety-sensitive functions (as determined by the Secretary) for the use, without lawful authorization, of controlled substances.

(c) The Secretary shall require that any policy or program established pursuant to the provisions of subsections (a) or (b) of this section shall include preemployment, periodic recurring, random, and post-incident testing and testing upon reasonable suspicion that such person has used, without lawful authorization, a controlled substance.

(d) In establishing any policy or program required under subsections (a) or (b) of this section, the Secretary shall develop requirements which shall—

(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

(2) with respect to laboratories and testing procedures, incorporate the Department of Health and Human Services scientific and technical guidelines dated February 13, 1987, and any subsequent amendments thereto, including mandatory guidelines which—

(A) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out this section, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

(B) specify the drugs for which individuals may be tested; and

(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out this section;

(3) provide that all tests which indicate the use, without lawful authorization, of a controlled substance by an individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding a controlled substance;

(4) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

(5) provide for the confidentiality of test results and medical information of employees, except that the provision of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions or rehabilitation; and

(6) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

(f) The Secretary shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of those employees of the Department of Energy whose duties include responsibility for safety-sensitive functions who are in need of assistance in resolving problems with the use of controlled substances.

(g) Each management and operating contractor which operates a Department of Energy owned or leased facility for carrying out the nuclear energy programs conducted by or under the authority of the Secretary shall establish and maintain a rehabilitation program which at the minimum provides for the identification and opportunity for treatment of employees whose duties include responsibility for safety-sensitive functions who are in need of assistance in resolving problems with the use, without lawful authorization, of controlled substances.

(h) No State or local government shall adopt or put into effect any law, rule, regulation, ordinance, standard or order that is inconsistent with the regulations promulgated under subsection (b) of this section, except that the regulations promulgate, under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury or damage to property, whether the provision apply specifically to employees of a person or entity covered under this section or to the general public.

(i) If any provision of this section, or the application of such provision to any person or circumstance, is held invalid, the remainder of this section, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Add at the end of the bill the following new section:

"SEC. —. Commendation of U.S. Customs Service.

(a) FINDINGS—The Senate finds that—

(1) On October 11, 1988, the United States Customs Service announced the results of Operation C-Chase, a two year investigation of the Bank of Credit and Commerce International and its top managers;

(2) This investigation culminated in simultaneous arrest, search and seizure warrants in the United States, France, and the United Kingdom;

(3) Operation C-Chase is the first indictment of an international financial institution for laundering illegal narcotics proceeds; and

(4) Operation C-Chase ended in 39 arrests, including Amjad Awan—General Manuel Antonio Noriega's personal banker—and other alleged international drug and money laundering kingpins known as Gonzalo Mora, Jr., Roberto Alcaino, and Don Chepe, some of whom are intimately tied to the Medellin Cartel;

(b) SENSE OF THE SENATE.—It is the Sense of the Senate that—

(1) The Senate commends Commissioner William von Raab, for his outstanding leadership and dedication over the last 7 years as Commissioner of the United States Customs Service, and specifically for his direction of Operation C-Chase;

(2) The Senate commends and expresses its gratitude to the undercover agents involved in Operation C-Chase, who risked their lives, and well-being for the sake of combatting the international drug trade;

(3) The Senate appreciates the efforts of Special Agent in Charge, Bonni Trischler of the Customs Service, and all other U.S. Customs officials who participated in Operation C-Chase;

(c) The Secretary of the Senate is directed to transmit copies of this section to President Reagan, Commissioner von Raab and Special Agent Tischler.

At the appropriate place in the —, insert the following new section:

SEC. . ESTABLISHMENT OF TASK FORCE AND PROTECTION OF PUBLIC HEALTH WITH RESPECT TO ILLEGAL DRUG LABORATORIES.

(A) SHORT TITLE.—This title section may be cited as the "Joint Federal Task Force on Illegal Drug Laboratories Establishment Act of 1988".

(b) FINDINGS.—Congress finds the following:

(1) The illegal manufacture of drugs has escalated dramatically in recent years.

(2) Law enforcement officials and emergency response personnel require specific training in the safe and environmentally sound handling and disposal of hazardous and toxic waste produced by illegal drug laboratories to ensure compliance with applicable State laws and regulations.

(3) The Drug Enforcement Administration of the Department of Justice has indicated that the number of illegal drug laboratories has tripled in recent years.

(4) The precursor chemicals that are combined in illegal drug laboratories, such as those combined in illegal methamphetamine laboratories, produced extremely hazardous substances.

(5) Illegal drug laboratories have been found in apartments, motel rooms, motor homes, and dwellings in both urban and rural settings.

(6) Cleanup operations undertaken at the site of a seized illegal drug laboratory often neglect residual hazardous wastes which threaten the health of innocent tenants, homeowners, and livestock, as well as the water supply of surrounding communities.

(7) Illegal drug laboratories are hazardous waste producers.

(8) No Federal agency has been granted budgetary authority to provide for the effective disposal and cleanup of hazardous waste produced by illegal drug laboratories.

(9) The failure to cleanup and dispose of hazardous waste produced by illegal drug laboratories presents long-term health hazards.

(1) State and local authorities are currently ill-equipped to effectively cleanup and dispose of hazardous waste produced by illegal drug laboratories.

(c) ESTABLISHMENT OF TASK FORCE.—There is established the Joint Federal Task Force on Illegal Drug Laboratories (hereinafter in this section referred to as the "Task Force").

(d) APPOINTMENT AND MEMBERSHIP OF TASK FORCE.—The members of the Task Force shall be appointed by the Administrators of the Environmental Protection Agency and the Drug Enforcement Administration (hereafter in this section referred to as the "Administrators"). The Task Force shall consist of at least 6 and not more than 20 members. Each Administrator shall appoint one-half of the members as follows: (1) the Administrator of the Environmental Protection Agency shall appoint members from among Emergency Response Technicians and other appropriate employees of the Agency; and (2) the Administrator of the Drug Enforcement Administration shall appoint members from among Special Agents assigned to field divisions and other appropriate employees of the Administration.

(e) Duties of Task Force.—The Task Force shall formulate, establish, and implement a program for the cleanup and disposal of hazardous waste produced by illegal drug laboratories. In formulating such program, the Task Force shall consider the following factors:

(1) The volume of hazardous wastes produced by illegal drug laboratories.

(2) The cost of cleaning up and disposing of hazardous waste produced by illegal drug laboratories.

(3) The effectiveness of the various methods of cleaning up and disposing of hazardous waste produced by illegal drug laboratories.

(4) The coordination of the efforts of the Environmental Protection Agency and the Drug Enforcement Administration in cleaning up and disposing of hazardous waste produced by illegal drug laboratories.

(5) The dissemination of information to law enforcement agencies that have responsibility for enforcement of drug laws.

(f) Guidelines.—The Task Force shall recommend to the Administration guidelines for cleanup of illegal drug laboratories to protect the public health and environment. Not later than 180 days after the date of the enactment of this Act, the Administration shall formulate and publish such guidelines.

(g) Demonstration Projects.—

(1) The Attorney General shall make grants to, and enter into contracts with, State and local governments for demonstration projects to clean up and safely dispose of substances associated with illegal drug laboratories which may present a danger to public health or the environment.

(2) The Attorney General may not under this subsection make a grant or enter into a contract unless the applicant for such assistance agrees to comply with the guidelines issued pursuant to subsection (e).

(3) The Attorney General shall, through grant or contract, provide for independent evaluations of the activities carried out pursuant to this subsection and shall recommend appropriate legislation to the Congress.

(h) Authorization of Appropriations.—There is authorized to be appropriated for the purpose of carrying out this section for fiscal year 1989, $5,000,000.

(i) Reports.—After consultation with the Task Force, the Administrators shall—

(1) transmit to the President and to each House of Congress not later than 270 days after the date of the enactment of this Act a report describing the program established by the Task Force under subsection (d) (including an analysis of the factors specified in paragraphs (1) through (5) of that subsection);

(2) periodically transmit to the President and to each House of Congress reports describing the implementation of the program established by the Task Force under subsection (e) (including an analysis of the factors specified in paragraphs (1) through (5) of that subsection) and the progress made in the cleanup and disposal of hazardous waste produced by illegal drug laboratories; and

(3) transmit to each House of Congress a report describing the findings made as a result of the evaluations referred to in subsection (g)(3).

(j) Effective Date.—The provisions of this Act shall take effect October 1, 1988, or upon the date of enactment, whichever occurs later.

On page 169, after line 24, insert the following new subsection:

(f) Designation of Authority.—The National Forest System Drug Control Act of 1986 is amended by inserting after section 15007 (16 U.S.C. 559f) the following new section:

"SEC. 15008. DESIGNATION AUTHORITY OF SECRETARY OF AGRICULTURE.

"(a) Purpose—It is the purpose of this section to authorized the Secretary of Agriculture to take actions necessary, in connection with the administration and use of the National Forest System, including the designation of certain officers or employees of the Forest Service, to make law enforcement operations more efficient.

"(b) Officers of Other Agencies.—The Secretary of Agriculture is authorized to designate law enforcement officers of any other Federal agency, when the Secretary determines such to be economical and in the public interest, and with the concurrence of that agency to exercise the powers and authorities of the Forest Service while assisting the Forest Service in the National Forest System, or for activities administrated by the Forest Service.

"(c) Acceptance by Forest Service.—The Forest Service is authorized to accept law enforcement designation from any other Federal or State agency or political subdivision thereof for the purpose of cooperating in the investigations and enforcement of the laws and regulations of any other Federal or State agency or political subdivision thereof, when such investigation or enforcement is mutually beneficial to the Forest System and the cooperating agency, and on the establishment of a memorandum of understanding or other cooperative agreement.".

On page 416, line 21, after "number" delete "and" and insert a ","

On page 416 insert on line 21 after "demographic characteristics," ", socioeconomic, and other relevant characteristics"

On page 416 after line 25, insert "(3) to the extent feasible the percentage of individuals who complete the appropriate course of treatment through programs referred to in paragraph (1) who upon one year after completion require further treatment."

On page 417 of the bill, insert on line 1 after "care" "or treatment"

On page 417 on line 5 after "complete" insert "and fail to complete."

On page 417 after line 25 insert "(12) to the extent feasible information shall be provided to determine whether clients subsequently become involved in criminal activities, drug use, and other information regarding the subsequent drug-related or criminal activities of individuals who have undergone a treatment program."

At the end of subtitle E of Title IV, insert the following new section:

SEC. . DISCUSSIONS ON [NEGOTIATIONS FOR] AN INTERNATIONAL CRIMINAL COURT.

It is the sense of the *Senate* that the President should begin *discussions* with foreign governments to investigate the *feasibility and advisability* of establishing an international criminal court to *expedite* cases regarding the prosecution of persons accused of having engaged in international drug trafficking or having committed international crimes. Such discussions shall not include any commitment that such court shall have jurisdiction over the extradition of U.S. citizens and shall assume that any international agreement shall recognize the rights and privileges guaranteed to U.S. citizens under the U.S. Constitution.

At the appropriate place in the bill, insert the following new section:

Sec. . The United States shall, in the case of the Chapare Regional Development Project, take the necessary steps to implement expeditiously a new agreement with Bolivia which shall provide for flexibility in achieving coca eradication targets. Such flexibility shall be exercised only to the extent that good faith efforts continue to be made to achieve stated eradication goals.

On page 337:

In lines 15 through 19, strike all between "or" and "procedures".

On page 341, line 25, strike all beginning with "or" through "procdure" on page 342, line 3.

On page 8, line 23, before the ";" insert, "including the Office of Comprehensive School Health Education upon its establishment".

On page 534, line 15, after "agencies" insert ", including Indian public housing authorities,".

At the end of Title IV, insert the following:

"Subtitle F—Diplomatic Immunity Abuse Prevention Act"

SEC. 4601. SHORT TITLE.

This subtitle may be cited as the "Diplomatic Immunity Abuse Prevention Act".

SEC. 4602. CRIMES COMMITTED BY DIPLOMATS.

(a) Records.—The Foreign Missions Act (title II of the State Department Basic Authorities Act of 1956; 22 U.S.C. 4301 et seq.) is amended by inserting after section 204A the following new section:

"CRIMES COMMITTED BY DIPLOMATS

"Sec. 204B. The Director shall develop and maintain records on each incident in which there is involved an individual with immunity from the criminal jurisdiction of the United States who the Director reasonably believes has committed a serious criminal offense within the United States. Each such record shall include—

"(1) the identity of such individual;

"(2) the nature of the offense committed by such individuals, including whether such offenses were committed against property or persons;

"(3) whether such offense involved reckless driving or driving while intoxicated; and

"(4) the number and nature of all other criminal offenses committed in the United States by such individual.".

(b) Report.—Section 5 of the Diplomatic Relations Act (22 U.S.C. 254a et seq.) is amended—

"(1) by redesignating section 5 as section 5(a); and

"(2) by inserting at the end thereof the following new subsection:

"(b) Crimes Committed by Diplomats.—

"(1) Report.—Every 12 months after the date of enactment of this Act, the Secretary of State shall submit to the Congress a report describing—

"(A) the incidents occurring during the preceding 12 months which were recorded under section 204B of the Foreign Missions Act, including the information developed and maintained under such section; and

"(B) the undisputed indebtedness which is owed to an individual or entity within the United States by a mission, members of the mission, or their families and for which repayment is in arrears by more than 6 months.

"(2) LAW ENFORCEMENT INDIVIDUALS.—The Secretary of State shall take such steps as may be necessary—

"(A) to educate law enforcement officials on the extent of the immunity from criminal jurisdiction provided to members of a mission and to family members of such members, under the Vienna Convention; and

"(B) to assure that, in the event that an individual entitled to immunity from the criminal jurisdiction of the United States is believed to have committed a serious crime, the relevant law enforcement and prosecutorial officials are fully informed of their rights to investigate, charge and, as warranted, prosecute the offense in question to the extent consistent with criminal immunities established under the Vienna Convention and other applicable international law.

"(3) DISCOURAGING PROSECUTIONS.—

"(A) No officer or employee of the Department of State may seek to discourage any investigation, charge, or prosecution by a Federal, State, or local government of—

"(i) an alien who is a member of a mission,

"(ii) a family member of an alien described in clause (i), or

"(iii) any other alien not entitled to immunity from the criminal jurisdiction of the United States.

"(B) No information shall be required to be submitted under paragraph (1) with respect to a specific individual if the Secretary of State determines and, within 30 days after the determination, reports to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate that significant foreign policy considerations or the national security so requires.

"(4) NOTIFICATION OF DIPLOMATIC CORPS.—The Secretary of State shall notify the members of each mission in the United States of United States policies relating to criminal offenses (particularly crimes of violence) committed by such members and the family members of such members, including the policy of obtaining criminal indictments, requiring such members to leave the country, and declaring such members persona non grata.".

SEC. 4603. REGISTRATION AND DEPARTURE PROCEDURES FOR INDIVIDUALS WITH DIPLOMATIC IMMUNITY.

Section 3 of the Diplomatic Relations Act (22 U.S.C. 254a et seq.) is amended by adding at the end thereof the following new subsection:

"(c)(1) The Secretary of State shall develop and implement registration and departure procedures for members of missions, and the family members of such members, in order to identify those individuals in the United States who are entitled to immunity from the criminal jurisdiction of the United States.

"(2) No individual shall enjoy diplomatic consular immunity in the United States if at the time of his proposed accreditation there are pending against such individual charges of a serious criminal offense in any jurisdiction within the United States.

"(3) The Secretary may waive paragraph (2) with respect to an individual if the Secretary determines, and reports to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate within 30 days after such accreditation, that such accreditation is required by significant foreign policy considerations or the national security.".

SEC. 4604. WAIVER OF DIPLOMATIC IMMUNITY OR REMOVAL WHEN CHARGED WITH A SERIOUS CRIME.

(A) IN GENERAL.—The Foreign Missions Act is amended by inserting after section 204B, as added by section 502(a) of this Act, the following new section:

"WAIVER OF DIPLOMATIC IMMUNITY OR REMOVAL WHEN CHARGED WITH A SERIOUS CRIME

"SEC. 204C. (a) Whenever there is probable cause to believe that an individual who is entitled to immunity from the criminal jurisdiction of the United States may have committed a serious criminal offense (particularly a crime of violence), the Secretary of State shall—

"(1) immediately expel from the United States or request the foreign ministry of the country such individual represents to waive the immunity of that individual;

"(2) through the appropriate United States foreign mission, promptly inform the foreign ministry of the offender's country of the United States Government's intention actively to pursue compensation for all damages resulting from the actions of the offender; and

"(3) if such waiver is denied, immediately declare such individual non grata or ensure the removal from the United States or, when appropriate, declare that the individual's principal sponsor is no longer acceptable as a diplomat or consular representative in the United States if there is a prima facie case against such individual which, absent immunity from criminal jurisdiction, would lead to prosecution.

"(b) The Secretary of State shall notify the Attorney General of each individual entitled to immunity from the criminal jurisdiction of the United States who voluntarily leaves, or is asked to leave, the United States because of that individual's alleged involvement in a serious criminal offense in order to prevent permanently that person from reentering the United States.".

(b) EXCLUSION OF ALIENS PREVIOUSLY INVOLVED IN A SERIOUS CRIMINAL OFFENSE COMMITTED IN THE UNITED STATES.—Section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) is amended—

(1) by striking out the period at the end of paragraph (33) and inserting in lieu thereof "; and"; and

(2) by adding after paragraph (33) the following new paragraph:

"(34) Any alien with respect to whom the Secretary of State has notified the Attorney General under section 204C of the Foreign Missions Act because of that alien's alleged involvement in an offense defined in section 202(a)(9) of that Act, except that such alien may be admitted to the United States—

"(A) with respect to any proceeding regarding such crime, or

"(B) if the Attorney General, in consultation with the Secretary of State, determines that admitting such individual into the United States is in the national interest.".

SEC. 4605. AUTHORITY TO INSTITUTE AND MAINTAIN CRIMINAL PROSECUTIONS.

Section 5(a) of the Diplomatic Relations Act (22 U.S.C. 254(a)), as amended by section 502(b)(1) of this Act, is further amended by inserting before the period at the end of the first sentence the following: ", except that, in the case of a criminal proceeding, prosecution may be instituted and maintained if no measure is taken in derogation of any immunities of any individual who is entitled to immunity from the criminal jurisdiction of the United States".

SEC. 4606. REVIEW OF UNITED STATES POLICY ON DIPLOMATIC IMMUNITY.

The Secretary of State shall review the policy of the United States of providing privileges and immunities to foreign missions, the members of the mission, their families, the diplomatic couriers, and others which result in treatment which is more favorable than the treatment required to be provided under the Vienna Convention on Diplomatic Relations. Within 180 days after the date of enactment of this Act, the Secretary of State shall submit to the Congress a report including recommendations—

(1) for such changes as may be necessary in such United States policy so that such privileges and immunities do not exceed United States treaty obligations; and

(2) to promote the observance of United States law by foreign missions, the members of the mission, their families, the diplomatic couriers, and others.

SEC. 4607. REVIEW OF PROCEDURES FOR ISSUING VISAS TO DIPLOMATS TO THE UNITED STATES AND THE UNITED NATIONS.

In order to ensure conformity with the treatment accorded to United States diplomats by other countries, the Secretary of State, in consultation with the Attorney General, shall review the procedures, and make such changes in the procedures as may be necessary, for issuing nonimmigrant visas to the aliens described in subparagraphs (A) and (G) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)). Within 1 year after the date of enactment of this Act, the Secretary of State shall submit to the Congress a report on the results of such review and describing the changes, if any, made in such procedures.

SEC. 4608. LIABILITY INSURANCE TO BE CARRIED BY DIPLOMATIC MISSIONS.

(a) REQUIREMENT.—Section 6 of the Diplomatic Relations Act (22 U.S.C. 254e) is amended by adding at the end thereof the following new subsection:

"(d) The Director of the Office of Foreign Missions shall, by regulations, establish, and take such steps as he deems necessary to ensure compliance with, liability insurance requirements which can reasonably be expected to afford adequate compensation for injury to person or property resulting from or arising out of the activities of a mission, members of the mission and their families, and individuals described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946, other than liability relating to risks described in subsection (b).".

(b) CONFORMING AMENDMENT.—Subsection (a) of such section is amended by striking out "subsection (b)" and inserting in lieu thereof "subsections (b) and (d)".

SEC. 4609. DIPLOMATIC POUCHES.

The President shall—

(1) take such steps as may be necessary to prevent the use of diplomatic pouches for the illicit transportation of narcotics, explosives, and weapons and any material used to foster terrorism into the United States; and

(2) seek in appropriate fora: the adoption of measures which will ensure that diplomatic pouches are not used to smuggle illicit narcotics, explosives, weapons, and any materials used to foster terrorism.

SEC. 4610. DEFINITIONS.

(a) FOREIGN MISSIONS ACT AMENDED.—Section 202(a) of the Foreign Missions Act is amended—

(1) by striking out "and" at the end of paragraph (7);

(2) by striking out the period at the end of paragraph (8) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following new paragraphs:

"(9) the term 'serious criminal offense' means—

"(A) any felony;

"(B) any crime of violence, as defined in section 16 of title 18, United States Code; or

"(C) reckless driving or driving while intoxicated or under the influence of alcohol or drugs which involves personal injury; and

"(10) the term 'individual entitled to immunity from the criminal jurisdiction of the United States' means any individual who is not subject to such criminal jurisdiction as a result of international obligations of the United States arising from multilateral agreements, bilateral agreements, or international law.".

(b) DIPLOMATIC RELATIONS ACT AMENDED.—Section of the Diplomatic Relations Act (22 U.S.C. 254a) is amended—

(1) by striking out "and" at the end of paragraph (3);

(2) by striking out the period at the end of paragraph (4) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(5) the term 'serious criminal offense' means—

"(A) any felony;

"(B) any crime of violence, as defined in section 16 of title 18, United States Code; or

"(C) reckless driving or driving while intoxicated or under the influence of alcohol or drugs which involves personal injury; and

"(6) the term 'individual entitled to immunity from the criminal jurisdiction of the United States' means any individual who is not subject to such criminal jurisdiction as a result of international obligations of the United States arising from multilateral agreements, bilateral agreements, or international law.".

(c) DEFINITION OF FAMILY MEMBERS.—Paragraph (2) of section 2 of the Diplomatic Relations Act (22 U.S.C. 254a) is amended to read as follows:

"(2) the term 'family', subject to further limitation by the Secretary of State where warranted by reciprocity or exceptional circumstances, means—

"(A) the spouse of a member of a mission described in paragraph (1)(A) and his or her unmarried children under 21 years of age, who are not members of some other household, and who reside exclusively in the principal's household, if the spouse or children are not nationals of the United States;

"(B) the spouse of a member of a mission described in paragraph (1)(B) and his or her unmarried children under 21 years of age, who are not members of some other household, and who reside exclusively in the principal's household, if the spouse or children are not nationals or permanent residents of the United States;

"(C) the unmarried children of a member of a mission described in paragraph (1)(A) who are under 23 years of age and attending an institution of higher education on a full-time basis, if they are not nationals of the United States;

"(D) the unmarried children of a member of a mission described in paragraph (1)(B) who are under 23 years of age and attending an institution of higher education on a full-time basis, if they are not nationals or permanent residents of the United States; and

"(E) under exceptional circumstances and with the express advance approval of the Department of State, other persons who are not members of some other household, who reside exclusively in the principal's household, and who are recognized by the sending State as members of the family forming part of the household.".

At the appropriate place in the bill, add the following:

SEC. . Sense of the Senate relating to illegal drug activities.

Whereas there has been a severe, cancer-like growth of youth gangs who abuse, transport, and traffic in illegal drugs;

Whereas such youth gangs engage in acts of violence, often on a random basis, resulting in death or serious bodily injury to thousands of people, as well as terrorizing tens of thousands of others; and

Whereas such youth gangs have spread their activities from Southern California to more than 50 cities throughout the United States, thereby clearly indicating that the threat posed by these gangs is national in nature, requiring a strong federal response;

Furthermore, whereas, the nation's insular territories and commonwealths of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Mariana Islands and Palau face the growing threat from drugs, and are on the frontier of illegal drug shipments to the mainlands;

Whereas, roughly 80% of the drugs coming to the island of Puerto Rico are for transshipment to the mainland United States, and the two year old drug fighting unit that coordinates Puerto Rico's drug enforcement has seized drugs with a value in excess of $1.5 billion, most of which otherwise would have flooded the streets of American cities; and

Whereas, the insular governments have demonstrated their commitment to the war on drugs by committing significant resources to this challenge and the Nation must commit itself to further assistance to the insular areas, and to coordinating their efforts with the national anti-drug effort;

Furthermore, whereas, stopping drugs at the source is one of the critical elements of our government's war on drugs; and

Whereas, the State Department's Bureau of International Narcotics Matters Airwing Operations is an important tool of our government's policy against narcotics trafficking.

It is, therefore, the sense of the Senate that the Director of National Drug Control Policy, (the Director), should review the entire drug control problem to determine priorities for new resources or shifting of existing resources, giving particular attention to:

(1) assistance to the insular territorial and commonwealth governments of Puerto Rico, Virgin Islands, Guam, American Samoa, Mariana Islands and Palau;

(2) assistance to the State Department's Bureau of International Narcotics Matters Airwing Operations; and

(3) assistance to control the present and growing threat posed to the nation by youth gangs which traffic in illegal drugs.

Based upon his findings, the Director should consider, as necessary, recommending significant resources in addition to those specifically allocated in this Act, utilizing his authority to reprogram or transfer monies, and requesting a reallocation of monies by the Congress.

At the appropriate place in the bill, insert the following:

SEC. . INCREASED PENALTIES FOR CERTAIN SERIOUS CRACK POSSESSION OFFENSES.

(a) Section 404(a) of the Controlled Substances Act (21 U.S.C. 844(a)) is amended by inserting after the second sentence the following new sentence: "Notwithstanding the preceding sentence, a person convicted under this subsection for the possession of a substance which contains cocaine base shall be fined under title 18, United States Code, or imprisoned not less than 5 years and not more than 20 years, or both, if the conviction is a first conviction under this subsection and the amount of the mixture or substance exceeds 5 grams, if the conviction is after a prior conviction for the possession of such a mixture or substance under this subsection becomes final and the amount of the mixture or substance exceeds 3 grams, or if the conviction is after 2 or more prior convictions for the possession of such a mixture or substance under this subsection become final and the amount of the mixture or substance exceeds 1 gram."

(1) Delete ", or to have used," wherever it appears (page 2 lines 7 & 19, page 3 line 13)

(2) Add at the end the following:

"(d) EFFECTIVE DATE.—The amendments in this section shall apply to offenses occurring or completed on or after January 1, 1989 except in cases involving parole where the amendments in this section shall apply upon the date of enactment."

At the appropriate place in the bill, insert the following new section:

SEC. . REVOCATION OF PROBATION, PAROLE, AND SUPERVISED RELEASE FOR USE OR POSSESSION OF A CONTROLLED SUBSTANCE.

(a) PROBATION.—(1) Section 3563(a) of title 18, United States Code, is amended by—

(A) striking "and" after the semicolon in paragraph (1);

(B) striking the period at the end of paragraph (2) and inserting "; and"; and

(C) inserting after paragraph (2) the following:

"(3) for a felony, a misdemeanor, or an infraction, that the defendant not possess illegal controlled substances."

(2) Section 3565(a) of title 18, United States Code, is amended by adding at the end thereof the following: "Notwithstanding any other provision of this section, if a defendant is found to be in possession of a controlled substance, thereby violating the condition imposed by section 3563(a)(3), the court shall revoke the sentence of probation and sentence the defendant to not less than one-third of the original sentence.".

(b) SUPERVISED RELEASE.—(1) Section 3583(d) of title 18, United States Code, is amended in the first sentence by striking the period and inserting "and that the defendant not possess illegal controlled substances.".

(2) Section 3583 of title 18, United States Code, is amended by adding at the end thereof the following:

"(g) USE OF CONTROLLED SUBSTANCES.—If the defendant is found to be in the possession of a controlled substance the court shall terminate the term of supervised release and require the defendant to serve in prison not less than one-third of the term of supervised release.".

(c) PAROLE.—(1) Section 4209(a) of title 18, United States Code, is amended in the first sentence by inserting after "local crime" the following ", that the parolee not possess illegal controlled substances.".

(2) Subsection (c) of section 4209 of title 18, United States Code, is amended by—

(A) striking the dash and "(1)";

(B) striking the semicolon at the end of paragraph (1) and all of paragraph (2) and inserting a period; and

(C) striking "subparagraph (1) or (2) of".

(3) Section 4214 of title 18, United States Code, is amended by adding at the end thereof the following:

"(f) Notwithstanding any other provision of this section, a parolee who is found to be in possession of, a controlled substance shall have his parole revoked.".

(d) EFFECTIVE DATE.—The amendment in this section shall apply to offenses occurring or completed on or after January 1, 1989, except in cases involving parole where the amendments in this section shall apply upon the date of enactment.

Viz: On page 558, line 5, strike "(l)(1)" and insert in lieu thereof "(n)(1)".

On page 561, strike "(3)" on line 11 and insert in lieu thereof "(4)" , and insert between lines 10 and 11 the following new paragraph:

"(3) In carrying out the provisions of this subsection, the Secretary shall only establish requirements that are consistent with the international obligations of the United States, and the Secretary shall take into consideration any applicable laws and regulations of foreign countries.

On page 565, Insert "(1)" on line 2 immediately before "No State" , and insert between lines 10 and 11 the following new paragraph:

"(2) In prescribing regulations under this section, the Secretary shall only establish requirements that are consistent with the international obligations of the United States, and the Secretary shall take into consideration any applicable laws and regulations of foreign countries.

On page 3, line 1 of Senate amendment #3695, strike "(2)" and insert in lieu thereof: "(3)";

On page 3, line 21 of Senate amendment #3695, after "court.", add the following: "The court shall continue to have the discretion in subparagraph (A) above.".

On page 15, line 1, strike "may" and insert in lieu thereof "may, 15 days after providing notification to the Committees on Appropriations and the appropriate authorizing committees of the Senate and the House of Representatives,". On page 15, line 3 immediately preceding "after", insert "15 days".

On page 15, line 4, after "Appropriations" insert "and the appropriate authorizing committees".

At the end of the amendment add the following:

TITLE VIII—CONSISTENCY OF ACT WITH INTERNATIONAL OBLIGATIONS OF THE UNITED STATES

SEC. 8001. CONSISTENCY OF ACT WITH INTERNATIONAL OBLIGATIONS OF THE UNITED STATES.

In prescribing regulations under this Act or any amendment made by this Act, the head of the appropriate agency shall only establish requirements that are consistent with the international obligations of the United States, and the head of the appropriate agency shall take into consideration any applicable laws and regulations of foreign countries.

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Federal Debt Collection Procedures Act of 1988".

TITLE I—FEDERAL DEBT COLLECTION PROCEDURES ACT

Subtitle A—Debt Collection

SEC. 601. (a) This Act may be cited as the "Federal Debt Collection Procedures Act of 1988".

(b) Title 28 of the United States Code is amended by inserting immediately after chapter 175 the following:

"CHAPTER 176—FEDERAL DEBT COLLECTION PROCEDURE

"Subchapter
"A. Definitions and General Provisions 3001
"B. Prejudgment Remedies 3101
"C. Judgments; Liens 3201
"D. Postjudgment Remedies 3301
"E. Exempt Property 3401
"F. Fraudulent Transfers 3501
"G. Partition 3601
"H. Foreclosure of Security Interests 3701

"SUBCHAPTER A—DEFINITIONS AND GENERAL PROVISIONS

"Sec.
"3001. Definitions.
"3002. Rules of construction.
"3003. Nationwide enforcement.
"3004. Priority of claims of the United States.
"3005. Claims of United States not barred by State statute of limitations.
"3006. Right of set-off or recoupment.
"3007. Discovery.
"3008. Affidavit requirements.
"3009. Perishable property.
"3010. Immunity.
"3011. Proceedings before United States magistrates.
"3012. United States marshals' authority to designate keeper.
"3013. Co-owned property.
"3014. Assessment of charges on a claim.
"3015. Funding.
"3016. Effective date.
"3017. Investigative authority.
"3018. Subrogation.

"SUBCHAPTER A—DEFINITIONS AND GENERAL PROVISIONS

"§ 3001. Definitions

"As used in this chapter—

"(a) 'claim' means amounts owing on account of direct loans or loans insured or guaranteed by the United States and all other amounts due the United States from or on account of fees, duties, leases, rents, services, sales of real or personal property, overpayments, fines, assessments, penalties, restitution, damages, interest, taxes, bail bond forfeitures, reimbursements and recovery of costs incurred and other sources of indebtedness. This definition includes amounts due the United States for the benefit of an Indian tribe or individual Indian.

"(b) 'Counsel for the United States' shall include for the purposes of this chapter, a United States attorney, an assistant United States attorney designated to act on behalf of the United States attorney, an attorney with the United States Department of Justice or other Federal agency having litigation authority and any private attorney authorized by contract to conduct litigation for collection of debts on behalf of the United States.

"(c) 'Court' means any court created by the Congress of the United States exclusive of the United States Tax Court.

"(d) 'Debt' means liability to the United States on a claim.

"(e) 'Debtor' means a person who is liable to the United States on a claim.

"(f) 'Debt collection personnel' means personnel employed by any agency of the Federal government whose primary duties are the collection of the debts owed to the United States.

"(g) 'Disposable earnings' means that part of the earnings remaining after all deductions required by law have been withheld and 'nonexempt disposable earnings' means 25 percent of disposable earnings.

"(h) 'Earnings' means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension or retirement program.

"(i) 'Garnishee' means a person other than the debtor who has, or is thought to have, possession, custody or control of any property of the debtor, including obligations owed to the debtor whether such obligations are past due or have yet to become due, against whom a garnishment has been issued by the clerk of the court.

"(j) 'Judgment' means a judgment, order or decree entered in favor of the United States in any court whether arising from a civil or criminal proceeding regarding a claim.

"(k) 'Judgment creditor' means the United States in situations in which the United States has judgments in its favor, whenever referred to in this chapter.

"(l) 'Judgment debtor' means a person against whom the United States holds a judgment on a debt.

"(m) 'Person' includes a natural person, including individual Indians, a corporation, a partnership, an unincorporated association, a trust or an estate or other entity, public or private, including local governments and Indian tribes.

"(n) 'Prejudgment remedy' means the remedies of attachment, garnishment, replevin, receivership, sequestration, injunction or a combination of any of the foregoing that are sought prior to judgment.

"(o) 'Property' includes any present or future interest in real, personal (including, but not limited to, earnings, goods and choses in action), or mixed property, whether legal or equitable, tangible or intangible, vested or contingent, and wherever located and however held, whether held as a tenancy in common, joint tenancy, tenancy by the entirety, community property, in partnership, or in trust (including spendthrift and pension trusts), and excludes any property held in trust by the United States for the benefit of any Indian tribe or individual Indian or any Indian lands subject to restrictions against alienation imposed by the United States.

"(p) 'Service' under the provisions of this chapter shall be in accordance with the Federal Rules of Civil Procedure.

"(q) 'State' includes the several states, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Marianas and any of the territories and possessions of the United States.

"(r) 'United States' includes an officer or agency thereof, a Federal corporation, Federal instrumentality, department, commission, board or other Federal entity.

"(s) 'United States marshal' means the United States marshal, his designee or contractor.

"§ 3002. Rules of construction

"In this title—

"(a) 'includes' and 'including' are not limiting;

"(b) 'or' is not exclusive;

"(c) the singular includes the plural;

"(d) the provisions are general and intended as a unified coverage of the subject matter;

"(e) if any provision or amendment made by this chapter or application thereof to any person is held invalid, the provisions of every other part and their application shall not be affected thereby;

"(f) the cases arising under the provisions herein shall not affect cases arising under admiralty jurisdiction;

"(g) the provisions of this chapter do not and should not be construed to curtail or limit any rights the United States has to collect taxes under any other provision of Federal law;

"(h) the provisions of this chapter do not, and should not be construed to, curtail or limit any rights the United States has under any other provision of Federal law to collect any fine, penalty, assessment, restitution, or forfeiture arising in a criminal case; and

"(i) the provisions of this chapter do not, and should not be construed to, curtail or limit the rights the United States has under any other provision of Federal law to appoint receivers.

"§ 3003. Nationwide enforcement

"Any writ, order, judgment, or other process, including a summons and complaint, obtained hereunder may be enforced by the court issuing the writ in any state, regardless of where the person is served with the writ, order or process.

"§ 3004. Priority of claims of the United States

"The priorities established by the various provisions of this chapter shall be superseded by the provisions of section 3713 of title 31, United States Code, when the debtor or, if deceased, his estate is insolvent as determined under that section and the priority of the United States shall be in accordance therewith.

"§ 3005. Claims of the United States not barred by State statute of limitations

"The United States shall not be barred by the statute of limitations of any State in the enforcement of any of its claims.

"§ 3006. Right of set-off or recoupment

"Except as specifically provided for in this chapter, nothing in this chapter shall be construed to affect the common law or statutory rights to set-off or recoupment.

"§ 3007. Discovery

"(a) The United States may have discovery from any person including the debtor regarding the financial condition of the debtor in any case in which the United States seeks to enforce a claim. Such discovery may be before judgment or after judgment is entered in the case and in the manner in which discovery is provided for in the Federal Rules Civil Procedure.

"(b) After judgment, the United States may also subpoena the judgment debtor or a third party to appear before the court at a location consistent with the Federal Rules of Civil Procedure with all records, books and other documents and to answer under oath questions regarding the debtor's financial condition and ability to satisfy the judgment.

"(c) The court shall impose appropriate sanctions as provided by the Federal Rules of Civil Procedure or the court's contempt power, including arrest of the offending person or debtor, for failure to comply with these discovery procedures.

"§ 3008. Affidavit requirements

"Any affidavit required of the United States by this chapter may be made upon information and belief, where reliable and reasonably necessary, establishing with particularity, to the court's satisfaction, facts supporting the claim of the United States.

"§ 3009. Perishable property

"At any time during any proceedings, other than those under section 3103(a), the court may determine on its own initiative or upon motion of any party, that any seized or detained property, or any portion thereof, is likely to perish, waste, or be destroyed, or otherwise depreciate in value during the pendency of the proceedings. The court shall order the sale of the property or portion thereof and require the proceeds to be deposited with the clerk of the court. For purposes of liability on the part of the United States, the price paid at any such sale shall be conclusively presumed to be the fair market value.

"§ 3010. Immunity

"Counsel for the United States, but excluding any private attorneys authorized by contract to conduct litigation for collection of debts on behalf of the United States, and non-attorney debt collection personnel shall have absolute immunity in their individual and official capacities from any liability arising from errors, omissions or negligence in performance of their official debt collection duties.

"§ 3011. Proceedings before United States magistrates

"A district court of the United States may assign its duties in proceedings under this chapter to a United States magistrate to the extent not inconsistent with the Constitution and laws of the United States. A district court may adopt appropriate rules to carry out any such assignment.

"§ 3012. United States marshals' authority to designate keeper

"Whenever the United States marshal is authorized to seize property pursuant to the provisions of this chapter, the United States marshal shall be authorized to designate another person or Federal agency to hold for safekeeping such property seized.

"§ 3013. Co-owned property

"The remedies available to the United States under this chapter shall be enforced against property which is co-owned by a debtor and others to the extent allowed by the law of the state where the property is located. Specific references to co-owned property in the provisions regarding execution and garnishment shall not restrict the application of other remedies to co-owned property in the manner stated above.

"For the purposes of this section, 'property' does not include the rights or interest of an individual other than the debtor in a retirement system for Federal military or civilian personnel established by the United States or any agency thereof. A 'retirement system for Federal military or civilian personnel' means a pension or annuity system for Federal military or civilian personnel of more than one agency, or for some or all of such personnel of a single agency, established by statute or regulation pursuant to statutory authority.

"§ 3014. Assessment of charges on a claim

"The United States may assess on a claim a charge of 10 percent of the amount of the claim to cover the cost of processing and handling the litigation and judicial enforcement of the claim.

"§ 3015. Funding

"It is hereby authorized that such sums be appropriated as may be necessary to carry out the provisions of this chapter. Appropriations authorized under this section shall remain available for obligations necessary to implement this chapter for one year.

"§ 3016. Effective date

"This Act and the amendments made by this Act shall take effect one hundred and eighty days after the date of enactment and shall apply to all claims and debts owed to the United States and judgments in favor of the United States.

"§ 3017. Investigative authority

"When the United States has reason to believe that an activity in violation of legal standards threatens to deprive it of a claim, the appropriate United States Attorney may commence a proceeding against named or unknown parties for the purpose of determining whether a claim for relief should be asserted under applicable law, and all discovery proceedings available under the Federal Rules of Civil Procedures shall be available in such proceeding.

"§ 3018. Subrogation

"When the United States asserts a claim against a debtor for sums alleged to be due the United States, the United States may name as an additional defendant then or by way of amendment of its complaint, any party believed to owe sums to the debtor arising out of the transaction or occurrence giving rise to the obligation to the United States, including but not limited to obligations on account of requirements to provide goods or services pursuant to a loan or loan guarantee extended pursuant to Federal law. If such party pays or is found liable, any amounts paid to the United States shall be credited to the account of the debtor.

"SUBCHAPTER B—PREJUDGMENT REMEDIES

"Sec.
"3101. Prejudgment remedies with prior notice.
"3102. Prejudgment remedies without prior notice.
"3103. Attachment.
"3104. Garnishment.
"3105. Injunctions.
"3106. Sequestration.
"3107. Replevin.
"3108. Receivership.

"SUBCHAPTER B—PREJUDGMENT REMEDIES

"§ 3101. Prejudgment remedies with prior notice

"(a) APPLICATION.—(1) The United States may in conjunction with the complaint or at any time after the filing of a civil action, make application, under oath, to the court to issue any prejudgment remedy allowed by law.

"(2) Such application shall be filed with the court and shall set forth the factual and legal basis for each prejudgment remedy sought.

"(3) Such application shall state that the party against whom any prejudgment remedy is sought shall be afforded an opportunity for a hearing.

"(b) GROUNDS.—Any prejudgment remedy may be issued in favor of the United States by any court of the United States on application before judgment when—

"(1) the application sets forth with particularity, that all statutory requirements for the issuance of such prejudgment remedy sought under this chapter have been complied with by the United States; and

"(2) the court finds that the United States has shown the probable success of its of claim.

"(c) Notice; Form of Notice.—Upon the filing of an application, the clerk of the court shall issue a notice directed to any person against whom any prejudgment remedy would operate, substantially in the following form—

"NOTICE

"You are hereby notified that your [property] may be taken away from you by the United States, which says that you owe the United States a debt of $[amount]. The United States wants to take your property so that it can be sure you will pay if the court decides that you owe this money.

"If you do not want to have your property taken away, you may ask for a hearing before this court. You may ask for the hearing anytime within 20 days from the date that this notice was mailed as indicated below by the clerk. The hearing, if you so demand, will take place within five working days after you notify the court. You may ask for the hearing by checking the box at the bottom of this notice and filing it with the court at the following address: [address of court]. You must also send a copy to counsel for the United States at [address], so that the United States knows that you want the hearing.

"At the hearing, the court will decide whether the claim against you is probably valid and whether other legal requirements have been met. In addition, there are certain exemptions under Federal law which you may be entitled to claim with respect to the property.

"If you do not check the box requesting a date for a hearing and take this notice to the court within seven days, the court will automatically assume you do not want a hearing and you will lose your right to a hearing before the United States may take your property with the court's permission.

"If you have any questions concerning your rights or this procedure, you should consult an attorney.

"DATE OF MAILING: ________

"(d) Service of Notice and Application.—(1) A copy of the notice and a copy of the application for issuance of any prejudgment remedy shall be served by counsel for the United States by first class mail on each party against whom any remedy is sought. If such service is not possible, then service may be made under Rule 4 of the Federal Rules of Civil Procedure, as appropriate.

"(2) Proof of service by mail may be made by affidavit or certification of mailing and shall set forth the actual date of mailing.

"(e) Time to Request Hearing Date; Form of Request.—(1) Each person served with a copy of the notice set forth above and the application for any prejudgment remedy may request a date be set for the hearing on such application by filing with the clerk of the court within 20 working days after service of the notice a written request for hearing date. The request for hearing shall be made by using the form provided or in some other writing. A copy of the request for hearing date shall be mailed by the person requesting the hearing to counsel for the United States.

"(2) The clerk of the court shall apprise counsel for the United States and the person requesting the hearing of the date of hearing.

"(f) Waiver of Hearing.—(1) If no request for hearing date is filed within the required time, counsel for the United States shall file an affidavit of default setting forth that service was made, that no request for hearing date was filed and that the party against whom any prejudgment remedy is sought has apparently waived any hearing. Counsel for the United States shall also file a proposed form of the written order requested. Upon filing of such affidavit, the clerk shall enter the order of waiver of record and any party so defaulted loses his right to a hearing prior to the issuance of the prejudgment remedy sought.

"(2) Upon entry of the order of waiver, the clerk shall immediately deliver the court file to the judge to whom the matter is assigned.

"(g) Judicial Review Application; Issuance of Prejudgment Remedies With Notice.—(1) The court shall, within five days after hearing or the entry of the order of waiver, review and examine all pleadings, evidence, affidavits and documents filed in the action to determine the following—

"(A) that evidence of service has been filed together with the original of the application and copy of notice;

"(B) where an order of waiver has been entered, that the affidavit of default has been filed and the order entered by the clerk;

"(C) that the claim or claims of the United States are based on facts established by the evidence or stated in the affidavit are sufficient to show that such claim or claims are probably valid; and

"(D) that any statutory requirement of this chapter for the issuance of any prejudgment remedy has been shown.

"(2) Upon the court's determination that the requirements of subsection (g)(1) have been met, the court shall issue all process sufficient to put into effect the prejudgment remedy sought.

§ 3102. Prejudgment remedies without prior notice

"(a) Grounds.—Any prejudgment remedy may be issued by any court without prior notice to the person against whom it will operate when the United States has a reasonable cause to believe that—

"(1) the person against whom the prejudgment remedy is sought is about to leave the jurisdiction of the United States with the intent to hinder, delay, or defraud the United States and has refused to secure that debt, or is a fugitive from justice;

"(2) such person has secreted or is about to secrete property;

"(3) such person has or is about to assign, dispose, remove, or secrete property, wholly or in part, or that such person is about to assign or dispose of property with the effect of hindering, delaying, or defrauding creditors;

"(4) the United States is the owner, lessor or otherwise is lawfully entitled to the immediate possession of the property claimed and is seeking a prejudgment remedy in the nature of replevin, receivership or sequestration;

"(5) a prejudgment remedy is required to obtain jurisdiction within the United States;

"(6) a constructive or resulting trust should be impressed on the property in favor of the United States if such person is likely to put the property beyond the reach of the United States;

"(7) the person against whom the prejudgment remedy is sought is converting, is about to convert or has converted his property of whatever kind, or some part thereof, into money, securities, or evidence of debt in a manner prejudicial to creditors;

"(8) the person against whom the prejudgment remedy is sought has evaded service of process by concealing himself or has temporarily withdrawn from the jurisdiction of the United States; or

"(9) the debt is due for property obtained illegally or by fraud.

"(b) Application; Affidavit; Bond; Issuance of Writ.—(1) Contemporaneously with or at any time after the filing of a civil action, the United States shall file an application supported by an affidavit made upon information and belief, where reliable and reasonably necessary, establishing with particularity to the court's satisfaction facts supporting the probable validity of the claim and the right of the United States to recover what is demanded in the application. The application shall state the amount of the debt owed the United States, including principal, interest, and costs, if any, and one or more of the grounds set forth in section 3102(a) and the specific requirements of the specific remedy sought.

"(2) No bond is required of the United States.

"(3) Upon the court's determination that the requirements of subsection (b)(1) have been met, the court shall issue all process sufficient to put into effect the prejudgment remedy sought.

"(c) Notice and Hearing; Waiver of Hearing.—(1) Upon filing of an application as provided in this section, the clerk shall issue notice in substantially the following form to the counsel for the United States for service upon the party against whom any prejudgment remedy is sought in accordance with subsection (3) of this section—

"NOTICE

"You are hereby notified that your [property] is being taken away from you by the United States, who says that you owe it a debt of $[amount]. The United States is taking your property because it says

[Insert one or more of the specific grounds set forth in section 3102(a).]

"In addition, you are hereby notified that there are certain exemptions under Federal law which you may be entitled to claim with respect to your property.

"If you disagree and think you do not owe the United States, or that you have not done what is stated above, then you can ask this court to hear your side of the story and give your property back to you. If you want such a hearing, it will be given to you within five working days if you so demand after you notify the court that you want one. To do so, check the box at the bottom of this notice or prepare your request in writing and mail it or take it to the clerk of the court at the following address: [address]. You must also send a copy to counsel for the United States at [address], so that the United States will know you want a hearing.

"If you do not request a hearing within thirty days from [date of issue] your property may be disposed of without further notice.

"You should consult a lawyer if you have any questions about your rights about this procedure.

"(2) When a prejudgment remedy is issued under this section, the person against whom it is sought may immediately move to quash such order and the court shall on the request of the debtor hear such motion within five days from the date the request was filed. The issues at such hearing shall be limited to—

"(A) the probable validity of the claim or claims of the United States and any defenses and claims of exemptions of the party against whom such prejudgment remedy will operate; and

"(B) the existence of any statutory requirement for the issuance of any prejudgment remedy sought, plus the existence of any ground set forth in section 3102(a) of this chapter.

"(3) Counsel for the United States shall, at the time of the seizure, attachment or garnishment, or within three days thereafter, exercise reasonable diligence to serve the person against whom a prejudgment remedy is sought with an application, order and prescribed notice of the seizure, impoundment or such other act ordered by the court and of said person's right to an immediate hearing contesting the same.

"(4) If no request for a hearing is filed with the clerk within thirty days after the notice of seizure is issued by the clerk, the United States may dispose of the property as provided for in this subchapter.

"§ 3103. Attachment

"(a) PROPERTY SUBJECT TO ATTACHMENT.—(1) GENERALLY.—All property of the debtor or garnishee, except earnings and property exempt under the provisions of this chapter, may be attached pursuant to a writ of attachment in any action in which a debt or damages are recoverable and may be held as security to satisfy such judgment and costs as the United States may recover.

"(2) The amount to be secured by an attachment shall be determined as follows—

"(A) the amount of the debt owed to the United States by the defendant; and

"(B) the estimated amount of interest and costs likely to be taxed by the court.

"(3) LIMITATION ON AMOUNT.—In any action or suit for an amount which is liquidated or ascertainable by calculation, no attachment shall be made for a larger sum than the amount of the debt and such additional amount as is reasonably necessary to provide for interest thereon and costs likely to be taxed in the action.

"(b) AVAILABILITY OF ATTACHMENT.—The United States after complying with the provisions of section 3101 or 3102 may, in the following cases, have the property of the defendant attached as security for satisfaction of any judgment which may be recovered by the United States—

"(1) in an action upon a contract, express or implied, for payment of money which is not fully secured by real or personal property, or, if originally so secured, the value of such security may, without any act of the United States or the person to whom the security was given, be substantially diminished below the amount of the debt;

"(2) when an action is pending for damages in tort and the defendant is about to dispose of or remove his property beyond the jurisdiction of the United States;

"(3) in an action for damages or upon contract, express or implied, against a defendant not residing within the jurisdiction of the United States; or

"(4) in an action to recover fines, penalties, or taxes.

"(c) ISSUANCE OF WRIT; CONTENTS.—(1) A writ of attachment shall be issued by the court directing the United States marshal of the district where the property is located to attach so much of the defendant's property as will be sufficient or is available to satisfy the debt of the United States.

"(2) Several writs of attachment may, at the option of the United States, be issued at the same time, or in succession, and sent to different districts until sufficient property is attached to satisfy the debt.

"(3) The writ of attachment shall contain—

"(A) the date of the issuance of the writ;

"(B) the court title and the docket number and name of the cause of action;

"(C) the name and last known address of the defendant;

"(D) the amount to be secured by the attachment; and

"(E) a reasonable description of the property to the extent available.

"(d) LEVY OF ATTACHMENT.—(1) The United States marshal receiving the writ shall proceed without delay to levy upon the property of the defendant found within his district, unless otherwise directed by counsel for the United States. The Marshal shall not sell property unless ordered by the court.

"(2) In performing the levy, the United States marshal may enter onto the lands and into the residence or other buildings owned, occupied or controlled by the defendant. In cases where the writ is issued pursuant to section 3101, the Marshal shall not enter into a residence or other building except upon specific order of the court.

"(3) When real property is levied upon, the United States marshal shall file a copy of the notice of levy in the same manner as provided for judgments in section 3202. The United States marshal shall also serve a copy of the writ and notice of levy upon the defendant in the same manner that a summons is served in a civil action and make his return thereof. If the United States marshal is unable to serve the writ upon the defendant, he shall post the writ and notice of levy in a conspicuous place upon the property and so make his return thereof.

"(4) Levy upon personal property is made by taking possession of it. Levy on personal property not easily taken into possession or which cannot be taken into possession without great inconvenience or expense, may be made by affixing a copy of the writ and notice of levy on it or in a conspicuous place in the vicinity of it describing in the notice of levy the property by quantity and with sufficient detail to identify the property levied upon. A copy of the writ and notice of levy shall also be served upon the defendant in the same manner that a summons is served in a civil action. Upon completion of the levy of personal property, the United States marshal shall so make his return thereof.

"(e) RETURN OF WRIT; DUTIES OF MARSHAL; FURTHER RETURN.—(1) A United States marshal executing a writ of attachment shall return the writ with his action endorsed thereon or attached thereto and signed by him, to the court from which it was issued within thirty days after the date of the levy.

"(2) The return shall describe the property attached with sufficient certainty to identify it, state the location where it was attached, when it was attached and the disposition made of the property. If no property was attached, the return shall so state.

"(3) When personal property has been replevied as authorized by section 3103(j), the United States marshal shall deliver the replevin bond to the clerk of the court to be filed in the action.

"(4) When the property levied on is claimed, replevied or sold after the return, the United States marshal shall immediately make a further return to the clerk of the court showing the disposition of the property.

"(f) LEVY OF ATTACHMENT AS LIEN ON PROPERTY; SATISFACTION OF LIEN.—(1) A levy on property under a writ of attachment creates a lien on the property in favor of the United States.

"(2) The levy of the writ of attachment upon any property of defendant subject thereto is a lien from the date of the levy on the real property and on such personal property as remains in the custody of the attaching United States marshal and on the proceeds of such personal property as is sold.

"(3) The lien in favor of the United States marshal shall be ranked ahead of any other security interests perfected after the time of levy.

"(4) The lien shall arise from the time of levy and continue until a judgment in the case is obtained or denied, or the action is otherwise dismissed. The death of the defendant whose property is attached does not terminate the attachment lien. Upon issuance of a judgment in the action and registration under this chapter, the judgment lien so created relates back to the time of levy.

"(5) Upon entry of judgment for the United States, the court shall order the proceeds of the personal property, if any has been sold, to be applied to the satisfaction of the judgment, and also order the sale of any remaining personal property and the sale of any real property levied on to satisfy the judgment.

"(g) ATTACHMENT OF PERISHABLE PROPERTY; SALE; PROCEDURE.—(1) When personal property that has been attached is not replevied, the court may order it to be sold when it appears that the property is in danger of serious and immediate waste or decay, or that keeping it until trial will result in such expense or deterioration in value as substantially will lessen the amount likely to be realized therefrom.

"(2) In ascertaining whether the property is in danger of serious and immediate waste or decay or that keeping of the property until trial will result in such expense or deterioration in value as will substantially lessen the amount likely to be realized therefrom, the court may require or dispense with notice to the parties and may act upon such information provided by affidavit, certificate of the United States marshal or other proof, as appears sufficient to protect the interest of the parties.

"(h) DISPOSITION OF PROCEEDS OF SALE OF PERISHABLE PROPERTY; REPORT OF SALE.—Within five days after sale, the proceeds of the sale as provided in subsection 3103(g) after deduction of the United States marshal's expenses therefrom shall be paid by the United States marshal making the sale to the clerk of the court. The proceeds shall be accompanied by a statement in writing and signed by the United States marshal, to be filed in the action, stating the time and place of sale, the name of the purchaser and the amount received with an itemized account of expenses.

"(i) PRESERVATION OF PERSONAL PROPERTY UNDER ATTACHMENT.—If personal property in custody of the United States marshal under a writ of attachment is not replevied, claimed or sold, the court may make such order for its preservation or use as appears to be to the interest of the parties.

"(j) REPLEVIN OF ATTACHED PROPERTY BY DEFENDANT; BOND.—At any time before judgment, if the property has not previously been sold, defendant may replevy the property or any part thereof by giving a bond approved by counsel for the United States or the court and payable to the United States in double the amount of the debt.

"(k) JUDGMENT WHERE PERSONAL PROPERTY REPLEVIED.—When personal property under attachment has been replevied, the judgment which may be entered shall be against defendant and also against the sureties on his replevin bond for the amount of the judgment, interest and costs.

"(l) RESTORATION OF PROPERTY OR EXONERATION OF BOND; LEVY ON EXEMPT PROPERTY.—(1) If the attachment is vacated or if the judgment is for defendant, the court shall order the property or proceeds thereof restored to defendant or exonerate the replevin bond. The court may determine under what circumstances the defendant is entitled to receive the proceeds rather than the attached property.

"(2) When any property claimed to be exempt is levied upon, defendant may, at any time after such levy, apply to the court for vacation of such levy. If it appears to the court that the property so levied upon is exempt, the court shall order the levy vacated and the property returned to defendant.

"(m) REDUCTION OR DISCHARGE OF ATTACHMENT.—(1) If an excessive or unreasonable attachment is made, the defendant or person whose property has been attached may submit a written motion to the court which issued the writ for a reduction of the amount of the attachment or its discharge. Notice of such motion shall be served upon the United States in accordance with the Federal Rules of Civil Procedure. The defendant may move for reduction or dissolution of attachment as appropriate.

"(2) The court shall order a part of the property to be released, if upon hearing the court finds that the amount of the attachment is excessive or unreasonable or where the attachment is for a sum larger than the liquidated or ascertainable amount of the debt plus an amount necessary to include interest and costs likely to be taxed.

"(3) The court shall dissolve the attachment if the amount of the debt is unliquidated and unascertainable by calculation.

"§ 3104. Garnishment

"(a) All prejudgment garnishments shall meet the requirements of sections 3101 and 3102.

"(b) All prejudgment garnishments as authorized by the court hereunder shall be issued and answered in the same manner and to the same extent as set forth in section 3306 with the following exceptions—

"(1) The writ shall specify the date that the order authorizing prejudgment garnishment was entered.

"(2) The writ shall specify the amount claimed by the United States.

"§ 3105. Injunctions

"Whether or not there are other remedies available to the United States under this chapter, nothing in this chapter shall be construed to preclude or otherwise limit the United States or any other party from obtaining injunctive relief under the Federal Rules of Civil Procedure in actions for debts owed the United States.

"§ 3106. Sequestration

"(a) APPLICATION FOR WRIT OF SEQUESTRATION AND ORDER.—If the United States claims in its complaint the right to title or possession of property or seeks to enforce a lien or security interest in such property, the United States may file an affidavit showing—

"(1) a description of the property sufficient to identify it;

"(2) the approximate value of the property;

"(3) the location of the real property, or in the case of personal property, the last known and likely locations of the property;

"(4) the availability of sequestration.

"(b) AVAILABILITY OF SEQUESTRATION.—The United States after complying with, or in addition to, the provisions of sections 3101 or 3102 may have property sequestered—

"(1) upon a showing that there exists an immediate danger that the debtor or garnishee of such property will ill treat, waste, destroy or convert to his own use the property, which includes, but is not limited to, crops, timber, rents, perishable goods, livestock or the revenues therefrom; or

"(2) upon a showing that title to or possession of such property has been secured by the debtor or other defendant or the party in possession by surreptitious means, trick, scheme, fraud, force, violence, claim of adverse possession or such other claims or any means adverse to the claim in title or possession, or both, of the United States.

"(c) ISSUANCE OF WRIT.—A writ of sequestration shall be issued by the court directing the debtor or other defendant or party in possession to sequester the property and deliver it to the United States.

"(d) Unless inconsistent, the provisions governing section 3103(g) through (1) shall be applicable to this section.

"(e) These writs shall be served in accordance with the Federal Rules of Civil Procedure.

"§ 3107. Replevin

"(a) APPLICATION FOR WRIT.—If the United States claims in its complaint the right to possession of specific personal property, the United States may, at any time after complying with the provisions of section 3101 or 3102, file an affidavit showing—

"(1) that the United States is the owner of the property claimed, or is lawfully entitled to its immediate possession;

"(2) a description of the property;

"(3) that the property is wrongfully detained by the defendant;

"(4) the approximate value of the property.

"(b) SEIZURE.—If the court determines the United States has met the above requirements, it shall order that the United States marshal take possession of the specified property and deliver it to the United States.

"(c) REDELIVERY OF POSSESSION TO DEFENDANT.—The defendant may obtain redelivery of the property or any part thereof by giving bond as set forth in section 3103(j).

"§ 3108. Receivership

"(a) APPOINTMENT OF A RECEIVER.—The United States may apply for the appointment of a receiver for property in which it has an interest and which is or is to be the subject of an action in court. The application may be filed at anytime prior to judgment or during the pendency of an appeal if there is a danger that the property will be removed from the jurisdiction of the court, lost, materially injured or damaged, mismanaged or the United States has otherwise established grounds for such relief under section 3101(a) or 3102(a). However when the security agreement so provides, a receiver shall be appointed without notice or without regard to adequacy of security. An application made by the United States when it is not already a party to the action constitutes an appearance in the action and the United States shall be joined as a party.

"(b) POWERS OF RECEIVER; EMPLOYMENT OF COUNSEL.—The court appointing a receiver may authorize him to take possession of real and personal property and sue for, collect and sell obligations upon such conditions and for such purposes as the court shall direct and to administer, collect, improve, lease, repair or sell such real and personal property, as the court shall direct. A receiver appointed to manage residential or commercial property shall have demonstrable expertise in the management of these types of property. Unless expressly authorized by order of the court, a receiver shall have no power to employ attorneys, accountants, appraisers, auctioneers or other professional persons. Upon motion of the receiver or a party, powers granted to a receiver may be expanded or limited. A receiver appointed under the terms of a security agreement shall be entitled to recover the rents and profits of the property covered by the security agreement as additional security and to pay them over to the United States in payment of any amount due arising from a default by the debtor.

"(c) UNITED STATES AS SECURED PARTY.—In the event of any default or defaults in paying the principal, interest, taxes, water, rents, or premiums of insurance required by the security instrument or in the event of a nonfinanced default or defaults, the United States in any action to foreclose the security interest shall be entitled, without notice and without regard to adequacy of any security for the debt, to the appointment of a receiver of the rents and profits of the premises covered by the security interest, and the rents and profits of the premises are assigned to the United States as further security for the payment of the debts.

"(d) DURATION OF RECEIVERSHIP.—In an action to foreclose a security interest, the receivership shall terminate when the purchaser at the foreclosure sale takes lawful possession of the property unless the court directs otherwise. In all other actions, the receivership shall not continue past the entry of judgment unless the court orders it continued under section 3302(b) or unless the court otherwise directs its continuation.

"(e) ACCOUNTS; REQUIREMENT TO REPORT.—A receiver shall keep written accounts itemizing receipts and expenditures, describing the property and naming the depository of receivership funds and his accounts shall be open to inspection by any person having an apparent interest in the property. The receiver shall file reports at regular intervals as directed by the court and shall serve the United States with a copy thereof.

"(f) REMOVAL.—Upon motion of any party or upon its own initiative, the court which appointed the receiver may remove him at any time with or without cause.

"(g) PRIORITY.—If more than one court appoints a receiver, the receiver first qualifying under law shall be entitled to take possession, control or custody of the property.

"(h) COMMISSIONS OF RECEIVERS.—

"(1) GENERALLY.—A receiver is entitled to such commissions not exceeding 5 per centum of the sums received and disbursed by him as the court allows unless the court otherwise directs.

"(2) ALLOWANCE WHERE FUNDS DEPLETED.—If, at the termination of a receivership, there are no funds in the hands of a receiver, the court may fix the compensation of the receiver in accordance with the services rendered and may direct the party who moved for the appointment of the receiver to pay such compensation in addition to the necessary expenditures incurred by the receiver which remained unpaid.

"(3) PROCEDURE.—At the termination of a receivership, the receiver shall file a final accounting of his receipts and disbursements and apply for compensation setting forth the amount sought and the services rendered by him.

"SUBCHAPTER C—JUDGMENTS; LIENS

"Sec.
"3201. Judgment by confession.
"3202. Judgment lien.
"3203. Sale of property subject to judgment lien.
"3204. Interest on judgments.

"SUBCHAPTER C—JUDGMENTS: LIENS

"§ 3201. Judgment by confession

"(a) GENERAL PROVISION.—On application, a court may enter a judgment by confession in favor of the United States without the filing of a civil action for money due and owing.

"(b) VENUE.—The confession of judgment shall be filed in the district in which one or more of the defendants reside, can be found, are doing business at the time of the application, or in cases proceeding by in rem or quasi in rem jurisdiction where the property sought to be adjudicated is located.

"(c) STATEMENT BY DEFENDANT; CONTENTS.—Before a judgment by confession shall be entered, a sworn statement in writing shall be made and signed by the defendant after default and subsequent notice by the United States and filed with the court along with the application, stating—

"(1) the amount for which judgment may be entered and authorizing the entry of judgment;

"(2) the facts out of which the debt arose and that the amount confessed is justly due; and

"(3) that the person signing the statement understands that a judgment by confession allows the entry of judgment without further proceedings and authorizes enforced collection of the judgment.

"(d) ENTRY OF JUDGMENT.—The confession of judgment shall be filed with the clerk of the court. The clerk may enter a judgment for the amount confessed.

"(e) CONFESSION BY JOINT DEBTORS.—One or more joint debtors may confess a judgment for a joint debt due. Where all the joint debtors do not join in the confession, the judgment shall be entered and enforced against only those who confessed it. A confessed judgment against some of the joint debtors is not a bar to an action against the other joint debtors.

"(f) ENFORCEMENT OF JUDGMENT BY CONFESSION.—Judgments by confession shall be enforced in the same manner as other judgments.

"§ 3202. Judgment lien

"(a) CREATION OF LIEN GENERALLY.—A judgment shall be a lien upon all real property of a judgment debtor upon filing a certified copy of the abstract of the judgment in the manner in which a notice of tax lien would be filed under section 6323(f) (1) and (2) of the Internal Revenue Code of 1986.

"(b) IN CRIMINAL CASES.—A judgment obtained by the United States in a criminal case shall create a lien as provided in sections 3565 and 3613 of the Internal Revenue Code of 1986.

"(c) IN TAX CASES.—A judgment obtained by the United States in a tax case shall create a lien co-extensive with any lien created prior to judgment under section 6321 of the Internal Revenue Code of 1986; if no lien was so created prior to the judgment, then the procedure in subsection (a) shall be followed.

"(d) AMOUNT OF LIEN.—A lien created hereunder is for the amount necessary to satisfy the judgment, including costs and interest.

"(e) PRIORITY OF LIEN.—A lien created hereunder shall have priority over any other lien or encumbrance which is perfected later in time. However, liens created under sections 3565 and 3613 of the Internal Revenue Code of 1986, regarding criminal judgments or under section 6321 of the Internal Revenue Code of 1986, regarding tax judgments shall have priority as otherwise provided by law.

"(f) DURATION OF LIEN; RENEWAL.—(1) A lien created hereunder is effective, unless satisfied, for a period of twenty years.

"(2) The lien may be renewed for one additional period of twenty years upon filing a notice of renewal in the same manner as the judgment was filed and shall relate back to the date the judgment was filed. The notice of renewal must be filed before the expiration of the first twenty-year period to prevent the expiration of the lien.

"(3) The duration and renewal of a lien created under sections 3565 and 3613 of title 18, United States Code, regarding criminal judgments, or a lien created under section 6321 of the Internal Revenue Code of 1986, regarding tax judgments shall be as otherwise provided by law.

"(g) RELEASE OF JUDGMENT LIEN.—A judgment lien shall be released upon the filing of a satisfaction of judgment or release of lien in the same manner as the judgment was filed to obtain the lien.

"(h) EFFECT OF LIEN UPON ELIGIBILITY FOR FEDERAL GRANTS, LOANS OR PROGRAMS.—Any person who has a judgment lien against his property for any debt to the United States shall not be eligible to receive any grant or loan which is made, insured, guaranteed or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which such person is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied. The agency responsible for such grants and loans may promulgate regulations to allow for waiver of this restriction on eligibility for such grants and loans.

"§ 3203. Sale of property subject to judgment lien

"Upon application to the court, the court may order the United States to sell pursuant to the provisions of sections 2001 and 2002 of title 28, United States Code, any real property subject to its judgment lien. This provision shall not preclude the United States from using an execution sale to sell real property subject to a judgment lien.

"§ 3204. Interest on judgments

"(a) Judgments for money, other than criminal or tax judgments, shall bear interest at the greater of—

"(1) the rate in an express contract or negotiable instrument, if the action was brought for the recovery of an amount due on the contract or negotiable instrument; or

"(2) the rate established by statute or regulation applicable to the debt owed;

"(3) the judgment interest rate established in accordance with this section.

"(b) The judgment interest rate, where applicable, shall be calculated from the date of the entry of the judgment, at a rate equal to 150 per centum of the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment. The Director of the Administrative Office of the United State Courts shall distribute notice of that rate and any changes in it to all Federal judges.

"(c) Interest on judgments shall accrue daily from the date of entry of the judgment at the rate determined herein and shall be compounded annually to the date of payment.

"(d) Interest on tax judgments obtained under the Internal Revenue Code shall be allowed under section 6621 of such Code.

"(e) Interest on criminal judgments shall be allowed as provided in title 18 of the United States Code.

"(f) The interest rate on any judgment over one year old may be adjusted to the current rate applicable under this section.

"(g) Nothing in this section shall preclude the assessment of prejudgment interest that is otherwise allowable by law.

"SUBCHAPTER D—POSTJUDGMENT REMEDIES

"Sec.
"3301. Enforcement of judgments.
"3302. Orders in aid of execution.
"3303. Restraining notice.
"3304. Execution.
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"SUBCHAPTER D—POSTJUDGMENT REMEDIES

"§ 3301. Enforcement of judgments

"(a) A judgment may be enforced by any of the remedies set forth in this subchapter, and the court may issue other writs pursuant to section 1651 of title 28, United States Code, as necessary to supplement these remedies, subject to the provision of Rule 81(b) of the Federal Rules of Civil Procedure.

"(b) The property of a judgment debtor which is subject to sale to satisfy the judgment may be sold by judicial sale, pursuant to sections 2001, 2002, and 2004 of title 28, United States Code, or by execution sale pursuant to section 3304(g) of this subchapter.

"§ 3302. Orders in aid of execution

"Where the judgment debtor has an ownership interest of any kind in property which is not exempt and cannot readily be attached or levied on by ordinary legal process, the United States is entitled to aid from the court by injunction or other appropriate order to reach the property to satisfy the judgment whether the property is located in the same district or other districts.

"(a) ORDER.—The court may order the property, together with all documents or records related to the property, that is in or subject to the possession or control of the judgment debtor or another person, to be turned over to the United States for execution or otherwise applied toward the satisfaction of the judgment. Where the judgment debtor or other person refuses to turn over the property, the court may enforce the order by proceedings for contempt or other appropriate order provided the judgment debtor or other person, as appropriate, is served with a copy of the order or has actual notice of the order.

"(b) RECEIVER.—The court may appoint a receiver of property where appropriate in accordance with section 3108 of this chapter.

"(c) SAME OR INDEPENDENT SUIT.—These proceedings may be brought by the United States in the same suit in which the judgment is rendered or in a new and independent suit.

"(d) COSTS.—Upon request, in a proceeding under this section, the United States shall recover from the judgment debtor 10 percent of the reasonable costs. This provision shall apply to the extent that recovery of costs by the United States is not provided for under other applicable provisions of Federal law.

"§ 3303. Restraining notice

"(a) ISSUANCE; ON WHOM SERVED; FORM; SERVICE.—A restraining notice may be issued by the clerk of the court or counsel for the

United States as officer of the court. It may be served upon any person, except the employer of a judgment debtor where the property sought to be restrained consists of earnings due or to become due to the judgment debtor. It shall be served personally in the same manner as a summons. It shall specify all of the parties to the action, the social security number of the judgment debtor, if known, the date the judgment was entered, the court in which it was entered, the amount of the judgment and the amount when due thereon, and the names of all parties against whom the judgment was entered. It shall set forth the requirements of subsection (b) below and shall state that disobedience is punishable as a contempt of court.

"(b) Effect of Restraint; Prohibition of Transfer; Duration.—(1) A judgment debtor who is served with a restraining notice shall not sell, assign, transfer or hypothecate any property, except as may be reasonably necessary to be extended for the maintenance or support of the debtor or a dependent of the debtor and if the debtor is engaged in business, as may be reasonably necessary for the payment of expenditures for the continuation, preservation, and operation of such business.

"(2) A person other than the judgment debtor who is served with restraining notice shall not—

"(A) repay any obligation to the judgment debtor;

"(B) return any property to the judgment debtor; or

"(C) sell, assign, transfer or hypothecate any property—

"(i) specifically described in the restraining notice;

"(ii) that the other person knows to be owned by the judgment debtor; or

"(iii) in which the other person could have reason to believe by the exercise of due diligence that the judgment debtor has an ownership interest.

"(3) The restraining notice shall remain in effect for one year from the date the notice is served, or until the judgment is satisfied or the restraining notice is vacated by order of the court, whichever occurs first.

"(c) Disclosure.—The person upon whom a restraining notice is served, other than the judgment debtor, shall disclose to the counsel for the United States, in writing under oath within ten days after receipt of the restraining notice, the type or nature and value of such property of the judgment debtor as may be in his possession or custody. Upon such person receiving or acquiring property of the judgment debtor after receipt of a restraining notice, that person shall disclose to counsel for the United States, in writing under oath within seven days of receipt of the property, the type or nature and value of such property of the judgment debtor as may be in his possession or custody.

"(d) Discovery.—Any discovery request under the Federal Rules of Civil Procedure which accompanies this restraining notice and which seeks the disclosure of the type, nature and value of property of the judgment debtor must be responded to within ten days of service of the notice and discovery request or within ten days after property of the judgment debtor comes into the possession of the person served. Upon request, a reasonable extension may be granted.

"(e) Subsequent Notice.—Leave of court is required to serve more than one restraining notice upon the same person, other than the judgment debtor, with respect to the same judgment.

"(f) Notice to Judgment Debtor.—A copy of the restraining notice shall be mailed by first class mail by counsel for the United States to the judgment debtor within four days after the time of service of the restraining notice on a person other than the judgment debtor.

"§ 3304. Execution

"(a) Property Subject to Execution.—All property which the judgment debtor possesses and in which the judgment debtor has an interest shall be subject to levy pursuant to a writ of execution; co-owned property shall be subject to execution to the same extent as it is under the law of the state in which it is located. The judgment debtor must identify any property claimed to be exempt under the provisions of subchapter E.

"(b) Execution Lien.—A lien shall be created in favor of the United States on all property levied upon under a writ of execution and shall date from the time of the levy. This lien shall have priority over all subsequent liens and shall be for the amount due on the judgment. If the United States has a judgment lien, the execution lien shall relate back to the judgment lien date.

"(c) Form of Writ of Execution.—(1) General Requirements.—An execution writ shall specify the date that the judgment was entered, the court in which it was entered, the amount of the judgment if for money, the amount of the costs, and the sum actually due when the writ is issued, the amount of interest due, the rate of post-judgment interest, and the name of the party against whom the judgment was entered. The writ shall direct the United States marshal to satisfy the judgment out of all property, real and personal, of the judgment debtor not otherwise exempt pursuant to this chapter. An execution writ shall direct that only the property in which a named judgment debtor, who is not deceased, has an interest be levied upon or sold thereunder, and shall state the last known address of that judgment debtor.

"(2) There shall be no requirement that personal property be levied upon and sold prior to levy and sale of real property of the judgment debtor.

"(3) Execution for Delivery of Certain Property.—An execution issued upon a judgment for the delivery to the United States of the possession of personal property, or for the delivery of the possession of real property, shall particularly describe the property, and shall require the marshal to deliver the possession of the property to the United States.

"(4) Execution for Possession or Value of Personal Property.—If the judgment is for the recovery of personal property or its value, the writ shall command the marshal, in case a delivery thereof cannot be had, to levy and collect the value thereof for which the judgment was recovered, to be specified therein, out of any property of the party against whom judgment was rendered, liable to execution.

"(d) Issuance.—(1) The clerk of any court where a judgment is docketed, entered or registered, upon written application of counsel for the United States, shall, and without other or further order of a judge of that court, forthwith issue writs of execution. The writs shall be addressed to "Any United States Marshal," and may be served and executed in any judicial district of the United States, but shall be returnable to the issuing court. The writ shall be signed by the clerk of the court issuing the writ.

"(2) Multiple writs may issue simultaneously, and successive writs may issue before the return date of a writ previously issued.

"(e) Records of United States Marshal.—(1) The United States marshal receiving the execution shall endorse thereon the exact hour and day when he received it. If he receives more than one on the same day against the same person, he shall number them as received.

"(2) The United States marshal shall make a memorandum in writing of the date of every levy and specify the property upon which the levy has been made on the process or in an attached schedule. The memorandum or schedule shall also set forth the marshal's costs, expenses and fees.

"(f) Levy of Execution.—(1) The United States marshal receiving the writ shall proceed without delay to levy upon the property of the debtor found within his district, unless otherwise directed by counsel for the United States.

"(2) In performing the levy, the United States marshal may enter onto the lands and into the residence or other buildings owned, occupied or controlled by the debtor.

"(3) When real property is levied upon, the United States marshal shall file a copy of the notice of levy in the same manner as provided for judgments in section 3202. The United States marshal shall also serve a copy of the writ and notice of levy upon the debtor in the same manner that a summons is served in a civil action and so make his return thereof. If the United States marshal is unable to serve the writ upon the debtor, he shall post the writ and notice of levy in a conspicuous place upon the property and so make his return thereof.

"(4) Levy upon personal property is made by taking possession of it. Levy on personal property not easily taken into possession or which cannot be taken into possession without great inconvenience or expense, may be made by affixing a copy of the writ and motion of levy on it or in a conspicuous place in the vicinity of it describing in the notice of levy the property by quantity and with sufficient detail to identify the property levied upon. A copy of the writ and notice of levy shall also be served upon the debtor in the same manner that a summons is served in a civil action. Upon completion of the levy of personal property, the United States marshal shall so make his return thereof.

"(5) Levy on Property Otherwise Secured or Pledged.—

"(A) Real property subject to a security interest or conveyed in trust as security for any debt or contract may be levied upon and sold on execution against the interest of the judgment debtor, subject to such mortgage, and the terms and conditions thereof.

"(B) Personal property pledged, assigned or security for any debt or contract, may be levied upon and sold on complying with the conditions of the pledge, assignment or security interest.

"(g) Execution Sale Procedures.—(1) Sale of Real Property.—

"(A) Real property, or any interest therein, shall be sold for cash at public auction at the courthouse of the county, parish or city in which the greater part of the property is located or upon the premises or some parcel thereof.

"(B) The time and place of sale of real property, or any interest therein, under execution shall be advertised by the United

States marshal, by publication of notice, once a week for at least three weeks prior to the sale, in at least one newspaper of general circulation in the county or parish where the property is located. The first of these publications shall appear not less than twenty-five days immediately preceding the day of sale. The notice shall contain a statement of the authority by which the sale is to be made, the time of levy, and the time and place of sale; it shall also contain a brief description of the property to be sold, sufficient to identify the property, such as a street address the urban property, and the survey identification and location for rural property, but it shall not be necessary for it to contain field notes.

"(C) The United States marshal shall give written notice of public sale by personal delivery, or certified or registered mail, to persons and parties known to him to claim an interest in property under execution, including lienholders, co-owners and tenants, at least twenty-five days prior to the day of sale, to the last known address of such persons or parties.

"(2) Sale of City Lots.—If the real property consists of several lots, tracts, or parcels in a city or town, each lot, tract, or parcel must be offered for sale separately, unless not susceptible to separate sale because of the character of improvements.

"(3) Sale of Rural Property.—If the real property is not located in a city or town, the debtor may divide the property into lots of not less than fifty acres or in such greater or lesser amounts as ordered by the court, furnish a survey of such prepared by a registered surveyor, and designate the order in which those lots shall be sold. When a sufficient number of lots are sold to satisfy the amount of the execution and costs of sale, the marshal shall stop the sale.

"(4) Sale of Personal Property.—

"(A) Personal property levied on shall be offered for sale on the premises where it is located at the time of levy, or at the courthouse of the county, parish or city wherein it is located, or at some other place if, owing to the nature of the property, it is more convenient to exhibit it to purchasers at such place. Personal property susceptible of being exhibited shall not be sold unless it is present and subject to the view of those attending the sale, except shares of stock in corporations, and in cases, when by reason of the type or nature of the property, it is impractical to exhibit it, or where the debtor has merely an interest without the right to the exclusive possession, in which case the interest of the debtor may be sold and transferred without the presence of the property.

"(B) Notice of the time and place of the sales of personal property shall be given by posting notice thereof for ten days successively immediately prior to the day of sale at the courthouse of any county, parish, or city, and at the place where the sale is to be made, and by mailing a copy by registered or certified mail to the judgment debtor at his last known address, or by personal delivery.

"(5) Postponement of Sale.—The United States marshal may postpone an execution sale from time to time continuing the posting of notice and/or publication of the notice until the date to which the sale is postponed, and appending, at the foot of such notice of each successive postponement the following:

"The above sale is postponed until the ______ day of ____________, 19____, at ______ o'clock ____ .M., ______________, United States Marshal for the District of ______________, by ______________, Deputy, dated ______________.

"(6) Bidding Requirements; Liability of Bidder; Resale.—

"(A) The United States marshal may require of any bidder at any sale a cash deposit of as much as twenty percent of the sale price before the bid is received.

"(B) The cash deposit of any successful bidder at an execution sale shall be forfeited to the United States if he fails to comply with the terms of the sale; in addition, he shall be liable to the United States for all losses incurred by the United States at a subsequent sale of the same property. The liability for losses shall be limited to the difference between the amount of the deposit which was forfeited and the amount accepted by the United States as the highest bid by the defaulting bidder at the defaulted sale plus the costs of the defaulted sale. This liability shall be reduced by the amount the United States realizes from the subsequent sale, if any.

"(7) Resale of Property.—When the terms of the sale are not complied with by the bidder, the United States marshal shall proceed to sell the property again on the same day, if there is sufficient time; but if not, he shall readvertise and sell the property.

"(8) Transfer of Title After Sale.—

"(A) When the sale has been made and its terms complied with, the United States marshal shall execute and deliver any and all documents necessary to transfer ownership to the purchaser, without warranty, all the rights, titles, interest, and claims that the judgment debtor had in the property sold to the purchaser.

"(B) If the purchaser dies before execution and delivery of the documents needed to transfer ownership, the United States marshal shall execute and deliver them to the estate of the purchaser, and it shall have the same effect as if accomplished during the lifetime of the purchaser.

"(9) Purchaser Considered Innocent Purchaser Without Notice.—The purchaser of property sold under execution is considered to be an innocent purchaser without notice if the purchaser would have been considered an innocent purchaser without notice had the sale been made voluntarily and in person by the defendant.

"(10) No Right of Redemption.—The judgment debtor shall not be entitled to redeem the property after the execution sale.

"(11) Distribution of Sale Proceeds.—

"(A) The United States marshal shall first deliver to the judgment debtor, or his agent or attorney, such amounts to which he is entitled from the sale of partially exempt property as set forth in subchapter E of this chapter.

"(B) The United States marshal shall retain from the proceeds of a sale of property an amount equal to the reasonable expenses incurred in making the levy and keeping and maintaining the property.

"(C) The United States marshal shall deliver the balance of the money collected on execution to the counsel for the United States at the earliest opportunity.

"(D) If more money is received from the sale of the property than is sufficient to satisfy the executions held by the United States marshal, he shall pay forthwith the surplus to the judgment debtor or his agent or attorney.

"(h) Replevy.—(1) Any personal property taken in execution may be returned to the defendant by the United States marshal upon the delivery by the defendant to him of a bond or upon satisfaction of the judgment and any costs incurred in connection with scheduling the sale prior to the execution sale, payable to the United States, with two or more good and sufficient sureties, to be approved by the United States marshal, conditioned upon the delivery of the property to the United States marshal at the time and place named in the bond, to be sold according to law, or for the payment to the United States marshal of a fair value thereof, which shall be stated in the bond.

"(2) Where property has been replevied, as provided above, the judgment debtor may sell or dispose of the property paying the United States marshal the stipulated value thereof.

"(3) In the case of the non-delivery of the property according to the terms of the delivery bond, and non-payment of the value thereof, the United States marshal shall forthwith endorse the bond 'Forfeited' and return it to the clerk of the court from which the execution issued; whereupon, if the judgment remains unsatisfied in whole or in part, the clerk shall issue execution against the principal judgment debtor and the sureties on the bond for the amount due, not exceeding the stipulated value of the property, upon which execution no delivery bond shall be taken, which instruction shall be endorsed by the clerk on the execution.

"(i) Death of Judgment Debtor.—The death of the judgment debtor after a writ of execution is issued stays the execution proceedings, but any lien acquired by levy of the writ must be recognized and enforced by the court having jurisdiction over the estate of the deceased. The execution lien may be enforced against the executor, administrator, or personal representative of the estate of the deceased; or if there be none, against the heirs or devisees of the property of the deceased receiving same, but only to the extent of the value of the property coming to them.

"(j) When Execution Not Satisfied.—When the property levied upon does not sell for enough to satisfy the execution, the United States marshal shall proceed on the same writ of execution as to other property of the judgment debtor.

"(k) Return on Execution.—(1) The United States marshal shall make a written return on each writ of execution to the court from which the writ was issued and deliver a copy to counsel for the United States who requested the writ. It shall be returnable ninety days from the date of issuance unless counsel for the United States has specified an earlier date. The return shall be filed by the clerk of the court from which the writ was issued.

"(2) The United States marshal shall state concisely what was done in pursuance of the requirements of the writ.

"(3) The return shall be made forthwith if satisfied by the collection of the money, or if ordered by counsel for the United States, which order shall be noted on the return.

"§ 3305. Installment payment order

"Where it is shown that the judgment debtor is receiving or will receive money from any source or is attempting to impede the United States by rendering services without adequate compensation, upon motion of the United States and notice to the judgment debtor, the court may, if appropriate, order that the judgment debtor make specified installment payments to the

United States. Notice of the motion shall be served on the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested. In fixing the amount of the payments, the court shall take into consideration the reasonable requirements of the judgment debtor, any payments required to be made by the judgment debtor or deducted from the money he would otherwise receive in satisfaction of other judgments, the amount due on the judgment, and the amount being or to be received, or, if the judgment debtor is attempting to impede the United States by rendering services without adequate compensation, the reasonable value of the services rendered.

"Upon motion of the United States, and upon a showing that the debtor's financial circumstances have changed or that assets not previously disclosed by the debtor have been discovered, the court may increase the amount of payments or alter their frequency or require full payment.

"§ 3306. Garnishment

"(a) General.—A court may issue writs of garnishment, either prejudgment or postjudgment against the property of a debtor which is in the possession, custody or control of a third person in order to satisfy a judgment against the debtor; co-owned property shall be subject to garnishment to the same extent as it is under the law of the States in which it is located. The United States may request and a court shall issue simultaneous separate writs of garnishment to several garnishees. All writs of garnishment issued pursuant to these provisions shall be continuing and shall terminate only as provided herein.

"(b) Writ.—(1) General Requirements.—The United States shall include in its application for a writ of garnishment, the following—

"(A) any matters required by section 3104 when seeking prejudgment garnishment;

"(B) the debtor's name, social security number, if known, and the debtor's last known address;

"(C) the nature and amount of the debt alleged to be owed and that demand on the debtor for payment of the debt has been made, but the debtor has not paid the amount due. A money judgment must be alleged for postjudgment garnishment; and

"(D) that the garnishee is believed to be indebted to the debtor or have possession of property of the debtor.

"(2) Proper Garnishee for Particular Property.—

"(A) Where property consists of a right to or share in the stock of an association or corporation, or interests or profits therein, for which a certificate of stock or other negotiable instrument is not outstanding, the corporation, or the president or treasurer of the association, shall be the garnishee.

"(B) Where property consists of a right to or interest in a decedent's estate or any other property or fund held or controlled by a personal representative or fiduciary, the personal representative or fiduciary shall be the garnishee.

"(C) Where property consists of an interest in a partnership, any partner other than the debtor, shall be the garnishee on behalf of the partnership.

"(D) Where property or a debt is evidenced by a negotiable instrument for the payment of money, a negotiable document of title or a certificate of stock of an association or corporation, the instrument, document or certificate shall be treated as property capable of delivery and the person holding it shall be the garnishee; except that in the case of a security which is transferable in the manner set forth in State law, the firm or corporation which carries on its books an account in the name of the debtor in which is reflected such security, shall be the garnishee; *Provided, however,* That if such security has been pledged, the pledgee shall be the garnishee.

"(c) Issuance of Writ.—(1) Clerk's Review.—The clerk of the court shall review the application for postjudgment writs of garnishment and if it meets the requirements set forth herein, shall issue an appropriate writ. The clerk shall issue prejudgment writs of garnishment as authorized by the court.

"(2) Form of Writ.—

"(A) General provisions.—The writ shall state—

"(i) The nature and amount of the debt. If interest is accruing, the rate of accrual thereafter shall be stated. If a judgment is involved, the amount of any costs included in the judgment should be stated.

"(ii) The name and address of the garnishee.

"(iii) The name and address of counsel for the United States.

"(iv) The last known mailing address of the debtor.

"(v) That the garnishee shall answer the writ within ten days of service of the writ.

"(B) Earnings garnishment.—The United States may apply for garnishment of the non-exempt disposable earnings of a natural person. The writ for the garnishment of earnings shall direct the garnishee to withhold and retain the non-exempt earnings for which the garnishee is indebted to the debtor at the time of receipt of the writ and may thereafter become indebted to the debtor pending further order of the court.

"(C) Garnishment of other property.—As to all non-earnings property of a debtor who is a natural person and all property of other debtors in the possession, custody and control of the garnishee at the time the writ is received by the garnishee and anytime thereafter, the writ shall direct the garnishee to retain possession, custody and control of and not to transfer or return the property pending further order of the court.

"(D) Service of writ.—The United States may serve the garnishee with a copy of the writ by first class mail or by delivery by the United States marshal as provided by Rule 4 of the Federal Rules of Civil Procedure. The United States shall, at the same time, serve the debtor with a copy of the writ by first class mail to the debtor's last known address; counsel for the United States shall certify to the court that this service was made.

"(E) Answer of the garnishee.—In its written answer to the writ of garnishment, the garnishee shall state under oath whether it is indebted to the debtor or has custody, control or possession of the debtor's property; a description of the indebtedness or property; whether the indebtedness or property is subject to any prior garnishments or levies and a description of any such claim; and whether the indebtedness or property is subject to any exemptions from garnishment. In addition, if the writ of garnishment is against the earnings of the debtor, the garnishee shall state whether the debtor was employed at the time the writ was received, and, if so, how much was owed at the time; and whether the garnishee anticipates owing earnings to the debtor in the future, and, if so, the amount and whether the pay period will be weekly or another specified period. In all cases, the garnishee shall file the original answer with the court issuing the writ and serve a copy on the debtor and counsel for the United States. The copy sent to the debtor shall be accompanied by instructions to the debtor for objecting to the answer of the garnishee and for obtaining a hearing on the objections. Any garnishee, including a corporation, may file an answer without the representation of an attorney.

"(F) Objections to answer.—Within twenty days after receipt of the answer, the debtor and the United States may file a written objection to the answer and request a hearing on the objection. The party objecting must state the grounds for the objection and bears the burden of proving them. A copy of the objection and request for hearing shall be served on the garnishee and the other party. The court shall set a hearing within ten to fifteen days after the date the request was received by the court, and give notice of the date to all parties.

"(G) Garnishee's failure to answer or pay.—If a garnishee fails to answer or pay within the time specified, the United States may petition the court for an order requiring the garnishee to appear before the court to answer the writ or pay by the appearance date. If the garnishee fails to appear or does appear and fails to show good cause why he failed to comply with the garnishment writ, the court shall enter judgment by default against the garnishee for the full amount of the past debt owed by the debtor.

"The court shall award reasonable attorney's fees to the United States and against the garnishee if the writ has not been answered within the time specified therein and a petition requiring the garnishee to appear was filed as provided in this section. Failure to answer or pay within the time specified in the writ may also be punished as a contempt of the court.

"(H) Disposition order.—After the garnishee files its answer and if no hearing is required, the court shall promptly enter an order directing the garnishee as to the disposition of the debtor's property. If a hearing is required, the order shall be entered within five days of the hearing.

"(I) Priorities.—Court orders and garnishments for the support of a person shall have priority over a writ of garnishment issued pursuant to these provisions. As to any other garnishment or levy, a garnishment issued pursuant to these provisions shall have priority over those which are later in time and shall be satisfied in the order in which the writs are served upon the garnishee.

"(J) Accounting.—The debtor or garnishee may request an accounting on a garnishment within ten days after the garnishment terminates. The United States shall give a written accounting to the debtor and garnishee of all earnings and property it receives under a writ garnishment within twenty days after it receives the request of the debtor or garnishee. Within ten days after the accounting is received, the debtor or garnishee may file a written objection to the accounting and a request for hearing. The party objecting must state grounds for the objection. The court shall set a hearing on the objection within ten to fifteen days after the court receives the request for a hearing.

"(K) Discharge of garnishee's obligation.—A garnishee shall be discharged as set forth in section 3311 of this subchapter.

"(L) TERMINATION OF GARNISHMENT.—A garnishment proceeding hereunder can be terminated by—

"(i) the court quashing the writ of garnishment;

"(ii) exhaustion of earnings or property in the possession, custody or control of the garnishee, unless the garnishee reinstates or reemploys the debtor within ninety days of dismissal or resignation; or

"(iii) satisfaction of the debtor's obligation to the United States.

"§ 3307. Modification of protective order; supervision of enforcement

"Within the provisions of this chapter, the court may at any time on its own initiative or the motion of any interested person, and upon such notice as it may require, make an order denying, limiting, conditioning, regulating, extending or modifying the use of any enforcement procedure.

"§ 3308. Power of court to punish for contempt

"A court shall have power to punish a civil or criminal contempt committed with respect to an enforcement procedure or order under this chapter.

"§ 3309. Arrest of judgment debtor

"Upon motion of the judgment creditor without notice, where it is shown by affidavit or otherwise that the judgment debtor is about to depart from the jurisdiction of the United States, or keeps himself concealed therein with intent to hinder, delay or defraud the judgment creditor, and that there is reason to believe that the judgment debtor has in his possession or custody nonexempt property in which he has an interest, the court may issue a warrant directed to the United States marshal to arrest the judgment debtor forthwith and bring him before the court. The United States marshal shall serve upon the judgment debtor a copy of the warrant and supporting documents at the time of arrest. When the judgment debtor is brought before the court, the court may order that he give a bond or undertaking in a sum to be fixed by the court, that he will appear before the court for examination and that he will obey the terms of a restraining notice contained in the order.

"§ 3310. Discharge

"A person who pursuant to an execution or order pays or delivers to the United States, a United States marshal or receiver, money or other personal property in which a judgment debtor has or will have an interest, or so pays a debt he owes the judgment debtor, is discharged from his obligation to the judgment debtor to the extent of the payment or delivery.

"SUBCHAPTER E—EXEMPT PROPERTY

"Sec.
"3401. Exempt property.
"3402. Limitation on exempt property.

"SUBCHAPTER E—EXEMPT PROPERTY

"§ 3401. Exempt property

"Except as provided under section 3402, the following property of natural persons shall be exempted from the enforcement procedures under the provisions of this chapter as to debts owed the United States—

"(a) The debtor's aggregate interest, not to exceed $7,500 in value in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

"(b) The debtor's interest, not to exceed $1,200 in value, in one motor vehicle.

"(c) The debtor's interest, not to exceed $200 in value in any particular item or $4,000 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family or household use of the debtor or a dependent of the debtor.

"(d) The debtor's aggregate interest, not to exceed $500 in value, in jewelry held primarily for the personal, family or household use of the debtor or a dependent of the debtor.

"(e) The debtor's aggregate interest in any property, not to exceed in value $400 plus up to $3,750 of any unused amount of the exemption provided under paragraph (1) of this subsection.

"(f) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

"(g) The debtor's aggregate interest, not to exceed in value $4,000 less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

"(h) The debtor's aggregate interest, not to exceed $750 in value in any implements, professional books or tools of the trade of the debtor or the trade of a dependent of the debtor.

"(i) Professionally prescribed health aids for the debtor or a dependent of the debtor.

"(j) The debtor's right to receive—

"(1) a social security benefit, unemployment compensation, or a local public assistance benefit;

"(2) a veterans' benefit;

"(3) a disability, illness, or unemployment benefit;

"(4) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

"(5) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless—

"(A) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;

"(B) such payment is on account of age or length of service; and

"(C) such plan or contract does not qualify under section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1986 (26 U.S.C. 401(a), 403(a), 403(b), 408, or 409).

"§ 3402. Limitations on exempt property

"(a) Property upon which a judgment debtor has voluntarily granted a lien, shall not be exempt to the extent of the balance due on the debt secured thereby.

"(b) If, within ninety days prior to judgment or thereafter, the debtor has transferred non-exempt property and as a result acquires, improves or increases in value exempt property, his interest shall not be exempt to the extent of the increased value.

"(c) The United States may require the judgment debtor to file a statement with regard to each claimed exemption; the original shall be filed with the court in which the enforcement proceeding is pending, and a copy served upon counsel for the United States. The statement shall be under oath and shall describe each item of property for which exemption is claimed, the value and the basis for such valuation, and the nature of the judgment debtor's ownership interest.

"(d) The United States, by application to the court where an enforcement proceeding is pending, may request a hearing on the applicability of any exemption claimed by the judgment debtor. The court shall determine whether the judgment debtor is entitled to the exemption claimed and the value of the property with respect to which the exemption is claimed; unless the court finds that it is reasonably evident that the exemption applies, the judgment debtor shall bear the burden of going forward with evidence and of persuasion. The value of the property must be established by credible, independent evidence in addition to the debtor's testimony; tax assessments shall create a rebuttable presumption of the value of the property assessed.

"(e) Assertion of an exemption shall not prevent seizure and sale of the property to which such exemption applies. However, where an exemption has been validly and properly asserted, the sale proceeds for that item of property must be applied first to satisfy the dollar value of the exemption and then to the balance of the judgment. Any excess remaining after payment of judgment shall be paid to the judgment debtor.

"SUBCHAPTER F—FRAUDULENT TRANSFERS

"Sec.
"3501. Definitions.
"3502. Insolvency.
"3503. Value.
"3504. Transfer fraudulent as to the United States on present and future claims.
"3505. Transfer fraudulent as to the United States on a present claim.
"3506. When transfer is made or obligation is incurred.
"3507. Remedies of the United States.
"3508. Defenses, liability and protection of transferee.
"3509. Supplementary provision.

"SUBCHAPTER F—FRAUDULENT TRANSFERS

"§ 3501. Definitions

"As used in this subchapter—

"(a) 'Affiliate' means—

"(1) a person who directly or indirectly owns, controls, or holds with power to vote, 20 per centum or more of the outstanding voting securities of the debtor other than a person who holds the securities—

"(A) as a fiduciary or agent without sole discretionary power to vote the securities; or

"(B) solely to secure a debt, if the person has not exercised the power to vote;

"(2) a corporation 20 per centum or more of whose voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds, with power to vote, 20 per centum or more of the outstanding voting securities of the debtor, other than the person who holds a securities—

"(A) as a fiduciary or agent without sole power to vote the securities;

"(B) solely to secure a debt, if the person has not in fact exercised the power to vote;

"(C) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

"(D) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

"(b) 'Asset' means property of a debtor, but does not include—

"(1) property to the extent it is encumbered by a valid lien; or

"(2) property to the extent it is exempt under Subchapter E of this chapter.

"(c) 'Insider' includes—

"(1) if the debtor is an individual—

"(A) a relative of the debtor or of a general partner of the debtor;

"(B) a partnership in which the debtor is a general partner;

"(C) a general partner in a partnership described in subsection (c)(1)(B); or

"(D) a corporation of which the debtor is a director, officer, or person in control.

"(2) if the debtor is a corporation—

"(A) a director of the debtor;

"(B) an officer of the debtor;

"(C) a person in control of the debtor;

"(D) a partnership in which the debtor is a general partner;

"(E) a general partner in a partnership described in subsection (c)(2)(D); or

"(F) a relative of a general partner, director, officer, or person in control of the debtor.

"(3) if the debtor is a partnership—

"(A) a general partner in the debtor;

"(B) a relative of a general partner in, a general partner of, or a person in control of the debtor;

"(C) another partnership in which the debtor is a general partner;

"(D) a general partner in a partnership described in subsection (c)(3)(C); or

"(E) a person in control of the debtor.

"(4) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

"(5) a managing agent of the debtor.

"(d) 'Lien' means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceeding, a common law lien, or a statutory lien.

"(e) 'Relative' means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

"(f) 'Transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

"(g) 'Valid lien' means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

"§ 3502. Insolvency

"(a) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.

"(b) A debtor who is generally not paying his debts as they become due is presumed to be insolvent.

"(c) A partnership is insolvent under subsection (a) if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's non-partnership assets over the partner's non-partnership debts.

"(d) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this subchapter.

"(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

"§ 3503. Value

"(a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promissor's business to furnish support to the debtor or another person.

"(b) For the purposes of sections 3504(a)(2) and 3507, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, non-collusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

"(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

"§ 3504. Transfer fraudulent as to the United States on present and future claims

"(a) A transfer made or obligation incurred by a debtor is fraudulent as to the United States, whether its claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation—

"(1) with actual intent to hinder, delay, or defraud the United States or any other creditor of the debtor; or

"(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor—

"(A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

"(B) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

"(b) In determining actual intent under subsection (a)(1), consideration may be given, among other factors, to whether—

"(1) the transfer or obligation was to an insider;

"(2) the debtor retained possession or control of the property transferred after the transfer;

"(3) the transfer or obligation was disclosed or concealed;

"(4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

"(5) the transfer was of substantially all of the debtor's assets;

"(6) the debtor absconded;

"(7) the debtor removed or concealed assets;

"(8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

"(9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

"(10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

"(11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

"§ 3505. Transfer fraudulent as to the United States on a present claim

"(a) A transfer made or obligation incurred by a debtor is fraudulent as to the United States on its claims which arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at the time or the debtor became insolvent as a result of the transfer or obligation.

"(b) A transfer made by a debtor is fraudulent as to the United States on its claim which arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time, and the insider had reasonable cause to believe that the debtor was insolvent.

"§ 3506. When transfer is made or obligation is incurred

"For the purposes of this subchapter—

"(a) a transfer is made—

"(1) with respect to an asset that is real property, other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

"(2) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that the United States on a simple contract cannot acquire a judicial lien otherwise than under this subchapter that is superior to the interest of the transferee.

"(b) If applicable law permits the transfer to be perfected as approved in subsection (a) and the transfer is not so perfected before the commencement of an action for relief under this subchapter, the transfer is deemed made immediately before the commencement of the action.

"(c) If applicable law does not permit the transfer to be perfected as provided in subsection (a), the transfer is made when it becomes effective between the debtor and the transferee.

"(d) A transfer is not made until the debtor has acquired rights in the asset transferred.

"(e) An obligation is incurred—

"(1) if oral, when it becomes effective between the parties; or

"(2) if evidenced by a writing, when the writing was executed by the obligor is delivered to or for the benefit of the obligee.

"§ 3507. Remedies of the United States

"(a) In an action for relief against a transfer or obligation under this subchapter, the United States, subject to the limitations in section 3508, may obtain, subject to applicable principles of federal equity and in accordance with the Federal Rules of Civil Procedure—

"(1) avoidance of the transfer or obligation to the extent necessary to satisfy the claim of the United States;

"(2) an attachment or other remedy against the asset transferred or other property of the transferee in accordance with the procedure described by this chapter.

"(b) If the United States has obtained a judgment on a claim against the debtor, if the court so orders, it may levy execution on the asset transferred or its proceeds.

"§ 3508. Defenses, liability and protection of transferee

"(a) A transfer or obligation is not voidable under section 3504(a) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

"(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by the United States under section 3507(a)(1), it may recover judgment for the value of the asset transferred, as adjusted under subsection (c), or the amount necessary to satisfy its claim, whichever is less. The judgment may be entered against—

"(1) the first transferee of the asset or the person for whose benefit the transfer was made; or

"(2) any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

"(c) If the judgment under subsection (b) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

"(d) Notwithstanding voidability of a transfer or an obligation under this subchapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to—

"(1) a lien on or a right to retain any interest in the asset transferred;

"(2) enforcement of any obligation incurred; or

"(3) a reduction in the amount of the liability on the judgment.

"(e) A transfer is not voidable under section 3504(a)(2) or section 3505 if the transfer results from—

"(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

"(2) enforcement of a security interest in compliance with article 9 of the Uniform Commercial Code or its equivalent in effect in the jurisdiction where the property is located.

"(f) A transfer is not voidable under section 3505(b)—

"(1) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

"(2) if made in the ordinary course of business or financial affairs of the debtor and the insider, or

"(3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose, as well as an antecedent debt of the debtor.

"§ 3509. Supplementary provision

"Unless displaced by the provisions of this subchapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

"SUBCHAPTER G—PARTITION

"Sec.
"3601. Action by United States for partition.
"3602. Service of process in partition action.
"3603. Trial; commissioners; decree of partition.
"3604. Partition by sale.
"3605. Costs.

"SUBCHAPTER G—PARTITION

"§ 3601. Action by United States for partition

"(a) The United States, as co-owner or claimant of real or personal property, or an interest therein, may compel a partition of the property among the co-owners and tenants.

"(b) The district court shall have original jurisdiction of any civil action brought by the United States for the partition of property. The action for partition shall be filed in the judicial district in which the property, or a part thereof, is located. An action in a State court in which the United States is a defendant and in which the United States seeks partition may be removed to the district court.

"(c) The United States shall file a complaint stating—

"(1) the name and residence, if known, of each co-owner or claimant to such property;

"(2) the share of interest, if known, of each co-owner or claimant in such property;

"(3) a description of the property sought to be partitioned; and

"(4) the estimated value of the property for which partition is sought.

"§ 3602. Service of process in partition action

"(a) Personal service of summonses and complaints and other process shall be made in accordance with Rules 4 (c) and (d) of the Federal Rules of Civil Procedure upon a defendant who resides within the United States or its territories or insular possessions and whose residence is known.

"(b) Upon the filing of a certificate by counsel for the United States stating that it is believed that a defendant cannot be personally served, because after diligent inquiry within the State in which the complaint is filed his place of residence cannot be ascertained by the United States or, if ascertained, that it is beyond the territorial limits of personal service as provided in Rules 4 (c) and (d) of the Federal Rules of Civil Procedure, service of Notice of Summons and Complaint shall be made on that defendant by publication in a newspaper published in the county where the property is located, or if there is no such newspaper, then in a newspaper having a general circulation in the State where the property is located, once a week for three successive weeks. Prior to the last publication, a copy of the notice shall also be mailed to a defendant who cannot be personally served as provided in this rule but whose place of residence is then known. Unknown owners may be served by publication in like manner by a notice addressed to 'Unknown Others.' Service by publication is complete upon the date of the last publication. Proof of publication and mailing shall be made by certificate of counsel for the United States, to which shall be attached a printed copy of the published notice with the name and dates of the newspaper marked thereon.

"§ 3603. Trial; commissioner; decree of partition

"(a) All questions of law or equity affecting the title of the property which may arise, and the determination of the share or interest of each of the co-owners or claimants shall be tried by the court without a jury.

"(b) The court shall determine whether the property, or any part thereof, is susceptible of partition. If the court determines that the whole, or any part of the property is susceptible of partition, then the court shall enter a decree directing the partition of the property which is held to be susceptible of partition, describing it and specifying the share or interest to which each party is entitled. The court shall then appoint three or more competent and disinterested persons as commissioners to make the partition in accordance with the court's decree, the majority of the commissioners may act.

"(c) The court may appoint a surveyor to assist the commissioners in making a partition of real estate. The commissioners may cause the real estate to be surveyed and partitioned into several tracts or parcels.

"(d) The court may appoint an appraiser or appraisers to value the property and file an appraisal report with the court and the commissioners, as the court directs.

"(e) The commissioners shall divide the property into as many shares as there are persons entitled thereto, as determined by the court, having due regard in the division of the property to the situation, quantity, and advantage of each share, so that the shares may be equal in value, as nearly as may be, in the proportion to the respective shares or interests of the parties entitled thereto.

"(f) The commissioners shall report in writing to the court; and the report shall be determined by a majority of the commissioners and the contents shall be governed by the provisions of Rules 53(e) (1) and (2) of the Federal Rules of Civil Procedure. The report shall also contain the following—

"(1) The several tracts, units, or parcels into which the property was divided (describing each particularly);

"(2) the number of shares and the estimated value of each share;

"(3) the allotment of each share; and

"(4) field notes and maps as to each estate, as may be necessary.

"The findings and reports of the commissioners shall have the effect, and be dealt with by the court in accordance with the practice prescribed in Rule 53(e)(2).

"(g) The decree of the court confirming the report of commissioners in a partition of property gives a recipient of an interest in the property a title equivalent to a conveyance of the interest by warranty deed as in the case of real property or by bill of sale as to personal property, from the other parties in the action.

"(h) All conditions, restrictive covenants, and encumbrances against the property that applied to the property prior to the partition shall remain against the property as partitioned unless those restrictions, covenants and encumbrances have been included and are subject to the partition action.

"§ 3604. Partition by sale

"Should the court determine that a fair and equitable division of the property, or any part thereof, cannot be made, the court shall order a sale of that part which is incapable of partition, which sale shall be for cash, or upon such other terms as the court may direct, and shall be made as provided by title 28 United States Code, chapter 127, or through a receiver, as the court so orders. The proceeds of such sale shall be paid into the court and partitioned among the persons and parties entitled thereto according to their respective interests.

"§ 3605. Costs

"Costs shall be taxed against each party to whom a share has been allotted in proportion to the value of such share.

"SUBCHAPTER H—FORECLOSURE OF SECURITY INTERESTS

"Sec.

"3701. United States foreclosures governed by Federal law.

"SUBCHAPTER H—FORECLOSURE OF SECURITY INTERESTS

"§ 3701. United States foreclosures governed by Federal law

"Unless the documents specifically adopt State law, any action by the United States to foreclose security interests in real property shall be governed by the Federal statutes and applicable regulations, provisions set forth in the transaction documents and by Federal common law where there is no governing statute, applicable regulation or provision, and not by the State law where the real property is located. This shall include, but not be limited to, questions regarding redemption rights and deficiency judgments.

"§ 3702. Deficiency rights on federally guaranteed or insured loans

"Unless the documents specifically adopt State law, the right of the United States to collect a deficiency following the foreclosure of a loan guaranteed or insured by the United States or any agency thereof shall be governed by Federal statutes, applicable regulations, and the provisions set forth in the transaction documents. The rights of the United States under this section shall apply notwithstanding the provisions of any State law and without regard to the method used by the loan holder to foreclose the loan.".

Subtitle B—Amendments to Other Legislation

SEC. 611. Section 505 of title 11, United States Code, is amended by adding at the end thereof the following subsection:

"(d) Payments of taxes under this title to a governmental unit may be applied by the governmental unit in a manner that preserves alternative sources of collection, if any.".

SEC. 612. Section 523(a) of title 11, United States Code, is amended as follows:

(a) by deleting the word "or" at the end of section 523(a)(9); and

(b) by deleting "." at the end of section 523(a)(10) and adding "; and" in lieu thereof; and

(c) by adding the following subsections at the end of section 523(a):

"(11) to the extent that such debt arises from a violation by the debtor of a civil or criminal law enforceable by an action by a governmental unit to recover restitution, damages, civil penalties, attorney fees, costs, or any other relief, or to the extent that such debt arises from an agreed judgment or other agreement by the debtor to pay money or transfer property in settlement of such an action by a governmental unit; or

"(12) to the extent such debt arises from a criminal appearance bond.

SEC. 613. Section 523(a) of title 11, United States Code, is amended to read as follows:

(a) subsection (8) is amended to read as follows:

"(8) for an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend, unless—".

(b) subsection (8)(A) is amended to read as follows:

"(A) such loan, benefit, scholarship or stipend overpayment or loan first became due seven years (exclusive of any applicable suspension of the repayment period) before the date of the filing of the petition; or".

SEC. 614. (a) Section 1129(a)(9)(C) of title 11, United States Code, is amended to read as follows:

"(C) with respect to a claim of a kind specified in section 507(a)(7) of this title, the holder of such claim will receive on account of such claim deferred cash payments, over a period not exceeding six years after the date of assessment of such claim or six years after confirmation for such claims that have not been assessed, of a value as of the effective date of the plan, equal to the allowed amount of such claim.".

(b) Section 1129 of title 11, United States Code, is amended by adding at the end thereof the following:

"(e) For purposes of determining the value of deferred cash payments under a plan with respect to a secured or unsecured tax claim, the appropriate interest rate shall be the statutory rate applicable to unpaid taxes owing to the governmental unit holding the claim.".

SEC. 615. Section 3013 of title 18, United States Code, is amended to read as follows:

"§ 3013. Special assessment on convicted persons

"(a) The court shall assess on any person convicted of a felony;

"(1) The amount of one hundred dollars per count if the defendant is an individual; and

"(2) The amount of four hundred dollars per count if the defendant is a person other than an individual.

"(b) Any amount so assessed shall be collected in the manner that fines are collected in criminal cases, except that no interest shall be charged on any assessment.

"(c) The obligation to pay the assessment ceases upon the death of the defendant or the expiration of five years after the date of the judgment, whichever occurs first.".

SEC. 616. Section 3142(c)(1)(B)(xi) of title 18, United States Code, is amended to read as follows:

"(xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial office may require.".

SEC. 617. Section 3142(c)(1)(B)(xii) of title 18, United States Code, is amended to read as follows:

"(xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond.".

SEC. 618. Section 3142(g)(4) of title 18, United States Code, is amended by—

(a) striking out "(c)(2)(k)" and inserting in lieu thereof "(c)(1)(B)(xi)"; and

(b) striking out "(c)(2)(L)" and inserting in lieu thereof "(c)(1)(B)(xii)".

SEC. 619. Chapter 207 of title 18, United States Code, is amended by—

(a) amending the table of sections by adding between the item relating to section 3150 and the item relating to section 3152, the following:

"3151. Refund of forfeited bail."; and

(b) by adding the following section immediately after section 3150:

"§ 3151. Refund of Forfeited Bail

"Appropriations shall be available to refund money erroneously received and deposited in the United States Treasury and available to refund any part of forfeited bail deposited into the general fund of the United States Treasury and ordered remitted under the Federal Rules of Criminal Procedure.".

SEC. 620. (a) Section 3552(d) of title 18, United States Code, is amended by adding at the end thereof the following:

"The court shall provide a copy of the presentence report to the attorney for the Government to use in collecting an assessment, criminal fine, forfeiture or restitution imposed.".

(b) The amendment made by subsection (a) shall take effect as if enacted on the date of the taking effect of section 3552(d) of title 18, United States Code.

SEC. 621. Section 3565(a) of title 18, United States Code, is amended—

(1) in paragraph (1), by striking out "by execution against the property of the defendant"; and

(2) in paragraph (1) by striking out "civil cases." and inserting in lieu thereof "accordance with chapter 176 of title 28. The United States may elect at its discretion to use any remedy available under this chapter or chapter 176 of title 28 or any combination of such remedies in the same case."; and

(3) in paragraph (4), by deleting the word "Salaries" and inserting in lieu thereof the following:

"Notwithstanding any contrary provision in Chapter 176 of title 28, United States Code, salaries."; and

(4) in paragraph (5), the second sentence should be deleted.

SEC. 622. Section 3579(f)(4) of title 18, United States Code, is amended by—

(a) striking out the "." at the end thereof; and

(b) adding at the end thereof the following: "only if they are in fear of contact with the defendant.".

SEC. 623. (a) Section 3613 of title 18, United States Code, is amended—

(1) in subsection (d), as added by section 212(a) of the Comprehensive Crime Control Act of 1984, by striking out the second sentence; and

(2) in subsection (e), as added by section 212(a) of the Comprehensive Crime Control Act of 1984 by—

(A) striking out "by execution against the property of the person fined";

(B) striking out "civil cases," and inserting in lieu thereof "accordance with chapter 176 of title 28,"; and

(C) adding at the end thereof "The United States may elect at its discretion to use any remedy available under this chapter or chapter 176 of title 28 or any combination of such remedies in the same case.".

(b) The amendments made by this section shall take effect as if enacted on the date of the taking effect of such section 3613.

SEC. 624. Section 3663(f)(4) of title 18, United States Code, is amended by inserting before the period at the end thereof the following: "only if they are in fear of contact with the defendant.".

SEC. 625. Section 524 of title 28, United States Code, is amended by adding at the end thereof the following:

"(d)(1) There shall be established in the United States Treasury a special fund to be known as the Department of Justice Debt Collection Fund (hereinafter in this subsection referred to as 'fund') which shall be available to the Attorney General without fiscal year limitation in such amounts as may be specified in appropriation Acts for the purposes set forth herein.

"(2) There shall be deposited in the fund 5 per centum of all net amounts realized from the debts collected by the divisions of the Department of Justice and all United States attorney's offices. Deposits to the fund shall begin October 1, 1988, from all amounts collected on and after that date.

"(3) The fund may be used for the following purposes of the Department of Justice:

"(A) the training of personnel of the Department of Justice in debt collection;

"(B) services pertinent to debt collection, such as title searches, debtor skiptracing, asset searches, credit reports and other investigation related to locating debtors and their property; and

"(C) expenses of costs of sales of property not covered by the sale proceeds, such as auctioneers' fees and expenses, maintenance and protection of property and businesses, advertising and title search and surveying costs;

"(4) Amounts in the fund which are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of, or guaranteed by the United States.

"(5) For fiscal years 1989, 1990, 1991, and 1992 there are authorized to be appropriated such sums as may be necessary for the purposes described in subsection (3). At the end of each fiscal year, any amount in the fund in excess of the amount appropriated, shall be deposited in the general fund of the Treasury of the United States, except that an amount not to exceed $5,000,000 may be carried forward and be available in the next fiscal year.

"(6) For the purposes of these subsections, amounts from debt collection efforts of the Department of Justice shall include amounts realized from actions brought by or judgments enforced by Department of Justice personnel, including those in all United States attorneys' offices, whether civil or criminal, and whether involving tax or non-tax debts owed to the United States, except as deposit of such amounts into other special funds is required by law.".

SEC. 626. Section 550 of title 28, United States Code, is amended by striking out "assistants and messengers" and inserting in lieu thereof "assistants, messengers, and private process servers.".

SEC. 627. Section 1961(c)(1) of title 28, United States Code, is amended to read as follows:

"(c)(1) The provisions of this section do not apply to judgments entered in favor of the United States.".

SEC. 628. Section 1962 of title 28, United States Code, is amended by adding the following after the first sentence thereof: "The provisions of this section do not apply to judgments entered in favor of the United States.".

SEC. 629. Section 1963 of title 28, United States Code, is amended by adding the following after the first sentence thereof: "The provisions of this section do not apply to judgments entered in favor of the United States.".

SEC. 630. (a) Chapter 129 of title 28, United States Code, is amended by adding at the end thereof the following section:

"§ 2044. Payment of fine with bond money

"Upon motion of the United States attorney, the court shall order any money belonging to and deposited by the defendant with the court for the purposes of a criminal appearance bail bond (trial or appeal) to be held and paid over to the United States attorney to be applied to the payment of any assessment, fine, restitution or penalty imposed upon the defendants. The court shall not release any money deposited for bond purposes after a plea or a verdict of the defendant's guilt has been entered and before sentencing, except upon a showing that an assessment, fine, restitution or penalty cannot be imposed for the offense the defendant committed or that the defendant would suffer an undue hardship. This does not apply to any third party sureties.".

(b) The table of sections for chapter 129 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"2044. Payment of fine with bond money.".

SEC. 631. Section 2410(c) of title 28, United States Code, is amended by adding at the end thereof the following: "In any case where the United States is a bidder at the judicial sale, it may credit the amount determined to be due it against the amount it bids at such sales.".

SEC. 632. Section 2413 of title 28, United States Code, and the item relating to section 2413 in the table of sections for chapter 161, are repealed.

SEC. 633. USE OF ADDITIONAL REVENUE FROM CRIME VICTIMS FUND.

Section 1402(c) of the Victims of Crime Act of 1984 (42 U.S.C. 1060(c)) is amended to read as follows:

"(c) USE OF EXCESS AMOUNT.—If the total deposited in the Fund during a particular fiscal year reaches the sum of $110 million, up to the first $2.2 million of the excess over that sum shall be available to the Judiciary for administrative costs of the collection of the amounts deposited in the Fund pursuant to 18 U.S.C. 3611 and 3612. As to the remainder of such excess, if any, over the $2.2 million available to the Judiciary, such remainder shall be deposited in the general Fund of the Treasury and shall not be a part of the Fund.

On page 53, line 11, after the period add the following sentence:

"Furthermore, nothing in Subsection (a) shall apply to the lawful carrying of firearms or dangerous weapons on federal lands or facilities for hunting or other lawful purposes."

APPOINTMENT OF ADDITIONAL BANKRUPTCY JUDGES

BENTSEN (AND OTHERS) AMENDMENT NO. 3700

Mr. BYRD (for Mr. BENTSEN, for himself, Mr. DECONCINI, and Mr. MCCAIN) proposed an amendment to the bill (H.R. 4064) to amend title 28 of the United States Code to authorize the appointment of additional bankruptcy judges; as follows:

Strike out "and" at the end of paragraph (4) in the first section.

Strike out the period at the end of paragraph (5) in the first section and insert in lieu thereof a comma.

After paragraph (5), add the following:

(6) in the item relating to the western district of Texas, by striking "3" and inserting "4", and

(7) in the item relating to the district of Arizona, by striking "4" and inserting "5".

IMPROVEMENTS WITH RESPECT TO THE FEDERAL JUDICIARY

HEFLIN AMENDMENT NO. 3701

Mr. BYRD (for Mr. HEFLIN) proposed an amendment to the bill (S. 1482) to amend title 18 and title 28, United States Code, to make certain improvements with respect to the Federal judiciary, and for other purposes; as follows:

Strike out all after line 2 and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Judicial Improvements and Access to Justice Act".

SEC. 2. REFERENCE TO TITLE 28, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed as an amendment to or repeal of a section or other provision, the reference shall be considered to be made to a section or other provision of title 28, United States Code.

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TITLE I—FEDERAL COURTS STUDY COMMITTEE

SEC. 101. SHORT TITLE.

This title may be cited as the "Federal Courts Study Act".

SEC. 102. ESTABLISHMENT AND PURPOSES.

(a) ESTABLISHMENT.—There is hereby established within the Judicial Conference of the United States, a Federal Courts Study Committee on the future of the Federal Judiciary (hereafter referred to as the "Committee").

(b) PURPOSES.—The purposes of the Committee are to—

(1) examine problems and issues currently facing the courts of the United States;

(2) develop a long-range plan for the future of the Federal Judiciary, including assessments involving—

(A) alternative methods of dispute resolution;

(B) the structure and administration of the Federal court system;

(C) methods of resolving intracircuit and intercircuit conflicts in the courts of appeals; and

(D) the types of disputes resolved by the Federal courts; and

(3) report to the Judicial Conference of the United States, the President, the Congress, the Conference of Chief Justices, and the State Justice Institute on the revisions, if any, in the laws of the United States which the Committee, based on its study and evaluation, deems advisable.

SEC. 103. MEMBERSHIP OF THE COMMITTEE.

(a) APPOINTMENTS.—The Committee shall be composed of fifteen members to be appointed by the Chief Justice of the United States, within ten days after the effective date of this title.

(b) SELECTION.—The membership of the Committee shall be selected in such a manner as to be representative of the various interests, needs and concerns which may be affected by the jurisdiction of the Federal courts. The Chief Justice shall designate one of the members of the Committee to serve as Chairman.

(c) TERM OF OFFICE.—The Committee members shall serve at the pleasure of the Chief Justice.

(d) RULES OF PROCEDURE.—Rules of procedure shall be promulgated by vote of a majority of the Committee.

SEC. 104. POWERS OF THE COMMITTEE.

(a) HEARINGS.—The Committee or, on the authorization of the Committee, any subcommittee thereof may, for the purpose of carrying out its functions and duties, hold such hearings and sit and act at such times and places, as the Committee or any such subcommittee may deem advisable.

(b) INFORMATION AND ASSISTANCE.—The Administrative Office of the United States Courts, the Federal Judicial Center, and each department, agency, and instrumentality of the executive branch of the Government, including the National Institute of Justice and independent agencies, shall furnish to the Committee, upon request made by the Chairman, such information and assistance as the Committee may reasonably deem necessary to carry out its functions under this title, consistent with other applicable provisions of law governing the release of such information.

(c) PERSONNEL.—(1) Subject to such rules and regulations as may be adopted by the Committee, the Director of the Administrative Office shall furnish to the Committee necessary staff and technical assistance in response to needs specified.

(2) Section 5108(c)(1) of title 5, United States Code, is amended by striking out "15" and inserting in lieu thereof "17".

(d) ADVISORY PANELS.—The Committee is authorized, for the purpose of carrying out its functions and duties pursuant to the provisions of this title, to establish advisory panels consisting of Committee members or members of the public. Such panels shall be established to provide expertise and assistance in specific areas, as the Committee deems necessary.

SEC. 105. FUNCTIONS AND DUTIES.

The Committee shall—

(1) make a complete study of the courts of the United States and of the several States and transmit a report to the President, the Chief Justice of the United States, the Congress, the Judicial Conference of the United States, the Conference of Chief Justices, and the State Justice Institute on such study, within fifteen months after the effective date of this title;

(2) recommend revisions to be made to laws of the United States as the Committee, on the basis of such study, deems advisable;

(3) develop a long-range plan for the judicial system; and

(4) make such other recommendations and conclusions it deems advisable.

SEC. 106. COMPENSATION OF MEMBERS.

(a) EMPLOYEES OF THE GOVERNMENT.—A member of the Committee who is an officer or full-time employee of the United States shall receive no additional compensation for his or her services, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties vested in the Committee, not to exceed the maximum amounts authorized under section 456 of title 28.

(b) PRIVATE SECTOR.—A member of the Committee who is from the private sector shall receive $200 per diem for each day (including travel time) during which he or she is engaged in the actual performance of duties vested in the Committee, plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties, not to exceed the maximum amounts authorized under section 456 of title 28.

SEC. 107. EXPIRATION OF THE COMMITTEE.

The Committee shall cease to exist on the date 60 days after it transmits the report pursuant to section 105.

SEC. 108. AUTHORIZATION OF APPROPRIATIONS.

To carry out the purposes of this title there are authorized to be appropriated

$300,000 for each of the fiscal years 1989 and 1990.

SEC. 109. EFFECTIVE DATE.

This title shall become effective on January 1, 1989.

TITLE II—FEDERAL JURISDICTION—DIVERSITY REFORM

SEC. 201. AMOUNT IN CONTROVERSY IN DIVERSITY CASES.

(a) Increase in Amount in Controversy to $50,000.—Subsections (a) and (b) of section 1332 are each amended by striking out "$10,000" and inserting in lieu thereof "$50,000".

(b) Effective Date.—The amendments made by this section shall apply to any civil action commenced on or after the 180th day after the date of enactment of this title.

SEC. 202. DIVERSITY IN CASES INVOLVING MULTI-STATE CORPORATIONS OR REPRESENTATIVE PARTIES.

(a) In General.—Section 1332(c) is amended to read as follows:

"(c) For the purposes of this section and section 1441 of this title—

"(1) a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business; and

"(2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.".

(b) Effective Date.—The amendment made by this section shall apply to any civil action commenced in or removed to a United States district court on or after the 180th day after the date of enactment of this title.

SEC. 203. CITIZENSHIP OF PERMANENT RESIDENT ALIEN.

(a) Permanent Resident Alien Citizenship for Diversity Purposes.—Section 1332(a) is amended by adding at the end thereof the following:

"For the purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.".

(b) Effective Date.—The amendment made by this section shall apply to claims in civil actions commenced in or removed to the United States district courts on or after the 180th day after the date of enactment of this title.

TITLE III—FEDERAL JUDICIAL CENTER

SEC. 301. FEDERAL JUDICIAL CENTER FOUNDATION.

(a) Establishment.—Chapter 42 is amended by adding at the end the following new section:

"§ 629. Federal Judicial Center Foundation

"(a) There is established a private nonprofit corporation which shall be known as the Federal Judicial Center Foundation (hereafter in this section referred to as the 'Foundation') and which shall be incorporated in the District of Columbia. The purpose of the Foundation shall be to have sole authority to accept and receive gifts of real and personal property and services made for the purpose of aiding or facilitating the work of the Federal Judicial Center. The Foundation shall not accept conditional or otherwise restricted gifts, except gifts that are designated for the support of specific projects previously approved by the Board of the Center may be accepted. The Foundation shall have no authority to administer or otherwise determine the use of gifts accepted under this section.

"(b) The business of the Foundation shall be conducted by a Board that shall have seven members, including a chairman. Three members, including the chairman, shall be appointed by the Chief Justice of the United States, two by the President Pro Tempore of the Senate, and two by the Speaker of the House of Representatives. The term of office of each member of the Board shall be 5 years, except that the initial terms shall be 5 years for the chairman, one member appointed by the President Pro Tempore and one member appointed by the Speaker, 3 years for the other member appointed by the President Pro Tempore and the other member appointed by the Speaker, and two years for the two other members appointed by the Chief Justice. Members of the Board shall serve without compensation but, upon authorization of the Director of the Center, shall be reimbursed by the Federal Judicial Center for actual and necessary expenses incurred in the performance of their official duties. No person who is a Federal or State judge in regular active service or otherwise eligible to perform judicial duties shall be eligible for membership on the Board. The Center shall provide all administrative support and facilities necessary for the operation of the Board.

"(c) The Federal Judicial Center is authorized to administer and use gifts received by the Foundation under this section. The gifts shall be used to further the goals of the Center as determined by the Board of the Center.

"(d) Gifts of money and proceeds from sales of other property received as gifts shall be deposited in a separate fund in the Treasury of the United States and disbursed on the order of the Director of the Center, in accordance with policies established by the Board of the Center.

"(e) The Board of the Foundation shall, not later than October 1 of each year, submit to the Committees on the Judiciary of the United States Senate and House of Representatives a report with respect to gifts received under this section during the preceding 12-month period, including the source of each such gift, the amount of each gift of cash or cash equivalent, and a description of any other gift. The Center shall include in its annual report of the activities of the Center under section 623(a)(3) a description of the purposes for which gifts were used during the year covered by the report.

"(f) For the purpose of Federal income, estate, and gift taxes, property accepted under this section shall be considered as a gift or bequest to or for the use of the United States.".

(b) Conforming Amendment.—The item relating to section 629 in the table of sections for chapter 42, is amended to read as follows:

"629. Federal Judicial Center Foundation.".

SEC. 302. AUTHORITY TO IMPLEMENT HISTORY PROGRAM.

Section 623(a) is amended—

(1) by striking out "and" at the end of paragraph (5);

(2) by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraph:

"(7) conduct, coordinate, and encourage programs relating to the history of the judicial branch of the United States Government.".

SEC. 303. AUTHORITY TO PROVIDE FOR TRAINING FOR PERSONS OUTSIDE THE JUDICIAL BRANCH.

Section 620(b)(3) is amended to read as follows:

"(3) to stimulate, create, develop, and conduct programs of continuing education and training for personnel of the judicial branch of the Government and other persons whose participation in such programs would improve the operation of the judicial branch, including, but not limited to, judges, United States magistrates, clerks of court, probation officers, and persons serving as mediators and arbitrators;".

SEC. 304. APPOINTMENT AND COMPENSATION OF THE DEPUTY DIRECTOR OF THE CENTER.

(a) Appointment by the Board.—Section 624(1) is amended by inserting "and the Deputy Director" after "Director".

(b) Compensation.—

(1) Section 626 is amended—

(A) by adding at the end the following new sentence: "The compensation of the Deputy Director of the Federal Judicial Center shall be the same as that of the Deputy Director of the Administrative Office of the United States Courts."; and

(B) by amending the section heading to read as follows:

"§ 626. Compensation of the Director and Deputy Director".

(2) The item relating to section 626 in the table of sections for chapter 42 is amended to read as follows:

"626. Compensation of the Director and Deputy Director.".

(c) Budget Act Compliance.—The amendment made by subsection (b) shall be effective for fiscal years beginning on or after October 1, 1988.

TITLE IV—RULES ENABLING ACT

SEC. 401. RULES ENABLING ACT AMENDMENTS.

(a) In General.—Chapter 131 is amended by striking out section 2072 and inserting in lieu thereof the following:

"§ 2072. Rules of procedure and evidence; power to prescribe

"(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates thereof) and courts of appeals.

"(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

"§ 2073. Rules of procedure and evidence; method of prescribing

"(a)(1) The Judicial Conference shall prescribe and publish the procedures for the consideration of proposed rules under this section.

"(2) The Judicial Conference may authorize the appointment of committees to assist the Conference by recommending rules to be prescribed under section 2072 of this title. Each such committee shall consist of members of the bench and the professional bar, and trial and appellate judges.

"(b) The Judicial Conference shall authorize the appointment of a standing committee on rules of practice, procedure, and evidence under subsection (a) of this section. Such standing committee shall review each recommendation of any other committees so appointed and recommend to the Judicial Conference rules of practice, procedure, and evidence and such changes in rules proposed by a committee appointed under subsection (a)(2) of this section as may be necessary to maintain consistency and otherwise promote the interest of justice.

"(c)(1) Each meeting for the transaction of business under this chapter by any committee appointed under this section shall be open to the public, except when the committee so meeting, in open session and with a majority present, determines that it is in the public interest that all or part of the remainder of the meeting on that day shall be closed to the public, and states the reason for so closing the meeting. Minutes of each meeting for the transaction of business under this chapter shall be maintained by the committee and made available to the public, except that any portion of such minutes, relating to a closed meeting and made available to the public, may contain such deletions as may be necessary to avoid frustrating the purposes of closing the meeting.

"(2) Any meeting for the transaction of business under this chapter, by a committee appointed under this section, shall be preceded by sufficient notice to enable all interested persons to attend.

"(d) In making a recommendation under this section or under section 2072, the body making that recommendation shall provide a proposed rule, an explanatory note on the rule, and a written report explaining the body's action, including any minority or other separate views.

"(e) Failure to comply with this section does not invalidate a rule prescribed under section 2072 of this title.

"§ 2074. Rules of procedure and evidence; submission to Congress; effective date

"(a) The Supreme Court shall transmit to the Congress not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective a copy of the proposed rule. Such rule shall take effect no earlier than December 1 of the year in which such rule is so transmitted unless otherwise provided by law. The Supreme Court may fix the extent such rule shall apply to proceedings then pending, except that the Supreme Court shall not require the application of such rule to further proceedings then pending to the extent that, in the opinion of the court in which such proceedings are pending, the application of such rule in such proceedings would not be feasible or would work injustice, in which event the former rule applies.

"(b) Any such rule creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress.".

(b) ADVISORY COMMITTEES FOR COURTS.—Section 2077(b) is amended—

(1) by striking out "of appeals" the first place it appears and inserting in lieu thereof ", except the Supreme Court, that is authorized to prescribe rules of the conduct of such court's business under section 2071 of this title"; and

(2) by striking out "the court of appeals" and inserting in lieu thereof "such court".

REPEALER.—Section 2076 is repealed.

(d) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 131 is amended by striking out the item relating to section 2072 and all that follows through the item relating to section 2076 and inserting in lieu thereof the following:

"2072. Rules of procedure and evidence; power to prescribe.
"2073. Rules of procedure and evidence; method of prescribing.
"2074. Rules of procedure and evidence; submission to Congress; effective date.
"2075. Bankruptcy rules.".

SEC. 402. COMPILATION AND REVIEW OF LOCAL RULES.

(a) COMPILATION.—Section 604(a) is amended—

(1) by redesignating paragraph (18) as paragraph (23); and

(2) by inserting after paragraph (18) the following:

"(19) Periodically compile—

"(A) the rules which are prescribed under section 2071 of this title by courts other than the Supreme Court;

"(B) the rules which are prescribed under section 372(c)(11) of this title; and

"(C) the orders which are required to be publicly available under section 372(c)(15) of this title;

so as to provide a current record of such rules and orders;".

(b) REVIEW.—Section 331 is amended by inserting after the fifth paragraph the following:

"The Judicial Conference shall review rules prescribed under section 2071 of this title by the courts, other than the Supreme Court and the district courts, for consistency with Federal law. The Judicial Conference may modify or abrogate any such rule so reviewed found inconsistent in the course of such a review.".

SEC. 403. RULES BY CERTAIN COURTS AND ORDERS BY CIRCUIT JUDICIAL COUNCILS AND THE JUDICIAL CONFERENCE.

(a) RULES BY CERTAIN COURTS.—(1) Section 2071 is amended—

(A) by inserting "(a)" before "The";

(B) by striking out "by the Supreme Court" and inserting in lieu thereof "under section 2072 of this title"; and

(C) by adding at the end the following:

"(b) Any rule prescribed by a court, other than the Supreme Court, under subsection (a) shall be prescribed only after giving appropriate public notice and an opportunity for comment. Such rule shall take effect upon the date specified by the prescribing court and shall have such effect on pending proceedings as the prescribing court may order.

"(c)(1) A rule of a district court prescribed under subsection (a) shall remain in effect unless modified or abrogated by the judicial council of the relevant circuit.

"(2) Any other rule prescribed by a court other than the Supreme Court under subsection (a) shall remain in effect unless modified or abrogated by the Judicial Conference.

"(d) Copies of rules prescribed under subsection (a) by a district court shall be furnished to the judicial council, and copies of all rules prescribed by a court other than the Supreme Court under subsection (a) shall be furnished to the Director of the Administrative Office of the United States Courts and made available to the public.

"(e) If the prescribing court determines that there is an immediate need for a rule, such court may proceed under this section without public notice and opportunity for comment, but such court shall promptly thereafter afford such notice and opportunity for comment.

"(f) No rule may be prescribed by a district court other than under this section.".

(2) Section 332(d) is amended by adding at the end the following new paragraph:

"(4) Each judicial council shall periodically review the rules which are prescribed under section 2071 of this title by district courts within its circuit for consistency with rules prescribed under section 2072 of this title. Each council may modify or abrogate any such rule found inconsistent in the course of such a review.".

(b) ORDERS BY CIRCUIT JUDICIAL COUNCILS.—Section 332(d)(1) is amended by inserting after the first sentence the following new sentence: "Any general order relating to practice and procedure shall be made or amended only after giving appropriate public notice and an opportunity for comment. Any such order so relating shall take effect upon the date specified by such judicial council. Copies of such orders so relating shall be furnished to the Judicial Conference and the Administrative Office of the United States Courts and be made available to the public.".

(c) RULES BY JUDICIAL CONFERENCE AND CIRCUIT JUDICIAL COUNCILS.—Section 372(c)(11) is amended by inserting before "Any rule promulgated" the following new sentence: "Any such rule shall be made or amended only after giving appropriate public notice and an opportunity for comment.".

SEC. 404. CONFORMING AND OTHER TECHNICAL AMENDMENTS.

(a) CONFORMING REPEAL OF CRIMINAL RULES ENABLING PROVISIONS.—(1) Chapter 237 of title 18, United States Code, and the item relating to chapter 237 in the table of chapters for part II of such title, are repealed.

(b) CONFORMING AMENDMENTS RELATING TO MAGISTRATES.—(1) Section 636(d) is amended by striking out "section 3402 of title 18, United States Code" and inserting in lieu thereof "section 2072 of this title".

(2) Section 3402 of title 18, United States Code, is amended by striking out the second paragraph.

(c) CROSS REFERENCE TECHNICAL AMENDMENT.—Section 9 of the Act entitled "An Act to provide an adequate basis for the administration of the Lake Mead National Recreation Area, Arizona and Nevada, and for other purposes" approved October 8, 1964 (Public Law 88-639; 16 U.S.C. 460n-8) is amended by striking out the sentence beginning "The provisions of title 18, section 3402".

SEC. 405. TAX COURT RULE MAKING NOT AFFECTED.

The amendments made by this title shall not affect the authority of the Tax Court to prescribe rules under section 7453 of the Internal Revenue Code of 1986.

SEC. 406. SAVINGS PROVISION.

The rules prescribed in accordance with law before the effective date of this title and in effect on the date of such effective date shall remain in force until changed pursuant to the law as amended by this title.

SEC. 407. EFFECTIVE DATE.

This title shall take effect on December 1, 1988.

TITLE V—JURISDICTION OF THE FEDERAL CIRCUIT

SEC. 501. INTERLOCUTORY APPEALS.

Section 1292(d) is amended by adding at the end the following new paragraph:

"(4)(A) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction of an appeal from an interlocutory order of a district court of the United States, the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands, granting or denying, in whole or in part, a motion to transfer an action to the United States Claims Court under section 1631 of this title.

"(B) When a motion to transfer an action to the Claims Court is filed in a district court, no further proceedings shall be taken in the district court until 60 days after the court has ruled upon the motion. If an appeal is taken from the district court's grant or denial of the motion, proceedings shall be further stayed until the appeal has been decided by the Court of Appeals for the Federal Circuit. The stay of proceedings in the district court shall not bar the granting of preliminary or injunctive relief, where appropriate and where expedition is reasonably necessary. However, during the period in which proceedings are stayed as provided in this subparagraph, no transfer to the Claims Court pursuant to the motion shall be carried out.".

SEC. 502. EFFECTIVE DATE.

The amendment made by section 501 shall apply to any action commenced in the district court on or after the date of enactment of this title.

TITLE VI—STATE JUSTICE INSTITUTE AMENDMENTS

SEC. 601. RULE MAKING.

Section 203(f) of the State Justice Institute Act of 1984 (42 U.S.C. 10702(f)) is amended—

(1) by striking out ", at least thirty days prior to their effective date,"; and

(2) by adding at the end the following: "The publication of a substantive rule shall be made not less than 30 days before the effective date of such rule, except as otherwise provided by the Institute for good cause found and published with the rule.".

SEC. 602. CIVIL SERVICE RETIREMENT.

Section 205(d)(2) of the State Justice Institute Act of 1984 (42 U.S.C. 10704(d)(2)) is amended by striking out "chapter 83" and inserting in lieu thereof "chapters 83 and 84".

SEC. 603. USE OF FUNDS UNDER GRANTS AND CONTRACTS.

Section 206(c) of the State Justice Institute Act of 1984 (42 U.S.C. 10705(c)) is amended—

(1) in paragraph (3) by inserting "judicial and" after "using";

(2) by striking out paragraph (4); and

(3) by redesignating paragraphs (5) through (15) as paragraphs (4) through (14), respectively.

SEC. 604. UNIT OF STATE OR LOCAL GOVERNMENT MATCHING FUNDS.

Section 206(d) of the State Justice Institute Act of 1984 (42 U.S.C. 10705(d)) is amended by striking out "judicial system" and inserting in lieu thereof "court (or other unit of State or local government)".

SEC. 605. INTERIM FUNDING.

Section 207(a) of the State Justice Institute Act of 1984 (42 U.S.C. 10706(a)) is amended—

(1) in paragraph (1)(B) by adding "and" after the semicolon;

(2) in paragraph (2) by striking out "; and" and inserting in lieu thereof a period; and

(3) by striking out paragraph (3).

SEC. 606. PROCEDURES FOR SUSPENSION OF FUNDING; RESTRICTIONS ON DISCLOSURE OF INFORMATION.

Section 209 of the State Justice Institute Act of 1984 (42 U.S.C. 10708) is amended to read as follows:

"ADMINISTRATIVE PROVISIONS

"SEC. 209. (a) The Institute shall prescribe procedures to ensure that financial assistance under this title shall not be suspended unless the grantee, contractor, person, or entity receiving financial assistance under this title has been given reasonable notice and opportunity to show cause why such actions should not be taken.

"(b) Except as provided by Federal law other than this title, no officer or employee of the Institute, and no recipient of assistance under this title, may use or reveal any research or statistical information furnished under this title by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained in accordance with this title. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.".

SEC. 607. AUTHORIZATION OF APPROPRIATIONS.

Section 215 of the State Justice Institute Act of 1984 (42 U.S.C. 10713) is amended to read as follows:

"SEC. 215. There are authorized to be appropriated to carry out the purposes of this title $15,000,000 for each of the fiscal years 1989 and 1990. Amounts appropriated under this section may remain available until expended.".

TITLE VII—COURT INTERPRETERS AMENDMENTS

SEC. 701. SHORT TITLE.

This title may be cited as the "Court Interpreter Amendments Act of 1988".

SEC. 702. AUTHORITY OF THE DIRECTOR.

Section 1827(a) is amended to read as follows:

"(a) The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of certified and otherwise qualified interpreters in judicial proceedings instituted by the United States.".

SEC. 703. CERTIFICATION OF INTERPRETERS; OTHER QUALIFIED INTERPRETERS.

Section 1827(b) is amended to read as follows:

"(b)(1) The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters, when the Director considers certification of interpreters to be merited, for the hearing impaired (whether or not also speech impaired) and persons who speak only or primarily a language other than the English language, in judicial proceedings instituted by the United States. The Director may certify interpreters for any language if the Director determines that there is a need for certified interpreters in that language. Upon the request of the Judicial Conference of the United States for certified interpreters in a language, the Director shall certify interpreters in that language. Upon such a request from the judicial council of a circuit and the approval of the Judicial Conference, the Director shall certify interpreters for that circuit in the language requested. The judicial council of a circuit shall identify and evaluate the needs of the districts within a circuit. The Director shall certify interpreters based on the results of criterion-referenced performance examinations. The Director shall issue regulations to carry out this paragraph within 1 year after the date of the enactment of the Judicial Improvements and Access to Justice Act.

"(2) Only in a case in which no certified interpreter is reasonably available as provided in subsection (d) of this section, including a case in which certification of interpreters is not provided under paragraph (1) in a particular language, may the services of otherwise qualified interpreters be used. The Director shall provide guidelines to the courts for the selection of otherwise qualified interpreters, in order to ensure that the highest standards of accuracy are maintained in all judicial proceedings subject to the provisions of this chapter.

"(3) The Director shall maintain a current master list of all certified interpreters and otherwise qualified interpreters and shall report periodically on the use and performance of both certified and otherwise qualified interpreters in judicial proceedings instituted by the United States and on the languages for which interpreters have been certified. The Director shall prescribe, subject to periodic review, a schedule of reasonable fees for services rendered by interpreters, certified or otherwise, used in proceedings instituted by the United States, and in doing so shall consider the prevailing rate of compensation for comparable service in other governmental entities.".

SEC. 704. LISTS OF INTERPRETERS; RESPONSIBILITY FOR SECURING SERVICES OF INTERPRETERS.

Section 1827(c) is amended to read as follows:

"(c)(1) Each United States district court shall maintain on file in the office of the clerk, and each United States attorney shall maintain on file, a list of all persons who have been certified as interpreters by the Director in accordance with subsection (b) of this section. The clerk shall make the list of certified interpreters for judicial proceeding available upon request.

"(2) The clerk of the court, or other court employee designated by the chief judge, shall be responsible for securing the services of certified interpreters and otherwise qualified interpreters required for proceedings initiated by the United States, except that the United States attorney is responsible for securing the services of such interpreters for governmental witnesses.".

SEC. 705. SOUND RECORDINGS.

Section 1827(d) is amended by—

(1) redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) inserting "(1)" after "(d)"; and

(3) adding at the end thereof the following:

"(2) Upon the motion of a party, the presiding judicial officer shall determine whether to require the electronic sound recording of a judicial proceeding in which an interpreter is used under this section. In making this determination, the presiding judicial officer shall consider, among other things, the qualifications of the interpreter and prior experience in interpretation of court proceedings; whether the language to be interpreted is not one of the languages for which the Director has certified interpreters, and the complexity or length of the proceeding. In a grand jury proceeding, upon the motion of the accused, the presiding judicial officer shall require the electronic sound recording of the portion of the proceeding in which an interpreter is used.".

SEC. 706. AUTHORIZATION OF APPROPRIATIONS; PAYMENT FOR SERVICES OF INTERPRETERS.

Section 1827(g) is amended—

(a) by amending paragraphs (1), (2), and (3) to read as follows:

"(g)(1) There are authorized to be appropriated to the Federal judiciary, and to be paid by the Director of the Administrative Office of the United States Courts, such sums as may be necessary to establish a program to facilitate the use of certified and otherwise qualified interpreters, and otherwise fulfill the provisions of this section and the Judicial Improvements and Access to Justice Act, except as provided in paragraph (3).

"(2) Implementation of the provisions of this section is contingent upon the availability of appropriated funds to carry out the purposes of this section.

"(3) Such salaries, fees, expenses, and costs that are incurred with respect to Government witnesses (including for grand jury proceedings) shall, unless direction is made under paragraph (4), be paid by the Attorney General from sums appropriated to the Department of Justice.";

(b) by redesignating paragraph (4) as paragraph (5) and by inserting between paragraph (3) and paragraph (5), the following:

"(4) Upon the request of any person in any action for which interpreting services established pursuant to subsection (d) are not otherwise provided, the clerk of the court, or other court employee designated by the chief judge, upon the request of the presiding judicial officer, shall, where possible, make such services available to that person on a cost-reimbursable basis, but the judicial officer may also require the prepayment of the estimated expenses of providing such services.".

SEC. 707. APPROVAL OF COMPENSATION AND EXPENSES.

Section 1827(h) is amended to read as follows:

"(h) The presiding judicial officer shall approve the compensation and expenses payable to interpreters, pursuant to the schedule of fees prescribed by the Director under subsection (b)(3).".

SEC. 708. DEFINITIONS.

Subsections (i) and (j) of section 1827 are amended to read as follows:

"(i) The term 'presiding judicial officer' as used in this section refers to any judge of a United States district court, including a bankruptcy judge, a United States magistrate, and in the case of grand jury proceedings conducted under the auspices of the United States attorney, a United States attorney.

"(j) The term 'judicial proceedings instituted by the United States' as used in this section refers to all proceedings, whether criminal or civil, including pretrial and grand jury proceedings (as well as proceedings upon a petition for a writ of habeas corpus initiated in the name of the United States by a relator) conducted in, or pursuant to the lawful authority and jurisdiction of a United States district court. The term 'United States district court' as used in this subsection includes any court which is created by an Act of Congress in a territory and is invested with any jurisdiction of a district court established by chapter 5 of this title.".

SEC. 709. SIMULTANEOUS INTERPRETATION.

Section 1827(k) is amended to read as follows:

"(k) The interpretation provided by certified or otherwise qualified interpreters pursuant to this section shall be in the simultaneous mode for any party to a judicial proceeding instituted by the United States and in the consecutive mode for witnesses, except that the presiding judicial officer, sua sponte or on the motion of a party, may authorize a simultaneous, or consecutive interpretation when such officer determines after a hearing on the record that such interpretation will aid in the efficient administration of justice. The presiding judicial officer, on such officer's motion or on the motion of a party, may order that special interpretation services as authorized in section 1828 of this title be provided if such officer determines that the provision of such services will aid in the efficient administration of justice.".

SEC. 710. TECHNICAL AMENDMENTS.

(a) Section 1827(d) is amended—

(1) by striking out "competent" and inserting in lieu thereof "qualified";

(2) by striking out "any criminal" and all that follows through "relator)" and inserting in lieu thereof "judicial proceedings instituted by the United States"; and

(3) by striking out "such action" and inserting in lieu thereof "such judicial proceedings".

(b) Section 1827(e)(2) is amended by striking out "criminal or civil action in a United States district court" and inserting in lieu thereof "judicial proceedings instituted by the United States".

SEC. 711. IMPACT ON EXISTING PROGRAMS.

Nothing in this title shall be construed to terminate or diminish existing programs for the certification of interpreters.

SEC. 712. EFFECTIVE DATE.

This title shall become effective upon the date of enactment.

TITLE VIII—JURY SELECTION AND SERVICE

SEC. 801. EXCUSE OF JURORS.

Section 1866(c)(1) is amended to read as follows: "(1) excused by the court, or by the clerk under supervision of the court if the court's jury selection plan so authorizes, upon a showing of undue hardship or extreme inconvenience, for such period as the court deems necessary, at the conclusion of which such person either shall be summoned again for jury service under subsections (b) and (c) of this section or, if the court's jury selection plan so provides, the name of such person shall be reinserted into the qualified jury wheel for selection pursuant to subsection (a) of this section, or".

SEC. 802. JURY SELECTION PLAN.

(a) Clerk Defined for Purposes of Functions Under Plan.—Section 1869(a) is amended to read as follows:

"(a) 'clerk' and 'clerk of the court' shall mean the clerk of the district court of the United States, any authorized deputy clerk, and any other person authorized by the court to assist the clerk in the performance of functions under this chapter;".

(b) Optional Jury Service by Volunteer Public Safety Personnel.—Paragraph (5) of section 1863(b)(5) is amended—

(1) by inserting "(A) except as provided in subparagraph (B)," after "(5)", and

(2) by adding at the end the following:

"(B) specify that volunteer safety personnel, upon individual request, shall be excused from jury service. For purposes of this subparagraph, the term 'volunteer safety personnel' means individuals serving a public agency (as defined in section 1203(6) of title I of the Omnibus Crime Control and Safe Streets Act of 1968) in an official capacity, without compensation, as firefighters or members of a rescue squad or ambulance crew.".

(c) Persons Exempted From Jury Service.—Paragraph (6) of section 1863(b) is amended to read as follows:

"(6) specify that the following persons are barred from jury service on the ground that they are exempt: (A) members in active service in the Armed Forces of the United States; (B) members of the fire or police departments of any State, the District of Columbia, any territory or possession of the United States, or any subdivision of a State, the District of Columbia, or such territory or possession; (C) public officers in the executive, legislative, or judicial branches of the Government of the United States, or of any State, the District of Columbia, any territory or possession of the United States, or any subdivision of a State, the District of Columbia, or such territory or possession, who are actively engaged in the performance of official duties.".

SEC. 803. MASTER JURY WHEEL.

(a) Alphabetical List Not Mandatory.—Strike out the second sentence of section 1864(a) and insert the following: "The clerk or jury commission may, upon order of the court, prepare an alphabetical list of the names drawn from the master jury wheel. Any list so prepared shall not be disclosed to any person except pursuant to the district court plan or pursuant to section 1867 or 1868 of this title.".

(b) Conforming Amendment.—The second sentence of section 1865(a) is amended by striking out "the alphabetical" and inserting in lieu thereof "in any alphabetical".

SEC. 804. TECHNICAL AMENDMENT.

Section 1869(f) is amended to read as follows:

"(f) 'district court of the United States', 'district court', and 'court' shall mean any district court established by chapter 5 of this title, and any court which is created by Act of Congress in a territory and is invested with any jurisdiction of a district court established by chapter 5 of this title;".

SEC. 805. EXPERIMENTAL USE OF NEW JURY SELECTION PROCEDURES.

(a) Section 1878.—Chapter 121 is amended by adding at the end thereof the following:

"§ 1878. Experimental use of a one-step summoning and qualification procedure

"(a) The Judicial Conference of the United States is hereby authorized to develop and conduct an experiment in which jurors serving in a limited number of United States district courts shall be qualified and summoned in a single procedure, in lieu of the two separate procedures otherwise provided for by this chapter. The Judicial Conference shall designate the district courts to participate in this experiment, but in no event shall the number of courts participating exceed ten. An experiment may be conducted pursuant to this section for a period not to exceed 2 years. The Judicial Conference shall ensure that an experiment conducted pursuant to this section does not violate the policies and objectives set forth in sections 1861 and 1862 of this title, and shall terminate the experiment immediately if it determines that these policies and objectives are being violated or whenever in its judgment good cause for such termination exists.

"(b) Jury selection conducted pursuant to this section shall be subject to challenge under section 1867 of this title for substantial failure to comply with the provisions of this title in selecting the jury. However, no challenge under section 1867 of this title shall lie solely on the basis that a jury was selected in accordance with an experiment conducted pursuant to this section.".

(b) Technical.—The table of sections for chapter 121 is amended by adding at the end thereof the following new item:

"1878. Experimental use of a one-step summoning and qualification procedure.".

TITLE IX—ARBITRATION

SEC. 901. ARBITRATION AUTHORIZATION BY DISTRICT COURTS.

(a) In General.—Title 28, United States Code, is amended by inserting after chapter 43 the following new chapter:

"CHAPTER 44—ARBITRATION

"Sec.
"651. Authorization of arbitration.
"652. Jurisdiction.
"653. Powers of arbitrator; arbitration hearing.
"654. Arbitration award and judgment.
"655. Trial de novo.
"656. Certification of arbitrators.
"657. Compensation of arbitrators.
"658. District courts that may authorize arbitration.

"§ 651. Authorization of arbitration

"(a) Authority of Certain District Courts.—Each United States district court described in section 658 may authorize by local rule the use of arbitration in any civil action, including an adversary proceeding in bankruptcy. A district court described in section 658(1) may refer any such action to arbitration as set forth in section 652(a). A district court described in section 658(2) may refer only such actions to arbitration as are set forth in section 652(a)(1)(A).

"(b) Title 9 Not Affected.—This chapter shall not affect title 9.

"§ 652. Jurisdiction

"(a) Actions That May Be Referred to Arbitration.—(1) Notwithstanding any provision of law to the contrary and except as provided in subsections (b) and (c) of this section, and section 901(c) of the Judicial Improvements and Access to Justice Act, a district court that authorizes arbitration under section 651 may—

"(A) allow the referral to arbitration of any civil action (including any adversary proceeding in bankruptcy) pending before it if the parties consent to arbitration, and

"(B) require the referral to arbitration of any civil action pending before it if the relief sought consists only of money damages not in excess of $100,000 or such lesser amount as the district court may set, exclusive of interest and costs.

"(2) For purposes of paragraph (1)(B), a district court may presume damages are not in excess of $100,000 unless counsel certifies that damages exceed such amount.

"(b) Actions That May Not Be Referred Without Consent of Parties.—Referral to arbitration under subsection (a)(1)(B) may not be made—

"(1) of an action based on an alleged violation of a right secured by the Constitution of the United States, or

"(2) if jurisdiction is based in whole or in part on section 1343 of this title.

"(c) Exceptions From Arbitration.—Each district court shall establish by local rule procedures for exempting, sua sponte or on motion of a party, any case from arbitration in which the objectives of arbitration would not be realized—

"(1) because the case involves complex or novel legal issues,

"(2) because legal issues predominate over factual issues, or

"(3) for other good cause.

"(d) Safeguards in Consent Cases.—In any civil action in which arbitration by consent is allowed under subsection (a)(1)(A), the district court shall by local rule establish procedures to ensure that—

"(1) consent to arbitration is freely and knowingly obtained, and

"(2) no party or attorney is prejudiced for refusing to participate in arbitration.

"§ 653. Powers of arbitrator; arbitration hearing

"(a) Powers.—An arbitrator to whom an action is referred under section 652 shall have, within the judicial district of the district court which referred the action to arbitration, the power—

"(1) to conduct arbitration hearings,

"(2) to administer oaths and affirmations, and

"(3) to make awards.

"(b) Time for Beginning Arbitration Hearing.—An arbitration hearing under this chapter shall begin within a time period specified by the district court, but in no event later than 180 days after the filing of an answer, except that the arbitration proceeding shall not, in the absence of the consent of the parties, commence until 30 days after the disposition by the district court of any motion to dismiss the complaint, motion for judgment on the pleadings, motion to join necessary parties, or motion for summary judgment, if the motion was filed during a time period specified by the district court. The 180-day and 30-day periods specified in the preceding sentence may be modified by the court for good cause shown.

"(c) Subpoenas.—Rule 45 of the Federal Rules of Civil Procedure (relating to subpoenas) applies to subpoenas for the attendance of witnesses and the production of documentary evidence at an arbitration hearing under this chapter.

"§ 654. Arbitration award and judgment

"(a) Filing and Effect of Arbitration Award.—An arbitration award made by an arbitrator under this chapter, along with proof of service of such award on the other party by the prevailing party or by the plaintiff, shall, promptly after the arbitration hearing is concluded, be filed with the clerk of the district court that referred the case to arbitration. Such award shall be entered as the judgment of the court after the time has expired for requesting a trial de novo under section 655. The judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

"(b) Sealing of Arbitration Award.—The district court shall provide by local rule that the contents of any arbitration award made under this chapter shall not be made known to any judge who might be assigned to the case—

"(1) except as necessary for the court to determine whether to assess costs or attorney fees under section 655,

"(2) until the district court has entered final judgment in the action or the action has been otherwise terminated, or

"(3) except for purposes of preparing the report required by section 903(b) of the Judicial Improvements and Access to Justice Act.

"(c) Taxation of Costs.—The district court may by rule allow for the inclusion of costs as provided in section 1920 of this title as a part of the arbitration award.

"§ 655. Trial de novo

"(a) Time for Demand.—Within 30 days after the filing of an arbitration award with a district court under section 654, any party may file a written demand for a trial de novo in the district court.

"(b) Restoration to Court Docket.—Upon a demand for a trial de novo, the action shall be restored to the docket of the court and treated for all purposes as if it had not been referred to arbitration. In such a case, any right of trial by jury that a party otherwise would have had, as well as any place on the court calendar which is no later than that which a party otherwise would have had, are preserved.

"(c) Limitation on Admission of Evidence.—The court shall not admit at the trial de novo any evidence that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding, unless—

"(1) the evidence would otherwise be admissible in the court under the Federal Rules of Evidence, or

"(2) the parties have otherwise stipulated.

"(d) Taxation of Arbitrator Fees as Cost.—(1)(A) A district court may provide by rule that, in any trial de novo under this section, arbitrator fees paid under section 657 may be taxed as costs against the party demanding the trial de novo.

"(B) Such rule may provide that a party demanding a trial de novo under subsection (a), other than the United States or its agencies or officers, shall deposit a sum equal to such arbitrator fees as advanced payment of such costs, unless the party is permitted to proceed in forma pauperis.

"(2) Arbitrator fees shall not be taxed as costs under paragraph (1)(A), and any sum deposited under paragraph (1)(B) shall be returned to the party demanding the trial de novo, if—

"(A) the party demanding the trial de novo obtains a final judgment more favorable than the arbitration award, or

"(B) the court determines that the demand for the trial de novo was made for good cause.

"(3) Any arbitrator fees taxed as costs under paragraph (1)(A), and any sum deposited under paragraph (1)(B) that is not returned to the party demanding the trial de novo, shall be paid to the Treasury of the United States.

"(4) Any rule under this subsection shall provide that no penalty for demanding a trial de novo, other than that provided in this subsection, shall be assessed by the court.

"(e) Assessment of Costs and Attorney Fees.—In any trial de novo demanded under subsection (a) in which arbitration was done by consent of the parties, a district court may assess costs, as provided in section 1920 of this title, and reasonable attorney fees against the party demanding the trial de novo if—

"(1) such party fails to obtain a judgment, exclusive of interest and costs, in the court which is substantially more favorable to such party than the arbitration award, and

"(2) the court determines that the party's conduct in seeking a trial de novo was in bad faith.

"§ 656. Certification of arbitrators

"(a) Standards for Certification.—Each district court listed in section 658 shall establish standards for the certification of arbitrators and shall certify arbitrators to perform services in accordance with such standards and this chapter. The standards shall include provisions requiring that any arbitrator—

"(1) shall take the oath or affirmation described in section 453, and

"(2) shall be subject to the disqualification rules of section 455.

"(b) Treatment of Arbitrator as Independent Contractor and Special Government Employee.—An arbitrator is an independent contractor and is subject to the provisions of sections 201 through 211 of title 18 to the same extent as such provisions apply to a special Government employee of the executive branch. A person may not be barred from the practice of law because such person is an arbitrator.

"§ 657. Compensation of arbitrators

"(a) Compensation.—The district court may, subject to limits set by the Judicial Conference of the United States, establish and pay the amount of compensation, if any, that each arbitrator shall receive for services rendered in each case.

"(b) Transportation Allowances.—Under regulations prescribed by the Director of the Administrative Office of the United States Courts, a district court may reimburse arbitrators for actual transportation expenses necessarily incurred in the performance of duties under this chapter.

"§ 658. District courts that may authorize arbitration

"The district courts for the following judicial districts may authorize the use of arbitration under this chapter:

"(1) Northern District of California, Middle District of Florida, Western District of Michigan, Western District of Missouri, District of New Jersey, Eastern District of New York, Middle District of North Carolina, Western District of Oklahoma, Eastern District of Pennsylvania, and Western District of Texas.

"(2) Ten additional judicial districts, which shall be approved by the Judicial Conference of the United States. The Judicial Conference shall give notice of the 10 districts approved under this paragraph to the Federal Judicial Center and to the public.".

(b) Conforming Amendment.—The table of chapters at the beginning of part III is amended by inserting after the item relating to chapter 43 the following new item:

"44. Arbitration .... 651".

(c) Exception to Limitation on Money Damages.—Notwithstanding section 652 (as added by subsection (a) of this section), establishing a limitation of $100,000 in money damages with respect to cases referred to arbitration, a district court listed in section 658 (as added by subsection (a) of this section), whose local rule on the date of the enactment of this Act provides for a limitation on money damages, with respect to such cases, of not more than $150,000, may continue to apply the higher limitation.

SEC. 902. MODEL PROCEDURES.

The Judicial Conference of the United States may develop model rules relating to procedures for arbitration under chapter 44, as added by section 901 of this Act. No model rule may supersede any provision of such chapter 44, this title, or any law of the United States.

SEC. 903. REPORTS.

(a) Annual Report by Director of Administrative Office of the United States Courts.—The Director of the Administrative Office of the United States Courts shall include in the annual report of the activities of the Administrative Office required under section 604(a)(3), statistical information about the implementation of chapter 44, as added by section 901 of this Act.

(b) Report by Federal Judicial Center.—Not later than 5 years after the date of enactment of this Act, the Federal Judicial Center, in consultation with the Director of the Administrative Office of the United States Courts, shall submit to the Congress a report on the implementation of chapter 44, as added by section 901 of this Act, which shall include the following:

(1) A description of the arbitration programs authorized by such chapter, as conceived and as implemented in the judicial districts in which such programs are authorized.

(2) A determination of the level of satisfaction with the arbitration programs in those judicial districts by a sampling of court personnel, attorneys, and litigants whose cases have been referred to arbitration.

(3) A summary of those program features that can be identified as being related to program acceptance both within and across judicial districts.

(4) A description of the levels of satisfaction relative to the cost per hearing of each program.

(5) Recommendations to the Congress on whether to terminate or continue chapter 44, or, alternatively, to enact an arbitration provision in title 28, United States Code, authorizing arbitration in all Federal district courts.

SEC. 904. EFFECT ON JUDICIAL RULE MAKING POWERS.

Nothing in this title, or in chapter 44, as added by section 901 of this Act, is intended to abridge, modify, or enlarge the rule making powers of the Federal judiciary.

SEC. 905. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for the fiscal year ending September 30, 1989, and for each of the succeeding 4 fiscal years, to the judicial branch such sums as may be necessary to carry out the purposes of chapter 44, as added by section 901 of this Act. Funds appropriated under this section shall be allocated by the Administrative Office of the United States Courts to Federal judicial districts and the Federal Judicial Center. The funds so appropriated are authorized to remain available until expended, except that such funds may not be expended for the arbitration of actions referred to arbitration after the date of repeal set forth in section 906 of this Act.

SEC. 906. REPEAL.

Effective 5 years after the date of the enactment of this Act, chapter 44, as added by section 901 of this Act, and the item relating to that chapter in the table of chapters at the beginning of part III of such title, are repealed, except that the provisions of that chapter shall continue to apply through final disposition of all actions in which referral to arbitration was made before the date of repeal.

SEC. 907. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect 180 days after the date of enactment of this Act.

TITLE X—MISCELLANEOUS PROVISIONS

SEC. 1001. DIVISIONAL VENUE IN CIVIL CASES.

(a) Repeal.—Section 1393, relating to divisional venue in civil cases, and the item relating to section 1393 in the table of sections at the beginning of chapter 87, are repealed.

(b) Effective Date.—The amendments made by this section take effect 90 days after the date of enactment of this Act.

SEC. 1002. REGISTRATION OF FOREIGN JUDGMENTS.

(a) Judgments of District Courts and Court of International Trade.—Section 1963 is amended by amending the first sentence to read as follows: "A judgment in an action for the recovery of money or property entered in any district court or in the Court of International Trade may be registered by filing a certified copy of such judgment in any other district or, with respect to the Court of International Trade, in any judicial district, when the judgment has become final by appeal or expiration of the time for appeal or when ordered by the court that entered the judgment for good cause shown.".

(b) Conforming Amendments.—(1) The section caption for section 1963 is amended to read as follows:

"§ 1963. Registration of judgments of the district courts and the Court of International Trade".

(2) Section 1963A is repealed.

(3)(A) The item relating to section 1963 in the table of sections at the beginning of chapter 125 is amended to read as follows:

"1963. Registration of judgments of the district courts and the Court of International Trade.".

(B) The table of sections at the beginning of chapter 125 is amended by repealing the item relating to section 1963A.

(c) Effective Date.—The amendments made by this section take effect 90 days after the date of enactment of this title.

SEC. 1003. BANKRUPTCY JUDGE, MAGISTRATE AND LAW CLERK EXEMPTION FROM FEDERAL LEAVE ACT.

(a) Amendments to Sections 153, 156, 631, 634, 712, 752, and 794.—

(1) Section 153 is amended by adding at the end thereof the following:

"(d) A bankruptcy judge appointed under this chapter shall be exempt from the provisions of subchapter I of chapter 63 of title 5.";

(2) Section 631 is amended by adding at the end thereof the following:

"(l) A United States magistrate appointed under this chapter shall be exempt from the provisions of subchapter I of chapter 63 of title 5.";

(3) Sections 156(a), 712, 752 and 794 are each amended by adding at the end thereof the following:

"A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.".

(4) Section 634(c) is amended by adding at the end thereof the following:

"A legal assistant appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.".

(b) Transition Provisions.—(1) If an individual who is exempted from the Leave Act by operation of amendments under this section and who was previously subject to the provisions of subchapter I of chapter 63 of title 5, United States Code, without a break in service, again becomes subject to this subchapter on completion of his service as an exempted officer, the unused annual leave and sick leave standing to his credit when he was exempted from this subchapter is deemed to have remained to his credit.

(2) In computing an annuity under section 8339 of title 5, United States Code, the total service of a person specified in paragraph (1) of this subsection who retired on an immediate annuity or dies leaving a survivor or survivors entitled to an annuity includes, without regard to the limitations imposed by subsection (f) of section 8339 of title 5, United States Code, the days of unused sick leave standing to his credit when he was exempted from subchapter I of chapter 63 of title 5, United States Code, except that these days will not be counted in determining average pay or annuity eligibility.

SEC. 1004. COST-OF-LIVING ADJUSTMENT OF ANNUITIES PAYABLE UNDER SECTIONS 611 AND 627.

(a) Amendments to Sections 611 and 627.—Sections 611 and 627 are amended by adding at the end thereof a new paragraph denominated as subsection (e) of section 611 and subsection (f) of section 627, to read as follows:

"Each annuity payable under this section shall be increased by the same percentage amount and effective on the same date as annuities payable under chapter 83 of title 5, are increased as provided by section 8340 of title 5.".

(b) Effective Date.—The amendments made by this section shall apply to cost-of-living increases that go into effect on or after the date of enactment of this title with respect to any annuity being paid or becoming payable on or after such date.

SEC. 1005. MILITARY RETIREMENT PAY FOR SENIOR OR RETIRED JUDGES.

(a) Amendments to Section 371.—Section 371 is amended by adding at the end thereof the following new subsection:

"(e) Notwithstanding subsection (c) of section 5532 of title 5, if a regular or reserve member or former member of a uniformed service who is receiving retired or retainer pay becomes employed as a justice or judge of the United States, as defined by section 451, or becomes eligible therefor while so employed, such retired or retainer pay shall not be paid during regular active service as a justice or judge, but shall be resumed or commenced without reduction upon retirement from the judicial office or from regular active service (into senior status) as such justice or judge.".

(b) Effective Date.—The amendment made by this section shall apply to a justice or judge who retires, or has retired, from the judicial office or from regular active service (into senior status) as such justice or judge of the United States on or after the effective date of section 5532(c) of title 5, and to whom section 5532(c) would otherwise be applicable.

SEC. 1006. AMENDMENTS TO CONFORM SECTIONS 611 AND 627 TO THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM ACT OF 1986.

(a) Amendments to Sections 611 and 627.—

(1) Section 611(a) is amended to read as follows:

"(a) The Director may, by written election filed with the Chief Justice of the United States within 6 months after the date on which he takes office, waive coverage under chapter 83 of title 5, subchapter III (the Civil Service Retirement System) or chapter 84 of title 5 (the Federal Employees' Retirement System), whichever is applicable, and bring himself within the purview of this section. A Director who elects coverage under this section shall be deemed an 'employee' for purposes of chapter 84 of title 5, subchapter III, regardless of whether he has waived the coverage of chapter 83, subchapter III, or chapter 84. Waiver of coverage under chapter 83, subchapter III, and election of this section shall not operate to foreclose to the Director, upon separation from service other than by retirement, such opportunity as the law may provide to secure retirement credit under chapter 83 for service as Director by depositing with interest the amount required by section 8334 of title 5. A Director who waives coverage under chapter 84 and elects this section may secure retirement credit under chapter 84 for service as Director by depositing with interest 1.3 percent of basic pay for service from January 1, 1984, through December 31, 1986, and the amount referred to in section 8422(a) of title 5, for service after December 31, 1986. Interest shall be computed under section 8334(e) of title 5."; and

(2) Section 627(b) is amended, following the words "*Provided, however,*", to read as follows:

"That the Director, upon written notice filed with the Director of the Administrative Office of the United States Courts within 6 months after the date on which he takes office, may waive coverage under chapter 83 of title 5, subchapter III (the Civil Service Retirement System) or chapter 84 of title 5 (the Federal Employees' Retirement System), whichever is applicable, and elect coverage under the retirement and disability provisions of this section. A Director who elects coverage under this section shall be deemed an 'employee' for purposes of chapter 84 of title 5, subchapter III, regardless of whether he has waived the coverage of chapter 83, subchapter III, or chapter 84. *And provided further*, That upon his nonretirement separation from the Federal Judicial Center, waiver of coverage under chapter 83, subchapter III, and election of this section shall not operate to foreclose to the Director such opportunity as the law may provide to secure retirement credit under chapter 83 for service as Director by depositing with interest the amount required by section 8334 of title 5. A Director who waives coverage under chapter 84 and elects this section may secure retirement credit under chapter 84 for service as Director by depositing with interest 1.3 percent of basic pay for service from January 1, 1984, through December 31, 1986, and the amount referred to in section 8422(a) of title 5, for service after December 31, 1986. Interest shall be computed under section 8334(e) of title 5.".

(b) Effective Date.—The amendments made by this section shall apply to persons holding the offices of Director of the Administrative Office of the United States Courts, Director of the Federal Judicial Center, and Administrative Assistant to the Chief Justice on the date of enactment of this title.

SEC. 1007. JUDICIAL DISQUALIFICATION AMENDMENT.

Section 455 is amended by adding at the end thereof the following:

"(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.".

SEC. 1008. INCENTIVE AWARDS.

Section 604(a), as amended by this Act, is further amended—

(1) by redesignating the second paragraph (14) through paragraph (19) as paragraphs (15) through (20); and

(2) by inserting after paragraph (20) the following:

"(21) Establish a program of incentive awards for employees of the judicial branch of the United States Government, other than any judge who is entitled to hold office during good behavior;".

SEC. 1009. WAIVER OF CLAIMS FOR OVERPAYMENT OF JUDICIAL PAY AND ALLOWANCES.

(a) Amendments to Title 5, United States Code.—Section 5584 of title 5, United States Code, is amended—

(1) in subsection (a)—

(A) by striking out "or" at the end of paragraph (1);

(B) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; or"; and

(C) by adding at the end thereof the following new paragraph:

"(3) the Director of the Administrative Office of the United States Courts when the claim is in an amount aggregating not more than $10,000 and involves an officer or employee of the Administrative Office of the United States Courts, the Federal Judicial Center, or any of the courts set forth in section 610 of title 28."; and

(2) in subsection (g)—

(A) by striking out "and" at the end of paragraph (4);

(B) by striking out the period at the end of paragraph (5) and inserting in lieu thereof "; and"; and

(C) by adding at the end thereof the following new paragraph:

"(6) the Administrative Office of the United States Courts, the Federal Judicial Center, and any of the courts set forth in section 610 of title 28.

For purposes of this section, the Director of the Administrative Office of the United States Courts shall be the head of the agency in the case of those entities set forth in paragraph (6) of this subsection.".

(b) Effective Date.—The amendments made by this section shall apply with respect to any claim arising before the date of the enactment of this Act which is pending on such date, and to any claim which arises on or after such date of enactment.

SEC. 1010. COURT SECURITY.

Section 604(a) is further amended by inserting the following new paragraph before paragraph (23), as redesignated by this Act:

"(22) Receive and expend, either directly or by transfer to the United States Marshals Service or other Government agency, funds appropriated for the procurement, installation, and maintenance of security equipment and protective services for the United States Courts in courtrooms and adjacent areas, including building ingress/egress control, inspection of packages, directed security patrols, and other similar activities;".

SEC. 1011. TRAVEL REIMBURSEMENT.

Section 604(a)(7) is amended by inserting a comma in lieu of the semicolon at the end thereof and adding thereafter the following: "without regard to the per diem allowances and amounts for reimbursement of actual and necessary expenses established by the Administrator of General Services under section 5702 of title 5: *Provided*, That the reimbursement of subsistence expenses may not exceed that authorized by the Director for judges of the United States under section 456 of this title;".

SEC. 1012. CLAIMS COURT FEES.

(a) Increase in Claims Court Filing Fees.—(1) Section 2520 is amended by striking out "$60" and inserting in lieu thereof "$120".

(2) The amendment made by this subsection shall take effect 30 days after the date of enactment of this title.

(b) Report on Other Fees.—Not later than 180 days after the date of enactment of this Act, the Judicial Conference of the United States shall submit a report to the Congress on the actual costs of filing actions in the district courts of the United States.

SEC. 1013. CORPORATE VENUE.

(a) In General.—Section 1391(c) is amended to read as follows:

"(c) For purposes of venue under this chapter, a defendant that is a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced. In a State which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State, and, if there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts.".

(b) Effective Date.—The amendment made by this section takes effect 90 days after the date of enactment of this title.

SEC. 1014. METHOD OF RECORDING.

Paragraph (7) of section 636(c) is amended to read as follows:

"(7) The magistrate shall, subject to guidelines of the Judicial Conference, determine whether the record taken pursuant to this section shall be taken by electronic sound recording, by a court reporter, or by other means.".

SEC. 1015. LOCATION OF CHAMBERS OF CIRCUIT JUDGES.

Section 462(c) is amended by striking out "where Federal facilities are available" and inserting in lieu thereof "within the circuit other than where regular sessions of court are authorized by law to be held,".

SEC. 1016. IMPROVEMENTS IN REMOVAL PROCEDURE.

(a) Actions Removable Generally.—Section 1441(a) is amended by adding at the end thereof the following new sentence: "For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.".

(b) Procedure for Removal.—Section 1446 is amended—

(1) by amending subsection (a) to read as follows:

"(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.";

(2) in subsection (b)—

(A) by striking out "petition for removal" each place it appears and inserting in lieu thereof "notice of removal"; and

(B) in the second paragraph by striking out the period at the end thereof and inserting in lieu thereof ", except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action."; and

(3) by striking out subsection (d) and redesignating subsections (e) and (f) as subsection (d) and (e), respectively.

(c) Procedure After Removal Generally.—Section 1447 is amended—

(1) by amending subsection (c) to read as follows:

"(c) A motion to remand the case on the basis of any defect in removal procedure must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case."; and

(2) by adding at the end thereof the following new subsection:

"(e) If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.".

SEC. 1017. COST-OF-LIVING ADJUSTMENTS FOR JUDICIAL SURVIVORS' ANNUITIES.

(a) In General.—Section 376(m) is amended to read as follows:

"(m) Each time that an increase is made under section 8340(b) of title 5 in annuities paid under subchapter III of chapter 83 of such title, each annuity payable from the Judicial Survivors' Annuities Fund shall be increased at the same time by the same percentage by which annuities are increased under that section.".

(b) Increase for Existing Annuitants.—Each annuity payable from the Judicial Survivors' Annuities Fund under section 376 of title 28, United States Code, on the date of the enactment of this title shall be increased by 10 percent, effective on such date of enactment.

(c) Effective Date.—The amendment made by subsection (a) shall apply with respect to increases in annuities which are made under section 8340(b) of title 5, United States Code, on or after the date of enactment of this title.

SEC. 1018. ELIMINATION OF CIRCUIT EXECUTIVE BOARD OF CERTIFICATION PROCEDURE.

Section 332 is amended—

(1) in subsection (e) by striking out "executive from among persons who shall be certified by the Board of Certification." and inserting in lieu thereof "executive. In appointing a circuit executive, the judicial council shall take into account experience in administrative and executive positions, familiarity with court procedures, and special training."; and

(2) in subsection (f) by striking out the first paragraph and by designating the remaining paragraphs as paragraphs (1), (2), (3), and (4), respectively.

SEC. 1019. APPEALS UNDER TITLE 9, UNITED STATES CODE.

(a) In General.—Chapter 1 of title 9, United States Code, is amended by adding at the end thereof the following new section:

"§ 15. Appeals

"(a) An appeal may be taken from—

"(1) an order—

"(A) refusing a stay of any action under section 3 of this title,

"(B) denying a petition under section 4 of this title to order arbitration to proceed,

"(C) denying an application under section 206 of this title to compel arbitration,

"(D) confirming or denying confirmation of an award or partial award, or

"(E) modifying, correcting, or vacating an award;

"(2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title; or

"(3) a final decision with respect to an arbitration that is subject to this title.

"(b) Except as otherwise provided in section 1292(b) of title 28, an appeal may not be taken from an interlocutory order—

"(1) granting a stay of any action under section 3 of this title;

"(2) directing arbitration to proceed under section 4 of this title;

"(3) compelling arbitration under section 206 of this title; or

"(4) refusing to enjoin an arbitration that is subject to this title.".

(b) Clerical Amendment.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"15. Appeals.".

SEC. 1020. MISCELLANEOUS TECHNICAL AMENDMENTS.

(a) Amendments to Title 28.—

(1) Section 332(c) is amended by striking out "semiannually" and inserting in lieu thereof "semiannual".

(2) Section 604(a)(2) is amended by striking out "quarterly" and inserting in lieu thereof "semiannually".

(3) Section 1295(a)(1) is amended by inserting ", exclusive rights in mask works," after "copyrights".

(4)(A) Section 1338 is amended by adding at the end the following:

"(c) Subsections (a) and (b) apply to exclusive rights in mask works under chapter 9 of title 17 to the same extent as such subsections apply to copyrights.".

(B) The section heading for section 1338 is amended to read as follows:

"§ 1338. Patents, plant variety protection, copyrights, mask works, trade-marks, and unfair competition".

(5) Section 1400(a) is amended by inserting "or exclusive rights in mask works" after "copyrights".

(6) Section 1498 is amended by adding at the end the following:

"(e) Subsections (b) and (c) of this section apply to exclusive rights in mask works under chapter 9 of title 17 to the same extent as such subsections apply to copyrights.".

(7) The table of sections at the beginning of chapter 85 is amended—

(A) in the item relating to section 1330 by striking out "Action" and inserting in lieu thereof "Actions";

(B) in the item relating to section 1331 by inserting a period after "question";

(C) by amending the item relating to section 1338 to read as follows:

"1338. Patents, plant variety protection, copyrights, mask works, trademarks, and unfair competition";

and

(D) by amending the item relating to section 1343 to read as follows:

"1343. Civil rights and elective franchise.".

(8) The item relating to section 1914 in the table of sections at the beginning of chapter 123 is amended by striking out "courts" and inserting in lieu thereof "court".

(9) The table of sections for chapter 17 is amended by amending the item relating to section 376 to read as follows:

"376. Annuities for survivors of certain judicial officials of the United States.".

(b) Other Amendments.—Section 912 of title 17, United States Code, is amended—

(1) by striking out subsection (d); and

(2) by redesignating subsection (e) as subsection (d).

SEC. 1021. CONFIGURATION OF FLORIDA DISTRICTS.

(a) Middle and Southern Districts.—Section 89 is amended—

(1) in subsection (b)—

(A) by inserting "Collier," after "Clay,";

(B) by inserting "Glades," after "Flagler,"; and

(C) by inserting "Hendry," after "Hardee,"; and

(2) in subsection (c) by striking "Collier," "Glades," and "Hendry,".

(b) Effective Date.—(1) The amendments made by this section shall take effect 90 days after the date of enactment of this title.

(2) The amendments made by subsection (a) shall apply to any action commenced in the United States District Court for the Middle District of Florida, or in the United States District Court for the Southern District of Florida, on or after the effective date of this title, and shall not affect any action pending in either such court on such effective date.

(c) Juries.—The amendments made by this section shall not affect the composition, or preclude the service, of any grand or petit jury summoned, empaneled, or actually serving on the effective date of this title.

SEC. 1022. SERVICE OF ARTICLE III JUDGES ON TERRITORIAL COURTS.

Chapter 13 is amended by—

(1) adding at the end thereof the following:

"§ 297. Assignment of judges to courts of the freely associated compact states

"(a) The Chief Justice or the chief judge of the United States Court of Appeals for the Ninth Circuit may assign any circuit or district judge of the Ninth Circuit, with the consent of the judge so assigned, to serve temporarily as a judge of any duly constituted court of the freely associated compact states whenever an official duly authorized by the laws of the respective compact state requests such assignment and such assignment is necessary for the proper dispatch of the business of the respective court.

"(b) The Congress consents to the acceptance and retention by any judge so authorized of reimbursement from the countries referred to in subsection (a) of all necessary travel expenses, including transportation, and of subsistence, or of a reasonable per diem allowance in lieu of subsistence. The judge shall report to the Administrative Office of the United States Courts any amount received pursuant to this subsection."; and

(2) amending the table of sections by adding at the end thereof the following:

"297. Assignment of judges to courts of the freely associated compact states.".

SEC. 1023. SALARIES OF UNITED STATES CLAIMS COURT JUDGES.

Section 172(b) is amended to read as follows:

"(b) Each judge shall receive a salary at the rate of pay, and in the same manner, as judges of the district courts of the United States.".

PRIVACY WITH RESPECT TO VIDEO TAPES

LEAHY AMENDMENT NO. 3702

Mr. BYRD (for Mr. Leahy) proposed an amendment to the bill (S. 2361) to amend title 18, United States Code, to preserve personal privacy with respect to the rental, purchase, or delivery of video tapes or similar audio visual materials and the use of library materials or services; as follows:

On page 9, strike out lines 18 and 19, and insert in lieu thereof the following:

" '§ 2710. Wrongful disclosure of video tape rental or sale records'.".

On page 10, line 7 strike out "or library".

On page 10, line 10, after "engaged in" insert "interstate or foreign commerce in or affecting".

On page 10, line 13, strike out "paragraph (b)(2)(D)" and insert in lieu thereof "subparagraph (D) or (E) of subsection (b)(2)".

On page 14, beginning with line 8, strike out through line 11, and insert in lieu thereof the following:

"(e) Preemption.—The provisions of this section preempt only the provisions of State or local law that require disclosure prohibited by this section.".

On page 14, strike out all after line 24 and insert in lieu thereof the following:

"2710. Wrongful disclosure of video tape rental or sale records.".

DISTRIBUTION OF ADVERTISEMENTS AND INFORMATION CONCERNING LOTTERIES

SIMON AMENDMENT NO. 3703

Mr. BYRD (for Mr. Simon) proposed an amendment to the bill (H.R. 3146) to clarify certain restrictions on distribution of advertisements and other information concerning lotteries and similar activities; as follows:

On page 6, lines 17, 18, 20, 21, 22, and 25, in section 2, wherever the word "entity" appears, strike "entity" and insert "organization".

On page 7, line 1, in section 2, strike "501" and insert "501(c)(3)".

On page 6, line 20, strike "is clearly ancillary" and insert in lieu thereof "is clearly occassional and ancillary".

PAYMENT OF CLAIMS BY MUNICIPALITIES THAT ARE DEBTORS

LEAHY (AND OTHERS) AMENDMENT NO. 3704

Mr. BYRD (for Mr. Leahy, for himself, Mr. Hatch, Mr. Thurmond, Mr. DeConcini, and Mr. Kennedy) proposed an amendment to the bill (H.R. 5347) to amend title II of the United States Code with respect to claims payable from special revenues by municipalities that are debtors, and for other purposes; as follows:

TITLE I—INTELLECTUAL PROPERTY

Sec. 101. This title may be cited as the "Intellectual Property Antitrust Protection Act of 1988".

PROHIBITION OF MARKET POWER PRESUMPTION

Sec. 102. In any action in which the conduct of an owner, licensor, licensee, or other holder of an intellectual property right is alleged to be in violation of the antitrust laws in connection with the marketing or distribution of a product or service protected by such a right, such right shall not be presumed to define a market or to establish market power, including economic power and product uniqueness or distinctiveness, or monopoly power.

Sec. 103. For purposes of this title—

(1) the term "antitrust laws" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)); and

(2) the term "intellectual property right" means a right, title, or interest—

(A) in subject matter patented under title 35 of the United States Code, or

(B) in a work, including a mask work, protected under title 17 of the United States Code.

TITLE II—PATENT MISUSE DOCTRINE REFORM

Sec. 201. Section 271(d) of title 35, United States Code, is amended by striking out the period at the end thereof and inserting in lieu thereof the following: "; (4) refused to license or use any rights to the patent; or (5) conditioned the license of any rights to the patent or the sale of the patented product on the acquisition of a license to rights in another patent or purchase of a separate product, unless the courts find that (i) the patent owner has market power in the relevant market for the patent or patented product on which the license or sale is conditioned and (ii) under the circumstances the business justification for the conditioned license or sale does not outweigh any anticompetitive effect."

Sec. 202. The amendment made by this title shall apply only to cases filed on or after the date of the enactment of this Act.

At an appropriate place, add the following:

TITLE III

SECTION 1. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Patent and Trademark Office—

(1) for salaries and necessary expenses, $117,504,000 for fiscal year 1989,

$125,210,000 for fiscal year 1990, and $111,984,000 for fiscal year 1991; and

(2) such additional amounts as may be necessary for each such fiscal year for increases in salary, pay, retirement, and other employee benefits authorized by law.

SEC. 2. APPROPRIATIONS AUTHORIZED TO BE CARRIED OVER.

Amounts appropriated under this Act and such fees as may be collected under title 35, United States Code, and the Trademark Act of 1946 (15 U.S.C. 1051 and following) may remain available until expended.

SEC. 3. OVERSIGHT OF AND ADJUSTMENTS TO TRADEMARK AND PATENT FEES.

(a) Trademark Fees.—The Commissioner of Patents and Trademarks may not, during fiscal years 1989, 1990, and 1991, increase fees established under section 31 of the Trademark Act of 1946 (15 U.S.C. 1113) except for purposes of making adjustments which in the aggregate do not exceed fluctuations during the previous three years in the Consumer Price Index, as determined by the Secretary of Labor. The Commissioner also may not establish additional fees under such section during such fiscal years.

(b) Patent Fees.—The Commissioner of Patents and Trademarks may not, during fiscal years 1989, 1990, and 1991, increase fees established under section 41(d) of title 35, United States Code, except for purposes of making adjustments which in the aggregate do not exceed fluctuations during the previous three years in the Consumer Price Index, as determined by the Secretary of Labor. The Commissioner also may not establish additional fees under such section during such fiscal years.

(c) Report to Congress.—The Secretary of Commerce shall, on the day on which the President submits the annual budget to the Congress, provide to the Committees on the Judiciary of the Senate and the House of Representatives—

(1) a list of patent and trademark fee collections by the Patent and Trademark Office during the preceding fiscal year;

(2) a list of activities of the Patent and Trademark Office during the preceding fiscal year which were supported by patent fee expenditures, trademark fee expenditures, and appropriations;

(3) budget plans for significant programs, projects, and activities of the Office, including out-year funding estimates;

(4) any proposed disposition of surplus fees by the Office; and

(5) such other information as the committees consider necessary.

SEC. 4. PUBLIC ACCESS TO PATENT AND TRADEMARK OFFICE INFORMATION.

(a) Repeal.—Section 4 of Public Law 99-607 (35 U.S.C. 41 note) is repealed.

(b) Maintenance of Collections.—The Commissioner of Patents and Trademarks shall maintain, for use by the public, paper or microform collections of United States patents, foreign patent documents, and United States trademark registrations arranged to permit search for an retrieval of information. The Commissioner may not impose fees for use of such collections, or for use of public patent or trademark search rooms or libraries. Funds appropriated to the Patent and Trademark Office shall be used to maintain such collections, search rooms, and libraries.

(c) Fees for Access to Search Systems.—Subject to section 5(a), the Commissioner of Patent and Trademarks may establish reasonable fees for access by the public to automated search systems of the Patent and Trademark Office in accordance with section 41 of title 35, United States Code, and section 31 of the Trademark Act of 1946 (15 U.S.C. 1113). If such fees are established, a limited amount of free access shall be made available to all users of the systems for purposes of education and training. The Commissioner may waive the payment by an individual of fees authorized by this subsection upon a showing of need or hardship, and if such waiver is in the public interest.

SEC. 5. FUNDING OF AUTOMATED DATA PROCESSING RESOURCES.

(a) Allocations.—Of amounts available to the Patent and Trademark Office for automatic data processing resources for fiscal years 1989, 1990, and 1991, not more than 30 percent of such amounts in each such fiscal year may be from fees collected under section 31 of the Trademark Act of 1946 (15 U.S.C. 1113) and section 41 of title 35, United States Code. The Commissioner of Patent and Trademarks shall notify the Committees on the Judiciary of the Senate and the House of Representatives of any proposed reprogrammings which would increase or decrease the amount of appropriations expended for automatic data processing resources.

(b) Use of Revenues by Patent and Trademark Office.—Except as otherwise specifically provided in this Act, Public Law 99-607, and section 42(c) of title 35, United States Code, the Patent and Trademark Office is authorized to use appropriated or apportioned fee revenues for any of its operations or activities.

SEC. 6. USE OF EXCHANGE AGREEMENTS RELATING TO AUTOMATIC DATA PROCESSING RESOURCES PROHIBITED.

The Commissioner of Patent and Trademarks may not, during fiscal years 1989, 1990, and 1991, enter into any agreement for the exchange of items or services (as authorized under section 6(a) of title 35, United States Code) relating to automatic data processing resources (including hardware, software and related services, and machine readable data), and the Commissioner may not, on or after the date of the enactment of this Act, continue existing agreements for the exchange of such items or services. The preceding sentence shall not apply to an agreement relating to data for automation programs which is entered into with a foreign government or with an international intergovernmental organization.

CHILD PROTECTION AND OBSCENITY ENFORCEMENT ACT

BIDEN AMENDMENT NO. 3705

Mr. BYRD (for Mr. Biden) proposed an amendment to the bill (S. 2033) to amend title 18, United States Code, with respect to child protection and obscenity enforcement, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

TITLE V—CHILD PORNOGRAPHY AND OBSCENITY

SEC. 501. SHORT TITLE.

This title may be cited as the "Child Protection and Obscenity Enforcement Act of 1988".

Subtitle A—Child Pornography

SEC. 511. AMENDMENTS TO EXISTING OFFENSES.

(a) Sexual Exploitation of Children.—Paragraph (2) of subsection 2251(c) of title 18, United States Code, is amended by inserting "by any means including by computer" after "interstate or foreign commerce" both places it appears.

(b) Material Involving Sexual Exploitation of Children.—Subsection 2252(a) of title 18, United States Code, is amended by inserting "by any means including by computer" after "interstate or foreign commerce" each place it appears.

(c) Definition.—Section 2256 of title 18, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (4);

(2) by striking out the period at the end of paragraph (5) and inserting in lieu thereof: "; and"; and

(3) by adding at the end the following:

"(6) 'computer' has the meaning given that term in section 1030 of this title.".

SEC. 512. SELLING OR BUYING OF CHILDREN.

(a) In General.—Chapter 110 of title 18, United States Code, is amended by inserting after section 2251 the following:

"§ 2251A. Selling or buying of children

"(a) Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor either—

"(1) with knowledge that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or

"(2) with intent to promote either—

"(A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

"(B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be punished by imprisonment for not less than 20 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

"(b) Whoever purchases or otherwise obtains custody or control of a minor, or offers to purchase or otherwise obtain custody or control of a minor either—

"(1) with knowledge that, as a consequence of the purchase or obtaining of custody, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or

"(2) with intent to promote either—

"(A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

"(B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be punished by imprisonment for not less than 20 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

"(c) The circumstances referred to in subsections (a) and (b) are that—

"(1) in the course of the conduct described in such subsections the minor or the actor traveled in or was transported in interstate or foreign commerce;

"(2) any offer described in such subsections was communicated or transported in interstate or foreign commerce by any means including by computer or mail; or

"(3) the conduct described in such subsections took place in any territory or possession of the United States.".

(b) DEFINITION.—Section 2256 of title 18, United States Code, as amended by section 201 of this Act, is further amended—

(1) by striking out "and" at the end of paragraph (5);

(2) by striking out the period at the end of paragraph (6) and inserting "; and" in lieu thereof; and

(3) by adding at the end the following:

"(7) 'custody or control' includes temporary supervision over or responsibility for a minor whether legally or illegally obtained.".

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 110 of title 18, United States Code, is amended by inserting after the item relating to section 2251 the following:

"2251A. Selling or buying of children.".

SEC. 513. RECORD KEEPING REQUIREMENTS.

(a) IN GENERAL.—Chapter 110 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 2257. Record keeping requirements

"(a) Whoever produces any book, magazine, periodical, film, videotape, or other matter which—

"(1) contains one or more visual depictions made after February 6, 1978 of actual sexually explicit conduct; and

"(2) is produced in whole or in part with materials which have been shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce;

shall create and maintain individually identifiable records pertaining to every performer portrayed in such a visual depiction.

"(b) Any person to whom subsection (a) applies shall, with respect to every performer portrayed in a visual depiction of actual sexually explicit conduct—

"(1) ascertain, by examination of an identification document containing such information, the performer's name and date of birth, and require the performer to provide such other indicia of his or her identity as may be prescribed by regulations;

"(2) ascertain any name, other than the performer's present and correct name, ever used by the performer including maiden name, alias, nickname, stage, or professional name; and

"(3) record in the records required by subsection (a) the information required by paragraphs (1) and (2) of this subsection and such other identifying information as may be prescribed by regulation.

"(c) Any person to whom subsection (a) applies shall maintain the records required by this section at his business premises, or at such other place as the Attorney General may by regulation prescribe and shall make such records available to the Attorney General for inspection at all reasonable times.

"(d)(1) No information or evidence obtained from records required to be created or maintained by this section shall, except as provided in paragraphs (2) and (3), be used, directly or indirectly, as evidence against any person with respect to any violation of law.

"(2) Paragraph (1) of this subsection shall not preclude the use of such information or evidence in a prosecution or other action for a violation of any applicable provision of law with respect to the furnishing of false information.

"(3) In a prosecution of any person to whom subsection (a) applies for an offense in violation of subsection 2251(a) of this title which has as an element the production of a visual depiction of a minor engaging in or assisting another person to engage in sexually explicit conduct and in which that element is sought to be established by showing that a performer within the meaning of this section is a minor—

"(A) proof that the person failed to comply with the provisions of subsection (a) or (b) of this section concerning the creation and maintenance of records, or a regulation issued pursuant thereto, shall raise a rebuttable presumption that such performer was a minor; and

"(B) proof that the person failed to comply with the provisions of subsection (e) of this section concerning the statement required by that subsection shall raise the rebuttable presumption that every performer in the matter was a minor.

"(e)(1) Any person to whom subsection (a) applies shall cause to be affixed to every copy of any matter described in paragraph (1) of subsection (a) of this section, in such manner and in such form as the Attorney General shall by regulations prescribe, a statement describing where the records required by this section with respect to all performers depicted in that copy of the matter may be located.

"(2) If the person to whom subsection (a) of this section applies is an organization the statement required by this subsection shall include the name, title, and business address of the individual employed by such organization responsible for maintaining the records required by this section.

"(3) In any prosecution of a person for an offense in violation of section 2252 of this title which has as an element the transporting, mailing, or distribution of a visual depiction involving the use of a minor engaging in sexually explicit conduct, and in which that element is sought to be established by a showing that a performer within the meaning of this section is a minor, proof that the matter in which the visual depiction is contained did not contain the statement required by this section shall raise a rebuttable presumption that such performer was a minor.

"(f) The Attorney General shall issue appropriate regulations to carry out this section.

"(g) As used in this section—

"(1) the term 'actual sexually explicit conduct' means actual but not simulated conduct as defined in subparagraphs (A) through (E) of paragraph (2) of section 2256 of this title;

"(2) 'identification document' has the meaning given that term in subsection 1028(d) of this title;

"(3) the term 'produces' means to produce, manufacture, or publish and includes the duplication, reproduction, or reissuing of any material; and

"(4) the term 'performer' includes any person portrayed in a visual depiction engaging in, or assisting another person to engage in, actual sexually explicit conduct.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 110 of title 18, United States Code, is amended by adding after the item relating to section 2256 the following:

"2257. Record keeping requirements.".

(c) EFFECTIVE DATE.—Section 2257 of title 18, United States Code, as added by this section shall take effect 180 days after the date of the enactment of this Act except—

(1) the Attorney General shall prepare the initial set of regulations required or authorized by section 2257 within 90 days of the date of the enactment of this Act; and

(2) subsection (e) of section 2257 of this title and of any regulation issued pursuant thereto shall take effect 270 days after the date of the enactment of this Act.

SEC. 514. R.I.C.O. AMENDMENT.

Subsection 1961(1)(B) of title 18, United States Code, is amended by inserting after "section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity)" the following: "sections 2251 through 2252 (relating to sexual exploitation of children),".

Subtitle B—Obscenity

SEC. 521. RECEIPT OR POSSESSION FOR SALE; PRESUMPTIONS FOR CHAPTER 71.

(a) RECEIPT OR POSSESSION FOR SALE.—Chapter 71 of title 18, United States Code, is amended by inserting after section 1465 the following:

"§ 1466. Receipt or possession of obscene matter for sale or distribution

"(a) Whoever is engaged in the business of selling or transferring books, magazines, pictures, papers, films, videotapes, or phonograph or other audio recordings, and knowingly receives or possesses with intent to distribute any obscene book, magazine, picture, paper, film, videotape, or phonograph or other audio recording, which has been shipped or transported in interstate or foreign commerce, shall be punished by imprisonment for not more than 5 years or by a fine under this title, or both.

"(b) As used in this subsection, the term 'engaged in the business' means that the person who sells or transfers or offers to sell or transfer books, magazines, pictures, papers, films, videotapes, or phonograph or other audio recordings, devotes time, attention, or labor to such activities, as a regular course of trade or business, with the objective of earning a profit, although it is not necessary that the person make a profit or that the selling or transferring or offering to sell or transfer such material be the person's sole or principal business or source of income. The offering for sale of or to transfer, at one time, two or more copies of any obscene publication, or two or more of any obscene article, or a combined total of five or more such publications and articles, shall create a rebuttable presumption that the person so offering them is 'engaged in the business' as defined in subsection (b).

"(c) In a prosecution for a violation of this section, it shall be an affirmative defense, on which the defendant has the burden of persuasion by a preponderance of the evidence, that the person—

"(1) ordered or received the obscene matter without examining the matter in advance;

"(2) did not in fact offer the matter for sale, or transfer or offer to transfer it to another person other than the sender; and

"(3) possessed the material less than 21 days.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 71 of title 18, United States Code, is amended by adding after the item relating to section 1465 the following:

"1466. Receipt or possession of obscene matter for sale or distribution.

"1467. Criminal forfeiture.".

(c) Use of Facility of Commerce.—The first paragraph of section 1465 of title 18, United States Code, is amended by inserting after the word distribution: ", or knowingly travels in interstate commerce, or uses a facility or means of commerce for the purpose of interstate or foreign sale or distribution of,".

(d) Distribution of Proceeds.—Section 1465 of title 18, United States Code, is amended by inserting "or the proceeds from the sale thereof" after "character,".

(e) Presumptions.—Chapter 71 of title 18, United States Code, as amended by subsection (a) of this section and by section 302, is further amended by adding at the end the following:

"§ 1469. Presumptions

"(a) In any prosecution under this chapter in which an element of the offense is that the matter in question was transported, shipped, or carried in interstate commerce, proof, by either circumstantial or direct evidence, that such matter was produced or manufactured in one State and is subsequently located in another State shall raise a rebuttable presumption that such matter was transported, shipped, or carried in interstate commerce.

"(b) In any prosecution under this chapter in which an element of the offense is that the matter in question was transported, shipped, or carried in foreign commerce, proof, by either circumstantial or direct evidence, that such matter was produced or manufactured outside of the United States and is subsequently located in the United States shall raise a rebuttable presumption that such matter was transported, shipped, or carried in foreign commerce.".

(f) Clerical Amendment.—The table of sections at the beginning of chapter 71 of title 18, United States Code, is amended by adding after the item relating to section 1468 the following:

"1469. Presumptions.".

SEC. 522. FORFEITURE IN OBSCENITY CASES.

(a) In General.—Chapter 71 of title 18, United States Code, is amended by adding at the end the following:

"§ 1467. Criminal forfeiture

"(a) Property Subject to Criminal Forfeiture.—A person who is convicted of an offense involving obscene material under this chapter shall forfeit to the United States such person's interest in—

"(1) any obscene material produced, transported, mailed, shipped or received in violation of this chapter;

"(2) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and

"(3) any property, real or personal, used or intended to be used to commit or to promote the commission of such offense. A forfeiture under this subparagraph shall be authorized only by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or the Assistant Attorney General or the Acting Assistant Attorney General in the Criminal Division.

"(b) Third Party Transfers.—All right, title, and interest in property described in subsection (a) of this section vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (m) of this section that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

"(c) Protective Orders.—(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) of this section for forfeiture under this section—

"(A) upon the filing of an indictment or information charging a violation of this chapter for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

"(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

"(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

"(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered;

except that an order entered under subparagraph (B) shall be effective for not more than 90 days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

"(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 10 days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

"(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

"(d) Warrant of Seizure.—The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (c) of this section may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

"(e) Order of Forfeiture.—The court shall order forfeiture of property referred to in subsection (a) if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.

"(f) Execution.—Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

"(g) Disposition of Property.—Following the seizure of property ordered forfeited under this section, the Attorney General shall destroy or retain for official use any property described in paragraph (1) of subsection (a) and shall direct the disposition of any property described in paragraph (2) of subsection (a) by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

"(h) Authority of Attorney General.—With respect to property ordered forfeited under this section, the Attorney General is authorized to—

"(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

"(2) comprise claims arising under this section;

"(3) award compensation to persons providing information resulting in a forfeiture under this section;

"(4) direct the disposition by the United States, in accordance with the provisions of section 1616, title 19, United States Code, of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

"(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

"(i) Applicability of Civil Forfeiture Provisions.—Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 1468(d) of this title (18 U.S.C. 1468(d)) shall apply to a criminal forfeiture under this section.

"(j) BAR ON INTERVENTION.—Except as provided in subsection (m) of this section, no party claiming an interest in property subject to forfeiture under this section may—

"(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

"(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

"(k) JURISDICTION TO ENTER ORDERS.—The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

"(l) DEPOSITIONS.—In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

"(m) THIRD PARTY INTERESTS.—(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

"(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within 30 days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

"(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

"(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within 30 days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

"(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

"(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

"(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

"(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

"(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

"(n) CONSTRUCTION.—The provisions of this section shall be liberally construed to effectuate its remedial purposes.

"(o) SUBSTITUTE ASSETS.—If any of the property described in subsection (a), as a result of any act or omission of the defendant—

"(1) cannot be located upon the exercise of due diligence;

"(2) has been transferred or sold to, or deposited with, a third party;

"(3) has been placed beyond the jurisdiction of the court;

"(4) has been substantially diminished in value; or

"(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).".

(b) REPEAL.—The last paragraph of section 1465 of title 18, United States Code, is repealed.

(c) SEXUAL ABUSE OF CHILDREN.—Sections 2253 through 2254 of title 18, United States Code, are amended to read as follows:

"§ 2253. Criminal forfeiture

"(a) PROPERTY SUBJECT TO CRIMINAL FORFEITURE.—A person who is convicted of an offense under this chapter involving a visual depiction described in sections 2251, 2251A, or 2252 of this chapter shall forfeit to the United States such person's interest in—

"(1) any visual depiction described in sections 2251, 2251A, or 2252 of this chapter, or any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped or received in violation of this chapter;

"(2) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and

"(3) any property, real or personal, used or intended to be used to commit or to promote the commission of such offense.

"(b) THIRD PARTY TRANSFERS.—All right, title, and interest in property described in subsection (a) of this section vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (m) of this section that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

"(c) PROTECTIVE ORDERS.—(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) of this section for forfeiture under this section—

"(A) upon the filing of an indictment or information charging a violation of this chapter for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

"(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered;

except that an order entered pursuant to subparagraph (B) shall be effective for not more than 90 days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

"(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 10 days after the date on which is it entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

"(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

"(d) Warrant of Seizure.—The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (c) of this section may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

"(e) Order of Forfeiture.—The court shall order forfeiture of property referred to in subsection (a) if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.

"(f) Execution.—Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

"(g) Disposition of Property.—Following the seizure of property ordered forfeited under this section, the Attorney General shall destroy or retain for official use any article described in paragraph (1) of subsection (a), and shall retain for official use or direct the disposition of any property described in paragraph (2) or (3) of subsection (a) by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

"(h) Authority of Attorney General.—With respect to property ordered forfeited under this section, the Attorney General is authorized to—

"(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

"(2) compromise claims arising under this section;

"(3) award compensation to persons providing information resulting in a forfeiture under this section;

"(4) direct the disposition by the United States, in accordance with the provisions of section 1616, title 19, United States Code, of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

"(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

"(i) Applicability of Civil Forfeiture Provisions.—Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 2254(d) of this title (18 U.S.C. 2254(d)) shall apply to a criminal forfeiture under this section.

"(j) Bar on Intervention.—Except as provided in subsection (m) of this section, no party claiming an interest in property subject to forfeiture under this section may—

"(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

"(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

"(k) Jurisdiction to Enter Orders.—The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

"(l) Depositions.—In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under rule 15 of the Federal Ruled of Criminal Procedure.

"(m) Third Party Interests.—(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

"(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within 30 days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

"(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

"(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within 30 days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

"(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

"(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

"(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

"(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

"(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

"(n) Construction.—The provisions of this section shall be liberally construed to effectuate its remedial purposes.

"(o) Substitute Assets.—If any of the property described in subsection (a), as a result of any act or omission of the defendant—

"(1) cannot be located upon the exercise of due diligence;

"(2) has been transferred or sold to, or deposited with, a third party;

"(3) has been placed beyond the jurisdiction of the court;

"(4) has been substantially diminished in value; or

"(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

"§ 2254. Civil forfeiture

"(a) Property Subject to Civil Forfeiture.—The following property shall be subject to forfeiture by the United States:

"(1) Any visual depiction described in sections 2251, 2251A, or 2252 of this chapter, or any book, magazine, periodical, film, videotape or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped, or received in violation of this chapter.

"(2) Any property, real or personal, used or intended to be used to commit or to promote the commission of an offense under this chapter involving a visual depiction described in sections 2251, 2251A, or 2252 of this chapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

"(3) Any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from a violation of this chapter involving a visual depiction described in sections 2251, 2251A, or 2252 of this chapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

"(b) Seizure Pursuant to Supplemental Rules for Certain Admiralty and Maritime Claims.—Any property subject to forfeiture to the United States under this section may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when the seizure is pursuant to a search under a search warrant. The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.

"(c) Custody of Attorney General.—Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under any of the provisions of this subchapter, the Attorney General may—

"(1) place the property under seal;

"(2) remove the property to a place designated by him; or

"(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

"(d) Other Laws and Proceedings Applicable.—All provisions of the customs laws relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, insofar as applicable and not inconsistent with the provisions of this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General or the Postal Service, except to the extent that such duties arise from seizures and forfeitures affected by any customs officer.

"(e) Sections 1606, 1607, 1608, 1609, 1613, 1614, 1617, and 1618 of title 19, United States Code, shall not apply with respect to any visual depiction or any matter containing a visual depiction subject to forfeiture under subsection (a)(1) of this section.

"(f) Disposition of Forfeited Property.—Whenever property is forfeited under this section the Attorney General shall destroy or retain for official use any property described in paragraph (1) of subsection (a) and, with respect to property described in paragraph (2) or (3) of subsection (a), may—

"(1) retain the property for official use or transfer the custody or ownership of any forfeited property to a Federal, State, or local agency pursuant to section 1616 of title 19;

"(2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public; or

"(3) require that the General Services Administration take custody of the property and dispose of it in accordance with law.

The Attorney General shall ensure the equitable transfer pursuant to paragraph (1) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General pursuant to paragraph (1) shall not be subject to judicial review. The Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of title 28 the proceeds from any sale under paragraph (2) and any moneys forfeited under this subchapter.

"(g) Title to Property.—All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

"(h) Stay of Proceedings.—The filing of an indictment or information alleging a violation of this chapter which is also related to a civil forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding.

"(i) Venue.—In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.".

(e) Tariff Act Amendment.—Section 305 of the Tariff Act of 1930 (19 U.S.C. 1305), is amended by adding at the end the following:

"(b) Coordination of Forfeiture Proceedings with Criminal Proceedings.—(1) Notwithstanding subsection (a), whenever the Customs Service is of the opinion that criminal prosecution would be appropriate or that further criminal investigation is warranted in connection with allegedly obscene material seized at the time of entry, the appropriate customs officer shall immediately transmit information concerning such seizure to the United States Attorney of the district of the addressee's residence. No notice to the addressee or consignee concerning the seizure is required at the time of such transmittal.

"(2) Upon receipt of such information, such United States attorney shall promptly determine whether in such attorney's opinion the referral of the matter for forfeiture under this section would materially affect the Government's ability to conduct a criminal investigation with respect to such seizure.

"(3) If the United States attorney is of the opinion that no prejudice to such investigation will result from such referral, such attorney shall immediately so notify the Customs Service in writing. The appropriate customs officer shall immediately notify in writing the addressee or consignee of the seizure and shall transmit information concerning such seizure to the United States attorney of the district in which is situated the office at which such seizure has taken place. The actions described in paragraphs (1) through (3) of this subsection shall take place within sufficient time to allow for the filing of a forfeiture complaint within 14 days of the seizure unless the United States attorney of the district of the addressee's residence certifies in writing and includes specific, articulable facts demonstrating that the determination required in paragraph (2) of this subsection could not be made in sufficient time to comply with this deadline. In such cases, the actions described in paragraphs (1) through (3) of this subsection shall take place within sufficient time to allow for the filing of a forfeiture complaint within 21 days of seizure.

"(4) If the United States attorney for the district of the addressee's residence concludes that material prejudice to such investigation will result from such referral, such United States attorney shall place on file, within 14 days of the date of seizure, a dated certification stating that it is the United States attorney's judgment that referral of the matter for forfeiture under this section would materially affect the Government's ability to conduct a criminal investigation with respect to the seizure. The certification shall set forth specific, articulable facts demonstrating that withholding referral for forfeiture is necessary.

"(5)(A) As soon as the circumstances change so that withholding of referral for forfeiture is no longer necessary for purposes of the criminal investigation, the United States attorney shall immediately so notify the Customs Service in writing and shall furnish a copy of the certification described in paragraph (4) above to the Customs Service.

"(B) In any matter referred to a United States attorney for possible criminal prosecution wherein subparagraph (5)(A) does not apply, the United States attorney shall immediately notify the Customs Service in writing concerning the disposition of the matter, whether by institution of a prosecution or a letter of declination, and shall also furnish a copy of the certification described in paragraph (4) of this subsection to the Customs Service.

"(C) Upon receipt of the notification described in subparagraph (A) or (B) of this paragraph, the appropriate customs officer shall immediately notify the addressee or consignee of the seizure and shall transmit information concerning the seizure, including a copy of the certification described in paragraph (4) above and a copy of the notification described in subparagraph (A) or (B) of this paragraph, to the United States attorney of the district in which is situated the office at which such seizure has taken place, who shall institute forfeiture proceedings in accordance with subsection (a) hereof within 14 days of the date of the notification described in subparagraph (A) or (B) above. A copy of the certification described in paragraph (4) above and a copy of the notification described in subparagraph (A) or (B) of this paragraph shall be affixed to the complaint for forfeiture.

"(c) STAY ON MOTION.—Upon motion of the United States, a court, for good cause shown, shall stay civil forfeiture proceedings commenced under this section pending the completion of any related criminal matter whether in the same or in a different district.".

SEC. 523. CABLE TELEVISION OBSCENITY.

(a) NEW OFFENSE.—Chapter 71 of title 18, United States Code, is amended by inserting at the end, the following new section:

"§ 1468. Distributing obscene material by cable or subscription television

"(a) Whoever knowingly utters any obscene language or distributes any obscene matter by means of cable television or subscription services on television, shall be punished by imprisonment for not more than 2 years or by a fine in accordance with this title, or both.

"(b) As used in this section, the term 'distribute' means to send, transmit, retransmit, telecast, broadcast, or cablecast, including by wire, microwave, or satellite, or to produce or provide material for such distribution.

"(c) Nothing in this chapter, or the Cable Communications Policy Act of 1984, or any other provision of Federal law, is intended to interfere with or preempt the power of the States, including political subdivisions thereof, to regulate the uttering of language that is obscene or otherwise unprotected by the Constitution or the distribution of matter that is obscene or otherwise unprotected by the Constitution, of any sort, by means of cable television or subscription services on television.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 71 of title 18, United States Code, is amended by adding at the end the following:

"1468. Distributing obscene material by cable or subscription television.".

SEC. 524. COMMUNICATIONS ACT AMENDMENT.

Section 223(b) of the Communications Act of 1934 (47 U.S.C. 223(b)) is amended to read as follows:

"(b)(1)(A) Whoever knowingly—

"(i) in the District of Columbia or in interstate or foreign communication, by means of telephone, makes (directly or by recording device) any obscene communication for commercial purposes to any person, regardless of whether the maker of such communication placed the call; or

"(ii) permits any telephone facility under such person's control to be used for an activity prohibited by clause (i);

shall be fined in accordance with title 18 of the United States Code, or imprisoned not more than two years, or both.

"(2)(A) Whoever knowingly—

"(i) in the District of Columbia or in interstate or foreign communication, by means of telephone, makes (directly or by recording device) any indecent communication for commercial purposes to any person, regardless of whether the maker of such communication placed the call; or

"(ii) permits any telephone facility under such person's control to be used for an activity prohibited by clause (i),

shall be fined not more than $50,000 or imprisoned not more than six months, or both.".

SEC. 525. ELECTRONIC SURVEILLANCE.

Subsection (1) of section 2516 of title 18, United States Code, is amended by redesignating paragraphs (i) and (j) as (j) and (k), respectively, and by adding a new paragraph (i) as follows:

"(i) any felony violation of chapter 71 (relating to obscenity) of this title;".

SEC. 526. POSSESSION AND SALE OF OBSCENE MATTERS IN FEDERAL JURISDICTION OR ON FEDERAL PROPERTY.

(a) IN GENERAL.—Chapter 71 of title 18, United States Code, is amended by inserting before section 1461 the following:

"§ 1460. Possession and sale of obscene matter on Federal property

"(a) Whoever, either—

"(1) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States; or

"(2) in the Indian country as defined in section 1151 of this title,

knowingly sells or possesses with intent to sell an obscene visual depiction or a visual depiction of a minor engaging in or assisting another person to engage in sexually explicit conduct, shall be punished by a fine in accordance with the provisions of this title or imprisoned for not more than 2 years, or both.

"(b) Except as provided in subsection (c), whoever, in an area described in subparagraph (1) or (2) of subsection (a) knowingly possesses an obscene visual depiction or a visual depiction of a minor engaging in or assisting another person to engage in sexually explicit conduct shall be punished by imprisonment for not more than 6 months or a fine of not more than $5,000 for an individual or $10,000 for a person other than an individual, or both.

"(c) Subsection (b) shall not apply in the case of a person who possesses an obscene visual depiction in any place where such person lives or resides.

"(d) For the purposes of this section—

"(1) the term 'visual depiction' includes undeveloped film and videotape but does not include mere words; and

"(2) the terms 'minor' and 'sexually explicit conduct' have the meaning given those terms in chapter 110 of this title.

"(e) In a prosecution for a violation of this section involving an obscene visual depiction, it shall be an affirmative defense, on which the defendant has the burden of persuasion by a preponderance of the evidence, that the person—

"(1) ordered or received the obscene matter without examining the matter in advance;

"(2) did not in fact offer the matter for sale, or transfer or offer to transfer it to another person other than the sender; and

"(3) possessed the material less than 21 days.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 71 of title 18, United States Code, is amended by adding before the item relating to section 1461 the following:

"1460. Possession and sale of obscene matter on Federal property.".

SEC. 527. CIVIL FORFEITURE.

(a) IN GENERAL.—Chapter 71 of title 18, United States Code, is amended by adding the following new section at the end thereof:

"§ 1470. Civil forfeiture

"(a) PROPERTY SUBJECT TO CIVIL FORFEITURE.—The following property shall be subject to forfeiture by the United States:

"(1) Any material that has been adjudged obscene in any criminal case, Federal or State, that is produced, transported, mailed, shipped, or received in violation of this chapter.

"(2) Any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from a violation of this chapter involving material that has been adjudged obscene in any criminal case, State or Federal, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

"(b) SEIZURE PURSUANT TO SUPPLEMENTAL RULES FOR CERTAIN ADMIRALTY AND MARITIME CLAIMS.—Any property subject to forfeiture to the United States under this section may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when the seizure is pursuant to a search under a search warrant. The government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.

"(c) CUSTODY OF ATTORNEY GENERAL.—Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under any of the provisions of this subchapter, the Attorney General may—

"(1) place the property under seal;

"(2) remove the property to a place designated by him; or

"(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

"(d) OTHER LAWS AND PROCEEDINGS APPLICABLE.—All provisions of the customs laws relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, insofar as applicable and not inconsistent with the provisions of this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General or the Postal Service, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

"(e) Applicability of Certain Sections.—Sections 1606, 1607, 1608, 1609, 1613, 1614, 1617, and 1618 of title 19 shall not apply with respect to obscene material subject to forfeiture under subsection (a)(1) of this section.

"(f) Disposition of Forfeited Property.—Whenever property is forfeited under this section the Attorney General shall destroy or retain for official use any article described in paragraph (1) of subsection (a), and with respect to property described in paragraphs (2) and (3) of subsection (a) may—

"(1) retain the property for official use or transfer the custody or ownership of any forfeited property to a Federal, State, or local agency pursuant to section 1616 of title 19;

"(2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public; or

"(3) require that the General Services Administration take custody of the property and dispose of it in accordance with law.

The Attorney General shall ensure the equitable transfer pursuant to paragraph (1) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General pursuant to paragraph (1) shall not be subject to judicial review. The Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of title 28 the proceeds from any sale under paragraph (2) and any moneys forfeited under this subchapter.

"(g) Title to Property.—All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

"(h) Stay of Proceedings.—The filing of an indictment or information alleging a violation of this chapter which is also related to a civil forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding.

"(i) Venue.—In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.".

(b) Clerical Amendments.—The table of sections at the beginning of chapter 71 of title 18, United States Code, is amended by inserting after the item relating to section 1469 the following:

"1470. Civil forfeiture.".

(c) Repeal.—The last paragraph of section 1465 of title 18, United States Code, is repealed.

SEC. 528. CIVIL FINES.

Chapter 71 of title 18, United States Code, is amended by inserting at the end the following new section:

"Section 1471. Civil fines.

"(a) Whoever produces, transports, mails, ships or receives any article that has been adjudged obscene in any state or federal criminal case shall be subject to a civil penalty of—

"(1) for a first violation, not more than $10,000;

"(2) for a second violation, not more than $50,000; and

"(3) for a third or subsequent violation, not more than $250,000 in the case of an individual, or $500,000 in the case of an organization.

"(b) An action to recover a fine imposable under subsection (a) shall be brought in the name of the United States. The Attorney General may commence such a civil action in the district court in any district where the violation occurs. Such an action must be commenced within 5 years of the violation. The Attorney General may compromise, modify, or remit with or without condition any civil penalty imposed under this section.

"(c) In any civil action under this section, the defendant shall have a right to a trial by jury, and the government shall have the burden of proof, by a preponderance of the evidence, that the article is obscene under the standards of the community in which the trial takes place.".

SEC. 529. SEVERABILITY.

If any of the provisions of this Act are found invalid, such finding shall not affect the validity or effect of the remaining provisions thereof.

OFFICE OF ENVIRONMENTAL QUALITY AUTHORIZATION

BAUCUS AMENDMENT NO. 3706

Mr. BYRD (for Mr. Baucus) proposed an amendment to the bill (S. 1792) to authorize appropriations for the Office of Environmental Quality for fiscal years 1987, 1988, and 1989; as follows:

On page 7, strike "Sec. 104" line 18 through line 15 on page 8. Insert the following:

"Sec. 104. (a) A State or interstate water pollution control agency shall, notwithstanding any other provision of law, have one year from the date of enactment of this Act to satisfy the certification requirement provided for in section 401 of the Clean Water Act (33 U.S.C. 134(a)(1)) with respect to each hydroelectric project for which a request for certification had been made pursuant to section 401 of the Clean Water Act but for which no license had been issued prior to February 11, 1987, by the Federal Energy Regulatory Commission and for which, prior to June 10, 1987, either—

(1) more than one year had elapsed since the State certifying agency or interstate water pollution control agency had received a certification request and the agency has neither certified nor specifically denied certification, or

(2) the State certifying agency or interstate water pollution control agency had denied certification, but the denial occurred more than one year after receipt of the request:

Provided, That any such water quality certification that was denied by a State certifying agency or interstate water pollution control agency prior to such date of enactment may, at the election of the agency pursuant to applicable law, be deemed to have been issued or denied on such date of enactment. *Provided further,* That the provisions of this section shall not apply to hydroelectric projects No. 5797 and No. 9260.

(b) With respect to each hydroelectric project for which a request for certification has been made pursuant to section 401 of the Clean Water Act but for which no license has been issued as of the date of enactment of this Act, and for which, prior to June 10, 1987, a water quality certification was issued, but the issuance occurred more than one year after agency receipt of the request, such certification for purposes of section 401 shall be deemed to have been issued.

On page 8, strike "Sec. 105" lines 16 through 18.

UNITED STATES GOALS WITH RESPECT TO LEBANON

MITCHELL (AND OTHERS) AMENDMENT NO. 3707

Mr. BYRD (for Mr. Mitchell, for himself, Mr. Boschwitz, Mr. Pell, Mr. Simon, Mr. Kerry, Mr. Chafee, Mr. Kasten, Mr. Dole, Mr. Helms, and Mr. Murkowski) proposed an amendment to the concurrent resolution (H. Con. Res. 381) expressing the sense of the Congress regarding United States goals with respect to Lebanon; as follows:

Strike out all after the resolving clause and insert in lieu thereof the following: That it is the sense of the Congress that the United States should—

(1) encourage all parties in Lebanon to support the constitutional mandate to elect a new President without delay in a democratic atmosphere, free from any external influence;

(2) reinforce its commitment to national sovereignty for Lebanon; and

(3) support actions which promote the unity of Lebanon.

Amend the preamble so as to read:

Whereas until 1975, Lebanon, whose capital of Beirut was called the Paris of the Middle East, was renowned for its role as the Middle East's financial and trade center and was known as a haven for the Moslems, Christians, and Jews;

Whereas Lebanon's unique social and economic structure, in addition to the quality of life and high standards of achievement that produced what was the "Lebanese miracle", made Lebanon a model of coexistence; and

Whereas a democratic government is essential to preserving Lebanon's freedom, sovereignty, unity, and independence: Now, therefore, be it

Amend the title so as to read: "A concurrent resolution expressing the sense of the Congress regarding the state of affairs in Lebanon and urging all parties in Lebanon to work together to resolve the constitutional crisis.".

ATLANTIC STRIPED BASS CONSERVATION ACT AUTHORIZATION

MITCHELL AMENDMENT NO. 3708

Mr. BYRD (for Mr. MITCHELL) proposed an amendment to the bill (S. 2384) to authorize appropriations to carry out the Atlantic Striped Bass Conservation Act for fiscal years 1989 through 1991, and for other purposes; as follows:

Strike section 5 and all that follows and insert in lieu thereof the following:

SEC. 5. STUDY OF STRIPED BASS IN ALBEMARLE SOUND AND ROANOKE RIVER BASIN.

(a) FINDINGS.—The Congress finds that:

(1) The anadromous stock of striped bass in the Albemarle Sound-Roanoke River Basin area of North Carolina sustained important commercial and recreational fisheries as recently as the 1960's and 1970's.

(2) This stock has been declining for some time and is severely depressed at present, and may soon reach a level from which recovery will be exceptionally difficult.

(3) The reasons for this decline are thought to include fishing; other human activities and environmental factors, such as unsuitable water flow before, during, and after critical spawning periods; degradation of water quality by pollutants; the impact of eutrophication on the food chain, and the impact of changing land use activities.

(4) Current Federal and interstate efforts to conserve the Atlantic striped bass, while effective in identifying factors contributing to the decline of other important Atlantic coastal migratory stocks of striped bass and steps that will be effective in reversing that decline, have not made a major contribution to the protection and restoration of the Albemarle Sound-Roanoke River stock of striped bass.

(5) Because the striped bass and the aquatic environment of the Albemarle Sound-Roanoke River basin presently are being significantly affected by combined but not fully understood causes, a study should be undertaken to obtain additional biological information to understand the significance of fishing, water flows, and other factors in the decline of the striped bass populations in the Albemarle Sound-Roanoke River basin and, if feasible, develop an effective course of action for restoring these important stocks of striped bass.

(b) STUDY.—

(1) IN GENERAL.—The Director of the United States Fish and Wildlife Service, in consultation with the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration shall—

(A) immediately undertake a biological study of the striped bass fishery resources and habitates of the Albemarle Sound-Roanoke River basin area;

(B) develop short-term and long-term recommendations for Federal and State government agencies for restoring and conserving such resources and habitats; and

(C) submit the results of such study and such recommendations to the Congress and to the States of North Carolina and Virginia as soon as practicable, but not later than 36 months after the date of the enactment of this Act.

(2) CONTENTS OF THE STUDY.—The study conducted under this subsection shall, to the extent existing data are adequate, use such existing data and shall include—

(A) a description of the Albemarle Sound-Roanoke River basin area, and an investigation and analysis of the effects of land and water use practices on the striped bass population and habitats of the area;

(B) an investigation and analysis of the abundance and age and geographic distribution of the Albemarle Sound-Roanoke River stock of striped bass, including the amount and geographical location of migration and spawning habitat;

(C) an investigation and analysis of factors that may affect the abundance and age and geographic distribution of the Albemarle Sound-Roanoke River stock of striped bass, including—

(i) the extent and causes of mortality at successive stages in the life cycle of striped bass, including mortality due to recreational and commercial fishing; and

(ii) the combined effects of pollution and other natural and human alterations of the physical environment, including the effects of water withdrawals, discharges, and flows, on striped bass migration and spawning and on the viability and condition of eggs and larval fish;

(D) an investigation and analysis of the status and effectiveness of current striped bass management measures implemented by State and Federal authorities, including State fishing regulations and Federal fish stocking activities, reservoir management and water flow regulation, and an analysis of whether any additional State or Federal measures would be effective in halting the decline and initiating the recovery of the Albemarle Sound-Roanoke River stock of striped bass; and

(E) a recommendation of whether conservation of the Albemarle Sound-Roanoke River stocks of striped bass could be improved by management of these stocks under the provisions of the Atlantic States Marine Fisheries Commission's Interstate Fisheries Management Plan for Striped Bass and the Atlantic Striped Bass Conservation Act.

(c) PARTICIPATION BY STATE AGENCIES.—

(1) The Director of the North Carolina Division of Marine Fisheries, the Executive Director of the North Carolina Wildlife Resources Commission, the Secretary of the Virginia Department of Natural Resources, and the District Engineer for the Wilmington District of the U.S. Army Corps of Engineers shall be invited to have their agencies participate in conducting the study and developing recommendations pursuant to subsection (b).

(2) To facilitate participation by the agencies referred to in paragraph (1), should they decide to participate, a Memorandum of Understanding will be executed with such officials setting forth the respective responsibilities of the entities involved in conducting the study and developing those recommendations.

(d) CONSULTATION.—In carrying out the study under subsection (b), the Atlantic States Marine Fisheries Commission, other Federal agencies, the Albemarle-Pamlico Estuarine Study, Dominion Resources, Inc./Virginia Power/North Carolina Power, affected local governments in North Carolina and Virginia, appropriate commercial and recreational fishing interests, and other interests shall be consulted, to the maximum extent practicable.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated the sum of $1,000,000 to carry out the requirements of this section. These appropriations will remain available until expended.

(f) STATE AUTHORITY.—Nothing in this section shall be construed as authorizing any State or manage fisheries within the jurisdiction of another State.

(g) RESTRICTION OF USE OF OTHER FUNDS.—Amounts appropriated pursuant to the authorization contained in section 7(D) of the Anadromous Fish Conservation Act (16 U.S.C. 757g(d)) shall not be used to carry out this section.

SEC. 6. PROTECTION OF STRIPED BASS IN THE EXCLUSIVE ECONOMIC ZONE.

(a) REGULATION OF FISHING IN EXCLUSIVE ECONOMIC ZONE.—The Secretary of Commerce shall promulgate regulations governing the fishing for Atlantic striped bass in the exclusive economic zone that the Secretary determines to be consistent with the national standards set forth in section 301 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1851) and necessary and appropriate to—

(1) ensure the effectiveness of State regulations or a Federal moratorium on fishing for Atlantic striped bass within the coastal waters of a coastal State; and

(2) achieve conservation and management goals for the Atlantic striped bass resource.

(b) CONSULTATION; PERIODIC REVIEW OF REGULATIONS.—In preparing regulations under subsection (a), the Secretary shall consult with the Atlantic States Marine Fisheries Commission, the appropriate Regional Fishery Management Councils, and each affected Federal, State, and local government entity. The Secretary shall periodically review regulations promulgated under subsection (a), and if necessary to ensure their continued consistency with the requirements of subsection (a), shall amend those regulations.

(c) FISHERY MANAGEMENT PLAN ON STRIPED BASS.—

(1) The appropriate Regional Fishery Management Councils may prepare a fishery management plan on Atlantic striped bass, which if approved and implemented by the Secretary shall supersede any regulations promulgated under subsection (a). Such plan shall—

(A) meet the requirements of sections 301 and 303 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1851 and 1853);

(B) apply to all fishing for Atlantic striped bass within the exclusive economic zone; and

(C) ensure the effectiveness of the Plan of the Atlantic States Marine Fisheries Commission defined under section 3(7) of the Atlantic Striped Bass Conservation Act (16 U.S.C. 1851 note).

(2) The Secretary shall review such fishery management plan pursuant to section 304 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854) and shall approve the plan if it meets the requirements of paragraph (1) and other provisions of this section. The Secretary shall implement the plan by promulgating regulations in accordance with section 305 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1855). No regulation promulgated under subsection (a) shall have force and effect during any period in which regulations implementing such plan are in effect.

(d) APPLICABILITY OF MAGNUSON ACT PROVISIONS.—The provisions of sections 307, 308, 309, 310, and 311 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1857, 1858, 1859, 1860, and 1861) regarding prohibited acts, civil penalties, criminal offenses, civil forfeitures, and enforcement shall apply with respect to regulations and any plan issued under subsection (a) or (c) of this section as if such regulations or plan were issued under the Magnuson Fishery Conservation and Management Act.

(e) DEFINITION.—As used in this section, the term "exclusive economic zone" has the meaning given such term in section 3(6) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802(6)).

(f) EFFECTIVE PERIOD.—Subsections (a) through (e) of this section shall cease to have force and effect at the close of September 30, 1991.

(g) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 3 of the Atlantic Striped Bass Conservation Act (16 U.S.C. 1851 note) is amended to read as follows:

"(1) The term 'Magnuson Act means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)."

(2) Section 5 of such act is amended by striking "Act of 1976" each place it appears and inserting in lieu thereof "Magnuson Act".

PROVISION OF CERTAIN AGREEMENTS UNDER THE OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS

BREAUX (AND STAFFORD) AMENDMENT NO. 3709

Mr. BYRD (for Mr. BREAUX, for himself, and Mr. STAFFORD) proposed an amendment to the bill (H.R. 4517) to amend title III of the Outer Continental Shelf Lands Act Amendments of 1978 to provide for indemnification and hold harmless agreements; as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Outer Continental Shelf Operations Indemnification Clarification Act of 1988".

SEC. 2. INDEMNITY AGREEMENTS.

Section 305 of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1802 et seq.) is amended by adding at the end the following new subsection:

"(e) Any owner or operator of an offshore facility may enter into an indemnity, hold harmless, or similar agreement with any person holding a lease on the Outer Continental Shelf with respect to any liability arising under this title. Notwithstanding the provision of this subsection (e), any such indemnity, hold harmless, or similar agreement shall not relieve such owner, operator, or person from liability arising under this title. Nothing in this subsection shall be construed to alter or in any way affect the financial responsibility requirements imposed under this section.

SEC. 3. GUARANTOR'S LIABILITY.

Section 305 of the Outer Continental Shelf Lands Act Amendments of 1978 is amended by redesignating subsection (c) as (c)(1) and adding a new subsection (c)(2) to read as follows:

"(2) The total liability of any guarantor in a direct action suit brought under this section shall be limited to the aggregate amount of the monetary limits of the policy of insurance, guarantee, surety bonds, letter of credit, or similar instrument obtained from the guarantor by the person subject to liability. Nothing in the subsection shall be construed, interpreted or applied to dimnish the liability of any person under this act or other applicable law.

CHAFEE AMENDMENT NO. 371

Mr. ARMSTRONG (for Mr. CHAFEE) proposed an amendment to the bill H.R. 4517, supra; as follows:

The bill is amended by inserting "Title I" immediately after the enacting clause and by adding the following new title at the end of the bill: "Title II. Pettaquamscutt Cover National Wildlife Refuge".

"SECTION 201. FINDINGS.

"The Congress finds that—

"(1) Pettaquamscutt Cove, and the associated tidal marshes and mudflats, and dividing the towns of Narragansett and South Kingstown, Rhode Island, has been identified as the most important black duck migration and wintering habitat in Rhode Island, in accordance with the objectives of the North American Waterfowl Plan;

"(2) Pettaquamscutt Cove provides important migration and wintering habitat for various other species of waterfowl, valuable feeding habitat for shorebirds, terns, gulls and wading birds, and habitat for many species of finfish and shellfish;

"(3) Pettaquamscutt Cove is home to several State-listed Rare and Uncommon animal and plant species; and.

"(4) designation of this area as a National Wildlife Refuge would significantly aid in the conservation of these fish and wildlife resources.

"SEC. 202. PURPOSES.

"The purposes for which the Pettaquamscutt Cove National Wildlife Refuge is established and shall be managed include—

"(1) to protect and enhance the populations of black ducks and other waterfowl, geese, shorebirds, terns, wading birds, and other wildlife using the refuge;

"(2) to provide for the conservation and management of fish and wildlife within the refuge;

"(3) to fulfill the international treaty obligations of the United States respecting fish and wildlife; and

"(4) to provide opportunities for scientific research, environmental education, and fish and wildlife-oriented recreation.

"SEC. 203. DEFINITIONS.

"For the purposes of this Act—

"(1) The term "refuge" means the Pettaquamscutt Cove National Wildlife Refuge;

"(2) The term "Secretary" means the Secretary of the Interior; and

"(3) The term "selection area" means the lands and waters of The Pettaquamscutt Watershed in the State of Rhode Island.

"SEC. 204. ESTABLISHMENT OF REFUGE.

(a)(1) Within one year after the effective date of this Act the Secretary shall designate approximately 600 acres of land and waters within the selection area which the Secretary considers appropriate for the refuge.

"(2) After making such designation, the Secretary shall publish in the Federal Register, and in newspapers of local circulation, a notice of availability of a detailed map depicting the boundaries of the land so designated, which map shall be on file and available for inspection in the office of the Director of the United States Fish and Wildlife Service, Department of the Interior, and in appropriate offices of the United States Fish and Wildlife Service in the State of Rhode Island.

"(b) BOUNDARY REVISIONS.—The Secretary may make such minor revisions in the boundaries designated under this section as may be appropriate to carry out the purpose of this Act or to facilitate the acquisition of property within the Refuge.

"(c) ACQUISITION.—After determination of the boundaries of the refuge in accordance with the provisions of subsection (a) of this section, the Secretary is authorized to acquire the lands and waters, or interests therein, within the boundary of the refuge.

"(d) ESTABLISHMENT.—The Secretary shall establish the National Wildlife Refuge, by publication of a notice to that effect in the Federal Register and publications of local circulation, whenever sufficient property has been acquired within the boundary of the refuge to constitute an area that can be effectively managed as a National Wildlife Refuge.

SEC. 205. ADMINISTRATION.

"The Secretary shall administer all lands, waters, and interests therein acquired under this Act in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1968 (16 U.S.C. 668dd-668ee). The Secretary may utilize such additional statutory authority as may be available to him for the conservation and development of wildlife and natural resources, the development of recreation opportunities, and interpretive education, as he deems appropriate to carry out the purpose of this Act.

"SEC. 206. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to the Department of the Interior—

"(a) such funds as may be necessary for the acquisition of lands and waters designated in section 4(a)(1); and

"(b) such funds as may be necessary for the development, operation and maintenance of the refuge.

"SEC. 207. EFFECTIVE DATE.

"This Act shall take effect on the date of its enactment.".

COMMERCIAL ACCESS TO SPACE

HOLLINGS AMENDMENT NO. 3711

Mr. BYRD (for Mr. HOLLINGS) proposed an amendment to the bill (H.R. 4399) to facilitate commercial access to space, and for other purposes; as follows:

On page 25, line 13, strike "10 years" and insert in lieu thereof "5 years".

HEALTH BENEFITS FOR FEDERAL EMPLOYEES

PRYOR AMENDMENT NO. 3712

Mr. BYRD (for Mr. PRYOR) proposed an amendment to the bill (H.R. 5102) to amend the provisions of title 5, United States Code, relating to the health benefits program for Federal employees and certain other individuals; as follows:

At the end of the bill, add the following new title:

TITLE III—HEALTH INSURANCE COVERAGE FOR TEMPORARY EMPLOYEES

SEC. 301. HEALTH INSURANCE COVERAGE FOR TEMPORARY EMPLOYEES.

(a) In General.—Chapter 89 of title 5, United States Code, is amended by inserting after section 8906 the following new section:

"§ 8906a. Temporary employees

"(a)(1) The Office of Personnel Management shall prescribe regulations to provide for offering health benefits plans to temporary employees (who meet the requirements of paragraph (2)) under the provisions of this chapter.

"(2) To be eligible to participate in a health benefits plan offered under this section a temporary employee shall have completed 1 year of current continuous employment, excluding any break in service of 5 days or less.

"(b) Notwithstanding the provisions of section 8906—

"(1) any temporary employee enrolled in a health benefits plan under this section shall have an amount withheld from the pay of such employee, as determined by the Office of Personnel Management, equal to—

"(A) the amount withheld from the pay of an employee under the provisions of section 8906; and

"(B) the amount of the Government contribution for an employee under section 8906; and

"(2) the employing agency of any such temporary employee shall not pay the Government contribution under the provisions of section 8906.".

(b) Conforming Amendment.—The table of sections for chapter 89 of title 5, United States Code, is amended by inserting after the item relating to section 8906 the following:

"8906a. Temporary employees.".

(c) Regulations.—Section 8913(b) of title 5, United States Code, is amended—

(1) in paragraph (2) by striking out "or" at the end thereof;

(2) in paragraph (3) by striking out the period and inserting in lieu thereof a semicolon and "or"; and

(3) by adding at the end thereof the following new paragraph:

"(4) an employee who is employed on a temporary basis and is eligible under section 8906a(a).".

(d) Effective Date.—The amendments made by this section shall be effective 120 days after the date of enactment of this section.

SASSER AMENDMENT NO. 3713

Mr. BYRD (for Mr. Sasser) proposed an amendment to the bill H.R. 5102, supra; as follows:

At the end of the bill add the following new title:

TITLE III—PROVISIONS RELATING TO CONTRIBUTIONS BY JUSTICES AND JUDGES TO THE THRIFT SAVINGS FUND

SEC. 301 CONTRIBUTIONS BY JUSTICES AND JUDGES TO THE THRIFT SAVINGS FUND.

(a) In General.—Subchapter III of chapter 84 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"Sec. 840a. Justices and judges

"(a)(1) A justice or judge of the United States as defined by section 451 of title 28 may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund. Basic pay does not include an annuity or salary received by a justice or judge who has retired under section 371 (a) or (b) or section 372(a) of title 28, United States Code.

"(2) An election may be made under paragraph (1) only during a period provided under section 8432(b) for individuals subject to chapter 84 of this title; provided, however, that a justice or judge may make the first such election within 60 days of the effective date of this section.

"(b)(1) Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of this title shall apply with respect to justices and judges making contributions to the Thrift Savings Fund.

"(2) The amount contributed by a justice or judge shall not exceed 5 percent of basic pay.

"(3) No contributions shall be made for the benefit of a justice or judge under section 8432(c) of this title.

"(4) Section 8433(b) of this title applies with respect to elections available to any justice or judge who retires under section 371 (a) or (b) or section 372(a) of title 28. Retirement under section 371 (a) or (b) or section 372(a) of title 28 is a separation from service for the purposes of subchapters III and VII of chapter 84 of this title.

"(5) Section 8433(d) of this title applies to any justice or judge who resigns without having met the age and service requirements set forth in section 371(c) of title 28.

"(6) Sums contributed under this section and earnings attributable to such sums may be invested and reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of this title.

"(7) The provisions of section 8351(b)(7) of this title shall govern the rights of spouses of justices or judges contributing to the Thrift Savings Fund under this section.".

(b) Conforming Amendment.—The table of sections for chapter 84 of title 5, United States Code, is amended by inserting after the item relating to section 8440 the following:

"8440.a. Justices and Judges.".

SEC. 302. DESIGNATION OF LEWIS E. MOORE, SR., POST OFFICE BUILDING

The United States Post Office Building located at 525 Royal Parkway in Nashville, Tennessee, is desginated as the "Lewis E. Moore, Sr., Post Office Building". Any reference to such building in a law, rule, map, document, record, or other paper of the United States shall be considered to be a reference to the "Lewis E. Moore, Sr., Post Office Building".

ADDITIONAL STATEMENTS

THE 75TH ANNIVERSARY OF COUNCIL 58 OF THE POLISH NATIONAL ALLIANCE

● Mr. DODD. Mr. President, I would like to take this opportunity to extend my greetings and congratulations to council 58 of the Polish National Alliance organized 75 years ago in my State, Connecticut.

The Polish National Alliance is the largest fraternal organization of Polish Americans in the United States. It provides scholarships, insurance, and other social services to the Polish community and maintains that productive and patriotic spirit that makes Polish Americans such a colorful and lively part of the American people.

By successive waves of immigrants my State has been blessed with a large Polish American population, almost 300,000 according to the latest census. It was natural, therefore, that when the 1913 convention of the Polish National Alliance recognized the need to establish local councils to unify smaller regional units, lodge 464 of Hartford applied to the national office and council 58 was chartered. During the past 75 years the council has remained an important core of Polish American life in Connecticut.

Mr. President, when I traveled to Poland 5 years ago to meet Lech Walesa, the leader of the trade union Solidarity, and then to Rome to see the Polish Pope, John Paul II, I was inspired in part by the curiosity that arose in me through my friendships and contacts in the vibrant Polish community in Connecticut. I wanted to see the country that produced this remarkable culture and that gave birth to such extraordinary leaders. During my time in Poland, I had a chance to experience the same dedication to freedom, motherland, culture, and the same profound religious commitment that I was so familiar with in Connecticut.

At this great milestone, their 75th anniversary I want to thank the members and officers of council 58 for their great social, cultural, civic, and patriotic contributions. I wish many more years of successful and productive existence to the council.●

BUILDERS EXCHANGE OF ROCHESTER, NY

● Mr. D'AMATO. Mr. President, I rise today to honor the Builders Exchange of Rochester, NY, on the occasion of its 100th anniversary. For 100 years this organization has been concerned with addressing the problems facing its construction members.

Over its 100 year history, membership in the exchange has grown from 9 to 200 firms. Its concerns today are similar to those it had in 1888. In addition to dealing with problems involving labor, architects, and owners, the exchange is forced by our complicated world to spend much more of its efforts with helping members cope with governmental rules, laws, and regulations.

The first president of the exchange was C.W. Voshall. The exchange was incorporated as the Builders & Building Supply Dealers Exchange of Rochester, NY, on February 4, 1888, meeting in the Wilder Arcade.

Later, as the exchange grew, it hired a paid executive director in 1905, and occupied its own building in 1929.

Mr. President, I salute the Builders Exchange on its long and productive history, and wish it another successful 100 years.●

DRUG FREE WORKPLACE STANDARDS FOR FEDERAL CONTRACTORS AND GRANTEES

● Mr. MOYNIHAN. Mr. President, I rise to insert into the RECORD a statement clarifying the intent of Congress with regard to drug-free workplace standards for Federal contractors and grant recipients.

The Treasury, Postal Service, and General Government Appropriations Act for fiscal year 1989 (Public Law 100-440) requires businesses and organizations that contract with or receive grants from the Government to maintain a drug-free workplace. The act requires these businesses to maintain in good faith a policy designed to rid its workplaces of the use, possession, or distribution of illegal drugs. It does not, however, delineate in any detail what Federal contractors and grantees must do to meet the new drug-free workplace standard.

The Omnibus Anti-Substance Abuse Act does define, in careful detail, what constitutes a good-faith effort to maintain a drug-free workplace. Title V of the bill requires employers to: First, notify their employees that the possession or use of drugs at the workplace is prohibited; second, maintain a drug-free awareness program; third, require employees to report to their employer any drug-related convictions; and fourth, either impose sanctions on employees so convicted or require them to complete rehabilitation. Any employer who establishes such a policy and makes a good-faith effort to implement it will be entitled to contract with or receive a grant from the Federal Government.●

NATIONAL SKIING DAY

● Mr. D'AMATO. Mr. President, I rise today to show my support of National Skiing Day, a joint resolution which I cosponsored last year, and which I again cosponsored this year. Millions of Americans ski every year: it's a great form of exercise. Skiing is also a part of our economy. Many jobs and livelihoods depend on the skiing industry. My home State of New York boast over 50 downhill ski centers and hundreds of cross-country ski areas. Skiing is a part of winter, and I am proud to have lent my support in recognizing the significance of it.●

CONSUMER RIGHTS BILL

● Mr. METZENBAUM. Mr. President, the Senate has considered the consumer rights bill, S. 430, on three different occasions. There was extensive debate on the measure each time. Even so, some of our colleagues wanted even more extensive debate on this issue. In fact, they really wanted to kill this bill. And they seem to have succeeded—at least for now.

What really happened to the consumer rights bill? The answer is quite simple. The Members of this body were presented with a choice: either vote for consumers—to help families with children stretch their budgets and to help the elderly on inflexible incomes, or vote to protect big companies which fix prices.

I am convinced that the vast majority of my colleagues would vote for consumers by supporting this bill. But it only takes a handful of Senators to stop this bill from getting a fair vote.

Meanwhile, small businesses are being squeezed out of the market. For example, I've been visited by several North Carolina furniture retailers. They told me about family businesses that are facing bankruptcy due to a cut off of supplies from major manufacturers. These reports make me very concerned. Small, family businesses are an important part of our economy.

In addition, consumers are being hurt. They are the ones who literally pay the price for price fixing. Their choice of where to shop—in a discount store or a full-price store—is reduced or even eliminated.

I promise to press forward with this issue again next year. Price fixers should be on notice, therefore, that Congress will not give up the fight to put a stop to their anticompetitive conduct.●

PREEMPTION: THE ROLE OF THE STATES IN PRESERVING DEMOCRACY

● Mr. STAFFORD. Mr. President, nearly two centuries ago Alexis de Tocqueville observed that "Main and Georgia, separated by a thousand miles, are more naturally united than Normandy and Brittany." He went on to ask why, and arrived at an answer which is just as correct and vital today as then. The reason, he concluded, was—in a word—the States.

States, de Tocqueville said "retained the love and prejudices of the people." He continued:

> States sovereignty enfolds every citizen and in one way or another affects every detail of daily life. To it falls the duty of guaranteeing his property, liberty, and life; it has a constant influence on his well-being or the reverse. State sovereignty is supported by memories, customs, local prejudices, and provincial and family selfishness; in a word, it is supported by all those things which make the instinct of patriotism so powerful in the hearts of men. How can one question its advantages?

The purpose of this statement, Mr. President, is not to dwell on the words and thoughts of a man long dead, but to impress on my colleagues the continued vitality of his observations. States, and the rights of citizens which they guarantee, are the glue that bind the Republic. Throughout our history, the rights of States have been subjected to periodic assault, often for good reason. The Congress concluded, and rightly, that the integrity of State sovereignty was no reason for children to be denied a decent education because of their color or adults to be deprived of their livelihoods because of their sex.

In our more recent history, however, State sovereignty has been under assault not for the purpose of assuring the protection of individual rights, but rather of enhancing profits. In literally every instance where the Congress has sought to protect the public, some industries—and those who are sympathetic to them—have endeavored to use the new Federal law as a means of limiting State authority.

To the credit of the Congress, these attempts have by and large been turned aside. But not always.

In the field of noise regulation, for example, courts have incorrectly held the Federal law to be preemptive. As a consequence there is no effective governmental regulations of noise in the United States. Despite the fact that the executive branch has steadfastly refused to exercise its statutory authority, States remain legally bared from acting thus leaving the citizenry with no governmental recourse. This is an intolerable result, but there is another field where the consequences are more dangerous. That is in the context of regulating automotive emissions.

In the late 1960's, as it became apparent that the automobile accounted for the vast majority of pollutants choking America's cities, individual States began to regulate exhaust gases. At the outset, the automobile industry resisted regulation at both the State an Federal level. As it began losing those fights in the State capitals, the industry turned to the Congress, seeking protective and preemptive Federal laws. The Congress complied.

The beneficial consequence of the Federal law was that stringent requirements were imposed throughout the United States. Although California was provided a special exemption by virtue of its unusual status, the other 49 States were barred from adopting their own standards. They were required to adopt either Federal standards or California standards, but that was the congressionally imposed limit of their authority.

Today, it has become apparent that the time has arrived to tighten those tailpipe standards. Yet the Congress is prevented from acting because powerful lobbies can rely on the influence of strategically located Members of the Congress. Pollution levels in our cities this last summer passed the point at which lung cells are destroyed and plants begin to die, yet States are helpless to act with respect to the single largest source of pollution in their midst.

It seems unlikely at this stage that the Congress will repeal this preemptive provision of law, although that would almost certainly be the correct action to take. Of greater concern to this Senator is whether future Congresses will succeed in resisting the entreaties of this and other industries. One need only look at the record to conclude that preemptive legislation will be sought in the future and that adopting it would be a serious error.

In virtually every field where the Congress has sought to address pressing social problems, States have acted before the Federal Government. States have been the first to regulate toxic chemicals, hazardous wastes, pesticides and their residues, protection of ground water, incinerator emissions and acid rain, to cite but a few examples from the environmental field. But the record does not stop there. States were also the first to protect the civil rights of racial minorities and women, to feed and clothe poor children, to guarantee the vote, to require safer work places, and even to cut taxes.

This is because the Federal Government is a creation of the Constitution, but the States are the creation of the people.

To the extent that the Federal Government attempts to limits the authority of the States, it is seeking to restrain the source of all political power in this Nation; namely, the people themselves.

The arguments which can be advanced in favor of limiting the power of the people by preempting States are many and they are persuasive. But the contrary argument is more compelling.

First, such attempts to bind the public are ultimately doomed to failure, for they will find a means of expressing their will whether or not governments approve.

Second, to the extent that such attempts succeed their ultimate result is to diminish the ability of the Republic to endure. Ours is a nation founded squarely on the sovereignty of the people. This is the principle which binds all Americans to one another regardless of their station in life and without respect to their hopes and aspirations. It is what has made it possible for this Nation to endure internal and external strife for over two centuries.

America is not unique because it has been blessed with great material wealth. Other nations are so endowed. Nor are we unique because ours is a democracy. Dozens of other nations share that form of government. What sets us apart is the principle that this nation is ruled by its people.

No doubt attempts will be made in the future to limit the freedom of States and their citizens to protect their own unique heritages. Bills now before the Congress, and considered by it in the past, would have limited States authority with respect to vaccines, product liability, water quality standards, workplace safety and dozens of other fields. Next year such a list will doubtless include powerplant emissions, regulation of toxic chemicals, and responses to oil spills.

This Senator would like to believe that a measure of past congressional refusal to yield to the blandishments of polluting industries has been due to his efforts. But more than this, he would like to believe that other Members of the Congress share his views and will as steadfastly oppose attempts at preemption in the future as he did in the past.●

DR. ELLIOTT M. FEINMAN

● Mr. MOYNIHAN. Mr. President, Dr. Elliott M. Feinman is the eminent director of the North Manhattan Eye Center. He is also an associate adjunct attending surgeon at the venerable New York Eye and Ear Infirmary. May last, he wrote a most persuasive letter to the editor of the New York Times in which he carefully argued the importance of regular eye examinations, particularly among the indigent, in the diagnosis of glaucoma. I would like to ask that this letter, which was printed in the June 4, 1988, edition of the New York Times, be inserted in the Record at the conclusion of my remarks, and I urge my colleagues to read it throughly.

The letter follows:

Eye Tests for Glasses Help in the Early Discovery of Glaucoma

To the Editor: It is myopic to support the self-dispensing of reading glasses without a doctor's prescription ("Clearly Wrong on Eyeglasses," editorial, May 16). It is common practice for the state to regulate health care when it is to the benefit of the public health and welfare; we frequently require screening tests, vaccinations and regulate health case, in New York State more than most.

Glaucoma, generally speaking, is an asymptomatic disease affecting 4 percent of the population older than 40, and it is a leading cause of legal blindness in this country. The visual loss caused by glaucoma is permanent and irreversible; it is treated most successfully in its earliest stages, when the visual loss is still in the peripheral field and not yet affecting the central (reading) vision.

Glaucoma most severely and disproportionately affects blacks and the medically indigent, who would be those most likely to buy a cheap pair of over-the-counter glasses in order to avoid spending the money or time for a complete examination.

Clearly, the best way of detecting early glaucoma is during a thorough eye examination, when the patient is still asymptomatic and in an early stage of the disease. Around age 40 most people develop visual changes caused by presbyopia, a form of farsightedness, which require them to get reading glasses. This is the ideal time for a thorough eye examination to detect glaucoma, early cataracts and early changes from diabetes. Fully 85 percent of my glaucoma patients were detected during a routine eye examination.

Surely, the long-term socioeconomic costs of people blinded by preventable diseases far outweigh the savings of over-the-counter glasses.●

ANTHONY: LEAP YEAR CAPITAL OF THE WORLD

● Mr. DOMENICI. Mr. President, on February 1, 1988, the Anthony Chamber of Commerce voted to proclaim the New Mexico/Texas town of Anthony "Leap Year Capital of the World," and to sponsor the one and only World-Wide Leap Year Birthday Club. Governors Garrey Carruthers and William B. Clements joined in this special proclamation.

This decision was made at the suggestion of chamber member, Mary Ann Brown, who enjoys a leap year birthday herself, after discovering that her neighbor, Birdie Lewis, shared this unique birthday, as well.

I commend the Anthony Chamber, for finding this unique way to promote their community.

The Anthony Chamber of Commerce has received national recognition for this exclusive club. Newspapers across the Nation published the announcement of this new club. John Chancellor broadcast the news to all the world on "Voice of America." Many other radio stations carried live interviews.

Every person born on February 29 is eligible for membership. All who pay their dues in 1988 will be charter members. Several 1988 leap year babies are already members. The Anthony Chamber of Commerce is hopeful that they will have at least 100 charter members before the end of this leap year.

To date, nearly 50 people from across the United States have paid their dues, which are set at $10 per member, payable to the chamber every leap year, and joined the World Wide Leap Year Birthday Club. Individuals from Munich, Germany, and Seoul, Korea have also become charter members, as well. The oldest member is 80-year-old Bessie Lee Norris of Albuquerque, NM.

By February 29, 1988, just 1 month after the chamber voted, 23 leap year babies had paid their dues and joined the "World Wide Leap Year Birthday Club." Nine birthday babies gathered in Anthony to celebrate the first official gathering of this unique birthday club.

Texas leads with the greatest number of members so far. Other States represented in this unusual club include, Arizona, California, Kansas, Florida, New York, Virginia, Michigan, New Hampshire, Wisconsin, and of course, New Mexico.

I commend my friends in Anthony for this most unusual promotion of their great city. If I had a leap year birthday, you can be certain I would become a charter member. I would encourage all those who celebrate their birthday on February 29 to become members of this fine birthday club. Big leap year celebrations are already being planned for 1992 and all future leap years.

Mr. President, I ask my colleagues to join myself, along with Govs. Carruthers and Clements, in proclaiming Anthony, New Mexico/Texas as the "Leap Year Capital of the World."●

HONORING MAX RUBIN

● Mr. LEVIN. Mr. President, I rise today to recognize and honor Max Rubin, president of Maxi Container, Inc., of Detroit, MI, for being selected to receive the NABADA—Association of Container Reconditioners; prestigious "Morris Hershon Award of Merit." Max is receiving the award in recognition of his more than 50 years of involvement in the barrel and drum industry. The Hershon Award, created to honor the memory of NABADA's late long-time president, will be presented at the association's national convention in Washington, DC, on November 4.

Max started in the barrel business in 1937. While attending the Detroit Institute of Technology, he worked part-time for his father, Charles Rubin, at Auto City Cooperate Works in Detroit. After studying engineering at the University of Mississippi and Kalamazoo College, Max served in World War II as a German interpreter with the military police escort guard, and as a member of the 96th Division and 24th Amphibious Corps, where he received the Purple Heart for wounds received during the invasion of Leyte in the Philippines. Later, he was part of the first wave in the invasion of Okinawa, and was training for the final invasion of Japan when the war ended.

After the war, Max returned to work with his father and convinced him that steel drums were going to replace wooden barrels. In 1952, they started National Drum Reconditioners, Inc., with Sam Breener and Hy Simes, which later became known as National Drum and Barrel Corp. In 1981, he started Maxi Containers, Inc., with his wife Alene and his brother Benson.

For nearly 30 years, Max has been reelected chairman of the General Regional of NABADA and has held most of the offices in the association on the national level. In every NABADA activity he has given 100 percent of himself and his reputation for loyalty, fairness, dependability and teamwork has made him one of the most respected and popular members of the association.

Congratulations to Max, and his wife Alene, who shares his interest in NABADA as well as hobbies of fishing, cooking and antique hunting, for receiving the Morris Hershon Award for Merit in recognition of his many contributions to the barrel and drum industry.●

NOMINATION OF GORDON CLYDE SOUTHERN TO THE BOARD OF DIRECTORS OF THE FEDERAL AGRICULTURAL MORTGAGE CORPORATION

● Mr. BOND. Mr. President, I am very pleased that Mr. Clyde Southern, a fellow Missourian, has been confirmed as a member of the first Board of Directors of the Federal Agricultural Mortgage Corporation. Mr. Southern, or Clyde as his friends call him, has extensive background in farming and nonprofit agricultural activities and I am confident it has prepared him well for such an important position.

Mr. Southern has been a farmer in Steele, MO, since 1954. He began farming following service in the Korean war and employment as a credit investigator. Besides his accomplishments in agriculture, Clyde's distinguished service record includes a Bronze Star and Legion of Merit Award.

Mr. Southern's family-held Southern Farm Co., Inc. was established in 1978. Its total crop acreage of 2,850 acres consists of corn, wheat, milo, soybeans, and cotton.

Mr. Southern serves on a number of nonprofit agricultural bodies for Pemiscott County, MO. He serves as vice president of the farm bureau, president of the port authority, president of Drainage District No. 1, and director of the Industrial Development Authority. Clyde also serves as director from Pemiscott County of the Bootheel Resources, Conservation and Development Commission in Dexter, MO.

In addition, Mr. Southern is also a member of several other agricultural organizations, including the American Soybean Association, the Missouri Cotton Producers Association, and the Agriculture Council of Arkansas.

Mr. President, Clyde and I go way back, and I know he shares my belief that the Federal Agricultural Mortgage Corporation will play a vital role in ensuring the availability and long-term viability of agricultural credit. To quote him, "I believe this will be a very important financial asset for all farmers and ranchers, and we should have had this many years ago."

Small farmers should benefit significantly from Clyde's background and perspective. According to Mr. Southern, small farmers and family farm operations should be encouraged by special provisions from the board. At his confirmation hearing, Clyde told us that "Farmer Mac could help strengthen the economy in rural areas by allowing rural lenders to service more loans."

With directors such as Clyde Southern, Farmer Mac also will be able to provide additional protection against unpredictable natural disasters. One such protection, according to Mr. Southern, would be the selection of qualified pooling and marketing facilities which would service loans from a wide geographic area covering many different crops. "In the event of drought or other natural disaster," Mr. Southern said, "This would insure that no one crop or area could cause serious loan losses to that particular mortgage pool."

Again, I am confident that my good friend Clyde Southern's background in agriculture will be a terrific asset to the Farmer Mac Board. As his dedicated service has benefited his home community, I am sure his service on this distinguished board will be a large plus for the entire agriculture community.●

FORMER SENATOR JENNINGS RANDOLPH ON HIGHWAY BEAUTIFICATION

● Mr. BURDICK. Mr. President, it is always a pleasure to hear from our former colleague Jennings Randolph, who retired from the Senate nearly 4 years ago. Although he is no longer a Member of this body, he maintains a lively interest in public affairs and the legislative process.

Throughout his 26 years as a Senator, Jennings was involved in a large and varied number of issues, and he served for nearly 15 years as one of my predecessors as chairman of the Committee on Environment and Public Works. This week I received a letter from him discussing some of the issues associated with the Federal program of outdoor advertising control. This program continues to attract congressional attention nearly 23 years after its enactment.

Jennings Randolph has a long involvement with highway beautification legislation making his observations particularly useful in understanding the issues surrounding this program. I ask that this letter to me be printed in the RECORD.

The letter follows:

TYGART HOTEL,
Elkins, WV, October 3, 1988.

HON. QUENTIN N. BURDICK,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR QUENTIN: Twenty-three years ago this month, the Congress enacted the Highway Beautification Act and thus launched a major effort to improve the scenic vistas along our Nation's major highways. This legislation, inspired by the work of the First Lady, Mrs. Lyndon B. Johnson, was signed into law by the President on October 22, 1965.

By any measure the Act has been a success in moving toward its objectives. But after nearly a quarter-century, there remain those individuals who continue to denigrate those objectives and the implementation of the Highway Beautification Act as it relates to the control of outdoor advertising. Many opponents of the program have attempted to buttress their case with misleading assertions, and they have been critical of those who have worked to make outdoor advertising control effective.

As the principal Senate sponsor of the Administration's original highway beautification proposal, I had the opportunity to help shape the legislation in its final form, and I have been a close observer of its operation since the beginning. With that experience, I have compared the facts with the arguments advanced to support drastic changes that could make billboard control ineffective. I would like to share my observations with you.

First, it should be understood that the Highway Beautification Act was never intended to completely ban billboards. It was a control measure, and the Committee on Public Works emphatically stated that outdoor advertising was a legitimate business that should be permitted where other industrial and commercial activities were conducted. Billboards were excluded along rural Interstate and primary highways.

The Act gave states the option of either controlling or prohibiting billboards. Forty-six States have chosen regulation while the other four (Maine, Alaska, Hawaii and Vermont) have exercised their right to forbid outdoor advertising.

The other central features of the program was the congressional requirement that "just compensation's be paid for any sign removed for public purposes. This is a standard feature of many federal and state laws on numerous subjects, but it has become the most controversial feature of the program. Critics of the billboard removal program as it is structured decline to acknowledge that this is a basic issue of property rights. Privately owned land needed to build a road is routinely bought—not confiscated—from its owner. There should be no question that the owners of signs removed to enhance the appearance of certain highways also should be paid for their property.

None of these components of the Act seems unreasonable. Yet they have been misunderstood and challenged almost from the day President Johnson signed the bill.

Among the more startling assertions is that there are more signs along America's highways today than there were in 1965. This is not the case, and the actual situation is shown in statistics developed by the U.S. Department of Transportation. The latest figures, compiled in 1987, show that nearly 600,000 "illegal" signs—95 percent of the original number—have been removed from the roadways. Compensation payments were not required for this category of signs, and they were eliminated at no cost to taxpayers. Even in commercial and industrial areas—where billboards are permitted—the number of signs is 4,120 less than in 1966. In addition, the Department of Transportation has estimated that the Highway Beautification Act has kept 150,000 new signs from being erected.

At a time when our country is deeply concerned about ozone depletion, the greenhouse effect and acid rain, we are told that billboards also are a form of pollution. This is certainly stretching a point. But even if it were true, the federal billboard control program has made substantial progress toward its goals. Expenditures of $208 million in federal funds have resulted in the removal of more than half of the 222,000 "nonconforming" signs targeted under the Highway Beautification Act and for which compensation payments were mandated. By contrast, billions of dollars have been invested in correcting the true environmental hazards posed by air and water pollution, but huge further expenditures still are needed.

The curious belief that billboards provoke accidents likewise cannot stand close scrutiny. An examination of accident records shows that roads in the four states without billboards are no safer than those of the 46 states where outdoor advertising is allowed and regulated. In fact, rural primary highways in Alaska and Hawaii, both without any billboards, had higher fatality rates than the high traffic states of New York, Pennsylvania and North Carolina.

Finally, there is a widespread belief that the outdoor advertising industry opposes any form of billboard control and would like to see programs of the Highway Beautification Act abandoned so it could fill the landscape with signs. The record clearly shows the falsity of this notion. The industry supported the Act in 1965 and for 23 years has endorsed its implementation in a fair and reasonable way. If we had this kind of support and understanding from other industries subject to federal regulation, life would be easier for everybody and we would be further along, for instance, in reducing air and water pollution.

I hope these thoughts will be helpful to you as you lead the Committee in its continuing oversight of the Highway Beautification Act. The statute was carefully devised, it has been conscientiously implemented and—despite opposition and funding shortages—it has been successful.

With best wishes, I am

Truly,

JENNINGS RANDOLPH.●

NATIONAL FAMILY WEEK

● Mr. D'AMATO. Mr. President, I rise today in support of Senate Joint Resolution 344, designating Thanksgiving Week, November 20, through November 26, 1988, as "National Family Week." Since this is the traditional time for families to gather and give thanks, it is an appropriate time to celebrate National Family Week.

Mr. President, a fundamental value in our Nation and culture is that a productive and healthy life is centered around the family. From birth to death, we are—if we are fortunate—surrounded by family. Thanksgiving and National Family Week remind us of this importance and should not be taken for granted.

The family is the source and touchstone of traditional, moral values. These values are transferred through a strong family life to our children, transferred to their children, down the generations in a stable culture. Values of trust, respect, and consideration are developed within the family.

My own family is very special to me, and National Family Day is an appropriate time to celebrate this. I commend my distinguished colleague from the State of North Dakota in taking the lead in sponsoring this resolution, and I urge my colleagues to join us in cosponsoring National Family Week.●

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, PERMITTING ACCEPTANCE OF A GIFT OF EDUCATIONAL TRAVEL FROM A FOREIGN ORGANIZATION

● Mr. HEFLIN. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee has received a request for a determination under rule 35, for Cynthia Shade, a member of the staff of Senator JOHNSTON, to participate in a program in Qingdao, China, sponsored by the Chinese Ministry of Forestry, from October 3-18, 1988.

The committee has determined that participation by Ms. Shade in the program in China, at the expense of the Chinese Ministry of Forestry and the Department of the Interior through a grant from the Phillips Petroleum Co., is in the interest of the Senate and the United States.●

TRIBUTE TO NEW HAMPSHIRE NATIONAL GUARD

● Mr. HUMPHREY. Mr. President, 20 years ago, the 3d Battalion of the 197th Artillery of the New Hampshire Army National Guard was mobilized. The men of the 197th joined 7,000 other guardsmen in continuation of the tradition as old as our Nation by serving our country in Vietnam.

This was neither the first nor the last time that New Hampshire guardsmen have answered the national call. In 1774, an early blow for liberty in the Revolutionary War was carried out by New Hampshire militiamen who raided the King's munition stores at Fort William and Mary (Fort Constitution) in Portsmouth Harbor. These stores were later used by the patriots who fought at the Battle of Bunker Hill. Battery B of the 3d Battalion of the 197th Artillery can trace its roots to the Dover militiamen who served under New Hampshire Gen. John Stark at the Battle of Bunker

Hill. The New Hampshire Guard has served in every American military action from the French and Indian Wars (1754-1763) to the Grenada operation of November 1983.

While the National Guard has a long history of quickly responding to a call to arms, they have also served in a nonmilitary capacity. The professionalism of the men and women who comprise the National Guard has proven to be an essential resource in those situations where the magnitude of events overtax civilian resources. These include: search and rescue efforts, support to drug enforcement operations, hay and water lifts, medical evacuation, and supplying aid and relief during natural disasters such as floods, fires, and storms.

Whether it be in response to a call to arms or to assist in civic service, the National Guard has proven equal to the tasks placed before them. In 1814, in the wake of the signing of the Treaty of Ghent which brought an end to the War of 1812, the New Hampshire Legislature issued the following statement to honor the New Hampshire National Guard. "This legislature could not fail to recognize and designate, with sentiments of peculiar pride and pleasure, many of the hardy and independent citizens of New Hampshire among those who enjoy the best claim to the grateful remembrance of their country." I wish to echo the sincere gratitude of 174 years ago and commend the New Hampshire National Guard for continuing an outstanding tradition of service to our Nation.●

GENOCIDE IMPLEMENTATION ACT OF 1988

● Mr. METZENBAUM. Mr. President, as this Congress comes close to an end, it becomes increasingly important that the Senate act to pass S. 1851, the Genocide Implementation Act of 1988. The United States has long shown a commitment to fundamental human rights. Yet, if we fail to implement the Genocide Convention, we will have failed to join the international community in condemning this most heinous of crimes.

Mr. President, I ask that an editorial from the Boston Globe urging passage of this legislation be printed in the RECORD.

The editorial follows:

[From the Boston Globe, Oct. 5, 1988]

Implementing a Genocide Treaty

Ceremonies in Washington today will mark the groundbreaking for a Holocaust memorial, a symbol of America's refusal to forget the crimes against humanity committed in this century. Yet, a nation founded upon the rule of law should embody its revulsion at the crime of genocide not solely in symbols of stone, but also in legal instruments.

The time is long overdue for the US Senate to ratify the Genocide Convention signed by President Truman in 1948. For 40 years, in what Sen. William Proxmire (D-Wis.) has called "a national shame," the Senate has failed to act on that treaty, which has been ratified by 97 countries.

Conservative senators led by Strom Thurmond (R-S.C.) have thwarted the implementating legislation on the grounds that it would dilute US sovereignty. They raised the objection that if genocide were to become a federal crime, native Americans might be tempted to bring the charge of genocide against the United States, while others might try to define as genocide American actions in Vietnam or US segregation laws.

The conservatives may have good reason to fear such legal tests, but implementing the legislation offers a circumscribed definition of genocide, carefully defining punishable acts, such as murder "with the intent to destroy in whole or in part, a national, ethnic, racial or religious group." Under the version of a federal law that is being considered by the Senate, the United States would retain the right to try any US citizen charged with genocide. No such right would be ceded to an international tribunal.

The Implementation Act of 1988, S. 1851, has received the support of the White House, both presidential candidates, the House of Representatives, and many private organizations devoted to the most basic of human rights—the right not to be murdered for belonging to a particular branch of the human family.

Those who argue for Senate passage of the implementing legislation because it would deprive the Soviet Union of a devastating propaganda tool have confused politics with a grave moral obligation. The Senate should ratify the Genocide Convention because it is the right thing to do.●

CHESTER F. CARLSON RECOGNITION DAY

● Mr. D'AMATO. Mr. President, I rise today to pay tribute to a man who changed the course of history in the business world. I am speaking of Chester F. Carlson, the inventor of xerography. It is for this reason that I joined my colleagues from New York in cosponsoring a joint resolution to designate October 22, 1988, as "National Chester F. Carlson Recognition Day".

October 22, 1988, marks the 50th anniversary of Chester Carlson's invention of xerography, which developed into the office copy machine. While Chester Carlson and the name "xerography" are somewhat unfamiliar to most people, this invention is used daily by millions of office workers.

Chester Carlson became very wealthy from the proceeds of his invention, but he donated most of his fortune to such causes as the achievement of world peace and the support of the United Nations, the Civil Rights Movement, and many colleges and universities.

Mr. President, I salute the memory of a great man. I urge my colleagues to join Mr. MOYNIHAN and myself in supporting this joint resolution.●

TRIBUTE TO GEORGIA ASSOCIATION OF BLACK ELECTED OFFICIALS

● Mr. FOWLER. Mr. President, it is indeed with great pleasure that I rise today to pay tribute to one of Georgia's most prestigious and respected organizations—the Georgia Association of Black Elected Officials [GABEO].

GABEO was founded in the early 1980's by several prominent black leaders in Georgia. I am proud to say that my State currently has over 500 black-elected officials, all of whom are members of GABEO. There are only two other States in this Union who can boast of having larger black delegations.

The association has done a great deal to improve the quality of public service among these officials. It provides a forum and organizational structure for its members to come together and discuss mutual problems and concerns.

On this, the eve of the organization's annual fall conference, I want to commend GABEO for all its hard work in the State of Georgia. Its efforts have made the difference in many communities.

The theme of this conference—"GABEO: Where Do We Go From Here?"—emphasizes the strategic position of the organization and its potential impact on State and national political events. The philosophical underpinnings of the conference and its theme are both derived from a speech delivered by Dr. Martin Luther King, Jr. in 1963. I want to quote from Dr. King's words in his speech, "Where Do We Go From Here?" because they give the deepest and fullest expression of the goals of this conference:

> * * * We have a task and let us go out with a "divine dissatisfaction." Let us be dissatisfied until America will no longer have a high blood pressure of creeds and an anemia of deeds. Let us be dissatisfied until the tragic walls that separate the outer city of wealth and comfort and the inner city of poverty and despair shall be crushed by the battering rams of the forces of justice. * * * Let us be dissatisfied until slums are cast into the junk heaps of history, and every family is living in a decent sanitary home. * * * Let us be dissatisfied until men and women, however black their skin may be, will be judged on the basis of the content of their character and not on the basis of the color of their skin. * * * Let us be dissatisfied until that day when the lion and lamb shall lie down together and every man will sit under his own vine and fig tree and none shall be afraid. Let us be dissatisfied. And men will recognize that out of one blood God made all men to dwell upon the face of the earth.

These are the dreams that GABEO members pursue in more prosaic fashion every day—in the steady toil of the town councils, the county commissions, the State legislature.

This is a fine organization of black-elected officials. But it is more than that. It is an association of black leaders, men and women from the heartland of the civil rights movement who are still at work in the 1980's. Not only do they fashion the ideals of a Martin Luther King, Jr., into the framework of statutes and ordinances governing today's society, the members of GABEO show the way for every citizen—proving that every voice can be heard, and that our Government will be directed by all our voices together.

In this they promote the fundamental principles of our republic, and I salute them for their contributions to Georgia and our Nation.●

NATIONAL GRASSLANDS WEEK

● Mr. D'AMATO. Mr. President, I rise today in support of National Grasslands Week designated as June 18-24, 1989. I commend my colleague, Mr. CONRAD, for taking the initiative in promoting awareness of the history, role, and benefits of our national grasslands. My home State, the great State of New York, has two such areas: the Hector Range District of Green Mountain and the Finger Lakes National Forest.●

NATIONAL FIREFIGHTER'S DAY

● Mr. D'AMATO. I rise today in support of a joint resolution which would designate Saturday, October 15, as "National Firefighter's Day." I commend my colleague, Mr. GORE, for taking the initiative in recognizing a vital part of our community, our firefighters.

Both professional and volunteer firefighters have a tremendous responsibility in protecting their communities from the dangers of fire. As a volunteer firefighter myself—and a proud one—I can attest to the dedication of these citizens.

Mr. President, I salute these outstanding men and women for their service and sacrifice to their communities. I urge my colleagues to join Mr. GORE and myself in cosponsoring this resolution.●

KEEPING THE RECORD STRAIGHT ON DEFENSE

● Mr. WARNER. Mr. President, I would like to address some misconceptions regarding the Defense budget and our military which have been circulating recently. I think it is important we try to keep the record straight on these matters.

I have selected several examples from recent articles to which I will respond today.

HOW MUCH MUST BE CUT

The first charge is that "the Senate Armed Services Committee estimates that the Defense budget must be reduced by nearly $300 billion over the next 5 years."

This statement is not correct.

Early this year, the Secretary of Defense informed the Senate Armed Services Committee that detailed defense planning documents for the 5-year period 1988-92 would have to be reduced by almost $300 billion to comply with the bipartisan budget agreement of November 1987 and Presidential direction for 2 percent annual real growth starting in fiscal year 1990.

Already, a total of $112 billion has been cut from two of those years, 1988 and 1989. Congressional appropriations for those 2 years are complete. And the Pentagon has reduced the Defense budget for the next 5 years to within $6 to $8 billion of its annual targets. This leaves an excess of only $18 to $24 billion to be cut from the 3 fiscal years 1990-92. By January 1989, when the budget is submitted to Congress, this remaining amount will have been eliminated.

BUSINESS PRACTICES

A second claim is that the Reagan administration has not followed appropriate business practices with regard to the military spending process.

This statement is misleading; this administration has brought greatly improved accounting procedures to the Defense Department. They have emphasized more and better audits, fixed price contracts, multiyear contracting, and dramatically increased competition.

For example:

The number of competitive procurement contracts has increased from less than 40 percent in 1981 to almost 60 percent in 1987.

Improved audits have led to an increase in the number of fraudulent suppliers suspended from doing defense business, from less than 50 in 1981 to more than 900 in 1988.

Multiyear contracting has saved more than $8.9 billion between 1982 and 1988.

WHAT DID WE GET FOR OUR MONEY

Another assertion is that we spent more than $2 trillion for our military but did not get our "money's worth."

Look again. During the Carter administration, we had a military in desperate need of modernization, plagued by equipment shortfalls, and sapped by low morale.

The situation was so poor in May 1980, that the Army Chief of Staff, Gen. Shy Meyer, testified before Congress:

> Right now, we have a hollow army. I don't believe the current budget (FY 1981) responds to the Army's needs for the 1980s.

In 1981, 1 week after Carter left office, the Chief of Naval Operations, Adm. Tom Hayward, testified before Congress:

> The ability of the Navy to do its job in terms of readiness * * * is the worst that I have seen it in my naval career.

In the 8 years since then, the Reagan administration has replaced aging hardware, increased readiness an sustainability levels to new highs, and rekindled America's pride in our military.

The Secretary of Defense, on February 18, 1988, in his report to the Congress stated:

> As the 1980s opened, our nation's armed forces suffered from severe neglect. Recognizing the deteriorating state of our defenses, the President and the Congress together enacted a major rebuilding program to restore American strength. That effort has had a clear effect. Our nation will enter the 1990s far stronger than it did the present decade.

Here are some of the incontrovertible facts. Over the past 8 years, we have procured: 4 Nimitz class aircraft carriers; 137 naval vessels, and expanded our Navy to over 565 ships; over 200,000 tactical missiles; over 3,800 combat aircraft; 5,500 M-1 tanks; 4,500 Bradley fighting vehicles; 100 B-1 bombers; 8 Trident submarines with over 1,500 survivable missiles; and 50 MX missiles.

Our renewed military strength has contributed significantly to a more peaceful world.

The INF treaty was signed, eliminating an entire class of nuclear weapons.

The Soviets have not invaded a single country since 1979, and in fact appear to be withdrawing from Afghanistan.

Terrorism appears to have been checked, especially since our counterattack against Libya.

United States forces in the Persian Gulf played a critical role in containing the Iran/Iraq war.

INCREASES IN CAPABILITY COMPARED TO INCREASES IN COST

Another claim is that "we simply haven't increased (military) capability commensurate with the money we've spent."

This is not true. The capability of all our forces has risen dramatically in the past 8 years.

For example:

Our tactical air forces have increased their combat capability by more than 200 percent.

Modern M-1 tanks have replaced aging M-60's.

Modern Bradley fighting vehicles have replaced aging M-113's.

Our expenditures have increased the capability and reliability of existing weapons. Programs to enhance radars and avionics of the F-14, F-15, F-16, and F/A-18 aircraft were implemented. Introduction of modern technology increased reliability of missiles across the board, often as much as 200 percent.

One hundred thirty-seven ships for the Navy have been funded, half of which have already joined the fleet.

Twenty-six Aegis ships—both cruisers and destroyers—were funded under Reagan; Aegis capability is vastly superior to that of the small frigates we were buying in the 1970's.

Four *Nimitz*-class nuclear-powered aircraft carriers have been funded.

Three battleships are in the fleet, and the fourth returns to service later this month.

Twenty-four 688-class submarines, seven Tridents, and the lead ship of a new design attack submarine—the *Seawolf*—have been funded; the *Seawolf* program originated under President Reagan.

READINESS

Then there is the matter of readiness. The charge has been made that "our support troops face a serious readiness crisis." What is the state of readiness of our troops? Let's look at the record.

Our military capability and overall readiness have been greatly increased during the past 8 years.

Our inventory of spare parts has risen from a low of 68.7 percent in 1981 to 95.8 percent in 1988—based on validated military requirements.

Tactical Air Force sustainability has risen from a low of 54 percent in 1981 to 96 percent in 1988.

Air Force flying hours have risen by 33 percent from 1980 to 1988.

Let's hear what our military commanders say today.

The Commander-in-Chief, U.S. Atlantic Command (CINCLANT):

> The outstanding readiness condition of our forces today reflects prior year commitment to funding spare parts, depot level maintence, end strength, and personnel pay and benefits programs. (March 15, 1988)

The Commander-in-Chief, U.S. European Command CINCEUR):

> I hope the Congress will preserve the progress made during the past few years of emphasis on readiness and sustainability programs. (February 1, 1988)

The Commander-in-Chief, U.S. Pacific Command (CINCPAC):

> The state of our readiness is today something about which we can be proud. (February 3, 1988)

ANTITANK MISSILES

Another charge is that our antitank missiles would bounce off Russian tanks.

This is partly true, but it is not quite the whole story.

While our older missiles are limited in effectiveness against the newest armor on Soviet tanks, the latest antitank weapons which we are currently fielding will kill any Soviet tank on the battlefield today.

The TOW-IIA, which we are currently fielding, was specifically designed and has proven effective against reactive armor.

The Maverick antitank missile, in all configurations, should prove to be effective against reactive armor based on engineering studies, and is currently being tested in the field.

Continuing improvements to the Hellfire antitank guided missile ensure its effectiveness against Soviet reactive armor.

COMBAT READY NAVY

A question has been raised as to whether the U.S. Navy is combat ready.

The answer can only be a resounding yes. This administration has substantially rebuilt our Navy, and the Congress has supported this effort.

Our Navy's combat readiness is at an all-time high.

In fact, this year the Under Secretary of the Navy stated before the Armed Services Committee:

> I am pleased to report that your Navy and Marine Corps are fully capable of operating globally to protect the interests of the United States. Indeed, a sustained commitment to rebuilding our naval forces during the past seven years has clearly reversed the previous decade of neglect.

According to the Chief of Naval Operations, Admiral Trost—on March 16, 1988:

> Improvements in readiness and sustainability have been the most dramatic product of the recent defense revitalization, even though force structure increases seem to receive the greatest attention. For example, the time that surface ships are free of debilitating material casualties has improved 61 percent, and aircraft full mission capable rates improved by 66 percent, from 1981 to 1987. During that same period, overall ship readiness increased 125 percent and overall aircraft squadron readiness increased an impressive 264 percent.

What better proof of combat effectiveness could we ask for than the heroic role of our Navy in the Persian Gulf, guaranteeing the safety of the sea lanes and the freedom of navigation in that region.

AIRCRAFT CARRIERS

A related charge concerns the two new aircraft carriers which Congress funded in fiscal year 1988 and whether we adequately funded procurement of new aircraft. The charge is that the Navy accelerated the production of these ships and yet at the same time the administration cut back by one-third all the combat aircraft it planned to buy in the next 5 years.

The Congress, not the administration, accelerated the aircraft carrier procurement funding in fiscal year 1988. At the same time, the Congress reduced the administration's request for naval aircraft in fiscal year 1987 and 1988 by almost $2 billion.

We will need those new carriers when they are completed in 1995 and 1998. But I would like to point out that the administration did prepare a budget which was balanced between carriers and aircraft.

In fact, defensewide, this administration has procured over 3,800 combat aircraft.

Additional reductions are prospective and uncertain; any future cuts in defense, or combat aircraft, will be carefully reviewed by the next administration and the Congress.

Compare this record for overall naval aviation against a proposal circulating—outside, not inside, the Congress—to eliminate two aircraft carrier battle-groups all together.

B-1 BOMBER

With regard to the B-1 bomber, the statement has been made that the B-1 still suffers from serious shortcomings in its defensive avionics.

This is partly true; but this information needs to be updated. Recently, the Armed Services Committee held a hearing and learned that the B-1 today can accomplish its penetration mission.

The defensive avionics system must be fixed to meet future threats, but the system is operational today and can satisfactorily meet current mission scenarios.

I would point that the B-1 was developed on cost and on schedule, and the on-going B-1 repairs are being conducted within the original cost estimates for the B-1 program.

The Air Force Chief of Staff stated that no informed observer can doubt the ability of the bomber to perform its mission today.

CONCLUSION

Mr. President, it is important that the public be given the complete truth so that they can determine for themselves the posture of our defense. As a result of the partnership between the administration and a bipartisan Congress, many actions have been taken to rebuild our military over the last 8 years.

We have come a long way since the headlines of 1980. Remember these?

> Sailors Seeking Welfare, Food Stamps in California (Washington Star, April 24, 1980)
>
> Beached Whale: Supership Docked for Lack of Crew (Washington Post, April 12, 1980)
>
> Shortage of Parts Hamstrings War Planes (Washington Post, March 2, 1980)

Since 1980, we have revitalized our military. We have restored the morale of our service men, and women, strengthened our national defense posture worldwide, and established a military which is once again respected by our allies and adversaries. Our renewed military strength has contributed significantly to a more peaceful world.

The facts I have presented here draw on information provided largely by the military chiefs, who are a nonpartisan body. I hope these facts will help us to gauge accurately the developments of the past few years.

I thank the chair for this opportunity to set the record straight.●

QUICK HIT ACID RAIN/GREENHOUSE PROGRAM

● Mr. STAFFORD. Mr. President, as this Congress draws to a close it becomes clear that some unfinished business will be left to those who serve in the 101st Congress when it convenes in January 1989. One of those items will be reauthorization of the Clean Air Act. Another will be addressing the threats posed by atmospheric contamination.

Although these two subjects are related to one another, it is unclear whether their resolutions will be linked during the legislative process. That is, however, a distinct possibility, at least at the very outset.

As much to satisfy my curiosity as anything else, this Senator began wondering whether it might be possible to simultaneously reduce a number of different pollutants, thus beginning the task of addressing the threats of ground level ozone, acid rain, and global warming. The tentative answer is yes.

Attached to my remarks is a summary of just such a proposal. It would reduce carbon dioxide emissions in the United States by 308 million tons a year, sulphur dioxide by 4.6 million tons, and oxides of nitrogen by 2.9 million tons. These are reductions of 6, 20, and 14 percent, respectively.

Most of these reductions would be achieved by 1994, although some would not be fully realized until the motor vehicle fleet turned over completely, which would be 2005. If some found the reductions to be too little or the dates too late, more substantial cuts could be achieved through the simple and relatively easy expedient of fuel switching, either to natural gas or lower sulphur oil or coal.

Mr. President, there is nothing particularly novel in this Senator's suggestion. Nor does this Senator harbor any illusion that he has just propounded the long sought after, miraculous solution to the thorny problems of acid rain and ozone control. What this does illustrate, however, is how simple and fast solutions can be.

If, either of the candidates for President of the United States—each of whom has promised action on both acid rain and global warming—wished to send an early and unmistakable signal, he could easily develop a program for simultaneous, significant, and proportional reductions in a wide variety of atmospheric contaminants. Speaking for myself, I hope that happens.

The summary follows:

QUICK HIT ACID RAIN/GREENHOUSE PROGRAM

MOTOR VEHICLES

1. CAFE Requirements:

(a) Reinstate the one and one-half mpg CAFE increase that was just waived by DOT, effective with model year 1991.

(b) Require an additional one mpg CAFE in model year 1993.

2. Controls on conventional pollutants: (a) Require a 0.4 gram per mile light duty NO_x standard effective model year 1993.

UTILITIES

1. Least emissions dispatching: Require all utilities to adopt and implement a system based on least emissions dispatching of electricity.

2. Repowering: Identifying the 50 utility units which (a) emit SO_2 at a rate in excess of 3.0 pounds per million Btu of heat input and (2) are larger than 250 megawatts and (3) have the worst heat rate. Require each of these units to be repowered by January 1, 1994 with new technologies (e.g. "Cool Water" or circulating fluidized bed) which achieve an overall efficiency of at least 38 percent.

CONSERVATION

Utilizing electric utilities as the means of delivery for money, expertise, etc., adopt a nationwide program of energy conservation (e.g. subsidized replacement of window air conditioners, time-of-day discounts).

POLLUTANT SAVINGS

	CO_2	SO_2	NO_x
Utility	53 mt	3.2 mt	.67 mt
Conservation	175 mt	1.4 mt	.65 mt
CAFE	[1] 80 mt	0	0
Cars/trucks	0	0	[1] 1.6 mt
Total	308 (5b) ([2] 6)	4.6 (22) ([2] 20)	2.9 (20) ([2] 14)

[1] Not fully effective until fleet turnover is complete in 2005.

[2] Percent.

ADDITIONAL SAVINGS

Require switching to low-sulphur coal or gas to boost SO_2/CO_2 cuts.●

ELECTION IN CHILE

● Mr. LUGAR. Mr. President, on October 5 the people of Chile expressed themselves at the polls in a national plebescite by rejecting continuation of the current military government. Senator KENNEDY and I have issued the following statement on behalf of the United States Committee to Support Free Elections in Chile, for which we serve as cochairmen. I ask that the full statement be included in the RECORD.

The statement follows:

STATEMENT: SENATORS RICHARD LUGAR AND EDWARD KENNEDY COCHAIRMAN OF UNITED STATES COMMITTEE TO SUPPORT FREE ELECTIONS IN CHILE

As chairmen of the U.S. Committee in Support of Free Elections in Chile, we are pleased to report that the October 5 plebescite was conducted in accordance with the electoral laws of Chile. The credit for the outcome, however, clearly goes to the people of Chile. They registered in massive numbers, some 7.4 million persons, and more than 90% turned out at the polls.

The International Human Rights Law Group, which has acted as counsel to our Committee, sent a distinguished delegation to Chile to monitor the electoral process. After meeting with other international observers, they concluded there was nearly complete compliance with the provisions of the voting law. We share their view that the government of Chile generally abided by the provisions of the electoral code and commend its acceptance of the victory of the opposition. It is evident that there was a clear and convincing rejection of General Pinochet's candidacy to continue in power for eight more years. The Chilean people said "No" to continued one-man rule. They said "Yes" to democracy.

The reports we have received from the Law Group and others noted the important role of international observers in this important step toward democracy in Chile. They emphasized the importance of the international community's continued involvement and attention to events in Chile as the democratic transition unfolds. We share the view that it is essential for the people of Chile to be permitted to exercise nornal democratic freedoms without interference during this transition period.

We will continue to follow that process, because we believe our involvement and the involvement of other international parties has been a positive one. We appreciate the Government's responsiveness to the concerns about the electoral process we expressed as recently as last week.

The international presence in Chile has been important to the election process, but it is minor when compared to the extraordinary courage, determination and resilience of the Chilean people and the unmistakable strength of the democratic ideal. The people of Chile saw a chance for a new future and they risked everything for that chance. They deserve our greatest admiration and firmest support.

This Committee will continue to follow the situation in Chile and to examine the democratic transition process. The will of the people of Chile was expressed eloquently in the election. It is now up to all groups and institutions to make their best efforts, in a spirit of reconciliation, to transform that will into a reality of democracy, the rule of law and respect for human rights for all the people of Chile.●

SUPPORTING THE RESTORATION OF DEMOCRACY IN BURMA

● Mr. LUGAR. Mr. President, I rise today to call upon the President and the Secretary of State to take immediate action to show support for those groups calling for an end to military rule and the civil war that has decimated the people of Burma and to assist in finding ways to restore peace, freedom, and democracy in Burma. After 40 years of civil war and 26 years of rule by a dictatorial regime, the people of Burma have risen up to denounce the dictatorship and have called for a return to democracy and an end to the civil war. The passive demonstrations by the people of Burma have been harshly suppressed by bayonets and bullets. After weeks of severe military crackdown, the streets of the major cities and towns have grown strangely quiet as the people have once more been forced to retreat to the safety of their homes.

Unrelenting, the army has been involved in a mop-up operation involving house to house searches for the leaders of the uprising. Travel to Rangoon has been closed off, but news trickling out indicates that thousands of demonstrators, including students, monks, and civic leaders have been arrested, tortured, and killed by the present Rangoon regime. In addition, thousands of students and dissidents have sought refuge in sanctuaries controlled by opposition forces near Thailand, China, India, and Bangladesh. Many of these refugees are facing starvation and some have already been reduced to eating rice gruel! Something must he done quickly to help these people.

The continued political and military domination of Burma by the military should be brought to an end. They are the ones responsible for the present chaotic conditions and the extreme social and economic distress. The people of Burma have repeatedly expressed their desire for the return of a democratically elected government.

It is my understanding that the National Democratic Front, which represents the ethnic nationalities of Burma, has called for a truce and the opening of peace talks to bring an end to the 40-year-old civil war and to bring about the establishment of a genuine Federal union. It is reported also that the non-Burman ethnic nationalities have abandoned secessionist goals and are willing to join the Burmans in a true union.

The irony of the present conditions prevailing in Burma is that Burma is presently closer to resolving its long-standing problems than it ever has been. It appears that all belligerent parties and factions are calling for a return to democracy and a restoration of peace and civil rule. Though reduced to one of the 10 poorest nations in the world, Burma is potentially one of the richest nations in Asia. The future of Burma and the prospects for peace and progress is promising, but these promises will not be realized without a restoration of democracy and sound economic practices.

The Burma Army's "Four Cuts" strategy and major military assaults into indigenous areas in recent years has resulted in tremendous suffering of the people due to loss of land, homes, lives, and dislocation of stable communities. Tens of thousands of the ethnic civilians have fled their traditional homelands for sanctuary in neighboring countries. Something must be done to help these refugees who aren't even recognized as such and are considered and treated as a nonpeople at this time.

There are also reports that the present narcotics eradication program in Burma involving the aerial spraying of 2,4-D which has been associated with an increased incidence of cancer and is being used by the Government of Burma as a form of chemical warfare against the indigenous minorities. The program should be immediately reevaluated and, if necessary, halted. As soon as possible, alternative programs, including an opium crop replacement program should be proposed similar to the successful programs being developed in Thailand.

There is a need for international assistance in resolving the present conflict in Burma. In light of recent developments, I am calling upon the State Department to reassess its relation with the Government of Burma and explore ways in which the United States can help facilitate the process of national reconciliation and the restoration of democracy.

Mr. President, I ask that the attached news stories be included in the Record.

The stories follow:

[From the Atlanta Journal and Constitution, Sept. 18, 1988]

BURMESE GUERRILLAS SUSPEND HOSTILITIES TO AWAIT DEVELOPMENTS IN POLITICAL WAR

(By Ron Martz)

When Burma's ethnic minorities survey the crop of opposition leaders that has sprouted during the country's current political turmoil, they see nothing that promises an end to four decades of civil war.

None of Burma's potential new leaders has been able to unify the hundreds of thousands in the Burman majority who for weeks have been marching to demand the ouster of the one-party government of the Burma Socialist Program Party (BSPP) and installation of a democratic, multiparty system.

More important to Burma's 10 major ethnic groups, which make up about a third of the country's population of 37 million, none of these leaders has addressed the source of the country's political, economic and social unrest: the government's 40-year-old war against them.

"Unless this civil war problem is solved, no matter what form the government will take, it will not be successful," Brang Seng, chairman of the Kachin Independence Organization, said last week in a telephone interview from Japan.

In recent weeks, Brang Seng has been traveling in Japan and West Germany, Burma's two largest trading, to seek support for the 10-member coalition of ethnic groups known as the National Democratic Front (NDF).

Brang Seng said the NDF will not back any group or individual until it finds some clear pattern of support by the people of Burma. To data, there has been none.

He also said the NDF wants some assurance that the ethnics' grievances against the Rangoon government will be addressed seriously by a new government.

To show good faith, and to avoid the appearance of trying to take advantage of the turmoil within the country, Brang Seng said, the NDF has suspended its military operations against Burma's army.

"We are sitting on the sidelines closely watching which group will be the main force before we decide what to do," he said.

Brang Seng declined to discuss the individuals who have emerged as opposition leaders in recent weeks. But a source close to him and the NDF called them "Johnny-come-latelys. All of these guys in Rangoon are out of touch with the reality of the situation in the rest of the country."

Among the most visible opposition leaders are Gen. Aung Gyi, former Defense Minister Tin Oo and Aung San Suu Kyi.

Aung Gyi won some support when he broke with former strongman Ne Win, who ruled Burma for 26 years after a 1962 coup. But Aung Gyi and Tin Oo have not been able to gain widespread support because of their close ties to an army that has been accused of numerous human rights abuses.

Aung San Suu Kyi, daughter of the late Gen. Aung San, a national hero who was assassinated in 1947, has no political experience and appears to have risen to prominence on little more than the strength of her father's name.

The latest possible leader to emerge is former Prime Minister U Nu, who was ousted by Ne Win in 1962. U Nu has named a government and said there would be elections Oct. 9. But neither the Burman majority nor the ethnic minorities have rushed to back him.

"There have been some problems with U Nu and the ethnic groups in the past," Brang Seng said.

One group backing U Nu is the Committee for the Restoration of Democracy in Burma (CRDB), an international group of Burmese expatriates based in Washington.

"In the absence of an interim government, we recognize the 1947 constitution and the government that came in at that time, and that's the government of U Nu," Ye Kyaw Thu, vice chairman of CRDB, said in an interview from Bangkok, Thailand.

U Nu, 82, seems an unlikely candidate to lead Burma out of the political and economic dark ages.

Despite disagreement on potential new leaders in Burma, there appears to be a consensus that somehow the BSPP, now run by Maung Maung, must be forced to agree to multiparty elections if there is to be peace in Burma.

There also seems to be agreement that democracy is the best way for Burma to join the 20th century.

But the role of ethnic minorities and their impact on Burma's future seem to have been underestimated.

Ethnic groups contol between one-third and one-half of the country. In the past, they have forced the government to spend up to 40 percent of its annual budget on a war in which it has been unable to gain an upper hand.

Ethnic groups also control the areas where opium poppies are grown. Burma is the world's major source of illegal opium.

Although State Department and Justice Department officials say most of the ethnic groups are involved in drug trafficking, ethnic leaders deny the allegations.

"The narcotics problem will be solved only when the civil war in solved," Brang Seng said.

And the civil war will be solved, he said, only when Burma's ethnic minorities are given a voice.

Without that, Brang Seng said, "There will be no new economic policy, no unity and no peace."

[From the New York Times, Sept. 12, 1988]

IN BURMA, A CIVIL WAR HAS GONE ON FOR 41 YEARS

To the Editor:

"Burma's Road to Self-Liberation" (editorial, Aug. 27) helped put into perspective the revolution in the major cities of Burma against the military-backed Government. But in focusing on the revolution, you ignored the longstanding civil war between the indigenous minorities in the hills and on the borders of burma and the Government. This civil war has been in progress 41 years, and hardly anyone has taken note.

Knowledge of the struggles of the minorities, isolated and berated as bandits, opium growers, opium traders and malcontents by Gen. Ne Win and the military leaders, has been suppressed from the majority in Burma's heartland. Thus, the majority was unaware that the minorities' call for democracy, a multiparty political system and human rights is exactly what they now fight for.

The Burmese majority seems to have forgotten that it approached the minorities in 1947, during the struggle for independence from Britain, and promised them equality, autonomy and the right to preserve and protect their cultures and traditions. It was Aung San, the leader of the nationalist struggle, who went to Panglong in the Shan States and made these promises in the name of the nationalist movement. Most of the minorities accepted his word—only the Karens refused—and after independence and the Government's violation of the promises, one minority after another protested and then went into revolt.

There might have been a peaceful resolution in 1962, had the military not seized power. Un Nu, the last elected leader under the constitutional system, invited all the minority leaders to Rangoon to discuss their problems and work out acceptable solutions. As the meetings were drawing to a close, the military struck, arrested all the leaders and began to rewrite history, as well as to reconstruct the political system.

The minorities have not forgotten either the promises of Aung San or the mistreatment of their people ad their cultures by the army and the Government of Burma.

For the last quarter-century the military rules have controlled the news media, and in their construction of events, the minorities in revolt were pained in the darkest colors. The refusal by the minorities to accept the 1974 constitution, which replaced federalism with a unitary system, was seen as proof that they were unwilling to join the rest of Burma on the road to socialism and insisted on remaining backward and feudal.

During the Ne Win period, the Burmese majority had no way of knowing what the minorities wanted and how they were being treated. Those in the Burmese heartland were unaware that last spring, Amnesty International issued two well-documented reports on human-rights violations by the military in its endless war against the minorities.

Few in Rangoon know that the 10 largest minorities are united in the National Democratic Front; that they do not want to secede or fight against the Burmese peoples, and that they have publicly declared that they want to be part of a democratic federal union in which they can enjoy equality, liberty and autonomy. The minorities are on record supporting the revolution by the people in the Burma heartland and stand ready to join their own struggle to that of the majority.

There can be no lasting peace in Burma, no development and no democracy unless the civil war and the revolution are addressed together. Any new government must declare a truce in the fighting against the minorities and invite their leaders to participate in the settlements that will be made.

History does not repeat itself exactly, and this is not 1947; however, it should be clear to the people in Rangoon that their lives and future are tied up with those of the minorities, and unless they can work together for the common good, their struggle will not bring the lasting peace and economic improvement they so desperately want.

JOSEF SILVERSTEIN,

NEW BRUNSWICK, NJ, *August 28, 1988.*

(The writer is a professor of political science at Rutgers University.)●

WESTERN SAHARA

● Mr. LUGAR. Mr. President, several longstanding wars and conflicts that have been waged for years in various parts of the world are on the verge of resolution. A United States-brokered settlement appears very close in Angola and Namibia, the long agony of Cambodia is entering a new, hopefully more peaceful stage with the announced withdrawal of Vietnamese forces, the Soviet Union has withdrawn tens of thousands of its occupation forces from Afghanistan, and the internecine war between Iran and Iraq holds out genuine potential for resolution.

These hopeful regional developments are, in my judgment, an outgrowth of many factors, not the least of which include prudent U.S. diplomacy, backed by sufficient military strength, guided by a commitment to basic values of democracy and human rights, and supported by patience and a willingness to bargain for acceptable outcomes.

I would like to call to the attention of my colleagues another conflict that may be coming to a close. Over the past few months, significant steps have been taken to end a war that has been waged for the past 13 years over the territory of the western Sahara. With the help of the United Nations, the parties appear to have come to the brink of peace.

On May 16, Morocco and Algeria reestablished diplomatic relations, which were severed 12 years earlier over Algeria's support for the Polisario guerillas in their struggle for control over the disputed territory. On August 30, the Government of Morocco and representatives of the Polisario agreed in principal to accept a U.N. proposal for a negotiated settlement of the war. On September 20, the U.N. Security Council voted unanimously to approve the holding of the referendum to decide the status of the western Sahara, and agreed to name a special representative to oversee the peace plan. The parties will now work with the United Nations and the Organization of African Unity to resolve the more contentious details, such as the list of who will qualify to vote on the referendum and what choices the referendum will offer.

We should all be pleased with initiatives being undertaken to resolve this conflict. I would like to commend His Majesty King Hassan II for his courageous efforts over the years to fashion a just and acceptable solution to this conflict and bring peace to the area. Although negotiations have repeatedly broken down, the King has continued to offer new proposals and compromises in hopes of bringing the war to an end.

As far back as June 1981, at the summit of the Organization of African Unity [OAU] in Nairobi, King Hassan announced that he would accept a referendum of self determination to be held in the territory of the western Sahara supervised by the OAU. From that date until February 1982, the King earnestly pursued negotiations with the Implementation Committee formed by the OAU. At the first meeting of that committee, he gave his consent "without any reservation or hesitation," to the ways, means and conditions it proposed.

Unhappily, these negotiations broke down after the OAU extended diplomatic recognition to the Sahrawi Arab Democractic Republic, the declared nation of the Polisario guerillas. Nevertheless, since that time, Morocco has continued to push for a referendum to be held under U.N. auspices.

In both 1984 and 1985, during addresses before the U.N. General Assembly, King Hassan reaffirmed Morocco's "readiness (and) commitment to accept, on one hand, the organization of a self-determination referendum in the western Sahara, and, on the other hand, the result of that referendum, whatever it may be." At the latter address, it was also announced that Morocco has unilaterally put into effect a cease-fire, pledging to abandon it only if compelled to defend itself against attacks from the Polisario.

And most recently, Morocco has been steadfast in support of the efforts undertaken by the U.N. Secretary General. Even after the Polisario launched an attack with a Soviet-made SPG-9 missile killing approximately 200 Moroccan soldiers, the Government of Morocco has maintained its determination to pursue the U.N.-sponsored peace negotiation.

There appears to be room to maneuver toward a resolution of this conflict. The efforts of the tireless and resourceful U.N. Secretary General are being assisted by the cooperative approaches of Morocco, Algeria, and the Polisario. I wish all the parties luck as they take final steps toward peace.●

AMERICAN POW/MIA'S IN SOUTHEAST ASIA

● Mr. LUGAR. Mr. President, I rise on behalf of the many American servicemen still missing and unaccounted for in Vietnam, and for the families in this country who have been patiently waiting for word about their loved ones lost in that conflict.

I applaud the commitment and activities of individuals and groups in Indiana who have demonstrated great resolve toward easing the suffering of those families. Last month, Indiana Gov. Robert D. Orr issued a proclamation designating September 16, 1988, as POW/MIA Recognition Day in the State of Indiana. This proclamation was issued in keeping with the establishment of this date on a national level, as proclaimed by the President. I ask to enter the full contents of Governor Orr's proclamation into the RECORD.

Mr. President, I also received in the last week a petition to the Government in Hanoi, signed by more than 1,000 Hoosiers, thanking that Government for the remains of men it has returned, but urging it to cooperate more fully toward the immediate release of all United States servicemen and civilians remaining in Vietnam, both living and dead. I applaud the efforts of these citizens and of the LaPorte POW/MIA group that sponsored the petition drive.

I support the joint United States-Vietnamese efforts to get information about missing servicemen. Within the past 2 weeks, in fact, a joint team of American and Vietnamese officials searched northern Vietnamese villages for people who might have seen plane crashes in which American soldiers were lost.

The joint efforts between the United States and Vietnam are extremely fragile, however, and could once again be suspended at any time. Adding to this difficulty is the fact that the United States does not have official diplomatic relations with Vietnam and the fact that many Americans do not want to see these relations established.

Mr. President, I urge Americans and my colleagues in the Senate to lend their support now and to continue to support these joint efforts in the hopes that every U.S. serviceman missing in action will be accounted for.

The proclamation follows:

PROCLAMATION

Whereas, the United States has fought in many wars; and

Whereas, thousands of Americans who served in those wars were captured by the enemy or are missing in action; and

Whereas, many American prisoners of war were subjected to brutal and inhuman treatment by their enemy captors in violation of international codes and customs for the treatment of prisoners of war, and many such prisoners of war died from such treatment; and

Whereas, many Americans are still listed as missing and unaccounted for; the uncertainty surrounding the fate of these brave citizens has caused acute suffering and hardship for their families; and

Whereas, the sacrifices of American prisoners and Americans missing in action and their families are deserving of national recognition;

Now, therefore, I, Robert D. Orr, Governor of the State of Indiana, recognizing the special debt we owe to those who gave their fullest measure to the cause of freedom, and in accordance with Senate and House of Representatives of the United States Congress, authorizing presidential proclamation, do hereby proclaim September 16, 1988, as "P.O.W.-M.I.A. Recognition Day" in the State of Indiana, and urge state and local officials and private organizations to remember with deep esteem and honor the sacrifices of our American prisoners of war and those still missing and the haunting uncertainty and anguish experienced by their families.●

RURAL DEVELOPMENT IN THE 101ST CONGRESS

● Mr. DURENBERGER. Mr. President, one of the great unfinished business items of the 100th Congress as we move toward adjournment is the long-ago-promised rural development bill. Unfortunately, the good intentions expressed by the Presidential candidates and the leadership here in the Senate did not result in a bill. Some have stated that the drought relief package was our "rural bill" of the 100th Congress. That view embodies the fallacy that "farm policy equals rural policy". Nothing could be further from the truth. The stress of the drought on rural businesses and governments made rural development more urgent, not less. I deeply regret that the Congress is leaving without addressing this central concern of millions of our citizens.

I look forward in the next Congress to working with my colleagues on virtually all of the Senate's committees to pass a comprehensive bill to revitalize rural communities. A proper approach to rural development should deal not only with agriculture, but banking, communications, health care, intergovernmental relations, small business, education, transportation, and the environment. The question is not "Can we afford to help rural America?" It is, "Can we afford not to maintain a rural economy which supports 60 million of population and constitutes the seed bed for our leadership and cherished values?" Senator HARKIN and I, as cochairs of the Rural Development Task Force of the Northeast-Midwest Coalition, have been studying the salient issues the Senate should address, which were touched upon in our amendment to the drought bill. We look forward to working with our colleagues from around the country to fashion a prudent and effective rural economic and social development policy.

I want to bring to the attention of my colleagues a paper written by Dr. Thomas Stinson, the chief economist for the State of Minnesota, and collaborator on a report entitled "Governing the Heartland: Can Rural Communities Survive the Farm Crisis?" which I published in 1986. It is an excellent review of rural development issues by one of the Nation's leading experts on this matter. I commend it to my colleagues' attention as they study this issue during the period prior to reconvening next year.

The paper follows:

HELPING PEOPLE IN PLACE: FEDERAL RURAL POLICY FOR THE NINETIES

(By Thomas F. Stinson, University of Minnesota)

During the last three decades two themes have run through discussions on rural policy. One reflects a concern with opportunities for low income rural residents. Those subscribing to this view see rural policy and anti-poverty policy as close substitutes, if not synonymous. Perhaps the best expression of this view remains that in "The People Left Behind," the 1967 report of the President's Commission on Rural Poverty.

Others see rural policy as a means of ensuring that the style of life, standards, and values of small town America endure and that households have the opportunity to choose between living in metro and non-metro environments. Secretary Freeman's "Rural-Urban Balance" efforts of the mid 1960's were one expression of this view. Those who favor this approach do not deny the need to help the rural poor, but they feel a true rural policy must provide explicitly for programs to halt an apparent divergence between the opportunities available in metro and non-metro communities.

Sometimes simple titles have been used to classify programs. Activities directed toward improving the standard of living for low income rural residents have been termed "people" programs. Those directed toward preserving rural communities, "place" programs. There has been a healthy debate about whether people or place programs are more effective, but often the debate has gone on without recognition that the underlying goals and expectations of the advocates differ.

That debate has produced a number of policy proposals and it has helped rural development programs through the sixties, seventies, and eighties. But, because there has been confusion over which policy goals programs are supposed to serve, rural development initiatives have been very unfocussed. One result of that ambiguity has been considered difficulty in building a support base for a comprehensive rural policy.

Whatever insights the people versus place distinction gave to policy development now seem to be exhausted. Today that framework no longer appears useful for analyzing ways of meeting the needs of rural residents. This paper will briefly elaborate on why a "people in place" focus should be considered as the foundation for a long-run rural policy, then go on to describe principles for the federal role in such a policy. It concludes with some specific components of a federal rural policy emphasizing people in place.

THE NEW RURAL POOR

The rural recession of the 1980's has changed the environment in which a national rural policy must be formulated. During the last eight years many formerly strong local economies have grown increasingly fragile and vulnerable. Farmers have lost their savings and their land, and been forced to turn to low wage jobs in town in order to survive. People working in the mines, the forests, and in rural manufacturing plants have been laid off and told their prospects of being rehired at their former position and pay were bleak. And, as the incomes of those living in the community dwindled, main street jobs have disappeared.

Long-term rural poverty continues to be a concern, but another problem has emerged. A new group of disadvantaged has been created, and this group and its potential long-run impacts must be the focus of today's rural policy. Incomes programs may be part of the solution, but a successful policy initiative will require more than incomes supplements.

This new target group has been labeled "the new rural poor" and for convenience I will continue to use that label. But that name may be misleading for program development, since the new rural poor do not share many of the characteristics traditionally associated with the rural poor. Instead, they are more closely related to the temporary rural poor described by Ross and Morrissey.

The new rural poor are not the elderly or disabled, nor do the heads of household lack the personal attributes needed to hold a job. Unemployment or under-employment is the primary source of their low income. At any one time many of these households may not even be considered poor under the Census definition of poverty. Instead, members of this group move in and out of poverty depending on local economic conditions.

The new rural poor are temporary poor, and the overriding goal for rural policy in the nineties must be to prevent these temporarily poor households from evolving into the persistent, or permanently poor and to prevent their once economically viable communities from institutionalizing a culture of long-term poverty.

This will be an enormous challenge for public policy. Because they are temporary poor, expanded levels of direct government support are unlikely to effectively reach this target group. And, because those in this group move into and out of poverty depending on the availability of employment, expanded education and training programs are less likely to be useful than job creation programs. Since many of the new rural poor are likely to remain in the rural communities in which they now reside, programs which ignore the need to improve economic opportunity outside the metropolitan areas are unlikely to prevent the conversion of many of the new rural poor into a permanent poverty population.

Research contrasting the social costs and benefits of a program of treating the new rural poor through expanding opportunities outside the metropolitan areas with the current policy of tacitly encouraging migration to the urban centers is necessary. Such analyses must consider the full impact of rural migration, not simply its effect on the migrating individuals incomes. Careful analysis will include the increased costs of providing minimum adequate levels of essential services such as education and health care for those that will, for sound economic reasons, remain in place as well as incorporating the long-term outlook for the children in those households which do not migrate.

The new rural poor are likely to be more successful migrants than were the rural poor of the sixties and seventies. But, the social costs of their migration may be greater than those of previous migrants. Migration of full families rather than single youth, for example, will place a greater strain on existing infra-structure and public service delivery systems at their destination. The existing urban poor also may be forced to absorb some additional costs since some crowding-out from access to scarce social services and entry level employment is likely to occur.

Finally, the costs of retaining the new rural poor in their rural communities may not be as high as expected. Many in this group had made conscious decisions to live and raise families outside the metropolitan areas, choosing to forego some income to obtain the style of life and values more readily available in smaller communities.

GUIDELINES FOR A FEDERAL RURAL POLICY

When costs of migration in the destination community are added to the increased aid which will be required to keep local government services at minimally adequate levels for those who remain, the substantial costs of dealing with the new rural poor through an explicit migration policy or through "benign neglect" become apparent. The likely magnitude of those social costs raises the presumption that an alternative approach—developing a program to meet the new rural poor's needs in place—may be a more efficient basis for rural policy.

Defining a comprehensive federal program for dealing with the problems of the new rural poor is clearly beyond the scope of this paper. Certain principles or guidelines for formulating the federal role are apparent, however, those principles, described briefly below suggest, in turn, some specific policy directions.

1. Federal rural policy must not be based on the assumption that rural communities are going to die. Contrary to conventional wisdom a decline in main street is not the deathknell for a community; it is only a signal that the region's economic geography is changing.

Certain rural communities are now evolving into lower order trade centers. In others, particularly the hamlets, fewer services are now offered. But, a declining commercial sector is not a signal that all the houses in the community will soon be boarded up. It is only a signal that a community's future role is being redefined.

Improved transportation and communication have changed the set of goods and services which must be provided in every community. Today's consumers, motivated by concerns over price and selection, are much more willing to commute to larger shopping areas than their parents were, and the result is that some local retail outlets are no longer needed. Just as urban neighborhoods did not disappear when suburban shopping malls developed, accelerating the decline in neighborhood retail activity, rural communities will not die as main street activity continues to shift to regional shopping malls.

2. Viewing rural communities as spatially separated neighborhoods, inter-dependent and not self-sufficient, is a key step toward bringing realism to rural development planning in much of the nation. Federal programs need to reinforce the idea that rural communities should view each other as cooperative neighbors rather than competitors. Programs which consciously pit one community against a neighboring community should be avoided.

3. Housing costs are an important equilibrating force in a spatial economy. The desires to live in a single family residence, and to own one's own home and land are extremely strong among those who grew up outside the central city. Individuals are willing to trade off substantial commuting time for the opportunity to obtain more desirable living arrangements. The existing stock of single family housing in rural areas is a key variable which must be considered in formulating any rural policy.

4. Households consume publicly produced goods and services as well as those produced by the private sector, and the quality and costs of those publicly provided goods help to determine the overall standard of living available in a locality. Policy changes which increase the costs of local services in smaller communities, other things equal, encourage migration to the urban centers, accentuating problems in both rural and metropolitan communities.

5. Agricultural policy is not rural policy, but rural policy must not ignore the contributions of the agricultural sector. It has almost become fashionable among those concerned with rural policy to dismiss the contributions that agriculture and agricultural policy make to the rural economy. Diversification, attracting new manufacturing, import substitution, and creating high-value-added products locally often are offered as the solution for local problems.

Unfortunately, in much of rural America manufacturing simply cannot grow enough by itself to allow the local economy to recover. Healthy resource based industries—agriculture, mining and forestry—are essential elements of many local economies. If these industries remain depressed many local economies will not recover even with growth in sectors outside those traditional industries.

6. Policy makers should begin their search for rural program alternatives by looking for points at which the market fails. If programs are identified which overcome existing market failures, federal intervention will produce efficiency gains, increasing national output, and not merely transfer income from one group to another. Two areas where market failures are commonly mentioned are insufficient information about opportunities in smaller communities, and barriers to the free flow of capital.

7. Direct subsidies for rural development should be limited, visible, and well targeted. But, if changes in the institutional structure are necessary, those changes need to be given time for the necessary adjustments in the private sector to occur once they are made, rather than be continually subject to the uncertainty of the appropriation process. Automatic, self-financing programs should form the basis for federal rural policy.

8. Federal policy must be designed to make sure that program managers at all levels, including those in quasi-public, and non-profit organizations, as well as private sector participants have a stake in the program's success. Time spent with prospective borrowers in activities such as developing a realistic business plan and market evaluation prior to granting a loan, and in follow-up contacts providing technical assistance after financing is made available are said to be key factors enhancing success ratios of small business loan programs. Federal rural policy initiatives must make sure program administrators have a sufficient stake in the outcome to provide the screening and follow-up needed for successful operation of rural development programs.

9. Finally, attempts to define a federal rural policy must be focused on a specific target—the problems of the temporary or new rural poor, and on preventing those households from becoming part of the persistent poor and passing on a culture of per-

manent poverty to their children. If the rural policy agenda is allowed to become too broad, the energy behind it will be dissipated on issues in which the rural issue is secondary to the broader national policy issue.

Many public policy issues have important rural dimensions to them, but attempts to define a rural policy must focus on issues where the rural interest is dominant. Dealing with the needs of the persistent poor, for example, remain a key problem for rural communities, but this is a national problem, and solutions are not limited to those living outside the urban centers.

COMPONENTS OF A FEDERAL RURAL POLICY

If one accepts a "people in place" goal for rural development policy the scope of possible federal actions becomes somewhat more focussed. Job training programs for positions not available within commuting distance are, for example, programs which would not be included since they do not enhance a household's ability to remain in a non-metro community. Programs which expand the services available from the community or reduce the local cost of providing such services, on the other hand, could be an element of such a policy as could wage subsidies targeted to workers in non-metro communities.

There is a long list of specific initiatives which could be part of a national rural policy based on the people in place goal. Several broad program directions consistent with that view and with the guidelines discussed earlier are described below.

An Expanded Federal Role in Rural Capital Markets

Establishing a national rural development bank, or alternatively, expanding the Farm Credit System's lending authority to include rural economic development loans could provide a new foundation for rural policy in the nineties. Although the question of whether barriers block the free flow of capital into rural areas remains open, a rural development bank would expand the availability of credit in rural communities while adding only slightly to existing distortions in capital markets if there is no credit gap in rural communities.

Rural development banks have been proposed (and rejected) in the past, but the financial industry has undergone important structural changes in recent years. Those changes—bank deregulation, expanded interstate banking, and the weakening and in some instances failure of many small, rural banks—have reshaped rural capital markets. It is now time to re-evaluate whether a rural development bank would improve the prospects for non-metro economies.

Past opposition has centered on the argument that barriers to credit in rural areas could not be shown to exist, and that such a bank would simply add to the federal bureaucracy without providing any additional assistance to rural areas. That objection may still be valid. However, the Farm Credit System's history indicates that an important, unmet niche in agricultural credit needs did exist, one which a quasi-public agency could fill. Such a niche may also exist in the business development loan field, for there is no reason to assume that non-metro bankers are more likely to be meeting the capital needs of business development than they once were to meet the needs of agriculture.

A rural development bank fits well with the guidelines for public policy noted above. The actual subsidy would be low—assumming the bank is financed in the same way as the existing farm credit system—and the structural changes would not require continuing appropriations to remain in place. The quasi-public nature of the bank would also impose more of a market discipline to the evaluation of economic development loans than exists in many of today's public sector loan programs.

Loan officers would have a direct stake in the success of their loan portfolio, since defaults would carry through to the bottom line and be visible to all. Funds raised through bond issues would reflect the opportunity cost of funds available. And, because the scope of the bank would be regional rather than community specific, the bank could contribute to a broader regional focus for development activities.

A Secondary Market for Revolving Loan Fund Loans

Revolving loan funds currently are the program of choice in rural development. Their advantages are obvious—they offer a long term solution to capital needs in rural areas by creating a pool of money which, in theory, can be used over and over to fund needy local businesses. Local development groups also like revolving funds because the local board has complete control over the distribution of those funds. Revolving loan funds are emerging in many smaller cities, with some states and foundations providing funds on a matching basis.

Small revolving loan funds have a major problem, however, one which greatly reduces their usefulness. That problem is that once a fund has loaned out its original capital, it may go dormant. It will take several years of re-payments before sufficient funds accumulate to allow another loan to be made. Unless additional private sector or foundation contributions are obtained the loan fund will be without sufficient resources for operation or additional lending. This creates strong incentives for fund management to devote much of its time to seeking additional contributions to the fund rather than monitoring and providing the technical assistance needed by its borrowers.

In practice revolving loan funds have a record problem. Because they are assumed to lend to more risky operations, many individuals—including some serving on loan fund boards—assume that revolving funds are a combination loan and grant program. The result is that often loan quality is not given sufficient attention and the likelihood of default not carefully evaluated. Delays of several years between the approval of a loan and ultimate accountability reduces the need for board members to focus on the long term impacts of decisions and allows a desire for immediate action to dominate.

Local revolving loan funds also suffer because they do not have the ability to diversify sufficiently to adequately spread the risk inherent in their loan portfolio. Community funds seldom are able to lend to firms locating outside their community's boundaries, so the entire portfolio is subject to the risk of local business fluctuations. In addition, local revolving funds often are too small to include enough of the higher risk loans to provide sufficient diversification.

Establishing a secondary market for local revolving fund loans is one solution to the problems facing those funds in small communities. Such a program could be modelled after the well know Ginnie Mae, Fannie Mae, and the new Farmer Mac (the Federal Agricultural Mortgage Corporation) programs. Existing revolving loan funds could be pooled—thus reducing the region specific risk and expanding the size of the portfolio to limit the impact of individual failures. Then the pooled loans could be sold as a group to other investors. The cash paid for those pooled loans would then be returned to the local revolving funds, providing them with capital for additional lending.

Private sector junk bond funds have shown that markets exist for pools of riskier credits. That market could possible be expanded by tax law changes which would provide incentives for foundations to purchase shares in these loan pools. Pools of such loans might also be appealing to state pension funds and other public sector funds as they receive increased pressure to invest a portion of their assets in building their state's future.

Existing federal secondary mortgage pools are fully guaranteed, but full federal guarantees may not be desirable for pools of revolving fund loans. A partial federal guarantee would, for example, leave room for state participation by providing an additional partial guarantee. A full federal guarantee also would remove the stake of the local lender in the success of the project. Local fund boards who find that their loans have a market value of only a fraction of the face amount without the guarantee would be given a strong market signal to improve the quality of the credit they issue.

Strengthening Regional Identity

Federal policy cannot mandate that rural communities carefully consider the economic welfare of the larger region before undertaking any new action. Indirectly though, through modifications in program rules and structure, identifiation with the regional economy can be enhanced. Rules for discretionary grant programs, for example, could be revised to favor applications from coalitions of rural communities or counties, thus encouraging a broader geographic perspective on the part of local officials.

The goal is not to eliminate community identity or separate and distinct local approaches to particular types of community problems. Instead, it is to enable rural communities to free up additional resources and to develop more effective and realistic development programs by recognizing their local economy's interdependence with their neighbor's.

Education and health care are fields where there should be particular emphasis. A special federal program funding shared communications technology used by adjoining school districts is an example of a program which would reward regional cooperation. The contribution that a program like the A-95 program of the 1970's would make to improving regional identification should also be examined.

Fiscal Assistance for Needy Rural Communities

When incomes decline households cutback on their consumption of all goods and services, including those provided by the public sector. When local property values decline dramatically, as has happened in many farm dependent communities, the level of spending on public services such as education drops again. Elimination of federal revenue sharing—the only source of federal aid obtained by most rural local governments has only worsened the financial squeeze facing many rural communities and "new federalism" has become a code word for cutbacks in public services.

Lost funding in other areas—such as EPA's phaseout of their wastewater treatment grant program after most metro communities have obtained grants, but before needed projects in rural areas are funded—only further worsens the financial problems facing previously stressed rural communities.

A rural policy designed to prevent the institutionalization of a culture of poverty in formerly self-sufficient rural communities cannot ignore the needs of the local public sector. Cutbacks in public education and in the availability of health care are the first steps in a process which produces intergenerational poverty. A program of targeted general purpose assistance designed to ensure that minimum adequate levels of public services remain available in financially stressed communities must be a key component of any rural policy initiative.

CONCLUSION

The drought of 1988 has created a window of opportunity for those seeking structural changes to help revitalize rural America. This summer's reduced yields have drawn down grain stocks and raised commodity prices producing expectations of lower than anticipated farm program costs for the next two years. Some of those farm program savings could be allocated to financing a major rural policy initiative, if a consensus can be reached on goals for a national rural policy.

Rural America faces a number of problems. Its special needs were ignored during the eighties, and the safety net for rural communities removed. Pockets of temporary poverty are emerging where local economies once were strong, and a new group of disadvantaged have appeared, adding to the already disproportionate number of poor residing outside the metropolitan centers.

Many national issues—education funding, education quality, health care costs and accessibility, housing policy, and environmental policy—have distinct rural components. All are candidates for inclusion in a national rural policy statement, for too often rural interests are under-represented when national policies which affect the standard of living and quality of life in communities outside the metropolitan areas are formulated.

Prospects for changes in many of those programs are slim, however, because the rural issue is secondary to a broader national issue on which there is no agreement, and it is unrealistic to expect a satisfactory solution to the rural component without a complete revision of national policy.

This paper argues that the new rural poor should be the focus of rural policy, and that the goal of that policy should be to prevent the evolution of those new pockets of temporary poverty into areas ingrained with long term, intergenerational poverty. To move toward that goal a strategy designed to deal with the problems of people in place appears likely to be the most effective and the most economically efficient.

The new rural poor are an attractive target for rural policy because their problems are recent enough to leave them tractable to public sector intervention. By moving soon, before the existing low-income problems are complicated by associated problems caused by underinvestment in human capital and public services it may be possible to avoid locking additional households into a cycle of long term, intergenerational poverty.

The goal of rural policy should not be to return each non-metro community to the position it occupied in the economic hierarchy during the 1950's, for the changing roles rural communities are playing on the economic landscape must be recognized. Instead, national policy must recognize that people are going to continue to live in rural communities and that it is in the nation's interest to insure that those who do, and their children, do not become second class citizens.●

RECOGNITION OF THE STATE OF MISSOURI'S EFFORTS IN MINORITY HEALTH

● Mr. BOND. Mr. President, providing the proper mix of health care alternatives to ensure proper coverage for all citizens is always a challenge. In an effort to address this situation, during my second term as Governor, I appointed a wide-ranging task force to study the best ways of meeting the health care needs of all Missourians. The members of the task force represented all facets of health care both in Government and the private sector. The task force made a number of constructive recommendations, many of which were enacted.

Despite the progress made by the task force, and through other actions of my administration and Gov. John Ashcroft's administration, disparities continue to exist between health care services for minority and nonminority Missourians. The October 1987 issue of the Missouri Department of Health's Missouri Monthly Vital Statistics identified those disparities. Age adjusted mortality rates for the years 1975–85 show the following disparities between Missouri blacks and whites:

Homicide, 1,030 percent.
Kidney disease, 172 percent.
Infant mortality, 159 percent.
Diabetes, 105 percent.
Liver disease, 97 percent.
Cancer, 39 percent.
Stroke, 31 percent.
Heart disease, 16 percent.
Pneumonia/influenza, 15 percent.
Unintentional injuries, 7 percent.

The Missouri Minority Health Task Force, led by the legislative Black Caucus, has been working actively to alleviate race disparities in health care. In conjunction with the Minority Task Force, the Missouri Department of Health had taken an active role in the development of a successful program that encourages black and minority high school students to pursue medical and public health careers. Their efforts have been supported by the Missouri General Assembly which had established an Office of Minority Health within the Missouri Department of Health to assess minority health needs and develop strategies to improve the quality and accessibility of health care available to Missouri's minority communities.

I would like to give special recognition to the achievements of the Minority Health Task Force, which is co-chaired by Representative Mary Bland and Edith Mitchell, M.D.; the Missouri Department of Health directed by Robert Harmon, M.D., and the dedicated members of the task force who have given so much of their time and effort to improve the healthcare for Missouri's minority population.●

BOYS CLUBS OF AMERICA "YOUTH OF THE YEAR"

● Mr. DECONCINI. Mr. President, a few days ago I had the pleasure of co-hosting a congressional breakfast in honor of Shawn Du Fresne, Chad McBride, Angela Thomas, Ralph McCormick and Taylor Pruette, the five Boys Club finalists for the Boys Clubs of America "Youth of the Year" award. These finalists represent the best and brightest of America's youth, and are a fine tribute to the countless hours of devotion by the more than 135,000 volunteers that make the Boys Club movement work.

During the breakfast, we were treated to an inspiring speech by the distinguished former Deputy Attorney General of the United States and a member of the board of directors for Boys Clubs of America, Mr. Arnold I. Burns. I would like to share his inspiring words about that illusive ray of hope in the midst of despair. I urge all of my colleagues to read this incisive evaluation of the state of America's youth today and their promise for tomorrow.

Mr. President, I ask that the remarks of Mr. Arnold I. Burns be printed in the RECORD.

The remarks follow:

REMARKS BY ARNOLD I. BURNS, FORMER DEPUTY ATTORNEY GENERAL OF THE UNITED STATES AND MEMBER OF THE BOARD OF DIRECTORS, BOYS CLUBS OF AMERICA

Good morning. Today we celebrate and honor the five "Youth of the Year" finalists. These young people represent the next generation of Americans on whose shoulders will rest the future peace and prosperity of the United States.

And I, for one, am optimistic about that future. These young men and women have made outstanding contributions to their communities. We admire their strength and their determination to overcome the many barriers to success that fate has placed in their paths. We salute them for scoring a victory over the enormous odds that confronted them.

Others, however, have not been so fortunate. Many are too down-trodden by the every-day fight for survival. They are too depressed. They see no way out. That is what life in our cities does to so many young people.

This morning I want to talk to you about our inner cities. Let's begin by putting all of its aspects into a giant cauldron. Our inner cities are troubled and turbulent. There is poverty. There is crime. There are drugs. There is violence. Kids growing up in our cities feel trapped. They are hapless, hopeless, and helpless. They don't know how to break the cycle. They see no light at the end of the tunnel.

In the inner cities, poverty is most pronounced for children living in single-parent households headed by women. In 1985, 66 percent of black children, over 70 percent of Hispanic children and nearly half of all white children living in female-headed households lived in poverty. In addition, nearly 75 percent of all black infants were born to unwed mothers, half of them to teenagers.

Teenage pregnancies continue to plague us. Each year in the United States there are more than 1 million such pregnancies, and the lives of many young, unwed parents are filled with nothing but despair.

Minorities and immigrants are among the most impoverished people in our society. Most of them live in the inner cities. Among black youngsters, one in two lives in poverty: one in two grows up without a father: nearly one in two black teens is jobless, and one in 21 young black men is murdered.

By the 12th grade, 80 perent of all boys and girls in the Nation are periodic drinkers.

Drugs continue to eat away at the very underpinnings of our society, and almost two-thirds of all high school seniors have tried illicit drugs. At the Department of Justice, we saw drugs as the number one problem facing America.

Latchkey teens who are left unsupervised for long periods of time feel abandoned, frustrated and angry. They are victims of social danger, as well as depression and even suicide.

Inner city kids too often join violent youth gangs because they feel the need to be part of something or because they have no other place to turn. This perpetuates the cycle of arson, rape, robbery, and bodily injury.

Kids living in America's inner cities don't know the first thing about how to resist street pressure for drugs and sex. They don't know the first thing about how to find a job and how to lead a productive life.

No doubt about it—the problems or our inner cities are staggering—mind boggling—our cauldron contains one foul brew. We must do something! But what?

Today I'm going to give you a recipe—a recipe for changing this foul mixture into something that is not only tolerable, but which tastes good to the American palate and provides hope. So, if you will bear with me while I put on my cooking gear, we'll begin to neutralize the acid, add some sweeteners and clarify the liquid in our cauldron. (Put on chef's hat and take out big wooden spoon.)

The first thing we must do is add some of our own wholesome ingredients. Let's start by blending slowly into the mixture an organization that has been helping boys and girls "beat the streets" for 128 years. Boys Clubs of America today serves 1 million boys and 300,000 girls. Now let's carefully measure out a cadre—second to none—of 3,200 full-time career professionals and 8,000 part-time workers dedicated to helping young people gain self-esteem and develop the motivation to become productive citizens and leaders. We sift that in, stirring constantly so that all the ingredients will blend together. Aha, I see the mixture gradually changing.

Now we carefully add a dash of another important ingredient—nearly 1,100 club units run by 590 local boys and girls club organizations where kids, ages 6 to 18, can go every day after school, in the evenings and on weekends, to participate in supervised activities. Now we're really beginning to see a difference. A quick taste before we go on.

We stir this slowly and fold in a pinch of another key ingredient—more than 47,000 volunteer program workers and 86,000 board volunteers who help make this movement work. These are people who give of their time, their energy and their treasure to help expand services for a growing number of boys and girls. Now that's really important. These people say "we care" and "we give a damn" about the future generation of Americans.

Now let's add the expenditure of almost $200 million representing the aggregate budgets of our local and national organizations. Now we throw in a healthy sprinkle of assistance from Boys Clubs of America—our national umbrella organization. Boys Clubs of America helps community leaders form new clubs, provides training, management consulting and resource materials to clubs, promotes greater public and media awareness of club work, and addresses legislative and public policy issues affecting young people.

Now for the sweeteners—the tried and proven programs that keep kids coming back to the club day after day and year after year—programs that help kids find employment, inculcate good work habits, teach them how to get up in the morning, how to show up on time for an interview, how to become a reliable and important part of the work force. Other program sweeteners help kids say "no" to drugs, "no" to alcohol, "no" to teenage sex and "yes" to school, jobs and family. Note that these sweeteners are not artificial: They literally save hundreds of thousands of kids from harm and destruction each year.

Yes, we must all do our part. The job is too big for the private sector alone or for government alone. I am calling for a consortium and partnership between all parties to produce a just and safe society for our children and our children's children. And how do we know that this recipe really works? Well, the proof of the pudding is in the testing. Boys Clubs of America audaciously commissioned an independent survey of Boys Clubs alumni conducted by Louis Harris & Associates. The survey showed that:

1. More than nine out of ten alumni state that being in a boys club had a positive effect on their lives.

2. Blacks, Hispanics, the economically disadvantaged, and those from tough neighborhoods benefit the most from their Boys Club experience.

3. Three out of four alumni believe their experience helped them avoid difficulty with the law.

4. More than eight out of ten believe their participation enhanced their ability to work with others and had a positive effect on their health and fitness.

5. Nearly seven out of ten alumni report that their Boys Club involvement helped them avoid drugs and alcohol problems.

6. Further, more than nine out of ten alumni believe that being in a Boys Club is important to success in later life. Today, two out of three former club members are professionals, managers, proprietors, skilled workers or in sales occupations.

My friends, we don't need Julia Child to tell us that our concoction is great. We have the right recipe for dealing with the problems faced by inner-city boys and girls. You know it works. I know it works. We have proof that it works.

During my tenure at the Justice Department, I saw no program anywhere that focused on this at-risk population the way our local boys clubs and boys and girls clubs do. Remember, our clubs are located where the action is—where the trouble is: in the inner cities. And club professionals are there to do their job for all the kids who walk through our doors, regardless of race, religion or background of any individual boy or girl.

Remember, kids who come to Boys Clubs and boys and girls clubs really need the services we provide. Sixty-six percent of these kids are from families earning $15,000 per year or less. Seventy-seven percent are from families with three or more children. Fifty-one percent are from minority families. Forty-seven percent are from single-parent families, and 29 percent are from families receiving public assistance.

To turn this country around, we need to do more than we are doing. We need to reach more kids. That's what clubs and BCA are doing with their bold Outreach '91 Program. Outreach '91 really means serving 700,000 more boys and girls who desperately need what our clubs have to offer. It also means adding 300 new facilities and bringing 71 new local club organizations into the Boys Club movement. We cannot sit back and wait for these kids to find our clubs. We have to reach out to boys and girls and make our clubs accessible to them.

So there you have it—a recipe for dealing with young people and their problems, a solution that works and a plan for the future.

I'd like to close by congratulating our "youth of the year" finalists—Shawn, Chad, Angela, Ralph and Taylor—for being an inspiration to us all. You give us cause to celebrate. You make us proud to renew our commitment to a strong and healthy America. Thank you.●

NATIONAL RECOGNITION FOR TUPELO SCHOOL SYSTEM

● Mr. COCHRAN. Mr. President, the city of Tupelo, MS, recently received national recognition at ceremonies here in Washington for its efforts to develop a school system with outstanding educational opportunities for its students.

It was cited by the Ford foundation and the John F. Kennedy School of Government as one of the 10 best school systems in the Nation.

This is a remarkable accomplishment, and it is a tribute to Tupelo educators, city officials, taxpayers, and students who contributed to this community-wide effort.

I invite the attention of my colleagues to an editorial from the Northeast Mississippi Daily Journal concerning Tupelo's nationally recognized accomplishments. I ask that the article be printed in the Record.

The article follows:

Ford Award Built on Strong Record

The Ford Foundation and Harvard University's John F. Kennedy School of Government recognized Tupelo's efforts to make its school system one of the 10 best in the country with a $100,000 award announced Friday in Washington.

The award, for Innovations in State and Local Governments, moves Tupelo's efforts to develop public/private partnerships that strengthen its schools to a new pinnacle of national recognition. More than 970 entries were submitted nationwide for the project. Ten awards were made.

The $100,000 grant from the Ford Foundation will be used to start a trust fund endowment called the Innovations in Education Fund. The project application calls for an eventual permanent endowment of $3 million to fund projects in three areas: $750,000 for education innovations, $750,000 for general social program projects and $1.5 million for projects related to housing.

City officials, school administrators and community leaders have worked on the project proposal most of 1988. The requirements included extensive documentation of planning, goals, past achievements, visits to Tupelo, and interviews.

PAST ACHIEVEMENTS RECOGNIZED

Ford Foundation award recognizes a specific proposal, but the framework for success was laid in years of previous work between the public and private sector for the Tupelo public schools.

Ford Foundation and Kennedy School officials saw in the project application that the proposal was not a hastily organized attempt to gain publicity and funding. Tupelo's efforts toward public education excellence have an important history:

The city of Tupelo has spent $885,000 in the past three years for the Quality Leap Forward initiative. The Quality Leap Forward program set as its goal extra tax funding applied to reducing teacher-pupil ratios in mathematics and English classes in grades 7-12, and that goal has been achieved.

The Association for Excellence in Education was organized in 1982 to invest private funds in approved projects in the public schools. Almost $500,000 has been raised through the association for particular areas of need in the school system.

Project H.O.P.E. was initiated by the public schools, North Mississippi Medical Center and CREATE, Inc., as a comprehensive approach to solving the problem of school dropouts and entrapment in the poverty cycle. More than $1 million has been committed to the five-year project.

AWARD PRESENTS NEW CHALLENGES

The award recognizes a tradition of well-planned, persistent work for education improvements. It also challenges our community to press on to the goal of becoming one of the 10 best school systems in the nation.

One of the long-range goals is to surpass the Southeastern average in expenditures per pupil. Tupelo's average in the 1986-87 school year was $2,673; the Southeastern average was $3,277; the national average was $3,970.

The public/private partnership has raised per pupil investment in education about 2.6 percent, but an additional increase of 22 to 24 percent is needed to reach the goal of top 10 standing nationwide.

We can achieve the goal if our efforts remain unified and coordinated. People who contend that individuals can do little working alone to improve public schools are correct. However, many individuals working toward common goals, with clear plans and good ideas, can accomplish almost anything they set out to do.

Students in the Tupelo public schools deserve the best education in America. Our community, working together, can provide it.●

INTELLECTUAL PROPERTY ANTITRUST PROTECTION ACT

● Mr. LEAHY. Mr. President, I am adding to this legislation the provisions of S. 438, a bill that previously passed the Senate unanimously. S. 438, which is cosponsored by Senators HATCH, THURMOND, HUMPHREY, BAUCUS, DECONCINI, METZENBAUM, and KENNEDY would provide important benefits to America's research and development community and encourage continued innovation in high technology.

The relevant legislative history on this legislation can be found in the Judiciary Committee report on S. 438, Senate Report 100-492, and in the October 4, 1988, CONGRESSIONAL RECORD beginning at S14434.

I encourage each of my colleagues to support this amendment. By doing so, we will promote America's competitiveness and encourage innovation by rewarding inventors and creators.●

THE FEDERAL DISTRICT COURT RULING IN THE CASE OF TIMOTHY W. VERSUS ROCHESTER SCHOOL DISTRICT

● Mr. HARKIN. Mr. President, I stand today with my colleague, Senator LOWELL WEICKER to express deep concern over the recent Federal district court ruling in the case of *Timothy W.* v. *Rochester School District* (No. C-84-733-L (D.N.H.)), which found that a public school district is not required to provide educational programming and services to a severely disabled 12-year-old child under part B of the Education of the Handicapped Act—Public Law 94-142—because of the severity of his disability.

The court's decision is wrong—plain and simple. In reaching his decision, the judge ignored the clear language of Public Law 94-142, which provides that all handicapped children, regardless of the severity of their handicap, are entitled to a free, appropriate public education. The judge also ignored the legislative history accompanying the act and the clear precedent handed down by the courts over the years.

This case was brought by Timothy's mother, who since 1980 has been seeking special educational programming for her son, consistent with the provisions of Public Law 94-142. Timothy is described in the court's opinion as having spasticity, brain damage, joint contractures, dislocated hip, scoliosis, and as nonambulatory, quadriplegic, and cortically blind. He is clearly a severely disabled young man.

Public Law 94-142 contains an unequivocal directive to State and local educational agencies to provide a free, appropriate public education for all handicapped children "regardless of the severity of their handicap * * * who are in need of special education and related services". This historic legislation was necessary in order to eliminate the exclusion to which disabled students were subjected prior to its passage in 1975. At that time Congress estimated that there were over 8 million disabled children, that only 3.5 million were being served, and that 1.75 million were excluded entirely from public schools. Many of those excluded from the educational system were students with severe disabilities. In order to ensure that these students were not denied educational opportunities, Congress placed a priority on providing educational services to previously unserved students and students with the most severe handicaps.

In requiring that disabled children be provided special education and related services, the law mandates that State and local educational agencies provide individualized education programs tailored to meet the unique needs of each child. In other words, the needs of the child are intended to guide the provision of services. Family members and professionals seeking to improve educational outcomes for students with the most severe disabilities have long realized that the concept of special education and related services is, as intended by Congress, necessarily broad, and encompasses the development of self-care skills such as toileting, eating, drinking, dressing, and communicating. The court, in most instances, has agreed (see for example *Kruelle* v. *New Castle County School District*, 642 F.2d 687, 693 (3rd Cir. 1981)).

Public Law 94-142 is Federal legislation of which we can be extremely proud. As a result of this law, students in our Nation who happen to have disabilities are no longer denied educational opportunity based on the mere presence of disability, nor on the automatic assumption made by some that severe disability means an inability to learn. Indeed, research clearly indicates that the needs of disabled children can be met. Improved educational outcomes resulting from the provision of special education and related services to students with the most severe disabilities have been documented by numerous researchers.

In other words, the law clearly mandates that special education and related services be provided to all handicapped students, including those with the most severe disabilities, and the research unequivocally supports this mandate. Therefore, to ask whether education is appropriate for a particular child is to ask the wrong question. Instead we should be asking what is the appropriate educational program, and how can we provide it in ways that will meet the needs of the student.

We find it a particularly grave cause for concern that more than a dozen years after enactment of Public Law 94-142 a Federal judge would exclude a severely disabled child in need of special education and related services from public education. No disabled child is too retarded, too physically disabled, or too much of a behavior problem to be excluded from or denied his or her right to a free, appropriate public education on the basis of the severity of his or her disability.

Timothy W. is clearly a handicapped child within the meaning of Public Law 94-142, and thus is entitled to its protections. He is a young man with severe, multiple disabilities, who, on the facts set forth in the court's opinion, demonstrates that he is in need of special education and related services.●

NATIONAL CRANIOFACIAL DEFORMITY AWARENESS WEEK

● Mr. D'AMATO. Mr. President, I rise today in support of the Senate joint resolution designating the week of November 13-19, 1988, as National Craniofacial Deformity Awareness Week. This resolution would help to create awareness to the victims of this tragic malformation, and to help these people live normal and productive lives. I commend my colleague, the distinguished majority leader, for taking the lead in this effort. I urge my colleagues in joining him and me in cosponsoring this joint resolution.●

BUDGET SCOREKEEPING REPORT

Mr. CHILES. Mr. President, I hereby submit to the Senate the first budget scorekeeping report for fiscal year 1989, prepared by the Congressional Budget Office in response to section 308(b) of the Congressional Budget Act of 1974, as amended. This report was prepared consistent with standard scorekeeping conventions. This report also serves as the scorekeeping report for the purposes of section 311 of the Budget Act.

This report shows that current level spending is under the budget resolution by $0.1 billion in budget authority, and over the budget resolution by $0.3 billion in outlays. Current level is over the revenue floor by $0.1 billion.

The current estimate of the deficit for purposes of calculating the maximum deficit amount under section 311(a) of the Budget Act is $135.2 billion, $0.7 billion below the maximum deficit amount for 1988 of $136.0 billion.

The report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 14, 1988.

Hon. LAWTON CHILES,
Chairman, Committee on the Budget,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report shows the effects of Congressional action on the budget for fiscal year 1989 and is current through October 13, 1988. The estimated totals of budget authority, outlays, and revenues are compared to the appropriate or recommended levels contained in the most recent budget resolution (H. Con. Res. 268). This report is submitted under Section 308(b) and in aid of Section 311 of the Congressional Budget Act, as amended, and meets the requirements of Senate scorekeeping of Section 5 of S. Con. Res. 32, the 1986 First Concurrent Resolution on the Budget.

This is my first report for fiscal year 1989.

Sincerely,

JAMES L. BLUM,
Acting Director.

CBO WEEKLY SCOREKEEPING REPORT FOR THE U.S. SENATE, 100TH CONG., 2D SESS. AS OF OCT. 13, 1988—FISCAL YEAR 1989

[In billions of dollars]

	Current level [1]	Budget resolution H. Con. Res. 268 [2]	Current level +/− resolution
Budget authority	1,231.9	1,232.1	−0.1
Outlays	1,100.0	1,099.8	0.3
Revenues	964.8	964.7	0.1
Debt subject to limit	2,600.2	[3] 2,824.7	−224.5
Direct loan obligations	24.4	28.3	−3.9
Guaranteed loan commitments	111.0	111.0	
	Current level [1]	Maximum deficit amount (MDA) [4]	Current level +/− MDA
Deficit	135.2	136.0	−0.7

[1] The current level represents the estimated revenue and direct spending effects (budget authority and outlays) of all legislation that Congress has enacted in this or previous sessions or sent to the President for his approval. In addition, estimates are included of the direct spending effects for all entitlement or other mandatory programs requiring annual appropriations under current law even though the appropriations have not been made. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

[2] In accordance with Sec. 5(a)(b) the levels of budget authority, outlays, and revenues have been revised for Catastrophic Health Care (P.L. 100-360).

[3] The permanent statutory debt limit is $2,800.0 billion.

[4] In accordance with section 3(7)(D) of the Congressional Budget Act, as amended.

PARLIAMENTARIAN STATUS REPORT, 100TH CONG., 2D SESS., SENATE SUPPORTING DETAIL, FISCAL YEAR 1989 AS OF CLOSE OF BUSINESS OCT. 13, 1988

[In millions of dollars]

	Budget authority	Outlays	Revenues
I. Enacted in previous sessions:			
Revenues			964,750
Permanent appropriations and trust funds	872,620	724,059	
Other appropriations		210,305	
Offsetting receipts	−180,560	−180,560	
Total enacted in previous sessions	692,059	753,803	964,750
II. Enacted this session:			
Appropriations:			
Commerce, Justice, State and Judiciary (P.L. 100-459)	14,851	11,408	
Offsetting receipts	−108	−108	
Defense (P.L. 100-463)	282,412	170,670	
District of Columbia (P.L. 100-462)	537	537	
Energy and water development (P.L. 100-371)	16,556	10,177	
Foreign Operations (P.L. 100-461)	12,766	5,171	
Offsetting receipts	−41	−41	
HUD-Independent Agencies (P.L. 100-404)	59,536	34,773	
Offsetting receipts	−150	−150	
Interior (P.L. 100-446)	9,352	6,750	
Labor-HHS-Education (P.L. 100-436)	125,228	104,726	
Offsetting receipts	−31,445	−31,445	
Legislative branch (P.L. 100-458)	1,808	1,627	
Military construction (P.L. 100-447)	8,797	2,618	
Rural development-agriculture (P.L. 100-460)	34,806	26,272	
Transportation (P.L. 100-457)	10,794	9,604	
Treasury-Postal Service (P.L. 100-440)	16,020	14,127	
Offsetting receipts	−4,859	−4,859	
Dire emergency supplemental (P.L. 100-393)		75	
Other spending:			
Veterans Home Loan Program Emergency Amendments (P.L. 100-253)		1	
Nevada-Florida Land Exchange Act (P.L. 100-275)	−3	−3	
Assistance and support for Central America (P.L. 100-276)		−17	
Atomic Veterans Compensation Act (P.L. 100-321) [1]			
Veterans Benefits and Services Act of 1988 (P.L. 100-322)	−4	3	−6
College-aid annual appropriation for territories (P.L. 100-339)	(²)	(²)	
Catastrophic health care (P.L. 100-360)	321	101	315
Disaster assistance (P.L. 100-387)	410	410	
Relief for the Coushatta Tribe (P.L. 100-411)	1	1	
Omnibus Trade and Competitiveness Act (P.L. 100-418)			−255
Reservation for Grand Ronde Tribes (P.L. 100-425)	2	2	
Hunger Prevention Act (P.L. 100-435) [3]			
Geothermal Steam Act Amendments (P.L. 100-443)	−1	−1	
U.S.-Canada Free Trade Agreement (P.L. 100-449)	2	2	−97
National Defense Authorization Act (P.L. 100-456)		23	
Family Welfare Reform Act of 1987 (H.R. 1720)	−400	−400	73
Total enacted this session	557,192	362,055	30
III. Continuing resolution authority			
IV. Conference agreements ratified by both Houses:			
Other spending:			
Indian Reorganization Act Amendments (H.R. 2677)	1	1	
V. Entitlement authority and other mandatory items requiring further appropriation action:			
Dairy Indemnity Program	(²)	(²)	
Special milk	4		
Food Stamp Program	253		
Federal Crop Insurance Corporation Fund	144		
Compact of Free Association	1	1	
Federal unemployment benefits and allowances	31	31	
Worker training	32	32	
Special benefits	37	37	
Payments to the Farm Credit System	35	35	
Payment to the civil service retirement and disability trust fund	(85)	(85)	
Payment to hazardous substance Superfund	(99)	(99)	
Supplemental security income	201	201	
Special benefits for disabled coal miners	3		
Medicaid:			
P.L. 100-360	45	45	
H.R. 1720	10	10	
Family support payments to States:			
Previous law	355	355	
H.R. 1720	63	63	
Veteran's compensation (COLA)	400	361	
Total entitlement authority	1,614	1,170	
VI. Adjustment for economic and technical assumptions	−18,925	−16,990	
Total current level as of October 13, 1988	1,231,941	1,100,039	964,780
1989 budget resolution H. Con. Res. 268	1,232,050	1,099,750	964,700
Amount remaining:			
Over budget resolution		290	80
Under budget resolution	109		

[1] This act increased the current law estimate for veterans compensation which is included in the HUD-Independent Agencies Appropriations bill (P.L. 100-404).

[2] Less than $500 thousand.

[3] This act increased the current law estimates for child nutrition, food stamps, temporary emergency food assistance, and cash commodities for selected groups. Amounts are included in the Agriculture Appropriations bill (P.L. 100-460).

Notes: Numbers may not add due to rounding.

TRIBUTE TO THE HUNDRED CLUB OF COOK COUNTY

● Mr. SIMON. Mr. President, I would like to call to the attention of the Senate the remarkable work of a remarkable organization in greater Chicago, the Hundred Club of Cook County.

On September 22, Chicago was stunned by the killing of police officer Irma Ruiz of the Chicago Police Department. In keeping with a longstanding general order of the department, the superintendent received the first call about this tragedy. Under that same general order, the second call. The result of that second call was delivery within hours of an initial $2,500 check to Officer Ruiz' widower to meet the family's immediate needs.

Ambassadors from the Hundred Club of Cook County have been the community's first ambassadors to such grief-stricken families each time a police officer or firefighter in Cook County has fallen in the line of duty since the club was founded in 1966. Each time, a club member has quietly delivered an initial check for urgent costs and, later, additional checks for virtually all existing debts, including mortgages of up to $30,000. Later on, they help with the college and medical expenses of the children of these families. In its first 20 years, the Hundred Club of Cook County has provided $2,186,509 to help the families of 163 of these slain public servants. Only interest from member's contributions—never the members' contributions themselves—is used to pay for the Club's modest overhead costs.

When members' dues are not enough to meet the needs of stricken families, members chip in with still more of their resources. And great good has been done with the additional contributions bequeathed by members in their wills.

The club also recognizes distinguished service by police and fire personnel with its annual Valor Awards, presented each year to as many as four recipients.

In the spirit of this unique "family of strangers," club members take personal interests in the families, arranging summer jobs for youngsters and giving a helping hand whenever it's needed.

Their good work is done quietly—in fact, reverently. Many, many fine citizens have helped make the Hundred Club of Cook County the pillar of the community it is today—too many to name here. But I would like to extend particular recognition to President Ralph G. Scheu and these officers, directors and senior directors of the club: James J. O'Connor, Michael R. Notaro, Patrick L. O'Malley, Marshall Korshak, Sidney L. Port, B. Michael Pallasch, Stephen J. Scheu, Mary Ann Erickson, Ralph A. L. Bogan Jr., William F. Eichelberg, Robert H. Asher, Thomas G. Ayers, Edward J. Barrett, Martin R. Binder, Mrs. Albert T. Candy, Gerald W. Cavanagh, Saul A. Epton, Russell H. Ewert, Ronald J. Gidwitz, Sheldon F. Good, Jack C. Leahy, Fred G. Litsinger, Daniel P. Lydon, Judd D. Malkin, Frederick M. McCahey, Walter F. Mullady Sr., Arnold Newberger, Vincent J. O'Connor Jr., O. William Olson, Vernon J. Pellouchoud, Nels L. Pierson, Bernard Pollack, Richard F. Prendergast, Ike Sewell, Robert E. Shamburg, James F. Sheerin, Robert Sheridan, Jackson W. Smart Jr. and Arthur R. Waddy.

They make the families of our fallen public servants part of their family, and we are a better city and a better Nation for all they do.●

THE CALENDAR

Mr. BYRD. Mr. President, I inquire of the acting Republican leader, Mr. ARMSTRONG, as to whether or not Calendar Order No. 1064 on the calendar of business has been cleared.

Mr. ARMSTRONG. Mr. President, if the leader would yield to me, I would respond that this matter has been cleared and, in fact, there is probably no matter about which I could report clearance with greater enthusiasm or a greater sense of fulfillment, and indeed, of rejoicing. Calendar Order No. 1064 is cleared on this side of the aisle.

Mr. BYRD. I thank the Senator.

COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT

Mr. BYRD. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar Order No. 1064, H.R. 2642.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2642) to facilitate and implement the settlement of Colorado Ute Indian reserved water rights claims in southwest Colorado, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

There being no objection, the Senate proceeded to consider the bill.

Mr. ARMSTRONG. Mr. President, let me inquire of the leader as to our status. Ordinarily, at this stage, I would think it would be his intention simply to insert statements, but my impression is that we are not pressed for time because we are awaiting the arrival of a package from the Judiciary Committee. So, if we have a moment, I would like to say a few words. I see my colleague from Colorado, Mr. WIRTH, is here, and he might also wish to say a few words.

So could I inquire what our time situation is?

Mr. BYRD. I have no problem whatsoever.

May I inquire of Mr. BIDEN?

Mr. ARMSTRONG. I do not want to hold up the Judiciary Committee, but I sense perhaps they were not quite ready.

Mr. BIDEN. Mr. President, in response to the leader's question, we have been working out a package relating to judgeships and legislation. The leader's able staff has put together a unanimous-consent request and order. It is now being checked out and over by the minority, I am told. We should be ready to go, with the leader's permission, in the next 5 to 10 minutes, I suspect.

So the Senator would in no way be interrupting, I say to the Senator from Colorado, the workings of the Judiciary Committee if he were to speak.

Mr. BYRD. Mr. President, I thank the Senator from Delaware. I yield the floor.

Mr. ARMSTRONG. Mr. President, with that understanding, let me just take a moment to express the singular sense of satisfaction that I have about the imminent passage of this legislation, which relates to the Animas-La Plata water project and to a settlement of a longstanding dispute involving Indian water rights affecting my State of Colorado, New Mexico; and, indeed, a matter which has been not only a source of great interest to Mr. WIRTH and to me but to our constituents, to people in States in our region, to water users throughout the West, to persons who are concerned about the rights of Indians, and others, I guess, all over the country. So this is a very, very significant piece of legislation which comes before us.

If I understand the intention of the leadership and the way this has been worked out with all concerned, we are going to proceed presently to the consideration and passage of H.R. 2642, which is the legislation passed by the House. Then, after working it out with several Senators, we are going to pass a concurrent resolution which will modify that slightly and we will discuss that in a moment.

Mr. ARMSTRONG. Mr. President, many parties can take great pride in the passage today of H.R. 2642, the Colorado Ute Indian Water Rights Settlement Act of 1987. Those parties include the Ute Mountain Ute and Southern Ute Indian Tribes, the States of New Mexico and Colorado, the U.S. Department of the Interior and Department of Justice, and numerous water conservancy districts and cities and other entities representing water users of northwest New Mexico and southwest Colorado.

The clearly stated purpose of H.R. 2642 is to facilitate and implement the negotiated settlement agreement of the Colorado Ute Indian Tribes' water rights claims in southwestern Colorado. The settlement agreement ends years of complex and costly litigation by the tribes. The settlement not only fulfills a century-old obligation of the United States to Colorado Ute Indian Tribes, but also removes a serious cloud from the adjudicated water rights of seven rivers and six of their tributaries in southwest Colorado, as well as from the water supply of Mesa Verde National Park.

H.R. 2642, and the settlement agreement which it implements, protects the reserved water rights of the Indians on their reservations, but allows off-reservation use, too. When used on the reservation, the water rights are governed according to the negotiated agreement. When used off the reservation, those rights are administered as State water rights, subject to the same privileges and prohibitions of any other Colorado State water right. Used once again on the reservation, those rights would again be governed according to the negotiated agreement.

Administration as State water rights of tribes' water used off the Indians' reservations was a provision demanded by the three Lower Colorado River Basin States and others in order to remove their opposition to this legislation. In addition, the Indians waive present and prospective litigation regarding their Winters water rights.

Considerable concern has been expressed about the status of the Ute Indians' water rights as negotiated in the agreement which this legislation implements. However, this legislation does not represent a precedent for settlement of any other tribes' water rights questions. This legislation implements a water rights settlement agreement which reflects these specific tribes' water needs, the region's geography and water supply, and the interests of all parties negotiating the settlement agreement. This settlement agreement is a unique solution to a unique situation, and represents extensive negotiations born of tremendous desire for cooperation among the great number of varied parties I have mentioned.

In 1976, the United States filed claims on behalf of the two Ute Tribes to all of the water from the rivers of southwestern Colorado. However, by that time many of those streams were fully appropriated by non-Indians for hundreds of farms and ranches, as well as the communities of Durango, Cortez, and Mancos, and other smaller southwest Colorado communities. In addition, some northwest New Mexico communities rely on the water from these streams. About 8 years later, in December 1984, negotiations began with the hope of reaching a settlement on Indian water rights claims.

The Ute Indian Reservation in southwestern Colorado was established in 1868. One hundred years later, in 1968, Congress authorized construction of the Dolores and Animas-La Plata water storage projects to resolve Federal and State conflicts over the waters of the Colorado River system under both the Colorado River Compact and the Upper Colorado River Basin Compact. The Dolores project is almost complete. The Animas-La Plata project is in the planning and initial construction stage.

In 1985, Congress required that water users in Colorado and New Mexico reach a cost-sharing agreement with the Secretary of the Interior as a precondition for receiving Federal funds for construction of the Animas-La Plata project. And that cost-sharing agreement was required to be part of the Indian water rights settlement negotiations.

Consequently, on June 30, 1986, a detailed Animas-La Plata project cost-sharing agreement was signed by all parties. Non-Federal parties are contributing 37 percent of the construction of the Animas-La Plata project. In addition to the non-Federal contributions to the project, Colorado is contributing $5 million for the tribal development fund and $6 million for construction of a domestic water pipeline from the Dolores project to Towaoc on the Ute Mountain Ute Reservation. This pipeline to provide water for human consumption and domestic uses is now under construction.

Like the Dolores project, the Animas-La Plata project was authorized in 1968 by the Colorado River Storage Projects Act or [CRSP]. Projects included in CRSP were the result of negotiations and agreement among the Colorado River Basin States. The projects the Basin States agreed to took into account the apportionment of the waters of the Colorado River between the Upper and Lower Basin States and existing compacts.

The Animas-La Plata project, while a small one, will provide water for the Southern Mountain Ute and the Ute Mountain Ute Tribes and benefit the surrounding, growing communities. This project helps ensure the continued economic development and social well-being of Indian and non-Indian communities in the region. The tribes recognized the economic and social value of the water to their reservations when the project was authorized. Consequently, they were among initial subscribers for water from the project, a number of years before they began litigating the question of their reserved rights. Now the project has become the answer to resolving their Indian water rights claims without economic disruption of the region.

The Animas-La Plata project was only one of many alternatives explored for resolving the Ute Indians' water rights claims. Settlement without the project was reviewed as were a dozen or more other reservoirs and a project larger than Animas-La Plata. However, the Animas-La Plata project was determined by the Bureau of Reclamation and the State of Colorado to be the least environmentally damaging alternative that addressed the water needs of the region, including the Indian water rights claims.

I do not know that many pieces of legislation receive the intense scrutiny H.R. 2642 has undergone. In addition to the complex discussions of the original parties negotiating the settlement resulting in H.R. 2642, the Lower Basin States have carefully examined this legislation. Changes to accommodate lower basin concerns have been made, and the delegations of California, Arizona, and Nevada now have been assured by their water interests that they are comfortable with the legislation as it stands.

Also, the ever-present concern of all Western States to protect State water law so inextricably linked to their economic vitality and stability made this legislation a candidate for review by our neighbors. Questions and concerns they had were addressed in hours of meetings.

And throughout the extensive review and resulting revisions of this bill, the Department of Justice and the Interior have stayed abreast of developments and concur with this final legislative language.

So H.R. 2642 is not only authorization for the Colorado Ute Indian Water Rights Final Settlement Agreement of December 10, 1986, but represents the enduring spirit of all those who labored so long and so conscientiously to recognize the Ute Indians' water rights, the existing appropriations of waters in southwest Colorado, the concerns of our neighboring States, the principles of existing water law and interstate compacts, and the concerns of the U.S. Government.

With that many interests to represent and complex litigation nearly a decade old to settle, negotiators initially could have given the impression that a negotiated settlement was not a realistic possibility.

But, to their great credit and our undying admiration and gratitude, they were all able to keep their eye on a vision. That vision was water for the Ute Tribes and continued harmony among the region's Indian and non-Indian neighbors. And today, with Senate passage of this legislation implementing the negotiated settlement agreement, we take a major step with all those parties toward realizing that vision.

Finally, I want to dwell for a very brief time on a personal aspect of it. The task of negotiating this Indian water rights settlement and the legislation which results from it has been literally the effort of years and years and years by some of the most talented and dedicated people that I have ever encountered.

I hesitate, in a sense, to mention any of them, because I do not want to leave somebody off the list. But I am going to overcome that natural caution and pay special tribute to Ival Goslin, who day after day and week after week and year after year, working part of the time out of a conference room in my office and part of the time out of his own office in Colorado and part of the time on horseback and sometimes in the open air and on street corners and curbstones and out of telephone booths, has managed to be all things to all people to get the lions and the lambs to lay down together and to finally convince everybody to get on board for a single agreed-upon settlement. I think it is an extraordinary accomplishment. Indeed, it is the fulfillment and culmination of a very distinguished career in dealing with resources and water issues.

I also want to pay tribute to Bill McDonald, who is the director of the Colorado Water Conservation Board, who has had a tremendous, constructive role in this and without whose invaluable help this would not have been possible.

To Leonard Burch, who is the chairman of the Southern Ute Indian Tribe, whose statesmanship and willingness to be patient and to negotiate and to take some chances in order to achieve this settlement has made possible a settlement that I am convinced will be in the best interest of his people who have gone far too long without the water to which they are rightfully entitled.

To Judy Knight, who is vice chairman of the Ute Mountain Ute Tribe; to Orian Box, Ute Mountain Ute tribal counsel member; to Duane Woodard, who is the attorney general of our State and who has had a contining interest in this and played a role in this; to Paula Phillips and Lois Witte, who are attorneys with the Colorado Attorney General's Office; attorneys for the Ute Tribes; and Sam Maynes, Dan Israel, and Scott McElroy, and to Fred Kraeger and John Murphy, Gary Ellsworth and Jim Beirne, staff members of the Committee on Energy and Natural Resources and a number of others, but three additional come to mind on this occasion:

Christine Kadlub, of my office; and Howard Propst, whose absolutely indefatigable efforts on behalf of this settlement have been just legendary. They have not only shown great scholarship and dedication in handling this, but when, on those days, maybe 100 times over the last 5 years or so, that I have come in completely convinced it would be impossible ever to obtain passage of this legislation, have cheered me up and bucked me up and promised someday we would get to this stage, I express my special thanks.

Finally, to my colleague, Tim Wirth. Tim and I have worked together on a number of issues during the last couple of years he has been in the State. It is no secret that he and I have found a special personal and working relationship and we have done a lot of business together, I think much to the betterment of our State.

No piece of legislation that we have worked on, however, is more important or more difficult and complicated than this bill which we are about to enact.

I want to acknowledge his tremendous efforts, his creativity, his legislative skill, his statesmanship, and his ability as a negotiator and just say to him that I am proud to have been associated with him in this effort, and I thank him for all he has done.

Mr. President, I do now yield the floor and look forward to hearing from my colleague, Mr. Wirth.

The **PRESIDING OFFICER**. The Senator from Colorado.

Mr. **WIRTH**. Thank you very much, Mr. President. I think all of us from our days of watching old black-and-white movies remember the Perils of Pauline. Pauline would be on the railroad track and down the track would come a large locomotive, and Pauline would be at the last moment snatched from beneath the wheels of disaster and would go on to live another day.

The legislation in front of us has had a career, perhaps, that is even more perilous than the perils of Pauline, and I am delighted, as in my colleague, the senior Senator from Colorado, Senator Armstrong, to see its resolution today, so that Pauline can rest assured that she will be safe for a long time to come.

Mr. President, the Colorado Ute Indian Water Rights Settlement Act will enable us to settle long-standing questions of the rights of two Indian tribes in Colorado. The Southern Ute Tribe and the Ute Mountain Ute Tribe will, through this bill, gain a clear right to the water they need to live, to grow, and to provide economic development for their people in their arid homeland.

This bill, and the amendments which I hope the Senate will adopt today, are the result of years of hard work by all the parties involved. All of those parties—the tribes, the State of Colorado, the State of New Mexico, municipalities, water users, and distant States concerned over the effect of a settlement on their own water uses and water laws—have invested an enormous amount of time, energy, and good faith into producing this bill.

What is the alternative to this legislation? It is endless years of litigation over the water rights claims of these tribes. The Federal Government, alone, might have to spend millions of dollars on that litigation. But worse, it would mean the persistence of the legal cloud that prevents the development of the water resources that are the key to the health, welfare, and economic development of the tribes, and of their non-Indian neighbors.

THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT

This act ratifies a settlement agreement between the Justice and Interior Departments, the State of Colorado, the Southern Ute and Ute Mountain Ute Indian Tribes, municipalities, and agricultural water users. The purpose of the agreement is to settle water rights claims of the tribes to reserved water rights springing from the establishment of reservations for the tribes on Federal lands in 1868.

The courts have consistently held that when the Federal Government gave lands to Indian tribes, it also granted them the right to the water needed to meet the purposes of the reservation. In the arid West, land without water would not result in a viable reservation. Without water, Indian tribes could not survive, let alone prosper.

Although the United States filed a water rights application for the tribes in 1976, the tribes' rights have never been quantified. Had everyone decided to battle the quantification out in court, that process might have taken another decade or more, and cost millions of dollars. The end result would likely have been the courts granting the tribes water rights which would have profoundly affected the water rights of their neighbors, who use water from these same streams to irrigate their farms, as well as for municipal and industrial uses.

But rather than fighting a battle in the courts over how this conflict would be resolved, the tribes, their non-Indian neighbors, and the State sat down and negotiated a way to satisfy the tribes water rights without harming the water rights of others in southwestern Colorado. That negotiated settlement was signed by all the parties, including the U.S. Department of Justice, on December 10, 1986.

There are six major components of this settlement:

First, the tribes will receive specified amounts of water from the Animas-La Plata and Dolores projects of the U.S. Bureau of Reclamation and additional rights to certain quantities of water from various streams which pass through their reservations.

Second, the manner in which these water rights will be used and administered is prescribed.

Third, in exchange for these water rights, the tribes will waive all of their reserved rights claims and any claims which they may have against the United States for breach of trust in the United States' capacity as the tribes trustee.

Fourth, $60.5 million will be placed in development funds for the tribes to enable them to develop their water resources and to otherwise make their reservations economically self-sufficient.

Fifth, non-Federal parties will contribute money to the financing of the settlement in two regards: For the financing of the Animas-La Plata project; and for the tribal development funds.

Sixth, repayment of certain costs of the Dolores and Animas-La Plata projects which would be allocable to the tribes will be deferred, and the tribes' share of operation and maintenance costs will be borne by the United States until the tribes actually put their water to use.

A key point, however, is that the agreement was made conditional on the Federal Government implementing its part of the deal, and passing legislation to accomplish this by the end of this year. That legislation is the bill now before us, and it is essential for us to pass it.

Its major provisions are authorization of a $49.5 million Federal contribution to the tribes' development funds; changes in existing law needed to insure that water for the tribes can be supplied by several already-authorized projects of the Bureau of Reclamation so that the tribes can use that water in a manner consistent with the nature of the water rights they would have received from a court proceeding, and; modification of the terms concerning the nature of the water rights granted the tribes to protect the interests of other States which use the Colorado River, and to prevent unintended changes to the status quo of the laws, agreements, and treaties which now govern use of the waters of the Colorado.

THE ANIMAS-LA PLATA PROJECT

It is clear in the settlement agreement, and in this legislation, that the provisions for how the water rights the Ute Tribes receive from Federal water projects are to be treated—in terms of the status of these rights in Colorado's water appropriation system—are entirely contingent on the construction of those projects.

I would hope that the Congress will recognize the importance of completing those projects—particularly the Animas-La Plata project—to getting the tribes real water, water they can drink, water they can irrigate their lands with, water with which they can plan their economic development in conjunction with their neighbors. These projects are just as important for the tribes' non-Indian neighbors throughout southwest Colorado and northwest New Mexico.

This legislation is clear that if for whatever reason the projects are not completed, the basis of that part of the settlement agreement dealing with the tribes' rights on the Animas, La Plata, and Mancos Rivers is eliminated, and all of the terms set out in the agreement for characterizing the rights of the Ute Tribes on those rivers are nullified. The tribes would then be free to return to court to assert their reserved rights to the waters of those rivers.

While that is a key guarantee for the tribes, it also points out the necessity for these projects. Without them, satisfying both the rights and needs of the tribes simply is not possible without a wrenching disruption of the lives, livelihoods, and future prospects of their non-Indian neighbors.

INDIAN WATER RIGHTS SETTLEMENTS

I think in discussing this settlement, it is important to restate its uniqueness, its specificity, and the lack of any intention on the part of the sponsors of the legislation or the signatories to the settlement for this bill or the agreement to serve as a template for other water rights settlements.

I would cite Resolution 1987 of the Western Governor's Association as providing a statement on this subject with which I want to identify myself. That resolution states:

> (we) * * * recognize the legitimate concerns that people distant from negotiations may feel regarding the implications of provisions in that settlement for other situations. However, each negotiated Indian water rights settlement will be unique, carefully tailored to the parties who are directly affected, and may be totally inappropriate to any and all other situations. Because of overarching historic, moral, and economic imperatives, we urge all concerned parties * * * to treat settlements as case-by-case, exceptional arrangements which * * * are not binding legal precedents * * *. Without such general flexible approaches, no state will be able to have the disputes within its borders fully resolved.

Mr. President, I believe that this bill is a unique opportunity.* * * developed and distributed have put aside their differences and come * * * whose interests are closely tied to how the waters involved here are to a mutual agreement. Nor did they just hand responsibility for solving these problems to the Federal Government. The State, the local water users, and the tribes will contribute 40 percent of the funds—more than $200 million—for the completion of the Animas-La Plata project, pursuant to a cost-sharing agreement reached with the Secretary of the Interior in 1986.

The tribes have at every turn done their best to compromise to meet the needs not only of their neighbors, but of distant States concerned about the effects of the settlement on their own water uses. All of us involved have worked hard to ensure that this is a fair compromise, and one that will work. I urge my colleagues to support it and vote to pass this bill.

But before we vote, Mr. President, I want to add my thanks to all the people mentioned by Senator ARMSTRONG. I would also like to register appreciation to Bill McDonald of the Colorado Water Conservation Board and his counterparts from the downstream States—California, Nevada, and Arizona—who have come back in at the time when we had our final negotiations and spent an enormous amount of time with us.

I think that that kind of patience and professionalism is reflected in this whole settlement. I want to convey the thanks of Colorado to them as well.

In addition to the wonderful work done by Judy Knight and Leonard Burch on behalf of the Mountain Ute and the Southern Ute Tribes, I would be remiss if I did not thank as well the Colorado River, Shoshone, and Wind River Tribes whose patience, involvement, and care in helping to put this package together has been greatly appreciated.

Sammy Maynes and former Congressman Ray Kogovsek from southern Colorado have been just fabulous as has Ival Goslin, as Senator ARMSTRONG pointed out. The two attorneys for the Ute Tribes, who have been here day in and day out, Scott McElroy and Dan Israel also deserve tremendous thanks.

In addition, a number of staff people on this side have spent an enormous amount of time putting this package together and gotten to know each other better than I think they wanted to, probably, at various times. Gene Peters from Senator BRADLEY's staff, Alan Parker from the Select Committee on Indian Affairs, and Russ Shay from my own office have all done a phenomenal job.

I would be remiss without also making reference to the leadership. Senator INOUYE has been just incredibly helpful and I owe him a special vote of thanks, as I do Speaker WRIGHT, who has committed himself to this package and the process that we are going to be following.

I also wish to acknowledge the efforts of Senator JOHNSTON, Senator EVANS, Senator DECONCINI, Senator BINGAMAN, and Senator REID, among others.

I would add my word of thanks to my colleague, Senator ARMSTRONG, and also Congressman BEN NIGHTHORSE CAMPBELL. BEN CAMPBELL is a new Member of the Congress and has committed himself incredibly well. Would that I had been as experienced as BEN and as successful as he in my first term. He has an enormously promising future ahead of him.

To my colleague, Senator ARMSTRONG, I would echo his comments on our cooperative relationship and add one other: that I would suspect our cooperative relationship has not only surprised a lot of people in the State of Colorado but pleased them. I think that this is a further step in the kind of cooperative efforts that are appropriate for the future of our State and for many other projects that we will look forward to in the future. This has been a real team effort.

A final word of thanks goes to Senator **Bill Bradley**. Senator **Bradley** has articulated, enunciated, and stuck by a set of principles on behalf of the water rights of Indians and has done so when he was faced with an incredible amount of pressure. His has been, in my mind, a singular articulation of, and support of, a set of principles that he believes in very, very strongly.

I have learned an enormous amount from Senator **Bradley** in this process, not only about how to use the legislative process in the Senate, but also how to comport oneself in the incredibly difficult and complicated situation in which we find ourselves at the end of the congressional session.

So, I want to thank Senator **Bradley** in particular, and his very patient and remarkable professional staff.

Finally, Mr. President, at the conclusion of the discussion on the legislation in front of us I will be sending to the desk for immediate consideration a concurrent resolution on behalf of Senator **Bradley** and will ask for its immediate consideration, immediately after the disposition of the issues in front of us here.

That concurrent resolution has been agreed to by all sides, and it will make corrections in H.R. 2642, the legislation in front of us.

That legislation, the concurrent resolution, will then go over to the House side and will be passed over there, we believe, with no problems at all.

Mr. INOUYE. Mr. President, I would like to pose a few questions to the chairman of the Energy and Natural Resources Committee. As I understand your committee's explanation in the joint report, there is a suggestion troubling to the Senate Select Committee on Indian Affairs that Indian reserved water rights and Federal reserved water rights share identical characteristics. I take it that the chairman agrees that Indian reserved water rights are, in fact, private property rights subject to, among other things, the fifth amendment to the Constitution and not, for instance, subject to the property clause of the Constitution as are Federal reserved rights. Is this a correct understanding of the joint committees' report?

Mr. JOHNSTON. Yes, I would have to agree that the chairman of the Select Committee on Indian Affairs has pointed out a very fundamental difference in the character of Indian water rights as opposed to Federal water rights.

Mr. INOUYE. With that distinction in mind, does the chairman agree that, subject to such laws as the Congress has enacted pursuant to its power to regulate commerce with the Indian tribes, an Indian tribe may exercise the enjoyment of its property rights in water in much the same way as other property owners under our Constitution?

Mr. JOHNSTON. The chairman raises a question that can admit of but one correct answer. Certainly, an Indian tribe is entitled to the enjoyment of its property rights, subject to such constitutional laws as the Congress may have enacted in the exercise of its constitutional power to regulate commerce with the Nation's Indian tribes.

Mr. INOUYE. In that regard, as I understand this bill, the two Ute Tribes have agreed that, should either of them agree to the use of all or part of their water rights off-reservation, then they have further agreed that while those water rights are used or leased off the reservation, they are to be administered and regulated as State of Colorado water rights according to State law and other applicable laws and treaties that are commonly known in the Colorado River Basin as the law of the river. The tribes have not agreed, however, to relinquish their ownership in those water rights. Rather, only the legal characteristics of their water rights are changed during the period of off-reservation use. Am I correct in this understanding?

Mr. JOHNSTON. Yes, the chairman is correct. Furthermore, in enacting this legislation, the Congress is removing any question that these tribes, subject to the terms of the underlying agreement and this statute, do have the right to enter into such agreements regarding off-reservation uses of their water rights. It is the view of the Committee on Energy and Natural Resources and, I believe, the Select Committee on Indian Affairs as well, that these provisions will greatly facilitate the most efficient and economic uses of the waters which are the subject of this agreement and this bill in the arid Southwest.

Mr. INOUYE. It is precisely for these reasons, as I understand it, that we are acting upon Senate Congressional Resolution 162, namely, to clarify any possible misunderstandings that may otherwise arise from the language of section 5 as passed by the House. In fact, section 5 as passed by the House, which as you know characterizes the use of the tribes' waters off the reservations, originated in a written agreement entered into between the Lower Basin States, the State of Colorado, and the two Ute Tribes. The Lower Basin States are not concerned in section 5 with on-reservation versus off-reservation legal distinctions, but rather that the tribes' use of water off the reservations fits within traditional and familiar State water law concepts. Hence, the comments found in the portion of the joint committees' report which contains your committee's discussion of section 5 do not accurately describe the language or the purpose behind section 5, as passed by the House of Representatives.

Mr. JOHNSTON. Your comments accurately reflect the history of section 5.

Mr. INOUYE. I thank the chairman for sharing his views on these important matters, and would like to offer the following observations of the Select Committee on Indian Affairs, which I believe are also shared by the Committee on Energy and Natural Resources.

In my view, H.R. 2642 is a unique piece of legislation. It is not a model settlement of Indian water rights. Indeed, I don't believe that there is any such thing as a model settlement. Whether these matters are concluded through litigation or negotiation or both, each settlement arises upon and is decided upon its own unique facts. By approving H.R. 2642, the Congress is not attempting to set any precedents or to limit in any way the range of settlement alternatives which may be available to the tribes, the States and the United States. All of the provisions of H.R. 2642, including section 5, should be viewed as being wholly unique to the specific facts of this particular settlement. All of the parties to the underlying settlement agreement have agreed to each and every provision in the agreement and each and every provision in H.R. 2642. No attempt has been made in either the bill or the underlying agreement to fashion principles which would be applied to any other settlement. The provisions of this bill, including section 5, apply only to the parties involved in this settlement and have no applicability to any other Indian water rights. This is my understanding of this bill.

I think it is equally important, however, to point out aspects of this bill in which the committees may not be in complete agreement, but which aspects of possible disagreement are not sufficiently important to derail this important legislation. The discussion of differing views which is highlighted in the explanations of amendments by each committee in the report accompanying this bill represents an ongoing debate regarding what the law of Federal reserved water rights and Indian reserved water rights is or should be. These matters remain unresolved, and are beyond the scope of the legislation that confirms the agreement to settle the water rights of the Colorado Ute Indians. Thus, neither this legislation nor discussions contained in the committee report should be construed to be a final disposition of unresolved matters of law as they relate to the general body of the Federal reserved water rights law or to the general body of Indian reserved water rights law. Does the chairman agree with my understanding?

Mr. JOHNSTON. Yes, the chairman of the Select Committee on Indian Affairs is correct. The provisions of H.R. 2642 are intended to govern only the settlement reached by the State of Colorado and the Ute Tribes. This bill has no applicability to and sets no precedents for any other water rights settlements between any tribes and any States. This bill merely reflects the agreements reached by these two tribes and this particular State and does not establish Federal standards for the resolution of Indian water rights.

The Ute Tribes of Colorado have agreed to have their reserved water rights changed to Colorado State water rights during the time their waters are used off the reservation, because under Colorado water law the tries are able freely to market their water in the same fashion that non-Indian holders of Colorado water rights may market their water rights. Other tribes situated in States with restrictions on the marketing of water rights probably will not want to agree to such terms in any negotiated settlement of their water rights claims. However, for the two Colorado Ute Tribes this compromise is clearly acceptable and, I believe the two committees agree, compatible with the trust responsibility of the United States toward these tribes.

Mr. INOUYE. There are Indian tribes whose water rights have been adjudicated or are being adjudicated, such as the lower Colorado River tribes involved in Arizona versus California and the Wind River Tribes in Wyoming. These tribes do not need to negotiate agreements with States in order to quantify their water rights. This bill has no effect on the exercise of those rights by those tribes. The marketability of those rights and other questions remain a matter of Federal law. Indeed, Justice Brennan, in his 1983 concurrence and dissent in Arizona versus California, stated that, "* * * the tribes can probably lease their rights to others with the consent of the United States but they have not explored this option extensively."

Mr. JOHNSTON. Yes, the chairman of the Select Committee on Indian Affairs is correct. As the joint report indicates, the select committee and the Energy and Natural Resources Committees differ on a wide range of matters involving Indian reserved water rights. This bill does not express the will of Congress in resolving any of these questions. In particular, this bill has no effect on adjudicated water rights, or such rights currently being adjudicated, of Indian tribes. This bill is what it says it is—a bill to implement a settlement of disputed water rights of the Colorado Ute Tribes. As section 11(b) of the bill states, "This act is intended solely to permit settlement of existing and prospective litigation among signatory parties to the agreement."

Mr. INOUYE. It is also my understanding that because of the concerns which we have been discussing that further revisions have been agreed to in section 5(c) and section 11(b) of H.R. 2642. These revisions are embodied in Senate Concurrent Resolution 162 and have been agreed to by all parties as a more accurate expression of the intent of the parties and this Congress, consistent with the principles we have been discussing. Is my understanding correct?

Mr. JOHNSTON. Yes, the chairman of the Senate Select Committee on Indian Affairs is correct. The provisions of Senate Concurrent Resolution 162 clearly indicate that H.R. 2642 does not effectuate any change in the existing body of Indian reserved water rights law and sets no precedent for any other Indian water settlement.

Mr. INOUYE. I thank the chairman of the Energy and Natural Resources Committee for his forbearance and willingness to take this time to clarify these important issues.

Mr. JOHNSTON. Mr. President, I join with my colleagues on the Energy and Natural Resources Committee in congratulating the Senators from Colorado and New Mexico for their tremendous effort in achieving what many considered an impossible task.

As anyone who has ever dealt with the complex and knotty issues surrounding the use of the waters of the Colorado River knows; to bring the seven Colorado River Basin States together in agreement is an almost impossible task. As passed by the House, H.R. 2642 reflects an untiring effort on the part of the Members and the staffs from the respective States in both the Senate and the House to reach a just and equitable solution to the needs of the Colorado Utes.

I would particularly like to express my appreciation for the efforts of the Senate Select Committee on Indian Affairs and Chairman INOUYE. The high degree of cooperation between the Select Committee and the Committee on Energy and Natural Resources on such a difficult and potentially divisive task was essential to the work at hand. In turn, I would commend the members of my own committee, particularly Senators WIRTH, BINGAMAN, and DOMENICI, who are cosponsors of the Senate companion measure, for their efforts.

Mr. President, I cannot help but remark on the spirit of cooperation which also prevailed amongst the staff of the Energy and Natural Resources Committee. I believe that my western colleagues on the committee will agree with me that when it comes to water, there is no majority and minority; there is only professionalism. In that regard, I would cite in particular the efforts of Russell Brown, senior professional staff, Gary Ellsworth, chief counsel to the minority, and Jim Beirne, senior counsel to the minority. It was largely through their efforts that the seven basin States were able to achieve a consensus thereby allowing this legislation to move forward.

Mr. President, enactment of the Colorado Ute Indian Water Rights Settlement Act will end years of litigation and fend off what promised to be perhaps decades more during which the Indian and non-Indian communities of southwestern Colorado would find themselves on opposite sides of the courtroom. The solution, as embodied in H.R. 2642 is constructive, meaningful, and equitable.

The Colorado Ute Indian Water Rights Settlement Act will stand as a testimonial to what can be achieved in a true spirit of cooperation.

It will be the bench mark for years to come.

Mr. President, although we are being called upon to consider a House passed measure, I must point out to my colleagues that as passed by the House, H.R. 2642 contains the text of the amendments proposed to the Senate companion measure, S. 1415, by the Select Committee on Indian Affairs as modified by the amendments proposed by the Committee on Energy and Natural Resources. H.R. 2642 as before us, also includes further refinements proposed and agreed to by the seven basin States and the tribes. Seldom have I seen such effort on the part of, or unity expressed by, such diverse interests. The States, the tribes, indeed all parties concerned, should take immense satisfaction in this achievement.

Mr. BRADLEY. Mr. President, I ask the unanimous support of my colleagues for Senate Concurrent Resolution 162. This resolution amends House bill, H.R. 2642, which passed the House last week and which this body is about to consider. I cannot begin to describe in the time available the time and effort which the Energy and Natural Resources Committee and the Select Committee on Indian Affairs have expended over the last few weeks in reaching the agreement which is reflected in this resolution and this bill.

The Southern Ute and the Ute Mountain Ute Indian Tribes, and an entire region of southwest Colorado have been under great stress while this agreement was being reached. The fundamental issue here has not been with the agreement itself, but with the concerns that Chairmen JOHNSTON and INOUYE and I have had that this legislation not jeopardize or limit the alternatives available to other tribes throughout the West to deal with their reserved water rights claims in the manner most acceptable to them. To achieve this objective, while not undoing years of arduous work by the Colorado Ute Tribes, has been an excruciating exercise. I am confident, however, that we have now accomplished precisely that.

The resolution will be sent to the House and I have been assured that it will be adopted on Tuesday. The measure will then go to the White House with the corrected language. This is an unusual but apparently necessary procedure to assure adoption of language that will clarify the intent of the Congress in approving certain provisions regarding the use of water off the reservations of the Southern Ute and Ute Mountain Ute Indian Tribes under their agreement with the State of Colorado, and the United States.

The bill and its Senate companion, S. 1415, as originally introduced, contained the legislative implementation of the settlement agreement reached between the parties with respect to off reservation water use. Under the agreement, the tribes' reserved water would be marketed subject to the same terms and conditions that apply to such marketing by non-Indians within the State of Colorado. The issue of out-of-State leasing by the tribes was left to future litigation.

This aspect of the settlement agreement met with strong opposition from the States in the lower basin of the Colorado River because of concern regarding the impact of out-of-State leasing on the allocation of water between States in the upper and lower basins of the River. The lower basin States wanted to avoid litigation that would have the potential of displacing existing water users in those States. Thus, the House adopted language to resolve this concern and the Ute Tribes agreed to the amended language.

Subsequently, there were serious concerns raised by many other Indian tribes that the new language potentially affected the water rights of those tribes whose claims are unsettled. The language of section 5(c) of H.R. 2642 states, rather unequivocally, that Congress requires that the reserved right of the tribes to water "shall become a Colorado State water right" when any of the tribes' reserved water is used of the reservation.

Indian water rights are reserved for the purpose of providing a permanent homeland for the tribe, and are not otherwise subject to abandonment or forfeiture. This reserved nature of the Indian water right has been consistently affirmed by the courts, including the Supreme Court, based on the understanding that a tribe may elect not to exercise its rights to water, and that until such an election is made, the tribe cannot lose its rights in the interim, and thereby defeat the purpose for which the water was reserved, that is, the establishment of a permanent homeland.

The declaration that an Indian water right would become a State water right, as opposed to being subject to State law, is without precedent in either any other Indian water rights settlement, or in the larger body of Federal-Indian law as it has been developed through judicial and legislative action. Once the Indian water right becomes a State water right, it may be subject to abandonment or forfeiture as those terms are defined by State law. Thus, the opportunity for the water to return to the reservation should it cease to be used off the reservation and the water rights to be preserved could be in serious jeopardy.

This is also the first time in an Indian water settlement that the Congress conditioned its ratification of a settlement agreement on the modification of the agreement that was reached amongst the parties to the settlement in such an intrusive manner. The present language of section 5(c) of the House bill would strip the Indian water of its reserved character while it is being used off the reservation, and nothing in the bill indicates that the reserved nature of the water would be restored upon the tribe's resumption of use of the water on the reservation.

In contrast, the agreement provided that while Indian water was used off the reservation, it would become subject to State law, but the agreement did not contemplate the conversion of the Indian water right into a State water right. Thus, under the agreement, once the water ceased to be used off the reservation, it would again be available for use on the reservation with its reserved character still intact.

There are over 50 general stream adjudications in Western State courts that involve Indian Winters water rights. In addition, the Department of the Interior Solicitor's Office is currently negotiating four settlements involving Indian water rights.

It is possible that many of the 50 cases now in court will be negotiated. All of the settlements that have been negotiated thus far have required ratification by the Congress. These include:

Ak-Chin Indian Water Rights Settlement (Public Law 98-530) (Arizona);

Papago Indian Water Rights Settlement (Arizona) (three settlement bills have been enacted by the Congress to resolve various claims of this tribe: Public Law 97-293; Public Law 99-469; and Public Law 99-503);

San Luis Rey Indian Water Rights Settlement (S. 795) (California);

Salt River Pima Maricopa Indian Water Rights Settlement (H.R. 4102, S. 2153) (Arizona); and

Seminole Indian Water Rights Settlement (Public Law 100-228) (Florida).

It is thus reasonable to assume that all of the settlements now being negotiated will come before the Congress and that many of those in litigation will also be negotiated and come to Congress for approval. It may be true that no other settlement will involve construction of a major project like Animas-LaPlata. However, this does not mean that other tribes in the West may never have an out-of-State market for tribal water.

Many tribes believe, and I fully agree, that the House language could be viewed as setting a serious and adverse precedent for the manner in which tribal water rights may be used off of Indian reservations. I am assured by all parties to the final House language that the intent was simply to implement a change in the underlying agreement that is the subject of this legislation.

Since the language on its face seems to go further than that, and since it was not the intention of the parties to prejudice or predetermine the outcome of any other pending litigation or negotiations, it is necessary now to make this change. All parties concerned with this matter, including representatives of the lower basin States and the tribes, have agreed to the language of this resolution which will replace section 5(c) of the bill.

The language contained in this resolution clarifies that the use of water off the reservation of the two Colorado tribes must follow an affirmative election by the tribes to move their water off the reservation and to subject such water to State water law. This further clarification of the consensual nature of the change in the water from a reserved right to a Colorado State water right includes language to assure absolutely the reversion of that State right back to a reserved right whenever the water ceases to be used beneficially off reservation. With this language, Congress assures that these tribes will not lose their water rights through inadvertent or hostile action. In addition, there is language to make doubly certain that this procedure is unique to these tribes under this settlement.

This issue of tribal water rights and off-reservation marketing of those rights is understandably a very delicate and sensitive one throughout the Western States where tribes with Winters reserved water rights claims are located. It has been a rather long and tortuous effort to reach this point today. I am certain that all Members of this body will agree that, with so much at stake for these two Ute Tribes and for other tribes, this resolution is the sensible and correct approach to avoid further uncertainty in an already unclear but extremely important aspect of Federal-Indian law.

The PRESIDING OFFICER (Mr. GORE). The Senator from Colorado.

Mr. ARMSTRONG. Would the Senator yield briefly? I hate to let this moment pass, although I do not want to let this go on too long so as to attract undue interest and have other Senators come to the floor to address this matter.

I want to thank my colleague for his gracious remarks and emphasize my own sense of appreciation to him for all he did to make this possible.

I want to agree with what he said about the efforts of our colleague, BEN CAMPBELL. The truth of the matter is, it was not a lot easier for him to get it through the House than it was for us to get it to this point in the Senate. He deserves great credit for doing it.

Then, there is another person who we have not yet mentioned and who had a great role in this and has been interested in this for a long time, Ray Kagoshian. Ray worked on this when he was a Congressman. He has worked on it since. He has followed it day after day. When I say "worked on it," he has been involved in this thing just endlessly, it a very detailed and patient and thorough way. We are thankful to him.

Then, Mr. President, I would be remiss if I did not mention our colleagues Senator WALLOP and Senator MCCLURE, who, although not directly affected, have a great interest in this whole legislative area and who worked on it. Our colleagues from New Mexico, JEFF BINGAMAN and PETE DOMENICI, who has really been a pillar of strength on this and similar matters.

Senator DOMENICI returned to New Mexico earlier today for an event at which he is the host, involving several hundred people. He could not be here this evening. But as recently as 2 or 3 hours ago I was conferring with him as he changed planes in Dallas on this matter.

At every step of the way for a couple of years, he has just been helping us at every stage and, in fact, has helped us in three or four specific occasions on this day, even though he has been traveling.

So, again, my thanks to all who made it possible.

Unless there is something else, we are ready to go forward and go to passage of this matter.

Mr. McCLURE. Mr President, I am pleased to support the passage of the Colorado Ute Indian Water Rights Settlement Act. I believe that the legislation, as modified by the amendments of the select committee and as further modified by the amendments of the Committee on Energy and Natural Resources with the further floor amendments to satisfy the concerns raised by Lower Basin States is an excellent solution to what started out as a disaster. The settlement agreement and the legislation as introduced stood absolutely no change of enactment, and I remain very concerned that people within the administration even thought it had any vitality.

I want to begin by expressing my deep appreciation to those parties to the settlement in Colorado who were willing to work with me and the other members of the committee to work out a solution which would enable us to recommend enactment of this measure. I am also grateful to the representatives of the Lower Basin States who were also willing to work out their concerns in a manner which did not pit the Upper Basin States against the Lower Basin. Specifically, I would like to thank Dan Israel and Scott McElroy who represented the tribes during the negotiations and were able to offer some very constructive alternatives which would preserve the substance of the agreement. I do want to make it clear that nothing in any of the amendments alters in any fashion the immediate effect of the settlement agreement for the tribes with respect to their use of wet water on the reservations of the respective tribes. In addition, the tribes will have the full ability to move the water off the reservation as contemplated under the agreement although a condition and consequence of that decision will be that the right will become a State water right subject to all the risks and limitations otherwise applicable to other Colorado State water rights. The possibility of out of State use has been preserved, but not on the same basis as originally contemplated—the tribes will now have precisely the same ability to market out of State as would any non-Federal, non-Indian holder of a Colorado State water right.

I also want to thank Ival Goslin, Bill McDonald, and Lois Witte from the State of Colorado for their efforts and assistance in helping to formulate the committee amendments and in resolving the concerns of the Lower Basin. Without their help it would have been impossible to even begin to correct the problems in the original bill. I am also grateful to Dennis Underwood, Jerry Lopez, Jack Stonehocker, Larry Linser, and the other representatives from the Lower Basin who were willing to devote the time and their efforts to help resolve very legitimate concerns when it would have been just as easy to simply block passage. The willingness of all the parties to consider alternatives led to creative solutions. I also want to express my gratitude to Mike Jackson from the House Interior Committee staff representing Congressman UDALL who helped enormously in briefing the Lower Basin concerns to a satisfactory resolution while preserving the essential substance of the water uses which the tribes had originally sought.

In mentioning those individuals, I do not want in any way to understate the assistance which the sponsors of the legislation, Senators ARMSTRONG, WIRTH, DOMENICI, and BINGAMAN have made. The time and effort which they and their staffs contributed was essential to the process. Above all, I want to thank Senator HECHT for his willingness to contribute to resolving the concerns raised by the Lower Basin and his willingness to permit the committee to report this measure subject to those concerns being worked out. Without his leadership, I doubt that we would have been able to resolve the differences

Mr. President, I would like to spend a few minutes describing what the amendments which the Energy Committee adopted would accomplish. The additional amendments which have been agreed to in the Senate do not alter the substance of the Energy Committee's action, but they also warrant discussion. The net effect of the amendments and the modifications to the agreement is to provide that the United States will permit the use of certain reclamation facilities solely for the storage and delivery of Colorado State water to the two tribes for use by the tribes pursuant the agreement as modified. The on-reservation use of the water secured to the tribes under the agreement is not altered by the legislation, however, a future decision by the tribes to put any of the water becoming solely a State water right. There will be no Federal nexus or protections attendant to that right any more than would attend any other water right granted by the State of Colorado to any other individual. The tribes will be able to alienate the State water right if they so choose under the same conditions and subjection to the same limitations as apply to any other State water right. They will have the full use of that State water right off reservation as would any other holder of a State water right. I want to emphasize that the transformation of the settlement rights into a State water right is a condition for use off reservation, but can only be initiated by the tribe. The decision to forgo the protections afforded on-reservation use is one which only the tribe can make, and once made, would be irrevocable. The tribes, however, never need to make that decision if they want to use the water on reservation. This is solely an option available only to the tribes. I also want to point out that the bill is specific that the administration of the water rights within the State of Colorado as provided in the agreement are unaltered.

In this context, I should mention that the agreement itself contemplated the ability of the tribes to put the water rights secured under the agreement to use off reservation subject to State law and the Law of the River. The amendments do not alter that central element. What the agreement and the original legislation did do, and what the committee unanimously rejected, was the creation of a mutant water right called a "project reserved right" and a "non-project reserved right" and established the basis for litigation to break the Law of the River. That was unconscionable. This is the second time during this Congress where the committee has had to specifically reject efforts within the administration to treat the scarce water resources of the West as a fungible commodity with complete disregard for a century of deference to State jurisdiction over water resources. In this instance, the attempt was even more obnoxious in that it was designed to destroy a series of interstate compacts allocating the use and disposition of the waters of the Colorado River. Apparently, there was still those within the executive branch who believe that the President's Executive Order of Federalism does not apply to them and that they have some charismatic influx which enables them to carry forth their mission. In this instance, it is clear that individuals within both the Department of Justice and the Department of the Interior were more concerned with their own social agenda than representing the interests of the two tribes. The resolution achieved by the committee amendments as further clarified by the floor amendments is the result which should have been incorporated in the original agreement. I would draw the Senate's attention to the new section added by the Energy Committee at the specific request of the tribes and the State of Colorado which would prohibit the United States from backing out of the agreement as modified. The fact that both the tribes and the State are sufficiently concerned to request such language should make both the Department of Justice and the Department of the Interior rethink their position and their understanding of their responsibility. It is unfortunate when tribes need to seek protection from the Congress against agencies who should be supporting them.

The report on S. 1415 and the discussion of the Energy Committee amendments fully discusses the intent and objectives of the amendments to this measure. The committee ordered the measure reported with the understanding that the concerns of the lower basin still needed to be addressed and may not have been totally resolved. Subsequent to the committee action, representatives from the lower basin did come to Washington to meet with representatives of Colorado and the tribes and agreed to some technical and clarifying changes. The major change is that the agreement has been modified to specifically provide for the transformation of the on-reservation rights of the tribes into State water rights as a condition for a change in place of use to an off-reservation use. I was not happy with the original committee amendment, which I offered, which accomplished that by declaring any off-reservation use to be pursuant to a State water right, even though it accomplished the same ultimate objective. It looked too much like a federally created State water right, which was not the intent. The change to provide that the transformation is a part of the agreement and would be accomplished through the State process respects the principles of federalism which the Department ignored. It also prevents any argument that the off-reservation use is pursuant to Federal law rather than pursuant to whatever authority is conferred by the State of Colorado or that any off-reservation water right is like a State water right, but is not necessarily such a right.

Again, I commend my colleagues who worked with me and Senator WALLOP in developing the amendment which we offered in committee. I especially want to thank Senator WALLOP who raised the fundamental questions about this legislation after the committee hearing. I should note that he joined with me in offering the amendments which the Energy Committee adopted and both he and his staff worked hard to resolve the concerns of the lower basin in a way which was acceptable to the State of the upper basin.

Mr. President, I want to make a few comments with respect to the language of H.R. 2642 and the legislative history and intent of those provisions. The text of H.R. 2642 is essentially the text of S. 1415 as reported by the Committee on Energy and Natural Resources with a few minor amendments. The Energy Committee had adopted the text of S. 1415 as reported by the select committee for the purposes of considering further amendments. As reported by the select committee, the legislation was not likely to ever see the light of day. Left unresolved by the select committee were questions of off-reservation marketing raised by Senator MELCHER in the select committee as well as the opposition of the States of the lower basin. In the House, the companion measure was reported only after an amendment offered by the lower basin lost on a tie vote.

At my request and that of Senator WALLOP, committee staff discussed those as well as other concerns with representatives of the tribes and the State of Colorado in an effort to resolve those concerns in a manner which would guarantee the tribes the practical use of the water rights contemplated under the settlement agreement in a manner acceptable to Colorado and the lower basin States. The credit for resolving those concerns rests solely with the attorneys for the tribes, Dan Israel and Scott McElroy, and the representatives from Colorado, Ival Goslin, Bill McDonald, and Lois Witte. The amendments which I and Senator WALLOP offered in committee were agreed upon by those parties prior to the committee's business session. The discussion of the amendments was also reviewed prior to being circulated to the committee members. I want to emphasize that the discussion of the Energy Committee amendments in the report accompanying S. 1415 is accurate and faithful. It also represented the agreement of all the parties to the settlement agreement in Colorado. The select committee, a few days ago, modified their views to indicate that the language was not accurate, and that insinuation should not be left unrebutted. The language in the explanation of the Energy Committee amendments is what was before the committee during its consideration and any assertion to the contrary is completely false. There also have not been any additional comments added to that language by staff subsequent to the Energy Committee's action. I have the highest respect for the professionalism of the staff of the Energy Committee, both majority and minority, and the implication that the language in the report is other than what was before the members is simply unacceptable.

I do not want to get into any protracted discussion, but I am deeply concerned about not only that comment, but also the additional comments which the select committee included in their explanation of their amendments on October 4, over 5 months after the select committee completed its action and almost 2 months after the Energy Committee had completed its action. Although the amendments which I and Senator WALLOP offered and the explanation for them had been circulated to the members of the Energy Committee prior to the committee's business meeting and were approved by the committee and represented the agreements reached with the representatives of the tribes and the State of Colorado, the select committee has inserted a totally gratuitous and legally suspect dissertation commenting on the action of the Energy Committee. While the views of the select committee are basically immaterial since their work product has been superseded by the amendments of the Energy Committee and the subsequent clarifications agreed upon by the lower basin, the tribes, and Colorado, I do think that some of the more outrageous statements need to be addressed.

The select committee, in their latest addition, asserts that "to represent that the tribes' claims based on their reserved rights are extinguished upon entry of the final consent decree, is to leave the tribes with no legal recourse should any of the benefits contemplated for the tribes under the settlement fail to be forthcoming." That statement demonstrates a basic failure to understand what a decree is. The entry of the final consent decree will extinguish all claims before the court. The decree will establish rights as set forth in the settlement agreement as modified under this legislation, and those rights are fully protected by the court order. A violation of the terms of the agreement can be brought before the court as a violation of the decree. The claims no longer exist. Furthermore, the statement demonstrates a fundamental misunderstanding of the basis for not only the current agreement, but of the reason why we even have this legislation before us. The tribes made a remarkable offer to Colorado in that they would give up their claims to appurtenant waters so as not to interfere with current users if they could be given water from the Animas and Dolores projects. In addition, they would agree to pay for the allocable costs of the project. The tribes never asserted a reserved claim to water in a nonexistent project. The decree, however, pursuant to their offer, will extinguish their claims to appurtenant waters and confirm their right to an allocation from the projects. I would note that the agreement, and the finality of the decree, do depend on the completion of the project, so that if the project is not built, the tribes will be free to either pursue their claims or seek some other solution. That does not detract from the fact that if the project is constructed, their claims will have been extinguished. The language in the committee amendment was included for chronological purposes because, according to the Colorado parties, the court needs jurisdiction over a claim with an early priority date in order to award the rights set forth in the settlement agreement. The select committee completely misconstrues the reasons for the language, as well as the effect of a final decree.

The other ancillary comments with respect to the nature of the tribes' water rights when used off reservation and upon its return are similarly in error. The amendments adopted by the committee do not speak to the character of the water rights confirmed in the decree when used on reservation, except that they will not be "project reserved rights" or "non project reserved rights"—the only terms in the current Agreement. The rights are nothing more or less than rights as set forth in the Agreement, as modified, on reservation subject to whatever State administration is set forth in the agreement. However, the election by a tribe to use the water off reservation includes a decision that the right become a State water right. That is the express language of the measure. That does not detract from the ability of the tribe at some future time to put the water to use on the reservation again, but it is an irrevocable election. The risks of abandonment and other losses are attendant to that decision, as well as acceptance of the limitations of State law on export and the other provisions of the Law of the River. I assume the tribes will be careful in entering into any off reservation leases in order to protect their rights from misuse by the lessee. I also think the tribes can continue to to rely on the State of Colorado to deal fairly with them under the terms of the settlement agreement.

Subsequent to the final clarifications which the tribes, the State of Colorado, and representatives from the Lower Basin agreed to after the Energy Committee action, the select committe requested three additional changes. The first change is useful in that the select committee wanted the agreement itself to trigger the rights under the decree, whatever they are, becoming a State water right, rather than having the legislation declare them to be a State water right. That is a useful provision because it eliminates any argument that this is somehow a federally mandated State water right, whatever that would be. It is clear that the agreement, which the court approves, now will contain the condition precedent; and the triggering of the condition precedent that the water rights become State water rights will occur through the court process. The other two changes have no substantive effect at all. The first inserts the phrase "during the use off reservation," which is certainly true. Once the water rights under the agreement become a State water right they will continue to be a State water right. It is really immaterial what they are on reservation since the tribes' right to the use of the water on reservation is defined by the decree which also defines the State of Colorado's rights to monitoring and administration. None of that is altered.

I certainly have no objection to how the Colorado court grants any application by the tribes for a change in place of use to a place back on the reservation. I assume the tribes and the State of Colorado will manage to work that out quite nicely without our assistance. What is important to note is that the phrase does not operate to transform the State water rights into some sort of Federal reserved right. Those claims were extinguished with the final decree. We are not creating some form of chameleon here. The Energy Committee specifically did not speak to what the rights were on reservation. That characterization was, and remains, immaterial to the legislation.

The last amendment, which alters the Energy Committee language in section 5(c)(2) that any Federal reserved claim be extinguished in favor of a referent to the obnoxious terms "project reserved right" and "non project reserved right", is acceptable in that it does nothing. All claims are extinguished with the final decree. The tribes were not the origin of the term "project reserved right" and probably are happy that it will hopefully disappear from the lexicon of the social activists. The sentence, as I explained earlier, was important to preserve the claim of an early priority date so that the court could award the priority dates which attach to the rights from the projects and elsewhere as provided in the agreement. To the extent someone thinks that the alteration somehow preserves claims independent of the effect of a final decree adjudicating all claims, they are sadly mistaken. The reason the tribes agreed to the language was that it is simply factual. Their rights are not extinguished, only their claims. I would note that the tribes do have some already adjudicated rights which they are relinquishing as part of the settlement agreement.

Mr. President, I want to conclude simply by expressing my gratitude and respect for all the participants who worked so hard to bring the troublesome issues in the legislation to an amicable resolution. The representatives from the Lower Basin States worked hard and were creative in finding a way to allay their concerns while protecting the practical uses of water for which the tribes and the State of Colorado had entered the settlement agreement. That fix was worked out in the Energy Committee library directly between the representatives of the Lower Basin, the tribes, and the State of Colorado. The representatives of the tribes, the State of Colorado, and the Lower Basin were able to come to an agreement which they all support. I know something of water law and the acrimony which usually attends water rights disputes. This is a remarkable achievement, and the credit belongs to those participants. If there has been any problem, it has come from elements within the administration and elsewhere who are more concerned with their social agenda, whether it is Federal water marketing or some curious gloss on court decisions finding implied congressional intents. It is sad that the tribes and the State of Colorado found it necessary to request the Energy Committee to propose an amendment, contained in section 14 of the legislation, to protect them from those who should be representing their interests rather than their social agenda. This is a good measure and deserves the full support of the Senate.

Mr. President, there has been some concern expressed as to whether or not this legislation establishes some form of binding precedent for other water rights settlements elsewhere.

That concern is specifically addressed in the legislation itself which states in section 11(b) that "This Act is intended solely to permit settlement of existing and prospective litigation among the signatory parties to the Agreement." While that language was originally developed to protect the Lower Basin States, it equally applies to anyone else who is not a signatory to the agreement, including other Indian Tribes. This settlement deals with unique circumstances and represents an amicable resolution of a particular problem by the various parties, including the tribes. If this legislation offers possibilities to others, that is all well and good, but what we do in this legislation does not bind others.

Mr. DOMENICI. Mr. President, I rise in support of S. 1415, the Colorado Ute Indian Water Rights Settlement Act, of which I am a cosponsor.

The passage of this legislation is vital to the Animas-La Plata project, which will supply much-needed water to northwestern New Mexico and southwestern Colorado.

The Animas-La Plata project will supply an average of 54,000 acre-feet of water to New Mexico per year. The remaining 144,000 acre-feet will go to Colorado.

The beneficiaries of the Animas-La Plata project are diverse. They include residents of two States, three Indian tribes, municipalities, farmer and ranchers, business owners, and sportsmen.

The project will allow New Mexico to put to use the water of the Upper Colorado River Basin to which it is entitled. It will ensure that water is available in the future to support the population, industry, and agricultural enterprises of communities in northwestern New Mexico, such as farming on, Aztec, and Bloomfield, as well as the Navajo Reservation.

The Animas-La Plata project has been on the drawing boards for over 30 years. In 1968, when Congress authorized the Central Arizona project, it committed the Federal Government to the construction of the Animas-La Plata project. However, in spite of that express commitment, construction has yet to begin on the project.

Most recently, the project has to overcome the twin hurdles presented by Public Law 99-88, which mandates non-Federal cost-sharing for Federal reclamation projects, and various water claims and other legal claims by the Ute Mountain and Southern Ute Indian Tribes against the Federal Government.

Many thought it would be impossible to come up with either a cost-sharing agreement or a settlement of the Indian claims, but in 1986 both goals were achieved.

The estimated cost of the project, including the settlement of the Indian water rights claims, is $550 million. As a result of the cost-sharing agreement entered into by the parties that will benefit from the construction of the project, the non-Federal parties to the agreement will contribute $212 million toward that cost.

This represents 37 percent of the total costs of the Animas-La Plata project.

The cost-sharing agreement reduced Federal budgetary outlays for the Animas-La Plata project by 39 percent relative to what would have been required had the project been built entirely at Federal expense as authorized by Congress.

I have long supported cost-sharing, not only to reduce Federal expenditures, but also as a means of evaluating the true need of a project. I would like to point out that very few Federal projects have as a high a level of non-Federal participation as does the Animas-La Plata project. For example, non-Federal entities have borne only 9.5 percent of the cost of the Central Arizona project, although it was authorized at the same time as Animas-La Plata.

The cost-sharing agreement was the product of much negotiation. Considering the number of parties and the long-standing problems between them, it is amazing that an agreement could be reached.

The settlement of the Ute Indian water claims represents an historic settlement of Indian water rights claims.

The two Ute Indian Tribes have water rights claims pending to over 25 rivers and streams in southwest Colorado. If the tribes are successful in this litgation, a number of non-Indian communities and a large segment of the agricultural community in southwest Colorado would be adversely affected.

It is entimated that if the Ute Indian were to win these claims, they would be awarded—at a mimimum—$550 million, which is $200 million more than the cost to the Federal Government of constructing the Animas-La Plata project.

The tribes are willing to settle these claims. However, the parties involved in this dispute have been unable to identify any feasible settlement absent the construction of the Animas-La Plata project.

Therefore, in 1986 the two Ute Tribes and the affected parties feashioned the Colorado Ute Indian Water Rights Final Settlement Agreement. The keystone of the settlement is the construction of the Animas-La Plata project to provide water so that future tribal needs are met and existing non-Indian water uses are preserved.

The two Ute Indian Tribers are firmly convinced that the present settlement, with its reliance on the construction of the Animas-La Plata project, is the only option for a negotiated settlement. The proposed settlement is far less costly than the potential liability of the Federal Government for the claims of the Colorado Ute Indina Tribes.

Mr. President, there is one final issue that I would like to address.

As originally introduced, S. 1415 would have permitted off-reservation, out-of-State leasing or sale of water by the Ute Indian Tribes to the extent permitted by State and Federal law and interstate compacts.

While this provision would have conferred no authority on the tribes to actually lease or sell water outside of Colorado, a number of States that are signatories to the Colorado River compact expressed concern that the provision as originally drafted would have invited litigation that could have allowed the courts to upset the current law of the river, which took years to negotiate.

In order to assure that this result does not occur, the legislation was amended. The bill now clarifies that the waters provided to the tribes under the agreement will become solely a State water right as a condition precedent for any use off reservation and are fully subject to the law of the river. With respect to the use of such State water rights, the tribes are in no different position than any other holder of a water right from the Colorado River in the State of Colorado. This language is a product of the parties to the agreement and representatives of other affected States.

All the Colorado River States now support this legislation.

Mr. President, S. 1415 is needed to implement the Animas-La Plata Cost-Sharing Agreement and the Colorado Ute Indian Water Rights Final Settlement Agreement. This bill provides statutory authority for a number of provisions in those two agreements, including provisions on the use of water from the Animas-La Plata project by the Colorado Ute Indian Tribes and the establishment of tribal development funds. The bill before the Senate has been carefully crafted by many parties.

Mr. President, the Colorado Ute Indian Water Rights Settlement Act is supported by all the members of both the Colorado and the New Mexico congressional delegations, as well as the States of New Mexico and Colorado. This legislation is needed in order for the Animas-La Plata project to move forward.

There is no question that Colorado and New Mexico have given their support over the years to Lower Colorado River Basin projects, ones that have enabled the lower basin States to conserve water, furnish water to arid lands, and preserve the Colorado River. It is now time for the upper basin States of New Mexico and Colorado to be given the right to develop the water rights to which they are entitled.

Mr. President, I am glad that the Senate has acted favorably on this legislation so that construction on the Animas-La Plata project, which has been delayed so long, can finally begin.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 2642) was ordered to a third reading, was read the third time, and passed.

Mr. ARMSTRONG. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. WIRTH. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CORRECTING THE ENROLLMENT OF H.R. 2642

Mr. WIRTH. Mr. President, I send to the desk and ask for the immediate consideration of a concurrent resolution making corrections in H.R. 2642.

The PRESIDING OFFICER. The concurrent resolution will be stated.

The assistant legislative clerk read as follows:

S. Con. Res. 162

Resolved by the Senate (the House of Representatives concurring), That, in the enrollment of the Act (H.R. 2642) to facilitate and implement the settlement of Colorado Ute Indian reserved water rights claims in southwest Colorado, and for other purposes, the Clerk of the House of Representatives shall make the following corrections:

Strike out paragraph (1) of section 5(c) and insert in lieu thereof the following:

(1) The use of the rights referred to in subsection (a) within the State of Colorado shall be governed solely as provided in the Agreement as modified pursuant to section 11 of this Act and this subsection. The Agreement is hereby modified to provide that a Tribe may voluntarily elect to sell, exchange, lease, use, or otherwise dispose of any portion of a water right confirmed in the Agreement and final consent decree off its reservation. If either the Southern Ute Indian Tribe or the Ute Mountain Ute Indian Tribe so elects, and as a condition precedent to such sale, exchange, lease, use, or other disposition, that portion of the Tribe's water right shall be changed to a Colorado State water right, but be such a State water right only during the use of that right off the reservation, and shall be fully subject to State laws, Federal laws, interstate compacts, and international treaties applicable to the Colorado River and its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.

At the end of subsection (b) of section 11, add the following: "This Act is the result of a voluntary compromise agreement between the Southern Ute Indian Tribe, the Ute Mountain Ute Indian Tribe, the State of Colorado, local water districts and municipalities, and the United States. Accordingly, no provision of this Act, the Agreement, or the final consent decree shall be construed as altering or affecting the determination of any questions relating to the reserved water rights belonging to other Indian tribes.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution was agreed to.

Mr. ARMSTRONG. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. WIRTH. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DODD. Mr. President, what is the pending business at this time?

The PRESIDING OFFICER. The pending business is a motion to proceed on S. 2449. But the Senator is advised that the Senate is operating as if in morning business.

SENATOR PROXMIRE

Mr. DODD. Mr. President, I would like to take a few moments, if I may, to comment on the departure of several of our colleagues who are leaving this body and who are dear friends to all of us, whose presence in this Chamber in the coming 101st Congress we are going to sorely miss.

The first of those colleagues, Mr. President, is my chairman, the chairman of the Banking Committee, Bill Proxmire. I rise to pay my respects to Bill in his last days in this 100th Congress.

With his departure, I and the Senate will lose a man of enormous talent, enormous personality and good will.

We will lose the most knowledgeable Member, without any doubt, of the Senate Banking Committee.

We also will lose a man who stood for fiscal responsibility long before it became politically popular.

We will lose a man whose golden fleece awards not only pointed out some of the silly excesses of Government but frankly also helped us laugh at ourselves from time to time.

We will also lose a man who ran for reelection on his reputation, not his bankroll—a lesson that we would all do well to learn before we lose the public trust.

But what I would like to focus on today is the man with the courage of his convictions who demonstrated an extraordinary capacity to follow ideas, wherever they took him.

As a member of the Banking Committee, I have been priviledged to see Bill Proxmire at work over the past 8 years. I seen him wrestle with the highly complicated and arcane—but extremely important—changes in the area of banking and other financial services, and I watched him wrestle with his own long held beliefs that the banking business should remain separate from other financial services. To his enormous credit—and someday in the not too distant future, to the country's benefit—he changed his long-held beliefs and drafted thoughtful legislation to address these changes.

At about the same time, Bill Proxmire discovered that the Banking Committee had changed over the past 6 years and now wanted to be involved in developing banking legislation. To his credit, he changed his modus operandi and conducted a series of meetings—first with Democrats alone and then with both Democrats and Republicans—and devised two major banking bills in this, his last, Congress.

The first—the Competitive Equality Banking Act of 1987—set in motion the dynamic to get all the financial institutions players to the table to discuss modernization seriously.

The second product of that process—the Proxmire Financial Modernization Act—is a truly fine forward-thinking piece of legislation. While it will not be enacted this year, unfortunately, it will provide us with an excellent roadmap for future efforts in this area.

In short, I admire Bill Proxmire for many of his views, his good clear politics and his sense of humor, but most of all I admire his remarkable ability to change with the times to fashion first rate legislation.

Mr. President, I will miss his leadership and his vision. I hope, however, that I and others have learned enough from Bill Proxmire to carry on his good works.

I commend my chairman on an exceptional career in Congress, and I wish him and all his family all the best in the future.

A TRIBUTE TO SENATOR JOHN C. STENNIS

Mr. DODD. Mr. President, the end of the 100th Congress will mark the end of an era. With the retirement of the President pro tempore of the Senate, Senator John C. Stennis of Mississippi, the U.S. Senate is losing a true legend.

This past June, the President of the United States, Members of Congress, the Governor of Mississippi, and countless friends honored our beloved friend and colleague in a tribute most appropriately titled: "Celebration of a Legend."

When Senator Stennis leaves the Senate on January 2, 1989, he will have served 41 years and 2 months—just 8 months short of Senator Carl Hayden's all-time record. When John Stennis retires, he will have served in the Senate through more than one-fifth of the life of the Constitution.

Five of our colleagues were not born when Senator Stennis was first elected to the Senate in a special election in 1947. Most of his constituents in Mississippi probably cannot even remember when their Senator was not Senator "STENNIS."

During his extraordinary 41-year career, JOHN STENNIS has personified the highest ideals of honor and integrity within the U.S. Senate. Those of us who serve with him treasure his steadfast leadership, his fearless courage, his kindness toward others, and his unselfish dedication to public service.

In 1985, the New York Times said of Senator STENNIS: "He is the undisputed patriarch of the Senate, a teacher to younger Members, and a conscience for the entire institution. He seldom makes national headlines but he wields considerable influence in the Senate itself and that influence comes from the quality of his personal judgment."

During his four decades in the Senate, he has been a dominating figure in this Chamber, an adviser to eight Presidents, and a man of sterling character.

There are so many moments during the past 41 years that can be cited to explain how it is that Senator STENNIS became a legend.

I do not recall personally, as I was not, obviously, a Member of the Senate in 1954 when President Eisenhower stood silent and the Senate was intimidated and cowed by Senator Joseph McCarthy. It was JOHN STENNIS who took the floor to denounce what he called McCarthy's "slush and slime." This courageous speech turned the tide against McCarthy.

Our strong and able military owes much of its strength to JOHN STENNIS who has always been an unwavering advocate of peace through strength.

From 1969 to 1981, Senator STENNIS was one of most effective chairmen of the Armed Services Committee in the history of this Chamber.

During that 12-year period, more than 50 new weapons systems were authorized. Equally important, however, Chairman STENNIS demanded close and careful scrutiny of every proposed defense outlay. As he himself stated, "to support military readiness, a Senator does not have to be a wastrel."

Senator STENNIS is recognized throughout the Nation as a leader in the call for a sound fiscal policy. It was largely as a result of his strong leadership as chairman of the Senate Appropriations Committee that the Congress this year completed action on all 13 appropriations bills before the start of the new fiscal year for the first time since 1972.

It is certainly a tribute to Senator STENNIS that he will be the last Member of this body to serve on both the Armed Services and Appropriations Committees at the same time.

All of his many accomplishments are dwarfed, however, by the courage and strength that Senator STENNIS has continually demonstrated during his long tenure in the Senate. In January 1973, he was shot twice during a robbery in front of his home in Northwest Washington. In 1984, he lost one of his limbs to cancer.

Yet he never allowed the pain and agony of these tragic events to limit his effective work as a U.S. Senator.

When JOHN STENNIS returned to the Senate after recovering from his gunshot wounds, our late colleague, Henry "Scoop" Jackson said of him, "The Senate is now whole again."

We now must face the reality that the U.S. Senate in January will be without JOHN STENNIS. In many ways, without JOHN STENNIS, The Senate will not be whole.

We know we will miss his wisdom, his decency, his quiet, unassuming dignity, and the experience accumulated during more than four decades of service in this Chamber.

I am one Senator who will always be grateful that I had the opportunity to know JOHN STENNIS, to serve with him in this body, and to call him my friend.

Mr. President, I am particularly proud that one of the last bills before this Congress, while it did not become enacted into law, the profamily package of parental leave and child care, that JOHN STENNIS was a supporter of it. The Senate and the Nation will miss him. His legacy of integrity, character, and courage and devoted service to his country will inspire the Senate and the Nation for generations to come.

SENATOR PAUL TRIBLE

Mr. DODD. Mr. President, among the very fine Senators who retire this year from the Senate is my friend and colleague, PAUL TRIBLE of Virginia. While we sit on different sides of the aisle and have not always agreed on all issues, we have served in both the House and Senate for many of the same years and share a strong commitment to the concerns of our political generation.

In the Senate we have both served on the Foreign Relations Committee for the last 4 years. It was here that I had a chance to observe more closely Senator TRIBLE at work. I came to respect him as a responsible conservative, thoughtful, and always well prepared. I was particularly pleased to work in tandem with him on human rights issues, among them the state of civil, religious, and minority rights in Romania. He showed strong leadership on this issue long before other Members discovered it. With PAUL, I have often been impressed with the way he has devoted himself to good and meritorious causes.

PAUL TRIBLE also distinguished himself as a member of the Select Committee on the Iran-Contra Affair during the long and arduous investigation.

Mr. President, it is odd to talk about the retirement of such a young, ambitious, hard working person as PAUL TRIBLE. I doubt that we have heard the last of him as a politician or as a statesman. Whatever his next endeavor, my respect, friendship, and good wishes go with him.

SENATOR DAN EVANS

Mr. DODD. Mr. President, I want to say a few words about my friend and fellow member of the Foreign Relations Committee, DAN EVANS, who retires from the Senate this year.

DAN EVANS came to the Senate in September 1983, when he was appointed to fill the seat of the late Henry Jackson. Two months later, he was elected in a special election to serve the term which expires in January 1989. He brought to the Senate an outstanding career in public service in his own State of Washington, where he served from 1956-64 in the State house of representatives, and from 1965-77 as the only three-term Governor in the State's history.

He is a man of deep convictions, as he has shown most recently in his arguments on the very difficult issue of the death penalty, as it was debated on the drug legislation in recent days. In his years on the Foreign Relations Committee, he has shown his sincerety and deep convictions in the debates on foreign aid, arms control, and State Department legislation.

All of us are sorry to see him leave after only one term in this body, but we will look at the contribution he made and be greatful that we were able to know him and work with him, even for that short period of time. We wish him well.

SENATOR LAWTON CHILES

Mr. DODD. Mr. President, as the 100th Congress draws to a close, I would like to take a few minutes to pay tribute to my friend and colleague from Florida, Senator LAWTON CHILES.

LAWTON, as is well known, is retiring from the Senate at the end of this session after 18 distinguished years of service to the citizens of Florida, the citizens of our Nation and the Democratic Party. LAWTON's will be a hard act to follow—for while the U.S. Senate is filled with men and women of great distinction, it is far less often graced by men and women of such earnest conviction as that of LAWTON CHILES.

As ranking member of the Budget Committee since 1983 and as its chairman since 1987, LAWTON has transformed a rancorous and divided group of Senators into a committee of accomplishment and credibility. Before LAWTON's stewardship, during the first 6 Reagan years, the budget process has been nothing short of absurd, with budgets arriving in Congress from the Oval Office that even a swindler would regard as laughable.

There is not a doubt in my mind that the budget summits of last year were a product of LAWTON CHILES' conviction and belief that it is possible to produce a real and workable Federal budget. And there is also not a doubt in my mind that the completion of thirteen appropriations bills before the end of this session are a tribute to LAWTON's vision that the budget process can be responsible to the needs of the American people and the Nation. It has been a great honor for me to serve with LAWTON on the Budget Committee these last 2 years. I am thankful—for he has been both friend and teacher.

In his first bid for the Senate in 1970, LAWTON CHILES walked across his great State of Florida, understanding that only in meeting his constituents on their turf, face to face, could he really know them, represent them in the truest sense. His "walk" is axiomatic of LAWTON CHILES' brand of leadership—courageous, genuine, intensely human. It's a kind of leadership this Nation yearns for in this age of 30-second sound bites; it's a kind of leadership that we, in the Senate, will surely miss. It's a kind of leadership that should stand as a shining example to the future leaders of our Nation.

LAWTON, I wish you and Rhea May, your children and grandchildren a lifetime of good health and great happiness.

A TRIBUTE TO HON. ROBERT T. STAFFORD

Mr. DODD. Mr. President, I rise today to honor a fellow New Englander and fellow sailor, ROBERT T. STAFFORD. After 27 years of service in the U.S. Congress, BOB STAFFORD has decided to retire—and we will miss him.

BOB STAFFORD is a role model for many of his colleagues and constituents. After completing law school he committed his life to public service. His experience began as Rutland City prosecutor. He served his country in the Navy during World War II and resumed active duty during the Korean conflict as well. From 1953 to the present, he has served as deputy attorney general, attorney general, Lieutenant Governor, Governor, U.S. Representative and Senator. His State has consistently shown its respect for BOB STAFFORD, by electing him to each of the above offices—and BOB STAFFORD has never lost an election. For his record of service and commitment to his State and Nation, BOB STAFFORD deserves our highest accolade.

I have had the opportunity to work closely with BOB STAFFORD on numerous occasions. We have worked together on the Committee on Labor and Human Resources and the Labor subcommittee. For 8 years, I have served with him on the Subcommittee on Education, Arts, and Humanities. Those familiar with the subcommittee have often heard of the firm "Pell and Stafford" or "Stafford and Pell." I can contest to the fact that BOB STAFFORD has been a leader on the subcommittee both as chairman in the 99th Congress and as ranking minority member. BOB STAFFORD and CLAIBORNE PELL have worked closely together in pursuit of education excellence.

BOB STAFFORD's sponsorship of the higher education amendments of 1986 and his cosponsorship of the elementary and secondary reauthorization amendments of 1988 have been instrumental during the 8 years of the Reagan administration. While the administration recommended cuts in the loan and grant programs for higher education, BOB STAFFORD has worked to preserve the same programs. While the administration talked about national security and focused on defense, BOB STAFFORD emphasized, as well, the need for an educated citizenry to ensure a strong, safe nation. He has played a major role in ensuring strong bipartisan support for education initiatives. And, the respect that his colleagues and I have for him is evident in our naming the Hawkins-Stafford Elementary and Secondary Reauthorization Act of 1988 and the Stafford Student Loan Program after him.

During the 97th, 98th, and 99th Congresses, BOB STAFFORD will be remembered most for his commitment to the Superfund Program; his efforts to improve the methods and regulations for the cleanup of toxic waste. Under his leadership legislation requiring the removal of asbestos from public schools became law.

After serving this Nation during both World War II and the Korean conflict, BOB STAFFORD has also brought a great deal of expertise and passion to the Senate Veterans' Affairs Committee. He has also served on the Special Committee on Aging and the Select Committee on Intelligence.

BOB STAFFORD is a man of integrity. His commitment to this Nation and passion for the well-being of all citizens serves as an example to every Member of this body and every American citizen. The U.S. Senate will feel BOB STAFFORD's absence. The people of his State will indeed miss his representation in this body.

After years of service, BOB STAFFORD deserves to relax. Having worked with him for 8 years, however, I wouldn't be surprised if he continues his public service in other capacities. But, now he will have more time to enjoy his wife, Helen, his daughters, and grandchildren. BOB, you will have more time to sail and I envy him.

I wish he and his wife Helen and his family good luck and Godspeed.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The majority leader.

THE EXECUTIVE CALENDAR

Mr. BYRD. Mr. President, there are several legislative matters that await disposition. The approval of those matters are conditioned upon the approval of a number of nominations and vice versa.

So I ask unanimous consent with that understanding that the Senate proceed to the consideration of the Executive Calendar and I will ask that certain nominations be considered en bloc, all conditioned on the passage of the legislative package as well. If we have a breakdown there, then the nominations are not confirmed.

I think it will all work out all right, and so if we might have that understanding I will proceed.

Let me ask first of the distinguished acting Republican leader if the nominations on the Executive Calendar under Judiciary beginning with 791 on page 5, all nominations under the Judiciary on page 7, all nominations under the Judiciary on page 8, with the exception of Calendar Order No. 910 at the top of the page, nominations under Department of Justice on page 8, nominations under the Department of Justice on page 9 with the exception of Calendar Order No. 920, and the nomination under State Justice Institute——

Mr. ARMSTRONG. Mr. Leader, could we pause there a moment?

Mr. BYRD. Yes.

Mr. ARMSTRONG. Is the leader saying that 920 has not been cleared?

Mr. BYRD. That is right.

Mr. ARMSTRONG. I thank the leader. It is cleared on our side, but I did not understand the majority leader.

Mr. BYRD. There are one or two that are cleared up above that are not cleared on the Senator's side, but I do not call attention to them.

Calendar Order No. 925, and under State Justice Institute on page 10 all nominations thereon. Have they been cleared on the Senator's side?

Mr. ARMSTRONG. Mr. President, the leader is correct. With the exceptions which he has noted, the nominations he has mentioned are cleared on our side.

Mr. BYRD. I thank the distinguished Senator.

Now, I call attention to the fact that the distinguished Senator from Tennessee, Mr. GORE, is now presiding over the Senate and he will have an interest in making some comments in relation to Calendar Order No. 914, Robert Leon Jordan, of Tennessee, to be U.S. district judge for the Eastern District of Tennessee, and my request will include a provision that he be allowed to make a statement, that it be included in the RECORD at the appropriate place.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Does the distinguished chairman of the Judiciary have any comments before I proceed to these nominations?

Mr. BIDEN. I would like to make a brief comment immediately thereafter if possible after they are all passed.

Mr. ARMSTRONG. Is it the leader's intention to take them all up en bloc and act upon them?

Mr. BYRD. Yes, it is.

Mr. ARMSTRONG. I will also have a statement to make after that has been done.

Mr. BYRD. Very well.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The majority leader has the floor.

Mr. BYRD. Mr. President, I am about to proceed to the Calendar of Nominations.

Does the distinguished Senator from South Carolina wish me to yield to him now?

EXECUTIVE SESSION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the aforementioned nominations en bloc; that they be considered en bloc; that they be agreed to en bloc; that the motions to reconsider en bloc be laid on the table; that the President be notified of the confirmation of the nominees; that Senators who have statements in relation to one or more of the nominations may have those statements appear in the RECORD as though read.

I will not return the Senate to legislative session yet.

The PRESIDING OFFICER. Is there objection?

Hearing none, it is so ordered.

Mr. HELMS. I move to reconsider the vote.

Mr. THURMOND. Mr. President, I would like to ask a question.

Mr. BYRD. It is already done, but it is on the condition, may I say to the distinguished Senator from North Carolina, that the legislative package follows.

Mr. HELMS. Yes.

Mr. THURMOND. Mr. President, I would like to make just an inquiry. I understand that covers the 10 judges to which we have agreed, it covers everything on the calendar from the Judiciary Committee except Liebeler, Judge Liebeler, Mr. Summit, and Mr. McGregor and U.S. Attorney Ashcraft of North Carolina; is that correct?

Mr. BYRD. Mr. President, it includes the four justices, the four nominations on page 7 under the Judiciary, all the nominations on page 8 under the Judiciary with the exception of Calendar Order No. 910, which is being held up by Mr. HUMPHREY, James R. McGregor.

Mr. THURMOND. I understand that clears the calendar except the three judges I mentioned and one district attorney.

Mr. BYRD. One under the Judiciary on page 5, Richard L. Voorhees of North Carolina.

Mr. BIDEN. If the leader will yield.

Mr. THURMOND. As I understand, it includes——

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the following nominations on the Executive Calendar.

Mr. THURMOND. Mr. President, the Senator need not read them again. I just asked, just to confirm the situation, that it covers everybody on the calendar from the Judiciary Committee except the three judges I mentioned and one district attorney. Is that correct?

Mr. BYRD. Just so the clerks will not be confused, let me read the nominations singly.

Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the following nominations on the Executive Calendar: under Judiciary, on page 5, Calendar Order No. 791, Richard L. Voorhees; on page 7, all nominations under the Judiciary, calendar orders numbered 906 through 909; on page 8, beginning with Calendar Order No. 911, all of the remaining nominations shown under the Judiciary, 911 through 916, and then under Department of Justice on page 8, calendar orders numbered 917 and 918; on page 9, Calendar Order No. 919, and calendar orders numbered 921 through 924 under Department of Justice, and then State Justice Institute, Calendar Order No. 925 on page 9, and the three remaining nominations under State Justice Institute appearing on page 10. Those are the nominations.

I ask unanimous consent the Senate proceed to the consideration of those nominations en bloc and that they be agreed to en bloc. I will withhold the motion to reconsider at the moment.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The nomination considered and confirmed en bloc are follows:

THE JUDICIARY

Richard L. Voorhees, of North Carolina, to be U.S. district judge for the western district of North Carolina.

Richard Nygaard, of Pennsylvania, to be U.S. circuit judge for the Third Circuit.

John M. Duhe, Jr., of Louisiana, to be U.S. circuit judge for the Fifth Circuit.

Paul V. Gadola, of Michigan, to be U.S. district judge for the eastern district of Michigan.

Alex R. Munson, of the Northern Mariana Islands, to be judge for the District Court for the Northern Mariana Islands for a term of 10 years.

Norwood Carlton Tilley, Jr., of North Carolina, to be U.S. district judge for the middle district of North Carolina.

Charles R. Butler, Jr., of Alabama, to be U.S. district judge for the southern district of Alabama.

Lewis T. Babcock, of Colorado, to be U.S. district judge for the district of Colorado.

Robert Leon Jordan, of Tennessee, to be U.S. district judge for eastern district of Tennessee.

D. Brooks Smith, of Pennsylvania, to be U.S. district judge for the western district of Pennsylvania.

Jay C. Waldman of Pennsylvania, to be U.S. district judge for the eastern district of Pennsylvania.

DEPARTMENT OF JUSTICE

Thomas M. Boyd, of Virginia, to be an Assistant Attorney General.

Douglas W. Kmiec, of Indiana, to be an Assistant Attorney General.

Stuart E. Earnest of Oklahoma, to be U.S. marshal for the western district of Oklahoma for the term of 4 years.

Jay B. Stephens, of Virginia, to be U.S. attorney for the District of Columbia for the term of 4 year.

Richard W. Cameron, of California, to be U.S. marshal for the southern district of California for the term of 4 years.

Dennis C. Vacco, of New York, to be U.S. attorney for the western district of New York for the term of 4 years.

Noreen T. Skagen, of Washington, to be U.S. marshal for the western district of Washington for the term of 4 years.

STATE JUSTICE INSTITUTE

Joseph Wentling Brown, of Nevada, to be a member of the board of directors of the State Justice Institute for a term expiring September 17, 1989.

The following-named person to be a mamber of the board of directors of the State Justice Institute for a term expiring September 17, 1991: Daniel John Meador, of Virginia.

The following-named person to be a member of the board of directors of the State Justice Institute for a term expiring September 17, 1991: Daniel John Meador, of Virginia.

The following-named person to be a member of the board of directors of the State Justice Institute for a term expiring September 17, 1991: Clement Clay Torbert, Jr., of Alabama.

John F. Daffron, Jr., of Virginia, to be a member of the board of directors of the State Justice Institute for a term expiring September 17, 1991.

Mr. BIDEN addessed the Chair.

Mr. BYRD. So the nominees that I have enumerated have been confirmed subject to reconsideration?

The PRESIDING OFFICER. The majority leader is correct.

Mr. BYRD. I ask that Senators may include statements appropriately placed in the RECORD as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF CHANCELLOR LEON JORDAN

Mr. GORE. Mr. President, I am glad to see that the nomination of Chancellor Leon Jordan is confirmed. I have supported his nomination and am heartened that the Senate has agreed with my judgment and that of my colleague, Senator SASSER.

Chancellor Jordan has a long history of service to his country. He was a PFC in the U.S. Army and has practices law, as well as serving as chancellor for the First Judicial District of Tennessee since 1980. He is a man of integrity and I believe his well-qualified to serve as a Federal judge.

A newspaper in east Tennessee, the Elizabethton Star, in an editorial strongly supporting this nomination, quoted Chancellor Jordan as follows:

> I try, with every case, to remember that even though this case may not have a great amount of money involved or be of great magnitude either in fact or in law, it still is the most important case in the world for that person because it's the only one he's got. Most people only have 1 day in court and I think they ought to feel like they've been treated fairly and justly.

This statement reflects Leon Jordan's philosophy of public service, a philosophy that is to be encouraged and admired. Moreover, it is a judicial philosophy that should be a model for our Nation's jurists. Even when working to overcome the backlog that he inherited when he became chancellor, Leon Jordan took the time to show those in his courtroom this kind of personal attention and consideration.

While Chancellor Jordan and I are of different political persuasions, I have supported his nomination because Leon Jordan is a man with an open mind, a fair mind, and a compassionate nature. In court, decisions are not made on the basis of ideology, but on the basis of law; not on the basis of party affiliation, but on the basis of justice and fairness.

The vacancy in the Eastern District of Tennessee is one of the oldest in the Nation. I would like to express the gratitude of the people of east Tennessee for the support of my colleagues in the Senate for this nomination.

NOMINATION OF JUDITH RICHARDS HOPE

Mr. SIMPSON. Mr. President, I rise today to make a few remarks regarding a remarkable woman who has witnessed injustice at the hands of the U.S. Senate. I am speaking of Judith Richards Hope. Judy, as she is known to everyone, was nominated by President Reagan on April 14, 1988 to fill a vacancy on the U.S. Court of Appeals for the District of Columbia. She went through the standard FBI and ABA inquiries. Of course, the FBI found no evidence from her outstanding background of any reason why she should not proceed swiftly to assume the position for which she was nominated. The American Bar Association rated her qualified.

Mr. President, let me give you a brief summary of Judy Hope's background so that you may have a better measure of this remarkable woman. She graduated from high school in Defiance, OH, at the age of 16 and ranked first in her class. From there she attended Wellesley College, once again achieving high academic distinction by graduating magna cum laude and with special honors in political science. Three years later she graduated from Harvard Law School. Judy then entered the "nuts and bolts" real world of legal practice and pursued an illustrious career in trial practice here in Washington, DC, and California—a career that has now covered 24 years. She has specialized in complex litigation in Federal courts. In addition to her litigation experience, she has taught at Pepperdine University and Georgetown University Law Center and lectured at her alma mater—Harvard.

This would be enough for a full career for most people, but Judy did not stop there. She engaged in public and community service throughout this time as the director of community and government service organizations including the Domestic Council of the White House, the President's Commission on Organized Crime and a variety of community service organizations. She was the first woman director for the BUDD Co. the Union Pacific Corp., and Woodward & Lothrop Co. Currently she is a senior partner in the prestigious firm of Paul, Hastings, Janofsky & Walker.

Mr. President, the Judiciary Committee has seen a running debate on the issue of the speed, or lack thereof, by which the committee has moved to vote on judicial nominees. The purpose here is not to recite the poor record which the committee has achieved this year—and this Senator does believe that it has been regrettably slow. Rather, I do think it is important to note this one nomination which was so cruelly mishandled by the committee. Earlier this year, the majority members of the Judiciary Committee held a hearing which was used as a forum to blast the administration for its failure to nominate women and minorities to fill judicial vacancies. Additionally, the administration was attacked for its supposed failure to nominate residents of the District of Columbia to fill vacancies on the very important U.S. Court of Appeals for the District of Columbia—considered by many people to be the "second most" important court in the country. And yet, when the President took the very action which was requested by the "complaintants," if you will, those same members of the committee refused to fulfill their duty and act on Judy Hope's nomination. The President nominated a resident of the District of Columbia, a woman—Judy Hope—to fill the vacancy on the U.S. Court of Appeals for the District of Columbia. Now, over 5 months having lapsed since the time of the nomination. The nominee has failed to receive even one hearing by the Judiciary Committee on her nomination.

Back in May we were told that there were delays because the nominee had not provided all the financial information to the committee which it had requested. This was accomplished in a timely fashion and yet still no hearings occurred. Time marched on without the glimmer of a hearing. Finally, on August 3, I put the question to my fellow Senators in the majority during a committee hearing as to when we could expect a hearing on the nomination of Judy Hope. It was my desire to have a hearing that month, prior to the August recess so that there would be time following the recess to consider the nomination on the floor. This, I was told, was not possible but that "she is scheduled for a hearing." This was a statement made by the junior Senator from Vermont. And yet, her name never appeared on any hearings scheduled thereafter. It simply turned out not to be the case.

Mr. President, the obvious question is: How do we explain this odd collection of facts? We had before the committee a woman, a member of the D.C. bar, supported by the D.C. Bar Association, a resident of the District of Columbia, a Harvard Law School graduate, a law professor, an experienced and respected litigator, a public servant, a community servant and—perhaps most important—a very decent and fine human being. And yet at the same time in the course of 5 months there apparently was no time on the Democratic agenda in the committee for a hearing. From every indication this lady was totally qualified and would have been one of the most remarkable judges on the U.S. Court of Appeals. Her qualifications were unquestioned and her credentials were never challenged. What happened? Unfortunately, Mr. President, she became the victim of old-fashioned, raw, hard-ball politics—swept up in the treacherous currents of a Presidential election year. In fact, we even have information that the Duke himself said, "Don't fill that slot. If I get to be President, I want to do it." In fact, I have even been informed that a member of his staff would fill that slot if he were to be elected President. That is another reason why we should send the Duke back to Massachusetts in order to make any of his judicial appointments in the future. It seems that Judy Hope was caught in the same illusive trap that snared Judge Bork. She was seen as that magical, omnipotent, awe-inspiring "swing vote" on the court for which she was nominated. All of the "swing vote" seats have been reserved by the majority party for their next President should they be successful in November. In the meantime, the country has lost a most outstanding judicial nominee. A nominee who would have served with great distinction, who would have brought to the bench high personal professional ethics and qualifications required of someone entrusted with such an important position in our society.

Mr. President, the chairman of the Senate Judiciary Committee has made some statements to the press recently which I must challenge. Specifically, the junior Senator from Delaware was quoted in the Congressional Monitor's Congressional Daily publication of October 5, 1988 as follows, and I quote: "It would have been easy for me to see that not one more judge was approved the rest of the session, but I made a commitment early on to move qualified nominees from this committee." Additionally, the October 5 edition of the Washington Post, on the Federal Page, quoted Mr. Biden as saying that he "made a commitment that good judges get a shot." Unfortunately, that just was not to be the case. Not all qualified nominees were moved. Not all good nominees got a shot. To say that only they did thus impugns the very fine reputation enjoyed by nominees who did not even get a hearing before the committee. These are disturbing comments from our chairman—not like him at all. I believe he may have been misquoted, because I know that Chairman JOE BIDEN thinks that Judy Hope is a splendid lawyer and would have made a splendid addition to the bench but I also know that in this situation that I think the word came down from on high. Judy Hope didn't make it for one reason—raw, pure, partisan, crystal clear politics. Nothing more. Nothing. Hopefully we can avoid any dancing or leaping or posturing or talking about qualified nominees and capable people and those less capable and just know that she would have made the grade if she hadn't been an extremely capable, bright, Republican woman. Sad, isn't it? Indeed it is.

Mr. President, I wanted to make these remarks because we here in the Senate need to remember that nothing occurred in the course of the months between the nomination and the end of this session that dimmed Judy Hope's remarkable qualifications or capabilities or extraordinary attributes. This Senator has made these comments so in the future some one will not look back and say, "I wonder why they had Judy Hope up before them there and she never made it." We all know why—it is the most unseemly side of our attempt to fulfill the constitutional duty to provide the President with the "advice and consent" on his nominations. I have every expectation that in November Vice President BUSH will win this election—and I trust that he will give the most careful consideration of the renomination of Judy Hope for the vacancy for which she is currently nominated. I can think of no better candidate for the job. Thank you, Mr. President.

NOMINATIONS TO THE STATE JUSTICE INSTITUTE

Mr. HEFLIN. Mr. President, today, with deep pleasure, I have the opportunity to comment on the pending nominations to the State Justice Institute.

These nominees have distinguished themselves as both legal scholars and as persons dedicated to the improvement of this Nation's legal system.

Three of the nominees are being reappointed to the Institute Board of Directors.

I am particularly pleased to endorse the renomination of C.C. Torbet, Jr., the chief justice of the Supreme Court of Alabama, to the SJI Board of Directors. Under his chairmanship, the Board of Directors has very successfully carried out the mission established for the Institute by Congress. Chief Justice Torbert has decided not to seek reelection to the court and will step down from the bench next January. After he advised the White House of that decision several months ago, the President nevertheless wisely recognized the value of renominating him to a judicial slot on the Board. Chief Justice Torbort has served 12 years on the highest bench in Alabama and his experience in that position will continue to serve the State Justice Institute well. I am, accordingly, delighted to support his renomination to the Board.

Also renominated is Judge John F. Daffron, Jr. Judge Daffron is currently chief judge for the 12th Judicial Circuit of Virginia. He was a general district court judge in Virginia from 1973-81, and a U.S. magistrate from 1970-73. He is presently secretary of the Institute's Board of Directors.

The third individual to be renominated is Prof. Daniel Meador. Professor Meador is the James Monroe professor of law at the University of Virginia Law School, and the director of the university's highly regarded "Graduate Program for Judges." He served as the Assistant Attorney General, Office for Improvements in the Administration of Justice, in the U.S. Department of Justice from 1977-79. He is one of the public members of the SJI Board.

Last, Joseph W. Brown, Esq., is the new nominee to the Board, and has been nominated to be a public member of the SJI Board. Mr. Brown is a partner with Jones, Jones, Bell, Close & Brown in Las Vegas, NV. He was a member of the U.S. Foreign Settlement Commission from 1981-87, and served as a commissioner of the Nevada Board of Wildlife Commissioners from 1979-85.

Each of these nominees has the experience and insight needed to make valuable contributions to the administration of justice in the State courts, and I am pleased to endorse their nominations to the Board of Directors of the Institute.

NOMINATING LEWIS T. BABCOK

Mr. WIRTH. Mr. President, I am pleased to rise in support of Judge Lewis Babcok, from my own home town of Boulder, who has been nominated to the U.S. District Court in Colorado.

Judge Babcok, who has presided on the Colorado Court of Appeals since 1983, will bring more then 20 years of experience in the profession of law to the Federal bench. His breadth of service in the justice system extends from city attorney to assistant district attorney and includes 7 years as a district judge, 5 years as the chief district judge, and 5 years as a State appellate judge.

The American Bar Association has found Judge Babcok to be well qualified for the position of Federal judge. My own bipartisan, judicial review committee, comprised of Colorado lawyers and judges, was unanimous in its conclusion that Judge Babcok is fully qualified to become a Federal judge.

Judge Babcok has been nominated to fill one of three vacancies on the Federal bench in Colorado; one has existed since July 1984, another since May 1985, and the last since just March of this year. The citizens of Colorado join me in urging that this nomination be confirmed. Mr. President, in view of this nominee's outstanding credentials, I am very hopeful that we will be able to install Judge Babcok on the Federal bench in Colorado without delay.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I thank the leader for the dispatch with which he handled these nominations. I would like to make two very brief comments. I know the hour is late. I know it is Friday. I want to begin by suggesting that I am delighted we have been able to finally move this many judges. I made a commitment to the ranking member early on we would attempt to move as many judges as possible and that has been possible. There is one judge who is on the calendar who I support and I hope will be able to be confirmed before we adjourn, and that is Judge McGregor.

The reason I stand to mention Judge McGregor is Judge McGregor—and he is presently a judge. That is why I refer to him as Judge McGregor—is a man whose record I have gone deeply into. There were a number of questions raised about Judge McGregor. I have looked at the file in depth. I have met with Judge McGregor along with Senator HEINZ and Senator SPECTER and others, including the investigatory staff on both sides.

Speaking only for myself, I am completely satisfied that the concerns raised about Judge McGregor are not with foundation. I believe that he in fact is someone who should be confirmed.

I will not take any more time of the Senate at this moment. It is my hope, though, between now and the time we adjourn sine die we may be able to get to this and possibly another, maybe two other judges with the Lord willing and the creek not rising.

Without losing my right to the floor I yield to my colleague from Pennsylvania, Mr. SPECTER, for a comment in Judge McGregor.

Mr. SPECTER. I thank the distinguished Senator from Delaware, the chairman of the committee.

I think it important to make a brief statement as to Judge McGregor because his absence in terms of confirmation is a matter which will be noted. There has been publicity in the Pittsburgh newspapers. I wish to make a very brief statement.

An extended investigation has resulted from the fact that Judge McGregor had handled so many cases over a protracted period of time on the criminal docket of the Allegheny County Court of Common Pleas, in addition to a variety of other questions which are frequently raised during the background investigation of a nominee, and Judge McGregor's handling of so many motions on suppression of evidence required lengthy inquiry and analysis.

I noted at the Judiciary Committee public executive session on October 5 of this year the significant issue raised as to Judge McGregor's reputation if he were not to be confirmed after this lengthy process. When I made the motion to add his name to the list of agreed-upon nominees, Senator BIDEN stated that it was agreeable to him as chairman to report Judge McGregor out of the committee since that was the last executive session, and Senator BIDEN reserved the right to consider the matter further. I thank Senator BIDEN for his laborious efforts on reviewing this file and for the extended meeting which he held with Judge McGregor, attended by Senator HEINZ and myself.

Mr President, a colloquy was prepared and authorized by Senator HEINZ to make this brief comment. This is Senator HEINZ' comment from the approved colloquy. "I have personally reviewed the FBI investigative file and find that there has been no impropriety by Judge McGregor. In addition, I have known Judge McGregor for more than 20 years, and I believe him to be a man of integrity and worthy of confirmation to the Federal bench."

Senator HATCH was also a party to the colloquy, and his very brief statement follows. This is Senator HATCH: "I want to thank all of my colleagues for their work on the judges being confirmed today, but especially"—this is his comment as to Judge McGregor—"I have known Judge McGregor for 25 years since I practiced law in Pittsburgh, and I can personally attest to his honesty and integrity. I am very pleased to see this well-qualified man confirmed to the bench for the Western District of Pennsylvania." That, of course, was on the understanding of confirmation.

But it is my hope, as it is the hope of Mr. BIDEN, that there will be yet an opportunity to clear up the outstanding questions in the mind of one Senator so that Judge McGregor may be confirmed.

I thank the distinguished chairman. I thank the ranking member. I thank the leader for yielding the floor.

I yield the floor.

Mr. BIDEN. I yield the floor.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. Mr. President, I would like to speak briefly about the nomination of Charles R. Butler, Jr., generally known as Randy Butler, of Mobile, AL, to be U.S. district judge for the Southern District of Alabama.

I spent considerable time before and after his hearing before the Judiciary Committee which was held on June 29 of this year investigating his background and charges that were brought against him. I did not make up my mind that I would support Mr. Butler until about the first of October. I publicly announced my support of October 3 of this year.

When the decision was made by the Democrats on the Senate Judiciary Committee that they would carefully examine each judicial nomination, and not attempt to kill nominations just because they were Republicans during the closing weeks of the 100th Congress, I renewed my effort to thoroughly investigate Mr. Butler.

I decided that I would support him if he was qualified and if I was convinced that he would be a fair and impartial judge. If Mr. Butler was not confirmed, one of the three Federal judgeships in his district, the southern district of Alabama, would be vacant for more than a year. Such a vacancy can materially harm the administration of justice in the district.

I feel that Randy Butler is well qualified. The American Bar Association by a majority rated him well qualified, and the minority of the committee found him qualified. No real doubt has been raised in my mind about his ability to be a fair and impartial judge.

There has been at the hearing, brought up by an individual, a remark that he said he heard Randy Butler make which would raise the issue of prejudice. Mr. Butler on the other hand categorically denied such statement.

I have heard from a number of black lawyers in and around Mobile and south Alabama, and none have raised any issue of racial prejudice against Mr. Butler. Many of the lawyers would like to gamble on the outcome of the Presidential election, and hope that a Democrat President would fill this vacancy, but not one of these black lawyers has made an unfavorable statement about the impartiality of Mr. Butler or accused him of any racial prejudice.

On the other hand, Mr. Butler was supported by a large group of blacks, one including Mr. Wesley James who was past president of the Southern Christian Leadership Conference, and who Mr. Butler represented in an election contest until a settlement was worked out in that contest.

He was also supported by Judge Cain, Kennedy, who is a black circuit judge in Mobile, by Mayor John Smith, who is a black mayor of Prichard, AL, which is a good-sized city which adjoins Mobile, and is a predominantly black city. As well, other black leaders and citizens around Mobile, and the entire southern section of our State support Mr. Butler.

In regard to Mr. Butler, I only received three letters against him of the mail that I received concerning this confirmation. Many, many letters were written—hundreds of letters were written in his favor saying how competent he was, and how fair he would be as well as giving him other compliments.

As we reached a point where we considered the evidence, we found the charges were made largely by one person. The credibility and the memory of that person was subject to question. He raised instances that occurred from 14 to 17 years ago. A very thorough investigation was made of all of the charges.

And I would like to submit as part of my remarks a "Dear Colleague" letter that I drafted and circulated yesterday to the members of the Judiciary Committee.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE, COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Washington, DC, October 12, 1988.

DEAR COLLEAGUE: Before and after the hearing in the Judiciary Committee, held on June 29, 1988, on Charles R. Butler, Jr. (generally known as Randy Butler) of Mobile, Alabama to be U.S. District Judge for the Southern District of Alabama, I spent considerable time investigating his background and the charges brought against him. I did not make up my mind that I would support him until about the first of October, 1988.

When the decision was made by the Democrats on the Senate Judiciary Committee that they would carefully examine each judicial nomination and not attempt to kill nominations just because they were Republicans during the closing weeks of the 100th Congress, I renewed my efforts to thoroughly investigate Mr. Butler. I decided that I would support him if he was qualified and if I was convinced he would make a fair and impartial judge. If Mr. Butler is not confirmed, one of the three federal judgeships in his district will be vacant for more than one year. Such a vacancy can materially harm the administration of justice in that district.

I, like a majority of the American Bar Association Committee, feel that Randy Butler is "well qualified." A majority of that Committee found him "qualified." No real doubt has been raised in my mind about his ability to be a fair and impartial judge.

I would like to recite some facts and evidence that I believe will clear up the charges against Mr. Butler.

The only witness who testified against Mr. Butler at the hearing was a former Deputy Sheriff of Mobile County by the name of Bill Travis. There is no question that Mr. Travis has a vendetta against former District Attorney Randy Butler. This was evidenced by his demeanor and appearance at the hearing. The memory of Mr. Travis, as well as his credibility, is subject to question. The charges recited by Mr. Travis center around incidents that occurred from 14 to 17 years ago when Randy Butler was the District Attorney for Mobile County, Alabama. The passage of time, of course, have dimmed the memory of Mr. Travis, as well as Randy Butler.

It is my understanding that Mr. Travis was fired by the Sheriff of Mobile County during the pertinent period of time for violating the civil rights of an accused. This then Sheriff, Roy Bridges, has filed with the Committee an affidavit in which he states that he would not believe Bill Travis under oath. Statements from reliable and reputable individuals in Mobile raise questions concerning Mr. Travis' memory and credibility.

First, let me clear up the matter of racial prejudice. Mr. Travis testified as to only one statement that would imply racial prejudice on the part of Mr. Butler. Randy Butler categorically denied such statement. I have heard from a number of black lawyers in and around the Mobile area, and none have raised any issue of racial prejudice. Many of the black lawyers would like to gamble on the outcome of the Presidential Election and hope that a Democrat President would fill this judicial vacancy. But not one of these black lawyers has made an unfavorable statement about the impartiality of Mr. Butler. Mr. Butler is supported by Judge Cain Kennedy, a black Circuit Judge in Mobile, and Mayor John Smith, the black mayor of Prichard, Alabama, which is a good-size city that adjoins Mobile, as well as other black leaders in and around Mobile.

Each Senator has received from the NAACP Legal Defense and Educational Fund a packet of materials on this nomination. In this "Dear Colleague" letter I will not attempt to refute each and every item of conjecture and speculation that is raised in the 47-page memorandum and other memorandums that are contained in the packet. I will attempt to get to the heart of each matter and show how all of the speculation and conjecture, as well as the charges, is unfounded or irrelevant.

The Barbara Wright Case: Bill Travis charged that Randy Butler declined to let Barbara "Big Barbara" Wright "wear a wire" in regard to an investigation against Noble Beasley (who was later convicted) and others because Butler was trying to protect law suspect enforcement officers and a public official. Butler's reply to this charge was that there was an ongoing investigation by federal authorities and that such activity by "Big Barbara" would interfere with their investigations.

A. Mr. Butler's testimony is not contradicted by anyone.

B. Mr. Butler's testimony is corroborated by the following:

1. Doyle L. Coats, an attorney in Gulfport, Mississippi, who during the period 1971 through 1974, when this "Big Barbara" matter occurred, was a special agent of the Intelligence Divisions of the Internal Revenue Service. He supports Mr. Butler in his explanation.

2. Kater Williams, who is now a highly respected Police Chief of the City of Dothan, Alabama, was the head of the Drug Division for the Police Department of the City of Mobile at the time. He says that the ongoing federal investigation would or could have been jeopardized by such use of "Big Barbara."

3. Bill Travis' own testimony (pages 74, 75, and 76 of the transcript of the hearing) supports that there was a task force in which an Internal Revenue Department agent was involved. His testimony also included the following: "We did not tell everybody everything, but we basically knew what each other were doing."

4. Reports show that DEA and the IRS were involved in this investigation rather than the FBI.

5. Robert C. Campbell, III, who was a Chief Assistant District Attorney, supports Butler's position. He also says that Butler tried to try "clean cases," and he is of the opinion in the early 1970's that criminal law was rapidly changing in the area of search warrants, confessions and wiretapping requirements and there was some uncertainty of the law in this area.

Attorney John Coleman, who represented "Big Barbara" Wright, wrote a letter in opposition to the appointment of Randy Butler, but his letter substantiates and corroborates Mr. Butler's explanation. I quote the following from his letter:

"My impression was, and still remains, that she was offering to implicate someone in the City Government or a high ranking member of the Police Department. I instructed Ms. Wright in the presence of Mr. Butler to never tell me the name of the person involved. I did this in order that I would not be implicated if the person being investigated was some how tipped off. Mr. Butler's reaction to this offer was to decline to accept her assistance because it might have interfered with an ongoing federal investigation. This reason was given at a later date and was not mentioned at the time of the initial meeting."

There has been some indication in NAACP Legal Defense Fund's materials that the Noble Beasley case was separate and apart from the investigation of the two police officers of the City of Mobile and a city official. This is incorrect. They were all related and the above quote from John Coleman substantiates the relationship.

The Mod Squad: Travis alleges that Butler did not thoroughly investigate the "Mod Squad," which was a group of Deputy Sheriffs involved in investigating narcotics crimes after Travis told Butler that he thought the "Mod Squad" was stealing captured narcotics for their personal use and using such narcotics as "plants" on suspects.

Butler, in effect, said he didn't remember all the details but that he turned the matter over to Charles Graddick, who was an Assistant DA, for an investigation. Mr. Graddick later became the District Attorney of Mobile and then the Attorney General of Alabama. Graddick stated, "After a full analysis and investigation, I determined there was no evidence to warrant any further actions and recommended the same to Mr. Butler." He also said, "At no time during my term of office as District Attorney for Mobile County or Attorney General for the State of Alabama was this matter brought back for further examination." The FBI records reveal that it had found a memorandum dated November 7, 1973, in the Mobile County Sheriff's office, where Butler asked the FBI to investigate the Mod Squad. The report shows that U.S. Attorney White-Spunner had referred the matter to the DEA and the IRS.

I have seen a statement signed by a TV reporter named Jim Hughes in which he alleges that a deputy sheriff Larry Tillman, who was a member of the Mod Squad, made a confession before him and on film to the effect that the Mod Squad was doing all of the things that had been charged. On the nights of January 15, 16, and 17, 1974, a television station in Mobile broadcasted a script that had been written and prepared by this Jim Hughes in which it recited all of the various things that are contained in Hughes' statement.

A short time thereafter on the 28th of January 1974 the Mod Squad, including Larry Tillman, sued the television station for libel. The film was never produced and the television station paid to the four members of the Mod Squad, including Larry Tillman, an undisclosed sum of money as a settlement of the law suit. The case was dismissed with the defendants paying the cost of November 13, 1974. Also it is interesting that in this well-publicized law suit that Bill Travis never volunteered to participate as a witness.

The primary focus of the telecasts, libel complaint, and law suit was about the alleged illegal activity of the Mod Squad in relationship to drugs and narcotics.

As you can well imagine there was a lot of publicity about the Mod Squad. A sheriff's race occurred during the time that publicity about the Mod Squad was at its height. A new sheriff was elected. It is most interesting that none of the members of the Mod Squad was fired by the new sheriff. There is no question that thorough investigations were conducted about the Mod Squad and that after the law suit against the television station was terminated, there has been no more mention of the Mod Squad by the media.

The Evelyn Jordan Case: Mr. Travis charged that Randy Butler refused to dismiss the case against Evelyn Jordan after he told Butler that two other women had confessed to the murder for which Evelyn Jordan had been indicted. It is true that Randy Butler did not dismiss the indictment against Evelyn Jordan for six months, but Butler has a good explanation.

A habeas corpus proceeding was brought by Evelyn Jordan and a judge heard all the testimony and then refused to dismiss the indictment. Mr. Travis wants the United States Senate "to second guess" a judge who observed all of the witnesses in a habeas corpus proceeding some 17 years ago. A habeas corpus proceeding in Alabama does not determine the guilt or innocence of an accused but determines whether or not there is sufficient evidence to hold the accused under the indictment.

A witness, Virgil Broadway, testified at a preliminary hearing before the grand jury and in the habeas corpus proceedings and identified the defendant Evelyn Jordan as being at the scene of the homicide, and other evidence supported her involvement regardless of the confessions of the two women.

During this period the attorney for one of the women who confessed to the crime had informed the DA (Butler) that his client was threatening to retract her confession.

Back Taxes (Altmayer v. Langan Matter): Professor Harry Cohen of the Law School at the University of Alabama who teaches legal ethics reviewed this case and concluded that there was no violation of ethical conduct. Mr. Marvin E. Frankel, an attorney of New York, made a subjective evaluation that raised questions about Mr. Butler's ethical conduct in this matter, but failed to point out any violation of the Code of Professional Responsibility. As you may know, the Code of Professional Responsibility is divided into two groups, Disciplinary Rules, and Ethical Considerations. Ethical Considerations (EC) are aspirational guidelines, but one can't be disciplined for the violation of an EC. Mr. Frankel doesn't bottom his thoughts on any specific EC other than generalized ones about a fair adversary system of justice.

There is no question that there are organizations, groups, and individual lawyers that would like to gamble on the outcome of the Presidential Election and hope that Democrats would be appointed to the Judiciary after a Democrat President might be inaugurated. I do not believe that we ought to play politics with the Judiciary and, therefore, I feel that Mr. Butler ought to be confirmed.

With kindest regards, I am

Sincerely yours,

HOWELL HEFLIN.

Mr. HEFLIN. Mr. President, I would like to point out that in regard to Mr. Butler's case, there is no question that there are some organizations, groups, and individual lawyers that would like to gamble on the outcome of the Presidential election and hope that Democrats would be appointed to the judiciary after a Democratic President might be inaugurated.

I do not believe we ought to play politics with the judiciary. And in this case, it is filling a vacancy that has already been vacant for a long period of time. If we waited until the next administration, it could be 6 or 7 months into the new President's term before we might have a judge on the bench and serving. There are only three judgeships in that district, and that means one-third of the judge power would not be able to operate during that period of time. In my judgment that would exceed over a year.

Thank you, Mr. President.

IN SUPPORT OF NOMINATION OF CHARLES R. BUTLER TO THE FEDERAL COURT FOR THE SOUTHERN DISTRICT OF ALABAMA

Mr. SHELBY. Mr. President, I appreciate the opportunity to submit a statement in support of the nomination of Mr. Charles R. Butler, Jr. The Judiciary Committee has approved the nomination of Mr. Butler. I feel that Mr. Butler would serve as a strong addition to the U.S. District Court for the Southern District of Alabama.

Mr. Butler has been associated with the legal profession for over 20 years. During this period Mr. Butler has been exposed to many facets of the legal profession. As a private practitioner, he has concentrated in the areas of admiralty, real estate, oil and gas, and financial institutions law. As a public defender and later, a district attorney, he worked as a chief litigator. I am sure that almost daily courtroom appearances provided him with a strong working knowledge of the criminal justice system.

He had a distinguished academic career at the University of Alabama School of Law. He appears to possess the intellect, temperament, maturity, and experience to become a fine judge.

At one time or another, Mr. Butler has been active in a number of professional and civic organizations including the Mobile Bar Association and the Mobile County Wildlife and Conservation Association. He has been praised for his diligence and honesty by lawyers who have practiced with him. A review of his record demonstrates that he possesses the credentials to serve as a Federal judge.

In closing, I again want to express my support for Mr. Butler's nomination.

Mr. THURMOND. Mr. President, I rise today to voice my support for Mr. Charles R. Butler, of Alabama, to be a U.S. district judge for the southern district of Alabama.

Mr. Butler was born in New York in 1940 and has been a resident of Mobile, AL, since 1950. He received his bachelor of arts degree from Washington and Lee University in 1962. From 1961 to 1962 he was enrolled in law school at Washington and Lee University. Mr. Butler then served as an artillery officer in the U.S. Army from 1962 to 1964. In 1964 he entered the University of Alabama School of Law where he received his law degree in 1966.

During his 22 years as an attorney Mr. Butler served as an Assistant Public Defender from 1969 to 1970, and as the District Attorney for Mobile County from 1971 to 1975; he has been an adjunct professor at the University of South Alabama and has spent over 15 years in the private practice of law.

Mr. Butler was nominated by President Reagan on April 28, 1988. On June 29, 1988, he testified before the Judiciary Committee regarding his nomination. During his hearing Mr. Butler responded to a series of questions concerning matters which occurred during his service as district attorney in Mobile, as well as during his private practice of law.

Only one witness appeared and testified regarding the nomination of Mr. Butler. This individual, Mr. Bill Travis, a former deputy sheriff of Mobile County, AL, discussed incidents which occurred over 15 years ago in Mobil, AL, while Mr. Butler was the District Attorney.

I would like to comment, briefly, on the allegations this individual made against Mr. Butler.

THE EVELYN JORDAN CASE

During his testimony Mr. Travis alleged that Mr. Butler refused to promptly dismiss a case against a woman, who had been indicted for murder, after two other woman had confessed to the murder. This matter was the subject of a habeaus corpus proceeding and at the end of the testimony the judge was of the opinion that the allegations of the petition has not been sufficiently proven and the writ was denied.

A witness who testified at the preliminary hearing before the grand jury and at the habeaus corpus proceeding identified the defendant, Evelyn Jordan, as being at the scene of the homicide. Other evidence also supported her involvement in the crime. Additionally, the attorney for one of the women who confessed to the crime stated that his client would retract her admission of guilt.

During his testimony before the Judiciary Committee on this matter Ms. Travis also alleged that Mr. Butler made a racially insensitive remark regarding Evelyn Jordan. Mr. Butler has categorically denied having made such a remark about Ms. Jordan or any other individual.

Mr. President, during Mr. Butler's nearly 2 years as an assistant public defender in Mobile, he defended many indigent clients incarcerated in the Mobile County jail because of their financial inability to make bond. One of his efforts as district attorney was to streamline the grand jury process so that indigent people who could not afford bail were not held for extreme lengths of time prior to the disposition of their cases.

Mr. President, it should be noted that Mr. Butler has received the endorsement of the only black State circuit court judge in Mobile County, Judge Cain Kennedy. He also received the endorsement of the black mayor of the second largest municipality in the Southern District of Alabama, Mayor John Smith of Prichard, AL.

Mr. President, the Judiciary Committee has also received a letter from

Mr. Peter Palughi, the attorney for Evelyn Jordan, who stated:

> It was my opinion as Evelyn Jordan's attorney that she should have been released at an earlier date, but I have no knowledge of the contents of the State's files. For this reason I cannot pass judgment to say she was held longer than necessary. I practice a good deal of criminal law, and it is not unusual to have the defense attorney and the prosecution to strongly disagree at all stages of the case.
>
> I would recommend Randy Butler to be appointed a U.S. district judge for the Southern District of Alabama. I have known Randy Butler as a fellow practicing lawyer here in Mobile, AL. for about 20 years. During this time he has conducted himself admirably as a competent lawyer in every way. He has an excellent reputation in the community.

Mr. President, I believe that Mr. Butler is sensitive to all minority groups, and a fair and impartial review of the record will bear me out on this point.

THE MOD SQUAD

At the committee hearing Mr. Travis also alleged that Mr. Butler did not thoroughly investigate the mod squad, which was a group of deputy sheriff's involved in investigating drug matters. Travis told Butler that he thought the mod squad was skimming, some of the illegal drugs which they had seized, for their personal use as well as using drugs to plant on subjects of their investigations.

Mr. Butler testified at his hearing that when apprised of the allegations he turned the matter over to Assistant District Attorney Charles Graddick, In a letter to the committee concerning this matter Mr. Graddick stated:

> Mr. Butler requested that I assist in looking into the allegation. After a full analysis and investigation, I determined that there was no evidence to warrant any further action and recommended same to Mr. Butler.

Mr. Graddick also stated in his letter that:

> At no time during my term of office as district attorney for Mobile County or attorney general for the State of Alabama was this matter brought back for further examination.

Mr. President, the committee has received information from the Department of Justice that the FBI files contained a letterhead memorandum from the Mobile division of the FBI to the Director of the FBI. The memorandum detailed conversations that Mr. Butler had with the Mobile division of the FBI between November 7, 1973, and November 12, 1973. These communications between Mr. Butler and the FBI concerned a request by Butler for the FBI to conduct an investigation regarding allegations received by Butler about the mod squad. There was also information in the memorandum that Mr. Butler indicated that:

> The only information he does have are rumors and innuendos that may be true or without foundation, *in view of the coming election*, but they were sufficient enough for him to believe the matter should be looked into by professional investigators.

The memorandum also indicated that Mr. Butler had discussed the allegations regarding the mod squad with the U.S. attorney, Charles White-Spunner.

The committee has also received a copy of a 1974 statement signed by a television reporter which made similar allegations against the mod squad. As a result of a television broadcast regarding this information, members of the mod squad filed suit against the television station. The case was settled and dismissed prior to trial and as a result of this suit the television station paid the members of the mod squad an undisclosed amount of money as well as made a public retraction regarding the allegations and fired the reporter who made them.

The committee also received information that on January 31, 1974, Mr. Butler had notified the Mobile division of the FBI that he would be conducting an investigation regarding misconduct on the part of the members of the mod squad. When questioned by committee staff on October 12, 1988, about this Mr. Butler responded:

> Well, that's consistent * * * with my recollection that when the civil suit was filed in January of 1974, that I monitored the civil suit. I was aware that here was an opportunity for the civil discovery process to ferret out any evidence that we might not have been able to discover.
>
> So now, there was a third, if you will, investigation, although not a law enforcement investigation, by the civil process of taking a number of depositions, interviewing witnesses, which led, basically, to the settlement of that lawsuit.
>
> So, that is consistent with my testimony that I monitored that civil suit with the idea that if it developed any evidence of criminality, I would certainly have been made aware of it.

Mr. President, the allegation made by Mr. Travis that Butler did not throughly investigate the complaint is totally incorrect and is certainly not supported by the record. The mod squad was thoroughly investigated regarding these allegations and no information arose which implicated them in any illegal scheme. In fact, after the law suit against the television station was terminated, the matter was dropped until now, 15 years later. Mr. Travis, for some unknown reason, felt compelled to raise the matter again.

THE BARBARA WRIGHT CASE

Mr. Travis also alleged that Mr. Butler declined to let Ms. Barbara Wright, who had been arrested and charged with robbery, wear a concealed microphone during an investigation of Mr. Noble Beasley for bribery and illegal drug trafficking. Mr. Butler according to Travis was trying to protect law enforcement officers and an "unnamed public official." The Judiciary Committee has received information from Ms. Wright that Mr. Butler had attempted to convince her to cooperate with the police by introducing an undercover agent to various individuals involved with drugs.

At his hearing, Mr. Butler responded to this charge by stating that there was, in fact, an ongoing investigation by Federal authorities and that by using Barbara Wright in an undercover capacity could possibly jeopardize an ongoing Federal investigation.

The committee has received information that there was indeed a substantive investigation taking place in 1972 regarding Beasley, and that a preliminary investigation took place prior to this time. Mr. President, I would like to point out, that the target of the investigation, Noble Beasley, was later convicted for drug trafficking, Hobbs Act violations, as well as IRS violations. This conviction of Mr. Beasley occurred without the use of Barbara Wright. Additionally, Mr. Butler's testimony is corroborated by several individuals.

First, Mr. Doyle Coats, a special agent with the intelligence division of the Internal Revenue Service, informed the committee that during the period 1971–74, when the Beasley investigation was taking place he was assigned to Mobile, AL, to work on the narcotics trafficking project which was in effect at that time. Mr. Coats states: "With Mr. Butler's full cooperation and help, we successfully identified and prosecuted in Federal court such individuals as Noble Beasley and other drug conspiracy cases."

Second, Kater Williams, who is now a respected police chief from the city of Dothan, AL, was the head of the drug division for the police department of the city of Mobile during these events. Chief Williams has informed the committee that the ongoing Federal investigation of Noble Beasley would have been jeopardized by using Barbara Wright.

Third, Robert Campbell, who was a chief assistant district attorney, supports Mr. Butler's position on this matter.

Fourth, John Coleman, who was Barbara Wright's attorney during this time, when interviewed by committee investigators as to why Mr. Butler would not use Ms. Wright, Mr. Coleman responded: "because they were afraid it would interfere with an ongoing investigation that they had of Noble Beasley." Mr. Coleman stated that he had heard this after the meeting with Mr. Butler but before the trial of Barbara Wright. He also stated that he thought that Mr. Travis had told him about this Federal investigation.

Mr. Travis himself unwittingly supports Mr. Butler's assessment that there was an ongoing investigation when he told the committee:

> At that time one of the officers Mr. Butler mentioned—his name slips me—he was the Internal Revenue Department's donation to the task force, and we all worked together. We called on each other for information, we shared information. *We did not tell everybody everything, but we basically knew what each other was doing,* and this I cannot understand, the need for secrecy or not using Barbara, because *she was telling us what all of us was working on.*

Mr. President, it is obvious from Mr. Travis' own statement to the committee when he said "we did not tell everybody everything" that Mr. Butler, as he testified, did not disclose the Federal investigation because it was held on a need to know basis. Just because Mr. Travis thought Barbara Wright should be used in the investigation did not make it correct. Mr. Travis just did not know everything that was going on.

Mr. President, after the hearing on Mr. Butler's nomination and the testimony given by Mr. Travis I requested the FBI to conduct approximately a dozen interviews of attorneys and law enforcement officials in Mobile regarding the veracity of Mr. Travis. Without fail, all of those individuals interviewed stated that Travis is someone who cannot be trusted. He is considered totally unreliable and an individual that cannot be believed under oath. We were advised that any information provided by Mr. Travis should be questioned regarding its validity.

Also, during the course of these interviews information was obtained that completely discredited anything Mr. Travis previously had to say. Mr. Travis was fired from his position as deputy sheriff of Mobile County as the result of a severe beating that he gave a black prisoner in an attempt to obtain a confession. It was also disclosed that Mr. Travis had committed illegal acts by taping a marijuana cigarette behind a mirror in a black woman's home that was being searched. No drugs were found, but Mr. Travis said that if they came back they would find something the next time. I felt it would be imprudent for the Senate to give any credibility to the testimony of Mr. Travis in light of the information regarding his character and performance as a deputy sheriff.

LAND MATTER

Another matter which was raised during Mr. Butler's confirmation hearing involved some property that was sold in 1980 to individuals at a tax auction for nonpayment of taxes. Mr. Butler filed suit on his own behalf and that of several other individuals who claimed an interest in the property. As a result of the suit the circuit court found that Butler and the other individuals should be entitled to recover the property. After the opinion Butler filed a petition with the Board of Equalization in Mobile to lower the tax assessment on the property. There are some who now allege that Butler failed to notify the defendants of the petition and that he was somehow in violation of ethical considerations.

First, I would like to state for the record that at no time during this suit has there been a complaint filed with the bar regarding Mr. Butler's handling of this matter.

Second, a learned real estate and ethics lawyer and professor in the State of Alabama, Prof. Harry Cohen, reviewed this matter. Professor Cohen advised the committee:

> I have reviewed the matter and in my opinion there is no impropriety or breach of any legal ethics rule on Mr. Butler's part whatsoever. In my opinion there was no legal duty to notify anyone of Mr. Butler's client's actions after the decision of the circuit court became final * * *. I also conclude that there is no ethical duty to give notice under these circumstances to Mr. Langan or anyone else of the appeal to the board of equalization by Mr. Butler's clients * * *.
>
> I have also discussed the matter with Prof. Richard Thigpen of our faculty who also teaches the legal profession course at the University of Alabama School of Law and he agreed with my assessment of this situation.
>
> I conclude by saying that I was surprised when I was first apprised of this matter. I cannot conceive of any irregularity or impropriety being alleged in this case.

Mr. President, the Judiciary Committee has thoroughly and laboriously investigated this nomination. The ABA, as well, has conducted an extensive investigation of Mr. Butler and they found him to be "well-qualified" for the position to which he has been nominated. The allegations raised against Mr. Butler were of a dubious nature and primarily came from one individual who is of very questionable character and credibility. Mr. Butler has responded honestly and forthrightly on all issues raised, both at his hearing and in response to further questions submitted to him.

Mr. President, Mr. Butler is a man of integrity, ability, experience, and knowledge. I am confident he will bring credit to the U.S. District Court in the Southern District of Alabama and will be known for his fairness and sense of equal justice for all who appear before him. I urge my colleagues to vote in favor of Charles R. Butler to be a U.S. District Court judge for the Southern District of Alabama.

NOMINATION OF JAMES R. CURTISS

Mr. SIMPSON. Mr. President, I rise today in order to speak about an exceptional young man. I am very pleased and very proud that President Reagan has nominated Jim Curtiss to the Nuclear Regulatory Commission. I have come to know him well, an individual of extraordinary intellect, integrity, and commitment. I think those of you—and I know that Senators MOYNIHAN and BREAUX have worked with him—we do get to know people who we refer to as "staffers" and we get to know them well. We know their philosophies, their propensities, their habits, their skills, but I think that all of us would agree that the President has nominated someone who is extremely well qualified to serve on the Nuclear Regulatory Commission, a very fine choice.

I don't spend any time in the background of his skills and his graduation from law school, but he worked on the staff of the NRC from 1979 to 1981. It was in February 1981 that I came to know him. Of course, he worked for me and he worked with Jim Asselstine, you will recall, who worked for the committee. It was ironic that at the time when Jim Asselstine went on the NRC, someone actually questioned his connections to the industry. We remember that. We all know how that one worked out. He proved to be a very independent and thoughtful man. Jim has the same traits.

During the time that he had served me when I was chairman of the subcommittee, and now as ranking member of the Subcommittee on Nuclear Regulation, he served with great distinction. He served me so well on this committee as we worked through so many important pieces of legislation regarding commercial nuclear power. Those laws are on the books with Jim's contribution stamped all over them. I think of the Nuclear Waste Policy Act of 1982, the Low Level Waste Act of 1985, and this year Price-Anderson, and just a few weeks ago the Senate passed the NRC reform bill.

I think, Mr. Chairman, any one of us who worked on nuclear regulatory legislation knows that it doesn't get done without tremendous effort because it is an arena just stuffed with emotion and fear and high drama and all the things that make it so tough to deal with. It has to be done with a yeoman effort and it has to be done with a bipartisan effort. I have watched Jim work with Senator BREAUX' counsel, Tim Smith, who has now gone on to other activities. I have watched him work with others on both sides of the aisle, and all of those pieces of legislation I have just ticked off involved the most thoughtful compromises and serious negotiations and consensus.

So this is Jim Curtiss. I have a very great deal of respect for this man. He is a true technician. He is not a partisan—and I would emphasize that. He is what I would call the ideal definition of staff, if it could be defined. I have watched him work; he is an indefatigable worker, so bright, so skilled, and diligent.

He is a consummate professional. He is a detail man. He understands the nuclear issues. And one other thing he is which is sometimes missed in this arena, he is very thoughtful and kind to other people that he deals with on staff. He has never made anyone feel lesser in his work, and yet he possesses an overpowering knowledge of his subject matter. But I've never seen him arrogant, never rude. I don't say that that always occurs in this arena with regard to staff persons. He is a fine human being.

So with regard to his nomination, I did have a mild chuckle about Jim Curtiss working so darned hard on the legislation that would eliminate the job that he has just been nominated to, because he has been the right hemisphere of my brain for years as we worked on the single Administrator bill.

So here now, he is presented in nomination. Still, I don't think that can be any kind of a conflict of interest when you're out to knock off the position to which you have been nominated, but it says a lot about Jim, about his commitment to responsible nuclear legislation, that he's willing to put it right on the line with this nomination.

So he remains very committed to the regulation of nuclear power in a way that ensures the public health and safety, and that's the only mission of the entire NRC. He believes in a process that yields results. He always seeks consensus on the tough issues, and boy, does he know how to work. I can't imagine how there could be a finer appointment and the changes he could make in the NRC would be substantial—especially if it remains in its present context of five collegial persons. They need someone like this man there.

Finally, Mr. President, in view of the various press reports—some incomplete, some inaccurate—concerning the participation by this nominee in future Commission business on matters in which he had a sustantial involvement as a staff member of the Committee on Environment and Public Works, I ask unanimous consent to have printed in the RECORD at this point the nominee's statement on this subject.

STATEMENT OF JAMES R. CURTISS

If I am confirmed, it would be my intention, prior to participating in any agency action or decision involving a matter with respect to which I had a substantial involvement in my previous capacity as a staff member for the Committee on Environment and Public Works, to first consider whether I can approach any such decision or action with an open and impartial mind. In that regard, I would intend to consult with the Commission's Office of General Counsel on the relevant statutory and judicial standards, prior to reaching a judgment about whether it would be appropriate for me to participate in any such decision or action. Additionally, with respect to any adjudicatory proceeding, it would be my intention to first examine the contested issues before the Commission for decision and to rescue myself from participating in any such decision if there is a reasonable basis for questioning my ability to consider and resolve such issues in an impartial manner because of prior involvement on my part in such issues during my previous capacity as a staff member.

In addition, in any case where the action or decision of the agency is required to be made based upon a formal administrative record, it would be my intention first to review the record in any such proceeding in a thorough manner prior to participating in any agency decision or action involving a contested issue in such proceeding. In that regard, in view of the complexity of the Shoreham proceeding and the contested issues that have arisen in that proceeding, as well as the voluminous administrative record already compiled, I believe that for the near future, I will not be in a position to have reviewed this lengthy record with the thoroughness that would be necessary for me to participate in the upcoming Commission review process regarding the Licensing Board's Concluding Initial Decision on Emergency Planning, LBP-88-24, (September 23, 1988), including any subsequent Appeal Board decisions on review of that Licensing Board decision, or to participate in pending or upcoming Commission decisions on contested issues that might arise in future litigation regarding NRC's review of the June, 1988, emergency planning exercise at the Shoreham facility.

Finally, as an attorney and former Senate employee, I am extremely sensitive to the importance of avoiding the appearance of conflict of interest or impropriety for subsequent decisions I might make on matters previously within my responsibility. In particular, I am aware of concerns that have been expressed about my participation as a staff member of the Committee on Environment and Public Works in matters related to emergency planning for the Seabrook Nuclear Power Plant and, because of that, my ability to approach Commission decisions involving emergency preparedness for this facility with an open and impartial mind.

I should say that while I have been involved in the broad legislative policy issues related to emergency planning for nuclear power plants in my capacity as a staff member of the Committee on Environment and Public Works, representing the views and positions of the members for whom I have worked, I do not have a view—nor do I think it would be appropriate for me to have a view—on the contested issues in the Seabrook proceeding currently pending before the NRC.

Nonetheless, I do believe that the perception of objectivity and impartiality is critical to the integrity of the Commission's decisionmaking process.

For this reason, I intend to abstain from participating in Commission decisions on contested issues that have arisen or might arise in this proceeding involving the adequacy of the emergency preparedness plan for the Seabrook facility.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

Mr. BIDEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, as I understand it, the nominees that I enumerated have been confirmed, but the motion to reconsider has not been made.

The PRESIDING OFFICER. The majority leader is correct.

Mr. BYRD. Mr. President, I ask unanimous consent that pending that motion to reconsider, the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

The Senate resumed the consideration of legislative business.

GENOCIDE CONVENTION IMPLEMENTATION ACT

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 655.

The PRESIDING OFFICER. That bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1851) to implement the International Convention on the Prevention and Punishment of Genocide.

The PRESIDING OFFICER. is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to the consideration of the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Genocide Convention Implementation Act of 1987 (the Proxmire Act)".

SEC. 2. TITLE 18 AMENDMENTS.

(a) IN GENERAL.—Part I of title 18, United States Code, is amended by inserting after chapter 50 the following:

"CHAPTER 50A—GENOCIDE

"Sec.

1091. Genocide.

1092. Exclusive remedies.

1092. Definitions.

"§ 1091. Genocide

"(a) BASIC OFFENSE.—Whoever, whether in time of peace or in time of war, in a circumstance described in subsection (d) and with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group as such—

"(1) kills members of that group;

"(2) causes serious bodily injury to members of that group;

"(3) causes the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques;

"(4) subjects the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part;

"(5) imposes measures intended to prevent births within the group; or

"(6) transfers by force children of the group to another group;

or attempts to do so, shall be punished as provided in subsection (b).

"(b) PUNISHMENT FOR BASIC OFFENSE.—The punishment for an offense under subsection (a) is—

"(1) in the case of an offense under subsection (a)(1), a fine of not more than $1,000,000 and imprisonment for life; and

"(2) a fine of not more than $1,000,000 or imprisonment for not more than twenty years, or both, in any other case.

"(c) INCITEMENT OFFENSE.—Whoever in a circumstance described in subsection (d) directly and publicly incites another to violate subsection (a) shall be fined not more than $500,000 or imprisoned not more than five years, or both.

"(d) REQUIRED CIRCUMSTANCE FOR OFFENSES.—The circumstance referred to in subsections (a) and (c) is that—

"(1) the offense is committed within the United States; or

"(2) the alleged offender is a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)).

"(e) NON-APPLICABILITY OF CERTAIN LIMITATIONS.—Notwithstanding section 3282 of this title, in the case of an offense under subsection (a)(1), an indictment may be found, or an information instituted, at any time without limitation.

"§ 1092. Exclusive remedies

"Nothing in this chapter shall be construed as precluding the application of State or local laws to the conduct proscribed by this chapter, nor shall anything in this chapter be construed as creating any substantive or procedural right enforceable by law by any party in any proceeding.

"§ 1093. Definitions

"As used in this chapter—

"(1) the term 'children' means the plural and means individuals who have not attained the age of eighteen years;

"(2) the term 'ethnic group' means a set of individuals whose identity as such is distinctive in terms of common cultural traditions or heritage;

"(3) the term 'incites' means urges another to engage imminently in conduct in circumstances under which there is a substantial likelihood of imminently causing such conduct;

"(4) the term 'members' means the plural;

"(5) the term 'national group' means a set of individuals whose identity as such as distinctive in terms of nationality or national origins;

"(6) the term 'racial group' means a set of individuals whose identity as such as distinctive in terms of physical characteristics or biological descent;

"(7) the term 'religious group' means a set of individuals whose identity as such as distinctive in terms of common religious creed, beliefs, doctrines, practices, or rituals; and

"(8) the term 'substantial part' means a part of a group of such numerical significance that the destruction or loss of that part would cause the destruction of the group as a viable entity with the nation of which such group is a part.".

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by inserting after the item relating to chapter 50 the following new item:

"50A. Genocide .... 1091".

The **PRESIDING OFFICER.** The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

Mr. **BIDEN.** Mr. President, today the U.S. Senate will take an important step toward reaffirming one of the most basic moral principles upon which this Nation is founded—respect for the dignity of human life.

More than 40 years ago, when the atrocities of the Nazi Holocaust were still fresh in the minds of the civilized nations, U.S. negotiators led an effort to draft an international treaty that sought to prevent future Holocausts, and to punish those who violated its provisions. On December 9, 1948, the U.S. General Assembly approved such a treaty—the U.N. Convention on the Prevention and Punishment of the Crime of Genocide—Without Dissent. The United States signed the convention 2 days later.

It was entirely appropriate that the United States played such an important role in drafting the Genocide Convention.

Then, as now, the United States had a responsibility to condemn human rights violations, to protect those who were vulnerable, and to punish any violators.

Then, as now, the United States had the power—legal, economic and political—to secure basic liberties for individuals throughout the world.

Then, as now, the community of nations looked to the United States as a moral leader in the struggle to advance human rights throughout the world.

Despite our moral and legal obligation to implement the Genocide Convention, the United States has not yet ratified the treaty. The Senate took 36 years to give its approval to the convention, and even then, the Senate prohibited the President from formally ratifying the treaty until implementing legislation had been signed into law. It is this unfinished business that brings us to the Senate floor today.

On November 5, 1987, I, along with Senators PROXMIRE and METZENBAUM, introduced S. 1851, the Genocide Convention Implementation Act of 1987. This legislation provides protection to members of any national, ethnic, racial or religious group by creating a new Federal crime of genocide for any person who attempts to destroy such a group, in whole or in part, though murder, serious bodily injury, mental or physical torture, prevention of members of the group from having children or forcible removal of children from the group. And S.1851 provides penalties that appropriately reflect the heinous and inhuman nature of genocide. For offenses involving the death of a member of a protected group, the punishment is a mandatory term of life imprisonment. For any other genocide offense that does not result in death, the punishment is imprisonment for not more than 20 years.

Mr. President, for too long the United States has not been a party to one of the most important human rights treaties ever drafted. This treaty—for the first time—recognizes that human rights are a matter of international—not simply domestic—concern, and that States have an international responsibility to prevent and punish such crimes within their borders. And this treaty—for only the second time, along with the U.N. Slavery Treaty—determined that certain human rights abuses—the attempted or actual destruction of an entire people—are so reprehensible as to demand universal condemnation as a crime under international law.

The fact that the Genocide Convention has not yet been ratified is an embarrassment for the United States. As Elie Wiesel stated in his testimony before the Judiciary Committee: "What is at stake is our moral credibility in the world." Further inaction would be an affront to the millions who have already lost their lives and a profound injustice to those who continue to suffer human rights abuses today.

Mr. President, I would be remiss if I did not add that the Judiciary Committee unanimously approved an amendment to rename this legislation "The Proxmire Act." The committee approved this amendment in recognition of Senator PROXMIRE's tireless advocacy for human rights issues. On January 11, 1967, Senator PROXMIRE declared that he would speak on the floor every day this body was in session to remind us of our obligation to ratify the Genocide Convention. True to his word, Senator PROXMIRE delivered more than 3,000 floor speeches from January 1967 until the treaty was finally approved by the Senate on February 19, 1986. This legislation—and the ratification of this historic treaty—is a direct result of Senator PROXMIRE's commitment and dedication to the human rights issue.

Mr. President, the time has come to take final action on the Genocide Convention. The time has come to make genocide a crime under Federal law and to provide for its punishment. The time has come for the United States to reassert its role as the leader in the struggle to advance human rights and expand human liberties throughout the world.

Mr. **METZENBAUM.** Mr. President, today this Senate can take an enormous step in improving our image in the international community.

Today, we can pass legislation enabling the United States to become full members in the International Convention on the Prevention and Punishment of the Crime of Genocide.

Two years ago, the Senate ratified membership in Genocide Convention.

But there is one last step to take.

We must make membership of the United States effective.

Judiciary Committee unanimously reported this bill in May of this year. It fully implements our membership and fulfills our historic commitment to human rights.

I hope we can approve today this legislation making the United States a full partner in the community of nations which have banned genocide.

It is a tragedy that it has taken 40 years to do so.

The convention was created by the United Nations in 1948.

It was a reaction to the greatest brutality of 20th century—the Holocaust.

That period is still a scar on human history and always will be.

The Genocide Convention Treaty was first submitted to the Senate by President Truman in 1948.

Over the years, there have been different objections to U.S. membership, none have been persuasive.

The failure to join and fully implement the convention has become a black mark on this country and a source of embarrassment.

Finally, in 1986, the Senate ratified the convention.

But, when the Senate ratified the convention, it provided that the articles would not be filed until implementing legislation was passed.

Thus, this final step remains to be completed before membership becomes effective.

This bill was originally sponsored by Senator BIDEN, Senator PROXMIRE, and myself.

In a real sense, this bill is a tribute to Senator PROXMIRE and therefore the committee voted to entitle it the Proxmire Act, in honor of his commitment to its passage. Senator PROXMIRE made over 3,000 speeches, every day on the floor, for almost 20 years until the Senate ratified the convention. Finally, we are on the verge of full and effective membership.

The American public can take pride in their country as we join the community of nations.

Today, we can say "never again."

For the first time, in our Nation's history, we can state clearly in our law that genocide is a Federal crime.

Any person or group who is so brutal, so insane as to attempt to destroy a race or ethnic group will violate U.S. law.

They will be exposed to severe penalties.

If a U.S. citizen abroad engages in such horrible conduct, they too may be punished under American law.

We have waited too long to take this step; we cannot wait any longer. I urge my colleagues to pass this critical legislation.

Many organizations and groups have fought for years to achieve full and effective U.S. participation in the Genocide Convention. Many of these groups represent individuals who have themselves suffered from the horrors of genocide or whose families or friends were victims. In this century, Jews from many countries in the world, Armenians, Cambodians, and the Baha'i community of Iran have been some of the victims of this most heinous of crimes.

I ask unanimous consent that statements from some of the organizations which have labored so valiantly for this day be included in the RECORD.

There being no objection, the statements were ordered to be printed in the RECORD, as follows:

STATEMENT OF ELIE WIESEL

Mr. Chairman, distinguished members of the United States Senate: please forgive my not being able to respond to your kind invitation to appear before you today. It has reached me too late. I simply cannot cancel certain previous commitments.

Your debate is of extreme importance and significance. Though overwhelmingly endorsed by the Senate, the Genocide Treaty is still to receive implementing legislation. Many of us fail to comprehend the reason for the delay.

What is at stake is our moral credibility in the world. Naturally, our nation opposes any massacre; but genocide is the ultimate massacre and thus must be opposed and denounced with force and vigor.

The fact that it has taken so long for the Treaty to reach this stage has been an embarrassment to those among us who, as teachers or writers, try to tell the world of our profound commitment to human rights and to the celebration of human dignity.

When the issue was before the Foreign Relations Committee, I had the honor of testifying in its favor. I tried to explain that I am not sure that a Genocide Convention would prevent genocide; but the absence of such a convention would surely be interpreted as an approval of genocide.

Thus I urge you, distinguished members of the Judiciary Committee, to accelerate the process of implementing the Treaty. What is at stake is the future of many nations. What is at stake is our honor as a nation governed by an ancient ethical tradition that proclaims its belief that life is to be celebrated and sanctified—that applies to the life of the individual and of human communities alike.

Thank You.

ELIE WIESEL.

STATEMENT OF DR. ROUBEN ADALIAN, DIRECTOR, ACADEMIC AFFAIRS OF THE ARMENIAN ASSEMBLY OF AMERICA

The Armenian Assembly of America strongly supports the speedy passage of legislation to implement the International Convention on the Prevention and Punishment of Genocide.

We commend Senators Biden, Metzenbaum and Proxmire for introducing this important legislation and urge that the Senate move in a timely manner this year to approve the bill.

The Armenian Genocide was the first example of genocide in the 20th century. Indeed, many believe it to be the worst example of mass slaughter history had known up until that time. Our American Ambassador to Ottoman Turkey, Henry Morgenthau, Sr., stated:

"I am confident that the whole history of the human race contains no such horrible episode as this. The great massacres and persecutions of the past seem almost insignificant when compared with the sufferings of the Armenian race in 1915." (Source: *Ambassador Morgenthau's Story*. 1919, p. 321–322.)

Indeed, Professor Raphael Lemkin, who first coined the word genocide and worked tirelessly toward the adoption of the Genocide Convention by the United Nations, was particularly sensitive to the extermination of the Americans in Ottoman Turkey in 1915.

Lemkin first proposed "to declare the destruction of racial, religious, or social collectivities" an international crime at the International Conference on the Unification of Criminal Law held at Madrid in 1933 under the auspices of the League of Nations. Although at first rejected, his proposal gained new significance after the destruction of European Jewry in World War II and led to the drafting of the Genocide Convention by a United Nations committee in 1947–1948. In his decade-long effort to obtain ratification of the treaty, Lemkin repeatedly noted the Armenian atrocities, together with the Holocaust, as prototypes of the crime of genocide.

In *Totally Unofficial*, an unpublished autobiography of Lemkin, Lemkin stated:

". . . A bold plan was formulated in my mind. This consisted (of) obtaining the ratification by Turkey among the first twenty founding nations. This would be an atonement for (the) genocide of the Armenians. But how could this be achieved? . . . The Turks are proud of their republican form of government and of progressive concepts, which helped them in replacing the rule of the Ottoman Empire. The genocide convention must be put within the framework of social and international progress. I knew however that in this conversation both sides will have to avoid speaking about one thing, although it would be constantly in their minds: the Armenians." (Source: The Raphael Lemkin Papers, p. 32, N.Y. Public Library)

Indeed, Turkey did become one of the twenty original nations to adopt the Genocide Convention. Turkey, like Germany and many other nations whose past regimes have been guilty of genocidal practices, has seen the value of joining in an international agreement against the crime of genocide. It is critical that the United States now do so as well.

Armenian-Americans are convinced that if there had been a Genocide Convention in place in 1915, the mere existence of such an internationally-adopted document outlawing the crime being perpetrated in Ottoman Turkey may have dissuaded the Young Turks from completing their campaign against the Armenian Christian minority.

Two years ago, the Senate took the important step of endorsing ratification of the Convention by the United States. But that action is just window-dressing until this implementing legislation is approved.

We commend Senator Metzenbaum for holding this hearing on the implementing legislation and look forward to the Senate completing its work toward final ratification.

(The Armenian Assembly of America is a national non-profit organization based in Washingtoin, D.C. Since 1972, the Assembly has presented Armenian-American community viewpoints within the legislative and executie branches of government)

STATEMENT BY THE NATIONAL SPIRITUAL ASSEMBLY OF THE BAHA'IS OF THE UNITED STATES

Genocide is the ultimate crime against humanity. The United Nations Convention on Genocide to which, after decades of debate, the United States has recently adhered, defines the crime of genocide as "any one" of five kinds of action, "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such." Thus the concept of genocide is much broader than outright massacre and includes other measures designed to destroy groups of people.

The Baha'is, members of a worldwide religious community dedicated to peace, unity, and brotherhood among all peoples, nations, and religions, have been victims of genocide in Iran for more than a hundred years. Shortly after the inception of the Baha'i Faith in mid-nineteenth century Iran, some twenty thousand of its early followers were killed at the bidding of the Shiite clergy supported by the government. In the last twenty years in the Baha'is of Iran have once again become victims of acts in every one of the categories that define genocide. For example:

The Convention defines killing as genocide, and the Iranian government has executed since 1979 more than 200 Baha'is, most of them leaders of the community.

The Convention states that "causing serious bodily or mental harm" is genocide; and and thousands of Baha'is have been unjustly imprisoned and subjected to torture to compel them to recant their faith.

The Convention states that "deliberately inflicting . . . conditions of life calculated to bring about [the] physical destruction" of the group is genocide. Iran has not only confiscated all the Baha'i community property—meeting places, schools, hospitals, srines, and even cemeteries—but forced the Bah'is to disband all the elected assemblies which governed the Baha'i community and to give up all organized religious activity.

The last two types of action defined as genocide involve "imposing measures intended to prevent birth within the group [and] forcibly transferring children of the group to another group." Iranian Baha'is have suffered these outrages as well.

In supporting human rights throughout the world and in ratifying the United Nations Covenant on the Prevention of the Crime of Genocide the United States explicitly committed itself to an unrelenting struggle for the elimination of what is undoubtedly the greatest evil of our century. The power and influence of the United States are indispensable for the achievement of victory in this struggle.

The Baha'is make no specific proposals for legislation in support of the Convention, but they do wish to emphasize the spiritual and moral imperative that all laws necessary for the implementation of the Convention be passed, unanimously if possible, or at least by an overwhelming majority.

During the first three weeks of March Baha'is observe a fast, devoting the early hours of every morning to prayer and meditation, attempting to spiritualize their lives, and hoping to bear witness to the unity of humanity, to the need of protecting the weak, to the duty of succoring victims of oppression.

It is in this spirit that we urge our representatives to approach the legislative task now before them.

Mr. PELL. Mr. President, the history of mankind is marred by the tragic record of man's inhumanity to his fellow man through violations of fundamental human rights. The pogroms against the Jews in Russia were a genocidal attempt by the government of that country to obliterate its Jewish population. Turkey's efforts to resolve its Armenian problem resulted in 27 years of bloody horror which ended with the death of over 2 million members of the Armenian minority. Most infamous of all was the systematic eradication of over 6 million Jews by the Nazis in World War II.

Men everywhere were outraged by the ruthless and barbaric actions of the German war machine. Determined that genocide should be dealt with forcefully, the United Nations declared in 1946 that it was to be treated as an international crime. The U.N. Genocide Convention translated the intent of this resolution into a formal treaty which was passed by the General Assembly in 1948 by a unanimous vote.

Not surprisingly, the United States was the first Nation to sign this treaty on December 11, 1948, 2 days after it was adopted by the United Nations. The treaty was submitted to the Senate in June of the following year. However, the Senate did not give its advice and consent to ratify this treaty until 1986 during the 99th Congress. The final step in the U.S. ratification process will occur today when we pass the implementing legislation that will make this treaty part of our own U.S. criminal law.

Mr. President, our Declaration of Independence recognizes the self-evident truth that all men are created equal and have certain inalienable rights, among them life, liberty, and the pursuit of happiness. The final approval of the Genocide Convention will serve as a symbol of our historic commitment to these values and our opposition to religious and racial persecution. It will also provide very tangible benefits in our continuing efforts to advance human rights throughout the world. The Genocide Convention has been aptly termed "a statement of conscience." As I have mentioned in the past, this convention has a very real personal meaning for me because it was through my father's efforts, as the chief U.S. representative on the U.N. War Crimes Commission, that genocide was initially declared a war crime. I earnestly hope that the Senate will at long last move ahead to give its approval to this historic document.

Mr. SIMON. Mr. President, I rise in support of S. 1851, the Genocide Convention Implemention Act of 1988. This bill has been named the Proxmire Act, a fine and fitting tribute to the diligence our friend and colleague from Wisconsin has shown in delivering more than 3,000 floor speeches calling on the Nation's, and this body's, conscience to implement the 1948 Genocide Treaty.

The United States was a key leader in drafting the treaty at the United Nations and immediately signing it. Now, 40 years later, we are considering this legislation which implements a treaty 97 nations have ratified in the meantime. It is long overdue.

S. 1851 outlaws acts committed with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group as such. These acts include killing or causing serious bodily injury to members of that group; causing permanent impairment of the faculties of members of that group through drugs, torture, or similar techniques; subjecting the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part; and transferring by force of children of the group to another group.

I am proud to be a consponsor of S. 1851 and to have voted for it in the Committee on the Judiciary. S. 1851 is supported by the Department of Justice, American Bar Association, American Jewish Committee, National Spiritual Assembly of the Baha'is of the United States, Armenian Assembly of America, Amnesty International U.S.A., and other organizations.

Perhaps the most compelling words to demonstrate the importance of passing S. 1851 in this Congress were those of Elie Weisel before the Judiciary Committee. He said, "What is at stake is the future of many nations. What is at stake is our honor as a nation governed by an ancient ethical tradition that proclaims its belief that life is to be celebrated and sanctified—that applies to the life of the individual and of human communities alike." I urge adoption of S. 1851.

Mr. HELMS. Mr. President, when the Genocide Convention was approved by the Senate on February 18, 1986, I was pleased that two reservations, five understandings, and one mandatory declaration were attached thereto.

The understandings and reservations which were made a part of the Genocide Convention were a response to the criticism raised by the late, great Senator from North Carolina, my friend and colleague Senator Sam Ervin. These reservations and understandings constitute a memorial to Senator Ervin and his lifelong commitment to the U.S. Constitution. They represent the very minimum of constitutional protections for this great Nation.

Mr. President, I voted against the ratification of the Genocide Convention in memory of Senator Ervin. Thanks to the provisos approved by the Foreign Relations Committee and attached by the Senate to the Convention, the Genocide Convention is more a symbol than a legal reality. Nevertheless, I still have concerns about how it might be implemented.

The legislation on which we are about to vote meets some of those concerns. I preferred a simple resolution condemning genocide in 1986. I prefer a simple resolution condemning genocide now. I condemn genocide, which is mass murder, in any form. However, I will still vote against this legislation because of Senator Ervin's objections and because I believe that the Convention is at best an uncertain symbol. Criminal laws are the best way of dealing with criminals, domestic or international.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. BYRD. Mr. President, I ask unanimous consent that the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THURMOND. Mr. President, an inquiry: Are we going to reconsider each of these bills without reconsidering the nominations of judges?

Mr. BYRD. It will be fine with me.

I ask unanimous consent that the motion to reconsider be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THURMOND. Mr. President, I did not understand.

Mr. BYRD. I vitiated the motion to reconsider.

Mr. THURMOND. I thank the Senator very much.

UNANIMOUS-CONSENT AGREEMENT—H.R. 3911, DEFENSE PROCUREMENT FRAUD BILL

Mr. BYRD. Mr. President, I ask unanimous consent that the majority leader, after consultation with the minority leader, any move to proceed to the consderation of Calendar No. 924, H.R. 3911, the defense procurement fraud bill, and that it be considered under the following time limitation:

One and a half hours on the bill, equally divided and controlled between the two leaders or their designees.

Five minutes on a managers' technical amendment to be offered to the committee substitute amendment.

Five minutes on a Grassley amendment dealing with technical changes to the False Claims Act.

Ten minutes on a Grassley-Levin amendment dealing with allowable costs for Government contractors.

Thirty minutes on an amendment to be offered on behalf of Senator CRANSTON adding the text of S. 1456.

Five minutes on an amendment to be offered on behalf of Mr. LEAHY to incorporate the text of S. 438 as passed by the Senate.

Ten minutes on any debatable motion, appeal, or point of order, if submitted by the Chair.

Provided, further, that no other amendments be in order, with the exception of the committee-reported substitute amendment.

That the agreement be in the usual form and that no motion to recommit, with or without instructions, be in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the agreement is as follows:

Ordered, That the Majority Leader, after consultation with the Minority Leader, may move to proceed to the consideration of H.R. 3911, the Defense procurement fraud bill, and that it be considered under the following time limitation:

Managers' technical amendment, to be offered to the committee substitute amendment, 5 minutes

Grassley amendment, dealing with technical changes to the False Claims Act, 5 minutes

Grassley-Levin amendment, dealing with allowable costs for government contractors, 10 minutes

Amendment to be offered on behalf of Senator CRANSTON, adding text of S. 1456, 30 minutes

Amendment to be offered on behalf of Senator LEAHY, to incorporate the text of S. 438, as passed the Senate, 5 minutes

Ordered further, That no other amendments be in order, with the exception of the committee-reported substitute amendment.

Ordered further, That time for debate on any debatable motion, appeal, or point of order, if submitted by the Chair, be limited to 10 minutes each.

Ordered further, That no motion to recommit, with or without instructions, be in order.

Ordered further, That time for debate on the bill be limited to 1½ hours, to be equally divided and controlled between the Majority and Minority Leaders, or their designees.

Ordered further, That the agreement be in the usual form. (Oct. 14, 1988)

APPOINTMENT OF ADDITIONAL BANKRUPTCY JUDGES

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 948, H.R. 4064.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4064) to amend title XXVIII of the United States Code to authorize the appointment of additional bankruptcy judges.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3700

(Purpose: To authorize the appointment of additional bankruptcy judges)

Mr. BYRD. Mr. President, I call up an amendment on behalf of Senators BENTSEN, DECONCINI, and MCCAIN.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. BENTSEN, (for himself, Mr. DECONCINI, and Mr. MCCAIN), proposes an amendment numbered 3700.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out "and" at the end of paragraph (4) in the first section.

Strike out the period at the end of paragraph (5) in the first section and insert in lieu thereof a comma.

After paragraph (5), add the following:

(6) in the item relating to the western district of Texas, by striking "3" and inserting "4", and

(7) in the item relating to the district of Arizona, by striking "4" and inserting "5".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3700) was agreed to.

Mr. STEVENS. Mr. President, I am delighted today to rise in support of H.R. 4064, a bill which authorizes five new bankruptcy judges including one for the Judicial District of Alaska.

I am indebted to my good friend and colleague, Congressman DON YOUNG, for introducing legislation authorizing a second bankruptcy judge for Alaska, and to the Congressman from New York, HAMILTON FISH, who offered the amendment in the House Judiciary Committee to incorporate Congressman YOUNG's bill into the measure which the Senate considers today.

As a result of the collapse of the oil industry, a long shadow has been cast on the Alaskan economy. The reduction in State oil revenues has forced State and local governments to cinch up their belts. Oil companies, related-support industries, and State government have had to lay off workers to adjust to the reduction in revenues.

This has led to an increase in business failures which in turn has had a rippling effect on personal finances. Together, all of these factors have had a reverberating impact on all segments of the Alaskan economy.

Alaska's heavy bankruptcy caseload problem is exacerbated by the fact that our single judge must travel extensively around the State to hold court. He spends 3½ days a month traveling from Anchorage to Nome, Fairbanks, and Juneau. During those days, he is not free to sit on the bench to hear cases.

The Administrative Office of the U.S. Courts has recommended expanding court sites to include Cordova, Kodiak, Valdez, and Sitka. I strongly support this action, but it will mean even more time must be spent traveling. The legislation which we consider today will enable the court to expand its services to include these communities.

Mr. President, the situation in Alaska has reached crisis proportions. The Ninth Circuit has had to pull a judge out of other districts for a week each month to send up to Alaska along with a law clerk and a court reporter.

Even with this extra help, we still are not able to keep up with the workload. The situation will only get worse if the price of oil plummets still further. In light of the crisis stituation facing my State, I hope my colleagues will join me in support of this legislation.

Mr. President, I have been working to authorize a second bankruptcy judge for Alaska since December of last year. I thank those who have helped in those efforts. First of all, I would like to acknowledge the great support I received from the distinguished chairman of the Judiciary Committee, Senator BIDEN, and the ranking Republican, my good friend, Senator THURMOND. The Judiciary Committee staff, particularly Diana Huffman, Terry Wooten, and Kevin McMahon, were also of great assistance.

I also express my appreciation to Senator HEFLIN, the chairman of the Subcommittee on Courts and Administrative Practice, and Senator GRASSLEY, the ranking Republican on that subcommittee. Their able assistants, Karen Kremer and Sam Gerdano, also played an important role in moving this measure through the legislative process.

Finally, I thank Senator HOLLINGS, chairman of the Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies, and Senator RUDMAN, the ranking Republican, for their support on this issue. I also extend my gratitude to the subcommittee staff for their help, particularly Dorothy Seder, John Shank, and Santol Manos.

Mr. McCONNELL. Mr. President, I would like to express my pleasure at the Senate's passage today of H.R. 4064, which will provide a new bankruptcy judgeship for the eastern district of Kentucky.

For years now, we have been facing a manpower crisis in the adjudication of bankruptcy petitions in eastern Kentucky. Judge Joe Lee, who is to be commended for his excellent service to that region, has been shouldering one of the highest caseloads in the Nation: 3,827 filings in 1987, almost twice the amount recommended per judge by the Bankruptcy Committee of the Judicial Conference.

In addition, since there is only one judge for the entire eastern district, Judge Lee has to spend a considerable amount of time traveling among the scattered courts under his jurisdiction. Anyone who is familiar with that area in my State knows that the mountain roads there make for beautiful but difficult driving.

I have been working over the past year with Judge Lee, whose persistence in this effort has been tremendous, to create another bankruptcy judgeship for the eastern district. Last year, during the Senate's consideration of the Omnibus Budget Reconciliation Act, I offered an amendment with four other Senators to establish additional bankruptcy judgeships in our States, all of which were overwelmed with bankruptcy filings and insufficient manpower.

However, since these new judgeships had not been authorized by the Administrative Office of the U.S. Courts [AOC], there was resistance to our amendment and we reluctantly withdrew. But we were able to include language in the budget reconciliation report which strongly urged the AOC to consider and approve bankruptcy judgeships in districts with excessive caseloads. In addition, I personally urged the AOC to carefully examine the need for a new bankruptcy judge in the eastern district.

Disappointingly the AOC recommended only that we switch one of the western district's bankruptcy judges to a swing judgeship serving both districts. This was totally unacceptable, given the high caseload of our western district judges and the unproductive amount of travel time that would be required.

Since then, the Bankruptcy Committee determined that, given the present rate of increase of bankruptcy filings, the eastern district would need an additional judgeship within a year. Based on that finding, a bill was introduced in the House, H.R. 4064, to create judgeships in Kentucky and several other needy States.

Again, I am very pleased that the Senate has approved this long-awaited new judgeship. I thank Judge Lee for his tireless dedication to serving the eastern district and ensuring adequate manpower for the bankruptcy courts there. I also gave special thanks to my good friend, Senator THURMOND of South Carolina, who has been most helpful and accommodating throughout this process. On this occasion and many others, I am reminded of the enjoyment of serving with him on the Judiciary Committee; and I am thankful there have been many other opportunities to work with him since I left that committee.

● Mr. BENTSEN. Mr. President, I am pleased to join my colleague from Arizona in proposing an amendment today to H.R. 4064, the Bankruptcy Judges Act of 1988, that will provide, in part, a much-needed bankruptcy judge for the western district of Texas. I know I do not have to tell my colleagues about the tough economic time in my State, and the fact that our economic situation has manifested itself in a continuing surge of bankruptcy filings in an already over-burdened system. As the Senate considered H.R. 4064, which will add five additional judges for other needy districts around the country, I urge my colleagues to support this amendment and provide an additional bankruptcy judge for the western district of Texas

The Judicial Conference has approved the addition of a bankruptcy judge for the western district of Texas. They know that filings in this district have skyrocketed. In July of this year there were 302 new filings, and in June, 350. These figures compare with 57 and 50, only 3 short years ago. Simply put, the western district needs help to address this mounting caseload.

I am pleased that H.R. 4064 already recognizes the pressing need in the eastern district of Texas for another bankruptcy judgeship, but I feel that it is imperative for us to help alleviate the extremely crowded bankruptcy docket in the western district of Texas as well. The unfortunate truth is that the western district in Texas is currently the fastest growing bankruptcy district in the country.

I urge my colleagues to give this amendment their favorable consideration.●

Mr. DECONCINI. Mr. President, I am offering today an amendment that will create two new bankruptcy judges in Federal judicial districts in which there are serious needs. H.R. 4064 creates five new bankruptcy judges in Alaska, Colorado, Kansas, the eastern district of Kentucky, and the eastern district of Texas. My amendment would add two additional judges in the Arizona and the western district of Texas for a total of seven new bankruptcy judges.

The Bankruptcy Court for the District of Arizona continues to experience exponential growth in filings. Arizona ranked seventh in the Nation in percentage increase in filings for the year ending June 30, 1988. Among the 15 courts which compose the ninth circuit, Arizona ranked first in percentage increase in filings for this same period.

The need for an additional bankruptcy judge to deal with this increase in caseload is pressing. The bankruptcy section of the State Bar of Arizona has gone on record supporting a fifth judgeship for the district. The Chief Judge of the U.S. District Court for the District of Arizona, Hon. Richard

M. Bilby, and the Judicial Council of the U.S. Court of Appeals for the Ninth Circuit also endorsed the proposal for a fifth judgeship during 1987.

Our four judges have extremely heavy calendars because of the increase in filings. Creation of a fifth bankruptcy judgeship would improve disposition time for judicial matters and benefit the bar, creditors, debtors, and the general public in Arizona.

Mr. President, I urge my colleagues to support this amendment to solve these pressing problems in Arizona and Texas. I ask unanimous consent that the amendment be printed in the RECORD.

The amendment was ordered to be engrossed and the bill to be read a third time.

This bill was read the third time and passed.

FEDERAL DEBT COLLECTION PROCEDURES ACT

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Orders Nos. 1068 and 1069, en bloc.

Mr. ARMSTRONG. I do not show 1069 as cleared.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1068.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1961) to amend title 28, United States Code, to provide Federal debt collection procedures.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Federal Debt Collection Procedures Act of 1988".

TITLE I—FEDERAL DEBT COLLECTION PROCEDURES ACT

Subtitle A—Debt Collection

SEC. 601. (a) This Act may be cited as the "Federal Debt Collection Procedures Act of 1988".

(b) Title 28 of the United States Code is amended by inserting immediately after chapter 175 the following:

"CHAPTER 176—FEDERAL DEBT COLLECTION PROCEDURE

"Subchapter	
"A. Definitions and General Provisions	3001
"B. Prejudgment Remedies	3101
"C. Judgments; Liens	3201
"D. Postjudgment Remedies	3301
"E. Exempt Property	3401
"F. Fraudulent Transfers	3501
"G. Partition	3601
"H. Foreclosure of Security Interests	3701

"SUBCHAPTER A—DEFINITIONS AND GENERAL PROVISIONS

"Sec.
"3001. Definitions.
"3002. Rules of construction.
"3003. Nationwide enforcement.
"3004. Priority of claims of the United States.
"3005. Claims of United States not barred by State statute of limitations.
"3006. Right of set-off or recoupment.
"3007. Discovery.
"3008. Affidavit requirements.
"3009. Perishable property.
"3010. Immunity.
"3011. Proceedings before United States magistrates.
"3012. United States marshals' authority to designate keeper.
"3013. Co-owned property.
"3014. Assessment of charges on a claim.
"3015. Funding.
"3016. Effective date.
"3017. Investigative authority.
"3018. Subrogation.

"SUBCHAPTER A—DEFINITIONS AND GENERAL PROVISIONS

"§ 3001. Definitions

"As used in this chapter—

"(a) 'claim' means amounts owing on account of direct loans or loans insured or guaranteed by the United States and all other amounts due the United States from or on account of fees, duties, leases, rents, services, sales of real or personal property, overpayments, fines, assessments, penalties, restitution, damages, interest, taxes, bail bond forfeitures, reimbursements and recovery of costs incurred and other sources of indebtedness. This definition includes amounts due the United States for the benefit of an Indian tribe or individual Indian.

"(b) 'Counsel for the United States' shall include for the purposes of this chapter, a United States attorney, an assistant United States attorney designated to act on behalf of the United States attorney, an attorney with the United States Department of Justice or other Federal agency having litigation authority and any private attorney authorized by contract to conduct litigation for collection of debts on behalf of the United States.

"(c) 'Court' means any court created by the Congress of the United States exclusive of the United States Tax Court.

"(d) 'Debt' means liability to the United States on a claim.

"(e) 'Debtor' means a person who is liable to the United States on a claim.

"(f) 'Debt collection personnel' means personnel employed by any agency of the Federal government whose primary duties are the collection of the debts owed to the United States.

"(g) 'Disposable earnings' means that part of the earnings remaining after all deductions required by law have been withheld and 'nonexempt disposable earnings' means 25 percent of disposable earnings.

"(h) 'Earnings' means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension or retirement program.

"(i) 'Garnishee' means a person other than the debtor who has, or is thought to have, possession, custody or control of any property of the debtor, including obligations owed to the debtor whether such obligations are past due or have yet to become due, against whom a garnishment has been issued by the clerk of the court.

"(j) 'Judgment' means a judgment, order or decree entered in favor of the United States in any court whether arising from a civil or criminal proceeding regarding a claim.

"(k) 'Judgment creditor' means the United States in situations in which the United States has judgments in its favor, whenever referred to in this chapter.

"(l) 'Judgment debtor' means a person against whom the United States holds a judgment on a debt.

"(m) 'Person' includes a natural person, including individual Indians, a corporation, a partnership, an unincorporated association, a trust or an estate or other entity, public or private, including local governments and Indian tribes.

"(n) 'Prejudgment remedy' means the remedies of attachment, garnishment, replevin, receivership, sequestration, injunction or a combination of any of the foregoing that are sought prior to judgment.

"(o) 'Property' includes any present or future interest in real, personal (including, but not limited to, earnings, goods and choses in action), or mixed property, whether legal or equitable, tangible or intangible, vested or contingent, and wherever located and however held, whether held as a tenancy in common, joint tenancy, tenancy by the entirety, community property, in partnership, or in trust (including spendthrift and pension trusts), and excludes any property held in trust by the United States for the benefit of any Indian tribe or individual Indian or any Indian lands subject to restrictions against alienation imposed by the United States.

"(p) 'Service' under the provisions of this chapter shall be in accordance with the Federal Rules of Civil Procedure.

"(q) 'State' includes the several states, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Marianas and any of the territories and possessions of the United States.

"(r) 'United States' includes an officer or agency thereof, a Federal corporation, Federal instrumentality, department, commission, board or other Federal entity.

"(s) 'United States marshal' means the United States marshal, his designee or contractor.

"§ 3002. Rules of construction

"In this title—

"(a) 'includes' and 'including' are not limiting;

"(b) 'or' is not exclusive;

"(c) the singular includes the plural;

"(d) the provisions are general and intended as a unified coverage of the subject matter;

"(e) if any provision or amendment made by this chapter or application thereof to any person is held invalid, the provisions of every other part and their application shall not be affected thereby;

"(f) the cases arising under the provisions herein shall not affect cases arising under admiralty jurisdiction;

"(g) the provisions of this chapter do not and should not be construed to curtail or limit any rights the United States has to collect taxes under any other provision of Federal law;

"(h) the provisions of this chapter do not, and should not be construed to, curtail or limit any rights the United States has under any other provision of Federal law to collect any fine, penalty, assessment, restitution, or forfeiture arising in a criminal case; and

"(i) the provisions of this chapter do not, and should not be construed to, curtail or limit the rights the United States has under any other provision of Federal law to appoint receivers.

"§ 3003. Nationwide enforcement

"Any writ, order, judgment, or other process, including a summons and complaint, obtained hereunder may be enforced by the court issuing the writ in any state, regardless of where the person is served with the writ, order or process.

"§ 3004. Priority of claims of the United States

"The priorities established by the various provisions of this chapter shall be superseded by the provisions of section 3713 of title 31, United States Code, when the debtor or, if deceased, his estate is insolvent as determined under that section and the priority of the United States shall be in accordance therewith.

"§ 3005. Claims of the United States not barred by State statute of limitations

"The United States shall not be barred by the statute of limitations of any State in the enforcement of any of its claims.

"§ 3006. Right of set-off or recoupment

"Except as specifically provided for in this chapter, nothing in this chapter shall be construed to affect the common law or statutory rights to set-off or recoupment.

"§ 3007. Discovery

"(a) The United States may have discovery from any person including the debtor regarding the financial condition of the debtor in any case in which the United States seeks to enforce a claim. Such discovery may be before judgment or after judgment is entered in the case and in the manner in which discovery is provided for in the Federal Rules Civil Procedure.

"(b) After judgment, the United States may also subpoena the judgment debtor or a third party to appear before the court at a location consistent with the Federal Rules of Civil Procedure with all records, books and other documents and to answer under oath questions regarding the debtor's financial condition and ability to satisfy the judgment.

"(c) The court shall impose appropriate sanctions as provided by the Federal Rules of Civil Procedure or the court's contempt power, including arrest of the offending person or debtor, for failure to comply with these discovery procedures.

"§ 3008. Affidavit requirements

"Any affidavit required of the United States by this chapter may be made upon information and belief, where reliable and reasonably necessary, establishing with particularity, to the court's satisfaction, facts supporting the claim of the United States.

"§ 3009. Perishable property

"At any time during any proceedings, other than those under section 3103(a), the court may determine on its own initiative or upon motion of any party, that any seized or detained property, or any portion thereof, is likely to perish, waste, or be destroyed, or otherwise depreciate in value during the pendency of the proceedings. The court shall order the sale of the property or portion thereof and require the proceeds to be deposited with the clerk of the court. For purposes of liability on the part of the United States, the price paid at any such sale shall be conclusively presumed to be the fair market value.

"§ 3010. Immunity

"Counsel for the United States, but excluding any private attorneys authorized by contract to conduct litigation for collection of debts on behalf of the United States, and non-attorney debt collection personnel shall have absolute immunity in their individual and official capacities from any liability arising from errors, omissions or negligence in performance of their official debt collection duties.

"§ 3011. Proceedings before United States magistrates

"A district court of the United States may assign its duties in proceedings under this chapter to a United States magistrate to the extent not inconsistent with the Constitution and laws of the United States. A district court may adopt appropriate rules to carry out any such assignment.

"§ 3012. United States marshals' authority to designate keeper

"Whenever the United States marshal is authorized to seize property pursuant to the provisions of this chapter, the United States marshal shall be authorized to designate another person or Federal agency to hold for safekeeping such property seized.

"§ 3013. Co-owned property

"The remedies available to the United States under this chapter shall be enforced against property which is co-owned by a debtor and others to the extent allowed by the law of the state where the property is located. Specific references to co-owned property in the provisions regarding execution and garnishment shall not restrict the application of other remedies to co-owned property in the manner stated above.

"For the purposes of this section, 'property' does not include the rights or interest of an individual other than the debtor in a retirement system for Federal military or civilian personnel established by the United States or any agency thereof. A 'retirement system for Federal military or civilian personnel' means a pension or annuity system for Federal military or civilian personnel of more than one agency, or for some or all of such personnel of a single agency, established by statute or regulation pursuant to statutory authority.

"§ 3014. Assessment of charges on a claim

"The United States may assess on a claim a charge of 10 percent of the amount of the claim to cover the cost of processing and handling the litigation and judicial enforcement of the claim.

"§ 3015. Funding

"It is hereby authorized that such sums be appropriated as may be necessary to carry out the provisions of this chapter. Appropriations authorized under this section shall remain available for obligations necessary to implement this chapter for one year.

"§ 3016. Effective date

"This Act and the amendments made by this Act shall take effect one hundred and eighty days after the date of enactment and shall apply to all claims and debts owed to the United States and judgments in favor of the United States.

"SUBCHAPTER B—PREJUDGMENT REMEDIES

"Sec.
"3101. Prejudgment remedies with prior notice.
"3102. Prejudgment remedies without prior notice.
"3103. Attachment.
"3104. Garnishment.
"3105. Injunctions.
"3106. Sequestration.
"3107. Replevin.
"3108. Receivership.

"SUBCHAPTER B—PREJUDGMENT REMEDIES

"§ 3101. Prejudgment remedies with prior notice

"(a) Application.—(1) The United States may in conjunction with the complaint or at any time after the filing of a civil action, make application, under oath, to the court to issue any prejudgment remedy allowed by law.

"(2) Such application shall be filed with the court and shall set forth the factual and legal basis for each prejudgment remedy sought.

"(3) Such application shall state that the party against whom any prejudgment remedy is sought shall be afforded an opportunity for a hearing.

"(b) Grounds.—Any prejudgment remedy may be issued in favor of the United States by any court of the United States on application before judgment when—

"(1) the application sets forth with particularity, that all statutory requirements for the issuance of such prejudgment remedy sought under this chapter have been complied with by the United States; and

"(2) the court finds that the United States has shown the probable success of its of claim.

"(c) Notice; Form of Notice.—Upon the filing of an application, the clerk of the court shall issue a notice directed to any person against whom any prejudgment remedy would operate, substantially in the following form—

"NOTICE

"You are hereby notified that your [property] may be taken away from you by the United States, which says that you owe the United States a debt of $[amount]. The United States wants to take your property so that it can be sure you will pay if the court decides that you owe this money.

"If you do not want to have your property taken away, you may ask for a hearing before this court. You may ask for the hearing anytime within 20 days from the date that this notice was mailed as indicated below by the clerk. The hearing, if you so demand, will take place within five working days after you notify the court. You may ask for the hearing by checking the box at the bottom of this notice and filing it with the court at the following address: [address of court]. You must also send a copy to counsel for the United States at [address], so that the United States knows that you want the hearing.

"At the hearing, the court will decide whether the claim against you is probably valid and whether other legal requirements have been met. In addition, there are certain exemptions under Federal law which you may be entitled to claim with respect to the property.

"If you do not check the box requesting a date for a hearing and take this notice to the court within seven days, the court will automatically assume you do not want a hearing and you will lose your right to a hearing before the United States may take your property with the court's permission.

"If you have any questions concerning your rights or this procedure, you should consult an attorney.

"DATE OF MAILING: ____________

"(d) Service of Notice and Application.—(1) A copy of the notice and a copy of the application for issuance of any prejudgment remedy shall be served by counsel for the United States by first class mail on each party against whom any remedy is sought. If such service is not possible, then service may be made under Rule 4 of the Federal Rules of Civil Procedure, as appropriate.

"(2) Proof of service by mail may be made by affidavit or certification of mailing and shall set forth the actual date of mailing.

"(e) Time To Request Hearing Date; Form of Request.—(1) Each person served with a copy of the notice set forth above and the application for any prejudgment remedy may request a date be set for the hearing on such application by filing with the clerk of the court within 20 working days after service of the notice a written request for hearing date. The request for hearing shall be made by using the form provided or in some other writing. A copy of the request for hearing date shall be mailed by the person requesting the hearing to counsel for the United States.

"(2) The clerk of the court shall apprise counsel for the United States and the person requesting the hearing of the date of hearing.

"(f) Waiver of Hearing.—(1) If no request for hearing date is filed within the required time, counsel for the United States shall file an affidavit of default setting forth that service was made, that no request for hearing date was filed and that the party against whom any prejudgment remedy is sought has apparently waived any hearing. Counsel for the United States shall also file a proposed form of the written order requested. Upon filing of such affidavit, the clerk shall enter the order of waiver of record and any party so defaulted loses his right to a hearing prior to the issuance of the prejudgment remedy sought.

"(2) Upon entry of the order of waiver, the clerk shall immediately deliver the court file to the judge to whom the matter is assigned.

"(g) Judicial Review Application; Issuance of Prejudgment Remedies With Notice.—(1) The court shall, within five days after hearing or the entry of the order of waiver, review and examine all pleadings, evidence, affidavits and documents filed in the action to determine the following—

"(A) that evidence of service has been filed together with the original of the application and copy of notice;

"(B) where an order of waiver has been entered, that the affidavit of default has been filed and the order entered by the clerk;

"(C) that the claim or claims of the United States are based on facts established by the evidence or stated in the affidavit are sufficient to show that such claim or claims are probably valid; and

"(D) that any statutory requirement of this chapter for the issuance of any prejudgment remedy has been shown.

"(2) Upon the court's determination that the requirements of subsection (g)(1) have been met, the court shall issue all process sufficient to put into effect the prejudgment remedy sought.

§ 3102. Prejudgment remedies without prior notice

"(a) Grounds.—Any prejudgment remedy may be issued by any court without prior notice to the person against whom it will operate when the United States has a reasonable cause to believe that—

"(1) the person against whom the prejudgment remedy is sought is about the to leave the jurisdiction of the United States with the intent to hinder, delay, or defraud the United States and has refused to secure that debt, or is a fugitive from justice;

"(2) such person has secreted or is about to secrete property;

"(3) such person has or is about to assign, dispose, remove, or secrete property, wholly or in part, or that such person is about to assign or dispose of property with the effect of hindering, delaying, or defrauding creditors;

"(4) the United States is the owner, lessor or otherwise is lawfully entitled to the immediate possession of the property claimed and is seeking a prejudgment remedy in the nature of replevin, receivership or sequestration;

"(5) a prejudgment remedy is required to obtain jurisdiction within the United States;

"(6) a constructive or resulting trust should be impressed on the property in favor of the United States if such person is likely to put the property beyond the reach of the United States;

"(7) the person against whom the prejudgment remedy is sought is converting, is about to convert or has converted his property of whatever kind, or some part thereof, into money, securities, or evidence of debt in a manner prejudicial to creditors;

"(8) the person against whom the prejudgment remedy is sought has evaded service of process by concealing himself or has temporarily withdrawn from the jurisdiction of the United States; or

"(9) the debt is due for property obtained illegally or by fraud.

"(b) Application; Affidavit; Bond; Issuance of Writ.—(1) Contemporaneously with or at any time after the filing of a civil action, the United States shall file an application supported by an affidavit made upon information and belief, where reliable and reasonably necessary, establishing with particularity to the court's satisfaction facts supporting the probable validity of the claim and the right of the United States to recover what is demanded in the application. The application shall state the amount of the debt owed the United States, including principal, interest, and costs, if any, and one or more of the grounds set forth in section 3102(a) and the specific requirements of the specific remedy sought.

"(2) No bond is required of the United States.

"(3) Upon the court's determination that the requirements of subsection (b)(1) have been met, the court shall issue all process sufficient to put into effect the prejudgment remedy sought.

"(c) Notice and Hearing; Waiver of Hearing.—(1) Upon filing of an application as provided in this section, the clerk shall issue notice in substantially the following form to the counsel for the United States for service upon the party against whom any prejudgment remedy is sought in accordance with subsection (3) of this section—

"NOTICE

"You are hereby notified that your [property] is being taken away from you by the United States, who says that you owe it a debt of $[amount]. The United States is taking your property because it says

[Insert one or more of the specific grounds set forth in section 3102(a).]

"In addition, you are hereby notified that there are certain exemptions under Federal law which you may be entitled to claim with respect to your property.

"If you disagree and think you do not owe the United States, or that you have not done what is stated above, then you can ask this court to hear your side of the story and give your property back to you. If you want such a hearing, it will be given to you within five working days if you so demand after you notify the court that you want one. To do so, check the box at the bottom of this notice or prepare your request in writing and mail it or take it to the clerk of the court at the following address: [address]. You must also send a copy to counsel for the United States at [address], so that the United States will know you want a hearing.

"If you do not request a hearing within thirty days from [date of issue] your property may be disposed of without further notice.

"You should consult a lawyer if you have any questions about your rights about this procedure.

"(2) When a prejudgment remedy is issued under this section, the person against whom it is sought may immediately move to quash such order and the court shall on the request of the debtor hear such motion within five days from the date the request was filed. The issues at such hearing shall be limited to—

"(A) the probable validity of the claim or claims of the United States and any defenses and claims of exemptions of the party against whom such prejudgment remedy will operate; and

"(B) the existence of any statutory requirement for the issuance of any prejudgment remedy sought, plus the existence of any ground set forth in section 3102(a) of this chapter.

"(3) Counsel for the United States shall, at the time of the seizure, attachment or garnishment, or within three days thereafter, exercise reasonable diligence to serve the person against whom a prejudgment remedy is sought with an application, order and prescribed notice of the seizure, impoundment or such other act ordered by the court and of said person's right to an immediate hearing contesting the same.

"(4) If no request for a hearing is filed with the clerk within thirty days after the notice of seizure is issued by the clerk, the United States may dispose of the property as provided for in this subchapter.

"§ 3103. Attachment

"(a) Property Subject to Attachment.—(1) Generally.—All property of the debtor or garnishee, except earnings and property exempt under the provisions of this chapter, may be attached pursuant to a writ of attachment in any action in which a debt or damages are recoverable and may be held as security to satisfy such judgment and costs as the United States may recover.

"(2) The amount to be secured by an attachment shall be determined as follows—

"(A) the amount of the debt owed to the United States by the defendant; and

"(B) the estimated amount of interest and costs likely to be taxed by the court.

"(3) Limitation on Amount.—In any action or suit for an amount which is liquidated or ascertainable by calculation, no attachment shall be made for a larger sum than the amount of the debt and such additional amount as is reasonably necessary to provide for interest thereon and costs likely to be taxed in the action.

"(b) Availability of Attachment.—The United States after complying with the provisions of section 3101 or 3102 may, in the following cases, have the property of the defendant attached as security for satisfaction of any judgment which may be recovered by the United States—

"(1) in an action upon a contract, express or implied, for payment of money which is not fully secured by real or personal property, or, if originally so secured, the value of such security may, without any act of the United States or the person to whom the security was given, be substantially diminished below the amount of the debt;

"(2) when an action is pending for damages in tort and the defendant is about to dispose of or remove his property beyond the jurisdiction of the United States;

"(3) in an action for damages or upon contract, express or implied, against a defendant not residing within the jurisdiction of the United States; or

"(4) in an action to recover fines, penalties, or taxes.

"(c) Issuance of Writ; Contents.—(1) A writ of attachment shall be issued by the court directing the United States marshal of the district where the property is located to attach so much of the defendant's property as will be sufficient or is available to satisfy the debt of the United States.

"(2) Several writs of attachment may, at the option of the United States, be issued at the same time, or in succession, and sent to different districts until sufficient property is attached to satisfy the debt.

"(3) The writ of attachment shall contain—

"(A) the date of the issuance of the writ;

"(B) the court title and the docket number and name of the cause of action;

"(C) the name and last known address of the defendant;

"(D) the amount to be secured by the attachment; and

"(E) a reasonable description of the property to the extent available.

"(d) Levy of Attachment.—(1) The United States marshal receiving the writ shall proceed without delay to levy upon the property of the defendant found within his district, unless otherwise directed by counsel for the United States. The Marshal shall not sell property unless ordered by the court.

"(2) In performing the levy, the United States marshal may enter onto the lands and into the residence or other buildings owned, occupied or controlled by the defendant. In cases where the writ is issued pursuant to section 3101, the Marshal shall not enter into a residence or other building except upon specific order of the court.

"(3) When real property is levied upon, the United States marshal shall file a copy of the notice of levy in the same manner as provided for judgments in section 3202. The United States marshal shall also serve a copy of the writ and notice of levy upon the defendant in the same manner that a summons is served in a civil action and make his return thereof. If the United States marshal is unable to serve the writ upon the defendant, he shall post the writ and notice of levy in a conspicuous place upon the property and so make his return thereof.

"(4) Levy upon personal property is made by taking possession of it. Levy on personal property not easily taken into possession or which cannot be taken into possession without great inconvenience or expense, may be made by affixing a copy of the writ and notice of levy on it or in a conspicuous place in the vicinity of it describing in the notice of levy the property by quantity and with sufficient detail to identify the property levied upon. A copy of the writ and notice of levy shall also be served upon the defendant in the same manner that a summons is served in a civil action. Upon completion of the levy of personal property, the United States marshal shall so make his return thereof.

"(e) Return of Writ; Duties of Marshal; Further Return.—(1) A United States marshal executing a writ of attachment shall return the writ with his action endorsed thereon or attached thereto and signed by him, to the court from which it was issued within thirty days after the date of the levy.

"(2) The return shall describe the property attached with sufficient certainty to identify it, state the location where it was attached, when it was attached and the disposition made of the property. If no property was attached, the return shall so state.

"(3) When personal property has been replevied as authorized by section 3103(j), the United States marshal shall deliver the replevin bond to the clerk of the court to be filed in the action.

"(4) When the property levied on is claimed, replevied or sold after the return, the United States marshal shall immediately make a further return to the clerk of the court showing the disposition of the property.

"(f) Levy of Attachment as Lien on Property; Satisfaction of Lien.—(1) A levy on property under a writ of attachment creates a lien on the property in favor of the United States.

"(2) The levy of the writ of attachment upon any property of defendant subject thereto is a lien from the date of the levy on the real property and on such personal property as remains in the custody of the attaching United States marshal and on the proceeds of such personal property as is sold.

"(3) The lien in favor of the United States marshal shall be ranked ahead of any other security interests perfected after the time of levy.

"(4) The lien shall arise from the time of levy and continue until a judgment in the case is obtained or denied, or the action is otherwise dismissed. The death of the defendant whose property is attached does not terminate the attachment lien. Upon issuance of a judgment in the action and registration under this chapter, the judgment lien so created relates back to the time of levy.

"(5) Upon entry of judgment for the United States, the court shall order the proceeds of the personal property, if any has been sold, to be applied to the satisfaction of the judgment, and also order the sale of any remaining personal property and the sale of any real property levied on to satisfy the judgment.

"(g) Attachment of Perishable Property; Sale; Procedure.—(1) When personal property that has been attached is not replevied, the court may order it to be sold when it appears that the property is in danger of serious and immediate waste or decay, or that keeping it until trial will result in such expense or deterioration in value as substantially will lessen the amount likely to be realized therefrom.

"(2) In ascertaining whether the property is in danger of serious and immediate waste or decay or that keeping of the property until trial will result in such expense or deterioration in value as will substantially lessen the amount likely to be realized therefrom, the court may require or dispense with notice to the parties and may act upon such information provided by affidavit, certificate of the United States marshal or other proof, as appears sufficient to protect the interest of the parties.

"(h) Disposition of Proceeds of Sale of Perishable Property; Report of Sale.—Within five days after sale, the proceeds of the sale as provided in subsection 3103(g) after deduction of the United States marshal's expenses therefrom shall be paid by the United States marshal making the sale to the clerk of the court. The proceeds shall be accompanied by a statement in writing and signed by the United States marshal, to be filed in the action, stating the time and place of sale, the name of the purchaser and the amount received with an itemized account of expenses.

"(i) Preservation of Personal Property Under Attachment.—If personal property in custody of the United States marshal under a writ of attachment is not replevied, claimed or sold, the court may make such order for its preservation or use as appears to be to the interest of the parties.

"(j) Replevin of Attached Property by Defendant; Bond.—At any time before judgment, if the property has not previously been sold, defendant may replevy the property or any part thereof by giving a bond approved by counsel for the United States or the court and payable to the United States in double the amount of the debt.

"(k) Judgment Where Personal Property Replevied.—When personal property under attachment has been replevied, the judgment which may be entered shall be against defendant and also against the sureties on his replevin bond for the amount of the judgment, interest and costs.

"(l) Restoration of Property or Exoneration of Bond; Levy on Exempt Property.—(1) If the attachment is vacated or if the judgment is for defendant, the court shall order the property or proceeds thereof restored to defendant or exonerate the replevin bond. The court may determine under what circumstances the defendant is entitled to receive the proceeds rather than the attached property.

"(2) When any property claimed to be exempt is levied upon, defendant may, at any time after such levy, apply to the court for vacation of such levy. If it appears to the court that the property so levied upon is exempt, the court shall order the levy vacated and the property returned to defendant.

"(m) Reduction or Discharge of Attachment.—(1) If an excessive or unreasonable attachment is made, the defendant or person whose property has been attached may submit a written motion to the court which issued the writ for a reduction of the amount of the attachment or its discharge. Notice of such motion shall be served upon the United States in accordance with the Federal Rules of Civil Procedure. The defendant may move for reduction or dissolution of attachment as appropriate.

"(2) The court shall order a part of the property to be released, if upon hearing the court finds that the amount of the attachment is excessive or unreasonable or where the attachment is for a sum larger than the liquidated or ascertainable amount of the debt plus an amount necessary to include interest and costs likely to be taxed.

"(3) The court shall dissolve the attachment if the amount of the debt is unliquidated and unascertainable by calculation.

"§ 3104. Garnishment

"(a) All prejudgment garnishments shall meet the requirements of sections 3101 and 3102.

"(b) All prejudgment garnishments as authorized by the court hereunder shall be issued and answered in the same manner and to the same extent as set forth in section 3306 with the following exceptions—

"(1) The writ shall specify the date that the order authorizing prejudgment garnishment was entered.

"(2) The writ shall specify the amount claimed by the United States.

"§ 3105. Injunctions

"Whether or not there are other remedies available to the United States under this chapter, nothing in this chapter shall be construed to preclude or otherwise limit the United States or any other party from obtaining injunctive relief under the Federal Rules of Civil Procedure in actions for debts owed the United States.

"§ 3106. Sequestration

"(a) Application for Writ of Sequestration and Order.—If the United States claims in its complaint the right to title or possession of property or seeks to enforce a lien or security interest in such property, the United States may file an affidavit showing—

"(1) a description of the property sufficient to identify it;

"(2) the approximate value of the property;

"(3) the location of the real property, or in the case of personal property, the last known and likely locations of the property;

"(4) the availability of sequestration.

"(b) Availability of Sequestration.—The United States after complying with, or in addition to, the provisions of sections 3101 or 3102 may have property sequestered—

"(1) upon a showing that there exists an immediate danger that the debtor or garnishee of such property will ill treat, waste, destroy or convert to his own use the property, which includes, but is not limited to, crops, timber, rents, perishable goods, livestock or the revenues therefrom; or

"(2) upon a showing that title to or possession of such property has been secured by the debtor or other defendant or the party in possession by surreptitious means, trick, scheme, fraud, force, violence, claim of adverse possession or such other claims or any means adverse to the claim in title or possession, or both, of the United States.

"(c) Issuance of Writ.—A writ of sequestration shall be issued by the court directing the debtor or other defendant or party in possession to sequester the property and deliver it to the United States.

"(d) Unless inconsistent, the provisions governing section 3103(g) through (1) shall be applicable to this section.

"(e) These writs shall be served in accordance with the Federal Rules of Civil Procedure.

"§ 3107. Replevin

"(a) Application for Writ.—If the United States claims in its complaint the right to possession of specific personal property, the United States may, at any time after complying with the provisions of section 3101 or 3102, file an affidavit showing—

"(1) that the United States is the owner of the property claimed, or is lawfully entitled to its immediate possession;

"(2) a description of the property;

"(3) that the property is wrongfully detained by the defendant;

"(4) the approximate value of the property.

"(b) Seizure.—If the court determines the United States has met the above requirements, it shall order that the United States marshal take possession of the specified property and deliver it to the United States.

"(c) Redelivery of Possession to Defendant.—The defendant may obtain redelivery of the property or any part thereof by giving bond as set forth in section 3103(j).

"§ 3108. Receivership

"(a) Appointment of a Receiver.—The United States may apply for the appointment of a receiver for property in which it has an interest and which is or is to be the subject of an action in court. The application may be filed at anytime prior to judgment or during the pendency of an appeal if there is a danger that the property will be removed from the jurisdiction of the court, lost, materially injured or damaged, mismanaged or the United States has otherwise established grounds for such relief under section 3101(a) or 3102(a). However when the security agreement so provides, a receiver shall be appointed without notice or without regard to adequacy of security. An application made by the United States when it is not already a party to the action constitutes an appearance in the action and the United States shall be joined as a party.

"(b) Powers of Receiver; Employment of Counsel.—The court appointing a receiver may authorize him to take possession of real and personal property and sue for, collect and sell obligations upon such conditions and for such purposes as the court shall direct and to administer, collect, improve, lease, repair or sell such real and personal property, as the court shall direct. A receiver appointed to manage residential or commercial property shall have demonstrable expertise in the management of these types of property. Unless expressly authorized by order of the court, a receiver shall have no power to employ attorneys, accountants, appraisers, auctioneers or other professional persons. Upon motion of the receiver or a party, powers granted to a receiver may be expanded or limited. A receiver appointed under the terms of a security agreement shall be entitled to recover the rents and profits of the property covered by the security agreement as additional security and to pay them over to the United States in payment of any amount due arising from a default by the debtor.

"(c) United States as Secured Party.—In the event of any default or defaults in paying the principal, interest, taxes, water, rents, or premiums of insurance required by the security instrument or in the event of a nonfinanced default or defaults, the United States in any action to foreclose the security interest shall be entitled, without notice and without regard to adequacy of any security for the debt, to the appointment of a receiver of the rents and profits of the premises covered by the security interest, and the rents and profits of the premises are assigned to the United States as further security for the payment of the debts.

"(d) Duration of Receivership.—In an action to foreclose a security interest, the receivership shall terminate when the purchaser at the foreclosure sale takes lawful possession of the property unless the court directs otherwise. In all other actions, the receivership shall not continue past the entry of judgment unless the court orders it continued under section 3302(b) or unless the court otherwise directs its continuation.

"(e) Accounts; Requirement to Report.—A receiver shall keep written accounts itemizing receipts and expenditures, describing the property and naming the depository of receivership funds and his accounts shall be open to inspection by any person having an apparent interest in the property. The receiver shall file reports at regular intervals as directed by the court and shall serve the United States with a copy thereof.

"(f) Removal.—Upon motion of any party or upon its own initiative, the court which appointed the receiver may remove him at any time with or without cause.

"(g) Priority.—If more than one court appoints a receiver, the receiver first qualifying under law shall be entitled to take possession, control or custody of the property.

"(h) Commissions of Receivers.—

"(1) Generally.—A receiver is entitled to such commissions not exceeding 5 per centum of the sums received and disbursed by him as the court allows unless the court otherwise directs.

"(2) Allowance Where Funds Depleted.—If, at the termination of a receivership, there are no funds in the hands of a receiver, the court may fix the compensation of the receiver in accordance with the services rendered and may direct the party who moved for the appointment of the receiver to pay such compensation in addition to the necessary expenditures incurred by the receiver which remained unpaid.

"(3) Procedure.—At the termination of a receivership, the receiver shall file a final accounting of this receipts and disbursements and apply for compensation setting forth the amount sought and the services rendered by him.

"SUBCHAPTER C—JUDGMENTS; LIENS

"Sec.

"3201. Judgment by confession.
"3202. Judgment lien.
"3203. Sale of property subject to judgment lien.
"3204. Interest on judgments.

"SUBCHAPTER C—JUDGMENTS; LIENS

"§ 3201. Judgment by confession

"(a) General Provision.—On application, a court may enter a judgment by confession in favor of the United States without the filing of a civil action for money due and owing.

"(b) Venue.—The confession of judgment shall be filed in the district in which one or more of the defendants reside, can be found, are doing business at the time of the application, or in cases proceeding by in rem or quasi in rem jurisdiction where the property sought to be adjudicated is located.

"(c) Statement by Defendant; Contents.—Before a judgment by confession shall be entered, a sworn statement in writing shall be made and signed by the defendant after default and subsequent notice by the United States and filed with the court along with the application, stating—

"(1) the amount for which judgment may be entered and authorizing the entry of judgment;

"(2) the facts out of which the debt arose and that the amount confessed is justly due; and

"(3) that the person signing the statement understands that a judgment by confession allows the entry of judgment without further proceedings and authorizes enforced collection of the judgment.

"(d) Entry of Judgment.—The confession of judgment shall be filed with the clerk of the court. The clerk may enter a judgment for the amount confessed.

"(e) Confession by Joint Debtors.—One or more joint debtors may confess a judgment for a joint debt due. Where all the joint debtors do not join in the confession, the judgment shall be entered and enforced against only those who confessed it. A confessed judgment against some of the joint debtors is not a bar to an action against the other joint debtors.

"(f) Enforcement of Judgment by Confession.—Judgments by confession shall be enforced in the same manner as other judgments.

"§ 3202. Judgment lien

"(a) Creation of Lien Generally.—A judgment shall be a lien upon all real property of a judgment debtor upon filing a certified copy of the abstract of the judgment in the manner in which a notice of tax lien would be filed under section 6323(f) (1) and (2) of the Internal Revenue Code of 1986.

"(b) In Criminal Cases.—A judgment obtained by the United States in a criminal case shall create a lien as provided in sections 3565 and 3613 of the Internal Revenue Code of 1986.

"(c) In Tax Cases.—A judgment obtained by the United States in a tax case shall create a lien co-extensive with any lien created prior to judgment under section 6321 of the Internal Revenue Code of 1986; if no lien was so created prior to the judgment, then the procedure in subsection (a) shall be followed.

"(d) Amount of Lien.—A lien created hereunder is for the amount necessary to satisfy the judgment, including costs and interest.

"(e) Priority of Lien.—A lien created hereunder shall have priority over any other lien or encumbrance which is perfected later in time. However, liens created under sections 3565 and 3613 of the Internal Revenue Code of 1986, regarding criminal judgments or under section 6321 of the Internal Revenue Code of 1986, regarding tax judgments shall have priority as otherwise provided by law.

"(f) Duration of Lien; Renewal.—(1) A lien created hereunder is effective, unless satisfied, for a period of twenty years.

"(2) The lien may be renewed for one additional period of twenty years upon filing a notice of renewal in the same manner as the judgment was filed and shall relate back to the date the judgment was filed. The notice of renewal must be filed before the expiration of the first twenty-year period to prevent the expiration of the lien.

"(3) The duration and renewal of a lien created under sections 3565 and 3613 of title 18, United States Code, regarding criminal judgments, or a lien created under section 6321 of the Internal Revenue Code of 1986, regarding tax judgments shall be as otherwise provided by law.

"(g) Release of Judgment Lien.—A judgment lien shall be released upon the filing of a satisfaction of judgment or release of lien in the same manner as the judgment was filed to obtain the lien.

"(h) Effect of Lien Upon Eligibility for Federal Grants, Loans or Programs.—Any person who has a judgment lien against his property for any debt to the United States shall not be eligible to receive any grant or loan which is made, insured, guaranteed or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which such person is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied. The agency responsible for such grants and loans may promulgate regulations to allow for waiver of this restriction on eligibility for such grants and loans.

"§ 3203. Sale of property subject to judgment lien

"Upon application to the court, the court may order the United States to sell pursuant to the provisions of sections 2001 and 2002 of title 28, United States Code, any real property subject to its judgment lien. This provision shall not preclude the United States from using an execution sale to sell real property subject to a judgment lien.

"§ 3204. Interest on judgments

"(a) Judgments for money, other than criminal or tax judgments, shall bear interest at the greater of—

"(1) the rate in an express contract or negotiable instrument, if the action was brought for the recovery of an amount due on the contract or negotiable instrument; or

"(2) the rate established by statute or regulation applicable to the debt owed;

"(3) the judgment interest rate established in accordance with this section.

"(b) The judgment interest rate, where applicable, shall be calculated from the date of the entry of the judgment, at a rate equal to 150 per centum of the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment. The Director of the Administrative Office of the United State Courts shall distribute notice of that rate and any changes in it to all Federal judges.

"(c) Interest on judgments shall accrue daily from the date of entry of the judgment at the rate determined herein and shall be compounded annually to the date of payment.

"(d) Interest on tax judgments obtained under the Internal Revenue Code shall be allowed under section 6621 of such Code.

"(e) Interest on criminal judgments shall be allowed as provided in title 18 of the United States Code.

"(f) The interest rate on any judgment over one year old may be adjusted to the current rate applicable under this section.

"(g) Nothing in this section shall preclude the assessment of prejudgment interest that is otherwise allowable by law.

"SUBCHAPTER D—POSTJUDGMENT REMEDIES

"Sec.
"3301. Enforcement of judgments.
"3302. Orders in aid of execution.
"3303. Restraining notice.
"3304. Execution.
"3305. Installment payment order.
"3306. Garnishment.
"3307. Modification of protective order; supervision of enforcement.
"3308. Power of court to punish for contempt.
"3309. Arrest of judgment debtor.
"3310. Discharge.

"SUBCHAPTER D—POSTJUDGMENT REMEDIES

"§ 3301. Enforcement of judgments

"(a) A judgment may be enforced by any of the remedies set forth in this subchapter, and the court may issue other writs pursuant to section 1651 of title 28, United States Code, as necessary to supplement these remedies, subject to the provision of Rule 81(b) of the Federal Rules of Civil Procedure.

"(b) The property of a judgment debtor which is subject to sale to satisfy the judgment may be sold by judicial sale, pursuant to sections 2001, 2002, and 2004 of title 28, United States Code, or by execution sale pursuant to section 3304(g) of this subchapter.

"§ 3302. Orders in aid of execution

"Where the judgment debtor has an ownership interest of any kind in property which is not exempt and cannot readily be attached or levied on by ordinary legal process, the United States is entitled to aid from the court by injunction or other appropriate order to reach the property to satisfy the judgment whether the property is located in the same district or other districts.

"(a) Order.—The court may order the property, together with all documents or records related to the property, that is in or subject to the possession or control of the judgment debtor or another person, to be turned over to the United States for execution or otherwise applied toward the satisfaction of the judgment. Where the judgment debtor or other person refuses to turn over the property, the court may enforce the order by proceedings for contempt or other appropriate order provided the judgment debtor or other person, as appropriate, is served with a copy of the order or has actual notice of the order.

"(b) Receiver.—The court may appoint a receiver of property where appropriate in accordance with section 3108 of this chapter.

"(c) Same or Independent Suit.—These proceedings may be brought by the United States in the same suit in which the judgment is rendered or in a new and independent suit.

"(d) Costs.—Upon request, in a proceeding under this section, the United States shall recover from the judgment debtor 10 percent of the reasonable costs. This provision shall apply to the extent that recovery of costs by the United States is not provided for under other applicable provisions of Federal law.

"§ 3303. Restraining notice

"(a) Issuance; On Whom Served; Form; Service.—A restraining notice may be issued by the clerk of the court or counsel for the United States as officer of the court. It may be served upon any person, except the employer of a judgment debtor where the property sought to be restrained consists of earnings due or to become due to the judgment debtor. It shall be served personally in the same manner as a summons. It shall specify all of the parties to the action, the social security number of the judgment debtor, if known, the date the judgment was entered, the court in which it was entered, the amount of the judgment and the amount when due thereon, and the names of all parties against whom the judgment was entered. It shall set forth the requirements of subsection (b) below and shall state that disobedience is punishable as a contempt of court.

"(b) Effect of Restraint; Prohibition of Transfer; Duration.—(1) A judgment debtor who is served with a restraining notice shall not sell, assign, transfer or hypothecate any property, except as may be reasonably necessary to be extended for the maintenance or support of the debtor or a dependent of the debtor and if the debtor is engaged in business, as may be reasonably necessary for the payment of expenditures for the continuation, preservation, and operation of such business.

"(2) A person other than the judgment debtor who is served with restraining notice shall not—

"(A) repay any obligation to the judgment debtor;

"(B) return any property to the judgment debtor; or

"(C) sell, assign, transfer or hypothecate any property—

"(i) specifically described in the restraining notice;

"(ii) that the other person knows to be owned by the judgment debtor; or

"(iii) in which the other person could have reason to believe by the exercise of due diligence that the judgment debtor has an ownership interest.

"(3) The restraining notice shall remain in effect for one year from the date the notice is served, or until the judgment is satisfied or the restraining notice is vacated by order of the court, whichever occurs first.

"(c) Disclosure.—The person upon whom a restraining notice is served, other than the judgment debtor, shall disclose to the counsel for the United States, in writing under oath within ten days after receipt of the restraining notice, the type or nature and value of such property of the judgment debtor as may be in his possession or custody. Upon such person receiving or acquiring property of the judgment debtor after receipt of a restraining notice, that person shall disclose to counsel for the United States, in writing under oath within seven days of receipt of the property, the type or nature and value of such property of the judgment debtor as may be in his possession or custody.

"(d) Discovery.—Any discovery request under the Federal Rules of Civil Procedure which accompanies this restraining notice and which seeks the disclosure of the type, nature and value of property of the judgment debtor must be responded to within ten days of service of the notice and discovery request or within ten days after property of the judgment debtor comes into the possession of the person served. Upon request, a reasonable extension may be granted.

"(e) Subsequent Notice.—Leave of court is required to serve more than one restraining notice upon the same person, other than the judgment debtor, with respect to the same judgment.

"(f) Notice to Judgment Debtor.—A copy of the restraining notice shall be mailed by first class mail by counsel for the United States to the judgment debtor within four days after the time of service of the restraining notice on a person other than the judgment debtor.

"§ 3304. Execution

"(a) Property Subject to Execution.—All property which the judgment debtor possesses and in which the judgment debtor has an interest shall be subject to levy pursuant to a writ of execution; co-owned property shall be subject to execution to the same extent as it is under the law of the state in which it is located. The judgment debtor must identify any property claimed to be exempt under the provisions of subchapter E.

"(b) Execution Lien.—A lien shall be created in favor of the United States on all property levied upon under a writ of execution and shall date from the time of the levy. This lien shall have priority over all subsequent liens and shall be for the amount due on the judgment. If the United States has a judgment lien, the execution lien shall relate back to the judgment lien date.

"(c) Form of Writ of Execution.—(1) General Requirements.—An execution writ shall specify the date that the judgment was entered, the court in which it was entered, the amount of the judgment if for money, the amount of the costs, and the sum actually due when the writ is issued, the amount of interest due, the rate of post-judgment interest, and the name of the party against whom the judgment was entered. The writ shall direct the United States marshal to satisfy the judgment out of all property, real and personal, of the judgment debtor not otherwise exempt pursuant to this chapter. An execution writ shall direct that only the property in which a named judgment debtor, who is not deceased, has an interest be levied upon or sold thereunder, and shall state the last known address of that judgment debtor.

"(2) There shall be no requirement that personal property be levied upon and sold prior to levy and sale of real property of the judgment debtor.

"(3) Execution for Delivery of Certain Property.—An execution issued upon a judgment for the delivery to the United States of the possession of personal property, or for the delivery of the possession of real property, shall particularly describe the property, and shall require the marshal to deliver the possession of the property to the United States.

"(4) Execution for Possession or Value of Personal Property.—If the judgment is for the recovery of personal property or its value, the writ shall command the marshal, in case a delivery thereof cannot be had, to levy and collect the value thereof for which the judgment was recovered, to be specified therein, out of any property of the party against whom judgment was rendered, liable to execution.

"(d) Issuance.—(1) The clerk of any court where a judgment is docketed, entered or registered, upon written application of counsel for the United States, shall, and without other or further order of a judge of that court, forthwith issue writs of execution. The writs shall be addressed to "Any United States Marshal," and may be served and executed in any judicial district of the United States, but shall be returnable to the issuing court. The writ shall be signed by the clerk of the court issuing the writ.

"(2) Multiple writs may issue simultaneously, and successive writs may issue before the return date of a writ previously issued.

"(e) Records of United States Marshal.—(1) The United States marshal receiving the execution shall endorse thereon the exact hour and day when he received it. If he receives more than one on the same day against the same person, he shall number them as received.

"(2) The United States marshal shall make a memorandum in writing of the date of every levy and specify the property upon which the levy has been made on the process or in an attached schedule. The memorandum or schedule shall also set forth the marshal's costs, expenses and fees.

"(f) Levy of Execution.—(1) The United States marshal receiving the writ shall proceed without delay to levy upon the property of the debtor found within his district, unless otherwise directed by counsel for the United States.

"(2) In performing the levy, the United States marshal may enter onto the lands and into the residence or other buildings owned, occupied or controlled by the debtor.

"(3) When real property is levied upon, the United States marshal shall file a copy of the notice of levy in the same manner as provided for judgments in section 3202. The United States marshal shall also serve a copy of the writ and notice of levy upon the debtor in the same manner that a summons is served in a civil action and so make his return thereof. If the United States marshal is unable to serve the writ upon the debtor, he shall post the writ and notice of levy in a conspicuous place upon the property and so make his return thereof.

"(4) Levy upon personal property is made by taking possession of it. Levy on personal property not easily taken into possession or which cannot be taken into possession without great inconvenience or expense, may be made by affixing a copy of the writ and motion of levy on it or in a conspicuous place in the vicinity of it describing in the notice of levy the property by quantity and with sufficient detail to identify the property levied upon. A copy of the writ and notice of levy shall also be served upon the debtor in the same manner that a summons is served in a civil action. Upon completion of the levy of personal property, the United States marshal shall so make his return thereof.

"(5) Levy on Property Otherwise Secured or Pledged.—

"(A) Real property subject to a security interest or conveyed in trust as security for any debt or contract may be levied upon and sold on execution against the interest of the judgment debtor, subject to such mortgage, and the terms and conditions thereof.

"(B) Personal property pledged, assigned or security for any debt or contract, may be levied upon and sold on complying with the conditions of the pledge, assignment or security interest.

"(g) Execution Sale Procedures.—(1) Sale of Real Property.—

"(A) Real property, or any interest therein, shall be sold for cash at public auction at the courthouse of the county, parish or city in which the greater part of the property is located or upon the premises or some parcel thereof.

"(B) The time and place of sale of real property, or any interest therein, under execution shall be advertised by the United States marshal, by publication of notice, once a week for at least three weeks prior to the sale, in at least one newspaper of general circulation in the county or parish where the property is located. The first of these publications shall appear not less than twenty-five days immediately preceding the day of sale. The notice shall contain a statement of the authority by which the sale is to be made, the time of levy, and the time and place of sale; it shall also contain a brief description of the property to be sold, sufficient to identify the property, such as a street address the urban property, and the survey identification and location for rural property, but it shall not be necessary for it to contain field notes.

"(C) The United States marshal shall give written notice of public sale by personal delivery, or certified or registered mail, to persons and parties known to him to claim an interest in property under execution, including lienholders, co-owners and tenants, at least twenty-five days prior to the day of sale, to the last known address of such persons or parties.

"(2) Sale of City Lots.—If the real property consists of several lots, tracts, or parcels in a city or town, each lot, tract, or parcel must be offered for sale separately, unless not susceptible to separate sale because of the character of improvements.

"(3) Sale of Rural Property.—If the real property is not located in a city or town, the debtor may divide the property into lots of not less than fifty acres or in such greater or lesser amounts as ordered by the court, furnish a survey of such prepared by a registered surveyor, and designate the order in which those lots shall be sold. When a sufficient number of lots are sold to satisfy the amount of the execution and costs of sale, the marshal shall stop the sale.

"(4) Sale of Personal Property.—

"(A) Personal property levied on shall be offered for sale on the premises where it is located at the time of levy, or at the courthouse of the county, parish or city wherein it is located, or at some other place if, owing to the nature of the property, it is more convenient to exhibit it to purchasers at such place. Personal property susceptible of being exhibited shall not be sold unless it is present and subject to the view of those attending the sale, except shares of stock in corporations, and in cases, when by reason of the type or nature of the property, it is impractical to exhibit it, or where the debtor has merely an interest without the right to the exclusive possession, in which case the interest of the debtor may be sold and transferred without the presence of the property.

"(B) Notice of the time and place of the sales of personal property shall be given by posting notice thereof for ten days successively immediately prior to the day of sale at the courthouse of any county, parish, or city, and at the place where the sale is to be made, and by mailing a copy by registered or certified mail to the judgment debtor at his last known address, or by personal delivery.

"(5) Postponement of Sale.—The United States marshal may postpone an execution sale from time to time continuing the posting of notice and/or publication of the notice until the date to which the sale is postponed, and appending, at the foot of such notice of each successive postponement the following:

"The above sale is postponed until the ______ day of ______, 19___, at ______ o'clock ___.M., ______

United States Marshal for the District of ______, by ______,

Deputy, dated ______.

"(6) Bidding Requirements; Liability of Bidder; Resale.—

"(A) The United States marshal may require of any bidder at any sale a cash deposit of as much as twenty percent of the sale price before the bid is received.

"(B) The cash deposit of any successful bidder at an execution sale shall be forfeited to the United States if he fails to comply with the terms of the sale; in addition, he shall be liable to the United States for all losses incurred by the United States at a subsequent sale of the same property. The liability for losses shall be limited to the difference between the amount of the deposit which was forfeited and the amount accepted by the United States as the highest bid by the defaulting bidder at the defaulted sale plus the costs of the defaulted sale. This liability shall be reduced by the amount the United States realizes from the subsequent sale, if any.

"(7) Resale of Property.—When the terms of the sale are not complied with by the bidder, the United States marshal shall proceed to sell the property again on the same day, if there is sufficient time; but if not, he shall readvertise and sell the property.

"(8) Transfer of Title After Sale.—

"(A) When the sale has been made and its terms complied with, the United States marshal shall execute and deliver any and all documents necessary to transfer ownership to the purchaser, without warranty, all the rights, titles, interest, and claims that the judgment debtor had in the property sold to the purchaser.

"(B) If the purchaser dies before execution and delivery of the documents needed to transfer ownership, the United States marshal shall execute and deliver them to the estate of the purchaser, and it shall have the same effect as if accomplished during the lifetime of the purchaser.

"(9) Purchaser Considered Innocent Purchaser Without Notice.—The purchaser of property sold under execution is considered to be an innocent purchaser without notice if the purchaser would have been considered an innocent purchaser without notice had the sale been made voluntarily and in person by the defendant.

"(10) No Right of Redemption.—The judgment debtor shall not be entitled to redeem the property after the execution sale.

"(11) Distribution of Sale Proceeds.—

"(A) The United States marshal shall first deliver to the judgment debtor, or his agent or attorney, such amounts to which he is entitled from the sale of partially exempt property as set forth in subchapter E of this chapter.

"(B) The United States marshal shall retain from the proceeds of a sale of property an amount equal to the reasonable expenses incurred in making the levy and keeping and maintaining the property.

"(C) The United States marshal shall deliver the balance of the money collected on execution to the counsel for the United States at the earliest opportunity.

"(D) If more money is received from the sale of the property than is sufficient to satisfy the executions held by the United States marshal, he shall pay forthwith the surplus to the judgment debtor or his agent or attorney.

"(h) Replevy.—(1) Any personal property taken in execution may be returned to the defendant by the United States marshal upon the delivery by the defendant to him of a bond or upon satisfaction of the judgment and any costs incurred in connection with scheduling the sale prior to the execution sale, payable to the United States, with two or more good and sufficient sureties, to be approved by the United States marshal, conditioned upon the delivery of the property to the United States marshal at the time and place named in the bond, to be sold according to law, or for the payment to the United States marshal of a fair value thereof, which shall be stated in the bond.

"(2) Where property has been replevied, as provided above, the judgment debtor may sell or dispose of the property paying the United States marshal the stipulated value thereof.

"(3) In the case of the non-delivery of the property according to the terms of the delivery bond, and non-payment of the value thereof, the United States marshal shall forthwith endorse the bond 'Forfeited' and return it to the clerk of the court from which the execution issued; whereupon, if the judgment remains unsatisfied in whole or in part, the clerk shall issue execution against the principal judgment debtor and the sureties on the bond for the amount due, not exceeding the stipulated value of the property, upon which execution no delivery bond shall be taken, which instruction shall be endorsed by the clerk on the execution.

"(i) Death of Judgment Debtor.—The death of the judgment debtor after a writ of execution is issued stays the execution proceedings, but any lien acquired by levy of the writ must be recognized and enforced by the court having jurisdiction over the estate of the deceased. The execution lien may be enforced against the executor, administrator, or personal representative of the estate of the deceased; or if there be none, against the heirs or devisees of the property of the deceased receiving same, but only to the extent of the value of the property coming to them.

"(j) When Execution Not Satisfied.—When the property levied upon does not sell for enough to satisfy the execution, the United States marshal shall proceed on the same writ of execution as to other property of the judgment debtor.

"(k) Return on Execution.—(1) The United States marshal shall make a written return on each writ of execution to the court from which the writ was issued and deliver a copy to counsel for the United States who requested the writ. It shall be returnable ninety days from the date of issuance unless counsel for the United States has specified an earlier date. The return shall be filed by the clerk of the court from which the writ was issued.

"(2) The United States marshal shall state concisely what was done in pursuance of the requirements of the writ.

"(3) The return shall be made forthwith if satisfied by the collection of the money, or if ordered by counsel for the United States, which order shall be noted on the return.

"§ 3305. Installment payment order

"Where it is shown that the judgment debtor is receiving or will receive money from any source or is attempting to impede the United States by rendering services without adequate compensation, upon motion of the United States and notice to the judgment debtor, the court may, if appropriate, order that the judgment debtor make specified installment payments to the United States. Notice of the motion shall be served on the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested. In fixing the amount of the payments, the court shall take into consideration the reasonable requirements of the judgment debtor, any payments required to be made by the judgment debtor or deducted from the money he would otherwise receive in satisfaction of other judgments, the amount due on the judgment, and the amount being or to be received, or, if the judgment debtor is attempting to impede the United States by rendering services without adequate compensation, the reasonable value of the services rendered.

"Upon motion of the United States, and upon a showing that the debtor's financial circumstances have changed or that assets not previously disclosed by the debtor have been discovered, the court may increase the amount of payments or alter their frequency or require full payment.

"§ 3306. Garnishment

"(a) General.—A court may issue writs of garnishment, either prejudgment or postjudgment against the property of a debtor which is in the possession, custody or control of a third person in order to satisfy a judgment against the debtor; co-owned property shall be subject to garnishment to the same extent as it is under the law of the States in which it is located. The United States may request and a court shall issue simultaneous separate writs of garnishment to several garnishees. All writs of garnishment issued pursuant to these provisions shall be continuing and shall terminate only as provided herein.

"(b) Writ.—(1) General Requirements.—The United States shall include in its application for a writ of garnishment, the following—

"(A) any matters required by section 3104 when seeking prejudgment garnishment;

"(B) the debtor's name, social security number, if known, and the debtor's last known address;

"(C) the nature and amount of the debt alleged to be owed and that demand on the debtor for payment of the debt has been made, but the debtor has not paid the amount due. A money judgment must be alleged for postjudgment garnishment; and

"(D) that the garnishee is believed to be indebted to the debtor or have possession of property of the debtor.

"(2) Proper Garnishee for Particular Property.—

"(A) Where property consists of a right to or share in the stock of an association or corporation, or interests or profits therein, for which a certificate of stock or other negotiable instrument is not outstanding, the corporation, or the president or treasurer of the association, shall be the garnishee.

"(B) Where property consists of a right to or interest in a decedent's estate or any other property or fund held or controlled by a personal representative or fiduciary, the personal representative or fiduciary shall be the garnishee.

"(C) Where property consists of an interest in a partnership, any partner other than the debtor, shall be the garnishee on behalf of the partnership.

"(D) Where property or a debt is evidenced by a negotiable instrument for the payment of money, a negotiable document of title or a certificate of stock of an association or corporation, the instrument, document or certificate shall be treated as property capable of delivery and the person holding it shall be the garnishee; except that in the case of a security which is transferable in the manner set forth in State law, the firm or corporation which carries on its books an account in the name of the debtor in which is reflected such security, shall be the garnishee; *Provided, however,* That if such security has been pledged, the pledgee shall be the garnishee.

"(c) Issuance of Writ.—(1) Clerk's Review.—The clerk of the court shall review the application for postjudgment writs of garnishment and if it meets the requirements set forth herein, shall issue an appropriate writ. The clerk shall issue prejudgment writs of garnishment as authorized by the court.

"(2) Form of Writ.—

"(A) General provisions.—The writ shall state—

"(i) The nature and amount of the debt. If interest is accruing, the rate of accrual thereafter shall be stated. If a judgment is involved, the amount of any costs included in the judgment should be stated.

"(ii) The name and address of the garnishee.

"(iii) The name and address of counsel for the United States.

"(iv) The last known mailing address of the debtor.

"(v) That the garnishee shall answer the writ within ten days of service of the writ.

"(B) Earnings garnishment.—The United States may apply for garnishment of the non-exempt disposable earnings of a natural person. The writ for the garnishment of earnings shall direct the garnishee to withhold and retain the non-exempt earnings for which the garnishee is indebted to the debtor at the time of receipt of the writ and may thereafter become indebted to the debtor pending further order of the court.

"(C) Garnishment of other property.—As to all non-earnings property of a debtor who is a natural person and all property of other debtors in the possession, custody and control of the garnishee at the time the writ is received by the garnishee and anytime thereafter, the writ shall direct the garnishee to retain possession, custody and control of and not to transfer or return the property pending further order of the court.

"(D) Service of writ.—The United States may serve the garnishee with a copy of the writ by first class mail or by delivery by the United States marshal as provided by Rule 4 of the Federal Rules of Civil Procedure. The United States shall, at the same time, serve the debtor with a copy of the writ by first class mail to the debtor's last known address; counsel for the United States shall certify to the court that this service was made.

"(E) Answer of the garnishee.—In its written answer to the writ of garnishment, the garnishee shall state under oath whether it is indebted to the debtor or has custody, control or possession of the debtor's property; a description of the indebtedness or property; whether the indebtedness or property is subject to any prior garnishments or levies and a description of any such claim; and whether the indebtedness or property is subject to any exemptions from garnishment. In addition, if the writ of garnishment is against the earnings of the debtor, the garnishee shall state whether the debtor was employed at the time the writ was received, and, if so, how much was owed at the time; and whether the garnishee anticipates owing earnings to the debtor in the future, and, if so, the amount and whether the pay period will be weekly or another specified period. In all cases, the garnishee shall file the original answer with the court issuing the writ and serve a copy on the debtor and counsel for the United States. The copy sent to the debtor shall be accompanied by instructions to the debtor for objecting to the answer of the garnishee and for obtaining a hearing on the objections. Any garnishee, including a corporation, may file an answer without the representation of an attorney.

"(F) Objections to answer.—Within twenty days after receipt of the answer, the debtor and the United States may file a written objection to the answer and request a hearing on the objection. The party objecting must state the grounds for the objection and bears the burden of proving them. A copy of the objection and request for hearing shall be served on the garnishee and the other party. The court shall set a hearing within ten to fifteen days after the date the request was received by the court, and give notice of the date to all parties.

"(G) Garnishee's failure to answer or pay.—If a garnishee fails to answer or pay within the time specified, the United States may petition the court for an order requiring the garnishee to appear before the court to answer the writ or pay by the appearance date. If the garnishee fails to appear or does appear and fails to show good cause why he failed to comply with the garnishment writ, the court shall enter judgment by default against the garnishee for the full amount of the past debt owed by the debtor.

"The court shall award reasonable attorney's fees to the United States and against the garnishee if the writ has not been answered within the time specified therein and a petition requiring the garnishee to appear was filed as provided in this section. Failure to answer or pay within the time specified in the writ may also be punished as a contempt of the court.

"(H) Disposition order.—After the garnishee files its answer and if no hearing is required, the court shall promptly enter an order directing the garnishee as to the disposition of the debtor's property. If a hearing is required, the order shall be entered within five days of the hearing.

"(I) Priorities.—Court orders and garnishments for the support of a person shall have priority over a writ of garnishment issued pursuant to these provisions. As to any other garnishment or levy, a garnishment issued pursuant to these provisions shall have priority over those which are later in time and shall be satisfied in the order in which the writs are served upon the garnishee.

"(J) Accounting.—The debtor or garnishee may request an accounting on a garnishment within ten days after the garnishment terminates. The United States shall give a written accounting to the debtor and garnishee of all earnings and property it receives under a writ garnishment within twenty days after it receives the request of the debtor or garnishee. Within ten days after the accounting is received, the debtor or garnishee may file a written objection to the accounting and a request for hearing. The party objecting must state grounds for the objection. The court shall set a hearing on the objection within ten to fifteen days after the court receives the request for a hearing.

"(K) Discharge of garnishee's obligation.—A garnishee shall be discharged as set forth in section 3311 of this subchapter.

"(L) Termination of garnishment.—A garnishment proceeding hereunder can be terminated by—

"(i) the court quashing the writ of garnishment;

"(ii) exhaustion of earnings or property in the possession, custody or control of the garnishee, unless the garnishee reinstates or reemploys the debtor within ninety days of dismissal or resignation; or

"(iii) satisfaction of the debtor's obligation to the United States.

"§ 3307. Modification of protective order; supervision of enforcement

"Within the provisions of this chapter, the court may at any time on its own initiative or the motion of any interested person, and upon such notice as it may require, make an order denying, limiting, conditioning, regulating, extending or modifying the use of any enforcement procedure.

"§ 3308. Power of court to punish for contempt

"A court shall have power to punish a civil or criminal contempt committed with respect to an enforcement procedure or order under this chapter.

"§ 3309. Arrest of judgment debtor

"Upon motion of the judgment creditor without notice, where it is shown by affidavit or otherwise that the judgment debtor is about to depart from the jurisdiction of the United States, or keeps himself concealed therein with intent to hinder, delay or defraud the judgment creditor, and that there is reason to believe that the judgment debtor has in his possession or custody non-exempt property in which he has an interest, the court may issue a warrant directed to the United States marshal to arrest the judgment debtor forthwith and bring him before the court. The United States marshal shall serve upon the judgment debtor a copy of the warrant and supporting documents at the time of arrest. When the judgment debtor is brought before the court, the court may order that he give a bond or undertaking in a sum to be fixed by the court, that he will appear before the court for examination and that he will obey the terms of a restraining notice contained in the order.

"§ 3310. Discharge

"A person who pursuant to an execution or order pays or delivers to the United States, a United States marshal or receiver, money or other personal property in which a judgment debtor has or will have an interest, or so pays a debt he owes the judgment debtor, is discharged from his obligation to the judgment debtor to the extent of the payment or delivery.

"SUBCHAPTER E—EXEMPT PROPERTY

"Sec.
"3401. Exempt property.
"3402. Limitation on exempt property.

"SUBCHAPTER E—EXEMPT PROPERTY

"§ 3401. Exempt property

"Except as provided under section 3402, the following property of natural persons shall be exempted from the enforcement procedures under the provisions of this chapter as to debts owed the United States—

"(a) The debtor's aggregate interest, not to exceed $7,500 in value in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

"(b) The debtor's interest, not to exceed $1,200 in value, in one motor vehicle.

"(c) The debtor's interest, not to exceed $200 in value in any particular item or $4,000 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family or household use of the debtor or a dependent of the debtor.

"(d) The debtor's aggregate interest, not to exceed $500 in value, in jewelry held primarily for the personal, family or household use of the debtor or a dependent of the debtor.

"(e) The debtor's aggregate interest in any property, not to exceed in value $400 plus up to $3,750 of any unused amount of the exemption provided under paragraph (1) of this subsection.

"(f) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

"(g) The debtor's aggregate interest, not to exceed in value $4,000 less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

"(h) The debtor's aggregate interest, not to exceed $750 in value in any implements, professional books or tools of the trade of the debtor or the trade of a dependent of the debtor.

"(i) Professionally prescribed health aids for the debtor or a dependent of the debtor.

"(j) The debtor's right to receive—

"(1) a social security benefit, unemployment compensation, or a local public assistance benefit;

"(2) a veterans' benefit;

"(3) a disability, illness, or unemployment benefit;

"(4) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

"(5) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless—

"(A) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;

"(B) such payment is on account of age or length of service; and

"(C) such plan or contract does not qualify under section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1986 (26 U.S.C. 401(a), 403(a), 403(b), 408, or 409).

"§ 3402. Limitations on exempt property

"(a) Property upon which a judgment debtor has voluntarily granted a lien, shall not be exempt to the extent of the balance due on the debt secured thereby.

"(b) If, within ninety days prior to judgment or thereafter, the debtor has transferred non-exempt property and as a result acquires, improves or increases in value exempt property, his interest shall not be exempt to the extent of the increased value.

"(c) The United States may require the judgment debtor to file a statement with regard to each claimed exemption; the original shall be filed with the court in which the enforcement proceeding is pending, and a copy served upon counsel for the United States. The statement shall be under oath and shall describe each item of property for which exemption is claimed, the value and the basis for such valuation, and the nature of the judgment debtor's ownership interest.

"(d) The United States, by application to the court where an enforcement proceeding is pending, may request a hearing on the applicability of any exemption claimed by the judgment debtor. The court shall determine whether the judgment debtor is entitled to the exemption claimed and the value of the property with respect to which the exemption is claimed; unless the court finds that it is reasonably evident that the exemption applies, the judgment debtor shall bear the burden of going forward with evidence and of persuasion. The value of the property must be established by credible, independent evidence in addition to the debtor's testimony; tax assessments shall create a rebuttable presumption of the value of the property assessed.

"(e) Assertion of an exemption shall not prevent seizure and sale of the property to which such exemption applies. However, where an exemption has been validly and properly asserted, the sale proceeds for that item of property must be applied first to satisfy the dollar value of the exemption and then to the balance of the judgment. Any excess remaining after payment of judgment shall be paid to the judgment debtor.

"SUBCHAPTER F—FRAUDULENT TRANSFERS

"Sec.
"3501. Definitions.
"3502. Insolvency.
"3503. Value.
"3504. Transfer fraudulent as to the United States on present and future claims.
"3505. Transfer fraudulent as to the United States on a present claim.
"3506. When transfer is made or obligation is incurred.
"3507. Remedies of the United States.
"3508. Defenses, liability and protection of transferee.
"3509. Supplementary provision.

"SUBCHAPTER F—FRAUDULENT TRANSFERS

"§ 3501. Definitions

"As used in this subchapter—

"(a) 'Affiliate' means—

"(1) a person who directly or indirectly owns, controls, or holds with power to vote, 20 per centum or more of the outstanding voting securities of the debtor other than a person who holds the securities—

"(A) as a fiduciary or agent without sole discretionary power to vote the securities; or

"(B) solely to secure a debt, if the person has not exercised the power to vote;

"(2) a corporation 20 per centum or more of whose voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds, with power to vote, 20 per centum or more of the outstanding voting securities of the debtor, other than the person who holds a securities—

"(A) as a fiduciary or agent without sole power to vote the securities;

"(B) solely to secure a debt, if the person has not in fact exercised the power to vote;

"(C) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

"(D) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

"(b) 'Asset' means property of a debtor, but does not include—

"(1) property to the extent it is encumbered by a valid lien; or

"(2) property to the extent it is exempt under Subchapter E of this chapter.

"(c) 'Insider' includes—

"(1) if the debtor is an individual—

"(A) a relative of the debtor or of a general partner of the debtor;

"(B) a partnership in which the debtor is a general partner;

"(C) a general partner in a partnership described in subsection (c)(1)(B); or

"(D) a corporation of which the debtor is a director, officer, or person in control.

"(2) if the debtor is a corporation—

"(A) a director of the debtor;

"(B) an officer of the debtor;

"(C) a person in control of the debtor;

"(D) a partnership in which the debtor is a general partner;

"(E) a general partner in a partnership described in subsection (c)(2)(D); or

"(F) a relative of a general partner, director, officer, or person in control of the debtor.

"(3) if the debtor is a partnership—

"(A) a general partner in the debtor;

"(B) a relative of a general partner in, a general partner of, or a person in control of the debtor;

"(C) another partnership in which the debtor is a general partner;

"(D) a general partner in a partnership described in subsection (c)(3)(C); or

"(E) a person in control of the debtor.

"(4) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

"(5) a managing agent of the debtor.

"(d) 'Lien' means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceeding, a common law lien, or a statutory lien.

"(e) 'Relative' means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

"(f) 'Transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

"(g) 'Valid lien' means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

"§ 3502. Insolvency

"(a) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.

"(b) A debtor who is generally not paying his debts as they become due is presumed to be insolvent.

"(c) A partnership is insolvent under subsection (a) if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's non-partnership assets over the partner's non-partnership debts.

"(d) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this subchapter.

"(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

"§ 3503. Value

"(a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

"(b) For the purposes of sections 3504(a)(2) and 3507, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, non-collusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

"(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

"§ 3504. Transfer fraudulent as to the United States on present and future claims

"(a) A transfer made or obligation incurred by a debtor is fraudulent as to the United States, whether its claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation—

"(1) with actual intent to hinder, delay, or defraud the United States or any other creditor of the debtor; or

"(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor—

"(A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

"(B) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

"(b) In determining actual intent under subsection (a)(1), consideration may be given, among other factors, to whether—

"(1) the transfer or obligation was to an insider;

"(2) the debtor retained possession or control of the property transferred after the transfer;

"(3) the transfer or obligation was disclosed or concealed;

"(4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

"(5) the transfer was of substantially all of the debtor's assets;

"(6) the debtor absconded;

"(7) the debtor removed or concealed assets;

"(8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

"(9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

"(10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

"(11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

"§ 3505. Transfer fraudulent as to the United States on a present claim

"(a) A transfer made or obligation incurred by a debtor is fraudulent as to the United States on its claims which arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at the time or the debtor became insolvent as a result of the transfer or obligation.

"(b) A transfer made by a debtor is fraudulent as to the United States on its claim which arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time, and the insider had reasonable cause to believe that the debtor was insolvent.

"§ 3506. When transfer is made or obligation is incurred

"For the purposes of this subchapter—

"(a) a transfer is made—

"(1) with respect to an asset that is real property, other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

"(2) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that the United States on a simple contract cannot acquire a judicial lien otherwise than under this subchapter that is superior to the interest of the transferee.

"(b) If applicable law permits the transfer to be perfected as approved in subsection (a) and the transfer is not so perfected before the commencement of an action for relief under this subchapter, the transfer is deemed made immediately before the commencement of the action.

"(c) If applicable law does not permit the transfer to be perfected as provided in subsection (a), the transfer is made when it becomes effective between the debtor and the transferee.

"(d) A transfer is not made until the debtor has acquired rights in the asset transferred.

"(e) An obligation is incurred—

"(1) if oral, when it becomes effective between the parties; or

"(2) if evidenced by a writing, when the writing was executed by the obligor is delivered to or for the benefit of the obligee.

"§ 3507. Remedies of the United States

"(a) In an action for relief against a transfer or obligation under this subchapter, the United States, subject to the limitations in section 3508, may obtain, subject to applicable principles of equity and in accordance with the Federal Rules of Civil Procedure—

"(1) avoidance of the transfer or obligation to the extent necessary to satisfy the claim of the United States;

"(2) an attachment or other remedy against the asset transferred or other property of the transferee in accordance with the procedure described by this chapter.

"(b) If the United States has obtained a judgment on a claim against the debtor, if the court so orders, it may levy execution on the asset transferred or its proceeds.

"§ 3508. Defenses, liability and protection of transferee

"(a) A transfer or obligation is not voidable under section 3504(a) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

"(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by the United States under section 3507(a)(1), it may recover judgment for the value of the asset transferred, as adjusted under subsection (c), or the amount necessary to satisfy its claim, whichever is less. The judgment may be entered against—

"(1) the first transferee of the asset or the person for whose benefit the transfer was made; or

"(2) any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

"(c) If the judgment under subsection (b) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

"(d) Notwithstanding voidability of a transfer or an obligation under this subchapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to—

"(1) a lien on or a right to retain any interest in the asset transferred;

"(2) enforcement of any obligation incurred; or

"(3) a reduction in the amount of the liability on the judgment.

"(e) A transfer is not voidable under section 3504(a)(2) or section 3505 if the transfer results from—

"(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

"(2) enforcement of a security interest in compliance with article 9 of the Uniform Commercial Code or its equivalent in effect in the jurisdiction where the property is located.

"(f) A transfer is not voidable under section 3505(b)—

"(1) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

"(2) if made in the ordinary course of business or financial affairs of the debtor and the insider, or

"(3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose, as well as an antecedent debt of the debtor.

"§ 3509. Supplementary provision

"Unless displaced by the provisions of this subchapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

"SUBCHAPTER G—PARTITION

"Sec.

"3601. Action by United States for partition.

"3602. Service of process in partition action.

"3603. Trial; commissioners; decree of partition.

"3604. Partition by sale.

"3605. Costs.

"SUBCHAPTER G—PARTITION

"§ 3601. Action by United States for partition

"(a) The United States, as co-owner or claimant of real or personal property, or an interest therein, may compel a partition of the property among the co-owners and tenants.

"(b) The district court shall have original jurisdiction of any civil action brought by the United States for the partition of property. The action for partition shall be filed in the judicial district in which the property, or a part thereof, is located. An action in a State court in which the United States is a defendant and in which the United States seeks partition may be removed to the district court.

"(c) The United States shall file a complaint stating—

"(1) the name and residence, if known, of each co-owner or claimant to such property;

"(2) the share of interest, if known, of each co-owner or claimant in such property;

"(3) a description of the property sought to be partitioned; and

"(4) the estimated value of the property for which partition is sought.

"§ 3602. Service of process in partition action

"(a) Personal service of summonses and complaints and other process shall be made in accordance with Rules 4 (c) and (d) of the Federal Rules of Civil Procedure upon a defendant who resides within the United States or its territories or insular possessions and whose residence is known.

"(b) Upon the filing of a certificate by counsel for the United States stating that it is believed that a defendant cannot be personally served, because after diligent inquiry within the State in which the complaint is filed his place of residence cannot be ascertained by the United States or, if ascertained, that it is beyond the territorial limits of personal service as provided in Rules 4 (c) and (d) of the Federal Rules of Civil Procedure, service of Notice of Summons and Complaint shall be made on that defendant by publication in a newspaper published in the county where the property is located, or if there is no such newspaper, then in a newspaper having a general circulation in the State where the property is located, once a week for three successive weeks. Prior to the last publication, a copy of the notice shall also be mailed to a defendant who cannot be personally served as provided in this rule but whose place of residence is then known. Unknown owners may be served by publication in like manner by a notice addressed to 'Unknown Others.' Service by publication is complete upon the date of the last publication. Proof of publication and mailing shall be made by certificate of counsel for the United States, to which shall be attached a printed copy of the published notice with the name and dates of the newspaper marked thereon.

"§ 3603. Trial; commissioner; decree of partition

"(a) All questions of law or equity affecting the title of the property which may arise, and the determination of the share or interest of each of the co-owners or claimants shall be tried by the court without a jury.

"(b) The court shall determine whether the property, or any part thereof, is susceptible of partition. If the court determines that the whole, or any part of the property is susceptible of partition, then the court shall enter a decree directing the partition of the property which is held to be susceptible of partition, describing it and specifying the share or interest to which each party is entitled. The court shall then appoint three or more competent and disinterested persons as commissioners to make the partition in accordance with the court's decree, the majority of the commissioners may act.

"(c) The court may appoint a surveyor to assist the commissioners in making a partition of real estate. The commissioners may cause the real estate to be surveyed and partitioned into several tracts or parcels.

"(d) The court may appoint an appraiser or appraisers to value the property and file an appraisal report with the court and the commissioners, as the court directs.

"(e) The commissioners shall divide the property into as many shares as there are persons entitled thereto, as determined by the court, having due regard in the division of the property to the situation, quantity, and advantage of each share, so that the shares may be equal in value, as nearly as may be, in the proportion to the respective shares or interests of the parties entitled thereto.

"(f) The commissioners shall report in writing to the court; and the report shall be determined by a majority of the commissioners and the contents shall be governed by the provisions of Rules 53(e) (1) and (2) of the Federal Rules of Civil Procedure. The report shall also contain the following—

"(1) The several tracts, units, or parcels into which the property was divided (describing each particularly);

"(2) the number of shares and the estimated value of each share;

"(3) the allotment of each share; and

"(4) field notes and maps as to each estate, as may be necessary.

"The findings and reports of the commissioners shall have the effect, and be dealt with by the court in accordance with the practice prescribed in Rule 53(e)(2).

"(g) The decree of the court confirming the report of commissioners in a partition of property gives a recipient of an interest in the property a title equivalent to a conveyance of the interest by warranty deed as in the case of real property or by bill of sale as to personal property, from the other parties in the action.

"(h) All conditions, restrictive covenants, and encumbrances against the property that applied to the property prior to the partition shall remain against the property as partitioned unless those restrictions, covenants and encumbrances have been included and are subject to the partition action.

"§ 3604. Partition by sale

"Should the court determine that a fair and equitable division of the property, or any part thereof, cannot be made, the court shall order a sale of that part which is incapable of partition, which sale shall be for cash, or upon such other terms as the court may direct, and shall be made as provided by title 28 United States Code, chapter 127, or through a receiver, as the court so orders. The proceeds of such sale shall be paid into the court and partitioned among the persons and parties entitled thereto according to their respective interests.

"§ 3605. Costs

"Costs shall be taxed against each party to whom a share has been allotted in proportion to the value of such share.

"SUBCHAPTER H—FORECLOSURE OF SECURITY INTERESTS

"Sec.

"3701. United States foreclosures governed by Federal law.

"SUBCHAPTER H—FORECLOSURE OF SECURITY INTERESTS

"§ 3701. United States foreclosures governed by Federal law

"Unless the documents specifically adopt State law, any action by the United States to foreclose security interests in real property shall be governed by the Federal statutes and applicable regulations, provisions set forth in the transaction documents and by Federal common law where there is no governing statute, applicable regulation or provision, and not by the State law where the real property is located. This shall include, but not be limited to, questions regarding redemption rights and deficiency judgments.

"§ 3702. Deficiency rights on federally guaranteed or insured loans

"Unless the documents specifically adopt State law, the right of the United States to collect a deficiency following the foreclosure of a loan guaranteed or insured by the United States or any agency thereof shall be governed by Federal statutes, applicable regulations, and the provisions set forth in the transaction documents. The rights of the United States under this section shall apply notwithstanding the provisions of any State law and without regard to the method used by the loan holder to foreclose the loan.".

Subtitle B—Amendments to Other Legislation

SEC. 611. Section 505 of title 11, United States Code, is amended by adding at the end thereof the following subsection:

"(d) Payments of taxes under this title to a governmental unit may be applied by the governmental unit in a manner that preserves alternative sources of collection, if any.".

Sec. 612. Section 523(a) of title 11, United States Code, is amended as follows:

(a) by deleting the word "or" at the end of section 523(a)(9); and

(b) by deleting "." at the end of section 523(a)(10) and adding "; and" in lieu thereof; and

(c) by adding the following subsections at the end of section 523(a):

"(11) to the extent that such debt arises from a violation by the debtor of a civil or criminal law enforceable by an action by a governmental unit to recover restitution, damages, civil penalties, attorney fees, costs, or any other relief, or to the extent that such debt arises from an agreed judgment or other agreement by the debtor to pay money or transfer property in settlement of such an action by a governmental unit; or

"(12) to the extent such debt arises from a criminal appearance bond.

Sec. 613. Section 523(a) of title 11, United States Code, is amended to read as follows:

(a) subsection (8) is amended to read as follows:

"(8) for an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend, unless—".

(b) subsection (8)(A) is amended to read as follows:

"(A) such loan, benefit, scholarship or stipend overpayment or loan first became due seven years (exclusive of any applicable suspension of the repayment period) before the date of the filing of the petition; or".

Sec. 614. (a) Section 1129(a)(9)(C) of title 11, United States Code, is amended to read as follows:

"(C) with respect to a claim of a kind specified in section 507(a)(7) of this title, the holder of such claim will receive on account of such claim deferred cash payments, over a period not exceeding six years after the date of assessment of such claim or six years after confirmation for such claims that have not been assessed, of a value as of the effective date of the plan, equal to the allowed amount of such claim.".

(b) Section 1129 of title 11, United States Code, is amended by adding at the end thereof the following:

"(e) For purposes of determining the value of deferred cash payments under a plan with respect to a secured or unsecured tax claim, the appropriate interest rate shall be the statutory rate applicable to unpaid taxes owing to the governmental unit holding the claim.".

Sec. 615. Section 3013 of title 18, United States Code, is amended to read as follows:

"§ 3013. Special assessment on convicted persons

"(a) The court shall assess on any person convicted of a felony;

"(1) The amount of one hundred dollars per count if the defendant is an individual; and

"(2) The amount of four hundred dollars per count if the defendant is a person other than an individual.

"(b) Any amount so assessed shall be collected in the manner that fines are collected in criminal cases, except that no interest shall be charged on any assessment.

"(c) The obligation to pay the assessment ceases upon the death of the defendant or the expiration of five years after the date of the judgment, whichever occurs first.".

Sec. 616. Section 3142(c)(1)(B)(xi) of title 18, United States Code, is amended to read as follows:

"(xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial office may require.".

Sec. 617. Section 3142(c)(1)(B)(xii) of title 18, United States Code, is amended to read as follows:

"(xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond.".

Sec. 618. Section 3142(g)(4) of title 18, United States Code, is amended by—

(a) striking out "(c)(2)(k)" and inserting in lieu thererof "(c)(1)(B)(xi)"; and

(b) striking out "(c)(2)(L)" and inserting in lieu thereof "(c)(1)(B)(xii)".

Sec. 619. Chapter 207 of title 18, United States Code, is amended by—

(a) amending the table of sections by adding between the item relating to section 3150 and the item relating to section 3152, the following:

"3151. Refund of forfeited bail."; and

(b) by adding the following section immediately after section 3150:

"§ 3151. Refund of Forfeited Bail

"Appropriations shall be available to refund money erroneously received and deposited in the United States Treasury and available to refund any part of forfeited bail deposited into the general fund of the United States Treasury and ordered remitted under the Federal Rules of Criminal Procedure.".

Sec. 620. (a) Section 3552(d) of title 18, United States Code, is amended by adding at the end thereof the following:

"The court shall provide a copy of the presentence report to the attorney for the Government to use in collecting an assessment, criminal fine, forfeiture or restitution imposed.".

(b) The amendment made by subsection (a) shall take effect as if enacted on the date of the taking effect of section 3552(d) of title 18, United States Code.

Sec. 621. Section 3565(a) of title 18, United States Code, is amended—

(1) in paragraph (1), by striking out "by execution against the property of the defendant"; and

(2) in paragraph (1) by striking out "civil cases." and inserting in lieu thereof "accordance with chapter 176 of title 28. The United States may elect at its discretion to use any remedy available under this chapter or chapter 176 of title 28 or any combination of such remedies in the same case."; and

(3) in paragraph (4), by deleting the word "Salaries" and inserting in lieu thereof the following:

"Notwithstanding any contrary provision in Chapter 176 of title 28, United States Code, salaries."; and

(4) in paragraph (5), the second sentence should be deleted.

Sec. 622. Section 3579(f)(4) of title 18, United States Code, is amended by—

(a) striking out the "." at the end thereof; and

(b) adding at the end thereof the following: "only if they are in fear of contact with the defendant.".

Sec. 623. (a) Section 3613 of title 18, United States Code, is amended—

(1) in subsection (d), as added by section 212(a) of the Comprehensive Crime Control Act of 1984, by striking out the second sentence; and

(2) in subsection (e), as added by section 212(a) of the Comprehensive Crime Control Act of 1984 by—

(A) striking out "by execution against the property of the person fined";

(B) striking out "civil cases," and inserting in lieu thereof "accordance with chapter 176 of title 28,"; and

(C) adding at the end thereof "The United States may elect at its discretion to use any remedy available under this chapter or chapter 176 of title 28 or any combination of such remedies in the same case.".

(b) The amendments made by this section shall take effect as if enacted on the date of the taking effect of such section 3613.

Sec. 624. Section 3663(f)(4) of title 18, United States Code, is amended by inserting before the period at the end thereof the following: "only if they are in fear of contact with the defendant.".

Sec. 625. Section 524 of title 28, United States Code, is amended by adding at the end thereof the following:

"(d)(1) There shall be established in the United States Treasury a special fund to be known as the Department of Justice Debt Collection Fund (hereinafter in this subsection referred to as 'fund') which shall be available to the Attorney General without fiscal year limitation in such amounts as may be specified in appropriation Acts for the purposes set forth herein.

"(2) There shall be deposited in the fund 5 per centum of all net amounts realized from the debts collected by the divisions of the Department of Justice and all United States attorney's offices. Deposits to the fund shall begin October 1, 1988, from all amounts collected on and after that date.

"(3) The fund may be used for the following purposes of the Department of Justice:

"(A) the training of personnel of the Department of Justice in debt collection;

"(B) services pertinent to debt collection, such as title searches, debtor skiptracing, asset searches, credit reports and other investigation related to locating debtors and their property; and

"(C) expenses of costs of sales of property not covered by the sale proceeds, such as auctioneers' fees and expenses, maintenance and protection of property and businesses, advertising and title search and surveying costs;

"(4) Amounts in the fund which are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of, or guaranteed by the United States.

"(5) For fiscal years 1989, 1990, 1991, and 1992 there are authorized to be appropriated such sums as may be necessary for the purposes described in subsection (3). At the end of each fiscal year, any amount in the fund in excess of the amount appropriated, shall be deposited in the general fund of the Treasury of the United States, except that an amount not to exceed $5,000,000 may be carried forward and be available in the next fiscal year.

"(6) For the purposes of these subsections, amounts from debt collection efforts of the Department of Justice shall include amounts realized from actions brought by or judgments enforced by Department of Justice personnel, including those in all United States attorneys' offices, whether civil or criminal, and whether involving tax or non-tax debts owed to the United States, except as deposit of such amounts into other special funds is required by law.".

Sec. 626. Section 550 of title 28, United States Code, is amended by striking out "assistants and messengers" and inserting in lieu thereof "assistants, messengers, and private process servers.".

Sec. 627. Section 1961(c)(1) of title 28, United States Code, is amended to read as follows:

"(c)(1) The provisions of this section do not apply to judgments entered in favor of the United States.".

Sec. 628. Section 1962 of title 28, United States Code, is amended by adding the following after the first sentence thereof: "The provisions of this section do not apply to judgments entered in favor of the United States.".

Sec. 629. Section 1963 of title 28, United States Code, is amended by adding the following after the first sentence thereof: "The provisions of this section do not apply to judgments entered in favor of the United States.".

Sec. 630. (a) Chapter 129 of title 28, United States Code, is amended by adding at the end thereof the following section:

"§ 2044. Payment of fine with bond money

"Upon motion of the United States attorney, the court shall order any money belonging to and deposited by the defendant with the court for the purposes of a criminal appearance bail bond (trial or appeal) to be held and paid over to the United States attorney to be applied to the payment of any assessment, fine, restitution or penalty imposed upon the defendants. The court shall not release any money deposited for bond purposes after a plea or a verdict of the defendant's guilt has been entered and before sentencing, except upon a showing that an assessment, fine, restitution or penalty cannot be imposed for the offense the defendant committed or that the defendant would suffer an undue hardship. This does not apply to any third party sureties.".

(b) The table of sections for chapter 129 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"2044. Payment of fine with bond money.".

Sec. 631. Section 2410(c) of title 28, United States Code, is amended by adding at the end thereof the following: "In any case where the United States is a bidder at the judicial sale, it may credit the amount determined to be due it against the amount it bids at such sales.".

Sec. 632. Section 2413 of title 28, United States Code, and the item relating to section 2413 in the table of sections for chapter 161, are repealed.

SEC. 633. USE OF ADDITIONAL REVENUE FROM CRIME VICTIMS FUND.

Sectioin 1402(c) of the Victims of Crime Act of 1984 (42 U.S.C. 1060)(c)) is amended to read as follows:

"(c) Use of excess amount

If the local deposited in the fund during a particular fiscal year reaches the summ of $110 million, up to the first $2.2 million of the excess over that sum shall be available to the Judiciary for administrative costs of the collection of the amounts deposited in the Fund pursuant to 18 U.S.C. 3611 and 3612. As to the remainder of such excess, if any, over the $2.2 million available to the Judiciary, such remainder shall be deposited in the general Fund of the Treasury and shall not be a part of the Fund.

The PRESIDING OFFICER. The question is on agreeing to the committee substitute amendment.

The committee amendment was agreed to.

Mr. THURMOND. Mr. President, on December 18, 1987, I, along with Senator Biden, and Senator Grassley introduced S. 1961, Federal Debt Collection Procedures Act of 1988. Since then, Senator Lautenberg, Senator Helms, Senator Cochran, and Senator D'Amato have been added as cosponsors. This legislation will enhance the remedies available to the United States for collection of debt owed to the Federal Government. Incredibly, it has been estimated by the General Accounting Office that the Federal Government has approximately $32 billion of outstanding, nontax delinquent debt which is collectable.

Currently, the debts owed to the United States must be collected under the laws of the State where the debtor resides. These laws vary greatly from State to State, making enforcement of debt collection extremely difficult and cumbersome. For example, in some States, a debtor can exempt vast amounts of property from execution, whereas a similarly situated debtor in another State is granted no such exemption at all. It is unfair that Federal debtors who reside in States with strong collection laws are made to pay their debts, while others use weak collection laws in debtors haven States to escape repayment of their debt.

S. 1961 will correct the inequities that exist under the current system. This bill creates a firm, but fair, comprehensive statutory scheme for the collection of Federal debt. This legislation maintains State law leaving State remedies unaffected in cases where the Federal Government is not a party. This legislation will be used by Federal litigators in Federal courts to collect debts owed to the Federal Government.

A hearing was held on S. 1961 on April 15, 1988. No one testified in opposition to this important legislation. Since that hearing, an examination of S. 1961 by representatives of the commercial law bar and the bankruptcy bar have led to recommendations to modify the bill due to certain technical concerns which they raised. The Senate Judiciary Committee unanimously agreed to report S. 1961 out of committee on October 5, 1988.

This legislation is most important, and I urge each Member of the Senate to support its passage.

Mr. GRASSLEY. Mr. President, I am pleased to be an original cosponsor of this legislation to improve the procedures by which the Federal Government can enforce collection of delinquent debts owed to the Government. I commend Senators Biden and Thurmond for working together to move this bill through the Judiciary Committee.

Most conservative estimates show about $68 billion in delinquent debt owed to the Federal Government. At a time when growing Federal budget deficits threaten our financial security, sound management demands that it is high time we started to collect this debt.

Under current law, debts owed the Federal Government must be collected under a patchwork quilt of State laws where the debtor is found. This system results in inequitable and inconsistent treatment of Federal debtors and impedes the effective recovery of debts owed to the Government. Worse, when legitimate debts owed to the U.S. Treasury go uncollected like this, a greater burden is placed on those honest, hardworking taxpayers who pay their fair share, and who pay their debts.

The debts issue here included Government students loans, SBA loans, Public Health Service loans to would-be doctors, criminal judgments and restitution, and many other types of Federal debts. These Federal debtors incur obligations under uniform Federal loan standards, yet the State collection laws are anything but uniform. Congress ought to ensure that all Federal debtors are treated uniformly with regard to their financial obligations.

This proposal creates a firm but fair system for the collection of Federal judgments. It's not a scheme to oppress "deadbeats", but it sends a clear message to those who would take the taxpayer's money and run.

Each of the provisions is based on existing law, and represents a cooperative effort of all or our U.S. Attorneys around the Nation. These are the individuals charged with conducting litigation to protect the Government. We ought to provide them with suitable tools to do the job.

Mr. President, I urge my colleagues in the House to agree to this fair proposal. As taxpayers, I hope they will insist, as we have, that Government benefit programs will be abused no more.

The bill was ordered to be engrossed for a third reading, was read a third time, and passed.

IMPROVEMENTS IN THE FEDERAL JUDICIARY

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1070, S.

1482, a bill to make certain improvements with respect to the Federal judiciary.

The **PRESIDING OFFICER**. The bill will be stated by title. The assistant legislative clerk read as follows:

A bill (S. 1482) to amend title 18 and title 28, United States Code, to make certain improvements with respect to the Federal judiciary, and for other purposes.

The **PRESIDING OFFICER**. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Judicial Branch Improvements Act of 1988".

SEC. 2. REFERENCE TO TITLE 28, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed as an amendment to or repeal of a section or other provision, the reference shall be considered to be made to a section or other provision of title 28, United States Code.

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TITLE I—FEDERAL COURTS STUDY COMMITTEE

SEC. 101. SHORT TITLE.

This title may be cited as the "Federal Courts Study Act".

SEC. 102. ESTABLISHMENT AND PURPOSES.

(a) ESTABLISHMENT.—There is hereby established within the Judicial Conference of the United States, a Federal Courts Study Committee on the future of the Federal Judiciary (hereafter referred to as the "Committee").

(b) PURPOSES.—The purposes of the Committee are to—

(1) examine problems and issues currently facing the courts of the United States;

(2) develop a long-range plan for the future of the Federal Judiciary, including assessments involving—

(A) alternative methods of dispute resolution;

(B) the structure and administration of the Federal court system;

(C) methods of resolving intracircuit and intercircuit conflicts in the courts of appeals; and

(D) the types of disputes resolved by the Federal courts; and

(3) report to the Judicial Conference of the United States, the President, the Congress, the Conference of Chief Justices, and the State Justice Institute on the revisions, if any, in the laws of the United States which the Committee, based on its study and evaluation, deems advisable.

SEC. 103. MEMBERSHIP OF THE COMMITTEE.

(a) APPOINTMENTS.—The Committee shall be composed of fifteen members appointed by the Chief Justice of the United States, within 10 days after the effective date of this title.

(b) SELECTION.—The membership of the Committee shall be selected in such a manner as to be representative of the various interests, needs and concerns which may be affected by the jurisdiction of the Federal courts. The Chief Justice shall designate one of the members of the Committee to serve as Chairman.

(c) TERM OF OFFICE.—The Committee members shall serve at the pleasure of the Chief Justice.

(d) RULES OF PROCEDURE.—Rules of procedure shall be promulgated by vote of a majority of the Committee.

SEC. 104. POWERS OF THE COMMITTEE.

(a) HEARINGS.—The Committee or, on the authorization of the Committee, any subcommittee thereof may, for the purpose of carrying out its functions and duties, hold such hearings and sit and act at such times and places, as the Committee, or any such subcommittee may deem advisable.

(b) Information and Assistance.—The Administrative Office of the United States Courts, the Federal Judicial Center, and each department, agency, and instrumentality of the executive branch of the Government, including the National Institute of Justice and independent agencies, shall furnish to the Committee, upon request made by the Chairman, such information and assistance as the Committee may reasonably deem necessary to carry out its functions under this title, consistent with other applicable provisions of law governing the release of such information.

(c) Personnel.—(1) Subject to such rules and regulations as may be adopted by the Committee, the Director of the Administrative Office shall furnish to the Committee necessary staff and technical assistance in response to needs specified.

(2) Section 5108(c)(1) of title 5, United States Code, is amended by striking out "15" and inserting in lieu thereof "17".

(d) Advisory Panels.—The Committee is authorized, for the purpose of carrying out its functions and duties pursuant to the provisions of this title, to establish advisory panels consisting of Committee members or members of the public. Such panels shall be established to provide expertise and assistance in specific areas, as the Committee deems necessary.

SEC. 105. FUNCTIONS AND DUTIES.

The Committee shall—

(1) make a complete study of the courts of the United States and of the several States and transmit a report to the President, the Chief Justice of the United States, the Congress, the Judicial Conference of the United States, the Conference of Chief Justices, and the State Justice Institute on such study within fifteen months after the effective date of this title;

(2) recommend revisions to be made to laws of the United States as the Committee, on the basis of such study, deems advisable;

(3) develop a long-range plan for the judicial system; and

(4) make such other recommendations and conclusions it deems advisable.

SEC. 106. COMPENSATION OF MEMBERS.

(a) Employees of the Government.—A member of the Committee who is an officer or full-time employee of the United States shall receive no additional compensation for his or her services, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties vested in the Committee, not to exceed the maximum amounts authorized under section 456 of title 28, United States Code.

(b) Private Sector.—A member of the Committee who is from the private sector shall receive $200 per diem for each day (including traveltime) during which he or she is engaged in the actual performance of duties vested in the Committee, plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties, not to exceed the maximum amounts authorized under section 456 of title 28, United States Code.

SEC. 107. EXPIRATION OF THE COMMITTEE.

The Committee shall cease to exist on the date 60 days after it transmits the report pursuant to section 105.

SEC. 108. AUTHORIZATION OF APPROPRIATIONS.

To carry out the purposes of this title there are authorized to be appropriated $300,000 for each of the fiscal years 1989 through 1990.

SEC. 109. EFFECTIVE DATE.

This title shall become effective on January 1, 1989.

TITLE II—FEDERAL JURISDICTION—DIVERSITY REFORM

SEC. 201. AMOUNT IN CONTROVERSY IN DIVERSITY CASES.

(a) Increase in Amount in Controversy to $50,000.—Subsections (a) and (b) of section 1332 are each amended by striking out "$10,000" and inserting in lieu thereof "$50,000".

(b) Effective Date.—The amendments made by this section shall apply to any civil action commenced on or after the date after the 180th day after the date of the enactment of this title.

SEC. 202. DIVERSITY IN CASES INVOLVING MULTISTATE CORPORATIONS OR REPRESENTATIVE PARTIES.

(a) In General.—Section 1332(c) is amended to read as follows:

"(c) For the purposes of this section and section 1441 of this title—

"(1) a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business; and

"(2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.".

(b) Effective Date.—The amendment made by this section shall apply to any civil action commenced in or removed to a United States district court on or after the 180th day after the date of the enactment of this title.

SEC. 203. CITIZENSHIP OF PERMANENT RESIDENT ALIEN.

(a) Permanent Resident Alien Citizenship for Diversity Purposes.—Section 1332(a) is amended by adding at the end thereof the following:

"For the purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.".

(b) Effective Date.—The amendment made by this section shall apply to claims in civil actions commenced in or removed to the United States district courts on or after the 180th day after the date of enactment of this title.

TITLE III—FEDERAL JUDICIAL CENTER

SEC. 301. FEDERAL JUDICIAL CENTER FOUNDATION.

(a) Establishment.—Chapter 42 is amended by adding at the end the following new section:

"§ 629. Federal Judicial Center Foundation

"(a) There is established a private nonprofit corporation which shall be known as the Federal Judicial Center Foundation (hereafter in this section referred to as the 'Foundation') and which shall be incorporated in the District of Columbia. The purpose of the Foundation shall be to have sole authority to accept and receive gifts of real and personal property and services made for the purpose of aiding or facilitating the work of the Federal Judicial Center. The Foundation shall not accept conditional or otherwise restricted gifts, except for gifts that are designated for the support of specific projects previously approved by the Board of the Center may be accepted. The Foundation shall have no authority to administer or otherwise determine the use of gifts accepted under this section.

"(b) The business of the Foundation shall be conducted by a Board that shall have seven members, including a chairman. Three members, including the chairman, shall be appointed by the Chief Justice of the United States, two by the President Pro Tempore of the Senate, and two by the Speaker of the House of Representatives. The term of office of each member of the Board shall be 5 years, except that the initial terms shall be 5 years for the chairman, one member appointed by the President Pro Tempore and one member appointed by the Speaker, 3 years for the other member appointed by the President Pro Tempore and the other member appointed by the Speaker, and two years for the two other members appointed by the Chief Justice. Members of the Board shall serve without compensation but, upon authorization of the Director of the Center, shall be reimbursed by the Federal Judicial Center for actual and necessary expenses incurred in the performance of their official duties. No person who is a Federal or State judge in regular active service or otherwise eligible to perform judicial duties shall be eligible for membership on the Board. The Center shall provide all administrative support and facilities necessary for the operation of the Board.

"(c) The Federal Judicial Center is authorized to administer and use gifts received by the Foundation under this section. The gifts shall be used to further the goals of the Center as determined by the Board of the Center.

"(d) Gifts of money and proceeds from sales of other property received as gifts shall be deposited in a separate fund in the Treasury of the United States and disbursed on the order of the Director of the Center, in accordance with policies established by the Board of the Center.

"(e) The Board of the Foundation shall, not later than October 1 of each year, submit to the Committees on the Judiciary of the United States Senate and House of Representatives a report with respect to gifts received under this section during the preceding 12-month period, including the source of each such gift, the amount of each gift of cash or cash equivalent, and a description of any other gift. The Center shall include in its annual report of the activities of the Center under section 623(a)(3) a description of the purposes for which gifts were used during the year covered by the report.

"(f) For the purpose of Federal income, estate, and gift taxes, property accepted under this section shall be considered as a gift or bequest to or for the use of the United States.".

(b) Conforming Amendment.—The item relating to section 629 in the table of sections for chapter 42 of title 28, United States Code, is amended to read as follows:

"629. Federal Judicial Center Foundation.".

SEC. 302. AUTHORITY TO IMPLEMENT HISTORY PROGRAM.

Section 623(a) is amended—

(1) by striking out "and" at the end of paragraph (5);

(2) by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraph:

"(7) conduct, coordinate, and encourage programs relating to the history of the judicial branch of the United States Government.".

SEC. 303. AUTHORITY TO PROVIDE FOR TRAINING FOR PERSONS OUTSIDE THE JUDICIAL BRANCH.

Section 620(b)(3) is amended to read as follows:

"(3) to stimulate, create, develop, and conduct programs of continuing education and training for personnel of the judicial branch of the Government and other persons whose participation in such programs would improve the operation of the judicial branch, including, but not limited to, judges, United States magistrates, clerks of court, probation officers, and persons serving as mediators and arbitrators;".

SEC. 304. APPOINTMENT AND COMPENSATION OF THE DEPUTY DIRECTOR OF THE CENTER.

(a) Appointment by the Board.—Section 624, relating to powers of the Board of the Federal Judicial Center, is amended in paragraph (1) by inserting "and the Deputy Director" after "Director".

(b) Compensation.—(1) Section 626 is amended—

(A) by adding at the end the following new sentence: "The compensation of the Deputy Director of the Federal Judicial Center shall be the same as that of the Deputy Director of the Administrative Office of the United States Courts."; and

(B) by amending the section heading to read as follows:

"§ 626. Compensation of the Director and Deputy Director".

(2) The item relating to section 626 in the table of sections for chapter 42 is amended to read as follows:

"626. Compensation of the Director and Deputy Director.".

(c) Budget Act Compliance.—The amendment made by subsection (b) shall be effective for fiscal years beginning on or after October 1, 1988.

TITLE IV—RULES ENABLING ACT

SEC. 401. RULES ENABLING ACT AMENDMENTS.

(a) In General.—Chapter 131 is amended by striking out section 2072 and all that follows through section 2076 and inserting in lieu thereof the following:

"§ 2072. Rules of procedure and evidence; power to prescribe

"(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases (including all bankruptcy matters) in the United States district courts (including proceedings before magistrates thereof) and courts of appeals.

"(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

"§ 2073. Rules of procedure and evidence; method of prescribing

"(a)(1) The Judicial Conference shall prescribe and publish the procedures for the consideration of proposed rules under this section.

"(2) The Judicial Conference may authorize the appointment of committees to assist the Conference by recommending rules to be prescribed under section 2072 of this title. Each such committee shall consist of members of the bench and the professional bar, and trial and appellate judges.

"(b) The Judicial Conference shall authorize the appointment of a standing committee on rules of practice, procedure, and evidence under subsection (a) of this section. Such standing committee shall review each recommendation of any other committees so appointed and recommend to the Judicial Conference rules of practice, procedure, and evidence and such changes in rules proposed by a committee appointed under subsection (a)(2) of this section as may be necessary to maintain consistency and otherwise promote the interest of justice.

"(c)(1) Each meeting for the transaction of business under this chapter by any committee appointed under this section shall be open to the public, except when the committee so meeting, in open session and with a majority present, determines that it is in the public interest that all or part of the remainder of the meeting on that day shall be closed to the public, and states the reason for so closing the meeting. Minutes of each meeting for the transaction of business under this chapter shall be maintained by the committee and made available to the public, except that any portion of such minutes, relating to a closed meeting and made available to the public, may contain such deletions as may be necessary to avoid frustrating the purposes of closing the meeting.

"(2) Any meeting for the transaction of business under this chapter by a committee appointed under this section shall be preceded by sufficient notice to enable all interested persons to attend.

"(d) In making a recommendation under this section or under section 2072, the body making that recommendation shall provide a proposed rule, an explanatory note on the rule, and a written report explaining the body's action, including any minority or other separate views.

"(e) Failure to comply with this section does not invalidate a rule prescribed under section 2072 of this title.

"§ 2074. Rules of procedure and evidence; submission to Congress; effective date

"(a) The Supreme Court shall transmit to the Congress not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective a copy of the proposed rule. Such rule shall take effect no earlier than December 1 of the year in which such rule is so transmitted unless otherwise provided by law. The Supreme Court may fix the extent such rule shall apply to proceedings then pending, except that the Supreme Court shall not require the application of such rule to further proceedings then pending to the extent that, in the opinion of the court in which such proceedings are pending, the application of such rule in such proceedings would not be feasible or would work injustice, in which event the former rule applies.

"(b) Any such rule creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress.".

(b) Advisory Committees for Courts.—Section 2077(b) is amended—

(1) by striking out "of appeals" the first place it appears and inserting in lieu thereof ", except the Supreme Court, that is authorized to prescribe rules of the conduct of such court's business under section 2071 of this title"; and

(2) by striking out "the court of appeals" the second place it appears and inserting in lieu thereof "such court".

(c) Clerical Amendment.—The table of sections at the beginning of chapter 131 is amended by striking out the item relating to section 2072 and all that follows through the item relating to section 2076 and inserting in lieu thereof the following:

"2072. Rules of procedure and evidence; power to prescribe.

"2073. Rules of procedure and evidence; method of prescribing.

"2074. Rules of procedure and evidence; submission to Congress; effective date.".

SEC. 402. COMPILATION AND REVIEW OF LOCAL RULES.

(a) Compilation.—Section 604(a) is amended—

(1) by inserting after paragraph (17) the following:

"(18) Periodically compile—

"(A) the rules which are prescribed under section 2071 of this title by courts other than the Supreme Court;

"(B) the rules which are prescribed under section 372(c)(11) of this title; and

"(C) the orders which are required to be publicly available under section 372(c)(15) of this title;

so as to provide a current record of such rules and orders;"; and

(2) by redesignating paragraph (18) as paragraph (22).

(b) Review.—Section 331 is amended by inserting after the fifth paragraph the following:

"The Judicial Conference shall review rules prescribed under section 2071 of this title by the courts, other than the Supreme Court and the district courts, for consistency with Federal law. The Judicial Conference may modify or abrogate any such rule so reviewed found inconsistent in the course of such a review.".

SEC. 403. RULES BY CERTAIN COURTS AND ORDERS BY CIRCUIT JUDICIAL COUNCILS AND THE JUDICIAL CONFERENCE.

(a) Rules by Certain Courts.—(1) Section 2071 is amended—

(A) by inserting "(a)" before "The";

(B) by striking out "by the Supreme Court" and inserting in lieu thereof "under section 2072 of this title"; and

(C) by adding at the end the following:

"(b) Any rule prescribed by a court, other than the Supreme Court, under subsection (a) shall be prescribed only after giving appropriate public notice and an opportunity for comment. Such rule shall take effect upon the date specified by the prescribing court and shall have such effect on pending proceedings as the prescribing court may order.

"(c)(1) A rule of a district court prescribed under subsection (a) shall remain in effect unless modified or abrogated by the judicial council of the relevant circuit.

"(2) Any other rule prescribed by a court other than the Supreme Court under subsection (a) shall remain in effect unless modified or abrogated by the Judicial Conference.

"(d) Copies of rules prescribed under subsection (a) by a district court shall be furnished to the judicial council, and copies of all rules prescribed by a court other than the Supreme Court under subsection (a) shall be furnished to the Director of the Administrative Office of the United States Courts and made available to the public.

"(e) If the prescribing court determines that there is an immediate need for a rule, such court may proceed under this section without public notice and opportunity for comment, but such court shall promptly thereafter afford such notice and opportunity for comment.

"(f) No rule may be prescribed by a district court other than under this section.".

(2) Section 332(d) is amended by adding at the end the following new paragraph:

"(4) Each judicial council shall periodically review the rules which are prescribed under section 2071 of this title by district courts within its circuit for consistency with rules prescribed under section 2072 of this title. Each council may modify or abrogate any such rule found inconsistent in the course of such a review.".

(b) ORDERS BY CIRCUIT JUDICIAL COUNCILS.—Section 332(d)(1) is amended by inserting after the first sentence the following new sentence: "Any general order relating to practice and procedure shall be made or amended only after giving appropriate public notice and an opportunity for comment. Any such order so relating shall take effect upon the date specified by such judicial council. Copies of such orders so relating shall be furnished to the Judicial Conference and the Administrative Office of the United States Courts and be made available to the public.".

(c) RULES BY JUDICIAL CONFERENCE AND CIRCUIT JUDICIAL COUNCILS.—Section 372(c)(11) is amended by inserting before "Any rule promulgated" the following new sentence: "Any such rule shall be made or amended only after giving appropriate public notice and an opportunity for comment.".

SEC. 404. CONFORMING AND OTHER TECHNICAL AMENDMENTS.

(a) CONFORMING REPEAL OF CRIMINAL RULES ENABLING PROVISIONS.—(1) Chapter 237 of title 18, United States Code, and the item relating to chapter 237 in the table of chapters for part II of such title, are repealed.

(b) CONFORMING AMENDMENTS RELATING TO MAGISTRATES.—(1) Section 636(d) is amended by striking out "section 3402 of title 18, United States Code" and inserting in lieu thereof "section 2072 of this title".

(2) Section 3402 of title 18, United States Code, is amended by striking out the second paragraph.

(c) CROSS REFERENCE TECHNICAL AMENDMENT.—Section 9 of the Act entitled "An Act to provide an adequate basis for the administration of the Lake Mead National Recreation Area, Arizona and Nevada, and for other purposes" approved October 8, 1964 (Public Law 88-639; 16 U.S.C. 460n-8) is amended by striking out the sentence beginning "The provisions of title 18, section 3402".

SEC. 405. TAX COURT RULE MAKING NOT AFFECTED.

The amendments made by this title shall not affect the authority of the Tax Court to prescribe rules under section 7453 of the Internal Revenue Code of 1986.

SEC. 406. SAVINGS PROVISION.

The rules prescribed in accordance with law before the effective date of this title and in effect on the date of such effective date shall remain in force until changed pursuant to the law as amended by this title.

SEC. 407. EFFECTIVE DATE.

This title shall take effect December 1, 1988.

TITLE V—JURISDICTION OF THE FEDERAL CIRCUIT

SEC. 501. INTERLOCUTORY APPEALS.

Section 1292(d) is amended by adding at the end the following new paragraph:

"(4)(A) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction of an appeal from an interlocutory order of a district court of the United States, the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands, granting or denying, in whole or in part, a motion to transfer an action to the United States Claims Court under section 1631 of this title.

"(B) When a motion to transfer an action to the Claims Court is filed in a district court, no further proceedings shall be taken in the district court until 60 days after the court has ruled upon the motion. If an appeal is taken from the district court's grant or denial of the motion, proceedings shall be further stayed until the appeal has been decided by the Court of Appeals for the Federal Circuit. The stay of proceedings in the district court shall not bar the granting of preliminary or injunctive relief, where appropriate and where expedition is reasonably necessary. However, during the period in which proceedings are stayed as provided in this subparagraph, no transfer to the Claims Court pursuant to the motion shall be carried out.".

SEC. 502. EFFECTIVE DATE.

The amendment made by section 501 shall apply to any action commenced in the district court on or after the date of the enactment of this title.

TITLE VI—STATE JUSTICE INSTITUTE AMENDMENTS

SEC. 601. RULEMAKING.

Section 203(f) of the State Justice Institute Act of 1984 (42 U.S.C. 10702(f)) is amended—

(1) by striking out ", at least thirty days prior to their effective date,"; and

(2) by adding at the end the following: "The publication of a substantive rule shall be made not less than 30 days before the effective date of such rule, except as otherwise provided by the Institute for good cause found and published with the rule.".

SEC. 602. CIVIL SERVICE RETIREMENT.

Section 205(d)(2) of the State Justice Institute Act of 1984 (42 U.S.C. 10704(d)(2)) is amended by striking out "chapter 83" and inserting in lieu thereof "chapters 83 and 84".

SEC. 603. USE OF FUNDS UNDER GRANTS AND CONTRACTS.

Section 206(c) of the State Justice Institute Act of 1984 (42 U.S.C. 10705(c)) is amended—

(1) in paragraph (3) by inserting "judicial and" after "using";

(2) by striking out paragraph (4); and

(3) by redesignating paragraphs (5) through (15) as paragraphs (4) through (14), respectively.

SEC. 604. UNIT OF STATE OR LOCAL GOVERNMENT MATCHING FUNDS.

Section 206(d) of the State Justice Institute Act of 1984 (42 U.S.C. 10705(d)) is amended by striking out "judicial system" and inserting in lieu thereof "court (or other unit of State or local government)".

SEC. 605. INTERIM FUNDING.

Section 207(a) of the State Justice Institute Act of 1984 (42 U.S.C. 10706(a)) is amended—

(1) in paragraph (1)(B) by adding "and" after the semicolon;

(2) in paragraph (2) by striking out "; and" and inserting in lieu thereof a period; and

(3) by striking out paragraph (3).

SEC. 606. PROCEDURES FOR SUSPENSION OF FUNDING; RESTRICTIONS ON DISCLOSURE OF INFORMATION.

Section 209 of the State Justice Institute Act of 1984 (42 U.S.C. 10708) is amended to read as follows:

"ADMINISTRATIVE PROVISIONS

"SEC. 209. (a) The Institute shall prescribe procedures to ensure that financial assistance under this title shall not be suspended unless the grantee, contractor, person, or entity receiving financial assistance under this title has been given reasonable notice and opportunity to show cause why such actions should not be taken.

"(b) Except as provided by Federal law other than this title, no officer or employee of the Institute, and no recipient of assistance under this title, may use or reveal any research or statistical information furnished under this title by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained in accordance with this title. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.".

SEC. 607. AUTHORIZATION OF APPROPRIATIONS.

Section 215 of the State Justice Institute Act of 1984 (42 U.S.C. 10713) is amended to read as follows:

"SEC. 215. There are authorized to be appropriated to carry out the purposes of this title $15,000,000 for each of the fiscal years 1989 and 1990. Amounts appropriated under this section may remain available until expended.".

TITLE VII—COURT INTERPRETERS AMENDMENTS

SEC. 701. SHORT TITLE.

This title may be cited as the "Court Interpreter Amendments Act of 1988".

SEC. 702. AUTHORITY OF THE DIRECTOR.

Section 1827(a) is amended to read as follows:

"(a) The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of certified and otherwise qualified interpreters in judicial proceedings instituted by the United States.".

SEC. 703. CERTIFICATION OF INTERPRETERS; OTHER QUALIFIED INTERPRETERS.

Section 1827(b) is amended to read as follows:

"(b)(1) The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters, when the Director considers certification of interpreters to be merited, for the hearing impaired (whether or not also speech impaired) and persons who speak only or primarily a language other than the English language, in judicial proceedings instituted by the United States. The Director may certify interpreters for any language if the Director determines that there is a need for certified interpreters in that language.

Upon the request of the Judicial Conference of the United States for certified interpreters in a language, the Director shall certify interpreters in that language. Upon such a request from the judicial council of a circuit and the approval of the Judiciary Conference, the Director shall certify interpreters for that circuit in the language requested. The judicial council of a circuit shall identify and evaluate the needs of the districts within a circuit. The Director shall certify interpreters based on the results of criterion-referenced performance examinations. The Director shall issue regulations to carry out this paragraph within 1 year after the date of the enactment of the Judicial Branch Improvements Act of 1988.

"(2) Only in a case in which no certified interpreter is reasonably available as provided in subsection (d) of this section, including a case in which certification of interpreters is not provided under paragraph (1) in a particular language, may the services of otherwise qualified interpreters be used. The Director shall provide guidelines to the courts for the selection of otherwise qualified interpreters, in order to ensure that the highest standards of accuracy are maintained in all judicial proceedings subject to the provisions of this chapter.

"(3) The Director shall maintain a current master list of all certified interpreters and otherwise qualified interpreters and shall report periodically on the use and performance of both certified and otherwise qualified interpreters in judicial proceedings instituted by the United States and on the languages for which interpreters have been certified. The Director shall prescribe, subject to periodic review, a schedule of reasonable fees for services rendered by interpreters, certified or otherwise, used in proceedings instituted by the United States, and in doing so shall consider the prevailing rate of compensation for comparable service in other governmental entities.".

SEC. 704. LISTS OF INTERPRETERS; RESPONSIBILITY FOR SECURING SERVICES OF INTERPRETERS.

Section 1827(c) is amended to read as follows:

"(c)(1) Each United States district court shall maintain on file in the office of the clerk, and each United States attorney shall maintain on file, a list of all persons who have been certified as interpreters by the Director in accordance with subsection (b) of this section. The clerk shall make the list of certified interpreters for judicial proceeding available upon request.

"(2) The clerk or district executive of the court shall be responsible for securing the services of certified interpreters and otherwise qualified interpreters required for proceedings initiated by the United States, except that the United States attorney is responsible for securing the services of such interpreters for governmental witnesses.".

SEC. 705. SOUND RECORDINGS.

Section 1827(d) is amended by—

(1) redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) inserting "(1)" after "(d)"; and

(3) adding at the end thereof the following:

"(2) Upon the motion of a party, the presiding judicial officer shall determine whether to require the electronic sound recording of a judicial proceeding in which an interpreter is used under this section. In making this determination, the presiding judicial officer shall consider, among other things, the qualifications of the interpreter and prior experience in interpretation of court proceedings; whether the language to be interpreted is not one of the languages for which the Director has certified interpreters; and the complexity or length of the proceeding. In a grand jury proceeding, upon the motion of the accused, the presiding judicial officer shall require the electronic sound recording of the portion of the proceeding in which an interpreter is used.".

SEC. 706. AUTHORIZATION OF APPROPRIATIONS; PAYMENT FOR SERVICES OF INTERPRETERS.

Section 1827(g) is amended—

(a) by amending paragraphs (1), (2), and (3) to read as follows:

"(g)(1) There are authorized to be appropriated to the Federal judiciary, and to be paid by the Director of the Administrative Office of the United States Courts, such sums as may be necessary to establish a program to facilitate the use of certified and otherwise qualified interpreters, and otherwise fulfill the provisions of this title and the Judicial Branch Improvements Act of 1988, except as provided in paragraph (3).

"(2) Implementation of the provisions of this section is contingent upon the availability of appropriated funds to carry out the purposes of this section.

"(3) Such salaries, fees, expenses, and costs that are incurred with respect to Government witnesses (including for grand jury proceedings) shall, unless direction is made under paragraph (4), be paid by the Attorney General from sums appropriated to the Department of Justice.";

(b) by redesignating paragraph (4) as paragraph (5) and by inserting between paragraph (3) and paragraph (5), the following:

"(4) Upon the request of any person in any action for which interpreting services established pursuant to subsection (d) are not otherwise provided, the Clerk of the District Court or district executive upon the request of the presiding judicial officer, shall, where possible, make such services available to that person on a cost-reimbursable basis, but the judicial officer may also require the prepayment of the estimated expenses of providing such services.".

SEC. 707. APPROVAL OF COMPENSATION AND EXPENSES.

Section 1827(h) is amended to read as follows:

"(h) The presiding judicial officer shall approve the compensation and expenses payable to interpreters, pursuant to the schedule of fees prescribed by the Director.".

SEC. 708. DEFINITIONS.

Subsections (i) and (j) of section 1827 are amended to read as follows:

"(i) The term 'presiding judicial officer' as used in this section refers to any judge of a United States district court, including a bankruptcy judge, and a United States magistrate, or, for grand jury proceedings conducted under the auspices of the United States attorney, a United States attorney.

"(j) the term 'judicial proceedings' as used in this section refers to all proceedings, whether criminal or civil, including pretrial and grand jury proceedings (as well as proceedings upon a petition for a writ of habeas corpus initiated in the name of the United States by a relator), instituted by the United States and conducted in, or pursuant to the lawful authority and jurisdiction of a United States district court. The term 'United States district court' as used in this subsection includes any court created by an Act of Congress in a State or territory which is invested with any jurisdiction of a District Court of the United States established by chapter 5 of this title.".

SEC. 709. SIMULTANEOUS INTERPRETATION.

Section 1827(k) is amended to read as follows:

"(k) The interpretation provided by certified or otherwise qualified interpreters pursuant to this section shall be in the simultaneous mode for any party to a judicial proceeding instituted by the United States and in the consecutive mode for witnesses, except that the presiding judicial officer, sua sponte or on the motion of a party, may authorize a simultaneous, or consecutive interpretation when such officer determines after a hearing on the record that such interpretation will aid in the efficient administration of justice. The presiding judicial officer on such officer's motion or on the motion of a party may order that special interpretation services as authorized in section 1828 of this title be provided if such officer determines that the provision of such services will aid in the efficient administration of justice.".

SEC. 710. TECHNICAL AMENDMENTS.

(a) Section 1827(d) is amended—

(1) by striking out "competent" and inserting in lieu thereof "qualified";

(2) by striking out "any criminal" and all that follows through "relator)" and inserting in lieu thereof "judicial proceedings instituted by the United States"; and

(3) by striking out "such action" and inserting in lieu thereof "such judicial proceedings".

(b) Section 1827(e)(2) is amended by striking out "criminal or civil action in a United States district court" and inserting in lieu thereof "judicial proceedings instituted by the United States".

SEC. 711. IMPACT ON EXISTING PROGRAMS.

Nothing in this title shall be construed to terminate or diminish existing programs for the certification of interpreters.

SEC. 712. EFFECTIVE DATE.

This title shall become effective upon the date of enactment.

TITLE VIII—JURY SELECTION AND SERVICE

SEC. 801. EXCUSE OF JURORS.

Section 1866(c)(1) is amended to read as follows: "(1) excused by the court, or by the clerk under supervision of the court if the court's jury selection plan so authorizes, upon a showing of undue hardship or extreme inconvenience, for such period as the court deems necessary, at the conclusion of which such person either shall be summoned again for jury service under subsections (b) and (c) of this section or, if the court's jury selection plan so provides, the name of such person shall be reinserted into the qualified jury wheel for selection pursuant to subsection (a) of this section, or".

SEC. 802. JURY SELECTION PLAN.

(a) CLERK DEFINED FOR PURPOSES OF FUNCTIONS UNDER PLAN.—Section 1869(a) is amended to read as follows:

"(a) 'clerk' and 'clerk of the court' shall mean the clerk of the district court of the United States, any authorized deputy clerk, and any other person authorized by the court to assist the clerk in the performance of functions under this chapter;".

(b) OPTIONAL JURY SERVICE BY VOLUNTEER PUBLIC SAFETY PERSONNEL.—Paragraph (5) of section 1863(b)(5) is amended—

(1) by inserting "(A) except as provided in subparagraph (B)," after "(5)", and

(2) by adding at the end the following:

"(B) specify that volunteer safety personnel, upon individual request, shall be excused from jury service. For purposes of this subparagraph, the term 'volunteer safety personnel' means individuals serving a public agency (as defined in section 1203(6) of title I of the Omnibus Crime Control and Safe Streets Act of 1968) in an official capacity, without compensation, as firefighters or members of a rescue squad or ambulance crew.".

(c) Persons Exempted From Jury Service.—Paragraph (6) of section 1863(b) is amended to read as follows:

"(6) specify that the following persons are barred from jury service on the ground that they are exempt: (A) members in active service in the Armed Forces of the United States; (B) members of the fire or police departments of any State, the District of Columbia, any territory or possession of the United States, or any subdivision of a State, the District of Columbia, or such territory or possession; (C) public officers in the executive, legislative, or judicial branches of the Government of the United States, or of any State, the District of Columbia, any territory or possession of the United States, or any subdivision of a State, the District of Columbia, or such territory or possession, who are actively engaged in the performance of official duties.".

SEC. 803. MASTER JURY WHEEL.

(a) Alphabetical List Not Mandatory.—The second sentence of section 1864(a) is amended to read as follows: "The clerk or jury commission may, upon order of the court, prepare an alphabetical list of the names drawn from the master jury wheel. Any list so prepared shall not be disclosed to any person except pursuant to the district court plan or pursuant to section 1867 or 1868 of this title.".

(b) Conforming Amendment.—The second sentence of section 1865(a) is amended by striking out "the alphabetical" and inserting in lieu thereof "in any alphabetical".

SEC. 804. TECHNICAL AMENDMENT.

Section 1869(f) is amended to read as follows:

"(f) 'district court of the United States', 'district court', and 'court' shall mean any district court established by chapter 5 of this title, and any court which is created by Act of Congress in a territory and is invested with any jurisdiction of a district court established by chapter 5 of this title;".

SEC. 805. EXPERIMENTAL USE OF NEW JURY SELECTION PROCEDURES.

(a) Section 1878.—Chapter 121 is amended by adding at the end thereof the following:

"§ 1878. Experimental use of a one-step summoning and qualification procedure

"(a) The Judicial Conference of the United States is hereby authorized to develop and conduct an experiment in which jurors serving in a limited number of United States district courts shall be qualified and summoned in a single procedure, in lieu of the two separate procedures otherwise called for by this chapter. The Judicial Conference shall designate the district courts to participate in this experiment, but in no event shall the number of courts participating exceed ten. An experiment may be conducted pursuant to this section for a period not to exceed 2 years. The Judicial Conference shall ensure that an experiment conducted pursuant to this section does not violate the policies and objectives set forth in sections 1861 and 1862 of this title, and shall terminate the experiment immediately if it determines that these policies and objectives are being violated or whenever in its judgment good cause for such termination exists.

"(b) Jury selection conducted pursuant to this section shall be subject to challenge under section 1867 of this title for substantial failure to comply with the provisions of this title in selecting the jury. However, no challenge under section 1867 of this title shall lie solely on the basis that a jury was selected in accordance with an experiment conducted pursuant to this section.".

(b) Technical.—The table of sections for chapter 121 is amended by adding at the end thereof the following new item:

"1878. Experimental use of a one-step summoning and qualification procedure.".

TITLE IX—ARBITRATION

SEC. 901. ARBITRATION AUTHORIZATION BY DISTRICT COURTS.

(a) In General.—Title 28, United States Code, is amended by inserting after chapter 43 the following new chapter:

"CHAPTER 44—ARBITRATION

"Sec.
"651. Authorization of arbitration.
"652. Jurisdiction.
"653. Powers of arbitrator; arbitration hearing.
"654. Arbitration award and judgment.
"655. Trial de novo.
"656. Certification of arbitrators.
"657. Compensation of arbitrators.
"658. District courts that may authorize arbitration.

"§ 651. Authorization of arbitration

"(a) Authority of Certain District Courts.—Each United States district court described in section 658 may authorize by local rule the use of arbitration in any civil action, including an adversary proceeding in bankruptcy. A district court described in section 658(1) may refer any such action to arbitration as set forth in section 652(a). A district court described in section 658(2) may refer only such actions to arbitration as are set forth in section 652(a)(1)(A).

"(b) Title 9 Not Affected.—This chapter shall not affect title 9.

"§ 652. Jurisdiction

"(a) Actions That May Be Referred to Arbitration.—(1) Notwithstanding any provision of law to the contrary and except as provided in subsections (b) and (c) of this section, and section 901(c) of the Judicial Branch Improvements Act of 1988, a district court that authorizes arbitration under section 651 may—

"(A) allow the referral to arbitration of any civil action (including any adversary proceeding in bankruptcy) pending before it if the parties consent to arbitration, and

"(B) require the referral to arbitration of any civil action pending before it if the relief sought consists only of money damages not in excess of $100,000 or such lesser amount as the district court may set, exclusive of interest and costs.

"(2) For purposes of paragraph (1)(B), a district court may presume damages are not in excess of $100,000 unless counsel certifies that damages exceed such amount.

"(b) Actions That May Not Be Referred Without Consent of Parties.—Referral to arbitration under subsection (a)(1)(B) may not be made—

"(1) of an action based on an alleged violation of a right secured by the Constitution of the United States, or

"(2) if jurisdiction is based in whole or in part on section 1343 of this title.

"(c) Exceptions From Arbitration.—Each district court shall establish by local rule procedures for exempting, sua sponte or on motion of a party, any case from arbitration in which the objectives of arbitration would not be realized—

"(1) because the case involves complex or novel legal issues,

"(2) because legal issues predominate over factual issues, or

"(3) for other good cause.

"(d) Safeguards in Consent Cases.—In any civil action in which arbitration by consent is allowed under subsection (a)(1)(A), the district court shall by local rule establish procedures to ensure that—

"(1) consent to arbitration is freely and knowingly obtained, and

"(2) no party or attorney is prejudiced for refusing to participate in arbitration.

"§ 653. Powers of arbitrator; arbitration hearing

"(a) Powers.—An arbitrator to whom an action is referred under section 652 shall have, within the judicial district of the district court which referred the action to arbitration, the power—

"(1) to conduct arbitration hearings,

"(2) to administer oaths and affirmations, and

"(3) to make awards.

"(b) Time for Beginning Arbitration Hearing.—An arbitration hearing under this chapter shall begin within a time period specified by the district court, but in no event later than 180 days after the filing of an answer, except that the arbitration proceeding shall not, in the absence of the consent of the parties, commence until 30 days after the disposition by the district court of any motion to dismiss the complaint, motion for judgment on the pleadings, motion to join necessary parties, or motion for summary judgment, if the motion was filed during a time period specified by the district court. The 180-day and 30-day periods specified in the preceding sentence may be modified by the court for good cause shown.

"(c) Subpoenas.—Rule 45 of the Federal Rules of Civil Procedure (relating to subpoenas) applies to subpoenas for the attendance of witnesses and the production of documentary evidence at an arbitration hearing under this chapter.

"§ 654. Arbitration award and judgment

"(a) Filing and Effect of Arbitration Award.—An arbitration award made by an arbitrator under this chapter, along with proof of service of such award on the other party by the prevailing party or by the plaintiff, shall, promptly after the arbitration hearing is concluded, be filed with the clerk of the district court that referred the case to arbitration. Such award shall be entered as the judgment of the court after the time has expired for requesting a trial de novo under section 655. The judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

"(b) Sealing of Arbitration Award.—The district court shall provide by local rule that the contents of any arbitration award made under this chapter shall not be made known to any judge who might be assigned to the case—

"(1) except as necessary for the court to determine whether to assess costs or attorney fees under section 655,

"(2) until the district court has entered final judgment in the action or the action has been otherwise terminated, or

"(3) except for purposes of preparing the report required by section 903(b) of the Judicial Branch Improvements Act of 1988.

"(c) Taxation of Costs.—The district court may by rule allow for the inclusion of costs as provided in section 1920 of this title as a part of the arbitration award.

"§ 655. Trial de novo

"(a) Time for Demand.—Within 30 days after the filing of an arbitration award with a district court under section 654, any party may file a written demand for a trial de novo in the district court.

"(b) Restoration to Court Docket.—Upon a demand for a trial de novo, the action shall be restored to the docket of the court and treated for all purposes as if it had not been referred to arbitration. In such a case, any right of trial by jury that a party otherwise would have had, as well as any place on the court calendar which is no later than that which a party otherwise would have had, are preserved.

"(c) Limitation on Admission of Evidence.—The court shall not admit at the trial de novo any evidence that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding, unless—

"(1) the evidence would otherwise be admissible in the court under the Federal Rules of Evidence, or

"(2) the parties have otherwise stipulated.

"(d) Taxation of Arbitrator Fees as Cost.—(1)(A) A district court may provide by rule that, in any trial de novo under this section, arbitrator fees paid under section 657 may be taxed as costs against the party demanding the trial de novo.

"(B) Such rule may provide that a party demanding a trial de novo under subsection (a), other than the United States or its agencies or officers, shall deposit a sum equal to such arbitrator fees as advanced payment of such costs, unless the party is permitted to proceed in forma pauperis.

"(2) Arbitrator fees shall not be taxed as costs under paragraph (1)(A), and any sum deposited under paragraph (1)(B) shall be returned to the party demanding the trial de novo, if—

"(A) the party demanding the trial de novo obtains a final judgment more favorable than the arbitration award, or

"(B) the court determines that the demand for the trial de novo was made for good cause.

"(3) Any arbitrator fees taxed as costs under paragraph (1)(A), and any sum deposited under paragraph (1)(B) that is not returned to the party demanding the trial de novo, shall be paid to the Treasury of the United States.

"(4) Any rule under this subsection shall provide that no penalty for demanding a trial de novo, other than that provided in this subsection, shall be assessed by the court.

"(e) Assessment of Costs and Attorney Fees.—In any trial de novo demanded under subsection (a) in which arbitration was done by consent of the parties, a district court may assess costs, as provided in section 1920 of this title, and reasonable attorney fees against the party demanding the trial de novo if—

"(1) such party fails to obtain a judgment, exclusive of interest and costs, in the court which is substantially more favorable to such party than the arbitration award, and

"(2) the court determines that the party's conduct in seeking a trial de novo was in bad faith.

"§ 656. Certification of arbitrators

"(a) Standards for Certification.—Each district court listed in section 658 shall establish standards for the certification of arbitrators and shall certify arbitrators to perform services in accordance with such standards and this chapter. The standards shall include provisions requiring that any arbitrator—

"(1) shall take the oath or affirmation described in section 453, and

"(2) shall be subject to the disqualification rules of section 455.

"(b) Treatment of Arbitrator as Independent Contractor and Special Government Employee.—An arbitrator is an independent contractor and is subject to the provisions of sections 201 through 211 of title 18 to the same extent as such provisions apply to a special Government employee of the executive branch. A person may not be barred from the practice of law because such person is an arbitrator.

"§ 657. Compensation of arbitrators

"(a) Compensation.—The district court may, subject to limits set by the Judicial Conference of the United States, establish and pay the amount of compensation, if any, that each arbitrator shall receive for services rendered in each case.

"(b) Transportation Allowances.—Under regulations prescribed by the Director of the Administrative Office of the United States Courts, a district court may reimburse arbitrators for actual transportation expenses necessarily incurred in the performance of duties under this chapter.

"§ 658. District courts that may authorize arbitration

"The district courts for the following judicial districts may authorize the use of arbitration under this chapter:

"(1) Northern District of California, Middle District of Florida, Western District of Michigan, Western District of Missouri, District of New Jersey, Eastern District of New York, Middle District of North Carolina, Western District of Oklahoma, Eastern District of Pennsylvania, and Western District of Texas.

"(2) Ten additional judicial districts, which shall be approved by the Judicial Conference of the United States. The Judicial Conference shall give notice of the 10 districts approved under this paragraph to the Federal Judicial Center and to the public.".

(b) Conforming Amendment.—The table of chapters at the beginning of part III is amended by inserting after the item relating to chapter 43 the following new item:

"44. Arbitration .... 651".

(c) Exception to Limitation on Money Damages.—Notwithstanding section 652 of title 28, United States Code (as added by subsection (a) of this section), establishing a limitation of $100,000 in money damages with respect to cases referred to arbitration, a district court listed in section 658 of title 28, United States Code (as added by subsection (a) of this section), whose local rule on the date of the enactment of this Act provides for a limitation on money damages, with respect to such cases, of not more than $150,000, may continue to apply the higher limitation.

SEC. 902. MODEL PROCEDURES.

The Judicial Conference of the United States may develop model rules relating to procedures for arbitration under chapter 44 of title 28, United States Code, as added by section 901 of this Act. No model rule may supersede any provision of such chapter 44, this title, or any law of the United States.

SEC. 903. REPORTS.

(a) Annual Report by Director of Administrative Office of the United States Courts.—The Director of the Administrative Office of the United States Courts shall include in the annual report of the activities of the Administrative Office required under section 604(a)(3) of title 28, United States Code, statistical information about the implementation of chapter 44 of title 28, United States Code, as added by section 901 of this Act.

(b) Report by Federal Judicial Center.—Not later than 5 years after the date of the enactment of this Act, the Federal Judicial Center, in consultation with the Director of the Administrative Office of the United States Courts, shall submit to the Congress a report on the implementation of chapter 44 of title 28, United States Code, as added by section 901 of this Act, which shall include the following:

(1) A description of the arbitration programs authorized by such chapter, as conceived and as implemented in the judicial districts in which such programs are authorized.

(2) A determination of the level of satisfaction with the arbitration programs in those judicial districts by a sampling of court personnel, attorneys, and litigants whose cases have been referred to arbitration.

(3) A summary of those program features that can be identified as being related to program acceptance both within and across judicial districts.

(4) A description of the levels of satisfaction relative to the cost per hearing of each program.

(5) Recommendations to the Congress on whether to terminate or continue chapter 44 of title 28, United States Code, or, alternatively, to enact an arbitration provision in title 28, United States Code, authorizing arbitration in all Federal district courts.

SEC. 904. EFFECT ON JUDICIAL RULE MAKING POWERS.

Nothing in this title, or in chapter 44 of title 28, United States Code, as added by section 901 of this Act, is intended to abridge, modify, or enlarge the rule making powers of the Federal judiciary.

SEC. 905. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for the fiscal year ending September 30, 1989, and for each of the succeeding 4 fiscal years, to the judicial branch such sums as may be necessary to carry out the purposes of chapter 44 of title 28, United States Code, as added by section 901 of this Act. Funds appropriated under this section shall be allocated by the Administrative Office of the United States Courts to Federal judicial districts and the Federal Judicial Center. The funds so appropriated are authorized to remain available until expended, except that such funds may not be expended for the arbitration of actions referred to arbitration after the date of repeal set forth in section 906 of this Act.

SEC. 906. REPEAL.

Effective 5 years after the date of the enactment of this Act, chapter 44 of title 28, United States Code, as added by section 901 of this Act, and the item relating to that chapter in the table of chapters at the beginning of part III of such title, are repealed, except that the provisions of that chapter shall continue to apply through final disposition of all actions in which referral to arbitration was made before the date of repeal.

TITLE X—MISCELLANEOUS PROVISIONS

SEC. 1001. DIVISIONAL VENUE IN CIVIL CASES.

(a) Repeal.—Section 1393, relating to divisional venue in civil cases, and the item relating to section 1393 in the table of sections at the beginning of chapter 87, are repealed.

(b) Effective Date.—The amendments made by this section take effect 90 days after the date of the enactment of this Act.

SEC. 1002. REGISTRATION OF FOREIGN JUDGMENTS.

(a) Judgments of District Courts and Court of International Trade.—Section 1963 is amended by amending the first sentence to read as follows: "A judgment in an action for the recovery of money or property entered in any district court or in the Court of International Trade may be registered by filing a certified copy of such judgment in any other district or, with respect to the Court of International Trade, in any judicial district, when the judgment has become final by appeal or expiration of the time for appeal or when ordered by the court that entered the judgment for good cause shown.".

(b) Conforming Amendments.—(1) The section caption for section 1963 is amended to read as follows:

"§ 1963. Registration of judgments of the district courts and the Court of International Trade".

(2) Section 1963A is repealed.

(3)(A) The item relating to section 1963 in the table of sections at the beginning of chapter 125 is amended to read as follows:

"1963. Registration of judgments of the district courts and the Court of International Trade.".

(B) The table of sections at the beginning of chapter 125 is amended by repealing the item relating to section 1963A.

(c) Effective Date.—The amendments made by this section take effect 90 days after the date of the enactment of this title.

SEC. 1003. BANKRUPTCY JUDGE, MAGISTRATE AND LAW CLERK EXEMPTION FROM FEDERAL LEAVE ACT.

(a) Amendments to Sections 153, 156, 631, 634, 712, 752, and 794.—

(1) Section 153 is amended by adding at the end thereof the following:

"(d) A bankruptcy judge appointed under this chapter shall be exempt from the provisions of subchapter I of chapter 63 of title 5, United States Code.";

(2) Section 631 is amended by adding at the end thereof the following:

"(l) A United States magistrate appointed under this chapter shall be exempt from the provisions of subchapter I of chapter 63 of title 5, United States Code.";

(3) Sections 156(a), 712, 752 and 794 are each amended by adding at the end thereof the following: "A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, United States Code, unless specifically included by the appointing judge or by local rule of court.".

(4) Section 634(c) is amended by adding at the end thereof the following: "A legal assistant appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, United States Code, unless specifically included by the appointing judge or by local rule of court.".

(b) Transition Provisions.—(1) If an individual who is exempted from the Leave Act by operation of amendments under this section and who was previously subject to the provisions of subchapter I of chapter 63 of title 5, United States Code, without a break in service, again becomes subject to this subchapter on completion of his service as an exempted officer, the unused annual leave and sick leave standing to his credit when he was exempted from this subchapter is deemed to have remained to his credit.

(2) In computing an annuity under section 8339 of title 5, United States Code, the total service of a person specified in paragraph (1) of this subsection who retired on an immediate annuity or dies leaving a survivor or survivors entitled to an annuity includes, without regard to the limitations imposed by subsection (f) of section 8339 of title 5, the days of unused sick leave standing to his credit when he was exempted from subchapter I of chapter 63 of title 5, except that these days will not be counted in determining average pay or annuity eligibility.

SEC. 1004. COST-OF-LIVING ADJUSTMENT OF ANNUITIES PAYABLE UNDER SECTIONS 611 AND 627.

(a) Amendments to Sections 611 and 627.—Sections 611 and 627 are amended by adding at the end thereof a new paragraph denominated as sections 611(e) and 627(f), respectively, reading as follows:

"Each annuity payable under this section shall be increased by the same percentage amount and effective on the same date as annuities payable under chapter 83 of title 5, United States Code, are increased as provided by section 8340 of title 5, United States Code.".

(b) Effective Date.—The amendments made by this section shall apply to cost-of-living increases that go into effect on or after the date of enactment of this title with respect to any annuity being paid or becoming payable on or after such date.

SEC. 1005. MILITARY RETIREMENT PAY FOR SENIOR OR RETIRED JUDGES.

(a) Amendments to Section 371.—Section 371 is amended by adding at the end thereof the following new subsection:

"(e) Notwithstanding subsection (c) of section 5532 of title 5, United States Code, if a regular or reserve member or former member of a uniformed service who is receiving retired or retainer pay becomes employed as a justice or judge of the United States, as defined by section 451, or becomes eligible therefor while so employed, such retired or retainer pay shall not be paid during regular active service as a justice or judge, but shall be resumed or commenced without reduction upon retirement from the judicial office or from regular active service (into senior status) as such justice or judge.".

(b) Effective Date.—The amendment made by this section shall apply to a justice or judge who retires, or has retired, from the judicial office or from regular active service (into senior status) as such justice or judge of the United States on or after the effective date of section 5532(c) of title 5, United States Code, and to whom section 5532(c) would otherwise be applicable.

SEC. 1006. AMENDMENTS TO CONFORM SECTIONS 611 AND 627 TO THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM ACT OF 1986.

(a) Amendments to Sections 611 and 627.—

(1) Section 611(a) is amended to read as follows:

"(a) The Director may, by written election filed with the Chief Justice of the United States within 6 months after the date on which he takes office, waive coverage under chapter 83 of title 5, United States Code, subchapter III (the Civil Service Retirement System) or chapter 84 of title 5, United States Code (the Federal Employees' Retirement System), whichever is applicable, and bring himself within the purview of this section. A Director who elects coverage under this section shall be deemed an 'employee' for purposes of chapter 84 of title 5, United States Code, subchapter III, regardless of whether he has waived the coverage of chapter 83, subchapter III, or chapter 84. Waiver of coverage under chapter 83, subchapter III, and election of this section shall not operate to foreclose to the Director, upon separation from service other than by retirement, such opportunity as the law may provide to secure retirement credit under chapter 83 for service as Director by depositing with interest the amount required by section 8334 of title 5, United States Code. A Director who waives coverage under chapter 84 and elects this section may secure retirement credit under chapter 84 for service as Director by depositing with interest 1.3 percent of basic pay for service from January 1, 1984, through December 31, 1986, and the amount referred to in section 8422(a) of title 5, United States Code, for service after December 31, 1986. Interest shall be computed under section 8334(e) of title 5, United States Code."; and

(2) Section 627(b) is amended, following the words "*Provided, however,*", to read as follows:

"That the Director, upon written notice filed with the Director of the Administrative Office of the United States Courts within 6 months after the date on which he takes office, may waive coverage under chapter 83 of title 5, United States Code, subchapter III (the Civil Service Retirement System) or chapter 84 of title 5, United States Code (the Federal Employees' Retirement System), whichever is applicable, and elect coverage under the retirement and disability provisions of this section. A Director who elects coverage under this section shall be deemed an 'employee' for purposes of chapter 84 of title 5, United States Code, subchapter III, regardless of whether he has waived the coverage of chapter 83, subchapter III, or chapter 84. *And provided further,* That upon his nonretirement separation from the Federal Judicial Center, waiver of coverage under chapter 83, subchapter III, and election of this section shall not operate to foreclose to the Director such opportunity as the law may provide to secure retirement credit under chapter 83 for service as Director by depositing with interest the amount required by section 8334 of title 5, United States Code. A Director who waives coverage under chapter 84 and elects this section may secure retirement credit under chapter 84 for service as Director by depositing with interest 1.3 percent of basic pay for service from January 1, 1984, through December 31, 1986, and the amount referred to in section 8422(a) of title 5, United States Code for service after December 31, 1986. Interest shall be computed under section 8334(e) of title 5, United States Code.".

(b) Effective Date.—The amendments made by this section shall apply to persons holding the offices of Director of the Administrative Office of the United States Courts, Director of the Federal Judicial Center, and Administrative Assistant to the Chief Justice on the date of enactment of this title.

SEC. 1007. JUDICIAL DISQUALIFICATION AMENDMENT.

Section 455 is amended by adding at the end thereof the following:

"(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.".

SEC. 1008. INCENTIVE AWARDS.

Section 604(a), as amended by this Act, is further amended—

(1) by redesignating the second paragraph (14) through paragraph (18) as paragraphs (15) through (19); and

(2) by inserting after paragraph (19) the following:

"(20) Establish a program of incentive awards for employees of the judicial branch of the United States Government, other than any judge who is entitled to hold office during good behavior;".

SEC. 1009. WAIVER OF CLAIMS FOR OVERPAYMENT OF JUDICIAL PAY AND ALLOWANCES.

(a) Amendments to Title 5, United States Code.—Section 5584 of title 5, United States Code, is amended—

(1) in subsection (a)—

(A) by striking out "or" at the end of paragraph (1);

(B) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; or"; and

(C) by adding at the end thereof the following new paragraph:

"(3) the Director of the Administrative Office of the United States Courts when the claim is in an amount aggregating not more than $10,000 and involves an officer or employee of the Administrative Office of the United States Courts, the Federal Judicial Center, or any of the courts set forth in section 610 of title 28."; and

(2) in subsection (g)—

(A) by striking out "and" at the end of paragraph (4);

(B) by striking out the period at the end of paragraph (5) and inserting in lieu thereof "; and"; and

(C) by adding at the end thereof the following new paragraph:

"(6) the Administrative Office of the United States Courts, the Federal Judicial Center, and any of the courts set forth in section 610 of title 28.

For purposes of this section, the Director of the Administrative Office of the United States Courts shall be the head of the agency in the case of those entities set forth in paragraph (6) of this subsection.".

(b) Effective Date.—The amendments made by this section shall apply with respect to any claim arising before the date of the enactment of this Act which is pending on such date, and to any claim which arises on or after such date of enactment.

SEC. 1010. COURT SECURITY.

Section 604(a) is further amended by inserting the following new paragraph before paragraph (22), as redesignated:

"(21) Receive and expend, either directly or by transfer to the United States Marshals Service or other Government agency, funds appropriated for the procurement, installation, and maintenance of security equipment and protective services for the United States Courts in courtrooms and adjacent areas, including building ingress/egress control, inspection of packages, directed security patrols, and other similar activities;".

SEC. 1011. TRAVEL REIMBURSEMENT.

Section 604(a)(7) is amended by inserting a comma in lieu of the semicolon at the end thereof and adding thereafter the following: "without regard to the per diem allowances and amounts for reimbursement of actual and necessary expenses established by the Administrator of General Services under section 5702 of title 5: *Provided,* That the reimbursement of subsistence expenses may not exceed that authorized by the Director for judges of the United States under section 456 of this title;".

SEC. 1012. REPORT AND STATISTICS.

Section 1121 of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (12 U.S.C. 3421) is amended by adding the following new subsection at the end thereof:

"(c) The report required by subsection (a) of this section shall not be required after the report is submitted in the year 1989.".

SEC. 1013. CLAIMS COURT FEES.

(a) Increase in Claims Court Filing Fees.—(1) Section 2520 is amended by striking out "$60" and inserting in lieu thereof "$120".

(2) The amendment made by this subsection shall take effect 30 days after the date of enactment of this title.

(b) Report on Other Fees.—Not later than 180 days after the date of the enactment of this Act, the Judicial Conference of the United States shall submit a report to the Congress on the actual costs of filing actions in the district courts of the United States.

SEC. 1014. JUDICIAL COST-OF-LIVING INCREASES.

Section 140 of Public Law 97-92 (95 Stat. 1183, 1200), is hereby repealed.

SEC. 1015. CORPORATE VENUE.

(a) In General.—Section 1391(c) is amended to read as follows:

"(c) For purposes of venue under this chapter, a defendant that is a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced. In a State which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State, and, if there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts.".

(b) Effective Date.—The amendment made by this section takes effect 90 days after the date of the enactment of this title.

SEC. 1016. METHOD OF RECORDING.

Paragraph (7) of section 636(c) is amended to read as follows:

"(7) The magistrate shall, subject to guidelines of the Judicial Conference, determine whether the record taken pursuant to this section shall be taken by electronic sound recording, by a court reporter, or by other means.".

SEC. 1017. LOCATION OF CHAMBERS OF CIRCUIT JUDGES.

Section 462(c) is amended by striking out "where Federal facilities are available" and inserting in lieu thereof "within the circuit other than where regular sessions of court are authorized by law to be held,".

SEC. 1018. IMPROVEMENTS IN REMOVAL PROCEDURE.

(a) Actions Removable Generally.—Section 1441(a) is amended by adding at the end thereof the following new sentence: "For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.".

(b) Procedure for Removal.—Section 1446 is amended—

(1) by amending subsection (a) to read as follows:

"(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.";

(2) in subsection (b)—

(A) by striking out "petition for removal" each place it appears and inserting in lieu thereof "notice of removal"; and

(B) in the second paragraph by striking out the period at the end thereof and inserting in lieu thereof ", except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action."; and

(3) by striking out subsection (d) and redesignating subsections (e) and (f) as subsection (d) and (e), respectively.

(c) Procedure After Removal Generally.—Section 1447 is amended—

(1) by amending subsection (c) to read as follows:

"(c) A motion to remand the case on the basis of any defect in removal procedure must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case."; and

(2) by adding at the end thereof the following new subsection:

"(e) If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.".

SEC. 1019. COST-OF-LIVING ADJUSTMENTS FOR JUDICIAL SURVIVORS' ANNUITIES.

(a) In General.—Section 376(m) is amended to read as follows:

"(m) Each time that an increase is made under section 8340(b) of title 5 in annuities paid under subchapter III of chapter 83 of such title, each annuity payable from the Judicial Survivors' Annuities Fund shall be increased at the same time by the same percentage by which annuities are increased under that section.".

(b) Increase for Existing Annuitants.—Each annuity payable from the Judicial Survivors' Annuities Fund under section 376 of title 28, United States Code, on the date of the enactment of this title shall be increased by 10 percent, effective on such date of enactment.

(c) Effective Date.—The amendment made by subsection (a) shall apply with respect to increases in annuities which are made under section 8340(b) of title 5, United States Code, on or after the date of the enactment of this title.

SEC. 1020. ELIMINATION OF CIRCUIT EXECUTIVE BOARD OF CERTIFICATION PROCEDURE.

Section 332 is amended—

(1) in subsection (e) by striking out "executive from among persons who shall be certified by the Board of Certification." and inserting in lieu thereof "executive. In appointing a circuit executive, the judicial council shall take into account experience in administrative and executive positions, familiarity with court procedures, and special training."; and

(2) in subsection (f) by striking out the first paragraph and by designating the remaining paragraphs as paragraphs (1), (2), (3), and (4), respectively.

SEC. 1021. APPEALS UNDER TITLE 9, UNITED STATES CODE.

(a) In General.—Chapter 1 of title 9, United States Code, is amended by adding at the end thereof the following new section:

"§ 15. Appeals

"(a) An appeal may be taken from—

"(1) an order—

"(A) refusing a stay of any action under section 3 of this title,

"(B) denying a petition under section 4 of this title to order arbitration to proceed,

"(C) denying an application under section 206 of this title to compel arbitration,

"(D) confirming or denying confirmation of an award or partial award, or

"(E) modifying, correcting, or vacating an award;

"(2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title; or

"(3) a final decision with respect to an arbitration that is subject to this title.

"(b) Except as otherwise provided in section 1292(b) of title 28, an appeal may not be taken from an interlocutory order—

"(1) granting a stay of any action under section 3 of this title;

"(2) directing arbitration to proceed under section 4 of this title;

"(3) compelling arbitration under section 206 of this title; or

"(4) refusing to enjoin an arbitration that is subject to this title.".

(b) Clerical Amendment.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"15. Appeals.".

SEC. 1022. MISCELLANEOUS TECHNICAL AMENDMENTS.

(a) Amendments to Title 28.—

(1) Section 332(c) is amended by striking out "semiannually" and inserting in lieu thereof "semiannual".

(2) Section 604(a)(2) is amended by striking out "quarterly" and inserting in lieu thereof "semiannually".

(3) Section 1295(a)(1) is amended by inserting ", exclusive rights in mask works," after "copyrights".

(4)(A) Section 1338 is amended by adding at the end the following:

"(c) Subsections (a) and (b) apply to exclusive rights in mask works under chapter 9 of title 17 to the same extent as such subsections apply to copyrights.".

(B) The section heading for section 1338 is amended to read as follows:

"§ 1338. Patents, plant variety protection, copyrights, mask works, trade-marks, and unfair competition".

(5) Section 1400(a) is amended by inserting "or exclusive rights in mask works" after "copyrights".

(6) Section 1498 is amended by adding at the end the following:

"(e) Subsections (b) and (c) of this section apply to exclusive rights in mask works under chapter 9 of title 17 to the same extent as such subsections apply to copyrights.".

(7) The table of sections at the beginning of chapter 85 is amended—

(A) in the item relating to section 1330 by striking out "Action" and inserting in lieu thereof "Actions";

(B) in the item relating to section 1331 by inserting a period after "question";

(C) by amending the item relating to section 1338 to read as follows:

"1338. Patents, plant variety protection, copyrights, mask works, trademarks, and unfair competition";

and

(D) by amending the item relating to section 1343 to read as follows:

"1343. Civil rights and elective franchise.".

(8) The item relating to section 1914 in the table of sections at the beginning of chapter 123 is amended by striking out "courts" and inserting in lieu thereof "court".

(9) The table of sections for chapter 17 is amended by amending the item relating to section 376 to read as follows:

"376. Annuities for survivors of certain judicial officials of the United States.".

(b) Other Amendments.—Section 912 of title 17, United States Code, is amended—

(1) by striking out subsection (d); and

(2) by redesignating subsection (e) as subsection (d).

SEC. 1023. CONFIGURATION OF FLORIDA DISTRICTS.

(a) Middle and Southern Districts.—Section 89 of title 28, United States Code, is amended—

(1) in subsection (b)—

(A) by inserting "Collier," after "Clay,";

(B) by inserting "Glades," after "Flagler,"; and

(C) by inserting "Hendry," after "Hardee,"; and

(2) in subsection (c) by striking "Collier," "Glades," and "Hendry,".

(b) Effective Date.—(1) The amendments made by this section shall take effect 90 days after the date of the enactment of this title.

(2) The amendments made by subsection (a) shall apply to any action commenced in the United States District Court for the Middle District of Florida, or in the United States District Court for the Southern District of Florida, on or after the effective date of this title, and shall not affect any action pending in either such court on such effective date.

(c) Juries.—The amendments made by this section shall not affect the composition, or preclude the service, of any grand or petit jury summoned, empaneled, or actually serving on the effective date of this title.

SEC. 1024. SERVICE OF ARTICLE III JUDGES ON TERRITORIAL COURTS.

Chapter 13 is amended by—

(1) adding at the end thereof the following:

"§ 297. Assignment of judges to courts of the freely associated compact states

"(a) The Chief Justice or the chief judge of the United States Court of Appeals for the Ninth Circuit may assign any circuit or district judge of the Ninth Circuit, with the consent of the judge so assigned, to serve temporarily as a judge of any duly constituted court of the freely associated compact states whenever an official duly authorized by the laws of the respective compact state requests such assignment and such assignment is necessary for the proper dispatch of the business of the respective court.

"(b) The Congress consents to the acceptance and retention by any judge so authorized of reimbursement from the countries referred to in subsection (a) of all necessary travel expenses, including transportation, and of subsistence, or of a reasonable per diem allowance in lieu of subsistence. The judge shall report to the Administrative Office of the United States Courts any amount received pursuant to this subsection."; and

(2) by amending the table of sections by adding at the end thereof the following:

"297. Assignment of judges to courts of the freely associated compact states.".

SEC. 1025. SALARIES OF UNITED STATES CLAIMS COURT JUDGES.

Section 172(b) of title 28, United States Code, is amended to read as follows:

"(b) Each judge shall receive a salary at the rate of pay, and in the same manner, as judges of the district courts of the United States.".

AMENDMENT NO. 3701

(Purpose: To make technical corrections)

Mr. BYRD. Mr. President, I submit an amendment on behalf of Mr. Heflin in the nature of a substitute and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. Byrd], for Mr. Heflin (for himself and Mr. Grassley) proposes an amendment numbered 3701.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered

(The text of the amendment is printed in today's Record under "Amendments Submitted.")

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3701) was agreed to.

Mr. HEFLIN. Mr. President, today I urge my colleagues to support passage of an omnibus court reform bill. The purpose of the legislation is to improve the administration and operation of the Federal courts. It is the culmination of many months of negotiation with members of the Subcommittee on Courts and Administrative Practice, the Senate Judiciary Committee, and the House of Representatives. This bill provides a procedure for the promulgation of rules issued by the courts, establishes a Committee of the Judicial Conference to study the problems and needs of the Federal judiciary, makes modest adjustments to the scope of diversity jurisdiction, provides for the early resolution of district court jurisdictional issues under the Tucker Act, reauthorizes the State justice institute, amends both the Court Interpreter and Jury Selection and Service Acts, and makes other improvements proposed by the Judicial Conference.

Because this legislation is being considered in the closing days of the 100th Congress, I think it is important for Members to understand the legislative history of this bill. In March 1987, at the request of the Judicial Conference of the United States, I introduced S. 1482. In March through May 1988, the Subcommittee on Courts and Administrative Practice held hearings on S. 1482. Testimony was received from the Judicial Conference of the United States, the Department of Justice, the American Bar Association and other interested parties. On September 15, 1988, the Subcommittee on Courts and Administrative Practice held a markup on S. 1482. The subcommittee adopted a complete substitute to S. 1482 and the bill was then reported to the full Judiciary Committee.

In the interim, between subcommittee and full committee consideration, discussions continued concerning the provisions of S. 1482. Those discussions also included provisions in a companion bill which was introduced by Representative KASTENMEIER as H.R. 3152. The House Subcommittee on Courts, Civil Liberties, and the Administration of Justice held hearings in September and October 1987, and February 1988. The House Subcommittee reported a bill in the nature of a substitute to H.R. 3152 on May 12, 1988, which was subsequently introduced as a clean bill, H.R. 4807.

The full House Committee on the Judiciary ordered H.R. 4807 reported, with an amendment in the nature of a substitute, on August 2, 1988. The only significant change made by the full committee was to reverse the decision of the subcommittee to abolish diversity of citizenship jurisdiction and to substitute an increase in the jurisdictional amount from $10,000 to $50,000. Minor amendments to the court interpreter, jury selection, and Federal judicial center provisions were also made. The House of Representatives passed H.R. 4807 on September 13, 1988.

Mr. President, the bill before the full Senate today reflects discussions with all interested parties, including Congressman KASTENMEIER and Congressman MOORHEAD (chairman and ranking minority member of the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice), The Judicial Conference of the United States, and the Department of Justice, and was reported unanimously by the Senate Judiciary Committee on Wednesday, October 5, 1988. There is substantial overlap with H.R. 4807 as passed by the House earlier this month and, on a number of significant matters in the bill, such as the titles dealing with arbitration and the rules enabling act amendments, the Kastenmeier subcommittee has been the leader in developing the provisions. There is also substantial overlap with the omnibus judicial improvements legislation forwarded to the Congress in May of 1987 by the Judicial Conference. Many other interested parties have participated in the evolution of this bill. The point I wish to make here is that S. 1482, as reported, is a noncontroversial judicial improvements bill with many authors. I acknowledge and appreciate their contributions.

Because of the limited time remaining in this Congress, there will not be a committee report accompanying S. 1482. I will describe the provisions of the bill and then will submit for the record a more lengthy explanation providing background and a section-by-section analysis.

I am offering a complete substitute to the substitute amendment reported by the committee, which reflects technical amendments to the bill. The technical amendments include changing the title of the bill, adding an effective date to the title dealing with arbitration, and deleting two sections within the title dealing with miscellaneous provisions.

In a sense, the pending bill is a continuation of over a decade of efforts in both the Senate and the House to respond to the needs of the Judiciary. Over that period the number of judges has dramatically increased. New forms of adjunct support for Article III courts—magistrates, bankruptcy judges and various other support personnel—have been provided. A new court of appeals for the Federal circuit was created to help alleviate the burden on appellate courts. As recently as this session, legislation which I introduced and which was supported overwhelmingly by the Chief Justice and the Judicial Conference to significantly ameliorate burdens on the Supreme Court by eliminating most of its mandatory jurisdiction in favor of discretionary review was signed into law. Public Law 100-352, signed on June 27, 1988.

TITLE 1—FEDERAL COURTS STUDY COMMITTEE

Over the years, I have repeatedly introduced a provision which in my opinion provides a mechanism for addressing the needs of the Federal Courts. In fact, legislation which I introduced, S. 951, the Federal Courts Study Act, passed the Judiciary Committee in March of this year, and passed the Senate by unanimous consent on October 5, 1988. S. 951 creates a three branch study commission for a period of 5 years. The purpose of the Commission is to study the Federal and State courts and make a report of their findings to the three branches of government and other organizations. I never thought that this legislation was particularly partisan. I have introduced the bill and supported it because I believe in its merit. The Commission grew out of a study prepared by Judge Clifford Wallace of the Ninth Circuit Court of Appeals in the early 1980's. Judge Wallace was asked by then Chief Justice Burger to undertake the task of exploring the problems facing the judicial system, in 10 or 20 years. As a result of consulting with lawyers, judges, academicians, and others interested in judicial administration, Judge Wallace suggested the benefit of a three branch commission to look at all facets of the courts, study the problems, formulate solutions, and suggest methods of change.

I believe such an approach would help us develop a workable plan for the future, instead of haphazard and piecemeal reforms. In my opinion, S. 951 accomplishes this goal, and I would like to see the provisions of that bill embodied in this court reform package.

However, my colleagues in the Senate and the House have not embraced all the provisions of the Federal Courts Study Commission. Because I believe it is important for this type of study to be implemented in some form, I have agreed to a compromise proposal.

In essence, the functions and duties of the original Commission remain intact, but this title establishes a commitee to study the Federal courts and the future of the Federal judiciary within the Judicial Conference of the United States.

I have opposed such approaches in the past because I have felt that with their other responsibilities, the existing committees of the Judicial Conference could not devote the time required to make the committee a success. I am hopeful that a committee with this as its only mandate will be successful.

The committee would be comprised of 15 members, appointed by the Chief Justice of the United States. The members would include judges, Members of Congress, individuals from the executive branch and members of the public. The committee would be authorized to study the courts of the United States and the courts of the several States and report their findings to the three branches of government. In addition, the committee would be authorized to recommend revisions to the laws of the United States, develop a long-range plan for the judicial system, and make such other recommendations and conclusions as it deems advisable.

The committee would be authorized for a period of 15 months, and $300,000 would be appropriated for each of the fiscal years 1989 and 1990.

This is not all I had envisioned for the Federal Courts Study Act, but it is a significant step in the right direction. Progress is the reward of persistence and if this committee is allowed to fulfill its potential, the returns to the judicial system will be proof enough that the committee is not only a good idea but a necessary one.

I am assured that the committee will have the support of the Chief Justice and I look forward to seeing this court reform measure finally become law.

TITLE II—DIVERSITY JURISDICTION

The provisions of this title make modest amendments to reduce the basis for Federal court jurisdiction based solely on diversity of citizenship. Diversity of citizenship refers to the jurisdiction of the Federal courts to hear matters involving no Federal law questions when citizens of different States are opposing parties. Diversity jurisdiction is provided for statutorily in 28 U.S.C. 1332.

While the Judicial Conference of the United States has long supported total abolition of diversity jurisdiction, such measures are very controversial. There are many litigants who zealously protect the right to choose between the State and Federal courts.

This title makes three changes in the diversity area: It increases the amount in controversy from $10,000 to $50,000; it treats permanent resident aliens in the United States as citizens of the State of domicile; and it provides that citizenship in representative party cases—estates, infants, and incompetents—is determined by reference to the citizenship of the "represented" party.

The last time the jurisdictional amount was increased was in 1958 from $3,000 to $10,000. It is estimated by some that the increase proposed in the Senate bill should reduce the Federal diversity caseload by up to 40 percent.

TITLE III—FEDERAL JUDICIAL CENTER AMENDMENTS

The Federal Judicial Center is an agency in the judicial branch of Government responsible for providing education and training services to all judicial personnel, as well as research and systems development services to the courts, to the Judicial Conference of the United States and its committees, and to the Congress. The Center is governed by an eight-member board chaired by the Chief Justice of the United States. The other board members consist of the director of the administrative office of the U.S. courts, who serves as an ex-officio member, and six judges.

Title III accomplishes several objectives regarding the Federal Judicial Center. First, it creates a Federal Judicial Center Foundation to accept and receive gifts to be used by the Federal Judicial Center for purposes of aiding or facilitating the work of the Center. In deciding to authorize the Center to accept gifts, it is necessary to safeguard both the independence and the appearance of the independence of the Federal judicial branch. The Judiciary Committee determined that the judiciary's independence would not be compromised if the Center were permitted to utilize gifts of personal property, such as books or papers from judges' or scholars' collections, or gifts or services from scholars or other experts who wished to donate their time. It would also be proper to utilize gift funds that would not be used to augment the Center's appropriations, but would support specific programs or projects for which appropriated funds are not available.

This title also contains provisions relating to historical preservation in the Federal judiciary, training of non-governmental personnel, and the salary of the Center's Deputy Director, making the salary comparable to that of the Deputy Director of the administrative office.

TITLE IV—RULES ENABLING ACTS

This title amends titles 18 and 28 of the United States Code known as the Rules Enabling Acts. The Rules Enabling Acts set forth the procedure for promulgating various rules of procedure and the Federal rules of evidence used by the Federal courts.

Under current law, the rulemaking procedure begins with an Advisory Committee of the Judicial Conference of the United States preparing an initial draft of a proposed new rule or amendment to an existing rule, which it submits to the Judicial Conference's Standing Committee on Rules of Practice and Procedure. The Judicial Conference reviews any proposal recommended by the standing committee and submits that proposal, together with the Conference's recommendation, to the Supreme Court.

The Supreme Court acts upon the Judicial Conference's recommendation, and must, before May 1 of any year, promulgate any new rule or amendment to an existing rule of which it approves.

Under existing law, a new rule or amendment promulgated by the Supreme Court does not take effect until 90 days after promulgation—180 days after promulgation in the case of the Federal rules of evidence—in order to give Congress an opportunity to review the new rule or amendment before it takes effect.

The purpose of the amendments to the rules enabling acts is to modernize the statutory framework, respond to criticism surrounding the process and promote openness and participation in the rulemaking process.

The promulgating of rules occurs at different levels in the court hierarchy. Individual district court judges can issue standing orders of general applicability governing their practice and procedures, not inconsistent with the national rules. These are usually issued ex parte with no opportunity for comment and review.

Rules are also adopted districtwide by a majority of the judges and these rules must be accompanied by notice and an opportunity for comment. However, participation by the bar may be limited.

Title IV of this bill responds to these criticisms by requiring the appointment of members of the bench and the professional bar, and trial and appellate judges to the standing Committee on Rules of Practice and Procedure and related advisory committees of the Judiciary Conference and requiring that the meetings of the standing committee and the advisory committees be open to the public unless a majority of the committee determines it is in the public interest to close the meeting. It also requires other courts to provide "appropriate public notice and opportunity for comment" before local rules are adopted.

In addition, the bill requires the judicial council of each circuit to provide "appropriate public notice and opportunity for comment" before prescribing a rule of practice or procedure relating to judicial discipline and other functions.

The amendments to the rules enabling acts require the director of the administrative office to compile a copy of local rules formulated by the courts of appeals and the district courts. It is estimated that nationwide there are over 3,000 local rules at both the district court and court of appeals levels. This bill also requires review of the local rules to determine if they are in fact consistent with the National Rules of Procedure.

The most controversial provision of the rules enabling acts concerns the so-called supersession clause, which is a provision in current law, except with respect to bankruptcy rules.

Under present supersession practice, when a Federal rule conflicts with any procedural component of a previously enacted statute, the rule governs. If the statute has been enacted later than the rule or if the conflict involves substantive rather than procedural rights, then the statute governs.

The House proposed to amend the supersession provision in the current law. Under the language in the House bill, rules would never supersede statutes, regardless of whether the statute contained purely procedural elements, unless the statute made an amendment to the rules themselves.

The Subcommittee on Courts and Administrative Practice held a hearing on May 25 1988, specifically to address the need for change in the supersession language. It became readily apparent that there were strong views that current law should not be changed in this respect.

Accordingly, the Senate Committee on the Judiciary elected to retain current language regarding the supersession clause. It is the opinion of many Members in the Senate that the supersession clause has worked well since its creation in 1934. It provides a sense of stability and uniformity to the Federal Rules of Procedure. As one witness testified at the hearing: "It has enabled the Rules of Procedure to be applied uniformly and has given confidence to lawyers and to litigants that the mechanics of filing a complaint, responding to an answer, conducting discovery, and trying a case, will not vary between one type of Federal lawsuit and another" (statement of Janet Napolitano, May 25, 1988, before the Subcommittee on Courts and Administrative Practice).

The amendments to the Rules Enabling Acts are needed and necessary. But at the same time, the Senate is not convinced that there is a corresponding need to amend the supersession clause and was persuaded that the current system is working well and should be continued.

TITLE V—JURISDICTION OF THE FEDERAL CIRCUIT

This title is designated to address one of several perceived problems relating to Federal circuit appellate jurisdiction over Tucker Act cases and the early determination of trial jurisdiction of such cases. It would amend 28 U.S.C. section 1292(d) by adding a new paragraph (4) to permit an interlocutory appeal from district court orders granting or denying motions to transfer actions to the claims court.

The statutory jurisdictional framework of the district courts and the claims court in Tucker Act cases must be kept in mind in considering this title. The United States Claims Court has exclusive jurisdiction of so-called Tucker Act claims against the Government for more than $10,000 (28 U.S.C. 1491). The district courts have concurrent jurisdiction with the claims court for so-called Little Tucker Act claims against the Government for $10,000 or less (28 U.S.C. 1346). The United States Court of Appeals for the Federal Circuit has exclusive jurisdiction of an appeal from any final decision of the United States Claims Court [28 U.S.C. 1295(3)] and of an appeal from a final decision of a district court where the jurisdiction of the district court was "in whole or in part" based on the Little Tucker Act portion of Section 1346 [28 U.S.C. 1295(A)(2)].

It therefore becomes important at an early stage of district court litigation involving the Tucker Act to determine whether the case was one within the exclusive jurisdiction of the claims court.

At present, both plaintiffs and the Government are prevented from obtaining an immediate appeal of adverse district court rulings on transfer motions.

In the interest of resolving jurisdictional questions at the onset of litigation, and thereby avoiding wasteful and duplicative litigation on the merits in the wrong trial court, this title would permit an immediate appeal to the Court of Appeals for the Federal Circuit by both plaintiffs and the Government from adverse district court rulings on motions to transfer actions to the claims court.

TITLE VI—STATE JUSTICE INSTITUTE AMENDMENTS

Congress established the State Justice Institute in October 1984 to "further the development and adoption of improved judicial administration in the courts." The Institute is authorized to award grants, cooperative agreements, and contracts for the purpose of improving the administration and quality of justice in the State courts, assuring the public ready access to a fair and effective system of justice, fostering coordination and cooperation between the State and Federal courts, and encouraging education for State court judges and court personnel. Its program covers civil as well as criminal jurisdiction, and both trial and appellate courts.

SJI is governed by a board of directors appointed by the President. By law, the board must consist of six State court judges, one State court administrator, and four members of the public. SJI is not an agency of the Federal Government; by statute, it is established as a non-profit organization outside the three branches of Government.

The Institute was established to improve both the quality of justice in the State courts and the public's confidence in the ability of those courts to dispense justice, and to find better ways of allocating caseload burdens among the diverse Federal and State courts.

One of the fundamental justifications for Congress' enactment of the State Justice Institute Act was that financial assistance provided by the Institute to State courts and their affiliated organizations would also benefit the Federal courts and help the State courts enforce Federal constitutional and legislative requirements.

Pursuant to that intention, in both fiscal year 1987 and fiscal year 1988, the Institute's program guideline designated projects that would "improve the administration of justice in the State courts and at the same time * * * reduce the work burdens of the Federal courts" as being of "special interest" to the Institute.

In its fiscal year 1987 funding cycles, the Institute funded a number of projects intended to serve a diverse array of Federal interests. Several projects are intended to reduce the workload burdens of the Federal courts, or demonstrate innovative procedures and practices that could result in increased efficiency in both State and Federal courts. Others support programs that will educate, train, and make information available to Federal judges and other court personnel. Still others are designed to help State and local courts implement the requirements of Federal legislation or to reduce the tension between Federal and State laws governing the same areas.

The Institute is also in frequent contact with other Federal agencies for the purpose of identifying projects that would serve their mutual Federal interests. In addition to cosponsoring a "state-of-the-art in the criminal courts" conference with the National Institute of Justice, the SJI is cosponsoring a grant program with the National Institute of Corrections to help State court judges understand and make better use of intermediate sentencing sanctions. The Institute is also undertaking joint projects with the Bureau of Justice Assistance and the Department of Health and Human Services. These combined efforts not only help SJI fulfill its mandate to serve a variety of Federal interests, but also maximize the impact of the funds appropriated to it by Congress.

In fiscal year 1988, SJI received 236 concept papers—including 15 requests for continuation of fiscal year 1987 grants—asking for a total of over $32 million. This was the largest response to any Institute funding cycle.

It has become eminently clear that there is substantial need for a focused source of assistance to the State and local courts throughout the country and that the Institute is now seen as that source.

This title will reauthorize the Institute for 2 years and amend the authorizing statute to address minor concerns that have arisen since the Institute's establishment.

TITLE VII—COURT INTERPRETER AMENDMENTS

This title ensures that competent interpretation services will be available to parties and witnesses in judicial proceedings instituted by the United States in order to ensure that persons who are hearing-impaired or who have as their primary language a language other than English, may participate meaningfully in the judicial system and that the constitutional rights of these individuals are fully protected. Specifically, these amendments would extend the use of interpreters to grand jury proceedings; provide an orderly procedure for the determination of those languages which merit certification; allow the judicial councils of the circuits, with the approval of the Judicial Conference, to recommend certification of a particular language within a geographical region; and give the judiciary the flexibility to make the best use of its resources to address the most critical problems facing the judiciary in its attempts to provide interpretation services.

This title is an extension of the Court Interpreters Act of 1978 and it responds to the needs of a diverse, multilingual population and promotes access to justice that is fair to all.

TITLE IX—ARBITRATION

As many of my colleagues are aware, traditionally I have opposed provisions that would force parties to submit to mandatory arbitration. However, it is my understanding that the judicial conference is currently conducting experiments in 10 judicial districts which provide for mandatory arbitration in cases involving money damages of a certain amount, usually less than $100,000 but some up to $150,000.

The arbitration provision included in this bill is a modification of what the House passed in H.R. 4807 and embodies most of the concepts in the House bill. The Senate bill adopts the idea of continuing the current 10 arbitration programs with authority to require parties to go through the arbitration process for the type of cases subject to such procedures under the bill, and to authorize the Judicial Conference to establish 10 new programs in other districts that will be limited to arbitration by consent of the parties. This should provide a basis for evaluating both mandatory and voluntary arbitration systems in the future.

I might also note that even in cases of mandatory arbitration, there are some actions that may not be referred to arbitration without the consent of the parties; namely, actions based on an alleged violation of a right secured by the constitution, and actions based in whole or in part of section 1343 of title 28, which deals with civil rights and voting rights.

Also, district courts which have arbitration programs must by local rule establish procedures for exempting cases from arbitration which involve complex or novel legal issues, where legal issues predominate over factual issues, or if there is other good cause.

Each district court involved in these pilot arbitration programs shall establish standards for certification of arbitrators and shall certify arbitrators to perform services.

Arbitrators in the designated districts have the power to conduct arbitration hearings, administer oaths and affirmations, and make awards.

After an arbitration award has been made by an arbitrator, any party may file a written demand for a trial de novo within 30 days.

Upon demand for a trial de novo, the action shall be restored to the docket of the court and treated for all purposes as if it had not been referred to arbitration. The contents of any arbitration award shall not be made known to any judge who might be assigned the case until the district court has entered final judgment in the action or the action has been otherwise terminated.

This legislation also requires the Federal Judicial Center to submit a report on the implementation of these arbitration programs within 5 years of enactment of this act. The study shall include a description of the arbitration programs; the success of the programs as viewed by the litigants, court personnel, and attorneys; and recommendations to Congress as to whether to continue the program.

Finally, this title also provides a 5-year sunset provision.

While I am very hesitant to act at all in the area of arbitration, I believe that Congress has a responsibility to monitor the existing programs to ensure continued access to justice. It is also imperative that Congress determine the value and continued usefulness of these programs. This bill is balanced and provides a basis for monitoring and evaluating arbitration in the Federal courts.

I believe that the issues involved in arbitration programs embody the fundamental concepts of justice. Frankly, I do not believe in second class justice in any case, regardless of its size, and I will endeavor over the length of this program to make certain that the rights of all parties are protected.

TITLE VIII—JURY SELECTION AND SERVICE AMENDMENTS

This title makes several technical and minor substantive amendments to the Jury Selection and Service Act of 1968, as amended, for the purpose of improving the administrative operation of the jury system in the U.S. district courts.

It provides that temporary excuses on the grounds of "undue hardship or extreme inconvenience"may not only be granted by the court, but also, if the court so authorizes, by the clerk of the court. At the conclusion of a juror's temporary excuse period, courts are given the choice of either resummoning the person so excused or reinserting the name of such person back into the qualified jury wheel for possible resummoning. Either of these two changes may be implemented only by affirmative action of the district court.

The amendments make it clear that persons other than clerks or jury commissions may be authorized to perform selection procedures under the court's jury selection plan. These amendments also ease unnecessary administrative burdens by eliminating the requirement for the preparation of an alphabetical list of names drawn from the master jury wheel. The amendments merely require the courts to possess the capability to generate an alphabetical list of names in the event access to such a list becomes necessary.

Finally, this title contains a provision which authorizes the Judicial Conference to develop and conduct an experiment in which jurors serving in a limited number of district courts will be qualified and summoned in a single procedure rather than the normal two step procedure. The experiment may not involve more than 10 districts or exceed a period to 2 years.

The Senate bill also contains a provision included in the House bill which would allow volunteer safety officers to be exempt from jury service if they request such an exemption.

TITLE X—MISCELLANEOUS PROVISIONS

Title X consists of 23 miscellaneous provisions to improve the administration of justice. Most come from specific recommendations of the Judicial Conference as developed over the past several years as problems surface. The source and merits of the various provisions are discussed in the section-by-section analysis.

This bill represents numerous hours of negotiation and compromise. Let me comment on one provision which was included in the original bill S. 1482, concerning district court executives. The provision in S. 1482 would have expanded the six existing district court executive programs to courts with eight or more district court judges. This provisions was deleted from the bill as adopted by the Subcommittee on Courts and Administrative Practice not on its merits, but because the subcommittee had not received sufficient information on which to evaluate this program. Therefore, this legislation does not address the existing programs. This is an issue which the subcommittee will probably revisit next Congress to give the Judicial Conference the opportunity to justify the retention or expansion of this program.

While this bill may not contain all the provisions I might wish to include in a court package, it reflects the willingness of those involved in this process to set aside partisan politics and work toward a common denominator. In this case that common denominator is a court package of which we can all be proud.

There is nothing in this bill that will make the front pages, and for all practical purposes the American public may not realize that this bill has been enacted. But I am hopeful that the improvements in this bill will allow us to affect the administration of justice in a quiet and reasoned manner. The public will benefit because our courts will function better as a result of our efforts.

I ask unanimous consent that the letter from Chief Justice Rehnquist be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the Record, as follows:

SUPREME COURT OF THE UNITED STATES,
Washington, DC, October 14, 1988.
Hon. HOWELL HEFLIN,
Chairman, Subcommittee on Courts and Administrative Practice, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I understand that S. 1482, the Judicial Branch Improvements Act of 1988, as reported by the Senate Committee on the Judiciary on October 5, will be considered by the Senate shortly. As Chairman of the Judicial Conference of the United States, I want to reiterate both my personal and the Conference's support for this legislation. This bill is probably the most significant measure affecting the operation and administration of the Federal Judiciary to be considered by the Congress in over a decade. If enacted, this omnibus bill would be a fitting finale for a Congress that, primarily through the efforts of you, Senator Grassley, and the other members of your Subcommittee, has repeatedly responded to meet the long-term needs of the Judiciary.

I am particularly pleased with the enactment earlier this year of a bill to eliminate the burdensome mandatory jurisdiction of the Supreme Court in favor of discretionary review. This Act will have incalculable beneficial effects on the Supreme Court workload and the way we conduct our business. Expected completion of action on a bankruptcy judge and magistrate retirement bill will have major beneficial impact on recruiting and retaining highly qualified individuals for these important functions. Similarly, enactment of S. 1482 as reported by the Committee, with its many and varied provisions to improve different aspects of the judicial system, will significantly enhance the effectiveness of the Federal Judiciary as a whole.

We are most appreciative of your fine work and that of your colleagues, as well as staff, on these important measures to assist the Judiciary.

Sincerely,
WILLIAM H. REHNQUIST,
Chief Justice.

Mr. HEFLIN. This bill is only possible because of the efforts of many individuals. Let me thank in particular the members of the Subcommittee on Courts and Administrative Practice for their support, suggestions, and guidance in formulating this bill: Senator GRASSLEY, the ranking member; Senator DECONCINI; Senator THURMOND; and Senator METZENBAUM. I would also like to commend Senator SIMON for his leadership and assistance in formulating the provisions regarding the court interpreter's title.

I also appreciate the efforts of Senator BIDEN, the chairman of the Judiciary Committee, for his assistance in bringing the bill before the Judiciary Committee and to the Senate floor. Everyone on Senator BIDEN's staff has been extremely helpful, especially Diana Huffman, the staff director, and Jeff Peck.

Oftentimes we forget to acknowledge those who aid in the actual drafting of the bill. I would therefore like to thank two individuals from the Legislative Counsel's Office: Jan Wilson for the many hours she has devoted to the drafting of this bill, and Jack Harris for his valued assistance.

Further, I would like to recognize the efforts of the staffs of all the Judiciary subcommittees, particularly Sam Gerdano with Senator GRASSLEY, Kevin McMahon with Senator THURMOND, Tara McMahon with Senator DECONCINI, Abby Kuzma with Senator HATCH, and Deborah Leavy and John Trasvina with Senator SIMON.

Finally, I want to thank Karen Kremer of my staff for her outstanding negotiation skills, her legislative drafting, her expertise in court matters, and her diligent work.

Mr. President, I ask unanimous consent that a section-by-section analysis be printed in the RECORD.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS ON THE JUDICIAL IMPROVEMENTS AND ACCESS TO JUSTICE ACT

INTRODUCTION

S. 1482 as reported by the Committee on the Judiciary covers ten separate titles relating to numerous proposals to improve the operation and administration of the Federal courts.

These include provisions to establish a Committee to study the problems and needs of the Federal Judiciary into the 21st century (Title I), to make modest adjustments to the scope of diversity jurisdiction to relieve the caseload pressures on the Federal courts (Title II), to improve the operation of the Federal Judicial Center (Title III), to modernize the Rules Enabling Acts (Title IV), to provide for early resolution of district court jurisdictional issues under the Tucker Act (Title V), to reauthorize the State Justice Institute and make minor improving amendments to the State Justice Institute Act (Title VI), to improve the efficiency and effectiveness of the court interpreter and jury selection systems (Titles VII and VIII), to authorize an expanded pilot arbitration program in the Federal courts (Title IX), and to enact numerous relatively minor noncontroversial miscellaneous proposals to improve various aspects of the judicial system.

TITLE I—FEDERAL COURTS STUDY COMMITTEE

This title would establish within the Judicial Conference of the United States a courts study committee on the future of the Federal judiciary. This title consists of nine sections as follows:

Section 101

This section provides that this title may be cited as the "Federal Courts Study Act."

Section 102

This section establishes within the Judicial Conference a Federal Courts Study Committee on the future of the Federal judiciary. The purposes of the Committee set forth are to examine problems and issues currently facing the Federal courts, to develop a long-range plan for the future of the Federal judiciary, and to report to the Judicial Conference, the President, the Congress, the Conference of Chief Justices, and the State Justice Institute on recommended revisions in the laws of the United States.

Section 103

This section provides that the Committee shall be composed of fifteen members appointed by the Chief Justice of the United States. The membership is to be representative of the various interests, needs, and concerns which may be affected by the jurisdiction of the Federal courts. The Chief Justice will designate a member of the Committee to serve as chairman. Members of the Committee will serve at the pleasure of the Chief Justice. Rules of procedure for the Committee shall be promulgated by vote of a majority of the Committee.

Section 104

Section 104 deals with the powers of the Committee. It authorizes the Committee, or any subcommittee thereof, to hold hearings and sit and act at such times and places deemed advisable. It also authorizes the Chairman to request assistance from, among others, the Administrative Office of the United States Courts, the Federal Judicial Center, and departments and agencies of the executive branch. The Administrative Office is directed to furnish to the Committee the necessary staff and technical assistance in respect to needs specified. This section also authorizes the Committee to establish appropriate advisory panels to provide expertise and assistance in specific areas as identified by the Committee.

Section 105

This section directs the Committee to make a complete study of the courts of the United States and of the several States and to transmit a report to the entities specified above, to recommend revisions to be made to laws of the United States deemed advisable, and to develop a long-range plan for the judicial system.

Section 106

This section provides for compensation for public and private members of the Committee. A member who is a full time employee of the United States shall receive no additional reimbursement, but may be reimbursed for travel, subsistence, and related expenses in the performance of duties vested in the Committee. Private members will receive $200 per diem for each day performing Committee business plus reimbursement for travel, subsistence, and related expenses in the performance of such duties.

Section 107

This section provides that the Committee shall cease to exist on the date 60 days after it transmits the report specified in section 105.

Section 108

This section authorizes to be appropriated $300,000 for each of the fiscal years 1989 through 1990 for support of the Committee operations.

Section 109

This section provides that this title shall become effective on January 1, 1989.

TITLE II—FEDERAL JURISDICTION—DIVERSITY REFORM

The provisions of this title make a few modest amendments to reduce the basis for Federal court jurisdiction based solely on diversity of citizenship. Diversity of citizenship refers to the jurisdiction of the Federal courts to hear matters, involving no Federal law questions, when citizens of different states are opposing parties. Diversity jurisdiction is provided for statutorily in 28 U.S.C. 1332. This title consists of three sections as follows:

Section 201

Section 201(a) amends 28 U.S.C. 1332 to provide for an increase in the amount in controversy required for Federal diversity of citizenship cases from $10,000 to $50,000. This change is supported by the Judicial Conference of the United States, the Department of Justice, and the American Bar Association.

The increase is justifiable on several grounds. First, diversity cases involve determination of legal matters based on interpretation of State law. The State courts have shown themselves fully capable of handling cases involving parties of diverse citizenship. Rarely, does a diversity case result in a new theory of law or finding of new rights. The Federal courts has substantial caseloads at present and the modest reduction in caseload for them as a result of this provision will be beneficial for them without placing an undue burden on the State courts or parties to diversity cases. Second, the adjustment of the amount in controversy largely reflects the effects of inflation. The American Bar Association has noted that an amount of $36,000 would be required merely to bring the threshold level to the amount represented in 1958 by the present $10,000 threshold. The new level of $50,000 will permit all but the smallest diversity cases to still be filed in the Federal courts and represents a Congressional intent to take measured steps in this area of jurisdiction before considering any further adjustments.

Section 202

Section 202(a) amends 28 U.S.C. 1332(c) to provide that for purposes of diversity of citizenship jurisdiction, the legal representative of the estate of a decedent, of an infant, or of an incompetent shall be deemed to be a citizen only of the same State as the deceased, the infant, or the incompetent. Under current law, the citizenship of a representative party in a civil action is the citizenship of the representative rather than the citizenship of the person represented. In some jurisdictions, attorneys seek the appointment of out-of-state representatives in order to create diversity of citizenship so that civil actions involving the interest represented may be brought in Federal court. This amendment would implement the sounder policy that would refer to the represented party to determine citizenship in the case.

Section 203

Section 203(a) amends 28 U.S.C. § 1332(a) to provide that an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which the alien is domiciled for the purposes of diversity jurisdiction.

28 U.S.C. § 1332(a)(2) currently gives the district courts diversity jurisdiction over actions between citizens of a State and citizens or subjects of a foreign state. Diversity jurisdiction exists under this provision even though the alien may have been admitted to the United States as a permanent resident. As any review of the immigration statistics indicates, large numbers of persons fall within this category.

There is no apparent reason why actions between persons who are permanent residents of the same State should be heard by Federal courts merely because one of them remains a citizen or subject of a foreign state.

The changes effected by all three of these sections will apply to civil actions commenced in or removed to Federal court on or after the 180th day after the date of enactment of this Act.

TITLE III—FEDERAL JUDICIAL CENTER AMENDMENTS

The Federal Judicial Center is an agency in the judicial branch of government responsible for providing education and training services to all judicial personal, as well as research and systems development services to the courts, to the Judicial Conference of the United States and its committees, and to the Congress. The Center is governed by an eight-member board chaired by the Chief Justice of the United States. The other board members consist of the Director of the Administrative Office of the United States Courts who serves ex-officio and six judges—two circuit, three district, and one bankruptcy—who are elected to four-year terms by the Judicial Conference. In the past few years, the Board of the Center has reviewed the operations of the Center and approved four proposed amendments to authorize the receipt of gifts by the Center through a private nonprofit corporation, to establish a history program for the Judicial Branch, to permit training of individuals other than judicial branch employees under certain circumstances, and to make the Deputy Director of the Center a statutory position and to fix the compensation of the Deputy Director. This title adopts these recommendations in four sections as follows:

Section 301

Section 301(a) amends chapter 42 of title 28, United States Code, by adding a new section 629 at the end thereof, entitled "Federal Judicial Center Foundation."

Subsection (a) of the new section establishes a "private nonprofit corporation" to be known as the Federal Judicial Center Foundation. The purpose of the foundation is to have sole authority to accept and receive gifts of property, both real and personal, and services made for the purpose of aiding or facilitating the work of the Center. The Foundation is not authorized to accept conditional gifts, but gifts could be accepted to support specific projects previously approved by the Board of the Center. The Foundation has no authority beyond acceptance and receipt of gifts

Subsection (b) primarily deals with the composition, appointment, and tenure of the Foundation Board. The Board would consist of seven members, including a chairman. The Chief Justice would appoint three of the members, including the Chairman; the President Pro Tempore of the Senate and the Speaker of the House would each appoint two members. The basic term of office is five years, with the initial terms staggered to prevent turnover of the whole Board at the same time. No Federal or State judge, in regular active service or otherwise eligible to perform judicial duties, is eligible for membership on the Board. The members of the Board will serve without compensation, but may be reimbursed for necessary expenses. Administrative support and facilities will be furnished by the Center.

Subsection (c) provides authority for the Center to administer and utilize gifts received by the Foundation. The Board of the Center is vested with sole authority to determine the manner in which gifts will be used.

Subsection (d) provides for money gifts and proceeds from the sale of property gifts to be deposited in and disbursed from a separate fund in the Treasury of the United States by order of the Director of the Center in accordance with policies established by the Board of the Center.

Subsection (e) provides that the Foundation prepare an annual report to Congress on gift activity of the Foundation. Similarly, the Center is required to report on the use of gifts in its annual report.

Subsection (f) provides that gifts under this section receive the same treatment of purposes of Federal income, estate, and gift taxes as other gifts to or for the use of the United States.

Section 301(b) amends the table of sections of the beginning of chapter 42 to reflect the new section.

Section 302

Section 302 of the bill amends section 623(a) of title 28, United States Code, dealing with the duties of the Board of the Federal Judicial Center, by adding a new paragraph (7) that directs the board to "conduct, coordinate, and encourage programs relating to the history of the Judicial Branch of the United States government." This amendment, in effect confers upon the Federal Judicial Center the task of establishing a history program for the Federal Judiciary. The program would in no way interfere with the deposit of official records in the National Archives and Record Administration. It should also be noted that the Judiciary Committee amended section 623(a)(7) of title 28 in the bill as introduced to delete after the term "programs" the phrase "to collect, preserve, and make available materials". This amendment is to clarify that the history programs to be undertaken by the Center were not intended to be narrowly focused upon document collection and preservation. Although the Center would have the authority to acquire and utilize personal papers and manuscripts relating to judicial history, it is not intended that the Center would establish a document collection program that would in any way compete with those of other government entities, such as the National Achieves and Records Administration or the Library of Congress.

The extent of historical preservation in the judiciary is not only very small, there is also extremely limited information available about the activities that do exist. A survey of circuit executives turned up only two such activities. A follow-up revealed several more projects at the district level that were not known at the circuit executive level. Doubtless, the total activity is still small, but it is larger than generally known. Material that cannot be found is almost as great a loss as material that has been lost or destroyed.

Preservation and use of historical material is a useful and valid service to contemporary work. Knowing how and why things came to be the way they are contributes substantially to any assessment of current effectiveness and to appreciating the promise of proposals for change. Though the utilitarian side of historical materials in the judiciary may differ from applications in other public endeavors, there is nonetheless real need and real potential.

A history program for the Judicial Branch might extend to the following elements: (a) a catalog that would record the location and identification of and identify existing materials, ongoing projects, and planned programs relating to Federal judicial history; (b) an oral history program; (c) a written history project that might support work to cover neglected areas or coordinate work addressing specific needs; and (d) a judicial museum for displaying artifacts, manuscripts, portraits, and other projects.

A history program for the Federal judiciary is related to the proposal in section 301 of this title to provide a mechanism for the Center to accept and utilize gifts. A history program would clearly need to be able to accept gifts of manuscripts, diaries, and other forms of non-federal records as well as artifacts.

Section 303

Section 303 amends section 620(b)(3) of title 28, United States Code, and permits the Federal Judicial Center to encompass within its training program non-government personnel whose participation in such programs would improve the operation of the Judicial Branch. A number of district courts now have programs under which members of the private bar serve as mediators or arbitrators in an effort to resolve litigation without the necessity of trial, but there is no authority to expend Judicial Center funds in programs to improve their mediation or arbitration skills. It would clearly be advantageous to the Judiciary if the Center were able to support such programs. There may also be limited situations in which it is appropriate to train members of the private bar who agree to represent indigent defendants but whose Federal court criminal experience is limited, or to provide court orientation seminars for prospective Federal court interpreters. This amendment would permit expenditure of Center funds in these types of situations clearly of benefit to the operation of the judiciary.

Section 304

Section 304 amends section 624 of title 28, United States Code, relating to powers of the Board of the Judicial Center, to authorize the Board to appoint, fix the duties of, and remove the Deputy Director of the Federal Judicial Center. This amendment conforms the Federal Judicial Center to parallel provisions in 28 U.S.C. 601 making the Deputy Director of the Administrative Office of the United States Courts an express statutory position subject to removal by the Supreme Court, Section 304 also amends section 626 of title 28, United States Code, to add a new sentence that would provide for compensation of the Deputy Director of the Federal Judicial Center at the same rate as that of the Deputy Director of the Administrative Office. This section also makes technical changes to the section title and the appropriate chapter analysis.

TITLE IV—RULES ENABLING ACT AMENDMENTS

The purpose of this title is to modernize the current statutory provisions relating to the role of the Federal judiciary in the development and promulgation of the Rules of Evidence and the various rules of procedure.

Provisions of title 18 and 28 of the United States Code known as the "Rules Enabling Acts" currently set forth the procedure for promulgating and amending the Rules of Evidence and the various rules of procedure used by the Federal courts. See, 18 U.S.C. §§ 3771, 3772 and 28 U.S.C. chapter 131, §§ 2071-2077. In brief, the current rule-making procedure begins with an advisory committee of the Judicial Conference of the United States preparing an initial draft of a proposed new rule or amendment to an existing rule, which it submits to the Judicial Conference Standing Committee on Rules of Practice and Procedure. The Judicial Conference reviews any proposal recommended by the Standing Committee, and submits the proposal, together with the recommendation of the Conference, to the Supreme Court. The Supreme Court acts upon the Judicial Conference recommendations and must, before May 1 of any year, promulgate any new rule, or amendment to an existing rule, of which it approves. A new rule or amendment promulgated by the Supreme Court does not take effect until 90 days after promulgation (180 days after promulgation in the case of the Rules of Evidence) in order to give Congress an opportunity to review the new rule or amendment before it takes effect.

The Rules Enabling Act amendments in this bill consolidate all of the current rules enabling provisions into chapter 131 of title 28 of the United States Code and standardize the language applicable to the rules process. They also largely codify the advisory commitee, standing committee, and Judicial Conference roles in the process developed over the years.

This title consists of seven sections as follows:

Section 401

Section 401(a) of title IV amends chapter 131 of title 28 of the United States Code to replace current provisions relating to the Rules of Evidence and the various procedural rules. To do this, the bill replaces sections 2072, 2073 and 2074 and repeals section 2076 of title 28 to provide as follows:

New Section 2072 of title 28

Subsection (a) of the new section 2072 provides that the Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases (including proceedings before magistrates) in the United States district courts and the courts of appeals. This consolidates but carries forward current law in this regard.

Subsection (b) provides that such rules shall not abridge, enlarge, or modify any substantive right and further provides that these rules will supersede all laws in conflict therewith after such rules have taken effect. This also carries forward the scope of current law. See, e.g., 20 U.S.C. § 2072.

New Section 2073 of title 28

Subsection (a) of the new 28 U.S.C. § 2073 provides that the Judicial Conference shall prescribe and publish procedures for the consideration of proposed rules and may authorize the appointment of committees to assist the Conference by recommending rules to be prescribed under section 2072. Subsection (b) authorizes the Judicial Conference to appoint a standing committee on rules of practice, procedure, and evidence, which is charged with the responsibility of reviewing the recommendations of the advisory committees and of making recommendations concerning the proposals of the advisory committees as may be necessary to maintain consistency and otherwise promote the interest of justice. These two subsections give statutory recognition to the central role traditionally played by the Judicial Conference and its rules committees in the development and promulgation of procedural rules and rules of evidence.

Subsection (c) of the new § 2073 provides a limited number of statutory principles to govern the transaction of businesss by the various rules committees. Paragraph (1) requires meetings of such committees to be open to the public, unless the committee in open session with a majority present determines that it is in the public interest that all or part of the remainder of the meeting on that day be closed to the public and states the reason for so closing the meeting. Each committee must maintain minutes of its meetings. Minutes shall be made available to the public except as necessary to avoid frustrating the purpose of a closed meeting. Paragraph (2) requires the committees to give sufficient notice of meetings to enable all interested persons to attend.

Subsection (d) requires that the body making recommendations shall provide a proposed rule, an explanatory note on the rule and a written report explaining the body's action, including any minority or other separate views.

Subsection (e) makes it clear that a failure to comply with some aspect of the method of prescribing rules under this section does not invalidate a rule prescribed under section 2072.

New Section 2074 of title 28

Subsection (a) of the new section 2074 of title 28 provides that the Supreme Court shall transmit to the Congress not later than May 1 of the year in which a rule is to become effective a copy of the proposed rule. The rule would take effect no earlier than December 1 of that year unless otherwise provided by law. The Court is empowered to fix the extent a rule or an amendment to a rule shall apply to proceedings then pending, except that the Supreme Court may not require the application of such rule or amendment to further proceedings then pending to the extent that the court in which the proceedings are pending determines that the application of the rule or amendment would not be feasible or would be unjust. In the latter event, the former rule would apply.

Subsection (b) of new section 2074 carries forward the restriction in current law that a rule creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress. See 28 U.S.C. § 2078.

Section 401(b) of the bill amends current 28 U.S.C. § 2077(b) to require each of the Federal courts, except the Supreme Court, authorized to prescribe rules of such court's business under 28 U.S.C. § 2071 to appoint an advisory committee for the study of the rules of practice and internal operating procedure of such court. Section 401(c) repeals section 2076.

Section 401(d) of the bill makes clerical amendments to the chapter analysis for chapter 131 of title 28.

Section 402

Section 402(a) of the bill amends 28 U.S.C. § 604 of title 28 relating to the duties of the Director of the Administrative Office of the United States Courts to require the Director to periodically compile local rules promulgated by courts other than the Supreme Court, rules promulgated by the judicial councils and the Judicial Conference for the conduct of judicial discipline proceedings under 28 U.S.C. § 372(c), and orders relating to judicial discipline required to be publicly available under 28 U.S.C. § 372(c)(15). The schedule for compilation of such materials should be designed to provide a current record of such rules and orders.

Section 402(b) of the bill amends 28 U.S.C. § 331 to require the Judicial Conference to review local rules issued by Federal courts, other than the Supreme Court and the district courts, for consistency with the national rules. These would include rules promulgated by the courts of appeals, the United States Claims Court, and the Court of International Trade. The Conference is authorized to modify or abrogatge any local rule found inconsistent with the national rules. Similar review authority is lodged in the relevant judicial council for local rules of the district courts. See discussion relating to section 403(b), below.

Section 403

Section 403(a) makes technical amendments to 28 U.S.C. § 2071 and adds thereto a number of specific provisions relating to local rules. These include (1) provision for promulgation of local rules only after advance public notice and opportunity to comment, with provision for delayed notice and comment if immediate need is found to exist; (2) provision that local rules duly issued will remain in effect unless modified or abrogated by the judicial council of the relevant circuit or the Judicial Conference, as appropriate; (3) a provision for distribution of district court local rules to the appropriate judicial council and distribution of all local rules to the Director of the Administrative Office of the United States Court; and (4) a provision for making all local rules available to the public. This subsection also amends 28 U.S.C. 332(d) to authorize the judicial councils to review local rules of the district courts within their circuits for consistency with the national rules and to modify or abrogate any such rule found inconsistent with the national rules.

Section 403(b) amends 28 U.S.C. § 332(d)(1) relating to the authority of the judicial council to make all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit. This amendment provides that any general order relating to practice and procedure issued by the judicial council shall be made or amended only after advance notice and opportunity to comment and shall be furnished to the Judicial Conference and the Administrative Office of the United States Courts and be made available to the public.

Section 403(c) amends 28 U.S.C. 372(c)(11) to require appropriate public notice and an opportunity for comments before a rule or an amendment to a rule relating to judicial discipline under that paragraph may be promulgated.

Section 404

This section makes technical and conforming amendments.

Section 405

Section 405 of the bill provides that amendments made by this title shall not affect the authority of the Tax Court to prescribe rules under section 7453 of the Internal Revenue Code of 1986.

Section 406

Section 406 of the bill provides for continuation of rules in effect on the effective date of the amendments made by this title until changed pursuant to the law as amended by this title.

Section 407

Section 407 of the bill provides that the amendments made by this title shall take effect on December 1, 1988.

TITLE V—JURISDICTION OF THE FEDERAL CIRCUIT

This title is designed to address one of several perceived problems relating to Federal Circuit appellate jurisdiction over Tucker Act cases against the government and the early determination of trial jurisdiction of such cases. The statutory jurisdictional framework of the district courts and the Claims Court in Tucker Act case must be kept in mind in considering this amendment. The United States Claims Court has exclusive jurisdiction of so-called Tucker Act claims against the government for more than $10,000. 28 U.S.C. § 1491. The district courts have concurrent jurisdiction with the Claims Court of so-called Little Tucker Act cases for $10,000 or less. 28 U.S.C. § 1346. The United States Court of Appeals for the Federal Circuit has exclusive jurisdiction of an appeal from any final decision of the Claims Court (28 U.S.C. § 1295(a)(3)) and of an appeal from a final decision of a district court where the jurisdiction of the district court was "in whole or in part" based on the Little Tucker Act portion of section 1346. See, 28 U.S.C. § 1295(a)(2); *Hohri* v. *United States,* 107 S. Ct. 2246 (1987). In this context, it is apparent that it would be most useful to be able to ascertain at an early stage of district court litigation involving the Tucker Act whether the case was one within the exclusive jurisdiction of the Claims Court. This title is designed to accomplish that objective in two sections as follows:

Section 501

Section 501 would amend 28 U.S.C. § 1292(d) by adding a new paragraph (4) to provide the United States Court of Appeals for the Federal Circuit, exclusive jurisdiction of an appeal from an interlocutory order of a district court granting or denying, in whole or in part, a motion to transfer an action to the United States Claims Court. Provision is also made for a stay pending appeal and for appropriate interim relief, if necessary.

Section 502

This section provides that the new interlocutory appeal provision in section 501 shall apply to any action commenced in the district court on or after the date of enactment of this title.

TITLE VI— STATE JUSTICE INSTITUTE AMENDMENTS

Congress created the State Justice Institute (SJI) in October 1984 to "further the development and adoption of improved judicial administration in the courts." The institute is authorized to award grants, cooperative agreements, and contracts for the purpose of improving the administration and quality of justice in the State courts, assuring the public ready access to a fair and effective system of justice, fostering coordination and cooperation between the State and Federal courts, and encouraging education for State court judges and court personnel. Its program covers civil as well as criminal jurisdiction, and both trial and appellate courts.

This title consists of seven section as follows:

Section 601. Rulemaking

This section amends the rulemaking provision of the State Justice Institute Act of 1984 (sec. 203(f)) to conform it with the provisions of the Administrative Procedure Act, 5 U.S.C. 553(d), that govern rulemaking by Federal agencies.

Section 602. Civil Service Retirement

This section amends section 206(d)(2) of the State Justice Institute Act to make Institute employees eligible for coverage under the Federal Employees' Retirement System established under chapter 84 of Title 5, United States Code.

Section 603. Use of Funds

This section makes three minor changes in the scope of the Institute's funding authority. The first change amends section 206(c)(3) of the State Justice Institute Act to clarify that the Institute may support alternative dispute resolution projects that involve judicial, as well as nonjudicial, personnel. The second amendment deletes section 206(c)(4) of the Act, which authorizes the Institute to expend funds to "assist State and local courts in meeting requirements of Federal law to recipients of Federal funds". The third amendment renumbers the remaining paragraphs of section 206(c) in light of the deletion of paragraph (4).

Section 604. Unit of State and local government Matching Funds

Secton 604 amends section 206(d) of the State Justice Institute Act to extend the match requirements to non-judicial units of State and local government. Under current law, the courts are required to match funds granted to them by the Institute by 50 percent. The match requirements do not apply to other units of State and local government. This amendment applies the match requirement to these entities, as well as the courts.

Section 605. Interim Funding

This section amends section 207(a) of the State Justice Institute Act to eliminate the requirement that the Institute continue interim funding, until after the conclusion of a formal administrative hearing, to a recipient whose application for refunding has been denied by the Board of Directors.

Section 606. Provisions for Suspension of Funding; Restrictions on Disclosure of Information

This section amends section 209 of the State Justice Institute Act by deleting current section 209(2), establishing the special hearing procedures for recipients whose applications for refunding had been denied, and adding a new section 209(b) to protect the confidentiality of information made available to persons conducting research under a grant from the Institute.

Section 607. Authorization of Appropriations

This Section amends section 215 of the State Justice Institute Act to authorize appropriation for the program of $15 million for fiscal years 1989 and 1990.

TITLE VII—COURT INTERPRETER AMENDMENTS

The purpose of this title is to provide competent interpretation services to parties and witnesses in judicial proceedings instituted by the United States in order to assure that such persons who are hearing-impaired or who have as their primary language a language other than English may participate meaningfully therein and that the constitutional rights of such persons are fully protected.

This title consists of twelve sections as follows:

Section 701

This section provides that this title may be cited as the "Court Interpreter Amendments Act of 1988".

Section 702

This section amends section 1827(a) of title 28 to provide that the Director of the Administrative Office of the United States Courts (hereinafter referred to as the "Director") shall establish a program to facilitate the use of certified and otherwise qualified interpreters in all judicial proceedings instituted by the United States, including grand jury proceedings. This provision extends the current requirement that the Director establish an interpreter program for use of interpreters in grand jury proceedings.

Section 703

This section amends section 1827(b) as follows:

Subsection (b)(1) provides that the Director shall prescribe, determine and certify the qualifications of certified interpreters in those languages where the Judicial Conference determines certification is merited. The Conference will determine the need for certified interpreters in a particular language based on the lack of certified or otherwise qualified interpreters from any source in that language and the anticipated number of proceedings at which that language will be used. In addition, in order to ascertain the need for languages other than those previously certified, the Conference shall look to the recommendations of the judicial councils of each circuit. Each circuit council, in turn, shall examine the interpretation needs of the districts within the circuit and evaluate those needs consistent with the judicial council's statutory responsibility, pursuant to 28 U.S.C. § 332, to provide for the "effective and expeditious administration of the business of the courts within its circuits". Languages requested for certification by the judicial council of a circuit shall be certified, subject to the approval of the Judicial Conference.

Interpreters are to be certified based on the results of a criterion-referenced performance exam. The Director is to develop and issue guidelines pertaining to the duties within this section.

Subsection (b)(2) provides that the Director shall issue guidelines to the court concerning the selection of otherwise qualified interpreters.

Subsection (b)(3) provides that the Director shall maintain a current master list of all interpreters certified and shall report periodically on their use and performance. The Director shall also prescribe a schedule of reasonable fees for services rendered by interpreters, certified or otherwise, considering the prevailing rates paid by other governmental entities.

Section 704

This section amends section 1827(c) as follows:

Subsection (c)(1) requires that each United States district court maintain on file in the office of the clerk, and each United States attorney shall maintain on file, a list of the persons who have been certified as interpreters by the Director. This list is to be provided upon request.

Subsection (c)(2) provides that the clerk of court generally will have responsibility for securing the services of an interpreter for all judicial proceedings instituted by the United States, but that the United States attorney will specifically be responsible for securing the services of an interpreter for any government witnesses.

Section 705

This section redesignates certain paragraphs of section 1827(d) and inserts a new paragraph (d)(2) to provide that, upon the motion of a party, the presiding judicial officer is to determine the need for the electronic sound recording of any judicial proceeding in which an interpreter is used; but that, in a grand jury proceeding, if the accused so moves, the officer must require any portions of the proceeding where an interpreter is used to be electronically sound recorded. This section allows the court to determine whether, for the protection of an individual before the court, the proceedings should be recorded. However, in the case of grand jury proceedings, if the accused wishes to protect his or her rights by requesting such recording, the presiding officer shall *require* that a recording be made of those portions in which an interpreter is utilized. This will enable the proceedings to be replayed at a later date if the quality of the interpretation is called into question.

Section 706

This section amends section 1827(g) as follows:

Subsection (g)(1) authorizes the appropriation to the Federal judiciary of such sums as may be necessary to establish the program.

Subsection (g)(2) provides that implementation of any of the provisions of this title is contingent upon the availability of appropriate funds to carry out the particular provision.

Subsection (g)(3) provides that salaries, fees, expenses and costs incurred under this title in relation to government witnesses shall be paid by the Attorney General out of sums appropriated to the Department of Justice.

Subsection (g)(4) is inserted to provide that any person who is not provided an interpreter pursuant to subsection (d) of this section may request interpreting services from the Director on a cost-reimbursable basis. The judicial officer may require the prepayment of the estimated expenses of providing such a service. Existing paragraph (4) is redesignated as paragraph (5).

Section 707

This section amends section 1827(h) to require that the presiding judicial officer approve compensation and expenses paid to an interpreter pursuant to the fee schedule fixed by the Director.

Section 708

This section amends section 1827(i) to further define the term "presiding judicial officer" for purposes of this title to include:

(a) a judge of the United States district court;

(b) a bankruptcy judge;

(c) a United States magistrate; and

(d) a United States attorney for grand jury proceedings.

This section also amends section 1827(j) to further define "judicial proceedings instituted by the United States for purposes of this title to include pretrial and grand jury proceedings. It also defines the term "United States district court."

Section 709

This section amends section 1827(k) to provide that all interpretation under this section be in the simultaneous mode for a party to the proceedings and the consecutive mode for witnesses, unless the presiding officer on that officer's own motion or the motion of a party determines on the record that another method is preferable for the efficient administration of the proceedings. There is some cause to believe that simultaneous interpreting should be the preferred mode of interpretation in most languages. This conforms to present practice in the Federal courts in relation to Spanish-English interpretation. However, given the reality that simultaneous interpreters do not exist in some languages, Congress recognizes the need to give flexibility to the courts to utilize other modes of interpretation for judicial proceedings.

Section 710

This section makes technical and conforming amendments.

Section 711

This section provides that nothing in this title shall be construed to terminate or diminish existing programs for the certification of interpreters.

Section 712

This section provides that the amendments made by the title shall take effect on the date of enactment of the Act.

TITLE VIII—JURY SELECTION AND SERVICE

This title makes several technical and minor substantive amendments to the Jury Selection and Service Act of 1986, as amended, for the purpose of improving the administrative operations of the jury system in the United States district courts. The provisions in S. 1482 as introduced originated with recommendations of the Judicial Conference growing out of several years of review by the Conference's Committee on the Operation of the Jury System. The details of these proposals are discussed below. It should be noted here that the bill does not adopt Judicial Conference recommendations (i) to give the Conference general authority to experiment with new jury selection procedures without prior statutory authorization or (2) to narrow 28 U.S.C. § 1863(b)(6) to bar jury service only with respect to active duty members of the armed forces and thereby open up such service to members of the police and fire departments and to "public officers." The Committee did adopt a provision to permit volunteer safety personnel to be excused from jury service upon request (section 802) and a limited provision to permit experimental use of a one-step summoning and qualification procedure (section 805).

This title consists of five sections as follows:

Section 801

This section amends the provision governing the temporary excuse of jurors appearing in clause (1) of 28 U.S.C. 1866(c) in two regards. First, it provides that temporary excuses on the grounds of "undue hardship or extreme inconvenience" may not only be granted by the court, but also, if the court so authorizes, by the clerk of court. Second, at the conclusion of a juror's temporary excuse period, courts are given the choice of either resummoning the person so excused or reinserting the name of such person back into the qualified jury wheel for possible resummoning. Either of these two changes may be implemented only by affirmative action of the district court; that is, the court's selection plan must specifically provide that the clerk may grant temporary excuses and that the names of excused persons are to be reinserted into the qualified jury wheel. In the absence of such provisions, only the court may grant temporary excuses, and persons so excused must automatically be resummoned.

The purpose of the first change is to promote administrative convenience and reduce unnecessary burdens placed upon the courts. It has been recognized that a significant number of requests for excuse on the grounds of "undue hardship or extreme inconvenience" are clearly legitimate. Upcoming vacation plans, business travel, and medical operations are typical examples of such legitimate excuses. In these situations, obtaining judicial approval of each request for excuse is a needless and burdensome formality; it will enhance the administration of the jury system to permit clerks to grant such excuses in their discretion.

To avoid needless challenges and to enhance administrative convenience, this section thus permits, although it does not require, courts to authorize clerks to grant temporary excuses. It should be emphasized that any authority so delegated is to be exercised strictly "under the supervision of the court", thus preserving the court's ultimate control over the process. A court may, for example, impose limits on a clerk's discretion, only permitting him or her to grant excuses requested because of travel or illness, and requiring that all other requests be referred to the court. Even with a broad delegation of authority, however, a clerk would still look to the court for guidance in difficult situations. Furthermore, were a pattern of abuse to develop, such as a clerk granting too many excuses, the court is free to revoke the clerk's authority in the plan.

In a similar vein, this section also increases courts' discretion regarding the resummoning of persons so excused. Under current law, any person granted a temporary excuse must be summoned again at the conclusion of the excuse period. Many courts report, however, that this requirement imposes significant administrative burdens, and requires the use of complex tickler files to keep track of the many persons who are granted temporary excuses under this section. They believe it would be preferable (and not inconsistent with the policies of the Act) to simply reinsert the names of such persons into the qualified jury wheel, making them eligible for resummoning. This amendment gives courts this discretion.

As with the first change, courts retain sufficient control to ensure proper administration in this area. If a court were to find, for example, that too many persons were requesting excuses in the hope that they would permanently escape service after being reinserted into the qualified wheel, the court could simply amend its plan and reimpose automatic resummoning of such person.

Section 802

Subsection (a) of section 802 amends 28 U.S.C. § 1869(a) to make clear that persons other than clerks or jury commissions may be authorized to perform selection procedures under a court's jury selection plan.

Under current law, the selection of the names of potential jurors and other duties under the Jury Act are to be performed by the "jury commission or clerk," and presumably the jury commission or clerk may delegate this function only to the staff under his or her direct supervision. In many courts, however, it has been found that personnel outside the judiciary, such as GSA computer technicians, private computing firms, or employees of State governments which provide lists of registered voters, can perform these functions under the "detailed procedures" specified by the court more expeditiously and economically than court personnel.

As an example, the Judicial Conference is currently conducting an experiment in which the juror qualification questionnaire has been redesigned so that it can be "read" by optical scanning devices. In this format, prospective jurors fill in "bubbles" with pencil and the forms are then "read" by the optical scanner. (By contrast, the current questionnaire contains boxes which jurors check. Deputy clerks manually read each of these forms to make preliminary determinations as to which prospective jurors are qualified, not qualified, or requesting an excuse.) The machine reads the forms faster than human beings, and does so with greater accuracy—the machine never gets fatigued after reading several hundred documents. This technology therefore promises to save hours of dreary, repetitive labor in clerk's offices. However, optical scanning devices of sufficient sophistication to read volumes of questionnaires are too expensive (at least for now) to be purchased by individual courts; thus use of machines owned and operated by out-of-court personnel is necessary. Unfortunately, the Jury Act does not literally authorize anyone but the clerk and deputy clerks to process the questionnaires in the first instance.

As a mechanical matter, the Jury Selection and Service Act could be amended in every instance in which the duties of clerks are set forth, but it is much simpler merely to amend the general definition of "clerk" appearing in section 1869(a) to include not only the clerk and deputy clerks but also such other non-court personnel as authorized by the court. This subsection takes the latter approach. In this way, every time the Act identifies a function to be performed by "the clerk," the court is authorized—but not required—to turn to outside personnel to assist the clerk in performing that task.

Subsection (b) provides that volunteer safety personnel, upon individual request, shall be excused from jury service and defines the term "volunteer safety personnel."

Subsection (c) of section 802 limits the classes of persons barred or exempt from jury service to the three categories specifically mentioned in section 1863(b)(6) of the Act; those in active service in the Armed Forces; members of fire and police departments; and public officers of Federal or State government. It should be noted that this provision differs from the specification of groups or groups of persons or occupational classes whose members shall be excused on individual request under 28 U.S.C. 1863(b)(5); this amendment concerns those groups whose members are barred from service even if they wish to serve.

Currently, section 1863(b)(6) authorizes each district court to exempt other groups of persons or occupational classes if it is found "that their exemption is in the public interest and would not be inconsistent with sections 1861 and 1862 of this title." Despite this language, the Judicial Conference Committee on the Operation of the Jury System in 1974 and in 1980 concluded that the three categories specified in section 1863(b)(6) should be considered exclusive, and should not be expanded upon by district courts in their plans. Although it appears that few, if any, courts specify any additional classes of exemptions, this amendment insures that the classes of exempt persons will be limited to the three referred to in section 1863(b)(6). In this way, the responsibilities and burdens of jury service will be distributed more evenly, in accordance with the policy statement at 28 U.S.C. 1861 that "all citizens shall have the opportunity to be considered for service on grand and petit juries * * * and shall have an obligation to serve as jurors when summoned for that purpose."

Section 803

Subsection (a) of section 803 amends 28 U.S.C. 1864(a). This section currently provides that the clerk or jury commission is required to prepare an alphabetical list of the names drawn from the master jury wheel, although this list "shall not be disclosed" except as provided in the court's selection plan or as necessary in the event of a challenge. This alphabetical list is also referred to in section 1865(a), which requires the clerk to record all "unqualified" determinations both on the qualification questionnaires of individual jurors and on the alphabetical list.

Many courts report that no apparent good is served by the mandatory preparation of this list, in that it is rarely referred to and in fact is not permitted to be routinely disclosed. Furthermore, the preparation of this list is extremely burdensome, especially in those automated courts in which the master wheel itself is not alphabetized.

To ease unnecessary administrative burdens, this subsection eliminates the mandatory preparation of the list, and, in lieu thereof, merely requires courts to possess the capability to generate an alphabetical list of names in the event access to such a list becomes necessary.

Subsection (b) of section 803 makes a conforming amendment.

Section 804

Section 804 makes a technical amendment.

Section 805

Section 805(a) adds a new section 1878 to title 28 to authorize the Judicial Conference to develop and conduct an experiment in which jurors serving in a limited number of district courts will be qualified and summoned in a single procedure rather than the normal two step procedure. The experiment may not involve more than ten districts or exceed a period of two years. The Conference must ensure that the experiment does not violate the policies and objectives set forth in 28 U.S.C. §§ 1861 and 1862.

Subsection (b) of section 805 provides that jury selection conducted pursuant to this section shall be subject to challenge under section 1867 for substantial failure to comply with the provisions of title 28 in selecting the jury; but no challenge would lie solely on the basis that a jury was selected in accordance with an experiment conducted pursuant to this section.

TITLE IX—ARBITRATION

This title is designed to provide express statutory authorization for the current arbitration programs in ten district courts and to permit the Judicial Conference to expand the program to ten additional districts for pilot arbitration projects on a consent of the parties basis only.

This title consists of six sections as follows:

Section 901

Section 901 amends title 28, United States Code, by adding a new chapter 44, sections 651 through 658, relating to arbitration.

New Section 651 of title 28

New section 651 of title 28 provides that each district court described in section 658 may authorize by local rule the use of arbitration in any civil action, including an adversary proceeding in bankruptcy. Section 658 names the ten judicial districts by name that currently have ongoing court-annexed arbitration programs and authorizes the Judicial Conference to designate an additional ten districts for such programs. This section expressly permits the ten current districts to authorize mandatory arbitration, but limits any new program to arbitration with the consent of the parties only.

New Section 652 of title 28

New section 652 sets forth the jurisdiction of the district courts which engage in arbitration: a district court may allow the referral to arbitration of any civil action pending before it if the parties consent to arbitration or, with respect to the ten district courts currently conducting arbitration, require the referral to arbitration of any civil action pending before it if the relief sought consists only of money damages not in excess of $100,000 or such lesser amount as the district court may set, exclusive of interest and costs. A district court may presume damages are not in excess of $100,000 unless counsel certifies that damages exceed such amount. Section 652(b) specifies that referral to arbitration may not be made in two circumstances: (1) of an action based on an alleged violation of a right secured by the Constitution of the United States, or (2) if jurisdiction is based in whole or in part on section 1343 of title 28, United States Code. Section 652(c) provides that a district court shall establish by local rule procedures for excepting from arbitration, sua sponte or on motion of a party, those cases in which the objectives of arbitration would not be realized, because the case involved complex or novel legal issues, or because legal issues predominate over factual issues, or for other good cause. Section 652(d) establishes ground rules for consensual arbitration: district courts must ensure that consent is freely and knowingly obtained and no party or attorney can be prejudiced for refusing to participate in arbitration.

New Section 653 of title 28

New Section 653 sets forth the powers of the arbitrator and the time limits for an arbitration hearing. An arbitrator may conduct arbitration hearings, administer oaths and affirmations, and make awards. The arbitration hearing shall commence within the time-period specified by the district court, but in no event later than 180 days after filing an answer or except that the arbitration proceeding shall not, unless the parties consent to a shorter time, commence until 30 days after the disposition by the district court of any motion to dismiss the complaint, motion for judgment on the pleadings, or motion for summary judgment, whichever is later. Such motions must be filed within a time period specified by the court. The 180-day and 30-day periods may be modified by the court for good cause shown.

New Section 654 of title 28

Section 654 describes procedures relating to the arbitration award and judgment. An arbitration award made by an arbitrator, along with proof of service of the award on the other party by the prevailing party or by the plaintiff, shall be filed promptly after an arbitration hearing with the clerk of the district court that referred the case to arbitration. The award shall be entered as the judgment of the court after the time has expired for requesting a trail de novo under section 655. The judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

New Section 655 of title 28

Section 655 allows any party who has engaged in arbitration to file a written demand for a trial de novo in the district court. When such a demand is made, the action is restored to the docket of the court and treated for all purposes as if it had not been referred to arbitration. Any right of trial by jury that a party otherwise would have had, as well as any place on the court calendar no later than a party otherwise would have had, is preserved. The court shall not admit at the trial de novo any evidence that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration in the court unless the evidence is otherwise admissible under the Federal Rules of Evidence or the parties have otherwise stipulated. A district court may promulgate a rule to allow arbitrator fees to be taxed as costs in trials de novo. Arbitrator fees may not be taxed as costs if the party demanding trial de novo obtains a final judgment more favorable than the arbitration award or the court determines that the demand for trial de novo was made for good cause. No other penalty for demanding a trial de novo shall be assessed: When arbitration was by consent of the parties, a district court may assess costs and reasonable attorney fees against the party demanding the trial de novo if such party fails to obtain a judgment, exclusive of interest and cost, which is substantially more favorable to such party than the arbitration award and the court determines that the party's conduct in seeking a trial de novo was in bad faith.

New Section 656 of title 28

New Section 656 requires each district court engaging in arbitration to establish standards for the certification of arbitrators and to certify arbitrators to perform services in accordance with these standards and this chapter. The standards shall include provision requiring that any arbitrator shall take the oath or affirmation described in section 453, of title 28, United States Code and shall be subject to the disqualification rules of section 455, of title 28, United States Code.

New Section 657 of title 28

New Section 657 authorizes the compensation of arbitrators. A district court, subject to limits set by the Judicial Conference, may establish and pay the amount of compensation, if any, that each arbitrator shall receive for services rendered in each case. In addition, under regulations prescribed by the Director of the Administrative Office of the United States Courts, a district court "may reimburse arbitrators for actual transportation expenses necessarily incurred in the performance of duties under this chapter."

New Section 658 of title 28

New Section 658 specifies the courts that may authorize arbitration. These include the current ten districts that have court-annexed programs. In addition, this section would authorize the Judicial Conference to approve ten more districts for an arbitration projects limited to arbitration by consent of the parties by section 651.

Subsection (b) of section 901 makes a conforming amendment to the table of chapters for Part III of title 28.

Subsection (c) of section 901 provides that, notwithstanding the new section 652 establishing a $100,000 ceiling for arbitration, a district court now conducting a pilot arbitration program whose local rule on the effective date of this title provides for an arbitration limitation of not more than $150,000 may continue to apply the higher limitation.

Section 902

Section 902 of title IX authorizes the Judicial Conference of the United States to develop interim model rules for arbitration procedures under new chapter 44 of title 28, United States Code. No model rule may supersede chapter 44, or any law of the United States.

Section 903

Section 903 requires the Federal judiciary to report back the results of the experiment to the Congress. Specifically, the Director of the Administrative Office of U.S. Courts shall include in the annual report of the activities of the Administrative Office (required under section 604(a)(3) of title 28, United States Code) statistical information about the implementation of the arbitration experiment.

Furthermore, the Federal Judicial Center will file a report with Congress on implemention of the legislation and recommendations for legislative change.

The purpose of the Center's report is to provide Congress with information about the following: first, a description of the arbitration programs as conceived and as implemented in the experimental districts; second, a determination of the level of satisfaction with the court-annexed arbitration programs in each of the experimental districts by court personnel, attorneys and litigants whose cases have been referred to arbitration; third, a summary of those program features that can be identified as being related to program acceptance both within and across districts; fourth an analysis of the levels of satisfaction relative to the cost of each program; and fifth, determination of whether to terminate or continue the experiment or alternatively, to codify an arbitration provision in title 28 of the United States Code authorizing arbitration in all Federal district courts.

Section 904

Section 904 provides that nothing in title IX is intended to abridge, modify, or enlarge the rulemaking power of the Federal judiciary.

Section 905

Section 905 authorize to be appropriated for fiscal year 1989 and for each of the succeeding four fiscal years to the judicial branch such sums as may be necessary to be allocated by the Administrative Office of the United States Courts to federal judicial districts and the Federal Judicial Center to carry out the purposes of the new chapter 44 of title 28. The funds so appropriated shall remain available until expended, except that no such funds shall be expended for the arbitration of actions referred to arbitration after the date of repeal set forth in section 906.

Section 906

Section 906 is the sunset provision. It provides that effective 5 years after the date of the enactment of title IX, new chapter 44 of title 28, United States Code, is repealed, except that the provisions of that chapter shall continue to apply through final disposition of all actions in which referral to arbitration was made before the date of repeal.

Section 907

This section provides that this title and the amendments made by this title shall take effect 180 days after the date of enactment of this Act.

TITLE X. MISCELLANEOUS PROVISIONS

Title X consists of twenty three miscellaneous provisions dealing with relatively minor proposals to improve some aspect of the Federal Judiciary. Most come from specific recommendations of the Judicial Conference as developed over the past several years as problems surfaced. The source and merits of the various provisions are discussed in the section-by-section analysis below.

Section 1001. Divisional Venue in Civil Cases

Section 1001 would repeal 28 U.S.C. § 1393, which presently provides for divisional venue in civil cases. Divisional venue in criminal cases was abolished in 1966 as a result of an amendment to Rule 18 of the Federal Rules of Criminal Procedure. The rationale for eliminating divisional venue for civil cases is essentially the same that underpinned the change in divisional venue in criminal cases. As noted by the Advisory Committee on Criminal Rules:

The former requirement for venue within the division operated in an irrational fashion. Divisions have been created in only half of the districts, and the differentiation between those districts with and those without divisions often bears no relationship to comparative size or population. In many districts a single judge is required to sit in several divisions and only brief and infrequent terms may be held in particular divisions. As a consequence under the original rule there was often undue delay in the disposition of criminal cases—delay which was particularly serious with respect to defendants who had been unable to secure release on bail pending the holding of the next term of court.

Change in divisional venue for criminal cases has not resulted in adverse consequences to the litigants or to the fair and expeditious administration of justice. (See Conf Rept., March 11-12, 1980, p. 19). Accordingly, no adverse efect is anticipated in eliminating divisional venue for civil cases as well.

Section 1002. Registration of Foreign Judgments.

Section 1002 amends 28 U.S.C. § 1963 to give the distrct court and the Court of International Trade, in entering a judgment in an action for the recovery of money or property, the discretion for good cause shown to permit registration of the judgment in a foreign jurisdiction pending appeal; merges section 1963A into section 1963; and repeals section 1963A.

28 U.S.C. § 1963 currently appears to authorize the registration of a judgment of a district court in a foreign jurisdiction only when the judgment has become final by appeal or expiration of the time for filing an appeal. The judgment is a lien on the property of the judgment debtor which is located within the district. A judgment debtor, who is an appellant, may obtain a stay of execution under Rule 62(d) of the Federal Rules of Civil Procedure by giving a supersedeas bond. Section 1963A is a parallel provision to section 1963 covering judgments of the Court of International Trade.

If the property of the judgment debtor is located in, or is removed to, another jurisdiction pending appeal, the judgment creditor cannot obtain a lien in the foreign jurisdiction until after the appeal process is completed and thus may be effectively unable to enforce the judgment if assets have been dissipated. Some courts have read section 1963 literally and have refused registration in a foreign jurisdiction.

Although these circumstances do not often occur, a judgment debtor should not be permitted to hide assets in a foreign jurisdiction and the district court entering the judgment should be given discretion to permit registration in a foreign jurisdiction pending appeal, but only upon a showing of good cause. Since the rationale for changing section 1963 for district court judgments is equally applicable to judgments of the Court of International Trade under section 1963A, the proposed amendment merges section 1963A into the new section 1963 and repeals the current section 1963A.

Section 1003. Leave Act Amendments Relating to Bankruptcy Judges, Magistrates and Law Clerks

Paragraphs (1) and (2) of section 1003(a) would amend 28 U.S.C. §§ 153 and 631 to make it explicit that bankruptcy judges and United States magistrates are exempt from the provisions of the Federal Leave Act (5 U.S.C. §§ 6301-6323).

Bankruptcy judges and United States magistrates have traditionally been considered judicial officers not subject to the Leave Act. The basis for this status are similar to those asserted for exemption of Presidential appointees or Congressional employees: Such officials are high-level government officials for whom hour-by-hour accountability is inappropriate and unnecessary; their hours and duties are not subject to a fixed schedule; or the type of position is such that they are never completely divested of their responsibilities and actually are on duty at all times. Bankruptcy judges and magistrates occupy positions meeting all of these criteria.

Following technical amendments to the Leave Act in 1978, a question was raised whether the statutory exemptions are elastic enough to continue the prior practice whereby bankruptcy judges and magistrates are administratively excluded therefrom. Concluding that legislation is desirable to expressly ratify this long-standing treatment of these judicial officers, paragraphs (a)(1) and (2) are icluded in the bill to accomplish that result.

Paragraphs (a)(3) and (4) of section 1003 would amend 28 U.S.C. §§ 156, 634, 712, 752, and 794 to explicitly exempt law clerks for judges on the courts of appeals, the district courts, the Claims Court and the law clerks to bankruptcy judges and magistrates from the provisions of the Federal Leave Act. Traditionally, regulations promulgated on behalf of the Judicial Conference by the Director of the Administrative Office authorized each judge to elect whether his or her personal staff would be covered by the Leave Act. The Judicial Conference in September 1983 established the policy that all new secretaries to judicial officers shall be placed under the Leave Act, thereby reflecting legal opinions to the effect that prior amendments to the Act had the effect of applying the Leave Act to all employees of the judiciary, except Presidentially appointed judges. The appropriate status of law clerks was held for further study. After further study, the Judicial Conference revisited the issue. It determined that discretionary exemption of law clerks from the Leave Act could not be supported under present law, but that mandatory coverage of law clerks under the Leave Act was inappropriate. The Conference adopted the position that legislation be proposed to exclude law clerks from the Leave Act, unless specifically included by the appointing judge or by local rule of court. (See Conf. Rept., September 1986, p. 57). This section as amended adopts the proposal of the Conference.

It should be noted that the qualifying language "unless specifically included by the appointing judge or by local rule of court" was inadvertently omitted from the draft legislation transmitted to Congress on behalf of the Judicial Conference and, therefore, was not included in S. 1482 as introduced. This omission is corrected in the pending draft of the bill.

Subsection (b) establishes transition provisions for the individuals affected by this section. An individual exempted from the Leave Act by this section who has accumulated leave under the Leave Act prior to the exemption would retain the leave on the books to be credited with such leave in the future as follows: First, if the individual again becomes subject to the Leave Act without a break in service, both annual and sick leave previously accumulated would remain to his or her credit. Secondly, if the individual separates from service without returning to a position under the Leave Act, previously accumulated annual leave would be paid in lump sum at the time of separation. Finally, if the individual retires on an immediate annuity or dies leaving a survivor entitled to an annuity, in computing annuity under section 8339 of title 5, United States Code, the previously accumulated sick leave will be used to compute total service for purposes of computing the individual's annuity, except that, in accordance with the usual rule applicable to sick leave, such leave will not be counted in determining average pay or annuity eligibility. Lump sum payments for accumulated annual leave at the time of separation shall be determined by reference to the salary level of the individual at the time of separation.

Subsection (c) makes the changes made by this section effective on the date of enactment of this Act.

Section 1004. Cost-of-Living Adjustment of Annuities Payable Under 28 U.S.C. 611 and 627

Section 1004(a) amends 28 U.S.C. 611 and 627 to apply the cost-of-living adjustment provisions applicable to regular civil service retirement annuities under 5 U.S.C. 8340 to annuities that may be elected by the Directors of the Administrative Office of the United States Courts and of the Federal Judicial Center, as well as the Administrative Assistant to the Chief Justice. The Judicial Conference has recognized for many years that the retirement provisions applicable to these key positions should be upgraded to attract and hold the most qualified individuals. In 1974, the Conference made this observation (Conf. Rept., March 7-8, 1974, pp. 52-53):

"In approving these recommendations [to improve the retirement system for the Directors of the Administrative Office and of the Federal Judicial Center and the Administrative Assistant to the Chief Justice], the Conference noted that the present statute makes no provision for cost-of-living increases and that while the proposed legislation would not affect present incumbents of the positions, the retirement provisions are not geared to attract and hold qualified individuals who do not have long civil service retirement credit or other types of retirement benefits, and that the statute should be amended to bring the retirement benefits in line with similar benefits in comparable positions."

Protection of annuities elected under 28 U.S.C. 611 and 627 from run-away inflation on the same basis as that of the civil service retirement system is a matter of fundamental fairness.

Subsection (b) of this section provides that the amendments to 28 U.S.C. §§ 611 and 627 with respect to cost-of-living adjustments shall apply to such increases that go into effect on or after the date of enactment with respect to annuities being paid or becoming payable on or after such date.

Section 1005. Military Retirement Pay for Senior Judges

Section 1005(a) amends 28 U.S.C. § 371 to permit senior judges to receive military retired or retainer pay to which they would be entitled on the basis of regular or reserve military service. The Judicial Conference approved this proposal in September 1985 (Conf. Rept., p. 44). In considering the merits of the subject, the Conference noted: "Since federal judges appointed to hold office during good behavior continue to occupy the office in the legal sense after retirement from regular active service under 28 U.S.C. 371(b), 5 U.S.C. 5532(c) precludes senior judges from receiving any military retired pay to which they would otherwise be entitled. * * * [S]ection 5532 is inconsistent with 5 U.S.C. 8344(f) (which requires the suspension of civil service retirement annuities to active judges but authorizes their resumption upon judicial retirement), and could provide an incentive for retirement from the judicial office under 28 U.S.C. 371(a) rather than to senior status under 371(b), thereby depriving the judiciary of the invaluable services of senior judges."

Subsection (b) of this section makes it clear that this military retirement amendment will apply to any justice or judge who retires, or has retired, from the judicial office or from regular active service on or after the effective date of 5 U.S.C. § 5532(c), and to whom that section would otherwise be applicable.

Section 1006. Amendments to Conform 28 U.S.C. §§ 611 and 627 to the Federal Employees' Retirement System Act of 1986

Section 1006(a) makes certain changes to 28 U.S.C §§ 611 and 627 needed to mesh these provisions with the newly enacted Federal Employees' Retirement System Act of 1986 (Public Law 99-335, enacted June 6, 1986).

As noted under section 1004 above, 28 U.S.C. §§ 611 and 627 contain special retirement provisions for the Directors of the Administrative Office and of the Federal Judicial Center, as well as the Administrative Assistant to the Chief Justice. Both sections, as presently worded, permit a Director to waive coverage under 5 U.S.C. chapter 83, subchapter III (the Civil Service Retirement System) and to elect coverage under section 611 or 627, as appropriate. Sections 611 and 627 also state that a Director's election of the special retirement provision does not operate to foreclose any deposit right under 5 U.S.C. § 8334 in order to reclaim civil service retirement credit for years of service as Director if an incumbent does not serve long enough for annuity eligiblity under sections 611 or 627. Because of the recent passage of the Federal Employees' Retirement System Act of 1986, the references in sections 611 and 627 to chapter 83 are no longer adequate. Depending upon the circumstances, a Director appointed after January 1, 1984 could fall either under chapter 83 or under the new Federal Employees' Retirement System in 5 U.S.C. chapter 84. Thus, a Director electing section 611 or 627 coverage must properly waive either chapter 83 or chapter 84, whichever is specifically applicable to his or her situation.

In addition, the deposit right mentioned in sections 611 and 627 should be amended to refer to chapter 84 as well as to chapter 83. The sentences in this section concerning deposits under chapters 83 and 84 are worded differently because chapter 83 explicitly permits an employee to make deposits for any periods of Federal service for which retirement deductions were not made, while chapter 84 does not. Thus, the sentence concerning deposits under chapter 84 affirmatively states that a deposit right exists, and establishes the amount of deposit by reference to the amount that would have been withheld from a Director's pay as a retirement contribution if the Director had not elected the coverage of section 611 or 627.

Amendments made by this section also permit a Director electing section 611 or 627 coverage to participate in the Thrift Savings Plan established by chapter 84, which allows an employee to deposit up to 5 or 10 percent of his or her pay into the tax-deferred investment plan, with matching Government contributions of up to 5 percent of his pay, depending on the retirement program applicable.

Finally, the amendments to section 611 will apply to the Administrative Assistant to the Chief Justice. 28 U.S.C. § 677 provides a person in this position with eligibility to elect the retirement benefits offered by 28 U.S.C. § 611.

Subsection (b) of this section provides that the amendments made by the section shall apply to persons holding the offices of Director of the Administrative Office of the United States Courts, Director of the Federal Judicial Center, and Administrative Assistant to the Chief Justice on the date of enactment. This subsection indicates that the bill applies to incumbent Directors, to make it entirely clear that they have the right to make deposits in the event that they leave their positions before retirement, and that they may participate in the Thrift Savings Plan.

Section 1007. Judicial Disqualification

Section 1007 amends 28 U.S.C. 455 by adding the following new subsection:

"(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery that he or she individually or as fiduciary after the matter was assigned to him or her, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate, or bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification."

This proposal is directed at a specific problem that has arisen as a consequence of existing disqualification requirements and their application in class action cases. Today, under section 455 of title 28, United States Code, a judge must "disqualify" himself or herself in any case in which he or she—or members of his or her family—are parties to the case or have a financial interest in a party to the case. In most cases determining whether a financial interest cognizable under the statute exists is not difficult. In complex multidistrict class action cases, however, a full list of all members of a class may not become available until long after litigation has commenced, and a judge will be unable to determine whether a cognizable interest exists until then. When that happens now, the case must be assigned to a different judge, an event which disrupts the efficient administration of the case and can be very costly to litigants.

This section proposes to amend 28 U.S.C. 455 to modify the automatic disqualification provisions to permit a judge or his or her spouse or minor children to resolve the conflict by divesting themselves of the property creating the conflict. Disqualification would continue to be automatic if the interest in the controversy was one that could be substantially affected by the outcome. For example, a significant stockholder in a closely held corporation with close acquaintances would be expected to recuse himself or herself rather than divest.

Section 1008. Incentive Awards

Section 1008 amends 28 U.S.C. § 604(a) (Duties of the Director of the Administrative Office) to specify as one of those duties the establishment of a program of incentive awards for employees of the Judicial Branch, except for Article III judges.

Personnel managers have long realized that recognition and reward of superior performance by an employee provide incentive for other employees to improve their performance and enhance morale. The effect is generally an improvement of productivity. The Executive Branch has a comprehensive program for agencies to recognize superior performance, to reward valuable suggestions, and to acknowledge special contributions among their employees. That program appears to have worked well, and the Judicial Conference believes that the Judicial Branch would benefit from a similar program for its employees. The Office of Personnel Management reports that, for each dollar invested in awards in fiscal year 1985, almost $7 in savings and benefits were received. The benefit-to-cost ratio has consistently remained high year after year.

Currently, the judiciary has only a system for quality step increases in pay under the Judiciary Salary Plan. This program rewards an employee's sustained superior performance that is likely to continue. A quality step increase is an award of an increase in the employee's basic pay in advance of the time when the increase would normally become payable if the employee had merely maintained an acceptable level of performance. Thereafter, the employee continues to be eligible for further regular increases at the normal intervals—but measured from the date of the award of the quality step increase. Thus, this type of award has a long-lasting effect. Accordingly, its use is—and should be—limited to outstanding performance of the highest order.

Short of this type of award, there are many instances of performance which deserve special recognition but which cannot now be recognized under current provisions of law. A program similar to that in the Executive Branch, under which awards would be made to employees serving the courts, the Federal Judicial Center, and the Administrative Office, administered by the Administrative Office under regulations approved by the Judicial Conference, has real merit.

The likely benefits of increased productivity and improved morale—as evidenced by the Executive Branch's program—would assist our continuing efforts in the Judicial Branch to handle the increasing workload fairly and expeditiously.

It should be noted that after S. 1482 was introduced, it was brought to the Subcommittee's attention that the provision in S. 1482 arbitrarily limited the application of the incentives program to the employees designated in paragraph (5) of section 604(a). This was not intended by the Judicial Conference. The current version cures this defect by substituting the following amendment:

Section 604(a) of title 28, United States Code, is amended by inserting a new paragraph at any appropriate place and redesignating subsequent paragraphs accordingly:

"( ) Establish a program of incentive awards for employees of the Judicial Branch of the United States Government, other than any judge who is entitled to hold office during good behavior.".

Section 1009. Amendments to Waive Claims of Overpayment of Judicial Pay and Allowances

Section 1009 would amend 5 U.S.C. § 5584 to authorize the Director of the Administrative Office of the United States Courts to waive a claim in an aggregate of not more than $10,000 for erroneous payment of pay or allowances against an employee of the Administrative Office of the United States Courts, the Federal Judicial Center and any of the courts set forth in section 610 of title 28, United States Code. In addition, the Director would be defined by this amendment as "head of an agency" for purposes of this section. This lack of waiver authority has caused undue hardship for employees of the judicial branch. For example, in 1979, the Personnel Division of the Administrative Office erroneously paid a former secretary to a United States magistrate a within-grade increase one year early. She was advised of the resulting overpaying only after she had retired, when she learned for the first time that instead of receiving approximately $3,000 in a lump-sum distribution for unused annual leave, she would get virtually nothing. This had a devastating impact upon the secretary in that she had planned to use this refund to pay for a needed surgical operation.

As a legal matter, the secretary was not entitled to retain the overpayments she had received, although it is clear that the error was solely the fault of the agency and that she was perfectly justified in assuming it had computed her pay in an accurate manner. This would be an appropriate case for waiver in the interest of doing equity, but the Administrative Office at present is not statutorily permitted to waive this debt to the government, as are agency heads in the Executive Branch and officials of Congress.

A review of relevant authority reveals that the statutes authorizing waiver of claims for erroneous payments of pay and allowances are codified at 2 U.S.C. §§ 130c, 130d and at 5 U.S.C. § 5584. Section 130c of title 2, United States Code, deals exclusively with waiver of claims for erroneous payments by the Secretary of the Senate in respect of payments made by him. Section 130d of title 2, United States Code, deals exclusively with waiver of claims for erroneous payments by the Speaker of the House of Representatives in respect of payments made by the clerk of the House of Representatives. Neither has any applicability to the judicial branch of government.

Section 5584 of title 5, United States Code, invests the "head of an agency" with limited authority to waive a claim for erroneous payment of pay, or allowances, other than travel and transportation allowances and relocation expenses payable under 5 U.S.C. 5724a, against an "employee of an agency." For purposes of this section, subsection (g) defines "agency" as:

(1) an Executive agency;
(2) the Government Printing Office;
(3) the Library of Congress;
(4) the Office of the Architect of the Capitol; and
(5) the Botanic Garden.

Accordingly, section 5584 of title 5, United States Code, has no application to the judicial branch of government.

Further, the Federal Claims Collection Act, 31 U.S.C. § 3701, does not apply to the judicial branch of government. An officer of the federal government is without power to release or otherwise dispose of the government's rights and property except to the extent that such power has been delegated to him by Congress or may be implied from other powers within which he is invested. *Royal Indemnity Co.* v. *United States,* 313 U.S. 289, 294 (1941); 77 Am. Jur. 2d United States § 75 (9175). The enactment by Congress of four independent laws for the waiver and compromise of claims is compelling authority for the proposition that similar authority cannot be inferred for the Director in the absence of express statutory provision.

While initially the judiciary considered the possibility that erroneous payments of pay could be remedied by retroactive adjustment, at least in respect of those officers and employees whose rates of pay are determined and fixed by the Director, that approach must be abandoned in light of the numerous decisions of the Comptroller General holding that an administrative change in salary may not be made effective retroactively in the absence of express statutory authority. 26 Comp. Gen. 706 (1947), 39 Comp. Gen. 583 (1960), 40 Comp. Gen. 207 (1960), B-168715 (January 22, 1970). This rule is subject to exception only when an error occurred because of failure to carry our nondiscretionary administrative regulations of policies, or where administrative error has deprived the employee of a right granted by statute or regulation. See 34 Comp. Gen. 360 (1955), 39 Comp. Gen. 550 (1960), 21 Comp. Gen. 369, 376 (1941), 27 Comp. Gen. 300 (1947), 37 Comp. Gen. 854 (1958).

Section 1010. Court Security

This provision clarifies the authority of the Administrative Office to expend appropriated funds for judicial security. While 28 U.S.C. § 604(a)(10)(C) appears to be broad enough to provide such authority, explicit authorization of this important program is very desirable. Under this authorization, security services currently provided from the appropriation of the judiciary would be specifically authorized, as would the use of the Marshals Service on a non-reimbursable basis for personal judicial security.

Section 1011. Travel Reimbursement

Section 1011 of the bill would amend 28 U.S.C. § 604(a)(7) respect to the Director's authority to regulate and pay travel expenses of judicial officers and employees on official business. The Director presently discharges this function under two divergent authorities. With respect to judges appointed for life under Article III of the Constitution, along with the 16 judges of the United States Claims Court, and the four judges of territorial courts of the United States, section 456 of title 28 empowers the Director to pay subsistence expenses at rates fixed by him after considering but without limitation by the subsistence rates for Executive Branch personnel under 5 U.S.C. § 5702. The Director's authority to regulate the travel expenses of other judicial officers and employees derives directly from chapter 57 of title 5 (5 U.S.C. § 5707(a)), thereby limiting the subsistence expenses of this latter category to those approved for the Executive Branch by regulation of the Administrator of General Services under section 5702.

This more restricted travel expense provision with respect to Judicial Officers and employees other than Presidentially appointed judges has presented a problem only in two major instances—attendance at the annual circuit judicial conferences mandated by 28 U.S.C. § 333 and at meetings of committees of the Judicial Conference. The circuit conferences and Judicial Conference committees are, of course, composed primarily of Article III judges but include a representation of bankruptcy judges and magistrates and are also necessarily attended by certain staff of the Administrative Office and the courts concerned. These meetings are sometimes held at locations throughout the United States where distinct locality per diem rates have not been established by the GSA Administrator (as authorized by 5 U.S.C. § 5702(a)(2)) because they are in relatively rural areas rather than highly populous or metropolitan counties. In the absence of such a locality rate, these travelers would be limited to the nationwide per diem rate of $60 in daily reimbursement for subsistence expenses, or to $90 (150 percent of the per diem rate) in itemized actual expenses of subsistence. Judges under the same circumstances would have the additional option, under their travel regulations pursuant to the authority of section 456, to claim up to $150 per day in itemized actual expenses of subsistence.

It is simply unfair that there be two tiers of reimbursement for subsistence expenses necessarily incurred in official travel under these circumstances. This unfairness is aggravated by the fact that the bankrutpcy judges, magistrates, and judicial employees do not have a voice in the selection of sites for circuit conferences or Conference committee meetings and their attendance at these events is not voluntary. They should equitably not be forced to pay their daily subsistence expenses out of their own pockets where they are required to stay in the same quarters with their Article III counterparts in the interest of efficient conduct of the conference or meeting.

This problem would be alleviated by the amendment that section 1011 would effect, permitting the Director to fix reimbursement rates for the subsistence expenses of all judicial officers and employees not to exceed those for Article III judges under 28 U.S.C. § 456 in circumstances where these two echelons of travelers are obligated to attend meetings or conferences simultaneously at the same facility.

Section 1012. Claims Court Fees

Section 1012(a) amends 28 U.S.C. § 2520 to raise the filing fee in the United States Claims Court from an amount not to exceed $60 to an amount not exceed $120. This brings the Claims Court fee into line with the filing fee in the United States district courts, as increased by Public Law No. 99-500, the Judiciary's Appropriation Act for the Fiscal Year 1987. The increased fee in the Claims Court would be imposed 30 days after date of enactment.

Subsection (b) would require the Judicial Conference to submit a report to the Congress on the actual costs of filing actions in the district courts of the United States within 180 days after the date of enactment of this Act.

Section 1013. Corporate Venue

The Judical Conference has recommended that 28 U.S.C. § 1391(c) be amended to read as follows:

"For purposes of venue under this chapter, a corporate defendant shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced. In a state having more than one judicial district, a corporation shall be deemed to reside in any district within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate state, and if there is no such district the corporation shall be deemed to reside in the district within which it has the most significant contacts."

Venue generally turns on one of two considerations; the place where the claim arose or the residence of the parties. When one or more of the parties is a corporation, venue problems arise in determining a corporation's "residence." The general venue statute defines the residence of a corporation as "any judicial district in which it is incorporated or licensed to do business or is doing business". 28 U.S.C. §1391(c). Read literally, the statute appears to make venue proper in any district in a multidistrict state in which a corporation is incorporated, licenses to do business, or doing business.

The Judicial Conference proposes that a corporation for venue purposes should be deemed to reside in any judicial district in which it was subject to personal jurisdiction at the time the action was commenced. In multidistrict states in which a corporation is not incorporated or licensed to do business, the venue determination should be made with reference to the particular district in which a corporation is sued. Thus, for example, a corporation that confines its activities to Los Angeles (Central California) should not be required to defend in San Francisco (Northern California) unless, of course, venue lies there for other reasons. This section incorporates this proposal.

Section 1014. Method of Court Recording

Under current 28 U.S.C. § 636(c)(7) the litigants are allowed to impose upon the court the method by which the court record will be taken before a magistrate. The Judicial Conference has recommended that this provision applicable to magistrates be amended to parallel provisions applicable to judges that reserve to the judge the right to determine the method for recording the court's proceedings. It is simply bad policy to permit a party to force a magistrate to use, for example, shorthand reporting when he or she might wish to use another method in order to manage the court business more expeditiously. This change is made by amending 28 U.S.C. § 636(c)(7) to read as follows:

"(7) The magistrate shall, subject the guidelines of the Judicial Conference determine whether the record taken pursuant to this section shall be taken by electronic sound recording, by a court reporter, or by other means."

Section 1015. Location of Chambers of Circuit Judges

The Judicial Confernce at its March 1988 meeting reviewed problems related to the location of chambers of circuit judges and now recommends that 28 U.S.C. § 462(c) relating to circuit court accommodations should be modified to provide more flexibility in this regard. (Conf. Rept., p. 31). This proposed amendment would permit chambers for circuit judges to be provided by the Director at any place where the judicial council of the circuit approves.

Current law provides that the Director, with judicial council approval, may provide chambers for circuit judges only at statutorily designated places of holding court or elsewhere in exisiting Federal facilities. When a circuit judge resides and wishes office space in a community with no Federal facilities or with Federal facilities filled to capacity, the Judiciary has been forced to go to Congress to seek specific legislation to statutorily designate such a community as a place of holding district court so that private leased space may be procured. This practice has the potential of defeating both congressional and Judicial Conference policy against the proliferation of places of holding court. In addition, when such a place is statutorily designated as a place of holding court, the Judiciary is inevitably faced with community and congressional pressure to actually hold court there or to build another Federal courthouse, a problem which the Judiciary has already faced several times.

In amending what is now section 462 (formerly section 142) of title 28, United States Code, to permit the use of Federal facilities by circuit judges in places other than where court is held, Congress in 1977 stated that its purpose was to "deter the proliferation of places of holding court . . . and alleviate an inconvenience for circuit court judges which Congress never intended to impose upon them . . ." S. Rept. No. 95-589, 95th Cong., 1st Sess. (1977). This amendment does not appear to contravene, and indeed is consistent with, the purposes of the original legislation, which evidently contemplated localized "resident chanbers" for circuit judges convenient to their communities of residence.

The following amendment is incorporated here to achieve the result suggested:

"SEC. . (a) Section 462(c) of title 28, United States Code, is amended by striking "where Federal facilities are available" and inserting in lieu thereof "within the circuit other than where regular sessions of court are authorized by law to be held,".

Section 1016. Improvements in Removal Procedure

All of the proposed amendments in this section relate to removal jurisdiction. The amendments would, among other things, allow the citizenship of fictitious or "Doe" defendants to be disragarded for removal purposes; simplify the "pleading" requirements for removal; establish a one-year limit on removal based on diversity jurisdiction; eliminate the bond requirement on removal procedure; and regulate the joinder of additional parties after removal.

Subsection (a) amends 28 U.S.C. 1441(a) to permit the citizenship of fictitious defendants to be disregarded. This amendment addresses a problem that arises in a number of states that permit suits against "Doe" defendants. The primary purpose of naming fictious defendants is to suspend the running of the statute of limitations. The general rule has been that a joinder of Doe defendants defeats diversity jurisdiction unless their citizenship can be established, or unless they are nominal parties whose citizenship can be disregarded even if known. This rule in turn creates special difficulties in defining the time for removal. Removal becomes possible when the Doe defendants are identified or dropped, perhaps as late as the start of trial, or when it becomes clear that any claims against the Doe defendants are fictitious or merely nominal. At best, the result may be disruptive removal after a case has progressed through several stages in the State court. At worse, the result may be great uncertainty as to the time when removal becomes possible, premature attempts to remove and litigation over removability, and forfeiture of the removal opportunity by delay after the point that in retrospect seems to have made clear the right to remove. These problems can be avoided by the disregard of fictitious defendants for purposes of removal. Experience in the district courts in California, where Doe defendants are routinely added to state court compliants, suggests that in many cases no effort will be made to substitute real defendants for the Doe defendants, or the newly identified defendants will not destroy diversity. If the plaintiff seeks to substitute a diversity-destroying defendant after removal, the court can act as appropriate under proposed § 1447(d) to deny joinder, or to permit joinder and remand to the State court.

Subsection (b)(1) makes minor changes to 28 U.S.C. 1446(a) removal procedure. The present requirement of a verified petition is changed to a requirement that a notice of removal be signed pursuant to Civil Rule 11. This change is in keeping with general modern distaste for verified pleading. The sanctions available under Civil Rule 11 apply to every "other paper," but it seems desirable to make it clear that they are available in cases of improvident removal. The present requirement that the petition of removal state the facts supporting removal has led some courts to require detailed pleading. Most courts, however, apply the same liberal rules that are applied to other matters of pleading. The proposed amendment requires that the grounds for removal be stated in terms borrowed from the jurisdictional pleading requirement established by civil rule 8(a).

Subsection (b)(2) amends 28 U.S.C. 1446(b) to establish a one-year limit on removal based on diversity jurisdiction as a means of reducing the opportunity for removal after substantial progress has been made in state court. The result is a modest curtailment in access to diversity jurisdiction. The amendment addresses problems that arise from a change of parties as an action progresses toward trial in state court. The elimination of parties may create for the first time a party alignment that supports diversity jurisdiction. Under section 1446(b), removal is possible whenever this event occurs, so long as the change of parties was voluntary as to the plaintiff. Settlement with a diversity-destroying defendant on the eve of trial, for example, may permit the remaining defendants to remove. Removal late in the proceedings may result in substantial delay and disruption.

Subsection (b)(3) deletes 28 U.S.C. 1446(d) and thereby abolishes the bond requirement associated with removal. The bond requirement imposes a cost that may be substantial to some litigants, and constitutes an additional procedural complication. A bond is not required on filing an action, and should not be required on removal. Moreover, the proposed amendment to section 1447(c) will ensure that a substantive basis exists for requiring payment of actual expenses incurred in resisting an improper removal; civil rule 11 can be used to impose a more severe sanction when appropriate.

Subsection (c) amends 28 U.S.C. 1447(c) and adds a new subsection (e). Section 1447(c) now appears to require remand to state court if at any time before final judgment it appears that the removal was improvident. So long as the defect in removal procedure does not involve a lack of federal subject matter jurisdiction, there is no reason why either State or Federal courts, or the parties, should be subject to the burdens of shuttling a case between two courts that each have subject matter jurisdiction. There is also some risk that a party who is aware of a defect in removal procedure may hold the defect in reserve as a means of forum shopping if the litigation should take an unfavorable turn. The amendment provides a period of 30 days within which remand must be sought on any ground other than lack of subject matter jurisdiction. The amendment is written in terms of a defect in "removal procedure" in order to avoid any implication that remand is unavailable after disposition of all federal questions leaves only State law questions that might be decided as a matter of ancillary or pendent jurisdiction or that instead might be remanded.

The proposal also would amend section 1447(c) to ensure that the court may order payment of actual expenses caused by an improper removal. As noted above, this provision would replace the bond provision now set out in section 1446(d), which covers payment of "all costs and disbursements incurred by reason of the removal proceedings should it be determined that the case was not removable or was improperly removed."

Proposed section 1447(e) is new. It takes advantage of the opportunity opened by removal from a state court to permit remand if a plaintiff seeks to join a diversity-destroying defendant after removal. Joinder coupled with remand may be more attractive than either dismissal under civil rule 19(b) or denial of joinder. The flexibility built into the framework of rule 19(b) fully supports this approach. This provision also helps to identify the consequences that may follow removal of a case with unidentified fictitious defendants.

It would be possible to draft a broader amendment. The most obvious alternative would be to provide that "the court may deny joinder, dismiss the action, or permit joinder and either remand to the state court or retain jurisdiction." This approach would rely on the concept of pendant party jurisdiction, and justify departure from the traditional requirement of complete diversity by the advantage of permitting the most desirable joinder of parties without sacrificing the advantage of continuing proceedings that may be well under way in the Federal court. The more modest approach was chosen instead in order to avoid the opposition that might be encountered by a proposal that would provide a small enlargement of diversity jurisdiction.

Section 1017. Cost-of-Living Increases for Judicial Survivors' Annuities

Section 1017 would address the problems faced by widows and widowers of Federal judges who have thus far received inadequate cost-of-living increases in their survivors' annuities. Current law, pursuant to 28 U.S.C. § 376(m), provides that:

"Whenever the salary paid for service in one of the offices designated in paragraph (1) of subsection (a) of this section is increased, each annuity payable from the "Judicial Survivors' Annuities Fund", which is based, in whole or in part, upon a deceased judicial official having rendered some portion of his or her final eighteen months of service in that same office, shall also be increased. The actual amount of the increase in such an annuity shall be determined by multiplying the amount of the annuity, on the date of which the increase in salary becomes effective, by 3 percent for each 5 percent by which such salary has been increased. In the event that such salary is increased by less than 5 percent, there shall be no increase in such annuity."

This provision was enacted in 1976, prior to the inflationary period of the late 1970s. Since that time, most increases in judicial salaries have amounted to 3 percent or less, thus seldom arriving at or exceeding the 5 percent threshold required to generate an increase pursuant to 28 U.S.C § 376(m). The salaries of Federal judges have historically followed those of Members of Congress and high-ranking Executive Branch officials. Congress has been reluctant to raise its own salary in increments of more than 3 percent. Thus, Federal judges have received few raises at or exceeding 5 percent, and unfortunately, this has resulted in few 3 percent raises for surviving spouses since 1976. The Personnel Office of the Administrative Office of the United States Courts estimates that, as of March 31, 1987, approximately 193 persons have been adversely affected by this provision.

Section 1017 would amend 28 U.S.C. § 376(m) to gear the cost-of-living adjustment for Judicial Survivors' Annuities to the cost-of-living adjustment made for civil service retirees pursuant to 5 U.S.C. § 8340(b). In other words, the cost-of-living increase in a Judicial Survivor's Annuity would be tied to the percentage change in the Consumer Price Index, as is done with Civil Service Retirement Annuities. In order to place such annuitants in a position similar to that in which they would have been if the cost-of-living adjustment had always been tied to the Consumer Price Index, this section also provides for an initial "catch-up" annuity increase of 10 percent.

Section 1018. Board of Certification for Circuit Executives

The Judicial Conference has recommended that 28 U.S.C. § 332 be amended to eliminate the circuit executive board of certification procedure currently utilized for the selection of circuit executives and to place its personnel evaluation functions in the judicial councils of each circuit. (See Conf. Rept., March 1988, p. 34). The Board was established in 1971 as part of the Circuit Executive Act (Public Law 91-647) and, as a national personnel evaluation board, accorded responsibility to ensure that the Judiciary would be provided with trained professional managers who could offer staff support to judicial councils and administrative support to chief judges. The Board played a vital role in the early years in the evolution of the court executive position, setting standards for qualification and initially screening the many applicants.

After careful review, the Judicial Conference concluded that the concept of court executive has matured and ripened in the 17 years of the Board's existence to such an extent that the Board is no longer needed to structure and manage the selection of these court officers. Indeed, both the number of and demand for outstanding trained managers available to the courts has increased dramatically. As a result, the focus has shifted sharply away from development of the concept of "court administrator" and training for such positions to recruiting activities. It would appear that the judicial councils and courts can now most effectively recruit and select court executives at the local level. Accordingly, the Committee has incorporated in this section the proposal to eliminate the centralized board of certification and place the responsibility for recruiting on the circuit judicial councils, using the same statutory selection criteria, applicable to the certification procedure.

Section 1019. Appeals under Title 9, United States Code

In September 1986, the Judicial Conference approved support of an American Bar Association proposal to amend the United States Arbitration Act (9 U.S.C. § 1 et. seq) to add a provision dealing with appeal from judicial orders relating to arbitration (Conf. Rept., pp. 59-60). Section 1019 sets forth this proposal.

Subsection (a) of the proposal, in effect, permits an appeal where the effect of the court order favors litigation over arbitration—e.g., refusal to stay judicial action on issue referable to arbitration, denial of an application to compel arbitration, et. seq—or where a final decision with respect to arbitration is involved. Subsection (b), on the other hand, would not permit an appeal in specified instances in which an interlocutory judicial order favored arbitration over litigation—e.g., granting a stay of the judicial action, compelling arbitration, or refusing to enjoin an arbitration.

Under present doctrine, appeal from orders with respect to arbitration depends not only on the final judgment rule, but also on antique distinctions arising from the days when law and equity were administered by separate courts. The appealability of orders that direct arbitration, stay arbitration, or stay judicial proceedings depends on accidents of procedure that do not respond to any rational needs of either appeals timing or arbitration. The rules as to appealability, moreover, often are obscure.

This section permits arbitration to proceed without appeal if the district court orders that arbitration precede litigation, and by permitting immediate appeal if the district court orders that litigation precede arbitration. Denial of appeal when arbitration is given precedence should not often be costly: district courts usually will be correct, and the arbitration process is apt to produce considerable savings in the process of preparing for trial if the dispute is ultimately found nonarbitrable. If the dispute is found to be arbitrable, of course, great saving will be made.

Moreover, under the proposed statute, appealability does not turn solely on the policy favoring arbitration. Appeal can be taken from final judgments, including a final judgment in an action to compel arbitration, a final judgment that refuses to enjoin arbitration, or a final judgment dismissing an action in deference to arbitration. These appeals preserve the general policy that appeal should be available where there is nothing left to be done in the district court. Orders of any type can be appealed under 28 U.S.C. §1292(b), preserving the opportunity for immediate review whenever the district court and court of appeals concur that this course is desirable.

Section 1020. Miscellaneous Technical Amendments

Section 1020 contains purely technical amendments

Section 1021. Configuration of Florida Districts

This section would transfer the counties of Collier, Hendry, and Glades from the Southern District of Florida to the Middle District of Florida. The distance between Naples (Collier County) and Miami, where Federal cases arising in Collier County are tried, is approximately 110 miles or 220 miles roundtrip. Hendry and Glades Counties are almost as far from Miami, where cases originating in these counties are tried. This imposes a substantial hardship on the citizens, lawyers, and litigants on the west coast of Florida who are required to travel to Miami for trial or jury service on two-week panels. This proposal would adjust district boundaries to include Naples and the surrounding areas of Southwest Florida in the Middle District of Florida, so that court for this area can be held at Ft. Myers, which is approximately 38 miles away and currently an underutilized federal facility.

At the March 1987 proceeding of the Judicial Conference of the United States, upon the recommendations of the Eleventh Circuit Judicial Council and the districts involved, the Conference considered the proposed realignment of the counties in the Middle and Southern District of Florida. The Conference approved the proposed realignment, but felt that the choice of districts in which to place the counties was a political one which should be made by the Members of Congress, the Bar Association of the counties involved and the people of Southwest Florida. Prior to the introduction of this legislation, Members of Congress from the area, Congressman Lewis and Mack and Senator Chiles, met with local community bar representatives concerning the counties subject to realignment. After listening to all concerned, they determined that the citizens of Southwest Florida could best be served by placing the counties involved in the Middle District of Florida.

Section 1022. Service of Article III Judges on Territorial Courts

Section 1022 adds a new section 297 to chapter 13 of title 28 to authorize the Chief Justice or the chief judge of the Ninth Circuit to assign any circuit or district judge within the circuit, with the consent of the judge so assigned, to serve temporarily as a judge of a duly constituted court of the freely associated compact states whenever so requested by the appropriate official of the compact state and the assignment is necessary for the proper dispatch of business of the respective court.

With the gradual termination of the trust known as the Trust Territories of the Pacific Islands, the United States has entered into compacts of free association with the governments of the Federal States of Micronesia, the Marshall Islands, and the Republic of Palau. These three compact states do not have enough full-time judges to staff their entire court structure. In order to permit Ninth Circuit judges to sit by designation on such courts, as was done when the islands were administered by the United States under the trust territories government, the Judicial Conference at the March 1987 meeting endorsed enactment of legislation by the Congress which permit the Chief Justice or the chief judge of the Ninth Circuit to assign judges of the Ninth Circuit to serve on the courts of Micronesia, the Marshall Islands, and Palau. (See Conf. Rept., March 1987, p. 39.) This section implements this recommendation.

Section 1023. Salaries of United States Claims Court Judges

This section provides that each judge of the United States Claims Court shall receive a salary at the rate of pay as judges of the district courts of the United States.

Mr. THURMOND. Mr. President, I rise today in support of S. 1482, the "Judicial Improvements and Access to Justice Act of 1988." This bill was introduced by Senator HEFLIN at the request of the Judicial Conference of the United States. Contained within the bill are numerous recommendations of the Judicial Conference designed to improve the administration of justice in the Federal courts. In its present form, all the provisions contained within S. 1482 have been approved by the Judiciary Committee.

Briefly, I would like to highlight certain provisions in this bill. Title I contains the Federal Courts Study Act which creates a Commission to: First, study relevant aspects of Federal and State court jurisdiction; two, to gather and assimilate previous studies as to the workload and caseload of the courts; and three, develop a long-range plan for the improvement of the judicial system

Title II would reform the Federal diversity jurisdiction statute and raise the amount in controversy requirement from $10,000 to $50,000. This provision simply reflects the present diversity amount adjusted for inflation. Another provision creates a Federal Judicial Center Foundation which will be allowed to accept and receive gifts and other donations to be used by the Federal Judicial Center for the purpose of aiding and facilitating the work of the center. Additionally, title VII contains improvements to the Federal Court Interpreters Program. This provision mandates increased participation in the Program by the Administrative Office of U.S. Courts giving them discretion in choosing which languages to adopt for certification. I believe that this will result in a timely reassessment of the quality of interpreting now being provided to non-English and hearing impaired individuals.

Finally, title X contains minor and technical provisions supported by the Administrative Office of U.S. Courts designed to improve the efficiency and effectiveness of the judicial system.

For the above reasons, I support S. 1482 and urge its passage.

Mr. SIMON. Mr. President, I rise in support of S. 1482, the omnibus court reform package reported favorably earlier this week by the Committee on the Judiciary.

Because of the leadership and guidance of the Courts Subcommittee Chairman HOWELL HEFLIN, this bill makes a number of improvements in the procedures and administration of the judiciary. I understand that the bill approved by the Committee on the Judiciary is acceptable to the other body and I urge its adoption.

I want to bring particular attention to the court interpreters amendments in S. 1482. The amendments made by this title of the bill incorporate the changes made by legislation I introduced last year with Senator ORRIN HATCH that has also been approved by the committee.

This legislation will amend the Court Interpreters Act of 1978, the original congressional attempt to ensure that non-English speakers and the hearing impaired would not be denied constitutional rights of due process in Federal court.

A decade after the original enactment, there is still only partial implementation of the 1978 act. The 1978 act instructed the Director of the Administrative Office of the Courts to determine the qualifications of interpreters and establish a program for certification of such persons. There are still only interim regulations for the program and only Spanish-language interpreters are certified. Today's bill makes clear that other Americans who are hearing impaired or do not speak English are to be afforded the benefits of the Court Interpreters Act.

One of the most important improvements made in this section is the extension of the Court Interpreters Act to grand jury proceedings. Accurate interpretation is particularly significant at the grand jury level. An error in the interpretation of the testimony of an accused, or that of a witness, could result in wasted court time and money. More important, an interpretation error could result in the incarceration of innocent individuals

The Committee on the Judiciary heard extensive testimony in the 99th Congress about the dangers of this very problem. An attorney testified before the committee and read the statement of Takeru Kamiyama, a client who was sent to jail and convicted of perjury. His conviction was triggered by what amounted to an incorrect interpretation of his testimony before a grand jury.

Another important improvement made by this section is the new method for certification of languages for which interpreters are needed. This bill directs the judicial councils of the Federal circuits to survey the language and interpreter needs of their district courts and, based on what they learn, recommend to the Director of the Administrative Office of the U.S. Courts certification of necessary languages. While this process will also require the approval of the Judicial Conference, I expect that the councils will receive the proper deference in light of their ability to directly ascertain district court needs for effective interpreter service. Other improvements, among them a mandate that the Director of the Administrative Office of the U.S. Courts provide clear guidelines to the courts on the selection of "otherwise qualified interpreters." Court interpretation must have stringent quality control. Otherwise qualified interpreters are to be employed where certified interpreters are not otherwise available. These guidelines are necessary to advance the requirement of accuracy when the services of interpreters who have not been certified are called upon in the courts.

Quality can be further enhanced by improvements in the availability of court interpreter training programs. Court interpretation requires multiple skills and a full understanding of two or more languages, interpretation, and legal terminology. State and private educational institutions need to play a more expansive role in training court interpreters in much the same way they train attorneys.

Finally, this bill brings uniformity to the issue of electronically sound recording proceedings in which an interpreter is used. This bill provides that, on the motion of the accused, the court shall require the recording of the segments of a grand jury proceeding in which an interpreter is used. In all other stages of a judicial proceeding, the presiding judicial officer is to determine whether to require electronic sound recording. This decision shall be in response to the motion of a party and will be based on identified criteria.

These and other improvements made by the bill will enable the Federal courts to become better equipped to handle the linguistically diverse populations that find themselves before our judicial system. Throughout the process of reaching this compromise legislation, a great deal of cooperation has been exhibited not only on a bipartisan basis within the Committee on the Judiciary, but with Members of the other body and with representatives of the administration. Our legislation has gained the attention of members of the Diet in Japan who themselves are considering expanding court interpreter services for persons who do not speak Japanese. As our trade and other relations with that nation expand for the rest of this century and the next, I am pleased that the improvements we are making today to our court system will be recognized by other nations to the ultimate benefits of Americans who are abroad.

Mr. GRASSLEY. Mr. President, I commend Senator HEFLIN, the chairman of our Subcommittee on Courts, and his staff for their hard work on S. 1482, the judicial improvements bill.

This is a consensus bill. There has been compromise on all sides, including with our colleagues in the other body. This bill is a product that's worthy of the Senate's support. Most importantly, it contains provisions that are needed by the third branch of Government to increase its efficiency in serving the public in the face of ever-increasing caseloads.

In this regard, I'm especially pleased that the Senate bill includes provisions that permit a controlled experiment in court-annexed arbitration. I offered an amendment in the subcommittee which expressly authorizes arbitration in the following districts: northern district of California, middle district of Florida, western district of Michigan, western district of Missouri, district of New Jersey, eastern district of New York, middle district of North Carolina, western district of Oklahoma, eastern district of Pennsylvania, and western district of Texas. In 10 other districts, to be selected by the Judicial Conference, court-annexed arbitration may be conducted with the consent of the parties.

Arbitration holds out great promise as a dispute-solving mechanism for both the public at large and the Federal Judiciary. The districts that I named earlier have tried it and they have enjoyed success. Indeed, surveys of attorneys, judges, and litigants by the Federal Judicial Center indicate a high degree of satisfaction with arbitration experiments in the Federal courts to date.

For example, the large majority of judges who have had at least 18 months of experience with court-annexed arbitration support the program, believe that it has reduced their caseload burden, and would recommend it to other courts.

A large majority of attorneys support both the concept of arbitration and the arbitration programs as implemented in their districts. The majority reported that referring cases to arbitration saved their time, their client's time, and saved their client's money. Most of these lawyers also supported the procedures associated with arbitration, even when they weren't satisfied with the outcome of the case.

Finally, a majority of litigants surveyed also had good things to say about arbitration. Even those unhappy with the results in particular cases agreed that the procedures were fair. Indeed, some surveys suggest that litigants actually prefer an arbitrator over a judge or jury as the factfinder and resolver of some disputes.

Court-annexed arbitration, as promoted by this bill, is not "second-class" justice, or "rough justice," Mr. President. I would not be so enthusiastic about it if that were the case.

Now we can expand the program, with appropriate congressional oversight.

I thank Chairman HEFLIN for his willingness to work with me on language to permit courts to try arbitration techniques, and I look forward to the bill's enactment.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the bill.

The bill (S. 1482) was ordered to be engrossed for a third reading, was read the third time, and passed.

COURT REFORM AND ACCESS TO JUSTICE ACT

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 954, H.R. 4807.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4807) to amend title 28, United States Code, to make certain improvements with respect to the Federal judiciary and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. BYRD. Mr. President, I ask unanimous consent that all after the enacting clause of H.R. 4807 be stricken and that the text of S. 1482 as passed by the Senate be inserted in lieu thereof.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 4807), as amended, was passed.

SWAP AGREEMENTS

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1074, S. 2279, to amend title II of the United

States Code, the Bankruptcy Code, regarding swap agreements.

The **PRESIDING OFFICER.** The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2279) to amend title II of the United States Code, the bankruptcy code, regarding swap agreements.

The **PRESIDING OFFICER.** Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The **PRESIDING OFFICER.** The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2279

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 101 of title 11, United States Code, is amended by—

(1) redesignating paragraphs (49), (50), and (51) as paragraphs (51), (52), and (53) respectively; and

(2) inserting between paragraphs (48) and (51), as redesignated herein, the following:

"(49) 'swap agreement' means an agreement, including terms and conditions incorporated by reference therein, which is a rate swap agreement, basis swap, forward rate agreement, interest rate option, forward foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option or any other similar agreement or combination thereof, and a master agreement for any of the foregoing together with all supplements shall be considered one swap agreement;

"(50) 'swap participant' means an entity that, on any day during the period beginning 90 days before the date of the filing of the petition, has an outstanding swap agreement with the debtor;".

Sec. 2. Section 362(b) of title 11, United States Code, is amended by—

(1) striking out "or" at the end of paragraph (12);

(2) striking out the period at the end of paragraph (13) and inserting in lieu thereof "; or"; and

(3) inserting at the end thereof the following:

"(14) under subsection (a) of this section, of the setoff by a swap participant, of any mutual debt and claim under or in connection with one or more swap agreements that constitutes the setoff of a claim against the debtor for any payment due from the debtor under or in connection with swap agreements against any payment due to the debtor from the swap participant under or in connection with the swap agreements or against cash, securities, or other property of the debtor held by or due from such swap participant to guarantee, secure or settle swap agreements.".

Sec. 3. Section 546 of title 11, United States Code, is amended by adding at the end thereof the following:

"(g) Notwithstanding sections 544, 545, 547, 548(a)(2) and 548(b) of this title, the trustee may not avoid a transfer under a swap agreement, made by or to a swap participant, in connection with a swap agreement and that is made before the commencement of the case, except under section 548(a)(1) of this title.".

Sec. 4. Section 548(d)(2) of title 11, United States Code, is amended by—

(1) striking out "and" at the end of subparagraph (B);

(2) striking out the period at the end of subparagraph (C) and inserting in lieu thereof "; and"; and

(3) adding at the end thereof the following:

"(D) a swap participant that receives a transfer in connection with a swap agreement, as defined in section 101(49 of this title, takes for value to the extent of such transfer".

Sec. 5. Section 553(b)(1) of title 11, United States Code, is amended by inserting "362(b)(14)," after "362(b)(7),".

Sec. 6. Subchapter III of chapter 5 of title 11, United States Code, is amended by adding at the end thereof the following:

"§ 560. Contractual right to terminate a swap agreement

"The exercise of any contractual rights of a swap participant to cause the termination of a swap agreement because of a condition of the kind specified in section 365(e)(1) of this title or to set off or net out any termination values or payment amounts arising under or in connection with one or more swap agreements shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title. As used in this section, the term 'contractual right' includes a right, whether or not evidenced in writing, arising under common law, under law merchant or by reason of normal business practice.".

PERSONAL PRIVACY WITH RESPECT TO VIDEOTAPES, AUDIOVISUAL MATERIALS, AND LIBRARY MATERIALS OR SERVICES

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1075, S. 2361.

The **PRESIDING OFFICER.** The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2361) to amend title 18, United States Code, to preserve personal privacy with respect to the rental, purchase, or delivery of video tapes or similar audiovisual materials and the use of library materials or services.

The **PRESIDING OFFICER.** Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which has been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

S. 2361

SECTION 1. SHORT TITLE.

This Act may be cited as the "Video Privacy Protection Act of 1988".

SEC. 2. CHAPTER 121 AMENDMENT.

(a) In General.—Chapter 121 of title 18, United States Code, is amended—

(1) by redesignating section 2710 as section 2711; and

(2) by inserting after section 2709 the following:

"§ 2710. Wrongful disclosure of video tape rental or sale records

"(A) Definitions.—For purposes of this section—

"(1) the term 'consumer' means any renter, purchaser, or subscriber of goods or services from a video tape service provider;

"(2) the term 'ordinary course of business' means only debt collection activities, order fulfillment, request processing, and the transfer of ownership;

"(3) the term 'personally identifiable information' includes information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider or library; and

"(4) the term 'video tape service provider' means any person, engaged in the business of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials, or any person or other entity to whom a disclosure is made under paragraph (b)(2)(D), but only with respect to the information contained in the disclosure.

"(b) Video Tape Rental and Sale Records.—(1) A video tape service provider who knowingly discloses, to any person, personally identifiable information concerning any consumer of such provider shall be liable to the aggrieved person for the relief provided in subsection (d).

"(2) A video tape service provider may disclose personally identifiable information concerning any consumer—

"(A) to the consumer;

"(B) to any person with the informed, written consent of the consumer given at the time the disclosure is sought;

"(C) to a law enforcement agency pursuant to a warrant issued under the Federal Rules of Criminal Procedure, an equivalent State warrant, a grand jury subpoena, or a court order;

"(D) to any person if the disclosure is solely of the names and addresses of consumers and if—

"(i) the video tape service provider has provided the consumer with the opportunity, in a clear and conspicuous manner, to prohibit such disclosure; and

"(ii) the disclosure does not identify the title, description, or subject matter of any video tapes or other audio visual material; however, the subject matter of such materials may be disclosed if the disclosure is for the exclusive use of marketing goods and services directly to the consumer;

"(E) to any person if the disclosure is incident to the ordinary course of business of the video tape service provider; or

"(F) pursuant to a court order, in a civil proceeding upon a showing of compelling need for the information that cannot be accommodated by any other means, if—

"(i) the consumer is given reasonable notice, by the person seeking the disclosure, of the court proceeding relevant to the issuance of the court order; and

"(ii) the consumer is afforded the opportunity to appear and contest the claim of the person seeking the disclosure.

If an order is granted pursuant to subparagraph (C) or (F), the court shall impose appropriate safeguards against unauthorized disclosure.

"(3) Court orders authorizing disclosure under subparagraph (C) shall issue only with prior notice to the consumer and only if the law enforcement agency shows that there is probable cause to believe that the records or other information sought are relevant to a legitimate law enforcement inquiry. In the case of a State government authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the video tape service provider, may quash or modify such order if the information or records requested are unreasonably voluminous in nature or if compliance with such order otherwise would cause an unreasonable burden on such provider.

"(c) CIVIL ACTION.—(1) Any person aggrieved by any act of a person in violation of this section may bring a civil action in a United States district court.

"(2) The court may award—

"(A) actual damages but not less than liquidated damages in an amount of $2,500;

"(B) punitive damages;

"(C) reasonable attorneys' fees and other litigation costs reasonably incurred; and

"(D) such other preliminary and equitable relief as the court determines to be appropriate.

"(3) No action may be brought under this subsection unless such action is begun within 2 years from the date of the act complained of or the date of discovery.

"(4) No liability shall result from lawful disclosure permitted by this section.

"(d) PERSONALLY IDENTIFIABLE INFORMATION.—Personally identifiable information obtained in any manner other than as provided in this section shall not be received in evidence in any trial, hearing, arbitration, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision of a State.

"(e) DESTRUCTION OF OLD RECORDS.—A person subject to this section shall destroy personally identifiable information as soon as practicable, but no later than one year from the date the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsections (b)(2) or (c)(2) or pursuant to a court order.

"(f) SELECTION OF A FORUM.—Nothing in this section shall limit rights of consumers or patrons otherwise provided under State or local law. A Federal court shall, in accordance with section 1738 of title 28, United States Code, give preclusive effect to the decision to any State or local court or agency in an action brought by a consumer or patron under a State or local law similar to this section. A decision of a Federal court under this section shall preclude any action under a State or local law similar to this section.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 121 of title 18, United States Code, is amended—

(1) in the item relating to section 2710, by striking out "2710" and inserting "2711" in lieu thereof; and

(2) by inserting after the item relating to section 2709 the following new item:

"2710. Wrongful disclosure of video tape rental or sale records".

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read "A bill to amend title 18, United States Code, to preserve personal privacy with respect to the rental, purchase, or delivery of video tapes or similar audio visual material."

AMENDMENT NO. 3702

(Purpose: To make technical corrections to the committee substitute)

Mr. BYRD. Mr. President, on behalf of Mr. LEAHY, I submit an amendment and ask for its immediate consideration.

THE PRESIDING OFFICER. The amendment will be stated. The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. LEAHY, proposes an amendment numbered 3702.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

THE PRESIDING OFFICER. Without objection, it is so ordered. The amendment is as follows:

On page 9, strike out lines 18 and 19, and insert in lieu thereof the following:

" '§ 2710. **Wrongful disclosure of video tape rental or sale records'.".**

On page 10, line 7, strike out "or library".

On page 10, line 10, after "engaged in" insert "interstate or foreign commerce in or affecting".

On page 10, line 13, strike out "paragraph (b)(2)(D)" and insert in lieu thereof "subparagraph (D) or (E) of subsection (b)(2)".

On page 14, beginning with line 8, strike out through line 16, and insert in lieu thereof the following:

"(e) PREEMPTION.—The provisions of this section prempt only the provisions of State and local law that require disclosure prohibited by this section.".

On page 14, strike out all after line 24 and insert in lieu thereof the following:

"2710. Wrongful disclosure of video tape rental or sale records."

THE PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3702) was agreed to.

Mr. SIMON. Mr. President, I rise today in support of the Video Privacy Protection Act which was introduced by my colleagues Senators LEAHY, GRASSLEY, SIMPSON, and I, to protect one of the most-treasured liberties of all, the right to privacy. There is no denying that the computer age has revolutionalized our world. Over the past 20 years we have seen remarkable changes in the way each one of us goes about our lives. Our children learn through computers. We bank by machine. We watch movies in our living rooms. These technological innovations are exciting and as a nation we should be proud of the accomplishments we have made.

Yet as we continue to move ahead, we must protect time-honored values that are so central to this society, particularly our right to privacy. The advent of the computer means not only that we can be more efficient than ever before, but that we have the ability to be more intrusive than ever before. Every day Americans are forced to provide to businesses and others personal information without having any control over where that information goes. Computer records are kept on where we travel, what we eat, what we buy, what we watch, and what we read. These records are a window into our loves, likes, and dislikes. As Justice Brandeis predicted over 40 years ago in his famous dissent in the Olmstead wiretap case—

> Time works changes, brings into existence new conditions and purposes . . . Subtler and more far reaching means of invading privacy have become available . . . Ways may some day be developed by which the Government, without removing papers from secret drawers, can reproduce them in court and by which it will be enabled to expose to a jury the most intimate occurences of the home.

This point was brought home to me during the course of the confirmation hearings on Judge Bork when I learned that a reporter had received from a local video store a list of the movies that Judge Bork and his family had rented. Who would guess that the choice of movies one watches in the privacy of the home would not be confidential?

The Video Privacy Protection Act takes an important step in ensuring that individuals will maintain control over their personal information when renting or purchasing a movie. The bill specifically provides for a Federal cause of action in the event a list which identifies the movies we watch is released. Since there are certain circumstances in which it may be necessary for this information to be divulged, the bill provides for some limited exceptions to the prohibition, including an exemption to cover legitimate law enforcement activities which has been modified since introduction to meet the concerns expressed by the FBI.

No doubt in the days and years ahead we will continue to make much progress in developing new technologies. While I am fully supportive of innovation and growth, I remain committed to protecting those principles which are so central to America. The Video Privacy Protection Act strikes the necessary balance to ensure that our privacy will not be lost as we move ahead. In closing, I want to thank all who helped move this legislation and urge my colleagues in the House to take swift action as well.

Mr. LEAHY. Mr. President, the right of privacy is one of our most cherished freedoms.

It shields us from the enormous appetite of large organizations of personal information.

It preserves our freedom to explore new ideas and to question popular beliefs without fear of criticism or recrimination.

And it protects the individuality reflected in each of our unique likes and dislikes.

Privacy protection is an increasingly challenging problem for the Congress in an information age. Government agencies and private corporations are keeping more information, in a more detailed manner, about more activities in our personal lives.

The Video Privacy Protection Act will establish comprehensive privacy protection for video tape users. It is a timely response to the need to protect private activities in an era of increasing information collection and dissemination.

The Judiciary Committee reported out, favorably, the Video Privacy Protection Act. All of us on the committee share a strong interest in the passage of this bill. The reason is that we all remember the disclosure of the video rental list of Judge Bork and his family last fall.

That was outrageous. Together we on the committee have drafted a bill that will extend privacy protection to all Americans.

This bill makes explicit the right to information privacy—an increasingly important part of the right to privacy in an age of automated information systems. It seeks to strike the "delicate balance," as described by the Privacy Protection Study Commission in 1977, between the information needs of organizations and each individual's desire of confidentiality and control over the records of personal activities.

In 1986 we enacted landmark privacy legislation—the Electronic Communications Privacy Act. That law protected communications from unlawful interception. This law will protect information from unlawful disclosure.

It is the most recent in a long line of statutes protecting the right of privacy. Beginning with the Fair Credit Reporting Act of 1970 and continuing up to the Electronic Communications Privacy Act, which I sponsored in 1986, we in the Congress have continually reaffirmed our commitment to the right of privacy. In 1973 we established privacy protection for educational records. In 1974 we passed the landmark Privacy Act that set up comprehensive restrictions on Federal agencies' collection, use and disclosure of personally identifiable information. We protected tax records in 1976 and bank records in 1978; 1980 was the year we passed legislation to protect newsrooms from unannounced searches. And 1984, the year of Orwell, the U.S. Congress established comprehensive privacy protection for cable service subscribers. In each instance, the Congress has established statutory protections to extend the right of privacy.

I am pleased to have worked with Erol's, the Video Software Dealer's Association, the Direct Marketing Association, the [ACLU], the American Library Association, the FBI, and the Department of Justice to develop a bill that establishes strong safeguards, clear guidelines, and workable commercial practices.

Erol's and the members of the Direct Marketing Association have established good policies to provide their customers with some control over the dissemination of transactional information. I support these efforts by the private sector to establish information privacy protection for their customers. Confidentiality provisions, "negative check-off' provisions, record destruction policies, and enhanced security for automated systems containing personal information make good business sense and help safeguard the right of information privacy. As we learned with the Electronic Communications Privacy Act, customers place greater value on services with clear privacy protections.

A little more than a year ago, I joined with other members of the Judiciary Committee in denouncing the disclosure of the video tape rental list of Judge Bork and his family. We were in the middle of a national debate over the constitutional right to privacy with a Supreme Court nominee. In the middle of that debate, a local newspaper ran an insipid story about the movies Judge Bork and his family watch in their home. That was a mockery of privacy.

Today, after the dedicated work of our committee members, we are prepared to pass legislation that will prevent such abuses in the future. It will reaffirm our commitment to the right of privacy.

Few of us will ever undergo the public scrutiny of a Supreme Court nominee, but all of us are entitled to a reasonable expectation of privacy. It is simply no one's business what Judge Bork, PAT LEAHY, or anyone else chooses to watch in their home.

I thank Senator GRASSLEY, Senator SIMON, Senator SIMPSON, Senator HUMPHREY, Senator THURMOND, and Senator BIDEN for their work in support of this legislation. I would also like to thank Chairman BOB KASTENMEIER with whom I chaired a joint hearing on this bill and who has been the guiding force on the House side to ensure enactment of the bill this session. I would also like to express my appreciation for the tireless work of the staff members who worked on this legislation: Melissa Patack with Senator GRASSLEY; Susan Kaplan with Senator SIMON; Bill Myers with Senator SIMPSON; George Smith with Senator HUMPHREY; Terry Wooten and Cindy Backburn with Senator THURMOND; Jeff Peck and Diana Huffman with Senator BIDEN; and Ginny Sloan with Representative KASTENMEIER. I also thank Marc Rotenberg and Ann Harkins on my staff for all their efforts.

Mr. GRASSLEY. Mr. President, I am pleased to speak in support of the Video Privacy Act of 1988, and at the outset, I would like to thank Senator LEAHY, as well as Senator SIMON and Senator SIMPSON, for their commitment and effort on this bill.

It was Senator SIMPSON who identified the problem this bill is intended to correct just over 1 year ago. At that time, a reporter released a list of the video tapes rented by Judge Robert Bork and his family. Senator SIMPSON, speaking, I'm sure, for all the members of the Judiciary Committee, found this to be an outrageous invasion of privacy.

So, we went to work in an effort to ensure that such activity would not happen in the future.

We all want to live in a society that values privacy. And we rightfully want both the Government and business to live in a society that respects this basic right.

But privacy is not a generalized right. And it is up to the legislature to define and give meaning to privacy. As our society grows more complex, legislatures should be responsive to new technological threats to privacy. This is the role of the legislature in a democratic society.

The Video Privacy Act does just that, in a narrow area. Video stores will be precluded from disclosing their customers names, addresses and specific video tapes rented or bought by the customers. The bill does set forth limited circumstances in which this information may be revealed. For example, law enforcement officials may obtain this information with a warrant, grand jury subpoena, or an appropriate court order. And the bill allows for those engaged in direct marketing businesses to release mailing lists of their customers, so long as the customers has had a chance to say "no" to such mailing list disclosures.

This bill imposes liability on the video store where the information is knowingly disclosed in violation of the bill's requirements. And under the common law of agency, an employer may be liable for the actions of its employees where the employee acts within the scope of his employment. A video store would, therefore, be best advised to educate its employees about the bill's provisions and discipline employees for unauthorized disclosures. A court would, no doubt, take such employers' actions into account in determining whether the employee was acting within the scope of his job in the event of a prohibited disclosure.

Mr. President, once again I thank my colleagues for their work on and support of this legislation.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2361

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Video Privacy Protection Act of 1988".

SEC. 2. CHAPTER 121 AMENDMENT.

(a) IN GENERAL.—Chapter 121 of title 18, United States Code, is amended—

(1) by redesignating section 2710 as section 2711; and

(2) by inserting after section 2709 the following:

"§ 2710. Wrongful disclosure of video tape rental or sale records

"(a) DEFINITIONS.—For purposes of this section—

"(1) the term 'consumer' means any renter, purchaser, or subscriber of goods or services from a video tape service provider;

"(2) the term 'ordinary course of business' means only debt collection activities, order fulfillment, request processing, and the transfer of ownership;

"(3) the term 'personally identifiable information' includes information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider; and

"(4) the term 'video tape service provider' means any person, engaged in interstate or foreign commerce in or affecting the business of rental, sale, or delivery of prerecorded video cassette types or similar audio visual materials, or any person or other entity to whom a disclosure is made under subparagraph (O) or (E) of subsection (b)(2) but only with respect to the information contained in the disclosure.

"(b) VIDEO TAPE RENTAL AND SALE RECORDS.—(1) A video tape service provider who knowingly discloses, to any person, personally identifiable information concerning any consumer of such provider shall be liable to the aggrieved person for the relief provided in subsection (d).

"(2) A video tape service provider may disclose personally identifiable information concerning any consumer—

"(A) to the consumer;

"(B) to any person with the informed, written consent of the consumer given at the time the disclosure is sought;

"(C) to a law enforcement agency pursuant to a warrant issued under the Federal Rules of Criminal Procedure, an equivalent State warrant, a grand jury subpoena, or a court order;

"(D) to any person if the disclosure is solely of the names and addresses of consumers and if—

"(i) the video tape service provider has provided the consumer with the opportunity, in a clear and conspicuous manner, to prohibit such disclosure; and

"(ii) the disclosure does not identify the title, description, or subject matter of any video tapes or other audio visual material; however, the subject matter of such materials may be disclosed if the disclosure is for the exclusive use of marketing goods and services directly to the consumer;

"(E) to any person if the disclosure is incident to the ordinary course of business of the video tape service provider; or

"(F) pursuant to a court order, in a civil proceeding upon a showing of compelling need for the information that cannot be accommodated by any other means, if—

"(i) the consumer is given reasonable notice, by the person seeking the disclosure, of the court proceeding relevant to the issuance of the court order; and

"(ii) the consumer is afforded the opportunity to appear and contest the claim of the person seeking the disclosure.

If an order is granted pursuant to subparagraph (C) or (F), the court shall impose appropriate safeguards against unauthorized disclosure.

"(3) Court orders authorizing disclosure under subparagraph (C) shall issue only with prior notice to the consumer and only if the law enforcement agency shows that there is probable cause to believe that the records or other information sought are relevant to a legitimate law enforcement inquiry. In the case of a State government authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the video tape service provider, may quash or modify such order if the information or records requested are unreasonably voluminous in nature or if compliance with such order otherwise would cause an unreasonable burden on such provider.

"(c) CIVIL ACTION.—(1) Any person aggrieved by any act of a person in violation of this section may bring a civil action in a United States district court.

"(2) The court may award—

"(A) actual damages but not less than liquidated damages in an amount of $2,500;

"(B) punitive damages;

"(C) reasonable attorneys' fees and other litigation costs reasonably incurred; and

"(D) such other preliminary and equitable relief as the court determines to be appropriate.

"(3) No action may be brought under this subsection unless such action is begun within 2 years from the date of the act complained of or the date of discovery.

"(4) No liability shall result from lawful disclosure permitted by this section.

"(d) PERSONALLY IDENTIFIABLE INFORMATION.—Personally identifiable information obtained in any manner other than as provided in this section shall not be received in evidence in any trial, hearing, arbitration, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision of a State.

"(e) DESTRUCTION OF OLD RECORDS.—A person subject to this section shall destroy personally identifiable information as soon as practicable, but no later than one year from the date the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsections (b)(2) or (c)(2) or pursuant to a court order.

"(f) PREEMPTION.—The provisions of this section preempt only the provisions of State or local law that require disclosure prohibited by this section.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 121 of title 18, United States Code, is amended—

(1) in the item relating to section 2710, by striking out "2710" and inserting "2711" in lieu thereof; and

(2) by inserting after the item relating to section 2709 the following new item:

"2710. Wrongful disclosure of video tape rental or sale records.".

PUNISHMENT OF CORRUPTION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1078, S. 2793, a bill to amend title 18 of the United States Code to punish corruption.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2793) to amend title 18 of the United States Code to punish corruption.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary, with an amendment.

On page 6, line 16, Strike "appointed", through and including the period on line 17, and insert "appointed.".

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Anti-Corruption Act of 1988".

SEC. 2. OFFENSE.

Chapter 11 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 225. Public Corruption

"(a) Whoever, in a circumstance described in subsection (c), deprives or defrauds, or attempts to deprive or to defraud, by any scheme or artifice, the inhabitants of a State or political subdivision of a State of the honest services of an official or employee of such State or subdivision, shall be fined under this title, or imprisoned for not more than ten years (or, if the defendant intended that the scheme or artifice promote conduct constituting an offense under the laws of the United States or a State for which the maximum term of imprisonment is greater than ten years, shall be imprisoned as required or authorized by the law punishing such offense or for not more than twenty years, whichever is less), or both.

"(b) Whoever, in a circumstance described in subsection (c), deprives or defrauds, or attempts to deprive or to defraud, by any scheme or artifice, the inhabitants of a State or political subdivision of a State of a fair and impartially conducted election process in any primary, run-off, special, or general election, through the procurement, casting, or tabulation of ballots or voter registration forms which are false, fictitious, fraudulent, or illegal under the laws of the

State in which the election is held, or through the filing of any false, fictitious or fraudulent report required to be filed under State law regarding an election campaign, shall be fined under this title or imprisoned for not more than ten years, or both.

"(c) The circumstances referred to in subsections (a) and (b) are that—

"(1) for the purpose of executing or concealing such scheme or artifice or attempting to do so, the actor—

"(A) places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing;

"(B) transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce any writings, signs, signals, pictures, or sounds;

"(C) transports or causes to be transported any person or thing, or induces any person to travel in or to be transported in, interstate or foreign commerce; or

"(D) uses any facility of interstate or foreign commerce; or

"(2) the scheme or artifice affects in any manner or degree, or would if executed or concealed so affect, interstate or foreign commerce.

"(d) Whoever deprives or defrauds, or attempts to deprive or defraud, by any scheme or artifice, the inhabitants of the United States of the honest services of a public official or person who has been selected to be a public official shall be fined under this title or imprisoned for not more than ten years (or, if the defendant intended that the scheme or artifice promote conduct constituting an offense under the laws of the United States or a State for which the maximum term of imprisonment is greater than ten years, shall be imprisoned as required or authorized by the law punishing such offense, or for not more than twenty years, whichever is less), or both.

"(e) Whoever being an official, or public official, or person who has been selected to be a public official, directly or indirectly, discharges, demotes, suspends, threatens, harasses, or, in any manner, discriminates against any employee or official of the United States or any State or political subdivision of such State, or attempts to do so, in order to carry out or to conceal any scheme or artifice described in this section, shall be fined under this title or subject to imprisonment of up to five years or both.

"(f)(1) Any employee or official of the United States or any State or political subdivision of such State who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against because of lawful acts done by the employee as a result of a violation of subsection (e) or because of actions by the employee on behalf of himself or others in furtherance of a prosecution under this section (including investigation for, initiation of, testimony for, or assistance in such a prosecution) may in a civil action, obtain all relief necessary to make such individual whole. Such relief shall include reinstatement with the same seniority status such individual would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.

"(2) An individual is not eligible for such relief if that individual participated in the violation of this section with respect to which such relief would be awarded.

"(g) For purposes of this section—

"(1) the term 'State' means a State of the United States, the District of Columbia, Puerto Rico, and any other territory or possession of the United States;

"(2) the term 'agency' means a subdivision of the executive, legislative, judicial, or other branch of government, including a department, independent establishment, commission, administration, authority, board, and bureau, and a corporation or other legal entity established and subject to control by a government or governments for the execution of a governmental or intergovernmental program;

"(3) the terms 'public official' and 'person who has been selected to be a public official' have the meaning set forth in section 201 of this title; the terms 'official', 'public official', and 'person who has been selected to be a public official' shall also include any person acting under color of official authority;

"(4) the term 'official' includes a person who has been nominated or appointed to be an official or who has been officially informed that he or she will be so nominated or appointed.".

SEC. 3. WHITE COLLAR CRIME.

Chapter 63 of Title 18 of the United States Code is amended by adding a new section as follows:

"§ 1346. Scheme or artifice to defraud

"For the purposes of this chapter, the term 'scheme or artifice to defraud' includes a scheme or artifice to deprive an organization of the intangible right of honest services in which the defendant received or attempted to receive, for the defendant or another person, anything of value or in which the defendant intended or contemplated loss or harm to the organization.".

SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS.

(a) TABLE OF SECTIONS.—The table of sections for chapter 11 of title 18, United States Code, is amended by adding at the end thereof the following item:

"225. Public Corruption.".

(b) TABLE OF SECTIONS.—The table of sections for chapter 63 of title 18, United States Code, is amended by adding at the end thereof the following item:

"1346. Scheme Or Artifice To Defraud.".

(c) RICO.—Section 1961(1) of title 18, United States Code, is amended by inserting "section 225 (relating to public corruption)," after "section 224 (relating to sports bribery),".

(d) INTERRUPTION OF COMMUNICATIONS.—Section 2516(1)(c) of title 18, United States Code, is amended by inserting "section 225 (relating to public corruption)," after "section 224 (bribery in sporting contests),".

SEC. 5. INTERSTATE COMMERCE.

(a) IN GENERAL.—Section 1343 of title 18, United States Code, is amended by striking "transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds" and inserting "uses or causes to be used any facility of interstate or foreign commerce".

(b) CONFORMING AMENDMENTS.—(1) The heading of section 1343 of title 18, United States Code, is amended by striking "Fraud by wire, radio, or television" and inserting "Fraud by use of facility of interstate commerce".

(2) The chapter analysis for chapter 63 of title 18, United States Code, is amended by striking the analysis for section 1343 and inserting the following:

"1343. Fraud by use of facility of interstate commerce".

Mr. BIDEN. Mr. President, I am very pleased that today the Senate will have a chance to vote on the Anti-Corruption Act of 1988. This legislation is the product of many months of work by a bipartisan group of Senators and the Department of Justice. It will give Federal prosecutors the tools, once again, to prosecute corrupt public officials and other white-collar criminals who victimize labor unions, corporations, and other organizations.

For 15 years, Federal prosecutors brought public and private corruption and election fraud cases in Federal court under the Federal mail and wire fraud statutes. But in 1987, the Supreme Court ruled that those statutes were not intended to protect such "intangible rights" as the right of the people to honest government. That decision, in McNally versus United States, was at odds with prior decisions issued by every one of the 12 Federal circuit courts. It resulted in the reversal of the convictions of a number of corrupt judges and office holders; and it halted or jeopardized hundreds of investigations throughout the United States.

Mr. President, I believe that the people of this country have a right to honest government. The Constitution guarantees a republican form of government, which means that Congress can enact statutes that make it possible to punish those who violate the public trust at any level of government. The bill we have before us today would reverse the McNally decision and allow Federal prosecutors to bring the kinds of public corruption cases that they were able to bring before 1987.

The importance of this legislation cannot be overemphasized. It is supported by virtually all of the U.S. attorneys and by the Attorney General, Richard Thornburgh, whose letter to me in support of this bill I will insert into the RECORD at the end of my statement.

At this point, Mr. President, I would like to refer to several specific provisions of the bill to make sure that the legislative intent is clear. First, as I said at the time the bill was introduced, the committee intends, in general, that the bill be read in the context of pre-McNally case law. Thus, the terms "deprive" and "defraud" in the new public corruption statute should be read in conjunction with pre-McNally case law interpreting the phrase "scheme or artifice to defraud" in the mail and wire fraud statutes in public corruption cases. See, e.g., *United States* v. *Isaacs*, 493 F.2d 1124 (7th Cir. 1974); *United States* v. *Mandel*, 591 F.2d 1347 (4th Cir. 1979); *United States* v. *Bush*, 522 F.2d 641, 647-48 (7th Cir. 1975); *United States* v. *Keane*, 522 F.2d 534, 545-46 (7th Cir. 1975); *United States* v. *Brown*, 540 F.2d 364, 374-75 (8th Cir. 1976); *United States* v. *States*, 488 F.2d 761, 765 (8th Cir. 1973).

A second point concerns the part of the new public corruption statute that addresses election fraud. Section 225(b) of the bill makes it a criminal violation to deprive or defraud, or attempt to deprive or defraud, by any scheme or artifice, the inhabitants of a State, or political subdivision of a State, of a fair and impartially conducted election process. One of the ways in which the violation may occur is "through the filing of a false, fictitious or fraudulent report required to be filed under State law." The committee intends that only "materially" false, fictitious or fraudulent reports be covered under this section of the bill.

Finally, the bill creates a new section 1346 of title 18 that codifies the pre-McNally intangible rights doctrine. The section makes it a criminal violation to deprive an organization of the intangible right of honest services if, for example, the defendant "intended or contemplated loss or harm to the organization." The word "contemplated" means "foreseen" as opposed to "hoped for" or "imagined." This is in keeping with those cases that held that a criminal offense involving an intangible right was committed only if some harm was foreseeable. See *United States* v. *Ballard*, 663 F.12d 534, 541-42 (5th Cir. 1981), modified on reh'g 680 F.2d 352 (5th Cir. 1982); *United States* v. *Siegel*, 717 F.2d 9, 14 (2nd Cir. 1983); *United States* v. *Lemire, 720 F.2d 1327, 1335-37 (D.C. Cir. 1983); United States* v. *Feldman, 711 F.2d 758, 763-65 (7th Cir. 1983).*

Similarly, the codification of the intangible rights doctrine is intended to allow the government to prosecute persons who violate the trust placed in them by their employers or some other organization and do so in order to get a bribe or kickback or some other thing of value. This is intended to permit prosecution of the kinds of cases that approved by the appellate courts before McNally. See *United States* v. *George*, 477 F.2d 508 (7th Cir. 1973); *United States* v. *Boffa*, 688 F.2d 919 (3rd Cir. 1982); *United States* v. *Newman*, 664 F.2d 12 (2nd Cir. 1981); *United States* v. *Weiss*, 752 F.2d 777 (2nd Cir. 1985); *United States* v. *Ventura*, 724 F.2d 305 (2nd Cir. 1983). It is not intended to criminalize mere breaches of fiduciary duty, or private confidence, or violations or ordinary rules of the workplace. Indeed, although the committee is aware of no such cases having been prosecuted before McNally under the intangible rights doctrine, in response to academic comment that such a result might someday occur, the codification of pre-McNally law in the bill is specifically limited to situations where the defendant is acting to obtain a thing of value, or to harm the organization. This provision will foreclose the abuse of the statute to prosecute trivial, noncriminal matters.

Mr. President, this is a bipartisan bill that has the unanimous support of the members of the Judiciary Committee. I hope my colleagues will support it.

Mr. METZENBAUM. Mr. President, I am pleased to be an original cosponsor of this important legislation and urge its immediate passage. S. 2793 would clear up confusion caused by recent Supreme Court decisions interpreting the Federal mail and wire fraud statutes.

The Federal Criminal Code prohibits the use of the mails or the telephone to execute any scheme or artifice to defraud. Until recently, the courts have interpreted these statutes rather broadly, giving prosecutors potent weapons to use against criminal fraud schemes and public and private corruption.

These criminal corruption statutes have also played a role in the fight against illegal drugs. For example, Federal prosecutors convicted a county deputy sheriff assigned to the metro narcotics unit for taking and extorting money from drug dealers during drug raids. In Miami, the U.S. attorney prosecuted and convicted drug traffickers under, among other laws, the mail fraud statute for purchasing and using a Miami bank to launder money from illegal drug deals.

Use of these fraud statutes against public corruption and white-collar crime was dealt a severe below in June 1987, however, by the Supreme Court's decision in McNally versus United States. In that case, the Court concluded that "the mail fraud statute clearly protects property rights, but does not refer to the intangible right of the citizenry to good government."

Many convictions for criminal fraud were invalidated by this decision. While a subsequent Supreme Court case, Carpenter versus United States, did lessen the adverse impact of McNally, these cases have left the law confused and greatly impeded Federal prosecutors in their daily work. In the words of Attorney General Richard Thornburgh: "Prosecution of public corruption cases has been one of the Department's highest priorities since the mid-1970's and if anything has increased in recent years, in part because of the proven link between public corruption and large scale drug trafficking. As a result of the Supreme Court's unexpected McNally interpretation last year, a sizable gap currently exists in the Federal statutory arsenal that can be employed against corrupt public officials in all States throughout this Nation." Our Federal prosecutors cannot live with current law, and Congress cannot sit idly by when our law enforcement officers don't have the tools they need to fight crime. The need to clarify the scope of these Federal fraud statutes could not be more more urgent.

I applaud the hard work of my colleagues on both sides of the aisle in reaching a resolution of this critical issue in this Congress.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment.

The committee amendment was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (S. 2793) was passed.

RESTRICTIONS ON DISTRIBUTION OF LOTTERY ADVERTISEMENTS

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1108, H.R. 3146.

The PRESIDING OFFICER (Mr. LAUTENBERG). The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3146) to clarify certain restrictions on the distribution of advertisements and other information concerning lotteries and similar activities.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

H.R. 3146

SECTION 1. SHORT TITLE.

This Act may be cited as the "Charity Games Advertising Clarification Act of 1988".

SEC. 2. AMENDMENTS RELATING TO THE MAILING AND BROADCAST OF ADVERTISEMENTS FOR LEGAL LOTTERIES AND SIMILAR ENTERPRISES.

(a) STATE-CONDUCTED LOTTERIES UNDER TITLE 18.—Subsection (a) of section 1307 of title 18, United States Code, is amended to read as follows:

"(a) The provisions of sections 1301, 1302, 1303, and 1304 shall not apply to—

"(1) an advertisement, list of prizes, or other information concerning a lottery conducted by a State acting under the authority of State law which is—

"(A) contained in a publication published in that State or a State which conducts such a lottery; or

"(B) broadcast by a radio or television station licensed to a location in that State or a State which conducts such a lottery; or

"(2) an advertisement, list of prizes, or other information concerning a lottery, gift enterprise, or similar scheme, other than one described in paragraph (1), that is authorized or not otherwise prohibited by the State in which it is conducted and which is—

"(A) conducted by a not-for-profit entity or a governmental entity; or

"(B) conducted as a promotional activity by a commercial entity and is clearly ancillary to the primary business of that entity.".

(b) DEFINITION OF NOT-FOR-PROFIT ENTITY.—Subsection (d) of section 1307 of title 18, United States Code, is amended by adding at the end thereof "For purposes of this section, the term a 'not-for-profit entity' means any entity that would qualify as tax exempt under section 501 of the Internal Revenue Code of 1986.".

(c) POSTAL SERVICE REGULATION OF LOTTERIES.—Paragraph (1) of section 3005(d) of title 39, United States Code, is amended to read as follows: "(1) publications containing advertisements, lists of prizes, or information concerning a lottery, which are exempt, pursuant to section 1307 of title 18 of the United States Code, from the provisions of sections 1301, 1302, 1303, and 1304 of title 18 of the United States Code,".

SEC. 3. TECHNICAL AMENDMENTS.

(a) AMENDMENTS TO TITLE 18, UNITED STATES CODE.—Chapter 61 of title 18, United States Code, is amended as follows:

(1) The section heading of section 1307 is amended to read as follows:

"§ 1307. Exceptions relating to certain advertisements and other information and to State-conducted lotteries".

(2) The item relating to section 1307 in the table of sections at the beginning of chapter 61 is amended to read as follows:

"Sec. 1307. Exceptions relating to certain advertisements and other information and to State-conducted lotteries.".

(3) Subsection (d) of section 1307 is amended by inserting after "purposes of" the following: "subsection (b) of".

(4) The first sentence of section 1304 is amended by inserting after "radio" the following: "or television".

SEC. 4. SEVERABILITY.

If any provision of this Act or the amendments made by this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons not similarly situated or to other circumstances, shall not be affected by such invalidation.

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall take effect 18 months after the date of the enactment of this Act.

AMENDMENT NO. 3703

Mr. BYRD. Mr. President, on behalf of Mr. SIMON I submit an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. SIMON, proposes an amendment numbered 3703.

Mr. BYRD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 6, lines 17, 18, 20, 21, 22, and 25 in section 2, wherever the word "entity" appears, strike "entity" and insert "organization".

On page 7, line 1 in Section 2, strike "501" and insert "501(c)(3)".

On page 6, line 20, strike "is clearly ancillary" and insert in lieu thereof "is clearly occasional and ancillary".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3703) was agreed to.

Mr. SIMON. Mr. President, I rise in support of H.R. 3146, the charity games bill.

The Committee on the Judiciary, to which was referred the bill (H.R. 3146) to clarify certain restrictions on distribution of advertisements and other information concerning charitable games and similar activities, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

PURPOSE

The purpose of H.R. 3146, as amended, is to expand the scope of chapter 61 of title 18, United States Code, to allow the publication of information and advertising in interstate commerce of certain lotteries, gift enterprises, and similar activities if the activity being advertised is legal in the State in which it is being conducted. The bill also amends section 3005 of title 39, United States Code, to allow for the mailing of such advertisements and materials, if the activity being advertised is exempt from the provisions of chapter 61 of title 18, pursuant to section 1307. The effective date of the bill is 18 months after enactment.

LEGISLATIVE HISTORY

During the 98th Congress, the committee considered related legislation on the advertising of legal lotteries activities, which was introduced by Senator LAXALT (R-NV). This bill, S. 1876, would have permitted advertising of even professional gambling businesses. The Judiciary Committee held a hearing on S. 1876 (98th) on November 16, 1983, and favorably reported the bill on June 28, 1984. No further action was taken by the Senate.

H.R. 1568, the predecessor to H.R. 3146, was introduced in the House of Representatives by Representative FRANK (D-MA) on March 11, 1987. The Subcommittee on Administrative Law and Governmental Relations held a markup on H.R. 1568, and favorably recommended to the full Judiciary Committee a clean bill, H.R. 3146. On March 15, 1988, the Judiciary Committee favorably reported H.R. 3146.

The House of Representatives passed H.R. 3146 on May 25, 1988, by voice vote. Prior to final passage, H.R. 3146 was amended on the floor to exclude professional gambling businesses. On May 26, 1988, this bill was received in the Senate and referred to the Judiciary Committee.

BACKGROUND

In 1895, lotteries primarily were privately run and largely unregulated. At that time, the Federal Government prohibited the importation of lottery tickets or prize lists into the United States, the transportation in interstate commerce of such articles, and the mailing of such materials. These restrictions were the predecessors of sections 1301 and 1302 of title 18, United States Code. Shortly after enactment of sections 1301 and 1302, the predecessor of section 1303 was added to prohibit postal employees from acting as agents for a lottery. In 1934, the predecessor of section 1304 was enacted to prohibit the broadcasting of any advertisement or information concerning a lottery by means of a radio station required to be licensed under Federal law.

After the adoption of lotteries by several States in the 1960's and 1970's, section 1307 was added to provide that the restrictions contained in sections 1301-1304 would not apply to advertisements, list of prizes, or information about the State-conducted lotteries that are advertised in the State conducting the lottery or in adjacent States that also conduct lotteries.

CURRENT LAW

Chapter 61 of title 18 of the United States Code currently prohibits mailing, broadcasting, or otherwise carrying in interstate commerce, any advertisement or any list of prizes drawn or awarded in any lottery, gift enterprise or similar scheme. 18 U.S.C. sections 1301, 1302, 1304. Section 1302 specifically addresses advertisements for lotteries and lists of lottery prizes in newspapers and other publications. That section makes it a crime for any person, including publishers, to mail any newspaper, circular, pamphlet or publication containing such an advertisement or list of prizes. Section 1304 specifically addresses advertisement or list of prizes. Section 1304 specifically addresses advertisements and other information concerning lotteries, gift enterprises, et cetera transmitted by broadcasting stations licensed by the United States. That section makes it a crime for any person to knowingly permit the broadcasting of lottery information.

Currently, exemptions exist for certain fishing contests and for State-conducted lotteries. 18 U.S.C. sections 1305, 1307. The fishing contest exemption, found in section 1305, states that the restrictions of Chapter 61 do not apply to any bona fide nonprofit fishing contest or recreational event where prizes are awarded for specie size, weight, or quality of fish caught by contestants. The State-conducted lottery exemption, found in section 1307, states that the restrictions of chapter 61 do not apply to any information concerning a State-conducted lottery acting under the authority of State law contained in a newspaper published in the State or in an adjacent State which conducts such a lottery.

A related Federal statute, section 3005 of title 39, United States Code, regulates the use of the mails in conducting lotteries or similar activities. Subsection (d) of this section contains an exception from the general prohibitions in subsections (a), (b), and (c) to allow the mailing of information, materials, or newspapers containing lottery advertisements, list of prizes, or information when that newspaper is published in that State or in adjacent States which also conduct lotteries.

While State-conducted lotteries are allowed limited advertising in interstate commerce, the practical effect of the current law is to prohibit the advertising of charitable raffles, church bingo games, and similar fund-raising or promotional activities, even if those activities are legal in the State in which they are being conducted.

SUMMARY OF H.R. 3146

H.R. 3146 would expand the exemptions in current law to allow the advertising in interstate commerce of certain legal lotteries, gift enterprises, and similar activities. The bill removes only Federal restrictions on the advertising of lawful lotteries and gaming activities in interstate commerce, whether conducted by public, private, or charitable interests.

H.R. 3146 makes no attempt to limit the rights of the individual States to restrict such advertising under State law. In fact, this legislation includes a delayed effective date in order to allow each State time to enact legislation to preserve and protect its interests.

H.R. 3146 does require that the advertised activity be legal in the State in which it is being conducted. Such activities must be authorized by the State, or otherwise not prohibited by the State. The committee emphasizes that illegal gambling activities may not be advertised. In addition, the committee wishes to make it clear that no provision of H.R. 3146 is intended to change current law as it applies to interstate advertising of professional gambling activities.

The committee also notes that in addition to allowing certain legal lottery activities to be advertised, this legislation is intended to expand the existing advertising exemptions accorded to State-conducted lotteries to allow advertising in any State which conducts its own State lottery. However, since the legislation leaves intact the prohibition on mailing lottery tickets, money, or other paraphernalia, the practical effect of this change will probably be negligible. Nothing in this legislation should be construed as limiting the rights already held and enjoyed by State-conducted lotteries.

H.R. 3146 also amends 39 U.S.C. 3005(d) to track chapter 61 of title 18 of the United States Code. As stated above, the bill does not authorize the mailing of lottery paraphernalia or tickets in interstate commerce.

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill provides that it may be cited as the Charity Games Advertising Clarification Act of 1988.

Section 2 of the bill amends section 1307 of title 18 of the United States Code to expand the current advertising exemptions provided by that section. New section 1307(a)(1) provides that sections 1301, 1302, 1303, and 1304 shall not apply to advertisements, lists or prizes or other information concerning State-run lotteries that are in a publication published in that State or in another State which conducts such a lottery, or which are broadcast by a station licensed in that State or in another State which conducts such a lottery.

New section 1307(a)(2) applies to activities other than the State-conducted lotteries addressed by subsection (a)(1). It provides that sections 1301, 1302, 1303 and 1304 shall not apply to certain advertisements, lists of prizes, or other information concerning lotteries, gift enterprises, or similar schemes that are authorized or not otherwise prohibited by the State in which it is conducted. The committee notes that a State need not directly regulate such lotteries and related activities for these activities to fall within this subsection.

Lotteries and related activities addressed by new section 1307(a)(2) are of two types. First are those "conducted by a not-for-profit entity or a governmental entity." For purposes of this section, not-for-profit entity is defined as any entity that would qualify as exempt under section 501(c)(3) of title 26 of the Internal Revenue Code.

This subsection's exemption for governmental entity applies to lotteries and related activities, other than State-conducted lotteries addressed by subsection (a)(1), that are conducted by State, county, municipal, or other governmental entities. For example, if a municipality conducts a lottery that is authorized or not otherwise prohibited by a State, advertisements and other information on such a lottery would be exempt under new section 1307(a)(2)(A).

Second, new section 1307(a)(2)(B) provides similar exemptions for advertisements, lists of prizes, or other information concerning commercial entities' promotional lotteries and related activities that are "clearly occasional and ancillary to the primary business" of those entities. The committee intends that this exemption apply in instances in which the promotional activity is not an ongoing part of its business, and the business does not derive a significant part of its revenues from such activities. For example, this advertising exemption would apply to a car dealership which conducts a drawing to award an automobile, or to a travel agency which conducts a raffle for a free trip. In such instances, the commercial entitles' primary business activities are the sales of cars and travel services. The lottery activities in such instances are occasional, and are utilized to promote such sales. These businesses derive the significant portion of their revenues from such sales, not from the lottery activities themselves.

No provision of H.R. 3146 is intended to change current law as it applies to the interstate advertising of professional gambling businesses.

Section 2 of the bill also amends section 3005(d) of title 39 to reflect the changes made in title 18.

Section 3 of the bill makes various technical changes.

Section 4 of the bill contains severability language to ensure that if any provision of this act shall be found unconstitutional, the remainder of this act and amendments made by it, and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected by that invalidation. The committee includes this language in recognition of the sensitive first amendment interests affected by restrictions on commercial speech and among speakers.

Section 5 of the bill makes the effective date 18 months after date of enactment.

CONCLUSION

The committee determined that at the time the lottery statutes were enacted, lotteries and gambling activities were privately run and largely unregulated. The committee notes that this situation has drastically changed. Almost all States authorize some form of lottery or gambling activity, and the Federal Government should not unnecessarily restrict the free flow of information about such lawful activities. In addition the committee noted that in the interest of fairness, legal privately run or charitable activities should enjoy rights similar to those of State-conducted lotteries. Therefore, the committee recommends that the bill, H.R. 3146, as amended be favorably considered by the Senate.

The **PRESIDING OFFICER.** The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The **PRESIDING OFFICER.** The question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

H.R. 3146

Resolved, That the bill from the House of Representatives (H.R. 3146) entitled "An Act to clarify certain restrictions on distribution of advertisements and other information concerning lotteries and similar activities", do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Charity Games Advertising Clarification Act of 1988".

SEC. 2. AMENDMENTS RELATING TO THE MAILING AND BROADCAST OF ADVERTISEMENTS FOR LEGAL LOTTERIES AND SIMILAR ENTERPRISES.

(a) STATE-CONDUCTED LOTTERIES UNDER TITLE 18.—Subsection (a) of section 1307 of title 18, United States Code, is amended to read as follows:

"(a) The provisions of sections 1301, 1302, 1303, and 1304 shall not apply to—

"(1) an advertisement, list of prizes, or other information concerning a lottery conducted by a State acting under the authority of State law which is—

"(A) contained in a publication published in that State or in a State which conducts such a lottery; or

"(B) broadcast by a radio or television station licensed to a location in that State or a State which conducts such a lottery; or

"(2) an advertisement, list of prizes, or other information concerning a lottery, gift enterprise, or similar scheme, other than one described in paragraph (1), that is authorized or not otherwise prohibited by the State in which it is conducted and which is—

"(A) conducted by a not-for-proift organization or a governmental organization; or

"(B) conducted as a promotional activity by a commercial organization and is clearly occasional and ancillary to the primary business of that organization.".

(b) DEFINITION OF NOT-FOR-PROFIT ORGANIZATION.—Subsection (d) of section 1307 of title 18, United States Code, is amended by adding at the end thereof "For purposes of this section, the term a 'not-for-profit organization' means any organization that would qualify as tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986.".

(c) POSTAL SERVICE REGULATION OF LOTTERIES.—Paragraph (1) of section 3005(d) of title 39, United States Code, is amended to read as follows: "(1) publications containing advertisements, lists of prizes, or information concerning a lottery, which are exempt, pursuant to section 1307 of title 18 of the United States Code, from the provisions of sections 1301, 1302, 1303, and 1304 of title 18 of the United States Code,".

SEC. 3. TECHNICAL AMENDMENTS.

(a) AMENDMENTS TO TITLE 18, UNITED STATES CODE.—Chapter 61 of title 18, United States Code, is amended as follows:

(1) The section heading of section 1307 is amended to read as follows:

"**§ 1307. Exceptions relating to certain advertisements and other information and to State-conducted lotteries**".

(2) The item relating to section 1307 in the table of sections at the beginning of chapter 61 is amended to read as follows:

"Sec. 1307. Exceptions relating to certain advertisements and other information and to State-conducted lotteries.".

(3) Subsection (d) of section 1307 is amended by inserting after "purposes of" the following: "subsection (b) of".

(4) The first sentence of section 1304 is amended by inserting after "radio" the following: "or television".

SEC. 4. SEVERABILITY.

If any provision of this Act or the amendments made by this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons not similarly situated or to other circumstances, shall not be affected by such invalidation.

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall take effect 18 months after the date of the enactment of this Act.

PAYMENT OF CERTAIN CLAIMS BY MUNICIPALITIES THAT ARE DEBTORS

Mr. **BYRD.** Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1065, H.R. 5347.

The **PRESIDING OFFICER.** The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5347) to amend title 11 of the United States Code with respect to claims payable from special revenues by municipalities that are debtors, and for other purposes.

The **PRESIDING OFFICER.** Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3704

(Purpose: To eliminate presumptions in defining markets, and for other purposes)

Mr. **BYRD.** Mr. President, on behalf of Mr. LEAHY, I send an amendment to the desk and ask for its immediate consideration.

The **PRESIDING OFFICER.** The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], (for himself, Mr. HATCH, Mr. THURMOND, Mr. DECONCINI, and Mr. KENNEDY) for Mr. LEAHY proposes an amendment numbered 3704.

Mr. **BYRD.** Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

The amendment is as follows:

TITLE I—INTELLECTUAL PROPERTY

SEC. 101. This title may be cited as the "Intellectual Property Antitrust Protection Act of 1988".

PROHIBITION OF MARKET POWER PRESUMPTION

SEC. 102. In any action in which the conduct of an owner, licensor, licensee, or other holder of an intellectual property right is alleged to be in violation of the antitrust laws in connection with the marketing or distribution of a product or service protected by such a right, such right shall not be presumed to define a market or to establish market power, including economic power and product uniqueness or distinctiveness, or monopoly power.

SEC. 103. For purposes of this title—

(1) the term "antitrust laws" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)); and

(2) the term "intellectual property right" means a right, title, or interest—

(A) in subject matter patented under title 35 of the United States Code, or

(B) in a work, including a mask work, protected under title 17 of the United States Code.

TITLE II—PATENT MISUSE DOCTRINE REFORM

SEC. 201. Section 271(d) of title 35, United States code, is amended by striking out the period at the end thereof and inserting in lieu thereof the following: "; (4) refused to license or use any rights to the patent; or (5) conditioned the license of any rights to the patent or the sale of the patented product on the acquisition of a license to rights in another patent or purchase of a separate product, unless the courts find that (i) the patent owner has market power in the relevant market for the patent or patented product on which the license or sale is conditioned and (ii) under the circumstances the business justification for the conditioned license or sale does not outweigh any anticompetitive effect."

SEC. 202. The amendment made by this title shall apply only to cases filed on or after the date of the enactment of this Act.

At an appropriate place add, the following:

TITLE III

SECTION 1. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Patent and Trademark Office—

(1) for salaries and necessary expenses, $117,504,000 for fiscal year 1989, $125,210,000 for fiscal year 1990, and $111,984,000 for fiscal year 1991; and

(2) such additional amounts as may be necessary for each such fiscal year for increases in salary, pay, retirement, and other employee benefits authorized by law.

SEC. 2. APPROPRIATIONS AUTHORIZED TO BE CARRIED OVER.

Amounts appropriated under this Act and such fees as may be collected under title 35, United States Code, and the Trademark Act of 1946 (15 U.S.C. 1051 and following) may remain available until expended.

SEC. 3. OVERSIGHT OF AND ADJUSTMENT TO TRADEMARK AND PATENT FEES.

(a) Trademark Fees.—The Commissioner of Patents and Trademarks may not, during fiscal years 1989, 1990, and 1991, increase fees established under section 31 of the Trademark Act of 1946 (15 U.S.C. 1113) except for purposes of making adjustments which in the aggregate do not exceed fluctuations during the previous three years in the Consumers Price Index, as determined by the Secretary of Labor. The Commissioner also may not establish additional fees under such section during such fiscal years.

(b) Patent Fees.—The Commissioner of Patents and Trademarks may not, during fiscal years 1989, 1990, and 1991, increase fees established under section 41(d) of title 35, United States Code, except for purposes of making adjustments which in the aggregate do not exceed fluctuations during the previous three years in the Consumer Price Index, as determined by the Secretary of Labor. The Commissioner also may not establish additional fees under such section during fiscal years.

(c) Report to Congress.—The Secretary of Commerce shall, on the day on which the President submits the annual budget to the Congress, provide to the Committees on the Judiciary of the Senate and the House of Representatives—

(1) a list of patent and trademark fee collections by the Patent and Trademark Office during the preceding fiscal year;

(2) a list of activities of the Patent and Trademark Office during the preceding fiscal year which were supported by patent fee expenditures, trademark fee expenditures, and appropriations;

(3) budget plans for significant programs, projects, and activities of the Office, including out-year funding estimates;

(4) any proposed disposition of surplus fees by the Office; and

(5) such other information as the committees consider necessary.

SEC. 4. PUBLIC ACCESS TO PATENT AND TRADEMARK OFFICE INFORMATION.

(a) Repeal.—Section 4 of Public Law 99-607 (35 U.S.C. 41 note) is repealed.

(b) Maintenance of Collections.—The Commissioner of Patents and Trademarks shall maintain, for use by the public, paper or microform collections of United States patents, foreign patent documents, and United States trademark registrations arranged to permit search for and retrieval of information. The Commissioner may not impose fees for use of such collections, or for use of public patent or trademark search rooms or libraries. Funds appropriated to the Patent and Trademark Office shall be used to maintain such collections, search rooms, and libraries.

(c) Fees for Access to Search Systems.—Subject to section 5(a), the Commissioner of Patents and Trademarks may establish reasonable fees for access by the public to automated search systems of the Patent and Trademark Office in accordance with section 41 of title 35, United States Code, and section 31 of the Trademark Act of 1946 (15 U.S.C. 1113). If such fees are established, a limited amount of free access shall be made available to all users of the systems for purposes of education and training. The Commissioner may waive the payment by an individual of fees authorized by this subsection upon a showing of need or hardship, and if such waiver is in the public interest.

SEC. 5. FUNDING OF AUTOMATED DATA PROCESSING RESOURCES.

(a) Allocations.—Of amounts available to the Patent and Trademark Office for automatic data processing resources for fiscal years 1989, 1990, and 1991, not more than 30 percent of such amounts in each such fiscal year may be from fees collected under section 31 of the Trademark Act of 1946 (15 U.S.C. 1113) and section 41 of title 35, United States Code. The Commissioner of Patents and Trademarks shall notify the Committees on the Judiciary of the Senate and the House of Representatives of any proposed reprogrammings which would increase or decrease the amount of appropriations expended for automatic data processing resources.

(b) Use of Revenues by Patent and Trademark Office.—Except as otherwise specifically provided in this Act, Public Law 99-607, and section 42(c) of title 35, United States Code, the Patent and Trademark Office is authorized to use appropriated or apportioned fee revenues for any of its operations or activities.

SEC. 6. USE OF EXCHANGE AGREEMENTS RELATING TO AUTOMATIC DATA PROCESSING RESOURCES PROHIBITED

The Commissioner of Patents and Trademarks may not, during fiscal years 1989, 1990, and 1991, enter into any agreement for the exchange of items or services (as authorized under section 6(a) of title 35, United States Code) relating to automatic data processing resources (including hardware, software and related services, and machine readable data), and the Commissioner may not, on or after the date of the enactment of this Act, continue existing agreements for the exchange of such items or services. The preceding sentence shall apply to an agreement relating to data for automation programs which is entered into with a foreign government or with an international intergovernmental organization.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3704) was agreed to.

Mr. DeCONCINI. Mr. President, I am pleased that the Senate is taking this action needed to send this important piece of legislation to the President. H.R. 5347, which was sponsored by Congressman Don Edwards, is almost identical to my bill S. 1863 which was unanimously passed by the Senate on September 20, 1988.

Mr. President, in 1978, Congress enacted sweeping revisions of the bankruptcy law to reflect the vast changes in commercial law that occurred in the 40-year period since the bankruptcy law was last revised. At that time, chapter 9 generally was amended to apply commercial bankruptcy law concepts to municipal corporations. However, due to the different nature of the evolution of municipal finance, some of the specific effects of the sweeping application of commercial law concepts to municipal corporations have resulted in unintended conflicts between municipal law and bankruptcy law.

Fundamental to the nature of municipal finance is the underlying scheme of State constitutional laws that provides States and localities the power to raise revenues for the purpose of providing governmental services. Since the founding of our Nation, each State has developed its own set of powers, restrictions and limitations on the financing of State and local services. They are based on the citizens' beliefs in the need to limit or provide expansive governmental power to tax and the decisionmaking process which should be required. In general terms, this evolutionary process has resulted in the reliance by localities and States on revenue bonds and general obligation bonds to meet differing constitutional requirements. Here is where application of corporate law bankruptcy concepts to governmental entities conflict with State constitutional law and the general principles of local government law.

General obligation bonds are bonds for which the general taxing power of the issuer is pledged to repay the bonds. Usually, general obligation bonds are issued to finance capital projects such as schools and police stations, but also can be used to finance annual governmental expenses. With a general obligation bond, the taxpayers are committed to raise their future taxes to whatever level may be necessary to repay the bondholders.

Revenue bonds are issued to finance projects or programs, the revenues from which are pledged to repay the bonds—for example, toll roads, water systems, and sewers. At the time the Government borrower approves financing for the project or program, it has been convinced by the financial analysis that the project or program will generate adequate revenues to repay the bondholders and operate the project or program, without any financial obligation on the governmental entity. These are limited obligation securities; the taxpayers are not committed to repay the bonds.

This bill will resolve unintended conflicts between State and local laws and bankruptcy law. The amendments protect the future effectiveness of revenue bond financing against the possibility of an adverse judicial determination in connection with a local government bankruptcy. Specifically, the amendments ensure that in the event of a bankruptcy, taxpayers will not be required to pay bondholders for bankrupt municipal projects that were intended to be funded exclusively through project revenues. Second, the amendments ensure that State and constitutional and statutory debt limits will not be preempted by the application of bankruptcy laws. Third, the amendments ensure that revenue bondholders will receive the benefit of their bargains with the municipal issuer. That is, they will have unimpaired rights to the project revenues pledged to them.

The only difference between S. 1883 and H.R. 5347 is an effective date provision. H.R. 5347 provides that the amendments to the Bankruptcy Code are applicable to cases filed on or after the effective date of the amendments. I want to reiterate what is stated in the report to H.R. 5347—that this effective date provision should not be construed to prejudice chapter 9 cases which are pending at the time of enactment of the bill. The amendments clarify the Bankruptcy Code to eliminate any possible conflicts or ambiguities between municipal law and the Bankruptcy Code. The amendments articulate principles which have long been the premise for municipal finance, but which have not been specifically stated in the Bankruptcy Code. Thus there should not be prejudice to holders of revenue bonds or notes of current chapter 9 debtors.

This bill has received wide support from the National Bankruptcy Conference, the National Association of Bond Lawyers, the National Governors' Association, the National Conference of State Legislatures, the National League of Cities, the National Association of Counties, the U.S. Conference of Mayors, the Government Finance Officers, the National Association of State Budget Officers, and the American Public Power Association.

Let me say again Mr. President, I am pleased that the Senate is taking final action on this legislation and providing the critically needed certainty in our bankruptcy law with respect to municipalities.

The **PRESIDING OFFICER**. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The **PRESIDING OFFICER**. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 5347), as amended, was passed.

IMPROVEMENTS IN THE FEDERAL COURT INTERPRETER PROGRAM

Mr. **BYRD**. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1121, S. 1867.

The **PRESIDING OFFICER**. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1867) to amend title 28, United States Code, to make certain improvements with respect to the Federal court interpreter program, and for other purposes.

The **PRESIDING OFFICER**. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italic.)

S. 1867

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Court Interpreters Improvement Act of 1987".

SEC. 2. The Congress hereby finds that—

(1) qualified interpreters are sometimes not provided to non-English speaking persons and the hearing impaired in judicial proceedings conducted pursuant to the jurisdiction and authority of the United States District Courts; and

(2) the failure to provide competent interpretation services to such individuals in Federal judicial proceedings could, under certain circumstances, constitute a denial of rights secured by the fifth and sixth amendments to the Constitution of the United States because such individuals may—

(A) be deprived of life, liberty, or property without due process of law;

(B) be unable to confront adverse witnesses due to a lack of comprehension;

(C) be deprived of the ability to effectively consult with counsel; and

(D) fail to comprehend the rulings and pronouncements of the court and the documentary evidence introduced in such proceedings.

SEC. 3. (a) The Congress declares that the constitutional rights of non-English speaking persons and the hearing impaired, guaranteed by the fifth and sixth amendments to the Constitution of the United States shall be protected by requiring the certification of interpreters of English and other languages and by requiring the promulgation of definitive standards and criteria for otherwise qualified interpreters who may be permitted to participate in Federal judicial proceedings.

(b) The Congress declares that the purpose of this Act is to provide competent interpretation services to parties and witnesses in judicial proceedings instituted by the United States in order to assure that such persons who are hearing impaired or who have as their primary language a language other than English may participate meaningfully therein and that the constitutional rights of such persons are fully protected.

SEC. 4. Nothing in this Act shall be construed to terminate or diminish existing programs for the certification of interpreters.

SEC. 5. Section 1827(a) of title 28, United States Code, is amended to read as follows:

"(a) The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of certified and otherwise qualified interpreters in judicial proceedings instituted by the United States.".

["(b)(1) The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters for the hearing impaired and persons who speak only or primarily a language other than the English language, in judicial proceedings instituted by the United States. The Director shall certify interpreters in at least eight languages other than those previously certified. The Director shall certify interpreters based on the results of criterion-referenced performance examinations. The Director shall develop and issue regulations pertaining to all the foregoing duties within one year after the date of enactment of this action. Such examinations shall be initially developed and administered within one year of the appropriation of funds for certification in the languages identified.]

SEC. 6. Sec. 1827(b) of Title 28, United States Code is amended to read as follows:

"(b)(1) The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters for the hearing impaired (whether or not also speech impaired) and persons who speak only or primarily a language other than the English language, in judicial proceedings instituted by the United States. The Director shall certify interpreters for any language if the Judicial Conference determines that there is a need for certified interpreters in that language based on the lack of certified or otherwise qualified interpreters in such language and the number of proceedings in which such language will be required. The Judicial Conference shall determine the need for certified interpreters in languages other than those previously certified based upon the recommendations of the judicial councils of the circuits, who shall identify and evaluate the needs of the districts within a circuit. The Director shall certify interpreters based on the results of criterion-referenced performance examinations. Any such examinations for certification in a language shall be initially administered within 1 year after funds are appropriated for certification in that language. The Director shall issue regulations to carry out this paragraph within 1 year after the date of the enactment of this Act.

"(2) The Director shall provide guidelines to the courts on the selection of otherwise qualified interpreters whose services may be use only in the event that certification is not available in a particular language, or only where no certified interpreter is reasonably available, as provided by subsection (d) of this section, in order to ensure that the highest standards of accuracy are maintained in all judicial proceedings subject to the provisions of this chapter.

"(3) The Director shall maintain a current master list of all certified interpreters and otherwise qualified interpreters and shall report periodically on the use and performance of both certified and otherwise qualified interpreters in judicial proceedings instituted by the United States and on the languages for which interpreters have been certified. The Director shall prescribe, subject to periodic review, a schedule of reasonable fees for services rendered by interpreters, certified or otherwise, used in proceedings instituted by the United States, and in so doing shall consider the prevailing rate of compensation for comparable service in other governmental entities.".

SEC. 7. Section 1827(c) of title 28, United States Code, is amended to read as follows:

"(c)(1) Each United States district court shall maintain on file in the office of the clerk, and each United States attorney shall maintain on file, a list of all persons who have been certified as interpreters by the Director in accordance with subsection (b) of this section. The clerk shall make the list of certified interpreters for judicial proceedings available upon request.

"(2) The clerk or district executive of the court shall be responsible for securing the services of certified interpreters and otherwise qualified interpreters required for proceedings initiated by the United States, except that the United States attorney is responsible for securing the services of such interpreters for governmental witnesses.".

Sec. 8. Section 1827(d) of title 28, United States Code, is amended by—

(1) redesignating paragraphs (1) and (2) as subparagraph (A) and (B), respectively;

(2) inserting "(1)" after "(d)"; and

(3) adding at the end thereof the following:

["(2) Upon the request of a party, the presiding judicial officer shall require the judicial proceedings in which interpreters are used to be electronically sound recorded. Grand jury proceedings in which interpreters are used must also be electronically sound recorded upon the request of a party.".]

"(2) upon the motion of a party, the presiding judicial officer shall determine whether to require the electronic sound recording of a judicial proceeding in which an interpreter is used under this section. In making this determination, the presiding judicial officer shall consider, among other things, the qualifications of the interpreter and prior experience in interpretation of court proceedings; whether the language to be interpreted is not one of the languages for which the Director has certified interpreters; and the complexity or length of the proceeding. In a grand jury proceeding, upon the motion of the accused, the presiding judicial officer shall require the electronic sound recording for the portion of the proceeding in which an interpreter is used.

Sec. 9. Section 1827(g) of title 28, United States Code, is amended—

(a) in paragraphs (1), (2), and (3) to read as follows:

"(1) There are authorized to be appropriated to the Federal judiciary, and to be paid by the Director of the Administrative Officer of the United States Courts, such sums as may be necessary to establish a program to facilitate the use of certified and otherwise qualified interpreters, and otherwise fulfill the provisions of this Act, except as provided in subsection (3) below.

"(2) Implementation of the provisions of this section is contingent upon the availability of appropriated funds to carry out the purposes of this section.

"(3) Such salaries, fees, expenses, and costs that are incurred with respect to Government witnesses (including for grand jury proceedings) shall, unles direction is made under paragraph (4) of this subsection, be paid by the Attorney General from sums appropriated to the Department of Justice.";

(b) by redesignating existing paragraph (4) as paragraph (5) and by adding a new paragraph (4) to subsection (g) as follows:

"(4) Upon request of any person in any action for which interpreting services established pursuant to subsection (d) are not otherwise provided, the clerk of the District Court or district executive upon the request of the presiding judicial officer, shall, where possible, make such services available to that person on a cost-reimbursable basis, but the judicial officer may also require the prepayment of the estimated expenses of providing such services.".

Sec. 10. Section 1827(h) of title 28, United States Code, is amended to read as follows:

"(h) The presiding judicial officer shall approve the compensation and expenses payable to interpreters, pursuant to the schedule of fees fixed by the Director.".

Sec. 11. Section 1827(i) of title 28, United States, Code, is amended to read as follows:

"(i) The term 'presiding judicial officer' as used in this section refers to any judge of a United States district court, including a bankruptcy judge, and a United States magistrate or, for grand jury proceedings conducted under the auspices of the United States attorney, a United States attorney."

Sec. 12. Section 1827(j) of title 28, United States code, is amended to read as follows:

"(j) The term "judicial proceeding' as used in this section refers to all proceedings, whether criminal or civil, including pretrial and grand jury proceedings (as well as proceedings upon a petition for a writ of habeas corpus initiated in the name of the United States by a relator), instituted by the United States and conducted in, or pursuant to, the lawful authority and jurisdiction of a United States District Court. The term 'United States District Court' as used in this subsection includes any court created by an Act of Congress in a state or territory which is invested with any jurisdiction of a District Court of the United States established by section 132 of this title.".

Sec. 13. Section 1827(k) of title 28, United States Code, is amended to read as follows:

"(k) The interpretation provided by certified or otherwise qualified interpreters pursuant to this section shall be in the simultaneous mode for any party to a judicial proceeding instituted by the United States and in the consecutive mode for witnesses, except that the presiding judicial officer [with the approval of all interested parties,] *sua sponte or on the motion of a party,* may authorize a simultaneous, or consecutive interpretation when such officer determines after a hearing on the record that such intepretation will aid in the efficient administration of justice. The presiding judicial officer on such officer's motion or on the motion of a party may order that special interpretation services as authorized in section 1828 of this title be provided if such officer determines that the provision of such services will aid in the efficient administration of justice.".

Sec. 14. The amendments made by this Act shall take effect on the date of enactment of this Act.

Mr. BYRD. Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc.

The PRESIDING OFFICER. Without objection, the committee amendments are agreed to en bloc.

The bill is open to further amendment.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (S. 1867) was passed.

Mr. THURMOND. Mr. President, there are two bills in this package. One is S. 2033, that is the pornography section we already put in the drug bill. We agreed to it. We put it here too and S. 2793, the Anti-Corruption Act.

CHILD PROTECTION AND OBSCENITY ENFORCEMENT ACT OF 1988

Mr. BYRD. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 2033, that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2033) to amend title 18, United States Code, with respect to child protection and obscenity enforcement, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. BYRD. Mr. President, I send an amendment to the desk on behalf of Mr. Biden in the nature of a substitute.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. Byrd], for Mr. Biden, proposes an amendment numbered 3705.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after enacting clause and insert the following:

TITLE V—CHILD PORNOGRAPHY AND OBSCENITY

SEC. 501. SHORT TITLE.

This title may be cited as the "Child Protection and Obscenity Enforcement Act of 1988".

Subtitle A—Child Pornography

SEC. 511. AMENDMENTS TO EXISTING OFFENSES.

(a) Sexual Exploitation of Children.—Paragraph (2) of subsection 2251(c) of title 18, United States Code, is amended by inserting "by any means including by computer" after "interstate or foreign commerce" both places it appears.

(b) Material Involving Sexual Exploitation of Children.—Subsection 2252(a) of title 18, United States Code, is amended by inserting "by any means including by computer" after "interstate or foreign commerce" each place it appears.

(c) Definition.—Section 2256 of title 18, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (4);

(2) by striking out the period at the end of paragraph (5) and inserting in lieu thereof: "; and"; and

(3) by adding at the end the following:

"(6) 'computer' has the meaning given that term in section 1030 of this title.".

SEC. 512. SELLING OR BUYING OF CHILDREN.

(a) In General.—Chapter 110 of title 18, United States Code, is amended by inserting after section 2251 the following:

"§ 2251A. Selling or buying of children

"(a) Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor either—

"(1) with knowledge that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or

"(2) with intent to promote either—

"(A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

"(B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be punished by imprisonment for not less than 20 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

"(b) Whoever purchases or otherwise obtains custody or control of a minor, or offers to purchase or otherwise obtain custody or control of a minor either—

"(1) with knowledge that, as a consequence of the purchase or obtaining of custody, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or

"(2) with intent to promote either—

"(A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

"(B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be punished by imprisonment for not less than 20 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

"(c) The circumstances referred to in subsections (a) and (b) are that—

"(1) in the course of the conduct described in such subsections the minor or the actor traveled in or was transported in interstate or foreign commerce;

"(2) any offer described in such subsections was communicated or transported in interstate or foreign commerce by any means including by computer or mail; or

"(3) the conduct described in such subsections took place in any territory or possession of the United States.".

(b) DEFINITION.—Section 2256 of title 18, United States Code, as amended by section 201 of this Act, is further amended—

(1) by striking out "and" at the end of paragraph (5);

(2) by striking out the period at the end of paragraph (6) and inserting "; and" in lieu thereof; and

(3) by adding at the end the following:

"(7) 'custody or control' includes temporary supervision over or responsibility for a minor whether legally or illegally obtained.".

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 110 of title 18, United States Code, is amended by inserting after the item relating to section 2251 the following:

"2251A. Selling or buying of children.".

SEC. 513. RECORD KEEPING REQUIREMENTS.

(a) IN GENERAL.—Chapter 110 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 2257. Record keeping requirements

"(a) Whoever produces any book, magazine, periodical, film, videotape, or other matter which—

"(1) contains one or more visual depictions made after February 6, 1978 of actual sexually explicit conduct; and

"(2) is produced in whole or in part with materials which have been shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce;

shall create and maintain individually identifiable records pertaining to every performer portrayed in such a visual depiction.

"(b) Any person to whom subsection (a) applies shall, with respect to every performer portrayed in a visual depiction of actual sexually explicit conduct—

"(1) ascertain, by examination of an identification document containing such information, the performer's name and date of birth, and require the performer to provide such other indicia of his or her identity as may be prescribed by regulations;

"(2) ascertain any name, other than the performer's present and correct name, ever used by the performer including maiden name, alias, nickname, stage, or professional name; and

"(3) record in the records required by subsection (a) the information required by paragraphs (1) and (2) of this subsection and such other identifying information as may be prescribed by regulation.

"(c) Any person to whom subsection (a) applies shall maintain the records required by this section at his business premises, or at such other place as the Attorney General may by regulation prescribe and shall make such records available to the Attorney General for inspection at all reasonable times.

"(d)(1) No information or evidence obtained from records required to be created or maintained by this section shall, except as provided in paragraphs (2) and (3), be used, directly or indirectly, as evidence against any person with respect to any violation of law.

"(2) Paragraph (1) of this subsection shall not preclude the use of such information or evidence in a prosecution or other action for a violation of any applicable provision of law with respect to the furnishing of false information.

"(3) In a prosecution of any person to whom subsection (a) applies for an offense in violation of subsection 2251(a) of this title which has as an element the production of a visual depiction of a minor engaging in or assisting another person to engage in sexually explicit conduct and in which that element is sought to be established by showing that a performer within the meaning of this section is a minor—

"(A) proof that the person failed to comply with the provisions of subsection (a) or (b) of this section concerning the creation and maintenance of records, or a regulation issued pursuant thereto, shall raise a rebuttable presumption that such performer was a minor; and

"(B) proof that the person failed to comply with the provisions of subsection (e) of this section concerning the statement required by that subsection shall raise the rebuttable presumption that every performer in the matter was a minor.

"(e)(1) Any person to whom subsection (a) applies shall cause to be affixed to every copy of any matter described in paragraph (1) of subsection (a) of this section, in such manner and in such form as the Attorney General shall by regulations prescribe, a statement describing where the records required by this section with respect to all performers depicted in that copy of the matter may be located.

"(2) If the person to whom subsection (a) of this section applies is an organization the statement required by this subsection shall include the name, title, and business address of the individual employed by such organization responsible for maintaining the records required by this section.

"(3) In any prosecution of a person for an offense in violation of section 2252 of this title which has as an element the transporting, mailing, or distribution of a visual depiction involving the use of a minor engaging in sexually explicit conduct, and in which that element is sought to be established by a showing that a performer within the meaning of this section is a minor, proof that the matter in which the visual depiction is contained did not contain the statement required by this section shall raise a rebuttable presumption that such performer was a minor.

"(f) The Attorney General shall issue appropriate regulations to carry out this section.

"(g) As used in this section—

"(1) the term 'actual sexually explicit conduct' means actual but not simulated conduct as defined in subparagraphs (A) through (E) of paragraph (2) of section 2256 of this title;

"(2) 'identification document' has the meaning given that term in subsection 1028(d) of this title;

"(3) the term 'produces' means to produce, manufacture, or publish and includes the duplication, reproduction, or reissuing of any material; and

"(4) the term 'performer' includes any person portrayed in a visual depiction engaging in, or assisting another person to engage in, actual sexually explicit conduct.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 110 of title 18, United States Code, is amended by adding after the item relating to section 2256 the following:

"2257. Record keeping requirements.".

(c) EFFECTIVE DATE.—Section 2257 of title 18, United States Code, as added by this section shall take effect 180 days after the date of the enactment of this Act except—

(1) the Attorney General shall prepare the initial set of regulations required or authorized by section 2257 within 90 days of the date of the enactment of this Act; and

(2) subsection (e) of section 2257 of this title and of any regulation issued pursuant thereto shall take effect 270 days after the date of the enactment of this Act.

SEC. 514. R.I.C.O. AMENDMENT.

Subsection 1961(1)(B) of title 18, United States Code, is amended by inserting after "section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity)" the following: "sections 2251 through 2252 (relating to sexual exploitation of children),".

Subtitle B—Obscenity

SEC. 521. RECEIPT OR POSSESSION FOR SALE; PRESUMPTIONS FOR CHAPTER 71.

(a) RECEIPT OR POSSESSION FOR SALE.—Chapter 71 of title 18, United States Code, is amended by inserting after section 1465 the following:

"§ 1466. Receipt or possession of obscene matter for sale or distribution

"(a) Whoever is engaged in the business of selling or transferring books, magazines, pictures, papers, films, videotapes, or phonograph or other audio recordings, and knowingly receives or possesses with intent to distribute any obscene book, magazine, picture, paper, film, videotape, or phonograph or other audio recording, which has been shipped or transported in interstate or foreign commerce, shall be punished by imprisonment for not more than 5 years or by a fine under this title, or both.

"(b) As used in this subsection, the term 'engaged in the business' means that the person who sells or transfers or offers to sell or transfer books, magazines, pictures, papers, films, videotapes, or phonograph or other audio recordings, devotes time, attention, or labor to such activities, as a regular course of trade or business, with the objective of earning a profit, although it is not necessary that the person make a profit or that the selling or transferring or offering to sell or transfer such material be the person's sole or principal business or source of income. The offering for sale of or to transfer, at one time, two or more copies of any obscene publication, or two or more of any obscene article, or a combined total of five or more such publications and articles, shall create a rebuttable presumption that the person so offering them is 'engaged in the business' as defined in subsection (b).

"(c) In a prosecution for a violation of this section, it shall be an affirmative defense, on which the defendant has the burden of persuasion by a preponderance of the evidence, that the person—

"(1) ordered or received the obscene matter without examining the matter in advance;

"(2) did not in fact offer the matter for sale, or transfer or offer to transfer it to another person other than the sender; and

"(3) possessed the material less than 21 days.".

(b) Clerical Amendment.—The table of sections at the beginning of chapter 71 of title 18, United States Code, is amended by adding after the item relating to section 1465 the following:

"1466. Receipt or possession of obscene matter for sale or distribution.
"1467. Criminal forfeiture.".

(c) Use of Facility of Commerce.—The first paragraph of section 1465 of title 18, United States Code, is amended by inserting after the word distribution: ", or knowingly travels in interstate commerce, or uses a facility or means of commerce for the purpose of interstate or foreign sale or distribution of,".

(d) Distribution of Proceeds.—Section 1465 of title 18, United States Code, is amended by inserting "or the proceeds from the sale thereof" after "character,".

(e) Presumptions.—Chapter 71 of title 18, United States Code, as amended by subsection (a) of this section and by section 302, is further amended by adding at the end the following:

"§ 1469. Presumptions

"(a) In any prosecution under this chapter in which an element of the offense is that the matter in question was transported, shipped, or carried in interstate commerce, proof, by either circumstantial or direct evidence, that such matter was produced or manufactured in one State and is subsequently located in another State shall raise a rebuttable presumption that such matter was transported, shipped, or carried in interstate commerce.

"(b) In any prosecution under this chapter in which an element of the offense is that the matter in question was transported, shipped, or carried in foreign commerce, proof, by either circumstantial or direct evidence, that such matter was produced or manufactured outside of the United States and is subsequently located in the United States shall raise a rebuttable presumption that such matter was transported, shipped, or carried in foreign commerce.".

(f) Clerical Amendment.—The table of sections at the beginning of chapter 71 of title 18, United States Code, is amended by adding after the item relating to section 1468 the following:

"1469. Presumptions.".

SEC. 522. FORFEITURE IN OBSCENITY CASES.

(a) In General.—Chapter 71 of title 18, United States Code, is amended by adding at the end the following:

"§ 1467. Criminal forfeiture

"(a) Property Subject to Criminal Forfeiture.—A person who is convicted of an offense involving obscene material under this chapter shall forfeit to the United States such person's interest in—

"(1) any obscene material produced, transported, mailed, shipped or received in violation of this chapter;

"(2) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and

"(3) any property, real or personal, used or intended to be used to commit or to promote the commission of such offense. A forfeiture under this subparagraph shall be authorized only by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or the Assistant Attorney General or the Acting Assistant Attorney General in the Criminal Division.

"(b) Third Party Transfers.—All right, title, and interest in property described in subsection (a) of this section vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (m) of this section that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

"(c) Protective Orders.—(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) of this section for forfeiture under this section—

"(A) upon the filing of an indictment or information charging a violation of this chapter for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

"(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

"(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

"(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered;

except that an order entered under subparagraph (B) shall be effective for not more than 90 days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

"(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 10 days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

"(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

"(d) Warrant of Seizure.—The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (c) of this section may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

"(e) Order of Forfeiture.—The court shall order forfeiture of property referred to in subsection (a) if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.

"(f) Execution.—Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

"(g) Disposition of Property.—Following the seizure of property ordered forfeited under this section, the Attorney General shall destroy or retain for official use any property described in paragraph (1) of subsection (a) and shall direct the disposition of any property described in paragraph (2) of subsection (a) by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

"(h) Authority of Attorney General.—With respect to property ordered forfeited under this section, the Attorney General is authorized to—

"(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

"(2) comprise claims arising under this section;

"(3) award compensation to persons providing information resulting in a forfeiture under this section;

"(4) direct the disposition by the United States, in accordance with the provisions of section 1616, title 19, United States Code, of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

"(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

"(i) Applicability of Civil Forfeiture Provisions.—Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 1468(d) of this title (18 U.S.C. 1468(d)) shall apply to a criminal forfeiture under this section.

"(j) Bar on Intervention.—Except as provided in subsection (m) of this section, no party claiming an interest in property subject to forfeiture under this section may—

"(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

"(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

"(k) Jurisdiction To Enter Orders.—The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

"(l) Depositions.—In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

"(m) Third Party Interests.—(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

"(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within 30 days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

"(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

"(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within 30 days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

"(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

"(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

"(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

"(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

"(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

"(n) Construction.—The provisions of this section shall be liberally construed to effectuate its remedial purposes.

"(o) Substitute Assets.—If any of the property described in subsection (a), as a result of any act or omission of the defendant—

"(1) cannot be located upon the exercise of due diligence;

"(2) has been transferred or sold to, or deposited with, a third party;

"(3) has been placed beyond the jurisdiction of the court;

"(4) has been substantially diminished in value; or

"(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).".

(b) Repeal.—The last paragraph of section 1465 of title 18, United States Code, is repealed.

(c) Sexual Abuse of Children.—Sections 2253 through 2254 of title 18, United States Code, are amended to read as follows:

"§ 2253. Criminal forfeiture

"(a) Property Subject to Criminal Forfeiture.—A person who is convicted of an offense under this chapter involving a visual depiction described in sections 2251, 2251A, or 2252 of this chapter shall forfeit to the United States such person's interest in—

"(1) any visual depiction described in sections 2251, 2251A, or 2252 of this chapter, or any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped or received in violation of this chapter;

"(2) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and

"(3) any property, real or personal, used or intended to be used to commit or to promote the commission of such offense.

"(b) Third Party Transfers.—All right, title, and interest in property described in subsection (a) of this section vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (m) of this section that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

"(c) Protective Orders.—(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) of this section for forfeiture under this section—

"(A) upon the filing of an indictment or information charging a violation of this chapter for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

"(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered;

except that an order entered pursuant to subparagraph (B) shall be effective for not more than 90 days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

"(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 10 days after the date on which is it entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

"(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

"(d) Warrant of Seizure.—The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (c) of this section may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

"(e) Order of Forfeiture.—The court shall order forfeiture of property referred to in subsection (a) if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.

"(f) Execution.—Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

"(g) Disposition of Property.—Following the seizure of property ordered forfeited under this section, the Attorney General shall destroy or retain for official use any article described in paragraph (1) of subsection (a), and shall retain for official use or direct the disposition of any property described in paragraph (2) or (3) of subsection (a) by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

"(h) Authority of Attorney General.—With respect to property ordered forfeited under this section, the Attorney General is authorized to—

"(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

"(2) compromise claims arising under this section;

"(3) award compensation to persons providing information resulting in a forfeiture under this section;

"(4) direct the disposition by the United States, in accordance with the provisions of section 1616, title 19, United States Code, of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

"(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

"(i) Applicability of Civil Forfeiture Provisions.—Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 2254(d) of this title (18 U.S.C. 2254(d)) shall apply to a criminal forfeiture under this section.

"(j) Bar on Intervention.—Except as provided in subsection (m) of this section, no party claiming an interest in property subject to forfeiture under this section may—

"(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

"(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

"(k) Jurisdiction to Enter Orders.—The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

"(l) Depositions.—In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under rule 15 of the Federal Ruled of Criminal Procedure.

"(m) Third Party Interests.—(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those person so notified.

"(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within 30 days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

"(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

"(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within 30 days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

"(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

"(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

"(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

"(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

"(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

"(n) Construction.—The provisions of this section shall be liberally construed to effectuate its remedial purposes.

"(o) Substitute Assets.—If any of the property described in subsection (a), as a result of any act or omission of the defendant—

"(1) cannot be located upon the exercise of due diligence;

"(2) has been transferred or sold to, or deposited with, a third party;

"(3) has been placed beyond the jurisdiction of the court;

"(4) has been substantially diminished in value; or

"(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

"§ 2254. Civil forfeiture

"(a) Property Subject to Civil Forfeiture.—The following property shall be subject to forfeiture by the United States:

"(1) Any visual depiction described in sections 2251, 2251A, or 2252 of this chapter, or any book, magazine, periodical, film, videotape or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped, or received in violation of this chapter.

"(2) Any property, real or personal, used or intended to be used to commit or to promote the commission of an offense under this chapter involving a visual depiction described in sections 2251, 2251A, or 2252 of this chapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

"(3) Any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from a violation of this chapter involving a visual depiction described in sections 2251, 2251A, or 2252 of this chapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

"(b) Seizure Pursuant to Supplemental Rules for Certain Admiralty and Maritime Claims.—Any property subject to forfeiture to the United States under this section may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when the seizure is pursuant to a search under a search warrant. The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.

"(c) Custody of Attorney General.—Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under any of the provisions of this subchapter, the Attorney General may—

"(1) place the property under seal;

"(2) remove the property to a place designated by him; or

"(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

"(d) Other Laws and Proceedings Applicable.—All provisions of the customs laws relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, insofar as applicable and not inconsistent with the provisions of this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General or the Postal Service, except to the extent that such duties arise from seizures and forfeitures affected by any customs officer.

"(e) Sections 1606, 1607, 1608, 1609, 1613, 1614, 1617, and 1618 of title 19, United States Code, shall not apply with respect to any visual depiction or any matter containing a visual depiction subject to forfeiture under subsection (a)(1) of this section.

"(f) Disposition of Forfeited Property.—Whenever property is forfeited under this section the Attorney General shall destroy or retain for official use any property described in paragraph (1) of subsection (a) and, with respect to property described in paragraph (2) or (3) of subsection (a), may—

"(1) retain the property for official use or transfer the custody or ownership of any forfeited property to a Federal, State, or local agency pursuant to section 1616 of title 19;

"(2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public; or

"(3) require that the General Services Administration take custody of the property and dispose of it in accordance with law.

The Attorney General shall ensure the equitable transfer pursuant to paragraph (1) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General pursuant to paragraph (1) shall not be subject to judicial review. The Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of title 28 the proceeds from any sale under paragraph (2) and any moneys forfeited under this subchapter.

"(g) Title to Property.—All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

"(h) Stay of Proceedings.—The filing of an indictment or information alleging a violation of this chapter which is also related to a civil forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding.

"(i) Venue.—In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.".

(e) Tariff Act Amendment.—Section 305 of the Tariff Act of 1930 (19 U.S.C. 1305), is amended by adding at the end the following:

"(b) Coordination of Forfeiture Proceedings with Criminal Proceedings.—(1) Notwithstanding subsection (a), whenever the Customs Service is of the opinion that criminal prosecution would be appropriate or that further criminal investigation is warranted in connection with allegedly obscene material seized at the time of entry, the appropriate customs officer shall immediately transmit information concerning such seizure to the United States Attorney of the district of the addressee's residence. No notice to the addressee or consignee concerning the seizure is required at the time of such transmittal.

"(2) Upon receipt of such information, such United States attorney shall promptly determine whether in such attorney's opinion the referral of the matter for forfeiture under this section would materially affect the Government's ability to conduct a criminal investigation with respect to such seizure.

"(3) If the United States attorney is of the opinion that no prejudice to such investigation will result from such referral, such attorney shall immediately so notify the Customs Service in writing. The appropriate customs officer shall immediately notify in writing the addressee or consignee of the seizure and shall transmit information concerning such seizure to the United States attorney of the district in which is situated the office at which such seizure has taken place. The actions described in paragraphs (1) through (3) of this subsection shall take place within sufficient time to allow for the filing of a forfeiture complaint within 14 days of the seizure unless the United States attorney of the district of the addressee's residence certifies in writing and includes specific, articulable facts demonstrating that the determination required in paragraph (2) of this subsection could not be made in sufficient time to comply with this deadline. In such cases, the actions described in paragraphs (1) through (3) of this subsection shall take place within sufficient time to allow for the filing of a forfeiture complaint within 21 days of seizure.

"(4) If the United States attorney for the district of the addressee's residence concludes that material prejudice to such investigation will result from such referral, such United States attorney shall place on file, within 14 days of the date of seizure, a dated certification stating that it is the United States attorney's judgment that referral of the matter for forfeiture under this section would materially affect the Government's ability to conduct a criminal investigation with respect to the seizure. The certification shall set forth specific, articulable facts demonstrating that withholding referral for forfeiture is necessary.

"(5)(A) As soon as the circumstances change so that withholding of referral for forfeiture is no longer necessary for purposes of the criminal investigation, the United States attorney shall immediately so notify the Customs Service in writing and shall furnish a copy of the certification described in paragraph (4) above to the Customs Service.

"(B) In any matter referred to a United States attorney for possible criminal prosecution wherein subparagraph (5)(A) does not apply, the United States attorney shall immediately notify the Customs Service in writing concerning the disposition of the matter, whether by institution of a prosecution or a letter of declination, and shall also furnish a copy of the certification described in paragraph (4) of this subsection to the Customs Service.

"(C) Upon receipt of the notification described in subparagraph (A) or (B) of this paragraph, the appropriate customs officer shall immediately notify the addressee or consignee of the seizure and shall transmit information concerning the seizure, including a copy of the certification described in paragraph (4) above and a copy of the notification described in subparagraph (A) or (B) of this paragraph, to the United States attorney of the district in which is situated the office at which such seizure has taken place, who shall institute forfeiture proceedings in accordance with subsection (a) hereof within 14 days of the date of the notification described in subparagraph (A) or (B) above. A copy of the certification described in paragraph (4) above and a copy of the notification described in subparagraph (A) or (B) of this paragraph shall be affixed to the complaint for forfeiture.

"(c) Stay on Motion.—Upon motion of the United States, a court, for good cause shown, shall stay civil forfeiture proceedings commenced under this section pending the completion of any related criminal matter whether in the same or in a different district.".

SEC. 523. CABLE TELEVISION OBSCENITY.

(a) New Offense.—Chapter 71 of title 18, United States Code, is amended by inserting at the end, the following new section:

"§ 1468. Distributing obscene material by cable or subscription television

"(a) Whoever knowingly utters any obscene language or distributes any obscene matter by means of cable television or subscription services on television, shall be punished by imprisonment for not more than 2 years or by a fine in accordance with this title, or both.

"(b) As used in this section, the term 'distribute' means to send, transmit, retransmit, telecast, broadcast, or cablecast, including by wire, microwave, or satellite, or to produce or provide material for such distribution.

"(c) Nothing in this chapter, or the Cable Communications Policy Act of 1984, or any other provision of Federal law, is intended to interfere with or preempt the power of the States, including political subdivisions thereof, to regulate the uttering of language that is obscene or otherwise unprotected by the Constitution or the distribution of matter that is obscene or otherwise unprotected by the Constitution, of any sort, by means of cable television or subscription services on television.".

(b) Clerical Amendment.—The table of sections at the beginning of chapter 71 of title 18, United States Code, is amended by adding at the end the following:

"1468. Distributing obscene material by cable or subscription television.".

SEC. 524. COMMUNICATIONS ACT AMENDMENT.

Section 223(b) of the Communications Act of 1934 (47 U.S.C. 223(b)) is amended to read as follows:

"(b)(1)(A) Whoever knowingly—

"(i) in the District of Columbia or in interstate or foreign communication, by means of telephone, makes (directly or by recording device) any obscene communication for commercial purposes to any person, regardless of whether the maker of such communication placed the call; or

"(ii) permits any telephone facility under such person's control to be used for an activity prohibited by clause (i);

shall be fined in accordance with title 18 of the United States Code, or imprisoned not more than two years, or both.

"(2)(A) Whoever knowingly—

"(i) in the District of Columbia or in interstate or foreign communication, by means of telephone, makes (directly or by recording device) any indecent communication for commercial purposes to any person, regardless of whether the maker of such communication placed the call; or

"(ii) permits any telephone facility under such person's control to be used for an activity prohibited by clause (i),

shall be fined not more than $50,000 or imprisoned not more than six months, or both.".

SEC. 525. ELECTRONIC SURVEILLANCE.

Subsection (1) of section 2516 of title 18, United States Code, is amended by redesignating paragraphs (i) and (j) as (j) and (k), respectively, and by adding a new paragraph (i) as follows:

"(i) any felony violation of chapter 71 (relating to obscenity) of this title;".

SEC. 526. POSSESSION AND SALE OF OBSCENE MATTERS IN FEDERAL JURISDICTION OR ON FEDERAL PROPERTY.

(a) In General.—Chapter 71 of title 18, United States Code, is amended by inserting before section 1461 the following:

"§ 1460. Possession and sale of obscene matter on Federal property

"(a) Whoever, either—

"(1) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States; or

"(2) in the Indian country as defined in section 1151 of this title,

knowingly sells or possesses with intent to sell an obscene visual depiction or a visual depiction of a minor engaging in or assisting another person to engage in sexually explicit conduct, shall be punished by a fine in accordance with the provisions of this title or imprisoned for not more than 2 years, or both.

"(b) Except as provided in subsection (c), whoever, in an area described in subparagraph (1) or (2) of subsection (a) knowingly possesses an obscene visual depiction or a visual depiction of a minor engaging in or assisting another person to engage in sexually explicit conduct shall be punished by imprisonment for not more than 6 months or a fine of not more than $5,000 for an individual or $10,000 for a person other than an individual, or both.

"(c) Subsection (b) shall not apply in the case of a person who possesses an obscene visual depiction in any place where such person lives or resides.

"(d) For the purposes of this section—

"(1) the term 'visual depiction' includes undeveloped film and videotape but does not include mere words; and

"(2) the terms 'minor' and 'sexually explicit conduct' have the meaning given those terms in chapter 110 of this title.

"(e) In a prosecution for a violation of this section involving an obscene visual depiction, it shall be an affirmative defense, on which the defendant has the burden of persuasion by a preponderance of the evidence, that the person—

"(1) ordered or received the obscene matter without examining the matter in advance;

"(2) did not in fact offer the matter for sale, or transfer or offer to transfer it to another person other than the sender; and

"(3) possessed the material less than 21 days.".

(b) Clerical Amendment.—The table of sections at the beginning of chapter 71 of title 18, United States Code, is amended by adding before the item relating to section 1461 the following:

"1460. Possession and sale of obscene matter on Federal property.".

SEC. 527. CIVIL FORFEITURE.

(a) In General.—Chapter 71 of title 18, United States Code, is amended by adding the following new section at the end thereof:

"§ 1470. Civil forfeiture

"(a) Property Subject to Civil Forfeiture.—The following property shall be subject to forfeiture by the United States:

"(1) Any material that has been adjudged obscene in any criminal case, Federal or State, that is produced, transported, mailed, shipped, or received in violation of this chapter.

"(2) Any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from a violation of this chapter involving material that has been adjudged obscene in any criminal case, State or Federal, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

"(b) Seizure Pursuant to Supplemental Rules for Certain Admiralty and Maritime Claims.—Any property subject to forfeiture to the United States under this section may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when the seizure is pursuant to a search under a search warrant. The government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.

"(c) Custody of Attorney General.—Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under any of the provisions of this subchapter, the Attorney General may—

"(1) place the property under seal;

"(2) remove the property to a place designated by him; or

"(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

"(d) Other Laws and Proceedings Applicable.—All provisions of the customs laws relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, insofar as applicable and not inconsistent with the provisions of this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General or the Postal Service, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

"(e) Applicability of Certain Sections.—Sections 1606, 1607, 1608, 1609, 1613, 1614, 1617, and 1618 of title 19 shall not apply with respect to obscene material subject to forfeiture under subsection (a)(1) of this section.

"(f) Disposition of Forfeited Property.—Whenever property is forfeited under this section the Attorney General shall destroy or retain for official use any article described in paragraph (1) of subsection (a), and with respect to property described in paragraphs (2) and (3) of subsection (a) may—

"(1) retain the property for official use or transfer the custody or ownership of any forfeited property to a Federal, State, or local agency pursuant to section 1616 of title 19;

"(2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public; or

"(3) require that the General Services Administration take custody of the property and dispose of it in accordance with law.

The Attorney General shall ensure the equitable transfer pursuant to paragraph (1) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General pursuant to paragraph (1) shall not be subject to judicial review. The Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of title 28 the proceeds from any sale under paragraph (2) and any moneys forfeited under this subchapter.

"(g) Title to Property.—All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

"(h) Stay of Proceedings.—The filing of an indictment or information alleging a violation of this chapter which is also related to a civil forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding.

"(i) Venue.—In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.".

(b) Clerical Amendments.—The table of sections at the beginning of chapter 71 of title 18, United States Code, is amended by inserting after the item relating to section 1469 the following:

"1470. Civil forfeiture.".

(c) Repeal.—The last paragraph of section 1465 of title 18, United States Code, is repealed.

SEC. 528. CIVIL FINES.

Chapter 71 of title 18, United States Code, is amended by inserting at the end the following new section:

"Section 1471. Civil fines.

"(a) Whoever produces, transports, mails, ships or receives any article that has been adjudged obscene in any state or federal criminal case shall be subject to a civil penalty of—

"(1) for a first violation, not more than $10,000;

"(2) for a second violation, not more than $50,000; and

"(3) for a third or subsequent violation, not more than $250,000 in the case of an individual, or $500,000 in the case of an organization.

"(b) An action to recover a fine imposable under subsection (a) shall be brought in the name of the United States. The Attorney General may commence such a civil action in the district court in any district where the violation occurs. Such an action must be commenced within 5 years of the violation. The Attorney General may compromise, modify, or remit with or without condition any civil penalty imposed under this section.

"(c) In any civil action under this section, the defendant shall have a right to a trial by jury, and the government shall have the burden of proof, by a preponderance of the evidence, that the article is obscene under the standards of the community in which the trial takes place."

SEC. 529. SEVERABILITY.

If any of the provisions of this Act are found invalid, such finding shall not affect the validity or effect of the remaining provisions thereof.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3705) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. BYRD. Mr. President, I ask unanimous consent that Calendar Order Nos. 858 and 643 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that all of the foregoing actions on legislative measures be reconsidered en bloc and motions to reconsider be laid on the table and that as in executive session the votes on the nominations be reconsidered en bloc and a motion to reconsider be laid on the table and that the President be immediately notified of the confirmation of the nominees.

ORDER OF PROCEDURE

Mr. ARMSTRONG. Mr. President, if the Senator will yield, I understand we have some other business to take up and we await the leader's pleasure on that.

At some point before adjournment, I would like to address the Senate on the subject of actions we have just taken. My desire would be to do that at a time of greatest convenience to the leader. I want to comment on the qualification of one of the nominees who has been approved and also to discuss two nominees who have not yet been approved and whose confirmation I hope on some occasion to obtain.

I would be glad to do it now, but my desire would be to let anyone else who would like to go ahead to do so, because I am going to stay here to close up and I just want to be accommodating to anyone who has other business.

Mr. BYRD. I thank the distinguished Senator. I believe that some work by staff is still going forward on the remainder of the measures to be transacted. It would be a good time at this moment. I suggest to the Senator that he proceed.

Mr. ARMSTRONG. I would be glad to do that.

Mr. THURMOND. Will the Senator yield?

Mr. ARMSTRONG. Yes, I yield.

JUDICIAL LEGISLATION AND NOMINATIONS COMPROMISE

Mr. THURMOND. Mr. President, I will not take but just a minute. I want to take this opportunity to thank the majority leader, Senator BYRD, the minority leader, Senator DOLE, and Senator BIDEN for joining in with us to work together to pass this package. There are some legislative proposals not included that all of us would like to have had included. But, all Senators had to compromise. However, as a whole, I think we have passed good legislation by working together on this package.

Specifically, I wish to express my appreciation to Senator BIDEN for his cooperation in getting the judges considered and this legislation passed. Senator BIDEN is a very reasonable, able, and dedicated chairman. I think he would have agreed to more judges and legislation if it had been possible.

We are leaving three judges on the calendar. We are leaving 14 in the committee that I would like to have seen action on, but it was not possible to do. I am pleased we could get this many before adjournment.

I wish to express my appreciation to all who cooperated in this regard.

Mr. President, I yield the floor.

CONFIRMATIONS ON THE EXECUTIVE CALENDAR

Mr. ARMSTRONG. Mr. President, I thought we had actually lost the knack of confirming people to the Federal bench around here, but I guess it is like riding a bicycle: once you know how to do it, you never forget. I did not think we would ever get to the point where we would get any more judges confirmed.

I wish to compliment those who have made it possible for us to get some of the judges, whose nominations have been submitted by the President for consideration of the Senate, before the Senate tonight and confirmed. I especially wish to single out the Senator from South Carolina [Mr. THURMOND] for his absolutely tireless efforts to make this possible in a situation which, to put it charitably, could only be described as very, very difficult. I thank my friend from South Carolina for doing so.

I am especially grateful to him for the particular effort he has made on behalf of Lewis T. Babcock, who tonight has been confirmed, and on behalf of two other nominees of the President to the Federal district bench in Colorado, Bill Erickson and Don Abram, who have not yet been confirmed.

LEWIS T. BABCOCK

Mr. President, Lewis Babcock, in my opinion, is one of the most outstandingly qualified persons ever to come before the Senate for the post of U.S. district judge.

He was born in Rocky Ford, CO, in 1943, and educated in the public schools there. He graduated with honors from the University of Denver in 1965. He then went on to earn a law degree from the University of Denver Law School in 1968 and took advanced studies at the University of Virginia.

Following his graduation from law school, Judge Babcock established his own law practice in the rural community of Rocky Ford, CO, with a partnership called Mitchell & Babcock, a practice which flourished until 1976. During that time, Lewis Babcock also served as city attorney for the town of Las Animas and city attorney for the town of Rocky Ford. He was appointed assistant district attorney for the 16th Judicial District in La Junta in 1973 and continued to distinguish himself as a thoughtful, fair, dedicated advocate for law enforcement.

In 1976, he was appointed to be a district judge for the 16th Judicial District in Otero County and in 1983 elevated to become chief judge for that district.

His service as a fair and impartial judge earned him a solid reputation in the Colorado legal community.

In 1983, he was appointed to the Colorado Court of Appeals, a position which he holds up to the present time.

While doing all of this, while becoming a leader within his profession, Judge Babcock also found time to serve in the Colorado National Guard for 6 years, and he is active in civic and community affairs.

Mr. President, Judge Babcock, in addition to being a member of several bar associations, was a member of the Colorado Judicial Planning Council on Judicial Performance. He is a member of the Colorado District Judges Association, the American Judicature Society, the American Law Institute, the Colorado Bar Foundation, and American Inns of Court. He also serves on the Civil Rules Committee of the Colorado Supreme Court and the Colorado Judicial Advisory Committee of the State Supreme Court.

Mr. President, there is no responsibility of a U.S. Senator which I personally take more seriously than the recommendation to the President and to the Senate of persons for consideration and confirmation to the Federal bench.

When Judge Babcock's name was presented to me at the recommendation of a distinguished panel of persons who I asked to help screen potential candidates for judges, I was impressed, because the people who sit on that panel, dear friends of mine, eminent attorneys, people who I have known and whose judgment I trust in Colorado, I was impressed by their recommendation because they looked at some outstanding people and Lew Babcock came out on top.

But I did not take their word for it. After they had done their homework, I proceeded to do my own in interviewing Judge Babcock and talking to people about him.

Mr. President, he gets high marks not just from most of the people I talked to, but from every single one of the people I talked to. In fact, I have rarely encountered anybody whose potential for the court comes so well vouched for. I applaud the action of the Senate in approving his nomination.

Now, Mr. President, there is a darker side to the action which we have taken tonight, because the reality is that we have left some outstanding people adrift, stranded. Yes, we have approved Lew Babcock and a handful of other judges, but, as I understand it, there is a dozen or more other nominations of the President which have not been approved by the committee, which have not come to the floor for a vote, and which, barring a miracle, are not likely to come before the Senate now perhaps at any time.

I want to tell you about two of the men whose qualifications I know as well as those of Lew Babcock, who has been approved, and to tell you why I think the Senate is making a very serious mistake—a mistake which the Senate will regret in the future by failing to approve the nominations of these two outstanding Colorado judges, because both of them are already judges, to be judges of the Federal district court in Colorado.

The background of it is this, Mr. President: These are not new vacancies for which they have been nominated. In fact, the vacancy that we have just confirmed Lew Babcock to fill is over 4 years old. For the last 4 years, we have had that vacancy.

Now, that is a hardship for the judges who sit on the court out there, and it is a hardship for the attorneys who cannot get their cases heard, and it is a hardship for the litigants who deserve to have a speedy trial in the district court of Colorado.

It is not just one vacancy. We have three vacancies and have had for a long, long time. And, for a combination of reasons, at least two vacancies, barring a miracle, will remain after the Senate completes its work here tonight and after we adjourn sine die hopefully next week.

WILLIAM H. ERICKSON

One of the persons the President has sent up to fill one of those other two vacancies is my old friend, Bill Erickson.

I believe Judge Bill Erickson is either the most distinguished State judge in America or, if he is not, I do not know who is. He is a native Coloradan, graduated in the upper third of his high school, worked briefly as a petroleum drilling engineer, and then in the private practice of law as a trial lawyer for 20 years.

In 1971, he went to the Colorado Supreme Court and has been there ever since.

From 1983 to 1985 he served as chief justice of the Colorado Supreme Court. He is the past chairman of the American Bar Association Standing Committee on Standards for Criminal Justice. The judicial standards which have been written by his committee have been cited in more than 10,000 appellate decisions.

In addition, Justice Erickson has been a member of the Board of Governors of the American Bar Association, chairman of the President's National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance, a fellow of the American College of Trial Lawyers, and a director of the National Judicial College.

He has served on two dozen other boards or Commissions.

Mr. President, Judge Bill Erickson is not just marginally qualified. You know, he not only passed muster of all of the little informal groups that sit around thinking about who ought to be a Federal judge. His credentials were considered by the American Bar Association and he was found not to just be qualified, but to be well qualified. Indeed, there was a minority report, a substantial minority report, I understand, that though it would be preferable to report him exceptionally well qualified.

Bill Erickson is a leader in his profession. He is an outstanding judge. He has a record of public service that is legendary in our State and is well know all over America.

Now you might ask, Mr. President, how come a judge of this outstanding character and qualification got turned down by the Judiciary Committee of the U.S. Senate? Why did they vote him down?

Well, Mr. President, they did not vote him down. They never voted on him. His nomination never came to a vote in the Judiciary Committee of the U.S. Senate and I am here to tell you he is getting a raw deal. He did not get voted on because of some whispered allegations, allegations that were never so far as I know formally presented to the committee, allegations for which he had no proper way to defend himself before the committee; allegations which I believe to be untrue.

He did not get a vote. He did not get his day in court before the U.S. Senate.

I would not like it if his nomination had been turned down. I will tell you, frankly, that if it had been voted on it would not have been turned down. I do not believe it would have. I know the members of the Judiciary Committee. Some of them I know pretty well. In fact, I guess I know most of them pretty well. I know how their minds work, I know what standards of fairness they adhere to, I know how carefully they consider the qualifications of persons who come before them. I know how jealously they guard their own reputations for fairness. And I do not think if the name of Bill Erickson had been laid down before the Judiciary Committee of the Senate he would have been turned down and I think it is a rotten trick that he was not voted on. He deserves to be voted on. I would say to you, Mr. President, he deserves to be voted on Monday morning.

I do not have any real expectation that that is going to happen, but it should. And I hope that somebody, somebody who is in a position to do so, as I am not, will lay that nomination before the Judiciary Committee before this session of Congress adjourns and give him a vote.

If he gets voted down by the committee I am not going to agree with that. But at least Senators will be able to go home and say: We did not leave this guy stranded. He did not fall victim to a whispering campaign. He got a chance to be voted on. He was judged by the Judiciary Committee of the Senate and members of the Judiciary Committee will be judged on how they voted on that, just like they are judged on every vote that they cast, and as all Senators are judged for every vote that they cast.

But, you know, you cannot hold anybody accountable for a vote that you do not cast. If you do not vote, you are just hiding. Mr. President, the Judiciary Committee is hiding out on the Erickson nomination and I think it is a raw deal, I think it is a rotten thing, and I am joined in this belief by a huge number of thoughtful people of Colorado. People who are Republicans, people who are Democrats, people who are independents, people who are not political at all, a tremendous number of other judges and lawyers in the State of Colorado who have expressed to me and to others who are knowledgeable about this that they cannot understand how the Senate could turn down, let alone fail to act upon the nomination of Judge Bill Erickson, a great judge, a distinguished judge. He does not even get a vote in the Judiciary Committee of the Senate.

DONALD E. ABRAM

Now, Mr. President, I want to say a word about the nomination of Donald E. Abram. I first met Donald Abram, I guess, more or less 25 years ago. I do not remember exactly. I remember the occasion. It was when Don Abram was named one of the outstanding young men of Colorado by the Jaycees, which is an organization I admire. And very early, as long as 25, maybe more, years ago, the Jaycees took a look at all of the young people in Colorado and they picked out two or three of them and said, "Here are the leaders for the future. Here are the outstanding young leaders in Colorado." And one of them was Don Abram.

I remember the occasion. I encountered him and got to know him and was impressed by the award which he had been given and I followed his career ever since. Do you know something, Mr. President; the Jaycees were right. Don Abram did turn out to be an outstanding leader or our State.

It is the fact that he is an outstanding person, as well as a fine lawyer, fine judge, now a fine Federal magistrate. That prompted the President of the United States to send his nomination over here to be a judge of the U.S. District Court of Colorado to fill another of the vacancies that we have suffered under in the Senate of Colorado, a judgeship for which Mr. Abram became nominated became vacant on July 10, 1984. More than 4 years ago.

Well, I support the President's nomination of Mr. Abram. He is not only qualified, in my opinion. He is well qualified. I do not think he would just be an average judge. I do not think he would be a mediocre judge. I believe that the day he took office that he would rank, right from the start, in the upper half of the judges in this country and I do not base that on my friendship for him because although I have known Don Abram for a long time, he is not a close pal of mine. He is not a person that I see very often.

In fact, I think before he was elected to be Mr. Reagan's nominee for the district bench, I think maybe 10 or 15 years had gone by since I had last seen him, though I had known of his name and thought of his career.

I do not say it for any personal purpose. I say it because I know what he already accomplished. Don Abram graduated first in his high school class. He was a top graduate of the University of Colorado Law School. While in law school, he served as managing editor of Law Review.

After law school, Mr. Abram worked 12 years in private law practice where he specialized in insurance liability. He became a partner of the firm. Between 1975 and 1981 he served as a State district court judge. Currently, Mr. Abram is a U.S. magistrate for the Federal district court in Colorado.

Mr. Abram extensively participates in legal and judicial activities. He has served in the following positions: Treasurer, National Council of U.S. Magistrates; first vice president, Colorado Bar Association; chairman, Juvenile Judges of Colorado; Lecturer, Federal procedures at Denver University Law School; member of legislative committees and Supreme Court Commissions on Grand Jury Reform, Mental Health Care, reorganizing

State courts, and legal and judicial continuing legal education; and member, board of directors, Pueblo Legal Services.

While his legal accomplishments are impressive, what is refreshingly noteworthy is Don Abram's extensive commitment and service to his country and his community. Mr. Abram served for 3 years in the U.S. Navy followed by 25 years of service in the U.S. Naval Reserve. He also served on the Pueblo City Council and once served as Pueblo Mayor. He has also been president of the Pueblo Goodwill Industries, Pueblo Sertoma Club, the Pueblo United Fund and the Pueblo County Navy League. He served as chairman of school planning and community action committees.

Not surprisingly, he has received numerous awards, including the Colorado Jaycee Distinguished Service Award and the Pueblo County Bar Association Award.

You might wonder, Mr. President, since we have a vacancy that goes back a long, long way; we have got cases piling up; we have got sitting judges wondering if they have been forgotten by the Senate that will not confirm nominees to our court, you might wonder why, under the circumstances, Don Abram was voted down by the Judiciary Committee.

You might wonder what kind of frustration prompted Judge John L. Kane, who recently had to leave the active service on the bench because of a health problem, to point out that more than 1,500 cases in my State could have been heard if we had had these vacancies filled, as they should have been a long time ago.

Judge Kane said it very well. He said: "Since there are always at least two sides to a case, at least 3,060 people and business have been deprived of their day in court."

I happen to be one of those, Mr. President, who believes that justice delayed is justice denied. So why is it with the vacancy of long standing, the need very great, the President sending up the name of an outstanding Colorado judge and magistrate, a distinguished citizen of our State, how could it be the Judiciary Committee of the U.S. Senate turned him down? Why did they vote him down?

Well, Mr. President, they did not. They did not vote him down. The same thing happened to him that happened to Bill Erickson. He did not get a vote. His name never was voted on. I do not have the slightest doubt, as I stand here tonight, that if there had been a vote on these two nominations, they both would have been approved.

How do I know that? I do not know for sure, but I do not doubt it and the reason I do not doubt it is because I do not think that Senators, knowing that they would be judged by their colleagues in this body, by their professional peers, by those who follow such matters within the profession of law, and, of course, most of the members of the Judiciary Committee are in fact lawyers, I do not think if they had a chance to vote on men like Bill Erickson and Don Abram they would vote no.

Don Abram had the same thing happen to him that happened to Bill Erickson. He was left in a lurch, stranded, never voted on. I think it is a tragedy, Mr. President. Somebody is going to say, "Oh, well, that is just politics. That is the way it is; somebody gets left at the goalpost. Life isn't fair."

Well, I know life is not fair, Mr. President. I did not get up here to complain of this because I think life is supposed to be fair. I learned that a long time ago. Bill Erickson and Don Abram are both men of maturity. They are not going to be crushed by this experience. I suppose that Bill Erickson is going to continue to serve on the Supreme Court of the State of Colorado, as he has for the past two decades, deciding important cases, writing decisions, serving with distinction just as he has ever since 1971. And I presume that Don Abram is going to continue handling cases of enormous consequences with very, very great jurisdiction as a U.S. magistrate working in the same building in the room next door to the Federal district court handling pretty much the same kind of cases—not exactly the same kind of cases but almost the same kind of cases—that he would handle if he were a Federal judge.

These men are going to survive it. I have not arisen to fight because I am worried about what is going to happen to them. They are going to be fine. I have arisen tonight for the following reasons: First because I want to express publicly in this forum on the occasion my admiration for these two fine men who well deserved to be nominated by the President of the United States to be judges of the district court in Colorado, and to tell them and to share with my colleagues and to spread upon the RECORD of this proceeding, in case anybody pays any attention and reads it on some later occasion, my admiration for them.

Second, to eliminate any lingering doubt about what I think of the process that had led to this compromise in which a dozen or 15 or however many judges it is, including these two from Colorado, get stranded, do not get voted on by the Senate. I am sorry these men are not being confirmed. They deserve to be confirmed, but what really rankles me, what really sticks in my craw, what really seems to me to be absolutely unfair is that they did not get a vote. They did not get their day in court.

If you get accused of a parking violation or of a speeding violation, you do not have to pay the ticket. You can insist on your day in court. Do you know that? If you are coming to work some morning and the officer pulls you over and says, "Hey, you were going 40 in a 30-mile-an-hour zone," he gives you a ticket but you do not have to pay it. You can insist on your right to a day in court, to be judged, to let the process work. This is just if you are getting a speeding ticket.

If you are a drug dealer and you are accused of selling drugs, they do not just throw you in the hoosegow, they indict you, they give you a trial, a speedy trial, Mr. President, not the kind of a delayed proceeding that we have seen become so routine of nominees that appear before the Judiciary Committee—a speedy trial.

Let me digress for just a moment. I had not intended to mention the case of Bob Miller, but I think I will because it illustrates the point. Bob Miller is another distinguished Coloradan who appeared before the Judiciary Committee a while back, had a hearing, he was nominated by the President of the United States to be a U.S. district judge in Colorado. He was the U.S. attorney for the State of Colorado. I believe he is the most popular single appointment of its kind I ever saw. When it came time for me to consider who I would recommend to be a U.S. attorney in my State, I think every single district attorney in the State of Colorado, and we have 63 counties, I think every single one of them recommended Bob Miller. I guess that was not spontaneous. Somebody must have put them up to it. I believe that is what happened. If it was not absolutely everyone, it was practically everyone. He served ably with distinction. I never heard complaints about his service as U.S. attorney. And then something happened. His luck changed because the President appointed him to be a district judge and he came up here, and they had a hearing, and they horsed him around and fooled around and finally after 11 months of pending before the Judiciary Committee in the Senate, he finally quit in disgust. He said, "Forget it. I do not want to be considered anymore. I am going to do something else," and he quit and took a job in private practice. He is probably making three or four times as much as he was as U.S. attorney. Probably three or four times as much as if he would have been a Federal district judge.

So Bob Miller is doing OK. But the Senate is not doing OK, Mr. President. The Judiciary Committee is not doing OK when men like Bob Miller hang around there for 11 months and do not get a vote, when this session of the Congress adjourns and people like Bill Erickson and Don Abram do not get a vote.

Mr. President, the fact that they do get voted on is bad enough, but both of these men are, if fact, victims of a whispering campaign—and I use the term advisedly—of a whispering campaign. Nobody has come forward to say why Don Abram should not be confirmed. In fact, let me tell you exactly what happened.

Don Abram was picked out by the Justice Department as somebody they wanted to consider, a distinguished group of Colorado citizens under the chairmanship of Ted Hallaby, a fine lawyer in Colorado who I have known for a long time, who I trust and who is chairman of the advisory committee that I appointed; along with Terry Considine, a graduate of Harvard Law School, and Ruth Leham, a lawyer who I have known for ages and who is one of the most respected persons in our State; Ray Friedlob a very talented and highly successful private practitioner of law; Miles Cortes in Arapahoe County. Another fine lawyer.

The committee reviewed qualifications of people, and they looked at Don Abram and said that he would be a good judge. And then the Bar Association reviewed the credentials of Don Abram, and the Bar Association said he was qualified to be a judge. And so he had a hearing before the Judiciary Committee. As far as I know, there was not a thing came out at that committee that would tell anybody he would not be a good judge. What happened is after the fact, an ad hoc committee, a committee that has no official standing, a committee which is not accountable to the public, a committee which, so far as I know, does not keep records of its procedings, a committee which—well, I said, it is an ad hoc committee—sent word that he was not suitable. They did not say why. They did not come before the committee and testify, and I would have much more admiration for a committee of that type if they had come in and said, "Look, we are against Don Abram because of the following things: He did this, he did this, he did this, or didn't do this. This is why we're against him," so that Senators who are members of the committee can say, "Well, how did you arrive at that? What is your evidence of this? Did you have a hearing at which Mr. Abram was present?"

They did not do that. They did not come before the committee. They may have communicated in writing with the committee, though I have no reason to think that is the case. So far as I know, they just sort of passed the word that they did not like his qualifications.

Well, when I heard this was happening and feared the outcome that in fact has ensued, I called up Magistrate Abram and I said, "Say, I think we have a problem here. Why don't you go to this ad hoc committee"—a committee by the way comparable to the committee I had to advise me. That is the character of it, and I do not say that to denigrate the members of the committee but only to spell out it is not an official committee. It is an advisory committee. I said, "Why don't you go to the committee and see what their problem is and see if we can work this thing out."

Well, he did and nobody would tell him. Nobody said, "Look, Don, you have cutting ethical corners; you have been taking kickbacks; you have been misappropriating property; you have been a lazy judge; you have had too many reversals; you don't run a good court."

They did not say any of those things. In fact, the record is the opposite. The record is that this guy was a good magistrate.

I do not say that because I know nothing about it. That is what the lawyers who practice before him say. That is what the Federal judge who supervises his work says. That is what his professional colleagues say. But because some committee for unspecified reasons, unspecified reasons, did not like him, the committee would not clear him. They would not even vote on it. And that is the part that sticks in my craw. No vote, no specified objection, no known problem, a lot of whispering, a couple of items in the letters to the editor column in the newspaper or something and here is the guy who does not get a vote.

Bill Erickson is a victim of a little different kind of whispering campaign. It is whispered he is a member of a club that discriminates against some people on the grounds of their religion. I do not know whether that is true. There is doubt in my mind whether the allegation is true. So far as I know that charge was never made officially before the committee. It was never made by anybody who came forward to the committee and said, "I accuse Judge Erickson of being a member of such a club," and there was a chance for cross-examination of that accusation to see if in fact there was reason to doubt it.

There is a lot of reason to doubt Bill Erickson knew it. In fact, he said he did not know it, did not believe it, and without going into all the details, Mr. President, there is a lot of reason to think that any responsible, thoughtful person would not think it was true. In fact, I think I should be a little more—well, maybe I will not be more specific. I guess I have explained it. They say that Cherry Hills Country Club, of which Bill Erickson has been a member a long time, discriminates against some people on the grounds of their religion.

Let me make this point. A lot of people who have been considered for various kinds of appointive and elective office are members of clubs against which that same allegation has been made. There have been people who have been appointed Federal judges and confirmed who have been members of clubs against whom that allegation has been made. The response in most cases when they are appointed to something was to resign.

Now, I do not know that I think that is such a purifying act if you have been a member of a club for a long time, 20, 30 years, and all of a sudden you get to be appointed a Federal judge and then somebody says, "Oh, well, that is a club that discriminates against blacks" or "That is a club that discriminates against Jews," and then the guy who had been appointed a judge suddenly says, "Well, in that case I resign." I do not know that I think that is such a purifying act. But that is exactly what has happened not once but over and over again.

As a matter of fact, I guess there are some Senators who are members of clubs like that. I guess there are probably some Members in this exclusive club in the U.S. Senate who, if we just knew it, are members of clubs of that kind, maybe even some who are members of the Senate Judiciary Committee, maybe even some who have been nominated for other offices like Vice President of the United States and who, after they get nominated, resign from those clubs.

Bill Erickson did not choose to do that. What he chose to do, instead of resigning, was what I think is a wiser and more responsible, more courageous approach. He said, "First, I don't know if this is true. If it is, it is reprehensible; I disown it; I don't want to be a member of a club like that." And the first thing he did was he said, "I want to submit this to an appropriate professional review society, and if this club practices invidious discrimination, I will get out. That is fair to the club. It establishes the facts."

Then he did something else that I think is far more significant and I hope would become a benchmark for people who belong to clubs that may practice this kind of reprehensible membership policy. He joined in sponsoring a person of the religion against which this club allegedly discriminates. I think that is the acid test.

Now, maybe he should have known more about it, thought I will have to admit, Mr. President, I think a lot of us are members of organizations about which we may not know things. Maybe we should not be members. Maybe before we join a social club we should know all the facts about how they do things. I think that is something for Senators to contemplate.

But that has not been the norm in public or private life in our country.

But when it came to Bill Erickson's attention, he did what I think is the right thing, the kind of thing that I think would qualify him not only for the endorsement of the committee but for the admiration of the committee. And I say that after talking not only to a number of my colleagues but to members of the religious group against which the club allegedly discriminates.

Mr. President, I regret what has happened not just because of the injustice to Bill Erickson and Don Abram and not just because we are not getting a vote, not just because they are victims of a whispering campaign, but also because it means there are a lot of people in Colorado who at least for the next several months are not going to get their cases heard. It is just a fact. The cases are piling up in our State, and I think that is unfortunate. I regret what has happened with these two judges, which is no secret. It is known out in the State what is going on, and it is making it harder to recruit good people to serve as Federal judges.

Now, most lawyers I think aspire to be Federal judges, or at least regard it, even those who do not want to be Federal judges themselves, as the pinnacle of their profession. And so I think I would lack credibility if I were to come to you tonight and say, "Gosh, this is so bad we just cannot get anybody who wants to be a Federal judge anymore. It is just terrible, but we have thousands of lawyers and none of them want to be Federal judges."

Now, that, Mr. President, would be lacking in credibility. It would also be not true. There are a lot of people in my State who want to be Federal judges. I have a file book full of people who want to be Federal judges. But I will tell you this: On at least two occasions in recent months when I have approached outstanding people who I thought would stand head and shoulders above the average, I got turned down flat. They just do not want to be subjected to this kind of process. They do not think it is fair. They do not want to see their reputations damaged.

Now, it is one thing for Bill Erickson and Don Abram, it is bad enough for them because they are already judges. They already serve in a position where the worst that can happen to them maybe is a little embarrassment, but if you are a lawyer in private practice and you are asked to submit yourself to a process that might take 3 months, 6 months, 12 months, and then you might not get a vote and the implication is maybe there is something wrong with you, that is pretty hard on your practice. If you are in private practice, and you do not know how long it is going to take to get confirmed or if you will get confirmed or whether your reputation is going to be sullied, you think twice.

I want to report that in at least two cases, one of them involving a man who I believe has the capacity to serve as a Justice of the U.S. Supreme Court—that is not what I approached him for, but I believe he has that kind of intellectual horsepower, that kind of physical stamina, and all of the things that go with it to be a great judge. He thought about it. He asked for a week to consider it, prayed about it and he told me no. I was talking to him about the Federal district court.

In another case, I approached a man who had not sought me out. He had not asked to be considered. But his name was recommended to me by a sitting Federal judge and whose credentials I checked and he came back with flying colors. I went to him and I asked him, "would you like to be considered for the circuit court?" For the circuit court, Mr. President, not for justice of the peace, not for county judge, not to hear traffic cases, but for the circuit court. He thought it over and you know what he told me? He said, "Sorry, not me, brother."

Now, those are two episodes. I could relate several more. I am not saying, Mr. President, we cannot get any qualified people.

But I am saying this, when it comes to recruiting outstanding people, people who will be way above average, this kind of a handling of extraordinarily well-qualified nominees makes it very difficult.

Mr. President, the Senate is in many ways a remarkably representative body. We do not think of ourselves as being representative as the other body, but when you get right down to it Senators are a pretty good cross section of the people of this country. Senators are wise and foolish, they are idealistic, and venal, they are men and women of integrity, and they are sometimes corrupt. They are just pretty much like people.

I regret among other things that the way we have handled these nominations and some of the others of judges who I have not spoken about, but who are left stranded in the Judiciary Committee, portrays to a thoughtful public an attitude of cynicism. It shows the Senate in a narrow, petty, unjust, vindictive, and just a poor light.

I know another Senate, the Senate which maintains high standards and high ideals, a Senate that properly considers itself to be the guardian of the finest traditions of our country. I am not going to become cynical as a result of this miscarriage of justice by the Judiciary Committee. We all make mistakes. Senators make mistakes. Sometimes we do things that we should not do. I have seen the Senate on enough occasions do things that are so admirable, that reflects so much courage and so much integrity, even on occasion statesmanship and vision, that I am not going to be disillusioned by the handling of this dozen or 15 judges including 2 men from my own State who deserve better. But I will bet there are some people in this country who will. I bet there are some people who will not actually think it true but who will just become a little more cynical as a result of this.

I do not think, by the way, that will be Bill Erickson and Don Abram. I have not asked them that question but it is just unthinkable to me that these two fine men who have devoted their lives to public service would be crushed or in some other way devastated by what has happened. They are not going to be pleased, I will tell you that. But they will live through it. They will be fine.

I do not know how their kids will be. I do not know how their friends will be. I do not know how some of the lawyers in the practice of law in Colorado will be when they see the final outcome. It is not going to be good.

Somebody will say, well, it is just politics. Well, it is not just politics. It is rotten, Mr. President. I object to it. I regret it. I did not want the moment to pass without saying so. Sometimes in the Senate, we have to make close calls between what is right and wrong, and a lot of times we do. Sometimes on complicated issues it is hard to know where the line is. Sometimes it is hard to know when we make a decision which side of the line something is on.

Mr. President, the way this has been handled is not in my mind in doubt. There is not any doubt in my mind which side of the line it is on. It is wrong. Somebody might throw it up to me or to other Senators: "Well, it has been done this way in the past." I cannot argue that, because I think it is true. But that does not make it right. I just hope it will not be done this way in the future.

Mr. President, unless others are seeking recognition at this time, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CALENDAR

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of calendar orders numbered 1103, 1111, and 1141; that they be considered en bloc; that amendments where shown be agreed to; that if there are amendments to titles or to preambles, they be agreed to; that the measures be passed en bloc; that statements by Senators be appropriately placed in the RECORD; and that the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

RELIEF OF MIDDLEMAN FAMILY

The bill (H.R. 1826) for the relief of Natasha Susan Middleman, Samantha Abigail Middleman, Naomi Katrina Orloff Middleman, and Hannah Emily Middleman, was considered, ordered to a third reading, read the third time, and passed.

RELIEF OF MEENAKSHIBEN P. PATEL

The bill (H.R. 3414) for the relief of Meenakshiben P. Patel was considered, ordered to a third reading, read the third time, and passed.

DISASTER ASSISTANCE TO BANGLADESH

The Senate proceeded to consider the bill (H.R. 5389) concerning assistance for Bangladesh.

Mr. KENNEDY. Mr. President, I am pleased to join today in support of the Bangladesh disaster relief bill. As we all know, the recent flooding in Bangladesh is the worst in modern history and has caused incalculable destruction and human suffering.

The regular foreign operations appropriations bill which was just passed provided much needed disaster assistance to Jamaica to help counter the effects of Hurricane Gilbert. While in no way diminishing the destruction and suffering that calamity caused, the United States should provide special disaster assistance for Bangladesh as well. The flood in Bangladesh is of a far worse magnitude. AID officials have stated that the disaster in Bangladesh is the worst they have seen in recent years.

Bangladesh is a country the size of the State of Wisconsin, densely packed with 100 million people, nearly half the population of the United States. The recent flooding submerged three-fourths of the total area of Bangladesh. Tens of millions have been left homeless. The death toll has been placed at more than 1,000, but authorities expect that it will be much higher. Incidents of water-borne disease have climbed as the waters have receded. Already outbreaks on intestinal and respiratory diseases are occurring.

The Government of Bangladesh has requested immediate assistance in the form of fresh water, food grains, and medicines, as well as the means to transport them. The latter will require boats and helicopters since most of the country is inaccessible by other means. Thousands of miles of roads and bridges have been washed away, railroads and other means of communication are cut, and dikes and levees are ruined. Literally years of work has been wiped away. The long-term costs of rebuilding will run into billions of dollars.

The United States has responded generously to Bangladesh's immediate needs. We have released funds earmarked for other projects in Bangladesh and offered to ship grain early. Additionally, a $3.6 million assistance package has been prepared including additional wheat seed for replanting and $2.5 million in Public Law 480 food aid, reprogrammed from title I to title II. The remainder will assist the efforts of several American voluntary agencies in the field. In addition, small boats and supplies of medicines, clothing, and housing material are also being provided.

What is clearly important is that American generosity not be restricted to the crisis of the moment. When the headlines are gone and the bureaucratic imperative diminishes, we must continue to assist the people of Bangladesh in the medium and longer term. Food shortages will not be fully evident for several months. At least 2 million tons of crops have been destroyed and there is no chance for replanting. Consequently, Bangladesh will require at least 3 million tons of food grains to carry it through the next harvest. These food grains will need to be delivered by this fall. By delivering already promised grains early the shortage is only delayed not eliminated. We must seriously consider additional food assistance—not just expedited deliveries. And medical supplies, construction materials, kerosene oil, and water purification tablets, will be needed in the forthcoming months.

Beyond the immediate- and medium-term needs for Bangladesh, an even more serious element of the floods must be considered. Deforestation in the mountainous regions surrounding Bangladesh, coupled with the lack of regional cooperation in flood control, increases the likelihood of similar future floods. Unless these underlying environmental problems are confronted, any development progress in Bangladesh is increasingly likely to be washed away.

The legislation we are proposing addresses all the issues. First, it mandates at least $100 million of Public Law 480 counterpart funds to be expended for disaster relief and rehabilitation. We would hope much more is spent. This will meet both the immediate crisis and the longer term needs Bangladesh will face due to the flood. It also extends the deadline by which counterpart funds must be obligated from September 1989 to September 1990. Finally, this bill makes clear that it is the intent of Congress that funds used for disaster relief and rehabilitation be in addition to regular development assistance which Bangladesh so sorely needs.

Moreover, we require a report focusing attention on the environmental problems which each year magnify the effects of flooding in Bangladesh. It is our hope also that this report can identify effective methods of combating deforestation in India and Nepal as well as suggest means of regional flood control. These problems must ultimately be solved if development efforts in Bangladesh are not to be continually washed away.

Mr. President, I commend the steps our Government has already taken to assist Bangladesh. Moreover, I urge my colleagues to join me in supporting the Bangladesh disaster relief bill. This bill will provide the assistance necessary for Bangladesh to cope with the damage it has sustained. Finally it focuses attention on the fundamental environmental issues which must be addressed if we are to lessen such disasters in the future.

BANGLADESH DISASTER ASSISTANCE ACT OF 1988

Mr. HELMS. Mr. President, we are all deeply concerned about the tragic situation in Bangladesh which has been caused by unusual flooding this year. Millions have been affected by the flooding which has resulted from natural and manmade causes.

H.R. 5389 is identical to S. 2860 which I recently introduced with Senators PELL, BOSCHWITZ, and KENNEDY as cosponsors. It will assist Bangladesh during a period of extraordinary conditions caused by this year's flooding. Both bills represent a strong bipartisan humanitarian effort to assist the people of Bangladesh in their time of great need.

The bill provides for facilitating aid to Bangladesh in a timely and effective manner. The aid here consists of local currency which is held in country under the provisions of the Agricultural Trade and Development and Assistance Act of 1954. Under the bill, such currency will be available for disaster relief and rehabilitation. Also, the bill extends by 1 year, that is until September 30, 1990, the date for the identification of projects and the obligation of funds for projects which have been identified by the Government of Bangladesh and our Agency for International Development.

In addition, the bill provides for reports to Congress which will enable Congress to better understand the natural and man-made causes of the flooding. Such information—engineering, environmental, and technical—will contribute to the development of more realistic and effective assistance to Bangladesh. The underlying causes of the flooding in Bangladesh are complex and have been subject to some controversy. The report to Congress will analyze the issues involved and the solutions which may be available.

This bill, the Bangladesh Disaster Assistance Act of 1988, requires no new funding and will go far to provide timely and effective assistance.

Section 1 of the bill provides that the act be cited as the Bangladesh Disaster Assistance Act of 1988.

Section 2 finds that as a result of the 1988 floods, two-thirds of Bangladesh has been inundated with flood waters and that over 30 million people in Bangladesh are homeless, over 2,000 are dead, tens of thousands are ill, and potentially millions are at risk of waterborne disease and epidemic because of lack of safe water and overcrowding.

Further, this section finds that transportation, communications, and normal commerce in Bangladesh have been seriously interrupted with a potential cost of $500 million.

Section 3 commends our President for his efforts in this crisis as well as commends the Government and the people of Bangladesh for their courage and resourcefulness in confronting this national tragedy. This section further declares that Congress stands ready to support the Government of Bangladesh and private and voluntary organizations in the emergency assistance efforts.

Section 4(a) amends section 301 of the Agricultural Trade and Development and Assistance Act of 1954 by allowing local currencies generate by the sale of Public Law 480 title I/III commodities to be used for disaster relief and rehabilitation.

Section 4(b) states it is the sense of the Congress that not less than $100,000,000 of the local currencies presently held in Bangladesh should be used for this purpose. Let me emphasize that this is prior year money and not new money. There is, therefore, no budgetary impact.

Section 4(c) states that disaster assistance provided because of the flood of 1988 should be in addition to regularly programmed assistance and states that the level of regularly programmed assistance should not be decreased.

Section 4(d) extends to September 30, 1990, the period in which the Agency for International Development and the Government of Bangladesh have to identify projects and to obligate local currencies. The current deadline is September 30, 1989; it cannot be met owing to the consequences of the tragic flooding situation this year. If the deadline is not extended until 1990, some $300 million of Public Law 480 grants would be converted to loans. This would result in an untenable debt situation for Bangladesh. The extension then gives Bangladesh a chance to develop the type of programs most needed in the wake of the flooding within a realistic timeframe.

Section 5 requires the President to submit to Congress in 6 months a report on efforts by the governments of the region and on international efforts to develop regional programs for the Ganges River Basin and the Brahmaputra River Basin. Such programs should be designed to ensure an equitable and predictable supply of water in the dry season and should promote better flood control mechanisms. This report would also include information on the environmental causes of flooding including the problems of deforestation and soil erosion.

This report should assist Congress in better understanding the natural and the manmade causes of the flooding. This report should also assist Congress in better understanding what realistic steps can be taken to help solve these problems through effective projects in agriculture and forestry and in the technical and engineering aspects of flood control management.

There has been some controversy in the area of the causes of the flooding and in the area of the remedies available. This report, therefore, should clarify—from a scientific, technical, and engineering standpoint—the issues that are involved and should describe realistic and effective solutions that are available. The report should include and analyze the various points of view on causes and solutions.

Section 6 states that it is the sense of Congress that the Office of Technology Assessment should cooperate in the reporting effort in order to better inform Congress about the situation and potential corrective measures.

As I have stated, this bill requires no new money. The bill is intended to facilitate the use of funds already allocated for Bangladesh in a timely manner and in a manner which will not burden Bangladesh with further debt.

Mr. President, the one institution in Bangladesh which has the organization and the nationwide coverage to handle disasters such as the recent flooding is the Bangladesh Armed Forces. Under the current tragic conditions, the military has responded with its best efforts to assist the civilian population and to maintain public order. Of course, civilian and private voluntary organizations have also played a role in relief efforts.

Given the unique and massive problems confronting Bangladesh in the flood control area, we should work with Bangladesh to develop contacts and relations between our Army Corps of Engineers and its Bangladesh counterpart. Also, contacts and relations should be developed between the medical branches in our military services with their counterparts in Bangladesh.

In this way, training and exchanges could be established which would be mutually beneficial. In these areas, we would learn about unique problems in tropical engineering and in tropical medicine; those in Bangladesh would learn about practices, procedures, and technologies which could help their country. This humanitarian contact in nonlethal areas relating to flood control management, transportation, and to disaster relief could contribute to professionalism in the Bangladesh military in its response to national emergencies.

The bill was considered, ordered to a third reading, read the third time, and passed.

MARINE MAMMAL PROTECTION ACT AMENDMENTS

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1126.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senate proceeded to consider the bill (S. 2810) to amend the Marine Mammal Protection Act of 1972 and to authorize appropriations for that act, and for other purposes, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following: with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italic.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Marine Mammal Protection Act Amendments of 1988".

INTERIM COMMERCIAL FISHERY EXEMPTION

SEC. 2. (a) The Marine Mammal Protection Act *of 1972* (16 U.S.C. 1361 et seq.) is amended—

(1) by redesignating section 114 as section 116; and

(2) by inserting immediately after section 113 the following new section:

"INTERIM EXEMPTION FOR COMMERCIAL FISHERIES

"SEC. 114. (a)(1) During the period beginning on the date of enactment of this section and ending October 1, 1993, except as provided in paragraph (2), the provisions of this section, rather than sections 101, 103, and 104, shall govern the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States and vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)). In any event it shall be the immediate goal that the incidental kill or serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate.

"(2) The provisions of this section other than subsection (e)(6)(A) shall not govern the incidental taking of marine mammals in the course of commercial yellowfin tuna fishing subject to section 104(h)(2) of this title.

"(b)(1) The Secretary shall, after consultation with the Marine Mammal Commission—

"(A) publish in the Federal Register, for public comment, not later than sixty days after the date of enactment of this section a proposed list of those fisheries, along with a statement of the marine mammals and the approximate number of vessels or persons involved in each such fishery, that have—

"(i) frequent incidental taking of marine mammals;

"(ii) occasional incidental taking of marine mammals; or

"(iii) a remote likelihood of or no known incidental taking of marine mammals;

"(B) publish in the Federal Register not later than one hundred and twenty days after the date of enactment of this section a final list of the fisheries and other information required by paragraph (A), together with a summary of the provisions of this section and information sufficient to advise vessel owners on how to obtain an exemption and otherwise comply with the requirements of this section; and

"(C) at least once each year thereafter, and at such other times as the Secretary considers appropriate, reexamine, based on information gathered from the program established under subsections (c), (d), (e), and (f), and other relevant sources and after notice and opportunity for public comment, the classification of fisheries and other determinations required under subparagraph (A) and publish in the Federal Register any necessary changes.

"(2)(A) An exemption shall be granted by the Secretary in accordance with this section for a vessel engaged in a fishery identified under paragraph (1)(A) (i) or (ii), upon receipt by the Secretary of a completed registration form providing the name of the vessel owner, the name and description of the vessel, the fisheries in which it will be engaged, and such other information as the Secretary considers necessary. A decal or other physical evidence that the exemption is current and valid shall be issued by the Secretary at the time an exemption is granted, and so long as the exemption remains current and valid, shall be reissued annually thereafter.

"(B) No exemption may be granted under this section to the owner of a vessel unless such vessel—

"(i) is a vessel of the United States; or

"(ii) has a valid fishing permit issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)).

"(C) Notwithstanding any other provision of this title, exemptions granted under this section shall authorize the incidental taking of marine mammals, other than California sea otters, from any species or stock, including a population stock designated as depleted, but shall not authorize the intentional lethal taking of any Steller sea lion, any cetacean, or any marine mammals from a population stock designated as depleted.

"(3)(A) Beginning two hundred and forty days after the date of enactment of this section, each owner of a vessel engaged in any fishery identified under paragraph (1)(A) (i) or (ii) shall, in order to engage lawfully in that fishery—

"(i) have registered with the Secretary in order to obtain for each such vessel owned an exemption for the purpose of incidentally taking marine mammals in accordance with this section;

"(ii) ensure that a decal or such other physical evidence of a current and valid exemption as the Secretary may require is displayed on or is in the possession of the master of each such vessel; and

"(iii) report as required by subsection (c).

"(B) Any owner of a vessel receiving an exemption under this section for any fishery identified under paragraph (1)(A)(i) shall, as a condition of that exemption, take on board a natural resource observer if requested to do so by the Secretary.

"(C) An owner of a vessel engaged in a fishery identified under paragraph (1)(A) (i) or (ii) who—

"(i) fails to obtain from the Secretary an exemption under this section;

"(ii) fails to maintain a current and valid exemption; or

"(iii) fails to ensure that a decal or other physical evidence of such exemption issued by the Secretary is displayed on or is in possession of the master of the vessel,

and the master of any such vessel engaged in such fishery, shall be deemed to have violated this title, and shall be subject to the penalties of this title except in the case of unknowing violations before January 1, 1990.

"(D) If the owner of a vessel has obtained and maintains a current and valid exemption from the Secretary under this section and meets the requirements set forth in this section, the owner of such vessel, and the master and crew members of the vessel, shall not be subject to the penalties set forth in this title for the incidental taking of marine mammals while such vessel is engaged in a fishery to which the exemption applies.

"(E) Each owner of a vessel engaged in any fishery not identified in paragraph (1)(A) (i) or (ii), and the master and crew members of such a vessel, shall not be subject to the penalties set forth in this title for the incidental taking of marine mammals if such owner reports to the Secretary, in such form and manner as the Secretary may require, instances of lethal incidental taking in the course of that fishery.

"(4) The Secretary shall suspend or revoke an exemption granted under this section and shall not issue a decal or other physical evidence of the exemption for any vessel until the owner of such vessel complies with the reporting requirements under subsection (c) and such requirements to take on board a natural resource observer under paragraph (3)(B) as are applicable to such vessel.

"(5)(A) The Secretary shall develop, in consultation with the appropriate States, Regional Fishery Management Councils, and other interested parties, the means by which the granting and administration of exemptions under this section shall be integrated and coordinated, to the maximum extent practicable, with existing fishery licenses, registrations, and related programs.

"(B) The Secretary shall utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising commercial fishermen of the provisions of this section and the means by which they can comply with its requirements.

"(C) The Secretary is authorized to charge a fee for the granting of an exemption under this subsection. The level of fees charged under this subparagraph shall not exceed the administrative costs incurred in granting an exemption. Fees collected under this subparagraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in the granting and administration of exemptions under this section.

"[(C)] *(c)* The owner of each vessel holding an exemption granted under subsection (b) of this section shall regularly compile information which shall be used in a report to be submitted to the Secretary at the close of the fishing season or annually, as the Secretary may prescribe. Such report shall be submitted in such form as the Secretary may require and shall include the following:

"(1) the type of fishery engaged in by the owner's vessel;

"(2) the date and approximate time of any incidental taking of a marine mammal, together with the area in which the incidental taking occurred, the fishing gear used at the time of the incidental taking, and the species of fish involved; and

"(3) for each incidental taking, the number and species of marine mammals involved, whether the marine mammals were deterred from gear or catch, incidentally injured, incidentally killed, or lethally removed to protect gear, catch, or human life. If there was no incidental taking of marine mammals during the reporting period, a report stating that fact shall be filed with the Secretary.

"(d)(1) The Secretary shall establish a program to enhance the quality of and verify information received from reports submitted by owners of vessels who have been granted an exemption under subsection (b) of this section. The program shall include, but not be limited to—

"(A) education efforts regarding the information that must be submitted;

"(B) interviews with fishermen; and

"(C) other such information gathering and verification activities that will enable the Secretary to determine reliably the nature, type, and extent of the incidental taking of marine mammals that occurs in a fishery.

Except to the extent authorized by the provisions of subsection (e), the program shall not include placement of observers aboard exempted vessels.

"(2) Information obtained under this subsection shall be subject to the confidentiality provisions of subsection (j).

"(e)(1) For each fishery identified under subsection (b)(1)(A)(i) of this section, the Secretary shall, after consultation with the appropriate Regional Fishery Management Councils, other Federal and State agencies, and other interested parties, and subject to paragraph [(5),] *(6),* place observers on board exempted vessels so as to monitor not less than 20 [per centum] *percent* nor more than 35 [per centum] *percent* of the fishing operations by vessels in the fishery to obtain statistically reliable information on the species and number of marine mammals incidentally taken in the fishery. If the Secretary determines that fewer than 20 [per centum] *percent* of the fishing operations by vessels in the fishery will be monitored during the course of the fishing season, the Secretary shall implement the alternative observation program described in subsection (f) to the extent necessary to supplement the observer program described in this subsection.

"(2) When determining the distribution of observers among fisheries and between vessels in a particular fishery, the Secretary shall be guided by the following standards:

"(A) the requirement to obtain the best scientific information available;

"(B) the requirement that assignment of observers is fair and equitable among fisheries and among vessels in a fishery;

"(C) consistent with paragraph (1), the requirement that no individual person or vessel, or group of persons or vessels, be subject to excessive or overly burdensome observer coverage; and

"(D) where practicable, the need to minimize costs and avoid duplication.

"(3) If the Secretary finds that, for reasons beyond his or her control, the Secretary cannot assign observers to all the fisheries identified under subsection (b)(1)(A)(i) of this section at the level of observer coverage set forth in paragraph (1), the Secretary shall allocate available observers among such fisheries, consistent with paragraph (2), according to the following priority:

"(A) those fisheries that incidentally take marine mammals from any population stock designated as depleted;

"(B) those fisheries that incidentally take marine mammals from population stocks that the Secretary believes are declining;

"(C) those fisheries other than those described in subparagraphs (A) and (B) in which the greatest incidental take of marine mammals occur; and

"(D) any other fishery identified under subsection (b)(1)(A)(i).

The Secretary may, with the consent of the vessel owner, station an observer on board a vessel engaged in a fishery not identified under subsection (b)(1)(A)(i).

"**[**(4) Information gathered by observers shall be subject to the provisions of subsection (j). In carrying out their duties the observers shall, consistent with the requirements of paragraph (1) and any applicable fishery management plan or State program, collect such additional scientific information on living marine resources in the fisheries to which they are assigned as the Secretary may require after consultation with appropriate States and Regional Fishery Management Councils.**]**

"(4) Information gathered by observers shall be subject to the provisions of subsection (j). Consistent with the requirements of paragraph (1), the Secretary shall, if requested by the appropriate Regional Fishery Management Council, or in the case of a State fishery, the State, require observers to collect additional information, including but not limited to the quantities, species, and physical condition of target and nontarget fishery resources and, if requested by the Secretary of the Interior, seabirds.

"(5) Notwithstanding the provisions of paragraph (4), the Secretary may decline to require observers to collect information described in such paragraph, if the Secretary finds in writing, following public notice and opportunity for comment, that such information will not contribute to the protection of marine mammals or the understanding of the marine ecosystem, including fishery resources and seabirds.

"**[**(5)**]** *(6)* The Secretary shall not be required to place an observer on a vessel in a fishery if the Secretary finds that—

"(A) in a situation where harvesting vessels are delivering fish to a processing vessel and the catch is not taken on board the harvesting vessel, statistically reliable information can be obtained from an observer on board the processing vessel to which the fish are delivered;

"(B) the facilities of a vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; or

"(C) for reasons beyond the control of the Secretary, an observer is not available.

"**[**(6)(A)**]** *(7)(A)* An observer on a vessel (or the observer's personal representative) under the requirements of this section or section 104 that is ill, disabled, injured, or killed from service as an observer on that vessel may not bring a civil action under *any* law of the United States for that illness, disability, injury, or death against the vessel or vessel owner, except that a civil action may be brought against the vessel owner for the owner's willful misconduct.

"(B) This paragraph does not apply if the observer is engaged by the owner, master, or individual in charge of a vessel to perform any duties in service to the vessel.

"**[**(7)**]** *(8)* There are authorized to be appropriated to the Department of Commerce for the purposes of carrying out this subsection not to exceed $2,700,000 for fiscal year 1989 and not to exceed $8,000,000 for each of the fiscal years 1990, 1991, 1992, and 1993.

"(f)(1) The Secretary shall establish an alternative observation program to provide statistically reliable information on the species and number of marine mammals incidentally taken in those fisheries identified pursuant to subsection (b)(1)(A)(i) of this section for which the required level of observer coverage has not been met or for any other fisheries about which such reliable information is not otherwise available. The alternative program shall include, but not be limited to, direct observation of fishing activities from vessels, airplanes, or points on shore.

"(2) Individuals engaged in the alternative observation program shall collect scientific information on the fisheries subject to observation, consistent with the requirements of paragraph (1) *and subsection (e) (4) and (5)*. All information collected shall be subject to the provisions of subsection (j).

"(g)(1) The Secretary shall review information regarding the incidental taking of marine mammals and evaluate the effects of such incidental taking on the affected population stocks of marine mammals.

"(2) If the Secretary finds, based on the information received from the programs established under subsections (c), (d), (e), and (f), that the incidental taking of marine mammals in a fishery is having an immediate and significant adverse impact on a marine mammal population stock or, in the case of Steller sea lions and North Pacific fur seals, that more than **[**one thousand three hundred and fifty and fifty,**]** *1,350 and 50,* respectively, will be incidentally killed during a calendar year, the Secretary shall consult with appropriate Regional Fishery Management Councils and State fishery managers and prescribe emergency regulations to prevent to the maximum extent practicable any further taking. Any emergency regulations prescribed under this paragraph—

"(A) shall, to the maximum extent practicable, avoid interfering with existing State or regional fishery management plans;

"(B) shall be published in the Federal Register together with the reasons therefor;

"(C) shall remain in effect for not more than one hundred and eighty days or until the end of the fishing season, whichever is earlier; and

"(D) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination if the Secretary determines the reasons for the emergency regulations no longer exist.

In prescribing emergency regulations under this paragraph, the Secretary shall take into account the economics of the fishery concerned and the availability of existing technology to prevent or minimize incidental taking of marine mammals.

"(3) If the Secretary finds, based on information received from the programs established under **[**subsection**]** *subsections* (c), (d), (e), and (f), that incidental taking of marine mammals in a fishery is not having an immediate and significant adverse impact on a marine mammal population stock but that it will likely have a significant adverse impact over a period of time longer than one year, the Secretary shall request the appropriate Regional Fishery Management Council or State to initiate, recommend, or take such action within its authority as it considers necessary to mitigate the adverse impacts, including adjustments to requirements on fishing times or areas or the imposition of restrictions on the use of vessels or gear.

"(4) The Secretary shall impose appropriate conditions and restrictions on an exemption granted under subsection (b) if—

"(A) a Regional Fishery Management Council or State does not act in a reasonable period of time on a request made by the Secretary under paragraph (3); or

"(B) if the Secretary determines after notice and opportunity for public comment that the purposes of this section would be better served by such action.

"(h) The Secretary shall design and implement an information management system capable of processing and analyzing reports received from the programs established under subsections (c), (d), (e), and (f), and other relevant sources, including Federal and State enforcement authorities, marine mammal stranding networks, and the marine mammal researchers. The information shall be made accessible to the public on a continuing basis, but in any case no later than six months after it is received, subject to the provisions of subsection (j).

"(i) When carrying out the Secretary's responsibilities under subsections (b), (d), (e), (f), and (h) of this section, the Secretary shall, to the maximum extent practicable, utilize the services and programs of State agencies, Federal agencies (including programs established by Regional Fishery Management Councils), marine fisheries commissions, universities, and private entities, on a reimbursable basis or otherwise. The Secretary is authorized to enter into contracts and agreements to carry out his or her responsibilities and shall establish appropriate guidelines to ensure that other programs used or contracted for will meet the same standards as a program established by the Secretary. A person contracting with the Secretary to provide observer services under subsection (e) of this section must provide evidence of financial responsibility in an amount and form prescribed by the Secretary to compensate employees (or their survivors) adequately for any illness, disability, injury, or death from service on a vessel.

"(j)(1) Any information collected under subsection (c), (d), (e), (f), or (h) of this section shall be confidential and shall not be disclosed except—

"(A) to Federal employees whose duties require access to such information;

"(B) to State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;

"(C) when required by court order; or

"(D) in the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils who are responsible for fishery management plan development and monitoring.

"(2) The Secretary shall prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary shall release or make public any such information in aggregate, summary, or other form which does not directly or indirectly disclose the identity or business of any person.

"(k) The Secretary, in consultation with any other Federal agency to the extent that such agency may be affected, shall prescribe such regulations as necessary and appropriate to carry out the purposes of this section.

"(l)(1) The Chairman of the Marine Mammal Commission shall, after consultation with interested parties and not later than February 1, 1990, transmit to the Secretary and make available to the public recommended guidelines to govern the incidental taking of marine mammals in the course of commercial fishing operations, other than those subject to section 104(h)(2), after October 1, 1993. Such guidelines shall be developed by the Commission and its Committee of Scientific Advisers on Marine Mammals and shall—

"(A) be designed to provide a scientific rationale and basis for determining how many marine mammals may be incidentally taken under a regime to be adopted to govern such taking after October 1, 1993;

"(B) be based on sound principles of wildlife management, and be consistent with and in furtherance of the purposes and policies set forth in this Act; and

"(C) to the maximum extent practicable, include as factors to be considered and utilized in determining permissible levels of such taking—

"(i) the status and trends of the affected marine mammal population stocks;

"(ii) the abundance and annual net recruitment of such stocks;

"(iii) the level of confidence in the knowledge of the affected stocks; and

"(iv) the extent to which incidental taking will likely cause or contribute to their decline or prevent their recovery to optimum sustainable population levels.

"(2) The Secretary shall advise the Chairman of the Commission in writing if the Secretary determines that any additional information or explanation of the Chairman's recommendations is needed, and the Chairman shall respond in writing to any such request by the Secretary.

"(3) On or before February 1, 1991, the Secretary, after consultation with the Marine Mammal Commission, Regional Fishery Management Councils, and other interested governmental and nongovernmental organizations, shall publish in the Federal Register, for public comment, the suggested regime that the Secretary considers should, if authorized by enactment of any additional legislation, govern incidental taking of marine mammals, other than those subject to section 104(h)(2), after October 1, 1993. The suggested regime shall include—

"(A) the scientific guidelines to be used in determining permissible levels of incidental taking;

"(B) a description of the arrangements for consultation and cooperation with other Federal agencies, the appropriate Regional Fishery Management Councils and States, the commercial fishing industry, and conservation organizations; and

"(C) a summary of such regulations and legislation as would be necessary to implement the suggested regime.

"(4) On or before January 1, 1992, the Secretary, after consultation with the Marine Mammal Commission, and consideration of public comment, shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives recommendations pertaining to the incidental taking of marine mammals, other than those subject to section 104(h)(2), after October 1, 1993. The recommendations shall include—

"(A) the suggested regime developed under paragraph (3) of this subsection as modified after comment and consultations;

"(B) a proposed schedule for implementing the suggested regime; and

"(C) such recommendations for additional legislation as the Secretary considers necessary or desirable to implement the suggested regime.

"(m) The Secretary shall consult with the Secretary of the Interior prior to taking actions or making determinations under this section that affect or relate to species or population stocks of marine mammals for which the Secretary of the Interior is responsible under this title.

"(n) For the purposes of this section, the owner of fixed or other commercial fishing gear that is deployed with or without the use of a vessel shall be deemed to be an owner of a vessel engaged in the fishery in which that gear is deployed.

"(o) As used in this section—

"(1) the term 'fishery' has the same meaning as it does in section 3(8) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802(8)).

"(2) the term 'Secretary' means the Secretary of Commerce.

"(3) the term 'vessel engaged in a fishery' means a fishing vessel as defined in section 2101(11a) of title 46, United States Code, or a fish processing vessel as defined in section 2101(11b) of that title, which is engaged in fishery.

"(4) the term 'vessel of the United States' has the same meaning as it does in section 3(27) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802(27)).".

(b) Section 102(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1372(a)) is amended by striking "and 113" and inserting in lieu thereof the following: "113, and 114".

(c) The table of contents contained in the first section of the Marine Mammal Protection Act of 1972 is amended by striking "Sec. 114. Authorization of Appropriations." and inserting in lieu thereof the following:

"Sec. 114. Interim Exemption for Commercial Fisheries.
"Sec. 115. Status Review; Conservation Plans.
"Sec. 116. Authorization of Appropriations.".

STATUS REVIEW

SEC. 3. (a) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) is amended by inserting immediately after section 114, as added by section 2 of this Act, the following new section:

"STATUS REVIEW; CONSERVATION PLANS

"SEC. 115. (a)(1) In any action by the Secretary to determine if a species or stock should be designated as depleted, or should no longer be designated as depleted, regardless of whether such action is taken on the initiative of the Secretary or in response to a petition for a status review, the Secretary shall only make such a determination by issuance of a rule, after notice and opportunity for public comment and after a call for information in accordance with paragraph (2).

"(2) The Secretary shall make any determination described in paragraph (1) solely on the basis of the best scientific information available. Prior to the issuance of a proposed rule concerning any such determination, the Secretary shall publish in the Federal Register a call to assist the Secretary in obtaining scientific information from individuals and organizations concerned with the conservation of marine mammals, from persons in any industry which might be affected by the determination, and from academic institutions. In addition, the Secretary shall utilize, to the extent the Secretary determines to be feasible, informal working groups of interested parties and other methods to gather the necessary information.

"(3)(A) If the Secretary receives a petition for a status review as described in paragraph (1), the Secretary shall publish a notice in the Federal Register that such a petition has been received and is available for public review.

"(B) Within sixty days after receipt of the petition, the Secretary shall publish a finding in the Federal Register as to whether the petition presents substantial information indicating that the petitioned action may be warranted.

"(C) If the Secretary makes a positive finding under subparagraph (B), the Secretary shall include in the Federal Register notice, a finding that—

"(i) a review of the status of the species or stock will be commenced promptly; or

"(ii) a prompt review of the petition is precluded by other pending status determination petitions and that expeditious progress is being made to process pending status determination petitions under this title.

In no case after making a finding under this subparagraph shall the Secretary delay commencing a review of the status of a species or stock for more than one hundred and twenty days after receipt of the petition.

"(D) No later than two hundred and ten days after the receipt of the petition, the Secretary shall publish in the Federal Register a proposed rule as to the status of the species or stock, along with the reasons underlying the proposed status determination. Persons shall have at least sixty days to submit comments on such a proposed rule.

"(E) Not later than ninety days after the close of the comment period on a proposed rule issued under subparagraph (D), the Secretary shall issue a final rule on the status of the species or stock involved, along with the reasons for the status determination. If the Secretary finds with respect to such a proposed rule that there is substantial disagreement regarding the sufficiency or accuracy of the available information relevant to a status determination, the Secretary may delay the issuance of a final rule for a period of not more than six months for purposes of soliciting additional information.

"(F) Notwithstanding subparagraphs (D) and (E) of this paragraph and section 553 of title 5, United States Code, the Secretary may issue a final rule as to the status of a species or stock any time sixty or more days after a positive finding under subparagraph (B) if the Secretary determines there is substantial information available to warrant such final status determination and further delay would pose a significant risk to the well-being of any species or stock. Along with the final rule, the Secretary shall publish in the Federal Register detailed reasons for the expedited determination.

"(b)(1) The Secretary shall prepare conservation plans—

"(A) By December 31, 1989, for North Pacific fur seals;

"(B) by December 31, 1990, for Steller sea lions; and

"(C) as soon as possible, for any species or stock designated as depleted under this title, except that a conservation plan need not be prepared if the Secretary determines that it will not promote the conservation of the species or stock.

"(2) Each plan shall have the purpose of conserving and restoring the species or stock to its optimum sustainable population. The Secretary shall model such plans [or] *on* recovery plans required under section 4(f) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f)).

"(3) The Secretary shall act expeditiously to implement each conservation plan prepared under paragraph (1). Each year, the Secretary shall specify in the annual report prepared under section 103(f) of this title what measures have been taken to prepare and implement such plans.".

TAKING OF PORPOISE IN TUNA FISHERY

SEC. 4. (a) Section 101(a)(2) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(2)) is amended—

(1) in subparagraph (A), by striking "and" at the end;

(2) in subparagraph (B)—

(A) in clause (ii), by striking the period at the end and inserting in lieu thereof a comma; and

(B) by adding at the end, flush with the margin, the following:

"except that the Secretary shall not find that the regulatory program, or the average rate of incidental taking by vessels, of a harvesting nation is comparable to that of the United States for purposes of clause (i) or (ii) of this paragraph unless—

"(I) the regulatory program of the harvesting nation includes, by no later than the beginning of the 1990 fishing season, such prohibitions against encircling pure schools of species of marine mammals, conducting sundown sets, and other activities as are made applicable to United States vessels;

"(II) the average rate of the incidental taking by vessels of the harvesting nation is no more than 2.0 times that of United States vessels during the same period by the end of the 1989 fishing season and no more than [1.23] *1.25* times that of United States vessels during the same period by the end of the 1990 fishing season and thereafter;

"(III) the total number of eastern spinner dolphin (Stenella longirostris) incidentally taken by vessels of the harvesting nation during the 1989 and subsequent fishing seasons does not exceed 15 [per centum] *percent* of the total number of all marine mammals incidentally taken by such vessels in such year and the total number of coastal spotted dolphin (Stenella attenuata) incidentally taken by such vessels in such seasons does not exceed 2 [per centum] *percent* of the total number of all marine mammals incidentally taken by such vessels in such year;

"(IV) the rate of incidental taking of marine mammals by the vessels of the harvesting nation during the 1989 and subsequent fishing seasons is monitored by the porpoise mortality observer program of the Inter-American Tropical Tuna Commission or an equivalent international program in which the United States participates and is based upon observer coverage that is equal to that achieved for United States vessels during the same period, except that the Secretary may approve an alternative observer program if the Secretary determines, no less than sixty days after publication in the Federal Register of the Secretary's proposal and reasons therefor, that such an alternative observer program will provide sufficiently reliable documentary evidence of the average rate of incidental taking by a harvesting nation; and

"(V) the harvesting nation complies with all reasonable requests by the Secretary for cooperation in carrying out the scientific research program required by section 104(h)(3) of this title;"; and

(3) by adding at the end the following new subparagraphs:

"(C) shall require the government of any intermediary nation from which yellowfin tuna or tuna products will be exported to the United States to certify and provide reasonable proof that it has acted to prohibit the importation of such tuna and tuna products from any nation from which direct export to the United States of such tuna and tuna products is banned under this section within sixty days following the effective date of such ban on importation to the United States; and

"(D) shall, six months after importation of yellowfin tuna or tuna products has been banned under this section, certify such fact to the President, which certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)) for as long as such ban is in effect.".

(b) Paragraph (2) of section 108(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1378(a)) is amended to read as follows:

"(2) initiate—

"(A) negotiations as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, commercial fishing operations which are found by the Secretary to be unduly harmful to any species *or population stock* of marine mammal, for the purpose of entering into bilateral and multilateral treaties with such countries to protect marine mammals, with the Secretary of State to prepare a draft agenda relating to this matter for discussion at appropriate international meetings and forums; and

"(B) discussions with foreign governments whose vessels harvest yellowfin tuna with purse seines in the eastern tropical Pacific Ocean, for the purpose of concluding, through the Inter-American Tropical Tuna Commission or such other bilateral or multilateral institutions as may be appropriate, international arrangements for the conservation of marine mammals taken incidentally in the course of harvesting such tuna, which should include provisions for (i) cooperative research into alternative methods of locating and catching yellowfin tuna which do not involve the taking of marine mammals, (ii) cooperative research on the status of affected marine mammal population stocks, (iii) reliable monitoring of the number, rate, and species of marine mammals taken by vessels of harvesting nations, (iv) limitations on incidental take levels based upon the best scientific information available, and (v) the use of the best marine mammal safety techniques and equipment that are economically and technologically practicable to reduce the incidental kill and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury [rate.] *rate;*".

(c) Section 108 of the Marine Mammal Protection Act of 1972 (16 U.S.C. [1373)] *1378)* is amended by adding at the end the following new subsection:

"(c) The Secretary shall include a description of the annual results of discussions initiated and conducted pursuant to subsection (a)(2)(B), as well as any proposals for further action to achieve the purposes of that subsection, in the report required under section 103(f) of this [Act.] *title*.".

(d) Section 104(h)(2)(B) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(h)(2)(B)) is amended by adding at the end the following new clauses:

"(iv) The Secretary shall, by January 1, 1989, prescribe regulations to ensure that the backdown procedure during sets of the purse seine net on marine mammals is completed and rolling of the net to sack up has begun no later than thirty minutes after sundown. The Secretary may waive or otherwise modify such regulations for—

"(I) a designated certificate holder on an observed trip if the Secretary determines, based on observer reports, that such restriction is not necessary because the certificate holder has consistently utilized fishing techniques and equipment so as to result in an incidental marine mammal mortality rate during sundown sets that is no higher than *the average* such rate *for the fleet* during daylight sets; or

"(II) all certificate holders on observed trips if the Secretary determines that such restriction is not necessary because all certificate holders have developed and are utilizing fishing techniques and equipment that assure that the incidental marine mammal mortality rate during sundown sets will be no higher than such rate during daylight sets.

"(v) The Secretary may authorize, after public notice and opportunity for comment, designated certificate holders to conduct experimental fishing operations on observed trips, under such terms and conditions as the Secretary may prescribe, for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce the incidental mortality of marine mammals in the course of commercial yellowfin tuna fishing operations, and the Secretary may waive such terms and conditions of the general permit and this section, other than the quotas on incidental taking of marine mammals and the prohibition against encircling pure schools of certain species of marine mammals, as the Secretary determines to be necessary and appropriate for the conduct of such experimental fishing.

"(vi) The Secretary, after public notice and opportunity for comment and consultation with the skippers' panel of experts established pursuant to the general permit, shall develop and implement by not later than the beginning of the 1990 fishing season a system of performance standards to maintain the diligence and proficiency of certificate holders in the use of the best marine mammal safety techniques and equipment that are economically and technologically practicable. The system shall include such arrangements as are necessary for the identification of certificate holders whose incidental marine mammal mortality rate is consistently and substantially higher than the average rate of the fleet, and for the supplemental training and observation of such certificate holders, and provisions for suspension or revocation of certificates of inclusion of those certificate holders whose unacceptably high rate of incidental taking reflects a lack of diligence or proficiency in the use of the best marine mammal safety techniques and equipment.

"(vii) It shall be unlawful to use [class A] *any* explosive devices *other than class C explosive pest control devices* in the course of commercial yellowfin tuna fishing subject to the general permit. The Secretary shall prescribe regulations, effective April 1, 1990, to prohibit or restrict the use of class C explosive *pest control* devices in the course of commercial yellowfin tuna fishing unless the Secretary determines, based on a study which the Secretary shall undertake, that the use of such devices does not result in physical impairment or increased mortality of marine mammals.

"(viii) During the 1989 and subsequent fishing seasons, each certificated vessel shall carry on every fishing trip subject to this subsection an official observer certified by the Secretary or by the Inter-American Tropical Tuna Commission for the purpose of conducting research and observing fishing operations unless, for reasons beyond the control of the Secretary, an observer is not available for such purpose. The Secretary may waive this requirement after the 1991 fishing season and establish a less extensive observer program if the Secretary, after notice and opportunity for comment, determines that such an alternative program will provide sufficiently reliable information.

"(ix) The Secretary shall annually convene meetings with representatives of conservation and environmental organizations, the commercial tuna fishing industry, and other interested persons for the purpose of discussing the results of efforts to reduce the incidental mortality and serious injury of marine mammals under this subsection as well as throughout the international fleet as a whole and developing plans for such efforts during the next year. On or before April 1, 1992, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a comprehensive report on the results of such efforts. The report shall discuss the results of the scientific research programs, performance standards, observer program, prohibition on sundown sets, development of alternative fishing techniques, and other efforts required by this section, and shall include recommendations for such action as the Secretary considers necessary and desirable to reduce further the total mortality and serious injury of marine mammals in the course of commercial yellowfin tuna fishing throughout the international fleet.".

(e) Section 110(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1380(a)) is amended—

(1) immediately before "The Secretary" at the beginning of the first sentence, by inserting "(1)"; and

(2) by adding at the end the following new paragraph:

"(2) For purposes of identifying appropriate research into promising new methods of locating and catching yellowfin tuna without the incidental taking of marine mammals, the Secretary shall contract for an independent review of information pertaining to such potential alternative methods to be conducted by the National Academy of Sciences with individuals having scientific, technical, or other expertise that may be relevant to the identification of promising alternative fishing techniques. The Secretary shall request that the independent review be submitted to the Secretary on or before September 8, 1989, and the Secretary shall submit the report of the independent review, together with a proposed plan for research, development, and implementation of alternative fishing techniques, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives on or before December 5, 1989.".

SCIENTIFIC RESEARCH AND PUBLIC DISPLAY PERMITS

SEC. 5. (a) Section 109(h) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1379(h)) is amended to read as follows:

"(h)(1) Nothing in this title shall prevent a Federal, State, or local government official or employee or a person designated under section 112(c) from taking, in the course of his or her duties as an official, employee, or designee, a marine mammal in a humane manner (including euthanasia) if such taking is for—

"(A) the protection or welfare of the mammal,

"(B) the protection of the public health and welfare, or

"(C) the nonlethal removal of nuisance animals.

"(2) Nothing in this title shall prevent the Secretary or a person designated under section 112(c) from importing a marine mammal into the United States if such importation is necessary to render medical treatment that is not otherwise available.

"(3) In any case in which it is feasible to return to its natural habitat a marine mammal taken or imported under circumstances described in this subsection, steps to achieve that result shall be taken.".

(b) Section 102(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1372(b)) is amended by adding at the end the following new sentence, flush with the margin:

"Notwithstanding the provisions of paragraphs (1) and (2), the Secretary may issue a permit for the importation of a marine mammal, if the Secretary determines that such importation is necessary for the protection or welfare of the animal.".

(c) Paragraph (1) of section 101(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)) is amended to read as follows:

"(1) Consistent with the provisions of section 104, permits may be issued by the Secretary for taking and importation for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock if—".

(d) Section 104(c) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(c)) is amended—

(1) by striking "display or scientific research" each place it appears and inserting in lieu thereof the following: "scientific research, public display, or enhancing the survival or recovery of a species or stock";

(2) by inserting "(1)" immediately after "(c)"; and

(3) by adding at the end the following new paragraphs:

"(2) A permit may be issued for public display purposes only to an applicant which offers a program for education or conservation purposes that, based on professionally recognized standards of the public display community, is acceptable to the Secretary and which submits with the permit application information indicating that the applicant's facilities are open to the public on a regularly scheduled basis and that access to the facilities is not limited or restricted other than by the charging of an admission fee.

"(3) A permit may be issued for scientific research purposes only to an applicant which submits with its permit application information indicating that the taking is required to further a bona fide scientific purpose and does not involve unnecessary duplication of research. No permit issued for purposes of scientific research shall authorize the killing of a marine mammal unless the applicant demonstrates that a nonlethal method for carrying out the research is not feasible. The Secretary shall not issue a permit for research which involves the lethal taking of a marine mammal from a species or stock designated as depleted, unless the Secretary determines that the results of such research will directly benefit that species or stock, or that such research fulfills a critically important research need.

"(4)(A) A permit may be issued for enhancing the survival or recovery of a species or stock only with respect to a species or stock for which the Secretary, after consultation with the Marine Mammal Commission and after notice and opportunity for public comment, has first determined that—

"(i) taking or importation is likely to contribute significantly to maintaining or increasing distribution or numbers necessary to ensure the survival or recovery of the species or stock; and

"(ii) taking or importation is consistent (I) with any conservation plan adopted by the Secretary under section 115(b) of this title or any recovery plan developed under section 4(f) of the Endangered Species Act of 1973 for the species or stock, or (II) if there is no conservation or recovery plan in place, with the Secretary's evaluation of the actions required to enhance the survival or recovery of the species or stock in light of the factors that would be addressed in a conservation plan or a recovery plan.

"(B) A permit issued in accordance with this paragraph may allow the captive maintenance of a marine mammal from a depleted species or stock only if the Secretary—

"(i) determines that captive maintenance is likely to contribute to the survival or recovery of the species or stock by maintaining a viable gene pool, increasing productivity, providing biological information, or establishing animal reserves;

"(ii) determines that the expected benefit to the affected species or stock outweighs the expected benefit of alternatives which do not require removal of animals from the wild; and

"(iii) requires that the marine mammal or its progeny be returned to the natural habitat of the species or stock as soon as feasible, consistent with the objectives of any applicable conservation plan or recovery plan, or of any evaluation by the Secretary under subparagraph (A).

The Secretary may allow the public display of such a marine mammal only if the Secretary determines that such display is incidental to the authorized maintenance and will not interfere with the attainment of the survival or recovery objectives.".

(e)(1) Section 101(a)(3)(B) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(3)(B)) is amended by inserting, immediately after "scientific research purposes", the following: "or enhancing the survival or recovery of a species or stock".

(2) Section 102(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1372(b)) is amended by striking "research" and inserting in lieu thereof the following: "research, or for enhancing the survival or recovery of a species or stock,".

(3) Section 109(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1379(b)) is amended—

(A) in paragraph (1)(E), by striking "research and public display purposes" and inserting in lieu thereof the following: "research, public display, or enhancing the survival or recovery of a species or stock"; and

(B) in paragraph (3)(B)(ii), by striking "research or public display purposes" and inserting in lieu thereof the following: "research, public display, or enhancing the survival or recovery of a species or stock".

(4) Section 202(a)(2) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1402(a)(2)) is amended by inserting, immediately after "scientific research", the following: ", public display, or enhancing the survival or recovery of a species or stock".

AUTHORIZATION OF APPROPRIATIONS

SEC. 6. Section 7 of the Act entitled "An Act to improve the operation of the Marine Mammal Protection Act of 1972, and for other purposes", approved October 9, 1981 (16 U.S.C. 1384 and 1407) is amended—

(1) in subsection (a), by adding at the end the following new sentence: "There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out such functions and responsibilities as it may have been given under such title (other than section [114(e)(7)),] *114(e)(8)),* $12,250,000 for fiscal year 1989, $12,740,000 for fiscal year 1990, $13,250,000 for fiscal year 1991, $13,780,000 for fiscal year 1992, and $14,331,000 for fiscal year 1993.";

(2) in subsection (b)—

(A) by striking "and" immediately after "1985,"; and

(B) by striking "and 1988" and inserting in lieu thereof the following: "1988, and 1989, $3,120,000 for fiscal year 1990, $3,240,000 for fiscal year 1991, $3,370,000 for fiscal year 1992, and $3,500,000 for fiscal year 1993"; and

(3) in subsection (c)—

(A) by striking "and" immediately after "1983,"; and

(B) by striking "and 1988" and inserting in lieu thereof the following: "1988, and 1989, $1,140,000 for fiscal year 1990, $1,190,000 for fiscal year 1991, $1,230,000 for fiscal year 1992, and $1,280,000 for fiscal year 1993".

STUDY ON MORTALITY OF ATLANTIC DOLPHIN

SEC. 7. (a) The Secretary of Commerce shall conduct a study regarding the east coast epidemic during 1987 and 1988 which has caused substantial mortality within the North Atlantic coastal population of Atlantic bottle-nosed dolphin. The study shall examine—

(1) the cause or causes of the epidemic;

(2) the effect of the epidemic on coastal and offshore populations of Atlantic bottle-nosed dolphin;

(3) the extent to which pollution may have contributed to the epidemic;

(4) whether other species and populations of marine mammals were affected by those factors which contributed to the epidemic; and

(5) any other matters pertaining to the causes and effects of the epidemic.

(b) On or before January 1, 1989, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a plan for conducting the study required in subsection (a).

AMENDMENTS TO FISHERMEN'S PROTECTIVE ACT OF 1967

SEC. 8. (a) Section 8(a)(4) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)(4)) is amended by striking "fish" and inserting in lieu thereof "any".

(b) Paragraph (4) of section 8(h) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(h)) is repealed.

PRIBILOF ISLAND TRUST FUNDS

SEC. 9. Section 206(e)(1) of the Fur Seal Act of 1966 (16 U.S.C. 1166(e)(1)) is amended by adding at the end the following new sentence: "In addition, there are authorized to be appropriated to the Secretary $3,200,000 for fiscal year 1989 and $1,800,000 for fiscal year 1990 to be used for the purpose of funding the Saint Paul Island Trust, as established pursuant to subsection (a)(1) of this [section.] *section, and $3,700,000 for fiscal year 1990 to be used for the purpose of funding the Saint George Trust, as established pursuant to subsection (a)(1).*".

Mr. ADAMS. Mr. President, I rise in support of this legislation. These amendments to the Marine Mammal Protection Act represent many months of hard work by the Commerce Committee, of which I am a member. I believe we have put together a good bill, a fair bill, one which is consistent with the preservation goals of the act, permits the continuation of fishing activities, and will enable us to gather far more information than we have presently on the interaction between humans and marine mammals.

The first major issue addressed by these amendments involves the controversial and emotional issue of porpoise mortalities that occur in the operation of the tuna fishing industry. In the years since MMPA was implemented, enormous progress has been made by the U.S. tuna fleet in reducing porpoise mortalities. However, unregulated foreign tuna fleets continue to kill unacceptably high levels of porpoise in their operations. Congress has recognized this problem for some time, passing amendments in 1984 that imposed import restrictions on foreign nations that did not impose standards comparable to those adopted by the United States on their fleets. Unfortunately, the administration has been inexcusably lax in implementing these laws.

In order to address this continuing problem, the new amendments take a two-pronged approach. First, they bring new muscle to the effort to bring foreign fleets into compliance with U.S. standards. These amendments make it clear that "comparability" means reduction to specific mortality levels by dates certain, and adoption of observer programs. They allow the Secretary to initiate embargo proceedings against countries that serve as intermediaries by exporting tuna from countries whose tuna fleets fail to meet the new standards. Finally, the Secretary is required to initiate discussions with other nations, through the Inter-American Tropical Tuna Association or a similar organization, for the purpose of reducing porpoise mortality through international agreements.

Second, the new amendments carefully target continuing problem areas in the U.S. fleet. Specifically, the Secretary is directed to design regulations that will, with certain exceptions, ban the sundown sets that are associated with high porpoise mortality. The Secretary is also directed to develop and implement a system of performance standards. This will allow the Secretary to identify those skippers or vessels with unusually high mortality records, and force improvement of their performance. Certain types of noise harrassment devices are banned, and 100 percent observer coverage on all vessels is required through 1991. Finally, the Secretary is directed to step up scientific research efforts to identify and develop alternative fishing methods for the tuna fleet.

This two-pronged approach of putting pressure on foreign industry and further improving U.S. industry standards will provide the Secretary with effective tools for reducing porpoise mortality. I want to make it clear that in my capacity as a member of the Senate Commerce Committee I will insist on rapid and forceful implementation of this program.

Second, there are amendments permitting the incidental take of marine mammals by commercial fishermen. Recent litigation successfully challenging the issuance of an incidental take permit to the Japanese salmon fleet has placed NOAA in the position of not being able to issue incidental take permits to the bulk of the commercial fishing fleet for 1989 unless the law is changed. This is a particularly important issue in the North Pacific, where many Washington State vessels fish, because of the potential for interactions with marine mammals such as stellar sea lions, northern fur seals, and killer whales.

This potential crisis has led to unprecedented negotiations between the commercial fishing industry and the conservation community. An agreement was hammered out during the summer, and this agreement is the foundation of the commercial fishing portion of our bill. Both sides are to be commended for their willingness to negotiate on this issue. Certainly the people of my State, with their strong interest in preserving both a rare and precious marine environment and a thriving fishing industry, are best served when competing interests can cooperate in this fashion.

The crux of agreement is that the industry gets to fish for 5 years in return for a comprehensive information gathering program. This program will require extensive reporting of interactions between the fishing industry and marine mammals, and provides for an observer program for specified fisheries. It also provides the Secretary with emergency authority to deal with potential threats to marine mammal populations, and provides for establishment of an information management system to analyze and process data on the incidental take of marine mammals. Finally, new specific timetable and procedures are provided for the Secretary to follow in conducting status reviews and preparing conservation plans for marine mammals.

The program set up by this legislation will require significant cooperation and effort from all involved, and I'm sure both sides are up to the task. In addition, this program will require a significant Federal commitment in terms of funding. I will personally do all I can to ensure that this new program receives the necessary funds to make it successful.

Mr. President, this bill represents hard work, and significant efforts towards compromise and cooperation on the part of many interest groups. I hope that most of these groups will recognize these amendments as the best possible agreement at this time on these issues. I urge my colleagues to give it their strong support.

Mr. INOUYE. I thank the Senator from South Carolina, as chairman of the Commerce Committee, for his strong support of S. 2810, the Marine Mammal Protection Act Amendments. As a member representing one of the most important ocean States, I am very interested in the protection, preservation and informed utilization of this most important resource.

Mr. HOLLINGS. I thank the Senator from Hawaii for his remarks.

Mr. INOUYE. I would like to take a moment to discuss the amendment pertaining to the issue of public display. The amendment language states that a permit for public display may be issued "* * * only to an applicant which offers a program for education or conservation purposes * * *" based on the professionally recognized standards of the public display industry. I believe that this language strengthens the overall bill and will ultimately lead to higher standards for public display of marine mammals.

To that end I would like to commend the exemplary program recently implemented by Dolphin Quest at the Hyatt Regency Wiakoloa Resort on the Big Island of Hawaii. The Dolphin Quest Program has developed the largest and most natural man-made dolphin habitat in the world and offers a unique education and conservation oriented program which is designed to unite the dolphins with their human counterparts and increase human understanding and appreciation for the dolphin.

Mr. HOLLINGS. The Senator from Hawaii has brought a very good point to our attention. The Marine Mammal Protection Act recognizes that marine mammals play an important role in marine ecosystems and that they are significant recreational and esthetic resources; the amendments to this important legislative initiative will strengthen our commitment to the more intelligent and humane treatment of marine mammals.

Mr. INOUYE. I thank the distinguished Senator from South Carolina for engaging in this discussion with me regarding the public display amendment in S. 2810. Moreover, I commend my colleague, the Senator from Massachusetts, for his timely introduction of this bill to reauthorize and amend the Marine Mammal Protection Act.

Mr. MURKOWSKI. Mr. President, I would like to bring to your attention one matter which is not addressed in this legislation. Aleut Natives have been harvesting fur seals on the Pribilof Islands of St. Paul and St. George since 1787. During virtually the entire period, the mainstay of the local economy has been the commercial harvest of Pribilof fur seals for their valuable pelts.

Today, more than 200 years after their forefathers were brought to these Alaskan islands, the approximately 800 residents are working hard to develop an economy which is not dependent on that harvest.

I would appreciate it if my good friend, the chairman of the Committee on Commerce, Science, and Transportation, would be willing to discuss this situation.

Mr. HOLLINGS. Mr. President, it would be a pleasure to discuss this matter with the Senator from Alaska.

Mr. MURKOWSKI. In 1983, the Fur Seal Act was amended to terminate Federal management of the Pribilof Islands and of associated commercial sealing. At this time, a trust fund was established to assist island residents to develop a new economic base. Two years later, the commercial harvest was discontinued. Aleut Natives retain the right, however, to harvest animals for subsistence purposes, and seal meat remains a valued staple of the Native diet.

At the present time, I have two concerns regarding the situation on the Pribilof Islands. The first of these is to ensure full utilization of animals taken for subsistence purposes, including the use of nonedible byproducts. Second, I would like to encourage the continued progress of island residents toward establishing a self-sustaining economic base.

Mr. HOLLINGS. I appreciate the concerns of the Senator from Alaska and anticipate that these issues will be discussed fully in a hearing held by the Commerce Committee in the upcoming year. In addition, I urge representatives of Native and conservation organizations to develop joint recommendations regarding action needed to further fur seal conservation and management. I am aware that this will not be an easy task. For that reason, I would ask the interested parties to expeditiously begin the discussions required to arrive at such joint recommendations.

Mr. MURKOWSKI. I agree with the distinguished chairman of the Commerce Committee that cooperative discussions are a promising approach to addressing these issues, and I am grateful for his suggestion that we may anticipate that the Commerce Committee will address this matter next year. I thank my colleague for engaging in this discussion, and at this time would like to express my strong support for the legislation under consideration.

Mr. BYRD. Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc, and that the measure be advanced to third reading.

THE PRESIDING OFFICER. Without, objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1044, H.R. 4189, the House companion bill.

THE PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill to authorize appropriations to carry out the Marine Mammal Protection Act of 1972 for fiscal years 1989 and 1993.

Mr. HOLLINGS. Mr. President, today, we are considering the Marine Mammal Protection Act Amendments of 1988. The legislation under discussion is an amendment in the nature of a substitute to H.R. 4189, a House-passed bill to reauthorize the Marine Mammal Protection Act [MMPA]. The next of the substitute is S. 2810, a bill similar to H.R. 4189, which was introduced by Senator KERRY and reported favorably by the Commerce Committee. This legislation reauthorizes the MMPA for a period of 5 years, amends the act to provide greater protection for marine mammals, and allows American fishermen to continue operations. The text reflects careful consideration and balancing of the diverse and sometimes divergent viewpoints of the committee members. I believe the final product addresses the legitimate concerns of the various interest groups which participated in its development.

In 1972, when the Congress enacted the MMPA, there was considerable debate over how far we should go in protecting marine mammals. Some environmental extremists preferred tough restrictions which would have crippled our domestic fishing industry. Not suprisingly, the fishing industry favored no regulations at all. The debate centered on striking the proper balance between our national desire to both protect marine mammals and preserve important commercial fisheries. After long deliberation, we finally reached what has proven to be an effective compromise. The number of marine mammals taken by our fishermen has been reduced dramatically without seriously damaging the economic viability of our domestic fishing fleet.

In the years since 1972, the central issue has changed a little. In reauthorizing this act, we must again strike the proper balance. After long negotiations, I believe that we have reached such a compromise. Although I understand that not everyone is completely satisfied with all aspects of this bill, such is the nature of a compromise, and I am pleased to support the Marine Mammal Protection Act Amendments of 1988. I believe this bill will fine tune the MMPA, increasing the protection afforded to marine mammals without hurting the competitiveness of the American fishing industry.

The legislation before us today contains amendments to three existing statutes, the Marine Mammal Protection Act of 1972, the Fishermen's Protective Act of 1967, and the Fur Seal Act of 1966. Amendments to the MMPA include the following: a 5-year limited exemption to authorize the incidental take of marine mammals by commercial fishermen; measures to reduce the number of porpoises killed in tuna fishing operations in the eastern tropical Pacific Ocean [ETP]; specific timetables and procedures for conducting marine mammal population reviews and preparing conservation plans; modifications to the requirements for scientific research and public display permits; a study on the recent high mortality of Atlantic bottlenose dolphins; and a 5-year reauthorization of appropriations to carry out Federal activities under the MMPA. In addition, the Fishermen's Protection Act is amended to broaden the embargo authority provided under the Pelly amendment to include any products. Finally, the Fur Seal Act is amended to include additional appropriations for the St. Paul and St. George Island trusts.

At this time, I would like to discuss briefly some of the more important provisions.

Section 2 of this bill would establish a 5-year interim system under which commercial fishermen may obtain exemptions authorizing the incidental taking of marine mammals during fishing operations. The need for such an exemption arose following recent court decisions which threatened to close down several West Coast fisheries. The system is based on an agreement reached between representatives of the fishing industry and conservation organizations after extensive negotiations. To be eligible for such an exemption, vessel owners must meet certain registration and reporting requirements, based on the frequency of incidential taking within a fishery. There is, however, no intention to redefine the original terms of the act, such as taking. Fisheries which frequency take marine mammals also will be required to participate in an observer program. The goals of the interim system created under this section are to collect information regarding fishery-marine mammal interactions and to develop guidelines governing the incidental taking of marine mammals beyond the 5-year scope of the exemption. I commend the representatives of both the fishing industry and the conservation organizations upon whose joint recommendations this section of the legislation is based.

Section 4 of the bill addresses the taking of porpoises by the tuna purse seine fleet in the ETP. Earlier this year, the Commerce Committee held a hearing to examine this problem. Witnesses testified that, although the U.S. tuna fleet had reduced their catch of porpoises substantially, foreign fleets had not matched those reductions. Further testimony indicated that, while additional decreases in porpoise mortality were desirable and possible within the U.S. fleet, the foreign fleet present a much more serious threat to porpoise populations and should be required to meet the same standards as the U.S. fleet. The legislation before us defines and clarifies comparability requirements that foreign fleets must meet in order to export tuna to the United States. In addition, intermediary nations are required to comply with U.S. embargoes against foreign fleets that do not meet these standards. With respect to domestic regulations, the bill mandates skipper performance standards, restricts sundown sets, bans the use of certain explosive devices, and initiates an assessment of alternative methods for catching tuna. These steps will result in a much stronger program to protect porpoises while allowing our tuna fleet to remain competitive.

Section 5 of the bill would modify the requirements for the issuance of public display and scientific research permits and authorize the issuance of permits for enhancing the survival or recovery of a species or stock. The new provisions would provide necessary protection for marine mammals consistent with the goals of the MMPA, while allowing legitimate scientific research and public display operations to continue. They would also legalize certain activities beneficial to marine mammals that are currently restricted.

Section 8 of the bill amends the Fisherman's Protective Act to broaden the President's discretionary authority under the Pelly amendment. By providing authority to embargo any product from a nation that diminishes the effectiveness of an international fishery conservation program, this provision increases the options available to the President to encourage international compliance with such programs. The importance of international efforts in protecting whales and other fishery resources has become increasingly apparent over the years, and this section would increase the effectiveness of such efforts.

In summary, this legislation would strengthen and extend the protection afforded to marine mammals under the MMPA without damaging our important commercial fisheries or restricting worthwhile public display and scientific research activities. These amendments are consistent with the original goals and intent of the MMPA and would facilitate our attempts to meet these goals. Passage of this bill would reaffirm our commitment to preserving and protecting this remarkable group of animals. I urge my colleagues to support it.

Mr. BREAUX. Mr. President, I rise today in support of H.R. 4189, the Marine Mammal Protection Act Amendments of 1988, as amended by the Senate. The Marine Mammal Protection Act [MMPA] provides important safeguards for the conservation of marine mammals, and these amendments further strengthen and improve the operation of this act.

The amendments before us today deal primarily with two issues. First, the amendments set up a system for the issuance of an interim exemption for commercial fisheries other than the yellowfin tuna fishery in the eastern tropical Pacific Ocean. Under this interim exemption, certain categories of commercial fisheries would be required to undertake additional data collection, registration, reporting, and observer responsibilities during the interim exemption period. The permit requirements and incidental take prohibitions of the act would be superseded by the interim exemption through October 1, 1993.

The second major provision of the bill involves the incidental taking of porpoise in the course of fishing for yellowfin tuna in the eastern tropical Pacific Ocean. Mr. President, the high level of porpoise mortality associated with such tuna fishing was a key motivation for congressional passage of the original Marine Mammal Protection Act in 1972. The National Marine Fisheries Service estimates that the domestic tuna industry killed or seriously injured 368,000 porpoise during

1972. By 1987, in response to the MMPA and due to the aggressive efforts of the U.S. tuna industry to develop and implement techniques and fishing practices to dramatically cut porpoise mortality, only an estimated 13,992 porpoise were killed or seriously injured. Thus, porpoise mortality in 1987 was less than 4 percent of the estimated mortality a decade and one-half earlier. A 96-percent drop in incidental mortality is, in my view, a commendable record of achievement. This is an industry that has responded constructively and positively to carry out the spirit of the MMPA.

The progress within the U.S. tuna fleet in dramatically reducing porpoise mortality was recognized by the Congress in the 1984 MMPA Amendments, which provided a statutory extension of the general permit issued to the American Tunaboat Association. The quota for incidental take under this permit would remain in effect so long as the industry continued to utilize the best marine mammal safety techniques and equipment that are technologically and economically achievable. The quota could be modified only if it was determined that the level of incidental take was determined to have a significant adverse effect on a marine mammal population.

Unfortunately, Mr. President, the record of most other nations which conduct yellowfin tuna fishing operations in the eastern tropical Pacific is sadly lacking. In response to the poor record established by foreign tuna fleets, the Congress enacted amendments to the MMPA in 1984 which were intended to assure that nations exporting yellowfin tuna to the United States would implement marine mammal protection measures comparable to those required of the U.S. fleet. However, the national marine fisheries service has failed to implement these requirements adequately. Data from 1987 indicate that foreign tuna fleets, not subject to regulation under the MMPA, caught 60 percent of the tuna in the eastern tropical Pacific, but killed over 80 percent of the porpoise. Over 103,000 porpoise are estimated to have died in 1987 in the course of yellowfin tuna fishing by foreign fleets.

Mr. President, the problem of incidental take of marine mammals by the foreign yellowfin tuna fleets of the eastern tropical Pacific is the significant issue that must be addressed if we are to reduce porpoise mortality further. The bill before us further strengthens requirements for these foreign vessels if the countries involved are to continue to have access to the U.S. market for their tuna products. Our goal must be to encourage these nations to implement the developments in gear technology and fishing practice that have been pioneered by the U.S. fleet and that have proven value in substantially reducing porpoise mortality. I am confident that the improvements contained in this bill will be persuasive in moving other nations to adopt programs comparable to that developed under the MMPA.

Mr. President, many Senators worked diligently to produce this important legislation and to see it through to passage today. My good friend and colleague from Massachusetts, Senator KERRY, has worked tirelessly in our effort to enact this legislation, and he has my appreciation for his significant marine mammal conservation efforts. The distinguished chairman of the committee, Senator HOLLINGS, is to be commended for his important efforts in this regard, as is my good friend, the Senator from Alaska, Senator STEVENS, whose understanding of the fishing industry and concern for the conservation of marine mammals has contributed to the sound approach contained in this legislation. I sincerely hope, Mr. President, that our colleagues in the House of Representatives, who themselves are to be commended for their efforts on this important legislation, will recognize the careful balance and compromise reflected in the Senate bill and will move quickly to adopt this legislation.

Mr. KERRY Mr. President, the legislation before us today is important legislation to reauthorize the Marine Mammal Protection Act. This act, first enacted in 1972 is critical for the protection and conservation of marine mammals which are so essential to our marine ecosystem as well as enjoyed by many people recreationally.

The bill pending before the Senate, is the result of tremendous time and effort by many individuals. This document represents a bipartisan and bicameral effort and reflects the input of many interested parties, including the fishing industry, environmentalists, the administration, the Marine Mammal Commission and virtually any and every group who was interested in this reauthorization process. I would like to offer my special appreciation to the House and Senate Committee staff both minority and majority—who is marathon sessions during the past several months used their collective expertise and patience, to craft a consensus bill from which the legislation before us today, is based.

Sixteen years ago, the Marine Mammal Protection Act was enacted in response to growing public concern at that time, over the health and welfare of marine mammals, from seals to whales to porpoise to manatees, seal lions and many more. The citizen outcry then, brought us a law which today protects over 100 species of marine mammals. The act has proven successful over the years by replenishing declining species of marine mammals and protecting others from extinction. Probably one of the most significant efforts of the MMPA, is the moratorium that has been placed on the taking and the harassment of marine mammals within the jurisdiction of the United States. The MMPA does provide limited exemptions where it is both appropriate and necessary, such as for legitimate scientific research, display for education, and of course incidental takes by commercial fishermen.

The legislation that we are considering today unanimously passed the Senate Commerce Committee last month. The overwhelming support behind it reflects the manner in which it builds upon and enhances the current act. It does this by focusing on and making changes in three major areas: problems associated with the tuna fishery in the Eastern Tropical Pacific as it relates to porpoise mortality; a fisheries agreement regarding the incidental taking of marine mammals by commercial fishermen; and, finally, it addresses issues surrounding scientific research and public display of marine mammals.

The issues surrounding the mortality of dolphins in the tuna fishery in the Eastern Tropical Pacific [ETP] are both extremely difficult as well as tremendously emotional. It is estimated that over 100,000 porpoise are killed each year in the ETP by both the foreign and the domestic tuna fleet with the overwhelming majority being killed by the foreign fleet. Last year for example 60 percent of the tuna caught and 80 percent of porpoise killed in the ETP were taken by foreign fishermen. Clearly, the focus of the problem lies with the foreign fleet.

In 1984 when the act was last reauthorized, Congress made a number of substantive changes designed to make the foreign fleet more accountable and responsible. Most noteably was a provision which ensures that nations exporting tuna to the United States must have an adequate marine mammal protection program. This objective was to be achieved through an observer program within the Inter-American Tropical Tuna Commission. Sadly, however, until recently the administration, had not issued or even drafted for that matter, regulations putting in place many ncessary and important changes. Building on what Congress set out to do in 1984, the bill that we are considering today places new, tougher restrictions on foreign and domestic tuna fishermen who kill dolphin. These changes will force the foreign fleet to lower the number of dolphins they are killing by using comparable regulations and methods in their fishery as well as, achieve an average rate of incidental take comparable to the U.S. fleet. In addition, the legislation will enable the domestic fleet to minimize their kill even further.

Specifically, this legislation will require foreign fleets to cut in half their mortality rate of dolphin by the end of 1989 and by the end of the 1990 fishing season they must be fully comparable with the U.S. rate. Any foreign nation selling their tuna in U.S. markets must adopt a comprehensive dolphin protection program which includes an observer coverage program. Those foreign nations which do not comply will have their tuna banned from U.S. markets. In addition, any intermediary nation selling tuna which does not come under a comparable plan will also be banned. Furthermore, within 6 months after an embargo, the Secretary must certify such embargo. Such certification will permit the President to ban fish and fish products from the embargoed nations under provisions in the Pelly amendment. The legislation requires the Secretary of Commerce to enter into international negotiations aimed at establishing worldwide protection of dolphins.

On the domestic side it must be noted that the U.S. fleet has done a commendable if not exemplary job in reducing dolphin mortality since the act was first established. In 1972, U.S. vessels killed roughly 368,600 dolphins and last year the number had decreased to an impressive 14,000. Clearly we have witnessed a respectable reduction, although I am confident that that number can be decreased even further and our legislation will provide the domestic fleet with the necessary tools to do just that. Through an all out effort of education and new gear technologies fishermen have made this very responsible achievement. In 1981, Congress imposed an annual quote on domestic fishermen of 20,500 for the number of porpoise allowed to be killed and I am pleased to say that our fleet has only reached that level twice in the past decade. In talks with the industry, it is my opinion, that they can and will do even better in the future.

To that end, Mr. President, this legislation also makes additional changes to the 1984 amendments designed to help the U.S. fleet lower their rate even further. It requires 100 percent observer coverage on all U.S. tuna boats with some of the observers participating in the IATTC observer program. This will enable a sound data base to be developed on the rate of porpoise mortality. After 2 years the Secretary may determine if this full level of coverage is still necessary. It places a ban on sundown sets beginning 30 minutes after sundown. In this regard it requires the Secretary to promulgate regulations which will ensure that the backdown procedure during night sets is completed and that the rolling of the purse seine net to sackup has begun no more than 30 minutes after sundown. This will prevent a higher number of dolphin from being killed. Statistics have shown that dolphin are more likely to die in the nets at night when it is too dark to see the dolphin caught in the nets. It directs the Secretary however, to develop a system in which exemplary skippers can apply for waivers to the sundown provision if their record shows that they have not killed porpoise during night sets. This is to be determined on a trip by trip basis, based on data that has been collected on observed trips. It establishes a system of performance standards for captains in which the Secretary and other skippers will determine when certain skippers are killing porpoises at a significantly higher level than others in order that they can be educated, reprimanded and if they are repeat offenders, suspension or removal of their license is also possible. The legislation requires the Secretary to ban the use of any explosive devices except those classified as class C explosive pest control devices used during tuna fishing. The Secretary shall also proscribe regulations effective April 1, 1990, to prohibit or restrict the use of class C bombs, unless the Secretary, through a study, determines that their use does result in physical impairment or increased mortality to dolphins. The bill also directs the National Academy of Sciences to study and devise alternative fishing gear that could be used by fishermen to reduce dolphin mortality. Finally, the legislation asks the Secretary to submit a report to Congress before April 1992 on the results of efforts required by the legislation to reduce dolphin mortality throughout the international fleet. If the mortality rate has not been reduced, then the Secretary is directed to recommend to Congress alternative proposals to achieve the goals of the act. Finally in the area of dolphin, the bill directs the Secretary to conduct a study into last year's death of bottlenose dolphin which washed up on the Atlantic coast.

With regard to the problems associated with incidental taking of marine mammals by commercial fishermen, this legislation is designed to fix and balance the need for protection of our marine mammals with the ability of commercial fisheries to operate in a responsible manner. The act currently prohibits the taking of marine mammals, but it includes procedures under which commercial fisheries can receive general permit exemptions. However, commercial fishermen may not be issued permit exemptions for the incidental take of marine mammals that are depleted. All general permits issued to domestic fisheries—except tuna—expire at the end of this year. Northern fur seals have recently been determined as depleted. Furthermore, in a recent court ruling, NOAA is now prohibited from issuing any new permit exemptions. Therefore, Mr. President it is imperative that we pass this vital legislation today. Otherwise, thousands of U.S. fishermen will find themselves tied up at the docks at the height of next year's fishing season.

To address the issue of declining and depleted stocks of marine mammals, particularly in the northern pacific, this legislation establishes a 5-year program to assess fishery and marine mammal interactions. It will strengthen reporting and verification requirements by fishermen as well as improve statistical information gathering so that the Secretary will better be able to determine the status of many stocks, and develop a more efficient system.

The Secretary is required to establish a system which identifies the number of vessels and individuals with: frequent incidental takings of marine mammals; occasional incidental takings, and remote incidental takings. Those with frequent and occasional incidental takings will be required to register their vessel and be subject to reporting requirements. In addition, vessels with frequent takings could be subject to an observer coverage program. Based on all the appropriate information, the Secretary will establish an exemption system. If a vessel does not participate in the system they will be subject to a penalty. If they do not comply with the reporting requirements or cooperate with the observer program, they are subject to having their exemption permit revoked.

In 1990 the chairman of the Marine Mammal Commission shall transmit guidelines to the Secretary governing the incidental taking of marine mammals.

North Pacific fur seals and Steller sea lions are given special attention for conservation matters.

With regard to public display and scientific research, current law provides that permits may be issued for the taking or importation of marine mammals for this use. Permits can not, however be issued for enhancing the survival of helping to recover depleted stocks. The legislation before us today adds a provision to allow permits for such actions.

Mr. President, this consensus bill is a compromise between many parties. In order to achieve such broad support many individuals have had to come to agreement on some very sensitive, and emotional issues. I believe we have been successful in crafting such a bill which enjoys broad support. And I urge my colleagues to unanimously pass this legislation which saves the lives of marine mammals while balancing the needs of our commercial fishing fleets.

Mr. BYRD. Mr. President, I ask unanimous consent that all after the enacting clause be stricken, and that the text of S. 2810, as amended, be substituted in lieu thereof.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that the House bill be advanced to third reading, and passed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that S. 2810 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

SALT RIVER PIMA-MARICOPA INDIAN RESERVATION

Mr. BYRD. Mr. President, I ask unanimous consent that the Commission on Indian Affairs be discharged from further consideration of H.R. 5066, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 5066) to add additional land to the Salt River Pima-Maricopa Indian Reservation in Arizona, and for other purposes.

● Mr. McCAIN. Mr. President, I would like to express appreciation to my Senate colleagues for passing H.R. 5066—a bill to modify a portion of the south boundary of the Salt River Pima-Maricopa Indian Reservation in Arizona. This legislation helps clear the way for vital freeway construction work in the Phoenix area.

As you know, Mr. President, Arizona is one of our Nation's fastest growing States. Our highway and transportation needs have grown commensurately. To accommodate this rapid growth, we have embarked on the construction of new freeways in Phoenix and the surrounding communities. One of the vital components of this program is the Outer Loop, which will circle the Phoenix metropolitan area, relieving traffic congestion and providing easier access to crosstown locations.

An 8-mile portion of the Outer Loop, Mr. President, known as the Pima Leg, will be constructed on tribal lands belonging to the Salt River Pima-Maricopa Indian community. House bill 5066 compensates the tribe for the land it will relinquish as a result of granting right-of-way to the State. Lands now held by the Bureau of Land Management will be transferred to the tribe, while the Bureau will receive compensation from the State of Arizona.

Mr. President, great credit is due the Salt River Pima-Maricopa Indian community, the State department of transportation, the Bureau of Land Management, and the affected landowners for their cooperation and hard work in coming to the fair and equitable arrangement embodied in this legislation.

Passage of this bill keeps the tribe whole, spares many homeowners from the prospect of displacement, and paves the way for better transportation in the Valley of the Sun.

Again, I thank my colleagues and those without whose efforts this legislation would not be possible.●

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The bill was ordered to be read a third time, was read a third time, and passed.

OFFICE OF ENVIRONMENTAL QUALITY AUTHORIZATION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 923.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1792) to authorize appropriations for the Office of Environmental Quality for fiscal years 1987, 1988, and 1989.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Environment and Public Works, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

TITLE I

SEC. 101. Section 204 of the National Environmental Policy Act of 1969 (42 U.S.C. 4344), is amended by—

(1) striking the "and" at the end of paragraph (7);

(2) striking the "." at the end of paragraph (8) and insert in lieu thereof "; and"; and

(3) adding the following new paragraph:

"(9) to promulgate regulations implementing the National Environmental Policy Act for all Federal agencies, including independent regulatory commissions.".

REVIEW FUNCTIONS OF COUNCIL

SEC. 102. (a) AMENDMENTS.—Section 204 of the National Environmental Policy Act of 1969 (42 U.S.C. 4344) is further amended—

(1) by inserting "(a)" before "It"; and

(2) by adding at the end thereof the following:

"(b)(1) In addition to any other review and appraisal carried out under subsection (a)(3), the Council shall evaluate, and annually report in writing to the Congress on the results of, the reviews carried out by Federal agencies under paragraph (2) and may include in the report such recommendations for legislation as the Council considers appropriate regarding issues raised incident to the evaluation.

"(2) Each Federal agency shall (i) on a continuing basis and subject to such guidelines as the Council shall establish, select and review a statistically significant random sample of the detailed statements prepared under section 102(2)(C) by the agency in which measures were specified for the mitigation of any adverse impact on the environment, including fish and wildlife populations and habitat, that was predicted to occur as a result of the agency action; and (ii) promptly submit to the Council all reviews prepared by the agency under this paragraph.

"(3) The guidelines established by the Council under paragraph (2) shall require that each Federal agency review—

"(A) the extent to which the mitigation measures specified in the statement were implemented in connection with the action;

"(B) the accuracy of the predicted adverse impact which the implemented action would have on the environment, including fish and wildlife populations and habitat; and

"(C) the effectiveness of the implemented mitigation measures.".

(b) INITIAL REVIEWS.—In carrying out subsection (b) of section 204 of the National Environmental Policy Act of 1969 (as added by subsection (a)), each Federal agency, within twenty-four months after the date of the enactment of this Act, shall—

(1) select and review under such subsection a statistically significant random sample of detailed statements that were prepared for appropriate projects which were completed before such date of enactment; and

(2) submit the reviews to the Council on Environmental Quality.

SEC. 103. Section 205 of the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4374), is amended by adding the following new subsection:

"(e) $750,000 for each of the fiscal years ending on September 30, 1987, 1988, and 1989.".

SEC. 104. A State or interstate water pollution control agency shall, notwithstanding any other provision of law, have one year from the date of enactment of this Act to satisfy the certification requirement provided for in section 401 of the Clean Water Act (33 U.S.C. 134(a)(1)) with respect to each hydroelectric project for which a request for certification had been made pursuant to section 401 of the Clean Water Act but for which no license had been issued prior to February 11, 1987, by the Federal Energy Regulatory Commission, and for which, prior to June 10, 1987, either—

(1) more than one year had elapsed since the State certifying agency had received a certification request and the State has neither certified nor specifically denied certification, or

(2) the State agency had either issued water quality certification or denied certification, but the issuance or denial occurred more than one year after State receipt of the request: Provided, That any such water quality certification that was issued or denied by a State or interstate water pollution control agency prior to such date of enactment may, at the election of the State, be deemed to have been issued or denied on such date of enactment.

SEC. 105. Section 102(C) of the National Environmental Policy Act of 1969 is amend-

ed by inserting after "actions" the following: "(including extraterritorial actions)".

TITLE II—SPECIAL USE AIR SPACE

DEFINITIONS

SEC. 201. As used in this Act—

(1) "special use airspace" is defined in accordance with regulations promulgated by the Federal Aviation Administration;

(2) "expansion of a special use airspace" means any increase in the physical dimensions of a special use airspace previously designated; and

(3) "designated" or "designation" means allocated, awarded, set aside, granted, or otherwise made available, and such term includes the expansion of a special use airspace.

NOTIFICATION

SEC. 202. (a) Effective upon the date of enactment of this Act, in the administration of the provisions of section 102 of the National Environmental Policy Act of 1969, and the laws and regulations of the United States relating to the designation of military special use airspace including but not limited to, prohibited areas, restricted areas, military operation areas (including but not limited to, routes for military training, research, development, testing and evaluation), the Secretary of Defense shall provide notice in writing including an opportunity to comment on any such proposed special use airspace designation, to—

(1) the Governor of any State whose airspace is sought to be designated as special use airspace;

(2) the head of an Indian tribe on any Indian lands, if such lands are likely to be affected by any such designation; and

(3) the Secretary of the Interior, if such designation includes airspace above any unit of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Trails System, or the National Wilderness Preservation System administered by the Department of the Interior.

(b) In addition to the notice required under subsection (a), notice of any significant proposed designation including an opportunity to submit written comments shall be published in newspapers of general circulation (rather than legal papers) within the affected area.

(c) Upon the request of any Governor made within thirty days following the receipt of a proposed designation of an airspace pursuant to subsection (a), the Secretary of Defense shall hold a public meeting and consider oral and written comments prior to making a determination with respect to such designation.

FAA RESPONSIBILITY

SEC. 203. (a) The Administrator of the Federal Aviation Administration shall, in consultation with the Council on Environmental Quality, adopt procedures to assure that designations of special use airspace are in compliance with the National Environmental Policy Act of 1969 no later than ninety days after enactment of this section.

(b) The Administrator of the Federal Aviation Administration shall establish procedures for the review of each special use airspace designation not less than every three years. If in the course of any such review, it is determined that the use of such airspace cannot justify the continued designation of such special use airspace, such designation shall be terminated or modified by the Administrator.

AMENDMENT NO. 3706

(Purpose: To strike Section 104, insert a substitute and strike Section 105)

Mr. BYRD. Mr. President, I send to the desk an amendment on behalf of Senator BAUCUS.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. BAUCUS, proposes an amendment numbered 3706.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered,.

The amendment is as follows:

On page 7, strike "Sec. 104." line 18 through line 15 on page 8. Insert the following:

"SEC. 104. (a) A State or interstate water pollution control agency shall, notwithstanding any other provision of law, have one year from the date of enactment of this Act to satisfy the certification requirement provided for in section 401 of the Clean Water Act (33 U.S.C. 134(a)(1)) with respect to each hydroelectric project for which a request for certification had been made pursuant to section 401 of the Clean Water Act but for which no license had been issued prior to February 11, 1987, by the Federal Energy Regulatory Commission and for which, prior to June 10, 1987, either—

(1) more than one year had elapsed since the State certifying agency or interstate water pollution control agency had received a certification request and the agency has neither certified nor specifically denied certification, or

(2) the State certifying agency or interstate water pollution control agency had denied certification, but the denial occurred more than one year after receipt of the request:

Provided, That any such water quality certification that was denied by a State certifying agency or interstate water pollution control agency prior to such date of enactment may, at the election of the agency pursuant to applicable law, be deemed to have been issued or denied on such date of enactment. *Provided further,* That the provisions of this section shall not apply to hydroelectric projects No. 5797 and No. 9260.

(b) With respect to each hydroelectric project for which a request for certification has been made pursuant to section 401 of the Clean Water Act but for which no license has been issued as of the date of enactment of this Act, and for which, prior to June 10, 1987, a water quality certification was issued, but the issuance occurred more than one year after agency receipt of the request, such certification for purposes of section 401 shall be deemed to have been issued.

On page 8, strike "Sec. 105." lines 16 through 18.

Mr. BAUCUS. Mr. President, I am pleased that the Senate is taking up the Office of Environmental Quality reauthorization today. In addition to reauthorizing appropriations, this measure contains several other important environmental provisions. The bill will do the following:

First, it amends the National Environmental Policy Act to specifically authorize the Council on Environmental Quality to issue regulations which are binding on all Federal agencies and independent regulatory commissions. This provision is necessary to settle ongoing disputes about the legal basis for CEQ's regulations and their applicability.

Second, it contains provisions to establish a monitoring system for the environmental impact statement process. Agencies will be required to evaluate a sample of EIS's for their predicted environmental effects against the actual effects and implementation of environmental mitigation measures. Agencies will report to CEQ on the findings and CEQ in turn will report to Congress.

Third, it will redress a problem created by a Federal Energy Regulatory Commission order of last year which reversed the Commission's policy on 401 State water quality certifications under the Clean Water Act. Section 401 of the act provides States and interstate authorities one year to certify or deny requests for water quality certifications. Until the time FERC issued Order No. 464, the Commission deemed the 1-year clock to run from the time a State had enough information to proceed with the certification request. Order No. 464 changed that policy to start the clock running from the time the State actually received the request. Further, this policy was applied retroactively invalidating State decisions on over 200 projects in 32 States.

The bill as amended will ensure that in cases where a State has neither certified or denied a project or has denied a project and more than 1 year has elapsed prior to June 10, 1987, an additional year is provided for a State to either issue or deny a section 401 water quality certification under the Clean Water Act. As originally reported projects that were licensed after June 10, 1987 but where FERC had deemed the section 401 waived because more than 1 year had elapsed since the request for certification had been made, would have been subjected to a possible re-opening of the license even if a State had certified the project. Under the amendment, projects for which licenses have been issued prior to the date of enactment and States that had already acted are no longer subject to this provision. In the case of projects where State has certified but more than 1 year has elapsed but FERC has not completed final action on the license, a project shall be deemed to be certified on the date of enactment. It is the intention of this amendment that all projects fully comply with all applicable requirements of the Clean Water Act.

I would like to commend the Senator from Idaho, Mr. MCCLURE, for his willingness to work with me to assure that a fair and equitable balance is maintained between the States and FERC where both parties had been operating in good faith to achieve the objectives of the Clean Water Act in the development of hydroelectric power. At the same time, licensees who have attempted to comply with both the requirements of the States and FERC are not subjected to having their licenses questioned.

Fourth, the bill will require improved environmental compliance on the part of the Federal Aviation Administration with respect to the issuance of special use airspace designations.

It is important to mention what the bill as amended will not do. S. 1792 as reported by the Environment and Public Works Committee, contained a provision that would have clarified NEPA's applicability to major Federal actions regardless of where the actions took place. Since it has become clear that individual actions can and do have an affect on the global environment, Federal agencies should be applying the same level of environmental analysis to proposed extraterritorial impacts as they do to those within our borders. However, it appears that this provision of the bill would be an obstacle to successful completion of legislation this year. There is much in the bill that is necessary and which requires timely enactment and implementation. Therefore, we have agreed to delete this provision of S. 1792. It is my intent however to pursue this clarification further in the coming year.

Mr. REID. Mr. President, the crystal blue skies over Nevada are filled with the wonders of nature. A visitor can see golden eagles as they soar against the background of majestic mountains in the Toyabe National Forest or prairie falcons as they swoop through the sundrenched valleys of the Mojave Desert.

But there is another even more common site in the airspace above Nevada. Supersonic jets with their deafening roars fly frequent missions buzzing over the people and wildlife who live below. Our nation's top pilots receive their training in Nevada's desert skies. We Nevadans are proud of our contribution to the Nation's strong defense, but we have grown to question the methods by which the Federal Government takes our airspace.

According to the FAA, nearly 40 persent of the airspace over Nevada is controlled in some way by the military. In fact, one witness—Dr. Richard Bargen—at a hearing we held on this issue in Sparks, NV testified that if military training routes are included, well over half of Nevada's airspace is controlled by the military. The military has been able to take Nevada's airspace without giving the people of Nevada a meaningful opportunity to participate in the process. We do not question the military's needs, but as I said earlier, we have come to question their methods.

As I have studied this issue, I have learned that the problem is not limited to Nevada. From Whidby Island, in Washington State to Cape Lookout National Seashore in North Carolina, the military continues to co-opt our Nation's airspace. Since 1978, when the FAA's present system of designating military airspace began, the amount of military special use airspace has increased by 34 percent and presently encompasses over 1 million square miles.

In August of this year, the GAO issued a report entitled "Airspace Use: FAA Needs to Improve its Management of Special Use Airspace." The report was requested by Senator JESSE HELMS of North Carolina. The reports findings are illuminating.

According to the GAO, the FAA is not effectively managing Special Use Airspace. Inefficient and inappropriate use of that airspace has resulted. In fact, the GAO says that the FAA cannot effectively manage the airspace or review its use because it does not compile sufficient data on the utilization of special use airspace. For this same reason, the FAA cannot determine whether the military uses the airspace for its originally designated purpose.

In 1987, the Department of Navy hired a private consultant to study the use of airspace controlled by the Navy and Marine Corps. The study was called Project Blue Air. This study found that Navy and Marine controlled special use airspace was used only 22 percent of the reserved time, and the airspace was often used for other than the intended purposes. Project Blue Air concluded that "this abuse creates circumstances that justify the FAA formally asking the Navy to revalidate and fully justify its requirements for some special use airspace." The GAO report also discusses the issue of the FAA's failure to certify compliance with the National Environmental Policy Act.

To address these problems, title II of S. 1792 requires the FAA to review current special use airspace designations and determine whether the designation continues to be justified. Title II also requires the FAA to certify that the airspace designation complies with the National Environmental Policy Act. In addition, title II sets up a system requiring notification of Governors Indian Tribes and the people in the area of each proposed special use designation. This will help to ensure that all interested people are afforded the opportunity to participate in the process.

Mr. BURDICK. Mr. President, I am pleased to support S. 1792 authorizing appropriations for the Office of Environmental Quality through fiscal year 1989. This measure includes important provisions to improve environmental compliance in special use airspace designations and provides States additional time to complete water quality certifications for hydropower projects that were caught in a "catch 22" as the result of a FERC ruling last year.

This measure also amends the National Environmental Policy Act to give the Council on Environmental Quality a clear statutory basis for issuing regulations and makes the regulations binding on all Federal agencies and independent regulatory commissions. This clarification is needed because CEQ's authority which derives from Executive Order 11514 as amended by Executive Order 11991 has on occasion been challenged. Another provision will establish a procedure for evaluating the accuracy of predicted environmental effects in environmental impact statements and the effectiveness of mitigation measures.

S. 1792 as reported clarifies the application of the environmental impact statement process to major Federal actions beyond the boundaries of the United States. An amendment being offered today deletes the "extraterritorial actions" language.

While I regret that it is necessary to drop this clarification, it became clear that if we were to see a bill enacted this year, this was an essential compromise. It is my hope that as the 20th anniversary of NEPA's enactment approaches we can revisit this matter since Federal agencies should not be applying a double standard to the environmental effects of projects undertaken abroad.

Mr. President, S. 1792 as amended is a good environmental measure and I urge my colleagues to support it.

Mr. McCLURE. Mr. President, it is my understanding that section 104 of S. 1792 is not intended to apply to hydro exemptions. I would like to ask the distinguished chairman of the Committee on Environment and Public Works as to whether or not my understanding is correct?

Mr. BURDICK. Mr. President, I would respond to the senior Senator from Idaho that as is expressed in the statutory language and explained in the accompanying committee report, the committee did not intend that the provisions of section 104 apply to exemptions from licensing.

Mr. McCLURE. I thank the distinguished chairman of the committee and the manager of the bill. I note that the committee amendment provides a specific exemption for project number 5797 from the application of section 104. This treatment is warranted and justified because this project is a part of an ongoing FERC environmental review which earlier this year resulted in the issuance of a draft environmental impact statement. This ongoing review by FERC will assure that all relevant environmental issues will be fully considered by the Commission before it acts on this license application.

Mr. BURDICK. I thank the senior Senator from Idaho for his explanation why the exemption for project 5797 will not result in any adverse impact on the environment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3706) was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the substitute amendment as amended.

The substitute amendment, as amended, was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be discharged from further consideration of H.R. 2020, the House companion bill, that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2020) to authorize appropriations for the Office of Environmental Quality for fiscal year 1987, 1988, and 1989.

Mr. BYRD. Mr. President, I ask unanimous consent that all after the enacting clause be stricken and that the text of S. 1792, as amended, be inserted in lieu thereof.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed, and I move to lay that motion on the table.

The motion was agreed to.

Mr. BYRD. Mr. President, I ask unanimous consent that Calendar Order No. 923 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

PIPELINE SAFETY REAUTHORIZATION ACT

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 2266.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 2266) entitled "An Act to amend the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 to authorize appropriations for fiscal year 1988 and 1989, and for other purposes", with the following amendment:

In lieu of the matter inserted by said amendment, insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the "Pipeline Safety Reauthorization Act of 1988".

(b) Table of Contents.—

TITLE I—NATURAL GAS PIPELINE SAFETY

Sec. 101. Certification authority.
Sec. 102. State notification and pipeline inventory.
Sec. 103. State enforcement.
Sec. 104. Qualifications for State grant programs.
Sec. 105. Federal-State cooperation in case of accident.
Sec. 106. Increased civil penalties.
Sec. 107. Destruction of signs or markers.
Sec. 108. Additional inspection and testing.
Sec. 109. State prenotification of testing.
Sec. 110. Authorization for appropriations.

TITLE II—HAZARDOUS LIQUID PIPELINE SAFETY

Sec. 201. Certification authority.
Sec. 202. State notification and pipeline inventory.
Sec. 203. State enforcement.
Sec. 204. Qualifications for State grant programs.
Sec. 205. Increased civil penalties.
Sec. 206. Destruction of signs or markers.
Sec. 207. Additional inspection and testing.
Sec. 208. State prenotification of testing.
Sec. 209. Federal-State cooperation in case of accident.
Sec. 210. Authorization for appropriations.
Sec. 211. Carbon dioxide.

TITLE III—GENERALLY APPLICABLE PIPELINE SAFETY PROVISIONS

Sec. 301. Grants-in-aid authorization.
Sec. 302. Additional hirings.
Sec. 303. Minimum requirements for one-call notification systems.
Sec. 304. Internal inspection of pipelines.
Sec. 305. Emergency flow restricting devices.
Sec. 306. Feasibility of regulating excavation activities.
Sec. 307. Pipeline safety instructors.
Sec. 308. Clarification of congressional intent.

TITLE IV—MOTOR VEHICLE INFORMATION AND COST SAVINGS

Sec. 401. Transfer of titles held by lienholders.

TITLE I—NATURAL GAS PIPELINE SAFETY

SEC. 101. CERTIFICATION AUTHORITY.

Section 3(a)(1) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1672(a)(1)) is amended by inserting after the second sentence the following: "Such standards may include a requirement that all individuals responsible for the operation and maintenance of pipeline facilities be tested for qualifications and certified to perform such functions.".

SEC. 102. STATE NOTIFICATION AND PIPELINE INVENTORY.

Section 3 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1672) is amended by adding at the end the following new subsections:

"(e) Notification Standards.—Not later than 1 year after the date of the enactment of this subsection, the Secretary shall establish by regulation minimum Federal standards requiring operators of pipeline facilities subject to this Act (to the extent practicable) to provide, and revise as necessary, information relating to the operations of such facilities. Such information shall be completed and maintained and be provided, upon request, to the Secretary and an appropriate official of a State, as the case may be. Such information shall include the following:

"(1) The business name, address, and telephone number, including an operations emergency telephone number, of the operator.

"(2) An accurate map or maps, along with an appropriate supplementary geographic description, showing the location of major pipeline facilities including all transmission lines and significant distribution lines, of such operator in the State.

"(3) A description of the characteristics of the operator's pipelines within the State.

"(4) A description of all products transported through the operator's pipelines within the State.

"(5) The manual which governs operations and maintenance of the pipeline facilities located in the State.

"(6) An emergency response plan describing the operator's procedures for responding to and containing releases, including—

"(A) an identification of specific actions which will be taken by the operator on discovery of a release;

"(B) liaison procedures with State and local government agencies for emergency response; and

"(C) communication and alert procedures for immediate notification of State and local officials at the time of any release.

"(7) Any other information the Secretary considers useful and necessary to inform the States of the presence of pipeline facilities and operations within their boundaries.

"(f) Pipeline Inventory Standards.—The Secretary shall, by regulations, establish minimum Federal standards to require, not later than 1 year after the date of the enactment of this subsection, operators of pipeline facilities subject to this Act, to the extent practicable, to complete and maintain for the Secretary, and to reviews as appropriate thereafter, an inventory with appropriate information with respect to all types of pipe used for the transmission of gas in such operators's system, along with additional information such as the material history and the leak history of such pipe. Such inventory shall exclude equipment used with the compression of gas.".

SEC. 103. STATE ENFORCEMENT.

Section 5(a)(3) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1674(a)(3)) is amended by inserting "through means which include inspections conducted by State employees who meet qualifications established by the Secretary under subsection (d)" after "each such standard".

SEC. 104. QUALIFICATIONS FOR STATE GRANT PROGRAMS.

Section 5(d) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1674(d)) is amended by adding at the end the following new paragraph:

"(5) QUALIFICATIONS FOR STATE GRANT PROGRAMS.—The Secretary may establish by regulation qualifications for States to meet in order to participate in the pipeline safety grant program under this subsection, including qualifications for State employees who perform inspection activities pursuant to either an annual certification by a State agency or an agreement relating to inspection between a State agency and the Secretary. Such regulations may take into account the experience and training of the State employee, may mandate training or other requirements, and may provide for conditional approval of qualifications pending satisfaction of specified requirements.".

SEC. 105. FEDERAL-STATE COOPERATION IN CASE OF ACCIDENT.

Section 9 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1676) is amended—

(1) by inserting "(a) GENERAL RULE.—" before "Whenever"; and

(2) by adding at the end of the following new subsection:

"(b) COORDINATION PROCEDURES.—Not later than 1 year after the date of the enactment of this subsection, the Secretary, after consultation with appropriate State officials, shall establish procedures to promote more effective coordination between the agencies of the United States and of the States with regulatory authority over pipeline facilities with respect to responses to pipeline accidents.".

SEC. 106. INCREASED CIVIL PENALTIES.

Section 11(a)(1) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1679a(a)(1)) is amended—

(1) by inserting ", after notice and an opportunity for a hearing," after "Secretary";

(2) by striking out "$1,000" and inserting in lieu thereof "$10,000"; and

(3) by striking out "$200,000" and inserting in lieu thereof "$500,000".

SEC. 107. DESTRUCTION OF SIGNS OR MARKERS.

Section 11(c) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1679a(c)) is amended by adding at the end the following new paragraph:

"(3) DESTRUCTION OF SIGNS OR MARKERS.—Any person who willfully and knowingly defaces, damages, removes, or destroys any pipeline sign or right-of-way marker required by Federal law or regulation shall, upon conviction, be subject, for each offense, to a fine of not more than $5,000, imprisonment for a term not to exceed 1 year, or both.".

SEC. 108. ADDITIONAL INSPECTION AND TESTING.

(a) INSPECTION AND TESTING.—Section 13 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1680) is amended—

(1) by inserting "(a) PIPELINE OPERATOR'S RESPONSIBILITIES.—" before "Each person who engages"; and

(2) by adding at the end the following new subsection:

"(b) SECRETARY'S RESPONSIBILITIES.—

"(1) IN GENERAL.—The Secretary shall inspect and, as appropriate, shall require testing of pipeline facilities subject to this Act and not covered by an agreement or certification under section 5 to ensure the safety of such pipeline facilities. To the extent and in such amounts as are provided in advance by appropriation Acts, such inspections shall be at intervals determined under paragraph (2) but no less frequently than once every 2 years thereafter; except that the Secretary may reduce the frequency of such inspections with respect to master meter systems. Such inspections shall begin as soon as feasible, but in no event more than 1 year after the date of the enactment of this subsection. Such testing shall be performed using the most appropriate technology practicable.

"(2) CRITERIA FOR FREQUENCY AND TYPE.—The frequency and type of inspection and testing under this subsection shall be determined by the Secretary on a case-by-case basis after consideration of the following factors:

"(A) The location of the pipeline facilities.

"(B) The type, size, age, manufacturer, method of construction, and condition of the pipeline facilities.

"(C) The nature and volume of the materials transported through the pipeline facilities and the pressure at which they are transported.

"(D) The climatic, geologic, and seismic characteristics of, and conditions (including soil characteristics) associated with the areas in which the pipeline facilities are located, and the existing and projected population and demographic characteristics associated with such areas.

"(E) The frequency of leaks, if any.

"(F) Any other factors determined by the Secretary to be relevant to the safety of pipeline facilities.".

(b) INSTRUMENTED INTERNAL INSPECTION DEVICES.—Section 3 of such Act (49 U.S.C. App. 1672) is amended by adding at the end the following new subsection:

"(g) INSTRUMENTED INTERNAL INSPECTION DEVICES.—The Secretary shall, by regulation, establish minimum Federal safety standards requiring that—

"(1) the design and construction of new transmission facilities, and

"(2) when replacement of existing transmission facilities or equipment is required, the replacement of such existing facilities.

be carried out, to the extent practicable, in a manner so as to accommodate the passage through such transmission facilities of instrumented internal inspection devices (commonly referred to as 'smart pigs').".

(c) IMPROVEMENT OF MASTER METER INSPECTION PROGRAM.—

(1) STUDY.—The Secretary of Transportation shall undertake a study to assess the need for an improved inspection program for master meter systems.

(2) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Transportation shall submit to Congress a report detailing the Secretary's findings under paragraph (1) together with any recommendations of the Secretary for appropriate legislation.

SEC. 109. STATE PRENOTIFICATION OF TESTING.

Section 14(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1681(a)) is amended by inserting after the first sentence the following new sentence: "Prior to requiring such testing, the Secretary shall notify the appropriate State official in the State in which the affected pipeline facility is located.".

SEC. 110. AUTHORIZATION FOR APPROPRIATIONS.

Section 17(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1684(a)) is amended—

(1) by striking "and" at the end of paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting in lieu thereof a semicolon; and

(3) by adding at the end the following:

"(6) $3,733,000 for the fiscal year ending September 30, 1988;

"(7) $3,978,000 for the fiscal year ending September 30, 1989;

"(8) $4,086,000 for the fiscal year ending September 30, 1990; and

"(9) $4,270,000 for the fiscal year ending September 30, 1991.

The Secretary may credit to any appropriation authorized under this subsection funds received from non-Federal sources for reimbursement for expenses incurred by the Secretary in providing training. The Secretary may expend in fiscal year 1989 or fiscal year 1990 not to exceed $50,000 of funds appropriated pursuant to this subsection for such fiscal year for establishing a training program for persons who install, operate, and maintain a system of providing natural gas for more than one unit in a definable area (including a building or series of buildings, a mobile home park, a housing project, or an apartment complex) through use of a master metering system in lieu of separate meters.".

TITLE II—HAZARDOUS LIQUID PIPELINE SAFETY

SEC. 201. CERTIFICATION AUTHORITY.

Section 203(c) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2002(c)) is amended by inserting after the first sentence the following: "Such standards may include a requirement that all individuals responsible for the operation and maintenance of pipeline facilities be tested for qualifications and certified to perform such functions.".

SEC. 202. STATE NOTIFICATION AND PIPELINE INVENTORY.

Section 203 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2002) is amended by adding at the end the following new subsections:

"(i) NOTIFICATION STANDARDS.—Not later than 1 year after the date of the enactment of this subsection, the Secretary shall establish by regulation minimum Federal standards requiring operators of pipeline facilities subject to this title (to the extent practicable) to provide, and revise as necessary, information relating to operation of such facilities. Such information shall be completed and maintained and be provided, upon request, to the Secretary and an appropriate official of a State, as the case may be. Such information shall include the following:

"(1) The business name, address, and telephone number, including an operations emergency telephone number, of the operator.

"(2) An accurate map or maps, along with any appropriate supplementary geographic description, showing the location of major pipeline facilities of such operator in the State.

"(3) A description of the characteristics of the operator's pipelines within the State.

"(4) A description of all products transported through the operator's pipelines within the State.

"(5) The manual which governs operations and maintenance of the pipeline facilities located in the State.

"(6) An emergency response plan describing the operator's procedures for responding to and containing releases, including—

"(A) an identification of specific actions which will be taken by the operator on discovery of a release;

"(B) liaison procedures with State and local government agencies for emergency response; and

"(C) communication and alert procedures for immediate notification of State and local officials at the time of any release.

"(7) Any other information the Secretary considers useful and necessary to inform the States of the presence of pipeline facilities and operations within their boundaries.

"(j) PIPELINE INVENTORY STANDARDS.—The Secretary shall, by regulation, establish minimum Federal standards to require, not later than 1 year after the date of the enactment of this subsection, operators of pipeline facilities subject to this title, to the extent practicable, to complete and maintain for the Secretary, and revise as appropriate thereafter, an inventory with appropriate information with respect to all types of pipe used for the transmission of hazardous liquids in such operator's system, along with additional information such as the material history and the leak history of such pipe. Such inventory shall exclude equipment associated only with the pipeline pumps or storage facilities.

SEC. 203. STATE ENFORCEMENT.

Section 205(a)(3) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2004(a)(3)) is amended by inserting "through means which include inspections conducted by State employees who meet qualifications established by the Secretary under subsection (d)" after "each such standard".

SEC. 204. QUALIFICATIONS FOR STATE GRANT PROGRAMS.

Section 205(d) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2004(d)) is amended by adding at the end the following new paragraph:

"(5) QUALIFICATIONS FOR STATE GRANT PROGRAMS.—The Secretary may establish by regulation qualifications for States to meet in order to participate in the pipeline safety grant program under this subsection, including qualifications for State employees who perform inspection activities pursuant to either an annual certification by a State agency on an agreement relating to inspection between a State agency and the Secretary. Such regulations may take into account the experience and training of the State employee, may mandate training or other requirements, and may provide for conditional approval of qualifications pending satisfaction of specified requirements.".

SEC. 205. INCREASED CIVIL PENALTIES.

Section 208(a)(1) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2007(a)(1)) is amended—

(1) by inserting ", after notice and an opportunity for a hearing," after "Secretary";

(2) by striking out "$1,000" and inserting in lieu thereof "$10,000"; and

(3) by striking out "$200,000" and inserting in lieu thereof "$500,000".

SEC. 206. DESTRUCTION OF SIGNS OR MARKERS.

Section 208(c) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2007(c)) is amended by adding at the end the following new paragraph:

"(3) DESTRUCTION OF SIGNS OR MARKERS.—Any person who willfully and knowingly defaces, damages, removes, or destroys any pipeline sign or right-of-way marker required by Federal law or regulation shall, upon conviction, be subject, for each offense, to a fine of not more than $5,000, imprisonment for a term not to exceed 1 year, or both.".

SEC. 207. ADDITIONAL INSPECTION AND TESTING.

(a) INSPECTION AND TESTING.—Section 210 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2009) is amended by adding at the end the following new subsection:

"(d) SECRETARY'S RESPONSIBILITIES.—

"(1) IN GENERAL.—The Secretary shall inspect and, as appropriate, shall require testing of pipeline facilities subject to this title and not covered by an agreement or certification under section 205 to ensure the safety of such pipeline facilities. To the extent and in such amounts as are provided in advance by appropriation Acts, such inspections shall be at intervals determined under paragraph (2) but no less frequently than once every 2 years thereafter. Such inspection shall begin as soon as feasible, but in no event more than 1 year after the date of the enactment of this subsection. Such testing shall be performed using the most appropriate technology practicable.

"(2) CRITERIA FOR FREQUENCY AND TYPE.—The frequency and type of inspection and testing under this subsection shall be determined by the Secretary on a case-by-case basis after consideration of the following factors:

"(A) The location of the pipeline facilities.

"(B) The type, size, age, manufacture, method of construction, and condition of the pipeline facilities.

"(C) The nature and volume of the materials transported through the pipeline facilities and the pressure at which they are transported.

"(D) The climatic, geologic, and seismic characteristics of, and conditions (including soil characteristics) associated with the areas in which the pipeline facilities are located, and the existing and projected population and demographic characteristics associated with such areas.

"(E) The frequency of leaks, if any.

"(F) Any other factors determined by the Secretary to be relevant to the safety of pipeline facilities.".

(b) INSTRUMENTED INTERNAL INSPECTION DEVICES.—Section 203 of such Act (49 U.S.C. App. 2002) is amended by inserting at the end the following new subsection:

"(k) INSTRUMENTED INTERNAL INSPECTION DEVICES.—The Secretary shall, by regulation, establish minimum Federal safety standards requiring that—

"(1) the design and construction of new pipeline facilities, and

"(2) when the replacement of existing pipeline facilities or equipment is required, the replacement of such existing facilities,

be carried out, to the extent practicable, in a manner so as to accommodate the passage through such pipeline facilities of instrumented internal inspection devices (commonly referred to as 'smart pigs').".

(c) TECHNICAL CORRECTION.—Section 210 of such Act (49 U.S.C. App. 2009) is amended by striking the last sentence of subsection (c)(3) and inserting such sentence at the end of subsection (a).

SEC. 208. STATE PRENOTIFICATION OF TESTING.

Section 211(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2010(a)) is amended by inserting after the first sentence the following new sentence: "Prior to requiring such testing, the Secretary shall notify the appropriate State official in the State in which the affected pipeline facility is located.".

SEC. 209. FEDERAL-STATE COOPERATION IN CASE OF ACCIDENT.

Section 212 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2011) is amended by adding at the end the following new subsection:

"(d) COORDINATION PROCEDURES.—Not later than 1 year after the date of the enactment of this subsection, the Secretary, after consultation with appropriate State officials, shall establish procedures to promote more effective coordination between the agencies of the United States and of the States with regulatory authority over pipeline facilities with respect to responses to pipeline accidents.".

SEC. 210. AUTHORIZATION FOR APPROPRIATIONS.

Section 214(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2013(a)) is amended—

(1) by striking "and" at the end of paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting in lieu thereof a semicolon; and

(3) by adding at the end the following:

"(6) $921,000 for the fiscal year ending September 30, 1988;

"(7) $995,000 for the fiscal year ending September 30, 1989;

"(8) $1,021,000 for the fiscal year ending September 30, 1990; and

"(9) $1,067,000 for the fiscal year ending September 30, 1991.

The Secretary may credit to any appropriation authorized under this subsection funds received from non-Federal sources for reimbursement for expenses incurred by the Secretary in providing training.".

SEC. 211. CARBON DIOXIDE.

(a) REGULATION.—The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001 et seq.) is further amended by adding at the end the following new section:

"SEC. 219. CARBON DIOXIDE.

"(a) GENERAL RULE.—In addition to hazardous liquids, the Secretary shall regulate under this title carbon dioxide which is transported by pipeline facilities.

"(b) REGULATIONS.—The Secretary, as necessary and appropriate, shall amend regulations issued with respect to hazardous liquids under this title and shall issue new regulations to ensure the safe transportation of carbon dioxide by pipeline facilities.".

(b) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Hazardous Liquid Pipeline Safety Act of 1979 is amended by inserting

"Sec. 219. Carbon dioxide."

after

"Sec. 218. Savings provisions.".

(c) EFFECTIVE DATE.—Section 219(a) of the Hazardous Liquid Pipeline Safety Act of 1979, as added by subsection (a) of this section, shall take effect 18 months after the date of the enactment of this Act.

TITLE III—GENERALLY APPLICABLE PIPELINE SAFETY PROVISIONS

SEC. 301. GRANTS-IN-AID AUTHORIZATION.

(a) IN GENERAL.—Subsection (c) of section 17 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1684) is amended—

(1) by striking "and" after "September 30, 1986,"; and

(2) by inserting ", $5,000,000 for the fiscal year ending September 30, 1988, $5,500,000 for the fiscal year ending September 30, 1989, $5,500,000 for the fiscal year ending September 30, 1990, and $5,500,000 for the fiscal year ending September 30, 1991" after "September 30, 1987".

(b) MAXIMUM ALLOCATION ON INDIRECT EXPENSES.—

(1) IN GENERAL.—Subsection (d) of such section is amended by inserting "(1) SET ASIDE FOR HAZARDOUS LIQUID GRANTS-IN-AID PROGRAM.—" before "Not less than" and by adding at the end thereof the following new paragraph:

"(2) MAXIMUM ALLOCATION TO INDIRECT EXPENSES.—Not more than 20 percent of the amount of a pipeline safety grant made to a State under section 5(d) of this Act and section 205(d) of the Hazardous Pipeline Safety Act of 1979 may be allocated to indirect expenses.".

(2) CONFORMING AMENDMENTS.—Such subsection is further amended—

(A) by inserting "LIMITATION ON GRANTS-IN-AID FUNDS.—" after "(d)" the first place it appears; and

(B) by indenting paragraph (1), as designated by this subsection, and aligning such paragraph with paragraph (2) of such section, as added by this subsection.

(c) ADDITIONAL FUNDING.—Such section is further amended by adding at the end the following new subsection:

"(e) ADDITIONAL FUNDING.—

"(1) ADDITIONAL GRANT FUNDS.—The Secretary shall make available for grants to the States any funds appropriated for fiscal years 1986 and 1987 which have not been expended in making grants under section 5(d) of this Act and section 205(d) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2004(d)).

"(2) ELIGIBILITY.—Grants made under this subsection shall be available to States which in 1988 or thereafter (A) undertake new responsibilities under section 5(a) of this Act or section 205(a) of the Hazardous Liquid Pipeline Safety Act of 1979, or (B) implement a one-call damage prevention program established under State law.

"(3) LIMITATIONS.—Nothing in this subsection shall result in any State receiving grant funds under this Act or under the Hazardous Liquid Pipeline Safety Act of 1979 in excess of 50 percent of its allowable pipeline safety costs. No State shall receive funds under this subsection in excess of $75,000.

"(4) AVAILABILITY.—Funds made available under this subsection shall remain available until expended.".

SEC. 302. ADDITIONAL HIRINGS.

Section 17 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1684) is amended by adding at the end thereof the following new subsection:

"(f) ADDITIONAL HIRING.—For purposes of hiring 8 additional inspectors to carry out inspections under section 13(b) of this Act and section 210(d) of the Hazardous Liquid Pipeline Safety Act of 1979 and necessary support staff, there is authorized to be appropriated $500,000 for fiscal year 1989. For purposes of retaining the persons hired under the preceding sentence and for hiring 8 additional inspectors to carry out such inspections and necessary support staff, there is authorized to be appropriated $1,000,000 for fiscal year 1990. For purposes of retaining the persons hired under the two preceding sentences, there is authorized to be appropriated $1,000,000 for fiscal year 1991.".

SEC. 303. MINIMUM REQUIREMENTS FOR ONE-CALL NOTIFICATION SYSTEMS.

(a) REQUIREMENT AND GRANT PROGRAM.—The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671-1686) is amended by adding at the end thereof the following new section:

"SEC. 20. MINIMUM REQUIREMENTS FOR ONE-CALL NOTIFICATION SYSTEMS.

"(a) STATE ADOPTION OF SYSTEM.—In making allocations under section 5 of this Act, and under section 205 of the Hazardous Liquid Pipeline Safety Act of 1979, the Secretary shall consider whether a State has adopted or is seeking adoption of a one-call notification system under subsection (b). If the Secretary determines that any State has not adopted, and is not seeking adoption of, such a system, such State may not receive the full reimbursement under such sections to which it would otherwise be entitled.

"(b) ONE-CALL NOTIFICATION SYSTEMS.—Not later than 18 months after the date of the enactment of this section, the Secretary shall issue regulations establishing minimum Federal requirements for establishment and operation of one-call notification systems for adoption by States as described in subsection (a) relating to notification of operators of pipeline facilities of activities in the vicinity of a pipeline facility which could threaten the safety of such facility. Such regulations shall include, but not be limited to, the following:

"(1) A requirement that the system or systems apply to all areas of the State containing underground pipeline facilities.

"(2) A requirement that any person intending to engage in any activity, as determined by the Secretary, which could cause physical damage to an underground pipeline facility must contact the appropriate one-call notification system to determine if there are underground pipeline facilities present in the area of the intended activity.

"(3) A requirement that all operators of underground pipeline facilities participate in an appropriate one-call notification system.

"(4) Qualifications for operation of such a system whether by operators of pipeline facilities, private contractors, or State or local agencies.

"(5) Procedures for advertisement and notice of the availability of such a system.

"(6) Requirements for the information to be provided by persons contacting the system under paragraph (2).

"(7) Requirements for the response of the operator of such notification system and of the operator of the pipeline facility after contact by a person under this subsection.

"(8) A requirement that each State determine whether the notification system will be toll free or not.

"(9) Requirements for sanctions substantially the same as are provided under sections 11 and 12 of this Act.

"(c) GRANTS TO STATES.—The Secretary may make grants to States for development and establishment of one-call notification systems which are consistent with all of the requirements established under subsection (b).

"(d) LIMITATION.—Nothing in this section or any regulation issued under this section shall alter any liability established under Federal or State law for damages caused by activities described in subsection (b)(2).

"(e) PIPELINE FACILITY DEFINED.—As used in this section, the term 'pipeline facility' includes, in addition to pipeline facilities as defined by this Act, any pipeline facility which is described in section 202(4) of the Hazardous Liquid Pipeland Safety Act of 1979.

"(f) AUTHORIZATION OF APPROPRIATIONS.—For purposes of carrying out subsection (c), there is authorized to be appropriated $1,000,000 per fiscal year for each of fiscal years 1990 and 1991. Such sums shall remain available until expended.".

(b) CONFORMING AMENDMENTS.—(1) Section 5(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1674(a)) is amended by striking "section 19" and inserting in lieu thereof "sections 19 and 20".

(2) Section 17(a) of such Act (49 U.S.C. 1684(a)) is amended by inserting "or section 20" after "subsection (b) or (c)".

SEC. 304. INTERNAL INSPECTION OF PIPELINES.

(a) STUDY.—The Secretary of Transportation shall undertake a study assessing the feasibility of requiring the inspection of transmission facilities with instrumented internal inspection devices at periodic intervals determined after consideration of the factors set forth in section 13(b)(2) of the Natural Gas Pipeline Safety Act of 1968 and section 219(d)(2) of the Hazardous Liquid Pipeline Safety Act of 1979.

(b) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Transportation shall submit to Congress a report detailing the Secretary's findings under subsection (a) together with any recommendations of the Secretary for appropriate legislation.

SEC. 305. EMERGENCY FLOW RESTRICTING DEVICES.

(a) STUDY.—The Secretary of Transportation shall undertake a study of the safety, cost, feasibility, and effectiveness of requiring operators of pipeline facilities subject to the Natural Gas Pipeline Safety Act of 1968 and operators of pipeline facilities subject to the Hazardous Liquid Pipeline Safety Act of 1979 to install emergency flow restricting devices in existing and future pipeline systems in varying circumstances and locations. The Secretary of Transportation shall also assess the cost and effectiveness of initiating a demonstration project of such emergency flow restricting devices.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall submit to Congress a report detailing the Secretary's findings under subsection (a) together with any recommendations of the Secretary for appropriate legislation.

SEC. 306. FEASIBILITY OF REGULATING EXCAVATION ACTIVITIES.

(a) ASSESSMENT AND REPORT.—The Secretary of Transportation shall assess the feasibility of regulating persons whose excavation activities may result in damage to pipeline facilities (as defined under section 2 of the Natural Gas Pipeline Safety Act of 1968 and under section 202 of the Hazardous Liquid Pipeline Safety Act of 1979) and, not later than 1 year after the date of the enactment of this Act, transmit to Congress a report on the results of such assessment together with any legislative recommendations of the Secretary concerning regulation of such persons.

(b) FUNDING.—The Secretary of Transportation may use such sums as may be necessary of funds appropriated pursuant to section 17(a) of the Natural Gas Pipeline Safety Act of 1968 and section 214(a) of the Hazardous Liquid Pipeline Safety Act to carry out this section.

SEC. 307. PIPELINE SAFETY INSTRUCTORS.

To the extent and in such amounts as are provided in advance by appropriation Acts, the Secretary of Transportation shall increase by not less than 2 the number of instructors of pipeline safety at the Transportation Safety Institute of the Department of Transportation.

SEC. 308. CLARIFICATION OF CONGRESSIONAL INTENT.

The Act entitled "An Act to revise, codify, and enact without substantive change the Interstate Commerce Act and related laws as subtitle IV of title 49, United States Code, 'Transportation' ", approved October 17, 1978 (92 Stat. 1337; Public Law 95-473) does not repeal and has no substantive effect on any rights, obligations, liabilities, or remedies of oil pipelines, including those arising under any provisions of the Interstate Commerce Act (49 U.S.C. App. 1 et seq.) or the Pomerene Bills of Lading Act

(49 U.S.C. App. 81 et seq.), before any Federal department or agency or official thereof or a court of competent jurisdiction.

TITLE IV—MOTOR VEHICLE INFORMATION AND COST SAVINGS

SEC. 401. TRANSFER OF TITLES HELD BY LIENHOLDERS.

Section 408(d)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1988(d)(1)) is amended by adding at the end thereof the following new subparagraph:

"(C) In the case of a transferor to whom title to a motor vehicle has been issued by any State and such title is, at the time of a transfer of such motor vehicle, physically held by a lienholder, nothing in this subsection shall be construed to prohibit for purposes of the mileage disclosure requirements of this section the use of a written power of attorney (if otherwise permitted by State law) in a form, and under reasonable conditions, prescribed by rule by the Secretary before February 1, 1989. The rule shall (i) ensure disclosure on the power of attorney document of the actual mileage at the time of the transfer, and (ii) ensure that such mileage will be restated exactly by the person exercising the power of attorney in the space referred to in paragraph (2)(A)(iii). The rule, consistent with the purposes of this Act and the need to facilitate enforcement thereof, shall prescribe that the form be issued by the State to the transferee in accordance with paragraph (2)(A)(i) and shall provide for retention of a copy of such power of attorney and for the original to be submitted back to the State by the person granted such power of attorney. The provisions of sections 412 and 413 shall apply to any person granting or granted such power of attorney.".

Mr. BYRD. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

RECESS SCHEDULE FOR 1989

Mr. BYRD. Mr. President, I am today announcing the nonlegislative periods for the first session of the 101st Congress.

The Senate will convene for the swearing in of new Members on Tuesday, January 3. On January 4, the Senate will join the House of Representatives in the House Chamber to count the electoral ballots. If the necessary statutory change in the law which requires the counting of the electoral ballots on January 6 is not enacted, it is possible that the Senate would have to be in session on January 6 to count the ballots. The Senate would then be out of session until Monday, January 23.

The remainder of the schedule follows the basic outline of this session—3 weeks in session and 1 week out of session. Easter next year has created a situation where the Senate will be in for slightly longer than 3 weeks in March and June. However, there are 2-week nonlegislative periods at Easter and July 4.

While Senators will find this schedule useful in arranging appointments for 1989, we should all remember that the next majority leader may find it necessary to adjust this schedule due to events which cannot be predicted at this time.

I ask unanimous consent that the schedule for nonlegislative periods for 1989 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SENATE CALENDAR 1989 NONLEGISLATIVE PERIODS 101ST CONGRESS, FIRST SESSION

January 3—Senate convenes.
January 4—Count Electoral Ballots.
January 5-20—Senate not in session.
January 20—Inauguration.
January 23 (Mon.)—Senate reconvenes.
February 13-17—Senate not in session.
February 20 (Mon.)—Senate reconvenes. Washington's Birthday.
March 20-31—Senate not in session.
March 24—Good Friday.
March 26—Easter.
April 3 (Mon.)—Senate reconvenes.
April 24-28—Senate not in session.
May 1 (Mon.)—Senate reconvenes.
May 22-30—Senate not in session.
May 29—Memorial Day.
May 31 (Wed.)—Senate reconvenes.
June 26-July 7—Senate not in session.
July 4—Independence Day.
July 10 (Mon.)—Senate reconvenes.
August 7-September 5—Senate not in session. August Recess.
September 4—Labor Day.
September 6 (Wed.)—Senate reconvenes.

Mr. ARMSTRONG. Mr. President, will the majority leader yield?

Mr. BYRD. I yield.

Mr. ARMSTRONG. Mr. President, I compliment the majority leader on the success of his 3 weeks on and 1 week off policy during this biennium.

While it is true that the next majority leader may feel the need to adjust that schedule, my guess is that he will face a popular uprising if he does so without very good reason, because it has worked out, much to the benefit not only of Senators but, more important, also to the people we serve, because it enables us to be home on a predictable basis.

When the majority leader implemented that policy 2 years ago—partly, I believe, on the suggestion of other Senators—there was some question as to whether it would work and be successful. I think it has been a great success.

Mr. BYRD. I thank the Senator for his observations.

STATE OF AFFAIRS IN LEBANON

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be discharged from further consideration of House Concurrent Resolution 381 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The concurrent resolution will be stated by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 381) expressing the sense of the Congress regarding the state of affairs in Lebanon, the necessity of resolving the constitutional crisis in Lebanon, and United States goals with respect to Lebanon.

AMENDMENT NO. 3707

Mr. BYRD. Mr. President, I submit an amendment on behalf of Mr. MITCHELL.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. MITCHELL, (for himself, Mr. BOSCHWITZ, Mr. PELL, Mr. SIMON, Mr. KERRY, Mr. CHAFEE, Mr. KASTEN, Mr. DOLE, Mr. HELMS, and Mr. MURKOWSKI), proposes an amendment numbered 3707.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the resolving clause and insert in lieu thereof the following:

That it is the sense of the Congress that the United States should—

(1) encourage all parties in Lebanon to support the constitutional mandate to elect a new President without delay in a democratic atmosphere, free from any external influence;

(2) reinforce its commitment to national sovereignty for Lebanon; and

(3) support actions which promote the unity of Lebanon.

Mr. MITCHELL. Mr. President, we in the United States care about the future of Lebanon. We are saddened by the constitutional crisis into which the country has been plunged. It is a tragedy for the people of Lebanon and for their many friends abroad.

House Concurrent Resolution 381 reaffirms America's support for Lebanon in this difficult time.

The failure to elect a new President before the expiration of former President Gemayel's term has led to the existence of two governments. The Moslem members of the former cabinet have kept their portfolios. Only Christians are participating in the interim military government that Mr. Gemayel appointed in his last hours as President. Today two cabinets claim legitimacy, but neither represents all of Lebanon.

This political split along religious lines threatens the very existence of the state. There is grave danger of a partition of the country and the destruction of all that Lebanon has represented for centuries.

Lebanon was once a stunning example of what diversity and tolerance can accomplish. A land in which Christians, Moslems, and Jews lived peacefully, Lebanon was known for its industry and wealth, its intellectual and cultural vibrancy. Together, its people tranformed Beirut into the financial and commercial center of the Middle East.

We wait in hope that this Lebanon will reemerge—that a democracy of myriad universities and thriving trade can be fully restored.

But this cannot happen until all foreign forces quit the country. The long shadow that outside powers have cast over Lebanon has eclipsed its once famous beauty and harmony.

Foreign interference in Lebanon has fueled bitter division and violence for more than a decade. Syria's dreams of regional hegemony are represented by some 35,000 troops now in Lebanon. Other governments send men and arms to advance their goals, further fragmenting the country. An important prerequisite for Lebanon's renewal is the withdrawal of outside powers.

Equally important to Lebanon's future is the willingness of all parties to move their battle from the military to the political arena.

Unless the various Lebanese factions can recognize the importance of preserving the State, it will remain easy prey for foreign powers.

Until all Lebanese learn to negotiate their differences, the country's future cannot be secure.

The first step toward restoring Lebanon is a resolution of the current crisis in the country's democratic and constitutional framework.

Lebanon simply cannot continue without a President. Lebanon needs one government, representing all Lebanese. The Lebanese must be free to choose their own leader.

The United States must do everything possible to facilitate an independent and constitutional election.

America has not only a long history of cultural and economic ties with Lebanon, but a profound respect for Lebanon's democratic influence upon the Middle East.

The need to help Lebanon does not derive simply from our affection for this country. It is in our national interest to help free Lebanon from the grip of outside powers and restore its role as a moderating regional influence.

The goal is not a simple one. It is not ours alone. But it is a goal that we share with all people of Lebanon.

House Concurrent Resolution 381 reaffirms this fact.

I am pleased that this resolution is essentially the text of Senate Concurrent Resolution 145, which Senator BOSCHWITZ and I introduced on September 28. The cosponsorship of Senators PELL, KERRY, CHAFEE, KASTEN, SIMON, DOLE, HELMS, and MURKOWSKI reflects the strong bipartisan support for Lebanon.

The resolution urges the United States to encourage all parties to work to ensure a free election as soon as possible. It calls on the administration to reinforce our commitment to national sovereignty for Lebanon. Finally, it urges the United States to support actions that promote Lebanon's unity.

In passing this legislation, the Senate underscores the importance of swiftly moving toward an election to mend the constitutional rift now threatening the state.

We reiterate our support for Lebanese efforts to restore their country's freedom and independence.

In this profoundly difficult juncture in the country's history, we must not lose sight of Lebanon's achievements and intrinsic strengths. With faith in the energies and talents of its people, we express our hopes for the future of Lebanon.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3707) was agreed to.

The concurrent resolution, as amended, was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution as amended, was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The preamble was amended so as to read:

Whereas until 1975, Lebanon, whose capital of Beirut was called the Paris of the Middle East, was renowned for its role as the Middle East's financial and trade center and was known as a haven for the Moslems, Christians, and Jews;

Whereas Lebanon's unique social and economic structure, in addition to the quality of life and high standards of achievement that produced what was the "Lebanese miracle", made Lebanon a model of coexistence; and

Whereas a democratic government is essential to preserving Lebanon's freedom, sovereignty, unity, and independence: Now, therefore, be it

The title was amended so as to read: "A concurrent resolution expressing the sense of the Congress regarding the state of affairs in Lebanon and urging all parties in Lebanon to work together to resolve the constitutional crisis.".

MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT OF 1972

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be discharged from further consideration of H.R. 4209 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4209) to authorize appropriations to carry out title I of the Marine Protection, Research, and Sanctuaries Act of 1972 during fiscal years 1989, 1990, and 1991.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The bill was ordered to be read a third time, was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed, and I move to lay that motion of the table.

The motion to lay on the table was agreed to.

CHANGE IN ENROLLMENT OF H.R. 4174

Mr. BYRD. Mr. President, on behalf of Mr. BUMPERS, I send to the desk a Senate concurrent resolution and ask for its immediate consideration.

The PRESIDING OFFICER. The concurrent resolution will be stated by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 163) to make a change in the enrollment of the bill H.R. 4174.

The concurrent resolution was agreed to as follows:

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (H.R. 4174) to amend the Small Business Act and the Small Business Investment Act of 1958, and for other purposes, the Clerk of the House of Representatives shall make the following changes:

(1) Strike all after section 123 up to section 125.

(2) renumber sections 125 through 138 as sections 124 through 137, respectively.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PREPAYMENT OF LOANS MADE TO STATE AND LOCAL DEVELOPMENT COMPANIES

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 437.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 437) entitled "An Act to amend the Small Business Investment Act of 1958 to permit prepayment of loans made to State and local development companies." do pass with the following amendments: Strike out all after the enacting clause and insert:

SECTION 1. PREPAYING EXISTING OBLIGATIONS

(a) In General.—Title V of the Small Business Investment Act of 1958 is amended by adding after section 505 the following new section:

"PREPAYING EXISTING OBLIGATIONS

"Sec. 506. (a) For purposes of this section, the term 'issuer' means the issuer of a debenture which has been purchased by the Federal Financing Bank pursuant to section 503, and the term 'borrower' means the small business concern whose loan secures a debenture issued pursuant to such section.

"(b) The issuer of a debenture purchased by the Federal Financing Bank and guaranteed by the Small Business Administration under section 503 shall, at the election of the borrower, prepay such debenture by paying to the Federal Financing Bank prior to October 1, 1992, the unpaid principal balance and accured interest due on the debenture at the coupon rate on the debenture: *Provided*, That—

"(1) the debenture is outstanding on the date of enactment, and neither the loan that secures the debenture nor the debenture is in default on the date the prepayment is made;

"(2) State or personal funds, including refinancing under the programs authorized by sections 504 and 505, are used to prepay the debenture;

"(3) the issue certifies that the benefits, net of fees and expenses authorized herein, associated with prepayment of the debenture are entirely passed through to the borrower; and

"(4) the issuer pays to the Federal Financing Bank at the time of prepayment a penalty in an amount equal to the original principal amount of the debenture times the interest rate thereon times the number of years remaining to maturity divided by the number of years to maturity when originally issued, reduced by the amount of any fees paid pursuant to subsection (c): *Provided*, That the borrower shall pay to the issuer the amount of the penalty plus the amount of any fees assessed pursuant to such subsection.

"(c) No fees or penalties other than those specified in this section may be imposed as a condition of such prepayment against the issuer, the borrower, or the Administration or any fund or account administered by the Administration. If an debenture is prepaid or refinanced other than through section 504, the issuer may require the borrower to pay a fee to the issuer in an amount equal to one percent of the unpaid principal balance of the debenture. If a debenture is refinanced with a guarantee pursuant to section 504, the issuer may require the borrower to pay a fee to the issuer in an amount equal to one-half of one percent of the unpaid balance of the debenture.

"(d) Debentures refinanced under section 504 shall be limited to $75,000,000 per year of the amounts otherwise authorized by the Small Business Act. Refinancings shall also be subject to all of the other provisions of sections 504 and 505 and the rules and regulations of the Administration promulgated thereunder, including, but not limited to, payment of authorized expenses and commissions, fees or discounts to brokers and dealers in trust certificates issued pursuant to section 505: *Provided, however*, That the issuer shall be deemed to have waived any origination fee on the new debenture to which it otherwise would have been entitled.".

(b) Any new credit authority provided for in this Act is subject to amounts provided for in advance in an appropriations Act.

(c) CLERICAL AMENDMENT.—The table of contents for title V of such act is amended by adding at the end the following new Item:

"Sec. 506. Prepaying existing obligations.".

Mr. METZENBAUM. Mr. President, I rise in support of S. 437. I introduced this bill to provide a long overdue remedy to a fundamental flaw in the Small Business Administration's 503 Loan Program which unfairly penalizes U.S. small businesses.

The SBA 503 Loan Program was established to provide long-term financing for small businesses. These loans are used for business expansion and the creation of jobs. This program has a proven track record. Since 1981, the SBA 503 Program has helped nearly 5,000 businesses nationwide through over $800 million in federally guaranteed loans. This program has attracted private investment, and together, this government-private sector effort has accounted for nearly $2 billion in small business expansion.

But now, many of these companies which took out SBA 503 loans when interest rates were sky high can find substantially lower rates from commercial lenders. However, when they want to pay off their SBA loans and to secure commercial refinancing, the Federal financing bank levies exorbitant prepayment penalties. These penalties are as much as 30 to 40 percent of the original loan.

This situation is not fair and it is not right. SBA's prepayment penalties are stifling the expansion the 503 Loan Program was designed to create. The SBA should be a responsible lender, not a loan shark.

I introduced S. 437 nearly a year ago to correct this situation. This bill reduces the prepayment penalties for businesses seeking commercial refinancing to a reasonable level. It ensures that the SBA 503 Loan Program will fulfill its original promise to stimulate small business expansion, rather than gouging small business men and women.

This legislation is vitally important to small businesses all across this Nation. I urge may colleagues to support it.

Mr. BYRD. Mr. President, I move that the Senate concur in the amendments of the House.

The motion was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ATLANTIC STRIPED BASS CONSERVATION ACT AUTHORIZATION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1143.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2384) to authorize appropriations to carry out the Atlantic Striped Bass Conservation Act for fiscal years 1989 through 1991, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Environment and Public Works, with an amendment.

On page 2, after line 14, insert the following:

SEC. 4. COMMISSION FUNCTIONS.

Section 4(a)(1) of the Atlantic Striped Bass Conservation Act (16 U.S.C. 1851 note) is amended by inserting "and at any other time it deems necessary," immediately after "thereafter,".

SEC. 5. STUDY OF STRIPED BASS IN ALBEMARLE AND ROANOKE RIVER BASIN.

(a) FINDINGS.—The Congress finds that—

(1) the anadromous stock of striped bass in the Albemarle Sound-Roanoke River basin area of North Carolina sustained important commercial and recreation fisheries as recently as the 1960's and 1970's;

(2) this stock has been declining for some time and is severely depressed at present, and may soon reach a level from which recovery will be exceptionally difficult;

(3) the reasons for this decline are thought to include fishing; other human activities and environmental factors, such as unsuitable water flow before, during, and after critical spawning periods; degradation of water quality by pollutants; the impact of eutrophication on the food chain; and the impact of changing land use activities;

(4) current Federal and interstate efforts to conserve the Atlantic striped bass, while effective in identifying factors contributing to the decline of other important Atlantic coastal migratory stocks of striped bass and steps that will be effective in reversing that decline, have not made a major contribution to the protection and restoration of the Albemarle Sound-Roanoke River stock of striped bass; and

(5) because the striped bass and the aquatic environment of the Albemarle Sound—Roanoke River basin presently are being significantly affected by combined, but not fully understood causes, a study should be undertaken to obtain additional biological information to understand the significance of fishing, water flows and other factors in the decline of the striped bass populations in the Albemarle Sound-Roanoke River basin and, if feasible, develop an effective course of action for restoring these important stocks of striped bass.

(b) STUDY.—

(1) IN GENERAL.—The Director of the United States Fish and Wildlife Service, in consultation with the Assistant Administrator of the National Oceanic and Atmospheric Administration for Fisheries—

(A) shall immediately undertake a biological study of the striped bass fishery resources and habitats of the Albemarle Sound-Roanoke River Basin area;

(B) develop short-term and long-term recommendations for Federal and State government agencies for restoring and conserving such resources and habitats; and

(C) submit the results of such study and such recommendations to the Congress and to the States of North Carolina and Virginia as soon as practicable, but not later than thirty six months after the date of the enactment of this Act.

(2) CONTENTS OF THE STUDY.—The Study conducted under this subsection shall, to the extent existing data are adequate, use such existing data and shall include—

(A) a description of the Albemarle Sound-Roanoke River basin area, and an investigation and analysis of the effects of land and water use practices on the striped bass population and habitats of the area;

(B) an investigation and analysis of the abundance and age and geographic distribution of the Albemarle Sound-Roanoke River stock of striped bass, including the amount and geographical location of migration and spawning habitat;

(C) an investigation and analysis of factors that may affect the abundance and age and geographic distribution of the Albemarle Sound-Roanoke River stock of striped bass, including—

(i) the extent and causes of mortality at successive stages in the life cycle of striped bass, including mortality due to recreational and commercial fishing; and

(ii) the combined effects of pollution and other natural and human alterations of the physical environment, including the effects of water withdrawals, discharges and flows, on striped bass migration and spawning and on the viability and condition of eggs and larval fish;

(D) an investigation and analysis of the status and effectiveness of current striped bass management measures implemented by State and Federal authorities, including State fishing regulations and Federal fish stocking activities, reservoir management and water flow regulation, and an analysis of whether any additional State or Federal measures would be effective in halting the decline and initiating the recovery of the Albemarle Sound-Roanoke River stock of striped bass; and

(E) a recommendation of whether conservation of the Albemarle Sound-Roanoke River stocks of striped bass could be improved by management of these stocks under the provisions of the Atlantic States Marine Fisheries Commission's Interstate Fisheries Management Plan for Striped Bass and the Atlantic Striped Bass Conservation Act.

(c) PARTICIPATION BY STATE AGENCIES.—

(1) the Director of the North Carolina Division of Marine Fisheries, the Executive Director of the North Carolina Wildlife Resources Commission, the Secretary of the Virginia Department of Natural Resources, and the District Engineer for the Wilmington District of the United States Army Corps of Engineers shall be invited to have their agencies participate in conducting the study and developing recommendations pursuant to subsection (b); and

(2) to facilitate participation by the agencies referred to in paragraph (1), should they decide to participate, a Memorandum of Understanding will be executed with such officials setting forth the respective responsibilities of the entities involved in conducting the study and developing those recommendations.

(d) CONSULTATION.—In carrying out the study under subsection (b), the Atlantic States Marine Fisheries Commission, other Federal agencies, the Albemarle-Pamlico Estuarine Study, Dominion Resources, Inc./Virginia Power/North Carolina Power, affected local governments in North Carolina and Virginia, appropriate commercial and recreational fishing interests, and other interests shall be consulted, to the maximum extent practicable.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated the sum of $1,000,000 to carry out the requirements of this section. These appropriations will remain available until expended.

(f) STATE AUTHORITY.—Nothing in this section shall be construed as authorizing any State to manage fisheries within the jurisdiction of another State.

SEC. 6. PROTECTION OF STRIPED BASS IN THE EXCLUSIVE ECONOMIC ZONE.

Title IV of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) is amended by adding at the end the following new section:

"SEC. 407. PROTECTION OF STRIPED BASS RESOURCES.

"(a) REGULATION OF FISHING IN EXCLUSIVE ECONOMIC ZONE.—Notwithstanding any other provision of this Act, when State regulations or a Federal moratorium on fishing for Atlantic striped bass within the coastal waters of a coastal State are in effect, the Secretary shall promulgate regulations governing the fishing for Atlantic striped bass in the exclusive economic zone that the Secretary determines to be consistent with the national standards and necessary and appropriate to—

"(1) ensure the effectiveness of such State regulations or such Federal moratorium; and

"(2) achieve conservation and management goals for the Atlantic striped bass resource.

"(b) CONSULTATION; PERIODIC REVIEW OF REGULATIONS.—In preparing regulations under subsection (a), the Secretary shall consult with the Atlantic States Marine Fisheries Commission, the appropriate Councils, and each affected Federal, State, and local government entity. The Secretary shall periodically review regulations promulgated under subsection (a), and if necessary to ensure their continued consistency with the requirements of subsection (a), shall amend those regulations.

"(c) FISHERY MANAGEMENT PLAN ON STRIPED BASS.—

"(1) The appropriate Councils may prepare a fishery management plan on Atlantic striped bass, which if approved and implemented by the Secretary shall supersede any regulations promulgated under subsection (a). Such plan shall—

"(A) meet the requirements of sections 301 and 303;

"(B) apply to all fishing for Atlantic striped bass within the exclusive economic zone; and

"(C) ensure the effectiveness of the Plan of the Atlantic States Marine Fisheries Commission defined under section 3(7) of the Act of October 31, 1984 (16 U.S.C. 1851 note).

"(2) The Secretary shall review such fishery management plan pursuant to section 304 and shall approve the plan if it meets the requirements of paragraph (1) and other provisions of this Act. The Secretary shall implement the plan by promulgating regulations in accordance with section 305. No regulation promulgated under subsection (a) shall have force and effect during any period in which regulations implementing such plan are in effect.

"(d) EFFECTIVE PERIOD.—This section shall cease to have force and effect at the close of September 30, 1991.".

SEC. 7. DEFINITIONS.

(a) Paragraph (1) of section 3 of the Act of October 3, 1984 (16 U.S.C. 1851 note), is amended to read as follows:

"(1) The term 'Magnuson Act' means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).".

(b) Section 5 of such Act is amended by striking "Act of 1976" each place it appears and inserting in lieu thereof "Magnuson Act".

SEC. 8. AMENDMENTS TO THE ATLANTIC TUNAS CONVENTION ACT.

(a) Paragraph (1) of section 2(a) of the Act entitled "An Act to authorize appropriations for fiscal years 1981, 1982, and 1983 for the Atlantic Tunas Convention Act of 1975, and for other purposes", approved September 4, 1980 (16 U.S.C. 1827(a)), is amended to read as follows:

"(1) The term 'Magnuson Act' means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);".

(b) Subparagraph (A) of section 2(b)(1) of such Act (16 U.S.C. 1827(b)(1) is amended to read as follows:

"(A) the exclusive economic zone as defined under section 3(6) of the Magnuson Act,".

(c) Section 2(f)(2) of such Act (16 U.S.C. 1827(f)(2)) is amended by striking "Act of 1976" each place it appears and inserting in lieu thereof "Magnuson Act".

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORIZATION OF APPROPRIATIONS.

Section 7 of the Atlantic Striped Bass Conservation Act (16 U.S.C. 1851) is amended by striking "and 1988," and inserting in lieu thereof "1988, 1989, 1990, and 1991,".

SEC. 2. EFFECTIVE PERIOD.

Section 9 of the Atlantic Striped Bass Conservation Act (16 U.S.C. 1851) is amended by striking "1988." and inserting in lieu thereof "1991.".

SEC. 3. FUNDING OF STRIPED BASS STUDIES.

Section 7(d) of the Anadramous Fish Conservation Act (16 U.S.C. 757g(d)) is amended by striking "the fiscal year ending September 30, 1980," and all that follows through "September 30, 1988" and inserting in lieu thereof "each of the fiscal years 1988, 1989, 1990, and 1991".

SEC. 4. COMMISSION FUNCTIONS.

Section 4(a)(1) of the Atlantic Striped Bass Conservation Act (16 U.S.C. 1851 note) is amended by inserting "and at any other time it deems necessary," immediately after "thereafter,".

SEC. 5. STUDY OF STRIPED BASS IN ALBEMARLE AND ROANOKE RIVER BASIN.

(a) FINDINGS.—The Congress finds that—

(1) the anadromous stock of striped bass in the Albemarle Sound-Roanoke River basin area of North Carolina sustained important commercial and recreation fisheries as recently as the 1960's and 1970's;

(2) this stock has been declining for some time and is severely depressed at present, and may soon reach a level from which recovery will be exceptionally difficult;

(3) the reasons for this decline are thought to include fishing; other human activities and environmental factors, such as unsuitable water flow before, during, and after critical spawning periods; degradation of water quality by pollutants; the impact of eutrophication on the food chain; and the impact of changing land use activities;

(4) current Federal and interstate efforts to conserve the Atlantic striped bass, while effective in identifying factors contributing to the decline of other important Atlantic coastal migratory stocks of striped bass and steps that will be effective in reversing that decline, have not made a major contribution to the protection and restoration of the Albemarle Sound-Roanoke River stock of striped bass; and

(5) because the striped bass and the aquatic environment of the Albemarle Sound—Roanoke River basin presently are being significantly affected by combined, but not fully understood causes, a study should be undertaken to obtain additional biological information to understand the significance of fishing, water flows and other factors in the decline of the striped bass populations in the Albemarle Sound-Roanoke River basin and, if feasible, develop an effective course of action for restoring these important stocks of striped bass.

(b) STUDY.—

(1) IN GENERAL.—The Director of the United States Fish and Wildlife Service, in consultation with the Assistant Administrator of the National Oceanic and Atmospheric Administration for Fisheries—

(A) shall immediately undertake a biological study of the striped bass fishery resources and habitats of the Albemarle Sound-Roanoke River Basin area;

(B) develop short-term and long-term recommendations for Federal and State government agencies for restoring and conserving such resources and habitats; and

(C) submit the results of such study and such recommendations to the Congress and to the States of North Carolina and Virginia as soon as practicable, but not later than thirty six months after the date of the enactment of this Act.

(2) CONTENTS OF THE STUDY.—The Study conducted under this subsection shall, to the extent existing data are adequate, use such existing data and shall include—

(A) a description of the Albemarle Sound-Roanoke River basin area, and an investigation and analysis of the effects of land and water use practices on the striped bass population and habitats of the area;

(B) an investigation and analysis of the abundance and age and geographic distribution of the Albemarle Sound-Roanoke River stock of striped bass, including the amount and geographical location of migration and spawning habitat;

(C) an investigation and analysis of factors that may affect the abundance and age and geographic distribution of the Albemarle Sound-Roanoke River stock of striped bass, including—

(i) the extent and causes of mortality at successive stages in the life cycle of striped bass, including mortality due to recreational and commercial fishing; and

(ii) the combined effects of pollution and other natural and human alterations of the physical environment, including the effects of water withdrawals, discharges and flows, on striped bass migration and spawning and on the viability and condition of eggs and larval fish;

(D) an investigation and analysis of the status and effectiveness of current striped bass management measures implemented by State and Federal authorities, including State fishing regulations and Federal fish stocking activities, reservoir management and water flow regulation, and an analysis of whether any additional State or Federal measures would be effective in halting the decline and initiating the recovery of the Albemarle Sound-Roanoke River stock of striped bass; and

(E) a recommendation of whether conservation of the Albemarle Sound-Roanoke River stocks of striped bass could be improved by management of these stocks under the provisions of the Atlantic States Marine Fisheries Commission's Interstate Fisheries Management Plan for Striped Bass and the Atlantic Striped Bass Conservation Act.

(c) PARTICIPATION BY STATE AGENCIES.—

(1) the Director of the North Carolina Division of Marine Fisheries, the Executive Director of the North Carolina Wildlife Resources Commission, the Secretary of the Virginia Department of Natural Resources, and the District Engineer for the Wilmington District of the United States Army Corps of Engineers shall be invited to have their agencies participate in conducting the study and developing recommendations pursuant to subsection (b); and

(2) to facilitate participation by the agencies referred to in paragraph (1), should they decide to participate, a Memorandum of Understanding will be executed with such officials setting forth the respective responsibilities of the entities involved in conducting the study and developing those recommendations.

(d) CONSULTATION.—In carrying out the study under subsection (b), the Atlantic States Marine Fisheries Commission, other Federal agencies, the Albemarle-Pamlico Estuarine Study, Dominion Resources, Inc./Virginia Power/North Carolina Power, affected local governments in North Carolina and Virginia, appropriate commercial and recreational fishing interests, and other interests shall be consulted, to the maximum extent practicable.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated the sum of $1,000,000 to carry out the requirements of this section. These appropriations will remain available until expended.

(f) STATE AUTHORITY.—Nothing in this section shall be construed as authorizing any State to manage fisheries within the jurisdiction of another State.

SEC. 6. PROTECTION OF STRIPED BASS IN THE EXCLUSIVE ECONOMIC ZONE.

Title IV of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) is amended by adding at the end the following new section:

"SEC. 407. PROTECTION OF STRIPED BASS RESOURCES.

"(a) REGULATION OF FISHING IN EXCLUSIVE ECONOMIC ZONE.—Notwithstanding any other provision of this Act, when State regulations or a Federal moratorium on fishing for Atlantic striped bass within the coastal waters of a coastal State are in effect, the Secretary shall promulgate regulations governing the fishing for Atlantic striped bass in the exclusive economic zone that the Secretary determines to be consistent with the national standards and necessary and appropriate to—

"(1) ensure the effectiveness of such State regulations or such Federal moratorium; and

"(2) achieve conservation and management goals for the Atlantic striped bass resource.

"(b) CONSULTATION; PERIODIC REVIEW OF REGULATIONS.—In preparing regulations under subsection (a), the Secretary shall consult with the Atlantic States Marine Fisheries Commission, the appropriate Councils, and each affected Federal, State, and local government entity. The Secretary shall periodically review regulations promulgated under subsection (a), and if necessary to ensure their continued consistency with the requirements of subsection (a), shall amend those regulations.

"(c) FISHERY MANAGEMENT PLAN ON STRIPED BASS.—

"(1) The appropriate Councils may prepare a fishery management plan on Atlantic striped bass, which if approved and implemented by the Secretary shall supersede any regulations promulgated under subsection (a). Such plan shall—

"(A) meet the requirements of sections 301 and 303;

"(B) apply to all fishing for Atlantic striped bass within the exclusive economic zone; and

"(C) ensure the effectiveness of the Plan of the Atlantic States Marine Fisheries Commission defined under section 3(7) of the Act of October 31, 1984 (16 U.S.C. 1851 note).

"(2) The Secretary shall review such fishery management plan pursuant to section 304 and shall approve the plan if it meets the requirements of paragraph (1) and other provisions of this Act. The Secretary shall implement the plan by promulgating regulations in accordance with section 305. No regulation promulgated under subsection (a) shall have force and effect during any period in which regulations implementing such plan are in effect.

"(d) EFFECTIVE PERIOD.—This section shall cease to have force and effect at the close of September 30, 1991.".

SEC. 7. DEFINITIONS.

(a) Paragraph (1) of section 3 of the Act of October 3, 1984 (16 U.S.C. 1851 note), is amended to read as follows:

"(1) The term 'Magnuson Act' means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).".

(b) Section 5 of such Act is amended by striking "Act of 1976" each place it appears and inserting in lieu thereof "Magnuson Act".

SEC. 8. AMENDMENTS TO THE ATLANTIC TUNAS CONVENTION ACT.

(a) Paragraph (1) of section 2(a) of the Act entitled "An Act to authorize appropriations for fiscal years 1981, 1982, and 1983 for the Atlantic Tunas Convention Act of 1975, and for other purposes", approved September 4, 1980 (16 U.S.C. 1827(a)), is amended to read as follows:

"(1) The term 'Magnuson Act' means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);".

(b) Subparagraph (A) of section 2(b)(1) of such Act (16 U.S.C. 1827(b)(1) is amended to read as follows:

"(A) the exclusive economic zone as defined under section 3(6) of the Magnuson Act,".

(c) Section 2(f)(2) of such Act (16 U.S.C. 1827(f)(2)) is amended by striking "Act of 1976" each place it appears and inserting in lieu thereof "Magnuson Act".

AMENDMENT NO. 3708

(Purpose: To provide for regulation of Atlantic striped bass fishing in the exclusive economic zone, and for other purposes)

Mr. BYRD. Mr. President, I send to the desk an amendment on behalf of Senators KERRY and MITCHELL.

The **PRESIDING OFFICER.** The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. KERRY (for himself and Mr.

MITCHELL), proposes an amendment numbered 3708.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

The amendment is as follows:

Strike section 5 and all that follows and insert in lieu thereof the following:

SEC. 5. STUDY OF STRIPED BASS IN ALBEMARLE SOUND AND ROANOKE RIVER BASIN.

(a) FINDINGS.—The Congress finds that:

(1) The anadromous stock of striped bass in the Albemarle Sound-Roanoke River Basin area of North Carolina sustained important commercial and recreational fisheries as recently as the 1960's and 1970's.

(2) This stock has been declining for some time and is severely depressed at present, and may soon reach a level from which recovery will be exceptionally difficult.

(3) The reasons for this decline are thought to include fishing; other human activities and environmental factors, such as unsuitable water flow before, during, and after critical spawning periods; degradation of water quality by pollutants; the impact of eutrophication on the food chain, and the impact of changing land use activities.

(4) Current Federal and interstate efforts to conserve the Atlantic striped bass, while effective in identifying factors contributing to the decline of other important Atlantic coastal migratory stocks of striped bass and steps that will be effective in reversing that decline, have not made a major contribution to the protection and restoration of the Albemarle Sound-Roanoke River stock of striped bass.

(5) Because the striped bass and the aquatic environment of the Albemarle Sound-Roanoke River basin presently are being significantly affected by combined but not fully understood causes, a study should be undertaken to obtain additional biological information to understand the significance of fishing, water flows, and other factors in the decline of the striped bass populations in the Albemarle Sound-Roanoke River basin and, if feasible, develop an effective course of action for restoring these important stocks of striped bass.

(b) STUDY.—

(1) IN GENERAL.—The Director of the United States Fish and Wildlife Service, in consultation with the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration shall—

(A) immediately undertake a biological study of the striped bass fishery resources and habitats of the Albemarle Sound-Roanoke River basin area;

(B) develop short-term and long-term recommendation for Federal and State government agencies for restoring and conserving such resources and habitats; and

(C) submit the results of such study and such recommendations to the Congress and to the States of North Carolina and Virginia as soon as practicable, but not later than 36 months after the date of the enactment of this Act.

(2) CONTENTS OF THE STUDY.—The study conducted under this subsection shall, to the extent existing data are adequate, use such existing data and shall include—

(A) a description of the Albemarle Sound-Roanoke River basin area, and an investigation and analysis of the effects of land and water use practices on the striped bass population and habitats of the area;

(B) an investigation and analysis of the abundance and age and geographic distribution of the Albemarle Sound-Roanoke River stock of striped bass, including the amount and geographical location of migration and spawning habitat;

(C) an investigation and analysis of factors that may affect the abundance and age and geographic distribution of the Albemarle Sound-Roanoke River stock of striped bass, including—

(i) the extent and causes of mortality at successive stages in the life cycle of striped bass, including mortality due to recreational and commercial fishing; and

(ii) the combined effects of pollution and other natural and human alterations of the physical environment, including the effects of water withdrawals, discharges, and flows, on striped bass migration and spawning and on the viability and condition of eggs and larval fish;

(D) an investigation and analysis of the status and effectiveness of current striped bass management measures implemented by State and Federal authorities, including State fishing regulations and Federal fish stocking activities, reservoir management and water flow regulation, and an analysis of whether any additional State or Federal measures would be effective in halting the decline and initiating the recovery of the Albemarle Sound-Roanoke River stock of striped bass; and

(E) a recommendation of whether conservation of the Albemarle Sound-Roanoke River stocks of striped bass could be improved by management of these stocks under the provisions of the Atlantic States Marine Fisheries Commission's Interstate Fisheries Management Plan for Striped Bass and the Atlantic Striped Bass Conservation Act.

(c) Participation by State Agencies.—

(1) The Director of the North Carolina Division of Marine Fisheries, the Executive Director of the North Carolina Widlife Resources Commission, the Secretary of the Virginia Department of Natural Resources, and the District Engineer for the Wilmington District of the U.S. Army Corps of Engineers shall be invited to have their agencies participate in conducting the study and developing recommendations pursuant to subsection (b).

(2) To facilitate participation by the agencies referred to in paragraph (1), should they decide to participate, a Memorandum of Understanding will be executed with such officials setting forth the respective responsibilities of the entities involved in conducting the study and developing those recommendations.

(d) CONSULTATION.—In carrying out the study under subsection (b), the Atlantic States Marine Fisheries Commission, other Federal agencies, the Albemarle-Pamlico Estuarine Study, Dominion Resources, Inc./Virginia Power/North Carolina Power, affected local governments in North Carolina and Virginia, appropriate commercial and recreational fishing interests, and other interests shall be consulted, to the maximum extent practicable.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated the sum of $1,000,000 to carry out the requirements of this section. These appropriations will remain available until expended.

(f) STATE AUTHORITY.—Nothing in this section shall be construed as authorizing any State to manage fisheries within the jurisdiction of another State.

(g) RESTRICTION ON USE OF OTHER FUNDS.—Amounts appropriated pursuant to the authorization contained in section 7(d) of the Anadromous Fish Conservation Act (16 U.S.C. 757g(d)) shall not be used to carry out this section.

SEC. 6. PROTECTION OF STRIPED BASS IN THE EXCLUSIVE ECONOMIC ZONE.

(a) REGULATION OF FISHING IN EXCLUSIVE ECONOMIC ZONE.—The Secretary of Commerce shall promulgate regulations governing the fishing for Atlantic striped bass in the exclusive economic zone that the Secretary determines to be consistent with the national standards set forth in section 301 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1851) and necessary and appropriate to—

(1) ensure the effectiveness of State regulations or a Federal moratorium on fishing for Atlantic striped bass within the coastal waters of a coastal State; and

(2) achieve conservation and management goals for the Atlantic striped bass resource.

(b) CONSULTATION; PERIODIC REVIEW OF REGULATIONS.—In preparing regulations under subsection (a), the Secretary shall consult with the Atlantic States Marine Fisheries Commission, the appropriate Regional Fishery Management Councils, and each affected Federal, State, and local government entity. The Secretary shall periodically review regulations promulgated under subsection (a), and if necessary to ensure their continued consistency with the requirements of subsection (a), shall amend those regulations.

(c) FISHERY MANAGEMENT PLAN ON STRIPPED BASS.—

(1) The appropriate Regional Fishery Management Councils may prepare a fishery management plan on Atlantic striped bass, which if approved and implemented by the Secretary shall supersede any regulations promulgated under subsection (a). Such plan shall—

(A) meet the requirements of sections 301 and 303 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1851 and 1853);

(B) apply to all fishing for Atlantic striped bass within the exclusive economic zone; and

(C) ensure the effectiveness of the Plan of the Atlantic States Marine Fisheries Commission defined under section 3(7) of the Atlantic Striped Bass Conservation Act (16 U.S.C. 1851 note).

(2) The Secretary shall review such fishery management plan pursuant to section 304 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854) and shall approve the plan if it meets the requirements of paragraph (1) and other provisions of this section. The Secretary shall implement the plan by promulgating regulations in accordance with section 305 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1855). No regulation promulgated under subsection (a) shall have force and effect during any period in which regulations implementing such plan are in effect.

(d) APPLICABILITY OF MAGNUSON ACT PROVISIONS.—The provisions of sections 307, 308, 309, 310, and 311 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1857, 1858, 1859, 1860, and 1861) regarding prohibited acts, civil penalties, criminal offenses, civil forfeitures, and enforcement shall apply with respect to regulations and any plan issued under subsection (a) or (c) of this section as if such regulations or plan were issued under the Magnuson Fishery Conservation and Management Act.

(e) DEFINITION.—As used in this section, the term "exclusive economic zone" has the meaning given such term in section 3(6) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802(6)).

(f) EFFECTIVE PERIOD.—Subsections (a) through (e) of this section shall cease to have force and effect at the close of September 30, 1991.

(g) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 3 of the Atlantic Striped Bass Conservation Act (16 U.S.C. 1851 note) is amended to read as follows:

"(1) The term 'Magnuson Act' means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).".

(2) Section 5 of such Act is amended by striking "Act of 1976" each place it appears and inserting in lieu thereof "Magnuson Act".

Mr. KERRY. Mr. President, I rise today to urge my colleagues to support S. 2384 a bill to reauthorize the Atlantic Striped Conservation Act, extend the Emergency Striped Bass Study. I am offering an amendment on behalf of myself and Mr. MITCHELL to correct the language in two important provsions of this legislation.

Mr. President, in August I introduced S. 2697 a bill to amend certain marine fishery laws to promote effective fishery conservation and management. It was designed to address the critical need for recovery of the severely depleted Atlantic striped bass stocks. A modified version of that legislation is included in the pending bill.

Mr. President it is essential that we reauthorize the Atlantic Striped Bass Conservation Act and extend the Emergency Striped Bass Study. It is clear to all that Atlantic striped bass are historically, commercially and recreationally important. I believe it is in the national interest to provide for effective interjurisdictional conservation and management of this species.

I would like to compliment the States on their ability to work together on this issue and applaud the signficant progress they have made both in studying and managing striped bass. However, much remains to be done. Conservation and research must continue until the goals of the Interstate Fisheries Management Plan for Striped Bass can be fully met.

The legislation before us today extends the act at a critical time because programs under its jurisdiction are due to expire. It also contains two additional provisions that I believe will help further the objectives of striped bass conservation. One of these, first introduced in S. 2697, provides for management of striped bass in the exclusive economic zone which is compatible with the management efforts of the States. The other is a provision authorizing a study of striped bass in the Albemarle Sound-Roanoke River Basin. Striped bass in these areas have not been included in the current management efforts and in fact are thought to be a separate stock by many scientists. This study is greatly needed because this stock too has shown signs of a serious population decline.

Mr. President, I ask my colleagues to support this important conservation measure so that we may quickly have this legislation signed into law to continue with successful restoration of Atlantic striped bass stocks.

Mr. MITCHELL. Mr. President, this legislation (S. 2384) and the amendment thereto were developed by members of the Environment and Public Works Committee and the Committee on Commerce, Science, and Transportation to extend the Atlantic Striped Bass Conservation Act and the Emergency Striped Bass Study through fiscal year 1991.

S. 2384 was reported by the Committee on Environment and Public Works on September 28, 1988 and sequentially referred to the Committee on Commerce, Science, and Transportation. The amendment makes only technical and relatively minor changes to the bill.

I want to thank Senator KERRY and also Senator HOLLINGS and DANFORTH of the Commerce Committee for their important contributions to this legislation and for their cooperation in discharging the bill from committee and allowing it to be brought before the Senate today.

I also want to thank Senators MIKULSKI and SANFORD for their efforts in developing the bill during its consideration in the Environment and Public Works Committee.

The Atlantic striped bass is an important commercial and sport fish from North Carolina to Maine. But population of this fish, particularly in the Chesapeake Bay, declined dramatically during the past decade.

The Atlantic Striped Bass Conservation Act was enacted in 1984 to encourage the States to develop, implement and enforce interstate plans for the restoration and conservation of the Atlantic striped bass.

The act recognized the severe decline of striped bass populations and the need for uniform regulations and enforcement of these regulations throughout the range of the species' migrations.

Historically, State laws and regulations aimed at conserving and managing striped bass were variable, or even inconsistent among the various jurisdictions.

Establishment of the Atlantic States Marine Fisheries Commission led to development of joint programs for the protection of fisheries, such as the interstate fishery management plan for the striped bass.

However, the Commission does not have the authority to establish or enforce laws and regulations pertaining to the fisheries with which it is concerned. Consequently, the provisions contained in the Commission's fishery management plans are not binding upon its member States.

The unique approach taken by the Atlantic Striped Bass Conservation Act, as amended, gives the States the choice of either carrying out what their representatives on the Commission approved or having the Federal Government impose a moratorium on striped bass fishing in their coastal waters.

The structure of the present statute has proven to be remarkably successful because it relies on the States to develop and agree collectively on a strategy for management of striped bass, but relies on the U.S. Fish and Wildlife Service and National Marine Fisheries Service to make sure that an individual State follows through with the agreement.

Under the provisions of the Commission's Interstate Fishery Management Plan for Striped Bass and its amendment No. 3, the Commission's member States from Maine to North Carolina prohibit taking in coastal waters of striped bass that are less then 33 inches in length. This size limit is intended to protect at least 95 percent of all females that entered the Chesapeake Bay population in 1982 and every year thereafter until 95 percent of these fish have had the opportunity to spawn at least once.

Historically, the majority of migratory striped bass in the coastal waters of the Atlantic has been produced in the Chesapeake Bay.

The restrictions on size of fish that may be taken are to remain in effect until the index to the abundance of juvenile striped bass in the Maryland portion of Chesapeake Bay averages a value of 8.0 over a period of three consecutive years. At the present time, however, this average Maryland juvenile index is only 3.9.

All of the Commission's member States from North Carolina to Maine, as well as the District of Columbia, have adopted the laws, regulations and enforcement measures that are necessary to comply with amendment No. 3 to the striped bass management plan. No moratorium on striped bass fishing has had to be invoked by the U.S. Fish and Wildlife Service and National Marine Fisheries Service in the coastal waters of any State.

The State of Maine enacted legislation last January that established size and creel limits and, more importantly, allowed the Commissioner of Marine Resources to adjust these limits to ensure compliance with any future changes in the Atlantic States Marine Fisheries Commission's striped bass management plan.

The first real payoff from the strict measures implemented by the States to conserve the striped bass should become evident this year when the 6-year-old females from 1982 begin to spawn.

One result already apparent from our efforts to date has been reports of reproduction from areas other then the Chesapeake Bay. In New York the production of young striped bass in 1987 in the Hudson River was the highest since 1979. Virginia also has reported finding very high reproduction in its rivers of the lower Chesapeake Bay.

In addition, I am pleased to report that there have been young striped bass found in the Kennebec River system of Maine. These fish are thought to be the first ones produced as a result of previous efforts to stock those waters with striped bass.

These early results give us cause for optimism about the future of the striped bass fishery along the Atlantic coast, but we should not let some initial success lure us into dismantling the effective combination of Federal and State conservation measures that have led us this far.

Mr. President, this legislation will continue our commitment to those conservation measures through 1991. In addition, it will extend for an additional 3 years the Emergency Striped Bass Study being conducted by the National Marine Fisheries Service and U.S. Fish and Wildlife Service. This study seeks principally to determine the causes of the decline in migratory striped bass populations and to recommend remedial actions.

The legislation, as amended, incorporates provisions developed by Senators MIKULSKI and KERRY to improve conservation of the increasing numbers of Atlantic striped bass in the U.S. exclusive economic zone. The provisions require the Secretary of Commerce to promulgate striped bass fishing regulations for these waters whenever State regulations or a Federal moratorium are in effect in the coastal waters of a State.

Finally, S. 2384, as amended, requires the U.S. Fish and Wildlife Service, in consultation with the National Marine Fisheries Service, to conduct a comprehensive biological study of striped bass in Albemarle Sound and the Roanoke River Basin of North Carolina. The study provided by this legislation was develolped by Senator SANFORD and other Members of the congressional delegations from North Carolina and Virginia. The report by the Committee on Environment and Public Works on S. 2384 provides the governing legislative history with respect to these and other provisions.

Mr. HOLLINGS. Mr. President, I rise today in support of S. 2384, legislation to extend the Atlantic Striped Bass Conservation Act and the emergency striped bass study for an additional 3 years. Jurisdiction over this bill is shared by two Senate committees, the Committee on Commerce, Science, and Transportation and the Committee on Environment and Public Works. Before turning to the provisions of the bill, I would like to express my appreciation to the junior Senator from Maine and the members of the Environment Committee for their cooperation on this issue.

Traditionally, Atlantic striped bass have been a prized catch for anglers and an important commercial fishery all along the Atlantic seaboard. In the 1970's however, this valuable fishery resource appeared to be seriously threatened. The abundance of adult fish dropped precipitously, and landings by fishermen plummeted. A decline was also apparent in the number of fish which returned to the Chesapeake Bay to spawn each year and few juvenile fish could be found in the spawning and nursery areas of the Bay. These trends led to widespread concern about the status and future of this magnificent fish. In 1979, Congress responded to the growing concern by enacting legislation to initiate the emergency striped bass study for determining the causes of the decline and to develop a management plan for the recovery of striped bass.

Information obtained through the emergency study has resulted in the identification of several factors contributing to the decline, including overfishing, pollution and habitat destruction. In addition, the study has been useful to the Atlantic States Marine Fisheries Commission [ASMFC] in developing an interstate management plan for striped bass in 1981. The purpose of this plan was to provide guidelines for effective regional management of the species. Over the years, the study has continued to improve our understanding of striped bass ecology and has led to updates in the ASFMC striped bass management plan. In 1983, the ASFMC called for a 55-percent reduction in catches by commercial and recreational fishermen. In 1985, the Commission requested a further reduction in fishing mortality to protect 95 percent of the females belonging to the 1982 and subsequent year classes until they could spawn at least once.

Although the ASMFC has developed an effective regional management plan, the organization has had no means of ensuring compliance by individual States. To correct this deficiency, the Atlantic Striped Bass Conservation Act was enacted in 1984 and amended in 1986. This act requires the individual State to comply with the management plan or face the imposition of a moratorium on striped bass fishing in that State. Despite the fact that no moratorium has ever been imposed under the act, it has ensured State compliance with the plan. The States of Maryland and Delaware have gone beyond the act's requirements and imposed their own moratorium on striped bass fishing within their States.

Together, the Emergency Striped Bass Act and the Atlantic Striped Bass Conservation Act have provided effective management for Atlantic striped bass. Today, we are on the brink of realizing a rare success story in interjurisdictional fisheries management. The abundance of young fish is on the increase, cooperative management among the States is improving, and we expect the recovery of stocks to continue. However, continued strong management efforts are necessary, if we are to reap the maximum benefits of this recovery. An extension of both acts will provide continued protection for female striped bass in the critical age group and will sustain the successful recovery of this species.

I look forward to the return of the coastal striped bass stocks to their former levels of abundance, and I urge my colleagues to support this legislation as a means of sustaining that recovery.

Mr. SANFORD. Mr. President, I rise in strong support of the committee amendment to H.R. 4124, which will reauthorize the Atlantic Striped Bass Conservation Act. The programs authorized under this legislation have served us well in the past by providing critical information regarding the striped bass and helping us to protect this valuable resource. However, we still have work to do in these areas, and the committee amendment will help make sure this work is done. I commend my colleagues on the Environment and Public Works Committee for producing an excellent bill in this regard.

I am pleased with the committee's work in providing for a study of the striped bass in the Albemarle Sound and Roanoke River Basin areas, which is very important to North Carolinians, and would particularly like to express my appreciation to the distinguished Senator from Maine, Senator MITCHELL, for his assistance in developing this language.

Striped bass have traditionally been a plentiful North Carolina resource, up to as recently as the 1970's. We do not know why they have been in decline since, but presume that a combination of a number of factors are threatening the striped bass.

Current striped bass management practices on the river are attempting to assist in the spawning process, but do not seem thus far to have been as successful as we have wished. We need to examine several questions carefully, including whether unsuitable waterflow before, during, and after critical spawning periods may play a role in unsuccessful reproduction of the striped bass, as well as whether water pollution, fishing, and other habitat factors are appropriately regulated at present. Land use activities along the Roanoke River are also changing, and we need to assess how those changes may effect the striped bass.

Federal and State efforts to address the decline of this fishery elsewhere on the Atlantic coast seem to have been at least partially successful in reversing this trend. We would hope to do the same for our States's waters.

I am particularly supportive of the Federal, State, and interstate aspect of the study provided for in the amendment. The Federal Government is to be represented by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the Corps of Engineers. At the State level, the relevant fish and game agencies of both North Carolina and Virginia have been invited to participate. The amendment provides for consultation with the widest possible range of interested parties, from commercial and sport fishermen to the power companies that also have an interest in waters that are critical to the striped bass.

Resource utilization is an exceptionally complicated field of study, and I have learned that it is always best to look before you leap on matters that could affect important resources. For the striped bass, resource utilization decisions such as the use of fresh water may have a host of other effects unforeseen absent a careful study. By study I do not mean paralysis by analysis; we have been careful to limit this study to 36 months at the most, and expect that the study will be completed even sooner.

Not only is this study to describe the current Albemarle Sound-Roanoke River Basin area and its striped bass populations, but also the effects of past, present, and reasonably foreseeable land and water uses on those populations. We are all aware that pressures are increasing, and will continue to increase, on water use in the reservoirs, rivers, and sounds of this area, and water flows, discharges, and withdrawals need to be carefully examined with respect to the striped bass. The impact of any proposed changes in water use can be properly evaluated only after the cumulative effects of both current and anticipated future uses and other factors are taken into account. We need to look as well at the effects of fishing practices; at pollution of all sorts; and at other biological factors affecting striped bass fisheries, with the well being of the species serving as the symbol of the health of the ecosystem.

Currently the State of North Carolina and the Federal Government together have a striped bass management plan for the Roanoke River. This plan includes waterflow regulation, reservoir management, fisheries regulations, and fish stocking. The current measures have not been successful enough and we need to know why. We need to develop recommendations regarding what additional measures may be necessary to ensure the recovery of the striped bass and the health of the ecosystem in which it lives, after considering past, present, and the likely future conditions that are relevant. This study will allow such recommendations to be developed.

Nothing in this legislation is intended to authorize one State to manage fisheries within the jurisdiction of another. We do recognize, however, that property owners in Virginia have claims to water in the Roanoke River where it flows within Virginia's boundaries. I am aware of a current proposal to divert a significant amount of water from this river for use in Virginia Beach, VA. Without judging either whether Virginia Beach needs that water, or whether this diversion is the best alternative for obtaining it if so—questions I believe are best examined under the National Environmental Policy Act—I do recognize that rivers inevitably link neighboring States.

Competing proposals for use of river water can lead to emotional arguments between good neighbors unless decisions regarding such proposals are made rationally in accordance with sound information. Our study will provide information that I hope will help ensure that rational decisions are made in any such situations. However, this study should not be used as a substitute for an environmental impact statement that is required in such a situation, but rather should complement such environmental impact statement.

Mr. President, this legislation does not attempt to resolve whether the Lake Gaston project should eventually go forward. The Corps of Engineers has issued a section 404 permit for the project, but a Federal court has found that the corps' environmental analysis with respect to the striped bass was inadequate and has returned the matter to the corps for further analysis.

However, this legislation does seek to place the weight of the Congress behind a simple and obvious proposition—in circumstances such as we have here, in which an important natural resource is severely threatened, the Federal Government should take no action which would further harm the species or inhibit its recovery. Instead, through the use of this study and the required environmental impact statement, it should seek to ensure that the important facts are known before irretrievable commitments of resources are made.

I urge my colleagues to support the committee amendment.

Ms. MIKULSKI. Mr. President, I rise to support this bill. This is timely and needed. I also want to call the Senate's attention to one provision of this bill that I offered as an amendment in the Environment and Public Works Committee.

My amendment solves a simple problem: Striped bass do not carry passports. So when the State of Maryland adopts an absolute ban on striped bass catches in its waters, someone can pull up to a dock at Ocean City with a hull full of striped bass and say: "I caught these 3.5 miles out—they're legal."

And that's indeed what some people do.

My amendment fixes this problem. It provides that the Secretary of Commerce shall issue regulations for striped bass for the area 3 to 200 miles offshore.

Furthermore, if the appropriate fisheries management councils prepare a plan for regulating these areas, then those plans supersede the Secretary's plan.

Mr. President, I believe everyone with an interest in this matter has been consulted and has agreed to the amendment.

In closing, let me note in particular the assistance of Senator KERRY—the vice chair of the National Oceans Policy Subcommittee of the Commerce Committee and my senior Senator PAUL SARBANES. Both of them have been instrumental in finding a solution to this problem.

I also want to thank Senator MITCHELL, the chair of the Environmental Protection Subcommittee and his staff for their leadership in bringing this bill to the floor.

Mr. CHAFEE. Mr. President, the plight of the striped bass first came to my attention in 1979. At that time, we found that we were losing these magnificent fish at an alarming rate. This was and is extremely troubling for a number of reasons: there is the historical significance of this species; there is the economic importance of this fish and the concern of commercial as well as recreational fishermen; and there are the environmental implications of such a decline.

For many of us, the striper is like the canary in the coal mine. Its decline is an indicator of something being seriously wrong. Until we can figure out what is going on, we run the risk of losing more than just one species of fish.

To respond to this problem, we authorized the emergency striped bass study in 1979. In 1984, we passed the Atlantic Striped Bass Conservation Act and, in 1986, we extended that law.

Today, we are considering a bill to extend the study and the Conservation Act for another 3 years. Passage of this bill is critical if we are to continue the significant progress that we have seen over the past several years.

Mr. HELMS. Mr. President, I fully support H.R. 4124, the Atlantic Striped Bass Conservation Act reauthorization, which will authorize a study of striped bass in the Albemarle Sound and Roanoke River of North Carolina.

The striped bass fisheries of this area of my State have been an important source of revenue and recreation for North Carolinians for over 200 years. Unfortunately, in the last two decades this vital resource has begun to decline.

The North Carolina fisheries experts attribute this decline in striped bass stock to the cumulative effect of many adverse factors. But, Mr. President, the most important factor is the unsuitable water flow through the dams from Lake Gaston before, during, and after critical spawning periods. When this is combined with the cumulative effects of pollution, fishing, and other adverse factors, North Carolina faces a crisis.

Some of our friends in Virginia suggest that overfishing in our waters is a contributing cause to this decline. Our fisheries experts do not agree, but we need to take a look at it. The study authorized by this bill will give us a clear answer to the decline of striped bass in the Albemarle Sound-Roanoke River area.

This study will involve the cooperation of State and Federal Government bodies. The North Carolina Department of Marine Fisheries and Wildlife Resources Commission will work in cooperation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. Because the headwaters of this complex river system is in Virginia, and because of plans to divert some water for the use of Virginia Beach, the study will also include the participation of the Virginia Marine Resources Commission and the U.S. Army Corps of Engineers.

Mr. President, many changes are being planned for the Albemarle Sound-Roanoke River area. Before major changes in land and water use in this area take place, however, we need to know what effect these changes will have on the fisheries in the entire area.

What we are doing is looking not only at the current environment of the Albemarle Sound-Roanoke River Basin, but also at any reasonably foreseeable land and water uses, especially future water withdrawals and discharges, and changes in water flow. We also need to know what will happen to our water supply if we have another summer as hot as the one that just ended.

North Carolina is the third most populated State in the South, and we are growing rapidly. As more people move into our State, there will be a greater need for fresh water and food resources.

North Carolina has a striped bass management plan, including waterflow regulation and reservoir management. We also have fishing regulations and a stocking program. We need to know if those efforts are working.

I know that my friends in Virginia have a deep interest in this project. But we must first determine whether withdrawals from the river upstream will affect the fish downstream, so we can balance the relative benefits and costs of various proposals for use of the river water. We don't want a repeat of the interstate water conflict which has become a way of life for our Western States. This study will go a long way toward preventing that type of situation.

Mr. President, I do not mean to suggest that North Carolina will be authorized to manage the fisheries in Virginia. I simply intend to emphasize that any actions affecting this delicate region should be studied carefully and thoroughly, so that any potential adverse consequences can be predicted and avoided.

I am fully aware that litigation is being conducted regarding the proposed withdrawals of Roanoke River water from Lake Gaston for Virginia Beach. North Carolina has opposed this plan, at least until an environmental impact statement [EIS], has been done pursuant to the National Environmental Policy Act.

Let me make it perfectly clear that the study authorized by H.R. 4124 is in no way intended to substitute for an EIS examining all aspects of the proposed withdrawals on reservoir and downriver life. The study should be useful in supplementing the EIS by providing the basis of information on fisheries to be analyzed in the EIS. That is primarily why we have mandated that the study be completed within 36 months. I hope that it can be completed much sooner.

Mr. President, by carefully planning the future course of the Albemarle Sound-Roanoke River area, we will be serving the interests of the people in North Carolina and Virginia.

Mr. WARNER. Mr. President, I rise today to address the provision in S. 2384 concerning the North Carolina striped bass study.

As I have indicated to my colleagues on the Environment and Public Works Committee, I support a straight forward biological study to determine the decline of the striped bass stocks in the Albemarle Sound-Roanoke River Basin.

However, it is my strong opinion, joined by Governor Baliles, that the requirements of the study in the House bill would adversely impact upon ongoing litigation between the U.S. Army Corps of Engineers and the State of North Carolina concerning the proposed Lake Gaston pipeline project.

This project will provide a vitally needed water supply source for Virginia Beach and the Tidewater Virginia area.

It is simply a matter of equity that Congress must not apply retroactively any changes on Federal agencies issuing permits for federally approved projects. I believe the House provision could have had the effect of impacting upon a project that has received the necessary section 404 permit.

The Corps of Engineers issued a section 404 permit in accordance with existing law and Federal regulations in 1985. This permit is presently being challenged in the Federal District Court in Raleigh, NC. The conditions of the study in the House bill would amend these regulations and establish a new set of conditions for water use in the Roanoke River Basin.

I have worked closely over the past week to modify the language in the House bill which would satisfy the concerns that Governor Baliles and I share. I am pleased to report that the Senate provision addressing the contents of the study will examine the causes of the decline of the striped bass stocks in North Carolina without impacting upon ongoing litigation between the Norfolk District of the Corps of Engineers and the State of North Carolina.

The study requires the U.S. Fish and Wildlife Service, in conjunction with the National Oceanic and Atmospheric Administration, and affected North Carolina and Virginia agencies to study the significance of fishing, water flows, and other factors in the decline of the striped bass stocks in the Albemarle Sound-Roanoke River Basin.

This study requires that all possible causes for the problems of the striped bass stocks will be studied, including future withdrawals and discharges of the Roanoke River.

I believe this is a fair approach to this study that will not interfere with ongoing litigation in Federal district court over a project that has already received the necessary section 404 permit.

Mr. Chairman, I strongly support Federal and State efforts to replenish the striped bass stocks along the east coast. I believe this study will contribute to these efforts.

I ask unanimous consent that the letter from the Governor of Virginia concerning S. 2384 be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE GOVERNOR,
Richmond, VA, September 20, 1988.
Hon. JOHN W. WARNER,
U.S. Senate,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR WARNER: I have recently been advised that Congressman Walter B. Jones of North Carolina had an amendment attached to H.R. 4124 which has the potential of delaying the Lake Gaston pipeline project.

As I am sure you know, the Lake Gaston project was proposed by Virginia Beach and several other southeastern Virginia localities as the best alternative to meeting their water supply needs for the future. This was done after years of considerable study of every possible option available to the local governments.

After Gaston was selected, the City of Virginia Beach followed all relevant environmental requirements in order to ensure that the pipeline would not have the potential to cause significant environmental degradation. The City's work in this regard resulted in endorsements from the U.S. Army Corps of Engineers and the Virginia State Water Control Board, as well as support from my Administration and that of my predecessor.

Litigation, now pending in the federal district court in Raleigh appears to be nearing conclusion. The only environmental issue which the court appears to be considering at this time is the effect of the Gaston proposal on the striped bass fishery in North Carolina. It is my understanding that it will have no effect. The Jones amendment embodied in H.R. 4124 would prohibit proposals such as this if it could be demonstrated that it "may contribute" to the decline of striped bass populations. A requirement such as this would seemingly prohibit virtually any future water supply projects, since the burden would be on the project proponent to prove that no ill effects would occur.

I understand that you are now considering incorporating language into the Senate counterpart of the Jones bill (S. 2384) in this regard. Since all studies have clearly shown that no detrimental effects can be expected from the Gaston pipeline, I support your efforts. It is important to the future well-being of Tidewater that the Gaston pipeline be built without further delay.

If there is anything that I, or any member of my staff can do to assist you on this matter, please let me know.

With kindest regards, I am

Sincerely,

GERALD L. BALILES.

THE PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3708) was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be discharged from further consideration of H.R. 4124, the House companion measure; that the bill be referred to the Committee on Commerce, Science, and Transportation; that the Committee on Commerce, Science, and Transportation be discharged from further consideration of H.R. 4124, and that the Senate proceed to its immediate consideration.

THE PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4124) to authorize appropriations to carry out the Atlantic Striped Bass Conservation Act for fiscal years 1989 through 1991, and for other purposes.

Mr. BYRD. Mr. President, I move to strike all after the enacting clause of H.R. 4124 and that the text of S. 2384, as amended, be inserted in lieu thereof.

The motion was agreed to.

THE PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill as amended, was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TELECOMMUNICATIONS ACCESSIBILITY ENHANCEMENT ACT OF 1988

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4992.

THE PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4992) to expand our national telecommunications system for the benefit of the hearing-impaired and speech-impaired populations, and for other purposes.

THE PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. HARKIN. Mr. President, I am pleased to rise in support today of H.R. 4992, the Telecommunications Accessibility Enhancement Act of 1988. This bill will greatly improve the Federal Government's telecommunications system for people with hearing or speech impairments.

This bill requires the Administrator of General Services to work with the Federal Communications Commission [FCC], the Architectural and Transportation Barriers Compliance Board [ATBCB], the Interagency Committee on Computer Support of Handicapped Employees and affected Federal agencies, to assure that the Federal telecommunications system is fully accessible to hearing-impaired and speech-impaired individuals.

It will also provide for the publication of a TDD directory for Federal departments and agencies, and for publication of governmental TDD access numbers in other existing directories; mandate the design of a standard logo to identify the location of a TDD; and support the development of technologies designed to reduce the cost of TDD Telecommunications with and within the Federal Government.

I am also pleased that this bill requires the FCC to complete its existing inquiry into the development of a non-Federal interstate relay system.

We often take for granted the ease of using the telephone to reach friends, relatives, and businesses. Yet, this is a luxury that most people with hearing or speech impairments do not enjoy. Many people with speech or hearing impairments can make telephone calls with "telecommunication devices for the deaf," also know as TDD's, which enable calls to be placed by typing messages on a keyboard. But, TDD users can only call other people who have TDD's to receive their calls. Where does this leave, then, the deaf employee who must call his boss to let her know he cannot come to work on a snowy day? How does a parent with a speech impairment call her child's school in an emergency when the school has not purchased a TDD? Even the smallest task can become a major nuisance for someone who cannot use regular telephone services.

One option for addressing this problem is to establish TDD relay systems. These systems use a third party to transmit messages back and forth between the TDD user and the hearing individual he or she wishes to call.

While a number of States have successfully established intrastate relay systems, efforts to obtain interstate services by State commissions and local telephone companies have met with problems because it has been unclear whether there is a need for the FCC to establish guidelines in this area. Consequently, TDD users have been unable to relay calls to a business, friend, or relative in another State.

This bill will require the FCC to make a timely response to their current Notice of Inquiry (FCC 88-123). It should also result in the FCC clarifying their service boundaries and jurisdiction relative to a national interstate telecommunications system for persons who use TDD's. This activity is essential for the ongoing development of a national telecommunications system that is truly accessible to persons with disabilities.

Mr. President, this bill addresses the need to establish telephone relay services to provide access to the Federal Government for people with hearing or speech impairments. Currently, there is a Federal relay system for TDD users operating as a pilot program funded by the ATBCB and housed in the Treasury Department. But, this pilot program only funds one operator to relay messages for the entire Federal Government. Clearly, this service is inadequate to provide access for the 24 million people in this country with hearing impairments, or the 2.8 million people who have speech impairments.

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of handicap in programs or activities which receive Federal financial assistance, and Federal agencies. This legislation is in keeping with the intent of section 504. It is inexcusable that, 15 years after the enactment of the Rehabilitation Act, people with hearing and speech impairments are still not receiving full access to the Federal Government. The passage of this legislation, which I fully support, must not be construed as providing a time extension for compliance with requirements of section 504 to ensure full access to and participation in the Federal Government by persons with speech and hearing impairments.

During this session of Congress, the Technology-Related Assistance for Individuals with Disabilities Act of 1988, which will help ensure that people with disabilities have access to the assistive technology they need to be more productive, independent, and integrated into the mainstream of society, was enacted into law. I look forward to the day when access to relay systems and to other types of technology to individuals with disabilities is routine. I urge my colleagues to support this legislation.

The bill was ordered to a third reading, was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote of by which the bill was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 771, H.R. 4517.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4517) to amend title III of the Outer Continental Shelf Lands Act Amendments of 1978 to provide for indemnification and hold harmless agreements.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3709

Mr. BYRD. Mr. President, I send to the desk an amendment on behalf of Senators BREAUX and STAFFORD.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. BYRD), for Mr. BREAUX (for himself and Mr. STAFFORD,) proposes an amendment numbered 3709.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Outer Continental Shelf Operations Indemnification Clarification Act of 1988".

SEC. 2. INDEMNITY AGREEMENT.

Section 305 of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1802 et seq.) is amended by adding at the end the following new subsection:

"(e) Any owner or operator of an offshore facility may enter into an indemnity, hold harmless, or similar agreement with any person holding a lease on the Outer Continental Shelf with respect to any liability arising under this title. Notwithstanding the provision of this subsection (e), any such indemnity, hold harmless, or similar agreement shall not relieve such owner, operator, or person from liability arising under this title, Nothing in this subsection shall be construed to alter or in any way affect the financial responsibility requirements imposed under this section.

SEC. 3. GUARANTOR'S LIABILITY.

Section 305 of the Outer Continental Shelf Lands Act Amendments of 1978 is amended by redesignation subsection (c) as (c)(1) and adding a new subsection (c)(2) to read as follows:

"(2) The total liability of any guarantor in a direct action suit brought under this section shall be limited to the aggregate amount of the monetary limits of the policy of insurance, guarantee, surety bond, letter of credit, or similar instrument obtained from the guarantor by the person subject to liability. Nothing in the subsection shall be construed, interpreted or applied to diminish the liability of any person under this act or other applicable law.

Mr. BREAUX. Mr. President, today on behalf of myself and Senator STAFFORD, I am offering a substitute amendment to the text of H.R. 4517, a bill to correct a longstanding problem in the Outer Continental Shelf Lands Act Amendments of 1978. This bill will ensure that small contractors working on Outer Continental Shelf leases can enter into indemnity agreements and are able to obtain oil spill insurance. These provisions benefit potential claimants because they will have certainty that they can recover for damages in the event of an oilspill.

This bill is intended to clarify existing law with respect to the ability of leaseholders and their contractors to enter into indemnity agreements. It has been the custom in the industry for leaseholders and their contractors to agree between themselves on how liability should be apportioned between them in the event of a discharge of oil. After the enactment of the Outer Continental Shelf Lands Act Amendments of 1978, some of these contractors and the leaseholders for whom they were providing goods and services believed that the legal validity of these indemnity agreements had been clouded. This amendment makes it clear that such agreements are still binding as between the parties to them.

The amendment does not affect the question of who is liable under either the Outer Continental Shelf Land Act Amendments of 1978 or other law, nor does it mean that such agreements necessarily satisfy the financial responsibility requirements of existing law.

Mr. STAFFORD. Then is it this Senator's understanding that section 2 of the proposal being offered by Senator BREAUX really merely clarifies what he and I believe to be the case under existing law, which is that contractors and leaseholders can enter into indemnity agreements?

Mr. BREAUX. Yes. These arrangements do not impact on the question of who is liable. The agreements only address the issue of who pays, and even then they are not binding on the U.S. Government, State or injured persons. Typically, such agreements provide for the payment of a deductible by a contractor, with payment of the balance by the leaseholder. But these arrangements are binding only on the parties to the agreement.

Mr. STAFFORD. It is also my understanding that such agreements do not per se satisfy the financial responsibility requirements of the law; is that right?

Mr. BREAUX. Yes. In order to satisfy the financial responsibility requirements of the law, indemnity agreements, like policies of insurance, bonds, self-insurance, and other arrangements, must comply with the rules and regulations of the Coast Guard. This language merely makes it clear that leaseholders and contractors can enter into such arrangements.

Mr. STAFFORD. I understand that the purpose of section 3 is to clarify another provision of the Outer Continental Shelf Lands Act Amendments of 1978. Is that correct?

Mr. BREAUX. Yes. Section 3 makes it clear that an insurer is liable under a policy only for the amount of that policy.

Mr. STAFFORD. In other words, if a policy has been issued in the amount of $200 million, and pursuant to that policy an insurer provides financial responsibility to obtain a certificate for financial responsibility issued by the U.S. Coast Guard for $35 million, a direct action suit can be filed for the full $200 million.

Mr. BREAUX. Yes. In the Senate's example, direct action is applicable to the entire $200 million policy assuming that the cleanup costs and damages amount to $200 million or more.

Mr. STAFFORD. Is the liability of an insurer or guarantor limited to the full policy amount in the case of a bad faith refusal to negotiate?

Mr. BREAUX. Nothing contained in this subsection shall be construed to limit other State or Federal statutory, contractual, or common law liability of a guarantor, including but not limited to, that liability of such guarantor for bad faith either in negotiation or in failing to negotiate the settlement of any claim. The bill we are considering today, does not expand or diminish liabilities, if any, of a guarantor.

Mr. STAFFORD. I thank the Senator. With those clarifications, the Senator from Vermont can support the amendments. I would, however, like to make one last observation.

These clarifications of the existing law will make life easier for those who drill for oil, those who produce the oil and those who issue policies of insurance. While this Senator personally doubts that such changes are necessary, he can understand that they will allay the concerns of many industries. While changes are being made, it would be desirable to make one more which would benefit the public. Specifically, this Senator has urged that the financial responsibility requirements be increased from the current level of $35 million to a more realistic $100 million.

The limit of $35 million was written into the law in 1978. It has been eroded not only by inflation, but by the even more rapid increase in the costs of cleanups. Even if one assumed only a 10-percent-per-year rate of inflation, the limit of $35 million would approximate $97 million in 1988 dollars.

The Senator from Louisiana cannot support an increase. While I understand his reasons, this Senator is nevertheless disappointed.

The costs associated with the Amoco *Cadiz* spill exceeded $42 million. According to Coast Guard officials, they have been advised informally that the damages resulting from the latest North Sea natural gas disaster may reach $1.2 billion.

Of course, $35 million is more than adequate to deal with virtually all spills of oil. But neither the law's fund nor its financial responsibility requirement were designed to deal primarily with the day-to-day, or even year-to-year, oilspills. They were designed to cope with spills which occur only once a decade or even less often. Clearly $35 million is too little now and it will be even more inadequate in the future.

Mr. BREAUX. I thank the ranking minority member for his efforts on this issue. I would also like to take this opportunity to thank the full committee chairman, Mr. Burdick, and the Environmental Protection Subcommittee chairman, Mr. Mitchell, for their help on this matter

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3709) was agreed to.

AMENDMENT NO. 3710

Mr. ARMSTRONG. Mr. President, I send to the desk an amendment on behalf of Senator Chafee.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Colorado [Mr. Armstrong], for Mr. Chafee, proposes an amendment numbered 3710.

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

The bill is amended by inserting "Title I" immediately after the enacting clause and by adding the following new title at the end of the bill: "Title II. Pettaquamscutt Cove National Wildlife Refuge

"SEC. 201. FINDINGS.

"The Congress finds that—

"(1) Pettaquamscutt Cove, and the associated tidal marshes and mudflats, and dividing the towns of Narragansett and South Kingstown, Rhode Island, has been identified as the most important black duck migration and wintering habitat in Rhode Island, in accordance with the objectives of the North American Waterfowl Plan;

"(2) Pettaquamscutt Cove provides important migration and wintering habitat for various other species of waterfowl, valuable feeding habitat for shorebirds, terns, gulls and wading birds, and habitat for many species of finfish and shellfish;

"(3) Pettaquamscutt Cove is home to several State-listed Rare and Uncommon animal and plant species; and

"(4) designation of this area as a National Wildlife Refuge would significantly aid in the conservation of these fish and wildlife resources.

"SEC. 202. PURPOSES.

"The purposes for which the Pettaquamscutt Cove National Wildlife Refuge is established and shall be managed include—

"(1) to protect and enhance the populations of black ducks and other waterfowl, geese, shorebirds, terns, wading birds, and other wildlife using the refuge;

"(2) to provide for the conservation and management of fish and wildlife within the refuge;

"(3) to fulfill the international treaty obligations of the United States respecting fish and wildlife; and

"(4) to provide opportunities for scientific research, environmental education, and fish and wildlife-oriented recreation.

"SEC. 203. DEFINITIONS.

"For the purposes of this Act—

"(1) The term "refuge" means the Pettaquamscutt Cove National Wildlife Refuge;

"(2) The term "Secretary" means the Secretary of the Interior; and

"(3) The term "selection area" means the lands and waters of The Pettaquamscutt Watershed in the State of Rhode Island.

"SEC. 204. ESTABLISHMENT OF REFUGE.

"(a) (1) Within one year after the effective date of this Act the Secretary shall designate approximately 600 acres of land and waters within the selection area which the Secretary considers appropriate for the refuge.

"(2) After making such designation, the Secretary shall publish in the Federal Register, and in newspapers of local circulation, a notice of availability of a detailed map depicting the boundaries of the land so designated, which map shall be on file and available for inspection in the office of the Director of the United States Fish and Wildlife Service, Department of the Interior, and in appropriate offices of the United States Fish and Wildlife Service in the State of Rhode Island.

"(b) Boundary Revisions.—The Secretary may make such minor revisions in the boundaries designated under this section as may be appropriate to carry out the purpose of this Act or to facilitate the acquisition of property within the Refuge.

"(c) Acquisition.—After determination of the boundaries of the refuge in accordance with the provisions of subsection (a) of this section, the Secretary is authorized to acquire the lands and waters, or interests therein, within the boundary of the refuge.

"(d) Establishment.—The Secretary shall establish the National Wildlife Refuge, by publication of a notice to that effect in the Federal Register and publications of local circulation, whenever sufficient property has been acquired within the boundary of the refuge to constitute an area that can be effectively managed as a National Wildlife Refuge.

"SEC. 205. ADMINISTRATION.

"The Secretary shall administer all lands, waters, and interests therein acquired under this Act in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1968 (16 U.S.C. 668dd-668ee). The Secretary may utilize such additional statutory authority as may be available to him for the conservation and development of wildlife and natural resources, the development of recreation opportunities, and interpretive education, as he deems appropriate to carry out the purposes of this Act.

"SEC. 206. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to the Department of the Interior—

"(a) such funds as may be necessary for the acquisition of lands and waters designated in section 4(a)(1); and

"(b) such funds as may be necessary for the development, operation and maintenance of the refuge.

"SEC. 207. EFFECTIVE DATE.

"This Act shall take effect on the date of its enactment.".

Mr. CHAFEE. Mr. President, the amendment I am offering is a simple, straightforward proposal. It will add a new title to the underlying bill. This title authorizes and directs the Secretary of the Interior to establish a new

National Wildlife Refuge in my home State of Rhode Island.

In putting this legislation together, I have consulted with the experts at the U.S. Fish and Wildlife Service, the director of the Rhode Island Department of Environmental Management, and local officials. All of us agree that this amendment is a good one and will produce tremendous benefits at the local, regional, national, and, indeed, international level.

The area we have identified for this new refuge is the Pettaquamscutt Cove, a spectacular area located between the towns of Narragansett and South Kingstown. Fish and Wildlife Service biologists have examined this area and have identified it as the most important black duck migration and wintering habitat in Rhode Island. They have told me that setting this land aside as a refuge is consistent with the objectives of the North American Waterfowl Management plan.

This beautiful cove provides important migration and wintering habitat for a number of other species of waterfowl as well as valuable feeding habitat for shorebirds, terns, wading birds, and habitat for many species of finfish and shellfish. It is also home to a number of State-listed endangered and threatened species of animals and plants. Located just inland from the Narragansett Bay, this cove is one of the most fertile and important wetland ecosystems in my State.

The preservation of open space has always been one of my top priorities. As Governor, I created the Green Acres Program, the first State program in the Nation to acquire and preserve open spaces. Under my direction, Rhode Island acquired such property as Colt State Park, Brenton Point, Prudence Island, Snake Den, and Fort Adams. Over the 5-year period from 1964 to 1969, the State acquired more than 2,300 acres under the Green Acres Program.

Since coming to the Senate, I have continued my work to preserve open spaces for the enjoyment of all of us, our children, our grandchildren, and all future generations. Working together, we have made tremendous progress.

In 1982, we created the landmark Coastal Barrier Resources System. We have managed to create or expand numerous wildlife refuges all across the country, including the Trustom Pond National Wildlife Refuge in Rhode Island and the Connecticut Coastal National Wildlife Refuge in the neighboring State of Connecticut.

In 1986, we passed my bill, the Emergency Wetlands Resources Act, and guaranteed that at least $35 million in Federal funds will be available each year for the purchase and preservation of wetlands as part of the National Wildlife Refuge System.

This year, I am proud to have introduced the American Heritage Trust Act, S. 2199, a bill that will create a trust fund that will generate $1 billion each year for the preservation of open space, recreational opportunities, and historic sites throughout the country. The Senate version of this bill now has the bipartisan support of 41 cosponsors. In the House, over one-half of that body has cosponsored the companion bill introduced by Mr. UDALL, H.R. 4127. That bill has been approved by the Interior Committee and will undoubtedly pass the House this year or early next year by an overwhelming vote of approval. I am hopeful that the Senate can do the same.

This amendment to create the Pettaquamscutt Cove National Wildlife Refuge has seven sections. The first includes congressional findings about the value of this area as wildlife habitat. The second section sets forth the purposes for which this refuge is established and shall be managed.

These purposes are the same as for most of our national wildlife refuges and include the provision of opportunities for scientific research, environmental education, and fish and wildlife-oriented recreation. This area is currently used by many Rhode Islanders for hunting and fishing and nothing in this legislation would preclude the continuation of such activities. Hunting and fishing is allowed in many of the Nation's wildlife refuges and the decision with respect to any particular refuge is left to the Secretary of the Interior under the National Wildlife Refuge Administration Act.

The third section sets forth several definitions.

The fourth section of the amendment is the heart of this legislation. It directs the Secretary to designate and map the approximately 600 acres that will be included as part of the refuge not later than 1 year after enactment of this bill. He will then be required to publish the map and make it available for public comment. This section also includes the authorization to acquire the lands and waters that will make up the refuge as well as the directive to formally designate and establish the refuge once sufficient property has been acquired to constitute an area that can be effectively managed as a national wildlife refuge.

The fifth section directs the Secretary to manage the refuge in accordance with the National Wildlife Refuge Administration Act.

The sixth section authorizes the appropriation of such sums as may be necessary for the acquisition, development, operation and maintenance of the refuge. These funds may come from the Land and Water Conservation Fund, the Emergency Wetlands Resources Act, the Endangered Species Act, other specific funds or the General Treasury.

The final section of this amendment establishes the effective date as the date of enactment.

Mr. President, the town of Narragansett has been trying to purchase and preserve a parcel of land in the northern section of Pettaquamscutt Cove known as Bridgepoint Commons along the Narrows River. The town has received a State grant of almost $800,000 and is prepared to supplement that with a sizable contribution of its own. The wetlands portion of this parcel is within the expected boundaries of the new Pettaquamscutt Cove National Wildlife Refuge. In addition, the wetlands qualify for Federal funding under the Emergency Wetlands Resources Act of 1986.

I am in the process of working with the town and the U.S. Fish and Wildlife Service to see if a portion of the $8 million we appropriated for wetlands acquisition in fiscal year 1989 can be used to help the town of Narragansett preserve Bridgepoint Commons. The idea is to help the town save this important area while, at the same time, getting the Federal Government to buy the first piece of this new national wildlife refuge. I hope to have an announcement on this matter in the next few weeks.

I thank the Senate for its help in this matter and look forward to continuing our efforts to preserve open space throughout the Nation.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill as amended, was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

COMMERCIAL SPACE LAUNCH ACT AMENDMENTS

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 1127.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4399) to facilitate commercial access to space, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Commercial Space Launch Act Amendments of 1988".

SEC. 2. FINDINGS.

The Congress finds that—

(1) a United States commercial space launch industry is an essential component of national efforts to assure access to space for Government and commercial users;

(2) the Federal Government should encourage, facilitate, and promote the use of the United States commercial space launch industry in order to continue United States aerospace preeminence;

(3) the United States commercial space launch industry must be competitive in the international marketplace;

(4) Federal Government policies should recognize the responsibility of the United States under international treaty for activities conducted by United States citizens in space; and

(5) the United States must maintain a competitive edge in international commercial space transportation by ensuring continued research in launch vehicle component technology and development.

SEC 3. DEFINITIONS.

Section 4 of the Commercial Space Launch Act (49 U.S.C. App. 2603) is amended—

(1) in paragraph (10) by striking "and" at the end;

(2) by redesignating paragraph (11) as paragraph (12); and

(3) by inserting immediately after paragraph (10) the following new paragraph:

"(11) 'third party' means any person or entity other than—

"(A) the United States, its agencies, or its contractors or subcontractors involved in launch services;

"(B) the licensee or transferee;

"(C) the licensee's or transferee's contractors, subcontractors, or customers involved in launch services; or

"(D) any such customer's contractors or subcontractors invovled in launch services; and".

SEC. 4. PRIVATE ACQUISITION OF GOVERNMENT PROPERTY AND SERVICES.

"(a) Section 15(a) of the Commercial Space Launch Act (49 U.S.C. App. 2614(a)) is amended by adding at the end the following: "In taking such actions, the Secretary shall consider the commercial availability, on reasonable terms and conditions, of substantially equivalent launch property or launch services from a domestic source.".

"(b) Section 15(b)(i) of the Commercial Space Launch Act (49 U.S.C. App. 2614(b)(1)) is amended by adding at the end the following: "For purposes of this paragraph, the term 'direct costs' means the actual costs that can be unambiguously associated with a commercial launch effort, and would not be borne by the United States Government in the absence of a commercial launch effort.".

"(c) Section 15 of the Commerical Space Launch Act (49 U.S.C. App. 2614) is amended by adding at the end the following new subsection:

"(d) The head of any Federal agency or department may collect payment for activities involved in the production of a launch vehicle or its payload for launch if such activities were agreed to by the owners or manufacturers of such launch vehicle or payload.".

SEC. 5. INSURANCE REQUIREMENTS OF LICENSEE.

"(a) Section 16 of the Commercial Space Launch Act (49 U.S.C. App. 2615) is amended to read as follows:

"LIABILITY INSURANCE

"SEC. 16. (a)(1)(A) Each license issued or transferred under this Act shall require the licensee or transferee—

"(i) to obtain liability insurance; or

"(ii) to demonstrate financial responsibility, in an amount sufficient to compensate the maximum probable loss (as determined by the Secretary, after consultation with the Administrator of the National Aeronautics and Space Administration, the Secretary of the Air Force, and the heads of other appropriate agencies) from claims by a third party for death, bodily injury, or loss of a damage to property resulting from activities carried out under the license in connection with any particular launch. In no event shall a licensee or transferee be required to obtain insurance or demonstrate financial responsibility under this subparagraph, with respect to the aggregate of such claims arising out of any particular launch, in an amount which exceeds (I) $500,000,000 or (II) the maximum liability insurance available on the world market at a reasonable cost, if such insurance is less than the amount in subclause (I).

"(B) Each license issued or transferred under this Act shall require the licensee or transferee—

"(i) to obtain insurance; or

"(ii) to demonstrate financial responsibility,

in an amount sufficient to compensate the maximum probable loss (as determined by the Secretary, after consultation with the Administrator of the National Aeronautics and Space Administration, the Secretary of the Air Force, and heads of other appropriate agencies) from claims against any person by the United States for loss of or damage to property of the United States resulting from activities carried out under the license in connection with any particular launch. In no event shall a licensee or transferee be required to obtain insurance or demonstrate financial responsibility under this subparagraph, with respect to the aggregate of such claims arising out of any particular launch, in an amount which exceeds (I) $100,000,000 or (II) the maximum insurance available on the world market at a reasonable cost, if such insurance is less than the amount in subclause (I).

"(C) Each license issued or transferred under this Act shall require the licensee or transferee to enter into reciprocal waivers of claims with its contractors, subcontractors, and customers, and the contractors and subcontractors of such customers, involved in launch services, under which each party to each such waiver agrees to be responsible for any property damage or loss it sustains or for any personal injury to, death of, or property damage or loss sustained by its own employees resulting from activities carried out under the license.

"(D) The Secretary, on behalf of the United States, its agencies involved in launch services, and contractors and subcontractors involved in launch services, shall enter into reciprocal waivers of claims with the licensee or tranferee, its contractors, subcontractors, and customers, and the contractors and subcontractors of such customers, involved in launch services, under which each party to each such waiver agrees to be responsible for any property damage or loss it sustains or for any personal injury to, death of, or property damage of loss sustained by its own employees resulting from activities carried out under the license. Any such waiver shall apply only to the extent that claims exceed the amount of insurance or demonstration of financial responsibility required under subparagraph (B). After consultation with the Administrator of the National Aeronautics and Space Administration and the Secretary of the Air Force, the Secretary may also waive, on behalf of the United States and any Federal agency, the right to recover any damages for loss of or damage to property of the United States to the extent insurance is not available by reason of policy exclusions which are determined by the Secretary to be usual for the type of insurance involved.

"(2) Any insurance policy obtained, or demonstration of financial responsibility made, pursuant to a requirement described in paragraph (1) shall protect the United States, its agencies, personnel, contractors, and subcontractors, and all contractors, subcontractors, and customers of the licensee or transferee, and all contractors and subcontractors of such customers, involved in providing the launch services, to the extent of their potential liabilities, at no cost to the United States.

"(3) The Secretary shall determine the maximum probable loss under paragraph (1)(A) and (B) associated with activities under a license, within 90 days after a licensee or transferee has requested such a determination and has submitted all information the Secretary requires to make such a determination. The Secretary shall amend such determination as warranted by new information. Within 12 months after the date of enactment of the Commercial Space Launch Act Amendments of 1988, and within each 12-month period thereafter, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report on the current determinations with respect to all issued licenses and the reasons for those determinations.

"(4) Within 6 months after the date of enactment of the Commercial Space Launch Amendments of 1988, and within each 12-month period thereafter, the Secretary shall review the amounts specified in paragraph (1)(A)(I) and (B)(I), and shall submit a report to the Congress which, if appropriate, contains a proposed adjustment to such amounts to conform with altered liability expectations and availability of insurance on the world market. Such proposed adjustment shall take effect 30 days after the submission of such report.

"(b)(1) To the extent provided in advance in appropriations Acts or to the extent there is enacted additional legislative authority to provide for the payment of claims as submitted in the compensation plan outlined in paragraph (4), the Secretary shall provide for the payment by the United States of successful claims (including reasonable expenses of litigation or settlement) of a third party against the license or transferee, or its contractors, subcontractors, or customers, or the contractors, subcontractors of such customers, resulting from activities carried out pursuant to a license issued or transferred under this Act for death, bodily injury, or loss of or damage to property resulting from activities carried out under the license, but only to the extent that the aggregate of such successful claims arising out of any particular launch—

"(A) is in excess of the amount of insurance or demonstration of financial responsibility required under subsection (a)(1)(A); and

"(B) is not in excess of the level that is $1,500,000,000 (plus any additional sums necessary to reflect inflation occurring after January 1, 1989) above such amount.

The Secretary shall not provide for payment of any part of such claims for which the death, bodily injury, or loss of or damage to property has resulted from willful misconduct by the licensee or transferee. To the extent insurance required pursuant to subsection (a)(1)(A) is not available to cover any such successful third party liability claim by reason of insurance policy exclusions determined by the Secretary to be usual for the type of insurance involved, the Secretary may provide for the payment of such excluded claims without regard to the limitation expressed in subparagraph (A).

"(2) The payment of claims under paragraph (1) shall be subject to—

"(A) notice to the United States of any claim, or suit associated with such claim, against a party described in paragraph (1) for death, bodily injury, or loss of or damage to property;

"(B) participation or assistance in the defense by the United States, at its election, of that claim or suit; and

"(C) approval by the Secretary of that portion of any settlement which is to be paid out of appropriated funds of the United States.

"(3) The Secretary may withhold payment under paragraph (1) if the Secretary certifies that the amount is not just and reasonable, except that the amount of any claim determined by the final judgment of a court of competent jurisdiction shall be deemed by the Secretary to be just and reasonable.

"(4)(A) If as a result of activities carried out under a license issued or transferred under this Act the aggregate of the claims arising out of a particular launch are likely to exceed the amount of insurance or demonstration of financial responsibility required under the license, the Secretary shall (i) make a survey of the causes and extent of damage and (ii) expeditiously submit to the Congress a report setting forth the results of such survey.

"(B) Not later than 90 days after any determination by a court indicating that the liability for the aggregate of claims arising out of a particular launch under such a license may exceed the amount of insurance or demonstration of financial responsibility required under the license, the President, on the recommendation of the Secretary, shall submit to the Congress a compensation plan or plans that (i) outlines the aggregate dollar value of such claims; (ii) recommends sources of funding to pay for these claims; and (iii) includes any legislative language required to implement the compensation plan or plans if additional legislative authority is required. No compensation plan for a single event or incident may exceed the aggregate of $1,500,000,000.

"(C) Any compensation plan transmitted to the Congress pursuant to subparagraph (B) shall bear an identification number and shall be transmitted to both Houses of Congress on the same day and to each House while it is in session.

"(D)(i) The provisions of this subparagraph shall apply with respect to consideration in the Senate of any such compensation plan and to Senate action on such compensation plan.

"(ii) Any such compensation plan that requires additional appropriations or additional legislative authority must be considered by the Senate pursuant to this subparagraph within 60 calendar days of continuous session of Congress after the date on which such plan is transmitted to the Congress.

"(iii) For the purposes of this subparagraph, the term 'resolution' means only a joint resolution of Congress the matter after the resolving clause of which is as follows: 'That the ______ approves the compensation plan numbered ______ submitted to the Congress on ______, 19______.', the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which includes more than one compensation plan.

"(iv) A resolution once introduced with respect to a compensation plan shall immediately be referred to a committee (and all resolutions with respect to the same compensation plan shall be referred to the same committee) by the President of the Senate.

"(v)(I) If the committee of the Senate to which a resolution with respect to a compensation plan has been referred has not reported it at the end of 20 calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration with respect to such compensation plan which has been referred to the committee.

"(II) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same compensation plan), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

"(III) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same compensation plan.

"(vi)(I) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the month was agreed to or disagreed to.

"(II) Debate on the resolution referred to in subclause (I) of this clause shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolutions shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

"(vii)(I) Motions to postpone, made with respect to the discharge from committee, or the considerations of a resolution or motions to proceed to the consideration of other business, shall be decided without debate.

"(II) Appeals from the decision of the Chair relating to the application of the rules of the Senate to the procedures relating to a resolution shall be decided without debate.

"(5) The provisions of paragraphs (1) through (4) shall apply only to each license issued or tranferred under this Act for which a complete and valid application has been received by the Secretary prior to the date that is 10 years following the date of enactment of the Commercial Space Launch Act Amendments of 1988.

"(c) The head of any Federal agency or department shall collect insurance proceeds or any other payment owed for the loss of or damage to Government property under its jurisdiction or control resulting from activities carried out under a license issued or transferred under this act. Such proceeds or other payment shall be credited to the current applicable appropriations, funds, or accounts of that agency or department.".

(b) Section 15(c) of the Commercial Space Launch Act (49 U.S.C. App. 2614(c)) is amended to read as follows:

"(c) Consistent with the requirements of this Act, the Secretary shall establish requirements for proof of financial responsibility and such other assurances as may be necessary to protect the United States and its agencies and personnel from liability, death, bodily injury, or loss of or damage to property as a result of a launch or operation of a launch site involving Government facilities or personnel. The Secretary may not under this subsection relieve the United States of liability for death, bodily injury, or loss of or damage to property resulting from the willful misconduct of the United States or its agents.".

SEC. 6. UNITED STATES LAUNCH INCENTIVES FOR CERTAIN SATELLITES.

(a) The requirements of subsection (a)(1)(B) of section 16 of the Commercial Space Launch Act (49 U.S.C. App. 2615), as amended by this Act, shall not apply to eligible satellites.

(b) To the extent approved in appropriations Act, the United States shall not require payment for the provision of launch services in connection with the commercial launch of an eligible satellite.

(c) For purposes of this section, the term "eligible satellite" means a satellite that—

(1) was under construction on August 15, 1986;

(2) was the subject of a launch services agreement or contract with the National Aeronautics and Space Administration, which as of August 15, 1986, was in effect and not yet carried out; and

(3) is licensed for launch under the Commercial Space Launch Act.

SEC. 7. PREEMPTION OF SCHEDULED LAUNCHES.

Section 15(b) of the Commercial Space Launch Act (49 U.S.C. App. 2614(b)) is amended by adding at the end the following new paragraph:

"(4)(A) The Secretary, with the cooperation of the Secretary of Defense and the Administrator of the National Aeronautics and Space Administration, shall take steps to ensure that the launches of payloads with respect to which a launch date commitment from the United States has been obtained for a launch licensed under this Act are not preempted from access to United States launch sites or launch property, except in cases of imperative national need. Any determination in imperative national need shall be made by the Secretary of Defense or the Administrator of the National Aeronautics and Space Administration, in consultation with the Secretary, and shall not be delegated. A licensee or transferee preempted from access to a launch site or launch property shall not be required to pay to the United States any amount for launch services solely attributable to the scheduled launch prevented by such preemption.

"(B) The Secretary of Defense or the Administrator of the National Aeronautics and Space Administration, in cooperation with the Secretary, as the case may be, shall report to the Congress within 7 days after any determination of imperative national need under subparagraph (A), including an explanation of the circumstances justifying such determination and a schedule for ensuring the prompt launching of a preempted payload.".

SEC. 8. STUDY OF PROCESS FOR SCHEDULING LAUNCHES.

The Secretary of Transportation, in cooperation with the Secretary of Defense and the Administrator of the National Aeronautics and Space Administration, and in consultation with representatives of the space launch and satellite industry, shall study ways and means of scheduling Government and commercial payloads on commercial launch vehicles at Government launch sites in a manner which—

(1) makes the best practicable use of the launch property of the United States; and

(2) assures that the launch property of the United States that is available for commercial use will be available on a commercially reasonable basis,

consistent with the objectives of the Commercial Space Launch Act. The Secretary shall report the results of such study to the Congress within 90 days after the date of enactment of this Act.

SEC. 9. COMMERCIAL SPACE LAUNCH SERVICE COMPETITION.

It is the sense of the Congress that the United States should explore ways and means of developing a dialogue with appropriate foreign government representatives to seek the development of guidelines for access to launch services by satellite builders and users in a manner that assures the conduct of reasonable and fair international competition in commercial space activities.

SEC 10. LAUNCH VEHICLE RESEARCH AND DEVELOPMENT.

The Administrator of the National Aeronautics and Space Administration shall, in consultation with representatives of the space launch and satellite industry, design a program for the support of research into launch systems component technologies, for the purpose of developing higher performance and lower cost United States launch vehicle technologies and systems available for the launch of commercial and Government spacecraft into orbit. The Administrator shall submit a report outlining such program to the Congress within 60 days after the date of enactment of this Act.

SEC. 11. APPLICABILITY TO LICENSES.

This Act, and the amendments made by this Act, shall apply to all licenses issued under the Commercial Space Launch Act before, on, or after the date of enactment of this Act.

AMENDMENT NO. 3711

(Purpose: To revise the period of applicability of Federal financial support for launches)

Mr. BYRD. Mr. President, I send to the desk an amendment on behalf of Mr. HOLLINGS.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. HOLLINGS, proposes an amendment numbered 3711.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 25, line 13, strike "10 years" and insert in lieu thereof "5 years".

Mr. HOLLINGS. Mr. President, I rise as a cosponsor of the Senate amendments to the House-passed version of H.R. 4399, the Commercial Space Launch Act Amendments of 1988, which were reported from the Senate Commerce Committee. The bill received unanimous support in the committee, and I believe that the entire membership of the Senate Commerce Committee has joined as cosponsors of this measure.

Let me take a minute to review the background leading to this legislation. In 1986, in the aftermath of the *Challenger* accident, the President announced that the space shuttle would no longer launch commercial communications satellites. He indicated that the domestic commercial expendable launch vehicle industry would launch those satellites. However, there was no domestic commercial industry at that time. In fact, the first commercial satellite launch by a domestic launch company will not occur until 1989. And much needs to be done between now and then to assist this industry.

Mr. President, at the time of the President's announcement, the United States, through NASA, launched 50 percent of the Western Hemisphere's communications satellites. Ariane, the French Government-supported launch company, launched the other 50 percent of the market. These were the only two competitors in the world marketplace, and the division of the market between the two was generally equitable.

Mr. President, since 1986, that situation has changed dramatically. Ariane continues to launch, and it appears that they will continue to possess 50 percent of the communications satellite market for quite some time. However, other competitors have surfaced, such as the Chinese and the Soviets, who are willing to buy into the satellite launch market at very cheap rates, and who have targeted the United States portion of the launch services market.

Today, as a result of Presidential policy, we have a situation in the United States where private launch companies are being asked to compete head-to-head with foreign governments who provide launch services. This competition is inherently unfair, and nowhere is this more visible than in the area of launch insurance requirements.

Let's take Ariane as an example. Ariane launches from a dedicated commercial launch facility. Therefore, Ariane doesn't have to worry about commercial launches being preempted by the Air Force or national security payloads as do U.S. domestic launch companies. Ariane doesn't charge customers for the cost of property insurance, since the launch company owns the range and bears the risk. Ariane does require minimal amounts of liability insurance, less than $65 million, with full government indemnification for claims above that amount.

Prior to the President's 1986 decision, the United States, through NASA, offered similar arrangements to commercial satellite owners. As a matter of fact, the Ariane insurance regime is modeled after the space shuttle regime. Because the United States and Ariane offered similar terms, the United States was able to compete on a more equal basis. This has all changed with the introduction of the President's new launch policies, the substitution of U.S. firms for the U.S. firms for the U.S. Government, and a dramatic shift in the domestic launch companies' insurance regime. Now U.S. domestic companies share launch facilities with NASA and the Air Force. As a result, preemption of commercial launches is a possibility—although hopefully not the norm. U.S. launch companies also must obtain, as a condition of their license, property insurance to protect Government launch facilities and liability insurance to protect third parties. The cost of these insurance requirements is born by the customers of the domestic launch operator and can be quite substantial.

Mr. President, despite the rhetoric of the last few years, there is currently a very limited market for commercial launches. The backlog of satellites that are waiting to be launched is what was offloaded by the space shuttle or Ariane as a result of their failures in 1986. Forecasts for the middle of the next decade now estimate no more than 15-20 commercial launches worldwide each year. This is a significant reduction from pre-*Challenger* forecasts. Based on these estimates, if the United States concedes 8 to 10 launches a year to Ariane, that only leaves United States companies 10 to 12 launches a year to compete for against the Chinese, possibly the Soviet Union, and in the near future Japan and maybe even Brazil. Considering the fact that our competitors will be government supported, it should be clear why the Federal Government must provide some transitional support for our nascent domestic commercial launch industry. If the U.S. Government is going to encourage a domestic launch industry, let's encourage a successful one.

In short, Mr. President, U.S. companies face a tremendous challenge and the committee believes that some legislative relief is required to permit these companies to establish themselves and make a real effort to compete in the world marketplace. The liability legislation proposed by the committee will not guarantee these U.S. launch companies commercial success, and the competition these companies face is far broader than just the insurance front. But, it is in the area of insurance that the disadvantages between domestic launch firms and foreign competitors are most readily apparent and addressable by the Congress.

The legislation proposed by the Senate Commerce Committee will limit the amount of insurance that the companies have to purchase as a requirement of their license. Under current law, the commercial launch operator is totally liable for third-party damages, and he is liable for the first $100 million in property damages. The committee bill doesn't amend the property regime, but it does create a risk-sharing mechanism for liability coverage that should make domestic launch companies more competitive. Pursuant to the legislation, the basic requirement that these launch companies must meet for property and liability coverage is protection against the maximum probable loss. Initially, the committee has fixed limitations on this estimate of maximum probable loss because of the lack of availability of insurance. The committee also realized that because available insurance could be less than sufficient to cover the maximum probable loss in the early phases of this new industry, the Secretary required discretionary authority to deal with such situations. This authority is provided. The committee bill also directs the Secretary of Transportation to adjust these insurance limits periodically as world insurance markets grow so that the bill does not artificially constrain the availability of insurance.

Above these required limits, the Government will pay for damages to launch property in the case of first party claims above the established level of insurance or will make payments up to $1.5 billion for third-party claims above the required level of liability insurance.

The Government's risk in the committee bill is minimized in several ways. First, the provision allowing for payments by the Government for liability claims will terminate at the end of 10 years. After that time, the commercial industry will be fully responsible for obtaining adequate liability insurance, and the committee expects that the world markets will grow over time to meet this demand. Second, the total amount of exposure to the Government for any one claim can never exceed $1.5 million. So, the companies purchase as much as $500 million in liability insurance which would be exhausted before any government responsibility accrues. If liability claims exceed $500 million, the Government will pay the successful claims for the next $1.5 billion. After that, the companies again would be fully responsible for payments.

Finally, these payments are subject to the availability of appropriations by the Congress, so there is a further safeguard to protect Government resources.

Mr. President, this legislation is not going to solve all of the problems the commercial expendable launch industry faces today. We all recognize that foreign competition for these launches is intense now and will stay that way, which is why section 9 of the bill urges the United States to establish equitable launch services pricing and business practices with our foreign competition. We do know, however, that the availability and cost of insurance are major factors in the decision of a satellite owner or builder to select a launch system. Every satellite launch that occurs outside of this country is a loss to the balance of payments and jeopardizes the health and survival of the domestic expendable launch vehicle industry. Furthermore, this industry is essential to the national and economic security of the Nation, since a mixed fleet of launch vehicles ensures access to space for all types of payloads, commercial as well as military.

Mr. President, we have worked closely with the House of Representatives in modifying provisions in their version of this legislation, and they appear ready to approve the Senate changes. Likewise, we have worked with the industry, which supports the bill, and with the administration which has not opposed it. The version of H.R. 4399 that lies before the Senate today meets the needs of the industry, the concerns of the administration, and the approval of the House.

In closing, Mr. President, H.R. 4399 as proposed by the Senate Commerce Committee establishes a reasonable risk-sharing regime between the Federal Government and the domestic commercial launch industry. It is modeled after the recently enacted amendments to Price-Anderson, Public Law 100-308, and the NASA section 308 of the Space Act authority. The Senate version of H.R. 4399 says that the United States recognizes the value of the launch service industry to our national and economic security and that the Federal Government will act as a reliable partner with industry in developing a viable commercial space launch industry. With passage of H.R. 4399, the U.S. domestic launch firms stand a chance of competing. Without H.R. 4399, the commercial launch services industry will be based on foreign soil. The choice is ours!

Mr. President, I ask unanimous consent that the text of the committee report and the bill be printed in the RECORD at this time. In particular, I would hope that each and every Member thoroughly review the "Conditions of Payment by the Government" section of the report that describes the expedited procedures and compensation plan provisions of the bill. I think this section will convince all Members that the processes and procedures outlined in the bill are consistent with constitutionally established procedures and in full compliance with the Balanced Budget and Emergency Deficit Control Reaffirmation Act, Public Law 100-119.

I would also like to thank Senators WIRTH, BENTSEN, and DANFORTH for their leadership in this regard. They sponsored the original Senate bill, S. 2395, which served as a model for the Committee. Their perseverance on this issue is the reason why the 100th Congress will soon enact a well-designed launch liability bill.

Mr. President, I hope that this legislation will be supported by the entire Senate and that we can complete action on this bill today, send it to the House for final approval, and then on to the President for signature.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3711) was agreed to.

Mr. DANFORTH. Mr. President, I am pleased to support H.R. 4399, the Commercial Space Launch Act Amendments of 1988. This legislation establishes a risk sharing system between the Federal Government and the commerical expendable launch vehicle [ELV] industry.

We must increase access to space. Commercial satellites will no longer be launched on the space shuttle. A wide variety of industries require access to space for the development of new products and research. A strong commercial ELV industry is vital to this access.

Domestic ELV manufacturers have invested vast sums in this new industry. The conversion of a government-oriented industry to a wholly private one is difficult. This industry deserves congressional support as it competes with foreign manufacturers. Europe, China, and the Soviet Union indemnify their lauch providers in the event of an accident. We should do so also.

This bill protects Government property by requiring ELV launch providers to acquire insurance to cover possible damage to launch facilities in the event of an accident. The Government would be responsible for the payment of damages in excess of the amount the Department of Transportation deemed the maximum probable loss for a specific launch. A similar system is mandated for possible third party claims. In these situations, Government obligations are limited to $1.5 billion above this DOT estimate. Insurance obtained by the launch provider likely will cover any damages resulting from an accident. The Federal Government's share of risk is simply the remote probability of a catastrophe impacting third parties. Such an event has never occurred. We must provide support to the industry should such an event occur. H.R. 4399 will sunset in 10 years. I expect that, by that time, the insurance industry will cover all needs. The Government's role is transitional.

With the successful return of the space shuttle *Discovery*, we must consider our goals for the space program. Access to space is the key for the Federal Government and the private sector. The space shuttle cannot meet all these needs. We must expand our capabilities. Commercial satellites must fly on ELV's. American ELV manufacturers are prepared to meet the challenge of foreign competition. This competition will be fierce. With the passage of the Commercial Space Launch Act of 1984, Congress recognized the role of the private sector in future space travel. This legislation will assist the private sector in developing a stable private sector launch capacity. By assisting commercial launch providers, we expand our Nation's access to space.

Mr. President, this is important legislation, and the fact we have a bipartisan bill which enjoys the administration's support is a significant accomplishment. I would like to thank an individual without whose hard work this legislation would not be possible: Sherman Joyce, Commerce Committee minority counsel for science and technology.

Mr. President, I urge my colleagues' support for this measure.

Mr. PRESSLER. Mr. President, today the Senate considers H.R. 4399, the Commercial Space Launch Act Amendments of 1988. I am pleased to be a cosponsor of this bill, recognizing that the commercial expendable launch vehicle, ELV industry is vital to our future in space.

This legislation allocates the risk associated with the launch of an ELV between the Federal Government and the commerical ELV industry. Such a launch in this country must occur on Government facilities. The bill requires that launch providers obtain insurance to cover possible damage to these Government facilities in the event of an accident. Coverage will not exceed $100 million. Any damage in excess of the amount of the insurance coverage would be paid by the Federal Government. The worst accident on record was the explosion of a Titan rocket which caused approximately $60 million in damage. I believe that this insurance requirement will protect Government facilities in the event of an accident.

The bill also requires launch providers to obtain insurance to protect against possible injury to third parties. The Department of Transportation determines the maximum probable loss for both third party liability and Government facilities. The launch provider must obtain insurance as a condition to receiving a license to launch. In the case of third party liability, insurance coverage may not exceed $500 million. The total Government payment to third parties may not exceed $1.5 million above the maximum probable loss. I would emphasize to my colleagues that never before has there been a third party claim. Moreover, any payment by the Government would have to be made from existing appropriated funds or following an appropriation for that specific purpose. This provision brings the system for paying claims into line with the Budget Act.

Mr. President, commercial satellites no longer may be deployed by the space shuttle. ELV's are the only alternative. Europe, China, and the Soviet Union now provide launch services and American companies are looking overseas to satisfy the demand for access to space. These foreign launch providers have access to dedicated launch facilities. Their Governments provide indemnification in the event of an accident. We must provide indemnification as well so that the developing American ELV industry has an opportunity to compete. The purpose of this bill is to assist the domestic ELV industry by limiting its exposure should an accident occur. Companies should not be required to put themselves on the line with each launch. There should be a greater degree of certainty for the industry, and the Government should provide it.

Finally, Mr. President, I would remind my colleagues that this bill contains a 10-year sunset provision. In 10 years, the market for this type of insurance will have developed. At that point, insurance will cover all claims. This legislation assists in the transition from an indusry that services only the Federal Government to a commercial one. I urge my colleagues to support this bill.

Mr. WIRTH. Mr. President, when the Senate passes the Commercial Space Launch Act Amendments of 1988 (H.R. 4399) today, we will be improving the ability of our nascent commercial space launch industry to survive, grow and prosper in the highly competitive world marketplace. H.R. 4399 is the House companion to legislation I introduced here in the Senate, S. 2395.

In 1984, Congress, recognizing the importance of the development of a vigorous domestic commercial space launch industry, passed the Commercial Space Launch Act, Public Law 98-575. This important statute established the regulatory framework necessary to encourage the growth of private sector satellite launch services. At the same time, the act preserves the national security and foreign policy priorities of the United States, and provides for the safety and protection of the public.

Following the tragic destruction of the space shuttle *Challenger* on January 28, 1986, the need for a vital, growing commercial launch industry became more pressing. Within 7 months of this event, the President announced that NASA would no longer provide launch services for commercial satellite customers. Rather, Government resources, including the space shuttle, would be reserved solely for Government-sponsored research or military payloads.

This chain of events stranded 44 satellites previously scheduled for launch aboard the space shuttle. The fragile nature of our ability to gain access to space became clear, and we now know that it was unwise to expect the shuttle program to accommodate all of our military and civilian needs. We must work to develop a mixed fleet capability—utilizing both expendable and reusable launch vehicles, and enlisting both the private and public sectors.

Since that time, Mr. President, several American companies have responded admirably to this challenge, including two which have significant presences in my own State of Colorado—Martin Marietta and McDonnell Douglas. These corporations have made significant investments in the development, construction and marketing of a private sector launch capacity.

This domestic fleet of expendable launch vehicles will not only lessen significant pressures on NASA to launch, but, by assuring America's access to space, will contribute to our economic and national security. A healthy private sector launch infrastructure can reduce Government costs of acquiring ELV's by encouraging manufacturers to produce a larger volume of rockets, will contribute an estimated $800 million annually to the U.S. balance of payments, and will directly create nearly 8,000 new jobs in the United States.

Unfortunately, a serious barrier continued to exist to the viability of this fledgling industry—and, consequently, our Nation's essential ability to gain and retain access to space. Prior to the administration's 1986 decision to ban commercial launches by NASA, the Federal Government shared in the risks of space launch ventures with private companies. Under this policy, NASA sold launch services to commercial customers and foreign governments. As part of the transaction, the clients were required to buy $500 million in liability insurance to cover third-party claims that might result from an accident. The Government assumed responsibility in the unlikely event that claims were above this amount—an event that has never occurred. In fact, no third party claim has ever been filed in court.

However, since the President banned commercial launches by NASA, the ELV manufacturers must obtain the maximum amount of liability insurance possible at a reasonable cost. Unfortunately, the maximum possible loss which could result from an unsuccessful rocket launch not only exceeds the amount of insurance available at reasonable costs, but also exceeds worldwide insurance capacity. In the unlikely event that a third party claim is successfully litigated, the ELV manufacturer would be responsible for losses exceeding the insured amount in accordance with the general principles of tort and contract law. In the worst case scenario, this financial responsibility could well exceed the total resources of any company.

Consequently, the ELV firms are presently operating with an unbounded liability, a fact which is having the undesirable effect of damaging the ability of our domestic industry to compete worldwide and hindering its long-term viability.

The U.S. commercial launch industry operates in a global marketplace, and our domestic ELV manufacturers must be able to compete successfully with the growing number of overseas competitors. Unlike our domestic industry, foreign launch programs receive substantial subsidies from their governments. For example, the French Government and the European Space Agency [ESA] indemnify Arianespace for third party losses in excess of the extermely low threshold of $70 million. The resulting savings are passed on to their customers in the form of lower rates. In the case of both the Soviet Proton or the Chinese Long March launch vehicles, their Governments assume all risk for damage to third parties, in addition to offering prices below cost. As a result, customer buying decisions are being made on the basis of the costs of insurance and the risk of third party claims, to the competitive detriment of the U.S. marketer of launch services who has no control over these factors. The most recent example is the administration's decision to allow an American firm, Hughes Communications, to launch two satellites aboard the Chinese Long March ELV.

The legislation we are considering today lays the groundwork to address these problems. Under the committee amendment to H.R. 4399, providers of launch services would be required to obtain the maximum insurance available at a reasonable cost, up to $500 million, for the payment of claims resulting from injuries to third parties. In addition, the provider would also be required to purchase $100 million of insurance—under similar conditions—to cover possible damage to Government launch facilities in the event of an unsuccessful launch.

In the extremely unlikely event that third party damages are incurred above the amount covered by insurance, a specially expedited appropriations process would bring the payment of claims by the Federal Government under direct review by Congress and the Administration. This bill contains no entitlement from the Federal Treasury.

Mr. President, the provisions enacted under the bill, as it will be amended today, would expire after a period of 5 years. While I generally support the sunsetting of legislation—it usually provides much needed congressional oversight—I believe that the life of this particular bill, as amended, is not long enough for Congress to determine whether it is achieving the intended results: a viable commercial launch industry. As a consequence, I fully expect the Congress will need to again address this issue, with an eye toward extending the sunset deadline, within the next 5 years.

The original committee amendment provided for a sunset of 10 years. Given the lengthy marketing cycle experienced by the commercial launch industry this period would have allowed enough development to determine if a viable industry could exist without significant Government support. Between the time that a satellite vendor selects a particular launch vehicle and the actual launch of the payload, at least 3 years will elapse.

Part of this delay occurs because the satellite manufacturer must construct a satellite according to the specifications of the payload bay—information not known until a launch vehicle vendor has been procured. However, even prior to this, the satellite manufacturer must secure approval from the Federal Communications Commission [FCC] to place a communications relay in orbit; this is a very lengthy process. Every 3 to 5 years, the FCC offers a competition for licenses—the last round had a filing deadline in 1983 and no decisions were made until 1985. Following selection of the launch vendor, a vehicle must be built, a license must be obtained for a commercial launch from the Department of Transportation, the launch must be scheduled with the Air Force, and finally, the vehicle must be installed on the launch pad. As of today, no satellite selected during the 1983 competition has been launched.

With a legislative lifetime this short, Congress may not be able to determine if the bill has sufficiently reduced the risk of catastrophe for the manufacturers so that they will continue to produce launch vehicles here in the United States. In addition, another goal of H.R. 4399 is to enhance to development of an adequate insurance capacity to accommodate the needs of the commercial launch industry. In the wake of the destruction of the space shuttle *Challenger*, followed by the loss of two expendable launch vehicles, the insurance industry experienced a crisis of confidence in the commercial launch industry, assuming it to be high risk and volatile. Until and unless the insurance industry's view is altered, commercial insurance either will be prohibitively expensive or unavailable. The only way for insurers to regain confidence in the commercial launch industry is by observing a sufficient number of successful launches. A 6-year authorization does not give the insurance industry the necessary experience with enough successful commercial launches to persuade them to, once again, make available adequate, affordable insurance.

Nevertheless, passage of this legislation will significantly benefit the Federal Government, since it would receive free coverage from the ELV manufacturer under its third party insurance policy up to the ceiling of coverage. Currently the Government could be held responsible for losses due to an accident with a commercial ELV, since the Air Force sets manufacturing standards, designs and monitors all launch procedures, and is responsible for destroying the rocket in the case of an aborted launch. In addition, under international agreements, the Federal Government is responsible for payment of all losses outside the U.S. border.

Finally, the Federal Government will experience savings in acquiring its own expendable launch vehicles, since a vigorous commercial launch vehicle industry will support larger production runs and achieve greater economies of scale. This is important as both NASA and the Air Force seeks to expand their fleet of expendable launch vehicles.

Mr. President, I would like to thank Senators BENTSEN and DANFORTH and the 15 additional colleagues who cosponsored this legislation, as well as Senator HOLLINGS, chairman of the Commerce, Science and Transportation Committee, and Senator RIEGLE, chairman of the Science, Technology, and Space Subcommittee, for their commitment to advancing this vital legislation.

Upon approval of this bill, I look forward to the greatly improved ability of our space launch industry to grow and prosper in the highly competitive world marketplace, and as one very important result, the strengthening of our national security.

Mr. RIEGLE. Mr. President, I rise as a cosponsor of H.R. 4399, which will extend limited Federal protections to the domestic commercial expendable launch vehicle industry. These protections consist of a limitation on the total financial risk that will be imposed on the commercial launch operators in the event of a catastrophic accident. Similar protection is extended to limit the risk to Government property. The bill is constructed in a fashion that will restrict total Federal Government protection to $1.5 billion, at the most, and this particular assistance will be terminated after a period of 10 years. The legislation was reported unanimously by the Senate Commerce Committee on September 20, 1988 and is cosponsored by the entire committee.

This bill is necessary to enable a domestic commercial expendable launch vehicle industry to develop and mature. It does this by making possible the growth of private insurance markets to meet the requirements of domestic launch concerns. Currently, these markets are restricted either in total capacity, or in experience. For example, commercial insurance has never been required to protect against the loss of Government property.

Prior to 1986, all commercial communications satellite launches in the United States were conducted by NASA. Liability insurance was required from the owners or builders of these satellites to protect against claims by third parties. This insurance was limited to between $500 and $750 million, and all claims above those required amounts would be fully indemnified by the Federal Government.

No insurance was obtained to protect against losses to Government property, since NASA was conducting all launch operations. There has never been a successful liability claim resulting from expendable launch vehicle operations in the United States. There have been accidents to launch facilities, the most recent occurred in 1986 at Vandenburg Air Force Base when a Titan III destroyed or damaged two launch pads and cost over $40 million to repair. In that case, the Government paid the full cost or repair.

The world insurance markets have no experience protecting against the loss of Government property. No other launching nation requires such protection. Ariane, the major foreign competitor to domestic expendable launch vehicle companies, has dedicated commercial launch facilities and has no property insurance requirement. The Chinese, who are on the verge of beginning commercial satellite launches, have been unclear with respect to their insurance requirements, but it appears that property insurance will not be required and that liability will be limited and indemnification protection offered.

Insurance, therefore, is a major factor in the success or failure of a commercial launch industry in this country. There is a direct relationship between the cost of insurance and the cost of launch services, and no commercial activities can occur without sufficient insurance coverage to protect fully the property involved and the liability risk that these operations entail. World satellite insurance markets are volatile, and major shifts in total available insurance and the cost of that insurance can and do occur.

For example, in 1985, five satellites were lost in a series of mishaps and the total loss to the insurance industry was $370 million. Two years before, over $180 million in claims were paid. These events resulted in several major insurers either restricting coverage or abandoning space launch coverage entirely. The cost of insurance for the satellites alone rose from 6 to 7 percent of the value of the satellite to 15 to 20 percent in one year.

If one considers the additional risks that must be insured in domestic commercial operations, it is clear that some form of transitional assistance is necessary. Government facilities represent hundreds of millions of dollars in property that must be insured. Potential liability claims can reach into the billions. Launch systems and satellites can be more than $300 million.

In short, Mr. President, the potential or possible risk that is created in these operations if far greater than world insurance markets can bear at the present time, and none of the domestic commercial launch firms are able to self-insure against this risk.

The Commerce Committee has reported a bill that will assist domestic firms in meeting these risks and will enable these firms to establish themselves in the world satellite launch markets. This assistance is limited in scope and we believe that all possible effort has been made to protect fully the interests of the Government. And we believe that at the end of the period of time when Government assistance is offered, a mature launch industry will be in place and world insurance markets will be available to accommodate this industry.

The major provisions of this legislation include:

The establishment of basic insurance requirements as a condition of license for commercial expendable launch vehicle operators. The insurance must protect against the maximum probable loss to Government property and against claims by third parties.

The required insurance would be initially limited to $100,000,000 in the case of Government property and $500,000,000 for liability claims. In both cases, an alternative insurance limit would be imposed if the maximum level of insurance available on the world markets at a reasonable cost is less than the fixed dollar amounts.

In the case of Government property, all claims above the insurance requirements will be waived and the Government will assume the full cost of repairs. In the case of liability claims, the launch companies will bear the first losses, to the level of insurance required, the Government will bear the next $1.5 billion in claims, and then the launch operators will once again be responsible for all claims. Authority for the Government to pay liability claims will terminate after 10 years but the basic insurance requirements will remain in place.

All insurance requirements will be readjusted annually by the Secretary of Transportation to reflect more accurately world insurance markets and maximum probable losses.

All payments by the Government are subject to the availability of appropriations. Provisions are included which will ensure that Congress has a role in approving payments made under these provisions.

The bill includes other provisions which address two problems that the committee found to exist in the commercial satellite industry. Certain incentives are offered to satellites which were removed from the space shuttle by a Presidential directive in 1986. Forty-four satellites had firm commitments from NASA to be launched by the space shuttle. The President removed virtually all commercial payloads from the shuttle which left these satellites with no access to space. Most have obtained alternative launches, primarily on foreign systems, but several remain with no launch commitments.

The legislation offers an incentive to these uncommitted satellites in the form of a waiver of certain charges for Government-provided services, and a waiver of the Government property insurance requirements. These incentives should permit domestic launch companies to offer launch services at prices competitive with foreign systems.

Finally, the legislation addresses a problem that the industry raised with the committee concerning Government preemption of commercial launches. Unlike Ariane or the Chinese, domestic launch companies must use Government facilities. It is possible that foreign competitors can raise the possibility that Government needs will displace commercial launches and that commitments by American launch operators are less secure than similar commitments by foreign operators.

The bill establishes conditions under which the U.S. Government may preempt commercial launches. Any decision must be made by the Secretary of Defense or the Administrator of NASA personally and can ony be done in cases of imperative national need. The committee has left ample discretion to ensure that critical Government payloads can be launched and preemptions can occur while taking steps to make certain that commercial launch commitments will be met.

Mr. President, this legislation is the product of many hours of discussion between the industry, the administration and the committee. In my view it does represent a balance between the needs of the industry and our responsibility to protect the interests of the Government. I do feel that a commercial expendable launch vehicle industry can survive in this country and further that it would be most unwise not to take steps to permit this industry to develop. It is in our national interest, both economic and security, to have a healthy expendable launch vehicle industry and this bill is one mechanism that will permit that to occur.

The **PRESIDING OFFICER**. The question is on agreeing to the substitute amendment, as amended.

The substitute amendment, as amended, was agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

Mr. **BYRD**. Mr. President, I move to reconsider the vote by which the bill was passed, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PROTECTION OF AQUATIC ENVIRONMENTS FROM PLASTIC MATERIALS

Mr. **BYRD**. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1986.

The **PRESIDING OFFICER** laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1986) entitled "An act to study, control, and reduce the pollution of aquatic environments from plastic materials, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

TITLE I—DEGRADABLE PLASTIC RING CARRIERS

SEC. 101. FINDINGS.

The Congress finds that—

(1) plastic ring carrier devices have been found in large quantities in the marine environment;

(2) fish and wildlife have been known to have become entangled in plastic ring carriers;

(3) nondegradable plastic ring carrier devices can remain intact in the marine environment for decades, posing a threat to fish and wildlife; and

(4) 16 States have enacted laws requiring that plastic ring carrier devices be made from degradable material in order to reduce litter and to protect fish and wildlife.

SEC. 102. DEFINITIONS.

As used in this title—

(1) the term "regulated item" means any plastic ring carrier device that contains at least one hole greater than 1¾ inches in diameter which is made, used, or designed for the purpose of packaging, transporting, or carrying multipackaged cans or bottles, and which is of a size, shape, design, or type capable, when discarded, of becoming entangled with fish or wildlife; and

(2) the term "naturally degradable material" means a material which, when discarded, will be reduced to environmentally benign subunits under the action of normal environmental forces, such as, among others, biological decomposition, photo-degradation, or hydrolysis.

SEC. 103. REGULATION.

Not later than 24 months after the date of the enactment of this title (unless the Administrator of the Environmental Protection Agency determines that it is not feasible or that the byproducts of degradable regulated items present a greater threat to the environment than nondegradable regulated items), the Administrator of the Environmental Protection Agency shall require, by regulation, that any regulated item intended for use in the United States shall be made of naturally degradable material which, when discarded, decomposes within a period established by such regulation. The period within which decomposition must occur after being discarded shall be the shortest period of time consistent with the intended use of the item and the physical integrity required for such use. Such regulation shall allow a reasonable time for affected parties to come into compliance, including the use of existing inventories.

TITLE II—SAN FRANCISCO BAY NATIONAL WILDLIFE REFUGE

SEC. 201. ENLARGEMENT OF REFUGE.

Section 2 of the Act entitled "An Act to provide for the establishment of the San Francisco Bay National Wildlife Refuge", approved June 30, 1972 (16 U.S.C. 668dd note), is amended to read as follows:

"SEC. 2. There shall be included within the boundaries of the refuge the following:

"(1) Those lands, marshes, tidal flats, salt ponds, submerged lands, and open waters in the south San Francisco Bay area generally depicted on the map entitled "Boundary Map, Proposed San Francisco Bay National Wildlife Refuge", dated July 1971, and which comprise approximately twenty-one thousand six hundred and sixty-two acres within four distinct units to be known as Fremont (five thousand five hundred and twenty acres), Mowry Slough (seven thousand one hundred and seventy-five acres), Alviso (three thousand and eighty acres), and Greco Island (five thousand eight hundred and eighty seven acres). Said boundary map shall be on file and available for public inspection in the offices of the United States Fish and Wildlife Service, Department of the Interior.

"(2) Up to 20,000 acres in the vicinity of the areas described in paragraph (1), and similar to the areas described in paragraph (1), which the Secretary determines are necessary to protect fish and wildlife resources.".

SEC. 202. TOTAL AREA OF REFUGE.

Subsection (a) of section 3 of such Act is amended in the second sentence by striking "twenty-three thousand acres" and inserting "43,000 acres".

SEC. 203. AUTHORIZATION OF APPROPRIATIONS.

Section 5 of such Act is amended—

(1) by inserting "(a)" before "There"; and

(2) by adding at the end the following new subsection:

"(b) There are authorized to be appropriated to the Secretary to acquire areas described in section 2(2) such sums as may be necessary, which shall remain available until expended.".

Amend the title of the bill so as to read: "A bill to require that plastic ring carrier devices be degradable, and for other purposes.".

Mr. **MITCHELL**. Mr. President, the establishment of the San Francisco Bay National Wildlife Refuge in 1972 represented an important step in preserving the fish and wildlife resources in south San Francisco Bay, which is a major metropolitan area.

However, the development pressures in the vicinity of the refuge continue to increase, threatening valuable wildlife habitat, as well as areas that have served to buffer the human impacts on the wildlife resources within the refuge.

To address these threats, S. 1986 authorizes acquisition of up to 20,000 additional acres of lands and waters, which will nearly double the size of the San Francisco Bay National Wildlife Refuge.

Because it is important that we move quickly to enable these habitats and buffer areas to be protected, I and other members of the Committee on Environment and Public Works have agreed to the expeditious consideration of this bill without the normal process of review by the committee. I would, however, as chairman of the Committee's Subcommittee on Environmental Protection, offer the following section-by-section analysis of title II of S. 1986 in lieu of a report by the committee:

SECTION 201. ENLARGEMENT OF REFUGE

Section 201 directs that up to 20,000 additional acres of lands, marshes, tidal flats, salt ponds, submerged lands, and open waters in the south San Francisco Bay, which the Secretary determines are necessary to protect fish and wildlife resources, shall be included within the boundaries of San Francisco Bay National Wildlife Refuge.

The added lands and waters need not be adjacent to existing refuge holdings, but it is expected that they will be within a reasonable distance of such areas to facilitate management.

As introduced, the House and Senate bills to expand the refuge, H.R. 4272 and S. 2710, respectively, referred to a proposed map entitled "San Francisco Bay National Wildlife Refuge Additions—Proposed," dated March 1988, depicting lands and waters for inclusion in San Francisco Bay Wildlife Refuge. This reference is no longer included in section 201 of S. 1986. However, the lack of any reference to the March 1988, map in this legislation should not be interpreted as an expression of opposition either to the acquisition of any of the lands and waters depicted on that map, or to the preparation by the U.S. Fish and Wildlife Service of a map depicting those or other proposed additions of lands and waters to the refuge.

Under this legislation, the U.S. Fish and Wildlife Service should, one, initiate an environmental review process to determine which uplands, marshes, tidal flats, salt ponds, submerged lands, and open water should be added to the refuge; two, prepare a map depicting proposed refuge additions; and three acquire properties for inclusion in the expanded refuge authorized under this bill.

The substantial destruction of tidal wetland habitat in the bay area provided much of the impetus for the passage of legislation to establish the refuge in 1972. However, it is not recognized that the loss of tidal wetlands has been overshadowed by the elimination of valuable seasonal marshes and other seasonal wetlands.

Consequently, the Service's environmental review should include careful consideration of the value of seasonal wetlands, and the rate at which they are disappearing. In setting its land aquisition priorities, the Service should consider the immediacy of development pressures on lands that will serve to buffer human impacts on fish and wildlife resources. The constraints provided by existing law, such as section 404 of the Clean Water Act, on the development of wetlands also should be considered, and the Service should determine whether the wildlife resources of those lands currently are threatened or are likely to become threatened in the forseeable future.

Lands and waters that are not currently being used, or are unlikely to be used in the foreseeable furture, in a manner that is detrimental to the fish and wildlife resources of the refuge should be given lower priority for acquisition than other lands and waters whose use or development pose greater threats to these resources.

SECTION 202. TOTAL AREA OF REFUGE

Section 202 amends section 3 of the act establishing the San Francisco Bay National Wildlife Refuge to increase the total allowable area with the refuge's boundaries from 23,000 acres to 43,000 acres of land, marshes, tidal flats, salt ponds, submerged lands, and open waters.

SECTION 203. AUTHORIZATION OF APPROPRIATIONS

Section 203 of S. 1986 authorizes appropriation of such sums as may be necessary to the Secretary of the Interior, which are to remain available until expended, to acquire up to 20,000 acres of land, marshes, tidal flats, salt ponds, submerged lands, and open waters needed to protect fish and wildlife resources.

Finally, Mr. President, I want to extend my thanks to Senator CRANSTON and Representative EDWARDS for developing this important legislation. Their efforts have made it possible for us to act today to protect the fish and wildlife resources of San Francisco Bay.

Mr. CHAFEE. Mr. President, I am extremely pleased that today we have passed legislation which I authored 2 years ago, the Plastic Pollution Control Act of 1988, S. 1986. This legislation will help us reduce the amount of plastic waste that is literally choking our marine wildlife and fouling our coastal areas. Although there is much more to be done to reduce and eliminate plastic waste, the passage of this bill represents an important step in the right direction.

Plastic has become an integral part of life, and it is rare that we survey our surroundings without finding plastic items in use. Over the last 40 years plastic production has shown a hundredfold increase in the marketplace. In the past year, over 50 billion pounds of plastic were used to make a variety of products, products that we use daily and then discard. And the growth of plastics is expected to continue.

There is no denying that plastics are a valuable and essential part of our day-to-day lives. It is tough, reliable, and durable, and it lasts literally for decades, or even centuries. But while these attributes are ideal for industrial and social needs, they are lethal for the marine environment and its inhabitants.

Mr. President, it is well-documented that plastic debris kills thousands of birds, seals, turtles, sea lions, and fish each year. Discarded six-pack holders, packing bands, and fishing nets choke and entangle wildlife. Findings indicate that plastic products are responsible for the death of up to 90,000 northern fur seals and 1 to 2 million birds. Such events have prompted a growing concern among scientists, conservationists, and citizens about discarded plastic.

Across the country, local beach cleanup efforts have resulted in the collection of tons and tons of debris. Last year, 14 Rhode Island community beach cleanups netted over 10,000 pounds of waste. And in addition to the environmental harm it causes, this debris ruins the aesthetic quality of our beaches. It is difficult to enjoy and appreciate our beautiful natural coastal and open areas if they are littered with plastics. And again, plastics are forever.

My legislation will help combat this problem by requiring that six-pack holders be made from degradable materials. Such holders are made from photo-degradable materials that, when exposed to sunlight, become brittle and break down into microscopic pieces. Industry has already indicated it can meet the demand nationwide for such holders. Since the technology exists, and is already in use in several States—including my own—it is no longer necessary to see six-pack holders littering our beaches and parks and entangling birds and sea-lions.

Under the legislation, the Administrator of the Environmental Protection Agency will be given 24 months to issue a regulation, and will allow a reasonable time for affected parties to come into compliance, with an allowance for use of existing inventory stock.

Furthermore, I expect the EPA, as part of the study called for by section 2202 of Public Law 100-220, to study and report specifically on the impact of all types of plastic beverage packaging or other plastic devices used to transport cans or bottles on fish and wildlife habitat, as well as on human health and safety. Secondly, I expect the EPA to analyze the feasibility, cost, and benefits, of making such packaging or devices degradable.

I realize that plastic six-pack holders represent only a small part of the overall amount of plastic in the solid-waste stream. However, the passage of the bill sends a strong and important message: degradability is a viable option, and can play a vital role in solving the plastic waste problem.

I applaud my colleagues for their support to this much-needed legislation.

Mr. WILSON. Mr. President, I would like to add my voice in support of this legislation which includes language to authorize the expansion of the San Francisco Bay Wildlife Refuge.

Bay area wildlife habitat has slowly been destroyed over the last century as the sprawling San Francisco metropolitan area has continued to grow. Before the few remaining wetlands that are left are sacrificed in the name of growth, we need to take action to preserve some of what remains. Land acquisition of the sort that is called for in this bill is the only way to ensure that this sensitive habitat will be protected for tomorrow's wildlife and tomorrow's visitors.

Over the last few years, California has had more than its share of problems with wildlife refuges. In particular, the Kesterson Wildlife Refuge that lies just over the inland hills from San Francisco has been virtually killed by selenium poisoning. It is sad but true that this poisoning has affected hundreds of birds and other animals at this refuge.

I do not propose that what we are doing today will make up for this tragedy, but it is a good start. Like the Kesterson Refuge, the San Francisco Refuge that is being expanded by this bill is a key stopping point for waterfowl in the Pacific Flyway. It is home to a wide varity of endangered and threatened species. The doubling of its size by up to 40,000 acres will appreciably enhance its wildlife habitat environment.

Mr. President, another thing that I like about this bill is precisely the fact that it authorizes a refuge enlargement in a major metropolitan area. I have long been a supporter of making wildlife experiences available to urban dwellers. As much as I support the creation of national parks and wilderness areas in the Sierra Nevadas and elsewhere, I am acutely aware that these outdoor experiences are not easily accessible to the average city resident.

Enlarging the San Francisco Wildlife Refuge will add to the open space opportunities available to the people of the bay area. Combining this benefit with the knowledge that we are improving a very valuable wetland habitat makes for a very worthwhile bill.

I commend all parties that have been involved in making this bill possible. The refuge area landowners have been especially helpful in crafting a bill that I think we can justifiably be proud of. I can only hope that we will receive similar cooperation and understanding from all sides when we tackle other controversial land management issues in California in the years to come.

Mr. BOSCHWITZ. Mr. President, I would like to clarify one point on this legislation with Senator CRANSTON, who was the Senate sponsor of the bill enlarging the San Francisco Bay Wildlife Refuge.

Mr. CRANSTON. I would be happy to respond to the Senator from Minnesota.

Mr. BOSCHWITZ. It is my understanding that a map that was drafted as part of H.R. 4272 as it was originally introduced has now been dropped from this bill. Is that correct?

Mr. CRANSTON. Yes, that map is no longer associated with this legislation.

Mr. BOSCHWITZ. So the Fish and Wildlife Service must conduct a full environmental review and other procedural requirements as it moves to acquire properties for inclusion in the expanded refuge authorized under this legislation.

Mr. CRANSTON. That is correct.

Mr. BOSCHWITZ. I thank the Senator for his response, and for his work on this legislation.

Mr. CRANSTON. I thank the Senator.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate concur in the House amendments and that the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

SAFE DRINKING WATER

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be discharged from further consideration of H.R. 4939 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4939) to amend the Safe Drinking Water Act to control lead in drinking water.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 4939) was ordered to a third reading, was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ARMSTRONG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CORRECTING ERRORS IN ENROLLMENT OF H.R. 4612

Mr. BYRD. Mr. President, on behalf of Senators HEFLIN and GRASSLEY I send to the desk a concurrent resolution correcting the enrollment of H.R. 4612 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 164) to correct errors in the enrollment of the bill H.R. 4612.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. HEFLIN. Mr. President, section 9 was added to H.R. 4612 to provide that the same protections enjoyed by other Federal employees under the bill should also be enjoyed by TVA employees. Although most of the bill was in the form of amendments to the Federal Tort Claims Act, the TVA provision was intended to be in the form of free-standing legislation, since TVA does not come under the Federal Tort Claims Act. This intent was carried out in subsections (a) and (b) of section 9. Unfortunately, due to a drafting error, the provisions of subsection (c) are cast in the form of an amendment to the Federal Tort Claims Act. This would render the provisions of subsection (c) meaningless, since: One, the FTCA does not apply to TVA and two, the phrase "with respect to any claim to which this section—that is, section 2674 of the FTCA—applies" could not apply to any claim against TVA. Therefore, I appreciate my colleagues' attention to the swift passage of this correction.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution was agreed to, as follows:

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (H.R. 4612), the Clerk of the House of Representatives shall make the following corrections:

(1) In section 9(c) of the bill, strike the words "Section 2674 of title 28, United States Code, is amended by adding at the end thereof the following new paragraph:"; and

(2) In section 9(c) of the bill, as corrected, strike the quotation marks and the words "under this chapter".

Mr. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. ARMSTRONG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AUTHORITY FOR ACTION TO BE TAKEN DURING ADJOURNMENT

Mr. BYRD. Mr. President, I ask unanimous consent that notwithstanding any recess or adjournment of the Senate the President of the Senate be authorized to receive any messages required to be transmitted to the Senate pursuant to Public Law 99-177 and Public Law 100-119.

The PRESIDING OFFICER. Without objection, it is so ordered.

AUTHORITY TO SIGN BILLS AND RESOLUTIONS

Mr. BYRD. Mr. President, I ask unanimous consent that the majority leader be authorized to sign all duly enrolled bills and resolutions following the adjournment sine die.

The PRESIDING OFFICER. Without objection, it is so ordered.

FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be discharged from further consideration of H.R. 5102 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 5102) To amend the provisions of title 5, United States Code, relating to the health benefits program for Federal employees and certain other individuals.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3712

(Purpose: To provide that temporary Federal employees may elect coverage of health insurance under chapter 89 of title 5, United States Code)

Mr. BYRD. Mr. President, I send an amendment to the desk on behalf of Mr. PRYOR and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. PRYOR, proposes an amendment numbered 3712.

Mr. BYRD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following new title:

TITLE III—HEALTH INSURANCE COVERAGE FOR TEMPORARY EMPLOYEES

SEC. 301. HEALTH INSURANCE COVERAGE FOR TEMPORARY EMPLOYEES.

(a) IN GENERAL.—Chapter 89 of title 5, United States Code, is amended by inserting after section 8906 the following new section:

"§ 8906a. Temporary employees

"(a)(1) The Office of Personnel Management shall prescribe regulations to provide for offering health benefits plans to temporary employees (who meet the requirements of paragraph (2)) under the provisions of this chapter.

"(2) To be eligible to participate in a health benefits plan offered under this section a temporary employee shall have completed 1 year of current continuous employment, excluding any break in service of 5 days or less.

"(b) Notwithstanding the provisions of section 8906—

"(1) any temporary employee enrolled in a health benefits plan under this section shall have an amount withheld from the pay of such employee, as determined by the Office of Personnel Management, equal to—

"(A) the amount withheld from the pay of an employee under the provisions of section 8906; and

"(B) the amount of the Government contribution for an employee under section 8906; and

"(2) the employing agency of any such temporary employee shall not pay the Government contribution under the provisions of section 8906.".

(b) CONFORMING AMENDMENT.—The table of sections for chapter 89 of title 5, United States Code, is amended by inserting after the item relating to section 8906 the following:

"8906a. Temporary employees.".

(c) REGULATIONS.—Section 8913(b) of title 5, United States Code, is amended—

(1) in paragraph (2) by striking out "or" at the end thereof;

(2) in paragraph (3) by striking out the period and inserting in lieu thereof a semicolon and "or"; and

(3) by adding at the end thereof the following new paragraph:

"(4) an employee who is employed on a temporary basis and is eligible under section 8906a(a)."

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective 120 days after the date of enactment of this section.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3712) was agreed to.

AMENDMENT NO. 3713

(Purpose: To provide for participation in the Thrift Savings Fund by justices and judges holding office under Article III of the United States Constitution, and for other purposes)

Mr. BYRD. Mr. President, I send to the desk an amendment on behalf of Mr. SASSER and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. SASSER, proposes an amendment numbered 3713.

Mr. BYRD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill add the following new title:

TITLE III—PROVISIONS RELATING TO CONTRIBUTIONS BY JUSTICES AND JUDGES TO THE THRIFT SAVINGS FUND

SEC. 301. CONTRIBUTIONS BY JUSTICES AND JUDGES TO THE THRIFT SAVINGS FUND.

(a) IN GENERAL.—Subchapter III of chapter 84 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"Sec. 8440a. Justices and judges

"(a)(1) A justice or judge of the United States as defined by section 451 of title 28 may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund. Basic pay does not include an annuity or salary received by a justice or judge who has retired under section 371(a) or (b) or section 372(a) of title 28, United States Code.

"(2) An election may be made under paragraph (1) only during a period provided under section 8432(b) for individuals subject to chapter 84 of this title; provided, however, that a justice or judge may make the first such election within 60 days of the effective date of this section.

"(b)(1) Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of this title shall apply with respect to justices and judges making contributions to the Thrift Savings Fund.

"(2) The amount contributed by a justice or judge shall not exceed 5 percent of basic pay.

"(3) No contributions shall be made for the benefit of a justice or judge under section 8432(c) of this title.

"(4) Section 8433(b) of this title applies with respect to elections available to any justice or judge who retires under section 371(a) or (b) or section 372(a) of title 28. Retirement under section 371(a) or (b) or section 372(a) of title 28 is a separation from service for the purposes of subchapters III and VII of chapter 84 of this title.

"(5) Section 8433(d) of this title applies to any justice or judges who resigns without having met the age and service requirements set forth in section 371(c) of title 28.

"(6) Sums contributed under this section and earnings attributable to such sums may be invested and reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of this title.

"(7) The provisions of section 8351(b)(7) of this title shall govern the rights of spouses of justices or judges contributing to the Thrift Savings Fund under this section.".

(b) CONFORMING AMENDMENT.—The table of sections for chapter 84 of title 5, United States Code, is amended by inserting after the item relating to section 8440 the following:

"8440.a. Justices and Judges.".

SEC. 302. DESIGNATION OF LEWIS E. MOORE, SR., POST OFFICE BUILDING

The United States Post Office Building located at 525 Royal Parkway in Nashville, Tennessee, is designated as the "Lewis E. Moore, Sr., Post Office Building". Any reference to such building in a law, rule, map, document, record, or other paper of the United States shall be considered to be a reference to the "Lewis E. Moore, Sr., Post Office Building".

Mr. SASSER. Mr. President, my amendment would permit article III Federal judges to participate in the thrift savings plan created under the Federal Employees Retirement System. Those judges are now excluded from the savings plan, even though it includes other Federal employees, Members of Congress and the executive branch, and Federal magistrates and bankruptcy judges.

Ironically, in last year's omnibus budget reconciliation bill, we specifically identified article III judges as Federal employees, eligible to participate in a retirement plan. That designation made the judges ineligible to use individual retirement accounts. Thus, the judges lack a readily available tax-deferred savings program to help provide for their spouses.

Permitting article III judges to participate in thrift savings would enhance the earning power of that plan. And it would reduce the return to other participants who are in the Federal Employees Retirement System.

Judges' participation in thrift savings would be more restricted than for other Federal employees. The judges' contribution cap would be 5 percent of salary, rather than 10 percent. The Federal Government would incur no additional cost since it would not make matching contributions for judges, as it does for other employees. Finally, judges would be required to contribute to the Government securities investment portion of the thrift savings plan, whereas other Federal employees have a choice among three plans.

In short, Mr. President, my amendment eliminates the anomalous treatment of article III judges when it comes to tax-deferred savings. And it does so in a way which enhances the investment potential of the thrift savings plan while causing no diminution of benefits for other participants. I urge its adopted by the Senate.

Mr. President, one final feature of my amendment would designate the U.S. Post Office building on Royal Parkway in Nashville, TN as the "Lewis E. Moore, Sr. Post Office Building". Mr. Moore served the U.S. Post Office with distinction for 39 years, 22 of those years as postmaster of the city of Nashville. I think there could be no more appropriate tribute to his dedication than naming this structure for Mr. Moore. I have cleared this provision with the bill's managers and I urge that it, too, be adopted by the Senate.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3713) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 5102) was passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ARMSTRONG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CORRECTION OF TECHNICAL ERRORS IN ENROLLMENT OF H.R. 3757

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be discharged from further consideration of House Concurrent Resolution 388.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 388) To correct technical errors in the enrollment of the bill H.R. 3757.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the concurrent resolution was considered and agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. ARMSTRONG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NATURE HAWAIIAN HEALTH CARE ACT

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 136.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 136) entitled "An Act to improve the health status of Native Hawaiians, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Native Hawaiian Health Care Act of 1988".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the United States retains the legal responsibility to enforce the administration of the public trust responsibility of the State of Hawaii for the betterment of the conditions of Native Hawaiians under section 5(f) of Public Law 86-3 (73 Stat. 6; commonly referred to as the "Hawaii Statehood Admissions Act");

(2) in furtherance of the State of Hawaii's public trust responsibility for the betterment of the conditions of Native Hawaiians, contributions by the United States to the provision of comprehensive health promotion and disease prevention services to maintain and improve the health status of Native Hawaiians are consistent with the historical and unique legal relationship of the United States with the government that represented the indigenous native people of Hawaii; and

(3) it is the policy of the United States to raise the health status of Native Hawaiians to the highest possible level and to encourage the maximum participation of Native Hawaiians in order to achieve this objective.

SEC. 3. COMPREHENSIVE HEALTH CARE MASTER PLAN FOR NATIVE HAWAIIANS.

(a) DEVELOPMENT.—The Secretary may make a grant to, or enter into a contract with, Papa Ola Lokahi for the purpose of developing a Native Hawaiian comprehensive health care master plan designed to promote comprehensive health promotion and disease prevention services and to maintain and improve the health status of Native Hawaiians. The master plan shall be based upon an assessment of the health care status and health care needs of Native Hawaiians. To the extent practicable, assessments made as of the date of such grant or contract shall be used by Papa Ola Lokahi, except that any such assessment shall be updated as appropriate.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $700,000 for fiscal year 1990 to carry out subsection (a).

SEC. 4. NATIVE HAWAIIAN HEALTH CENTERS.

(a) COMPREHENSIVE HEALTH PROMOTION, DISEASE PREVENTION, AND PRIMARY HEALTH SERVICES.—(1)(A) The Secretary, in consultation with Papa Ola Lokahi, may make grants to, or enter into contracts with, any qualified entity for the purpose of providing comprehensive health promotion and disease prevention services as well as primary health services to Native Hawaiians.

(B) In making grants and entering into contracts under this paragraph, the Secretary shall give preference to Native Hawaiian health centers and Native Hawaiian organizations, and, to the extent feasible, health promotion and disease prevention services shall be performed through Native Hawaiian health centers.

(2) In addition to paragraph (1), the Secretary may make a grant to, or enter into a contract with, Papa Ola Lokahi for the purpose of planning Native Hawaiian health centers to serve the health needs of Native Hawaiian communities on each of the islands of O'ahu, Moloka'i, Maui, Hawai'i, Lana'i, Kaua'i, and Ni'ihau in the State of Hawaii.

(b) QUALIFIED ENTITY.—An entity is a qualified entity for purposes of subsection (a)(1) if the entity is—

(1) a Native Hawaiian health center;

(2) a Native Hawaiian organization; or

(3) a public or nonprofit private health provider.

(c) SERVICES TO BE PROVIDED.—(1) Each recipient of funds under subsection (a)(1) shall provide the following services:

(A) Outreach services to inform Native Hawaiians of the availability of health services.

(B) Education in health promotion and disease prevention of the Native Hawaiian population by (wherever possible) Native Hawaiian health care practitioners, community outreach workers, counselors, and cultural educators.

(C) Services of physicians, physicians' assistants, or nurse practitioners.

(D) Immunizations.

(E) Prevention and control of diabetes, high blood pressure, and otitis media.

(F) Pregnancy and infant care.

(G) Improvement of nutrition.

(2) In addition to the mandatory services under paragraph (1), the following services may be provided pursuant to subsection (a)(1):

(A) Identification, treatment, control, and reduction of the incidence of preventable illnesses and conditions endemic to Native Hawaiians.

(B) Collection of data related to the prevention of diseases and illnesses among Native Hawaiians.

(C) Services within the meaning of the terms "health promotion", "disease prevention", and "primary health services", as such terms are defined in section 8, which are not specifically referred to paragraph (1) of this subsection.

(3) The health care services referred to in paragraphs (1) and (2) which are provided under grants or contracts under subsection (a)(1) may be provided by traditional Native Hawaiian healers.

(d) Limitation on Number of Entities.—During a fiscal year, the Secretary under this Act may make a grant to, or hold a contract with, not more than nine qualified entities in the State of Hawaii, as follows:

(1) Two entities serving individuals on Kaua'i, from which individuals on Ni'ihau shall also be served.

(2) Two entities serving individuals on O'ahu.

(3) One entity serving individuals on Moloka'i, from which individuals on Lana'i shall also be served.

(4) Two entities serving individuals on Maui.

(5) Two entities serving individuals on Hawai'i.

(e) Matching Funds.—The Secretary may not make a grant or provide funds pursuant to a contract under subsection (a)(1) to an entity—

(A) in an amount exceeding 75 percent of the costs of providing health services under the grant or contract; and

(B) unless the entity agrees that the entity will make available, directly or through donations to the entity, non-Federal contributions toward such costs in an amount equal to not less than $1 (in cash or in kind under paragraph (2)) for each $3 of Federal funds provided in such grant or contract.

(2) Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government or services assisted or subsidized to any significant extent by the Federal Government may not be included in determining the amount of such non-Federal contributions.

(3) The Secretary may waive the requirement established in paragraph (1) if—

(A) the entity involved is a nonprofit private entity described in subsection (b); and

(B) the Secretary, in consultation with Papa Ola Lokahi, determines that it is not feasible for the entity to comply with such requirement.

(f) Restriction on Use of Grant and Contract Funds.—The Secretary may not make a grant to, or enter into a contract with, an entity under subsection (a)(1) unless the entity agrees that amounts received pursuant to such subsection will not, directly or through contract, be expended—

(1) for any purpose other than the purposes described in subsection (c);

(2) to provide inpatient services;

(3) to make cash payments to intended recipients of health services; or

(4) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment.

(g) Limitation on Charges for Services.—The Secretary may not make a grant, or enter into a contract with, an entity under subsection (a)(1) unless the entity agrees that, whether health services are provided directly or through contract—

(1) health services under the grant or contract will be provided without regard to ability to pay for the health services; and

(2) the entity will impose a charge for the delivery of health services, and such charge—

(A) will be made according to a schedule of charges that is made available to the public, and

(B) will be adjusted to reflect the income of the individual involved.

(h) Authorization of Appropriations.—(1) There is authorized to be appropriated $5,000,000 for fiscal year 1991 and $10,000,000 for fiscal year 1992 to carry out subsection (a)(1).

(2) There is authorized to be appropriated for fiscal year 1990, $900,000 to carry out subsection (a)(2)

SEC. 5. ADMINISTRATIVE GRANT FOR PAPA OLA LOKAHI.

(a) In General.—In addition to any other grant or contract under this Act, the Secretary may make grants to, or enter into contracts with, Papa Ola Lokahi for—

(1) coordination, implementation, and updating (as appropriate) of the comprehensive health care master plan developed pursuant to section 3;

(2) training for the persons described in section 4(c)(1)(B); or

(3) identification of and research into the diseases that are most prevalent among Native Hawaiians, including behavioral, biomedical, epidemiological, and health services.

(b) Authorization of Appropriations.—There is authorized to be appropriated $1,000,000 for each of the fiscal years 1990, 1991, and 1992, to carry out subsection (a).

SEC. 6. ADMINISTRATION OF GRANTS AND CONTRACTS.

(a) Terms and Conditions.—The Secretary shall include in any grant made or contract entered into under this Act such terms and conditions as the Secretary considers necessary or appropriate to ensure that the objectives of such grant or contract are achieved.

(b) Periodic Review.—The Secretary shall periodically evaluate the performance of, and compliance with, grants and contracts under this Act.

(c) Administrative Requirements.—The Secretary may not make a grant or enter into a contract under this Act with an entity unless the entity—

(1) agrees to establish such procedures for fiscal control and fund accounting as may be necessary to ensure proper disbursement and accounting with respect to the grant or contract;

(2) agrees to ensure the confidentiality of records maintained on individuals receiving health services under the grant or contract;

(3) with respect to providing health services to any population of Native Hawaiians a substantial portion of which has a limited ability to speak the English language—

(A) has developed and has the ability to carry out a reasonable plan to provide health services under the grant or contract through individuals who are able to communicate with the population involved in the language and cultural context that is most appropriate; and

(B) has designated at least one individual, fluent in both English and the appropriate language, to assist in carrying out the plan;

(4) with respect to health services that are covered in the plan of the State of Hawaii approved under title XIX of the Social Security Act—

(A) if the entity will provide under the grant of contract any such health services directly—

(i) the entity has entered into a participation agreement under such plan; and

(ii) the entity is qualified to receive payments under such plan; and

(B) if the entity will provide under the grant or contract any such health services through a contract with an organization—

(i) the organization has entered into a participation agreement under such plan; and

(ii) the organization is qualified to receive payments under such plan; and

(5) agrees to submit to the Secretary and to Papa Ola Lokahi an annual report that describes the utilization and costs of health services provided under the grant or contract (including the average cost of health services per user) and that provides such other information as the Secretary determines to be appropriate.

(d) Contract Evaluation.—(1) If, as a result of evaluation conducted by the Secretary, the Secretary determines that an entity has not complied with or satisfactorily performed a contract entered into under section 4, the Secretary shall, prior to renewing such contract, attempt to resolve the areas of noncompliance or unsatisfactory performance and modify such contract to prevent future occurrences of such noncompliance or unsatisfactory performance. It the Secretary determines that such noncompliance or unsatisfactory performance cannot be resolved and prevented in the future, the Secretary shall not renew such contract with such entity and is authorized to enter into a contract under section 4 with another entity referred to in section 4(b) that provides services to the same population of Native Hawaiians which is served by the entity whose contract is not renewed by reason of this subsection.

(2) In determining whether to renew a contract entered into with an entity under this Act, the Secretary shall consider the results of evaluations under this section.

(3) All contracts entered into by the Secretary under this Act shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and may be exempted from the provisions of the Act of August 24, 1935 (40 U.S.C. 270a et seq.).

(4) Payments made under any contract entered into under this Act may be made in advance, by means of reimbursement, or in installments and shall be made on such conditions as the Secretary deems necessary to carry out the purposes of this section.

(e) Limitation on the Use of Funds for Administrative Expenses.—Except for grants and contracts under section 5, the Secretary may not make a grant to, or enter into a contract with, an entity under this Act unless the entity agrees that the entity will not expend more than 10 percent of amounts received pursuant to this Act for the purpose of administering the grant or contract.

(f) Report.—(1) For each fiscal year during which an entity receives or expends funds pursuant to a grant or contract under this Act, such entity shall submit to the Secretary and to Papa Ola Lokahi a quarterly report on—

(A) activities conducted by the entity under the grant or contract;

(B) the amounts and purposes for which Federal funds were expended; and

(C) such other information as the Secretary may request.

(2) The reports and records of any entity which concern any grant or contract under this Act shall be subject to audit by the Secretary, the Inspector General of Health and Human Services, and the Comptroller General of the United States.

(g) Annual Private Audit.—The Secretary shall allow as a cost of any grant made or contract entered into under this Act the cost of an annual private audit conducted by certified public accountant.

SEC. 7. ASSIGNMENT OF PERSONNEL.

(a) In General.—The Secretary is authorized to enter into an agreement with any entity under which the Secretary is authorized to assign personnel of the Department of Health and Human Services with expertise identified by such entity to such entity on detail for the purpose of providing comprehensive health promotion and disease prevention services to Native Hawaiians.

(b) Applicable Federal Personnel Provisions.—Any assignment of personnel made by the Secretary under any agreement entered into under the authority of paragraph (1) shall be treated as an assignment of Federal personnel to a local government that is made in accordance with subchapter VI of chapter 33 of title 5, United States Code.

SEC. 8. DEFINITIONS.

For purposes of this Act:

(1) Disease prevention.—The term "disease prevention" included—

(A) immunizations,

(B) control of high blood pressure,

(C) control of sexually transmittable diseases,

(D) prevention and control of diabetes,

(E) control of toxic agents,

(F) occupational safety and health,

(G) accident prevention,

(H) fluoridation of water,

(I) control of infectious agents, and

(J) provision of mental health care.

(2) Health promotion.—The term "health promotion" includes—

(A) pregnancy and infant care, including prevention of fetal alcohol syndrome,

(B) cessation of tobacco smoking,

(C) reduction in the misuse of alcohol and drugs,

(D) improvement of nutrition,

(E) improvement in physical fitness,

(F) family planning, and

(G) control of stress.

(3) Native Hawaiian.—The term "Native Hawaiian" means any individual who has any ancestors that were natives, prior to 1778, of the area that is now the State of Hawaii as evidenced by—

(A) genealogical records,

(B) Kupuna (elders) or Kama' aina (long-term community residents) verification, or

(C) birth records of the State of Hawaii.

(4) Native Hawaiian health center.—The term "Native Hawaiian health center" means an entity—

(A) which is organized under the laws of the State of Hawaii,

(B) which provides or arranges for health care services through practitioners licensed by the State of Hawaii, where licensure requirements are applicable,

(C) which is a public or nonprofit private entity, and

(D) in which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health services.

(5) Native Hawaiian organization.—The term "Native Hawaiian organization" means any organization—

(A) which serves the interests of Native Hawaiians,

(B) which is—

(i) recognized by Papa Ola Lokahi for the purpose of planning, conducting, or administering programs (or portion of programs) authorized under this Act for the benefit of Native Hawaiians, and

(ii) certified by Papa Ola Lokahi as having the qualifications and capacity to provide the services, and meet the requirements, under the contract the organization enters into with, or grant the organization receives from, the Secretary under this Act,

(C) in which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health services, and

(D) which is a public or nonprofit private entity.

(6) Papa Ola Lokahi.—The term "Papa Ola Lokahi" means an organization composed of—

(A) E Ola Mau;

(B) the Office of Hawaiian Affairs of the State of Hawaii;

(C) Alu Like Inc.;

(D) the University of Hawaii; and

(E) the Office of Hawaiian Health of the Hawaii State Department of Health.

(7) Primary health services.—The term "primary health services" means—

(A) services of physicians, physicians' assistants, and nurse practitioners;

(B) diagnostic laboratory and radiologic services;

(C) preventive health services (including children's eye and ear examinations to determine the need for vision and hearing correction, perinatal services, well child services, and family planning services);

(D) emergency medical services;

(E) transportation services as required for adequate patient care;

(F) preventive dental services; and

(G) pharmaceutical services, as may be appropriate for particular health centers.

(8) Secretary.—The term "Secretary" means the Secretary of Health and Human Services.

(9) Traditional Native Hawaiian healer.—The term "traditional Native Hawaiian healer" means a practitioner—

(A) who—

(i) is of Hawaiian ancestry, and

(ii) has the knowledge, skills, and experience in direct personal health care of individuals, and

(B) whose knowledge, skills, and experience are based on a demonstrated learning of Native Hawaiian healing practices acquired by—

(i) direct practical association with Native Hawaiian elders, and

(ii) oral traditions transmitted from generation to generation.

SEC. 9. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to restrict the authority of the State of Hawaii to license health practitioners.

SEC. 10. REPEAL OF DEMONSTRATION PROJECT.

Section 205 of the Indian Health Care Improvement Act, as added by section 203(c) of the Indian Health Care Amendments of 1988, is repealed.

SEC. 11. COMPLIANCE WITH BUDGET ACT.

Any new spending authority (described in subsection (c)(2) (A) or (B) of section 401 of the Congressional Budget Act of 1974) which is provided under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

SEC. 12. SEVERABILITY.

If any provision of this Act, or the application of any such provision to any person or circumstances is held to be invalid, the remainder of this Act, and the application of such provision or amendment to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

Mr. BYRD. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. ARMSTRONG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER FOR STAR PRINT—S. 2672

Mr. BYRD. Mr. President, I ask unanimous consent that a report attending Calendar Order No. 1045, S. 2672, providing for Federal recognition of the Lumbee Tribe of North Carolina be star printed.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE FEDERAL COURT INTERPRETER PROGRAM

Mr. BYRD. Mr. President, I ask unanimous consent that the action taken on Calendar Order No. 1121, S. 1867, be vitiated and that the bill be returned to the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE CALENDAR

Mr. BYRD. Mr. President, I inquire of the distinguished acting Republican leader if the following nominations have been cleared on his side of the aisle: Beginning on page 6, all of the nominations on page 6 of the Executive Calendar; the first three nominations on page 7 of the Executive Calendar going down to the Judiciary; and nominations under Department of Defense and New Reports on page 10; nominations on page 11 under the Air Force; nominations under page 12 under the Air Force, Marine Corps, and Navy; nominations on page 13 under Navy; all nominations on page 14 under Navy; all nominations placed on the Secretary's desk in the Air Force, Army, and Navy.

Mr. ARMSTRONG. Mr. President, did the leader intend to include these two items?

Mr. BYRD. No, not those under Foreign Service.

Mr. ARMSTRONG. I thank the leader.

With that understanding, the remainder of the list is in accord.

Mr. BYRD. I thank the distinguished Senator.

EXECUTIVE SESSION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the aforementioned nominations on the Executive Calendar; that they be considered en bloc; agreed to en bloc; the motion to reconsider en bloc be laid on the table; and the President be immediately notified on the confirmation of the nominees; and the Senate return to legislative session.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT

Kenneth Blankenship, of North Carolina, to be a Member of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development for a term of years prescribed by Public Law 99-498 of October 17, 1986. (New Position)

Herman Agoyo, of New Mexico, to be a Member of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development for a term of years prescribed by Public Law 99-498 of October 17, 1986. (New Position)

Thomas A. Thompson, of Montana, to be a Member of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development for a term of years prescribed by Public Law 99-498 of October 17, 1986. (New Position)

DEPARTMENT OF STATE

Richard Clark Barkley, of Michigan, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the German Democratic Republic.

Charles A. Gillespie, Jr., of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Chile.

Robert Bigger Oakley, of Louisiana, a Career Member of the Senior Foreign Service, Class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Islamic Republic of Pakistan, to which position he was appointed during the last recess of the Senate.

U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Carol C. Adelman, of Virginia, to be an Assistant Administrator of the Agency for International Development, vice Charles W. Greenleaf, Jr., resigned.

NUCLEAR REGULATORY COMMISSION

James R. Curtiss, of Maryland, to be a Member of the Nuclear Regulatory Commission for the term of five years expiring June 30, 1993, vice Frederick M. Bernthal, resigned.

DEPARTMENT OF DEFENSE

Ken Kramer, of Colorado, to be an Assistant Secretary of the Army, vice Michael P. W. Stone.

NEW REPORTS

Karen R. Keesling, of Virginia, to be an Assistant Secretary of the Air Force, vice Tidal W. McCoy, resigned.

Clyde O. Glaister, of Virginia, to be Comptroller of the Department of Defense. (New Position—Public Law 99-433)

AIR FORCE

The following named officer for appointment to the grade of lieutenant general on the retired list pursuant to the provisions of title 10, United States Code, section 1370:

To be lieutenant general

Lt. Gen. James A. Abrahamson, [redacted]FR, U.S. Air Force.

The following named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Lt. Gen. George L. Monahan, Jr., [redacted]FR, U.S. Air Force.

The following named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Lt. Gen. Craven C. Rogers, Jr., [redacted]FR, U.S. Air Force.

The following named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Thomas A. Baker, [redacted]FR, U.S. Air Force.

ARMY

The U.S. Army Reserve officer named herein for appointment as a Reserve Commissioned Officer of the Army, under the provisions of title 10, United States Code, sections 593(a), 3371 and 3384:

To be brigadier general

Col. Roger C. Bultman, [redacted].

MARINE CORPS

The following named officer to be placed on the retired list in the grade of general under the provisions of title 10, United States Code, section 1370:

To be general

George B. Crist, [redacted] U.S. Marine Corps.

The following named officer to be placed on the retired list in the grade of lieutenant general under the provisions of title 10, United States Code, section 1370:

To be lieutenant general

Anthony Lukeman, [redacted]/9903, U.S. Marine Corps.

NAVY

The following named officer of the U.S. Navy for appointment to the grade of rear admiral (lower half) while serving as Assistant Judge Advocate General of the Navy under title 10, United States Code, section 5149(b):

Capt. William L. Schachte, Jr., [redacted]/2500 Judge Advocate General's Corp, U.S. Navy.

The following named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be vice admiral

Vice Adm. Paul D. Miller, [redacted]/1110, U.S. Navy.

The following named officer to be placed on the retired list in the grade indicated under the provisions of title 10, United States Code, section 1370:

To be vice admiral

Vice Adm. Clyde R. Bell, [redacted]/1120. U.S. Navy.

The following named officer to be placed on the retired list in the grade indicated under the provisions of title 10, United States Code, section 1370:

To be vice admiral

Vice Adm. Walter T. Piotti, Jr., [redacted]/1110, U.S. Navy.

The following named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be vice admiral

Rear Adm. James F. Dorsey, Jr., [redacted]/1310, U.S. Navy.

The following named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be vice admiral

Rear Adm. Henry H. Mauz, Jr., [redacted] U.S. Navy.

The following named officer to be placed on the retired list in the grade indicated under the provisions of title 10, United States Code, section 1370.

To be vice admiral

Vice Adm. William E. Ramsey, [redacted]/1310, U.S. Navy.

The following named officer, under the provisions of title 10, United States Code, section 5149(a), to be assigned as Deputy Judge Advocate General of the Navy:

To be Deputy Judge Advocate General of the Navy

Rear Adm. (Lower Half) John E. Gordon, [redacted]/2500 Judge Advocate General's Corps, U.S. Navy.

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE AIR FORCE, ARMY, FOREIGN SERVICE, NAVY

Air Force nominations beginning Daniel W. Abrams, and ending William P. Murray, IV, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 28, 1988.

Air Force nominations beginning Roy M. Kring, and ending William E. Richardson, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 28, 1988.

Air Force nominations beginning Maj. James R. Bell, [redacted] and ending Maj. Raymond L. Webster, [redacted] which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 5, 1988.

Air Force nominations beginning Rodrigo B. Floro, and ending Salah H. Yashruti, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 5, 1988.

Air Force nominations beginning John W. Batcheller, and ending John F. Aita, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 5, 1988.

Air Force nominations beginning Maj. William B. Blakely, [redacted] and ending Maj. Thampi Verghese, [redacted] which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 11, 1988.

Army nominations beginning Chester L. Cupp, and ending *Edward J. Mistak, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 28, 1988.

Army nominations beginning *Thomas M. Amon, and ending *Jay D. Wells, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 28, 1988.

Army nominations beginning Larry D. Aaron, and ending 247x, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 3, 1988.

Army nominations beginning Paul W. Schwarz, and ending *Samuel C. Cutierrez, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of October 5, 1988.

Navy nominations beginning Patrick J. Bruscia, and ending John R. Aitken, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 28, 1988.

U.S. INSTITUTE OF PEACE

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Labor and Public Welfare be discharged from the following nominations for the U.S. Institute of Peace.

Let me ask the distinguished acting Republican leader if the five following nominations have been cleared on his side of the aisle, nominations that are to be discharged from the Labor Committee:

W. Scott Thompson, Allen Weinstein, Evron M. Kirkpatrick, Dennis L. Bark, and John Norton Moore.

Mr. ARMSTRONG. If the leader will bear with me just a moment, W. Scott Thompson is correct.

Mr. BYRD. Yes.

Mr. ARMSTRONG. Allen Weinstein?

Mr. BYRD. Yes.

Mr. ARMSTRONG. Evron M. Kirkpatrick?

Mr. BYRD. Yes.

Mr. ARMSTRONG. Dennis L. Bark?

Mr. BYRD. Yes.

Mr. ARMSTRONG. John Norton Moore?

Mr. BYRD. Yes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate return to executive session to consider the aforementioned five nominations, that they be considered en bloc, agreed to en bloc, and the motion to consider en bloc be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

W. Scott Thompson, of Virginia, to be a Member of the Board of Directors of the U.S. Institute of Peace for a term expiring January 19, 1993. (Reappointment.)

The following-named person to be a Member of the Board of Directors of the U.S. Institute of Peace for a term expiring January 19, 1993: Allen Weinstein, of the District of Columbia. (Reappointment.)

The following-named person to be a Member of the Board of Directors of the U.S. Institute of Peace for a term expiring January 19, 1993: Evron M. Kirkpatrick, of Maryland. (Reappointment.)

The following-named person to be a Member of the Board of Directors of the U.S. Institute of Peace for a term expiring January 19, 1993: Dennis L. Bark, of California. (Reappointment.)

The following-named person to be a Member of the Board of Directors of the U.S. Institute of Peace for a term expiring January 19, 1993: John Norton Moore, of Virginia. (Reappointment.)

Mr. ARMSTRONG. Mr. President, was Mr. Curtis one of the nominees we just acted upon?

Mr. BYRD. No. Only the five.

Mr. ARMSTRONG. I thank the Senator.

Mr. BYRD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF HERMAN AGOYO TO THE BOARD OF THE INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE ARTS AND CULTURE

Mr. BINGAMAN. Mr. President, I rise today in praise of Mr. Herman Agoyo, a worthy individual recently nominated by President Reagan to the Board of the Institute of American Indian and Alaska Native Arts and Culture [IAIA] in Santa Fe, NM. For the past several years, Mr. Agoyo has served as chairman of the All Pueblo Council, diligently working for all Native Americans in New Mexico.

Mr. Agoyo will join the institute as a pioneer in its newly established charter to lay a foundation for young Native American artists. As the only institution of its kind in our country, IAIA seeks to instill within its students the importance of remaining firmly committed to the preservation of the unique Native American cultural heritage, while, at the same time, it fosters and encourages an exploration of contemporary and personal artistic expression.

For board members, the challenges are many, but I am confident that Mr. Agoyo and his colleagues on the board will rise to the task. A revitalizing spirit has been generated, and a new era between the institute and the Federal Government has been formed. Working in a common effort to chronicle the artistic continuum of Native Americans, the institute strives toward a higher ground of expanding existing academic programs to include performing arts, literature, arts and sciences, and museum sciences. This goal can be realized through the hard work and dedication of board members such as Mr. Agoyo, who pledge their time and energy toward that end.

The institute has served Native Americans as a national fine arts and junior college, which has been internationally recognized through the talents and exhibitions of its students, faculty and alumni. The vision and aims of the Institute will be generously enhanced by the appointment of Mr. Agoyo, who will well serve the institute and those who converge there in a search for excellence.

I look forward to his expeditious confirmation. Thank you.

IN SUPPORT OF NOMINEES TO THE BOARD OF DIRECTORS OF THE U.S. INSTITUTE OF PEACE

Mr. MATSUNAGA. Mr. President, I rise in support of the President's nominees to the Board of Directors of the U.S. Institute of Peace.

My colleagues may recall that when the Peace Institute was established in 1984, the 11 public members of its first Board were appointed to staggered terms, with six serving for 2 years and five serving for 4 years. In 1987, President Reagan reappointed five members of the Board, and filled a vacant position. The terms of the five Board members initially appointed for 4 years expire on January 20, 1989. The President has nominated these five individuals to serve full 5-year terms, starting in January.

Under the able leadership of Board Chairman John Norton Moore and his fellow nominees, Dennis Bark, Evron Kirkpatrick, Scott Thompson, and Allan Weinstein, the U.S. Institute of Peace has made considerable progress. Although modestly funded during its first 4 years, it has provided more than $2 million to other institutions and individuals for research in the field of international peacemaking and conflict resolution. It has established the Jennings Randolph Program for International Peace to bring together scholars and leaders from this country and abroad to study peacemaking and conflict resolution. It has established a public outreach program, including public colloquia, a pilot television program for the Public Broadcasting System, a high school essay contest and a newsletter.

Confirmation of these five nominees will help ensure the Institute's continued progress during the next 5 years. Therefore, I urge that these nominees be approved.

LEGISLATIVE SESSION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

The PRESIDING OFFICER. Without objection, it is so ordered.

MISSISSIPPI RIVER COMMISSION

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be discharged from further consideration of the nomination of Sam Epstein Angel, of Arkansas, to be a member of the Mississippi River Commission for a term of 9 years; that the Senate proceed to the nomination; that the nomination be confirmed; the motion to reconsider laid on the table; and that the President be immediately notified of the confirmation of the nominee.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination considered and confirmed is as follows:

Sam Epstein Angel, of Arkansas, to be a Member of the Mississippi River Commission for a term of nine years.

FOREIGN CLAIMS SETTLEMENT COMMISSION

Mr. BYRD. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of the nomination of Stanley J. Glod, of Virginia, to be Chairman of the Foreign Claims Settlement Commission for the term expiring September 30, 1991; that the Senate proceed to the consideration of the nomination; that the nomination be confirmed; that the motion to reconsider be laid on the table; and that the President be immediately notified of the confirmation of the nominee.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination considered and confirmed is as follows:

Stanley J. Glod, of Virginia, to be Chairman of the Foreign Claims Settlement Commission for the term expiring September 30, 1991.

LEGISLATIVE SESSION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I renew my request. I ask unanimous consent that the motion to reconsider en bloc all of the previous legislative actions be laid on the table and, at the same time, as in executive session, I move to reconsider the confirmation of the nominees, that the motion to reconsider en bloc be laid on the table, and that the President be immediately notified of the confirmation of the nominees.

The PRESIDING OFFICER. Without objection, it is so ordered.

APPOINTMENT BY THE MAJORITY LEADER

Mr. BYRD. Mr. President, pursuant to appropriate provisions of Public Law 100-458, I appoint, from the private sector, William E. Cresswell of Mississippi, to serve a 2-year term, and William F. Winter of Mississippi, to serve a 6-year term, to the board of trustees of the John C. Stennis Center for Public Service Training and Development.

Mr. BYRD. Mr. President, does the distinguished Senator from Colorado, the acting Republican leader, have anything further he wishes to say or any further business he would like to transact?

Mr. ARMSTRONG. Mr. President, if the leader would yield, I thank him for his courtesy in doing so. I do have one brief observation.

NOMINATION OF KEN KRAMER

Mr. ARMSTRONG. Mr. President, among the names which have come across the desk for confirmation is that of my old and dear friend Ken Kramer, who the Senate has just confirmed to be Assistant Secretary of the Army, a post for which he is well qualified and where he will serve with great distinction. I am pleased about that. But I noted one other thing about it which also pleases me.

The leader may not recall it, but Mr. Kramer was, in fact, a candidate for membership in this body. He served in the House of Representatives with distinction from my State and then ran for the Senate. It did not turn out that he was elected. In fact, my colleague, Tim Wirth, was elected instead.

I noted with interest and, in fact, with satisfaction on the calendar that the report recommending Mr. Kramer's confirmation was submitted on behalf of the Armed Services Committee by Mr. Wirth, which I thought was reflective of a fine spirit and a fine tradition and had a certain symmetry to it. It reminds me that, on the occasion of Mr. Kramer's nomination, the most gracious statement of the day was made by Mr. Wirth.

So I am pleased that he was confirmed and it pleases me that it just worked out that way.

Mr. BYRD. Mr. President, "Cast thy bread upon the waters: for thou shalt find it after many days."

These things have a way of working out like that.

Mr. ARMSTRONG. So they do.

Mr. BYRD. I thank the distinguished Senator and tell him that it has been a pleasure working with him.

ORDERS FOR MONDAY, OCTOBER 17, 1988

RECESS UNTIL 10 A.M.

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 10 o'clock on Monday morning next.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that, following the recognition of the two leaders under the standing order, there be a period for morning business not to extend beyond the hour of 10:30 a.m. on Monday next and that Senators may speak therein for not to exceed 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS TO MONDAY, OCTOBER 17, 1988, AT 10 A.M.

Mr. BYRD. Mr. President, there being no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until the hour of 10 o'clock on Monday morning next.

The motion was agreed to; and, at 8:21 p.m., the Senate recessed until Monday, October 17, 1988, at 10 a.m.

NOMINATIONS

Executive nomination received by the Senate October 14, 1988:

NATIONAL LABOR RELATIONS BOARD

DENNIS M. DEVANEY, OF MARYLAND, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE REMAINDER OF THE TERM EXPIRING DECEMBER 16, 1989, VICE MARSHALL B. BABSON, RESIGNED.

IN THE NAVY

THE FOLLOWING-NAMED OFFICER, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601, TO BE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE PRESIDENT UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

VICE ADM. DIEGO E. HERNANDEZ, [redacted]/1310, U.S. NAVY.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 14, 1988:

THE JUDICIARY

RICHARD L. VOORHEES, OF NORTH CAROLINA, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

RICHARD L. NYGAARD, OF PENNSYLVANIA, TO BE U.S. CIRCUIT JUDGE FOR THE THIRD DISTRICT.

JOHN M. DUHE, JR., OF LOUISIANA, TO BE U.S. CIRCUIT JUDGE FOR THE FIFTH DISTRICT.

PAUL V. GADOLA, OF MICHIGAN, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN.

ALEX R. MUNSON, OF THE NORTHERN MARIANA ISLANDS, TO BE JUDGE FOR THE DISTRICT COURT FOR THE NORTHERN MARIANA ISLANDS FOR A TERM OF 10 YEARS.

NORWOOD CARLTON TILLEY, JR., OF NORTH CAROLINA, TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF NORTH CAROLINA.

CHARLES R. BUTLER, JR., OF ALABAMA, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ALABAMA.

LEWIS T. BABCOCK, OF COLORADO, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLORADO.

ROBERT LEON JORDAN, OF TENNESSEE, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TENNESSEE.

D. BROOKS SMITH, OF PENNSYLVANIA, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

JAY C. WALDMAN, OF PENNSYLVANIA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

DEPARTMENT OF JUSTICE

THOMAS M. BOYD, OF VIRGINIA, TO BE AN ASSISTANT ATTORNEY GENERAL.

DOUGLAS W. KMIEC, OF INDIANA, TO BE AN ASSISTANT ATTORNEY GENERAL.

STUART E. EARNEST, OF OKLAHOMA, TO BE U.S. MARSHAL FOR THE WESTERN DISTRICT OF OKLAHOMA FOR THE TERM OF 4 YEARS.

JAY B. STEPHENS, OF VIRGINIA, TO BE U.S. ATTORNEY FOR THE DISTRICT OF COLUMBIA FOR THE TERM OF 4 YEARS.

RICHARD W. CAMERON, OF CALIFORNIA, TO BE U.S. MARSHAL FOR THE SOUTHERN DISTRICT OF CALIFORNIA FOR THE TERM OF 4 YEARS.

DENNIS C. VACCO, OF NEW YORK, TO BE U.S. ATTORNEY FOR THE WESTERN DISTRICT OF NEW YORK FOR THE TERM OF 4 YEARS.

NOREEN T. SKAGEN, OF WASHINGTON, TO BE U.S. MARSHAL FOR THE WESTERN DISTRICT OF WASHINGTON FOR THE TERM OF 4 YEARS.

STATE JUSTICE INSTITUTE

JOSEPH WENTLING BROWN, OF NEVADA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE STATE JUSTICE INSTITUTE FOR A TERM EXPIRING SEPTEMBER 17, 1989.

THE FOLLOWING-NAMED PERSONS TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE STATE JUSTICE INSTITUTE FOR A TERM EXPIRING SEPTEMBER 17, 1991:

DANIEL JOHN MEADOR, OF VIRGINIA.
CLEMENT CLAY TORBERT, JR., OF ALABAMA.

JOHN F. DAFFRON, JR., OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE STATE JUSTICE INSTITUTE FOR A TERM EXPIRING SEPTEMBER 17, 1991.

DEPARTMENT OF STATE

RICHARD CLARK BARKLEY, OF MICHIGAN, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE GERMAN DEMOCRATIC REPUBLIC.

CHARLES A. GILLESPIE, JR., OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF CHILE.

ROBERT BIGGER OAKLEY OF LOUISIANA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE ISLAMIC REPUBLIC OF PAKISTAN.

U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

CAROL C. ADELMAN, OF VIRGINIA, TO BE ASSISTANT ADMINISTRATOR OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT.

NUCLEAR REGULATORY COMMISSION

JAMES R. CURTISS, OF MARYLAND, TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION FOR THE TERM OF 5 YEARS EXPIRING JUNE 30, 1993.

DEPARTMENT OF DEFENSE

KEN KRAMER, OF COLORADO, TO BE AN ASSISTANT SECRETARY OF THE ARMY.

KAREN R. KEESLING, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF THE AIR FORCE.

CLYDE O. GLAISTER, OF VIRGINIA, TO BE COMPTROLLER OF THE DEPARTMENT OF DEFENSE.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT

KENNETH BLANKENSHIP, OF NORTH CAROLINA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT FOR A TERM OF YEARS PRESCRIBED BY PUBLIC LAW 99-498 OF OCTOBER 17, 1986.

HERMAN AGOYO, OF NEW MEXICO, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT FOR A TERM OF YEARS PRESCRIBED BY PUBLIC LAW 99-498 OF OCTOBER 17, 1986.

THOMAS A. THOMPSON, OF MONTANA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT FOR A TERM OF YEARS PRESCRIBED BY PUBLIC LAW 99-498 OF OCTOBER 17, 1986.

U.S. INSTITUTE OF PEACE

THE FOLLOWING-NAMED PERSONS TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE U.S. INSTITUTE OF PEACE FOR A TERM EXPIRING JANUARY 19, 1993:

JOHN NORTON MOORE, OF VIRGINIA.
DENNIS L. BARK, OF CALIFORNIA.
EVRON M. KIRKPATRICK, OF MARYLAND.
ALLEN WEINSTEIN, OF THE DISTRICT OF COLUMBIA.

W. SCOTT THOMPSON, OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES INSTITUTE OF PEACE FOR A TERM EXPIRING JANUARY 19, 1993.

MISSISSIPPI RIVER COMMISSION

SAM EPSTEIN ANGEL, OF ARKANSAS, TO BE A MEMBER OF THE MISSISSIPPI RIVER COMMISSION FOR A TERM OF 9 YEARS.

DEPARTMENT OF JUSTICE

STANLEY J. GLOD, OF VIRGINIA, TO BE CHAIRMAN OF THE FOREIGN CLAIMS SETTLEMENT COMMISSION FOR THE TERM EXPIRING SEPTEMBER 30, 1991.

IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL ON THE RETIRED LIST PURSUANT TO THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. JAMES A. ABRAHAMSON, [redacted] U.S. AIR FORCE.

THE FOLLOWING-NAMED OFFICER, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601, TO BE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE PRESIDENT UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

LT. GEN. GEORGE L. MONAHAN, JR., [redacted]FR, U.S. AIR FORCE.

THE FOLLOWING-NAMED OFFICER, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601, TO BE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE PRESIDENT UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

LT. GEN. CRAVEN C. ROGERS, JR., [redacted]FR, U.S. AIR FORCE.

THE FOLLOWING-NAMED OFFICER, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601, TO BE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE PRESIDENT UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

MAJ. GEN. THOMAS A. BAKER, [redacted]FR, U.S. AIR FORCE.

IN THE ARMY

THE U.S. ARMY RESERVE OFFICER NAMED HEREIN FOR APPOINTMENT AS A RESERVE COMMISSIONED OFFICER OF THE ARMY, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 593(A), 3371 AND 3348:

To be brigadier general

COL ROGER C. BULTMAN, [redacted].

IN THE MARINE CORPS

THE FOLLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE OF GENERAL UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be general

GEORGE B. CRIST, [redacted] U.S. MARINE CORPS.

THE FOLLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE OF LIEUTENANT GENERAL UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

ANTHONY LUKEMAN, [redacted]9903, U.S. MARINE CORPS.

IN THE NAVY

THE FOLLOWING-NAMED OFFICER OF THE U.S. NAVY FOR APPOINTMENT TO THE GRADE OF REAR ADMIRAL (LOWER HALF) WHILE SERVING AS ASSISTANT JUDGE ADVOCATE GENERAL OF THE NAVY, UNDER TITLE 10, UNITED STATES CODE, SECTION 5149(B):

CAPT. WILLIAM L. SCHACHTE, JR., [redacted]/2500 JUDGE ADVOCATE GENERAL'S CORP, U.S. NAVY.

THE FOLLOWING-NAMED OFFICER, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601, TO BE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE PRESIDENT UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

VICE ADM. PAUL D. MILLER, [redacted]/1110, U.S. NAVY.

THE FOLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be vice admiral

VICE ADM. CLYDE R. BELL, [redacted]/1120, U.S. NAVY.

THE FOLLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be vice admiral

VICE ADM. WALTER T. PIOTTI, JR., [redacted]/1110, U.S. NAVY.

THE FOLLOWING-NAMED OFFICER, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601, TO BE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE PRESIDENT UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

REAR ADM. JAMES F. DORSEY, JR., [redacted]/1310, U.S. NAVY.

THE FOLLOWING-NAMED OFFICER, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601, TO BE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE PRESIDENT UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

REAR ADM. HENRY H. MAUZ, JR., [redacted] U.S. NAVY.

THE FOLLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be vice admiral

VICE ADM. WILLIAM E. RAMSEY, [redacted]/1310, U.S. NAVY.

THE FOLLOWING-NAMED OFFICER, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 5149(A), TO BE ASSIGNED AS DEPUTY JUDGE ADVOCATE GENERAL OF THE NAVY:

To be deputy judge advocate general of the Navy

REAR ADM. (LOWER HALF) JOHN E. GORDON, [redacted]/2500 JUDGE ADVOCATE GENERAL'S CORPS, U.S. NAVY.

IN THE AIR FORCE

AIR FORCE NOMINATIONS BEGINNING DANIEL W. ABRAMS, AND ENDING WILLIAM P. MURRAY, IV, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF SEPTEMBER 28, 1988.

AIR FORCE NOMINATIONS BEGINNING ROY M. KRING, AND ENDING WILLIAM E. RICHARDSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF SEPTEMBER 28, 1988.

AIR FORCE NOMINATIONS BEGINNING MAJ. JAMES R. BELL, [redacted] AND ENDING MAJ. RAYMOND L. WEBSTER, [redacted] WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 5, 1988.

AIR FORCE NOMINATIONS BEGINNING RODRIGO B. FLORO, AND ENDING SALAH H. YASHRUTI, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 5, 1988.

AIR FORCE NOMINATIONS BEGINNING JOHN W. BATCHELLER, AND ENDING JOHN F. AITA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 5, 1988.

AIR FORCE NOMINATIONS BEGINNING MAJ. WILLIAM B. BLAKELY, [redacted] AND ENDING MAJ. THAMPI VERGHESE, [redacted] WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 11, 1988.

IN THE ARMY

ARMY NOMINATIONS BEGINNING CHESTER L. CUPP, AND ENDING • EDWARD J. MISTAK, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF SEPTEMBER 28, 1988.

ARMY NOMINATIONS BEGINNING • THOMAS M. AMON, AND ENDING • JAY D. WELLS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF SEPTEMBER 28, 1988.

ARMY NOMINATIONS BEGINNING LARRY D. AARON, AND ENDING 247X, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 3, 1988.

ARMY NOMINATIONS BEGINNING PAUL W. SCHWARZ, AND ENDING • SAMUEL C. GUTIERREZ, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 5, 1988.

IN THE NAVY

NAVY NOMINATIONS BEGINNING PATRICK J. BRUSCIA, AND ENDING JOHN R. AITKEN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF SEPTEMBER 28, 1988.

EXTENSIONS OF REMARKS

ADDRESS TO MISSOURI SOCIETY OF PROFESSIONAL ENGINEERS

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. SKELTON. Mr. Speaker, on October 8, I had the opportunity to speak with the Missouri Society of Professional Engineers when they met at Whiteman Air Force Base, MO. My remarks to the society, a hard-working group dedicated to the success of the Show Me State's engineering efforts, centered on the need for increased education in basic math and science. My address to the group follows:

REMARKS OF CONGRESSMAN IKE SKELTON

Good afternoon, ladies and gentlemen. I am pleased to be part of the Missouri Society of Professional Engineers convention and to be here at Whiteman Air Force Base. I appreciate the opportunity to be with you today.

Whiteman Air Force Base should provide a confortable setting for this group of engineers, as Whiteman will be the site for one of America's most exciting and ingenious engineering feats of the century in terms of national security. As you know, Whiteman will house the first operational base for the Stealth Bomber which—while we've only seen an artist's rendering to date—appears to be a significant step forward for high-technology American engineering.

I also should point out that nearby is another important facet of our nation's engineering talents. On June 1, Fort Leonard Wood officially began flying the colors of the Army Engineering School. The relocation of the Engineering School from Fort Belvoir to Fort Leonard Wood means that our state houses the core of the Army's—and our Nation's—engineering program.

Ladies and gentlemen, we have a problem that we need to talk about today. It's a problem where out country—once unparalled in its technological success—is falling behind other nations in our scientific, engineering and technological advances. It's a problem where the number of American students enrolled in engineering has decreased by 17,000 since 1980. And it's a problem where only seven percent of our 17-year-olds have sufficient skills to succeed in college-level science courses.

My friends, we do indeed have a problem. In the early and mid-1900s, this nation was unrivalled in its success for inventing, designing and producing technologies that changed and catalyzed the world.

Recently, columnist Jack Anderson summed up how that situation has changed in the last decade or so: "New technologies are still coming out of America, but they're being developed, packaged and marketed by Japan. Unless present trends are reversed, Japan will surpass the United States as the world's No. 1 technological power."

As engineers in the midst of this changing scenario, I am sure you are as aware as I of this imbalance. Other nations, Japan in particular, are stepping into the technological void and taking advantage of our ideas. What hurts the most is that the products of U.S. research are being sold back to American consumers, with foreign interests raking in the profits. Right now, we Americans are the losers in this high-stakes game.

Let's look specifically at the field of engineering. As I noted earlier, engineering enrollments nationwide have decreased in this decade, including in some Missouri schools. In 1986, some 95,000 new engineering jobs came open and another 95,000 opened through retirement, deaths, and career changes. At the same time, only about 80,000 students received an engineering bachelor degree in 1986. You can see the kind of gap this leaves.

Another disturbing trend is that currently, 60 percent of doctoral candidates in American engineering schools are foreign-born. Why is that so troublesome? Because many of these students will take their high-technology education home. Again, America is the loser.

Furthermore, last year, the Congressional Research Service completed a study for me on the "supply and demand" of engineers and scientists in America. In particular, the study noted that "the engineering college faculty shortage as well as the graying of the science and engineering faculty in general, may play an important underlying role in the United States' ability to continue its current scientific and technological lead in the world."

Why are we falling behind in terms of sheer numbers and, in turn, jeopardizing America's engineering and technological superiority? I believe this is due in large part to the shortfall of our educational system in terms of basic math and science skills. Unless we can spark our children's interest at an early age in the world of science and mathematics, we obviously have a much smaller chance of seeing these young men and women choose a career in research or engineering or science.

Unfortunately, we also have a problem in terms of our national math and science curriculum. In September, the Educational Testing Service released a federally funded project called, "The Science Report Card." The study showed that science literacy among America's school children is at an "alarming and depressing" level and that more than half of the nation's 17-year-olds are so poorly educated in science that they cannot benefit from special job training and cannot perform work requiring basic technical understanding. Sadly, there is also a marked "gender gap" that shows girls well behind boys in science proficiency, and minorities are well behind the pack as well.

Worst of all, the Science Report Card shows American school children at all levels performed far behind children of the same age in most of the other 14 nations surveyed.

Missouri has felt the impact of this growing need for mathematics and science education in our high-tech world. Recently, the Kansas City region was vying for location of the SEMATECH project, a multi-corporation, high-technology center for developing high-speed computers. Missouri did not win its bid for the project, and part of the reason was reportedly that we did not have the higher education and technological resources needed to house the program. Whether or not we agree with this assessment, Missourians came out the losers.

We've talked at length about the problems we face. What we need now is a good look at the possible solutions, particularly the ways in which the federal government can help keep America at the forefront of the world's high-technology advances.

Specifically in terms of engineering, we have several options: First, we can recruit individuals trained in other fields such as chemistry, physics and mathematics whose skills can be applied to engineering; second, we can expand graduate assistantships and stipends to attract more engineers to doctorate programs and most importantly, we can encourage women and minorities to choose engineering careers.

While there are important steps to help fill the current needs of our engineering industry, we must go beyond the symptoms if we want to reach the core of the problem. We have to make science, math, and engineering education accessible to our children. And that means we continue to make education a top federal policy issue. This year, for the first time since 1981, I am pleased to report that the President requested a substantial increase in federal education funding. This increase was long overdue.

Now we need to ensure that a fair share of these monies go to basic math and science education. The funds can be used to create a more in-depth, hands-on science curricula for our youngsters; to recruit teachers who are proficient in scientific teaching; to integrate science teaching with our school subjects; and to develop regional science centers that would provide teaching methods and materials for educators.

As chairman of the Congressional Rural Caucus and as a native Missourian, I also have a special interest in making sure that school children in rural America have equal access to this increased math and science funding. Currently school children in rural schools are less likely to have access to advanced science courses than their urban cousins. In addition, suburban schools are, by and large, better equipped for science instruction than schools in rural and farming communities. We must balance the scales of our educational system.

If we want to get back into the game and to maintain our traditional lead in science and engineering, this is where we must begin—at the heart of the matter. The future of American engineering is in the hands of our children, so we must be sure that those hands are well-prepared for the job.

Over the past few years, I have worked with other members of Congress to craft a trade bill that would help American industry compete in the international marketplace. That is an important step for America's technological resurgence. And now we

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

can continue that effort by preparing our children for their turn at the wheel.

I am confident in your skills as our engineers of today, and I am certain that the next generation—with a little help from us—can keep this nation the most successful, productive country in the world.

We have a long history of success in this nation, and I believe we will see that tradition continue into the 21st century and beyond. Because, in America, when we have a problem, we find a solution.

Thank you and God bless.

DIGESTIVE DISEASE NATIONAL COALITION

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. CONTE. Mr. Speaker, in May I was very fortunate to be honored by the Digestive Disease National Coalition as the recipient of their prestigious President's Award. In 1984, in my capacity as ranking minority member of the Appropriations Subcommittee on Labor, Health and Human Services, I worked to establish a network of Digestive Disease Research Centers. These 12 centers, funded by the National Institute of Diabetes and Digestive and Kidney Diseases are located throughout the country at major medical institutions, including one at Harvard Medical School. Each center supports a number of scientists who specialize in research and focus on digestive problems such as inflammatory bowel disease, peptic ulcers, and gallstone disease. I am very proud of this initiative taken by the NIDDK to support this valuable centers program, and I am also very grateful that the Digestive Disease National Coalition's president, Dr. John T. Farrar, and chairman, Thelma Thiel, presented me with their President's Award.

Mr. Speaker, this body should be aware that the Digestive Disease National Coalition is an outstanding example of partnership among voluntary health organizations concerned with digestive diseases, professional organizations of those treating patients, and the pharmaceutical companies that manufacture products to treat and relieve digestive ailments. These groups have impressively combined efforts to support national policy to improve digestive disease research, health care, and education. Several of the industry representatives have made a special contribution recently by sponsoring patient education brochures on specific disorders of the digestive system. Mr. Speaker, the following are the 21 national organizations, as well as the 13 institutional members, that make up the Digestive Disease National Coalition.

NATIONAL ORGANIZATIONS

American Association for the Study of Liver Disease.
American Celiac Society.
American College of Gastroenterology.
American Gastroenterological Association.
American Liver Foundation.
American Society of Colon and Rectal Surgeons.
American Society for Gastrointestinal Endoscopy.
Center for Ulcer Research and Education Foundation.
Children's Liver Foundation.
Dean Thiel Foundation.
Gluten Intolerance Group.
International Association for Enterostomal Therapy.
National Foundation for Ileitis and Colitis.
North American Society for Pediatric Gastroenterology.
Oley Foundation for Home Parenteral and Enteral Nurtition.
Pennsylvania Society of Gastroenterology.
Society of American Gastrointestinal Endoscopic Surgeons.
Society of Gastrointestinal Assistants.
The Hemochromatosis Research Foundation.
The Society for Surgery of the Alimentary Tract.

INSTITUTIONAL MEMBERS

Glaxo, Inc.
Hoffman-LaRoche, Inc.
Janssen Pharmaceutica.
Marion Laboratories, Inc.
Norwich Eaton Pharmaceuticals, Inc.
Pfizer Pharmaceuticals.
Pharmacia, Inc.
Procter & Gamble Company.
Reed & Carnrick Pharmaceuticals.
William H. Rorer, Inc.
Sandoz Pharmaceuticals.
Searle Laboratories.
Smith, Kline & French Laboratories.

IN SUPPORT OF ILLINOIS AS THE SITE FOR THE SUPERCONDUCTING SUPER COLLIDER

HON. HARRIS W. FAWELL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. FAWELL. Mr. Speaker, I rise to express my view on the selection of the site for the superconducting super collider. There is no question that this is the most important decision to be made since President Reagan first approved the project almost 2 years ago, because more than any other single factor the site will directly impact the integrity and vitality of the SSC facility for its entire future.

After all the technical criteria, such as geology, regional resources, affordability, and so forth, are weighed, there is no question that Illinois offers far and away the best site for the SSC. The draft environmental impact statement makes clear that Illinois is not only environmentally sound, but it is far superior to the other sites. Building the SSC at Fermilab would require the construction of only 8 miles of new roads and 2 miles of new powerlines, the smallest infrastructure improvements of all the sites. Our site is located near a major municipal center, Chicago, and is conveniently accessed by all forms of transportation. In addition, Illinois' air quality is very good and its water supply is plentiful and convenient. (Only 32 wells, not the 320 stated in the draft EIS, would be lost to the public.) The impacts on farmland would be marginal; only Arizona would lose fewer acres of prime farmland to the construction of the SSC. Wetlands would also be virtually untouched, and Fermilab's prairie restoration project clearly demonstrates that Illinois cares about protecting its natural environment.

It is not enough to show that we can do it, however, we must also show that we can afford it. Here again Illinois stands head-and-shoulders above the competition. By incorporating the existing facilities at Fermilab into the SSC, the Department of Energy would save almost $500 million in construction costs and $88 million per year in operating costs. Total savings over the lifetime of the project would be in excess of $3.2 billion. This is in addition to the other infrastructure improvements that Illinois has offered, such as building the entire tunnel for the SSC ring at no cost to the Federal Government. Other States may talk of cost savings or cash contributions, but only Illinois offers real, concrete proof that it will save the taxpayers' money. By choosing Illinois as the site of the SSC, the Department of Energy will have not only have opted for scientific merit but will also have taken the most cost-efficient route. And as a member of the House Science Subcommittee on Energy Research and Development, the committee with primary jurisdiction over the SSC, I can plainly say that cost-efficiency will figure prominently into future authorization and appropriation hearings.

Finally, Illinois offers one clear advantage that cannot be measured in dollars or acres, and that is experience. For 20 years Illinois has worked closely with the Department of Energy to make the Fermi National Accelerator Laboratory an outstanding success. For 20 years Fermilab has been the world's center for high energy physics research. This kind of success cannot simply be packed up and moved away to a new site. Fermilab is high energy physics, and its loss would mean not only irreparable harm to Illinois but also a dangerous tearing of the fabric of the Nation's academic community. When weighed against all the advantages of the Fermilab site, there is no question that this risk would simply be too great to bear.

In short, Illinois offers the experience, the savings, and the environmental quality that no other State can match. When the American taxpayers are asked to pay for this $4 billion facility, they will want to be assured that the site was selected for sound technical and financial reasons. They will want to be assured that they are getting their money's worth. Illinois and Illinois alone offers these assurances.

TROUBLES AT O'HARE

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. PORTER. Mr. Speaker, the FAA has cut back on the flights into O'Hare International Airport in an unprecedented move to reduce air traffic controller mistakes. Since Friday, there have been four errors in the crowded skies above Chicago.

Because the staffing of air traffic controllers is of the utmost importance for air safety, in September of last year I offered an amendment to the Airport and Airways Improvement

Act to ensure that 75 percent of the air traffic controllers in all "high density" airports are full performance level controllers. The highest qualified controllers should be working at the high density airports, one of which is Chicago's O'Hare Airport. The amendment failed, but its debate on the House floor sent a message to the FAA that this body is adamant about the safety of the flying public.

I was concerned about air safety then and I am still concerned. Thirty controller errors at O'Hare in the last 12 months is appalling. I applaud the actions of the FAA. If we must reduce the number of flights into O'Hare then so be it. We must not compromise safety.

SOUTH AFRICAN SANCTIONS

HON. MICKEY LELAND

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. LELAND. Mr. Speaker, Minorco, a South African controlled company, is making a hostile bid for Consolidated Gold Fields—a British concern with strategic mineral assets in the United States. I hold grave reservations about South Africa's unhindered ability to use apartheid-generated profits to obtain control of United States corporations. Such investments provide stability for South Africa and apartheid.

Apartheid persists because it is profitable. Paying workers slave wages, and subjecting them to substandard working and living conditions provide South African companies large profit margins. Eliminating this incentive through economic sanctions will pressure Pretoria to re-examine its barbaric policies.

I submit for the record a recent *Washington Post* article which reported that the Government Accounting Office has concluded that the sanctions enacted in 1986 have caused South Africa to lose $469 million in sales, and that South Africa has been unable to replace its former United States exports by redirecting trade to other industrialized nations. In short Mr. Speaker, sanctions do work.

I am disappointed that on the eve of adjournment of the 100th Congress, our colleagues in the other body have not yet acted on sanctions legislation. This fight for freedom will continue.

[From the Washington Post, October 12, 1988]

GAO SAYS SANCTIONS HAVE CUT U.S. TRADE WITH SOUTH AFRICA

(By Carl Hartman)

Sanctions imposed by Congress in 1986 against South Africa have begun to bite into U.S. buying and investment there, congressional investigators say.

Congress imposed the sanctions because of South Africa's policy of racial discrimination against its non-white majority, overriding a veto by President Reagan in the process.

The General Accounting Office analyzed data for the first nine months of 1987, and found South Africa's major exports to the United States fell $417 million from the same period last year. The biggest drops were in iron, steel and uranium.

"South Africa has not been able to replace its former exports to the United States of these commodities by redirecting trade to the other [major trading] nations and has suffered further losses in exports to these countries as well," said the report to Sens. Edward Kennedy (D-Mass.) and Lowell Weicker (R-Conn.), who supported the sanctions.

The total decrease in South African sales was put at $469 million. The report said exports to West Germany, Japan, Canada, Italy and Hong Kong also decreased, although the drops were not as large as those in exports to the United States.

South African sales would have fallen more had Taiwan not increased its purchases by $164 million, the report said. U.S. investments in South Africa also fell in 1987, the report found, although total U.S. investment is up from the level of 1984.

American investments in South Africa increased nearly 10 percent from 1984 to 1986—from $2.04 billion to $2.23 billion—before declining in 1987, after sanctions were imposed, by about 5 percent to $2.12 billion.

"Despite more than half of U.S. companies withdrawing since 1984, the value of U.S. direct investments in South Africa . . . has increased 4 percent," the report said. "This increase is largely the result of significant reinvested earnings." In 1987 American companies reinvested $94 million of their profits in South Africa.

DEDICATION OF THE NEONATAL INTENSIVE CARE UNIT, CHILDREN'S HOSPITAL NATIONAL MEDICAL CENTER

HON. WALTER E. FAUNTROY

OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. FAUNTROY. Mr. Speaker, it gives me great pleasure to call attention to the recent dedication of the neonatal intensive care unit at Children's Hospital National Medical Center, a high-technology intensive care unit saving the lives of infants born with critical health care problems. This new unit marks the culmination of many months of planning, renovation and redesign to construct one of the largest most innovative neonatal intensive care units in the Washington metropolitan area. Already at the forefront of neonatal medicine, the new neonatal intensive care unit demonstrates the level of excellence achieved by the physicians, administrators and staff of Children's Hospital National Medical Center in the treatment of critically ill infants.

The neonatal intensive care unit at Children's Hospital National Medical Center combines state-of-the-art medical machinery and equipment with old-fashioned loving, nurturing care. The many innovative features of the nursery include lighting systems specially designed to admit light that is sensitive to the eyes of newborns and the addition of a breast-feeding and parent care room. A rocker, breast pump supplies and the patient care room serves as a special training room where parents are given instruction on how to care for their infants at home. In addition to teaching, this special feature provides parents with an opportunity to "room-in" with their infant prior to the patients release from the hospital. This concept of "rooming-in" is very new to neonatal intensive care units and Children's Hospital National Medical Center is one of only a few intensive care nurseries, in the Nation, to have this special feature.

Along with these innovative features, the neonatal intensive care unit houses the premier extra corporeal membrane oxygenation [ECMO] program, a revolutionary therapy, pioneered by Children's Hospital National Medical Center, that is saving the lives of infants suffering from acute respiratory distress. Children's Hospital is a national leader in ECMO technology, treating critically ill infants from across the Nation. Since Children's Hospital National Medical Center first developed the ECMO program in 1984, the lives of more than 150 children have been saved. Five years ago, 80 percent of those infants would have died. Today, as a result of ECMO, less than 20 percent of these infants die.

Mr. Speaker, I am proud to acknowledge the outstanding work being done on behalf of America's children by Children's Hospital National Medical Center of Washington, DC.—service and leadership that has marked it as a regional and national leader in the delivery of pediatric health care. I ask that my colleagues join me in saluting Children's Hospital National Medical Center on the dedication of its new intensive care unit and its 120 years of commitment to the infants, children and youth of our Nation's Capital.

TRIBUTE TO MR. AND MRS. JOSEPH A. SCAVNICKY

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. TRAFICANT. Mr. Speaker, today I rise in order to pay tribute to a most outstanding couple from my 17th Congressional District in Ohio, Mr. and Mrs. Joseph A. Scavnicky. Joseph Scavnicky and his wife, the former Jenny Polumbaro will be celebrating their 50th wedding anniversary on Thanksgiving Day of this year, November 24, 1988.

Joseph Scavnicky, who is of Slovak heritage, hails from Struthers, OH, where he worked on the family farm as a youngster. He worked for the Youngstown Sheet & Tube Co. in the Struthers works and then transferred as head peeler man in the Brier Hill works. He served in the steel mills for 40 years, where he was a member of the United States Steel Workers Local Union 1462. In April of 1976 he retired. Joe also served in the CCC's from September 1935 to April 1936. Today he enjoys fishing, gardening, and is also an avid bowler.

Jenny, who is of Italian heritage, was born and raised in the Brier Hill area of Youngstown. She worked as the manager of the men's department of a local clothing store and once sat on the board of the AFL-CIO Retail Clerks, Local Union 298. Today she is a devout gardener, producing one of the finest flower gardens in the area. She is also known throughout northeast Ohio for her excellent Italian cooking.

Jenny and Joe have one daughter, Grace Scavnicky Yavorsky, four grandchildren, and four great-grandchildren, whose company they enjoy immensely.

Mr. Speaker, it fills me with a great sense of pride to honor this highly respected, inspirational couple. I consider it a privilege to represent them and wish them the best of everything in their next 50 years of marriage.

MANDAN FAMILY GETS FIFTH EAGLE SCOUT

HON. BYRON L. DORGAN

OF NORTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. DORGAN. Mr. Speaker, I would like to share with my colleagues a story of special achievements by a family from Mandan, ND. Each of their five sons has earned the rank of Eagle Scout—the highest award given by the Boy Scouts of America.

I think this is an outstanding tribute to the parents, Ted and Agnes Kary, as well as to the sons, Dan, Dave, Jim, Mike, and Tom.

I would like to share with my colleagues the wonderful article on Tom's award that was published in the Bismarck Tribune. Congratulations to this special family for an extraordinary achievement.

[From the Bismarck Tribune]

MANDAN FAMILY GETS FIFTH EAGLE SCOUT

(By Christen Rennich)

Scouting is a family affair—at least for Ted and Agnes Kary of Mandan.

Tonight, Tom Kary will be their fifth and last son to receive the Eagle Scout Award from Boy Scouts of America. All seven of the Kary's children have been involved in scouting.

Ted Kary said that scouting activities take a lot of family time, but it's well worth it. "When you got a family and a bunch of kids, anything you have them in is going to take time."

The Kary's oldest child, Rhonda, 36, and Mary Jo, 26, were involved with Girl Scouts in Mandan while growing up. The Kary's five sons, Dan, 34, Dave, 29, Jim, 28, Mike, 21, and Tom, 17, have all earned Eagle Scouts—the highest award given by the Boy Scouts.

Earning the award is no easy accomplishment. There are three requirements for the award:

A minimum of 21 merit badges earned, 10 of which are required,

A leadership position held within the troop, and

A community service project with a target number of 100 hours of service.

"A few years ago they said it was one in 100 (scouts who earned the award.) Now it's about one in 250," Mrs. Kary said.

Parents usually spend even more time with their children when they're working for this award, she said. "It's something that has to be a family project. I think they do need to be encouraged by their parents to keep with it."

Tom Kary said he has had to deal with the social pressure of being the oldest in his troop and living up to the challenge of his older brothers. "Nobody ever said you had to be an Eagle Scout because your brothers did it. But it was a challenge. I thought, 'If they can do it, why can't I?'"

Tom said the community service project was the award requirement that involved the most time and help from his family.

His parents helped him choose and plan his project—to cleanup and landscape a traffic island at the intersection of 13th Avenue and Fourth Street in Mandan. "It started with just things like cleaning up parks and then Mon got the idea of picking up the island," Tom said.

"We thought of different things he could work on as a project. Tom Little, the city engineer, thought that one would be pretty good," Mrs. Kary said. "Heartview bought the lot across the street (from the island) and made it into a parking lot for visitors. These people would come from all over and saw this eyesore."

The project took a lot of effort. Tom said the island was covered with weeds and three-foot piles of dirt left from road construction. With the help of a few other scouts, Tom filled three Mandan city trucks full of dirt and leveled the ground. Then he pulled weeds, rototilled the area and put down plastic. He laid 30 tons of rock to cover the island.

The project took over a year. Tom put the finishing touches on by planting yucca plants last fall. "It involved a lot of time," he said. "One day another scout and I spent nine hours down there."

Scout Master Gary Flakker said Tom's project is a symbol of his growth. Tom's attitude toward reaching for the Eagle Scout award has changed from resentful pressure to ambitious aspiration.

"One time when I asked him why he wanted to become an Eagle Scout he said, 'Because it's a requirement in our family.' I think he was about 14 at the time. Since then he's matured. He went after this Eagle Scout because he wanted it.

"I guess it's just my opinion that being the fifth one would make it twice as hard as being the first one. This kid has done a really good job at carrying the family banner," Flakker said.

Flakker said the Karys are a special scouting family. "I think five Eagle Scouts in one family is really something to crow about. They're a pretty unique family. They're builders."

Tom's four brothers are coming from out of state to see him receive the award at 7 tonight First United Methodist Church in Mandan.

"For us it's a big deal," Mrs. Kary said. "As big as a wedding."

"We are strong believers in scouting," Mrs. Kary said. "I feel that scouting is something that goes with you the rest of your life."

THE AFFORDABLE FAMILY HOME MORTGAGE ACT

HON. NANCY L. JOHNSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mrs. JOHNSON of Connecticut. Mr. Speaker, today I am introducing legislation to make the dream of affording a home a little more attainable for American families. While there is little time remaining in the 100th Congress to take up this and other worthy proposals that have been advanced on affordable housing, I believe it is important that we take ideas such as this home to discuss with our constituents before Congress reconvenes in January

Mr. Speaker, when Congress took on the task of simplifying the Tax Code 3 years ago, no tax preference had broader support than the mortgage interest tax deduction. That deduction has made it possible for millions of families, even those of modest means, to own their own homes. But to be eligible to buy a home and use the deduction, a home buyer must first be able to come up with an adequate downpayment and have qualifying income. Unfortunately for many Americans, while they make a decent wage and save as much as possible, rising home prices keep the dream out of reach.

I believe there is a way we can utilize the home buyer's best friend, the mortgage interest deduction, in such a way that its benefits are available to home buyers at the time they need it most: up front, when they are trying to qualify for a mortage. Under my bill, the Affordable Family Home Mortgage Act, buyers could transfer their expected mortgage tax benefits to the lender for the first 5 years of the mortgage. The lender, in turn, would use the proceeds to buy down the interest on the mortgage over that time, reducing the buyer's monthly payment or allowing him or her to qualify for a larger loan. Meanwhile, the revenue loss to the Federal Government would be neglible, since the tax benefit would merely be transferred from one entity to another.

Using real numbers, the results of this proposal are dramatic. If a family were seeking a $100,000 mortgage, which today would buy a two-bedroom condo in many parts of the country, they could expect a monthly payment of about $880 on a 10-percent 30-year loan. Assuming the lending institution were in a 35-percent tax bracket, shifting the buyer's deduction to the lender would allow the lender to offer the loan at only 6½ percent. The same $100,000 loan at that rate would carry a monthly payment of only about $630 per month, 28 percent less than the family would pay with a conventional loan. Conversely, if the family could afford payments of $880 per month, they could qualify for a loan nearly 40 percent higher than the original $100,000.

Mr. Speaker, home ownership is truly the fiber in our society's fabric, and we cannot allow it to decline further. The strongest tool we have to encourage home ownership is already in the Tax Code, the mortgage interest deduction, and we can greatly expand its effectiveness by adopting this proposal. I urge my colleagues to consider it, and would welcome their comments on how it might be improved before the next Congress convenes.

TO GIVE WELFARE REFORM A CHANCE

HON. CHARLES E. BENNETT

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. BENNETT. Mr. Speaker, I read with great interest an editorial recently published in the Florida-Times Union on the proposed Welfare Program which I support and they do as well. I thought it appropriate to have this ably written editorial placed in the CONGRESSIONAL

RECORD; it having appeared in the October 3 edition of the Florida-Times Union as follows:

[From the Florida Times-Union, Oct. 3, 1988]

GIVE WELFARE REFORM A CHANCE TO BREAK THE CYCLE OF POVERTY

After more than a half-century of "family security" guaranteed by the federal government, change is coming.

Friday, Congress approved the $3.3 billion Family Security Act and sent it to the president.

It took two years for the measure to make its tortuous way through the House and Senate. But the final product holds the prospect of jobs, education and self-sufficiency to poor people who otherwise could face a lifetime of dependence on government handouts.

Sen. Daniel Patrick Moynihan, D-N.Y., the leader of the reform effort, said the bill constitutes "an entire redefinition and overhaul of what we've come to know as our welfare system," the first since it was established in 1935.

Aid to Families with Dependent Children, which was established in 1935 as part of the Social Security system, would be renamed the Child Support Supplement System under Moynihan's bill.

AFDC now supports 3.7 million families, including 7 million children.

Originally conceived as a widow's benefit when women did not work outside the home, AFDC now is dominated by divorced and unwed mothers at a time when the majority of new mothers are at work within a year of having a child.

Welfare will "no longer be a permanent or extended condition," Moynihan said. Instead, he said, the new system will stress work, child support and last-resort cash supplements while encouraging the poor to get the education and training needed to avert long-term dependence.

A key provision in the bill is mandatory workfare for a small percentage of welfare recipients.

That was the result of a bipartisan compromise and consensus across the political spectrum, which is probably the distinguishing feature of the bill. Not all were pleased with the result, of course.

Liberal House members contended the bill treats the poor unfairly by requiring some parents to work, including some with young children.

That represents the compromise between conservatives who wanted welfare trimmed back sharply and liberals longing for the 1960-style jobs programs abandoned in the 1970s.

Even in its final form, conservative opponents claim the bill will result in more people on the rolls at the end of five years than there would be under current law.

But that has been the problem. In spite of billions poured into welfare, job training and various programs from the "Great Society" of the 1960s, there has not been enough progress in reducing the incidence of poverty.

Participants in the new JOBS program would receive transportation and child care help. Welfare parents working their way off the rolls would qualify for a year of transitional child care and Medicaid benefits.

Money for new spending under the Moynihan bill would come from making permanent a tax refund withholding program to recover federal debts, and phasing out the business meals and entertainment tax deduction for people with incomes of more than $360,000. It would be eliminated entirely at $440,000.

This new effort may not hold all the answers to this intracable problem either, but it represent a good faith effort by both sides to help those among us who are most in need of help.

A CONGRESSIONAL SALUTE TO SISTER MARY ALPHONSUS TALLON

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. ANDERSON. Mr. Speaker, I rise today to pay tribute to an outstanding individual who has devoted five decades of her life caring for patients at the St. Mary's Medical Center in Long Beach, CA. Sister Mary Alphonsus Tallon will be honored on October 28, 1988, at the Starlight Ball Life Achievement Award Dinner, for her outstanding service at the St. Mary's Medical Center. This occasion gives me the opportunity to join Governor Deukmejian, Archbishop Roger Mahoney, and numerous other individuals, in expressing my sincere appreciation for her many years of hard work and unending commitment.

Sister Alphonsus came to the United States from Ireland as a young postulant in 1926 and went to Houston. In 1932, she settled in Long Beach to serve at what was then known as St. Mary's Hospital as a nurse. In addition to her nursing skills, her loving, compassionate ways brought spirit and joy to those who were recovering, and strength to those who grieved over the loss of a loved one. Throughout her 55 years of devoted service, Sister Alphonsus has cared for and watched over thousands of people, including many of Long Beach's most outstanding citizens and community leaders.

In addition to the job and hope that Sister Alphonsus has brought to St. Mary's, over the years in excess of $14 million has been donated to the medical center in her honor. In many ways, she has been a strong component in the success of this outstanding medical facility. As you can tell, Mr. Speaker, Sister Alphonsus commands the respect of her community, the St. Mary's Medical Center, and her country.

My wife, Lee, joins me in extending our congratulations to this caring and giving woman. She is truly a remarkable individual who has devoted her talents and energies to enriching the lives of so many other people. We wish Sister Mary Alphonsus Tallon and the St. Mary's Medical Center all the best in the years to come.

SANCTIONS AGAINST THE APARTHEID REGIME IN SOUTH AFRICA

HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. LEVINE of California. Mr. Speaker, as we near the closing hours of this session of Congress, we leave one critical piece of business unfinished: Legislation for tough sanctions against the apartheid regime in South Africa.

I am deeply disappointed that the other body has been unable even to consider this legislation on the floor, despite its approval by the Foreign Relations Committee. It is most unfortunate that a fundamental human rights issue has been turned into a political football—with the Republican Party clearly concerned that action on this legislation will highlight the depravity of the administration's "do-nothing" policy toward the abhorrent system in South Africa.

Action on the antiapartheid bill would also underscore the little-recognized fact that the Republican Presidential nominee's position on South Africa is also devoid of substance. Vice President BUSH would have us continue the bankrupt policy of this administration to assist and finance apartheid.

We were mandated by the 1986 Anti-Apartheid Act to invoke sanctions if the South African Government did not reform, did not take steps to improve basic human rights conditions for its black majority. Mr. President, the South African Government has taken no significant steps to dismantle apartheid in the last 2 years. They have completely disregarded our human rights pleas, and have revealed the full extent of their contempt and scorn for international political opinion.

Now is not the time to back away from our concerns and tell Botha to "have it your way." We can only hope to hasten the end of apartheid if we stand resolute and keep the pressure on. The Senate deadlock on this important question despite an overwhelming House vote in August in favor of the bill is a distressing development and a serious dereliction of duty.

TRIBUTE TO BARBARA FLANAGAN

HON. GERRY SIKORSKI

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. SIKORSKI. Mr. Speaker, on the retirement of Barbara Flanagan, as columnist Jim Klobuchar said, Barbara Flanagan is "a good journalist, a good woman, a good lady and a good friend."

At this point I include the article in the CONGRESSIONAL RECORD:

ON THE RETIREMENT OF BARBARA FLANAGAN—"A GOOD JOURNALIST, A GOOD WOMAN, A GOOD LADY AND A GOOD FRIEND."

(By Jim Klobuchar)

The closest I have ever come to injury in line of duty was an attempt to dance the tango with Barbara Flanagan.

Mountain climbs, parachute jumps and treks among the lions have produced no lasting agonies. Facing Barbara Flanagan on her own court nearly sent me into traction. I tore cartilage. I have never confessed it to her. It was some competition she dragged me into early in her stewardship as a newspaper columnist. Barbara could have been a ballroom dancer. She also could have been a lobbyist, florist prosecutor, fashion designer, architect, den mother, propagandist and town crier. Mercifully, God created one job—the newspaper column—where all of these Flanaganesque crafts and urges could be combined without requiring double joints or an environmental impact statement.

And now she is leaving the newsroom, and I have to tell you the world where I work will spin for a time with less zest and ginger, and I am dying a little today.

If you will allow a second thought, let me edit that last remark. I'm dying more than a little.

We have been chums in this business for nearly a quarter of a century. Professionally we have lived side by side, confidantes most of the time, startled watchers of humanity some of the time, sitting targets for the other's odd impulses. She needed a partner to record her impressions as a dancer and nobody volunteered. She conscripted me to dance the tango. I told her I was a zombie on the dance floor. She said if I could climb the Andes with ropes I could dance the tango with Barbara Flanagan and I should shut up and face the music. I tried to make that move in the tango where you whirl and stride across the floor, nostrils flaring in pagan passion.

So I came out with wounded cartilage. It happened. It could have been worse. It could have been what trainers call a groin injury. I saw a doctor. He said it was the kind of injury received by running backs who collide with linebackers.

And now she knows the truth, but I am beyond retaliation. I won't be able to tell her the locker room gossip that enthralled her, and I won't be able to nudge her chivalrously toward the door when she drones on and on about the potato heads who insist on ignoring her advice about how to convert downtown into Camelot.

In case we forget, lay no tombstones for Barbara Flanagan. She is retiring as a regularly printed columnist, not dying of consumption in the style of the operatic divas she loved to twitter about.

But she did so much more than that. Yes, she is an incurable name-dropper. There were two ways to respond to an editor's rusty old dictum that names make news. One was to dump four telephone directories on the editor's desk and defy him to turn them into a Pulitzer Prize. The other way was Barbara's—to burrow through the news columns, prowl the malls, dine with the stars and the innovators and to do selective eavesdropping at the salons.

Her column was popcorn for the arts and fashion and entertainment junkies, and also for thousands who liked the zip and obvious relish with which she lathered her space with those stars.

Yet the best people in this business are servants in a way. And the best part of what Barbara has done in newspapering is service. Hers has been a voice worth respect when she speaks about the re-creation of downtown Minneapolis and the vulnerability of the arts. It is authoritative because she is not only a fountain of ideas but because she understands the city's rhythms, knows its power barons—their conceits as well as their vision—and can locate most of the skeleton closets.

As much as any one person in the community, she has been responsible for the latter-day congeniality of the downtown, with its continental outdoor cafes, banks of flowers and strolling musicians. All of that might have materialized without Barbara Flanagan, but I doubt it. For if she has been a human being and woman of invariable good taste and civility, as a professional scold she has been as relentless as a fishwife.

I took her into the huddle of a professional football team and she was indebted to me for years, because she had been dying to know what they say to each other. And what they say to each other, if you must know, is "29 G-O, red, on 2." She was totally awed, as though she had just heard Pavarotti's private confessions.

So she has been inquisitive and a good reporter. She looks at newspapering to this day with the same stage-struck fizziness and joy that she brought every day to the search for that good and punchy lead paragraph of her youth. What kind of day was Parade Day of the Aquatennial? It was, Barbara announced, "a billowy, dilly of a day."

She left a note in my mailbox 22 years ago. "I can't keep a secret, but you can," it said. "Wish me luck and break a leg, Jimmy John, I'm getting married over the weekend." I wished her luck, but she didn't need it. It's been a good marriage, and she has deserved it. As a newspaper woman, she has been a welcome guest in hundreds of thousands of homes for a quarter of a century and as a citizen-journalist she has been a force for good in her community just as long.

I'm going to miss something more than that. We came from the same times, knew the same music and heroes, and found a kind of brother-and-sister trust in each other's attitudes and hopes. We sang the old radio jingles to each other all the time, and finished the Bing Crosby lyric the other would start. We have lived through waves of editors and colleagues, most of whom brought something worthwhile into our lives. We talked about them candidly when we talked, but I don't think ever with meanness. Newspapering is always better that way.

It has been good for me for many years, and an important part of that was the warmth of the kinship with Barbara Flanagan. She is a good journalist, a good woman, a good lady and a good friend.

She is also the only person I know who gives the grocery list to her husband in boldfaced type.

UNIVERSITY OF LOUISVILLE IS WORLD LEADER IN MICROCIRCULATORY RESEARCH

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. MAZZOLI. Mr. Speaker, as a followup on my comments inserted into the CONGRESSIONAL RECORD on October 6, 1988, with regard to the University of Louisville's Center of Excellence in Applied Microcirculatory Research, I commend to the attention of my colleagues the following article wich appeared in the first edition of Kentucky Teknifront, a new publication which describes promising research and development in Kentucky universities and colleges:

UNIVERSITY OF LOUISVILLE IS THE WORLD LEADER IN MICROCIRCULATORY RESEARCH

When blood flow to a leg is reduced by a partial blockage of a major artery, the affected limb, deprived of oxygen, cries out in pain.

Physicians typically treat the condition with vasodilators, drugs that enlarge the blood vessels. But in many cases this eminently logical approach doesn't help; in fact, it sometimes makes the pain much worse.

It turns out that the vasodilator, by widening the smaller vessels, also reduces the velocity of oxygen-rich red blood cells flowing through them. The result of this deceleration is that more oxygen is lost through diffusion as the blood makes its way to the affected tissues; the drug's side effect offsets, or overwhelms, its principal effect.

Until recently, no one suspected that this well-known side effect of vasodilators might be clinically significant. The concept of countercurrent-exchange oxygen diffusion in the small vessels hadn't been described. The persistence of the symptom—"pain of intermittent claudication"—was a mystery.

Indeed, it was one of a host of mysteries in the science of microcirculation—the study of the 99 percent of human blood vessels that are smaller than 1 mm. in diameter. Little was known about the workings of such vessels—chiefly because there were no instruments with which one could measure such things as the oxygen density in a capillary five one-millionths of an inch across.

That has changed in recent years with rapid advances in computers, microscopes, imaging technologies, fiber-optics and related fields. One result has been an explosion in knowledge of the microcirculatory system. Another has been the emergence of the University of Louisville as the world's leading research institution in the field.

U of L's Center of Excellence in Applied Microcirculatory Research, headed by Dr. Patrick Harris of the Department of Physiology and Biophysics, involves about 20 researchers from five groups of clinical and basic-science faculty members in the School of Medicine and from two engineering departments in the Speed Scientific School.

"Until about 1960 we knew very little about small vessels and related disease patterns and therapies," Harris said. "We were able to make very few measurements of what was happening in the small vessels, even in experimental animals. Diseases of the small vessels were lumped under the general heading of peripheral blood vessel disease."

"Then, around 1964, people started reporting breakthroughs in work related to making measurements. Suddenly there were 50 things you could measure in the small blood vessels. The result was a tremendous explosion in the field."

Among other things, researchers have found that:

The vessels rhythmically expand and contract about 30 times a minute. The discovery of what Harris calls this "never-suspected" phenomenon promises to be useful in anesthesiology because one of the first effects of any anesthetic is the loss of this "vasomotion."

Vessels can close down completely to shut off blood flow, or expand to three times their normal size to enhance it, in response to hormones.

The relationship between the small blood vessels and cellular products such as hormones and growth factors are still largely unexplored, but the complex picture that is emerging belies the intuitive tendency to think of the vessels as simple delivery tubes.

The small vessels can permit holes to exist in their walls large enough to allow the passage of virtually all molecules other than red blood cells—including white blood cells (leukocytes) and proteins.

This finding could have important implications in immunology, Harris said, and the fact that the abnormal vessels associated with tumors are particularly "permeable" is intriguing to cancer researchers.

Some vessels get smaller and become rigid—"literally becoming like steel pipes," in Harris' words—in people who suffer from hypertension. The phenomenon begins "very, very early, long before actual blood pressure becomes high."

The promise of very early diagnosis is obvious.

"We take the word 'applied' in our name very seriously," Harris said. "Up to now the science of small blood vessels hasn't had much effect on the doing of medicine. We want to change that. That's why we've planned efforts involving collaboration with clinicians."

The center is emphasizing several research areas, including:

The measurement of perfusion (blood flow) in vital organs.

Many disease processes produce little change in the overall flow to an organ, but markedly alter the distribution of the flow within the organ, producing localized tissue damage and too often contributing to "multiple-system organ failure," the most common cause of death in patients who fail to recover from trauma. U. of L. researchers plan to exploit fiber-optic techniques to refine perfusion measurements.

Testing for small-artery changes that signal the earliest stages of systemic vascular diseases, including diabetes mellitis and hypertension.

Early diagnosis is an obvious goal, but such a test also would be useful in controlling dosages of toxic drugs and in monitoring patients under anesthesia.

The development of better techniques for evaluating heart function.

One goal is refined impedance-cardiography technique for measuring mechanical heart function, which would involve less risk to the patient than current methods, such as left-heart catherization.

Another approach is to measure coronary performance by injecting fluorescent material into the inferior vena cava and timing its flow through coronary arteries.

The destruction of tumors with light.

Possibly because of the abnormal blood-vessel growth associated with tumors, some compounds injected into the bloodstream collect in tumors without accumulating in surrounding normal tissue. Some such compounds have another useful charateristic—they are transformed into poisons when exposed to certain wavelengths of light.

The clinical potential is obvious, especially for cancers of the lung, bladder, esophagus, rectum and colon, where tumors can be reached by light-transmitting fiber-optic bundles.

One drawback is that the mechanisms whereby such compounds are localized in tumors and by which the photochemical reaction kills tumors are not understood. The goal of one center project is to explore these processes through animal and eventually human studies.

An examination of white blood cells' behavior in the bloodstream—including their tendency to form clumps, to stick to vessel walls, and to plug capillaries.

A sensitive in-the-bloodstream measure of white-cell activation could aid in the diagnosis of many clincial situations, including the onset of low-level infections and the early stages of tissue-transplant rejection.

It is not by accident that this field of medical research has a strong flavor of engineering. The development of the necessary instrumentation often relies on engineering principles, and the microcirculatory system itself seems to yield its mysteries to an engineering approach.

Harris' own early training was in engineering.

Harris and his colleagues hope much of their research will have come to fruition by 1991, when the city of Louisville will serve as the host for the fifth World Congress on Microcirculation.

FATHER COYLE: DON'T BE ASHAMED OF OLD-FASHIONED VALUES

HON. CARL D. PURSELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. PURSELL. Mr. Speaker, I rise today to pay tribute to a man whose old-fashioned values have been a source of guidance and direction for many in Jackson County, MI. For the last 20 years, the Reverend Joseph W. Coyle has served as administrator at Jackson Lumen Christi High School. He has overseen the school's birth and growth and has announced that, at age 62, he will step down from his post on October 30, 1988.

I value the opportunity to know and work with Father Coyle. He is an inspiration to all Americans to work hard for those things they deeply believe.

Recently, I came across an article on Father Coyle from the October 7, 1988, issue of the Jackson Citizen Patriot. I don't think an article could be written that better expresses the strength, warmth, love and direction that emanates from this man. It is a pleasure for me to submit this article for publication in the CONGRESSIONAL RECORD and ask that my colleagues join me in wishing Father Coyle continued good health and happiness in all his future endeavors.

[From the Jackson (MI) Citizen Patriot, Oct. 7. 1988]

FATHER COYLE: DON'T BE ASHAMED OF OLD-FASHIONED VALUES

(By Monetta L. Horr)

A wonderful smile spreads across the face of the Rev. Joseph Coyle as he recalls the times he has made Catholics fidget when pressing them about their beliefs.

The opportunity comes often, at Sunday noon Mass at St. Mary's Catholic Church, during the many marriage ceremonies he performs and even in the football stands as he roots for the Lumen Christi Titans.

In other words, Coyle has made any occasion the right time to talk about the moral issues that Catholics often try to avoid. The smile means he is getting the message across.

"The goal is to be yourself in the very best sense of the word. Hold on ot your integrity and don't be ashamed of old-fashioned values," says Coyle, who is leaving his position as administrator at Lumen Christi High School after 20 years.

Coyle, 62, will be honored tonight at the 20th anniversary celebration of Lumen Christi. "The people in Jackson are genuinely good people," Coyle says. "Protestants, Catholics and Jews in this town—across the board—are good people."

They are also people of strong faith, he contends.

"Lumen Christi is proof of that Catholic faith. We would not be here without the parishes," says Coyle.

In his position at Christi, Coyle has raised countless dollars for financial support. In his position as priest, Coyle has raised the consciousness of Catholics throughout Jackson in his untiring quest to remind them of the basic principles of the Roman Catholic faith.

"The confusion, division, strife today among American Catholics is due in part to people trying to make up their own religion. The Holy Father (Pope John Paul II) is clearly emphasizing the teachings of Jesus Christ. He is absolutely an outstanding and marvelous leader. He doesn't tell people what he thinks they want to hear."

So it's not surprising when Coyle says the pope is the man he admires most.

Not only do Americans want to rewrite parts of the Catholic religion, but many, Coyle believes, are part of a "word-playing" game.

"We have such gorgeous names for selfish acts. Like abortion. Who are we kidding? That is killing a kid. And by taking a name and attaching it to a problem, people think it is solved. Like homosexuality. The word helps people hide but it isn't helpful for anybody."

Coyle calls married Catholic couples "selfish" who don't have children and he often talks about that topic during wedding ceremonies.

"The selfishness of modern man and woman is setting them up for real failure. Men and women get married to have children. If they don't want to have children, they shouldn't be married."

Coyle says it also pains him to hear the way people talk today.

"We need a huge bar of soap to cleanse the mouths of modern man and woman. Those words are in your songs, your movies, television programs. People are so worried about a clean environment yet their children are raised in homes inundated by filth.

"We call that freedom and that's sad. Freedom is wholesome, joyful and powerful. Freedom isn't filth," he says.

Parents, he continued, must be concerned about raising healthy children in both the physical and spiritual sense.

"Parents, like elementary school teachers, are our unsung heroes. Both have such a tremendous effect on people throughout their lives," he says.

Coyle can still name the nuns who taught him in his Philadelphia, Pa., grade school, most of whom he liked.

"In second grade, I prayed for a vocation in the priesthood. At St. Veronica's Catholic Church I always prayed 'My Lord and my God make me a priest.' I was a hell-raiser but I thought the most important thing I needed to do was get into heaven. And I decided being a priest was the greatest insurance policy I could have."

Coyle was the fifth of eight children, evenly split in boys and girls.

"I am the only one of my family to become a priest. I think I made my family apprehensive because they weren't sure if I would stay with it."

Even with guidelines from parents, teachers and the church, Coyle understands some people may get confused because of so many contradictory statements in the media.

"They need only pray and watch the leadership of the Holy Father. If you follow him you will be walking in the footsteps of Jesus Christ.

"Jesus Christ is the center of my value system. I tell everyone not to barter away their integrity. The source of integrity is Jesus Christ. That's why the name Lumen Christi is such an appropriate name—Light of Christ. Hopefully it has lighted up a good portion of Jackson County."

RETIREMENT OF ADM. LEE BAGGETT

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. SKELTON. Mr. Speaker, I take this moment to salute the distinguished service career of Adm. Lee Baggett, a man devoted to duty and a personal friend who retires later this month. Admiral Baggett embarked on his Navy career after graduating from the U.S. Naval Academy in 1946. His first assignment was as an ensign on the U.S.S. *Frank Knox* back in 1950. He then continued his training and education at the Naval Postgraduate School in Monterey, earned a master of science at the University of California, and graduated from the Naval War College in 1962.

Following his promotion to rear admiral in 1975, Admiral Baggett was assigned to Naval Material Command as Commander of the Anti-Submarine Warfare Systems Project Office. His later positions included Commander, Naval Surface Group, Midpac; Commander, Naval Surface Force, U.S. Pacific Fleet; Director of Naval Warfare at the Office of CNO. He was promoted to the rank of full admiral in 1985 while serving as Cincusnaveur, Cincsouth followed by assignment as Commander in Chief, U.S. Atlantic Command/Supreme Allied Commander, Atlantic.

Admiral Baggett's exemplary military performance has been recognized with many awards and honors, most prominent of which are the Distinguished Service Medal, Legion of Merit and the Bronze Star Medal with one Gold Star.

My fellow colleagues, I invite you to join with me in expressing appreciation to Adm. Lee Baggett in recognition for his many years of dedicated service to the Navy and to our country. I also offer my sincere thanks to his wife Doris for her loyalty, understanding, and willingness to make sacrifices—the signs of a devoted Navy wife. Congratulations and best wishes.

CELEBRATING THE ANNIVERSARY OF THE UNITED HELLENIC AMERICAN CONGRESS

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. PORTER. Mr. Speaker, I rise to call attention to the upcoming celebration on November 12 of the National United Hellenic American Congress' 13th anniversary.

The United Hellenic American Conference [UHAC] was conceived 6 months and 8 days after the Turkish Army invaded the sovereign nation of Cyprus. A group of distinguished members of the Greek-American community in Chicago met in January 1975 and established UHAC because of the need to create a unifying body to effectively focus the resources of Greek-Americans to protest the illegal invasion and occupation of Cyprus.

Leaders of the Greek-American community, using the newly established UHAC as a springboard, assembled in Brookline, MA, in June 1975 and established the National United Hellenic American Congress.

UHAC is a collection of many previously established groups in the Greek community. Independent organizations, church communities, professional groups, and distinguished and concerned individuals make up this broad-based and strong organization.

UHAC's main focus was initially the fate of the occupied Cypriot nation; however, they have since become committed to democratic causes and civic human rights matters all over the world. True to its laurels, UHAC is the organization through which thousands of Greek-Americans now take active roles in domestic and international issues.

Because UHAC was founded on such a broad base, it nourishes a deep sense of responsibility to the Greek-American community. Its achievements are many and to count them would produce a long list of beneficial involvements and efforts. Terrific amounts of hard work and energy on the part of the Greek-American community are solely responsible for what UHAC has achieved. It is this tremendous effort on the part of its members which UHAC is celebrating, and it is this same effort which we, the U.S. Congress, should honor.

TRIBUTE TO SPECIAL OLYMPIAN, MERIAM H. WASHINGTON

HON. WALTER E. FAUNTROY

OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. FAUNTROY. Mr. Speaker, I am proud to bring to the attention of my colleagues the accomplishments of special olympian, Meriam H. Washington of Ward Four in my Congressional District.

Ms. Washington, a Gold Medalist of the 1983 International Olympic Games, was 1 of 25 special olympians from 11 countries chosen to attend the 1988 Summer Olympic Games in Seoul, South Korea. As a part of the Olympic pagentry she met our Olympic heroes, observed them in action, and participated in non-Olympic sports competitions at the U.S. Military Forces facilities. Ms. Washington also participated in the painting of a giant wall hanging, entitled "Coming Together for Peace," which was presented to the Olympic Clinic located in the Olympic Village.

As a member of the District of Columbia Special Olympics SOFIT team, Ms. Washington is a multitalented athlete, active in field and track, swimming, and basketball. She is the recipient of various medals from spring and summer game competitions. Ms. Washington will surely remember the trip to the summer olympic competitions in Seoul, South Korea as one of the greatest highlights of her lifetime.

I am pleased to join with Meriam's family, friends, and a caring community in expressing our pride in her marvelous accomplishments.

A TRIBUTE TO MICHELLE BROWN

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. TRAFICANT. Mr. Speaker, today I rise to pay tribute to a young woman from Hubbard Township fighting for her life. At a time when many young people of her age are planning for their future, Michelle Brown is dealing with chemotherapy, radiation, and bone marrow transplants.

In September 1986, Michelle Brown was diagnosed as having acute myelogenous leukemia. Following chemotherapy and radiation treatments, the cancer was put into remission. However, in July 1987, Michelle came out of remission and underwent a bone marrow transplant. Although the leukemia has once again been put into remission as a result of this operation, Michelle has suffered severe side-effects from the treatments. Although the road to recovery is long, Michelle is determined to someday have the opportunity to deal with questions such as college and her dreams to work with abused children.

Throughout this ordeal, Michelle has displayed tremendous courage, not only for herself, but in helping others who are experiencing the evils of cancer. From the beginning, Michelle has been active in Friendship Circle, a cancer support group, and has assisted others with patient-community education.

There is no adequate way to describe the courage of Michelle Brown. Despite the seriousness of her own illness, Michelle has given of herself to those in need of counsel and support. I commend her for her dedication and commitment to others and wish her good health and comfort for the future.

CONGRESSIONAL TRIBUTE TO CORDELIA McALLISTER MANNING

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. ANDERSON. Mr. Speaker, I rise today to acknowledge and pay tribute to a distinguished citizen in my district, Cordelia McAllister Manning, past president of the Immaculate Heart Auxiliary. Cordelia will be inducted into the St. Anthony's High School Hall of Fame. This award is given to citizens who have graduated from St. Anthony's High School of Long Beach, to recognize their outstanding contribution to the community.

Cordelia attended Immaculate Heart College. Her goal was to become an educator and to teach young people the spiritual and intellectual values she had learned. Cordelia received her bachelor of arts in elementary education and then taught for 7 years in the Long Beach Unified School District.

Cordelia married Mark A. Manning in 1952. After their marriage, she dedicated the next 35 years to raising their family.

She was then elected president of the Immaculate Heart Auxiliary. Cordelia served four consecutive terms. Her credits as president include the expansion of the board of directors, a growth in memberships and the development of fundraisers.

Her charitable work includes serving as president of the Saint Barnabas Womens Council, chairperson to the Right to Life organization, membership in the Altars and Shrines committee, and the United Way. Together with her husband Mark, she participates as a Eucharistic Minister to the sick and elderly.

My wife, Lee, joins me in extending our congratulations to Cordelia McAllister Manning. Cordelia is truly a remarkable individual. She has devoted her talents and energies to enriching the lives of others. On behalf of the entire community, we wish Cordelia, her husband Mark, her children, Mark, Maria, Delia, Patrick, Julia, and Daniel, all the best in the years to come.

NEED TO ADDRESS TELECOMMUNICATION ISSUES

HON. BOB STUMP

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. STUMP. Mr. Speaker, I am including a copy of a letter which I recently wrote to Chairman JOHN DINGELL and that I wanted to share with other Members:

HOUSE OF REPRESENTATIVES,
Washington, DC, October 13, 1988.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, 2125 Rayburn HOB, Washington, DC.

DEAR MR. CHAIRMAN: A consensus appears to be building among Members over the need for Congress to address telecommunication issues early in the 101st Congress. There is a growing perception that the line of business restrictions placed on the Bell operating companies [BOC's] resulting from antitrust litigation, may be adversely affecting U.S. consumer access to technological advances.

Competitors of the BOC's have strong objections to outright removal of current business restrictions, and are very concerned over congressional initiatives in this area. Their input would obviously be critical to any legislative restructuring of the Court's application of antitrust laws to the telecommunications industry.

I believe it is time for Congress to review the impact of the Court's decision on the competitive position of our telecommunications companies. I urge you to begin this process early in the next Congress. Will work with you to determine whether modifications to the line of business restrictions are appropriate, and to fashion acceptable legislation to assure a vigorous and competitive telecommunications industry.

Sincerely,

BOB STUMP,
Member of Congress.

CONGRESS, AS WELL AS COURTS, MUST MAKE CONSTITUTIONAL LAW

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. EDWARDS of California. Mr. Speaker, I want to share with our colleagues an excellent article regarding the special prosecutor law which was written by Paul Gewirtz, professor of constitutional law at Yale Law School. The article is a lucid, scholarly description of Congress' role in making constitutional law. I believe it should be widely read, and I commend it to our colleagues attention.

[From the Hartford (CT) Courant, July 24, 1988]

CONGRESS, AS WELL AS COURTS, MUST MAKE CONSTITUTIONAL LAW

(By Paul Gewirtz)

Many have praised the U.S. Supreme Court's decision last month upholding the special prosecutor law, but the real credit belongs more to Congress than to the court itself.

The law was upheld because Congress did something that legislatures often fail to do. Rather than pass the buck to the courts, Congress carefully considered possible constitutional objections at the time it adopted the legislation. It wrote a balanced statute that took account of reasonable constitutional concerns and tried to minimize them.

In the end, the Supreme Court deferred to that effort. Its action illustrates the role legislatures can play in constitutional decision-making.

Congress' overriding concern, of course, was to address a sharply felt practical need—to create an independent prosecutorial office that avoided the conflict of interest of having executive-branch prosecutors investigate crimes possibly committed by top executive-branch officials.

But from the beginning, Congress heard arguments that principles of the separation of powers would be offended by having prosecutors appointed by the courts or by Congress, and then not removable by the president or attorney general. Such an approach, it was argued, would undermine legitimate executive-branch prerogatives and give inappropriate powers to other branches of government.

Aware of these issues, Congress held hearings that assessed the views of a broad range of constitutional law experts. The drafters of the legislation sought to address many of the constitutional concerns raised—when the law was passed and through subsequent refinements.

The statute does not create special prosecutors who are altogether independent. It preserves a role for the president and attorney general in both the appointment and possible removal of special prosecutors. In addition, it avoids an excessive role for the other branches of government.

Specifically:

The independent counsel is appointed by a court, but only if the attorney general first determines that there are "reasonable grounds to believe that further investigation is warranted."

A special panel of judges appoints the independent counsel, but the prosecutor's jurisdiction is based on the attorney general's initial investigation. The appointing judges are disqualified from sitting in any of the cases that the independent counsel actually brings—thereby protecting the integrity of the judicial branch.

The independent counsel retains a great measure of independence, but the executive branch retains some counter-check by having the power to fire the counsel for "good cause." A further counterbalancing check is built in, however, by providing for judicial review of any decision to fire.

Congress strictly limited its own role in appointing or removing independent counsels.

Taken together, these provisions give the special prosecutor the independence necessary to be a check on executive-branch lawlessness. But they also establish a broader interactive structure of checks and balances that promotes a measure of accountability and respects the prerogative of each branch.

Critics of the law invoke "separation of powers." But our system of separation of powers was designed to preserve checks and balances in the political system. The structure of intersecting roles provided in the independent counsel legislation suggests that Congress was seeking to foster a system of checks and balances rather than subvert it.

That, at least, was what the Supreme Court concluded. Its opinion makes clear that the legislation was upheld precisely because it provided for interactive relationships among the branches and showed no sign of being a congressional power grab.

Had Congress not been so careful and balanced in attempting to avoid constitutional difficulties, the legislation might well have been struck down.

The complex role that legislatures play in evaluating constitutional questions is often overlooked. Like every government entity, Congress has the duty to assess the constitutionality of its actions, and to try to act consistently with constitutional requirements. It should not pass the buck to the courts, though it sometimes does. By facing constitutional issues itself, Congress can avoid problems and help shape the courts' analysis.

On the other hand, the courts cannot automatically defer to the judgment of Congress solely because it has considered carefully the constitutionality of its actions.

Sometimes Congress is wrong. Sometimes Congress' assessment of constitutional issues may be distorted because its own interests are at stake, or because it slights the rights of politically weak individuals or minorities. The courts have their own expertise—and unique detachment.

But where Congress considers a constitutional question seriously, and where Congress is not acting to aggrandize its own power or in disregard of minority interests, the courts will give substantial weight to its attempt to navigate the constitutional waters.

This is especially so in the separation of powers area, where the Constitution's language is vague and general. Here, the constitutionality of government action often turns on whether it addresses a strong practical need, if only because the Constitution is a charter of practical government.

Where the legislature is moved by those felt necessities and at the same time attempts to respond in a balanced manner to the underlying constitutional values at stake, the courts are not likely to stand in the way.

LUCIAN C. WARREN: A DEDICATED NEWSMAN

HON. HENRY J. NOWAK

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. NOWAK. Mr. Speaker, today I share the sorrow of many people from western New York and the Washington, DC, area at the news of the death of a respected member of the journalism community, Lucian C. Warren.

A dedicated newsman, Lu Warren was one of the most energetic persons I have ever met. His enthusiasm and excitement for relentlessly pursuing and capturing a good story never waned during a career spanning more than half a century, the bulk of it in Washington.

While he formally retired as the bureau chief of the Buffalo News in 1978, Lu never really retired. He continued to contribute articles to the News and served as congressional correspondent for the Frederick, MD, News-Post.

Among his many achievements, perhaps his most notable was earning the equivalent of the triple crown for a newspaperman here in Washington, having served as president of the National Press Club, president of the Gridiron Club, and chairman of the Standing Committee of Correspondents which operates the press galleries in the Capitol.

Those truly notable achievements testified to Lu Warren's professional competence and the respect and admiration he earned from his peers.

He was a congenial man of accomplishment, who will truly be missed.

Following is the October 12 article on Lu Warren that appeared in the Buffalo News, which details his illustrious career:

LUCIAN C. WARREN DIES; WAS CHIEF OF THE NEWS WASHINGTON BUREAU

(By Douglas Turner)

WASHINGTON.—Lucian C. Warren, 75, retired Buffalo News bureau chief and one of the most influential leaders in the capital's journalistic organizations, died in his Maryland home early this morning after a long illness.

At various times in his long career, Warren, a Jamestown native, held all three of the top positions in this city's newspaper community.

He was president of the National Press Club, president of the Gridiron Club and chairman of the Standing Committee of Correspondents, the organization that runs the House and Senate press galleries in the Capitol.

"All of us at The Buffalo News who worked with Lu Warren had the greatest respect for his integrity, his personal warmth and charm and his dedication to the news business," said Murray B. Light, editor and senior vice president of The News. "He was a wonderful colleague, and he shall always evoke positive memories."

"The Washington press corps had the same feeling of high regard for Lu," Light said. "His professionalism, enormous energy level and enthusiasm had made him well known to hundreds of Washington's journalists and political leaders.

"It is not a cliche to say that Lu Warren will be sorely missed by all of us who had the privilege of knowing him and working with him."

Lee Roderick, the current press club president, called Warren "an outstanding leader" and recalled that Warren led the fight to break the color line at the club when he was president in 1955.

That year, the club admitted its first black member, Louis Lautier of the old Atlanta Daily World. Warren was inaugurated club president by Earl Warren, then U.S. chief justice.

Warren was the second Buffalo News reporter to be press club president, Roderick noted, the first being Alfred H. Kirchhofer in 1927, who later became the newspaper's editor.

Columnist Carl T. Rowan, president of the Gridiron Club, said Warren "was one of the most dedicated members the club ever had".

Warren began his career while still in high school with the old Jamestown Evening Journal, worked as a city reporter from 1937 to 1943 for the old Buffalo Courier-Express, and became the Courier's Washington correspondent in 1945. He was named as Washington bureau chief of The News in 1968.

During his time with The News, Warren filed dispatches from Vietnam, Eastern Europe, and Scandinavia and traveled the world covering former President Richard M. Nixon. In 1970, he filed an exclusive set of interviews with the White House staff and the Nixon Cabinet.

After his retirement from The News in 1978, Warren and his wife, Katherine, embarked on an around-the-world tour, filing dispatches from various world capitals.

He and his wife narrowly escaped death in 1984 when they survived a boating accident in the Potomac River that claimed the lives of former National Press Club President Michael Hudoba and his wife, Frances.

At the time of his death, Warren was the congressional correspondent for the Federick, Md., News-Post, and a contributing writer for The Buffalo News. He retired from full-time duties with The News in 1978 after 10 years as bureau chief.

Warren, a 1936 Phi Beta Kappa graduate of Denison University, was also widely published in such periodicals as the New York Times Magazine, Esquire and Coronet magazines, Parade, Family Weekly and others.

His influence in journalistic circles continued unabated, largely through his post as secretary and of the Gridiron Club, the organization that is host of one of the city's most prestigious political dinners.

Warren was occasionally called on to settle serious disputes, such as the time that House Doorkeeper James T. Molloy, a native of Buffalo, threatened in 1984 to take control of the House Press Gallery after an embarrassingly small turnout in the gallery for a speech by Irish Prime Minister Garrett Fitzgerald. Warren was chosen to mediate the dispute between Molloy and the 4,000-member press gallery.

Perhaps the highest honor conferred on Warren was his induction in 1986 into the Journalism Hall of Fame of the Washington Chapter of Sigma Delta Chi/Society of Professional Journalists. His class also included television correspondent Roger Mudd, political writer David Broder and Hugh Sidey, a correspondent from Time magazine.

Warren's honors included a Ernie Pyle journalism award for dispatches he wrote from Vietnam for The Buffalo News.

Survivors include his wife, the former Katherine Smith, a son, Lucian James Warren, and three daughters, Sylvia Warren, Katherine "Kitty" Sites and Nancy Warren-Stringos, and 15 grandchildren.

Memorial donations may be made to Hospice of Charles County, Md. Arrangements are being made by Arehart Funeral Home, La Plata, Md.

There will be no service here this week, but his ashes will be interred in a family plot in Bemus Point, Chautauqua County.

A memorial service at the National Press Club is being planned.

TRIBUTE TO AN OUTSTANDING VETERAN

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. SKELTON. Mr. Speaker, recently a good friend and an outstanding American passed away. Mr. Ewald Oberhelman, a well-known and highly respected resident of Higginsville, MO, was a World War II veteran and a leader in the American Legion.

As a businessman and as a family man, he was highly regarded by all who knew him. Missouri veterans owe a debt of gratitude to Mr. Oberhelman for his tireless efforts on their behalf.

I know this body joins me in extending sincere sympathies to his family and friends. Mr. Oberhelman will be missed.

TRIBUTE TO DANIEL PRATT

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. TRAFICANT. Mr. Speaker, today I rise to pay tribute to Daniel Pratt, the first Los Angeles policeman slain as a result of the gang violence in that city. Daniel Pratt is a former resident of Vienna Township, which is located in the 17th Congressional District.

During a high-speed chase on Saturday, September 3, Daniel Pratt was brutally murdered by gang members who sprayed the officers' car with automatic weapons fire. At the time of the incident, he and his partner were in pursuit of a vehicle which was believed to have been involved in a drive-by shooting earlier in the week.

Mr. Pratt was born on July 31, 1938, in Youngstown, OH. He is survived by his wife, Andria; a daughter, Amanda; and two sons, Daniel A., Jr., and Nicholas A.; his parents, Roy J., II and Joyce Kiddon Pratt; his stepmother, Betty; as well as four brothers and three sisters. Services for Daniel Pratt were held on Friday, September 9, at the First Baptist Church in Pomona, CA. He was buried at the Forest Lawn Memorial Cemetery, Covina, CA.

As a former sheriff and one who has experienced the loss of a fellow officer, I want to express my sincere condolences and offer my prayers to the family of Daniel Pratt. Mr. Speaker, I know that you join me today in this message to the family and will remember them in your thoughts and prayers.

A CONGRESSIONAL SALUTE TO THE FIRST UNITED METHODIST CHURCH OF SAN PEDRO

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. ANDERSON. Mr. Speaker, I rise, today to pay tribute to the First United Methodist Church of San Pedro which will be celebrating its first 100 years on October 23, 1988. This occasion gives me the opportunity to honor this integral part of the San Pedro, CA. community. In recognition of this centennial, I would like to share with my colleagues a bit of history provided to me by Mr. John Houston, church historian, on the beginning of this enduring congregation.

The initial meeting of the First United Methodist Church of San Pedro was on October 14, 1888, when Dr. W.S. Mathews, president of the University of Southern California, preached to a small group in Crocker's Hall. A short 2 weeks later 15 persons chartered and organized the church. Ten years later there were 43 members, meeting in a church building constructed from lumber salvaged from a wrecked ship.

The church relocated from 12th and Center Streets to 6th and Grand, and in August 1916, a frame structure was built to care for the growing congregation. In 1922, the present sanctuary was built, as well as the community's first gymnasium, worshipful sanctuary, and a three-story educational addition. In 1958, the new children's wing replaced the 1916 structure and the church plan was complete.

It was out of the Los Angeles Harbor and the San Pedro fishing community that Methodists salvaged lumber from a shipwreck to construct their new Methodist church building. Since that time the First United Methodist Church of San Pedro has continued to instill in its members the same strong will, inspiration, and compassion characteristic of its charter members.

My wife, Lee, joins me in extending our congratulations to this landmark religious institution on its first 100 years. We wish Rev. Dr. Jose M. Fernandez, the church staff, and all the members our very best wishes in the years to come.

A CRITICAL AVIATION AGENDA FOR THE NEXT ADMINISTRATION

HON. JIM LIGHTFOOT

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. LIGHTFOOT. Mr. Speaker, I rise today to draw the attention of my colleagues to a joint document released recently by the fourteen principal aviation groups in the United States. Entitled "A Critical Aviation Agenda for the Next Administration" the paper provides a clear, succinct, nonpartisan blueprint of steps to be taken if we are to meet the challenge of the 1990's and beyond with a vibrant aviation infrastructure.

It is important to emphasize not only the basic good sense reflected in its message, but also the diversity of interests which have come together to present this important paper. The groups involved represent the entire spectrum of aviation—manufacturers, labor, government, airlines, airports, private pilots and more—who have joined together in unprecedented agreement on a forward thinking agenda for change. The message delivered is strong, clear, and I believe, very accurate.

The agenda calls for a vibrant new approach to aviation by the Congress. Before the close of the 100th Congress, I would hope that my colleagues would join in a careful review of this important call to action, and personally commit themselves to make this a high priority issue in the 101st Congress. It is vitally important to our future economic success that we do just that. I include the document in the CONGRESSIONAL RECORD in its entirety:

A CRITICAL AVIATION AGENDA FOR THE NEXT ADMINISTRATION

THE AVIATION CHALLENGE

One of the major challenges facing the new Administration is to revive the nation's airport/airway system, which is suffering from congestion and neglect. Our aviation industry is absolutely essential to our nation's public interest and economic vitality. To achieve and maintain the highest levels of safety and efficiency, the time for action is now.

Airline delays are symptomatic of a national problem. The explosive growth in air travel following airline deregulation has been muffled by the government's failure to upgrade and modernize our aviation infrastructure to meet the demand. Billions have been amassed through aviation user fees to finance the required modernization and expansion, yet the Administration and the Congress have allowed a multi-billion dollar surplus to accumulate while aviation has suffered. This threatens key elements of our economy:

The aviation industry—which directly employs over 800,000 people, is an essential ingredient in our nation's international competitive position, and is a leading developer of new technologies;

The aerospace industry—that contributed a $15 billion surplus to partially offset our nation's enormous trade deficit in 1987;

Domestic airlines—which employ 500,000 people in a $50 billion per year industry;

General aviation and commuter airlines—which face the threat of restricted access to key airports as they provide air service to hundreds of smaller communities; and

The traveling public—which numbered 450 million passengers in 1987 and should double by the year 2000.

ISSUES AND SOLUTIONS

Time and again, highly credible groups, including the President's Aviation Safety Commission and the Office of Technology Assessment, have concluded that the major problems confronting aviation are in inadequate infrastructure—including growing airport and airway capacity limitations—and the government's failure to resolve these limitations in a timely way. The authorizing and tax-writing committees in the Congress have provided the authority and the tax revenues to do the job, but other committees have not approved full spending. Moreover, the Administration's reluctance to use all of the dedicated user fees for their intended purposes—out of deference to the national deficit—has been a major factor. Finally, the ability of the FAA to make decisions and carry out its reponsibilities has been frustrated and delayed by bureaucratic wrangling. The new Administration *must* coordinate its resources to meet this challenge. The question is—how?

REVITALIZE AND STREAMLINE THE FAA

This is our nation's aviation action agency. Its ability to do its job has been severely hampered by organizational and operational constraints. What does it need?

Assign an administrator for a multi-year fixed term to ensure a continuity of effort and the completion of long-term projects. He must be given authority and control commensurate with his substantial responsibilities.

Ensure that the FAA's Congressional budget request is adequate to meet system needs and is consistent with past commitments to aviation taxpayers to use—and not hoard—their user fees.

Consider and implement human resource management and compensation enhancements to meet the mobility and high-technology needs of its personnel system.

Streamline procurement system policies and procedures to meet both short and long-term acquisition requirements.

EXPAND AIRPORT CAPACITY

Airport capacity has not kept pace with the rapid growth of air travel. Billions of dollars in documented airport improvement requests lay unfunded in the FAA. The result has been congestion, travel delays and, as alleged by some, growing safety concerns among air travelers. What can be done?

Seek full spending of authorized trust fund monies for airport development and enhancement where needed and justified.

Provide additional runways and taxiways as required.

Explore expanded joint civil/military use of selected military airfields and public use of surplus fields.

Consider a federal approach to the aircraft noise issue that balances local community needs with the need for a national air transportation system.

Devote additional resources to research and development (R&D) efforts and current technology applications in search of airport capacity enhancements.

MODERNIZE THE AIR TRAFFIC CONTROL SYSTEM

The FAA has pursued implementation of the National Airspace System Plan (NASP) since its publication in 1982. Frustrated by contractor delays compounded by underfunding, and suffocated by well-intended bureaucratic oversight, FAA progress has not kept pace with expectations. Progress—not excuses—is what is required:

Accelerate implementation of the NASP, with particular attention to advanced automation and collision avoidance systems.

Increase R&D efforts for the next generation air traffic control system.

Develop and apply advanced simulation models in search of better, safer ways to control air traffic.

CONSIDER ADDITIONAL PRIORITY ISSUES

Other vital functions require attention:

Increased staffing in such areas as full performance controllers and skilled maintenance technicians;

Research into human factors and aircraft accidents;

Improved collection and dissemination of adverse weather and critical flight information to the pilot;

Improved controller and pilot training and certification; and

More navigational aids at smaller airports.

CONCLUSION

The new Administration has both the opportunity and the responsibility to address the needs of a neglected aviation infrastructure. A national aviation policy should be established. Significant advances in safety, service, competitiveness and technology will reward a responsible leadership. This nation simply cannot accept complacency. The entire aviation community stands ready to work with the new Administration to accomplish these vital objectives.

Submitted by:

Aerospace Industries Association; Air Line Pilots Association; Air Traffic Control Association; Air Transport Association of America; Aircraft Owners and Pilots Association; Airport Operators Council International; American Association of Airport Executives; Experimental Aircraft Association; General Aviation Manufacturers Association; Helicopter Association International; National Air Transportation Association; National Aeronautic Association; National Business Aircraft Association; and Regional Airline Association.

IN MEMORY OF GENE WEISS

HON. BENJAMIN L. CARDIN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. CARDIN. Mr. Speaker, I rise today the memory of an outstanding citizen of Baltimore, Gene Weiss, who died on Saturday, October 8, 1988.

Gene was active in politics for many years, serving most recently as administrative assistant to Howard County Executive Elizabeth Bobo. Gene was one of the founders and a past president of the Columbia Democratic Club, one of the most active political clubs in my district. He also contributed to the political process by registering untold numbers of new voters during voter registration drives in Howard County. In recognition of Gene's contributions, he was named Howard County Democrat of the Year in 1986.

Gene's public service was not limited to the political arena. Gene served in the U.S. Air Force for 20 years, and held the rank of master sergeant when he retired.

My deepest sympathies go out to Gene's wife Mary, his daughter Margaret Ashley, his three grandchildren and two brothers. Their loss is great, but they can be proud of Gene, his work and devotion to making his country and community a better place. He will be missed.

HAPPY 25TH ANNIVERSARY BISHOP IRETON HIGH SCHOOL

HON. STAN PARRIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. PARRIS. Mr. Speaker, I wish to extend congratulations on the 25th anniversary of the founding of Bishop Ireton High School. Since its opening in 1964 in Alexandria, Bishop Ireton has exceeded in academic excellence and provided one of the State's finest college preparatory programs.

As northern Virginia's only Catholic high school for young men, Bishop Ireton is devoted to developing the intellectual, creative, and physical potential of each student and to foster in him Christian ethical and religious values. The unique character and success of the school is based in large measure on the dedication and guidance of the Oblates of St. Francis de Sales, who have, for 25 years, run the school with distinction.

From the beginning, Bishop Ireton High School has welcomed students from all backgrounds without discriminating on the basis of race, creed, or economic measure. On average, Bishop Ireton students' scholastic aptitude test [SAT] scores consistently rank above public and private school students in the Washington metropolitan area and significantly above the national and State averages. In contrast to many schools where only 20 to 30 percent of students take the SAT, at Bishop Ireton 100 percent of the students take the test, and on average, 98 percent of the graduates attend the college of their choice.

The true mark of the school's success, however, can be found in the accomplishments of its graduates. In the 1987 National Merit Scholarship Program, 14 seniors were designated commended students, a distinction which placed them in the top 50,000 of more than 1 million Merit Program participants. The senior class also had four national merit semifinalists, one of whom ranked 38th out of 31,000 applicants. Over the years Bishop Ireton graduates have moved on to successful careers in all walks of public and professional life. Students and alumni also continue to provide, as they have for 25 years, volunteer services to the poor, elderly and disadvantaged citizens of northern Virginia.

Bishop Ireton's long list of achievements does not end with scholastics and community service. The school has produced several championship athletic teams in over a dozen varsity sports. In March, the school's delegation was 1 of only 4 schools out of 160 to win national recognition and receive a United Nations flag as an outstanding delegation to the economic and social council at the 25th North American Invitational Model United Nations. A pioneer among American secondary schools in establishing a critical languages program, Bishop Ireton was recently commended by the Geraldine Dodge Foundation as one of the handful of schools "leading the country" with the teaching of international languages. And the Bishop Ireton—St. Mary's Symphonic Wind Ensemble continues its 15-year tradition of performing internationally acclaimed world concert tours and presentations under the direction of Dr. Garwood Whaley.

Mr. Speaker, Bishop Ireton High School is truly a model for secondary education in the eighties and the decade ahead. I am proud to represent so many of the school's students, faculty and alumni, including the Rev. Dr. William Walsh, OSFS, who will be leaving next year after 10 years of distinguished service as principal.

Again, my personal congratulations on the anniversary of Bishop Ireton High School's first 25 years, and best wishes for a second quarter century of achievement as distinguished as its first.

BRAZIL-CHINA AGREEMENTS

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. ACKERMAN. Mr. Speaker, one of the ways Latin American nations have sought to circumvent the debt-related stranglehold on their domestic economies is through increased bilateral trade and technological exchanges with other developing countries. Brazil, bearing the largest external debt in the developing world, recently concluded agreements on trade, financial, and technical cooperation with the People's Republic of China. As Congress allocates foreign assistance funds and formulates U.S. regional trade policy, we should keep abreast of such negotiations.

The new Brazil-China agreements include plans to cooperate on developing Brazil's satellite-launching capabilities, which at a future date could be used to develop Brazil's first nuclear-weapons capable ballistic missile. In addition, both nations have recently become active arms exporters, particularly in the Middle East. Since these agreements could have both positive and ominous implications, I urge my colleagues to review the following article on Brazil-China ties which first appeared in the August 31 issue of the Washington Report on the Hemisphere, a biweekly publication of the Washington-based Council on Hemispheric Affairs [COHA]. The author of the piece is Margo Cunniffe, a research associate with COHA.

The article follows:

BRAZIL AND CHINA SEEK TECHNICAL COOPERATION

(By Margo Cunniffe)

President Sarney's early July "goodwill visit" to the People's Republic of China yielded a number of significant agreements, mainly concerned with improving bilateral trade and increasing technical cooperation between the two countries. Perhaps the most important involves the joint production of two space satellites over the next decade. The accords represent a vigorous effort to reverse the fate of their once flourishing, and now faltering, commercial relationship. Trade between the two countries has been halved, from $1.2 billion in 1985 to $620 million in 1987.

Both sides view technical cooperation as a vital component in current plans to revive trade. During Sarney's visit, the two countries signed an aerospace cooperation agreement which involves the joint production of the satellites. Funds totaling $150 million have been allocated for the project, $45 million of which will be provided by Brazil.

The first satellite, called the China-Brazil Earth Resources Satellite (CBERS), is scheduled to be launched from Shanghai in 1992. Before departing for China, Brazilian Science and Technology Minister Luiz Henrique da Silvera said that CBERS "will supply images of every point in Brazil," aiding environmental, meteorological and agricultural research. A second satellite, to be launched from the Alcantara base in Brazil in 1994, is still in the preliminary planning stages. Both satellites are to be built by the Space Research Institute (INPE) of Brazil with Chinese assistance. Scientists are set to begin serious work on CBERS this September.

A Brazilian spokesman stated that the agreement would be an important step in breaking the de facto high technology blockade imposed by the superpowers, noting that "the two countries have similar levels of development and countries of the Third World have not stopped suffering the discrimination of the superpowers in products of high technology." Celso Amorium, special secretary for international affairs of Brazil's Science and Technology Ministry, observed that "there is no fear of one country dominating the other."

Ralph Brescia, an official at the National Aeronautic and Space Administration (NASA), verified that there is no comparison between what Brazil and China possess in satellite technology and the capability of either the United States or the Soviet Union. Brazil has yet to launch its own satellite, and a data gathering spacecraft scheduled for a 1989 liftoff has encountered problems. Brescia stated, nevertheless, that Brazil has the "lead space agency in Latin America in facilities and concrete plans."

According to the July 17 Folha de Sao Paulo, the Brazilian Aeronautics Ministry will test a scaled-down version of its Satellite Launching Vehicle (VLS) this November, hoping to launch its own satellites using the VLS by 1995. Brazil's satellite program has been stymied by problems encountered in the development of the Sonda-4 rocket, designed to carry the VLS into space. These difficulties may have helped prompt Sarney to sign the cooperative agreement with Beijing.

Another NASA official told the Council on Hemispheric Affairs that China has the "expertise for the project." It has launched three communications satellites since 1984 and is presently developing a meteorological vehicle. Currently, China, a member of the exclusive club of countries which possess the technology to launch commercial satellites, is gearing up to take advantage of the private sector demand for payload rights which sprang from President Reagan's decision to bar commercial cargo from U.S. space shuttle missions for the near future. Beijing is prepared to make its first commercial launch in 1989 using the Long March CZ-3 rocket, from which CBERS will also be launched. The Chinese rocket has a maximum payload of one satellite weighing up to 4,000 pounds.

A State Department official described China's efforts to improve relations with Brazil as a means to "get their foot in the door" and to "keep in step with the Soviets." Brescia agreed, saying that Beijing's reason for signing this agreement is a "combination of science, politics and cost." The State Department official also noted that the Chinese, as a matter of policy, exchange trade delegations with other countries to keep "relationships on an even keel" and to remain open to any additional trade opportunities. China also is always seeking to acquire useful technology, but is usually constrained by its tight financial situation. The agreement with Brazil on satellite cooperation, with its provision for sharing the cost of the project, is highly desirable to Beijing and also must be seen as a first step towards further cooperation with Latin America's most technologically advanced nation.

Moscow may be less than delighted by China's improving relationship with Brazil. According to Amorium, Brasilia approached the Soviet Union two years ago with an offer to exchange satellite technology and sign a cooperation agreement, but was rebuffed. Now that the Sino-Brazilian agreement is in effect, this may spur the Soviets to increase cooperative efforts with Brazil.

Brazilian policymakers are obviously hoping that the other accords on energy, transport, and communications signed by Sarney during his visit to China will broadly stimulate trade, something that the country's deeply troubled economy badly requires. The chief obstacle often blocking such growth is the incompatibility of the two countries export products. Both nations have a limited range of goods available for export, many of which are either redundant or unsuitable for the other.

Beijing and Brasilia are also reportedly negotiating arms transfer agreements, as Brazil is apparently interested in purchasing missiles from China, and in turn, as one of the world's leading arms exporters, is prepared to ship Beijing a whole range of weaponry and military vehicles. Brazilian Army Minister Gen. Leonidas Pires Goncalves, who made an official visit to China in late June, favors the development of stronger ties to China in this area. The June 29 O Estado de Sao Paulo reported that any such agreement would be made through "reciprocal imports and through resales to third parties." No arms sales or agreements have yet been realized.

According to the July 21 Folha de Sao Paulo, successful launches of the VLS with the Sonda-2 rocket have paved the way for Brazil to develop its first ballistic missile. Brazil's uranium enrichment capabilities and sophisticated nuclear research facilities suggest that the country could eventually develop nuclear weapons, if it hasn't done so already. Due to budgetary constraints, however, the nuclear program has ostensibly been halted, according to the July 21 O Estado de Sao Paulo. Still, rumors persist that secret nuclear research may be continuing under the Brazilian National Security Council, the armed forces superagency which is estimated to control a budget of $2 to 3 billion.

[Margo Cunniffe is a research associate with the Washington-based Council on Hemisperic Affairs.]

TRIBUTE TO JACK VINYARD

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. SKELTON. Mr. Speaker, today I rise to offer sincere congratulations to an outstanding resident of my own hometown of Lexington, MO. Jack Vinyard, who currently serves as president of the Missouri State War Dads, was recently chosen president of that group's national organization.

The American War Dads is a nationwide group, which includes parents and other individuals who are concerned about the welfare and treatment of America's soldiers and veterans. In particular, the War Dads have put forth a great deal of effort on behalf of disabled American veterans. I recently had the opportunity to address the national convention of the War Dads and was pleased to see the hard work Mr. Vinyard and his fellow War Dads contribute to our country's past and present servicemen.

Further, the Vinyards have made their service a family affair. Mrs. Vinyard serves as president of the War Dads Auxiliary in the Lexington area.

I know that this body joins me in congratulating Mr. Vinyard on his selection as president of the American War Dads and wishing him the best in his service. Missouri is proud to produce such outstanding Americans.

TRIBUTE TO RON STOOPS

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. TRAFICANT. Mr. Speaker, it is with great sadness that I rise today to pay tribute to a fine man from my 17th Congressional District in Ohio, Mr. Ron Stoops. This exceptional high school assistant football coach, Ron Stoops died suddenly on October 7, 1988 after his Cardinal Mooney football team posted a Friday night victory.

Ron Stoops had a tremendous impact on athletics in the Mahoning Valley. As an assistant to Mooney head coach Don Bucci, he won the respect and admiration of friends, athletes and fellow coaches with whom he worked. His selflessness and determination allowed him to become one of the most admired coaches in Cardinal Mooney history, both on and off the field. Although I never had the opportunity to play high school football with Ron Stoops, I did have the privilege of throwing a pass to him in a benefit football game we participated in in the 1960's. Even then I recognized his athletic prowess and genuine commitment to sportsmanship.

Above all, Mr. Speaker, Ron Stoops was a man devoted to his God, his family, and his community. He leaves his wife Evelyn and their two daughters and four sons with sadness, but also with the assurance that he will always be remembered in his community.

Mr. Speaker, it gives me a great deal of pride to salute Ron Stoops, a man I was more than honored to represent.

CONGRESSIONAL TRIBUTE TO LARRY ALLISON

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. ANDERSON. Mr. Speaker, I rise today to acknowledge and pay tribute to a distinguished citizen in my district, Larry Allison, senior vice president and editor of the Long Beach Press-Telegram. Larry will be inducted into the St. Anthony's High School Hall of Fame. This award is given to citizens who graduated from St. Anthony's High School of Long Beach, to recognize their outstanding contribution to the community.

Larry was born in Phoenix, into a newspaper family. His grandfather and father were in the newspaper business.

Mr. Allison attended parochial schools in Los Angeles and Long Beach, and was graduated in 1952 from St. Anthony High School. He then left for Paris, where he studied not journalism, but French literature, philosophy, and political science. He later attended California State University, Long Beach, Harvard University as a Nimen fellow, and Stanford University Graduate School.

His first reporting job was at a small weekly newspaper in Downey. From there, Larry went on to work in Lexington, KY and Detroit, MI before rising to editor of the Press-Telegram in 1978.

He is a member of the board of United Way Region III and of the St. Anthony High school Foundation.

Larry lives in Surfside, with his wife Patricia. His son Larry, Jr., is a graduate student at American University in Washington, DC.

My wife, Lee, joins me in extending our congratulations to Larry Allison. Larry is truly a remarkable individual. He has devoted his talents and energies to enriching the lives of others. On behalf of the entire community, we wish Larry, his wife Patricia and their son Larry, Jr., all the best in the years to come.

INTRODUCTION OF LEGISLATION TO PROVIDE TAX INCENTIVES FOR ALTERNATIVE FUEL USE AND OIL AND GAS EXPLORATION AND DEVELOPMENT

HON. MICHAEL A. ANDREWS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. ANDREWS. Mr. Speaker, energy nourishes America and the world. The legislation I am introducing today will work hand in hand with oil and gas producers, consumers, and environmentalists to craft a national energy policy devoted to energy security, clean air, conservation, and domestic economic growth and prosperity. These two bills, the Energy Security Incentive Act and the Alternative Fuels Incentive Act, join with my oil import fee bill—the Energy Security Tax Act, H.R. 2198—to create a national framework for clean air and energy security legislation. I have introduced this legislation in discussion draft form, and I invite comment on the substance and goals of these bills. I plan to introduce a complete package of legislation early next year and I look forward to working with my colleagues and the private and public sectors on these ideas.

My hometown of Houston is the energy capital of the world. Texas has abundant resources to warm our homes, fuel our industries, and power our transportation networks. I propose today to tap those resources through tax incentives for oil and gas exploration and development. These incentives, such as eliminating intangible drilling costs as a preference item under the alternative minimum tax and creation of a crude oil production and natural gas exploration and development credit, will encourage our domestic oil and gas industry to add to our domestic reserves and reduce our dependence on unreliable overseas suppliers. These energy-production incentives gives us a platform on which we can build a national energy policy.

A national energy policy must reflect reliability and security, efficiency and conservation, the environment, and price stability. To achieve these ends, I propose to bring together the oil and gas industry, the environmental community, and the consumers of America to forge a dynamic consensus devoted to the prospect of ample fuel at reasonable prices, clean air and national security. In pursuit of this end, my Alternative Fuels Incentive Act will encourage the use of clean-burning fuels such as natural gas, liquid petroleum gas, methanol, ethanol, and other alcohol fuels. Use of alternative fuels will lessen our reliance on imported oil, which has risen to more than 40 percent of all oil consumed in this country. This national security concern has been evidenced recently by attempts to reduce directly the flow of imported oil into the United States.

These incentives converge with the emerging national consensus that we need to increase the use of alternative fuel vehicles, especially in urban areas where air pollution threatens the quality of life. The problems of the greenhouse effect are ones that we cannot ignore. In Houston, as in many other major cities across the Nation, we have an ozone pollution problem, and 50 to 55 percent of this ozone comes from automobile exhaust. While many questions remain concerning which alternative fuel vehicles best answer which needs, I believe that my introduction today of a discussion bill with broad tax incentives for alternative fuel use constitutes a legislative framework around which we may build a comprehensive alternative fuel use policy. The conversion of transportation fleets to alternative fuels must proceed deliberately, but with caution. Initially private and public owners of fleets of vehicles could elect to convert their vehicles to alternative fuel use; tax incentives would make that option easier for such fleet owners. Second, vehicle manufacturers would retrofit vehicles at the factory, thus creating a market for new vehicles converted to alternative fuel technology. The final stage would see the creation of dedicated alternative fuel vehicle assembly lines. If alternative fuel vehicle technology has matured at this point to yield economical, clean, and safe vehicles that will meet America's transportation needs far into the future, then wholesale conversion of our passenger, commercial, and mass transportation vehicle fleets would be possible.

The Alternative Fuels Incentive Act will begin the conversion process by giving an air quality tax credit of 20 percent to owners of private fleets of vehicles who elect to convert existing vehicles to clean-burning fuels and who elect to acquire clean-burning vehicles. State and local governments are encouraged to use their tax-exempt bond authority to convert fleets. In addition, I have included further incentives for State and local governments. My bill establishes credit-equivalent payments for such vehicles. An alternative idea included in this legislation is to earmark 25 percent of the mass transit account for clean-burning vehicles and refueling equipment.

This bill also addresses the "chicken and egg" quandry regarding the refueling infrastructure needed for alternative fuel conversion by giving a tax incentive for the creation of public refueling stations and the addition of alternative fuel retailing capacity at existing gasoline retail locations.

I am also considering several options for incentives for the manufacture of alternative fuel vehicles. These options include an environmental employment tax credit which would provide a tax break to employers who train workers in the manufacture or installation of alternative fuel technology. Another option would give manufacturers a research and development credit for designing and building retrofit and dedicated alternative fuel vehicle assembly lines. Perhaps air quality credits could be established for alternative fuel vehicles and traded to other taxpayers. These incentives would not only spur the development of alternative fuel vehicles, but would also aid manufacturing industries adapt new technologies to the demands of an everchanging market.

Research has proven that alternative fuel vehicles generally produce less pollution than diesel or gasoline powered vehicles. For example, the Environmental Protection Agency has found that natural gas- and methanol-fueled buses emit almost no particulate matter, emit hydrocarbons which are less ozone forming than those from gasoline or diesel fuel, and—for methanol—reach nitrogen oxide levels well below the 1991 standard. Clearly, alternative fuel vehicles have a role to play in helping nonattainment urban areas comply with EPA air quality standards. I recognize that many questions remain regarding the environmental impact of alternative fuel vehicles: for example methanol-fueled vehicles appear to emit formaldehyde which is a carcinogen. These questions demand further attention and comment.

Other questions concerning the impact of alternative fuel vehicles on energy conservation and energy security. Some tests have shown that natural gas vehicles offer advantages over gasoline and other alternative fuel vehicles in terms of fuel efficiency and economic savings. For a 100-vehicle fleet, including 90 sedans and 10 light trucks traveling the national fleet average of 25,000 miles per year per vehicle, natural gas vehicles enjoy an 11 percent operating cost savings relative to gasoline—5.6 cents per mile versus 6.3 cents per mile. Of course, these numbers change with market conditions so I only offer them as a general guide to the relative efficiency of the two types of vehicles; but if such savings can be realized, I believe that it is worth the attention of the Congress to maximize economic growth and well-being by encouraging energy conservation alternatives.

There are presently numerous alternative fuel demonstrations underway throughout the United States and the world. The Urban Mass Transportation Administration [UMTA] has methanol bus programs in seven locations: Golden Gate Transit in San Francisco; Florida DOT in Jacksonville; Seattle, WA; Riverside, CA; New York City; Southern California Rapid Transit in Los Angeles; and the Denver Regional Transportation District in Colorado. There are 13 GM, 11 MAN and 35 TMC methanol-fueled buses in service. Though natural gas conversion of diesel fuel engines is still being researched and developed, a number of transit companies have already converted vehicles, including Hamilton Street Railway Co. in Ontario, Canada; Pierce Transit Co. in Tacoma, WA; Toronto Transit Commission, which is just beginning its program, Brooklyn Union Gas in New York City, and the Los Angeles County Transportation Commission, which will begin a program soon. The major goals and objectives of these programs are to establish natural gas as a safe, cost-effective fuel for transit buses, to identify and address environmental and public health effects of alternative fuel use, to obtain operational data and resolve initial problems, and to expand the potential conversion market by developing low cost modification kits.

Assuming alternative fuel vehicles prove to be clean burning and fuel efficient, the availability of present and future supplies of these alternative fuels becomes an important issue. My home state of Texas has ample supplies of natural gas looking for a market, and we want to use these supplies to fuel clean-burning vehicles and industries. The Department of Energy has estimated that we have enough supplies of natural gas to last 60 years at the present rate of use; other studies have shown that there are great undiscovered reserves of gas that may be found through exploration. Our national energy policy must make alternative fuel use a priority.

I recognize that other problems assail the oil and gas industry. I am concerned about the present deliverability problem, and I invite comment and suggestion as to how the issue may be addressed. This thorny regulatory difficulty demands attention, and I am convinced that resolving it must constitute a cornerstone of our national energy policy.

In addition to incentives for conversion of vehicles to alternative fuel technology, I also wish to address the question of alternative fuel use for industrial and power generation purposes. Industrial processes and power generation that rely on conventional fuels contribute to our ozone and acid rain problems. Perhaps tax incentives for alternative fuel conversions in these areas could relieve some pollution problems and reduce our dependency on imported oil.

Finally, the final package must be revenue neutral. We cannot afford new tax incentives without a corresponding revenue raiser. I also invite comment regarding appropriate revenue raisers to offset the cost of this package.

In summary, I introduce this legislation today as a starting point. I hope to expand the debate regarding our national energy policy into the arena of tax incentives for alternative fuel use and to further contribute to the debate over tax incentives for energy exploration and development. I invite comment and discussion regarding my ideas, and I believe that we may use this legislation as a point of departure from which we may craft a comprehensive and progressive energy policy that will address the crucial concerns of energy security, the environment, and economic growth and prosperity.

THE CHILD CARE AMENDMENT TO S. 2238

HON. BOB McEWEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. McEWEN. Mr. Speaker, at this time, I would like to call upon the House of Representatives to support an amendment placed on S. 2238, the Senate version of H.R. 4333, the technical corrections bill recently approved by this House.

This amendment would alleviate a serious problem which will soon affect State child care systems across the country if it continues to gain footholds it has in Ohio.

The Internal Revenue Service has declared certain types of child care providers who contract to the counties to care for low-income children as "county-employees." This designation traps both the providers and the States into positions they wished to avoid. As such, the counties, and hence the States, must provide benefits such as retirement, health plans, social security matching, and so forth.

These providers are only taking in a few children, and the amount of money for which they are contracted is small. It does not make sense to penalize these counties for finding places to take care of low-income children while their parents are trying to earn a living.

This ruling caused the closing of several child care systems in Ohio. Please don't let this happen. The Senate amendment grants States the option of treating these child care people as contractors. Furthermore, it provides for the Secretary of the Treasury to report to Congress concerning the income tax States of these people, thus reassuring the IRS that it will not be cheated of its taxes. Finally, the law contains a deadline in 1990, which would permit a time for congressional review of this measure.

At this time I would urge all the Members of the House of Representatives to support this needed relief from an unfair IRS ruling.

SUPPORT UNITED FARM WORKER'S BOYCOTT

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. ROYBAL. Mr. Speaker, today I am fasting to lend my support to the United Farm Workers' Boycott of California table grapes. The migrant workers who harvest the grapes have been exposed to certain pesticides which may be responsible for the sterility, genetic mutations and the tragically high rate of cancer deaths among their children. I hope all of my colleagues are aware of their plight, and I hope they are doing their part to help the farmworkers—whether through fasting, not buying grapes, or legislation to improve working conditions and health care for farmworkers.

Unfortunately, this is not a new problem. The boycott has been going on for 4 years before it became the focus of public attention this summer. Even 20 years ago, farmworkers were protesting the use of DDT and related pesticides on the crops they harvested. In both instances, the driving force and conscience of the American farmworker movement has been embodied by its founder and leader, Cesar Chavez.

Chavez is weakened and bed-ridden right now from the hunger strike he began on July 16. His deteriorating health finally forced him to eat after 36 days without food, but his "fast for life" continues. Jesse Jackson picked up the fast where Mr. Chavez left off, and from there, the burden has been passed along to individuals who know that the boycott and the problems of the migrant farmworkers are far from over.

About 20 of my colleagues and I in the House are helping to keep the fast alive, and to keep America aware of the lack of worker safety in the fields. I salute Cesar Chavez and the United Farm Workers of America for their tireless devotion, and I look forward to Mr. Chavez' quick recovery. I also respectfully remind my colleagues that the people who plant and harvest the food for our tables need support.

I BELIEVE IN AMERICA

HON. CHRISTOPHER SHAYS

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. SHAYS. Mr. Speaker, I would like to submit an essay composed by one of my constituents, Sidney B. Rubin of Bridgeport, CT. Mr. Rubin wrote this piece right before joining the armed services in 1942, a time when the free world was seriously challenged. Mr. Rubin's essay "I Believe in America," depicts the steadfast spirit of our precious land and the many blessings bestowed upon it.

I BELIEVE IN AMERICA

(By Sidney Benjamin Rubin)

I believe in America because I believe in God. America could not be America without God.

Who could build a house to withstand the flood waters and tempests that assail us through the years, save he who set tyrants an despots upon their heels, and smote our enemies at every turn in the darkest hours, when sore and weary, torn and tired our fathers looked to him alone for survival.

America was founded on the precepts of the Lord. In the cruel days that assail us, when our enemies tax our patience and tear at our heart, what better solace and comfort is there than the rock which is our Sovereign—the God who gave our forefathers the mind to make here a haven and land for the oppressed and persecuted, hallowed in that love which made the pioneers set up his standard in the wilderness and proclaim liberty throughout the land.

America did not come of age alone. It was by no whim that led the pilgrim fathers to these shores, that gave wind to the eager sails to steer men of all creeds and faiths to these golden doors, where in brotherhood they worshiped God according to their conscience and with a free will planned a nation dedicated to liberty and freedom.

No-where in all the written lore of mankind was there a land where so many from so far came to-gether to be so near to each other in understanding and unity, and to live to-gether in peace.

These things alone could be counted for boundless blessings, yet besides them the fountain springs of justice written in the law of the land proclaim God's glory even more, for his words and commandments are the moral and basic fibre of our sustainance and inheritance, cherishing us, leading us on the greater achievements, our succor, strength and refuge in our hour of need, a strong arm and shelter to be counted on in the days when the whole courage of the nation will be called upon in the testing ground of truth.

PERSONAL EXPLANATION

HON. JIM MOODY

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. MOODY. Mr. Speaker, on Wednesday evening, October 12, I was unavoidably absent when the House took rollcall votes on three measures. These measures were S. 1081, the National Nutrition Monitoring and Related Research Act of 1988; H.R. 5043, the Postemployment Restrictions Act of 1988, and; House Resolution 574, commemorating the successful return to flight by the space shuttle *Discovery*.

Had I been present, I would have voted "Aye" on passage of all three measures.

TRIBUTE TO THE HONORABLE SHIRLEY CHISHOLM

HON. JULIAN C. DIXON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. DIXON. Mr. Speaker, it is with great pride and admiration that I rise to pay tribute to my dynamic and courageous former colleague from the 12th Congressional District of New York, the Honorable Shirley Chisholm. Twenty years after her election to Congress as the first black woman to serve in the U.S. House of Representatives, she is still "unbought and unbossed."

During the 4 short years I had the privilege of serving in the Congress with Shirley, I came to admire her unyielding determination in championing the causes of the downtrodden and disenfranchised. She was an articulate spokeswoman for the poor, elderly and less fortunate in our society, always candid, hard-hitting, outspoken and independent.

Although Shirley was known as a fighter who used impassioned and persuasive arguments in her crusade against social and economic injustice, her legislative prowess behind the scenes was successful in garnering support for her causes. As a member of the House Education and Labor Committee her tireless efforts on behalf of domestic workers resulted in a law which guarantees them a minimum wage, Social Security and medical benefits. In her transformation from educator to Member of Congress, she became an outspoken advocate in the battle to expand and strengthen vital education programs—Head Start, financial aid to black colleges and compensatory education. From her vantage point on the House Rules Committee she was able to make a unique mark on major civil rights and social legislation. Shirley never hesitated to speak her mind or vote her conscience.

During her illustrious 14-year career in the U.S. House of Representatives Shirley served the 12th District of New York and the Nation with distinction never wavering from her commitment to fight for those least able to care for themselves. Her concern over the plight of the defenseless was reflected in her legislative record as a stalwart voice and valuable ally on behalf of Haitian refugees, migrant farmworkers, minorities, the poor and the politically powerless.

Always a pioneer and trailblazer, in 1972 she took this crusade to the Nation when she became the first black woman to actively campaign for the Democratic Party nomination for the Presidency of the United States.

Her dedication and commitment has been a beacon of hope and inspiration for millions of women, minorities, and poor people. Her courageous efforts and tenacity in pursuit of justice against the odds serve as testimony to the dynamic spirit which has been the hallmark of her career.

No doubt Shirley will continue to find new frontiers to conquer. As she commemorates the 20th anniversary of her election to the U.S. House of Representatives, I extend my congratulations on a distinguished career and wish her much success and happiness in the future.

NEW YORK'S FLIRT WITH LEGALIZATION

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. RANGEL. Mr. Speaker, the Select Committee on Narcotics Abuse and Control just completed 2 days of hearings on drug legalization.

During those 2 days, we took testimony from more than 30 witnesses on both sides of this issue. Our agenda included political leaders, Government officials, law enforcement authorities and academicians and social observers.

Overwhelmingly, the American public is opposed to any sort of legalization. One recent poll conducted by one of the major networks indicates that 90 percent of the people are on this side of the issue. The public thinks legalization is a rotten idea that would not lead to significantly reduced crime, and would greatly increase drug addictions.

My position is and has been that of most of the people in this country—legalization is a terrible idea. But the reason the hearings were held, Mr. Speaker, was to get the people supporting legalization to give us some answers on some very important questions. Just calling for legalization is not nearly enough. There are countless questions that must be dealt with and thought through, and it was apparent from the hearings that not a lot of that has taken place.

It was my hope that we could depart from these hearings with a renewed sense of hope and a new found spirit that would make us more determined than ever to rein in the drug madness that has gripped America. And I think most of us have done that.

Unfortunately, Mr. Speaker, my city, New York City, appears to be on the verge of taking a step backward on the legalization issue.

In just a few weeks, New York is poised to begin a program to distribute clean needles to intravenous drug users. The City Health Commissioner says the idea is to curb the spread of AIDS via tintravenous drug use. But rather than seek logical approaches that utilize more and better treatment and rehabilitation our chief health expert is pursuing the kamikaze approach, which is to give addicts needles to help them do a better job of killing themselves.

The city health commissioner, with the blessing of the State health commissioner, is going to make New York City the biggest subsidizer of drug addiction in the country. Why? Because taxpayers are going to spend $330,000 for this colossal public injection. The people of New York don't want to spend their hard-earned tax dollars supporting the habits of drug users. New Yorkers do, however, want to get rid of the drug problem. But they want no needles, rather than free needles.

Mr. Speaker, the distribution of free needles—regardless of the reason—is just as much a form of legalization as is the sale of cocaine at the corner drugstore, which is what some legalization proponents have been proposing. It is legalization because a branch of Government would be officially sanctioning the sale and use of an illicit narcotic. If you're giving out free needles to IV drug users, then you're OK'ing the use of the narcotic as well as the illicit sale that leads to the use of the narcotic.

This issue of legalization and of New York's free needle exchange could not have been better crystallized than it was on Tuesday, October 4, 1988, in a column published in the New York Daily News by writer Bob Herbert.

Mr. Speaker, Mr. Herbert's keen insight and sharp analysis of the proposed free needles project deserves wide circulation. I would like to have the full text of his work, "Drug Legalizing Gets Shot in Arm From No. 1. Doc," published in the RECORD.

[From the New York Daily News, Oct. 4, 1988]

DRUG LEGALIZING GETS SHOT IN ARM FROM No. 1 DOC

(By Bob Herbert)

The report looks harmless enough. It's neatly typed on plain white paper. It's 43 pages long. There's no way to tell at a glance that it's the first step toward legalizing drugs in New York.

The title of the report is pure bureaucratic hocus-pocus. It's called "Needle Exchange Study: A Proposed Research Protocol for New York City."

What it means is that in four or five weeks the City of New York is going to start handing out hypodermic needles and syringes to hard-core junkies.

The junkies will then run off to their favorite shooting gallery (this could be anywhere—an apartment, an alleyway, the subway, the beach) and inject themselves with heroin or cocaine or both. They will have a card that says no one is allowed to arrest them for possession of drug paraphernalia. The long march toward the legalization of drugs will have begun.

This program is being prepared largely in secret by the city's health commissioner, Dr. Stephen Joseph, and his staff. Although the Daily News has obtained a copy of the report, very few are in circulation. Opposition to the program is intense and Joseph has been keeping a low profile.

The distribution of free needles is designed to prevent the spread of AIDS by drug users who share contaminated needles. Early in November, Joseph will open needle-distribution sites in two boroughs, probably Manhattan and Brooklyn. The first part of the program will be experimental. Two hundred addicts will get needles and syringes. They will also get counseling and condoms. If the experiment works to the city's satisfaction, it will expand the program.

The aim of the program is commendable, obviously. AIDS is rampant among IV drug users and their sex partners. But the program and the report outlining it are based on a tremendous falsehood—that junkies are responsible people.

The report says, for example, "Data will be collected on self-reports of drug injection/needle use and sexual behavior during participation."

In other words, the junkies will be quizzed when they show up to exchange dirty needles for clean ones. Since hard-core junkies are capable of stealing from their mothers and selling their own children, they will have no trouble lying to bureaucrats.

When the bureaucrat asks, "Did you use a condom?" the junkie will say, "Oh, yes."

When the bureaucrat asks, "Did you share your needle?" the junkie will say, "Oh, no."

On page 10, the report says, "The sites will be open Monday thru Friday 9 a.m.-5 p.m. initially." This is insurance-company time, not junkie-time. A junkie who needs a fix on Friday night will not wait for his friendly local bureaucrat to show up with a fresh batch of needles and syringes on Monday morning. City government may work that way, but drug addiction does not.

Joseph has some powerful arguments to support his idea that New York needs a dramatic new effort to fight the spread of AIDS, especially among drug users, their sex partners and their children. The majority of New York's IV drug users are black or Hispanic and Joseph said the worst of the epidemic is yet to come. He described AIDS as a "locomotive that is heading straight down the track, in this case at the black and Hispanic communities."

Joseph said, "Currently, in the City of New York, 1.8% of all black women of reproductive age are already infected with this virus. Fifty-sixty per cent of all the IV drug users, the largest share of whom are black or Hispanic, are currently infected with the virus.

"Ninety per cent of all the women we've had with AIDS in New York City and 90% of all the children we've had with AIDS in New York City are black or Hispanic, and it's because of the transmission through IV drug use."

Joseph is right on the money when he is describing the enormity of the crisis. But you don't fight drug use and AIDS by pretending that tens of thousands of junkies are going to straighten up and fly right because you've handed them a needle and a condom and a card that makes them immune to arrest for a crime.

Junkies will share the needles, trade the needles, sell the needles, lose the needles—and some, when they get AIDS, will turn around and sue the city for giving them the needles.

All of the city's major law enforcement officials, and all of the major black officials, and most of the major health officials have been telling Joseph he should back off on this one. But Joseph is not listening.

The AIDS epidemic is so bad, he said yesterday. "I feel impelled to go ahead no matter who's against it."

A TRIBUTE TO COMDR. JOHN R. "BARNEY" BARNES, A SOWER OF THE SEED

HON. BEN BLAZ

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. BLAZ. Mr. Speaker, I rise today to recognize the efforts and accomplishments of U.S. Navy Comdr. John R. "Barney" Barnes in service to our Nation under one God.

On October 31, 1988, Commander Barnes will take charge of the Navy's precommission unit within the correctional branch in Charleston, SC. Adhering to the scripture: "Remember them that are in bonds" (Hebrews 13-3), Commander Barnes has worked diligently toward establishing programs in Navy correctional programs and systems which promote rehabilitation, training, and education of Navy law offenders with the goal of yielding productive military personnel of integrity and purpose.

Born and raised in east Tennessee, Comdr. "Barney" Barnes has been on active duty with the Navy for more than 20 years and has flown a variety of fixed and rotary wings aircraft logging over 3,000 flight hours and serving all over the world. He has served on many aircraft carriers and his tours include the Middle East Force as well as 500 combat missions in helicopter gunships.

Commander Barnes is currently serving as Head, Correctional Programs for the U.S. Navy where his responsibilities include managing the resources of 21 brigs and 13 correctional custody units world wide.

A man dedicated to serving his country, Commander Barnes is also a dedicated Christian who has proven himself faithful and obedient to help in organizing and establishing in 1985 a chapter of the Full Gospel Businessmen's Fellowship International, a group which meets regularly on Capitol Hill. Prayer and a personal relationship with God through Jesus Christ have been the most important priorities in Commander Barnes' life.

On behalf of countless FGBMFI brothers, friends, colleagues, and of all the personal lives which have been touched and blessed by his love, labor, and friendship, I salute Comdr. Barney Barnes and pray for him and his family Godspeed in his new mission.

BILL TO AUTHORIZE TRANSFER OF TITLE TO SAND HILLS STATE FOREST TO THE STATE OF SOUTH CAROLINA

HON. JOHN M. SPRATT, JR.

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. SPRATT. Mr. Speaker, today I am introducing legislation authorizing the transfer of title to the Sand Hills State Forest, located in Chesterfield County, SC, from the U.S. Department of the Interior to the State of South Carolina. Senator THURMOND is introducing identical legislation in the Senate. This transfer has been approved by the Department of the Interior, and the terms of transfer embodied in the bill also meet with the Department's approval. The bill is being introduced late in this session because the State of South Carolina and the Department of the Interior have only reached final agreement within the last few days on the terms of transfer. While there are only a few days remaining before adjournment, this legislation is important to South Carolina, and if it is at all possible, I urge its approval before this session ends.

The Sand Hills State Forest was purchased by the Federal Government under the Bankhead-Jones Act in the early 1930's, but in 1939 it was leased to the South Carolina Forestry Commission [SCFC], which has been responsible ever since for reclaiming and managing the land. When the 46,000-acre tract was purchased, the land was desolate and barren. The property, which had virtually no merchantable timber, was largely comprised of abandond fields, rutted hills, and tracts of scrub oaks and pine. The South Carolina Forestry Commission began an intensive program of forest management and also improved the area as animal habitat. Abandoned fields were reforested and game food patches were interspersed throughout the area. Today, the once-barren lands have become pine forests and animal habitat for various species of wildlife including turkey, duck, and deer. They are home also to one endangered species, the red cockaded woodpecker.

I support transfer of title to the State for two important reasons. It makes de jure what is already de facto: For the past 50 years, South Carolina, has had virtually exclusive control over the forest's management and operation. The transfer will merely acknowledge the State's role in running the forest. Second, the State has earned the right to acquire title because of its record for 50 years of reclaiming these lands and managing the forest.

While the State has earned the right to hold title, the State has also agreed to provide compensation to the Federal Government in return for the transfer. This compensation package is the product of long negotiations between the SCFS and the Interior Department which insisted on reasonable consideration. Under this bill, the State agrees to provide free fire protection for 50 years to a 46,000-acre wildlife refuge still owned by the Federal Government and adjacent to the forest. The State has also agreed to conduct prescribed burning and to provide reforestation services for up to 25,000 acres of the wildlife refuge. The total value of these services has been estimated at $2,637,000.

The South Carolina Forestry Commission has proven its commitment to sound forest management and environmental protection. It pledges to maintain those same practices once it takes title. But we do not need to rely on the State's promises. The legislation itself mandates that the State can continue to operate the forest only for public purposes and it requires the forestry commission to follow those Federal policies designed to protect endangered species on the land. The penalty for the State's failure to follow these policies is strong but effective: The land will revert to the Federal Government.

This bill is fair and reasonable. By granting South Carolina legal title, it rewards the State for a job well done and recognizes that South Carolina has virtually owned and controlled the forest for 50 years. It also contains strong environmental protection by ensuring that the State will continue to follow the same policies in operating these forest lands that it has pursued in the past.

I urge my colleagues to support the bill and earnestly hope that it will be enacted before our adjournment.

THE 50TH ANNIVERSARY OF ARCHER HEIGHTS CIVIC ASSOCIATION

HON. WILLIAM O. LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. LIPINSKI. Mr. Speaker, I rise today to call my colleagues' attention to the 50th anniversary of an exemplary community organization, the Archer Heights Civic Association.

This association was formed and incorporated in 1938 to "promote the general welfare of the community." It has clearly achieved this goal. As the Archer Heights area of Chicago was expanding, the association worked to maintain and improve essential city services. As progress continued, it became crucial in the development of the community. The association organized the Archer Heights Credit Union in 1965, now a $5 million financial institution serving Archer Heights and the surrounding area. In 1966, the association promoted construction of a community recreational facility and fieldhouse; both completed and opened to the public in the early 1970's. In November 1967 an Archer Branch Public Library and Archer Heights Community Firehouse were opened to serve the community. For the children, Curie High School was constructed in the 1970's and continues to serve the Archer Heights community.

This association has also been a driving force in the development of community spirit. They sponsor yearly food drives for the needy; parties and other activities for the children; and Junior Citizen Awards for students exhibiting outstanding school spirit, academic achievement, and community involvement. As the theme of their anniversary dinner-dance suggests, they are "celebrating 50 years of community spirit and participation" in all aspects of the community.

Mr. Speaker, I am sure my colleagues will join me in congratulating this exemplary community organization on its 50th anniversary, thanking them for their tremendous contributions to the community, and wishing them all the best as they face the challenges ahead. Their community spirit typifies the neighborhoods of my native Chicago and symbolizes the best of America.

JIM AND ARETHA ROBINSON HONORED FOR CONTRIBUTIONS TO EFNEP PROGRAM

HON. BILL EMERSON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. EMERSON. Mr. Speaker, I rise today to honor Jim and Aretha Robinson of East Prairie, MO. Mr. and Mrs. Robinson have been recognized by the U.S. Department of Agriculture as a family that has contributed to the success of the Expanded Food and Nutrition Education Program. This month marks the 20th anniversary of the Expanded Food and Nutrition Education Program. That program, better known as EFNEP, is designed to help needy families by improving the dietary level through nutrition education. Through EFNEP, families are able to improve their diets, increase their knowledge of the relationship between diets and health, improve their food production and preparation, and incease their ability to manage food budgets.

Mr. and Mrs. Robinson are among only 23 individuals nationwide being honored, out of hundreds of thousands of families, youths, and volunteers who have participated in EFNEP since 1968.

Back in 1969 the Robinsons and their eight children were trying to run a farm, but knew little about the basics. They were barely able to make ends meet. Through EFNEP the Robinsons became involved in many facets of the USDA Extension Service. Agronomists helped with farming knowledge and the children became involved in 4-H activities. Mr. and Mrs. Robinson became EFNEP volunteers and passed on the knowledge they acquired about nutrition, food preservation, and more efficient homemaking. Several of the Robinson children have been honored with scholarships to the Missouri 4-H Congress and two have participated in the national 4-H conference here in Washington, DC. The Robinson farm has improved due in part to the assistance provided by the Extension Service and by the hard work of the entire Robinson family.

The Robinsons are being honored for their dedication and participation in EFNEP, in 4-H and as volunteers in many Extension Service programs. Mr. Robinson is currently an elected member of the Mississippi County Extension Council.

I salute the Jim and Aretha Robinson and commend them for their hard work and success and for their dedication to EFNEP. They were helped by EFNEP and then proceeded to give back much more than they received—through their volunteer efforts.

A TRIBUTE TO THE 25TH ANNIVERSARY OF JEFFERSON INTERMEDIATE SCHOOL

HON. BILL SCHUETTE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. SCHUETTE. Mr. Speaker, I would like to bring to the attention of my colleagues in the House an important event taking place in Midland, MI, this weekend. On October 16, 1988, Jefferson Intermediate School, where I attended school from 1966 through 1969 will be celebrating its 25th anniversary.

Jefferson Intermediate School was built in 1963 and classes began in September of that year. Originally called North Intermediate School, the name of the school was changed to Jefferson in honor of President Thomas Jefferson who was known for his deep concern with education. The design of the school is particularly unique, featuring classrooms grouped in a clustered fashion with a central location of larger facilities. Ramps and handrails were also installed to make every part of the building accessible to those students handicapped in mobility.

Jefferson is a school that stresses the individuality of each of its students by providing an atmosphere where they can excel academically as well as socially, emotionally and athletically. This balance, as we all know, is extremely important to the development of a child. Jefferson Intermediate School deserves to be commended for maintaining its sensitivity toward its students while pursuing an undying commitment to academic excellence.

My years at Jefferson Intermediate were very memorable for me. From student council involvement, working with other student leaders during a millage crisis to save extra curricular activities [SECA], to athletics at various levels, the public school system, its teachers, administrators and concerned parents provided me and so many other students with good, solid academic skills, and positive attitudinal development.

Mr. Speaker, I hope my colleagues in the House today will join me in paying tribute to the 25th anniversary of Jefferson Intermediate School. There is nothing more important today than the education of our young people for they are America's future. I know firsthand the benefits of an excellent education like the one that Jefferson Intermediate School provided me and will continue to provide so many other young people.

REFORMING THE FAA

HON. JIM CHAPMAN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. CHAPMAN. Mr. Speaker, as the historic 100th Congress draws to a close, it is with a great deal of pride that we look back on its diverse accomplishments. At the same time, however, it is critical that we also look forward—to the tasks that remain undone, but which must be foremost in the collective mind of the 101st Congress. High on this list must be our resolve to come to terms, once and for all, with the dilemma of our increasingly inadequate aviation infrastructure.

As the recent campaign has moved forward, one message that has been delivered with unmistakable clarity by the American people is their determination to compete and to excel. They expect both the Congress and the administration to lead the way in charting a deliberate course to economic success—including the development of the infrastructure essential to economic productivity. In the area of aviation this means building the necessary airports and improving those we already have, as well as securing the needed enhanced technology to permit optimal, safe handling of the demand for air traffic services. Our ability, as a nation, to meet this demand is directly linked to the success or failure of key elements of our economy. The right solution is imperative to our success.

The recognition of this fact, of course, is nothing new. What is new, however, is the almost universal realization that our programs, up to this point, to meet this demand have not worked out as we hoped. The nearly $7 billion sitting idle in the Airport and Airway Trust Fund provide an unfortunate commentary on where we have gone wrong. The American people are not only willing to pay for the aviation infrastructure they need—they have paid for it. Their message to us is to find a way to apply those revenues effectively, efficiently and quickly to the purpose for which they were collected—and to avoid repeating the mistakes of the past.

It is unfortunate, that while in the 100th Congress we came to recognize where change was needed, we were unable to force the issue through to resolution. We must, however, take advantage of the momentum which has developed on this matter to bring it to a successful conclusion early in the next Congress. The combined goals of a fixed term for the FAA, budget reform to deliver aviation dollars to aviation needs, personnel resource enhancements and a more compatible procurement system for the FAA must become more than an often repeated incantation—they must become a reality.

Before leaving this Chamber, I would call upon my colleagues to commit themselves to the resolution of the aviation dilemma as a matter of highest priority when we return in January. It will not be an easy task, it will require strong leadership and a willingness to try new, more creative measures in our approach to this critical element of the economy. It is, in the final analysis, however, a step which must be undertaken if we are to succeed and prosper.

RESTORE DRUG INTERDICTION FUNDS FOR CARIBBEAN

HON. RON de LUGO

OF THE VIRGIN ISLANDS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. DE LUGO. Mr. Speaker, two news reports today from my district, the U.S. Virgin Islands, make me wonder if the United States is really serious about combatting the drug trade in the Caribbean. The Virgin Islands Daily News tells us that the United States has severely reduced its aid to nine Caribbean islands that use the funds for drug interdiction patrols. The St. Croix Avis notes that the expanding drug trade in the entire region threatens the stability of the Government of St. Lucia.

I am deeply concerned that the Federal Government, despite the rhetoric about the war on drugs, is not offering reliable support to our friends in the Caribbean who are our allies in this war. These nine Caribbean nations have joined with the United States as partners to patrol the waters of our region and shut down the drug trade. The United States, over the years, has provided funding to buy small boats and patrol vessels and support land-based forces as well. That funding has been slashed to $4.3 million for the 1989 fiscal year, apparently because the United States earmarked almost all foreign aid for countries of the Middle East.

There is something wrong when these Caribbean nations, who are working closely with our Government to combat the drug trade that threatens all of our countries, get shut out. That is not in the interest of the United States or our Caribbean neighbors. It makes our country appear unreliable and unpredictable in its appoach to the war on drugs. It gives the impression that, once again, the United States is treating the Caribbean as its back yard, instead of its frontyard.

Two military officers are quoted in the story. Their statements are blunt and accurate, and I want to emphasize my agreement. First, the current threat to the security of the Caribbean does not come from Cuba or Libya or any foreign source. It comes from the flow of drugs that can destroy the stability of the small democratic govenments of the region. Second, the United States can save money by cooperating with these Caribbean islands to patrol the region, instead of being in the position of having to patrol the entire region on our own.

The editorial in the St. Croix Avis makes clear that the drug trade can devastate the Caribbean. Drugs not only destroy lives and families, but also can undermine the stability of the governments of the small islands in the Caribbean. In this case, the Avis notes reports that the Govenment of St Lucia is at risk because of drug trafficking.

I am submitting both of these excellent reports for the RECORD. I urge my colleagues in Congress to help get the war on drugs in the Caribbean up to full strength.

[From the Virgin Island Daily News, Oct. 13, 1988]

U.S. DROPS DRUG-WAR AID TO NINE CARIBBEAN NATIONS

(By William Ringle)

WASHINGTON.—With all the hoopla about the war on drugs, the United States has virtually shut off support for forces that have proved effective in reducing the drug threat in the Caribbean.

The money went to nine Caribbean nations for operating and keeping up patrol craft and land-based security forces—essentially police officers.

The drug-interdiction patrol; that these units were carrying out "had been extraordinarily effective," said U.S. Marine Maj. Gen. Robert F. Milligan during a Washington visit Tuesday.

"The threat to the stability of these democracies in this region is not from Cuba or Libya or Soviet expansionism," said Milligan, who is commander of the U.S. Caribbean Command, based at Key West, Fla.

"The threat really is to the economies and the survivability of these democracies. The biggest threat to them is from drugs. That threat in the Caribbean is staggering, absolutely mind-boggling."

Even Cuban dictator Fidel Castro "doesn't present the same threat to the small democracies that is resonant in the destabilization of drugs," said Milligan.

"That effect is far greater from drugs in these small, delicate, young democracies than from anything Castro might be doing or planning on * * * I'm not directly involved in the drug-enforcement business by law, but I am tasked with the stability of the region.

"And because the threat to the stability of the region leans so heavily on the drug side, we're involved in monitoring what the hell is going on."

A by-product of drugs, says Milligan, is a threat to the tourism business on which many of the depressed island nations rely, and which requires stability. The crimes put a damper on tourism."

"We see it in some of our own possessions, like the (U.S.) Virgin Islands" where drug-related murders have been on the increase, Milligan says.

And, he says, officials in the Bahamas are worried about the impact of drugs and the increase in hard crime like muggings and holdups on the tourist business.

The drug trade also involves vast amounts of cash that can buy elections and government officials in the depressed economies, Milligan says.

To illustrate the sums being thrown around, he notes that recently $839,000 in cash had been found in the anchor well of a nondescript fishing boat.

In Miami, drug traffickers paid high school dropouts $1,000 a week to serve as lookouts. Now they've been augmented by 8- or 9-year-olds who get $300 a day.

The United States had provided Caribbean nations with about $90 million for 22-foot Boston whalers and 100-foot-long patrol boats, plus improved security forces that have been used in anti-drug actions.

The patrols last year cost $11 million, he said. Had the United States itself carried them out the cost would have been $30 million.

"For fiscal 1988, $12.5 million—we're talking relative peanuts—was requested," he said. That was just to operate and keep up "what we have put in place. The Caribbean Command got zero." For the current fiscal year, $9 million was requested and $4.3 million provided.

"I agree with the general's comments," said Richard White of the National Narcotics Border Interdiction staff.

"It's a lot more effective for (other nations to carry on drug interdiction) * * * in their own waters than for the United States to patrol all over the Caribbean, without a doubt.

"The U.S. position is that the more we can help other nations enforce drug laws in their own waters and international waters, the better we are able to use our own resources elsewhere. Not a U.S. problem—an international problem."

The 1988 money was cut, Milligan said, because Congress "lenced"—forbade any change in—security assistance to Egypt and Israel, so that virtually more was left for the dozens of other nations all over the world.

[From the St. Croix Avis, Oct. 13, 1988]

DRUG TRADE MAY BRING DOWN ST. LUCIA GOVERNMENT

Recent events have indicated that St. Lucia may well be on the way to gaining the dubious distinction of being the first Eastern Caribbean nation whose leaders are brought down due to the presence of drug trafficking within and without its ranks.

Western Caribbean leaders have long suggested that the increase in drug trafficking in their waters and within their borders had the potential to undermine and, worse, bring down their governments.

They have long contended that the interdiction of drug traffickers—both local and foreign—has become such an expensive project that outside financial and equipment aid is needed to fight the trade effectively.

In the past year the rumblings from opposition party leaders about Prime Minister John Compton's disturbing complacency about increased drug trafficking on the island, have reverberated out to the whole St. Lucian population.

There have been rumors about "barrels" of confiscated drugs hidden in police and customs warehouses for inordinate amounts of time, as well as alarm bells raised about the alleged disappearance of same.

In August, while in government session, Compton was confronted directly by several of the country's leaders and accused of deliberately moving slow against St. Lucian drug traffickers.

Last month Police Commissioner Cuthbert Phillips told the Caribbean media that the fight against drug dealers corrupting the St. Lucia police force was "the biggest headache" facing his department. He spoke of "question marks" concerning the loyalty of some policemen and customs officials, of the fact that "crack" was now dirt cheap in the country and had become the major drug seized at the nation's two airports.

The commissioner also said some of the country's known drug dealers had moved out of Castries, the capital, and were now focusing their efforts on certain banana producing areas of the country. Police intelligence had also suggested that, as a result, many young banana farmers were using their hard earned money to buy crack and with their new drug habits, "will not even be able to continue working their plantations."

This week St. Lucian government officials announced that Phillips had been sacked. Many St. Lucians are reportedly wondering whether his demise was caused by covert cooperation with traffickers or failure to cooperate with these same elements. Most are also looking to see what new developments will occur in the near future.

HAWAII ALPHA DELTA KAPPA WEEK

HON. DANIEL K. AKAKA

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. AKAKA. Mr. Speaker, it is a pleasure and a privilege for me to introduce for the RECORD today a letter which I sent to Ms. Thelma Nip, president of the Hawaii Alpha Delta Kappa, as they recognize this week as their special week in Hawaii.

DEAR MS. NIP: It is my pleasure to extend congratulations and best wishes to the members of Hawaii Alpha Delta Kappa and to join in recognizing October 9th through October 15th as Hawaii Alpha Delta Kappa Week.

Your theme this year is especially worthy for it underscores what has been advocated by so many individuals and groups that education is the key to continued success of our State and Nation. The ability of our country to compete in the rapidly changing world and to maintain our competitive edge will depend to a large degree on how well our teachers succeed in achieving that goal of "shaping the future with excellence."

I applaud your efforts to promote high standards in education and to recognize outstanding women educators in our state. I would especially like to commend Ms. Judy Ann Ching, chairperson of Alpha Delta Kappa Week, for all her hard work on behalf of this special observance.

Best wishes and aloha.

Aloha pumehana,

DANIEL K. AKAKA,
Member of Congress.

THE CASE OF JOSEPH PATRICK THOMAS DOHERTY

HON. MATTHEW J. RINALDO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. RINALDO. Mr. Speaker, I rise today to protest the ruling of former U.S. Attorney General Edwin Meese III to deport Joseph Patrick Thomas Doherty to Great Britain.

Mr. Doherty, a citizen of Ireland and the United Kingdom, was convicted in 1981 of a series of crimes involving the death of a British Army soldier. While serving a life sentence, Mr. Doherty escaped from prison and entered the United States in 1982. He was arrested in New York City in June 1983 and has been held as a prisoner in our Federal prison system because of his illegal entry into the United States. In 1985, a Federal district court ruled that Mr. Doherty's crimes fell within the political offenses exception which barred his extradition under the existing treaty between the United States and the United Kingdom. The Federal Board of Immigration Appeals overturned the 1985 decision and ruled that Mr. Doherty should be deported to the Republic of Ireland, the country he had designated.

Despite this decision, the Justice Department has not carried out the order for deportation in accordance with Mr. Doherty's rights under this country's immigration laws. While no criminal charge has ever been brought against Mr. Doherty in this country, he remains incarcerated pending a resolution of this conflict.

Mr. Speaker, I strongly object to the Justice Department's attempts to deport Mr. Doherty to the United Kingdom and to deny him fair treatment under the law of the United States.

I urge the Justice Department to expedite their consideration of Mr. Doherty's case, for the real issue at stake here is a man's freedom and right to due process of law. It is my sincere hope that the final decision of our courts will be to support justice and preserve our constitutional rights rather than bow to political pressures.

SHADY SIDE POST OFFICE CELEBRATES 100TH ANNIVERSARY

HON. C. THOMAS McMILLEN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. MCMILLEN of Maryland. Mr. Speaker, I would like to commemorate the centennial of the Shady Side Post Office. The post office in Shady Side is much more than a distribution center for the mail. The Shady Side Post Office is a community meeting ground.

The first settler in the area was Edward Parrish who had an area of 100 acres surveyed in 1662. The region was divided among a few large plantations that provided the economic base for the area. After the Civil War, many of the large holdings were broken up and there was an influx of new settlers. A large percentage of the population worked on the Chesapeake Bay. The economic base of the community in the 19th century was provided by farming and oystering.

Travel to the area was difficult by road but in 1832 a steamboat, the "Maryland" began a weekly run to the area. By 1834, there were biweekly runs. In future years additional steamboat runs were added and sailboats to Baltimore to handle the large volume of produce from the area.

Another influx of families arrived in the area in the 1880's; among these families were the Nowells. The Nowell family ran the local general store and as the family expanded, so did the business. A visitor to the area from Baltimore asked if she could board with the family for the summer giving birth to the "rural home." In subsequent years, the family added to their home until eventually there were 36 bedrooms, all in use during the summer months.

With the influx of summer visitors, mail became a major problem. The solution to this problem provided the village with the name of Shady Side. In order to provide his guests with the mail, local boarding house owner Sam Parrott, approached the Federal Government about a post office for the area. The Government agreed to a post office on a trial period and it was established at the Nowell house.

The Government, however, needed a name. Three suggestions for a name were made: Parrott—after the originator of the idea; Parrish Creek—the local estuary—and Shady Side—after the name of the Parrott farm. The Post Office Department selected Shady Side, so in 1888 Shady Side, MD, was born.

VOTE

HON. JOSEPH M. McDADE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. McDADE. Mr. Speaker, I was unable, because of health reasons, to record my votes last night on three measures considered by the House. I do want to go on public record, however, in stong support of S. 1081, the National Nutrition Monitoring and Related Research Act, House Resolution 574, to commemorate the successful return to flight by the space shuttle *Discovery*, and H.R. 4917, the Post-Employment Restrictions Act of 1988. Had I been present, I would have enthusiastically voted for all of these measures.

CONGRESSIONAL SALUTE TO MR. DONALD E. PIERCE, BOYS CLUB "MAN OF THE YEAR"

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. ROE. Mr. Speaker, it is with the greatest sense of pride and admiration that I rise today to salute an extremely successful businessman and hard working member of the Boys Club of Paterson in my Eighth Congressional District who, during the last 30 years, has distinguished himself as an exemplary community leader and as one who is devoted to all forms of community service.

I speak of Mr. Donald E. Pierce, who is being honored on Friday, October 28, by the Boys Club of Paterson as their 23d annual "Man of the Year." The occasion will be celebrated at the Westmount Country Club, where a gala dinner dance with a deluxe international smorgasbord is scheduled.

Mr. Speaker, few men have such a glowing history of community service as Mr. Pierce. He attended Lehigh University where he earned his bachelor of science degree in business and finance, as well as New York University, where he graduated with his masters of business administration. He is also a graduate of the American Institute of Banking, Arden House at Columbia University, and the Advanced Management Program at Harvard University. He began his career in 1956 as a credit adjuster at First Fidelity Bank, n.a., North Jersey, and by 1963, he had moved his way up to officer status in the mortgage department.

In 1965, Mr. Pierce was appointed manager of the bank's eastside office in Paterson and promoted to assistant vice president later that year. He was transferred to the investment department in 1968, and while managing this area, was promoted to vice president in 1970 and to senior vice president in 1974.

Mr. Pierce was named executive vice president in 1977 and bank president in 1978. In 1980, he was elected to succeed C. Gordon Jelliffe as chief executive officer.

In addition to heading the bank's funds management group and its board of directors, his banking activities include: the New Jersey Bankers Association Task Force on Interstate Banking Directors, the American Bankers Association Educational Development and Policy Council, and the Bank Leadership Group.

Along with his ambitious professional pursuits, Mr. Pierce has been vigorously involved in a number of civic pursuits. He is director and vice president of the Better Business Bureau of Bergen Passaic, and Rockland Counties, director of the United Way of Passaic Valley and 1987-88 general campaign chairman, director of the Bergen-Passaic Retarded Citizens, trustee for the Paterson Eye and Ear Infirmary, and he serves on the board of directors for the Paterson Education Foundation. Mr. Pierce is highly involved in the Passaic County Boy Scouts of America, and he is a member of both the Charter Club and the Hamilton Club.

Among Mr. Pierce's most outstanding attributes is his ability to accomplish meaningful things without any fanfare. He never speaks of the service he has provided to others, he merely gives assistance as his position permits. He has spent many years joining organizations whose goal it is to give service to the community, including his dynamic involvement in the Boys Club of Paterson. In this way he has spent his life improving the lives of others. I have no doubt that his wife, Joan, and their two daughters, Susan and Carol, are most proud of this man who has given so much of himself to so many.

I am certain, Mr. Speaker, that you and our colleagues will join me in recognizing the profound effects of the generosity and devotion of Mr. Donald E. Pierce in matters of good will and brotherhood which truly set an example for all of us. I am proud to extend my heartiest congratulations to Mr. Pierce on his well-deserved title of "Man of the Year."

PUBLIC POWER WEEK, OCTOBER 9-15

HON. GEORGE (BUDDY) DARDEN

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. DARDEN. Mr. Speaker, this week, October 9-15, is Public Power Week in my hometown of Marietta, GA, and in 2,200 other communities across America. The week has been set aside to honor America's publicly owned electric utilities.

In the United States, there are two major types of electric utilities—private power companies and nonprofit consumer-owned systems that are locally controlled and part of the communities they serve. The United States is one of only a few industrialized nations to have such a diversity and competition in their utility industry.

The Marietta Board of Lights and Water, which was established in 1906, is my hometown's publicly owned electric utility. It is 1 of 52 public power systems in the State of Georgia, and part of the nationwide family of 2,200 communities throughout the United States, which also operate their own utilities as a part of local government. The Marietta Board of Lights and Water serves 31,396 residential customers and 4,955 businesses and commercial firms.

Today, more and more communities are considering public power to enjoy the benefits of local control, community ownership, and not-for-profit service. Citizens, through local boards and bodies of government, as well as the ballot box, have power to help decide their utility's policies. Public power is responsive to its community because the owners of the utilities and the consumers of the electricity are the same people; therefore, public power belongs to the people it serves. And since it is not-for-profit, all economic benefits produced in the community stay in the community.

In a national public opinion poll, Americans support public power principles and favor a competitive, diverse electric utility industry. As we celebrate Public Power Week, I would like to bring national attention to the special service publicly owned electric utilities provided to so many communities throughout our Nation.

Mr. Speaker, please join me in thanking the many public power systems and recognizing their contributions to our communities.

ENVIRONMENTAL POLICY INSTITUTE ADMITS TO BIAS

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. YOUNG of Alaska. Mr. Speaker, I thought the Members should be aware that an upcoming report on clearcutting as a forestry technique in the United States by the Environmental Policy Institute will be biased. That should come as no surprise to those who are familiar with the Environmental Policy Institute's record of abusing the truth. How do I know that this new report will be biased? Because they told my staff.

This morning a young man called my office, and asked whether we had any information about clearcutting in my State of Alaska. When my staff member correctly pointed out that the best source of such information is the U.S. Forest Service, which is world-renowned for its expertise in forestry and forest sciences, the young man replied, "well, the report I am doing is biased against the Forest Service."

I warn the American public—the Environmental Policy Institute will be producing a self-admitted biased report on forestry techniques some time in the future. When you see it, I hope you remember what the Environmental Policy Institute said about it.

BERNE CONVENTION SIGNING OVERDUE

HON. BILL FRENZEL

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. FRENZEL. Mr. Speaker, I am pleased that the United States has finally joined the Berne Copyright Convention, which has set the international standard for copyright protection since its establishment in 1886. All major countries have adhered to the Berne Convention—except the United States, the United Soviet Socialist Republic and the People's Republic of China.

Yesterday, H.R. 4262, the implementing legislation which provides for the United States to become a signatory nation to the treaty was passed and sent on to the President. I voted in favor of the bill, as amended by the Senate.

This action was long overdue. The bill provided for changes to United States copyright laws to conform to the Berne Convention. United States laws will, of course, continue to be the basis for copyright protection for United States artists and authors, but we are now in conformance with other signatories.

One of my main reasons for supporting the signing of the Berne Convention is that the United States has long been criticized for demanding copyright protection in foreign markets, yet we didn't seem very interested in signing on to the Berne Convention rights which have been around more than 100 years. Our efforts abroad to stop infringement of United States works will be easier now that we have signed on to the treaty.

I am pleased that the Judiciary Committee was able to work out potential problems and sent a good bill through the congressional process. The United States efforts in favor of intellectual property rights protection in the Uruguay Round of GATT negotiations will be assisted by its passage.

ONE YEAR AFTER THE STOCK MARKET CRASH

HON. GEORGE J. HOCHBRUECKNER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. HOCHBRUECKNER. Mr. Speaker, tomorrow, October 14, marks the first anniversary of the sharpest decline in the U.S. stock markets in America's history. Between October 14 and October 19, the stock market fell 769 points. American stockholders lost about $1 trillion. On one day, October 19, the Dow Jones industrial average, the benchmark of American prosperity, tumbled 508 points. This one day's loss represented a 22.6-percent decrease in the value of all outstanding American stocks.

One year later, the market has recovered, and so has its confidence in the Government process. Congress and the President, working together, have successfully started putting the U.S. Government's financial house in order. Deficits remain. We have, though, begun to exercise fiscal discipline. We in Congress brought President Reagan to the table and ironed out many compromises. The job has not been easy. It has taken tough negotiations between Congress and the President and it has required making difficult choices. The fruit of our labor was historic—the passage of all 13 appropriation bills which comprise the Federal budget before the start of the new fiscal year.

Congress was quick to react to the fall of stock prices. Seven days after the market closed on October 19, Congressman BILL GRAY, chairman of the House Budget Committee, introduced H.R. 3545, the Omnibus Budget Reconciliation Act of 1987 [OBRA]. OBRA was introduced to reconcile Government expenditures with the amount of revenue the Government was expecting to take in. With the introduction of this bill, the House injected into the national debate an alternative for resolving the budget crisis. The House seized the opportunity to force the President to come to terms with the huge annual deficits his policies have been creating. OBRA was the catalyst that prompted the budget summit between Congress and the President in November 1987.

The uncontrolled growth of the Federal debt was one of the primary causes of the stock market crash. The Federal national debt has nearly tripled in the 8 years since 1980. Between 1789 and 1980, the United States accumulated a total debt of $914 billion. The United States now owes its creditors more than $2,500 billion.

The failure of President Reagan's supply-side economic policy is a major cause of this tremendous growth in the national debt. This is the economic policy which GEORGE BUSH referred to in 1980 as voodoo economics. BUSH was right then, though he refuses to admit it now. The supply-side theory assumed that huge tax cuts and an increase in defense spending could be paid for by the economic growth resulting from these actions. The 1981 tax cut has contributed $1,100 billion to the current debt. Combined with a large increase in the Nation's defense budget, the national debt has grown to a perilous size.

Each year the President submits to Congress what he proposes to spend. The deficit resulting from President Reagan's first budget was $128 billion. His second year's budget deficit was $208 billion. Budget deficits hit an all time high in 1986—$221 billion. The 1986 deficit alone was equivalent to 25 percent of the total national debt accumulated from George Washington's administration until the start of Reagan's.

As originally introduced, the Omnibus Budget Reconciliation Act would have reduced the fiscal year 1988 deficit by $14.5 billion. OBRA would accomplish this through $2.5 billion in reduced outlays and $12 billion in new revenue. More than $2.3 billion of this new revenue came from adopting measures proposed by President Reagan. These included closing a major estate tax loophole, imposing or extending user fees, and requiring more people to help pay for the Social Security Program. Approximately $2.1 billion came from extending certain tax provisions which were due to expire. The remaining $8 billion came from tax reform measures affecting business taxes. OBRA avoided any new or increased excise taxes and had very little effect on the taxes paid by low- or middle-income taxpayers.

I knew that the House vote on passage of H.R. 3545 would be very close. In fact, it came down to one—vote—mine. I voted to pass the OBRA because I believed that it was imperative that the President deal constructively with the deficit problem and stop living on credit. This borrow and spend policy must end. The final vote was 206 to 205.

I voted for OBRA because I believed that this bill could be used as an effective bargaining tool to get the President to negotiate Federal spending priorities. It worked. On November 20, 1987, the President, flanked by the bipartisan leadership of the House and Senate, announced a deficit reduction agreement. This agreement is a 2-year deficit reduction plan. It calls for deficit reductions totaling $30.2 billion in 1988 and $45.85 billion in 1989. The negotiated package complies with the Gramm-Rudman deficit reduction targets which are designed to get the United States to a balanced budget by 1993. The President agreed to increase revenue by $9 billion in 1988 and by $14 billion in 1989. He also agreed to reduce defense spending by $5 billion in 1988 and by $8.2 billion in 1989. The final version of the 1987 OBRA implemented the first year of this agreement. It was passed by a vote of 237 to 181 in the House and by a vote of 61 to 28 in the Senate. The President signed the 1987 OBRA on December 22, 1987.

The budget summit agreement also enabled Congress to consider this year's appropriation bills in record time. The agreement set overall limits on defense and nondefense spending levels. With these levels established, House and Senate Appropriations Committees focused their attention on how best to spend the Federal Government's limited financial resources. The House this year passed all 13 of the required appropriation bills 3 months before the beginning of the new fiscal year. Although the Senate moved at a much slower pace, all 13 bills were approved by Congress and sent to the President before the beginning of the new fiscal year on October 1. The last time Congress accomplished this was 1977. If President Reagan had signed the bills before midnight, it would have been the first time since 1948 that all of the appropriation bills were enacted into law before the beginning of the new fiscal year.

The Federal Government started fiscal year 1989 with its financial house in order. Congress and President Reagan—working together as they never have before—have put in place a Federal budget which continues the deficit reduction process and meets the 1989 Gramm-Rudman goals. One year after the stock market crash, the Dow Jones industrial average has recovered half of the value it lost in October 1987. Just as concern over the growing Federal debt was one of the causes for the crash, confidence that Congress and President have begun to deal responsibly with this issue has contributed to the stock market's recovery.

House passage of the 1987 OBRA was the first step in the return to an orderly budget process. I am proud of the key role I played in bringing the President to the bargaining table to resolve the Federal budget crisis. I am also proud that the historic 100th Congress has earned its name by approving the legislation required for the continued operation of the Federal Government on time and in an orderly manner for the first time in 11 years.

Much has changed since the stock market crash 1 year ago. The market has recovered much of its previous value. Last year, Congress was forced to pass one omnibus continuing resolution in place of the 13 regular appropriation bills. This year all 13 of the bills were approved individually and readied for the President before the fiscal year began. I hope that the lessons of 1987 and the solutions of 1988 are long remembered and serve as a basis for continued cooperation between the White House and Congress.

THE CAMP DAVID CHAPEL FUND

HON. BEVERLY B. BYRON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mrs. BYRON. Mr. Speaker, I would like to take the opportunity to bring to your attention the efforts to establish a chapel at Camp David. A private fund has been organized for this purpose, headed by Mr. Kenneth Plummer.

Mr. Plummer was at Camp David on official business at the time of the assassination of President Kennedy. Desiring a place to pray for the President, Mr. Plummer sought a chapel but was informed that none were present on the grounds. During his visit, President Carter resorted to using a movie theatre for worship.

Last fall, Mr. Plummer set up a fund to build the chapel and began receiving donations. The fund has collected about 30 percent of its goal and hopes to be fully funded by next spring. A groundbreaking ceremony was held on July 2.

I have a deep appreciation of Camp David. Not only is it located in a very beautiful portion of my congressional district, but Camp David was named for a member of a family with which I have enjoyed a special closeness. My father, Capt. Harry C. Butcher, served as naval aid to Gen. Dwight D. Eisenhower. During the war, I shared living quarters with the Eisenhowers. I am pleased to see this effort to enhance this national asset. I salute Mr. Plummer and his organization and I wish them the best of fortune in completing their mission.

THE ISSUE OF DRUG LEGALIZATION

HON. JOSEPH J. DioGUARDI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 13, 1988

Mr. DIOGUARDI. Mr. Speaker, I rise today to revive the debate carried out a few weeks ago in the Select Committee on Narcotics Abuse and Control regarding the legalization of illegal drugs.

On this issue, Mr. Speaker, I land squarely on the side of sanity in opposition to the crazy idea of legalization. It is ludicrous to consider making these lethal substances more readily available to the very addicts and abusers that have proven time and time again that no one can control the use of these addictive substances. The best answer to the calls for legalization is better law enforcement, better education of potential abusers and more effective rehabilitation of present abusers.

My years on the board of the Phoenix House, the preeminent rehabilitative authority in New York and quite possibly the Nation, have proven to me that effective rehabilitation can be an answer. The turnaround young abusers were able to make in a disciplined, well-conceived rehabilitative program dramatically highlighted for me the failings of legalization and the availability of illicit narcotics on demand. No, Mr. Speaker, legalization or decriminalization, whatever you want to call it, is not the answer. Prevention and rehabilitation, rivaling the quality programs offered by the Phoenix House, are the keys to success in the war on drugs.

I was pleased to see that my good friend, Dr. Mitch Rosenthal was present at and participated in the unique hearings held in the Select Committee on Narcotics Abuse and Control regarding legalization. I believe that based on his unparalled experience of dealing with drug abusing youth, Dr. Rosenthal is uniquely qualified to address this body on the issue of legalization. I feel his remarks before the select committee are so poignant and relevant to the debate on this issue that I ask for their inclusion in the RECORD for the convenience of all Members.

I agree wholeheartedly with Dr. Rosenthal that the prospect of legalized illicit narcotics is "utterly terrifying." I hope that other Members will heed the sound advice of experts, such as Dr. Rosenthal, and dismiss the idea of legalization all together.

STATEMENT OF MITCHELL S. ROSENTHAL, M.D.

My name is Mitchell S. Rosenthal, M.D. I'm a psychiatrist and the president of Phoenix House, the nation's largest, private, nonprofit, drug abuse services agency.

A pioneer in the development of drug-free treatment methods, Phoenix House has treated more than 40,000 men, women, and children over the past 21 years and created model programs for prevention and intervention. Today, Phoenix House operates ten treatment centers in New York and California (including the 250-student Phoenix Academy at Shrub Oak, New York—a fully accredited residential high school for youngsters in treatment). Nearly 1,200 drug-troubled young people are now enrolled in Phoenix House programs, with close to 1,100 in residential treatment, and more than 30,000 school children each year take part in Phoenix drug education courses.

We believe our experience with drug abusers, our research, and our understanding of how drug abuse starts, how it is sustained, and how it influences behavior, give us a unique perspective on the consequences of legalization.

We find the prospect utterly terrifying. We believe there is no way that making drugs of abuse legally available and easily affordable could result in anything but an extraordinary increase in drug use—both in the number of users and in the amounts used.

But it is the consequences of increased drug use that are most frightening. The destabilizing influences that now threaten our society—the amount of disordered behavior and criminality, the breakdown of families and communities—will simply become uncontrollable. There will be enormous increases in homelessness, mental illness, runaways, child abuse and neglect, crime and violence of all kinds, and in the number of dysfunctional men, women, and children unable to work or learn or care for themselves.

To those of us who have worked closely with drug abusers, this outcome appears inevitable. Why, we wonder, is it less evident to others?

The failure to recognize what is so obvious to us lies, I believe, in a more general misunderstanding of drug abuse. Indeed, what has been most absent from public debate of the legalization question has been realistic recognition of what drug abuse involves, who it threatens, and how it affects individuals, families, and communities.

To understand these, it's important to appreciate fully two vitally significant aspects of drug abuse—the addictiveness of illicit drugs and their impact on the character, values and behavior of abusers.

Cocaine, argue advocates of legalization, is no more addicting than tobacco. And that may be true. About 70 percent of smokers and 70 percent of cocaine users may well become addicted. They will become compulsive users—persisting in the use of tobacco or cocaine in spite of compelling reasons for not using these substances.

But the tobacco-cocaine parallel obscures the sheer power of cocaine addiction and ignores the amounts of cocaine addicts would use were access easy and cost negligible.

Animal studies have shown us the "reinforcing" power of cocaine—the ultimate levels of compulsion that users reach. Experimental animals will ignore powerful electric shocks. They will pass up food, water, and sex for just the chance of getting cocaine. They will literally kill themselves, starving to death, as they seek more cocaine.

Cocaine abusers in treatment almost uninformally report that cost alone limited the amounts they used. Two-to-three-day binges ended only when they were unable to buy more cocaine. If they depended on 40 or 50 or 100 little "hits" to get through the day, that number was determined primarily by how much of the drug they could afford.

And this is the evidence of users who did not smoke crack—the most reinforcing and rapidly addicting form of the drug.

The tobacco-cocaine parallel deteriorates further when we consider the impact of addiction.

Drug abusers, we must realize, are not otherwise normal folk who happen to use illicit drugs. Drug abuse rapidly diminishes the ability to function "normally"—to hold a job, keep up with schoolwork, or sustain responsible social, sexual, or family relationships.

Drug abusers become "driven" people, self-destructive, and out of control. Their abuse lowers self esteem, erodes character, and prompts behavior that is anti-social, often violent, frequently criminal, and manifests an almost absolute indifference to the impact on others. Thus, drug abuse poses grave threats not just to the abuser but to the rest of society as well.

Looking closely at what legislation would bring, we should take seriously those projections of post-legalization drug use that estimate the number of drug users in this country will at least double—and quite possibly triple.

What else could we expect to happen when—at the same time—we increase the availability of drugs and remove the disincentives to use. Let's understand that drug use is a pleasure millions of Americans deny themselves primarily because the cost—in dollars or in danger—is too great. And the dangers that stop them are not so much the health risks as the risk of arrest, social censure or professional embarrassment.

Legalization not only does away with disincentives, but it adds incentives. It makes public use of drugs possible—more possible than it already is in many places—expanding opportunities for use. And it makes drug use an even more contagious condition by eliminating prohibitions that now inhibit the proselytizing of users and limit peer pressure among adolescents.

Should we legalize drugs, where do you suppose the greatest increases in use are likely to occur? They will occur among adolescents 12-to-21 years old. And I am talking here about sheer numbers of new users, because a tripling of use within this age group is already statistically impossible.

Where else are new drug users going to be found but among the age group that already contains almost all new users? And do not imagine that government regulation of distribution will in any way limit the access of adolescents to drugs. It doesn't now. So, if teenagers do not get their drugs from obliging adults—as they now get alcohol—they will get drugs from the same illicit sources that presently provide them.

In addition to adolescents, there will be disproportionate increases in use among other vulnerable populations—among the unemployed, the homeless, the mentally ill, and the emotionally fragile. The impact of legalization on communities already hardest hit by drugs will be devastating.

And what, do you suppose, will result from these increases in drug use? What will be the impact on individuals, families, and communities? What will be the costs and the consequences?

Let's look at the health consequences—not because they are the greatest danger of legalization—but because the proponents of legalization make so much of them. Actually, they make very little of them, forcing an invidious comparison between more than 300,000 smoking-related deaths each year and the roughly 4,000 deaths they so frequently cite as the total number of drug-related fatalities.

Let's recognize first that the 3,600 to 4,100 number is not the total of drug related deaths, but the total number that occur in those hospitals that are part of the federal governments DAWN system—a system devised to show trends not totals—and a system that does not even presently include drug fatalities from New York City.

The more than 300,000 tobacco-related deaths do not represent an actual total either. They are epidemiological estimates, based on the incidence of death from tobacco-related illnesses among smokers and non smokers.

Now, I do not mean to diminish the health danger of tobacco. But we should recognize that we have no real idea of how great a health danger is possed by drugs. I would suspect that it is considerably greater than we imagine. I find Dr. Ian McDonald's projection of 100,000 drug deaths annually after legalization a reasonable one. Indeed, Dr. Robert Dupont's suggestion that drug deaths may go as high as half-a million a year might be closer to the mark.

One aspect of the health risk of drugs we surely cannot ignore is the health risk that drug abusers create for non-users. Plainly, the transmission of AIDS is the most serious dimension of this problem, for drug abusers are already the most dangerous and least controllable carriers of the disease.

But the health consequences of increased drug use—while potentially immense—are nevertheless less threatening than the social consequences. And these derive from that all-important aspect of drug abuse that seems so easy for proponents of legalization to ignore—the deterioration of the individual.

We need ask ourselves what will happen when two to three times as many people—and a disproportionate number of highly vulnerable ones—become dysfunctional: When they cannot work or learn; when they cannot be responsible husbands, wives, or parents; when they lose self-regard; when they become socially irresponsible, self-destructive, paranoid, violent, or criminal.

What we will then see is even more of what we are seeing now—enormous increases in social disorder, homelessness, mental illness, disrupted families, family violence, child abuse and neglect, and crime.

Look at what is happening today:

There are five million mentally ill Americans. It is estimated that half are drug abusers, and there is recent evidence that drug use increases their need for hospitalization.

There are as many as three million homeless; the number grows by 20 to 25 percent a year. And about one-third of those in shelters have histories of substance abuse.

There are some 1.5 million teenage runaways now—three times the number there were in 1984—and street workers estimate that 80 percent are drug abusers.

In New York City—

Infant mortality involving maternal drug abuse has doubled since 1983;

The number of addicted babies doubled last year alone;

And drug abusing parents are now responsible for three out of every four cases of reported child abuse that leads to death.

And increased use will increase crime, no matter how many dealers legalization may drive out of business. Drug abusers—let me repeat—become irresponsible, self-destructive, and anti-social. Not all of them, but far too many. They go out of control. They become paranoid. They give way to violence. They do not rob and steal and mug only to buy drugs. And they will not stop robbing, stealing, and mugging because they can't get drugs at bargain prices.

To the extent that legalization increases drug use it will increase crime, all kinds of crime—not only robbery and theft, but homicide, assault, rape, and child abuse as well.

Clearly, the costs and consequences of legalization would be immense. they could cripple industry—where one out of five male workers 18-to-24 is already drug-impaired. And they would destroy communities that are now barely able to withstand levels of disorder and crime.

I believe the destabilizing effect of legalization would irreparably damage American society, I believe it would be catastrophe from which this nation would never recover.

And what I find hardest to understand about the legalization proposal, which has been around for decades, is why it is suddenly being considered—if not seriously—than at least by serious people.

It is ironic, I believe, for this notion to resurface at this time. Today, the American public has a better understanding of drug abuse and its dangers than ever before. It is now considered the nation's number one problem. And we are more committed to confronting it and controlling it than we have ever been.

There is also solid evidence that we can control drug abuse. The decline in drug use among and even more impressive changes in adolescent attitudes towards drugs are the most encouraging signs we have ever seen.

I do not accept the notion that legalization must be considered as an alternative to strategies that have failed, although I will admit that strategy based primarily upon interdiction cannot succeed.

Enforcement officials too would allow that a supply-side strategy cannot work without reduction in demand. And reduction in demand can only be achieved by a balanced response that involves enforcement, prevention, and treatment.

Because I come from the treatment side, I am angered when its role in control of drug abuse is ignored. And I noted with no little distress, during last Sunday's debate, how neither candidate for president saw fit to add treatment to his prescription for the nation's drug abuse problem, although much was made of both enforcement and prevention.

So, let me take a moment to point out that treatment is the only response to drug abuse that we know will work. We can and do cure drug abuse. Yes, I know the courts and the prisons are filled with "uncured" drug abusers. But they are there, not because treatment has failed but because the present system allows them to avoid treatment.

Treatment works—and drug-free treatment works best. We will succeed in nine out of ten cases, when drug abusers are convinced or compelled to remain through the full course of treatment. And this capability is what makes a demand side strategy possible, because it will allow millions of men, women, and children to overcome dependency and change the attitudes and values that accompany addiction. It will permit them to start new lives and conform to society's new demand of abstinence.

But we cannot cure drug abusers who aren't in treatment—and what brings them in are disincentives. That is why enforcement at the street level is so important. That is why the current climate in this country—growing public intolerance for drug use and strong employer drug policies—makes victory over drugs a realistic expectation.

I would be remiss if I did not mention to a Congressional committee the ways in which I believe the federal government can help. And I endorse many provisions of the omnibus bill. But I would ask that—when funds for treatment are considered—you take a more than short-term view. A one-shot increase in funding will not help us to respond effectively to rising treatment demand. What we need is a multi-year commitment, so that we can develop new capacity thoughtfully and sustain the new centers we open or the new programs we bring on line.

I have been involved in the treatment of drug abuse for more than 25 years now. And I have seen the problem attacked and ignored in all kinds of ways.

I do not believe the legalization proposal is a real threat. But I am grateful for the opportunity it has provided to focus attention on the real threats that drug abuse poses. And I would ask this panel, in considering legalization or any alternative strategy, to focus on the core problem, not to be sidetracked by other concerns—no matter how compelling. And by this I mean that we cannot devise answers to crime or to AIDS—or to any problem that derives in whole or in part from drug abuse—without attacking drug abuse itself and the conditions that sustain it.

STUDENT VISA INEQUITIES

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 14, 1988

Mr. LANTOS. Mr. Speaker, the resolution which I have introduced today, calls on the Department of State to treat foreign students at U.S. universities in an equal and equitable way. Equitable treatment would mean that students from one country must have the same rights and responsibilities as students from another country. It is a simple concept which our Government should have been following all along in its programs of student visas.

An example of the problem is a young couple who live in the United States under J-1 student visas. They are from the People's Republic of China. They have one child, born in the People's Republic of China, and an infant, born in the United States of America. Under the conditions of a J-1 visa, this couple must return to the People's Republic of China when their education is completed. When they do return, their second child who is a U.S. citizen, will be denied health benefits and will not receive a food ration card. Under current policy, the U.S. State Department will send the couple home, to comply with their visa requirements. Unfortunately, they are also sending a United States citizen to the People's Republic of China to face the hardships of being an officially unrecognized human being in terms of basic rights such as food and access to health care. The status of the second child is not considered a case of hardship when the couple apply for a visa waiver or a change of visa. Yet the U.S. Immigration Service has granted asylum in similar cases because they clearly recognize the danger to and hardship of this family.

Further, U.S. institutions who would like the couple to stay and utilize their rare academic specialties to the benefit of university research are lost to their sponsoring school.

J-1 visas require the couple to return home after graduation for at least 2 years as long as visa conditions are met. But in effect, the People's Republic of China students remain home forever. And often they return even though visa conditions are not met by the People's Republic of China.

Among the conditions of a J-1 visa is that the People's Republic of China must substantially contribute to the support of their students. United States State Department officials have ruled that $50 "good luck" money from a People's Republic of China official, or a loan—paid back—for plane fare, constitutes appropriate government support. This contrasts to student graduate fellowships from United States institutions which may total close to $100,000 for many People's Republic of China students. Yet State Department policy weighs the small, initial People's Republic of China contribution against United States institutional support and had ruled in favor of the People's Republic of China commitment of very limited funds. This appears in conflict with the spirit and letter of the law concerning foreign governments' support of foreign students.

Part of the debate is the interest on the part of United States universities in retaining the services of the People's Republic of China student and graduate—who has often completed expensive, specialized training which can best be used at the sponsoring United States university.

The issue of J-1 visas for People's Republic of China students is only relevant in law if there is an opportunity to work in the United States in unique and specialized fields as certified by the research or university employer, or cases of hardship.

In the cases of many People's Republic of China students, their studies make them key to United States university research, and the opportunity to work not only exists, but can be critical to United States interests.

Of greater importance is the human rights issue raised in some of these cases. A second child born in the United States to People's Republic of China students faces extreme hardship if the family has to return to their nation of origin because of People's Republic of China population policies. It is critical to note that the student is not the focus of the problem. The focus is an infant who is a U.S. citizen and who faces a very uncertain future.

The resolution does not question the basic assumptions behind J-1 visas—that nations invest in their students to educate them in the United States in vital disciplines for their own national needs. However, if a nation does not choose to support that student as required by law, and a U.S. institution does, our laws and policies are compromised. My resolution simply calls for equal treatment of students regardless of country of origin. No new rights are granted.

The allowance for hardship waivers is also an issue we need to highlight, and it is a central concern of the resolution. In the case of People's Republic of China students who have a second child in the United States, a return to People's Republic of China mistakenly has focused on the People's Republic of China's implied contract with a student for educational opportunities and support in the United States. We should consider the hardship of the second child, the U.S. citizen, who may be sent back to his parents' country to find him or herself an unwelcomed addition to society.

My resolution calls for a United States policy to ensure that students from the People's Republic of China are treated in the same manner as students from other parts of the world. Further, it suggests a definition of government support for those visas which require the support of a foreign government to provide a fair way to measure whether a government is educating a student or simply keeping a rope around that student to pull him home whether U.S. law allows for him to stay or not.

This resolution is simple, fair and a reflection of the best in our human rights policies. While my examples have been students from the People's Republic of China, the resolution does not mention any specific country. It requires a uniform policy for all and with that kind of fairness, we will not have to face the dilemma of specific groups of students, singling out specific countries. My resolution provides for a student's responsibility to return to his country of origin if all J-1 visa requirements are met, and allows waivers when those requirements are not met. It should be the same for Canada or France or Senegal as it is for the People's Republic of China.

CHURCHVILLE PRESBYTERIAN CHURCH

HON. ROY DYSON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, October 14, 1988

Mr. DYSON. Mr. Speaker, I am happy to rise today to honor the congregation of the Churchville Presbyterian Church on the occasion of their 250th anniversary. I commend the continuity and strength of faith that this anniversary represents.

Religious faith has always been the backbone of America. Our churches and synagogues continually renew this strength through the spirit of brotherhood, family, and concern for one's fellowman. This is the spirit that built our Nation, and makes us a symbol for the world.

The longevity of the Churchville Presbyterian Church is remarkable. Records show that a preaching place called Deer Creek existed as early as 1738. In 1739, the English evangelist George Whitefield preached in the region, and the religious revival he created brought about the active organization of the Deer Creek Congregation. Connected to the Donegal Presbytery at its founding, the Deer Creek church was transferred to the New Castle Presbytery in 1759, and the congregation moved to its present site in Churchville. The congregation has remained here ever since.

Mr. Speaker, the Churchville Presbyterian Church has undergone many changes since that time—new buildings, new pastors, and new members—yet the zeal for spiritual service has remained constant. From the time the congregation met in a tent, through a move into more permanent housing, and until the present day, the Churchville Presbyterian Church has been a fortress of Christian values in the community. Under the able leadership of its present pastor, Rev. J. William Kokie, since 1976, the congregation has continued to promulgate the Gospel.

I congratulate the members of the Churchville Presbyterian Church on the 250th year of their efforts to aid the spiritual life of their community. I am hopeful that this will continue for the 300th anniversary and beyond. Wouldn't it be wonderful if all of our Nation's churches could celebrate 250-year anniversaries.

THE 30TH ANNIVERSARY TRIBUTE TO THE BENNING-RIDGE CIVIC ASSOCIATION, INC.

HON. WALTER E. FAUNTROY

OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 14, 1988

Mr. FAUNTROY. Mr. Speaker, I am proud to pay tribute upon this, the 30th anniversary of the founding of the Benning-Ridge Civic Association, to the distinguished, courageous, and determined citizens who have created, served, and maintained the work of this important civil association.

The history of race relations in the Nation's Capital has been marked by pain and suffering. From the days of slavery to the early 1950's, scholarly writers like Constance McLaughlin Green in her book, "The Secret City," documented the second-class citizenship that the Nation's Capital, as leader of the free world, accorded its black citizenry. I would recommend this as must reading for Members and staff that have come to our Nation's Capitol after the 1970's in order to realize some of the great strides in dignity and equality that were achieved during the 1960's and the 1970's by the black citizens of the Nation's Capital.

Therefore, in my tribute to this civic association, I want to mention that Washington, DC, always practiced a two-tier system; the citizens association was white; the civic association was black. There was a basic assumption that there was no commonality in needs, community projects, or goals. I am gratified to say that during the early 1970's these two associations were merged and they now are able to join hands in a true partnership of human concerns. But until this miracle of unity occurred, civic associations like the Benning-Ridge Civic Association were often the only voice heard on community needs and concerns.

As one might expect, the history of this group of stalwart citizens includes the names of distinguished personages who made other contributions besides the world of the association. One of its past early President was John B. Duncan, the first black commissioner appointed to the administration of Washington, DC. Other distinguished presidents of the association were Lemon Moses, the first president, and Albert Long, the current president, who has served three terms.

In addition to expressing the will of the citizens living in the area served by the civic association on matters pertaining to the District of Columbia, the association has encouraged and promoted many forms of coordinated activities of citizens on behalf of community betterment and the development of good citizenship.

Just a few of these worthy projects have in past and present years included the organizing of a junior civic organization to train, develop, and encourage young people in civic work and citizen responsibility. The association has maintained a scholarship program for outstanding local high school students, which was expanded to include graduates from the association's area elementary schools, Davis and Plummer, and Fletcher-Johnson Junior High School. The association also worked diligently to improve building maintenance and proper landscaping of the Davis Elementary School grounds as well as leading the efforts to relieve overcrowding at the Davis School. The association was successful in its efforts to have the Ridge Road playground redeveloped and lights installed on the ball field and a swimming pool opened, among many other projects.

Serving principally an area termed as ward 7, the association is proud of having produced the first elected city councilmember, Hon. Willie J. Hardy, who still lives in ward 7.

The list of accomplishments by these dedicated civic-minded citizens continues today in the service of the association to its community. I want to express my deepest appreciation to each and all of them and to wish them continued good works. We are all proud of you on this your 30th anniversary of the founding of the Benning-Ridge Civic Association.

UNITED STATES UTILITY PLANTS TREES IN GUATEMALA TO HELP PREVENT GLOBAL WARMING

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 14, 1988

Mr. BROWN of California. Mr. Speaker, I would like to share an interesting and inspiring story with my colleagues and the rest of the Nation.

Roger Sant, chairman of the board of the Environmental and Energy Study Institute in Washington, DC, is deeply concerned that carbon dioxide emissions from the burning of fossil fuels are causing a potentially disastrous global warming trend. Carbon dioxide is the primary contributor to the greenhouse effect, which if not controlled, threatens to disrupt the Earth's climate with warmer temperatures, higher sea levels, more frequent droughts, and unpredictable weather patterns.

Mr. Sant has reason to be concerned: He is also chairman of the board and CEO of a utility that builds coal-fired powerplants, Applied Energy Services [AES] of Arlington, VA. About 40 percent of the carbon dioxide emitted from fossil fuels worldwide comes from coal. Coal burning also contributes to acid rain by emitting sulfur dioxide. AES, a self-described "socially responsible company," has recently built a coal-fired powerplant in Connecticut. The company addressed the sulfur dioxide problem by using a special combustion process, but the plant will emit roughly 1½ million tons of carbon dioxide annually.

Mr. Sant charged his director of strategic planning, Ms. Sheryl Sturges, with the task of coming up with a plan to address the carbon dioxide problem. The task was not easy, since no cost-effective technologies exist to remove carbon dioxide from powerplant emissions. A psychologist with an MBA, Ms. Sturges proposed a simple, cost-effective strategy. She decided to plant trees. Trees use carbon dioxide in the photosynthetic process to convert sunlight energy into compounds needed for growth. They are, in fact, the biggest hope we have for absorbing much of the 6 billion tons of carbon dioxide from fossil fuels emitted to the atmosphere each year.

Mr. Sant and Ms. Sturges went to the World Resources Institute, a policy research group, for assistance in identifying an organization that could plant the trees. WRI received eight responses to its request for proposals, and chose CARE, an international relief and development organization. CARE will work with the Guatemalan Forestry Service and the Peace Corps to plant 52 million trees in Guatemala. The trees are expected to absorb at least as much carbon dioxide as the new plant emits. The Agency for International Development and several thousand Guatemalan farmers will assist in the project. This is the first such project undertaken by a utility.

I have been deeply concerned for over a decade that the industrialized nations have committed the Earth to a dangerous warming trend. I have not always been optimistic that the inhabitants of the Earth would be able to curtail greenhouse gas emissions in time to prevent disastrous climate change consequences. This project offered hope. AES has provided the Nation and the world with a model for social responsibility. An article from the October 12 edition of the New York Times, printed below, describes the project in greater detail. I urge my colleagues to join me in applauding this highly noble and creative effort to protect our environment.

[From the New York Times, Oct. 12, 1988]

U.S. UTILITY TURNS TO GUATEMALA TO AID AIR

(By Philip Shabecoff)

WASHINGTON, Oct. 11.—Concerned that its new coal-burning power plant in Connecticut will add to the global trend toward a warming of the atmosphere around the globe, and electric utility has come up with an unusual response: it will pay to have trees planted in Guatemala.

The idea is that trees, 52 million of them will do battle with carbon dioxide, the principal gas implicated in the warming of the globe, as though it were in a greenhouse.

"Given the scientific consensus on the seriousness of the greenhouse problem, we decided that it was time to stop talking and act," said Roger Sant, chief executive of Applied Energy Services, at a news conference here today. Applied Energy Services of Arlington, Va., is the parent of AES Thames, a Connecticut based concern that is to contribute $2 million toward the planting of the trees over 385 square miles in Guatemala.

Trees will absorb carbon dioxide from sources all over the world, no matter where they are planted.

AN IMAGINATIVE EXPERIMENT

James G. Speth, president of the World Resources Institute, a Washington based research and policy group that helped design the tree planting program, said that "this is an imaginative experiment in the quest for solutions to the greenhouse effect."

"The project is also a viable solution to the serious deforestation problems of a developing country," he said.

In a related development, the American Forestry Association, a conservation group whose members include foresters and woodlands owners, will hold a rally here tomorrow to open a national campaign to encourage Americans to plant 100 million trees around the country by 1992. The association hopes the tree planting program will be part of "a major public policy effort aimed at reversing the greenhouse effect."

ADVANCES WILL BE SLOW

The two programs are among the first in which business and industry has responded to the growing alarms being sounded by scientists and policy makers about the anticipated onset of global warming. But both would hardly make a dent in the problem.

It is estimated that six billion tons of carbon dioxide from fossil fuels is entering the atmosphere each year. At the same time, 26 million acres of trees, which would otherwise absorb some of the carbon dioxide, are being cut down annually.

To compensate for that much carbon dioxide being put into the atmosphere and that many trees being cut down, it would be necessary to plant as many as 3 billion acres of trees, an area bigger than all of the United States, according to the World Resources Institute.

The tree planting program in Guatemala will be managed by CARE, the international relief and development organization, working together with the Guatemalan Forestry Service and the United States Peace Corps. The sponsors said that some 40,000 small farmers in Guatemala would be involved in planting the tree plantations and woodlots.

In addition to the $2 million from the utility, $2 million cash or services will be contributed by CARE, $1.2 million by the Guatemalan government, $3.6 million by the United States Agency for International Development and $7.5 million by the Peace Corps.

Mr. Sant said the number of trees to be planted would be able to absorb at least as much carbon dioxide as would be emitted by a new generating plant being built in Uncasville, Conn. The 180 megawatt plant will emit an estimated 15 million tons of carbon dioxide over its 40-year lifetime.

The consensus view at the moment is that if current trends in the emissions of carbon dioxide and other trace gases continue and if forests continue to be felled at the present rate, the global average temperature would rise by 3 to 8 degrees Fahrenheit toward the middle of the next century. This temperature, scientists believe, is likely to cause major changes in global climate patterns and cause the sea level to rise because of thermal expansion of the oceans and the melting of glaciers.

Sponsors of the tree-planting program in Guatemala said that in addition to offsetting carbon dioxide, emissions, the project would help reach other goals, including the economic growth in Guatemala and the preservation of the biological diversity of Latin America's rapidly disappearing tropical forests.

JAMES C. MILLER

HON. ROBERT H. MICHEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 14, 1988

Mr. MICHEL. Mr. Speaker, I want to join with our colleagues in paying tribute to James C. Miller III, Director of the Office of Management and Budget [OMB], who on October 18 will be starting a new career as a distinguished fellow of the Center for the Study of Public Choice, George Mason University, distinguished fellow for the Citizens for a Sound Economy, and chairman of the Washington Economic Research Consultants.

Jim Miller has been Director of the OMB since October 8, 1985, a time of hectic and often furious budget and economic battles in Washington. During that time those of us who have worked with him have admired his leadership qualities and his knowledge of the complexities of the budget. I believe his most memorable accomplishment was the part he played in putting together what has been called the budget summit of 1987, which enabled us to meet Gramm-Rudman figures and, in my view, was a major bipartisan achievement.

Jim has had a distinguished career in Government and in education. He has been Chairman of the Federal Trade Commission, senior staff economist for the President's Council of Economic Advisers, Assistant Director of the U.S. Council on Wage and Price Stability, a professor of economics, and resident scholar at the American Enterprise Institute.

It was this background that gave Jim the qualities that enabled him to be of such great service to this country during the various battles over the budget.

We wish Jim well in his new career, and we all hope that his distinguished service will continue in other capacities in the future.

TRIBUTE TO J. HART CLINTON, CHAMPION OF A FREE PRESS

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 14, 1988

Mr. LANTOS. Mr. Speaker, this month the San Mateo County Press Association is honoring J. Hart Clinton, publisher of the largest daily newspaper in San Mateo County. He will be recognized for his contributions to the county and to the newspaper profession. That honor is well deserved, Mr. Speaker,

Hart has been publisher of the San Mateo Times since 1943, and from 1972 until just 2 years ago, he devoted his full time and energies to the newspaper. Under this leadership the Times circulation increased from 5,000 in 1943 to over 50,000 at present. When the Times eight weeklies are added, combined circulation jumps to 200,000.

But Hart is not a one-career man. Born in Quincy, MA, he attended Boston College and received an LLB degree from Harvard Law School in 1929. As so many have, he saw opportunity in California. He practiced law in San Francisco for 43 years from 1929 until retiring from full-time practice in 1972, when he devoted his full energies to the newspaper.

His legal background, however, is one important reason for Hart's strong commitment to the critical first amendment right of freedom of the press. Though Hart and I have disagreed on a whole host of political issues over the years, we are in perfect harmony and passionately agree on one critical issue—freedom of the press.

A couple of years ago, with my distinguished Republican colleague from Michigan, GUY VANDER JAGT, and some 225 other Members of Congress, I introduced bipartisan legislation to designate August 4, 1985, as "Freedom of the Press Day." This date was the 250th anniversary of the landmark court decision in the trial of colonial New York publisher John Peter Zenger. The court decision exonerating Zenger was a watershed event in establishing the principle of freedom of the press in our country. I am delighted to report to you that Hart was an enthusiastic supporter of my legislation.

Our Nation's support for freedom of the press represents our faith in the American people. Through more than 200 years of history, our courts and our Government have defended the public's "right to know" and the impropriety of Government censorship. In the landmark case of New York Times v. United States, Supreme Court Justice Hugo Black stressed the inviolability of the first amendment guarantees: "The Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors."

Mr. Speaker, J. Hart Clinton has been a determined advocate of freedom of the press. I invite my colleagues to join me in paying tribute to this champion of first amendment rights, J. Hart Clinton.

CHALLENGES FACING THE FEDERAL AVIATION ADMINISTRATION

HON. BENJAMIN L. CARDIN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, October 14, 1988

Mr. CARDIN. Mr. Speaker, in 1978 approximately 275 million passengers flew on commercial flights in the United States. This year, reflecting the deregulation revolution in the air transportation industry, more than 450 million passengers will fly. It is forecast that by the turn of the century nearly 800 million passengers will be logged annually. These facts made clear the challenge facing the Federal Aviation Administration and Congress as we try to keep up.

While the demands placed on our airlines, airports, and airway systems have vastly increased, there has been almost no expansion of airport capacity and improvements in the FAA's ability to carry out their responsibilities to the aviation community have been slow. The FAA simply has not been able to keep up with the remarkable changes in the aviation industry and the system is strained. As capacity problems and threats to safety in the air have grown, the administration has allowed a surplus of $5 billion to grow in the airport and airways trust fund. In the past 5 years there have been three new FAA Administrators. And outdated procurement and personnel regulations restrict the agency's ability to carry out its mandates effectively. The American people, through ticket and fuel taxes, have paid for, and have the right to expect, the safest and most efficient system of air service possible. In these days of deregulation this challenge has not been met.

During the 100th Congress, Aviation Subcommittee chairman MINETA, myself, and other members of the subcommittee and Congress have devoted much time and thought to these problems. Passage of the Airport and Airway Safety and Capacity Expansion Act of 1987 marked a most significant step toward correcting many of the problems facing the national aviation system. This legislation built a strong foundation for change, but the war has not been won. Further action to address problems in FAA operations and the aviation industry—efforts to ensure that the American public is served by the safest and most efficient air system possible, should be high on the priority list for the 101st Congress.

CONCERN ABOUT NICARAGUA

HON. MICKEY EDWARDS

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 14, 1988

Mr. EDWARDS of Oklahoma. Mr. Speaker, Congress is set to adjourn in a few days, and all of us will be returning home to our districts across the country. But while we in the United States prepare for the coming elections, millions of Nicaraguans are still left inside their country with neither freedom nor democracy.

The Nicaraguan Contras have helped encourage limited democratic reforms in Nicaragua, and they have helped promote diplomacy by keeping the Sandinistas at the bargaining table in good faith. But since February of this year, the Nicaraguan resistance has been forced to carry on without U.S. military assistance. If the Sandinistas mounted an attack during the congressional adjournment period, the Contras would be unable to defend themselves. We, in Congress, should send the strongest possible message to the Sandinista government that we are still watching what is happening in Nicaragua.

Today I am introducing a resolution expressing continued concern about the Nicaraguan Government's efforts to crack-down on basic human freedom inside Nicaragua. This resolution also emphasizes the need to protect and sustain the Nicaraguan resistance as one of the few pressure points remaining on the Sandinistas. Mr. Speaker, it would be a tragic mistake to conclude the 100th Congress, and then have Nicaragua take advantage of our adjournment by crushing what's left of the resistance. I urge each Member to support this resolution.

THE RECOMMISSIONING OF THE BATTLESHIP U.S.S. "WISCONSIN"

HON. TOBY ROTH

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Friday, October 14, 1988

Mr. ROTH. Mr. Speaker, on October 22, in Pascagoula, Mississippi the battleship U.S.S. *Wisconsin* will once again enter the active service of our country. The U.S.S. *Wisconsin* will be recommissioned after 30 years and is the last of the four existing World War II battleships to undergo modernization. October 22 will be a proud day for Wisconsinites and I commend the US Navy for its prudent decision to refurbish this battleship.

I encourage my colleagues to read the article below which highlights the U.S.S. *Wisconsin*'s honored service in World War II operations and the plans for the recommissioning. The article originally appeared in the August issue of *Veterans Affairs in Wisconsin.*

BATTLESHIP U.S.S. "WISCONSIN"

(By Richard H. Zeitling, Ph.D.)

WARTIME SERVICE

The battleship USS *Wisconsin* earned five stars for its World War II operations. It earned a sixth star and Presidential Unit Citation for its Korean War experiences. During these two wars, *Wisconsin* suffered only three casualties and minimal battle damage.

After its first commissioning in Philadelphia in April 1944, *Wisconsin* was sent to the Pacific where it joined Admiral William F. Halsey's Third Fleet. *Wisconsin* escorted the Third Fleet's fast carriers when they attacked Manila in preparation for the amphibious landings on Mindoro in late 1944. *Wisconsin* rode out a destructive typhoon which struck the fleet and sank three U.S. destroyers.

In early 1945, *Wisconsin* escorted carriers on raids against Formosa, Saigon, Canton, Hong Kong and Okinawa while other Allied forces invaded Luzon in the Philippines. In February *Wisconsin* became part of the Fifth Fleet and began a series of actions designed to cover the long-planned amphibious assault against Iwo Jima. *Wisconsin* crewmen spent over two months at sea without touching land during the operation.

Wisconsin joined the task force supporting the invasion of Okinawa between March and June of 1945. Japanese resistance was ferocious during this campaign. Waves of suicide planes—kamikazes—hurled themselves upon U.S. shipping and large scale air-sea battles developed. *Wisconsin* anti-aircraft gunners shot down three kamikazes on March 18 and were credited with four assists. The carrier *Franklin* was seriously damaged along with 116 American planes, but the Japanese lost 528 aircraft and 16 ships that month.

Kamikaze attacks increased during April and May. While being escorted by *Wisconsin* and other ships, U.S. carriers *Hancock, Intrepid, Bunker Hill* and *Enterprise* were hit and seriously damaged by kamikazes. The battleship's 100 anti-aircraft guns, however, contributed to the American total of 490 Japanese planes shot down during the period.

Wisconsin became part of the Third Fleet in July and began operating off the Japanese Coast. The ship's giant 16 inch guns shelled steel mills and oil facilities at Muroran, Hokkaido and, several days later, *Wisconsin* shelled the Hitachi plant on the main island of Honshu, northeast of Tokyo.

Wisconsin joined the U.S. fleet at anchor in Tokyo Bay three days after the formal surrender of Japan concluded World War II. The ship had steamed 105,381 miles in nine months, had participated in every major U.S. naval operation since arriving in the Pacific and had weathered three typhoons all while suffering neither casualties nor battle damage. *Wisconsin* arrived at San Francisco to a hero's welcome in October 1945.

During the Korean War *Wisconsin* again saw action. American battleships and cruisers provided naval gunfire support to U.S. Marines and South Korea infantrymen on the east coast of Korea. The battleships steamed far northward, almost to the border of North Korea and Soviet Russia, bombarding coastal targets such as railroad facilities and supply depots. Communist supply routes, while never completely severed either by American bombs or by gunfire, were seriously hampered and occasionally brought to a halt. *Wisconsin*, for instance, after subjecting Sonjin Chaho to a prolonged bombardment with its guns, stopped the main rail supply line from Russia for five days by bringing down a hillside upon a track and tunnel system. North Korean bridges, likewise, were toppled by *Wisconsin* gunners.

On March 15, 1952, *Wisconsin*, patrolling very close to shore, was fired upon by Communist heavy artillery. One 152mm shell hit *Wisconsin*, wounding three men. Damage was minimal. The shore battery—its position now unmasked—was demolished within minutes. The direct hit was *Wisconsin's* only battle damage.

Wisconsin served as a training ship after the Korean War. It was home ported out of Norfolk except when operating in the Pacific with the Seventh Fleet. In 1956 *Wisconsin* collided with destroyer *Eaton* and had to be fitted with a new bow, which was accomplished in record time. *Wisconsin* joined *Iowa, New Jersey* and *Missouri* in "mothballs" during 1958, the last battleship in the U.S. Navy to become deactivated.

THE RECOMMISSIONING

"Mothballed" in Philadelphia since 1958, the battleship USS *Wisconsin* (BB-64) will be underway this year for the first time in 30 years. In early 1987, *Wisconsin* was dispatched to the Ingalls Shipbuilding Yard in Pascagoula, Mississippi for upgrading and a complete overhaul. The ship will be recommissioned on October 22, 1988, becoming the last of the Navy's four existing World War II battleships to undergo modernization and recommissioning. *Wisconsin* will join *Iowa, New Jersey* and *Missouri* (upon whose broad deck Japan formally surrendered in 1945) as an active member of the U.S. fleet.

Governor Tommy Thompson signed an executive order creating the Battleship *Wisconsin* Commission to help coordinate activities celebrating the ship's recommissioning. "I have never received more requests to serve on a commission," Governor Thompson explained. James McVey, president of Oscar Mayer Foods, heads the commission and Veterans Affairs Secretary John Maurer is also a member.

Supported by the commission, the State Historical Society will undertake a series of educational exhibits: Three USS *Wisconsin* traveling displays will be available for loan to civic groups throughout the state beginning in June. The first USS *Wisconsin* exhibit opened on May 16, 1988 at Milwaukee's War Memorial building on Lake Michigan in recognition of Armed Forces Day.

The major USS *Wisconsin* historical exhibit will open in mid-August at the new state museum on the Capitol Square in downtown Madison. The exhibit will feature artifacts removed from the battleship at the time of its modernization, and items from museums in Wisconsin and from around the nation. The display will illustrate the development of U.S. battleships by using both ships named *Wisconsin* as examples. The first USS *Wisconsin* served the navy between 1901 and 1922. It was one of a group of battleships which toured the world during the voyage of the Great White Fleet, thereby announcing the coming of age of American naval power in the early 20th century.

A commemorative historical publication will be available at all exhibit sites and through the Department of Veterans Affairs. The publication will contain numerous photographs and historical information regarding both battleships *Wisconsin.*

To assist in the gathering of historical information, the USS *Wisconsin* veterans organization—headed by David Patrykus of Wisconsin Rapids—provided names of battleship sailors. A questionnaire was sent to 500 USS *Wisconsin* veterans on the organization's computerized list. USS *Wisconsin* veterans who have not received the questionnaire may contact Dr. Richard Zeitlin, Wisconsin Veterans Museums, State Capitol, Room 419 North, Madison, WI 53702, Tel. (608) 266-1009.

Wisconsin's ship of state, the mighty battleship *Wisconsin,* will again play an important part in America's military readiness. Sleek, fast and impressive, the modernized *Wisconsin* retains its formidable defensive armor, measuring seventeen inches thick in some places. *Wisconsin, New Jersey* and *Missouri* constitute the most heavily protected class of ships in the world. Battleship offensive power will include not only the World War II sixteen inch guns (the largest sea-borne artillery in existence), but also the latest Tomahawk cruise missiles, Harpoon anti-ship rockets, and a battery of close-in anti-missile weapons. Crew size will be reduced from its World War II complement of 2,700 to 1,500. *Wisconsin* will most likely be home ported in Corpus Christi, Texas.

Captain Jerry M. Blesch will command the battleship *Wisconsin.* Born in Fort Thomas, Kentucky, Blesch has logged many years of experience with surface warships. Blesch served aboard destroyers and frigates, rising to command Destroyer Squadron Twenty-Five by 1985. Captain Blesch plans to maintain relations between the USS *Wisconsin* and the people of the state for which it is named.